APPENDIX 1 - Second Circuit Judgement of March 4, 2024.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of March, two thousand twenty-four.

PRESENT: GUIDO CALABRESI,
JOSÉ A. CABRANES,
RAYMOND J. LOHIER, JR.,
Circuit Judges

IKEMEFUNA STEPHEN NWOYE,
Plaintiff-Appellant,

v. No. 23-1178-cv

BARACK HUSSEIN OBAMA,
Former President of the United States of America/Senior Citizen,
MICHELLE LAVAUGHN ROBINSON OBAMA,
Former First Lady of the United States of America/Senior Citizen

Defendants-Appellees,

FOR APPELLANT: Ikemefuna Stephen Nwoye, pro se, Jersey City, NJ

FOR APPELLEES: No appearance

Appeal from a judgment of the United States District Court for the Southern District of New York (Valerie E. Caproni, Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Plaintiff Ikemefuna Stephen Nwoye, a lawyer proceeding pro se, appeals from a judgment of the United States District Court for the Southern District of New York (Caproni, J.) dismissing his claims against former President Barack Obama and former First Lady Michelle Obama and denying him leave to file a second amended complaint. In March 2022 Nwoye sued the Obamas for breach of contract, unjust enrichment, quantum meruit, and declaratory judgment based on legal and consulting work Nwoye performed through a pro bono externship with the law firm Sidley Austin LLP. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

We review de novo the District Court's dismissal of Nwoye's complaint and its denial of leave to amend on futility grounds. See Empire Merchs., LLC v. Reliable Churchill LLLP, 902 F.3d 132, 139 (2d Cir. 2018). Because Nwoye is a lawyer, he is not entitled to the "special solicitude" we afford pro se litigants. See Chevron Corp. v. Donziger, 990 F.3d 191, 203 (2d Cir. 2021).

Nwoye's argument that the District Court failed to provide sufficient notice before dismissing his complaint is meritless. Nwoye had notice and an opportunity to be heard in response to the District Court's order to show cause, and as the Obamas had not appeared,1 the District Court was not required to provide them notice before ruling in their favor. See Snider v. Melindez, 199 F.3d 108, 112–13 (2d Cir. 1999).

Moving to the merits, the District Court correctly concluded that Nwoye's unjust enrichment and quantum meruit claims are untimely. Under New York law,2 the statute of limitations for both claims is six years. Cohen v. S.A.C. Trading Corp., 711 F.3d 353, 364 (2d Cir. 2013); Simon v. FrancInvest, S.A., 192 A.D.3d 565, 567 (App. Div. 2021). An unjust enrichment claim accrues "upon the occurrence of the wrongful act giving rise to a duty of restitution." Cohen, 711 F.3d at 364.

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1 Nwoye failed to properly serve the Obamas.

2 New York law applies because this case arises from Nwoye's externship at the Sidley Austin office located in New York. See GlobalNet Financial.Com, Inc. v. Frank Crystal & Co., Inc., 449 F.3d 377, 383–84 (2d Cir. 2006).

(quotation marks omitted). A quantum meruit claim accrues "immediately" after the plaintiff's services for the defendant have concluded. Universal Acupuncture Pain Servs., P.C. v. Quadrino & Schwartz, P.C., 370 F.3d 259, 263 (2d Cir. 2004); see Demian v. Calmenson, 156 A.D.3d 422, 423 (App. Div. 2017). As a result of the COVID-19 pandemic, the statute of limitations was tolled in New York from March 20, 2020 through November 3, 2020, adding an additional 228 days to the limitations period for Nwoye's claims. See McLaughlin v. Snowlift, Inc., 214 A.D.3d 720, 721 (App. Div. 2023). Because Nwoye filed his complaint on March 3, 2022, his claims must have accrued no earlier than July 19, 2015. Nwoye's unjust enrichment claim is premised on his work as an extern for Sidley Austin from October 2013 through May 2014, and Nwoye's quantum meruit claim is premised on conversations he had with a Sidley Austin partner in 2014. We thus conclude that both claims are untimely because they accrued in 2014.

