

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MATT PASQUINELLI and BRYAN
PAYSEN, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

HUMBL, LLC, BRIAN FOOTE,
JEFFREY HINSHAW, GEORGE
SHARP, KAREN GARCIA, and
MICHELE RIVERA,

Defendants.

Case No. 1:23-cv-00743-CFC

Chief Judge Colm F. Connolly

**BRIEF IN SUPPORT OF THE
HUMBL DEFENDANTS'
MOTION TO DISMISS THE
AMENDED CLASS ACTION
COMPLAINT**

Filed: October 30, 2023

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NATURE AND STAGE OF THE PROCEEDINGS

Defendants HUMBL, Inc. (erroneously sued as HUMBL, LLC)¹ (“HUMBL” or the “Company”), Brian Foote, Jeffrey Hinshaw, Karen Garcia, and Michele Rivera (collectively, the “HUMBL Defendants”), through their undersigned counsel, submit this brief in support of their Motion to Dismiss the Amended Class Action Complaint (the “Complaint”) (D.I. 26). The U.S. District Court for the Southern District of California transferred this action to this Court under 28 U.S.C. § 1404(a) based on a forum-selection clause. (D.I. 47) Plaintiffs brought the Complaint as a putative class action, alleging violations of the Securities Exchange Act of 1934 (the “Exchange Act”) and the Securities Act of 1933 (the “Securities Act”). This is a pre-answer, pre-discovery motion to dismiss.

SUMMARY OF ARGUMENT

Plaintiffs bring claims under the Exchange Act based on allegations that the HUMBL Defendants defrauded them by making misleading statements about the Company. In reality, Plaintiffs’ allegations rely primarily on HUMBL’s statements regarding future expectations about various business initiatives that did not turn out as hoped. That is not securities fraud.

¹ HUMBL, LLC merged into HUMBL, Inc. (then named Tesoro Enterprises, Inc.) in December 2020 and, thereafter, HUMBL, LLC ceased to exist. *See* HUMBL, Inc., Registration Statement (Form S-1) (Nov. 29, 2021) at 5, *available at*: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1119190/000149315222016613/forms-1a.htm>. References herein to “HUMBL” mean HUMBL, Inc.

As an early-stage technology startup, HUMBL naturally pursued various business strategies and, when some did not pan out, continued to pursue others. That is an appropriate business model for an early stage company, not an illicit “pump and pivot” scheme as pejoratively characterized by Plaintiffs. Indeed, HUMBL announced various pilot projects and business partnerships in their early stages and similar forward-looking statements, but such statements were plainly not guarantees of any particular outcome, nor would any reasonable investor interpret them as such. There is no legal support for Plaintiffs’ novel “pump and pivot” theory of liability.

Regarding the development of its mobile app, HUMBL accurately stated in November and December 2020 that it had “designed” and “built” a mobile app, not that it was already “fully operational” for the public. Plaintiffs’ allegations on this topic rely on mischaracterizations and cherry-picking of certain statements out of context. In any event, the user functionality of the app in its various stages was plainly apparent to any public user.

Nor does the Complaint adequately allege that the HUMBL Defendants said anything misleading regarding stock issuances or reverse stock splits. Rather, the Complaint alleges that the HUMBL Defendants “omitted” to disclose certain *additional* information, with no real explanation as to how such “omissions” purportedly rendered the accurate statements misleading.

The Complaint utterly fails to allege the required “strong inference of scienter,” or anything close to it. The Complaint’s brief section on scienter is boilerplate and conclusory, merely alleging that certain Defendants had knowledge about the Company’s operations, not that they intended to say anything misleading.

The Complaint also fails to adequately allege reliance and loss causation. The Over-the-Counter market, on which HUMBL shares trade, is not an “efficient market” for purposes of establishing the fraud-on-the-market presumption of reliance, and the Complaint does not adequately allege a basis to conclude otherwise. Likewise, the Complaint fails to adequately plead loss causation, instead relying heavily on reports containing negative characterizations of already-public information, rather than an actual “corrective disclosure” of new information.

In addition, the individual defendants should be dismissed because the Complaint fails to allege a viable claim under Section 20(a) of the Exchange Act that the individual defendants are liable as “controlling persons” of the Company.

Separately, Plaintiffs assert a claim under the Securities Act that Defendants sold an “unregistered security,” which fails as a matter of law. Plaintiffs’ claim relies on artful pleading to imply that HUMBL’s “BLOCK ETX” service was equivalent to some sort of cryptocurrency or other asset offered to investors. But as the Complaint’s more specific factual allegations reveal, BLOCK ETX was not a security (or asset of any kind) that was offered for sale, but rather a software

product/service that assisted users in purchasing cryptocurrencies, which HUMBL had no involvement in creating, issuing, or holding. Indeed, Plaintiff Pasquinelli's own certification shows that he never "purchased" BLOCK ETX "shares" at all (there was no such thing) but instead purchased a variety of cryptocurrencies from third parties, alleging that he used the BLOCK ETX service to do so. Thus, the Complaint does not state a claim for sale of an unregistered security because, as a matter of law, the BLOCK ETX service was not a security.

In sum, the Complaint fails to adequately allege that the HUMBL Defendants made any misleading statement of present or historical fact, that they acted with scienter, caused any loss, or that Plaintiffs reasonably relied on any such misstatement. Each of those failures independently preclude Plaintiffs' fraud claims under the Exchange Act. Likewise, Plaintiffs' claim under Securities Act fails because the Complaint itself makes clear that the BLOCK ETX service at issue was not a security, but rather a service to assist in rebalancing a user's portfolio of assets. The Complaint should be dismissed in its entirety.

FACTS

Except where noted otherwise, the Complaint alleges the following facts, presumed true only for purposes of this motion.

HUMBL is a technology startup company that offers digital-commerce products and services. HUMBL's common stock is not listed on a major stock

exchange but instead trades on the Over-the-Counter market (the “OTC”), also known as the “Pink Sheets.” (Compl. ¶ 13.) Plaintiffs Matt Pasquinelli and Alfred Miller allege that they purchased HUMBL shares and lost money as a result of Defendants’ misleading statements about the Company. Pasquinelli, unlike Miller, also alleges that he purchased HUMBL’s former “BLOCK ETX” service and suffered losses from his use of that service.

The Complaint’s four causes of action fall into two categories: *first*, claims that Defendants are liable for securities fraud under Sections 10(b) and 20(a) of the Exchange Act based on allegedly misleading statements and omissions about the Company (Causes of Action I–III, the “Securities Fraud Claims”); and *second*, a claim that HUMBL’s BLOCK ETX service was an “unregistered security” in violation of Sections 5 and 12(a)(1) of the Securities Act (Cause of Action IV, the “Unregistered Security Claim”).

A. Securities Fraud Claims

In support of the Securities Fraud Claims, Plaintiffs identify the “allegedly false and/or misleading statements” in Paragraphs 243–285 of the Complaint. For convenience and completeness, the specific statements at issue are set forth in an **Appendix** (the “Appx.”), which also shows additional relevant statements from the same quoted sources that Plaintiffs omit from the Complaint. As the statements themselves make clear, they are almost exclusively forward-looking statements

about the future prospects of the Company, which was then a technology startup in its earliest stages.

More specifically, the Complaint asserts that Defendants made certain misleading statements or omissions on the following subjects: (1) statements about the functionality of HUMBL’s mobile app; (2) statements about HUMBL’s business partnerships and prospects; and (3) statements about conversion or dilution of HUMBL stock.

1. Mobile App Functionality

The Complaint quotes certain statements made between November 2020 and April 2021 about how the Company had “designed” and built” certain functionality for a mobile app, some of which were used in “pilot transactions” and tested by “beta testers.” (*See Appx.* at 1–7.) Plaintiffs contend that these statements are misleading because “HUMBL did not have a fully functional app until July 15, 2022.” (Compl. ¶ 211.) But the Complaint does not allege that the HUMBL Defendants ever claimed to have a “fully functional” app before July 2022. To the contrary, in the very same statements Plaintiffs rely on for their claims, the HUMBL Defendants made clear that they were discussing app functionality that “will” be available to the public in the future, that it was subject to “pilot” and “beta” testing in the meantime, that the Company was working on “regulatory clearances,” and that the “roll out” would happen in stages. (*See Appx.* at 1–7.)

2. Business Relationships and Prospects

Plaintiffs primarily fault certain of HUMBL’s statements about its business relationships (*see* Appx. at 8–11) for “omitting” to make additional, pessimistic statements about the prospects of those relationships and for not reiterating that HUMBL’s mobile app was not yet fully functional for the public. For example, for three of the business relationships, Plaintiffs contend that the HUMBL Defendants were required to opine that those relationships “could do little to help HUMBL . . . because its App did not have even basic functionality yet.” (*See* Compl. ¶ 253 (Cyberbeat), ¶ 266 (TGP); ¶ 278 (Aurea Group).) For the Cyberbeat relationship in particular, the Complaint faults HUMBL’s press release for noting the relevant experience that the Cyberbeat relationship could bring to bear, while “fail[ing] to disclose” that “Cyberbeat was less than [a] two-year-old company.” (*Id.* ¶ 253.) But the Complaint selectively omits from its quotation the portion of the same statement that asserts clearly that it was “Cyberbeat’s *executives* [who] have had a proven track record” (Appx. at 8 (emphasis added).)

In addition, the Complaint contends that HUMBL’s statement that it had a “global network of regional affiliates” was somehow misleading because the Company “failed to disclose” that the network then “consisted of one or two individuals in each city in which it maintained an office.” (Compl. ¶ 246.) The Complaint provides no other information as to why Plaintiffs believe that statement

was misleading. Nor does the Complaint mention that the statement was made in the context of a forward-looking statement about what “HUMBL’s global money platform *will deliver*” in the future. (Appx. at 8 (emphasis added).)

Finally on this topic, the Complaint asserts that statements during a May 2021 investor call were misleading to the extent they addressed how the Company was “driving revenues” across its business lines including, among others, “ticketing” and “NFTs.” (Compl. ¶¶ 283–85.) The Complaint also cites statements on that same call about how Tickeri, a business that HUMBL acquired, achieved certain goals for its ticketing sales and was among the Company’s “super accretive” business initiatives. (*Id.* ¶¶ 283–84.) The Complaint contends that HUMBL should have told its investors that its acquisition of Tickeri was “overvalued” and that “neither HUMBL’s ticketing platform nor NFT service were generating significant revenue” at that time. (*Id.* ¶ 285.) But the Complaint does not dispute that Tickeri, in fact, met the goals as represented, that the ticketing and NFT businesses generated revenue, or that the Company believed these lines of business to be “accretive,” meaning “result[ing] in gradual or incremental growth in value for a company.”² The Complaint also omits statements made contemporaneously with the challenged statements above, which indicate that both the NFT and ticketing functionality were

² See Investopedia, “Accretive,” *available at*: <https://www.investopedia.com/terms/a/accretive.asp>.

still under development. (*See* Appx. at 9–11 (describing what “we are going to do” with NFTs; functionality “coming soon with NFTs”; “can’t wait to grow [the ticketing] business together [with Tickeri]”; “the ticketing platform [is] again, under construction”).)

3. Conversion or Dilution of HUMBL Stock

In this third category of allegedly misleading statements, the Complaint cites the Defendants’ statements regarding the conversion of preferred shares of HUMBL stock into common shares and expectations about future dilution of the common shareholders. (*See* Appx. at 11–13.)

The Complaint cites Company press releases from November 17, 2020 and February 25, 2021 stating that new classes of preferred shares were being created and that, in the latter instance, the Company had executed a reverse stock split. (*See* Appx. at 11–12.) The Complaint does not dispute the accuracy of this information. Instead, the Complaint apparently takes issue with the following statement in the earlier press release: “The company does not anticipate that the number of common shares outstanding will increase during the remainder of 2020 and throughout 2021.” (Compl. ¶ 248.) The Complaint also cites a statement by co-defendant George Sharp (an outside advisor to HUMBL) on a February 26, 2021 investor call that, “If you’re worried about dilution, don’t be.” (Appx. at 13.) The Complaint alleges that these statements were “materially false and/or misleading” because the new class of

preferred shares was eligible to be converted into common shares starting on December 3, 2021, and, if such conversions occurred, they would dilute the value of the common stock. (*Id.* ¶ 249.)

The Complaint omits the following additional statement by Mr. Sharp in that same February 26, 2021 investor call: “We don’t *anticipate* any dilution before the end of this year, certainly. And even then, this is not your typical OTC stock. *We believe* these are investors rather than necessarily profit-takers.” (Appx. at 13 (emphasis added).) The Complaint alleges that, months after these statements, some preferred shareholders did convert their shares to common shares. (Compl. ¶ 159.) Thus, Plaintiffs’ claim to have been “materially misled” on this topic is apparently based on the assertion that Mr. Sharp stated he did not anticipate that there would be an increase in the number of common shares during the 409 days from November 17, 2020 to December 31, 2021, but it turned out that there was no increase in the number of common shares during only 382 days into the future. The Complaint does not allege that Mr. Sharp did not sincerely believe his prediction, nor does it allege that any of the Defendants converted shares during that time.

Relatedly, the Complaint cites as misleading the following Tweet by HUMBL CEO Brian Foote on April 20, 2021: “We have noted some concern re: the Series B preferred shares (of which I own 45%) that are not eligible to be converted until December ‘21. I will commit to not selling any of those personal shares for the

entirety of Calendar Year 2021-2022.” (Appx. at 13.) The Complaint does not allege that Mr. Foote did not honor his commitment and does not dispute that those shares accounted for 45% of the total. Instead, the Complaint alleges that Mr. Foote’s parents separately owned HUMBL stock, without further explanation as to why that would render Mr. Foote’s statement misleading. (Compl. ¶ 282.)

B. Unregistered Security Claim

In support of the Unregistered Security Claim, the Complaint characterizes HUMBL’s former BLOCK ETX service as an “unregistered security,” even while describing it as merely a service that used automated “trading codes” to implement a “simple rebalancing of assets” owned by the users of the service (*id.* ¶¶ 194, 242). As described in the Complaint, the BLOCK ETX services were fee-based “subscription products.” (*Id.* ¶¶ 93, 231.) The Complaint notes that HUMBL discontinued its BLOCK ETX service after responding to a question from the SEC in connection with HUMBL’s filing of its Form S-1 Registration Statement, but does not allege that the SEC took any further action. (*Id.* ¶ 231.)

The Complaint does not allege that Defendants issued, sold, or had custody of *any* of the underlying cryptocurrency assets Mr. Pasquinelli allegedly bought and sold using the BLOCK ETX service. Indeed, the Complaint repeatedly quotes the following description of the BLOCK ETX service: “These products are non-custodial, algorithmically driven software services that allow customers to purchase

and hold digital assets in pre-set allocations through their own digital asset exchange accounts.” (*E.g., id.* ¶ 24.) Nevertheless, Plaintiffs contend that HUMBL was somehow an “issuer” of BLOCK ETX, claiming that the service was itself a “security” that needed to be registered.

ARGUMENT

I. THE COMPLAINT FAILS TO STATE A CLAIM UNDER THE EXCHANGE ACT FOR SECURITIES FRAUD

Fatal to the Complaint, Plaintiffs fail to allege that the HUMBL Defendants made any material misleading statements, much less that they did so with intent to defraud. Most of the identified statements are inactionable predictions of future events and the remainder are selectively quoted out of context. Further, the Complaint does not adequately allege that Plaintiffs actually relied on any of the statements or that they suffered any loss as a result.

A. Legal Standards

Under FRCP 12(b)(6), a complaint should be dismissed for “failure to state a claim upon which relief can be granted.” To survive such a motion, a complaint “must do more than allege the plaintiff’s entitlement to relief.” *In re Amarin Corp. PLC Sec. Litig.*, 2016 U.S. Dist. LEXIS 55568, at *19 (D.N.J. Apr. 26, 2016) (quoting *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009)). Thus, “[a] complaint has to ‘show’ such an entitlement with its facts,” in a manner that “plausibly give[s] rise to an entitlement to relief.” *Id.* at *19–*20. In addition, FRCP

9(b) imposes a heightened pleading standard for fraud claims: the complaint “must state with particularity the circumstances constituting fraud or mistake.”

In the case of federal securities fraud allegations, Congress imposed an “even higher pleading standard” in the Private Securities Litigation Reform Act (“PSLRA”), which “is targeted at preventing abusive securities litigation.” *In re Amarin Corp. PLC Sec. Litig.*, 2016 U.S. Dist. LEXIS 55568, at *22. For private securities fraud claims,

First, “the complaint must specify each allegedly misleading statement, why the statement was misleading, and if an allegation is made on information and belief, all facts supporting that belief with particularity.” . . . Second, the complaint must “with respect to each act or omission alleged to violate this chapter, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.”

Williams v. Globus Med., Inc., 869 F.3d 235, 240–41 (3d Cir. 2017) (citing 15 U.S.C. § 78u-4(b)). “Significantly, both provisions require facts to be pleaded ‘with particularity.’” *Institutional Inv’rs Grp. v. Avaya, Inc.*, 564 F.3d 242, 253 (3d Cir. 2009).

Subject to these heightened pleading requirements, to state a claim for securities fraud under Exchange Act Rule 10(b) or its corresponding Rule 10b-5,

[A] plaintiff must plead facts demonstrating that (1) the defendant made a materially false or misleading statement or omitted to state a material fact necessary to make a statement not misleading; (2) the defendant acted with scienter; and (3) the plaintiff’s reliance on the defendant’s misstatement caused him or her injury.

Williams, 869 F.3d at 240 (citing 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5).

Importantly, “[Section] 10(b) and Rule 10b-5(b) do not create an affirmative duty to disclose any and all material information. Disclosure is required under these provisions only when necessary ‘to make . . . statements made, in light of the circumstances under which they were made, not misleading.’ . . . ‘Silence, absent a duty to disclose, is not misleading under Rule 10b-5.’” *Id.* at 241. Indeed, “a corporation is not required to disclose a fact merely because a reasonable investor would very much like to know that fact.” *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1432 (3d Cir. 1997) (quoting precedent).

B. The Complaint Does Not Plead Any Actionable Misstatements of Present or Historical Fact.

Plaintiffs do not actually allege that any of the quoted statements of present or historical fact were inaccurate. Instead, the Complaint asserts that some were somehow “misleading.” But the Complaint makes these assertions either without any adequate explanation or by selective quotation of statements out of context.

