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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MARCO A. GARCIA,  
Plaintiff,  
v.  
GARCIA, *et al.*,  
Defendants.

Case No. 1:17-cv-01313-BAM (PC)  
**ORDER FOR THE WARDEN OF PELICAN BAY STATE PRISON TO APPEAR ON NOVEMBER 16, 2021 TO SHOW CAUSE FOR FAILURE TO OBEY A COURT ORDER**  
(ECF No. 59)  
ORDER DIRECTING CLERK OF COURT TO SERVE A COPY OF THIS ORDER ON SENIOR ASSISTANT ATTORNEY GENERAL MONICA ANDERSON, THE WARDEN OF PELICAN BAY STATE PRISON, AND THE LITIGATION COORDINATOR AT PELICAN BAY STATE PRISON  
**Show Cause Hearing: November 16, 2021 at 1:30 p.m. (Zoom)**

Plaintiff Marco A. Garcia (“Plaintiff”) is a former pretrial detainee and current state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Garcia and Bursiaga for excessive force in violation of the Fourteenth Amendment. All parties have consented to Magistrate Judge jurisdiction. (ECF No. 28.) The jury trial in this matter was originally set for November 1, 2021, and has been continued to November 30, 2021 for failure to produce Plaintiff and his legal property for trial on November 1, 2021. (ECF No. 67.)

1 On September 28, 2021, the Court issued an order and writ of habeas corpus ad  
2 testificandum directing the Warden of Pelican Bay State Prison to produce Plaintiff “to appear in  
3 person in Courtroom #8, 6th Floor, United States Courthouse, 2500 Tulare Street, Fresno,  
4 California on November 1, 2021, at 8:30 a.m. for a jury trial in this matter.” (ECF No. 59, p. 1.)

5 The writ further stated:

6 **WE COMMAND** you to produce the inmate named above, **along with**  
7 **any necessary legal property**, to appear **in person** to testify before the United  
8 States District Court, at the time and place above, and from day to day until  
9 competition of court proceedings, or as ordered by the court; and thereafter to  
return the inmate to the above institution.

10 (ECF No. 59, pp. 1–2 (emphasis in original).)

11 The Court attempted to commence the jury trial on the date and time ordered. Plaintiff  
12 had been transported to California Substance Abuse Treatment Facility (“CSATF”), from Pelican  
13 Bay State Prison, prior to trial and appeared before the undersigned in Courtroom 8. **However,**  
14 **despite the explicit language in the writ, Plaintiff was not in possession of any of his legal**  
15 **property.** Plaintiff stated, on the record, that he had alerted officers at Pelican Bay before he was  
16 transported that he required his legal property to be transported with him to CSATF for trial in  
17 this case. However, Plaintiff’s legal property was transpacked with the remainder of his property,  
18 and his legal property did not accompany him in the transport from Pelican Bay. Plaintiff stated  
19 that he would be unable to proceed with trial without the specific materials he had prepared for  
20 trial and which were currently unavailable to him. The transporting officers accompanying  
21 Plaintiff from CSATF stated that Plaintiff’s property at Pelican Bay could not be obtained in a  
22 timely fashion.

23 Given this information, the Court found it necessary to continue the jury trial in this  
24 matter. The failure to comply with the Court’s order has resulted in delay in the judicial  
25 proceedings and unnecessary costs to the parties and the State of California. The waiting jurors  
26 were excused from service because the Court was unable to commence trial.

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Accordingly, IT IS HEREBY ORDERED as follows:

1. The Warden of Pelican Bay State Prison SHALL appear before the undersigned on **November 16, 2021, at 1:30 p.m.** to show cause why sanctions, including monetary sanctions or contempt, should not be imposed for the failure to comply with an order of the Court regarding transportation of Plaintiff and his necessary legal property;
2. In light of evolving coronavirus protocols, the Warden shall appear **remotely via Zoom**;
3. The Warden, or any other party wishing to appear, shall contact Courtroom Deputy, Esther Valdez, at (559) 499-5788 or [evaldez@caed.uscourts.gov](mailto:evaldez@caed.uscourts.gov) for the video and dial-in information;
4. The Warden may submit a written response to this order to show cause on or before **November 9, 2021**. Notwithstanding any written response, the Warden will be required to personally appear before the Court via Zoom on November 16, 2021;
5. The Clerk of the Court is directed to serve a copy of this order on Senior Assistant Attorney General Monica Anderson, the Warden of Pelican Bay State Prison, and the Litigation Coordinator at Pelican Bay State Prison; and
6. **Failure of the Warden of Pelican Bay State Prison to appear before the Court on November 16, 2021, will result in the imposition of sanctions.**

IT IS SO ORDERED.

Dated: November 3, 2021

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE