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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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. 3:22-cv-00723-AJB-BLM

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

Date: February 2, 2023
Time: 2:00 p.m.
Judge: Hon. Anthony Battaglia
Courtroom: 4A
Complaint Filed: May 19, 2022
Trial: Not yet set

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Plaintiffs respectfully submit this Opposition to Defendant George Sharp's Motion to Dismiss the First Amended Class Action Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) (ECF No. 33) ("Motion" or "Mot.").[1]

I. INTRODUCTION

During the Class Period, Defendants engaged in and financially benefitted from a multifaceted scheme in which they made materially false and/or misleading statements regarding the Company's business and operations, and/or engaged in deceptive conduct, to entice Plaintiffs and other Class members to invest in HUMBL. Throughout its three-year history, HUMBL – which has likened itself to Apple and Amazon – launched various products and services promising disruption in their respective industries. ¶¶28, 30-31, 76, 121, 206, 296, 299. But those promises were a sham, as the Company has yet to develop any monetizable products. ¶30. Instead, HUMBL's purportedly global platform of products and services was not even functional when announced. *Id*.

In essence, Defendants' deceptive strategy consisted of artificially inflating the price of HUMBL stock by flooding the public forum with misleading press events, press releases, advertisements, and social media posts relating to its launch of a new "disruptive" product, and announcing a new partnership to aid in the product's immediate effectiveness in the market, all to persuade investors to buy and hold HUMBL shares. ¶31. As later revealed to investors, HUMBL failed to follow through on these partnerships and to invest the funds necessary to make its products successful. *Id*. HUMBL then shifted into another sector where Defendants repeated the pump-and-pivot cycle until corporate insiders, including Sharp, could use clandestine corporate actions, toxic debt, and related parties to make millions. *Id*.

[1] Unless otherwise noted, capitalized terms have the meanings ascribed in the Amended Class Action Complaint for Violations of the Federal Securities Laws (ECF No. 26) (the "Complaint"); citations to "¶" refer to the Complaint; citations and footnotes have been omitted; and all emphasis has been added.

In addition to product functionality, global partnerships, and geographic reach of the HUMBL platform, Defendants made material misstatements regarding stock ownership, share count restrictions and reductions, and dilution probability. ¶4. Defendants also sold a series of highly speculative unregistered securities called BLOCK ETX products, collateralized by a variety of highly speculative and risky digital assets. ¶3.

Despite the Complaint's well-pled allegations, Sharp contends that his portrayal of HUMBL, and the strength of its securities, was not misleading, that he did not have a duty to disclose alleged material information, and that he did not have the requisite control over the Company. The alleged (and indisputable) facts, however, belie these arguments. In addition, Sharp contends that, even if (1) his assurances to investors were materially misleading because pursuant to the merger agreement between HUMBL and Tesoro, the issuance of 552,029 shares of Series B Preferred Stock convertible to 10,000 shares of common stock, following the planned reverse split, would cause massive share dilution, and (2) his conduct contributed to the artificial inflation of HUMBL's stock price, and therefore was deceptive, causing substantial losses to shareholders, the alleged facts do not show recklessness or knowledge. But Sharp was embroiled in and personally profited from the scheme alleged by Plaintiffs, and he admits to knowing and withholding material information from investors to prevent the Company's stock price from falling. Therefore, the inference that he proposes – that he acted unwittingly and innocently when orchestrating and profiting from HUMBL's critical merger with Tesoro – is implausible.

Thus, Plaintiffs have adequately pled the requisite elements of their claims, and Defendant Sharp's Motion must be denied.[2]

[2] Plaintiffs do not oppose dismissal of the §§5 and 12(a)(1) claims under the Securities Act as to Defendant Sharp only.

II. RELEVANT FACTS

HUMBL purports to be a mobile financial services company. ¶21. Prior to and during the Class Period, Defendants employed a strategy of regularly announcing HUMBL's launch of "disruptive" products, global partnerships, and acquisitions, expending significant resources on marketing each one to maintain investor interest in, and create a façade of legitimacy for, the Company:

Date	Type of news	HUMBL News
05/19/19	Product launch	HUMBL Mobile App (¶¶22, 46-47)
03/20/20	New partnership	Digital India Payments (¶34)
04/03/20	New partnership	One Kiosk (¶35)
11/24/20	New partnership	Cyberbeat (¶36)
12/01/20	Product launch	HUMBL Hubs (¶¶22, 46)
12/09/20	Product launch	HUMBL's first live transaction, as recorded in "A Borderless Day in Baja" video (¶41)
12/17/20	Product launch	HUMBL Marketplace (¶¶23, 69-71)
01/22/21	New partnership	Tuigamala Group Pty LTD (¶38)
01/22/21	New partnership	Joint venture on a HUMBL Hubs beta test location in the U.S. (¶39)
01/22/21	Acquisition	BLOCK 30 Labs, LLC (¶88)
01/25/21	Product launch	HUMBL Financial (¶¶77, 83, 89)
02/22/21	Product launch	HUMBL BLOCK ETX products (¶91)
02/26/21	Acquisition	Tickeri, Inc. (¶99)
04/16/21	Product launch	HUMBL Pay Mobile App (¶¶48, 279)
05/07/21	New partnership	Monster Creative, LLC (¶110)
05/24/21	Product launch	HUMBL NFT Gallery (¶111)
06/22/21	New partnership	Athletes First (¶114)
09/07/21	Product launch	Re-launch of HUMBL NFT Gallery (¶115)

HUMBL also generated positive publicity around its product launches. Specifically, on April 16, 2021, following the HUMBL Pay Mobile App launch, Nick Carter (former member of The Backstreet Boys) posted a picture of his HUMBL Pay username and headshot for his 675,000 Twitter followers. ¶43. On November 24, 2021, Carter also tweeted: "Excited to be able to send and receive digital assets this holiday season with @HUMBLPAY!!" ¶48. The HUMBL Mobile App also received an influx of five-star reviews in the Apple App Store shortly after

the product launch. ¶¶44-46. HUMBL and Defendant Foote followed the same play book to keep investors buzzing about HUMBL's NFTs:

- Foote Tweet (03/25/21): Announcing NFTs with MLB players like Johnny Cueto, and Nelson Cruz. ¶¶112-113.
- Foote Tweet (05/07/21): Announcing HUMBL as the "Official NFT Provider of The Pilgrimage Festival in Sep '21." ¶112.
- HUMBL Tweet (09/7/21): Announcing Machado x Glaser NFT coming soon. ¶116.
- HUMBL Tweet (10/21/21): Announcing new NFT collection featuring professional surfer Rob Machado and legendary surf photographer Todd Glaser. *Id.*
- HUMBL Press Release (10/25/21): Announcing Nick Carter was releasing his Extended Play Record and NFT Collection on Blockchain. ¶¶116-117.

Defendants' misleading statements and omissions, and/or deceptive conduct, artificially inflated the Company's stock price throughout the Class Period:

HUMBL News	Date	Price	Increase
Cyberbeat deal announced (¶37)	11/24/20	$0.128	+58.91%
	11/25/20	$0.165	+28.66%
	11/26/20	$0.432	+161.74%
	11/27/20	$0.798	+84.55%
New "Financial" webpage (¶¶84-87)	01/19/21	$1.168	+43.14%
TGP deal announced (¶40)	01/22/21	$1.413	+13.94%
	01/23/21	$1.916	+35.59%
HUMBL Financial launched (¶¶89-90)	01/25/21	$1.916	+35.59%
BLOCK ETX lines announced (¶¶91-92)	02/02/21	$1.846	+16.81%
	02/03/21	$2.660	+44.10%
	02/04/21	$3.720	+39.85%
	02/05/21	$5.520	+48.29%
	02/08/21	$6.840	+1.18%
Tickeri acquisition announced (¶104)	02/26/21	$4.830	+42.06%
Tickeri binding term sheet (¶105)	03/01/21	$5.980	+23.81%
Johnny Cueto & Nelson Cruz NFTs (¶113)	03/25/21	$3.850	+4.19%
NFT Gallery announced (¶111)	05/24/21	$0.915	+9.58%
Nick Carter NFT announcement (¶117)	10/25/21	$0.675	+7.76%

However, the true functionality, geographic reach, and user satisfaction of HUMBL's products and partnerships stood in stark contrast to the Company's public statements and promotional conduct. ¶¶49-65, 72-98, 101-107, 118-21.

First, despite Defendants' consistent portrayal of a strong portfolio of products, the basic features of the HUMBL Mobile App, HUMBL Pay, and HUMBL Marketplace failed to work as promised. ¶¶50-54, 75. Indeed, HUMBL has yet to develop any new global payment functionality; rather, it relies on its competitor, Stripe – one of the largest online payment processors in the world – to transact the business HUMBL Marketplace claims to facilitate. ¶76.

Likewise, the strategic partnerships were either doomed from the start or not followed through by the Company. ¶¶55-62. Specifically, the partnerships with DIPL, One Kiosk, TGP, Cyberbeat, and BLOCK 30 never existed or were overstated, as there is no evidence to suggest that they ever evolved past the press release stage. ¶¶55-62, 95-98. Regarding HUMBL's acquisition of Tickeri, it was later revealed that contrary to Defendants' statements, Tickeri did not service the Americas, nor did it feature events in Latin America or the Caribbean. ¶¶102-106. HUMBL also claimed Tickeri had $30M in revenue and that the deal provided it with $20,086,664 in goodwill. ¶101. However, that impressive goodwill dropped ***over $12 million*** to $7,945,602 in mere months (¶107), and even more shocking, Tickeri only had $23,587 in account receivables; thus, the reckless $20M acquisition left the Company with a negative balance of $127,377 in net cash (¶101).

Lastly, HUMBL had not developed its own NFT Gallery and instead utilized a third-party developer's technology, which used application programming interfaces from OpenSea. ¶¶118, 121. Notably absent from the NFT Gallery were any NFTs from the professional athletes and Olympians previously promoted by Defendants. ¶119. Moreover, HUMBL's collaboration with Athletes First was never discussed again following its announcement. ¶120. Likewise, HUMBL's

reviews also proved to be disingenuous and/or paid for by the Company without disclosure to the public. ¶¶63-65.

In sum, while shareholders were led to believe that HUMBL had successfully launched five-star products and secured critical partnerships with vast geographic reach, what shareholders were really investing in was a series of misleading publicity stunts, costing Plaintiffs and other Class members nearly ***$100 million***. ¶¶66-68.

Integral to Defendants' long-game scheme was the appearance of faith in HUMBL and its products by corporate insiders. ¶122. The alleged scheme began with the merger between Tesoro and HUMBL with Defendant Sharp, a known player in the OTC market, at the center of the deal. ¶¶32, 123. Sharp connected Defendant Foote with Tesoro's CEO and orchestrated that merger which made the worthless company worth billions of dollars overnight. ¶33. HUMBL announced the merger on November 12, 2020, which was an all-stock transaction whereby HUMBL members received preferred shares of Tesoro in exchange for their HUMBL holdings. ¶35. HUMBL did not, however, disclose the number of preferred shares to be issued, just each Individual Defendants' role at the Company. ¶36.

Notably, while serving as an advisor to HUMBL, Sharp served as president of Forwardly, LLC. *Id*. On November 23, 2020, Forwardly invested an undisclosed amount in Tesoro in exchange for warrants to purchase 500 million common shares within two years of the HUMBL/Tesoro merger. ¶42. Just over two weeks later, on December 9, 2020, Tesoro announced that its merger with HUMBL was complete. ¶43. The following day, Forwardly issued a press release, quoting Sharp as stating, in relevant part, that the investment in HUMBL was immediately beneficial due, in part, to "the fortuitous timing of the execution of the purchase agreement." ¶42.

