UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

APEX FINTECH SERVICES, LLC
D/B/A APEX FINTECH SOLUTIONS

and Case No. 12-CA-325317

JOHN D. RICHARDSON
An Individual

Stephen Barclay, Esq.
for the General Counsel.
Bradley A. Fink, David L. Christlieb, Emily E. Levy, Esqs. (Littler Mendelson, P.C., Denver, Chicago and Columbus, Ohio)
for the Respondent.

DECISION

STATEMENT OF THE CASE/FINDINGS OF FACT[1]

Arthur J. Amchan, Administrative Law Judge. This case was tried in Tampa, Florida on May 5 – 7, 2026 . John D. Richardson filed the charge giving rise to this case on September 5, 2023.

The General Counsel issued the complaint on December 29, 2025. The issues in this case concern Respondent's termination of Mr. Richardson in 2023, a subsequent lawsuit filed against him and its policies regarding confidentiality, non-competition and non-solicitation.

Respondent Apex Fintech Services, LLC, has offices in various cities, including New York, Chicago and Austin, Texas. Many of its employees, including the Charging Party, work

[1] I have read and considered the parties' briefs. Tr. 245, line 1 attributes a question asked by me to Mr. Richardson. Lines 4-6 attribute a statement made by Respondent's counsel to me.
G.C. Exh. 62, which was admitted at Tr. 186, was erroneously not included in the record. The record is corrected to include it. The General Counsel is responsible for making sure the exhibit is included in the official case file.

or worked remotely. Mr. Richardson worked from Winter Sprins, Florida. Respondent is in the business of providing technology services to the financial industry.

In the year prior to the issuance of the complaint, Respondent provided services valued in excess of $50,000 to entities located in states other than Illinois or Texas. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2 of the Act.[2]

The Charging Party's employment with Respondent

Respondent hired Charging Party Richardson on November 1, 2021 as a data engineer. While in-boarding he noticed a program called Poker Powher (later renamed Poker Power) for which an employee was required to identify as female in order to participate. The next day he emailed an HR Project Manager, objecting to being excluded from this program on the basis of gender identity.

On November 15, 2021, Richardson emailed Apex HR representative Brianna Rodgers, asking if there was a program comparable to Poker Powher that he could enroll in without identifying as female, G.C. Exh. 7. He was told he could participate if accompanied by someone who identified as female.

Richardson filed a complaint about Poker Powher with the Equal Employment Opportunity Commission (EEOC), which issued him a right to sue letter. He did not file a lawsuit.

In July 2022, Richardson attended an on-line tutorial about Poker Power.

Women in Tech Alliance

John Richardson had access to a Slack channel available to Respondent's employees.[3] In the channel he found messages promoting a mentoring program of the Women in Tech Alliance (WITA) open only to women. He also found feminist or sexist anti-male jokes that he considered offensive. On July 12, 2023, Richardson sent the following email to his boss, Tom Warner, a Senior Engineering Manager, and Warner's boss, Sudha Guttula, Respondent's Director of Engineering.

> I would like to report sexism in company slack channels. These channels were used by a number of close participants, none of them objected or reported the sexist material, some even reacted with extreme positivity, thus condoning it….
>
> There is a lot more sexism being conducted in company slack channels ironically but not unsurprisingly, these are often with poker power channels for the internal women-only club, or WITA -related channels. There are newer examples of sexism in company

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[2] The General Counsel has not alleged that Respondent is a joint employer or single employer with any other entity. Thus, there is no need to address Respondent's contentions on this issue.

[3] Slack is an intercompany communications platform.

