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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

VERA SEROVA, an individual, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

SONY MUSIC ENTERTAINMENT, a
Delaware general partnership; JOHN
BRANCA, as Co-Executor of the Estate of
Michael J. Jackson; EDWARD JOSEPH
CASCIO, an individual; JAMES VICTOR
PORTE, an individual; MJJ PRODUCTIONS,
INC., a California Corporation;
ANGELIKSON PRODUCTIONS LLC, a New
York Jersey Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. BC 548468

[Assigned for All Purposes to Honorable
Judge Ann I. Jones]

**PLAINTIFF VERA SEROVA'S
OPPOSITION TO DEFENDANTS
EDWARD JOSEPH CASCIO, JAMES
VICTOR PORTE, AND ANGELIKSON
PRODUCTIONS, LLC'S DEMURRERS
TO FIRST AMENDED COMPLAINT**

Date: November 15, 2016

Time: 11:00 a.m.

Dept.: 308

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1. Introduction

The Demurrers of Defendants Edward Joseph Cascio, James Victor Porte, and Angelikson Productions, LLC (“Angelikson Defendants”) to Plaintiff Vera Serova’s (“Plaintiff”) fraud cause of action should each be overruled.

First, the Angelikson Defendants contend Plaintiff cannot certify a class because she cannot plead or prove each class member saw or relied on the Angelikson Defendants’ alleged misrepresentations. But Plaintiff can certainly plead and can likely prove that each class member saw the Angelikson Defendants’ misrepresentation that Michael Jackson performed the Cascio tracks because the misrepresentation appeared on the cover of the *Michael* album and at the point of sale for digital purchases. Plaintiff is entitled to an inference of class wide reliance because that misrepresentation was material and communicated to each class member.

Second, the Angelikson Defendants’ challenges to the sufficiency of Plaintiff’s fraud allegations are themselves deficient. They contend the FAC fails to attribute any affirmative misrepresentations to Porte or Angelikson individually, but no such allegations are required given Plaintiff’s allegations of conspiracy, aiding and abetting, non-disclosure, and furnishing the means. They contend the FAC fails to allege the Angelikson Defendants owed Plaintiff a duty to disclose, but under California’s indirect deception doctrine, Plaintiff states a claim against the Angelikson Defendants based on their failure to disclose the truth to Defendants Sony Music Entertainment and Jackson’s Estate. And, they contend Plaintiff cannot allege reasonable reliance because she knew of the controversy surrounding *Michael*, but it was eminently reasonable at the time of purchase for Plaintiff and class members to take the word of *Michael*’s performers, publishers, and producers over the opinions of third parties who were not involved in the production process.

Third, the Angelikson Defendants’ uncertainty challenge fails to identify any real uncertainty or ambiguity in the FAC, but merely rehashes the purported reasons the FAC fails to state a claim. These flawed arguments fare no better the second time around.

Should the Court sustain any of the demurrers, Plaintiff requests leave to amend.

2. Summary of Allegations

Three of the ten songs on Michael Jackson's posthumous album *Michael*—"Breaking News," "Monster," and "Keep Your Head Up"(collectively the "Cascio Tracks") - are the product of a conspiracy by Defendants Edward Joseph Cascio, James Victor Porte, and Angelikson Productions LLC ("Angelikson") (collectively the "Angelikson Defendants") to create counterfeit Michael Jackson songs and sell them to Sony Music Entertainment ("Sony") and the Estate of Michael J. Jackson (the "Estate"). First Amended Complaint ("FAC") ¶¶ 12-18, 27, 34, 63. The Angelikson Defendants directed a Michael Jackson impersonator to record the lead vocals on the Cascio Tracks and submitted the songs to Sony and the Estate for inclusion on *Michael*. *Id.* ¶¶ 13, 16. Cascio, and potentially Porte and Angelikson, told Sony and the Estate that the lead vocals on the Cascio Tracks were Jackson's. *Id.* ¶ 14. Cascio, and potentially Porte and Angelikson, made these representations with the intent that the songs would be sold to consumers as Michael Jackson recordings and with the intent to profit through the sale and/or resale of the songs. *Id.* ¶ 15. Based on these misrepresentations (and the Angelikson Defendants' failure to disclose the truth), Sony and the Estate selected the Cascio Tracks for inclusion on *Michael* and purchased the rights to the songs from Cascio and potentially Porte and Angelikson (or agreed to share revenue from the exploitation of the songs with them). *Id.* ¶¶ 17, 18. Sony, the Estate, and MJJ Productions, Inc. (together the "Jackson Defendants") finalized the Cascio Tracks to prepare them for commercial release. *Id.* ¶ 19.

