UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EMMANUEL ANDRO, ***Plaintiff*** v. TOWN OF BROOKLINE, DANIEL C. O'LEARY, MICHAEL JOHN McCARTHY, PAUL CAMPBELL, JENNIFER PASTER, ILYA D. GRUBER, RUSSELL T. LLOYD, JOSEPH CAPUCCIO, DOREEN GALLAGHER, RAY RICHARDS MATTHEW BARONAS, KELLY CHAMBLISS, PATRICK DOBER, BROOKLINE DOES 1-10, MICHAEL W. MORRISSEY, PAMELA FRIEDMAN, ERICA L. MARATHAS, STEVEN G. NELSON, NORFOL DOES 11-20, SEAN GALLAGHER, TODD THURLOW, FRANCK SAPIA, ROBERT McNEICE, WILLIAM CHAMGERS, CHRISOTPHER MILLEY, JAY GILBERT I.C.E. DOES 21-30, STEVEN W. TOMPKINS, SUFFOLK DOES 31-40, NORFOLK COUNTY and the UNITED STATES, ***Defendants***	**CASE NO. 1:15-cv-13030-NMG**

MEMORANDUM OF LAW IN SUPPORT OF
MOTION OF DEFENDANTS MATTHEW BARONAS, KELLEY CHAMBLISS, AND PATRICK DOBER FOR JUDGMENT ON THE PLEADINGS

The Plaintiff in this case, Emmanuel Andro, claims to have been unlawfully detained by the U.S. Immigration and Customs Enforcement Agency ["ICE"] following his arrest by the Brookline Police in March 2014 for violating a restraining order. The Plaintiff has sued 27 separately named individual and governmental Defendants and 40 additional "Doe" Defendants, including the Town of Brookline and various of its police personnel, the United States of America and various ICE personnel, Norfolk County and various personnel from the Norfolk County District Attorney's Office, and the Sheriff of Suffolk County. These Defendants are

alleged, in one form or another, to have been involved in and/or responsible for the deprivation of the Plaintiff's liberty by virtue of his allegedly unlawful detainer in March 2014.

Included in this 46-page, 188-paragraph, 12-count Complaint is a claim asserted against three employees of the Brookline Housing Authority, Patrick Dober (Executive Director), Matthew Baronas (Assistant Executive Director), and Kelley (misspelled "Kelly" in the Complaint) Chambliss (Property Manager).[1] *See* Complaint, ¶¶ 25-27. The substantive allegations against these three Defendants, ***in their entirety***, consist of the following:

> "80. Upon [Mr. Andro's] release from detention pursuant to a writ of Habeas Corpus, the Brookline Police and the Brookline Housing Authority prevented Mr. Andro from gaining access to his belongings.
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> . . . .
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> 168. By depriving Mr. Andro access to his belongings, Defendants Dober, Baronas, Chambliss . . . subjected Mr. Andro to adverse treatment and property loss, in violation of his right to due process of law."

Complaint, ¶¶ 80, 168. These three Defendants are alleged to be liable to the Plaintiff under Count VI of the Complaint: "Fourteenth Amendment (42 U.S.C. § 1983)(Equal Protection)". *Id*., p. 38.

This is not the abridged version of the allegations asserted against these three Defendants. Rather, it is the full, unexpurgated, unedited collection of every factual and legal averment made against them in the Complaint. Under our rules of pleadings, these bare-bones allegations are insufficient to state claims against these Defendants upon which relief can be granted.

The rules of pleading in the post-*Twombly*, post–*Iqbal* world have been reviewed and distilled by the First Circuit Court of Appeals:

[1] The Brookline Housing Authority is a creature of statute, *Mass. Gen. Laws*, ch. 121B, answers to both state and federal housing agencies, and is not an office or department of the Town of Brookline. *See generally*, *Commesso v. Hingham Housing Authority*, 399 Mass. 805, 807-09, 507 N.E. 2d 247, 248-50 (1987).

