

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

GARY LEE FLEMING,

No. C 07-02338 CW (PR)

Plaintiff,

ORDER ADDRESSING PENDING MOTION

v.

K. J. ALLEN, et al.,

Defendants.

Before the Court is Plaintiff's motion entitled, "Motion for Summary Judgment" (docket no. 19). The Court construes this motion as a motion for preliminary interim relief. Plaintiff requests the Court to prevent prison officials from placing him in administrative segregation at Salinas Valley State Prison. (Pl.'s Mot. at 2.)

Changes in conditions relating to classification and reclassification do not implicate the Due Process Clause itself. See Hernandez v. Johnston, 833 F.2d 1316, 1318 (9th Cir. 1987) (citing Moody v. Dagget, 429 U.S. 78, 88 n.9 (1976)) (no constitutional right to particular classification). California prison regulations regarding custody designations do not contain substantive predicates or mandatory language requiring any specific outcome when a custody classification or reclassification is conducted. See Kentucky Dep't of Corr. v. Thompson, 490 U.S. 454, 461-62 (1989). Therefore, they do not create a state-created liberty interest implicating Plaintiff's procedural due process rights.

1 Accordingly, the Court DENIES Plaintiff's motion for
2 preliminary interim relief because there is no constitutional right
3 to a particular classification. See Hernandez, 833 F.2d at 1318;
4 see also Olim v. Wakinekona, 461 U.S. 238, 244-48 (1983) (no
5 constitutional right to incarceration in a particular prison);
6 Hoptowit v. Ray, 682 F.2d 1237, 1255-56 (9th Cir. 1982)
7 (misclassification itself does not inflict pain so as to be cruel
8 and unusual punishment).

9 Plaintiff's amended complaint will be reviewed in a separate
10 written Order.

11 This Order terminates Docket no. 19.

12 IT IS SO ORDERED.

13 Dated: 3/23/09



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 GARY LEE FLEMING,

5 Plaintiff,

6 v.

7 DIRECTOR OF CORRECTIONS et al,

8 Defendant.

Case Number: CV07-02338 CW

CERTIFICATE OF SERVICE

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

11 That on March 23, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Gary Lee Fleming
16 T-29495
17 Salinas Valley State Prison
18 POB 1050
19 Soledad, CA 93960-1030

20 Dated: March 23, 2009

21 Richard W. Wieking, Clerk
22 By: Sheilah Cahill, Deputy Clerk
23
24
25
26
27
28