

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Wayne Ensley,)	Civil Action No. 9:17-3113-BHH
)	
)	
)	
)	ORDER AND OPINION
v.)	
)	
Goodwill Industries of Lower SC,)	
)	
)	
Defendant.)	
_____)	

This matter is before the Court upon Plaintiff’s complaint alleging that his former employer, Goodwill Industries of Lower SC, discriminated against him in violation of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (“ADEA”), and the Fair Labor Standards Act (“FLSA”). Plaintiff also alleges a state law claim for breach of contract. (ECF No. 1 at 4, 8–9.) In accordance with 28 U.S.C. § 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(g) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary determinations. On September 17, 2018, Magistrate Judge Kevin F. McDonald issued a Report and Recommendation (“Report”) outlining the issues and recommending that the Court dismiss Plaintiff’s Title VII and ADEA claims for lack of subject matter jurisdiction, and that Plaintiff’s remaining claims be dismissed *with prejudice* for failure to state a claim. Attached to the Magistrate Judge’s Report was a notice advising Plaintiff of his right to file written objections to the Report within fourteen days of being served with a copy. To date, no objections have been filed.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The

Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Here, because no objections have been filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. After review, the Court finds no error and agrees with the Magistrate Judge’s determination that this action should be dismissed *with prejudice* for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. In addition, the action should be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to comply with a court order. Accordingly, the Court adopts and incorporates the Magistrate Judge’s Report (ECF No. 34) and dismisses this action *with prejudice*.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce Howe Hendricks
United States District Judge

October 19, 2018
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.