

SEP 15 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD THOMAS,

Plaintiff - Appellant,

v.

T FELKER; et al.,

Defendants - Appellees.

No. 08-16312

D.C. No. 2:07-CV-01399-MCE

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted September 8, 2008**

Before: PREGERSON, McKEOWN and N.R. SMITH, Circuit Judges.

Upon review of the record and appellant's opening brief, this court hereby
summarily affirms the district court's order denying without prejudice appellant's

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

request for preliminary injunctive relief because the district court dismissed appellant's complaint prior to service. *See* Fed. R. Civ. P. 65(a)(1) (court may issue preliminary injunction only on notice to adverse party); *see also United States v. Hooton*, 693 F.2d 857 (9th Cir. 1982) (per curiam) (summary affirmance appropriate where result is clear from face of record).

All pending motions are denied.

AFFIRMED.