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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL LEE HOLTERMAN,

Plaintiff - Appellant,

v.

JEAN HILL, Superintendent Snake River
Correctional Institution; et al.,

Defendants - Appellees.

No. 06-35839

D.C. No. CV-06-00389-AJB

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted November 13, 2007**

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

Oregon state prisoner Daniel Lee Holterman appeals pro se from the district court's judgment dismissing for failure to state a claim his action alleging his

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

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

housing placement violated 42 U.S.C. § 1983 and the Americans with Disabilities Act (“ADA”). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order), and we affirm.

The district court properly dismissed Holterman’s claim that defendants acted with deliberate indifference to his medical condition, because he failed to allege that defendants knew of and disregarded an excessive risk to his health or safety. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

The district court also properly dismissed Holterman’s ADA claim, because Holterman failed to adequately allege defendants denied him the benefit of any services, programs, or activities based on his disabilities. *See Duffy v. Riveland*, 98 F.3d 447, 455 (9th Cir. 1996).

The district court properly denied Holterman’s motion for appointment of counsel because Holterman did not demonstrate any exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

AFFIRMED.