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

LEONARD ROWE, ROWE ENTERTAINMENT, INC., LEE KING, and LEE KING PRODUCTIONS, INC., Plaintiffs, -against - GARY, WILLIAMS, PARENTI, WATSON AND GARY, P.L.L.C., WILLIE E. GARY, SEKOU M. GARY, MARIA SPERANDO, and LORENZO WILLIAMS, Defendants.	Civil Action File No. 1:16-CV-01499-MHC **DECLARATION OF LEONARD ROWE IN OPPOSITION TO MOTIONS TO DISMISS OR TRANSFER**

LEONARD ROWE declares pursuant to 28 U.S.C. § 1746 as follows:

1. I am a plaintiff in this lawsuit and I was a plaintiff in the underlying lawsuit in which Willie Gary and the other defendants (the "Gary Lawyers") represented me and other black concert promoters asserting race discrimination and antitrust claims against talent/booking agents and white concert promoters, *Rowe Entertainment, Inc., et al. v. The William Morris Agency, Inc., et al*., 98 Civ. 8272 (RPP) (S.D.N.Y.) (the "Civil Rights Action").

2. I submit this declaration to establish four points that put the lie to the Gary Lawyers' unsupported assertions in their motions to dismiss:

(i) Willie Gary solicited me in Atlanta to retain his firm and bragging about his regular litigation cases in Georgia and his firm's ability to handle complex cases throughout the country;

(ii) the choice of law and forum selection clause in my retainer agreement with the Gary Lawyers was obtained by fraud;

(iii) a substantial part of the events or omissions giving rise to this lawsuit took place in Atlanta, Georgia; and

(iv) the Gary Lawyers have had continuous contacts with Georgia, and have derived substantial revenue here, for years.

3. Before making those points, however, I want to explain in the Introduction the critical importance of this action and how inequitable and unfair it would be to allow Gary to choose New York as the forum to resolve my claims.

INTRODUCTION

4. In dismissing my prior action asserting RICO claims against the Gary Lawyers, Judge Totenberg correctly observed:

> There is no doubt that Plaintiffs . . . were deeply impacted by their professional experiences and by *the loss of their landmark case* in which they believed they would prevail, in reliance on the representations of their counsel at the Gary Firm.

Exhibit E[1] (Order dated March 31, 2016 in *Rowe Entertainment v. Gary, et al.*, Civil Action No. 15-cv-0770-AT ("*Rowe I*")) at 65 (emphasis added).

[1] Exhibits are marked consecutively with Exhibits A through D to the complaint, which are also annexed hereto.

5. Judge Totenberg was right to describe the Civil Rights Action as a landmark case. It was critically important, not only to black concert promoters, but also to black actors, directors, producers, writers, and all other black people involved in the entertainment industry. The case was heavily covered by the Hollywood media; it had the potential to mark a turning point in African-American participation in the industry. Dismissal of the case in January 2005, however, sent a clear message that there was no need to disturb the status quo or the all-white "old boys' networks" that dominated the industry then, and continue to dominate the industry now.

6. There was also a terrible backlash against me and other black concert promoters. The second and third-tier work that we were previously allowed suddenly dried up. Black concert promoters, including my co-plaintiff, Lee King, and me, have been essentially forced out of the business and we've been unable to support our families for years.

7. It is now clear to me that Willie Gary and his colleagues were directly responsible for the loss of the Civil Rights Action through fraud and gross malpractice. As Judge Totenberg found:

> *It is inexplicable why the Gary Firm failed to obtain the actual underlying emails* [showing that employees of the defendants in the Civil Rights Action used racially derogatory terms], and if that is indeed so, might demonstrate a continuing thread of negligent handling of the case and presentation of evidence.

Exhibit E (Order dated March 31, 2016 in *Rowe I*) at 57 (emphasis added).

