

AUG 26 2016

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FARON E. LOVELACE,

Plaintiff-Appellant,

v.

ROBIN SANDY; et al.,

Defendants-Appellees.

No. 15-35518

D.C. No. 1:14-cv-00430-REB

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Ronald E. Bush, Chief Magistrate Judge, Presiding

Submitted August 16, 2016**

Before: O'SCANNLAIN, LEAVY, and CLIFTON, Circuit Judges.

Idaho state prisoner Faron E. Lovelace appeals pro se from the magistrate judge's judgment dismissing with prejudice his 42 U.S.C. § 1983 action arising out of the allegedly improper termination of a prison visit. We review de novo whether a magistrate judge has jurisdiction. *Allen v. Meyer*, 755 F.3d 866, 867-68

* 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).

(9th Cir. 2014). We vacate and remand.

Contrary to the magistrate judge's statement in its order dismissing Lovelace's amended complaint, Lovelace did not consent to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c)(1) (authorizing magistrate judge to "conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case" "[u]pon the consent of the parties"). The consent forms filed on October 17, 2014 and March 18, 2015 were executed by putative co-plaintiff Melissa Kuntz-Corta, not Lovelace. Accordingly, we vacate the judgment and remand to the district court for further proceedings. *See Allen*, 755 F.3d at 868 (judgment entered by magistrate judge a nullity where some parties did not consent to magistrate judge's jurisdiction).

On remand, the district court may review the complaint de novo in the first instance pursuant to 28 U.S.C. § 1915A, or may construe the magistrate judge's May 18, 2015 order as a report and recommendation and afford Lovelace reasonable time to file objections.

In light of our disposition, we do not consider the other issues raised in the opening brief.

VACATED and REMANDED.