No. 24-5138

IN THE

Supreme Court of the United States

Gina Russomanno,

Petitioner

~against~

Sumitomo Pharma America, Inc. (for affiliate Sunovion Pharmaceuticals, Inc.) and Sunovion Pharmaceuticals, Inc.;
AND

Freda L. Wolson, (past) U.S.D.J.; (currently) Partner, Lowenstein Sandler, LLP

Respondent(s)

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW

1. ***Whether*** the ***related-case,* OPINION**-decision, **DCNJ [3:19-cv-05945], [DKT. 61]**, which is *boldly* "**absent adequate remedy of law,**" per ***judicial law requirement*** is *extraordinary circumstance* in *abuse of discretion, and grave miscarriage of justice;* and ***whether,*** that judgement is thereby, **void as a matter of law.**

   To Note:
   (Wherein, *(no form of)* "***curative amendment remedy*** *was ever provided on a* ***Motion to Dismiss, Rule 12(b)(6) dismissal in failure to state a claim,***" (starting **page 10** of a ***uniform-Opinion,*** with a remand reconsideration), per ***related***-case, [**3:19-cv-05945**]).

2. ***Whether, the Rule 60(d)(1),*** **independent-action,** no-time limitation, savings-clause provision, can be jurisdictionally brought to the trial court, as specially enjoined by law, for ***due*-relief** to "cure" a **Judgement "absent adequate remedy of (judicial) law,"**(per it's *related*-case, **[3:19-cv-05945]**); ***whereby, discovery to the Opinion-Omission,*** was ***after-timelines*** in Matter of Right Rule **4a**, and Permission to Appeal Rule **5a**; and whereby, *adequate relief cannot be obtained in any other form or any other court.*

3. ***Whether,*** the *U.S. Court of Appeals for the Third Circuit* will "**certify" questions of law** to the *U.S. Supreme Court; **whereto***:

   "A district court must provide curative amendment, leave to amend, or **Opinion**-statements in reasons amendment would be futile, **upon ANY, Motion to Dismiss, Rule 12(b)(6) dismissal in failure to state a claim**; [*Phillips v. County of Allegheny*], et. al; And
   whether, the court's omission to provide *that judicial requirement is extraordinary circumstance in abuse of discretion and grave miscarriage of justice; wherein, thereby, the judgement is void as matter of law.* [*Barrett*]; [*Wright&Miller*]; [*Allcock*]; [*Jaffe*]; [*Beggarly*]; [*Mitchell*]

4. ***Whether,*** **DCNJ Freda L. Wolfson**, now Partner Lowenstein Sandler, LLP, will comply to enter *amicus curiae* brief, in '**considerable help to this Court,**' in support of the plaintiff per *granting certiorari.*

5. ***Whether,*** the **Deference** (by the Judges and Courts) to '**Cure**' this judicial-wrongdoing, ***has gone too far*** toward this ***Pro Se*** Plaintiff, her cases, and her **earnest** attempts toward appropriate, *adequate due-relief.*

To Note:
(Whereby, *for example,* the *Court of Appeals for the Third Circuit* denied plaintiffs appeal **[24-1080]**, in a final summary sentence, that stated:

> "*Accordingly, the District Court did not* '***abuse its discretion***' ***in declining to grant relief*** *on Russomanno's* ***Rule 60(d) motion***").
>
> (The *Third Circuit Appeals Court* could **easily construe**, that plaintiffs '**appeal petition statements**' **were not pertaining** to any "**abuse of discretion**" *upon* the *District Courts* "**denial by Jurisdiction**" for plaintiffs Rule 60(d)(1) action, but **rather, for:**
>
> > the "**abuse of discretion**" upon the ***related***-case, **[3:19-cv-05945]**, for its **Judgment-Opinion,[Dkt 61]**, in being *boldly,* "*absent adequate remedy of (judicial) law,*" requirements; when ***discovered-after-timelines*** by Rule **4a**, and Rule **5a**)

Memorandum Citations:

[*Phillips v. Cnty. of Allegheny*], 515 F.3d 224, 234 (**3d Cir.** 2008)

