IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN W. BOYD, JR.,

PLAINTIFF,

v.

KILPATRICK TOWNSEND & STOCKTON LLP and DENNIS M. GINGOLD,

DEFENDANTS.

Civil Action No. 1:14-cv-00889-RJL

KILPATRICK TOWNSEND & STOCKTON LLP'S
MOTION TO DISMISS

Defendant Kilpatrick Townsend & Stockton LLP ("Kilpatrick") hereby respectfully moves to dismiss all of Plaintiff John W. Boyd, Jr.'s claims against it with prejudice for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

INTRODUCTION

Boyd is the president of the National Black Farmers Association. This lawsuit is the latest chapter in Boyd's long-running attempt to secure a multimillion dollar, personal payout for himself for lobbying efforts he voluntarily conducted, in the admitted absence of any contract, on behalf of minority farmers. Along with many other individuals and organizations, Boyd lobbied Congress to enact the Claims Resolution Act of 2010 (the "CRA"), an appropriations bill that provided funding for the United States government's historic settlement of two class actions in this Court: (1) *In re Black Farmers Discrimination Litigation*, Civil Action No. 08-mc-0511-PLF (D.D.C., filed Aug. 8, 2008) ("*Pigford II*") and (2) *In re Indian Trust Fund Litigation*, Civil Action No. 1:96-cv-01285-TFH (D.D.C., filed June 10, 1996) ("*Cobell*").

After the CRA became law, Boyd sued class counsel in *Pigford II*, claiming that he was entitled to a portion of their attorneys' fees because of his alleged lobbying activities in support of the CRA. He claimed that his lobbying efforts were instrumental in getting the CRA enacted, and that he therefore was owed a portion of the *Pigford II* class counsel's attorneys' fees. This Court dismissed his complaint with prejudice for lack of standing and failure to state a claim. *See Boyd v. Farrin*, 958 F. Supp. 2d 232 (D.D.C. 2013) ("*Boyd I*").

Undeterred, Boyd filed this virtually identical lawsuit, this time against class counsel in *Cobell*. Boyd again claims that he is entitled to a portion of class counsel's attorney's fees because of his alleged lobbying activities in support of the CRA. The only significant difference between this lawsuit and *Boyd I* is that Boyd filed it in D.C. Superior Court, and named Kilpatrick as a defendant in an apparent attempt to destroy federal diversity jurisdiction.[1]

Boyd's gambit must fail because he has no conceivable legal claim against Kilpatrick.

First, Boyd is collaterally estopped from relitigating the issues he already lost in *Boyd I*. He already had a full and fair opportunity to bring these claims against identically situated defendants, and this Court correctly rejected them.

Second, the Complaint fails to state claims against Kilpatrick for unjust enrichment, breach of implied-in-fact contract, or *quantum meruit*, just as his complaint failed to state claims in *Boyd I*. Boyd alleges no facts tending to show that it would be unjust for Kilpatrick to retain the Court-ordered attorneys' fees it earned from litigating the complex *Cobell* class action for many years. And Boyd does not allege the material terms of any purported agreement with Kilpatrick, or even that he discussed payment with Kilpatrick on any occasion.

[1] Defendant Gingold removed this action, in view of Boyd's fraudulent joinder of Kilpatrick.

Finally, Boyd's claims are time-barred by the District of Columbia's three-year statute of limitations. Boyd's implied-in-fact contract claim accrued, if at all, on June 1, 2010, when Gingold allegedly informed Boyd that any payment would depend on a named plaintiff in *Cobell*, and not class counsel. And Boyd's unjust enrichment and *quantum meruit* claims accrued no later than December 8, 2010, when President Obama signed the CRA into law. Boyd delayed filing his Complaint until May 6, 2014, long after the statute had run.

At bottom, Boyd's legal claims depend on a pernicious, inaccurate premise: that any organization or person who helps advocate for legislative change, in the absence of a contract, is entitled to payment from anyone who benefits directly or indirectly when a law is enacted. Permitting Boyd's claims to go forward would open the door to endless mischief.

