UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN W. BOYD JR., 68 Wind Road Baskerville, VA 23915 Plaintiff, v. **KILPATRICK TOWNSEND & STOCKTON, LLP,** 607 14th Street, NW, Suite 900 Washington, D.C. 20005-2018 and **DENNIS M. GINGOLD** 8712 Crider Brook Way Rockville, MD 20854 Defendants.	**Civil Case No. 14-889 (RJL)** **Removed from D.C. Superior Court** **(Civil Action No. 2014 CA 002782)** **Judge Richard Leon**

PLAINTIFF'S MOTION FOR REMAND

Plaintiff John W. Boyd ("Plaintiff" or "Mr. Boyd"), by his attorneys, Doyle, Barlow & Mazard PLLC, hereby files this Motion for Remand and Incorporated Memorandum of Law In Support of its Motion. Pursuant to Local Rule 7(m), counsel for Plaintiff sought consent to this Motion from opposing counsel, but consent has not been granted. In support of this Motion for Remand, Plaintiff states as follows:

I. PROCEDURAL HISTORY

Plaintiff brought this action against Defendants Kilpatrick Townsend & Stockton, LLP ("Defendant Kilpatrick") and Dennis Gingold ("Defendant Gingold") (collectively referred to as "Defendants") in the Superior Court of the District of Columbia, Case No.: 2014 CA 002782 B

on May 6, 2014. Plaintiff's Complaint alleges breach of implied contract, *quantum meruit*, and unjust enrichment claims against Defendant Kilpatrick and Defendant Gingold. Plaintiff's Complaint, attached as Exhibit 1.

Defendant Kilpatrick and Defendant Gingold were duly served on May 6 and May 7, 2014, respectively.

On May 27, 2014, Defendant Gingold removed the D.C. Superior Court action to this court, claiming that even though Defendant Kilpatrick shares Virginia citizenship with Plaintiff, Defendant Kilpatrick had been fraudulently joined as a defendant in Plaintiff's Complaint. Therefore, Defendants believe that Defendant Kilpatrick should be dismissed so as to create complete diversity and allow this Court to exercise diversity jurisdiction over this matter.

Defendant Kilpatrick has not responded to Plaintiff's Complaint, but according to Defendant Gingold, Defendant Kilpatrick consents to this removal. There is nothing anywhere on record from Defendant Kilpatrick either responding to the Complaint or directly acknowledging consent to removal of this action to federal court.

II. INTRODUCTION

Defendant Gingold, with the tacit consent of Defendant Kilpatrick, in a blatant effort to delay and forum shop, sought to remove this action to federal court on the basis of diversity jurisdiction, while acknowledging that complete diversity can only be achieved if this court dismisses Defendant Kilpatrick from this action. This cleverly disguised motion to dismiss is improperly filed in federal court and should have been brought before the Superior Court of the District of Columbia.

Defendants' arguments are senseless. First, Defendants argue Mr. Boyd lacks standing to sue under the Article III of the Constitution, despite the fact that Mr. Boyd plainly pled damages

against Defendants for conduct that violates District of Columbia law. Defendants next argue that Mr. Boyd cannot sue Defendants unless and until they "unequivocally" refuse to pay him, as if Defendants could just remain equivocal in their refusal to pay Mr. Boyd and avoid liability indefinitely. Finally, Defendants present a confused and completely unsupported attempt to extract *res judicata* from another lawsuit brought by Mr. Boyd that involved substantially different facts and circumstances, completely different defendants, and which was confidentially settled to the mutual satisfaction of all parties involved. All of Defendants' arguments lack merit, as will be shown in Plaintiff's Incorporated Memorandum of Law.

This case is not complicated. Through his exhaustive efforts on behalf of Defendants, Mr. Boyd was an integral force in securing Congressional funding for the *Cobell* settlement, which directly led to a massive payday for Defendants. Mr. Boyd's efforts were of immense value to Defendants, as on their own, they had not been able to even secure a Congressional vote on funding for the *Cobell* settlement, much less passage of the actual legislation. Defendants' refusal to pay Mr. Boyd for his services as set forth in the Complaint are in direct violation of District of Columbia law. Moreover, Plaintiff's Complaint states a valid cause of action against both Defendants. As Defendants concede that Defendant Kilpatrick shares Virginia citizenship with Plaintiff, this Court does not have jurisdiction over this action. Therefore, this Court should remand it to the Superior Court for the District of Columbia without further delay.

III. LEGAL ARGUMENT

1. Mr. Boyd Has Standing To Bring This Action Against Defendant Kilpatrick.

Defendants seek to muddy the water of this state court action by opening with a claim that Mr. Boyd lacks standing to sue Defendant Kilpatrick under Article III of the United States Constitution. Presumably, Defendants believe that by invoking the Constitution, they give this

case the air of a federal question jurisdiction. The argument for standing inescapably depends on whether Mr. Boyd pled a valid claim under District of Columbia law against Defendant Kilpatrick and whether the District of Columbia Court has jurisdiction to hear that claim.

The cases Defendants cite to support their standing argument are not relevant because each involves federal question jurisdiction. For instance, *Florida Audubon Soc'y v. Bentsen*, 94 F.3d 658 (D.C. Cir. 1996) involved the federal National Environmental Policy Act, 42 U.S.C. 4321 *et seq*; *Raytheon Co. v. Ashborn Agencies, Ltd.*, 372 F.3d 451 (D.C. Cir. 2004) was brought under the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*; *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) was brought under the federal Endangered Species Act 16 U.S.C. § 1531 *et seq.*; and *Winpisinger v. Watson*, 628 F.2d 133 (D.C. Cir., 1980) alleged misuse of federal funds and violations of the First and Fifteenth Amendments to the United States Constitution. Defendant Gingold did not cite a single case that speaks to the issue of diversity or fraudulent joinder. Each case that Defendant Gingold cited was completely irrelevant to the present matter. Defendants wish this Court to apply a standard that presumes federal jurisdiction over Defendant Kilpatrick, when the actual standard the Court must apply goes solely to the question of whether there can be federal jurisdiction over Defendant Kilpatrick.

As for his claims, Mr. Boyd pled actual, concrete particularized injury caused by Defendants' conduct, including conduct by Defendant Kilpatrick and Defendant Gingold. Mr. Boyd sufficiently pled the elements of unjust enrichment, breach of implied contract and *quantum meruit* under District of Columbia law.

2. Standard For Diversity Jurisdiction.

Pursuant to 28 U.S.C. 1332(a), a federal district court has original jurisdiction over any civil action where the amount in controversy exceeds $75,000 and where the plaintiff does not

share state citizenship with any named defendant. *See Fortuin v. Milhorat,* 683 F.Supp. 1, 2 (D.D.C. 1998) (citing *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365) (1978).

In the present case, Defendants allege this court has diversity jurisdiction. It is undisputed that the amount in controversy exceeds $75,000. It is likewise undisputed that Defendant Kilpatrick shares Virginia state citizenship with Plaintiff, and thus destroys diversity jurisdiction. Defendant Gingold's Notice of Removal at 4. Therefore, Defendants attempt to save diversity jurisdiction by alleging that Defendant Kilpatrick was fraudulently joined. As will be shown below, Defendants' claim of fraudulent joinder fails as a matter of law.

3. Standard For Proving Fraudulent Joinder.

As cited by Defendants in their removal action, to prove fraudulent joinder, Defendants must demonstrate "either that there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court or that there has been outright fraud in the plaintiff's pleading of jurisdictional facts." *Brown v. Brown & Williamson Tobacco Corp.*, 26 F.Supp.2d 74, 76-77 (D.D.C. 1998) (internal citations omitted). In the present case, Defendants specifically *do not* allege fraud, but only that there is no possibility that Mr. Boyd would be able to establish a cause of action in District of Columbia Superior Court. Defendant Gingold's Notice of Removal at 7.

The burden is squarely on Defendants to show that Mr. Boyd cannot establish a cause of action against Defendant Kilpatrick. The weight of this burden is clear under federal law.

> There is a heavy burden on a defendant claiming fraudulent joinder, and courts are required to resolve all disputed issues of fact and law in favor of the plaintiff. *See Marshall v. Manville Sales Corp.*, 6 F.3d 229, 232-33 (4th Cir. 1993); *Richardson v. Phillip Morris Inc.*, 950 F.Supp. 700, 702 (D. Md. 1997). It is not enough to show a likelihood of ultimate success in the action; the defendant must show that the plaintiff has "*no possibility* of a right to relief." *Richardson*, 950 F.Supp. at 702 (emphasis).

Brown, 26 F.Supp.2d at 77.

The district court in *Brown* further described just how difficult Defendants' burden is when alleging fraudulent joinder.

> "[I]f there is even a possibility that a state court would find a cause of action stated against any one of the named in-state defendants on the facts alleged by the plaintiff, then the federal court must find that the in-state defendant(s) have been properly joined, and that there is incomplete diversity, and that the case **must** be remanded to the state courts." *B. Inc. v. Miller Brewing Co.*, 663 F.2d 545, 550 (5th Cir. 1981). [emphasis added]. Unless a state law claim is "wholly nonsensical," remand is the appropriate course of action. *Pulse One Communications, Inc. v. Bell Atlantic Mobile Systems, Inc.*, 760 F.Supp. 82, 84 (D.Md.1991) ("[T]he state law argument might be meritless as well as novel, but ... the state courts should make that determination, not the federal removal court….").

Brown at 77.

In the present case, Mr. Boyd alleged three causes of action under District of Columbia law against Defendant Kilpatrick: unjust enrichment, breach of implied contract, and *quantum meruit*. Instead of filing a motion to dismiss in District of Columbia Superior Court, Defendants cleverly attempt to have this federal court dismiss these state law claims against Defendant Kilpatrick in the guise of establishing federal diversity jurisdiction. Federal law is clear that when ruling upon diversity jurisdiction, the state court is the proper tribunal to make decisions on the merits of state claims, "not the federal removal court." *Pulse One Communications, Inc.* at 84.

Given that Mr. Boyd pled three cognizable claims against Defendant Kilpatrick, this Court must remand the case and allow the District of Columbia Superior Court to decide the merits of the claims.

A. Mr. Boyd Pled A Cognizable Claim Against Defendant Kilpatrick For Unjust Enrichment Under District of Columbia Law.

Under District of Columbia law, a claim for unjust enrichment has three elements:

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.

Fort Lincoln Civic Ass'n, Inc. v. Fort Lincoln New Town Corp., 944 A.2d 1055, 1076 (D.C. 2008).

In fact, the D.C. Circuit recognized that a non-lawyer can have an unjust enrichment claim against lawyers involved in a contingency fee award. *Bregman v. Perles*, 747 F.3d 873 (D.C. Cir. 2014). In the *Bregman* case, cited by Defendants, the plaintiff was an investigator, who claimed that the law firm had been unjustly enriched when it collected a contingency fee and refused to pay him for his efforts in helping the firm attain that fee. The only reason the plaintiff was not allowed to proceed on this theory was because the court found that his claim was past the three year statute of limitations.

The D.C. Circuit elaborated on the concept of unjust enrichment under District of Columbia law, stating that unjust enrichment "is based not on a contractual duty but rather has its roots in the common law concept of quasi-contract." *Bregman* at 875 (citing *4934, Inc. v. D.C. Dep't of Emp't Servs.*, 605 A.2d 50, 55 (D.C. 1992)). That is:

> A quasi or constructive contract rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. In truth it is not a contract or promise at all. It is an obligation which the law creates, in the absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, *or its equivalent*, under such circumstances that in equity and good conscience he ought not to retain it, and which *et aequo et bono* belongs to another. *Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.*, 870 A.2d 58, 64 (D.C. 2005) (second emphasis added) (quoting *Miller v. Schloss*, 218 N.Y. 400, 407 (1916)); *see also Vila v. Inter-Am. Inv. Corp.*, 570 F.3d 274, 279-80 (D.C. Cir. 2009).

Bregman at 875.

Importantly, for the present case, the D.C. Circuit, in *Bregman*, specifically recognized that circumstances such as Mr. Boyd's, where Mr. Boyd actively worked to achieve a result from

which attorneys ultimately received a large contingency fee, would be sufficient to state a cause of action for unjust enrichment under District of Columbia law.

> Although the defendant lawyers were eventually enriched by the Beecham settlement proceeds, they were "enriched" in the legal sense by [plaintiff]'s efforts on their behalf. Whether or not [plaintiff]'s labors got them across the goal line, he conferred a benefit on them by working to move the ball forward.

Id.

Defendants, in the present case, try to turn the *Bregman* decision on its head by alleging that Mr. Boyd's unjust enrichment claim against Defendant Kilpatrick is not ripe because Defendant Kilpatrick has to date chosen not to respond, but only to hide behind Defendant Gingold in this matter. Defendant Kilpatrick was contacted by Mr. Boyd's counsel in April 2014 demanding fair compensation for Mr. Boyd's efforts. Defendant Kilpatrick did not respond to those demands, but has the audacity to suggest that a lack of a response can indefinitely forestall an unjust enrichment claim. Such a result is not tenable as will be more fully explained by Section 5 of this Incorporated Memorandum. Regardless, this type of state law argument should be decided by the state court, and not the federal removing court. *See Pulse One Communications, Inc.,* 760 F.Supp. at 84.

B. Mr. Boyd Pled A Cognizable Claim For Breach of Implied-in-fact Contract and *Quantum Meruit* Under District of Columbia Law.

The District of Columbia Court of Appeals held that "an implied-in-fact contract is a true contract, containing all necessary elements of a binding agreement; it differs from other contracts only in that it has not been committed to writing or stated orally in express terms, but rather is inferred from the conduct of the parties in the milieu in which they dealt." *Steuart Inv. Co. v. Meyer Grp., Ltd.*, 61 A.3d 1227, 1233 (D.C. 2013) (internal citations omitted).

The elements of establishing an implied-in-fact contract and *quantum meruit* under District of Columbia law are:

> (1) valuable services being rendered;
> (2) for the person sought to be charged;
> (3) which services were accepted by the person sought to be charged, used and enjoyed by him or her; and
> (4) under such circumstances as reasonably notified the person sought to be charged that the [person rendering the services] expected to be paid by him or her.

New Economy Capital, LLC, v. New Markets Capital Group, 881 A.2d 1087, 1095 (D.C. 2005).

In the present case, Mr. Boyd demonstrated the value of his services in securing passage of Congressional funding for the *Cobell* settlement and that those services inured to the great benefit of Defendant Kilpatrick and Defendant Gingold. These facts cannot be reasonably disputed. Moreover, both the circumstances and facts indicate that Mr. Boyd reasonably notified Defendant Kilpatrick and Defendant Gingold of Mr. Boyd's expectation to be paid for his efforts. In fact, as alleged in the Complaint at paragraph 30, Mr. Boyd expressly told Defendants at a lunch meeting on June 1, 2010 at the Laughing Man restaurant in Washington, D.C. that he expected to be paid for his efforts on behalf of the *Cobell* litigation team in securing funding for the *Cobell* settlement. Defendants did not refuse to pay him at that time. Rather, they prodded and encouraged Mr. Boyd to help them obtain the necessary funding that would allow Defendant Kilpatrick and Defendant Gingold to get paid handsomely. Defendants merely put him off with assurances of payment and then instructed Mr. Boyd about what actions they expected him to take next on their behalf.

These allegations are not mere recitations of the elements of a claim but based upon numerous emails, phone calls, and meetings with Defendant Kilpatrick's employees/agents and Defendant Gingold, which are verified by emails and/or can be proven through testimony.

4. Mr. Boyd's Claims Against Defendants Are Not Precluded By Any Previous Litigation.

Mr. Boyd filed a lawsuit in federal district court in 2012 against attorneys representing class plaintiffs in the *Pigford II* decision. This previous case, *Boyd v. Farrin,* Case No. 12-01893 (D.D.C 2012) was settled since then and a stipulation of dismissal filed on September 9, 2013. Stipulation of Dismissal, attached as Exhibit 2. Defendants attempt to attach a theory of *res judicata* from the *Farrin* case to the case at bar. This court is neither bound to consider *Farrin,* nor is it proper to do so when analyzing the merits of the present action.

Res judicata holds that a judgment on the merits in a prior suit bars a second suit involving identical parties or their privies based upon the same cause of action. *Drake v. FAA,* 291 F.3d 59, 66 (D.C. Cir. 2002). Under the law of the District of Columbia, a party seeking to apply *res judicata* must establish four elements:

1. identity of the parties;
2. judgment from a court of competent jurisdiction;
3. final judgment on the merits; and,
4. identity of the cause of action.

Tembec, Inc. v. United States, 570 F.Supp.2d 140-141 (D.D.C. 2008).

In the present matter, Defendants cannot satisfy the first and fourth requirements to apply *res judicata* to this action. Defendants were not parties to the *Farrin* case, nor could they have been. The *Farrin* case involved Mr. Boyd's relationship with the attorneys for class plaintiffs prior to, during and after the *Pigford II* litigation. Defendants in the present matter were not involved in the *Pigford II* litigation. Mr. Boyd's claims in the *Farrin* case were discrete claims of breach of fiduciary duty, *quantum meruit* and breach of contract. Mr. Boyd's claims against Defendants Kilpatrick and Gingold are unjust enrichment, breach of implied contract and *quantum meruit*. Mr. Boyd's claims against Defendants are discrete from those brought in

Farrin. Mr. Boyd's claims against Defendant Kilpatrick and Defendant Gingold are based only on Mr. Boyd's relationship with Defendant Kilpatrick and Defendant Gingold during that period of time in which they were seeking to get Congressional funding for the *Cobell* settlement. Mr. Boyd had no involvement in the underlying *Cobell* litigation, and Mr. Boyd is not claiming compensation for anything done to achieve the *Cobell* settlement.

Here, the *Cobell* settlement was worthless until Congress funded it. Defendants Kilpatrick and Gingold made no progress towards the goal of obtaining Congressional funding for their settlement agreement, as there had not been a single Congressional vote on the matter prior to their enlistment of Mr. Boyd to champion their cause. It is true that Mr. Boyd was working to achieve funding for the *Pigford II* decision simultaneously, but *Cobell* added to his burden, and in fact hindered the progress of gaining funding for the *Pigford II* settlement. The *Cobell* litigation team, which was led by Defendants Kilpatrick and Gingold, was unpopular in Congress, and their attorney fee demands were seen as excessive. Defendant Kilpatrick and Defendant Gingold happily used Mr. Boyd and exploited his zeal and dedication for the cause of black farmers to their own objectives. The Complaint clearly states facts showing how Defendant Kilpatrick was specifically and directly involved in instructing Mr. Boyd's efforts. The Complaint also details how Plaintiff relayed to both Defendants his desire and expectation to be remunerated for his efforts.

Defendants attempt to compare the language of the *Farrin* complaint and the present case. Defendant Gingold's Notice of Removal at 20. However, their attempt is misguided because the paragraphs from the Complaint detail meetings with members of Congress and newspaper articles delineating the progress of Mr. Boyd's efforts to secure funding for both the *Pigford II* and *Cobell* settlements. Mr. Boyd never attempted to hide the fact that his actions in

seeking funding for these settlements were linked, both because of Presidential prerogative and because of the insistence and direction of the *Cobell* attorneys, *i.e.*, Defendants Kilpatrick and Gingold. This fact does nothing to defeat or even diminish Mr. Boyd's claims against Defendants in the present case.

5. Defendant Kilpatrick Refused To Fairly Remunerate Mr. Boyd For His Efforts On Its Behalf.

As enumerated in the Complaint, Mr. Boyd made clear to Defendant Kilpatrick and its agents that he expected compensation for his efforts on their behalf. Defendant Kilpatrick made the initial contact with Mr. Boyd, recruited Mr. Boyd, and encouraged Mr. Boyd to help obtain funding, which led to Defendant Kilpatrick receiving an enormous fee award through Mr. Boyd's efforts. Defendant Kilpatrick since refused to pay or even communicate with Mr. Boyd because it no longer needs his services.

Furthermore, on April 28, 2014, Mr. Boyd's counsel sent a demand for payment to Defendant Kilpatrick detailing the claims and attaching a draft of the Complaint. To date, Defendant Kilpatrick has not responded in any way, either to the April 28th demand letter or the Complaint filed on May 6, 2014 in Superior Court of the District of Columbia.

Defendants assert that Defendant Kilpatrick's refusal to respond means that Defendant Kilpatrick has yet to do anything wrong and there can be no case against it. This argument is as ludicrous as it sounds. The cases upon which Defendants rely to support this proposition all involve the determination of when a statute of limitation begins to run. The plaintiffs in these cases were denied the right to bring suit because they waited more than three years from the date they received an "unequivocal" refusal to pay. Defendants cannot, however, use these cases to suggest that they can prevent a case from ever becoming ripe because of refusing to respond instead of refusing to pay.

Defendant Kilpatrick's very silence on the matter of remuneration for over two years and its continued silence after receiving the April 28th demand letter is enough to put Mr. Boyd on notice that he cannot expect payment from Defendant Kilpatrick except through litigation. As stated by the District of Columbia, when ruling on a statute of limitation pursuant to a contract case:

> No statute or provision of the lease prevented [plaintiffs] from pursuing their right to sue once they had made the successive demands and received no payment from the [defendant]. [Plaintiff]'s contrary argument that she had no reason to assume a refusal to pay until she received the [defendant's] March 30, 1994, letter — fully fifteen months after she made the original demand — is untenable. *See* 51 AM.JUR.2D § 114 (Limitation of Actions) ("the courts may presume from the lapse of an unreasonable time that a demand was made and refused" (emphasis added)).

Bembery v. District of Columbia, 758 A.2d 518, 520 (D.C. 2000).

6. Mr. Boyd Pled Detailed Factual Allegations Against Defendant Kilpatrick And Its Lawful Agents That Support His Claims.

Defendant Kilpatrick not only was an integral part but also played a leadership role in the *Cobell* litigation team. In this role, Defendant Kilpatrick is liable to Mr. Boyd on the basis of both its direct actions and vicariously liable for the actions of the members of the *Cobell* litigation team taken for the common benefits of the team. The word "team" is not an invention of Mr. Boyd's Complaint. It is Defendants' own term used throughout the *Cobell* litigation and during the Congressional negotiations in which Mr. Boyd played such a critical part.

Geoffrey Rempel, a member of this team, as alleged in the Complaint, filed affidavits in support of the Defendants' applications for fees and expenses, describing himself as "engaged as a member of [*Cobell's*] litigation team." Affidavit of Geoffrey Rempel, Dec. 5, 2012, attached as Exhibit 3. Keith Harper, a partner at Defendant Kilpatrick at the time this litigation was filed and throughout all relevant periods of Mr. Boyd's Complaint, also filed an affidavit describing the litigation team, and how he and Defendant Gingold controlled the operations of the

team. Affidavit of Keith Harper, March 31, 2011, attached as Exhibit 4. In this particular affidavit, Mr. Harper describes how he and Mr. Rempel informed Defendant Gingold that they wanted an attorney removed from the *Cobell* team because he negotiated on behalf of the Plaintiffs without the knowledge or consent of the rest of the team. It is clear from the affidavit that the *Cobell* litigation team all worked out of Defendant Kilpatrick's offices, and, at the very least, Defendant Gingold and Defendant Kilpatrick were co-equal leaders of the team, not making decisions concerning the team's strategy without consulting with the other.

There can be no doubt that Defendants acted in concert at all times throughout the *Cobell* litigation, and never more so than during the period in 2011 when they used Mr. Boyd to secure funding for their settlement. As specifically pled in Plaintiff's Complaint, Defendant Kilpatrick was directly involved in engaging Mr. Boyd, directing his work, and refusing him remuneration. *See* Plaintiff's Complaint at para. 25. Indeed, Defendant Kilpatrick was the first from the *Cobell* litigation team to contact and recruit Mr. Boyd. Defendant Kilpatrick participated in numerous meetings, phone calls, and emails with Mr. Boyd throughout all relevant times. When Mr. Boyd met with Defendant Gingold and Mr. Rempel at lunch in March 2011, he was meeting with the *Cobell* team. These facts make Defendant Kilpatrick directly liable to Mr. Boyd for all claims.

Furthermore, Defendant Kilpatrick is vicariously liable for the actions of the other members of the team by virtue of its control over the team, and under *respondeat superior* for the actions of those under its control for the purposes of using Mr. Boyd to secure funding for the settlement that inured to the benefit of the *Cobell* team. In the District of Columbia,"under the doctrine of *respondeat superior*, an employer may be held liable for the acts of his employees committed within the scope of their employment." *Boykin v. District of Columbia*, 484 A.2d

560, 561 (D.C.1984). As a general rule, whether an employee is acting within the scope of his employment is a question of fact for the jury. *Brown v. Argenbright Sec., Inc.*, 782 A.2d 752, 757 (D.C. 2001). The employees or any agent under the direct control of Defendant Kilpatrick impart liability to Defendant Kilpatrick for any actions they take in the scope of that control.

