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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jerry Walker,

10 Plaintiff,

11 v.

12 Emil Botezatu, et al.,

13 Defendant.
14

No. CV-15-08288-PCT-JZB

ORDER

15 Pending before the Court are Plaintiff's Complaint for Damages (Doc. 1), and
16 Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2). The
17 Court will grant Plaintiff's Application. However, as detailed below, the Court will
18 dismiss Plaintiff's Complaint because his claims are either time-barred or he failed to
19 allege facts sufficient to state a claim for relief. The Court will allow Plaintiff leave to
20 file an amended complaint.

21 **I. Application to Proceed in District Court Without Prepaying Fees or Costs**

22 In Plaintiff's Application to Proceed in District Court Without Prepaying Fees or
23 Costs, he declares under penalty of perjury that he is unable to pay the filing fee and other
24 costs associated with this case. Plaintiff has presented financial information to support
25 his Application. Given Plaintiff's lack of significant income and assets, the Court will
26 grant his Application.

27 **II. Screening IFP Complaints Pursuant to 28 U.S.C. § 1915(e)(2)**

28 For cases proceeding *in forma pauperis*, Congress provided that a district court

1 “shall dismiss the case at any time if the court determines” that the “allegation of poverty
2 is untrue” or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim
3 on which relief may be granted,” or “seeks monetary relief against a defendant who is
4 immune from such relief.” 28 U.S.C. § 1915(e)(2); *see also Lopez v. Smith*, 203 F.3d
5 1122, 1126 n.7 (9th Cir. 2000) (noting that section 1915(e) applies to all *in forma*
6 *pauperis* complaints, not merely those filed by prisoners). Accordingly, “section 1915(e)
7 not only permits but requires a district court to dismiss an *in forma pauperis* complaint
8 that fails to state a claim.” *Lopez*, 203 F.3d at 1127.

9 **III. Analysis of Plaintiff’s Complaint**

10 In his Complaint, Plaintiff asserts claims for “theft and related offenses” and
11 intentional infliction of emotional distress against Defendant Emile Botezatu. (Doc. 1 at
12 3-4.)¹ Plaintiff’s claims are based on the following allegations: (1) Defendant stole
13 Plaintiff’s passport from him while Plaintiff was in Romania in the summer of 2012,
14 causing Plaintiff to obtain an emergency travel replacement passport and to be detained
15 and questioned by United States Customs and Border Protection Officers; and (2)
16 “Plaintiff was warned, by persons he met while visiting his wife in Romania, that
17 [Defendant] made threats against him if Plaintiff was to contact ICE about Defendant’s
18 illegal presence and employment in Las Vegas.” (*Id.* at 2-3.)²

19
20 ¹ It is unclear whether Plaintiff seeks to assert his claims under Arizona or Nevada law.
21 The Court will construe Plaintiff’s “theft and related offenses” claim as a tort claim for
22 conversion under either Arizona or Nevada law. To the extent Plaintiff seeks to assert
23 criminal claims under either state’s laws, such claims do not allow for a private right of
24 action.

24 ² Plaintiff also attaches a 2004 complaint filed in Nevada state court, and asserts that he
25 “re-alleges each and every factual allegation as set forth in the attached Complaint . . .
26 and hereby incorporates same by reference, as if all were set forth fully herein.” (Doc. 1
27 at 2.) However, the attached complaint asserts criminal claims under Nevada law that do
28 not allow for a private right of action, and Plaintiff was not a party to, or alleged to be
damaged by, Defendant’s conduct alleged in the 2004 complaint. Further, any causes of
action asserted in that complaint would, over 11 years later, be time-barred. Accordingly,
Plaintiff’s reference to the 2004 complaint does not state a claim for relief in this action.

