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

VINCENT C. BRUCE,)	No. C 99-4492 RMW (PR)
)	
Plaintiff,)	ORDER DENYING PLAINTIFF’S
)	MOTION TO ENFORCE
vs.)	SETTLEMENT AGREEMENT;
)	DIRECTING DEFENDANTS TO
EDDIE YLST, et al.,)	SHOW CAUSE
)	
Defendants.)	(Docket Nos. 230, 236, 237)

Plaintiff, a state prisoner proceeding pro se, filed a federal civil rights complaint pursuant to 42 U.S.C. § 1983, challenging prison gang validation procedures. On September 13, 2001, the court granted defendants’ motion for summary judgment and terminated the case. On February 3, 2004, the Ninth Circuit affirmed in part, reversed in part, and remanded in part. See Bruce v. Ylst, 351 F.3d 1283 (9th Cir. 2003). Upon remand, the parties reached a settlement agreement, and entered into a stipulated dismissal. (Doc. No. 226.) On March 15, 2013, plaintiff filed a motion to enforce the settlement agreement, motion to appoint counsel, and motion to permit discovery. The case was thereafter re-assigned to the undersigned judge. Defendants have filed a response to plaintiff’s motion to enforce the settlement agreement, arguing that plaintiff’s motion is barred by res judicata and collateral estoppel.¹ For the reasons stated below, the court

¹ Defendants’ request for judicial notice is GRANTED. Plaintiff’s motion for entry of default and motion for default judgment are DENIED.

1 DENIES plaintiff's motion without prejudice, and issues an order to defendants to show cause.
2 Plaintiff's requests for appointment of counsel and permission to conduct discovery are denied
3 without prejudice.

4 BACKGROUND

5 In the settlement agreement in the underlying case, plaintiff was awarded \$7500.00, and
6 the parties agreed that a copy of the settlement agreement and the following language would be
7 placed in plaintiff's prison file:

8 If Vincent Bruce is considered for revalidation as an associate or member of the Black
9 Guerilla Family prison gang, the CDCR will thoroughly review the source item or
10 sources items [sic] considered in and used to support any such revalidation to ensure
11 that the proposed revalidation complies with CDCR criteria for revalidation that are in
12 effect at the time of the proposed revalidation and the due process protections in effect
13 at the time of the proposed revalidation. Such protections will include those set forth in
14 Castillo v. Terhune, USDC N.D. Case No. C-94-2847, provided that the Castillo terms
15 are in effect at the time of the proposed revalidation.

16 (Doc. No. 230, Ex. A at ¶ 6.)

17 In 2007, plaintiff was revalidated as a associate of the Black Guerilla Family prison gang.
18 Plaintiff challenged this revalidation by filing a federal civil rights action in Bruce v. Cate, No.
19 09-4649 JW (N.D. Cal.). In his complaint, plaintiff alleged that defendants (1) denied him due
20 process by revalidating him as an associate based on false evidence and without procedural
21 protections; (2) retaliated against him by revalidating him as an associate of a prison gang; and
22 (3) violated his constitutional right to receive mail. (Def's. Req. Judicial Notice, Ex. A.) On
23 March 26, 2012, the defendants' motion for summary judgment was granted, and the civil rights
24 action was closed. (Id.) In the order, the court found that, inter alia: (1) the 2007 revalidation
25 process complied with due process in that the validation was supposed by "some evidence," and
26 the process complied with procedural protections set forth in Toussaint v. McCarthy, 801 F.2d
27 1080, 1104 (9th Cir. 1986), and (2) defendants did not retaliate against plaintiff as a matter of
28 law.

ANALYSIS

Plaintiff claims that the 2006 settlement agreement in the underlying case required the
CDCR to follow its own gang revalidation criteria and procedures, as well as those protections

1 included in Castillo. However, argues plaintiff, in 2007, defendants used a secret process created
2 in 2002 to change plaintiff's status to that of an active gang member. Plaintiff states that in
3 2007, the revalidation process breached the 2006 settlement agreement because CDCR did not
4 adhere to its own criteria and procedures regarding the revalidation process, and did not comply
5 with the Castillo settlement. Defendants respond that plaintiff's motion to enforce the settlement
6 agreement is barred by res judicata and collateral estoppel. Defendants have not addressed
7 whether there has been a breach of the settlement agreement.

8 I. Res Judicata

9 In general, “[r]es judicata, or claim preclusion, prohibits lawsuits on any claims that were
10 raised or could have been raised in a prior action.” Stewart v. U.S. Bancorp, 297 F.3d 953, 956
11 (9th Cir. 2002) (emphasis omitted). In the instant case, defendants contend that the claim raised
12 in this lawsuit is barred because it was raised or could have been raised in a prior lawsuit that
13 plaintiff brought in the Northern District of California. See Bruce v. Cate, No. 09-4649 JW
14 (N.D. Cal., filed September 30, 2009). To determine the preclusive effect of the previous lawsuit
15 – a federal lawsuit – the court must look to federal law. See Tahoe-Sierra Pres. Council, Inc. v.
16 Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1077 n.10 (9th Cir. 2003) (noting that “[t]he res
17 judicata effect of federal court judgments is a matter of federal law”). Under federal law, “[r]es
18 judicata is applicable whenever there is (1) an identity of claims, (2) a final judgment on the
19 merits, and (3) privity between parties.” United States v. Liquidators of European Fed. Credit
20 Bank, 630 F.3d 1139, 1150 (9th Cir. 2011).

