Melanie Hirsch is the Brayton-Thornton attorney at Public Justice.

Jack Landskroner is Vice President of the Public Justice Foundation and a principal in Landskroner Grieco Madden, LLC.

Claire Prestel is a staff attorney at Public Justice.

Public Justice is a national public interest law firm dedicated to preserving access to justice and holding the powerful accountable in courts. In 2009, Public Justice launched an Iqbal Project to prevent misuse of the Supreme Court's recent pleading decisions. To contact Public Justice with questions about Iqbal, please email iqbal@publicjustice.net or call 202-797-8600.

Pleading After *Iqbal* And *Twombly*

by Melanie Hirsch, Jack Landskroner, and Claire Prestel

The Supreme Court's recent decisions in *Bell Atlantic Corp. v. Twombly*[1] and *Ashcroft v. Iqbal*[2], re-formulated the test for deciding motions to dismiss under the Federal Rules of Civil Procedure. Instead of applying the well-known standard from *Conley v. Gibson*[3], which said that a motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts . . . which would entitle him to relief," federal courts must now determine whether a complaint states a claim that is "plausible on its face."[4] The meaning and significance of this plausibility requirement has become one of the hottest topics in federal litigation.

This article will summarize *Twombly* and *Iqbal* and then turn to two important questions that have arisen since the Supreme Court's decisions: (1) what effect, if any, do *Twombly* and *Iqbal* have in state courts; and (2) what exactly does it mean for a federal-court claim to be "plausible."

I. *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*

In *Bell Atlantic v. Twombly*, the Court considered a putative class-action complaint alleging that the "Baby Bells" had conspired to exclude competitors from the market for local phone and high-speed Internet service.[5] The putative class in *Twombly* included all local telephone or high-speed Internet consumers from 1996 to the present.[6] In an opinion written by Justice Souter, the Supreme Court held, 7-2, that the complaint's bare allegations of a conspiracy were "legal conclusions" insufficient to survive a motion to dismiss.[7] The Court also held that under Rule 8, the plaintiffs' complaint had to include enough "factual matter" to provide "plausible grounds to infer an [illegal] agreement" and that the complaint's allegations of parallel conduct failed this test because, in light of the unique history of the telecommunications industry, such conduct could "natural[ly]" be explained by legal, self-interested behavior on the part of the Baby Bells.[8] In the course of reaching these conclusions, the Court held that *Conley's* "no set of facts" language had often been misinterpreted and had "earned its retirement."[9]

At the same time, *Twombly* reaffirmed another key aspect of the *Conley* decision—that the principal purpose of pleading is nothing more than to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."[10] The Court also explicitly rejected the notion that it was applying a "'heightened' pleading standard" or requiring "heightened fact pleading of specifics."[11] And it affirmed the continuing validity of the model complaints found at the end of the Federal Rules.[12] Those complaints state claims in a simple and straightforward fashion, and they "illustrate the simplicity and brevity that [the] rules contemplate."[13]

Two years after *Twombly*, the Supreme Court addressed pleading again in *Ashcroft v. Iqbal*. The plaintiff in *Iqbal* was a Pakistani citizen and Muslim who was detained after September 11, 2001, and who alleged that he was deprived of various constitutional protections while in federal custody.[14] In particular, he alleged that Attorney General John Ashcroft and FBI Director Robert

Mueller "adopted an unconstitutional policy that subjected [him] to harsh conditions of confinement on account of his race, religion or national origin."[15]

The Supreme Court held, 5-4, that Iqbal's complaint should have been dismissed under *Twombly's* "plausibility" standard, which it extended to all civil cases.[16] In an opinion written by Justice Kennedy, the Court summarized *Twombly's* standard as based on "two working principles."[17] First, district courts need not accept a complaint's "legal conclusions" as true, although factual allegations should be accepted as true.[18] The Court described a conclusory allegation as one that "amount[s] to nothing more than a 'formulaic recitation of the elements'" of a claim,[19] and while it held that such allegations need not be taken as true, it also recognized that they may appropriately form the "framework" for a complaint.[20]

