

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATHAN HOYE,)
)
 Plaintiff,)
)
 vs.) Civil Action No. 2:23-cv-01701
) Judge Nora Barry Fischer
 MR. ELI ZOKAS,)
)
)
 Defendant.)

MEMORANDUM ORDER

On September 14, 2023, pro se Plaintiff Nathan Hoye initiated the above captioned case against Defendant Mr. Eli Zlokas. In accordance with the Magistrate Judges Act, 28 U.S.C. § 636, and the Local Rules of Court, all pretrial matters were referred to United States Magistrate Judge Cynthia Reed Eddy. On October 16, 2023, the Magistrate Judge issued a Report and Recommendation (ECF No. 3) recommending that Plaintiff's Motion for Leave to Proceed *in forma pauperis* be granted (ECF No. 1) and that the Complaint (ECF No. 1-1) be summarily dismissed pursuant to the screening provisions of 28 U.S.C. § 1915(e)(2). Plaintiff was served with the Report and Recommendation at his listed address of record and advised that written objections were due by November 8, 2023. To date, no objections have been filed nor has Plaintiff sought an extension in time in which to do so.

The Court has reviewed the matter and concludes that the Report and Recommendation correctly analyzes the issues and makes a sound recommendation that the claims in the instant complaint should be dismissed for several reasons, including:

- res judicata due to the previous dismissal of two prior suits he filed alleging the same claims against the same Defendant at *Hoye v. Zlokas*, Civ. A. No. 17-0021 (W.D. Pa.) (“Hoye I”) and *Hoye v. Zlokas and Woodruff*, Civ. A. No. 17-0270 (W.D. Pa. (“Hoye II”));
- as frivolous or malicious under § 1915 given Plaintiff’s repetitious filings of the same claims against the same Defendant;
- as time barred given that the events about which Plaintiff complains took place more than 2 years prior to his filing suit; and,
- for lack of diversity jurisdiction under 28 U.S.C. § 1332(a) as there is no basis to find that Zlokas is a state actor and both he and Plaintiff are citizens of Pennsylvania.

(ECF 3 at 6-8). This Court further agrees with the Magistrate Judge’s recommendation that any further amendment would be futile. *See Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 252 (3d Cir. 2007).

Upon consideration of the Complaint, together with the Report and Recommendation, and after undertaking a *de novo* review of the record,

IT IS HEREBY ORDERED that Plaintiff’s Motion for Leave to Proceed in forma pauperis (ECF No. 1) is GRANTED;

IT IS FURTHER ORDERED that the Complaint is DISMISSED with prejudice for failure to state a claim pursuant to the screening provisions of 28 U.S.C. § 1915(e)(2) and leave to amend is DENIED as futile.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 3) dated October 16, 2023, is ADOPTED as the Opinion of the District Court.

IT IS FURTHER ORDERED that the Clerk of Court is ORDERED to mark this case CLOSED; and,

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

IT SO ORDERED this 14th day of November, 2023.

BY THE COURT:

s/Nora Barry Fischer

Nora Barry Fischer
Senior United States District Judge

cc: NATHAN HOYE
2949 North Charles Street
Apartment 303
Pittsburgh, PA 15214
(via U.S. First Class Mail)