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CAUSE NO. 2021-65235

CHAREE HARRISON,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
V.	§	
	§	HARRIS COUNTY, T E X A S
FAIR FINTECH, INC., AMSYS	§	
INNOVATIVE SOLUTIONS LLC and	§	
KHALID PAREKH,	§	
	§	
Defendants.	§	334TH JUDICIAL DISTRICT

PLAINTIFF'S THIRD AMENDED PETITION

Plaintiff Charee Harrison ("Plaintiff" or "Ms. Harrison"), files her Third Amended Petition, complaining of Defendants Fair Fintech, Inc., AMSYS Innovative Solutions LLC, and Khalid Parekh ("Fair Fintech," "Defendants," or "the Company").

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190, in that Ms. Harrison seeks monetary relief aggregating more than $50,000.00.

THE PARTIES, JURISDICTION, AND VENUE

2. The Plaintiff, Ms. Harrison, is a natural person residing in Houston, Texas. Ms. Harrison has standing to file this lawsuit.

3. Defendant Fair Fintech, Inc. is a Texas corporation headquartered at 10101 Southwest Freeway, Suite 570, Houston, Texas 77074, that is already a Defendant in this case and will be served through its counsel of record.

4. Defendant AMSYS Innovative Solutions LLC is a Texas limited liability corporation headquartered at 10101 Southwest Freeway, Suite 570, Houston, Texas 77074, that is already a Defendant in this case and will be served through its counsel of record.

5. Defendant Khalid Parekh is an individual and citizen of Texas, who is already a Defendant in this case, and will be served through his counsel of record.

6. During 2020 or 2021 Fair Fintech engaged in an industry affecting commerce and had 15 or more employees for each working day in each of 20 or more calendar weeks in one or both calendar years. As such, Fair Fintech is a Texas Commission on Human Rights Act ("TCHRA") defined "employer." *See* TEX. LAB. CODE ANN. § 21.002(8) (defining employer).

7. During 2020 or 2021 AMSYS Innovative Solutions LLC engaged in an industry affecting commerce and had 15 or more employees for each working day in each of 20 or more calendar weeks in one or both calendar years. As such, AMSYS Innovative Solutions LLC is a TCHRA defined "employer." *See* TEX. LAB. CODE ANN. § 21.002(8) (defining employer).

8. Jurisdiction is exclusive in state court. There is no basis for removal to federal court, because: (a) Plaintiff does not bring any claims under any federal law; and (b) there is not complete diversity of citizenship between the parties.

9. Venue is proper in this Court because Harris County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

FACTUAL BACKGROUND

10. In February 2021, Ms. Harrison began working as the Chief Marketing Officer for Fair Fintech. Fair Fintech is owned by AMSYS Innovative Solutions LLC, and the two companies have: (1) common management, (2) interrelation between operations, (3) centralized control of labor relations, and (4) common ownership. As such, for purposes of the TCHRA, the two companies are joint employers or enterprises, an integrated employer, or a single employer.

11. Ms. Harrison had been recruited to Fair Fintech by Khalid Parekh, the Company's Founder, Chairman, CEO, and majority owner. Fair Fintech is a startup online banking company

that targets the "unbanked" population, meaning people who do not typically use banks. That target population is heavily African American.

12. When Mr. Parekh was recruiting Ms. Harrison to come to work for Fair Fintech as an employee, he promised her:

- If she agreed to go to work for the Company, she would be his "partner." At the time, Ms. Harrison owned her own company, named Etched Communication LLC, and owned a 5% interest in another company named 1035 LLC, which she would have to give up if she accepted employment with Fair Fintech. Mr. Parekh knew that and told Ms. Harrison that he would not insult her by asking her to leave her company without offering her something in return, which is why he was promising her to become his "partner" if she accepted employment with Fair Fintech.

