IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MICHAEL DOBBS, **Plaintiff,** **v.** **MARTIN MARIETTA MATERIALS, INC.,** **Defendant.**	**CIVIL ACTION FILE** **NO. 1:19-CV-4170-MHC-LTW**

ORDER

This case is before the Court on the Final Report and Recommendation ("R&R") of Magistrate Judge Linda T. Walker [Doc. 91] recommending that Defendant's Motion for Summary Judgment ("Def.'s Mot. for Summ. J.") [Doc. 49] be granted and Defendant's Second Motion for Summary Judgment [Doc. 70] be denied as moot. The Order for service of the R&R [Doc. 92] provided notice that, in accordance with 28 U.S.C. § 636(b)(1), the parties were authorized to file objections within fourteen (14) days of that Order. After receiving an extension of time within which to file his objections, Plaintiff filed his Corrected Objections to the Magistrate Judge's R&R ("Pl.'s Objs.") [Doc. 96]. Thereafter, Defendant filed a Response to Plaintiff's Objections [Doc. 100].

I. STANDARD OF REVIEW

In reviewing a Magistrate Judge's Report and Recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009) (quoting Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988)) (internal quotation marks omitted). Absent objection, the district court judge "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1), and need only satisfy itself that there is no plain error on the face of the record in order to accept the recommendation. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983). Further, "the district court has broad discretion in reviewing a magistrate judge's report and recommendation"—it "does not abuse its discretion by considering an argument that was not presented to the magistrate judge" and "has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge." Williams v. McNeil, 557 F.3d 1287, 1290-92 (11th Cir. 2009).

II. BACKGROUND[1]

Plaintiff Michael Dobbs ("Dobbs"), a sixty-six year old male, initiated the above-styled lawsuit on September 16, 2019, alleging that he was unlawfully discriminated against by his former employer, Defendant Martin Marietta Materials, Inc. ("Martin Marietta"), when he was forced to accept a demotion and transfer to another company. R&R at 1 (citing Compl. [Doc. 1]). Dobbs began work for Martin Marietta in October of 1999 as a plant manager, he was promoted to manager of multiple plants in 2008, and, in 2013, became area manager of five different plants, including the Forsyth Quarry in North Georgia. Id. at 2 (citing Pl.'s Second Add'l MF ¶¶ 1, 4-5); see also Compl. at 1, ¶¶ 12-14.

In June of 2017, Martin Marietta announced its intention to acquire Bluegrass Materials Company ("Bluegrass") which caught the attention of the Antitrust Division of the United States Department of Justice ("DOJ"). R&R at 2

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[1] The salient facts in this case are not disputed and are taken from the parties' statements of undisputed facts which have been admitted or not otherwise properly contested based upon the requirements of the Local Rules of this Court. See R&R at 2-7; see also Def.'s Statement of Material Facts on Limitations as to Which There is no Genuine Issue to be Tried ("Def.'s SMF") [Doc. 49-1]; Pl.'s Resp. to Def.'s Statement of Material Facts ("Pl.'s Resp. to Def.'s SMF") [Doc. 83-1]; Pl.'s Statement of Additional Material Facts in Supp. of his Resp. in Opp'n to Def.'s Second Mot. for Summ. J. ("Pl.'s Second Add'l MF") [Doc. 84-2]; Def.'s Resp. to Pl.'s Statement of Additional Material Facts on Second Mot. for Summ. J. ("Def.'s Resp. to Pl.'s Second Add'l MF") [Doc. 88-1].

(citing Pl.'s Second Add'l MF ¶¶ 6-7). As a part of a settlement Martin Marietta reached with the DOJ to approve the Bluegrass acquisition, Martin Marietta agreed to sell the Forsyth Quarry to MidSouth Paving ("MidSouth"). Id. at 3 (citing Pl.'s Second Add'l MF ¶ 9).

