

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ERIKA KATRIN MEYER,

Plaintiff,

v.

**FEDERAL BUREAU OF
INVESTIGATION,**

Defendant.

Case No. 3:23-cv-1320-SI

ORDER

Michael H. Simon, District Judge.

Plaintiff Erika Katrin Meyer is a self-represented, or pro se, litigant who brings this case against the Federal Bureau of Investigation (FBI). Plaintiff alleges that the FBI is using implanted biomedical devices to harm her and her family members. She also alleges that the FBI surveil Plaintiff and destroy her property and “evidence” of the FBI’s alleged crimes, including data from her computer and stored on the cloud. She alleges that the FBI has surveillance cameras hidden in her home and “throughout Portland,” particularly in “fire sprinklers . . . including from a sprinkler over [Plaintiff’s] bed; in gym locker rooms, in department store dressing rooms, in doctors’ exam rooms, in gym locker rooms, and in women’s restrooms throughout Portland, including on the campus of Portland Community College.” Plaintiff alleges

that FBI Director Christopher Wray spoke in a televised interview in coded terms that relate to biomedical implants and other aspects of the alleged conspiracy to commit crimes against U.S. citizens, including the kidnapping and sex trafficking of children.

Plaintiff's allegations are substantially similar to allegations she raised last year against the FBI in *Meyer v. Federal Bureau of Investigation*, Case No. 3:22-cv-1779-SI (*Meyer I*). In that case, Plaintiff alleged violations of her rights under several Oregon criminal laws, her Fourth Amendment right under the U.S. Constitution to be free from unlawful search and seizure, and her Fifth Amendment right under the U.S. Constitution to due process. On January 6, 2023, the Court dismissed what the Court construed as Plaintiff's Amended Complaint in that case without leave to amend, and entered Judgment.

Here, Plaintiff alleges a claim under the civil Racketeer Influenced and Corrupt Organizations statute, alleging predicate offenses of murder, kidnapping, obscenity, wire fraud, witness tampering, witness retaliation, sex trafficking of children, money laundering, and copyright infringement. In her allegations she alleges that the FBI conspires with fire departments throughout the United States and all medical personnel. Plaintiff also alleges violations of her rights under the First, Fourth, and Thirteenth Amendments. Finally, Plaintiff alleges an antitrust claim under Section 2 of the Sherman Antitrust Act.

Plaintiff originally filed an application to proceed *in forma pauperis* (IFP). ECF 2. Several days later, Plaintiff paid her filing fee. She, however, did not withdraw her application to proceed IFP. By paying her filing fee, the Court construes that Plaintiff intended to withdraw her application to proceed IFP, and thus denies that application as moot. Regardless of her IFP status, however, the Court performs its gatekeeping *sua sponte* review of a complaint filed by a pro se litigant. Even under the liberal pleading standards afforded a pro se plaintiff, Plaintiff fails

to state a claim upon which relief may be granted and her claims are barred by the doctrines of claim preclusion and issue preclusion. Accordingly, for the reasons stated below, the Court dismisses this case without leave to amend.

A. Legal Standards

A court must liberally construe the filings of a *pro se* plaintiff and afford the plaintiff the benefit of any reasonable doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). “Unless it is absolutely clear that no amendment can cure the defect, . . . a *pro se* litigant is entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal of the action.” *Garity v. APWU Nat’l Labor Org.*, 828 F.3d 848, 854 (9th Cir. 2016) (alteration in original) (quoting *Lucas v. Dep’t of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam)).

A district court may *sua sponte* dismiss a complaint before responsive pleadings if the complaint is frivolous. *Kidd v. Dep’t of Corr.*, 993 F.2d 883 (9th Cir. 1993). A complaint is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

A district court may also *sua sponte* dismiss a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure if it fails to state a claim. *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987). “Such a dismissal may be made without notice where the claimant cannot possibly win relief.” *Id.* A complaint fails to state a claim when there is no cognizable legal theory or the factual allegations are insufficient to support a claim for relief. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010). In evaluating the sufficiency of a complaint’s factual allegations, the court must accept as true all well-pleaded material facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010). But to be entitled to a presumption of truth, the

complaint must do more than simply allege legal conclusions couched as factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). The plaintiff “may not simply recite the elements of a cause of action, but must [provide] sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The underlying factual allegations must “*plausibly* suggest an entitlement to relief.” *Id.* (emphasis added). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

Further, “[a]s a general matter, a court may, sua sponte, dismiss a case on preclusion grounds where the records of that court show that a previous action covering the same subject matter and parties had been dismissed.” *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1054 (9th Cir. 2005) (citation and quotation marks omitted). Under the doctrine of claim preclusion, “[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Federated Dep’t Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). The elements necessary to establish claim preclusion are: “(1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003). “Dismissal for failure to state a claim is a judgment on the merits for purposes of claim preclusion.” *Save Bull Trout v. Williams*, 51 F.4th 1101, 1109 (9th Cir. 2022). Issue preclusion, also known as collateral estoppel, “is designed to bar successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination.” *Paulo v. Holder*, 669 F.3d 911, 918 (9th Cir. 2011) (cleaned up); *see also Robi v. Five Platters, Inc.*, 838

F.2d 318, 322 (9th Cir. 1988) (“The doctrine of issue preclusion prevents relitigation of all issues of fact or law that were actually litigated and necessarily decided in a prior proceeding. . . . The issue must have been actually decided after a full and fair opportunity for litigation.” (quotation marks and citations omitted)).