- If she agreed to go to work for the Company, she would receive 500,000 of Fair Fintech's Class C Voting Common Stock with a strike price of $0.00. At the time, the Current Market Value of those shares was $2.00 per share, for a total of a $1,000,000 valuation at that time. Since then, the Market Value of those shares has increased, such that they are now worth more than $1,000,000. The shares vested over time, with the first one-fourth (125,000) vesting on Ms. Harrison's one year anniversary with the Company, and the remaining shares vesting 125,000 on January 1, 2023, 125,000 on January 1, 2024, and 125,000 on January 1, 2025.

- Participation in an "Executive Investment Plan" in which Fair Fintech, Inc. would give an annual dividend of 10% on her principal investment.

- An annual bonus of no less than $25,000 yearly based on agreed upon "metrics and targets" being achieved.

13. But for Mr. Parekh and Fair Fintech's promises – all of which were, unbeknownst to her, false – Ms. Harrison never would have agreed to have given up her company to become employed by Fair Fintech. Despite Mr. Parekh's promises to the contrary, she was never made a "partner" in Fair Fintech, and the Company never even had an "Executive Investment Plan." Furthermore, Mr. Parekh and Fair Fintech never gave Ms. Harrison any "metrics and targets" upon which to base the promised annual bonus. Mr. Parekh and Fair Fintech never intended to honor any of the above-identified promises and never intended retain Ms. Harrison long enough such that the promised Class C Voting Common Stock would vest. Rather, Mr. Parekh and Fair Fintech,

Inc. intentionally fraudulently duped Ms. Harrison into giving up her company and her 5% interest in 1035 LLC to accept employment with Fair Fintech based on a series of knowingly false promises.

14. Mr. Parekh is Indian. He grew up in Mumbai, India. Before he hired Ms. Harrison, he knew that she was African American. She was the only African American employed by Fair Fintech. Mr. Parekh told Ms. Harrison many times that he wanted her to target the African American consumer market, and to use her race to promote Fair Fintech, repeatedly saying things like:

- "I want you to exploit your blackness."
- "Where are all the black people?"
- "Flash your pretty black face."

15. Mr. Parekh also referred to Ms. Harrison as "Beyonce" and "Rihanna" and told her "[y]ou look hot. You are so hot." In addition, he would regularly call white people the "sophisticated" people and, in contrast, negatively refer to African Americans as "colored" or "the other people." Ms. Harrison repeatedly complained to Mr. Parekh about his racist statements and told him that they were not appropriate. Mr. Parekh did not like it when Ms. Harrison did that and on August 10, 2021 he fired her in retaliation for such complaints. At the time, he gave no reason for terminating Ms. Harrison. Ms. Harrison was terminated without cause.

16. On August 23, 2021, Ms. Harrison filed a Charge of Discrimination against Fair Fintech, Inc. and AMSYS Innovative Solutions LLC with the Texas Workforce Commission – Civil Rights Division ("TWC-CRD") and the Equal Employment Opportunity Commission ("EEOC"). Ms. Harrison alleged race discrimination and retaliation in her Charge of Discrimination.

17. On September 13, 2021, Ms. Harrison filed an Amended Charge of Discrimination against Fair Fintech, Inc. and AMSYS Innovative Solutions LLC with the TWC-CRD and EEOC and added a claim of sex discrimination.

18. All conditions precedent to bringing this lawsuit have been performed or occurred.

CLAIMS FOR RACE AND SEX DISCRIMINATION UNDER THE TCHRA AGAINST FAIR FINTECH AND AMSYS INNOVATIVE SOLUTIONS LLC

A. Legal Standards

19. Race and sex discrimination in employment are prohibited by the TCHRA, TEX. LAB. CODE § 21.001 *et seq*. The circumstantial model of proof that applies to race and sex discrimination claims is governed by the well-known burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). To establish a *prima facie* case of discrimination, the employee must show that she: (1) is a member of a protected class; (2) was qualified for his position; (3) suffered an adverse employment action; and (4) was replaced by someone outside of her protected class or others similarly situated were treated more favorably (disparate-treatment cases). *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000). To establish a *prima facie* case, the plaintiff is only required to make a minimal showing. *El Paso Cmty. Coll. v. Lawler*, 349 S.W.3d 81, 86 (Tex. App. – El Paso 2010, pet. denied).

