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

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

Civil Action File No.
1:12-CV-1996-TWT

BENJAMIN DANIEL DEHAAN, et al.
Defendants.

S. GREGORY HAYS, Receiver for
LIGHTHOUSE FINANCIAL PARTNERS, LLC,
Plaintiff,

v.

Ancillary Proceeding
1:13-CV-03925-TWT

PAGE PERRY, LLC, et al.
Defendants.

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

S. Gregory Hays's ("Hays") Motion for Reconsideration fails to provide a valid basis for reconsidering the Court's dismissal of Hays's Complaint. Instead, Hays mainly seeks to rehash baseless arguments the Court rejected previously. Where Hays has advanced new legal theories (themselves baseless), he fails to provide an explanation "for failing to raise the issue at an earlier stage in the litigation." *Stephens v. Trust for Pub. Land,* 2007 WL 3046510 (N.D. Ga. Oct. 17,

2007) (rejecting reconsideration argument because party failed to explain basis for not previously raising the argument). In short, Hays's Motion is nothing more than a last ditch attempt to revive a claim against Page Perry where, as a matter of law, none exists. For the reasons explained below, Defendants respectfully request the Court reject Hays's Motion.

I. FACTUAL BACKGROUND

The allegations of Hays's Complaint have been discussed extensively by both parties during the course of nearly two hundred pages of briefing; Defendants will not rehash most of them in this opposition. Suffice it to say, Defendants unwittingly represented a financial advisory company, Lighthouse Financial Partners, LLC, that turned out to be a Ponzi scheme. Defendants' representation was in an advisory capacity only, and Defendants themselves were lied to and their advice was not followed. Lighthouse's now-imprisoned former president, Benjamin DeHaan, masterminded and orchestrated the scheme by operating Lighthouse as his alter ego. [Compl. ¶¶ 1, 12; *SEC v. DeHaan, ("SEC Action")*, Case No. 1:12-CV-1996-TWT (N.D.Ga. June 9, 2012), Dkt. 1].

Throughout its representation of Lighthouse (as is more fully detailed in Defendants Page Perry, Parker, and Terry's Motion to Dismiss), Page Perry repeatedly gave Lighthouse correct advice that, had it been followed, would have

rendered DeHaan's fraud impossible. [*See* Mtn. To Dismiss, Dkt. 11; Compl. Exs. 10, 16, 24, 29; *SEC Action*, Mitchell Decl., Ex. C (Dkt. 9-4)]. Three examples of such advice include: (1) advising Lighthouse it could only accept client checks made payable to its custodian—DeHaan could not have stolen funds from Lighthouse's clients had that advice been followed [*see* Compl., Ex. 10]; (2) advising Lighthouse to confirm its custodians were sending account statements to Lighthouse's clients directly—clients would have been able to detect DeHaan's fraud had that advice been followed [*see Id.*, Ex. 24]; and (3) advising Lighthouse against using a marketing pitch book for the DeHaan Fund[1]—Lighthouse later secretly used a similar pitch book to steal client money in the so-called Facebook offering. [*See* Compl. ¶¶ 95-99].

As private counsel, however, Page Perry was powerless to force Lighthouse to follow its advice. Indeed, DeHaan concealed his fraud from Page Perry by ignoring its requests for Lighthouse's records. [Compl. Ex. 11 (Letter from J. Steven Parker to Lighthouse, p. 3 (Aug. 30, 2011)].[2]

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[1] Despite Hays's contrary protestations, Page Perry never drafted a pitch book for Lighthouse. This explains why Hays's allegations—woven together to portray Page Perry in the worst light possible—still fail to create a plausible inference otherwise.

