



Civil Procedure: Pleading

HILLEL Y. LEVIN



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The Plaintiff's Complaint

Hillel Y. Levin

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Preface

This chapter covers the Civil Procedure topic of Pleading: The Plaintiff's Complaint. The chapter takes approximately four class periods to cover in detail. The student is exposed to cases, presented with questions that are designed to both guide class discussion and to help the student focus his reading of the materials, pleadings from cases, and the applicable Federal Rules of Civil Procedure.

Table of Contents

1. Preface	3
2. Rule 8. General Rules of Pleading.....	5
3. Rule 9. Pleading Special Matters.....	6
4. Conley v. Gibson.....	6
5. Swierkiewicz v. Sorema N.A.....	9
6. Rule 10. Form of Pleadings.....	15
7. Bell Atlantic Corp. v. Twombly.....	15
8. Ashcroft v. Iqbal.....	31
9. Kregler v. City of New York	45
10. Complaint 1.....	56
11. Complaint 2.....	64

Unit 1

Goals of the Section.

By the end of this section, you should: understand what a plaintiff must include in a complaint; understand how the relevant standards have changed over time; be able to articulate what interests are being balanced and vindicated by the Rules and the judicial opinions that interpret and apply them; be able to critique the doctrine; be able to apply the doctrine in run-of-the-mill cases as a lawyer would; have a better understanding of the job of the lawyer through your experience drafting and reviewing litigation documents.

A court case begins with the plaintiff filing a complaint and serving the defendant. The material in this section focuses on the law that governs the contents of the plaintiff's complaint. (For the rules concerning service, see Rule 4.) This has been one of the most dynamic and controversial areas in all of civil procedure in recent years. Rule 8(a) of the Federal Rules of Civil Procedure provides that a plaintiff's complaint must include the following:

Rule 8. General Rules of Pleading

(a) Claims for Relief.

A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

However, Rule 9(b) provides that in some specific cases, the plaintiff must also include additional information:

Rule 9. Pleading Special Matters

(b) Fraud or Mistake; Condition of Mind.

In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

In the following case, the Supreme Court explained what Rule 8(a)(2) requires of a plaintiff in the typical case. The standard adopted by Conley is often referred to as the Notice Pleading standard.

Conley v. Gibson 355 U.S. 41 (1957)

MR. JUSTICE BLACK delivered the opinion of the Court.

Once again, Negro employees are here under the Railway Labor Act asking that their collective bargaining agent be compelled to represent them fairly. In a series of cases this Court has emphatically and repeatedly ruled that an exclusive bargaining agent under the Railway Labor Act is obligated to represent all employees in the bargaining unit fairly and without discrimination because of race, and has held that the courts have power to protect employees against such invidious discrimination.

This class suit was brought in a Federal District Court in Texas by certain Negro members of the Brotherhood of Railway and Steamship Clerks, petitioners here, on behalf of themselves and other Negro employees similarly situated against the Brotherhood, its Local Union No. 28 and certain officers of both. In summary, the complaint made the following allegations relevant to our decision: Petitioners were employees of the Texas

and New Orleans Railroad at its Houston Freight House. Local 28 of the Brotherhood was the designated bargaining agents under the Railway Labor Act for the bargaining unit to which petitioners belonged. A contract existed between the Union and the Railroad which gave the employees in the bargaining unit certain protection from discharge and loss of seniority. In May, 1954, the Railroad purported to abolish 45 jobs held by petitioners or other Negroes, all of whom were either discharged or demoted. In truth, the 45 jobs were not abolished at all, but instead filled by whites as the Negroes were ousted, except for a few instances where Negroes were rehired to fill their old jobs, but with loss of seniority. Despite repeated pleas by petitioners, the Union, acting according to plan, did nothing to protect them against these discriminatory discharges and refused to give them protection comparable to that given white employees. The complaint then went on to allege that the Union had failed in general to represent Negro employees equally and in good faith. It charged that such discrimination constituted a violation of petitioners' right under the Railway Labor Act to fair representation from their bargaining agent. And it concluded by asking for relief in the nature of declaratory judgment, injunction and damages.

The respondents appeared and moved to dismiss the complaint on several grounds[, including that] the complaint failed to state a claim upon which relief could be given.

[W]e hold that the complaint adequately set forth a claim upon which relief could be granted. In appraising the sufficiency of the complaint, we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Here, the complaint alleged, in part, that petitioners were discharged wrongfully by the Railroad and that the Union, acting according to plan, refused to protect their jobs as it did those of white employees or to help them with their grievances all because they were Negroes. If these allegations are proven, there has been a manifest breach of the Union's statutory duty to

represent fairly and without hostile discrimination all of the employees in the bargaining unit. This Court squarely held [previously] that discrimination in representation because of race is prohibited by the Railway Labor Act. The bargaining representative's duty not to draw "irrelevant and invidious" distinctions among those it represents does not come to an abrupt end, as the respondents seem to contend, with the making of an agreement between union and employer. Collective bargaining is a continuing process. Among other things, it involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract. The bargaining representative can no more unfairly discriminate in carrying out these functions than it can in negotiating a collective agreement. A contract may be fair and impartial on its face, yet administered in such a way, with the active or tacit consent of the union, as to be flagrantly discriminatory against some members of the bargaining unit.

The respondents also argue that the complaint failed to set forth specific facts to support its general allegations of discrimination, and that its dismissal is therefore proper. The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this. Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. Following the simple guide of Rule 8(f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be

decisive to the outcome, and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.

The judgment is reversed, and the cause is remanded to the District Court for further proceedings not inconsistent with this opinion.

It is so ordered.

Questions

1. What does the Conley case instruct as to the meaning of Rule(a)(2)? What function does the complaint serve in a lawsuit?
2. According to Rule 8(a) and Conley, is it easy or difficult for a plaintiff to meet the requirements of the Rule?
3. Who benefits from this standard? Who bears the cost of it?
4. According to Conley, how would courts get rid of cases where the plaintiff produces no facts that support her claim?
5. According to Conley, what is the relationship between pleading and discovery?
6. What interests do you think are served by Rule 8(a)? What do you think the purpose of Rule 8(a) is?

The Court has periodically reaffirmed its core holding in Conley, as in the following case.

Swierkiewicz v. Sorema N.A.
534 U.S. 506 (2002)

JUSTICE THOMAS delivered the opinion of the Court.

This case presents the question whether a complaint in an employment discrimination lawsuit must contain specific facts establishing a prima facie case of discrimination under the framework set forth by this Court in

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). We hold that an employment discrimination complaint need not include such facts and instead must contain only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. Rule Civ. Proc. 8(a)(2).

I

Petitioner Akos Swierkiewicz is a native of Hungary, who at the time of his complaint was 53 years old. In April 1989, petitioner began working for respondent Sorema N. A., a reinsurance company headquartered in New York and principally owned and controlled by a French parent corporation. Petitioner was initially employed in the position of senior vice president and chief underwriting officer (CUO). Nearly six years later, François M. Chavel, respondent’s Chief Executive Officer, demoted petitioner to a marketing and services position and transferred the bulk of his underwriting responsibilities to Nicholas Papadopoulo, a 32-year-old who, like Mr. Chavel, is a French national. About a year later, Mr. Chavel stated that he wanted to “energize” the underwriting department and appointed Mr. Papadopoulo as CUO. Petitioner claims that Mr. Papadopoulo had only one year of underwriting experience at the time he was promoted, and therefore was less experienced and less qualified to be CUO than he, since at that point he had 26 years of experience in the insurance industry.

Following his demotion, petitioner contends that he “was isolated by Mr. Chavel . . . excluded from business decisions and meetings and denied the opportunity to reach his true potential at SOREMA.” Petitioner unsuccessfully attempted to meet with Mr. Chavel to discuss his discontent. Finally, in April 1997, petitioner sent a memo to Mr. Chavel outlining his grievances and requesting a severance package. Two weeks later, respondent’s general counsel presented petitioner with two options: He could either resign without a severance package or be dismissed. Mr. Chavel fired petitioner after he refused to resign.

Petitioner filed a lawsuit alleging that he had been terminated on account of his national origin in violation of Title VII of the Civil Rights Act of 1964,

and on account of his age in violation of the Age Discrimination in Employment Act of 1967 (ADEA). The United States District Court for the Southern District of New York dismissed petitioner's complaint because it found that he "ha[d] not adequately alleged a prima facie case, in that he ha[d] not adequately alleged circumstances that support an inference of discrimination." The United States Court of Appeals for the Second Circuit affirmed the dismissal, relying on its settled precedent, which requires a plaintiff in an employment discrimination complaint to allege facts constituting a prima facie case of discrimination under the framework set forth by this Court in *McDonnell Douglas*. The Court of Appeals held that petitioner had failed to meet his burden because his allegations were "insufficient as a matter of law to raise an inference of discrimination." We granted certiorari to resolve a split among the Courts of Appeals concerning the proper pleading standard for employment discrimination cases, and now reverse.

II

Applying Circuit precedent, the Court of Appeals required petitioner to plead a prima facie case of discrimination in order to survive respondent's motion to dismiss. In the Court of Appeals' view, petitioner was thus required to allege in his complaint: (1) membership in a protected group; (2) qualification for the job in question; (3) an adverse employment action; and (4) circumstances that support an inference of discrimination.

The prima facie case under *McDonnell Douglas*, however, is an evidentiary standard, not a pleading requirement.

This Court has never indicated that the requirements for establishing a prima facie case under *McDonnell Douglas* also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss. For instance, we have rejected the argument that a Title VII complaint requires greater "particularity," because this would "too narrowly constrict the role of the pleadings." Consequently, the ordinary rules for assessing the sufficiency of a complaint apply. See, e.g., *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)

(“When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims”).

Furthermore, imposing the Court of Appeals’ heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2), which provides that a complaint must include only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Such a statement must simply “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47 (1957). This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. “The provisions for discovery are so flexible and the provisions for pretrial procedure and summary judgment so effective, that attempted surprise in federal practice is aborted very easily, synthetic issues detected, and the gravamen of the dispute brought frankly into the open for the inspection of the court.” 5 C. Wright & A. Miller, *Federal Practice and Procedure* §1202, p. 76 (2d ed. 1990).

Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited exceptions. Rule 9(b), for example, provides for greater particularity in all averments of fraud or mistake. This Court, however, has declined to extend such exceptions to other contexts. Thus, complaints in these cases, as in most others, must satisfy only the simple requirements of Rule 8(a).

Other provisions of the Federal Rules of Civil Procedure are inextricably linked to Rule 8(a)’s simplified notice pleading standard. Rule 8(e)(1) states that “[n]o technical forms of pleading or motions are required,” and Rule 8(f) provides that “[a]ll pleadings shall be so construed as to do substantial justice.” Given the Federal Rules’ simplified standard for pleading, “[a] court may dismiss a complaint only if it is clear that no relief could be granted

under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56. The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim.

Applying the relevant standard, petitioner’s complaint easily satisfies the requirements of Rule 8(a) because it gives respondent fair notice of the basis for petitioner’s claims. Petitioner alleged that he had been terminated on account of his national origin in violation of Title VII and on account of his age in violation of the ADEA. His complaint detailed the events leading to his termination, provided relevant dates, and included the ages and nationalities of at least some of the relevant persons involved with his termination. These allegations give respondent fair notice of what petitioner’s claims are and the grounds upon which they rest. In addition, they state claims upon which relief could be granted under Title VII and the ADEA.

Respondent argues that allowing lawsuits based on conclusory allegations of discrimination to go forward will burden the courts and encourage disgruntled employees to bring unsubstantiated suits. Whatever the practical merits of this argument, the Federal Rules do not contain a heightened pleading standard for employment discrimination suits. A requirement of greater specificity for particular claims is a result that “must be obtained by the process of amending the Federal Rules, and not by judicial interpretation.” Furthermore, Rule 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits. “Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test.”

For the foregoing reasons, we hold that an employment discrimination plaintiff need not plead a prima facie case of discrimination and that

petitioner's complaint is sufficient to survive respondent's motion to dismiss. Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Questions

1. What had the lower court done that the Supreme Court rejected?
2. Did the Supreme Court indicate one way or another way whether Conley's Notice Pleading standard was a good rule or a bad rule, as a policy matter? What reasons did the Supreme Court offer for adhering to the Notice Pleading standard?
3. After *Swierkiewicz*, what must a plaintiff in a discrimination case state in her complaint in order to meet the Rule 8(a)(2) standard?
4. In the decades after *Conley*, many lower courts imposed heightened pleading standards in a wide range of cases (with the Second Circuit's heightened standard in *Swierkiewicz* being one such example). The Supreme Court repeatedly reversed such cases and reaffirmed *Conley*. What do you think drove lower courts to do so despite consistent reversals from the Supreme Court?

In-class exercise

Based on your readings thus far, work with a partner sitting next to you to draft a complaint that meets the requirements of Rule 8(a) for the following fact pattern.

Your client is Ms. Holly Branham. Ms. Branham shopped in a Dollar General store in Amherst County, Virginia on June 8, 2009. While shopping, she stepped on liquid that was on the floor and fell. She tells you that there were no signs posted around the liquid. She says that she has suffered a severe and permanent injury totaling \$100,000 in medical bills and lost wages. She wants to sue the Dollar General store for negligence in the District Court for the Western District of Virginia. Dollar

General is based in Virginia. The plaintiff lives in Georgia. (Assume that the requirements for subject matter and personal jurisdiction are met by these facts.)

Be sure that your complaint complies with Rule 10(a) and (b):

Rule 10. Form of Pleadings

(a) Caption; Names of Parties.

Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements.

A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence — and each defense other than a denial — must be stated in a separate count or defense.

Recently, the Supreme Court has issued two very important and controversial decisions concerning Rule 8(a)(2). These cases may have changed the standards substantially. The first of these cases was *Bell Atlantic Corp. v. Twombly*.

Bell Atlantic Corp. v. Twombly **550 U.S. 544 (2007)**

JUSTICE SOUTER delivered the opinion of the Court.

Liability under §1 of the Sherman Act, requires a contract, combination, or conspiracy, in restraint of trade or commerce. The question in this putative

class action is whether a §1 complaint can survive a motion to dismiss when it alleges that major telecommunications providers engaged in certain parallel conduct unfavorable to competition, absent some factual context suggesting agreement, as distinct from identical, independent action. We hold that such a complaint should be dismissed.

I

The upshot of the 1984 divestiture of the American Telephone & Telegraph Company's (AT&T) local telephone business was a system of regional service monopolies (variously called "Regional Bell Operating Companies," "Baby Bells," or "Incumbent Local Exchange Carriers" (ILECs)), and a separate, competitive market for long-distance service from which the ILECs were excluded. More than a decade later, Congress withdrew approval of the ILECs' monopolies by enacting the Telecommunications Act of 1996, which fundamentally restructured local telephone markets and subjected ILECs to a host of duties intended to facilitate market entry. In recompense, the 1996 Act set conditions for authorizing ILECs to enter the long-distance market.

Central to the new scheme was each ILEC's obligation to share its network with competitors, which came to be known as "competitive local exchange carriers" (CLECs). A CLEC could make use of an ILEC's network in any of three ways: by (1) purchasing local telephone services at wholesale rates for resale to end users, (2) leasing elements of the ILEC's network on an unbundled basis, or (3) interconnecting its own facilities with the ILEC's network. Owing to the considerable expense and effort required to make unbundled network elements available to rivals at wholesale prices, the ILECs vigorously litigated the scope of the sharing obligation imposed by the 1996 Act, with the result that the Federal Communications Commission (FCC) three times revised its regulations to narrow the range of network elements to be shared with the CLECs.

Respondents William Twombly and Lawrence Marcus (hereinafter plaintiffs) represent a putative class consisting of all subscribers of local telephone and/or high speed internet services from February 8, 1996 to present. In this

action against petitioners, a group of ILECs, plaintiffs seek treble damages and declaratory and injunctive relief for claimed violations of §1 of the Sherman Act, which prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations.”

The complaint alleges that the ILECs conspired to restrain trade in two ways, each supposedly inflating charges for local telephone and high-speed Internet services. Plaintiffs say, first, that the ILECs “engaged in parallel conduct” in their respective service areas to inhibit the growth of upstart CLECs. Their actions allegedly included making unfair agreements with the CLECs for access to ILEC networks, providing inferior connections to the networks, overcharging, and billing in ways designed to sabotage the CLECs’ relations with their own customers. According to the complaint, the ILECs’ “compelling common motivation” to thwart the CLECs’ competitive efforts naturally led them to form a conspiracy; “had any one ILEC not sought to prevent CLECs from competing effectively, the resulting greater competitive inroads into that ILEC’s territory would have revealed the degree to which competitive entry by CLECs would have been successful in the other territories in the absence of such conduct.”

Second, the complaint charges agreements by the ILECs to refrain from competing against one another. These are to be inferred from the ILECs’ common failure “meaningfully to pursue attractive business opportunities” in contiguous markets where they possessed “substantial competitive advantages,” and from a statement of Richard Notebaert, chief executive officer (CEO) of the ILEC Qwest, that competing in the territory of another ILEC “‘might be a good way to turn a quick dollar but that doesn’t make it right.’”

The complaint couches its ultimate allegations this way:

“In the absence of any meaningful competition between the ILECs in one another’s markets, and in light of the parallel course of conduct that each engaged in to prevent competition from CLECs within their respective local

telephone and/or high speed internet services markets and the other facts and market circumstances alleged above, Plaintiffs allege upon information and belief that the ILECs have entered into a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets and have agreed not to compete with one another and otherwise allocated customers and markets to one another.”

The United States District Court for the Southern District of New York dismissed the complaint for failure to state a claim upon which relief can be granted. The District Court acknowledged that “plaintiffs may allege a conspiracy by citing instances of parallel business behavior that suggest an agreement,” but emphasized that “while circumstantial evidence of consciously parallel behavior may have made heavy inroads into the traditional judicial attitude toward conspiracy, ‘conscious parallelism’ has not yet read conspiracy out of the Sherman Act entirely.” Thus, the District Court understood that allegations of parallel business conduct, taken alone, do not state a claim under §1; plaintiffs must allege additional facts that tend to exclude independent self-interested conduct as an explanation for defendants’ parallel behavior.

The Court of Appeals for the Second Circuit reversed, holding that the District Court tested the complaint by the wrong standard. It held that “plus factors are not required to be pleaded to permit an antitrust claim based on parallel conduct to survive dismissal.” Although the Court of Appeals took the view that plaintiffs must plead facts that “include conspiracy among the realm of plausible possibilities in order to survive a motion to dismiss,” it then said that “to rule that allegations of parallel anticompetitive conduct fail to support a plausible conspiracy claim, a court would have to conclude that there is no set of facts that would permit a plaintiff to demonstrate that the particular parallelism asserted was the product of collusion rather than coincidence.”

We granted certiorari to address the proper standard for pleading an antitrust conspiracy through allegations of parallel conduct, and now reverse.

II

A

Because §1 of the Sherman Act does not prohibit all unreasonable restraints of trade but only restraints effected by a contract, combination, or conspiracy, the crucial question is whether the challenged anticompetitive conduct stems from independent decision or from an agreement, tacit or express. While a showing of parallel business behavior is admissible circumstantial evidence from which the fact finder may infer agreement, it falls short of conclusively establishing agreement or itself constituting a Sherman Act offense. Even conscious parallelism, a common reaction of firms in a concentrated market that recognize their shared economic interests and their interdependence with respect to price and output decisions is not in itself unlawful.

B

This case presents the question of what a plaintiff must plead in order to state a claim under §1 of the Sherman Act. Federal Rule of Civil Procedure 8(a)(2) 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,” *Conley v. Gibson*, 355 U. S. 41, 47 (1957). [But a] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.

In applying these general standards to a §1 claim, we hold that stating such a claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made. Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it

simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and “that a recovery is very remote and unlikely.” In identifying facts that are suggestive enough to render a §1 conspiracy plausible, we have the benefit of the prior rulings and considered views of leading commentators that lawful parallel conduct fails to bespeak unlawful agreement. It makes sense to say, therefore, that an allegation of parallel conduct and a bare assertion of conspiracy will not suffice. Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality. Hence, when allegations of parallel conduct are set out in order to make a §1 claim, they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action.

The need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects the threshold requirement of Rule 8(a)(2) that the “plain statement” possess enough heft to show that the pleader is entitled to relief. A statement of parallel conduct, even conduct consciously undertaken, needs some setting suggesting the agreement necessary to make out a §1 claim; without that further circumstance pointing toward a meeting of the minds, an account of a defendant’s commercial efforts stays in neutral territory. An allegation of parallel conduct is thus much like a naked assertion of conspiracy in a §1 complaint: it gets the complaint close to stating a claim, but without some further factual enhancement it stops short of the line between possibility and plausibility of entitlement to relief.

[I]t is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive. A district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive

factual controversy to proceed.” See also *Car Carriers, Inc. v. Ford Motor Co.*, 745 F. 2d 1101, 1106 (CA7 1984) (“[T]he costs of modern federal antitrust litigation and the increasing caseload of the federal courts counsel against sending the parties into discovery when there is no reasonable likelihood that the plaintiffs can construct a claim from the events related in the complaint”); Note, *Modeling the Effect of One-Way Fee Shifting on Discovery Abuse in Private Antitrust Litigation*, 78 N. Y. U. L. Rev. 1887, 1898–1899 (2003) (discussing the unusually high cost of discovery in antitrust cases); *Manual for Complex Litigation, Fourth*, §30, p. 519 (2004) (describing extensive scope of discovery in antitrust cases); Memorandum from Paul V. Niemeyer, Chair, Advisory Committee on Civil Rules, to Hon. Anthony J. Scirica, Chair, Committee on Rules of Practice and Procedure (May 11, 1999), 192 F. R. D. 354, 357 (2000) (reporting that discovery accounts for as much as 90 percent of litigation costs when discovery is actively employed). That potential expense is obvious enough in the present case: plaintiffs represent a putative class of at least 90 percent of all subscribers to local telephone or high-speed Internet service in the continental United States, in an action against America’s largest telecommunications firms (with many thousands of employees generating reams and gigabytes of business records) for unspecified (if any) instances of antitrust violations that allegedly occurred over a period of seven years.

It is no answer to say that a claim just shy of a plausible entitlement to relief can, if groundless, be weeded out early in the discovery process through careful case management, given the common lament that the success of judicial supervision in checking discovery abuse has been on the modest side. And it is self-evident that the problem of discovery abuse cannot be solved by careful scrutiny of evidence at the summary judgment stage, much less lucid instructions to juries; the threat of discovery expense will push cost-conscious defendants to settle even anemic cases before reaching those proceedings. Probably, then, it is only by taking care to require allegations that reach the level suggesting conspiracy that we can hope to avoid the potentially enormous expense of discovery in cases with no reasonably

founded hope that the discovery process will reveal relevant evidence to support a §1 claim.

Plaintiffs' main argument against the plausibility standard at the pleading stage is its ostensible conflict with an early statement of ours construing Rule 8. Justice Black's opinion for the Court in *Conley v. Gibson* spoke not only of the need for fair notice of the grounds for entitlement to relief but of the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. This "no set of facts" language can be read in isolation as saying that any statement revealing the theory of the claim will suffice unless its factual impossibility may be shown from the face of the pleadings; and the Court of Appeals appears to have read *Conley* in some such way when formulating its understanding of the proper pleading standard.

On such a focused and literal reading of *Conley's* "no set of facts," a wholly conclusory statement of claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery. So here, the Court of Appeals specifically found the prospect of unearthing direct evidence of conspiracy sufficient to preclude dismissal, even though the complaint does not set forth a single fact in a context that suggests an agreement. It seems fair to say that this approach to pleading would dispense with any showing of a reasonably founded hope that a plaintiff would be able to make a case.

Seeing this, a good many judges and commentators have balked at taking the literal terms of the *Conley* passage as a pleading standard. See, e.g., *Car Carriers*, 745 F. 2d, at 1106 ("Conley has never been interpreted literally" and, "[i]n practice, a complaint ... must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory" (internal quotation marks omitted; emphasis and omission in original); *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F. 2d 1149, 1155 (CA9 1989) (tension between *Conley's* "no set of facts" language

and its acknowledgment that a plaintiff must provide the “grounds” on which his claim rests); *O’Brien v. DiGrazia*, 544 F. 2d 543, 546, n. 3 (CA1 1976) (“[W]hen a plaintiff ... supplies facts to support his claim, we do not think that Conley imposes a duty on the courts to conjure up unpleaded facts that might turn a frivolous claim of unconstitutional ... action into a substantial one”); *McGregor v. Industrial Excess Landfill, Inc.*, 856 F. 2d 39, 42–43 (CA6 1988) (quoting *O’Brien’s* analysis); Hazard, *From Whom No Secrets Are Hid*, 76 *Tex. L. Rev.* 1665, 1685 (1998) (describing Conley as having “turned Rule 8 on its head”); Marcus, *The Revival of Fact Pleading Under the Federal Rules of Civil Procedure*, 86 *Colum. L. Rev.* 433, 463–465 (1986) (noting tension between Conley and subsequent understandings of Rule 8).

We could go on, but there is no need to pile up further citations to show that Conley’s “no set of facts” language has been questioned, criticized, and explained away long enough. To be fair to the Conley Court, the passage should be understood in light of the opinion’s preceding summary of the complaint’s concrete allegations, which the Court quite reasonably understood as amply stating a claim for relief. But the passage so often quoted fails to mention this understanding on the part of the Court, and after puzzling the profession for 50 years, this famous observation has earned its retirement. The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard: once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint. Conley, then, described the breadth of opportunity to prove what an adequate complaint claims, not the minimum standard of adequate pleading to govern a complaint’s survival.

III

When we look for plausibility in this complaint, we agree with the District Court that plaintiffs’ claim of conspiracy in restraint of trade comes up short. To begin with, the complaint leaves no doubt that plaintiffs rest their §1

claim on descriptions of parallel conduct and not on any independent allegation of actual agreement among the ILECs.

We think that nothing contained in the complaint invests either the action or inaction alleged with a plausible suggestion of conspiracy. As to the ILECs' supposed agreement to disobey the 1996 Act and thwart the CLECs' attempts to compete, we agree with the District Court that nothing in the complaint intimates that the resistance to the upstarts was anything more than the natural, unilateral reaction of each ILEC intent on keeping its regional dominance. The 1996 Act did more than just subject the ILECs to competition; it obliged them to subsidize their competitors with their own equipment at wholesale rates. The economic incentive to resist was powerful, but resisting competition is routine market conduct, and even if the ILECs flouted the 1996 Act in all the ways the plaintiffs allege, there is no reason to infer that the companies had agreed among themselves to do what was only natural anyway; so natural, in fact, that if alleging parallel decisions to resist competition were enough to imply an antitrust conspiracy, pleading a §1 violation against almost any group of competing businesses would be a sure thing.

Plaintiffs say that our analysis runs counter to *Swierkiewicz v. Sorema N. A.*, which held that a complaint in an employment discrimination lawsuit need not contain specific facts establishing a prima facie case of discrimination under the framework set forth in *McDonnell Douglas Corp. v. Green*. As the District Court correctly understood, however, *Swierkiewicz* did not change the law of pleading, but simply re-emphasized that the Second Circuit's use of a heightened pleading standard for Title VII cases was contrary to the Federal Rules' structure of liberal pleading requirements. Even though *Swierkiewicz's* pleadings detailed the events leading to his termination, provided relevant dates, and included the ages and nationalities of at least some of the relevant persons involved with his termination, the Court of Appeals dismissed his complaint for failing to allege certain additional facts that *Swierkiewicz* would need at the trial stage to support his claim in the

absence of direct evidence of discrimination. We reversed on the ground that the Court of Appeals had impermissibly applied what amounted to a heightened pleading requirement by insisting that Swierkiewicz allege specific facts beyond those necessary to state his claim and the grounds showing entitlement to relief.

Here, in contrast, we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.

The judgment of the Court of Appeals for the Second Circuit is reversed, and the cause is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins except as to Part IV, dissenting.

In the first paragraph of its 24-page opinion the Court states that the question to be decided is whether allegations that “major telecommunications providers engaged in certain parallel conduct unfavorable to competition” suffice to state a violation of §1 of the Sherman Act. The answer to that question has been settled for more than 50 years. If that were indeed the issue, a summary reversal would adequately resolve this case. As [we have previously] held, parallel conduct is circumstantial evidence admissible on the issue of conspiracy, but it is not itself illegal.

Thus, this is a case in which there is no dispute about the substantive law. If the defendants acted independently, their conduct was perfectly lawful. If, however, that conduct is the product of a horizontal agreement among potential competitors, it was unlawful. Plaintiffs have alleged such an agreement and, because the complaint was dismissed in advance of answer, the allegation has not even been denied. Why, then, does the case not

proceed? Does a judicial opinion that the charge is not “plausible” provide a legally acceptable reason for dismissing the complaint? I think not.

Respondents’ amended complaint describes a variety of circumstantial evidence and makes the straightforward allegation that petitioners “entered into a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets and have agreed not to compete with one another and otherwise allocated customers and markets to one another.”

The complaint explains that, contrary to Congress’ expectation when it enacted the 1996 Telecommunications Act, and consistent with their own economic self-interests, petitioner Incumbent Local Exchange Carriers (ILECs) have assiduously avoided infringing upon each other’s markets and have refused to permit nonincumbent competitors to access their networks. The complaint quotes Richard Notebaert, the former CEO of one such ILEC, as saying that competing in a neighboring ILEC’s territory “might be a good way to turn a quick dollar but that doesn’t make it right.” Moreover, respondents allege that petitioners “communicate amongst themselves” through numerous industry associations. In sum, respondents allege that petitioners entered into an agreement that has long been recognized as a classic per se violation of the Sherman Act.

Under rules of procedure that have been well settled, a judge ruling on a defendant’s motion to dismiss a complaint, must accept as true all of the factual allegations contained in the complaint. But instead of requiring knowledgeable executives such as Notebaert to respond to these allegations by way of sworn depositions or other limited discovery—and indeed without so much as requiring petitioners to file an answer denying that they entered into any agreement—the majority permits immediate dismissal based on the assurances of company lawyers that nothing untoward was afoot. The Court embraces the argument of those lawyers that there is no reason to infer that the companies had agreed among themselves to do what was only natural anyway; that there was just no need for joint encouragement to resist the

1996 Act; and that the natural explanation for the noncompetition alleged is that the former Government-sanctioned monopolists were sitting tight, expecting their neighbors to do the same thing.

The Court and petitioners' legal team are no doubt correct that the parallel conduct alleged is consistent with the absence of any contract, combination, or conspiracy. But that conduct is also entirely consistent with the presence of the illegal agreement alleged in the complaint. And the charge that petitioners "agreed not to compete with one another" is an allegation describing unlawful conduct. As such, the Federal Rules of Civil Procedure, our longstanding precedent, and sound practice mandate that the District Court at least require some sort of response from petitioners before dismissing the case.

Two practical concerns presumably explain the Court's dramatic departure from settled procedural law. Private antitrust litigation can be enormously expensive, and there is a risk that jurors may mistakenly conclude that evidence of parallel conduct has proved that the parties acted pursuant to an agreement when they in fact merely made similar independent decisions. Those concerns merit careful case management, including strict control of discovery, careful scrutiny of evidence at the summary judgment stage, and lucid instructions to juries; they do not, however, justify the dismissal of an adequately pleaded complaint without even requiring the defendants to file answers denying a charge that they in fact engaged in collective decisionmaking. More importantly, they do not justify an interpretation of Federal Rule of Civil Procedure 12(b)(6) that seems to be driven by the majority's appraisal of the plausibility of the ultimate factual allegation rather than its legal sufficiency.

I

Rule 8(a)(2) of the Federal Rules requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The rule did not come about by happenstance and its language is not inadvertent. The English experience with Byzantine special pleading rules—

illustrated by the hypertechnical Hilary rules of 18341—made obvious the appeal of a pleading standard that was easy for the common litigant to understand and sufficed to put the defendant on notice as to the nature of the claim against him and the relief sought. Stateside, David Dudley Field developed the highly influential New York Code of 1848, which required “[a] statement of the facts constituting the cause of action, in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.” Substantially similar language appeared in the Federal Equity Rules adopted in 1912.

A difficulty arose, however, in that the Field Code and its progeny required a plaintiff to plead “facts” rather than “conclusions,” a distinction that proved far easier to say than to apply. As commentators have noted, it is virtually impossible logically to distinguish among ultimate facts, evidence, and conclusions. Essentially any allegation in a pleading must be an assertion that certain occurrences took place. The pleading spectrum, passing from evidence through ultimate facts to conclusions, is largely a continuum varying only in the degree of particularity with which the occurrences are described.

Under the relaxed pleading standards of the Federal Rules, the idea was not to keep litigants out of court but rather to keep them in. The merits of a claim would be sorted out during a flexible pretrial process and, as appropriate, through the crucible of trial.

II

It is in the context of this history that *Conley v. Gibson* must be understood. The *Conley* plaintiffs were black railroad workers who alleged that their union local had refused to protect them against discriminatory discharges, in violation of the National Railway Labor Act. The union sought to dismiss the complaint on the ground that its general allegations of discriminatory treatment by the defendants lacked sufficient specificity. Writing for a unanimous Court, Justice Black rejected the union’s claim as foreclosed by the language of Rule 8. In the course of doing so, he articulated the formulation the Court rejects today: “In appraising the sufficiency of the

complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”

Consistent with the design of the Federal Rules, Conley’s “no set of facts” formulation permits outright dismissal only when proceeding to discovery or beyond would be futile. Once it is clear that a plaintiff has stated a claim that, if true, would entitle him to relief, matters of proof are appropriately relegated to other stages of the trial process. Today, however, in its explanation of a decision to dismiss a complaint that it regards as a fishing expedition, the Court scraps Conley’s “no set of facts ” language. Concluding that the phrase has been “questioned, criticized, and explained away long enough,” the Court dismisses it as careless composition.

If Conley’s “no set of facts” language is to be interred, let it not be without a eulogy. That exact language, which the majority says has “puzzl[ed] the profession for 50 years,” has been cited as authority in a dozen opinions of this Court and four separate writings. In not one of those 16 opinions was the language “questioned,” “criticized,” or “explained away.” Indeed, today’s opinion is the first by any Member of this Court to express any doubt as to the adequacy of the Conley formulation. Taking their cues from the federal courts, 26 States and the District of Columbia utilize as their standard for dismissal of a complaint the very language the majority repudiates: whether it appears “beyond doubt” that “no set of facts” in support of the claim would entitle the plaintiff to relief.

