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ROBERT FERRANTE AND DOREEN  
FERRANTE

Plaintiff(s),

v.

COUNTY OF MONMOUTH;  
MONMOUTH COUNTY PROSECUTOR'S  
OFFICE; MANASQUAN BOARD OF  
EDUCTAION; MANASQUAN HIGH  
SCHOOL; NEW JERSEY MOTOR  
VEHICLE COMMISSION; STATE OF  
NEW JERSEY; THE PATCH; RICHARD  
ROE PUBLISHER; ABC PUBLISHING  
COMPANY; JOHN/JANE DOES (1-100);  
XYZ COS. (1-10)

Defendant(s).

**United States District Court  
District of New Jersey  
Vicinage of Trenton**

**Civil Action No.  
3:16-cv-03496-MLC-LHG**

**BRIEF IN SUPPORT OF MOTION TO  
DISMISS IN PART IN LIEU OF AN  
ANSWER**

Defendants, Manasquan Board of Education and Manasquan High School, hereby submit the following brief in support of their motion to dismiss Count II of the Complaint of Plaintiffs, Robert Ferrante and Doreen Ferrante.

### **INTRODUCTION**

Plaintiffs, Robert Ferrante and Doreen Ferrante (hereinafter "Plaintiffs"), bring the present action against Defendants, Manasquan Board of Education and Manasquan High School (hereinafter "Manasquan"), County of Monmouth, Monmouth County Prosecutor's Office, New Jersey Motor Vehicle Commission, State of New Jersey, The Patch, and Richard Roe Publisher (collectively "Defendants"). The Complaint asserts constitutional claims against Manasquan under 42 U.S.C. § 1983, state law, and negligence principles involving the Monmouth County Prosecutor's Office presentation on heroin use hosted at Manasquan High School.

Plaintiffs' claims in Count II fail to meet the pleading requirements of the Federal Rules. Under the holdings of the Supreme Court in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), Plaintiff must do more than merely state that his "civil rights" have been violated. Instead, Plaintiff must plead specific constitutional violations under 42 U.S.C. § 1983 to demonstrate that he has a plausible claim for relief. As will be discussed more fully below, the allegations set forth in Plaintiffs' Complaint fail to state a claim upon which relief can be granted due to the failure to assert a specific constitutional violation against Manasquan under 42 U.S.C. § 1983.

Therefore, Plaintiffs' claims against Manasquan in Count II must be dismissed.

### **STATEMENT OF FACTS**

Plaintiffs make the following pertinent factual allegations relating to Manasquan in their Complaint. On September 18, 2013, Plaintiffs learned that the Monmouth County Prosecutor held a presentation for students and parents at Manasquan High School regarding heroin use in Monmouth County. (Exhibit A, ¶1) During the presentation, the Monmouth County Prosecutor's Office distributed a handout that included plaintiff Robert Ferrante's photograph as one of the "Faces of Heroin." (Id.) The handout was prepared by the Monmouth County Prosecutor's Office and was later made public via a news release on the Patch Internet News service. (Id. at ¶2). However, plaintiff Robert Ferrante asserts that he has never used or been associated with heroin. (Id. at ¶5). Finally, as a result of Robert Ferrante's photograph being released, Plaintiffs have allegedly sustained psychological damages. (Id. at ¶6)

As a result of the presentation held at Manasquan High School, Plaintiffs specifically allege the following against Manasquan:

- Count One: Manasquan violated the following civil rights of the Plaintiffs under New Jersey law: the right to enjoy and defend life and liberty; the right to pursue and obtain safety and happiness; the right to due process of law; the right to equal protection under the law; and the right of any other natural and unalienable right retained by the people, as protected right under the New Jersey Laws and Constitution.
- Count Two: Manasquan violated Plaintiffs' Civil Rights as protected under 42 U.S.C. § 1983 et seq. by: psychologically attacking the plaintiffs; falsely accusing the plaintiff; and treating the plaintiff in a discriminatory manner.

- Count Four: Manasquan was negligent in attaining, releasing, and using the photo of Plaintiff Robert Ferrante.