21 In order to determine whether there is an identity of claims, the court must determine:
22 “(1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights
23 or interests established in the prior judgment would be destroyed or impaired by prosecution of
24 the second action; (3) whether the two suits involve infringement of the same right; and (4)
25 whether substantially the same evidence is presented in the two actions.” Mpoyo v. Litton
26 Electro-Optical Sys., 430 F.3d 985, 987 (9th Cir. 2005). “Whether two suits arise out of the
27 same transactional nucleus depends upon whether they are related to the same set of facts and
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1 *whether they could conveniently be tried together.”* ProShipLine Inc. v. Aspen Infrastructures
2 Ltd., 609 F.3d 960, 968 (9th Cir. 2010) (emphasis added) (internal quotation marks omitted).

3 Here, plaintiff’s claim is not barred by res judicata because there is no identity of claims.
4 Plaintiff did, in fact, raise the underlying breach of settlement claim in Bruce v. Cate, No. 09-
5 4649 JW (N.D. Cal.), Docket No. 1 at 22-23. However, there, the court determined that the
6 breach of settlement claim could not conveniently be tried with the federal constitutional claims
7 and explicitly declined to address the claim, stating, “To the extent plaintiff seeks compliance
8 with court orders in other cases, plaintiff must apply for relief in those cases.” (Defs. Req.
9 Judicial Notice, Ex. A at 17.) The court in Bruce v. Cate, No. 09-4649 JW (N.D. Cal.) rejected
10 plaintiff’s attempt to litigate this claim, and directed him to raise the claim in the underlying
11 case, as plaintiff has done. The claim, therefore, is not barred by res judicata. See ProShipLine
12 Inc., 609 F.3d at 968; see also 18 C. Wright, A. Miller & E. Cooper, Federal Practice and
13 Procedure § 4412, at 93-94 (1981) (“It is clear enough that a litigant should not be penalized for
14 failing to seek unified disposition of matters that could not have been combined in a single
15 proceeding. It is even clearer that no penalty should be inflicted if a deliberate effort to combine
16 such matters has been expressly rejected.”).

17 II. Collateral Estoppel

18 Collateral estoppel, or issue preclusion, only bars the relitigation of issues explicitly
19 litigated and necessary to the judgment. See Hiser v. Franklin, 94 F.3d 1287, 1292 (9th Cir.
20 1996). To foreclose relitigation of an issue under federal law: (1) the issue at stake must be
21 identical to the one alleged in the prior litigation; (2) the issue must have been actually litigated
22 by the party against whom preclusion is asserted; and (3) the determination of the issue in the
23 prior litigation must have been a critical and necessary part of the judgment in the earlier action.
24 See Gospel Missions v. City of Los Angeles, 328 F.3d 548, 553-54 (9th Cir. 2003) (no issue
25 preclusion where plaintiff’s standing to challenge ordinance provisions was not actually litigated
26 in prior action).

27 As the court already stated, here, plaintiff is raising a claim that the 2006 settlement
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1 agreement was breached by the 2007 revalidation process. In Bruce v. Cate, No. 09-4649 JW
2 (N.D. Cal.), the breach of settlement claim was not actually litigated, and the determination of
3 the breach of settlement claim was not a necessary or critical part of the judgment. Thus,
4 collateral estoppel does not bar this claim.

5 **CONCLUSION**

6 Based on the foregoing, plaintiff's motion is not barred by res judicata or collateral
7 estoppel. Plaintiff's motion to enforce the settlement agreement, in which plaintiff seeks an
8 evidentiary hearing, injunctive relief, declaratory relief, and damages, is DENIED without
9 prejudice. The court must first determine whether defendants have breached the settlement
10 agreement.

11 To that end, defendants are directed to show cause why plaintiff is not entitled to relief.
12 Defendants should explicitly set forth: (1) which, if any, of plaintiff's specific claims of breach
13 of the settlement agreement (Mot. at 11-14) are addressed in Judge Ware's opinion in Bruce v.
14 Cate, No. 09-4649 JW (N.D. Cal.), and (2) for those claims that were not addressed, why
15 plaintiff's claims should be rejected. Defendants' response shall be filed no later than **sixty days**
16 from the filing date of this order. Plaintiff's reply shall be due thirty days thereafter.

17 Plaintiff's motion for appointment of counsel and permission to conduct discovery are
18 DENIED without prejudice.

19 IT IS SO ORDERED.

20 DATED: _____

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22 RONALD M. WHYTE
23 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BRUCE, ET AL,

Plaintiff,

v.

YLST, ET AL et al,

Defendant.

Case Number: CV99-04492 RMW

CERTIFICATE OF SERVICE

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

That on March 31, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent C. Bruce J-84086
Pelican Bay State Prison
D6-101
P.O. Box 7500
Crescent City, CA 95532

Dated: March 31, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk