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## APPENDIX

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Clarence B. Jenkins Jr.  
945 Wire Rd.  
Neeses, SC 29107  
(803)263-4514  
Upscale81@yahoo.com  
Pro Se Petitioner

Attorney Hayne Hodges  
3700 Forest Drive, Suite 500  
Columbia, South Carolina 29204  
(803)799-9311  
Attorney for Respondents

## INDEX

1. CERTIFICATE OF COUNSEL.....	A1
2. FORM USM 285 BY U.S MARSHA,S OFFICE FOR CASE NO. 3:23-CV-4593.....	A2
3. REPORT AND RECOMMENDATION CASE FOR NO. 3:23-CV-4593.....	A3
4. ORDER CASE NO. FOR CASE NO. 3:23-CV-4593.....	A4
5. DEFENDANT'S ANSWER TO AMENDED CASE NO. 3:23-CV-4593....	A5-A9
6. DEFENDANT'S CERTIFICATION AND STATEMENT FOR CASE NO. 3:23-CV-4593.....	A10
7. SECOND REPORT AND RECOMMENDATION FOR CASE NO. 3:23-CV-4593.....	A11
8. OPINION AND ORDER FOR CASE NO. 3:23-CV-4593.....	A12
9. ORDER U.S.FOURTH COURT OF APPEAL DENIED PETITION.....	A13
10. U.S. EQUAL EMPLOYMENT OPPORTUNI COMMISSION RULE.....	A14

11. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISION CHARGE NO.	
436-2021-00092.....	A15-A17
12. ORDER FOR CASE NO. 3:21-CV-01606-TLW.....	A18-A19
13. U.S. DISTRICT COURT SUMMONS FOR CASE NO. 3:18-CV-1874.....	A20
14. U.S DISTRICT COURT FORM USM 285 BY U.S. MARSHALS FOR CASE NO. 3:18-CV-1874.....	A21
15. A JOB ANNOUNCEMENT INITIATION FROM S.C. DEPARTMENT OF EMPLOYMENT WORKFORCE.....	A21-A23
16. VERIFICATION OF A DOCUMENTED PHONE CALL WITH TOMEKA JONHSON OF SCDEW.....	A24
17. PETITIONER'S PROOF OF SERVICE.....	A25

**UNPUBLISHED****UNITED STATES COURT OF APPEALS  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

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**No. 24-1968**

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CLARENCE B. JENKINS, JR.,

Plaintiff - Appellant,

v.

OFFICE OF SOUTH CAROLINA GOVERNOR; SOUTH CAROLINA DEPARTMENT OF ADMINISTRATION; SOUTH CAROLINA OFFICE OF INSPECTOR GENERAL; SOUTH CAROLINA HUMAN AFFAIRS COMMISSION; SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE; SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; RICHLAND COUNTY, Government; SOUTH CAROLINA SECRETARY OF STATE,

Defendants - Appellees.

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Appeal from the United States District Court for the District of South Carolina, at Columbia. Jacquelyn Denise Austin, District Judge. (3:23-cv-04593-JDA)

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Submitted: January 23, 2025

Decided: January 27, 2025

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Before WILKINSON, WYNN, and THACKER, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Clarence B. Jenkins, Jr., Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Clarence B. Jenkins, Jr., appeals the district court's order accepting the magistrate judge's reports and recommendations and dismissing Jenkins's amended complaint alleging violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e to 2000e-17, and the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §§ 621-634. Jenkins also appeals the district court's order denying his motion for reconsideration. *See Fed. R. Civ. P. 59(e).*

We conclude that the district court correctly granted the South Carolina Department of Employment Workforce's motion for judgment on the pleadings. *See Fed. R. Civ. P. 12(c).* Jenkins's ADEA claim is barred by sovereign immunity. *McCray v. Md. Dep't of Transp.*, 741 F.3d 480, 483 (4th Cir. 2014). And his Title VII claims are not plausible. After being accorded an opportunity to amend his complaint, Jenkins alleged no facts suggesting that race was a motivating factor for—or that his protected activity was a but-for cause of—his nonselection for an interview. *See McCleary-Evans v. Md. Dep't of Transp.*, 780 F.3d 582, 584-86 (4th Cir. 2015) (Title VII pleading standard). We further conclude that the district court correctly dismissed the claims against the remaining Defendants without prejudice and without service of process. Title VII and the ADEA prohibit unlawful employment practices by employers or potential employers, and Jenkins did not allege that he applied for any positions with the remaining Defendants. *See* 29 U.S.C. § 623(a)(1); 42 U.S.C. § 2000e-2(a)(1). Finally, we reject Jenkins's baseless assertion on appeal that the district court judge and the magistrate judge engaged in corruption and other misconduct.

Accordingly, we affirm the district court's judgment. *Jenkins v. Off. of S.C. Governor*, No. 3:23-cv-04593-JDA (D.S.C. Aug. 27 & Oct. 3, 2024). 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*

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

Clarence B. Jenkins, Jr., ) Case No. 3:23-cv-04593-JDA  
 )  
 Plaintiff, )  
 )  
 v. ) **OPINION AND ORDER**  
 )  
 Office of the South Carolina Governor, )  
 South Carolina Department of )  
 Administration, South Carolina Office of )  
 Inspector General, South Carolina )  
 Human Affairs Commission, South )  
 Carolina Department of Employment )  
 Workforce, South Carolina Department )  
 of Public Safety, Richland County )  
 Government, South Carolina Secretary )  
 of State, )  
 )  
 Defendants. )  
 )

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This matter is before the Court on two Reports and Recommendations ("Reports") of the Magistrate Judge; a motion for judgment on the pleadings by Defendant South Carolina Department of Employment Workforce ("SCDEW"); and various motions by Plaintiff, including what he has titled a motion of justification, motion to accept response by Defendants as admission of guilt, motion to file verifications seeking discovery, motion to establish non-compliance, motion establishing deprivation, and motion requesting a jury trial. [Docs. 25; 28; 37; 40; 54; 63; 66; 67; 70.] In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C., this matter was referred to United States Magistrate Paige J. Gossett for pre-trial proceedings.

On November 8, 2023, the Magistrate Judge issued a Report recommending that this case be dismissed without prejudice and without issuance and service of process as to Defendants Office of the South Carolina Governor, South Carolina Department of Administration, South Carolina Office of Inspector General, South Carolina Human Affairs Commission, South Carolina Department of Public Safety, Richland County Government, and South Carolina Secretary of State (collectively, the “Non-Served Defendants”) and that the case proceed only as to SCDEW (the “First Report”). [Doc. 25.] The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the First Report and the serious consequences if he failed to do so. [*Id.* at 6.] On November 27, 2023, Plaintiff filed partial objections to the First Report, objecting to the recommendation that the Non-Served Defendants be dismissed from the case. [Doc. 27.]

On December 11, 2023, Plaintiff filed a motion of justification, seeking “to hold[] all Defendants accountable for [c]ivil [r]ights [v]iolations based on known facts and known evidence,” and on December 28, 2023, he filed a motion to accept response by Defendants as admission of guilt, arguing that SCDEW admitted guilt based on defenses raised in their Answer to the Amended Complaint. [Docs. 28; 37.] SCDEW filed a response in opposition to the motion to accept response as admission of guilt, and Plaintiff filed a reply. [Docs. 45; 48.] On January 5, 2024, SCDEW filed a motion for judgment on the pleadings. [Doc. 40.] Plaintiff filed a response in opposition to the motion for judgment on the pleadings, and SCDEW filed a reply. [Docs. 46; 51.] On February 2, 2024, the Magistrate Judge issued a Report recommending that SCDEW’s motion for judgment on the pleadings be granted and that Plaintiff’s motions of justification and to accept

response as admission of guilt be denied (the “Second Report”). [Doc. 54.] The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Second Report and the serious consequences if they failed to do so. [*Id.* at 8.] Plaintiff filed objections to the Second Report on February 6, 2024, and SCDEW filed a reply on February 9, 2024. [Docs. 59; 60.]

Plaintiff has since filed a motion to file verifications seeking discovery; a motion to establish non-compliance, contending that Defendants were not complying with discovery; a motion establishing deprivation, asserting that he has suffered a deprivation based on the denial of employment opportunities; and a motion requesting a jury trial. [Docs. 63; 66; 67; 70.] All motions are ripe for review.

#### BACKGROUND

In his Amended Complaint, Plaintiff alleges that he received an email from SCDEW on October 27, 2022, inviting him to apply for a Workforce Specialist position in Orangeburg, South Carolina. [Docs. 15 at 8; 15-1 at 1.] The job announcement indicated he should bring his resume and dress professionally. [Docs. 15 at 8; 15-1 at 1.]

Plaintiff went to the Orangeburg South Carolina Ready Work Center on November 2, 2022, with his resume, dressed professionally, and ready to interview. [Doc. 15 at 9.] He asserts he has the required education for the position, relevant work experience, and excellent work performance record. [*Id.*] Nonetheless, he did not receive an interview that day and was told that someone would contact him. [*Id.*] He waited months to hear from someone but never heard from anyone about the position. [*Id.*]

Plaintiff visited the Orangeburg South Carolina Ready Work Center on March 28, 2023, and spoke with a manager about the Workforce Specialist position. [*Id.* at 9–10]

Plaintiff was told to contact the director, and he spoke with the director the next day. [*Id.* at 10.] The director informed Plaintiff that she had not received or seen his resume, that all applications and resumes are first reviewed by the SCDEW human resources office, that the human resources office selects the candidates to be interviewed from their resumes and applications, and that the director then hires a candidate from those who have been selected for an interview. [*Id.*]