Petitioners have not requested that the Conley formulation be retired, nor have any of the six amici who filed briefs in support of petitioners. I would not rewrite the Nation’s civil procedure textbooks and call into doubt the pleading rules of most of its States without far more informed deliberation as to the costs of doing so. Congress has established a process—a rulemaking process—for revisions of that order.

Most recently, in *Swierkiewicz*, we were faced with a case more similar to the present one than the majority will allow. In discrimination cases, our precedents require a plaintiff at the summary judgment stage to produce either direct evidence of discrimination or, if the claim is based primarily on circumstantial evidence, to meet the shifting evidentiary burdens imposed under the framework articulated in *McDonnell Douglas Corp. v. Green*. *Swierkiewicz* alleged that he had been terminated on account of national origin in violation of Title VII of the Civil Rights Act of 1964. The Second Circuit dismissed the suit on the pleadings because he had not pleaded a *prima facie* case of discrimination under the *McDonnell Douglas* standard.

We reversed [unanimously], holding that “under a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a *prima facie* case because the *McDonnell Douglas* framework does not apply in every employment discrimination case.” We also observed that Rule 8(a)(2) does not contemplate a court’s passing on the merits of a litigant’s claim at the pleading stage. Rather, the “simplified notice pleading standard” of the Federal Rules “relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims.”

The majority rejects the complaint in this case because—in light of the fact that the parallel conduct alleged is consistent with ordinary market behavior—the claimed conspiracy is “conceivable” but not “plausible.” I have my doubts about the majority’s assessment of the plausibility of this alleged conspiracy. But even if the majority’s speculation is correct, its “plausibility” standard is irreconcilable with Rule 8 and with our governing precedents. As we made clear in *Swierkiewicz*, fear of the burdens of litigation does not justify factual conclusions supported only by lawyers’ arguments rather than sworn denials or admissible evidence.

In this “Big Case,” the Court succumbs to the temptation that previous Courts have steadfastly resisted. While the majority assures us that it is not

applying any heightened pleading standard, I have a difficult time understanding its opinion any other way.

Accordingly, I respectfully dissent.

Questions

1. Who is correct, the majority or the dissent, on the question of whether the standard announced in *Twombly* is consistent with *Conley* and other cases? Consider: if the *Swierkiewicz* case were decided today, post-*Twombly*, would it come out the same or differently? Why? Put otherwise, in the wake of *Twombly*, what would a plaintiff have to plead in a discrimination case in order to state a claim?
2. What does “plausible” mean? How would a court determine whether a complaint is plausible?
3. The majority opinion’s discussion and rejection of the “no set of facts” language from *Conley* cites almost exclusively to lower court opinions and the analysis of commentators, rather than on other Supreme Court opinions. Why might this be so?
4. What does the majority identify as the dangers of allowing a case like *Twombly* to proceed in the district court? In his dissent, how does Justice Stevens argue that such dangers should be addressed?
5. What does Justice Stevens argue the purpose of Rule 8(a) is?

After *Twombly*, there was a great deal of disagreement among commentators and lower courts as to its implications. The following case was the next opportunity for the Supreme Court to address pleading and Rule 8(a)(2).

Ashcroft v. Iqbal
556 U.S 662 (2009)

JUSTICE KENNEDY delivered the opinion of the Court.

Respondent Javaid Iqbal is a citizen of Pakistan and a Muslim. In the wake of the September 11, 2001, terrorist attacks he was arrested in the United States on criminal charges and detained by federal officials. Respondent claims he was deprived of various constitutional protections while in federal custody. To redress the alleged deprivations, respondent filed a complaint against numerous federal officials, including John Ashcroft, the former Attorney General of the United States, and Robert Mueller, the Director of the Federal Bureau of Investigation (FBI). Ashcroft and Mueller are the [only] petitioners in the case now before us. As to these two petitioners, the complaint alleges that they adopted an unconstitutional policy that subjected respondent to harsh conditions of confinement on account of his race, religion, or national origin.

In the District Court petitioners raised the defense of qualified immunity and moved to dismiss the suit, contending the complaint was not sufficient to state a claim against them. The District Court denied the motion to dismiss, concluding the complaint was sufficient to state a claim despite petitioners' official status at the times in question. Petitioners brought an interlocutory appeal in the Court of Appeals for the Second Circuit. The court affirmed the District Court's decision.

Respondent's account of his prison ordeal could, if proved, demonstrate unconstitutional misconduct by some governmental actors. But the allegations and pleadings with respect to these actors are not before us here. This case instead turns on a narrower question: Did respondent, as the plaintiff in the District Court, plead factual matter that, if taken as true, states a claim that petitioners deprived him of his clearly established constitutional rights. We hold respondent's pleadings are insufficient.

I

Following the 2001 attacks, the FBI and other entities within the Department of Justice began an investigation of vast reach to identify the assailants and prevent them from attacking anew.

In the ensuing months the FBI questioned more than 1,000 people with suspected links to the attacks in particular or to terrorism in general. Of those individuals, some 762 were held on immigration charges; and a 184-member subset of that group was deemed to be “of ‘high interest’” to the investigation. The high-interest detainees were held under restrictive conditions designed to prevent them from communicating with the general prison population or the outside world.

Respondent was one of the [high interest] detainees. According to his complaint, in November 2001 agents of the FBI and Immigration and Naturalization Service arrested him on charges of fraud in relation to identification documents and conspiracy to defraud the United States. Pending trial for those crimes, respondent was housed at the Metropolitan Detention Center (MDC) in Brooklyn, New York. [He] was placed in a section of the MDC known as the Administrative Maximum Special Housing Unit (ADMAX SHU [in 2002])). As the facility’s name indicates, the ADMAX SHU incorporates the maximum security conditions allowable under Federal Bureau of Prison regulations. ADMAX SHU detainees were kept in lockdown 23 hours a day, spending the remaining hour outside their cells in handcuffs and leg irons accompanied by a four-officer escort.

Respondent pleaded guilty to the criminal charges, served a term of imprisonment, and was removed to his native Pakistan. He then filed a [claim] in the United States District Court for the Eastern District of New York against 34 current and former federal officials and 19 “John Doe” federal corrections officers. The defendants range from the correctional officers who had day-to-day contact with respondent during the term of his confinement, to the wardens of the MDC facility, all the way to petitioners—officials who were at the highest level of the federal law enforcement hierarchy.

The 21-cause-of-action complaint does not challenge respondent’s arrest or his confinement in the MDC’s general prison population. Rather, it concentrates on his treatment while confined to the ADMAX SHU. The

complaint sets forth various claims against defendants who are not before us. For instance, the complaint alleges that respondent's jailors "kicked him in the stomach, punched him in the face, and dragged him across" his cell without justification; subjected him to serial strip and body-cavity searches when he posed no safety risk to himself or others; and refused to let him and other Muslims pray because there would be "[n]o prayers for terrorists."

The allegations against petitioners [Ashcraft and Mueller] are the only ones relevant here. The complaint contends that petitioners designated respondent a person of high interest on account of his race, religion, or national origin, in contravention of the First and Fifth Amendments to the Constitution. The complaint alleges that "the [FBI], under the direction of Defendant Mueller, arrested and detained thousands of Arab Muslim men ... as part of its investigation of the events of September 11." It further alleges that "[t]he policy of holding post-September-11th detainees in highly restrictive conditions of confinement until they were 'cleared' by the FBI was approved by Defendants Ashcroft and Mueller in discussions in the weeks after September 11, 2001." Lastly, the complaint posits that petitioners "each knew of, condoned, and willfully and maliciously agreed to subject" respondent to harsh conditions of confinement "as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest." The pleading names Ashcroft as the "principal architect" of the policy, and identifies Mueller as "instrumental in [its] adoption, promulgation, and implementation."

Petitioners moved to dismiss the complaint for failure to state sufficient allegations to show their own involvement in clearly established unconstitutional conduct. The District Court denied their motion. Accepting all of the allegations in respondent's complaint as true, the court held that "it cannot be said that there [is] no set of facts on which [respondent] would be entitled to relief as against" petitioners[,] relying on *Conley v. Gibson*. [P]etitioners filed an interlocutory appeal in the United States Court of Appeals for the Second Circuit. While that appeal was pending, this Court

decided *Bell Atlantic Corp. v. Twombly*, which discussed the standard for evaluating whether a complaint is sufficient to survive a motion to dismiss.

The Court of Appeals considered *Twombly*'s applicability to this case. Acknowledging that *Twombly* retired the Conley no-set-of-facts test relied upon by the District Court, the Court of Appeals' opinion discussed at length how to apply this Court's "standard for assessing the adequacy of pleadings." It concluded that *Twombly* called for a "flexible 'plausibility standard,' which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim *plausible*." The court found that petitioners' appeal did not present one of "those contexts" requiring amplification. As a consequence, it held respondent's pleading adequate to allege petitioners' personal involvement in discriminatory decisions which, if true, violated clearly established constitutional law.

We granted certiorari, and now reverse.

IV

A

We turn to respondent's complaint. Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." As the Court held in *Twombly*, the pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement."

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is

liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant's liability, it “stops short of the line between possibility and plausibility of entitlement to relief.”

Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not “show[n]”—“that the pleader is entitled to relief.”

In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Our decision in *Twombly* illustrates the [above] two-pronged approach. There, we considered the sufficiency of a complaint alleging that incumbent telecommunications providers had entered an agreement not to compete and to forestall competitive entry, in violation of the Sherman Act, 15 U.S.C. § 1. Recognizing that § 1 enjoins only anticompetitive conduct “effected by a

contract, combination, or conspiracy,” the plaintiffs in *Twombly* flatly pleaded that the defendants “ha[d] entered into a contract, combination or conspiracy to prevent competitive entry ... and ha[d] agreed not to compete with one another.” The complaint also alleged that the defendants’ “parallel course of conduct ... to prevent competition” and inflate prices was indicative of the unlawful agreement alleged.

The Court held the *Twombly* plaintiffs’ complaint deficient under Rule 8. In doing so it first noted that the plaintiffs’ assertion of an unlawful agreement was a “‘legal conclusion’ ” and, as such, was not entitled to the assumption of truth. Had the Court simply credited the allegation of a conspiracy, the plaintiffs would have stated a claim for relief and been entitled to proceed perforce. The Court next addressed the “nub” of the plaintiffs’ complaint—the well-pleaded, nonconclusory factual allegation of parallel behavior—to determine whether it gave rise to a “plausible suggestion of conspiracy.” Acknowledging that parallel conduct was consistent with an unlawful agreement, the Court nevertheless concluded that it did not plausibly suggest an illicit accord because it was not only compatible with, but indeed was more likely explained by, lawful, unchoreographed free-market behavior. Because the well-pleaded fact of parallel conduct, accepted as true, did not plausibly suggest an unlawful agreement, the Court held the plaintiffs’ complaint must be dismissed.

B

Under *Twombly*’s construction of Rule 8, we conclude that respondent [Iqbal]’s complaint has not “nudged [his] claims” of invidious discrimination “across the line from conceivable to plausible.”

