

Appendix A

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-1998

SAMUEL T. WHATLEY, II,

Plaintiff - Appellant,

v.

WAFFLE HOUSE, INC.,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at
Charleston. Richard Mark Gergel, District Judge. (2:22-cv-04143-RMG)

Submitted: January 30, 2024

Decided: February 2, 2024

Before KING, AGEE, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Samuel T. Whatley, II, Appellant Pro Se. Andrew Lindemann, LINDEMANN LAW
FIRM, P.A., Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Samuel T. Whatley, II, appeals the district court's order accepting the recommendation of the magistrate judge and granting Defendant Waffle House Inc.'s motion for summary judgment in Whatley's action alleging violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's judgment. *Whatley v. Waffle House, Inc.*, No. 2:22-cv-04143-RMG (D.S.C. Sept. 14, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Samuel T. Whatley, II,

C/A: 2:22-cv-4143-RMG

Plaintiff,

v.

Waffle House, Inc..

ORDER AND OPINION

Defendant.

Before the Court is the Report and Recommendation ("R&R") (Dkt. No. 47) of the Magistrate Judge recommending that the Court grant Defendant's motion for summary judgment and deny Plaintiff's motion for summary judgment. For the reasons set forth below, the Court adopts the R&R as the order of the Court, grants Defendant's motion for summary judgment, and denies Plaintiff's motion for summary judgment.

I. Background and Relevant Facts

Plaintiff brings this action alleging violation of the Fair Labor Standards Act ("FLSA"). Plaintiff alleges he worked one day at "Waffle House Unit #1453" in Summerville, South Carolina, on October 1 and 2, 2022 for nineteen hours. (Dkt. No. 47 at 1). Plaintiff was paid for the time he worked at said Waffle House but takes issue with the time it took Defendant to pay him the agreed upon \$190 for his nineteen hours of work. (*Id.* at 2, 4-6) (noting a check was originally cut for Plaintiff on October 13, 2022, but that a stop payment notice was issued on the check when Plaintiff did not pick it up. Defendant then reissued a check which was cashed by Plaintiff on December 22, 2022); (Dkt. No. 42-2 at 6) (copy of cleared check). Plaintiff believes the delay in payment constitutes a violation of the FLSA.

On September 1, 2023, the Magistrate Judge filed an R&R recommending that Defendant's motion for summary judgment be granted and Plaintiff's motion for summary judgment be denied. (Dkt. No. 47).

Plaintiff filed objections to the R&R. (Dkt. No. 50).

The parties' motions are fully briefed and ripe for disposition.

II. Legal Standards

a. Fed. R. Civ. P. 56

Summary judgment is appropriate if a party "shows that there is no genuine dispute as to any material fact" and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A dispute is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. *See id.* Therefore, summary judgment should be granted "only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987).

"In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities in favor of the nonmoving party." *HealthSouth Rehab. Hosp. v. Am. Nat'l Red Cross*, 101 F.3d 1005, 1008 (4th Cir. 1996). The movant bears the initial burden of demonstrating that there is no genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment must demonstrate that specific, material facts exist that give rise to a genuine issue. *See id.* at 324. Under this standard, "[c]onclusory or speculative allegations do not suffice, nor does a 'mere scintilla of evidence'" in

support of the non-moving party's case. *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002) (quoting *Phillips v. CSX Transp., Inc.*, 190 F.3d 285, 287 (4th Cir. 1999)).

b. Magistrate Judge's Report and Recommendation

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “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.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). Because Plaintiff filed objections to the R&R, the R&R is reviewed *de novo*.

