

APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12083

Non-Argument Calendar

CAMERON M. THIERRY,

Plaintiff-Appellant,

versus

THE HONEY POT COMPANY (DE), LLC,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-04414-MHC

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Cameron Thierry, proceeding *pro se*, appeals the district court's dismissal of his complaint against The Honey Pot Company (DE), LLC ("Honey Pot") as barred by the statute of limitations and the district court's denial of his motion for reconsideration. After careful consideration, we affirm.

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

On November 3, 2022, Thierry, proceeding *pro se*, sued Honey Pot, alleging that it had violated an oral contract it had entered into with him. Thierry's complaint invoked the diversity jurisdiction of the district court, 28 U.S.C. § 1332, and he alleged that: (i) he was a Wisconsin citizen; (ii) Honey Pot was incorporated in Delaware with a principal place of business in Georgia; and (iii) his suit was seeking \$327,000 in damages. Later, Thierry moved to amend his complaint. The district court granted the motion, but ordered Thierry to show why his suit should not be dismissed for lack of subject-matter jurisdiction because he had not listed the citizenship of all members of Honey Pot, a limited liability corporation.

Thierry filed a "First Amended Complaint", alleging as follows: Thierry was a co-chief financial officer ("CFO") of Honey Pot

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from January 8, 2018, until “on or about June 29, 2018.”¹ Honey Pot’s other co-CFO was Simon Gray. Thierry and Gray agreed to begin providing co-CFO services without payment until Honey Pot received funds from a “\$3 million ‘life changing’ investor . . . via a bridge loan Honey Pot expected to receive within months.” Honey Pot promised that, after it received the full \$3 million in funding, it would: (1) adequately compensate Thierry for all services he rendered; (2) offer Thierry full-time employment; and (3) award Thierry equity in Honey Pot. When Honey Pot made its first payment to Thierry on March 2, 2018, it orally agreed to amend the parties’ agreement to adjust his co-CFO revenue share from 35% to 50% because of his contributions to the company. Over six months, Thierry rendered invaluable services to Honey Pot. During that time, Honey Pot paid Thierry only \$9,500.

Honey Pot continued to pay Gray “through at least June 29, 2018,” giving Thierry the impression that he still was sharing 50% of Honey Pot’s revenues with Gray and that they both would be made whole together later. Even so, Gray had been hired by, and awarded equity in, Honey Pot in May 2018. Thierry relied on Honey Pot’s representations, passing on multiple employment opportunities and exhausting his savings. Thierry alleged that Honey Pot had fraudulently induced him to perform services by stating

¹ When reviewing the grant of a motion to dismiss, we accept all factual allegations in the complaint as true and construe the complaint in the light most favorable to the plaintiff. *United States v. Henco Holding Corp.*, 985 F.3d 1290, 1296 (11th Cir. 2021).

that he would become a full-time employee—with an annual salary of \$60,000 and 3.99% equity in the company—once a \$3 million investor was secured. Moreover, Thierry alleged he was “instrumental” to Honey Pot’s success while he worked there and was invited to attend meetings as part of the Honey Pot “team.”

However, Honey Pot reneged on all of its promises once an investor was secured. On July 5, 2018, Gray communicated that he was having a final conversation with an investor regarding Thierry’s compensation and equity share. Gray called Thierry on July 6, 2018, made him a \$6,000 offer for the services he had rendered, and stated that Thierry had not contributed to the \$3 million investor funding. Thierry refused the \$6,000 offer, and Gray said he would have further conversations with the investor and Honey Pot’s chief executive officer about a new offer for Thierry to consider. On July 7, 2018, Thierry no longer had access to Honey Pot’s payroll administration account, and his Honey Pot email password had been changed.

Thierry’s amended complaint brought five counts: (1) “Breach of Contract, Quantum Meruit”; (2) “Promissory and Equitable Estoppel”; (3) Fraud; (4) Unjust Enrichment; and (5) “Attorneys’ Fees and Expenses pursuant to O.C.G.A. § 13-1-11.” It also noted the statutes of limitations for his claims were impacted by the suspension of filing deadlines because of COVID-19 from the Supreme Court of Georgia from March 14, 2020, to July 14, 2020. He attached numerous exhibits to his amended complaint.

Honey Pot moved to dismiss Thierry's amended complaint, arguing, as relevant, that Thierry had not properly pled diversity jurisdiction and that Thierry's claims were barred by the statute of limitations. As to the statute of limitations point, Honey Pot argued that Georgia law imposed a four-year statute of limitations on Counts 1 through 4. It contended that the breach of contract claim accrued on the day the contract was entered into, in January 2018, beyond the four-year statute of limitations. However, even if the claim accrued when Honey Pot offered Gray employment and not Thierry, that was in May 2018, also beyond the four-year statute of limitations. It next argued that Thierry's remaining claims—for *quantum meruit*, promissory and equitable estoppel, and unjust enrichment—were based on the same negotiations and therefore they had accrued at the same time and were barred by the statute of limitations. It also argued that Thierry's attorneys' fees claim failed because he had no meritorious underlying claims which were not barred by the statute of limitations.

Thierry opposed the motion to dismiss. He argued, as relevant, that his cause of action accrued on July 7, 2018, when Honey Pot breached its contractual obligations with him by failing to hire him at that point. Thierry also submitted additional filings relating to the subject matter jurisdiction issue, wherein he sought information about the citizenship of Honey Pot's members. The district court first denied Thierry's requests for discovery but granted him additional time and scheduled a telephonic conference on the issue. At the telephonic conference, the district court ordered the parties to confer regarding the jurisdictional issue and file a joint status

report. After the hearing, Thierry filed additional requests for information. The district court later entered an order noting that “the issue of subject matter jurisdiction” had still not been resolved. In aid of determining that question, the court granted Thierry’s requests in part and ordered Honey Pot to provide information to Thierry relating to the domicile of each of its members. After obtaining that information, Thierry filed documents showing that each member of Honey Pot was not a citizen of Wisconsin, where Thierry is a citizen.

In May 2023, the district court granted Honey Pot’s motion to dismiss and dismissed Thierry’s amended complaint with prejudice. It first concluded that Thierry had established diversity jurisdiction by showing that all members of Honey Pot were citizens of different states than he was.² It then noted that: (i) neither party disputed the authenticity of the exhibits attached to Thierry’s amended complaint, so it could consider them in resolving the motion to dismiss; and (ii) Thierry had not disputed that the parties had entered into an oral contract nor that each of his counts was subject to a four-year statute of limitations. Independently, it

² In passing, Honey Pot challenges this contention in its brief on appeal. We are obligated to inquire into subject matter jurisdiction whenever it may be lacking. *Esteve v. UBS Fin. Servs. Inc. (In re Esteve)*, 60 F.4th 664, 670 (11th Cir. 2023). Having done so, we see no error in the district court’s thorough consideration of the jurisdictional issues in this case, and we agree with its conclusion that it had subject matter jurisdiction. 28 U.S.C. § 1332. Accordingly, we proceed to the merits.

