

1 Defendants filed a reply.⁴ On May 22, 2012, the parties appeared for hearing. For the reasons
2 explained below, Defendants' motion is GRANTED.

3 I. BACKGROUND

4 In July 2008, Heidari wrote a book titled "Iran: I survived you all."⁵ On July 8, 2008,
5 Plaintiff's book was registered with the Copyright Office.⁶ Heidari subsequently hired Richard
6 Sellers ("Sellers") to act as her book representative and marketing specialist.⁷ Heidari and Sellers
7 entered into a one-page contract.⁸ On September 3, 2008, Sellers recommended that Heidari retain
8 Dog Ear to publish her book.⁹ Heidari participated in a call with Sellers and Defendants, and on
9 September 26, 2008, Heidari entered into a contract with Dog Ear.¹⁰

10 Heidari was excluded from pertinent conversations amongst Defendants Nelson, Harris,
11 Robinson, and Sellers.¹¹ On January 22, 2009, Sellers informed Heidari that her book was selling
12 on Amazon.¹² That same month, Heidari found her book listed for sale on eBay.¹³ On February 1,
13 2009, Heidari "found out that a good portion of the book was accessible on the
14 www.books.google.com."¹⁴ Sellers claimed that he "had nothing to do with it." Sellers also told
15 Heidari that "it was a clear case of copyright violation and suggested that Heidari file a lawsuit
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17 ⁴ See Docket No. 34 (Defs.' Reply Mot.).

18 ⁵ See Docket No. 1 (Compl.) ¶ 1.

19 ⁶ See *id.* ¶ 3.

20 ⁷ See *id.* ¶ 5.

21 ⁸ See *id.*

22 ⁹ See *id.* ¶ 6.

23 ¹⁰ See *id.* ¶¶ 8, 9.

24 ¹¹ See *id.* ¶ 14.

25 ¹² See *id.* ¶ 16.

26 ¹³ See *id.* ¶ 17.

27 ¹⁴ *Id.* ¶ 19.

1 against Google.”¹⁵ After contacting Dog Ear, Heidari was informed that listing part of the book on
2 Google was authorized by her contract. On February 3, 2009, Heidari claims that Sellers
3 “separated” himself from the book.¹⁶

4 On February 3, 2012, Heidari filed this lawsuit.¹⁷

5 II. LEGAL STANDARDS

6 A complaint must contain “a short and plain statement of the claim showing that the
7 pleader is entitled to relief.”¹⁸ If a plaintiff fails to proffer “enough facts to state a claim to relief
8 that is plausible on its face,” the complaint may be dismissed for failure to state a claim upon
9 which relief may be granted.¹⁹ A claim is facially plausible “when the pleaded factual content
10 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
11 alleged.”²⁰ Accordingly, under Fed. R. Civ. P. 12(b)(6), which tests the legal sufficiency of the
12 claims alleged in the complaint, “[d]ismissal can based on the lack of a cognizable legal theory or
13 the absence of sufficient facts alleged under a cognizable legal theory.”²¹

14 On a motion to dismiss, the court must accept all material allegations in the complaint as
15 true and construe them in the light most favorable to the non-moving party.²² The court’s review is
16 limited to the face of the complaint, materials incorporated into the complaint by reference, and
17 matters of which the court may take judicial notice.²³ However, the Court need not accept as true
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19 ¹⁵ *See id.*

20 ¹⁶ *See id.* ¶¶ 21, 22.

21 ¹⁷ *See* Docket No. 1 (Compl.).

22 ¹⁸ Fed. R. Civ. P. 8(a)(2).

23 ¹⁹ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

24 ²⁰ *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).

25 ²¹ *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1990).

26 ²² *See Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

27 ²³ *See id.* at 1061.

