IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN W. BOYD, JR.,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 1:14-cv-00889 (RJL)**
KILPATRICK TOWNSEND & STOCKTON, LLP	)	
and	)	
DENNIS M. GINGOLD,	)	
Defendants.	)	

DEFENDANT DENNIS M. GINGOLD'S MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND 12(b)(6)

INTRODUCTION

On May 6, 2014, plaintiff John W. Boyd ("Boyd") filed an action in the Superior Court for the District of Columbia (Case No. 2014 CA 002782) against defendants Kilpatrick, Townsend & Stockton ("Kilpatrick") and Dennis M. Gingold ("Gingold"), sounding in unjust enrichment, breach of implied-in-fact contract and quantum meruit (the "Complaint" or "*Boyd v. Gingold*"). On May 27, 2014, Gingold filed a Notice of Removal pursuant to 28 U.S.C. §§ 1332(a), 1441(a) and §1446.

Gingold now moves this Court to dismiss the action against him in its entirety pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds: (1) that Boyd has failed

to allege that he has sustained a concrete and particularized injury traceable to any act or omission on the part of Gingold that can be redressed by this or any other court and (2) that the Complaint fails to state a claim upon which relief may be granted.

BACKGROUND

The Complaint seeks compensation for lobbying and advocacy services Boyd says he performed between December 9, 2009 and November 2010 on behalf of plaintiffs in a class-action lawsuit, captioned *Cobell v. Jewell*, (No. 1:96-cv-01285-TFH) ("*Cobell*"). Complaint, at ¶ 109. Those services allegedly included intervening with Congressional leaders and the White House to ensure passage of the Claims Resolution Act of 2010 ("CRA") – legislation which appropriated funding for the settlement in *In re Black Farmers Discrimination Litigation*, Civil No. 08-mc-511 (D.D.C.) ("*Pigford II*") and the settlement in *Cobell*. Alleging that he was retained by, performed services at the behest of, and was wrongfully denied payment by counsel for the *Cobell* plaintiffs, Boyd seeks damages and restitution.

The Complaint represents Boyd's second attempt to exact money from counsel in a class action. On November 21, 2012, Boyd filed an action in the United States District Court for the District of Columbia captioned *John W. Boyd, Jr. and National Black Farmers Association, Inc. v. James Scott Farrin and Andrew H. Marks*, No. 1:12-cv-01893 (RJL) ("*Boyd v. Farrin*"), in which he asserted entitlement to share in the attorneys' fees awarded to class counsel in the *Pigford II* class action. *See* Exhibit "A". Both in *Boyd v. Gingold* and in *Boyd v. Farrin*, Boyd painstakingly details the lobbying efforts he allegedly undertook in support of the CRA, referencing multiple meetings with senior government officials (Complaint at ¶¶ 20, 21, 22, 24, 25, 28 -31, 35, 37, 39, 46, 47, 49, 50, 54-57, 61-64, 68, 69, 71, 73, 77-81, 83, 87, 90 and 91) and painstakingly describes the accolades he received in the press for his efforts on behalf of the

Black Farmers. Complaint, at ¶¶ 22, 30, 34, 56, 58, 61, 65, 66, 90 and 93. And in both complaints, Boyd insists he was denied payment for his efforts.

On August 2, 2013, this Court dismissed Boyd's action against attorneys Farrin and Marks. *Boyd v. Farrin*, 958 F.Supp.2d 232, 241 (D.D.C. 2013). Nine months following that dismissal, Boyd filed the instant claim against Gingold seeking payment for identical services he purports to have rendered on behalf of the *Pigford II* claimants.

BOYD'S COMPLAINT MUST BE DISMISSED PURSUANT TO FED.R.CIV.P. 12(B)(1)

A court may dismiss a complaint, or any portion of it, that does not fall within the court's subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "Under Rule 12(b)(1), the plaintiff bears the burden of establishing that the court has jurisdiction." *Grand Lodge of Fraternal Order of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13 (D.D.C. 2001). Boyd cannot meet that burden.

BOYD LACKS STANDING TO ASSERT CLAIMS AGAINST GINGOLD

Boyd's inability to prevail against Gingold is attributable, in the first instance, to his lack of standing to pursue his claims. As discussed more fully below, the Complaint fails to allege that Boyd sustained a concrete and particularized injury traceable to any act or omission on the part of Gingold that is redressable by this Court or by any court of competent jurisdiction. *See Grayson v. AT & T Corp.*, 15 A.3d 219, 233 (D.C. 2011) (the D.C. Court of Appeals "has followed the principles of standing, justiciability and mootness to promote sound judicial economy and has recognized that an adversary system can best adjudicate real, not abstract, conflicts") (citation omitted).

It is a bedrock principle that "Article III limits the constitutional role of the federal judiciary to resolving cases and controversies." *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658,

663 (D.C.Cir. 1996). A "showing of standing" is "an essential and unchanging predicate to any exercise of [federal] jurisdiction," *id.* (internal citation and quotation marks omitted), and "must be resolved as a threshold matter." *Raytheon Co. v. Ashborn Agencies, Ltd.*, 372 F.3d 451, 453 (D.C.Cir. 2004).