> channels, but these examples are very useful not only for their objectively offensive material but also the longevity of the meme and reaction of support by employees showing that a hostile culture has been cultivated…
>
> I would absolutely be fired and rightfully so, if I shared memes like this at work with the genders flipped. From what I recall, Courtney was even an executive assistant. Kate is still employed here and is often involved in the hiring process. The same goes for many others that were part of those channels and reacted positively to these memes.
>
> Again, this is only a small part of a culture management has fostered. While I had reported issues with sexism with the company shortly after working here and was promised by Brianna Rodgers that there would be follow up, none has occurred…
>
> As Poker Power is a company that is premised on getting others to violate federal civil rights laws to generate revenue, is actively engaged in eliciting funding violations from a number of entities, is owned by the same parent company and runs programs at Apex… Apex should not be risking association with this kind of negligent compliance with federal law….
>
> Please do not direct this to Brianna Rodgers to handle, last time she acted unprofessionally by misrepresenting me and failing to follow up in any way after saying she would.
>
> I am requesting a significant and swift crackdown on the proliferating sexism within this company…
>
> G.C. Exh. 37.

Respondent retained the law firm of Masuda, Funai to investigate the issues raised by Richardson. In July lawyers from that firm interviewed him. That investigation appears to have revealed nothing that is relevant to this case.

On about August 21, 2023, Kayla Nassiri, an Apex human resources representative, advised Richardson that,

> Apex expects all employees to treat each other with mutual respect, refrain from hostile behavior, and fully cooperate in all company investigations. To that end, it is essential that everyone involved in this investigation maintain confidentiality and avoid naming specific employees or discussing details related to the ongoing investigation. This precaution is crucial to protect the privacy and reputation of all parties involved and to ensure that we adhere to our professional standards.
>
> G.C. Exh. 54.

When Richardson challenged Nassiri's assertion that he was not cooperating with the company's investigation, Nassiri advised him to raise any concerns he had through proper channels, such as HR.

G.C. Exh. 56.

In essence, this message interfered with and coerced Richardson in disseminating his views about Respondent's DEI (Diversity, Equity, and Inclusion) policies elsewhere. I would note that it does not appear that Respondent had any legitimate concerns that required confidentiality into its investigation of Richardson's complaints. This investigation was not one in which there was a danger of Respondent getting incorrect information if participants in the investigation communicated with each other.

On August 25, 2023, Richardson posted an 11-page article on LinkedIn entitled "Be Collaborative, Respectful & Inclusive. A call to honestly discuss discrimination at Apex Fintech Solutions." G.C. Exh. 57. The portion relevant to his discharge and Respondent's lawsuit appears on page 3, as follows:

> The company has allowed outright hate to proliferate as a demonstration of what they think DEI is. For example, at one point in a recorded meeting, someone from HR went on a tirade about "white males" making them feel uncomfortable, defensive and guarded simply for existing and doing their jobs or even being part of a discussion with them. **Core parts of the tirade would later disappear from the transcript of the meeting,** but the tirade wasn't about those feelings being bigoted. The tirade was about that being a reason we need fewer "white males" doing specific things in the company. Senior leadership was there, but no one stepped forward to say "that's inappropriate…" (Bold added by this judge).

Richardson testified that the person from HR who went on a tirade was Brianna Rodgers, Tr. 272-75. He testified that he could not recall at which DEI panel meeting this tirade took place, but thinks it was the August 1, 2023 DEI panel meeting, Tr. 277. G.C. Exh. 28 is a transcript of that meeting. The General Counsel obtained the transcript from a law firm that represented Respondent previously and moved for its admission – initially over Respondent's objection. . In its brief, the General Counsel does not dispute the accuracy or completeness of the transcript. Instead, it argues that Richardson's characterization of Brianna Rodgers' remarks is not maliciously false.

Nevertheless, there is no evidence as to the circumstances by which the transcript was made, its chain of custody or whether or not portions of the meeting were not recorded or not transcribed. It has also not been established whether there are deletions from either the recording, the transcript, or both. The transcript does not contain what would generally be considered a tirade by Ms. Rodgers. However, it has not been established that the transcript is complete and accurate.

The August 1, 2023 DEI panel was moderated by Tobenna Egwu, G.C. Exh. 28 at 2. Richardson attended that meeting, Tr. 241. If this is the DEI panel to which Richardson was referring, pages 41-43 include statements to which Richardson or other white males may have taken offense. The tone of voice of Egwu or Rodgers is not apparent, but neither constitutes what would be normally considered a tirade or hateful.

