

2026 Tex. Bus. 65



The Business Court of Texas,
1st Division

JOSEPH BEARD, <i>Plaintiff</i>	§	
v.	§	
HENRY ROSS PEROT, JR.;	§	Cause No. 26-BC01B-0018
ANURAG JAIN; and PEROT	§	
JAIN, L.P., <i>Defendants</i>	§	

OPINION ON DEFENDANTS' MOTION TO DISMISS

*Syllabus*¹

This opinion addresses the interplay between no-reliance, merger, and no-other-representations clauses in commercial contracts and their effect on fraudulent inducement and breach of oral contract claims.

I. INTRODUCTION

[¶ 1] Plaintiff sued defendants, including his former employer, alleging that they improperly withheld his right to a three percent carried interest

¹ This syllabus is for the reader's convenience. It is not part of the court's opinion, and it is not legal authority.

“promote” based on a post-employment asset sale.

[¶ 2] The court considered defendants’ Rule 91a motion to dismiss Plaintiff’s First Amended Petition (FAP). A pivotal issue is whether reliance disclaimer, no-other-representations, and merger clauses in plaintiff’s termination-related contracts defeat his fraud and contract claims based on oral promises not written in either contract. Because plaintiff did not plead facts overcoming those and other obstacles, the court dismissed those claims with prejudice. Those rulings also required dismissal of his other claims. So, the court dismissed the FAP with prejudice and reserved the attorneys’ fees issue for further consideration.² Plaintiff requested a written opinion. *See* TEX. R. CIV. P. 360(a)(1); B.C.L.R. 5(g). This opinion assumes that these facts from plaintiff’s FAP are true.

II. BACKGROUND

A. Undisputed Facts

1. The Parties

[¶ 3] Plaintiff Joseph Beard is a United States Military Academy graduate, a former U.S. Army Captain, and an experienced businessman who

² *See* August 10, 2026, Order Granting Defendants’ Motion to Dismiss.

founded his own company before joining Perot Jain.³

[¶ 4] Defendant Perot Jain, L.P., is an early-stage venture capital firm founded by defendants Henry Ross Perot, Jr. and Anurag Jain.⁴

2. Beard's Employment with Perot Jain

[¶ 5] In September 2015, Beard joined Perot Jain as its first “partner” and managed the firm’s daily operations under Perot’s and Jain’s stewardship.⁵ Beard was “eligible for a three percent promote based on [his] involvement” in the company.⁶ Beyond his Employment Agreement’s provisions, Jain and Perot never formalized Beard’s three percent equity interests in Perot Jain’s portfolio companies on which he worked.⁷

[¶ 6] Pursuant to the company’s honor-ethos, Perot Jain entrusted Beard with extensive responsibilities, including signing authority for Perot Jain.⁸ At one point, Beard solely held a bank account with a million dollars of

³ FAP ¶s 11, 14.

⁴ FAP ¶ 15.

⁵ FAP ¶ 16. Perot and Jain did not formally add Beard to the partnership structure. *Id.* ¶ 17.

⁶ FAP ¶ 16; FAP Ex. A.

⁷ FAP ¶ 17.

⁸ FAP ¶ 18.

Perot Jain assets.⁹

[¶ 7] Access Healthcare was Beard's most time-consuming and valuable portfolio company while he was a Perot Jain employee.¹⁰ Both Perot and Jain told Beard to prioritize Access Healthcare.¹¹

[¶ 8] For over four years, Beard functioned as an Access Healthcare employee with an email address, title, and business cards.¹² He worked directly with senior Access Healthcare executives, acting as its U.S.-based Senior Vice President of Corporate Development.¹³ His notable achievements include securing significant debt financing, leading a global merger and acquisition deal, and taking on important corporate finance responsibilities.¹⁴ Beard created at least \$128 million in value for Access Healthcare.¹⁵ His Access Healthcare work went above and beyond the expectations of his role and industry expectations of a venture capital investor.¹⁶

⁹ FAP ¶ 18.

¹⁰ FAP ¶ 19.

¹¹ FAP ¶ 19.

¹² FAP ¶ 20.

¹³ FAP ¶ 20.

¹⁴ FAP ¶ 20.

¹⁵ FAP ¶ 20.

¹⁶ FAP ¶ 20.

3. The Separation Agreement and General Release

[¶ 9] In July 2020, after nearly five years of employment and four years of managing Access Healthcare and its core growth, Beard amicably left Perot Jain to start a new business venture.¹⁷ Before his departure, the parties agreed to his “Separation Agreement and General Release” (Separation Agreement) and identified the post-employment payments Beard would receive.¹⁸

[¶ 10] Specifically, the Separation Agreement states:

1. In consideration of Beard entering into and performing the covenants in Paragraphs 2, 3, 4, 5, 6, 7, and 9 of this Agreement, [Perot Jain] shall provide the following to Beard in accordance with and subject to the provisions of this Agreement (the “Additional Consideration”):

* * *

(b) [Perot Jain] previously agreed that Beard would receive a promote based on his involvement in the portfolio companies. If the Effective Date occurs, Beard will maintain a vested carried interest *in the portfolio companies included in the Attached Schedule A*. Beard shall be allocated 3% out of the 20% (15% of the total participation) carry assigned to Jain GP . . . as the General Partner of Perot Jain, L.P. according to the following:

- Carry will be applicable *only to the companies identified in Schedule A* . . .¹⁹

¹⁷ FAP ¶ 22.

¹⁸ See FAP ¶ 22; FAP Ex. B.

¹⁹ FAP Ex. B at 1 (emphasis added).

* * *

[¶ 11] The Separation Agreement’s Schedule A listed thirty-seven companies for which Beard could receive post-employment compensation.²⁰ Access Healthcare is not listed.²¹

[¶ 12] In exchange, Beard acknowledged that he was not owed any further payment from Perot Jain other than unpaid wages or un-reimbursed expenses:

Except for [Perot Jain] related expenses if any, incurred by Beard but not yet reimbursed by [Perot Jain], and other compensation explicitly referenced in the agreement,²² Beard acknowledges that he has been paid in full all amounts due and payable to him by [Perot Jain] arising from or related in any way to his employment by [Perot Jain], including, without limitation, (a) all wages and unused vacation, (b) all bonus and/or commission payments, (c) all amounts due under any other agreements of any nature relating to [Perot Jain] or any of its affiliates or to any property previously or currently owned by [Perot Jain] or its affiliates. Other than unpaid wages, Beard shall not assert any claim against [Perot Jain] or any of its affiliates for any unpaid amounts due with respect to his employment by [Perot Jain] or other rights referenced in this

²⁰ FAP Ex. B at 2.

²¹ See FAP Ex. B at 5.

²² “Agreement” (capital “A”) is a defined term meaning the Separation Agreement itself. Despite being un-capitalized, the surrounding context evidences the parties’ intent that “the agreement” in ¶ 2 refers to the Separation Agreement. See *Falk & Fish, LLP v. Pinkston’s Lawnmower and Equipment, Inc.*, 317 S.W.3d 523, 527-28 (Tex. App.—5th Dist. 2010, no pet.) (“With respect to typographical errors, written contracts will be construed according to the intention of the parties, notwithstanding errors and omissions, by perusing the entire document and to this end, words, names, and phrases obviously intended may be supplied.” (quotations omitted)).

Paragraph 2.²³

[¶ 13] The Separation Agreement also contained a “General Release Agreement[,]” providing that:

In exchange for [Perot Jain’s] commitment to Provide the Additional Consideration, Beard does hereby irrevocably and unconditionally release, acquit and forever discharge [Perot Jain] and all of its affiliates, all of the members, managers, affiliates, parents, shareholders, partners, subsidiaries, officers, directors, agents, employees, predecessors, successors and assigns of [Perot Jain] or any of its affiliates including, but not limited to, . . . Access Healthcare Services USA, LLC and its affiliates, and any company in which H.R. Perot, Jr. or Anurag Jain have an ownership interest . . . collectively referred to as “the Company Releasees” from any and all claims, obligations, actions, and causes of action *in any way related to Beard’s employment by [Perot Jain] or separation from said employment and/or Beard’s association or contact with [Perot Jain] or any of the other Company Releasees, including, but not limited to, claims based upon express or implied contract; covenants of fair dealing and good faith; option grants; profit participations; compensation of any nature other than wages; . . . the common law, negligence, gross negligence or any other tort claim . . .*²⁴

[¶ 14] Additionally, the Separation Agreement contains this combined merger, no-other-representations, and reliance disclaimer clause:

9. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto and contains all of the covenants, agreements, and understandings between the parties [(Merger Clause)]. The Parties agree that there are no other agreements, statements, promises or representations by

²³ FAP Ex. B at 2.

²⁴ FAP Ex. B at 2. (emphasis added).

any Party hereto, or any party purporting to represent any Party hereto [(No-Other-Representations Clause)]. The terms of this Agreement are contractual, and not a mere recital. The Parties acknowledge that neither party is relying upon any statements or representations of the other party, other than those set forth herein [(No-Reliance Clause)]. This Agreement may be modified only by an instrument in writing, signed by Beard and an authorized agent of [Perot Jain].²⁵

[¶ 15] Finally, the Separation Agreement ends by stating that:

BEARD ACKNOWLEDGES THAT BEARD HAS READ THIS AGREEMENT AND, AFTER HAVING HAD THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF HIS CHOOSING, RECOGNIZES AND UNDERSTANDS THAT THIS IS A FULL AND FINAL RELEASE OF ANY AND ALL CLAIMS OF EVERY KIND, ACTUAL AND POTENTIAL, AGAINST THE COMPANY RELEASEES, WHETHER OR NOT BEARD CURRENTLY KNOWS OR SUSPECTS THOSE CLAIMS TO EXIST. BEARD IS GIVEN A PERIOD OF 45 DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT. THIS OFFER WILL EXPIRE IF NOT SIGNED AND RETURNED TO [PEROT JAIN] BY THE END OF THAT PERIOD.²⁶

That statement is directly above Beard's signature.²⁷

[¶ 16] Defendants represented that they excluded Access Healthcare from the Separation Agreement in exchange for a separate, later payment because they wanted to avoid a difficult valuation of the company at that

²⁵ FAP Ex. B at 4.

²⁶ FAP Ex. B at 4.

²⁷ FAP Ex. B at 4.

time.²⁸ Based on the trust established in his relationship with Perot and Jain, Beard orally agreed to exclude Access Healthcare from the Separation Agreement (which he refers to as the “handshake agreement”).²⁹

4. The Release Agreement

[¶ 17] More than two years later, Beard and Perot Jain executed a “Release Agreement” whereby Perot Jain bought out Beard’s interests in the companies listed on the Separation Agreement’s Schedule A for \$270,000.³⁰

[¶ 18] Beard discussed the Release Agreement with Perot Jain’s lawyer.³¹ That lawyer confirmed that the buyout did not affect Beard’s Access Healthcare equity interest.³² Beard’s own counsel confirmed the same information.³³ Thereafter, defendants made this change to the draft Release Agreement (which according to Beard was intended to explicitly exclude Access Healthcare from the release):³⁴

²⁸ FAP ¶ 23.

²⁹ FAP ¶ 24.

³⁰ FAP ¶ 27; FAP Ex. C.

³¹ FAP ¶ 28.

³² FAP ¶ 28.

³³ FAP ¶ 28.

³⁴ FAP ¶s 28-29.

BEARD ACKNOWLEDGES THAT BEARD HAS READ THIS AGREEMENT AND, AFTER HAVING HAD THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF HIS CHOOSING, RECOGNIZES AND UNDERSTANDS THAT THIS IS A FULL AND FINAL RELEASE OF ANY AND ALL CLAIMS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OF EVERY KIND, ACTUAL AND POTENTIAL AGAINST THE COMPANY RELEASEES, WHETHER OR NOT BEARD CURRENTLY KNOWS OR SUSPECTS THOSE CLAIMS TO EXIST. THIS OFFER WILL EXPIRE IF NOT SIGNED AND RETURNED TO COMPANY BY OCTOBER ~~13~~18, 2022.]

[¶ 19] Based on Perot Jain’s counsel’s confirmation that the \$270,000 buyout did not include or address Beard’s Access Healthcare equity and based on the above limitation in the Release Agreement, Beard proceeded with the buyout of his other equity interests³⁵ and signed the Release Agreement.³⁶

[¶ 20] The Release Agreement included merger and reliance disclaimer clauses like the ones in the Separation Agreement.³⁷

5. The Access Healthcare Sale

[¶ 21] In January 2025, Access Healthcare sold in a multi-billion dollar deal.³⁸ Upon learning of that deal, Beard asked Perot and Jain for his equity payment from that sale.³⁹ Defendants refused, denied that the handshake agreement ever happened, and said Beard disclaimed any interest in Access

³⁵ FAP ¶ 30.

³⁶ FAP Ex. C at 3.

³⁷ FAP Ex. C at 2.

³⁸ FAP ¶ 32.

³⁹ FAP ¶ 32.

Healthcare when he executed the Separation and Release Agreements.⁴⁰

B. Procedural Background

[¶ 22] Beard sued defendants, alleging fraud, promissory estoppel, quantum meruit, and contract breaches of the oral handshake agreement and employment contract.⁴¹ Defendants removed the case to this court.⁴² They also answered and counterclaimed, asserting that Beard's suit breached the Separation Agreement and the Release Agreement.⁴³ Beard answered and asserted affirmative defenses.⁴⁴ Beard also moved to remand the case to district court, which the court denied.⁴⁵

[¶ 23] Defendants moved to dismiss Beard's Original Petition.⁴⁶ But he amended his petition.⁴⁷ So, defendants filed a new dismissal motion,⁴⁸ which Beard opposed.⁴⁹ Defendants' motion relied on the FAP's allegations and terms of the Separation Agreement and Release Agreement, which (along

⁴⁰ See FAP ¶s 32-34.

⁴¹ See *generally* Plaintiff's Original Petition (Plaintiff's OP).

⁴² Notice of Removal.

⁴³ See *generally* Defendants' Answer to Plaintiff's Original Petition and Original Counterclaim (DAOC).

⁴⁴ See Plaintiff's Answer to Defendants' Original Counterclaim.

⁴⁵ See Plaintiff's Motion to Remand; June 2, 2026, Order Denying Motion to Remand.

⁴⁶ See *generally* Defendants' Rule 91a Motion to Dismiss Plaintiff's OP.

⁴⁷ See *generally* FAP.

⁴⁸ See *generally* Defendants' Rule 91a Motion to Dismiss Plaintiff's FAP (MTD).

⁴⁹ See *generally* Plaintiff's Response in Opposition to the Motion (Resp.).

with his Employment Agreement) Beard attached to his pleadings.⁵⁰ *See* TEX. R. CIV. P. 59.

[¶ 24] The court heard oral argument on the motion and dismissed the FAP with prejudice.⁵¹ Beard later requested this opinion.

III. APPLICABLE LAW

A. Motion to Dismiss Standards

[¶ 25] Rule of Civil Procedure 91a allows dismissal of a cause of action that has no basis in law or fact. TEX. R. CIV. P. 91a; *Reynolds v. Quantlab Trading Partners US, LP*, 608 S.W.3d 549, 555 (Tex. App.—14th Dist. 2020, no pet.). “A cause of action has no basis in law if the allegations, taken as true, together with the inferences reasonably drawn from them, do not entitle the claimant to the relief sought.” TEX. R. CIV. P. 91a.1. A cause of action has no basis in fact if no reasonable person could believe the pled facts. *Id.*

[¶ 26] Although Texas follows a liberal notice-pleading standard, that standard still requires factual substance. *See* TEX. R. CIV. P. 45(b) (requiring pleading to at least give “fair notice to the opponent”). A pleading cannot survive dismissal by just “giv[ing] notice of the claim and the relief sought[;]”

⁵⁰ *See generally* MTD.

⁵¹ August 10, 2026, Order on Motion to Dismiss.

it must also present “the [underlying] essential factual allegations.” *See In re First Rsrv. Mgmt., L.P.*, 671 S.W.3d 653, 661-62. (Tex. 2023) (orig. proceeding) (citations omitted). It must provide fair notice of the essential factual allegations supporting that claim—allegations that, if proven, could support a judgment. *Id.* at 662.

[¶ 27] Procedurally, a Rule 91a motion must identify each challenged cause of action and explain why it has no basis in law, fact, or both. *Reaves v. City of Corpus Christi*, 518 S.W.3d 594, 606 (Tex. 2017).

[¶ 28] A court may not consider evidence in ruling on a 91a motion; it must decide the motion based “solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.” TEX. R. CIV. P. 91a.6; *see also* TEX. R. CIV. P. 59 (permitting “[n]otes, accounts, bonds, mortgages, records, and all other written instruments, constituting, in whole or in part, the claim sued on” to be attached to and made part of the pleadings).

B. Contract Construction

[¶ 29] A court’s primary objective when construing contracts “is to ascertain and give effect to the parties’ intent as expressed in the instrument.” *U.S. Polyco, Inc. v. Tex. Cent. Bus. Lines Corp.*, 681 S.W.3d 383, 387 (Tex. 2023) (quoting *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 763 (Tex. 2018));

see also Equinor Energy LP v. Lindale Pipeline, LLC, 731 S.W.3d 324, 327 (Tex. 2026).

[¶ 30] Usually, courts deem the contract alone to express the parties' intent because it is objective, not subjective, intent that controls. 681 S.W.3d at 387. To that end, courts will examine and consider the entire writing, seeking as best they can to harmonize and give effect to all its provisions so that none will be rendered meaningless. *Universal C.I.T. Credit Corp. v. Daniel*, 243 S.W.2d 154, 157-58 (Tex. 1951).

[¶ 31] With unambiguous contracts, courts “can determine the parties’ rights and obligations under the agreement as a matter of law.” *Inwood Nat’l Bank v. Fagin*, 706 S.W.3d 342, 347 (Tex. 2025) (per curiam) (quoting *ACS Invs., Inc. v. McLaughlin*, 943 S.W.2d 426, 430 (Tex. 1997)); *see also Equinor Energy*, 731 S.W.3d at 327.

[¶ 32] A written contract is unambiguous if it is so worded that it can be given a definite or certain meaning when considered in context of the circumstances surrounding its execution and as applied to the matter in dispute. *URI*, 543 S.W.3d at 765. Context is a permissible indicator of meaning, and courts are to harmonize and give effect to all contract terms by analyzing them regarding the whole contract. *Polyco*, 681 S.W.3d at 390.

Context “is not [] confined to the two-dimensional contractual environs” of the document itself but also includes the business context and realities the words are meant to address. *Board of Regents of the Univ. of Tex. Sys. v. IDEXX Labs., Inc.*, 691 S.W.3d 438, 443-45 (Tex. 2024) (per curiam) (quoting *URI*, 543 S.W.3d at 764).

C. Parol Evidence Rule and Merger Clauses

[¶ 33] Courts will not enforce prior or contemporaneous agreements that add to, vary, or contradict a final, fully integrated written contract. *West v. Quintanilla*, 573 S.W.3d 237, 243 (Tex. 2019); *Hubacek v. Ennis State Bank*, 317 S.W.2d 30, 31-32 (Tex. 1958). This parol evidence rule is a doctrine of substantive law, not evidence; therefore, courts will not enforce an inconsistent prior agreement regardless of the proof offered. *Hubacek*, 317 S.W.2d at 31. When a contract includes a merger clause, courts view it as the parties’ explicit declaration that the writing is completely integrated. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 334 (Tex. 2011).

[¶ 34] Courts recognize two parol evidence rule exceptions, but neither one protects a party whose prior agreement conflicts with the written contract. First, courts may enforce a collateral agreement only if it is consistent with

the writing and addresses a topic the parties naturally would have treated separately. *Hubacek*, 317 S.W.2d at 32; *West*, 573 S.W.3d at 245. But courts do not consider an oral term collateral if it contradicts a written term. *David J. Sacks, P.C. v. Haden*, 266 S.W.3d 447, 450-51 (Tex. 2008) (per curiam).

[¶ 35] Second, although courts allow fraudulent inducement claims to avoid the parol evidence rule, *Dallas Farm Mach. Co. v. Reaves*, 307 S.W.2d 233, 239 (Tex. 1957), courts deny this exception when reliance on the oral promise was unjustified as a matter of law. *DRC Parts & Accessories, L.L.C. v. VM Motori, S.P.A.*, 112 S.W.3d 854, 858-59 (Tex. App.—14th Dist. 2003, pet. denied) (en banc).

[¶ 36] Further, courts apply the same principle to successive written contracts, holding that a later-integrated writing between the same parties supersedes an earlier agreement on the same subject to the extent they conflict. *Italian Cowboy*, 341 S.W.3d at 334.

IV. DISCUSSION

A. Introduction

[¶ 37] Defendants requested dismissal because: (i) Beard's releases negate his claims;⁵² (ii) the Employment Agreement negates his contract,

⁵² MTD at 17-20.

promissory estoppel, and quantum meruit claims;⁵³ (iii) the Separation Agreement's merger clause bars Beard's promissory estoppel and handshake agreement claims;⁵⁴ (iv) reliance disclaimers in the Separation and Release Agreements defeat Beard's fraud and promissory estoppel claims;⁵⁵ (v) Perot and Jain are not personally liable;⁵⁶ and (vi) other grounds defeat his claims.⁵⁷

[¶ 38] Beard responded primarily that: (i) the releases do not include his Access Healthcare claim because they do not mention it;⁵⁸ (ii) merger does not bar his claims;⁵⁹ (iii) fraud negates his reliance disclaimers;⁶⁰ (iv) Perot and Jain are personally liable for quantum meruit because they personally benefited from Beard's Access Healthcare efforts;⁶¹ and (v) defendants' remaining arguments do not defeat Beard's claims.⁶²

[¶ 39] Defendants replied mainly that: (i) the releases' broad terms cover Beard's Access Healthcare claim;⁶³ (ii) the reliance disclaimers negate

⁵³ MTD at 21-23.

⁵⁴ MTD at 23-26.

⁵⁵ MTD at 26-31.

⁵⁶ MTD at 31-34.

⁵⁷ MTD at 34-45.

⁵⁸ Resp. at 17-21.

⁵⁹ Resp. at 23-25.

⁶⁰ Resp. at 25-35.

