



NEW YORK
REGIONAL OFFICE

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

October 15, 2021

By ECF

Hon. Analisa Torres
U.S. District Court
Southern District of New York

Re: *SEC v. Ripple Labs, Inc.*, No. 20-cv-10832 (AT) (SN)

Dear Judge Torres:

Pursuant to Rule I(C) of this Court's Individual Practices, Plaintiff Securities and Exchange Commission ("SEC") respectfully requests that the Court extend the expert rebuttal report deadline to November 12, 2021, and the expert discovery deadline from November 12, 2021 to January 14, 2022, to permit the parties sufficient time to prepare rebuttal reports and depose a minimum of 14 expert witnesses. In this case alleging that Defendant Ripple Labs, Inc. ("Ripple"), together with Individual Defendants Bradley Garlinghouse ("Garlinghouse") and Christian Larsen ("Larsen"), made over \$1 billion in unlawfully unregistered securities offerings, the SEC's proposed extension would complete expert discovery as to Ripple within eleven months of the Amended Complaint's filing and within approximately ten months of Ripple's Answer. Ripple consents to an extension of the rebuttal report deadline until November 12, but opposes the January 14 deposition deadline, as set forth below. (A proposed Order is attached as Exhibit A.)

The requested extension would not affect any other deadlines in this case. The parties previously jointly requested an extension of the expert discovery deadline, based on the need to reschedule an Individual Defendant's deposition due to the unexpected illness of his attorney. D.E. 312. The Court granted the parties' request, and in the same order, adjourned *sine die* the deadline for the parties to exchange their respective Statements of Material Facts pursuant to Local Civil Rule 56.1 and their pre-motion letters regarding motions for summary judgment, pending resolution of the Individual Defendants' motions to dismiss and the SEC's motion to strike Ripple's "fair notice" affirmative defense.¹ D.E. 313.

Ripple consents to the SEC's request to extend the rebuttal reports deadline to November 12, 2021. But Ripple opposes the request to extend the close of expert discovery until January 14, 2022, and intends to file its opposition to this letter motion on October 18, 2021. Based on Ripple's earlier position that it would not accept any extensions to the discovery schedule, the SEC offered a

¹ Individual Defendants may seek to identify additional experts as necessary—and have agreed that they would not object to the SEC doing so—after the additional 120-day fact discovery period following the Court's resolution of the Individual Defendants' motions to dismiss. *See* D.E. 48 ¶ 14.

compromise that expert discovery be completed by December 22. But Ripple rejected that offer. In doing so, Ripple now claims that extending the expert discovery schedule beyond December 10, 2021—a date Ripple claims would provide sufficient time for the parties to complete a minimum of 14 expert depositions in 18 business days, given the Thanksgiving holiday—“would likely impact the briefing schedule for summary judgment motion[s].” *See* Exhibit B (October 15, 2021 A. Ceresney email). However, as set forth above, there is no such schedule in light of the Court’s latest Order on the issue (D.E. 313).

Moreover, expert discovery has commenced with an incomplete factual record, and the case is even less ready for summary judgment motions. First, on September 1, 2021, Magistrate Judge Netburn granted the SEC’s motion to compel Ripple to produce certain instant messages among its employees, but Ripple has not completed its production of responsive documents and has not provided any timetable by which it will be complete. D.E. 327. Second, the parties have four discovery motions currently pending before Magistrate Judge Netburn: (i) Defendants’ motion to pierce the SEC’s deliberative process privilege and other privileges as to many of the SEC’s internal communications and communications with other law enforcement agencies (which will not be fully briefed until October 22, 2021); (ii) the SEC’s motion for a protective order relieving it from answering over 29,000 requests for admission that Defendants served on the SEC in the last six hours of fact discovery; (iii) Ripple’s and Larsen’s motion to compel further responses to certain interrogatories; and (iv) the SEC’s motion to compel Ripple to conduct a reasonable search for and produce certain video recordings of internal staff meetings involving Individual Defendants and key executives. If Magistrate Judge Netburn grants any of the pending motions to compel, at minimum, the parties would need additional time to review and produce the documents at issue.

The SEC’s proposed extension is fair and reasonable under the circumstances and should be granted for good cause. Fed. R. Civ. P. 16(b)(4). On October 4, 2021, pursuant to Federal Rule of Civil Procedure 26(a)(2)(B), Defendants served the SEC with the reports of eight testifying experts, and the SEC served Defendants with the reports of five testifying experts. Combined, the reports total in excess of 600 pages and address trading and economic analyses, accounting and tax issues, and the sophisticated blockchain technology underlying XRP. The reports also cite thousands of underlying documents on which the experts’ opinions are based.

