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SUPREME COURT AMPLIFIES THE *TWOMBLY* PLEADING STANDARD

In a recent decision captioned *Ashcroft v. Iqbal*,¹ the United States Supreme Court further clarified the pleading standard first articulated in *Bell Atlantic Corp. v. Twombly*.² Continuing the Supreme Court's recent trend of raising the pleading standard required for a complaint to survive a motion to dismiss, the *Iqbal* Court affirmed the "plausibility" standard articulated in *Twombly* and confirmed that the standard applies to all forms of civil actions.

In *Iqbal*, a Pakistani pretrial detainee brought a complaint against former U.S. Attorney General John Ashcroft and former FBI Director Robert Mueller for purposeful and unlawful discrimination in violation of the detainee's constitutional rights. In reversing the Second Circuit's denial of the defendants' motion to dismiss, the Supreme Court held that under the standard set forth in *Twombly*, the plaintiff failed to adequately plead facts supporting his claim of discrimination because, although the allegations set forth a possible claim, they did not set forth a *plausible* claim.

Twombly and the Retirement of Conley's "No Set of Facts" Pleading Standard

In *Twombly*, which involved an alleged antitrust conspiracy, the Court rejected the well-established 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."³ The *Twombly* Court stated that this "no set of facts" standard had "earned its retirement" and would be "best forgotten as an incomplete, negative gloss on a pleading standard."⁴

Under *Twombly*, a complaint must present enough facts to state a claim for relief that is plausible on its face.⁵ While Federal Rule of Civil Procedure 8(a)(2) only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," the

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¹ *Ashcroft v. Iqbal*, No. 07-1015 (U.S. May 18, 2009).

² *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955 (2007).

³ *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99 (1957)

⁴ *Twombly*, 550 U.S. at 563.

⁵ *Id.*, at 570.

plaintiff's obligation to give the defendant fair notice of what the claim is and the grounds upon which that claim rests requires more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action."⁶ In order to survive a motion to dismiss, the *Twombly* Court held that the plaintiffs must "nudge[] their claims across the line from conceivable to plausible."⁷ This plausibility requirement raised several questions, some of which the Court endeavored to resolve in *Iqbal*.

Iqbal's Clarification of the Twombly Standard

Applicability to All Civil Actions

Iqbal resolved the question of whether the *Twombly* pleading standard applied to non-antitrust cases.⁸ The Court rejected the argument that the *Twombly* decision should be limited to claims raised in the antitrust context and stated that *Twombly* was based on a general interpretation and application of Rule 8 of the Federal Rules of Civil Procedure.⁹ Thus, the *Twombly* pleading standard applies to "all civil actions" in federal court, whether brought under antitrust laws or otherwise.¹⁰

The Underlying Principles of Twombly Decision: Rejection of "Legal Conclusions" and the "Plausible" Claim Requirement

The Court also highlighted two working principles underlying the *Twombly* decision. *First*, the Court noted that although a court must accept as true all of the allegations contained in a complaint, it need not accept as true assertions of mere legal conclusions.¹¹ The Court recognized that while Rule 8 requires only a short and plain statement, it "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions" or allegations simply reciting the elements of a cause of action.¹²

Second, to survive a motion to dismiss, *Iqbal* requires that a complaint state a plausible claim for relief based on a defendant's misconduct and not just the mere possibility that a defendant's actions constituted misconduct.¹³ The Court noted that determining whether a claim for relief is plausible will be context-specific and will require the reviewing court to "draw on its judicial experience and common sense."¹⁴ Indeed, the Court found that while the *Iqbal* plaintiff's factual allegations of Ashcroft and Mueller's actions were consistent with a finding of purposeful misconduct, there were "more likely explanations" for the conduct.¹⁵ Specifically, the Court found that the plaintiffs' arrest and the disproportionate detention of Arab Muslims following the September 11 attacks were not based solely on purposeful and unconstitutional discrimination on the basis of religion, race, or national origin. The "more likely explanations" for the Defendants' conduct precluded a finding of plausibility of plaintiffs' claim of wrongdoing.¹⁶

⁶ *Id.*, at 555.

⁷ *Id.*, at 570.

⁸ *See Twombly*, 550 U.S. at 596 (Stevens, J., dissenting) ("Whether the Court's actions will benefit only defendants in antitrust treble-damages cases, or whether its test for the sufficiency of a complaint will inure to the benefit of all civil defendants, is a question that the future will answer."); *United States v. Harchar*, No. 1:06-cv-2927, 2007 WL 1876510, at *2 (N.D. Ohio, June 28, 2007) ("*Twombly* merely held that a complaint that alleged only parallel conduct did not state a claim for an antitrust conspiracy. The Supreme Court did not purport to change the applicable 12(b)(6) standards").

⁹ *Iqbal*, slip op. at 20.

¹⁰ *Id.*, slip op. at 20.

¹¹ *Id.*, slip op. at 14.

¹² *Id.*, slip op. at 14.

¹³ *Id.*, slip op. at 15.

¹⁴ *Id.*, slip op. at 15.

¹⁵ *Id.*, slip op. at 17.

¹⁶ *Id.*, slip op. at 17.

Two-Pronged Approach to Consideration of Motions to Dismiss

Applying these two principles, the Court stated that *Twombly* illustrated a two-pronged approach to motions to dismiss.¹⁷ A reviewing court must first determine what is merely a legal conclusion and what is a factual assertion. When there are well-pleaded factual allegations, a court must accept those factual allegations as true.¹⁸ The next step is for the court to determine whether the factual allegations state a claim for relief that is plausible on its face.¹⁹ A claim has facial plausibility when the plaintiff pleads enough facts to allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.²⁰ Although the plausibility standard is not akin to a requirement that the plaintiff make a showing of *probability* at the pleading phase, the complaint must state more than “a sheer *possibility* that a defendant has acted unlawfully.”²¹

Conclusion

Iqbal amplifies the plausibility standard first articulated in *Twombly* and erases any remaining doubt about the broad application of *Twombly* to all civil actions. The decision will be a powerful tool for defendants, particularly in securing the quick dismissal of strike suits crafted merely to survive a motion to dismiss in order to create leverage for settlement.

¹⁷ *Id.*, slip op. at 15.

¹⁸ *Id.*, slip op. at 16.

¹⁹ *Id.*, slip op. at 17.

²⁰ *Id.*, slip op. at 14.

²¹ *Id.*, slip op. at 14.

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