

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Frank Sharp,

Plaintiff,

v.

Bar Fluid LLC (d/b/a

“The Q”),

Robert Fluets, and

Allan Pikus,

Defendants.

SUMMONS

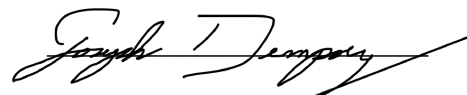
To the above-named defendants:

YOU ARE HEREBY SUMMONED and required to serve upon the plaintiff’s attorney an answer to the Verified Complaint in this action within 20 days after the service of this summons, excluding the day of service, or within 30 days after service is complete if this summons is not delivered personally to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

The basis of the venue designated is the county of the plaintiff’s residence at 354 West 44th Street, #1R Rear Townhouse, New York, New York 10036.

June 8, 2022

Respectfully submitted,



Joseph Anthony Dempsey
Attorney & Counselor at Law
14 Woodcrest Terrace
Amawalk, NY 10501
(914) 230-0798

jdempsey@jadempseylaw.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Frank Sharp,
Plaintiff,

v.

**Bar Fluid LLC (d/b/a
“The Q”),
Robert Fluet, and
Allan Pikus,**
Defendants.

Verified Complaint

Plaintiff Frank Sharp (“Sharp”), by and through his attorney Joseph Anthony Dempsey, for his complaint against Bar Fluid LLC (“Bar Fluid”), Robert Fluet (“Fluet”) and Allan Pikus (“Pikus”), in their individual and professional capacities (collectively, “Defendants”), alleges as follows:

I. NATURE OF THE CASE

1. Sharp is a well-known promoter, nightlife event planner, and creative director. In 2019, Pikus and Fluet solicited Sharp’s interest in forming a partnership with them to launch a new nightclub. Sharp was promised equity as a co-owner of the nightclub eventually named The Q. Sharp also wanted a salaried role as director once the club opened along with health insurance to which Fluet and Pikus agreed orally and the three formed a partnership.

2. For the next two years Sharp worked to conceptualize, design, and launch the nightclub. This was entirely uncompensated except for the promised future equity.

3. Fluet certified in his December 18, 2020 employment certification letter (attached as Exhibit 1) that Sharp would:

“hold title as Creative and Program Director as well as Owner/Partner alongside myself” and
“[h]is salary as Creative and Program Director is \$80,000 a year and as Owner/Partner his equity share is 12% of all net earnings, paid out quarterly.”

4. This reflected the final contract that Fluet accepted by email on September 30, 2020. Also part of that agreement was Fluet’s assurance regarding the vesting schedule:

“Again, to be very clear, this is *only in the event you leave or we need to fire you for cause, before the 3 years has passed.*”[emphasis added]

5. Two months before opening, Sharp and Fluet signed an employment agreement (attached as Exhibit 2) with an Official Addendum (attached as Exhibit 3) for the salaried position as Manager and Creative Director. Fluet in bad faith inserted an at-will employment clause. Sharp, unsophisticated in business and with only a high school education, did not understand the significance of the

clause and understood it to mean how Fluet explained it: that it meant Sharp was free to “walk away,” which was something he had no plan to do anyway. Sharp did express surprise and confusion at the “employed verbiage,” asking Fluet if it referred to full-time programming or to his status as partner and co-owner of Bar Fluid. Fluet made no attempt to clarify. When Sharp arrived at the conclusion that the employment agreement was separate and parallel to the partnership and co-ownership of Bar Fluid, Fluet remained silent and allowed Sharp to fall into his trap.

6. Sharp launched The Q to great success and rave reviews but problems with Pikus quickly surfaced. Fluet’s failure in acoustic testing led to a sustained barrage of noise complaints. Attempts were made to mitigate but Pikus refused to cooperate and defiantly kept up excessive noise the nights he was managing, leaving the neighbors that approved Bar Fluid’s permits feeling betrayed and irate.

7. Though The Q’s core brand was inclusiveness, Pikus was vocal in his discriminatory beliefs and was hostile to the club catering to any group other than white young men, telling Sharp repeatedly:

**“Make sure your Latin nights are the *good kind of*
Latins. Not Blatinos.”**

8. He wanted special measures taken against customers that:

“looked like they were from the Bronx.”

9. Pikus was adamant the priority was to make The Q:

“comfortable for white twink” and

“don’t alienate the white boys.”

10. During an interview, he told one candidate for bar manager:

“I don’t need to break my back to hire people just because they’re black or trans.”

11. Pikus’ discriminatory rhetoric and policies would create conflict with senior management. Four senior managers quit or were fired within the first year of opening in part due to conflict with Pikus, five if Sharp is included.

12. Sharp then began to receive calls from the managers of other bars saying that underage people were trying to gain access using drink bracelets they had just obtained from The Q, which was allegedly developing a reputation as the place to go for underage drinking. This allegation imperiled Bar Fluid’s liquor license among other liabilities.

13. Sharp’s investigation revealed that Pikus had ordered security to stop checking the IDs of customers he was allowing in. Pikus also ordered security to stop prohibiting the introduction of illegal drugs into the club, specifically GHB, a well-known and dangerous club drug that can also be considered a “date-rape drug.”

14. When he found out security continued to do their job, Pikus was irate and called Sharp saying:

“I’m going to read Edwin [the head of security] the riot act. They’re taking our boys’ GHB away.”

15. Indeed, the next day Pikus went on a twenty minute tirade against the head of security at a staff meeting because security was still carding at the door and refusing to allow illegal drugs into the club.

16. However, it was the numerous staff complaints that Pikus was routinely engaging in workplace sex with customers in their immediate workspace while they were trying to do their jobs that forced Sharp to take action.

17. Sharp brought the staff complaints to the attention of Fluet, the Managing Agent of Bar Fluid. Fluet was dismissive. But when Sharp showed Fluet security tape corroborating the staff complaints, Fluet gave Sharp an ultimatum: resign with 4% of net profits for the remainder of the lease and a small cash disbursement in exchange for signing a non-disclosure agreement (“NDA”) or:

“I can simply terminate your employment.”

18. When Sharp refuses to sign the NDA or resign, Fluet announced he was terminated as of May 23, 2022, as at will employee without cause.

19. Sharp now brings this action for breach of contract, breach of fiduciary duty, fraud, unjust enrichment and an accounting against Fluet, Pikus, and Bar Fluid LLC.

II. PARTIES

20. Frank Sharp (aka “Frankie Sharp”) is, ostensibly, one of the three founders, partners, and co-owners of Bar Fluid LLC. He is also the public face of The Q.

21. Robert Fluet is the owner of Interior Building Services, Inc., co-owner of the Hush and Boxers bars, and the Managing Agent of Bar Fluid LLC of which he is,

ostensibly, one of the three founders, partners, and co-owners.

22. Allan Pikus (aka “Alan Picus”) is a promoter and ostensibly one of the three founders, partners, and co-owners of Bar Fluid LLC together with Sharp and Fluet.

23. Bar Fluid LLC (d/b/a “The Q”) is a for-profit limited liability company incorporated in the State of New York whose registered address is 247 West 37th Street, 12th Floor, New York, New York 10018 and whose principal place of business is 795 8th Avenue, New York, New York 10019. Upon information and belief, Fluet owns at least 96% of Bar Fluid and is the only member with voting rights.

