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August 31, 2021

VIA ECF

Hon. Sarah Netburn
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *SEC v. Ripple Labs, Inc.* et al., No. 20-cv-10832 (AT)(SN) (S.D.N.Y.)

Dear Judge Netburn:

We write on behalf of Defendants Ripple Labs Inc. and Christian Larsen (“Defendants”), pursuant to Part II.C of the Court’s Individual Practices, to request a Local Rule 37.2 conference.

On December 22, 2020, the Securities and Exchange Commission commenced this unprecedented enforcement action alleging that virtually all of Defendants’ transactions in XRP over an eight-year period were investment contracts under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The SEC further alleged that Defendants’ multifarious transactions during this period were part of a single, integrated, distribution of securities subject to registration under Section 5 of the Securities Act of 1933.

The SEC, however, has resisted any attempt to pin down its theory of the case. Defendants served interrogatories pursuant to Local Rule 33.3(c), seeking to identify the ways in which the SEC contends *Howey* applies to all these transactions. The SEC has refused to provide this information, contending that Defendants are seeking irrelevant information. But, as set forth below, each of Defendants’ interrogatories is properly designed to elicit binding statements from the SEC necessary to “narrow the scope of litigation, reduce the element of surprise, [and] serve as admissions for trial.” *Trueman v. N.Y. State Canal Corp.*, 2010 WL 681341, at *2 (N.D.N.Y. Feb. 24, 2010).

Consistent with Federal Rule of Civil Procedure 37(a), Defendants conferred with the SEC to address these deficiencies. The SEC adheres to its position that the contentions sought are irrelevant, and refuses to provide substantive, non-evasive responses.

I. Defendants’ Interrogatories Seek Critical Information Under Rule 33

The SEC has previously informed this Court that its case against Defendants involves a “straightforward application of a well-settled legal test” – the Supreme Court’s 75-year old decision in *Howey*. Letter from J. Tenreiro to the Honorable Analisa Torres, ECF No. 54 at 2

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(Mar. 9, 2021). Under *Howey*, an investment contract exists where “a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.” *Howey*, 328 U.S. at 299.

Defendants’ interrogatories seek, as Rule 33 permits, binding representations from the SEC as to how it contends *Howey* applies to this case, as well as identification of the factual support (if any) for those contentions. See *Weiss v. Nat’l Westminster Bank, PLC*, 242 F.R.D. 33, 59 & n.25 (E.D.N.Y. 2007) (“Contention interrogatories may serve a useful purpose in narrowing issues for trial ‘especially when served after adequate opportunity for relevant discovery.’”) (citation omitted). This is absolutely basic information essential to the defense. Rule 33 requires the SEC to answer each interrogatory “separately and fully,” Fed. R. Civ. P. 33(b)(3), and in a manner that is as “specific as possible and not evasive,” *Trueman*, 2010 WL 681341, at *3. Rule 33 requires full and complete responses to interrogatories in order “to ‘minimize uncertainty concerning the scope of [the SEC’s] claims.’” *Cooke v. Mercedes-Benz USA, LLC*, 2014 WL 2013444, at *2 (D. Conn. May 16, 2014) (citation omitted). Evasive responses “must be treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4).

A. Deficient Responses to Ripple’s Interrogatory Nos. 2, 6, 11, 17, 19

Interrogatory No. 2. “For each contract You listed in response to Interrogatory No. 1, Identify all terms of the contract that You contend created an ‘expectation of profits’ . . . by the purchaser of XRP, stating with particularity the factual basis, and citing any Documents or Communications relied upon, for that contention.”

The SEC refuses to provide the information sought by this interrogatory. It has not identified any “term” of any contract with any Defendant that purportedly led to any “expectation of profits” within the meaning of *Howey*. Instead, the SEC directs Defendants to unspecified “public statements” made in various forums that it contends led XRP purchasers to expect “that Ripple and its agents would undertake significant entrepreneurial and managerial efforts, with the expectation that such efforts could potentially lead to an increase in demand for XRP and therefore its price.” SEC’s Resps. & Objs. To Def. Ripple’s First Set of Interrogs. (attached as Ex. A), at 10. This response is insufficient: the interrogatory does not seek information about *public statements* (that XRP purchasers may or may not have seen before they bought or received XRP), it seeks identification of *specific terms in specific contracts made with specific counterparties* that purportedly led those XRP purchasers to expect profits based on Ripple’s efforts.

The SEC should not be permitted to play cat-and-mouse on this issue. Ripple asked the SEC to identify each “contract that You contend constituted or was part of an investment contract that Ripple offered or sold as part of the unregistered distribution of securities alleged in the Complaint.” *Id.* at 3. The SEC responded that, “every offer, sale and distribution of XRP by [Defendants]” over an eight-year period – which Defendants estimate includes, but is not limited to, approximately 1,700 *contracts* – constituted a *single, unbroken* distribution of an “investment contract under *Howey*.” *Id.* at 6. Defendants do not believe that any of these contracts include any provision that addressed, much less led a purchaser of XRP to expect, any future profits. If (as Defendants contend) none of these *contracts* include a provision leading to an expectation of

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profits, the SEC is required to provide that information in its response. *See Harris v. Bronx Parent Hous. Network, Inc.*, 2020 WL 763740, at *3 (S.D.N.Y. Feb. 14, 2020) (“If Defendant cannot identify any documents concerning the interactive process between Defendant and Plaintiff, Defendant must state so.”). If there are none, then the SEC must respond accordingly.

The SEC attempts to excuse its refusal to comply with Rule 33 by arguing that the “terms” of Ripple’s contracts are “not relevant to any claim or defense.” *See* Letter from B. Hanauer to R. Figel at 2 (Aug. 27, 2021) (attached as Ex. B). That is flatly inconsistent with *Howey*. Application of the *Howey* test to this case involves a determination of whether a purchaser of XRP was led to expect profits solely from the efforts of Ripple. Whether the specific contracts executed by the parties in connection with “every offer, sale and distribution of XRP by Ripple, Larsen, and Garlinghouse,” Ex. A at 6, included – or did not include – a specific provision that led to an expectation of profits is plainly relevant to this case. *See Shim-Larkin v. City of New York*, 2018 WL 3187327, at *12 (S.D.N.Y. June 28, 2018) (an interrogatory may relate to any matter that may be inquired into under Rule 26(b)(1)).¹

If the answer is none, as Defendants contend, a complete response to the interrogatory will significantly narrow the disputed issues at summary judgment and trial. And if the SEC believes there are such provisions, identification of those specific provisions is essential for Defendants to prepare their defense.² The SEC should thus be required to supplement its response to identify the specific provisions in Ripple’s contracts that it contends explicitly or implicitly led to an expectation of profits, or state that no such terms exist. *See Harris*, 2020 WL 763740, at *3.

Interrogatory No. 6. “State whether You contend that Bitcoin and/or Ether are securities within the meaning of Section 2 of the 1933 Securities Exchange Act, and Identify with particularity the evidence (including any Documents) on which You rely for that contention.”

The SEC refuses to respond to this interrogatory on the grounds that “[t]he legal status of . . . Bitcoin and Ether are not relevant to this case.” Ex. A at 17. The Court has already rejected that argument, holding that discovery related to Bitcoin and Ether is “relevant to the Court’s eventual analysis with respect to the *Howey* factors . . . it is relevant as to the objective review of defendants’ understanding in thinking about the aiding and abetting charge [and] it is relevant to the fair notice defense that Ripple is raising.” *See* Apr. 6, 2021 Hr’g Tr. at 51:11-19. Accordingly, the Court should order the SEC to answer the interrogatory accurately and completely, in a manner that Defendants can rely on at trial.³

¹ Although the parties disagree about the application of the legal standard set forth in *Howey*, the Court need not resolve that disagreement to resolve this motion. Defendants are entitled to know whether the SEC will contend that Ripple’s *written agreements* led to an expectation of profits as contemplated by *Howey*.

² The SEC further argues that, “to the extent [Defendants] seek the SEC to identify terms of common law contracts, any of those contracts entered by Ripple are already in Ripple’s possession.” Ex. B at 3. But this does not relieve the SEC of its obligation to identify *its own contentions* concerning what it believes are the relevant terms.

³ The SEC purported to “supplement[] its response by referring to its responses to Defendants’ RFA Nos. 20-23,” Ex. B at 3, in which the Commission admitted that it has not made any public statements, or taken any action, as to the legal status of any person’s offers or sales of Bitcoin or Ether. But that unsworn “supplement” does not

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Interrogatory No. 11. “State whether You contend that efforts by Ripple were necessary to affect any increase in the price of XRP. If that is Your contention, Identify with particularity the factual basis (including any Documents relied on) for that contention.”

This interrogatory is directly relevant to the application of *Howey* to this case, which requires proof that purchasers expected “profits to be derived solely from the efforts of [the seller].” *Revak v. SEC Realty Corp.*, 18 F.3d 81, 87 (2d Cir. 1994). The SEC asserts that “the information Ripple seeks is not relevant to any claim or defense.” Ex. B at 3. But under *Howey*, the SEC bears the burden of proving that purchasers of XRP relied on Ripple’s efforts to increase the value of XRP. Ripple is entitled to a full and complete response as to whether the SEC contends that Ripple’s efforts were, in fact, necessary to increase the price of XRP. If, as Defendants contend, Ripple’s efforts were unnecessary and the value of XRP increased based on factors other than Ripple’s efforts, a full and complete statement to that effect is highly relevant to Defendants’ defense. Accordingly, a complete and full response to Interrogatory No. 11 – and specifically whether the SEC contends that *Ripple’s* efforts “were necessary to affect any increase in the price of XRP” – is directly relevant to Ripple’s defense.

The SEC refuses to answer whether *Ripple’s efforts* were *necessary* to increase the price of XRP. Instead, the SEC provides the evasive response that “Ripple has engaged in efforts that led XRP purchasers to reasonably expect profit based on Ripple’s efforts,” Ex. A at 28, citing “non-exhaustive examples reflecting *Ripple’s beliefs* that its efforts were necessary to achieve XRP price increases and related efforts (*sic*),” Ex. B at 3 (emphasis added). Requiring the SEC to state whether it contends that Ripple’s efforts were necessary to increase the value of XRP (*i.e.*, whether future profits were “solely” dependent on Ripple’s efforts) is not just relevant, it is critical to the proper application of *Howey*.⁴

Interrogatory No. 17. “Identify the enterprise(s) or venture(s), if any, in which You contend XRP holders acquired a stake in by virtue of their purchase of XRP from Defendants, and all evidence on which You intend to rely to support that contention.”

The identification of the “common enterprise” from which a purchaser of XRP expects to receive future profits, and to which Defendants will apply their entrepreneurial and managerial efforts, is critical to the proper application of *Howey*. The SEC has previously conceded that a purchaser of XRP has no right to receive profits from Ripple itself.⁵ This leaves unanswered,

satisfy the requirements of Rules 33(b)(3) and (5). And, even if it were part of the SEC’s response, it does not provide the “complete,” “specific,” and “not evasive” response that Rule 33 requires. *Trueman*, 2010 WL 681341, at *3.

⁴ See, e.g., *Tcherepnin v. Knight*, 389 U.S. 332, 338 (1967) (finding investment contract under *Howey* because investors’ profits were “dependent . . . upon the skill and efforts” of the promoter); *Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Daniel*, 439 U.S. 551, 562 (1979) (no investment contract under *Howey* because profits did not “depend” upon promoter’s efforts).

⁵ See, e.g., SEC Response to RFA No. 57 (“the Commission admits that purchasing XRP on the open market typically does not convey any right, based solely on their status as a holder of XRP, to receive payment directly from Ripple in any form.”); see also SEC Responses to RFA Nos. 58-63.

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however, the identification of the “common enterprise” from which a purchaser of XRP might expect future profits, or to which Defendants purportedly agreed to apply their entrepreneurial and managerial efforts. Nowhere in the Complaint does the SEC identify the “common enterprise” at issue in this case. The Complaint vaguely references an undefined “XRP ecosystem.” *See* Compl. ¶¶ 308-309, 311. And the SEC’s response to Interrogatory No. 17 is similarly evasive and inadequate: “XRP holders hoped to profit from a potential increase in the value of XRP based on Ripple’s efforts to create a use for XRP and develop the XRP ‘ecosystem,’ potentially increasing demand for the token.” SEC’s Resps. & Objs. To Ripple’s Second Set of Interrogs (attached as Ex. C), at 15. This response fails to identify any legally cognizable “common enterprise,” and fails to give Defendants adequate notice of what common enterprise (if any) XRP holders contracted to receive any interest in or right to future profits from.

The SEC again asserts that “the information Ripple seeks is not relevant.” Ex. B at 4. But the “common enterprise” is an essential element in the *Howey* test and Second Circuit law. *See, e.g., Revak*, 18 F.3d at 88 (sales of condominiums were not “investment contracts” because “fact that many purchasers employed [the same management firm] in renting their units establishe[d], at most, a common agency, not a common enterprise”). The Court should compel the SEC to identify the common enterprise present in this case, or to state clearly that XRP holders did not acquire a stake in any common enterprise.

Interrogatory No. 19. “Identify with particularity any evidence . . . that You contend demonstrates that any XRP holder has or had any right, as a result of his or her purchase of XRP in the unregistered distribution of securities alleged in the Complaint, to receive any future payment directly from Ripple, in any form, at any time, or for any purpose”

The SEC again refuses to provide a response to an interrogatory seeking the SEC’s position on an essential element of *Howey*: whether the Defendants offered purchasers of XRP the right to share in the future profits of any enterprise, including Ripple. *See Howey*, 328 U.S. at 299. The SEC claims that “[w]hether the purchaser had a right to receive payments *from Ripple* is irrelevant.” Ex. C at 17 (emphasis added). However, the SEC’s belief that future profits need not come directly from Ripple does not excuse its refusal to comply with its obligations under the Federal Rules. *See Shim-Larkin*, 2018 WL 3187327, at *12. If, as Defendants believe, there is no evidence that XRP holders had any expectation of any future right to payments from Ripple, the SEC must affirmatively state this in a form that can be used at trial.⁶

B. Deficient Response to Larsen’s Interrogatory No. 5

Interrogatory No. 5. “State whether You contend that the XRP Ledger was not fully functional before the start of the ongoing securities offering alleged in the Complaint. If that is Your contention, Identify when You contend the XRP Ledger did become fully functional (if ever)

⁶ Again, the SEC purported to “supplement[] its response by noting its responses to Defendants’ RFA No. 57” and “RFA Nos. 58, 59, 60, 70, 73, and 74.” Ex. B at 4. But again, that unsworn “supplement” does not satisfy the requirements of Rules 33(b)(3) and (5), and Defendants are entitled to a complete response to the interrogatory. *See, e.g., Trueman*, 2010 WL 681341, at *3.

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and what actions or efforts resulted in making the XRP Ledger fully functional, and all evidence You intend to rely on to support that contention.”

The SEC’s response fails to answer the interrogatory, and instead states only that “Ripple engaged a team of people *working on improving* the XRP Ledger *throughout the period at issue* in this case,” and that certain (unspecified) documents “show examples of Ripple continuing to make efforts to develop, improve, and modify the functioning of the XRP Ledger.” SEC’s Resps. & Objs. To Larsen’s First Set of Interrogs. (attached as Ex. D), at 11 (emphasis added). The SEC defends its evasive answer by arguing that “whether and when the XRP Ledger became ‘fully functional’ is irrelevant under *Howey*.” Ex. B at 5. That argument lacks any good faith basis, because the SEC (in materials it has previously relied on to argue that Defendants had fair notice of what the law requires⁷) has suggested that whether a “digital asset is not fully functional at the time of the offer or sale” is “especially relevant in an analysis of whether the third prong of the *Howey* test is satisfied.”⁸ The Court should compel the SEC to provide a non-evasive response.

II. The SEC’s Inappropriate References to Other Interrogatory Answers

The SEC’s responses to Ripple’s Interrogatory Nos. 3, 7, 18, 22, 23, and 24, and Larsen’s Interrogatory No. 4 merely incorporate by reference the SEC’s responses to other interrogatories. However, an answer to an interrogatory must be “completed within itself, and it should be in a form that may be used at trial.” *Harris*, 2020 WL 763740, at *2 (quoting *Edebali v. Bankers Standard Ins. Co.*, 2016 WL 4621077, at *2 (E.D.N.Y. Sept. 6, 2016)). Answers to interrogatories that merely reference other answers to the interrogatories are improper and unresponsive. *E.g.*, *Bernstein v. Mafcote, Inc.*, 2014 WL 3579418, at *3 (D. Conn. July 21, 2014) (ordering party to “state with specificity the portions of his response to interrogatory 5 that are responsive to interrogatory 11”).⁹

After years of investigation, and with discovery coming to an end, the SEC is required to provide “the best answer they can based upon current information in their possession.” *Trueman*, 2010 WL 681341, at *2. It cannot evade this obligation by providing vague and ambiguous

⁷ See, e.g., SEC’s Memo. of Law in Supp. of it’s Mot. to Strike, ECF No. 132 at 13 & n.6.

⁸ SEC, Framework for “Investment Contract” Analysis of Digital Assets, <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>.

⁹ The cases cited by the SEC in its letter to Ripple are not to the contrary, and in fact confirm that simply referring to another interrogatory response is generally improper. See *Graco, Inc. v. PMC Glob., Inc.*, 2011 WL 1114233, at *34 (D.N.J. Mar. 24, 2011) (“Rule 33 typically requires a separate answer for each interrogatory”). In *Graco*, the court permitted responses that referenced other interrogatory responses only in light of the “substantial number of interrogatories posed by both parties” and because the interrogatories were identical. See *id.* And, in the other cases, the Court found the party had answered in such a way that provided the other party notice of the relevant factual information responsive to the interrogatory at issue. See *United States v. R.J. Zavoral & Sons, Inc.*, 2014 WL 12756821, at *12 (D. Minn. Apr. 23, 2014) (in response to interrogatory asking the government to identify documents and relevant witnesses, it was sufficient for the government to refer to specific documents detailed in its answers to other interrogatories); *Caliper Techs. Corp. v. Molecular Devices Corp.*, 213 F.R.D. 555, 560 (N.D. Cal. 2003) (supplemental response incorporated reference to detailed invalidity contentions, and party had not shown how this response “deprived it of relevant information”). Here, Defendants’ interrogatories are not identical, and the SEC has not indicated which aspects of its responses to other interrogatories are relevant.

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responses that merely incorporate vague and ambiguous responses to other interrogatories, seeking different information. For example, in response to Larsen's Interrogatory No. 4, which seeks "all efforts by Ripple that You contend were made in order to generate profits for any Person who purchased XRP from Ripple," the SEC responds only that it "incorporates by reference its responses and objections to Ripple's Interrogatories Nos. 2, 8, and 10-11." Ex. D at 10. But, as noted above, Ripple's Interrogatory No. 2 seeks the terms in Ripple's contracts that allegedly led to an expectation of profits (not the alleged efforts taken by Ripple to generate profits), and the other interrogatories likewise seek different information – whether Ripple promised to create a secondary trading market for XRP (No. 8), whether Ripple pooled the funds of XRP purchasers (No. 10), and whether Ripple's efforts were *necessary* to increase in the price of XRP (No. 11).

Respectfully submitted,

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Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

**RIPPLE LABS, INC.,
CHRISTIAN A. LARSEN, and
BRADLEY GARLINGHOUSE,**

Defendants.

20 Civ. 10832 (AT) (SN)

**PLAINTIFF'S RESPONSES AND OBJECTIONS
TO DEFENDANT RIPPLE LABS, INC.'S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure ("Federal Rules") 26 and 33, Plaintiff Securities and Exchange Commission (the "SEC" or "Commission") hereby responds to Defendant Ripple Labs, Inc.'s ("Ripple") First Set of Interrogatories to Plaintiff Securities and Exchange Commission (the "Interrogatories"). The SEC's responses and objections to the Interrogatories are made to the best of its present knowledge, information, or belief. These responses and objections are made without prejudice to the SEC's right to revise or supplement its responses and objections as appropriate and to rely upon and produce witnesses or evidence at trial or at any proceeding, particularly given that discovery is ongoing. The SEC does not waive any applicable privilege, protection, doctrine, or right by providing these responses. The SEC also provides these responses without prejudice to its right to produce or object to evidence, witnesses, facts, writings, or documents that are identified either in these responses or in any later supplements or amendments. The SEC does not necessarily represent or agree, by virtue of providing a response, that any of the information identified below is relevant or admissible.

GENERAL OBJECTIONS

1. The SEC objects to the Interrogatories on the ground that they are not “proportional to the needs of the case” to the extent they call for answers that are premature given that the parties have neither completed document discovery and depositions, nor expert discovery. Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 33(b) (“An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete.”); *County of Suffolk v. Lillo*, No. 87 CV 0646 (JBW), 1988 WL 69759, at *1–2 (E.D.N.Y. June 13, 1988) (“Contention interrogatories such as those propounded by the defendant here are generally not favored in the early stages of discovery.... [F]orcing the plaintiffs to answer these interrogatories is not justified when balancing the burden imposed upon the plaintiffs in responding to these requests against the likelihood that useful information will be produced.”); *Roth v. Bank of Commonwealth*, No. CIV-79-36E, 1988 WL 43963, at *4 (W.D.N.Y. May 4, 1988) (contention interrogatories include “those that ask the adverse party to state all the *facts* or all the *evidence* upon which he *bases* some specific contention” (emphases in original)).

The SEC faces a heavy burden in identifying and listing each and every fact underlying various mixed legal and factual allegations in the Complaint when Individual Defendants Christian A. Larsen and Bradley Garlinghouse have yet to answer the Complaint and when Defendants have not made complete productions in response to the SEC’s document requests and the parties have not completed depositions. Furthermore, it is unlikely that any responses to the Interrogatories will be substantially more useful than the information Ripple already has or soon will have. Specifically, the Complaint (D.E. 46) provides a summary of certain key factual allegations underlying each of the SEC’s claims, the SEC has produced to Ripple its entire non-privileged investigative file, and much

of the information sought for by the Interrogatories is public (such as public statements by Ripple) or is in Ripple's possession and therefore more easily accessible to Ripple.

2. The SEC further objects to the Interrogatories on the ground that they are not "proportional to the needs of the case" because they are overly broad, regardless of their timing. Fed. R. Civ. P. 26(b)(1); *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007) ("Contention interrogatories that systematically track all of the allegations in an opposing party's pleadings, and that ask for 'each and every fact' and application of law to fact that supports the party's allegations, are an abuse of the discovery process because they are overly broad and unduly burdensome.... [They] should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents."); *Moses v. Halstead*, 236 F.R.D. 667, 674 (D. Kan. 2006) ("The Court, however, does find [an interrogatory] to be overly broad and unduly burdensome on its face to the extent it asks Allstate to state 'all' facts that support each defense.").

3. The SEC objects to Defendant's Definition No. 9, "Securities and Exchange Commission," "Plaintiff," "SEC," "You," or "Your," to the extent that it means each of the Commission's Divisions and Offices, and each current or former SEC Commissioner, staff member or employee, because it is overly broad and not proportional to the needs of the case. Accordingly, unless expressly stated otherwise, the SEC has limited its inquiry to information in the possession, custody, or control of the Division of Enforcement, as further limited by the other general and specific objections herein with the exception of Interrogatories Nos. 6 and 9, as noted herein.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 1

Identify each contract that You contend constituted or was part of an investment contract that Ripple offered or sold as part of the unregistered distribution of securities alleged in the Complaint.

Response and Objections to Interrogatory No. 1

The Commission incorporates the General Objections above in its response to Interrogatory No. 1. The Commission further objects to Interrogatory No. 1 as premature, harassing, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. This Interrogatory is overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of “each contract” the Commission alleges “constituted or was part of an investment contract that Ripple offered or sold as part of the unregistered distribution of securities alleged in the Complaint.”

To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission “contend[s],” doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant

burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify contracts which involve the offer or sale or distribution of XRP by Ripple or any of its subsidiaries, agents, or affiliates (including specifically XRP II, LLC) to a third party, Ripple is in possession of such information and can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and do nothing but waste time.

The Commission also objects to this Interrogatory as premature. Discovery on the issue of Ripple’s offers and sales of XRP is ongoing—in particular, depositions are still ongoing. To the extent this Interrogatory seeks to obtain information that upcoming deponents may testify to, it is premature. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Finally, the Commission objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the meaning of the term “investment contract” as that term is used in the Securities Act of 1933 (“Securities Act”). “[A]n investment contract for purposes of the Securities Act means a *contract, transaction or scheme* whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.” *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946) (emphasis added). “[A]rrangements whereby the investors’ interests are made manifest involve investment contracts, regardless of the legal terminology in which such contracts are clothed.” *Id.* at 300. The Securities Act’s terms are defined broader than and independently from their common law or contract law meaning. *E.g.*, *SEC v. Cavanagh*, 155 F.3d 129, 135 (2d Cir. 1998). “[T]he test whether

a contract constitutes an investment contract within the Securities Act is ‘what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect.’” *Glen-Arden Commodities, Inc. v. Costantino*, 493 F.2d 1027, 1029, 1034 (2d Cir. 1974) (quoting *SEC v. C.M. Joiner Leasing Co.*, 320 U.S. 344, 352-353 (1943)); *SEC v. Kik Interactive, Inc.*, 492 F. Supp. 3d 169, 178-79 (S.D.N.Y. 2020) (“courts regularly consider representations and behavior outside the contract,” discussing *Joiner*).

Subject to and without waiving the foregoing objections, the Commission responds as follows: We contend that every offer, sale and distribution of XRP by Ripple, Larsen, and Garlinghouse (and their agents, affiliates, subsidiaries, underwriters, conduits, brokers, and dealers) during the Relevant Period, was the offer, sale, or distribution of an investment contract under *Howey*. Such transactions include, but are not limited to, Ripple’s market and institutional sales of XRP; Ripple’s sales of XRP on behalf of RippleWorks; Ripple’s sales of XRP to certain entities that exercised options to buy XRP; Larsen’s and Garlinghouse’s XRP sales; and Ripple’s distributions of XRP to (i) executives as compensation, (ii) entities associated with its xRapid product, and (iii) entities associated with xPring.

To the extent this Interrogatory asks for “contracts” (in the common law, not securities law sense), examples of “contracts” (in the common law, not securities law sense) that were part of the “investment contracts” (in the securities laws sense) that Ripple and the Individual Defendants offered and sold, include but are not limited to the following (though in identifying the following examples the Commission does not purport to and is not obligated to provide an exhaustive list of any such contracts): spreadsheets produced by Ripple identifying various XRP transactions (*e.g.*, RPLI-SEC 00024512; RPLI-SEC 74559; RPLI_SEC 0072667; RPLI-SEC 0301033; RPLI-SEC 0248118-119; RPLI-SEC 0072667; RPLI-SEC 0069918; RPLI-SEC 0001641; RPLI-SEC 0001640; RPLI-SEC 0001629; RPLI-SEC 006919; RPLI-SEC 0301008; RPLI-SEC 0301161; RPLI-SEC

0301162); spreadsheets produced by GSR, a third party that Defendants' contracted with, identifying XRP sales on behalf of Ripple and the Individual Defendants (*e.g.*, GSR 00000100; GSR 00000101; GSR 00000102; GSR 00000103; GSR 0000010; GSR 00000445; GSR 00000446; GSR 00000447; GSR 00000439; GSR 00000440; GSR 00000441; GSR 00000442; GSR 00000443; GSR 00000444); spreadsheets provided by Individual Defendants identifying their XRP sales (*e.g.*, GARL 00000001); XRP purchase agreements and sales orders for certain purchasers (*e.g.*, RPLI-SEC-609612; RPLI-SEC-609617; RPLI-SEC 173808; CDRW_XRP_SEC_0000001; CDRW_XRP_SEC_00000019); certain XRP purchase summaries between XRP II, LLC and third parties, such as Genesis Global Trading on June 9 and June 23, 2016; the Master Purchase Agreement between XRP II, LLC and Genesis Global Trading dated August 3, 2017; the Master Purchase Agreement between XRP II, LLC and Akuna Capital LLC dated June 21, 2018 and the Commitment to Sell Agreement with Akuna Capital LLC dated September 5, 2018; Master Purchase Agreement between XRP II, LLC and Rosemoor Capital LP dated August 6, 2018; and certain contracts between Ripple and Market Makers dated between 2014 and 2020, including but not limited to GSR (*e.g.*, Bates GSR00000732), Two Rivers Trading Group, LLC (*e.g.*, Bates TWO RIVERS 000001), and CS Capital (*e.g.*, Bates RPLI_SEC 423561).

