25-5598

No.

# In the Supreme Court of the United States



MARY MARTHA MCCOMAS,

*Petitioner,*

*v.*



PHH MORTGAGE CORPORATION,

*Respondent.*

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## PETITION FOR WRIT OF CERTIORARI

MARY MARTHA MCCOMAS
*In Pro Se*

480 Scottsdale Circle
Medford, OR 97504
Tel: 541-292-3914
Mccomasmm@gmail.coom

## QUESTION PRESENTED

Whether when denying a *pro se* litigant leave to amend the complaint, a district court must provide a reason for that denial (as held by the Third, Seventh, Ninth, Eleventh, and D.C. Circuits), or whether a district court need not provide a justifying reason when denying a pro se litigant leave to amend the complaint if that reason is apparent from an analysis of the record (as held by the First, Fourth, Fifth, and Tenth Circuits.)

# TABLE OF CONTENTS

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

# TABLE OF AUTHORITIES

Page No.

v.

## PARTIES TO THE PROCEEDING

Petitioner Mary Martha McComas is the plaintiff in the underlying action, and an individual residing in the State of Oregon.

Respondent PHH Mortgage Corporation is a corporate entity duly registered in the State of New Jersey; and HSBC BANK USA, N.A., as Trustee for Merrill Lynch Mortgage Investors Trust Series MLCC 2006-2 Mortgage Pass-Through Certificates.

## RELATED PROCEEDINGS

United States District Court (E.D.N.C.):

*Mary Martha McComas v. PHH Mortgage Corporation,* No.1:22-cv-00435-CL
(May 15, 2023)

United States Court of Appeals (9th Cir.):

*Mary Martha McComas v. PHH Mortgage Corporation,* No. 24-4900
(June 4, 2024)

**No.**

# In the Supreme Court of the United States

MARY MARTHA MCCOMAS,

*Petitioner,*

*v.*

PHH MORTGAGE CORPORATION,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI

Mary Martha McComas petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit dated September 24, 2024 in Case No. 24-4900. The case involves a property at 23 South Foothill Road, Oregon, and a $458,800.00 mortgage loan obtained by her father, William P. McComas, in 2005.

## JURISDICTION

The judgment of the court of appeals dated September 24, 2024 in case no. 24-4900, denied Petitioner's request for extraordinary remedy of mandamus (App. A1). According to the appellate court, [quote] the Petitioner has not demonstrated a clear and indisputable right to the extraordinary remedy of mandamus. See *In re Mersho*, 6 F.4th 891, 897 (9th Cir. 2021) ("To determine whether a writ of mandamus should be granted, we weigh the five factors outlined in Bauman v. United States District Court."); *Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977).

Pursuant to 28 U.S.C. § 1254(1) this Court has jurisdiction to review the September 24, 2024 order of the court of appeals denying Petitioner his right to mandamus remedy.

## RELEVANT FEDERAL RULES OF CIVIL PROCEDURE

This case concerns the explanation a district court must give when denying pro se litigants leave to amend their complaint. The Federal Rules of Civil Procedure 15(a)(2) addresses amendments not made as a matter of course, and provides that:

> In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed. R. Civ. P. 15(a)(2).

## INTRODUCTION

This case raises fundamental issues concerning whether pro se litigants have meaningful access to federal court. In line with three other circuits, the decision below held that when denying a pro se litigant leave to amend the complaint, the district court need not identify the justifying reason for that denial if the reason for the denial is apparent from an investigation and analysis of the litigation record. Five circuits have held the opposite, ruling that a district court must identify the reason for denying a pro se litigant leave to amend in the denial order, itself.

This circuit split has serious, practical implications for pro se litigants who bring cases in jurisdictions that do not require district courts to provide a reason when denying leave to amend. Absent notice of their pleading deficiencies, very few pro se litigants can parse the record and identify how to successfully amend their complaints.