[2] And even if it had that power, which it didn't, Page Perry's representation of Lighthouse did not include "mak[ing] independent inquiry or investigation without

Hays's argument that Page Perry should have or could have forced Lighthouse to provide it with documents because government regulators later uncovered the records is just another of the many fictions that define Hays's flawed Complaint. The misguided argument blurs the distinctly different functions of private counsel and of regulators: lawyers make recommendations while government regulators give orders—orders that have consequences when they are ignored. Indeed, Hays's Complaint turns a blind eye to the reality that private lawyers lack the tools that regulators use to ensure their orders are followed. For example, in early 2012, when the SEC began investigating Lighthouse, the SEC obtained Lighthouse's records using its *subpoena power*—a power Page Perry could not wield. [Compl. Ex. 31].

Faced with the SEC's subpoena, Lighthouse finally turned its records over to Defendants. On examining them in late May 2012, Defendants discovered DeHaan's theft. By this time, DeHaan granted Page Perry permission to report his actions to the SEC and agreed he would cooperate with an SEC "accounting of Lighthouse and its affiliates." [Compl. ¶110; Diskin Decl. ¶ 8 (Joint Appx. Ex. 2)]. In response, Page Perry scheduled a meeting with the SEC. [*See* Compl. ¶¶89-90;

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specific request." [Compl., Ex. 2; *see* Ga. Bar Rule 1.2 (noting a lawyer's representation may be defined by its client engagement agreement)].

Diskin Decl. ¶¶7-8]. Page Perry met with the SEC on May 30, 2012 and again on June 1, 2012. [Diskin Decl. ¶¶8-9].

Despite DeHaan's outward cooperation with both Page Perry and the SEC, DeHaan secretly continued his fraud during this period. [Compl., Ex. 35]. After Page Perry discovered DeHaan's continued theft, Page Perry convinced DeHaan to transfer approximately $600,000 into a special trust account to be used for restitution to Lighthouse advisory clients. [Diskin Decl. ¶17; First Interim Report of Receiver, Ex. 2 (*SEC Action,* Dkt. 23)]. An additional $69,214 was moved from Page Perry's general trust account to the special trust account. [Id.]

Thereafter, on July 2, 2012, Hays was appointed Lighthouse's receiver and the funds in the special account were turned over to him. [Compl. ¶27]. As DeHaan is penniless, Hays elected to ignore DeHaan's paramount role in the fraud. Instead, he faulted (in hindsight) Page Perry for failing to deduce DeHaan's fraud from Lighthouse's securities compliance deficiencies and failing to report indicia of DeHaan's fraud to regulators sooner than it did.

Hays compounded the injustice he sought to inflict on Defendants by ignoring Page Perry's diligence in uncovering key elements of DeHaan's scheme; convincing DeHaan to turn himself in to the regulators once the fraud was discovered; and convincing him to segregate hundreds of thousands of dollars of

purloined assets for the defrauded investors, and Hays's benefit. To date, most of the assets Hays claims to have "recovered" for the benefit of the receivership estate, including $660,000 in cash and the proceeds of the sale of a house in Memphis, Tennessee, are assets *Defendants* arranged to be turned over to a fund for defrauded investors before Hays was even appointed.

Almost all of these assets have gone to pay the receiver's fees. For instance, in his first 13 months as receiver, Hays and his professionals "incurred fees and expenses totaling $570,069.26." [Objection to the Sixth Application for Fees and Reimbursement of Costs, *SEC Action*, Dkt. 58]. And as of the date of Hays's Third Interim Report, February 10, 2014, only $350,984.76 remained in the Receivership Estate. [Third Interim Report, *SEC Action*, Dkt. 72 (emphasis added)].

On January 24, 2014, Defendants moved to dismiss Hays's Complaint. [Dkt. 11 and 12] . On March 14, 2014, Hays filed his briefs in opposition to those Motions. [Dkt. 14 and 15]. Collectively, Hays's opposition briefs totaled more than 75 pages. [*Id.*] On June 10, 2014, this Court granted Defendants' Motions to Dismiss in a 21-page Order. [Dkt. 27]. As evident from a reading of the detailed Order, the Court thoroughly examined the extensive pleadings and carefully considered Hays's claims, yet rejected each of them in a well-reasoned Opinion.