In the lead-up to *Michael*'s release, several Jackson family members and others publicly disputed that Michael Jackson performed the lead vocals on the Cascio tracks. *Id.* ¶ 20. On November 5, 2010, Sony responded to the questions regarding the authenticity of the Cascio tracks by stating "We have complete confidence in the results of our extensive research as well as the accounts of those who were in the studio with Michael that the vocals on the new album are his own." *Id.* ¶ 21. On November 11, 2010, the Estate's attorney, Howard Weitzman, released a public statement to Jackson's fans on behalf of the Estate ("Weitzman's Statement") that relayed numerous findings supporting the authenticity of the tracks, including that six of Jackson's former producers and engineers listened to *a cappella* versions of the Cascio tracks together and concluded that Jackson performed the lead vocals on the tracks. *Id.* On

December 6, 2010, Cascio appeared on the Oprah Winfrey Show and claimed that Jackson performed the lead vocals on the Cascio tracks. *Id.* ¶ 25.

On or about December 3, 2010, Sony and the Estate released a video advertisement (the “Video Ad”) for *Michael* in which the narrator states “a brand new album from the greatest artist of all time.” *Id.* ¶ 24.

Sony and the Estate released *Michael* on December 14, 2010. *Id.* ¶ 10. The album’s front cover is comprised of images of Michael Jackson. *Id.* ¶ 27. Its back cover states “This album contains 9 previously unreleased vocal tracks *performed by Michael Jackson.*” *Id.* (emphasis added.) This statement refers to nine previously unreleased vocal tracks instead of ten previously unreleased vocal tracks because one of the ten songs on the album—“The Way You Love Me”—was previously released in 2004. *Id.* Nothing on the album states or suggests that Michael Jackson did not perform the lead vocals for every track on the album. *Id.*

Before purchasing *Michael*, Plaintiff saw each of Defendants’ foregoing public representations that Jackson performed the lead vocals on the Cascio Tracks. *Id.* ¶ 29. In reliance on Defendants’ claims that Jackson performed the lead vocals on the Cascio Tracks, Plaintiff purchased *Michael* on compact disk in California between June 18 and 28, 2011. *Id.* ¶ 30.

Plaintiff asserts fraud claims against the Angelikson Defendants on behalf of a subclass defined as: “All persons who purchased ‘Breaking News,’ ‘Monster,’ and/or ‘Keep Your Head Up’ (individually or as part of a compilation) in California within the three years immediately preceding the filing of this action.” *Id.* ¶¶ 37, 59-60.

3. Defendants’ Demurrer Must Be Denied Because There Is A “Reasonable Possibility” Plaintiff Can Certify A Class For The Fraud Cause Of Action.

A trial court may sustain a demurrer to class allegations “only if it concludes as a matter of law that, assuming the truth of the factual allegations in the complaint, there is no reasonable possibility that the requirements for class certification will be satisfied.” *Bridgeford v. Pacific Health Corp.*, 202 Cal.App.4th 1034, 1041-1042 (2012). To certify a class, plaintiffs must “demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial

benefits from certification that render proceeding as a class superior to the alternatives.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1021 (2012). Community of interest, or commonality, embodies three factors, including “predominant common questions of law or fact.” *Fireside Bank v. Superior Court*, 40 Cal.4th 1069, 1089 (2007); Civ. Code § 1781, subd. (b)(2); Code Civ. Proc., § 382. Predominance rests on whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Brinker* at 1021. “Individual issues do not render class certification inappropriate so long as such issues may effectively be managed.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 334 (2004).

The Angelikson Defendants raise three challenges to predominance, but each of them fails.

A. Plaintiff Alleges Common Misrepresentations Made To All Class Members At Point Of Sale.

First, the Angelikson Defendants contend Plaintiff has not and cannot allege that all class members saw the Angelikson Defendants’ misrepresentations. Demurrer at 8:20-9:12. This argument fails because Plaintiff alleges that the Angelikson Defendants are responsible for the misleading content of the *Michael* album cover, which includes: (a) the statement “This album contains 9 previously unreleased vocal tracks performed by Michael Jackson.”; (b) the title—*Michael*; and (c) depictions of Jackson on the cover. *See, e.g.*, FAC ¶¶ 12-18, 27, 34, 63. These prominent uniform misrepresentations that Michael Jackson performed the songs at issue made to all class members who purchased a physical version of the *Michael* album support a finding of predominance as to that portion of the class. *See, e.g.*, *Ortega v. Nat. Balance, Inc.*, 300 F.R.D. 422, 428 (C.D. Cal. 2014) (common issues predominated where alleged misrepresentations appeared on uniform packaging); *Bruno v. Quten Research Inst., LLC*, 280 F.R.D. 524, 537 (C.D. Cal. 2011) (same); *Johns v. Bayer Corp.*, 280 F.R.D. 551, 558 (S.D. Cal. 2012) (same); *Wiener v. Dannon Co.*, 255 F.R.D. 658, 671 (C.D. Cal. 2009) (finding predominance, and materiality, met because “[r]egardless of whether every class member was exposed to Dannon's television, print, and internet advertisements, the record clearly establishes that Dannon's alleged misrepresentations regarding the clinically proven health benefits of the Products are prominently

1 displayed on all of the Products' packaging, a fact that Dannon has never contested); *Wolph v. Acer Am.*
2 *Corp.*, 272 F.R.D. 477, 488 (N.D. Cal. 2011) (finding predominance met because allegedly fraudulent
3 representations on packaging “were communicated to all class members because they were shown at the
4 point of purchase”).

5 While the class includes members who did not purchase the physical album such as purchasers
6 of digital versions of the songs at issue or compilation albums, all purchasers of the at-issue songs were
7 exposed to a representation that Jackson performed the songs prior to purchase. For example, the Apple
8 iTunes webpages for the *Michael* and *The Ultimate Fan Extras Collection* compilation album lists
9 Michael Jackson as the artist of the Cascio tracks. See FAC ¶ 28; Request for Judicial Notice (“RFJN”)
10 Exs. 1-2, filed concurrently. Indeed, the Jackson Defendants argued in support of their Anti-SLAPP
11 motion that “it would be nearly impossible to disseminate a music album without in any way identifying
12 the creator or performer of the work.” Jackson Defts’ Reply in Supp. Mot. to Strike at 11:8-10. Whether
13 any Californians purchased the Cascio Tracks without seeing Defendants’ claim that Jackson performed
14 them is an issue for discovery and class certification.

15 Moreover, even though Plaintiff alleges multiple misrepresentations, they convey a single
16 fraudulent message—that Jackson performed the lead vocals on the Cascio tracks. “[T]here is ample
17 case law finding predominance to be met where companies convey one allegedly fraudulent message ...
18 by a *multiplicity of means* such as television and print ads, and product labeling.” *Red v. Kraft Foods,*
19 *Inc.*, No. CV 10-1028-GW AGRX, 2012 WL 8019257, at *10 (C.D. Cal. Apr. 12, 2012) (citing *Johnson*
20 *v. Gen. Mills, Inc.*, 275 F.R.D. 282, 288 (C.D. Cal. 2011) (“common issues underlying [Plaintiffs’] UCL
21 and CLRA claims predominate [because] the central issues raised by this suit concern an allegedly
22 overriding, material misrepresentation that YoPlus promotes digestive health in a way that ordinary
23 yogurt does not. According to [Plaintiff], this misrepresentation was communicated by the packaging of
24 YoPlus and further amplified by General Mills’ marketing including television, newspaper, magazine,
25 and internet advertisements”); *In re Ferrero Litig.*, 2011 U.S. Dist. LEXIS 131533, at *16 (S.D. Cal.
26 Nov. 15, 2011) (finding predominance met despite multiplicity of packaging because “all of the class
27 members’ claims share a common contention: namely, that Defendant made a material

misrepresentation regarding the nutritious benefits of Nutella® that violated the UCL, FAL and the CLRA”); *Makaeff v. Trump Univ., LLC*, No. 3:10-CV-0940-GPC-WVG, 2014 WL 688164, at *13 (S.D. Cal. Feb. 21, 2014) (finding predominance met where there was evidence that the Trump University multi-media promotional campaign was uniform, highly orchestrated, concentrated and focused on its intended audience making it highly likely that each member of the putative class was exposed to the same misrepresentations).