The Court should dismiss the Complaint with prejudice for failure to state a claim.[2]

FACTUAL BACKGROUND[3]

A. The *Pigford* and *Cobell* Settlements.

Defendants Kilpatrick and Dennis M. Gingold were co-counsel for the plaintiff class in an action to recoup Native Americans' trust funds after decades of mismanagement by the United States government. Compl. ¶ 2. The *Cobell* action, originally filed in 1996, was litigated

[2] In his separate motion to dismiss, Defendant Gingold argues that Boyd lacks standing. The Court need not address standing where, as here, the Complaint would fail to state a claim in any event. *See United Transp. Union v. I.C.C.*, 891 F.2d 908, 919 (D.C. Cir. 1989) (Ginsburg, J., concurring) ("There is respectable authority . . . for [avoiding] the difficult justiciability issue when, as in this case, the questions of standing and merits blend, and the merits are decidedly against the complainant.").

[3] On a motion to dismiss, the Court must "accept as true all reasonable factual inferences drawn from [the Complaint's] well-pleaded factual allegations." *Mizell v. SunTrust Bank*, No. 13-cv-1077, --- F. Supp. 2d ---, 2014 WL 1022888, at *3 (D.D.C. Mar. 18, 2014) (quotation marks omitted). Kilpatrick does not concede the accuracy of Boyd's allegations.

for 13 years before a settlement was reached with the federal government in December 2009. Compl. ¶ 2; *see Cobell v. Salazar*, Civil Action No. 1:96-cv-01285-TFH (D.D.C. Dec. 7, 2009).

Boyd is the President of the National Black Farmers Association and an advocate on behalf of black farmers. Compl. ¶ 1. He was a member of the plaintiff class in *Pigford I*, an action brought to remedy decades of discrimination by the federal government against black farmers. Compl. ¶ 18; *Pigford v. Glickman*, Civil Action No. 97-cv-1978 (D.D.C. filed Aug. 28, 1997) ("*Pigford I*"). The *Pigford I* Court approved a consent decree resolving the claims of the class members on April 14, 1999. Comp. ¶ 18. Subsequently, approximately 65,000 individuals filed late claims and were deemed ineligible for compensation under the consent decree. Compl. ¶ 18. According to the Complaint, Boyd in 2000 took it upon himself to embark on a decade-long campaign to obtain compensation for these late-filers. Compl. ¶ 19. Boyd's alleged work included meeting with congressional leaders, testifying at congressional hearings, and conducting media interviews. Compl. ¶¶ 20–22. A settlement agreement between the federal government and the late-filers was reached in February 2010 in "*Pigford II*." Compl. ¶ 24.

B. Boyd's Alleged Coordination with *Cobell* Class Counsel.

Funding for both the *Pigford II* and *Cobell* settlements required congressional appropriations. Compl. ¶¶ 2, 24. In December 2009, Boyd learned that the While House wanted to pursue one appropriations bill for both the *Pigford II* and *Cobell* settlements. Compl. ¶ 25. Boyd began working to support the appropriations bill to fund both settlements upon hearing this news from the White House. Comp. ¶ 28. Four months later, and a decade after Boyd's alleged efforts on behalf of the *Pigford II* class began, Boyd received a call from John Loving, a non-lawyer government relations advisor at Kilpatrick. Comp. ¶ 26. On March 5, 2010, Loving allegedly asked Boyd for his assistance in promoting legislation to fund the *Cobell* settlement. Compl. ¶¶ 26–27. Boyd does not allege that he ever discussed payment with Loving.

Boyd continued his lobbying efforts after he spoke with Loving, meeting with members of Congress and conducting media interviews. Compl. ¶¶ 32–39, 46–89. Boyd's primary contacts with counsel for the *Cobell* class were with Defendant Gingold and Geoffrey Rempel, an accountant whom the *Cobell* plaintiffs had hired directly.[4] Compl. ¶¶ 32, 38, 40–44, 48–50, 52, 54–55, 65–67, 70, 72, 75–76, 82, 85–88. Boyd also alleges that he communicated with Kilpatrick associate Michael A. Pearl to coordinate lobbying efforts. Compl. ¶¶ 26–27, 38, 48–50, 54–55. But Boyd does not allege that he ever discussed payment with anyone from Kilpatrick.

Despite Boyd's exhaustive allegations about his lobbying efforts, he alleges only one conversation (not involving Kilpatrick) in which payment was discussed. On June 1, 2010, Boyd alleges that he met with Gingold and Rempel over lunch. Compl. ¶¶ 40–42. During that conversation, Boyd allegedly told Gingold and Rempel that "he expected to be paid for his efforts to secure funding for the *Cobell* settlement," and Gingold "never indicated" that Mr. Boyd would not be paid. Compl. ¶ 43. Instead, Gingold allegedly "indicated to [Boyd] that compensation should not concern him," and that the "issue of payment was not whether Mr. Boyd would be compensated, but when [named plaintiff] Eloise Cobell would focus on the amount of compensation for [Boyd]." *Id*. (emphasis omitted). Further, Boyd alleges that "[e]ach time Mr. Boyd raised the question of payment, Defendant Gingold always responded that he told Ms. Cobell about the need to compensate Mr. Boyd and that Ms. Cobell acknowledged that Mr. Boyd was to be paid but she never focused on the issue of how much and when." Compl. ¶ 43. Moreover, Boyd alleges that Ms. Cobell "needed to be consulted on issues related to costs," but

[4] Boyd asserts that Rempel was "associated with Kilpatrick Townsend." Compl. ¶ 32. In fact, Rempel was never employed by Kilpatrick. In any event, Boyd's vague assertion that Rempel was somehow "associated" with Kilpatrick is devoid of any actual factual content, and does not suggest that Rempel was Kilpatrick's employee or agent. He was not.

that "Gingold never to this day reported to Mr. Boyd the results of any discussions he had with Ms. Cobell about Mr. Boyd's compensation." Compl. ¶¶ 43–44.

C. The CRA Becomes Law.

Numerous organizations and individuals lobbied for passage of the CRA, according to official records. *See* Ex. 1.[5] As examples, the National Association for the Advancement of Colored People (NAACP), People for the American Way, the Lawyer's Committee for Civil Rights Under Law, the Trust for Public Land, the Biotechnology Industry Organization, the National Sustainable Agriculture Coalition, Patton Boggs LLP, Akin Gump Strauss Hauer & Feld LLP, Holland & Knight LLP, the Salt River Project, and the Mid-West Electric Consumers Association all registered to lobby. *See id.*[6] Boyd did not register as a lobbyist on behalf of the *Cobell* or *Pigford II* classes or their counsel. *See id*.

The House of Representatives passed the CRA on March 10, 2010. Compl. ¶ 30. The Senate passed the CRA on November 19, 2010, and the House approved the Senate amendments on November 30, 2010. Compl. ¶¶ 84, 88. President Obama signed the CRA into law on December 8, 2010. Compl. ¶ 4.

D. This Court Rejects Boyd's Claims Against *Pigford II* Class Counsel.

Boyd initially demanded payment from the attorneys who represented the *Pigford II* (black farmers) class. He filed claims against them for, *inter alia*, *quantum meruit* and breach of contract. Boyd alleged that the *Pigford II* attorneys had "promised him that he would be fully

[5] The Court may take judicial notice of official records on a motion to dismiss. *Al-Aulaqi v. Panetta*, No. 12-1192, --- F. Supp. 2d --- , 2014 WL 1352452, at *8 (D.D.C. Apr. 4, 2014).

[6] In addition to funding the *Cobell* and *Pigford II* settlements, the CRA also funded a number of federal water rights settlements, extended Temporary Assistance for Needy Families, and accomplished various other legislative objections. *See* Public Law No. 111-291, Reported at 124 Statutes 3064 (Dec. 8, 2010).

compensated for his years of advocacy." *Boyd I*, 958 F. Supp. 2d at 236. Even though Boyd had "fought relentlessly on behalf of American black farmers," this Court dismissed Boyd's complaint for lack of subject matter jurisdiction and failure to state a claim under Rules 12(b)(1) and 12(b)(6). *See id.* at 235.