Interrogatory No. 2

For each contract You listed in response to Interrogatory No. 1, Identify all terms of the contract that You contend created an "expectation of profits" (as that term is used in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946)) by the purchaser of XRP, stating with particularity the factual basis, and citing any Documents or Communications relied upon, for that contention.

Response and Objections to Interrogatory No. 2

The Commission incorporates the General Objections above in its response to Interrogatory No. 2. The Commission further objects to Interrogatory No. 2 as premature, harassing, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission objects to this Interrogatory because, when combining the interrogatories, their

subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. This Interrogatory is overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of “all terms of the contract” the Commission alleges “created an ‘expectation of profit.’”

To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission “alleges,” would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify contracts which involve the offer or sale or distribution of XRP by Ripple or any of its subsidiaries, agents, or affiliates (including specifically XRP II, LLC) to a third party, Ripple is in possession of such information and can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an

endeavor would simply describe the Commission counsel's mental impressions and related work-product and would do nothing but waste time.

The Commission also objects to this Interrogatory as premature. Discovery on the issue of Ripple's offers and sales of XRP is ongoing—in particular, depositions are still ongoing. To the extent this Interrogatory seeks to obtain information that upcoming deponents may testify to, it is premature. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Finally, the Commission objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the meaning of the term “investment contract” as that term is used in the Securities Act. “[T]he test whether a contract constitutes an investment contract within the Securities Act is ‘what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect.’” *Glen-Arden Commodities*, 493 F.2d at 1029, 1034 (quoting *Joiner*, 320 U.S. at 352-353). “In applying acts of this general purpose, the courts have not been guided by the nature of the assets back of a particular document or offering. The test rather is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect.” *Joiner*, 320 U.S. at 352-53. Proof of whether something is an investment contract “[i]n some cases [may] be done by proving the document itself, which on its face would be a note, a bond, or a share of stock. In others proof must go outside the instrument itself.” *Id.* at 355; *see also Kik Interactive*, 492 F. Supp. 3d at 178-79 (S.D.N.Y. 2020) (“courts regularly consider representations and behavior outside the contract,” discussing *Joiner*). As such, the Commission objects to the use of the word “term” in the Interrogatory, to the extent Defendant suggests that the investment contracts alleged in the Complaint necessarily contain explicit or written provisions, or “terms” in the contract law sense.

Subject to and without waiving the foregoing objections, the Commission responds as follows: In public statements by Ripple and its affiliates, agents, and executives, Ripple and the Individual Defendants made implicit and explicit promises to prospective and actual XRP purchasers, or led prospective and actual XRP purchasers to reasonably expect, that Ripple and its agents would undertake significant entrepreneurial and managerial efforts, with the expectation that such efforts could potentially lead to an increase in demand for XRP and therefore its price. These public statements included, but are not limited to: promises to and discussions of Ripple's own incentives and plans to create an active and liquid trading market for XRP and to develop and foster "uses" for XRP; Ripple's and its affiliates', agents', and executives' incentives to build an ecosystem that utilized XRP and to be a good "steward" of XRP; Ripple's significant holdings of XRP and its relationships to the company's financial operations; Ripple's and its affiliates', agents', and executives' actual efforts to create demand for XRP; and statements touting the increase in price of XRP and its availability on digital asset trading platforms. These types of statements, and others of substantially similar sum and substance, were made, among other places, in YouTube videos, Tweets, and posts on digital asset discussion fora by Ripple personnel David Schwartz, Patrick Griffin, Arthur Britto, Breanne Madigan, Monica Long, Asheesh Birla, Miguel Vias, and Defendants Garlinghouse and Larsen (though many other Ripple employees made such public statements as well), from 2013 through 2020; public statements posted by Ripple on its website and on its Twitter or YouTube accounts including periodic updates and the quarterly "XRP Market Reports"; emails between Ripple personnel and members of the public discussing Ripple and/or XRP; and in-person conversations between Ripple personnel and members of the public discussing Ripple and/or XRP, such as at digital asset discussion symposia or fora. In addition, the economic reality of (1) Ripple's holdings of XRP, Ripple's incentives with respect to XRP, Ripple's offers and sales of XRP (including, on occasion at a discount to market prices), the lack of uses for XRP, and Ripple's

promises to create uses for XRP; and of (2) XRP itself and its relationship to Ripple, all created in XRP purchasers a reasonable “expectation of profit” from their purchase of XRP.

Interrogatory No. 3

Identify every transaction, statement, representation, promise, or scheme, other than the contracts You listed in response to Interrogatory No. 1, that You contend was part of an investment contract that Ripple offered or sold as part of the unregistered distribution of securities alleged in the Complaint.

Response and Objections to Interrogatory No. 3

The Commission incorporates by reference its responses to Interrogatories Nos. 1 and 2.

Interrogatory No. 4

Is it Your contention that Ripple controlled the XRP Ledger at any point in time from January 1, 2013 through December 22, 2020? If so, Identify with particularity the factual basis (including any statements or Documents relied upon) for that contention and state the period(s) of time as to which You contend this.

Response and Objections to Interrogatory No. 4

The Commission incorporates the General Objections above in its response to Interrogatory No. 4. The Commission further objects to Interrogatory No. 4 as premature, harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 4 is vague and ambiguous, because it is unclear what the undefined term “controlled” means in the context of this Interrogatory.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of all of “the factual basis (including any statements or Documents relied upon)” for a Commission allegation. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered

during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission “conten[ds],” would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify information about a publicly available distributed ledger, such information is equally available to Ripple and Ripple can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product.

The Commission also objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the meaning of the term “investment contract” as that term is used in the Securities Act. There is no requirement under *Howey* that an issuer or promoter of an investment contract related to a digital asset “control” the ledger on which the digital asset trades or is represented.

Finally, the Commission objects to this Interrogatory as premature. Discovery on the issue of the level of centralization of the XRP Ledger is ongoing. Ripple has yet to respond to all of the

SEC's requests for production of documents that relate to this issue, expert discovery has not yet begun, and depositions are still ongoing. To the extent this Interrogatory seeks to obtain information about what the Commission's experts are expected to testify to, it is improper. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Subject to and without waiving the foregoing objections, the Commission avers that certain critical aspects of the XRP Ledger were centralized to Ripple between 2012 and 2020, including through Ripple's control over several aspects of the XRP Ledger, such as the ledger's maintenance, development, governance, functionality, default trusted nodes list, and consensus mechanism. For a period of time through at least 2020, validation of transactions on the XRP Ledger was under Ripple's control, as it operated at times *all* the validators on the default trusted nodes list, and through almost the entire relevant period, at least 20% of such validators, sufficient to essentially "veto" changes to the XRP Ledger. Nor was there ever any incentive for a third-party to act as a validator on the XRP Ledger, until Ripple affirmatively sought out third parties (and at times covered expenses for third parties) to do so, further showing that Ripple "controlled" who would become a validator on the XRP Ledger. Examples of information related to the level of centralization of the XRP Ledger can be surmised from portions of the investigative testimony and deposition testimony of Ripple employee David Schwartz. Other examples of such information is also publicly available and equally available to Ripple as it is to the Commission, including, but not limited to, white papers related to the ledger's functionality, websites that act as repositories of XRP Ledger data (*e.g.*, <https://xrpscan.com>; <https://github.com>), and information related to the number of validating nodes and nodes on the Ripple default Unique Node List that were operated, controlled, or run by Ripple or entities affiliated with Ripple at various times (*e.g.*, <https://xrpcharts.ripple.com>). Other documents upon which the Commission may rely to establish

the level of centralization of the XRP Ledger (to the extent relevant or in rebuttal to arguments by any Defendant) include, but are not limited to communications, documents, or contracts between Ripple personnel related to the ledger's centralization (*e.g.*, RPLI_SEC 0026658; RPLI_SEC 0574082-101; RPLI_SEC 0555975; RPLI_SEC 0541809) and between Ripple and its affiliates and other parties on Ripple's default Unique Node List, or other persons operating or controlling nodes on the XRP Ledger that are actually necessary for the state of the XRP Ledger to advance (*e.g.*, RPLI_SEC 0509804; RPLI_SEC 0554278; RPLI_SEC 0546274).

Interrogatory No. 5

Is it Your contention that XRP trading in the secondary market is an investment contract with Ripple? If so, Identify with particularity the factual basis (including any statements or Documents relied upon) for that contention.

Response and Objections to Interrogatory No. 5

The Commission incorporates the General Objections above in its response to Interrogatory No. 5. The Commission further objects to Interrogatory No. 5 as premature, harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission also objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 5 is vague and ambiguous, because it is unclear what the undefined term "XRP trading in the secondary market" means in the context of this Interrogatory.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of all of "the factual basis (including any statements or Documents relied upon)" for a Commission allegation. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered

during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission “conten[ds],” would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify information about a publicly available distributed ledger or about publicly available market transactions, such information is equally available to Ripple and Ripple can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product.

The Commission also objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the claims the Commission is asserting. For the avoidance of doubt, and as the Commission has repeatedly averred in this litigation, the Commission does not allege in this action violations of Section 5 of the Securities Act as to offers, purchases, or sales of XRP between two parties who are investors in Ripple’s investment contracts and in whose hands Ripple’s investment contracts have

come to rest, when neither party was Ripple, its subsidiaries, its agents, its affiliates, its underwriters, its intermediaries, its conduits, or its securities dealers. As stated in response to Interrogatory No. 1, the Commission alleges that every offer, sale and distribution of XRP *by Defendants* (and their agents, affiliates, subsidiaries, underwriters, conduits, and dealers), was the offer, sale, and distribution of an investment contract.

Interrogatory No. 6

State whether You contend that Bitcoin and/or Ether are securities within the meaning of Section 2 of the 1933 Securities Exchange Act, and Identify with particularity the evidence (including any Documents) on which You rely for that contention.

Response and Objections to Interrogatory No. 6

The Commission incorporates the General Objections above in its response to Interrogatory No. 6. The Commission further objects to Interrogatory No. 6 as unduly burdensome, overly broad, vague, harassing, and oppressive, and because it seeks information that is not relevant to any party's claim or defense in this Action, and is disproportionate to the needs of the case. The Commission also objects to this Interrogatory as consisting of multiple interrogatories, which, combined with each of Defendant's specific interrogatories, exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. The Commission further objects to this Interrogatory to the extent that it seeks information that is public, because such information is available on substantially the same basis to Defendant as it is to the Commission.

Furthermore, Interrogatory No. 6 is vague and ambiguous, because it is unclear at what point in time Defendant seeks to discover the SEC's position as to the status of offers and sales of Bitcoin or Ether under the Securities Act, and because it fails to identify whose or what offers and sales of Bitcoin or Ether the Interrogatory seeks to discover information about. The Commission further objects to the extent that this Interrogatory requires that the Commission, under Defendant's Definition No. 9, make representations as to any individual employee's (both current

and former), Commissioner's (both current and former), Office's or Division's policy or position held from January 1, 2012 to December 22, 2020. Such a requirement is unduly burdensome and impossible to respond to. The Commission has thousands of employees. The Commission cannot reasonably inquire and determine the policy or position of each of its thousands of employees, or any other person indirectly employed by the Commission, or otherwise connected to the Commission. The Commission further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client and governmental deliberative process privileges and the work product doctrine. The Commission further objects to this Interrogatory to the extent that it seeks information that is not relevant to any claim or defense in this case. Under *Howey*, whether any asset—including any digital asset—is being offered and sold as a security requires fact-specific analysis about the manner of the offering and by whom is it offered. *See, e.g., Kik Interactive*, 492 F. Supp. 3d at 183. The legal status of particular offers and sales (by particular parties, at particular times) of the digital assets Bitcoin and Ether are not relevant to this case and any attempt to procure or introduce evidence as to the legal status of those assets would unduly delay the resolution of this matter.

Interrogatory No. 7

Identify each statement, representation, or other Communication by Ripple that You contend was a promise of profits to, or created an expectation of profits for, any purchaser or holder of XRP.

Response and Objections to Interrogatory No. 7

The Commission incorporates by reference its Responses and Objections to Interrogatory Nos. 1 and 2.

Interrogatory No. 8

Is it Your contention that Ripple promised to create or maintain a secondary trading market for XRP? If so, Identify with particularity the factual basis (including any statements or Documents relied upon) for that contention.

Response and Objections to Interrogatory No. 8

The Commission incorporates the General Objections above in its response to Interrogatory No. 8. The Commission further objects to Interrogatory No. 8 as premature, harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission also objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 8 is vague and ambiguous, because it is unclear what the undefined terms “create,” “maintain,” and “secondary market” mean in the context of this Interrogatory.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of all of “the factual basis” for a Commission allegation. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission “conten[ds],” would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further,

requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify statements and efforts made by Ripple or any of its affiliates, Ripple is in possession of such information and can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product.

