

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

DANIEL ROSARIO-GONZALEZ,

Plaintiff,

v.

Case No: 5:16-cv-106-Oc-41PRL

UNITED STATES OF AMERICA,

Defendant.

ORDER

THIS CAUSE is before the Court on Plaintiff's Application to Proceed in District Court Without Prepaying ("Motion to Proceed," Doc. 3). United States Magistrate Judge Philip R. Lammens submitted a Report and Recommendation ("R&R"), in which he recommends that the Motion to Proceed be denied, the Complaint (Doc. 1) be dismissed without prejudice, and Plaintiff's Clarification and Request Motion (Doc. 10) be denied as moot. (R&R, Doc. 12, at 5). Plaintiff timely filed an Objection (Doc. 13).

After an independent *de novo* review of the record, the Court agrees entirely with the analysis set forth in the R&R. As an initial matter, Plaintiff does not object to Judge Lammens' finding that the Complaint fails to provide any factual support for his claims. Plaintiff's failure to make any factual assertions in support of his claims is sufficient grounds justify dismissal, particularly where Plaintiff has already declined to file an amended pleading when given an opportunity to do so.

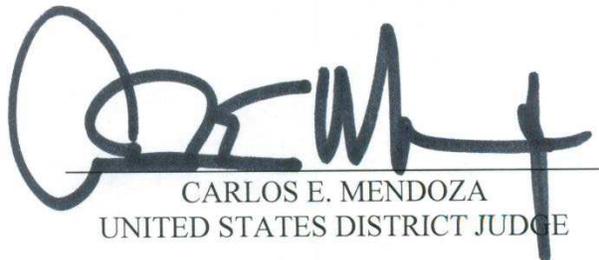
Furthermore, as Judge Lammens noted, it appears this Court is not the proper venue for Plaintiff's claims as Plaintiff does not reside in this district and asserts that the alleged tort occurred in Puerto Rico. *See* 28 U.S.C. § 1402(b). To the extent Plaintiff objects to this finding on the basis

that “he is in the process of relocating to Ocala, Florida” on or about June 22, 2016, (Doc. 13 ¶ 4), Plaintiff’s objection is without merit. Pursuant to § 1402, the Court must look at where Plaintiff is presently residing to determine if venue is proper. Plaintiff has filed no notice of change of address with this Court, and this Court notes that as of September 12, 2016, the date of Plaintiff’s last filing, Plaintiff continued to list an address in Puerto Rico. (*See* Informative Mot., Doc. 19, at 17). Thus, this Court is not the proper venue for Plaintiff’s lawsuit.

Therefore, it is **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation (Doc. 12) is **ADOPTED** and **CONFIRMED** and made a part of this Order.
2. Plaintiff’s Motion to Proceed (Doc. 3) is **DENIED**.
3. Plaintiff’s Clarification and Request Motion (Doc. 10) is **DENIED as moot**.
4. The Complaint (Doc. 1) is **DISMISSED without prejudice**. The Clerk is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on October 14, 2016.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Unrepresented Party