

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 23 2019

FOR THE NINTH CIRCUIT

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

JOHNNY LEE HOWZE, AKA J. L. Howze,

No. 18-56154

Plaintiff-Appellant,

D.C. No. 2:14-cv-04067-SVW-
RAO

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, public entity,

MEMORANDUM*

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted April 17, 2019**

Before: McKEOWN, BYBEE, and OWENS, Circuit Judges.

California state prisoner Johnny Lee Howze, AKA J.L. Howze, appeals pro se from the district court's judgment dismissing his action alleging violations of Title II of the Americans with Disabilities Act ("ADA"). We have jurisdiction

* 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).

under 28 U.S.C. § 1291. We review de novo the district court’s dismissal under Federal Rule of Civil Procedure 12(b)(6). *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). We affirm.

The district court properly dismissed Howze’s ADA claim for monetary damages because Howze failed to allege facts sufficient to show that defendant intentionally discriminated against him because of his disability. *See Duvall v. County of Kitsap*, 260 F.3d 1124, 1135, 1138-40 (9th Cir. 2001) (discussing elements of a Title II claim under the ADA, and the required showing of intentional discrimination to state a Title II claim for damages); *see also Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1115 (9th Cir. 2014) (the court need not accept as true allegations contradicted by documents referenced in the complaint); *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.”).

Howze’s request for appointment of counsel, set forth in the opening brief, is denied.

Defendant’s motion to revoke Howze’s in forma pauperis status (Docket Entry No. 16) is denied. Defendant’s motion to take judicial notice (Docket Entry

No. 17) is denied as unnecessary.

AFFIRMED.