III. JURISDICTION AND VENUE

24. The plaintiff lives in New York County as of the commencement of this action making venue proper under CPLR § 503(a).

25. New York County is also the agreed upon venue in the employment agreement.

IV. FACTS UNDERLYING ALL CAUSES OF ACTION

A. Background

26. Sharp was born in Subic Bay, Philippines to a father in the U.S. Navy stationed in the Philippines and a dancer mother who met Sharp’s father at the club where she worked. As a child he was immersed in the nightlife, sipping Shirley Temples waiting for his mother’s performances to end while being babysat

by the club's other dancers. It was an environment that both celebrated individual eccentricity and creativity while also being communal and caring, with everyone helping to look out for one another. This mix of fun, self-expression, and community became Sharp's defining brand.

27. The family moved to California when Sharp was in kindergarten. At that point it became a migratory childhood as the family moved frequently due to his father's military postings. He found solace at a performing arts high school where he found an outlet for his creativity.

28. He is not a college graduate and lacks any training or background in business or finance.

29. Despite his humble beginnings he has achieved significant professional success, establishing himself as a celebrated creative director, event producer, nightlife curator and DJ.

30. William Van Meter of the New York Times described Sharp as "THE mercurial promoter behind the city's "It" club night" and described Sharp's Westgay production as "a singular accomplishment" in "Echoes of Studio 54" published on October 3, 2012.

31. Mike Albo of the Village Voice noted Sharp's "breathless rise, even in the speedy, trendy world of nightlife" and credited Sharp with single-handedly launching a rebirth of New York City's then stagnant nightlife, as detailed in the March 3, 2013 article "How Frankie Sharp is Bringing New York Nightclubs Back to Life." Sharp even graces the cover of The Village Voice captioned as "The

Fixer... how Frankie Sharp conquered clubland.”

32. He won the coveted Best Event Producer and Best Club Party awards at the 2020 New York City Nightlife Glam Awards and is the recipient of 5 Glam Awards in total, the industry equivalent of Oscars or Emmys. In addition he is the recipient of the Best Cabaret award for his work in directing and performing in the cabaret, “MARY”, which featured on “The Voice” on NBC.

33. Prior to taking on his role at The Q, Sharp’s previous job was Program Director at the Three Dollar Bill, where he made approximately \$150,000 annually for essentially the same work that he would do for \$80,000 at The Q.

34. Sharp was content at Three Dollar Bill but sought greater autonomy over his creative projects and wanted to be an owner rather than an employee, implementing his own ideas rather than those of others.

35. In short, before the events at issue here, Sharp was a highly accomplished professional within his industry with a formidable reputation and track record of success, commanding a salary of approximately \$150,000 per year.

B. Pikus and Fluet solicit Sharp to form a partnership.

36. In July 2019, Pikus asked Sharp if he would be interested in forming a partnership together with Fluet to create a new nightclub in Hell’s Kitchen.

37. Sharp was interested, so the three entered into an oral agreement to form a partnership, leaving the specifics for later.

38. They agreed to an equal partnership, with Sharp expressing that he wanted

his share of the equity partially expressed in the form of a salaried directorship with health insurance, which Pikus and Fluet agreed to. Upon information and belief all three ended up with a similar arrangement.

39. The trio then spent the next several months developing the concept, coming up with potential names, and scouting for a suitable location.

40. Fluet wrote to Sharp and Pikus in September that they should finalize the remaining specifics of their partnership having settled on a location at 795 8th Avenue.

41. The three decided that given Fluet's experience he should set up a limited liability company for the partnership.

42. Fluet would then serve as the managing agent on behalf of Pikus and Sharp, though the exact equity percentages were not yet decided.

43. Upon information and belief, Fluet never listed Sharp in the organizing documents or provided Sharp with any member shares.

44. Sharp, trusting Fluet and not knowing how any of this worked, never thought to ask to see Bar Fluid's organizing documents.

45. The trio agreed that while Fluet would manage the business, Sharp would be its public face.

46. Fluet would call Sharp his business partner and co-owner for the next three years when speaking to Sharp, potential investors, journalists, and Bar Fluid's entire staff.

47. In fact, The Q's own website features a prominent quote from Queerty

accompanied by an article link: “FRANKIE SHARP TO OPEN HUGE, FABULOUS QUEER CLUB IN POST-PANDEMIC HELL’S KITCHEN.” Michael Musto quotes Sharp saying, “I’m opening with two partners—architect and builder Bob Fluet of Boxers NYC and promoter Alan Picus[Pikus’ alias]—and the three of us will bring you a well-rounded program, considering our different and unique experiences in NYC nightlife. There’s also a board of like-minded celebrity investors from Broadway, TV, film, and the fashion industry with some very big names that I will reveal soon.” This article is featured prominently, *in all capital letters*, with a link, on the company website.

48. In an interview with Thotyssey also linked to in all capital letters on The Q’s website, Sharp related how “I was approached by owner / architect of the wildly successful Boxers venues, Bob Fluet, and promoter extraordinaire Alan Picus about coming on as the creative director and partner for a new venue they were cooking up. We shopped for spaces and found a very, very special one we all three fell in love with—smack dab in the middle of Times Square and Hell’s Kitchen.”

49. The Q’s website also features another prominent quote from Instinct magazine also accompanied by an article link: “GAME CHANGER-FRANKIE SHARP IS BRINGING THE Q TO NYC NIGHTLIFE.” The opening paragraph of notes that Sharp “(along with partners Alan Picus & Bob Fluet) would be opening up a four-story gay nightclub in Times Square/Hell’s Kitchen aptly called, The Q.”

50. The interviewer Micheal Cook asked Sharp, “You’re bringing The Q to life

with what I hear is an eclectic and interesting group of people. What can you tell me about that process and group?” Sharp answered, “My brilliant business partner Bob Fluet is an extremely talented engineer and architect and owns his own construction company, so he quite literally is building the club of our dreams...Alan Picus, promoter extraordinaire, marketing and branding guru has been in the game producing weekly parties for decades at iconic NYC venues including Splash, XL, Stage 48, Copacabana, and creator of Boi Party events locally and nationally. It was actually Alan’s idea to put our team together, so many accolades must go to him from the jump. The three of us come to this seismic venture with uniquely different perspectives and vast nightlife experiences, but we come together harmoniously.”

51. The Q also prominently links to another Instinct magazine article, “NYC’S MOST ANTICIPATED NIGHTLIFE SPACE ANNOUNCES FOUR NEW INVESTORS.” Here Michael Musto says, “I sat down with two of the men behind The Q, Alan Picus and Frankie Sharp, who just announced their four brand new investors...” This article presents a photograph of the three principals, Sharp, Pikus, and Fluet, posing together at the construction site of the club.

52. Most significantly, The Q’s website prominently features a Get Out! magazine article, “THE NEWEST NEW YORK NIGHTLIFE PHENOMENON.” Eileen Shapiro wrote, “*Owners Bob Fluet, Frankie Sharp, and Alan Picus are planning to open when things are safe enough, Sharp telling insider Michael Musto that the club will be in Hell’s Kitchen. The three major owners agreed to*

give us a sneak preview.” Fluet in the interview says, **“We have some very fun investor folks that we will be able to announce when the time is right. But right now we’re focused on building the ever growing harmony with the three main partners of myself, Frankie [Sharp] and Alan [Picus].”** [emphasis added]

53. To be clear, Fluet sat at an interview where Sharp was publicly characterized as one of the three co-owners of The Q (that is, Bar Fluid) and Fluet did not dispute this fact but reinforced it by calling Sharp one of his **“the three main partners”** and prominently featured it on his company’s website.

