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

PLAINTIFFS' OMNIBUS OPPOSITION TO MOTIONS TO DISMISS

Of Counsel

SCOTT+SCOTT
ATTORNEYS AT LAW LLP
John T. Jasnoch
(admitted *pro hac vice*)
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: (619) 233-4565
Facsimile: (619) 233-0508
Email: jjasnoch@scott-scott.com

KLEHR HARRISON
HARVEY BRANZBURG LLP
David S. Eagle (Bar No. 3387)
Sally E. Veghte (Bar No. 4762)
919 N. Market Street, Suite 1000
Wilmington, DE 19801
Telephone: (302) 552-5508
Email: deagle@klehr.com
sveghte@klehr.com

Co-Lead Counsel for Lead Plaintiffs and the Class

Dated: December 29, 2023

and

FREEDMAN NORMAND FRIEDLAND LLP
Ivy T. Ngo (admitted *pro hac vice*)
Velvel (Devin) Freedman
(admitted *pro hac vice*)
1 SE 3rd Avenue, Suite 1240
Miami, FL 33131
Telephone: (786) 924-2900
Facsimile: (646) 392-8842
Email: ingo@fnf.law
vel@fnf.law

Co-Lead Counsel for Lead Plaintiffs and the Class

and

BRONSTEIN, GEWIRTZ & GROSSMAN, LLC
Peretz Bronstein (admitted *pro hac vice*)
60 East 42nd Street, Suite 4600
New York, New York 10165
Telephone: (212) 697-6484
Email: peretz@bgandg.com

Additional Counsel for Lead Plaintiff Alfred Miller

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Lead Plaintiffs Matt Pasquinelli and Alfred Miller ("Plaintiffs") respectfully submit this omnibus opposition to the motions to dismiss the Amended Class Action Complaint for Violations of the Federal Securities Law, ECF No. 26 (the "AC"),[1] filed by Defendants HUMBL, Inc. ("HUMBL" or "the Company"), Brian Foote, Jeffrey Hinshaw, Karen Garcia, and Michele Rivera (the "HUMBL Defendants") (ECF No. 72) and, separately, Defendant George Sharp ("Sharp" and collectively with the HUMBL Defendants, "Defendants") (ECF No. 76).

I. INTRODUCTION

The AC presents a compelling case of securities fraud, demonstrating that HUMBL, along with its key executives and advisors, engaged in a litany of deceptive practices that significantly misled and damaged investors. Central to these allegations are claims that HUMBL made materially false and misleading statements regarding the functionality and potential of its sole mobile app, the prospects of its various business relationships, as well as the potential for extreme dilution of shareholders. Plaintiffs allege a progression of conduct by Defendants that is actionable under the causes of action set forth in the AC.

The AC meticulously details how Defendants' repeated misrepresentations and omissions, disseminated in various public communications, created a distorted

[1] Unless otherwise defined, all capitalized terms herein have the same meanings set forth in the AC.

picture of the Company's true financial health and operational status. This false portrayal of HUMBL was not only misleading, but was done with the requisite scienter to deceive, manipulate, and defraud the investors who relied on Defendants' representations in making their investment decisions.

Investors were misled into investing in HUMBL based on a fabricated narrative of corporate success and potential to disrupt industries. As Defendants' fraud was exposed, HUMBL's stock value plummeted, leading to substantial losses for Plaintiffs and other class member investors.

In the face of these highly specific allegations, Defendants contend that Plaintiffs have not alleged sufficient facts, taken as true (with all inferences drawn in Plaintiffs' favor), to state a claim for relief. Defendants argue that their principal role in creating a materially false narrative about HUMBL's prospects were mere expressions of corporate optimism and that the Company simply failed to reach its goals. But as required, the AC's allegations set forth a plausible case that Defendants' statements were knowingly (or at least recklessly) false, misleading, and incomplete when made, and their actions were otherwise fraudulent.

Defendants' Motions minimize Plaintiffs' key allegations, manipulate others where it benefits their position, and shirk any responsibility for the harm their actions have caused Plaintiffs and other class members. Under the applicable standards, however, Plaintiffs have asserted a plausible *prima facie* case against Defendants

based on their deceitful misrepresentations and fraudulent actions. The arguments set forth in the motions to dismiss stand as a testament to their continued disregard for the damage they inflicted. Their motions to dismiss should be denied, allowing Plaintiffs the opportunity to advance this case towards class certification and trial.

II. STATEMENT OF FACTS

HUMBL purports to be a mobile financial services company based in San Diego, CA. ¶21.[2] It has compared itself to technology giants like Apple and Amazon, and has claimed to have "developed a full technology stack of blockchain solutions across a number of different verticals," including "a mobile wallet, NFT and ticketing, in which customers can buy crypto, use and send up to 20+ digital assets" and "customized blockchain-as-a-service programs, such as mobile IDs and verifiable credentials, for government and private sector customers." ¶28.

But the Company's promises of its products and services causing a disruption in their industries were based on fraud. Far from having disruptive technology or products, the Company is itself an elaborate scheme to enrich insiders at the expense of investors like Plaintiffs and other class members.

Throughout the Class Period, HUMBL artificially pumped the price of its shares by: (a) launching a new "disruptive" product, (b) announcing a new

[2] Unless otherwise indicated, all "¶_" and "¶__" references herein are to the AC.

partnership to purportedly aid in the product's immediate effectiveness in the market, (c) flooding the public with flashy press events, advertisements, social media posts, and misleading press releases to persuade investors to buy and hold shares, while (d) failing to follow through on the partnership or to invest the funds necessary to make the product a success. Thereafter, the Company pivoted to another sector and repeated steps (a)-(d). While this pump-and-pivot cycle continued, Company insiders used clandestine corporate actions, toxic debt, and related party transactions to enrich themselves to the tune of millions of dollars. ¶31.

The scheme began with the reverse merger between HUMBL and Tesoro Enterprises, Inc. ("Tesoro"). ¶32. At the time, Tesoro was a public shell company, *i.e.*, a public reporting company with no material operations. The reverse merger was effectuated so that HUMBL shares could be publicly traded without the legal and accounting fees and registration requirements associated with an Initial Public Offering. The reverse merger was facilitated by Defendant Sharp, who had a long history of brokering reverse mergers in the over-the-counter ("OTC") market. *Id.*

Defendants immediately engaged in extensive marketing campaigns to promote the Company's "disruptive" products, global partnerships, and acquisitions, creating a façade of legitimacy. At the same time, they repeatedly touted the launch of the HUMBL Mobile App and falsely described in detail its purported capabilities. ¶22. The Company also garnered attention through undisclosed paid celebrity

endorsements, including the Backstreet Boys' Nick Carter's promoting of the HUMBL Pay Mobile App on Twitter. ¶43. And Defendants hyped various global acquisitions and partnerships that purportedly would significantly grow the Company. ¶31. These promotions led to a significant, albeit artificial, increase in the Company's stock price, as seen in its dramatic rise following each major announcement. ¶30.

However, the reality of HUMBL's products and partnerships differed significantly from their public portrayal. The promised functionalities of the HUMBL Mobile App, HUMBL Pay, and HUMBL Marketplace were nonexistent or deeply flawed. ¶¶49-50. The various announced strategic partnerships remained at the announcement stage as Defendants never followed up on them. ¶¶55, 195-203. Likewise, HUMBL's acquisitions of ticketing company Tickeri and NFT company Monster Creative including $20.1M and $8.5M in goodwill, respectively, were overstated. Indeed, the combined revenue from Tickeri and Monster Creative for 1H 2021 was under $1M and of the acquired goodwill, $16.5M was written off by June 30, 2021. ¶¶121, 285, 293. The Company's foray into NFTs was also misleading as the HUMBL NFT Gallery relied significantly on third-party technology and never represented a source for meaningful revenues, despite Defendants' statements to the contrary. ¶¶118, 206, 285, 294, 296. Defendants' misleading statements about the Company's stock dilution, preferred shares, and

reverse split, further exemplified the Company's deceptive practices. ¶¶247-48, 271-73, 282.

