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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHAWN ANDERSON,

Plaintiff-Appellant,

v.

CHRIS KR PAN; MICHAEL FOSTER,

Defendants-Appellees.

No. 15-15974

D.C. No. 1:14-cv-01380-AWI-  
MJS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted October 25, 2016\*\*

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

Shawn Anderson, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. §§ 1915A and

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

1915(e)(2)(B)(ii). *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We reverse and remand.

Dismissal of Anderson’s action was premature because Anderson alleged that defendants failed to provide and delayed medical treatment for Anderson’s ankle. Liberally construed, these allegations in the amended complaint were “sufficient to warrant ordering [defendants] to file an answer.” *Wilhelm*, 680 F.3d at 1116; *see also id.* at 1122 (denying or delaying medical treatment can amount to deliberate indifference; a prisoner need not show his harm was substantial); *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (a prison official is deliberately indifferent if he or she knows of and disregards an excessive risk to an inmate’s health).

Accordingly, we reverse the district court’s judgment and remand for further proceedings.

**REVERSED and REMANDED.**