To further illustrate Defendant Kilpatrick's liability, it is only necessary to read the Complaint. Defendant Gingold, in his Notice of Removal, undeniably demonstrates that Mr. Boyd sufficiently pled his causes of action with particularity and specificity. Defendant Gingold cites at least 17 paragraphs directly implicating Defendant Kilpatrick through the actions of its lawful agents. Defendant Gingold, however, fails to include many more, which refer to "Defendants" as is clearly defined by the Complaint to include the actions of Defendant Kilpatrick and Defendant Gingold.

As for the relevant portions of the Complaint that Defendant Gingold has not cited, Paragraph 2 describes Defendant Kilpatrick's role in the present litigation as attorneys for class plaintiffs in the *Cobell* litigation. Paragraphs 3 through 9 detail the history of the negotiations to secure Congressional funding for the *Cobell* settlement, Defendant Kilpatrick's role in directing Mr. Boyd to work towards that goal, the distinct value of Mr. Boyd's service, and the benefit Defendant Kilpatrick received from these services.

Paragraph 25 describes how Defendant Kilpatrick took advantage of Mr. Boyd's relationship with the *Pigford II* settlement to get Mr. Boyd to advocate on behalf of the *Cobell* team. Indeed, paragraphs 26-28 demonstrate that Defendant Kilpatrick made the initial contact to Mr. Boyd and Defendant Kilpatrick actively recruited him to help the *Cobell* team. Paragraph 29 describes just how difficult Mr. Boyd's task was in advocating for the *Cobell* team, as the *Cobell* team hardly made any inroads in bring the *Cobell* funding issue to members of Congress.

Paragraph 33 describes Defendant Kilpatrick's direct efforts, and the efforts of the *Cobell* team, to take advantage of Mr. Boyd's advocacy skills, and to direct and control his efforts. Paragraphs 40 through 43 describe the lunch meeting with Defendant Gingold and Mr. Rempel, another member of the *Cobell* team, regarding the lack of success members of the team had so far in dealing with the White House and Congress, and the fact that Mr. Boyd's contacts and experience were necessary for the *Cobell* team to achieve these goals. Paragraph 43 also states Mr. Boyd's direct request for compensation for his efforts from the *Cobell* team.

Paragraphs 48-50 and 52-55 detail emails from the *Cobell* team, including Defendant Kilpatrick, directing Mr. Boyd to use his contacts at a local law firm with government contracts to steer support for the *Cobell* funding and to continue his efforts with Congress. Paragraph 55 demonstrates that Defendant Kilpatrick directed Mr. Boyd to continue his efforts:

> Mr. Boyd specifically stated that "I pressed Reid's staff late Friday on War bill… I reached out to him again today…Waiting to hear back." **In response, Mr. Loving [Defendant Kilpatrick] directed Mr. Boyd to: "Keep on him [Sen. Reid's staff member] about it."** Mr. Boyd then informed the *Cobell* team again, in particular Defendant Gingold, **Mr. Loving, Mr. Pearl [Defendant Kilpatrick],** and Mr. Rempel, that he was reaching out to Senators Hagan and Landrieu, sponsors of the Black Farmers Bill, to get the *Pigford II* and *Cobell* legislation added to the War Supplemental Bill. Defendants strongly encouraged Mr. Boyd to do so. On July 15, 2010, Defendant Gingold sent an email communication to Mr. Boyd and **Mr. Loving**, while copying **Mr. Pearl** and Mr. Rempel, directing them to have a conference call on Friday, July 16, 2010 to discuss strategy going forward. Rather than a conference call, Mr. Boyd, **Mr. Pearl** and Mr. Rempel all had various email communications with each other regarding the best strategy to pursue.

Para. 55 of Complaint (emphases added).

Paragraphs 56-64 detail Mr. Boyd's interactions with the press and members of Congress on behalf of the *Cobell* team. Paragraphs 65-68 detail Mr. Boyd's interaction with the Washington

Post and other media outlets at the direction and with the approval of the *Cobell* team. Paragraphs 86-87 demonstrate that the *Cobell* team knew and acknowledged that the interest in settling *Cobell* was negatively impacting Mr. Boyd's efforts for *Pigford II* funding, but insisting that he keep advocating for *Cobell.*

Paragraphs 89-93 describe how Mr. Boyd's efforts were ultimately successful and of great benefit to the *Cobell* team, and how he was publicly acknowledged by the press and Congress as playing a key role in the passage of the *Cobell* funding.

The facts indisputably find that Defendant Kilpatrick and Defendant Gingold expended enormous energy in their attempts to micromanage Mr. Boyd's actions. It is also clear from the facts that Defendant Kilpatrick and Defendant Gingold exerted such effort to direct Mr. Boyd's activities precisely because they knew the pivotal importance of Mr. Boyd's activities in obtaining funding for Cobell's settlement, without which Defendant Kilpatrick and Defendant Gingold would not have realized even a dime of the tremendous legal fees that ultimately came with the funding. The facts show that Defendant Kilpatrick's and Defendant Gingold's refusal to pay just compensation for Mr. Boyd's efforts, efforts from which Defendant Kilpatrick and Defendant Gingold derived enormous financial reward, construes unjust enrichment under the laws of the District of Columbia, and should so be tried before the Superior Court of the District of Columbia.

7. Conclusion

The facts show that Defendant Kilpatrick was an active participant in soliciting and directing Mr. Boyd's efforts to secure Congressional funding for the *Cobell* settlement. The facts further show that Defendant Kilpatrick received direct benefit from these efforts. Defendants' refusal to compensate Mr. Boyd is in violation of District of Columbia law.

For these reasons and for the reasons set forth above, Mr. Boyd presented well-pled claims against Defendant Kilpatrick for violations of District of Columbia law. Defendant Kilpatrick is properly named as a party to this action. Because there is no dispute that Defendant Kilpatrick is a citizen of the state of Virginia, as is the Plaintiff, this Court does not have jurisdiction to hear this matter under 28 U.S.C. 1332(a).

WHEREFORE Plaintiff moves this Court to remand this action back to the District of Columbia Superior Court without further delay Case No. 2014 CA 002782, and to enter an Order awarding Plaintiff his just costs and attorney fees as allowed under 28 U.S.C. Sec. 1447(c) for litigating Defendants' meritless removal attempt.

ORAL HEARING REQUESTED

Respectfully submitted,

/s/
Andre P. Barlow (Bar No. 465683)
Camelia C. Mazard (Bar No. 461778)
Keith Lively (Bar No. 499948)
DOYLE, BARLOW & MAZARD PLLC
1110 Vermont Ave, N.W. Suite 715
Washington, D.C. 20005
T: (202) 589-1834
F: (202) 589-1819
abarlow@dbmlawgroup.com
cmazard@dbmlawgroup.com
klively@dbmlawgroup.com

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 2014, I electronically filed the foregoing *Plaintiff's Motion for Remand* with the Clerk of the Court using the CM/ECF system, and by the same means served the following parties:

Alan L. Balaran, Esq. #438709
Law Office of Alan L. Balaran, PLLC
1111 19th St., N.W. Twelfth Floor
Washington, D.C. 20036
abalaran@balaran-law.com
Attorney for Defendant Dennis M. Gingold

Charles Davant, IV, Esq.
John Kazar Villa, Esq.
Williams & Connolly, LLP
725 Twelfth Street, NW
Washington, DC 20005
Attorneys for Defendant Kilpatrick Townsend & Stockton, LLP

Stanley M. Brand, Esq. #213082
Ross A. Nabatoff, Esq. #376665
Brand Law Group, PC
923 Fifteenth Street, N.W.
Washington, D.C. 20005
rnabatoff@brandlawgroup.com
Attorneys for Defendant Dennis M. Gingold

Respectfully submitted,

/s/
Andre Barlow (D.C. Bar No. 465683)
DOYLE, BARLOW & MAZARD PLLC
1110 Vermont Ave, N.W., Suite 715
Washington, D.C. 20005
T: (202) 589-1834
F: (202) 589-1819
abarlow@dbmlawgroup.com

Counsel for John W. Boyd

EXHIBIT 1

Plaintiff's Complaint
May 6, 2014

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JOHN W. BOYD, JR.
68 Wind Road
Baskerville, VA 23915,

Plaintiff,

v.

KILPATRICK TOWNSEND & STOCKTON, LLP,
c/o DANIEL H. MARTI
607 14th Street, NW, Suite 900
Washington, DC 20005-2018,

and

DENNIS M. GINGOLD
8712 Crider Brook Way
Rockville, MD 20854
c/o ROSS NABATOFF
BRAND LAW GROUP
923 15th Street, NW
Washington, DC 20005,

Defendants.

Civil Action No. _____

COMPLAINT AND DEMAND FOR JURY TRIAL

14-0002782

COMPLAINT

I. INTRODUCTION

Plaintiff John W. Boyd, Jr. ("Plaintiff" or "Mr. Boyd"), by his attorneys Doyle, Barlow & Mazard PLLC, brings this Complaint for unjust enrichment, *quantum meruit*, and breach of an implied contract, against Kilpatrick, Townsend & Stockton, LLP ("Kilpatrick Townsend") and

Dennis M. Gingold ("Gingold") (collectively the "Defendants"). Plaintiff hereby demands judgment against Defendants in the amounts set forth below.

Based upon personal knowledge known to himself and his own acts and upon information and belief as to all relevant matters, Plaintiff states as follows:

II. NATURE OF THE CASE

1. Plaintiff Mr. Boyd is the President of the National Black Farmers Association ("NBFA"). He works tirelessly to promote the rights of minority farmers and has done so for well over 25 years. A farmer himself, Mr. Boyd has a sterling reputation in the legislative community and beyond and uses this reputation, as well as his considerable experience and extensive contacts, to bring to light, years of injustice suffered by minority farmers and to advance their rights. As a result, he was instrumental in achieving legislation to secure compensation for black farmers pursuant to a pair of companion federal lawsuits, *Pigford v. Glickman*, Civil Action No. 97-cv-1978 (April 14, 1999) (*Pigford I)* and *In re Black Farmers Discrimination Litigation*, Civil Action No. 08-mc-0511 (Oct. 27, 2011) (*Pigford II)*.

2. Defendants are attorneys who represented the interests of Native Americans in a federal lawsuit against the United States Department of Interior ("DOI") titled *Cobell v. Salazar*, Civil Action No. 1:96-cv-01285-TFH (D.D.C. Dec. 7, 2009) ("*Cobell*"). The claims of the Native American plaintiffs were not identical to those of the Black Farmers plantiffs in the *Pigford* cases, but procedurally they reached the same *impasse*. By December 2009, the class plaintiffs in both *Pigford* and *Cobell* agreed to settlement terms with the federal government. The difficult problem for both settlements was that each required specifically allocated and targeted congressional appropriations to fund the settlements. The appropriations bill, passed only after much effort of many in government, and due in no small part to the relentless efforts of Mr.

Boyd, was called the Claims Resolution Act of 2010 ("CRA" or the "Act"), and it provided full funding for both the *Pigford* and *Cobell* settlements.

3. Mr. Boyd had long been the advocate the black farmers counted on to push for legislation to be enacted. Even today, he remains reliable, informed and committed to the causes of black farmers. Mr. Boyd's efforts in pursuit of the goals of black farmers were well-known, storied and successful and continue to this day. Defendants were well aware of Mr. Boyd's remarkable reputation.

4. By contrast, the *Cobell* Plaintiffs had no one of Mr. Boyd's stature, connections and reputation to press their cause before Congress and the Obama Administration. The *Cobell* case dragged on for well over ten years until Mr. Boyd was contacted, recruited and relied on by Defendants identified herein to secure passage of the dual funding legislation, the CRA, passed by the 111th Congress in November 2010 and signed into law by President Obama on December 8, 2010, a historical event acknowledged by both black farmers and Native Americans. The final version of the bill was passed by the U.S. Senate with a unanimous voice vote on November 19, 2010 and then approved by the U.S. House of Representatives by a vote of 256 to 152 on November 30, 2010. Legal fees of $99 million were awarded to Defendants when the United States District Court for the District of Columbia issued the final order in the *Cobell* case on July 27, 2011.

5. The Act specifically afforded long overdue compensation to tens of thousands of black farmers, as well as tens of thousands of Native Americans. The Act provided a total of over $3.4 billion in compensation to Native Americans and the black farmers who were injured over a long period of time and allotted $99 million of that sum in fees for the *Cobell* attorneys.