Richardson's assertion that Respondent allowed a culture of hate to proliferate is not limited to the remarks at a DEI meeting. The record establishes that he had access to and complained to Respondent about many other communications about males that he found offensive, G.C. Exhs. 37-40.

The record does not indicate how frequent DEI panels were conducted or whether there were others in the July-August 2023 timeframe.

On August 30, 2023, Senior HR Director Michael Walters demanded that Richardson remove any false, derogatory, disparaging and/or defamatory statement from his post by the next day. Richardson asked Walters to identify which of his statements he was being ordered to remove. Respondent did not do so, G.C. Exh. 67, 69. Instead it terminated him the next day.

Richardson disputes the accuracy and completeness of the transcript of the August 1, DEI panel. This is not a new assertion. In his August 25, posting, he made this assertion in the portion I have highlighted in bold. This puts a greater burden on Respondent to prove that the transcript is accurate and complete, which it did not do.[4]

Richardson recalls attending a DEI panel at which Stephen Lach[5] said the things transcribed at p. 41` of G.C. 28. The parties admitted a video of another DEI panel into the record, Jt. Exh. 2. The date on which that panel took place is not in the record. In the video, Brianna Rodgers speaks briefly at the end of the meeting, merely to thank the participants, Tr. 280. I find that Respondent has not established that Richardson's remarks in his LinkedIn posts are false. Moreover, I draw an adverse inference from Respondent's failure to produce any witness as to what was said at the DEI panels. I infer that the testimony of individuals who were present at the DEI panels would corroborate Richardson.

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[4] On September 7, 2023, the Region served the charge on Respondent. [4] The letter transmitting the charge contains the following standard paragraph.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

The Region advised Mr. Richardson of his obligation to preserve evidence the same day. If the videos and audio established that Brianna Rodgers never said the things attributed to her by Richardson, the fact that they no longer exist is to Respondent's detriment. This is particularly so since on October 17, 2023, Respondent filed a defamation lawsuit against Richardson in State Court.

[5] Apparently Chief of Staff to Respondent's CEO.

On August 30, Richardson posted another article on LinkedIn, 3 pages long, entitled " A culture of bigotry at Apex Fintech Solutions, Pt. 2". This post was precipitated by a virtual meeting on August 29, 2023, G.C. Exh. 64. The relevant portion is as follows:

> Creating a culture of discrimination and sharing bigoted thoughts (against the "right" demographics) is yet again rewarded at Apex Fintech Solutions. Brianna Rodgers who went on a racist/sexist rant in a company-wide recorded meeting that included senior leadership is now a Director of Culture and DEI at Apex. This is the same person who was also organizing meetings where people were being supported and told they were brave for sharing that they were engaged in civil rights and employment law violations. Bri also organized a DEI panel where one person was talking to us about harassment yet had been engaged in sharing sexist jokes that Directors such as Palal Jain found humorous. Bri is our new Director of Culture and DEI, and they got a company-wide congratulations from our CEO, William Capuzzi yesterday (8/29). If Bri can't be bothered to call out people admitting to discrimination and bigotry during DEI panels as not being aligned with our culture, maybe it is aligned with our culture.

Michael Walters, a Senior Director of Human Resources, emailed Richardson on the evening of August 30, stating:

> We believe your posts contain misstatements, as well as derogatory and disparaging remarks. We ask that you amend your posts accordingly to remove these types of comments and do so as soon as possible, but no later than Aug. 31, 2023…We are not requesting that you take down or delete the posts, but merely that any false, derogatory, disparaging and/or defamatory statements be removed.

John Richarson responded about half an hour later.

> You need to be specific in your challenge to my statements, or I can not help you. Being overly broad is a threat and affront to the free exercise of my rights.

G.C. Exh. 67.

On September 1, 2023, Respondent notified Richardson that it had terminated his employment.