54. Furthermore, Fluet said this on April 8, 2021, the same time that Fluet was slipping the at will clause into the employment agreement that he would later use to terminate Sharp in bad faith as an at will employee.

55. Even the Wikipedia page for The Q lists the three co-owners as Sharp, Pikus, and Fluet.

56. Fluet’s later denials that Sharp was a partner and co-owner were therefore knowingly false and in bad faith.

C. Fluet’s repeated bad faith “rearrangements.”

57. On January 5, 2021, Fluet sent Sharp what was ostensibly a memorandum of their September agreement which in reality introduced significant changes.

58. A major source of initial contention was Fluet’s introduction of a non-compete clause despite their earlier agreement to the contrary. Sharp pointed out this would

heavily restrict his side income while including events that do not compete with Bar Fluid.

59. In response, Sharp asked for an additional points of profit sharing and a new vesting schedule in consideration of his large intellectual property investment and a new TV series centered on Sharp's creation of The Q.

60. On March 1, 2021, Fluet responds to Sharp's concerns with a new vesting schedule at 4% per year, with 12% while Sharp is "employed" by Bar Fluid. Fluet wrote to Sharp: **"For vesting, 4% after one year, 4% after year 2 and 4% after year 3. Again, to be very clear, this is only in the event you leave or we need to fire you for cause, before the 3 years has passed. Once the 3 years has passed, you will be getting 12% profit annually. And you still get 12% of the distributed profits in year 1, 2 and 3 if and when we distribute."**[emphasis added]

61. To repeat, Fluet stated to Sharp concerning the proposed vesting schedule, **"Again, to be very clear, this is only in the event you leave or we need to fire you for cause..."**[emphasis added]

62. Fluet added, **"In terms of profit sharing, i do plan on paying bak[sic] investors 50% of their investments then do some profit sharing for a bit, and then paying the blaance[sic] to investors, in order to help you guys out."**

63. Upon information and belief, when the investors had been paid back 50% of their investment, there was no profit sharing.

64. Upon information and belief, though sales were over \$5,000,000 for the first year, there was no profit sharing or bonus percentage point distributed.

65. Upon information and belief, given the gross sales numbers, with proper and prudent financial management the investors should have been paid back on their entire investment before the end of the first year.

66. Upon information and belief, the investors have not been been fully paid back on their investment.

67. Upon information and belief, Fluet used his position as general contractor and owner of the construction company IBS to engage in self-dealing during construction.

68. Sharp took issue with the term “employment” introduced by Fluet at this time, saying, “Of course, it goes without saying I plan to hold my position for along[sic] as were[sic] in business, but I do want clarification before signing off on that, as it is an investment from me.”

69. To which Fluet replied, **“Its[sic] per the above i[sic] wrote.”** This was in reference to his prior statement, **“Again, to be very clear, this is only in the event you leave or we need to fire you for cause, before the 3 years has passed.”**

70. By March 29, 2021, Sharp again followed up as Fluet had not responded. On April 6, 2021, still not receiving a response Sharp followed up with Fluet again to no response.

71. On April 9, 2021, Sharp wrote to Fluet, "I know well[sic] circle back with alan[sic] on this like you said. But I've come to a point where I do need to be clear and get this square, since were[sic] essentially two months out from actually opening and a month away from digging into programming, so well[sic] be technically working by then. Truly with all due respect, Ive[sic] already been working and putting in my own intellectual property etc[sic] into the space."

72. Finally, on April 19, Fluet responds with an updated draft that "tweaked the language on the non-compete."

73. The "tweak" however did not fix the issue. The same day Sharp responded, "It says repeatedly throughout that distribution and rights to the 12% equity will be null and void if I am no longer "employed" - what does "employed" mean? Does "employ" mean my salaried position or my partnership?"

74. In reference to the extra point of net profits if sales are over \$4 million for the year, Sharp stated, "However, the "employed" verbiage comes up again. Id[sic] like this 1% annual bonus to be paid throughout the partnership annually until the business closes, not just when my salaried position is in place."

75. Fluet replied to Sharp regarding Pikus, "He also does not get a salary and

will put in a lot of sweat equity for no salary, especially in the first year. You are very good with the press and he is taking a back seat to let you run with it but he is more than capable if we needed him to be the one to do so.”

76. Upon information and belief, Pikus began to receive a salary from Bar Fluid sometime after The Q opened.

77. Sharp also said, “The Vesting schedule says it shall begin on the date of termination. I think thats[sic] a mistake?” Fluet replied, “its[sic] actually correct in that we only need to go to it if you are not working there. Then the schedule determines waht[sic] percentage ou[sic] get. If you are there 3 years then you get full 12%. You are laready[sic] getting 12% while employed so it kicks in if employment is terminated by either party.” This was in the context of Fluet’s previous statement that the termination language is “only in the event you leave or we need to fire you for cause, before the 3 years has passed.”

78. Sharp replied, “Wait – I totally understand “employed” now. God Im[sic] daft. Makes sense now.” Fluet omitted at this point to clarify that the “employment at-will” language that he inserted was in direct conflict to Fluet’s previous statements that termination clause only applied if Sharp chose to leave or was fired for cause.

79. Based upon his subsequent conduct and statements, Fluet knew the significance of the “at-will” language that he had inserted into the agreement and also knew that Sharp did not appreciate the significance of the “at-will” language inserted into the document.

80. Upon information and belief, Fluet's intention was deceive Sharp into believing that Sharp "employment" and "at-will" referred to *Sharp* being able to leave "at-will" at the cost of potentially less than his full 12% if before the full three years.

81. Upon information and belief, Fluet intentionally misrepresented Sharp's employment status to induce Sharp's consent and reliance.

82. Upon information and belief, Fluet intentionally misrepresented Sharp's employment status in the belief that he could later use the merger clause he inserted to divest Sharp when Sharp's utility had come to an end, which is in fact precisely what Fluet would later do.

83. Fluet would later cite the "at-will" language in terminating Sharp's employment before the end of the term.

84. He would deny that Sharp could only be terminated against Sharp's will for cause, despite his earlier statements to the contrary.

85. Upon information and belief, Fluet was using what he believed was his superior knowledge of business and the law to avoid his obligations under their agreement in bad faith and to divest his business partner of his rightful equity.

86. Upon information and belief, Fluet opportunistically exploited his position of trust to take advantage of Sharp's trust and lack of business knowledge and experience.

87. In finalizing the April Agreement, Sharp made the final offer which was explicitly conditioned upon an “Official Addendum” consisting of the unified thread of Sharp and Fluet’s discussion to decide any matters of interpretation.

88. By signing the April Agreement which was offered contingent upon the inclusion of the “Official Addendum,” Fluet accepted the “Official Addendum” as the mutually agreed upon guide to interpretation of the April Agreement.

89. By signing the April Agreement which was offered by Sharp contingent upon the inclusion of the “Official Addendum,” Fluet acknowledged that the four-corners of the agreement incorporated the “Official Addendum.”