6. Defendants realized they needed an individual of Mr. Boyd's ability, stature and reputation to head up a single unified effort in order to focus on getting the necessary funding appropriated by Congress. Therefore, Defendants encouraged, recruited, offered and finally pled with Mr. Boyd to accept their offer to work on their behalf to secure support of and approval for the passage of the CRA by the 111th Congress. Mr. Boyd agreed to and accepted work on behalf of Defendants and the *Cobell* legal team. Immediately upon his acceptance, Mr. Boyd began taking directions from Defendants who relied on Mr. Boyd to communicate with crucial White House and congressional staffs for the benefit of the *Cobell* team. Defendants previously had neither the network nor the ability to communicate with these staffs themselves.

7. As a result, Defendants relied on and directed Mr. Boyd to use his well-established contacts. Defendants even directed Plaintiff Mr. Boyd to defend and advocate for the amount of attorneys' fees originally sought by Defendants (approximately $223 million). However, most in government viewed such exorbitant fees as excessive and offensive. Mr. Boyd too thought the original demand was self-defeating and entirely exorbitant and he communicated that to Defendants.

8. Plaintiff did as Defendants directed and now Defendants refuse to compensate Mr. Boyd in any manner whatsoever. This refusal by Defendants to compensate Mr. Boyd is especially unjust as, but for his tireless efforts, the CRA would not have passed, and Defendants would not have enjoyed an incredibly successful and lucrative payday of $99 million.

9. Senators, Congressmen and even President Obama credited Mr. Boyd with obtaining justice and money for tens of thousands of injured Native Americans in the *Cobell* litigation. There is no person or entity in the country that has done anything close to what Mr. Boyd did over the past twelve years to make this settlement a reality and, as a result, Mr. Boyd deserves

just compensation. Because of the passage of the Act, Defendants were rewarded handsomely for their role as representatives of Native Americans in the *Cobell* litigation. Mr. Boyd was a driving force in the passage of the CRA, a fact that Defendants exploited, encouraged, directed and ultimately from which they received great benefit. Given Defendants' windfall reward of $99 million in legal fees, it is an injustice of significant proportion for Defendants now to refuse to pay Mr. Boyd just compensation for his extensive, rewarding efforts in obtaining the necessary support for the passage of the CRA.

III. PARTIES

10. Plaintiff John W. Boyd, Jr. is a resident of the State of Virginia and President of the NBFA.

11. Defendant Kilpatrick, Townsend & Stockton LLP is an international law firm with at least 17 offices from coast to coast in the United States and throughout the world, including offices in California, Colorado, the District of Columbia, Georgia, New York, North Carolina, Washington, Sweden, Japan, Saudi Arabia, China and elsewhere. In 2013, Defendant Kilpatrick Townsend was rated 75th in terms of yearly revenue among the top 100 leading law firms in the United States with gross revenues in excess of $406 million and its profits per partner were approximately $1 million. Whether the $99 million in legal fees, or a portion thereof, is included in the Defendant Kilpatrick Townsend's 2013 gross revenue figures is unclear. Nonetheless, Defendant Kilpatrick Townsend is a large and influential law firm of significant wealth.

12. Keith M. Harper and David C. Smith, Kilpatrick Townsend partners, have been counsel for the plaintiffs in the *Cobell v. Salazar* litigation from the inception of the case in 1996 through the present. Other attorneys and professionals at Kilpatrick Townsend represented the *Cobell* plaintiffs since at least March 1999, including John Loving, a non-lawyer, lobbyist and senior

government relations advisor, who first approached Mr. Boyd about working for the *Cobell* legal team and advocating on behalf of the *Cobell* plaintiffs.

13. Following Defendant Dennis M. Gingold's withdrawal in December 2013, Kilpatrick Townsend became sole lead counsel for the plaintiffs in the *Cobell v. Salazar* litigation and it remains in that position today.

14. Defendant Dennis M. Gingold was co-lead counsel for the plaintiffs in the *Cobell v. Salazar* litigation from the inception of the case in 1996 until his withdrawal in December 2013. Defendant Gingold is admitted to practice law in New Jersey, Colorado and the District of Columbia. During the course of the *Cobell* litigation and until his withdrawal from the *Cobell* case in 2013, Defendant Gingold maintained an office at the Kilpatrick Townsend law firm located in Washington, DC. Defendant Gingold worked from that office on a regular basis in order to conduct his representation of the *Cobell* litigants and pursue the *Cobell* litigation.

IV. JURISDICTION AND VENUE

15. This Court has personal jurisdiction over the Defendants pursuant to D.C. Code §§ 13-423(a)(1)-(5) (1983), as amended.

16. This Court has jurisdiction over the subject matter of this dispute pursuant to D.C. Code § 11-921(a) (1981).

17. Venue in this Court is proper because a substantial part of the acts and/or omissions giving rise to this action occurred in the District of Columbia.

V. BACKGROUND FACTS

A. Mr. Boyd: An Advocate For Black Farmers

18. In 1997, a class action of black farmers sued the United States Department of Agriculture ("USDA") for decades of discrimination. *Pigford v. Glickman*, Civil Action No. 97-cv-1978

("*Pigford I*"). On April 14, 1999, the *Pigford I* Court (per Judge Paul L. Friedman) approved the terms of a consent decree to resolve the claims of the class members. Approximately 65,000 individuals filed late claims under the *Pigford I* consent decree but were deemed ineligible for compensation due to lateness (the "Late Filers").

19. In 2000, Mr. Boyd began receiving phone calls and emails from many of these Late Filers. Mr. Boyd decided to help these Late Filers and beginning on or about September 2000 and, for the next ten years, Mr. Boyd brought their issues to the forefront of the public's attention.

20. Mr. Boyd's remarkable efforts in helping the Late Filers included meeting with congressional leaders and their staffs to encourage investigations and legislation, some of which he helped draft. Over the years, he worked with Senators including Charles Grassley (R-IA), George Allen (R-VA), Joe Biden (D-DE), Barack Obama (D-IL), Ted Kennedy (D-MA) and Congresspersons including Bennie Thompson (D-MI), Max Burns (R-GA), Steven Chabot (R-OH), John Conyers (D-MI), Artur Davis (D-AL), Bobby Scott (D-VA), James Sensenbrenner (R-WI), and Maxine Waters (D-CA) on behalf of the Late Filers..

21. Mr. Boyd testified at several congressional hearings and investigations, some initiated through his own efforts to highlight the issues facing the black farmers and the Late Filers. He worked directly with USDA Secretary James Vilsack, Attorney General Eric Holder, and the Congressional Black Caucus to further the cause of the black farmers and the Late Filers.

22. Mr. Boyd garnered publicity for his cause by giving multiple interviews, in addition to staging rallies and holding press events. As a result, Mr. Boyd's efforts were covered by local and national press and media outlets, including *The Richmond Times-Dispatch*, *The Washington Post*, *The New York Times*, *National Public Radio* and *ABC News*. In fact, Mr. Boyd was named

"Person of the Week" by Peter Jennings in an *ABC News* story in November 2003. To further his cause, Mr. Boyd journeyed 280 miles from his farm in southern Virginia to the White House accompanied only by his mule (named *Struggle*), to conduct a peaceful protest and focus attention on the plight of black farmers and the Late Filers.

23. Mr. Boyd was eventually successful in his quest to help black farmers and the Late Filers who had not filed in time under the *Pigford I* case, with the passage of the 2008 Farm Bill. However, for the Late Filers to receive the proceeds, further litigation was required. Mr. Boyd previously sought out counsel to represent the NBFA and its members in the *Pigford I* case with no success, but now that the Farm Bill passed and much of the hard work was done, he had little trouble finding an attorney to represent the black farmers and the Late Filers.

B. The *Black Farmers* And *Cobell* Cases Are Combined For Funding Purposes

24. Even after another class action was filed in 2008, *Pigford II*, Mr. Boyd worked to secure sufficient congressional funding to pay the black farmers and Late Filers the restitution they deserved. For the next two and a half years, Mr. Boyd met with members of the House and Senate, Capitol Hill staffers, White House officials, United States Department of Justice ("DOJ') attorneys, and USDA officials in efforts to secure this funding. In February 2010, the parties in *Pigford II* entered into a Joint Settlement Agreement to resolve the claims of the black farmers and the Late Filers, an agreement that was predicated on Congress appropriating over $1.15 billion dollars to fund the settlement.

25. In December 2009, Mr. Boyd met with White House officials to discuss congressional appropriations for the *Pigford II* settlement. Mr. Boyd learned that while supportive of the black farmers' claims, the White House wanted an appropriations bill that would combine the claims of the black farmers and the Late Filers with those of the Native Americans who recently settled

their class action lawsuit against the DOI. *Cobell v. Salazar*, No. 1:96-CV-01285-JR (D.D.C. Dec. 7, 2009). *Cobell* was a class action litigation brought by Native Americans against the DOI for failing to adequately account for income generated from Native American land and other assets held in trust by the United States Government. The case was settled in 2009, but as with the *Pigford II* settlement, the *Cobell* settlement agreement was worthless unless and until the 111st Congress specifically appropriated the money to fund the dual settlements. Now that Defendants knew that both the *Pigford II* and *Cobell* cases were to be joined for congressional funding purposes, Mr. Boyd was essential to Defendants realizing their goals.

C. Mr. Boyd Is Recruited By Defendants To Get Congressional Funding

26. The *Cobell* team of lawyers, consultants and lobbyists had no relationship with the White House or key congressional contacts, a critical weakness in their ability to obtain funding for their settlement and their legal fees. Indeed, the legal fee issue was of particular interest to Defendants and, more importantly, it was an ongoing, troubling concern for Defendant Gingold who throughout the litigation insisted on receiving the maximum fee possible. As all knew, Mr. Boyd had an ongoing knowledge of and familiarity with key White House officials and congressional contacts because of his previous work. So, on March 5, 2010, Mr. Boyd was contacted via telephone by John Loving, a senior government relations advisor with Defendant firm Kilpatrick Townsend.

27. Mr. Loving wasted no time and recruited Mr. Boyd to assist the *Cobell* litigation team secure passage of legislation to fund the *Cobell* settlement. Mr. Loving specifically asked Mr. Boyd to use his extensive contacts in the House and Senate and elsewhere to drum up the necessary support for the *Cobell* settlement legislation. Defendants needed Mr. Boyd's help because he clearly had established himself as a prominent figure and an outspoken advocate who

successfully pushed for legislation on behalf of minority farmers in the past. Through Mr. Boyd's years of work, he developed significant political contacts that Defendants needed to exploit so that they could obtain the appropriate joint funding for the joint settlements, as well as for their attorneys' fees.

28. Between Mr. Boyd's December 2009 meeting at the White House and March 5, 2010 when he was contacted via telephone by Mr. Loving from the *Cobell* team, Mr. Boyd had been the primary advocate on Capitol Hill exercising relentless passion and influence to advocate, testify, persuade and encourage Congress to appropriate joint funding for the settlements in *Pigford II* and *Cobell*.

29. Defendants, including the entire *Cobell* team, failed to keep Congress updated and knowledgeable on the *Cobell* issues. This mistake was a great failure on part of Defendants that required particular attention and effort on the part of Mr. Boyd, who needed to get up to speed on the *Cobell* case in order to fulfill his obligation to the Defendants. Therefore, beginning in December 2009 shortly after his White House meeting, Mr. Boyd began studying the *Cobell* litigation on a full time basis to become well versed on all the issues in order to educate his contacts on Capitol Hill about *Cobell*, as few of his congressional contacts had intimate knowledge of the *Cobell* lawsuit. After over a decade of work pushing Congress to compensate black farmers, Mr. Boyd now had to revisit and resell his congressional contacts on appropriations for the both the newly-joined *Cobell* Plaintiffs as well as the *Pigford II* Late Filers. Until Mr. Boyd's involvement with *Cobell*, there were few, if any, congressional offices that were fully informed or even aware of the *Cobell* lawsuit and pending settlement. In fact, prior to Mr. Boyd's involvement with *Cobell*, there had never been a congressional vote on a *Cobell* settlement proposal.

30. Due in large part to Mr. Boyd's newly concerted efforts in December 2009 through April 2010, on March 9, 2010, the CRA was introduced in the House of Representatives and passed at record speed the following day on the 10th of March. This accomplishment was major on Mr. Boyd's part because the CRA included references to funding for the plaintiffs in *Pigford II*, *Cobell* and others. In a press release praising the passage of the CRA, Congressman Bobby Scott (D-Va.) stated, "Had it not been for the insistency and consistency of John W. Boyd, President of the NBFA, urging the branches of the US government to right this injustice, none of it may have occurred."

