Pretrial Practice & Discovery Committee of the ABA Litigation Section
***Iqbal* Task Group**
Chart of Cases

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
1.	*Atherton v. District of Columbia Office of Mayor*	567 F.3d 672	D.C. Cir.	6/2/09	D.C. Cir.	Equal protection, Section 1983, Section 1985, Section 1986, due process, fraud	All claims dismissed, except due process remanded	Plaintiff claimed that he was discriminated against for being Hispanic when he was dismissed from grand jury service. Plaintiff alleged that he thanked a witness in Spanish, was the only Hispanic on the jury, and that the attorneys conspired to remove him. The Court noted that a pro se complaint must be held to less stringent standards than formal pleadings drafted by lawyers, but even a pro se complainant must plead factual matter that permits the court to infer "more than the mere possibility of misconduct." In reversing the district court's finding that Plaintiff sufficiently pled his equal protection claim, the Court relied on *Iqbal* to find his facts "spare" and to hold that the complaint and supporting materials did not permit the court to infer more than the mere possibility of misconduct.	Y (in district court); N (in appellate court)	A pro se plaintiff must plead factual matter than permits the court to infer "more than the mere possibility of misconduct."	Maggie Sklar, Greenberg Traurig LLP
2.	*Baumel v. Syrian Arab Republic*	2009 WL 3583510	D.C. Cir.	11/3/09	D.C. Cir.	Claims for battery, assault, false imprisonment, economic damages, intentional infliction of	All claims dismissed	Plaintiffs, a United States citizen's parents and siblings, brought an action against, inter alia, Syria, alleging the citizen was captured while serving in	N	Court dismissed case where the most important facts were alleged "upon information and belief."	Maggie Sklar, Greenberg Traurig LLP

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						emotional distress, loss of solatium, and punitive damages were brought against Syria pursuant to an exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602 et seq.		the Israeli Defense Forces Armored Corps during the war between Israel and Syria. Plaintiffs asserted claims arising from alleged hostage-taking and torture. The captured solider had not been seen by anyone in Israel, the Red Cross, or his family since the date of his capture. The Court granted Syria's motion to dismiss because Plaintiff's factual allegations that the captured soldier had been tortured by the Syrian government, or was even alive, were based "upon information and belief," and amounted to rank speculation.			
3.	*Ekwam v. Fenty*	2009 WL 3462327	D.C. Cir.	10/29/09	D.C. Cir.	Violation of freedom of speech rights under First Amendment, Fifth Amendment, Due Process and Equal Protection clauses of Fourteenth Amendment, 42 U.S.C. §§1983 and 1985(3), a consent decree under which DC manages the CFS Agency, common law and DC Code.	Dismissed federal claims, declined to exercise supplemental jurisdiction over state law claims.	Plaintiff, a DC CFS employee sued DC Mayor and DC after being suspended from position without pay and without hearing. Plaintiff was a supervisor of more caseworkers than any other supervisor, and caseworkers were assigned well over the number of cases pursuant to a consent decree under which DC manages the CFS Agency. In two independent cases, children whose cases were assigned to plaintiff's caseworkers were found	N	Conclusory allegations, well-pleaded factual allegations, discrimination	Jessica Supernaw, Alston & Bird LLP

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							dead, and plaintiff was first placed on paid administrative leave then suspended without pay. The District Court dismissed claims against the Mayor individually because plaintiff did not allege the Mayor had personal knowledge or condoned conduct that led to suspension. The Court dismissed the Fifth Amendment Liberty Interest/§1983 claim and violation of protected property interest under Due Process Clause because plaintiff's allegations did not meet the elements of the claims. The Court dismissed plaintiff's Equal Protection claim because he did not allege facts that "plausibly give rise to an entitlement to relief" (quoting *Iqbal*), and the allegations were conclusory without sufficient factual support, and "stops short of the line between possibility and plausibility of entitlement to relief." Plaintiff also failed to allege any facts to support the claim of racially discriminatory policy or practice, but for a single			

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								conclusory statement. The Court dismissed the First Amendment claims as plaintiff's statements, to management, were made in his official capacity, not as a citizen, and thus not eligible for such a claim. The Fourteenth Amendment claim was dismissed as it does not apply to DC or its employees and officials. The §1985(3) claim was dismissed as plaintiff did not support his claim with *Iqbal*'s required "well-pleaded factual allegations." Plaintiff's claim under the consent decree were dismissed as plaintiff could not show that the decree was intended to directly confer a benefit upon him or that it was intended he be able to sue to protect such a benefit. The Court declined to expand jurisdiction over the DC law claims.			
4.	*Mitchell v. Federal Bureau of Prisons*	2009 WL 3878148	D.C. Cir.	11/20/09	D.C. Cir.	Claim challenging condition of incarceration under 5 U.S.C. §552a, the Privacy Act. Issue on Appeal was whether Plaintiff could proceed *In Forma Pauperis*	Plaintiff barred from proceeding with his claim IFP.	Plaintiff, a convicted felon in custody, challenged his transfer to a maximum security prison on the basis that he would be attacked there and that prison officials would not properly treat his Hepatitis B & C. Plaintiff, who has previously	Y	Court refused to apply *Iqbal* standard to decision of whether or not to allow Plaintiff to proceed *In Forma Pauperis.*	Michael Oliverio, Paul Hastings Janofsky & Walker LLP

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						under the PLRA, 28 U.S.C. §1915(g).		filed some 65 other legal challenges to his incarceration, sought to proceed IFP but was denied by the District Court under the "three strikes" rule in the PLRA. The Circuit Court held that the prisoner did not have "three strikes" under the PLRA, but that he was nevertheless barred from proceeding IFP because of a track record of "abuse" of the legal process. The government sought to have the prisoner's petition to proceed IFP reviewed under the *Iqbal* standard, but the Court refused to apply *Iqbal* to IFP decisions. The Court stated that IFP decisions are nonadversarial and implicate none of the concerns articulated in *Iqbal*, and thus that the decision did not apply.			
5.	*Tooley v. Napolitano*	2009 WL 3818372	D.C. Cir.	11/17/09	D.C. Cir.	Infringement of Fourth Amendment Rights and Constitutional Right-To-Privacy; Violation of First Amendment Rights due to retaliation claim; declaratory judgment sought pursuant to	All claims dismissed with prejudice.	In 2002 the Plaintiff, while speaking to a customer service representative for Southwest Airlines, complained about the airline's failure to screen 100% of all baggage that was loaded into planes. When asked why he felt such steps were necessary, he replied that it made the	Y	Dismissal based on "patent insubstantiality"; extension of argument made by Justice Souter in dissent in *Iqbal* that "the sole exception to th[e] rule [that allegations must be credited at the pleading state applies to] 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." as basis for dismissal. Dismissal appropriate on alternative jurisdictional grounds, without need for a standings analysis, when it is "'patently insubstantial' presenting no federal	Michael Oliverio, Paul Hastings Janofsky & Walker LLP

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					rejection of plaintiff's FOIA requests.		airlines less safe because of the potential that someone could "put a bomb on a plane." According to plaintiff the Southwest representative became extremely alarmed and repeatedly said "you said the 'b' word, you said the 'b' word" before placing him on hold indefinitely, after which he eventually hung up. Plaintiff alleged that thereafter that he began experiencing problematic connections with his home phones, including tell-tale clicking noises which he believes indicated his phones had been tapped. He also alleged that the government used Radio Frequency Identification Tags (RFIT's) to monitor his vehicle movements and subjected he and his wife to "round-the-clock surveillance." The Plaintiff submitted several requests under FOIA regarding these alleged monitoring activities, all of which were rejected. The D.C. Circuit upheld the dismissal of all the plaintiff's claims on grounds "distinct from but not inconsistent with the holding in *Iqbal*." The		question suitable for decision."	

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								Court ruled that the plaintiff's claims were so fantastical as to be "essentially fictitious" and "patently insubstantial."			
6.	*Ye v. Holder*	644 F.Supp.2d 112	D.C. Cir.	8/13/09	D.C. Cir.	Assault & Battery Discrimination on the basis of race or national origin False arrest and false imprisonment Malicious prosecution IIED Trespass to chattels and conversion Defamation Civil Fraud Civil Conspiracy Negligent Supervision 42 U.S.C. §§1981, 1982, 1983, 1985, 1986; 18 U.S.C. §§241, 242; 28 U.S.C. §1443	As to all defendants, claims pursuant to 18 U.S.C. §§241, 242, 28 U.S.C. §1443, 42 U.S.C. §1982 dismissed with prejudice; claims pursuant to 42 U.S.C. §§1985, 1986 dismissed without prejudice; as to one defendant, all claims dismissed and motion to strike granted. Plaintiff's motion for default, motion to strike denied; motion to amend granted.	Plaintiff (an attorney) represented a criminal defendant; at a status conference, Court considered questions of plaintiff's current admission status, and instructed plaintiff to not address the Court. During a recess, plaintiff observed a defendant in criminal matter remove items from plaintiff's bag. Plaintiff subsequently attempted to alert the Court, and was removed by Marshals. Plaintiff claimed Marshals beat, kicked and choked him, handcuffed and left him in a cell for over 2 hours. Plaintiff subsequently indicted for assaulting, resisting, or impeding US Marshals in performance of their duties. Plaintiff brought this civil action, federal defendants moved to dismiss for improper service, and individual defendant (Amato) moved to dismiss for failure to state a claim.	Y	Naked/indefinite assertions, conclusory allegations, pleading requirement to offer more than 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action.'	Jessica Supernaw, Alston & Bird LLP

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							The District Court noted that it could choose to begin by identifying the allegations not entitled to the assumption of truth because they are nothing but conclusions, and the courts need not accept naked assertions devoid of further factual enhancement or legal conclusions in the form of factual allegations. The District Court dismissed all but one (which was unaddressed by Amato, and thus not dismissed) defamation claim, holding the statements were not defamatory. It continued, dismissing the civil conspiracy claims against all defendants under 42 U.S.C. §1985 as nothing but conclusory allegations, "amount[ing] to nothing more than a 'formulaic recitation of the elements'" (citing *Iqbal*. The claims under 28 U.S.C. §1443, 18 U.S.C. §§241 and 242 were dismissed because they do not support a private cause of action. Claims under 42 U.S.C. §1982 were dismissed because no allegations in the complaint support such an allegation. The actions under 42 U.S.C.			

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								§1986 were dismissed because such claims require a valid claim under §1985, which was also dismissed. Remaining allegations against Amato were dismissed against Amato as they did not "plead [] factual content that allows the court to draw the reasonable inference that Amato is liable for the misconduct alleged." (quoting *Iqbal*).			
7.	*Jones v. Bernanke*	2010 WL 519757	D.C. Dist.	2/15/10	D.C. Cir.	Claim that employer retaliated against him in violation of Title VII of the ADEA.	Held that plaintiff was entitled to amend complaint to add claims for retaliation and constructive discharge, as neither claim was futile.	Plaintiff, a former Federal Reserve Board employee and CPA, sued his former employer for discriminating against him by lowering his performance review ratings after he filed charges of age and gender discrimination with the EEOC. Later, the plaintiff sought to amend his initial complaint to add charges of retaliation and constructive discharge. The defendant employer objected to the amendment, and argued that any amendment would be futile as no such claim could survive review under *Iqbal*. The Court disagreed, finding that both claims were plausible as required by *Iqbal*. The Court noted that many courts, particular in	N	Court applied *Iqbal* standard to decision of whether or not additional claims would be futile, for purposes of deciding motion for leave to amend complaint. Court noted that, even under *Iqbal*, that pleading standard for retaliation and constructive discharge under Title VII is very low.	Michael Oliverio, Paul Hastings Janofsky & Walker, LLP

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								the DC Circuit, have emphasized that a plaintiff alleging retaliation faces a relatively low hurdle at the motion to dismiss stage. Plaintiff's allegation that his performance review was given in retaliation for his involvement in protected activity was sufficient to meet the *Iqbal* pleading standard.			
8.	*Smith v. Fenty*	2010 WL 535009	D.C. Dist.	2/26/10	D.C. Cir.	§1983 claim against District of Columbia Mayor, and Department of Corrections Officials, based on actions allegedly committed during the plaintiff's incarceration.	Granted defendants' motions to dismiss, and refused plaintiff's request for leave to amend, as futile.	Plaintiff, an inmate of the D.C. Department of Corrections facilities, sued numerous defendants within the D.C. Government in their individual capacities. Defendants moved to dismiss because they argued none of them had been personally involved in any injurious conduct, and mere negligence was not sufficient to establish liability under §1983. The plaintiff sought the right to amend his complaint, but the court refused, finding any such amendment would be futile.	Y	Court applied *Iqbal* standard to decision of whether or not additional claims would be futile, for purposes of deciding motion for leave to amend complaint.	Michael Oliverio, Paul Hastings Janofsky & Walker, LLP
9.	*Rouse v. Berry*	2010 WL 325569	D.C. Dist.	1/29/10	D.C. Cir.	Claim for employment discrimination against the Director of the Office of	Denied defendants' motion to dismiss.	Plaintiff, an employee of the Department of Health and Human Services, applied for long term care insurance through his employer. The	N	Court noted that D.C. Circuit maintains very liberal standard for employment discrimination claims.	Michael Oliverio, Paul Hastings Janofsky

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						Personnel Management under the Rehabilitation Act, §501.		plaintiff is a paraplegic and uses a push wheelchair to assist with walking, a fact he disclosed in his insurance application. The insurer refused to insure the plaintiff, and he brought suit under §501 of the Rehabilitation Act. The defendants moved to dismiss under *Iqbal*, but the Court refused. The Court noted that the D.C. Circuit has long recognized the ease with which a plaintiff claiming employment discrimination can survive a Rule 12(b)(6) motion. Court also held that the plaintiff did not have to plead every element of his prima facie case to survive the motion to dismiss, and that a motion for summary judgment, not dismissal, was the proper vehicle to challenge the sufficiency of his evidence. The plaintiff's factual allegation that the letter denying his insurance coverage stated that he had been denied because of his wheelchair use was sufficient under *Iqbal*.			& Walker, LLP
10.	*Sisney v. Best*	754 N.W.2d 804	S.D. Supreme Ct.	7/23/08	N/A	42 U.S.C. §1983, 1985 and state law	Dismissed in part	State inmate sued prison food-service contractors for failure to provide kosher	Y	Adopted *Twombly* standard for motion to dismiss	Carrie L. Zochert, Larkin

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						claims		food in violation of religious rights. Federal claims against Best were dismissed as untimely. Federal claims against other providers were dismissed for failure to adequately allege sufficient facts even under pre-*Twombly* standard. Conspiracy claim dismissed for failure to adequately plead a conspiracy. Inmates deceit claim survived dismissal.			Hoffman
11.	*Tony Colida v. Nokia, Inc.*	Case No. 2009-1326 (slip op.)	United States Court of Appeals for the Federal Circuit	10/6/09	Fed. Cir.	Patent Infringement - patents claim designs for	Affirmed district court's order dismissing complaint and imposing permanent anti-filing injunction	Citing *Iqbal* for proposition that a complaint must have sufficient "facial plausibility" to permit the inference that the defendant is liable, court found that the plaintiff's "infringement claims were facially implausible and provided the district court with no basis on which to reasonably infer that any ordinary observer would confuse the pleaded patented designs with the accused Nokia 661 phone."	Y	In a footnote, the court noted that plaintiff did not argue that his complaint was sufficient under Fed.R.Civ.P.84 and Form 18, observing that while Form 18 is a sample pleading for patent infringement it "was last updated before the Supreme Court's *Iqbal* decision." This raises the question whether the form pleadings attached in the Appendix to the Civil Rules meet the standard articulated in *Iqbal* and *Twombly* and continue, as stated in Rule 84 to "suffice" under Rule 8(a) and 12(b)(6).	Marc Phillips
12.	*Alston v. Commonwealth of Massachusetts*	2009 WL 3261921	D. Mass.	10/14/09	1st Cir.	Title VII, 42 U.S. C. § 1981, state anti-discrimination laws	Dismissal	After failing the state teacher licensure exam, Plaintiffs brought suit against the Commonwealth of Massachusetts alleging discrimination.	N		Ray Ripple, Edwards Angell Palmer & Dodge

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								Defendant moved to dismiss and argued that Plaintiffs' Complaint failed to state a claim upon which relief could be granted. The court dismissed the Plaintiffs' complaint, in part, relying on *Iqbal*. The court noted that "[w]hat is clear from *Twombly* and *Iqbal* is that a plaintiff cannot get beyond the pleadings stage by simply arguing that the law has been broken without some alleged facts to stand behind [the] legal claims. . . . [Plaintiffs] provide no facts to back up the legal claims, thus lacking the factual enhancement critical to a properly pleaded complaint. Both *Twombly* and *Iqbal* instruct that the claims be dismissed in such a scenario." 2009 WL 3261921 at *6.			LLP
13.	*Ark. Public Employee Retirement Sys. v. GT Solar Int'l*	2009 WL 3255225	D.N.H.	10/7/09	1st Cir.	§§ 11 and 12(2) of the Securities Act of 1933	Motion to Dismiss Denied	The plaintiff was an investor who purchased defendant's shares in the IPO brought a class action against defendant, its officers and directors, the investment banks that underwrote the IPO, and the venture capital firms that own a controlling interest in defendant alleging that the defendants'	N	The court's stance on *Iqbal*, in *dicta*, is interesting. According to the Court, the strictest reading of the pleading standard "even arguably supported by *Twombly* and *Iqbal*" is "that if the facts alleged in the complaint could support either an inference of wrongdoing or an 'obvious alternative explanation' then the plausibility standard requires the court to choose the 'obvious alternative explanation.'" The Court also made a point to note that Justice Souter, the author of *Twombly* dissented from the majority in *Iqbal*.	Bahar Azhdari, Waller Lansden Dortch & Davis

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								failure to disclose the "substantial likelihood" that defendant's biggest customer would stop purchasing furnaces from it, violated the Securities Act.			
14.	*Brace v. Comm. of Mass.*	2009 WL 4756348	D. Mass.	12/10/09	1st Cir.	Negligence, Wrongful Death, 42 U.S.C. § 1983	Motion to Dismiss Denied	Plaintiff estate brought suit on behalf of prisoner who died in custody of Commonwealth of Massachusetts. Defendant argued that plaintiff failed to plead adequately a set of facts to support a § 1983 claim. Court noted that *Twombly* "seems limited to highly complex cases—like the antitrust matter before the Court in that case—where a bare bones complaint and the burden of pretrial discovery might effectively coerce an unwarranted settlement by defendants." Id. at *5. The Court relied on the Seventh Circuit's decision in *Smith v. Duffey*, 576 F.3d 336 (7th Cir. 2009) for this point. Additionally, relying on Smith, the *Brace* court expressed concern about taking the holding in *Iqbal* beyond the special circumstances in that case. Court ultimately held that plaintiff had plead sufficient	N		Ray Ripple, Edwards Angell Palmer & Dodge LLP

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								facts, "regardless of the actual reach of *Twombly* and *Iqbal*."			
15.	*Chao v. Ballista*	630 F. Supp. 2d 170	D. Mass.	7/1/09	1st Cir.	Civil Rights, 42 U.S.C. § 1983	Motion to Dismiss Denied	Plaintiff brought suit against prison officials alleging that they failed to properly investigate and protect her from abuse by prison guard. Defendants filed a motion to dismiss arguing, *inter alia*, that Plaintiff failed to adequately plead their personal involvement and the allegations amounted to nothing more than conclusory allegations that they failed to train, supervise, and investigate rumors of misconduct. In ruling that the Complaint adequately alleged the defendants' personal involvement, the court discussed *Iqbal* at length. The court noted that "plausibility is a relative measure." An analysis as to whether a plaintiff's allegations are conclusory "depends on the full factual picture, the particular cause of action, and the available alternative explanations." The court further held that "a complaint should only be dismissed at the pleading	N		Ian Fisher, Schopf & Weiss