B. The Class Is Entitled To An Inference Of Reliance.

While the Angelikson Defendants contend “Plaintiff is unable to plead or prove actual reliance by all members of the putative class” (Demurrer at 9:13-10:18), their demurrer must be denied because Plaintiff can show that the class is entitled to an inference of reliance. Under California law, an inference of reliance arises as to the entire class if the court finds uniform material misrepresentations were made to the class members. *In re Vioxx Class Cases*, 180 Cal. App. 4th 116, 129 (2009) (“Causation, on a class-wide basis, may be established by materiality. If the trial court finds that material misrepresentations have been made to the entire class, an inference of reliance arises as to the class.”); *Mass. Mut. Life Ins. Co. v. Superior Court*, 97 Cal. App. 4th 1282, 1292 (2002) (because defendant “broadly disseminated” some information to prospective purchasers, “trial court could have reasonably concluded that the ultimate question of whether the undisclosed information was material was a common question of fact suitable for treatment in a class action”); *In re Steroid Hormone Prod. Cases*, 181 Cal. App. 4th 145, 156-57 (2010) (plaintiff “entitled to show that GNC’s alleged deceptive conduct caused the same damage to the class by showing that the alleged misrepresentation was material, even if GNC might be able to show that some class members would have bought the products even if they had known they were unlawful to sell or possess without a prescription”). Thus, “plaintiffs [may] satisfy their burden of showing causation as to each by showing materiality as to all.” *Mass. Mut.*, 97 Cal. App. 4th at 1292.

Materiality is judged by a “reasonable man” standard. *In re Steroid Hormone Prod. Cases*, 181 Cal. App. 4th at 157. “In other words, a misrepresentation is deemed material ‘if “a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the

1 transaction in question” [citations], and as such materiality is generally a question of fact unless the “fact
2 misrepresented is so obviously unimportant that the jury could not reasonably find that a reasonable man
3 would have been influenced by it.”” *Id. citing Engalla v. Permanente Medical Group, Inc.*, 15 Cal.4th
4 951, 977 (1997).

5 In *Massachusetts Mutual*, the plaintiffs alleged that defendant sold them insurance policies that
6 paid dividends that defendants said would over time cover the premiums for the policy, but that
7 defendant failed to disclose that it had no intention of maintaining the dividend and, in fact, had plans to
8 “ratchet down” its dividend. *Mass. Mut.*, 97 Cal. App. 4th at 1286. The court found that “the record
9 permits an inference of common reliance” because “any reasonable person contemplating the purchase
10 of [defendant’s] premium payment plan” would find the defendant’s “own concerns about the premiums
11 it was paying” – which defendant failed to disclose – material to their purchase decision. *Id.* at 1293.

12 Here, Defendants made uniform misrepresentations to the class, or at least the vast majority of it.
13 As set forth above, *Michael’s* cover misrepresented the authenticity of the Cascio Tracks to all
14 purchasers of the physical album and websites like iTunes also repeated the misrepresentation that
15 Jackson performed the Cascio Tracks to the purchasers of the digital album. FAC ¶ 28; RFJN Exs. 1-2.
16 Defendants cannot reasonably argue that the identity of the singer of those tracks “is so obviously
17 unimportant that the jury could not reasonably find that a reasonable man would have been influenced
18 by it.” On the contrary, a “reasonable” purchaser of an album called “Michael,” that presents images of
19 Michael Jackson on its cover, and that is labeled as containing songs performed by Michael Jackson can
20 reasonably be expected to have attached importance to whether the songs were actually performed by
21 Jackson. Accordingly, Plaintiff will be able to establish reliance on a class basis.

22 The Angelikson Defendants cite *Tucker v. Pacific Bell Mobile Servs.*, 208 Cal. App. 4th 201
23 (2012), for the proposition that reliance cannot be established on a class basis where misrepresentations
24 are communicated to class members in a variety of ways such as advertisements, labels, product
25 descriptions, and promotional appearances. Demurrer at 10:7-12. But the real problem for the *Tucker*
26 plaintiffs was not the variety of ways through which misrepresentations were communicated. Rather,
27 *Tucker* focused on the fact that it was unclear whether class members saw or relied on any of the alleged
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misrepresentations. *Id.* at 221 (“Individual members of [the proposed class] may, or may not, have seen or relied upon any of [Defendants' alleged misrepresentations]. It is not even clear that the named Plaintiffs allege actual reliance.”) In addition, some of the putative class members in *Tucker* received disclosures that would negate reasonable reliance. *Id.* No such issues exist here as Plaintiff can show that all class members saw Defendants’ claim that Jackson performed the Cascio Tracks. Moreover, as noted above, “there is ample case law finding predominance to be met where companies convey one allegedly fraudulent message ... by a multiplicity of means.” *Red*, 2012 WL 8019257, at *10 (emphasis added).