8. Judge Totenberg is not the only federal judge to recognize that the Gary Lawyers had a responsibility to obtain the racially derogatory emails described in the altered E-Discovery Memorandum annexed hereto as Exhibit B. The judge presiding over the Civil Rights Action, Hon. Robert P. Paterson, also concluded that Gary was "at fault."

9. In particular, as Judge Totenberg found, after the Civil Rights Action was dismissed, I "undertook an extensive campaign to obtain information in a variety of ways from a variety of sources to find out how and why the case was dismissed." *Id*. at 30. Because Gary had "misdirected" my efforts, *id*., however, I wasted years of my life blaming the wrong people, Complaint at ¶¶ 101-123.

10. As a result, when I filed my Rule 60(b) motion in March 2012, I still couldn't believe that the Gary Lawyers were responsible for failing to obtain racially derogatory emails in a major race discrimination case! In my motion, I blamed my New York lawyers, who Gary had accused of conspiring with the defendants due to conflicts with the entertainment industry, and Judge Patterson, who Gary had said was racist and suggested could also be involved in a corrupt conspiracy. *Id*. at ¶¶ 101-103.

11. At a January 24, 2014 hearing on that motion, Judge Patterson explained to me that the Gary Lawyers had the responsibility for obtaining, and the power to obtain, those emails, but nevertheless failed to do so:

Judge Patterson: . . . this is something I think that you didn't fully understand, and continue not to understand fully, that [the E-Discovery Memorandum] is not a document that was prepared by any of the defendants. It was prepared by [your] electronic discovery company . . . So you don't know anything [about the underlying emails] from [the E-Discovery Memorandum].

Rowe: You know, Judge Patterson, you're right. You're 100 percent correct. But that's easy for you to prove. You could have said, come forth with the [emails] so we can see. . . .

Judge Patterson: Look, but that isn't my job. *That's up to the attorneys' to do. . . And your lawyer was the Gary firm. They had the power to do that.* Now it wasn't the responsibility of the [New York] lawyers here . . . *So the fault, if any, lies with the Gary firm*.

Complaint at ¶ 136; Exhibit D (transcript of January 24, 2014 hearing before Judge Patterson) at 8:18-22, 9:6, 9:9-12, 9:21 – 10:5 (emphasis added).

12. Nine years earlier, when Judge Patterson dismissed the Civil Rights Action, however, I had no way of knowing that "the fault, if any, lies with the Gary Firm." On the contrary, Gary turned to his modus operandi used in many other cases – fraudulent misrepresentations to conceal his fault and to prevent me and the other plaintiffs in the Civil Rights Action (the "Civil Rights Plaintiffs") from pursuing our claims against the Gary Lawyers for years. Indeed, Gary's fraudulent misrepresentations caused me to waste years of my life blaming the wrong people for the loss of the Civil Rights Action.

13. When Judge Robert P. Patterson issued his January 2005 decision granting summary judgment dismissing the Civil Rights Action, I was deeply disappointed and shocked. Judge Patterson had appeared to me as fair in his prior decisions and the Gary Lawyers had assured me there was no chance that the summary judgment motions would be granted. Complaint at ¶¶ 63-64.

14. Willie Gary told me, however, that there was nothing he or any other lawyer could have done to prevent the Civil Rights Action from being dismissed because Judge Patterson, like other New York judges, was a racist. Complaint at ¶¶ 101-106. At that time, I had absolute trust in Gary and no reason to question what he said. After all, Gary was one of the country's preeminent African-American lawyers, known as the "Giant Killer," *i.e.*, someone who was not afraid to confront the largest corporations to defend victims of corporate greed, discrimination, and corruption. And because he had litigated cases all over the country, I respected his views about racism in the courts, including the courts of New York.

15. Gary and I also had something in common that made me particularly vulnerable to his misrepresentations about the racism of New York judges -- we both grew up in the South during the era of Jim Crow laws and segregation. I have experienced both overt and subtle racism throughout my entire life and I accept the ugly fact that in the past black Americans rarely received justice in the courts. So when Gary told me that Judge Patterson and other New York judges were the type

of white people who wanted to appear fair but nevertheless held racist views, I believed him. Complaint at ¶¶ 107-120.