To satisfy the "irreducible constitutional minimum of standing," a plaintiff must demonstrate that "[he] has suffered a concrete and particularized injury that is: 1) actual or imminent, 2) caused by, or fairly traceable to, an act that [plaintiff] challenges in the instant litigation, and 3) redressable by the court." *Bentsen*, 94 F.3d at 663 (internal citation and quotation marks omitted). There simply can be no standing where, as in the instant action, "a court would have to accept a number of very speculative inferences and assumptions," as courts "are powerless to confer standing when the causal link is too tenuous." *Winpisinger v. Watson*, 628 F.2d 133, 139 (D.C.Cir. 1980).

Boyd's allegations against Gingold are not merely "speculative," they are ethereal and any connection he attempts to draw between the conduct attributable to Gingold and the injuries Boyd may have suffered is not simply tenuous, it is imaginary. The Complaint, thus, falls woefully short of satisfying the threshold prerequisites necessary to confer standing.

Boyd Cannot Demonstrate that He Suffered a "Concrete and Particularized Injury".

At the outset, Boyd has failed to demonstrate that he has been "injured." To make a showing of injury sufficient to confer standing, a plaintiff must assert an "an invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Boyd does not make such a showing.

Boyd is unable, for example, to demonstrate that his request for compensation constitutes a "legally protected interest." Nowhere does the Complaint identify the scope of Boyd's services, the duration of those services, the rate to be charged, the terms of payment or who was to shoulder the responsibility for payment. In other words, Boyd pleads no facts to support a finding that Boyd retained any cognizable right to, or protectable interest in, compensation from *Cobell* counsel, in general, or from Gingold, in particular. And nowhere in the Complaint are facts alleged which identify the source of a duty on the part of Gingold to remunerate him for those services he does not establish have been performed on Gingold's defendants' behalf. Adding insult to injury, the Complaint is barren of any pleading reflecting an understanding, explicit or otherwise, between Boyd and Gingold that could be construed as creating a legally enforceable agreement. What remains are "naked allegations of verbal promises" which cannot, as a matter of law, demonstrate that Boyd sustained a "concrete and particularized" injury. *Boyd v. Farrin*, 958 F.Supp.2d at 240.

Boyd's Request for Compensation Cannot be Sustained, as a Matter of Law.

The allegations in the Complaint similarly confer no standing upon Boyd in light of the legal principle that, "[a]n action cannot constitute 'an invasion of a legally protected interest' if 'the action is of no legal significance.'" *Boyd v. Farrin*, 958 F.Supp.2d at 238 (quoting *Weaver's Cove Energy, LLC v. R.I. Dept. of Envtl. Mgmt.*, 524 F.3d 1330, 1333 (D.C.Cir. 2008)).

Boyd seeks "full restitution" of "all amounts in which Defendants, including Defendant Gingold, have been unjustly enriched at Mr. Boyd's expense," Complaint, at ¶ 102, namely from the $99 million attorneys' fee awarded by Judge Hogan on July 27, 2011 for the work *Cobell* class counsel performed on behalf of their clients for the previous 15 years. ("Fee Award"). Complaint, at ¶ 94. According to Boyd it would be "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." Complaint, at ¶ 9.

As a matter of law, Boyd's claim for restitution is "of no legal significance" as it asks this Court to sanction conduct which would violate Gingold's ethical obligation not to share fees with nonlawyers. The relief Boyd seeks would operate to transfer from the Fee Award those monies to which Boyd claims legal entitlement. *See Curtis v. Loether*, 415 U.S. 189, 197 (1974) (describing an award as restitutionary if it would "requir[e] the defendant to disgorge funds wrongfully withheld from the plaintiff"); *Porter v. Warner Holding Co.*, 328 U.S. 395, 402 (1946) (restitution encompasses a decree "ordering the return of that which rightfully belongs to" the plaintiff). *See also SEC v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C. Cir. 2000) (The measure of disgorgement is the "amount by which the defendant was unjustly enriched."). These holdings are grounded in the principle that, "[r]estitutionary recoveries are based on the defendant's gain, not on the plaintiff's loss." 3 D. Dobbs, LAW OF REMEDIES § 12.1(1), at 9 (2d ed. 1993).

Boyd's asserted entitlement to disgorge money he claims to be owed from the Fee Award cannot be sustained. "[T]o the extent that plaintiff elected to do business with a lawyer, plaintiff thereby exposed herself to the machinations of the rules that govern that profession. Because [the ethical rule] prevents defendant from making payments in accord with an agreement to share a fee with a nonlawyer, that rule prevents plaintiff from collecting that share by way of an enforcement action." *Fisher v. Carron*, 2010 WL 935742, at *2 (Mich.Ct.App. Mar. 16, 2010). That holding applies with compelling force to the underlying action as it comports with the rule in this jurisdiction prohibiting attorneys from sharing fees with nonlawyers given the recognized "need to ensure that the lawyer will control the litigation, the deterrence of

solicitation by nonlawyer intermediaries, and the protection of clients from unreasonably high fees." Ethics Opinion 351 of the D.C. Bar.

