

## Drafting a Complaint

Hypothetical (read this first):

Bernie Smith and Tommy Jones are business associates. Bernie lives in Phoenix, AZ, and Tommy lives in San Francisco, CA. They have been friends since childhood when they went to school together in Phoenix. While Tommy moved to California, he kept in touch with Bernie, who remained in Phoenix and became a computer programmer.

Last year, Bernie and Tommy agreed, by exchange of emails, that Tommy would pay Bernie \$20,000 and Bernie would write some software for Tommy's new website. Three months ago, however, Tommy told Bernie that he was unhappy with his work and was terminating this relationship after Tommy had been paid only \$4,000 but had completed most of the project.

Bernie was incensed and threatened that if Tommy did not pay him the balance, he would sue. He flew out to San Francisco on May 10 of this past year to confront Tommy. He rented a Ford Fusion and drove to Tommy's house. Tommy invited him in to discuss the matter. Soon, the discussion got heated and Tommy insisted that Bernie leave the house. Bernie failed to do so and started screaming that Tommy was a "rotten, no-good back-stabber." Tommy punched Bernie in the nose and then ran to the kitchen and grabbed a steak knife. He ran up to Bernie, brandished the knife and said "Get out of my house! NOW!"

Bernie left the house, but tripped on some loose gravel on the front porch and fell. Bernie then got up and screamed, "You haven't see the last of me, you jerk!" Tommy replied, "Oh, yeah. Here's something to remember me by" and threw a stone from the front doorway that shattered the window of Bernie's rental car. Bernie drove to the hospital where he was diagnosed with a broken nose from the punch and a severely sprained ankle from the fall. He incurred hospital bills of \$15,000 and had to miss work for several days.

Bernie now wants to sue Tommy for everything plausible.

## Drafting a Complaint

While actually drafting a good complaint requires thought and practice, understanding the overall purpose of the complaint is an important component of this basic legal task. The complaint is designed to be a framework for the litigation to follow. It does not have to be overly detailed and it is not expected that a complaint will contain evidence or, in itself, actually prove anything. Rather, the complaint describes the basics of the case to the parties, the court and even the public (complaints in civil cases are public record). It serves to give "notice" to the defendant as to why he or she is being sued.

The federal system, under Rule 8 of the Federal Rules of Civil Procedure, requires only:

1. a short and plain statement of the grounds for the court's jurisdiction
2. a short and plain statement of the claim showing that the pleader is entitled to relief; and
3. a demand for the relief sought

It should also be noted, however, that the Supreme Court has interpreted the second requirement above to mean that the complaint must include some facts that make the allegation plausible in context. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). Some complaints go beyond this requirement and give more detail than is absolutely necessary, but these are the minimum requirements.

Drafting the complaint, of course, is not the initial step in the litigation process as far as the plaintiff's attorney is concerned. On the contrary, the plaintiff's attorney has a responsibility to conduct a reasonable investigation to ascertain the facts of the case and to ensure that the cause of action is not false or frivolous. Negligently filing a false or frivolous complaint can subject an attorney to discipline or sanctions.

The complaint briefly tells the story of the case. It starts by identifying the parties involved (and thereby establishing why the court has jurisdiction) and proceeds to lay out the facts upon which the cause of action is based. Once the story of the facts are told, the complaint must explain why the elements of the cause of action are met by the facts. If there are multiple causes of action, they should be treated separately even if they all rely on the same basic facts.

For convenience purposes, complaints are generally set forth in numbered paragraphs. However, this does not mean that the paragraphs are independent of each other. The paragraphs are, in fact built on one another.

The final section of a complaint demands the remedies sought in the jury trial if that is being sought as well.

**Caption**

A complaint, like most other documents are filed in a civil case, contains a caption at the top of the first page that sets forth:

- The parties
- The title (i.e., what document is being filed)
- The court in which it's filed
- The index number or case number, if available.