This circuit split is especially problematic because the majority of pro se litigants bring claims seeking remedies for violations of the U.S. Constitution and federal civil rights statutes. These litigants—who are predominantly women, minorities, and the poor—are four times more likely than represented parties to have their cases dismissed under Federal Rule of Civil Procedure 12(b)(6). Serious due process concerns arise when courts dismiss civil rights claims brought by vulnerable populations and protected classes because, without representation, these litigants cannot interpret the record to identify how to successfully amend their complaints. For most pro se litigants, it will be unreasonably difficult, if not impossible, to review the record and identify the reasons in the record that the court denied leave to amend. The minority rule requires that pro se litigants undertake an investigation and

analysis that would be difficult for many fledgling attorneys.

Additional due process concerns arise from the circuit split itself. As a practical matter, the ability to amend a complaint and thus proceed to the merits depends on the geographical location of the pro se litigant. Pro se litigants in the circuits adhering to the minority rule are at a distinct and arbitrary disadvantage.

Additional due process concerns arise from the circuit split itself. As a practical matter, the ability to amend a complaint and thus proceed to the merits depends on the geographical location of the pro se litigant. Pro se litigants in the circuits adhering to the minority rule are at a distinct and arbitrary disadvantage.

Neutral stakeholders, including the federal judiciary, have voiced concerns about the serious obstacles pro se litigants face and their inability to successfully plead otherwise meritorious claims on their first attempt. The Honorable Lois Bloom has observed that "the legally untrained face special difficulties in navigating and carrying out the arcane requirements of pleading." *Lois Bloom & Helen Hershkoff, Federal Courts, Magistrate Judges, and the Pro Se Plaintiff, 16 Notre Dame J.L. Ethics & Pub. Pol'y* 475, 483 (2002). The Second Circuit Task Force on Gender, Racial and Ethnic Fairness similarly acknowledged that "fundamental notions of justice require that the circuit adopt practices to assist such litigants in presenting their claims as clearly as possible and in using the required court procedures properly." John H. Doyle et al., *Report of the Working Committees to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts,* 1997 Ann. Surv. Am. L. 117, 300. The American Bar Association similarly recognizes that pro se litigants may require "reasonable accommodations" from

the district courts hearing their cases in order "to ensure pro se litigants the opportunity to have their matters fairly heard." Am. Bar Ass'n, *Model Code of Judicial Conduct* R. 2.2 cmt. 4 (2014) (explaining that such reasonable accommodations do not violate Rule 2.2's requirement that judges remain impartial).

Requiring district courts to identify a reason when denying pro se litigants leave to amend is a logical accommodation that would visit minimal burden upon the district courts while making them more transparent and thus more accessible.

This Court should hear this case and resolve whether district courts must include the reason for denial in the order denying a pro se litigant leave to amend. Providing an explanation can make the difference between a pro se litigant having a meritorious case heard and that same litigant—who typically is a vulnerable individual bringing a core constitutional claim—being blocked from the court at the pleading stage.

The outcome of a case should not depend on the location of the court in which the claim is brought.

## STATEMENT OF THE CASE

### I. Factual Background.

The Plaintiff-Petitioner Mary McComas purchased a real property located in 23 South Foothill Road, Oregon back in 1987, the subject property in the underlying case and petition.

Consequently, sometime in 2003, Petitioner's father Mr. William P. McComas requested if he could take out a loan against the property that will be secured in Mr. McComas' so Petitioner would never have a responsibility to pay for the said loan which she agreed to.

Pursuant to the aforementioned agreement, around 2003, Mr. McComas proceeded to fill out an application at two banks, one of which is Merrill Lynch– Mr. McComas. A year thereafter in 2004, Mr. McComas came to Oregon and executed a "deed" on the property statin, and "not as tenants in common," but with rights of survivorship naming Petitioner Mary McComas the survivor to the property's title and ownership which was recorded the next year, January of 2005.

Subsequently, in the same year 2005, Merrill Lynch offered Mr. McComas loan which he took advantage of. Mr. McComas pay off the loan he had obtained in 2003.

Following Petitioner Mary McComas' recent discovery in 2020 when she went to the Merrill Lynch Palm Springs Office where Mr. McComas filled out the application in 2003. In the archive in the basement, petitioner discovered Mr. McComas had a loan in 2005 with

Merrill Lynch which now PHH Mortgage Corporation succeeded to serve as an agent to collect the loan.

Petitioner found out that in 2005, Merrill Lynch in processing the loan they did not have Mr. McComas fill out another application for it. If PHH Mortgage had done its necessary screening procedures of doing a "title search" as part of the loan process and screening procedures, PHH Mortgage would have discovered in timely manner that Mr. McComas executed a "bargain and sale" deed over the property, "not as tenants in common but rights of survivorship" to his daughter, herein petitioner Mary McComas.

This simple negligence and incompliance with proper procedures involving mortgage loan application and transactions had caused confusion and misleading events and information.

## II. Overview of the Loan and its Instruments.

Sometime on December 24, 2004, William P. McComas ("Mr. McComas") executed a "bargain and sale deed" [1]conveying the real property located in 23 South Foothill Road, Medford, OR 97504, to both Mr. McComas and her daughter, herein petitioner Mary McComas, not as tenants in common but with rights of survivorship. (See Complaint ¶10, 2)

Then on or about November 18, 2005, Mr. McComas obtained a mortgage loan in the amount of $458,800.00 (the "loan"). Compl. ¶3 To obtain the loan, Petitioner and Mr. McComas executed a Deed of Trust along an Adjustable Rate Note which did not sign as borrower, but signed on behalf of her father, Mr.McComas' as an attorney-in-fact.

---

[1] Citing in reference Exhibit A to Complaint, Bargain and Sale Deed

Pursuant to the Deed of Trust and Note executed, it was Mr. McComas who was required to repay the loan in monthly installment payments with a term of over the period of thirty (30) years. Unfortunately, Mr. McComas passed away and his estate commenced probate proceedings in California. (See Complaint, ¶4)

Thereafter, the loan fell into default and Respondent PHH Mortgage Corp., proceeded to foreclose the property by issuing a letter entitled Notice of Intent to Foreclose.

Consequently, Petitioner made mortgage payments on the loan from March of 2017 until July of 2019, **although she was not required to because she did not sign the Adjustable-Rate Note, therefore, she was not the borrower and has no obligation**.

The petitioner believed that she would be reimbursed for the payments she made and attempted to get Mr. McComas estate to pay the mortgage on the property, but unsuccessful.

These unsuccessful attempts to have Mr. McComas estate cover the mortgage payments on the property was because PHH refused to send a letter to the estate stating Petitioner was "not the borrower" and was "not responsible" for the mortgage loan balance, despite the fact that Petitioner had already sent a written notice of Mr. McComas death along a request for confirmation that Petitioner was not a borrower to the mortgage loan. Despite numerous requests has not provided any response to address and resolve Petitioner McComas inquiry and concerns.

## III. Procedural History

### A. THE DISTRICT COURT DENIES PETITIONER'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT.

On March 24, 2022, PHH Mortgage moved to dismiss the case which the court decided in favor of the defendants in its July 15, 2022, Opinion and Order dismissing Petitioner's complaint without prejudice and with leave to file an amended complaint due August 15, 2022.

Petitioner McComas filed her First Amended Complaint ("FAC") on August 8, 2022, adding two more parties to the action, HSBC Bank USA, N.A., Bank of America, NA. and Merrill Lynch Credit Corporations as defendants. In response to the First Amended Complaint, PHH Mortgage filed their second motion to dismiss on August 10, 2022, pursuant to Rule 12 (b)(6) and 12 (e) of the Federal Rules of Civil Procedure, requesting to dispose Petitioner's claim and its amended complaint for failure to state a claim upon which relief can be granted.

