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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ELVIS VENABLE,	
	Case No. 1:17-cv-01519-BAM (PC)
Plaintiff,	ORDER CONSTRUING PLAINTIFF’S
	FILING AS A MOTION FOR
v.	CLARIFICATION
PATEL,	ORDER GRANTING IN PART PLAINTIFF’S
	MOTION CLARIFICATION
Defendant.	(ECF No. 53)

Plaintiff Elvis Venable (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s claim against Defendant Patel for nominal, compensatory, and punitive damages resulting from Defendant Patel’s alleged violation of Plaintiff’s Eighth Amendment rights. All parties have consented to Magistrate Judge jurisdiction. (ECF No. 44.) Pursuant to the Court’s second scheduling order issued on May 18, 2021, trial is currently set to begin on February 14, 2022. (ECF No. 50.)

In a previous filing, Plaintiff requested that the defense correct the penal code that this case is filed under, “to 2254(3)(c) and some other penal code?!?” (ECF No. 51.) The Court denied the request, as it was not clear what correction Plaintiff was requesting, and explained that the case is proceeding on Plaintiff’s Eighth Amendment claim against Defendant Patel, and there are no penal codes or state law claims at issue.

1 Currently before the Court is Plaintiff's notice, filed July 19, 2021, to inform the Court
2 that he stated the wrong penal code. (ECF No. 53.) Plaintiff states that he would like to clarify
3 the penal code this civil rights case is filed under, which is Penal Code 2246(3)(c). (*Id.*)

4 Based on Plaintiff's filing, it appears that further clarification is necessary. As the Court
5 previously explained, this civil rights action was filed pursuant to 42 U.S.C. § 1983, and is
6 proceeding only on Plaintiff's Eighth Amendment claim against Defendant Patel. There are no
7 penal codes or state law provisions at issue in this case, and therefore no correction is necessary.
8 However, to the extent Plaintiff is requesting clarification from the Court regarding the claims
9 proceeding in this action, the request is granted in part.

10 Accordingly, IT IS HEREBY ORDERED as follows:

- 11 1. Plaintiff's filing, (ECF No. 53), is construed as a motion for clarification; and
- 12 2. Plaintiff's motion for clarification, (ECF No. 53), is GRANTED IN PART, as discussed
13 above.

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15 IT IS SO ORDERED.

16 Dated: July 21, 2021

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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