

23 No. 7604

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED

MAY 20 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SHEILA HALOUSEK,

Petitioner

v.

VERIZON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

the UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner

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Respondent

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QUESTIONS PRESENTED for REVIEW

Was Petitioner denied her explicit constitutional civil right under the First Amendment to petition the government for a redress of grievances when the Court of Appeals and the District Court arbitrarily and capriciously dismissed her case and denied her appeal?

Under California Consumers Legal Remedies Act - California Civil Code §§ 1750 et seq and 15 U.S. Code § 45 - Unfair Methods of Competition, (a)(1) "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful," must courts must uphold and enforce these laws or is this optional?

Under 18 U.S.C. § 242 - Deprivation of Rights Under Color of Law – are judges included within the scope of this law?

PARTIES to the PROCEEDING

The parties to the proceedings in the US District Court, Eastern District, Sacramento and the Ninth Circuit Court of Appeal were Verizon and petitioner Sheila Halousek. There were no parties to the proceeding other than these as named in the caption of the case.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the
judgment below.

OPINIONS and ORDERS BELOW

The original opinion of the United States Court of Appeals for the
Ninth Circuit, denying petitioner's appeal was filed on February 22, 2023
on Appeal Case No. 23-16101, and is attached hereto as Appendix A.

The United States District Court, Eastern Division, Sacramento,
dismissal of petitioner's complaint was filed on August 7, 2023 Case No.
2:22-cv-1728 TLN JDP PS, and is attached hereto as Appendix B.

The Findings and Recommendations of the United States
Magistrate Judge, dated June 10, 2023 and filed June 12, 2023, is
attached hereto as Appendix C.

None of the opinions above have been published.

JURISDICTION

A. The Basis for Jurisdiction is a Federal Question

The decision of United States Court of Appeals, sought to be reviewed, was filed February 22, 2023. This petition is filed within 90 days of that date pursuant to the Rules of the United States Supreme Court, Rule 13.1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (Federal Question - The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.)

B. Basis for Jurisdiction is Diversity of Citizenship

This Court also has Jurisdiction under Diversity of Citizenship. The petitioner, (Petitioner) Sheila Halousek, is a citizen of the State of California.

The respondent, (Respondent) is a corporation; Verizon Communications Inc., and is incorporated under the laws of the State of Delaware [Delaware General Corporation Law (Title 8, Chapter 1 of the Delaware Code) is the statute of the Delaware Code that governs corporate law in the U.S. State of Delaware.], and has its Corporate Headquarters at 1095 Avenue of the Americas, New York, NY 10013 and has its Operations Headquarters at 1 Verizon Way, Basking Ridge, NJ 07920. Verizon also has many authorized retailers across the United States.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

A. Federal Provisions

The First Amendment – “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” See also *Bill Johnson’s Rests., Inc. v. NLRB*, 461 U.S. 731, 741 (1983), which reaffirmed that “the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances.” See Exhibits 1 through 4 above, Verizon’s information on the sale date and past use stored in the cell phone, evidence which substantiate Petitioner’s allegations and facts.

Petitioner's complaint against respondent is/was seeking damages for their violation of 15 U.S. Code § 45 - Unfair Methods of Competition, (a)(1) "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful."

Deprivation of Rights Under Color of Law 18 U.S.C. § 242 –

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."

Deprivation of rights under the color of law makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States, including acts done by federal, state, or local officials within their lawful authority, as well as acts done beyond that authority, if they are done while the official is purporting to or pretending to act in the performance of his or her official duties.

Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim. Accordingly, it is a federal crime for individuals, as named above to deprive Plaintiff of her Constitutional right to Due Process, that includes access to federal court.

Consequently, the judicial dismissal of Petitioner's case, which she has substantiated and evidenced and therefore has reasonable basis in both fact and law, violates her explicit Constitutional Civil Right under the First Amendment. Also, under 18 U.S.C. § 242, Deprivation of Rights Under Color of Law, which emphasizes the illegality of the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, this dismissal of her case and the denial of her appeal, also violates this explicit statute.

B. State Provisions

Curtailing deceptive commerce practices and consumer protections, pursuant to 15 U.S. Code § 45, is so important that California has expanded thereon with the California Consumers Legal Remedies Act ("CLRA") the name for California Civil Code §§ 1750 et seq. The CLRA declares unlawful several "methods of competition and unfair or deceptive acts or practices."

'The CLRA makes unlawful, in Civil Code section 1770, subdivision (a) . . . various "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer." The CLRA proscribes 27 specific acts or practices including item (6) "Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand."

The CLRA was enacted, "to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." (*Valdez v. Seidner-Miller, Inc.* (2019) 33 Cal.App.5th 600, 609 [245 Cal.Rptr.3d 268].)

Under California Consumers Legal Remedies Act: Private Cause of Action. Any consumer entitled to bring an action under Section 1780 may, if the unlawful method, act, or practice has caused damage to other consumers similarly situated, bring an action on behalf of himself and such other consumers to recover damages or obtain other relief as provided for in Section 1780. Civil Code section 1780(a), suffering of, "any damage as a result of a method, act, or practice declared to be unlawful by Section 1770 may bring an action to recover or obtain any of the following:

(1) Actual damages,

- (2) An order enjoining the methods, acts, or practices.
- (3) Restitution of property.
- (4) Punitive damages.
- (5) Any other relief that the court deems proper."

