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January 27, 2022

**VIA ECF**

Hon. Analisa Torres  
United States District Court  
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 Torres:

We write on behalf of Defendant Ripple Labs Inc. (“Ripple”) to respond to the SEC’s letter (ECF No. 420) notifying the Court of yet another out-of-circuit decision in *SEC v. Keener*, No. 20-cv-21254, 2022 WL 196283 (S.D. Fla. Jan. 21, 2022).

As in its previous letter, *see* ECF Nos. 408 & 409, the SEC once again ignores the differences in procedural posture: its latest case was decided on a motion for summary judgment, “[u]pon review of the record,” *Keener*, 2022 WL 196283, at \*14, whereas its motion to strike asks the Court to dispose of Ripple’s defense without even considering the factual record.

The SEC also continues to ignore that, in this Circuit, even “disputed or substantial issues of law” are more properly “determinable only after discovery and a hearing on the merits.” *See William Z. Salcer, Panfeld, Edelman v. Envicon Equities Corp.*, 744 F.2d 935, 939 (2d Cir. 1984) (internal quotation omitted), *vacated on other grounds sub nom. Salcer v. Envicon Equities Corp.*, 478 U.S. 1015 (1986); *see also* ECF No. 171 at 10 & n.5 (collecting cases). The SEC has not identified any controlling authority granting a motion to strike a defense comparable to the one Ripple has asserted here. Without such controlling authority, the SEC’s motion must fail under the Second Circuit’s standards for motions to strike. No amount of out-of-circuit cases in different procedural stages will change that.<sup>1</sup>

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<sup>1</sup> This decision would not help the SEC in any event. The SEC argues that the law was clear regardless of whatever guidance it issued (or declined to issue). *E.g.*, ECF No. 132 at 16. But in

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Respectfully submitted,

/s/ Michael K. Kellogg  
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*Keener*, the court expressly looked beyond the statute to examine SEC guidance and other authority. *See* 2022 WL 196283 at \*14.