We begin our analysis by identifying the allegations in the complaint that are not entitled to the assumption of truth. Respondent pleads that petitioners “knew of, condoned, and willfully and maliciously agreed to subject [him]” to harsh conditions of confinement “as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest.” The complaint alleges that Ashcroft was the “principal architect” of

this invidious policy, and that Mueller was “instrumental” in adopting and executing it. These bare assertions, much like the pleading of [an antitrust] conspiracy in *Twombly*, amount to nothing more than a “formulaic recitation of the elements” of a constitutional discrimination claim, namely, that petitioners adopted a policy [intentionally] “ ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” As such, the allegations are conclusory and not entitled to be assumed true. To be clear, we do not reject these bald allegations on the ground that they are unrealistic or nonsensical. It is the conclusory nature of respondent’s allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.

We next consider the factual allegations in respondent’s complaint to determine if they plausibly suggest an entitlement to relief. The complaint alleges that “the [FBI], under the direction of Defendant Mueller, arrested and detained thousands of Arab Muslim men ... as part of its investigation of the events of September 11.” It further claims that “[t]he policy of holding post-September-11th detainees in highly restrictive conditions of confinement until they were ‘cleared’ by the FBI was approved by Defendants Ashcroft and Mueller in discussions in the weeks after September 11, 2001.” Taken as true, these allegations are consistent with petitioners’ purposefully designating detainees “of high interest” because of their race, religion, or national origin. But given more likely explanations, they do not plausibly establish this purpose.

The September 11 attacks were perpetrated by 19 Arab Muslim hijackers who counted themselves members in good standing of al Qaeda, an Islamic fundamentalist group. Al Qaeda was headed by another Arab Muslim—Osama bin Laden—and composed in large part of his Arab Muslim disciples. It should come as no surprise that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the purpose of the policy was to target neither Arabs nor

Muslims. On the facts respondent alleges the arrests Mueller oversaw were likely lawful and justified by his nondiscriminatory intent to detain aliens who were illegally present in the United States and who had potential connections to those who committed terrorist acts. As between that “obvious alternative explanation” for the arrests, and the purposeful, invidious discrimination respondent asks us to infer, discrimination is not a plausible conclusion.

But even if the complaint’s well-pleaded facts give rise to a plausible inference that respondent’s arrest was the result of unconstitutional discrimination, that inference alone would not entitle respondent to relief. It is important to recall that respondent’s complaint challenges neither the constitutionality of his arrest nor his initial detention in the MDC. Respondent’s constitutional claims against petitioners rest solely on their ostensible “policy of holding post-September-11th detainees” in the ADMAX SHU once they were categorized as “of high interest.” To prevail on that theory, the complaint must contain facts plausibly showing that petitioners purposefully adopted a policy of classifying post-September-11 detainees as “of high interest” because of their race, religion, or national origin.

This the complaint fails to do. Though respondent alleges that various other defendants, who are not before us, may have labeled him a person of “of high interest” for impermissible reasons, his only factual allegation against petitioners accuses them of adopting a policy approving “restrictive conditions of confinement” for post-September-11 detainees until they were “‘cleared’ by the FBI.” Accepting the truth of that allegation, the complaint does not show, or even intimate, that petitioners purposefully housed detainees in the ADMAX SHU due to their race, religion, or national origin. All it plausibly suggests is that the Nation’s top law enforcement officers, in the aftermath of a devastating terrorist attack, sought to keep suspected terrorists in the most secure conditions available until the suspects could be cleared of terrorist activity. Respondent does not argue, nor can he, that such a motive would violate petitioners’ constitutional obligations. He would need

to allege more by way of factual content to “nudge” his claim of purposeful discrimination “across the line from conceivable to plausible.”

[R]espondent’s complaint does not contain any factual allegation sufficient to plausibly suggest petitioners’ discriminatory state of mind. His pleadings thus do not meet the standard necessary to comply with Rule 8.

It is important to note, however, that we express no opinion concerning the sufficiency of respondent’s complaint against the defendants who are not before us. Respondent’s account of his prison ordeal alleges serious official misconduct that we need not address here. Our decision is limited to the determination that respondent’s complaint does not entitle him to relief from petitioners [Ashcroft and Mueller].

C

Respondent offers three arguments that bear on our disposition of his case, but none is persuasive.

1

Respondent first says that our decision in *Twombly* should be limited to pleadings made in the context of an antitrust dispute. This argument is not supported by *Twombly* and is incompatible with the Federal Rules of Civil Procedure. Though *Twombly* determined the sufficiency of a complaint sounding in antitrust, the decision was based on our interpretation and application of Rule 8. That Rule in turn governs the pleading standard “in all civil actions and proceedings in the United States district courts.” Fed. Rule Civ. Proc. 1. Our decision in *Twombly* expounded the pleading standard for “all civil actions,” and it applies to antitrust and discrimination suits alike.

2

Respondent next implies that our construction of Rule 8 should be tempered where, as here, the Court of Appeals has “instructed the district court to cabin discovery in such a way as to preserve” petitioners’ defense of qualified immunity “as much as possible in anticipation of a summary judgment

motion.” We have held, however, that the question presented by a motion to dismiss a complaint for insufficient pleadings does not turn on the controls placed upon the discovery process. “It is no answer to say that a claim just shy of a plausible entitlement to relief can, if groundless, be weeded out early in the discovery process through careful case management given the common lament that the success of judicial supervision in checking discovery abuse has been on the modest side.”

We decline respondent’s invitation to relax the pleading requirements on the ground that the Court of Appeals promises petitioners minimally intrusive discovery. That promise provides especially cold comfort in this pleading context, where we are impelled to give real content to the concept of qualified immunity for high-level officials who must be neither deterred nor detracted from the vigorous performance of their duties. Because respondent’s complaint is deficient under Rule 8, he is not entitled to discovery, cabined [confined] or otherwise.

3

Respondent finally maintains that the Federal Rules expressly allow him to allege petitioners’ discriminatory intent “generally,” which he equates with a conclusory allegation (citing Fed. Rule Civ. Proc. 9 [’s inapplicable heightened pleading requirement]). It follows, respondent says, that his complaint is sufficiently well pleaded because it claims that petitioners discriminated against him “on account of [his] religion, race, and/or national origin and for no legitimate penological interest.” Were we required to accept this allegation as true, respondent’s complaint would survive petitioners’ motion to dismiss. But the Federal Rules do not require courts to credit a complaint’s conclusory statements without reference to its factual context.

V

We hold that respondent’s complaint fails to plead sufficient facts to state a claim for purposeful and unlawful discrimination against petitioners. The Court of Appeals should decide in the first instance whether to remand to

the District Court so that respondent can seek leave to amend his deficient complaint.

JUSTICE SOUTER, with whom JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

The majority misapplies the pleading standard under *Bell Atlantic Corp. v. Twombly*, to conclude that the complaint fails to state a claim. I respectfully dissent from the holding that the complaint fails to satisfy Rule 8(a)(2) of the Federal Rules of Civil Procedure.

I

A

The District Court denied Ashcroft and Mueller’s motion to dismiss Iqbal’s discrimination claim, and the Court of Appeals affirmed. Ashcroft and Mueller asked the Court to address whether Iqbal’s allegations against them (which they call conclusory) were sufficient to satisfy Rule 8(a)(2) and in particular whether the Court of Appeals misapplied our decision in *Twombly* construing that rule.

II

[T]he complaint satisfies Rule 8(a)(2). Ashcroft and Mueller admit they are liable for their subordinates’ conduct if they “had actual knowledge of the assertedly discriminatory nature of the classification of suspects as being ‘of high interest’ and they were deliberately indifferent to that discrimination.” The complaint thus alleges, at a bare minimum, that Ashcroft and Mueller knew of and condoned the discriminatory policy their subordinates carried out. Actually, the complaint goes further in alleging that Ashcroft and Muller affirmatively acted to create the discriminatory detention policy. If these factual allegations are true, Ashcroft and Mueller were, at the very least, aware of the discriminatory policy being implemented and deliberately indifferent to it.

Ashcroft and Mueller argue that these allegations fail to satisfy the “plausibility standard” of *Twombly*. They contend that Iqbal’s claims are implausible because such high-ranking officials “tend not to be personally involved in the specific actions of lower-level officers down the bureaucratic chain of command.” But this response bespeaks a fundamental misunderstanding of the enquiry that *Twombly* demands. *Twombly* does not require a court at the motion-to-dismiss stage to consider whether the factual allegations are probably true. We made it clear, on the contrary, that a court must take the allegations as true, no matter how skeptical the court may be. The sole exception to this rule lies with allegations that are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff’s recent trip to Pluto, or experiences in time travel. That is not what we have here.

The complaint alleges that FBI officials discriminated against Iqbal solely on account of his race, religion, and national origin, and it alleges the knowledge and deliberate indifference that, by Ashcroft and Mueller’s own admission, are sufficient to make them liable for the illegal action. Iqbal’s complaint therefore contains “enough facts to state a claim to relief that is plausible on its face.”

The majority says that these are “bare assertions” that, “much like the pleading of conspiracy in *Twombly*, amount to nothing more than a ‘formulaic recitation of the elements’ of a constitutional discrimination claim” and therefore are “not entitled to be assumed true.” The fallacy of the majority’s position, however, lies in looking at the relevant assertions in isolation. The complaint contains specific allegations that, in the aftermath of the September 11 attacks, the Chief of the FBI’s International Terrorism Operations Section and the Assistant Special Agent in Charge for the FBI’s New York Field Office implemented a policy that discriminated against Arab Muslim men, including Iqbal, solely on account of their race, religion, or national origin. Viewed in light of these subsidiary allegations, the allegations singled out by the majority as “conclusory” are no such thing. Iqbal’s claim is

not that Ashcroft and Mueller “knew of, condoned, and willfully and maliciously agreed to subject” him to a discriminatory practice that is left undefined; his allegation is that “they knew of, condoned, and willfully and maliciously agreed to subject” him to a particular, discrete, discriminatory policy detailed in the complaint. Iqbal does not say merely that Ashcroft was the architect of some amorphous discrimination, or that Mueller was instrumental in an ill-defined constitutional violation; he alleges that they helped to create the discriminatory policy he has described. Taking the complaint as a whole, it gives Ashcroft and Mueller fair notice of what the claim is and the grounds upon which it rests.

JUSTICE BREYER, dissenting.

I agree with Justice Souter and join his dissent. I write separately to point out that, like the Court, I believe it important to prevent unwarranted litigation from interfering with “the proper execution of the work of the Government.” But I cannot find in that need adequate justification for the Court’s interpretation of *Bell Atlantic Corp. v. Twombly*, and Federal Rule of Civil Procedure 8. The law, after all, provides trial courts with other legal weapons designed to prevent unwarranted interference. As the Second Circuit explained, where a Government defendant asserts a qualified immunity defense, a trial court, responsible for managing a case and “mindful of the need to vindicate the purpose of the qualified immunity defense,” can structure discovery in ways that diminish the risk of imposing unwarranted burdens upon public officials.

Questions

1. Does Iqbal clarify *Twombly*? If so, how? According to Iqbal, what is the test for whether a complaint meets the Plausibility standard?
2. In the battle between efficiency and open access/addressing the merits of the dispute, which side seems to be on top now? Do *Twombly*’s and Iqbal’s

focus on “plausibility” represent a heightened pleading standard that is different from the Notice Pleading standard articulated in Conley and reaffirmed in Swierkiewicz? If so, why do you think the Supreme Court switched sides?

3. In the wake of Iqbal, what would a plaintiff have to plead in a discrimination case in order to state a claim?
4. Justice Souter wrote Twombly but dissented in Iqbal. Why?
5. In the wake of Twombly and Iqbal, is the complaint you drafted in the Branham class sufficient? What would you argue if you were the defendant?