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								stage where the allegations are so broad, and the alternative explanations so overwhelming, that the claims no longer appear plausible." 630 F. Supp. 2d at 177.			
16.	*Chiang v. Skeirik*	582 F.3d 238	1st Cir.	9/28/09	1st Cir.	Civil Rights, *Bivens* claims	Dismissal	Plaintiff brought suit against the United States alleging that the Department of Homeland Security denied his application for a visa for his Chinese fiancée in violation of his constitutional rights. As part of the claims, Plaintiff alleged that government officials appropriated his immigration documents without permission. On appeal, the First Circuit affirmed the dismissal of the claims. The Court applied *Iqbal* and held that the Plaintiff's allegations were conclusory in nature and merely contained threadbare recitals of the elements of the cause of action.	N		Ray Ripple, Edwards Angell Palmer & Dodge LLP
17.	*Cortelco Sys. of P.R., Inc. v. Phoneworks, Inc.*	2009 WL 4046794	D.P.R.	11/20/09	1st Cir.	Antitrust, Breach of Contract	Motion to Dismiss Granted	Plaintiff brought a suit against a rival telephone company alleging that the rival wanted to purchase shares of Plaintiff to monopolize the public telephone system in PR.	N		Bahar Azhdari, Waller Lansden Dortch & Davis

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								Applying *Iqbal* to the Complaint, the Court found the Complaint lacking in relevant and material factual allegations. The Court held that Plaintiff's allegations were mere conjecture and irrelevant states or unsupported conclusions of law and dismissed the Clayton Act claims with prejudice.			
18.	*In re Karagianis*	2009 WL 4738188	D.N.H. Bkrtcy.	12/4/09	1st Cir.	Claim under § 523(a)(2)(A) of the Bankruptcy Code	Dismissal	The court granted the creditor leave to file an amended complaint in light of *Iqbal*, and it provides a rather lengthy discussion of the new pleadings standard. In the amended Complaint, the plaintiff relied entirely on another complaint as the sole basis for allegations in its complaint. According to the Court, "while *Iqbal* does not require a plaintiff's complaint to weave an eloquent narrative fit for a novel, the new standard at least requires some intelligible, factually-developed context to support the legal elements of the cause of action."	N		Bahar Azhdari, Waller Lansden Dortch & Davis
19.	*K&S Servs., Inc. v. The Schulz Elec. Group of*	2009 WL 4019805	D. Me.	11/20/09	1st Cir.	Breach of Contract	Partial Dismissal	Plaintiff filed a breach of contract claim against the Schulz Group and Robert	N		Bahar Azhdari, Waller

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	Cos.							Davis. Each party filed a separate motion to dismiss. The Court granted the Schulz Group's motion finding it was not a legal entity. Davis' motion to dismiss was denied, however, because Plaintiff was able to state a plausible cause of action, which was all that was required, under *Iqbal*.			Lansden Dortch & Davis
20.	*Kelly v. U.S.*	2010 WL 128321	D.N.H.	1/13/10	1st Cir.	Civil Rights, 42 U.S.C. § 1983, ADA, *Bivens*, 8th Amendment, Municipal Liability, FOIA, and HIPAA	Dismissal	An inmate filed several claims against the US, the DOJ, the BOP, the US Marshals Service, and several federal corrections institutions alleging a range of complaints. Since the plaintiff was a prisoner proceeding *pro se* and in forma pauperis, the Court had to determine whether the complaint states any claim upon which relief could be granted (under NH law, a magistrate must conduct a preliminary review of cases filed by prisoners). The Court coupled *Iqbal*'s standard with the rule that all factual assertions, however inartfully pleaded, had to construed liberally. Despite this liberal reading of the plaintiff's complaint,	N		Bahar Azhdari, Waller Lansden Dortch & Davis

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								including allegations that the corrections institutions allowed him to be assaulted and withheld his medication, the magistrate found that the plaintiff's complaint did not state a claim. The district court upheld the magistrate's decision.			
21.	*Maldonado v. Fontanes*	568 F.3d 263	1st Cir.	6/4/2009	1st Cir.	Civil Rights, 42 U.S.C. § 1983	Dismissal	Plaintiffs sued mayor of town in Puerto Rico regarding alleged unlawful seizure of pet animals in violation of their Fourth Amendment right to be free from unreasonable seizures and their Fourteenth Amendment right procedural and substantive due process rights. The mayor moved to dismiss on the grounds of qualified immunity. The District of Puerto Rico denied the motion. On appeal, the First Circuit reversed the decision of the District Court as to the Fourteenth Amendment claim. The court applied *Iqbal* and concluded that only conclusory allegations were alleged that would establish liability on the part of the mayor for the Fourteenth Amendment claim.	N	The first time the First Circuit applied the *Iqba*l decision.	Ray Ripple, Edwards Angell Palmer & Dodge LLP

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22.	*Ocasio-Hernandez v. Fortuno-Burset*	639 F. Supp. 2d 217	D.P.R.	8/4/09	1st Cir.	Civil Rights, 42 U.S.C. § 1983	Dismissal	Fourteen former maintenance and domestic employee's of the Governor's mansion filed an amended complaint against several defendants claiming they were terminated because of their political affiliation. The Court granted the defendants' motion to dismiss all federal and supplemental claims with prejudice. In a footnote, the Court called its own ruling "draconianly harsh to say the least," but it was mandated by *Iqbal*. The original complaint filed before *Iqbal* met the pre-*Iqbal* pleadings standard under Fed. R. Civ. P 8, and the defendants did not move to dismiss it. According to the Court, "even highly experienced counsel will henceforth find it extremely difficult, if not impossible, to plead a section 1983 political discrimination suit without 'smoking gun' evidence." 639 F. Supp. 2d at 226 n.4.	N	The Court stated that now counsel in political discrimination cases will be forced to file in Commonwealth court, where *Iqbal* does not apply and post-complaint discovery is available. Additionally, the Court warned that counsel will likely only raise local law claims to avoid removal to federal court where *Iqbal* will "sound the death knell. Certainly, such a chilling effect was not intended by Congress when it enacted Section 1983." 639 F. Supp. 2d at 226 n.4.	Bahar Azhdari, Waller Lansden Dortch & Davis
23.	*Sanchez v. Pereira-Castillo*	2009 WL 4936397	1st Cir.	12/23/09	1st Cir.	42 U.S.C. § 1983	Decision on Motion to Dismiss affirmed in part, and vacated in	The First Circuit engaged in an in-depth application of *Iqbal*'s pleading requirements to each claim brought by the plaintiff	N		Ray Ripple, Edwards Angell Palmer &

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							part	against each defendant. In its analysis, the First Circuit gave no indication that its liberal application of, and citation, to *Iqbal* was limited to prisoner cases or § 1983 actions.			Dodge LLP
24.	*Soukup v. Garvin*	2009 WL 2461687	D.N.H.	8/11/09	1st Cir.	42 U.S.C. § 1983 claim against a municipality	Motion for Judgment on the Pleadings Granted	Plaintiff was arrested and charged with disorderly conduct and with violating bail conditions after an encounter with his neighbor. He sued the arresting officer, the Town of Lisbon, alleging violations of his civil rights. The Town of Lisbon moved for judgment on the pleadings. Applying *Iqbal*, the Court held that though the complaint alleged a constitutionally violative policy or custom as is required under Section 1983, it had insufficient factual specificity to satisfy Rule 8.	N		Bahar Azhdari, Waller Lansden Dortch & Davis
25.	*Arar v. Ashcroft*	585 F.3d 559	2nd Cir. (en banc)	11/2/09	2nd Cir.	Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350, and Fifth Amendment	Dismissal affirmed	Plaintiff, a Canadian citizen, challenged his rendition to Syria by the U.S. government, where he was tortured, forced to falsely confess, and released after one year without ever being charged. The district court (E.D.N.Y.) dismissed the suit, a decision that was	N	Application of *Iqbal* to a similar national security case spurring the Second Circuit's *sua sponte* grant of en banc rehearing and four separate dissenting opinions. Dissents recognize *Iqbal*'s more stringent standard but disagree on result of its application.	Mor Wetzler & Carla Walworth at Paul, Hastings, Janofsky & Walker LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								upheld by a split panel of the Second Circuit. In a highly unusual move, the Second Circuit decided, *sua sponte*, to rehear the case en banc. The Court upheld the dismissal in a 7-4 decision, with four dissenting opinions disagreeing on whether the complaint passed muster under the "more stringent standard of review for pleadings" established in *Iqbal*. The dissents argue that the complaint is sufficient under *Iqbal* and, *inter alia*, disagree with the majority's procedural decision to consider of the viability of a *Bivens* claim, which was assumed viable in *Iqbal*. The dissents also recognize *Iqbal*'s effect on supervisory liability and that "to the extent actions against 'policymakers' can be equated with lawsuits against policies, they may not survive *Iqbal* either."			
26.	*Brown v. Castleton State College*	2008 WL 3248106	D. Vt	10/7/09	2nd Cir.	Race discrimination, 42 U.S.C. § 1981	Dismissal	An Asian male student brought race and gender discrimination charges against a state college. The Court initially framed its statute of limitations inquiry under the *Twombly* standard,	N	In considering other possible explanations for an administrative tribunal's allegedly discriminatory actions, the court suggests "time constraints, laziness, or . . . standard procedure" and dismisses accordingly.	Mor Wetzler & Carla Walworth at Paul, Hastings, Janofsky

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								requiring that plaintiff show "an entitlement to relief." For the single timely claim, the Court considered the specific pleading requirements of §1981 as a "specific fleshing-out of the *Twombly* and *Iqbal* plausibility standard" rather than as evidentiary standards. The Court then found that plaintiff had alleged sufficient facts to cast doubt on the administrative tribunal's outcome, but that the facts did not plausibly suggest discriminatory intent because there were other possible explanations for the tribunal ignoring certain evidence and accepting other evidence unquestioningly—"among them time constraints, laziness, or just that it was standard procedure to do so."			& Walker LLP
27.	*Creative Interiors v. Epelbaum*	2009 WL 2382986, 2009 N.Y. Slip Op. 51680(U)	N.Y. Supreme Court, Richmond Cty	7/30/09	2nd Cir.	Breach of contract	Damages awarded after bench trial	Plaintiffs brought a breach of contract claim when defendants kept 28 deficiently-produced custom doors after plaintiffs refunded defendants for nearly the complete contract price. Following a bench trial, the court set forth its	N	An interesting application of *Iqbal* to reject "implausible" arguments following a bench trial, rather than on a motion to dismiss	Mor Wetzler & Carla Walworth at Paul, Hastings, Janofsky & Walker

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								findings. Defendants had argued that they agreed to receive a refund of the majority of the purchase price as well as keep the faulty doors, and that this interpretation of the transaction was reasonable. The court rejected these arguments "as being implausible and not worthy of belief because they are 'manifestly untrue, . . . contrary to experience, or self-contradictory." For this conclusion, the court cites *Iqbal*.			LLP
28.	*Cuevas v. City of New York*	No. 07 Civ. 4169 (LAP), 2009 WL 4773033	S.D.N.Y.	12/07/09	2nd Cir.	42 U.S.C. §1983	Dismissal	Plaintiff claimed that she was maliciously and falsely arrested and assaulted by the defendants, unidentified NYPD officers. She also claimed that the officer's conduct was due to the City of New York's policy. The court dismissed her claim because her allegations against the city were "boilerplate." The court noted that while the allegations were "heavy on descriptive language," they were "light on [the] facts" required by *Iqbal.* As a result, the plaintiff did not show the court "what the policy [was] or how that	N	Civil Rights, substantial excerpts from inadequate pleadings	Bryce L. Friedman, Simpson Thacher & Bartlett LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								policy subjected Plaintiff to suffer the denial of a constitutional right."			
29.	*Green v. Beer*	2009 WL 3401256 (S.D.N.Y)	S.D.N.Y	10/22/09	2nd Cir.	Motion for reconsideration of previous order on the following causes of action: unjust enrichment, breach of fiduciary duty, fraud, negligent misrepresentation, and civil conspiracy	Motion for Reconsideration Denied (motion to dismiss denied)	Defendant's moved for a reconsideration of the court's previous order finding the plaintiff's claims of direct and indirect fraud based on a theory of civil conspiracy were sufficiently plead. The court found that *Iqbal*'s clarification of Rule 8 and 9(b) did not amount to an intervening change in decisional law and so a reconsideration of its previous order in the case was not required. The court also noted that "to the extent that *Iqbal* altered applicable pleading requirements, Plaintiff's Amended Complaint satisfies those requirements."	N	*Iqbal* did not change the fraud pleading standard.	Simpson Thacher & Bartlett LLP
30.	*In re Agria Corporation Securities Litigation*	2009 WL 4276967 (S.D.N.Y)	S.D.N.Y	11/30/09	2nd Cir.	Securities Act of 1933 Sections 11 and 12(a)(2), 15 U.S.C. § 77	Dismissal (though not based on insufficient factual allegations)	The plaintiff alleged that the defendant failed to disclose important negotiations with a key employee at the time of its IPO and that its Registration Statement contained untrue statements of material facts. The court found that the plaintiff pled sufficient facts to draw an inference that such negotiations had taken place	N	The *Iqbal* standard screens out more cases than previous standards.	Simpson Thacher & Bartlett LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								and that the outcome of such negotiations posed a "significant risk" to the defendant's operations. As such, the court found that the plaintiff's factual allegations were sufficient. However, the court ultimately found that the defendant's failures did not amount to a violation of the securities laws.			
31.	*Kregler v. City of New York*	646 F. Supp. 2d 570	S.D.N.Y	8/17/09	2nd Cir.	Civil rights, 42 U.S.C. § 1983	Dismissal	Plaintiff alleged that Defendants failed to hire him for a job after he publicly endorsed a candidate for district attorney, thereby violating his rights under the First and Fourteenth Amendments. Taking language from *Iqbal,* the court called the plaintiff's allegations "'threadbare recitals' of the elements of the cause of action 'supported by mere conclusory statements.'" The court explained that the plaintiff's complaint contained no factual allegations about the defendants' direct knowledge of his endorsement or any personal involvement in his application's rejection. As such, the court <u>declined to</u>	N	Illustrative of the difference between "possibility" and "plausibility" under *Iqbal*.	Simpson Thacher & Bartlett LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								<u>accept his pleadings as true</u> and stated that even if they were "credited to some degree," the facts plead were consistent with the defendants' liability but did not make liability more plausible. The court then analyzed the "context specific" factual issue of the plaintiff's failure to disclose a disciplinary action in his application, and concluded that given this omission, a finding of retaliatory action was not a "reasonable inference" and therefore was not plausible.			
32.	*Nomination Di Antonio E Paolo v. H.E.R Accessories LTd., et. al.*	No. 07 Civ. 6959(DAB), 2009 WL 4857605	S.D.N.Y.	12/14/09	2nd Cir.	Trademark Infringement, 15 U.S.C. §1114	Dismissal (for licensor defendants)	Plaintiff sued defendant because the Defendant manufactured and distributed counterfeit items packaged with the plaintiff's trademark. The plaintiff also sued a licensor for contributing to the infringement by licensing its IP for its famous characters to the supplier who used the characters in its jewelry and then packaged them with the plaintiff's trademark. The court dismissed the complaint with respect to the licensor because the plaintiff failed to adequately plead under *Iqbal*. First, the	N	Trademark	Bryce L. Friedman, Simpson Thacher & Bartlett LLP

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								court noted that "[a]lthough participation in the development, promotion and sale of the counterfeit bracelets would, if true, likely equate to direct control and monitoring, Plaintiffs have not stated any factual allegations as to how the Licensor Defendants have done so." The court also noted that the plaintiff failed to show which licensors had notice of the infringement and failed to allege that that the licensors continued to provide their own marks to the supplier after notification.			
33.	*Slelevan v. N.Y. Thruway Auth.*	584 F.3d 82	2nd Cir.	10/15/09	2nd Cir.	Civil Rights, 42 U.S.C. § 1983	Reverse dismissal of all but one claim	Plaintiffs brought a putative class action challenging an interstate highway toll policy that afforded a discount to residents of a particular New York municipality. The district court (N.D.N.Y.) dismissed for lack of standing and failure to state a claim. The Court applied *Iqbal* as its standard of review, stating that it "need only consider whether the complaint alleges a plausible claim" and that it is required to assume all "well-pleaded	N	Application of *Iqbal* as standard of review, and reversal of dismissals	Mor Wetzler & Carla Walworth at Paul, Hastings, Janofsky & Walker LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								factual allegations" in assessing whether the allegations plausibly give rise to an entitlement to relief. The Court added that it is still to "construe plaintiffs' complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in plaintiffs' favor." Applying this standard, the Court found the allegations sufficient and reversed all but one of the district court's dismissals. The Court affirmed only the district court's dismissal of a challenge by U.S. citizen residing in Canada to the toll policy under the Privileges and Immunities Clause of Article IV.			
34.	*South Cherry St., LLC v. Hennessee Group LLC*	573 F.3d 98	2nd Cir.	07/14/09	2nd Cir.	Breach of contract and violation of § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.S. § 78j(b)	Affirmed dismissal	The Second Circuit affirmed the dismissal of an investor's claims against an investment advisor for breach of contract and violation of § 10(b) of the Securities Exchange Act of 1934. Plaintiff alleged that defendants failed to disclose that a recommended hedge fund was part of a Ponzi scheme. The district court dismissed the breach of	N	Example of the Second Circuit's distinction between *Iqbal*'s pleading standard and the higher pleading standard imposed by the PSLRA. In a later unpublished case, the Second Circuit found that allegations that arguably were plausible under *Iqbal* failed to satisfy the PSLRA's pleading standard.	Carla Walworth & Mor Wetzler at Paul, Hastings, Janofsky & Walker LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								contract claim as barred by the New York Statute of Frauds and the § 10(b) claim for failing to plead scienter. In affirming, the Second Circuit found that the complaint did not give rise to a strong inference of fraudulent intent or conscious recklessness, or that these allegations led to an inference of negligence. While the investor alleged that appellees would have discovered the Ponzi scheme if they had conducted the due diligence promised in recommending the investment, the complaint's allegations failed to show that appellees knew that the hedge fund was involved in a Ponzi scheme. In reaching its decision, the Second Circuit clarified that the PSLRA requires an even higher pleading standard than that of *Iqbal*.			
35.	*Spagnola v. Chubb Corporation et. al.*	Nos. 06 Civ. 9960(HB), 08Civ. 193(HB), 2010 WL 46017	S.D.N.Y.	01/07/10	2nd Cir.	Breach of Contract, Violation of N.Y. Insurance Law §3425; Violation of N.Y. General Business Law §349, Unjust Enrichment, and Injunctive Relief	Dismissal granted in part and denied in part	The plaintiffs held homeowner insurance policies with Great Northern. When they switched carriers, they found that their properties were underinsured. Plaintiffs then sued Great Northern as well as its	N	Alter Ego Liability	Bryce L. Friedman, Simpson Thacher & Bartlett LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								parent, Chubb Corporation, and another corporation in the group, FIC. Plaintiffs sued Chubb and FIC on the basis of alter-ego liability. However, the court found that the plaintiff inadequately plead the first and second prongs of the piercing the veil test. For the first prong, plaintiffs alleged some overlap between the companies but not enough to show more than the "mere possibility of misconduct." As for the second prong, the plaintiff made a conclusory allegation of injustice which was devoid of the "factual enhancement" required by *Iqbal.*			
36.	*Starr v. Sony BMG Music Entertainment*	No. 08-5637-cv., 2010 WL 99346	2nd Cir. Court of Appeals	01/13/10	2nd Cir.	Sherman Act, § 1 violations	Reversed dismissal	Buyers of digital music brought actions in various state and federal courts against sellers for violation of the Sherman Act, alleging that sellers had agreed to fix the price of digital music. The Second Circuit reversed the district court's dismissal, holding that the buyers plausibly alleged that the sellers' parallel conduct was the result of an agreement among the sellers to fix the price of digital music, as	N	The Second Circuit's third decision post-*Iqbal* finding that an antitrust violation was plausibly alleged and reversing dismissal.	Carla Walworth & Mor Wetzler at Paul, Hastings, Janofsky & Walker LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								required to state a claim under the section of the Sherman Act prohibiting trusts in restraint of trade.			
37.	*Turkmen v. Ashcroft*	589 F.3d 542	2nd Cir. Court of Appeals	12/18/09	2nd Cir.	31 claims of constitutional violations broadly categorized as challenging conditions of confinement and length of detention.	Affirmed dismissal and reversed denial of motion to dismiss	Removed detainees brought a putative class action alleging, *inter alia*, that on account of their Arab or Muslim background, they were subjected to excessively prolonged detention and mistreated while in custody. The district court dismissed claims concerning the length of detention but denied motions to dismiss claims concerning the conditions of confinement. On appeal, the Second Circuit affirmed the dismissal of the "length of detention" claims and reversed the denial to dismiss the "conditions of confinement" claims. Based on the changes to the pleading standard established by *Twombly* and *Iqbal*, the Second Circuit instructed the district court to re-consider granting leave to amend and to re-weigh the "conditions of confinement" claims under the new pleading standard.	N	The Second Circuit notes special deference given to the Executive branch in national security cases, and reverses denial of a motion to dismiss for the district court to review the complaint under *Twombly* and *Iqbal*.	Carla Walworth & Mor Wetzler at Paul, Hastings, Janofsky & Walker LLP
38.	*Wiese v. Kelley*	2009 WL	S.D.N.Y	9/10/09	2nd Cir.	Civil rights,	Dismissal	Plaintiff alleged that	N	General application of the *Iqbal* standard.	Simpson

