

OCT 05 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROY WARDEN,

Plaintiff-Appellant,

v.

KATHLEEN ROBINSON, individually
and in her capacity as Assistant Chief of
Police; et al.,

Defendants-Appellees.

No. 14-15803

D.C. No. 4:13-cv-00283-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Roy Warden appeals pro se from the district court's summary judgment and dismissal order in his 42 U.S.C. § 1983 action alleging various claims arising from his removal from a public park and arrest at a city council meeting. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e)(2). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We vacate and remand.

The district court dismissed defendants Walkup, Kozachik, Miranda, Rankin, Riojas, Villasenor, Couch, and the City of Tucson because Warden failed to comply with Federal Rule of Civil Procedure 8. However, in his First Amended Complaint, Warden set forth specific factual allegations against these defendants, including their unlawful conduct and Warden's resulting injuries. Warden also set forth five legal claims, and alleged which conduct supported each claim. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (Fed. R. Civ. P. 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests" (citations and internal quotation marks omitted)). Accordingly, we vacate the judgment as to these defendants and remand for further proceedings.

We do not vacate the district court's summary judgment for defendant Robinson because on appeal Warden does not challenge the order granting summary judgment.

We do not consider issues and arguments incorporated by reference on

appeal, *see Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992), or matters not specifically and distinctly raised and argued in the opening brief, *see Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

The parties shall bear their own costs on appeal.

VACATED and REMANDED.