⁶¹ Resp. at 36-37.

⁶² Resp. at 38-49.

⁶³ Perot Jain Defendants' Reply Supporting Dismissal (Reply) at 8-9.

justifiable reliance necessary to support Beard’s fraud claims;⁶⁴ (iii) the merger clauses bar promissory estoppel and handshake agreement claims;⁶⁵ and (iv) Beard’s remaining arguments lack merit.⁶⁶

[¶ 40] The court granted defendants’ motion because (i) the Separation Agreement’s broad releases and (ii) the additional compensation, reliance disclaimers, and merger clauses in both contracts; negate most of Beard’s claims. His remaining claims have no basis in law.

B. Beard’s Releases

1. Introduction

[¶ 41] The Separation Agreement broadly released Beard’s existing and potential Access Healthcare claims. Only his claims that he was fraudulently induced into signing the Separation Agreement itself and the later Release Agreement would escape the effect of that release, if effective.⁶⁷

2. Contract Construction Rules

[¶ 42] Releases are construed like other contracts. *Stroop v. Northern*

⁶⁴ Reply at 10-14.

⁶⁵ Reply at 17.

⁶⁶ Reply at 14-25.

⁶⁷ A release of all claims is not necessarily effective to preclude a claim that a plaintiff was fraudulently induced into the release itself. *See Schlumberger*, 959 S.W.2d at 178-81. A release must “clearly express[] the parties’ intent to waive fraudulent inducement claims” or the contract must “*disclaim[] reliance on representations* about specific matters in

Cnty. Mut. Ins. Co., 133 S.W.3d 844, 851 (Tex. App.—5th Dist. 2004, pet. denied); *Loy v. Kuykendall*, 347 S.W.2d 726, 728 (Tex. App.—4th Dist. 1961, writ ref’d n.r.e.). So, the court applies the releases as written if their terms unambiguously demonstrate the parties’ intent. *See, e.g., Fagin*, 706 S.W.3d at 347.

3. The Releases

[¶ 43] The Separation Agreement has two release clauses:

[¶ 44] The first clause defines the released parties as the “Company Releasees,” which includes Perot Jain, Perot, Jain, and “Access Healthcare Services USA, LLC and its affiliates” among others.⁶⁸ That clause states that Beard unconditionally releases “‘the Company Releasees’ from any and all claims and causes of action of whatever kind and character, arising out of or in any way related to Beard’s employment by [Perot Jain] or separation from said employment[.]”⁶⁹

[¶ 45] The parties further agreed that this release applies to “express

dispute” to preclude a claim of fraudulent inducement. *Id.* at 181 (emphasis added). Because the Separation Agreement contains a separate no-reliance clause, the court does not address whether its release provisions independently preclude Beard’s fraudulent inducement claim for the Separation Agreement itself. *See* part IV(C)(6), below.

⁶⁸ FAP Ex. B at 2.

⁶⁹ FAP Ex. B at 2.

or implied contract” promises, including claims for “profit participations” and “compensation of any nature other than wages.”⁷⁰ Beard also agreed that:

It is the express intent of Beard to enter into this full and final settlement and compromise of any and all claims against the Company Releasees whatsoever, and Beard promises and covenants that Beard will not file or initiate any such claim in any local, state, or federal court, . . . seeking relief against the Company Releasees, or any of them, for any such cause of action.⁷¹

[¶ 46] The second release clause provides that Beard recognizes and understands that, by signing the Separation Agreement, he agrees to a “FULL AND FINAL RELEASE OF ANY AND ALL CLAIMS OF EVERY KIND, ACTUAL AND POTENTIAL, AGAINST THE COMPANY RELEASEES, WHETHER OR NOT BEARD CURRENTLY KNOWS OR SUSPECTS THOSE CLAIMS TO EXIST.”⁷²

4. Beard’s Arguments

[¶ 47] Beard’s response argued that the Separation Agreement’s release does not apply because (i) it does not encompass his Access Healthcare equity claim; (ii) fraudulent inducement voids the Separation Agreement and

⁷⁰ FAP Ex. B at 2.

⁷¹ FAP Ex. B at 2.

⁷² FAP Ex. B at 4 (emphasis original). Although the Separation Agreement has two release paragraphs, this opinion reads them as one combined release for analytical purposes.

its release; and (iii) the release is not supported by consideration.⁷³

a. Scope of the Separation Agreement's Release

[¶ 48] Regarding the release's scope, Beard relies on *Victoria Bank and Trust Co. v. Brady*, 811 S.W.2d 931, 938 (Tex. 1991) for the premise that to be effective a release must "mention" the subject claim or said claim must be "clearly within the subject matter of the release."⁷⁴ From there, he argues that the Separation Agreement's release does not apply to his Access Healthcare claim because the Separation Agreement excluded Access Healthcare from the list of companies for which Perot Jain would pay a promote.⁷⁵

[¶ 49] A general categorical release is "narrowly construed." *Id.* However, a release is effective regarding claims that clearly fall within a class of claims mentioned in the release. *See id.* at 937-39. And a release "does not require that the parties anticipate and identify each potential cause of action relating to the release's subject matter," and "a valid release may encompass unknown claims and damages that develop in the future." *Keck, Mahin & Cate*

⁷³ Resp. at 17-21.

⁷⁴ Resp. at 17-18.

⁷⁵ Resp. at 18-19. The defendants pled release as an affirmative defense. DAOC at 2.

v. Nat’l Union Fire Ins. Co. of Philadelphia, 20 S.W.3d 692, 698 (Tex. 2000).

[¶ 50] So, Beard’s reliance on *Brady* is misplaced because the cause of action there was not named in the release *nor* was it within a category of claims the release mentioned. *See id.* at 937-39.

[¶ 51] But here, the Separation Agreement’s release covers all claims in any way related to Beard’s employment with and separation from Perot Jain.⁷⁶ More specifically, the releases cover claims for “profit participations” and “compensation of any nature other than wages,” whether the released claims are “actual or potential” claims.⁷⁷

[¶ 52] Because (i) Beard alleges that leading up to executing the Separation Agreement the parties were in discussions about a proposed three percent equity interest in Access Healthcare⁷⁸ and (ii) Access Healthcare was specifically included as a “Company Releasee[]” in the agreement,⁷⁹ Beard’s potential claim for a three percent interest in or other compensation related to Access Healthcare was not “unknown” when the agreement was executed.

⁷⁶ FAP Ex. B at 2.

⁷⁷ FAP Ex. B at 2, 4 (emphasis removed).

⁷⁸ FAP ¶ 23.

⁷⁹ FAP Ex. B at 2.

Keck, 20 S.W.3d at 698.

[¶ 53] So, because Access Healthcare is not included on the Schedule A list of companies for which Beard would receive a “profit participation[],” the Separation Agreement released all of Beard’s existing or potential Access Healthcare-based claims—except for a possible claim that he was fraudulently induced into signing the Separation Agreement itself.⁸⁰

[¶ 54] Furthermore, the court must read the Separation Agreement’s releases in context with the agreement’s other terms as a whole. *Myers-Woodward, LLC v. Underground Servs. Markham, LLC*, 716 S.W.3d 461, 472-73 (Tex. 2025) (construe contracts’ provisions as a whole). Those terms establish the parties’ objective intent that the release’s scope includes all possible Access Healthcare claims.

[¶ 55] First, in Separation Agreement ¶ 2, Beard acknowledges that he has been paid in full for all amounts due and payable to him by [Perot Jain] arising from or related in any way to his employment by [Perot Jain], including, without limitation, (a) all wages and unused vacation, (b) all bonus and/or commission payments, (c) all amounts due under any other agreements of any nature relating to [Perot Jain] or any of its affiliates or to any property previously or currently owned by

⁸⁰ See FAP Ex. B at 1-4.

[Perot Jain] or its affiliates.⁸¹

[¶ 56] In context with (i) the express exclusion of Access Healthcare from the list of companies for which Beard would receive a promote and (ii) the agreement's merger and no-other-representation clauses, ¶ 2 is further evidence that the parties' objectively intended for the releases to cover any existing or potential claim to an Access Healthcare-related promote or other such compensation.⁸² *Myers-Woodward*, 716 S.W.3d at 472-73.

[¶ 57] In sum, Beard released all of his claims except for a possible claim that he was fraudulently induced into signing the Separation Agreement itself or the later Release Agreement.

b. Fraudulent Inducement

[¶ 58] As a general matter, the court agrees with Beard⁸³ that a contractual release of all claims does not necessarily preclude a claim that the contract containing the release itself was fraudulently induced. *See*

⁸¹ FAP Ex. B at 2.

⁸² The court does not discuss the later Release Agreement's release because it only covered claims "relating to the subject matter of this agreement," which meant "claims to the portfolio companies set forth in Section A to the Separation Agreement," which in turn did not include Access Healthcare. FAP Ex. C at 1, 3. So, the Release Agreement does not release (i) any claims related to Access Healthcare or (ii) claims that he was fraudulently induced into signing the Release Agreement itself. *See Schlumberger*, 959 S.W.2d at 178.

⁸³ Resp. at 20-21.

Schlumberger, 959 S.W.2d at 178 (“[A] release is a contract, and like any other contract, is subject to avoidance on grounds such as fraud or mistake.”); *see also Italian Cowboy*, 341 S.W.3d at 331-34 (even merger or no-other-representations clauses do not preclude claims for fraudulent inducement).

[¶ 59] This opinion addresses Beard’s fraudulent inducement and fraud defense to the releases and his corresponding fraud causes of action at part IV(C) below. But in short, the contracts’ (i) reliance disclaimers, (ii) related red flags, and (iii) direct contradictions negate the justifiable reliance element of Beard’s fraud claims.⁸⁴

c. Consideration

[¶ 60] Beard cited *Buddy L, Inc. v. General Trailer Co., Inc.*, 672 S.W.2d 541, 547 (Tex. App.—5th Dist. 1984, writ ref’d n.r.e.) for the premise that releases require consideration but he never received his Access Healthcare payment that was consideration for his releases.⁸⁵ The court rejected that argument because the Separation Agreement was a written contract that recites its own consideration, which supports the release. *Id.* For example, in

⁸⁴ FAP’s Claim One is labeled “Common Law Fraud and Fraudulent Inducement (All Defendants).” However, in substance he pled only a fraudulent inducement claim.

⁸⁵ Resp. at 19-20.

exchange for the release Beard would receive the “Additional Consideration” defined in ¶ 1 of the agreement.⁸⁶ *See id.* (conferring a benefit is sufficient consideration).

5. Conclusion

[¶ 61] Because all of Beard’s claims⁸⁷ except for his Quantum Meruit claim depend on a purported promise made before he signed the Separation Agreement that he would be paid on a three percent equity interest in Access Healthcare, claims regarding this “profit participation[]” were specifically released when Beard signed the Separation Agreement.⁸⁸ As to Quantum Meruit, Beard released all claims for any non-wage compensation related to Access Healthcare as well.⁸⁹

[¶ 62] As discussed above, the releases do not affect Beard’s claims that he was fraudulently induced into the Separation and Release Agreements

⁸⁶ FAP Ex. B at 1.