With respect to Boyd's breach of contract claim, this Court held that "naked allegations of verbal promises" were insufficient to state a claim where the complaint did not "specify exactly what type of advocacy Boyd was expected to perform, how many hours he was expected to work, or how much defendants were expected to compensate him." *Id.* at 240–41. Even though Boyd had alleged that *Pigford II* class counsel actually had made some payments to him, his allegations were "devoid of any information as to what the payments were for, whether the payments were for one-time or ongoing activities, how much the payments were, or any other details." *Id.* at 241.

The Court dismissed Boyd's *quantum meruit* claim because he "fail[ed] to allege with specificity facts establishing that defendants knew Boyd expected to be paid," other than making the vague allegation that "he made clear that he expected and needed to be paid [and] defendants agreed to pay Boyd for his time and expenses." *Id*. (brackets and quotation marks omitted).

E. Boyd's Complaint Against *Cobell* Class Counsel.

On May 6, 2014, Boyd filed this lawsuit in D.C. Superior Court, this time asserting claims against *Cobell* class counsel for Unjust Enrichment (Count I), Breach of Implied-In-Fact Contract (Count II), and *Quantum Meruit* (Count III). On May 27, 2014, Defendant Gingold removed this lawsuit to federal court on the ground that Kilpatrick—which Boyd admits never discussed payment with him—was fraudulently joined to defeat federal diversity jurisdiction.

STANDARD FOR DISMISSAL

To survive a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim [for] relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Mizell v. Sun Trust Bank*, No. 13-cv-1077, 2014 WL 1022888, at *3 (D.D.C. Mar. 18, 2014) (alteration and quotation marks omitted). Mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "[C]onclusory allegations are not entitled to the assumption of truth." *United States ex rel. Conteh v. IKON Office Solutions, Inc.*, No. 12-1074, --- F. Supp. 2d ---, 2014 WL 1022861, at *3 (D.D.C. Mar. 18, 2014) (quotation marks omitted). The Court also need not accept plaintiff's inferences that are unsupported by the facts in the complaint. *Mizell*, 2014 WL 1022888, at *3.

ARGUMENT

I. COLLATERAL ESTOPPEL BARS BOYD'S CLAIMS (COUNTS I–III).

Collateral estoppel renders conclusive "an issue of fact or law that was actually litigated and necessarily decided . . . in a subsequent action between the same parties or their privies." *Brodie v. Dep't of Health & Human Servs.*, 951 F. Supp. 2d 108, 117 (D.D.C. 2013) (quotation marks omitted), *aff'd*, No. 13-5227, 2014 WL 21222 (D.C. Cir. Jan. 10, 2014). Collateral estoppel "allows defendants to prevent a plaintiff from asserting a claim the plaintiff has previously litigated and lost against another defendant." *Mead v. Lindlaw*, 839 F. Supp. 2d 66, 72 (D.D.C. 2012) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.4 (1979) (quotation marks omitted)). Dispositive issues already were decided against Boyd in *Boyd I*:

- Breach of Contract (Count II): This Court ruled in *Boyd I* that Boyd could not seek personal payment for his CRA lobbying on a breach of contract theory based on "verbal promises to pay" without "a description of the pertinent obligation[.]" *Id.* at 241. His claim against Kilpatrick suffers from the same deficiency, but here his claims are far weaker: Boyd does not allege that Kilpatrick made *any* promise to him.
- *Quantum Meruit* (Count III): This Court ruled in *Boyd I* that Boyd did not "allege with specificity facts establishing that defendants knew Boyd expected to be paid." *Id*. Once again, Boyd alleges no facts showing that Kilpatrick knew Boyd expected to be paid.