D. Sharp launched The Q successfully.

90. The Q’s grand opening to public was on June 24, 2021 to great success and rave reviews.

91. Kyler Alvord in Thrillest (7/6/2021) wrote: “Sharp, an award-winning event producer, nightlife curator, and DJ, had to put his new business venture on hold when COVID-19 forced New York into lock down, but over the past several months, *he and his business partners*—Boxers co-owner Bob Fluet and party promoter Alan Picus—made up for lost time and pieced together The Q, a game-changing queer venue that caters to every interest... Sharp, who specializes in putting on a show... and *co-owner* Pikus, another notable promoter in the city, are using their industry connections to create a diverse lineup of recurring events.... The bar makes a point

to provide an “affirming, welcoming space for all to enjoy,” according to its website. [emphasis added] “Violent rhetoric or action, non-consensual touching, or any form of racist, homophobic, transphobic, sexist, sizeist, ageist, ableist conduct will not be tolerated.””

92. Scott Barbarino in Nightlife Exchange (8/13/2021) wrote: “Miraculously, The Q finally opened due to the diligence and hard work of a dedicated trio of dreamers: Frankie Sharp, Alan Picus and Bob Fluet. Sharp, an award-winning event producer, nightlife curator and DJ is known for his hosting of famed parties like WestGay and Dreamland. *Along with partners Pikus and Fluet, the trio has created a space* that boasts five unique areas in those four stories, combining nightclub, piano bar, cabaret, jazz, live music and drag genres all located under one roof.” [emphasis added]

E. The misconduct of Pikus and Fluet comes into focus.

i. Sharp begins to realize that Fluet has been defrauding him.

93. In September, Fluet asked Sharp to spearhead the Hush’s nightclub program in exchange for five points of net profits. The Hush is a sister club that Fluet also has an ownership interest in. Sharp spent the month creating programs and creative content for Hush.

94. Fluet later in the month said Sharp would have to split the points with Pikus. Sharp replied that he was not willing to work with Pikus on the Hush deal

but would program for three points and a weekly stipend. Fluet then rescinded the Hush offer claiming it was because of the inevitable conflict it would create between Pikus and Hush.

95. Sharp would be surprised to learn Hush nevertheless opened using the content he created, again without compensation. When he confronted Fluet about this, Fluet was dismissive and offered to **“throw a few bucks”** at Sharp to buy what he wanted “a la carte.” This was the essence of how Fluet operates: he makes an offer to pay for a service, he obtains the service while continuing to dangle the promised payment, and when it comes time for him to pay, he “renegotiates” or “rearranges the terms” or pays what he feels like, if anything.

96. One does not lawfully take another person’s property without their knowledge or consent and then **“throw a few bucks”** at them.

ii. Pikus jeopardizes the business by violating noise ordinances.

97. Due to Fluet’s botched acoustic analysis and sound-proofing, noise complaints quickly began to pour in.

98. Sharp and Fluet attempted to mitigate the problem by reducing speaker volume, but Pikus was defiant: Far from reducing noise levels when neighbors would complain, he would personally ensure the noise levels stayed high or higher. If anyone attempted to lower sound levels, he would personally increase them.

99. The neighbors grew irate, as Fluet had given specific assurances to them in

obtaining the permits that he was failing to uphold. They felt that Fluet had deceived them.

100. While Pikus was provoking the community board, Sharp was bearing the brunt of their anger, since he and Fluet were the ones who attended the board meetings and provided their personal contact information. Each night Pikus was managing, Sharp's phone would be flooded with angry texts from board members.

101. This situation presented significant liability to Bar Fluid as fines for violating noise ordinance could be crippling for the fledgling business. Pikus, however, prioritized his personal enjoyment over the well-being of the business and his partners.

102. In what would become a common pattern, Fluet would do nothing to intervene to protect the interests of the business or investors and instead enabled Pikus.

iii. Pikus jeopardizes the business by implementing discriminatory policies.

103. Despite The Q's brand identity revolving around fun, inclusiveness, and community and the nightclub existing in the heart of one of the world's most diverse and multi-ethnic metropolises, Pikus was adamantly opposed to promoting customer diversity from the time that club opened to the public.

104. Pikus was hostile to "Latin Nights" despite the popularity of such events and despite New York City having an exceptionally large Latin community, telling

Sharp on multiple occasions:

**“Make sure your Latin nights are the *good kind of*
Latins. Not Blatinos.”**

105. “Blatinos” is a racial slur against those of mixed ancestry.

106. Pikus was insistent that this alienates his favored demographic of “white twinks,” that is, white college aged young men. He said they needed to make The Q:

**“comfortable for white twinks” and
“don’t alienate the white boys.”**

107. “Twink” is a gay slang for a young man in his late teens to early twenties, generally with a boyish appearance.

108. The idea that college aged people in New York City today are hostile to diversity or inclusiveness in nightlife programming or that young white people are alienated by Latin music and dancing has no factual basis.

109. The entire basis of Sharp’s professional success has been in knowing exactly what appeals to young people when it comes to nightlife event planning. Indeed it is no exaggeration to say that Sharp is one of the world’s leading experts on this topic.

110. On June 9, Sharp emailed Pikus and Fluet to address this. Sharp not only reiterated that this was his area of expertise but that this was in direct conflict with what they had told to the celebrity investors.

111. Fluet and Pikus immediately called Sharp and were furious that he had referenced what they had discussed in writing and thereby created a “legal problem.” They insisted that he delete the email at once, as they done.

112. The offensive rhetoric and policies of Pikus became a point of increasing conflict with the managers of The Q.

113. Forrest Wu, the first General Manager, took issue with Pikus’ very vocal and casual racism. Wu was fired two months after opening.

114. Upon information and belief, Vincent Cooper, the Evening Manager, would also be fired over conflicts with Pikus’ problematic behavior.

115. Upon information and belief, Laura Smith, the Bar Manager, would quit because of Pikus’ dysfunctional behavior and misconduct.

116. Upon information and belief, Harrison Curley the current Evening Manager has put in two week’s notice to quit because of Pikus’ ongoing behavioral problems.

117. Fluet told Sharp that he was to “**protect the partnership at all costs**” and in dealing with Wu and Cooper, Sharp should “**diminish and diffuse the issues.**”

118. Upon information and belief, Bar Fluid lost four managers within the first year because of Pikus, five if Sharp is included.

iv. Pikus jeopardizes the business by facilitating underage drinking and drug use.

119. In April, Sharp received a call from one of the managers at Hush who asked him if they were supposed to adopt the same policy as The Q had of allowing underage customers to not be carded by security. He was told that underage customers were showing up at Hush looking to buy alcohol using free weekend pass bracelets obtained from Pikus.

120. Sharp was unaware of any such policy and began to investigate.

121. Security at The Q confirmed to Sharp that they had been instructed not to card customers **“that looked of age”** to Pikus and to stop searching for or confiscating illegal drugs unless the customers **“looked like they were from the Bronx.”**

122. To be clear, looking **“like they were from the Bronx”** was a racial slur in reference to the larger minority population of the Bronx compared to Manhattan.

123. Pikus’ open hostility to the presence of non-white male customers was a problem for a nightclub whose entire brand identity centered around inclusion.

124. This was a direct threat not only to Bar Fluid’s brand identity, but Sharp’s as well, whose reputation was built on inclusiveness and communal well-being, and was now inextricably tied to Bar Fluid.