The ban on fee-sharing has "long been a feature of codes of legal ethics" and one "motivated by a number of concerns, chiefly that nonlawyers might through such arrangements engage in the unauthorized practice of law, that client confidences might be compromised, and that nonlawyers might control the activities of lawyers and interfere with the lawyers' independent professional judgment." D.C. Bar Ethics Opinion No. 223 (citing Opinion No. 146). *See* ABA Model Rules of Prof'l Conduct R. 5.4, cmt. 1 (the proscription against attorneys sharing fees with nonlawyers is informed by the need to " protect the lawyer's professional independence of judgment"); *See also O'Hara v. Ahlgren, Blumenfeld & Kempster*, 537 N.E.2d 730, 735 (Ill. 1989) (splitting fees not only "provides an incentive for a layperson to recommend the services of an attorney with whom he or she will share the fees," but "creates the possibility that the clients' rights may be adversely affected").

For these reasons, courts routinely refuse to enforce such agreements in the hope that "[b]y refusing in every case to assist the lay party, courts may deter laypersons as well as attorneys from attempting such agreements." *O'Hara*, 537 N.E.2d at 737-38. *See also McIntosh v. Mills*, 121 Cal. App. 4th 333, 346 (1st Dist. 2004) ("because there is no dispute here that the agreement at issue between [the parties] clearly violates [the rule proscribing the sharing of fess between attorneys and nonlawyers], we conclude that the doctrine of illegality applies facially to their fee-sharing agreement); *Ungar v. Matarazzo Blumberg & Associates, P.C.*, 688 N.Y.S. 2d 588, 589 (N.Y.A.D. 2 Dept.,1999) ("Upon our review of the terms of the parties' agreement, we conclude that it is an agreement between a nonlawyer and attorneys to split legal fees which is prohibited").

By seeking disgorgement from the Fee Award, Boyd asks this court to sanction conduct which "would have violated defendants' ethical obligation not to share fees with nonlawyers *Boyd v. Farrin*, 958 F. Supp. 2d 232 at 238 (citing D.C. Rules Prof 1 Conduct R. 5.4 ("A lawyer or law firm shall not share legal fees with a nonlawyer")). It is neither a claim cognizable at law nor one in which Boyd has a legally protected interest.

Boyd Cannot Prove that Any Injury He May Have Suffered Was "Caused By, or is Fairly Traceable to an Act that He Challenges in the Instant Litigation"

Beyond his inability to demonstrate a "legally protected interest" to compensation, Boyd fails to establish the necessary causal connection between such an interest and an act or omission by Gingold.

In the first instance, Boyd has failed to allege that he was recruited by Gingold. The Complaint states that, "[O]n March 5, 2010, Mr. Boyd was contacted via telephone by John Loving, a senior government relations advisor with Defendant firm Kilpatrick Townsend," who "wasted no time and recruited Mr. Boyd to assist the Cobell litigation team secure passage of legislation to fund the Cobell settlement." Complaint, at ¶¶ 26 and 27. The only other reference remotely resembling a solicitation for services apparently took place "[o]n March 26, 2010 [when] 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. Gingold is not mentioned once as having been a party to Boyd's alleged solicitation or retention.

Boyd's claims are further undermined by his own vague and conclusory allegations linking Gingold to his demand for compensation. On that point, Boyd alleges only that, "[o]n June 1, 2010, 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 always indicated to Mr. Boyd that he would be paid." Complaint, at ¶ 43. Without more, Boyd's singular reference is insufficient to ground his Complaint. *See Boyd v. Farrin*, 958 F.Supp.2d at 240 ("naked allegations of verbal promises," such as "defendants allegedly promised 'to pay Boyd for his time and expenses,'" "to pay Boyd for his time" cannot sustain an action in breach of contract) (internal references omitted).

Boyd's contention that Gingold assumed responsibility for remunerating him for services rendered is undercut by his very next statement: "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* [sic] *Cobell would focus on the amount of compensation for him*. Complaint, at ¶ 43 (Emphasis added.) And according to Boyd, "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." Complaint, at ¶ 44.

What is plain is that the Complaint not only fails to reference any agreement between Boyd and Gingold but, by his own admission, Boyd explicitly admits that payment was contingent on Elouise Cobell's approval. Any other expectation Boyd may have harbored that Gingold was going to remunerate him for his services is grounded in "the other communications and face to face meetings with the Cobell team from March through November 2010, [which] 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." Complaint, at ¶ 86. The Complaint supplies no further detail concerning these other "communications and face to face meetings" from which he derived such an expectation.

Stated alternatively, Boyd's belief that he was to be compensated stemmed from the fact that he "understood that Defendants enlisted him to help them get paid, and Defendants would, in turn, pay Mr. Boyd." *Id.* It certainly did not arise out of, not does Boyd reference, any agreement, document, correspondence or conversation which could remotely be construed as imposing a legal obligation upon Gingold, as no such instruments or documents are referenced or attached as exhibits to, the Complaint.

Boyd's "beliefs" notwithstanding, the Complaint simply attributes no specific acts or omissions to Gingold which might implicate him as a party from whom a legal obligation flowed. The Complaint is completely silent in its description of the services Boyd insists he was to perform; the rate he was to charge for those services; the duration of his services; whether his demand for payment reflected an hourly rate, a flat rate or a contingent fee; the terms of the payment; who was responsible for payment; and what, if any, *pro rata* share Gingold was to assume. Boyd's failure to delineate these or any other terms stems from the fact that they were never discussed, much less agreed upon.