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concluded that a four-year statute of limitations applied to each claim under Georgia law.

The district court then concluded that each of Thierry's claims were barred by the applicable statutes of limitation. Given the four-year statutes of limitations and orders from the Georgia Supreme Court that tolled the statutes of limitations based on the COVID-19 pandemic, the district court concluded that any of Thierry's claims that accrued on or after July 3, 2018, would be timely.

The district court then determined that, based on the amended complaint's allegations, any breach of the oral contract occurred when Honey Pot secured investor financing and its promises—to provide Thierry with equity, a full-time position, and payment for all services previously rendered—were broken. It rejected Thierry's argument that his claim began to accrue on July 7, 2018, because that date would be inconsistent with the principle in Georgia law that the cause of action accrues upon the first breach. It found that Thierry's attempt to negotiate with Honey Pot regarding his compensation after Honey Pot's initial breach—*i.e.*, Honey Pot's failure to follow through on its promises after it secured its financing—did not affect the accrual of his breach of contract claim. Instead, it concluded that, according to Thierry's amended complaint, the financing was secured and Honey Pot failed to fulfill its end of the bargain before July 3, 2018. The court noted that there was a dispute in the record on when the financing was secured, but that the dispute was only between dates in June

2018, any of which would have been barred by the statute of limitations.

The district court next found that Thierry's equitable claims were also time-barred because Thierry's last day of services rendered to Honey Pot was June 29, 2018, meaning those claims also accrued before July 3, 2018.³ As for Thierry's fraud claim, the court determined that a claim for fraud accrued when a representation was relied on and that the only alleged misrepresentations were made before July 3, 2023, specifically, that Thierry would be given equity, a job, and payment for his services after Honey Pot secured the financing. The court determined that the parties' communications after July 3, 2018, where Thierry was made a settlement offer that he rejected, were not false statements that Thierry relied on that resulted in damages.

The district court further concluded that because Thierry's causes of action were barred by the applicable statutes of limitation, Thierry's claim for attorney's fees and expenses necessarily failed and it did not need to consider the alternative grounds for dismissal Honey Pot raised.

³ The district court alternatively determined that, because Thierry did not address Honey Pot's arguments about the dismissal of his unjust enrichment, *quantum meruit*, and promissory estoppel claims in his response, the claims were abandoned. We need not address this issue, however. See *Fla. Wildlife Fed'n Inc. v. United States Army Corps of Eng'rs*, 859 F.3d 1306, 1316 ("We may affirm the district court's ruling on any basis the record supports.").

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Thierry moved for reconsideration of the district court's order. He argued that the district court "overlooked and/or misapprehended" the facts and the law. He also argued that there had been several procedural errors in the case that had prevented him from having an adequate chance to challenge the dismissal.

Before the district court ruled on the motion for reconsideration, Thierry timely filed a notice of appeal to challenge the district court's dismissal order.

Later, the district court denied Thierry's motion for reconsideration. It concluded that, while Thierry had submitted new evidence, there was no reason that Thierry could not have submitted that evidence before his suit had been dismissed. It therefore found reconsideration unwarranted. After his motion for reconsideration was denied, Thierry moved to proceed on appeal *in forma pauperis*, and the district court granted that motion.

II. STANDARDS OF REVIEW

We review *de novo* a district court's dismissal of a complaint for being brought beyond the statute of limitations. *Jackson v. Astrue*, 506 F.3d 1349, 1352 (11th Cir. 2007). In examining whether a district court's dismissal is proper, we accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011). We review the denial of a motion for reconsideration, whether brought under Rule 59(e) or Rule 60(b), for abuse of discretion. *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003) (Rule 60(b)); *Sanderlin v. Seminole Tribe of Fla.*, 243 F.3d 1282, 1285

(11th Cir. 2001) (Rule 59(e)). In applying these standards, we liberally construe *pro se* pleadings and hold them to a “less stringent standard.” *Bingham*, 654 F.3d at 1175 (internal quotations omitted).

III. ANALYSIS

On appeal, Thierry argues that the district court erred in finding his claims time-barred and committed various procedural errors. He argues that Honey Pot breached the parties’ oral contract on July 5, 2018, rendering his suit timely. In support of that contention, he cites exhibits, attached to his amended complaint, showing Thierry’s negotiations with Gray in July 2018. He also contends that the district court erred in concluding his claims were abandoned and in denying his motion for reconsideration. He again concedes that a four-year statute of limitations applies to his claims and that, using that period, his claims needed to accrue after July 3, 2018, to be timely. However, he contends that his last day of employment with Honey Pot was July 7, 2018, not June 30, which justifies reversal of the dismissal of his unjust enrichment, quantum meruit, and promissory estoppel claims. He argues that his fraud claim, as well, was timely because he did not know of Honey Pot’s fraud until July 7. Finally, he argues that the district court committed various procedural errors during the proceedings, including relating to subject matter jurisdiction and discovery.

A district court may dismiss a complaint under Rule 12(b)(6) as time-barred only if it is “apparent from the face of the complaint” that the applicable statute of limitations bars the claim. *Henco Holding*, 985 F.3d at 1296 (quoting *Bhd. of Locomotive Eng’rs &*

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Trainmen Gen. Comm. of Adjustment CSX Transp. N. Lines v. CSX Transp., Inc., 522 F.3d 1190, 1194 (11th Cir. 2008)). In doing so, a district court must accept all factual allegations in the complaint as true and construe the complaint in the light most favorable to the plaintiff at the motion-to-dismiss stage, but it is not bound to accept as true the complaint's legal conclusions or unwarranted factual inferences. *Id.*; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). In diversity cases, we apply the substantive law of the forum state, here Georgia. *Mesa v. Clarendon Nat'l Ins. Co.*, 799 F.3d 1353, 1358 (11th Cir. 2015).

