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No. 25295

FURUYA & CLARK

Apr./May 1946

Cons. no. 25294-S

Stipulation & other

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ORIGINAL
FILED

APR 15 1946

MARY KANAME FURUYA, ET AL.,
Plaintiffs

vs.

TOM C. CLARK, ATTORNEY GENERAL, ET AL.,
Defendants

WILLIAM CLARK, U. S. DIST. COURT
SAN FRANCISCO

CIVIL NO. 25295
CONS. NO. 25295-5

MOTION TO STRIKE

Defendants move to strike from the Complaint and Amendment and Supplement thereto filed herein certain redundant, immaterial and impertinent matter identified below, pursuant to Rules 8(e) and 12(f) of the Federal Rules of Procedure:

I

Exhibit 1 to the complaint as originally filed and Exhibits 2 and 3 to the "Supplement and Amendment to Complaint * * *" herein, comprise evidentiary matter; are impertinent, immaterial and redundant; and, as a result of their inclusion in it, the allegations of the complaint are not simple, concise, and direct as required by the Federal Rules. For these reasons, the three exhibits described, and all references to or discussions of them, should be stricken from the pleadings.

II

Paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of the "Supplement and Amendment to Complaint * * *" contain allegations evidentiary in character; they and each of them contain matter which is impertinent, immaterial and redundant; and as a result of their inclusion in it, the allegations of the complaint are not simple, concise and direct as required by the Federal Rules. For these reasons, all the said paragraphs should be stricken from the pleadings.

III

Paragraphs III, IV, V, VI, VII, and VIII of the First Cause of Action in the complaint as originally filed contain allegations evidentiary in nature; they, and each of them, contain matter which is impertinent, immaterial and redundant; and as a result of their inclusion in it the allegations of the complaint are not simple, concise, and direct as required by the Federal Rules. For these reasons, all of the said paragraphs should be stricken from the pleadings.

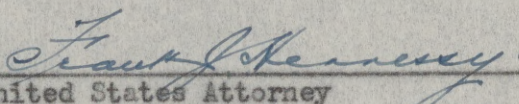
IV

Paragraphs I and II of the Second Cause of Action in the Complaint as originally filed incorporate and contain, respectively, allegations evidentiary in nature, and matter which is impertinent, immaterial and redundant. As a result of their inclusion in it, the allegations of the complaint are not simple, concise and direct as required by the Federal Rules. For these reasons, the said paragraphs should be stricken from the pleadings.

V

By reason of the fact that the objectionable matter referred to in paragraphs I through IV herein is inextricably confused and intermingled with the allegations of essential fact in the Complaint and Supplement and Amendment thereto, the complaint as originally filed and the Supplement and Amendment thereto are themselves rendered impertinent, immaterial and redundant and fail to meet the standard required by the Federal Rules: that they be simple, concise, and direct. For these reasons, the complaint as originally filed and the Supplement and Amendment thereto should be, and defendants move that they be, stricken.

Respectfully submitted,


United States Attorney
Attorney for Defendants

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ORIGINAL
FILED

APR 15 1946

MARY KANAME FURUYA, ET AL.,

Plaintiffs

vs.

TOM C. CLARK, ATTORNEY GENERAL, ET AL.,

Defendants

WILL CLARK, U. S. DIST. COURT
San Francisco

CIVIL NO. 25295
CONS. NO. 25295-5

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO STRIKE

1. Matter evidentiary in character, as opposed to statements of the ultimate facts essential to raising a litigable issue, may be stricken on motion under Federal Rules 8(e) and 12(f).

Southern Pacific Ry. v. Conway, 115 F. (2d) 746.

Satink v. Holland Township, 28 F. Supp. 67 (D.C. N.J. 1939)

Barnsdall Refining Corp. v. Birnamwood Oil Co., 32 F. Supp. 308
(D.C. E.D. Wisc. 1940)

Anchor Hocking Glass Co. v. White Cap. Co., 47 F. Supp. 451
(D.C. Del. 1942)

CF. Pliner v. Nesvig, 42 F. Supp. 297 (citing

McAllister v. Kuhn, 96 U. S. 87) (D.C. W.D. Wisc. 1942)

Dellefield v. Blockdel Realty Co., 1 F.R.D. 42 (D.C. S.D.
N.Y. 1939)

Booth Fisheries Corp. v. General Foods Corp., 27 F. Supp.
268 (D.C. Del. 1939)

Bulkley v. Altheimer, 2 F.R.D. 285 (D.C. N.D. Ill. 1942)

In Contazaritti v. Bianco, #1338, June Term, 1938, the Federal District Court for the Middle District of Pennsylvania, after stating the requirements of Rule 8(e), said:

"Plaintiff's pleading in the present case is neither simple, concise, nor direct, and for that reason it must be stricken off. It contains many allegations which are merely evidence of essential facts; * * * * *."

