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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

G. SMITH,

Plaintiff,

v.

DANIEL WOLF and
PAUL BEDINGTON,

Defendants.

Case No.: 3:20-cv-1409-JAH-JLB

**ORDER GRANTING IN PART AND
DISMISSING IN PART
PLAINTIFF’S SECOND AMENDED
COMPLAINT [ECF No. 11]**

I.

INTRODUCTION

On July 22, 2020, G. Smith (“Plaintiff”), proceeding pro se, filed a Complaint seeking damages against Daniel Wolf and Paul Bedington (“Defendants”) for seven California state law claims: (1) Breach of Contract, (2) Assault, (3) Trespass, (4) Trespass to Chattels, (5) Conversion, (6) Abuse of Process, and (7) Unjust Enrichment. (ECF No. 1). Plaintiff concurrently filed a Motion to Proceed in forma pauperis (“IFP”). (ECF No. 2).

On October 28, 2020, this Court granted Plaintiff’s Motion to Proceed IFP and dismissed Plaintiff’s Complaint in part without prejudice pursuant to U.S.C. § 1915(e)(2)(B)(ii). (ECF No. 6). Plaintiff then filed a First Amended Complaint, which the Court granted in part and dismissed in part without prejudice pursuant to U.S.C. §

1 1915(e)(2)(B)(ii). Presently before the Court is Plaintiff’s operative Second Amended
2 Complaint (“SAC”), which alleges the original seven claims and includes two additional
3 claims of Negligent Interference with Prospective Economic Relations and Intentional
4 Infliction of Emotional Distress. (ECF No. 11, “Compl.”). After a careful review of the
5 pleadings and for the reasons set forth below, the Court **GRANTS IN PART** and
6 **DISMISSES IN PART** Plaintiff’s Second Amended Complaint.

7 **II.**

8 **LEGAL STANDARD**

9 When a Plaintiff seeks leave to proceed IFP, the SAC is subject to *sua sponte* review,
10 and mandatory dismissal, if it is “frivolous, malicious, fail[s] to state a claim upon which
11 relief may be granted, or seek[s] monetary relief from a defendant immune from such
12 relief.” See 28 U.S.C. § 1915(e)(2)(B); *Coleman v. Tollefson*, 135 S. Ct. 1759, 1763 (2015)
13 (pursuant to 28 U.S.C. § 1915(e)(2) “the court shall dismiss the case at any time if the court
14 determines that... (B) the action or appeal... (ii) fails to state a claim on which relief may
15 be granted.”); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“section
16 1915(e) not only permits, but requires, a district court to dismiss an in forma pauperis
17 complaint that fails to state a claim.”). “The standard for determining whether a plaintiff
18 has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the
19 same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”
20 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Whether the causes of action are
21 timely filed is also a matter to be reviewed under Federal Rule of Civil Procedure 12(b)(6).

22 **III.**

23 **DISCUSSION**

24 In the prior *sua sponte* screening and order of this Court, (ECF No. 9), this Court
25 found that the Breach of Contract, Trespass, Trespass to Chattels, Conversion and Unjust
26 Enrichment claims survived *sua sponte* review. *Id.* at 9. Plaintiff re-alleges these claims,
27 in the SAC. ECF No. 11. The Court dismissed, without prejudice, Plaintiff’s Assault and
28 Abuse of Process claims. ECF No. 9 at 9. As noted, Plaintiff has alleged two additional

1 claims – Negligent Interference with Prospective Economic Relations and Intentional
2 Infliction of Emotional Distress. This Court considers all claims pursuant to 28 USC
3 Section 1915(a).

4 *1. Breach of Contract Claim*

5 Having reviewed this claim, the Court adopts and incorporates the rationale
6 contained in its analysis in the order granting in part and dismissing in part Plaintiff’s First
7 Amended Complaint, (ECF No. 9, at 2-3), and finds Plaintiff has alleged sufficient facts to
8 state a breach of contract claim.

9 *2. Assault Claim*

10 Plaintiff alleges on or about July 20, 2016, Defendant Wolf “took several steps closer
11 to where Plaintiff stood, threatening her that he was about to physically grab her to remove
12 her from the premises” and that Plaintiff was put “in immediate fear of an unconsented-to
13 touching resulting in imminent bodily harm.” Compl. at 4. Pursuant to Cal. Code Civ.
14 Pro. §335.1, the statute of limitations for an assault claim is two years. Because more than
15 two years has elapsed from when the incident occurred to the filing of Plaintiff’s complaint
16 on July 22, 2020, the assault claim is time-barred.

17 *3. Trespass Claim*

18 Plaintiff alleges on or about July 22, 2016, Defendants “entered [Plaintiff’s] suite
19 without Plaintiff’s consent.” Compl. at 5. Pursuant to Cal. Code Civ. Pro. § 338(b), the
20 statute of limitations for a trespass claim is three years. Because more than three years has
21 elapsed from when the incident occurred to the filing of Plaintiff’s complaint on July 22,
22 2020, the trespass claim is time-barred.

23 *4. Trespass to Chattels Claim*

24 Plaintiff alleges on or about July 22, 2016, Defendants “entered into Plaintiff’s suite
25 and converted all of Plaintiff’s possessions contained within it[.]” Compl. at 5. Pursuant
26 to Cal. Code Civ. Pro. § 338(c)(1), the statute of limitations for a trespass to chattels claim
27 is three years. Because more than three years has elapsed from when the incident occurred
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1 to the filing of Plaintiff’s complaint on July 22, 2020, the trespass to chattels claim is time-
2 barred.

