

1 raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which
2 relief may be granted, or that seek monetary relief from a defendant who is immune from
3 such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion
4 thereof, that may have been paid, the court shall dismiss the case at any time if the court
5 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
6 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

7 A complaint must contain “a short and plain statement of the claim showing that the
8 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
9 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
10 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
11 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
12 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
13 face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
14 allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

15 **III. SUMMARY OF COMPLAINT**

16 Plaintiff alleges violations of his Fourteenth Amendment right to due process and
17 Eighth Amendment right to be free from cruel and unusual punishment. Plaintiff names
18 the following individuals as Defendants: R. Crum, Kern Valley State Prison (“KVSP”)
19 correctional officer; J.R. Garza, KVSP correctional lieutenant; Everett W. Fischer, special
20 agent, Office of Correctional Safety (“OCS”); G. Williams, special agent, OCS; M. Ruff,
21 special agent, OCS; and R. Clemons, correctional officer at Los Angeles County State
22 Prison.

23 Plaintiff alleges as follows: On August 14, 2006, Plaintiff was placed in segregation
24 for an investigation into his alleged association with a prison gang. Plaintiff was issued a
25 validation packet which included four sources claiming Plaintiff had ties to the prison gang.
26 All of the source reports were authored by Defendant Crum: 1) dated May 16, 2006,
27 regarding a tattoo on Plaintiff’s chest which was a symbol for the gang; 2) dated June 1,
28 2006, based on a review of Plaintiff’s address book which included known gang members;

1 3) date June 2, 2006, based on another entry in Plaintiff's address book of a known gang
2 member; and 4) dated July 28, 2006, based on a confidential disclosure from Defendant
3 Clemons dealing with letters to and from known gang members which were intercepted by
4 prison officials. Plaintiff rebutted these sources in an interview conducted by Defendants
5 Crum and Garza on August 16, 2006. During the interview, Plaintiff asked to see a copy
6 of a confiscated letter written by Plaintiff which was deemed confidential by officials. He
7 did not receive a copy until September 2006.

8 Defendant Garza approved and submitted the gang validation packet on September
9 5, 2006 knowing that Plaintiff had not received full disclosure of evidence against him.
10 Defendants Fischer, Williams, and Ruff were on the committee that reviewed the reports
11 and accepted all four sources as valid on October 4, 2006, validating Plaintiff as a gang
12 member. As a result, Plaintiff was placed in the security housing unit ("SHU") for an
13 indeterminate sentence.

14 Plaintiff seeks declaratory and injunctive relief, compensatory and punitive
15 damages, and fees and costs.

16 **IV. ANALYSIS**

17 The Civil Rights Act under which this action was filed provides:

18 Every person who, under color of [state law] . . . subjects, or
19 causes to be subjected, any citizen of the United States . . . to
20 the deprivation of any rights, privileges, or immunities secured
21 by the Constitution . . . shall be liable to the party injured in an
22 action at law, suit in equity, or other proper proceeding for
23 redress.

24 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal
25 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.
26 1997) (internal quotations omitted).

27 **A. Due Process Claim**

28 Plaintiff alleges that his due process rights under the Fourteenth Amendment were
violated by Defendants Crum, Clemons, Garza, Fischer, Williams, and Ruff.

The Due Process Clause protects prisoners from being deprived of liberty without

1 due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to state a
2 cause of action for deprivation of procedural due process, a plaintiff must first establish the
3 existence of a liberty interest for which the protection is sought. Id. Liberty interests may
4 arise from the Due Process Clause itself or from state law. Hewitt v. Helms, 459 U.S. 460,
5 466–68 (1983). The Due Process Clause itself does not confer on inmates a liberty
6 interest in being confined in the general prison population instead of administrative
7 segregation. See id. With respect to liberty interests arising from state law, the existence
8 of a liberty interest created by prison regulations is determined by focusing on the nature
9 of the deprivation. Sandin v. Conner, 515 U.S. 472, 481–84 (1995). Liberty interests
10 created by prison regulations are limited to freedom from restraint which “imposes atypical
11 and significant hardship on the inmate in relation to the ordinary incidents of prison life.”
12 Id. at 484. The Court will assume without deciding that Plaintiff has alleged a liberty
13 interest in not being validated as a gang member and placed in administrative segregation.

14 Placement in administrative segregation, or the Security Housing Unit (“SHU”) if
15 done for administrative rather than disciplinary purposes, requires notice to the prisoner,
16 an opportunity for the prisoner to submit information, and non-adversarial review of the
17 information supporting placement. Toussaint v. McCarthy, 801 F.2d 1080, 1100 (9th Cir.
18 1986). A prison gang validation proceeding is subject to the “some evidence” standard
19 where it is an administrative strategy rather than a disciplinary action. Bruce v. Ylst, 351
20 F.3d 1283, 1287–88 (9th Cir. 2003) (citing Superintendent v. Hill, 472 U.S. 445, 455
21 (1985)). There is no independent assessment of witness credibility or re-weighing of
22 evidence; rather “the relevant question is whether there is any evidence in the record that
23 could support the conclusion.” Hill, 472 U.S. at 455–56.