And in Curacao Trading Co. v. Federal Insurance Co., Civil #18-73, Southern District of New York., September 25, 1942, the Court said:

"Legal conclusions and evidentiary facts should not be set out in a complaint which should be simple, concise, and direct."

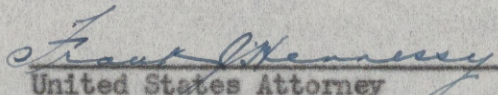
2. General redundancy and immateriality, likewise, when they are so intermingled with allegations of essential fact as to impair the clarity of the pleading and make answer difficult, form proper grounds for motion to strike:

Blake v. De Vilbiss Co., 118 F. (2d) 346. (C.C.A.6, 1941)

Buckley v. Musical Corp. of America, 1 F.R.D. 602 (D.C. D. Del. 1941)

Dellefield v. Blockdel Realty Co., supra, and other cases cited in point 1.

Respectfully submitted,


United States Attorney
Attorney for Defendants

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4
5 IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA.

7 MARY KANAME FURUYA, et al., etc.)

8 Plaintiffs,)

No. 25295

9 -vs-)

Cons. 25294-S

10 TOM CLARK, ETC., et al.,)

11 Defendants.)

12 STIPULATION AND ORDER EXTENDING TIME ETC.

13 IT IS STIPULATED between the parties hereto that the time
14 within which the defendants may file their responsive pleadings to
15 the complaint and supplemental complaint herein be extended to and
16 including the 22nd day of April, 1946, and that the defendants may
17 file a motion to strike Exhibit "2" from the Supplement and Amend-
18 ment To Complaint To Rescind Renunciations Of Nationality herein, if
19 such they be inclined to file, on or by the 15th day of April, 1946,
20 and it is stipulated that the plaintiffs in this suit who are not
21 released from custody by the order of the Attorney General of the
22 United States or the defendants will be produced before the above-
23 entitled court for hearing or trial purposes in the above-entitled
24 proceeding, upon reasonable notice, by the United States Government,
25 the Attorney General of the United States, or defendants, from
26 whatever internment camps or place of restraint in which they may
27 be detained by the United States Government, the Attorney General
28 of the United States or the defendants.

29 Dated: April 3, 1946.

30 _____
Wayne M. Collins,
31 Attorney for Plaintiffs.

32 TOM C. CLARK, Attorney General,
FRANK J. HENNESSY, U.S. Attorney, Defendants
By: _____

Assistant United Attorney.
Attorneys for Defendants.

SO ORDERED:
April _____, 1946.

UNITED STATES DISTRICT JUDGE.

ORIGINAL
FILED

APR 22 1946

WILLIAM CLARK, U. S. DIST. COURT
San Francisco

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY KANAME FURUYA, et al., etc.)

Plaintiffs,)

-VS-

TOM CLARK, ETC. et al.,)

Defendants)

No. 25295

Cons. No. 25294-S

STIPULATION AND ORDER EXTENDING TIME

IT IS STIPULATED between the parties hereto that the time within which the defendants shall file their responsive pleadings, to-wit, answers to the complaint and amended and supplemental complaint herein, be extended to and including the 6th day of May, 1946.

Dated: April 22, 1946.

Wayne M. Collins.
Attorney for Plaintiffs.

TOM C. CLARK, Attorney General,
FRANK C. HENNESSY, U.S. Attorney, Defendants.

By: _____
Assistant United States Attorney.

Attorneys for Defendants.

SO ORDERED:

April 22, 1946.

UNITED STATES DISTRICT JUDGE.