It is common for a box or series of lines or end parentheses to be used to create a caption.

Applying our hypothetical, above, let's assume we represent Bernie and we want to sue Tommy in federal court in San Francisco. We will likely need to pay a fee and get an index number when we file the complaint. If we have not yet done so and so don't have a case or index, we can leave it blank. But for our purposes, we'll assume we have one already:

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

-----X

BERNIE SMITH,  
Plaintiff

COMPLAINT  
DEMAND FOR A JURY TRIAL

- versus -

TOMMY JONES,  
Defendant

Case Number: 12-34567

-----X

Instead of “versus” you may see “v.” or “against” and there may be slight differences in wording. You should follow the custom of your firm or the standard practice of your local court. Some courts also require the name and address of the plaintiff on the first page. A summary of the rules required in the Central District of California, for example, can be found here:

<http://www.publiccounsel.org/tools/materials/files/GUIDE-How-to-Write-a-Complaint.pdf>.

## **Opening and Jurisdiction**

In the first part of the complaint, we’re going to have to name the parties and identify where they live to establish jurisdiction. We can make this very simple. Let’s try:

### *Parties*

- 1. The Plaintiff, Bernie Smith, is a resident of Phoenix, AZ.*
- 2. The Defendant, Tommy Jones, is a resident of San Francisco, CA*

It can get a little more complex if corporations or minors are involved, but this section is generally easy.

Next, under the federal rules, we have to say why this court has jurisdiction. While not directly required by Rule 8, it is also a good idea to state why this venue is a proper venue. Remember that jurisdiction means both subject matter and personal jurisdiction. That the Northern District of California has personal jurisdiction over Tommy is obvious (it would have been trickier had we sued in Phoenix), but it should still be stated.

### *Jurisdiction and Venue*

- 3. This court has subject matter jurisdiction over this action under 28 USC § 1332 because the parties are residents of different states (Arizona and California) and the amount in controversy is more than \$75,000.*
- 4. This court has personal jurisdiction over the defendant because the defendant is a resident of the state of California and because most of the underlying facts occurred in California.*
- 5. This court is a proper venue under 28 USC § 1391 because the defendant is a resident San Francisco, which is within this district and because most of the underlying facts occurred in this district.*

Notice that we’re not using fancy language or legalese. Other than the federal statutes (which are not even really necessary, but are helpful), we will not be citing legal authority. This is not a legal treatise or a judicial decision. It is merely meant to serve notice to the defendant and the court as to what this case is about.

## **Facts of the case**

Now we will turn to giving a run-down of the relevant facts. These will form the basis of the causes of action and plea for damages, which will come later on. We will continue the same paragraph numbering structure. The facts don’t need to go into exhaustive detail but they should state everything that is necessary to frame the contextual background for the causes of action alleged.

Let's take a shot at drafting the section on the facts based on our fact pattern. You may have to make some additional facts up or embellish a little. Of course, in real life, you will have a full set of facts to go on. As we're drafting, we will of course stay completely accurate, but it also makes sense to try to frame the facts in the light most favorable to your client.

#### *Background and Facts*

6. *On or about June 1, YR01, Plaintiff and defendant agreed that plaintiff would complete certain software writing tasks for defendant in exchange for \$20,000. This agreement was made voluntarily and knowingly by both parties in e-mails that were duly electronically signed and sent.*

7. *Plaintiff has substantially completed his requirements under this agreement.*

8. *Nevertheless, defendant has paid only \$4,000 of this amount. The other \$16,000 is still outstanding.*

9. *On or about May 10, YR02, Plaintiff and Defendant met at Defendant's house to discuss the above referenced matter.*

10. *During this meeting, Defendant threatened plaintiff by brandishing a steak knife at him.*

11. *During this meeting, Defendant knowingly and intentionally punched Plaintiff in the face with a closed fist. As a result of this punch, Plaintiff suffered pain and suffering and a broken nose.*

12. *After the meeting, Plaintiff tripped on loose gravel that Defendant had failed to remove from his front porch.*

13. *Shortly after the events referenced above, Defendant intentionally threw a rock from his doorway that hit and shattered the window of Plaintiff's rental car.*

Notice that in this section, we have not used any legal conclusion words such as "assault" or "breach." At this point, we're just telling the story. Later, we will tie in the facts with the legal terminology necessary to establish the elements of our causes of action.

