

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2023

FOR THE NINTH CIRCUIT

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

MAURICE HUNT,

Plaintiff-Appellant,

v.

ANDRE MATEVOUSIAN; S. HELLING,
Lieutenant at USP Atwater; W. GUNN,
Correctional Officer at USP Atwater;
GRAHAM, Correctional Officer at USP
Atwater,

Defendants-Appellees.

No. 18-17464

D.C. No. 1:16-cv-01560-LJO-BAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted November 14, 2023**

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

Federal prisoner Maurice Hunt appeals pro se from the district court's
judgment dismissing his action under *Bivens v. Six Unknown Named Agents of*

* 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).

Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging Eighth Amendment claims of excessive force, failure to protect, and deliberate 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. *Belanus v. Clark*, 796 F.3d 1021, 1024 (9th Cir. 2015). We affirm.

The district court properly dismissed Hunt’s Eighth Amendment claims for excessive force and failure to protect because a *Bivens* remedy is unavailable for such claims. *See Egbert v. Boule*, 596 U.S. 482, 491-93 (2022) (explaining that recognizing a cause of action under *Bivens* is “a disfavored judicial activity” and that the presence of an alternative remedial structure precludes recognizing a *Bivens* cause of action in a new context (citation and internal quotation marks omitted)); *Chambers v. Herrera*, 78 F.4th 1100, 1105-08 (9th Cir. 2023) (declining to extend a *Bivens* remedy to Eighth Amendment excessive force or failure to protect claims).

The district court properly dismissed Hunt’s Eighth Amendment claim for deliberate indifference to his serious medical needs because Hunt failed to allege facts sufficient to show defendants knew of and disregarded an excessive risk to his health. *See Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014) (setting forth standard for an Eighth Amendment claim for deliberate indifference to serious medical needs). The district court did not abuse its discretion in denying

Hunt leave to amend this claim where Hunt had repeatedly refused opportunities to amend. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that leave to amend may be denied when amendment would be futile).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Hunt's motion for appointment of counsel (Docket Entry No. 70) is denied.

AFFIRMED.