1 WAYNE M. COLLINS,
2 1721 Mills Tower,
3 San Francisco, 4, California.
4 Garfield 1218.
5 Attorney for Plaintiffs.

ORIGINAL
FILED

MAY 2 - 1946

WILL CLARK, U. S. DIST. COURT
San Francisco

7
8 IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 MARY KANAME FURUYA, et al., etc.,

11 Plaintiffs,

12 -vs-

13 TOM CLARK, etc., et al.,

14 Defendants.

No. 25295

Cons. No. 25294-S

15
16 PLAINTIFFS' POINTS AND AUTHORITIES IN OPPOSITION TO
17 DEFENDANTS' MOTION TO STRIKE

18 I

19 PRELIMINARY STATEMENT

20 Attention is drawn to the fact that the complaint is one in
21 equity for the following purposes (1) to rescind renunciations
22 for duress, fraud, menace, coercion and undue influence; (2) to
23 declare nationality under the authority of Title 8 USCA, Sec. 903;
24 (3) for declaratory relief under the authority of Title 28 USCA,
25 Sec. 400(2) and (4) for an injunction preventing the deportation
26 of the plaintiffs and for an order for their release from detention.
27 The gravamen of the charges made by plaintiffs is that they were
28 coerced into renouncing citizenship while held in duress by the
29 War Relocation Authority, a federal agency.

30 Paragraph II(1)(a) on page 12 of the complaint alleges an
31 unlawful imprisonment for a period of years without cause, without

1 hearings on the reason therefore, and the ultimate facts of duress,
2 menace, fraud and the undue influence of groups and gangs which
3 caused the renunciations and which the War Relocation Authority,
4 a federal agency, aided, abetted and condoned and to which it was
5 accessory and against which it failed to give plaintiffs protection.
6 The supplemental complaint pleads the ultimate facts of the conti-
7 nuing nature of the duress and the mistreatment of the plaintiffs.
8 by the government and its agents as though they were alien enemies
9 and not native Americans.

10 Exhibit 2 attached to the supplemental complaint and incorporat-
11 ed by reference and to which we refer as the "Fortas letter", is
12 an official record. It contains an official finding and judgment
13 of the Government that the renunciations of plaintiffs were the
14 products of coercion and duress. Its contents aid, amplify and de-
15 tail briefly the general averments of coercion and duress stated
16 in the pleadings. It is incorporated by apt words in the pleadings
17 and it supplies substantial allegations essential to the causes of
18 action. The supplemental complaint was framed for the express
19 purpose of incorporating the recitals of the exhibit as substantial
20 allegations of facts therein under the authority of Holly Sugar Corp.
21 v. Johnston, 18 Cal. 2d. 218, 225-226, and the other cases herein-
22 after cited.

23 II

24 THE MOTION TO STRIKE VIOLATES STIPULATIONS AND COURT ORDERS

25
26 On November 13, 1945, the Complaint was filed herein and
27 shortly thereafter service was had upon the defendants. Thereafter,
28 at the special request and solicitation of the Department of Justice,
29 two written Stipulations were entered into upon which court orders
30 were issued extending the defendants' time to plead to Feb. 11th
31 and Feb. 19th, 1946.

32 On March 14, 1946, plaintiffs filed and served their "Supple-

1 ment and Amendment to Complaint". Thereafter, on March 14th a
2 written Stipulation was executed and filed herein extending the
3 defendants' time to file their responsive pleadings to April 8th and
4 expressly restricting their right to move to strike to that of en-
5 deavoring to strike "Exhibit 2" from the "Supplement and Amendment
6 to Complaint" on or by April 8th. Thereafter, by a similar written
7 Stipulation and court order executed on April 3rd, the defendants
8 were required to file their answers to the complaint and supplemen-
9 tal complaint on or by April 22nd and were required to file a motion
10 to strike "Exhibit 2" from the supplemental complaint, if they were
11 inclined to file such a motion, on or by April 15th. Each of said
12 Stipulations was executed at the special request and solicitation of
13 the Department of Justice in Washington, D.C. Each of the stipula-
14 tions specifically limits and restricts the defendants' motion to
15 strike to that of endeavoring to strike said "Exhibit 2" from the
16 "Supplement and Amendment to Complaint" to the exclusion of any
17 other matter.

18 In violation of the said stipulations and court orders, however,
19 the defendants, on April 15th, belatedly filed a motion to strike
20 matter contained in the original complaint although the time when
21 such a motion could be interposed expired months ago. The defendants
22 and the Department of Justice have had two (2) months to prepare a
23 simple motion to strike said Exhibit 2 from the supplemental complaint.
24 Instead it has filed a motion to strike out substantially the whole
25 of the original and supplemental complaints. In filing the same they
26 have disregarded the elapse of time and have violated the said Sti-
27 pulations and Court orders which limited and restricted such a motion
28 to an endeavor to strike said Exhibit 2 from the supplemental complain
29 to the exclusion of any other matter.