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
		2902513				42 U.S.C. § 1983		Defendant violated his Due Process rights by making certain statements public during the course of his termination. A journalist used these statements in articles where he also made unflattering comments about the plaintiff. The court dismissed the plaintiff's claim because the plaintiff's allegations "that Defendant intended to destroy Plaintiff's future by providing information to [the journalist] for republication" were not consistent with *Iqbal*'s plausibility requirement. The court went on to say that the plaintiff failed "to articulate any factual basis for [the defendant's] communication with" the newspaper writer. As a result, the court refused to hold the defendant responsible for the journalist's comments.			Thacher & Bartlett LLP
39.	*Willets Point Industry and Realty Ass'n v. City of New York*	2009 WL 4282017	E.D.N.Y.	11/25/09	2nd Cir.	Civil Rights, 42 U.S.C. § 1983		Plaintiffs allege violations of their equal protection and due process rights by the city's refusal to provide services and infrastructure to a specific area, which they allege is refused to depress property values to give the	N	Relationship between "alternative explanations" considered under *Iqbal* and rational basis review for Equal Protection analysis.	Mor Wetzler & Carla Walworth at Paul, Hastings, Janofsky & Walker

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								City an economic advantage when exercising its right of eminent domain. The court rejects plaintiffs' equal protection class-of-one claim because they did not "plausibly establish that a rational basis is lacking for the alleged disparate treatment . . . or that it was motivated by a malicious intent to injure plaintiffs" and adds that there are "more likely explanations" for the city's actions. This conclusion is "supported strongly by the fact that the City's conduct is subject only to rational basis review."			LLP
40.	*Willey v. J.P Morgan Chase*	2009 WL 1938987 (S.D.N.Y)	S.D.N.Y	7/7/09	2nd Cir.	Fair Credit Reporting Act, 15 U.S.C. §1681w.	Dismissal	Plaintiff, a Circuit City – Chase credit card holder, alleged that Chase violated § 1681w of the FCRA when it accidentally threw out and destroyed his personal information. The relevant standard here was whether or not Chase had "adopted and implemented the comprehensive security program envisioned by the OCC's [Office of the Comptroller of the Currency] regulations." The court cited the plausibility standard from *Iqbal* in	N	General application of the *Iqbal* standard.	Simpson Thacher & Bartlett LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								dismissing the plaintiff's claim for lack of sufficient specific factual allegations with respect to an OCC regulation violation. The court noted that "…without providing a factual basis, [the plaintiff] appears to assert that a violation of the FCRA must have occurred simply because the data loss incident occurred. That sort of ipse dixit pleading is insufficient." Under *Iqbal*, the court continued, "conclusory statements unsupported by factual allegations [cannot] subject a defendant to the burdens of discovery."			
41.	*Lunardini v. Mass. Mut. Life Ins. Co.*	2010 U.S. Dist. LEXIS 17796	D. Conn.	3/1/10	2nd Cir.	Gender discrimination under CCHRO	D's Motion to dismiss denied	Defendant moved to dismiss Plaintiff's constructive discharge claim under rule 12(b)(6). Specifically, defendant argued that Lunardini's "decision not to return to work because his supervisor allegedly looked annoyed and disgusted after hearing that Plaintiff was returning to work" did not state a claim for constructive discharge. *Id.* at *27. The court denied defendant's motion to dismiss and held that plaintiff's constructive discharge claim was facially	Y	Pleading requirements are still governed by Rule 8; Motions to dismiss not governed by elevated standards of proof in deciding SJ motions.	Melissa Pierre-Louis, Outten & Golden LLP

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							plausible. The *Lunardini* decision is worth noting for two reasons. First, the court was willing to draw rather generous inferences from plaintiff's arguably barebones pleading. In his complaint, Plaintiff alleged among other things that following his disability leave, he decided not to come back to work because he heard rumors that his supervisor did not want him back at the office. After learning of this information, combined with the knowledge that his supervisor was trying to force another male manager out, Plaintiff alleged that he "was afraid and embarrassed to return to work." *Id.* at *5. Despite citing the high standard that applies to constructive discharge cases, the court stated that the elevated standard of proof that applies at trial or on a motion for summary judgment is not relevant when adjudicating a motion to dismiss. Specifically, the court held that "the question			

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							here is simply whether plaintiff states a *plausible* entitlement to relief. *Id* at * 31. The court ultimately determined that plaintiff's factual allegations supported a permissible inference that his supervisor was a difficult manager who played favorites, favored women and targeted plaintiff for termination. In short, although admitting that Plaintiff had "only barely" stated a claim for constructive discharge, the court held that he had alleged enough to be entitled to discovery. The *Lunardini* decision is also noteworthy because the court arguably engaged in *Iqbal* nullification. Although citing *Iqbal*'s plausibility standard, the court held that the sufficiency of the complaint is governed by Fed. R. Civ. P. 8(a)(2), "requiring only 'a short and plain showing that the pleader is entitled to relief," and a Title VII plaintiff need not allege facts demonstrating a prima facie case of discrimination.'" *See id*. at 112 n.3. The court also			

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								cited *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510 (2002) for the proposition that Rule 8(a) "establishes a pleading standard without regard to whether a claim will succeed on the merits." *Id*.			
42.	*Seifert v. Hofmann*	2009 U.S. Dist. LEXIS 116650	D. Vt.	10/15/09	2nd Cir.	ADA	Dismissal of Complaint	Defendants moved to dismiss plaintiff's ADA claim alleging that plaintiff had failed to identify a "major life activity" that was impaired by his alleged disabilities. Plaintiff's complaint alleged that he suffered from "several mental health disorders which included manic depression, Aspburgers Syndrome, acute anxiety and adult ADHD" and that all of these illnesses affected his behavior. *Id.* at *12-13. The court granted defendant's motion to dismiss. The court's decision in *Seifert* is noteworthy because it essentially converted a motion to dismiss into a motion for summary judgment. In granting defendant's motion to dismiss, the court set out the substantive requirements	Y	Pro se plaintiffs may be subject to the same strict pleading standards as represented parties; in deciding plausibility, some courts may strictly apply the substantive law to the allegations in the complaint.	Melissa Pierre-Louis, Outten & Golden LLP

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							for one to qualify as disabled under the ADA. Citing the ADA, the court held that plaintiff must have either: (1) a physical or mental impairment that substantially limits one or more of an individual's major life activities; (2) a record of such impairment; or (3) being regarded as having such impairment. *Id.* at *12-13. The court also cited EEOC regulations setting out functions that qualify as major life activities (i.e. such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). *Id.* The court found that plaintiff had not alleged any of the aforementioned life activities and dismissed the complaint. Arguably, plaintiff's disability impaired his ability to do any of the functions outlined by the EEOC guidelines or perhaps Plaintiff may have been able to argue an impairment that fell outside of the EEOC regulations. However, unlike the *Lunardini* court, the court in			

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								Seifert refused to draw any inferences or to construe the complaint liberally.			
43.	*Morpurgo v. Incorporated Village of Sag Harbor*	2010 WL 889778	E.D.N.Y.	3/5/10	2nd Cir.	42 U.S.C. §§ 1983 and 1985	Complaint dismissed with prejudice	The court first notes that *pro se* pleadings must be considered under a "more lenient standard" and "interpreted to raise the strongest arguments they suggest." Nonetheless, "claims alleging conspiracy to violate civil rights are held to a heightened pleading standard" because they can be so easily made and can create protracted proceedings with a disruption of governmental functions. The court interprets the complaint broadly, yet ultimately finds the allegations lacking. Plaintiff had not alleged a viable claim against a municipality or misconduct violating her constitutional rights, and had not satisfied the state actor requirement for the conspiracy claims against the remaining defendants. Even assuming that plaintiff belonged to a protected class, she failed to allege that the purpose of the purported conspiracy was related to her membership in such class. The court also	Y	Although *pro se* complaint is to be construed liberally, claims alleging conspiracy to violate civil rights are held to a heightened pleading standard. The complaint is dismissed without leave to amend.	Carla Walworth & Mor Wetzler Paul, Hastings, Janofsky & Walker LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								found it "highly unlikely" that plaintiff would be able to correct the pleading defects and dismissed the complaint with prejudice.			
44.	Toussie v. Town Bd. of Town of East Hampton	2010 WL 597469	E.D.N.Y.	2/17/10	2nd Cir.	Fourteenth Amendment equal protection	Complaint dismissed	Plaintiffs brought claims asserting that the upzoning of their property from 2-acre to 5-acre zoning violated their equal protection rights, and asserted violation of a municipal law. The court found that the equal protection claim was implausible because the allegations in the complaint are incompatible with the claim of no rational basis. The court dismissed this claim with prejudice, finding that plaintiff could plead no facts demonstrating the alleged differing treatment was without a rational basis. The court also rejected the claim that the differing treatment was motivated by malice, and despite finding it difficult to imagine how plaintiffs could adequately plead facts to support the claim, the court dismissed with leave to amend, accepting "the possibility that Plaintiffs' imagination exceeds [the	N	Court dismisses equal protection claim with prejudice, finding that plaintiffs could plead no facts demonstrating the alleged differing treatment was without a rational basis.	Carla Walworth & Mor Wetzler Paul, Hastings, Janofsky & Walker LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								court's]."			
45.	*Adams v. Lafayette College*	2009 WL 2777312	E.D. Pa. (Hon. Lawrence F. Stengel)	08/31/09	3rd Cir.	Age discrimination claim, based upon disciplinary sanctions that allegedly would not have been given to younger employees.	Defendant's motion to dismiss under Rule 12(b)(6) was granted.	Plaintiff's allegations that he was penalized for minor infractions, while younger employees were treated differently on several other occasions and that he received harsher treatment because of his age, without factual detail of the allegedly disparate treatment, amount to legal conclusions that do not satisfy the *Iqbal* standard, requiring a plaintiff to allege facts plausibly suggesting that his injury was due to (and most logically explained by) the defendant's misconduct.	N	*Iqbal* standard applies to employment discrimination claims.	Peter Jason
46.	*Capogrosso v. Supreme Court of the State of New Jersey*	--- F.3d ---, 2009 WL 4110372	3rd Cir.	11/27/09	3rd Cir.	42 U.S.C. § 1983	Affirmance of Dismissal	Court affirms that plaintiff's claims against several state-court judges are precluded by judicial immunity because, although plaintiff pleaded that judges acted "without jurisdiction," she alleged no facts that could show that absence. Also, district court properly affirmed dismissal of claim of "judicial conspiracy" because, in absence of factual allegation that defendants agreed to commit specific act, that act (*e.g.*,	Y	Court states that it is mindful of its obligation to give liberal construction to pleadings of pro se litigant. However, as plaintiff is "experienced litigant," court confines itself to issues raised in brief.	Stuart Gaul

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								judicial error, *ex parte* communications or adverse ruling) is not a conspiracy. Allegation of contact between claimed conspirators followed by ruling adverse to plaintiff is insufficient.			
47.	*Fowler v. UPMC Shadyside*	578 F.3d 203	3rd Cir.	8/18/09	3rd Cir.	Rehabilitation Act, 29 U.S.C. §§ 794 et seq.	Reversal of Dismissal	"[A]ll civil complaints" • "must now set out 'sufficient factual matter' to show that the claim is facially plausible." • "must contain 'more than an unadorned, the-defendant-unlawfully-harmed-me accusation.'" District court is to conduct two-part analysis: (1) separate factual and legal elements of a claim; (2) determine whether the alleged facts "are sufficient to show that the plaintiff has a 'plausible claim for relief." Appears to confirm court's post-*Twombly* statement that district court should accept all factual allegations as true, construe complaint in light most favorable to plaintiff and	N	First published Third Circuit opinion on *Iqbal*. Court had previously (post-*Twombly*) held that "plausibility paradigm" applied to employment discrimination cases.	Stuart Gaul

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								determine whether, under any reasonable reading of complaint, plaintiff may be entitled to relief. Although more detail would be preferred, complaint showed "how, when, and where" defendant had allegedly discriminated against plaintiff: defendant believed plaintiff was disabled, had suitable opening, didn't transfer plaintiff to that position and acted on basis of plaintiff's disability.			
48.	*Gonzalez v. Bristol-Myers Squibb Co*	2009 WL 5216984	D.N.J. (Hon. Freda L. Wolfson)	12/30/09	3rd Cir.	Numerous claims; subject of motion to dismiss was negligent misrep-resentation claim	Dismissal of negligent misrep-resentation claim without prejudice; plaintiff given leave to file motion to amend	Plaintiff brought suit for, among other things, negligent misrepresentation, relating to defendants' promotion of the prescription drug Plavix®. Defendants moved to dismiss the negligent misrepresentation claim for failure to state a claim upon which relief can be granted. The District Court dismissed the negligent misrepresentation claim without prejudice, finding that even if plaintiff has sufficiently plead the first four elements of such a claim, plaintiff had failed to	N	The factual allegations of a complaint must support a requisite element under the applicable law – "a formulaic recitation of the element without any factual support" is not sufficient. Also, as in other cases, *Iqbal*'s application is extended beyond the antitrust and constitutional rights context.	Jeffrey Soos, Saiber LLC

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								allege sufficient facts to support the fifth element of such a claim – that he reasonably relied on defendants' false representations to his detriment. The Court concluded that plaintiff simply set forth "a formulaic recitation of the element without any factual support." Because plaintiff's First Amended Complaint lacked any allegations regarding which misrepresentations were made to plaintiff and/or his prescribing physician, and what was relied upon by them in connection with the decision to take/prescribe Plavix®, plaintiff's negligent misrepresentation claim was "clearly insufficient under the standard set forth in Iqbal[,]" and subject to dismissal.			
49.	*Knechtel v. Choicepoint, Inc., et al.* *Carlton v. ChoicePoint, Inc., et al.*	2009 WL 4123275 2009 WL 4127546	D.N.J. (Hon.Robert B. Kugler)	11/23/09	3rd Cir.	Violation of Fair Credit Reporting Act ("FCRA"), defamation, and invasion of privacy/false light	Dismissal of FCRA claims without prejudice, with leave to amend; motion to dismiss denied as to defamation and invasion of	Plaintiff brought claims for violation of the FCRA, defamation, and invasion of privacy/false light, for the alleged improper dissemination of negative credit information. Defendants moved to dismiss for failure to state a	N	The factual allegations of a complaint must support a requisite element under the applicable law – here, a showing that defendants were a consumer reporting agency. Again, as in other cases, *Iqbal*'s application is extended beyond the antitrust and constitutional rights context.	Jeffrey Soos, Saiber LLC

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							privacy/ false light claims	claim upon which relief can be granted. The District Court dismissed the FCRA claim because plaintiff's factual allegations did not support a plausible claim that defendants were a consumer reporting agency – a threshold requirement under the Act. With respect to the defamation and invasion of privacy/false light claims, the court found that the well-pled factual allegations plausible stated a claim for these torts. As a result, the court denied defendants' motion to dismiss as to these claims.			
50.	*Mark IV Industries Corp. v. Transcore, L.P.*	2009 WL 4403187	D. Del. (Hon. Gregory M. Sleet, Chief Judge)	12/2/09	3rd Cir.	Patent Infringement	Motion to Dismiss Denied	Plaintiff brought suit against defendant for infringement of patents concerning vehicle toll and tracking systems. Defendant moved to dismiss, arguing that *Iqbal's* heightened pleading standard requires a patent infringement plaintiff to plead specific claims of the patent allegedly infringed and describe how the allegedly infringed product works. The District Court disagreed that *Iqbal* had such an effect on pleading direct patent infringement,	N	*Iqbal* did not supersede the pleading forms appended to the Federal Rules of Civil Procedure and prior rulings by the Federal Circuit on pleading requirements for patent infringement actions. While courts in other cases have extended the application of *Iqbal* beyond antitrust and alleged violations of constitutional rights, this court rejected the extension of *Iqbal* claims for direct patent infringement that are pled in the manner set forth in Form 18 to the Federal Rules of Civil Procedure.	Jeffrey Soos, Saiber LLC

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							reasoning that this issue was not before the Supreme Court in *Iqbal.* The District Court observed that, the Federal Circuit has squarely addressed the pleading requirements in a patent infringement action (albeit, prior to *Iqbal*), and has held that a plaintiff is neither required to plead individual claims of the asserted patents, nor is a plaintiff required to plead specifics as to how an allegedly infringing product works. The specifics of how an allegedly infringing product works was something more appropriately determined through discovery. The District Court also found that *Iqbal* did not have such a far reaching effect so as to supersede all previous jurisprudence on pleading requirements, including Form 18 appended to the Federal Rules of Civil Procedure, which sets forth a model complaint for direct patent infringement. The District Court held that such a form continues to be viable, absent an explicit			

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								abrogation by the Supreme Court. Furthermore, mindful of the practical difficulties of pleading patent infringement with more specificity than that required by Form 18, the Court drew on its own "judicial experience and common sense" and concluded that plaintiff's complaint sufficiently asserted a claim for patent infringement.			
51.	*McDonough v. Horizon Blue Cross Blue Shield of New Jersey*	2009 WL 3242136	D.N.J. (Hon. Stanley R. Chesler)	10/7/09	3rd Cir.	Payment of Health Benefits, ERISA	Dismissal Without Prejudice; Leave to Amend	Plaintiff insured brought this putative class action against defendant insurer for alleged underpayment of benefits relating to the manner in which insured processed and paid claims for services provided by out-of-network providers to insured, in violation of ERISA. Defendant moved to dismiss under Rule 12(b)(6). The District Court granted defendant's motion and dismissed the complaint without prejudice. The District Court found that the complaint contained "abundant legal conclusions," but was "short on the substantive factual allegations on which	N	In order to survive a motion to dismiss, plaintiff must do more than aver in a conclusory fashion a violation of law. Rather, it must provide substantive factual allegations on which liability must be based. In addition, this case shows the application and extension of *Iqbal* to claims—here, ERISA—beyond the antitrust and constitutional context.	Jeffrey Soos, Saiber LLC

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								liability must be based." The District Court further observed that it was unclear from the complaint what actions or inactions by the insurer might plausibly have supported liability for various alleged ERISA violations. For example, the District Court found that the complaint alleged certain violations of state regulations concerning payment of benefits, but failed to provide any factual substantiation for how these regulations were violated by the insurer. The District Court further observed that the complaint averred in conclusory fashion that the insurer's reimbursement to plaintiff and the class violated the regulations and therefore violated ERISA, and that such "unadorned, the defendant-unlawfully-harmed-me accusation" did not pass muster under Rule 8(a). As a result, the District Court dismissed the complaint without prejudice (with leave to amend).			
52.	*McTernan v. City of York*	577 F.3d 521	3rd Cir.	8/24/09	3rd Cir.	Injunctive Relief under First	Affirmance of Dismissal	Court characterized as "legal conclusion" plaintiffs'	N		Stuart Gaul

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
						Amendment		statement that access ramp for disabled (on which plaintiffs wanted to conduct protest) was a public forum. Accordingly, district court properly determined that it was not bound by that characterization. Because district court had properly concluded in preliminary injunction proceeding that plaintiffs "had no probability of success on the merits, that the ramp leading to the Facility was a non-public forum," district court acted appropriately in dismissing complaint, as well.			
53.	*U.S. v. Nobel Learning Communities*	2009 WL 3617734	E.D. Pa. (Hon. Mary A. McLaughlin)	11/02/2009	3rd Cir.	Disability discrimination claim against the operator of a charter school network based upon alleged failure to enroll or by disenrolling from its schools children with disabilities.	Defendant's motion to dismiss under Rule 12(b)(6) granted in part and denied in part.	The plaintiff's allegations of 12 specific instances in which children with significant neurological disabilities (11 of whom were under age 6 at the time of the defendant's action) deemed sufficient to allege a pattern of discrimination in the preschool context, but not beyond the preschool level. The Court rejected the defendant's argument that the absence of statistical data to demonstrate the breadth of the alleged discriminatory policy required dismissal of the	N	Statistical data not necessary to support a claim of disability discrimination at the pleading stage.	Peter Jason

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								complaint (inferentially but not explicitly finding that *Iqbal* has not changed pleading requirements regarding statistical evidence).			
54.	*Young v. Speziale*	2009 WL 3806296	D.N.J. (Hon. Susan D. Wigenton)	11/10/09	3rd Cir.	Civil rights, 42 U.S.C. § 1983	Motion to Dismiss Denied	Plaintiff, a pretrial detainee of the U.S. Marshals Service ("USMS"), sued the nurse consultant affiliated with the USMS and various other defendants for violation of his constitutional rights based upon defendants' alleged failure to provide him with adequate medical care. The nurse consultant ("defendant") subsequently filed a motion to dismiss. Citing *Iqbal*, defendant argued that "[p]laintiff's allegations merely parrot[ed] the legal requirements of a §1983 claim and [were] implausible." The District Court disagreed and denied defendant's motion, distinguishing between the pleading requirements of a *Bivens* action for discrimination, as was the case in *Iqbal*, and a §1983 action for inadequate	Y[1]	The factors necessary to establish a *Bivens* or §1983 violation will vary with the constitutional provision at issue. (*Iqbal* thus does not support the proposition that general allegations are never sufficient to support a §1983 claim.)	Jeffrey Soos, Saiber LLC

[1] Plaintiff initiated the action, *pro se*, but was later represented by counsel.

