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

ARCHIE A. MARTINEZ,

No. CIV S-09-0680-CMK-P

Plaintiff,

vs.

ORDER

G. HOOVER, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is Plaintiff’s motion for an order allowing access to the prison law library (Doc. 39). In his motion, Plaintiff states he is being denied access to the law library despite a court ordered deadline. The court notes that Plaintiff’s response to Defendants’ motion to dismiss is currently due on November 15, 2010. Plaintiff stated he had requested law library access on or about October 19, 2010. As of the date he submitted his motion, however, no response to his inmate grievance had been received.

Plaintiff is requesting a court order to allow him access to the law library. The court is reluctant to issue such an order as it is not for the court to dictate to the prison how to schedule such activities as when to allow prisoners access to the law library. However, complete

1 failure to allow law library access may violate Plaintiff's right of access to the court, in which
2 case Plaintiff may have cause for filing a separate lawsuit. That being said, the court finds that
3 allowing Plaintiff additional time to respond to the pending motion may be sufficient to
4 overcome the delay in accessing the library. If Plaintiff continues to experience difficulties in
5 accessing the law library, he may file a new motion. However, if he does so, the motion shall
6 include all the steps he has taken in order to gain access to the library, including informing the
7 court that he has followed the rules of the prison for doing so. Failure to follow the proper prison
8 procedure for library access is no excuse for a late filed response.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's motion for a court order to access the law library (Doc. 39) is
11 denied; and
- 12 2. Plaintiff's response to the pending motion to dismiss shall be filed within
13 30 days of the date of this order.

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15 DATED: November 3, 2010

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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