The Commission also objects to this Interrogatory as premature. Discovery on the issue of Ripple’s offers and sales of XRP and its efforts with respect to XRP markets is ongoing—in particular, depositions are still ongoing and expert discovery has not begun. To the extent this Interrogatory seeks to obtain information that upcoming deponents may testify to, it is premature. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Finally, the Commission objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the meaning of the term “investment contract” as that term is used in the Securities Act. There is no requirement under *Howey* that an issuer or promoter of an investment contract promise to “create or maintain” a “secondary market” for its securities.

Subject to and without waiving the foregoing objections, the Commission responds as follows: We contend that during the Relevant Period, Ripple, its subsidiaries, employees, agents, and representatives implicitly or explicitly led investors to expect that Ripple would create and maintain a liquid trading market in XRP, and that Ripple and its agents, subsidiaries, and affiliates did in fact undertake certain efforts in furtherance of that expectation. Examples of such efforts, and statements with respect to such efforts, include but are not limited to Ripple’s giveaways of XRP, Ripple’s retention of XRP market makers to facilitate trading of XRP, Ripple’s payments to

exchanges to list XRP, Ripple's institutional and market sales of XRP, and Ripple's other distributions of XRP, as well as Ripple's establishment of the XRP Escrow, and Ripple's statements and actions aimed at affecting the volume, price, liquidity, and trading in XRP markets. Some additional examples of statements by Ripple and its executives, include, but are not limited to, Ripple's promotion of XRP as a long term investment that would increase in value with increased demand, statements related to Ripple's efforts to increase demand for XRP by developing a "use" for XRP, and statements related to Ripple's efforts to make XRP available for digital asset trading platforms that would provide XRP holders with a venue to sell XRP at a profit (*e.g.*, Ripple's quarterly XRP Markets Reports; <https://twitter.com>; <https://ripple.com/insights/>), and other statements and the economic reality set forth in response to Interrogatories Nos. 1 and 2.

Interrogatory No. 9

Identify all meetings (in person, telephonic or otherwise) by the SEC with third parties, including the dates and attendees of such meetings, during which the legal status of Bitcoin, Ether and/or XRP were discussed.

Response and Objections to Interrogatory No. 9

The Commission incorporates the General Objections above in its response to Interrogatory No. 9. The Commission further objects to Interrogatory No. 9 as harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission also objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 9 is vague and ambiguous, because it is unclear what the undefined term "meeting" means in the context of this Interrogatory, including for example whether it is defined to include email communications, and because it is unclear what the undefined term "legal status" means in the context of this Interrogatory.

The Commission further objects to this Interrogatory to the extent it would require the Commission to review and parse the over 29,500 SEC documents the SEC has produced as a result of Magistrate Judge Netburn's Orders, and any publicly available documents, because such requirement would be unreasonably burdensome, disproportional to the needs of the case, and require the production of information equally available to Defendants based on such documents. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence, nor is it required to organize the evidence in this matter for Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. The results of this unduly burdensome review would not translate into the "discovery" of actual facts.

The Commission further objects to the extent that this Interrogatory requires that the Commission, under Defendant's Definition No. 9, make representations as to all employee's (both current and former), Commissioner's (both current and former), Office's or Division's meetings held from January 1, 2012 to December 22, 2020. Such a requirement is unduly burdensome and impossible to respond to. The Commission has thousands of employees. The Commission cannot reasonably inquire and determine each and every meeting between each and every Commission employee and any possible third party. The Commission further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client and governmental deliberative process privileges and the work product doctrine.

Finally, the Commission objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case. Magistrate Judge Netburn has ruled that Ripple's

“fair notice defense” is “not rooted in the defendant’s state of mind. Rather it is an objective test of how a reasonable person would have interpreted the agency’s conduct.” D.E. 210 at 7. Nor are discussions about the legal status of Bitcoin or Ether in any way relevant to Ripple’s “fair notice defense,” which, per Magistrate Judge Netburn’s ruling, turns on the “*Commission’s* state of mind as to whether *XRP* qualified as a security.” *Id.* at 8 (second emphasis added).

Subject to and without waiving the foregoing, the Commission responds as follows, having reviewed certain of the relevant documents of the custodians called for by Magistrate Judge Netburn’s rulings in this case (which include custodians outside the Division of Enforcement):

- The “SEC,” meaning a quorum of its chair and commissioners, has never had a meeting with a third party discussing the legal status of Bitcoin, Ether, or XRP under the Securities Act.
- The legal status of certain offers and sales of Bitcoin under the Securities Act was discussed between certain SEC employees and at least the following third parties: (1) Joseph A. Grundfest, in and around December 2013 and February 2014; and (2) Joseph A. Hall, Byron Rooney, Zach Zweihorn, and Reuben Grinberg (Davis Polk & Wardwell) and Robby Gutmann, Jim Rothwell, and Ben Lawskey (Stone Ridge) in and around December 2017.
- The legal status of certain offers and sales of Ether under the Securities Act was discussed between certain SEC employees and at least the following third parties: (1) Joseph Lubin, Matt Corva, Patrick Berarducci, Aaron Wright, Agnes Budzyn (Consensus) in and around December 2017; and (2) Joseph A. Hall, Byron Rooney, Zach Zweihorn, and Reuben Grinberg (Davis Polk & Wardwell) and Robby Gutmann, Jim Rothwell, and Ben Lawskey (Stone Ridge), in writing in and around December 2017.

- The legal status of Ripple's offers and sales of XRP under the Securities Act was discussed between certain SEC employees and certain Ripple representatives on various occasions between April 2018 and December 2020, with the date, participants, and contents of such meetings equally available to Ripple as to the SEC. The legal status of Ripple's offers and sales of XRP under the Securities Act was discussed in writing between certain SEC employees and Joseph A. Hall, Byron Rooney, Zach Zweihorn, and Reuben Grinberg (Davis Polk & Wardwell) and Robby Gutmann, Jim Rothwell, and Ben Lawskey (Stone Ridge) in and around December 2017.

Interrogatory No. 10

Is it Your contention that Ripple engaged in any conduct by or through which it pooled the funds of multiple XRP purchasers in any "common enterprise" (as that term is used in *Howey*, 328 U.S. 293)? If so, Identify with particularity the factual basis (including any statements or Documents relied upon) for that contention, and describe the nature of the pooled funds, including where they were held and what they were used for.

Response and Objections to Interrogatory No. 10

The Commission incorporates the General Objections above in its response to Interrogatory No. 10. The Commission further objects to Interrogatory No. 10 as premature, harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission also objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. This Interrogatory is overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of "any conduct" or "any statements or Documents relied upon" for the Commission's "contention[s]," or to "describe the nature of the pooled funds" Commission may allege were "pooled" by Ripple.

To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission “conten[ds],” would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify what Ripple did with the funds it obtained from its unregistered offers and sales of XRP, including where Ripple collected and held those funds, and how Ripple disbursed them, Ripple is in possession of that information and can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product.

The Commission objects to this Interrogatory as premature. Discovery on the issue of Ripple’s pooling and use of funds is ongoing.

Finally, the Commission objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of

the meaning of the term “investment contract” as that term is used in the Securities Act. There is no requirement that a defendant “pool assets” (as that term is used in the Interrogatory) in order to find the existence of a “common enterprise” with respect to an asset. Rather, a common enterprise exists when the fortunes of investors are tied to the fortunes of the promoter, or to the fortunes of other investors in the enterprise. *Revak v. SEC Realty Corp.*, 18 F.3d 81, 87-88 (2d Cir. 1994).

Subject to and without waiving the foregoing objections, the Commission responds as follows: We contend that Ripple pooled the funds it obtained from various XRP purchasers. Ripple and its executives, including, but not limited to David Schwartz, Arthur Britto, and Defendants Larsen and Garlinghouse, publicly stated that Ripple would “invest” in the XRP ecosystem using its XRP holdings and XRP sales proceeds. Examples of such representations include public statements that the company would use XRP sales proceeds to further develop and improve the XRP Ledger (*e.g.*, Ripple’s Q1 2017 XRP Markets Report), and that it would use its XRP holdings and XRP sales proceeds to “invest” in the XRP ecosystem by partnering with funds, digital asset trading platforms, market makers and others (*e.g.*, Ripple’s Q1 2019 XRP Markets Report). Some other examples of the factual basis for such contention include that Ripple did not distinguish between funds it obtained from any particular XRP purchasers when it decided how to disburse those funds, Ripple’s use of XRP sales proceeds to fund its operations, pay salaries, develop “uses” for XRP, and fund other initiatives that would develop uses for XRP, the XRP Ledger ecosystem, and/or create and support a market for XRP). The Commission further avers that based upon the information provided to it by Ripple and certain third parties to date, it appears as if most of the XRP purchaser funds Ripple pooled were held at various Ripple accounts at Silicon Valley Bank. The Commission further avers that Ripple’s bank accounts and financial statements are evidence of what the funds at issue “were used for,” and that the testimony of various Ripple employees also establishes what funds were obtained, how they were pooled, and what they were

used for. The Commission further avers that Ripple has set forth no evidence that it segregated proceeds from any particular sales of XRP, or otherwise distinguished between the source of any sales of XRP to any person when accepting and depositing into its bank accounts fiat currency received in the course of Ripple's XRP sales, and the Commission has come across no such evidence.

Interrogatory No. 11

State whether You contend that efforts by Ripple were necessary to affect any increase in the price of XRP. If that is Your contention, Identify with particularity the factual basis (including any Documents relied on) for that contention.

Response and Objections to Interrogatory No. 11

The Commission incorporates the General Objections above in its response to Interrogatory No. 11. The Commission further objects to Interrogatory No. 11 as premature, harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission also objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 11 is vague and ambiguous, because it is unclear what the undefined terms "necessary" and "affect" mean in the context of this Interrogatory.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of "the factual basis (including any Documents relied on)" for the Commission's "contention[s]." To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any

way forms part of what the Commission “conten[ds],” would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify what efforts Ripple made with respect to the volume, liquidity, price, or markets for XRP, or the economic reality of XRP and the markets for XRP, Ripple is in possession of that information and can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product.

The Commission also objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the meaning of the term “investment contract” as that term is used in the Securities Act. There is no requirement that a defendant’s efforts be “necessary to affect any increase in the price” of one of the assets underlying an investment contract offered and sold by the defendants. *Hovey* requires a reasonable *expectation* of profit, not a guarantee of profit.

Finally, the Commission objects to this Interrogatory as premature. Discovery on the issue of Ripple’s efforts with respect to the price of XRP is ongoing. Ripple has yet to respond to all of

the SEC's requests for production of documents that relate to this issue, expert discovery has not yet begun, and depositions are still ongoing. To the extent this Interrogatory seeks to obtain information about what the Commission's experts are expected to testify to, it is improper. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Subject to and without waiving the foregoing objections, the Commission responds as follows: We contend that Ripple has engaged in efforts that led XRP purchasers to reasonably expect profit based on Ripple's efforts, and that such efforts included efforts to increase or maintain the price of XRP. Examples of such efforts include, but are not limited to, Ripple's creation and establishment of an active and liquid trading market for XRP through certain XRP giveaways, XRP market sales through market makers, and OTC XRP sales and leases; efforts to make XRP and XRP related financial products available for trading on digital asset trading platforms; partnerships with other market participants such as wallet and custody providers in order to create infrastructure for XRP; and making efforts and statements with respect to XRP. Other examples include, but are not limited to, Ripple placing sales restrictions on large XRP holders or purchasers (*e.g.*, XRP purchase agreements containing restrictions on transfer of the XRP), placing its XRP holdings in escrow and limiting the amount of XRP available to Ripple for its own use each month, controlling the pace of new XRP supply entering the market (*e.g.*, Ripple announcements related to the escrow feature), and purchasing XRP in the market (*e.g.*, Ripple's quarterly XRP Markets Reports; GSR 00000270; RPLI_SEC 0057039; RPLI_SEC 0056924). These restrictions and limitations on XRP sales sought to mitigate downward pressure on XRP's price from XRP sales by Ripple and others, and these purchases of XRP sought to increase and/or stabilize XRP's price. Ripple and its executives touted these efforts in public statements and other promotional material, and the economic reality of

Ripple's relationship to XRP and of XRP itself incentivized Ripple to do so, as set forth in responses to Interrogatory Nos. 1, 2, 4, 7, and 10.

Dated: New York, New York
July 1, 2021

SECURITIES AND EXCHANGE COMMISSION

By: 

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Attorneys for Plaintiff

Verification for Responses to Interrogatories 1 Through 11

I declare under penalty of perjury, that the factual statements made above are true to the best of my knowledge, information, and belief. Executed in Washington, District of Columbia on this 1st Day of July 2021.

A. Kristina Littman

A. Kristina Littman
Division of Enforcement

Exhibit B



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

August 27, 2021

VIA ELECTRONIC MAIL

Reid M. Figel, Esq.
KELLOGG, HANSEN, TODD, FIGEL,
& FREDERICK, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036

Re: SEC v. Ripple Labs, Inc. et al., No. 20-cv-10832 (AT) (SN) (S.D.N.Y.)

Dear Mr. Figel:

The SEC respectfully writes in response to your August 20, 2021 letter regarding the SEC's responses to certain of Defendants' interrogatories (the "Letter"). We are available to meet and confer on the issues discussed herein and in your Letter, at your convenience.