31. Although the House passed the CRA, it had not designated specifically the source of the funds to pay for the relief, as was required by budget rules. Expert advice was needed to secure funding. Astute knowledge of congressional lawmakers and their staffs were also essential as part of this process and Mr. Boyd possessed both. For the next several months, Mr. Boyd continued working with Speaker Nancy Pelosi's office and other lawmakers to get a supplemental appropriation to fund the *Black Farmers-Cobell* Joint Settlement Agreement.

D. Mr. Boyd's Increased Efforts To Gain Support For *Black Farmers-Cobell* Joint Settlement Agreement

32. On March 26, 2010, Mr. Boyd was contacted again by the *Cobell* litigation team. In a phone conversation, Geoffrey Rempel, a member of the *Cobell* litigation team associated with Kilpatrick Townsend, requested that Mr. Boyd use his political contacts to work directly with the *Cobell* litigation team and to assist them in getting congressional approval of funding for the *Cobell* settlement. During the call, Mr. Rempel informed Mr. Boyd that he was on the *Cobell* litigation team and was attempting to lobby for funds in the *Cobell* settlement but "needed [Mr. Boyd's] help." Mr. Boyd informed Mr. Rempel that he was already working on the matter. Mr. Rempel replied, "I know; Senator Byron Dorgan [D-ND], the Chairman of the Committee on

Indian Affairs, told me to call you." This conversation unequivocally demonstrates that legislative leaders in Congress considered Mr. Boyd the key player in any *Cobell* discussions going forward because of his contacts developed through his work and leadership on behalf of the black farmers and because he was already building momentum on a Joint Settlement Agreement.

33. *Cobell's* counsel on their own failed to develop any of the political or media contacts that Mr. Boyd established during his time working on the *Pigford II* and *Cobell* appropriations negotiations. Defendants realized, more than ever, they needed Mr. Boyd on their team and aggressively recruited Mr. Boyd. In fact, Mr. Rempel's telephone conversation with Mr. Boyd was designed to convince Mr. Boyd to work more closely with the *Cobell* team because of his relationships with specific members of the 111th Congress and the White House and the goodwill he developed over many years of advocacy on behalf of black farmers and other minorities in the United States.

34. On April 1, 2010, *Congressional Quarterly ("CQ") Today* featured an article on the issue of funding for the CRA, which focused on Mr. Boyd's efforts.

35. On April 13, 2010, Mr. Boyd emailed Darrel Thompson, a senior advisor to Senate Majority Leader Reid, to schedule an appointment with Senator Reid regarding his support for the *Pigford II* and *Cobell* settlements.

36. After Mr. Boyd's involvement with Mr. Reid's office, on April 23, 2010, Senator Reid issued a statement through the Senate Democratic Communications Center calling for a joint settlement for the *Pigford II* and the *Cobell* litigants. Through Mr. Boyd's efforts, Senator Reid was now formally and publicly on board and Mr. Boyd reported the Senator's support to Defendants.

37. On May 5, 2010, Mr. Boyd was contacted by Rollie Wilson, Senior Counsel to the Senate Committee on Indian Affairs, asking to meet on Thursday, May 6, 2010. Mr. Boyd also met with staffers of Senator Tom Coburn (R-OK) on many occasions to discuss support of the *Cobell* and the *Pigford II* settlements. Senator Coburn, who was opposed to the Joint Settlement Agreement from the beginning and publicly raised serious budgetary concerns about it, eventually supported the CRA because of Mr. Boyd's continuing discussions with Senator Coburn and his staff.

38. On May 7, 2010, Mr. Rempel emailed Mr. Boyd and copied Defendant Gingold and Mr. Michael Alexander Pearl, at the time an associate at Defendant Kilpatrick Stockton, asking Mr. Boyd how his meeting with Senator Coburn went. Mr. Boyd responded and so did Defendant Gingold. On May 21, 2010, Mr. Rempel emailed Mr. Boyd asking if he was hearing anything about the votes for the *Pigford II* and *Cobell* appropriations being included in the Tax Extenders Bill, a much larger spending bill. Mr. Boyd responded to Mr. Rempel and told him he was waiting to hear back from his contact in Senator Reid's office.

39. Throughout the spring and summer of 2010, Mr. Boyd worked with the following lawmakers to fund the *Pigford II* and *Cobell* settlements and pass the CRA in the Senate and the House: Senate Majority Leader Harry Reid, Speaker of the House Nancy Pelosi, Senator Thad Cochran, Senator James Webb, Senator Charles Grassley, Senator Mary Landrieu, Senator Kay Hagan, Senator Blanche Lincoln, Senator Tom Harkin, Senator Mark Warner, Senator Coburn, Rep. James Clyburn (Majority Whip), Rep. John Conyers, Rep. Maxine Waters, Rep. Bennie Thompson, Rep. Bobby Scott, and others.

E. The Laughing Man Tavern: Confirmation of Offer, Acceptance, Compensation

40. On June 1, 2010, Mr. Boyd met for lunch with Mr. Rempel and Defendant Gingold, lead counsel on the *Cobell* litigation team, at the Laughing Man Tavern in Washington, D.C. During lunch that day, Mr. Rempel and Defendant Gingold continued to recruit and engage Mr. Boyd to work more closely with the *Cobell* legal team. By this time, the White House was frustrated with *Cobell's* legal team, particularly with Defendant Gingold, and requested that Defendants and the *Cobell* counsel decrease their excessive legal fee request. The White House found it difficult to work with the *Cobell* team because the *Cobell* team was inexperienced and focused primarily on the issue of excessive legal fees. Specifically, Defendants refused to lower their fee request of $223 million. Even in the face of mounting opposition to the CRA, Defendants were intransigent on the fee issue, insisting on and defending their right to legal fees that exceeded $223 million. Mr. Boyd advised Defendants that compromise on the fee issue was essential if the CRA was to be funded and move forward.

41. As a result of Defendants' refusal to lower their exorbitant legal fees, Defendants lost all credibility with Congress and, in particular, the White House. Communication between the White House and Defendants suffered and eventually became nonexistent, requiring Mr. Boyd step in and fill this serious void. Defendants, particularly Defendant Gingold, who was insistent that the fees not be lowered under any circumstances, now needed Mr. Boyd to use his relationships with the White House senior to rebuild credibility and respect. Mr. Boyd told Mr. Rempel and Defendant Gingold at the June lunch, as well as the *Cobell* team on many other occasions, that attention needed to be refocused to the issue of securing funds for the *Cobell* settlement, in order to alleviate bad faith and hostility toward the White House. Focus could not remain on the demand for $223 million in legal fees. Now more than ever, Mr. Boyd was

needed by Defendants to enhance their credibility with the White House and obtain the Administration's support to recover reasonable attorney fees.

42. Defendant Gingold informed Mr. Boyd at the Laughing Man Tavern lunch meeting that he and other *Cobell* counsel were unable to work with White House personnel on their own because of the amount of legal fees they requested. More importantly, at the lunch, Defendant Gingold admitted to Mr. Boyd that the *Cobell* team was inexperienced and naïve in dealing directly with the White House. Accordingly, because of this naiveté, Defendant Gingold wanted Mr. Boyd to continue his full-time efforts to get the funding for the *Cobell* settlement approved and, to a lesser extent, focus on the legal issue pending at the White House.

43. At that point during the lunch, Mr. Boyd specifically told both Defendant Gingold and Mr. Rempel that he expected to be paid for his efforts to secure funding for the *Cobell* settlement. In response, Defendant Gingold encouraged Mr. Boyd to continue working with and for Defendants. Defendant Gingold never indicated to Mr. Boyd at any time at the restaurant, or at any subsequent time thereafter, that Mr. Boyd would not be compensated for his efforts. It never happened. In fact, just the opposite occurred. Defendant Gingold always indicated to Mr. Boyd that he would be paid. Every time Mr. Boyd raised issues of compensation or the amount of such compensation, Defendant Gingold always indicated to him that compensation should not concern him -- clearly indicating to Mr. Boyd that payment would be forthcoming. **Indeed, according to Defendant Gingold, the issue of payment was *not whether Mr. Boyd would be compensated*, but when Eloise Cobell *would focus on the amount of compensation* for him.** Each 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. Eloise

Cobell was the lead plaintiff in the original *Cobell* case and needed to be consulted on issues relating to costs.

44. Defendant Gingold never to this day reported to Mr. Boyd the results of any discussions he had with Ms. Cobell about Mr. Boyd's compensation other than to say she agreed that Mr. Boyd should be paid.

45. Eloise Cobell died on October 16, 2011, less than a year after President Obama signed the CRA into law on December 8, 2010 and three months after Defendants were awarded $99 million in legal fees on July 27, 2011.

F. Mr. Boyd Educates Congress On *Cobell* Funding, The CRA And Legal Fees

46. Following lunch on the afternoon of June 1, 2010 and in order to immediately demonstrate and convey his willingness, promise and commitment to work on behalf of the *Cobell* team, Mr. Boyd emailed a DOJ official, Tony West, then Assistant Attorney General of the DOJ's Civil Division, to request a luncheon to discuss the *Cobell* and *Pigford II* cases. As head of the Civil Division at DOJ, Assistant Attorney General West had significant responsibility for and influence over the *Pigford II* and *Cobell* matters pending in his division. This time was just one of many Mr. Boyd consulted with Mr. West.

47. In late June and early July 2010, Mr. Boyd specifically spoke with the offices of Representatives Susan David (D-CA), Barbara Lee (D-CA), G. K. Butterfield (D-NC), James Clyburn (D-SC), John Conyers (D-MI) and Bobby Scott (D-VA) on behalf of the *Cobell* and *Pigford II* legislation. These congressional representatives were the leading officials needed to get the *Cobell* and *Pigford II* legislation passed.

48. On July 6, 2010, Mr. Boyd provided the *Cobell* litigation team members including Mr. Rempel, Defendant Gingold, Mr. Loving and Mr. Pearl with a list of the votes cast by members

of the Senate on the House version of the CRA in May 2010. The list provided by Mr. Boyd contained the names of legislators for specific targeting and detailed Republican Senators who voted yes, Republican Senators who voted no, Democratic Senators who voted no and members of both parties who did not vote on the Bill. This list provided the Defendants and the entire *Cobell* team with the names of the Congressional parties involved and the names of the key Senators whose support would be crucial in the passage of a bill to fund the *Cobell* and *Pigford II* settlements.

49. On the same day, Defendant Gingold and Mr. Loving each responded to Mr. Boyd's email with suggestions related to developing a political strategy for Mr. Boyd to implement. Defendant Gingold asked Mr. Boyd if he had "been able to engage the WH in the cause?" and further stated "This may sound silly, but it would be very helpful if staff and the president finally started to talk to members on both sides of the aisle." Mr. Boyd was again directed to make that decision happen. Mr. Loving responded with additional information to assist Mr. Boyd's efforts. Mr. Boyd was also in contact with Senator Reid's staff that night advocating for Senator Reid to add the *Cobell* and *Black Farmers*' legislation to the War Supplemental Bill. The War supplemental Bill was one of at least five other bills considered during this appropriations process that was proposed by Mr. Boyd and/or other congresspersons as a funding source for the *Cobell* and *Black Farmers* settlements. Through his influential contacts, Mr. Boyd developed the initial congressional strategy that became the focal point of the *Cobell* legal team in obtaining Congressional approval of the funding for the *Cobell* settlement.

50. On July 7 and 8, 2010, Mr. Boyd had numerous email communications with the *Cobell* litigation team, including Mr. Rempel, Defendant Gingold, Mr. Loving and Mr. Pearl, regarding political and public relation strategies. Mr. Rempel sent an email to Mr. Boyd and Mr. Loving

directing them to leverage their contacts on the Hill. Mr. Boyd responded specifically to the directions of Mr. Loving and stated: "Yes. We have a full court press! I have called everyone in the black farmers area of influence … to help call on congress, and support us in the war bill." On July 7, Mr. Boyd was also contacted by the office of Senator Grassley to provide the office with a copy of the War Supplemental Bill. Senator Grassley's office wanted to review the language of the bill to determine whether the *Cobell* and *Black Farmers* settlements could be added successfully to the legislation with his support.

51. In early July, Mr. Boyd did a radio interview with Roland Martin and Tom Joyner to discuss and promote on a national basis the *Cobell* and *Pigford II* settlements. The aim was to have listeners throughout the nation reach out to their representatives to vote in the affirmative on the War Supplemental Bill, which in turn meant passage of funding necessary to pay for the *Cobell* and *Pigford II* settlements.

