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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GREGORY JAMES KUEBLER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>DR. JAIME; DR. TRAN,</p> <p>Defendants - Appellees.</p>
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No. 14-55446

D.C. No. 5:11-cv-01983-DMG-OP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Submitted March 15, 2016**

Before: GOODWIN, LEAVY, and CHRISTEN, Circuit Judges.

Former California state prisoner Gregory James Kuebler appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging

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

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

deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's rulings concerning discovery. *Preminger v. Peake*, 552 F.3d 757, 768 n.10 (9th Cir. 2008). We vacate and remand.

The magistrate judge denied Kuebler's requests for subpoenas. However, "[t]he clerk must issue a subpoena, signed but otherwise in blank, to a party that requests it." Fed. R. Civ. P. 45(a)(3). Although generally "a party who fails to file timely objections to a magistrate judge's nondispositive order . . . forfeits [the] right to appellate review of that order," *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996), we retain discretion to review such an order if "the issue presented is purely one of law and either does not depend on the factual record developed below, or the pertinent record has been fully developed," *Bastidas v. Chappell*, 791 F.3d 1155, 1161 (9th Cir. 2015) (citation and internal quotation marks omitted). We exercise that discretion here.

Based on the record before us, we cannot conclude that the magistrate judge's error was harmless. *See generally Tagupa v. Bd. of Directors*, 633 F.2d 1309, 1312 (9th Cir. 1980) (appeal of discovery order is subject to harmless error analysis). Accordingly, we vacate the judgment and remand for further proceedings consistent with this disposition.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.