125. On April 26, 2022, Pikus told Sharp that **“tomorrow I’m going to read Edwin the riot act about confiscating drugs... We have a problem with security and they’re taking our boys’ GHB away.”** Sharp did not respond

because by this point he had learned it simply would lead to an argument and Fluet would side with Pikus.

126. Sharp, unsure of how to proceed, spoke with Fluet's assistant George Maestre, who in turn suggested Sharp meet with Rob Hynds, Fluet's partner at Boxers.

127. Sharp met with Hynds at 2 pm on April 27. Arriving back at The Q at 3 pm, Sharp was present for the end of a 2 o'clock staff meeting where he heard Fluet tell everyone to **"respect the owners"** and said "Frankie [Sharp] on Thursdays and Sundays and Alan [Pikus] on Fridays and Saturdays." Fluet then reiterated that Pikus "deserves respect" and summed up by saying how the staff should relate to Pikus with the phrase, **"People have my respect until they earn my disrespect."**

128. This was followed by a 4 pm manager/owner meeting consisting of the three owners Fluet, Sharp, Pikus as well as David Lopez, The Q's General Manager. As he said he would, Pikus berated security for approximately 20 minutes because they had continued to check the IDs of all customers entering the club and continued to prohibit the entry of illegal drugs. Pikus and Fluet told Sharp that they planned to fire Harrison unless Sharp could persuade Harrison to say that Pikus **"is the boss and anything he says goes."**

129. At the bar staff meeting on April 29, Fluet would deny hearing Pikus say anything about not checking IDs or searching for illegal drugs. He remarked that

Sharp was “empowering the staff to hate on Alan [Pikus].”

130. Around 5 pm, the head of security and his second in charge came to see Sharp and Curley extremely upset at what had occurred. They express extreme frustration at being placed in an impossible situation.

131. By mid-April of 2022, staff also began approaching Sharp with employment concerns that all sounded the same two themes: discriminatory practices and sexual harassment of staff. Sharp became increasingly concerned as the number and severity of the complaints began to quickly increase and staff began to discuss filing complaints with the Department of Labor.

132. Staff working the door had informed Sharp that Pikus had told them to stop admitting women. This was confirmed on April 16, when Sharp was present when staff received a pre-shift call from Pikus. The staff put Pikus on speakerphone so Sharp could hear. Sharp witnessed Pikus ordering the staff that they were not to let any women into the club.

133. Staff also complained that Pikus was having public sex with customers, often in close proximity to their workspace, sometimes actually next to them. The staff did not want to be forced to be present while their boss had sex in front of them but they had no choice as their job tied them to a fixed location in the club.

v. These policies pose significant liability.

134. The presence of illegal drugs, especially Gamma-Hydroxybutyric acid

(“GHB”), at nightclubs present a danger to public health and safety.

135. The presence of illegal drugs, especially Gamma-Hydroxybutyric acid (“GHB”), at nightclubs also present a source of liability to the business.

136. According to the New York City Department of Health (“DOH”), a “club drug” is a drug that is “most often used by teens and young adults at bars, nightclubs, concerts, and parties to heighten sensory perceptions and reduce inhibitions.” The DOH catagorizes GHB as a club drug.

137. According to the DOH, “GHB is misused for its intoxicating effects. Like Rohypnol, it is better known for being placed in the alcoholic drink of an unsuspecting victim to prevent resistance to sexual assault, leaving the victim unaware of what has happened.”

138. GHB presents a particular health hazard in the nightclub environment, as “[c]oma and seizures can occur following use of GHB. Combined use with other drugs such as alcohol can result in nausea and breathing difficulties.” The dark and cavernous multi-story layout of The Q nightclub presents a particular danger of customers suffering GHB induced seizure, coma and suffocation unbeknownst to other customers and staff. In addition, the lack of an elevator would make medical evacuation difficult.

139. Because of the popularity of GHB as well as its risk of seizure and coma, nightlife events in major cities now routinely include the presence of medical

stations staffed with specifically trained medical and paramedical personnel. Fluet dismissed the medical team for cost savings.

140. It is prudent business practice for a service establishment to take reasonable precautions to prevent the death and injury of its customers.

141. It is a crime in New York to sell or give alcoholic beverages to an underage person: "No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to... Any person, actually or apparently, under the age of twenty-one years..." Alcoholic Beverage Control Law § 65.

142. Selling or giving alcohol to underage persons can jeopardize the liquor license of a business.

143. A liquor license is essential to running a profitable and competitive nightclub in New York City.

144. It is prudent business practice to take reasonable steps to ensure that no alcohol is sold or given to underage customers.

145. Sexual harassment is detrimental to Bar Fluid's business interests.

146. Sexual harassment is illegal in New York.

147. The managing agents, owners, and managerial staff have a legal obligation not to permit policies that permit or tolerate sexual harassment in the workplace.

148. It is against public policy for a business to permit sexual harassment in the workplace.

149. When the managing agents, owners, and managerial staff of a business are alerted to credible claims of sexual harassment by staff, those managing agents, owners, and managers have an obligation to investigate.

150. When the managing agents, owners, and managerial staff of a business are alerted to credible claims of sexual harassment by staff, those managing agents, owners, and managers have an obligation to take action to correct the situation if warranted.

151. Sexual harassment claims expose a business to liability.

152. The liability that sexual harassment claims pose to a business is significant even if not successful or meritorious.

153. Sexual harassment claims expose a business to reputation damage.

154. Reputation is a significant business asset in the service industry.

155. The legal costs of sexual harassment claims can be significant even if the claim is without merit.

156. It is sound business policy for management to encourage employees to report potential sexual harassment within the company so that prompt action may be taken.

F. Sharp is terminated without cause.

157. The following day on April 28, managers from Hush relay security dissatisfaction with The Q's "new protocol." Sharp learns that since he and Fluet did not object to Pikus' tirade, the three partners were perceived to be in agreement.

158. Sharp now realized that not only was this situation a major threat to the well being of the staff, customers, investment, and business, the severity was growing and he was becoming personally implicated as well. His professional reputation and the professional reputation of the celebrity investors was in jeopardy. He knew he had to confront Fluet and demand forceful corrective action.

159. On April 29 at 2 pm there was an in-person meeting between Sharp and Fluet where Sharp relayed everything he has been told by the staff about Pikus' policies and activities.

160. Fluet dismissed Sharp's concerns and refused to investigate the staff complaints about Pikus. Instead, Fluet began to belittle Sharp and trivialize sharp's concerns for the business and the investors. After dismissing the staff allegations, Fluet re-framed the issue as merely a dislike of Pikus personally. Fluet suggested Sharp is overdue for a vacation.

161. Sharp and Fluet agree on a three week paid vacation. Fluet offered two options to Sharp at the conclusion of the vacation: an exit package with Sharp leaving with four or five equity points and retroactive paid health insurance for the

year and a first quarter equity check, or Sharp staying on as producer without salary and the understanding he would **“stay out of Alan’s [Pikus] way.”**

162. Afterwards, Sharp showed Fluet a security video corroborating the staff complaints about Pikus’ workplace sexual harassment.

163. On May 5, Sharp texted Fluet to say he wanted to stay on as producer and work for years to come and did not want to give up full equity in the business he had built and was the public face of.

164. Fluet then called Sharp and said he needed to think about it but was leaning towards **“going our separate ways”** and introduced a non-disclosure agreement into the exit package.

