

22-7202

No: _____

IN THE
Supreme Court of the United States

FILED
MAR 29 2023
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SUPREME COURT U.S.

ORIGINAL

Gina Russomanno,

Petitioner

~against~

Sunovion Pharmaceuticals, Inc. and IQVIA, Inc.; and

*Dan Dugan, Jenna Yackish, Trevor Voltz, Erik
Weeden, and Sunovion Pharmaceuticals, Inc.*

Respondent(s)

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Third
Circuit

PETITION FOR WRIT OF CERTIORARI

Gina Russomanno

Pro Se Petitioner

6309 Avalon Ct.

West Long Branch, NJ 07764

732-841-4647

Grusso777@comcast.net

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QUESTIONS FOR REVIEW

Whether, the Supreme Court will consider the merits of the decision by the U.S. Court of Appeals for the Third Circuit, pursuant to *Pro Se plaintiffs Motion upon the NJ District Court, pursuant to Permission to Appeal Case [3:19-cv-05945]*, by FRCP Rules 60(b)(6), and Rule 60(d)(1); wherein, were denied.

Whether, the Pro Se Plaintiff was righteously provided ‘provisional remedy mandate law,’ to Case [3:19-cv-05945], which provides the Standards, that upon any Rule 12(b)(6) Dismissal, failure to state a claim, a provision for amendment, “**must be provided**” before dismissal action can be upheld: [*Phillips v. County of Allegheny*], (3rd Cir. 2008).

Whether, such refusal actions by the lower courts are Exceptional, Extraordinary Circumstance for Certiorari, per

i.

[*Phillips v. County of Allegheny*], (3rd Cir. 2008).

Whether, this initial case (along with its consolidated case), was *wrongly dismissed*; ***whereby***, *Pro Se Plaintiff was never provided any amendment whatsoever* nor any Standards of the mandate law [*Phillips*]. Plaintiff did not amend, did not stand, was not given Opinion Statement why amendment would be futile. ***Whereby whether***, request directed to the NJ District Court per “Permission to Appeal,” is reasonably, *righteously just*.

Whether, *subsequent claims also wrongly dismissed* in a subsequent, timely brought, separate cause of action case, consolidated therein, the Appeal Case: No. [2023: 22-2822 and 22-2823] is *correct or just*.

Whether, *all claims were righteously adjudicated*.

Whether, this Court *has the power to justify relief*,

ii.

and relieve this Pro Se Plaintiff of judgement.

Whether, exhausting remedies to request to Reopen Case, and Permission to Appeal, now again, in following, reopens further Case in *re-new*, Petition for Extraordinary Writ of Mandamus.

Whether, the ‘*distinct* mandate law,’ *egregiously withheld* from Pro Se Plaintiff, which *egregiously removed* her judicial rights and due process rights is Righteous or Just; wherein, Certiorari aids in appellate jurisdiction.

LIST OF PARTIES AND RELATED CASES

- *Gina Russomanno vs. Sunovion Pharmaceuticals, et al.* Case No. [22-2822], and *Gina Russomanno vs. Dan Dugan, et al.* Case No. [22-2823], United States Court of Appeals for the Third Circuit. *Judgement entered*, January 20, 2023; Mandate entered, January 30, 2023.
- *Gina Russomanno vs. Sunovion Pharmaceuticals Inc. and IQVIA Inc.* Case No. [3:19-cv-05945], United States District Court of New Jersey. *Judgement entered*, May 18, 2020.
- *Gina Russomanno vs. Dan Dugan, Jenna Yackish, Trevor Volz, Erik Weedon, and Sunovion Pharmaceuticals Inc.* Case No. [3:20-cv-12336], United States District Court of New Jersey. *Judgement entered*, May 4, 2021.
- *Gina Russomanno vs. Sunovion Pharmaceuticals, et*

- *al. Case No. [23-1186]; and Gina Russomanno vs. Sunovion Pharmaceuticals, et al. Case No. [23-8013], United States Court of Appeals for the Third Circuit. Pending.*

CORPORATE DISCLOSURE STATEMENT, RULE 29.6

Petitioner, Gina Russomanno is strictly a personal entity with no such corporation or LLC established under this name or control.