When reviewing allegedly misleading statements, “courts must ‘examine statements in the full context of the documents which they are a part’ and not engage in a ‘selective reading’ of the statements.” *In re Aurora Cannabis, Inc. Sec. Litig.*, 2021 U.S. Dist. LEXIS 126677, at *36 (D.N.J. July 6, 2021) (quoting *City of Edinburgh Council v. Pfizer, Inc.*, 754 F.3d 159, 169 (3d Cir. 2014)). When ruling on a motion to dismiss, it is appropriate for a court to consider documents that are

cited in or relied upon by the complaint. *Burlington*, 114 F.3d at 1426. This is to prevent a plaintiff “extracting an isolated statement from a document” as the basis for a fraud claim, “even though if the statement were examined in the full context of the document, it would be clear that the statement was not fraudulent.” *Id.*

Furthermore, under the PSLRA’s heightened pleading standard, a complaint “must specify each allegedly misleading statement and the reasons why the statement is misleading” and must do so “with particularity.” *Avaya*, 564 F.3d at 252–53.

1. App Functionality

Defendants’ statements in late 2020 and early 2021 that the Company “designed” and “built” a mobile app are not inconsistent with Plaintiffs’ allegation that the app was not “fully functional” until later. (Compare Appx. at 1–7 with Compl. ¶ 211.) While that is apparent even on the face of Plaintiffs’ selective quotations, it is even more apparent from the full context of those statements. Indeed, the same statements upon which Plaintiffs rely made clear that Defendants were not representing that the mobile app was complete and available for use by the public. Instead, they described functionality that the Company anticipated that it “will deliver” in the future, making it eminently clear that such features were being tested by “beta testers” in “pilot transactions,” not widely available for the public. (See Appx. at 1–3.)

As for the description of what the Company “built” as having certain functionality “in the barn,” the very same statement described that functionality as subject to “regulatory clearances.” (*Id.* at 4.) Further, that statement described how those regulatory issues would require the Company to “crawl, walk, run on how we roll out this business, . . . [s]o we’ll keep some cars in the garage sometimes until we know exactly what is a go or no-go zone for the business.” (*Id.*) Accordingly, those statements could not be reasonably interpreted as representing that the app was already fully functional and available for use by the public. In any event, the functionality or lack thereof by the public was apparent to any public user. *See, e.g., In re Tseng Lab. Sec. Litig.*, 954 F. Supp. 1024, 1029 (E.D. Pa. 1996) (“[There can be no liability under the securities laws because of an alleged failure to disclose information that is already available to the public. This is because such information is already part of the ‘total mix.’”), *aff’d*, 107 F.3d 8 (3d Cir. 1997). Accordingly, the statements of present fact about the Company’s mobile app are not actionable.

2. Business Relationships and Prospects

The Complaint does not identify any untrue statement about the Company’s business relationships but, rather, faults Defendants for not volunteering information and for failing to take a pessimistic outlook or accurately predict the future. In particular, Plaintiffs contend that the Company should have stated that these relationships “could do little to help HUMBL . . . because its App did not have even

basic functionality yet.” (*Supra* at 7.) Plaintiffs also contend that the Company’s statement referencing its “global network of affiliates” was misleading for “fail[ing] to disclose” that the network then “consisted of one or two individuals in each city in which it maintained an office.” (*Supra* at 7–8.) Thus, Plaintiffs offer no basis to dispute the accuracy of these disclosures but, instead, contend that Defendants were required to disclose additional information, particularly in a way that expressed a negative view about the prospects of those relationships. That is not the law. *See Williams*, 869 F.3d at 241 (no affirmative duty of disclosure); *see also Singh v. Schikan*, 106 F. Supp. 3d 439, 448–49 (S.D.N.Y. 2015) (“the law is clear that companies need not depict facts in a negative or pejorative light or draw negative inferences to have made adequate disclosures”) (collecting cases). And again, there simply were no misleading statements about the status of the mobile app.

In the single instance where the Complaint feebly implies some factual inaccuracy in an announcement of a business relationship, it relies on a cherry-picked quotation that omits clarifying language in the same statement. As described above (at 7), the announcement regarding the Cyberbeat relationship stated that its “*executives* have had a proven track record,” which is not inconsistent with the Complaint’s allegation that “Cyberbeat was less than [a] two-year-old company.” The Complaint offers no explanation for why a lack of an additional disclosure about

the age of the entity itself somehow rendered misleading the statement about its executives' experience.

As for statements regarding the Company's ticketing and NFT businesses, the Complaint again fails to identify any particular false statement of present or historical fact. The Complaint does not dispute that those business lines were already generating revenue or that the ticketing business achieved its goals regarding ticketing sales. (*See supra* at 8.) Instead, the Complaint opines that the revenue was not "significant" (*see* Compl. ¶ 285), apparently because it did not exceed \$1 million for the first half of 2021 (*see id.* ¶ 121). But again, the Complaint offers no basis for why the Company was required to disclose the particular amount of revenue generated. *See Williams*, 869 F.3d at 241.

Nor does the Complaint explain why Defendants were required to downplay the revenue for a nascent line of business as "insignificant" if it did not exceed \$1 million for the first half of its first year or to opine that it had overpaid for the Tickeri acquisition. To the contrary, Section 10(b) does not require a company to pejoratively characterize its own business performance or prospects. *Singh*, 106 F. Supp. 3d at 448–49; *see also Howard v. Arconic Inc.*, 395 F. Supp. 3d 516, 548 (W.D. Pa. 2019) ("Subjective characterizations of a company's performance or future performance, absent a misstatement of fact, will not give rise to liability.")

(citing *In re Aetna, Inc. Sec. Litig.*, 617 F.3d 272, 283 (3d Cir. 2010)); *In re Hertz Glob. Holdings, Inc.*, 905 F.3d 106, 117 (3d Cir. 2018)).

3. Stock Issuances and Reverse Split

The Complaint does not allege any of the statements of present or historical fact regarding stock issuances, conversions, or the reverse split were inaccurate. For example, there is no dispute that the November 17, 2020 press release correctly stated that Defendant Foote agreed to convert 318 million of his shares to preferred shares, or that after the conversion, the “outstanding number of common shares will have been reduced by over 860 million shares since Mr. Foote became President.” (See Appx. at 11–12.) Nor is there any dispute about the description in the February 25, 2021 press release as to the “one for four (1:4) reverse split of [the Company’s] common stock” and “other changes to its share structure.” (See *id.* at 12.)

Instead, the Complaint improperly challenges certain *forward-looking* statements on this topic, which are addressed in the next section.

C. The Projections and Opinions Upon Which the Complaint Relies Are Not Actionable as a Matter of Law

The rest of the statements Plaintiffs allege as misleading are inactionable opinions, projections, or other forward-looking statements.

In a federal securities fraud case, “opinions are not actionable unless they are (1) not honestly believed and (2) lack a reasonable basis[.]” *In re Amarin Corp. PLC Sec. Litig.*, 689 F. App’x 124, 132 (3d Cir. 2017) (citing *City of Edinburgh Council*

v. Pfizer, Inc., 754 F.3d 159, 170 (3d Cir. 2014)). Similarly, “[s]tatements about a board’s or a company’s goals are inactionable puffery, as multiple courts have held.” *Kiger ex rel. Qualcomm Inc. v. Mollenkopf*, 2021 U.S. Dist. LEXIS 220509, at *5-*6 (D. Del. Nov. 15, 2021). More generally, “[o]pinions, predictions, and other forward-looking statements are not actionable unless the speaker does not genuinely and reasonably believe them when they are made (*i.e.*, has actual knowledge of falsity).” *In re CIGNA Corp Sec. Litig.*, 2005 U.S. Dist. LEXIS 35524, at *10 (E.D. Pa. Dec. 23, 2005).

“[Third] Circuit law generally requires more than a showing that a predicted event did not occur in order to sustain a claim of fraud.” *Id.* at 11. For example, the Third Circuit held that the fact that a company “subsequently changed its business strategy” announced in a prior statement did not support a claim for securities fraud because the company “owed no duty to update” the prior statement. *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 536 (3d Cir. 1999); *see also Cal. Pub. Empls.’ Ret. Sys. v. Chubb Corp.*, 394 F.3d 126, 158 (3d Cir. 2004) (“We have long rejected attempts to plead fraud by hindsight.”); *accord In re Diebold Nixdorf, Inc. Sec. Litig.*, 2021 U.S. Dist. LEXIS 62449, at *39 (S.D.N.Y. Mar. 30, 2021) (“a change in business strategy does not itself show that the old approach was plagued by fraud”).

Predictions and projections are generally immaterial as a matter of law because they do not guarantee any specific outcome. As the Second Circuit has held,

To be “material” within the meaning of § 10(b), the alleged misstatement must be ***sufficiently specific*** for an investor to reasonably rely on that statement as a ***guarantee of some concrete fact or outcome*** which, when it proves false or does not occur, forms the basis for a § 10(b) fraud claim.

City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG, 752 F.3d 173, 185 (2d Cir. 2014) (emphasis added); *see also Howard v. Arconic Inc.*, 395 F. Supp. 3d 516, 549 (W.D. Pa. 2019) (statements were inactionable where “[t]hey were not a guarantee that no safety issues would ever occur. Instead, they presented a declaration of goals and aspirations for the Company.”); *Amarin*, 689 F. App’x at 131 (affirming dismissal where defendants “never expressly stated or implied that the [FDA agreement] guaranteed approval”).

Further, the PSLRA provides a statutory “safe harbor” for “forward-looking statements.” 15 U.S.C. § 78u-5(c) (the “Safe Harbor”). “The statute ‘immunizes from liability any forward-looking statement, provided that: the statement is identified as such and accompanied by meaningful cautionary language; ***or*** is immaterial; ***or*** the plaintiff fails to show the statement was made with actual knowledge of its falsehood.’” *Williams*, 869 F.3d at 245 (emphasis added); *see OFI Asset Mgmt. v. Cooper Tire & Rubber*, 834 F.3d 481, 491 (3d Cir. 2016) (clarifying that the list is “disjunctive”).

Immunized “forward-looking” statements include, among others, “a statement of the plans and objectives of management for future operations, including

plans or objectives relating to the products or services of the issuer”; “a statement of future economic performance”; and “any statement of the assumptions underlying or relating to any statement described [above].” 15 U.S.C. § 78u-5(i).

Courts have emphasized the high bar that the Safe Harbor sets for plaintiffs to plead a viable claim based on a forward-looking statement. For example, “[t]he scienter requirement for forward-looking statements’—actual knowledge—is stricter than for statements of current fact . . . [and] attaches only upon proof of knowing falsity.” *Lewakowski v. Aquestive Therapeutics, Inc.*, 2023 U.S. Dist. LEXIS 42484, at *27 (D.N.J. Mar. 14, 2023) (citing cases); *e.g.*, *Williams*, 869 F.3d at 245 (affirming dismissal where “plaintiffs have failed to adequately plead that the revenue projections were made with actual knowledge of falsehood”); *see generally CIGNA*, 2005 U.S. Dist. LEXIS 35524, at *10 (describing the Safe Harbor as one of the “stringent pleading requirements of the PSLRA”).

And like all scienter allegations in a securities fraud case, Plaintiffs must adequately plead a “strong inference” of scienter. (*See infra* at 28–29.) In the case of forward-looking statements, that means that a complaint must plead “*with particularity*” a “*strong inference*” that defendants had “*actual knowledge*” that their forward-looking statements were false when made. *See Williams*, 869 F.3d at 246 (emphasis added); *Lewakowski*, 2023 U.S. Dist. LEXIS 42484, at *27.

Here, Plaintiffs’ allegations do not come anywhere close to meeting these exacting standards for the forward-looking or opinion statements they cite.

1. App Functionality

Almost all of the challenged statements about HUMBL’s anticipated mobile app functionality are actually forward-looking statements. (*See* Appx. at 1–7.) Those statements reflected the functionality the Company anticipated its app “will deliver,” “will allow,” and similar projections or aspirations for the app. (*See id.*) Those statements were accompanied by cautionary language both in the Safe Harbor Statement and elsewhere. The Safe Harbor Statement, for example, cautioned that there were “risks and uncertainties” regarding “delays in completing various engineering and manufacturing programs” and “regulatory requirements and the ability to meet them,” among others. (Appx. at 1–2.) And, as noted above, the substance of the statements themselves cautioned that the Company would need to obtain “regulatory clearances” and that the Company would need to “crawl, walk, run on how we roll out this business” in light of those limitations. (*Id.* at 4.) Likewise, the statements made clear that the product was being “tested in beta behind the scenes” and in “pilot transactions.” (*Id.* at 2, 6.)

These statements are plainly inactionable predictions of a future outcome. Indeed, they qualify for protection under each of the three independent prongs of the Safe Harbor. *First*, they are accompanied by “meaningful cautionary language” that

they were subject to relevant risks and uncertainties. *Second*, they were “immaterial” as a matter of law because they were not specific “guarantees” of any “concrete fact or outcome” but, instead, were subject to uncertainties, including testing and regulatory clearances. *Third*, the Complaint fails to allege “with particularity” a “strong inference” that Defendants had “actual knowledge” that these statements were somehow false. Indeed, not only does the Complaint fail make such particularized allegations that Defendants *knew* these predictions would not come true, the Complaint actually concedes that the predictions for a “fully functional” mobile app *were ultimately realized* in July 2022. (*See* Compl. ¶ 211.)

2. Business Relationships and Prospects

As discussed above, most of the challenged statements about HUMBL’s business relationships were accurate statements of present fact about those relationships. (*See supra* at 16–18.) Nevertheless, to the extent the Complaint seeks to characterize those statements as implying something about the future prospects of those relationships, the allegations fare no better.

The Company was not, as the Complaint suggests, required to project that these partnerships “could do little to help HUMBL” because its app was not yet functional. (Compl. ¶¶ 253, 266, 278.) Again, there is no requirement that a Company make pessimistic, subjective characterizations of its future prospects. (*See supra* at 16–17.) Nor were any of these announcements worded as “guarantees” of

any “concrete fact or outcome.” Instead, they were merely announcements of business partnerships that the Company hoped would be fruitful in the future. And once again, the Complaint is devoid of any particularized allegations that Defendants somehow *knew* that these relationships would not yield the hoped-for benefits.

To the extent the Complaint challenges the characterization of the acquisitions of the Tickeri and NFT businesses as “super accretive” (Compl. ¶¶ 284–85), that also fails as an inactionable opinion and/or forward-looking statement. To say that an acquisition or line of business is “accretive” is certainly no guarantee of any concrete fact or outcome. It is a subjective characterization that those acquisitions were expected to “result in gradual income or growth for [the] company.” (*See supra* at 8 n.2.) The Complaint does not include any particularized allegations supporting a “strong inference” that the Defendants “actually knew” that these businesses would not result in gradual growth. And indeed, the Complaint does not and cannot allege that future incremental growth from these businesses was somehow known to be impossible. Accordingly, the “accretive” statement is inactionable as a matter of law.

In any event, the surrounding statements regarding the NFT and ticketing businesses—which the Complaint selectively omits—make clear that these statements were forward-looking, and therefore not guaranteed. (*See Appx.* at 9–11 (discussing what “we are going to do”; “conversations in this zone”; functionality

“coming soon with NFTs”; “we did a test [of the NFT Gallery]”; “we are now in the process of a v2 NFT marketplace build”; the “ticketing platform” is “under construction”).)

Moreover, the Complaint’s apparent overarching theory that Defendants engaged in a “pump and pivot” scheme has no legal basis whatsoever. (See Compl. ¶ 31.) The fact that a company—particularly an early-stage tech startup like HUMBL—makes changes to its business strategy does not constitute securities fraud. See, e.g., *CIGNA*, 2005 U.S. Dist. LEXIS 35524, at *11. Similarly, the fact that certain business ventures or relationships did not ultimately turn out as well as hoped does not constitute securities fraud. See, e.g., *Advanta*, 180 F.3d at 536. Instead, what Plaintiffs are attempting to do here is to plead the type of “fraud by hindsight” that courts routinely reject, particularly under the demanding pleading standards of the PSLRA that are designed to prevent abusive securities litigation at the outset. See, e.g., *Chubb*, 394 F.3d at 158.

3. Stock Issuances and Dilution

As noted above, the entirety of the Complaint’s allegations regarding statements about stock issuances and dilution are forward-looking in nature. (See *supra* at 19.) For example, the Complaint challenges the statement by co-Defendant Sharp that “If you’re worried about dilution, don’t be.” (Appx. at 13.) Yet it omits the very next sentence, which clarifies that “We don’t *anticipate* any dilution before

the end of this year, certainly.” (*Id.*) Nor does it include the next statement in which Mr. Sharp provides the basis of his prediction that owners of preferred shares would not convert their shares to common stock “before the end of the year”: “We *believe* these are investors rather than necessarily profit-takers.” Thus, this statement of “belie[f]” about what Mr. Sharp “anticipate[d]” is a forward-looking statement immunized by the Safe Harbor, unless Plaintiffs allege with particularity a strong inference that he actually knew that investors would convert their shares before the end of 2021. *See Williams*, 869 F.3d at 246.

The Complaint contains no such allegations, or anything close. Instead, it alleges that Defendants were aware that certain preferred shareholders “could” convert their shares beginning on December 3, 2021. (Compl. ¶ 274.) But the Complaint alleges no basis, much less particularized allegations of a “strong inference,” that Defendants somehow had actual foreknowledge of what the preferred shareholders would do after December 3.

The Complaint also offers no explanation as to why it would be material to investors that preferred shares might be converted after December 3 as opposed to “the end of th[e] year,” as predicted. That is to say, Mr. Sharp’s prediction as to the period during which no shares would be converted was only off by, at most, 28 days, or 7% of the predicted period. Tellingly, the Complaint offers no explanation as to why this predictive error is material.

Similarly, there is no dispute that Defendant Foote kept his promise that he would not sell any of his personal shares through 2022. (*See* Appx. at 13.) Plaintiffs vaguely suggest that this was somehow misleading because Mr. Foote’s parents also owned their own shares. (Compl. ¶ 282.) The Complaint does not give any reason why that fact is inconsistent with Mr. Foote’s commitment not to sell any of his “personal shares,” and there is none.

* * * *

In sum, the Complaint offers no basis to meet the high pleading standards that are required to demonstrate any actionable forward-looking or opinion statements.

D. The Complaint Fails to Adequately Allege Scienter

In addition to the specific defects described above, equally fatal, the Complaint fails to plead any adequate scienter allegations whatsoever. None of the allegations even come close to meeting the PSLRA’s demanding standard for scienter—whether they are based on present, historical, or forward-looking statements.

The PSLRA imposes “exacting” scienter requirements to plead securities fraud. *Rahman v. Kid Brands, Inc.*, 736 F.3d 237, 243 (3d Cir. 2013). To satisfy this standard, a securities fraud claim must “state with particularity . . . the facts evidencing scienter, i.e., the defendant’s intention ‘to deceive, manipulate, or defraud.’” *Id.* at 241–42 (emphasis added).