C. The Class Is Entitled To An Inference Of Justifiable Reliance.

The Angelikson Defendants contend “it would be impossible to determine on a class wide basis, whether each individual class member’s reliance on the Angelikson Defendants’ purported misrepresentations was reasonable [because] the reasonableness of each class member’s reliance would be wholly subjective and based upon each class member’s personalized knowledge and experience.” Demurrer at 10:19-11:12. But a class-wide inference of justifiable reliance arises if the court finds that a reasonable man would have relied upon the alleged misrepresentations. *See Vasquez v. Superior Court*, 4 Cal. 3d 800, 814 n.9 (1971); *Marler v. E.M. Johansing, LLC*, 199 Cal. App. 4th 1450, 1464 (2011). The question of whether reliance is reasonable is a question of fact, “except in the rare case where the undisputed facts leave no room for a reasonable difference of opinion.” *West v. JPMorgan Chase Bank, N.A.*, 214 Cal. App. 4th 780, 794 (2013).

A reasonable person would rely on the Defendants’ representations that Jackson performed the at-issue tracks because the performers, publishers, and producers of a musical work are bound to speak honestly about their product, they are better positioned to know the performer’s identity than anyone else, and such reliance is customary. Defendants contend any reliance was unreasonable because several of Jackson’s family members and former producers disputed the authenticity of the Cascio Tracks before their release. Demurrer at 13:12-13:24. But Sony and the Estate published the Cascio Tracks as authentic Michael Jackson recordings after those allegations arose. FAC ¶ 26.¹ It was reasonable for

¹ Plaintiff also alleges that Sony allayed fans’ concerns regarding the authenticity of the Cascio Tracks by making a public statement that it had conducted “extensive research” and had “complete confidence

Plaintiff and class members to take the word of *Michael*'s performers, publishers, and producers over the opinions of third parties who were not involved in the production process. *See, e.g., In re Tobacco II Cases*, 46 Cal.4th 298, 328 (2009) ("[A]n allegation of reliance is not defeated merely because there was alternative information available to the consumer-plaintiff, even regarding an issue as prominent as whether cigarette smoking causes cancer."); *Boeken v. Philip Morris, Inc.*, 127 Cal. App. 4th 1640, 1657-68 (2005) (substantial evidence supported jury's finding that plaintiff justifiably relied on Tobacco company's "campaign of doubt" disputing link between smoking and lung cancer despite his awareness of Surgeon General's warnings and controversy over whether cigarettes were addictive, dangerous, harmful, or cancer-causing); *Whiteley v. Phillip Morris Inc.*, 117 Cal.App.4th 635,682-691 (2004) (substantial evidence supported jury's finding that plaintiff justifiably relied on Tobacco company's claims that smoking was safe and did not cause cancer despite awareness of Surgeon General's warnings).

4. Plaintiff Adequately States A Fraud Cause Of Action Against Each Angelikson Defendant.

A. Plaintiff Can State A Fraud Cause Of Action Against Porte And Angelikson Without Alleging They Personally Made Affirmative Misrepresentations.

The Angelikson Defendants contend Plaintiff's fraud claims against Porte and Angelikson fail because Plaintiff does not allege Porte or Angelikson personally made any misrepresentations. Demurrer at 12:6-12:15. But Plaintiff adequately alleges Porte and Angelikson's liability for fraud under several theories that do not require Porte and Angelikson to have made the misrepresentations themselves.

First, Plaintiff alleges all of the Angelikson Defendants are liable for fraud as co-conspirators in the scheme to create the counterfeit Cascio Tracks and sell them to Sony and the Estate as authentic. FAC ¶¶ 12-18, 27, 34, 63. Defendants who conspire to commit a tort are jointly responsible for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity. *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 511 (1994) (quoting *Doctors' Co. v. Superior Court*, 49 Cal.3d 39, 44 (1989)). "The elements of an action for civil

in the results". FAC ¶ 21.