20. If the plaintiff makes out a *prima facie* case, the burden of production then shifts to the defendant to proffer a legitimate, nondiscriminatory reason for the challenged employment action. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 507 (1993); *Willis v. Coca Cola Enters., Inc*., 445 F.3d 413, 420 (5th Cir. 2006). If the defendant meets its burden, the presumption raised by the plaintiff's *prima facie* case disappears. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 255 n. 10 (1981). The plaintiff is then given the opportunity to demonstrate that the defendant's articulated rationale was merely a pretext for discrimination. *See Hicks*, 509 U.S. at

507-08, 113 S. Ct. 2742; *Burdine*, 450 U.S. at 253, 101 S. Ct. 1089; *Machinchick v. PB Power, Inc.*, 398 F.3d 345 (5th Cir. 2005).

21. Regarding the standard of causation, ultimately, under the TCHRA, the burden falls to the employee only to produce evidence that his or her race or sex was a "motivating factor" in his or her termination. *See Quantum Chem. Corp. v. Toennies*, 47 S.W.3d 473 (Tex. 2001) (motivating factor is the standard of causation under the TCHRA). In "motivating factor" cases, such as claims under the TCHRA, a modified *McDonnell Douglas* approach applies in discrimination cases. As described by the Fifth Circuit, under that modified approach, if the defendant meets its burden of production, the plaintiff must then offer sufficient evidence to create a genuine issue of material fact that either: (1) the employer's reason is a pretext (*see supra*); or (2) that the employer's reason, while true, is only one of the reasons for its conduct, and another motivating factor is the plaintiff's protected characteristic. *Vaughn v. Woodforest Bank*, 665 F.3d 632, 636 (5th Cir. 2011) (stating that if the employer sustains its burden, the *prima facie* case dissolves, and the burden shifts back to the plaintiff to establish either: (1) that the employer's proffered reason is not true but is instead a pretext for discrimination; or (2) that the employer's reason, while true, is not the only reason for its conduct, and another "motivating factor" is the plaintiff's protected characteristic).

B. Analysis

22. Ms. Harrison incorporates the preceding paragraphs of this petition as if set out verbatim.

23. Ms. Harrison wins under the circumstantial model. She easily makes out a *prima facie* case of race and sex discrimination. She was objectively qualified for her job position, and she was discharged, and then replaced (or had her job duties subsumed by) one or more non-African American(s) and males. Furthermore, she was treated differently, and worse, than non-

African Americans and males under nearly identical conditions. This is sufficient to make out a *prima facie* case of race and sex discrimination.

24. The burden now shifts to Fair Fintech and AMSYS Innovative Solutions LLC to articulate a legitimate and nondiscriminatory basis for Ms. Harrison's termination. They fail to do so, as, at the time he terminated her, Mr. Parekh gave Ms. Harrison no reason for terminating her employment. *See Alvarado v. Texas Rangers*, 492 F.3d 605, 616-17 (5th Cir. 2007) (employer's lack of factual specificity meant that it never carried its burden under the *McDonnell Douglas* test); *Patrick v. Ridge*, 394 F.3d 311, 317 (5th Cir. 2004) (same).

25. Even assuming, solely for the sake of argument, that Fair Fintech and AMSYS Innovative Solutions LLC could articulate a legitimate and nondiscriminatory reason, there remains ample proof of pretext and race and sex discrimination *vel non*. Specifically, Fair Fintech submitted a false reason (alleged insubordination) for terminating Ms. Harrison to the EEOC. This is proof of pretext. *See, e.g., Haire v. Board of Sup'rs of La. State Univ. Agricultural & Mech. Coll.*, 719 F.3d 356, 365 n. 10 (5th Cir. 2013) (reversing summary judgment for the employer in a sex discrimination case, and holding that, "[e]vidence demonstrating that the employer's explanation is false or unworthy of credence . . . is likely to support an inference of discrimination *even without further evidence of defendant's true motive*.") (italics in original); *Burton v. Freescale Semiconductor, Inc.*, 798 F.3d 222, 239-40 (5th Cir. 2015) (holding that a jury may view "erroneous statements in [an] EEOC position statement" as "circumstantial evidence of discrimination."); *Miller v. Raytheon Co.*, 716 F.3d 138, 144 (5th Cir. 2013) (affirming a jury verdict in a discrimination case partially because "[a]t trial, Miller presented undisputed evidence that Raytheon made erroneous statements in its EEOC position statement."); *McInnis v. Alamo Comm. College Dist.*, 207 F.3d 276, 283 (5th Cir. 2000) (reversing summary judgment that had