On February 12, 2018, Martin Marietta's Regional President, Joe Reilly ("Reilly"), informed the Forsyth Quarry employees, in Dobbs's presence, that Martin Marietta would be divesting the Forsyth Quarry as part of the Bluegrass acquisition and those employees would then employed by MidSouth. Id. at 3 (citing Pl.'s Second Add'l MF ¶ 23). Reilly then met privately with Dobbs, who wrote a memo of his February 12 meeting with Reilly, indicating that Reilly said the following:

> Department of Justice said that the company needed to keep Forsyth operating. They would have to retain the crew and have management available. Joe [Reilly] said the plant manager will be transferred to engineering and I would be offered to the new buyers to run the operation. I would receive $100,000 as a retention bonus to stay on for two years. I was in shock at the separation. Joe [Reilly] said I would be made whole in the transaction between companies.

Id. at 4 (citing Pl.'s Second Add'l MF ¶ 25). Dobbs understood that this change in employment to work for the new company at the Forsyth Quarry was a demotion, that Reilly told him he would not be rehired by Martin Marietta, and that the reason Martin Marietta was terminating his employment was because of his age:

> Q: [O]n February 12th of 2018, on that date you realized you were being demoted?
> A: That's what Joe told me.
> ***
> Q: On February 12th of 2018, did you think that-- that the reason for your demotion and for your separation from Martin Marietta was based at all on your age?
> A. Yes.
> Q. So as early as February 12th of 2018, you had personally reached the conclusion that Martin Marietta was demoting you and was going to terminate you based on your age, correct?
> A. Correct.

Id. (citing Dep. of Michael Dobbs (Aug. 27, 2020) ("Dobbs Dep.") [Doc. 79] at 92-93). Based on Dobbs's understanding of the proposed demotion to run the Forsyth Quarry for the new company, at some point after the February 12 meeting and before February 26, Dobbs reached out to a law firm to explore the possibility of pursuing a wrongful termination against Martin Marietta. Id. at 5 (citing Dobbs Dep. at 146-48).

Subsequently, Martin Marietta and MidSouth contemplated an alternative proposal where a manager from a Bluegrass plant being acquired by Martin Marietta would go run the Forsyth Quarry for MidSouth and Dobbs would stay employed by Martin Marietta and would manage the newly acquired quarry in Cumming, Georgia. Pl.'s Second Add'l MF ¶¶ 26-27. The DOJ rejected this alternative proposal in a letter dated April 5, 2018. Id. ¶ 29. Reilly again notified Dobbs on April 10, 2018, that his employment with Martin Marietta was ending

and that he was not eligible for rehire. R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶¶ 6-7). Dobbs memorialized the April 10 conversation in contemporaneous notes: "4/10 - Called to office for a meeting with Joe, Curt & Rich. I was told the D.O.J. is requiring me to stay at Forsyth to run the plant. I would receive 100K severance and not be eligible for rehire with Martin." Id. Dobbs's notes are consistent with his deposition testimony:

> Q. So on April 10th, once again, you knew that you were being separated from employment at Martin Marietta, just like you had previously thought that to be the case back in February--on February 12th of 2018, correct?
> A. That's what I was told, yes.
> Q. Okay. So now--so now on April 10, 2018, once again you're thinking to yourself, wait a second, this could be a wrongful termination, correct?
> A. Correct.
> Q. Okay. And was that because you thought they were treating you differently based on your age?
> A. Because they transferred a younger plant manager that should have been there. And there's another [sic] plant managers that could have ran the plant, yes.
> Q. Right. So as of April 10, 2018, you had reached the conclusion that you were being terminated based on your age, correct?
> A. Yes.

Id. (citing Dobbs Dep. at 149).

> Q. [B]ack on April 10th of 2018, you had reached the conclusion that they were treating you poorly in order to favor a younger employee, is that fair?
> A. I felt that.
> Q. Okay. Back on April 10th of 2018?

> A. I felt that in February when they told me they were transferring Wilson Lin out.

Id. at 6 (citing Dobbs Dep. at 180-81); see also Dobbs Dep. at 272-74 (making clear that Dobbs was told during the April 10 meeting that he would not be eligible for rehiring after he left Martin Marietta's employ).