1 conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff from an
2 act or acts done in furtherance of the common design....” *Id.* The FAC alleges these elements to the
3 extent the information is in Plaintiff’s possession, which is all that is required. *See Committee on*
4 *Children’s Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 216 (1983) (less specificity is
5 required to plead fraud when “it appears from the nature of the allegations that the defendant must
6 necessarily possess full information concerning the facts of the controversy”); *Miles v. Deutsche Bank*
7 *Nat’l Trust Co.*, 236 Cal. App. 4th 394, 403-404 (2015).

8 Second, Plaintiff alleges Porte and Angelikson are responsible for Cascio’s misrepresentations as
9 aiders and abettors of his fraud. FAC ¶ 63. “California has adopted the common law rule for subjecting a
10 defendant to liability for aiding and abetting a tort.” *Casey v. U.S. Bank Nat’l Ass’n*, 127 Cal. App. 4th
11 1138, 1144 (2005). “Liability may ... be imposed on one who aids and abets the commission of an
12 intentional tort if the person ... knows the other’s conduct constitutes a breach of duty and gives
13 substantial assistance or encouragement to the other to so act.” *Id.* (quoting *Saunders v. Superior Court*,
14 27 Cal.App.4th 832, 846 (1994)). The FAC alleges these elements to the extent the information is in
15 Plaintiff’s possession. *See* FAC ¶¶ 12-18, 30, 34, 63. Because the FAC alleges Porte and Angelikson
16 aided and abetted Cascio’s fraud, Plaintiff adequately alleges Porte and Angelikson’s responsibility for
17 Cascio’s misrepresentations and omissions.

18 Third, Plaintiff alleges actionable non-disclosures by all of the Angelikson Defendants. Under
19 California law, nondisclosure or concealment may constitute actionable fraud, *inter alia*, “when the
20 defendant had exclusive knowledge of material facts not known to the plaintiff” and “when the
21 defendant actively conceals a material fact from the plaintiff.” *LiMandri v. Judkins*, 52 Cal. App. 4th
22 326, 336 (1997); *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal. App. 4th 1105, 1130 (2014).
23 Plaintiff alleges each of the Angelikson Defendants: (a) engaged in one or more transactions concerning
24 the Cascio Tracks with Sony and the Estate, (b) failed to disclose to Sony or the Estate that Michael
25 Jackson did not perform the lead vocals on the Cascio Tracks, (c) had exclusive knowledge that Jackson
26 did not perform the Cascio Tracks, and (d) actively concealed the fact that Jackson did not perform the
27 Cascio Tracks. FAC ¶ 18. These allegations suffice to allege Porte and Angelikson owed Sony and the
28

1 Estate a duty to disclose regardless of whether or not they made any affirmative representations.

2 The Angelikson Defendants' liability under these theories extends to Plaintiff and class members
3 because California follows the Restatement rule that:

4 The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to
5 another who acts in justifiable reliance upon it if the misrepresentation, although not made
6 directly to the other, is made to a third person and the maker intends or has reason to expect
7 that its terms will be repeated or its substance communicated to the other, and that it will
8 influence his conduct in the transaction or type of transaction involved.

9 Restatement (Second) of Torts § 533 (1977); *Varwig v. Anderson-Behel Porsche/Audi, Inc.*, 74 Cal.
10 App. 3d 578, 581 (1977) (accepting Restatement rule); *Mega Life & Health Ins. Co. v. Superior Court*,
11 172 Cal. App. 4th 1522, 1530 (2009) (same). This rule applies not only to misrepresentations, but also to
12 actionable non-disclosures. *See Massei v. Lettunich*, 248 Cal. App. 2d 68, 73 (1967) ("No reason
13 appears why this same rule should not be applicable to nondisclosures as well as misrepresentations.");
14 *Geernaert v. Mitchell*, 31 Cal.App.4th 601, 606-608 (1995) (home seller made false representations of
15 fact that house foundation had no problems and all modifications to the house were done to code, but
16 concealed true facts which were to the contrary). Plaintiff alleges the Angelikson Defendants expected
17 and intended that Sony and the Estate would communicate the substance of their misrepresentations and
18 omissions to consumers and thereby influence their conduct in the transactions at issue, so this theory is
19 adequately pled. *See* FAC ¶¶ 15, 34, 63.