⁸⁷ *See* FAP ¶s 46 (Two – Promissory Estoppel) (Beard refrained from enforcing his right to receive a three percent equity interest in Access Healthcare based on promise it would be disbursed upon a liquidity event of the company); 57 (Four – Breach of Employment Agreement) (Employment Agreement conferred to Beard a three percent equity interest in all portfolio companies on which he worked); 62 (Five – Breach of Handshake Agreement) (Beard would receive a three percent equity interest in Access Healthcare); 67 (Six – Recission of Employment Agreement) (same).

⁸⁸ FAP Ex. B at 2.

⁸⁹ FAP Ex. B at 2; *see* FAP ¶s 50, 53 (seeking compensation for providing defendants with “valuable services in the form of his work on Access Healthcare for over four years”).

themselves.

[¶ 63] Accordingly, the court concluded that the Separation Agreement's releases were an independent ground to dismiss FAP Claims Two, Three, Four, Five, and Six in addition to any other grounds discussed below.

C. Claim One: Common Law Fraud and Fraudulent Inducement (All Defendants)

1. Fraud Elements and Justifiable Reliance

[¶ 64] Fraudulent inducement is a sub-species of common law fraud in contractual contexts and requires the same elements. *Haase v. Glazner*, 62 S.W.3d 795, 798-799 (Tex. 2001).

[¶ 65] Common law fraud requires: (i) a material misrepresentation (ii) that was either known to be false when made or was asserted without knowledge of its truth, (iii) was intended to be acted upon, (iv) was relied upon, and (v) caused injury. *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 47-48 (Tex. 1998). However, the reliance must be justified. *Maya Walnut LLC v. Ly*, 738 S.W.3d 764, 767 (Tex. 2026); *Roxo Energy Co. v. Baxsto*, 713 S.W.3d 404, 408 (Tex. 2025).

[¶ 66] “‘Justifiable reliance usually presents a question of fact’ for the

jury to decide.” *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 497 (Tex. 2019) (quoting *JPMorgan Chase Bank, N.A. v. Orca Assets G.P.*, 546 S.W.3d 648, 654 (Tex. 2018)). But justifiable reliance can be “negated as a matter of law when circumstances exist under which reliance cannot be justified,” *id.*, because those circumstances show “it is extremely unlikely that there is actual reliance on the plaintiff’s part.” *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010) (quoting *Haralson v. E.F. Hutton Grp.*, 919 F.2d 1014, 1026 (5th Cir. 1990) (*overruled on other grounds as recognized in Lewis v. Fresne*, 252 F.3d 352, 358 n.5 (5th Cir. 2001))).

[¶ 67] There are three analytical lines regarding when reliance on extracontractual promises may be considered unjustifiable as a matter of law: (i) the red flags doctrine, (ii) the direct contradiction rule, and (iii) reliance disclaimers. As discussed in parts two through six below, those lines may operate independently or together depending on the facts. Here, all three lines apply.

2. The Red Flags Doctrine

[¶ 68] Courts use the red flags doctrine to identify circumstances where reliance is unjustified. *Maya Walnut*, 738 S.W.3d at 768. That doctrine stems from the Restatement of Torts (Second) statement that a plaintiff

“cannot recover if he blindly relies upon a misrepresentation the falsity of which would be *patent* to him if he had utilized his opportunity to make a cursory examination or investigation.” *Id.* (quoting RESTATEMENT (SECOND) OF TORTS § 541 cmt. a (A.L.I. 1976)) (emphasis added).

[¶ 69] The red flags doctrine includes these standards:

We have declined to say how many red flags are sufficient to negate justifiable reliance. *See Orca Assets*, 546 S.W.3d at 655 (* * *). Instead, courts must ask whether, “given a fraud plaintiff’s individual characteristics, abilities, and appreciation of facts and circumstances at or before the time of the alleged fraud[,] it is extremely unlikely that there is actual reliance on the plaintiff’s part.” *Grant Thornton*, 314 S.W.3d at 923 (alteration in original) (quoting *Haralson*, 919 F.2d at 1026). If sufficient red flags exist to alert the recipient to the potential unreliability of the misrepresentation, then the recipient must “protect its own interests through the exercise of reasonable diligence.” *Orca Assets*, 546 S.W.3d at 657. A party that fails to exercise reasonable diligence is “charged with knowledge of all facts that would have been discovered by a reasonably prudent person similarly situated.” *Id.* at 654 (quoting *AKB Hendrick, LP v. Musgrave Enters.*, 380 S.W.3d 221, 232 (Tex. App.—Dallas 2012, no pet.)).

Id. at 769.

[¶ 70] That is, courts take a holistic approach in determining whether sufficient red flags exist. *Id.* Context is determinative, and one red flag alone may negate reliance as a matter of law. *Id.* at 770. So, instead of counting red flags, courts “view the circumstances in their entirety while accounting for the

parties’ relative levels of sophistication.” *Id.* at 769 (citations omitted).

[¶ 71] Further, a sophisticated party “should be expected to recognize red flags that the less experienced may overlook,” *id.* (quoting *Orca Assets*, 546 S.W.3d at 656), and a party engaged in arm’s-length negotiations “must exercise ordinary care for the protection of his interests.” *Id.* (quoting *Barrow-Shaver*, 590 S.W.3d at 593).

[¶ 72] Thus, where a reasonable investigation would unquestionably have revealed the alleged fraud—often because language *in the contract* (or in public records) directly contradicts an oral misrepresentation—reliance would be unjustified as a matter of law. *Id.* at 771. This is referred to as the direct contradiction rule. *See Orca Assets*, 546 S.W.3d at 654. In fact, this conflict itself is “a large red flag.” *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 559 (Tex. 2019) (citing *Orca Assets*, 546 S.W.3d at 658).

3. The Direct Contradiction Rule

[¶ 73] The direct contradiction rule means that reliance on oral promises that directly conflict with express, unambiguous contract terms is unjustified as a matter of law. *Roxo Energy*, 713 S.W.3d at 408-09 (citing *Orca*

Assets, 546 S.W.3d at 653).

a. *Roxo Energy*

[¶ 74] In *Roxo Energy*, Baxsto owned mineral interests and negotiated with Roxo Energy regarding a potential lease. Roxo’s investor, Vortus, also participated in the negotiations. Baxsto wanted to ensure that Roxo and Vortus would develop the leasehold instead of flipping it and that Baxsto would get as good a bonus as other owners in the area. Baxsto and Roxo signed three documents, including a lease summary containing the parties’ business terms. In short, Roxo never drilled a well on the acreage, did not pay Baxsto the best bonus amount, and flipped the acreage.

[¶ 75] Baxsto sued Roxo and Vortus for common law fraud, fraud in the inducement, statutory fraud, and fraud by non-disclosure. The trial court granted defendants summary judgment on all claims. The court of appeals reversed, holding that the parties’ written agreements did not so directly contradict Roxo’s alleged oral representations as to make Baxsto’s reliance on them unjustifiable. 668 S.W.3d 912, 938-39 (Tex. App.—11th Dist. 2023). It further held that there were insufficient red flags to put Baxsto on notice that it could not rely on Roxo’s oral representations. *Id.* at 940. The supreme court reversed, explaining in two parts the red flags doctrine and the direct

contradiction principle. *See* 713 S.W.3d at 408-11.

[¶ 76] Part “A” addressed allegations that Roxo misrepresented its intent to develop Baxsto’s acreage rather than to “flip” the lease. In sum, Baxsto sought to bind Roxo to its oral promise to drill on and develop the lease. But the signed lease contained no duty to drill or develop the land. Instead, the lease had a typical assignment clause that allowed the lessee’s interest to be assigned, devised, or otherwise transferred in whole or in part.

[¶ 77] Relying on its reasoning in *Barrow-Shaver*, the supreme court held that the lease terms directly contradicted the existence of an oral agreement that Baxsto allegedly relied on, thereby making Baxsto’s reliance on those representations unreasonable as a matter of law:

This unqualified transfer right, clearly expressed in writing and agreed to by Baxsto, directly contradicts the notion that Roxo bound itself orally not to transfer the lease and instead to drill. We confronted a similar circumstance in *Barrow-Shaver*. There, the plaintiff complained that the lessor refused to consent to an assignment after orally promising never to withhold its consent. * * * The parties’ written agreement, however, gave the lessor the right to give or withhold consent. * * * We held that the unqualified consent-right stated in the contract made it unjustifiable for the plaintiff to rely on a prior oral promise that consent would be given. * * * The same reasoning holds true here. Just as an unqualified contractual right to withhold consent contradicts a prior oral promise to give consent, an unqualified contractual right to transfer a lease contradicts a prior oral promise not to do so.

Baxsto complains that Roxo falsely represented itself as “in the business” of developing land rather than flipping leases. The court of appeals considered this representation actionable despite the written agreement. * * * We disagree. Whatever Roxo said about being “in the business” of developing land, Baxsto freely agreed to a written agreement that allows Roxo, at its election, to no longer be “in the business” of developing Baxsto’s land.

Id. at 409-10 (citations omitted).

[¶ 78] The supreme court also held that Baxsto could have written terms in the lease protecting itself from Roxo’s conduct. *Id.* at 410.

[¶ 79] Part “B” of the opinion concerns Baxsto’s claims regarding “most favored nation” bonus payments. A single six-month most favored nations clause was the only such written promise in the parties’ contracts, and there was no evidence Roxo breached that agreement. Relying on *Barrow-Shaver* and *Orca Assets*, the supreme court held that the absence of other most favored nation language in the contracts was a red flag negating justifiable reliance on any such additional promises:

As in *Barrow-Shaver*, the absence from the written agreements of language confirming the alleged representations or cementing the parties’ alleged oral agreement is itself a red flag negating justifiable reliance. * * * When a party like Roxo proffers written contract language that makes no mention of matters the parties have previously discussed, this alone should make it obvious to a reasonably sophisticated party like Baxsto that the previous discussions may no longer be part of the deal.

The prudent response is to demand that the parties' discussions be reflected in the writing—not to sign an agreement that makes no mention of the promises and then try to hold your counterparty to them anyway.

When assessing red flags, we view “the circumstances in their entirety while accounting for the parties’ relative levels of sophistication.” *Orca Assets*, 546 S.W.3d at 656. Assuming the truth of Baxsto’s allegation that Roxo was the more sophisticated party, the un rebutted summary-judgment evidence nevertheless shows that Baxsto’s representative, Cole Stout, was an experienced oil and gas businessman who should have appreciated the significance of the disparities between the signed agreement and the alleged oral promises now claimed. In the two years before the parties began negotiations, Stout negotiated at least fifty oil and gas leases. This deal alone involved 548 mineral acres, 6,200 physical acres, and \$8 million. The parties executed numerous written agreements, including the lease, the extensions, and the sale contract. As in *Barrow-Shaver*, “[a] similarly situated ‘savvy participant’ would have recognized that [Defendant] could change its mind, if [the] representations were binding at all, and would have weighed the risk of that happening before entering into the agreement.” 590 S.W.3d at 501.

Whether or not Stout was as sophisticated a negotiator as Roxo, he was in a position to intelligently assess the merits of the \$8 million deal he was making, and he was in a position to understand the differences between the deal he was signing and any prior discussions not contained in the documents he signed. He was also in a position to seek and obtain information other than Roxo’s self-serving statements when assessing the value of Baxsto’s mineral interests. Baxsto’s reliance on Roxo’s alleged misrepresentations about bonus payments was unjustifiable as a matter of law, and the trial court correctly granted summary judgment in this regard.