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							medical care. Specifically, the District Court observed that a *Bivens* action for discrimination in violation of the First and Fifteenth Amendments required plaintiff to plead and prove that defendant acted with a discriminatory purpose, whereas there was no such pleading requirement for a §1983 claim for inadequate medical care arising under the Eighth or Fourteenth Amendments. As a result of the more specific pleading requirement in *Iqbal*, the Supreme Court concluded that mere knowledge on the part of the supervisor was an insufficient basis for *Bivens* liability. Here, however, the District Court pointed out that, "[t]he Supreme Court, in *Iqbal*, even prefaced its analysis of this issue by recognizing that '[t]he factors necessary to establish a *Bivens* [or §1983] violation will vary with the constitutional provision at issue … and thus *Iqbal* does not support the proposition that general allegations are never sufficient to support a §1983			

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								claim." Rather, the District Court found that it was plausible and can be inferred from plaintiff's factual allegations that the harm plaintiff suffered resulted from defendant's denial of medical care to plaintiff, and consequently, plaintiff's pleadings adequately alleged a claim for denial of medical care – *i.e.*, defendant was deliberately indifferent to plaintiff's serious medical needs.			
55.	*Argueta v. U.S. Immigration and Customs Enforce-ment*	2010 WL 398839	D.N.J. (Hon. Peter G. Sheridan)	1/27/10	3rd Cir.	Alleged civil rights violation of Fourth Amendment	Motion to Dismiss based upon qualified immunity denied without prejudice	Plaintiffs brought suit against various federal and state officials for civil rights violations for allegedly "partaking" in a practice of unlawful and abusive raids of immigrant homes. The Individual Federal Defendants (Julie Myers, former Assistant Secretary for Homeland Security, and John Torres, Acting Deputy Assistant Secretary for Operations of U.S. Immigration and Customs Enforcement) moved to dismiss. The District Court found that because plaintiffs did not allege invidious	N	The factors necessary to establish a *Bivens* or § 1983 violation will vary with the constitutional provision at issue.	Jeffrey Soos, Saiber LLC

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							discrimination (*i.e.,* that defendant(s) acted with discriminatory purpose), but rather violations of their Fourth Amendment rights, their pleading must be analyzed under the appropriate Fourth Amendment standard, which does not require a showing of purposeful discriminatory intent, only actual knowledge or acquiescence. Analyzing plaintiffs' Second Amended Complaint under such a standard and applying "its experience and common sense," the Court found sufficient factual allegations had been pled to conclude that a plausible claim against each Individual Federal Defendant existed (*i.e.,* that their personal involvement, direction and knowledge or acquiescence permitted a search of the residence of plaintiffs without consent and in violation of the Fourth Amendment). As a result, the Court denied the Individual Federal Defendants' Motion to Dismiss the Second Amended Complaint			

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								based upon qualified immunity without prejudice.			
56.	*Bardes v. Magera*	2009 WL 3163547	D.S.C.	9/30/09	4th Cir.	42 U.S.C. § 1983; RICO; malpractice	Dismissed as to all who filed motions to dismiss	Plaintiff brought suit against numerous state officials and actors involved in a child custody and support case, alleging violations of his constitutional and civil rights, the federal RICO statute, and numerous state law claims. The district court upheld the magistrate's recommendation of dismissal on the majority of the claims on the basis of sovereign and judicial immunity. In his RICO claim, Plaintiff alleged that the prosecutor and the SC Department of Social Services operated as an "enterprise" to "racketeer" and "cause damage to Plaintiff." Plaintiff alleged that the judge, lawyer's and Social Services computers were all linked, the parties colluded against him, and the actions of the parties as a whole were to "destroy" him. The Plaintiff argued that, because he was proceeding *pro se*, the district court had to "formulate the legal claim based on what he means" in	Y	Must have a factual basis of support from which inference of a plausible claim is reasonable, even if *pro se*.	Avery Simmons

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								his complaint. The court dismissed the RICO claim under 12(b)(6), noting that, under *Iqbal*, the plaintiff had failed to state a "RICO claim that is plausible on its face." The allegations in the complaint were nothing more than bare assertions that failed to allege the necessary factual elements of a RICO claim.			
57.	*Boy Blue, Inc. v. Zomba Recording, LLC*	2009 WL 2970794	E.D. Va.	10/16/09	4th Cir.	Tortious interference	Dismissal	Plaintiff brought a complaint for tortious interference with the management contract of recording artist Chris Brown. The Court found that any facts establishing the element of "knowledge of the relationship or expectancy on the part of the interferor" could, at that stage of the proceedings, be entirely within the possession of the opposing parties. The court allowed plaintiff to plead the factual basis for that element "upon information and belief." With respect to the element of "intentional interference inducing or causing a breach or termination of the relationship or expectancy," the court found that Plaintiff simply pled that its contract with defendants was		Pleading on information and belief is still permissible	

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								terminated, and listed the rest of the required elements with Defendants' names inserted as the offending party. Pursuant to *Iqbal*, the court held that even viewed in its most favorable light, Plaintiff did not plead factual content for that element that allowed the court to draw the reasonable inference that the defendant was liable, and Plaintiff's Complaint failed to sufficiently plead the claim.			
58.	*Francis v. Giacomelli*	No. 08-1908, 2009 US App. LEXIS 26188	4th Cir.	12/2/09	4th Cir.	Constitutional claims based on alleged Fourth Amendment (unreasonable searches and seizures) and Fourteenth Amendment (due process) violations; violation of 42 USC § 1981	Claims dismissed	Former police commissioner and deputies brought action alleging that the termination of their employment by the Mayor of Baltimore violated their due process rights, amounted to an unreasonable search and seizure, and was racially motivated. Plaintiffs previously filed a related action in state court. The Fourth Circuit held that the allegations in the related state court action could be considered in connection with the motion to dismiss because they provided the "proper context" in which to consider the sufficiency of the allegations in the federal complaint. The Court	N	On motion to dismiss, court may consider allegations in a related state court action as the "context" in which to consider the sufficiency of the allegations in a complaint filed in federal court. If plaintiffs intend to ask for leave to amend in the event that the allegations of their original complaint are found to be deficient, plaintiffs should file a motion to amend/attach a proposed amendment so that the district court can determine whether the amendment would cure the deficiencies	Kerrin Kowlach

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							rejected the notion that the Federal Rules of Civil Procedure require nothing more than "notice pleading," stating that the "aggregation" of various rule provisions makes clear that "plaintiffs may proceed into the litigation process only when their complaints are justified by both law and fact." The Court found that the complaint did not state a plausible claim based on alleged unreasonable searches/seizures because the actions were undertaken outside the context of a law enforcement effort and the plaintiffs did not set forth facts showing that the actions were unreasonable in an employment context. The Court found that complaint did not state a plausible claim for discrimination or conspiracy to violate civil rights because the allegations were conclusory. The Court dismissed Plaintiffs' claim based on an alleged due process violation due to qualified immunity. Finally, the Court held that the district court did not err in refusing to allow plaintiffs to amend their complaint,			

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								because the plaintiffs did not file a separate motion seeking leave to amend or provide a copy of their proposed amendment, which was required by Local Rule.			
59.	*In re XE Services Alien Tort Litigation*	2009 WL 3415129	E.D. Va.	10/21/09	4th Cir.	Alien Tort Statute, RICO	Dismissal, some claims with leave to amend	Plaintiffs, Iraqi nationals or the estates of deceased Iraqi nationals, claimed that defendant's employees were liable for various injuries or deaths that occurred in Iraq under the Alien Tort Statute ("ATS") and RICO. In order to withstand a motion to dismiss on the ATS Claim, the plaintiffs needed to state facts that would allow a trier of fact plausibly to infer that defendant (i) intentionally (ii) killed or inflicted serious bodily harm (iii) on innocent civilians (iv) during an armed conflict and (v) in the context of and in association with that armed conflict. The court held that Plaintiffs failed to meet this burden. The court noted at the outset that the content of all the complaints contained within a section entitled "Count One--War Crimes" was not entitled to the presumption of truth normally afforded a complaint's factual	N	Claims that failed to allege certain elements or contain sufficient factual allegations after *Iqbal* will be allowed to be amended (and that may require confirming that that amendment will conform with FRCP 11), but if amendment would be futile they will be dismissed.	Maggie Sklar, Greenberg Traurig

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							allegations on a motion to dismiss because, citing *Iqbal*, those sections did not contain factual allegations, but instead offered only "threadbare recitals of a cause of action's elements, supported by mere conclusory statements." Specifically, that portion of the complaints asserted that defendant and his employees engaged in acts that were "deliberate, willful, intentional, wanton, malicious and oppressive and constitute war crimes," that the acts occurred "during a period of armed conflict," that the war crimes were committed against the decedents "and others," that defendants are liable for the war crimes, and that the misconduct caused "grave and foreseeable" injuries to the plaintiffs. The court held that this section alleged no facts, but merely recited the elements, as plaintiffs understood them, for claims under the ATS. The court then found that other facts cited in the complaints did not support that the defendant acted intentionally or knowingly			

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							when his employees injured or killed the Iraqi nationals. Where one plaintiff had alleged that an Iraqi national was killed by one of defendant's employees while the employee was intoxicated, the court found that "the lengthy chain of inferences that would be required to trace such conduct back to [defendant]'s alleged directive to his employees to kill Iraqi civilians is so tenuous that it does not even approach the plausibility standard articulated in *Iqbal* and *Twombly*," and denied plaintiffs' motion for leave to amend the complaint on grounds of futility. For other plaintiffs alleging that the employees shot or beat the Iraqi nationals, the court allowed the plaintiffs leave to amend their complaints to allege sufficient factual allegations. With respect to plaintiffs' RICO claims, the court dismissed both the plaintiffs' claims based on Section 1962(b) and (c) as failing to allege necessary elements. The court did not grant leave to amend the plaintiffs' claims based on 1962(b), because plaintiffs'			

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								claims were based on an inconsistent theory of liability, but allowed leave to amend plaintiffs' claims based on 1962(c), because plaintiffs stated that, consistent with FRCP 11, they had a good faith basis to allege the 1962(c) elements they had failed to plead.			
60.	*King v. United Way of Central Carolinas, Inc.*	2009 WL 2432706	W.D.N.C.	8/6/09	4th Cir.	Breach of contract; ERISA; ADEA; Title VII; 42 U.S.C. § 1981	Dismissal of discrimination claims, but with leave to amend ERISA claim on other grounds	Plaintiff, an African American woman, brought suit against employer United Way after the Board of Directors voted to remove her, replacing her with a white male. She alleged claims of breach of contract, race and age discrimination, and violations of ERISA. The district court granted the Defendants' motion to dismiss, noting that the complaint failed to state any "well-pleaded factual allegations" supporting Plaintiff's underlying claims. The court reasoned that the Plaintiff had pointed to no facts to support her allegations of racial or discriminatory conduct, other than community blogs, editorials, and internet postings, none of which had been authored or endorsed	N	Must point to actual racial and discriminatory conduct on the part of the defendants in order to survive a motion to dismiss—mere allegations of community discomfort are not sufficient.	Avery Simmons

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								by the defendants. The court stated that there was no "factual content which would 'nudge' her claims of purposeful discrimination and retaliation 'across the line from conceivable to plausible.'' Further, even taking the factual allegations as true, and inquiring as to a alternative explanation of behavior, as dictated by the two-part analysis outlined in *Iqbal*, the court found that it was more likely that the Plaintiff had been terminated because she could no longer effectively lead the United Way.			
61.	*Knowledge Boost v. SLC California*	No. 09-0936	D. Md.	10/16/09	4th Cir.	Tort and statutory claims based on alleged misrepresentations in asset purchase transaction	Claim dismissed	Plaintiffs' complaint alleged claims in tort (conspiracy, tortious interference, misrepresentation) and statutory violations based on the corporate defendants' alleged vicarious liability for actions of various individuals (who were not named as defendants). Plaintiffs' complaint was defective because it failed to allege that facts that would show that the alleged tortfeasors were actually agents of the defendants.	N	Claims asserting vicarious liability must allege facts that would show that the tortfeasors were agents of the defendants	Kerrin Kowlach
62.	*Valencia v.*	No. 09-	D. Md.	10/5/09	4th Cir.	Violation of	Claim dismissed	Employee filed suit alleging	Y	Dismissal without prejudice to allow plaintiff to file	Kerrin

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	Ultimate Staffing	1155, 2009 US Dist. LEXIS 93026				42 USC §2000e	without prejudice to replead	termination based on pregnancy. Plaintiff's complaint failed to include any direct evidence of discrimination or other allegations that would create a presumption of discrimination. The court noted that plaintiff had not alleged how her employer knew of her pregnancy, how she was terminated, the reasons given for her termination, or whether her position was filled with a non-pregnant person or left open. Without such allegations, the complaint did not state a plausible claim for relief.		an amended complaint that alleges facts necessary to meet requirements of Title VII and the *Iqbal* pleading standards	Kowlach
63.	*Mayor & City Council of Baltimore v. Wells Fargo Bank, N.A.*	2010 WL 46401	D. Md.	1/6/10	4th Cir.	42 U.S.C. §3601 (fair housing act)	Dismissal with leave to replead	City of Baltimore brought "reverse redlining" suit against mortgage lender, alleging that defendant's practices led to foreclosures, causing vacant home and other harm to the City (increase in crime, lower property tax revenues, etc.) Court dismissed complaint based on constitutional standing, holding that plaintiff's allegations of a causal connection between Wells Fargo's alleged misconduct and the City's	N	*Iqbal* applies to allegations concerning standing, and *Iqbal* may also color how a judge evaluates the helpfulness of proposed expert testimony under FRE 702.	John Lovejoy, Shapiro Sher Guinot & Sandler

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								claimed damages were "not plausible," as City's own briefing showed the allegedly improper loans were "responsible for only a negligible portion of the City's vacant housing stock." Court further held that proposed expert testimony that "incremental damages" caused by a lender could be calculated and attributed to the lender was not sufficient to withstand a motion to dismiss, as it did not bear a "coherent relationship" to the underlying facts.			
64.	*In re Peel*	2010 WL 670026	Bankr. E.D.N.C.	2/19/10	4th Cir.	11 U.S.C. §523	Dismissal with leave to replead	Plaintiff brought adversary proceeding against bankruptcy estate, seeking to except certain obligations from discharge. Plaintiff alleged that he sold wine to the debtor's company, and debtor paid by issuing several checks that were wither stopped or returned for insufficient funds. Plaintiff contended that debtor's use of the checks amounted to a "willful and malicious injury by the debtor to another entity or to the property of another entity." The Court granted	N		John Lovejoy, Shapiro Sher Guinot & Sandler

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								debtor's motion for judgment on the pleadings, holding that plaintiff failed to meet the *Iqbal* pleading standard, as his allegation was "in essence a recitation of the elements of the claim."			
65.	*Stuart v. LaSalle Bank, N.A.*	2010 WL 582162	E.D. Va.	2/11/10	4th Cir.	Truth in Lending Act ("TILA")	Dismissal	Plaintiff entered into consumer mortgage refinance loan with defendant bank. When bank foreclosed, plaintiff purported to rescind the transaction. Plaintiff sought declaratory judgment that he had properly rescinded the loan, based on allegation that the Bank, via the closing agent involved in the mortgage transaction, violated TILA by charging him an undisclosed finance charge as part of a $250 notary fee. The fee was paid to a third-party company, and under TILA's "Special Rule," a fee charged by a third party settlement agent is only a finance charge if the lender "(i) Requires the particular services for which the consumer is charged; (ii) Requires the imposition of the charge; or (iii) Retains a portion of the third-party charge, to the extent of the	N		John Lovejoy, Shapiro Sher Guinot & Sandler

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								portion retained." Applying this Rule, the Court held that plaintiff failed to show that fee was a "finance charge" because he merely stated the legal conclusion that the lender "required [plaintiff] to pay a notary fee of $250.00" and his allegations lacked factual support and were "simply sterile legal conclusions that 'are not entitled to the assumption of truth.'" Opinion does not specify whether dismissal is with prejudice or not.			
66.	*Brewster v. Dretke*	__ F.3d __, 2009 WL 3738532	5th Cir.	11/10/09	5th Cir.	Eighth Amendment claim for indifference to prisoner's medical needs (confiscation of inmate's spare glass eye).	Dismissal of IFP complaint as frivolous	QUOTE (citations omitted): Brewster alleges that officials confiscated his spare eye, but this allegation, without more, does not indicate that prison officials were aware that their actions exposed Brewster to a substantial health risk, or that the officials consciously disregarded that risk. Importantly, Brewster does not allege any facts indicating that prison officials had reason to know that Brewster's spare glass eye was medically necessary, even assuming	Y	Application of *Iqbal* to prisoner's denial-of-medical-treatment claim under the 8A (the same kind of claim at issue in *Erickson*, 551 U.S. 89 (2007)).	Adam Steinman

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								that it was. Brewster, for example, does not allege that he complained to prison officials about adverse medical effects resulting from the confiscation and that these complaints were ignored. Rather, Brewster admits that he currently has the use of a glass eye and that the confiscated eye was "extra." . . . Since the facts alleged in Brewster's complaint and more definite statement "do not permit the court to infer more than the mere possibility of misconduct," he has failed to state an Eighth Amendment claim.			
67.	*Floyd v. City of Kenner*	2009 U.S. Ap. LEXIS 23913 (unpub.)	5th Cir.	10/29/09	5th Cir.	Civil rights action	Dismissal under 12(b)(6) affirmed in part, reversed in part	A former employee filed suit against the City and members of the police department related to his arrest for misappropriating relief supplies following Hurricane Katrina. *Id.* at *2. The claims against the police officer who discovered the relief supplies at the employee's home were "presented with sufficient clarity" to survive dismissal. *Id.* at *11-12. The claims against the detective who filed an affidavit to support the	N	Qualified immunity analysis discussed in conjunction with analysis of pleadings, multiple defendants involved, cites *Morgan v. Hubert*	Elizabeth Patterson, Abrams, Scott & Bickley, LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								warrants included sufficient factual specificity to survive dismissal. *Id.* at *16. The claims against the Police Chief and the Chief of Investigations lacked the specificity required to meet the plausibility standard. *Id.* at *24, 26. Thus, the Fifth Circuit reversed the dismissal against the two officers and affirmed the dismissal of the claims against the two chiefs and against the City. *Id.* at *26.			
68.	*Gonzalez v. Kay*	577 F.3d 600	5th Cir.	8/3/09	5th Cir.	Fair Debt Collection Practice Act claim	Dismissal under 12(b)(6) reversed	In a lawsuit related to the collection of a consumer debt, the debtor filed suit against a law firm and alleged that the debt collection letter sent on the firm's letterhead violated the Fair Debt Collection Practices Act. *Id.* at 601. The district court dismissed under Rule 12(b)(6) based on the disclaimer in the letter without analyzing the context or placement of the disclaimer. *Id.* at 603, 607. The Fifth Circuit reversed based on the facial plausibility of the debtor's claim and remanded. *Id.* at 603, 607.	N		Elizabeth Patterson, Abrams, Scott & Bickley, LLP
69.	*Jebaco Inc. v.*	2009 U.S.	5th Cir.	10/30/09	5th Cir.	Sherman Act	Dismissal under	In a lawsuit alleging	N		Elizabeth