Again, Defendants' scheme required maintaining a façade of integrity to mislead investors, and each Individual Defendant engaged in at least one specific act in furtherance thereof. ¶122. Sharp described himself during HUMBL's debut

webcast as "an advocate for shareholder rights and honesty in the OTC." ¶175. Sharp used that well-branded identity to pump Tesoro's share price right before the completion of its merger with HUMBL. ¶123. During HUMBL's 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.'" *Id.*

Then, on February 26, 2021, during the Company's investor conference call ("February 26 investor call"), Sharp admitted to deliberately withholding material information to delay adverse reactions from HUMBL investors regarding the reverse split. ¶¶124, 300. Specifically, during the February 26 investor call, Sharp said:

> 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***.

¶300. These statements demonstrate Sharp's knowledge of what HUMBL investors considered material, and his decision to withhold material information to artificially inflate or maintain HUMBL's stock price based on his acknowledgment that reporting the split would have had an adverse effect on the price. ¶¶124-125. Indeed, between the day Sharp knew of the reverse split (November 12, 2020) and the day the split had occurred (February 26, 2021), HUMBL's stock price had skyrocketed from $0.014 to $5.15. *Id.*

In addition to withholding material information regarding the reverse split, the Individual Defendants, including Sharp, knew that the share structure, put into place by the merger agreement, would massively dilute shareholders' common stock; yet none of the Defendants disclosed these impending and pre-planned corporate actions

when speaking with investors. ¶39. Pursuant to the Plan of Merger, 552,029 shares of Series B Preferred Stock of Tesoro (the "C Corp") were exchanged for the interests of HUMBL's (the "LLC") members "and all references to the C Corp common stock reflect a planned 1:4 reverse split." ¶37. During the February 26 investor call, 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.'" ¶126. Yet, five months after announcing the merger, and less than two months after Sharp's February 26 Statement, the Company disclosed that each of those Series B Preferred shares would be convertible to ***10,000*** common shares. ¶37.

The truth began to emerge on April 18, 2021, when an analyst at Seeking Alpha explained how each of the newly created Series B Preferred Stock from the reverse merger with Tesoro "shall be convertible at the option of the holder thereof at any time after December 3, 2021 . . . into ten thousand (10,000) fully paid and nonassessable shares of common stock." ¶¶185-186. This report concluded that if "all Series B preferred shares are converted, HUMBL is valued at $16.9 billion" despite "barely any investment in development and just $1.8 million of assets as of December." ¶186. On this news, HUMBL share prices fell over 53%. ¶187.

Once it was revealed to investors that HUMBL had quietly issued Series B Preferred shares, convertible to 5.54 billion common shares to Company insiders and their family members, Sharp repeatedly gaslit investors. ¶126. For example, 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." ¶127. Sharp's portrayal of HUMBL as full of diehard believers who would never sell their shares was an important part of Defendants' scheme to keep investors engaged in the Company despite its utter failure to bring a successful product to market. ¶128.

Notably, Sharp or his family benefitted from the sale of Forwardly's common shares (previously converted to Series B). ¶167. For example, on July 20, 2022, the Company reported that Forwardly planned to sell 125 million HUMBL shares. *Id.*

On top of announcing undeveloped products and promising not to sell their shares, Defendants announced influxes of cash via convertible notes to dissuade investors from selling HUMBL stock before the conversion took place. ¶145. Those repeated announcements of new financing, including renegotiated debt, just after a negative press cycle distracted shareholders and misled them to believe HUMBL still had institutional support – despite no profitable products. ¶¶148, 154, 156-157.

Then, on May 20, 2021, Hindenburg published a research report calling into serious question HUMBL's business and financial prospects. ¶¶188-204. On this revelation, HUMBL's share price fell to $0.76 on May 20, 2021, representing an 88.8% drop from its inflated peak price of $6.84 in February 2021. ¶204.

The fraud was fully revealed on November 17, 2021, when Gold Panda issued a report analyzing HUMBL's financial situation and concluding that, "HUMBL has a pattern of promising to disrupt an industry, launching a product that barely generates any revenues and then pivoting to another sector." ¶206. On this news, HUMBL's stock price fell over 16%, closing at $0.4026 on November 18, 2021. ¶207.

These dramatic price drops in HUMBL's stock as the market absorbed the truth caused millions in losses for Plaintiffs and the Class, who had relied on Defendants' statements and conduct. On these facts, Plaintiffs brought suit against Defendants for violations of §§10(b) and 20(a) of the Exchange Act and §§5 and 12(a)(1) of the Securities Act. ¶¶315-351.

III. RELEVANT LEGAL STANDARDS

"To establish a violation of Section 10(b), a plaintiff must plead: (1) a material misrepresentation or omission made by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation." *In re Wells Fargo & Co. S'holder Derivative Litig.*, 282 F. Supp. 3d 1074, 1089-90 (N.D. Cal. 2017) (citing *Stoneridge Inv. Partners, LLC v. Sci.–Atlanta*, 552 U.S. 148, 157 (2008)). Rule 10b-

5 also makes it unlawful for any person "[t]o employ any device, scheme, or artifice to defraud" or "[t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security." 17 C.F.R. §240.10b-5(a), (c).

Courts must accept as true all well-pled factual allegations and draw all reasonable inferences in plaintiff's favor. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A motion to dismiss must be denied where the complaint plausibly articulates the circumstances constituting fraud. *Id.* at 570. When "faced with a . . . motion to dismiss a §10(b) action, courts must . . . consider the complaint in its entirety." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

IV. ARGUMENT

Sharp argues that Plaintiffs failed to allege that he: (1) made materially misleading statements; (2) had a duty to disclose omitted facts; (3) is liable under scheme liability; (4) acted with scienter; and (5) had "control" of HUMBL. Mot. at 10-16. Sharp is wrong.