TABLE OF CONTENTS

QUESTIONS FOR REVIEW.....	i.
LIST OF PARTIES, RELATED CASES, CORPORATE DISCLOSURE: Rule 29.6.....	iv.
OPINIONS BELOW.....	vi.
JURISDICITION AND STATUTORY PROVISIONS.....	vii.
STATEMENT OF CASE.....	1
ARGUMENT/REASONS FOR GRANTING WRIT	4
I. Phillips v. County of Alleghany: 515 F3d 224 (3 rd Cir. 2008).....	6
II. NJ District Court Refused Plaintiff Mandate Law Provision.....	15
PRIOR COURT JURISDICTION STATEMENT.....	18
CONCLUSION.....	18
CERTIFICATION.....	19
CERTIFICATE OF COMPLIANCE.....	-
NOTIFICATION OF SERVICE Rule 29.4.....	-

INDEX TO APPENDICES

APPENDIX A - No. [22-2822 with 22-2823], (Rehearing)
APPENDIX B - No. [22-2822 with 22-2823], (Formal Appeal)
APPENDIX C - No. [3:19-cv-05945], (NJ District Case Judgement)

TABLE OF AUTHORITIES

Cases:

<i>Alston v. Parker</i> , <u>363 F.3d 229, 235</u> (3d Cir. 2004).....	13
<i>Batoff v. State Farm Ins. Co.</i> , <u>977 F.2d 848, 851</u> n. 5 (3d Cir. 1992).....	15
<i>Borelli v. City of Reading</i> , <u>532 F.2d 950, 951</u> n. 1 (3d Cir. 1976).....	12
<i>Grayson v. Mayview State Hosp.</i> , <u>293 F.3d 103, 108</u> (3d Cir. 2002).....	11, 14
<i>Greater Boston Television Corp. v. FCC</i> , 463 F.2d 268, 279 (D.C. Cir. 1971)).....	14
<i>"In re Rockefeller Ctr. Props., Inc. Sec. Litig."</i> , <u>311 F.3d 198, 215-16</u> (3d Cir. 2002).....	8
<i>Iqbal v. Hasty</i> , <u>490 F.3d 143, 157</u> n. 7 (2d Cir. 2007).....	10
<i>Leuthner v. Blue Cross and Blue Shield of Ne. Pa.</i> , <u>454 F.3d 120, 129-131</u> (3d Cir. 2006).....	10
<i>Phillips v. Cnty. of Allegheny</i> , 515 F.3d 224, 234 (3d Cir. 2008).....	2, 3, 5, 6, 11, 13-17
<i>Pinker v. Roche Holdings Ltd.</i> , <u>292 F.3d 361, 374</u> n. 7 (3d Cir. 2002).....	8, 10
<i>Pryor v. National Collegiate Athletic Ass'n</i> , <u>288 F.3d 548, 564-65</u> (3d Cir. 2002).....	10
<i>Shane v. Fauver</i> , <u>213 F.3d 113, 116</u> (3d Cir. 2000).....	12, 14

<i>Worldcom, Inc. v. Graphnet, Inc., 343 F.3d 651, 653</i> (3d Cir. 2003).....	7
<i>Twombly</i> , 550 U.S. at 555); (127 S.Ct. at 1965).....	8, 9, 10
<i>Twombly</i> , <u>127 S.Ct. at 1964</u> (quoting <i>Conley</i> , <u>355 U.S. at 47, 78 S.Ct. 99</u>).....	8, 9, 10
<i>Twombly</i> , <u>127 S.Ct. at 1969</u>	8, 9, 10
<u>Federal Rules of Procedure:</u>	
<i>Fed. Rule Civ. Proc. Rule 12(b)(6)</i>	3, 6, 7, 9, 11, 13, 16, 17
<i>Fed. Rule Appellate. Proc. Rule 5(a)(1), Rule 60(b)(6),</i> <i>Rule 60(d)(1)</i>	4, 18
<u>U.S. Codes:</u>	
48 U.S. Code § 1613a	18

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari is issued to review the judgements below and so requiring the entire record to be sent up for decision of the entire matter in controversy.

OPINIONS BELOW

1. The Opinion and Order for the United States Court of Appeals for the Third Circuit for Plaintiffs Rehearing En Banc appears at Appendix A to the petition and is reported at Case No. [22-2822], [Dkt. 17, 18] and [22-2823], [Dkt. 11]. Judgement entered, January 20, 2023; Mandate issued January 30, 2023.
2. The Opinion and Order for the United States Court of Appeals for the Third Circuit for Plaintiffs Formal Appeal appears at Appendix B to the petition and is reported at Case No. [22-2822], [Dkt. 14, 15], and

[22-2823], [Dkt. 9, 10]. Judgement entered, December 29, 2022; Mandate issued January 30, 2023.