Boyd is no stranger to asserting claims barren of any underlying factual or legal support. It is particularly telling that the hollow contentions found in Boyd's Complaint against Gingold track those he asserted in *Boyd v. Farrin,* where Boyd attempted to enforce what he contended was a legally binding agreement with class counsel in *Pigford II*. On facts strikingly similar to those asserted here, this Court dismissed Boyd's complaint, observing that, "nowhere does the complaint specify exactly what type of advocacy Boyd was expected to perform, how many hours

he was expected to work, or how much defendants were expected to compensate him . . . or any other details," leaving the court unable "to identify the obligations that it should enforce." *Boyd v. Farrin*, 958 F.Supp.2d at 241 (quoting *In re U.S. Office Prods. Co. Sec. Litig.*, 251 F.Supp.2d 58, 71 (D.D.C. 2003)). That ruling is of compelling application here.

Boyd's Complaint not only fails to set out the material terms of any supposed agreement he entered into with Gingold, it is similarly silent describing Gingold's role, if any, in Boyd being denied compensation. As the following sections of the Complaint demonstrate, Gingold is not referenced at all as having refused to compensate Boyd.

Complaint Paragraph Number	Assertion
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.
93	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.
94	Since receiving the attorney fees, Defendants refuse to pay Mr. Boyd just compensation for the benefit he conferred upon Defendants, including Defendant Gingold.

As evident from these pleadings, Boyd not only fails to describe the circumstances surrounding these "refusals," he fails to ascribe any specific statement or conduct to Gingold from which a legally cognizable cause of action may be raised. Nor can Boyd's claim be resuscitated by his oblique references to actions taken by the "Defendants." For those assertions where Gingold is not

mentioned by name, Boyd's claims against him cannot stand as they run afoul of the well-established precept that a complaint, at minimum, must afford "the defendant fair notice of what plaintiff's claim is and the grounds upon which it rests." *Swiekiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Boyd fails to satisfy this most basic criterion, as he "lump[s] all the defendants together and fail[s] to distinguish [Gingold's] conduct" and because his "allegations fail to give adequate notice" as to what Gingold "did wrong." *Appalachian Enterprises, Inc. v. ePayment Solutions, Ltd.*, 2004 WL 2813121 *7 (S.D.N.Y. Dec. 8, 2004). *See also Cambridge Holdings Group, Inc. v. Fed. Ins. Co.*, 357 F. Supp. 2d 89, 94 (D.D.C. 2004) (granting motion to dismiss breach of contract claim because complaint failed to allege that defendant was a party to the agreement at issue); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Young*, 1994 WL 88129 S.D.N.Y. (March 15, 1994) ("at a minimum, the complaint must specify which defendant is alleged to have committed a particular predicate act").

In this respect, Boyd's allegations in the Complaint against Gingold closely resemble those he asserted in *Boyd v. Farrin.* There, the court, aptly characterizing Boyd's arguments against the counsel for the Black Farmers as "anemic," dismissed the complaint on the grounds that it was replete "with naked allegations of verbal promises," such as "defendants allegedly promised 'to pay Boyd for his time and expenses,'" "to pay Boyd for his time," to "pay Boyd when [Farrin] was able," to pay Boyd "for all the work he had done and was doing," and to "pay him what he was owed," *Boyd v. Farrin*, 958 F.Supp.2d at 240 (internal references omitted). Boyd's allegations against Gingold are even more specious and compel the same result.

Boyd's Claims Cannot be Redressed by any Court

Boyd's Complaint not only fails to allege any misconduct on the part of Gingold, but the nebulous manner in which he describes his entitlement to compensation and restitution renders his claims incapable of judicial redress.

These vague allegations include the following:

Complaint Paragraph Number	Assertion
43	Defendant Gingold always indicated to him that compensation should not concern him -- clearly indicating to Mr. Boyd that payment would be forthcoming … 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
88	Mr. Boyd understood that Defendants enlisted him to help them get paid, and Defendants would, in turn, pay Mr. Boyd.
94	Since receiving the attorney fees, Defendants refuse to pay Mr. Boyd just compensation for the benefit he conferred upon Defendants, including Defendant Gingold.
107	Defendants, including Defendant Gingold, are obligated to pay Mr. Boyd for his knowledge, influence, congressional relationships,
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.

By grounding his claims against Gingold on the same unsupported, conclusory allegations that foreclosed his action against Farrin and Marks, Boyd leaves this Court unable "to identify the obligations that it should enforce." *Boyd v. Farrin*, 958 F.Supp.2d at 240.

In sum, Boyd fails in every respect to demonstrate either that he "has suffered a concrete and particularized injury" arising out of a "legally protected interest"; that any injury he may have suffered was "caused by, or is fairly traceable to," an act or omission by Gingold; or that the allegations set forth in the Complaint contain the requisite specificity to permit meaningful review by this Court. His inability to meet these standards constitutes a lack of standing to proceed against Gingold and urges dismissal of the Complaint.

BOYD'S COMMON-LAW CLAIMS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

STANDARD OF REVIEW

To survive a motion to dismiss under Rule 12(b)(6), a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). To successfully mount a claim, it is incumbent on the plaintiff "to provide the grounds of his entitle[ment] to relief" which "requires more than labels and conclusions, and a formulaic recitation of the elements." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original) (citations and quotation marks omitted). When applying this standard, "the court need not accept inferences drawn by plaintiff [] if such inferences are unsupported by the facts set out in the complaint," *Kowal v. MCI Comm'ns Corp.*, 16 F.3d 1271, 1276 (D.C.Cir. 1994), nor must a court "accept as true 'legal conclusions cast in the form of factual allegations.'" *El Paso Nat. Gas Co. v. United States*, 774 F. Supp. 2d 40, 45 (D.D.C. 2011) (quoting *Kowal*, 16 F.3d at 1276). "[U]nder Rule 12(b)(6), dismissal of a complaint is appropriate if plaintiff's factual allegations are insufficient to 'raise a right to relief above the speculative level.'" *El Paso*, 774 F. Supp. 2d at 45 (D.D.C. 2011) (quoting *Twombly*, 550 U.S. at 555).