Plaintiff alleges he is “still being discriminated [against] by a secret blackballing [e]ffect by [the SCDEW human resources office] to deny [him] job opportunities as before.” [*Id.*] He previously filed a complaint with the United States Equal Employment Opportunity Commission (“EEOC”) in 2011 regarding a “secret blackballing [e]ffect,” and he asserts that he is “still being discriminated and retaliated [against] because of filing prior complaints against several South Carolina State Government Agencies for employment discrimination and retaliation” with the EEOC. [*Id.* at 11.] He also contends he is being discriminated against because he is “an African American, black and a protected class.” [*Id.*]

Finally, Plaintiff alleges that he has been denied job opportunities for years, most recently on July 24, 2023, because SCDEW flagged him as “Barred From Applying” in its online application system. [*Id.* at 11–13.] Plaintiff has notified the following agencies about his being flagged as “Barred From Applying”: the Office of the South Carolina Governor, the South Carolina Department of Administration, the South Carolina Office of Inspector General, the South Carolina Human Affairs Commission, the SCDEW, the South Carolina Department of Public Safety, the Richland County Government, and the South Carolina Secretary of State. [*Id.* at 13.]

Plaintiff filed a discrimination charge against SCDEW with the South Carolina Human Affairs Commission and the EEOC in April 2023 alleging discrimination based on age and race and retaliation. [Docs. 15 at 14–15; 15-1 at 7–8.] The EEOC issued a determination and notice of rights on June 30, 2023, notifying Plaintiff that it would not proceed further with its investigation and that he could file a lawsuit within 90 days of receiving the notice. [Docs. 15 at 15; 15-2 at 1.] Plaintiff then filed this action on September 12, 2023 [Doc. 1], and filed an Amended Complaint on October 17, 2023 [Doc. 15]. The Magistrate Judge has construed the Amended Complaint as raising claims of retaliation and discrimination pursuant to Title VII of the Civil Rights Act (“Title VII”) and the Age Discrimination in Employment Act (“ADEA”). [Doc. 21 at 1–2.]

#### STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo determination of only those portions of the Report that have been specifically objected to, and the Court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). The Court will review the Report only for clear error in the absence of an objection. 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” (internal quotation marks omitted)).

## DISCUSSION

### **The First Report**

In the First Report, the Magistrate Judge recommends that the case be dismissed without prejudice and without issuance and service of process as to the Non-Served Defendants for failure to state a claim upon which relief can be granted. [Doc. 25.] Specifically, the Magistrate Judge concluded that Plaintiff has made no allegations that the Non-Served Defendants discriminated or retaliated against him. [*Id.* at 4–5.] In his objections, Plaintiff argues that he informed many of the Non-Served Defendants about the discrimination he endured based on being classified as “Barred From Applying” and requested that they conduct an independent investigation, but the Non-Served Defendants did nothing. [Doc. 27 at 3–5, 8.]

Title VII and ADEA claims based on failure to hire can be brought only against entities who are Plaintiff’s potential employers. See 42 U.S.C. § 2000e-2(a)(1) (“It shall be an unlawful employment practice for an *employer* to fail or refuse to hire . . . any individual . . . because of such individual’s race, color, religion, sex, or national origin.” (emphasis added)); 29 U.S.C. § 623(a)(1) (“It shall be unlawful for an *employer* to fail or refuse to hire . . . any individual . . . because of such individual’s age.” (emphasis added)); *Jefferies v. UNC Reg’l Physicians Pediatrics*, 320 F. Supp. 3d 757, 760 (M.D.N.C. 2018) (“Title VII . . . authorizes claims against an employer, but not against non-employers or supervisors.”). Although Plaintiff contends that he informed the Non-Served Defendants about SCDEW’s classifying him as “Barred From Applying,” he does not allege that he applied for a position with any of the Non-Served Defendants or that they failed or refused to hire him. Accordingly, Plaintiff’s objections are overruled.

Having conducted a de novo review of the First Report, the Court accepts the First Report, and the Non-Served Defendants are dismissed without prejudice and without the issuance and service of process.