The letter states as a basis for the termination:

> On August 25, 2023 and then again on August 30, 2023, you publicly posted on LinkedIn a number of false, disparaging, and defamatory statements about the Company and several of its employees (using their full names and job titles at that). Despite our urgent requests that you amend the post to remove these statements by August 31, 2023, you still have failed to do so. As has been explained to you, AFS encourages the free expression of opinions concerning its workplace and working conditions, however, you cannot publicly defame AFS employees in the process. Such statements publicly made by you as well as your unwillingness to retract them constitute a willful and continuing breach of your <u>Employee Agreement Regarding Confidentiality, Non-Competition and</u>

Non-Solicitation, specifically, the Non-Disparagement, Public Profiles Clause. Accordingly, you are terminated effective immediately.

G.C. Exh. 73.

Richardson's work performance was not a factor in his termination. His supervisor, Tom Warner, advised Richardson that he could use him as a positive job reference., G.C. Exh. 78.

On some date uncertain, after his termination, Richardson made another LinkedIn post claiming that "Apex again confirms that it supports management targeting employees for speaking out against discrimination and labor violations." He continued, "For example, Sudha "ratfuck" Guttula (his boss' boss) at one point instructed subordinate employees to rat on concerted activity." R. Exh. 2, Tr. 283-87.[6]

Respondent's Non-Disparagement Public Profiles Clause

On October 7, 2021, John Richardson signed an Employee Agreement Regarding Confidentiality, Non-Competition and Non-Solicitation which contains the following clauses which the General Counsel contends violated the Act.

Confidentiality

1. **Definitions of Proprietary Information,**

(a) As used herein, the term "Proprietary Information" means any and all information regarding, related to or belonging to the Company, its business, business relationship and financial affairs whether written, and whether or labeled or identified as confidential or proprietary that is confidential or proprietary in nature, including without limitation:

(iii) The subject matter of the Company's patents, design patents, copyrights, trade secrets, trademarks, service marks, trade names, trade dress, manuals, operating instructions, training materials, business and marketing plans and other industrial property, including such information in incomplete stages of design or research and development;

(vi) Company's educational processes and all materials related thereto

(vii) Company's list of past, existing or potential clients, customers, members, partners, stockholders and investors, and

[6] If R. Exhs. 2 and 3 are related, R-2 was posted after Laura Agharker was hired by Respondent as its chief of human resources, in 2024.

(viii) Any other information or documents which the Company reasonably regards as being confidential.

<u>11. Non-Disparagement: Public Profiles.</u> Employee acknowledges and agrees that the professional reputation of the Company is an important asset that should not be impaired by Employee, either during or after employment ceases or terminates for any reason. Employee agrees to not, either directly or indirectly , make any oral or written statement to any third party or person that disparages, defames or reflects negatively on the Company, the Company's business or operations, or the Company's partners, officers, employees, or management. Employee further agrees not to act in a manner that denigrates, demeans, or reflects negatively on the Company, its owners, employees or management, the Company's business, operations, products or services, or the Company's financial condition. Employee further agrees that within one week of termination of employment for any reason, Employee will update any and all profiles (including social media Profiles, such as LinkedIn, Twitter and Facebook) and resumes to reflect the fact that Employee is no longer employed by the Company.

G.C. Exhs. 2 and 90.[7]

Respondent's lawsuit against John Richardson

On October 17, 2023, Respondent filed a lawsuit against John Richardson in Seminole County, Florida. Respondent alleged that the statements set forth above in Richardson's August 25 and 30 LinkedIn posts were false, materially misleading and defamatory.

The complaint sought general expungement of all defamatory, disparaging libelous and false statements about Apex, actual damages and a declaratory statement that Richardson's statements were false. G.C. Exh. 81.

Respondent pursued the lawsuit by propounding interrogatories to Richardson and making a Request for Production of Documents, G.C. Exhs. 83 and 84. For reasons unexplained in this record, Respondent abandoned the lawsuit.

The only relevant evidence in this case is the testimony of John Richardson and the documents in the record. Respondent called one witness, Laura Agharkar, its VP/Chief of Global Human Resources. She was hired in 2024 and has no personal knowledge relevant to the legality of Richardson's termination or its lawsuit against him. Respondent did not offer any reason for not calling other witnesses, who may or may not still work for it, such as Brianna Rodgers, Sudha Guttula, Tobenna Egwu or Michael Walters.