As detailed below, Boyd's individual common-law claims against Gingold consist of little more than self-congratulatory homilies and conclusory assertions that never rise above the "speculative level." He is entitled to no relief, as a matter of law.

COUNT I – UNJUST ENRICHMENT

In his claim for unjust enrichment, Boyd presses the position that his services,

> 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.

Complaint, at ¶ 101.

Boyd's assertion cannot withstand scrutiny.

Boyd's Claim for Unjust Enrichment Has Not Accrued.

It is a well-established principle of law that a claim accrues "when [a] plaintiff has a complete and present cause of action." *Petrella v. Metro-Goldwyn-Mayer, Inc.*, --- S.Ct. ----, 2014 WL 2011574 *6 (May 19, 2014) (quoting *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal*., 522 U.S. 192, 201 (1997) (internal quotation marks omitted)). And a claim for unjust enrichment accrues only "when: (1) the plaintiff conferred a benefit on the defendant; (2) the defendant retains the benefit; and (3) under the circumstances, the defendant's retention of the benefit is unjust." *Euclid Street, LLC v. District of Columbia Water and Sewer Authority*, 41 A.3d 453, 463 n.10 (D.C. 2012) (quoting *Peart v. District of Columbia Hous. Auth.*, 972 A.2d 810, 813 (D.C. 2009)). For a defendant to be liable under this theory, he must "have committed some 'wrongful act' whereby he was unjustly enriched." *News World Comms., Inc. v. Thompsen*, 878 A.2d 1218, 1225 (D.C. 2005). More precisely, a plaintiff's claim only becomes legally cognizable "when the services were rendered and when payment was refused." *Vila v. Inter-American Investment, Corp.*, 570 F.3d 274, 283-84 (D.C. Cir. 2009) (citing *Thompsen*, 878 A.2d at 1223.

This principle was underscored recently in *Bregman v. Perles*, – F.3d –, 2014 WL 1282615 (D.C.Cir. April 1, 2014), where the appellate court took great pains to review the evolution of case law in this jurisdiction on the subject of unjust enrichment and concluded that

such a claim can accrue only in the face of "*an unequivocal refusal of payment*." *Id.*, at *4. (Emphasis added.) Nowhere in the Complaint does Boyd assert either that he demanded payment from Gingold or that Gingold refused his demand. To the contrary, Boyd insists that, "*Defendant Gingold never indicated to Mr. Boyd at any time . . . or at any subsequent time thereafter, that Mr. Boyd would not be compensated for his efforts.*" Complaint, at ¶ 43 (Emphasis added.)

Boyd seeks to evade the consequences of this fatal admission by implicitly conflating Gingold with the "Defendants." The Complaint states:

Complaint Paragraph Number	Assertion
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	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.
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.

For the reasons set forth above, Boyd's inferential reference to Gingold in the collective term "Defendants" does nothing to further his claim. *See Cambridge Holdings Group, Inc. v. Fed. Ins. Co.*, 357 F. Supp. 2d 89, 94 (D.D.C. 2004).

Boyd's Failure to Assert a Nexus Between his Injury and Gingold's Conduct is Fatal.

Boyd's claim in unjust enrichment cannot survive summary dismissal given his failure to allege any causal connection between any "wrongful act" on Gingold's part and any injury he may have suffered.

Unjust enrichment is a common law equitable claim which becomes colorable only "when a person retains a benefit (usually money) which in justice and equity belongs to another." *4934 Inc. v. D.C. Dep't. of Employment Servs.*, 605 A.2d 50, 55–56 (D.C.1992). It is a cause of action intended to address those situations where, "the recipient of the benefit has a duty to make restitution to the other person" and "it is unjust for [the recipient] to retain it." *Id.* (internal citations and quotations omitted).

Recovery under this theory requires a plaintiff to "show a causal 'nexus' between a defendant's enrichment and their own expense that goes beyond mere 'correlation.'" *Network Enterprises, Inc. v. Reality Racing, Inc.*, 2010 WL 3529237, at *7 (S.D.N.Y. Aug. 24, 2010). To survive dismissal, a claim must "clearly contemplate that a defendant and plaintiff must have had some type of direct dealings or an actual, substantive relationship." *Reading Int'l, Inc. v. Oaktree Capital Mgmt.*, 317 F.Supp.2d 301, 333-34 (S.D.N.Y.2003) (citations and internal quotation marks omitted). Boyd has not only failed to plead any "wrongful act" on the part of Gingold, he asserts not a single allegation linking Gingold to his claim for compensation or restitution. That, plus the fact that the restitutionary relief he seeks would violate Gingold's ethical obligation not to split fees with nonlawyers, nullifies his claim as a matter of law. *Boyd v. Farrin*, 958 F.Supp.2d at 238.

