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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>TAI HUYNH,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SUSAN HUBBARD; et al.,</p> <p>Defendants - Appellees.</p> |
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No. 11-15177

D.C. No. 2:09-cv-01979-KJM

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Kimberly J. Mueller, Magistrate Judge, Presiding\*\*

Submitted February 21, 2012\*\*\*

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Tai Huynh, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate

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

\*\* Huynh consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

indifference to serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We reverse and remand.

The district court concluded that Huynh failed to allege any injury. However, in his second amended complaint, Huynh alleges that after he tested positive for tuberculosis, defendants refused to administer a preventative tuberculosis treatment in a proper manner, and, as a result, he is now at a high risk of developing active tuberculosis and multi-drug resistant tuberculosis. At this early stage of the proceedings, we cannot say that these allegations fail to state an Eighth Amendment injury. *See Helling v. McKinney*, 509 U.S. 25, 32-35 (1993) (Eighth Amendment deliberate indifference claim can be based on threat of future harm). Accordingly, we reverse the judgment and remand for further proceedings.

Huynh shall bear his costs on appeal.

**REVERSED and REMANDED.**