Your Letter first claims the SEC's interrogatory responses are "evasive" and "incomplete." The SEC disagrees. Rather, the SEC's responses satisfy its obligations under Rules 26 and 33. The SEC further notes that its interrogatory responses are no more evasive or incomplete than Defendants' responses. To that end, the SEC observes that in response to the SEC's interrogatories, Defendants have lodged objections and made responses similar to those you contend renders the SEC's responses evasive and incomplete. Examples include:

- Ripple's General Objection 6 to the SEC's First Set of Interrogatories ("Ripple objects to each Interrogatory and to each Definition and Instruction to the extent they seek information already in the possession, custody or control of Plaintiff or is obtainable from public sources"); *see also* Ripple's Response to Interrogatory Nos. 15, 16, 17 and Garlinghouse Objection to Interrogatory No. 1 (lodging similar objection);
- Ripple's General Objection 3 to the SEC's Second Set of Interrogatories ("Ripple will identify the material facts upon which it presently intends to rely, but does not represent that its responses and objections exhaustively list all facts, documents, or other evidence that may be offered at summary judgment or at trial."); *see also* Ripple's Response to Interrogatory No. 13 (lodging similar objection);
- Ripple's Response to Interrogatory No. 1 (objecting to the extent the interrogatory "calls for an analysis applying law to facts" and "asks Ripple to explain or analyze how facts support its defenses and Answer"); *see also* Ripple's Response to Interrogatory No. 8 (lodging similar objection);
- Ripple's Response to Interrogatory No. 8 ("Ripple also objects to this Interrogatory insofar as it seeks "every fact and piece of evidence [defendant] may wish to offer concerning" the stated contentions. *Phillies v. Harrison/Erickson, Inc.*, 2020 WL

6482882, at *2 (S.D.N.Y. Nov. 4, 2020) (Netburn, M.J.). Ripple further objects to the Interrogatory's request for "particularity," as a party "is not required to describe *in detail* the factual basis for its contention." *Id.* at *3 (emphasis in original)."; *see also* Ripple's Responses to Interrogatory Nos. 10-13 (lodging similar objections);

- Larsen General Objection 4 to the SEC's First Set of Interrogatories ("Larsen objects to the Interrogatories to the extent they call for responses better suited for depositions."); and
- Larsen Response to Interrogatory No. 1 ("Larsen objects to the Interrogatory to the extent it requires a legal conclusion").

The SEC also notes that for certain interrogatories, Ripple did not offer a substantive response, and instead referred the SEC to its own document *requests* (as opposed to identifying documents that Ripple contends answers the interrogatory). *See* Ripple Responses to Interrogatory Nos. 1, 5. The SEC likewise observes that for certain of its interrogatories, Ripple failed to provide any substantive response whatsoever. *See* Ripple Responses to Interrogatory Nos. 14, 15.

Your Letter further alleges that the SEC improperly responded to certain interrogatories by incorporating its responses to other interrogatories. But Defendants engaged in the very same practice. *See* Ripple's Responses to Interrogatory No. 8 ("Ripple incorporates by reference its response to Interrogatory No. 12..."); No. 10 ("Ripple incorporates by reference its response to Interrogatory No. 11.").

Given Defendants' responses to the SEC's interrogatories, Defendants should not now complain that the SEC 1) improperly limited its responses by lodging objections similar to those made by Defendants to qualify their own interrogatory responses; 2) failed to sufficiently answer interrogatories when Ripple itself failed to provide substantive answers to various interrogatories; and 3) improperly incorporated responses to other interrogatory answers, when Ripple did the same thing. Nevertheless, the SEC responds to the specific items referenced in your Letter as follows:

Ripple Interrogatory No. 2: That interrogatory asked the SEC to identify all terms of any "investment contract" the SEC contends created an "expectation of profits" by the purchaser of XRP. In response, the SEC noted that "investment contracts" under *Howey* need not contain the same written provisions or "terms" as actionable agreements under traditional contract law. The SEC then identified numerous public statements by Ripple personnel, as well as the economic realities of Defendants' XRP offers and sales, that would lead XRP purchasers to expect profits. While you contend that these responses are insufficient, and that SEC must "identify the specific provisions in Ripple's contracts" creating an expectation of profits, the SEC need not provide such additional detail. *See* Ripple's Response to Interrogatory No. 1 (objecting to the extent the interrogatory "calls for an analysis applying law to facts" and "asks Ripple to explain or analyze how facts support its defenses and Answer"); *see also* Ripple's Response to Interrogatory No. 8 (lodging similar objection). Moreover, because the information Ripple seeks is not relevant to any claim or defense, no additional response is required. *See* Ripple's Response to Interrogatory 1 (objecting on relevance grounds); Ripple's Response to Interrogatory 14 (refusing to substantively answer, citing relevancy). Your complaint about the SEC's response to Ripple Interrogatory No. 2 appears based on your contention that the term "investment contract" requires the existence of a common law

“contract.” But, disagreement over the meaning of a legal term—one of the core issues for the Court in this case to resolve—is not the basis to object to the SEC’s response. Our contention remains that Ripple’s sales of XRP were a series of “transactions, schemes, or contracts” under *Howey*. Accordingly, the SEC stands by its response to this interrogatory. The SEC further notes that, to the extent you seek the SEC to identify terms of common law contracts, any of those contracts entered by Ripple are already in Ripple’s possession.

Ripple Interrogatory No. 6: That interrogatory sought the SEC to declare whether it contends Bitcoin and Ether are “securities” within the meaning of the Securities Act. The SEC responded that the interrogatory is “is vague and ambiguous, because it is unclear at what point in time Defendant seeks to discover the SEC’s position as to the status of offers and sales of Bitcoin or Ether under the Securities Act, and because it fails to identify whose or what offers and sales of Bitcoin or Ether the Interrogatory seeks to discover information about.” Your Letter’s suggestion that the SEC must affirmatively state whether it considers Bitcoin and Ether to be “securities,” in a vacuum, shows a miscomprehension of how the SEC operates as well as the application of the *Howey* test and Section 5 of the Securities Act. As we have repeatedly stated in multiple court filings, the SEC does not typically decide whether any particular financial instrument, without additional context, qualifies as a security *per se*. Rather, the SEC typically determines, *inter alia*, whether it considers certain offers, sales, or transactions of financial instruments to violate the federal securities laws. Consistent with its original response to the interrogatory, the SEC reaffirms that the interrogatory is improper because it asks for the SEC’s position as to Bitcoin and Ether in a vacuum, without any of the necessary factual context surrounding any particular offer or sale of those digital assets. Subject to the foregoing and its original responses and objections, the SEC supplements its response by referring to its responses to Defendants’ RFA Nos. 20-23 (seeking admissions that Bitcoin and Ether are not and previously were not “securities”).

Ripple Interrogatory No. 11: That interrogatory asked whether the SEC contends any efforts by Ripple were necessary to “affect any increase in the price of XRP” and, if so, to identify the factual basis for that contention. The SEC responded that, under *Howey*, the relevant inquiry is whether investors expected to profit based on Ripple’s efforts, not whether Ripple’s efforts were necessary to effect XRP price increases. The SEC further responded by identifying a variety of ways in which Ripple’s efforts led XRP purchasers reasonably to expect profits. Because the information Ripple seeks is not relevant to any claim or defense, no additional response is required. *See* Ripple’s Response to Interrogatory 1 (objecting on relevance grounds); Ripple’s Response to Interrogatory 14 (refusing to substantively answer, citing relevancy). Subject to the foregoing and its original responses and objections, the SEC supplements its response by citing the following non-exhaustive examples reflecting Ripple’s beliefs that its efforts were necessary to achieve XRP price increases and related efforts: RPLI_SEC 0364717-41 (observing that increases in XRP’s liquidity and volume cause increases in XRP’s price and that “while it is possible for XRP to become a universal bridge currency, it absolutely CAN NOT happen without Ripple Lab’s assistance”); Zagone Dep. Tr. at 103 (Ripple made efforts to create liquid trading market in XRP); Birla Dep. Tr. at 180-81 (same); RPLI_SEC 0352731-32 (suggesting that Ripple could increase XRP’s price by decreasing XRP’s supply); RPLI_SEC 0026664 (noting an objective of Ripple’s escrow announcement was to “create a second wave of excitement...amongst speculators”); RPLI_SEC 00951567-82 (observing that the value of XRP would appreciate with increased use of the Ripple protocol); RPLI_SEC 0049845-55 (“Ripple’s [XRP] distribution strategy, including the timing, volume and pace of distribution, will impact the supply and ultimately value of XRP...Ripple aims to distribute XRP in a way that supports a stable or strengthening value of XRP.”); RPLI_SEC 0346934-45 (containing similar

representations); RPLI_SEC 0915999-6000 (observing that Ripple implemented its escrow program to prevent Ripple from dumping its XRP holdings into the market); Zagone Dep. Tr. at 89-91 (describing purpose of escrow program as preventing Ripple from dumping large amount XRP into market and recognizing that large-scale XRP dumping would negatively affect XRP's price).

Ripple Interrogatory No. 17: That interrogatory asked the SEC to identify any enterprise or venture in which XRP purchasers acquired a stake by virtue of their XRP purchases. The SEC responded that, under *Howey*, the relevant inquiry is whether investors invested money in a common enterprise. The SEC further responded by identifying a variety of ways in which XRP holders were invested in Ripple's efforts to create a use and demand for XRP. Because the information Ripple seeks is not relevant to any claim or defense, no additional response is required. *See* Ripple's Response to Interrogatory 1 (objecting on relevance grounds); Ripple's Response to Interrogatory 14 (refusing to substantively answer, citing relevancy). Subject to the foregoing and its original responses and objections, the SEC further references its responses to Defendants' RFA Nos. 57-63, 71-72, and 75-78.

Ripple Interrogatory No. 19: That interrogatory asked the SEC to identify evidence supporting the contention that XRP holders had a right to future payments from Ripple resulting from their XRP purchases. The SEC responded that, under *Howey*, the relevant inquiry is whether investors invested money in a common enterprise with a reasonable expectation of profit based on the efforts of others. The SEC further responded by referring to several of its interrogatory responses identifying evidence supporting the relevant *Howey* factors. Because the information Ripple seeks is not relevant to any claim or defense, no additional response is required. *See* Ripple's Response to Interrogatory 1 (objecting on relevance grounds); Ripple's Response to Interrogatory 14 (refusing to substantively answer, citing relevancy). Subject to the foregoing and its original responses and objections, the SEC supplements its response by noting its responses to Defendants' RFA No. 57, which you cite in your Letter, and RFA Nos. 58, 59, 60, 70, 73, and 74.

Ripple Interrogatories Nos. 3, 7, 18, 22, 23, 24: Your Letter complains that the SEC improperly responded to these interrogatories by incorporating its responses to other interrogatories. The SEC responds that its responses satisfy the requirements of Rule 26 and 33. *See, e.g., United States v. R.J. Zavoral & Sons, Inc.*, 2014 U.S. Dist. LEXIS 200974, *22-37 (D. Minn. Apr. 23, 2014) (denying motion to compel government to supplement interrogatory responses where it had incorporated responses to other interrogatories); *Caliper Techs. Corp. v. Molecular Devices Corp.*, 213 F.R.D. 555, 560 (N.D. Cal. 2003) (denying similar motion to compel); *Graco, Inc. v. PMC Global, Inc.*, 2011 U.S. Dist. LEXIS 30980, *99-100 (D.N.J. Mar. 23, 2011) (allowing interrogatory response to incorporate by reference other responses). And, as noted above, Ripple engaged in the very same practice when responding to the SEC's interrogatories. *See* Ripple's Responses to Interrogatory No. 8 ("Ripple incorporates by reference its response to Interrogatory No. 12..."); No. 10 ("Ripple incorporates by reference its response to Interrogatory No. 11."). For the foregoing reasons, the SEC will not supplement its responses to these interrogatories. Subject to the foregoing, to the extent Ripple seeks specific information beyond what is contained in the incorporated responses, the SEC is willing to further meet and confer on these interrogatories.

Larsen Interrogatory No. 4: Your Letter complains that the SEC improperly responds to this interrogatory by incorporating its responses to other interrogatories. The SEC responds that its responses satisfy the requirements of Rule 26 and 33. *See, e.g., United States v. R.J. Zavoral & Sons, Inc.*, 2014 U.S. Dist. LEXIS 200974, *22-37 (D. Minn. Apr. 23, 2014) (denying motion to compel

government to supplement interrogatory responses where it had incorporated responses to other interrogatories); *Caliper Techs. Corp. v. Molecular Devices Corp.*, 213 F.R.D. 555, 560 (N.D. Cal. 2003) (rejecting similar motion to compel); *Graco, Inc. v. PMC Global, Inc.*, 2011 U.S. Dist. LEXIS 30980, *99-100 (D.N.J. Mar. 23, 2011) (allowing interrogatory response to incorporate by reference other responses). And, as noted above, Ripple engaged in the very same practice. *See* Ripple's Responses to Interrogatory No. 8 ("Ripple incorporates by reference its response to Interrogatory No. 12..."); No. 10 ("Ripple incorporates by reference its response to Interrogatory No. 11."). Subject to the foregoing and its original responses and objections, the SEC supplements its response by referencing the above response regarding Ripple's Interrogatory No. 11.

Larsen Interrogatory No. 5: That interrogatory asked the SEC to identify the date by which the SEC contends the XRP ledger became "fully functional." In response, the SEC noted that "whether and when the XRP Ledger became 'fully functional' is irrelevant under *Hovey*." The SEC stands by that contention. The SEC further objected to the term "fully functional," given that the creation and development of distributed networks "are iterative processes without clearly demarcated end points" and that the term cannot be defined "without identifying parameters to measure functionality or the person from whose perspective functionality is being measured." That objection remains valid. The SEC further notes that Mr. Larsen's counsel had the opportunity to question Mr. Schwartz, Director Hinman, Mr. Birla, and others about their views as to the XRP Ledger's functionality, but declined to do so. *See* Larsen General Objection 4 to the SEC's First Set of Interrogatories ("Larsen objects to the Interrogatories to the extent they call for responses better suited for depositions.") Subject to the foregoing, to the extent Mr. Larsen provides sufficient additional detail to describe what he means by "fully functional" in this context, the SEC is willing to further meet and confer on this interrogatory.