[*Barrett*], 840 F.2d at 1263

[*Wright & A. Miller*], Fed. Practice and Procedure § 2868 at 238 (1973)

[*Allcock v. Allcock*], 437 N.E. 2d 392 (III App. **3 Dist. 1982**)

[*Beggarly*], 524 U.S. at 47 (1998)

[*Mitchell v. Rees*], (6th Cir., 2011)

LIST OF PARTIES AND RELATED CASES

- *Gina Russomanno vs. Sumitomo Pharma America, Inc., (SMPA), for affiliate Sunovion Pharmaceuticals, Inc., et al.* Case No. [24-1080]; *United States Court of Appeals for the Third Circuit.* Judgement entered, April 16, 2024; Rehearing en banc, Judgement entered, June 4, 2024.
- *Gina Russomanno vs. Sumitomo Pharma America, Inc., (SMPA), for affiliate Sunovion Pharmaceuticals, Inc., et al.* Case No. [3:23-cv-03684]; *United States District Court for the District of New Jersey.* Judgement entered, January 5, 2024; Text-only ORDER.
- *Gina Russomanno vs. Sunovion Pharmaceuticals Inc.* ***(now named Sumitomo Pharma America, 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.* ***(now named Sumitomo Pharma America, Inc.)*** Case No. [3:20-cv-12336], *United States District Court of New Jersey.* Judgement entered, May 4, 2021.
- ***Freda L. Wolfson****, Partner,* Lowenstein Sandler, LLP; and *past presided* as Chief Judge District NJ, and who *decision*-**Opinioned** on both, *related*-cases; and is *Called* to *enter amicus curiae* in **considerable** help to this court in support for plaintiff and granting certiorari.

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.

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TABLE OF AUTHORITIES

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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 THIRD Circuit* for Plaintiffs Formal Petition, appears at Appendix A to the petition and is reported at Case No. [24-1080], [Dkt.12, 13], Judgement entered, April 16, 2024; **Mandate** *affirmed* June 12, 2024. **Rehearing en banc**, [Dkt 17], Judgement entered, **June 4, 2024**; Mandate [Dkt. 18], *affirm,* June 12, 2024. **AppxA.**
2. The Opinion and Order for the *United States District Court for the Third Circuit* for Plaintiffs Case No. [3:23-cv-03684], [Dkt.18], entered as 'TEXT-only' ORDER, appears as at Appendix B to the petition and is reported at Case No. [3:23-cv-03684]. Judgement entered, January 5, 2024.

v.

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], appears as 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 *U.S. Court of Appeals, THIRD Circuit* denied my Appeal was April 16, 2024. 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.

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.* The court has departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure from the lower court, deciding important federal question *in conflict* with relevant precedent, and decisions of this Court.

Whereby, in *extraordinary circumstances*, in *abuse of discretion, miscarriage of justice, and void judgment*(s), *is a matter of law*; and calls for the Supreme Court's Supervisory Power, in ***overdue***-settlement for *due*-relief.

As matter of general public importance, and substantial question of law that directly or indirectly *affects the rights of parties*, and ***similarly-situated*** others, these circumstances for certiorari are of a **dire** request.

Judge Freda L. Wolfson, has been **"Called to Action"** by this Pro Se plaintiff, (via emails, and certified letter, and this petition's proof of service), to enter **amicus**

curiae brief for this case, as *respondent who supports the position of the plaintiff petitioner in these reasons for granting certiorari*.

Judge Freda L Wolfson's *amicus curiae*, will be of **"considerable help"** to the Court.

Judge Freda L Wolfson has ***since Retired*** from her *appointment* as **DCNJ Chief Judge**, and is *currently Private Practice Partner/Attorney for Lowenstein Sandler LLP*. **Judge Freda L. Wolfson** past *presided* on the *related*-case(s) in question: **[3:19-cv-05945]**, **[Dkt. 61]**; and also, its subsequent case **[3:20-cv-12336]**, **[Dkt. 49]**.

Judge Wolfson has been requested to provide **amicus curiae "Admission Statements"** for this certiorari petition, (*U.S. Solicitor General* has received *service-notice*):

Wherein, *upon review* of her **OPINION**, **[Dkt. 61]**, **[3:19-cv-05945]**, **evidence demonstrates** that the plaintiff *was never provided curative amendment, leave to amend*, or *reason amendment would be futile*, upon the Rule 12(b)(6) dismissal in failure to state a claim, (*solely*, per the Motion

to Dismiss (**portion**), starting **page 10**, of the *uniform-opinion,* with a *separate,* Remand Reconsideration).

Furthermore, **Judge, Freda L. Wolfson**, has the opportunity via **amicus curiae** to **state** the "**reasons why" she did not provide the *mandatory, ministerial, law requirement* to the plaintiff**, and whether her actions of *omission and refusal* were an *apologetic oversight,* (*addressing further,* that the action does now *require due-process-correction*)*;* or otherwise, whether her actions were in **deliberate, abuse of discretion.**

As is *evidenced* by **Wolfson's OPINION**, **[3:19-cv-05945], [Dkt. 61]**, **abuse of discretion**, is *boldly* **evident**. There is *zero statement language* that offers plaintiff "*curative amendment, leave to amend, or reasons amendment would be futile* (**a mandatory, ministerial, judicial law requirement**)," upon the Motion to Dismiss, Rule 12(b)(6) dismissal, failure to state a claim; **(portion), (starting page 10)**, of the *uniform-decision, with a separate, remand reconsideration.*

Judge Freda L. Wolson's Code of Conduct is thereby, questioned. Has **Wolfson** *deliberately* broken the **Canons of Law (1-4)?**: A judge should "*maintain integrity, uphold standards of judiciary, maintain public confidence, impartiality, compliance, integrity of the judiciary, and perform duties fairly, diligently, and with dignity. A judge "should not allow outside relationships to influence judicial conduct or judgements or extrajudicial activities to detract from judicial performance."*

Judge Freda L. Wolfson, may clearly have had issue with *her impartiality in maintaining the integrity of the judiciary*. Her profile for Lowenstein Sandler LLP reads: "Judge Wolfson also *represents and consults* **'pharmaceutical clients'** in patent-related matters. **Additionally,** Judge Wolfson has served as a *mock judge* for parties in '***high profile cases***' *involving patents and* **'pharmaceutical'** *product liability.*" ***See*: [Appendix C].**

It is also boldly evident that **(CHIEF) Judge Freda L. Wolfson** ***has close ties*** with the **Justices of this U.S.**

Supreme Court. Her profile further reads: "In 2014, *she was appointed* by *U.S. Supreme Court,* **(also (CHIEF)), Justice, John Roberts**, to represent the Third Circuit on the *Judicial Conference Committee on the Administration of the Magistrate Judge System;* (Wolfson) *then served* as Third Circuit District Judge Representative on the *Judicial Conference of the United States*."

Ironically, Plaintiff had past entered SCOTUS "*Application to Individual Justices*" directed to **(Chief) John G. Roberts** in relation to plaintiffs appeals against these same "*incorrectly dismissed cases*;" **wherein**, plaintiff had **quoted**, (in *numerous briefs to these Courts*), **Justice Roberts'** *own*, "***historic-statements***" regarding the "***duty of the Court to uphold judicial integrity,***" *upon* "**deference to judgements as performed per rulings of (lower) judges and courts.**"

However, *collaboratively*, these Courts have regularly turned a Blind Eye with *continual* **deference** upon the pro

se plaintiff's (*initial*), two cases; and her *earnest*, further *attempts* for *due-relief*.

Could it be any more **obvious** that the reasons these *courts and judges* continue to "**defend**" their **judges'-wrongdoing(s) and the judicial-deference**, with *more upon more* **deference**,' (*especially*, toward plaintiff's case(s)), lies within the *mere confidence of their* ***network protection?*** Their *actions* in **deference** are *designed* to **stave off and avert all judge-made wrongdoing**, and to *protect friends and colleagues,* (instead of the laws they represent by their honored oath).

Plaintiff has **ad nauseum** presented ***valid and concrete issues*** with her DCNJ *related*-cases **[3:19-cv-05945]**, and subsequent **[3:20-cv-12336]**; and Third Circuit Appeals cases. Plaintiff's briefs have provided ***spot-on***, *specific, memorandum of law* and material facts to allow these Courts **to easily construe**, *thus,* **act**, in "**proper practice and honorable decision**" to: either *vacate and remand, set-aside judgement, instruct to permit amendment,*

etc., (upon plaintiff's cases); ***despite any additional language or extra testimony*** presented within plaintiff's briefs.

***Whether**, regarding rising evidence,* **or Not**;

The judicial law requirement (*very simply*) is:

"*provisional curative amendment remedy upon a Motion to Dismiss, Rule 12(b)(6) dismissal, failure to state claim;*" **no matter any perceived reasons for wanting amendment**, or *no matter if plaintiff hadn't requested leave to amend*.

The information plaintiff *consistently provided, lent enough specifics* for the courts to *reasonably* **construe** that the *related-case*, (in **Opinion, [3:19-cv-05945], [Dkt 61])**, evidences a distinct "*absence of adequate remedy of (judicial) law (requirement),*" and must be *set-aside* as a *void judgement*, as a *matter of law*. [*Barrett*]; [*Jaffe*]; [*Allcock*], et.

***Wherein,* Judge Freda L. Wolfson's OPINION-**decision for **[3:19-cv-05945], [Dkt. 61]** is "*absent adequate remedy of (judicial) law,*" a **judicial requirement**, for

"*curative remedy amendment or leave to amend or reasons amendment would be futile*" on a Rule 12(b)(6) dismissal in failure to state a claim, (in the Motion to Dismiss, **(portion), (starting page 10),** of the *uniform-decision,* with a *separate,* Remand Reconsideration). Thereby, that judgement is void **as matter of law**; and wherein, also, the subsequent case **[3:20-cv-12336],[Dkt.49, 50]**, was next dismissed by **Judge Freda L. Wolfson**, by *incorrect res judicata*, that Judgement is **also void**, as a matter of law.

WHEREAS, The *Third Circuit Appeals Court* affirmed the District Court decision to deny Jurisdiction for its own trial case, thereby denying plaintiff *due*-relief by *savings-clause provision*, independent-action, Rule 60(d)(1): to which there is no time-limitation, and to which serves *as remedy for extraordinary circumstances, in abuse of discretion, and grave miscarriage of justice,* as *specially enjoined by law.*

The Appeals court REFUSED EN BANC REHEARING on June 4, 2024. The *Third Circuit Court of*

Appeals has now also been motioned to "***certify several questions or propositions of law;***" ***wherein***, "*curative amendment remedy is a mandatory, ministerial, judicial law requirement and provision, on a Rule 12(b)(6), failure to state a claim.*" [*Phillips*]; and ***wherein***, per "*absence of (this) adequate remedy of (judicial) law,*" the judgement is thereby, ***null and void***. [*Barrett*]; [*Jaffe*]; [*Allcock*]. **[Appendix D]**.

This case is not about Jurisdiction, and shouldn't have been dismissed by *District Court* to *fastidiously* ***quash*** the Rule 60(d)(1), independent-action, **without due-hearing** in **the trial court**; *wherein*, was most appropriate. *Plaintiff never testified to any "*abuse of discretion*" per the "*denial of jurisdiction*!" Abuse of discretion was **per the *related*-case!**

DCNJ *related*-Case No. **[3:19-cv-05945]**, **[Dkt 61]**, was dismissed by a Motion to Dismiss, Rule 12(b)(6) dismissal action in failure to state a claim. A dismissal by this action is **required by judicial law** to provide the plaintiff **curative amendment remedy, leave to amend,**

or statement-reasons in futility; *regardless if the plaintiff requests it.*

This *mandatory, ministerial* law requirement was never provided to the plaintiff per the Motion to Dismiss (**portion**) of *uniform-decision,* with a *separate,* remand reconsideration: **Opinion, [Dkt 61], [3:19-cv-05945]**, *starting* on **page 10** of the **Opinion**.

Thus, wherein, the Opinion is, "***absent adequate remedy of (judicial) law,***" for *curative amendment,* leave to amend, upon a Motion to Dismiss, Rule 12(b)(6) dismissal in failure to state a claim, there exists *extraordinary, exceptional circumstance,* in *abuse of discretion, miscarriage of justice, and more, and* requires ***due*-relief to plaintiff**; Whereby, **Rule 60(d)(1),** provides provision, in (*appropriate*) *savings-clause action, without any timelines,* as *specially enjoined by law.*

Judge Freda L. Wolfson's Omission of this judicial law requirement, in case **[3:19-cv-05945], [Dkt. 61]**, is

evidenced by the lack of **any Opinion**-statements that provide plaintiff *curative amendment, leave to amend, or reason amendment would be futile,* for the Motion to Dismiss, Rule 12(b)(6) action, in failure to state a claim, (which **starts on page 10**, in the **Motion to Dismiss portion** of the *uniform-decision*, which includes a *separate (portion)*, for a Remand Reconsideration).

It is to be *noted* that **SOLELY**, ONLY the portion for the Remand Reconsideration, (***alone***), does the Opinion state, (per [*Phillips v. Allegheny*]), that "amendment would be inequitable or futile." *This is **NOT addressed** for the **Motion to Dismiss**, (the *actual Complaint*).*

That Court action and ***omission*** *in refusal* to provide *mandatory, judicial law requirement for curative amendment* on a Motion to Dismiss, Rule 12(b)(6), failure to state a claim, is an extraordinary circumstance and '*indisputable element*' in "***abuse of discretion***." ***See***: [*Phillips v. County of Allegheny*]; and et al: [*Shane v.*

Fauver]; [*Grayson v. Mayview*]; [*Borelli v. City of Reading*]; [*Alston v. Parker*]; [*Batoff v. State Farm Ins.*]; ***Also See:*** [*Mitchell v. Rees*]; [*U.S. v. Beggarly*]; [*Barrett*, 840 F.2d at 1263 (*citing*11 *C. Wright & A. Miller*, Fed. Practice and Procedure § 2868 at 238 (1973)].

Refusal of mandatory law requirement by an Official (Chief) Judge is *a grave miscarriage of justice* in *abuse of discretion*, and *requires due-relief* by any processes, *specially enjoined by law*, including the *savings-clause provision*, *no time-limitation*, independent-action by **Rule 60(d)(1)**.

It should be also noted, case **[3:19-cv-05945]** was never timely appealed by Rule 4a, *simply* because the *Pro Se* Plaintiff (also *deserving of* ***leniency*** *standards*), **was (then) UN-aware** of the *curative amendment* law requirement, and **more specifically**, was also **UN-aware** of the fact that the decision-**Opinion** itself, was *significantly*, *"absent adequate*

remedy of (judicial) law," per the curative amendment standard: [*Phillips*]; (*et. al*).

Notwithstanding, plaintiff's later, in **earnest** attempts to Reopen the case or Permission for appeal, by Rule 5a, were still dismissed as *untimely*; despite plaintiff's ***urgency*** for requesting *due*-relief.

However, plaintiff had in *reasonable time* filed a *subsequent case,* no. **[3:20-cv-12336]**, **within 90-days** of the dismissal of the *prior* case **[3:19-cv-05945]**. ***Wherein***, upon that second case dismissal, (*barred by res judicata*), plaintiff **only-then** became aware of the standard law per judicial requirement, and had only-*then* *also* determined, that the previous *related*-case had refused plaintiff all forms of "*curative amendment remedy*." **Whereby**, the *previous, related*-case **Opinion, [Dkt. 61]**, was "*absent adequate remedy of law" for "curative amendment remedy upon a* ***Motion to Dismiss***, *Rule 12(b)(6), failure to state a claim*."

Plaintiff followed to immediately appeal case **[3:20-cv-12336]**,**[Dkt. 49, 50]**, by timely Rule 4a, testifying to the **'errors drawn upon the *prior*, related-case, [3:19-cv-05945], [Dkt. 61, 62]**, to which made the *subsequent* case's *res judicata decision* also "incorrect."