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[7] A similar clause is contained in an agreement signed by another employee on April 1, 2022, G.C. Exh. 90. The clause is found on the 7th unpaginated page of G.C 2 and at page 94 of 608 in the consolidated on-line General Counsel exhibits.

Analysis

Richardson engaged in protected concerted activity.
Richardson's comments did not forfeit the protection of the Act.

There is no question that John Richardson engaged in protected concerted activity of which Respondent was aware and terminated his employment for conduct that was at least related to protected activity. Richardson clearly sought to enlist other employees in his crusade against what he perceived as Respondent's discrimination against males, GC. Exhs. 53, 57 and 64. For example, the last page of his August 30 posting, G.C. 64, encourages other employees to file a claim with the EEOC.

Respondent's reaction to Richardson's post, including suing him for defamation, supports a finding that Respondent was aware of the concerted nature of Richardson's posts. Moreover, the posts were protected insofar as they sought to inform the public about matters that affected employees' working conditions, *Bexar County Performing Arts Center d/b/a Tobin Center for the Performing Arts,* 372 NLRB No. 28 (2022); *Eastex, Inc. v. NLRB*, 437 US 556 (1978).

The conduct of a single employee in enlisting the support of fellow employees for their mutual aid and protection is as much "concerted activity as ordinary group activity. The object of inducing group action need not be express, a concerted objective may be inferred from the circumstances," *Whittaker Corp.,* 289 NLRB 933 (1988). Whether or not other employees agreed with Richardson is irrelevant, although the record establishes that some were sympathetic with Richardson's concerns, *Fresh and Easy Neighborhood Market, Inc.* 361 NLRB 151, 154 (2014); *El Gran Combo,* 284 NLRB 1115, 1117 (1987). The key question is whether the conduct for which Richardson was terminated was protected, or whether he lost the protection of the Act by making statements that were false or otherwise justified his termination.

There is a question as to whether his discharge should be evaluated under *Atlantic Steel Co.*, 245 NLRB 814 (1979) or *Wright Line* and *General Motors,* 369 NLRB No. 127 (2020). At the moment *Atlantic Steel* is the controlling Board precedent, *Lion Elastomers, LLC,* 372 NLRB No. 83 (2023) for direct confrontations with management at the worksite. My conclusion would be the same under either standard, or under *Pier Sixty LLC,* 362 NLRB 505 (2015) [totality of the circumstances]. I see no significance to whether Richardson's comments were made face to face or online.[8]

To prove a violation of Section 8(a)(3) and/or (1) under *Wright Line*, the General Counsel bears the burden of proving by a preponderance of the evidence that animus against protected conduct was a motivating factor in the adverse employment action. If the General Counsel makes a showing of discriminatory motivation by proving protected activity, the employer's knowledge of that activity, and animus against protected activity, then the burden of persuasion shifts to the

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[8] *NLRB v. Electrical Workers Local 1229 (Jefferson Standard)* 346 U.S. 464 (1953) is not relevant in that Richardson did not disparage Respondent's products or services.

NLRB v. Burnup & Sims, 379 U.S. 21 (1964) is not relevant because Respondent has not shown that it had a good faith belief that Richardson made misstatements of fact.

employer to prove that it would have taken the same action even in the absence of the protected activity.

The only issue in this case is whether Richardson's conduct was of such a nature that he forfeited the protection of the Act. In *Atlantic Steel Co*., 245 NLRB 814 (1979) the Board set forth four factors to be considered in making this determination: 1) the place of discussion; 2) the subject matter of the discussion; 3) the nature of the employee's outburst and 4) whether the outburst was provoked by an employer's unfair labor practice; Also see *Overnite Transportation Co.*, 343 NLRB 1431, 1437 (2004).