Hays now has improperly moved for reconsideration in an attempt "to show the Court how it could have done it better." *Bryan v. Murphy,* 246 F. Supp. 2d 1259, 1259 (N.D. Ga. 2003) (quoting *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)).

II. ARGUMENT

Hays's Motion flouts the rules governing motions for reconsideration. In this Court, "[m]otions for reconsideration shall not be filed as a matter of routine practice" and should only be filed when "absolutely necessary." N.D. Ga. L.R. 7.2 (E). "Such absolute necessity arises 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." *The Coca-Cola Co. v. Pepsi-Cola Co.*, 500 F.Supp.2d 1364, 1367 (N.D. Ga. 2007) (quoting *Bryan v. Murphy,* 246 F.Supp.2d 1256, 1258-59 (N.D. Ga. 2003)). Further, reconsideration is vested in the district court's sound discretion. *See Fla. Ass'n of Rehab. Facilities, Inc. v. State of Fla. Dept. of Health and Rehab Servs.,* 225 F.3d 1208, 1216 (11th Cir. 2000).

A motion for reconsideration should be denied if it is being used to "repackage familiar arguments to test whether the Court will change its mind," or to present new arguments or evidence that should have been raised earlier or to introduce novel legal theories. *See Powell v. Barrett*, 376 F. Supp.2d 1340, 1354

(N.D. Ga. 2005) (quoting *Bryan,* 246 F.Supp. 2d at 1259). This is precisely what Hays has done; he has recast or expanded the same basic claims asserted unsuccessfully in his Complaint. Hays's Motion should be denied.[3]

A. Georgia Bar Rules 1.13, 4.1 and 1.2.

Hays's reconsideration arguments relating to Georgia Bar Rules 1.13, 4.1, and 1.2 are not proper for a reconsideration motion. In opposing Defendants' Motions to Dismiss, Hays expended five pages arguing Page Perry violated Georgia Bar Rule 1.13 by failing to report purported indicia of DeHaan's fraud to outside regulators. [Opp. To Mtn. to Dismiss at 40-45, Dkt. 18]. To support the argument, Hays advanced an unreasonable interpretation of Rule 1.13 whereby Defendants were obligated to report DeHaan's misconduct to outside regulators because (somehow) outside regulators qualified as the "highest authority that [could] act on behalf of" Lighthouse. [*Id.*]. In dismissing that extensively briefed argument, the Court held Page Perry fully complied with Rule 1.13 because the "Defendants informed DeHaan—who, at the time, was the highest authority at

[3] Hays's Motion represents yet another example of his repeated violation of the "later advocating" theory of Rule 11. *See Turner v. Sungard Business Systems, Inc.,* 91 F.3d 1418, 1421-22 (11th Cir. 1996). As the court in *Turner* recognized, a party violates Rule 11 when he continues advocating a meritless position. *Id.* Here, Hays has violated Rule 11 again by filing this Motion as it recasts many of the patently frivolous claims that the Court rejected previously.

Lighthouse—on at least three separate occasions that Lighthouse might not be in compliance with custody regulations." [Opinion and Order at 15, Dkt. 27].

In moving the Court to reconsider its Opinion and Order, Hays expends roughly seven pages—nearly a third of his brief's argument section—arguing the Court erred in holding Page Perry complied with Rule 1.13. [Mtn. at 9-16, Dkt. 30]. Once again, however, Hays does not point to a single case or legal authority supporting his argument—he cannot because there are none. Instead, he has largely repackaged the same flawed arguments he made in opposing Defendants' Motions to Dismiss. But the "repackag[ing] of familiar arguments to test whether the Court will change its mind" is an invalid ground for seeking reconsideration. *Brogdon ex rel. v. National Healthcare Corp.,* 103 F.Supp.2d 1332, 1338 (N.D. Ga. 2000); *see also Worsham v. Provident Companies, Inc.*, 249 F. Supp. 2d 1325, 1338 (N.D. Ga. 2002) ("A motion for reconsideration should not be used to reiterate arguments that have been made previously[.]")