STATEMENT of the CASE

In violation of laws governing commerce within the United States of America; particularly transactions intended to result or which results in the sale or lease of goods or services to any consumer; unfair methods of competition and unfair or deceptive acts or practices; Verizon unlawfully sold to Petitioner's group's cell phone plan a used phone, which was of inferior quality. Shortly after purchase, said cell phone ceased to function properly. Thereafter, Petitioner has been seriously impaired and harmed in being unable to send or receive text messages, unable to make or receive phone calls, and the phone does not readily or easily recharge. See below, as well as Exhibits 1 through 4, which is actually Verizon's information stored in the cell phone, for additional detail.

On or around January 9, 2022, in Sacramento California, a member of Petitioner's close friends and family dropped off for her a surprise Christmas present, see Exhibit 1, an alleged new phone, which was purchased on December 24, 2021, see Exhibit 2.

Unfortunately, the fact is that Petitioner's "new" phone did not function properly; she also noticed that the phone log lists calls as far back as June 28, 2021, see Exhibit 4. Accordingly, on Monday, March 21, 2022, Petitioner took this "new" phone to Verizon, in Arden Fair Mall, Sacramento, California, and she told them about the old calls, see Exhibit 4, indicating the phone was not a new phone. Petitioner asked to have the phone fixed, replaced, or returned and her prior phone put back in use. (Petitioner also showed Verizon staff the note in Exhibit 1.) The only assistance that Verizon provided was to inform Petitioner that it was too late to return the phone. The "new" phone was neither fixed nor replaced.

Then on September 6, 2022, Petitioner went again to Verizon, on Arden Way, Sacramento, California, and spoke to a Manager, Charls, regarding her phone and was given a document (See Exhibit 3) with phone numbers for her to call for assistance. Petitioner asked how was this going to help, given her cell phone, her only phone, wasn't working? See Exhibit 3, this was the only help that Verizon provided Petitioner.

Smartphones are a necessity in today's world, not only in staying connected, but, like many people, Petitioner also has no other phone. Should Petitioner need emergency services, roadside, medical, or otherwise, she only has her cell phone, which is not working, to call for assistance.

Petitioner's is also approved to drive for UBER and was planning to improve her financial circumstances by so doing. Accordingly, use of her phone was/is valuable to her and the deprivation of such use has caused her a substantial economic loss and immeasurable hardship.

REASONS for GRANTING the WRIT

This Court Should Grant The Writ In Order To Decide Important Questions Of Federal Law, To Resolve The Conflict In The Federal Courts On These Issues, And To Uphold Explicit Consumer Protection Laws.

In Petitioner's opinion, provisions under 28 U.S.C. § 1915, Proceedings in Forma Pauperis, and Rule 12(b)(6) abridge Petitioner's explicit civil rights under the First Amendment to petition the government for a redress of grievances and are unconstitutional."

The Courts exist to resolve disputes and dispense justice and the Courts should not hesitate to do so, in accordance with the law. Petitioner's right to seek this redress is her explicit civil right, under the First Amendment, "**Congress shall make no law ... abridging ... the right of the people ... to petition the government for a redress of grievances.**" (Petitioner would emphasize that there is **NO EXCEPTION** for the Courts convenience in case processing.) This right is further enhanced and supported by Congress and the courts who have long recognized that poverty, and an inability to pay court filing fees, should not bar litigants from filing a complaint. In 1892, Congress memorialized this principle by enacting an in forma pauperis statute that waived fees for those who could not afford to pay them. As the Supreme Court explained, this statute was built on the understanding that "no citizen [sh]ould be

denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because his poverty makes it impossible for him to pay or secure the court costs." *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948) (internal quotation marks omitted). Nearly one hundred years after its original passage, the Supreme Court continued to describe *in forma pauperis* status as a safeguard "designed to ensure that indigent litigants have meaningful access to the federal courts." See also, *Neitzke v. Williams*, 490 U.S. 319, 324 (1989); which held, "A complaint filed *in forma pauperis* is not automatically frivolous within the meaning of § 1915(d) because it fails to state a claim under Rule 12(b)(6). The two standards were devised to serve distinctive goals, and have separate functions.

