

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 25 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

BENJAMIN K. TOSCANO,

Plaintiff-Appellant,

v.

SCOTT KERNAN; et al.,

Defendants-Appellees.

No. 17-15995

D.C. No. 1:17-cv-00292-MJS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Michael J. Seng, Magistrate Judge, Presiding

Submitted January 16, 2018\*\*

Before: REINHARDT, TROTT, and HURWITZ, Circuit Judges.

Benjamin K. Toscano, a California state prisoner, appeals pro se from the magistrate judge's order dismissing his 42 U.S.C. § 1983 action alleging constitutional violations. We have jurisdiction under 28 U.S.C. § 1291. We review de novo whether the magistrate judge validly entered judgment on behalf of

---

\* 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).

the district court. *Allen v. Meyer*, 755 F.3d 866, 867-68 (9th Cir. 2014). We vacate and remand.

Toscano consented to proceed before the magistrate judge. *See* 28 U.S.C. § 636(c). The magistrate judge then screened and dismissed Toscano's action before the named defendants had been served. *See* 28 U.S.C. §§ 1915A(b)(1)-(2), 1915(e)(2)(B)(ii). Because all parties, including unserved defendants, must consent to proceed before the magistrate judge for jurisdiction to vest, *Williams v. King*, 875 F.3d 500, 503-04 (9th Cir. 2017), we vacate the magistrate judge's order and remand for further proceedings.

**VACATED and REMANDED.**