16. Relying on Gary's horrific misrepresentations, I embarked on an almost decade-long campaign to bring to light the racism and corruption which Gary had attributed as the cause of the dismissal of the Civil Rights Action. *Id*.; Exhibit C (timeline of my due diligence efforts to discover and expose the real reasons why the Civil Rights Action was dismissal).

17. After Gary betrayed our shared experience of racism in America by falsely blaming the dismissal of the Civil Rights Action on the racism of New York judges, it would be particularly unfair and inequitable to allow Gary to choose New York as the forum to resolve my claims in this action.

18. In addition, as set forth in more detail below, the motions to dismiss or transfer must also be denied based on four critical points:

(i) Willie Gary vigorously solicited me in Atlanta to retain him and his firm;

(ii) The choice of law and forum selection clause was obtained by fraud;

(iii) a substantial part of the events and omissions giving rise to this action occurred here in Atlanta, Georgia; and

(iv) Gary and his firm have had continuous contact with Georgia, and derived substantial revenue here, for years.

I. Willie Gary Solicited Me in Atlanta to Retain Him and His Firm and Bragged About His Regular Practice in Georgia.

19. The Gary Lawyers correctly point out that I first heard about Willie Gary in April 2001 from an episode of the television news program *60 Minutes II*. When I called Gary's office in Florida later, however, his secretary told me that Gary was trying a case here in Atlanta, in the Fulton County state court. I agreed to meet him at the courthouse, where we discussed the Civil Rights Action. Complaint at ¶ 42.

20. Contrary to his unsupported assertion now, however, Gary vigorously solicited me to retain him and his firm as counsel to the Civil Rights Plaintiffs. When I met Gary at the state courthouse, I was of course impressed with his profile on *60 Minutes II*, but I was also concerned about changing lawyers in the middle of litigation and the cost and other risks associated with doing so. When I described the Civil Rights Action and my concerns, Gary immediately expressed interest in the case and began soliciting me to hire him and his firm.

21. At first, Gary said that he would replace my New York lawyers and criticized them on three grounds: (i) as white lawyers, they could not adequately represent black concert promoters; (ii) their firms had conflicts of interest because they represented clients in the entertainment industry; and (iii) their demand of $750 million was too low because the case was worth at least $3.5 billion. In

subsequent phone calls, Gary explained that he needed New York co-counsel after all, and that my current New York counsel was the logical choice in light of their experience with the case. Complaint at ¶ 42.

22. During our first meeting in Atlanta, Gary explained that he maintained a national practice and, unlike most other lawyers, was capable of handling complex litigation anywhere in the country. He pointed out that even though he is based in Florida, he had been in Atlanta over the past week to try one of his Georgia matters and that one of his close friends was Atlanta Mayor Bill Campbell.

23. Gary also told me during our meeting in Atlanta that he regularly practiced throughout the country, including Georgia and New York. He mentioned, for example, that he had successfully represented plaintiffs in the Coca-Cola race discrimination class-action here in Atlanta. He also said that he had recently litigated a case before the Georgia Supreme Court involving liability arising out of the terrorist bombing of the Atlanta Olympics in 1996.

24. Gary also bragged that in order to maintain a truly nationwide practice, his firm owned two private jets named *Wings of Justice I* and *Wings of Justice II*. Gary said the planes enabled him and his partners to "attend a meeting in Atlanta and be home for dinner." Gary gave a similar explanation in an undated press release announcing his firm's purchase of a second plane, a Boeing 737 named *Wings of Justice II*, which Gary had acquired recently before I met him:

> "*Wings II*" provides the Gary law firm with the ability to handle cases throughout the United States. Gary and his partners will continue using "*Wings of Justice I*" – the law firm's Gulfstream II Jet, which has been flying since 1996.
>
> "This aircraft allows us to better serve our clients," Gary said. "*We can meet with people in Atlanta, Chicago and Carolina* the same day and still be home for dinner. The plane is equipped with a conference table, an office, a bedroom and a full service kitchen."