On October 22, 2018, Dobbs filed his first charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging discrimination based on age and retaliation. Id. (citing Charge of Discrimination [Doc. 49-2]). Dobbs alleged in the Charge of Discrimination that in February of 2018 Martin Marietta "claimed that employees at [the Forsyth Quarry] location could not transfer to another location to remain with the company, but [Martin Marietta] permitted Wilson [Lin], who was the Plant Manager subordinate to [Dobbs], and two other younger employees with qualifications inferior to [Dobbs's], to transfer to another location to preserve their jobs." Id.

Dobbs filed the above-styled lawsuit on September 16, 2019, asserting two claims pursuant to the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq*. Compl. ¶¶ 57-73. Martin Marietta moved for summary judgment on Dobbs's ADEA discrimination claim (Count I), arguing that it is time-barred because Dobbs failed to file a complaint with the EEOC within 180 days of receiving notice of the adverse employment decision. Def.'s Mot. for

Summ. J. at 6-8. Martin Marietta moved for summary judgment on Dobbs's ADEA retaliation claim (Count II), arguing that it is temporally impossible. Id. at 8-9. The Magistrate Judge agreed with Martin Marietta's motion on both counts, concluding that Dobbs's ADEA claim is time-barred "[b]ecause Plaintiff did not file an EEOC charge within the limitations period set forth by the ADEA and he has not pointed to facts which would permit a reasonably [sic] jury to find that the limitations period should be equitably tolled." R&R at 18. With regard to Dobbs's retaliation claim, the Magistrate Judge found that Dobbs's complaints of age discrimination came months after Martin Marietta announced its decision to terminate Dobbs's employment, thereby making it impossible to show that the termination decision was causally connected to any protected activity. Id. at 21.

III. DOBBS'S OBJECTIONS

Dobbs argues that the Magistrate Judge erred by: (1) failing to consider evidence that the notice of adverse action given to Dobbs on Feb. 10, 2018, was equivocal and insufficient to trigger the 180-day period; (2) ruling that Dobbs failed to cite record evidence supporting the position that Martin Marietta promised to make Dobbs whole during the April 10 meeting; (3) misapplying Sturniolo v. Sheaffer, Eaton, Inc., 15 F.3d 1023 (11th Cir. 1994); (4) not properly considering controlling precedent in ruling on Dobbs's equitable estoppel argument; and (5)

erroneously finding that the retaliation claim was temporally impossible. Pl.'s Objs. at 11-25. The Court will consider Dobbs's arguments *seriatim*.

A. The Magistrate Judge Did Not Err in Concluding that Dobbs Had Unequivocal Notice of an Adverse Employment Action by April 10, 2018.

Dobbs argues that the Magistrate Judge erred by "concluding that on February 12, 2018 Mr. Dobbs received 'unequivocal notice' of adverse employment action" because there was evidence in the record that Martin Marietta reversed course about firing him after the February 12 meeting. Pl.'s Objs. at 11-12. Dobbs cites to his handwritten notes memorializing a conversation he had with Reilly on February 26 in which Reilly told Dobbs that MidSouth did not want to hire him and contends that Dobbs's "understanding from February 26, until April 10, 2018, was that he was keeping his job." Id. at 12 (citing Dobbs's hand-written diary notes [Doc. 79-2] at 4-5).

Dobbs's argument fails because it is based upon an erroneous characterization of the Magistrate Judge's R&R. The Magistrate Judge did not rely exclusively on the February 12 date as the date Dobbs received "unequivocal notice" of an adverse employment action.

> Plaintiff Dobbs repeatedly, consistently, and unambiguously testified that as early as February 12, 2018, and no later than April 10, 2018, he believed that Defendant Martin Marietta was subjecting him to discrimination based on his age. On these dates, Defendant informed

> Plaintiff that the company had made the decision to terminate his employment and that he was not eligible for rehire.