Nor did the District Court err in dismissing Nwoye's breach of contract claim. Nwoye fails to allege that he entered into an agreement with the Obamas, an essential element of a breach of contract claim. See Donohue v. Hochul, 32 F.4th 200, 206–07 (2d Cir. 2022). He claims that the Obamas entered into a contract with him through Sidley Austin, but he alleges no facts showing that Sidley Austin had the authority to contract with Nwoye on the Obamas' behalf.

Finally, the District Court did not err in denying Nwoye leave to amend to add breach of contract and equitable estoppel claims against Sidley Austin on the grounds that it would have been futile to do so. In his proposed second amended complaint, Nwoye alleges that he had one "express" and two "oral" agreements with Sidley Austin and

further, that he and the law firm entered into a "written contract" under which he made "intellectual contributions for which he has been denied recognition." District Court Docket No. 23, ¶¶ 7, 31. But these allegations alone fail to state a breach of contract claim, and on appeal Nwoye does not identify other facts that could support such a claim. See Express Indus. & Terminal Corp. v. N.Y. State Dep't of Transp., 93 N.Y.2d 584, 589 (1999) ("To create a binding contract, there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms."); Register.com, Inc. v. Verio, Inc., 356 F.3d 393, 427 (2d Cir. 2004). We thus agree with the District Court that any amendment to add the breach of contract claim would be futile. See TechnoMarine SA v. Giftports, Inc., 758 F.3d 493, 505–06 (2d Cir. 2014).

We also agree with the District Court that Nwoye's proposed addition of an equitable estoppel claim against Sidley Austin is futile. Nwoye does not allege that Sidley Austin falsely represented or concealed any material facts regarding his externship. Nwoye therefore does not state a claim for equitable estoppel. See Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgmt., L.P., 7 N.Y.3d 96, 106–07 (2006) (noting that "evidence that a party was misled by another's conduct" is "an essential element of estoppel" (quotation marks omitted)); In re Vebeliunas, 332 F.3d 85, 93–94 (2d Cir. 2003).

Because the dismissal of Nwoye's substantive claims eliminates any "actual controversy" under the Declaratory Judgment Act, see 28 U.S.C. § 2201(a); Admiral Ins. Co. v. Niagara Transformer Corp., 57 F.4th 85, 92 (2d Cir. 2023), we also conclude that the District Court did not err in dismissing Nwoye's declaratory judgment claim.

We have considered Nwoye's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court
________"s/"_________

APPENDIX 2 - District Court Order of August 11, 2024

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IKEMEFUNA STEPHEN NWOYE,

Plaintiff,

-against-

BARACK HUSSEIN OBAMA and MICHELLE LAVAUGHN ROBINSON OBAMA,

Defendants.

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ORDER ADOPTING IN PART REPORT & RECOMMENDATION

VALERIE CAPRONI, United States District Judge:

WHEREAS on March 3, 2022, Plaintiff sued former President Barack Obama and his wife Michelle Obama, and on March 8, 2022, filed an amended complaint against them asserting claims of unjust enrichment, breach of contract, quantum meruit, and declaratory judgment arising from work performed as an extern for Sidley Austin, LLP ("Sidley"), see Compl., Dkt. 1; Am. Compl., Dkt. 7;

WHEREAS on March 7, 2022, the Court referred this case to Magistrate Judge Lehrburger for general pretrial management and for the preparation of reports and recommendations ("R&Rs") on any dispositive motions, Dkt. 5;

WHEREAS on May 29, 2022, the Court dismissed Plaintiff's First Amended Complaint with prejudice as frivolous on the grounds that Defendants likely enjoy absolute immunity from damages liability predicated on official acts, including the ones at issue in this

lawsuit, and even if Ms. Obama were not subject to absolute immunity, Plaintiff failed adequately to allege that her conduct had any link to his claims, Dkt. 18;

WHEREAS on January 25, 2023, the Second Circuit vacated the Court's order of dismissal with instructions to provide Plaintiff an opportunity to be heard as to why the First Amended Complaint should not be dismissed as frivolous or for failure to state a claim, Dkt. 20;

WHEREAS on January 27, 2023, the Court ordered Plaintiff to show cause why the First Amended Complaint should not be dismissed as frivolous or for failure to state a claim, Dkt. 21;