Notwithstanding, although the Courts are able to analyze testimony, inference, and material facts by method of **construe**, (*acting justly in accordance for due-relief*), the courts still *overlooked this authority* in **deference,** *favoring* to dismiss plaintiff's testimony *under appeals* case, **[3:20-cv-12336]**; Despite that the *prior* case, **[3:19-cv-05945]**, was only **then**-*discovered* as being ('*absent adequate remedy of (judicial) law*'), and was *already, timeline-barred* for an Appeal as a Matter of Right, per Rule 4a; and *furthermore, no other adequate-remedy*, for *initial appeals*, remained.

Thereby, **(Rule 60(d)(1))**, is *justly applicable,* toward *due-relief* for *extraordinary circumstances, in abuse of discretion*, and *miscarriage of justice*, per **Opinion**-

decision(s), that are "*absent adequate remedy of (judicial) law*" requirement(s), thereby, a *grave miscarriage of justice.*

In such circumstances, Judgements are deemed **void** as a matter of law, and must be set-aside. (i.e. **[3:19-cv-05945]**; **[3:20-cv-12336]**). [*Barrett*]; [*Beggarly*]; [*Jaffe*]; [et.al]

Independent-action for due-relief, by *savings-clause provision,* **Rule 60(d)(1),** for *extraordinary reason(s)* in *miscarriage of justice, and indisputable element(s) of abuse in discretion,* **cannot be** *justly* **barred by** *its own trial court* for a lack of **Jurisdiction**; *regardless,* of the court-given reasons per *untimely initial appeals,* (*timelines of which were already, *pre*-**expired**, "**before plaintiff's discovery**" to the "Opinion-**Omission**" and "*absence of adequate remedy of (judicial) law*"). Further attempts, wherein, plaintiff was *earnestly*, requesting *adequate, due-relief,* for the Opinion-**Omission,** can neither bar jurisdiction to **Rule 60(d)** action.

Instead, the savings clause provision exists (*with no time limitation*) **to prevent** a grave miscarriage of

justice, in extraordinary circumstances and abuse of discretion... *no matter the timeline delay to the discovery (for its justice miscarriage)*.

The **sole-point in blatant issue, to *related*-case **[3:19-cv-05945],[Dkt. 61, 62]**, is the "**Omission** of a mandatory judicial **law requirement**; wherein, "*no curative amendment* on a *Motion to Dismiss, Rule 12(b)(6) dismissal, failure to state claim,*" was *ever provided* to the plaintiff **in any evidenced form.****

That **Omission-action** was a **violation of judicial law requirement(s)**, in *abuse of discretion* and *grave miscarriage of justice*. Therefore, the judgement is **void** as a matter of law; thus, must be set-aside, (*with instructions to permit amendment*).

Wherein, when an **Opinion**-dismissal is "*absent adequate, remedy of (judicial) law,*" having departed from the law in the usual course of judicial proceeding, judicial law requirement(s), standards, and common law precedence,

and *unjustly affecting the rights of a party*, the judgement must be *righteously* **set-aside**: (and per plaintiff's case(s), *provisional* ***action(s)*** *must be provided with* ***instructions*** ***to permit amendment).***

REASONS FOR GRANTING WRIT ARGUMENT

I. **Rule 60(d)(1) savings-clause provision, independent-action, upon no time limitation:**

1. A judgement-**Opinion**, "*absent adequate remedy of (judicial) law requirement*" is an *indisputable element* in *abuse of discretion*, and *grave miscarriage of justice*," upon *whereby*, independent-action by **Rule 60(d)(1)**, *savings-clause* provision, provides no time-limitation for *due*-relief, as *specially enjoined by law.*

2. [*Mitchell*] moved... "for equitable relief in the form of an 'independent action in equity, as provided for in **Rule 60(d)(1), the Rule 60 savings-clause provision**. *Such an action has no time limitation.*" [*Mitchell v. Rees*, (2011)].

3. "Because this is an equitable action, we

would ordinarily review the district court's decision for *abuse of discretion*." [*Mitchell and Rees,* (2011)], *citing, See*: [*Barrett,* 840 F.2d at 1263].

4. "The '*indisputable elements*' of an independent action are: (1) *a judgement which ought not, in equity and good conscious, to be enforced*; (2) a good defense to the alleged cause of action on which the judgement is founded; (3) fraud, accident or mistake which prevented the defendant in the judgement from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; **and** *the* ***absence of any adequate remedy at law***." [*Barrett,* 840 F.2d at 1263], *citing* 11 C. *Wright & A. Miller,* Federal Practice of Civil Procedure § 2868 at 238 (1973).

