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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KEVIN J. LISLE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>HOWARD SKOLNICK; et al.,</p> <p>Defendants - Appellees.</p>
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No. 12-15141

D.C. No. 3:11-cv-00338-ECR-VPC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Edward C. Reed, Jr., District Judge, Presiding

Submitted March 12, 2013\*\*

Before: PREGERSON, REINHARDT, and W. FLETCHER, Circuit Judges.

Nevada state prisoner Kevin J. Lisle appeals pro se from the district court’s judgment dismissing his action brought under 42 U.S.C. § 1983 and the Americans with Disabilities Act (“ADA”). We have jurisdiction under 28 U.S.C. § 1291. We

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

review de novo a district court's dismissal under 28 U.S.C. § 1915A and § 1915(e)(2). *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm in part, reverse in part, and remand.

The district court properly dismissed Lisle's claim that prison officials violated the ADA by refusing to allow him to use a leg brace because Lisle failed to allege facts sufficient to show that prison officials discriminated against him "solely by reason of disability." *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (citation and internal quotation marks omitted); *see also Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1022 (9th Cir. 2010) ("The ADA prohibits discrimination because of disability, not inadequate treatment for disability.").

However, the district court erroneously dismissed Lisle's deliberate indifference claim because the allegations in the amended complaint liberally construed were "sufficient to meet the low threshold for proceeding past the screening stage." *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012); *see Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (deliberate indifference standard).

Accordingly, we reverse in part, and remand with instructions for the district court to order service of the amended complaint by the United States Marshal.

**AFFIRMED in part; REVERSED in part; REMANDED.**