The FAC petitioner filed alleged wide variety of causes of action against Respondent PHH Mortgage alleging as follows: (1) breach of contract; (2) professional negligence; (3) fraud and negligent misrepresentation; (4) NIED claim (negligent infliction of emotional distress)[2];

---

[2] Petitioner McComas' strongly believed that she is entitled of an award for both economic damages and non-economic damages ORS 31.705 (2)(a)(b); for mental anguish, lost work time, and various costs and expenses incurred as a result of or in response to Defendants' wrongful acts, including the legal costs of hiring an attorney to provide legal insights and services related

(5) breach of implied covenant of good faith and fair dealing ; (6) breach of fiduciary duty, and; (7) accompanying request for accounting as a matter of right.

Respondent PHH Mortgage denied all allegations arguing that Petitioner's FAC despite leave of court is still facially defective for failure to plead required factual allegations that satisfy the elements of each cause of action alleged in the FAC.

Petitioner had not had the ample opportunity to properly narrow down its claims in the FAC. Admittedly, upon knowledge of these deficiencies and other errors, Petitioner immediately sought for leave of court to file a Second Amended Complaint ("SAC")3 and even attached to its motion the proposed second amended complaint.

This was a legitimate attempt to correct any manifesting errors in her FAC, and present to the court further refined allegations with proper application of legally cognizable claims.

PHH Mortgage argued on the basis that the FAC of Petitioner failed to meet the required legal standards for every complaint in order to survive a dismissal request. Its motion specifically relied upon the application of well-established doctrines and standards in evaluating the legal sufficiency of any complaint in a lawsuit. Its contentions

---

to drafting any relevant documents and numerous administrative expenses incurred in responding to PHH Mortgage. See *Frazile v. EMC Mortg. Corp.*, 382 Fed.Appx. 833, 836 (11th Cir. 2010). Not to mention hiring a Personal Investigator to very a "*dubios assignment*" to ascertain validity of a signing officer "Jackelyn Medero", where after a judicially verified investigator, found out the truth that the authority of Medero was deceptive in nature, not having in possession valid authority to act on behalf of PHH Mortgage Corp., which likewise violates PHH Settlement and Consent Order with Oregon state laws.

[3] Dkt. 31, McComas Motion for Leave along with Attachment #1 (Proposed Second Amended Complaint)

applied extensively a legal analysis on "plausibility" standards with respect to Petitioner's cause of action.

Among the points and arguments raised by PHH Mortgage, it asserted further that Petitioner's claim for fraud like all other causes of action the FAC has claimed, Petitioner did not allege the identity of a person who made the alleged representation, instead electing to lump the Defendants together without distinguishing their alleged involvement. Accordingly, Plaintiff did not plead the "the who, what, when, where, and how" of fraud. ¶1 page 15 of Motion to Dismiss FAC.

**B. THE DISTRICT COURT AND APPELLATE REVIEW ERRED IN FINDING "FUTILITY" OF AN AMENDMENT, THUS, DENIES PETITIONER LEAVE OF COURT TO FILE A SAC.**

In view of this particular matter, the Petitioner had become aware that the FAC requires further refinement of its allegations to present clearly the claim for relief. For this reason, the Petitioner sought leave of court to file a second amended complaint adding new theories of liabilities and factual allegations that may justify the cause of action stated. This was not precisely a common fraud claim but rather a violation of state and business practices stretching as far as lawful collection of debt as far as governing federal laws are concerned.

Contrary to Respondent PHH's argument and contention that Petitioner did not adequately satisfy the heightened standards of proving fraud based upon common law, or to its minimum present a meritorious allegation for misrepresentation, Petitioner's proposed SAC ironed out the deficiencies to this claim and bridged its gap.

Petitioner claimed in the SAC newly admitted factual allegations of misrepresentation, unlawful debt

collection and deceptive practices in relation to its negligence claims.

The petitioner significantly notes that she made numerous attempts to get the estate of Mr. McComas to pay for the mortgage loan, but she was unsuccessful. Petitioner even faithfully and responsibly reached out to respondent PHH Mortgage and made several repetitive requests to update the loan by submitting documents validating the decedent debtor's death, and to remove her name on the loan because she was not the borrower but merely assisted back when the loan was processed as attorney in fact.

Upon default, Petitioner made efforts by tendering payments, even to the extent negotiated with PHH a short pay-off deal with one of its agents and an unknown superior who acted as the closer. Little did Petitioner short pay-off deal offered was part of deceptive trade practice in a misrepresenting scheme when she communicated with its relationship manager via email on August 20, 2020.

The conduct of the negotiation lead to requiring Petitioner to show proof of funds for the suggested pay-off deal, amounting in total of $350, 000 prior defendant's request that Petitioner submit a request for a pay-off deal that PHH subsequently rejected few days later after Petitioner had already wired the funds of $350,000.

Petitioner was lately informed of her settlement pay-off being rejected and that the funds she wired to defendant PHH were not applied to the outstanding balance of the Mr. McComas' mortgage account, but rather applied to various accrued interests when the loan went into default. When asked by Petitioner a statement, PHH refused to respond to the request and praying for the perfect moment

to seize the subject property by accelerating the mortgage foreclosure proceedings.

## C. THE LOWER COURTS' FINDINGS OF FACT AND CONCLUSIONS OF LAW

On July 15, 2022, the district court Magistrate Judge issued its order and opinion disposing the issues of the case and Petitioner McComas claims by wholly adopting it finding and recommendations stating that, Magistrate Judge Opinion, 07/15/2022:

"Petitioner although is a self - represented litigant. After a close reading of the Complaint and the responses provided to the Motion to Dismiss, the Court finds it difficult to discern a plausible claim. Certainly, mortgage companies and lenders have defined obligation to borrowers, and to successors - in - interest after the death of a borrower. The specific facts here, however, do not appear to state any wrongful conduct on the part of the Defendant."

The District Court Judge further noted that Petitioner's Motion for Leave to file Second Amended Complaint is encompassed by recommendations of the Magistrate Judge. Thus, adopting wholly the findings and recommendations, the court issued its final judgment and subsequent order that the case is be dismissed without further leave to amend.[4]

---

[4] The district court as per recommendations of the Magistrate Judge upheld the basis that *Pro se* pleadings are held to less stringent standards than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972). That is, the court should construe pleadings by pro se plaintiffs liberally and afford the plaintiffs the benefits of any doubt. *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988) (citation omitted). Additionally, a *Pro se* litigant is

The District Court Judge further noted that Petitioner's Motion for Leave to file Second Amended Complaint is encompassed by recommendations of the Magistrate Judge. Thus, adopting wholly the findings and recommendations, the court issued its final judgment and subsequent order that the case is be dismissed without further leave to amend.[5]

The Appeals Court upon review of the case found and affirmed that the district court did not abuse its discretion in denying Petitioner McComas leave to file a second amended complaint because further amendment would have been futile. See *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (explaining that leave to amend may be denied where amendment would be futile); *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1072 (9th Cir. 2008) (affirming denial of leave to amend for failing to articulate how an amended complaint would cure prior deficiencies).

## REASONS FOR GRANTING THE PETITION

A district court's obligation—or lack thereof—to provide an explanation when denying pro se litigants leave to amend is an important federal question that multiple circuit courts have decided in opposing manners. This Court should grant certiorari under Supreme Court Rule 10(a) and resolve the current circuit split.

---

entitled to notice of the deficiencies in the complaint and the opportunity to amend, unless the complaint's deficiencies cannot be cured by amendment. Id.

[5] The district court as per recommendations of the Magistrate Judge upheld the basis that *Pro se* pleadings are held to less stringent standards than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972). That is, the court should construe pleadings by pro se plaintiffs liberally and afford the plaintiffs the benefits of any doubt. *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988) (citation omitted). Additionally, a *Pro se* litigant is entitled to notice of the deficiencies in the complaint and the opportunity to amend, unless the complaint's deficiencies cannot be cured by amendment. Id.

## I. THIS COURT SHOULD DETERMINE THE DISTRICT COURTS' OBLIGATION WHEN DENYING A PRO SE LITIGANT LEAVE TO AMEND.

### 1. The Circuit Courts Are Split, Creating Two Opposing Rules Governing District Courts' Denials of Leave to Amend for Pro Se Litigants.

In *Foman v. Davis*, this Court ruled that, absent "any apparent or declared reason" such as undue delay, prejudice, or futility, plaintiffs should be given leave to amend their complaints. 371 U.S. 178, 182 (1962). This Court further explained that the "outright refusal to grant the leave without any justifying reason appearing for the denial" is an abuse of discretion. *Id. Foman v. Davis* did not address whether that "justifying reason" must be set forth in the district court's denial order or if it is sufficient for the "justifying reason" to be apparent in the record but not identified by the district court's denial order. The circuit courts have split on this question with respect to pro se litigants, and this circuit split is a matter of national importance, worthy of this Court's attention.

### 2. Five Circuits Require District Courts to Provide Justifying Reasons in the Order Denying Pro Se Litigants Leave to Amend.

In the Third, Seventh, Ninth, Eleventh, and D.C. Circuits, district courts must provide justifying reasons when denying pro se litigants leave to amend. The failure to include an explanation in the order is an abuse of discretion even if the reason is apparent in the record.

The D.C. Circuit has "emphasized that a proper exercise of discretion requires that the district court provide reasons" for denying pro se litigants leave to amend. *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C.

Cir. 1996) ("Turning then to Rule 15(a) issue, we find error in the district court's complete failure to provide reasons for refusing to grant leave to amend."). The Seventh and Eleventh Circuits employ the same rule. *See, e.g.*, *Phillips v. Ill. Dep't of Fin. & Prof'l Regulation*, 718 F. App'x 433, 436 (7th Cir. 2018) (mem.) ("Dismissal with prejudice and without an explanation of why" the pro se plaintiff "did not deserve a chance to resolve the ambiguity through an amended complaint was an abuse of discretion."); *Higdon v. Tusan*, 673 F. App'x 933, 937 (11th Cir. 2016) (per curiam) ("We also conclude that the court abused its discretion by denying" the pro se plaintiff "a chance to amend his complaints, without a showing of a substantial reason to deny leave to amend.").

The Third Circuit recently held that it can be reversible error for a district court to fail to provide an explanation when denying a pro se plaintiff leave to amend a civil rights complaint. In *Flynn v. Department of Corrections*, the Third Circuit criticized the district court because it "did not say in its opinion that all of the pleading deficiencies" in the pro se plaintiff's "complaint were incurable; in fact, neither the opinion nor the accompanying order said anything about the efficacy of an amended pleading at all." 739 F. App'x 132, 136 (3d Cir. 2018) (per curiam) ("The District Court thus erred when it
(1) failed to offer Flynn an opportunity to amend and (2) did not say why.").

As the Ninth Circuit has explained when employing the same rule for pro se and in forma pauperis litigants, the rules in these circuits are not a formalistic requirement. These rules are substantive and intended to protect pro se litigants' rights: "The requirement that courts provide a pro se litigant with notice of the deficiencies in his or her complaint helps ensure that the pro se litigant can use the opportunity to amend effectively. Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors." *Noll v. Carlson*, 809 F.2d 1446, 1448–49 (9th Cir. 1987) ("Amendments that are made

without an understanding of underlying deficiencies are rarely sufficient to cure inadequate pleadings."), *superseded on other grounds by statute as stated in Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc); *see also Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (explaining that, "before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively").

## II. THE QUESTION PRESENTED WILL RECUR ABSENT INTERVENTION FROM THIS COURT.

Due to increasing pro se litigation, the question presented will recur absent intervention from this Court. Nearly one-third of all federal civil cases are brought by pro se litigants, and "pro se litigation shows no sign of subsiding." Rory K. Schneider, *Illiberal Construction of Pro Se Pleadings*, 159 U. Pa. L. Rev. 585, 591–93 (2011); *see also* U.S. Courts, *U.S. District Courts—Civil Pro Se and Non-Pro Se Filings, by District, during the 12-Month Period Ending September 30, 2017*, *supra*, at 1–5. This number will only increase as the cost of legal services continues to become too expensive for average individuals. *See supra* pp. 17–18.