#### **Causes of Action**

Now it's time to let the court and defendant know the legal theories (causes of action) under which we are filing this lawsuit. We will draft these one at a time, incorporating the facts and elements of the cause of action into each section. We will start each section by "re-alleging" while previous allegations so that we don't have to restate all the relevant facts that are relevant to each cause of action.

##### *Count 1: Breach of Contract*

14. *Plaintiff re-alleges all previous allegations that appear above.*

15. *Plaintiff and defendant completed an agreement with valid offer, acceptance and consideration, under which he is due \$20,000.*

16. *Plaintiff has substantially completed his responsibilities under this agreement.*

17. *Defendant has breached this agreement by failing to pay \$16,000 of that amount.*

That takes care of the breach of contract allegation. The rest of our causes of action will be torts. Assuming you've already taken torts (or at least the first few classes in that course), you may have noticed that there are several intentional tort causes of action relevant here. There is also a negligence action here that may be available due to the loose gravel. It is important to allege this negligence cause of action even though there are plenty of other causes of action available because this is the theory upon which we can establish liability for the twisted ankle. Finally, we can allege a cause of action for trespass to chattel due to Tommy's throwing the rock at Bernie's rental car.

For counts 2 and 3, let's start with the assault allegations. Assault means a reasonable fear of an immediate harmful or offensive contact. It is also an intentional tort. So, let's frame the facts in a way that shows that an assault was committed.

*Count 2: Assault*

*18. Plaintiff re-alleges all previous allegations that appear above.*

*19. Defendant intentionally brandished a knife at Plaintiff, as stated above.*

*20. As a result of brandishing the knife, Plaintiff suffered a reasonable fear that he was in imminent danger of suffering a harmful contact, i.e., being stabbed with this knife.*

We don't have to prove anything at this point or make complex legal arguments or include case citations or anything like that. We only need to show what tort is being alleged and how the elements of the cause of action fit the facts.

Count three is another assault count and is very similar. Even though we already alleged assault, the assault that came with the punch is a separate action from count 2 and so we can and should allege it as a separate count.

*Count 3: Assault*

*21. Plaintiff re-alleges all previous allegations that appear above.*

*22. Defendant intentionally punched the Plaintiff in those, as stated above.*

*23. While the punch was being thrown, Plaintiff suffered a reasonable fear that he was in imminent danger of suffering a harmful contact, i.e., being punched in the nose.*

Count four will follow a similar pattern as we move to our next tort, battery. Battery is also an intentional tort, which is defined as a harmful or offensive contact. Since the knife never made contact with Bernie, we only have one count here.

*Count 4: Battery*

*24. Plaintiff re-alleges all previous allegations that appear above.*

*25. Defendant intentionally punched the Plaintiff in those, as stated above.*

*26. As a result of being punched, Plaintiff suffered a harmful and offensive contact; i.e., the Defendant's fist punching his nose.*

Next, we can either move to negligence or allege the last of our intentional torts (trespass to chattel). There's not necessarily a "right" or "wrong" way to choose an order, but I'm going to proceed on a "first in time" basis and thus allege negligence for the fall on the loose gravel next. The elements of negligence are: duty, breach, causation and damages. As you may know from torts class, defining these elements can be complex. Fortunately, we don't have to worry too much about that. We're just going to allege the elements.

