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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR CHARLES FOURSTAR, Jr.,

Plaintiff - Appellant,

v.

DAVID NESS; et al.,

Defendants - Appellees.

No. 06-35516

D.C. No. CV-05-00108-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted April 22, 2008**

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Victor Charles Fourstar, Jr., appeals from the district court's order dismissing his malpractice complaint pursuant to 28 U.S.C. § 1915A, without leave to amend. We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

discretion a district court's denial of leave to amend, *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc), and we affirm.

The district court did not abuse its discretion by dismissing Fourstar's complaint without leave to amend because his action is barred by a three-year statute of limitations, whether the complaint is construed as asserting a federal claim, *see* Mont. Code Ann. § 27-2-204; *Van Strum v. Lawn*, 940 F.2d 406, 410 (9th Cir. 1991) (state's statute of limitations for personal injury claims applies in both *Bivens* and section 1983 actions), or a state claim, *see* 28 U.S.C. § 1332; *see also* Mont. Code Ann. § 27-2-206; *Flowers v. Carville*, 310 F.3d 1118, 1123 (9th Cir. 2002) (in a diversity case forum state law determines which state's statute of limitations governs).

AFFIRMED.