Exhibit F (undated Gary Firm Press Release, as reprinted at Airlines.Net, "Why No Logo Lights on Most Flights" thread)[2] (emphasis added).

25. I believe that Gary failed to submit a declaration in support of his motion to dismiss because his business in Georgia is so extensive that he could not do so in good faith. Indeed, my counsel has located several reported Georgia state and federal decisions in which Gary and the other defendants have been involved in over the years, including the following:

(i) *Ingram v. Coca-Cola*,, 200 F.R.D. 685 (N.D. Ga. 2001) (Civil Action No. 1:98-CV-3679-RWS) (Willie Gary, Gary Firm, and other Gary Firm lawyers);

(ii) *Abdallah v. Coca-Cola*, 133 F. Supp. 2d 1364 (N.D. Ga. 2001) (Civil Action No. 1:98-cv-3679-RWS) (Willie Gary, Gary Firm, and other Gary Firm lawyers);

(iii) *Abdallah v. Coca-Cola*, 2000 U.S. Dist. LEXIS 21025 (N.D. Ga. 2001) (Civil Action No. 1:98-cv-3679-RWS) (Willie Gary, Gary Firm, and Sekou Gary);

[2] www.airliners.net/forum/viewtopic.php?t=743845.

(iv) *Anderson v. Atlanta Comm*., 273 Ga. 113 (2000) (Sup. Ct. Fulton Co. Case Nos. S00A0899, S00A0901, and S00A1069) (Willie Gary, Gary Firm, and other Gary Firm lawyers);

(v) *Swoope v. Air Serv. Corp*., 2013 Ga. State LEXIS 2761 (Sup. Ct. Fulton Co. 2013) (Case No. 2008EV006257) (Defendant Lorenzo Williams and Gary Firm);

(vi) *Keh v. Americus-Sumter Co. Hospital*, 2006 U.S. Dist. LEXIS 15668 (M.D. Ga. 2006) (Civil Action No. 1:03-CV-68-2 (WLS) (Lorenzo Williams); and

(vii) *Marshal v. Americus-Sumter Co. Hospital*, 2002 U.S. Dist. LEXIS 26822 (M.D. Ga. 2002) (Civil Action No. 1:01-CV-79-3 (WLS) (Lorenzo Williams).

26. I believe that in addition to those cases with reported decisions, Gary and his firm have represented many other Georgia clients in Georgia state and federal court in which there have been no published decisions. Based only on the Coca-Cola cases and the Olympic bombing cases, Gary and the other partners of his firm must have derived substantial income over the years from his work in Georgia.

27. In addition, Gary has two children who live in Atlanta with their mother and Gary was involved in litigation over their child support payments in Fulton County Superior Court. *See* Exhibit G (*The Matrimonial Strategist*, "Prominent Trial Lawyer Loses Support Fight," reporting result in *Gowins v. Gary*, No. 2004CV88406 (Sup. Ct. Fulton Co.)) ("Gary is known in Georgia law circles for his representation of race discrimination plaintiffs against The Coca-Cola Co., and Centennial Olympic

Park bombing victims suing Atlanta Olympic organizers").[3] In 2003, Gary hired former Atlanta Mayor Bill Campbell as a partner of Gary's firm.

II. The Choice of Law and Forum Selection Clause Was Obtained by Fraud.

A. The Initial Retainer Agreements.

28. When I first hired my New York lawyers to commence the Civil Rights Action in October 1998, I entered into a retainer agreement with my primary lawyer at that time, Marty Gold of the New York City law firm Gold, Farrell, & Marks. Complaint at ¶ 34. I no longer have a copy of that retainer agreement and I don't know whether it contained a choice of forum clause. I know, however, that neither Mr. Gold nor anyone else discussed such a clause with me and I never thought about where I would bring a lawsuit to resolve a dispute with Mr. Gold.