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
	Harrah's Operating Co., Inc.	App. LEXIS 23973				antitrust claims, related state law claims	12(c) affirmed	Harrah's and Pinnacle were monopolizing the casino market in Louisiana, the Fifth Circuit affirmed dismissal on an alternate ground that "Jebaco has failed to allege sufficient facts that, if true, would establish a plausible claim of antitrust standing." *Id.* at *10. Neither Jebaco's landlord/supplier claim nor its potential-competitor claim arose from the type of injury antitrust law was designed to prevent. *Id.* at *17, 21.			Patterson, Abrams, Scott & Bickley, LLP
70.	*Lehman Bros. Holdings, Inc. v. Cornerstone Mortgage Co.*	2009 U.S. Dist. LEXIS 77523	S.D. Tex.	8/31/09	5th Cir.	Breach of contract, breach of express warranties	Dismissal of counter-claim with leave to amend	Plaintiff filed motion to dismiss Defendant's counterclaims for breach of contract and attorney's fees. Court applied a two-step analysis to determine which statements were factual allegations and which were legal conclusions and then determined whether the factual allegations, assumed to be true, alleged a plausible claim. The breach of contract counterclaim failed to even meet the pre-*Twombly* pleading standard. The counterclaim for attorney's fees was based on a Texas statute that did not apply to the facts as plead.	N	Pleading requirement applies to counterclaims and affirmative defenses (FN 11)	Elizabeth Patterson, Abrams, Scott & Bickley, LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								The court granted Plaintiff's motion to dismiss the counterclaims and granted the Defendant leave to amend before a set date.			
71.	*Lonoaea v. Corrections Corp. of Am.*	___ F. Supp. 2d ___, 2009 WL 3349421	N.D. Miss.	10/15/09	5th Cir.	Claim under § 1983 and Mississippi law against individual executives of company operating prison for injuries suffered as a result of attack by fellow inmates	Dismissed with prejudice	QUOTE (citations omitted): [M]erely noting that a particular defendant has relevant responsibilities is a far cry from alleging specific facts in support of an assertion that the defendant personally took actions which violated the U.S. Constitution and/or basic negligence standards. The Supreme Court has recently tightened the pleading standards in federal lawsuits, and it is apparent that the complaint fails to plead facts which would establish a "plausible" case for liability against the individual defendants under *Iqbal-Twombley* [sic].	N	Oddly, this case involved a motion for summary judgment, but the claims against the individual executives were examined under *Iqbal*	Adam Steinman
72.	*McCall v. Southwest Airlines Co.*	___ F. Supp. 2d ___, 2009 WL 3163544	N.D. Tex.	10/1/09	5th Cir.	Union's breach of duty of fair representation (other claims too, but they don't involve *Iqbal*)	Motion to dismiss denied	The court provides a detailed list of the plaintiff's allegations and concludes that "the factual landscape described in McCall's Complaint raises a plausible inference that [the union's refusal to press her grievance] was arbitrary or irrational." Additional	N	Application of *Iqbal* to allegation that union's conduct was arbitrary and/or discriminatory.	Adam Steinman

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								allegations in the complaint "raise a plausible inference that SWAPA's actions during the grievance process were discriminatory."			
73.	*Morgan v. Hubert*	2009 U.S. App. LEXIS 14355 (unpub.)	5th Cir.	7/1/09	5th Cir.	Eighth Amendment, 42 U.S.C. § 1983	Denial of dismissal under 12(b)6 vacated & remanded	Initial citation in the Fifth Circuit of *Iqbal* in response to dispute between the parties about whether to apply *Twombly* or *Conley v. Gibson*. "The Supreme Court recently settled the dispute by applying the *Twombly* standard – that a complaint must state a claim that is 'plausible on its face' – to all civil cases." *Id.* at *8.	N	Prisoner represented in part by ACLU, claims based on post-Katrina transfer of Louisiana inmates	Elizabeth Patterson, Abrams, Scott & Bickley, LLP
74.	*Oceanic Exploration Co. v. Philips Petroleum Co.*	2009 U.S. App. LEXIS 24751 (unpub.)	5th Cir.	11/6/09	5th Cir.	RICO, other claims related to bribery	Dismissal under 12(c) affirmed	Citing *Twombly* and *Iqbal*, the Fifth Circuit stated, "In order for a claim to be plausible at the pleading stage, the complaint need not strike the reviewing court as probably meritorious, but it must raise 'more than a sheer possibility' that the defendant has violated the law as alleged." *Id.* at *13. The Fifth Circuit held that the pleading party failed to properly plead proximate causation for the RICO claim because the alleged bribery "could only have	N	Complicated facts with sophisticated parties on both sides	Elizabeth Patterson, Abrams, Scott & Bickley, LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								caused the alleged harm to Oceanic by means of a highly improbable series of hypothetical events and decisions by affected countries and entities." *Id.* at *13, 16. The court held that the allegations failed the test of common sense plausibility because there was no reason to believe Australia would have allowed the events as described to occur. *Id.* at *16-17.			
75.	*Watts v. City of Jackson*	___ F. Supp. 2d ___, 2009 WL 3336124	S.D. Miss.	10/14/09	5th Cir.	Section 1983 claim for violation of First Amendment rights	Motion to dismiss (mostly) denied	The court begins with the standard language from *Iqbal* and *Twombly*, but then states that "The Court does not weigh facts under Rule 12(b)(6), even if supported in the record. Instead, the Court must separate the conclusory statements contained in Plaintiff's Complaint, give the presumption of truth to the remaining averments, and determine whether, when viewed in a light most favorable to Plaintiff, the allegations show he is entitled to relief." On the issue of whether the plaintiff adequately alleged an adverse employment action, the court writes: "Plaintiff	N	Application of *Iqbal* to allegation that an employment action was "adverse"	Adam Steinman

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								expressly avers that the transfer would be considered punishment; that he moved from a day to graveyard shift; and that the new shift was more hazardous. Such allegations are more than sufficient to plead an adverse employment action under § 1983."			
76.	*Whiddon v. Chase Home Finance, LLC*	___ F. Supp. 2d ___, 2009 WL 3297294	E.D. Tex.	10/14/09	5th Cir.	Breach of contract	Order to file an amended complaint	The following allegations were found insufficient to state a claim for breach of contract: "Plaintiff relied upon Defendant, Chase to place coverage based upon representations that it would be done, and the payments be escrowed"; "in reliance upon the representations made by Chase, [Whiddon] believed that his home was covered"; "the actions and/or omissions of Defendants described herein above constitute a breach of contract."	N		Adam Steinman
77.	*Borneo Energy Sendirian Berhad v. Sustainable Power Corp.*	646 F. Supp. 2d 860	S.D. Tex.	8/12/09	5th Cir.	Securities-law claims, fraud claims, and state-law claims for negligent misrepresentation, breach of contract, and constructive trust	MTD denied for state-law claims	Very detailed summary of SCT's reasoning in *Iqbal* and *Twombly*. The state-law claims were the only ones governed by Rule 8(a)(2)/*Iqbal/ Twombly* rather than Rule 9(b)/PSLRA, and all were found to be sufficiently pled.	N		Adam Steinman

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								The court summarized the elements for each state-law claim and concluded that the plaintiff had "pleaded nonconclusory allegations that state a plausible claim for the relief it seeks."			
78.	*Mauro v. Freeland*	___ F. Supp. 2d ___, 2009 WL 3806091	S.D. Tex.	9/21/09	5th Cir.	Prisoner's constitutional claims arising from official's refusal to provide him with chain-of-custody records and drug test results.	MTD granted	Claims are barred by sovereign immunity, prosecutorial immunity, and *Heck v. Humphrey*. Claims were also inadequately pled. On claim for denial of access to courts, the court wrote that the plaintiff Mauro "fails to clearly specify, in either his complaint or his response briefs, what sort of claims he is unable or was unable to litigate. He asserts only generally that his inability to obtain the sought after records has prevented him from initiating an action and vindicating his rights." On claim for officials' failure to train and supervise, the court wrote: "Mauro has failed to allege a pattern of violations that would indicate deliberate indifference on Johnson's part, and Mauro has not specifically alleged how any particular training program for which Johnson	Y	The court's treatment of the plaintiff's failure-to-train claim seems to be in tension with the Supreme Court's 1993 *Leatherman* decision, which rejected the idea that a complaint must allege multiple instances of misconduct to make out a claim based on a failure to adequately train officers.	Adam Steinman

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								is responsible is defective."			
79.	*Lone Star Fund V (US), LP v. Barclays Bank PLC*	594 F.3d 383	5th Cir.	1/11/10	5th Cir.	Material misrepresentations, fraud	Affirmed 12(b)(6) dismissal	Lone Star sued Barclays in state court for material misrepresentations and fraud related to mortgage-backed securities sold by Barclays. Barclays removed the case to federal court and moved to dismiss pursuant to 12(b)(6). The district court dismissed the case for failure to state a claim, and the Fifth Circuit affirmed. Citing *Iqbal* the Fifth Circuit held that the "court's task is to determine whether the plaintiff stated a legally cognizable claim that is plausible, not to evaluate the plaintiff's likelihood of success. In fn 3, the Fifth Circuit held that the Rule 9(b) pleading requirements did not apply in such a case where the fraud and misrepresentations claims are based on the same set of alleged facts. The Fifth Circuit examined what representations Barclays had made to Lone Star concerning the presence of delinquent loans in the mortgage pools involved in the sales. The court held that Barclays made no actionable	N		Elizabeth Patterson Abrams Scott & Bickley, L.L.P.

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								misrepresentations and that Lone Star did "not set forth sufficient facts to state a claim for relief that is plausible on its face."			
80.	*Sullivan v. Leor Energy LLC*	2010 U.S. App. LEXIS 5383	5th Cir.	3/15/10	5th Cir.	Contract dispute, state law claims under Texas law including breach of contract, quantum meruit, unjust enrichment, fraud, equitable and promissory estoppel, and detrimental reliance	Affirmed dismissal for failure to state a claim	Sullivan sued his former employer and attempted to rely on an unsigned employment agreement as the basis of his contract claims. The Fifth Circuit cited *Iqbal*, "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." The court held that enforcement of the unsigned agreement was barred by the statute of frauds and that the partial performance exception did not apply. Sullivan's failure to sign any contract and his receipt of a salary were fatal to his estoppel, unjust enrichment, and quantum meirut claims. In addition, the Fifth Circuit held that he failed to comply with Rule 9(b) heightened pleading requirements in relation to his fraud claims. The Fifth Circuit affirmed the district court's dismissal of	N		Elizabeth Patterson Abrams Scott & Bickley, L.L.P.

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								Sullivan's claims.			
81.	*Bustos v. Martini Club Inc.*	2010 U.S. App. LEXIS 4739	5th Cir.	3/5/10	5th Cir.	Section 1983 claims and state tort claims against the City, City Manager, Police Chief, off-duty police officers, a bar, and the bar's owners	Affirmed dismissal of claims against the City and officers and summary judgment for bar and owners	Bustos, a *pro se* plaintiff, filed suit against the City, City Manager, Police Chief, several off-duty police officers, a bar, and the bar's owners based on an alleged assault by the off-duty police officers while at the bar. He alleged substantive due process violations under section 1983 and also brought state law claims including assault, battery, false imprisonment, intentional infliction of emotional distress, invasion of privacy, negligent hiring, negligence, and retaliation. Although the Fifth Circuit acknowledged that the pleading standards are less stringent for a pro se plaintiff, the court also held that the plaintiff must plead enough facts to state a claim to relief that is plausible on its fact. Noting the Texas Supreme Court's holding that the Texas Tort Claims Act bars intentional tort claims against a governmental employee when the plaintiff sues both the employee and the employer, the Fifth Circuit held that Bustos' claims	Y	Liberally construed the pleadings of *pro se* plaintiff	Elizabeth Patterson Abrams Scott & Bickley, L.L.P.

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								against the officers should be dismissed. Bustos failed to state a claim, even when his complaint was construed liberally, against the officers under section 1983 because he did not sufficiently allege that they acted under color of state law. The Fifth Circuit affirmed the dismissal of the claims against the officers and the City and affirmed the granting of summary judgment for the bar and the bar owners.			
82.	*Hole v. Texas A&M Univ.*	2010 U.S. App. LEXIS 835 (unpub.)	5th Cir.	1/13/10	5th Cir.	Seeking injunctive relief under section 1983, compensatory damages under section 1988 including attorney's fees and expenses, and declaratory relief related to an underlying state court suit involving university discipline	Affirming judgment on the pleadings under 12(c)	Plaintiffs were members of a student organization disciplined for hazing. Plaintiffs sued in state court and alleged constitutional violations. While the state court suit was ongoing, Plaintiffs filed this suit in federal court. The state appeals court held that the suit was not yet ripe and reversed the trial court's judgment for the plaintiffs. The district court granted the University's motion for judgment on the pleadings under 12(c). In addition, on appeal, the Fifth Circuit addressed the amended complaint and cited *Iqbal*. "Although the Amended	N		Elizabeth Patterson Abrams Scott & Bickley, L.L.P.

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								Complaint hints at other damages – injuries to Appellants' reputations, liberty interests, and educations – these hints do not reach the level of specificity required in a complaint." The Fifth Circuit affirmed the district court's ruling.			
83.	*Rhodes v. Prince*	2010 U.S. LEXIS 700 (unpub.)	5th Cir.	1/12/10	5th Cir.	False arrest claim in violation of the *Fourth Amendment*	Affirming dismissal for failing to allege an arrest and based on qualified immunity	A crime scene investigator alleged that he was subject to false arrest in violation of the *Fourth Amendment*. He relied on events that occurred when he voluntarily appeared at the police station for questioning. Citing *Iqbal*, the Fifth Circuit held that "Rhode's allegation of 'arrest' is nothing more than a formulaic recitation of the elements of a constitutional claim and is not entitled to be assumed true." (internal quotations omitted) The Fifth Circuit affirmed the dismissal.	N		Elizabeth Patterson Abrams Scott & Bickley, L.L.P.
84.	*Courie v. Alcoa Wheel & Forged Prods.*	577 F.3d 625	6th Cir. Court of Appeals	8/18/09	6th Cir.	Claim under § 301 of the Labor Management Relations Act; state law discrimination claim; defamation claim; claim for	3-0 decision affirming dismissal.	Plaintiff sued his employer and union, alleging that they discriminated against him by settling his union grievance under an agreement that branded him a racist. During an investigation of a	N	Application of *Iqbal* standard to allegations of an agreement between two parties.	Ben Sassé, Tucker Ellis & West LLP

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
					intentional infliction of emotional distress		prior incident involving an inappropriate note left at one of the employer's cafeteria tables, Plaintiff said he sat with "Jew Boy." Plaintiff responded to a warning from his employer for that statement by filing a grievance with his union claiming that the term was not racist. A grievance hearing was held; the employer maintained that its warning was proper and the union did not push for arbitration. Sometime after the hearing, plaintiff discovered that his employer and union had considered settling the dispute. With a document labeled "settlement proposal" in hand, plaintiff sued his employer and union, claiming (among other things) that they discriminated against him by entering into the settlement. One of the issues on appeal from the dismissal of Plaintiff's lawsuit was whether he had adequately alleged a settlement by attaching a "settlement proposal." The court of appeals concluded that he had: "Courie has alleged that this settlement			

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								agreement exists and has provided an unsigned settlement proposal as an exhibit to his complaint in support. For purposes of his motion to dismiss, this is 'sufficient' detail for us to assume that the agreement existed." The court of appeals affirmed the dismissal of plaintiff's complaint on other grounds.			
85.	*Hensley Mfg. v. Propride, Inc.*	579 F.3d 603; 92 U.S.P.Q. 1003	6th Cir.	6/19/09	6th Cir.	Trademark Infringement	Dismissal for Failure to State a Claim	Hensley Mfg. alleged that it purchased the Jim Hensley trailer hitch business, including the HENSLEY mark. Hensley then went to work for ProPride, a competitor. To promote his new trailer hitch, ProPride created print and web pieces on the "Jim Hensley Hitch Story." All the ads disclaimed any affiliation between Jim Hensley and Hensley Mfg. Hensley Mfg. attached copies of the print and web ads as exhibits to its Complaint. The district court dismissed, saying the attachments supported ProPride's fair use defense. The 6th Cir. affirmed, and held that the allegations of the Complaint (including the		*Iqbal* generally deals with insufficient pleadings. One IP law blogger states that *Hensley* deals with the question of pleading too much. He ponders whether the complaint would have been dismissed if the plaintiff had not attached the ads that established the fair use defense. His informative post is at: http://secondarymeaning.blogspot.com/2009/09/6th-circuit-decision-affirming.html	Barry Miller, Fowler Measle & Bell PLLC

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								attachments) affirmatively established the fair use defense.			
86.	*Hensley Mfg. v. ProPride, Inc.*	579 F.3d 603	6th Cir. Court of Appeals	9/3/09	6th Cir.	Trademark infringement claim under Lanham Act	3-0 decision affirming dismissal.	Plaintiff, a manufacturer of trailer hitches, sued competitor and its founders for trademark infringement. Plaintiff alleged that defendants had "misappropriated the Plaintiff's registered trademark by offering for sale products and services utilizing the 'HENSLEY' trademark," and that there was a "strong likelihood of confusion in the marketplace as to the source of origin and sponsorship of the goods." Defendant filed a motion to dismiss, asserting that plaintiff failed to adequately allege likelihood of confusion. The district court granted the motion to dismiss and the court of appeals affirmed. The court of appeals emphasized that the likelihood of confusion analysis "involves a preliminary question: whether the defendants 'are using the challenged mark in a way that identifies the source of their goods.'" The court of appeals explained that the Plaintiff's	N	Application of *Iqbal* standard to intellectual property claim.	Ben Sassé, Tucker Ellis & West LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								conclusory allegation of a "strong likelihood of confusion" was insufficient, because the exhibits attached to the complaint demonstrated that the name "HENSLEY" was not being used by defendants to "signify the source of [Defendants'] products."			
87.	*Hiles v. Inoveris, LLC*	No. 2:09-cv-53, 2009 WL 3671007	S.D. Ohio	11/4/09	6th Cir.	Worker Adjustment and Retraining Notification claim	Motion to dismiss denied.	Plaintiffs sued multiple defendants under the WARN Act following the termination of their employment, alleging that all of the defendants constituted a single employer under the WARN ACT, and that this employer violated the act by failing to the required advance notice of termination. Defendants moved to dismiss, asserting that Plaintiffs failed to allege sufficient facts to state a plausible claim that the defendants were a single employer. The district court denied the motion, holding that the following allegations made "on information and belief" were sufficient to state a claim under the act: a) defendants shared common officers and directors; b) Defendant Inoveris was a wholly	N	The district court rejected defendants' argument that plaintiffs were required to plead "specific facts" pertaining to each of the factors relevant to a single employer analysis, explaining that "detailed factual allegations are not required, particularly where, as here, the defendants are in control of such information or it is otherwise unavailable to the plaintiffs."	Ben Sassé, Tucker Ellis & West LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								owned subsidiary of ComVest; c) Defendant Inoveris and ComVest directly owned and operated the facility where plaintiffs worked; and d) defendants jointly made the labor decision to terminate plaintiffs' employment.			
88.	*In re Travel Agent Commission Antitrust Litigation*	583 F.3d 896	6th Cir. Court of Appeals	10/2/09	6th Cir.	Antitrust claim under Section 1 of the Sherman Act	2-1 decision affirming dismissal.	Plaintiff travel agencies sued various airlines under Section 1 of the Sherman Act, alleging that the airlines conspired to reduce and eventually eliminate the payment of base commissions to drive the travel agencies out of business. The Sixth Circuit affirmed dismissal of the complaint, reasoning that the complaint failed to allege facts plausibly *suggesting* a prior illegal agreement — as opposed to merely being *consistent with* such an agreement — because: 1) the allegation in the amended complaint of an "agreement between and among Defendants to reduce, cap and eliminate commissions paid to plaintiffs" is "a legal conclusion 'masquerading' as a factual allegation" that is insufficient under	N	Judge Merritt's dissent draws a distinction between allegations of misfeasance and the alleged nonfeasance at issue in *Twombly* — asserting that the allegations of action in the form of follow-the-leader price cuts, especially when coupled with allegations tying those rate-cuts to meetings attended by the defendants, is sufficient to state a plausible claim under Section 1 of the Sherman Act.	Ben Sassé, Tucker Ellis & West LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								Twombly and *Iqbal*; 2) allegations of a mere "opportunity to conspire" do "not necessarily support an inference of illegal agreement" under *Twombly* and *Iqbal*; 3) each defendant "had a reasonable, independent economic interest in adopting a competitor's commission cut rather than to maintain the status quo"; and 4) a 1983 statement by a former airline executive approving of commission cuts was too remote in time to support a plausible inference of an agreement.			
89.	*Fritz v. Charter Township of Comstock*	592 F.3d 718	6th Cir.	1/28/2010	6th Cir.	42 U.S.C. § 1983	2-1 decision reversing dismissal.	Plaintiff, a former independent agent for the Farm Bureau Insurance Agency, filed a Section 1983 action against the Charter Township of Comstock ("Comstock") and its Supervisor for retaliating against her in violation of her rights under the First Amendment The district court granted what it treated as a motion for judgment on the pleadings, holding that plaintiff failed to adequately allege a violation of her First Amendment rights, and the	N		Ben Sassé, Tucker Ellis & West LLP