Pursuant to the *Wright Line/General Motors* or *Atlantic Steel* analysis, Respondent failed to rebut the General Counsel's initial showing of discrimination. This is because it did not establish that the statements made by Richardson were maliciously false and therefore unprotected, or even that it had a good faith belief that Richardson made false factual statements, *NLRB v. Burnup & Sims,* 379 U.S. 21 (1964). As stated earlier, I draw an adverse inference from Respondent's failure to call any witnesses about what was said at the DEI meetings and its failure to authenticate the transcript of the August 1 DEI meeting or prove that nothing had been deleted from the transcript. Moreover, Richardson's assertions about a hateful or hostile work environment were not limited to one or several DEI meetings.

Respondent cannot justify Richardson's termination on the basis of his expressed negative opinions about the company's DEI policies or its managers, or his characterization of the atmosphere at Apex Fintech, *Triple Play Sports Bar & Grill,* 361 NLRB 308 (2014); *Thor Power Tool Co,* 351 F. 2d 584 (7th Cir. 1965). Richardson did not lose the protection of the Act if his comments were merely an exaggerated characterization of managers' remarks (hyperbole), *Dreis & Krump Mfg. v. NLRB,* F. 2d 320 (7th Cir. 1976); *El San Juan Hotel,* 289 NLRB 1453, 1455 (1988), as opposed to statements that are deliberately or maliciously false or made with a reckless disregard for the truth.

I conclude that Respondent has not proved that Richardson said anything that was established to be factually incorrect and that it cannot justify his termination on the basis of his qualitative characterization of what Respondent's agents said or wrote or his opinion about their remarks.

Respondent by Kayla Nassiri and Michael Walters violated Section 8(a)(1) by ordering John Richardson to cease engaging in protected concerted activity

Nassiri's August 2023, communications, in attempting to limit Richardson's complaints to the "proper channels" and Walters' non-specific demand that Richardson remove statements from LinkedIn, interfered with Richardson's free exercise of his Section 7 rights. With regard to Nassiri's demand of confidentiality in Respondent's investigation of Richardson's complaints, Respondent has not shown that confidentiality was required to protect the safety of witnesses, the maintenance of evidence or the veracity of testimony, *Hyundai American Valley Shipping Agency,* 357 NLRB 860, 874 (2011). Therefore, Respondent, by Nassiri and Walters violated Section 8(a)(1) of the Act.

Respondent violated the Act by filing a lawsuit against John Richardson and by engaging in pre-trial discovery

The filing of the lawsuit and Respondent's discovery requests would have the likely consequences of discouraging any employee from engaging in concerted activity to change its policies with regard to the perceived discrimination/ alleged hostile workplace created by its DEI policies. The Supreme Court in *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983) held that a lawsuit against an employee violates the Act if it lacks a reasonable basis in law or fact; and was commenced with a retaliatory motive. I infer both from the lack of evidence that Richardson made any factual misstatements and the lack of any explanation as to why the lawsuit was abandoned. Before the test of reckless or knowing falsity can be met, there must be a false statement of fact,

Respondent violated the Act in maintaining rules which violated Section 8(a)(1)

In *Stericycle, Inc.,* 372 NLRB No. 113 (2023) the Board adopted the current standard for determining whether a facially neutral provision violates Section 8(a)(1). First the General Counsel must show that the challenged provision has a reasonable tendency to chill employees from exercising their Section 7 rights. The General Counsel meets this burden if an employee could reasonably interpret the provision to have a coercive meaning.

If the General Counsel meets its initial burden the employer may rebut the presumption of unlawfulness by showing that the provision advances a substantial business interest that the employer cannot protect with a more narrowly tailored provision.

Respondent's definition of Proprietary Information violates the Act in that it prevents employees from sharing material in company manuals, and training materials and processes that an employee perceives to violate the Act. As in this case, this definition would have prohibited Richardson from sharing the material in Poker Powher that he considered discriminatory. It also violated the Act in stating that whatever the company reasonably regards as confidential is proprietary, thus leaving employees to guess what information is or is not proprietary and confidential. An example is the inclusion of lists of past, existing members, partners, stockholders and investors. Not only might a reasonable employee be discouraged from sharing such information, Kayla Nassiri's August 22 email to Richardson specifically instructs him not to "name names." That a reasonable employee might think that "members" means employees is established by the fact that Laura Agharkar, Respondent's VP of Human Resources, thinks so, Tr. 231-32.