29. After I met with Willie Gary in the Fulton County state courthouse in the spring of 2001, Gary circulated a retainer agreement that included his firm, Mr. Gold's firm, which had merged with the New York City Firm of RubinBaum LLC, and two other New York lawyers that were assisting Mr. Gold. That is the retainer agreement annexed as Exhibit A to the complaint (and this affidavit), which contains the forum selection clause on which the Gary Lawyers rely.

[3] http://www.lawjournalnewsletters.com/issues/ljn_matrimonial/23_8/news/144937-1.html.

30. At the time I entered into that retainer agreement, however, neither Gary nor any of my other lawyers explained that it contained a choice of law or forum selection clause. Nor did anyone discuss with me what would happen if a dispute arose between the Civil Rights Plaintiffs and their lawyers. At that time, I discussed with Gary only two terms set forth in the retainer agreement. First, I was concerned that the contingency fee was increasing from one third to 48%. Gary told me the increase was necessary because Mr. Gold and the other lawyers still had to be compensated and that the addition of his firm required a substantial increase in the contingency fee.

31. Second, I objected to the fact that expenses, which the Civil Rights Plaintiffs were advancing, would not be deducted from the gross amount of any recovery before calculating the attorneys' contingency fees. Under my prior retainer agreement with Mr. Gold, expenses would be first deducted from the gross amount of any settlement and attorneys' fees would then be calculated on the net recovery.

32. Gary told me that the Florida bar rules required that expenses be paid for 100% by plaintiffs and that attorney contingency fees must be calculated on the gross amount of any recovery rather than the net amount. As I had absolute faith in Gary, I accepted that representation and agreed to the terms of the new retainer agreement. The choice of law and forum selection clause was never discussed, however, and I was not aware of that clause.

33. I now know that the Florida bar rules did not require that expenses be paid 100% out of plaintiffs' share, especially since plaintiffs were advancing all expenses! Gary insisted on that inequitable provision because he intended to charge outrageous expenses to the case and he knew that his New York co-counsel would not accept such expenses decreasing their contingency fees.

34. In fact, when the ClearChannel settlement was finalized, Gary deducted huge expenses for the use of his private jet, *Wings of Justice II*, to fly to and from New York and Atlanta several times. Each trip cost approximately $20,000 and those costs were deducted from plaintiffs' share of the settlement. Indeed, of the $10 million settlement, the Civil Rights Plaintiffs received only $4,036,571.85. At the time, I had no idea that Gary intended to charge the Civil Rights Plaintiffs such exorbitant fees. On the contrary, Gary's description of the jet as an essential tool to facilitate his nationwide practice led me to believe that the jet was part of Gary's cost of doing business.

B. Withdrawal of the New York Lawyers.

35. In late 2002, the New York lawyers, which had then merged with the international law firm of Sonnenshein Nath & Rosenthal ("SNR"), told me that they wanted to withdraw as counsel in the Civil Rights Action. Complaint at ¶ 71. I told Gary that I was uncomfortable allowing SNR to withdraw because SNR was responsible for opposing the anticipated motions for summary judgments. I was

worried that Gary and his firm could not effectively respond to the motions for summary judgment with so little time after SNR withdrew.

36. Gary told me, however, that SNR's withdrawal was a positive development since SNR probably had been working against the Civil Rights Plaintiffs in light of SNR's conflicts with the entertainment industry. Complaint at ¶ 72. Gary told me that SNR's conflict probably accounted for SNR's attempt to conceal the E-Discovery Memorandum and the racially derogatory emails. Gary said that the racially derogatory emails guaranteed that the summary judgment motions would be denied and that SNR's decision to withdraw was "good riddance." *Id*.