III. Discussion

After a careful, *de novo* review of the record, the Court finds that the Magistrate Judge ably addressed the issues and correctly determined that Defendant's motion for summary judgment should be granted while Plaintiff's should be denied. The Magistrate Judge correctly found that the FLSA does not provide a private cause of action for the delay in payment Plaintiff challenges. *See* (Dkt. No. 47 at 4-5) (noting Plaintiff does not seek damages for unpaid wages or unpaid overtime compensation and that, in any event, there is no record evidence Defendant in fact violated the FLSA); *Trejo v. Ryman Hospitality Properties, Inc.*, 795 F.3d 442, 446 (4th Cir. 2015) (“Section 216(b) provides a cause of action for violations of these two provisions, permitting

employees to seek damages, as relevant here, in ‘the amount of their unpaid minimum wages’ and (in appropriate circumstances) an equal amount of liquidated damages.”); *Id.* (“Thus, the Act requires payment of a minimum wage, 29 U.S.C. § 206(a), and limits the maximum working hours an employee may work without receiving overtime compensation, 29 U.S.C. § 207(a).”). Accordingly, the Court grants Defendant’s motion for summary judgment.

Plaintiff filed objections to the R&R, none of which the Court finds compelling. (Dkt. No. 50). First, Plaintiff alleges Defendant “committed perjury by providing a false affidavit” but provides no evidence calling into question the authenticity of the affidavit nor the facts contained therein. Accordingly, this objection is overruled. (*Id.* at 1, 3). Second, Plaintiff objects Defendant violated various Federal Rules of Civil Procedure and Local Civil Rules by “filing additional exhibits past the discovery time.” The Court overrules this objection as Plaintiff does not indicate what exhibits he is challenging nor put forth evidence that, for example, Plaintiff requested certain information from Defendant in discovery which Defendant did not produce but submitted during summary judgment briefing. Third, Plaintiff objects that Defendant had “OSHA safety violations.” The Court overrules this objection as it is immaterial to the allegations in this case. Fourth, Plaintiff argues Defendant is “gaslighting from failing to provide compensation for the delayal [sic] of pay.” (*Id.* at 4). The Court overrules this objection because, as noted above, the FLSA does not provide a cause of action for such an allegation. Last, the Court overrules the remainder of Plaintiff’s objections as they are either incoherent. (*Id.* at 3) (“Defendant is demanding unpayable fees from the Plaintiff because the whole point of filing suit was about the wages.”), or fail to otherwise challenge specific findings in the R&R relevant to Plaintiff’s claims.

IV. Conclusion

For the forgoing reasons, the Court **ADOPTS** the R&R (Dkt. No. 47) as the Order of the Court, **GRANTS** Defendant's motion for summary judgment (Dkt. No. 42) and **DENIES** Plaintiff's motion for summary judgment (Dkt. No. 39).

AND IT IS SO ORDERED.

s/Richard Mark Gergel
United States District Judge

September 14, 2023
Charleston, South Carolina

UNITED STATES DISTRICT COURT

for the

District of South Carolina

<u>Samuel T. Whatley, II</u>)	
<i>Plaintiff</i>)	
<u>v.</u>)	Civil Action No. 2:22-cv-04143-RMG
<u>Waffle House, Inc.</u>)	
<i>Defendant</i>)	

SUMMARY JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

the plaintiff (name) _____ recover from the defendant (name) _____ the amount of _____ dollars (\$), which includes prejudgment interest at the rate of _____ %, plus postjudgment interest at the rate of _____ %, along with costs.

the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____ recover costs from the plaintiff (name) _____.

other: Summary Judgment is granted as to the Defendant and this action is dismissed.

This action was (check one):

tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

tried by the Honorable _____ presiding, without a jury and the above decision was reached.

decided by the Honorable, Richard M Gergel, United States District Judge, presiding. The Court having adopted the Report and Recommendation set forth by the Honorable Mary Gordon Baker, United States Magistrate Judge.

Date: September 14, 2023



ROBIN L. BLUME, CLERK OF COURT

A handwritten signature in black ink, appearing to read "ROBIN L. BLUME".