“To satisfy this scienter requirement, a plaintiff must “state with particularity facts giving rise to a strong inference” that the defendant acted with scienter. *Id.* at 242 (emphasis in original). “[T]o qualify as ‘strong’ . . . an inference of scienter must be more than merely plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.” *Id.* (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314 (2007) (emphasis added)). “To determine whether the plaintiff has alleged facts that give rise to the requisite ‘strong inference’ of scienter, a court must consider plausible, nonculpable explanations for the defendant’s conduct, as well as inferences favoring the plaintiff.” *Tellabs*, 551 U.S. at 323–24 (emphasis added). “[O]missions and ambiguities count against inferring scienter.” *City of Roseville Emples. Ret. Sys. v. Horizon Lines, Inc.*, 442 F. App’x 672, 675 (3d Cir. 2011).

Here, the Complaint is almost entirely devoid of any scienter allegations at all, let alone any that would meet the PSLRA’s exacting standards. Instead, the Complaint’s very brief section devoted to scienter focuses on general and conclusory allegations that Defendants were generally aware of what was going on at the Company. (*See* Compl. ¶¶ 298–303.)

Thus, the Complaint recites that Defendants were “privy” to information about the Company “by virtue of their receipt of information”; “their control over, and/or receipt and/or modification of” Company statements; “and/or their

associations with the Company.” (*Id.* ¶ 298.) The Complaint also alleges that Defendants “had actual knowledge of HUMBL’s strategy for the reverse merger with Tesoro and structuring of the different classes of shares at the time they were occurring,” as well as “knowledge of the capabilities of HUMBL’s touted technology.” (*Id.* ¶¶ 299, 301.) The Complaint also alleges that Defendants “closely followed HUMBL’s stock price” and “knew or recklessly disregarded that information about any deal falling through or failing . . . was material to investors.” (*Id.* ¶¶ 302, 303.)

In addition, in the section of the Complaint identifying the allegedly misleading statements, Plaintiffs repeatedly recite, like a mantra, that Defendants “knew or recklessly disregarded” the allegedly true “facts” identified in that section. (*Id.* ¶¶ 243–85.) Those allegedly true “facts” are necessarily accepted as true for purposes of this motion and have already been discussed in detail above, explaining that none of those facts in any way rendered Defendants’ statements misleading.

To allege that the Defendants knew the truth about the Company does nothing to establish a “strong inference” that Defendants intended to “deceive, manipulate, or defraud” investors. As shown above, none of the statements of present or historical fact were incorrect. And the forward-looking statements are protected by the Safe Harbor. At most, Mr. Sharp’s prediction about how long it would be before preferred shareholders converted their shares was off by a matter of days. But again,

there is absolutely no basis in the Complaint to infer, let alone “strong[ly]” infer, that the inaccurate prediction was part of a scheme to defraud.

And again, the law is clear that Plaintiffs cannot plead securities fraud by citing business initiatives that did not turn out as well as hoped or that did not come to fruition as fast as hoped. (*See supra* at 20, 26.) That is the essence of what the Complaint alleges here for its Securities Fraud Claims, and those claims should be dismissed accordingly.

E. The Complaint Fails to Adequately Allege Reliance

Plaintiffs do not allege that they actually relied on any particular statement at issue in making decisions about whether to buy or sell HUMBL stock. Instead, they rely upon “the presumption of reliance established by the fraud-on-the-market doctrine.” (Compl. ¶ 312.) But that theory fails because they have not adequately alleged an “efficient market” for HUMBL shares.

“The ‘fraud on the market’ theory accords plaintiffs in Rule 10b-5 class actions a rebuttable presumption of reliance if plaintiffs bought or sold their securities in an ‘efficient’ market.” *Burlington*, 114 F.3d at 1419 n.8. Thus, “plaintiffs are accorded the presumption of reliance based on the theory that in an efficient market the misinformation directly affects the stock prices at which the investor trades and thus, through the inflated or deflated price, causes injury even in the absence of direct reliance.” *Id.* “Therefore, in order to avail themselves of the

fraud on the market theory and the benefit of not having to plead specific reliance on the alleged misstatement or omission, plaintiffs have to allege that the stock in question traded on an open and efficient market.” *Id.*

Here, however, HUMBL’s shares do not trade on a major stock exchange but, instead, trade on the Over-the-Counter market, also known as the “OTC” (formerly, “OTCBB”) or “Pink Sheets.” (Compl. ¶ 13.) Unlike the major stock exchanges, courts do not presume that the OTC is “efficient.” *See, e.g., Handal v. Tenet Fintech Grp. Inc.*, 2023 U.S. Dist. LEXIS 170679, at *50 (E.D.N.Y. Sep. 25, 2023) (“The Court follows other courts in this district in finding that the OTC markets are not presumed to be efficient.”); *Alki Partners, L.P. v. Vatas Holding GmbH*, 769 F. Supp. 2d 478, 493 (S.D.N.Y. 2011) (“The Court is unaware of any court holding that the OTCBB . . . meet[s] this [efficient market] standard.”) (quoting precedent).

As a result, plaintiffs who traded stock on the OTC and seek the “efficient market” presumption must adequately allege that, in their particular circumstances, there was an efficient market for that stock. *E.g., Hull v. Glob. Dig. Sols., Inc.*, 2017 U.S. Dist. LEXIS 208191, at *50 (D.N.J. Dec. 19, 2017). Indeed, “simply alleging that [the] stock was traded on the OTC market with moderate to heavy volume during the relevant period is not sufficient to establish an ‘efficient market.’” *Id.* at *51. Such “conclusory” allegations are “deficient.” *Id.* at *52.

More is required. Specifically,

[S]ufficient allegations of an efficient market, for example, look to 1) the percentage of the weekly trading volume; 2) coverage of a company's stock by 'significant number of securities analysts'; 3) reported number of market-makers; 4) [the issuer]'s eligibility to file an SEC Registration Form S-3 and the number of months the form was filed; 5) the measurement of 'the difference between the price at which current stockholders are willing to buy the stock and the price at which current stockholders are willing to sell their shares'; 6) number of institutional investors; 7) percentage of shares held by insiders, or the float, 8) the percentage of shares outstanding that has been sold short.

Id. at *51–52 (citations omitted).

Here, as in *Hull*, the Complaint's conclusory allegations are insufficient to establish that the OTC was an efficient market for HUMBL stock. As in *Hull*, Plaintiffs make the conclusory allegation that "the Company's securities were liquid and traded with moderate to heavy volume during the Class Period." (Compl. ¶ 312(d).) The only other potentially relevant factor that the Complaint alleges is that "the Company was covered by securities analysts" (*id.* ¶ 312(f)), though it does not allege facts to establish that there were a "significant number" of analysts covering the Company. Nor does the Complaint say anything at all about any of the other factors identified in *Hull* to support the allegation of an "efficient market."

Accordingly, the Complaint fails to adequately allege that Plaintiffs' shares traded in an efficient market and, therefore, fails to adequately plead reliance. That deficiency alone is an independent basis for dismissal of the Securities Fraud Claims.

F. The Complaint Fails to Adequately Allege Loss Causation

An additional, independent basis for dismissal of the Securities Fraud Claims is that the Complaint fails to adequately plead the required element of loss causation.

The applicable standards are well established:

Loss causation is defined as ‘a causal connection between the material misrepresentation and the loss.’ To plead the element of loss causation under § 10(b), the plaintiff must plead that ‘the defendant’s misrepresentation (or other fraudulent conduct) proximately caused the plaintiff’s economic loss.’ ‘[T]o satisfy the loss causation requirement, the plaintiff must show that the revelation of that misrepresentation or omission was a substantial factor in causing a decline in the security’s price, thus creating an actual economic loss for the plaintiff.’ ‘In other words, the plaintiff is required to plead that the decline in the stock price was caused by the market’s discovery of defendant’s fraud.’

Martin v. GNC Holdings, Inc., 2017 U.S. Dist. LEXIS 145530, at *52 (W.D. Pa. Sep. 8, 2017) (citations omitted).

Accordingly, “to satisfy loss causation, a plaintiff must show that ‘the share price fell significantly after the truth became known.’” *In re DVI, Inc. Sec. Litig.*, 2010 U.S. Dist. LEXIS 92888, at *23 (E.D. Pa. Sep. 3, 2010). This revelation of the “truth” is known as a “corrective disclosure.” *See id.* “In general, a ‘corrective disclosure’ must reveal at least part of the falsity of the alleged misrepresentation, and it must reveal new information to the market.” *Id.* at *24.

“A disclosure of disappointing earnings or other indications of the ‘true financial condition’ of the company, without any evidence of a link between the disclosure and the fraud, is not a corrective disclosure.” *Id.* at *28. Thus, loss-

causation allegations are deficient where they “only show that [the company]’s stock price dropped predominately as a result of announcements of disappointing financial results rather than disclosures of any misrepresentations or omissions.” *Nat’l Junior Baseball League v. PharmaNet Dev. Grp., Inc.*, 720 F. Supp. 2d 517, 563 (D.N.J. 2010).

Furthermore, where the alleged corrective disclosure “did not reveal any new facts regarding the alleged omissions,” such disclosures “could not have caused Plaintiff’s losses associated with the decline in stock price.” *SLF Holdings, LLC v. Uniti Fiber Holdings, Inc.*, 499 F. Supp. 3d 49, 70 (D. Del. 2020). Similarly, “[a] negative journalistic characterization of previously disclosed facts does not constitute a corrective disclosure of anything but the journalists’ opinions.” *Martin*, 2017 U.S. Dist. LEXIS 145530, at *55 (quoting *In re Omnicom Group, Inc. Sec. Litig.*, 597 F.3d 501, 512 (2d Cir. 2010)).

Here, the Complaint apparently seeks to allege loss causation in its section titled “The Truth Emerges.” (See Compl. ¶¶ 286–297.) But these allegations are based entirely on precisely the kinds of inactionable “disclosures” described in the cases above: they lack any “link” between disclosure and the particular alleged misstatement, or they do not actually disclose any new information at all.

First, the Complaint alleges that “[t]he truth began to be revealed” with the release of HUMBL’s annual report on April 14, 2021. (*Id.* ¶ 287.) The Complaint

cites content in the annual report that “revealed” certain information about the convertibility of certain preferred shares to common shares and a subsequent commentary on that report by an analyst. (*Id.* ¶ 287–88.) The Complaint then cites a drop in the stock price in the following days. (*Id.* ¶ 289.) But, of course, the company’s lengthy annual report made numerous disclosures, and Plaintiffs cannot “link” one of those specific disclosures to the subsequent drop in the stock price. It is well known that *any time* a company issues a periodic report on its performance, it is likely to materially affect its stock price. As the case law makes clear, a disclosure of disappointing financial results, or the “true” financial condition of the company, accompanied by a stock drop does not suffice to allege a corrective disclosure. *See DVI*, 2010 U.S. Dist. LEXIS 92888, at *23; *Baseball League*, 720 F. Supp. 2d at 563. Thus, the Complaint does not adequately allege a causal link between the specific information about stock convertibility in the annual report and the subsequent drop in stock price.

Second, the Complaint relies heavily on the “Hindenberg Report” published on May 20, 2021, an analysis that was bearish on HUMBL’s prospects. (*See Compl.* ¶ 290; *see also* ¶¶ 50–57; 72–75; 111; 188–205.) But the Complaint fails to identify any new, material information that the Hindenberg Report revealed to the public. Instead, it was primarily an “analysis” of information that was already public, based on HUMBL’s own disclosures and information about app functionality that was

apparent to the public. The law is clear that such a “negative journalistic characterization of previously disclosed facts does not constitute a corrective disclosure.” *Martin*, 2017 U.S. Dist. LEXIS 145530, at *55.

Third, the Complaint cites a quarterly financial report from HUMBL on August 16, 2021, which disclosed a “goodwill writeoff” relating to HUMBL’s acquisition of Tickeri, again followed by an analyst commentary on that report. (Compl. ¶¶ 293–94.) But again, the Complaint does not and cannot link the subsequent drop in stock price to any particular “misstatement” that was corrected in that report. Again, the quarterly report contained extensive financial information about other aspects of HUMBL’s business. And, in any event, nothing in either the quarterly report or the analyst commentary on it “revealed” any prior false statement, but rather, as the Complaint itself states, that certain results were lower than “expected” or did not ultimately “materialize.” (*Id.* ¶ 294.)

Finally, the Complaint alleges that “[t]he truth was fully revealed” with yet another analyst report on November 17, 2021. (*Id.* ¶ 296.) But the Complaint does not allege that this report actually revealed any new information. Instead, the report “aggregated and analyzed HUMBL’s financial situation” and offered predictions that certain of HUMBL’s products “will not perform” based on past patterns. (*Id.*) This is, once again, precisely the kind of “negative journalistic characterization” of old information that fails to support an allegation of loss causation.

G. The Section 20(a) Claim Against “Controlling Persons” Fails

The Complaint also fails to allege a viable claim under Section 20(a) of the Exchange Act that the individual defendants are liable as “controlling persons” of the Company. *See* 15 U.S.C. § 78t(a).

“To state a claim under Section 20(a), Plaintiff must plead: (i) ‘a primary violation of the federal securities laws by a controlled person’; (ii) ‘control of the primary violator by the defendant’; and (iii) ‘that the controlling person was in some meaningful way a culpable participant in the primary violation.’” *In re Advance Auto Parts, Inc.*, 2020 U.S. Dist. LEXIS 21271, at *24 (D. Del. Feb. 7, 2020). The “culpable participation” element is required “[i]n addition to the statutory elements.” *Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 484 (3d Cir. 2013).

The “culpable participation” pleading standard is a “heavy burden.” *In re Dig. Island Sec. Litig.*, 223 F. Supp. 2d 546, 563 (D. Del. 2002). The Complaint must do more than merely establish the “knowledge” of an individual defendant; it must further allege in detail the basis for the defendants’ “culpability.” *Id.* Nor will vague allegations of “participation” suffice. *Id.* (dismissing Section 20(a) claim that lacked allegations of “when or how” the alleged “participation” occurred). In addition, where an allegation of culpable participation is premised on inaction, “the plaintiff must prove that the inaction ‘was deliberate and done intentionally to further the fraud.’” *Belmont*, 708 F.3d at 484.

As a threshold matter, the Section 20(a) claim fails as a matter of law because the underlying fraud claims fail. *E.g.*, *Ortiz v. Canopy Growth Corp.*, 537 F. Supp. 3d 621, 679 (D.N.J. 2021). Further, the Complaint fails to adequately plead control-person liability under Section 20(a). The Complaint relies primarily on the assertion that the individual defendants are liable “[b]y reason of their senior management positions and/or being directors of HUMBL” (Compl. ¶ 329), which is insufficient as a matter of law. *See Dig. Island*, 223 F. Supp. 2d at 561 (“[I]t is well-settled that ‘the mere fact that an individual is a director of a firm is not sufficient to show he is a controlling person of the firm.’”).

Moreover, the Complaint fails to make any viable allegation of the individual defendants’ “culpable participation,” relying instead upon conclusory allegations that they “participated, directly and indirectly, in the conduct of HUMBL’s business affairs” and “knew the adverse nonpublic information about HUMBL’s current financial position and future business prospects.” (Compl. ¶ 326.) But conclusory allegations of “participation” in and “knowledge” of misstatements are each insufficient to meet the heavy pleading standard of “culpable participation.” *Id.* at 563.

II. THE COMPLAINT FAILS TO STATE A CLAIM UNDER THE SECURITIES ACT FOR AN “UNREGISTERED SECURITY”

The Complaint fails to state a claim that the Company’s former BLOCK ETX service was an unregistered “security.” Plaintiffs’ efforts at artful pleading cannot

obscure the reality, as reflected in the Complaint itself, that BLOCK ETX was not an asset that could be “invested” in. Rather, as set forth above, the Complaint itself makes clear that BLOCK ETX was a software service that assisted users in trading cryptocurrencies—allegedly via a “simple rebalancing of assets”—assets that HUMBL did not issue, sell, control, or have custody of. (*See supra* at 11–12.) The Complaint’s conclusory assertion that BLOCK ETX was a “security” because it constituted an “investment contract” is baseless.

Sections 5 and 12(a)(1) of the Securities Act prohibit the sale in interstate commerce of unregistered securities. 15 U.S.C. §§ 77e; 77l(a)(1). The Securities Act defines the term “security” to include an “investment contract.” 15 U.S.C. § 77b(1). Under the well-known “*Howey* test” established by the Supreme Court in 1946, an “investment contract” means a “scheme [that] involves an investment of money in a common enterprise with profits to come solely from the efforts of others.” *SEC v. W. J. Howey Co.*, 328 U.S. 293, 301 (1946).

Here, however, it is clear that users of the BLOCK ETX service did not “invest in” BLOCK ETX at all, nor was it a “common enterprise.” Rather, as noted above, users paid a fee to subscribe to use the BLOCK ETX service, which was software that assisted them with buying and selling third-party cryptocurrencies in asset balances that the users selected. This is apparent from the face of the Complaint itself. (*See, e.g.*, Compl. ¶¶ 24, 93, 194, 231, 242.) Thus, a BLOCK ETX user’s

success was primarily determined based on the price of the underlying digital cryptocurrencies and not the “efforts of” HUMBL. Accordingly, the BLOCK ETX service fails to constitute an “investment contract” under each of the three prongs of the *Howey* test.

Moreover, Plaintiff Pasquinelli—the only named plaintiff who allegedly subscribed to BLOCK ETX—makes clear in his certification that he did not “buy” or “invest in” BLOCK ETX at all (since there was no such thing to invest in). Instead, Mr. Pasquinelli’s certification clearly shows that all of his so-called “BLOCK ETX Transactions” were, in fact, trades of underlying cryptocurrencies. (*See* Certification Pursuant to Federal Securities Laws (D.I. 10-4) (incorporated into the Complaint at ¶ 12).) That is, Mr. Pasquinelli does not allege that he ever bought, sold, or traded “BLOCK ETX,” but rather that he bought or sold certain cryptocurrencies. Plaintiff does not, and cannot, make any allegation that HUMBL is somehow an “issuer” or “seller” of those cryptocurrencies. (*See* Compl. ¶ 348 (“HUMBL is an issuer of BLOCK ETXs.”).)

In sum, the Complaint and Mr. Pasquinelli’s incorporated certification show that he did not “invest” in BLOCK ETX at all. Accordingly, the Complaint’s conclusory claim that Defendants issued an “unregistered security” under Sections 5 and 12(a)(1) of the Securities Act fails as a matter of law.

CONCLUSION

For the foregoing reasons, the Court should dismiss all of the Complaint's claims against the HUMBL Defendants for failure to state a claim under Rule 12(b)(6).

Dated: October 30, 2023

Respectfully submitted,

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CERTIFICATION REGARDING WORD COUNT AND FONT

Pursuant to this Court's *Standing Order Regarding Briefing in All Cases*, dated November 10, 2022, counsel certifies that: (a) this brief contains a total number of 9,772 words, including footnotes, exclusive of the cover page, Table of Contents, Table of Authorities, and signature blocks; and (b) the text of this brief is in 14-point Times New Roman font and complies with the applicable word limitations for this brief as established pursuant to Order of this Court.

Dated: October 30, 2023

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**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MATT PASQUINELLI and BRYAN
PAYSEN, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

HUMBL, LLC, BRIAN FOOTE,
JEFFREY HINSHAW, GEORGE
SHARP, KAREN GARCIA, and
MICHELE RIVERA,

Defendants.

Case No. 1:23-cv-00743-CFC

Chief Judge Colm F. Connolly

**APPENDIX TO THE HUMBL
DEFENDANTS' BRIEF IN
SUPPORT OF THEIR MOTION
TO DISMISS THE AMENDED
CLASS ACTION COMPLAINT**

Filed: October 30, 2023

Defendants HUMBL, Inc., Brian Foote, Jeffrey Hinshaw, Karen Garcia, and Michele Rivera (collectively, the "HUMBL Defendants") submit the following Appendix to their Brief in Support of Their Motion to Dismiss the Amended Class Action Complaint.

Dated: October 30, 2023

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Garcia and Michele Rivera*

Allegedly “False and/or Misleading Statements”

Statements Quoted in the Complaint	Other Statements From Same Document/Presentation But Omitted from the Complaint
<u>Functionality of HUMBL’s Mobile App</u>	
November 12, 2020 Press Release (Compl. ¶¶ 243–44) ¹	
<p>“HUMBL has <i>designed</i> a mobile wallet (HUMBL®)” (Emphasis added.)</p> <p>“The HUMBL® Mobile App delivers borderless transactions. . . . HUMBL® provides greater access and portability than US only mobile wallet providers, such as Venmo® and Zelle®.”</p>	<p>“HUMBL’s global money platform <i>will deliver</i> up to 50% estimated savings on transactions such as: sending, receiving, lending, borrowing, investing money and paying bills.” (Emphasis added.)</p> <p>“For those customers without a smartphone, HUMBL Hubs™ <i>will allow</i> participating merchants to deliver contactless payments, text ordering and money services across the full pyramid of end-users in these markets.” (Emphasis added).</p> <p>“Safe Harbor Statement</p> <p><i>This release contains forward-looking statements</i> within the meaning of the Private Securities Litigation Reform Act of 1995. You can identify these statements by the use of the words "may," ‘will,’ ‘should,’ ‘plans,’ ‘expects,’ ‘anticipates,’ ‘continue,’ ‘estimates,’ ‘projects,’ ‘intends,’ and similar expressions.</p>

¹ See Declaration of Jeffrey Hinshaw in Support of the HUMBL Defendants’ Motion to Dismiss the Amended Class Action Complaint (“Hinshaw Decl.”), **Ex. A**. The Hinshaw Declaration attaches complete copies of each of the written documents containing the statements at issue and is being filed contemporaneously herewith.

	<p>Forward-looking statements involve risks and uncertainties that could cause results to differ materially from those projected or anticipated. These <i>risks and uncertainties include</i>, but are not limited to, <i>the Company’s ability to successfully execute its expanded business strategy, including by entering into definitive agreements with suppliers, commercial partners and customers</i>; general economic and business conditions, effects of continued geopolitical unrest and regional conflicts, competition, changes in technology and methods of marketing, <i>delays in completing various engineering and manufacturing programs</i>, changes in customer order patterns, changes in product mix, <i>continued success in technical advances and delivering technological innovations</i>, shortages in components, production delays due to performance quality issues with outsourced components, <i>regulatory requirements and the ability to meet them</i>, government agency rules and changes, and various other factors beyond the Company’s control.” (Hereinafter, “<u>Safe Harbor Statement</u>” (emphasis added).)</p>
<p style="text-align: center;">December 1, 2020 Press Release (Compl. ¶¶ 254–57)²</p>	
<p>“HUMBL® Mobile App and HUMBL Hubs™ Merchant Solutions Deliver Successful <i>Pilot Transactions</i> Between United States and Mexico” (Emphasis added.)</p> <p>“Unlike US only mobile wallets like Venmo® or Zelle,® <i>we designed</i> HUMBL® so that it can go along with customers and merchants into places like Latin America” (Emphasis added.)</p>	<p>“HUMBL commissioned a video crew to walk-through the variety of <i>market problems that it is addressing with its design</i> of HUMBL® mobile wallet and HUMBL Hubs™ merchant solutions in the United States and Baja California, Mexico.” (Emphasis added.)</p> <p>[Included Safe Harbor Statement]</p>

² Hinshaw Decl., Ex. B.

“In the HUMBL brand video, which will be premiered at the Dec. 9 investor call, *beta testers* are seen transacting within the HUMBL® mobile wallet to digitally send, receive and exchange currencies across the border; as well as paying, tipping and transacting with merchants.”

In addition, HUMBL® showcases financial technologies such as USD Stablecoins” (Emphasis added.)

[Under background section titled “About HUMBL, Inc.”:] “The HUMBL® Mobile App delivers borderless transactions, by integrating multiple currencies, payment methods, banks, blockchain and financial services providers into one-click for the customer. HUMBL® provides greater access and portability than US only mobile wallet providers, such as Venmo® and Zelle® and *will offer* a HUMBL Hubs™ merchant software for clients without smartphones in certain domiciles.” (See also December 9, 2020 Press Release (Compl. ¶¶ 258, 262)³ (same language).)

“HUMBL® instantly makes life easier for me, my business and my customers here in Mexico,” said Fernando Cuevas, Founder of Tours in Baja, a HUMBL® *pilot test partner* and a lead affiliate sales representative in the region.

Being able to pay people for goods and services digitally with HUMBL®, enables my customers to spend more time enjoying their trips, and less time seeking out ATM’s and cash payment options everywhere we go.” (Emphasis added.)

³ Hinshaw Decl., Ex. C.

December 9, 2020 Investor Call (Compl. ¶¶ 259–62)⁴

“What do you guys have *built* right now? Right now, *in the barn*, we have – send money, request money, receive money, exchange money, Stable coins.” (Emphasis added.)

“[T]hese are very real tools that are critical for folks to be able to park their money into USD Stablecoins and things like that. We have that capability, and *as we get regulatory clearances from different countries and domiciles, we’ll be moving quickly* on that as well.” (Emphasis added.)

“[T]hose traveling in from abroad want to use a mobile wallet that is multicurrency and multi-asset, and gives them the ability to, in a contactless capacity, point in pay. We’ve *built* that and you’ll see that in the film.” (Emphasis added.)

“We have CRM features, meaning we can take any offline cash only dead tech merchant who’s like, ‘I just want to be able to take credit cards or bank accounts.’ We can turn them int[o] a digitally connected consumer relationship management merchant within a day.”

“I challenged our Mexico sales team. I said ‘Go sign up a hundred merchants in a week.’ They came back with 300 merchants in three days.”

“So *we’ll crawl, walk, run on how we roll out this business*. Just from a regulatory standpoint we want to have a really long-term run here. We’re a hyper compliance-focused-organization. *So we’ll keep some cars in the garage sometimes until we know exactly what is a go or no-go zone for the business.*” (at 00:20:49 (emphasis added).)

⁴ Available at: <https://vimeo.com/489189832/ad57ab8452?share=copy>

December 14, 2020 Press Release (Compl. ¶¶ 263–64) ⁵	
<p>“HUMBL announced today the launch of its HUMBL Holiday Deal Days merchant campaign. Upon signing up for a HUMBL® Pay account, customers <i>will be able</i> to shop the HUMBL Marketplace for highly curated holiday deals, coupon codes and affiliate discount links in shopping verticals like electronics, health, beauty, home, fashion, fitness, and kids.” (Emphasis added.)</p> <p>“The HUMBL Deal Days campaign enables HUMBL® Pay global customers to shop online hassle-free by locating the best deals on the internet while avoiding broken links, fake merchandise and expired coupon codes.”</p>	[Included Safe Harbor Statement]
January 22, 2021 Investor Call (Compl. ¶¶ 267–68) ⁶	
<p>“We wanted to just show that we’re a promises made, promises kept organization. I think we’re really on track with everything that we promised to the shareholders, if not ahead of schedule bumping up the <i>Q1 app release likely in February and then migrating into other service loads</i>, like peer-to-peer, HUMBL Hubs.” (Emphasis added.)</p>	[Included Safe Harbor Statement]

⁵ Hinshaw Decl., **Ex. D**.

⁶ Available at: <https://vimeo.com/503668084/8def590555?share=copy>

<p>February 25, 2021 Press Release (Compl. ¶¶ 269–70)⁷</p>	
<p>In press release on a different topic, in a background section titled “About HUMBL, Inc.,” the release stated: “The HUMBL® Mobile App delivers more seamless global transactions, by integrating multiple currencies, payment methods and financial services into one-click for the customer, beyond primarily US only mobile wallet providers such as Zelle® and Venmo®.”</p>	<p>In the beginning of the same background section: “The <i>mission</i> of HUMBL, Inc. is to deliver more seamless digital pairing experiences for consumers and merchants in the global economy.”</p> <p>[Included Safe Harbor Statement]</p>
<p>February 26, 2021 Investor Call (Compl. ¶¶ 275–76)⁸</p>	
<p>“We’re tracking very well to continue to <i>release this product in quarter two</i>, as stated in our first month one and month two conference calls.” (Emphasis added.)</p>	<p>“There’s a couple of things from a regulatory and a legal and a compliance standpoint that gave me a little bit of pause, <i>so bear with us</i> over the next you know four to six weeks about how we figure out some things. <i>I want to make sure we have our legals really buttoned up just in terms of how we’re rolling out this product.</i> You know, as I say, we take a 20 to 30-year view on the business. <i>I don’t want to, you know, come out three weeks too early and commit some foot fault</i> that that we’re paying for with, you know, any kind of legal or compliance concerns, <i>so bear with us there.</i> But note that the app is being stress <i>tested in beta behind the scenes</i> by a really terrific tech team and QA teams and agencies that have built some of the apps you would recognize. You know at any given time we’re 30 or 35 people now at HUMBL. I think, you know, our technology team, <i>the engine inside is just fantastic</i>, so very blessed to have these</p>

⁷ Hinshaw Decl., **Ex. E**.

⁸ Available at: <https://vimeo.com/518201612/968c5a9173?share=copy>

	<p>guys online with us, and they’re doing a great job. So the app is living, it’s in App Store, it’s been approved, but we want to just try to get a little bit of guidance on a couple of features that I’m a little bit just, not hesitant about, but wanting to get more clarity.” (at 00:19:30)</p> <p>“You know, I like to say we have contracts for the engine that you would need to run Formula One. We’re the car and the tires and the brand and everything that sits around that. But again, just <i>the U.S. has some additional layers of regulatory and compliance complexity that we need to navigate with our banking partners to make sure that we don’t get out of the gates too quick</i> on some of the cars we have built. So we’re tracking very well to continue to release this product [sending peer-to-peer money] in quarter two as stated in our first month one and month two conference calls. So excited about that.” (at 00:23:01 (emphasis added).)</p> <p>[Included Safe Harbor Statement]</p>
<p>April 16, 2021 Press Release (Compl. ¶¶ 279–80)⁹</p>	
<p>“The HUMBL Pay mobile app <i>will allow</i> customers to discover merchants; as well as pay, tip, rate and review those same merchants in contactless transactions.</p> <p>The company has also integrated ticketing into the HUMBL Pay mobile application, for customers seeking to find and purchase tickets to live events; as well as click-through to HUMBL Financial™ services, along with third party credit and lending</p>	<p>“The HUMBL Pay mobile app <i>will be rolled out in phases</i> over the coming weeks. . . . <i>The launch</i> of the HUMBL Pay mobile application <i>will be</i> accompanied by outdoor media campaigns the United States, Canada, Mexico, Australia and Singapore.” (Emphasis added.)</p> <p>[Included Safe Harbor Statement]</p>

⁹ Hinshaw Decl., Ex. F.

offers (US only).”	
<u>HUMBL’s Business Relationships and Prospects</u>	
November 12, 2020 Press Release (Compl. ¶¶ 245–46) ¹⁰	
“HUMBL . . . has created a global network of regional affiliates, who stand ready to implement sales and marketing programs in these corridors.”	“HUMBL’s global money platform <i>will deliver</i> up to 50% estimated savings on transactions such as: sending, receiving, lending, borrowing, investing money and paying bills.” [Included Safe Harbor Statement]
November 24, 2020 Press Release (Compl. ¶¶ 250–53) ¹¹	
“Cyberbeat, a leading digital payments and financial technologies company led by veteran digital payment industry executives of the Asia Pacific region has made a strategic investment into HUMBL, LLC.” “We view this opportunity to establish this global relationship with a proven winner in the Asia Pacific region a significant achievement for HUMBL in the coming year.” ““We have seen a number of technology cycles over the decades at Cyberbeat’ stated Cyberbeat CEO, Rajan S. Narayan.”	“Cyberbeat <i>executives</i> have had a proven track record of implementing and offering digital and traditional payment solutions of US-based partners” (Emphasis added.) [Included Safe Harbor Statement]

¹⁰ Hinshaw Decl., **Ex. A**.

¹¹ Hinshaw Decl., **Ex. G**.

<p>“The Cyberbeat team has helped Fortune 500 brands expand their footprint into this region for decades”</p>	
<p>January 22, 2021 Shareholder Letter (Compl. ¶¶ 265–66)¹²</p>	
<p>“[W]e have secured . . . [o]ur first of multiple option payments on a distribution rights deal in Oceania region. We are underway on the development of <i>plans</i> to enter the region with this group.” (Emphasis added.)</p>	<p>[Included Safe Harbor Statement]</p>
<p>March 16, 2021 Press Release (Compl. ¶¶ 277–78)¹³</p>	
<p>“HUMBL and Aurea Group are already underway on HUMBL Latin America <i>business development discussions</i> in key verticals such as: banking, merchant and financial services, real estate, hospitality, tourism, sports, festivals, entertainment and ticketing services in the region.” (Emphasis added.)</p>	<p>[Included Safe Harbor Statement]</p>
<p>May 7, 2021 Investor Call (Compl. ¶¶ 283, 285)¹⁴</p>	
<p>“We are <i>driving revenues across all three of our business lines</i> so subscription revenues through the ETXs, transaction revenues, ticketing, vendors, and NFTs. If you look at top shots in the NBA</p>	<p>“We are <i>going to do</i> some really thoughtful, creative things with the repurposing of NFTs that <i>I believe will give</i> catalogs of content a whole second life in the digital metaverse. . . . So,</p>

¹² Hinshaw Decl., **Ex. H.**

¹³ Hinshaw Decl., **Ex. I.**

¹⁴ Available at: <https://vimeo.com/546913418/e34814a684?share=copy>

<p>doing \$350 million a month on NFTs, there are hundreds of professional sports leagues around the world, <i>we are having incredibly compelling discussions in key verticals of NFTs, sports, gaming, photography, entertainment, previous catalogs.</i></p> <p><i>“[W]e need to start working the revenues and the fundamentals and getting into a process of building a very lasting business. Part of the way we will do that is through the ticketing piece.</i> The Tickeri side, they have already achieved one of their post-COVID goals, which was to achieve \$1 million in gross ticket sales over the last 30-day rolling period. Sorry for that typo there. In gross ticket sales over the last 30-day rolling period, aligning well across Mobile Pay and NFTs, a 33% increase in ticketing sales over the previous 30-day period.”</p>	<p>amazing <i>conversations in this zone</i> that fit perfectly within mobile pay, NFTs, ticketing, and immersive experiences. <i>So we’re thrilled to be jumping into that space</i>, and it fits perfectly within our mobile app.” (at 00:17:17)</p> <p>In slide deck shown contemporaneously during teleconference:</p> <ul style="list-style-type: none"> “ - Transaction revenue across marketplace in ticketing, vendor shops, and <i>coming soon with NFTs</i>” (emphasis added) “- Our growth strategy is focused on investments across all our engineering teams, performance marketing, M&A and Tickeri international expansion” <p>[Included Safe Harbor Statement]</p>
<p>June 30, 2021 Investor Call (Compl. ¶¶ 284–85)¹⁵</p>	
<p>“We completed two acquisitions, so Tickeri, Monster Creative an incredible Hollywood studio doing some of the best work in the world creatively that will service on NFTs, ticketing, multimedia content, all the things that we’re trying to do as a platform. . . . <i>They’re super accretive.</i>”</p> <p>“Then we’re driving sales volume, so revenues. <i>We’ll be doing revenues</i> of transaction volumes of over a million dollars a month already at HUMBL in our first full quarter as a business, so revenues.”</p>	<p>In slide deck shown contemporaneously during teleconference:</p> <ul style="list-style-type: none"> “- Launched HUMBL NFT Gallery <i>Test</i>” (at 26.27) (emphasis added) <p><i>“NFT Gallery—we did a test there.</i> There’s about—I don’t know—<i>five or ten features we felt like we were lacking on that.</i> So <i>we are now in the process of a v2 NFT marketplace build</i> that I think should hit in August. This is from a very good subcontractor that we’re working with along with our in-house</p>

¹⁵ Available at: <https://vimeo.com/569620441/be891bcd6e?share=copy>

	<p>teams to land the plane.” (at 26:27) (emphasis added)</p> <p>“In terms of HUMBL ticketing, we acquired Tickeri. Thrilled to partner with them. <i>Can’t wait to grow that business together. . . .</i> A lot of this stuff <i>will sit inside the HUMBL app.</i> And <i>I’m on the look now for another ticketing business to acquire</i>, perhaps that is even higher in volume for the U.S. mid-market. So, you know, <i>no guarantees, but I’m hunting.</i>” (at 00:53:58) (emphasis added.)</p> <p>“In terms of the <i>ticketing platform—again, under construction, will occur in Q3.</i> You’re gonna be able to—<i>we’re gonna have a</i> customized HUMBL ticketing experience, so if we do buy a U.S. mid-market ticketing brokerage for primary and secondary, we’ll tuck that under HUMBL ticketing.” (at 00:54:50)</p> <p>[Included Safe Harbor Statement]</p>
<p><u>Conversion or Dilution of HUMBL Stock</u></p>	
<p>November 17, 2020 Press Release (Compl. ¶¶ 247–49)¹⁶</p>	
<p>“[T]he company’s CEO and President, Brian Foote, has agreed to convert over 318 million shares recently purchased by him out of the retail market to a new class of Preferred shares. . . .</p> <p>Upon completion of the conversion, Tesoro’s issued and outstanding number of common shares will have been reduced by over 860 million shares since Mr. Foote became President of</p>	<p>[Included Safe Harbor Statement]</p>

¹⁶ Hinshaw Decl., **Ex. J.**

<p>Tesoro.</p> <p>The company does not <i>anticipate</i> that the number of common shares outstanding will increase during the remainder of 2020 and throughout 2021.” (Emphasis added.)</p>	
<p>February 25, 2021 Press Release (Compl. ¶¶ 271–72, 274)¹⁷</p>	
<p>“HUMBL has executed a one for four (1:4) reverse split of its common stock, and made other changes to its share structure, including the creation of restricted preferred classes of shares which will be issued to former members of HUMBL, LLC and prospective investors of HUMBL.”</p> <p>““The company’s Board of Directors concluded that it was important to quell the volatility in the share price. Prospective investors and current shareholders were concerned that it was difficult to pinpoint the true value of the common shares. Furthermore, this will force any outstanding short positions to cover their position. The board was also sympathetic to the need not to wipe out the holdings of the shareholders, and therefore determined that this small reverse split would satisfy both requirements.””</p>	<p>[Included Safe Harbor Statement]</p>

¹⁷ Hinshaw Decl., **Ex. E**.