37. Gary had previously explained to me that the $200,000 that the Civil Rights Plaintiffs paid for the electronic email searches had been "money well spent" because the racially derogatory emails guaranteed at least a billion dollar recovery. *Id*. at ¶¶ 64, 68. Based on those representations, I simply could not believe what I later learned to be true:

(i) Gary never commissioned a search of the emails of the white music agents suspected of using racially derogatory terms – agents that I and the Civil Rights Plaintiffs specifically identified to Gary, *id*. at ¶¶ 50-52, 129, 156(ii);

(ii) Once the search of apparently random employees of the Civil Rights Action returned hundreds of racially derogatory emails, Gary never made any effort to obtain those emails, *id*., *e.g*., at ¶ 2;

(iii) Gary then violated the court-ordered e-discovery protocol by allowing the racially derogatory emails to be returned to the Civil Rights Defendants, *id*.

C. The Gary Lawyers' Fraud During the Negotiation of the 2003 Retainer Agreement.

38. After SNR withdrew in December 2002, Gary called for an in-person strategy meeting with the Civil Rights Plaintiffs. Gary, Sperando, and at least two or three of his other lawyers flew to Atlanta on Gary's private jet for the meeting. The meeting took place in the conference room at the Atlanta Hilton. At that meeting, Gary explained that the withdrawal of the New York lawyers was a positive development because they probably had been conspiring with the defendants in Civil Rights Action, including the primary defendants, William Morris and Creative Artists Agency (collectively, the "Civil Rights Defendants"). (I reminded Maria Sperando at that meeting that when she and I had been in New York, I had raised a similar suspicion about the New York lawyers, but she had insulted me by rudely dismissing the possibility.)

39. At that meeting, I raised the issue of reducing the total contingency fee from 48% to a lower amount since fewer law firms were working on the case. Gary rejected that suggestion, asserting that his firm would have to do additional work and that SNR would still be entitled to a portion of any recovery. I challenged that assertion and suggested that at the very least, the retainer

agreement should be revised to provide that expenses would be deducted from the gross recovery and that attorneys' fees would be calculated on the net.

40. Gary replied that he was negotiating with the New York lawyers and that a revised retainer agreement would have to be signed. Gary suggested that we meet in person to discuss the revised retainer agreement when I traveled to Florida to assist in the preparation of the opposition to the summary judgment motions. In April 2003, my co-plaintiff and I traveled to Florida for that purpose.

41. While Mr. King and I were reviewing documents in a conference room at Gary's office, Gary, Maria Sperando, and at least one or two other Gary Firm lawyers came in to discuss the revised retainer agreement. As they came in, I joked that with that much legal talent, there was nothing I could do but accept their pronouncements about the revised retainer agreement.

42. At my insistence, we nevertheless reviewed each of the ten numbered paragraphs of the 2001 retainer agreement. Once again, Gary refused to consider reducing the 48% contingency fee or to deduct expenses from any recovery before calculating fees. I was particularly sensitive to those issues because even though we had just reached settlements with ClearChannel and other Civil Rights Defendants, the Civil Rights Plaintiffs received only 40% of those settlements after fees and expenses were deducted. I later learned that most of the expenses

consisted of exorbitant charges for each flight made by Gary's jet, *Wings of Justice II*, as well as other fraudulent charges.[4]

43. I now know that Gary's assertion that the Florida bar rules required contingency fees to be calculated on the gross recovery, even where plaintiffs were paying for expenses, was a lie. In fact, I'm sure that Gary insisted on calculating fees before deducting expenses because his New York co-counsel would not have allowed him to deduct unreasonable expenses such as the cost of his private jet from their fees.

44. As we reviewed each paragraph of the 2001 retainer, we finally came to paragraph 8, the choice of law and forum selection clause on which the Gary Lawyers now rely. I had never noticed or understood the provision, so I asked what it meant.