Conclusions of law

Respondent violated Section 8(a) (1) by terminating John Richardson on September 1, 2023.

Remedy[9]

The Respondent, having discriminatorily discharged John Richardson, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). Respondent shall compensate John Richardson for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings, computed as described above.

Also, Respondent must compensate John Richardson for all direct or foreseeable pecuniary harms that he suffered as a result of Respondent's unfair labor practices, regardless of whether these expenses exceed interim earnings, *Thrryv,, Inc.,* 372 NLRB No. 22 (2022), This shall be calculated separately from taxable backpay with the rate of interest prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010), *Crushin' It LLC,* 372 NLRB 100 (June 29, 2023).

Respondent shall file a report with the Regional Director allocating backpay to the appropriate calendar quarters. Respondent shall also compensate John Richardson for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than 1-year, *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

Respondent, Apex Fintech Services, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees for engaging in union or other protected concerted activity.
(b) Instructing employees to cease protected concerted activity.
(c) Demanding recission of protected posts from social media platforms
(d) Filing baseless lawsuits against employees for engaging in protected concerted activity.
(e) Maintaining Rules that coerce employees in the exercise of their Section 7 rights
(f) In any like or similar manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[9] Respondent has not established facts which would warrant denying Richardson reinstatement and backpay. This could be litigated in a compliance specification. Potential issues would be the date of the "ratfuck" post and what precipitated it.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Respondent shall take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer John Richardson full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Respondent shall make John Richardson whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of his unlawful discharge, as provided in the remedy portion of this decision.

(c) Compensate John Richardson for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

(d) Compensate John Richardson for the adverse tax consequences, if any, of receiving a lump sum backpay award and file with the Regional Director for Region 12, within 21 days of the date the amount of back pay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a report allocating the backpay award to the appropriate calendar year and a copy of the backpay recipient's corresponding W-2 form reflecting the backpay award.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge of John Richardson. Within 3 days thereafter notify John Richardson in writing that this has been done and that the discharge will not be used against him in any way

(f) Rescind, or lawfully revise, the unlawful rules in its Employee Agreement Regarding Confidentiality, Non-Competition and Non-Solicitation and disseminate a lawful agreement to all employees who were or are subject to the unlawful Employee Agreement.

(g) Within 14 days after service by the Region, post at its facilities, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting

11 If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on an intranet or an internet site, and/or other electronic means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business, ceased operations or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 1, 2023.

(h) Respondent shall preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 21 days after service by the Region, Respondent shall file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.
July 24, 2026

Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain with us on your behalf.
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge, discipline, or otherwise discriminate against any of you for engaging in union activity or other protected concerted activity.

WE WILL NOT file a baseless lawsuit against you for engaging in protected conduct.

WE WILL NOT demand that you cease engaging in protected conduct.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer John Richardson full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make John Richardson whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest compounded daily.

WE WILL make John Richardson whole for any other direct or foreseeable harms incurred as a result of his unlawful discharge, if any, regardless of whether these expenses exceed interim earnings, plus interest compounded daily.

WE WILL compensate John Richardson for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Regional Director allocating the backpay award to the appropriate calendar quarters.

WE WILL compensate John Richardson for his search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of John Richardson.

WE WILL, within 3 days thereafter, notify John Richardson in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL rescind, or lawfully revise, the unlawful rules in our Employee Agreement Regarding Confidentiality, Non-Competition and Non-Solicitation and disseminate a lawful agreement to all employees who were or are subject to the unlawful Employee Agreement.

Apex Fintech Solutions, LLC
(Employer)

Dated--------------- By ____
(Representative)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

South Trust Plaza, 201 East Kennedy Boulevard, Ste 530, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-325317 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2455.