> Dismissal of a complaint pursuant to Rule 12(b)(6) is inappropriate if the complaint satisfies Rule 8(a)(2)'s requirement of a short and plain statement of the claim showing that the pleader is entitled to relief . . . . A short and plain statement needs only enough detail to provide a defendant with fair notice of what the . . . claim is and the grounds upon which it rests. . . . However, in order to show an entitlement to relief a complaint must contain enough factual material to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact). . . . Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. . . . In short, an adequate complaint must provide fair notice to the defendants and state a facially plausible legal claim.
>
> In resolving a motion to dismiss, a court should employ a two-pronged approach. It should begin by identifying and disregarding statements in the complaint that merely offer legal conclusion[s] as . . . fact or [t]hreadbare recitals of the elements of a cause of action. . . . A plaintiff is not entitled to proceed perforce by virtue of allegations that merely parrot the elements of the cause of action. . . . Non-conclusory factual allegations in the complaint must then be treated as true, even if seemingly incredible. . . . If that factual content, so taken, allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged, the claim has facial plausibility. . . . The make-or-break standard . . . is that the combined allegations, taken as true, must state a plausible, not a merely conceivable, case for relief.
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> Although evaluating the plausibility of a legal claim requires the reviewing court to draw on its judicial experience and common sense, . . . the court may not disregard properly pled factual allegations, even if it strikes a savvy judge that actual proof of those facts is improbable. . . . Nor may a court attempt to forecast a plaintiff's likelihood of success on the merits; a well-pleaded complaint may proceed even if . . . a recovery is very remote and unlikely. . . . The relevant inquiry focuses on the reasonableness of the inference of liability that the plaintiff is asking the court to draw from the facts alleged in the complaint.

Ocasio-Hernandez v. Fortuno-Burset, 640 F. 3d 1, 11-13 (1st Cir. 2011) (internal citations and quotation marks omitted), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937 (2009).

Here, there are effectively ***no*** factual allegations against these three Defendants. Defendants Dober and Baronas are described, respectively, as the Executive Director and Assistant Executive Director of the Brookline Housing Authority. Complaint, ¶¶ 25, 26.

Defendant Chambliss is described as the "manager" of the building where the Plaintiff resided. Complaint, ¶ 27. But there is not a single factual allegation pertaining to the long saga of the Plaintiff's arrest and detainer that even obliquely involves any of these three Defendants. The three Defendants are only alleged, by implication, to have prevented the Plaintiff from "gaining access to his belongings", upon his release from detention, which had the effect of violating his due process rights. These allegations are set forth in a conclusory, fact-free vacuum. *Id.*, ¶¶ 80, 168. There is literally nothing else in the Complaint that describes ***factually*** what any of these three Defendants actually did or failed to do, or, more critically, provides the basis for a reasonable, plausible inference that these Defendants may be held liable for the legal injury the Plaintiff claims to have suffered. *See, e.g., Shay v. Walters,* 702 F.3d 76, 82-83 (1st Cir. 2012)(defamation complaint that contained no factual assertions lending plausibility to conclusions about "ill will" and "actual malice" is deficient under *Ocasio-Hernandez).*

Twombly, *Iqbal*, and *Ocasio-Hernandez* instruct that a complaint must contain something more than skeletal factual suggestions, and conclusory, leap-of-faith legal conclusions in order to comply with the pleading requirements of the Federal Rules. Here, no fair reading of the Complaint in the present matter would cause the reader to conclude that the Plaintiff had succeeded in setting forth a factually plausible claim of misconduct on the part of the Defendants Dober, Baronas, and Chambliss. Indeed, the Complaint plainly fails in that regard.

WHEREFORE, for the reasons set forth above, the Defendants' Motion for Judgment on the Pleadings should be GRANTED, and the Plaintiff's claims against these three Defendants DISMISSED.

Respectfully submitted,

MATTHEW BARONAS, KELLEY CHAMBLISS and PATRICK DOBER

By their Attorney,

/s/ John Egan

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Date: July 7, 2016

CERTIFICATE OF SERVICE

I, John Egan, hereby certify that on the 7th day of July, 2016, I caused a copy of this Memorandum of Law in Support of Motion of Defendants Matthew Baronas, Kelley Chambliss and Patrick Dober for Judgment on the Pleadings to be served electronically, through the ECF system and a paper copy will be sent to Plaintiff via first-class mail at the following address:

Emmanuel Andro, *Pro se*
1764 Dorchester Avenue, #2
Boston, MA 02124

/s/ John Egan
John Egan