

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 3 2023

FOR THE NINTH CIRCUIT

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

DWAYNE BRIAN BURNS,

Plaintiff-Appellant,

v.

HUMBOLDT RECOVERY CENTER, INC.;
ARLETTE LARGE, Director, Humboldt
Recovery Center, Inc.; JOHN REMEN, Lead
Counselor, Humboldt Recovery Center, Inc.,

Defendants-Appellees.

No. 22-15674

D.C. No. 4:22-cv-00880-HSG

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Submitted June 26, 2023**

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Dwayne Brian Burns appeals pro se from the district court's judgment dismissing his action alleging violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213, and California law. 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 28 U.S.C. § 1915(e)(2)(b)(ii). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). We affirm.

The district court properly dismissed Burns’s action because Burns failed to allege facts sufficient to state a plausible claim under the ADA or state law. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” (citation and internal quotation marks omitted)); *Bax v. Drs. Med. Ctr. of Modesto, Inc.*, 52 F.4th 858, 873 (9th Cir. 2022) (“In the disability context, California’s Unruh Civil Rights Act operates virtually identically to the ADA.” (citation and internal quotation marks omitted)); *Arizona ex rel. Goddard v. Harkins Amusement Enters., Inc.*, 603 F.3d 666, 670 (9th Cir. 2010) (To state a claim under Title III of the ADA, a plaintiff must allege: “(1) he is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodations by the defendant because of his disability.”).

The district court did not abuse its discretion in denying leave to amend because amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review).

We do not consider Burns’s challenge to the district court’s denial of his motion brought under Federal Rule of Civil Procedure 60(b) because Burns failed

to file another or an amended notice of appeal specifying the order denying the motion. *See* Fed. R. App. 4(a)(4)(B)(ii); *Whitaker v. Garcetti*, 486 F.3d 572, 585 (9th Cir. 2007).

AFFIRMED.