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							court of appeals reversed. There was no dispute that Defendants were acting under color of state law. The court of appeals held that allegations in the complaint concerning three phone conversations between the Comstock Supervisor and Plaintiff's employer were sufficient to allege an adverse action taken in retaliation for Plaintiff's protected conduct. Specifically, Plaintiff's complaint alleged that the Supervisor told her employer that if Plaintiff would "tone down her speech and remove her sign, her problems might go away"; that Plaintiff's public comments and her petitioning would create adverse consequences for her and Farm Bureau "from a public relations perspective"; and that Farm Bureau's presence in Comstock was in jeopardy because of Plaintiff's conduct inasmuch as the community was "allegedly in an uproar about it." The court of appeals explained that, "[w]hile Plaintiff may not have pled specific facts to support her claim that [the			

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								Supervisor] specifically threatened her business, nor that he attempted to persuade the Farm Bureau to terminate its contract with Plaintiff, there is certainly a 'set of facts' which, if accepted by the trier of fact, would 'entitle [Plaintiff] to relief.'" According to the majority, "under the *Iqbal* pleading standard . . . Plaintiff has plausibly alleged in her pleadings adverse actions on the part of the Defendants that would deter a person of ordinary firmness from exercising their First Amendment rights — a threat to her economic livelihood directly traceable to Defendants' conduct based on her factual allegations regarding the conversations and the denial of variances."			
90.	*Brenston v. Wal-Mart*	Case No. 2:09 cv 026 PS, 2009 U.S. Dist. LEXIS 47971	N.D. of Ind.	6/8/09	7th Cir.	Discrimination under Title VII and ADA	Dismissal without prejudice	Pro se plaintiff sued his employer after he was fired. The complaint stated only that he was forced by his supervisor to do work in a short time frame that was physically impossible and that there was an accident the supervisor was partly responsible for. In response	Y	In discrimination cases, plaintiffs must state that the defendant(s) discriminated against them and how to maintain an action.	Angela S. Fetcher, Stoll Keenon Ogden PLLC

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								to the motion to dismiss, plaintiff submitted documents confirming that he is disabled. However, the Court, citing to *Iqbal* and *Bell Atlantic*, stated that the plaintiff stated no allegations in the complaint that raise his Title VII claim against Wal-Mart above the speculative level because there is no allegation that he was discriminated against in the complaint other than checking the Title VII box on the complaint. He was allowed to amend to include allegations that Wal-Mart discriminated against him because of race, color, religion, sex or national origin. The court also dismissed the ADA claim without prejudice because there is no allegation that Wal-Mart discriminated against the plaintiff based on his disability. For instance, he did not allege that he was given physically impossible tasks because of his disability.			
91.	*City of Waukegan v. National*	2009 U.S. Dist. LEXIS	N.D. Ill.	9/2/09	7th Cir.	CERCLA § 107	Dismissed without prejudice	Court held that *Iqbal* required the plaintiff, who was seeking reimbursement	N	Application of *Iqbal* to CERCLA cases and the fact that the complexity of the case may determine the leniency of the pleading standards	Angela S. Fetcher, Stoll

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
	Gypsum Co.	93333 (Case No. 07 C 5008)						for costs incurred to clean up environmental contamination at a facility, to state whether the costs were incurred pursuant to one of the consent decrees or voluntarily. The need for more clarity is due, it stated, to the fact that the case would "entail extensive and complex discovery on a wide range of issues" involving dozens of parties, third parties and experts, and "it is not unreasonable to require Waukegan to identify in its complaint the nature of the response costs it alleges it has incurred to date."			Keenon Ogden PLLC
92.	*Cooney v. Rossiter*	583 F.3d 967	7th Cir.	9/30/09	7th Cir.	Civil rights, 42 U.S.C. § 1983	Dismissal	*Pro se* plaintiff who lost custody of her children sued the state court judge, the children's court-appointed lawyer, the court-appointed psychiatrist, her husband's lawyer and the children's therapist for conspiring to deprive her of her civil rights. The Seventh Circuit affirmed the district court finding that the judge, the children's attorney and the court-appointed psychiatrist were entitled to immunity and therefore dismissed. The court also dismissed the	Y	Pleading requirement is relative to circumstances—focus is on burden of case to defendant	Ian Fisher, Schopf & Weiss

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								remaining defendants (the husband's attorney and the children's therapist) due to the plaintiff's failure to adequately plead a conspiracy against them. The specific factual pleadings of the complaint did not show how the remaining defendants' alleged conduct tied into the alleged conspiracy. The Court, through Judge Posner, discussed *Iqbal*'s call for a "context specific" plausibility test and concluded that *Iqbal* requires a sliding scale for pleading: "In other words, the height of the pleading requirements is relative to the circumstances." Because the plaintiff alleged "a vast encompassing conspiracy . . . the plaintiff must meet a high standard of plausibility" to before she could "entangle[]"the defendants in discovery.			
93.	*In re Mission Bay Ski & Bike, Inc.*	2009 Bankr. LEXIS 2495 (Case Nos. 07 B 20870 & 08 A 55)	N.D. Ill. Bankr.	9/9/09	7th Cir.	Affirmative Defenses in an answer of estoppel, laches, etc.	Dismissed affirmative defenses	The bankruptcy trustee sued First American Bank for fraudulent transfer and other claims. The bank asserted several affirmative defenses in summary fashion, i.e., "the trustee's claims are precluded, in whole or in	N	*Iqbal* applies to affirmative defenses	Angela S. Fetcher, Stoll Keenon Ogden PLLC

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								part, by the doctrine of estoppel." The court held that *Iqbal* and its standards apply to affirmative defenses because affirmative defenses must comply with Rule 8 of the Federal Rules of Civil Procedure. Because there were no facts pled that would demonstrate plausibility, the affirmative defenses were dismissed.			
94.	*In re White*	409 B.R. 491	N.D. Ind. Bankr.	7/24/09	7th Cir.	Motion for relief from bankruptcy stay – 11 U.S.C. 362(d)	Denied stay motion	A creditor moved for stay relief, which Bankruptcy Rule 9013 requires to be stated "with particularity," similar to the standard for stating fraud under Rule 9 of the Federal Rules of Civil Procedure. The court cited *Iqbal*'s standard that conclusory allegations are not sufficient and stated that although *Iqbal* applied the standards of Rule 8, not Rule 9, "if such allegations will not satisfy the requirements of Rule 8 they will not satisfy the more rigorous requirements of Rule 9(b)." The court held that, consistent with *Iqbal*, a creditor moving for stay relief needed to plead facts that describe what it is complaining about, such as why there is a lack of	Unknownbut likely No	Application of *Iqbal* to bankruptcy proceedings	Angela S. Fetcher, Stoll Keenon Ogden PLLC

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								adequate protection, and not simply state that there is cause, it needs adequate protection and that there is no equity. Because the creditor did not even state the reasons it sought stay relief, the court dismissed the motion for lack of particularity under Bankruptcy Rule 9013.			
95.	*McCormick v. Hard Rock Café*	2009 U.S. Dist. LEXIS 111691 (Case No. 1:09-cv-847-SEB-DML)	S.D. Ind.	12/1/09	7th Cir.	Employment Discrimination	Motion to dismiss denied	The court, while admitting that the plaintiff's discrimination complaint is facially implausible, refuses to dismiss the complaint under *Iqbal*, stating that the explicit reference in the complaint to the EEOC complaint with which the defendant was involved "supplies the salient information which the defendant contends is lacking in the complaint itself." The court states that it is allowed to do this due to *Iqbal*'s admonition that whether a complaint states a claim for relief is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."	Y	Reference in the complaint to another document containing the plausible allegations may be sufficient to comply with *Iqbal* under some circumstances under	Angela S. Fetcher, Stoll Keenon Ogden PLLC
96.	*Ori v. Fifth Third Bank*	2009 U.S. Dist.	E.D. Wisconsin	12/14/09	7th Cir.	Fair Credit Reporting Act	Motion to dismiss denied	Defendant moved to dismiss the plaintiff's Fair Credit	N	Sometimes all parts of a cause of action do not need to be set forth to comply with *Iqbal*	Angela S. Fetcher,

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
		LEXIS 115985 (Case No. 08CV0432)				violations		Reporting Act claims under *Iqbal* because the complaint did not allege that the credit reporting agencies ("CRA") plaintiff complained to notified the defendant that the plaintiff disputed information on his credit report allegedly furnished by the defendant. The court denied the motion. It stated that if the plaintiff alleged that he notified a CRA that he disputed reported information, he did not also have to plead that the CRA notified the furnisher of the information "because it would be unlikely that he would know whether this was so." In other words, the court found that at the pre-discovery stage of the case, it was reasonable to infer that plaintiff notified the CRA, who notified the furnisher.			Stoll Keenon Ogden PLLC
97.	*Riley v. Vilsack*	Case No. 09-cv-308-bbc, 2009 U.S. Dist. LEXIS 98548	W.D. Wisconsin	10/22/09	7th Cir.	ADEA, Congressional Accountability Act of 1995 (regarding disability discrimination – 2 U.S.C. § 1311), retaliation	Granting in part and denying in part motion to dismiss	After discussing at length the history of the pleading standards under Rule 8 in the Seventh Circuit, including under *Iqbal*, the court states that *Iqbal* gives few guidelines on discerning between "plausible" and "implausible" claims and "conclusions" and "detailed	N	A determination of the factual sufficiency of elements of claims depends on the nature of the claims and those particular elements	Angela S. Fetcher, Stoll Keenon Ogden PLLC

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							facts." The court then states that *Iqbal* requires the court to consider the context of a particular case in determining the sufficiency of a complaint. It also states that when an element of a claim involves the intent of the defendant, which is purely within the knowledge of the defendant, the plaintiff is limited in the facts in can provide at the pleadings stage, and the factual context for such claim elements should be minimal. The court also says that the pleading standard under *Iqbal* is not akin to the summary judgment standard, but is more like the Rule 11 standard of "an inquiry reasonable under the circumstances." Applying these principles, the court concluded that the plaintiff pled sufficient facts on his ADEA claim because he alleged that the defendants targeted him for elimination positions and made statements regarding their preference for younger workers. The court did, however, dismiss the Congressional Accountability Act claim			

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								because plaintiff failed to allege any facts showing that the defendants discriminated on him based on his disability or even that they were aware of his disability. It also dismissed the retaliation claim because plaintiff did not allege a "materially adverse" action taken by the defendants because of his protected conduct, other than calling him a "trouble maker," which is not sufficient.			
98.	*Shoppell v. Schrader*	Case No. 1:08-CV-284 PS, 2009 U.S. Dist. LEXIS 56771	N.D. Ind.	6/30/09	7th Cir.	42 U.S.C. § 1983 – jail funding	Not dismissed	An inmate at a county jail died while incarcerated from cardiovascular disease with 75 to 100% narrowing of three arteries. The personal representative for the inmate sued the County Council for inadequately funding the jail, which she claimed meant there were insufficient funds to train jail personnel on responding to medical needs, make healthcare professions available to inmates, and develop an inmate classification system. The Council claimed that under *Bell Atlantic*, the plaintiff's claims were too speculative because she could not show that the Council's funding	N	Limits to *Iqbal* – a court cannot look at the plaintiff's probability of success at the dismissal stage, only the plausibility of the claim	Angela S. Fetcher, Stoll Keenon Ogden PLLC

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								decision was the "moving force" behind the decedent's death, and that she would need to show how much in funds would have been sufficient and whether the Council knew the funds were insufficient. The court disagreed, citing *Iqbal*, stating that the questions posed by the defendant were more proper for assessing the plaintiff's probability of success, not the plausibility of her claim. The court held that the allegations that the Council was responsible for funding, that they failed to give enough money and the factual allegations regarding the inmate's death were enough to draw a reasonable inference that the Council is liable.			
99.	*Wilson v. City of Chicago*	2009 U.S. Cist. LEXIS 93912 (Case No. 09 C 2477)	N.D. Ill.	10/7/09	7th Cir.	Conspiracy	Motion to dismiss denied	Plaintiff was convicted of murder, which conviction was overturned by a state appellate court, which stated that the "evidence was 'so improbable or implausible' that it raised a reasonable doubt regarding Wilson's guilt." Wilson then filed the action at issue, alleging that the police officers and detectives conspired against him, including by coercing	Unknown	When facts are peculiarly within the knowledge of the defendants, cannot dismiss the plaintiff's complaint for failure to allege the facts	Angela S. Fetcher, Stoll Keenon Ogden PLLC

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							two witnesses to testify against him, one of whom recanted her statement at trial. Defendants moved to dismiss, claiming that plaintiff's claims are not sufficient under *Iqbal* because the complaint does not specify which individual committed which act. The court was not persuaded, and denied the motion to dismiss, stating "Each defendant knows what he did or did not do and can admit or deny the fact based on this knowledge," but because the plaintiff was not there when the defendants allegedly manipulated the witnesses, the knowledge is uniquely in the possession of the defendants. It stated that Seventh Circuit case law states that where a plaintiff is injured "'as the consequence of the actions of an unknown member of a collective body, identification of the responsible party may be impossible without pretrial discovery,' and that courts should not dismiss such claims." (quoting *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009) (internal citation			

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								omitted)).			
100.	*Gardunio v. Town of Cicero*	--- F.Supp.2d ----, 2009 WL 4506318	N.D. Ill.	11/30/09	7thCir.	Civil rights, 42 U.S.C. §1983 – Equal protection, civil conspiracy, malicious prosecution and other related claims.	Motion to dismiss denied in part, granted in part (*Iqbal/Twombly* argument did not result in dismissal)	Plaintiff sued a town claiming federal civil rights violations and state tort claims, including civil conspiracy and malicious prosecution. Although the district court cited the Seventh Circuit's *Cooney v. Rossiter* decision (cited above), it found that relatively conclusive conspiracy pleadings were sufficient to support the § 1983 claims. The conspiracy pleadings were that: the Defendants "agreed, through explicit or implicit means, to effect the unlawful detention and arrest of the Plaintiff," that, "in furtherance of said agreement," the Defendants "unlawfully detained and arrested the Plaintiff and manufactured and fabricated evidence against him, and withheld the existence and disclosure of exculpatory evidence," and that the "false and unjustified arrest of the Plaintiff … was … at the direction of" a specific defendant. Although the court granted part of the motion to dismiss, the district court denied a	N	Despite citation to *Cooney v. Rossiter* decision (cited above), district court found that relatively conclusive conspiracy pleadings were sufficient to support § 1983 claims.	Ian Fisher, Schopf & Weiss LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								motion for a more definite statement finding that the Defendants were on sufficient notice of the claims against them.			
101.	*Greer v Floyd*	2010 U.S. Dist. LEXIS 3142 (Case No. 08 C 4958)	N.D. Ill.	11/15/10	7th Cir.	Securities fraud	Dismissed	Court found that the plaintiffs' allegations that defendants "knew of," or "should have known" that their statements were false or that they "condoned" unlawful behavior were too conclusory to credit under *Iqbal*. It thus found that the plaintiffs could not show scienter under federal securities laws.	N	Application of Iqbal to federal securities case	Angela S. Fetcher, Stoll Keenon Ogden, PLLC
102.	*Noble Roman's, Inc. v. French Baguette, LLC*	2010 U.S. Dist. LEXIS 5302 (Case No. 1:07-cv-1176-LJM-JMS)	S.D. Ind.	11/21/10	7th Cir.	Breach of contract, trademark infringement, and unfair competition	Dismissed	Court allowed plaintiff to complete some discovery before deciding the motion to dismiss. However, the court stated that the claims made by the party in its complaint and in response to the motion to dismiss were undercut by the document in the record. Thus, the court found that the plaintiff's claims were not plausible under *Iqbal* and dismissed them.	N	Court allowing discovery before deciding "motion to dismiss" really turned it into an early motion for summary judgment that the plaintiff lost – maybe no discovery would have been better	Angela S. Fetcher, Stoll Keenon Ogden, PLLC
103.	*Walton v. Walker*	2010 U.S. App. LEXIS 2338 (Case No. 09-	7th Cir.	2/3/10	7th Cir.	42 U.S.C. § 1983	Dismissed	The plaintiff appealed the dismissal of his 82-page complaint for failing to meet the pleading standards of Iqbal. The 7th Circuit	Y	Court interprets a court's ability to "rely on judicial experience and common sense" to include looking at prior litigation filed by a plaintiff	Angela S. Fetcher, Stoll Keenon Ogden,

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
		2617)						affirmed the district court's dismissal of the plaintiffs claims that 24 people conspired to falsely arrest and convict him, that the district court claimed "defied reality," because the claims were naked assertions and because the district court was allowed to rely on its familiarity of the plaintiff's prior meritless litigation			PLLC
104.	*Braden v. Wal-Mart Stores, Inc,*	2009 WL 4062105	8th Cir.	11/25/09	8th Cir.	Putative class action for fiduciary duty violations under ERISA. Wal-Mart employee – Braden - on behalf of himself and other member of Wal-Mart's employee retirement plan brought this putative class action alleging that the Plan administrators failed to obtain institutional shares of mutual funds based on its size; that the administrators failed to select lower-fee mutual	Wal-Mart moved for dismissal pursuant to Federal Rules 12(b)(1) and 12(b)(6). The district court dismissed the complaint finding that Braden lacked constitutional standing and had otherwise failed to state a plausible claim.	In reversing the district court, the Eighth Circuit found that the district court had conflated the Article III standing requirement of an injury in fact with a plaintiff's potential causes of action. If a Plaintiff has standing, he may assert causes of action that are broader than his own personal injuries. The Eighth Circuit also examined the complaint under Federal Rules 8 and 12 in light of *Twombly* and *Iqbal*. The Eighth Circuit reiterated the requirement that Rule 12 requires the complaint to be read in the light most favorable to the Plaintiff and that the Plaintiff must be given all	N	Perhaps the only ERISA specific aspect of this case is that the court noted that "[n]o matter how clever or diligent, ERISA plaintiffs generally lack the inside information necessary to make out their claims in detail unless and until discovery commences. Thus, while a plaintiff must offer sufficient factual allegations to show that he or she is not merely engaged in a fishing expedition or strike suit, we must also take account of their limited access to crucial information…. These consideration counsel careful and holistic evaluation of an ERISA complaint's factual allegation before concluding that they do not support a plausible inference that the plaintiff is entitled to relief."	Gary D. Goudelock Jr Assistant City Attorney City of Des Moines, Iowa

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
					funds; and that the fund broker – Merrill Lynch – had a conflict of interest in suggesting funds because it received "kickbacks" from the mutual fund companies when participants such as Wal-Mart invested in the mutual fund.		reasonable inferences. A complaint is not to be "parsed piece by piece to determine whether each allegation, in isolation, is plausible." The court held that Rule 8 does not "require a plaintiff to plead 'specific facts' explaining precisely how the defendant's conduct was unlawful." Instead, a Plaintiff sufficiently states a cause of action if she pleads facts "indirectly showing unlawful behavior" so long as those facts (1) "give the defendant fair notice of what the claim is and the grounds upon which it rests"; and (2) "'allow[] the court to draw the reasonable inference' that the plaintiff is entitled to relief." Perhaps most importantly, the court discussed the *Iqbal* court's holding that the plaintiff failed to state a claim for relief "in light of 'more likely explanations' for the defendants' conduct." Rule 8 does not require the plaintiff to plead facts rebutting all possible lawful explanations for a defendant's conduct. Only if there is a concrete "'obvious alternative explanation'" for			