WHEREAS on February 3, 2023, Plaintiff moved for leave to file a second amended complaint, which would add Sidley as a Defendant, see Mot., Dkt. 22; Second Am. Compl., Dkts. 23; Pl. Mem. to Am. Compl., Dkt. 24; Pl. Mem. on OTSC, Dkt. 25; WHEREAS on June 20, 2023, Magistrate Judge Lehrburger ordered Plaintiff to show cause why (i) the First Amended Complaint should not be dismissed, and (ii) his motion for leave to file a second amended complaint should not be denied because the claims in it are time barred, Dkt. 30;

WHEREAS on June 26, 2023, Plaintiff filed a memorandum of law in support of his arguments that (i) the First Amended Complaint should not be dismissed, and (ii) the motion for leave to file a second amended complaint should be granted, Pl. Mem. on Second OTSC, Dkt. 31;

WHEREAS on July 20, 2023, Judge Lehrburger entered an R&R recommending that the Court deny Plaintiff's motion for leave to file a second amended complaint, dismiss with prejudice the operative complaint, and grant Plaintiff leave to amend the complaint solely to assert a breach of contract claim against Sidley, R&R, Dkt. 32 at 2;

WHEREAS in the R&R, Judge Lehrburger notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), they had fourteen days to file written objections to the R&R's findings, id. at 36–37;

WHEREAS on July 24, 2023, Plaintiff timely objected to the R&R, Dkt. 33;

WHEREAS in reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1)(C);

WHEREAS when specific objections are made to the R&R, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to," Fed. R. Civ. P. 72(b)(3); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997);

WHEREAS when objections are "merely perfunctory responses argued in an attempt to . . . rehash[] the same arguments set forth in the original papers," a "district court need only find that there is no clear error on the face of the record in order to accept the Report and Recommendation," Phillips v. Reed Grp., Ltd., 955 F. Supp. 2d 201, 211 (S.D.N.Y. 2013) (cleaned up); and

WHEREAS an error is clear when the reviewing court is left with a "definite and firm conviction that a mistake has been committed," see Cosme v. Henderson, 287 F.3d 152, 158 (2d Cir. 2002) (quoting McAllister v. United States, 348 U.S. 19, 20 (1954)).

IT IS HEREBY ORDERED that the R&R is ADOPTED in part. The Court DENIES Plaintiff's motion for leave to file a second amended complaint and DISMISSES the First Amended Complaint with prejudice and without leave to file an amended complaint.

The portions of Plaintiff's objections to the Magistrate Judge's conclusion that the claims in the

First Amended Complaint and proposed second amended complaint are untimely are conclusory and regurgitate arguments previously made to, and rejected by, Judge Lehrburger. Compare Obj. ¶ 9 (arguing that his claims are timely because Defendants' and Sidley's violations are continuing) with Pl. Mem. on Second OTSC ¶¶ 24–33 (arguing that Defendants'.

and Sidley's violations continued after 2014). Because Plaintiff's objections are perfunctory and not substantive, the Court reviews the R&R for clear error and finds none with respect to the Magistrate Judge's recommendation to dismiss the First Amended Complaint with prejudice and to deny Plaintiff leave to file the proposed second amended complaint. While the R&R recommended granting Plaintiff leave to amend to assert a breach of contract claim against Sidley, the Court declines to do so. As the Magistrate Judge noted, Plaintiff failed plausibly to allege a claim against Sidley in the First Amended Complaint or in the proposed second amended complaint, both of which vaguely referenced an externship agreement between Plaintiff and Sidley, as well as one or more implied agreements. See R&R at 4, 28; First Am. Compl. ¶¶ 6–7;

Second Am. Compl. ¶¶ 7–8, 31. Although the proposed second amended complaint asserts that Plaintiff's alleged externship contract with Sidley was written,[1] the allegations regarding Sidley's purported breach of contract remain wholly conclusory. See R&R at 20–23, 28; see also, e.g., Second Am. Compl. ¶¶ 31, 46–50.