A. The HUMBL Defendants Repeatedly Made False Statements About the Mobile App's Functionality

The Class Period began on November 12, 2020, when HUMBL announced the reverse merger with Tesoro. The press release falsely stated that "HUMBL has designed a mobile wallet (HUMBL) and merchant software (HUMBL Hub), that help primarily cash economies migrate to digital money services across key vertical markets, such as: government, banking, wireless carriers and merchant services." Going further, the press release falsely stated that "[t]he 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®." ¶¶46, 168.

Thereafter, HUMBL issued a press release on December 1, 2020, which again misrepresented the development status and capabilities of its Mobile App. ¶254. The press release quoted Defendant Rivera as stating that "'[u]nlike 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.'" *Id.* The press release also misrepresented HUMBL's wallet as being able to "digitally send, receive and

exchange currencies across the border; as well as paying, tipping and transacting with merchants" and that "HUMBL showcases financial technologies such as USD Stablecoins[.]" ¶255.

During a December 9, 2020 conference call with investors, Defendant Foote made material misstatements that "[r]ight now, in the barn, we have – send money, request money, receive money, exchange money, Stable coins." ¶¶47, 176, 259, 301. Then, on January 22, 2021, he falsely stated that "we're really on track with everything that we promised to the shareholders, if not ahead of schedule bumping up the Q1 app release likely in February[. . . .]" ¶267. Likewise, on February 26, 2021, he again confirmed that, "[w]e're tracking very well to continue to release this product in quarter two[.]" ¶275.

These statements, and others like them, were materially false, misleading, and incomplete because the Company's mobile wallet's design was nowhere near complete, and its Mobile App did not even have basic functionality at the time the statements were made. ¶244. Indeed, HUMBL would not have a functioning app until July 15, 2022, when the HUMBL Wallet on Android was launched. *Id.* And, as was later revealed by Hindenburg Research's testing of HUMBL's Mobile App, there was "no indication that users can do anything with stablecoins." ¶¶50, 189.

More evidence that the HUMBL App's capabilities were exaggerated can be found in the account of the cofounder of HUMBL's purported partner, One Kiosk.

In a signed statement submitted with the AC, One Kiosk's COO/cofounder Oloyede Babatunde ("Babatunde") confirmed that "[t]he capabilities of the HUMBL product lineup described in the press release (HUMBL Mobile App, HUMBL Mobile Pay, HUMBL POS Tablets, and HUMBL Hubs®) were never demonstrated in a live setting for One Kiosk but virtual demo, and to date, we have no empirical evidence of their actual existence as described by HUMBL." *See* Exhibit 1 to AC (filed as ECF No. 26-1).

B. The HUMBL Defendants Misrepresented the Company's Business Relationships and Prospects

The AC is replete with facts demonstrating that HUMBL and its executives made false and misleading statements concerning its partnerships and global network. For example, the aforementioned November 12, 2020 press release falsely stated that HUMBL had "created a global network of regional affiliates, who stand ready to implement sales and marketing programs in these corridors." ¶245. This statement was false and misleading and/or incomplete because HUMBL's "global network of regional affiliates" consisted of merely one or two individuals in each city in which it maintained an office. ¶246.

Then, on November 24, 2020, HUMBL issued a press release touting Cyberbeat as "a leading digital payments and financial technologies company led by veteran digital payment industry executives of the Asia Pacific region" and the deal as an "opportunity to establish this global relationship with a proven winner in the

Asia Pacific region." ¶¶36, 173, 250. The November 24, 2020 press release further quotes Defendant Garcia as stating that "[t]he Cyberbeat team has helped Fortune 500 brands expand their footprint into this region for decades." ¶252.

These statements were materially false and/or misleading because Cyberbeat was a less than two-year-old company that appeared to only have two employees and could do little to help HUMBL expand into the Asia-Pacific and Pan-India markets because its Mobile App did not have even basic functionality yet. ¶253.

On December 9, 2020, Defendant Foote again falsely represented the strength of its international partnerships, stating "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." ¶¶177, 261. No matter how many merchants HUMBL's sales team purportedly signed up or how many partnerships were announced, this statement was false and misleading because the Company was in no position to meaningfully generate revenue with them. ¶262. And, as was later disclosed in the Hindenburg Report, HUMBL's purported Mexico merchant partners reported that they didn't even use HUMBL, that the app wasn't ready, and that merchants in Mexico would not be able to use the app until modifications were made. ¶¶51-54.

Continuing the partnership charade, in a January 22, 2021 letter to shareholders, Defendant Foote boasted that the Company had secured "[o]ur first of multiple option payments on a distribution rights deal in Oceania region" with "plans

to enter the region with this group." It was later announced that the Tuigamala Group Pty Ltd ("TGP") had paid $600,000 in December 2020 for 12.5 million warrants at $1 each and an option to purchase territory rights, with plans to invest an aggregate $15 million. ¶¶38, 178, 265. But again, these statements were materially false and/or misleading because TGP could do little to help HUMBL expand into Oceania because its Mobile App did not have even basic functionality yet. ¶266. Following the initial announcement of the partnership, neither the Company nor TGP ever announced any specific initiatives or expansion of HUMBL into the Oceania markets as result of the deal. *Id.*

More evidence that HUMBL's global partnerships were fictions is seen in the account of HUMBL's purported partner, One Kiosk. Indeed, One Kiosk's Chief Technology Officer Babatunde told Hindenburg: "'HUMBL actually reach[ed] out to us and they wanted One Kiosk to use their payment system on our platform as a way of entering the African market. But it never went beyond that.'" ¶57. And in the signed statement submitted with the AC, One Kiosk's COO/cofounder Oluwatomisin Oloyede ("Oloyede") confirmed that "HUMBL took advantage of One Kiosk's desire for accelerated growth during the COVID-19 pandemic by entering into an agreement with us but obviously either had no intention or no capability to perform." *See* ¶58; Exhibit 1 to AC (filed as ECF No. 26-1).

Oloyede continued that "beyond the press release on April 3 2020 of our intent 'HUMBL® and One Kiosk® Team Up On Africa Home Delivery Network,' HUMBL made no effort to commence the proposed business relationship." *Id.* In summarizing their purported partnership with HUMBL, One Kiosk's cofounder stated that "[i]n light of their failure to perform or to continue with any substantive discussion, we believe HUMBL used One Kiosk for nothing more than self-promotional purposes." *Id.*

C. Defendants Made False and Misleading Statements Concerning Stock Issuances, the Reverse Split, and Dilution

Defendants made false, misleading, and otherwise incomplete statements regarding the issuances of HUMBL's preferred shares, and the potential for extreme dilution of then-existing shares. On November 17, 2020, HUMBL issued a press release announcing that Defendant Foote would "convert over 318 million shares recently purchased by him out of the retail market to a new class of Preferred shares." ¶¶41, 172, 247. The release continued "[u]pon 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." ¶¶172, 248.

Thereafter, on February 25, 2021, HUMBL issued a press release discussing "the creation of restricted preferred classes of shares." ¶272. This press release

quoted Defendant Hinshaw to explain the basis for the reverse split, falsely stating that the Company's Board wanted to "quell the volatility in the share price" and was "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." ¶¶135, 272. Likewise, on February 26, 2021, Defendant Sharp falsely assured investors that "[i]f you're worried about dilution, don't be." ¶¶126, 181, 273.