### **The Second Report**

In the Second Report, the Magistrate Judge recommends that SCDEW's motion for judgment on the pleadings be granted and that Plaintiff's motions of justification and to accept response by Defendants as admission of guilt be denied. [Doc. 54.] Specifically, the Magistrate Judge concluded that SCDEW is entitled to sovereign immunity with respect to Plaintiff's ADEA claim and that Plaintiff has failed to state a Title VII claim upon which relief can be granted because the Amended Complaint fails to allege facts showing that race was a motivating factor or that retaliation was a but-for cause of SCDEW's not selecting Plaintiff for a job. [*Id.* at 5–7.] Additionally, because she recommends granting SCDEW's motion for judgment on the pleadings, the Magistrate Judge further recommends denying Plaintiff's motions of justification and to accept response by Defendants as admission of guilt, which address the merits of his claims. [*Id.* at 7 n.4.] In his objections, Plaintiff argues that Defendants do not have sovereign immunity under the Eleventh Amendment; that the case should proceed against all Defendants and not just SCDEW<sup>1</sup>; that he has a right to discover the truth about why he was denied employment opportunities and to determine whether the actions were legitimate, nondiscriminatory, and nonretaliatory; that Defendants violated his Fourteenth Amendment rights; that Defendants violated S.C. Code § 1-13-80; and that because he

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<sup>1</sup> The Court has overruled Plaintiff's objection to the dismissal of the Non-Served Defendants in the previous discussion regarding the First Report.

met or exceeded the job requirements, that leaves only race and retaliation as factors for why he did not receive an interview or job offer.<sup>2</sup> [Doc. 59.]

With respect to Plaintiff's argument that SCDEW is not entitled to sovereign immunity [Doc. 59 at 1–2], he is incorrect. As the Fourth Circuit Court of Appeals has noted, “[s]overeign immunity has not been abrogated for ADEA claims.” *McCray v. Md. Dep’t of Transp.*, 741 F.3d 480, 483 (4th Cir. 2014). Accordingly, the Court overrules this objection.

The Court also overrules Plaintiff's objection to the Second Report's conclusion that Plaintiff has failed to state a Title VII claim upon which relief can be granted because the Amended Complaint fails to allege facts showing that race was a motivating factor or that retaliation was a but-for cause of SCDEW's not selecting Plaintiff for a job. Plaintiff asserts that race and retaliation had to have been factors SCDEW used in deciding not to select him for an interview or job offer because he met or exceeded the requirements for the position. [Doc. 59 at 7.] However, as the Magistrate Judge noted, to state a claim for relief under Title VII, a plaintiff must allege facts that could plausibly show that the defendant discriminated or retaliated against the plaintiff *because of* his race or participation in protected activity. *McCleary-Evans v. Md. Dep’t of Transp.*, 780 F.3d 582, 585 (4th Cir. 2015). In *McCleary-Evans*, where the plaintiff “repeatedly alleged that the [defendant] did not select her because of the relevant decisionmakers’ bias against

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<sup>2</sup> Neither party has objected to the recommendation that Plaintiff's motions of justification and to accept response by Defendants as admission of guilt be denied. Having reviewed those recommendations in the Second Report, the record, and the applicable law, the Court finds no clear error. Thus, the Court accepts the Second Report with respect to the recommendation that Plaintiff's motions of justification and to accept response by Defendants as admission of guilt [Docs. 28; 37] be denied.

African American women,” the Fourth Circuit concluded that the plaintiff’s “naked allegations—a formulaic recitation of the necessary elements—[were] no more than conclusions and therefore [did] not suffice.” *Id.* (internal quotation marks omitted). Plaintiff’s allegations in the Amended Complaint are similarly “too conclusory” and “stop[] short of the line between possibility and plausibility of entitlement to relief.”<sup>3</sup> *Id.* at 586 (internal quotation marks omitted).

With respect to Plaintiff’s arguments that SCDEW violated his Fourteenth Amendment rights and violated S.C. Code § 1-13-80, the Amended Complaint contains no allegations regarding the Fourteenth Amendment or S.C. Code § 1-13-80. [See Doc. 15.] “Plaintiff cannot use his objections to plead new facts not alleged in his complaint.”<sup>4</sup> *Vanzant v. Carolina Ctr. for Occupational Health*, No. 8:14-cv-03725-RBH, 2015 WL 5039302, at \*4 (D.S.C. Aug. 25, 2015).

Having conducted a de novo review of the portions of the Second Report to which Plaintiff specifically objected, the Court accepts the Second Report, grants SCDEW’s motion for judgment on the pleadings, and denies Plaintiff’s motions of justification and to accept response by Defendants as admission of guilt.

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<sup>3</sup> Plaintiff also seems to assert he is entitled to discovery in this case. [Doc. 59 at 4 (arguing that Plaintiff “has a right to discover the TRUTH” and “a right to determine whether actions taken by State of South Carolina [were] legitimate, nondiscriminatory, and nonretaliatory” and noting that Plaintiff has provided interrogatories to SCDEW’s counsel).] However, because the Court has concluded that the Amended Complaint fails to state a claim upon which relief can be granted, Plaintiff is not entitled to discovery. See *Chaudhry v. Mobil Oil Corp.*, 186 F.3d 502, 505 (4th Cir. 1999).