A. The Complaint Adequately Alleges Sharp Made a Materially Misleading Statement About the Potential Dilution of HUMBL Stock[3]

At the pleading stage, to establish liability under Rule 10b-5(b), a plaintiff need only "specify each statement alleged to have been misleading" and "the reason

[3] Sharp's Motion identifies three Class Period statements as alleged actionable misstatements. *See* Mot. at 11. However, Sharp misconstrues the Complaint, which alleges that he violated §10(b) and Rule 10b-5(b) because during the Company's February 26 investor call, he omitted material information regarding the inevitable dilution of HUMBL stock, following the merger with Tesoro and resulting reverse split, when he said: "'***If you're worried about dilution, don't be***'" ("February 26 Statement"). ¶273. Separately, the Complaint alleges Sharp's other two statements – first, on February 26, 2021, regarding HUMBL's concealment of the reverse split (¶¶124, 300), and second, on April 18, 2021, furthering the false impression that dilution, was unlikely (¶127) – along with other misleading statements and deceptive conduct (¶¶32-33, 42, 123-128, 167, 175), as part of a scheme actionable under §10(b) and Rule 10b-5(a) and (c). *See* §IV.B.

or reasons why the statement is misleading." 15 U.S.C. §78u-4(b)(1)(B). Falsity is a mixed question of law and fact for a jury; the Court should only dismiss a case if "'reasonable minds' could not disagree that the challenged statements were not misleading." *Fecht v. Price Co.*, 70 F.3d 1078, 1080-82 (9th Cir. 1995). Here, the Complaint adequately pleads falsity, alleging with particularity the who, what, when, and where of each misstatement, as well as facts showing how each misstatement was misleading.

"A statement or omission is misleading . . . 'if it would give a reasonable investor the impression of a state of affairs that differs in a material way from the one that actually exists.'" *Wells Fargo*, 282 F. Supp. 3d at 1090 (quoting *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985 (9th Cir. 2008)). "[T]he Supreme Court made clear that statements couched as opinion or belief may be actionable if . . . (1) known by the speaker to be false when made or (2) made without a reasonable basis in fact." *In re Amgen Inc. Sec. Litig.*, 544 F. Supp. 2d 1009, 1027 (C.D. Cal. 2008) (citing *Va. Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1093-94 (1991)); *see also Wells Fargo*, 282 F. Supp. 3d at 1097 ("[T]he line between puffery and a misleading statement . . . requires an analysis of the context in which the statements were made."). Opinions are thus actionable if plaintiff alleges "'facts about the inquiry the issuer did or did not conduct or the knowledge it did or did not have – whose omission makes the opinion statement at issue misleading to a reasonable person reading the statement fairly and in context.'" *Bos. Ret. Sys. v. Uber Techs., Inc.*, 2020 WL 4569846, at *8 (N.D. Cal. Aug. 7, 2020).

Plaintiffs' allegations that Sharp's February 26 Statement inaccurately portrayed HUMBL's state of affairs meet these standards. During the Company's February 26 investor call, held the day after announcing a 1:4 reverse split of its common stock and other changes to its share structure (¶180), Sharp – to downplay concerns expressed by shareholders about the reverse split and consequently, the potential dilution of outstanding HUMBL stock – falsely assured investors by

stating, "'***If you're worried about dilution, don't be***'" (February 26 Statement). ¶¶126, 181, 273.

Defendant's Motion characterizes this misleading statement as an opinion that Sharp "didn't believe that certain investors were profit takers or that there would be dilution of shares." Mot. at 11-12. This mischaracterization is misguided and unreasonable based on the facts known to Sharp at that time. He was at the center of the merger between Tesoro and HUMBL. ¶¶32, 123. He connected Foote with Tesoro's CEO and assisted HUMBL and other corporate insiders to solidify the deal and its terms. ¶¶33, 299. Pursuant to the Plan of Merger, announced on November 12, 2020, 552,029 shares of Series B Preferred Stock of the C Corp were exchanged for the interests of the LLC members "and all references to the C Corp common stock reflect a planned 1:4 reverse split." ¶37. And as later revealed on April 14, 2021, each of those Series B shares was convertible to 10,000 common shares. *Id*.

As such, Sharp's February 26 Statement misrepresented and/or failed to disclose material information, including that, the new "restricted preferred classes of shares" could be converted into over 5.5 billion shares of common stock beginning on December 3, 2021. ¶274. That conversion would severely dilute the value of outstanding HUMBL stock, currently held by Company shareholders. *Id*. Those realities differed from the impression that Sharp provided to investors regarding HUMBL's state of affairs on February 26, 2021, which was that there was nothing then-presently in place that would dilute shareholders' stock. No more is required to plead falsity. *See, e.g.*, *Brown v. China Integrated Energy, Inc.*, 875 F. Supp. 2d 1096, 1119-20 (C.D. Cal. 2012) ("Plaintiffs have alleged with particularity the statements made by China Integrated, explained in detail why they were misleading, and stated the basis for their belief. Accepting plaintiffs' allegations as true – as the court must – they have adequately pled that China Integrated's failure to disclose . . . was misleading.").

Seeking to bypass those well-pled allegations, Sharp raises scattershot arguments about falsity, improperly conflated with allegations of scheme liability. Mot. 10-15. For clarity, Plaintiffs classify Sharp's miscellany into three overarching arguments, each of which fails: (1) the alleged misrepresentation and omissions were immaterial; (2) he did not have a duty to disclose; and (3) his misrepresentation and omissions are protected by the Private Securities Litigation Act of 1995's ("PSLRA") Safe Harbor.

1. Sharp's Misstatement and Omissions Were Material

"A misleading statement is material . . . if there is 'a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.'" *Mausner v. Marketbyte LLC*, 2013 WL 12073832, at *7 (S.D. Cal. Jan. 4, 2013) (quoting *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988)). In other words, an "'omission or misrepresentation'" is "'material'" if it "'would have misled a reasonable investor about the nature of his or her investment.'" *Brown*, 875 F. Supp. 2d at 1103. But "[m]ateriality is a 'mixed question of law and fact,' and '[p]roof of that sort is a matter for trial.'" *Uber*, 2020 WL 4569846, at *6. Thus, "[m]ateriality is rarely appropriate to decide at the motion to dismiss." *Feyko v. Yuhe Int'l, Inc.*, 2013 WL 816409, at *5 (C.D. Cal. Mar. 5, 2013).

To the extent the Court delves into materiality, the Complaint sufficiently demonstrates that Sharp's February 26 Statement was material. As set forth above, HUMBL shareholders were concerned about potential dilution. ¶181. Sharp knew shareholders were concerned, and that they were looking to the Company, and thereby Defendant Sharp, for answers. *Id*. His statement was specifically directed towards those "'worried about dilution.'" *See* ¶¶126, 181, 273. At the same time, he knew that each Series B share would be convertible to 10,000 common shares, thus diluting HUMBL's existing common shares. ¶¶37, 274. Sharp's February 26 Statement thus created a false impression of HUMBL's business operations and state

of affairs as not diluting shareholders' stock. His February 26 Statement is in line with those of the other Defendants who also deceived the investing public about stock ownership, share count restrictions and reductions, and dilution probability. ¶¶247-248, 271-272.

Reasonable investors would have viewed those facts as altering the total mix of information about the state of HUMBL's business operations and current affairs as to stock dilution. *See Retail Wholesale & Dep't Store Union Loc. 338 Ret. Fund v. Hewlett-Packard Co*., 845 F.3d 1268, 1274 (9th Cir. 2017) ("The materiality of the misrepresentation or an omission depends upon whether there is 'a substantial likelihood that [it] would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available' for the purpose of decisionmaking [sic] by stockholders concerning their investments.").

Moreover, the substantial decline of HUMBL's stock when the truth was revealed (*see* ¶¶185-187, 287-289) confirms that investors viewed the undisclosed information about the share dilution as material. *See Westley v. Oclaro, Inc*., 897 F. Supp. 2d 902, 914 (N.D. Cal. 2012) ("[D]ecline in stock price after a disclosure supports a finding of materiality."); *In re Nat'l Golf Props. Inc. Sec. Litig.*, 2003 WL 23018761, at *5 (C.D. Cal. Mar. 19, 2003) ("[Defendant]'s shares suffered a one-day decline in value of 13%" after the revelations and, so, "[i]t cannot be said, at least at the pleading stage, that these disparities would not be material to a reasonable investor."). Thus, Sharp's challenge to materiality fails.

2. Sharp Had a Duty to Disclose Material Information

A "duty to disclose arises when one party has information 'that the other [party] is entitled to know because of a fiduciary or other similar relation of trust and confidence.'" *Chiarella v. United States*, 445 U.S. 222, 228 (1980). A "corporate issuer in possession of material nonpublic information, must, like other insiders in the same situation, disclose that information to its shareholders or refrain from trading." *McCormick v. Fund Am. Cos., Inc.*, 26 F.3d 869, 876 (9th Cir. 1994)

("'[T]he relationship between a corporation and its shareholders engenders the type of trust and confidence' necessary to trigger the duty to disclose.") (collecting cases); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 328 F. Supp. 3d 963, 984 (N.D. Cal. 2018) (Duty to disclose extends to the corporation and a "traditional corporate insider.").

The Ninth Circuit recognizes several factors when considering whether a defendant has a duty to disclose: "(1) the relationship of the parties, (2) relative access to information, (3) the benefit that the defendant derives from the relationship, (4) the defendant's awareness that the plaintiff was relying upon the relationship in making his investment decision, and (5) the defendant's activity in initiating the transaction." *Jett v. Sunderman*, 840 F.2d 1487, 1493 (9th Cir. 1988), *abrogated by Moore v. Kayport Package Express, Inc.*, 885 F.2d 531 (9th Cir. 1989).

Sharp claims he lacked a duty to disclose the merger with Tesoro and the resulting reverse split and probability of dilution. Mot. at 12. Not so. He was privy to material nonpublic information which shareholders were entitled to when he spoke to them. First, at all relevant times, Sharp served as an advisor to HUMBL. ¶¶16, 36. As its advisor, Sharp had access to sensitive insider information about the Company and its state of affairs that was not available to the investing public. ¶¶19-20. In addition to compensation and corporate benefits received by Sharp as a Company advisor, he was the president of Forwardly, through which he financially benefitted from his relationship with HUMBL. *See* ¶¶42, 167. Next, as demonstrated above, and as Sharp admitted, he was aware that HUMBL investors, including Plaintiffs, relied upon his representations when making investment decisions. *See* ¶¶123-124, 321. Lastly, Sharp orchestrated the merger of Tesoro and HUMBL, resulting in the reverse split and stock dilution. *See* ¶¶32-33, 299.

Thus, when Sharp chose to speak about stock dilution, he was required to do so in a manner that was not misleading. ¶¶126, 181, 273, 314. Specifically, he had a duty to disclose the material nonpublic information known to him about the Series

B convertible shares when he assured investors, worried about stock dilution, to not be. *See Melcher v. Fried*, 2018 WL 6326334, at *11 (S.D. Cal. Dec. 4, 2018) ("'[N]on-board member, non-officer, non-employee, simple vanilla shareholder'" had a duty to disclose.); *Martinek v. AmTrust Fin. Servs., Inc.*, 2020 WL 4735189, at *10 (S.D.N.Y. 2020) ("Even where a company is not under a duty to disclose . . . once it 'chooses to speak, it has a "duty to be both accurate and complete."'").[4]

3. The PSLRA's Safe Harbor Does Not Apply

Sharp vaguely argues that "two of his statements referenced above [in the Motion] [a]re 'forward-looking,'" and thus entitled to Safe Harbor protection. Mot. at 15. This argument fails for three reasons: (1) Safe Harbor protections do not apply to penny stocks; (2) Sharp waived this argument by failing to clearly brief it; and (3) the Safe Harbor does not protect Sharp's February 26 Statement of current facts.