Id. at 410-411.

[¶ 80] Part A could have been decided under the red flags doctrine; and Part B could have been decided under the direct contradiction rule. In both instances, the plaintiff's alleged reliance on oral promises inconsistent with the parties' written contracts was unjustifiable as a matter of law.

b. Westergren

[¶ 81] *National Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419 (Tex. 2015) (per curiam) is another direct contradiction case. The supreme court held that a party claiming fraud in the inducement could not have justifiably relied on oral representations regarding a release that were in direct conflict with the release itself. *Id.* at 424-26.

[¶ 82] In that case, Westergren accepted a \$500,000 payment and signed a release that negated National Property Holdings' (NPH) oral promise to pay him a total of \$1 million and a share of profits from a future real estate development. At trial, Westergren claimed he was fraudulently induced to sign the release:

(i) by an oral representation that the \$500,000 was the first half of the

\$1 million payment;

(ii) NPH told him the release was only a receipt;

(iii) NPH said he would receive the other half of the \$1 million later;

(iv) he did not read the release because he was in a hurry and did not have his reading glasses with him;

(v) he could have used but chose not to use a magnifying glass on his watch to read the release;

(vi) he did not ask NPH or the notary to read the document to him; and

(vii) he instead relied on NPH's representations regarding the release and signed it without reading it.

[¶ 83] The supreme court held that as a matter of law Westergren could not justifiably rely on NPH's statements about the contents of the release that directly conflicted with the release's content itself. *Id.* 424. Rather, on its face, the release's intent and effect was obvious and unambiguous. *Id.*

[¶ 84] The court reasoned that its conclusion was grounded in established Texas law:

It is well-established that "[t]he recipient of a fraudulent misrepresentation is not justified in relying upon its truth if he knows that it is false or its falsity is obvious to him." RESTATEMENT (SECOND) OF TORTS § 541 (1977). Thus, as Texas courts have repeatedly held, a party to a written contract cannot justifiably rely on oral misrepresentations regarding the contract's unambiguous terms. *See, e.g., Thigpen v. Locke*, 363 S.W.2d 247, 251 (Tex. 1962) ("In an arm's-length

transaction the defrauded party must exercise ordinary care for the protection of his own interests.... [A] failure to exercise reasonable diligence is not excused by mere confidence in the honesty and integrity of the other party.”) (citation omitted). This is particularly true when the party had a reasonable opportunity to review the written agreement but failed to exercise ordinary care to do so. *See Tex. & Pac. Ry. Co. v. Poe*, 131 Tex. 337, 115 S.W.2d 591, 592 (1938) (holding that evidence was legally insufficient to support a finding of fraud where party who relied on oral statement that release was receipt had an opportunity to read the document which plainly identified itself as a release); *see also Thigpen*, 363 S.W.2d at 251.

Id. at 424-25.

4. Combined Red Flags and Direct Contradiction Analysis

a. *Orca Assets*

[¶ 85] *Orca Assets* is an oil and gas case in which the supreme court was asked to determine whether red flags and the direct contradiction rule as a matter of law negated justifiable reliance in fraud claims. In short, the court held that as a matter of law red flags and a negation-of-warranty clause in sales documents defeated plaintiff’s fraud and negligent misrepresentation claims based on extra-contractual representations. *Orca Assets*, 546 S.W.3d at 650.

[¶ 86] In that case, a mineral interest owner, represented by a JP Morgan Chase employee (Mettham), leased more than 1,800 acres to

GeoSouthern. But GeoSouthern waited six months to record its leases.

[¶ 87] In the meantime, Orca Assets was interested in leasing acreage in the same area. So, Mettham met with Orca representatives, who brought maps showing the tracts Orca wanted to lease. They asked whether the acreage at issue “was open and not leased.” There was evidence that Mettham said that the acreage was unleased.

[¶ 88] But shortly after that meeting, Mettham required that the lease include a new negation-of-warranties clause that shifted the risk of title failure to the lessee:

Negation of Warranty. This lease is made without warranties of any kind, either express or implied, and without recourse against Lessor in the event of a failure of title, not even for the return of the bonus consideration paid for the granting of the lease or for any rental, royalty, shut-in payment, or any other payment now or hereafter made by Lessee to Lessor under the terms of this lease.

Id. 651 (emphasis in original).

[¶ 89] Orca’s representatives recognized this new language as different—a “curveball” and a “red flag”—because it made the lessee responsible for ensuring that the lessor had title to the minerals. Orca’s landman characterized the new language as unusually explicit and advised

Orca to give title another review before closing.

[¶ 90] Before closing, the parties signed a letter of intent in which the lessor made no representations about whether the land was leasable. Instead, the letter recited that Orca had searched the relevant records and preliminarily determined lessor was the owner and holder of the mineral estate. The letter also quoted the new clause and gave Orca a thirty-day option in exchange for accepting the new language. It also permitted Orca to close the lease in segments and to decline any acreage due to title defects.

[¶ 91] Orca had been checking the property records almost daily. But it did not do so during the thirty-day option period. Three days into the option period, GeoSouthern recorded the leases it obtained six months earlier.

[¶ 92] Orca closed on over half the acres the letter of intent covered. At closing, Orca asked if the acreage was still open. Mettham looked at something below his desk, checked his computer and the maps, and said, “We’re good to go. They’re open.” Orca delivered bonus checks for \$3,217,585.

[¶ 93] After GeoSouthern discovered Orca’s leases in the county records, it brought the matter to Mettham’s attention. He then refunded the bonus payments to Orca. Nonetheless, Orca rejected the tender and sued the

lessor for contract breach, fraud, and negligent misrepresentation.

[¶ 94] The trial court issued a Texas Rule of Civil Procedure 166(g) order disposing of all of Orca's claims. In so doing, the trial court concluded that the letter of intent's and the leases' unambiguous terms precluded Orca's contract claim and ruled as a matter of law that Orca could not establish justifiable reliance for its fraud and negligent misrepresentation claims.

[¶ 95] The appellate court affirmed the contract ruling but reversed as to fraud and negligent misrepresentation. 592 S.W.3d 591 (Tex. App.—5th Dist. 2015). In so doing, the court held that the negation-of-warranty did not clearly and unequivocally disclaim reliance on prior representations and thus could not preclude justifiable reliance as a matter of law. *Id.* at 603-04. It also rejected the lessor's red flags and direct conflicts arguments. *Id.* at 604-06. The supreme court granted review.

[¶ 96] The supreme court reversed the court of appeals and reinstated the trial court's judgment for the lessor. 546 S.W.3d at 660.⁹⁰ After thoroughly reviewing its own and intermediate appellate court opinions, the

⁹⁰ Orca did not pursue its breach of contract claim in the supreme court. 546 S.W.3d at 653.

supreme court concluded that:

Viewed in context with numerous “red flags,” Orca’s sophistication in the oil-and-gas industry, *and the direct contradiction* between the representation and the letter of intent,² Orca cannot maintain its claim of justifiable reliance. Orca, composed of experienced and knowledgeable businesspeople, negotiated an arm’s-length transaction and then placed millions of dollars in jeopardy—all while operating under circumstances that similarly situated parties would have regarded as imminently risky. Orca needed to protect its own interests through the exercise of ordinary care and reasonable diligence rather than blindly relying upon another party’s vague assurances. Its failure to do so precludes its claim of justifiable reliance as a matter of law.

Id. (emphasis added) (footnote two discussed below).

[¶ 97] Footnote two explains how red flags and direct contradiction can apply separately or jointly in a case:

Either “red flags” alone or direct contradiction alone can negate justifiable reliance as a matter of law. *Compare Westergren*, 453 S.W.3d at 424–25 (“[A] party to a written contract cannot justifiably rely on oral misrepresentations regarding the contract’s unambiguous terms.” (citing *Thigpen*, 363 S.W.2d at 251)), *and DRC*, 112 S.W.3d at 858 (“[R]eliance upon an oral representation that is directly contradicted by the express, unambiguous terms of a written agreement between the parties is not justified as a matter of law.”), *with Grant Thornton*, 314 S.W.3d at 923 (“[A] person may not justifiably rely on a misrepresentation if ‘there are “red flags” indicating such reliance is unwarranted.’” (quoting *Lewis*, 343 F.3d at 546)). In this case, however, both theories apply. And either would be sufficient to preclude justifiable reliance.

Id. at 660 n.2.

b. *Mikob*

[¶ 98] *Mikob Props., Inc. v. Joachim*, 468 S.W.3d 587, 599 (Tex. App.—5th Dist. 2015, pet denied) is among the court of appeals cases the supreme court cited with approval in *Orca Assets*. 546 S.W.3d at 659. In *Mikob*, the court held that an oral representation that a settlement agreement covered all parties was directly contradicted by the agreement explicitly listing only some defendants, while remaining silent about another defendant, and therefore barred the omitted defendant from establishing justifiable reliance. 468 S.W.3d at 599. *Mikob*’s red flags analysis includes this passage:

“Generally, reliance on representations made in a business or commercial transaction is not justified when the representation takes place in an adversarial context.” *AKB Hendrick, LP v. Musgrave Enters., Inc.*, 380 S.W.3d 221, 232 (Tex. App.—Dallas 2012, no pet.) (citing *Coastal Bank SSB v. Chase Bank of Tex., N.A.*, 135 S.W.3d 840, 843 (Tex. App.—Houston [1st Dist.] 2004, no pet.)).

Id. at 598.

5. Reliance Disclaimers

a. Introduction

[¶ 99] An unambiguous waiver-of-reliance provision negotiated by sophisticated parties represented by counsel in an arm’s-length transaction

may preclude a fraudulent inducement claim as a matter of law. *See Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 52 (Tex. 2008); *see also Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 179-81 (Tex. 1997) (reliance disclaimer precluded fraud claim based on representations not stated in settlement agreement); *but see Italian Cowboy Partners, LTD v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 331-36 (Tex. 2011) (merger clause alone without a reliance disclaimer did not negate justifiable reliance as a matter of law). Such provisions conclusively negate the element of reliance for fraudulent inducement claims. 268 S.W.3d 51, 52, 56-61.

[¶ 100] Although the supreme court has declined to adopt a *per se* rule that a disclaimer automatically precludes a fraudulent inducement claim, it acknowledged the importance of enforcing such provisions because “[i]t is not asking too much that parties not rely on extra-contractual statements that they contract not to rely on.” *Id.* at 60-61.

[¶ 101] *Forest Oil* also holds that

If disclaimers of reliance cannot ensure finality and preclude post-deal claims for fraudulent inducement, then freedom of contract, even among the most knowledgeable parties advised by the most knowledgeable legal counsel, is grievously impaired.