Signature of Clerk or Deputy Clerk

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Samuel T. Whatley, II,)	Civil Action No. 2:22-04143-RMG-MGB
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Waffle House, Inc.,)	
)	
Defendant.)	
)	

Plaintiff, proceeding *pro se*, filed this action alleging that Defendant violated the Fair Labor Standards Act (“FLSA”). (Dkt. No. 1.) This matter is now before the Court upon two motions for summary judgment: one filed by Plaintiff, and one filed by Defendant. (Dkt. Nos. 39, 42.) Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2)(g), D.S.C., all pretrial matters in employment discrimination cases are referred to a United States Magistrate Judge for consideration. For the reasons set forth below, the undersigned **RECOMMENDS** that Plaintiff’s Motion for Summary Judgment (Dkt. No. 39) be **DENIED** and Defendant’s Motion for Summary Judgment (Dkt. No. 42) be **GRANTED**.

RELEVANT FACTUAL SUMMARY

The Complaint alleges that Plaintiff worked at “Waffle House Unit #1453” in Summerville, South Carolina on October 1 and 2, 2022 for a total of nineteen (19) hours. (Dkt. No. 1 at 5.)¹ Plaintiff claims that he worked as a “Unit Manager trainee” for those

¹ This Report and Recommendation reflects the pagination assigned by the Court’s automated docketing system.

nineteen (19) hours and was entitled to be paid ten (10) dollars per hour. (*Id.*) Plaintiff claims that he was not paid for his work. (*Id.* at 6.)²

Defendant does not dispute that Plaintiff worked as a “Unit Manager trainee” for nineteen (19) hours on October 1 and 2, 2022. (Dkt. No. 42-1 at 4.) According to Defendant, Plaintiff was being observed during his time as a “Unit Manager trainee” and ultimately “was not offered a management position.” (*Id.* at 5.) However, Defendant asserts that Plaintiff “was paid the agreed upon \$10 per hour for the 19 hours of work.” (*Id.*) Defendant claims that Plaintiff’s \$190 check was issued on October 13, 2022, but Plaintiff “never picked [it] up at the address that was provided by the Plaintiff.” (*Id.*) Thus, Defendant issued a “stop payment” for the check. (*Id.*) Defendant asserts that it later reissued the \$190 check to Plaintiff, “and that check was received and cashed by the Plaintiff on December 22, 2022.” (*Id.*)

PROCEDURAL HISTORY

Plaintiff filed his Complaint on November 18, 2022. (Dkt. No. 1.) On June 20, 2023, he filed a Motion for Summary Judgment. (Dkt. No. 39.) Defendant responded in opposition to Plaintiff’s Motion for Summary Judgment on July 5, 2023. (Dkt. No. 41.) Plaintiff declined to reply to Defendant’s response by the July 12, 2023 deadline. (*Id.*)

On August 11, 2023, Defendant filed its own Motion for Summary Judgment. (Dkt. No. 42.) On August 14, 2023, the Court issued an Order, pursuant to *Roseboro v.*

² The Complaint further notes that “the time clock at the location was not working,” so “employees were writing down times which were not inputted the same by the unit manager at [the] location.” (Dkt. No. 1 at 5.) Plaintiff claims that “[c]orporate and management” were notified about this situation but did not attempt to resolve the problem. (*Id.*) In addition, Plaintiff alleges that the position he applied for was “a salary-based job with a range of \$54,000-\$74,000 yearly as a Unit Manager.” (*Id.*) Plaintiff claims that Defendant’s regional Senior Vice President, Brandon Rogers, “wanted plaintiff to do an hourly job differing to what was originally advertised as a salary-based position and coerced plaintiff to apply for an hourly position.” (*Id.*) However, these allegations are not pertinent to the claim alleged in Plaintiff’s Complaint – violation of the Fair Labor Standards Act. (*See generally id.*)

Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the possible consequences if he failed to respond adequately to Defendant's summary judgment motion. (Dkt. No. 43.) Plaintiff responded to Defendant's summary judgment motion on August 18, 2023. (Dkt. No. 45.) On August 25, 2023, Defendant replied to Plaintiff's response. (Dkt. No. 46.) As such, the Motions before the Court have been fully briefed and are ripe for disposition.