[4] For example, in early 2002, the Civil Rights Defendant ClearChannel requested a settlement mediation. Complaint at ¶ 55. One of the New York lawyers, Ray Heslin, told me that ClearChannel had agreed to pay 100% of the $25,000 fee charged by the mediator, Harvard Professor Charles Ogletree. When I told Gary who the mediatory would be, he explained that he was very close to Ogletree. When Gary picked me up in his jet to take me to the mediation, Gary told me that there had been a misunderstanding and that $25,000 was only half of Ogletree's fee. Gary said that the Civil Rights Plaintiffs would have to pay the other $25,000. At the time, I accepted Gary's representation without question. Now, I am sure that this is yet another example of Gary's fraud and the fraudulent expenses he charged the Civil Rights Plaintiffs.

45. Gary explained that any disputes between the Civil Rights Plaintiffs and the Gary Firm would be governed by New York law and any lawsuit arising from such a dispute would have to be brought in state or federal court in New York. I then pointed out that it made no sense to resolve disputes in New York since I reside in Georgia and the Gary Lawyers reside in Florida. I asked why a dispute between us would be governed by a third state's law and be required to be brought in a third state, which was inconvenient to both of us. Gary replied that the law required that New York law govern any dispute with lawyers litigating a federal or state case in New York. He said we had no right under the law to bring a lawsuit arising from such a dispute anywhere except in New York. Gary asserted the clause in the retainer agreement merely reflected that fact.

46. At the conclusion of our discussion of the 2001 retainer agreement, Gary had convinced us, through his fraudulent representations, to accept no modifications in the revised retainer agreement executed shortly thereafter on April 15, 2003. That agreement merely increased Gary's share of the 48% contingency fee without modifying any terms affecting the Civil Rights Plaintiffs. *See* Exhibit H (2003 modification to 2001 retainer agreement).

47. My current lawyers inform me that Gary's representation was false. I could have objected to the choice of law and choice of forum clause, but I didn't do so in reliance on Gary's false representation that the law required New York

law to govern and that any dispute be brought in New York state or federal court. Again, I had no reason to doubt Gary's representations as I trusted him implicitly.

III. A Substantial Part of the Events and Omissions Giving Rise to this Action Occurred in Atlanta, Georgia.

48. The Gary Lawyers also falsely deny that a substantial part of the events and omissions giving rise to this action arose in Georgia. First, Gary solicited me to retain his firm as counsel to the Civil Rights Plaintiffs here in Atlanta – at the Fulton County courthouse as described, *supra*, at ¶¶ 19-24. Indeed, by the end of that meeting, I had tentatively agreed to replace the New York lawyers with Gary's firm based on Gary's representations made to me at that meeting in Atlanta.

49. Second, the Civil Rights Action was a major national case and it was litigated throughout the country, including in Georgia. On March 20, 2002, for example, defendant Maria Sperando deposed one of the principal defendants in the Civil Rights Action, a white concert promoter named Alexander Cooly. That deposition took place in College Park, Georgia, adjacent to Atlanta's Hartsfield-Jackson International Airport. Like most of the depositions taken in the Civil Rights Action, I attended that deposition. Notably, Mr. Cooly acknowledged that an all-white "old boys' network" existed in the concert promotion business and that no black concert promoters were members of that network. *See* Exhibit I (excerpt from Cooly deposition transcript). Despite Mr. Cooly's concession and

other blatant evidence of racial discrimination, the Gary Lawyers managed to lose the case because of their gross negligence and fraud.

50. Third, there were at least three meetings between the Gary Lawyers, me, and other Civil Rights Plaintiffs that took place in Atlanta. First, there was the strategy meeting at the Atlanta Hilton after the New York lawyers withdrew. *See*, *supra*, at ¶¶ 38-39. There were also two meetings that took place on Gary's private plane, while it was parked at Atlanta's Hartsfield-Jackson International Airport. Those meetings took place when Gary and his colleagues flew in their private jet to pick me up for mediations with certain Civil Rights Defendants.