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a. Plaintiff's Conversion Claim

The Court will dismiss Plaintiff's conversion claim as time-barred. Plaintiff's claim is subject to either a two- or three-year statute of limitations. *See* Ariz. Rev. Stat. Ann. § 12-542 (setting out two-year statute of limitations for tort claims); *Jackson v. Am. Credit Bureau, Inc.*, 531 P.2d 932, 934 (Ariz. Ct. App. 1975) (applying A.R.S. § 12-542 to a conversion claim); Nev. Rev. Stat. § 11.190(3)(c) (a three-year statute of limitations applies to property torts such as conversion, interference with contractual relations, and interference with prospective economic advantage).

Here, Plaintiff asserts claims based on the taking of his passport, which he alleges occurred in the summer of 2012—over three years before filing his November 27, 2015 Complaint in this case. (Doc. 1.) Plaintiff does not set forth any allegations that show his causes of actions accrued after November 27, 2012, or that the applicable statute of limitations was tolled. Therefore, the Court will dismiss Plaintiff's conversion claim as time-barred.

b. Plaintiff's Intentional Infliction of Emotional Distress Claim

The Court will likewise dismiss Plaintiff's claim for intentional infliction of emotional distress. To the extent Plaintiff asserts that claim based on Defendant's taking of Plaintiff's passport, that claim is also time-barred by the applicable two-year statute of limitations under Arizona and Nevada law. *Cecala v. Newman*, 532 F. Supp. 2d 1118, 1142 (D. Ariz. 2007) (applying two-year statute of limitations to an Arizona intentional infliction of emotional distress claim); Nev. Rev. Stat. 11.190(4)(e); *State Farm Mut. Auto Ins. Co. v. Fitts*, 99 P.3d 1160, 1161 (Nev. 2004) (recognizing the "two-year statute of limitations governing tort actions brought in Nevada").

Further, to the extent Plaintiff's claim is based on his allegation that "[m]ore than a year ago," Plaintiff was "warned" by third parties that Defendant had generally made "threats" against Plaintiff if Plaintiff contacted "ICE about Defendant's illegal presence and employment in Las Vegas," such a general allegation is insufficient to state a claim for relief.

1 Rule 8(a) of the Federal Rules of Civil Procedure provides that to state a claim for
2 relief, a complaint must contain (1) “a short and plain statement of the grounds for the
3 court’s jurisdiction,” (2) “a short and plain statement of the claim showing that the
4 pleader is entitled to relief,” and (3) “a demand for the relief sought.” The complaint also
5 must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
6 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
7 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When the claims have not crossed the line
8 from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at
9 570. “Determining whether a complaint states a plausible claim for relief will . . . be a
10 context-specific task that requires the [district] court to draw on its judicial experience
11 and common sense.” *Iqbal*, 556 U.S. at 679.

12 The complaint must also provide each defendant with a fair opportunity to frame a
13 responsive pleading. *McHenry v. Renne*, 84 F. 3d 1172, 1176 (9th Cir. 1996). Even
14 where a complaint has the factual elements of a cause of action present but scattered
15 throughout and not organized into a “short and plain statement of the claim,” the Court
16 may dismiss the complaint for failure to satisfy Rule 8. *Sparling v. Hoffman Constr. Co.*,
17 864 F.2d 635, 640 (9th Cir. 1988). Dismissal of the complaint is appropriate if it is so
18 “verbose, confused and redundant that its true substance, if any, is well disguised.”
19 *Gillibeau v. City of Richmond*, 417 F. 2d 426, 431 (9th Cir. 1969).

20 To state a claim for intentional infliction of emotional distress, Plaintiff must
21 establish that: (1) the conduct of defendant was “extreme” and “outrageous”; (2)
22 defendant intended to cause emotional distress or recklessly disregarded the near
23 certainty that such conduct would result from his conduct; and (3) severe emotional
24 distress occurred as a result of defendant’s conduct. *Citizen Publishing Co. v. Miller*, 115
25 P.3d 107, 111 (Ariz. 2005); *Nelson v. Las Vegas*, 665 P.2d 1141, 1145 (Nev. 1993). The
26 acts must be “so outrageous in character and so extreme in degree, as to go beyond all
27 possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a
28 civilized community.” *Mintz v. Bell Atlantic Systems Leasing International, Inc.*, 905

1 P.2d 559, 563 (Ariz. Ct. App. 1995) (quotation omitted); *Maduiké v. Agency Rent-A-Car*,
2 953 P.2d 24, 26 (Nev. 1998).