20 Fourth, Plaintiff adequately alleges each of the Angelikson Defendants furnished the means for
21 the accomplishment of the fraud by creating the counterfeit tracks and furnishing them to Sony and the
22 Estate for sale to the public. FAC ¶¶ 12-18, 30, 34, 63. One who "furnishes the means for [the]
23 accomplishment [of a fraud] is liable equally with those who actually make the misrepresentation."
24 *People v. Bestline Prod., Inc.*, 61 Cal. App. 3d 879, 918 (1976). In *American Philatelic Soc. v.*
25 *Claibourne*, 3 Cal.2d 689 (1935), this doctrine was applied to a defendant who marked and perforated
26 postage stamps so that they resembled rare and expensive collectible stamps and sold them to dealers.
27 *Id.* at 692. The defendant did not misrepresent the nature of the stamps himself but left that to the dealers
28 buying the stamps. *Id.* at 694. Nevertheless, the court found: "The fact that respondent is satisfied to take
a small profit, leaving to another the actual fraud, the double-dealing and palming off, is wholly

1 immaterial. He who induces another to commit fraud and furnishes the means is equally guilty.” *Id.* at
2 696-97. By furnishing the means for Sony and the Estate’s deception of consumers, each of the
3 Angelikson Defendants is liable for fraud.

4 Finally, since filing the FAC, Plaintiff has determined she has an adequate basis to allege that
5 Porte and Angelikson themselves affirmatively misrepresented the authenticity of the Cascio Tracks to
6 Sony and the Estate. Porte’s statement to this effect is evident from Sony Music’s November 5, 2010
7 statement: “We have complete confidence in the results of our extensive research as well as the accounts
8 of those who were in the studio with Michael that the vocals on the new album are his own.” FAC ¶ 21
9 (emphasis added). Based on Weitzman’s Statement, it appears Porte was one of only two people
10 purportedly in the studio with Michael. Plaintiff is informed and believes Angelikson made such a
11 statement because her investigation indicates that Cascio was speaking for Angelikson as its agent and
12 alter ego when he told Sony and the Estate that the Cascio tracks were authentic. In particular, Plaintiff
13 is informed and believes that Cascio exercises complete control over Angelikson as its owner. Cascio
14 was authorized to transact business for Angelikson, and Cascio sold the Cascio Tracks to the Jackson
15 Defendants through Angelikson. FAC ¶¶ 7, 15-16.

16 **B. Plaintiff Alleges Actionable Non-Disclosures By The Angelikson Defendants.**

17 The Angelikson Defendants argue that Plaintiff fails to state a fraud claim against them for
18 nondisclosure because she alleges they owed a duty to disclose to Sony and the Estate but not to her.
19 Demurrer at 12:16-12:22. But, as set forth above, liability for indirect misrepresentations extends to
20 nondisclosures under California law. *See Massei*, 248 Cal. App. 2d at 73; *Geernaert*, 31 Cal.App.4th at
21 606-608. Plaintiff adequately alleges the Angelikson Defendants’ liability for indirect nondisclosures as
22 she alleges the Angelikson Defendants made actionable non-disclosures to Sony and the Estate with the
23 expectation and intent that Sony and the Estate would communicate the substance of their
24 misrepresentations and omissions to consumers and thereby influence their conduct in the transactions at
25 issue. *See* FAC ¶¶ 15, 34, 63.

1 **C. Plaintiff Alleges She Indirectly Relied On Misrepresentations And Omissions By The**
2 **Angelikson Defendants.**

3 The Angelikson Defendants argue that Plaintiff fails to allege that she relied on any of their
4 misrepresentations, but she adequately alleges indirect reliance. Demurrer at 12:23-13:3. As discussed
5 above, the Restatement recognizes that justifiable reliance upon a misrepresentation made to a third
6 person is sufficient to state a claim for fraudulent misrepresentation. Restatement Second of Torts § 533;
7 *Varwig*, 74 Cal. App. 3d at 581 (seller of car to seller #2 who sold car to plaintiff liable to plaintiff “who
8 purchased car in reliance upon [seller #2’s] repetition of the representation” of false claim of title);
9 *Barnhouse v. City of Pinole*, 133 Cal. App. 3d 171, 191 (1982) (developer who failed to disclose
10 material information to seller of property to plaintiff liable for deceit to plaintiff because developer “had
11 reason to expect that there would be subsequent purchasers and that the original buyers would repeat the
12 [developer’s] fraudulently incomplete representations about the property”).