Georgia law allows parties to bring a breach of written contract action within six years, and a breach of oral contract action within four years. See O.C.G.A. § 9-3-24 (6-year statute of limitations for simple written contracts); O.C.G.A. § 9-3-25 (4-year statute of limitations for oral contracts). Georgia law also has a residual four-year statute of limitations for “[a]ll other actions upon contracts express or implied.” O.C.G.A. § 9-3-26. A four-year statute of limitations applies to claims for fraud in the inducement, unjust enrichment, *quantum meruit*, and promissory estoppel. See *Brooks v. Freeport Kaolin Co.*, 324 S.E.2d 170, 172 (Ga. 1985) (holding that a claim for fraudulent inducement is governed by a four-year statute of limitations); *Koncul Enters., Inc. v. Fleet Fin., Inc.*, 630 S.E.2d 567, 570 (Ga. Ct. App. 2006) (holding that a statute of limitations for unjust enrichment is four years under O.C.G.A. § 9-3-26); *Burns v. Dees*, 557 S.E.2d 32, 39-40 (Ga. Ct. App. 2001) (noting that the statute of limitations for a *quantum meruit* claim is four years under O.C.G.A. § 9-3-26); *Willner & Millkey v. Shure*, 183 S.E.2d 479, 481

(Ga. Ct. App. 1971) (noting that *quantum meruit* claims are subject to a four-year statute of limitations); *Baker v. GOSI Enters.*, 830 S.E.2d 765, 770 (Ga. Ct. App. 2019) (explaining that promissory estoppel claims are governed by the four-year statute of limitations applicable to breach of contract suits) (citing O.C.G.A. §§ 9-3-25, 9-3-26). As relevant here, a claim for fraud generally must be brought within four years from the date the fraud is known or discovered. See *Anthony v. Am. Gen. Fin. Servs.*, 697 S.E.2d 166, 175-76 (Ga. 2010); see also O.C.G.A. § 9-3-96.

In Georgia, the statute of limitations for a breach of contract claim runs on the date the claim accrues. *Hall v. Allstate Ins.*, 880 F.2d 394, 398 (11th Cir. 1989) (citing *Hoffman v. Ins. Co. of N. Am.*, 245 S.E.2d 287, 288 (Ga. 1978)). “When the claim is for breach of contract, Georgia law provides that ‘the statute of limitations runs from the time the contract is broken and not from the time the actual damage[] results or is ascertained.’” *Id.* (alteration in original) (quoting *Space Leasing Assocs. v. Atl. Bldg. Sys., Inc.*, 241 S.E.2d 438, 441 (Ga. Ct. App. 1977)); see also *Mobley v. Murray Cnty.*, 173 S.E. 680, 684 (Ga. 1934) (same). In other words, the statute of limitations runs from the date suit can first be brought. *Koncul Enters.*, 630 S.E.2d at 570.

Under Georgia law, “[t]he tort of fraud has five elements: a false representation by a defendant, scienter, intention to induce the plaintiff to act or refrain from acting, justifiable reliance by plaintiff, and damage to plaintiff.” *Coe v. Proskauer Rose, LLP*, 314 Ga. 519, 528 (Ga. 2022) (quoting *Bowden v. Med. Ctr., Inc.*, 845

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S.E.2d 555, 563 n.10 (Ga. 2020)). Similar to a breach of contract, a cause of action for fraud accrues from the first day that the action could have been successfully maintained. *See id.*; *Colormatch Exteriors v. Hickey*, 569 S.E.2d 495,497 (Ga. 2002).

Here, the district court did not err by finding that each of Thierry's claims were barred by the four-year statute of limitations because his complaint establishes that each of his claims accrued before July 3, 2018. While Thierry has argued on appeal that the parties' contract was breached in July 2018, he alleged in his complaint that the terms of the contract were that Honey Pot would, after it received the full \$3 million in funding: (1) adequately compensate him for all services he rendered; (2) offer him full-time employment; and (3) award him equity in Honey Pot. Once that contract was broken—*i.e.*, once Honey Pot secured funding and failed to follow through on those promises—Thierry's claim accrued and the statute of limitations began running. *Hall*, 880 F.2d at 398; *Space Leasing Assocs.*, 241 S.E.2d at 441; *Mobley*, 173 S.E. at 684. The exhibits Thierry attached to his complaint established that Honey Pot secured an investor sometime in June 2018.

While Thierry now argues that his conversations with Gray in July 2018 established a July 5, 2018, performance date, that allegation was not the basis for the breach of contract claim he pled in his complaint. *See Irving v. Mazda Motor Corp.*, 136 F.3d 764, 769 (11th Cir. 1998) (cautioning that “[w]e cannot allow [litigants] to argue a different case [on appeal] from the case [they] presented to the district court”). In any event, the conversations between

Thierry and Gray are beside the point, as even if Thierry's and Gray's negotiations constituted another breach of the contract, the "face of the complaint" establishes that Thierry first could have brought suit for breach of the contract when the investor was obtained, during June 2018, outside the statute of limitations. See *Henco Holding*, 985 F.3d at 1296; *Hoffman*, 245 S.E.2d at 288 ("The statute of limitation[s] begins to run . . . on the date that suit on the claim *can first be brought*." (emphasis added)). We therefore affirm the dismissal of Thierry's breach of contract claim.

As to Thierry's *quantum meruit*, unjust enrichment, and promissory estoppel claims, the statute of limitations had run before Thierry's suit as well. Just as with his breach of contract claim, "the date of accrual [for an unjust enrichment claim] is the time when the plaintiff could first have maintained his action to a successful result,' not necessarily at the time the benefits were conferred." *Renee Unlimited, Inc. v. City of Atlanta*, 687 S.E.2d 233, 238 (Ga. Ct. App. 2009) (quoting *Engram v. Engram*, 463 S.E.2d 12, 15 (Ga. 1995)). In other words, the accrual date for these equitable claims was the same as the accrual date for the breach of contract claim and the facts in the amended complaint that justify our conclusion that Thierry could have brought his breach of contract claim during June 2018 justify the same conclusion for his equitable claims. In addition, exhibits to Thierry's amended complaint show that he began inquiring about his start date in June 2018, further suggesting that he knew that Honey Pot had reneged on its promises before July 3, 2018, as well. See *Mills v. Barton*, 422 S.E.2d 269, 270-71 (Ga. Ct. App. 1992) (finding claims subject to statute of

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limitations in O.C.G.A. § 9-3-25 to accrue at the time the non-breaching party requested repayment).

Thierry's amended complaint also shows that his fraud claim was brought outside the statute of limitations. In this claim, Thierry alleged that he relied on representations related to the benefits he would receive after an investor was secured. Once Honey Pot secured funding and Thierry failed to obtain those benefits he was promised, all the elements of fraud were present, and Thierry could have sued. *Coe*, 314 Ga. at 528. Moreover, as we mentioned, Thierry began inquiring about his start date in June 2018, which shows that he knew or should have known that Honey Pot had renegeed on its promises before July 3, 2018. *See Anthony*, 697 S.E.2d at 175-76; O.C.G.A. § 9-3-96. Accordingly, the district court did not err in concluding that the statute of limitations had run on Thierry's claims.⁴

As to Thierry's arguments that the district court's procedural rulings were error, we conclude that, because Thierry's suit was barred by the statute of limitations, any procedural errors were harmless. *See Equal Emp't Opportunity Comm'n v. STME, LLC*, 938 F.3d 1305, 1322–23 (11th Cir. 2019) (explaining that we do not reverse on the basis of harmless error).