Second, a complaint must "state a plausible claim for relief."[21] To determine whether a complaint states a plausible claim, a judge may draw on his or her "judicial experience and common sense."[22] The Court explained that plausibility is "not akin to a 'probability requirement,'"[23] and it described the plausibility inquiry as a "context-specific task."[24]

Within days of the *Iqbal* decision, defendants in consumers' rights, workers' rights, and civil rights lawsuits began moving to dismiss those cases, claiming that *Twombly* and *Iqbal* changed federal law in numerous dramatic ways. While some of these "*Twiqbal*" motions have been granted, others have been denied, and one federal judge described the rush of citations to *Iqbal* as "Pavlovian," in that too many defendants reflexively filed even meritless motions to dismiss.[25] The same judge commented that *Twombly* and *Iqbal* are being "seriously overread[]" in some defendants' motions and that they are far from a "get out of jail free" card.[26]

II. Applications of *Twombly* and *Iqbal* in State Courts

One of the major questions that has emerged since *Twombly* and *Iqbal* is the extent to which the decisions apply in state court. The straightforward answer is that, because the Supreme Court's decisions interpret the Federal Rules of Civil Procedure, they are not binding on state courts interpreting their own rules. However, this has not stopped defendants in state court actions from attempting to impose the overly broad misinterpretation of these cases into state court pleading and practice.

Although *Twombly* and *Iqbal* interpret only the Federal Rules, defendants in Ohio and elsewhere have nonetheless begun to argue that state courts should adopt plausibility pleading. Before turning to arguments being made in other states, it should be noted that while some Ohio appellate courts have cited *Twombly* or *Iqbal* (although not in formally published opinions), the Ohio Supreme Court has never cited, let alone approved or adopted, either decision. Indeed, in the years since *Twombly*, the Ohio Supreme Court has confirmed that "Ohio generally is a notice-pleading state," with heightened pleading standards applied only in certain limited circumstances "where policy considerations so warrant."[27]

Ohio has preserved its pleading standard requiring that a dismissal on a motion to dismiss can only occur when it appears beyond a doubt that plaintiff can prove no set of facts entitling plaintiff to relief.[28]

In Ohio, as in other states, defendants' call for adoption of *Twombly* and *Iqbal* should be rejected. The flaws in defendants' logic are aptly demonstrated by the thorough analysis of the Washington Supreme Court in *McCurry v. Chevy Chase Bank, FSB*.[29] The defendants in *McCurry* argued that Washington should interpret its rules of procedure in accordance with *Twombly* and *Iqbal*—and the court soundly rejected that argument.[30]

In doing so, the *McCurry* court made two key points. First, it noted that the plausibility standard "is predicated on policy determinations specific to the federal trial courts," namely concerns about discovery costs forcing settlements.[31] The court found no reason to believe that "these policy determinations hold sufficiently true in the Washington trial courts to warrant such a drastic change in court procedure."[32] Indeed, as Professor Arthur Miller has pointed out, the available empirical data indicate that the discovery-abuse rationale fails to hold water even in federal court: in a recent survey conducted by the Federal Judicial Center, more than half of respondents reported that discovery costs had no effect on the likelihood of settlement in their cases and that the costs and extent of discovery were the "right amount" in proportion to their clients' stakes.[33]

Second, the *McCurry* court explained that it would be inappropriate for the court "to effectively rewrite CR 12(b)(6) based on policy considerations," since the "appropriate forum for revising the Washington rules is the rule-making process."[34] In that process, far more so than before a court, "policy considerations [can] be raised, studied, and argued in the legal community and the community at large."[35]