COUNT II – BREACH OF IMPLIED-IN-FACT CONTRACT

Boyd's action against Gingold for breach of implied-in-fact contract is similarly meritless and must be dismissed.

To establish a claim for breach of an implied-in-fact contract, Boyd must demonstrate that his "services were carried out under such circumstances as to give the recipient reason to understand (i) that they were performed for him and not for some other person and (ii) that they were not rendered gratuitously, but with the expectation of compensation from the recipient; and (iii) that the services were beneficial to the recipient. *Bloomgarden v. Coyer*, 479 F.2d 201, 208-09 (D.C. Cir. 1973). Boyd cannot meet that standard.

In the first instance, Boyd cannot demonstrate that his lobbying and advocacy services were undertaken solely for Gingold "and not for some other person." The record on this point is clear. Boyd contends that, after his December 2009 meeting with White House officials, he "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." Complaint, at ¶ 29 (emphasis added). He further asserts that, between December 2009 and November 2010, he

> 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*.

Complaint, at ¶ 100.

Boyd's claimed "full time" advocacy efforts were not, however, expended primarily or principally to support funding of the *Cobell* settlement and are belied by his averments in his complaint against Farrin and Marks. A reading of both complaints reveals that Boyd's efforts

supporting the CRA were undertaken to support the *Pigford II* litigants. The interests of the *Cobell* plaintiffs at most were secondary. A comparison of the two complaints amply bears this out.

In his Complaint against Gingold, for example, Boyd states that,

> In December 2009, Mr. Boyd met with White House officials to discuss congressional appropriations for *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 *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 *Pigford II* and *Cobell* cases were to be joined for congressional funding purposes, Mr. Boyd was essential to Defendants realizing their goals.

Complaint, *Boyd v. Kilpatrick*, at ¶ 24

In his complaint against Farrin and Marks, Boyd offers up similar assertions,

> After the failure of the 2009 legislative efforts, Boyd met with Michael Strautmanis and Valerie Jarrett, top advisers to President Obama, to find out why the White House had not pressed for congressional action on the late-filers. Boyd was informed that, although the President supported the idea of legislation to help the late-filers, the White House favored a broader bill that would also resolve claims for relief asserted by Native Americans against the Department of the Interior in the case of *Cobell v. Salazar*, which had settled on December 9, 2009 but required implementing legislation.

Complaint, *Boyd v. Farrin*, at ¶ 84.

A plain reading of these paragraphs calls into question the integrity of Boyd's assertion that he worked "full time" on behalf of *Cobell* or that he agreed to advocate on behalf of funding for the *Cobell* settlement only "after being pursued, approached, recruited and encouraged by Defendants, including Defendant Gingold, to work for them." Complaint, at ¶ 99. The language

in both complaints begs a different conclusion, namely, that Boyd's decision to advocate on behalf of *Cobell* was triggered not by the supplication of *Cobell* counsel but by the realization that he would be unable to obtain funding for the *Pigford II* settlement without *Cobell*. In other words, *Cobell* didn't need *Pigford II*; *Pigford II* needed *Cobell*.

Indeed, the complaint in *Boyd v. Farrin* reveals more than 100 paragraphs in which Boyd painstakingly details the "thousands of hours" he devoted to securing funds for the *Pigford II* settlement. *Boyd v. Farrin* Complaint, at p.1. Many of these notations describe services Boyd says he performed between November 2009 and December 2010 on behalf of the *Pigford II* settlement. And while his complaint against Marks and Farrin describes services expended solely on behalf of *Pigford II*, his complaint against Gingold, Boyd alludes to the identical panoply of services cast as efforts rendered on behalf of "*Cobell/Pigford II*." Boyd simply changed the recipient's name to suit the exigencies of the moment.

The following examples of Boyd's cross-pollination technique are instructive:

Boyd v Farrin	***Boyd v. Kilpatrick***
89. Although the House had passed the CRA, it had not designated the source of the funds to pay for the relief as was required by budget rules. For the next several months, Boyd continued working with Speaker Pelosi's office and others lawmakers to get a supplemental appropriation **to fund the Settlement Agreement.** (Emphasis added.)	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. . . . 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.** (Emphasis added.)

Boyd v Farrin	***Boyd v. Kilpatrick***
93. Throughout the spring and summer of 2010, Boyd worked with the following lawmakers **to fund the Settlement Agreement** and pass the CRA in the Senate: 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 Hagen, Senator Blanche Lincoln, Senator Tom Harkin, Senator Mark Warner, Rep. James Clyburn (Majority Whip), Rep. John Conyers, Rep. Maxine Waters, Rep. Bennie Thompson, Rep. Bobby Scott, and others. (Emphasis added.)	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. (Emphasis added.)
96. On August 4, 2010 Senator Mark Warner, speaking on the floor of the Senate, urged the Senate **to approve funding for the Settlement Agreement**. Senator Warner acknowledged Boyd in his remarks, stating "this issue was first brought to my attention by John Boyd…" 156 Cong.Rec. 117, S6715 (August 4, 2010)(Statement of Sen. Mark Warner). (Emphasis added.)	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). (Emphasis added.)

