IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

MARVIN B. DAVIS,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	No. 00-3051-CM
)	
)	
LOUIS E. BRUCE, et al.,)	
)	
Defendants.)	
)	

MEMORANDUM AND ORDER

This case is before the court on defendants' Motion for Judgment on the Pleadings (Doc. 182). Defendants Davis and Cummings, the only defendants remaining in the case, argue that they are entitled to judgment on the pleadings because (1) plaintiff failed to allege personal participation of defendant Cummings; and (2) plaintiff failed to show damages as a result of the allegedly retaliatory disciplinary report issued by defendant Davis. Defendants ask the court to review the *Martinez* report in determining whether judgment on the pleadings is appropriate. *See Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978). The court has not done so, as it would be improper in reviewing a motion for judgment on the pleadings. *See Ketchum v. Cruz*, 961 F.2d 916, 919–20 (10th Cir. 1992).

At this stage of the proceedings, plaintiff has sufficiently alleged personal participation on the part of defendant Cummings and general damages that would include damages due to defendant Davis's allegedly retaliatory disciplinary report. He will, of course, later be required to prove that defendant Cummings personally participated and that his damages were caused by defendant

Davis's disciplinary report, but plaintiff has met the "short and plain statement" standard of Rule 8.

IT IS THEREFORE ORDERED that defendants' Motion for Judgment on the Pleadings (Doc. 182) is denied.

Dated this 4th day of October 2007, at Kansas City, Kansas.

s/ Carlos Murguia CARLOS MURGUIA United States District Judge