

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BENJAMIN K. TOSCANO,
Plaintiff,
v.
G. D. LEWIS, et al.,
Defendants.

Case No. 12-cv-05893-EMC

**ORDER RE PLAINTIFF'S LETTER,
FILED ON OCTOBER 4, 2017**

Docket No. 397

The Court has received a letter from Mr. Toscano, which appears to have been mailed on October 2, 2017. In the letter, he states that (1) on September 27, 2017, he was told that he was being transported but was not told where; (2) on September 28, 2017, he was told that he was being sent to San Quentin for court; and (3) on September 30, 2017, he was told that he was being sent back to Pelican Bay. According to Mr. Toscano, these actions were taken to harass him and deprive him of his property. *See* Docket No. 397 (letter).

At about the same time that the Court received the letter from Mr. Toscano, it received an email from the California DOJ's office, stating that Mr. Toscano was refusing to be transported even though the Court had ordered such transport so that he would be present for the final pretrial conference set for October 11, 2017. (The Court also set a status conference and hearing on Mr. Toscano's counsel's motion to withdraw for October 11.)

With respect to Mr. Toscano's letter, it is not clear that he is seeking any specific relief from the Court at this time. Thus, the Court does not take any action on his letter.

However, the Court is concerned about Mr. Toscano's current refusal to be transported (*i.e.*, for the October 11 conferences and hearing). The Court thus orders as follows.

- (1) Mr. Toscano is to be physically present at the October 11 conferences and hearing,

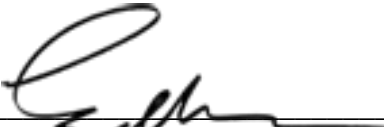
1 as previously ordered. *See* Docket Nos. 391, 395 (orders). That the trial is not scheduled until
2 November is immaterial.¹ The Court has set the conferences and hearing for October 11, and his
3 presence is necessary. **Mr. Toscano is forewarned that, if he fails to appear as ordered by the**
4 **Court, and the failure is based on his refusal to be transported, the Court shall sanction him,**
5 **and such sanctions could include dismissal of his case with prejudice.**

6 (2) The Clerk of the Court shall serve courtesy copies of this order on Mr. Toscano by
7 mail and on the California DOJ's office by email (c/o Bryan Kao). **Mr. Kao is instructed to take**
8 **all reasonable steps to work with prison officials to ensure that Mr. Toscano is given a copy**
9 **of this order, as well as the Court's prior orders at Docket Nos. 391 and 395, at the time of**
10 **his transport, such that it is clear that his transport is being required by this Court.**

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: October 5, 2017



EDWARD M. CHEN
United States District Judge

¹ The trial has been reset to start on November 13, 2017. *See* Docket No. 364 (amended order).