February 26, 2021 Investor Call (Compl. ¶¶ 273–74) ¹⁸	
Defendant Sharp said, “If you’re worried about dilution, don’t be.”	<p>“<i>We don’t anticipate any dilution before the end of this year, certainly. And even then, this is not your typical OTC stock. We believe these are investors rather than necessarily profit-takers.</i>” (at 00:09:22 (emphasis added).)</p> <p>[Included Safe Harbor Statement]</p>
April 20, 2021 Tweet (Compl. ¶¶ 281–82) ¹⁹	
“I will commit to not selling any of those personal shares for the entirety of Calendar Year 2021-2022.”	<p>Full statement: “We have noted some concern re: <i>the Series B preferred shares (of which I own 45%)</i> that are not eligible to be converted until December ‘21. <i>I will commit to not selling any of those personal shares</i> for the entirety of Calendar Year 2021-2022.”</p>

¹⁸ Available at: <https://vimeo.com/518201612/968c5a9173?share=copy>

¹⁹ Hinshaw Decl., **Ex. K**.

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MATT PASQUINELLI and BRYAN
PAYSEN, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

HUMBL, LLC, BRIAN FOOTE,
JEFFREY HINSHAW, GEORGE
SHARP, KAREN GARCIA, and
MICHELE RIVERA,

Defendants.

Case No. 1:23-cv-00743-CFC

Chief Judge Colm F. Connolly

**DECLARATION OF JEFFREY
HINSHAW IN SUPPORT OF THE
HUMBL DEFENDANTS’
MOTION TO DISMISS THE
AMENDED CLASS ACTION
COMPLAINT**

Jeffrey Hinshaw declares pursuant to 28 U.S.C. § 1746:

1. I am the Chief Financial Officer and Chief Operating Officer of HUMBL, Inc. and one of the defendants named in the above-captioned action. I am familiar with the pleadings and papers on file in this action.

2. Attached hereto as **Exhibit A** is a true and correct copy of a November 12, 2020 press release from HUMBL, entitled “Tesoro Enterprises, Inc. to Merge with HUMBL, LLC - A Global Payments and Financial Services Network.”

3. Attached hereto as **Exhibit B** is a true and correct copy of a December 1, 2020 press release from HUMBL, entitled “HUMBL® Mobile App and HUMBL

Hubs™ Merchant Solutions Deliver Successful Pilot Transactions Between United States and Mexico.”

4. Attached hereto as **Exhibit C** is a true and correct copy of a December 9, 2020 press release from HUMBL, entitled “HUMBL Completes Merger with Tesoro Enterprises, Inc.; Sells Warrants with Provision for \$50 Million In Funding.”

5. Attached hereto as **Exhibit D** is a true and correct copy of a December 14, 2020 press release from HUMBL, entitled “HUMBL Announces Launch of Holiday Deal Days.”

6. Attached hereto as **Exhibit E** is a true and correct copy of a February 25, 2021 press release from HUMBL, entitled “HUMBL, Inc. Completes Corporate Actions.”

7. Attached hereto as **Exhibit F** is a true and correct copy of an April 16, 2021 press release from HUMBL, entitled “HUMBL® Announces Launch of HUMBL Pay Mobile Application.”

8. Attached hereto as **Exhibit G** is a true and correct copy of a November 24, 2020 press release from HUMBL, entitled “HUMBL Partners with Cyberbeat to Expand into Asia Pacific and Pan-India Vertical Markets.”

9. Attached hereto as **Exhibit H** is a true and correct copy of a January 22, 2021 HUMBL Shareholder Letter.

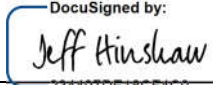
10. Attached hereto as **Exhibit I** is a true and correct copy of a March 16, 2021 press release from HUMBL, entitled “HUMBL, Inc. Announces Aurea Group Ventures Investment and Partnership for Exclusive Chile Country Rights.”

11. Attached hereto as **Exhibit J** is a true and correct copy of a November 17, 2020 press release from HUMBL, entitled “Tesoro Enterprises, Inc. CEO to Lock Up Over \$10 Million Worth of Stock Purchased Directly Out of the Market.”

12. Attached hereto as **Exhibit K** is a true and correct copy of an April 20, 2021 tweet by Brian Foote on the social media platform formerly known as Twitter, now rebranded as “X.”

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

Executed on October 30, 2023.

DocuSigned by:

234497DE18CF4C0...
Jeffrey Hinshaw

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MATT PASQUINELLI and BRYAN
PAYSEN, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

HUMBL, LLC, BRIAN FOOTE,
JEFFREY HINSHAW, GEORGE
SHARP, KAREN GARCIA, and
MICHELE RIVERA,

Defendants.

Case No. 1:23-cv-00743-CFC

Chief Judge Colm F. Connolly

**THE HUMBL DEFENDANTS’
MOTION TO DISMISS THE
AMENDED CLASS ACTION
COMPLAINT**

Filed: October 30, 2023

Pursuant to Federal Rule of Civil Procedure Rule 12(b)(6), Defendants HUMBL, Inc., Brian Foote, Jeffrey Hinshaw, Karen Garcia, and Michele Rivera (collectively, the “HUMBL Defendants”), through their undersigned counsel, respectfully move this Court for an order dismissing Plaintiffs’ Amended Class Action Complaint (D.I. 26) as against the HUMBL Defendants, for failure to state a claim upon which relief can be granted. In support of this motion, the HUMBL Defendants are filing herewith the following:

- “Brief in Support of the HUMBL Defendants’ Motion to Dismiss the Amended Class Action Complaint”;
- “Appendix A: Allegedly ‘False and/or Misleading Statements’”;

- “Declaration of Jeffrey Hinshaw in Support of the HUMBL Defendants’ Motion to Dismiss the Amended Class Action Complaint,” together with its attached Exhibits A through K; and
- A proposed order, as attached hereto.

Dated: October 30, 2023

Respectfully submitted,

CULHANE MEADOWS PLLC

Of Counsel

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*Attorneys for Defendants Humbl, Inc.,
Brian Foote, Jeffrey Hinshaw, Karen
Garcia and Michele Rivera*

Compliance Certification: Counsel hereby certifies that this filing complies with the type, font and word limitations set forth in this Court’s *Standing Order Regarding Briefing in All Cases*

Certified Word Count: 468 Words

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MATT PASQUINELLI and BRYAN
PAYSEN, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

HUMBL, LLC, BRIAN FOOTE,
JEFFREY HINSHAW, GEORGE
SHARP, KAREN GARCIA, and
MICHELE RIVERA,

Defendants.

Case No. 1:23-cv-00743-CFC

Chief Judge Colm F. Connolly

**[PROPOSED] ORDER ON THE
HUMBL DEFENDANTS'
MOTION TO DISMISS THE
AMENDED CLASS ACTION
COMPLAINT**

WHEREAS Defendants HUMBL, Inc., Brian Foote, Jeffrey Hinshaw, Karen Garcia, and Michele Rivera (collectively, the “HUMBL Defendants”) moved the Court for an order dismissing the Amended Class Action Complaint (the “Motion to Dismiss”) as against the HUMBL Defendants; and

WHEREAS, the Court has considered the briefs, exhibits, and arguments in support of and in opposition to the Motion to Dismiss;

IT IS HEREBY ORDERED, this ____ day of _____, 20____, that the Motion to Dismiss is GRANTED, and, accordingly, all claims in the Amended Class Action Complaint against the HUMBL Defendants are hereby DISMISSED.

Chief Judge Colm F. Connolly

Exhibit A



Source: HUMBL, Inc.

November 12, 2020 09:00 ET

Tesoro Enterprises, Inc. to Merge with HUMBL, LLC - A Global Payments and Financial Services Network

San Diego, CA, Nov. 12, 2020 (GLOBE NEWSWIRE) -- Tesoro Enterprises, Inc. (OTC Pink: TSNP) ("Tesoro") announced today that it has entered into an agreement with HUMBL, LLC ("HUMBL") to merge the two entities. In an all-stock transaction, the members of HUMBL will receive preferred shares of Tesoro in exchange for their HUMBL holdings.

Tesoro, the surviving entity, will be renamed "HUMBL, Inc." and following an imminent redomiciling of the corporation to Delaware, an application will be filed with the Financial Industry Regulatory Authority ("FINRA") for a change of the issuer's name and symbol. The company will almost immediately begin the process for becoming an SEC filer and provide audited annual financials beginning with yearend 2020.

Consummate with the transaction, HUMBL, Managing Member and Founder, Brian M. Foote has acquired the control block of voting shares and a significant number of common shares from outgoing Tesoro President, Henry Boucher.

The Board of Directors has installed Mr. Foote and HUMBL associate, Jeffrey Hinshaw, as directors of Tesoro and to the officer positions of President and Secretary, respectively. In addition, Adam Wolfe has been named Chief Technology Officer, Michele Rivera has been named Vice President, Global Partnerships, and a director and Karen Garcia will become Vice President, Major Accounts.

Mr. Boucher has resigned all officer and director positions with Tesoro and the company thanks him for his careful guidance. All liabilities of the company to date were settled by Mr. Boucher prior to his resignation.

HUMBL is comprised of team members from companies like Western Union, Moneygram, Visa, American Express, Epson, Microsoft, Facebook and Qualcomm and was recently named a Forbes "Rising Startups to Watch" in June 2020 for recognizing the "major gap between the US and emerging markets regarding mobile payments."

HUMBL has designed a mobile wallet (HUMBL[®]) and merchant software (HUMBL Hubs[™]), that help primarily cash economies migrate to digital money services across key vertical markets, such as: government, banking, wireless carriers and merchant services. HUMBL's global money platform will deliver up to 50% estimated savings on transactions such as: sending, receiving, lending, borrowing, investing money and paying bills.

Brian Foote is the CEO, President and a founder of HUMBL and brings with him twenty years of consumer technology experience, having launched a number of top ranked global technology products at companies like Epson, where he was twice named to the Innovators Team Award for his work across merchant partners such as Amazon, Walmart, Costco, Target and Best Buy. Mr. Foote is a graduate of University of California at Los Angeles (UCLA) and is certified in blockchain, digital media and social media from Massachusetts Institute of Technology (MIT).

Jeff Hinshaw, MBA guides the daily financial and operational components of HUMBL, working with internal team members and external agencies on accounting, compliance, project management and financial accounting of the company. Jeff brings experience from roles in finance, operations and corporate strategy at Hewlett-Packard and Sempra Energy. He has served as a guest lecturer at San Diego State University (SDSU), where he was a member of the Aztec Equity Fund endowment steering committee and a mentor at the SDSU Lavin Entrepreneurship Center.

Adam Wolfe leads the technology deliverables of the company, bringing over a decade of experience in fintech, payments and blockchain engineering. Adam is a specialist in Cross-Platform Mobile Applications, Web Development, Java Script, Angular and Payment Cloud architectures that are required for HUMBL[®] and HUMBL Hubs[™] product lineup. His technology background previously was in hybrid Information Technology and engineering roles at Qualcomm and PowerFleet.

Karen Garcia manages major accounts in Latin America. She will also be working with major accounts in Africa, Caribbean and the Asia Pacific and is developing an extensive regional affiliate program in these markets. She received her corporate training at Nordstrom, Eddie Bauer and L Brands across functions such as vendor management, purchasing and key accounts.

The merger is being shepherded by well-known OTC Markets analyst, George Sharp, who brought the parties together and has provided valuable advice on strategies and compliance to complete the transaction.

An investor call, tentatively scheduled for December 9, 2020, will be held to introduce HUMBL to investors and shareholders and provide further insights for the public about HUMBL's mission, positioning and corporate partnerships. The precise logistics of the investor call will be announced soon.

About HUMBL

The mission of HUMBL[®] and HUMBL Hubs[™] is to deliver high quality, low cost digital payments and financial services. The HUMBL network was designed to disrupt entrenched regional banks, wire services and roadside finance providers in emerging markets such as Latin America, Caribbean, Asia and Africa to help reduce costs and improve settlement speeds for customers.

HUMBL maintains offices in San Diego (HUMBL - North America), Mexico (HUMBL – Latin America), Miami (HUMBL – Caribbean and Africa), and Singapore (HUMBL – Asia Pacific and Oceania Region) and has created a global network of regional affiliates, who stand ready to implement sales and marketing programs in these corridors.

The HUMBL[®] Mobile App delivers borderless transactions, by integrating multiple currencies, payment methods, banks and financial services providers into one-click for the customer. HUMBL[®] provides greater access and portability than US only mobile wallet providers, such as Venmo[®] and Zelle[®].

For those customers without a smartphone, HUMBL Hubs[™] will allow participating merchants to deliver contactless payments, text ordering and money services across the full pyramid of end-users in these markets.

"We didn't build HUMBL for the 450 million digital customers using Apple Pay[®], but for the 7 billion people for whom money has a totally different set of global pathways, access points and cost structures," according to the CEO of HUMBL, Brian Foote.

The HUMBL corporate website features global brand videos, product tours, market research, white papers and network architecture at www.HUMBLpay.com.

Safe Harbor Statement

This release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. You can identify these statements by the use of the words "may," "will," "should," "plans," "expects," "anticipates," "continue," "estimates," "projects," "intends," and similar expressions. Forward-looking statements involve risks and uncertainties that could cause results to differ materially from those projected or anticipated. These risks and uncertainties include, but are not limited to, the Company's ability to successfully execute its expanded business strategy, including by entering into definitive agreements with suppliers, commercial partners and customers; general economic and business conditions, effects of continued geopolitical unrest and regional conflicts, competition, changes in technology and methods of marketing, delays in completing various engineering and manufacturing programs, changes in customer order patterns, changes in product mix, continued success in technical advances and delivering technological innovations, shortages in components, production delays due to performance quality issues with outsourced components, regulatory requirements and the ability to meet them, government agency rules and changes, and various other factors beyond the Company's control.

CONTACT:

HUMBL, LLC
investors@HUMBLPay.com

Exhibit B

HUMBL[®]

Source: HUMBL, Inc.

December 01, 2020 09:00 ET

HUMBL[®] Mobile App and HUMBL Hubs[™] Merchant Solutions Deliver Successful Pilot Transactions Between United States and Mexico

San Diego, California, Dec. 01, 2020 (GLOBE NEWSWIRE) -- Tesoro Enterprises, Inc. (OTCMKT: TSNP) announced today that HUMBL[®] has delivered its first live transactions in the Mexico market. The event was recorded during the production of a HUMBL brand video in the Baja California border region over the weekend.

“HUMBL[®] was born here in the border region of the San Diego and Mexico, specifically because of the problems families regularly experience when moving and using money across borders. The current options are expensive and inefficient,” said Michele Rivera, HUMBL Vice President of Global Partnerships.

“Unlike US only mobile wallets like Venmo[®] or Zelle,[®] we designed HUMBL[®] so that it can go along with customers and merchants into places like Latin America, enabling them to transact with each other seamlessly in the new digital economy.”

HUMBL commissioned a video crew to walk-through the variety of market problems that it is addressing with its design of HUMBL[®] mobile wallet and HUMBL Hubs[™] merchant solutions in the United States and Baja California, Mexico.

In the HUMBL brand video, which will be premiered at the Dec. 9 investor call, beta testers are seen transacting within the HUMBL[®] mobile wallet to digitally send, receive and exchange currencies across the border; as well as paying, tipping and transacting with merchants.

In addition, HUMBL[®] showcases financial technologies such as USD Stablecoins, which enable Latin American customers to avoid domestic currency fluctuations, by holding their money in US dollars on the blockchain in the HUMBL[®] mobile wallet.

The company also demonstrated its HUMBL Hubs[™] Point of Sale (POS) solutions for merchants in Mexico, designed to assist millions of “Cash Only” Latin American merchants with a seamless migration to the digital economy.

HUMBL Hubs[™] enables merchants to accept major credit cards such as Visa, Mastercard and American Express via its contactless “Point and Pay” solutions, as well as text orders, mobile payments, tipping, local deals, ratings and reviews.

“HUMBL[®] instantly makes life easier for me, my business and my customers here in Mexico,” said Fernando Cuevas, Founder of Tours in Baja, a HUMBL[®] pilot test partner and a lead affiliate sales representative in the region.

“Being able to pay people for goods and services digitally with HUMBL[®], enables my customers to spend more time enjoying their trips, and less time seeking out ATM’s and cash payment options everywhere we go.”

As reported on November 11, 2020, HUMBL, LLC is merging with Tesoro Enterprises. The merger process is well underway and expected to be completed in the coming days. The surviving Delaware corporation will be known as HUMBL, Inc.

About HUMBL[®]

The mission of HUMBL[®] and HUMBL Hubs[™] is to deliver high quality, low cost digital payments and financial services. The HUMBL network was designed to support vertical markets such as government, banking, wireless and merchants in locations like Latin America, Caribbean, Asia and Africa who are seeking to migrate to digital payment and financial technologies, to help reduce costs and improve settlement speeds for customers.

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The HUMBL[®] Mobile App delivers borderless transactions, by integrating multiple currencies, payment methods, banks, blockchain and financial services providers into one-click for the customer. HUMBL[®] provides greater access and portability than US only mobile wallet providers, such as Venmo[®] and Zelle[®] and will offer a HUMBL Hubs[™] merchant software for clients without smartphones in certain domiciles.