165. Sharp said it was unfair that he was the one being pushed out and not Pikus, as Sharp was only trying to protect the partnership, investors and the business.

166. To reiterate, Sharp brought his concerns to Fluet in exactly the way Fluet had previously encouraged when problems with Pikus had arisen: **“we must be honest and open with each other...”**

167. Fluet replied: **“you brought this onto us not the other way around.”**

168. Fluet then wrote Sharp on May 9, 2022, **“As you know, and I'm sure you've read the agreement again, *I can simply terminate your employment. But I'm willing to have you vest 4 percent for the life of this lease as long***

as you agree to an NDA...”[emphasis added]

169. Sharp responded, “I’ve been a partner and co-owner since the beginning and that’s how you’ve always described it and it’s how I’m seen by the staff and the investors and the public. When we became partners you promised me I could hold this position for as long as I wanted.”

170. On May 16, 2022, Fluet announced that Sharp would be terminated on May 23, 2022, as an at will employee “**per the agreement, in section 5 “Fluid will employ Frankie in the capacity of a Managing and Creative Director as an at will employee as defined by the US Department of Labor.”**”

IV. CAUSES OF ACTION

First Cause of Action – Breach of Contract

(Against Bar Fluid and Fluet)

171. The plaintiff repeats and re alleges the allegations contained in paragraphs 1 through 170 of the complaint, as fully set forth herein.

172. There was a valid employment contract between Sharp and Bar Fluid to employ Sharp as Managing and Creative Director.

173. Fluet admitted, as Managing Agent of Bar Fluid on May 16, 2022, that there was a valid employment agreement between Sharp and Bar Fluid.

174. This employment contract was for a definite term ending August 31, 2030.

175. In New York, an employment contract for a definite term can only be terminated for just cause by the employer.

176. In addition, when an employment contract is coupled with an ownership or managerial relationship in a corporation, it can only be terminated for cause.

177. From opening on June 25, 2021, until the end of term on August 31, 2030, Sharp had a contractual right to 12% of net profits in excess of investor repayment, becoming 13% if net sales exceed \$4,000,000.

178. Sharp had a 12% net profit property interest from the time Bar Fluid opened to the public, which is an ownership relationship.

179. The fact that this ownership interest was conditioned upon his employment as a managerial director of the company for an initial period of time does not alter the fact that Sharp had a present ownership interest for the duration of the employment contract.

180. Fluet said to Sharp, **“I can simply terminate your employment.”**

181. This was in response to if Sharp did not agree to resign and sign a non-disclosure agreement.

182. Sharp refused to sign a non-disclosure agreement or resign.

183. Fluet admitted, as Managing Agent of Bar Fluid on May 16, 2022, that he was terminating Sharp on May 23, 2022 as an at-will employee without cause.

184. Fluet stated, **“To be clear, per the agreement, in section 5 “Fluid will employ Frankie in the capacity of a Managing and Creative Director as an at will employee as defined by the US Department of Labor.””**

185. Fluet stated: **“And as of Monday May 23, 2022, and as per section 5, of the agreement, Fluid will be officially terminating your employment.**

We will also reimburse you for the health insurance we were not able to put in place.”

186. As of this time, there has been no reimbursement for health insurance by Bar Fluid.

187. Health insurance upon opening to the public was a material term of the contract.

188. Refusal to sign a non-disclosure agreement concerning company misconduct does not constitute just cause for termination.

189. It is improper to terminate an employee for reporting information concerning potential sexual harassment to the employees supervisor.

190. Reporting information concerning potential sexual harassment in the workplace to supervisors, owners, or management is not employee misconduct.

191. Reporting information concerning potential sexual harassment in the workplace to supervisors, owners, or management is not a lawful or reasonable cause for termination.

192. Fluet did not allege that Sharp was in breach of the employment contract or engaged in misconduct.

193. Fluet did not allege that Sharp had engaged in any conduct harmful to Bar Fluid's *lawful* business interests.

194. Upon information and belief, Sharp was terminated in retaliation for continuing to bring Pikus' misconduct to Fluet's attention and for continuing to

insist that Fluet undertake some investigation or preventative action.

195. Upon information and belief, Sharp was terminated for putting the interests of Bar Fluid, the investors, the staff, and the customers over the wishes of Fluet and Pikus.

196. Privately reporting misconduct to business partners, co-owners, or supervisors does not constitute conduct constituting reasonable grounds for termination.

197. Furthermore, Bar Fluid through its agent Fluet had an implied duty of good faith and fair dealing not to act in a deliberate manner to deprive Sharp of the benefit of the contract in the form of the share of the net profits.

198. Bar Fluid by its agent Fluet was already under a pre-existing duty under the September 30, 2020, agreement with Sharp.

199. Fluet further confirmed that this agreement was finalized by his December 18, 2021 employment certification letter signed by him in his official capacity as Managing Agent of Bar Fluid where he clearly laid out the terms of his agreement with Sharp.

200. Fluet certified and admitted that Sharp would **“hold title as Creative and Program Director as well as Owner/Partner alongside myself”** and **“[h]is salary as Creative and Program Director is \$80,000 a year and as Owner/Partner his equity share is 12% of all net earnings, paid out quarterly.”**

201. Fluet promised to Sharp that the termination provision would only apply

if Sharp “chose to walk away” or was fired for cause. Fluet stated to Sharp concerning the proposed vesting schedule, **“Again, to be very clear, this is only in the event you leave or we need to fire you for cause, before the 3 years has passed.”**

202. Fluet explained the “employment” language that he had inserted into the agreement as a way to protect against Sharp leaving early. Sharp was also clear that he could only agree with a similar protection for his investment of time and intellectual property.

203. Fluet knew well that Sharp would not agree to at will employment if he understood what that term actually meant based on their negotiations.

204. Upon information and belief, Fluet was confident that the merger cause would exclude his prior representations and explanations to Sharp.

205. Upon information and belief, Fluet was behaving opportunistically to take advantage of Sharp’s trust and lack of business savvy.

206. However, the real effect of their course of their negotiations was that Fluet and Sharp settled upon an idiosyncratic definition of “at will employment” to mean “for cause employment.”

207. As the party who supplied this idiosyncratic interpretation of for-cause termination, Fluet and Bar Fluid cannot claim to have been misled or to have believed that Sharp and Bar Fluid were agreeing to the normal objective meaning of the term “at will employment.”

208. The April 2021 agreement was not simply a memorandum of the

September 30 2020 contract and is a significantly worse deal for Sharp without any new or corresponding benefit to him..

209. The April 2021 agreement is a product of bad faith “re-negotiation” exploiting Sharp’s position of vulnerability two months before opening, having already completed the majority of his part of the bargain over the previous two years to create and launch the club, while Bar Fluid had yet to perform on any of its obligations.

210. Sharp substantially performed his obligations under all agreements, which Fluet did not dispute.

211. Sharp suffered damages to his expectation interest from Bar Fluid’s breach of contract.

212. Sharp’s exception interest in the contract consists of the salary he should have been paid from May 25, 2022, until August 31, 2030, at the rate of \$80,000 per year (8.25 years times \$80,000 totals \$660,000); the value of the health insurance (110 months at \$600 per month totals \$66,000); and the expected value of the share of net profits over the duration of the contract based on first year gross sales numbers in excess of \$5.6 million.

