

OCT 8 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHNNY LEE HOWZE,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>T. TANAKA, Ph.D., individual capacity; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 13-56382

D.C. No. 2:13-cv-04422-UA-RZ

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, Chief Judge, Presiding

Submitted September 23, 2014**

Before: W. FLETCHER, RAWLINSON, and CHRISTEN, Circuit Judges.

California state prisoner Johnny Lee Howze appeals pro se from the district court's order denying his application to proceed in forma pauperis and dismissing his 42 U.S.C. § 1983 action alleging claims related to his insomnia and erectile dysfunction. We have jurisdiction under 28 U.S.C. § 1291. We review for an

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

abuse of discretion the denial of leave to proceed in forma pauperis, and de novo a determination that a complaint lacks arguable substance in law or fact. *Tripati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987). We affirm.

The district court did not abuse its discretion by denying Howze leave to proceed in forma pauperis because Howze's claims were either frivolous or lacked merit. *See id.* at 1370 (“A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.”); *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (court may sua sponte dismiss for failure to state a claim without notice or an opportunity to respond where plaintiff cannot possibly win relief); *see also Farmer v. Brennan*, 511 U.S. 825, 845, 847 (1994) (elements of deliberate indifference); *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1021-22 (9th Cir. 2010) (“The [Americans with Disabilities Act] prohibits discrimination because of disability, not inadequate treatment for disability”).

We reject Howze's contentions that the dismissal of his action was premature or that the district court failed to address any timely-filed objections.

AFFIRMED.