

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 19 2018

FOR THE NINTH CIRCUIT

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

MONICO J. QUIROGA III,

Plaintiff-Appellant,

v.

C. CHAPA; et al.,

Defendants-Appellees.

No. 17-16049

D.C. No. 1:16-cv-00071-SAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Stanley Albert Boone, Magistrate Judge, Presiding

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON and NGUYEN, Circuit Judges.

California state prisoner Monico J. Quiroga III appeals pro se from the magistrate judge's order dismissing his 42 U.S.C. § 1983 action alleging sexual assault by a correctional officer while in pretrial detention. 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.

Quiroga consented to proceed before the magistrate judge. *See* 28 U.S.C. § 636(c). The magistrate judge then screened Quiroga's action and dismissed all defendants except for defendant Chapa before the named defendants had been served, *see* 28 U.S.C. § 1915A, and dismissed the action for failure to serve defendant Chapa pursuant to Federal Rule of Civil Procedure 4(m). 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.

VACATED and REMANDED.