3. The Opinion and Order for the United States District Court for the Third Circuit for Plaintiffs Case No. [3:19-cv-05945], [Dkt. 61, 62], on the Appeal for Permission to Appeal, appears at Appendix C to the petition and is reported at Case No. [3:19-cv-05945], Judgement entered, May 18, 2020.

JURISDICITON

The date on which the U.S. Court of Appeals, Third Circuit denied my Rehearing was January 20, 2023.

A timely petition for Rehearing was entered on January 5, 2023, and a copy of the Order denying Rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Wrongful Termination Provisions: N.J. Model Civil Jury

Charges § 4.10(J) (2011), Covenant of Good Faith and Fair

Dealing; Title VII: 42 U.S.C. § 2000e, 2000e-2; ADEA: 29

U.S.C § 621; Equal Pay Act: 29 U.S.C § 621; NJLAD and

NJ Diane B. Allen Equal Pay: N.J.S.A. §10:5-12(a),

N.J.S.A. §10:5-12(e), N.J.S.A. § 10:5-12(t), N.J. Rev. Stat. §

10:5-13.

STATEMENT OF THE CASE

The Supreme Court is being called upon for Writ of Certiorari to review the character reasons for decision by the U.S. Court of Appeals for the Third Circuit, Case No. [22-2822; 22-2823].

The courts have departed from the usual course of judicial proceedings, deciding important federal question in conflict with relevant precedent, whereby, these *substantial, extraordinary circumstances*, call for the Supreme Court's supervisory power.

Wherein, as matter of general public importance, and of substantial question of law that directly or indirectly affects the rights of parties.

The Appeals court affirmed the District court decision to not Reopen the Case, and also refused

any decision on the Permission to Appeal; and further denied plaintiff panel rehearing and en banc rehearing.

This case was riddled with Court Prejudice and abuse of discretion. The Plaintiff Petitioner is and has always been a Pro Se Party with no Legal advice, Pro Bono assistance, or anything of the like. A pro se plaintiff by all law standards is “entitled to leniency and favorable light, and the courts assumption of trust,” per [Twombly; Ashcroft; Phillips; Sonnier]. In prejudice and abuse of discretion, Plaintiff was afforded “absolutely none” of the above.

NJ District Court for the Third Circuit, Case [3:19-cv-05945] was never appealed. A subsequent case, and completely separate cause of action was

timely filed. Such case was “never barred” by Opinion-Dismissal per [3:19-cv-05945]. There were further claims from that case that were brought via plaintiff testimony, but never given opportunity for adjudication. The District Court **did not provide** Mandate Standard Law upon a Rule 12(b)(6), failure to state a claim, Opinion-Dismissal action, per standard law, [*Phillips v. County of Allegheny*].

Plaintiff is entitled to this mandate law provision, once, as a Matter of Right. Plaintiff appealed the subsequent case *instead*, in consecutive, rightful *remedy* stemming from the original case [3:19-cv-05945], (which was not *righteously* dismissed upon its Rule 12(b)(6) dismissal).

The substantial question of law lies upon this first case; *wherein, mandate, provision law was never provided* to the plaintiff. Plaintiff thereby, has matter of right, to appeal that case, and/or matter of right, for permission to appeal at [Dkt 72], NJ District Case [3:19-cv-05945]. Plaintiff's motion for permission to appeal must be granted. The Federal Standard Rules pertaining to this action are: FRCP Rule 4, FRCP Rule 60(b)(6), FRCP Rule 60(d)(1), and further, FRAP Rule 5(a), (whereby, a direct motion application to the Circuit Clerk), (entered, March 2, 2023).

REASONS FOR GRANTING WRIT ARGUMENT

Plaintiff should be granted permission to appeal NJ District Case [3:19-cv-05945] as a Matter of Right, and upon a Rule 60(b)(6) Permission to

Appeal request to the District Court, and in further, by Rule 60 (d)(1): Other Powers to Grant Relief, (whereby, entertaining *independent* action to grant relief).