<sup>4</sup> The Court notes that Plaintiff filed a separate document that he titled “Plaintiff’s Reply to Roseboro Order,” in which he “declar[es] that Defendants ha[ve] violated the Fourteenth (14th) Amendment.” [Doc. 58 at 1.] Nonetheless, as noted, the claims before the Court are those alleged in the Amended Complaint, which does not reference the Fourteenth Amendment.

### **Plaintiff's Motions**

As noted, Plaintiff has filed motions to file verifications seeking discovery, to establish non-compliance, establishing deprivation, and requesting jury trial. [Docs. 63; 66; 67; 70.] Because the Court accepts the First Report and Second Report, dismisses the Non-Served Defendants, and grants SCDEW's motion for judgment on the pleadings, thereby terminating this case, Plaintiff's motions to file verifications seeking discovery, to establish non-compliance, establishing deprivation, and requesting jury trial are denied.

### **Admonition to Plaintiff**

In his objections to the Second Report, Plaintiff contends that the Magistrate Judge in this case "is like a STREET WALKER that goes to the highest BIDDER." [Doc. 59 at 1.] This reference has no connection to this case, and Plaintiff appears to have resorted to such name calling because he disagrees with the Magistrate Judge's recommendations in this and other cases. Plaintiff is ADMONISHED against using personally derogatory characterizations of the judges handling his cases. If Plaintiff continues to use this sort of language in documents he submits to the Court, those filings will be stricken from the docket and returned to Plaintiff.

### **CONCLUSION**

Based upon the foregoing, the Court accepts the First Report [Doc. 25], accepts the Second Report [Doc. 54], and incorporates both Reports and Recommendations of the Magistrate Judge by reference. Thus, the Non-Served Defendants are DISMISSED without prejudice and without the issuance and service of process; SCDEW's motion for judgment on the pleadings [Doc. 40] is GRANTED; the claims against SCDEW are

DISMISSED with prejudice; and Plaintiff's motions [Docs. 28; 37; 63; 66; 67; 70] are DENIED.

IT IS SO ORDERED.

s/Jacquelyn D. Austin  
United States District Judge

August 26, 2024  
Columbia, South Carolina

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

Clarence B. Jenkins, Jr.,	)	C/A No. 3:23-4593-SAL-PJG
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Office of the South Carolina Governor; South	)	
Carolina Department of Administration;	)	<b>REPORT AND RECOMMENDATION</b>
South Carolina Office of Inspector General;	)	
South Carolina Human Affairs Commission;	)	
South Carolina Department of Employment	)	
Workforce; South Carolina Department of	)	
Public Safety; Richland County Government;	)	
South Carolina Secretary of State,	)	
	)	
Defendants.	)	
	)	

Plaintiff Clarence B. Jenkins, Jr., proceeding *pro se*, brings this employment action pursuant to the Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e *et seq.*, and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 *et seq.* This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on Defendant South Carolina Department of Employment Workforce’s (“SCDEW’s”) motion for judgment on the pleadings.<sup>1</sup> (ECF No. 40.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Jenkins of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to the defendant’s motion. (ECF No. 42.) Jenkins filed a response in opposition to the

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<sup>1</sup> On November 8, 2023, the court issued a Report and Recommendation recommending that the other defendants in this case be dismissed for failure to state a claim upon which relief can be granted. (ECF No. 25.) That recommendation remains pending.

motion (ECF No. 46) and SCDEW replied (ECF No. 51). Having reviewed the record presented and the applicable law, the court concludes that SCDEW's motion should be granted.

## BACKGROUND

The following allegations are taken as true for purposes of resolving the pending motion. Jenkins received a job announcement on October 27, 2022 by email, indicating that SCDEW was inviting applications for a Workforce Specialist Position at the Orangeburg Ready Work Center. The announcement indicated that interviews would be held on November 2, 2022 and applicants should come dressed professionally with a résumé and meet the staff. Jenkins has prior experience working at the Bamberg Ready Work Center as an intake coordinator, job developer, employment specialist, and assistant director. Jenkins went to the Orangeburg Ready Work Center on November 2 professionally dressed with résumé in hand, but Jenkins was not interviewed. Jenkins waited months to hear from someone at SCDEW about an interview. On March 29, 2023, Jenkins spoke with the work center's director who told Jenkins that she never saw Jenkins's résumé. The director told Jenkins that applications for the position were first reviewed by SCDEW's human resources office and then the director interviewed the candidates chosen by the human resources office.

