

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 29 2024

FOR THE NINTH CIRCUIT

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

MICHAEL DEUSCHEL,

Plaintiff-Appellant,

v.

BAYER HEALTHCARE
PHARMACEUTICALS INC.; BAYER
HEALTHCARE LLC; BAYER
CORPORATION; MCKESSON
CORPORATION; MCKESSON MEDICAL
SURGICAL, INC.,

Defendants-Appellees.

No. 23-2600

D.C. No.

2:22-cv-08338-HDV-PD

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Hernan Diego Vera, District Judge, Presiding

Submitted October 25, 2024**
Pasadena, California

Before: IKUTA and BRESS, Circuit Judges, and BASTIAN, District Judge.***

* 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).

*** The Honorable Stanley Allen Bastian, United States District Judge for the Eastern District of Washington, sitting by designation.

Michael Deuschel appeals the district court's order dismissing his suit against Bayer Healthcare Pharmaceuticals, Inc. and other defendants without leave to amend. We have jurisdiction pursuant to 28 U.S.C. § 1291.

The district court did not err in holding that Deuschel's product-liability claims were time-barred by the applicable two-year statute of limitations.¹ Cal. Civ. Proc. Code § 335.1. Deuschel knew or should have suspected that his injury resulted from Magnevist when two medical professionals told him, in 2013, that his symptoms were related to the Magnevist injected into his body for a procedure. *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 813 (2005). Because a reasonable investigation would have revealed the factual bases for his claims in 2013, Deuschel's claims, which were not brought until 2019, are time-barred. *Id.* at 803. Indeed, in 2013, Deuschel brought a separate claim against his hospital relating to the use of Magnevist. *Fox* is not to the contrary; as in Deuschel's case, the statute of limitations in *Fox* commenced when the plaintiff learned that the defendant's medical device had been used during the plaintiff's surgery. *Id.* at 811.

The district court did not abuse its discretion in dismissing the complaint

¹ Deuschel has forfeited any claim that the district court erred in dismissing his negligence, Americans with Disabilities Act, and Unruh Civil Rights Act claims by failing to raise those claims on appeal. *Indep. Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003).

without leave to amend. *See Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Deuschel did not proffer any additional facts that would avoid the statute-of-limitations bar, and the court correctly determined that amendment would have been futile.

AFFIRMED.