⁴ Because we affirm the dismissal of Thierry's substantive claims, he could not recover attorney's fees and expenses either.

Finally, we address Thierry's challenges to the denial of his motion for reconsideration.⁵ Thierry argues that the evidence submitted in his motion for reconsideration established that his claims were not time-barred. A motion for reconsideration "cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009). The district court did not abuse its discretion in rejecting Thierry's motion for reconsideration. Thierry did not show, and does not show on appeal, why he could not have presented the arguments and evidence in his motion for reconsideration before the district court

⁵ We have jurisdiction over Thierry's appeal, even to the extent that he challenges the district court's denial of his motion to reconsider its prior ruling, which was entered after he filed his notice of appeal. *See Frulla v. CRA Holdings, Inc.*, 543 F.3d 1247, 1250 (11th Cir. 2008) ("[W]e are obligated to address jurisdictional questions *sua sponte*"). Generally, when a post-judgment motion for reconsideration is pending at the time an appeal is taken, an "appealing party is required to file a separate notice of appeal or amend its original notice to designate the motion as subject to appeal" after the reconsideration motion is denied. *Weatherly v. Ala. State Univ.*, 728 F.3d 1263, 1271 (11th Cir. 2013); *see also* Fed. R. App. P. 4(a)(4)(B)(ii). In any event, we construe Thierry's "Motion for Permission to Appeal In Forma Pauperis," filed after the district court denied the motion for reconsideration, as a timely amended notice of appeal, as it specifically expresses an intent to appeal and serves the functional equivalent of such a notice. *See Rinaldo v. Corbett*, 256 F.3d 1276, 1278-80 (11th Cir. 2001); *Haney v. Mizell Mem'l Hosp.*, 744 F.2d 1467, 1472 (11th Cir. 1984) (construing a motion to proceed *in forma pauperis* as a proper notice of appeal). We therefore address Thierry's challenges to the order denying his motion for reconsideration.

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had entered judgment. *Id.* Therefore, there was no abuse of discretion.

IV. CONCLUSION

For the reasons provided above, we affirm the dismissal of Thierry's suit and the denial of his motion for reconsideration.

AFFIRMED.

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

CAMERON M. THIERRY,

Plaintiff,

v.

**THE HONEY POT COMPANY
(DE), LLC,**

Defendant.

CIVIL ACTION FILE

NO. 1:22-CV-4414-MHC

ORDER

This case comes before the Court on the Motion to Dismiss [Doc. 43] filed by Defendant The Honey Pot Company (DE), LLC (“Honey Pot”).

I. BACKGROUND

A. The Court Finds That Thierry Has Established Subject-Matter Jurisdiction.

The procedural history of this case has been discussed in a number of prior orders that have been entered by this Court. See, e.g., Apr. 6, 2023, Order [Doc. 76] at 1-5. After the litany of motions, Court orders, emails to the Court, and two telephone conferences regarding jurisdictional discovery, Plaintiff Cameron M. Thierry (“Thierry”), proceeding *pro se*, has established that this Court has diversity jurisdiction. Thierry’s Corrected Response to this Court’s Show Cause Order

[Doc. 85] establishes that all members of Honey Pot are diverse from Thierry. Id. at 19-22. Consequently, the Court is now in a position to consider Honey Pot’s Motion to Dismiss.

B. Factual Background¹

On January 8, 2018, Thierry began serving as a Co-Chief Financial Officer (“Co-CFO”) of Honey Pot with Simon Gray (“Gray”), a co-founder of Honey Pot. Am. Compl. ¶¶ 5-6. Thierry alleges that he worked for Honey Pot while being compensated only \$9,500 between January 8, 2018 to June 29, 2018—based on an understanding that Honey Pot was awaiting a \$3 million investment—and upon receiving the investment, Honey Pot would fully compensate Thierry for his prior services, hire him for a full-time position as Cost Accountant with a \$60,000 annual salary, and award Thierry 3.99% equity in the company. Id. ¶¶ 4, 7-9, 13-1. Because Thierry was awaiting his position at Honey Pot, he passed up other opportunities and exhausted his life savings. Id. ¶ 16.

Thierry alleges that the role he performed in helping Honey Pot secure the \$3 million investment was “invaluable” and included, among other things:

¹ Because this case is before the Court on a motion to dismiss, the facts are presented as alleged in Thierry’s Amended Complaint [Doc. 33]. Silberman v. Miami Dade Transit, 927 F.3d 1123, 1128 (11th Cir. 2019).

managing payroll, performing financial modeling, executing the diligence process, negotiating contracts, creating pricing models, preparing financial statements, and building out accounting functions. Id. ¶ 11. Beatrice Dixon (“Dixon”), the CEO of Honey Pot, and Gray both portrayed Thierry to people outside the company as an employee of Honey Pot. Id. ¶ 12. In addition, Thierry alleges that he explained Honey Pot’s accounting to investors, presented a deck at a board meeting, and helped Dixon review and sign the term sheet. Id. ¶¶ 17-18.

Thierry alleges that Gray was awarded equity in Honey Pot in late May 2018, and once the \$3 million investment was secured, Honey Pot reneged on its promises to Thierry. Id. ¶¶ 15, 19. On July 5, 2018, Gray had a “final conversation” with Boikai Cummings (“Cummings”), the Honey Pot investor, regarding Thierry’s employment, compensation, and equity. Id. ¶ 20. On July 6, 2018, Gray offered Thierry \$6,000 for services rendered and claimed that Thierry did not contribute to the funding of the \$3 million investment, but Thierry rejected the offer. Id. ¶¶ 21-22. Gray told Thierry that he would have another conversation with Cummings to find another offer for Thierry, but on July 7, 2018, Thierry learned that he had been locked out of his Honey Pot accounts. Id. ¶¶ 22-23. No further communications are alleged to have occurred.

