

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

DUSTIN LEE LUND,

Plaintiff,

v.

CASE NO. 23-3184-JWL

LOU MILLER, 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 Oswego Correctional Facility in Oswego, Kansas, the allegations giving rise to his Complaint occurred during his detention at the Ottawa County Detention Center (“OCDC”) and the Saline County Jail (“SCJ”). The Court granted Plaintiff leave to proceed *in forma pauperis*.

On August 18, 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”) directing the officials responsible for the operation of the OCDC and the SCJ to file a *Martinez* Report. 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. 9, at 5.) The *Martinez* Report (the “Report”) has now been filed (Docs. 14, 16), and Plaintiff has filed responses to the Report (Docs. 18 and 21). 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. Ruetters*, 704 F.2d 491, 493 n. 3 (10th Cir. 1983)). Therefore, Plaintiff’s Amended Complaint survives screening, and the Court will order the defendants to be served and to answer or otherwise respond to the Amended Complaint.

Also before the Court is Plaintiff’s Motion for Court to Order Defendant to Submit the Safety Data Sheet for Scrubbing Bubbles Foaming [Bleach] Bathroom Cleaner to Plaintiff & Court as Part of Defendant’s Martinez Report Exhibits (Doc. 23). Plaintiff points out that the *Martinez* Report filed by Defendant Thornton indicates that Scrubbing Bubbles Foaming *Bleach* Bathroom Cleaner was used but attaches the safety data sheet for Scrubbing Bubbles Foaming Bathroom Cleaner without bleach. Plaintiff’s point is well taken. Therefore, his motion is granted.

IT IS THEREFORE ORDERED that the Court directs the Clerk of the Court to prepare and issue waiver of service forms for the defendants pursuant to Fed. R. Civ. P. 4(d) to be served upon the defendants at no cost to Plaintiff.

IT IS FURTHER ORDERED that Plaintiff’s Motion for Court to Order Defendant to Submit the Safety Data Sheet for Scrubbing Bubbles Foaming [Bleach] Bathroom Cleaner to Plaintiff & Court as Part of Defendant’s Martinez Report Exhibits (Doc. 23) is **granted**. Defendant Thornton is ordered to supplement his *Martinez* Report by filing the safety data sheet for Scrubbing Bubbles Foaming Bleach Bathroom Cleaner by **February 21, 2024**.

IT IS SO ORDERED.

Dated February 14, 2024, in Kansas City, Kansas.

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