What follows is a district court opinion in which the judge struggles to apply Twombly and Iqbal. Note that this case was decided before the Supreme Court decided Iqbal. However, the Supreme Court had already decided Twombly, and the Second Circuit had already issued its opinion in Iqbal, interpreting and applying Twombly. Thus, the district court in this case is applying the Supreme Court’s holding in Twombly and the Second Circuit’s holding in Iqbal.

Pay careful attention to how the district court understands the Twombly and Iqbal cases, and what the court decides in order to balance the competing interests at stake.

Kregler v. City of New York
608 F. Supp.2d 465 (S.D.N.Y. 2009)
Decision and Order

VICTOR MARRERO, District Judge.

Plaintiff William Kregler (“Kregler”) brought this action pursuant to 42 U.S.C. § 1983 (“§ 1983”) alleging that defendants violated his rights under the First and Fourteenth Amendments of the United States Constitution. Defendants consist of the City of New York (the “City”) and five individuals who at all relevant times were employees of the City’s Fire Department (“FDNY”) or Department of Investigation (“DOI”) (collectively with the

City, “Defendants”). Defendants move pursuant to Federal Rule of Civil Procedure 12(b)(6) (“Rule 12(b)(6)”) to dismiss the amended complaint for failure to state a claim upon which relief can be granted. For the reasons stated below, the Court defers decision on the motion pending the outcome of a preliminary hearing it will conduct pursuant to Federal Rule of Civil Procedure 12(i) (“Rule 12(i)”).

I. Introduction

This case raises a longstanding concern frequently noted by the Supreme Court and the Second Circuit, as well as by federal courts across the country. Not uncommonly, on the basis of nothing more than the barest conclusory allegations, government officials are summoned to court to defend private lawsuits charging constitutional violations and other serious official misconduct. In most cases the costs the parties incur in litigation such actions, measured by expenditures of time and public resources, disruption of government operations, and potential damage to professional and personal reputations, are quite extensive. Frequent instances arise in which the underlying issues raise matters involving the formulation of government policy or, as in the case at hand, the appointment of public officers. These circumstances may implicate inquiry into confidential communications, though processes and internal documents containing sensitive matters the public disclosure of which in itself could entail judicial proceedings. Equally significant are the attendant impacts of such lawsuits on the courts' dockets and the administration of justice.

More fundamentally, the question regarding the personal and social costs associated with litigating insubstantial lawsuits reduces to a far greater value: fairness. It is inequitable to subject a government official-or indeed any party-to the burdens of defending a claim challenged on legitimate grounds as insubstantial or frivolous for any longer than the minimum time reasonably necessary to ascertain whether sufficient basis exists to warrant allowing the action to proceed. For essentially the same social costs and fairness

considerations, our justice system prescribes speedy trial rules demanding the earliest feasible resolution of charges against defendants in criminal cases.

The consequences described above, however, are not always, and not necessarily, of the complainant's making. Rather, to a large degree they reflect unintended side effects, byproducts of the lenient notice pleading standards embodied in Federal Rules of Civil Procedure 8(a) ("Rule 8(a)") and 12(b)(6) and related case law. These rules are designed to insure that litigants with meritorious claims obtain adequate access to resolve their disputes in court. But, in a judicial instance of the duality that generally pervades so much of life, the same open door that welcomes the just cause also admits the nuisance suit; the flimsy or frivolous allegation is as free to enter the courthouse as the valid claim. As the Supreme Court has recognized, accusations of unconstitutional conduct on the part of public officials are easy to level, but very difficult and costly to defend against.

Over the course of many years courts concerned with the severe hardships that insubstantial lawsuits place on litigants, on the justice system and on society as a whole have struggled with this dilemma, not only as it pertains to complaints lodged against government officials, but to litigation in general. To address these issues, courts have devised several tests meant both to instruct plaintiffs on drafting well-pleaded claims, and to guide the courts' review of the legal sufficiency of claims for relief. Among such judicial means employed to part the wheat from the chaff are: imposing "heightened" pleading standards, discounting conclusory allegations, rejecting recitations of law and factually unsupported incantations of the statutory or common law elements of a cause of action. Yet, as the case at hand illustrates and the law reports amply record, the problem persists, a sign of an intrinsic tension built into the federal rules. The Supreme Court has repeatedly rejected the notion that the Federal Rules of Civil Procedure countenance any universal heightened pleading standard, and has consistently reaffirmed that Rule 8(a) calls for nothing more than what its clear text prescribes: "a short and plain statement of the claim showing that the pleader is entitled to relief."

Moreover, whether in their factual allegations as originally crafted, or upon being granted leave to replead deficient claims, seasoned plaintiffs' counsel know to charge the pleadings with enough adjectives that reverberate of extreme malice, improper motives, and bad faith to raise factual issues sufficient to survive a dispositive motion, thus securing a hold on the defendant strong enough for the duration, however long and costly the ultimate resolution of the claim may be.

In practical terms, the philosophy of pleading that these rules embodies, a one-rule-fits-all principle, defines the scope of the problem engendered by its unintended outcomes. For instance, in theory the same generalized minimal Rule 8(a) standards that govern the plaintiff's drafting, as well as the court's review, of a complaint alleging common law negligence stemming from a slip and fall, or a breach of a simple contract for failure to pay a debt, apply to writing and evaluating a complaint charging civil violations of intricate federal antitrust, intellectual property, or racketeering statutes.

To be sure, the federal rules include provisions designed to ensure that factual allegations in pleadings have some evidentiary and legal support and are made in good faith, as well as sanctions to deter abusive practices. Specifically, Federal Rule of Civil Procedure 11 ("Rule 11") deems any litigation papers submitted to the court as embodying a certification that, to the person's knowledge, information and belief, "formed after an inquiry reasonable under the circumstances," the filing is not presented for an improper purpose, the claims are warranted by law, and the factual allegations have or will likely have evidentiary support. Fed. R. Civ. P. 11(b)(1)-(3). But these rules are difficult to police effectively, and, under the rigorous bar that governs imposition of Rule 11 sanctions, they are infrequently invoked and only rarely enforced.

These considerations serve as a backdrop for the Court's review of Defendants' motion to dismiss the complaint in this case. Below, the Court outlines a procedure it will employ to reach a resolution it deems appropriate to do substantial justice for the parties and to promote judicial economy as

expeditiously as possible. The Court regards the means proposed, if somewhat uncommon, nonetheless permissible under the federal rules and applicable case law.

II. Facts

Until his retirement in March 2004, Kregler had been employed by the FDNY for 20 years. One month after retiring, Kregler filed a preliminary application for appointment by the Mayor as a City Marshal, a process governed by Article 16 of the New York City Civil Court Act. Pursuant to § 1601 and the Mayor's Executive Order 44 ("Executive Order 44"), the Mayor's Committee on City Marshals (the "Mayor's Committee") is charged with recruiting and recommending candidates for appointment as City Marshals. Candidates are subject to a DOI investigation of personal and financial background, and to a training program administered by DOI. In January 2005 Kregler was interviewed by representatives of the Mayor's Committee and was later notified by defendant Keith Schwam ("Schwam"), an Assistant Commissioner at DOI, that DOI would commence its personal and financial review of Kregler's background. As a follow-up, Kregler met in April 2005 with defendant Darren Keenaghan ("Keenaghan"), a DOI investigator, to discuss Kregler's preliminary application. Kregler then made minor modifications, signed the revised application, and provided authorizations for release of personal information.

On May 25, 2005 Kregler, in his capacity as President of the Fire Marshals Benevolent Association ("FMBA"), an organization of the FDNY Fire Marshals, publicly endorsed the candidacy of Robert Morgenthau ("Morgenthau") for reelection as District Attorney for New York County. Kregler asserts that at that time all other law enforcement associations, including the two other unions of firefighters, supported Morgenthau's opponent, Leslie Crocker Snyder ("Snyder"). An article that appeared in a June 2005 edition of *The Chief*, a local newspaper, reported on the endorsement of Morgenthau by Kregler acting as president of the FMBA. According to Kregler, defendant Brian Grogan ("Grogan"), an FDNY

Supervising Fire Marshal, posted a copy of that article in a public area within one of the FDNY offices. Kregler further alleges that Grogan “berated” him for the endorsement, stating: “who the f... do you think you are. Louie [Garcia] makes the endorsements.” Defendant Louis Garcia (“Garcia”) was Chief Fire Marshal of the FDNY’s Bureau of Fire Investigation. Kregler alleges that both Garcia and Kregler politically supported Snyder’s campaign against Morgenthau, that Garcia was socially acquainted with defendant Rose Gill Hearn (“Hearn”), the DOI Commissioner, and that Hearn also politically supported Snyder’s candidacy.

Morgenthau was reelected as District Attorney in November 2005. In March 2006 Kregler was informed by letter from Schwam that he would not be appointed as a Fire Marshal. He filed this action in August 2008 alleging that Garcia and Hearn “agreed to cause Kregler’s application for appointment as a City Marshal to be rejected in retaliation for Kregler’s support of Morgenthau.” He further asserts that Garcia and Grogan and other FDNY employees requested Hearn, Schwam, Keenaghan, and other DOI employees to misuse their authority to cause the rejection of his application. Responding to the reason Defendants proffered for denying him an appointment—his failure to disclose details of a command discipline he had received in 1999 during his employment by the FDNY—Kregler states that this explanation is merely a pretext for Defendants’ unlawful retaliation.

III. Discussion

Defendants argue that Kregler’s complaint must be dismissed because his pleadings fail to satisfy the elements of an action for First Amendment retaliation under § 1983. To state a such claim, a plaintiff must demonstrate that (1) he engaged in constitutionally protected speech, (2) suffered an adverse employment action, and (3) a causal connection exists between the speech and the adverse employment action so that it can be said that the speech was a motivating factor in the determination. Defendants contend that Kregler has not stated factual allegations sufficient to support a reasonable finding of a causal connection between his endorsement of

Morgenthau's candidacy and Defendants' decision not to offer Kregler a position as City Marshal. Defendants also maintain that Kregler fails to assert retaliatory animus or personal involvement by Defendants in the decision not to appoint Kregler, and thus that he fails to satisfy the third element of a First Amendment retaliation claim.

A more fundamental issue touching upon the sufficiency of Kregler's retaliation claim is that nothing in the record indicates that Grogan or Garcia made the decision to deny Kregler a City Marshal appointment, or had any direct personal involvement in the matter. Under § 1601 the final determination not to offer Kregler a position was presumably made by the Mayor's Committee upon the recommendation of DOI officials. A basic premise of Kregler's claim is therefore that, for retaliatory reasons arising from Kregler's endorsement of Morgenthau, Grogan and Garcia communicated and agreed with DOI employees to interfere with Kregler's application, and that Hearn and other DOI officials then influenced representatives of the Mayor's Committee and the Mayor's Office to prevent Kregler's appointment. Kregler does not allege that Schwam, Keenaghan, Hearn, or any other DOI officials had any direct knowledge of his endorsement of Morgenthau. He thus grounds his theory of retaliation on suggestion supported by a chain of inferential links that would connect the alleged improper political motives of the FDNY officials he names with the actions of the officials at DOI.

Defendants argue that, at its core, Kregler's action amounts to a claim of conspiracy to violate his constitutional rights. According to Defendants, Kregler developed his alleged conspiracy theory to overcome the dilemma that the FDNY officials he claims had political motives to oppose his City Marshal application were not the persons in DOI or the Mayor's Committee who actually made the decision not to offer him an appointment. Faced with this legal impediment, Kregler alleges that first Garcia and Grogan and then Garcia and Hearn “agreed to take steps to interfere with and prevent Kregler's appointment,” and that Garcia and Hearn “agreed” to cause

Kregler's application for appointment as a City Marshal to be rejected by DOI in retaliation for Kregler's support of Morgenthau. Reading Kregler's pleadings as asserting a conspiracy claim, Defendants contend that under Second Circuit law a heightened pleading standard governs such actions, pursuant to which specific facts tending to demonstrate that a "meeting of the minds" occurred must be pleaded, rather than bare conclusory allegations that an agreement was reached.