Under Rule 12(b)(6)'s failure to state a claim standard -- which is designed to streamline litigation by dispensing with needless discovery and factfinding -- a court may dismiss a claim based on a dispositive issue of law without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one, whereas, under § 1915(d)'s frivolousness standard -- which is intended to discourage baseless lawsuits -- dismissal is proper only if the legal theory (as in Williams' Fourteenth Amendment claim) or the factual contentions lack an arguable basis. The considerable common ground between the two standards does not mean that one

invariably encompasses the other, since, where a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. This conclusion flows from § 1915(d)'s role of replicating the function of screening out inarguable claims from arguably meritorious ones played out in the realm of paid cases by financial considerations. Moreover, it accords with the understanding articulated in other areas of law that **not all unsuccessful claims are frivolous. It is also consonant with Congress' goal in enacting the *in forma pauperis* statute of assuring equality of consideration for all litigants.** (Petitioner emphatically disagrees that this is consonant with Congress' goal of assuring equality of consideration for all litigants. Petitioner would also emphasize again that there is **NO EXCEPTION** to the First Amendment for the Court's convenience in case processing and she argues vehemently that Rule 12(b)(6) and § 1915 are unconstitutional.) To conflate these standards would deny indigent plaintiffs the practical protections of Rule 12(b)(6) -- notice of a pending motion to dismiss and an opportunity to amend the complaint before the motion is ruled on -- which are not provided when complaints are dismissed *sua sponte* under § 1915(d).

In her case against Verizon, which Petitioner did substantiate, as above in the statement of the case, Respondent did not dispute any fact or

interpretation of law. Regardless, the magistrate judge indicated in the Findings and Recommendations, that "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Petitioner contends that this opinion is what is unsubstantiated and obviously erroneous. Therefore, the subsequent arbitrary and capricious dismissal of her case deprives her of meaningful access to the court system and violates her guaranteed civil rights under the First Amendment.

Petitioner believes and contends that under 28 U.S.C. § 1915(e)(2) "The court shall dismiss the case at any time, if court determines that -," in fact, this is a law abridging the right of the people to petition the government for a redress of grievances; and is unconstitutional as violating the explicit Constitutional guaranteed civil right under the First Amendment.

The Ninth Circuit represents that, "The district court certified that this appeal is not taken in good faith ... and [u]pon a review of the record and the response to the court's August 22, 2023 order, we conclude that this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 6) and dismiss this appeal."

In Petitioner's case, particularly since her allegations, which she has supported with details and evidenced with Verizon's information stored and readily displayed on the cell phone, have not been undisputed

by Respondent, her evidence stands as **facts** and the Court had no legitimate authority or knowledge upon which to base another opinion. These positions of the Ninth Circuit and the District Court are clearly erroneous. Appellant believes and argues that she has made her case clearly and explicitly in her filings. Refer to the Statement of the Case and Exhibits 1 through 4 above.

In *Maldonado v. Apple Inc., et al.*, from the United States District Court for the Northern District of California (Case No. 3:16-cv-04067-WHO). Plaintiffs' claims arise out of two extended service plans offered by Apple Inc.: AppleCare+ and its predecessor AppleCare Protection Plan.

The terms and conditions for AppleCare Protection Plan and AppleCare+ provided that when a customer sought service for a covered iPhone or iPad due to a hardware defect or accidental damage, Apple Inc. would either repair the device or replace it with a device that was either "new or equivalent to new in performance and reliability." One of the types of replacements customers can receive under AppleCare Protection Plan and AppleCare+ is a remanufactured iPhone or iPad. Plaintiffs allege that remanufactured devices are not "equivalent to new in performance and reliability" and assert claims against Defendants for breach of contract, alleged violations of the Magnuson-Moss Warranty Act and Song-Beverly Consumer Warranty Act, and alleged violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200.

On Document 340 of this case Filed 04/29/22 Page 2 of 8, "The Court finds that Plaintiffs' proposed Plan of Allocation, proposing to pay Settlement Class members an equal amount per remanufactured replacement device they received, is fair, reasonable, and adequate." So, while, this case was settled, it was done so in favor of the Plaintiff's, who contended that, "remanufactured devices are not 'equivalent to new in performance and reliability.'" This case supports Petitioner's case that used is also not comparable to new and Verizon's sale of this phone is in violation of the authorities quoted above.

In the case, *Consumer Financial Protection Bureau v. Sprint Corporation*, No. 1:2014cv09931 - Document 46 (S.D.N.Y. 2017), In the CFPB's case against Verizon, the Court approved a final judgment; refunds of multi-million dollars to all of its customers that were subjected to the unfair practice of charging its wireless customers for unauthorized third-party charges. (Sprint unfairly charged its customers by creating a billing and payment-processing system that gave third parties virtually unfettered access to its customers' accounts. This access allowed third parties to "cram" unauthorized charges onto wireless bills. Since Sprint automatically enrolled customers in its third-party billing system without their knowledge, much less their consent, many customers were therefore unaware of the unauthorized charges.)

Without justice there is no peace and a peaceful rule-based and law-abiding society is critical to smooth economic function which provides the opportunities for economic prosperity. In support of this public policy objective, the judicial system exists as part of law enforcement created to resolve disputes and dispense justice. Consequently, it is inconceivable that these Courts have not complied with the law as well as deprived Petitioner of her explicit civil rights under 18 U.S.C. § 242, Deprivation of Rights Under Color of Law.

In light of the above, Petitioner urges that this writ should be granted so that this Court can decide these very important questions of law, and so that this Court can resolve the current conflict between the various Federal Courts in dismissals based on an erroneous frivolous designation or an erroneous designation of a failure to state a case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: May 17, 2024

Respectfully submitted,

Sheila Halousek

Sheila Halousek, In Pro Se