Thierry attaches and references several documents throughout his Amended Complaint.² These documents include screenshots of emails and texts where Thierry is referred to as Cost Accountant, discussions regarding Thierry's equity portions with "shareholders[,]” an email referring to Thierry as a member of the Honey Pot team, payment from Dixon referencing money "owe[d]" to Thierry, and a text thread with Gray referencing Thierry's status as "pledging" and noting that "It will turn around[.]” Communications Referring to Thierry as a Cost Accountant [Doc. 33 at 60-61, 68-74]; Equity Discussions [Doc. 33 at 62-64]; PayPal Receipt Referencing Money Owed [Doc. 33 at 79-80], Email from Boikai Cummings to Lynette Bethea (June 28, 2018, at 5:24 P.M.) [Doc. 33 at 127-129] (referring to Thierry as member of Honey Pot team); Pledging Conversation [Doc. 33 at 58-59].

C. The Amended Complaint

Thierry filed his complaint on November 3, 2022. Original Compl. [Doc. 1]. On December 20, 2022, Thierry filed a motion for leave to file an amended

² Neither party disputes that the Court may consider these attachments in the resolution of the motion. See Hoefling v. City of Miami, 811 F.3d 1271, 1277 (11th Cir. 2016) ("A district court can generally consider exhibits attached to a complaint in ruling on a motion to dismiss, and if the allegations of the complaint about a particular exhibit conflict with the contents of the exhibit itself, the exhibit controls.").

complaint [Doc. 7], which the Court granted on January 31, 2023. Jan. 31, 2023, Order [Doc. 27]. The Amended Complaint alleges four causes of action: breach of contract / quantum meruit (Count I); promissory and equitable estoppel (Count II); fraud (Count III); unjust enrichment (Count IV). Am. Compl. ¶¶ 29-42.³ In its Motion to Dismiss, Honey Pot argues that Thierry's suit is barred due to the statute of limitations and insufficient service of process, that Thierry failed to sufficiently plead his claims, and that Thierry's Amended Complaint is a shotgun pleading. Br. in Supp. of Mot. to Dismiss ("Honey Pot's Br.") [Doc. 43-1] at 8-20.⁴

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Under Federal Rule of Civil Procedure 12(b)(6), a claim will be dismissed for failure to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp.

³ Additionally, Thierry seeks attorney's fees and expenses pursuant to O.C.G.A. § 13-1-11 (Count V). Id. ¶¶ 43-44.

⁴ Honey Pot also argues that Thierry has not sufficiently demonstrated subject-matter jurisdiction, but the Court has found otherwise based upon Thierry's latest response to this Court's Show Cause Orders, which was filed subsequent to the motion to dismiss.

v. Twombly, 550 U.S. 544, 570 (2007). The Supreme Court has explained this standard as follows:

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citation omitted). Thus, a claim will survive a motion to dismiss only if the factual allegations in the pleading are “enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555. However, “[a] document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” Erickson, 551 U.S. at 94 (citations omitted).

At the motion to dismiss stage, the court accepts all well-pleaded facts in the Plaintiff’s Complaint as true, as well as all reasonable inferences drawn from those facts. McGinley v. Houston, 361 F.3d 1328, 1330 (11th Cir. 2004); Lotierzo v. Woman’s World Med. Ctr., Inc., 278 F.3d 1180, 1182 (11th Cir. 2002). Not only must the court accept the well-pleaded allegations as true, but these allegations must also be construed in the light most favorable to the pleader. Powell v. Thomas, 643 F.3d 1300, 1302 (11th Cir. 2011). However, the court need not

accept legal conclusions, nor must it accept as true legal conclusions couched as factual allegations. Iqbal, 556 U.S. at 678. Thus, evaluation of a motion to dismiss requires the court to assume the veracity of well-pleaded factual allegations and “determine whether they plausibly give rise to an entitlement to relief.” Id. at 679.

III. THIERRY’S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Honey Pot asserts that each of Thierry’s causes of action are subject to a four-year statute of limitations and untimely because the claims either accrued on January 8, 2018, the date he began serving as a co-CFO, or in “late May 2018,” which is when Gray was awarded equity in Honey Pot. Honey Pot’s Br. at 10-11.

Thierry does not dispute that he had an oral contract⁵ nor that all of his causes of action are governed by a four-year statute of limitations, but contends that the breach of contract occurred on July 7, 2018. Pl.’s Resp. in Opp’n to Def.’s Mot. to Dismiss (“Pl.’s Resp.”) [Doc. 52] at 7-8 (citing Honey Pot Final Emails [Doc. 33 at 140-47] and ¶¶ 20-23). This is the date that Thierry’s Honey Pot

⁵ Honey Pot contends that because there was no express written contract, Thierry’s breach of contract cause of action in Count I is actually a claim for a breach of oral contract which is subject to a four-year statute of limitations. Honey Pot’s Br. at 9-10; see Harris v. Baker, 287 Ga. App. 814, 815 (2007) (“Under Georgia law, written contracts are subject to the six-year statute of limitation imposed by O.C.G.A. § 9-3-24, whereas oral/parol contracts are subject to the four-year statute of limitation imposed by O.C.G.A. § 9-3-25.”).

credentials were revoked shortly after he rejected an offer for \$6,000 for his services from Gray and Cummings. Am. Compl. ¶¶ 20-23. The Court agrees that the four-year statute of limitations applies to all of Thierry's causes of action. See Brooks v. Freeport Kaolin Co., 253 Ga. 678, 679 (1985) (holding that a claim for fraud in the inducement of a contract is barred by the four-year statute of limitations in O.C.G.A. § 9-3-31); Koncul Enters., Inc. v. Fleet Fin., Inc., 279 Ga. App. 39, 42 (2006) (stating that under O.C.G.A. § 9-3-26, the statute of limitations for unjust enrichment is four years); Burns v. Dees, 252 Ga. App. 598, 607 (2001) (holding that the statute of limitations for suits brought on quantum meruit, like unjust enrichment, is four years under O.C.G.A. § 9-3-26); Kiroff v. Jurkuta, No. 1:08-CV-2837-CC, 2009 WL 19672145, at *8 (N.D. Ga. Aug. 17, 2009) (concluding that a four-year statute of limitations applies to a claim for promissory estoppel under O.C.G.A. 9-3-26).

Because Thierry filed his lawsuit on November 3, 2022, his claims normally would need to have accrued no later than November 3, 2018. However, based on the emergency caused by the COVID-19 pandemic, the Georgia Supreme Court issued an order which states that, for statutes of limitations that began running prior to March 14, 2020, "the running of the period of limitation was suspended on March 14, and the running of that period will resume when the

tolling provision of the March 14 declaration has expired.” See Guidance on Tolling Statutes of Limitation Under the Chief Justice's Order Declaring Statewide Judicial Emergency, Supreme Court of Georgia, (Apr. 6, 2020), located at <https://www.gasupreme.us/wp-content/uploads/2020/04/Guidance-for-Tolling-Statutes-of-Limitation-040620.pdf>. A subsequent order lifted the suspension of the statute of limitations as of July 14, 2020, and provided that “[t]he 122 days between March 14 and July 14, 2020, or any portion of that period in which a statute of limitation would have run, shall be excluded from the calculation of that statute of limitation.” Fourth Order extending declaration of the Statewide Judicial Emergency, Supreme Court of Georgia, at 3-5 (July 10, 2020), located at <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL-pdf>.