First, "Congress expressly excluded all issuers of penny stocks from the protections afforded by the Safe Harbor provisions." *SEC v. Strategic Glob. Invs., Inc.*, 262 F. Supp. 3d 1007, 1021 (S.D. Cal. 2017); *see* 15 U.S.C. §§77z-2(b)(1)(C), 78u-5(b)(1)(C) ("[T]his section shall not apply to a forward-looking statement . . . that is made with respect to the business or operations of the issuer, if the issuer . . . issues penny stock . . . ."). HUMBL's common stock is a "penny stock" under SEC Rule 15g-9, trading on the OTC Pink marketplace.[5] Therefore, Sharp's February 26 Statement is excluded from the PSLRA's Safe Harbor. *See Strategic Glob.*, 262 F.

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[4] *See also Uber*, 2020 WL 4569846, at *7 ("[T]he information defendants ***did*** disclose 'create[d] an impression of a state of affairs that differ[ed] in a material way from the one that actually exist[ed]' . . . [D]efendants had an affirmative duty to correct that impression.") (emphasis in original); *SEC v. Das*, 2011 WL 4375787, at *5 (D. Neb. Sept. 20, 2011) ("Even absent a legal duty to make a disclosure, when a party '"discloses material facts in connection with securities transactions" . . . the law requires "[that] actor to provide complete and non-misleading information with respect to the subjects ***on which he undertakes to speak***."'") (emphasis in original).

[5] *See* ¶13; *see also* HUMBL, Inc., Registration Statement Under the Securities Act of 1933 (Form S-1) (July 29, 2021) at 20.

Supp. 3d at 1020-21 (rejecting argument that misstatements were forward-looking statements protected by the Safe Harbor because the company's stock was a penny stock); *see, e.g.*, *MAZ Partners LP v. First Choice Healthcare Sols., Inc.*, 2020 WL 1072582, at *6 n.7 (M.D. Fla. Feb. 14, 2020) (same).

Second, Sharp failed to identify which two (of three) statements referenced in his Motion he seeks Safe Harbor protection for. *See* Mot. at 15. This argument should be waived for lack of clarity alone. *See In re Clark*, 662 F. App'x 544, 547 (9th Cir. 2016) (rejecting moving party's arguments because "she does not specify the issues she believes were not litigated or decided"); *see also Khoja v. Orexigen Therapeutics, Inc.*, 498 F. Supp. 3d 1296, 1309 n.4 (S.D. Cal. 2020) (declining to address failure to plead scienter "which was not fully briefed by the Parties").

Finally, Sharp's February 26 Statement was a statement of then-current facts and thus, not protected by the Safe Harbor.[6] *See In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1141-42 (9th Cir. 2017) (holding that statements of "current facts" are not protected even when mixed with other, forward-looking statements); *Prodanova v. H.C. Wainwright & Co., LLC*, 2018 WL 8017791, at *12-*13 (C.D. Cal. Dec. 11, 2018) (PSLRA Safe Harbor does not apply where statement is "misleading because it omitted a disclosure of a present fact."). As described in detail above, Sharp was at the center of the merger between Tesoro and HUMBL, connecting Foote with Tesoro's CEO and assisting HUMBL and other corporate insiders to solidify the deal and its terms. ¶¶32-33, 123, 299. Pursuant to the Plan of Merger, announced on November 12, 2020, 552,029 shares of Series B Preferred Stock of the C Corp were exchanged for the interests of the LLC members "and all references to the C Corp common stock reflect a planned 1:4 reverse split." ¶37.

[6] As discussed *supra*, the only statement by Sharp that the Complaint asserts is actionable is his February 26 Statement (¶273). *See* §IV.A.1-2 n.2. The other two statements in his Motion (Mot. at 11) are in the Complaint, with other misstatements and deceptive conduct, as factual support for Sharp's scheme liability. *See* §IV.B.

Five months later, on April 14, 2021, the Company disclosed in its Annual Report that each of those Series B shares would be convertible to 10,000 common shares. *Id.* With knowledge, or in reckless disregard, of that share structure that had been put into place by the merger agreement, Sharp told investors not to worry about share dilution on February 26, 2021 – without disclosing those impending and pre-planned corporate actions. ¶273. Thus, Sharp's February 26 Statement, described ***current*** affairs – not a future plan – and Safe Harbor protections do not apply here.

B. The Complaint Adequately Alleges Scheme Liability as to Sharp

A §10(b) and Rule 10b-5 violation can be found in the absence of a statement or omission because "[c]onduct itself can be deceptive." *Stoneridge*, 552 U.S. at 158. For a Rule 10b-5(a) or (c) claim, a plaintiff must allege a device, scheme, or artifice to defraud, or an act, practice or course of business which would operate as a fraud, in addition to the standard elements of a §10(b) and Rule 10b-5 violation. *N.Y. City Emps.' Ret. Sys. v. Berry*, 616 F. Supp. 2d 987, 996 (N.D. Cal. 2009).

"Secondary actors, other than the securities issuer, may be liable as primary violators under Section 10(b)." *SEC v. Zouvas*, 2016 WL 6834028, at *5 (S.D. Cal. Nov. 21, 2016) (citing *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 191 (1994)). Even a "non-speaking actor who employs a manipulative device or makes a material misstatement (or omission) that is relied on by a purchaser or seller of securities may be liable as a primary violator under 10b-5." *Id*. (citing *Cent. Bank*, 511 U.S. at 191; *SEC v. Zandford*, 535 U.S. 813, 821-22 (2002)). So long as "a defendant's conduct or role in an illegitimate transaction has the principal purpose and effect of creating a false appearance of fact in the furtherance of a scheme to defraud, then the defendant is using or employing a deceptive device within the meaning of § 10(b)." *Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040, 1050 (9th Cir. 2006), *vacated on other grounds*, 519 F.3d 1041 (9th Cir. 2008).

But since "'the exact mechanism of the scheme is likely to be unknown to the plaintiffs, allegations of the nature, purpose, and effect of the fraudulent conduct and the roles of the defendants are sufficient for alleging participation.'" *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 235 F. Supp. 2d 549, 580 (S.D. Tex. 2002); *see also ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 102 (2d Cir. 2007) ("A claim of manipulation, however, can involve facts solely within the defendant's knowledge; therefore, at the early stages of litigation, the plaintiff need not plead manipulation to the same degree of specificity as a plain misrepresentation claim."); *In re Parmalat Sec. Litig.*, 376 F. Supp. 2d 472, 492 (S.D.N.Y. 2005) (Alleging "manipulation in violation of Rule 10b-5(a) and (c) must specify 'what manipulative acts were performed, which defendants performed them, when the manipulative acts were performed and what effect the scheme had on the securities'").

