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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LaKEITH L. McCOY, AKA LaKeith  
LeRoy McCoy,

Plaintiff - Appellant,

v.

M. GARIKAPARTHI, M.D. at CCI; et al.,

Defendants - Appellees.

No. 14-17387

D.C. No. 1:13-cv-01495-BAM

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Barbara McAuliffe, Magistrate Judge, Presiding\*\*

Submitted June 22, 2015\*\*\*

Before: HAWKINS, GRABER, and W. FLETCHER, Circuit Judges.

California state prisoner LaKeith L. McCoy, a.k.a. LaKeith LeRoy McCoy,  
appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983

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

\*\* McCoy 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).

action alleging Eighth Amendment violations. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hamilton v. Brown*, 630 F.3d 889, 892 (9th Cir. 2011) (dismissal under 28 U.S.C. § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)). We reverse and remand.

Dismissal of McCoy's Eighth Amendment claims arising from the deprivation of adequate food was premature. McCoy's allegations, liberally construed, were "sufficient to warrant ordering [defendants] to file an answer." *Wilhelm v. Rotman*, 680 F.3d 1113, 1116 (9th Cir. 2012); *see also Foster v. Runnels*, 554 F.3d 807, 814 (9th Cir. 2009) (a prison official acts with deliberate indifference if the official was aware of a substantial risk to the inmate's health or safety and deliberately disregarded the risk).

We do not consider McCoy's contentions regarding an equal protection claim because McCoy was granted leave to amend this claim but he did not reallege it in the operative first amended complaint.

**REVERSED and REMANDED.**