

AUG 26 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID BODLEY, an individual,

Plaintiff - Appellant,

v.

PLAZA MANAGEMENT
CORPORATION, an Arizona corporation,
DBA Scottsdale Plaza Resort,

Defendant - Appellee.

No. 08-15697

D.C. No. 07-CV-00974-ROS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Argued and Submitted July 17, 2009
San Francisco, California

Before: HALL, W. FLETCHER, and PAEZ, Circuit Judges.

David Bodley appeals the district court's summary judgment in his action under Title III of the Americans with Disabilities Act ("ADA"), alleging that he was denied full and equal enjoyment of the Scottsdale Plaza Resort ("Plaza") as a

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

result of architectural barriers. The district court concluded that Bodley lacked standing because he did not show he was likely to patronize the hotel in the future, thereby failing to establish the imminent injury required for injunctive relief. We affirm.

Though Bodley was able to demonstrate that he was actually injured because he “personally suffered discrimination as a result of the barriers in place” while patronizing Plaza, *see Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1040 (9th Cir. 2008), he did not “establish a ‘real and immediate threat of repeated injury,’” *Fortuyne v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2004) (quoting *O’Shea v. Littleton*, 414 U.S. 488, 496 (1974)), because he did not demonstrate that he intended to return to patronize the Plaza. *See D’Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1037 (9th Cir. 2008); *Doran*, 524 F.3d at 1041.

AFFIRMED.