

DEC 22 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIAN EDWARD MALNES,

Plaintiff-Appellant,

v.

BAYERISCHE MOTOREN WERKE AG,
(BMW AG); et al.,

Defendants-Appellees.

No. 14-16296

D.C. No. 3:13-cv-08211-MHB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Michelle H. Burns, Magistrate Judge, Presiding**

Submitted December 14, 2016***

Before: WALLACE, LEAVY, and FISHER, Circuit Judges.

Brian Edward Malnes appeals pro se from the district court's judgment in

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

** Malnes consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, Malnes' request for oral argument, set forth in his reply brief, is denied.

his action alleging violations of federal and state law related to his car battery. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal of the complaint for failure to state a claim under Fed. R. Civ. P.

12(b)(6). *Gingery v. City of Glendale*, 831 F.3d 1222, 1226 (9th Cir. 2016). We may affirm on any basis fairly supported by the record. *Lake Wash. Sch. Dist. No. 414 v. Office of Superintendent of Pub. Instruction*, 634 F.3d 1065, 1067 (9th Cir. 2011). We affirm.

Dismissal of Malnes' action was proper because venue in the District of Arizona was improper. Malnes has not established that all defendants are residents of Arizona or that "a substantial part of the events or omissions giving rise to [his] claim[s]" occurred in Arizona. 28 U.S.C. § 1391(b)(1) & (2) (describing where a civil action may be brought).

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).

AFFIRMED.