Other state supreme courts—although not all—have similarly rejected defendants' calls to apply *Iqbal* and *Twombly* to their state procedural rules. The Arizona Supreme Court reaffirmed its notice pleading standard in *Cullen*

v. Auto-Owners Ins. Co.,[36] which "dispel[led] any confusion as to whether Arizona has abandoned the notice pleading standard under Rule 8 in favor of the recently articulated standard" in *Twombly*.[37] The court emphasized that the United States Supreme Court's proclamations did not affect Arizona procedure, since "this Court has the final say in the interpretation of procedural rules" and no rule changes had been proposed.[38] Put another way, state courts simply "are in no way bound by federal jurisprudence in interpreting our state pleading rules."[39]

III. The Meaning of "Plausibility Pleading"

After *Iqbal*, it is clear that "plausibility pleading" is now the rule for all civil cases in federal court. What is not clear, however, is what the Court meant when it said that a claim must be "plausible." Plausibility is now the governing standard for motions to dismiss, but the *Iqbal* Court had only this to say about it:

> A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with

Kathleen J. St. John is a principal at Nurenberg, Paris, Heller & McCarthy Co.,L.P.A. She can be reached at 216.621.2300 or kstjohn@nphm.com.

Sidebar: Notice Pleading Remains The Law In Ohio

by Kathleen J. St. John

Although *Iqbal* and *Twombly* have been cited in several Ohio appellate decisions, the courts' references to these cases do not represent a change in Ohio's liberal notice pleading standards.

It has long been held that Ohio is a notice pleading state, and that a plaintiff is generally not required to plead operative facts with particularity.[1] Under Ohio's Civ. R. 8(A), a complaint need only consist of a short and plain statement of the claim that gives the defendant fair notice of the plaintiff's claim and the grounds upon which it is based.[2] Outside of a few exceptions, such as workplace intentional tort or a negligent hiring claim against a religious institution, the complaint need only contain "brief and sketchy allegations of fact to survive a motion to dismiss under the notice pleading rule." [3]

Under Ohio law, moreover, the standard for granting a motion to dismiss under Civ. R. 12 (B) (6) continues to be a difficult one to meet. "A trial court may not grant a motion to dismiss for failure to state a claim upon which relief may be granted unless it appears 'beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.'"[4] In ruling on a motion to dismiss, the court must presume all factual allegations to be true and must draw all reasonable inferences in favor of the non-moving party. [5] "[A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss."[6]

The Ohio appellate decisions that have cited *Twombly* and/or *Iqbal* do not alter the foregoing principles of Ohio law. Indeed, all such decisions *also* cite the long-settled principles of Ohio law as mentioned above. Thus, to the extent that Ohio courts have cited *Twombly* or *Iqbal*, they have treated these decisions as being consistent with existing Ohio law, and *not* as signaling a new era of pleading in Ohio.

For instance, in *Parsons v. Greater Cleveland Regional Transit Authority*,[7] although the court cited the *Twombly* "plausibility" standard, it affirmed the trial court's denial of the defendant's motion to dismiss because "we cannot say beyond doubt that [the plaintiffs] can prove no set of facts entitling them to relief. That is all that is required at this stage of the proceedings."[8]

At least one Ohio appellate judge has expressly noted that the heightened pleading requirements of *Iqbal* and *Twombly* do not represent Ohio law. In *Miller v. Thyssenkrup Elevator Corp.*,[9] the Eighth District Court of Appeals affirmed the trial court's denial of the political subdivision defendant's (CMHA's) motion for judgment on the pleadings, despite CMHA's contention that it was entitled to be given notice under a heightened pleading standard. Although the majority rejected this contention without reference to *Iqbal* or *Twombly*, Judge Christine T. McMonagle – dissenting on the ground that the appeal was not taken from a final appealable order – expressly noted that the *Iqbal/Twombly* standard does not govern state court rulings in Ohio. Judge McMonagle stated:

