

NOT FOR PUBLICATION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.