These statements were materially false and/or misleading because the new class of preferred shares were to be issued to Company insiders, family members, and related parties and could be converted into over 5.5 billion shares of common stock beginning on December 3, 2021. Defendants knew that this conversion would severely dilute the value of the then-existing shares of common stock. ¶¶249, 274.

On April 20, 2021, Defendant Foote tweeted that "I will commit to not selling any of those personal shares for the entirety of Calendar Year 2021-2022." ¶281. This statement was misleading and incomplete because Defendant Foote's parents hold over 335 million shares via the Stephen L. and Sandra M. Foote Revocable Trust. ¶282.

E. Other False Statements and Actions by Defendants in Furtherance of the Scheme

Defendants each committed numerous acts in support of the scheme. For example, HUMBL used undisclosed paid celebrity promotion to inflate the price of its shares. On April 16, 2021, the day the HUMBL Mobile App launched, Nick

Carter ("Carter") – a member of the 1990s hit boyband, The Backstreet Boys – posted a picture of his HUMBL Pay username and headshot for his 675,000 Twitter followers. ¶48. This post did not indicate that the tweet was a paid sponsorship. But it was. On June 29, 2021, HUMBL had issued Carter 1 million common shares, valued at $1.02 per share at issuance. About seven months later, Carter began including "#sponsored" in his HUMBL tweets to indicate his being compensated by the Company. But at the critical moment of launch – while HUMBL was pumping up the price of its shares – Carter's glowing endorsement of the HUMBL Mobile App appeared unprompted by anything other than his satisfaction with the app. ¶64.

Next, the HUMBL Defendants made false statements concerning the Company's acquisitions of ticketing company Tickeri and NFT company Monster Creative. On May 7, 2021, Defendant Foote falsely stated that HUMBL was "driving revenues" through its acquisitions including ticketing and NFTs. ¶283. Foote stated that "[t]he 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[. . . .] 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." *Id.* Then, on June 30, 2021, Foote referred to the Tickeri and Monster Creative acquisitions as "super accretive" and that the Company was "driving sales volume, so revenues" from them. ¶284.

Again, these statements were materially false and/or misleading because Defendants knew or recklessly disregarded that the acquisitions had been grossly overvalued, requiring over half the acquired goodwill to be written down within months of the acquisitions, and that in six months, they were generating less than $1M despite costing their combined $28M price tag. ¶285.

Defendants also misled the market regarding their personal holdings and sales of HUMBL shares. While using precise language regarding the Company's co-founders selling ***personal*** shares, Defendants Foote, Hinshaw, and Rivera issued well-crafted half-truths aimed at maintaining their false appearance, legitimacy, and loyalty to HUMBL shareholders. ¶138. In truth, they each benefitted from selling shares, directly or via a related party, after the shares became unrestricted. ¶139. Given Foote's holdings, shareholders thought that they were in the same boat as him, but they were wrong. Foote managed to enrich his entire family without selling any of his individually owned shares. ¶140. For example, when HUMBL terminated an equity finance agreement, Foote's family members were handsomely rewarded via a termination fee paid for with common shares while HUMBL shareholders had nothing to show but additional dilution. ¶151.

Indeed, each Individual Defendant has an entity outside the Company's definition of "beneficial ownership" – *i.e.*, each Individual Defendant was able to dump shares while maintaining the appearance of loyalty. ¶¶161, 163. For example,

Defendants Foote, Hinshaw, Garcia, and Rivera were beneficial owners of Block 30, which received 249,707 Series B shares during the merger. ¶164. As such, they each personally benefited from Block 30's common share sales. *Id.*

In addition, Defendant Hinshaw and/or his family benefited via the entity, HinCamp, LLC, which sold millions of shares. ¶165. As reported in the July 20, 2022 S-1, HinCamp was a "selling stockholder" of up to 2,410,000 shares of common stock. *Id.* Next, Defendant Sharp and/or his family benefited from the sale of Forwardly's common shares (previously converted from Series B). ¶167. As also reported in the July 20, 2022 S-1 filing, Forwardly was to sell 125,000,000 shares. *Id*. And Defendant Rivera or her family benefitted via BRNR, LLC, which received 1,933 Series B shares during the merger. ¶166.

E. The HUMBL Defendants Sold and Solicited Investment into Unregistered Securities Known as BLOCK ETXs

Another core area that HUMBL feigned expertise in was cryptocurrency and blockchain technology, which it leveraged to solicit and sell unregistered securities known as BLOCK Exchange Traded Indexes ("BLOCK ETXs"). The BLOCK ETXs were blatantly illegal investment contracts that were not registered with the SEC nor subject to exemption.

Participants in the cryptocurrency industry have long sought SEC approval for an Exchange Traded Fund ("ETF") tied to crypto assets like bitcoin. ¶212. The SEC first rejected such products in March of 2017 and have since rejected several

other high-profile products. ¶¶212-13. Undeterred by the SEC's repeated rejections of crypto-related ETFs, the HUMBL Defendants went ahead with their plan, creating the BLOCK ETX investment product and promoting it as akin to a new type of Mutual Fund or ETF. ¶¶222, 225. Instead of taking the BLOCK ETXs through the proper channels and obtaining SEC approval, the HUMBL Defendants simply sold them. The HUMBL Defendants solicited investors in these unregistered securities through social media promotion, press releases, and other public statements. ¶¶221-29.

HUMBL promoted that it had "developed proprietary, multi-factor blockchain indexes, trading algorithms and financial services for the new digital asset trading markets to accommodate index, active and thematic investment strategies." ¶¶227, 229. Although the Company boasted that it had developed 20,000 lines of proprietary code to create its trading strategies, the Hindenburg Report found that those proprietary trading strategies were just a rebalancing of assets. ¶194.

Further, the BLOCK ETXs were used to offload thinly-traded DigiByte token onto ETX purchasers. ¶213. DigiByte tokens were packaged with more established crypto assets in the "basket" of assets that made up the ETXs. ¶194. DigiByte was included because the founders/executives of DigiByte had close ties to the HUMBL Defendants and engaged in cross promotion of the unregistered securities. ¶¶214-16, 218-19. For example, when Hindenburg researchers signed up for the Block 30

product, its portfolio was 50% BTC, 25% ETH, and 25% Litecoin. Later, the allocation shifted to 50% BTC, 25% Litecoin, and 25% Digibyte. ¶194.

After selling the BLOCK ETXs for a few months and offloading the dubious DigiByte tokens to purchasers like Plaintiff Pasquinelli as part of the ETX basket, HUMBL filed a preliminary registration statement with the SEC on November 29, 2021, which further described the nature of the BLOCK ETX investment contracts. ¶229. Thereafter, the SEC sent correspondence to HUMBL questioning the legality of the BLOCK ETX products. ¶230. Specifically, on January 14, 2022, the SEC told HUMBL that "[t]hese products look like they may create a separate program that could be viewed as an investment contract." *Id.* Alluding to the Supreme Court's seminal decision in *Howey* (cited *infra*), the SEC further stated that "[t]he products appear to be a trading program through which customers are relying on the operation of the program to generate profits from the implementation of a particular trading strategy." *Id.* Flatly stating that "the program itself could be a security," the SEC told HUMBL to provide its analysis as to whether the BLOCK ETXs are securities under §2(a)(1) of the Securities Act. *Id.*

Rather than providing the requested analysis showing the BLOCK ETXs are not securities, HUMBL shut down the program selling illegal investments. On February 11, 2022, Defendant Foote issued a series of tweets that the BLOCK ETXs being suspended. ¶231. He stated that "[a]fter additional dialogue with the SEC

surrounding our S-1 filing, we have decided to take down our BLOCK ETX products." *Id.* He even admitted that HUMBL's "push for innovation will outpace regulation in terms of guidelines." *Id.* On February 14, 2022, HUMBL issued a press release confirming the suspension of the BLOCK ETXs. ¶232.

Investors who purchased BLOCK ETX subscriptions and funded their account to purchase the ETXs' baskets of assets suffered significant losses based on the BLOCK ETX purported trading strategies. ¶233. The price of DigiByte, the thinly traded token that comprised an outsized portion of the BLOCK ETX asset basket, dropped significantly over the lifetime of the BLOCK ETX program. The token's price hit an all-time high on May 1, 2021, shortly after the launch of the BLOCK ETX program in the United States, but subsequently dropped over 90%. *Id.*

F. Defendants' House of Cards Collapses as Their Fraud Is Exposed and Shares Suffer Extreme Dilution

Defendants' false and misleading statements artificially inflated the price of HUMBL common shares. The repeated false statements regarding the Company's products and services resulted in its market capitalization peaking at over $50 billion on a fully diluted basis. ¶29. But the promise of HUMBL's products and services disrupting their industries was a sham. The Company never developed any monetizable proprietary products. Instead, Defendants spent resources on marketing

a purportedly global platform of products and services that simply did not exist at the time they were announced. ¶30.

Plaintiffs allege that the truth concerning Defendants' fraud began to emerge in April 2021 when HUMBL issued its Annual Report, and revealed that the 552,522 shares of newly created Series B Preferred Stock from the reverse merger with Tesoro each "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." The AC alleges that, as the market absorbed this news, shares of HUMBL fell over 53% from April 14, 2021, to April 20, 2021, on unusually heavy trading volume. ¶¶287-89.

The truth was further revealed before markets opened on May 20, 2021, through Hindenburg publishing a report. Among other issues, that Hindenburg Report revealed that: (i) HUMBL had "failed to deliver on even the most basic aspects of its business plan, including features it claimed were completed months ago. Six months after going public, its users can't send or receive money on its 'payment' app" and (ii) "international deals announced over the last year – a key source of the company's perceived legitimacy – never got off the ground or have quietly collapsed behind the scenes." Those deals included the collapse of the "landmark $15.6 million deal to sell rights to HUMBL's business in 15 countries in Oceania, including Australia and Tonga," the "investment by a Singaporean

company into HUMBL's Asia business [which] hasn't resulted in any specific initiatives 6 months later," and the purported "expansion into Mexico, where HUMBL's CEO boasted of recruiting 300 merchants in 3 days, has only 2 merchants listed as accepting payments [who] aren't currently accepting HUMBL payments; the business in Mexico is on hold pending changes to the platform, according to a local merchant working with the company." On this news, shares of HUMBL fell over 12% to close at $0.7654 on May 20, 2021, on unusually heavy trading, damaging shareholders. ¶¶290-91.

After markets closed on August 16, 2021, HUMBL issued its Quarterly Report for the period ending June 30, 2021, which revealed that it had written down its goodwill to $16.5M as of that date – mere months after acquiring $20.1M in goodwill from Tickeri and $8.5M in goodwill from Monster Creative. Most notably, over $12M of the Tickeri goodwill had been written off. Reacting to this news, HUMBL shares fell over 13%, or $.111, from closing at $0.806 on August 16, 2021, to $0.695 on August 19, 2021, on unusually heavy trading. ¶¶293, 295.

More truth emerged after markets closed on November 17, 2021, through a report by Seeking Alpha ("Report"). That Report aggregated and analyzed HUMBL's financial situation, concluding that it "has a pattern of promising to disrupt an industry, launching a product that barely generates any revenues and then pivoting to another sector." The Report laid out why the new products HUMBL

announced in September, the NFT and ticketing platforms, would not perform "considering how bad its other products have done." The Report also revealed the litigation risk facing the Company based on the high interest in "a website named humblelawsuit.com . . . that says it's exploring options for class action representation." On this news, HUMBL shares fell over 16%, to close at $0.4026 on November 18, 2021, on unusually heavy trading. ¶¶296-97.

HUMBL shareholders' concerns regarding extreme share dilution were also confirmed when, beginning in December 2021, owners of the Series B shares began converting them into common stock. These conversions caused the extreme dilution that shareholders were repeatedly told not to worry about during the reverse merger transactions. For example, as of December 23, 2021, there were 947.3 million shares of common stock outstanding. By April 25, 2022, there were 1.429 billion shares. This was an increase of over 50% of the outstanding common shares as of December 23, 2021. The extreme dilution coincided with extremely high transaction volume and a sharp drop in the price of HUMBL common stock. As of December 23, 2021, the stock price was approximately $0.39 per share; by April 25, 2022, the price had dropped to $0.11 on high volume throughout the period. ¶208.

Defendants' fraud is ongoing. Today, HUMBL shares trade for approximately a tenth of a penny as the Company continues diluting shareholders and hyping new business lines pursuant to its pump and pivot strategy. Outstanding

shares have skyrocketed. The Company's share price is down over 99% off its Class Period high. Anyone who invested during the Class Period and held their shares, would have suffered a total loss of their investment.

III. APPLICABLE LEGAL STANDARDS

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).[3]

IV. ARGUMENT

A. Defendants Committed Securities Fraud

HUMBL and the Individual Defendants, in their capacities as executives or senior advisors to HUMBL, disseminated and/or approved public statements which they knew were, or deliberately disregarded as, misleading and materially incomplete. Given their positions at HUMBL, they were in a unique position to understand the capabilities of the HUMBL App, the true nature of the promoted partnerships, and the likelihood that shareholders would suffer extreme dilution.

[3] Unless otherwise indicated, all internal citations are omitted and emphasis is added.

Despite their knowledge of these undisclosed material facts, they made numerous public statements presenting a misleading picture of the technological development of HUMBL's App and the successful global partnerships that stood in stark contrast to the reality that was hidden from investors.

1. **The Challenged Statements Were Materially False**

Plaintiffs' allegations on falsity are sufficiently particularized. The AC identifies specific challenged statements (¶¶243, 245, 247-48, 250-52, 254-56, 258-61, 263, 265, 267, 269, 271-73, 275, 277, 279, 281, 283-84) and describes why they were false, misleading, or incomplete when made (¶¶244, 246, 249, 253, 257, 262, 264, 266, 268, 270, 274, 276, 278, 280, 282, 285). Plaintiffs accordingly plead the "who, what, when, where and how" of the misconduct, as the Private Securities Litigation Act of 1995 ("PSLRA") requires. *Institutional Invs. Grp. v. Avaya, Inc.*, 564 F.3d 242, 253 (3d Cir. 2009).

Plaintiffs also adequately allege that these false statements were material to investors. 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." *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (internal quotations omitted). Certainly, statements concerning the viability of the Company's main product (its

App), its alleged partners, and the potential for shareholder dilution would alter the "total mix" of information made available to investors.

Plaintiffs do not merely allege that HUMBL had a few failed business ventures. They detail Defendants' repeated efforts to artificially inflate the price of HUMBL stock through bogus partnerships and false claims regarding its products' capabilities. Defendants put these subjects "in play" and thus assumed a duty to speak truthfully and completely about them. *Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 281-82 (3d Cir. 1992).

2. **Defendants Acted with Scienter**

The AC raises a "strong" inference of Defendants' scienter – one that is "cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Tellabs*, 551 U.S. at 324. To that end, the AC details "strong circumstantial evidence of conscious misbehavior or recklessness[.]" *In re Suprema Specialties, Inc. Sec. Litig.*, 438 F.3d 256, 277 (3d Cir. 2006). Plaintiffs have met their burden under the PSLRA.

The AC adequately alleges that Defendants all acted with scienter in that they knew or recklessly disregarded that their public statements issued in the name of the Company were materially false and misleading. They personally participated or acquiesced in the issuance or dissemination of such statements as primary violations of the federal securities laws. By virtue of their control over and/or receipt of

information reflecting the true facts regarding HUMBL, Defendants were privy to confidential and proprietary information concerning HUMBL. Armed with that information, they participated in the fraudulent scheme alleged by the AC.

