No: 24-5138

IN THE

*Supreme Court of the United States*



*Gina Russomanno,*

**Petitioner**

**~against~**

***Sumitomo Pharma America, Inc. (for affiliate, Formerly, Sunovion Pharmaceuticals, Inc.)***
***AND***

***United States District Judge, Freda L. Wolfson; (currently) Partner, Lowenstein Sandler, LLP***

**Respondent(s)**

**On Motion to The United States Court of Appeals for the Third Circuit**

# MOTION FOR RECONSIDERATION UPON PETITIONERS IN FORMA PAUPERIS DENIAL AND CERTIORARI CASE [24-5138] DISMISSAL BY RULE 39.8; WITH PETITIONERS DIRE REQUEST TO OTHERWISE MAKE FEE PAYMENT THERETO CONTINUE CERTIORARI

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## MOTION FOR RECONSIDERATION

The Supreme Court has denied Petitioners In Forma Pauperis Motion per Rule 39.8, completely dismissing Petitioners Writ of Certiorari, and eliminating Petitioners certiorari request by timeline, and/or potential rehearing. Petitioner was also not offered the ability to submit certiorari by fee payment as was offered to other Petitioners in this Court.

Petitioners request for certiorari is ***dire***, and will be in aid of the Courts appellate jurisdiction, for *exceptional and extraordinary circumstances* that have departed from the *accepted* and usual course of *standard law* and judicial proceedings, and warrants the exercise of the Court's supervisory powers. Whereby, the petitioner *cannot obtain adequate relief in any other form or any other court; and whereby further, due-relief is not discretionary, but a mandatory matter in constitutional due-process remedy.*

Dismissing petitioner's certiorari will be action that will only serve to uphold *unjust judicial actions in violation of constitutional due-process, while* making the pronouncement that *unjust judicial misrepresentation, abuse of discretion, and grave miscarriages of justice* will nonetheless, be *upheld. Regardless,* of evidenced, *judicial wrongdoing.*

A dismissal of petitioner's certiorari without granting merit-hearing will quash the validity of the law standards by which equitable litigation relies; especially, wherein regarding judicial judgements that are *"absent adequate remedy of law;"* damaging parties constitutional *due-process* rights, and public confidence to fairness, equality and due-process for all.

Whereby, *long-standing, well-established precedent law,* [*Phillips v. County of Allegheny 515 F.3d. 224-245 3rd Cir. 2008*], (a federal mandate and common law, cited in well-over 18,000 cases), [et.al.], and a ministerial, "judicial

law requirement" for providing *due-process* for "*curative amendment remedy*, upon any Rule 12(b)(6) dismissal, in failure to state a claim," was withheld and refused to the plaintiff upon numerous court requests for plaintiff *due-relief*. ***See:*** *DCNJ, related case* [3:19-cv-05945], [Dkt. 61, 62].

The denial of Petitioners IFP and disposition of petitioner's certiorari upon case complaint to the Third Circuit by the independent-action, *no time limitation Savings-Clause Provision* (FRCP Rule 60(d)(1)), as specially enjoined by law, for requesting *due-process-relief* upon Related case **DCNJ** no. **[3:19-cv-05945], [Dkt. 61, 62]**, (to which there is no other adequate remedy in any other court), will serve to uphold *judicial violations of constitutional due-process* per unjust judicial actions in *misrepresentation, abuse of discretion, and grave miscarriage of justice*; wherein, the judgement-dismissal was "*absent adequate remedy of law.*"

The case evidence is clear-cut, simplistic, and black and white as demonstrated by the Opinion-record, *itself.* There *does not exist* any 'Opinion-statements' regarding 'any form' of provisional "*curative amendment remedy*" as having been issued to the plaintiff upon the "*Rule 12(b)(6) dismissal, in failure to state a claim.*"

The courts have been wrongfully denying Petitioners requests for *due-relief* in extreme prejudice for the Pro Se party; who by other legal standards should require *favorable light and leniency.*

The courts are easily *able to construe* (no matter the verbiage used by the plaintiff), that the related case DCNJ, [3:19-cv-05945], [Dkt. 61, 62], *did not provide plaintiff due-process rights* in "*judicial law and mandate requirement*" for "*curative amendment remedy*" upon a "*Rule 12(b)(6) dismissal action in failure to state a claim.*" ***See***: [*Phillips v. County of Allegheny 515 F.3d. 224-245 3rd Cir. 2008*]; [et.al.].