*Count 5: Negligence*

*27. Plaintiff re-alleges all previous allegations that appear above.*

*28. Defendant had a duty to maintain his front porch in a reasonable manner, as it was foreseeable that other people would walk in his front porch to get to or from his front door.*

*29. Defendant breached that duty by failing to remove or remediate the loose gravel on his front porch.*

*30. As a proximate result of this breach of duty, the Plaintiff tripped on the Defendant's front porch while walking on it in a standard manner.*

*31. As a result of this fall, the Plaintiff suffered a badly sprained ankle.*

In drafting this count, we have used "buzzwords" that are associated with the negligence tort such as "foreseeable," which is necessary for a breach of duty to occur and "proximate," because "proximate causation" is required for the causation element to be met. Notice also that, in the previous counts, we did not reference damages. We'll get to those when we request relief. But in this count, we put damages in the count itself because damages is one of the four elements of negligence. Damages is not an element of any of the other torts we discussed.

Okay, now we move to the rock-throwing incident and we'll allege trespass to chattel. This is an easy one. Intentional interference with someone else's possession is trespass to chattel. While it's true that Bernie did not own the car, ownership is not necessary to establish a case for trespass to chattel.

*Count 6: Trespass to Chattel*

*32. Plaintiff re-alleges all previous allegations that appear above.*

*33. Plaintiff was in lawful possession of his rental car at the time in question.*

*34. Defendant intentionally threw a rock at that rental car.*

*35. The Defendant's thrown rock hit and shattered the windshield of the Plaintiff's rental car, constituting an interference with that car.*

Again, we will not reference damages for this cause of action (yet).

Okay, now we're hitting the home stretch. Some complaints go straight to request for relief. I like to establish the damages first and then request relief.

*Damages*

*36. As a result of the Defendant's actions stated above, Plaintiff suffered the following damages:*

- *Loss due to breach of contract, in the amount of \$16,000*
- *Hospital Bills, in the amount of \$25,000*
- *Lost work time, in the amount of \$10,000*
- *Damage to his rental car, in the amount of \$2,000*
- *Pain and Suffering and emotional distress, in the amount of \$30,000*

Now, we can finish up with our demand for relief. Though attorney's fees are not generally awarded in most civil cases, it doesn't hurt to ask for them. Court costs (such as filing fees, etc.) are often awarded to the winner.

*37. WHEREFORE, Plaintiff demands the following relief:*

- *A monetary judgment in an amount not less than \$83,000*
- *Court costs to be awarded to Plaintiff*
- *Attorney's fees to be awarded to Plaintiff*
- *A jury trial to try this action*
- *Such further relief that the court deems just and proper.*

This last request may not amount to much as it's doubtful that the court will deem everything requested as insufficient to compensate the Plaintiff. But, as with many other standard provisions that come standard in court documents, it can't hurt.

Then we put the signature and date line for the plaintiff's attorney and put our firm's contact information. Federal courts (and some state courts) also require a verification form signed by the plaintiff to attest that the complaint is true.

Please see the following pages for our completed complaint.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

-----X

BERNIE SMITH,  
Plaintiff

COMPLAINT  
DEMAND FOR A JURY TRIAL

- versus -

TOMMY JONES,  
Defendant

Case Number: 12-34567

-----X

The Plaintiff, BERNIE SMITH, alleges the following:

**Parties**

1. The Plaintiff, Bernie Smith, is a resident of Phoenix, AZ.
2. The Defendant, Tommy Jones, is a resident of San Francisco, CA

It can get a little more complex if corporations or minors are involved, but this section is generally easy.

**Jurisdiction and Venue**

3. This court has subject matter jurisdiction over this action under 28 USC § 1332 because the parties are residents of different states (Arizona and California) and the amount in controversy is more than \$75,000.
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**Background and Facts**

6. On or about June 1, YR01, Plaintiff and defendant agreed that plaintiff would complete certain software writing tasks for defendant in exchange for \$20,000. This agreement was made voluntarily and knowingly by both parties in e-mails that were duly electronically signed and sent.
7. Plaintiff has substantially completed his requirements under this agreement.
8. Nevertheless, defendant has paid only \$4,000 of this amount. The other \$16,000 is still outstanding.
9. On or about May 10, YR02, Plaintiff and Defendant met at Defendant's house to discuss the above referenced matter.
10. During this meeting, Defendant threatened plaintiff by brandishing a steak knife at him.
11. During this meeting, Defendant knowingly and intentionally punched Plaintiff in the face with a closed fist. As a result of this punch, Plaintiff suffered pain and suffering and a broken nose.