R&R at 15 (emphasis added). Instead, the Magistrate Judge found that "as early as" February 12, but "no later than" April 10, 2018, Dobbs unequivocally was on notice of the adverse employment action, and the R&R makes clear that it calculates the 180 days from the latter date:

> Plaintiff Dobbs consistently testified that as early as February 12, 2018, and no later than April 10, 2018, he believed that Defendant Martin Marietta made the decision to terminate his employment on the basis of his age. Given Plaintiff's own unambiguous testimony, a reasonable factfinder could not conclude that Plaintiff did not have facts to support his age discrimination claim until after April 10, 2018. Despite Plaintiffs belief on February 12 and April 10, 2018, that Defendant was subjecting him to age discrimination, Plaintiff did not file an EEOC charge until October 22, 2018, two weeks after the 180-day deadline passed.

R&R at 17-18 (emphasis added); see also id. at 17 n.3 ("One-hundred and eighty days after April 10, 2018 was October 7, 2018, but this date was a Sunday.") (emphasis added).

A plain reading of the R&R reveals that the Magistrate Judge based her ruling that Dobbs failed to file a charge of discrimination within 180 days of having unequivocal notice of the adverse employment action as of the April 10, 2018 date, not the February 12, 2018 date. Accordingly, Dobbs's objection is **OVERRULED**.

B. The Magistrate Judge Correctly Viewed the Evidence Presented Regarding the April 10, 2018, Notice of Adverse Employment Action.

In response to Martin Marietta's Motion for Summary Judgment, Dobbs argued that he had "no notice of tangible adverse action [on April 10, 2018] if, at the same time of this notice of termination, he was told he would be made whole by immediately having another job at the same salary, and be paid out his entire pension and stock." Pl.'s Resp. in Opp'n to Def.'s First Mot. for Summ. J. [Doc. 83] at 13. The Magistrate Judge acknowledged this argument, among others, and indicated in a footnote that Dobbs did not offer any citation to the record in support of this argument. R&R at 11-12, n.1. Dobbs argues that the Magistrate Judge's omission of this evidence is "unjust and a patent violation of due process," that Dobbs made three record citations supporting this argument and that "such evidence is critical here in demonstrating and explaining the reasonable belief on Mr. Dobbs' part that while he was forced to change employers, an EEOC charge was premature until Martin Marietta made clear it would not keep its word of making him whole." Pl.'s Objs. at 13-15. Dobbs's objection is flawed for two reasons: (1) the citations to the record do not support the proposition that Dobbs was told that he would be "made whole" contemporaneously with the April 10, 2018, meeting with Reilly, and (2) the evidence cited by Dobbs does not create a

genuine disputed issue of material fact that, as of April 10, 2018, Dobbs was given unequivocal notice of an adverse employment action.

Dobbs has not cited any evidence that supports the proposition that Martin Marietta told him on or around April 10, 2018, that he would be "made whole." The first cite Dobbs makes is to his diary entry of February 12 and 13, 2018, in which Dobbs notes that Reilly told him that "I would be made whole in the transition between the companies." Pl.'s Objs. at 13 (citing Dobbs's hand-written diary notes at 1-2). Although this evidence does support the proposition that Martin Marietta told Dobbs he would be "made whole," the conversation occurred in February of 2018, and was not contemporaneous with the April 10, 2018 meeting between Dobbs and Reilly.

Dobbs next cites his deposition testimony in which he confirms that he was investigating how Martin Marietta was going to make him whole:

> Q. Okay. Okay. And so when you were asking yourself -- so after Joe Reilly said to you, we want to figure out how to make you whole based on your requirement that you go to Midsouth with Forsyth quarry, there are only two items that you were investigating. One is the impact on your pension and two is the impact on your stock; is that correct?
> A. Because I didn't know what – at that point what Midsouth was offering, correct.

See id. at 13-14 (citing Dobbs Dep. at 122). This colloquy in Dobbs's deposition dealt with the February 16, 2018, entry in Dobbs's diary in which he wrote that he

spoke to his financial advisor: "talked to Carol Jakavoch about losing $1,000 a month in pension [benefits]" and that he "should get the vesting on this stock now." See Dobbs Dep. at 118 (referencing Dobbs's hand-written diary notes entry from February 4, 2018). Again, viewed in a light most favorable to Dobbs, this evidence relates to communications made to him in February of 2018 and cannot support the proposition that he was told, contemporaneous with the April 10, 2018, meeting between Dobbs and Reilly, that he would be made whole.