been entered for the employer in a discrimination case partially because the employer's report to the EEOC "contained false statements . . . .").

26. In addition, Fair Fintech's given reason to the EEOC for terminating Ms. Harrison (alleged insubordination) is based on nothing more than a racist and sexist prejudice that African American women who are strong are thus "Angry Black Women." That is what Fair Fintech's given reason to the EEOC for terminating Mr. Harrison boils down to. Consistent with this point, Mr. Parekh's repeatedly racist remarks, summarized above, are also additional, compelling evidence of pretext and racial discrimination *vel non*. *See, e.g.*, *Isaac v. Precision Drilling Co., LP*, Civil Action No. 4:16-CV-01253, 2017 WL 442313, at *5 (S.D. Tex. Oct. 05, 2017) (racist comment by decisionmaker was not a stray remark and could be used as evidence of pretext).

CLAIM FOR RETALIATION UNDER THE TCHRA AGAINST FAIR FINTECH AND AMSYS INNOVATIVE SOLUTIONS LLC

A. Legal Standards

27. The TCHRA also prohibits retaliation. Retaliation may also be proven by direct or circumstantial evidence. In an action for retaliation brought under the TCHRA, the plaintiff-employee must make a *prima facie* showing that: (1) she engaged in a protected activity, (2) an adverse employment action occurred, and (3) a causal link existed between the protected activity and the adverse action. *Dias v. Goodman Mfg. Co., L.P.*, 214 S.W.3d 672, 676 (Tex. App.-Houston [14th Dist.] 2007, pet. denied). Protected activities include: (1) opposing a discriminatory practice; (2) making or filing a charge with the TWC-CRD; (3) filing a complaint in court; or (4) testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing. *Id*. (citing TEX. LAB. CODE ANN. § 21.055). If the plaintiff makes this showing, the burden shifts to the defendant-employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Id*. If the employer carries that burden, then the burden shifts back to the

plaintiff-employee to demonstrate that the employer's articulated reason for the adverse employment action is, in actuality, a mere pretext for retaliation. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973) (setting out this burden-shifting scheme for analysis of these types of case); *Wheat*, 811 F.3d at 705 (applying *McDonnell Douglas* burden-shifting model to retaliation case and finding fact questions precluded summary judgment as to plaintiff's claim that she was terminated in retaliation for having engaged in protected activities under Title VII).

B. Analysis

28. Ms. Harrison incorporates the preceding paragraphs of this petition as if set out verbatim.

29. Under the *McDonnell Douglas* burden-shifting model, Ms. Harrison easily makes out a *prima facie* case. First, as set forth above, she engaged in protected activities under the TCHRA, when she complained about Mr. Parekh's racist statements. *See supra*. *See Badgerow v. REJ Properties, Inc*., 974 F.3d 610, 619 (5th Cir. 2020) (plaintiff's statement that "she was not sure if she was not treated fairly because she was not family or because she is a woman" was protected activity under Title VII); *E.E.O.C. v. Rite Way Serv., Inc.*, 819 F.3d 235, 237 (5th Cir. 2016) (noting low bar for internal complaints to be protected against retaliation).

30. Second, Ms. Harrison suffered adverse employment action – she was terminated. *See Royal v. CCC & R Tres Arboles, L.L.C.*, 736 F.3d 396, 400 (5th Cir. 2013) ("It is clear that an adverse employment action occurred here—Royal was fired.").