3 Here, although Plaintiff asserts that Defendant’s conduct was done “intentionally,
4 willfully, maliciously, recklessly, [and] for the purpose to injure and damage the
5 Plaintiff,” Plaintiff’s general allegation that he learned of “threats” from a third party falls
6 short of the requirement that he assert factual allegations sufficient to show that
7 Defendant’s conduct was “extreme” and “outrageous.” Accordingly, the Court will also
8 dismiss Plaintiff’s intentional infliction of emotional distress claim.

9 **IV. Leave to Amend**

10 The Court will give Plaintiff an opportunity, if he so chooses, to amend his
11 Complaint to make his claims clear, to show that the applicable statutes of limitations
12 were tolled, and to otherwise state a claim for relief. *See Lopez*, 203 F.3d at 1127 (when
13 dismissing for failure to state a claim, “a district court should grant leave to amend if no
14 request to amend the pleading was made, unless it determines that the pleading could not
15 possibly be cured by the allegation of other facts”) (quoting *Doe v. United States*, 58 F.3d
16 494, 497 (9th Cir. 1995)). In any amended complaint Plaintiff files, he must assert
17 sufficient allegations to show that his claims accrued within the statutes of limitations or
18 the statutes of limitations were tolled. (Doc. 7.) Further, in accordance with Rule 8 of
19 the Federal Rules of Civil Procedure, Plaintiff must write out, in short, plain statements,
20 (1) the rights he believes were violated, (2) the name of the person or entity who violated
21 each right, (3) exactly what that individual or entity did or failed to do, (4) how the action
22 or inaction of that person or entity is connected to the violation of each right, and (5)
23 what specific injury was suffered because of the other person’s or entity’s conduct.
24 Plaintiff should also clarify whether he asserts his claims under Arizona or Nevada law.

25 Plaintiff is warned that if he elects to file an amended complaint and if he fails to
26 comply with the Court’s instructions explained in this Order or the Federal Rules of Civil
27 Procedure, the action will be dismissed pursuant to section 28 U.S.C. § 1915(e) and/or
28 Rule 41(b) of the Federal Rules of Civil Procedure. *See McHenry*, 84 F.3d at 1180

1 (affirming dismissal with prejudice of amended complaint that did not comply with Rule
2 8(a)); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673-74 (9th Cir. 1981)
3 (affirming dismissal of amended complaint that was equally as verbose, confusing, and
4 conclusory as the initial complaint”).

5 Accordingly,

6 **IT IS ORDERED** that Plaintiff’s Application to Proceed in District Court
7 Without Prepaying Fees or Costs (Doc. 2) is granted.

8 **IT IS FURTHER ORDERED** that Plaintiff’s Complaint (Doc. 1) is dismissed.

9 **IT IS FURTHER ORDERED** that Plaintiff is granted leave to file an amended
10 complaint by **May 25, 2016**.

11 **IT IS FURTHER ORDERED** that if Plaintiff elects to file an amended
12 complaint, the complaint may not be served until and unless the Court screens the
13 amended complaint pursuant to 28 U.S.C. § 1915(e)(2).

14 **IT IS FURTHER ORDERED** that if Plaintiff elects not to file an amended
15 complaint by **May 25, 2016**, the Clerk shall dismiss this action without further order from
16 this Court.

17 **IT IS FURTHER ORDERED** that Plaintiff’s Motion to Allow Electronic Filing
18 by a Party Appearing Without an Attorney (Doc. 3) is denied as moot.

19 Dated this 25th day of April, 2016.

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22 _____
23 Honorable John Z. Boyle
24 United States Magistrate Judge
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