Pursuant to the existing expert discovery schedule (reflected in D.E. 312 and by the parties’ previous agreement), rebuttal expert reports are due on October 29, 2021, and expert discovery closes nine business days later, on November 12, 2021. The parties met and conferred and have determined that Defendants plan to disclose at least one additional expert to rebut an SEC expert (and will not rebut one SEC expert) but have not made any definitive commitment to retain only one additional expert, and the SEC also may disclose an additional rebuttal expert. Defendants’ proposal that the parties depose at least 14 experts—possibly more, depending on how many new rebuttal experts the parties ultimately introduce—in at most 19 business days (assuming Thanksgiving is the only day off the week of November 22) and during which time the parties and their experts need to digest and analyze multiple rebuttal reports, is unreasonable and unnecessary under the circumstances.

Given the number of experts, the breadth of the issues raised in the expert reports (and in the forthcoming rebuttal reports), and the vast amount of material on which the reports are premised, the SEC respectfully submits that the modest extension described here is appropriate for the SEC to properly prepare its experts for their depositions and to prepare to depose Ripple’s experts. The SEC’s proposed extension would not alter any other deadlines in this case, and would not prejudice

Defendants in any material way.² The SEC's proposal also takes into account that the Thanksgiving and December holidays fall within the period of its request, limiting the number of available days for depositions. Accordingly, the SEC respectfully requests the Court grant the requested extension for good cause shown as set forth above and in Exhibit A.

Respectfully submitted,

/s/ Mark R. Sylvester
Mark R. Sylvester

cc: All counsel of record (by ECF)

² Ripple asserts that an extension of the expert discovery schedule is prejudicial "due to the significant harm to Ripple's business and XRP markets this suit is causing." Ex. B. Ripple's claim of prejudice is belied by its continued robust sales of XRP, notwithstanding the pendency of this litigation. See Ripple's Q2 2021 XRP Markets Report (reporting the Ripple sold over \$150 million worth of XRP in the first quarter of 2021 and over \$157 million worth of XRP in the second quarter of 2021), available at <https://ripple.com/insights/q2-2021-xrp-markets-report/>. Similarly, XRP's price closed at approximately 25 cents on the day after this lawsuit was filed, December 23, 2020, and its price closed yesterday, October 14, 2021, at \$1.13. See Historical Data for XRP, CoinMarketCap, available at <https://coinmarketcap.com/currencies/xrp/historical-data/>.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

Case No. 20-CV-10832 (AT)

[PROPOSED] ORDER

Having considered the motion of Plaintiff Securities and Exchange Commission (“SEC”) to extend the expert rebuttal report deadline to November 12, 2021, to which Defendant Ripple Labs, Inc. (“Ripple”) consents, and to extend the expert discovery deadline to January 14, 2022, to which Ripple objects, and for good cause shown,

IT IS HEREBY ORDERED THAT: (1) the current rebuttal report deadline will be extended to November 12, 2021; and (2) the current expert discovery deadline will be extended to January 14, 2022.

Dated: _____, 2021

By: _____
The Honorable Analisa Torres
United States District Judge

EXHIBIT B

From: [Ceresney, Andrew J.](#)
To: [Sylvester, Mark](#)
Cc: [Hanauer, Benjamin J.](#); [Gulay, Erol](#)
Subject: RE: Ripple expert schedule
Date: Friday, October 15, 2021 12:13:28 PM

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Mark and Ben:

Thank you for yesterday's call. I wanted to write to respond to your email and to set forth our position and reasoning clearly.

As discussed, Ripple agrees to extend the deadline for expert rebuttal reports two weeks to November 12 to accommodate the SEC's request for additional time. Ripple is also willing to extend the deadline for expert depositions from the current deadline of November 12, recognizing that there are at least 14 experts who will be deposed. However, Ripple is only willing to extend the end of expert discovery 28 days to December 10. We believe this is a reasonable and achievable deadline.

Under this schedule, we would have four weeks, or 18 business days, to take 14 depositions. This works out to less than one deposition per day, with some depositions likely not requiring a full day of questioning. Ripple's proposed schedule gives the parties sufficient time and avoids having to "dual track" any of the depositions, which was a concern you had raised. But even if dual-tracking is eventually required because of scheduling challenges, the SEC is more than equipped to handle two depositions in a single day, since no fewer than six SEC lawyers took depositions of fact witnesses during fact discovery, and the SEC currently has at least eight attorneys staffed on the matter.

We are prepared to immediately start scheduling depositions of experts for whom no rebuttal report will be filed. We do not plan to file a rebuttal for Mr. Cangiano and if the SEC is not planning to file rebuttal reports relating to any of Defendants' experts, we can schedule the experts without rebuttal reports as soon as possible – even before November 12. That would mean that the parties would have completed a meaningful portion of the depositions by mid-November, which lends further support to the reasonableness of Ripple's proposal.