* * *

As noted above, we are available to meet and confer on the issues discussed herein and in your Letter, at your convenience.

/s/ Benjamin Hanauer

cc: Counsel for All Defendants (*via* email)

Exhibit C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

**RIPPLE LABS, INC.,
CHRISTIAN A. LARSEN, and
BRADLEY GARLINGHOUSE,**

Defendants.

20 Civ. 10832 (AT) (SN)

**PLAINTIFF'S RESPONSES AND OBJECTIONS
TO DEFENDANT RIPPLE LABS, INC.'S SECOND SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure ("Federal Rules") 26 and 33, Plaintiff Securities and Exchange Commission (the "SEC" or "Commission") hereby responds to Defendant Ripple Labs, Inc.'s ("Ripple") Second Set of Interrogatories to Plaintiff Securities and Exchange Commission (the "Interrogatories"). The SEC's responses and objections to the Interrogatories are made to the best of its present knowledge, information, or belief. These responses and objections are made without prejudice to the SEC's right to revise or supplement its responses and objections as appropriate and to rely upon and produce witnesses or evidence at trial or at any proceeding, particularly given that discovery is ongoing. The SEC does not waive any applicable privilege, protection, doctrine, or right by providing these responses. The SEC also provides these responses without prejudice to its right to produce or object to evidence, witnesses, facts, writings, or documents that are identified either in these responses or in any later supplements or amendments. The SEC does not necessarily represent or agree, by virtue of providing a response, that any of the information identified below is relevant or admissible.

GENERAL OBJECTIONS

1. The SEC objects to the Interrogatories on the ground that they are not “proportional to the needs of the case” to the extent they call for answers that are premature given that the parties have neither completed document discovery and depositions, nor expert discovery. Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 33(b) (“An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete.”); *County of Suffolk v. Lillo*, No. 87 CV 0646 (JBW), 1988 WL 69759, at *1–2 (E.D.N.Y. June 13, 1988) (“Contention interrogatories such as those propounded by the defendant here are generally not favored in the early stages of discovery.... [F]orcing the plaintiffs to answer these interrogatories is not justified when balancing the burden imposed upon the plaintiffs in responding to these requests against the likelihood that useful information will be produced.”); *Roth v. Bank of Commonwealth*, No. CIV-79-36E, 1988 WL 43963, at *4 (W.D.N.Y. May 4, 1988) (contention interrogatories include “those that ask the adverse party to state all the *facts* or all the *evidence* upon which he *bases* some specific contention” (emphases in original)).

The SEC faces a heavy burden in identifying and listing each and every fact underlying various mixed legal and factual allegations in the Complaint when Individual Defendants Christian A. Larsen and Bradley Garlinghouse have yet to answer the Complaint and when Defendants have not made complete productions in response to the SEC’s document requests, and the parties have not completed depositions. Furthermore, it is unlikely that any responses to the Interrogatories will be substantially more useful than the information Ripple already has or soon will have. Specifically, the Complaint (D.E. 46) provides a summary of certain key factual allegations underlying each of the SEC’s claims, the SEC has produced to Ripple its entire non-privileged investigative file, and much

of the information sought for by the Interrogatories is public (such as public statements by Ripple) or is in Ripple's possession and therefore more easily accessible to Ripple.

2. The SEC further objects to the Interrogatories on the ground that they are not "proportional to the needs of the case" because they are overly broad, regardless of their timing. Fed. R. Civ. P. 26(b)(1); *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007) ("Contention interrogatories that systematically track all of the allegations in an opposing party's pleadings, and that ask for 'each and every fact' and application of law to fact that supports the party's allegations, are an abuse of the discovery process because they are overly broad and unduly burdensome.... [They] should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents."); *Moses v. Halstead*, 236 F.R.D. 667, 674 (D. Kan. 2006) ("The Court, however, does find [an interrogatory] to be overly broad and unduly burdensome on its face to the extent it asks Allstate to state 'all' facts that support each defense.").

3. The SEC objects to Defendant's Definition No. 11, "Securities and Exchange Commission," "Plaintiff," "SEC," "You," or "Your," to the extent that it means each of the Commission's Divisions and Offices, and each current or former SEC Commissioner, staff member or employee, because it is overly broad and not proportional to the needs of the case. Accordingly, unless expressly stated otherwise, the SEC has limited its inquiry to information in the possession, custody, or control of the Division of Enforcement, as further limited by the other general and specific objections herein, as noted herein.

4. The SEC objects to Defendant's Definitions Nos. 9 and 12 to the extent they assume that the digital asset known as "XRP" functions as a medium of exchange or a store of value, or was ever offered or sold for either of those purposes.

5. The SEC objects to the Interrogatories to the extent they are duplicative of Ripple's First Set of Interrogatories to the SEC, to which the SEC responded on July 1, 2021.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 12

State whether You contend that every unit of XRP is per se a security. If that is Your contention, state the characteristics of a unit of XRP that supports Your contention and Identify when units of XRP first became securities and Identify all evidence You intend to rely on to support that contention. If that is not Your contention, state the facts and circumstances (e.g., Defendants' specific conduct, or particular statements made by Defendants) that You contend resulted in XRP being a security when offered or sold by any of the Defendants and Identify all evidence You intend to rely on to support that contention.

Response and Objections to Interrogatory No. 12

The Commission incorporates the General Objections above in its response to Interrogatory No. 12. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. This Interrogatory is overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of "the facts and circumstances" and "all evidence" the SEC intends "to rely on" to support a contention.

To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission "contend[s]," doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may

support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify statements which involve the offer or sale or distribution of XRP by Ripple or any of its subsidiaries, agents, or affiliates (including specifically XRP II, LLC) to a third party, Ripple is in possession of such information and can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and do nothing but waste time.

The Commission also objects to this Interrogatory as premature. Discovery on the issue of Ripple’s offers and sales of XRP is ongoing—in particular, depositions are still ongoing. To the extent this Interrogatory seeks to obtain information that upcoming deponents may testify to, it is premature. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Finally, the Commission objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the meaning of the term “investment contract” as that term is used in the Securities Act of 1933 (“Securities Act”) at least as applied to digital assets.

Subject to and without waiving the foregoing objections, the Commission responds as follows: The Commission does not contend “that every unit of XRP is per se a security.” We contend that every offer, sale and distribution of XRP by Ripple, Larsen, and Garlinghouse (and

their agents, affiliates, subsidiaries, underwriters, conduits, brokers, and dealers) during the Relevant Period, was the offer, sale, or distribution of an investment contract under *SEC v. W.J. Howey Co.*, 238 U.S. 293 (1946). Such transactions include, but are not limited to, Ripple's market and institutional sales of XRP; Ripple's sales of XRP on behalf of RippleWorks; Ripple's sales of XRP to certain entities that exercised options to buy XRP; Larsen's and Garlinghouse's XRP sales; and Ripple's distributions of XRP to (i) executives as compensation, (ii) entities associated with its xRapid product, and (iii) entities associated with xPring. We contend that every unit of XRP offered, sold and distributed by Ripple, Larsen, and Garlinghouse constitutes one aspect of those investment contracts, and the method by which an investor's interests are made manifest. *Howey*, 238 U.S. at 300.

To the extent this Interrogatory asks for "Defendants' specific conduct, or particular statements made by Defendants" that made their offers and sales of XRP the offers and sales of investment contracts, the Commission refers you to its Responses and Objections to Interrogatories Nos. 1-5, 7-8, 10-11.

Interrogatory No. 13

State whether You contend that the XRP sold by Ripple "directly to money transmitters specifically for effecting money transfers through ODL" (Complaint at ¶ 372) resulted in an investment contract with Ripple. If that is Your contention, Identify with particularity the basis for, and all evidence You intend to rely on to support, that contention.

Response and Objections to Interrogatory No. 13

The Commission incorporates the General Objections above in its response to Interrogatory No. 13. The Commission further objects to Interrogatory No. 13 as premature, harassing, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil

Procedure 33. This Interrogatory is overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of “the basis for, and all evidence You intend to rely on to support” a particular contention.

To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission “contend[s],” doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and would do nothing but waste time.

The Commission also objects to this Interrogatory as premature. Discovery on the issue of Ripple’s offers and sales of XRP is ongoing—in particular, depositions are still ongoing and depositions relating to Ripple’s sales of XRP to money transmitters have not occurred. To the extent this Interrogatory seeks to obtain information that upcoming deponents may testify to, it is

premature. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Subject to and without waiving the foregoing objections, the Commission responds as follows: The Commission contends that Ripple's sales of XRP to money transmitters for effecting money transfers through ODL were securities transactions to the extent that the money transmitters sold, directly or indirectly, the XRP purchased from Ripple into the public markets. In such instances, the money transmitters acted as conduits or underwriters for such sales in that the money transmitters purchased XRP with the intention of distributing those units of XRP into the public markets, in exchange for compensation from Ripple for doing so.

Interrogatory No. 14

State whether You contend that sales of XRP by Co-Founder (as that term is defined in the ¶ 20 of the Complaint) resulted in an investment contract between any purchaser and Ripple. If that is Your contention, Identify with particularity the basis for, and all evidence You intend to rely on to support, that contention.

Response and Objections to Interrogatory No. 14

The Commission incorporates the General Objections above in its response to Interrogatory No. 14. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. This Interrogatory is overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of "the basis for, and all evidence You intend to rely on to support" a particular contention.

To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the

Commission “contend[s],” doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and would do nothing but waste time.

Subject to and without waiving the foregoing objections, the Commission responds that it considers sales of XRP by Co-Founder to be securities transactions to the extent Ripple or its predecessor provided XRP to Co-Founder with the expectation that he would distribute it into the public markets.

Interrogatory No. 15

In the four-year period ending immediately before the SEC commenced this lawsuit on December 22, 2020, the market price of XRP (as reported on [coinmarketcap.com](https://coinmarketcap.com/currencies/xrp/historical-data/), <https://coinmarketcap.com/currencies/xrp/historical-data/>) fluctuated between less than \$0.01 to approximately \$3.80. Identify with particularity the factors that You contend caused each material change in the market price of XRP during that time period.

Response and Objections to Interrogatory No. 15

The Commission incorporates the General Objections above in its response to Interrogatory No. 15. The Commission further objects to Interrogatory No. 15 as premature, harassing, vague,

and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 15 is vague and ambiguous, because it is unclear what the undefined terms “factors” and “caused” mean in the context of this Interrogatory.

The Commission further objects to this Interrogatory as premature. Discovery on the issue of the changes in price of XRP is ongoing, as expert discovery has not yet begun. Ripple has yet to respond to all of the SEC’s requests for production of documents that relate to this issue, and depositions are still ongoing. To the extent this Interrogatory seeks to obtain information about what the Commission’s experts are expected to testify to, it is improper. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of all “factors” that caused a change in market prices. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what “caused” price movements, doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any

research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. To the extent this Interrogatory requires the Commission to identify information about a publicly available distributed ledger, such information is equally available to Ripple and Ripple can identify it. Further, the Commission objects to this Interrogatory to the extent it incorrectly assumes that the Commission contends that particular factors “caused” price changes in XRP, incorrectly assumes that the Commission is required to contend or prove anything about changes in the price of XRP, and incorrectly assumes that anything in particular with respect to movements in the price of XRP is required to prove the Commission’s allegations. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product.

The Commission also objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the meaning of the term “investment contract” as that term is used in the Securities Act. There is no requirement under *Howey* that an issuer or promoter of an investment contract’s efforts actually result in “material changes” to the price of the instrument that represents or underlies the investment contract.

Interrogatory No. 16

Identify with particularity (by date, speaker, publication or medium, parties, and/or docket number, as appropriate, along with specific excerpts or quotations) all information that You contend was sufficient, singularly or collectively, to provide market participants with fair notice that offers or sales of XRP could not be made absent registration under Section 5, or pursuant to an exemption, of the Securities Act of 1933.

Response and Objections to Interrogatory No. 16

The Commission incorporates the General Objections above in its response to Interrogatory No. 16. The Commission further objects to Interrogatory No. 16 as premature, harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 16 is vague and ambiguous, because it is unclear what the undefined terms “provide” and “fair notice” mean in the context of this Interrogatory.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of “all information” that provided fair notice. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what provided fair notice as to a certain question of law, doing would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review.

The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product.

The Commission also objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the requirements of the Due Process Clause of the U.S. Constitution, and of any applicable vagueness or “fair notice” defense. There is no requirement under any principle of law that the Commission warn Ripple or give “notice” to Ripple that its offers and sales of XRP may constitute securities transactions before Section 5 of the Securities Act of 1933 applies to such conduct.

Finally, the Commission objects to this Interrogatory as premature. Discovery on the issue of fair notice is ongoing, including depositions. To the extent this Interrogatory seeks to obtain information about what the Commission’s experts or witnesses are expected to testify to, it is improper. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Subject to and without waiving the foregoing objections, the Commission avers that the Supreme Court’s decision in *Howey* and the decades of case law interpreting and applying *Howey* to a variety of facts and circumstances provide all the fair notice that is constitutionally or legally required, to the extent any is required. Moreover, various Commission actions over the course of many years, including but not limited to those referenced in pages 9-13 of the Commission’s Memorandum of Law in Support of its Motion to Strike Ripple’s Fourth Affirmative Defense, in Exhibit 1 to the Commission’s Reply brief in further support of its Motion to Strike Ripple’s Fourth Affirmative Defense, the various legal and non-legal advice that Ripple received since 2012 regarding its offers and sales of XRP vis-à-vis the securities laws, certain public statements and speeches by SEC officials regarding the applicability of the securities laws to transactions in digital assets,

Ripple's awareness of the SEC staff's nonpublic investigation that preceded this lawsuit, and the various statements by SEC staff to Ripple's representatives to the effect that the SEC staff believed that Ripple's offers and sales of XRP were likely securities transactions, all provided Ripple notice that it could not conduct its offers and sales of XRP without registration under Section 5 of the Securities Act of 1933.