51. Fourth, Gary and his colleagues regularly communicated with me by phone and fax while I was at home in Georgia.

52. Finally, it is not true that the Gary Lawyers' Georgia activities are unrelated to the claims in this action. Gary and his colleagues lied to me repeatedly about the E-Discovery Memorandum and the underlying racially derogatory emails during the in-person meeting that took place in Atlanta as well as on the numerous telephone calls to me while I was in Atlanta. He and his colleagues misrepresented their ability to defend against the Civil Rights Defendants' motions for summary judgment. At the December 2002 meeting at the Atlanta Hilton, Gary dismissed my concerns about the withdrawal of the New York lawyers since they had the responsibility of responding to the motions for summary judgment. Gary knew at

that time that he never obtained the racially derogatory emails, yet he fraudulently stated that the emails were the "smoking gun" that guaranteed denial of the summary judgment motions and ultimate victory for over a billion dollars.

53. Moreover, by the December 2002 meeting in Atlanta, Gary and his colleagues had perpetrated their massive fraud on their clients in a Michigan gender discrimination lawsuit against Ford Motor Company. Complaint at ¶¶ 140-43. That is the case in which Gary defrauded his clients out of $51.5 million of a $67.5 million settlement. Although Gary concealed the actual settlement amount from his clients, his local Michigan counsel inadvertently disclosed a spreadsheet setting forth the actual settlement amount to one of the clients. The clients then sued Gary for fraudulently stealing $51.5 million of the settlement. *Id*. at ¶ 140.

54. After examining some of Gary's emails in camera, however, the Michigan court granted the plaintiffs' motion to compel, finding:

> *There is probable cause to believe that a fraud has been attempted or committed* and that the [allegedly privileged] communications at issue were made in furtherance of it.

Exhibit J (Opinion and Order Granting Plaintiffs' Motion for Order Compelling Discovery dated February 17, 2005, *Kubik v. Willie Gary, et al*., Civil Action No. 03-CV-73350-DT (E.D. Mich.)) at 9 (emphasis added).

55. The Michigan federal judge also determined that Gary may regularly engage in fraud against his clients and that otherwise privileged emails had to be

produced under the crime/fraud exception to the attorney-client privilege:

> [The Gary Firm] may have used a common fraudulent settlement agreement scheme *in a variety of cases*, and that discussions [among the Gary Lawyers] about *the prospective structure of this scheme may have involved advice in furtherance of fraud*.

Id. at 8 (emphasis added).

56. The Gary Lawyers did not disclose their fraudulent activities in the Ford case to me or the other Civil Rights Plaintiffs at the December 2002 meeting in Atlanta or at any other time, even though as their clients, we had a right to know of that conduct. Had I and the other Civil Rights Plaintiffs known of the Gary Lawyers' conduct in the Ford case in 2002, we certainly would have fired the Gary Lawyers and made other arrangements to continue prosecuting the Civil Rights Action.

IV. The Gary Lawyers Have Continuous Contacts with Georgia.

57. As set forth, *supra,* at ¶¶ 19-26, Gary and his colleagues regularly litigate cases in Georgia state and federal court. They market their firm as having the ability to handle cases nationwide. In their press release bragging about their new Boeing 737 jet, the Gary Lawyers specifically mention that the plane enables them to travel easily to Atlanta:

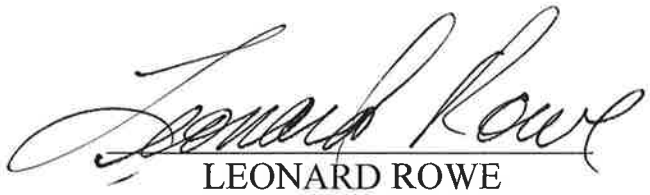
> *We can meet with people in Atlanta*, Chicago and Carolina the same day and still be home for dinner.

Exhibit F (undated press release) (emphasis added).

58. Gary even has two daughters living here in Atlanta. In short, the Gary Lawyers have continuous contacts with Georgia that put the lie to any allegation that it would be inconvenient for them to defend this action here.

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

Executed: September 5, 2016
Johns Creek, Georgia



LEONARD ROWE