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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LLEWELYN L. GABALIS,

No. CIV S-09-0253-CMK-P

Plaintiff,

vs.

ORDER

R. PLAINER, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court is plaintiff’s motion for injunctive relief (Doc. 27).

In his one-page handwritten motion, plaintiff states:

I am writing you because on 10-25-09 I was put here in Administrative Segregation pending the investigation into the death of my cell mate who committed suicide by hanging his self.

Anyway since I’ve been in Administrative Segregation I have requested a number of times for all my legal materials for this case that’s in my personal property. And all my request has gone un-answered. This action constitute actual injury to my pursuit of my legal claim in this case.

I hereby request an order compelling the authority here at High

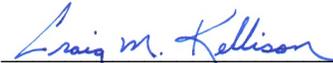
1 Desert State Prison to hand over all my legal materials, papers, books, etc.,
2 for this case. As soon as possible.

3 The legal principles applicable to requests for injunctive relief, such as a
4 temporary restraining order or preliminary injunction, are well established. To prevail, the
5 moving party must show that irreparable injury is likely in the absence of an injunction. See
6 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Natural Res.
7 Def. Council, Inc., 129 S.Ct. 365 (1008)). To the extent prior Ninth Circuit cases suggest a lesser
8 standard by focusing on the mere possibility of irreparable harm, such cases are “no longer
9 controlling, or even viable.” Am. Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046,
10 1052 (9th Cir. 2009). Under Winter, the proper test requires a party to demonstrate: (1) he is
11 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of an
12 injunction; (3) the balance of hardships tips in his favor; and (4) an injunction is in the public
13 interest. See Stormans, 586 F.3d at 1127 (citing Winter, 129 S.Ct. at 374).

14 In this case, the court finds that plaintiff has not demonstrated the requisite
15 irreparable injury should the requested order not be issued. In particular, the docket reflects that,
16 despite plaintiff’s allegations of an inability to access his legal materials, he was able to file a
17 timely substantive opposition, with exhibits attached, to defendants’ motion for summary
18 judgment.¹

19 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for injunctive
20 relief (Doc. 27) is denied.

21 DATED: August 11, 2010

22 
23 **CRAIG M. KELLISON**
24 UNITED STATES MAGISTRATE JUDGE

25
26 ¹ Defendants’ motion will be addressed by separate order.