Adhering to the Georgia Supreme Court’s guidance, an additional 122 days prior to November 3, 2018, is July 4, 2018. But because July 4, 2018, is a government holiday, any claims alleged in Thierry’s Amended Complaint that accrued on or after Tuesday, July 3, 2018, would be timely. See Peavy v. CoreCivic, Inc., No. CV 322-095, 2023 WL 3125367, at *5 (S.D. Ga. Apr. 27, 2023) (citing Georgia cases explaining that O.C.G.A. § 1-3-1(d)(3) saves otherwise untimely actions when the last day of limitations period fell on a Saturday, Sunday, or public and legal holiday); O.C.G.A § 1-3-1(d)(3) (“When the last day prescribed

for such action falls on a public and legal holiday as set forth in Code Section 1-4-1, the party having the privilege or duty shall have through the next business day to exercise the privilege or to discharge the duty.”).

A. Breach of Contract

In a breach of contract case in Georgia:

The statute of limitations begins to run on any given claim on the date the claim accrues—in other words, on the date that suit can first be brought. “When the question is raised as to whether an action is barred by a statute of limitation, the true test to determine when the cause of action accrued is to ‘ascertain the time when the plaintiff could first have maintained his action to a successful result.’”

Hall v. Allstate Ins. Co., 880 F.2d 394, 398 (11th Cir. 1989) (quoting Hoffman v. Ins. Co. of N. Am., 241 Ga. 328, 329 (1978) (citation omitted)). “[T]he statute of limitation runs from the time the contract is broken rather than from the time the actual damage results or is ascertained.” Hamburger v. PFM Cap. Mgmt., Inc., 286 Ga. App. 382, 385 (2007) (quoting Moore v. Dept. of Human Res., 220 Ga. App. 471, 472 (1996)); see also Shelnutt v. Mayor of Savannah, 349 Ga. App. 499, 504 (2019) (finding that “the alleged breach occurred at the time [the plaintiffs] were promoted, and not at each pay period”) (citing City of Lafayette v. Bates, 234 Ga. App. 662, 663 (1998) (finding that the statute of limitation for an action seeking payment of unused sick leave began running when the City changed its employees’ sick leave policy, not when the payments came due)).

Here, the alleged oral contract between Thierry and Honey Pot was that upon receipt of the \$3 million financing, Honey Pot would provide Thierry with equity, a full-time position at Honey Pot, and payment for all services previously rendered. Am. Compl. ¶ 9 (“[U]pon full receipt of the balance of the \$3 million funding, Honey Pot further promised to: a. adequately compensate Mr. Thierry for all of his services rendered, b. offer Mr. Thierry full-time employment, c. and award Mr. Thierry equity in Honey Pot[.]”). And upon securing the funding, “Honey Pot reneged on all of the above promises to Mr. Thierry.” Id. ¶ 19. Therefore, the alleged breach occurred when the funding was secured and the alleged promises were broken.

Honey Pot contends that Thierry’s cause of action accrued on January 8, 2018, the date of the entry of the oral contract. Honey Pot’s Br. at 11. Based on the 122-tolling period established by the Georgia Supreme Court, that would mean Thierry would have needed to file his complaint by May 10, 2022. Id. Alternatively, Honey Pot argues that even if the date of accrual is as late as the date Honey Pot offered employment and equity to Gray (late May 2020), Thierry’s complaint should have been filed in September 2022. Id.

Thierry argues that his claim “began to accrue on July 7, 2018, when Honey Pot “failed to perform its contractual obligations by failing to execute Plaintiff’s

Statement of Work” a day earlier. Pl. Resp. at 7. But Thierry’s position is inconsistent with precedent stating that the cause of action accrues upon the first breach. Hamburger, 286 Ga. App. at 385. No portion of Thierry’s alleged oral contract required him to engage in any additional discussions to get the benefit of his bargain once Honey Pot secured its financing, which is the only alleged contractual condition triggering Honey Pot’s contractual obligation to Thierry. According to Thierry’s own pleadings, the financing was secured⁶ and Honey Pot failed to fulfill its end of the bargain with Thierry all prior to July 3, 2018. Because failure to fulfill obligations to Thierry following the funding is the initial breach that begins the accrual of Thierry’s causes of action, his action for breach of contract is untimely. Thierry’s attempt to negotiate with Honey Pot regarding his compensation following the initial breach and his own lack of clarity regarding his position within the company do not affect the accrual of Thierry’s breach of contract claim.

⁶ There is some dispute in the record as to when the financing was initially secured. Thierry attaches a term sheet regarding the specifics of the funding that is dated for closing on June 1, 2018. Term Sheet [Doc. 33 at 111-116]. And the Complaint indicates that the funding meeting took place on June 29, 2018, which was the last day of work performed by Thierry under the oral contract. Am. Compl. ¶¶ 15, 18. Even if the Court treated one of these dates as the date of accrual of the breach of contract claim, it would be barred by the statute of limitations because none of those dates are on or after July 3, 2018.

B. Unjust Enrichment and Promissory Estoppel

Honey Pot also argues that Thierry's quantum meruit, unjust enrichment, and promissory estoppel causes of action are only available in lieu of an enforceable contract, but nevertheless are time-barred. Honey Pot's Br. at 9-13; see also Jysk Bed'N Linen v. Dutta-Roy, 787 F. App'x 608, 612 (11th Cir. 2019) (holding that the four-year statute of limitations for quantum meruit and unjust enrichment causes of action accrue from last day of performing a service). Thierry argues in his response that there is an enforceable contract, but does not otherwise address Honey Pot's arguments seeking to dismiss the equitable remedies. Pl.'s Resp. at 11-13. "[A] party's failure to respond to any portion or claim in a motion indicates such portion, claim or defense is unopposed." Kramer v. Gwinnett Cnty., Ga. 306 F.Supp.2d 1219, 1221 (N.D. Ga. 2004). "Also, when a party fails to respond to an argument or otherwise address a claim, the Court deems such argument or claim abandoned." Jones v. Bank of Am., N.A., 564 F. App'x 432, 434 (11th Cir. 2014) (citation omitted, alterations adopted). Because Thierry does not address Honey Pot's arguments regarding Thierry's unjust enrichment, quantum meruit, and promissory estoppel claims in his response, the Court deems them abandoned.