### **LEGAL STANDARD**

Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss an action for failure to state a claim upon which relief can be granted. When evaluating a motion to dismiss, “courts accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir.2009) (quoting Phillips v. Cnty. of Allegheny, 515 F.3d 224, 233 (3d Cir.2008)). In other words, a complaint survives a motion to dismiss if it contains sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 570.

To make this determination, a court conducts a three-part analysis. Santiago v. Warminster Twp., 629 F.3d 121, 130 (3d Cir. 2010). First, the court must “tak[e] note of the elements a plaintiff must plead to state a claim.” Id. (quoting Iqbal, 556 U.S. at 675). Second, the court should identify allegations that, “because they are no more than conclusions, are not entitled to the assumption of truth.” Id. at 131 (quoting Iqbal, 556 U.S. at 679). Finally, “where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.” Id. (quoting Iqbal, 556 U.S. at 680). This plausibility determination is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Iqbal, 556 U.S. at 679. A complaint cannot survive where a court can only infer that a claim is merely possible rather than plausible. Id.

When evaluating a Rule 12(b)(6) motion to dismiss, the Court considers “only the allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.” Lum v. Bank of America, 361 F.3d 217, 221 n. 3 (3d Cir. 2004).

## LEGAL ARGUMENT

### I. **PLAINTIFFS FAIL TO STATE A COGNIZABLE CONSTITUTIONAL VIOLATION AGAINST MANASQUAN UNDER 42 U.S.C. § 1983**

Plaintiffs' complaint in Count II solely alleges that Manasquan "violated the plaintiff's Civil Rights as protected under 42 U.S.C. 1983." Section 1983 of Title 42 of the United States Code provides a cause of action for an individual whose constitutional rights are violated by those acting under color of state law:

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.

42 U.S.C. § 1983.

To establish a viable § 1983 claim, a plaintiff must demonstrate that "the conduct complained of was committed by a person acting under color of state law" and that "this conduct deprived [the plaintiff] of rights, privileges, or immunities secured by the Constitution or laws of the United States." Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir.1993) (quoting Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled in part on other grounds by Daniels v. Williams, 474 U.S. 327 (1986)).

"By itself, Section 1983 does not create any rights, but provides a remedy for violations of those rights created by the Constitution or federal law." Morse v. Lower Merion School Dist., 132 F.3d 902, 906-07 (3d Cir.1997) (citing Baker v. McCollan, 443 U.S. 137, 144 n. 3 (1979)). As such, Plaintiff must allege an underlying violation of the Due Process Clause in order to proceed further with his claim. Smith v. Holtz, 210 F.3d 186, 195 (3d Cir.2000). Therefore, if a § 1983 complaint "does not state a constitutional claim it is subject to dismissal under Rule 12(b)(6)[.]" Doe v. Metro. Police Dep't, 445 F.3d 460, 467 (D.C. Cir. 2006). Thus, the court must begin the inquiry by identifying "the exact contours of the underlying right said to have been violated." Cty. of Sacramento v. Lewis, 523 U.S. 833, 837, 841-842 n. 5 (1998).

Here in this matter, Plaintiffs do not offer a cogent theory of liability under § 1983 in Count II. Nowhere in Count II does it identify a specific federal constitutional violation committed by Manasquan. Plaintiff claims only that Manasquan "violated the plaintiff's Civil

Rights as protected under 42 U.S.C. 1983.” (Exhibit A, Count II, ¶2). As a result of the absence of a specific underlying constitutional rights violation by Manasquan, Plaintiffs cannot sustain a claim under § 1983.

Accordingly, Plaintiffs fail to state a claim under 42 U.S.C. § 1983 upon which relief can be granted, and Count II must be dismissed as to Manasquan.

**CONCLUSION**

Therefore, for all of the foregoing reasons, it is respectfully requested that the Court grant Defendants’ motion to dismiss in part pursuant to Federal Rule of Civil Procedure 12(b)(6), and dismiss Plaintiffs’ claims in Count II against Defendants Manasquan Board of Education and Manasquan High School.

MADDEN & MADDEN, P.A.

*/s/ Patrick J. Madden*

Dated: July 18, 2016

By: \_\_\_\_\_  
Patrick J. Madden, Esquire