The Complaint adequately alleges that the Individual Defendants, including Sharp, carried out a plan or scheme that was intended to, and did, deceive investors and cause Plaintiffs and other Class members to purchase or sell HUMBL stock at artificially inflated and distorted prices. In particular, the Complaint alleges that Sharp: (i) connected Foote with Tesoro's CEO and orchestrated the merger, making a worthless company worth billions (¶¶32-33, 299); (ii) used his personal brand to pump Tesoro's share price right before its merger with HUMBL, and to promote HUMBL as a worthwhile investment despite having access to nonpublic information demonstrating the Company was developing little more than a series of publicity stunts (¶¶49-65, 72-98, 101-107, 118-121, 123, 175); (iii) fortuitously investing in HUMBL through Forwardly, as its president (¶¶42-43); (iv) deliberately withheld material information to delay adverse reactions from HUMBL investors regarding the reverse split (¶¶124, 300); and (v) assured investors that HUMBL was full of diehard believers who would never sell their shares (¶¶126-128).

This conduct is separate from the alleged misstatement and omissions and suffices to allege a §10(b) claim for scheme liability. *See In re Galena Biopharma,*

Inc. Sec. Litig., 117 F. Supp. 3d 1145, 1193-94 (D. Or. 2015) (finding scheme liability where the conduct included "Defendants' ***actions*** in allegedly manipulating the stock price, including Galena hiring [certain defendants], Galena paying them both significantly above-market rates, . . . the planning and execution of well-timed social media posts and emails with targeted content to artificially inflate the value of Galena's stock, the sale of significant personally-held Galena stock by insiders at artificially inflated prices, the attempted cover-up of those stock sales, and . . . of the full relationship between Galena and [certain defendants]."") (emphasis in original).[7]

In addition, Sharp's conduct had the principal purpose of creating a false appearance with the aim of deceiving the investing public as to the financial strength of HUMBL securities. As discussed in detail herein and in the Complaint, Sharp knew or was deliberately reckless in not knowing that his conduct would result in material misrepresentations or omissions to be included in public documents issued by HUMBL. Indeed, its Class Period SEC filings, press releases, and investor calls

[7] *See, e.g.*, *W. Va. Pipe Trades Health & Welfare Fund v. Medtronic, Inc.*, 57 F. Supp. 3d 950, 977, 981-82 (D. Minn. 2014) (finding scheme liability where alleged conduct included designing trials to elicit biased results and editing articles published by consultants without disclosing the company had paid them millions); *JAC Holding Enters., Inc. v. Atrium Capital Partners, LLC*, 997 F. Supp. 2d 710, 735 (E.D. Mich. 2014) (finding scheme liability where alleged conduct was "not just specific false statements . . . but also the planning and carrying out of a comprehensive scheme, by specific steps, to mislead the buyers"); *SEC v. Curshen*, 888 F. Supp. 2d 1299, 1308 (S.D. Fla. 2012) (finding scheme liability where defendant "orchestrated the false media campaign" around the company, including issuing press releases claiming fictitious achievements and "arranging for the posting of a false website" touting developments); *Swack v. Credit Suisse First Bos.*, 383 F. Supp. 2d 223, 239 (D. Mass. 2004) (alleging that defendant "worked extensively with Dachis to issue bullish research reports (and 'work' Razorfish stock in conference calls and elsewhere) with the deliberate aim of boosting Razorfish's market price artificially . . . adequately states a 'scheme' and 'course of business' under Rule 10b-5(a) and (c)"); *In re ZZZZ Best Sec. Litig.*, 864 F. Supp. 960, 971-72 (C.D. Cal. 1994) (finding scheme liability where defendant reviewed, edited, and approved press releases and other misleading documents as part of scheme).

were the primary methods of perpetuating the scheme alleged. As such, this case involves the systemic perpetration and concealment of material information relating to the financial strength of HUMBL securities, by a high-level corporate insider, who also had a role in the dissemination of misstatements or omissions. Therefore, Sharp's alleged "'behavior is at the heart of [HUMBL's] false and misleading conduct.'" *Berry*, 616 F. Supp. 2d at 997; *see, e.g.*, *In re Bristol Myers Squibb Co. Sec. Litig.*, 586 F. Supp. 2d 148, 170 (S.D.N.Y. 2008) (permitting §10(b) conduct claim where executive committed deceptive acts in connection with a major settlement and failed to correct his company's misstatements about the settlement).

C. The Complaint Adequately Alleges that Sharp Acted with Scienter

To plead scienter, a plaintiff "must 'state with particularity facts giving rise to a strong inference' that defendants acted with the intent to deceive or with deliberate recklessness as to the possibility of misleading investors." *Berson*, 527 F.3d at 987. "'In the securities context, an actor is reckless if he had reasonable grounds to believe material facts existed that were misstated or omitted, but nonetheless failed to obtain and disclose such facts although he could have done so without extraordinary effort.'" *Azar v. Yelp, Inc.*, 2018 WL 6182756, at *16 (N.D. Cal. Nov. 27, 2018). "The inference that the defendant acted with scienter need not be irrefutable . . . or even the 'most plausible of competing inferences.'" *Tellabs*, 551 U.S. at 324. Instead, "[w]hen the allegations are accepted as true and taken collectively," a court need only "deem the inference of scienter at least as strong as any opposing inference." *Id.* at 326. Moreover, "[i]n assessing the allegations holistically . . . courts certainly need not close their eyes to circumstances that are probative of scienter viewed with a practical and common-sense perspective." *S. Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 784 (9th Cir. 2008).