“We aren’t building HUMBL for the 350 million customers using PayPal[®], but for the 7 billion people for whom money moves in different pathways, formats and cost structures,” according to the CEO of HUMBL, Brian Foote.

The HUMBL website features global brand videos, product tours, market research, white papers and network architecture at www.HUMBLpay.com.

Safe Harbor Statement

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CONTACT:

HUMBL, LLC
investors@HUMBLpay.com

Attachment

- [HUMBL[®]](#)

Exhibit C

HUMBL[®]

Source: HUMBL, Inc.

December 09, 2020 09:00 ET

HUMBL Completes Merger with Tesoro Enterprises, Inc.; Sells Warrants with Provision for \$50 Million In Funding

San Diego, California, Dec. 09, 2020 (GLOBE NEWSWIRE) -- Tesoro Enterprises, Inc. (OTCMKT: TSNP) announced today that its merger with HUMBL, LLC is complete, and the company is now a registered Delaware corporation. Additional amendments are now being filed with the Delaware Secretary of State's office to change the name of the corporation to "HUMBL, Inc." Furthermore, corporate actions are being prepared for filing with the Financial Industry Regulatory Authority ("FINRA") to have the public entity renamed "HUMBL, Inc." together with a request for a change in the ticker symbol to "HMBL".

HUMBL celebrated the merger by launching its new landing page at www.HUMBLpay.com, which premieres the company's brand video - "A Borderless Day in Baja." The video has received overwhelming response in previews to industry professionals and HUMBL partners.

As a result of the completion of the merger, HUMBL was able to consummate November 23, 2020 agreements to raise funding through the cash sale of warrants. As these warrants are exercised, HUMBL will access up to \$50 million in equity funding, to be used for marketing of the HUMBL global brand; the HUMBL[®] mobile app and HUMBL Hubs[®] merchant software; as well as distribution and partnerships around the world.

Shares acquired through the exercising of the warrants will not be saleable through the retail market for a period of one year from the purchase date of the warrants.

About HUMBL, Inc.

The mission of HUMBL[®] and HUMBL Hubs[™] is to deliver high quality, low cost digital payments and financial services. The HUMBL network was designed to support vertical markets such as government, banking, wireless and merchants in locations like Latin America, Caribbean, Asia and Africa who are seeking to migrate to digital payment and financial technologies, to help reduce costs and improve settlement speeds for customers.

The HUMBL[®] Mobile App delivers borderless transactions, by integrating multiple currencies, payment methods, banks, blockchain and financial services providers into one-click for the customer. HUMBL[®] provides greater access and portability than US only mobile wallet providers, such as Venmo[®] and Zelle[®] and will offer a HUMBL Hubs[™] merchant software for clients without smartphones in certain domiciles.

"We aren't building HUMBL for the 350 million customers using PayPal[®], but for the 7 billion people for whom money moves in different pathways, formats and cost structures," according to the CEO of HUMBL, Brian Foote.

The HUMBL website features global brand videos, product tours, market research, white papers and network architecture at www.HUMBLpay.com.

Safe Harbor Statement

This release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. You can identify these statements by the use of the words "may," "will," "should," "plans," "expects," "anticipates," "continue," "estimates," "projects," "intends," and similar expressions. Forward-looking statements involve risks and uncertainties that could cause results to differ materially from those projected or anticipated. These risks and uncertainties include, but are not limited to, the Company's ability to successfully execute its expanded business strategy, including by entering into definitive agreements with suppliers, commercial partners and customers; general economic and business conditions, effects of continued geopolitical unrest and regional conflicts, competition, changes in technology and methods of marketing, delays in completing various engineering and manufacturing programs, changes in customer order patterns, changes in product mix, continued success in technical advances and delivering technological innovations, shortages in components, production delays due to

CONTACT:

HUMBL, LLC

investors@HUMBLpay.com

Attachment

- [Tesoro Enterprises, Inc.](#)

Exhibit D



Source: HUMBL, Inc.

December 14, 2020 09:00 ET

HUMBL Announces Launch of Holiday Deal Days

San Diego, California, Dec. 14, 2020 (GLOBE NEWSWIRE) -- Tesoro Enterprises, Inc. (OTCMKT: TSNP) HUMBL announced today the launch of its HUMBL Holiday Deal Days merchant campaign. Upon signing up for a HUMBL[®] Pay account, customers will be able to shop the HUMBL Marketplace for highly curated holiday deals, coupon codes and affiliate discount links in shopping verticals like electronics, health, beauty, home, fashion, fitness, and kids.

The HUMBL Deal Days campaign enables HUMBL[®] Pay global customers to shop online hassle-free by locating the best deals on the internet while avoiding broken links, fake merchandise and expired coupon codes. Current deals include curated links to holiday discounts on trusted brands such as Apple[®], Microsoft[®], Samsung[®], Sony[®], Target[®], Best Buy[®] and ULTA Beauty[®].

“What we learned from studying the AliPay[™] model is that seamless engagement across Alibaba[®] Marketplace and AliPay[™] merchant channels, was critical to the user growth of their platforms in China,” said Jennifer Edgerton, VP, Omni-Channel Marketing of HUMBL.

“HUMBL[®] Pay online customers have told us they want to find great prices and offers, conveniently, in one place, and HUMBL merchants need to make sales year-round; that is our goal with the HUMBL Marketplace and it will expand with us into the global markets.”

The HUMBL Marketplace will also be exploring HUMBL affiliate email programs, flash sales and the development of more seamless checkout technologies via a HUMBL[®] Pay website module and potential one-touch checkout partners.

The HUMBL Holidays program will run through from December 14, 2020 through January 4, 2021 and will be followed by regularly scheduled merchant discounts and offers on www.HUMBLpay.com.

About HUMBL, Inc.

The mission of HUMBL, Inc. is to deliver more seamless digital pairing experiences for consumers and merchants in the global economy. The HUMBL platform includes the HUMBL[®] Mobile App, HUMBL Hubs[™] Merchant Software and the HUMBL Marketplace.

The HUMBL[®] Mobile App delivers more seamless global transactions, by integrating multiple currencies, payment methods and financial services into one-click for the customer, beyond primarily US only mobile wallet providers such as Zelle[®] and Venmo[®].

The HUMBL Hubs[™] merchant software and point-of-sale (POS) pairs customers and merchants together to use contactless payment technologies, helping merchants in majority cash economies to do things like accept debit cards, credit cards and USD stablecoins from HUMBL[®] mobile wallet users.

The HUMBL Marketplace will connect customers and merchants online, in improved global commerce, deal discovery and HUMBL Pay merchant checkout programs.

Safe Harbor Statement

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expanded business strategy, including by entering into definitive agreements with suppliers, commercial partners and customers, general economic and business conditions, effects of continuing geopolitical unrest and regional conflicts, competition, changes in technology and methods of marketing, delays in completing various engineering and manufacturing programs, changes in customer order patterns, changes in product mix, continued success in technical advances and delivering technological innovations, shortages in components, production delays due to performance quality issues with outsourced components, regulatory requirements and the ability to meet them, government agency rules and changes, and various other factors beyond the Company's control.

CONTACT:

HUMBL, LLC
investors@HUMBLpay.com

Attachment

- [HUMBL Holidays](#)

Exhibit E

HUMBL[®]

Source: HUMBL, Inc.

February 25, 2021 16:00 ET

HUMBL, Inc. Completes Corporate Actions

San Diego, CA, Feb. 25, 2021 (GLOBE NEWSWIRE) -- HUMBL, Inc. (OTCPINK: TSNP) ("HUMBL"), announced today that the Financial Industry Regulatory Authority ("FINRA") has processed the company's corporate actions, as requested, and has had its name changed to HUMBL, Inc.

In addition to the change in the company's name, HUMBL has executed a one for four (1:4) reverse split of its common stock, and made other changes to its share structure, including the creation of restricted preferred classes of shares which will be issued to former members of HUMBL, LLC and prospective investors of HUMBL. The authorized number of shares stated reflects these preferred shares on a presumed fully diluted basis.

In discussion about the reverse split, HUMBL's COO and Corporate Secretary, Jeffrey Hinshaw, stated, "The company's Board of Directors concluded that it was important to quell the volatility in the share price. Prospective investors and current shareholders were concerned that it was difficult to pinpoint the true value of the common shares. Furthermore, this will force any outstanding short positions to cover their position. The board was also sympathetic to the need not to wipe out the holdings of the shareholders, and therefore determined that this small reverse split would satisfy both requirements."

As a result of the reverse split, HUMBL's stock symbol will change to "TSNPD" on February 25, 2021 and then to "HMBL" on March 26, 2021.

About HUMBL, Inc.

The mission of HUMBL, Inc. is to deliver more seamless digital pairing experiences for consumers and merchants in the global economy. The HUMBL platform includes the HUMBL[®] Mobile App, HUMBL Hubs[™] Merchant Software and the HUMBL Marketplace.

The HUMBL[®] Mobile App delivers more seamless global transactions, by integrating multiple currencies, payment methods and financial services into one-click for the customer, beyond primarily US only mobile wallet providers such as Zelle[®] and Venmo[®].

The HUMBL Hubs[™] merchant software and point-of-sale (POS) pairs customers and merchants together to use contactless payment technologies, helping merchants in majority cash economies to do things like accept debit cards, credit cards and USD stablecoins from HUMBL[®] mobile wallet users.

The HUMBL Marketplace will connect customers and merchants online in improved global commerce, via merchant shops, deal listings, affiliate programs and HUMBL Pay web checkout integrations.

Company Website: www.HUMBLpay.com

Safe Harbor Statement

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CONTACT:

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HUMBL, LLC

investors@HUMBLpay.com

Exhibit F



Source: HUMBL, Inc.

April 16, 2021 16:00 ET

HUMBL® Announces Launch of HUMBL Pay Mobile Application

San Diego, California, April 16, 2021 (GLOBE NEWSWIRE) -- HUMBL, Inc. (OTC Markets: HMBL) announced today that it is launching the first version of its HUMBL Pay™ mobile application, which will be made available after 2 PM PST.

The HUMBL Pay mobile app will allow customers to discover merchants; as well as pay, tip, rate and review those same merchants in contactless transactions.

The company has also integrated ticketing into the HUMBL Pay mobile application, for customers seeking to find and purchase tickets to live events; as well as click-through to HUMBL Financial™ services, along with third party credit and lending offers (US only).

The HUMBL Pay mobile app will be rolled out in phases over the coming weeks.

Phase I: United States, Canada, Mexico, Australia, Singapore and New Zealand

Phase II: Austria, Belgium, Bulgaria, Switzerland, Cyprus, Czech Republic, Germany, Denmark, Estonia, Spain, Finland, France, United Kingdom, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, Netherlands, Norway, Poland, Portugal, Romania, Sweden, Slovenia, Slovakia occurring in the coming weeks.

Phase III: Brazil, India, Hong Kong, Japan, Malaysia

HUMBL Pay is being built in a modular capacity, to support regional customization and future roadmap features, such as peer-to-peer transactions, digital asset investing and blockchain NFTs, which will include a broader list of countries than those listed above.

The launch of the HUMBL Pay mobile application will be accompanied by outdoor media campaigns in the United States, Canada, Mexico, Australia and Singapore.

About HUMBL

HUMBL seamlessly connects consumers and merchants in the digital economy. HUMBL has three core business units: HUMBL Mobile, HUMBL Marketplace, and HUMBL Financial, which work together to package new technologies like mobile payments and digital assets for global consumers.

CONTACT:

HUMBL, Inc.
investors@HUMBLpay.com

Safe Harbor Disclaimer

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Attachment

- [HUMBL, Inc.](#)

Exhibit G



Source: HUMBL, Inc.

November 24, 2020 09:00 ET

HUMBL Partners with Cyberbeat to Expand into Asia Pacific and Pan-India Vertical Markets

San Diego, CA, Nov. 24, 2020 (GLOBE NEWSWIRE) -- Tesoro Enterprises, Inc. (OTCMKT: TSNP) announced today that Singapore-based Cyberbeat, a leading digital payments and financial technologies company led by veteran digital payment industry executives of the Asia Pacific region has made a strategic investment into HUMBL, LLC.

The cash investment is consummate with a new partnership in which Cyberbeat gains the non-exclusive rights to sell, distribute and deploy HUMBL and HUMBL Hubs technologies into key verticals in the Asia Pacific in calendar year 2021 and beyond.

Cyberbeat's digital payment platform is uniquely positioned to address a vast Asia Pacific based clientele that fits with the key verticals of HUMBL, including: banks, financial services, telecom companies and national payment institutions.

HUMBL is a provider of the HUMBL[®] mobile wallet and HUMBL Hubs[®] merchant services software which is being developed to accommodate the migration by governments to digital forms of their national currency, as well as key functions like cross-border remittance, foreign exchange, bill payment and lending products from smartphones.

The strategic partnership enables HUMBL to explore sales and installation expansions through Cyberbeat into operating markets such as Singapore, Myanmar, Nepal, India, Vietnam and the Pacific Islands, reflecting over a 1.5 billion consumer and merchant opportunity.

Cyberbeat executives have had a proven track record of implementing and offering digital and traditional payment solutions of US-based partners such as Visa, Mastercard and American Express into the Asia Pacific and Pan-India markets.

"We have seen a number of technology cycles over the decades at Cyberbeat. The national migrations to digital forms of ID's, money, payments and financial services products is the most exciting one yet, and we believe the HUMBL brand will achieve mass penetration in this region, given its flexible technology solutions and architecture," stated Cyberbeat CEO, Rajan S. Narayan.

"We view this opportunity to establish this global relationship with a proven winner in the Asia Pacific region a significant achievement for HUMBL in the coming year. The Cyberbeat team has helped Fortune 500 brands expand their footprint into this region for decades, and we hope to be a part of that legacy during this next digital transformation cycle," said Karen Garcia, VP Major Accounts for HUMBL.

As reported on November 11, 2020, HUMBL, LLC is merging with Tesoro Enterprises. The merger process is well underway and expected to be completed in the coming days. The surviving Delaware corporation will be known as HUMBL, Inc.

About Cyberbeat

Cyberbeat is a high performing team providing digital payment services, with presence in the Asia Pacific, headquartered in Singapore. Cyberbeat has extensive global banking and payments expertise, offering unique cloud-based SaaS digital payment solutions, with seamless API integration creating a 'one stop shop' for clients. Services include, project delivery, digital transformation, card management, secure identification, Fraud Monitoring, switching and merchant management.

About HUMBL

Case 1:23-cv-00743-CFC Document 74-7 Filed 10/30/23 Page 3 of 3 PageID #: 166

The mission of HUMBL[®] and HUMBL Hubs[™] is to deliver high quality, low cost digital payments and financial services. The HUMBL network was designed to support vertical markets such as government, banking, wireless and merchants in locations like Latin America, Caribbean, Asia and Africa who are seeking to migrate to digital payment and financial technologies, to help reduce costs and improve settlement speeds for customers.

The HUMBL[®] Mobile App will deliver borderless transactions, by integrating multiple currencies, payment methods, banks, blockchain and financial services providers into one-click for the customer. HUMBL[®] provides greater access and portability than US only mobile wallet providers, such as Venmo[®] and Zelle[®].

For those customers without a smartphone, HUMBL Hubs[™] will allow participating merchants to deliver contactless payments, text ordering and money services across the full pyramid of end-users in these markets.

“We didn’t build HUMBL for the 350 million digital customers using PayPal[®], but for the 7 billion people for whom money has a totally different set of global pathways, technology access points and cost structures,” according to the CEO of HUMBL, Brian Foote.

The HUMBL corporate website features global brand videos, product tours, market research, white papers and network architecture at www.HUMBLpay.com.

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CONTACT:

HUMBL, LLC
investors@HUMBLpay.com

Attachment

- [Tesoro Enterprises, Inc.](#)

Exhibit H

HUMBL[®]

HUMBL Shareholder Letter

January 22, 2021

Thank you for the opportunity to represent you alongside us as shareholders. We wanted to do a one-month update to our HUMBL - Day One shareholder Call on Dec 9, 2020.

It was an honor today seeing our new global, consumer brand alongside companies like McDonald's[®], Express[®], Forever 21[®] and Oakley[®] rotating on the Times Square billboard.

We have come a long way since our time working in the garage on our concepts, but still we will very much represent that DNA as an early-stage tech startup in the coming years.

I want to thank our team, consultants and vendor partners for the tireless effort they are giving us to launch our brand, products and services to the market.

HUMBL is being designed as a Web 3 platform that connects consumers and merchants in the digital economy.

Our target audiences are: Consumers, Freelancers and Merchants. Our goal is to create a digital layer that connects people in commerce around the world, in ways that go beyond coins, cash bills or receipt printers.

We believe this will drive lower costs, greater levels of financial inclusion and a new decade of financial services products, built on technologies like blockchain.

HUMBLPAY[™]

We are in internal beta on the HUMBL[®] Mobile Application and hope to launch a consumer version of the HUMBL[®] Mobile Application sometime in February 2021.

This first version of HUMBL[®] will be to help connect consumers and merchants in the digital economy. It will be non-custodial, and lean into trusted, third party processors in the regions we seek to serve.

As customers, freelancers and merchants, you will be in control of your data and your merchant plan. If you would like as a merchant to upgrade your subscription, the HUMBL Merchant Services Cloud[™] will deliver attributes like discovery, maps, ratings,

reviews and CRM offers, and potentially scale into other bets over time, like text ordering or delivery.

We will be focusing on creating connections in cash economies or environments where customers may want to “skip the ATM,” such as tourism zones or mobile merchants. As we roll out our countries, we look forward to your product feedback and are on the lookout for HUMBL Affiliate Program partners as well to help us expand in your region.

HUMBL® Mobile App – Phase II

In the HUMBL® Mobile App, we will be working on further elements such as Peer-To-Peer (P2P) and HUMBL Hubs™ locations.

These attributes are more complex and we are staying tightly mindful on regulatory before rolling out any products in either fiat currency or blockchain-based capacities.

We believe that growth by acquisition is one the fastest paths forward in this zone, and are in active negotiations with multiple regions of service providers that have existing licenses, regulatory and technology approvals.

HUMBL® Mobile App – Business Updates

Lastly, we have secured:

1. **HUMBL Regional Rights** – Our first of multiple option payments on a distribution rights deal in Oceania region. We are underway on the development of plans to enter the region with this group.
2. **HUMBL Patent Filing** – HUMBL has filed an international patent for a blockchain-based, HUMBL Instant Settlement Network™, that we believe can greatly reduce costs and improve financial inclusion for customers.
3. **HUMBL Hubs** – A binding term sheet for a joint venture on our first HUMBL Hubs™ beta test location in the United States, which will serve as a concept for testing our brand strategy, services and technologies.