> CMHA appeals a denial of its Civ. R. 12(C) motion to dismiss, arguing that for public policy reasons, this court should adopt what is perhaps a heightened pleading standard articulated in two U.S. Supreme Court cases: *Bell Atlantic Corp. v. Twombly* (2007), 550 U.S. 544, 127

> a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief."[40]

Despite the lack of clarity in *Iqbal*, there are compelling reasons to believe that the "plausibility" standard is a lenient one. As an initial matter, the unchanged language of Rule 8 still requires only "a short and plain statement of the claim." Furthermore, the Court in *Twombly* emphasized that a "complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely" and cited the proposition that "Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations."[41]

Moreover, in *Erickson v. Pardus*, an often-overlooked case decided shortly after *Twombly*, the Supreme Court re-affirmed that "[s]pecific facts are not necessary" and that notice pleading remains the rule.[42] *Erickson* also described the pleading standard, even after *Twombly*, as "liberal."[43]

In another recent case that is useful for comparison, the Supreme Court held that even under the heightened, *more*-than-plausible pleading standard imposed by the Private Securities Litigation Reform Act (PSLRA), a plaintiff's theory of liability need not be more compelling than competing inferences in order for the plaintiff's

> S.Ct. 1955*** and *Ashcroft v. Iqbal* (2009), __U.S.___, 129 U.S. 1937**** The Ohio Supreme Court has not (and legally need not) adopt this standard and the law remains that Ohio is a notice pleading state.[10]

Notably, no Ohio appellate case that has cited *Iqbal* or *Twombly* has affirmed or reversed a lower court's decision by applying a stricter pleading standard than would otherwise apply under Ohio's notice-pleading standard.[11] Thus, appellate court references to *Iqbal* and Twombly should not be construed as hailing a new and stricter pleading era under the Ohio Rules of Civil Procedure. ■

