

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 28 2017

FOR THE NINTH CIRCUIT

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

SCOTT JOHNSON,

Plaintiff-Appellant,

v.

KARIM MEHRABI,

Defendant-Appellee.

No. 17-15736

D.C. No. 2:13-cv-01519-KJM-DB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Scott Johnson appeals from the district court's order denying as moot his motion for attorney's fees in his action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 966 (9th Cir. 2014). We may

* 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).

affirm on any basis supported by the record. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). We affirm.

Denial of Johnson's motion for attorney's fees was not an abuse of discretion because Johnson failed to set forth any basis for such an award. *See Buckhannon Bd. & Care Home, Inc. v. W. Vir. Dep't of Health & Human Res.*, 532 U.S. 598, 600, 604-05, 610 (2001) (discussing motions for attorney's fees brought under the Americans with Disabilities Act, and explaining that "prevailing party" does not include a party that has failed to secure a judgment on the merits or a court-ordered consent decree); *Doran v. N. State Grocery, Inc.*, 39 Cal. Rptr. 3d 922, 925-27 (Cal. App. 2006) (an award for attorney's fees under Cal. Civ. Code § 52(a) requires a finding of liability).

AFFIRMED.