30 We contend that the right of the defendants to file a motion
31 to strike any portion of the original Complaint long has expired,
32 has been waived thereby and is unauthorized. We contend that the

1 present motion made by the defendants violates the consecutive
2 Stipulations and Court Orders for not being confined to an endeavor
3 to strike Exhibit 2 from the supplemental complaint. For each of
4 said reasons and because there is no merit to their motion we resist
5 the said motion in its entirety. (The fact that we stipulated that
6 a motion to strike might be filed by the defendants, were they
7 inclined so to do, for the limited purposes set forth in the stipu-
8 lations does not lend merit to the motion and does not confer vali-
9 dity upon it.).

10 Without waiving our right to have the motion to strike dismissed
11 or denied for the reasons asserted in paragraph II hereof we con-
12 tend also that there are no facts alleged in our complaint and
13 supplemental complaint except the same be ultimate facts which are
14 properly pleaded and each of which is highly relevent, material and
15 pertinent to the serious issues raised therein.

16 III

17 THE FACTS AND CIRCUMSTANCES OF DURESS ARE PROPERLY PLEADED.

18

19 Mere allegations of duress, menace, undue influence, fraud or
20 mistake are "conclusions of law". It long has been the settled rule
21 that, in order to state a cause of action at law or for relief
22 in equity, the facts and circumstances constituting the duress,
23 menace, undue influence, fraud or mistake must be pleaded with par-
24 ticularity. The complaint and supplemental complaint set forth the
25 ultimate facts which caused the renunciations. The allegations
26 thereof fit the descriptions necessary to satisfy the legal and
27 equitable grounds for relief where plaintiffs' claims rest upon du-
28 ress, menace, undue influence or fraud, as appears from the follow-
29 ing definitions:-

30 1. Duress consists in the unlawful confinement of detention
31 of a person or of members of his family and also of the confinement
32 of such a person, lawful in form, but fraudulently obtained or made

1 unjustly harassing or oppressive. See Calif. Civil Code, Sec. 1569.

2 2. Menace consists in a threat of such duress and also of un-
3 lawful and violent injury to the person or property of a person
4 held under duress or of injury to the character of any such person.
5 See Calif. Civil Code, Sec. 1570.

6 3. Undue influence consists in the use by one who holds a real
7 or apparent authority over a person of such authority for the pur-
8 pose of obtaining an unfair advantage over him through taking an
9 unfair advantage of another's weakness of mind or in taking a gross-
10 ly oppressive and unfair advantage of another's necessities or dis-
11 tress. See Calif. Civil Code, Sec. 1575.

12 4. Actual fraud consists of an act committed by a party or with
13 his connivance with intent to deceive another or to induce him to
14 execute a writing by means of the suggestion of a fact he knows to
15 be false or the suppression of that which he knows to be true or of
16 a promise made with no intention of performing it or any other act
17 fitted to deceive. See Calif. Civil Code, Sec. 1572.

18 5. Constructive fraud consists in a breach of duty by which one
19 gains an advantage by misleading another to his prejudice. See
20 Calif. Civil Code, Sec. 1573.

21 The types of "duress" are summarized in 17 C.J.S., p.530, Sec.
22 171, 172 as follows:

23 "Under the common law doctrine duress of
24 imprisonment arises where a person is actually
25 imprisoned for an improper purpose without just
26 cause, for a just cause without lawful authority,
27 of for a just cause and under proper authority
28 but for an improper purpose."

29 "Maltreatment while under arrest on a well
30 founded charge will invalidate an act produced
31 by such maltreatment."

32 "Although the imprisonment is originally
lawful, yet if the party detains the prisoner
unlawfully, it is duress."

"Duress per minas arises when a person is
threatened with loss of life, with loss of limb,
with mayhem, with imprisonment, ---."

1 "Fear of imprisonment may be sufficient to
2 constitute duress."

3 And in 17 C.J.S., p. 532, Sec. 173:-

4 "Under the modern rule now generally recognized
5 a contract obtained by so oppressing a person by
6 threats as to deprive him of the free exercise of
7 his will may be avoided on the ground of duress
8 whether or not the oppression causing incompetence
9 to contract amounts to what was formerly deemed
10 duress at law or merely to the wrongful compulsion
11 remedial in equity."

12 See also the definitions of "undue influence" in 17 C.J.S. 539,
13 Sec. 180b, and the definitions of "coercion" in 14 C.J.S., pg. 1307.

14 To set aside an instrument for duress the modern doctrine
15 recognizes that the test is not so much the means by which its
16 execution was compelled but, as stated in 17 C.J.S. 534:-

17 "...it is the state of mind induced by the
18 means employed - the fear which made it impossible
19 for him to exercise his own free will".