Boyd v Farrin	***Boyd v. Kilpatrick***
97. On August 5, 2010 Senator Grassley called for the **Senate to approve funding for the settlement, s**tating, "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 (August 5, 2010)(Statement of Charles Grassley). (Emphasis added.)	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). (Emphasis added.)
99. On September 23, 2010 Senators Landrieu, Hagan and Lincoln joined Boyd at a press conference **to urge the Senate to pass funding legislation for the Settlement Agreement.** (Emphasis added.)	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.** (Emphasis added.)
100. On October 21, 2010, Boyd met at the White House with top aides to President Obama **to discuss a plan for obtaining funding for the Settlement Agreement.** (Emphasis added.)	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.** (Emphasis added.)

Boyd v Farrin	***Boyd v. Kilpatrick***
107. On December 27, 2010 the Richmond Times Dispatch did a profile of John Boyd, hailing his work on behalf of the late-filers and describing him as having "successfully pushed for a $1.15 billion settlement for black farmers." In that article, defendant Marks was quoted as saying **Boyd's work was "vital" to getting the funds appropriated for the Settlement Agreement.** Faces of 2010: John W. Boyd, Jr., Richmond Times Dispatch, December 27, 2010. (Emphasis added.)	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. (Emphasis added.)

Putting aside the fact that there was never a "Pigford II-Cobell Joint Settlement Agreement" (with respect to *Cobell*, there was the Agreement on Attorneys' Fees, Expenses, and Costs (*see* Exhibit "B") and the Class Action Settlement Agreement (see Exhibit "C") – both executed on December 7, 2009 – two years before Boyd alleges he began his crusade in support of the CRA efforts on behalf of *Cobell*), Boyd cannot demonstrate that his services "were carried out under such circumstances as to give [Gingold] reason to understand that they were performed for [him] and not for some other person," *Bloomgarden*, 479 F.2d at 208, as those services for which Boyd seeks compensation from Gingold are identical to those he alleged performing on behalf of the *Pigford II* claimants. In short, Boyd cannot demonstrate that the services he alleges to have rendered in support of the CRA were undertaken on Gingold's behalf and for no one else.

Boyd similarly cannot demonstrate that his services "were not rendered gratuitously, but with the expectation of compensation from the recipient." *Id.*, 479 F.2d at 208-09. Nowhere in the Complaint does Boyd state that he anticipated payment from Gingold. The Complaint *does*,

however, evidence Boyd's intent to seek compensation from Gingold's clients, the *Cobell* plaintiffs. Boyd states that,

> **according to Gingold, the issue of payment was not whether Mr. Boyd would be compensated, but when Eloise [sic] 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.

Complaint, at ¶ 43 (Emphasis in original)

Boyd not only fails to refute the statement, he never alleges that he expected Gingold to compensate him for any efforts he performed.

In short, nothing in the Complaint suggests that Boyd's services "were not rendered gratuitously, but with the expectation of compensation" from Gingold.

Boyd's Claim For Breach Of Implied-In-Fact Contract Fails For Lack Of Specificity.

Boyd not only fails to demonstrate that his services in support of the CRA were not rendered gratuitously or that they were performed for the benefit of Gingold and no other person or entity, he is unable to demonstrate that he and Gingold entered into a binding agreement.

It has long been the rule in this jurisdiction that a contract implied-in-fact "is a true contract, containing all the necessary elements of a binding agreement." *Vereen v. Clayborne*, 623 A.2d 1190, 1193 (D.C. 1993). 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 and the milieu in which they dealt." *Id.* (quoting *Bloomgarden*, 479 F.2d at 208 (internal citations omitted)). And like written contracts, to be enforceable, there must be both (1) agreement as to all material terms; and (2) intention of the parties to be bound.'" *New Economy Capital, LLC v. New Markets Capital Group*, 881 A.2d 1087, 1094 (D.C. 2005).

Stated alternatively, the "oral agreement . . . [must] meet [ ] the dual requirements of intent and completeness." *Jack Baker, Inc. v. Office Space Dev. Corp.*, 664 A.2d 1236, 1238 (D.C. 1995). (citations omitted). *See also Steven R. Perles, P.C. v. Kagy*, 473 F.3d 1244, 1249 (D.C.Cir. 2007) (valid and enforceable oral contract must include intention to be bound and agreement as to all material terms). Those material terms may include "subject matter, price, payment terms, quantity, quality, and duration" which must be stated with specificity such "that the promises and performance to be rendered by each party are reasonably certain." *LanQuest Corp. v. McManus & Darden LLP*, 796 F.Supp.2d 98, 102 (D.D.C. 2011) (quoting *EastBanc, Inc. v. Georgetown Park Assocs. II, L.P.*, 940 A.2d 996 (D.C. 2008)). *See Perles*, 473 F.3d at 1249-50 (reversing district court finding that an oral contract existed because the parties "did not agree on two essential elements of a services contract - how long [plaintiff] would have to work on the case ... and what kind of work she would have to do").

In this jurisdiction, the burden to demonstrate the validity of a contract implied-in-fact rests squarely on the party asserting the existence of an oral contract to prove these requirements have been met. *See New Econ. Capital, LLC v. New Mkts. Capital Grp.*, 881 A.2d 1087, 1094 (D.C. 2005) ("The burden of proof in this case is on [the Plaintiff] since it asserts the existence of an oral contract"). This is a burden Boyd cannot meet.