Hays's one newly cast Rule 1.13 argument is that Defendants should have reported DeHaan's misconduct to Anatoly Melamud because he "held an indirect interest in Lighthouse." [Mtn. at 13-14]. As a preliminary matter, the argument is baseless: Hays cannot explain how Melamud possibly could have qualified as a higher authority than DeHaan—Lighthouse's president and majority owner—

within the meaning of Rule 1.13. But more to the point, Hays fails to provide an explanation for failing to raise the argument in his Oppositions to Defendants' Motions to Dismiss—or, even more critically, why Hays failed to assert any allegations regarding Melamud in his Complaint.[4] Accordingly, the Court need not consider this frivolous argument since 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." *Alder v. Wallace Computer Servs. Inc.*, 202 F.R.D. 666, 675 (N.D. Ga. 2001).

Likewise, Hays's new contention that Defendants violated Georgia Bar Rules 1.2 and 4.1 is not a valid basis for reconsideration. In his 75 pages of opposition to Defendants' Motions to Dismiss, Hays referenced Rules 1.2 and 4.1 in just *two sentences*. [Opp. to Page Perry, Parker, and Terry's Motion to Dismiss at 43, Dkt. 27].[5] He never argued, however, that Defendants violated these rules. Instead, Hays merely advocated that Rules 1.2 and 4.1 "must be read in

[4] Hays never mentioned Melamud in his Complaint because Hays's Lawsuit has always been based on Defendants' non-existent duty to report DeHaan's custody violations to regulators. Having lost, Hays is now improperly attempting to change his story despite never having amended his Complaint.

[5] These Rules are not even mentioned in the Complaint or Bullard's Affidavit.

conjunction with Rule 1.13" to support his argument Defendants violated Georgia Bar Rule 1.13. [*Id.*]

In contrast, Hays revises his contention in his Reconsideration Motion that Defendants violated Rules 1.2 and 4.1 by: (1) helping "prepare and file Lighthouse's annual form ADV (in March 2011 and March 2012) representing that Lighthouse did **not** have *custody of client funds*, despite 'open and notorious' evidence to the contrary" [Mtn. at 19]; (2) failing to correct "the false information as soon as they learned that false information had been given to regulators" [*Id.*]; and (3) "draft[ing] and provid[ing] implausible excuses to the Securities Commissioner for DeHaan's inability to produce basic client records." [*Id.*] Critically, Hays never explains why he never advanced this legal theory in his opposition to Defendants' Motions to Dismiss. For this reason, the argument should not be considered. *See Alder,* 202 F.R.D. at 675.

Even assuming, *arguendo,* Hays's theory was proper for a reconsideration motion, it still fails. Legally, Hays has failed to point to a single case or statute establishing that lawyers have a duty to report client custody violations to regulators. That obligation falls on the corporate officer who signs off on the Form ADV attesting to its truthfulness, in this case DeHaan. Moreover, "while the Code of Professional Responsibility provides specific sanctions for the professional

misconduct of the attorneys whom it regulates, it does not establish civil liability of attorneys for their professional misconduct, nor does it create remedies in consequence thereof." *Davis v. Findley*, 262 Ga. 612, 613 (1992); *see also Allen v. Lefkoff, Duncan, Grimes & Dermer, P.C.*, 265 Ga. 374 (1995) ("[W]e have held that an alleged violation of the Code of Professional Responsibility . . . or the Standards of Conduct . . . standing alone, cannot serve as a legal basis for a legal malpractice action."). In addition, with respect to Hays's allegations relating both to Lighthouse's Form ADVs and the draft letter that Defendants prepared for the client to sign, the law expressly holds securities professionals shall not be liable for misinformation provided to a lawyer by his client which the professional then uses in documents the professional prepares. *See Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011).