The final record cite that Dobbs contends supports his position is an e-mail Dobbs wrote to Reilly on April 24, 2018, in which he states "[a]ll along through the divestiture, I was told that Martin Marietta would be making me whole." Pl.'s Objs. at 14 (citing E-mail from Mike Dobbs to Joe Reilly (Apr. 24, 2018) [Doc. 55-3]). This e-mail deals with Dobbs's calculation of the financial impact he would suffer by losing by losing his pension with Martin Marietta, not whether a representation was made by Reilly to Dobbs at the April 10, 2018, meeting concerning being "made whole." Moreover, the e-mail Dobbs cites goes on to emphasize the fact that Dobbs understood that going from a position with Martin Marietta, where he was area manager of five plants, to a position with another company, where he was manager of one plant, was a demotion: "I am losing quite a bit by going with Old Castle taking over besides being demoted to plant

manager." E-mail from Mike Dobbs to Joe Reilly (Apr. 24, 2018). This sentence, which was not cited by Dobbs, makes clear that, apart from whether Dobbs was under the impression that he going to be "made whole" financially in terms of losing his pension, Dobbs viewed the termination from Martin Marietta as a demotion and an adverse employment action.

None of the evidence presented by Dobbs creates a genuine disputed issue of material fact as to whether Dobbs was told contemporaneously with the April 10, 2018, meeting with Reilly that he would be made whole. More importantly, none of the evidence presented by Dobbs, viewed in a light most favorable to Dobbs, creates a genuine disputed issue of material fact that Dobbs was on notice as of April 10, 2018, of Martin Marietta's adverse employment action against him. The Court finds that the Magistrate Judge correctly found Dobbs had notice of Martin Marietta's decision to terminate his employment and not re-hire him as of April 10, 2018:

> Plaintiff Dobbs repeatedly, consistently, and unambiguously testified that as early as February 12, 2018, and no later than April 10, 2018, he believed that Defendant Martin Marietta was subjecting him to discrimination based on his age. On these dates, Defendant informed Plaintiff that the company had made the decision to terminate his employment and that he was not eligible for rehire.

R&R at 15. Accordingly, Dobbs's objection is **OVERRULED**.

C. The Magistrate Judge Correctly Applied the Law in Concluding that Dobbs Had Notice of an Adverse Employment Action on April 10, 2018.

Dobbs argues that the Magistrate Judge misapplied Stuniolo, in concluding that Dobbs had notice of an adverse employment decision on April 10, 2018. Pl.'s Objs. at 15-20 (citing Sturniolo, 15 F.3d at 1025).

The Magistrate Judge cited Sturniolo three times in the R&R:

> "It is not necessary for a plaintiff to know all the facts that support his claim in order to file a claim." Sturniolo, 15 F,3d at 1025 (citation omitted). "[A] plaintiff who is aware that [he] is being replaced in a position [he] believes [he] is able to handle by a person outside the protected age group knows enough to support filing a claim." Id.
> ***
> As previously noted, "a limitations period does not start to run until the facts which would support a charge of discrimination are apparent or should be apparent to a person with a reasonably prudent regard for his rights." Sturniolo, 15 F.3d at 1025.
> ***
> In summary, Eleventh Circuit caselaw holds that the limitations period begins to run when "the facts which would support a charge of discrimination are apparent or should be apparent to a person with a reasonably prudent regard for his rights." Sturniolo, 15 F.3d at 1025.

R&R at 12-13, 17. Applying these legal principles, the Magistrate Judge concluded:

> Plaintiff Dobbs consistently testified that as early as February 12, 2018, and no later than April 10, 2018, he believed that Defendant Martin Marietta made the decision to terminate his employment on the basis of his age. Given Plaintiff's own unambiguous testimony, a reasonable factfinder could not conclude that Plaintiff did not have facts to support his age discrimination claim until after April 10, 2018. Despite

> Plaintiff's belief on February 12 and April 10, 2018, that Defendant was subjecting him to age discrimination, Plaintiff did not file an EEOC charge until October 22, 2018, two weeks after the 180-day deadline passed.