Id. at 61.

b. *Forest Oil* Factors

[¶ 102] *Forest Oil* addressed whether an unambiguous reliance disclaimer precluded as a matter of law a fraudulent inducement claim. 268 S.W.3d at 52. The court rejected that claim, which was offered to avoid a mandatory arbitration clause. In so doing, the court discussed *Schlumberger* at length and held that:

It is true that *Schlumberger* noted a disclaimer of reliance “will not always bar a fraudulent inducement claim,” but this statement merely acknowledges that facts may exist where the disclaimer lacks “the requisite clear and unequivocal expression of intent necessary to disclaim reliance” on the specific representations at issue. Courts must always examine the contract itself and the totality of the surrounding circumstances when determining if a waiver-of-reliance provision is binding. We did so in *Schlumberger*, but since courts of appeals seem to disagree over which *Schlumberger* facts were most relevant, we now clarify those that *guided* our reasoning: (1) the terms of the contract were negotiated, rather than boilerplate, and during negotiations the parties specifically discussed the issue which has become the topic of the subsequent dispute; (2) the complaining party was represented by counsel; (3) the parties dealt with each other in an arm’s length transaction; (4) the parties were knowledgeable in business matters; and (5) the release language was clear. These factors were each present in *Schlumberger*, and they are each present in this case.

[¶ 103] 268 S.W.3d at 60 (emphasis added, footnotes omitted). The

supreme court referred to the above as “factors,” therefore acknowledging that each one does not need to be present before a reliance disclaimer is effective as a matter of law to defeat a fraud claim based on prior representations omitted from a signed contract. *See id.*; *see also Austin Tr. Co. v. Houren*, 664 S.W.3d 35, 48 (Tex. 2023) (referring to “*Forest Oil* factors”).

[¶ 104] As discussed in the next section, the red flags, direct contradiction, and reliance disclaimer rules individually or collectively defeat Beard’s fraud claims as a matter of law.

6. Application

a. Beard’s Reliance Disclaimers

i. General Application

[¶ 105] Beard’s Separation Agreement and Release Agreement contain these reliance disclaimers:

Separation Agreement

9. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto and contains all of the covenants, agreements and understandings between the parties. The Parties agree that there are no other agreements, statements, promises or representations by any Party hereto, or any party purporting to represent any Party hereto. The terms of this Agreement are contractual, and not a mere recital. *The Parties acknowledge that neither party is relying upon any statements or representations of the other party, other than set forth herein.* This

Agreement may be modified only by an instrument in writing, signed by Beard and an authorized agent of [Perot Jain].⁹¹

Release Agreement

5. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto as to the subject matter of this Agreement and contains all of the covenants, agreements and understandings between the parties as to such subject matter. The terms of this Agreement are contractual, and not a mere recital. *The Parties acknowledge that neither party is relying upon any statements or representations of the other party, other than those set forth herein.* This Agreement may be modified only by an instrument in writing, signed by Beard and an authorized agent of [Perot Jain].

6. Disclaimer of Reliance. Except for the specific representations expressly made by [Perot Jain] in this Agreement, Beard specifically disclaims that Beard is relying upon or has relied upon on any communications, promises, statements, inducements, or representation(s) that may have been made, oral or written, regarding the subject matter of this Agreement. The Parties represent that they are relying solely and only on their own judgment in entering into this Agreement. Therefore, Beard understands that Beard is precluded from bringing any fraud, fraudulent inducement, or similar claim against [Perot Jain] associated with any such communications, promises, agreements, statements, inducements, understandings, or representations.⁹²

[¶ 106] All three reliance disclaimers are clear and unambiguous; in exchange for an equity interest in specific companies—without mentioning

⁹¹ FAP Ex. B at 4 (bold original, italics added).

⁹² FAP Ex. C at 2 (emphasis original).

Access Healthcare—Beard agreed that he was not relying on any promises not stated in those agreements.⁹³

[¶ 107] Moreover, the Release Agreement has two separate reliance disclaimers.⁹⁴ Not only does it have the same reliance disclaimer in the Separation Agreement, but Beard separately agreed that he was not relying or had relied on “any communications, promises, statements, inducements, or representation(s) that may have been made, oral or written, regarding the subject matter of this Agreement.”⁹⁵

[¶ 108] Beard further acknowledged his understanding that he “is precluded from bringing any fraud, fraudulent inducement or similar claim against [Perot Jain] associated with any such communications, promises, agreements, statements, inducements, understandings, or representations.”⁹⁶

[¶ 109] Beard did not plead or argue that those disclaimers or other contract terms are ambiguous, and the court finds no ambiguity or lack of clarity in them. Nor did he allege fraud in the factum.⁹⁷

[¶ 110] Beard expressly promised that he was not relying on any

⁹³ FAP Ex. B. at 1; FAP Ex. C. at 1.

⁹⁴ FAP Ex. C at 2.

⁹⁵ FAP Ex. C at 2.

⁹⁶ FAP Ex. C at 2.

⁹⁷ Beard’s response argued that if defendants want to dispute the *Employment Agreement*’s

promises outside the Separation Agreement or the Release Agreement, yet his fraud claims depend exclusively on oral promises not included in either contract. Thus, these reliance disclaimers unambiguously defeat his fraud and fraud in the inducement claims.

ii. *Forest Oil* Factors

[¶ 111] Nonetheless, Beard argues that the Separation and Release Agreements’ disclaimer-of-reliance clauses are voidable because they themselves were fraudulently induced.⁹⁸ But nothing in the portion of *Italian Cowboy* cited by Beard supports that notion. *See* 341 S.W.3d at 333. Instead, the question is whether “the disclaimer-of-reliance clause[s] ha[ve] the ‘requisite clear and unequivocal expression of intent necessary to disclaim reliance . . . on specific representations by [defendants].’” *Id.* (quoting *Schlumberger*, 959 S.W.2d at 179-80).

[¶ 112] To answer that question, the court applies the *Forest Oil* factors. *See id.* at 337 n.8.

[¶ 113] To begin, “[I]t is unnecessary to satisfy each factor when the parties’ intent to preclude a fraud claim is clear and unequivocal and a

plain terms, then the contract is ambiguous and cannot be resolved under Rule 91a. Resp. at 45 (emphasis added).

⁹⁸ Resp. at 25-26 (citing *Italian Cowboy*, 341 S.W.3d at 333).

sufficient number of factors are satisfied to meet the public policy concerns expressed in *Schlumberger* and its progeny.” *Newman v. Firstmark Credit Union*, No. 03-14-00315-CV, 2015 WL 4998326, *8 (Tex. App.—3rd Dist., August 21, 2015), *judgment withdrawn, appeal dismissed*, No. 03-14-00315-CV, 2015 WL 9583880 (Tex. App. Dec. 31, 2015) (quoting *Allen v. Devon Energy Holdings, L.L.C.*, 367 S.W.3d 355, 384 (Tex. App.—1st Dist. 2012, pet. granted, judgment vacated w.r.m.)).

[¶ 114] Factor One (whether the terms were negotiated, rather than boilerplate, and whether the negotiations included the issue in dispute):⁹⁹ The parties discussed the Separation Agreement’s terms, including whether Beard would get paid on Access Healthcare, which is the subject of the current dispute.¹⁰⁰

[¶ 115] Beard understood that the Separation Agreement excluded Access Healthcare from the list of companies for which he could later receive payment.¹⁰¹ Thus, the Access Healthcare issue was discussed and by omission

⁹⁹ *Forest Oil*, 268 S.W.3d at 60.

¹⁰⁰ FAP ¶s 22-26. After defendants filed their initial 91(a) motion, Beard amended his petition. One amendment was to change his pleading that he “negotiated” the Separation Agreement with Jain to he “discussed” it with Jain. Either way, none of its terms were a surprise to him.

¹⁰¹ FAP ¶ 23, *see also* FAP Ex. B.

excluded from promised future payment.

[¶ 116] Although Beard said that Perot Jain had complete control over the Separation Agreement, he also admitted that he personally discussed the exclusion of Access Healthcare from the Separation Agreement with Jain and other Perot Jain employees.¹⁰²

[¶ 117] Accordingly, Beard’s pleadings establish that Access Healthcare’s exclusion from the Separation Agreement was negotiated—therefore not boilerplate—and specifically discussed by the parties.

[¶ 118] As to the later Release Agreement, Beard pled that during discussions leading to that contract, he directly negotiated with defendants’ outside legal counsel regarding the release’s terms and ultimately obtained the changes he wanted.¹⁰³ Again, Beard admits that Access Healthcare was discussed in these negotiations.

[¶ 119] In sum, Beard “discussed” the Separation Agreement with Jain and other Perot Jain employees, and he personally negotiated the Release Agreement with opposing counsel and obtained requested changes to that agreement. And Access Healthcare was discussed in both situations. This

¹⁰² FAP ¶s 22, 23.

¹⁰³ FAP ¶s 28, 30.

factor favors defendants.

[¶ 120] Factor Two (was the complaining party represented by counsel):¹⁰⁴ The FAP does not say whether Beard consulted with his own counsel before signing the Separation Agreement, so the court assumes he did not do so. But that contract also recited that he was invited to consult with counsel of his choosing, and he had forty-five days to do that while considering Perot Jain's offer.¹⁰⁵ That was an ample opportunity to have consulted with his own lawyer had he wanted to.

[¶ 121] Under circumstances similar to this case in which plaintiff was “advised, and given ample opportunity, to consult counsel,” the court in *McLernon v. Dynegy, Inc.* held that lack of advice of counsel did not nullify a reliance disclaimer because the other *Forest Oil* factors were all present. See 347 S.W.3d 315, 332-33. The same applies here.

[¶ 122] Moreover, Beard consulted with his counsel before signing the Release Agreement,¹⁰⁶ which had a reliance disclaimer identical to the one he agreed to in the Separation Agreement.¹⁰⁷ That is, Beard twice agreed to

¹⁰⁴ *Forest Oil*, 268 S.W.3d at 60.

¹⁰⁵ FAP Ex. B at 4.

¹⁰⁶ FAP ¶ 28.

¹⁰⁷ *Compare* FAP Ex. B at 4 (“The Parties acknowledge that neither party is relying upon any statements or representations of the other party, other than those set forth herein.”)

identical reliance disclaimers negating his reliance on the alleged oral representations on which his fraud claims rest—and his own counsel approved that same language the second time.

[¶ 123] And his counsel-approved Release Agreement contained an additional, and more explicit, disclaimer of reliance on anything defendants told him that induced him to sign the Release agreement.¹⁰⁸

[¶ 124] In sum, this factor favors defendants because Beard had forty-five days to consult with his own counsel regarding the Separation Agreement and he actually consulted his own counsel regarding the Release Agreement.

[¶ 125] Factor Three (did the parties deal with each other in an arm’s-length transaction):¹⁰⁹ An “arm’s length transaction” is one in which the parties are “unrelated and unaffiliated,” or, “however closely related they may be, [is] conducted as if the parties were strangers, so that no conflict of interest arises.” *Transaction*, BLACK’S LAW DICTIONARY (12th ed. 2024); *see also Arm’s-length*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“Of, relating to, or involving dealings between two parties who are not related or not on close

(Separation Agreement) *with* FAP Ex. C at 2 (“The Parties acknowledge that neither party is relying upon any statements or representations of the other party, other than those set forth herein.”) (Release Agreement).

¹⁰⁸ FAP Ex. C at 2.

¹⁰⁹ *Forest Oil*, 268 S.W.3d at 60.

terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship.”).