Specifically, the AC explicitly alleges that the Individual Defendants had actual knowledge of HUMBL's strategy for the reverse merger with Tesoro and the structuring of the different share classes at the time they were occurring. Their own public statements indicate their personal involvement and knowledge. ¶299. Their public statements also indicated that they had actual knowledge of the capabilities of HUMBL's touted technology at any given point in time. ¶301.

In addition, the AC alleges that the Individual Defendants closely followed HUMBL's stock price, and thus was aware that each time the Company announced a new deal, its stock price increased. ¶¶302-03. As a result, they knew or recklessly disregarded that information about any deal falling through or failing was material to investors and thus concealed that information from investors in order to artificially maintain or inflate the Company's stock price. Defendant Sharp's own statements demonstrate his knowledge of what HUMBL shareholders considered 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, "I made the conscious decision that we were not going to tell you." ¶300.

Beyond actual knowledge, the AC demonstrates that Defendants had motive and opportunity to commit fraud. *See In re SLM Corp. Sec. Litig.*, 740 F. Supp. 2d 542, 557-58 (S.D.N.Y. 2010) (holding that plaintiffs' allegations regarding the CEO's motive and opportunity to commit fraud gave rise to a strong inference of scienter to him and the corporate defendant). The AC credibly alleges that insiders and their family members or related parties were enriched as a result of the fraudulent scheme. ¶¶137-43. Although not required to plead motive and opportunity, "insider trading represents a classic example of a 'concrete and personal' benefit that suffices to plead motive to commit securities fraud." *Bd. of Trustees of City of Ft. Lauderdale Gen. Emps.' Ret. Sys. v. Mechel OAO*, 811 F. Supp. 2d 853, 867 (S.D.N.Y. 2011). Allegations of insider trading "'meaningfully enhance the strength of the inference of scienter.'" *Southland Sec. Corp. v. INSpire Ins. Sols., Inc.*, 365 F.3d 353, 368 (5th Cir. 2004).

Defendants' structuring of HUMBL preferred shares so that their family members and/or related persons would significantly profit is evidence of their state of mind in making their false statements and effectuating these complicated transactions. Indeed, this conduct is sufficient to show scienter because one simply does not accidentally engage in such a complex strategy, as numerous courts have recognized. *See generally, e.g.*, *CP Stone Fort Holdings, LLC v. John*, No. 16 C 4991, 2016 WL 5934096, at *5 (N.D. Ill. Oct. 11, 2016) (features of transactions

themselves can give rise to inference of manipulative intent); *S.E.C. v. Masri*, 523 F. Supp. 2d 361, 368-72 (S.D.N.Y. 2007) (same).

Likewise, the close proximity between Defendants' statements concerning the HUMBL App's capabilities and the Company's partnerships and the release of the Hindenburg Report further supports an inference of culpability. *See Universal Am. Corp. v. Partners Healthcare Sols. Holdings, L.P.*, 176 F. Supp. 3d 387, 395-96 (D. Del. 2016) ("temporal proximity of the misrepresentations in relation to the truth's revelation" may be considered in assessing scienter).

Scienter can also be found because the alleged misstatements concern core aspects of HUMBL's business, subjects into which its top-level executives would have direct insight. *See In re Providian Fin. Corp. Sec. Litig.*, 152 F. Supp. 2d 814, 825 (E.D. Pa. 2001) (scienter inferred where plaintiffs "allege[d] that Providian's illegal or fraudulent practices permeated core aspects of Providian's business and were so pervasive that [the CEO and CFO] must have known or were reckless in not knowing."). Indeed, the importance of a product to a company lends to the inference of scienter as to adverse facts regarding that product. *See New Orleans Emps. Ret. Sys. v. Celestica, Inc.*, 455 F. App'x 10, 14 n.3 (2d Cir. 2011) (endorsing the core operations doctrine as enhancing, if not independently supporting, an inference of scienter).

Defendants' bad faith state of mind is further evidenced by the aforementioned accounts of the CTO and COO/cofounder of One Kiosk, one of HUMBL's purported international partners. One Kiosk's CTO Babatunde told Hindenburg: "'HUMBL actually reach[ed] out to us and they wanted One Kiosk to use their payment system on our platform as a way of entering the African market. But it never went beyond that.'" ¶57. One Kiosk's COO/cofounder Oloyede likewise confirmed that confirmed that HUMBL "had no intention or no capability to perform" in connection with the reported partnership. ¶58; Exhibit 1 to AC. Oloyede stated that following the promotional press release, "HUMBL made no effort to commence the proposed business relationship." *Id.* In summarizing their purported partnership with HUMBL, One Kiosk's cofounder stated that "HUMBL used One Kiosk for nothing more than self-promotional purposes." *Id.* With respect to the purported capabilities of HUMBL's App, Oloyede likewise admitted there was no factual basis for HUMBL's claims. *Id.* These accounts from the One Kiosk executives confirm what Plaintiffs allege to be Defendants' bad faith modus operandi with respect to the statements regarding the claimed partnerships and the technological capabilities of its Mobile App.

In the face of the litany of detailed allegations against them, Defendants simply do not raise any nonculpable inference more compelling than the inference of scienter alleged by Plaintiffs. *See Avaya*, 564 F.3d at 269 (inference turns "not

on the presence or absence of certain types of allegations but on a practical judgment about whether, accepting the whole factual picture painted by the [AC], it is at least as likely as not that defendants acted with scienter").

3. **Reliance**

Plaintiffs explicitly allege that they relied on Defendants' false statements. The AC alleges that, in making their purchases of HUMBL securities, Plaintiffs were "relying on the materially false and misleading statements" and/or otherwise "relied upon the price of the securities, the integrity of the market for the securities, and/or [the] statements disseminated by Defendants[.]" ¶¶321, 322. Plaintiffs further allege that BLOCK ETX investors relied on the managerial and entrepreneurial efforts of HUMBL, the Defendants, and others to manage, oversee, and/or develop the BLOCK ETX program. ¶242.

In a market manipulation case, a plaintiff need only allege reliance on "an assumption of an efficient market free of manipulation." *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 101 (2d Cir. 2007); *see also Ploss v. Kraft Foods Grp., Inc.*, 197 F. Supp. 3d 1037, 1054 (N.D. Ill. 2016) (citing *ATSI* and explaining that "investors generally assume that they are trading on 'an efficient market free of manipulation[]'"); *Anschutz Corp. v. Merrill Lynch & Co. Inc.*, 785 F. Supp. 2d 799, 815-16 (N.D. Cal. 2011) (same). The Second Circuit has also made clear that it does "not read *ATSI's* reference to 'reliance on an assumption of an efficient market free

of manipulation' as referring to a liquid, efficient market with prices publicly reported in real time. We read *ATSI's* reference to an 'efficient' market to mean only a bona fide market free of manipulation." *Fezzani v. Bear, Stearns & Co. Inc.*, 716 F.3d 18, 23 n.3 (2d Cir. 2013). Thus, Plaintiffs' allegations adequately show reliance.

Plaintiffs can also avail themselves of the fraud-on-the-market presumption. Under this presumption, plaintiffs who purchase or sell securities presumably rely on the integrity of the market price, and thus on any material misrepresentations. "Although the fraud-on-the-market presumption was adopted in the context of misrepresentation claims, courts have uniformly held that the presumption is also applicable to market manipulation claims." *In re GenesisIntermedia, Inc. Sec. Litig.*, No. CV 01-9024, 2007 WL 1953475, at *10 (C.D. Cal. June 28, 2007).

