IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Chris Robert Klein,	)	
	)	Civil Action No. 8:16-cv-00444-JMC
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
United States,	)	
	)	
Defendant.	)	
	)	

Plaintiff brought this action alleging damages under 26 U.S.C. § 7422. This matter is before the court upon review of Magistrate Judge Jacquelyn D. Austin's Report and Recommendation ("Report"), filed on December 15, 2016, recommending that Defendant's motion to dismiss (ECF No. 33) be granted on the grounds that Plaintiff failed to wait the required six-month period under 26 U.S.C. § 6532(a)(1) before filing this action for damages due to alleged unauthorized collection actions by the Internal Revenue Service ("IRS"). The Report details the relevant facts and legal standards on this matter, and this court incorporates the Magistrate Judge's recommendation herein without a recitation.

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court that has no presumptive weight—the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976).

The court reviews *de novo* only those portions of a Magistrate Judge's Report to which specific objections are filed, and it reviews those portions not objected to—including those portions to which only "general and conclusory" objections have been made—for clear error. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*,

718 F.2d 198, 200 (4th Cir. 1983); *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The court may accept, reject, or modify—in whole or in part—the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report "within fourteen (14) days of the date of service" of the Report (ECF No. 33-1). However, Plaintiff filed no objections. In the absence of objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendation. *See Camby*, 718 F.2d at 199. Furthermore, failure to timely file specific written objections to the Report results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

Therefore, after a thorough and careful review of the Report and the record in this case, this court finds the Report provides an accurate summary of the facts and law. The court **ACCEPTS** the Report and Recommendation (ECF No. 33) with the modification that this action be dismissed *without* prejudice. For the reasons articulated by the Magistrate Judge, this court **GRANTS** Defendant's Motion to Dismiss (ECF No. 26), and this action is **DISMISSED** without prejudice.

IT IS SO ORDERED.

United States District Judge

February 16, 2017
Columbia, South Carolina