5. "Moreover, an independent action is '*available only to prevent a grave miscarriage of justice.*" [*United States v. Beggarly,* 524 U.S. 38, 47, 118, S.Ct. 1862, 141 L.Ed.2d 32 (1998); accord [*Pickford v. Talbott,* 225 U.S. 651, 657, 32 S.Ct. 687, 56 L.Ed (1912), (*available when*

enforcement of the judgement is "manifestly unconscionable"); [Barrett, 840 F.2d at 1263 ("Relief pursuant to the independent action is available only in cases of '*unusual and exceptional circumstances.*'" quoting Rader, v. Cliburn, 476 F.2d 182, 184 (6th Circuit)))).

6. "As other circuit courts have held, a 'grave miscarriage of justice' is a 'stringent' and 'demanding' standard. *Gottlieb* v. S.E.C., 310 F.App'x 424, 425 (2nd Circuit 2009)." [*Mitchell v. Rees*, (2011)].

7. "In light of the *diligence displayed* by the [respondents] *in seeking the truth and pursuing their rights*, equity demanded that the statute of limitations be tolled in this case." 114 F.**3d**, at 489. [*United States v. Beggerly*, 524 U.S. 38 (1998)].

II. Opinion is "Absent Adequate Remedy of Law" in curative amendment upon a Rule 12(b)(6) dismissal, failure to state claim:

1. The "*absence of adequate remedy of law*" is an '*indisputable element*' in "*abuse of discretion*" which is *exceptional, extraordinary circumstance* that requires *due-*

relief. ***See***: [*Barrett*, 840 F.2d at 1263 (*citing*11 *C. Wright & A. Miller*, Fed. Practice and Procedure § 2868 at 238 (1973)].

2. The Opinion for *related*-Case **[3:19-cv-05945]**, **[Dkt 61]**, demonstrates a "**violation of a judicial requirement of law.**" The Opinion **cannot demonstrate 'any' [evidence or indication] 'in the record'** for *curative amendment, leave to reinstate, statement-reasons amendment would be futile, or that Plaintiff failed to file an amendment or stand* upon the Rule 12(b)(6) dismissal in failure to state a clai, Motion to Dismiss, (**portion**). ***See:*** [*Phillips v. Allegheny*]; and et al: [*Shane v. Fauver*]; [*Grayson v. Mayview*]; [*Borelli v. City of Reading*]; [*Alston v. Parker*]; [*Batoff v. State Farm Ins.*].

III. 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
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)."

IV. Indisputable element in Abuse of discretion, thereby, Judgement is void; Case [3:19-cv-05945]:

1. The **Opinion**-dismissal for DCNJ, *related*-**Case [3:19-cv-05945], [Dkt. 61]**, is a "*judgement which ought not, in equity and good conscious, to be enforced.*" **Opinion** *evidences a* distinct "*absence of an adequate remedy of law*" (in *curative amendment* for **Rule 12(b)(6), dismissal**, failure to state a claim [*Phillips*]), which is an "*indisputable element*" in "*abuse of discretion.*" ***See***: [*Barrett*, 840 F.2d at 1263 (*citing*11 *C. Wright & A. Miller*, Fed. Practice and Procedure § 2868 at 238 (1973)].

The **Opinion**, to *related*-case **[3:19-cv-05945], [Dkt. 61]**, *demonstrates abuse of discretion, a grave miscarriage of*

justice, manifestly unconscionable, unusual, exceptional circumstance(s) and requires adequate remedy and appropriate due-relief.

2. 'Indisputable elements' to a void judgement are: "(1) *a judgement which ought not, in equity and good conscious, to be enforced*; (2) a good defense to the alleged cause of action on which the judgement is founded; (3) fraud, accident or mistake which prevented the defendant in the judgement from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; **and *the absence of any adequate remedy at law.*"** [*Barrett*, 840 F.2d at 1263], *citing* 11 C. *Wright & A. Miller*, Federal Practice of Civil Procedure § 2868 at 238 (1973)].

