

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

CRAIG CUNNINGHAM,

Plaintiff,

v.

YAKIM JORDAN, MJ MINISTRIES
SPREADING THE GOSPEL, INC., MJ
MINISTRIES, LLC, STEVEN SLEDGE,
AARON JORDAN, NAOMI COOK,
LUTHER MCKINSTY, FRANK
JULIANO, JONATHAN FOREMAN,
JESSE SPENCER, WARREN TAYLOR,
SERVING HANDS COMMUNITY
DEVELOPMENT CORPORATION, and
JOHN/JANE DOES 1-5,

Defendants.

CIVIL ACTION NO.
1:22-cv-01419-WMR

ORDER

This matter is before the Court on Plaintiff Craig Cunningham’s Motion for Reconsideration of Summary Judgment (“Motion”) [Doc. 62]. After review, Plaintiff’s Motion is **DENIED**.

I. Background

In March of 2022, Plaintiff filed his Complaint against Defendants alleging that he received telemarketing phone calls that violated the Telephone Consumer

Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”) and the Texas Business & Commerce Code §§ 302.101 and 305.0533 (“TBCC”). [Doc. 1].

During discovery, several of the Defendants filed a Motion for Summary Judgment¹ [Doc. 42] asserting that the Plaintiff failed to produce any evidence to support his claims that Defendants had made the telemarketing calls put at issue in this case. [*Id.* at 1]. This Court granted the Defendants’ Motion for Summary Judgment on that issue in August of 2023, concluding that Plaintiff had not provided any such evidence. [Doc. 48]. Plaintiff attempted to appeal, but was unsuccessful. [Doc. 53].

Plaintiff then filed a Motion for Extension of Time to Complete Discovery [Doc. 45] after the filing of Defendants’ Motion for Summary Judgment, but prior to the Court’s Order granting summary judgment. Relevant to the instant motion, Plaintiff sought to serve subpoenas on third-party phone service providers to gather evidence that Defendants had actually engaged in the telemarketing calls. Plaintiff’s request for subpoenas to issue to third-party service providers was granted. [*Id.*]. On November 30, 2023, this Court directed the Clerk of Court to make ten subpoenas available for the Plaintiff. [*Id.*]. The Court further instructed the Plaintiff that if the information he obtained from the subpoenas created

¹Defendants Frank Juliano, Jonathan Foreman, Jesse Spencer, and Serving Hands Community Development Corporation filed this initial Motion for Summary Judgment [Doc. 42], but Defendants Steven Sledge, Aaron Jordan, Naomi Cook, Luther McKinstry, Wayne Taylor, and MJ Ministries Spreading the Gospel, Inc. later joined the motion [Doc. 43].

evidence that Defendants made the alleged phone calls, Plaintiff may then file a motion for reconsideration of the Order granting Summary Judgment within 90 days. [*Id.*].

Plaintiff filed the instant Motion for Reconsideration on March 5, 2024. [Doc. 62]. Plaintiff requests this Court reconsider its previous grant of summary judgment and reopen discovery. Because Plaintiff failed to comply with the Court's November 2023 Order, his motion is **DENIED**.

II. Legal Standard

The decision to grant a motion for reconsideration is committed to the sound discretion of the district court. *Florida Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health & Rehab. Servs.*, 225 F.3d 1208, 1216 (11th Cir. 2000). The Local Rules of the Northern District of Georgia permit the filing of motions for reconsideration only when "absolutely necessary." LR 7.2(E), NDGa. "Reconsideration is only 'absolutely necessary' where 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).

Further, a motion for reconsideration is not "a vehicle to present new arguments or evidence that should have been raised earlier." *Brogdon ex rel. Cline v. Nat'l Healthcare Corp.*, 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000). Nor is it

“an opportunity for the moving party and their counsel to instruct the court on how the court ‘could have done it better’ the first time.” *Preserve Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Eng’rs*, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995). A motion for reconsideration should not be used to simply “repackage familiar arguments to test whether the Court will change its mind.” *Chesnut v. Ethan Allen Retail, Inc.*, 17 F. Supp. 3d 1367, 1370 (N.D. Ga. 2014).

This Court recognizes that because Plaintiff is pro se, the filings are construed liberally. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

III. Discussion

Plaintiff’s Motion fails because he did not comply with the terms of the Court’s November 2023 Order. This Court instructed the Plaintiff that he had 90 days to serve subpoenas on third-party phone service providers, and only if the resulting information created any evidence that Defendants engaged in telemarketing calls, Plaintiff could then file a motion for reconsideration. [Doc. 45].

In his Motion, Plaintiff primarily rehashes details of other litigation with Defendants, complains that he should have been issued the subpoenas much earlier in the discovery process, argues about rulings on past issues, and requests even more time from the Court. [Doc. 68]. Essentially, Plaintiff’s Motion attempts to

“instruct the court on how the court ‘could have done it better’ the first time[,]” while also “repackag[ing] familiar arguments” this Court has already decided on. *Preserve Endangered Areas of Cobb’s History, Inc.*, 916 F. Supp. at 1560; *Chestnut*, 17 F. Supp. 3d 1367 at 1370.

Plaintiff filed this Motion for Reconsideration despite the fact that he has yet to subpoena any of the third-party service providers and, thus, cannot provide any evidence that Defendants were the perpetrators of the phone calls. In addition to failing to provide any of this “newly-discovered evidence,” Plaintiff did not provide evidence of a “development or change in controlling law”, nor evidence that there was a “clear error of law or fact” that would otherwise entitle him to potential relief under Local Rule 7.2(E). *Bryan*, 246 F. Supp. 2d at 1258. Even construing this filing as liberally as possible, Plaintiff has not provided any basis that would enable this Court to reconsider its prior ruling.


Regardless, even if Plaintiff had included such evidence, the Court could still deny his Motion because he filed it outside of the 90-day period as required by the November 2023 Order. Plaintiff’s requests for more time to gather this evidence are unpersuasive. The Court’s initial grant of 90 days tripled the typical period for a motion for reconsideration; so, he was already given the extended

timeline he now desires.² Further, because Plaintiff has had no problem serving subpoenas on other parties³ during the 90-day period, he could have easily served subpoenas on the right parties during this time.

IV. Conclusion

After consideration of Plaintiff's Motion, the Court finds that Plaintiff has failed to provide the information as instructed by the Court in its prior order and failed to conform with the requisite time constraints. Plaintiff has also failed to demonstrate any of the additional bases for relief under Local Rule 7.2(E). Accordingly, Plaintiff's Motion for Reconsideration [Doc. 62] is **DENIED**.

IT IS SO ORDERED, this 29th day of October, 2024.



WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE

² Motions for reconsideration generally must be filed with the clerk of court "within twenty-eight (28) days after entry of the order or judgment." LR 7.2(E), NDGa. Here, Plaintiff was given 90 days.

³ In February of 2024, this Court granted in part Defendants' Motion to Quash Plaintiff's Third-Party Subpoenas because Plaintiff had served a subpoena upon Bank of America at some point in time after November 30, 2023. [Doc. 60].