Interrogatory No. 17

Identify the enterprise(s) or venture(s), if any, in which You contend XRP holders acquired a stake in by virtue of their purchase of XRP from Defendants, and all evidence on which You intend to rely to support that contention.

Response and Objections to Interrogatory No. 17

The Commission incorporates the General Objections above in its response to Interrogatory No. 17. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 17 is vague and ambiguous, because it is unclear what the undefined terms "acquired a stake" means in the context of this Interrogatory.

This Interrogatory is overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of "all evidence" on which the SEC intends to "rely to support" a particular contention. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission "conten[ds]," doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each

and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and would do nothing but waste time.

The Commission further objects to this Interrogatory to the extent it relies on an incorrect understanding of the meaning of “investment contract” under *Howey* and the cases applying it. There is no requirement under the law that the purchaser “acquire a stake” in an “enterprise or venture” in order for that purchaser to have purchased an investment contract. Instead, an investment contract exists when, based upon the totality of the circumstances, the representations and statements made by the promoter, and the economic realities of the transaction, a purchaser invested money in a common enterprise with a reasonable expectation of profit based upon the efforts of others.

Subject to and without waiving the foregoing objections, the Commission responds that it alleges that XRP holders were invested in Ripple’s efforts to create a use for and demand for XRP. XRP holders hoped to profit from a potential increase in the value of XRP based on Ripple’s efforts to create a use for XRP and develop the XRP “ecosystem,” potentially increasing demand for the token. The Commission further refers Defendant to the Commission’s answers to Interrogatories 2,

8, 10-11, which are incorporated by reference herein, for additional information about some of the evidence that the Commission intends to rely on in this case.

Interrogatory No. 18

Describe all uses, functionality, features, or other characteristics of Bitcoin, Ether, or XRP that You contend distinguish Bitcoin or Ether from XRP with respect to the registration requirements of Section 5 of the Securities Act of 1933.

Response and Objections to Interrogatory No. 18

The Commission incorporates by reference its responses and objections to Interrogatory No. 6.

Interrogatory No. 19

Identify with particularity any evidence (including any Documents relied upon) that You contend demonstrates that any XRP holder has or had any right, as a result of his or her purchase of XRP in the unregistered distribution of securities alleged in the Complaint, to receive any future payment directly from Ripple, in any form, at any time, or for any purpose (including but not limited to any fiat currency, XRP, or any other Digital Asset or commodity, or any other form of consideration).

Response and Objections to Interrogatory No. 19

The Commission incorporates the General Objections above in its response to Interrogatory No. 19. The Commission further objects to Interrogatory No. 19 as premature, harassing, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 19 is vague and ambiguous, because it is unclear what the undefined terms “receive,” “payment” or “purpose” mean in the context of this Interrogatory.

This Interrogatory is overbroad, oppressive, and unduly burdensome, to the extent that Ripple seeks identification of “any evidence” and “any Document relied upon” for a particular

contention, or the extent it asks for “any” payment “in any form” “at any” time and “for any purpose.” To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission “contend[s],” doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and would do nothing but waste time.

The Commission also objects to this Interrogatory as premature. Discovery on the issue of Ripple’s offers and sales of XRP is ongoing. To the extent this Interrogatory seeks to obtain information that upcoming deponents may testify to, it is premature. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Subject to and without waiving the foregoing objections, the Commission responds as follows: Whether the purchaser had a right to receive payments from Ripple is irrelevant. The

relevant inquiry is whether a purchaser invested money in a common enterprise with a reasonable expectation of profit based upon the efforts of others. The Commission refers Defendant to its answer to Interrogatories Nos. 1-5, 7-8, 10-12 for some of the evidence the Commission will rely on to support this contention. The Commission further notes that the Securities Act of 1933 creates rights, under certain circumstances, to receive payments from issuers of securities offered and sold without meeting the Act's registration requirements.

Interrogatory No. 20

Identify each Digital Asset that the SEC has determined is not a security under U.S. law.

Response and Objections to Interrogatory No. 20

The Commission incorporates the General Objections above in its response to Interrogatory No. 20. The Commission further objects to Interrogatory No. 20 as harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission also objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 20 is vague and ambiguous, because it is unclear what the undefined term "determined" means in the context of this Interrogatory.

The Commission further objects to this Interrogatory to the extent it would require the Commission to review and parse the tens of thousands of documents the SEC has produced and any publicly available documents, because such requirement would be unreasonably burdensome, disproportional to the needs of the case, and require the production of information equally available to Defendants based on such documents. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence, nor is it required to organize the evidence in this matter for Defendant. Further, to the extent this

Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and would do nothing but waste time.

The Commission further objects to the extent that this Interrogatory requires that the Commission, under Defendant’s Definition No. 11, make representations as to all employees’ (both current and former), Commissioners’ (both current and former), Offices’ or Divisions’ meetings held from January 1, 2012 to December 22, 2020. Such a requirement is unduly burdensome and impossible to respond to. The Commission has thousands of employees. The Commission cannot reasonably inquire and determine each and every meeting between each and every Commission employee and any possible third party. The Commission further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client and governmental deliberative process privileges and the work product doctrine. To the extent the Commission responds to this Interrogatory, it refers only to the “Commission” as that term is defined under the United States securities laws.

Subject to and without waiving the foregoing, the Commission responds that it has not voted on any recommendations or issued any orders or opinions that any particular offer or sale of a digital asset by any particular person was not a securities transaction.

Interrogatory No. 21

Identify each Digital Asset that the SEC has determined is a security under U.S. law.

Response and Objections to Interrogatory No. 21

The Commission incorporates the General Objections above in its response to Interrogatory No. 21. The Commission further objects to Interrogatory No. 21 as harassing, vague, and oppressive, and as contrary to the requirements of Rule 26 of the Federal Rules of Civil Procedure. The Commission also objects to this Interrogatory because, when combining the interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 20 is vague and ambiguous, because it is unclear what the undefined term “determined” means in the context of this Interrogatory.

The Commission further objects to this Interrogatory to the extent it would require the Commission to review and parse the tens of thousands of documents the SEC has produced and any publicly available documents, because such requirement would be unreasonably burdensome, disproportional to the needs of the case, and require the production of information equally available to Defendants based on such documents. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence, nor is it required to organize the evidence in this matter for Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and would do nothing but waste time.

The Commission further objects to the extent that this Interrogatory requires that the Commission, under Defendant’s Definition No. 11, make representations as to all employees’ (both

current and former), Commissioners' (both current and former), Offices' or Divisions' meetings held from January 1, 2012 to December 22, 2020. Such a requirement is unduly burdensome and impossible to respond to. The Commission has thousands of employees. The Commission cannot reasonably inquire and determine each and every meeting between each and every Commission employee and any possible third party. The Commission further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client and governmental deliberative process privileges and the work product doctrine. To the extent the Commission responds to this Interrogatory, it refers only to the "Commission" as that term is defined under the United States securities laws.

Subject to and without waiving the foregoing, the Commission responds that it has authorized enforcement actions alleging that the particular offers and sales of the digital assets in the enforcement actions listed in Exhibit 1 to the Reply Brief in Further Support of the Commission's Motion to Strike were securities transactions.

Interrogatory No. 22

Identify with particularity any evidence (including any Documents relied upon) that You contend demonstrates that any Defendant pooled the funds from any XRP purchaser with those from any other XRP purchaser.

Response and Objections to Interrogatory No. 22

The Commission incorporates by reference its Responses and Objections to Interrogatory No. 10.

Interrogatory No. 23

Identify with particularity any evidence (including any Documents relied upon) that You contend supports the allegation that "the fortunes of XRP purchasers were and are tied to one another, and each depend on the success of Ripple's XRP Strategy," as alleged in ¶ 291 of the Complaint.

Responses and Objections to Interrogatory No. 23:

The Commission incorporates by reference its Responses and Objections to Interrogatories Nos. 2, 8, 10-11.

Interrogatory No. 24


Identify with particularity the factual basis (including any statements or Documents on which You intend to rely) to support Your contention that XRP is a security, and that Ripple's distributions, transfers or sales of XRP are investment contracts, as those terms are construed under the federal securities laws and *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), and its progeny

Responses and Objections to Interrogatory No. 24:

The Commission incorporates by reference its Responses and Objections to Interrogatories Nos. 1-5, 7-8, 10-12.

Dated: New York, New York
July 20, 2021

SECURITIES AND EXCHANGE COMMISSION

By:  _____

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Mark R. Sylvester
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Verification for Responses to Interrogatories 12 Through 24

I declare under penalty of perjury, that the factual statements made above are true to the best of my knowledge, information, and belief. Executed in Washington, District of Columbia on this 20th Day of July 2021.

A. Kristina Littman

A. Kristina Littman
Division of Enforcement

Exhibit D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

**RIPPLE LABS, INC.,
CHRISTIAN A. LARSEN, and
BRADLEY GARLINGHOUSE,**

Defendants.

20 Civ. 10832 (AT) (SN)

**PLAINTIFF'S RESPONSES AND OBJECTIONS
TO DEFENDANT CHRISTIAN A. LARSEN'S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure ("Federal Rules") 26 and 33, Plaintiff Securities and Exchange Commission (the "SEC" or "Commission") hereby responds to Defendant Christian A. Larsen's ("Larsen" or "Defendant") First Set of Interrogatories to Plaintiff Securities and Exchange Commission (the "Interrogatories"). The SEC's responses and objections to the Interrogatories are made to the best of its present knowledge, information, or belief. These responses and objections are made without prejudice to the SEC's right to revise or supplement its responses and objections as appropriate and to rely upon and produce witnesses or evidence at trial or at any proceeding, particularly given that discovery is ongoing. The SEC does not waive any applicable privilege, protection, doctrine, or right by providing these responses. The SEC also provides these responses without prejudice to its right to produce or object to evidence, witnesses, facts, writings, or documents that are identified either in these responses or in any later supplements or amendments. The SEC does not necessarily represent or agree, by virtue of providing a response, that any of the information identified below is relevant or admissible.

GENERAL OBJECTIONS

1. The SEC objects to the Interrogatories on the ground that they are not “proportional to the needs of the case” to the extent they call for answers that are premature given that the parties have neither completed document discovery and depositions, nor expert discovery, and discovery specifically related to Defendant Larsen has yet to commence. Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 33(b) (“An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete.”); *County of Suffolk v. Lillo*, No. 87 CV 0646 (JBW), 1988 WL 69759, at *1–2 (E.D.N.Y. June 13, 1988) (“Contention interrogatories such as those propounded by the defendant here are generally not favored in the early stages of discovery.... [F]orcing the plaintiffs to answer these interrogatories is not justified when balancing the burden imposed upon the plaintiffs in responding to these requests against the likelihood that useful information will be produced.”); *Roth v. Bank of Commonwealth*, No. CIV-79-36E, 1988 WL 43963, at *4 (W.D.N.Y. May 4, 1988) (contention interrogatories include “those that ask the adverse party to state all the *facts* or all the *evidence* upon which he *bases* some specific contention” (emphases in original)).

The SEC faces a heavy burden in identifying and listing each and every fact underlying various mixed legal and factual allegations in the Complaint when Individual Defendants Larsen and Bradley Garlinghouse have yet to answer the Complaint, and when Defendants, including Defendant Ripple Labs, Inc. (“Ripple”), have not made complete productions in response to the SEC’s document requests, and the parties have not completed depositions. Furthermore, it is unlikely that any responses to the Interrogatories will be substantially more useful than the information Larsen already has or soon will have. Specifically, the Amended Complaint (D.E. 46) provides a summary of certain key factual allegations underlying each of the SEC’s claims, the SEC

has produced to Larsen its entire non-privileged investigative file, and much of the information sought for by the Interrogatories is public (such as public statements by Ripple and Larsen) or is in Larsen's possession and therefore more easily accessible to Larsen.

2. The SEC further objects to the Interrogatories on the ground that they are not "proportional to the needs of the case" because they are overly broad, regardless of their timing. Fed. R. Civ. P. 26(b)(1); *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007) ("Contention interrogatories that systematically track all of the allegations in an opposing party's pleadings, and that ask for 'each and every fact' and application of law to fact that supports the party's allegations, are an abuse of the discovery process because they are overly broad and unduly burdensome.... [They] should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents."); *Moses v. Halstead*, 236 F.R.D. 667, 674 (D. Kan. 2006) ("The Court, however, does find [an interrogatory] to be overly broad and unduly burdensome on its face to the extent it asks Allstate to state 'all' facts that support each defense....").

3. The SEC objects to Defendant's Definition No. 10, "Securities and Exchange Commission," "Plaintiff," "SEC," "You," or "Your," to the extent that it means each of the Commission's Divisions and Offices, and each current or former SEC Commissioner, staff member, or employee, because it is overly broad and not proportional to the needs of the case. Accordingly, unless expressly stated otherwise, the SEC has limited its inquiry to information in the possession, custody, or control of the Division of Enforcement, as further limited by the other general and specific objections herein, as noted herein.

4. The SEC objects to Defendant's Definitions Nos. 9 and 11 to the extent they assume that the digital asset known as "XRP" functions as a medium of exchange or a store of value, or was ever offered or sold for either of those purposes.

5. The SEC objects to the Interrogatories to the extent they are duplicative of Ripple's Interrogatories, defined as Ripple's First Set of Interrogatories to the SEC, to which the SEC responded on July 1, 2021, and of Ripple's Second Set of Interrogatories to the SEC, to which the SEC is responding concurrently herewith.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 1

Identify with particularity the factual and legal basis (including any statements or Documents relied upon) for Your contention that Plaintiff has extraterritorial authority over the offers and sales of XRP alleged in the Complaint that were settled outside the United States and/or were made on foreign exchanges.

