

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**DANIEL ALLEN HENECK,**

**Plaintiff,**

**v.**

**CASE NO. 23-3166-JWL**

**BRETT CORBY, et al.,**

**Defendants.**

**MEMORANDUM AND ORDER**

Plaintiff brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Although Plaintiff is currently incarcerated at the Larned State Correctional Facility in Larned, Kansas, the allegations giving rise to his Complaint occurred during his detention at the El Dorado Correctional Facility (“EDCF”) in El Dorado, Kansas. The Court granted Plaintiff leave to proceed *in forma pauperis*.

On August 8, 2023, the Court entered a Memorandum and Order to Show Cause (Doc. 6) (“MOSC”) granting the plaintiff leave to show cause why the Complaint should not be dismissed or to file an amended complaint curing the deficiencies. In response to the MOSC, Plaintiff filed an Amended Complaint (Doc. 7). The Court then entered a Memorandum and Order (“M&O”) (Doc. 18) dismissing all but one count of the Amended Complaint and directing the officials responsible for the operation of the EDCF to file a *Martinez* Report as to the remaining excessive force claim. The M&O provides that “[o]nce the report has been received, the Court can properly screen Plaintiff’s claims under 28 U.S.C. § 1915A.” (Doc. 18, at 11.) The *Martinez* Report (the “Report”) has now been filed (Docs. 20, 21), and Plaintiff has filed responses to the Report (Docs. 27, 28, 29, and 30). The Court’s screening standards are set forth in detail in the M&O.

Plaintiff disputes the allegations in the *Martinez* Report. Plaintiff maintains his version of the events and his allegations set forth in his Amended Complaint. The *Martinez* Report “is treated like an affidavit, and the court is not authorized to accept the factual findings of the prison investigation when the plaintiff has presented conflicting evidence.” *Hall v. Bellmon*, 935 F.2d 1106, 1111 (10th Cir. 1991) (citing *Sampley v. Ruettgers*, 704 F.2d 491, 493 n. 3 (10th Cir. 1983)). Therefore, Plaintiff’s Amended Complaint survives screening, and the Court will order the defendant to be served and to answer or otherwise respond to the Amended Complaint.

Also before the Court is Plaintiff’s Motion to Withdraw Request for Joinder of Claims (Doc. 26). Plaintiff states that he asked to have his claims in another case joined to this case, but he now wants to continue them as two separate cases. Plaintiff’s motion is granted.

**IT IS THEREFORE ORDERED** that the Court will enter a separate e-service order directing the Clerk of Court to serve Defendant Corby.

**IT IS FURTHER ORDERED** that Plaintiff’s Motion to Withdraw Request for Joinder of Claims (Doc. 26) is **granted**.

**IT IS SO ORDERED.**

**Dated February 28, 2024, in Kansas City, Kansas.**

**S/ John W. Lungstrum**  
**JOHN W. LUNGSTRUM**  
**UNITED STATES DISTRICT JUDGE**