Plaintiffs satisfy the reliance element in yet another way – through the presumption established by the Supreme Court in *Affiliated Ute Citizens of Utah v. U.S.*, 406 U.S. 128 (1972), which applies in cases involving primarily a failure to disclose. Market manipulation "creates an independent duty to disclose[,]" (*U.S. S.E.C. v. Santos*, 355 F. Supp. 2d 917, 920 (N.D. Ill. 2003)) and that "duty to disclose falls on all parties aware of the manipulation, or who take advantage of it" (*In re Initial Pub. Offering Sec. Litig.*, 241 F. Supp. 2d 281, 381-82 (S.D.N.Y. 2003) (noting that "participants in the securities market are entitled to presume that all of

the actors are behaving legally; silence that conceals illegal activity is therefore intrinsically misleading")). *See also In re Enron Corp.*, 529 F. Supp. 2d 644, 739 (S.D. Tex. 2006) (same). Indeed, "failure to disclose that market prices are being artificially depressed operates as a deceit on the market place and is an omission of material fact." *U.S. v. Regan*, 937 F.2d 823, 829 (2d. Cir. 1991). Accordingly, Plaintiffs have adequately alleged reliance by alleging that Defendants systemically failed to disclose material information which manipulated the price of HUMBL securities and gave rise to a duty to disclose.

Defendants broadly argue that HUMBL's shares do not trade on an efficient market and thus no claim can go forward. But although HUMBL's shares traded OTC during the Class Period, Plaintiffs still adequately allege that HUMBL stock traded on an efficient market. ¶312. Plaintiffs directly allege that HUMBL's securities were liquid and traded with moderate-to-heavy volume during the Class Period. *Id.* Plaintiffs further allege that trading volume significantly increased upon the release of material news, demonstrating an efficient market. ¶¶289, 291, 295, 297. Moreover, Plaintiffs allege that the Company was covered by securities analysts. ¶312.

In any event, Plaintiffs directly allege that they relied on Defendants' statements. Whether the market for HUMBL's shares was an efficient market is clearly a question of fact not suitable for resolution on the pleadings. Indeed, market

efficiency has long been recognized as a "battle of the experts" that take place at later stages of litigation. *See Amgen Inc. v. Conn. Ret. Plans and Tr. Funds*, 568 U.S. 455, 473 (2013) (discussing market efficiency in the class certification context and confirming that "market efficiency [is] not [an] indispensable element[] of a Rule 10b-5 claim").

Finally, the fact that Plaintiffs invested in HUMBL securities at artificially high prices in ignorance of the true facts regarding their risk shows that they did in fact rely on Defendants' misstatements and omissions.

4. **Loss Causation**

Loss causation concerns "whether the misrepresentation or omission proximately caused the economic loss." *McCabe v. Ernst & Young, LLP*, 494 F.3d 418, 426 (3d Cir. 2007). At the pleading stage, the plaintiff need only "plausibly allege a causal connection between the defendant's misstatements and the plaintiff's economic loss." *In re BofI Holding, Inc. Sec. Litig.*, 977 F.3d 781, 794 (9th Cir. 2020). "Federal Rule of Civil Procedure 8(a)(2) governs a plaintiff's allegations of loss causation." *DH2, Inc. v. Athanassiades*, 404 F. Supp. 2d 1083, 1097 (N.D. Ill. 2005). The Article III injury-in-fact requirement poses a similarly "low threshold." *John v. Whole Foods Mkt. Grp., Inc.*, 858 F.3d 732, 736 (2d Cir. 2017). "[E]ven under Rule 9(b) the plaintiff's allegations will suffice so long as they give the defendant 'notice of plaintiffs' loss causation theory' and provide the court 'some

assurance that the theory has a basis in fact.'" *BofI*, 977 F.3d at 794. "The question of [. . .] [loss] causation is usually reserved for the trier of fact." *In re DaimlerChrysler AG Sec. Litig.*, 294 F. Supp. 2d 616, 626 (D. Del. 2003) (*citing EP Medsystems, Inc. v. EchoCath, Inc.*, 235 F.3d 865, 884 (3d Cir. 2000)).

Plaintiffs adequately allege that the false and misleading misrepresentations and material omissions proximately caused their economic losses in the AC. *Suez Equity Invs., L.P. v. Toronto-Dominion Bank*, 250 F.3d 87, 97-98 (2d Cir. 2001) ("[P]laintiffs may allege transaction and loss causation by averring both that they would not have entered the transaction but for the misrepresentations and that the defendants' misrepresentations induced a disparity between the transaction price and the true 'investment quality' of the securities at the time of transaction.").

Plaintiffs have identified the dates on which corrective information was disclosed that caused the price of HUMBL common stock to decline. ¶¶208, 286-97. Nothing more is needed.

B. Defendants Are Liable for Their Fraudulent Scheme

Together with "making" the fraudulent misrepresentations, Defendants' dissemination and promotion of these statements comprise a fraudulent scheme to maintain and/or increase inflation in HUMBL's stock price in violation of §10(b). 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." *See IBEW Local 595 Pension*

and Money Purchase Pension Plans v. ADT Corp., 660 Fed. Appx 850, 858 (11th Cir. 2016) (brackets in original).

The securities laws prohibit the actions (and inactions) taken by Defendants through §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and SEC Rule 10b-5(a) and (c) promulgated thereunder. "Congress meant to prohibit the full range of ingenious devices that might be used to manipulate securities prices." *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 477 (1977); *SEC v. Lek Secs. Corp.*, 276 F. Supp. 3d 49, 59 (S.D.N.Y. 2017); *see also In re Galena Biopharma, Inc. Sec. Litig.*, 117 F. Supp. 3d 1145, 1195 (D. Or. 2015) (concluding that "manipulative conduct includes more than only wash sales, matched orders, or rigged prices").

Market manipulation includes any "conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 198-99 (1976). Even a non-speaking actor who employs a manipulative device or makes a material misstatement (or omission) upon which a purchaser or seller of securities relies may be liable as a primary violator under 10b-5. *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 191 (1994); *S.E.C. v. Zandford*, 535 U.S. 813, 821-22 (2002)). That is exactly the type of conduct in which Plaintiffs allege that Defendants engaged.

And Plaintiffs allege that this scheme continued throughout the Class Period. Each Defendant "committed fraudulent acts that created misleading information

about [HUMBL]" and "[t]hat information… publicized by [Defendants]… factored efficiently into share prices." *In re FirstEnergy Corp.*, Nos. 2:20-cv-3785 & 2:20-cv-4287, 2022 WL 681320, at *14 (S.D. Ohio Mar. 7, 2022). Plaintiffs have thus stated §10(b) claims. *See Lorenzo v. SEC*, 139 S. Ct. 1094, 1103 (2019) ("using false representations to induce the purchase of securities would seem a paradigmatic example of securities fraud").

Plaintiffs' allegations of scienter, reliance, causation, and damages may support liability under §10(b) and are relevant to one or all of Rule 10b-5's sub-sections. *FirstEnergy*, 2022 WL 681320, at *26 ("Defendants' misrepresentations and omissions – and the presumptions that attach to them – are relevant for scheme liability.").

Utilizing manipulative App reviewers as well as undisclosed paid third-party promoters like Nick Carter to publicize, amplify, and endorse statements Defendants knew were false and misleading are deceptive acts. ¶¶43-47, 64; *In re CytRx Corp. Sec. Litig.*, 2015 WL 5031232, at *12 (C.D. Cal. July 13, 2015) (hiring of promoters who released articles with false information sufficient for scheme liability); *accord Warshaw v. Xoma Corp.*, 74 F.3d 955, 959 (9th Cir. 1996).