End Notes

1. *City of Cincinnati v. Beretta U.S.A. Corporation*, 95 Ohio St.3d 416, 2002-Ohio-2480, ¶29.
2. *Illinois Controls, Inc. v. Langham* (1994), 70 Ohio St.3d 512, 526, 1994-Ohio-99, 639 N.E.2d 771.
3. *Vinicky v. Pristas*, 163 Ohio App.3d 508, 2005-Ohio-5196, 839 N.E.2d 88, ¶6; *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143, 145, 573 N.E.2d 1063.
4. *Ogle v. Ohio Power Company*, 180 Ohio App.3d 44, 2008-Ohio-7042, ¶3 (quoting *O'Brien v. Univ. Community Tenants Union* (1975), 42 Ohio St.2d 242, 327 N.E.2d 753, syllabus).
5. *Beretta*, at ¶5.
6. *York*, 60 Ohio St.3d at 145.
7. 8th Dist. No. 93523, 2010-Ohio-266.
8. *Id.* at ¶15.
9. 8th Dist. No. 94352, 2010-Ohio-5011.
10. *Id.* at ¶37.
11. As of the drafting of this sidebar, in April of 2011, a LEXIS search of Ohio cases produces eleven decisions that cite *Twombly, Iqbal*, or both. Two of these decisions have nothing to do with pleading standards, but cite *Twombly* for other reasons. *Szuch v. King*, 6th Dist. No. E-09-069, 2010-Ohio-5896, ¶115 (dissenting judge cites the intermediate appellate court's decision in *Twombly* for its statement of the law on conspiracy); *Grace v. Mastruserio* (1st Dist.), 182 Ohio App.3d 243, 2007-Ohio-3942, n.30 (citing Justice Stevens' dissent in *Twombly* on a discovery issue). Four more of these decisions either affirm an order denying the defendant's motion to dismiss or for judgment on the pleadings, or reverse an order granting a motion to dismiss, based on Ohio's notice pleading standards. *Fink v. Twentieth Century Homes, Inc.,* 8th Dist. No. 94519, 2010-Ohio-5486, ¶¶28, 38 (affirming denial of motion to dismiss); *Miller, supra* (affirming denial of motion for judgment on the pleadings); *Parsons, supra* (affirming denial of motion to dismiss); *Gallo v. Westfield National Ins. Co., 8*th Dist. No. 91893, 2009-Ohio-1094, ¶¶14, 23, 25 (reversing, in part, the trial court's order granting a motion to dismiss, because the complaint "satisfie[s] the liberal notice pleading requirements set forth in Civ. R. 8"). Two other decisions affirm dismissals of pro se complaints that fail under any standard of pleading. *Cirotto v. Heartbeats of Licking County*, 5th Dist. No. 10-CA-21, 2010-Ohio-4238 (volunteer sues charitable organization for gender and religious discrimination because the organization did not follow through on plans to create a paying position for him); *Williams v. Ohio Edison,* 8th Dist. No. 92840, 2009-Ohio-5702 (after having default judgment entered against her on a creditor's claim in an action filed in Summit County, *pro se* plaintiff sues creditor and its attorneys in Cuyahoga County for fraud and collusion; this case also involved a heightened pleading standard due to the allegations of fraud). The remaining three decisions also fail to usher in a new era in pleading. *Vagas v. City of Hudson*, 9th Dist. No. 24713, 2009-Ohio-6794 was an affirmance of an order granting the City's motion to dismiss under circumstances where the complaint would not have survived under any pleading standards. *Boske v. Massillon City School Dist.*, 5th Dist. No. 2010-CA-00120, 2011-Ohio-580 was an action against a school district, a guidance counselor and several officials for failing to prevent the plaintiff's eighth grade daughter from having a physical relationship with a male teacher. Although the appellate court affirmed the lower court's denial of the motion for judgment on the pleadings as to most of the appellants, it reversed as to the superintendent as there were no allegations in the complaint suggesting that his conduct would rise to the level of culpability necessary for an exception to immunity to apply to him. Finally, in *State ex rel. Dann v. American International Group, Inc.*, Cuy. Cty. C.P. No. 633857, 2008 Ohio Misc. LEXIS 320, the trial court denied the defendants' motion to dismiss the plaintiff's Valentine Act claim, finding that the *Twombly* standard did not apply, and that "[t]he appropriate standard of review to be applied in this case is specified by *Conley v. Gibson* (1957), 355 U.S. 41, 78 S.Ct. 99***, which holds that a rule 12(B)(6) motion will not be granted 'unless is appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' Id. at 45-46." *Id.* at *6.

complaint to survive a motion to dismiss.[44] The same must necessarily be true under the more lenient standard that applies to non-PSLRA complaints, as several courts have now held.[45]

As the lower courts have wrestled with the meaning of "plausibility" after *Iqbal*, they have produced a number of statements that are useful to practitioners. For example, as Judge Wood explained in *Swanson*, plausibility "does not imply that the district court should decide whose version to believe, or which version is more likely than not. . . . As we understand it, the Court is saying instead that the plaintiff must give enough details . . . to present a story that holds together."[46] The ultimate question is "*could* these things have happened, not *did* they happen."[47] As phrased by an Ohio district court, "the term 'plausible' is to be understood in a peculiarly narrow sense, and does not refer to the likelihood that the plaintiff will be able to prove a particular allegation. Rather, the Court meant the term to refer to the plausibility of the plaintiff's legal theories, when considered in light of the factual allegations in the complaint."[48]

Not only is the plausibility standard a liberal one, but several post-*Iqbal* decisions from the lower courts—including from the Sixth Circuit and Ohio district courts—emphasize that *Twombly* and *Iqbal* did not alter numerous well-established principles that favor plaintiffs on motions to dismiss. For example:

- The complaint still must be construed in the light most favorable to the plaintiff,[49] and the court must make "reasonable inferences in favor of the non-moving party."[50]
- Since plaintiff's factual allegations are assumed to be true,[51] the court is not "permitted to weigh or disbelieve . . . factual allegations in the motion to dismiss context."[52]
- General allegations are permissible at the pleading stage[53]; detailed factual allegations are not required, because "[i]f the Court were to require Plaintiffs to have all evidence available to them before they file their complaint and to set forth that evidence in the complaint, the well-established rules and processes of discovery would be rendered utterly unnecessary."[54]
- Plaintiffs may still plead facts "on information and belief."[55] Furthermore, "[e]videntiary support is simply not necessary at this stage in the proceedings, and the Court does not read *Iqbal* and *Twombly* to impose that requirement on plaintiffs. . . . [D]efendants have seized upon these cases and, as here, contend that they stand for the proposition that a plaintiff must essentially present a fully developed factual record in his complaint. This is, indeed, an over-reading of the cases."[56]
- Courts remain cognizant of informational asymmetry between plaintiffs and defendants and that plaintiffs cannot yet plead specific facts; often, "the defendants are in control of such information or it is otherwise unavailable to the plaintiffs,"[57] or the evidence defendants claim is missing from the complaint is "uniquely in [the defendants'] possession."[58]
- Plaintiffs need not disprove alternative explanations at the pleading stage.[59]
- Every complaint must be considered as a whole, not piece-by-piece.[60]

Conclusion

At the time of this writing, only about twenty months have passed since the Supreme Court decided *Ashcroft v. Iqbal*, and lower courts are continuing to struggle with how to apply the decision. But regardless of what, exactly, has changed after *Iqbal*, courts should also bear in mind what has stayed the same.■

End Notes

1. 550 U.S. 544 (2007).
2. 129 S. Ct. 1937 (2009).
3. 355 U.S. 41, 45–46 (1957).
4. *Twombly*, 550 U.S. at 570.
5. See 550 U.S. at 550–51.
6. *Id.* at 550.
7. *Id.* at 564.
8. *Id.* at 556, 566.
9. *Id.* at 561–63.
10. *Id.* at 555 (quoting *Conley*, 355 U.S. at 47); *see also, e.g., Maty v. Grasselli Chem. Co.*, 303 U.S. 197, 200 (1938) ("Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end.").
11. *Twombly,* 550 U.S. at 569 n.14, 570.
12. *See id.* at 565 n.10.
13. Fed. R. Civ. P. 84.
14. *See* 129 S. Ct. at 1942.
15. *Id.*
16. *Id.* at 1953.
17. *Id.* at 1949.
18. *Id.*
19. *Id.* at 1951.
20. *Id.* at 1950.
21. *Id.*
22. *Id.*
23. *Id.* at 1949.
24. *Id.* at 1950.
25. *Madison v. City of Chicago*, No. 09 C 3629 (N.D. Ill. Aug. 10, 2009) (Shadur, J.)
26. *Id.* at 2, 11.
27. *Fletcher v. Univ. Hosps. of Cleveland,* 120 Ohio St.3d 167, 2008-Ohio-5379, 897 N.E.2d 147, 150; *see also LaNeve v. Atlas Recycling, Inc.,* 119 Ohio St.3d 324, 2008-Ohio-3921, 894 N.E.2d 25, 30 (noting that Ohio's rules "establish[] 'notice pleading,' which supports pleading constructions allowing for substantial justice") (citation omitted).
28. *Volbers-Klarich v. Middletown Management, Inc.*, 125 Ohio St.3d 494, 2010 Ohio 2057, at ¶¶11-12 citing *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St. 2d 242.
29. 233 P.3d 861 (Wash. 2010).
30. *See id.* at 862–64.
31. *Id.* at 863.
32. *Id.*
33. Arthur Miller, *From* Conley *to* Twombly *to* Iqbal:

A Double Play on the Federal Rules of Civil Procedure, 60 Duke L.J. 1, 64–65 & n.259 (2010) (citing FJC survey).