Factually, Hays's Complaint does not create a plausible inference that Defendants discovered DeHaan's theft until "the very end when the lawyers persuaded DeHaan to allow them to report his theft to the SEC." [Opinion and Order at 15, Dkt. 27]. In his Motion, Hays primarily relies on his expert's affidavit to establish Defendants' purported knowledge of DeHaan's theft before then. But Bullard's factual conclusions are irrelevant to any plausibility analysis because he did not perform that analysis himself: Bullard's "expert opinion is based on [his]

assumption that the factual allegations in the Complaint are true, as authorized by *Druckman v. Ethridge*, 198 Ga. App. 321 (1991)." [Bullard Aff. ¶ 6 (emphasis added)].[6] The Court should also remember that Hays *even conceded* that "the Complaint in this case does not allege that PP intentionally 'procured' DeHaan's fraud or '*acted in concert*' with DeHaan 'to bring about' the theft . . . ." [Plaintiff's Opposition to Defendants' Motion for Rule 11 Sanctions at 17, Dkt. 29].

B. Rule 1.7

Hays misrepresents the Court's dismissal of his conflict of interest allegations. Hays contends that the Court's rejection of the conflict of interest claim rested solely on a factual assumption that DeHaan's theft occurred **prior** to the SEC hearing. [Mtn. at 22]. Hays makes that contention by selectively quoting the Court's Order to suggest that the Court overlooked that "millions of dollars were stolen by DeHaan **after** the April 3, 2012 deposition." [Mtn. at 22 (emphasis in original)]. Hays's argument is disingenuous.

The Court found that Hays's Complaint never explained how Defendants' representation of DeHaan during the SEC hearing allowed for DeHaan's misappropriation for two reasons: [1] "DeHaan's misappropriation took place prior to the SEC hearing," **and** [2] "*the Complaint makes clear that shortly after*

[6] In addition, Bullard applied the wrong standard: in federal court, a complaint's factual allegations may only be assumed true if they are plausible.

the hearing the Defendants reported DeHaan's criminal activity to the SEC." [Opinion and Order at 16 (emphasis added)]. It is clear the Court did not overlook DeHaan's post-SEC testimony thefts given that the Court's citation to the portion of Hays's Complaint detailing those misappropriations in dismissing Hays's conflict of interest allegations.[7]

Instead, the Court reasoned that DeHaan's continued theft after the April 2012 hearing failed to create a plausible inference that Defendants' representation at the hearing allowed for DeHaan's theft—especially given that Defendants reported DeHaan's criminal activity to the SEC shortly after the hearing. *Cf. De La Maria v. Powell, Goldstein, Frazer & Murphy*, 612 F. Supp. 1507, 1518-19 (N.D. Ga. 1985).[8] Hays's mischaracterization of the Court's opinion is not a valid basis for reconsideration.

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[7] In particular, the Court cites to paragraph 94 of the Complaint. [Opinion and Order at 16, Dkt. 27]. In the very next paragraph of the Complaint, paragraph 95, Hays alleges, in part: "Notably in May and June 2012...DeHaan pilfered approximately $2.5 million **more** from Lighthouse and its clients." [Compl. ¶ 95 (emphasis in original)].

[8] Additionally, the Complaint does not allege, nor can it allege, that Defendants knew any more about DeHaan's thefts at the time of the hearing than the SEC itself knew. In fact, the SEC knew about the purported smoking gun balance sheet and that Lighthouse had custody of client funds, having received an email detailing those facts on March 14, 2012, weeks prior to the testimony. [*SEC Action*, Mitchell Decl., Ex. C (Dkt. 9-4)]. Additionally, the SEC knew facts that Defendants did not know and could not know, such as that Lighthouse did not have the amount of assets at certain custodians that it claimed to have. [*Id.*] Clearly, the

C. Mock Audit

Hays's argument that "the Order erroneously dismissed" his claim that Defendants failed "to properly perform the mock audits" also fails as a basis for this Court to reconsider the dismissal. As a preliminary matter, Hays's Motion focuses solely on proximate cause and overlooks that the Court also dismissed Hays's argument based on a failure to set forth adequate allegations of fact to support a breach: "Disregarding the wild exaggerations, implausible inferences and selective quotations from e-mails, the Plaintiff fails to allege facts showing a *single instance* in which the Page Perry lawyers gave Lighthouse bad advice." [Opinion and Order at 15]. From this alone, Hays's mock audit arguments may be rejected.