Moreover, even if the Court considered those equitable claims, they would also be time-barred because Thierry's last day of services rendered to Honey Pot was June 29, 2018, which means that those causes of action accrued prior to July 3, 2018. Am. Compl. ¶ 4; Statement of Work [Doc. 33 at 23-28] (listing end date of June 29, 2018). Because the four-year statute of limitations would also bar any of these equitable claims, they are subject to dismissal.

C. Fraud

A claim for fraud⁷ begins to accrue when representations are relied upon. Coe v. Proskauer Rose, LLP, 314 Ga. 519, 528 (2022). Like a breach of contract, the cause of action for fraud accrues from the "first" day that the action could have been maintained. Colormatch Exteriors v. Hickey, 275 Ga. 249 (2002) ("The true test to determine when a cause of action accrues is to ascertain the time when the plaintiff could first have maintained his or her action to a successful result.") (citation and punctuation omitted). Here, the only allegations of fraud in the Amended Complaint are alleged misrepresentations made prior to July 3, 2023,

⁷ To state a claim for fraud under Georgia law, a plaintiff must allege facts showing: "(1) the defendant knowingly made a false statement; (2) the defendant intended for the plaintiff to act or refrain from acting in reliance on that statement; (3) the plaintiff justifiably relied on the defendant's false statement; and (4) the plaintiff's reliance resulted in damage." Wylie v. Denton, 323 Ga. App. 161, 168 (2013)).

namely: that Thierry would be given equity, a job position, and payment for his services after Honey Pot secured the investment.⁸ Am. Compl. ¶¶ 37-40.

Accordingly, because the only alleged misrepresentations were relied upon when Thierry began working for Honey Pot in January 2018, the fraud claim did not accrue past July 3, 2023. Thierry does not argue for additional tolling due to fraud,⁹ and in any event, fraud-based tolling can only be granted when fraudulent acts or omissions debar a plaintiff from bringing suit, but here Thierry was immediately aware of the reneged promises and was free to pursue to his rights under the law.¹⁰

⁸ The communications after July 3, 2018, where Gray made a settlement offer and allegedly told Thierry he would follow up with Cummings do not equate to fraud because these are not false statements that Thierry relied upon which resulted in damages, but rather a sequence of events that involved Thierry rejecting a settlement offer in expectation of further offers that never came.

⁹ Thierry vaguely alleges that an attorney he contacted after the breakdown of communication with Honey Pot delayed his ability to file suit sooner due to some unspecified interference by Honey Pot, but his own language in the Amended Complaint refers to this allegation as “speculat[ive].” Am. Compl. ¶¶ 25-26 (alleging that Thierry has “reason to speculate” regarding tampering with his evidence against Honey Pot and a conflict of interest between Thierry’s initial attorney and Gray).

¹⁰ Under O.C.G.A. § 9-3-96, “[i]f the defendant or those under whom he claims are guilty of a fraud by which the plaintiff has been debarred or deterred from bringing an action, the period of limitation shall run only from the time of the plaintiff’s discovery of the fraud.” This statute has three elements: “(1) actual fraud involving moral turpitude on the part of the defendant; (2) the fraud must conceal

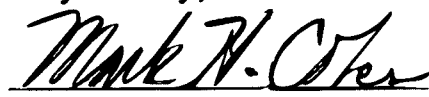
Because Thierry's causes of action are barred by the applicable statutes of limitation,¹¹ the Court need not consider the alternative grounds for dismissal contained in the motion to dismiss.

IV. CONCLUSION

For the foregoing reasons, Defendant The Honey Pot Company (DE), LLC's Motion to Dismiss [Doc. 43] is **GRANTED**. It is further **ORDERED** that Plaintiff Cameron M. Thierry's Amended Complaint [Doc. 33] is **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that Thierry's Cross-Motion for Judgment on the Pleadings [Doc. 51] and Thierry's Emergency Motion for Extension of Time to Complete Discovery [Doc. 82] are **DENIED AS MOOT**.

The Clerk is **DIRECTED** to close the case.

IT IS SO ORDERED this 22nd day of May, 2023.



MARK H. COHEN
United States District Judge

the existence of the cause of action from the plaintiff, thereby debarring or deterring the knowing of the cause of action; and (3) plaintiff exercised reasonable diligence to discover the cause of action, notwithstanding the failure to discover within the statute of limitation." Heretyk v. P.M.A. Cemeteries, Inc., 272 Ga. App. 79, 80-81 (2005) (citation omitted).

¹¹ Because there are no valid claims, Thierry's claim for attorney's fees and expenses also fails.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CAMERON M. THIERRY,

Plaintiff,

vs.

THE HONEY POT COMPANY (DE),
LLC,

Defendant.

CIVIL ACTION FILE

NO. 1:22-CV-4414-MHC

J U D G M E N T

This action having come before the court, Honorable Mark H. Cohen, United States District Judge, for consideration of defendant's motion to dismiss, and the court having granted said motion, it is

Ordered and Adjudged that the action be, and the same hereby is, dismissed.

Dated at Atlanta, Georgia, this 22nd day of May, 2023.

KEVIN P. WEIMER
CLERK OF COURT

By: s/Jill Ayers
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
May 22, 2023
Kevin P. Weimer
Clerk of Court

By: s/Jill Ayers
Deputy Clerk

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

CAMERON M. THIERRY,

Plaintiff,

v.

**THE HONEY POT COMPANY
(DE), LLC,**

Defendant.

CIVIL ACTION FILE

NO. 1:22-CV-4414-MHC

ORDER

This case is before the Court on Plaintiff Cameron M. Thierry (“Thierry”)’s Motion for Reconsideration [Doc. 94].

I. BACKGROUND

On May 22, 2023, this Court entered an order granting Defendant The Honey Pot (DE), LLC (“Honey Pot”)’s Motion to Dismiss, holding that Thierry’s Amended Complaint [Doc. 33] was time-barred. May 22, 2023, Order [Doc. 92]. In reaching this conclusion, the Court considered all the exhibits Thierry attached to his filings, including his communications with Honey Pot, and his arguments regarding when his cause of actions accrued. *Id.* at 4, 8-12. Based on when his action was filed, the Court ruled that, as a matter of law, “any claims alleged in

Thierry's Amended Complaint that accrued on or after Tuesday, July 3, 2018, would be timely." Id. at 9.