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								the conduct is the plaintiff required to plead additional facts ruling out that alternative explanation.			
105.	*C.N. v. Wilmar Public Schs., et al.*	2010 U.S. App. LEXIS 286	8th Cir.	1/7/10	8th Cir.	IDEA, 4th Amendment, and 14th Amendment claims	All claims dismissed	IDEA claims are dismissed on procedural grounds. 4th Amendment claims are dismissed for failure to state a substantial departure from accepted professional judgment, practice, or standards. The 14th Amendment, in which the court cites to *Iqbal*, is dismissed because the "complaint does not state a viable substantive due process claim."	No	The court reasoned that even through the complaint cited to other students being mistreated, the complaint in some areas did not identify the plaintiff as a victim. Id. at *24. "Such vague allegations neither provide the Appellees with fair notice of the nature of [plaintiff's] claims and the grounds upon which those claims rest nor plausibly establish [plaintiff's] entitlement to any relief."	Francis Rojas, Miller O'Brien Cummins, PLLP
106.	*Express Scripts, Inc. v. Walgreen Co.,*	2009 WL 4574198	E.D. Mo.	12/3/09	8th Cir.	Counterclaim for conversion by Walgreen Co.	Express Scripts brought an action against Walgreen Co. for declaratory relief, breach of contract and unjust enrichment. Walgreen asserted a counterclaim for conversion by wrongfully recouping money Express Scripts had paid to Walgreen Co.	The district court denies Walgreen Co.'s counterclaim for conversion based on the motion to dismiss standard under Fed. R. 12(b)(6) as clarified in *Twombly* and *Iqbal*. The court sets forth the *Iqbal* standard of "facial plausibility" and states that this standard is based on two "working principles" (1) a court must not treat legal conclusions set forth in a complaint as true; and (2) a complaint must state a plausible claim for relief to survive a motion to dismiss.	N	There are no context specific issues in this case, other than the choice of law provisions in the contract requiring Missouri tort law to be used.	Gary D. Goudelock Jr. Assistant City Attorney City of Des Moines, Iowa

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								Because Walgreen's claim was for cash rather a specific, identifiable chattel, it had to allege that it had given the cash for a specific purpose and that Express Scripts diverted the funds for its own use. Because Walgreen did not plead conduct that would constitute conversion under Missouri law, its counterclaim could not survive a motion to dismiss.			
107.	*Kinetic, Co. v. Medtronic, Inc.*	2009 WL 4547624	D. Minn.	12/4/09	8th Cir.	Minn. Stat. §§ 325F.67, 325D.44, and 325F.69 for consumer fraud, unfair trade practices and deceptive advertising (claims must be pleaded with particularity per Rule 9(b).	Survived dismissal	Self-insured employer sought to represent putative class of third-party payors for medical services, seeking reimbursement for medical expenses resulting from recall of cardiac devices manufactured by Medtronic. Plaintiff abandoned some claims with prejudice; remaining claims were adequately pleaded to survive motion to dismiss.	N	Court applied *Iqbal* standard to Rule 9 consumer fraud claims	Carrie L. Zochert, Larkin Hoffman
108.	*McCurry, et al. v. Swanson, et al.*	2009 U.S. Dist. 82078	D. Neb.	9/8/09	8th Cir.	Section 1983 and Neb. Rev. Stat. § 20-148	Only state claims dismissed.	Court dismissed state claims as they were barred by Neb. § 13-910(7); but allowed § 1983 claims to go forth. The court interpreted Twombly/Iqbal as stating that "[w]hen there are well-pleaded factual allegations, a court should assume their	N		Francis P. Rojas, Miller O'Brien Cummins, PLLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								veracity and then determine whether they plausibly give rise to an entitlement to relief." Court also cited to Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 347 (2005) for the proposition that it "explain[s] that something beyond a faint hope that the discovery process might lead eventually to some plausible cause of action must be alleged."			
109.	*Murchison v. Marathon Petroleum Co., LLC*	2009 WL 3853179	D. Minn.	11/17/09	8th Cir.	Negligence	Dismissal without prejudice	Injured plaintiff working at a refinery sued manufacturers of catalyst cooler and spring canisters for negligence. One manufacturer moved to dismiss. Court concluded that plaintiff failed to plead sufficient facts for the court to plausibly infer that defendant proximately caused plaintiffs' injuries where plaintiff alleged his injuries were caused by failure of spring canisters that were incorporated into the spring canisters, but did not identify the defendant as the manufacturer or installer of the spring canisters and made no allegations demonstrating a connection between the manufacturer's	N	Concluded plaintiff's allegations raised defendant's role in the accident only to level of possibility, not plausibility.	Carrie L. Zochert, Larkin Hoffman

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								catalyst cooler and the spring canisters.			
110.	*Onyiah v. St. Cloud State University*	2009 WL 2974738	D. Minn.	9/17/09	8th Cir.	Lilly Ledbetter Act, ADEA, Title VII, intentional infliction of emotional distress	Motions for partial dismissal were granted.	Plaintiff professor brought claims against university, board of trustees, faculty union and ten individual defendants. Court determined that plaintiffs' conclusory allegations against union were insufficient to establish pay discrimination claim and could not be brought against individual defendants; that ADEA and Title VII claims were time-barred; that plaintiff failed to allege sufficient facts to recover for breach of duty of fair representation and for intentional infliction of emotional distress.	N		Carrie L. Zochert, Larkin Hoffman
111.	*Precision Indus., Inc. v. Tyson Foods, Inc.*	2009 U.S. Dist. LEXIS 110442; 09-cv-195	D. Neb.	11/25/09	8th Cir.	Breach of Contract	One claim dismissed; one claim not dismissed.	Court dismissed first breach of contract claim for failure to negotiate in good faith in the future because it would be particularly difficult to enforce the provision since there is no way to measure the breach under the contract as alleged, if any, or to give a particular remedy under the contract as alleged.	N		Francis P. Rojas, Miller O'Brien Cummins, PLLP
112.	*Raines v.*	2009 WL	D.S.D.	9/28/09	8th Cir.	42 U.S.C. § 1983,	Dismissal	*Pro se* plaintiffs husband and wife who were	Y	Thorough discussion of *Twombly* and *Iqbal* cases.	Carrie L. Zochert,

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
	Hollingsworth	3233430				1985		convicted of theft, sued the state court judges, prosecutors, three private attorneys, and policeman, for deprivation of their civil rights. The court affirmed the magistrate's report and recommendations concluding that the judges and prosecutors were entitled to judicial & prosecutorial immunity, respectively, and dismissed those claims. The court also dismissed certain § 1983 claims as a matter of law because the plaintiffs' criminal convictions had not been invalidated. Other claims against the private attorneys were dismissed due to the plaintiffs' failure to adequately plead a conspiracy against them. Claims against the policeman were dismissed due to plaintiffs' failure to allege any racially discriminatory intent. The state law claims were dismissed without prejudice because the court declined to exercise supplemental jurisdiction.			Larkin Hoffman
113.	*Sales Board v. Pfizer, Inc.*	644 F. Supp. 2d	D. Minn.	8/10/09	8th Cir.	Trademark infringement and	Motion granted in part and	Plaintiff sales training company brought action against pharmaceutical	N	Court applied its judicial experience and common sense to conclude claim was plausible.	Carrie L. Zochert, Larkin

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
		1127				unfair competition	denied in part	manufacturer alleging trademark infringement pertaining to use of plaintiff's training technique. Defendant argued claims were time-barred by 6-year statute of limitations and the complaint, filed in 2009, alleged first use in 2002. The court concluded, based on its "judicial experience" and "common sense," that it was plausible that the training guide in question was still in use as of 2003 and allowed the claim.			Hoffman
114.	*Smith v. Local Union No. 110*	2010 U.S. Dist. LEXIS 2414	D. Minn	1/13/10	8th Cir.	DFR	All claims dismissed without prejudice	"While recent United States Supreme Court decisions addressing Rule 12(b)(6) standard might have raised the pleading bar, there is no requirement that a plaintiff actually prove the merits of its case in its complaint.." Id. at *29-30.	No	The court held the state law claims were completely preempted under DFR and thus, independently removable. Id. at *12-19. The § 1441(c) Fielder doctrine is confined to a unique set of facts. Id. at *23-27.	Francis Rojas, Miller O'Brien Cummins, PLLP
115.	*Dubinsky v. Mermart*	2010 U.S. App. LEXIS 2734 (8th Cir. Feb. 10, 2010)	8th Cir.	2/10/10	8th Cir.	Breach of contract, unjust enrichment, negligence, and fraudulent misrepresentation	Motion dismissed (affirmed)	The court dismissed the breach of contract claim because it interpreted the contract as limiting the remedies and rights of the bondholders. The court dismissed the other tort claims because these claims were merely just trying to enforce the	N		Francis Rojas, Miller O'Brien Cummins, PLLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								contract.			
116.	*Williams v. Dakota County Bd. of Commissioners, et al.*	2010 U.S. Dist. LEXIS 22828	D. Neb.	3/10/10	8th Cir.	Claims for race discrimination under 42 U.S.C. §§ 1981 & 1983 and gender discrimination under 42 U.S.C. § 1983 and 42 U.S.C. § 2000e	Motion dismissed in terms of certain defendants Motion to dismiss or strike complaint was granted in part and denied in part	Court found that the complaint stated a plausible complaint because the plaintiff alleged disparate pay for reasons of race and gender. "She alleges facts showing she was treated differently than similarly-situated male employees with respect to work assignments and pay and further alleges conduct that is severe or pervasive enough that a reasonable person would find it hostile or abusive. Williams alleges conduct by defendants Wagner and Herron that would give rise to individual liability." Court dismissed suit against the Department of Corrections and the Board of Commissioners because it held that these entities were not subject to suit under § 1983.	N		Francis Rojas, Miller O'Brien Cummins, PLLP
117.	*Ripee v. WCA Waste Corp. et al.*	2010 U.S. Dist. LEXIS 19606	D. Mo.	3/4/10	8th Cir.	MHRA, FMLA, and ADA	Motion to dismiss denied, and motion to amend granted	Court found that the amended complaint cured all deficiencies. The amended complaint alleged facts showing why defendant supervisor acted on behalf of defendant WCA		The court granted a motion for leave to amend, and denied the motion to dismiss	Francis Rojas, Miller O'Brien Cummins, PLLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
118.	*al-Kidd v. Ashcroft*	580 F.3d 949	9th Cir.	9/4/09	9th Cir.	*Bivens*	Denial of motion to dismiss affirmed in part, reversed in part.	Plaintiff brought a *Bivens* action against former Attorney General Ashcroft claiming that he was unlawfully detained under the federal material witness statute, 18 U.S.C. § 3144. The pleading-specific analysis was in connection with the § 3144 claim. Plaintiff alleged that Ashcroft was the "principal architect" of a policy of misusing the material witness statute to improperly detain suspected terrorists. The 9th Circuit compared al-Kidd's allegations to the allegations made in *Iqbal* and found that, in contrast to *Iqbal*'s allegations, al-Kidd's complaint "plausibly suggest[s] unlawful conduct and does more than contain bare allegations of an impermissible policy." Among other allegations, the complaint contained "specific statements that Ashcroft himself made regarding the post-September 11th use of the material witness statute," and references to "congressional testimony from FBI Director Mueller, stating that al-Kidd's arrest was one of the government's	N		David Horowitz, Kirkland & Ellis LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								anti-terrorism successes -- without any caveat that al-Kidd was arrested only as a witness." The 9th Circuit concluded that these specific allegations "plausibly suggest something more than just bare allegations of improper purpose; they demonstrate that the Attorney General purposefully used the material witness statute to detain suspects whom he wished to investigate and detain preventatively, and that al-Kidd was subjected to this policy."			
119.	*Brocato v. Department of Corrections*	2009 WL 3489367	C.D. Cal.	10/26/09	9th Cir.	Section 1983	Dismissal	Plaintiff sued the Department of Corrections, a registered dietitian, a prison warden, and others alleging that Defendants failed to provide him with an adequate diet causing medical injury. Plaintiff alleged deliberate indifference and cruel and unusual punishment under the Eight and Fourteenth amendments. The court initially dismissed with leave to amend and plaintiff filed a First Amended Complaint (FAC). The	Y		David Horowitz, Kirkland & Ellis LLP

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							court determined that the FAC did not state a claim under the *Iqbal* standard. Analyzing the Eighth Amendment claims, the court noted that while the complaint "repeatedly invokes the elements of the Eighth Amendment claim" the allegations were mere "legal conclusions couched as factual assertions" and thus not entitled to a presumption of truth. The court then moved on to the well-plead allegations, which were that Plaintiff suffered from high cholesterol and triglyceride levels and received a 2250 calorie daily diet. Plaintiff contended that such a diet was nutritionally inadequate and caused him injury. Because the FAC referenced the prison administrative grievance process to establish that one of the defendants had notice of his complaints, the Court took judicial notice of the process when evaluating Plaintiff's factual allegations. Analyzing these allegations along with judicially noticeable facts, the court			

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								held that Plaintiff, at best, "raised only a possible or conceivable Eight Amendment claim, not a plausible one."			
120.	*Moss v. U.S. Secret Service*	572 F.3d 962	9th Cir.	7/16/09	9th Cir.	*Bivens* action -- First Amendment	Dismissal (reversal of district court's denial of motion to dismiss)	Plaintiff-protesters brought First Amendment claims against secret service agents alleging that the agents violated Plaintiffs' First Amendment rights when they ordered Plaintiffs to move the location of a protest. The 9th Circuit, applying *Iqbal*, found that the complaint failed under to plead facts plausibly suggesting that the agents moved the Plaintiffs because of their political viewpoint. In analyzing the complaint, the court followed *Iqbal*'s suggested sequence of disregarding conclusory allegations and determining whether well-plead factual allegations "plausibly give rise to an entitlement to relief." The court disregarded the complaint's "bald allegation of impermissible viewpoint-discrimination motive" by the agents finding it "conclusory" and thus not entitled to an assumption of	N	The court granted leave to amend because *Iqbal* post-dated the filing of the complaint.	David Horowitz, Kirkland & Ellis LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								truth. The court also disregarded as conclusory Plaintiffs' allegations that the agents acted pursuant to a "*sub rosa* Secret Service policy of suppressing speech critical of the President," finding that allegations of systemic-viewpoint discrimination, without supporting factual allegations were insufficient under *Iqbal*. The court next looked to the remaining "non-conclusory" factual allegations; namely, (i) that the agents ordered Plaintiffs relocated but left a pro-Bush demonstration alone; (ii) that diners and guests at the inn where the President was staying were allowed to stay close to the president without screening; and (iii) that Plaintiffs were moved by local police over three blocks away from the inn and subjected to abusive police tactics. The court found that these allegations were insufficient to state a claim, noting that they did not plausibly support an inference of viewpoint discrimination.			
121.	*Patterson v.*	- - - F.Supp.	N. D. Cal.	11/25/09	9th Cir.	Plaintiffs are	Dismissal,	The FAC includes	N	The court used *Twombly* to "evaluate conclusory	Jeff Price

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
O'Neal	- - - , 2009 WL 4282795				former employees of Thelen LLP ("Thelen"), a nationwide law firm that closed its business in 2008. Plaintiffs' Complaint raises only one cause of action against the Law Firm Defendants, alleging violations of the Worker Adjustment and Retraining Notification Act ("WARN" or "WARN Act").	without oral argument.	conclusory statements that each of the Law Firm Defendants "purchased" one or more of Thelen's practices. FAC ¶¶ 16, 19, 22, 25, 28. However, the FAC does not describe these purchases, or explain who took part in them or whether there were any negotiations between the Law Firm Defendants and Thelen itself. The Law Firm Defendants maintain that they merely hired the employees that worked in the practice groups that they acquired, and extended partnership offers to Thelen's partners. The Law Firm Defendants argue that this cannot constitute a "sale" under the WARN Act. The FAC offers no details that contradict the Law Firm Defendants' descriptions of the transactions. . . . . **Neither the WARN Act nor any related DOL regulation defines "sale."** [emphasis supplied] . . . . As the *Brobeck* decisions indicate, law firms can and do engage in transactions that can be construed as		allegations" and ultimately find dismissal warranted.	

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							"purchases" of other law firms under the WARN Act. This Court simply holds that the mere hiring of employees and partners simply does not amount to such a purchase. . . . . Turning to the FAC, the question is whether bare and conclusory allegations that "purchases" took place, FAC ¶¶ 16, 19, 22, 25, 28, are enough to state a claim at the dismissal stage, in the context of alleged sales of business between law firms. In order to state a claim that is based on the "sale" of all or part of a law firm's business, Plaintiffs must allege that the Law Firm Defendants actually engaged in a transaction with Thelen, or did something more than merely hire its employees or extend partnership offers to its partners. **In addition, "the non-conclusory 'factual content' [of the FAC] and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief."** *Moss v. U.S. Secret Servs.,* 572 F.3d 962, 969 (9th Cir.2009). [emphasis			

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							supplied] **Even if there is a possibility that discovery could turn up some hypothetical evidence to support a cause of action, Plaintiffs cannot "unlock the doors of discovery" if they are "armed with nothing more than conclusions."** ***Iqbal***, 129 S.Ct. at 1950. [emphasis supplied] . . . . The Court finds that the mere assertions that "sales" took place, without any supporting detail or inferences based on non-conclusory facts, are nothing more than "[t]headbare recitals of the elements of a cause of action ...." ***Iqbal***, 129 S.Ct. at 1949. This Court may evaluate conclusory allegations in light of "obvious alternative explanation[s]" in order to determine whether they are, in fact, plausible. *Twombly*, 550 U.S. at 567. The Court notes that it is an extremely common practice for attorneys and partners to move laterally from one law firm to another, particularly when seeking to flee from a failing law firm. The normal migration of			

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							attorneys from one firm to another provides an "obvious alternative explanation" for the behavior that Plaintiffs describe as the Law Firm Defendants' "purchase" of parts of Thelen's business. *C.f. Id.* at 567 (rejecting conclusory allegation that defendants engaged in anticompetitive "conspiracy," where behavior described by plaintiffs was "just as much in line with" regular market behavior). There is no doubt that the Law Firm Defendants acquired certain clients and employees of Thelen-however, the Court need not accept Plaintiffs' bare attempt to label these acquisitions as "purchases." Plaintiffs cannot state a claim by using language-i.e., "purchase"-that is, in this context, vague and ambiguous as to whether it includes activity that is covered by the relevant statute. Plaintiffs must instead plead facts that are suggestive of a "sale," as distinct from the more common practice of hiring attorneys and accepting			