20 The fact that Government, and its officers or agents may be
21 guilty of duress, menace, undue influence, coercion or fraud is too
22 well established to admit of doubt. See Brown v. Mississippi, 297
23 U.S. 278.

24 General averments of duress, fraud or undue influence are in-
25 sufficient inasmuch as they constitute mere conclusions of law by
26 the pleader. Murphy v. Mitchell, 249 Fed. 499, 500; Voorhees v.
27 Bonestell, 83 U.S. 16; Noonan v. Lee, 67 U.S. 499; Moore v. Greene,
28 60 U.S. 69. The facts and circumstances constituting duress or
29 fraud must be stated with particularity in the pleadings. Ruwitch
30 v. Frankel (CCA-Ill.), 68 Fed.2d. 52,55, cert. den. 292 U.S. 653;
31 Scott v. Empire Land Co., 5 Fed.2d.873,875. Attention is also
32 drawn to the fact that Rule 9(b) R.C.P. requires that "the circum-
stances constituting fraud shall be stated with particularity" and
that Rule 9(f) R.C.P. makes averments of time and place material
matter to be alleged in a complaint.

The reason for the rule requiring a factual recitation in such

1 cases, in actions at law as also in suits in equity, is "to apprise
2 the other party of what he is to be called upon to answer" and also
3 that "it may be determined whether the charge is well founded".
4 See 49 C.J. 95, sec. 90(3); Fogg v. Blair, 139 U.S. 118,126; St.
5 Louis etc. R.Co. v. Johnston, 133 U.S. 566, 577; Anastasopoulos v.
6 Steger, 16 Fed. 2d. 32, cert. den. 273 U.S. 769.

7 The old rule that matter of an evidentiary nature ought not to
8 be pleaded has been relaxed to a considerable extend on the grounds
9 both of necessity and convenience. The more modern doctrine, as
10 set forth in 49 Corpus Juris 43, Sec.16(7), is stated as follows:

11 "Moreover the rule must be taken with the
12 qualification that facts esseential to show a
13 cause of action, and therefore necessary to be
14 pleaded, are often evidentiary in character, as
15 in the case of facts constituting fraud, which,
16 to comply with the rule against pleading conclu-
17 sions of law, must be alleged as well as proved."

15 IV

16 THE FORTAS LETTER IS AN INCORPORABLE EXHIBIT 17 (Foundation Rule Requires Incorporation)

18 The great weight of authority is that a writing which is the
19 foundation of a cause of action must be pleaded in haec verba either
20 by setting it forth in the body of the pleading or by annexation
21 as an exhibit thereto and incorporating it by reference. See
22 Bates v. Daley's Inc., 5 Cal.App. 2d.95, 101; and Lambert v. Haskell,
23 80 Cal. 611; 21 Cal. Juris 47. The same rule applies in other
24 jurisdictions. See Davidson v. Falls, 215 Ky. 368, 285 S.W.209,210;
25 Gardner v. Hughes, 136 Ark,332; 206 S.W.678,679; McDonald v. Sargent,
26 171 Mass. 492; 51 N.E. 17; 49 C.J. 80, sec.72b. In equity a complaint
27 must set forth a copy or aver the terms of an instrument which is
28 vital to the plaintiffs' case and such an instrument may be annexed
29 thereto as an exhibit. See 30 C.J.S. 660, Sec. 202, stating:-

30 "A bill must set forth a copy or aver the
31 terms of an instrument vital to plaintiff's demand.
32 The proper practice is to state the substance of
the instrument relief on and to attach it or a copy

1 to the pleading --. The filing of an exhibit does
2 not dispense with the necessity of setting forth in
3 the bill by proper averment the substance of the
4 instrument and everything else that is material to
5 the case---. While, as a matter of convenience, do-
6 cuments relied on as evidence to prove the allegations
7 of a bill are usually filed therewith as exhibits,
8 it is not necessary so to file them."

9 "The general rule is that instruments properly
10 referred to and exhibited become for all purposes of
11 pleading a part of the bill, and consequently, in de-
12 termining the sufficiency of the bill on demurrer or
13 otherwise, an exhibit will be considered with the
14 averments in the bill itself and may be used in aid
15 thereof ---. and an exhibit will not be considered
16 as contradicting or qualifying a bill where it is
17 attached not to amplify or supply allegations, but to
18 bring the instrument before the court for other reasons."

