

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SAMSON BENDER,

Plaintiff,

v.

Case No. 8:23-cv-02950-KKM-JSS

DONMENICK G. LAZZARA,

Defendant.

ORDER

On January 23, 2024, the Magistrate Judge entered a Report and Recommendation, recommending that Plaintiff Samson Bender's complaint be dismissed and his motion to proceed In Forma Pauperis be denied. *See* Compl. (Doc. 1); IFP (Doc. 2); R&R (Doc. 8). The Clerk mailed a copy of the Report and Recommendation to Bender the same day. Bender's deadline to object to the Magistrate Judge's Report and Recommendation has passed without either party lodging an objection. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 6(d). Considering the record, the Court adopts the Report and Recommendation in part for the reasons stated therein and dismisses Bender's complaint without prejudice. The Court also denies Bender's motion to proceed In Forma Pauperis without prejudice.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's Report and Recommendation. 28 U.S.C. § 636(b)(1). If a party files a timely and specific objection to a finding of fact by a magistrate judge, the district court must conduct a de novo review with respect to that factual issue. *Stokes v. Singletary*, 952 F.2d 1567, 1576 (11th Cir. 1992). The district court 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); *Ashworth v. Glades Cnty. Bd. of Cnty. Comm'rs*, 379 F. Supp. 3d 1244, 1246 (M.D. Fla. 2019) (Steele, J.).

In the absence of any objection and after reviewing the factual allegations and legal conclusions, the Court adopts the Report and Recommendation in part. Bender's complaint fails to allege federal jurisdiction. The complaint also violates the Federal Rules of Civil Procedure because it does not contain sufficient factual support to place Defendant on notice of the claims against him. That said, Bender has adequately divided his claims into separate counts as required by Rule 10(b).

Accordingly, it is **ORDERED**:

1. The Magistrate Judge's Report and Recommendation (Doc. 4) is **ADOPTED in part** and made a part of this Order for all purposes to the extent described above.

2. Bender's Complaint (Doc. 1) is **DISMISSED without prejudice**. Bender is granted leave to file a cognizable amended complaint that complies with the Federal Rules of Civil Procedure by February 26, 2024. If Bender fails to amend the complaint this action will be dismissed without further notice.
3. Bender's Motion to Proceed In Forma Pauperis (Doc. 2) is **DENIED without prejudice**.

ORDERED in Tampa, Florida, on February 12, 2024.


Kathryn Kimball Mizelle
United States District Judge