



## Litigation Practice Tip - May 2022

### A [fairly] short complaint about not-short complaints

*Richard A. Rothschild*  
*Director of Litigation*

**Pop Quiz: What statute do California legal services and public interest lawyers most often violate?**

Answer: Code of Civil Procedure § 425.10(a), which states:

- (a) A complaint or cross-complaint shall contain . . .  
(1) A statement of the facts constituting the cause of action, *in ordinary and concise language*.

With each passing year, our complaints in major litigation have gotten longer and longer, more argumentative, and more laden with extraneous detail. My modest proposal is: **stop and think!**

Let's go back to basics. "What is important is that the complaint as a whole contain sufficient facts to apprise the defendant of the basis upon which the plaintiff is seeking relief." *Perkins v. Superior Ct.*, 117 Cal. App. 3d 1, 6 (1981). In other words, all a complaint really needs to do is to let the defendants know why they are being sued. That can and should be accomplished in fewer than 20 pages.

What makes complaints so long and what's the harm? Two of the culprits are excessive evidentiary and other factual detail; and too much argument. As for the former, a "complaint should set forth the ultimate facts constituting the cause of action, not the evidence by which plaintiff proposes to prove those facts." *Comm. on Children's Television, Inc. v. Gen. Foods Corp.*, 35 Cal. 3d 197, 212 (1983). *Children's Television* illustrates the difference. There, the Court held that a complaint could survive demurrer by alleging as an "ultimate fact" that a cereal company misrepresented to the public the health benefits of sugared cereal. It was unnecessary for the complaint to quote each statement

or to specify the date, place, author, etc. of each representation. *Id.*

Loading a complaint with such evidentiary detail is not only unnecessary, but potentially counter-productive. For one thing, a defendant intent on making life miserable for plaintiffs' counsel can send a form interrogatory asking for the basis of each factual allegation, followed up by unpleasant depositions.

And facts may change as a case progresses. A client or a witness may have changed their recollection of events or you have misunderstood what was told to you. Once a detail finds its way into a complaint, it has become an admission plaintiffs are stuck with unless and until the complaint is amended, which may not cure the problem.

Making detailed legal arguments in a complaint is also both unnecessary and potentially harmful. All a complaint must do is specify the statute or constitutional provision that defendants' actions are violating. Why give defendants more? And as with evidentiary detail, some aspects of your legal theory might change as the case progresses; don't pin yourself down. A complaint is not a brief. Case citations are a red flag for overly argumentative complaints; they have no place in a complaint.

Nor is a complaint a scholarly thesis. Resist the temptation to load the complaint with marginally relevant historical background, and cites to studies, websites, and articles. One red flag for this tendency is the presence of footnotes. Footnotes have no place in a complaint.

So why do attorneys insist on writing never-ending complaints? **Here are some justifications I have heard, and why they don't hold water.**

***"I want the judge who reads the complaint to understand how strong our case is."***

A judge is unlikely to read most of your complaint. The only reason for glancing at it at all is when a demurrer or similar motion argues that the complaint lacks a critical allegation. And then the judge will be pointed to particular paragraphs of the complaint. Persuading the judge not to dismiss is the role of your opposition brief, not the complaint.

***"I want opposing counsel to understand how strong our case is."***

Opposing counsel most likely will read every word of your complaint, but not for its persuasive value. The goal will be to catch a weakness, a contradiction, or anything that can be pounced on. The more you write, the more likely that goal will be achieved.

***"Short complaints may be okay for simple cases, but my case is complex."***

Your case may indeed be complex, but your job as plaintiffs' attorney is to make it seem as simple to understand as possible. Writing at excessive length thwarts that mission. See, e.g., *Janik v. Rudy, Exelrod & Zieff*, 119 Cal. App. 4th 930, 942 (2004) ("Sometimes the more prolix the complaint, the more difficult it is to sustain the class action . . . a straightforward, more limited complaint would enjoy a greater likelihood of success for

class certification than a prolix complaint.”).

**“Short complaints may be okay in state court, but federal practice is different.”**

(Usually spoken or written with just a hint of condescension.)

Maybe, but Rule 8(a)(2) of the Federal Rules of Civil Procedure states: “A pleading that states a claim for relief must contain . . . a *short and plain* statement of the claim showing that the pleader is entitled to relief . . . .”

**“But what about *Iqbal*?”**

In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court in a 5-4 decision seemingly upended Rule 8 by holding that a factual claim must be “plausible” to survive a motion to dismiss. The Court declared that “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.” *Id.* at 678. The Court held that the plaintiff could not meet that standard when he alleged that his mistreatment when detained after 9-11 was attributable to anti-Muslim animus by very high level officials.

While *Iqbal* is troubling on many levels, it does not stand for the wisdom of generally writing lengthy complaints. Given the majority’s expressed antipathy towards suits against high level officials that threaten to subject those officials to discovery,<sup>[1]</sup> only a smoking gun could have saved that suit. And *Iqbal* has not been relied on by California courts construing complaints based on California law.

**“We need to put in lots of rhetoric and background material for the benefit of press coverage.”**

Press coverage is important in many cases, but writing prolix complaints is not a way to achieve it. A good **one-page** Introduction explaining what the case is about is all that reporters need from the complaint. If you have good quotes the press can pick up, those can and should be in an accompanying press release. And the background you want the media to see can be in a separate Fact Sheet.

Other reasons complaints are too long include lack of editing for redundancy; over-use of legalese (e.g., “Come now Plaintiffs . . .”); and long quotations of entire statutes. I could expound on these, but litigation tips, like complaints, should be [fairly] short.

---

<sup>[1]</sup> And one should not rule out the majority’s unexpressed antipathy towards discrimination suits, particularly those brought by Muslims.

---

**As always, if you have any questions about this Tip, please feel free to reach out to [Richard Rothschild](#).**

---



Copyright © 2022 Western Center on Law & Poverty, All rights reserved. For other permissions, please contact us at [cracela@wclp.org](mailto:cracela@wclp.org).

If you no longer want to receive these emails [unsubscribe here](#).