11 V

12 (EXHIBITS ARE INCORPORABLE TO SUPPLY SUBSTANTIAL ALLEGATIONS)

13
14 The general rule is that an exhibit, other than the one on
15 which an action is founded, may be annexed and incorporated by re-
16 ference for the purpose of supplying substantial allegations which
17 are essential to the cause of action "if the pleadings are framed
18 for that purpose and with that end in view." Holly Sugar Corp.
19 v. Johnston, 18 Cal. 2d. 218, 225-226; Washer v. Bank of America,
20 21 Cal. 2d. 830; Silvers v. Grossman, 183 Cal. 696; See also,
21 Georges v. Kesler, 131 Cal. 183, holding that an instrument can
22 be pleaded in the body of a complaint or be annexed thereto and be
23 incorporated by reference and that, if incorporated, its recitals
24 are equivalent to recitals of matters of substance in the pleadings.
25 There is no doubt that "an exhibit may be made part of a pleading by
26 apt words". See Reinschmidt v. Crosby (Fla.), 123, So. 755, 756;
27 Silvers v. Grossman, supra.

28 VI

29 (EXHIBITS ARE INCORPORABLE TO AID, AMPLIFY AND EXPLAIN ALLEGATIONS)

30
31 In equity it is well established that an exhibit may be attached
32 to a bill in equity and be considered a part thereof and "in aid"

1 and explanation thereof. See State v. Morgans, etc., 18 Fed.2d.
2 645, 646; Nauvoo v. Ritter, 97 U.S. 389, 24 L.Ed. 1050; Columbia
3 Graphophone Co. v. 330 West Ninety-Fifth St. Corp., 269 Fed. 190,
4 192; Seebas v. Mutual Reserve, 82 Fed. 792, (under statute);
5 Smythe v. Homewood, 181 So. 491, 236 Ala. 159; 30 C.J.S. 662.

6 The same rule obtains in California where it has been held repeat-
7 edly that exhibits, other than the one on which a suit is based,
8 may be incorporated in a pleading to aid the allegations thereof.
9 See Santa Rosa Bank v. Paxton, 149 Cal. 195, 198; Estate of Cook,
10 137 Cal. 184, 191; Ward v. Clay, 82 Cal. 502, 505. Even if the
11 exhibit is not the one forming the foundation of the action it may,
12 nevertheless, be incorporated to amplify allegations of fact or
13 to aid defective allegations. Washer v. Bank of America, 21 Cal.
14 2d. 822, 830; People v. Reid, 195 Cal. 249, 260-261, holding in-
15 corporation of recitals in affidavits to be proper; Silvers v.
16 Grossman, 183 Cal. 696, 700; 21 Cal. Jur. 48, sec. 26. It is also
17 permissible to attach an exhibit to a bill in equity simply to
18 "amplify" the allegations of the bill. Richardson v. Curlee, 158
19 So. 189, 191, 229 Ala. 505; Virginia, etc., v. Satsuma, etc.,
20 148 So. 853, 857, 227 Ala. 55; Pool v. Menefee, 88 So. 654, 656,
21 205 Ala. 531.

22 It is also proper to annex and incorporate documents which
23 do not form the basis for a cause of action if the pleading be
24 framed for such a purpose provided the incorporated material relates
25 to the grounds upon which the plaintiff rests his claim. In
26 Holly Sugar Corp. v. Johnston, 18 Cal. 2d. 218, 225-226, where a
27 written protest which was incorporated in the complaint but which
28 did not form the foundation for the action, nevertheless, was held
29 proper as constituting material allegations of ultimate facts in
30 the following language:

31 "It equally well settled that an instrument
32 which is made a part of the complaint by reference
and attached as an exhibit, but which did not con-

1 stitute the contract upon which the complaint is
2 based, may not supply substantial allegations to
3 the statement of a cause of action unless the
4 pleading is framed for that purpose and with that
5 end in view. (Silvers v. Grossman, supra, at p.700;
6 Santa Rosa Bank v. Paxton, supra, at p. 108; Estate
7 of Cook, 137 Cal. 184, 191). The instant case comes
8 precisely within this exception. The complaint
9 directly refers to the protest not simply as evidence
10 of compliance with the requisite procedural formality
11 before bringing suit, but as a means of "setting
12 forth the grounds upon which the plaintiff rests its
13 claims," and for that express object a copy of the
14 necessary document was incorporated by the use of apt
15 words of reference above quoted. Furthermore, the
16 protest was made under oath, which circumstance
17 imports verity to its contents and removes any question
18 as to the pleaders intent to make its own the aver-
19 ments contained in the attached exhibit."