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*, 493 F.3d at 102 ("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 AC adequately alleges that Defendants 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 prices. In particular, the AC alleges that Defendants: (i) orchestrated the Tesoro/HUMBL merger, making a worthless company worth billions (¶¶32-33, 299); (ii) promoted HUMBL as a worthwhile investment despite having access to nonpublic information demonstrating it was developing little more than a series of publicity stunts (¶¶49-65, 72-98, 101-07, 118-21, 123, 175); (iii) profited handsomely through family members or related parties like Forwardly (¶¶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 (¶¶126-28). These allegations are sufficiently particularized to demonstrate a fraudulent scheme prohibited by the federal securities laws. *See FirstEnergy*, 2022 WL 681320, at *14 (plaintiffs need only "show 'representative samples' of a 'complex and far-reaching fraudulent scheme'").

This conduct is separate from the alleged misstatements and omissions and suffices to allege a §10(b) claim for scheme liability. *See Galena*, 117 F. Supp. 3d at 1193-94 (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).[4]

[4] *See also 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 Cap. 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*,

In addition, Defendants' 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 AC, Defendants knew or were deliberately reckless in not knowing that their 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 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 high-level corporate insiders, who also had primary roles in the public dissemination of misstatements or omissions. Therefore, Defendants' alleged "behavior is at the heart of [HUMBL's] false and misleading conduct." *N.Y.C. Emps.' Ret. Sys. v. Berry*, 616 F. Supp. 2d 987, 997 (N.D. Cal. 2009); *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

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).

committed deceptive acts in connection with a major settlement and failed to correct his company's misstatements about the settlement).

C. Defendant Sharp Committed Securities Fraud

Plaintiffs have adequately alleged claims against Defendant Sharp, a senior advisor to HUMBL who was instrumental in orchestrating the Tesoro reverse merger. In his separate motion, 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. Opening Brief in Support of Defendant George Sharp's Motion to Dismiss the [AC], ECF No. 76 ("Sharp Motion") at 9-17. Sharp is wrong.

Sharp's Motion identifies three Class Period statements as alleged actionable misstatements. *See id.* at 10. But Sharp misconstrues the AC. It 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 AC alleges he violated §10(b) and Rule 10b-5(a) and (c) based on a scheme involving his other two statements – on February 26, 2021, regarding HUMBL's concealment of the reverse split (¶¶124, 300) and on April 18, 2021,

furthering the false impression that dilution was unlikely (¶127) – along with other misleading statements and deceptive conduct (¶¶32-33, 42, 123-28, 167, 175).

Plaintiffs adequately allege that Sharp's February 26 Statement inaccurately portrayed the state of HUMBL's affairs. 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.'" ¶¶126, 181, 273.

Sharp's Motion characterizes this misleading statement as an opinion that he "didn't believe that certain investors were profit takers or that there would be dilution of shares." Sharp Mot. at 11. This mischaracterization is misguided and unreasonable based on the facts alleged to be known to Sharp at that time. He was at the center of the Tesoro and HUMBL merger. ¶¶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 LLC members' interests "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, held by shareholders. *Id*. Those realities differed from the impression that Sharp provided to investors regarding the state of HUMBL's affairs on February 26, 2021, which was that nothing then-existed which 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. Sharp Mot. at 9-15. 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 (*id*. at 12); and

(3) his misrepresentation and omissions are protected by the PSLRA's Safe Harbor (*id*. at 15).

First, the AC sufficiently demonstrates that Sharp's February 26 Statement was material. As set forth above, HUMBL shareholders were concerned about potential dilution. ¶181. Sharp certainly knew shareholders were concerned, and that they were looking to the Company, and thereby Sharp, for answers. *Id*. His statement was specifically directed towards those "'worried about dilution.'" ¶¶126, 181, 273. At the same time, Sharp knew that each Series B share would be convertible to 10,000 common shares, thus significantly 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.

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 Basic*, 485 U.S. at 231-32; *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 (¶¶185-87, 287-89) 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[.]").

Second, Plaintiffs adequately allege that 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. U.S.*, 445 U.S. 222, 228 (1980) (brackets in original). 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.").

Considering those factors, Sharp had a duty to disclose the merger with Tesoro and the resulting reverse split and probability of dilution when speaking to shareholders because he was privy to material nonpublic information to which they were entitled to. To begin, at all relevant times, Sharp served as a senior advisor to

HUMBL. ¶¶16, 36. In that role, he had access to sensitive insider information about the Company and its state of affairs that was not available to the investing public. ¶¶19-20. Not only did he receive compensation and corporate benefits as a Company advisor, Sharp was the president of Forwardly, through which he financially benefitted from his relationship with HUMBL. ¶¶42, 167. Next, as demonstrated above, and as Sharp admitted, he was well aware that HUMBL investors, including Plaintiffs, relied upon his representations when making investment decisions. ¶¶123-24, 321. Lastly, Sharp personally orchestrated the merger of Tesoro and HUMBL, resulting in the reverse split and stock dilution. ¶¶32-33, 299.

Thus, when Sharp chose to speak about stock dilution, he was required to do so in a manner that did not mislead. ¶¶126, 181, 273, 314. Specifically, he had a duty to disclose what material nonpublic information he had about the Series B convertible shares when assuring investors, worried about stock dilution, to not be. *See Martinek v. AmTrust Fin. Servs., Inc.*, No. 19 Civ. 8030, 2020 WL 4735189, at *10 (S.D.N.Y. Aug. 14, 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.'"); *Melcher v. Fried*, No. 16-cv-2440, 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.); *S.E.C. 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 he] provide complete and non-misleading information with respect to the subjects on which he undertakes to speak") (internal quotations omitted).

Third, Sharp's argument that his statements are "forward-looking" and thus entitled to Safe Harbor protection misses the mark because the Safe Harbor (i) simply does not apply to penny stocks and (ii) does not protect currently known 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. Therefore, Sharp's February 26 Statement is excluded from the PSLRA's Safe Harbor. *See Strategic Glob.*, 262 F. Supp. 3d at 1020-21 (rejecting argument that misstatements were forward-looking and thus 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).

Next, as described in detail above, despite assisting HUMBL and other corporate insiders into solidifying the Tesoro-HUMBL deal and its terms, including that each

Series B share would be convertible to 10,000 common shares, Sharp told investors not to worry about share dilution on February 26, 2021. ¶¶32-33, 37, 123, 299. At the time, the Plan of Merger had been announced months ago on November 12, 2020, so Sharp had knowledge of, or recklessly disregarded, the share structure that had been put in place by Plan when making the February 26 Statement – without disclosing the impending and pre-planned corporate actions. ¶273. The February 26 Statement therefore described current affairs – not a future plan – to which Safe Harbor protections do not apply.

D. Plaintiffs Adequately Alleged §20(a) Control Person Liability

To state a claim under §20(a), Lead Plaintiffs must plead (i) a primary securities law violation by the controlled entity (HUMBL), (ii) the §20(a) defendant's control of HUMBL, and (iii) culpable participation in the securities law violation by the §20(a) defendant. *See Stanley Black & Decker, Inc. v. Gulian*, 70 F. Supp. 3d 719, 731 (D. Del. 2014). As Defendants do not seriously challenge Plaintiffs' allegations that they "controlled" HUMBL, the only dispute is whether the AC sufficiently pleads an underlying 1934 Act violation in which Defendants culpably participated. *Zazzali v. Alexander Partners, LLC*, No. 12–828, 2013 WL 5416871, at *11 (D. Del. Sept. 25, 2013) (stating elements of §20(a) claim). As detailed in Section IV(A) above, it does.

Section 20(a) claims are subject only to Rule 8's pleading requirements. Therefore, to state a claim under §20(a), Plaintiffs need only provide Defendants with fair notice of the claim and the basis of their allegations. *See Initial Pub. Offering*, 241 F. Supp. 2d at 395-96 (§20(a) claims are subject only to the pleading standards of Rule 8(a)). Plaintiffs' §20(a) claims should proceed.

