

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 23 2018

FOR THE NINTH CIRCUIT

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

HENRY MALASKY,

Plaintiff-Appellant,

v.

ROBERT A. JULIAN; et al.,

Defendants-Appellees.

No. 17-15117

D.C. No. 4:16-cv-04102-DMR

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Donna M. Ryu, Magistrate Judge, Presiding

Submitted March 13, 2018**

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Henry Malasky appeals pro se from the magistrate judge's order dismissing his action alleging federal claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo whether the magistrate judge had jurisdiction. *Allen v. Meyer*, 755 F.3d 866, 867-68 (9th Cir. 2014). We vacate and remand.

* 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).

Plaintiff and defendants Julian and Plastiras consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c). The magistrate judge then dismissed plaintiff's action before the other named defendants had been served. *See* Fed. R. Civ. P. 4(m), 12(b)(6). 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.

Henry Malasky's and Julian's requests for oral argument, set forth in their briefs, are denied.

Appellees Martin and Garrett Malasky's motion to dismiss the appeal (Docket Entry No. 9), joined by Appellee Jennifer Esposito (Docket Entry No. 12), is denied.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.