

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

BRIAN MICHAEL WATERMAN,

Plaintiff,

v.

CASE NO. 23-3182-JWL

(FNU) HARRED, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff brings this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff is currently incarcerated at the Larned State Correctional Facility in Larned, Kansas. The Court granted Plaintiff leave to proceed in forma pauperis. On October 17, 2023, the Court entered a Memorandum and Order to Show Cause (Doc. 13) (“MOSC I”) giving Plaintiff an opportunity to show cause why his Complaint should not be dismissed or to file an amended complaint curing the identified deficiencies. On November 9, 2023, Plaintiff filed an Amended Complaint (Doc. 17). On November 27, 2023, the Court entered a Memorandum and Order (Doc. 19) (“M&O”), finding that the proper processing of Plaintiff’s claims cannot be achieved without additional information from appropriate KDOC officials. *See Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978); *see also Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991). Accordingly, the Court ordered the KDOC officials to prepare and file a *Martinez* Report. The M&O provided that “[o]nce the Report has been received, the Court can properly screen Plaintiff’s claims under 28 U.S.C. § 1915A.” (Doc. 19, at 3.) The Court screened the Amended Complaint after the *Martinez* Report (Doc. 24) (the “Report”) was filed and entered a Memorandum and Order (Doc. 34) (“MOSC II”)

directing Plaintiff to show good cause why this matter should not be dismissed. This matter is before the Court on Plaintiff's response (Doc. 36).

Plaintiff's Amended Complaint contains two counts. Plaintiff claims that he received inadequate medical care after he injured his shoulder, and he claims that he was retaliated against for filing this lawsuit. He alleges violation of his rights under the Eighth and First Amendments and seeks injunctive relief, as well as compensatory and punitive damages.

Plaintiff names as defendants: Dr. Harred, doctor at El Dorado Correctional Facility ("EDCF"); (fnu) Buchanan, Unit Manager, EDCF; Sarah Madgwick, Health Service Administrator, EDCF; (fnu) Knipp, nurse, EDCF; Nicole Scolari, Unit Team, EDCF; (fnu) Little, Unit Team, EDCF; Jesses Hoses, Warden, Lansing Correctional Facility ("LCF"); (fnu) Shaw, Property Officer, LCF; and (fnu) Jaru, guard, LCF.

Plaintiff's response does not address the deficiencies with his retaliation claim. The Court finds that Plaintiff has failed to show good cause why that claim should not be dismissed. Therefore, Count II of the Amended Complaint is dismissed, along with Defendants Hoses, Jaru, and Shaw.

Plaintiff disputes the allegations in the *Martinez* Report as to his Eighth Amendment deliberate indifference claim, maintaining his version of the events and the 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, the Court finds that Count I of the Amended Complaint survives the screening required by 28 U.S.C. § 1915A(a) and further finds that a responsive pleading is necessary.

The Court directs the Clerk to serve Defendants Harred, Madgwick, Knipp, Little, Scolari, and Buchanan with waivers of service.

Plaintiff has also filed a Motion in Limine (Doc. 37). The motion asks the Court to strike any reply filed by the defendants or KDOC responding to Plaintiff's response to the *Martinez* Report. Plaintiff argues that such a reply is typically not allowed. Because the Court finds that a portion of the Amended Complaint survives screening and orders the defendants to be served, Plaintiff's motion is denied as moot.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's retaliation claim against Defendants Hoses, Jaru, and Shaw **is dismissed**.

IT IS FURTHER ORDERED that Count I of Plaintiff's Amended Complaint survives screening under 28 U.S.C. § 1915A. The Clerk is directed to serve Defendants Harred, Madgwick, Knipp, Little, Scolari, and Buchanan with waivers of service.

IT IS FURTHER ORDERED that Plaintiff's Motion in Limine (Doc. 37) is **denied**.

IT IS SO ORDERED.

Dated April 19, 2024, in Kansas City, Kansas.

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