HUMBL STUDIOS™

In our market research phase, we heard from merchants around the world that they had a strong desire to a) get out of the “Cash Only” economy without the hardware POS burden, and b) connect their goods to broader online markets through digital sales.

We admire what big tech marketplaces have done with their online platforms, but we think there is plenty of opportunity in the global market for new entrants as those algorithms and seller marketplaces get more impacted with tonnage.

We will be offering affordable splits and seeking to grow the platform with improved technologies and artisan listings in the upcoming quarters. We have launched initial listings with authentic jewelry makers, clothing, crafts and other verticals and welcome your inquiries for listing.

HUMBLFINANCIAL™

Finally, I am excited to report what is a very proud moment for us all personally at the business. We have put in several years of thought and development to this product line around our BLOCK Indexes and BLOCK Exchange Traded Index (ETX) products that we are excited to begin presenting to the marketplace.

Phase I – Fully Non-Custodial

We release today the BLOCK Exchange Traded Index (ETX) products. These will begin from Singapore, as a fully non-custodial, algorithm-based product line that is not currently available to the United States and other select markets.

Phase II – Blockchain Tokenization

We believe that over time, assets of all kinds will move to a tokenized format on the blockchain, that will enable greater ease of use for consumers to: trade, track, pay, record and invest.

Our goal with HUMBL Financial is to serve these concepts in more custodial, synthetic formats over time, pending regulatory guidance.

We will seek to use these blockchain constructs to improve investment into emerging markets, such as real estate, land and transfer of assets on the blockchain.

We will also be seeking to work with third-party partners that may want to provide offers for consumers and merchants inside basic financial services to our customers and merchants.

HUMBL Financial™ – New Hires, Advisors, Mergers and Acquisitions

HUMBL Financial is excited to welcome aboard Calvin Weight, CEO of Coinbook, Jacob Davis, Lead Technologist and Jane Edmonson, EQM Indexes as an Advisor.

HUMBL has entered into a binding term sheet with three affiliated entities – BLOCK 30 Financial, BLOCK 30 Marketplace and BLOCK 30 Pay – for the purchase of the

intellectual property of these three entities. As a team, we decided it made more sense to consolidate all operations and intellectual property in HUMBL rather than have HUMBL license the technology from these entities.

To accomplish that goal, HUMBL has entered into a binding term sheet with the three other entities to purchase all of their patents, trademarks, software and other intellectual property in exchange for HUMBL common stock.

We hope that bringing the intellectual property under the HUMBL umbrella will allow HUMBL shareholders to capture the full value of these technologies as the business grows. This includes the filing of an international patent that will also be transferred over as well. We remain on the lookout for additional mergers and acquisitions in all business categories.

Legal Disclaimers

HUMBL Inc. is not a money services business and does not hold itself out to be such. All money transmission services are being provided exclusively by third parties which are money transmitter licensed and registered under all applicable state and federal laws. HUMBL does not offer money transmission services. The availability of the HUMBL® Mobile App, HUMBL Hubs Merchant Software, HUMBL Marketplace and HUMBL Network will vary by state, country, domicile and/or third-party service providers and may change at any time.

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Exhibit I

HUMBL[®]

Source: HUMBL, Inc.

March 16, 2021 09:34 ET

HUMBL, Inc. Announces Aurea Group Ventures Investment and Partnership for Exclusive Chile Country Rights

San Diego, CA., March 16, 2021 (GLOBE NEWSWIRE) -- HUMBL, Inc. ("HUMBL") (OTCMARKETS: TSNPD) and Aurea Group Ventures ("Aurea Group"), a Chilean multi-family office, announced today the signing of a Securities Purchase Agreement (the "Purchase Agreement") for the purchase by Aurea Group of HUMBL common stock and the country rights to Chile for a purchase price of up to \$7,500,000 (USD).

Pursuant to the terms of the Purchase Agreement, Aurea Group, through an affiliate, agreed to purchase 437,500 shares of HUMBL common stock for \$1,000,000. The payment for these shares is due on or before March 30, 2021. In addition, Aurea Group also received the right to purchase 1,562,000 additional shares of HUMBL common stock and a 35% equity interest in a Chilean subsidiary HUMBL intends to form to conduct its operations in Chile for \$6,500,000. Aurea Group's purchase right expires on December 31, 2021.

The Agreement provides that if Aurea Group exercises its right to purchase the subsidiary interest, it will receive 35% of the profits from operations of the HUMBL family of products in Chile, including the HUMBL[®] Mobile Division, HUMBL Hubs[™], HUMBL Marketplace[™], and HUMBL Financial[™]. In addition, Aurea Group also received a right of first refusal with respect to regional or country rights sales in Latin America.

HUMBL and Aurea Group are already underway on HUMBL Latin America business development discussions in key verticals such as: banking, merchant and financial services, real estate, hospitality, tourism, sports, festivals, entertainment and ticketing services in the region.

"At Aurea Group Ventures, our mission is to find, invest, import and work together as a partner with disruptive global companies at the forefront of innovation, and HUMBL perfectly represents this vision. We are strongly confident in how this top-tier HUMBL team and technologies will revolutionize multiple industries in Latin America and the world," said Juan Pablo Morales, CEO and Director of Aurea Group.

"We are deeply honored to be represented in Latin America region by such an educated, ethical and visionary set of partners as the team at Aurea Group," said Brian Foote, CEO of HUMBL. "While HUMBL will not be selling the exclusive HUMBL distribution rights to all 195 global countries, we are keenly aware of the rapid scale we can achieve in certain regions, through distribution partners. Their working history with brands like Booking Holdings, Airbnb and Expedia Group gives us great confidence in the road ahead for HUMBL as we enter the Latin American market in the year ahead."

The HUMBL and Aurea Group teams will be performing investment meetings in the second quarter of 2021 in the Latin America region to discuss further partnerships and rights sales, pending the continued resolution of COVID-19 travel protocols.

The two parties will be celebrating their partnership with the blockchain tokenization of several collectible physical assets and NFT's from the region, that will be tokenized using the HUMBL Token Engine[™] and secured by HUMBL Origin Assurance[™].

About Aurea Group

Aurea Group's main objective is to provide independent and comprehensive advice for the wealth management of families, foundations, family offices and institutional clients, through dedicated, transparent, and confidential work. Aurea Group has a multidisciplinary team of professionals and analysts who provide tailor-made solutions for each of their clients, focusing on the global search for attractive investment alternatives, both in financial products and in real assets. The company also pursues the development of new businesses through its "Ventures" area.

Website: www.en.aureagroup.cl

About HUMBL, Inc.

HUMBL Mobile Applications will deliver more seamless global transactions, by integrating multiple currencies, payment methods and financial services into reduced clicks for the customer.

HUMBL Marketplace was developed to connect customers and merchants online in online listings and blockchain tokenization in areas like physical assets, real estate, hospitality, ticketing and NFTs.

HUMBL Financial has developed new software and algorithms for the digital asset trading markets, which are a new global market for blockchain technologies, and will also offer other credit, lending and financial services.

Website: www.HUMBLpay.com

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Attachment

- [HUMBL, Inc.](#)

Exhibit J



Source: HUMBL, Inc.

November 17, 2020 09:00 ET

Tesoro Enterprises, Inc. CEO to Lock Up Over \$10 Million Worth of Stock Purchased Directly Out of the Market

San Diego, CA, Nov. 17, 2020 (GLOBE NEWSWIRE) -- Tesoro Enterprises, Inc. (OTC Pink: TSNP) ("Tesoro") announced today that the company's CEO and President, Brian Foote, has agreed to convert over 318 million shares recently purchased by him out of the retail market to a new class of Preferred shares.

The conversion will be transacted following the imminent completion of the merger between Tesoro and HUMBL LLC, which will coincide with the redomiciling of the corporation to Delaware.

Upon completion of the conversion, Tesoro's issued and outstanding number of common shares will have been reduced by over 860 million shares since Mr. Foote became President of Tesoro.

The company does not anticipate that the number of common shares outstanding will increase during the remainder of 2020 and throughout 2021.

About HUMBL

The mission of HUMBL[®] and HUMBL Hubs[™] is to deliver high quality, low cost digital payments and financial services. The HUMBL network was designed to disrupt entrenched regional banks, wire services and roadside finance providers in emerging markets such as Latin America, Caribbean, Asia and Africa to help reduce costs and improve settlement speeds for customers.

The HUMBL[®] Mobile App delivers borderless transactions, by integrating multiple currencies, payment methods, banks, blockchain and financial services providers into one-click for the customer. HUMBL[®] provides greater access and portability than US only mobile wallet providers, such as Venmo[®] and Zelle[®].

For those customers without a smartphone, HUMBL Hubs[™] will allow participating merchants to deliver contactless payments, text ordering and money services across the full pyramid of end-users in these markets.

"We didn't build HUMBL for the 450 million digital customers using Apple Pay[®], but for the 7 billion people for whom money has a totally different set of global pathways, access points and cost structures," according to the CEO of HUMBL, Brian Foote.

The HUMBL corporate website features global brand videos, product tours, market research, white papers and network architecture at www.HUMBLpay.com.

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CONTACT:

Exhibit K



 Settings

← **Post**



Brian Foote
@humblceo



We have noted some concern re: the Series B preferred shares (of which I own 45%) that are not eligible to be converted until December '21. I will commit to not selling any of those personal shares for the entirety of Calendar Year 2021-2022.

9:30 AM · Apr 20, 2021

413 Reposts **158** Quotes **2,011** Likes **3** Bookmarks



3



Who can reply?

Accounts @humblceo mentioned can reply

Don't miss what's happening

People on X are the first to know.

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MATT PASQUINELLI and BRYAN
PAYSEN, Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

HUMBL, LLC, BRIAN FOOTE,
JEFFREY HINSHAW, GEORGE
SHARP, KAREN GARCIA, and
MICHELE RIVERA,

Defendants.

Case No.: 1:23-cv-00743-CFC

**OPENING BRIEF IN SUPPORT OF DEFENDANT GEORGE SHARP'S
MOTION TO DISMISS THE FIRST AMENDED CLASS ACTION
COMPLAINT PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 12(b)(6)**

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Dated: October 30, 2023

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George Sharp*

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I. INTRODUCTION

Defendant George Sharp (“Sharp” or “Defendant Sharp”) hereby moves to dismiss the First Amended Class Action Complaint (“FAC”), and all Causes of Action therein, of Plaintiffs Matt Pasquinelli and Bryan Payson, individually and on behalf of all others similarly situated (collectively “Plaintiffs”). The FAC fails to adequately plead any of its claims against Defendant Sharp.

The FAC’s First, Second, and Third Causes of Action for violations of the Exchange Act are not plead with the requisite particularity as to Defendant Sharp. Lacking are any detailed allegations of any material misrepresentations or omissions by Defendant Sharp, or allegations showing that Defendant Sharp is a “controlling person” of Defendant HUMBL, LLC (“HUMBL”). Pursuant to the Private Securities Litigation Reform Act (“PSLRA”), and FRCP 9(b), these claims are subject to heightened pleading requirements – which have not been satisfied here.

Further, the Fourth Cause of Action for violation of Section 12(a) of the Securities Act also fails. The FAC does not allege that Defendant Sharp was an “immediate seller” of the securities at issue, nor are there sufficient allegations to state a claim based on “solicitation”. Accordingly, Defendant Sharp respectfully requests that this Court grant the instant motion in its entirety, and dismiss the FAC as against Defendant Sharp.

II. FACTUAL ALLEGATIONS

The FAC generally alleges a scheme by HUMBL and the Individual Defendants to artificially inflate the price of HUMBL's stock through a series of misrepresentations relating to partnerships, product development, mergers, etc. However, as against Defendant Sharp, the allegations are very limited. Below are all of the allegations in the FAC that identify any alleged conduct of Defendant Sharp:

32. The scheme begins with the merger between Tesoro Enterprises, Inc. ("Tesoro") and HUMBL, which was facilitated by Defendant Sharp – a known player in the OTC market with a history of brokering reverse mergers and a penchant for thoroughbred horses (including one named "Front-Run the Fed"¹⁰).

33. In this instance, Sharp connected Defendant Foote with Tesoro's near-death CEO Henry Boucher ("Boucher") and orchestrated a lightning-speed merger that instantly turned a worthless company into one worth billions of dollars – despite having no products on the market.

36. The Company simultaneously announced that Foote was installed as President, Hinshaw as Secretary, Rivera as a director and Vice President, Global Partnerships, and Garcia as Vice President, Major Accounts.¹¹ Sharp remained on as an advisor to HUMBL, while also working with HUMBL in his capacity as President of Forwardly, LLC ("Forwardly").¹²

42. On November 23, 2020, Forwardly – controlled by Sharp – invested an undisclosed amount in Tesoro in exchange for warrants to purchase 500 million common shares within two years of the HUMBL/Tesoro merger. In a December 10, 2020 press release issued by Forwardly, Sharp stated that the investment in HUMBL was immediately beneficial due, in part, to "the fortuitous timing of the execution of the purchase agreement."¹⁶

123. Defendant Sharp – who routinely promoted himself as an “advocate for shareholder rights and honesty in the OTC”⁶⁶ – used his well-branded identity to pump Tesoro’s share price just before the merger completed. In one Tweet, Sharp wrote: “I didn’t really realize what a big deal \$TSNP & HUMBL CEO, Brian Foote, is until this weekend. I believe that he may be the Elon Musk of blockchain. He is so highly regarded that he is a keynote speaker at BC conventions around the world.”⁶⁷ At the December 9, 2020 investor call, Sharp said: “I’m not easily impressed, but I was blown apart. . . . This deal is going to bring credibility finally to the OTC.”⁶⁸

124. In addition to pumping the share prices, Sharp deliberately withheld material information from shareholders to delay adverse reactions from the public. During the February 26, 2021 investor call, Sharp said: “I made the conscious decision that we were not going to tell you and I’ll tell you why: it would have created mass panic . . . I don’t want to sound like I’m your mother, but we saved a lot of you from yourselves here.” Id

125. In saying this, Sharp acknowledged that telegraphing the split would have had an adverse effect on the share price. Between the time Sharp knew that a split would occur (November 12, 2020) and the date of the actual split (February 26, 2021), HUMBL shares skyrocketed from \$0.014 to \$5.15.

126. Then when the public learned that HUMBL had quietly issued Series B Preferred shares convertible into 5.54 billion common shares to insiders and family members – thereby setting shareholders up for total annihilation once those shares unlocked and became available to sell – Sharp repeatedly gaslit investors. On February 26, 2021, Sharp said: “If you’re worried about dilution, don’t be. This is not your typical OTC stock. We believe these people are investors, not profit takers.” Id.

127. Again, on April 18, 2021, Sharp tweeted: “If you think that 6 billion new \$HMBL shares are going to suddenly appear in the O/S, then please . . . sell your shares.”⁶⁹ Sharp’s Tweet was classic gaslighting, given that 3 billion shares could suddenly appear for sale in December if insiders converted their Series B into common shares.

128. Sharp's portrayal of HUMBL as full of diehard believers who would never sell their shares was an important part of the scheme to keep investors engaged in the Company despite its utter failure to bring a successful product to market. Foote carried this mission out flawlessly.

167. Sharp or his family benefited from the sale of Forwardly's common shares (previously converted from Series B). For example, the Company reported that Forwardly planned to sell 125,000,000 shares in its July 20, 2022 S-1 filing.

175. The reverse merger closed on December 3, 2020. The reverse merger was shepherded by OTC investor Defendant George Sharp, who described himself during HUMBL's debut webcast as "an advocate for shareholder rights and honesty in the OTC."⁸⁷

181. Thereafter Defendant Sharp attempted to downplay the concern shareholders expressed about the corporate action and assuage those who were concerned about potential dilution, stating: "If you're worried about dilution, don't be."⁹⁴ Sharp also told investors that he was doing them a favor by being opaque about the Company's actions, such as the surprise reverse stock split, stating, "I made the conscious decision that we were not going to tell you."⁹⁵

182. The price of HUMBL stock declined following the announcement of the reverse split, but the downplaying of the potential dilution by the Company and Defendant Sharp, coupled with a continued string of announcements about HUMBL's international partnerships and growth prospects, kept the stock price artificially inflated for the rest of the Class Period.

273. Then, after markets closed on February 26, 2021, HUMBL held its third investor conference call. During that February 26, 2021 investor call, Defendant Sharp assured investors that: "If you're worried about dilution, don't be."¹⁴⁸

299. The Individual Defendants had actual knowledge of HUMBL's strategy for the reverse merger with Tesoro and structuring of the different classes of shares at the time they were occurring. Their own public statements indicated their personal involvement and knowledge:

- December 9, 2020: “The HUMBL team and the Tesoro public vehicle were a perfect match, and we laid out a plan to bring the two together and everybody followed the plan to a tee which is a credit to Brian [Foote] and his group. (Sharp)

December 9, 2020: “It goes without saying that George [Sharp] was incredible at getting us into the OTC markets. ... We knew it takes an average of five to seven years to get onto the NASDAQ and we saw tech starting to run through the same five venture capital firms, same five mega techs, same five investment backs in New York, and I said ‘Okay, well, what can we do here to do something really fresh and not only for the brand ... but also do something from a capital markets prospective that was super disruptive and got back to the basic so early stage technology being available for anybody to invest in.’ We appreciate that opportunity. Thank you George.” (Foote)160

February 26, 2021: “A lot of people that would have taken over the TSNP vehicle would have done a 1 for 10,000, a 1 for 100,000, wiping out the existing shareholders. We did a very small reverse split ... We picked the number one for four as our personally said because we wanted to appease the shareholders.” (Sharp)161

300. Defendant Sharp’s own statements further demonstrated his knowledge of what HUMBL shareholders consider material and indeed, his admission that he withheld information in order to manage the Company’s stock price. Specifically, during the February 26, 2021 call with investors, Defendant Sharp stated: We received a number of comments about how some certain people would have wished that we had announced that we were doing to do this reverse split sooner. In other words, we should have told you a week ago or two weeks ago. I made the conscious decision that we were not going to tell you. I’ll tell you why. It would’ve created mass panic. Some of you would’ve sold your stock, which is fine, but the problem is, with a mass panic, instead of selling your stock at a dollar, 90 cents, 80 cents, 70 cents, you probably would’ve ended up selling, a lot of you, selling it for 40 cents. I don’t want to sound like I’m your mother, but we saved a lot of you from yourselves here.