First, Plaintiff has not alleged any facts that would allow the Court plausibly to infer that Sidley made any binding promise to Plaintiff concerning future employment, compensation for work performed during the externship, or recognition for intellectual work product contributed to the projects on which Plaintiff worked as an extern. See R&R at 20–22, 28. The proposed second amended complaint instead alleges, vaguely, "The Plaintiff entered into a direct legal relationship (written contract) with [Sidley] . . . to render Pro Bono Legal Services under the Sidley Austin LLP Africa-Asia Pro Bono Program.

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1 Significantly, Plaintiff did not attach a copy of the purported written contract to the proposed second amended complaint, nor has he provided a copy of it in connection with any of his many filings in this case. The Court surmises that the "written contract" referenced in paragraph 31 of the proposed second amended complaint is the same "agreement" referenced in paragraph 8 of the proposed second amended complaint. That agreement is apparently comprised of two emails between him and the NYU Law School Pro Bono Manager and one email from the NYU Law School Pro Bono Manager to Plaintiff and a number of other persons who had been selected to participate in Sidley's pro bono program. See Second Am. Compl., Dkt. 23 ¶ 8. None of those emails was attached to the proposed second amended complaint or to any other filing.

He made value [sic] intellectual contributions for which he has been denied recognition and his intellectual property rights remain in continuing breach by the Defendants." Second Am. Compl. ¶ 31. Whatever exactly that means, there are no facts alleged from which the Court could infer the scope of the agreement (e.g., if it was limited to work performed as an extern or also included post-externship work), the compensation (if any) that Plaintiff was to receive, or that the "written contract" covered intellectual work product.

Nor has Plaintiff alleged any facts that would allow the Court plausibly to infer that, even if Sidley offered him some form of employment, compensation, or recognition, such an offer constituted a bargained-for agreement supported by consideration from Plaintiff as required to establish a binding contract. See, e.g., id. ¶ 13; see also R&R at 17–22. Furthermore, to the extent that Plaintiff claims that he entered into an implied consultancy agreement with Sidley, those allegations are also entirely conclusory, and Plaintiff alleges no facts that would allow the Court plausibly to infer either that a contract existed or that a breach occurred. See Second Am. Compl. ¶¶ 16, 33–35; First Am. Compl. ¶¶ 15–20.

While Plaintiff is proceeding pro se, the Court does not afford Plaintiff the liberal consideration normally provided to pro se plaintiffs because Plaintiff is a legal practitioner. See R&R at 9–11. Plaintiff has already amended the complaint once and has proposed a second amended complaint; none of the three complaints that he has filed or has proposed to file has stated a viable claim. Accordingly, the Court finds that granting Plaintiff a fourth bite at the apple would be futile and waste judicial resources; for that reason, the Court declines to grant Plaintiff leave to amend his complaint yet again. See Rukoro v. Fed. Republic of Germany, 976 F.3d 218, 228 (2d Cir. 2020) (noting

that courts may deny leave to amend if amendment would fail to cure substantive deficiencies).

The Clerk of Court is respectfully directed to terminate the open motion at docket entry 22 and to CLOSE this case.

SO ORDERED.

______S/________

Date: August 11, 2023

VALERIE CAPRONI
New York, NY
United States
District Judge

APPENDIX 3 - Text of relevant Constitution and Statutory provisions

1. **Fifth Amendment**

   No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. **Fourteenth Amendment**

   No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. **Fed. R. Civ. Procedure**

(i) Rule 7— Pleadings Allowed; Forms of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

[As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983.]

(ii) Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments

upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure To Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when

not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading To Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

4. N.Y.C.P.L.R § 213 (1 and 2)

§ 213. Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder; based on fraud. The following actions must be commenced within six years:

1. an action for which no limitation is specifically prescribed by law;

2. an action upon a contractual obligation or liability, express or implied, except as provided in section two hundred thirteen-a or two hundred fourteen-i of this article or article 2 of the uniform commercial code or article 36-B of the general business law.

5. Executive Order 202.67
Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and
WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster continues to exist for which affected state agencies and local governments are unable to respond adequately. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby continue the declaration of the State Disaster Emergency effective March 7, 2020, as set forth in Executive Order 202. This Executive order shall remain in effect until November 3, 2020.