In response, Kregler points out that his complaint does not allege any conspiracy claim, and that in any event recent Supreme Court decisions have rejected the existence of any general heightened pleading standard. Instead, Kregler asserts that the applicable test by which to assess the sufficiency of his complaint is the short and plain statement of the claim called for under Rule 8(a)(2), which requires that the pleadings need only give the defendant "fair notice of what the claim is and the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 513, 122 S. Ct. 992. With regard to the standard governing review of Rule 12(b)(6) motions to dismiss, Kregler points to authority declaring that a complaint should not be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Ricciuti v. NYC Transit Auth.*, 941 F.2d 119, 123 (2d Cir.1991) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)).

Surprisingly, in squaring off their conflicting stands on the proper standard of review, the parties use as foils the test of a "heightened pleading standard" pointed against the language of "no set of facts." But neither of them mentions either of two recent cases that essentially dispatched those phrases from our procedural law as general pleading guides: *Twombly*, now the most relevant Supreme Court decision articulating the applicable test to evaluate Rule 12(b)(6) motions to dismiss for failure to state a claim, and *Iqbal*, the Second Circuit's reading and application of *Twombly*. In *Twombly*, an antitrust case, the Supreme Court, though reiterating the traditional liberal tests pertaining to pleading under Rule 8(a) and to reviewing motions to

dismiss under Rule 12(b)(6), nonetheless gave Conley's "no set of facts" formula a decent burial, and somewhat modified the traditional notice pleadings standard. The Twombly Court then stated that to be sufficient under Rule 8(a) and survive a Rule 12(b)(6) motion to dismiss, the factual allegations in a complaint must be "enough to raise a right to relief above the speculative level," and state a claim "plausible on its face."

Explaining Twombly in the context of a defense invoking qualified immunity, the Second Circuit in Iqbal concluded that the Supreme Court had not recognized a universal standard of heightened fact pleading, but instead required "a flexible 'plausibility standard,' which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim plausible." In applying the Twombly standard to the facts of the case before it, the Iqbal Court noted that some of the plaintiff's claims were based on generalized allegations of supervisory involvement rather than on facts supporting the claim. It concluded that to survive a motion to dismiss under Twombly's plausibility standard "a conclusionary allegation concerning some elements of a plaintiff's claims might need to be fleshed out."

Running through Twombly and Iqbal is a common theme that has long troubled the courts: the tension between, on the one hand, the lenient notice pleading standards embodied in Rules 8(a) and 12(b)(6) to ensure that plaintiffs with meritorious claims have maximum access to the courts, and on the other hand the imperative to "weed out" groundless actions early in the litigation so as to minimize the expenditure of time and resources of the parties and the courts.

The instant litigation raises many of those issues and concerns. It entails serious charges of constitutional violations and abuse of power allegedly committed for political purposes by high officials of the City's FDNY and DOI, including the DOI Commissioner.

The Court finds that under Twombly's plausibility standard Kregler's amended complaint remains at best borderline in stating a First Amendment

retaliation claim. To survive the new motion to dismiss the pleadings as modified would require the Court to accept as true numerous conclusory allegations, to make substantial inferential leaps, and to resolve considerable doubts in Kregler's favor.

Perhaps not cognizant of the gloss *Twombly* added to the Rule 8(a) pleading standard, Kregler simply points the Court to the traditional “no set of facts” standard that governed review of motions to dismiss under *Conley*: that factual allegations in the complaint are presumed to be true; that all reasonable inferences must be drawn and doubts resolved in the plaintiff's favor; that these standards apply with particular strictness as regards complaints of civil rights violations; and that an inquiry as to the factual issue of causation addresses the quality of the evidence and is thus more appropriate on a motion for summary judgment rather than on the basis of the pleadings. This argument overlooks that *Twombly*'s intent, as read by the Second Circuit, was “to make some alteration in the regime of pure notice pleading that had prevailed in the federal courts ever since *Conley v. Gibson*.”

Nonetheless, the Court is mindful of the traditional standards insofar as they survive *Twombly*, and also of other strictures that limit judicial authority to dismiss a complaint pursuant to Rule 12(b)(6).

Weighing the considerations described above, and acknowledging that this case presents a close call, to minimize additional motion practice at this stage and avert potentially unnecessary extensive discovery, the Court proposes two steps intended to achieve the “amplification” of factual allegations by means of a fleshing out procedure such as that suggested in *Iqbal*. First, the Court will exercise its discretion pursuant to Rule 12(i) to schedule a preliminary hearing at which the parties may present the testimony of live witnesses and other evidence limited to Defendants' objections to the pleadings, specifically the threshold legal issues upon which, under the *Twombly* and *Iqbal* plausibility test, the sufficiency of Kregler's retaliation claim is grounded. Second, the hearing would serve as an occasion for the

Court to probe, in accordance with Rule 11(b), the extent to which some of Kregler's conclusory allegations have factual support and were formed after an inquiry reasonable under the circumstances.

Rule 12(i) authorizes the Court to conduct a preliminary hearing to consider and decide before trial a motion raising any defense listed in Rule 12(b)(1)-(7). As appropriate, the Court may use that procedure to determine jurisdictional as well as other threshold issues. The Court may order such a hearing on motion or sua sponte. As regards matters involving factual issues that bear on the subject of the hearing the Court may consider affidavits, depositions or documents, or testimony presented orally.

The Court finds that employment of this procedure is particularly fitting to achieve early resolution of certain threshold issues in this case. The action involves serious accusations of violations of constitutional rights brought against public officials. The Supreme Court and the Second Circuit have instructed district courts to exercise their broad discretion to guard public officials from being subjected to unnecessary and burdensome discovery or trial proceedings.

Admittedly, the approach the Court proposes here entails passage through relatively uncharted ground. Difficulties are bound to arise along the way. At this point some of the bumps and detours are entirely unknown, while others, though likely in the repertory of anticipated legal argument, do not appear insurmountable. But such challenges go with the territory in any form of exploration for new paths and different ways of doing things.

IV. Order

For the reasons stated above, it is hereby ordered that the parties are directed to appear at a conference with the Court on March 27, 2009 at 2:00 p.m. to review preparation for a preliminary hearing pursuant to Federal Rule of Civil Procedure 12(i) concerning the matters described in the preceding discussion.

Questions

1. Does the judge in this case see *Twombly* and *Iqbal* as having changed the law? If so, how?
2. What does the judge identify as the positives and negatives of having restrictive pleading rules, as opposed to permissive ones?
3. How does the judge propose to balance the interests at stake? Do you think this is a good idea?
4. What do you think will happen at the Rule 12(i) hearing?

When you graduate from law school and pass the bar, you will be a lawyer. In preparing for your career as a lawyer, it will be helpful if you have been introduced to actual litigation documents from real cases. Peruse the following two complaints and consider the following questions:

1. What is the crux of each lawsuit? Make sure you understand what the basic facts and legal theories are.
2. Notice how the complaints comply with Rule 10(a) and (b).
3. Why are these complaints so long and detailed? Don't they more than satisfy both Notice Pleading and Plausibility Pleading standards? Having read Rule 8(a) and the cases, are you surprised by the length and detail of these complaints?
4. Would you draft the complaints differently?

Complaint 1

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

BRANDON CORDERO,)

)

Plaintiff,)

Case No.

)

6:08-CV-2118-22 KRS

vs.

)

)

CITY OF KISSIMMEE)

)

Defendant,)

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Brandon Cordero, hereinafter (“Cordero”) sues the Defendant, City of Kissimmee (“City”), and alleges:

Jurisdiction and Venue

1. This action arises under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. seq., the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. Jurisdiction is invoked pursuant to 42 U.S.C. § 2000e-5(f), 28 U.S.C. §§ 1343(3) and 1343(4), and pursuant to 28 U.S.C. § 1367.
3. Costs and attorneys fees may be awarded pursuant to 42 U.S.C. § 2000e-5(k)
4. Venue properly lies in the Middle District of Florida pursuant to 28 U.S.C. § 1391(b), and 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practice was committed in this judicial district.

Conditions Precedent

5. Plaintiff, Cordero, has fulfilled all conditions precedent to the institution of this action under 42 U.S.C. § 2000(e). A Notice of Right to Sue was issued by the U.S. Department of Justice on September 24, 2008, a true and correct copy of which is attached as an Exhibit "A".

Parties

6. At all times material, Plaintiff, Cordero, was a citizen and resident of the United States, residing in Osceola County. He is Hispanic and bilingual speaking English and Spanish. At all times material he was an employee of the City of Kissimmee as a fitness coordinator. His natural origin is Puerto Rican.
7. At all times material, Defendant, City, was a municipal corporation pursuant to the Laws of The State located in Osceola County, Florida and authorized to conduct business in Florida.
8. At all times material, Defendant, City, was an employer within the meaning of 42. U.S.C. § 2000e, and was engaged in an industry affecting commerce, and upon information and belief, employed more than fifteen (15) employees for each working day in each of twenty (20) or more calendar weeks in the then current or preceding calendar year.

Facts

9. Plaintiff is entitled to relief against the Defendant upon the following facts:
 - a. On October 18th, 2005 a staff meeting was held with the facility manager, Greg Smith. When evaluating a prospective employee he said: “We don’t have need for bilingual help. We haven’t needed it for 10 years and we don’t need it now. This is an “English only” facility. English is the standard language here. At no time should Spanish be spoken in the facility, amongst employees or between employees and members. We don’t want anyone to be offended by people speaking Spanish around them.” The Plaintiff being Hispanic responded by saying that he “can’t believe “English only” policy is a City Policy.” Greg Smith stated “Well I am the facility manager and that’s the policy I am enforcing.”
 - b. On November 1st, 2005, at a staff meeting, Greg Smith wanted to revisit the “English only” policy and stated that it had been decided that under no circumstances is Spanish to be allowed during tours of the facility or in general conversation between employees or with members. Greg Smith said “We pay our employees in Dollars not pesos. I don’t want to walk down the hallways and hear Spanish being spoken everywhere.” The Plaintiff responded “I can’t believe you would make a discriminatory statement like that.”
 - c. On November 2nd, 2005, Brandon called and reported to the City that the “English only” policy was discriminatory towards Hispanics including himself, in a grievance, to Personnel and was told that the information would be passed on to the right person and he would be contacted.
 - d. Shortly after reporting the discriminatory policy, Plaintiff realized that his questioning the “English only” policy was causing him problems in the workplace. His performance began to be questioned. His e-mails were

ignored, he was reprimanded, and he received false and derogatory performance evaluations.

- e. Five weeks passed with no response to his complaint. On Dec 6th, 2005, he contacted the assistant director and reported again the two instances where Greg Smith had made the comments on the “English only” policy. Plaintiff was then advised that he would be meeting with the Superintendent of Recreation. Time passed and the Plaintiff heard from no one.
- f. On Jan 13th, 2006, the Plaintiff contacted the EEOC and received an automated response.
- g. On January 23rd, 2006, the Plaintiff submitted a grievance outlining the harassment he had been receiving since he reported and opposed the “English only” policy.
- h. On Jan 25th, 2006, the Plaintiff was interviewed by the City Attorney and the Director of Personnel. This interview was tape recorded and lasted for three hours.
- i. On February 9th, 2006, the Plaintiff was interviewed again by the City Attorney for three hours. The points discussed the same harassment and retaliation issues that the Plaintiff had been complaining about since he questioned and reported the “English only” policy.
- j. On April 11th, 2006, the Plaintiff was fired as a result of his opposing the discriminatory policy of “English only” in the workplace.
- k. On May 7th, 2006, the Plaintiff filed a formal charge with EEOC.
- l. On September 24th, 2007, the Plaintiff received a letter of Determination from The EEOC finding reasonable cause to believe that the City

discriminated against the Plaintiff in violation of Title VII (a copy is attached as Exhibit B.)