Second Cause of Action – Breach of Contract

(Against Bar Fluid)

213. The plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 170 of the complaint, as fully set forth herein.

214. There was a valid contract between Bar Fluid and Sharp to provide health

insurance valued at \$600 per month commencing upon opening in exchange for Sharp's employment as Managing and Creative Director.

215. Fluet as Managing Agent of Bar Fluid admitted on May 16, 2022, that Bar Fluid had a binding contractual obligation to provide Sharp with health insurance while employed.

216. Fluet as Managing Agent of Bar Fluid did not allege that Sharp failed to perform under the agreement or was in breach for any reason.

217. Fluet as Managing Agent of Bar Fluid admitted on May 16, 2022, that Bar Fluid failed to provide any of the health insurance it was obligated to provide for the entirety of Sharp's employment.

218. Fluet as Managing Agent of Bar Fluid admitted on May 16, 2022, that Sharp suffered damages for Bar Fluid's breach and Sharp is owed reimbursement for the health coverage that Bar Fluid failed to provide.

219. However, the proper measure of damages for breach of contract is Sharp's expectation interest. As the employment contract is for a definite term ending August 31, 2030, the correct expectation amount is the value of health care that Sharp would have if Bar Fluid fulfilled its contractual obligation from June 25, 2021 until August 31, 2030 at \$600 per month (110 months at \$600 per month totals \$66,000).

Third Cause of Action – Breach of Fiduciary Duty

(Against Fluet and Pikus)

220. The plaintiff repeats and re-alleges the allegations contained in

paragraphs 1 through 170 of the complaint, as fully set forth herein.

221. Fluet and Pikus publicly characterized Sharp as their business partner and co-owner of Bar Fluid in multiple interviews and prominently on the company's website.

222. Fluet and Pikus solicited investment by describing themselves and Sharp as the three principals of Bar Fluid.

223. On September 28, 2019, Fluet told Sharp and Pikus: **“We really do need to finalize the terms of a partnership before we get too far along.”**

224. Fluet and Pikus had a fiduciary relationship with and thus a corresponding duty to Sharp.

225. Fluet furthermore is the Managing Agent of the LLC that Sharp had a membership or ownership interest in or represented the relationship as such.

226. Upon information and belief, Fluet cultivated Sharp's trust by acting in the role of Sharp's business mentor because he knew that Sharp was looking for a mentor and took advantage of this to exploit Sharp.

227. Fluet's misconduct is within the scope of his role as partner, managing agent, or trusted mentor.

228. Sharp was in a position of extreme trust and dependence upon Fluet.

229. Upon information and belief, at all times Fluet was exploiting Sharp to create Bar Fluid while working to subtly marginalize Sharp from the business.

230. Fluet wrote to Sharp on October 20, 2020: “And remember the three of us are partners and we are all going to have moments. Good partners help and support each other during the rough patches. But to do so we must be honest and open with each other so we can. Its[sic] basically another marriage!”

231. This statement is characteristic of Fluet’s communication over the three year period in question.

232. When Sharp’s usefulness came to an end, Fluet dropped his kindly mentor persona abruptly. At that point Fluet alluded to Sharp “**misunderstanding the nature of our relationship**” and that he considered Sharp an expendable at-will employee that he “**can simply terminate**” at any time.

233. Upon information and belief, Fluet did not believe that he and Sharp were partners and at all times these were knowing misrepresentations.

234. Fluet cultivated Sharp’s trust on an almost daily basis for a period of almost three years.

235. Fluet increasingly exploited Sharp’s trust and Fluet’s own greater business experience to place Sharp in a position of dependence and cultivated this dependence opportunistically.

236. Over the course of several years Fluet strung Sharp along with promises Fluet never intended to keep to obtain free labor and value from Sharp.

237. Fluet intentionally induced Sharp’s trust to through his misrepresentations to obtain free labor and value from Sharp.

238. Fluet as Managing Agent of Bar Fluid LLC owed a fiduciary duty to those

with a membership or ownership interest in the company.

239. Sharp and the investors all had a membership or ownership interest in the company.

240. Fluet engaged in misconduct in his official capacity as Managing Agent of Bar Fluid LLC.

241. Fluet's refusal to investigate or act on Pikus' misconduct when presented with evidence recklessly and improperly subjected the company and investors to substantial liability and loss.

242. Fluet's unlawful termination of Sharp harmed Sharp, the investors, and Bar Fluid.

243. Fluet's self-dealing harmed Sharp, the investors, and Bar Fluid.

244. Fluet's reckless business practices harmed Sharp, the investors, and Bar Fluid.

Fourth Cause of Action – Fraudulent Concealment

(Against Fluet and Bar Fluid)

245. The plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 170 of the complaint, as fully set forth herein.

246. Fluet was Sharp's business partner or represented himself as such.

247. Fluet was the Managing Agent of Bar Fluid of which Sharp was a co-owner, or so represented the situation.

248. By deliberately representing himself as Sharp's fiduciary, Fluet therefore owed Sharp a fiduciary duty.

249. Fluet concealed the fact that Sharp was not listed in the organizing documents of Bar Fluid and never had a documented ownership or membership interest.

250. Fluet deliberately concealed this fact to defraud Sharp out of several years of unpaid work by misrepresenting that Sharp was a co-owner in the business that Sharp was creating.

251. Sharp reasonably trusted Fluet as a vastly more experienced and seemingly legitimate business owner.

252. Sharp suffered damages in the form of several years of unpaid work, loss of intellectual property, and reputation damage as a result of his reliance on Fluet.

Fifth Cause of Action – Fraudulent Misrepresentation

(Against All Defendants)

253. The plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 170 and 245 through 252 of the complaint, as fully set forth herein.

254. In July 2019, Pikus and Fluet told Sharp they would be the three principal co-owners of a new business if he helped them launch it successfully.

255. On September 28, 2019, Fluet told Sharp and Pikus: **“We really do need to finalize the terms of a partnership before we get too far along.”**

256. On March 5, 2020, Fluet wrote to Sharp: **“Nothing on my end has differed from what we discussed earlier on in terms of a percentage, a salary, and health coverage. I just need to finalize it collectively with**

Alan so I know the totals.”

257. Fluet wrote to Sharp on October 20, 2020, **“No worries. And remember the three of us are partners and we are all going to have moments. Good partners help and support each other during the rough patches. But to do so we must be open and honest with each other so we can. It’s basically another marriage!”**

258. Fluet stated in his December 18, 2020 certification letter for Sharp: **“Frankie begins full time employment at Bar Fluid LLC DBA THE Q on January 1,2021 and will hold the title as Creative and Program Director as well as owner/partner alongside myself. The Company and venue is located at 795 8th Avenue in New York City. His salary as Creative and Program Director is \$80,000 a year and as owner/partner his equity share is 12% of all net earnings, paid out quarterly.”**

259. In Bar Fluid’s offer letter to solicit investment, Bar Fluid represents Sharp as one of the three principals of Bar Fluid. (Attached Exhibit 4)

260. On April 8, 2021, Fluet told Get Out! Magazine: **“But right now we’re focused on building the ever growing harmony with the three main partners of myself, Frankie and Alan.”**

261. However, on May 16, 2022, in response to Sharp’s claim to be a partner and co-owner of Bar Fluid, Fluet denied it, claiming that Sharp was merely an at will employee and had no ownership interest.