Plaintiffs Motion *went unaddressed* per the actual-entered Motion, by the District Court **Opinion-Dismissal** at [Dkt 72]. The Court *did not enter ORDER* pertaining at all, to any request for Permission to Appeal, until upon a second motion of the same, wherein Permission was noted, denied.

The Third Circuit Court of Appeals then *wrongly*, affirmed the District Courts actions. (Those Opinions are included, herein). **[Appendix]**.

Per, **[*Phillips v. County of Alleghany: 515 F3d 224 (3rd Cir. 2008)*]**, “a District Court must permit curative amendment (or leave to reinstate)

upon Rule 12(b)(6) Dismissal.” The NJ District Judge “*refused to provide this ministerial action*” upon Rule 12(b)(6) Dismissal, failure to state claim.

The Dismissal-Opinion for to NJ District Case [3:19-cv-05945] offers “**no indication**” in the ‘record’ for curative amendment, leave to reinstate, reason amendment would be futile, or that Plaintiff failed to file an amendment or stand. [*Phillips v. Allegheny*].

The actual and Official, Case Text to Mandate, provision law, [*Phillips v. County of Allegheny*] follows as reason for Granting Writ in (*rightful*), Permission to Appeal:

I. **Phillips v. County of Allegheny: 515 F3d 224 (3rd Cir. 2008):**

1. The District Court, in *deciding a motion under Fed. R Civ. P. 12(b)(6)*, is required “to accept as true all factual allegations in the complaint” and “draw all inferences from the facts in the light most favorable to the plaintiff.” *Worldcom, Inc. v. Graphnet, Inc.*, 343 F.3d 651, 653 (3d Cir. 2003).

2. Moreover, *in the event a complaint fails to state a claim, unless amendment would be futile*, the District Court **must give a plaintiff the opportunity to amend her complaint**. *Shane v. Fauver*, 213 F.3d 113, 116 (3d Cir. 2000).

3. Under Rule 12(b)(6), Courts are required to accept “all well-pleaded allegations in the complaint as true and to draw all reasonable inferences in favor of the non-moving party.” The inquiry is not whether plaintiffs will ultimately

prevail in a trial on the merits, but whether they should be afforded an opportunity to offer evidence in support of their claims. [Twombly].

4. *In re Rockefeller Ctr. Props., Inc. Sec.*

Litig., 311 F.3d 198, 215-16 (3d Cir. 2002) (internal citations omitted). “In evaluating the propriety of the dismissal, we accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.”

5. *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n. 7 (3d Cir. 2002) rule “requires only a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to ‘give the defendant fair notice of what the . . . claim

is and the grounds upon which it rests,"" and that this standard does not require "detailed factual allegations." *Twombly*, 127 S.Ct. at 1964 (quoting *Conley*, 355 U.S. at 47, 78 S.Ct. 99). "On a Rule 12(b)(6) motion, the facts alleged must be taken as true and a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits. *See id.* at 1964-65, 1969 n. 8. "Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Twombly*, 127 S.Ct. at 1969. We find that these two aspects of the decision are intended to apply to the Rule 12(b)(6) standard in

general. See *Iqbal v. Hasty*, 490 F.3d 143, 157 n. 7 (2d Cir. 2007).

6. "We have already recognized principles that preclude the hyper-literal reading of *Conley*'s language "no set of facts" rejected in *Twombly*. Other Cases in that following:

Leuthner v. Blue Cross and Blue Shield of Ne. Pa., 454 F.3d 120, 129-131 (3d Cir. 2006), *Pryor v. National Collegiate Athletic Ass'n*, 288 F.3d 548, 564-65 (3d Cir. 2002), and *Levy v. Sterling Holding Co.*, 314 F.3d 106, 119 (3d Cir. 2002).

Furthering, *Pinker*, 292 F.3d at 374 n. 7. See also *Twombly*, 127 S.Ct. at 1969 n. 8 (citing as consistent with its rejection of the ("no set of facts") language the statement that "if, in view of what is

alleged, it can reasonably be conceived that the plaintiffs . . . could, upon a trial, establish a case which would entitle them to . . . relief, the motion to dismiss should not have been granted") (citation omitted).

7. "The District Judge erred when he dismissed the complaint without offering [Phillips] the opportunity to amend her complaint. It does not matter whether or not a plaintiff seeks leave to amend. We have instructed that if a complaint is vulnerable to 12(b)(6) dismissal, a district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002)

(citing *Shane v. Fauver*, 213 F.3d 113, 116 (3d Cir. 2000)).