LEGAL STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment "shall" be granted "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Facts are 'material' when they might affect the outcome of the case, and a 'genuine issue' exists when the evidence would allow a reasonable jury to return a verdict for the nonmoving party." *The News & Observer Publ'g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 576 (4th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

In ruling on a motion for summary judgment, "'the nonmoving party's evidence is to be believed, and all justifiable inferences are to be drawn in that party's favor.'" *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999) (quoting *Anderson*, 477 U.S. at 255); *see also Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 123–24 (4th Cir. 1990). Although the Court must "draw all justifiable inferences in favor of the nonmoving party, the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." *Sandlands C & D LLC v. Cty. of Horry*, 737 F.3d 45, 54 (4th Cir. 2013) (citing *Dash v.*

Mayweather, 731 F.3d 303, 311 (4th Cir. 2013)). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson*, 477 U.S. at 248.

Because Plaintiff is representing himself, these standards must be applied while liberally construing his filings in this case. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (referencing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

DISCUSSION

“The FLSA is best understood as the ‘minimum wage/maximum hour law.’” *Trejo v. Ryman Hospitality Properties, Inc.*, 795 F.3d 442, 446 (4th Cir. 2015) (quoting *Monahan v. County of Chesterfield*, 95 F.3d 1263, 1266 (4th Cir.1996)). “The substantive sections of the FLSA, narrowly focusing on minimum wage rates and maximum working hours, bear out its limited purposes.” *Monahan*, 95 F.3d at 1267 (internal quotation marks and citation omitted). “Thus, the Act requires payment of a minimum wage, 29 U.S.C. § 206(a), and limits the maximum working hours an employee may work without receiving overtime compensation, 29 U.S.C. § 207(a).” *Trejo*, 795 F.3d at 446. “Section 216(b) provides a cause of action for violations of these two provisions, permitting employees to seek damages, as relevant here, in ‘the amount of their unpaid minimum wages’ and (in appropriate circumstances) an equal amount of liquidated damages.” *Id.* (quoting 29 U.S.C. § 216(b)).

Here, Plaintiff is not seeking damages for unpaid minimum wages, nor unpaid overtime compensation. (*See generally* Dkt. Nos. 1, 24, 39, 45.) Rather, Plaintiff appears to take issue with the time it took Defendant to pay him the agreed-upon \$190 for his

nineteen (19) hours of work. (*See generally* Dkt. Nos. 1, 24, 39, 45.) As such, Plaintiff does not have a private right of action under Section 216(b). *See Trejo*, 795 F.3d at 446; *see also Monahan*, 95 F.3d at 1284 (rejecting FLSA claim and noting that there is no FLSA violation “[i]f the employee has been properly paid at or above minimum wage for all nonovertime hours”). Defendant is therefore entitled to summary judgment on Plaintiff’s FLSA claim. *See Trejo*, 795 F.3d at 448 (“The FLSA ‘requires payment of minimum wages and overtime wages only,’ and ‘is unavailing where wages do not fall below the statutory minimum and hours do not rise above the overtime threshold.’” (quoting *Nakahata v. New York-Presbyterian Healthcare Sys.*, 723 F.3d 192, 201 (2d Cir. 2013))).

Even assuming Plaintiff had a private right of action under the FLSA, Defendant would still be entitled to summary judgment because the record makes clear that Defendant did not violate the FLSA. (*See generally* Dkt. No. 42-2.) Attached to Defendant’s Motion for Summary Judgment are: (1) an affidavit from Kathy Robinson, Defendant’s payroll manager; (2) a copy of the “stop check” order placed on the first check issued to Plaintiff; and (3) evidence of a check issued to and cashed by Plaintiff in December 2022. (*Id.*) This evidence fully supports Defendant’s contention that Plaintiff was paid the agreed upon \$190 for the nineteen (19) hours he worked for Defendant. (*Id.*) The evidence also supports Defendant’s contention that it promptly issued a check to Plaintiff but “stopped” that check because Plaintiff never picked it up. (*Id.*) The evidence further supports Defendant’s contention that it issued a second check to Plaintiff, which Plaintiff later cashed. (*Id.*) Plaintiff provides no evidence or arguments to dispute Defendant’s contentions and proffered evidence, and certainly no evidence that might

raise a genuine issue of material fact as to whether Defendant violated the FLSA. (See generally Dkt. Nos. 1, 24, 39, 45.)

