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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAMUEL K. PORTER,

v.

HOWARD et al.,

Plaintiff,

Defendants.

CASE NO. 10cv1817 JLS (PCL)

**ORDER DENYING PLAINTIFF'S
2ND MOTION EX PARTE FOR
INADEQUATE ACCESS TO THE
COURTS AND OVERRULING
PLAINTIFF'S OBJECTIONS TO
MAGISTRATE'S SUBMITTING
THE DEFENDANTS' MOTION
TO DISMISS**

(Doc. 49.)

**ORDER DENYING PLAINTIFF'S PLAINTIFF'S 2ND MOTION EX PARTE FOR INADEQUATE
ACCESS TO THE COURTS AND OVERRULING PLAINTIFF'S OBJECTIONS TO
MAGISTRATE'S SUBMITTING THE DEFENDANTS' MOTION TO DISMISS**

INTRODUCTION

Plaintiff Samuel Kenneth Porter, a state prisoner proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint under 42 U.S.C. §1983 on August 30, 2010. (Doc. 1.) On March 21, 2011,

1 Plaintiff filed a “2nd Motion Ex Parte for Inadequate Access to the Courts.” (Doc. 49.) Attached to that
2 motion was Plaintiff’s “Objection to the Magistrates [sic] Submitting the Defendants [sic] Motion to
3 Dismiss With Admission by Defendants of Other Prescribed Administrative Remedies.” For the
4 following reasons Plaintiff’s Motion is **DENIED** and Plaintiff’s Objections are **OVERRULED**.

6 DISCUSSION

7 As a preliminary matter, this Court will construe Plaintiff's Motion for Inadequate Access to the
8 Courts as a Motion for Access to the Courts. In support of his Motion for Access to the Courts, Plaintiff
9 states the law librarian informed him that certain cases could only be accessed on the internet. (Doc. 49,
10 at 1.) Plaintiff states that his inability to retrieve these cases impedes him from effectively prosecuting
11 his complaint and gives the opposing party an unfair advantage thereby violating the fundamental
12 fairness doctrine. (*Id.*) Plaintiff has not cited, nor can this Court find, any authority supporting the
13 notion that a case available in digital form only violates the fundamental fairness doctrine, even if the
14 digital form is unavailable to an inmate. *See James v. Adams*, slip op., 2009 WL: 2905724, at *11 (E.D.
15 Cal. 2009) (“The standard for determining whether a persons conviction violates the fundamental fairness
16 guarantee of the Due Process clause is whether the action complained of . . . violates those fundamental
17 conceptions of justice which lie at the base of our civil and political institutions . . . and which define the
18 community's sense of fair play and decency.”).

19 “[T]he right of access to the courts is only a right to bring petitions or complaints to the federal
20 court and not a right to discover such claims or even to litigate them effectively once filed with a court.”
21 *Giles v. Soto*, slip op., 2011 WL 1344894 (2011) (citing *Lewis v. Casey*, 518 U.S. 343, 356-57 (1996)).
22 To maintain an access to the courts claim, an inmate must submit actual injury. *Id.* An actual injury is
23 defined as actual prejudice with respect to contemplated or existing litigation such as the inability to meet
24 a filing deadline or to present a claim. *Lewis*, 518 U.S. at 348. Plaintiff submits that his inability to
25 access certain cases prevents him from effectively litigating. (Doc. 49, at 1.) As the court stated in
26 *Giles*, however, an inmate is not guaranteed the right to effectively litigate. Moreover, even if Plaintiff
27 were entitled to effectively litigate, he cannot demonstrate actual injury from the lack of the specific
28 cases he seeks because his inability to access these cases has not prevented him from bringing his claim.

1 Both cases requested by Plaintiff directly support Defendant's Motion to Dismiss, (doc. 27) for failure to
2 exhaust and for failure to state a claim. See Sandrock v. Show, slip. op., 2010 WL 5114955 (S.D. Cal.
3 2010); and see Young v. Corr. Corp. of America, slip op., 2010 WL 1525983 (D. Mont. 2010). Thus,
4 Plaintiff's inability to conduct exhaustive legal research fails to meet the "actual injury" test.
5 Accordingly, Plaintiff's Motion for Access to the Courts is DENIED.

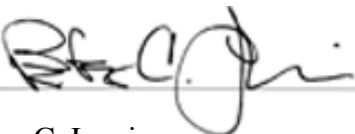
6 Plaintiff's Objection to Magistrate's Submitting Defendants Motion to Dismiss with Admission by
7 Defendants of Other Administrative Remedies essentially duplicates the arguments put forth by Plaintiff
8 in the various papers he filed in opposition to Defendants' Motion to Dismiss. (Docs. 30, 39, and 44.)
9 Plaintiff argues that the Prison Rape Elimination Act is an administrative remedy and therefore excuses
10 him from compliance with the Appeals Process afforded by the California Department of Corrections and
11 Rehabilitation. These arguments have no merit. Moreover, this Court has already issued its Report and
12 Recommendation on Defendants' Motion to Dismiss rendering Plaintiff's objections moot. Accordingly,
13 Plaintiff's objections are OVERRULED.

14
15 **CONCLUSION**

16 Accordingly, Plaintiff's Motion for Inadequate Access to the Courts is hereby **DENIED** and
17 Plaintiff's Objections are **DENIED**.

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19 **IT IS SO ORDERED.**

20 DATED: June 20, 2011

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25 Peter C. Lewis
26 U.S. Magistrate Judge
27 United States District Court
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