R&R at 17-18 (relying, *inter alia*, on Dobbs's repeated testimony that he believed, as early as February 12, 2018, and no later than April 10, 2018, that Martin Marietta had made a decision to terminate him based on his age).

Dobbs first argues that the Magistrate Judge erred in applying Sturniolo because she "restrictively applied that case to the earliest possible date that the plaintiff learned of just the potential adverse action," February 12, 2018. Pl.'s Objs. at 17. Dobbs is mistaken. As discussed above in Section III(A), the Magistrate Judge did not rely exclusively on the February 12 date as the date Dobbs received "unequivocal notice" of an adverse employment action, but instead found that Dobbs had notice "as early as" February 12, but "no later than" April 10, 2018.

Second, Dobbs contends that the facts of Sturniolo are distinguishable from the present case and asserts that Cocke v. Merrill Lynch & Co., Inc., 817 F.2d 1559 (11th Cir. 1987), is more applicable. Pl.'s Objs. at 17-18. Cocke is irrelevant in the context of the determination as to when Dobbs had unequivocal notice of the adverse employment action to trigger the 180-day period because Cocke dealt exclusively with the application of equitable tolling to suspend the limitations

period. See Cocke, 817 F.2d at 1561 ("[T]he Court holds that while the employer is actively trying to find a position within the company for the employee, the 180–day filing period of section 626(d)(1) is equitably tolled until such time as it is or should be apparent to an employee with a reasonably prudent regard for his rights that the employer has ceased to actively pursue such a position.").

Finally, Dobbs asserts that the individual he identified as a comparator who was more favorably treated, Wilson Lin ("Lin"), did not ultimately replace Dobbs and that the "Magistrate Judge's characterization of Lin as a 'replacement' that would have supplied Dobbs with the 'apparent' basis to file a charge was a factual and legal error." Pl.'s Objs. at 18-19. Dobbs's claim of age discrimination is based on his allegation that his employment was terminated by Martin Marietta while a younger and less qualified employee was treated more favorably and allowed to remain employed by Martin Marietta. See Compl. ¶ 62 ("Defendant forced Mr. Dobbs to train his substantially younger replacement, Wilson Lin, and allowed Mr. Lin to retain his job as a plant manager after the Forsyth Quarry divestiture occurred, while refusing to allow Mr. Dobbs to continue working as Area Manager over the four other plants he managed that were unaffected by the Forsyth Quarry divestiture and DOJ settlement."); see also Charge of Discrimination at V ("In approximately February 2018, the U.S. Department of

Justice initiated a purchase and divestiture from Respondent of Respondent's most profitable location, which I managed. Respondent claimed employees at this location could not transfer to another location to remain with the company, but it permitted Wilson, who was the Plant Manager subordinate to me, and two other younger employees with qualifications inferior to mine, to transfer to another location to preserve their jobs.").

Consequently, the gravamen of Dobbs's lawsuit is Martin Marietta's decision to terminate Dobbs and to allow Lin to remain its employee. The Magistrate Judge correctly found that Dobbs had notice of this decision as early as February 12, but no later than April 10, 2018. The record evidence clearly supports this conclusion:

> Q. [B]ack on April 10th of 2018, you had reached the conclusion that they were treating you poorly in order to favor a younger employee, is that fair?
> A. I felt that.
> Q. Okay. Back on April 10th of 2018?
> A. I felt that in February when they told me they were transferring Wilson Lin out.

Dobbs Dep. at 180-81. Accordingly, Dobbs's objection is **OVERRULED**.

D. The Magistrate Judge Correctly Applied Controlling Authority Regarding Dobbs's Equitable Tolling Argument.

Dobbs argues that the Magistrate Judge did not properly consider controlling authority in considering Dobbs's equitable estoppel argument. Pl.'s Objs. at 20-23.

