

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DEANDRE DEVINE TYLER,

Plaintiff,

v.

Case No. 8:20-cv-2250-T-60JSS

YONG CHONG, LEFORTH VICENTE
MUNOZ and CARLOS IAN ORTIZ,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on consideration of the report and recommendation of Julie S. Sneed, United States Magistrate Judge, entered on November 2, 2020. (Doc. 6). Judge Sneed recommends Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 2) be denied without prejudice, and that his case be dismissed without prejudice due to Plaintiff's failure to file a complaint.¹

Neither Plaintiff nor Defendants filed an objection to the report and recommendation, and the time to object has expired.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); *Williams v. Wainwright*,

¹ Instead of filing a complaint, Plaintiff filed an affidavit. Even assuming the affidavit could be construed as a complaint, it failed to comply with the Federal Rules of Civil Procedure and contained several deficiencies identified by Judge Sneed in her report and recommendation.

681 F.2d 732 (11th Cir. 1982). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994); *Castro Bobadilla v. Reno*, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), *aff'd*, 28 F.3d 116 (11th Cir. 1994) (table).

Upon due consideration of the record, including Judge Sneed's report and recommendation, the Court adopts the report and recommendation. Consequently, Plaintiff's *in forma pauperis* motion is denied without prejudice. The case is dismissed without prejudice, with leave to file a complaint that complies with the Federal Rules of Civil Procedure and cures the deficiencies identified by Judge Sneed in her report and recommendation. Plaintiff is directed to file his complaint, along with a new motion for leave to proceed *in forma pauperis*, on or before December 8, 2020. Failure to file a complaint as directed will result in this Order becoming a final judgment. See *Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 719-20 (11th Cir. 2020).

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

- (1) Judge Sneed's report and recommendation (Doc. 6) is **AFFIRMED** and **ADOPTED** and **INCORPORATED BY REFERENCE** into this Order for all purposes, including appellate review.
- (2) Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 2) is hereby **DENIED WITHOUT PREJUDICE**.
- (3) This case is **DISMISSED WITHOUT PREJUDICE**, with leave to amend. Plaintiff is directed to file a complaint on or before December 8, 2020, along with a motion to proceed *in forma pauperis*. Failure to file a complaint as directed will result in this Order becoming a final judgment. *See Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 719-20 (11th Cir. 2020).

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 17th day of November, 2020.



TOM BARBER
UNITED STATES DISTRICT JUDGE