8. In *Shane*, we held that when dismissing for a failure to state a claim:

“[W]e suggest that district judges expressly state, where appropriate, that the plaintiff has leave to amend within a specified period of time, and that application for dismissal of the action may be made if a timely amendment is not forthcoming within that time. If the plaintiff does not desire to amend, he may file an appropriate notice with the district court asserting his intent to stand on the complaint, at which time an order to dismiss the action would be appropriate.”

Id. at 116 (quoting *Borelli v. City of Reading*, 532 F.2d 950, 951 n. 1 (3d Cir. 1976)).

Because [Phillips] was not given such an opportunity, we will remand to allow her to decide whether to stand on her complaint or attempt an amendment so as to properly allege an affirmative act by defendant.

9. “If a complaint is subject to a Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile. *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). Moreover, we have instructed that a district court must provide the plaintiff with this opportunity even if the plaintiff does not seek leave to amend. *Id.* Accordingly, even when plaintiff does not seek leave to amend his complaint after a defendant moves to dismiss it, unless the district court finds that amendment

would be inequitable or futile, the court must
inform the plaintiff that he or she has leave to
amend the complaint within a set period of
time. *See Grayson*, 293 F.3d at 108. A district court
may dismiss the action if the plaintiff does not
submit an amended pleading within that time, or if
the plaintiff files notice with the district court of his
intent to stand on the complaint. *See Shane*, 213
F.3d at 116 (citation omitted)."

10. "The District Court's memorandum opinion
indicates that it dismissed Phillips' Section
1983 claims with prejudice after receiving the
parties' briefs on the motion to dismiss. There is no
indication that the District Court informed
[Phillips] that she would have leave to amend her
complaint. Moreover, the memorandum opinion

contained neither a finding that a curative amendment would be inequitable or futile, nor a finding that [Phillips] had failed to file a timely amended pleading or had filed notice of her intention to stand on the complaint. There is **no indication** that [Phillips] wishes to stand on the complaint for purposes of this appeal. Indeed, [Phillips] argues that, in the event we determine she has failed to state a claim, we remand the matter to the District Court with instructions to permit amendment. See *Batoff v. State Farm Ins. Co.*, 977 F.2d 848, 851 n. 5 (3d Cir. 1992)."

II. NJ District Court Refused Plaintiff Mandate Law Provision:

1. The NJ District Court did not provide any 'stated, decision' to mandate law, [Phillips v. County of Allegheny], apart from the Opinion's 'Standard of

Review,’ (pgs. 10 & 11). **Wherein**, the NJ District Judge *admits* to this law being standard mandate for provision, (wherein, pertaining to the uniform- decision, upon the remand reconsideration, only).

Despite such, there is ‘no other mention’ of this law mandate (within the 23-page Opinion-Dismissal), *wherein*, in ‘specific regard’ to “having provided the *plaintiff* this *mandate provision*” per the Rule 12(b)(6) Dismissal action. **Whereby**, the *standards* of that law are listed herein, above, # 1-10, as taken from the *actual “case text”* from the Mandate decision, Case: [*Phillips v. County of Allegheny*].

2. “Plaintiff was never provided any of the following *standards*” for the mandate law [*Phillips*];

Writ as reviewed upon these plaintiff reasons for granting the Writ.

PRIOR COURT JURISDICTION STATEMENT

The Court of Appeals for the Third Circuit has jurisdiction per 48 U.S. Code § 1613a, appellate jurisdiction of a district court, appeals from all final decisions of the district court on appeal.

CONCLUSION:

The courts have departed from the usual course of judicial proceedings, and relevant precedent calling for the Supreme Court's supervisory power. Plaintiff's request for an '*initial appeal*' on the Original Judgement/Order, from May 18, 2020; ***whereby***, FRCP, Rule 60(b)(6), Permission to Appeal, and Rule 60(d)(1), Other

Powers to Grant Relief thereto, entertain
independent action to relieve a party from
judgement, must be granted.

It is respectfully requested this petition for
writ of certiorari be **GRANTED**, and judgement
vacated to remand for proper continuance.

CERTIFICATION

I certify under penalty of perjury that the
foregoing is true and correct.

Respectfully Submitted,
/s/ Gina Russomanno



Date: March 29, 2023