IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

YVES JEAN JACQUES MILORD,
 # X62866,

Plaintiff,

vs. **Case No. 4:23cv248-WS-MAF**

DETECTIVE DARRYL TAMASH,
et al.,

Defendants.
_____/

REPORT AND RECOMMENDATION

Plaintiff, proceeding pro se, submitted a civil rights complaint, ECF No. 1, to this Court on June 9, 2023, but did not pay the filing fee for this case or submit an in forma pauperis motion. An Order was entered on June 15, 2023, advising Plaintiff to do one or the other if he wanted to proceed. ECF No. 3. Plaintiff belatedly filed an in forma pauperis motion, ECF No. 4, which was insufficient. Plaintiff was given another opportunity to file a properly supported in forma pauperis motion. ECF No. 5.

Plaintiff has now filed another in forma pauperis motion, ECF No. 7, along with a motion to transfer venue, ECF No. 6. Plaintiff's in forma

pauperis motion, ECF No. 7, appeared to still be insufficient in that it did not include the required inmate account statement was required by 28 U.S.C. § 1915. However, in reviewing Plaintiff's request to transfer, a copy of Plaintiff's inmate Trust Fund Account Statement was filed with that motion. *See* ECF No. 6 at 3. That statement demonstrates Plaintiff has maintained a zero account balance for the prior six months and lacks the resources to pay the filing fee in one lump sum. He has demonstrated entitlement to in forma pauperis status.

Nevertheless, Plaintiff's complaint shows he is incarcerated in Union Correctional Institution, which is in Raiford, Florida, and within the jurisdiction of the United States District Court for the Middle District of Florida. ECF No. 1 at 2. The two named Defendants are detectives with the Orange County Sheriff's Department. *Id.* at 2-3. Orange County, Florida, is also located in the Middle District of Florida. Because a lawsuit should be filed where the events occurred or where the Defendants are located, *see* 28 U.S.C. § 1390, it appears that this case should be transferred to the Middle District of Florida and Plaintiff's motion to transfer venue should be granted.

For simplicity in directing future partial filing fee payments - a necessity when granting a prisoner's in forma pauperis motion pursuant to 28 U.S.C. § 1915(b)(2) - it is also recommended that ruling be deferred on Plaintiff's in forma pauperis motion, ECF No. 7, and the Middle District enter a ruling on the in forma pauperis motion and direct subsequent payments.

When a case is filed in the wrong division or district, the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). It is in the interest of justice that this case be transferred.

RECOMMENDATION

Pursuant to 28 U.S.C. § 1406(a), it is respectfully **RECOMMENDED** that Plaintiff's motion to transfer venue, ECF No. 6, be **GRANTED**, and this case be transferred to the United States District Court for the Middle District of Florida, Orlando Division, for all further proceedings, including ruling on Plaintiff's in forma pauperis motion, ECF No. 7.

IN CHAMBERS at Tallahassee, Florida, on September 27, 2023.

S/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Within fourteen (14) days after being served with a copy of this Report and Recommendation, a party may serve and file specific written objections to these proposed findings and recommendations. Fed. R. Civ. P. 72(b)(2). A copy of the objections shall be served upon all other parties. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b)(2). Any different deadline that may appear on the electronic docket is for the Court's internal use only and does not control. If a party fails to object to the Magistrate Judge's findings or recommendations as to any particular claim or issue contained in this Report and Recommendation, that party waives the right to challenge on appeal the District Court's order based on the unobjected-to factual and legal conclusions. *See* 11th Cir. Rule 3-1; 28 U.S.C. § 636.