12. After the meeting, Plaintiff tripped on loose gravel that Defendant had failed to remove from his front porch.

13. Shortly after the events referenced above, Defendant intentionally threw a rock from his doorway that hit and shattered the window of Plaintiff's rental car.

#### **Count 1: Breach of Contract**

14. Plaintiff re-alleges all previous allegations that appear above.

15. Plaintiff and defendant completed an agreement with valid offer, acceptance and consideration under which he is due \$20,000.

16. Plaintiff has substantially completed his responsibilities under this agreement.

17. Defendant has breached this agreement by failing to pay \$16,000 of that amount.

#### **Count 2: Assault**

18. Plaintiff re-alleges all previous allegations that appear above.

19. Defendant intentionally brandished a knife at Plaintiff, as stated above.

20. As a result of brandishing the knife, Plaintiff suffered a reasonable fear that he was in imminent danger of suffering a harmful contact, i.e., being stabbed with this knife.

#### **Count 3: Assault**

21. Plaintiff re-alleges all previous allegations that appear above.

22. Defendant intentionally punched the Plaintiff in those, as stated above.

23. While the punch was being thrown, Plaintiff suffered a reasonable fear that he was in imminent danger of suffering a harmful contact, i.e., being punched in the nose.

#### **Count 4: Battery**

24. Plaintiff re-alleges all previous allegations that appear above.

25. Defendant intentionally punched the Plaintiff in those, as stated above.

26. As a result of being punched, Plaintiff suffered a harmful and offensive contact; i.e., the Defendant's fist punching his nose.

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30. As a proximate result of this breach of duty, the Plaintiff tripped on the Defendant's front porch while walking on it in a standard manner.

31. As a result of this fall, the Plaintiff suffered a badly sprained ankle.

**Count 6: Trespass to Chattel**

32. Plaintiff re-alleges all previous allegations that appear above.

33. Plaintiff was in lawful possession of his rental car at the time in question.

34. Defendant intentionally threw a rock at that rental car.

35. The Defendant's thrown rock hit and shattered the windshield of the Plaintiff's rental car, constituting an interference with that car.

Again, we will not reference damages for this cause of action (yet).

**Damages**

36. As a result of the Defendant's actions stated above, Plaintiff suffered the following damages:

- Loss due to breach of contract, in the amount of \$16,000
- Hospital Bills, in the amount of \$25,000
- Lost work time, in the amount of \$10,000
- Damage to his rental car, in the amount of \$2,000
- Pain and Suffering and emotional distress, in the amount of \$30,000

**Relief Sought**

37. WHEREFORE, Plaintiff demands the following relief:

- A monetary judgment in an amount not less than \$83,000
- Court costs to be awarded to Plaintiff
- Attorney's fees to be awarded to Plaintiff
- A jury trial to try this action
- Such further relief that the court deems just and proper.

Respectfully Submitted

\_\_\_\_\_  
Steve Howe, Attorney for Plaintiff

\_\_\_\_\_  
Date

Dewie, Cheatum & Howe  
1 Market Street,  
San Francisco, CA 94015

## Verification

I, Bernie Smith, declare as follows:

1. I am a Plaintiff in the present case.
2. I have personal knowledge of the events in the foregoing complaint.
3. I verify under penalty of perjury that the factual statements in this complaint are true.

Executed on this 12<sup>th</sup> day of June, YR02

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Bernie Smith, Plaintiff