31. Third, Ms. Harrison can show causation, and that but for her protected complaints, she would not have been terminated. Indeed, the close temporal proximity between their protected complaints and termination along establishes causation. *See Garcia v. Professional Contract Servs., Inc*., 938 F.3d 236, 243 (5th Cir. 2019) (two and one-half month gap between protected

activity and termination is sufficiently close to establish a causal nexus for purposes of a *prima facie* case of retaliation).

32. Finally, the same evidence of pretext that supports Ms. Harrison's race discrimination claims also supports her retaliation claim and establishes pretext and "but for" causation. *See Caldwell v. KHOU-TV*, 850 F.3d 237, 242 (5th Cir. 2017) (same evidence of pretext that precluded summary judgment against discrimination claim also gave rise to fact issue on retaliation claim).

DAMAGES UNDER THE TCHRA

33. Ms. Harrison incorporates the preceding paragraphs of this petition as if set out verbatim.

34. At the time of her termination, Ms. Harrison was earning an annual base salary of $250,000, plus a guaranteed Anniversary Bonus of $25,000 at the end of one year, eligibility for another bonus of no less than $25,000, and other benefits, including but not limited to the 500,000 shares mentioned above. As a result of her termination, Ms. Harrison has suffered past loss of earnings, and will likely suffer future lost earnings.

35. Ms. Harrison is entitled to back-pay, measured by the difference between the earnings she would have had at Fair Fintech and what she actually earned between the date of her termination, and the date of final judgment. In addition, the back-pay award would include the costs of uncovered medical treatments, or payments for replacement insurance, and other benefits, including lost pension benefits. *See Pearce v. Carrier Corp*., 966 F.2d 958, 959 (5th Cir. 1992); *Brunnemann v. Terra Int'l, Inc.*, 975 F.2d 175, 179 (5th Cir. 1992). Lost share awards, or options, are also recoverable as lost backpay in a discrimination and retaliation case like this one. *Cf. Greene v. Safeway Stores, Inc.*, 210 F.3d 1237, 1243-44 (10th Cir. 2000) (wrongfully discharged executive entitled to damages for unrealized stock option appreciation); *Harding v. Cianbro Corp.*,

498 F. Supp. 2d 344, 360 (D. Me. 2007) (awarding plaintiff who was illegally fired based on his disability the value of unvested stock that would have vested but for his wrongful termination).

36. Ms. Harrison also seeks reinstatement or front-pay. Concerning front-pay, Texas law provides that, "[a]bsent evidence to the contrary, it should be assumed that an illegally discharged employee would have continued working for the employer until retirement." *Dell, Inc. v. Wise*, 424 S.W.3d 100, 112 (Tex. App.—Eastland 2013, no pet.). *See, e.g., Bell Helicopter v. Burnett,* 552 S.W.3d 901, 921-23 (Tex.App. – Fort Worth 2018, pet denied) (affirming an award of twenty-four years of front pay to a plaintiff who prevailed in his discrimination case against Bell and affirming the final total award of $864,420.51 to the plaintiff, even though the plaintiff only earned $48.54 an hour (or approximately $100,000 per year), which is far less than Ms. Harrison); *Tex. Dep't of Pub. Safety v. Williams*, No. 03-08-00466-CV, 2010 WL 797145, at *9 (Tex. App.—Austin Feb. 19, 2010, no pet.) (mem. op.) (affirming an award of eighteen years of front pay and explaining that a factfinder could have reasonably found that the plaintiff would have remained with the employer for eighteen years, until the end of his career).

37. Ms. Harrison is also entitled to compensatory damages under the TCHRA for "emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." TEX. LAB. CODE § 21.2585 (d). *See, e.g*., *Jackson*, 2011 WL 2119644, at *8-9 (affirming $300,000.00 compensatory damages award in a single-plaintiff TCHRA age-discrimination case); *Giles v. General Electric Co*., 245 F.3d 474, 489 (5th Cir. 2001) (awarding $150,000.00 compensatory damages award in a single-plaintiff employment discrimination case).

38. Claimants under the TCHRA are also entitled to punitive damages where a violation is shown to have been made with reckless disregard or malice – as it clearly was here. TEX. LAB. CODE 21.2585; *see, e.g., Quality Dialysis, Inc. v. Adams*, NO. 13-05-086-CV, 2006 WL

1553353, at *11 (Tex. App.– Corpus Christi June 8, 2006, no pet.) (affirming jury's award of punitive damages against employer in an age discrimination case). Punitive damages are especially warranted here.

39. Under the TCHRA, attorneys' fees are also recoverable, and Ms. Harrison seeks them. *See, e.g., Miller*, 716 F.3d at 149 (affirming an award of attorneys' fees of $488,437.08 to the plaintiff in a single-plaintiff ADEA/TCHRA age discrimination case); *Lewallen v. City of Beaumont,* 394 Fed. Appx. 38, 46 (5th Cir. 2010) (affirming an award of attorneys' fees of $428,421.75 to the plaintiff in a single-plaintiff failure to promote case); *Mota,* 261 F.3d at 527-28 (affirming an attorneys' fees award of more than $300,000.00 in a retaliation and sexual harassment case); *Watkins v. Input/Output, Inc.*, 531 F. Supp. 2d 777, 789 (S.D. Tex. 2007) (awarding prevailing plaintiff in a single-plaintiff discrimination case $336,010.50 in attorneys' fees); *see also Dell, Inc. v. Wise*, 424 S.W.3d 100, 103 (Tex. App.–Eastland 2013, no pet.) (affirming a jury verdict of $668,019, plus attorneys' fees of $221,000, for a total award of $889,019.00 in a discrimination case brought under the TCHRA).

EXHAUSTION UNDER THE TCHRA

40. In order to comply with the exhaustion requirement under the TCHRA, a claimant must: (1) file a complaint with the TWC-CRD within 180 days of the alleged discriminatory act; (2) allow the TWC-CRD to dismiss the complaint or resolve the complaint within 180 days before filing suit; and (3) file suit no later than two years after the complaint is filed. *Rice v. Russell-Stanley, L.P.*, 131 S.W.3d 510, 513 (Tex. App.–Waco 2004, pet. denied); TEX. LAB. CODE §§ 21.201-.202, 21.208 (Vernon 2006). Thus, a plaintiff need not actually obtain a right-to-sue letter in order to exhaust his or her administrative remedies; he or she need only be entitled to one. "Texas courts hold that it is the entitlement to a right-to-sue letter rather than the receipt of the letter that exhausts the complainant's administrative remedies." *Wooten v. Federal Exp. Corp.*,

No. 3:04–CV–1196–D, 2007 WL 63609, at *8 n. 14 (N.D. Tex. Jan. 9, 2007) (citing *Rice v*, 131 S.W.3d at 513), *aff'd*, 325 Fed. Appx. 297 (5th Cir. 2009). In other words, "the right-to-sue letter is not part of the exhaustion requirement, only notice of exhaustion [is required]." *Rice*, 131 S.W.3d at 513. Based on the foregoing legal standards, Ms. Harrison has satisfied all the requirements to exhaust her administrative remedies and bring this lawsuit under the TCHRA. *See supra*. Specifically, she (1) filed a complaint and amended complaint with the TWC-CRD within 180 days of the alleged discriminatory act; (2) allowed the TWC-CRD to dismiss the complaint or resolve the complaint within 180 days before filing suit, and it did neither to date; and (3) filed suit with her claims under the TCHRA no later than two years after the complaint was filed. Ms. Harrison's timely suit is entirely brought entirely under Texas state law. No claims are brought under any federal law.