34. *Id.* at 864.
35. *Id.*
36. 189 P.3d 344 (Ariz. 2008).
37. *Id.* at 345.
38. *Id.* at 347.
39. *Colby v. Umbrella, Inc.*, 955 A.2d 1082, 1086 n.1, 1090 (Vt. 2008) (emphasizing intent to continue relying on *Conley* standard and describing complaint as "a bare bones statement that merely provides the defendant with notice of the claims against it. Its purpose is to initiate the cause of action, not prove the merits of the plaintiff's case") (citation omitted); *see also Roth v. DeFeliceCare, Inc.,* 700 S.E.2d 183, 189 n.4 (W. Va. 2010) ("Under West Virginia law . . . this Court has not adopted the more stringent pleading requirements as has been the case in federal court and all that is required by a plaintiff is 'fair notice.'").
40. 129 S. Ct. at 1949 (citations omitted).
41. *Id.* at 556 (citations omitted).
42. 551 U.S. 89, 93 (2007) (purpose of Rule 8 is "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests") (quoting *Twombly*, 550 U.S. at 555) (internal quotation marks omitted); *see also Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010) ("The factual allegations in the complaint need to be sufficient to give notice to the defendant as to what claims are alleged.").
43. 551 U.S. at 94.
44. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314 (2007).
45. *See, e.g., Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. 2010) (under *Twombly* and *Iqbal*, plaintiff's inferences need not be "more compelling than the opposing inferences").
46. 614 F.3d at 404.
47. *Id.*
48. *Boroff v. Alza Corp.*, 685 F. Supp. 2d 704, 707–08 (N.D. Ohio 2010) (citations omitted); *see also Redinger v. Stryker Corp.,* No. 5:10 CV 104, 2010 WL 1995829, at *3 (N.D. Ohio May 19, 2010) (defendant's arguments, while "relevant to whether Plaintiff can ultimately *prove* his claims," did not demonstrate that plaintiff's claims were not plausible) (emphasis added).
49. *Fritz,* 592 F.3d at 725; *McKinney v. Bayer Corp.*, --- F.Supp.2d ----, 2010 WL 3834327, at *4 (N.D. Ohio 2010).
50. *Augenstein v. Coldwell Banker Real Estate LLC,* --- F. Supp. 2d ----, 2010 WL 4537049, at *1 (S.D. Ohio 2010).
51. *Segal v. Fifth Third Bank, N.A.,* 581 F.3d 305, 308 (6th Cir. 2009); *McKinney*, 2010 WL 3834327, at *4.
52. *Ferron v. Metareward, Inc.*, 698 F. Supp. 2d 992, 999 (S.D. Ohio 2010).
53. *Fritz,* 592 F.3d at 725–26.
54. *Lefker v. I-Flow Corp.*, No. 1:10-CV-00350, 2010 WL 4806771, at *4 (S.D. Ohio Nov. 17, 2010).
55. *Lewis v. Taylor,* No. 1:10-CV-00108, 2010 WL 3785109, at *2–*3 (S.D. Ohio Sept. 21, 2010).
56. *Id.* at *3.
57. *Hiles v. Inoveris, LLC*, No. 2:09-cv-53, 2009 WL 3671007, at *3 (S.D. Ohio Nov. 4, 2009).
58. *Pasqualetti v. Kia Motors America, Inc.*, 663 F. Supp. 2d 586, 601 (N.D. Ohio 2009).
59. *See Foust v. Stryker Corp.,* No. 2:10-cv-00005, 2010 WL 2572179, at *4–5 (S.D. Ohio June 22, 2010) ("The fact that Plaintiff's hip replacement could have failed for multiple reasons is not relevant at this stage in the pleadings.").
60. *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009); *Auto Chem Labs., Inc. v. Turtle Wax, Inc.*, 3:07cv00156, 2010 WL 3860660, at *3 (S.D. Ohio Feb. 13, 2010) (considering claim "in light of all of [plaintiff's] factual allegations" and stating that defendant's focus on one allegation "is too narrow").