20 Exhibit 1 to the complaint is incorporated by apt words on
21 page 20. It is a notice of rescission of the renunciations and
22 sets forth the specific grounds and reasons for the rescissions.
23 Exhibit 2 to the supplemental complaint is the "Fortas letter"
24 incorporated therein by apt words on page 4, line 2, Exhibit 3 to
25 the supplemental complaint is the written protest over the conti-
26 nuing nature of the duress. It is incorporated by apt words on
27 page 8, line 14. Each of the said exhibits satisfied the require-
28 ments of the foregoing rules authorizing the incorporation of ex-
29 hibits for the purpose of aiding, explaining and amplifying the
30 allegations and for supplying substantial allegations to the plead-
31 ings. Since the adoption of the new rules liberalizing the rules
32 of federal procedure the incorporation of written documents to
33 pleadings has been recognized as a matter of right in the federal
34 jurisdiction. See Rule 10(c) R.C.P.

VII

(OTHER APPLICABLE RULES AUTHORIZING INCORPORATION OF EXHIBITS)

35 Although there is no hard rule that an instrument needs to be
36 set out in extenso in a bill in equity it must be set out if the

1 bill shows that is essential to the proper construction of parti-
2 cular clauses which it contains. See U.S. v. United Shoe Mach. Co.,
3 234 Fed. 127,128. It is also a rule in equity that any and every
4 document essential to make out the plaintiff's case where the terms
5 are not actually recited in the bill should be made an exhibit to
6 the pleadings. See Marshall v. Turnbull, (CC-NY), 34 Fed. 827;
7 Everglades D. League v. Napoleon B. Browerage Drainage Distriot,
8 253 Fed. 246, 251, writ of error dism. 251 U.S. 567.

9 "Where interpretation of public records is involved and their
10 legal effect is to be adjudged good pleading requires either that
11 the records be set forth at length in the body of the pleadings
12 or that copies of them be filed." See 49 C.J. 80, sec. 72(b),
13 citing Newport v. Lang, 160 S.W. 495, 155 Ky. 776, where the court
14 stated that unless this is done "the courts will be left to the
15 interpretation of such records which are contained in the conclu-
16 sions reached by the pleader or his attorneys".

17 Although "documents which are mere evidence should, as a
18 general rule, be pleaded only according to their legal effect"
19 it is the rule that in a suit in equity which involves "a judicial
20 interpretation" of an instrument the instrument itself should
21 be set out in a pleading according to its terms or be annexed there-
22 to as an exhibit. Edgar v. Emerson, 139 S.W.122, 124, 235 Mo.
23 552; 49 C.J. 80, sec. 72.

24 Although, under Rule 9)e) R.C.P., it is not necessary to set
25 forth matter showing the jurisdiction of an officer to render a
26 judgment or decision it is essential to set forth the judgment,
27 decision or finding of such officer. In paragraph (c), pg 2 line
28 21 and (d) pg. 4, line 2, of the supplemental complaint it is
29 charged that Hon. Abe Fortas, as the Under Secretary of the Interior,
30 made a judgment and finding that the renunciations of the plaintiffs
31 were the products of duress and coercion. Exhibit 2
32

1 which is incorporated therein sets forth a general detail of that
2 judgment and finding which is incorporated therein by apt words.
3 It is an official document executed by the officer in charge of the
4 federal agency to whose charge the plaintiffs were committed at
5 the time of renunciation. The "Fortas letter" sets forth the
6 ultimate facts of duress and coercion which caused each renunciation.
7 It forms the foundation of plaintiffs' claims. It is vital to the
8 plaintiffs' case. It amplifies, aids and explains the allegations
9 of duress in the pleadings. It supplies allegations of substantial
10 fact to the pleadings. It is essential to the proper construction
11 of those allegations. The document itself requires a judicial
12 interpretation and application. In incorporating it as an exhibit
13 by apt words the plaintiffs have complied with the provisions of
14 Rule 9(e), 9(d) and 9(b) R.C.P. The fact alone that the document
15 is an official one, executed by a public officer and constituting
16 a public record which is not published in an official report form
17 renders it necessary and proper to be pleaded and incorporated
18 as an exhibit. Consequently, its annexation and incorporation
19 by reference would seem to be not only proper but necessary as
20 well.