With respect to the Court's proximate cause holding, Hays fails to explain in his Motion how the Court's holding constituted a clear error of law or fact. Specifically, the Court held: "[t]he Plaintiff argues that the Defendants breached their duty of care by performing deficient mock audits. But even assuming this to be true, the Complaint does not state a causal link between this alleged breach and

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SEC had more pieces of the puzzle than Defendants. Yet it was still unable to conclude DeHaan was stealing until May 30, 2012. [*See SEC Action*, Diskin Decl. (Dkt. 9-7)]. Hays does not explain how Defendants, with less information than the SEC, were supposed to conclude that Lighthouse was stealing, when the SEC did not so conclude.

Lighthouse's subsequent damages... The Complaint fails to indicate how a more adequate mock audit, by itself, would have prevented DeHaan's criminal conduct." [Opinion and Order at 15]. In his Motion, Hays attempts to rebut the Court's holding with the conclusory allegation that "[a] properly conducted mock audit in July 2010 and/or August 2011 would have uncovered DeHaan's theft much earlier and prevented millions of dollars in damages to Lighthouse." [Mtn. at 23]. But, just like Hays's Opposition to Defendants' Motions to Dismiss, Hays fails to explain what Defendants should have done differently in performing the mock audit or how the allegedly deficient mock audit caused any damages to Lighthouse. Thus, Hays's reiteration of the same points raised in response to Defendants' Motions to Dismiss simply does not provide a basis for this Court to reconsider its ruling. *See Brogdon,* 103 F.Supp.2d at 1338; *see also Worsham,* 249 F.Supp.2d at 1338.

D. Disclosure of Criminal Conduct.

1. The Crime-Fraud Evidentiary Exception To The Attorney-Client Privilege Is Distinct From Ethical Rules Governing Confidentiality.

Hays faults the Court for failing "to consider or even address the crime-fraud exception to the attorney-client privilege" in reaching the conclusion that the attorney-client privilege barred Page Perry from disclosing information learned

about DeHaan's fraud. [Mtn. at 8]. The simplest explanation why the Court left out this analysis—aside from the fact that Hays hardly mentioned it previously—is that the argument is incorrect legally and factually.

Legally, Hays's argument conflates a lawyer's *ethical* obligation to guard the secrets of his client with the crime-fraud *evidentiary* exception to the attorney-client privilege. The distinction is well explained in comment five to Georgia Bar Rule 1.6:

> The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics.
>
> **The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client.**
>
> **The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law.**
>
> Rule 1.6 applies not merely to matters communicated in confidence by the client but also to all information gained in the professional relationship, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

In short, the crime-fraud exception, which provides that attorney/client communications are subject to *discovery during litigation* when the communications relate to the existence of an ongoing crime or contemplated future

crime, is irrelevant to this case. *See Sullivan v. State*, A14A0531, 2014 WL 2974855 *3 (Ga. Ct. App. July 1, 2014) (generally applying crime-fraud exception to admit into evidence in criminal trial communications between defendant and investigator employed by his counsel). Hays is not accusing Page Perry of causing Lighthouse's damages by failing to produce evidence demanded in an evidentiary proceeding. Instead, he faults Page Perry for failing to disclose voluntarily possible indicia of DeHaan's fraud outside of the litigation context. But outside of litigation, it is a lawyer's duty to keep confidential "all information gained in the professional relationship, whatever its source." [Ga. Bar. Rule 1.6]. Accordingly, Hays's primary argument is beside the point: regardless of the potential application of the crime-fraud exception during litigation, Defendants were duty-bound, absent litigation, to preserve the confidentiality of all information they gained by representing Lighthouse—including indicia of Lighthouse's regulatory violations.