CLAIM FOR BREACH OF CONTRACT AGAINST FAIR FINTECH

41. Ms. Harrison incorporates the preceding paragraphs of this petition as if set out verbatim.

42. The essential elements of a breach of contract claim are: (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained as a result of the breach. *APMD Holdings, Inc. v. Praesidium Med. Prof'l Liab. Ins. Co.*, 555 S.W.3d 697, 707 (Tex. App.—Houston [1st Dist.] 2018, no pet.); *Schlumberger Ltd. v. Rutherford*, 472 S.W.3d 881, 892 (Tex. App.—Houston [1st Dist.] 2015, no pet.). A breach of contract occurs when a party fails or refuses to do something it has promised to do. *APMD Holdings*, 555 S.W.3d at 707; *Mays v. Pierce*, 203 S.W.3d 564, 575 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). Here, Fair Fintech contractually promised Ms. Harrison:

- If she agreed to go to work for the Company, she would be his "partner." At the time, Ms. Harrison owned her own company, named Etched Communication LLC, and owned a 5% interest in another company named 1035 LLC, which she would have to give up if she accepted employment with Fair Fintech. Mr. Parekh knew that and told Ms. Harrison that he would not insult her by asking her to leave her company without offering her something in return, which is why he was promising her to become his "partner" if she accepted employment with Fair Fintech.

- If she agreed to go to work for the Company, she would receive 500,000 of Fair Fintech's Class C Voting Common Stock with a strike price of $0.00. At the time, the Current Market Value of those shares was $2.00 per share, for a total of a $1,000,000 valuation at that time. Since then, the Market Value of those shares has increased, such that they are now worth more than $1,000,000. The shares vested over time, with the first one-fourth (125,000) vesting on Ms. Harrison's one year anniversary with the Company, and the remaining shares vesting 125,000 on January 1, 2023, 125,000 on January 1, 2024, and 125,000 on January 1, 2025. Ms. Harrison is entitled to damages based on the vesting as set out herein (and in the contract) even though she was terminated before her one-year anniversary with the Company because she was terminated without cause. *See, e.g., Crane v. Rave Restaurant Group, Inc*., 552 F. Supp. 3d 692, 700-03 (E.D. Tex. 2021) (finding employer could not get out of breach of contract claim on grounds that the employee-plaintiff had not vested at the time he was terminated if it had terminated the employee-plaintiff without cause). *Crane* was based on *Sellers v. Minerals Techs., Inc*., 753 F. App'x 272 (5th Cir. 2018), in which the Fifth Circuit provided guidance for cases similar to the one here involving employee incentive awards that had not vested at the time of a termination without cause. There, the employer terminated the employee-plaintiff without cause before the date that his right to an incentive payment would have vested. When the employer refused to pay the incentive, the employee sued. He lost in the trial court, but the Fifth Circuit reversed, stating that "[u]nder Texas jurisprudence, if one party prevents another from performing a condition precedent or renders its fulfillment impossible, then the condition may be considered fulfilled." *Id*. The Fifth Circuit determined that the defendant unilaterally prevented fulfillment of the condition at issue by firing the employee without cause before the date the incentive would have been due, and thus could not rely on nonfulfillment to deny the long-term incentive benefits. *Id*. at 279. *See also Donaldson v. Dig. Gen. Sys*., 168 S.W.3d 909, 916 (Tex. App.—Dallas 2005) ("[I]f one party prevents the other from performing a condition precedent, then the condition is considered as fulfilled" (internal quotation marks and citation omitted)); *D&M Specialties, Inc. v. Apache Creek Props., L.C.*, 2014 WL 12493290, at *5 (Tex. W.D. Aug. 21, 2014) (citing *Houston Cty. v. Leo L. Landauer & Assocs., Inc.*, 424 S.W.2d 458, 464 (Tex. Civ. App.—Tyler 1968))); *Clear Lake City Water Auth. v. Friendswood Dev. Co., Ltd*., 344 S.W.3d 514, 519 (Tex. App.—Houston [14th Dist.] 2011) (recognizing that "a party who prevents or makes impossible the occurrence of a condition precedent upon which its liability under a contract depends cannot rely on the nonoccurrence to escape liability" (internal quotation marks and citation omitted). The same analysis and result as in *Crane* and *Sellers* applies here too, as Ms. Harrison was terminated without cause.