302. Lastly, the Individual Defendants closely followed HUMBL's stock price, see, e.g., February 26, 2021 investor call (Sharp: "[Y]ou in fact had a tremendous increase in the value of your stock today ... We closed at 85 cents yesterday, and opened at \$3.40."), and relied on the value of its stock in order to conduct acquisitions, see, e.g., July 7, 2021 Press Release (Foote's "retired shares are sufficient to cover the shares that have been or will be issued in connection with the completed Tickeri and Monster LA acquisitions, HUMBL Brand Ambassadors, HUMBL Strategic Advisors and HUMBL Strategic Collaborations such as Athletes First, Glushon Sports Management and Pilgrimage Festival").

326. During the Class Period, Defendants Foote, Sharp, and Hinshaw participated in the operation and management of HUMBL and conducted and participated, directly and indirectly, in the conduct of HUMBL's business affairs. Because of their senior positions, the Individual Defendants knew the adverse nonpublic information about HUMBL's current financial position and future business prospects

330. By reason of the above conduct, Defendants Foote, Sharp, and Hinshaw are liable pursuant to §20(a) of the Exchange Act for the violations committed by HUMBL.

The remainder of allegations in the FAC either relate to the conduct of other individuals, or are alleged against the "Defendants" generally.

III. LAW AND ARGUMENT

A. Legal Standard

"A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of a claim, and therefore may be decided on its face without extensive factual development." *Mann v. Brenner*, 375 F. App'x 232, 239 (3d Cir. 2010). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement

to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint does not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

The Court generally must assume the truth of the allegations in the Complaint, however, "conclusory allegations of law, unsupported conclusions and unwarranted inferences" should not be accepted as true. *Carefirst of Md., Inc. v. Care First Transp., Inc.*, Civil Action No. 02-229-, 2002 U.S. Dist. LEXIS 22830, at *7 (D. Del. Nov. 1, 2002). Thus, "conclusory allegations unsupported by any factual assertions, made in plaintiffs' complaint cannot withstand a motion to dismiss." *Id.* at *7-*8.

B. Pleading Requirements for Securities Fraud Claims

A Complaint alleging a violation of section 10(b) and Rule-10b(5) of the Exchange Act must satisfy the pleading requirements of both the PSLRA and FRCP 9(b). See *Universal Am. Corp. v. Partners Healthcare Sols. Holdings, L.P.*, 176 F. Supp. 3d 387, 393 (D. Del. 2016) The PSLRA provides that:

In any private action arising under this title [15 USCS §§ 78a et seq.] in which the plaintiff alleges that the defendant—

(A) made an untrue statement of a material fact; or

(B) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.

15 U.S.C. § 78u-4(b)(1). Further:

[I]n any private action arising under this title [15 USCS §§ 78a et seq.] in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this title [15 USCS §§ 78a et seq.], state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

15 U.S.C. § 78u-4(b)(2).

“The PSLRA requires plaintiffs to state with particularity both the facts constituting the alleged violation, and the facts evidencing scienter, i.e., the defendant's intention ‘to deceive, manipulate, or defraud.’” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

It does not suffice that a reasonable factfinder plausibly could infer from the complaint's allegations the requisite state of mind. Rather, to determine whether a complaint's scienter allegations can survive threshold inspection for sufficiency, a court governed by § 21D(b)(2) must engage in a comparative evaluation; it must consider, not only inferences urged by the plaintiff, as the Seventh Circuit did, but also competing inferences rationally drawn from the facts alleged. An inference of fraudulent intent may be plausible, yet less cogent than other, nonculpable explanations for the defendant's conduct. ***To qualify as "strong" within the intendment of § 21D(b)(2), we hold, an inference of scienter must be more than merely plausible or***

reasonable--it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.

Id. at 314 (emphasis added).

In alleging fraud, “Rule 9(b) requires a plaintiff to plead (1) a specific false representation of material fact; (2) knowledge by the person who made it of its falsity; (3) ignorance of its falsity by the person to whom it was made; (4) the intention that it should be acted upon; and (5) that the plaintiff acted upon it to his [or her] damage.” *Garfield v. Shutterfly, Inc.*, 857 F. App'x 71, 80 (3d Cir. 2021). Indeed, the “PSLRA requires Plaintiff to specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.” *Id.* at 81. This requires a pleading of “the who, what, when, where, and how” of the misconduct charged. *Id.* at 80.

C. The FAC Fails to State a Claim under Section 10(b) and Rule 10(b)-5 of the Exchange Act against Defendant Sharp

“Section 10(b) of the Securities Exchange Act of 1934 forbids (1) the use or employ[ment] . . . of any . . . deceptive device, (2) in connection with the purchase or sale of any security, and (3) in contravention of” Securities and Exchange Commission rules and regulations.” *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341, 125 S. Ct. 1627, 1630-31 (2005). Additionally, “Rule 10b-5 forbids, among

other things, the making of any "untrue statement of a material fact" or the omission of any material fact "necessary in order to make the statements made . . . not misleading." *Id.* at 1631. A claim under section 10(b) and Rule 10(b)-5 of the Exchange Act "has six elements: (i) a misrepresentation or omission of material fact; (ii) scienter; (iii) a connection with the purchase or sale of a security; (iv) reliance; (v) economic loss; and (vi) loss causation. *City of Warren Police & Fire Ret. Sys. v. Prudential Fin., Inc.*, 70 F.4th 668, 679 (3d Cir. 2023)

1. The FAC Does Not Identify Any Material Misrepresentation or Omission by Defendant Sharp

None of the statements attributed to Sharp in the FAC constitute material misrepresentations. "To be actionable, of course, a statement must also be misleading." *Basic Inc. v. Levinson*, 485 U.S. 224, 239, fn. 17 (1988). "Puffery" or "generalized statements of optimism" are not actionable. *In re Mylan N.V. Sec. Litig.*, No. 2:20-cv-955-NR, 2023 U.S. Dist. LEXIS 88941, at *26 (W.D. Pa. May 18, 2023).

The FAC discloses only three statements made by Sharp relevant to Plaintiffs' section 10(b) and Rule 10(b)-5 claim including: (1) a statement allegedly made in a February 26, 2021 wherein Sharp stated that he did not tell investors about the reverse merger; (2) another statement from that call wherein Sharp told investors not to be worried about dilution; and (3) a tweet from April 18, 2021 wherein Sharp

allegedly told investors that if they were worried to sell their shares. (See FAC ¶¶ 126, 127 & 300).

The First of the above statements cannot be construed as misleading. Sharp is doing nothing more than advising investors that he did not tell them about the alleged “reverse-split” and providing his opinion on what would have happened if he did disclose that information. Indeed, the FAC does not allege that this statement was misleading either.

The Second and Third statements identified above are also not misleading. Both statements are statements of opinion – not fact. Defendant Sharp is identifying that he didn’t believe that certain investors were profit takers or that there would be dilution of shares. Defendant Sharp even qualified these statements by advising investors to “sell [their] shares” if they believed otherwise. Accordingly, none of the statements attributable to Defendant Sharp constitute a material misrepresentation.

Further, the FAC does not adequately allege any material omission by Sharp. The securities laws do not require a defendant "provide the public with all material information." *In re Burlington Coat Factory*, 114 F.3d at 1432. “To impose liability for non-disclosure, a defendant must be under a duty to disclose the omitted information.” *Winer Family Tr. v. Queen*, 503 F.3d 319, 329 (3d Cir. 2007); *see also Oran v. Stafford*, 226 F.3d 275, 285 (3d Cir. 2000) ["Even non-disclosure of material information will not give rise to liability under Rule 10b-5 unless the defendant had

an affirmative duty to disclose that information."]; *Basic, Inc. v. Levinson*, 485 U.S. 224, 239 n.17, 108 S. Ct. 978, 99 L. Ed. 2d 194 (1988) ["Silence, absent a duty to disclose, is not misleading under Rule 10b-5."].

Moreover, it bears emphasis that § 10(b) and Rule 10b-5(b) do not create an affirmative duty to disclose any and all material information. **Disclosure is required under these provisions only when necessary "to make . . . statements made, in the light of the circumstances under which they were made, not misleading.** Even with respect to information that a reasonable investor might consider material, companies can control what they have to disclose under these provisions by controlling what they say to the market.

(*Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44-45 (2011) (internal citations omitted) (emphasis added)).

The only omission that the FAC attributes to Defendant Sharp is his failure to inform investors of the Merger with Tesoro and the "reverse-split". However, the FAC does not allege that Defendant Sharp had a duty to disclose this information. Further, there are no statements allegedly made by Sharp in the FAC that would have given rise to a duty to disclose on his part. Accordingly, the FAC fails to allege a material misrepresentation or omission on the part of Defendant Sharp, and the First and Third Causes of Action for violations of Section 10(b) and Rule 10(b)-5 of the Exchange Act fail.

While there are numerous other allegations in the FAC concerning other statements made by HUMBL and its principals, the FAC does not attribute any of those statements to Sharp. The FAC's allegations that simply reference

“Defendants” or the “Individual Defendants” lack the requisite particularity to find a violation of 10(b) and 10(b)-5 against Defendant Sharp as an individual. *See Garfield, supra*, at 80 [allegations of fraud must identify “the who, what, when, where, and how”].

Finally, Defendant Sharp cannot be held liable for a violation of Section 10(b) and Rule 10(b)-5 simply by his involvement in the “scheme” alleged or general allegations of his providing assistance to other actors. “Aiding and abetting liability is authorized in actions brought by the SEC but not by private parties.” *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta, Inc.*, 552 U.S. 148, 162, 128 S. Ct. 761, 771 (2008). In proceeding against a “secondary actor”, “the plaintiff must show the deceptive conduct was publicly attributed to that secondary actor.” *In re DVI, Inc. Sec. Litig.*, 639 F.3d 623, 648 (3d Cir. 2011). “It is insufficient to show only that the deceptive conduct was publicly disclosed through other statements or conduct; the public must be made aware of the defendant's acts.” *Id.*

Here, the FAC does not allege any material misrepresentation or omission against Defendant Sharp. Therefore, he cannot be liable under Section 10(b) or Rule 10(b)-5. His involvement in the overall “scheme” or rendering of assistance to primary violators is insufficient to confer individual liability. Accordingly, the First and Third Causes of Action must be dismissed.

2. *The FAC Does not Adequately Plead Scienter as to Defendant Sharp*

To plead scienter under the PSLRA, plaintiffs must "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2). "It does not suffice that a reasonable factfinder plausibly could infer from the complaint's allegations the requisite state of mind." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314, 127 S. Ct. 2499, 2504 (2007). The required state of mind is one 'embracing [an] intent to deceive, manipulate, or defraud,' either knowingly or recklessly." *In re Hertz Glob. Holdings, Inc.*, 905 F.3d 106, 114 (3d Cir. 2018).

"A complaint adequately pleads a strong inference of scienter 'only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged.'" *Transperfect Holdings, LLC v. Pincus*, No. 22-1477-RGA, 2023 U.S. Dist. LEXIS 161106, at *11 (D. Del. Sep. 12, 2023).

Here, the FAC utterly fails to plead scienter with the requisite particularity against Defendant Sharp. The only scienter allegations against Sharp are that he (1) personally benefitted from the sale of stock owned by a company called "Forward" that was allegedly under his control (FAC ¶ 167); and (2) told shareholders that he intentionally did not advise them of the "reverse-split" because he feared creating a panic. These allegations fall far short of establishing the intent to defraud required

to support a claim under Section 10(b) and Rule 10(b)-5. Accordingly, the First and Third Causes of action must be dismissed.

Further, Sharp is entitled to even greater protection because two of his statements referenced above were “forward-looking.” The PSLRA contains a “safe harbor” provision which “applies to statements that are forward-looking as defined by the statute provided that they are (1) identified as such, and accompanied by meaningful cautionary statements; or (2) immaterial; or (3) made without actual knowledge that the statement was false or misleading.” *In re Aetna Sec. Litig.*, 617 F.3d 272, 278-79 (3d Cir. 2010); 15 U.S.C. § 78u-5(c)(1)-(2). “Under the PSLRA, if the alleged misstatement or omission is a “forward-looking statement,” the required level of scienter is “actual knowledge.” *Matrixx Initiatives, Inc. v. Siracusano* 563 U.S. 27, 48, fn. 14 (2011).

There is absolutely nothing alleged in the FAC that shows “actual knowledge” of falsity in the statements allegedly made by Defendant Sharp. Accordingly, the First and Third Causes of Action must be dismissed.

D. The FAC Fails to State a Claim Under Section 20(a) of the Exchange Act Against Defendant Sharp

Section 20(a) of the Exchange Act states:

Every person who, directly or indirectly, controls any person liable under any provision of this title or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not

directly or indirectly induce the act or acts constituting the violation or cause of action.

15 U.S.C. § 78t(a).

“To state a § 20(a) claim, plaintiffs must plead both a primary and secondary violation.” *Sheehan v. Little Switz.*, 136 F. Supp. 2d 301, 315 (D. Del. 2001). “To state a claim that the individual defendants were “controlling persons,” plaintiffs must establish that: 1) the individual defendants had the power to control or influence the primary violators; and 2) the individual defendants were culpable participants in the illegal activity.” *Id.* “To establish control person liability, plaintiffs must show that the defendants had actual power or influence over the allegedly controlled person. Actual control means the practical ability to direct the actions of the controlled person.” *Id.*

The FAC is devoid of allegations indicating that Defendant Sharp was a “control person” of HUMBL. The FAC identifies that Sharp previously served as an “advisor” to HUMBL and currently serves as its “Capital Markets Advisor”. (FAC ¶ 16). The FAC does not allege that Defendant Sharp is an officer, director, or controlling shareholder of HUMBL. Further, it does not allege that Sharp had the authority to make business decisions on HUMBL’s behalf, or that he exercised actual authority over HUMBL’s day to day operations. Indeed, Defendant Sharp is the only Defendant that is not alleged to be an officer or director (or both) of HUMBL. (*See* FAC ¶¶ 13-18).

Based on the foregoing, the FAC fails to state a claim for control person liability under Section 20(a) of the Exchange Act. Accordingly, the Second Cause of Action must be dismissed.

E. The FAC Fails to State a Claim for Violations of Sections 5 and 12(a)(1) of the Securities Act Against Defendant Sharp

“Any person who... offers or sells a security in violation of section 5 [15 USCS § 77e]... shall be liable, subject to subsection (b), to the person purchasing such security from him...” 15 U.S.C.S. § 77l(a)(1). “This section is designed as a vehicle for a purchaser to claim against his immediate seller.” *Collins v. Signetics Corp.*, 605 F.2d 110, 113 (3d Cir. 1979) (emphasis added). “[U]nless some special relationship exists between the issuer and the actual seller of the securities, such as control of the seller by the issuer, a purchaser not in privity with the issuer has no claim under § 12(2) against the issuer.” *Id.* at 112.

The FAC does not allege that any Plaintiffs purchased securities directly from Defendant Sharp. Because there are no allegations that Sharp was an immediately seller, or in privity with the Plaintiffs, the Fourth Cause of Action should be dismissed.

The FAC attempts to escape the privity requirement by alleging that Defendant Sharp “actively solicited” the sale of the securities at issue. FAC ¶ 349. However, the FAC does not sufficiently plead liability by reason of solicitation.

The person who gratuitously urges another to make a particular investment decision is not, in any meaningful sense, requesting value in exchange for his suggestion or seeking the value the titleholder will obtain in exchange for the ultimate sale. The language and purpose of § 12(1) suggest that liability extends only to the person who successfully solicits the purchase, motivated at least in part by a desire to serve his own financial interests or those of the securities owner. If he had such a motivation, it is fair to say that the buyer "purchased" the security from him

Pinter v. Dahl, 486 U.S. 622, 647, 100 L. Ed. 2d 658, 108 S. Ct. 2063 (1988).

“The purchaser must demonstrate direct and active participation in the solicitation of the immediate sale to hold the issuer liable as a § 12(2) seller.” *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 716 (3d Cir. 1996) (emphasis added). Further, “persons who fail to qualify as sellers under the *Pinter* standard may not be held liable under § 12(2) on an aiding and abetting theory.” *Craftmatic Sec. Litig. v. Kraftsow*, 890 F.2d 628, 637 (3d Cir. 1989).

The Fourth Cause of Action does not allege Defendant Sharp’s “solicitation” with any detail whatsoever. *See* FAC ¶¶ 343-351. Further, the preliminary allegations in the FAC do not sufficiently allege solicitation either. As is identified in greater detail above, the FAC only alleges that Defendant Sharp: (1) told investors that he did not disclose the “reverse-split” to them, and (2) told investors not to worry about dilution of their shares. Thus, the allegations of the FAC fail to allege a violation of Section 12(a) of the Securities Act against Defendant Sharp, and the Fourth Cause of Action must be dismissed.

IV. CONCLUSION

Defendant George Sharp respectfully requests that this Court dismiss the FAC in its entirety as against Defendant Sharp.

Dated: October 30, 2023

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CERTIFICATION REGARDING WORD COUNT AND FONT

Pursuant to this Court's Standing Order Regarding Briefing in All Cases, dated November 10, 2022, counsel certifies that: (a) this brief contains a total number of 4,946 words, including footnotes, exclusive of the cover page, Table of Contents, Table of Authorities, and signature blocks; and (b) the text of this brief is in 14-point Times New Roman font and complies with the applicable word limitations for this brief as established pursuant to Order of this Court.

Dated: October 30, 2023

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**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MATT PASQUINELLI and BRYAN
PAYSEN, Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

HUMBL, LLC, BRIAN FOOTE,
JEFFREY HINSHAW, GEORGE
SHARP, KAREN GARCIA, and
MICHELE RIVERA,

Defendants.

Case No.: 1:23-cv-00743-CFC

**[PROPOSED] ORDER GRANTING DEFENDANT GEORGE SHARP'S
MOTION TO DISMISS THE FIRST AMENDED
CLASS ACTION COMPLAINT**

AND NOW, upon consideration of Defendant George Sharp's Motion to Dismiss the First Amended Class Action Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) (the "Motion"), together with any opposition thereto;

IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED.
2. The First Amended Class Action Complaint as to Defendant George Sharp is DISMISSED.

Dated: _____

Honorable Colm F. Connolly
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MATT PASQUINELLI and BRYAN
PAYSEN, Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

HUMBL, LLC, BRIAN FOOTE,
JEFFREY HINSHAW, GEORGE
SHARP, KAREN GARCIA, and
MICHELE RIVERA,

Defendants.

Case No.: 1:23-cv-00743-CFC

**DEFENDANT GEORGE SHARP'S MOTION TO DISMISS THE FIRST
AMENDED CLASS ACTION COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant George Sharp hereby moves to dismiss the claims asserted against him in the First Amended Class Action Complaint. The grounds supporting the Motion are set forth in the accompanying Opening Brief, and will be supplemented, as appropriate, in a reply brief.

Dated: October 30, 2023

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