

SEP 21 2016

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL M. COSTON,

Plaintiff-Appellant,

v

ANDREW NANGALAMA; HALE,

Defendants-Appellees.

No. 15-15397

D.C. No. 2:10-cv-02009-MCE-  
EFB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, Jr., District Judge, Presiding

Submitted September 13, 2016\*\*

Before: HAWKINS, N.R. SMITH, and HURWITZ, Circuit Judges.

California state prisoner Daniel M. Coston appeals pro se from the district court's judgment as a matter of law under Fed. R. Civ. P. 50(a) in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Krechman v.*

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\* 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).

*County of Riverside*, 723 F.3d 1104, 1109 (9th Cir. 2013). We vacate and remand.

The district court erred by concluding that judgment as a matter of law was proper on the basis of Coston's failure to provide evidence establishing defendants' deliberate indifference because the district court did not give Coston a Rule 50(a) notice prior to dismissal. *See Waters v. Young*, 100 F.3d 1437, 1442 (9th Cir. 1996) (under Rule 50, trial court has a responsibility to inform the non-moving party of deficiencies in its proof and to afford that party an opportunity to correct any such deficiency); *see also Rand v. Rowland*, 154 F.3d 952, 961 (9th Cir. 1998) (failure to give Rule 50(a) notice to pro se litigant constitutes per se reversible error without regard to prejudice). Accordingly, we vacate the judgment and remand for further proceedings.

**VACATED and REMANDED.**