Boyd "cannot continue to file suit against [new] Defendants with the same fundamentally flawed allegations in hopes of achieving a better result." *See Mead*, 839 F. Supp. 2d at 72. Collateral estoppel bars his claims.

II. BOYD'S CLAIMS AGAINST KILPATRICK SHOULD BE DISMISSED.

Even apart from collateral estoppel, Boyd's claims fail for the same reasons this Court previously dismissed them in *Boyd I*.

A. The Complaint Fails To State an Unjust Enrichment Claim (Count I).

A plaintiff asserting unjust enrichment must allege that "(1) the plaintiff conferred a benefit on the defendant; (2) the defendant retains the benefit; and (3) under the circumstances, the defendant's retention of the benefit is unjust." *Euclid St., LLC v. Dist. of Columbia Water & Sewer Auth.*, 41 A.3d 453, 463 n.10 (D.C. 2012) (quotation marks omitted). The plaintiff must "of course, prove that the defendant's enrichment is *unjust*," i.e. that there has been a "wrongful act giving rise to a duty of restitution." *News World Commc'ns, Inc. v. Thompsen*, 878 A.2d 1218, 1225 (D.C. 2005). Boyd's Complaint fails to state an unjust enrichment claim for multiple reasons.

First, Boyd attributes no "wrongful act" to Kilpatrick. *See News World*, 878 A.2d at 1225. The Complaint does not allege that Kilpatrick broke any promises it made to Boyd. Indeed, it does not allege that Kilpatrick *made* any promises to Boyd.

Second, Kilpatrick cannot have been "unjustly" enriched by a court-ordered award of attorneys' fees. As Judge Hogan noted at the Fairness Hearing in *Cobell*, class counsel worked a "phenomenal number of hours" over more than a decade and "took a big risk" that they could go home "empty-handed." Ex. 2, 6/20/11 Fairness Hr'g Tr. 247:18–25.[7] Boyd may have advocated for the CRA (along with many other individuals and organizations) in 2010, but *Cobell* class counsel spent 13 years pursuing their Native American clients' claims at great financial risk. This Court awarded them the attorneys' fees it deemed appropriate, in accordance with the governing jurisprudence. It cannot be said that such a Court-ordered fee was "unjust."

Third, it is not "unjust" to retain a benefit that was freely given. *News World*, 878 A.2d at 1225–26. Boyd readily admits that he worked to obtain funding for the *Pigford II* class starting in 2000, a full decade before *Cobell* class counsel allegedly contacted him on March 5, 2010. Compl. ¶ 19. He began working to secure congressional funding for both the *Pigford II* and *Cobell* classes in December 2009, before any communications with *Cobell* class counsel. Compl. ¶¶ 25, 28. By the time he started coordinating with *Cobell* class counsel in pursuit of their common interests, Boyd already was "exercising relentless passion and influence to advocate, testify, persuade and encourage Congress to appropriate joint funding." Compl. ¶ 28.

Fourth, Boyd's unjust enrichment theory has ridiculous implications. Under Boyd's theory, anyone who successfully advocates for legislative change would have an "unjust

[7] "A court may take judicial notice of facts on the public record in other proceedings . . . ." *Remy Enter. Grp., LLC v. Davis*, No. 13-461, --- F. Supp. 2d --- , 2014 WL 961796, at *1 n.4 (D.D.C. Mar. 13, 2014) (quotation marks omitted).

enrichment" claim against anyone who benefits directly or indirectly from a law. The AARP could sue senior citizens for "unjust enrichment" when it successfully lobbies for expansion of their Medicare coverage. The Governors Highway Safety Association (or anyone else who petitions government for stricter helmet laws) could sue motorcycle helmet manufacturers for "unjust enrichment," and demand payment, when helmet manufacturers profit from states' adoption of helmet laws. Indeed, under Boyd's erroneous theory, Kilpatrick would be liable for its "unjust enrichment" not just to Boyd, but also to the NAACP, the Trust for Public Land, Patton Boggs LLP, and every other organization and individuals who petitioned Congress to enact the CRA. This is not the law. The Court should dismiss Boyd's unjust enrichment claim.

