

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 4 2016

FOR THE NINTH CIRCUIT

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

FRANCIS PATRICK SAITTA,

Plaintiff-Appellant,

v.

TUCSON UNIFIED SCHOOL DISTRICT,

Defendant-Appellee.

No. 15-16155

D.C. No. 4:14-cv-02074-JGZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Jennifer G. Zips, District Judge, Presiding

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Francis Patrick Saitta appeals pro se from the district court's summary judgment in his employment discrimination action alleging a disparate impact claim under the Age Discrimination in Employment Act ("ADEA"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Johnson v. Henderson*,

* 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).

314 F.3d 409, 413 (9th Cir. 2002), and we affirm.

The district court properly granted summary judgment because Saitta failed to raise a genuine dispute of material fact as to whether defendant's hiring practice produced an age-based disparate impact. *See Stockwell v. City & County of San Francisco*, 749 F.3d 1107, 1115 (9th Cir. 2014) (disparate impact claimant "must demonstrate a statistical disparity affecting members of the protected group"); *see also Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1421 (9th Cir. 1990) ("[P]laintiff must actually prove the discriminatory impact at issue, rather than merely an inference of discriminatory impact.").

AFFIRMED.