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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 KYLE ROBERT JAMES,

10 Plaintiff,

11 v.

12 DEPUTY EMMENS, et al.,

13 Defendants.
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Case No.: 16cv2823-WQH (NLS)

**ORDER DENYING PLAINTIFF'S
MOTION TO ORDER SAN DIEGO
CENTRAL JAIL FOR ACCESS TO
THE COURTS**

[ECF No. 86]

15 Plaintiff Kyle Robert James, proceeding *pro se* and *in forma pauperis*, filed this
16 civil rights action under 42 U.S.C. § 1983. Before the Court is Plaintiff's motion for an
17 order directing San Diego Central Jail to grant Plaintiff access to the courts and notice to
18 the court of Plaintiff's status regarding legal property and medication. ECF No. 86.

19 As the Court has previously noted, Plaintiff is currently being held at San Diego
20 County Central Jail for his criminal retrial, for which he has been appointed counsel.
21 ECF No. 80 at 1-2. In his instant motion, Plaintiff states that he is being denied "pro per"
22 status by the San Diego Sheriff's Department because he has legal representation in his
23 state court case and, as a result of the denial of this status, he states that he is not
24 permitted access to the law library or to legal supplies he needs to pursue his pending
25 § 1983 actions, including this instant case. He requests that the Court order the San
26 Diego Sheriff's Department to grant him "pro per" status, to declare his rights to have
27 access to the courts and free speech, and to warn the San Diego Sheriff and his deputies
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1 that future disregard for Plaintiff’s rights will result in sanctions. In addition, Plaintiff
2 requests that the Court take notice of that he did not have access to his legal property for
3 10 days and that he was not given his medications for 10 days.

4 **A. Plaintiff’s Requests Regarding “Pro per” Status and Access to the Law**
5 **Library**

6 The Court declines to order the San Diego County Sheriff’s Department to
7 designate Plaintiff as a “pro per” detainee. While Plaintiff is correct that he has a
8 constitutional right of access to the courts, *see Bounds v. Smith*, 430 U.S. 817 (1977), this
9 is not an unfettered right. Since *Bounds*, the Supreme Court has stated that the right of
10 access to courts means the right to “**bring** to court a grievance that the inmate wishes to
11 present.” *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (emphasis added). However, the
12 right does not include the right to “**discover** grievances or to **litigate effectively** once in
13 court.” *Id.* (“These elaborations upon the right of access to the courts have no antecedent
14 in our pre-*Bounds* cases, and we now disclaim them.”); *see also Hoffman v. Hennessey*,
15 No. 09-cv-1777-MHP, 2009 WL 3756628, at *3 (N.D. Cal. Nov. 6, 2009). Thus, courts
16 in this district and the Ninth Circuit have limited this right of access to “only during the
17 pleading stage of a habeas or civil rights action.” *Donnan v. Cook*, No. 08-cv-2157-
18 DMS, 2010 WL 3431823, at *1 (S.D. Cal. Aug. 30, 2010) (quoting *Cornett v. Donovan*,
19 51 F.3d 894, 898 (9th Cir.1995)). At this point in time, this case is beyond the pleading
20 stages, since the answer was filed on September 29, 2017 and the deadline for amending
21 pleadings passed on November 3, 2017. ECF Nos. 58, 59. Thus, Plaintiff’s request for
22 access to the law library falls outside the scope of the right of access to the courts set
23 forth by the Supreme Court.

24 Furthermore, inmates do not have an “abstract, freestanding right to a law
25 library”—such access is only a means for ensuring access to courts. *Lewis*, 518 U.S. at
26 351. An inmate claiming interference with or denial of access to the courts must show
27 that he suffered an actual injury. *Id.* An actual injury is defined as “actual prejudice with
28 respect to contemplated or existing litigation, such as the inability to meet a filing

1 deadline or to present a claim.” *Id.* Here, Plaintiff is temporarily in the custody of the
2 San Diego County Central Jail during his criminal retrial. Plaintiff has failed to state an
3 actual injury he has suffered due to the alleged denial of access to the law library and
4 legal supplies during the time he has been in Central Jail. The Court additionally notes
5 that, since Plaintiff arrived in Central Jail on December 21, 2017, Plaintiff has actually
6 been able to file five motions with the Court in this case, including the present motion.
7 *See* ECF Nos. 73, 75, 79, 83, 86.

8 Plaintiff may use this order to show the San Diego County Sheriff Deputies that he
9 has *pro se* status in this pending § 1983 federal action and is representing himself.
10 However, the Court **DENIES** Plaintiff’s request for an order to the San Diego County
11 Sheriff’s Department to designate Plaintiff as a “pro per” detainee.

12 The Court also **DENIES** Plaintiff’s request that the Court declare his rights as to
13 access to the courts and issue warnings to the San Diego Sheriff and his deputies that
14 future disregard for Plaintiff’s rights will result in sanctions. As outlined above, Plaintiff
15 is mistaken about the scope of his rights regarding his access to the courts. Furthermore,
16 what Plaintiff requests from the court is akin to requesting an advisory opinion, which
17 federal courts are prohibited from providing. *See Partington v. Gedan*, 961 F.2d 852,
18 862 (9th Cir. 1992).

19 **B. Plaintiff’s Request for “Notice”**

20 Finally, as to Plaintiff’s request that the Court take “notice” of the status of his
21 legal property and medications, the Court has read and reviewed the representations that
22 Plaintiff makes in his motion and declaration. However, to the extent that Plaintiff asks
23 the Court to take judicial notice of these statements, the request is **DENIED**. Judicial
24 notice allows a court to consider “a fact that is not subject to reasonable dispute because
25 it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be
26 accurately and readily determined from sources whose accuracy cannot reasonably be
27 questioned.” Fed. R. Evid. 201. Plaintiff’s allegations that his legal property and
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1 medication were withheld from him are not appropriate “facts” not subject to reasonable
2 dispute for which the Court can take judicial notice.

3 **IT IS SO ORDERED.**

4 Dated: January 26, 2018

A handwritten signature in cursive script, reading "Nita L. Stormes", written over a horizontal line.

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6 Hon. Nita L. Stormes
7 United States Magistrate Judge
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