B. The Complaint Fails To State an Implied-in-Fact Contract Claim (Count II).

Boyd fails to state a claim for breach of implied-in-fact contract for the same reason that he failed to state a claim for breach of contract in *Boyd I*. A contract implied-in-fact, while inferred from the conduct of the parties, "is a true contract, containing all necessary elements of a binding agreement." *Vereen v. Clayborne*, 623 A.2d 1190, 1193 (D.C. 1993). "[T]here must be both (1) agreement as to all material terms; and (2) intention of the parties to be bound." *New Econ. Capital, LLC v. New Mkts. Capital Grp.*, 881 A.2d 1087, 1094 (D.C. 2005) (quotation marks omitted); *see also Steven R. Perles, P.C. v. Kagy*, 473 F.3d 1244, 1249 (D.C. Cir. 2007). Those material terms may include "subject matter, price, payment terms, quantity, quality, and duration," which must be stated with specificity such "that the promises and performance to be rendered by each party are reasonably certain." *LanQuest Corp. v. McManus & Darden LLP*, 796 F. Supp. 2d 98, 102 (D.D.C. 2011) (quotation marks omitted).

As in *Boyd I*, Boyd again makes "naked allegations of verbal promises" without "any detail beyond nebulous payment, much less 'material terms' of an agreement." *Boyd I*, 958 F. Supp. 2d at 240. The Complaint does not "specify exactly what type of advocacy Boyd was

expected to perform, how many hours he was expected to work, or how much defendants were expected to compensate him." *Id.* at 240–41. Boyd's "[c]onclusory allegations of verbal promises to pay, absent a description of the pertinent obligations, cannot nudge claims across the line from conceivable to plausible." *Id.* (alterations and quotation marks omitted).[8]

Finally, no allegation in the Complaint suggests that Kilpatrick had reason to understand Boyd expected payment from Kilpatrick. *See Geier v. Conway, Homer & Chin-Caplan, P.C.*, --- F. Supp. 2d --- , No. 12-1171, 2013 WL 471663, at *14 (D.D.C. Feb. 8, 2013) (dismissing implied-in-fact contract claim where defendants were not on notice that plaintiff expected to be paid by them). Boyd does not allege a single instance in which he conveyed his desire for payment to Kilpatrick.

C. The Complaint Fails To State a *Quantum Meruit* Claim (Count III).

To state a *quantum meruit* claim, Boyd must allege "1) valuable services rendered by the plaintiff; 2) for the person from whom recovery is sought; 3) which services were accepted and enjoyed by that person; and 4) under circumstances which reasonably notified the person that the plaintiff, in performing such services, expected to be paid." *United States ex rel. Modern Elec., Inc. v. Ideal Elec. Sec. Co.*, 81 F.3d 240, 246 (D.C. Cir. 1996) (quotation marks omitted).[9]

Boyd's Complaint leaves no doubt that his purported services were not performed *for Kilpatrick*. He admittedly was working to enact the CRA before he had any communications

[8] Even if there had been a valid contract between Boyd *and Defendant Gingold*, their contract would not bind Kilpatrick. "It is a fundamental principle of contract law that parties to a contract may bind only themselves and may not bind a third person who is not a party to the contract in absence of his consent to be bound." *United States ex rel. Tenn. Valley Marble Holding Co. v. Grunley Constr.*, 433 F. Supp. 2d 104, 114 (D.D.C. 2006) (alterations and quotation marks omitted). *See also Geier*, 2013 WL 471663, at *13.

[9] *Quantum meruit* may also refer to an implied contract claim. *See Vereen*, 623 A.2d at 1193. To the extent Boyd's *quantum meruit* claim is for breach of implied contract, it fails for the same reasons as Claim II.

with *Cobell* class counsel, Compl. ¶ 28, and he describes himself as having "work[ed] tirelessly to promote the rights of minority farmers . . . for well over 25 years." *Id*. ¶ 1. In addition, as in *Boyd I*, "Boyd's complaint cannot justify the conclusion that defendants were reasonably notified that the plaintiff, in performing such services, expected to be paid." 958 F. Supp. 2d at 241 (alterations and quotation marks omitted).