Here, the alleged oral contract between Thierry and Honey Pot was that upon receipt of the \$3 million financing, Honey Pot would provide Thierry with equity, a full-time position at Honey Pot, and payment for all services previously rendered. Am. Compl. ¶ 9 (“[U]pon full receipt of the balance of the \$3 million funding, Honey Pot further promised to: a. adequately compensate Mr. Thierry for all of his services rendered, b. offer Mr. Thierry full-time employment, c. and award Mr. Thierry equity in Honey Pot[.]”). And upon securing the funding, “Honey Pot reneged on all of the above promises to Mr. Thierry.” Id. ¶ 19. Therefore, the alleged breach occurred when the funding was secured and the alleged promises were broken.

Id. at 11. The Court accepted as true Thierry's own allegations that the funding was secured prior to July 3, 2018, therefore, Thierry's breach of contract claim was time-barred. Id. at 11-12. Additionally, Thierry's remaining claims were also time-barred because as he alleged, his last day of services rendered to Honey Pot was June 29, 2018, and his fraud claim accrued prior to July 3, 2018. Id. at 12-15.¹ In ruling that Thierry's claims were time-barred, the Court considered the post-July 3 conduct, including communications about settlement offers, but ultimately held that Thierry's claims accrued from the first breach or instance that the action could

¹ The Court ruled that Thierry's unjust enrichment, quantum meruit, and promissory estoppel claims were abandoned, but ruled in the alternative that even if they were not abandoned that they were time-barred. Id. at 13-14.

have been maintained and communications that occurred after July 3, 2018, did not change the fact that Thierry's claims accrued prior to that date. Id.

II. LEGAL STANDARD

“The Court does not reconsider its orders as a matter of routine practice.” Belmont Holdings Corp. v. SunTrust Banks, Inc., 896 F. Supp. 2d 1210, 1223 (N.D. Ga. 2012) (citing LR 7.2E, NDGa.). Under the Local Rules of this Court, “[m]otions for reconsideration shall not be filed as a matter of routine practice[,]” but only when “absolutely necessary.” LR 7.2E, NDGa. Such absolute necessity arises only when there is “(1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact.” Bryan v. Murphy, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003) (citation omitted). A motion for reconsideration may not be used “to present the court with arguments already heard and dismissed or to repackage familiar arguments to test whether the court will change its mind.” Id. at 1259. Nor may it be used “to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation.” Adler v. Wallace Comput. Servs., Inc., 202 F.R.D. 666, 675 (N.D. Ga. 2001). Finally, “[a] motion for reconsideration is not an opportunity for the moving party . . . to instruct the

court on how the court ‘could have done it better’ the first time.” Pres. Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps. of Eng’rs, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995), aff’d, 87 F.3d 1242 (11th Cir. 1996). “If a party presents a motion for reconsideration under any of these circumstances, the motion must be denied.” Bryan, 246 F. Supp. 2d at 1259; see also Brogdon ex rel. Cline v. Nat’l Healthcare Corp., 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000).

III. ANALYSIS²

Thierry’s arguments are hard to follow because they do not clearly state his basis for filing the Motion for Reconsideration and he confusingly discusses alleged “procedural errors” related to his requests for entity information from Honey Pot that have no relevance to the Court’s ruling on whether his claims are time-barred. Mot. for Recons. at 13-14. However, the Court will construe Thierry’s Motion for Reconsideration as seeking relief based on his position that the “Court overlooked and/or misapprehended information and/or evidence,” and “new evidence” that the Court purportedly lacked at the time of its decision. Id. at 13-22. Thierry also attaches a Proposed Second Amended Complaint based on his

² Thierry attaches a “Memorandum of Law” [Doc. 94-1] in support of his Motion for Reconsideration, but this Memorandum does not contain anything that varies from the arguments in the Motion for Reconsideration.

“deeper review and further amalgamation of the facts and controlling precedent[.]” Id. at 15-16 (emphasis omitted); Proposed Second Am. Compl. [Doc. 94 at 120-138]. Thierry’s new argument is that his cause of action accrued from July 5, 2018, rather than the July 7, 2018, date that he initially argued in his response to Defendant’s Motion to Dismiss. Compare Mot. for Recons. at 13, 16-18 with Pl.’s Resp. in Opp’n to Def.’s Mot. to Dismiss [Doc. 52] at 7-8 (citing Honey Pot Final Emails [Doc. 33 at 140-47] and ¶¶ 20-23). Thierry also attaches a timeline of events entitled “Attachment B - Plaintiff’s Affidavit In Support of His Motion for Reconsideration” purporting to contain “fuller descriptions of these, and additional events in the case surrounding cause of action accrual date commencement, with supporting evidence links and Exhibits[.]” Mot. for Recons. at 16; Pl.’s Aff. in Supp. of Mot. for Recons. (June 15, 2023) [Doc. 94 at 142-154].³

Thierry’s Motion for Reconsideration relies heavily on his one-page affidavit and attached timeline. Mot. for Recons. at 18-22; Pl.’s Aff. in Supp. of Mot. for Recons. This is not newly discovered evidence but rather repackaging of his prior allegations with new arguments seeking to challenge the Court’s


³ There is no indication that any of the information presented to the Court in Thierry’s Motion for Reconsideration is newly discovered evidence, nor does Thierry provide any reason for failing to provide any of the information in his initial response to the Motion to Dismiss.

determination that none of his claims accrued after July 3, 2018. But even if this was newly discovered evidence, the issue with his filing is that the information presented was within Thierry's possession, custody, or control, and could have been presented prior to the entry of judgment. "A motion for reconsideration cannot be used to 'relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.'" Wilchombe v. TeeVee Toons, Inc., 555 F.3d 949, 957 (11th Cir. 2009). "[A] reconsideration motion may not be used to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation." Adler v. Wallace Computer Servs., Inc., 202 F.R.D. 666, 675 (N.D. Ga. 2001). "[W]here a party attempts to introduce previously unsubmitted evidence on a motion to reconsider, the court should not grant the motion absent some showing that the evidence was not available during the pendency of the motion." Mays v. U.S. Postal Serv., 122 F.3d 43, 46 (11th Cir. 1997). Thierry gives no reason for failing to present this evidence earlier prior to the Court's May 22, 2023, Order; Consequently, the Court **DENIES** his Motion for Reconsideration. See Mays, 122 F.3d at 46; Adler, 202 F.R.D. at 675.

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Cameron M. Thierry's Motion for Reconsideration [Doc. 94] is **DENIED**.⁴

IT IS SO ORDERED this 31st day of August, 2023.



MARK H. COHEN
United States District Judge

⁴ Thierry's Motion to Strike [Doc. 106] is **DENIED AS MOOT**.

APPENDIX B

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12083

CAMERON M. THIERRY,

Plaintiff-Appellant,

versus

THE HONEY POT COMPANY (DE), LLC,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-04414-MHC

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR
REHEARING EN BANC

2

Order of the Court

23-12083

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.