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								additional partners.			
122.	*William O. Gilley Enterps., Inc. v. Atlantic Richfield Co.*	2009 WL 4282014, __ F.3d __	9th Cir.	12/2/09	9th Cir.	Antitrust -- Sherman Act §1	Dismissal affirmed	Plaintiffs alleged a price-fixing conspiracy on behalf of wholesale purchasers of California Air Resources Board (CARB) gasoline. Plaintiffs Second Amended Complaint (SAC) alleged that defendants had entered into agreements for the sale and exchange of gasoline purportedly to limit the refining capacity for CARB gasoline or to keep the gasoline off the spot market, away from unbranded competitors. The SAC also alleged that these agreements raised prices for CARB gas in Northern California to supracompetitive levels. The court found Plaintiffs' allegations inconsistent with *Twombly* and *Iqbal* because the complaint did not "clearly assert which individual agreement or agreements constitute[d] in themselves a 'contract . . . by which the persons or entities intended to harm or restrain trade.'" The court also found that the complaint did not provide defendants fair notice of the claim and the grounds the	N	The court relied more on *Twombly* than on *Iqbal*.	David Horowitz, Kirkland & Ellis LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								claim rested on.			
123.	*Dury v. Ireland, Stapleton, Pryor & Pasco*	2009 WL 2139856	D. Colo.	7/14/09	10th Cir.	Breach of Fiduciary Duty, Nondisclosure, and Non-Economic Damages	Dismissal Denied	Plaintiff sued defendants for failing to disclose a conflict of interest. Defendants moved to dismiss two of the three claims asserted (for breach of fiduciary duty and nondisclosure), as well as Plaintiff's claims for non-economic damages. The case was before the United States District Court for the District of Colorado on diversity jurisdiction. The court looked to Colorado substantive law to determine the elements of the claims at issue and the sufficiency of the allegations in support, ultimately denying the motion to dismiss.	N	Plausibility is context specific Diversity Jurisdiction	Jennette Roberts, McKenna Long & Aldridge LLP
124.	*Eller v. Experian Information Solutions, Inc.*	2009 WL 2601370	D. Colo.	8/20/09	10th Cir.	Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. Colorado Consumer Credit Reporting Act, C..R.S. § 12-14.3-101 et seq. Privacy Act of 1974 Breach of Contract	Dismissal	*Pro se* plaintiff filed a complaint against Defendant alleging that it prepared and provided consumer credit reports concerning Plaintiff that were inaccurate. An attorney entered an appearance on behalf of Plaintiff but at the time of the decision had not sought leave to amend the Complaint. Defendant moved to dismiss, arguing that Plaintiff pled only conclusory allegations.	Y	Conclusory Statements	Jennette Roberts, McKenna Long & Aldridge LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								The United States District Court for the District of Colorado noted that "a complaint must contain more than 'labels and conclusions'" and that, in fact the "Court must disregard averments that 'are no more than conclusions [which] are not entitled to the assumption of truth.'" The Court construed Plaintiff's complaint under the standards applicable to a *pro se* plaintiff and even under that more liberal review dismissed the Complaint, determining that it was comprised of "bald conclusions of law."			
125.	*Hall v. Witteman*	584 F.3d 859	10th Cir.	10/19/09	10th Cir.	Civil rights, 42 U.S.C. §§ 1983 and 1985 Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-68	Dismissal affirmed	*Pro se* plaintiff alleged a violation of his rights when he paid a newspaper to run on two occasions an advertisement opposing the election of a local judge, but the newspaper only ran the advertisement once and then ran an advertisement supporting the judge's election paid for by a group of attorneys, including the county attorney. The plaintiff sued the newspaper, the judge, the attorneys, and others, claiming that "the	Y	Pleading requirement is context specific Facial plausibility	Jennette Roberts, McKenna Long & Aldridge LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								defendants unlawfully convinced the paper's publisher" to substitute Plaintiff's second advertisement for their own, "which contained defamatory remarks about him." Plaintiff alleged that this violated his rights of free speech and equal protection. The United States District Court for the District of Kansas dismissed the Complaint for failure to state a claim. Fed. R. Civ. P. 12(b)(6). The Tenth Circuit affirmed after analyzing the context specific pleading requirements necessary to support a civil rights claim under Sections 1983 and 1985 and a RICO claim. The Tenth Circuit held that Plaintiff did not allege state action sufficient to support his civil rights claims, and did not allege a threat of continuing racketeering activity sufficient to support his RICO claims.			
126.	*Navigato v. SJ Restaurants, LLC*	2009 WL 2487937	D. Kan.	8/14/09	10th Cir.	Default on a commercial lease, seeking unpaid rent and other damages	Motion to dismiss denied	Plaintiff sued defendants claiming they defaulted on a commercial lease and seeking unpaid rent plus other damages. Defendants	N	Diversity Jurisdiction Facial Plausibility	Jennette Roberts, McKenna Long & Aldridge

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								removed to the United States District Court for the District of Kansas on the basis of diversity jurisdiction. Pursuant to Rule 12(b)(6), Defendants sought partial dismissal for plaintiff's claim for future rent and damages accruing after Plaintiff allegedly terminated the lease and retook possession of the property. The District Court looked to Kansas law to determine the validity of Plaintiff's damages claims at the pleading stage and overruled Defendant's Motion to Dismiss.			LLP
127.	*Total Renal Care, Inc. v. Western Nephrology and Metabolic Bone Disease*	2009 WL 2596493	D. Colo.	8/21/09	10th Cir.	Antitrust	Counter-claims dismissed	Plaintiff brought claims against numerous defendants claiming they breached, or assisted/induced the breach of non-compete, non-solicitation, and confidentiality agreements. One defendant asserted antitrust counterclaims for monopolization, attempted monopolization, conspiracy to monopolize, and unreasonable restraint of trade. The District Court noted that	N	The requisite degree of specificity is contextual.	Jennette Roberts, McKenna Long & Aldridge LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								"the degree of specificity needed to plausibly assert a claim is contextual." The court then described the antitrust legal principles relevant to the counter-claims asserted and set forth the required pleading standards to sufficiently state a claim. Although the judge found that the defendant sufficiently pled certain aspects of its antitrust claims, the defendant failed to include adequate facts to establish the relevant market or any specific intent to monopolize that was shared by the alleged co-conspirators. All counter-claims were dismissed without prejudice to re-filing.			
128.	*Diaz-Martinez v. Miami Dade County, et al.*	No. 07-20914-CIV, 2009 WL 2970468	S.D. Fla.	9/10/09	11th Cir.	Civil rights, 42 U.S.C. § 1983	Partial Dismissal	Plaintiff was falsely convicted of several life felonies. After serving nearly twenty six years in prison, Plaintiff was exonerated of all charges. In his subsequent civil action, the Plaintiff alleged that the Defendant police officers fabricated evidence against him and engaged in other egregious misconduct. In addition to bringing	N	Application of pleading requirements; *Iqbal* does not completely bar § 1983 supervisor liability claims.	John Bajger; Office of the Attorney General

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							numerous claims against the Defendant police officers, the Plaintiff brought two § 1983 claims against the County, one alleging an unconstitutional pattern and practice and the other alleging that the County failed to properly train and supervise the officers. He also brought a § 1983 supervisor liability claim against the police officer's superiors. The Court dismissed both claims against the County. Applying *Iqbal*, the Court found that the Plaintiff failed to state a "plausible claim" because he incorrectly identified the mayor, rather than the Board of Commissioners, as having final policy making authority. The Court likewise dismissed the Plaintiff's "bald" allegation that the County breached its duty to properly train the officers as conclusory, citing *Iqbal* once again for support. However, the Court found that *Iqbal* did not bar Plaintiff's supervisory liability claims against the officer's superiors. The Defendants argued that *Iqbal* eliminated § 1983			

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								supervisor liability, but the Court rejected their interpretation as "overbroad." The Court interpreted *Iqbal* to hold that "a supervisor cannot be vicariously liable solely for the acts of a subordinate" and affirmed the viability of § 1983 supervisor liability claims in all other instances.			
129.	*Gomez v. Pfizer, Inc.*	No. 09-22700-CIV, 2009 WL 4908937	S.D. Fla.	12/21/09	11th Cir.	Negligence; Strict Liability	Dismissal without prejudice	Plaintiffs sued multiple manufacturer defendants and a pharmacy defendant for negligence and strict liability. Plaintiffs alleged injuries resulting from the use of various prescription and/or over-the-counter products. Two of the manufacturer defendants moved for dismissal (another defendant that made a different product chose to answer the complaint, and plaintiffs dismissed the pharmacy defendant). The court dismissed, without prejudice, the negligence and strict-liability claims. To plead negligence and strict liability plausibly, supported by sufficient factual allegations, the plaintiffs	N	1. The key pleading requirement is the connection between legal theories and supporting facts. Pleading only that a product is "defective" because it is "unreasonably dangerous" is insufficient. Those allegations do nothing to place either the court or the defendant on notice of the actual theory of liability. To cross the plausibility threshold, a plaintiff must allege some fact in support of each claim or theory.	David J. Walz; Carlton Fields

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							must: 1. For negligence, plead each defendant's individualized duty and the breach of that duty. Plaintiffs must plead each defendant's relationship to the products at issue, as well as the defendants' relationship to each other. Only then could the defendants' respective duties be clear. 2. For strict liability, plead each defendant's role in the design and manufacture of the products. As a starting point, plaintiffs must plead the specific products that they claim are defective, including whether plaintiffs used over-the-counter versions, prescription versions, or both. Then, plaintiffs must plead facts suggesting what was actually defective about those products. Otherwise, allegations of simply "defect" really "amount to no more than bare legal conclusions." Finally, in conjunction with pleading a plausible defect, the plaintiffs must specify which theory of strict			

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								liability they claim, whether design, manufacture, or failure to warn. "Defective design, manufacture, and failure to warn are distinct theories, and [d]efendants are prejudiced in that they cannot determine which doctrine is at issue, much less how to frame a proper response."			
130.	*Gross v. White*	No. 08-14411, 2009 WL 2074234	11th Cir.	7/17/09	11th Cir.	§ 1983, 8th & 14th Amendments, medical malpractice	Affirmed dismissal	*Pro se* criminal plaintiff was assaulted by a fellow inmate, necessitating medical treatment. Plaintiff brought claims based on the assault and treatment, alleging cruel and unusual punishment, retaliation, gross negligence on the part of his jailers and medical negligence against personnel for deliberate indifference to his medical condition. The 11th Circuit upheld the trial court's dismissal of all claims on the following grounds: 1) claims against the State of Florida (Plaintiff's jailer) were barred by sovereign immunity; 2) claims against criminal sheriff and deputies were barred by immunity; 3) evidence did not show that sheriff and deputies were	Y	Pleading requirement—focus is on burden of plaintiff to support allegations in complaint	William M. Davis; Hawkins & Parnell, LLP

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							grossly negligent or indifferent; 4) Plaintiff failed to file a medical affidavit in malpractice action against doctors as required under Florida law; and, 5) evidence was inadequate to support claims of inadequate medical treatment. In analyzing the merits of Plaintiff's medical negligence/indifference claims, the court noted that the medical records available generally established that the treatment of the Plaintiff was proper under the circumstances and that no evidence supported Plaintiff's conclusory allegations. In support of its affirmation of the dismissal of Plaintiff's medical claims, the court cited *Iqbal* and parenthetically noted that "the pleading standards set forth in Fed. R. Civ. P. 8 do 'not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions'" (*quoting Iqbal*). While discovery was not an issue in the *Gross* case, it appears that the court cited *Iqbal* in support of its decision to dismiss Plaintiff's medical			

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								malpractice claims because they were unsupported beyond the allegations of the complaint.			
131.	*Hernandez Auto Painting & Body Works, Inc. v. State Farm Mut. Auto. Ins. Co.*	Case No.: CV408-256; 2009 WL 2952066	S.D. Ga.	9/14/09	11th Cir.	Tortious interference, Motor Vehicle Accident Reparations Act ("MVRA"), Unjust Enrichment, Injunctive Relief pursuant to MVRA and the Uniform Deceptive Trade Practices Act, Bad Faith	Dismissal without prejudice	In this putative class action, Plaintiff alleged that State Farm "steered" potential customers away from his auto repair shop, and others similarly situated, to repair shops farmed by the defendant with rates and charges below reasonable market value. In dismissing the complaint, the court discussed the complaint's lack of factual content in light of the pleading standard set forth in *Iqbal.* The court dismissed claim for tortious interference because defendant was not a "stranger" to the business relationship. Citing *Iqbal* in a footnote, the court also noted that the plaintiff's mere conclusory allegation that defendant acted "without privilege" was a "simple recitation of an element of tortious interference" and insufficient as a matter of law. The court further noted that the claim was subject to dismissal for lack of factual content, finding that	N	Pleading requirement is relative to circumstances—focus is on burden of case to defendant	Alan Poppe; Foley & Lardner

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								allegations of "steering and misrepresentations" were mere "labels for a type of conduct that must be deduced from supporting facts." Similarly, the court dismissed the MVRA claim because plaintiff alleged only conclusory statements and recitations of the statute, stating that the pleading standard under Rule 8 "demands more than an unadorned, the defendant unlawfully harmed me accusation."			
132.	*N. Am. Clearing, Inc. v. Brokerage Computer Sys., Inc.*	No. 6:07-CV-1503-ORL19KR, 2009 WL 2982834	M.D. Fla.	9/11/09	11th Cir.	(1) Breach of Contract; 2) Conversion; (3) False designation of origin in violation of the Lanham Act; (4) Violation of Florida's Deceptive and Unfair Trade Practices Act	Motion to Dismiss Denied.	Plaintiff Broker Computer Systems, Inc. ("BCS"), a California corporation in the business of creating, designing, providing, and maintaining computer securities accounting systems for brokers, alleged that Defendants North American Clearing, Inc. ("NAC"), a stock brokerage firm, and its founder Richard Goble, viewed, copied, reverse-engineered and decompiled program files in breach of the parties agreement. In denying the Defendants' motion to dismiss the Second Amended Complaint, the court reiterated that "the	N	Key phrases include: -"must plead facts plausibly establishing" the elements of each cause of action -"must plead facts which permit a reasonable inference" of supporting each cause of action	C. Meade Hartfield; Lightfoot, Franklin & White, L.L.C.

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								facts alleged in support of each cause of action must be compared with the elements of that cause of action." The court then separately compared each claim to the elements of that cause of action. The court held that the plaintiff had pled facts "plausibly establishing" the elements of each claim and, thus, had sufficiently pled the four claims asserted.			
133.	*Sinaltrainal v. Coca-Cola Co.*	578 F.3d 1252	11th Cir.	8/11/09	11thCir.	Alien Tort Statute ("ATS") (28 U.S.C. § 1350); Torture Victims Protection Act ("TVPA") (28 U.S.C. § 1350)	Dismissal affirmed	Plaintiffs, trade union leaders, brought suit against Defendants, beverage makers and bottling companies. Plaintiffs "alleged the systematic intimidation, kidnapping, detention, torture, and murder of Colombian trade unionists at the hands of paramilitary forces, who allegedly worked as agents of the Defendants." The trial court dismissed for failure to plead factual allegations necessary to invoke subject-matter jurisdiction. The appellate court affirmed dismissal of both the ATS and TVPA claims. Regarding the ATS claims, the Plaintiffs failed to allege	N	1. The *Iqbal* and *Twombly* standards apply to dismissal for lack of subject-matter jurisdiction under Rule 12(b)(1) as well as failure to state a claim under Rule 12(b)(6). 2. The key pleading requirement is plausibility. Simply put, "[a] complaint may be dismissed if the facts as pled do not state a claim for relief that is plausible on its face." Thus, under Rule 8(a)(2), the "showing that the pleader is entitled to relief" is slightly clarified.	David J. Walz; Carlton Fields

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							state action because their allegation that the paramilitary forces acted under color of law was conclusory. Plaintiffs made "no suggestion" that the Colombian government was even aware of, let alone involved in, the alleged murder and torture. Plaintiffs also failed to allege conspiracy with allegations "based on information and belief." Plaintiffs vaguely alleged only that the conspiracy involved either payment of money or a shared ideology and failed to allege when or with whom the alleged actor entered into the conspiracy. Regarding the TVPA claims, the court held that subject-matter jurisdiction existed as a federal question under 28 U.S.C. § 1331, so the trial court should have analyzed the issue under Rule 12(b)(6). Plaintiffs alleged the same operative facts as those in the ATS claims, which again fell short on the issues of state action and conspiracy. Therefore, the court ordered dismissal for failure to state			

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								a claim.			
134.	*Harrison v. Benchmark Elecs. Huntsville, Inc.*	No. 08-16656, 2010 WL 60091	11th Cir.	1/11/10	11th Cir.	Americans with Disabilities Act ("ADA") 42 U.S.C. § 12112(d)(2) Specifically: improper medical inquiry; improper termination	Reversed District Court's Grant of Summary Judgment to Defendant	Plaintiff who suffered from epilepsy which was controlled with prescription barbiturates was terminated following a positive drug test. He filed a complaint alleging that his employer improperly inquired into his medical status and improperly terminated him due to his disability. The district court found that the Plaintiff failed to adequately plead his medical inquiry claim. The Eleventh Circuit reversed, citing *Iqbal* amongst other cases addressing federal pleading standards, and concluded: "[Plaintiff] satisfied our liberal pleading standard. His complaint alleged that [his employer] questioned him about his seizures following a pre-employment drug test, and he claimed damages for those prohibited medical inquiries." The court noted that the pleading was sufficient to provide notice to the employer of the relief sought by the Plaintiff, and that the pleading also specifically referred to pre-	N	*Iqbal* was simply recited in this decision without any particular analysis. It is perhaps noteworthy to see the Court referencing *Iqbal* alongside other cases which establish a "liberal pleading standard."	William M. Davis; Hawkins & Parnell, LLP

	Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
								employment medical inquiries.			
135.	*Waters Edge Living LLC v. RSUI Indem. Co.*	No. 08-16847, 2009 WL 4366031	11th Cir.	12/03/09	11th Cir.	Breach of settlement agreement; failure of insurer to timely pay a settled loss; breach of insurer's duty of good faith; misrepresentation (Texas law)	Reversed dismissal of certain portions of complaint	This case involved the payment of insurance proceeds for properties damaged by Hurricane Katrina. The properties were underinsured, and significant legal battles ensued as various property owners scrambled for a piece of the insurance proceeds. The court analyzed each of the counts of the complaint carefully in light of *Iqbal*. Although the court's inquiry was fact-specific for each count, the *Iqbal* analysis was generally the same for all. Primarily, the court focused on whether each particular count contained sufficient factual allegations to permit the court to draw a "reasonable inference" that the defendant might be liable.	N	Pleading requirement is that the pleaded facts are sufficient to permit the court to draw a "reasonable inference" regarding the potential liability of the defendant.	William M. Davis; Hawkins & Parnell, LLP
136.	*Mabien v. Riley*	No. 08-00728-CG-B, 2009 WL 4609763	S.D. Ala.	12/01/09	11th Cir.	42 U.S.C. § 1983	Dismissed complaint	*Pro se* criminal plaintiff filed a complaint alleging general concerns regarding the conditions of his confinement at J.O. Davis Correctional Facility. The court noted that,	Y	Pleading requirement is to present facts which are sufficient to permit the court to draw legal conclusions regarding the potential liability of the defendant.	William M. Davis; Hawkins & Parnell, LLP

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								although the plaintiff used a variety of legal terms and catch-phrases in his Complaint, there was a lack of factual assertions which would permit the court to draw legal conclusions. Citing *Iqbal*, the court noted: "Although the court must accept as true the factual allegations contained in Plaintiff's [Complaint], this does not apply to legal conclusions or 'a legal conclusion couched as factual allegation.' Plaintiff's limited factual allegations are not sufficient so as to allow this court to 'draw the reasonable inference that the defendant is liable for the misconduct alleged.'"			
137.	*De Lotta v. Dezenzo's Italian Restaurant, Inc.*	No. 6:08-cv-2033-Orl-22KRS, 2009 WL 4349806	M.D. Fla.	11/24/09	11th Cir.	Fair Labor Standards Act (29 U.S.C. § 201)	Denied motion for final default judgment	Plaintiff filed a complaint against a restaurant alleging that he was not paid overtime compensation pursuant to the Fair Labor Standards Act ("FLSA"). A default was entered against the Defendants and the Plaintiff filed a Motion for Entry of Final Default Judgment. The matter went before a magistrate judge, who found that the Plaintiff	N	1. The court applied the *Iqbal* analysis to a Motion for Final Default. 2. The magistrate's recommendation, which was adopted by the court, noted: "In the past, the court has accepted the bald allegation that a defendant was an enterprise engaged in commerce…without supportive facts. Reevaluation of those cases in light of the clarification in *Iqbal* regarding the necessity to plead facts, not merely conclusions, requires the court evaluate the facts alleged in the complaint."	William M. Davis, Hawkins & Parnell, LLP

Case Name	Citation	Court	Date	Circuit	Description of Causes of Action	Outcome	Summary of Court's Analysis	Pro Se? (Y/N)	Particular Issues of Interest	Task Group Member
							failed to allege facts rather than mere conclusions which demonstrated that the Defendant fell under the purview of the FLSA by being engaged in commerce or the production of goods for commerce. The only allegation regarding the "commerce or production of goods for commerce" requirement was a statement in the Complaint which read: "at all material times relevant to this action, Defendants were an enterprise covered by the FLSA, and as defined by 29 USC § 203(r) and 203(s). Additionally, Plaintiff was engaged in interstate commerce during his employment with Defendants." The Plaintiff alleged that *Iqbal* and *Twombly* precluded labor victims from seeking redress from the court without first obtaining private financial information regarding their employers. The court disagreed and denied the motion, but allowed the Plaintiff 10 days to amend his complaint.			