The case matter is a matter in *violation of* Constitutional and *due-process* rights, in exceptional and extraordinary circumstances and *abuse of discretion;* whereby, timeline discovery cannot quash the *righteousness-owed* for *due-relief*.

Wherein, the Judgement-Opinion *is missing mandate, ministerial requirements for" adequate remedy of law"* per the 23-page Opinion-record-evidence, and is thereby, a '*void judgment*' in *abuse of discretion*, as a '*matter of law.*' ***See***: [*Barrett*, 840 F.2d at 1263 (*citing*11 *C. Wright & A. Miller*, Fed. Practice and Procedure § 2868 at 238 (1973)]; [*U.S.C.A Const. Amend. 5- Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986)]. ***See Also***: **ARGUMENT III.** for Reconsideration, *herein.*

*Per the related case action,* DCNJ no. [3:19-cv-05945], [Dkt. 61, 62], there *does not exist* 'any' Opinion-statement evidence in "any form" for "*curative amendment remedy,*" as *related* to the "*Motion to Dismiss, by Rule*

*12(b)(6), in 'failure to state a claim,"* that was ever provided to the plaintiff in the *entire,* 23-page Opinion-evidence.

The egregious judicial-action in "*refusing* plaintiff's *standard due-process*" is "*exceptional and extraordinary circumstance*" by deliberate, prejudicial abuse of discretion which *violates due-process* for the plaintiff, and *all similarly-situated citizens.*

The *exceptional and extraordinary prejudicial action* by the District Court *to refuse plaintiff 'any form' of "curative amendment remedy" on a Rule 12(b)(6) dismissal in 'failure to state a claim,'* (per DCNJ, [3:19-cv-05945], [Dkt. 61, 62]), also further followed to 'wrongly' affect the *subsequent-related* case, DCNJ no. [3:20-cv-12336], [Dkt. 49, 50]; whereby, an *incorrect res judicata decision* was premised upon that preceding-case, ([3:19-cv-05945], [Dkt. 61, 62]); (to which, provisional "*curative amendment remedy*" was *prejudicially refused* to the plaintiff, *violating* her *due-process rights, and requiring due-remedy and relief*).

The *exceptional and extraordinary action in judicial mandate law refusal, whereby,* the Opinion-evidence, *itself,* demonstrates that it is "**absent** of *adequate remedy of law*" for "*curative amendment remedy*" upon the "*Rule 12(b)(6) dismissal, in failure to state a claim,*" is an *unconscionable* manifest injustice, and *void judgement,* as a *matter of law.* *See:* [*Phillips v. County of Allegheny 515 F.3d. 224-245 3rd Cir. 2008*]; *et, al.; See*: [*Barrett,* 840 F.2d at 1263 (*citing*11 *C. Wright & A. Miller,* Fed. Practice and Procedure § 2868 at 238 (1973)]; [*U.S.C.A Const. Amend. 5- Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986)]. ***See Also***: **ARGUMENT III**. for Reconsideration, *herein.*

Refusal of *mandatory law requirement* 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).

Rule 60(d)(1), is *justly applicable,* toward *righteously-owed, due-relief* for *exceptional and extraordinary*

*circumstances, in abuse of discretion,* and *miscarriage of justice,* per **Opinion**-decision(s), that are "*absent adequate remedy of law.*" The Opinion-record [3:19-cv-05945]. [Dkt. 61, 62], cannot demonstrate any evidence by the Opinion-statements as having provided this judicial mandate and law standard requirement to the plaintiff, (in any form). ***See:*** [*Phillips v. County of Allegheny 515 F.3d. 224-245 3rd Cir. 2008*]; *et, al.*

Thus, in abuse of discretion, the judgement is *void as a matter of law,* and must be set-aside; (i.e. DCNJ cases: **[3:19-cv-05945], [Dkt. 61, 62]; and** following to the (also incorrect) res judicata decision for the subsequent related case, **[3:20-cv-12336], [Dkt. 49, 50]**). ***See:*** **ARGUMENT III.** for Reconsideration, *herein.*

The Judicial Omission-action is 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*), Furthermore, the subsequent case must

also be set-aside for incorrect res judicata decision. ***See:*** **ARGUMENT III.** for Reconsideration, *herein.*

**ARGUMENT REASONS FOR GRANTING RECONSIDERATION:**

**I. Phillips v. County of Alleghany: 515 F3d 224-245 (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)."

## II. Court Completely Withheld Curative Amendment Remedy, on a Rule 12(b)(6) dismissal in failure to state a claim, Refusing to perform Judicial duties and Mandate Requirement and Conflicting Standard Precedent: per Related case, DCNJ [3:19-cv-05945], [Dkt. 61, 62], Which is Absent that Adequate Remedy of Law.

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)]. *See*: **ARGUMENT III**., *herein, below.*

2. The Opinion for *related*-Case [3:19-cv-05945], [Dkt 61, 62], demonstrates a "violation of a judicial requirement of law." The Opinion cannot demonstrate 'any form' [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 claim, Motion to Dismiss, (portion). *See*: [*Phillips v. County of Allegheny 515 F.3d. 224-245 3rd Cir. 2008*]; *et, al.; See:* **ARGUMENT I.**, *herein above.*

## III. Void Judgements As Determined By Standard Law:

### A. Judgement-Opinion, *related*-Case No. [3:19-cv-05945], [Dkt 61, 62], is absent adequate remedy of law in curative amendment remedies, thus the Order violated due process of law, is ineffectual to bind the parties; and thereby, judgement is void as a matter of law:

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)].

## CONCLUSION:

The United States Supreme Court is Petitioners only means for righteous, *constitutional due-process remedy, and due-relief.*

Petitioners request for certiorari is **dire**, and the *proposition of law upon which it rests*, is a mandatory, not discretionary matter. A *violation of constitutional due-process law* by the *Opinion-evidence*, is *undisputable. Such miscarriages of justice are unconscionable and cannot be barred* per the no time limitation, Rule 60(d)(1), savings-clause *provision, as specially enjoined by law.*

The petitioner was denied *constitutional due-process rights* by an *abuse of discretion* in the judicial refusal to provide provisional and ministerial law requirements; whereby, *demonstrated* per the 23-page-Opinion-record-evidence, in its "*absence of adequate remedy of judicial law,*" (as to any statements, for *curative amendment remedy* upon a *Rule 12(b)(6) dismissal in failure to state a claim.*" (per related case DCNJ [3:19-cv-05945], [Dkt. 61, 62]). ***See***: [*Phillips v. County of Allegheny 515 F.3d. 224-245 3rd Cir. 2008*]; *et, al.; See:* **ARGUMENT I.**, *herein.*

Thereby, the judgement is *void as a matter of law* and must be *set-aside.* ***See***: [*Barrett*, 840 F.2d at 1263 (*citing*11

*C. Wright & A. Miller*, Fed. Practice and Procedure § 2868 at 238 (1973)]; [*U.S.C.A Const. Amend. 5- Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986)]; ***See:*** **ARGUMNET III.,** *herein.*

Further, the subsequent related case [3:20-cv-12336], [Dkt. 49, 50], dismissed upon res judicata judgment, is also *incorrect* and *void as a matter of law*, and must also be *set-aside*. ***See:*** **ARGUMNET III.,** *herein.*

Petitioner has acted entirely as a Pro Se party, for a 6-year duration in seeking the *constitutional due-process right* she was egregiously refused by the District Court of New Jersey. Petitioner earnestly requests appropriate, due-leniency.

Petitioner also requests the option to make SCOTUS the standard fee payment for the continuance of the certiorari petition if the In Forma Pauperis reconsideration is still denied.

For all foregoing reasons, Petitioner respectfully requests the Supreme Court to **GRANT** Petitioner Reconsideration.

## CERTIFICATION

I certify under penalty of perjury that the foregoing Petition for Reconsideration is true and correct, presented in good faith, and not for delay.

Respectfully Submitted,

/s/ Gina Russomanno **Date**: October 15, 2024
*Pro Se Petitioner; and*

Notary Public, New Jersey; Commission **#50148307**; 1/14/26

*Proof of Service*:
**Cc**: *The Solitor General of the United States, respondent*