Response and Objections to Interrogatory No. 1

The Commission incorporates the General Objections above in its response to Interrogatory No. 1. The Commission objects to this Interrogatory because, when combining Ripple's Interrogatories and these Interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 1 is vague and ambiguous, because it is unclear what the undefined terms "settled" or "made" mean in the context of this Interrogatory and in the context of transactions in digital assets that are represented on distributed ledgers that exist on networks of computers all over the world.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Defendant seeks identification of "the factual and legal basis (including any statements or Documents relied upon)" for a particular contention. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission contends or has "authority" over,

doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents, or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case or to any cognizable or relevant defense. To the extent this Interrogatory requires the Commission to identify statements which involve the offer or sale or distribution of XRP by Larsen or any of his agents to a third party, Larsen is in possession of such information and can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and do nothing but waste time.

The Commission also objects to this Interrogatory as premature. Discovery on the issue of Larsen’s offers and sales of XRP is ongoing—in particular, depositions are still ongoing, and Larsen has not yet answered the Amended Complaint. To the extent this Interrogatory seeks to obtain information that upcoming deponents may testify to, it is premature. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Finally, the Commission objects to this Interrogatory to the extent it seeks evidence that is not relevant to any claim or defense in this case insofar as it relies on an incorrect understanding of the claims at issue in this case, particularly to the extent it incorrectly assumes that the Commission seeks to exert “extraterritorial authority over the offers and sales of XRP” alleged in the Complaint.

Subject to and without waiving the foregoing objections, the Commission directs Defendant Larsen to Commission's Brief in Opposition of the Individual Defendants' Motion to Dismiss (D.E. 183), principally the Statement of Facts and the Argument § 2, for the factual and legal basis that the Commission has so far developed in support of its claim that Larsen's offers and sales of XRP were domestic transactions in securities subject to the Securities Act of 1933.

Interrogatory No. 2

Identify all Documents and Communications that You contend show injury or damage to individual members of the public that resulted from the "Offering," as defined in the Complaint.

Response and Objections to Interrogatory No. 2

The Commission incorporates the General Objections above in its response to Interrogatory No. 2. The Commission objects to this Interrogatory because, when combining Ripple's Interrogatories and these Interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 2 is vague and ambiguous, because it is unclear what the undefined terms "injury" or "damage" mean in the context of this Interrogatory.

The Commission objects to this Interrogatory to the extent it rests on a misstatement of the claims at issue in this case and the elements required to prove them. The Commission claims that Defendant violated Section 5 of the Securities Act of 1933, and that he aided and abetted Ripple's violations of that provision. To prove a violation of Section 5, the SEC must show: (1) that no registration statement was filed or in effect as to the transaction, and (2) that the defendant directly or indirectly sold or offered to sell the securities (3) through interstate commerce. To prove aiding and abetting a violation of Section 5, the SEC must show: (1) a primary violation of Section 5 by Ripple, (2) that Larsen substantially assisted the violation, and (3) that Larsen acted knowingly or recklessly. No proof of "damage" or "injury" is required.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Defendant seeks identification of “all Documents and Communications” for a particular contention. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents collected in discovery, and any publicly available documents, and locate every testimony phrase or document that in any way forms part of what the Commission contends, doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents, or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case or to any cognizable or relevant defense. To the extent this Interrogatory requires the Commission to identify documents and statements which involve the offer or sale or distribution of XRP by Larsen or any of his agents to a third party, Larsen is in possession of such information and can identify it. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and do nothing but waste time.

The Commission also objects to this Interrogatory as premature. Discovery on the issue of Larsen’s offers and sales of XRP is ongoing—in particular, depositions are still ongoing, and Larsen

has not yet answered the Amended Complaint. To the extent this Interrogatory seeks to obtain information that upcoming deponents may testify to, it is premature. The Commission specifically reserves the right to supplement its answer to this Interrogatory at the appropriate time.

Subject to and without waiving any of the foregoing, the Commission further avers that the fact of Larsen's failure to register his offers and sales of XRP, and the resulting failure to disclose information required by the federal securities laws, demonstrates the injury suffered by members of the public from Larsen's offers and sales of XRP. The registration regime imposed by the Securities Act of 1933 requires the offer or sale of securities to the public to be accompanied by full and fair disclosure afforded by a registration statement filed with the SEC and the delivery of a statutory prospectus, providing potential purchasers with the information essential to an informed investment decision. *See SEC v. Cavanagh*, 1 F. Supp.2d 337, 360 (S.D.N.Y. 1998), *aff'd*, 155 F.3d 129 (2d Cir. 1998); *SEC v. Aaron*, 605 F.2d 612, 618 (2d Cir. 1979)), vacated on other grounds, 446 U.S. 680 (1980). The registration statement is "central to the Act's comprehensive scheme for protecting public investors." *Aaron*, 605 F.2d at 618. Larsen's failure to provide that statement injured public investors and public markets by depriving them of the material information required to be disclosed in the offer and sale of securities.

Interrogatory No. 3

Identify all third parties that provided any comments or analyses to the SEC concerning the SEC's authority to regulate or its position regarding the regulation of Digital Assets, including Bitcoin, Ether, or XRP, at any point between the July 25, 2017 DAO Report and December 22, 2020.

Response and Objections to Interrogatory No. 3

The Commission incorporates the General Objections above in its response to Interrogatory No. 3. The Commission objects to this Interrogatory because, when combining Ripple's Interrogatories and these Interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of

interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 3 is vague and ambiguous, because it is unclear what the undefined terms “authority to regulate” mean in the context of this Interrogatory.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Defendant seeks identification of “all third parties” that engaged in certain conduct. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents it has already produced to Defendants, and any publicly available documents, and locate every testimony phrase or document, doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses that may support its contentions, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents, or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case or to any cognizable or relevant defense. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and do nothing but waste time.

The Commission further objects to this Interrogatory as premature, as the Commission is still in the process of providing documents to Defendants in discovery, depositions by Defendants

have not yet begun, and the Commission has provided this information in response to Ripple's Interrogatories.

Subject to and without waiving the foregoing, the Commission, having reviewed a limited number of documents beyond those in the possession of the Division of Enforcement, refers Defendant to emails the Commission received at the inboxes fintech@sec.gov and finhub@sec.gov, which the Commission has produced or in short order will produce to Defendants, no-action letter requests and responses, documents from the 20 custodians responsive to Defendants' document requests, and publicly available requests for rulemaking posted on the SEC's website pursuant to Rule 192 of the Commission's Rules of Practice (at <https://www.sec.gov/rules/petitions.htm>). The Commission further notes that other persons and entities that have made comments to the SEC regarding the regulation of digital assets include the persons and entities identified in the Commission's response to Ripple Interrogatory No. 9.

Interrogatory No. 4

Identify with particularity all efforts by Ripple that You contend were made in order to generate profits for any Person who purchased XRP from Ripple.

Response and Objections to Interrogatory No. 4

The Commission incorporates by reference its responses and objections to Ripple's Interrogatories Nos. 2, 8, and 10-11.

Interrogatory No. 5

State whether You contend that the XRP Ledger was not fully functional before the start of the ongoing securities offering alleged in the Complaint. If that is Your contention, Identify when You contend the XRP Ledger did become fully functional (if ever) and what actions or efforts resulted in making the XRP Ledger fully functional, and all evidence You intend to rely on to support that contention.

Response and Objections to Interrogatory No. 5

The Commission incorporates by reference its responses and objections to Ripple's Interrogatory No. 4, including specifically to note that whether and when the XRP Ledger became "fully functional" is irrelevant under *Howey* and cases applying it.

In addition, the Commission further objects to this Interrogatory as vague, to the extent the term "fully functional" means in the context of this Interrogatory or in the context of distributed networks, the creation and development of which are iterative processes without clearly demarcated end points, and that discussing whether a distributed, open-source network is "fully functional" is nonsensical in this context without identifying parameters to measure functionality or the person from whose perspective functionality is being measured. This Interrogatory is premature for the additional reason that discovery into the XRP Ledger is still ongoing, including depositions and expert discovery. Subject to and without waiving the foregoing, the Commission further avers that the investigative and deposition testimony of David Schwartz, among other things, establishes that Ripple engaged a team of people working on improving the XRP Ledger throughout the period at issue in this case, and certain documents produced by Ripple to the Commission show examples of Ripple continuing to make efforts to develop, improve, and modify the functioning of the XRP Ledger.

Interrogatory No. 6

Identify each and every voluntary Document production, voluntary interview, or voluntary testimony You have requested, received, or taken related to this action and/or any investigation of Ripple, XRP, Bradley Garlinghouse, or Christian A. Larsen.

Response and Objections to Interrogatory No. 6

The Commission incorporates the General Objections above in its response to Interrogatory No. 6. The Commission objects to this Interrogatory because, when combining Ripple's Interrogatories and these Interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of

interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 6 is vague and ambiguous, because it is unclear what the undefined terms “voluntary” and “interview” mean in the context of this Interrogatory.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Defendant seeks identification of “each and every” person the Commission and its employees may have spoken to in connection with its investigation of this matter, and to the extent it purports to seek discovery beyond the filing of this action. Moreover, to the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents it has already produced to Defendants, and any publicly available documents, and locate every testimony phrase or document, doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents, or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, the Commission objects to this request to the extent it requires disclosure of information protected by the attorney work product doctrine, the attorney client privilege, the deliberative process privilege, the law enforcement privilege, or common interest protections. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case or to any cognizable or relevant defense. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an

endeavor would simply describe the Commission counsel's mental impressions and related work-product and do nothing but waste time.

Subject to and without waiving the foregoing, the Commission directs Defendant to the Commission's privilege log dated July 9, 2021, for a list of the non-United States-based securities regulators from which the SEC sought voluntary information, the Commission's Initial Disclosures dated March 8, 2021, and Supplemental Initial Disclosures, and the documents the Commission has produced from its investigative file of this matter, for the information that Defendant seeks and notes that it has discussed this matter on a voluntary basis with the following persons (among others) and their representatives: certain plaintiffs in the class action related to this case in the Northern District of California, certain U.S.-based digital asset trading platforms that list or listed XRP, Tetragon Financial Group, Jed McCaleb, Jesse Powell, Julia Ko, Cryptosystems, GSR, The Hatch Agency, Antoinette O'Gorman, Route 66, Ryan Gaylor, MoneyGram International, and R3.

Interrogatory No. 7

Identify every joint industry group, task force, or other similar body in which the SEC participated relating to the regulation of Digital Assets, and state when the SEC joined.

Response and Objections to Interrogatory No. 7

The Commission incorporates the General Objections above in its response to Interrogatory No. 7. The Commission objects to this Interrogatory because, when combining Ripple's Interrogatories and these Interrogatories, their subparts, and the separate pieces of information sought by the definitions and their subparts, the Interrogatories exceed the allowable number of interrogatories under Federal Rule of Civil Procedure 33. Furthermore, Interrogatory No. 7 is vague and ambiguous, because it is unclear what the undefined terms "joint industry group," "task force," or "other similar body" mean in the context of this Interrogatory.

This Interrogatory is also overbroad, oppressive, and unduly burdensome, to the extent that Defendant seeks identification of "every" group that SEC employees may have participated in. Such


a requirement is unduly burdensome and impossible to respond to. The Commission has thousands of employees. The Commission cannot reasonably inquire and determine each and every meeting between each and every Commission employee and any possible third party. To the extent that the Interrogatory would require the Commission to review and parse the testimony taken and the over 93,000 documents gathered during the investigation that preceded this case or the tens of thousands of documents it has already produced to Defendants, and any publicly available documents, and locate every testimony phrase or document, doing so would be unreasonably burdensome and would invade the attorney work product doctrine. The Commission is not required to compile and correlate the evidence, nor to provide a narrative of its entire case, nor to marshal the evidence or to state each and every one of the many facts or identify every one of the many documents or witnesses, nor is it required to organize the evidence in this matter for Defendant, nor is it required to conduct any research on behalf of Defendant. Further, to the extent this Interrogatory seeks to require the Commission to review testimony, documents, or public information that is, or has been made, available to Defendant, Defendant is equally capable of conducting any such review. Further, the Commission objects to this request to the extent it requires disclosure of information protected by the attorney work product doctrine, the attorney client privilege, the deliberative process privilege, the law enforcement privilege, or common interest protections. Further, requesting the Commission to do so imposes a significant burden on the Commission, which is not a percipient witness to any of the facts in the case or to any cognizable or relevant defense. The results of this unduly burdensome review would not translate into the “discovery” of actual facts; at most, such an endeavor would simply describe the Commission counsel’s mental impressions and related work-product and do nothing but waste time.

Subject to and without waiving the foregoing, the Commission, having reviewed a limited number of documents beyond those in the possession of the Division of Enforcement, avers that

certain of its employees participate informally in calls organized by the Blockchain Alliance, that certain of its employees participate and/or have participated in federal and international joint task forces, including but not limited to IOSCO, Financial Stability Board, CPMP-IOSCO, Financial Action Task Force, OECD, PWG (Presidential Working Group on Financial Markets), and FSOC's Distributed Ledger Technology Task Force, and that certain of its employees participate and/or have participated in and attend and/or attended symposia, conferences, and chats organized by colleges and universities regarding the regulation of digital assets. The Commission additionally refers Defendant to documents the Commission has produced or shortly will produce related to non-privileged Commission communications with third parties.

Dated: New York, New York
July 20, 2021

SECURITIES AND EXCHANGE COMMISSION

By:  _____

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Verification for Responses to Larsen Interrogatories 1 Through 7

I declare under penalty of perjury, that the factual statements made above are true to the best of my knowledge, information, and belief. Executed in Washington, District of Columbia on this 20th Day of July 2021.

A. Kristina Littman

A. Kristina Littman
Division of Enforcement