1 allegations that are conclusory, unwarranted deductions of fact, or unreasonable inferences.²⁴ Pro
2 se complaints are held to “less stringent standards than formal pleadings drafted by lawyers.”²⁵ The
3 court “has an obligation to construe the pleadings liberally and to afford the [plaintiff] the benefit
4 of any doubt.”²⁶ “However, even pro se pleadings must allege facts sufficient to allow a reviewing
5 court to determine whether a claim has been stated.”²⁷ “Dismissal with prejudice and without leave
6 to amend is not appropriate unless it is clear . . . that the complaint could not be saved by
7 amendment.”²⁸

8 III. DISCUSSION

9 As a threshold matter, the court must determine whether Heidari’s copyright claim is barred
10 by the statute of limitations. The court must do so without straying outside the four corners of
11 Heidari’s complaint.²⁹ Defendants argue that Heidari’s copyright claim is barred by the three-year
12 statute of limitations that is generally applicable to all copyright claims. Heidari responds that she
13 first learned of the copyright claim within the statute of limitations’ three-year window.

14 Section 507(b) of Title 17 sets forth the following restriction regarding civil actions for
15 copyright infringement: “No civil action shall be maintained under the provisions of this title
16 unless it is commenced within three years after the claim accrued.” “A cause of action for
17 copyright infringement accrues when one has knowledge of a violation or is chargeable with such

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19 ²⁴ See *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); see also *Twombly*,
20 550 U.S. at 561 (“a wholly conclusory statement of [a] claim” will not survive a motion to
dismiss).

21 ²⁵ *Silva-Pearson v. BAC Home Loans Servicing, LP*, No. C 11-1491 SI, 2011 WL 2633406, at *2
22 (N.D. Cal. July 6, 2011) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

23 ²⁶ *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc).

24 ²⁷ *Silva-Pearson*, 2011 WL 2633406, at *2 (citing *Ivey v. Bd. of Regents of Univ. of Alaska*, 673
F.2d 266, 268 (9th Cir. 1982)).

25 ²⁸ *Eminence Capital, LLC v. Asopeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

26 ²⁹ See *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990)
27 (“Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule
12(b)(6) motion. . . . However, material which is properly submitted as part of the complaint may
28 be considered on a motion to dismiss.”) (citations omitted).

1 knowledge.”³⁰ “In copyright litigation, the statute of limitations issue that often arises is that the
2 plaintiff filed its copyright claim more than three years after it discovered or should have
3 discovered infringement.”³¹ The Copyright Act “does not provide for a waiver of infringing acts
4 within the limitation period if earlier infringements were discovered and not sued upon, nor does it
5 provide for any reach back if an act of infringement occurs within the statutory period.”³²
6 However, “[i]n a case of continuing copyright infringements, an action may be brought for all acts
7 that accrued within the three years preceding the filing of the suit.”³³

8 Heidari’s complaint alleges that from September 26, 2008, until February 1, 2009, Heidari
9 “was pressured to make changes to the book,” and that Heidari “did not approve of these
10 changes.”³⁴ On January 7, 2009, Heidari “desperately tried to argue and stop [Dog Ear from
11 releasing] the press release of the book.”³⁵ On January 8, 2009, Defendants decided to release a
12 section of her book “out in the open,” and that it was then Heidari felt that “she had no say on the
13 matter and was forced to except [*sic*] the plans of defendants.”³⁶

14 On January 22, 2009, Sellers told Heidari that her book was selling on Amazon.³⁷ In
15 January 2009 Heidari discovered that her book was selling on eBay.³⁸ On February 1, 2009,
16 Heidari discovered that a portion of her book was available free of charge on Google Books.³⁹

18 ³⁰ *Roley v. New World Pictures, Ltd.*, 19 F.3d 479, 481 (9th Cir.1994).

19 ³¹ *Polar Bear Productions., Inc. v. Timex Corp.*, 384 F.3d 700, 705-06 (9th Cir. 2004).

20 ³² *Roley*, 19 F.3d at 481 (quotation omitted).

21 ³³ *Id.*

22 ³⁴ Docket No. 1 (Compl.) ¶ 11.

23 ³⁵ *Id.* ¶ 12.

24 ³⁶ *Id.* ¶ 15.

25 ³⁷ *See id.* ¶ 16.

26 ³⁸ *See id.* ¶ 17.

27 ³⁹ *See id.* ¶ 19.

