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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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11 ERIC WHEELER,

12 Plaintiff,

13 vs.

14 ALISON, et al.,

15 Defendants.
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) 1:12cv00861 LJO DLB PC
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) FINDINGS AND RECOMMENDATIONS
) REGARDING PLAINTIFF’S REQUEST
) FOR STAY OF TRANSFER
) (Document 102)
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) THIRTY-DAY DEADLINE
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17 Plaintiff Eric Wheeler (“Plaintiff”) is a prisoner in the custody of the California
18 Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in
19 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action
20 on May 25, 2012.

21 The action is currently in discovery. The discovery cut-off is July 16, 2014.

22 On May 21, 2014, Plaintiff filed a document in which he requests that the Court issue an
23 order staying his pending transfer. The Court construes this as a motion for a preliminary
24 injunction.
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26 **A. LEGAL STANDARD**

27 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter
28 v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008) (citation

1 omitted). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
2 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
3 the balance of equities tips in his favor, and that an injunction is in the public interest.” Id. at 20
4 (citations omitted). An injunction may only be awarded upon a clear showing that the plaintiff is
5 entitled to relief. Id. at 22 (citation omitted) (emphasis added). In cases brought by prisoners
6 involving conditions of confinement, any preliminary injunction “must be narrowly drawn,
7 extend no further than necessary to correct the harm the court finds requires preliminary relief,
8 and be the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

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10 **B. DISCUSSION**

11 In his motion, Plaintiff states that on May 15, 2014, while incarcerated at SATF, he was
12 placed for transfer to either Mule Creek State Prison or Salinas Valley State Prison within thirty
13 days. He contends that this transfer will severely hamper his ability to conduct discovery given
14 that the incident at issue occurred at SATF and most witnesses and documents are at SATF.
15 Plaintiff requests that the Court order a stay of transfer for forty-five days.

16 Difficulty or inconvenience in discovery is not type of injury, however, that a preliminary
17 injunction is meant to address. Rather, a plaintiff seeking a preliminary injunction must show,
18 among other things, that he is likely to suffer *irreparable harm* in the absence of preliminary.
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20 Moreover, it well settled that prisoners have no constitutional right to placement in any
21 particular prison, to any security classification, or to any particular housing assignment. See
22 Olim v. Wakinekona, 461 U.S. 238, 245 (1983); Meachum v. Fano, 427 U.S. 215, 225 (1976);
23 Montayne v. Haymes, 427 U.S. 236, 242, (1976). Plaintiff, therefore, may not use a motion for
24 preliminary injunction to prevent a prison transfer.

25 **C. CONCLUSION AND RECOMMENDATIONS**

26 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s request to stay
27 his transfer be DENIED. These Findings and Recommendations will be submitted to the United
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1 States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).
2 Within thirty (30) days after being served with these Findings and Recommendations, the parties
3 may file written objections with the Court. The document should be captioned “Objections to
4 Magistrate Judge’s Findings and Recommendations.” A party may respond to another party’s
5 objections by filing a response within fourteen (14) days after being served with a copy of that
6 party’s objections. The parties are advised that failure to file objections within the specified time
7 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153, 1157
8 (9th Cir. 1991).
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10 IT IS SO ORDERED.
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12 Dated: May 22, 2014

/s/ Dennis L. Beck
13 UNITED STATES MAGISTRATE JUDGE
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