21 CONCLUSION

22
23 The defendants' chief complaint is that they do not know how
24 to answer the allegations contained in our pleadings. They
25 recognize that in order to answer the plaintiffs' pleadings truth-
26 fully they necessarily must admit the truth of the facts recited
27 therein and thereby immediately render their answer susceptible to
28 a motion for judgment on the pleadings and for summary judgment
29 in favor of plaintiffs. Obviously the defendants do not wish this
30 to happen and, consequently, would prefer to have the Fortas letter
31 stricken so that by general denials in an answer they might have
32 a tenderable issue reserved which might bring them up to the

1 trial stage of the case. The defendants are trapped by the plead-
2 ings and wish to delay a judgment being entered in favor of plain-
3 tiffs on the pleadings. Nevertheless, the plaintiffs are entitled
4 to have the defendants file an answer admitting the truth that
5 the renunciations were the results of the duress and coercion
6 alleged and as proved by the official finding set forth in the
7 "Fortas letter". There is no good reason for the defendants to
8 avoid the basic issues and seek to have the court tied up in some
9 1,500 individual trials involving years in court upon issues easily
10 tendered and determined on the pleadings alone.

11 For the foregoing reasons the plaintiffs respectfully submit
12 the defendants' motion to strike comes too late, is violative of
13 theaforesaid stipulations and court orders, is wholly without
14 merit and that the court has jurisdiction only to dismiss or deny
15 said motion.

16
17
18 Wayne M. Collins,
19 1721 Mills Tower,
20 San Francisco, 4, Calif.
21 Garfield 1218.
22 Attorney for Plaintiffs.

23
24 Receipt of a copy of the foregoing Points and Authorities
25 is hereby admitted this 1st day of May, 1946.

26 Tom C. Clark, Attorney General.
27 Frank J. Hennessy, U.S. Attorney.

28 By: Assistant U.S. Attorney
29 Attorneys for Defendants.
30
31
32

ORIGINAL
FILED

MAY 6 - 1946

WILLIAM CLARK, U. S. DIST. COURT
SAN FRANCISCO

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY KANAME FURUYA, et al., etc.

Plaintiffs,

-vs-

TOM CLARK, etc. et al.,

Defendants.

No. 25295

Cons. No. 25294-S

STIPULATION AND ORDER EXTENDING TIME

IT IS STIPULATED between the parties hereto that the time within which the defendants shall file their responsive pleadings, to-wit, answers to the complaint and amended and supplemental complaint herein, be extended to and including the 13th day of May, 1946.

Dated: May 6, 1946.

Wayne M. Collins.
Attorney for Plaintiffs.

TOM C. CLARK, Attorney General,
FRANK J. HENNESSY, U.S. Attorney, Defendants.

By: _____
Assistant United States Attorney.
Attorneys for Defendants.

SO ORDERED:

May 6, 1946.

UNITED STATES DISTRICT JUDGE.

ORIGINAL
FILED

MAY 13 1946

WILL CLARK, U. S. DIST. COURT
San Francisco

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY KANAME FURUYA, et al., etc.

Plaintiffs,

-vs-

TOM CLARK, etc. et al.,

Defendants.

No. 25295

Cons. No. 25294-S

STIPULATION AND ORDER EXTENDING TIME

IT IS STIPULATED between the parties hereto that the time within which the defendants shall file their responsive pleadings, to-wit, answers to the complaint and amended and supplemental complaint herein, be extended to and including the 27th day of May, 1946.

Dated May 13, 1946.

Wayne M. Collins,
Attorney for Plaintiffs.

TOM C. CLARK, Attorney General,
FRANK J. HENNESSY, U.S. Attorney, Defendants.

By: _____
Assistant United States Attorney.

Attorneys for Defendants.

SO ORDERED:

May 13, 1946.

UNITED STATES DISTRICT JUDGE.

ORIGINAL
FILED

MAY 27 1946

WILLIAM CLARK, U. S. DIST. COURT
SAN FRANCISCO

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY KANAME FURUYA, et al., etc.)

Plaintiffs,)

-vs-)

TOM CLARK, etc. et al.,)

Defendants.)

No. 25295

Cons. No. 25294-3

STIPULATION AND ORDER EXTENDING TIME

IT IS STIPULATED between the parties hereto that the time within which the defendants shall file their responsive pleadings, to-wit, answers to the complaint and amended and supplemental complaint herein, be extended to and including seven (7) days from and after the defendants' motion to strike shall have been determined by the court herein.

Dated: May 27, 1946.

Wayne M. Collins,
Attorney for Plaintiffs.

TOM C. CLARK, Attorney General,
FRANK J. HENNESSY, U.S. Attorney, Defendants.

By: _____
Assistant United States Attorney.

Attorneys for Defendants.

SO ORDERED:

May 27, 1946.

UNITED STATES DISTRICT JUDGE.