24 Plaintiff argues that Defendants violated his due process rights when they failed to
25 notify him that confidential information was placed in his file. Plaintiff also argues that
26 Defendants failed to give him all of the required due process during the gang validation
27 process. Specifically, Plaintiff argues that he did not receive a fair hearing and that he was
28 not allowed to fully rebut the allegations against him because he did not receive a copy of

1 the confidential letter until September 2006,

2 Based on Plaintiff's general allegations regarding SHU conditions, the Court will
3 assume the existence of a liberty interest in being free from an indeterminate SHU term.
4 See Wilkinson v. Austin, 545 U.S. 209, 223–24 (2005) (finding a liberty interest in avoiding
5 indefinite confinement in Ohio's "Supermax" facility). However, there are no facts alleged
6 which would support a claim that Plaintiff was assessed an indeterminate SHU term
7 without the minimal protections he is due under federal law. Bruce, 351 F.3d at 1287.
8 Plaintiff states that he received the notice of the gang affiliation investigation on the same
9 day that he was placed in segregation. He describes the four source reports, which means
10 he was aware of their contents. He eventually got to see the letter deemed confidential.
11 The reports appear to meet the "some evidence" requirement. As currently pleaded,
12 Plaintiff received notice of the hearing, notice of what evidence there was against him, and
13 he received a hearing. He also was afforded the opportunity to rebut the sources in an
14 interview and during the committee review hearing. As pleaded, Plaintiff does not state a
15 due process claim.

16 Plaintiff was given the appropriate legal standards for stating Fourteenth
17 Amendment due process claims in the Court's prior Screening Order. (ECF No. 10.)
18 Plaintiff was specifically informed that he had not stated any facts that suggested any lack
19 of due process. In fact, his statements lend themselves toward finding sufficient due
20 process. Plaintiff's amended complaint, while more descriptive as to the evidence against
21 him, does not meaningfully address the deficiencies noted by the Court. The Court finds
22 that Plaintiff's due process claims are not capable of being remedied by granting further
23 leave to amend.

24 **B. Cruel and Unusual Punishment**

25 In its Screening Order, the Court noted that Plaintiff was not to add claims to his
26 amended complaint. Plaintiff disregarded these instructions and, In his amended
27 complaint included an Eighth Amendment claim. Plaintiff alleges that he is being subjected
28 to cruel and unusual punishment because he is being housed in the SHU.

1 The Eighth Amendment’s prohibition of cruel and unusual punishment requires that
2 prison officials take reasonable measures for the safety of inmates. See Farmer v.
3 Brennan, 511 U.S. 825, 834 (1994). A prison official violates the Eighth Amendment only
4 when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently
5 serious, and (2) the official is, subjectively, deliberately indifferent to the inmate’s safety.
6 See id. “[O]nly those deprivations denying ‘the minimal civilized measure of life’s
7 necessities,’ are sufficiently grave to form the basis of an Eighth Amendment violation.”
8 Wilson v. Seiter, 501 U.S. 294, 298 (1991) (internal citation omitted).

9 Prison conditions only rise to the level of cruel and unusual punishment if they
10 amount to the deprivation of adequate food, clothing, shelter, sanitation, medical care, or
11 personal safety. See Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986). Plaintiff
12 must allege that he was denied “the minimal civilized measure of life’s necessities.”
13 Nothing in Plaintiff’s complaint suggests that being housed in the SHU can be equated to
14 the denial of the minimal civilized measure of life’s necessities. Further, Plaintiff does not
15 allege that there was any risk to Plaintiff’s health or safety or that Defendants acted with
16 deliberate indifference by purposefully ignoring a known risk to Plaintiff’s health or safety.
17 Plaintiff fails to state any claims under the Eighth Amendment based on his placement in
18 the SHU. Thus, the Court finds that amendment of this claim would be futile.

19 **V. CONCLUSION AND ORDER**

20 The Court finds that Plaintiff’s First Amended Complaint fails to state any Section
21 1983 claims upon which relief may be granted against the named Defendants. Under Rule
22 15(a) of the Federal Rules of Civil Procedure, leave to amend “shall be freely given when
23 justice so requires.” In addition, “[l]eave to amend should be granted if it appears at all
24 possible that the plaintiff can correct the defect.” Lopez v. Smith, 203 F.3d 1122, 1130 (9th
25 Cir. 2000) (internal citations omitted). However, in this action, Plaintiff filed two complaints
26 and received substantial guidance from the Court in its Screening Orders. (ECF Nos. 1,
27 10, & 11.) Even after receiving the Court’s guidance, Plaintiff failed to make alterations or
28 to include additional facts to address the noted deficiencies. Because of this, the Court

1 finds that the deficiencies outlined above are not capable of being cured by amendment,
2 and therefore orders that further leave to amend not be granted. 28 U.S.C. §
3 1915(e)(2)(B)(ii).

4 Accordingly, based on the foregoing, the Court HEREBY ORDERS that this action
5 be DISMISSED in its entirety, WITH PREJUDICE, for failure to state a claim upon which
6 relief may be granted.

7 IT IS SO ORDERED.

8 Dated: July 20, 2011


UNITED STATES MAGISTRATE JUDGE

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