V. Void Judgement Case Law:

A. Judgement-Opinion, *related*-Case No. [3:19-cv-05945], [Dkt 61], is absent adequate remedy of law, thus the Order violated due process of law, and is ineffectual to bind the parties; thereby, judgement is void:

1. "Void judgement is one which, from its inception, *was a complete nullity* and *without legal effect.*" [*Holstein v. City of Chicago*, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, **affirmed** 29 **F.3d** 1145 (N.D, III 1992)]; [*Hobbs v. U.S. Office of Personnel Management*, 485 F.Supp. 456 (M.D. Fla, 1980)].

2. "Void judgement is one where court lacked personnel or subject matter jurisdiction ***or entry of an order violated due process.***" [*U.S.C.A Const. Amend. 5- Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986)].

3. "Void judgement may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personnel jurisdiction, or ***acted in a manner inconsistent with due process of law.***" [*Eckel v. MacNeal*, 628 N.E. 2d 741 (III App. Dist. 1993)].

4. "A void judgment is one which, from its inception, *is and forever continues to be absolutely null,* ***without legal efficacy, ineffectual to bind the parties*** or

to *support a right*, of *no legal force and effect whatever, and incapable of enforcement in any manner or to any degree*." [*Loyd v. Director, Dept. of Public Safety*, 480 So. 2d 577 (Ala Civ. App. 1985)].

5. "A void judgment is one rendered by court which lacked personnel or subject matter jurisdiction ***or acted in a manner inconsistent with due process***." [*In re Estate of Wells*, 983, P. 2d 279, (Kan. App. 1999)]; [*U.S.C.A Const. Amends. 5, 14 Matter of Marriage of Hampshire*, 869 P.2d 58 (Kan. 1997)].

6. "Void judgement under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties, ***or acted in a manner inconsistent with due process*** *of law* ***or*** *otherwise* ***acted unconstitutionally*** *in* ***entering judgement***." [*U.S.C.A Const. Amend 5, Hays v, Louisiana Dock Co.*, 452 n.e.2D 1383 (III. App. 5 Dist. 1983)].

7. "A void judgement is one which has a mere

semblance, but ***is lacking in some of the essential elements which would authorize the court to proceed to judgment.***" [*Henderson v. Henderson,* 59 S.E. 2d 227, (N.C. 1950)].

8. "Judgements entered where court lacked either subject matter or personnel jurisdiction or that ***were otherwise entered in violation of dure process law, must be set aside***." [*Jaffe and Asher v. Van Brunt,* S.D.N.Y. 1994. 158 F.R.D. 278].

9. "**Res Judicata** consequences ***will not be applied to a void judgment*** which is one which, from its inception, *is a complete nullity and without legal effect*." [*Allcock v. Allcock,* 437 N.E. 2d 392 (III App. **3 Dist. 1982**)].

10. "When rule providing for ***relief from void judgements*** is applicable, ***relief is not discretionary matter, but is mandatory***." [*Orner v. Shalala* 30 **F.3d** 1307, (Colo. 1994)].

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.

By independent-action, Rule 60(d)(1), Plaintiff requests *due*-relief per *related*, Judgement-**Opinion, [3:19-cv-05945], [Dkt 61]**, for its ***abuse of discretion*** and ***grave miscarriage of justice***. ***Wherein***, that judgement is "***absent adequate remedy of (judicial) law***" *in curative amendment remedy* on the Motion to Dismiss (portion), Rule 12(b)(6), failure to state a claim; and **thereby, the judgement is void, as a matter of law.**

That judgment must be *set-aside* thereto, *provide appropriate due-relief with instructions to permit proper*

amendment. The subsequent related case **[3:20-cv-12336]**, **[Dkt. 49]**, *dismissed by 'incorrect res judicata' upon the prior related case* **[3:19-cv-12336]**, is thereby, also void, and must also be *set-aside with instructions to permit its due-continuance* (as *rightful amendment* to the first case).

It is respectfully requested this petition for writ of certiorari be **GRANTED**.

CERTIFICATION

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

Respectfully Submitted,
/s/ Gina Russomanno Date: July 19, 2024