Jenkins alleges he is "still being discriminated [against] by a secret blackballing affect [sic] by [SCDEW's human resources office] to deny job opportunities as before." (Am. Compl., ECF No. 15 at 10.) Jenkins filed a complaint with the United States Equal Employment Opportunity Commission ("EEOC") against SCDEW in 2011, raising the issue of the "blackballing affect." (Id. at 10-11.) Jenkins claims he is "still being discriminated and retaliated [against] because of filing prior complaints against several South Carolina State Government Agencies for employment discrimination and retaliation with the [EEOC]." (Id. at 11.) Jenkins also alleges he is being

discriminated against because he is “an African American, black and a protected class.” (Id. at 11.) Jenkins further alleges that other state agencies have denied him job opportunities because the online system for applying for jobs at South Carolina state agencies indicates that Jenkins is “barred from applying,” which Jenkins claims is unlawful. (Id. at 11-12.) Jenkins claims SCDEW intentionally flagged him in the online system as “barred from applying” to harm him. (Id. at 12.) In the court’s order authorizing service of this case, the court construed the Amended Complaint as raising claims of retaliation and discrimination pursuant to Title VII and the ADEA.<sup>2</sup> (ECF No. 21.)

## **DISCUSSION**

### **A. Motion for Judgment on the Pleadings Standard**

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, a party may move for judgment on the pleadings after the pleadings are closed. A motion for judgment on the pleadings should be granted when, viewing the facts in the light most favorable to the non-moving party, there remain no genuine issues of material fact, and the case can be decided as a matter of law. Tollison v. B & J Machinery Co., 812 F. Supp. 618, 619 (D.S.C. 1993). In considering a motion for judgment on the pleadings, the court applies the same standard as for motions made pursuant to Rule 12(b)(6). Independence News, Inc. v. City of Charlotte, 568 F.3d 148, 154 (4th Cir. 2009). However, the court may also consider the defendant’s answers. See Massey v. Ojaniit, 759 F.3d 343, 347 (4th Cir. 2014); see also Void v. Orangeburg Cty. Disabilities & Special Needs Bd., Civil Action No. 5:14-cv-02157-JMC, 2015 WL 404247, at \*2 n.1 (D.S.C. Jan. 29, 2015).

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<sup>2</sup> The court gave the parties the opportunity to object to the court’s construction of the claims, but no objection was received.

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of the plaintiff's complaint. Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. Id. When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. Erickson v. Pardus, 551 U.S. 89, 94 (2007). The court “may also consider documents attached to the complaint, see Fed. R. Civ. P. 10(c), as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic.” Philips v. Pitt Cty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009) (citing Blankenship v. Manchin, 471 F.3d 523, 526 n.1 (4th Cir. 2006)).

Further, while the federal court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case, see, e.g., Erickson, 551 U.S. 89, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

**B. SCDEW's Motion**

**1. Sovereign Immunity**

SCDEW argues Jenkins's ADEA claim is barred by South Carolina's sovereign immunity. The court agrees. The ADEA prohibits employers from "fail[ing] or refus[ing] to hire or to discharge any individual or otherwise discriminate against any individual . . . because of such individual's age." 29 U.S.C. § 623(a)(1). Though the ADEA includes state governments in its definition of employers, 29 U.S.C. § 630(b), the United States Supreme Court has concluded that the ADEA did not validly abrogate the States' sovereign immunity from suit as evidenced in the Eleventh Amendment. Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 91 (2000); see also U.S. Const. amd. XI ("The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."). Therefore, SCDEW, a South Carolina state agency, is immune from Jenkins's ADEA claim. See, e.g., Peterson v. Davidson Cty. Cmtv. Coll., 367 F. Supp. 2d 890, 892 (M.D.N.C. 2005) (finding the plaintiff's ADEA claim against a state community college was barred by the state's sovereign immunity).

**2. Failure to State a Claim**

SCDEW argues that Jenkins fails to state a Title VII claim upon which relief can be granted. The court agrees.

Title VII makes it unlawful for an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such

individual's race, color, religion, sex, or national origin.<sup>3</sup> 42 U.S.C. § 2000e-2(a)(1); Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993); Ocheltree v. Scollon Prods. Inc., 335 F.3d 325, 331 (4th Cir. 2003). Title VII also makes it unlawful for an employer to retaliate against an employee for engaging in activity protected by the statute. See 42 U.S.C. § 2000e-3(a). While a Title VII plaintiff need not plead facts establishing a *prima facie* case of discrimination or retaliation to survive a Rule 12 motion, the plaintiff must still allege facts that could plausibly show that the defendant discriminated or retaliated against the plaintiff because of his race. See McCleary-Evans v. Maryland Dep't of Transp., State Highway Admin., 780 F.3d 582, 585 (4th Cir. 2015) (citing Swierkiewicz v. Sorema N. A., 534 U.S. 506, 511 (2002)); see also Univ. of Texas Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 339 (2013) (stating retaliation under Title VII is proven by showing “but-for” causation, whereas Title VII discrimination claims may be proven by showing that race was a motivating factor).