52. On July 7, 2010, in an email from the *Cobell* litigation team, Mr. Rempel again directed Mr. Boyd to leverage his "attorney contacts on the Hill" to use their influence to push through the War Supplemental Bill with *Cobell* and *Pigford II* funding attached. Mr. Rempel believed this approach to be a good strategy as it was his understanding that "at least one of your attorneys may have clients with significant defense contracts." Mr. Boyd asked specifically which attorneys he would recommend that he should approach. Defendant Gingold interjected his opinion and specifically directed Mr. Boyd to approach Crowell & Moring, and to "put the question to them directly." It is particularly noteworthy to point out that Defendant Gingold, an established Washington, DC attorney, who practiced for many years and has been a member of the bar in the District of Columbia for decades was now directing Mr. Boyd, a non-attorney and

non-member of the DC bar, to communicate directly with a major international law firm, well-established in the DC legal community.

53. Crowell & Moring, a Washington, DC based firm, slightly smaller than Defendant Kilpatrick Townsend, has 11 offices throughout the world and over 500 lawyers. In terms of revenue generated in 2013, it ranks 86th among the 100 largest law firms in the United States. This specific order from Defendant Gingold to communicate and negotiate with Crowell & Moring on behalf of the *Cobell* litigation team indicates the significant confidence and reliance placed on Mr. Boyd by the *Cobell* team throughout Mr. Boyd's involvement in the *Cobell* matter. To suggest otherwise is inconsistent with the facts that provide clear and unambiguous support that Mr. Boyd played a key role in the passage of the *Black Farmers/Cobell* Joint Settlement Agreement and the CRA.

54. On July 8, 2010, Mr. Boyd was on Capitol Hill discussing the *Cobell* and *Pigford II* amendment to the War Supplemental Bill with various congressional staffers. During this day, Mr. Boyd was contacted directly by a staffer from Senator Reid's office and met with a staffer from Senator Grassley's office. Again, Mr. Boyd had numerous email communications with Mr. Rempel, Mr. Loving, and Defendant Gingold, providing them with up-to-the-minute Capitol Hill updates.

55. On July 12, 2010, Mr. Boyd informed Defendants that according to congressional leadership, the *Cobell* and *Pigford II* amendments were to be removed from the War Supplemental Bill and added to the Tax Extenders Bill, a second funding source considered. Mr. Boyd reported to Defendants that he contacted Senator Reid's office to press that the *Cobell* and *Pigford II* amendments be added to the War Supplemental Bill. Mr. Boyd specifically stated that "I pressed Reid's staff late Friday on War bill… I reached out to him again today…Waiting to

hear back." In response, Mr. Loving directed Mr. Boyd to: "Keep on him about it." Mr. Boyd then informed Defendants again, in particular Defendant Gingold, Mr. Loving, Mr. Pearl, and Mr. Rempel, that he was reaching out to Senators Hagan and Landrieu, sponsors of the Black Farmers Bill, to get the *Pigford II* and *Cobell* legislation added to the War Supplemental Bill. Defendants strongly encouraged Mr. Boyd to do so. On July 15, 2010, Defendant Gingold sent an email communication to Mr. Boyd and Mr. Loving, while copying Mr. Pearl and Mr. Rempel, directing them to have a conference call on Friday, July 16, 2010 to discuss strategy going forward. Rather than a conference call, Mr. Boyd, Mr. Pearl and Mr. Rempel all had various email communications with each other regarding the best strategy to pursue.

56. On July 27, 2010, Mr. Boyd was called upon again to speak on behalf of Defendants and the entire *Cobell* team. Mr. Boyd was interviewed on a conference call by national news reporters and discussed his frustration in particular and the frustration of the entire *Cobell* team with the lack of support for the *Cobell/Pigford II* Joint Settlement Agreement from Republican Senators. Mr. Boyd urged the Senate through the reporters' stories to vote in the affirmative for funding of the Joint Settlement Agreement. As always, Mr. Boyd was urged once again by Defendants to use his press connections to speak out publicly on all issues relating to *Cobell* whenever he chose. This type of autonomy is only granted to trusted and essential members of any organization who are relied on to speak with authority on important matters of substance. Such was the case with Mr. Boyd who spoke at all times on the merits of the *Cobell* settlement with enthusiasm.

57. On July 28, 2010, Mr. Boyd met with Senator Reid and successfully persuaded Senator Reid to call the vote on whether the funding of the *Cobell* and *Pigford II* Joint Settlement Agreement should be added to the Small Business Bill, a third funding source considered for the

CRA. Mr. Boyd also telephoned Senator Grassley in an attempt to get a Republican co-sponsor for the *Cobell* and *Pigford II* amendment to be added to the Small Business Bill.

58. On August 2, 2010, *CQ Today* ran another article about the legislative efforts to fund the *Cobell* and *Pigford II* settlements, again quoting Mr. Boyd, and describing him as having "pressed both Reid and House Speaker Nancy Pelosi for action."

59. On August 4, 2010, Senator Mark Warner, speaking on the floor of the Senate, urged the Senate to approve funding for the *Cobell/Pigford II* Joint Settlement Agreement. Senator Warner acknowledged Mr. Boyd in his remarks, stating "this issue was first brought to my attention by John Boyd. . . " 156 Cong. Rec. 117, S6715 (Aug. 4, 2010) (Statement of Senator Mark Warner).

G. CRA Is Passed and Funded

60. On August 5, 2010, Senator Grassley called for the Senate to approve funding for the *Cobell* and *Pigford II* Joint Settlement Agreement and publicly stated the importance of Mr. Boyd and capsulated in large part the sentiment of the Senate regarding Mr. Boyd when Senator Grassley stated: "There is an advocate for the Black Farmers—John Boyd. I have been working with him for a long period. He was working hard on this a long time before I was. We should be getting this resolved for the benefit of the Farmers but also for the advocates, those people who have been working so hard finding ways to get it done. " 156 Cong. Rec. 118, S. 6800 (Aug. 5, 2010) (Statement of Charles Grassley). Senator Grassley and John Boyd had a good working relationship as a result of their previous work on matters related to the NBFA. This relationship was publicly known and Defendants, in particular Defendant Gingold, were very mindful of this beneficial relationship at the time of Mr. Boyd's recruitment and hiring.

61. On August 11, 2010, Mr. Boyd called Senator Blanche Lincoln (D-AR), then Chairwoman of the Senate Agriculture Committee, to find an "immediate, administrative remedy" for discriminated farmers "regardless of race." Mr. Boyd was also quoted in *Reuters* as saying, "this is a national disaster, and it's a man-made disaster what happened to the farmers." Mr. Boyd then sent this article to Michael Steele, Chair of the Republican Party. Mr. Boyd also spoke with staffers of Senator Reid to have funding for the *Cobell* and *Pigford II* settlements attached to the Border Security Bill, a fourth funding source. The request was ultimately denied. But Mr. Boyd was not discouraged.

62. On August 12, 2010, Mr. Boyd spoke with staffers of Senator Reid and inquired about using stimulus money to be an offset for the Joint *Cobell/Pigford II* Settlement. Budget offsets are additional funds available to be used to pay or "offset" the increased costs of a special spending program or that of a particular piece of legislation.

63. In a continuing effort to influence Senator Coburn's opinion, on August 16, 2010, Mr. Boyd met with staffers of Senator Coburn's office to discuss the *Cobell* and *Pigford II* appropriations. This process was ongoing with Senator Coburn, which Mr. Boyd relished as it called for his particular skill set. Mr. Boyd was ideally suited to turn Senator Coburn around on the settlement issues. And he did.

64. During September and October 2010, Mr. Boyd continued to work very closely with lawmakers, including Senate Majority Leader Harry Reid, and also met with administration officials, including Secretary Vilsack. During this time, Mr. Boyd also continued to hold rallies, including a rally in Washington, DC on September 16, 2010. Mr. Boyd continued to report to and coordinated his activities with Defendants and members of the *Cobell* team.

65. Consistent with Defendants' insistence that Mr. Boyd speak publicly on *Cobell's* behalf, on August 31, 2010, Defendant Gingold sent Mr. Boyd an email advising him that he referred a member of the *Washington Post* editorial board to Mr. Boyd for a possible editorial piece in the Washington Post in support of the *Cobell* and *Pigford II* settlements. At Defendant Gingold's direction, Mr. Boyd took the opportunity to be quoted in the *Washington Post* regarding the CRA and the Joint Settlement Agreement

66. Indeed, on September 3, 2010, Mr. Boyd forwarded to Defendant Gingold an op-ed piece in the *Washington Post*, quoting Mr. Boyd, which highlighted the problems the plaintiffs in both *Cobell* and *Pigford II* were having in securing joint Congressional funding. Defendant Gingold responded "Good job for you. The Post doesn't like [*Cobell*] plaintiff's counsel because we successfully prosecuted Babbitt on civil contempt charges." Defendant Gingold, pleased with the article, went on to comment that the article was: "…ok for us [*Cobell*]. We'll take it."

67. On September 7, 2010, Mr. Boyd emailed Defendant Gingold a long list of publicity efforts he made on behalf of the *Cobell* and *Pigford II* settlements. Again, Defendant Gingold lauded Mr. Boyd and stated that he was doing a "damn good job."

68. On September 15, 2010, Darrel Thompson, senior advisor to Senator Reid, emailed Mr. Boyd and requested a telephone conference call to discuss options to obtain funding for the *Cobell* and *Black Farmers'* Joint Settlement Agreement.

69. In furtherance of that conference call, on September 16, 2010, Mr. Boyd emailed Mr. Thompson for clarification of the Tax Extenders Bill. Mr. Thompson informed Mr. Boyd that Republicans objected to the *Cobell/Black Farmers'* Joint Settlement Agreement being made a part of the Tax Extenders Bill. Mr. Boyd asked Mr. Thompson when the Bill was coming to a vote so he could inform the media of the Republican efforts to block the Bill. Mr. Thompson

responded to Mr. Boyd and informed him that Senator Baucus (D-MT) offered the Bill, and that Republicans blocked the Bill eight times.

70. On September 16, 2010, Defendant Gingold forwarded Mr. Boyd an email and attached an Associated Press story that detailed the White House's request for Congress to fund the *Cobell* settlement. In this email, Defendant Gingold gave Mr. Boyd the following instructions: "Now you must get to work on [Senator] Ried [*sic*] et al. Nothing else counts" (emphasis added).

71. On September 20, 2010, Mr. Boyd contacted Senator Mark Warner (D-VA) to arrange a meeting to discuss the *Cobell* and *Black Farmers'* Joint Settlement Agreement. Mr. Boyd also sent an email to Senator Warner's staffer, Nicholas Devereux, thanking him for the meeting.

72. On September 21, 2010, Defendant Gingold acknowledged the ability of Mr. Boyd to influence Senator Grassley, among others, and directed Mr. Boyd to "light a fire under [Senator] Grassley re DOA assets."

73. On September 21, 2010, Nicholas Devereux responded to Mr. Boyd's September 20, 2010 email and wrote that Senator Warner was very supportive of trying to get the joint settlement legislation passed in the Senate.

74. On September 23, 2010, Senators Landrieu, Hagan and Lincoln joined Mr. Boyd at a press conference to urge the Senate to pass funding legislation for the *Black Farmers/Cobell* Joint Settlement Agreement.

75. On September 23, 2010, Defendant Gingold directed Mr. Boyd again to contact Senator Grassley to help broker offsets in the *Cobell* settlement bill. Based on the influential capabilities of Mr. Boyd and his easy access to Senator Grassley and his office staff, Defendant Gingold told Mr. Boyd "GET TO GRASSLEY ASAP" (emphasis in original).

76. Later on the same day, on September 23, 2010, Defendant Gingold again directed Mr. Boyd to "do whatever you can" to get Senator Grassley to "push" Senator McConnell on the issue of *Cobell* and *Pigford II*.

77. During this period, Mr. Boyd was kept informed by key congressional advisors on the progress of the settlement discussions. In fact, on September 29, 2010, Mr. Thompson from Senator Reid's office again emailed Mr. Boyd to let him know that he had been trying to call Mr. Boyd's hotel room in order to tell Mr. Boyd that Senator Coburn, the Oklahoma Republican and member of the Senate Indian Affairs Committee who had been an early opponent of any joint settlement legislation, was continually objecting to the introduction of the CRA and the *Cobell* and *Pigford II* Joint Settlement Agreement. Once he was assured that the bill was budget neutral, in large part due to Mr. Boyd's non-stop efforts to keep the Senator and his staff fully informed on these matters, Senator Coburn ultimately supported the CRA.

78. On September 30, 2010, Mr. Boyd emailed Mr. Thompson asking what members of the Senate were against the *Cobell* and *Pigford II* Joint Settlement Agreement.

79. On October 21, 2010, Mr. Boyd met at the White House with top aides to President Obama to discuss a plan for obtaining funding for the *Pigford II-Cobell* Joint Settlement Agreement.

