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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 ANTHONY STITT,) No. C 11-3046 JSW (PR)
9 Plaintiff,) **ORDER OF DISMISSAL**
10 v.)
11 G.D. LEWIS, Warden,) (Docket No. 15)
12 Defendant.)
13 _____)
14

15 **INTRODUCTION**

16 On June 20, 2011, Plaintiff, a prisoner of the State of California, filed this pro se
17 civil rights action under 42 U.S.C. § 1983. He has filed an amended complaint. The
18 Court reviews the amended complaint pursuant to 28 U.S.C. § 1915A and dismisses it for
19 failure to state a cognizable claim for relief.

20 **DISCUSSION**

21 I. Standard of Review

22 Federal courts must engage in a preliminary screening of cases in which prisoners
23 seek redress from a governmental entity or officer or employee of a governmental entity.
24 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss any portion
25 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon
26 which relief may be granted,” or “seeks monetary relief from a defendant who is immune
27 from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed.
28 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

1 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
2 of the claim showing that the pleader is entitled to relief." "Specific facts are not
3 necessary; the statement need only "'give the defendant fair notice of what the . . . claim
4 is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
5 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
6 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
7 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
8 recitation of the elements of a cause of action will not do. . . . Factual allegations must
9 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
10 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
11 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
12 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
13 699 (9th Cir. 1990).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
15 (1) that a right secured by the Constitution or laws of the United States was violated, and
16 (2) that the alleged violation was committed by a person acting under the color of state
17 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 II. Legal Claims

19 Plaintiff alleges that he appeared fore a hearing before PBSP's "Unit
20 Classification Committee" ("UCC") for a determination of whether he should be retained
21 in the Secured Housing Unit ("SHU"). At the hearing, Defendant Wilbur determined
22 that he should stay in the SHU because he is actively involved in a gang activity.
23 Plaintiff contends that this decision was wrong, and that it violates due process because it
24 contravenes pertinent California regulations and a settlement agreement reached in a
25 class action involving PBSP.

26 In the order dismissing the original complaint with leave to amend, the Court
27 explained the scope of due process in the context placement in segregated housing. *See*
28 *Wilkinson v. Austin*, 545 U.S. 209, 223-25 (2005); *See generally Sandin v. Conner*, 515

1 U.S. 472, 484-87 (1995). In particular, it was explained that the fact that Plaintiff may
2 have been placed in segregated housing “wrongly” or incorrectly does not raise a due
3 process issue because the Constitution demands only adequate procedural safeguards, not
4 that the decision to segregate him be error-free. *See Ricker v. Leapley*, 25 F.3d 1406,
5 1410 (8th Cir. 1994); *McCrae v. Hankins*, 720 F.2d 863, 868 (5th Cir. 1983). Plaintiff
6 was informed that due process requires: (1) an informal nonadversary hearing within a
7 reasonable time after the prisoner is segregated, (2) the prisoner be informed of the
8 charges against him or the reasons segregation is being considered, (3) the prisoner must
9 be allowed to present his views, (4) periodic review of the inmate's confinement.
10 *Toussaint*, 801 F.2d at 1100-01, and “some evidence” to support the officials’ decision,
11 *see Bruce v. Ylst*, 351 F.3d 1283, 1287-88 (9th Cir. 2003).

12 Here plaintiff does not allege that Defendants failed to meet any of the foregoing
13 due process requirements. Rather, he contends that a settlement agreement in a prior
14 class action required the sources of evidence relied upon to find him gang-affiliated to be
15 counted as part of a single gang-related incident, rather than as separate incidents. Such
16 counting is not required by due process; Plaintiff may seek to enforce the settlement
17 agreement in the class action case, provided he is a covered member of that class, but not
18 in a separate lawsuit brought by him individually. *See McNeil v. Guthrie*, 945 F.2d 1163,
19 1165 (10th Cir. 1991) (individual suits for injunctive and equitable relief from alleged
20 unconstitutional prison conditions cannot be brought where there is a pending class
21 action suit involving the same subject matter). Plaintiff also contends that he was not
22 involved “periodically or regularly” with gang members, as required by the 15 Cal. Code
23 of Regs. § 3378(c)(4). This may be a requirement of the state regulations, but it is not a
24 requirement of due process prior to being placed in segregated housing. As Plaintiff’s
25 allegations, even when liberally construed, do not state a due process violation, his
26 claims must be dismissed. As Plaintiff was given a second opportunity to state a
27 cognizable claim and failed to do so, the Court concludes that further attempts to amend
28 would be futile and that Plaintiff cannot cure the deficiencies in his claim by amendment.


1 Consequently, further leave to amend will not be granted.

2 **CONCLUSION**

3 For the foregoing reasons, this action is DISMISSED. Plaintiff's motion for
4 appointment of counsel (docket number 15) is DENIED. The Clerk shall enter judgment
5 and close the file.

6 IT IS SO ORDERED.

7 DATED: October 26, 2011

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10 JEFFREY S. WHITE
11 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 ANTHONY STITT,

Case Number: CV11-03046 JSW

6 Plaintiff,

CERTIFICATE OF SERVICE

7 v.

8 // et al,

9 Defendant.
10 _____/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on October 26, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Anthony Stitt
18 Pelican Bay State Prison
19 #J95688
20 P.O. Box 7500
21 Crescent City, CA 95532

22 Dated: October 26, 2011



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk