

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2018

FOR THE NINTH CIRCUIT

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

TIEN MINH NGUYEN, also known as
Leon Tien Nguyen,

Plaintiff-Appellant,

v.

J. LEWIS, Deputy Director, Prison Health
Care Services, in his individual and official
capacities; et al.,

Defendants-Appellees.

No. 17-55047

D.C. No. 2:15-cv-07600-PSG-AS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted February 13, 2018**

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

California state prisoner Tien Minh Nguyen, aka Leon Tien Nguyen, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging retaliation, a violation of substantive due process, and deliberate

* 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).

indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A for failure to state a claim. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We may affirm on any ground supported by the record. *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1121 (9th Cir. 2013). We affirm.

Dismissal of Nguyen's action was proper because the magistrate judge correctly recommended that Nguyen had failed to state facts in his third amended complaint sufficient to state any plausible claims. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be liberally construed, a plaintiff must still present factual allegations sufficient to state a plausible claim for relief). The magistrate judge also provided notice of deficiencies each time Nguyen was granted leave to amend and correctly recommended that further leave to amend would be futile. *See Hartmann*, 707 F.3d at 1129-30 (futility is a proper basis for denying leave to amend).

Nguyen's motion for appointment of counsel, set forth in his opening brief, is denied.

Nguyen's motion to file a corrected document attached to his informal brief (Docket Entry No. 23) is granted. The copy of the "Encounter Form" received on

August 14, 2017 is deemed filed.

Nguyen's requests for further relief (Docket Entry Nos. 36, 39, 40) are denied.

AFFIRMED.