

# Defense Attorneys Gain More Authority To Have Federal Cases Dismissed Earlier

Matthew J. Trostler

In California it has been consistently held that a plaintiff is required only to set forth the essential facts of his or her case with reasonable precision, and with particularity sufficient to acquaint a defendant with the nature, source and extent of the cause of action. When a complaint is ambiguous, or otherwise fails to state facts sufficient to support of cause of action, a defendant typically files a demurrer to the complaint seeking the court to order the plaintiff to provide more facts in the complaint, else the complaint will be dismissed. It has been held that a complaint is legally sufficient if it contains a statement of facts constituting a cause of action, in ordinary and concise language.

In 2007, the California Supreme Court held in *John Doe v. City of Los Angeles* that a trial judge was correct in sustaining a demurrer when a plaintiff's complaint was factually insufficient. In the *John Doe* case, two 40 year old former boy scouts brought an action against the City and the Boy Scouts of America seeking damages based on allegations that a City police officer sexually abused them when they were teenagers. The City and the Boy Scouts demurred raising a statute of limitations defense. The Supreme Court essentially held that a pleading that did no more than assert "boilerplate" allegations that defendants knew or were on notice of the perpetrator's past unlawful sexual conduct and allegations based on information and belief that merely asserted the alleged facts were insufficient to survive a demurrer. The *John Doe* decision seemed to heighten otherwise lax pleading requirements in California.

Last year, the Supreme Court of the United States decided *Ashcroft v. Iqbal* which arguably takes the California Supreme Court case one step further in regards to pleading with particularity. In Federal Court, it has been the rule that a complaint only need state a short and plain statement of the claim showing that the pleader is entitled to relief and that the claim be "plausible on its face". (*Bell Atlantic v Twombly* 2007.) In the *Ashcroft* case, the US Supreme Court dismissed a complaint filed by a Pakistani against former attorney general John Ashcroft seeking to hold Ashcroft liable for policies that led to the round-up of aliens following the September 11, 2001 terrorist attacks. The Court held that in order to survive a motion to dismiss in Federal Court (i.e, similar to a demurrer in state court), the "plausibility" standard is not akin to a probability requirement, but asks for more than the sheer possibility that a defendant had acted unlawfully. The Court ultimately held that the allegation that the attorney general was the "principal architect" of the policies at issue was conclusory, and failed to state facts sufficient to support the claim. Justice Kennedy, writing for the majority, not only expanded the decision of *Bell Atlantic v Twombly*, which had arguably only applied to anti-trust cases, but heightened pleading requirements in all Federal courts for a variety of civil claims.

The recent Federal and State Supreme Court decisions appear to have brushed aside previously liberal pleading requirements. Judges may now have more discretion to dismiss their cases earlier in light of the apparent more stringent pleading requirements. Corporate defendants would now seem to be more likely to challenge pleadings in lawsuits, seeking dismissals so as to avoid costly discovery in marginal cases. One can expect more filings of demurrers, motions for judgment on the pleadings, and motions to dismiss in Federal Court, as there is now more authority for defense attorneys to have a case dismissed earlier.



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*Matthew J. Trostler is a Partner in the Los Angeles office of Borton Petrini, LLP. He received his undergraduate degree from the University of Southern California earning a major in psychology and a minor in English, with an emphasis in expository writing. He earned his Juris Doctorate from California Western School of Law in 1991 where he was a contributing editor for the law school newspaper.*

*Matthew's primary area of emphasis at Borton Petrini, LLP is insurance defense. His wide-ranging experience in the field of insurance has provided additional insight to insurance carriers through seminars defining and discussing insurer regulations in California.*

*Matthew has significant experience in arbitrations, mediations and jury trials. Some of his verdicts have been published statewide and nationally. His aggressive applicational style is tempered by his sense of fairness and compassion.*



[mtrostler@bortonpetrini.com](mailto:mtrostler@bortonpetrini.com)