80. On October 22, 2010, Mr. Boyd updated Congressman Clyburn via email about meetings that took place on Capitol Hill that week. At the request of Congressman Clyburn, Mr. Boyd kept the Congressman informed of the Joint Settlement Agreement's progress in the Senate. By this time, the Joint Settlement Agreement already passed the House and was waiting for Senate approval.

81. On November 8, 2010, Mr. Boyd emailed Mr. Thompson asking for a meeting on Wednesday, November 10, 2010. Mr. Boyd informed Mr. Thompson of the changes to the CRA legislation that Republicans in Congress were pushing, including the role of attorneys in the claims process and the submission of attorneys' time records.

82. On November 17, 2010, Defendant Gingold directed Mr. Boyd to meet with Congressman Clyburn (D-SC) if the CRA passed in the Senate that day. Defendant Gingold wanted Mr. Boyd to advise Congressman Clyburn to be prepared to move the Senate version with changes through the House review process. Mr. Boyd did what he was directed to do.

83. On November 17, 2010, Mr. Boyd emailed Mr. Thompson again for an update to see if there were objections to the Joint Settlement Agreement. Mr. Boyd asked Mr. Thompson who the Democrat was that had an issue with *Cobell*. Mr. Boyd then emailed Mr. Thompson again to inform him that he heard a Democrat raised an objection in the Caucus and asked Mr. Thompson to find out the basis for the objection to kill the Bill. Mr. Thompson responded to Mr. Boyd telling him that he would call back shortly.

H. Senate Vote Is Unanimous, House Is Split, Bill Signed Into Law

84. Ultimately, on November 19, 2010, the Senate unanimously passed the CRA and sent the measure back to the House for consideration of the Senate amendments. Because the Senate passed a different version of the originally passed House Joint Settlement, the Senate Bill had to go back to the House to get a new and separate vote.

85. Therefore, on November 19, 2010, Defendant Gingold directed Mr. Boyd, writing "You must get [Congressman] Clyburn firmly behind the effort" to pass the Senate CRA in the House.

86. A few days later, on November 23, 2010, Defendant Gingold further pressed Mr. Boyd to step up his efforts to gain the support needed to pass the Joint Settlement Agreement through an

email to Mr. Boyd, in which, Defendant Gingold told Mr. Boyd that Mr. Boyd's "enemy isn't Cobell" and directed Mr. Boyd that he "ha[d] work to do in the House". This email, along with all of the other communications and face to face meetings with the *Cobell* team from March through November 2010, further led Mr. Boyd to believe that he would be financially compensated for the additional work required to obtain the votes needed to pass the Joint Settlement Agreement and CRA. Of course, Mr. Boyd now knew that *Cobell* was not the "enemy" that would divert Mr. Boyd's attention away from *Pigford II*. Mr. Boyd understood that Defendants enlisted him to help them get paid, and Defendants would, in turn, pay Mr. Boyd.

87. Mr. Boyd understood Defendant Gingold's orders to step up his efforts in the House and, in particular, to reach out to Congressman Clyburn. On November 24, 2010, Mr. Boyd per Defendant Gingold's instruction, emailed Congressman Clyburn to inform him that his telephone call with Barvetta Singletary, Clyburn's then Deputy Chief of Staff, went well and thanked Congressman Clyburn for his leadership. Mr. Boyd also informed the Congressman that he looked forward to working with him on the vote for the *Cobell/Pigford II* Joint Settlement Agreement the following week. Defendant Gingold emailed Mr. Boyd later in the day and directed him to "[k]eep your foot down on the accelerator." Mr. Boyd continued his full court press on Congress, especially in light of Defendant Gingold's instructions.

88. On November 30, 2010, the House debated the Senate amendments to the CRA and ultimately agreed to those amendments by a vote of 256 to 152. Mr. Boyd's work in securing passage of the CRA and funding for the minority farmers was recognized and praised by three members of Congress in their remarks on the House floor. Representative Bobby Scott thanked Mr. Boyd for his hard work over the many years. Representative John Conyers noted Mr.

Boyd's work on behalf of black farmers went back 27 years to 1983. Representative Maxine Waters stated "I am so proud of John Boyd and all the members of this Congress who have worked so hard [on the CRA]." 156 Cong. Rec. 155, H7690-93 (Nov. 30, 2010). Mr. Boyd and Defendant Gingold exchanged congratulations and praise for each other for the passage of the CRA. In fact, on December 1, 2010, Defendant Gingold also specifically recognized and acknowledged Mr. Boyd's efforts again, when telling him "kudos to you."

89. Not all lawmakers supported the CRA and among those who did not, blamed Mr. Boyd for its passage. Mr. Boyd willingly accepted responsibility for the CRA's passage and the *Cobell* team was fully aware of his significant role. According to Representative Peter King, "John Boyd, the *head of this,* who has driven a tractor around Washington, D.C. and filed his claims and made this a high priority public issue, testified there were 18,000 Black Farmers" (emphasis in original). Mr. Boyd is forever tied directly to the *Cobell* and *Black Farmers'* settlements and is seen as the life blood of the CRA. In fact, Representative King irresponsibly and foolishly argued that "Secretary Vilsack and Attorney General Eric Holder sat down with John Boyd, the head of the Black Farmers organization, and they cooked up *Pigford II*. . . They have negotiated that agreement. They have negotiated the amount. They have succeeded in getting it past the Senate after the Senate reached a point of exhaustion in fighting it. That is my reports from some of the Senators over there." 156 Cong. Rec. 153, H7638-7639 (Nov. 29, 2010); 156 Cong. Rec. 154, H7653-54 (Nov. 30, 2010).

I. President Obama Invites Mr. Boyd To White House For CRA Signing

90. On December 2, 2010, Mr. Boyd attended the enrollment ceremony where Speaker Pelosi signed the enrolled version of the CRA and thanked Mr. Boyd for his "stalwart advocacy." *See* Office of Representative Nancy Pelosi, Press Release, "Pelosi: By Compensating Black Farmers

and Native Americans We Close the Door on An Old Injury," Dec. 2, 2010 (available at the website of Rep. Nancy Pelosi, http://pelosi. house. gov/new/pressreleases/2010/12).

91. On December 6, 2010, House Speaker Pelosi wrote to Mr. Boyd, thanking him for his "leadership and hard work on behalf of the *Pigford/Cobell* settlements," and giving him the pen that was used to sign the House enrollment of the CRA.

92. On December 8, 2010, after 10 years of effort, the CRA was signed into law. In recognition of his tireless efforts on behalf of the *Cobell* and *Pigford II* Joint Settlement Agreement, Mr. Boyd was invited to attend the White House signing with President Obama and other dignitaries. Mr. Boyd proudly attended and participated in the celebratory signing. Mr. Boyd was awarded a signed copy of the original CRA bill by the White House, which he proudly displays to this day. No members of the *Cobell* team, including Defendants and Defendant Gingold, were invited. And none attended.

93. On December 27, 2010, *the Richmond Times Dispatch* profiled Mr. Boyd, hailing his work on behalf of the late filers and *Cobell* litigants. In that article, Mr. Boyd's work was acknowledged as "vital" to getting the funds appropriated for the Joint Settlement Agreement. *Faces of 2010: John W. Boyd, Jr.,* Richmond Times Dispatch, Dec. 27, 2010.

94. On July 27, 2011, the United States District Court for the District of Columbia issued its final order awarding attorney fees to the *Cobell* class counsel in the amount of $99 million. Defendants and Defendant Gingold received the lion's share of the award. Since receiving the attorney fees, Defendants refuse to pay Mr. Boyd just compensation for the benefit he conferred upon Defendants, including Defendant Gingold.

95. Plaintiff brings this action to right this serious and grossly unfair wrongdoing.

VI. COUNTS

A. Count I -- Unjust Enrichment

96. Plaintiff John W. Boyd, Jr. incorporates by reference each and every allegation set forth in the paragraphs above, as if fully set forth herein.

97. Defendants' conduct as alleged herein gives rise to the common law liability for unjust enrichment.

98. Mr. Boyd worked tirelessly to promote the passage of the CRA with the encouragement and direction from Defendants, including Defendant Gingold. However, Mr. Boyd has not been compensated for his efforts that ultimately enriched the *Cobell* class and Defendants, including Defendant Gingold.

99. After being pursued, approached, recruited and encouraged by Defendants, including Defendant Gingold, to work for them, Mr. Boyd worked tirelessly from at least December 2009 until the passage of the CRA in November 2010 to garner the necessary congressional support to ensure that Defendants, including Defendant Gingold, received their legal fees. Mr. Boyd met with President Obama and White House staff, congressional representatives, and other political and press figures regularly over the relevant time period, made multiple public statements about the *Pigford II* and *Cobell* Joint Settlement Agreement, appeared on multiple television and radio broadcasts, was quoted extensively by various newspapers, magazines and other media outlets, and organized rallies across the country to drum up the necessary support for the passage of the CRA.

100. Because of Mr. Boyd's political and media connections, and other essential contacts, Defendants, including Defendant Gingold, were awarded over $99 million in attorneys' fees. Indeed, Defendants, including Defendant Gingold, admitted to Mr. Boyd that they could not

effectively communicate or negotiate with the White House and the 111th Congress of the United States without his help. Assuming such an individual or individuals were even available, Mr. Boyd saved Defendants, including Defendant Gingold, the significant costs of hiring additional independent lobbyists, publicists, or other experts with similar skills and connections as Mr. Boyd to spend the time and the money to work with the President and the White House, to meet with members of Congress, to organize and attend rallies, to make public statements in support of *Cobell,* and to advocate full time on behalf of the *Cobell* settlement. Not only did Mr. Boyd save Defendants, including Defendant Gingold, those expenses, but his unique and irreplaceable services ultimately benefited the Defendants, including Defendant Gingold, in the amount of $99 million.

101. Mr. Boyd's efforts conferred a benefit on Defendants, including Defendant Gingold, through his tireless efforts that led to the successful enactment of the CRA, which resulted in the Defendants, including Defendant Gingold, obtaining $99 million in attorneys' fees. Defendants, including Defendant Gingold, retained the benefit without providing any compensation or reimbursement to Mr. Boyd. Defendants', including Defendant Gingold's, retention of the benefit is unjust.

102. Accordingly, Mr. Boyd is entitled to compensation and full restitution of all amounts in which Defendants, including Defendant Gingold, have been unjustly enriched at Mr. Boyd's expense.

103. **WHEREFORE,** Plaintiff asks this Court to enter judgment in Plaintiff's favor against Defendants, including Defendant Gingold, for unjust enrichment and award the Plaintiff an amount equal to the benefit conferred upon Defendants, including Defendant Gingold, such benefit being not less than five million dollars ($5,000,000) and for such further and additional

equitable and legal relief as appears just to the Court including, but not limited to, Plaintiff's legal fees and costs.

B. Count II -- Breach of Implied-In-Fact Contract

104. Plaintiff John W. Boyd, Jr. incorporates by reference each and every allegation set forth in the paragraphs above, as if fully set forth herein.

105. Mr. Boyd provided invaluable advocacy and publicity services to Defendants, including Defendant Gingold, which included advocating, negotiating, testifying and raising awareness of the need to fund the Joint Settlement Agreement. Defendants, including Defendant Gingold, enjoyed the benefit of those services to the sum of over $99 million in legal fees.

106. Throughout the relevant time period, Defendants, including Defendant Gingold, understood that Mr. Boyd provided his services for the benefit of Defendants, including Defendant Gingold and that Mr. Boyd expected to be paid for his services.

107. Accordingly, the history of communications, interactions and course of dealings between Defendant, including Defendant Gingold and Mr. Boyd, prove the existence of an implied-in-fact contract between Mr. Boyd and Defendants. Under that implied-in-fact contract, Defendants, including Defendant Gingold, are obligated to pay Mr. Boyd for his knowledge, influence, congressional relationships, White House connections and the publicity services he provided.

108. Defendants', including Defendant Gingold's, failure to pay Mr. Boyd for services provided from December 2009 to November 2010 that inured to the benefit of Defendants, including Defendant Gingold, is a breach of the parties' implied-in-fact contract.

109. **WHEREFORE,** Plaintiff asks this Court to enter judgment in Plaintiff's favor against Defendants, including Defendant Gingold, for breach of implied-in-fact contract and award the Plaintiff an amount equal to the value of the services conferred upon Defendants, including

Defendant Gingold, such benefit being not less than one million, five hundred thousand dollars ($1,500,000) and for such further and additional equitable and legal relief as appears just to the Court including, but not limited to, Plaintiff's legal fees and costs.