To the extent Plaintiff attempts to bring a state law claim under the South Carolina Wage Payment Act (“SCWPA”), Defendant is entitled to summary judgment on this claim, as well. The undersigned notes that Plaintiff’s Complaint does not reference the SCWPA; however, Plaintiff has attached exhibits to his Complaint which indicate that he believes he has a cause of action under the SCWPA. (See generally Dkt. No. 1; see also Dkt. No. 1-1 at 10–13.) In light of Plaintiff’s *pro se* status and in an abundance of caution, the undersigned will address the merits of such claim, below.

The section of the SCWPA applicable to Plaintiff’s potential claim, S.C. Code Ann. § 41-10-50, reads: “[w]hen an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days.” As noted, Defendant has provided an affidavit from its payroll manager, Kathy Robinson, in which she attests that: “Samuel T. Whatley, II was originally issued check #2283933 on October 13, 2022; however, that check was returned to Waffle House, Inc. due to Mr. Whatley not having picked his check up at the address he provided to Waffle House, Inc.” (Dkt. No. 42-2 at 1.) Thus, even assuming, *arguendo*, that the Complaint brings an SCWPA claim against Defendant, the evidence demonstrates that Defendant did not violate S.C. Code Ann. § 41-10-50 because Defendant attempted to promptly tender payment to Plaintiff within thirty (30) days of the dates on which Plaintiff worked. (See generally Dkt. No. 42-2.) Again, Plaintiff has presented the Court with no evidence or arguments disputing Ms. Robinson’s affidavit. (See generally Dkt. Nos. 39, 45.)

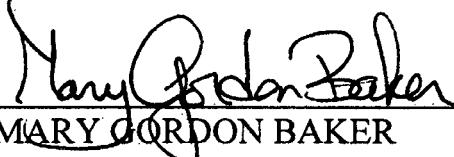
Accordingly, Defendant is entitled to summary judgment on all claims against it. Plaintiff's summary judgment motion (Dkt. No. 39) should be **DENIED** and Defendant's summary judgment motion should be **GRANTED** (Dkt. No. 42).³

CONCLUSION

For the reasons set forth above, the undersigned **RECOMMENDS** that the Court **DENY** Plaintiff's Motion for Summary Judgment (Dkt. No. 39), **GRANT** Defendant's Motion for Summary Judgment (Dkt. No. 42), and **DISMISS** Plaintiff's case in full.

IT IS SO RECOMMENDED.

September 1, 2023
Charleston, South Carolina



MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

³ To the extent Plaintiff attempts to bring a cause of action against Defendant based upon the broken time clock referenced in his Complaint, the record before the Court shows that there is no dispute over the number of hours Plaintiff worked for Defendant. (See generally Dkt. Nos. 39, 42-1, 42-2, 45, 46.) To the extent Plaintiff attempts to bring a cause of action against Defendant based upon Defendant "want[ing] [him] to do an hourly job differing to what was originally advertised," Defendant's briefings and the exhibits attached thereto show that Plaintiff was simply not chosen for the advertised position. (See generally Dkt. Nos. 42-1, 42-2, 46.) Accordingly, Defendant would be entitled to summary judgment on any claims Plaintiff may attempt to assert based on these factual allegations, as well.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** “[I]n 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.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402**

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Am*, 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).

**Additional material
from this filing is
available in the
Clerk's Office.**