

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2018

FOR THE NINTH CIRCUIT

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

GREGORY C. BONTEMPS,

Plaintiff-Appellant,

v.

R. PEREZ, Correctional Officer; W.
SILLAS, Correctional Officer,

Defendants-Appellees.

No. 17-15586

D.C. No. 1:16-cv-01220-EPG

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Erica P. Grosjean, Magistrate Judge, Presiding

Submitted February 13, 2018**

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

California state prisoner Gregory C. Bontemps appeals pro se from the magistrate judge's order dismissing his 42 U.S.C. § 1983 action alleging Eighth Amendment and Americans with Disabilities Act claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo whether the magistrate judge validly

* 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).

entered judgment on behalf of the district court. *Allen v. Meyer*, 755 F.3d 866, 867-68 (9th Cir. 2014). We vacate and remand.

Bontemps consented to proceed before the magistrate judge. *See* 28 U.S.C. § 636(c). The magistrate judge then revoked Bontemps' in forma pauperis status on the basis that Bontemps had accrued three strikes and dismissed Bontemps' action for failure to pay the filing before the named defendants had been served. *See* 28 U.S.C. § 1915(g) (prisoner cannot bring a civil action if he has accrued three strikes). Because all parties, including unserved defendants, must consent to proceed before the magistrate judge for jurisdiction to vest, *Williams v. King*, 875 F.3d 500, 503-04 (9th Cir. 2017), we vacate the magistrate judge's order and remand for further proceedings.

Bontemps' request for appointment of counsel, set forth in his opening brief, is denied.

VACATED and REMANDED.