- m. On September 25th, 2008 the Plaintiff received a right to sue letter (a copy is attached as Exhibit A.)

Count I
Violation of Civil Rights Act of 1964
Retaliation

Plaintiff repeats and realleges paragraphs 1 through 9 as if stated herein in full.

- 10. Plaintiff was terminated out of retaliation for opposing the discriminatory employment practices and for participating in the investigation into his complaints of discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended.
- 11. As a direct and proximate result of the foregoing, Plaintiff has suffered, is now suffering, and will continue to suffer, emotional pain and mental anguish. As a direct and proximate result of such actions, Plaintiff has been, is being, and will in the future be deprived of income in the form of wages and of prospective benefits due to the Plaintiff solely because of the Defendant's conduct.

WHEREFORE, Plaintiff demands judgment for damages against Defendant, including but not limited to the following:

- a. loss of past and future income;
- b. loss of fringe benefits;

- c. a declaration that the acts and practices complained of herein are in violation of Title VII;
- d. enjoining and permanently restraining these violations of Title VII;
- e. directing Defendant to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated and do not continue to affect Plaintiff's employment opportunities;
- f. reinstate Plaintiff to his position with Defendant, or reasonable front pay as alternative relief if an immediate promotion is not feasible until a position becomes available;
- g. compensatory damages for past, present and future mental anguish, pain and suffering, and humiliation caused by the intentional discrimination;
- h. awarding Plaintiff the costs of this action together with reasonable attorney's fees, as provided by § 706(k) of Title VII, 42 U.S.C. § 2000e-5(k);
- i. trial by jury; and
- j. such other relief as the court deems proper.

Count II
Violation of the Civil Rights Act of 1964
Race/National Origin Discrimination

Plaintiff repeats and realleges paragraphs 1 through 9 as if states herein in full.

- 12. Plaintiff was terminated because of his race, Hispanic, and/or because of his national origin, Puerto Rican, in violation of Title VII of the Civil Rights Act of 1964, as amended.

13. As a direct and proximate result of the foregoing, Plaintiff has suffered, is now suffering, and will continue to suffer, emotional pain and mental anguish. As a direct and proximate result of such actions, Plaintiff has been, is being, and will in the future be deprived of income in the form of wages and of prospective benefits due to the Plaintiff solely because of the Defendant's conduct.

WHEREFORE, Plaintiff demands judgment for damages against Defendant, including but not limited to the following:

- a. loss of past and future income;
- b. loss of fringe benefits;
- c. a declaration that the acts and practices complained of herein are in violation of Title VII;
- d. enjoining and permanently restraining these violations of Title VII;
- e. directing Defendant to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated and do not continue to affect Plaintiff's employment opportunities;
- f. reinstate Plaintiff to his position with Defendant, or reasonable front pay as alternative relief if an immediate promotion is not feasible until a position becomes available;
- g. compensatory damages for past, present and future mental anguish, pain and suffering, and humiliation caused by the intentional discrimination;
- h. awarding Plaintiff the costs of this action together with reasonable attorney's fees, as provided by § 706(k) of Title VII, 42 U.S.C. § 2000e-5(k);

- i. trial by jury; and
- j. such other relief as the court deems proper.

Permission to reprint this pleading is provided by Neil Chonin and David Chonin

Complaint 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

SUSAN PITTS,

*

*

Plaintiff

*

*

CIVIL ACTION NUMBER:

VS.

*

3 07-CV-093-JTC

*

ROBERT G. HEMKER, and

*

COMANCHE CONSTRUCTION,

*

INC. OF GEORGIA,

*

*

Defendants

*

Complaint for Damages

Comes now Susan Pitts, as Plaintiff, who respectfully shows the Court and Jury as follows:

Jurisdiction and Venue

1. Plaintiff is resident of the State of Alabama.
2. Defendant Robert G. Hemker [herein “Defendant Hemker”] is a resident of 6320 Whirlaway Drive, Cumming, Forsyth County, Georgia.
3. Comanche Construction, Inc. of Georgia [herein “Defendant Comanche”] is a Georgia business corporation with its principal office at 1734 Sands Place, SE, Marietta, Georgia, and its registered agent for service at such address is Lyle J. Austin.
4. The jurisdiction of this court over the subject matter of this action is predicated upon 28 USC Section 1332. The amount in controversy exceeds Seventy Five Thousand [\$75,000.00] Dollars, exclusive of interest and costs.
5. This action arises from a vehicle collision which occurred in Troup County, Georgia. Venue is based in The Newnan Division of The Northern District Of Georgia under 28 USC 1391(a)(2) because the events which gave rise to this action occurred in Troup County, Georgia.

General Operative Facts

6. On Wednesday, November 30, 2005, Plaintiff was injured when her vehicle was struck from the rear by vehicles driven by Defendant Hemker and by

Jacelyn Lachristian Reese as she drove her vehicle through a work site in Interstate Highway 85 in Troup County, Georgia. The construction at the work site was being performed by Defendant Comanche.

Specific Operative Facts

7. On the date of the collision, Defendant Comanche was engaged in hydro blasting the bridge deck below the top mat of steel and replacing it with new concrete at the bridge on the Georgia-Alabama line on Interstate Highway 85 in Troup County, Georgia under a contract with The Georgia Department of Transportation. [Project Number CSNHS-M002-00(782)01]
8. At the immediate work site over the bridge, Defendant Comanche had erected barricades to limit travel to one lane as it passed the construction site.
9. Defendant Comanche negligently and carelessly allowed excess water and other materials to accumulate and cover the one lane of travel allowed for vehicles approaching and passing through the construction site.
10. As Plaintiff approached the work site in the one lane of travel, the vehicle in front of her began to skid due to a large amount of water and other materials which Defendant Comanche had allowed to flow from the work site onto the lane of travel. Plaintiff slowed her automobile but, as Plaintiff entered the area of the lane of travel covered with water, Plaintiff's vehicle also began to skid, forcing Plaintiff to come to a stop to avoid sliding past the barricades and into the work site. At all times relevant to this action, Plaintiff was driving at a reasonable and safe speed for the conditions and under the circumstances then existing.

11. As Plaintiff brought her vehicle to a stop, her vehicle was struck in the rear by the Hemker and Reese vehicles as set forth in Paragraph 6 of this Complaint.
12. As a result of the collisions, Plaintiff received both temporary and permanent injuries to her neck, back, shoulders, and other parts of her body.

Specific Allegations of Negligence

Negligence of Defendant Hemker

13. Defendant Hemker was negligent in following Plaintiff's vehicle too closely in violation of Official Code of Georgia Annotated § 40-6-49.
14. Defendant Hemker was negligent in driving at a speed greater than was reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing in violation of O.C.G.A. § 40-6-180.

Negligence of Defendant Comanche

15. Defendant Comanche was negligent in closing lanes of traffic and limiting traffic to one lane of travel during weekdays in violation of Section 150.11 [Special Conditions] of its contract with the Georgia Department of Transportation. The contract provides that work at the site involved in this complaint was to be performed only between the hours of 9:00 p.m. on Friday through 5:00 a.m. on Monday. This collision happened on Wednesday between the hours of twelve noon and one o'clock p.m.

16. Defendant Comanche was negligent in allowing excess amounts of water and/or slick material to enter and coat the only lane open for travel and the lane required for travel by the Plaintiff.
17. Defendant Comanche was negligent in failing to warn approaching traffic of the special hazardous conditions existing in the one open lane adjacent to the work site.
18. Defendant Comanche was negligent in maintaining a 12 foot clearance on travel instead of a 16 foot clearance as required by the contract.
19. Defendant Comanche was negligent in using the wrong advance warning signs for this work site. Defendant Comanche used Georgia Standard 9104 for lane closure as show on its plans TC-3, but Georgia Standard 9104 was neither appropriate for this work site nor approved for use by the contract with the Georgia Department of Transportation.
20. Defendant Comanche failed to have proper signage on the approaches to the work site as required by the contract with the Georgia Department of Transportation.

Damages

21. As stated above, the Plaintiff sustained temporary and permanent injuries to her neck, back, shoulders, and other parts of her body as a result of the collision. Plaintiff has required medical treatment, including surgery to her shoulder, and has incurred medical expenses in excess of \$20,000.00.
22. The Plaintiff will continue to incur medical bills in the future as a result of the collision.

23. The Plaintiff has sustained a loss of her future capacity to labor and earn income as an item of general damages due to the injuries she received in this collision.
24. The Plaintiff has lost income in the past and will lose income in the future as a result of the injuries she received in the collision. At the time of the collision, Plaintiff was employed as a police sergeant with the Emory University Police Department in Atlanta, Georgia earning \$22.09 per hour. Plaintiff has lost wages in excess of \$75,000.00 since the date of the collision and due to the injuries she received in the collision.
25. Plaintiff seeks compensatory damages in the form of special and general damages for the pain and suffering she has endured for the injuries described in the preceding paragraphs.
26. All of the injuries and damages sustained by the Plaintiff were the direct and proximate result of the negligence of the Defendants,

WHEREFORE, Plaintiff demands:

- a. That summons issue requiring the Defendants to appear as provided by law and answer this complaint;
- b. That Plaintiff have and recover of each of the Defendants damages for all her injuries in such amount as the jury shall deem just and adequate to fully compensate Plaintiff for all her injuries, past and future according to the proportionate fault as determined by the jury under O.C.G.A. § 51-12-50;
- c. That Plaintiff have and recover of the Defendants special damages for her medical expenses, past and future, as set forth in this complaint and as shown by the evidence;

- d. That Plaintiff have and recover of the Defendants special damages for her lost wages as set forth in this complaint and as shown by the evidence;
- e. That Plaintiff have and recover of the Defendants general damages for her lost capacity to labor and earn income as set forth in this complaint;
- f. That Plaintiff have and recover of the Defendants general damages for pain and suffering, both past and future, for her temporary and permanent injuries received as a result of the negligence of the Defendants;
- g. That Plaintiff have trial by jury;
- h. That all costs be taxed against the Defendants; and
- i. That Plaintiff have such other relief as the Court deems proper.

Permission to reprint this pleading is provided by J. Anderson Harp

At the beginning of this section, you drafted a complaint in the Branham slip-and-fall case. In all likelihood, the complaint you drafted was quite similar to the one actually filed in the case, which you have seen by now.

You have now been given the motion to dismiss and the supporting memorandum of law filed by the defendant in the case. The motion argues that the plaintiff's complaint does not comply with Twombly and Iqbal.

1. Read it and see whether you agree before reading the judge's ruling.
2. If you represented the plaintiff, how would you respond?
3. How should the judge rule?
4. Also, take note of the form of the filings. This is what court documents typically look like, and these kinds of documents are often drafted and filed by recent law school graduates.

Now read the opinion in the case.

1. Do you agree with the judge's ruling?
2. What additional facts would the plaintiff need to plead in order to pursue her case?
3. Is the plaintiff likely to be in possession of those facts? If not, how might she go about getting them? Does the fact that she does not necessarily have access to them make her case any less likely to be meritorious?
4. What does this say about the Plausibility standard?