Viewed holistically, Plaintiffs' allegations indicate that Sharp acted recklessly, if not intentionally, during the Class Period, by providing misleading assurances that there was no concern with regards to HUMBL's internal affairs as

causing share dilution, and in making other misstatements and taking deceptive actions to entice investors to buy and hold Company stock. *First*, during an investor call, Sharp misled investors about the strength of HUMBL stock following the Tesoro merger, which he orchestrated, by offering assurances such as, "'***If you're worried about dilution, don't be***,'" while obfuscating that the new "restricted preferred classes of shares" could be converted into over 5.5 billion shares of common stock. *See Killinger*, 542 F.3d at 785-86 ("[A]llegations regarding management's role in a company may . . . independently satisfy [scienter] where they are particular and suggest that defendants had actual access to the disputed information . . . ."); *In re MannKind Sec. Actions*, 835 F. Supp. 2d 797, 814 (C.D. Cal. 2011) ("Defendants' purported access to certain information contradicting their public statements provides additional support for finding . . . scienter.").

Sharp's February 26 Statement was also made in the context of other statements, suggesting he had access to and knowledge of HUMBL's strategy for the reverse merger and the structuring of the different classes of shares at that time:

- 12/09/20: "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) (¶299)
- 02/26/21: "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) (*Id.*)

Second, Sharp used his personal brand to pump Tesoro's share price just before the merger was complete (¶123) and afterwards, deliberately withheld information about the reverse split to keep HUMBL's stock price artificially inflated (¶¶124-125, 300). Specifically, during the February 26 investor call, Sharp stated: "***I made the conscious decision that we were not going to tell you***" about the reverse split earlier because "[i]t would've created mass panic. . . . I don't want to sound like I'm your mother, but we saved a lot of you from yourselves." ¶300. From the

day Sharp knew and kept quiet about the split (November 12, 2020) to the day of the split (February 26, 2021), HUMBL shares had skyrocketed from $0.014 to $5.15. ¶125.

Then, after the Series B Preferred shares, convertible to 5.54 billion common shares issued to Company insiders and their family, became public, Sharp portrayed HUMBL as full of diehard believers who would never sell their shares in an effort to keep investors engaged, despite the Company's utter failure to bring a successful product to market. ¶128. For example, 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." ¶127.

These statements highlight Sharp's knowledge of what HUMBL shareholders considered material and his deliberate choice to withhold certain information from the investing public to manage, or manipulate, the Company's stock price.

Considering these allegations holistically, as the Court must, the Complaint adequately alleges a strong inference that Sharp acted with scienter – *e.g.*, the intent to mislead investors. *See SEC v. Sztrom*, 538 F. Supp. 3d 1050, 1060 (S.D. Cal. 2021) (finding scienter where defendants knew of the alleged misconduct, "yet did not . . . correct [investors'] confusion, and in fact undertook actions to maintain the misconception"); *see also Fernandez v. United States*, 329 F.2d 899, 908 (9th Cir. 1964) ("If the fact that Fernandez made telephone calls . . . impersonating others, was independently proved, an improper intent was likewise independently proved, because the nature of the act involved such an intent."); *Galena*, 117 F. Supp. 3d at 1166 (finding scienter where defendant attempted to hide and cover up the scheme's specifics); *Nathanson v. Polycom, Inc.*, 87 F. Supp. 3d 966, 979-80 (N.D. Cal. 2015) (finding scienter where defendant attempted to hide his fraudulent conduct).

And in support of that inference, the Complaint alleges that Sharp personally benefitted from the sale of HUMBL stock funneled through Forwardly, a company he controlled. ¶167; *see Tellabs*, 551 U.S. at 325 ("motive can be a relevant

consideration, and personal financial gain may weigh heavily in favor of [scienter]"); *see also In re Tesla, Inc. Sec. Litig.*, 477 F. Supp. 3d 903, 930 (N.D. Cal. 2020) ("Motive can provide circumstantial evidence of scienter."); *In re Questcor Sec. Litig.*, 2013 WL 5486762, at *19 (C.D. Cal. Oct. 1, 2013) ("[C]ourts consider the defendants' motive to commit fraud as one factor that may support . . . scienter.").

D. The Complaint Adequately Alleges Sharp Violated §20(a)

For control person liability under §20(a), a plaintiff must prove: "a primary violation of federal securities laws" and "that the defendant exercised actual power or control over the primary violator." *Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1065 (9th Cir. 2000); *see also Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151, 1161 (9th Cir. 1996) ("The plaintiff need not show the controlling person's scienter or that they 'culpably participated' in the alleged wrongdoing.").

The SEC defines "control" as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." 17 C.F.R. §230.405; *see also Howard*, 228 F.3d at 1065 n.9 (accepting SEC definition). "To establish control, Plaintiffs must allege that Defendants . . . were active in the day-to-day affairs of [the company] or that they exercised specific control over the preparation and release of the alleged statements." *In re Immune Response Sec. Litig.*, 375 F. Supp. 2d 983, 1031 (S.D. Cal. 2005). Allegations of responsibilities which "relate[] directly to the subject of [the] fraud" also suffice. *Fouad v. Isilon Sys., Inc.*, 2008 WL 5412397, at *12 (W.D. Wash. Dec. 29, 2008).

As discussed *supra*, Plaintiffs adequately alleged primary violations of §10(b) and Rule 10b-5. Further, Plaintiffs alleged Sharp participated directly, and indirectly, in HUMBL's business affairs. ¶¶32-33, 36, 124, 175, 273, 299, 326. Moreover, he controlled the contents of his misstatements, and his deceptive conduct. As such, he is liable under §20(a) as a control person. *See In re Adaptive Broadband Sec. Litig.*, 2002 WL 989478, at *19 (N.D. Cal. Apr. 2, 2002)

(defendants who "held the highest offices in the corporation, spoke frequently on its behalf, and made key decisions in how to present its financial results" were control persons).

V. CONCLUSION

Based on the foregoing reasons, Plaintiffs respectfully request that the Court deny the Motion in full or, in the alternative, grant leave to amend if granted.

Dated: November 21, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on November 21, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

s/ Ivy T. Ngo
Ivy T. Ngo