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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GENE E. SMITH, Sr.,

Plaintiff - Appellant,

v.

RICHARD C. TALLMAN; et al.,

Defendants - Appellees.

No. 08-17393

D.C. No. 3:08-CV-01860-EMC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, Magistrate Judge, Presiding

Submitted February 23, 2009**

Before: KOZINSKI, Chief Judge, HAWKINS and GOULD, Circuit Judges.

Upon review of the record, appellant's response to this court's December 10, 2008 order to show cause, and appellant's opening brief, this court hereby

* 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).

summarily affirms the district court's final judgment. *See 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.