

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2017

FOR THE NINTH CIRCUIT

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

GREGORY CHARLES KRUG,

No. 15-55178

Plaintiff-Appellant,

D.C. No. 2:12-cv-10696-PA-CW

v.

MEMORANDUM*

THOMAS PELLICANE; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted November 15, 2017**

Before: CANBY, TROTT, and GRABER, Circuit Judges.

Gregory Charles Krug appeals pro se from the district court's judgment dismissing his action brought under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging retaliation in violation of the First Amendment. We have jurisdiction under 28 U.S.C. § 1291. We

* 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).

review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

Assuming without deciding that a *Bivens* remedy may be inferred for a First Amendment retaliation claim, *see Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857-58 (2017), the district court properly dismissed Krug’s retaliation claim because Krug failed to allege facts sufficient to establish that chilling or deterring Krug’s protected speech was a substantial or motivating factor in defendants’ conduct. *See Mendocino Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999) (requirements for First Amendment retaliation claim); *see also Ford v. City of Yakima*, 706 F.3d 1188, 1193 (9th Cir. 2013) (plaintiff must establish that “the officers’ conduct would chill a person of ordinary firmness from future First Amendment activity” and that “the officers’ desire to chill his speech was a but-for cause of their allegedly unlawful conduct”).

The district court did not abuse its discretion by denying as premature Krug’s request for an evidentiary hearing due to the pendency of defendants’ motion to dismiss.

We reject as unsupported by the record Krug’s contention regarding judicial bias.

AFFIRMED.