

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

JEFFREY J. SPERRY,

Plaintiff,

v.

CASE NO. 18-3120-SAC

RAYMOND ROBERTS, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff, a state prisoner appearing *pro se*, brings this 42 U.S.C. § 1983 civil rights complaint. Plaintiff is an inmate at the El Dorado Correctional Facility (“EDCF”) in El Dorado, Kansas. He is serving a sentence of life imprisonment (hard 25) for premeditated first degree murder. Plaintiff complains that since February of 2012, he has not received the interest earned on the balance in his inmate account. He states that previously the accrued interest was added to his account every month. Plaintiff alleges Defendants embezzled the interest instead of paying it to him. He claims his rights under the Fifth and Fourteenth Amendments have been violated. He also alleges conspiracy, state tort law violations, and a RICO violation. Mr. Sperry names five defendants and requests injunctive and declaratory relief, as well as compensatory and punitive damages.

The Court finds that the proper processing of Plaintiff’s claims cannot be achieved without additional information from appropriate officials of the Kansas Department of Corrections (KDOC). *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 orders the appropriate officials of KDOC to

prepare and file a *Martinez* Report. Once the report has been received, the Court can properly screen Plaintiff's claims under 28 U.S.C. § 1915.

Plaintiff has also filed a motion for leave to proceed in forma pauperis (ECF No. 5). Because Plaintiff has paid the filing fee in full, the motion is denied as moot.

IT IS THEREFORE ORDERED BY THE COURT that:

(1) The Clerk of Court shall serve Defendants under the e-service pilot program in effect with the Kansas Department of Corrections ("KDOC").

(2) Upon the electronic filing of the Waiver of Service Executed pursuant to the e-service program, KDOC shall have **sixty (60) days** to prepare the *Martinez* Report. Upon the filing of that report, the AG/Defendants shall have an additional **sixty (60) days** to answer or otherwise respond to the Complaint.

(3) Officials responsible for the operation of the KDOC and El Dorado Correctional Facility are directed to undertake a review of the subject matter of the Complaint:

- a. To ascertain the facts and circumstances;
- b. To consider whether any action can and should be taken by the institution to resolve the subject matter of the Complaint; and
- c. To determine whether other like complaints, whether pending in this Court or elsewhere, are related to this Complaint and should be considered together.

(4) Upon completion of the review, a written report shall be compiled which shall be filed with the Court and served on Plaintiff. The KDOC must seek leave of the Court if it wishes to file certain exhibits or portions of the report under seal or without service on Plaintiff. Statements of all witnesses shall be in affidavit form. Copies of pertinent rules, regulations, official

documents, and, wherever appropriate, the reports of medical or psychiatric examinations shall be included in the written report. Any recordings related to Plaintiff's claims shall also be included.

(5) Authorization is granted to the officials of the KDOC and El Dorado Correctional Facility to interview all witnesses having knowledge of the facts, including Plaintiff.

(6) No answer or motion addressed to the Complaint shall be filed until the *Martinez* Report required herein has been prepared.

(7) Discovery by Plaintiff shall not commence until Plaintiff has received and reviewed Defendants' answers or responses to the Complaint and the report ordered herein. This action is exempted from the requirements imposed under Fed. R. Civ. P. 26(a) and 26(f).

IT IS FURTHER ORDERED that the Clerk of Court shall enter KDOC as an interested party on the docket for the limited purpose of preparing the *Martinez* Report ordered herein. Upon the filing of that report, KDOC may move for termination from this action.

IT IS FURTHER ORDERED that Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 5) is **denied** as moot.

Copies of this order shall be transmitted to Plaintiff, to Defendants, and to the Attorney General for the State of Kansas.

IT IS SO ORDERED.

Dated in Topeka, Kansas, on this 17th day of October, 2018.

s/ Sam A. Crow
SAM A. CROW
U. S. Senior District Judge