Hays's argument is also incorrect factually. Hays alleged that Page Perry should have known of serious regulatory deficiencies, indicating fraud, and had a duty to report them. The Court correctly noted that under Georgia law a "lawyer is not even permitted to report his client except in the most limited circumstances—circumstances Page Perry never faced during its representation of Lighthouse until the very end when the lawyers persuaded DeHaan to allow them to report his theft

of client funds to the SEC." [Opinion and Order at 13]. Thus, the Court found Hays's Complaint did not create a plausible inference Defendants were actively involved in or knew about DeHaan's criminal activity until the very end — something necessary to trigger the crime-fraud exception. Hays is precluded from rehashing this settled issue in his Reconsideration Motion.

2. Page Perry Was Duty-Bound Not To Disclose Indicia Of DeHaan's Misconduct To Regulators Regardless Of Whether Page Perry Only Represented Lighthouse.

Regardless of whether Defendants only represented Lighthouse, they were duty-bound not to report indicia of DeHaan's fraud. Hays's argument otherwise is based on the mistaken premise that Lighthouse, Defendants' client, was not stealing its client's funds, and that Defendants could somehow "report" DeHaan to regulatory authorities without also reporting that Lighthouse was stealing. That is simply not true. DeHaan's actions in stealing client funds are undeniably attributable to Lighthouse. Indeed, the SEC's complaint in the SEC Action alleged that Lighthouse was stealing client funds—an allegation that Hays makes no effort to contradict. [*SEC Action*, Compl. ¶ 1 (Dkt. 1)]. Indeed, the SEC's complaint goes so far as to allege that Lighthouse and DeHaan were in fact alter egos. *Id.*

The lawyer's dilemma upon discovering that an employee or officer of a corporate client is engaged in malfeasance is precisely the reason for the existence

of Rule 1.13. That is to say, the lawyer cannot report the constituent's conduct outside of the organization because to do so would be reporting on the client itself. Despite having made Georgia Bar Rule 1.13 the focal point of his lawsuit, Hays seems to have overlooked it in advocating Page Perry, as counsel for Lighthouse, was nevertheless obligated to report DeHaan's misconduct to regulators as some sort of exception to the attorney-client privilege. [Mtn. 7-8]. Under Georgia Bar Rule 1.13, when an organization's lawyer learns that a company constituent is acting in "violation of a legal obligation to the organization" or in "violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization," the lawyer must notify the organization's senior management—in this case, of course, DeHaan. [Ga. Bar. Rule 1.13]. But the law only permits (and never obligates) an organization's lawyer to disclose client confidences. [Rule 1.13(c)].

As noted previously, in dismissing Hays's Complaint, the Court held that Page Perry fully complied with Rule 1.13 because the "Defendants informed DeHaan—who, at the time, was the highest authority at Lighthouse—on at least three separate occasions that Lighthouse might not be in compliance with custody regulations." [Opinion and Order at 15]. Hays's effort to repackage the same

flawed argument the Court rejected is not a valid basis for pursuing a Motion for Reconsideration. *See Powell*, 376 F. Supp.2d 1354.

III. CONCLUSION

Hays falls far short of the high burden for obtaining reconsideration of the Court's Opinion and Order dismissing his case. No absolute necessity exists to reconsider the Court's well-reasoned Order. Hays fails to show any error of law or fact, much less clear error. For the foregoing reasons, the Court should deny Hays's Motion for Reconsideration.

This 25th day of July, 2014.

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CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing **DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail documentation of such filing to the following attorneys of record for Plaintiff:

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I also certify that, pursuant to LR 5.1B, ND Ga., the above document was prepared in Times New Roman 14 pt. font.

This 25th day of July, 2014.

HAWKINS PARNELL THACKSTON & YOUNG LLP

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