Here, Plaintiff fails to allege any facts that plausibly show that his race was a motivating factor in SCDEW not selecting him for a job or that his prior EEOC charge was a but-for cause of retaliation against him. Jenkins baldly claims he is “still being discriminated and retaliated [against] because of filing prior complaints against several South Carolina State Government Agencies for employment discrimination and retaliation with the [EEOC]. Also because I am an African American, black and a protected class.” (Am. Compl., ECF No. 15 at 11.) But none of

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<sup>3</sup> Though not addressed by the parties, the court notes that it construes Jenkins's discrimination claim as arising out of a failure to hire, rather than a failure to interview, which is arguably not a material adverse change in his employment circumstances sufficient to trigger liability under Title VII. See, e.g., Cook v. Caldera, 45 F. App'x 371, 377 (6th Cir. 2002) (stating that the plaintiff failed to show he was subject to an adverse employment action by asserting that the defendant failed to select him for an interview); Wheeler v. City of Columbus, Miss., 686 F.2d 1144, 1153 (5th Cir. 1982) (stating the plaintiff in a Title VII claim could recover for the defendants discriminatory failure to hire her, but not for failing to interview her).

Jenkins's allegations connects his failure to obtain an interview or position to his race or prior EEOC charge. See Iqbal, 556 U.S. at 678 (stating Federal Rule of Civil Procedure 8 does not require detailed factual allegations, but it requires more than a plain accusation that the defendant unlawfully harmed the plaintiff, devoid of factual support). To the contrary, Jenkins indicates he did not receive an interview because the online system for applying for jobs at South Carolina state agencies indicates that Jenkins is “barred from applying,” and Jenkins makes no allegations that could show he is barred from applying *because of* his race or prior EEOC charge. See, e.g., McCleary-Evans, 780 F.3d at 585-86 (stating that repeated allegations in a pleading that the plaintiff was not hired “because of her race or sex” were merely “‘naked’ allegations—a ‘formulaic recitation’ of the necessary elements—and that they ‘are no more than conclusions’ ” that failed to show a plausibility that the plaintiff was entitled to relief) (quoting Iqbal, 556 U.S. at 67-79). Consequently, Jenkins fails to state a Title VII claim upon which relief can be granted.

#### RECOMMENDATION

Based on the foregoing, the court recommends SCDEW's motion for judgment on the pleadings be granted.<sup>4</sup> (ECF No. 40.)

February 2, 2024  
Columbia, South Carolina

  
Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

*The parties' attention is directed to the important notice on the next page.*

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<sup>4</sup> In light of the court's recommendation, the court further recommends that Jenkins's motions seeking relief on the merits of his case should be denied. (ECF Nos. 28 & 37.)

**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  
901 Richland Street  
Columbia, South Carolina 29201

**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. 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).

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

Clarence B. Jenkins, Jr.,	)	C/A No. 3:23-4593-TLW-PJG
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Office of the South Carolina Governor; South	)	
Carolina Department of Administration;	)	<b>REPORT AND RECOMMENDATION</b>
South Carolina Office of Inspector General;	)	
South Carolina Human Affairs Commission;	)	
South Carolina Department of Employment	)	
Workforce; South Carolina Department of	)	
Public Safety; Richland County Government;	)	
South Carolina Secretary of State,	)	
	)	
Defendants.	)	
	)	

Plaintiff Clarence B. Jenkins, Jr., proceeding *pro se*, brings this employment action pursuant to the Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e *et seq.*, and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 *et seq.* This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for initial review pursuant to 28 U.S.C. § 1915. By order dated October 6, 2023, the court provided Plaintiff the opportunity to file an amended complaint to correct deficiencies identified by the court that would warrant summary dismissal of the Complaint. (ECF No. 12.) Plaintiff filed an Amended Complaint on October 17, 2023. (ECF No. 15.) Having reviewed the Amended Complaint in accordance with applicable law, the court concludes the Amended Complaint still fails to state a claim upon which relief can be granted against all of the defendants except the South Carolina Department of Employment Workforce. Accordingly, this case should be summarily

dismissed without prejudice and without issuance and service of process as to the other defendants.<sup>1</sup>

### **I. Factual and Procedural Background**

In the original complaint, Plaintiff brought this lawsuit seeking damages for “civil rights violations” and “employment discrimination and retaliation” based on “secret blackballing affect [sic] since 2013 or before and event to 2023.” (Compl., ECF No. 1 at 4.) Plaintiff indicated he received an online notice of a job announcement for a Workforce Specialist at the Orangeburg, South Carolina Ready Work Center, which is apparently part of the South Carolina Department of Employment Workforce (“SCDEW”). Plaintiff alleged the job announcement stated that onsite interviews were scheduled for November 2, 2022 for which candidates should bring a resumé and come professionally dressed. Plaintiff indicated he has extensive experience as a Workforce Specialist. Plaintiff alleged he went to the onsite interview on November 2, 2022 professionally dressed and with a resumé but he did not receive an interview. Plaintiff further alleged that after November 2, he spoke with the director of the Ready Work Center in Orangeburg who told Plaintiff that she had not seen Plaintiff’s resumé and she does not see resumés until they are sent to her by SCDEW. Plaintiff claimed that he was discriminated against because he did not receive an interview on November 2.