- Participation in an "Executive Investment Plan" in which Fair Fintech, Inc. would give an annual dividend of 10% on her principal investment.

- An annual bonus of no less than $25,000 yearly based on agreed upon "metrics and targets" being achieved.

43. Fair Fintech failed to satisfy any of these promises. Its failure to do so has caused Ms. Harrison to suffer damages.

CLAIM FOR FRAUDULENT INDUCEMENT AGAINST FAIR FINTECH AND MR. PAREKH

44. Ms. Harrison incorporates the preceding paragraphs of this petition as if set out verbatim.

45. Fraudulent inducement is a species of common-law fraud that shares the same basic elements: (1) a material misrepresentation, (2) made with knowledge of its falsity or asserted without knowledge of its truth, (3) made with the intention that it should be acted on by the other party, (4) which the other party relied on and (5) which caused injury. *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018). Fraudulent inducement is actionable when the misrepresentation is a false promise of future performance made with a present intent not to perform. *Id*. Because fraudulent inducement arises only in the context of a contract, the existence of a contract is an essential part of its proof. *Id*. As set forth above, in the "Factual Background" section, Ms. Harrison satisfies these elements. *See supra* and *Anderson*, 550 S.W.3d at 614-17 (affirming jury's verdict in favor of ex-employee plaintiff against ex-employer defendant on fraudulent inducement claim that arose out of the employment relationship).

46. Fair Fintech and Mr. Parakh acted with malice, spite, and with a fraudulent and evil intent to harm Ms. Harrison, thus justifying an award of punitive damages.

PROMISSORY ESTOPPEL CLAIM AGAINST FAIR FINTECH AND MR. PAREKH

47. Ms. Harrison incorporates the preceding paragraphs of this petition as if set out verbatim.

48. Promissory estoppel is a defensive theory that estops a promisor from denying the enforceability of a promise. *Trammel Crow Co. No. 60 v. Harkinson*, 944 S.W.2d 631, 636 (Tex. 1997). The elements of a promissory estoppel claim are: (1) a promise; (2) foreseeability of reliance thereon by the promisor; and (3) substantial reliance by the promisee to his detriment. *See English v. Fischer*, 660 S.W.2d 521, 524 (Tex. 1983). To show detrimental reliance, the plaintiff must show that she materially changed her position in reliance on the promise. *Miller v. Raytheon Aircraft Co*., 229 S.W.3d 358, 379 (Tex. App.–Houston [1st Dist.] 2007, no pet.). Ms. Harrison satisfies these elements too. *See supra*.

49. Fair Fintech and Mr. Parakh acted with malice, spite, and with a fraudulent and evil intent to harm Ms. Harrison, thus justifying an award of punitive damages.

NO JURY DEMAND

50. The parties contractually agreed that there would be no jury trial in Paragraph 13 of the Executive Employment Agreement.

PRAYER

In compliance with Texas Rule of Civil Procedure 47, Ms. Harrison states that she seeks monetary relief of more than $1 million and judgment for all the other relief to which she is deemed entitled. Ms. Harrison asks that the court issue citation for Defendants to appear and answer, and that she be awarded a judgment against Defendants for the following:

a. Actual damages including by not limited to pecuniary losses, non-pecuniary losses, back-pay, reinstatement (or front-pay), and compensatory damages;

b. An order awarding her 500,000 of Fair Fintech's Class C Voting Common Stock with a strike price of $0.00.

c. Consequential damages;

d. Punitive damages;

e. Prejudgment and post-judgment interest;

f. Attorneys' fees;

g. Court costs;

h. Injunctive and equitable relief; and

i. All other relief to which Plaintiff is entitled.

Respectfully submitted,

s/ Mark J. Oberti
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on all counsel of record, as listed below, via electronic filing on this the 3rd day of November 2022.

Richard A. Simmons
Waldon & Schneider, PLLC
15150 Middlebrook Drive
Houston, Texas 77058
Via email to: rsimmons@ws-law.com

s/ Mark J. Oberti
Mark J. Oberti

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lisa Greer on behalf of Mark Oberti
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