UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BRYAN KEITH TEW,

Plaintiff,

vs.

FEDERAL BUREAU OF INVESTIGATION; et al.,

Defendants.

CASE NO. 13-CV-0608 BEN (NLS)

ORDER:

(1) GRANTING MOTIONS TO AMEND COMPLAINT

(2) DISMISSING ACTION WITH PREJUDICE

(3) DENYING AS MOOT MOTION TO PROCEED *IN FORMA PAUPERIS*

(4) DENYING AS MOOT MOTION TO APPOINT COUNSEL

[Docket Nos. 2, 18, 20, 23]

On March 15, 2013, *pro se* Plaintiff Bryan Keith Tew filed a Complaint against forty defendants, including the Federal Bureau of Investigation ("FBI"). (Docket No. 1.) Plaintiff also filed a Motion to Proceed *In Forma Pauperis* (Docket No. 2), a Motion to Appoint Counsel (Docket No. 18), and two Motions to Amend the Complaint (Docket Nos. 20, 23). In addition, Plaintiff has filed twenty-six other documents that the Court has rejected for failure to follow the Civil Local Rules. The Court decides the matters on the papers submitted. For the reasons outlined below, the

Court **GRANTS** the Motions to Amend the Complaint, **DISMISSES** the action with prejudice, and **DENIES** as moot the Motion to Proceed *In Forma Pauperis* and Motion to Appoint Counsel.

BACKGROUND

Plaintiff's Complaint is 127 pages long and names forty defendants, including the FBI. Plaintiff alleges that "[w]ith the advanced technology such as Directed Energy Weapons (DEW) which are an established fact as they are used for crowd control by the government, and other technology certainly unknown to most, via a shadow network of surveillance and other spying under DARPA projects, etc., the defendants are attacking me daily with DEW and also transmitting, intercepting, tampering, destroying by erasing and also blocking the content of a significant portion of the Plaintiff's phone calls, emails, faxes, tampering with physical mail and electronic and wireless communications . . . ." (Compl. at 11.) The 127-page Complaint mostly focuses on the FBI's alleged "Direct Energy Weapon Torture" against Plaintiff. (*Id.* at 5.)

The Complaint alleges many causes of action, including, "Civil Conspiracy, Assault and Battery, Stalking (having me stalked me [sic] en masse on foot and in vehicles). Medical Battery, Medical Malpractice, Organized Harassment, Respondeat Superior, Destruction of and Tampering with Evidence, Witness Tampering, Wrongful Termination, Intentional Infliction of Mental Anguish and Duress, Obstruction of Justice, blanketing my dwelling and surroundings with electromagnetic energy, Deprivation of Sleep (depriving me of sleep due to neurological intervention) and Other Forms of Direct Energy Weapon Torture, vandalizing my home and/or car, tapping my phones and hacking my computer, blacklisting me in the labor market, 'workplace mobbing'. [and] bombarding my body with debilitating electronic and mind manipulation effects." (*Id.* at 5.)

The First Motion to Amend the Complaint consists of a print-out of a Wikipedia article entitled "Directed-energy weapon" and a letter to the "Office of Chief of Police

San Diego," requesting that he investigate the FBI. (Docket No. 20.) The Second Motion to Amend the Complaint consists of an email exchange regarding returning merchandise to the business it was purchased from, bank statements, and multiple letters to law enforcement officers and United States Attorneys that request that the FBI be investigated. (Docket No. 23.)

DISCUSSION

I. MOTIONS TO AMEND THE COMPLAINT

Plaintiff's Motions to Amend the Complaint (Docket Nos. 20, 23) are **GRANTED**. The Court will consider the material submitted with the Motions to Amend the Complaint along with the Complaint.

II. *SUA SPONTE* SCREENING AND DISMISSAL

A complaint filed by any person proceeding, or seeking to proceed, *in forma pauperis* under 28 U.S.C. § 1915(a) is subject to mandatory *sua sponte* review and dismissal if the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from suit. 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000). A complaint is frivolous "where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

The legal sufficiency of a complaint is tested under Federal Rule of Civil Procedure 12(b)(6). *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Under Rule 12(b)(6), dismissal is appropriate if the complaint fails to state a facially plausible claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007). That is, the complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of the claim. *Id.* at 556. Dismissal is also appropriate when the complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). The court must assume the truth of all factual allegations and construe them in the light most favorable to the plaintiff. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d

336, 337-38 (9th Cir. 1996). *Pro se* litigants are not "excused from knowing the most basic pleading requirements." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107 (9th Cir. 2000).

Here, the Court finds Plaintiff's claims to be frivolous because they lack even "an arguable basis either in law or in fact," and appear "fanciful," "fantastic," or "delusional." *Neitzke*, 490 U.S. at 325, 328. Because "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment," the Court **DISMISSES** the complaint **WITH PREJUDICE**. *See Franklin v. Murphy*, 245 F.2d 1221, 1228 n.9 (9th Cir. 1984).[1]

III. MOTION TO PROCEED *IN FORMA PAUPERIS* AND MOTION TO APPOINT COUNSEL

Because Plaintiff's Complaint is dismissed, Plaintiff's Motion to Proceed *In Forma Pauperis* and Motion to Appoint Counsel are **DENIED** as moot.

CONCLUSION

For the reasons stated above, the Motions to Amend the Complaint are **GRANTED**, the Complaint is **DISMISSED WITH PREJUDICE**, and the Motion to Proceed *In Forma Pauperis* and Motion to Appoint Counsel are **DENIED** as moot. The Clerk of Court shall close the file.

IT IS SO ORDERED.

DATED: 4/23/2013

HON. ROGER T. BENITEZ
United States District Judge

[1] The Court notes that Plaintiff's allegations are similar to those set forth in previously filed (and dismissed) complaints filed in Ohio and Kentucky: *Tew v. Federal Bureau of Investigation*, Case No. 11-CV-554 (S.D. Ohio); *Tew v. Teamworks USA*, Case No. 11-CV-0089 (W.D. Ky.); *Tew v. Yahoo, Inc.*, Case No. 11-CV-200 (W.D. Ky.); *Tew v. Federal Bureau of Investigation*, Case No. 11-CV-241 (W.D. Ky.); *Tew v. Federal Bureau of Investigation*, Case No. 13-CV-216 (W.D. Ky.); and *Tew v. Federal Bureau of Investigation*, Case No. 12-CV-416 (S.D. Ohio).