Specifically, Dobbs cites to Robinson v. Jojanns, 147 F. App'x 922 (11th Cir. 2005), for the proposition that "[e]quitable tolling applies when the defendant misleads plaintiff into allowing the statutory period to lapse, when plaintiff has no reasonable way of discovering the wrong perpetrated against him, or when plaintiff files a technically defective pleading and in all other respects acts with the proper diligence which statutes of limitations were intended to insure." Id. at 22 (quoting Robinson, 147 F. App'x at 924). Dobbs argues that because Martin Marietta lied to him by claiming that it had no choice but to fire him as a condition to the DOJ's approval of Martin Marietta's acquisition, "the Court can reasonably infer, and a jury could find, that Mr. Dobbs would not have known he had an age discrimination claim until he learned that Defendant had some volition in the matter." Id. at 22-23.

Dobbs's argument is belied by the undisputed evidence in this case, including his own testimony. As early as February 12, 2018, and no later than April 10, 2018, Dobbs believed that Martin Marietta was subjecting him to discrimination based on his age. In other words, Dobbs's argument that the 180-day period should be tolled because he was deceived is precluded by his undisputed testimony that he knew he was being discriminated against because of his age. The Magistrate Judge correctly found that Dobbs failed to carry his

burden to prove that equitable tolling is appropriate because he was not prevented from obtaining "vital information bearing on the existence of his claim;" in fact, based on the undisputed facts in this case, Dobbs believed that, as of April 10, 2018, he was being discriminated against based on his age. R&R at 10-11. Accordingly, Dobbs's objection is **OVERRULED**.

E. The Magistrate Judge Correctly Concluded that Dobbs's Retaliation Claim is Temporally Impossible

Dobbs argues that the Magistrate Judge erroneously found that his retaliation claim was temporally impossible. Pl.'s Objs. at 23-25. Specifically, Dobbs argues that "a reasonable jury could find that Defendant determined not to rehire Mr. Dobbs in retaliation for his filing of the EEOC charge and this suit, including after Mr. Dobbs notified Defendant that the DOJ was no barrier to his rehire." Id. at 25.

This exact argument was made to the Magistrate Judge, who correctly rejected it:

> Plaintiff is unable to establish a prima facie case of retaliation under the ADEA because he cannot show that any protected activity was causally related to his termination. Plaintiff alleges in his Complaint that he engaged in protected expression when he filed his EEOC charge alleging age discrimination (and retaliation) on October 22, 2018. [Doc, 1 at 20; Doc, 49-2, Ex. 7]. Plaintiff also asserts in his response brief that he "expressed a concern that Defendant was discriminating against him based on his age on August 23, 2018, to Defendant's Chief Human Resources Officer and General Counsel." [Doc, 83 at 22]. The deficiency in Plaintiff's argument is that both of these complaints of

> alleged discrimination occurred after Defendant made the decision to terminate Plaintiff's employment.

R&R at 19-20. The Magistrate Judge notes the undisputed evidence that Dobbs was told about Martin Marietta's decisions to (1) terminate his employment and (2) that he would not be rehired on February 12, 2018 and April 10, 2018. Id. The Magistrate Judge then correctly concluded that "Plaintiff is unable to show that the termination decision was causally connected to any of his protected activity" because any such protected activity (complaints of discrimination in August and October of 2018) occurred months after Martin Marietta's decision to fire and not rehire him. Id. at 21. Accordingly, Dobbs's objection is **OVERRULED**.

IV. CONCLUSION

Therefore, after consideration of Dobbs's objections and a de novo review of the record, it is hereby **ORDERED** that Plaintiff's Corrected Objections to the Magistrate Judge's R&R ("Pl.'s Objs.") [Doc. 96] are **OVERRULED**. The Court **APPROVES AND ADOPTS** the Final Report and Recommendation [Doc. 91] as the Opinion and Order of this Court. It is hereby **ORDERED** that Defendant's Motion for Summary Judgment [Doc. 49] is **GRANTED**, and that judgment be entered in favor of Defendant Martin Marietta Materials, Inc.

It is further **ORDERED** that Defendant's Second Motion for Summary Judgment [Doc. 70] is **DENIED AS MOOT**.

The Clerk is **DIRECTED** to close this file.

IT IS SO ORDERED this 13th day of September, 2021.

Mark H. Cohen

MARK H. COHEN
United States District Judge