[¶ 126] Beard signed the Separation Agreement as he was terminating his employment with Perot Jain, which is an inherently adversarial transaction with opposite parties looking out for their best interests. It is the transaction by which the parties became “unaffiliated.” *McLernon*, 347 S.W.3d at 331. The fact that he understood he was terminating his prior relationship with defendants evidences his objective awareness that whatever relationship existed before was ending and he had to look out for himself.

[¶ 127] Defendants’ statements that they were not making any promises to Beard that were not stated in the contracts and Beard’s unambiguous agreement that he could not rely on anything defendants told him that was not written in the contracts further notified him that the parties were signing the contracts on an arm’s-length basis.

[¶ 128] Additionally, similar to the plaintiff in *McLernon*, Beard was (i) advised to consult with an attorney before executing the Separation Agreement and (ii) given a significant period of time to consider the agreement and consult with counsel before signing, further supporting its arm’s-length

nature. *Id.*

[¶ 129] Furthermore, he signed the Release Agreement more than two years after he left Perot Jain and as part of its buyout of Beard's remaining Separation Agreement compensation. That transaction, involving Beard's release of rights, was inherently arm's-length.

[¶ 130] Beard argues that these were not arm's-length transactions because he trusted defendants based on their longstanding relationship.¹¹⁰ But that presumed trust conflicts with the facts that (i) defendants never reduced his bonus plan to writing; (ii) defendants never made him a partner in the company; and (iii) at least with respect to the Release Agreement, Beard felt a need to consult with his own lawyer.¹¹¹ *See id.* at 333 (fact parties were negotiating a severance agreement and were not embroiled in any dispute at the time did not preclude no-reliance clause's enforceability). And he signed the Release Agreement more than two years after he signed the Separation Agreement.¹¹²

[¶ 131] Further, the supreme court has held many times that ordinarily

¹¹⁰ FAC ¶s 13, 14, 17, 18, 24, 38; Resp. at 33-35.

¹¹¹ Resp. at 33.

¹¹² *See* FAP Ex. C.

trusting a counterparty is not grounds for ignoring a contract's unambiguous terms. *Orca Assets*, 546 S.W.3d at 654 (“[F]ailure to exercise reasonable diligence is not excused by mere confidence in the honesty and integrity of the other party.”); *Roxo Energy*, 713 S.W.3d at 409 (“[R]eliance upon an oral representation that is directly contradicted by the express, unambiguous terms of a written agreement between the parties is not justified as a matter of law.”).

[¶ 132] Additionally, Beard pled no facts suggesting that defendants owed him fiduciary duties. And the supreme court has long refused to impose an implied duty of good faith and fair dealing in contracts between parties, even where the relationship has been a cordial one of long duration:

Travis Crim testified that he believed the relationship with Navistar was one of mutual trust and confidence. However, “*mere subjective trust alone is not enough to transform arms-length dealing into a fiduciary relationship.*” *Thigpen*, 363 S.W.2d at 253. Further, the Crims point to language in the contract which they claim articulates a special trust and confidence between these parties beyond that ordinarily found in a contract. We are unpersuaded that this language was ever intended to inject an element of personal trust and confidence above and beyond that which is ordinarily contemplated by parties to contracts of this type.

Crim Truck & Tractor Co. v. Navistar Intern. Transp. Corp., 823 S.W.2d 591, 595 (Tex. 1992) (emphasis added, footnotes omitted). Regardless of whatever trust and confidence Beard had in defendants when discussing the Separation

Agreement, the circumstances changed over two years and any relationship beyond arm's-length nature dissipated by when he signed the Release Agreement.

[¶ 133] This factor favors defendants.

[¶ 134] Factor Four (was Beard knowledgeable about business matters):¹¹³ As a West Point graduate and former Army Captain,¹¹⁴ Beard is highly educated, highly capable, and able to look after himself. He is also a sophisticated private equity portfolio manager experienced in international transactions, debt financings, and mergers and acquisitions.¹¹⁵ He knows how to negotiate with opposing counsel and how to obtain and consult with his own counsel.¹¹⁶ Beard's response concedes that he is "a talented, experienced businessman,"¹¹⁷ and at the hearing his counsel agreed that the pleaded facts describe a highly sophisticated and successful investor.¹¹⁸

[¶ 135] Accordingly, this factor strongly favors defendants.

[¶ 136] Factor Five (was the relevant language clear):¹¹⁹ The

¹¹³ *Forest Oil*, 268 S.W.3d at 60.

¹¹⁴ FAP ¶ 11.

¹¹⁵ See FAP ¶ 20.

¹¹⁶ FAP ¶s 26, 28, 33.

¹¹⁷ Resp. at 35.

¹¹⁸ July 21, 2026, Tr. at 18 (unofficial).

¹¹⁹ *Forest Oil*, 268 S.W.3d at 60.

Separation Agreement unambiguously told Beard that Perot Jain’s promise to pay future compensation was limited to only those companies on the Schedule A attached to that contract—and Access Healthcare was not on that list. The reliance disclaimers and merger clauses in both agreements were obvious and unambiguous. Both contracts were short. A person of Beard’s experience, sophistication, and abilities could not have missed or misunderstood what he was signing.

[¶ 137] Thus, this factor strongly favors defendants.

* * *

[¶ 138] Accordingly, the court concludes that the *Forest Oil* factors as a matter of law support enforcing both the Separation Agreement’s and Release Agreement’s no-reliance clauses, those terms are binding against Beard, and they defeat his fraud (and promissory estoppel)¹²⁰ claims—without directly resorting to red flags and direct contradiction analyses.

b. Red Flags and Direct Contradiction

[¶ 139] Beard’s pre-Separation Agreement oral promise to pay him a

¹²⁰ “[S]ubstantial reliance by promisee to his detriment” is also an element of promissory estoppel. *Miller v. Raytheon Aircraft Co.*, 229 S.W.3d 358, 378–79 (Tex. App.—1st Dist. 2007, no pet.).

future promote regarding Access Healthcare directly conflicts with that contract's unambiguous terms in these ways: (i) that contract unambiguously told Beard that his future carry would apply to *only* those companies listed on Schedule A, and Access Healthcare is unambiguously absent from that list; (ii) that contract's merger clause was an affirmative statement to Beard that Perot Jain (and by extension Perot and Jain) were not making any promises to Beard that were not stated in that document; (iii) Beard agreed that he was not relying on any such extracontractual promise; and (iv) Beard released defendants from all existing or potential future claims except for claims regarding companies on the Schedule A, which again excluded Access Healthcare. *See Westergren*, 453 S.W.3d at 423-25 (reliance on oral contract is not justified where "release's plain language conflicted with [prior] representations"); *see also Mercedes-Benz*, 583 S.W.3d at 559 (same).

[¶ 140] Not only is Beard's Access Healthcare-based claim in direct conflict with the Separation Agreement's unambiguous terms, but those contract terms were unmistakable red flags that defendants did not consider Beard's handshake agreement to be part of his potential future compensation. *See Roxo*, 713 S.W.3d at 410 (absence of language confirming alleged oral

representations is itself a red flag negating justifiable reliance).

[¶ 141] Moreover, that defendants never admitted Beard to the company and never reduced his promised carried interest compensation to a definite agreement were additional red flags. The numerous red flags told Beard that he needed to reduce his handshake agreement to writing to make it enforceable. As a matter of law, these direct conflicts and red flags render Beard's reliance on any oral promises concerning the Separation Agreement unjustifiable.

[¶ 142] Likewise, the Release Agreement's no-reliance clause and the merger clause—in conjunction with the reliance disclaimer and other Separation Agreement terms—were even more red flags and direct contradictions that as a matter of law negate Beard's alleged justifiable reliance on oral promises not contained in that contract.¹²¹ See *Westergren*, 453 S.W.3d at 423-25; *Mercedes-Benz*, 583 S.W.3d at 559; *Roxo*, 713 S.W.3d at 410.

c. Conclusion

[¶ 143] Reliance disclaimers, merger clauses, and broad releases exist

¹²¹ The court is not concluding that the merger clause or disclaimer of representations alone negate Beard's fraud claims. See *Italian Cowboy*, 341 S.W.3d at 328.

to bring certainty and finality to their parties’ agreements and relationships and avoid future disputes. Courts enforce those contractual agreements when they are open, unambiguous, and executed voluntarily, as the undisputed facts establish here. *See Italian Cowboy*, 341 S.W.3d at 337 n.8; *Forest Oil*, 268 S.W.3d at 60-61.

[¶ 144] Moreover, courts conclude that there is no justifiable reliance as a matter of law when the plain language of a written agreement contradicts an alleged prior oral agreement. *Roxo*, 713 S.W.3d at 410. The contradictory text is itself a red flag alerting a party that the oral discussions may no longer be part of the deal. *Id.* at 410-11; *Mercedes-Benz*, 583 S.W.3d at 559.

[¶ 145] Accordingly, the court rejected Beard’s (i) fraud defenses to the release agreements (*see* part IV(B)(4)(b) above) and (ii) Beard’s affirmative fraud-based (and promissory estoppel, *see* part IV(F)(2) below) causes of action.

[¶ 146] Finally, Beard’s Claim One singularly pleads both “common law fraud” and “fraudulent inducement” as a single cause of action with no discrete factual differences. Likewise, Beard’s response did not distinguish

between common law fraud and fraud in the inducement.¹²² So, the court concluded that Beard raised no “common law fraud” claims apart from his fraud in the inducement claims.¹²³

[¶ 147] And in his response to defendants’ 91a motion, he disclaimed that his fraud or fraudulent inducement claims were based on the Employment Agreement.¹²⁴ Therefore, even taking the FAP’s allegations as true, there is no common law fraud claim separate and apart from Beard’s fraudulent inducement claims. Accordingly, the court also dismissed his affirmative fraud causes of action as having no basis in law. TEX. R. CIV. P. 91a.1.

d. Perot and Jain (Individually)

[¶ 148] Perot Jain could act only through its agents, and the FAP alleges that Perot and Jain made the promises as Perot Jain’s principals.¹²⁵ Because the court concluded above that Beard was not justified in relying on the oral representations of Perot Jain and its agents in entering into the Separation and Release Agreements, those conclusions also apply to Perot and Jain because Beard’s claims against them individually are based on the same

¹²² See Resp. at 13, 20-21, 24-35, 38-40.

¹²³ See FAP ¶s 36-44.

¹²⁴ Resp. at 38-39.

¹²⁵ FAP ¶s 23, 69.

oral representations. Stated differently, Beard alleged that he was not relying on what Jain and Perot told him. This is a tort issue of Beard's inability to prove an element of his causes of action, not a matter of contract law. Specifically, justifiable reliance is an element of fraudulent inducement (and fraud). *Roxo*, 713 S.W.3d at 408. It is not an affirmative defense to be proven by a particular defendant.

[¶ 149] Given the court's conclusion that Beard's allegations, taken as true, together with inferences reasonably drawn from them, cannot as a matter of law establish the element of justifiable reliance as to Perot Jain, those allegations do not somehow become legally sufficient as to Perot and Jain individually. *See* TEX. R. CIV. P. 91a.1.