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<sup>1</sup> In a contemporaneous order, the court authorized the issuance and service of process as to Defendant South Carolina Department of Employment and Workforce.

Plaintiff brought this action pursuant to Title VII, raising claims of discrimination and retaliation.<sup>2</sup> Plaintiff also brought an unspecified claim of civil rights violations pursuant to 42 U.S.C. § 1983.

In the Amended Complaint, Plaintiff dropped the § 1983 claim but added ADEA claims based on discrimination and retaliation. Otherwise, Plaintiff raises roughly the same allegations about not being hired for a position at SCDEW.

## II. Discussion

### A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Amended Complaint. The Amended Complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. This statute allows a district court to dismiss the case upon a finding that the action “is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

To state a claim upon which relief can be granted, the plaintiff must do more than make mere conclusory statements. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rather, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face. Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 570. The reviewing court need only accept as true the complaint’s factual allegations, not its legal conclusions. Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 555.

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<sup>2</sup> In a charge of discrimination filed with the South Carolina Human Affairs Commission, which is attached to the Complaint, Plaintiff raised claims of race and age discrimination and retaliation.

This court is required to liberally construe *pro se* complaints, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for “all civil actions”).

#### **B. Analysis**

The court finds that despite having availed himself of the opportunity to cure the deficiencies previously identified by the court, this case should nonetheless be summarily dismissed as to all of the defendants except for SCDEW for failure to state a claim upon which relief can be granted. As explained in the court’s October 6 order, Plaintiff fails to state a legal claim against the defendants other than SCDEW because he does not make any allegations about them in the body of the Complaint that would plausibly show that they injured him. See Fed. R. Civ. P. 8 (requiring that a pleading contain “a short and plain statement of the claim showing that the pleader is entitled to relief”); Iqbal, 556 U.S. at 678 (stating Federal Rule of Civil Procedure 8 does not require detailed factual allegations, but it requires more than a plain accusation that the defendant unlawfully harmed the plaintiff, devoid of factual support); see also Langford v. Joyner, 62 F.4th 122, 126 (4th Cir. 2023) (“[W]e do not require a complaint to contain detailed factual allegations. But we do require sufficient facts to allow the court to infer liability as to *each* defendant. This is baked into Rule 8’s requirement that the complaint ‘show’ the plaintiff is entitled to relief.”) (internal citations and quotation marks omitted). In the Amended Complaint, Plaintiff raises only Title VII and ADEA employment claims, but Plaintiff makes no allegations

that the defendants other than SCDEW discriminated or retaliated against him. See generally 29 U.S.C. § 623(a)(1) (ADEA); 42 U.S.C. § 2000e-2(a)(1) (Title VII). Nor does Plaintiff allege that he filed a charge of discrimination against the other defendants, a mandatory prerequisite to suit. See 42 U.S.C. § 2000e-5(f)(1)(Title VII); see also Fort Bend County, Texas v. Davis, 587 U.S. \_\_, 139 S. Ct. 1843 (2019). Consequently, Plaintiff fails to state an ADEA or Title VII claim against the defendants other than SCDEW upon which relief can be granted.

### III. Conclusion

In light of the foregoing, the court recommends that this case be dismissed without prejudice and without the issuance and service of process as to Defendants Office of the South Carolina Governor, South Carolina Department of Administration, South Carolina Office of Inspector General, South Carolina Human Affairs Commission, South Carolina Department of Public Safety, Richland County Government, and South Carolina Secretary of State. If this recommendation is adopted, the only remaining defendant in this case would be SCDEW.

November 8, 2023  
Columbia, South Carolina

  
Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

*The parties are directed to note the important information in the attached  
"Notice of Right to File Objections to Report and Recommendation."*

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*AB*

FILED: February 25, 2025

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 24-1968  
(3:23-cv-04593-JDA)

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CLARENCE B. JENKINS, JR.

Plaintiff - Appellant

v.

OFFICE OF SOUTH CAROLINA GOVERNOR; SOUTH CAROLINA  
DEPARTMENT OF ADMINISTRATION; SOUTH CAROLINA OFFICE OF  
INSPECTOR GENERAL; SOUTH CAROLINA HUMAN AFFAIRS  
COMMISSION; SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT  
WORKFORCE; SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY;  
RICHLAND COUNTY, Government; SOUTH CAROLINA SECRETARY OF  
STATE

Defendants - Appellees

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O R D E R

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The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Wynn, and  
Judge Thacker.

For the Court

/s/ Nwamaka Anowi, Clerk

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