C. Count III -- *Quantum Meruit*

110. Plaintiff Mr. John W. Boyd, Jr. incorporates by reference each and every allegation set forth in the paragraphs above, as if fully set forth herein.

111. Mr. Boyd provided valuable advocacy and publicity for Defendants, including Defendant Gingold, which included advocating, negotiating and testifying to obtain passage of the CRA, and raising concern and awareness about the need to fund the *Black Farmers-Cobell* Joint Settlement Agreement. As a result, Defendants, including Defendant Gingold, enjoyed the benefit of those skills and services to the sum of over $99 million in legal fees.

112. Throughout the relevant time period, Defendants, including Defendant Gingold, understood that Mr. Boyd provided his skills and services for the benefit of Defendants, including Defendant Gingold. Defendants, including Defendant Gingold, knowingly and voluntarily accepted Mr. Boyd's skills and services. Indeed, Defendants, including Defendant Gingold, actively pursued, approached, recruited, and encouraged Mr. Boyd to advocate for *Cobell* class members and directed his efforts in order for Defendants, including Defendant Gingold, to receive their legal fees. Defendants, including Defendant Gingold, even directed Mr. Boyd to advocate for the reasonableness of their legal fee request.

113. The history of communications, interactions and course of dealings between Defendants, including Defendant Gingold, and Mr. Boyd prove that Defendants, including Defendant Gingold, relied on Mr. Boyd's advocacy skills and publicity efforts to obtain funding in order to pay the *Cobell* settlement and Defendants $99 million in legal fees.

114. It would be unjust to allow Defendants, including Defendant Gingold, to retain the benefit created by Mr. Boyd's efforts without any compensation to Mr. Boyd.

115. Accordingly, Mr. Boyd is entitled to recover in *quantum meruit* the value of the skills and services he provided Defendants, including Defendant Gingold, from at least December 2009 through November 2010.

116. **WHEREFORE,** Plaintiff asks this Court to enter judgment in Plaintiff's favor against Defendants in *quantum meruit* and award the Plaintiff an amount equal to the value of the skills and services conferred upon Defendants, such benefits being not less than one million, five hundred thousand dollars ($1,500,000) and for such further and additional equitable and legal relief as appears just to Court including, but not limited to, Plaintiff's legal fees and costs.

VII. JURY TRIAL DEMAND

117. Mr. Boyd hereby requests a trial by jury on all issues so triable.

Dated: May 6, 2014

DOYLE, BARLOW & MAZARD PLLC

Attorneys for Plaintiff John W. Boyd, Jr.

By: _____

Robert W. Doyle, Jr. (Bar No. 285429)
Andre P. Barlow (Bar No. 465683)
Camelia C. Mazard (Bar No. 461778)
Keith Lively (Bar No. 499948)
DOYLE, BARLOW & MAZARD PLLC
1110 Vermont Ave, N.W., Suite 715
Washington, D.C. 20005
T: (202) 589-1834
F: (202) 589-1819
rdoyle@dbmlawgroup.com
abarlow@dbmlawgroup.com
cmazard@dbmlawgroup.com
klively@dbmlawgroup.com

EXHIBIT 2

Stipulation of Dismissal
September 9, 2013

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN W. BOYD, JR. and NATIONAL BLACK FARMERS ASSOCIATION, INC.,

Plaintiffs,

v.

JAMES SCOTT FARRIN and ANDREW H. MARKS,

Defendants.

Civil Action No. 1:12-cv-01893-RJL

STIPULATION OF DISMISSAL

NOW COME the parties, Plaintiff John W. Boyd, Jr. and National Black Farmers Association, Inc., and Defendants James Scott Farrin and Andrew H. Marks, through counsel, and hereby enter into this binding written Stipulation of Dismissal pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. The parties stipulate that all claims stated in this action between and among the parties or their affiliates, are hereby DISMISSED WITH PREJUDICE with the express understanding that this shall operate, when filed, as a final adjudication upon the merits. Each party shall bear its own costs and attorney fees.

Respectfully submitted, this 9th day of September, 2013.

/s/ Alexander John Pires, Jr.
Alexander J. Pires, Jr. (D.C. Bar #185009)
Farmerslawyer@aol.com
Diane E. Cooley (D.C. Bar #431817)
Dianecooley@pirescooley.com
4401 Q Street, N.W.
Washington, D.C. 20007
Telephone: (202) 905-6706
Facsimile: (202)338-3635
Attorneys for Plaintiffs John W. Boyd, Jr. and National Black Farmers Association, Inc.

/s/ Bradley M. Risinger
Bradley M. Risinger (DC Bar # 429930)
brad.risinger@smithmoorelaw.com
Matthew Nis Leerberg
matt.leerberg@smithmoorelaw.com
SMITH MOORE LEATHERWOOD LLP
434 Fayetteville Street, Suite 2800 (27601)
Post Office Box 27525
Raleigh, North Carolina 27611
Telephone: (919) 755-8700
Facsimile: (919) 755-8800

Attorneys for Defendant James Scott Farrin

/s/ Keith J. Harrison
Keith J. Harrison (D.C. Bar #416755)
kharrison@crowell.com
Philip T. Inglima (D.C. Bar #420119)
pinglima@crowell.com
Michael L. Kuppersmith (D.C. Bar #004835)
mkuppersmith@crowell.com
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 624-2500

Attorneys for Defendant Andrew H. Marks

EXHIBIT 3

Affidavit of Geoffrey Rempel
December 5, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL et al., on their own behalf and on behalf of all persons similarly situated, Plaintiffs, v. KEN SALAZAR, Secretary of the Interior, et al., Defendants.	)	Civil Action No. 96-1285 (TFH)

AFFIDAVIT OF GEOFFREY REMPEL

1. My name is Geoffrey Rempel. I am a Certified Public Accountant and I was engaged as a member of plaintiffs' litigation team in Cobell v. Salazaar, No. 1:96 CV 01285, an action in equity that has been in litigation in the United States District Court for the District of Columbia and this Court since June 10, 1996.
2. I make this affidavit in support of the plaintiffs' application for fees and expenses incurred since December 7, 2009, the date the settlement agreement was filed with this Court.

Time Records

3. I maintain time records in an electronic spreadsheet file that is dedicated solely to recording and tracking my Cobell time. The entries submitted to this Court reflect the day a particular task or service was rendered; a description of that task or service and the

amount of time incurred. I maintain these records in tenths of an hour and no task covers time for more than one day.

4. My hourly rate for this application is $475.00. I have maintained the same rate as reflected in *Plaintiffs' Petition for Class Counsel's Fees, Expenses and Costs Through Settlement* [Dkt. No. 3678-11 at ¶7], even though this rate is substantially below what comparable litigation professionals with similar experience charge who are involved in complex litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 5, 2012.

/S/
Geoffrey Rempel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing AFFIDAVIT OF GEOFFREY REMPEL was served on the following via facsimile, pursuant to agreement, on this 10th day of September, 2013.

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
406.338.7530 (fax)

/s/ William E. Dorris

EXHIBIT 4

Affidavit of Keith Michael Harper
March 31, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action
v.	)	No. I:96 CV 01285 (TFH)
	)	
KEN SALAZAR, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

AFFIDAVIT OF KEITH MICHAEL HARPER

1. My name is Keith M. Harper. I am a member of the Bar of this Court and Class Counsel for the plaintiffs in this action. I have worked on this matter since inception. I make this affidavit in support of plaintiffs' opposition to *Attorney Mark Kester Brown's Motion for Attorney's Fees; Mark Kester Brown's Objection to Plaintiffs' Counsel's Fees, Expenses, and Costs through Settlement.*

2. In 2000, Dennis Gingold discussed with me adding another lawyer to the litigation team. He suggested a lawyer named Mark Brown, who I understood Mr. Gingold knew in both a professional and personal capacity. At the time, the workload of the *Cobell* case was quite heavy and, accordingly, adding another attorney seemed by all a necessary step. We met with Mr. Brown on a number of occasions and reviewed his biography extensively and agreed that he should be brought on. I understood that thereafter Mr. Gingold would

recommend Mr. Brown be added to the team to lead plaintiff, Elouise Cobell and thereafter I was informed that the representative plaintiffs had agreed to retain Mr. Brown. I also understood that Mr. Brown had agreed to devote substantially all his professional time to this case.

3. From the inception of his retention, I maintained a cordial and professional working relationship with Mr. Brown. Also from inception, however, there were professional differences of opinion regarding approach and strategic decisions. I observed early-on that Mr. Brown would not always comply with the decisions made by the litigation team after long deliberations. At times, he would continue an approach inconsistent with the agreed one and the interests of the plaintiff class. Nevertheless, I worked with Mr. Brown cooperatively for several years.

4. Other members of the team including Mr. Gingold and especially Geoffrey Rempel clashed bitterly with Mr. Brown. Over time, these clashes became more severe and had the potential to undermine our ability to represent the class effectively. During this period, starting in around 2003, Mr. Gingold asked that Mr. Brown work principally with me. I agreed to attempt to play that role. But over time, that role became untenable because Mr. Brown and I had differences of opinion and he would too often not follow direction. It became often easier for me to just assume tasks he was performing rather than constantly monitoring his work product.

5. Because of the continuing conflict with team members, Mr. Brown began to disengage from the case more and more, especially in 2005. He often was not available and in 2005, I saw very little of him in the office or in court proceedings. In the spring of 2005,

we commenced preparation for a trial regarding information technology security at the Department of Interior. Mr. Brown to my knowledge did not participate in such preparation.

6. As I understood it at the time, Mr. Gingold informed Mr. Brown that he would not participate in examining witnesses during the IT security trial because he was not familiar enough with the record. During the early days of the trial, the Court asked that I negotiate with a designated Justice Department lawyer to reach resolution regarding the scope, procedure and protocol for the production of electronic records from the so-called "Zantaz" database at the Interior Department – information that was critical to the prosecution of our case-in-chief. Despite the Court's direction, Mr. Brown decided on his own accord and without asking either me or Mr. Gingold, to participate in the negotiations. Because he was not sufficiently familiar with the record, Mr. Brown's participation was detrimental to our interests. I, along with Mr. Rempel who joined me in the negotiation, asked that Mr. Brown not participate in further discussions and informed Mr. Gingold that Mr. Brown's continuing participation was counter-productive to the interests of the plaintiff class. As a result of this incident and the cumulative effect of working with Mr. Brown over time, I expressed disinterest in continuing to monitor his work for this case.

7. After the time frame described in Paragraph 6, *supra*, I had very little contact with Mr. Brown. I rarely saw Mr. Brown at this office and, to my recollection, did not speak with him regarding case matters. I understood from other members of the team that they had very little to no contact with him either.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 31, 2011.

Keith Michael Harper

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN W. BOYD JR., 68 Wind Road Baskerville, VA 23915 Plaintiff,	)	
v.	)	**Civil Case No. 14-889 (RJL)** **Removed from D.C. Superior Court** **(Civil Action No. 2014 CA 002782)** **Judge Richard Leon**
KILPATRICK TOWNSEND & STOCKTON, LLP, 607 14th Street, NW, Suite 900 Washington, D.C. 20005-2018	)	
and	)	
DENNIS M. GINGOLD 8712 Crider Brook Way Rockville, MD 20854	)	
Defendants	)	

ORDER OF REMAND

UPON CONSIDERATION of Plaintiff's Motion for Remand; and

IT APPEARING TO THIS COURT that Defendant Dennis Gingold's Notice of Removal does not demonstrate original jurisdiction in this Court over removed civil action under 29 U.S.C. § 1332(a); and

FINDS that the District of Columbia Superior Court has jurisdiction to hear this civil action; and

FINDS that Defendant Kirkpatrick Townsend & Stockton, LLP is a properly pled party to this action; and

FINDS that it is undisputed that Defendant Kilpatrick Townsend & Stockton shares state citizenship with Plaintiff John W. Boyd, thereby precluding original jurisdiction over this action in this Court under 29 U.S.C. §1332(a); and

NOW, THEREFORE, it is hereby, this the ____ day of _____, 2014,

ORDERED, that Plaintiff's Motion for Remand shall be, and hereby is, GRANTED, and

ORDERED that Defendant Dennis M. Gingold pay Plaintiff's just costs, actual expenses and attorney fees incurred as a result of this removal, pursuant to 28 U.S.C §1447(c).

A certified copy of this Order of Remand shall be mailed by the Clerk of this Court to the Clerk of the District of Columbia Superior Court, whereupon said Court may proceed with this civil action.

_____
Judge Richard Leon
United States District Court
for the District of Columbia