The amount and frequency of pro se litigation also appear to have influenced the district court in this case. When denying Petitioner's Second Motion to Reopen, the district court worried that, "were Petitioner's conduct repeated on a nationwide scale, the work of the Federal Judiciary might come to a grinding halt."[6] App. B at 8a.

[6] Interestingly, some empirical studies suggest that the perception of the burden created by pro se litigants may be worse than the reality. *See, e.g.*, Schneider, *supra*, at 597–98

Yet, the majority of circuit courts that require an explanation when denying leave to amend crafted a careful rule that balances the burden on the courts with the obligations to the pro se litigant.

The Ninth Circuit instructs that a "statement of deficiencies need not provide great detail or require district courts to act as legal advisors to pro se plaintiffs." *Noll*, 809 F.2d at 1448–49. District courts "need draft only a few sentences explaining the deficiencies," so that a pro se litigant is on notice of how to cure a pleading deficiency if the facts are available to cure that deficiency. *Id.* For example, in a "42 U.S.C. § 1983 action where the pro se plaintiff failed to allege that the defendant acted under color of state law, the court need point out only that the complaint fails to state a claim because it fails to allege facts sufficient to show that the defendant acted under color of state law." *Id.* at 1449.

## III. THE QUESTION IS CLEANLY PRESENTED BY THE DECISION BELOW.

The facts and procedural posture cleanly tee up the question presented. The petitioner sought leave to file a second amended complaint and was denied.

Here, on August 29. 2022, Petitioner McComas moved for leave to file a second amended complaint to incorporate new theories as source of liabilities and add relevant facts that support the overall allegations in the complaint. Pursuant to the Magistrate Judge's recommendations and findings, the District Court denied the motion in a final judgement on May 15, 2023,

---

(discussing empirical evidence and studies demonstrating the "lighter burden" pro se cases place on the judiciary and that cases with represented parties consume more judicial time than pro se cases and settle at the same rate).

dismissing Petitioner's claims and lawsuit with prejudice. Petitioner now contends the court committed a reversible error in denying her leave to amend and cure the deficiencies in her complaint.

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief.". In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Court also explained, more generally, that "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a plaintiff's obligation to provide grounds for entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555.

The allegations "must be enough to raise a right to relief above the speculative level" and give the defendant fair notice of what the claim is and the grounds upon which it rests. *Ibid.* In other words, plaintiff must allege "enough facts to state a claim to relief that is plausible on its face" and to "nudge the claims across the line from conceivable to plausible." *Id.* at 570.

In the instant case, Petitioner McComas brought new causes of action and supplementary allegations to the original complaint inclusive of the First Amended Complaint that plausibly alleged Violations of Federal UDAP Law through Or. Rev. Stat. § 646.605(8).

Respondent PHH Mortgage breached the lawful conduct of servicing and collection under Or. Rev. Stat. § 646.605 where PHH Mortgage intentionally misrepresented and deceived the Petitioner to make a wire transfer under false pretenses that Plaintiff relied verily, resulting to financial loss, distress, and among other effects that irreparably injured Petitioner.

Moreover, PHH failed to provide the charged-off debt information pertaining to the amount and rate of interests, any fees and any charges from any previous owner of the debt imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge tantamount to misrepresentation where it eventually told the Plaintiff that the amount wired did not satisfy their bogus pay-off settlement instead had applied the entire funds to the incurred interests for the default and other fees without consulting the Petitioner.

## CONCLUSION

**WHEREFORE,** for the foregoing reasons, Petitioner Mary McComas respectfully requests the Honorable Justices of the United States Supreme Court to grant this instant Petition for Writ of Certiorari pursuant to Rule 10(a) of the Rules of Supreme Court of the United States.

**DATED:** August 13, 2025

Respectfully Submitted,

By: /s/ Mary Martha McComas

Mary Martha McComas
480 Scottsdale Circle
Medford, OR 97504
Tel: 541-292-3914
mccomasmm@gmail.com
Petitioner, In Pro Se