3 *5. Conversion Claim*

4 Plaintiff alleges on or about July 22, 2016, Defendants “entered into Plaintiff’s
5 suit[e] and took Plaintiff’s possessions[.]” Compl. at 6. Pursuant to Cal. Code Civ. Pro. §
6 338(c)(1), the statute of limitations for a conversion claim is three years. Because more
7 than three years has elapsed from when the incident occurred to the filing of Plaintiff’s
8 complaint on July 22, 2020, the conversion claim is time-barred.

9 *6. Abuse of Process Claim*

10 Plaintiff alleges on or about July 19, 2016, Defendant Wolf “procured [a] TRO by
11 perjury, falsely alleging that Plaintiff has abused him.” Compl. at 6. Pursuant to Cal. Code
12 Civ. Pro. § 340, subd. (3), the statute of limitations for an abuse of process claim is one
13 year. Because more than one year has elapsed from when the incident occurred to the filing
14 of Plaintiff’s complaint on July 22, 2020, the abuse of process claim is time-barred.

15 *7. Unjust Enrichment Claim*

16 Plaintiff alleges on or about July 22, 2016, Defendants “greatly profited by depriving
17 Plaintiff of the contract’s most valuable benefit.” Compl. at 8. Pursuant to Cal. Code Civ.
18 Pro. § 339, subd. (1), the statute of limitations for an unjust enrichment claim is two years.
19 Because more than two years has elapsed from when the incident occurred to the filing of
20 Plaintiff’s complaint on July 22, 2020, the unjust enrichment claim is time-barred.

21 *8. Negligent Interference with Prospective Economic Relations Claim*

22 Plaintiff alleges on or about July 22, 2016, Defendants failed to act with reasonable
23 care, which disrupted Plaintiff’s separate contract with McBride Literary Agency
24 (“McBride”). Compl. at 8. Plaintiff claims Defendants were aware or should have been
25 aware of its contract in October 2015. (*Id.*) Pursuant to Cal. Code Civ. Pro. § 339, subd.
26 (1), the statute of limitations for a negligent interference with prospective economic
27 relations claim is two years. Because more than two years has elapsed from when the
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1 incident occurred to the filing of Plaintiff’s complaint on July 22, 2020, the negligent
2 interference with prospective economic relations claim is time-barred.

3 *9. Intentional Infliction of Emotional Distress Claim*

4 Plaintiff alleges on or about July 22, 2016, Defendants caused Plaintiff to “suffer
5 severe emotional distress from [their] conduct.” Compl. at 9. Pursuant to Cal. Code Civ.
6 Pro. § 335.1, the statute of limitations for an intentional infliction of emotional distress
7 claim is two years. Because more than two years has elapsed from when the incident
8 occurred to the filing of Plaintiff’s complaint on July 22, 2020, the intentional infliction of
9 emotional distress claim is time-barred.

10 **IV.**

11 **CONCLUSION**

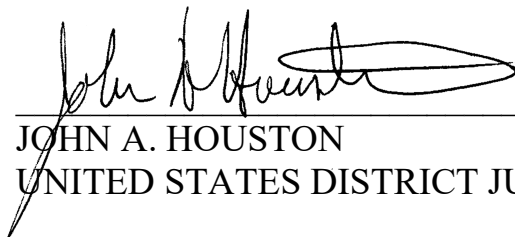
12 Accordingly, for all of the aforementioned reasons, IT IS HEREBY ORDERED:

- 13 1. The Breach of Contract claim survives *sua sponte* review.
- 14 2. The Assault, Trespass, Trespass to Chattels, Conversion, Abuse of Process,
15 Unjust Enrichment, Negligent Interference with Prospective Economic
16 Relations, and Intentional Infliction Emotional Distress claims are **DISMISSED**
17 **with prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).
- 18 3. The Clerk of Court shall issue a summons as to Plaintiff’s Second Amended
19 Complaint, (ECF No. 11), and forward it to Plaintiff along with a blank U.S.
20 Marshal Form 285 for each Defendant. In addition, the Clerk will provide
21 Plaintiff with a certified copy of this Order, a certified copy of the Complaint,
22 and the summons so that they may serve the Defendants. Upon receipt of this
23 “IFP Package,” Plaintiff must complete the Form 285s as completely and
24 accurately as possible, include an address where each named Defendant may be
25 served, *see* S.D. Cal. CivLR 4.1.c, and return them to the United States Marshal
26 according to the instructions the Clerk provides in the letter accompanying the
27 IFP package;

- 1 4. The U.S. Marshal shall serve a copy of the Complaint and summons upon
2 Defendants as directed by Plaintiff on the USM Form 285 provided. All costs of
3 that service will be advanced by the United States. *See* 28 U.S.C. § 1915(d);
4 FED. R. CIV. P. 4(c)(3);
- 5 5. Plaintiff shall, after service has been effected by the U.S. Marshal, serve upon
6 Defendants or, if appearance has been entered by counsel, upon Defendants'
7 counsel, a copy of every further pleading, motion, or other document submitted
8 for the Court's consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must
9 include with every original document they seek to file with the Clerk of the Court,
10 a certificate stating the manner in which a true and correct copy of that document
11 was served on Defendants or Defendants' counsel, and the date of that service.
12 *See* S.D. Cal. CivLR 5.2. Any document received by the Court which has not
13 been properly filed with the Clerk, or which fails to include a Certificate of
14 Service upon the Defendants, may be disregarded.

15 **IT IS SO ORDERED.**

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17 DATED: December 1, 2021

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21 JOHN A. HOUSTON
22 UNITED STATES DISTRICT JUDGE
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