

AUG 03 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR H. VILLANUEVA,

Plaintiff - Appellant,

v.

M. D. BITER, Warden at Kern Valley
State Prison; S. LOPEZ, Chief Medical
Executive at Kern Valley State Prison,

Defendants - Appellees.

No. 13-16935

D.C. No. 1:11-cv-01050-SAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Stanley Albert Boone, Magistrate Judge, Presiding**

Submitted July 21, 2015***

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Oscar H. Villanueva, a California state prisoner, appeals pro se from the

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

** Villanueva 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).

district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that defendants were deliberately indifferent to his health and safety in violation of the Eighth Amendment. 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 Villanueva's action was premature because Villanueva alleged that defendants were aware of water contamination issues at the prison since the facility opened but failed to act, which resulted in harm to his health. Liberally construed, these allegations were "sufficient to warrant ordering [defendants] to file an answer." *Wilhelm v. Rotman*, 680 F.3d 1113, 1116 (9th Cir. 2012); *see also Johnson v. Lewis*, 217 F.3d 726, 732 (9th Cir. 2000) ("More modest deprivations can also form the objective basis of [an Eighth Amendment] violation, but only if such deprivations are lengthy or ongoing."); *Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996) (water adequate to maintain health is a basic human need protected by the Eighth Amendment).

REVERSED and REMANDED.