Ripple does not accept the SEC's proposal to extend expert depositions even further out, to December 17, which you proposed today. We have emphasized since the beginning of the matter the prejudice to Ripple from any delay and the need for clarity in the market on the current status of XRP, especially in the U.S. You have agreed to the existence of this urgency. Any delay would likely impact the briefing schedule for summary judgment motion, a delay that is unnecessary and highly prejudicial to Ripple due to the significant harm to Ripple's business and XRP markets this suit is causing—a harm that is inflicted every additional day the case is pending.

Ripple is prepared and able to meet the current schedule. However, we understand that the SEC seeks additional time. In an effort to avoid burdening the Court with this, Ripple countered the SEC's proposal and offered to extend expert discovery by nearly an additional month. This is a generous extension and we hope you will reconsider your position and

agree. It would be a shame to burden the Court with a dispute over one week. If you decide to take the issue to the Court, we would propose filing one joint letter to minimize the burden on an already overtaxed Court.

I look forward to speaking today at 3:30 pm.

Best,

Andrew

From: Sylvester, Mark [mailto:sylvesterm@SEC.GOV]
Sent: Tuesday, October 12, 2021 18:22
To: Ceresney, Andrew J.
Cc: Hanauer, Benjamin J.
Subject: RE: Ripple expert schedule

Andrew,

Thanks for the call today. As discussed, we will get you our experts' availability and locations for 11/1-11/10 and 11/12. As also discussed, however, we do not think 9 days is a sufficient amount of time to depose a minimum of 14 expert witnesses, with numerous expert rebuttal reports planned to be submitted on the Friday before (10/29). We think, given the number of experts and breadth and complexity of the issues raised in the expert reports, a modest extension of the schedule makes sense. We are raising now for your consideration and so that you can if you wish inquire of your experts' availability for the entire proposed period. We will do the same.

We propose extending the rebuttal report deadline from 10/29 to 11/12, an extension of 9 business days.

We propose extending the close of expert discovery from 11/12 to 12/22. This would provide approximately 5.5 weeks – one of which contains the Thanksgiving holiday – for a minimum of 14 expert depositions.

Given the number of experts involved and the work to be performed, the many fact discovery disputes pending before the court, and the fact that our proposed schedule would not implicate any other impending deadlines, we believe this is a reasonable and appropriate request. We ask that you consider this request and let us know by Thursday whether you agree.

Thanks,
Mark

From: Ceresney, Andrew J. <aceresney@debevoise.com>
Sent: Tuesday, October 12, 2021 11:37 AM
To: Sylvester, Mark <sylvesterm@SEC.GOV>
Cc: Hanauer, Benjamin J. <HanauerB@sec.gov>

Subject: RE: Ripple expert schedule

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Ah – didn't realize that was you guys. Why don't you try me again in about 15 minutes.

From: Sylvester, Mark [<mailto:sylvesterm@SEC.GOV>]
Sent: Tuesday, October 12, 2021 11:35
To: Ceresney, Andrew J.
Cc: Hanauer, Benjamin J.
Subject: RE: Ripple expert schedule

Hi Andrew,

Ben and I tried you at 11:30. Is there another time today that works?

Thanks,
Mark

From: Ceresney, Andrew J. <aceresney@debevoise.com>
Sent: Tuesday, October 05, 2021 5:50 PM
To: Sylvester, Mark <sylvesterm@SEC.GOV>
Cc: Hanauer, Benjamin J. <HanauerB@sec.gov>
Subject: RE: Ripple expert schedule

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Cell works – 917 250 4487

From: Sylvester, Mark [<mailto:sylvesterm@SEC.GOV>]
Sent: Tuesday, October 05, 2021 17:40
To: Ceresney, Andrew J.
Cc: Hanauer, Benjamin J.
Subject: RE: Ripple expert schedule

Sure – we'll give you a call. Let us know the best number to reach you. Thanks.

From: Ceresney, Andrew J. <aceresney@debevoise.com>
Sent: Tuesday, October 05, 2021 4:41 PM
To: Sylvester, Mark <sylvesterm@SEC.GOV>
Cc: Hanauer, Benjamin J. <HanauerB@sec.gov>
Subject: RE: Ripple expert schedule

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Sure. I am in testimony tomorrow. Hopefully done by 530. That work?

From: Sylvester, Mark [<mailto:sylvesterm@SEC.GOV>]

Sent: Tuesday, October 05, 2021 15:39

To: Ceresney, Andrew J.

Cc: Hanauer, Benjamin J.

Subject: Ripple expert schedule

Hi Andrew,

Do you have a few minutes to talk about our expert schedule?

Thanks,

Mark