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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HENRYK S. BORECKI,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SAFEGUARD SECURITY AND COMMUNICATIONS INCORPORATED; et al.,</p> <p>Defendants - Appellees.</p>

No. 12-16156

D.C. No. 2:11-cv-01983-GMS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
G. Murray Snow, District Judge, Presiding

Submitted September 24, 2013**

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

Henryk S. Borecki appeals pro se from the district court’s judgment dismissing his action alleging that defendants provided false information at his unemployment administrative hearing. We have jurisdiction under 28 U.S.C.

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

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

§ 1291. We review de novo. *Price v. Hawaii*, 939 F.2d 702, 706 (9th Cir. 1991).

We affirm.

The district court properly dismissed Borecki's 42 U.S.C. § 1983 claim because Borecki failed to allege facts sufficient to show that defendants acted under color of state law. *See id.* at 707-08 (private parties do not generally act under color of state law for § 1983 purposes); *see also Briscoe v. LaHue*, 460 U.S. 325, 329-30 (1983) (private party's testimony in court is not act performed under color of state law).

The district court properly dismissed Borecki's fraud claim because Borecki failed to allege facts sufficient to show all the elements of fraud. *See Echols v. Beauty Built Homes, Inc.*, 647 P.2d 629, 631 (Ariz. 1982) (elements of fraud under Arizona law).

Borecki's motion to permit filing of physical exhibits is denied.

AFFIRMED.