

JAN 30 2015

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN SHEK,

Plaintiff - Appellant,

v.

CHILDREN'S HOSPITAL RESEARCH
CENTER IN OAKLAND; et al.,

Defendants - Appellees.

No. 13-15680

D.C. No. 3:12-cv-04517-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Submitted January 21, 2015**

Before: CANBY, GOULD, and N.R. SMITH, Circuit Judges.

John Shek appeals pro se from the district court's judgment dismissing his employment action alleging violations of Title VII, the Age Discrimination in Employment Act ("ADEA"), and the Americans with Disabilities Act ("ADA").

* 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).

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P. 12(b)(6), *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1030 (9th Cir. 2008), and we affirm.

The district court properly dismissed Shek's action because Shek's claims were either time-barred or failed to state a cognizable claim for relief. *See* 29 U.S.C. §§ 623(a), 626(d), (e) (setting forth actionable conduct and limitations period under the ADEA); 42 U.S.C. §§ 12112, 12117(a) (setting forth actionable conduct and procedures for filing suit under the ADA); 42 U.S.C. §§ 2000e-2, 2000e-5(f)(1) (setting forth actionable conduct and limitations period under Title VII).

The district court did not abuse its discretion in denying Shek's motion to file a second amended complaint because amendment would have been futile. *See Hinton v. Pac. Enters.*, 5 F.3d 391, 395 (9th Cir. 1993) (setting forth standard of review and explaining that a court may deny leave to amend if the defects of the complaint cannot be cured).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

Shek's requests for judicial notice, filed on November 21, 2013 and

December 3, 2013, are denied.

Shek's motion for permission for electronic case filing, filed on November 14, 2013, is denied as unnecessary.

AFFIRMED.