262. In August 26, 2021, Fluet claimed he **“finally got approval for Health**

benefits.”

263. However, on May 16, 2022, he acknowledged that he never put health benefits in place.

264. By Fluet’s admission, these statements of fact were false when he said them and he knew or should have known that.

265. Fluet never by his own admission considered Sharp a partner or co-owner.

266. Upon information and belief Fluet never intended to provide any equity or profit sharing to Sharp and intended to terminate him once Bar Fluid was well-established.

267. Fluet’s statements together with the investor solicitation letter and the articles prominently linked to on The Q’s website illustrate a multi-year pattern of intentional material misrepresentations that Sharp was a partner and co-owner of Bar Fluid in order to take advantage of Sharp’s unpaid labor, reputation, and personal network, both for its own value and to obtain investment and goodwill for Bar Fluid without compensation.

268. Upon information and belief Fluet and Pikus intended to defraud Sharp from the start.

269. Sharp’s reliance was reasonable as Fluet appeared to be a legitimate business owner with experience in co-owning other bars and Pikus appeared to be a legitimate promoter.

270. Sharp lost opportunities and significant salary, wasted enormous effort, and risks reputation damage for his reliance on Fluet and Pikus’ statements.

Sixth Cause of Action – Negligent Misrepresentation

(Against Fluet and Bar Fluid)

271. The plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 170 and 245 through 270 of the complaint, as fully set forth herein.

272. Fluet had a duty to provide Sharp with correct information because of the special relationship of trust that Fluet had cultivated as a business partner, Managing Agent of the Bar Fluid, and mentor to Sharp.

273. Fluet made false representations to Sharp that he should have known were false.

274. The information in Fluet's false representations to Sharp were known to be taken seriously by Sharp.

275. Sharp intended to rely and act upon Fluet's false representations.

276. Sharp's reliance was reasonable and to his detriment.

Seventh Cause of Action – Unjust Enrichment

(Against All Defendants)

277. The plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 276 of the complaint, as fully set forth herein.

278. Sharp worked, for periods on a full-time daily basis, to create Bar Fluid from approximately August 2019 to June 2021 without receiving any compensation for his labor.

279. Sharp contributed two years of uncompensated labor and value to the

Defendants, including:

- attendance at Block Association Meetings and Community Board Meetings on behalf of Bar Fluid to secure a liquor license and permits for the venture;
- aesthetic and design layouts;
- introducing his designer Jasin Cadic to Fluet and Pikus;
- months of daily design work together with Cadic;
- creation of The Q logo with his graphic designer Bob Bottle;
- design of the teaser promo / announcement for the The Q's launch
- narrowing his curated list of celebrity investors that would pair both investment capital and much needed publicity in line with the brand identity Sharp was overseeing;
- construction and design daily from January to March 2021
- candidate interviews for management positions alongside Pikus and Fluet.

280. Bar Fluid would have otherwise needed to compensate someone for their labor if not for Sharp's work at a rate of at least \$80,000 to \$100,000 per year.

281. Sharp provided Bar Fluid (and the Hush) with the use of his extensive personal network of connections for hiring staff and procuring talent.

282. Sharp provided Bar Fluid with intellectual property that Bar Fluid would have otherwise had to pay for.

283. Sharp provided Bar Fluid with the publicity benefit of his reputation along with substantial goodwill valued at a minimum of \$228,000.

284. Sharp provided the benefit of substantial seed capital by bringing on 3 investors at \$120,000.

285. Sharp provided the benefit of substantial publicity by bringing on celebrity investors who provided substantial publicity value of at least \$50,000.

286. These celebrities brought on by Sharp include A-list actors and best-selling musicians with vast public reach and exposure.

287. These celebrity investors lent the enormous value of their publicity to Bar Fluid *solely* because of of their faith in Sharp's personal skill, brand, and integrity, as well as the understanding of his ongoing participation.

288. All of these benefits came at the expense of Sharp's time, energy, and reputation.

289. These benefits to the Defendants also came at the expense of the celebrity investors' vitally important reputation.

290. The Defendants were enriched by Sharp's efforts to his detriment in an amount not less than \$558,000 and it is fundamentally unjust for the Defendants to retain this value and thereby profit by their wrongdoing at Sharp's expense.

Eighth Cause of Action – Accounting

(Against All Defendants)

291. The plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 170 of the complaint, as fully set forth herein.

292. Fluet represented himself as a fiduciary of Sharp, as a business partner, Managing Agent, and trusted mentor.

293. Sharp entrusted the formation of Bar Fluid and its operation to Fluet given his in trust of his superior business knowledge and experience.

294. Fluet used his position to engage in self-dealing at Sharp's expense.

295. Sharp made a demand for the organizational and financial documents of Bar Fluid, of which he was purportedly a co-owner, and Fluet refused.

296. If there is no other adequate remedy, Sharp asks the Court for an accounting and determination of any partnership interest or ownership share in Bar Fluid and to enable a determination of the extent of Fluet's self-dealing.

V. DEMAND FOR RELIEF

WHEREFORE, Sharp demands relief in the form of:

- (a) (for the First Cause of Action) expectation damages for duration of the contract from May 25, 2022, until August 31, 2030, at the rate of \$80,000 per year (8.25 years times \$80,000 totals \$660,000); the value of promised health insurance (110 months at \$600 per month totals \$66,000); and the expected value of the share of net profits based on first year gross sales numbers in excess of \$5.6 million;
- (b) (for the Second Cause of Action) expectation damages for contractual health coverage from June 25, 2021 until August 31, 2030 at \$600 per month (110 months at \$600 per month totals \$66,000);

- (c) (for the Third Cause of Action) actual damages and punitive damages
- (d) (for the Fourth Cause of Action) actual damages and punitive damages;
- (e) (for the Fifth Cause of Action) actual damages and punitive damages;
- (f) (for the Sixth Cause of Action) actual damages;
- (g) (for the Seventh Cause of Action) restitution not less than \$558,000 for Sharp's value provided;
- (h) (for the Eighth Cause of Action) constructive trust and restitution;
- (i) piercing the corporate veil of Bar Fluid as the alter-ego of Fluet who exercises complete dominion and control over it;
- (j) along with costs and any other relief the Court deems just.

June 8, 2022

Respectfully submitted,



Joseph Anthony Dempsey
Attorney & Counselor at Law
14 Woodcrest Terrace
Amawalk, NY 10501
(914) 230-0798
jdempsey@jadempseylaw.com

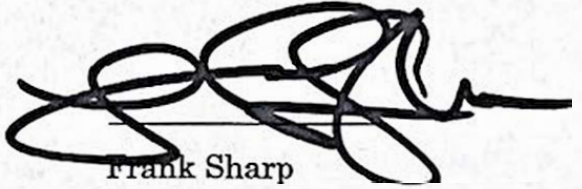
VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF New York)

FRANK SHARP, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing Verified Complaint and know the contents thereof, that the same is true to the best of my own knowledge, except as to matters stated to be upon information and belief, and as to those matters I believe them to be true.

Sworn to before me this
9th day of June, 2022


Frank Sharp
Plaintiff

Notary Public



JONATHAN TRATTNER
Notary Public - State of New York
NO. 01TR6416407
Qualified in Queens County
My Commission Expires Apr 19, 2025

This remote notarial act involved the use of communication technology.