E. The HUMBL Defendants Sold Unregistered Securities in the Form of the BLOCK ETXs

Beyond the series of misstatements and omissions and fraudulent scheme detailed above, the HUMBL Defendants[5] violated the Securities Act of 1933 by selling unregistered securities in the form of the BLOCK ETXs.

Under §2(a)(1) of the Securities Act, a "security" is defined to include an "investment contract." 15 U.S.C. §77b(a)(1). An investment contract is "an investment of money in a common enterprise with profits to come solely from the efforts of others." *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946). Specifically, a transaction qualifies as an investment contract and, thus, a security if it is: (1) an investment; (2) in a common enterprise; (3) with a reasonable expectation of profits; and (4) to be derived from the entrepreneurial or managerial efforts of others. *See United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 852-53 (1975).

[5] Plaintiffs do not oppose dismissal of the Fourth Cause of Action solely as to Defendant Sharp.

This definition of a security embodies a "flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits," and thereby "permits the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of 'the many types of instruments that in our commercial world fall within the ordinary concept of a security.'" *W.J. Howey*, 328 U.S. at 299. Accordingly, in analyzing whether something is a security, "form should be disregarded for substance," and the emphasis should be "on economic realities underlying a transaction, and not on the name appended thereto." *Forman*, 421 U.S. at 848-49.

BLOCK ETXs meet all the criteria for an investment contract under *Howey*. Investors like Plaintiff Pasquinelli who bought BLOCK ETX products invested money and other valuable consideration in a common enterprise. These investors had a reasonable expectation of profit based on the efforts of the HUMBL Defendants, including, among other things, their purported propriety trading algorithms and blockchain expertise. BLOCK ETX investors relied on the managerial and entrepreneurial efforts of HUMBL, the Defendants, and others to manage, oversee, and/or develop the BLOCK ETX program.

Federal courts have applied the *Howey* test "to determine that similar cryptocurrency tokens intended to be sold on a blockchain or in the general market

were securities within the meaning of the Securities Act." *Digilytic Int'l FZE v. Alchemy Fin., Inc.*, No. 20 CIV. 4650, 2022 WL 912965, at *11 (S.D.N.Y. Mar. 29, 2022).

The AC adequately alleges Plaintiffs' reasonable expectation of profit from purchases of the BLOCK ETXs as a result of HUMBL's proprietary trading algorithm. *See, e.g.*, *Balestra v. ATBCOIN LLC*, 380 F. Supp. 3d 340, 355-57 (S.D.N.Y. 2019) (finding expectation of profit where allegations establish that "coins" would increase in value "based primarily on Defendants' entrepreneurial and managerial efforts" and "Defendants' [. . .] sole responsibility for developing and launching the ATB Blockchain–the performance of which largely dictated the value of ATB Coins[.]"); *Solis v. Latium Network, Inc.*, No. 18-10255, 2018 WL 6445543, at *3 (D.N.J. Dec. 10, 2018) (factual allegations, including promotional and other materials marketing investment opportunity despite the blockchain-based tasking platform had only limited functionality and had not yet been launched, supported inference plaintiff purchased tokens "with the expectation of profit rather than as a means of using the tasking platform"). Because the BLOCK ETXs meet every element of the *Howey* test, they are "investment contracts" (*i.e.*, securities) required to be registered pursuant to the Securities Act.

Plaintiffs allege that the HUMBL defendants violated §§5 and 12(a)(1) of the Securities Act by selling and soliciting the sale of unregistered securities in the form

of the BLOCK ETX products. HUMBL directly sold these unregistered securities by offering them as part of a subscription. HUMBL is thus in privity with Plaintiff Pasquinelli and other members of the class who subscribed. *Pinter v. Dahl*, 486 U.S. 622 (1988).

The AC further alleges that the HUMBL defendants made statements – including in social media posts and press releases – that specifically promoted the BLOCK ETXs as an investment opportunity in a new type of ETF or Mutual Fund. These statements solicited Class members' BLOCK ETX purchase by systematically marketing the asset and financially benefiting from such efforts. *Pinter*, 486 U.S. at 647. Indeed, HUMBL and its executives engaged in an extensive, public marketing campaign across multiple media to encourage the purchase of the BLOCK ETX products. Two federal circuit courts directly address this issue and concluded that social media communications can constitute solicitation under *Pinter*. *See Wildes v. BitConnect Int'l PLC*, 25 F.4th 1341, 1346 (11th Cir. 2022), *cert. denied sub nom. Arcaro v. Parks*, 143 S. Ct. 427 (2022) ("Broadly disseminated communications [. . .] can convey a solicitation."); *Pino v. Cardone Cap., LLC*, 55 F.4th 1253, 1260 (9th Cir. 2022) (ruling that "to conclude that their social media communications fall outside the [Securities] Act's protections would be at odds with Congress's remedial goals").

The HUMBL Defendants' marketing campaign for BLOCK ETXs promoted these financial products as an investment opportunity that would appreciate due to Defendants' efforts. *See, e.g.*, ¶¶184, 222, 225, 227, 229, 235, 242. These were solicitations to buy a security that Plaintiffs saw and relied on when purchasing the BLOCK ETXs. ¶321. The HUMBL Defendants' failure to register these transactions is a class-wide violation of the federal securities laws.

V. CONCLUSION

Defendants' motions to dismiss should be denied in their entireties. If, however, the Court determines that Plaintiffs' allegations are deficient, it should grant them leave to replead.[6]

[6] Plaintiffs' request for leave to amend is not made with "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party [. . .] etc." *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

Dated: December 29, 2023

Respectfully submitted,

KLEHR HARRISON HARVEY BRANZBURG LLP

/s/ David S. Eagle
David S. Eagle (Bar No. 3387)
Sally E. Veghte (Bar No. 4762)
919 N. Market Street, Suite 1000
Wilmington, DE 19801
Telephone: (302) 552-5508
Email: deagle@klehr.com
sveghte@klehr.com

Co-Lead Counsel for Lead Plaintiffs and the Class

Of Counsel

SCOTT+SCOTT ATTORNEYS AT LAW LLP
John T. Jasnoch
(admitted *pro hac vice*)
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: (619) 233-4565
Facsimile: (619) 233-0508
Email: jjasnoch@scott-scott.com

and

FREEDMAN NORMAND FRIEDLAND LLP
Ivy T. Ngo (admitted *pro hac vice*)
Velvel (Devin) Freedman
(admitted *pro hac vice*)
1 SE 3rd Avenue, Suite 1240
Miami, FL 33131
Telephone: (786) 924-2900
Facsimile: (646) 392-8842
Email: ingo@fnf.law
vel@fnf.law

Co-Lead Counsel for Lead Plaintiffs and the Class

and

BRONSTEIN, GEWIRTZ & GROSSMAN, LLC
Peretz Bronstein (admitted *pro hac vice*)
60 East 42nd Street, Suite 4600
New York, New York 10165
Telephone: (212) 697-6484
Email: peretz@bgandg.com

Additional Counsel for Lead Plaintiff Alfred Miller

CERTIFICATION REGARDING WORD COUNT AND FONT

Pursuant to this Court's Standing Order Regarding Briefing in All Cases, dated November 10, 2022 and the Court's Order Increasing the Word Count for Plaintiff's Omnibus Brief [D.I. 70], counsel certifies that: (a) this brief contains a total number of 11,850 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: December 29, 2023

Respectfully submitted,

KLEHR HARRISON
HARVEY BRANZBURG LLP

/s/ David S. Eagle
David S. Eagle (Bar No. 3387)
Sally E. Veghte (Bar No. 4762)
919 N. Market Street, Suite 1000
Wilmington, DE 19801
Telephone: (302) 552-5508
Email: deagle@klehr.com
sveghte@klehr.com

Co-Lead Counsel for Lead Plaintiffs and the Class