1 Heidari then asked Sellers why her book was available on Google without her permission.⁴⁰ In
2 response, Sellers told her it was a “clear case of copyright violation and suggested to file [*sic*] a
3 lawsuit against Google.”⁴¹

4 Heidari also contacted Dog Ear with the same complaint.⁴² After contacting Dog Ear,
5 Heidari was told by Robinson that it was permissible for Dog Ear to upload a portion of Heidari’s
6 book on Google because it was permitted in the agreement between Sellers and Dog Ear.⁴³ This
7 was when she first learned of a contract between Sellers and Dog Ear.⁴⁴

8 In light of the forgoing, it is clear that a reasonable person in Heidari’s position was put on
9 notice more than three years before February 3, 2012 of the copyright violation for which Heidari
10 now seeks relief. According to Heidari’s own complaint, well before February 3, 2009, she was
11 pressured to make changes to her book, and those changes were made to her book by Defendants
12 without Heidari’s consent. On January 7, 2009, Defendants issued a press release regarding
13 Heidari’s book without her consent. On January 22, 2009, Sellers told Heidari that her book was
14 for sale on Amazon, and sometime in January 2009 Heidari found her book listed for sale on eBay.
15 Heidari had not consented to either listing. On February 1, 2009, Heidari discovered that a portion
16 of her book was freely available on Google Books without her consent. When Heidari confronted
17 Sellers, Sellers told her specifically that she may have a claim for copyright infringement, once
18 again, before February 3, 2009.⁴⁵ While it is true that Sellers did not tell Heidari specifically that
19 she had a claim against him or Dog Ear for copyright infringement, Heidari was nevertheless put
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21 ⁴⁰ *See id.*

22 ⁴¹ *Id.*

23 ⁴² *See id.* ¶ 20.

24 ⁴³ *See id.* ¶ 21.

25 ⁴⁴ *See id.*

26 ⁴⁵ The court notes that while Heidari’s complaint fails to give a precise date for this exchange, the
27 only reasonable conclusion to draw from the complaint is that it occurred before February 3, 2009.
28 *See* Docket No. 1 (Compl.) ¶ 19. Heidari did not dispute this conclusion in either her papers or at
the hearing on the pending motion.


1 on notice of the facts giving rise to her present claim.⁴⁶ This is especially true because Heidari
2 discovered a side agreement between Sellers and Dog Ear before February 3, 2009.⁴⁷ In short,
3 Heidari was chargeable before February 3, 2009, with a duty to investigate, and her filing of this
4 complaint over three years later is time-barred.

5 **IV. CONCLUSION**

6 Defendants' motion to dismiss Heidari's complaint is GRANTED. Because it is not clear
7 that Heidari's complaint could not be saved by amendment, this dismissal is with leave to amend.⁴⁸
8 Any amendment shall be filed no later than June 22, 2012.

9 **IT IS SO ORDERED.**

10 Dated: June 1, 2012

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12 PAUL S. GREWAL
13 United States Magistrate Judge

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20 ⁴⁶ See *Polar Bear Productions*, 384 F.3d at 705-06 (“Section 507(b) of the Copyright Act provides
21 that copyright claims must be commenced within three years after the claim accrued. . . . § 507(b)
22 permits damages occurring outside of the three-year window, so long as the copyright owner did
23 not discover—and reasonably could not have discovered—the infringement before the
24 commencement of the three-year limitation period.”); see also *Aalmuhammed v. Lee*, 202 F.3d
25 1227, 1231 (9th Cir. 2000) (finding that date of discovery is an issue of fact, and the district court’s
26 determination will be upheld unless it is clearly erroneous).

27 ⁴⁷ Again, the court notes that while Heidari's complaint fails to give a precise date for this
28 exchange, the only reasonable conclusion to draw from the complaint is that it occurred before
February 3, 2009. See Docket No. 1 (Compl.) ¶ 21. Once again, in both her papers and oral
argument at the hearing, Heidari did not dispute this conclusion.

⁴⁸ On May 29, 2012, Heidari filed a motion for leave to amend her complaint. See Docket No. 42
(Pl.'s Mot. for Leave to Am. Compl.). In light of this order allowing Heidari to amend her
complaint, the court finds that Heidari's motion is moot.