

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 13 2019

FOR THE NINTH CIRCUIT

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

DENNIS PATTERSON, AKA Dennis
Wallace Patterson,

Plaintiff-Appellant,

v.

KENDLE ALLEN; et al.,

Defendants-Appellees,

and

WILLIAM BITTON; et al.,

Defendants.

No. 19-35362

D.C. No. 2:16-cv-00442-RMP

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Rosanna Malouf Peterson, District Judge, Presiding

Submitted December 11, 2019**

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges.

Dennis Patterson, AKA Dennis Wallace Patterson, appeals pro se from the

* 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).

district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional claims and claims under the Americans with Disabilities Act ("ADA"). We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the dismissal of an action for failure to comply with a court order. *Allen v. Bayer Corp. (In re Phenylpropanolamine (PPA) Prods. Liab. Litig.)*, 460 F.3d 1217, 1226 (9th Cir. 2006). We review de novo the dismissal of a complaint for failure to state a claim 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 Patterson's claims in the fifth amended complaint against defendants Patrick Monasmith, Allen Neilson, Lech Radzimski, Timothy Rasmussen, and Jessica Taylor-Reeves because these defendants are entitled to judicial or prosecutorial immunity. *See Garmon v. County of Los Angeles*, 828 F.3d 837, 842-43 (9th Cir. 2016) (application of absolute prosecutorial immunity); *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) (application of judicial immunity).

The district court properly dismissed Patterson's deliberate indifference and ADA claims in the fifth amended complaint against defendants William Bitton, MA Coon, Aaron William Smith Davis, Jeffrey Wayne Evans, Wayne Anthony Gagnon, Jessica Garza, J Pedersen, Billy Reece, J Stearns, and Justin Young because Patterson failed to allege facts sufficient to state a plausible claim. *See*

Gordon v. County of Orange, 888 F.3d 1118, 1125 (9th Cir. 2018) (setting forth elements of a Fourteenth Amendment medical care claim by a pretrial detainee); *Simmons v. Navajo County*, 609 F.3d 1011, 1022 (9th Cir. 2010) (“The ADA prohibits discrimination because of disability, not inadequate treatment for disability.”).

The district court did not abuse its discretion by dismissing Patterson’s action because Patterson failed to comply with the district court’s order to appear for his in-person deposition despite a warning that continued noncompliance would result in dismissal of his action. *See In re PPA Prods. Liab. Litig.*, 460 F.3d at 1227-29 (discussing the five factors for determining whether to dismiss a case for failure to comply with a court order); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (although dismissal is a harsh penalty, the district court’s dismissal should not be disturbed absent “a definite and firm conviction” that it “committed a clear error of judgment” (citation and internal quotation marks omitted)).

Appellees’ motion to strike Patterson’s affidavit, set forth in the answering brief, is denied.

AFFIRMED.