The allegations set out in the Complaint go beyond the vague and conclusory into the realm of the ephemeral. Boyd sets forth no facts whatsoever indicating that Gingold took any actions that were wrongful or that could remotely be construed as creating a legally cognizable interest. Rather than set forth any material terms with specificity the Complaint substitutes a compendium of threadbare assertions for facts:

Complaint Paragraph Number	Assertion
9	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.
86	Mr. Boyd understood that Defendants enlisted him to help them get paid, and Defendants would, in turn, pay Mr. Boyd.
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.
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. . . .
100	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	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.
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.

It is evident that none of Boyd's contentions remotely set forth the material terms necessary to demonstrate the existence of a legally binding agreement between Boyd and Gingold. As stated, the Complaint offers up no specifics as to scope, duration, rate or payment. And nowhere is Gingold mentioned in the context of payment. This Court's ruling, that "naked allegations of verbal promises" cannot sustain a claim sounding in breach, *Boyd v. Farrin*, 958 F.Supp.2d at 240, applies with particular force to the Boyd's claim as the absence of material terms deprives the court of the ability "to determine whether a breach has occurred and to identify an appropriate remedy." *Monument Realty LLC v. Wash. Metro. Area Transit Auth.*, 535 F.Supp.2d 60, 69 (D.D.C. 2008) (quoting *Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 327 (D.C. 2001)).

In sum, Boyd's allegation that Gingold breached an implied-in-fact contract is meritless, as a matter of law.

COUNT III – QUANTUM MERUIT

Boyd's third count, seeking restitution under the theory of quantum meruit, similarly is unsupportable and cannot survive summary disposition.

The District of Columbia Court of Appeals uses the term "quantum meruit" to describe recovery under a theory of implied-in-fact contract or as a contract implied-in-law. *See Fred Ezra Co. v. Pedas*, 682 A.2d 173, 176 (D.C. 1996) ("a request for quantum meruit, which is a measure of damages and not a legal theory of recovery, encompasses both implied-in-law obligations ('quasi-contracts') as well as implied-in-fact contracts." Interpreted as a contract implied-in-fact requires that the agreement "contain[] all the required elements of a binding agreement." *Id.* (citing *Vereen v. Clayborne*, 623 A.2d 1190, 1193 (D.C. 1993)). A quasi-contract, on the other hand, "is not a contract at all, but a duty thrust under certain conditions

upon one party to requite another in order to avoid the former's unjust enrichment." *King & King, Chartered v. Harbert Intern., Inc.*, 436 F.Supp.2d 3, 13 (D.D.C. 2006) (quoting *Bloomgarden*, 479 F.2d at 208). It is a claim seeking restitution, the purpose of which "is to require a person who has been unjustly enriched at another's expense to compensate the other party for the amount of enrichment, restoring the other to the position he formerly occupied either by the return of something [that the other party] formerly had or by the [transfer] of its equivalent in money." *King*, 436 F.Supp.2d at 13 (citing C.J.S. IMPLIED CONTRACTS § 6 (2005)).

For the purpose of assessing the validity of Boyd's attempt to recover in quantum meruit, the difference between an implied-in-fact contract and one implied-in-law is of no moment. As an action on a contract implied-in-fact, Boyd cannot demonstrate, under any circumstances, that he and Gingold entered an agreement "containing all the required elements of a binding agreement." *Pedras*, 682 A.2d at 176. As an action on a contract implied-in-law, Boyd cannot demonstrate that he rendered any service, let alone "valuable services" on behalf of Gingold and "no other person" under "circumstances which reasonably notified" Gingold that Boyd "expected to be paid." *Providence Hospital v. Dorsey*, 634 A.2d 1216, 1219 n. 8 (D.C. 1993).

Not only has Boyd failed to allege the elements necessary to press a claim for unjust enrichment, the absence of any mention in the Complaint that he requested payment for services and that his request was "unequivocally refused," is fatal to his claim. *Bregman* – F.3d –, 2014 WL 1282615 at *4.

WHEREFORE, for the aforementioned reasons, defendant Dennis M. Gingold respectfully requests that this Court dismiss with prejudice John W. Boyd's complaint against him in its entirety.

Date: June 1, 2014

Respectfully submitted,

/s/ Alan L. Balaran
Alan L. Balaran, Esq. # 438709
Law Office of Alan L. Balaran, PLLC
1111 19th Street, N.W., Twelfth Floor
Washington, D.C. 20036
Telephone: 202.466.5019
Facsimile: 202.986.8477
abalaran@balaran-law.com
Attorney for Defendant Dennis M. Gingold

/s/ Stanley M. Brand
Stanley M. Brand, Esq. # 213082
Ross A. Nabatoff, Esq. # 376665
Brand Law Group, PC
923 Fifteenth Street, N.W.
Washington, D.C. 20005
P: 202-662-9700
F: 202-202-737-7565
rnabatoff@brandlawgroup.com
Attorney for Defendant Dennis M. Gingold

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June 2014, a true and correct copy of *Defendant Dennis M. Gingold's Motion to Dismiss Pursuant To Fed. R. Civ. P. 12(b)(1) And 12(b)(6)* was served via electronic transmission through the Court's electronic filing system on the following:

Robert W. Doyle, Jr., Esq.
Andre P. Barlow
Camelia C. Mazard
Keith Lively
Doyle, Barlow & Mazard, PLLC
1110 Vermont Ave., N.W., Ste. 715
Washington, D.C. 20005
Counsel for Plaintiff John W. Boyd, Jr.

and

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

/s/Alan L. Balaran
Alan L. Balaran