13 As in *Varwig* and *Barnhouse*, the Angelikson Defendants may be held liable to Plaintiff and the
14 putative class for misrepresentations they made to the Jackson Defendants. Indeed, Plaintiff sufficiently
15 alleges indirect reliance: “Defendants Cascio, Porte, and Angelikson are subject to direct liability for this
16 [fraud] cause of action because they each performed actions constituting fraud” including making “(e)
17 fraudulent statements that were not made directly to Plaintiff and Class members, but which were made
18 to a third person with the intent and expectation that the substance of the misrepresentation would be
19 communicated to Plaintiff and Class members and would influence their conduct in the transactions at
20 issue.” FAC ¶ 63.

21 Here, Plaintiff specifically alleges that before purchasing *Michael*, she saw Defendants’
22 following public representations that Michael Jackson performed the lead vocals on the Cascio
23 Tracks: (1) the Michael CD album’s: (a) claim to contain “9 previously unreleased vocal tracks
24 performed by Michael Jackson.”; (b) title—*Michael*; and (c) depictions of Jackson; (2) the Video Ad;
25 and (3) Cascio’s statement on Oprah. FAC ¶¶ 24, 25, 27, 29. She alleges that she purchased *Michael* in
26 reliance on Defendants’ claims that Jackson performed the lead vocals on the Cascio Tracks. *Id.* ¶¶ 30
27 (“In reliance on Defendants’ claims ... Plaintiff [] purchased *Michael*...”), 61 (“Plaintiff actually and
28

1 reasonably relied on these misrepresentations, omissions, and concealments [by the Angelikson
2 Defendants]”). As explained above, Plaintiff alleges the Angelikson Defendants are responsible for each
3 of these misrepresentations.

4 **D. Plaintiff Alleges Reasonable Reliance.**

5 The Angelikson Defendants argue Plaintiff’s reliance on Defendants’ alleged misrepresentations
6 and omissions was not reasonable given the controversy around the Cascio Tracks prior to *Michael’s*
7 release. Demurrer at 13:4-13:24. As set forth above, this is a question of fact for the jury, and Plaintiff’s
8 reliance on Defendants’ misrepresentations was justifiable.

9 **5. The Fraud Cause Of Action Is Not Subject To Demurrer For Uncertainty.**

10 The Angelikson Defendants contend the FAC is subject to demurrer for uncertainty because: (1)
11 Plaintiff does not allege which misrepresentations she relied on in purchasing *Michael*; (2) Plaintiff does
12 not allege why her reliance was reasonable; and (3) Plaintiff’s damages are uncertain because she knew
13 she was purchasing a “controversy.” Demurrer at 14:4-15:1. The first two arguments fail because the
14 FAC adequately pleads reliance and reasonable reliance as set forth above. The third argument fails
15 because the existence of a controversy does not negate Plaintiff’s damages just as it does not negate
16 reasonable reliance.

17 **6. Conclusion**

18 For the foregoing reasons, the Angelikson Defendants’ demurrers should be overruled. Should
19 the Court sustain any of the demurrers, Plaintiff requests leave to amend.

20
21 Dated: October 21, 2016

Respectfully Submitted,

22 **MOSS BOLLINGER LLP**

23
24 By: 

25 Ari E. Moss

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF LOS ANGELES)

5 I am over the age of 18 years and not a party to this action. My business address is
6 15300 Ventura Blvd., Suite 207, Sherman Oaks, CA 91403. My address for electronic service is
7 lea@mossbollinger.com.

8 On October 24, 2016, I served true and correct copies of the foregoing document(s):

9 **PLAINTIFF VERA SEROVA'S OPPOSITION TO DEFENDANTS EDWARD JOSEPH
10 CASCIO, JAMES VICTOR PORTE, AND ANGELIKSON PRODUCTIONS, LLC'S
11 DEMURRERS TO FIRST AMENDED COMPLAINT**

12 By the following means of service:

13 X : **BY ELECTRONIC SERVICE:** I hereby certify that the document(s) listed above was (were)
14 electronically served from Los Angeles, California on counsel of record by transmission to Case
15 Anywhere.

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Victor Porte, and Angelikson Productions LLC*

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
24 correct and that this declaration was executed on October 24, 2016, at Sherman Oaks, California.

25 
26 _____
27 Lea Garbe
28