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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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THOMAS JAMES ZAJAC,

Plaintiff,

v.

JANE BALKEMA, et. al,

Defendants.

**ORDER ADOPTING AND APPROVING  
REPORT AND RECOMMENDATION  
TO DISMISS CLAIM**

Case No. 2:17-cv-304

Judge Clark Waddoups

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Plaintiff Thomas James Zajac filed a pro se complaint in this action originally in the United States District Court for the Northern District of Illinois. On April 18, 2017, the case was transferred to the District of Utah. Mr. Zajac was allowed to proceed after paying an initial partial filing fee under 28 U.S.C. Section 1915. The case was eventually assigned to Magistrate Judge Evelyn Furse who on November 26, 2018 filed a Report and Recommendation to Dismiss for Failure to Sate a Claim. (ECF No. 20). The Report included notice that any objection must be filed within 14 days as required by 28 U.S.C. §636(b) and Fed. R. Civ. P. 72(b). The court granted Mr. Zajac an extension until February 11, 2019. Mr. Zajac did not file an objection, but on February 12, 2019, he filed what is captioned as a Civil Rights Complaint (42 U.S.C § 1983, §1985). The filing was docketed as an Amended Complaint. The new filing does not address objections to the Report and Recommendation and, with some deletions, appears to largely be a verbatim restatement of the assertions made in the first complaint (ECF 9).

Mr. Zajac previously filed suit pro se under 28 U.S.C. § 2255 with standby counsel seeking to vacate his conviction for crimes associated with a bombing of the Salt Lake City library in 2006. As grounds for relief he asserted (1) prosecutorial misconduct, (2) mishandling of the evidence (3) failure to prove each element of the crime, and (4) ineffective assistance of

counsel. (Case No. 2:12-cv-355, ECF 105). The court held an evidentiary hearing on March 26, 27 and April 1, 2014. After briefing and oral argument, the court issued a 42 page decision analyzing and denying Mr. Zajac's § 2255 claims. Much of Mr. Zajac's complaint in the action cites to the court's decision in the § 2255 case. Mr. Zajac appealed and, in a 21-page decision, the Tenth Circuit Court of Appeals affirmed. (Case No. 2:12-cv- 355, ECF 137). The United States Supreme Court denied Mr. Zajac's petition of a writ of certiorari on October 30, 2017. (Case No. 2:12-cv- 355, ECF 140). Mr. Zajac petitioned the Tenth Circuit to allow him to file a Successive Motion un § 2255. The Tenth Circuit denied that petition on May 13, 2019. (Case No. 2:12-cv- 355, ECF 141). Mr. Zajac's arguments seeking to overturn his conviction have been heard, well considered and repeatedly rejected.

Mr. Zajac did not style his "Amended Complaint" as an objection, and the court can sustain the Report and Recommendation on the ground that no objection was filed. Even accepting the Amended Complaint as an objection, Mr. Zajac's complaint fails. There is nothing in the filing to suggest error in the analysis of conclusion of the Magistrate Judge. For the reasons stated in the Report and Recommendation, Mr. Zajac has failed to allege a cognizable Bivens Action and his claims for ineffective assistance of counsel fail because his counsel were not federal actors. Mr. Zajac's claims also fail as an attempt to repeat the same arguments but avoid the prohibition on successive filings. The court adopts fully the reasoning of the Report and Recommendation and dismisses the Complaint pursuant to 28 U.S.C. § 1915 for failure to state a claim upon which relieve can be granted.

DATED this 25th day of September, 2019.

A handwritten signature in blue ink, appearing to read "Clark Waddoups".

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The Honorable Clark Waddoups  
United States District Court