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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WADE THORNTON,

Plaintiff - Appellant,

v.

ARNOLD SCHWARZENEGGER; et al.,

Defendants - Appellees.

No. 09-15418

D.C. No. 2:08-cv-01260-WBS-  
CMK

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
William B. Shubb, District Judge, Presiding

Submitted April 5, 2011\*\*

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

California state prisoner Wade Thornton appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action seeking to prevent his transfer to an out-of-state prison. We have jurisdiction under 28 U.S.C. § 1291.

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\* 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).

We review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Thornton's claim that California Penal Code § 11191 vests him with a state-created liberty interest in avoiding an involuntary transfer to an out-of-state prison because the statute has been revised to delete the requirement that such transfers be voluntary. *See Toussaint v. McCarthy*, 801 F.2d 1080, 1092 (9th Cir. 1986) (a state-created liberty interest ceases to exist if the state repeals the statute or eliminates the regulation creating the liberty interest), *abrogated in part on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

Thornton's remaining contentions are unpersuasive.

**AFFIRMED.**