No: 22-7365

IN THE

Supreme Court of the United States

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
FEDERAL Circuit

PETITION FOR WRIT OF CERTIORARI

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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 FEDERAL 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

[*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 dismissed* in a subsequent, timely brought, separate cause of action case, **consolidated** *therein,* the FEDERAL Appeal Case: No. [2023: 23-1020 and 23-1022] was *wrongly, incorrect and unjust.*

Whether, *all claims were righteously adjudicated.*

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

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. [23-1020], and *Gina Russomanno vs. Dan Dugan, et al.* Case No. [23-1022], United States Court of Appeals for the FEDERAL Circuit. *Judgement entered*, February 28, 2023; Mandate entered, April 6, 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. *Rehearings, 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.

PETTITION 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 FEDERAL Circuit for Plaintiffs Formal Petition for Appeal appears at Appendix **A** to the petition and is reported at Case No. [2023-23-1020], [Dkt. 25, 26] and [23-1022], [Dkt. 18, 19]. Judgement entered, February 28, 2023; Mandate issued April 6, 2023.
2. 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], appears at Appendix **B** to the petition and is reported at Case No. [3:19-cv-05945], Judgement entered, May 18, 2020.

JURISDICITON

The date on which U.S. Court of Appeals, FEDERAL Circuit denied my Appeal was February 28, 2023; a copy of the Order denying Rehearing appears at Appendix A. This Court's Jurisdiction 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.

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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 FEDERAL Circuit, Case No. [2023-1020, 2023-1022].

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 Federal Circuit Court wrongly dismissed this court action to Appeal the decision of the NJ

District Court to not Reopen Case or provide Permission to Appeal Case [3:19-cv-05945].

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*]; or any reason amendment would be futile.

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 Waste of Judicial Resources has been despicable. As the Courts have attempted in Prejudice to dispose of Plaintiffs claims without cause by LAYERING upon LAYERING of dismissal actions from each new Motion on the initial case and every subsequent Case and Motion pertaining thereto, (all of which are in direct "Relation Back, and/or Supplemental (FRCP 15(c)(d), or Subsequent, separate cause of action claim Case [3:20-cv-12336] and [3:22-cv05032], per the initial case, [3:19-cv-05945]).

The substantial question of law lies upon that 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, District Case [3:19-cv-05945].

The Courts have a '*binding authority*' to provide the Pro Se Plaintiff the Mandate Standard for Amendment upon a Rule 12(b)(6) Dismissal Action. Having never been provided such, the Courts, by FRCP Rules have further authority by Other Powers to Grant Relief from a Judgement Order or Proceeding, and entertain such as 'independent action." [FRCP 60(d)(1)].

The Federal Circuit Court of Appeals dismissed Plaintiffs Motion on limited jurisdiction per 28 U.S.C. § 1295(a), as jurisdiction for patents and trademarks only; and further did not transfer the action by 28 U.S.C. § 1631, because of separate appeal in the Third Circuit Court of Appeals. Further, by FRAP Rule 56 (c)(1)

(B), and F.R.A.P Rule 56 (e)(2)(3), the Court also dismissed and denied Plaintiff Summary Judgement; *wherein*, Defendant parties had failed to appear, support or address any fact of the Federal Circuit Appeals Case.

REASONS FOR GRANTING WRIT ARGUMENT

Plaintiff should have been 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). Additionally, Plaintiff should have been granted Summary Judgement per FRAP 56 (c)(1) (B), and F.R.A.P Rule 56 (e)(2)(3).

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 Alleghany: 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. F.R.C.P. RULE 60(b)(6), 60(d)(1) ARE NOT TIME-BARRED:

Rule 60(b)(6): Relief from Judgement or Order, provides relief for legal errors and post-judgement

developments that *invalidate the judgement*. Motions under these subsections have **no firm deadline.**

Rule 60(b)(6) provides 'any other reason justifying relief from the operation of the judgement;' and "grants federal courts broad authority to relieve a party from a final judgment 'upon such terms as are just,' provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." *Liljeberg v. Health Serv.Acquisition Corp.*, 486 U.S. 847, 863 (1988). "[R]elief is available under Rule 60(b)(6) only where exceptional circumstances have denied the moving party a full and fair opportunity to litigate his claim and have prevented the moving party from receiving adequate redress." *Harley v. Zoesch*, 413 F.3d 866, 871 (8th Cir. 2005).

Rule 60(d)(1): (d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding.

III. EXCEPTIONAL CIRCUMSTANCES FOR APPEAL:

The very fact that plaintiff was not provided provisional mandate law for curative amendment as Mandate required is Exceptional, Extraordinary Circumstance for this Appeal:

"In order to constitute good cause, there must be a showing of exceptional circumstances, 'which render it manifestly unconscionable that a judgment be given effect.'" *Greater Boston Television Corp.* v. FCC, 463 F.2d 268, 279 (D.C. Cir. 1971)).

IV. 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*]; *wherein,* Opinion-Dismissal-Statements, ***excluded all*** [*Phillips*] *law-provisions. **See**:* **(a- h)**, *below.*

> **a)**. District Court must provide remedy upon Rule 12(b)(6) Dismissal, **b)**. District Court must otherwise provide "reason" why amendment would be futile, **c)**. When dismissing for 'failure to state a claim,' District Judges are held to 'expressly state' that plaintiff has leave to amend within a specified period of time **d)**. Plaintiff must file an 'intent to stand' on the complaint if plaintiff does not desire to amend **e)**. Only upon an 'intent to stand' notice from the plaintiff, would an Order to Dismiss the Complaint be appropriate, **f)**. The District Court MUST provide leave to amend, even if the plaintiff does not request it, **g)**. Court ruled the District Judge erred by not providing plaintiff **[*Phillips*]** leave to amend, **h)**. Court also ruled to Remand to allow **[*Phillips*]** the opportunity to stand on her Complaint or attempt an amendment.

The Supreme Court has the great power to exercise its jurisdiction to consider the *merits* of this Writ as reviewed upon these plaintiff reasons for granting the Writ.

PRIOR COURT JURISDICTION STATEMENT

The District Court of New Jersey has jurisdiction per 28 U.S. Code § 1331 and 28 U.S. Code § 1367 (a).

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. Whereby, Defendants continual stance in failure to appear and respond, as they did in this Federal Appeals Court Case, demand for summary judgement per, FRAP 56 (c)(1)(B), and F.R.A.P Rule 56 (e)(2)(3) should have been 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: April 20, 2023