III. BOYD'S CLAIMS ARE TIME-BARRED.

"D.C. Code § 12-301 sets forth a three-year statute of limitations for both tort and contract claims . . . ." *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1201 (D.C. 1984).[10] "[T]he statute of limitations begins to run when a claim accrues, and . . . a cause of action accrues when its elements are present, so that the plaintiff could maintain a successful suit." *Bregman v. Perles*, 747 F.3d 873, 876 (D.C. Cir. 2014) (alterations in original) (quotation marks omitted). [11]

Boyd's implied-in-fact contract claim is time-barred because it accrued on June 1, 2010, more than three years before the Complaint was filed on May 6, 2014. Boyd alleges that Gingold told him on June 1, 2010 that named plaintiff *Eloise Cobell*, not Gingold or Kilpatrick, would decide whether to pay Boyd. Compl. ¶ 43. The limitations period starts to run when

[10] In diversity cases, a federal court "looks to the choice-of-law rules of the state in which it sits" to determine what state's limitations period applies. *A.I. Trade Fin., Inc. v. Petra Int'l Banking Corp.*, 62 F.3d 1454, 1458 (D.C. Cir. 1995); *see also Paul v. Didizian*, 292 F.R.D. 151, 157 (D.D.C. 2013), *aff'd per curiam*, No. 13-7132, 2014 WL 590628 (D.C. Cir. Feb. 7, 2014). "D.C. choice-of-law rules . . . treat statutes of limitations as procedural, and therefore almost always mandate application of the District's own statute of limitations." *A.I. Trade*, 62 F.3d at 1458; *Paul*, 292 F.R.D. at 157.

[11] "[T]hat claims are barred by the statute of limitations may be asserted in a Rule 12(b)(6) motion when the facts that give rise to the defense are clear from the face of the complaint." *Pricer v. Deutsche Bank*, 842 F. Supp. 2d 162, 165 (D.D.C. 2012) (quotation marks omitted). Dismissal is warranted where "[t]he face of the complaint . . . conclusively indicate[s] that the complaint is time-barred." *Id*.

plaintiff "has been made aware that the [defendant] is refusing to perform." *LoPiccolo v. Am. Univ.*, 840 F. Supp. 2d 71, 78 (D.D.C. 2012); *see also Medhin v. Hailu*, 26 A.3d 307, 311 (D.C. 2011).

Boyd's *quantum meruit* and unjust enrichment claims are also time-barred. A claim for unjust enrichment or *quantum meruit* accrues when the "enrichment bec[omes] unjust," typically upon "unequivocal refusal of payment." *Bregman*, 747 F.3d at 877. Courts in other jurisdictions have adopted a last-rendition-of-services test, which has been cited with approval in the District of Columbia. *See News World*, 878 A.2d at 1224; *Bregman*, 747 F.3d at 878–79. Boyd's claims are untimely under either test. As already noted, Gingold is alleged to have effectively refused payment on June 10, 2010. And Boyd's alleged services were last rendered no later than December 8, 2010, when President Obama signed the CRA into law. Both dates are more than three years before the Complaint was filed on May 6, 2014.

CONCLUSION

Kilpatrick respectfully requests that the Court dismiss the Complaint with prejudice.

Dated: June 3, 2014

Respectfully submitted,

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[PROPOSED] ORDER

THIS MATTER, having come before the Court on Defendant Kilpatrick Townsend & Stockton LLP's Motion to Dismiss the Complaint, **IT IS** on this _____ day of _____ 2014, **ORDERED** that Defendant Kilpatrick Townsend & Stockton LLP's Motion is **GRANTED**;

ORDERED that the Complaint is dismissed with prejudice.

_____
Richard J. Leon
United States District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2014, I caused a true and accurate copy of the foregoing to be served on the following via the Court's CM/ECF system:

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