**NOT FOR PUBLICATION**

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RN-BSN BARBARA ANN MILLER, LCDR - Donald G. Miller - Trust; STEVEN L. MILLER-HART;

Plaintiffs - Appellants,

and

LCDR DONALD G. MILLER TRUST,

Plaintiff,

v.

OREGON DEPARTMENT OF HUMAN SERVICES, Adult Protective Services (APS); BRADLEY VEO TIMMONS, individually and in concert; OREGON DEPARTMENT OF JUSTICE; AMERITITLE, LLC; COUNTY OF HOOD RIVER; DIAMOND FRUIT GROWERS, INC.; DOES 1-50; ALLISON WILLIAMS, HRC Director, individually and in her official capacity; JEFF HECKSEL, (ret.), former HRC Director, individually; ERIC WALKER, HRC Principal Planner, individually,

Defendants - Appellees.

No. 26-2716

D.C. No. 3:26-cv-00220-SB

MEMORANDUM*

Appeal from the United States District Court

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

for the District of Oregon
Michael H. Simon, District Judge, Presiding

Submitted October 27, 2026[**]

Before: SILVERMAN, FORREST, and VANDYKE, Circuit Judges.

Barbara Ann Miller and Steven G. Miller-Hart appeal pro se from the district court's judgment dismissing as time-barred their action alleging Racketeer Influenced and Corrupt Organizations Act ("RICO") claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996) (dismissal based on the statute of limitations); *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (sua sponte dismissal for failure to state a claim). We affirm.

The district court properly dismissed plaintiffs' RICO claims as time-barred because plaintiffs failed to file their action within the applicable statute of limitations or establish any basis for equitable tolling. *See Grimmett*, 75 F.3d at 510-11, 514-15 (explaining that a four-year statute of limitations applies to civil RICO claims and begins to run when a plaintiff knows or should have known of the injury underlying the action, and discussing the requirements to establish equitable tolling based on fraudulent concealment).

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

The district court did not abuse its discretion in dismissing plaintiffs' second amended complaint without leave to amend and with prejudice because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and stating that dismissal without leave to amend is proper where amendment would be futile); *City of Oakland v. Hotels.com LP*, 572 F.3d 958, 962 (9th Cir. 2009), *as amended* (Aug. 20, 2009) (noting that claims may be dismissed with prejudice "when it is clear that no amendment could cure a defect in the complaint").

The district court did not abuse its discretion in reviewing and adopting the magistrate judge's findings and recommendation because the district court met its statutory obligations. *See* 28 U.S.C. § 636(b)(1) (setting forth process for reviewing findings or recommendations made by the magistrate judge); *United States v. Ramos*, 65 F.4th 427, 432-33 (9th Cir. 2023) (setting forth standard of review and discussing the district court's statutory obligations under § 636(b)).

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

The motion for voluntary dismissal of appellees Rayfield, Rosenblum, the State of Oregon, the Oregon Department of Human Services Estate Administration Unit, and the Oregon Department of Human Services Risk Management Division, set forth in Docket Entry No. 14, is granted.

All other pending motions and requests are denied.

**AFFIRMED.**