[¶ 150] Moreover, on at least one occasion the supreme court has not distinguished between a corporate signatory and its agents in the context of fraudulent inducement claims. Specifically, in *Mercedes-Benz*, Carduco signed a Dealer Agreement with Mercedes-Benz USA, LLC (MBUSA) that prohibited Carduco from changing locations without MBUSA's written consent. 583 S.W.3d at 556. Later, Carduco sued MBUSA and three of its agents because Carduco alleged they induced it to believe that its bargain with MBUSA

included the opportunity to relocate. *Id.*

[¶ 151] The supreme court overturned judgments against MBUSA and the three individuals because reliance upon oral representations that were directly contradicted by the plain terms of the Dealer Agreement was unjustified as a matter of law. *Id.* at 559, 563. In doing so, the supreme court did not distinguish between MBUSA and the individual defendants, despite the fact the Dealer Agreement was only between MBUSA and Carduco. *Id.* at 556.

[¶ 152] Finally, the Separation Agreement’s release explicitly names “H.R. Perot, Jr. and Anurag Jain” as Company Releasees.¹²⁶ Therefore, the agreement releases Perot and Jain from every claim it covers.

D. Claim Four: Breach of Contract—Employment Agreement (Perot Jain)

[¶ 153] Beard’s contract breach claim based on the Employment Agreement fails for several reasons:

[¶ 154] For starters, for the reasons discussed in part IV(B) above, the Separation Agreement’s release unambiguously defeats all breach of contract

¹²⁶ FAP Ex. B. at 2.

claims based on the Employment Agreement.

[¶ 155] Next, the Separation Agreement’s merger clause supersedes the Employment Agreement’s promote provision. Both contracts are between Beard and Perot Jain. Separation Agreement § 1(b) recites that Perot Jain “previously agreed that Beard would receive a promote,” but going forward it limits that promote to a carry “applicable only to the companies identified in Schedule A.”¹²⁷ Separation Agreement ¶ 9 in turn states:

This Agreement constitutes the entire Agreement between the Parties hereto and contains all of the covenants, agreements and understandings between the parties. The Parties agree that there are no other agreements, statements, promises or representations by any Party hereto, or any party purporting to represent any Party hereto.¹²⁸

[¶ 156] Therefore, the Separation Agreement is the parties’ final agreement on the promote’s scope, and the Employment Agreement’s prior eligibility language cannot be enforced because it conflicts with this later final agreement. *See Italian Cowboy*, 341 at 334. As discussed throughout above, that scope did not include equity in Access Healthcare.

[¶ 157] Accordingly, Beard’s Employment Agreement breach claim

¹²⁷ FAP Ex. B at 1.

¹²⁸ FAP Ex. B at 4.

fails as a matter of law.

E. Claim Five: Breach of Contract—Handshake Agreement (All Defendants)

[¶ 158] Beard’s Claim Five rests on an alleged oral agreement whereby defendants promised that he would be paid the value of his three percent equity interest in Access Healthcare upon an Access Healthcare liquidity event.¹²⁹ However, Beard admits that the Separation Agreement expressly excluded Access Healthcare from the exclusive list of Schedule A companies for which Beard could receive future carried interest payments.¹³⁰ *See City of Houston v. Williams*, 353 S.W.3d 128, 145 (Tex. 2011) (purposeful inclusion of specific terms in a writing implies the purposeful exclusion of terms that do not appear); *see also* Antonin Scalia and Bryan A. Garner, *Reading Law* 107 (2012). Indeed, the Separation Agreement unambiguously states as much.¹³¹

[¶ 159] Furthermore, Separation Agreement ¶ 2 disclaimed any right to further compensation not expressly provided for in the Separation Agreement, which unambiguously excluded compensation for Access Healthcare by omitting it from the list of companies for which he could receive

¹²⁹ FAP ¶ 62.

¹³⁰ FAP ¶ 63.

¹³¹ FAP Ex. B at 1.

future compensation.¹³²

[¶ 160] Additionally, Beard pled that defendants made the promise in discussions that produced the Separation Agreement and before he signed it.¹³³ So, it is a prior or contemporaneous oral agreement on the same subject of the Separation Agreement—post-employment payments tied to portfolio companies—and therefore barred by the parol evidence rule and that contract’s merger clause. *See West*, 573 S.W.3d at 243; *Hubacek*, 317 S.W.2d at 31.

[¶ 161] A fully integrated writing supersedes prior or contemporaneous oral agreements. *Italian Cowboy*, 341 S.W.3d at 334. And the collateral agreement exception does not apply because the alleged oral promise contradicts the written contract. *Sacks*, 266 S.W.3d at 450-51. The Separation Agreement states that the carry applies “only” to Schedule A companies and confirms there are “no other agreements, statements, promises or representations.” Furthermore, the contract may be modified “only by an instrument in writing.” Because the only performance Beard alleges under the

¹³² FAP Ex. B at 2.

¹³³ FAP Ex. B at 4.

handshake agreement is his signing of the Separation Agreement¹³⁴, the handshake agreement was part of the transaction integrated by the writing.

[¶ 162] Moreover, the Release Agreement's merger clause has the same effect.

F. Promissory Estoppel, Quantum Meruit, and Rescission

1. Introduction

[¶ 163] Beard posits that the court should not dismiss his alternative promissory estoppel, quantum meruit, and rescission claims because he is permitted to plead alternative claims and they each withstand 91a scrutiny.¹³⁵ He is correct that he may assert alternative claims, but his alternative claims fail for the following reasons.

2. Claim Two: Promissory Estoppel (All Defendants)

[¶ 164] Beard pleads his promissory estoppel claim based on services he provided regarding Access Healthcare before he left and signed the Separation Agreement.¹³⁶ This claim fails as a matter of law for several reasons.

[¶ 165] First, for the reasons described in part IV(C)(6) above, Beard's

¹³⁴ FAP ¶ 63.

¹³⁵ Resp. at 22-23.

¹³⁶ FAP ¶s 46-48.

reliance on defendants’ alleged promises is negated as a matter of law. *See Miller*, 229 S.W.3d at 378–79 (reliance is an element of promissory estoppel).

[¶ 166] Second, the alleged promises are the subject of his Employment Agreement.¹³⁷ Because the services on which he bases his claim are the services that are the subject of his Employment Agreement, promissory estoppel does not apply. *See Barnett v. Coppell N. Tex. Ct., Ltd.*, 123 S.W.3d 804 (Tex. App.—5th Dist. 2003, pet. denied) (“Promissory estoppel does not apply to a promise covered by a valid contract between the parties[.]”); *see also Wheeler v. White*, 398 S.W.2d 93, 97 (Tex. 1965) (“[W]here there is actually no contract the promissory estoppel theory may be invoked, thereby supplying a remedy which will enable the injured party to be compensated for his foreseeable, definite, and substantial reliance.”). They are also the subject of the Separation and Release Agreements because the parties discussed Access Healthcare regarding both transactions and did not include it in those contracts.

[¶ 167] Third, the remedy is limited to reliance damages, which are the amount needed to restore the promisee to the position he would have been in

¹³⁷ *See* FAP ¶s 17, 46.

had he not acted in reliance upon the promise. *Wheeler*, 398 S.W.2d at 97. It excludes expectancy damage, or the profits expected from the promise. See *Lamajak v. Frazin*, 230 S.W.3d 786, 794 (Tex. App.—5th Dist. 2007, no pet.) (reliance damages proper recovery for promissory estoppel).

[¶ 168] Here, Beard concedes that reliance damages are the sole available measure, yet his response defines them as “the value of Beard’s 3% interest . . . [he] would have received if he had not deferred his right.”¹³⁸ However, these would be expectancy damages. Aside from this mischaracterized measure and a conclusory reference to “reasonable expenses,”¹³⁹ neither the FAP nor the response identifies any reliance expenditure, cost, or change of position. See *First Rsrv.*, 671 S.W.2d at 662. The only other detriment claimed—the forbearance—is not legally cognizable because the right Beard claims he chose not to enforce never existed and had already been released.¹⁴⁰

[¶ 169] Accordingly, because Beard’s requested benefits of the bargain

¹³⁸ Resp. at 41.

¹³⁹ FAP ¶ 80(c).

¹⁴⁰ FAP ¶ 83.

are not available, this claim fails to state a viable claim for recovery.

3. Claim Three: Quantum Meruit (All Defendants)

[¶ 170] Beard's quantum meruit claim is another alternative, equitable remedy concerning the services he provided defendants before he left and signed the Separation Agreement.¹⁴¹

[¶ 171] This claim fails for the same reasons that his promissory estoppel claim fails. A party cannot recover in quantum meruit when a valid contract covering the services exists. *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 740 (Tex. 2005). However, the existence of an express contract does not preclude recovery in quantum meruit for the reasonable value of work performed that is not covered by an express contract. *Champion Food Service, Inc. v. ProAlamo Foods, L.L.C.*, 738 S.W.3d 511 (Tex. 2026).

[¶ 172] Here, Beard's valid Employment Agreement covers his services, including his work on Access Healthcare. Further, the Separation Agreement explicitly limits his carry to the companies listed in Schedule A.

[¶ 173] Moreover, as to Perot and Jain individually, quantum meruit requires that the services have been rendered for the person sought to be

¹⁴¹ FAP ¶s 51-54.

charged and accepted by that person under circumstances giving notice that the plaintiff expected payment from him. *Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 732-33 (Tex. 2018); *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992). However, Beard pled that he performed his work as a Perot Jain employee for Perot Jain and expected compensation only from the company.¹⁴²

[¶ 174] Accordingly, his quantum meruit claim fails as a matter of law.

4. Claim Six: Rescission of the Employment Agreement (Perot Jain)

[¶ 175] Finally, Beard's rescission claim fails because rescission is a remedy, and all other claims independently fail. *See Cruz v. Andrews Restoration, Inc.*, 364 S.W.3d 817, 825-26 (Tex. 2012) (rescission is an equitable remedy and shorthand for composite remedy of rescission and restitution).

[¶ 176] Here, Beard did not plead that he tendered a return of all consideration he received under the Employment Agreement. A party seeking rescission must return, or offer to return the value of benefit, and the offer must precede a request for rescission. *Cruz*, 364 S.W.3d at 824-26; *Hart v.*

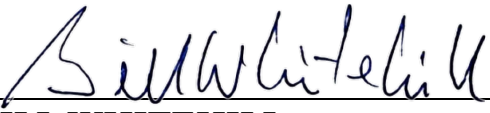
¹⁴² FAP ¶s 16-20, 50-54.

Besselman, No. 07-24-00219-CV, 2025 WL 1561279, at *1-2 (Tex. App.—7th Dist., June 2, 2025, pet. denied) (mem. op.). Beard’s counsel confirmed at the hearing that no tender had been made or pleaded and that Beard would tender only if later required.¹⁴³ That is not an offer to restore.

V. CONCLUSION

[¶ 177] Based upon the foregoing, the court issued its August 10, 2026, Order, (i) granting defendants’ motion to dismiss and (ii) dismissing Beard’s claims with prejudice.¹⁴⁴

It is so ORDERED.


BILL WHITEHILL
Judge of the Texas Business Court,
First Division

SIGNED: September 22, 2026

¹⁴³ July 21, 2026, Tr. at 40-41 (unofficial).

¹⁴⁴ August 10, 2026, Order Granting Defendants’ Motion to Dismiss.

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Business Court 1B		BCDivision1B@txcourts.gov	9/22/2026 4:46:13 PM	SENT