B. Analysis

1. Preclusion

Considering this case and *Meyer I*, the elements for claim preclusion are met. The parties (Plaintiff and defendant FBI) are the same. The Court dismissed *Meyer I* for failure to state a claim, which is a judgment on the merits. *Save Bull Trout v. Williams*, 51 F.4th at 1109. Finally, Plaintiff’s claims against the FBI in this case all arise under the same facts Plaintiff alleged in *Meyer I*. Because Plaintiff’s claims in the instant proceeding were raised or *could have been* raised in *Meyer I*, this action is barred by the doctrine of claim preclusion. *See Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (explaining that claim preclusion bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action).

Plaintiff’s claims also are precluded under issue preclusion. The underlying issues about whether the FBI engaged in widespread surveillance and biomedical implants previously were decided by this Court in *Meyer I*. Plaintiff raises some new arguments and claims, but that does not prevent the application of issue preclusion. The Ninth Circuit has explained, in rejecting the contention that a new argument prevents the application of issue preclusion:

The government is correct that the question of whether the statutory counterpart rule made Paulo ineligible for § 212(c) relief was not raised in the district court. The government could have made an argument addressed to this question, but it did not. The fact that a particular argument against Paulo’s eligibility was not made by the government and not addressed by the district court does not mean that the issue of Paulo’s eligibility for § 212(c)

relief was not decided. Issue preclusion is designed to “bar[] ‘successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination.’” *Taylor*, 553 U.S. at 892 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001)). If a party could avoid issue preclusion by finding some argument it failed to raise in the previous litigation, the bar on successive litigation would be seriously undermined. *See* 18 James Wm. Moore *et al.*, Moore’s Federal Practice § 132.02[2][c] (3d ed. 2010) (“If a new legal theory or factual assertion raised in the second action is relevant to the issues that were litigated and adjudicated previously, the prior determination of the issue is conclusive on the issue despite the fact that new evidence or argument relevant to the issue was not in fact expressly pleaded, introduced into evidence, or otherwise urged.”). The issue sought to be relitigated in this case is Paulo’s eligibility for § 212(c) relief, which was decided in the previous proceeding by the district court.

Paulo v. Holder, 669 F.3d 911, 917-18 (9th Cir. 2011) (citation omitted) (alterations in original).

2. Merits of Complaint

Even if Plaintiff’s claims were not precluded under claim or issue preclusion, the Court would still dismiss Plaintiff’s complaint. Plaintiff’s Complaint is frivolous and fails to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Further, the Court may *sua sponte* dismiss Plaintiff’s claim, without notice, because Plaintiff “cannot possibly win relief.” *Omar*, 813 F.2d at 991.

a. RICO Claim

“RICO was intended to combat organized crime, not to provide a federal cause of action and treble damages to every tort plaintiff.” *Oscar v. University Students Co-operative Ass’n*, 965 F.2d 783, 786 (9th Cir. 1992), *abrogated on other grounds by Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005). To state a civil claim under RICO, a plaintiff must show that a defendant engaged in a pattern of racketeering activity. *Ticor Title Ins. Co. v. Florida*, 937 F.2d 447, 450 (9th Cir. 1991). This requires a plaintiff to “show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity.” *H.J. Inc. v. Nw. Bell Telephone*

Co., 492 U.S. 229, 239 (1989) (emphasis in original). Plaintiff's complaint does not *plausibly* allege facts supporting that the FBI has engaged in a conspiracy with fire departments and medical personnel to commit the alleged predicate criminal acts that are ongoing.

b. Constitutional Claims

Plaintiff's constitutional claims against the FBI and CIA also fail. Plaintiff alleges that the FBI has implanted biomedical devices in Plaintiff's body and home; has tampered with physical evidence in her house, including removing a dental implant from a box in her home and "filling the cavity" and then returning it; has tampered with files on her computer Google account; has surveilled her computer, house, phone, and car; and that the FBI's technology influences thoughts and behavior. Plaintiff asserts that these alleged bioweapons have caused her extreme physical injury and killed her husband.

The Court is not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A court may *sua sponte* dismiss allegations found to be "fanciful," "fantastic," or "delusional," or if they "rise to the level of the irrational or the wholly incredible." *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992); *see also Nietzsche*, 490 U.S. at 327 (explaining that a court may dismiss a complaint *sua sponte* that contains "claims describing fantastic or delusional scenarios"); *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (holding that a district court may *sua sponte* dismiss for failure to state a claim without notice or an opportunity to respond when the plaintiff cannot possibly win relief).

Plaintiff's claims are not plausible. They fail to state a claim and are "frivolous," "fanciful," "fantastic," and "delusional" as those terms are used under § 1915. *See Ayres v. Obama*, 2013 WL 5754953, at *2 (D. Haw. Oct. 22, 2013) (concluding that allegations that FBI implanted biochips in the plaintiff and her family to turn them into "a living vegetable or a New

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World Order slave” were “so ‘fantastic’ and ‘fanciful’ as to be clearly baseless”); *cf. Bivolarevic v. U.S. CIA*, 2010 WL 890147, at *1-2 (N.D. Cal. Mar. 8, 2010) (concluding that the court lacked subject matter jurisdiction due to “essentially fictitious, obviously frivolous” claims that CIA subjected plaintiff to a “satellite powered” “mind-altering mechanism” using “microwave technology” as a “mind control weapon”). Plaintiff “cannot possibly win relief” and thus the Court dismisses without leave to amend. *Omar*, 813 F.2d at 991.

C. Conclusion

The Court DENIES AS MOOT Plaintiff’s application to proceed *in forma pauperis*, ECF 2. The Court DISMISSES Plaintiff’s Complaint (ECF 1) as precluded under the doctrines of claim preclusion and issue preclusion, and as frivolous and for failure to state a claim upon which relief may be granted.

IT IS SO ORDERED.

DATED this 19th day of September, 2023.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge