

[REDACTED]

[REDACTED]

Exhibit 42

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

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

Defendants.

**20 Civ. 10832 (AT)
ECF Case**

EXPERT REBUTTAL REPORT OF KRISTINA SHAMPANIER, PH.D.

November 12, 2021

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I. QUALIFICATIONS

1. I am a Senior Vice President at Compass Lexecon, an economic consulting firm. I received a Ph.D. in Business and Management Science (with specialization in Marketing) from the MIT Sloan School of Management in 2007. Prior to that, I received a Master's degree in Mathematics from Moscow State University in 2001 and a Master's degree in Economics from the New Economic School (Moscow) in 2002, both cum laude. While at MIT, I conducted research on judgment, decision making, and consumer behavior.
2. At MIT, and subsequently in litigation consulting settings, I designed, conducted, and analyzed numerous laboratory, online, and field experiments and other "primary data" studies, including in survey format. I have extensive experience in survey development and administration, and analysis of data on consumer behavior in academic, consulting, and litigation settings. I have also taught outside audiences on survey design and published in academic journals and practitioner publications.
3. I have been retained as an expert witness in various matters, including matters relating to trademark infringement, false advertising, employment, and healthcare. In each of these matters, I was retained to design and field a survey, experiment, or another "primary data" study, or to evaluate such studies conducted by others.
4. My Curriculum Vitae is attached as Appendix A to this report, and includes all publications I have authored in the last ten years.
5. Appendix B lists the materials I have considered in forming my opinions. I reserve the right to update my opinions if additional information becomes available.
6. Compass Lexecon is compensated for my work on this matter at the rate of \$975 per hour. I receive compensation from Compass Lexecon based on my billing and billings of staff

who have assisted me. Neither Compass Lexecon's compensation nor my compensation depends upon the outcome of this case.

II. ASSIGNMENT

7. I was retained by Kellogg, Hansen, Todd, Figel & Frederick PLLC on behalf of Ripple Labs Inc. ("Ripple") to evaluate the Expert Report of [REDACTED] [REDACTED] ("[REDACTED] Report") in this matter.¹

8. I reserve the right to revise my opinions if new information becomes available.

III. SUMMARY OF OPINIONS

9. Mr. [REDACTED] "analysis" suffers from the following fatal flaws:
- a. Mr. [REDACTED] provides no scientific basis for his causal conclusions regarding the effect of "Ripple's statements, actions, and product offerings" on the "perspective of a reasonable purchaser of XRP." Mr. [REDACTED] does not conduct an experiment, the gold standard for a causal conclusion. Neither does he conduct any other quantitative empirical analysis, such as a survey or analysis of data accumulated in the regular course of business, or qualitative empirical analysis such as focus groups. At best, his analysis can be viewed as a highly unreliable survey of a single respondent – himself.
 - b. Mr. [REDACTED] does not evaluate whether and to what degree XRP purchasers were exposed to Ripple's statements that he "review[s] and analy[zes]." A proper analysis of the impact of such statements on potential purchasers would include such an evaluation.

¹ Expert Report of [REDACTED] October 4, 2021, *U.S. Securities and Exchange Commission v. Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larson*, United States District Court, Southern District of New York.

- c. Mr. [REDACTED] “analysis” does not allow him to separate the supposed impact of Ripple’s conduct on the purchaser’s “perspective” from other potential influences, such as preexisting beliefs or general principles of economics.
- d. Mr. [REDACTED] does not explain how he selected Ripple’s statements that he “review[s] and analy[zes].”
- e. Mr. [REDACTED] does not offer any market segmentation or similar analysis that would allow him to establish that the different types of XRP purchasers he describes (investment-oriented and cross-border-transfer-oriented) actually exist, or that they are the only types of XRP purchasers that exist.
- f. Mr. [REDACTED] does not appear to possess the qualifications or experience needed to address certain aspects of the “perspective of a reasonable purchaser” or the effect of Ripple’s “statements, actions, and product offerings” on those aspects of the purchaser’s perspective, such as purchasers’ perceptions of Ripple’s at-issue statements.

IV. BACKGROUND

10. According to the operative complaint in this matter, Ripple (f/k/a Open Coin, Inc.) “is a Delaware corporation founded in September 2012, with its principal place of business in San Francisco, California, and an office in Manhattan.”² Ripple characterizes itself as “a San Francisco-based, privately-held payments technology company that uses blockchain innovation (including XRP) to allow money to be sent around the world instantly, reliably, and more

² First Amended Complaint, *Securities and Exchange Commission v. Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen*, 20 Civ. 10832 (AT), ECF Case, United States District Court, Southern District of New York, February 18, 2021 (“Complaint”), ¶16.

cheaply than traditional avenues of money transmission.”³ The Securities and Exchange Commission (“SEC”) alleges that Ripple has sold or distributed significant quantities of XRP, the digital asset at issue in this case.⁴

11. The SEC claims that XRP is an “investment contract” and thus a security.⁵ According to the SEC, “[i]nvestment contracts are instruments through which a person invests money in a common enterprise and reasonably expects profits or returns derived from the entrepreneurial or managerial efforts of others.”⁶ The SEC claims that those “who purchased XRP . . . invested into a common enterprise with other XRP purchasers, as well as with Ripple,” that the “common interest” was “in XRP’s price increasing,” and that Ripple “led investors to reasonably expect that they could reap a profit from their investment into XRP, derived from Ripple’s and its agents’ efforts into their common enterprise.”⁷ According to the SEC, XRP has “[n]o significant [n]on-[i]nvestment [u]se.”⁸ In particular, the SEC does not believe that XRP’s use in cross-border payments, such as via Ripple’s On-Demand Liquidity (“ODL”) product, is a “use” of XRP.⁹

12. The SEC claims that Ripple sold XRP without filing a security registration statement, and therefore “never provided investors with the material information that every year hundreds of

³ Answer of Defendant Ripple Labs, Inc. to Plaintiff’s First Amended Complaint, *Securities and Exchange Commission v. Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen*, 20-cv-10832 (AT), United States District Court, Southern District of New York, March 4, 2021 (“Ripple’s Answer”), ¶6, footnotes omitted.

⁴ Complaint, ¶1; Ripple’s Answer, ¶¶1, 7. According to the SEC, “[f]rom at least 2013 through the present,” Ripple “sold over 14.6 billion units” of XRP. Complaint, ¶1.

⁵ Complaint, ¶3.

⁶ Complaint, ¶31.

⁷ Complaint, ¶¶290, 302, 315.

⁸ Complaint, Section V.

⁹ Complaint, ¶131, Section V.A.

other issuers include in such statements.”¹⁰ Thus, according to the SEC, Ripple engaged in an “illegal securities offering from 2013 to the present.”¹¹

13. Ripple’s position is that XRP is not a security and that it “performs a number of functions that are distinct from the functions of ‘securities’ as the law has understood that term for decades”; for example, “XRP functions as a medium of exchange — a virtual currency used today in international and domestic transactions — moving value between jurisdictions and facilitating transactions.”¹² Among other things, Ripple contends that “holders of XRP cannot objectively rely on Ripple’s efforts” because “Ripple has no explicit or implicit obligation to any counterparty to expend efforts on their behalf,” “never explicitly or implicitly promised profits to any XRP holder,” and in any event is not in control of the XRP Ledger.¹³

V. SUMMARY OF THE [REDACTED] REPORT

14. Mr. [REDACTED] was retained by the SEC “to independently analyze and render opinions on the perspective of a reasonable purchaser of XRP on Ripple’s statements, actions, and product offerings” in connection with “purchases of XRP [that] were made . . . throughout the period that Ripple offered XRP for sale from 2013 to the filing of the SEC’s Complaint on December 22, 2020.”¹⁴ Mr. [REDACTED] states that the purchasers he considers “primarily include individuals, institutional investors, and financial services companies.”¹⁵ Mr. [REDACTED] performs what he calls “review and analysis of Ripple’s public statements made throughout the Issuance Period,

¹⁰ Complaint, ¶2.

¹¹ Complaint, ¶3.

¹² Ripple’s Answer, ¶1.

¹³ Ripple’s Answer, ¶¶7, 9, 10.

¹⁴ [REDACTED] Report, ¶2.

¹⁵ [REDACTED] Report, ¶2.

documents, and design decisions made by Ripple and/or its founders”¹⁶ and concludes the following with respect to the “perspective of a reasonable purchaser” of XRP:

- a. “[A] reasonable purchaser would have had an expectation of future profit derived from the efforts of Ripple.”¹⁷ In particular, Mr. [REDACTED] opines that Ripple’s actions “would create the hope that a purchaser could passively earn profits by owning XRP while Ripple took steps to increase the value of the coin.”¹⁸
- b. “[T]here are certain elements in Ripple’s and its founders’ design of XRP, the XRP Ledger, and a variety of software products that appealed more to a purchaser of XRP interested in making a profit than to financial institutions seeking to embrace Ripple’s stated vision of utilizing XRP as a bridge asset for cross-border asset transfers.”¹⁹

¹⁶ [REDACTED] Report, ¶7. In particular, Mr. [REDACTED] states that his “report focuses on what Ripple communicated publicly, including its assertions that usage of its products by financial institutions would ultimately lead to greater demand for XRP.” [REDACTED] Report, footnote 25.

¹⁷ [REDACTED] Report, ¶8.

¹⁸ [REDACTED] Report, ¶8. In the “Summary of Findings and Conclusions” section at the end of his report, Mr. [REDACTED] restates this conclusion as follows, “[o]ver the course of the Issuance Period a reasonable purchaser of XRP would have had an expectation of generating profit based on the efforts of Ripple and its management to accomplish the growth strategies that Ripple advertised to the public as being already achieved or planned for the future. . . . a reasonable purchaser would have closely considered many factors that were publicized by Ripple such as disclosed partnerships with financial institutions, the quality of Ripple’s management team, the target addressable market for Ripple’s products, and the availability of liquidity on trading platforms for XRP.” [REDACTED] Report, ¶89.

¹⁹ [REDACTED] Report, ¶9. In the “Summary of Findings and Conclusions” section at the end of the report, Mr. [REDACTED] restates this conclusion as “[c]ertain aspects of the design characteristics of XRP and the promotional activity of Ripple did not appeal to a pure utility use case.” [REDACTED] Report, ¶90. The rest of Mr. [REDACTED] “Summary of Findings” section and “Summary of Findings and Conclusions” section appear to list the reasons for which he holds these opinions about the “perspective of a reasonable purchaser” (or supposed logic of how a “reasonable purchaser” would arrive at these two “perspectives”) rather than providing any incremental “perspectives.”

VI. MR. ██████ OPINES ON THE “PERSPECTIVE OF A REASONABLE PURCHASER” RESULTING FROM RIPPLE’S “STATEMENTS, ACTIONS, AND PRODUCT OFFERINGS” WITHOUT EMPLOYING ANY RELIABLE METHODOLOGY

15. Mr. ██████ opinions concern the effects that Ripple’s “statements, actions, and product offerings” supposedly had on the “perspectives” of reasonable purchasers of XRP. For example, he opines that actions by Ripple “would create” certain expectations for “a reasonable purchaser.”²⁰ Conclusions of this sort are considered “causal,” in the sense that he implies that Ripple’s “statements, actions, and product offerings” caused changes in the “perspective of a reasonable purchaser.”

16. There are scientifically grounded and reliable methodologies to assess whether causal relationships of this sort exist. Mr. ██████ did not employ any such methodology. As a result, Mr. ██████ has offered no legitimate and reliable basis for his opinions. Mr. ██████ also offers no explanation as to why he failed to use such a methodology, and from the materials Mr. ██████ provided, it does not appear that Mr. ██████ has any experience or qualification that would enable him to use such a methodology to the extent that his opinions discuss perceptions of reasonable purchasers. Appendix C to this report lists examples of Mr. ██████ unsupported causal propositions.

17. I describe the bases for my opinion below. Section VI.A describes reliable scientific methodologies that can be employed (but that Mr. ██████ failed to employ) to determine whether the sort of causal relationship that Mr. ██████ posits actually exists. Section VI.B describes in detail Mr. ██████ “review and analysis.” Section VI.C describes why the “methodology” on which Mr. ██████ effectively relied is invalid as a matter of well-established scientific principles.

²⁰ ██████ Report, ¶8.

A. The established, reliable, and supportable method for evaluating causal propositions is the experimental method

18. The gold standard for testing a causal hypothesis is an experiment. For example, Babbie (2010) states that “[e]xperiments are the primary tool for studying causal relationships”²¹ and Shadish, et al. (2002) also state that “experiments are well-suited to studying causal relationships. No other scientific method regularly matches the characteristics of causal relationships so well.”²² The 2019 Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel (commonly referred to as the “Nobel Prize” in economics) was awarded to Abhijit Banerjee, Esther Duflo, and Michael Kremer for their use of experiments in the field of developmental economics²³ and, similarly, the 2021 Nobel Prize in Economics was awarded to David Card, Joshua Angrist and Guido Imbens for their work related to experiments and quasi-experiments.²⁴ The Royal Swedish Academy noted that “[m]ost applied science is concerned

²¹ Babbie, Earl. *The Practice of Social Research*. Twelfth Edition. Wadsworth Cengage Learning, 2010 (“Babbie (2010)”), p. 249.

²² Shadish, William R., Thomas D. Cook, and Donald T. Campbell. *Experimental and Quasi-Experimental Designs for Generalized Causal Inference*. Wadsworth Cengage Learning, 2002, pp. 7-9. Shadish, et al. (2002) further state “In many correlational studies, for example, it is impossible to know which of two variables came first, so defending a causal relationship between them is precarious. . . . The unique strength of experimentation is in describing the consequences attributable to deliberately varying a treatment.”

²³ The Royal Swedish Academy of Sciences. “The Prize in Economic Sciences 2019,” available at <https://www.nobelprize.org/uploads/2019/10/press-economicsciences2019-2.pdf>, p. 1.

²⁴ The Royal Swedish Academy of Sciences. “Scientific Background on the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2021 - Answering Causal Questions Using Observational Data,” available at <https://www.nobelprize.org/uploads/2021/10/advanced-economicsciencesprize2021.pdf> (“The Royal Swedish Academy of Sciences (2021)”), pp. 1-2. “This year’s Prize in Economic Sciences rewards three scholars: David Card of the University of California, Berkeley, Joshua Angrist of Massachusetts Institute of Technology, and Guido Imbens of Stanford University. The Laureates’ contributions are separate but complementary. . . . The combined contribution of the Laureates, however, is larger than the sum of the individual parts. Card’s studies from the early 1990s showcased the power of exploiting natural experiments to uncover causal effects in important domains. This early work thus played a crucial role in shifting the focus in empirical research using observational data towards relying on quasi-experimental variation to establish causal effects. The framework developed by Angrist and Imbens, in turn, significantly altered how researchers approach empirical questions using data generated from either natural experiments or randomized experiments with incomplete compliance to the assigned treatment. At the core, the LATE interpretation clarifies what can and cannot be learned from such experiments. Taken together, therefore, the Laureates’ contributions have played a central role in establishing the so-called design-based approach in economics. This approach – aimed at emulating a randomized experiment to answer a causal question using

with uncovering causal relationships,” and that in many fields, “randomized controlled trials (RCTs) are considered the gold standard for achieving this. . . . Randomized experiments can be used to answer a broad range of causal questions.”²⁵

19. Some of the most commonly discussed experiments are clinical trials, also referred to as randomized controlled trials, where patients are randomly assigned to a treatment group that receives the tested treatment, or a control group that receives a previously established treatment or a placebo.²⁶ In these experiments, if the studied health outcome of the test group (e.g., blood pressure) is statistically significantly better than in the control group, the researchers conclude that the tested treatment is effective (or more effective than the pre-existing treatment that the control group received).²⁷ That is, the researchers use a test group and a control group to establish whether and how a change in stimulus (tested treatment vs. control treatment) affects outcomes (e.g., blood pressure). Principles of this sort can be applied to measure causation in other fields as well, including economics as discussed above. Experiments are also common in marketing and consumer behavior and can be used to test whether receiving certain information affects consumers’ views about a particular product.²⁸

observational data – has transformed applied work and improved researchers’ ability to answer causal questions of great importance for economic and social policy using observational data.”

²⁵ The Royal Swedish Academy of Sciences (2021), pp. 1, 8.

²⁶ “In the medical sciences . . . randomized experiments are often used for determining the effects of a treatment. For example, a drug and a placebo may be randomly given to patients and the health effects then compared between those receiving the drug and those given a placebo.” The Royal Swedish Academy of Sciences (2021), p. 7.

²⁷ “If we observe statistically significant differences among the groups after a comparative randomized experiment, we have good evidence that the treatments actually caused these differences.” Yates, Daniel, David Moore, and George McCabe. *The Practice of Statistics*. First Edition. W.H. Freeman, 1999 (“Yates, et al. (1999)”), p. 276.

²⁸ See, for example, Assael, Henry. *Consumer Behavior, A Strategic Approach*. Houghton Mifflin Company, 2004, pp. 18-19. “Researchers try to determine the effects of marketing stimuli such as alternative product characteristics, advertising themes, or price levels (the cause) on consumer responses (the effect). In trying to establish such cause-and-effect relationships, the researcher must try to control all factors except the marketing stimulus being tested so that consumer responses can be attributed to that stimulus. Frito-Lay ran experiments under controlled conditions and found it could reduce oil in its light chip line (the stimulus or cause) by one-third without a decrease in consumer taste ratings (the response or effect).”

20. Here, a proper experimental methodology to support Mr. [REDACTED] opinions – which Mr. [REDACTED] did not use – would test whether the particular information he points to (i.e., Ripple’s “statements, actions, and product offerings”) actually caused the effects he ascribes to that information (e.g., creating particular beliefs or expectations among reasonable purchasers of XRP). To do that, a well-designed experiment would compare outcomes (“perspective of a reasonable purchaser”) in the actual world in which Ripple engaged in the at-issue “statements, actions, and product offerings” with outcomes in the but-for world in which the at-issue “statements, actions, and product offerings” were not present. This experiment would directly compare the “perspective of a reasonable purchaser” in the actual and the but-for worlds.

21. Academics and experts in litigation conduct similar experiments and experiment-like studies using a variety of methods involving either data accumulated in the regular course of business or by conducting new “primary data” studies.²⁹

22. Because one of the key outcomes of interest here is the beliefs held by potential XRP purchasers (e.g., whether or not the potential XRP purchasers had “an expectation of future profit”), the most direct way of measuring that outcome is through a survey of actual and potential XRP purchasers. For example, Jacoby (2013) notes surveys are “the methodological tool most often used by social scientists to probe states of mind,” and are “routinely used” in litigation contexts for that reason.³⁰

²⁹ See, for example, Diamond, Shari, S. “Reference Guide on Survey Research.” *Reference Manual on Scientific Evidence*. Third Edition. Federal Judicial Center, 2011, pp. 359-423 (“Diamond (2011)”), at pp. 397-401. Jacoby (2013) noted that in “[a] study of trademark cases (including applications for interim injunctions) that went to final judgment reported during a 10-year span from the mid-1990s through the mid-2000s revealed more cases where survey evidence was submitted (57.4 percent) than where surveys were not submitted.” Jacoby, Jacob, and Lynda Zadra-Symes. “Legal Issues That Can Be Examined via Surveys.” *Trademark Surveys: Volume 1: Designing, Implementing, and Evaluating Surveys*. Jacob Jacoby. ABA Book Publishing, 2013 (“Jacoby (2013)”), p. 7.

³⁰ Jacoby (2013), p. 6. Diamond (2011) explains that surveys “are used to describe or enumerate the beliefs, attitudes, or behavior of persons or other social units. Surveys typically are offered in legal proceedings to establish or refute claims about the characteristics of those individuals or social units (e.g., whether consumers are likely to be

23. There are multiple types of surveys that can be conducted. A traditional survey may ask respondents for information without trying to measure any causal effects. For example, a survey could simply ask respondents which political candidate they intend to vote for, or whether they have ever purchased a particular type of product, or how they understand a particular advertisement. However, as Diamond (2011) explains, “[s]urveys that merely record consumer impressions have a limited ability to answer questions about the origins of those impressions. The difficulty is that the consumer’s response to any question on the survey may be the result of information or misinformation from sources other than the trademark the respondent is being shown or the commercial he or she has just watched.”³¹ Surveys of this sort can be appropriate when the goal is to learn about prevalent opinions or preferences (such as which candidate is likely to win an election) rather than causal relationships (such as how new information may cause people to change their beliefs or preferences). When the purpose is to investigate such a causal relationship, a survey in the experimental form would be carried out. Diamond (2011), for example, states that “[m]any surveys are designed not simply to describe attitudes or beliefs or reported behaviors, but to determine the source of those attitudes or beliefs or behaviors. That is, the purpose of the survey is to test a causal proposition.”³² Because Mr. [REDACTED] attempts to describe a causal relationship (i.e., whether potential XRP purchasers’ “perspectives” are caused by Ripple’s at-issue “statements, actions, and product offerings”), an experimental form survey

misled by the claims contained in an allegedly deceptive advertisement; which qualities purchasers focus on in making decisions about buying new computer systems).” Diamond (2011), at p. 361.

³¹ Diamond (2011), at p. 397.

³² Diamond (2011) presents an example of how such a survey works: “For example, how does a trademark or the content of a commercial affect respondents’ perceptions or understanding of a product or commercial? Thus, the question is not merely whether consumers hold inaccurate beliefs about Product A, but whether exposure to the commercial misleads the consumer into thinking that Product A is a superior pain reliever. Yet if consumers already believe, before viewing the commercial, that Product A is a superior pain reliever, a survey that simply records consumers’ impressions after they view the commercial may reflect those preexisting beliefs rather than impressions produced by the commercial.” Diamond (2011), at pp. 397-399.

would have been the appropriate methodology to use here. Mr. [REDACTED] did not conduct such a survey.

24. A well-designed experimental-form survey would simulate the actual and the but-for world for a sample of “reasonable purchasers,” half of which would be randomly assigned to the “actual world” (test group) and the other half to the “but-for world” (control group). Diamond (2011) explains:

By adding one or more appropriate control groups, the survey expert can test directly the influence of the stimulus. In the simplest version of such a survey experiment, respondents are assigned randomly to one of two conditions. For example, respondents assigned to the experimental condition view an allegedly deceptive commercial, and respondents assigned to the control condition either view a commercial that does not contain the allegedly deceptive material or do not view any commercial. Respondents in both the experimental and control groups answer the same set of questions about the allegedly deceptive message. The effect of the commercial’s allegedly deceptive message is evaluated by comparing the responses made by the experimental group members with those of the control group members. If 40% of the respondents in the experimental group responded indicating that they received the deceptive message (e.g., the advertised product has fewer calories than its competitor), whereas only 8% of the respondents in the control group gave that response, the difference between 40% and 8% (within the limits of sampling error) can be attributed only to the allegedly deceptive message. Without the control group, it is not possible to determine how much of the 40% is attributable to respondents’ preexisting beliefs or other background noise (e.g., respondents who misunderstand the question or misstate their responses).³³

25. Similarly, Yates, et al. (1999) state that a great advantage of experiments is that “they can produce data that give good evidence for a cause-and-effect relationship between the explanatory

³³ Diamond (2011), at p. 398.

and response variables. We know that in general, a strong association does not imply causation.

A strong association in data from a well-designed experiment does imply causation.”³⁴

26. In this case, a well-designed experimental survey would involve the following steps:³⁵

- a. The survey should be designed, conducted, and analyzed by an expert who is “[a]ppropriately [s]killed and [e]xperienced,” which Mr. [REDACTED] is not.³⁶
- b. Actual and potential purchasers of XRP (the target population) would be recruited to participate in a survey. Those could be drawn, for example, from the three types of purchasers that Mr. [REDACTED] highlighted, “individuals, institutional investors, and financial services companies.”
- c. The “[i]dentification of the proper target population or universe is recognized uniformly as a key element in the development of a survey.”³⁷

³⁴ Yates, et al. (1999), p. 275. Yates, et al. (1999) describe the “logic behind a randomized comparative design” as: “• Randomization produces groups of experimental units that should be similar in all respects before the treatments are applied. • Comparative design ensures that influences other than the experimental treatments operate equally on all groups. • Therefore, differences in the response variable must be due to the effects of the treatments. That is, the treatments not only are associated with the observed differences in the response but must actually cause them.”

³⁵ A survey would be preceded by exploratory research, which may include other “primary data” collection, and a pretest. The exploratory research and the design stage would include numerous decisions such as which at-issue statements to test, and how to instrumentalize the targeted population.

³⁶ Diamond (2011), at p. 375. “Experts prepared to design, conduct, and analyze a survey generally should have graduate training in psychology (especially social, cognitive, or consumer psychology), sociology, political science, marketing, communication sciences, statistics, or a related discipline; that training should include courses in survey research methods, sampling, measurement, interviewing, and statistics. In some cases, professional experience in teaching or conducting and publishing survey research may provide the requisite background. In all cases, the expert must demonstrate an understanding of foundational, current, and best practices in survey methodology, including sampling, instrument design (questionnaire and interview construction), and statistical analysis. Publication in peer-reviewed journals, authored books, fellowship status in professional organizations, faculty appointments, consulting experience, research grants, and membership on scientific advisory panels for government agencies or private foundations are indications of a professional’s area and level of expertise,” (footnotes omitted). While Mr. [REDACTED] may have some training in statistics, he does not appear to have any training (e.g., in marketing or psychology) that would allow him to ask questions in an unbiased fashion.

³⁷ Diamond (2011), at p. 376, footnote 76.

Diamond (2011) further states that “One of the first steps in designing a survey or in deciding whether an existing survey is relevant is to identify the target population (or universe). The target population consists of all elements (i.e., individuals or other units) whose characteristics or perceptions the survey is intended to represent. Thus, in trademark litigation, the relevant population in some disputes may include all prospective and past purchasers of the

- d. Respondents who qualify would be randomly assigned to a test group or a control group.
- e. Test group respondents would be exposed to a set of tested statements and actions by Ripple: specifically, the “statements, actions, and product offerings” that Mr. [REDACTED] describes in his report. These could be presented in a form of a vignette accompanied by news articles, video interviews, or other stimuli approximating the marketplace realities.³⁸ The names “Ripple” and “XRP” could be anonymized to control for prior knowledge.
- f. The control group would be exposed to the same procedure, except that the at-issue elements of the statements, actions, and product offerings would be replaced

plaintiff's goods or services and all prospective and past purchasers of the defendant's goods or services.... The definition of the relevant population is crucial because there may be systematic differences in the responses of members of the population and nonmembers. For example, consumers who are prospective purchasers may know more about the product category than consumers who are not considering making a purchase. The universe must be defined carefully. For example, a commercial for a toy or breakfast cereal may be aimed at children, who in turn influence their parents' purchases. If a survey assessing the commercial's tendency to mislead were conducted based on a sample from the target population of prospective and actual adult purchasers, it would exclude a crucial relevant population. The appropriate population in this instance would include children as well as parents.” Diamond (2011), at pp. 376-377.

Jacoby (2013) also notes the importance of selecting the correct survey universe in the context of trademark cases: “The rationale relied upon for identifying the relevant buyer class (the ‘survey universe,’ see chapter 5) is important, as courts may find the universe of relevant buyers too broad or too narrow. ... Using the wrong universe can result in the survey being given little weight or even deemed inadmissible.” Jacoby (2013), pp. 11-12.

³⁸ Yates, et al. (1999) state that the “most serious potential weakness of experiments is lack of realism. The subjects or treatments or setting of an experiment may not realistically duplicate the conditions we really want to study.... Lack of realism can limit our ability to apply the conclusions of an experiment to the settings of greatest interest. Most experiments want to generalize their conclusions to some setting wider than that of the actual experiment. Statistical analysis of the original experiment cannot tell us how far the results will generalize... A convincing case that an experiment is sufficiently realistic to produce useful information is based not on statistics but on the experimenter's knowledge of the subject matter of the experiment. The attention to detail required to avoid hidden bias also rests on subject matter knowledge. Good experiments combine statistical principles with understanding of a specific field of study.” Yates, et al. (1999), pp. 278-279.

by “placebo” versions that lack the content that is hypothesized to have an effect on reasonable purchasers’ “perspective.”³⁹

- g. “In designing a survey-experiment, the expert should select a stimulus for the control group that shares as many characteristics with the experimental stimulus as possible, with the key exception of the characteristic whose influence is being assessed.”⁴⁰
- h. Both groups will then be evaluated on a “dependent measure” which would aim at gaining the unbiased “perspective of a reasonable purchaser.” For example, respondents could be asked in open-ended and closed-ended formats about their perception of the digital asset described to them, whether they would expect its price to grow because of the efforts of the company discussed in the study, whether they would expect the digital asset to be usable in transactions, including cross-border transactions, and what their own intentions would be with respect to

³⁹ For example, Mr. [REDACTED] claims that in a certain passage in an interview with Bloomberg Technology, Ripple’s CEO Brad Garlinghouse contributed to certain underrating of XRP potential purchasers about XRP. [REDACTED] Report, ¶¶25-26.

The passage called out by Mr. [REDACTED] reads, “[w]hen Ripple uses XRP we’re solving a payments problem. I believe that the more utility you draw, the more demand you’re going to drive. And for most of these digital assets you have fixed supply. If you have fixed supply and increasing demand it’s going to drive price up.” Mr. [REDACTED] believes that because of this statement, “[p]otential purchasers of XRP would have understood [that] XRP, as designed, provided a mechanism for passive XRP owners to benefit financially from Ripple’s success as a provider of financial service products built on the XRP Ledger, as a developer of the XRP ecosystem, and as a driver of demand for XRP” (footnote omitted).

In the experiment, respondents in the test group could be exposed to the interview the way it occurred, while the control group respondents could be exposed to the same interview but where the passage identified by Mr. [REDACTED] would be removed or replaced by a “placebo.”

In addition to testing the causal proposition, such an approach would account for whether potential purchasers who viewed the interview would even pay attention to the passage highlighted by Mr. [REDACTED]. Additional empirical research would be needed to further investigate what percentage of the potential or actual XRP purchasers was even exposed to the interview. Mr. [REDACTED] addressed neither of these topics.

⁴⁰ Diamond (2011), at p. 399.

the asset discussed (e.g., whether they would consider purchasing it, and what they would potentially do with it afterwards).

- i. After data are collected, statistical analysis would be carried out to assess whether the perspectives of the test and control groups differ. If the perspectives are *not* statistically significantly different, one can conclude that the perspective of a reasonable purchaser is *not* caused by the statements and actions tested in the experiment (i.e., those elements that differ in the stimuli presented to the test and control group).⁴¹ (Strictly speaking, when a researcher finds no statistically significant difference in the outcomes between the test and control groups, the researcher “fails to reject the null hypothesis” of no causal relationship.)
- j. The study would also allow a researcher to assess whether different groups respond to inputs differently. In particular, Mr. [REDACTED] opines that Ripple’s actions and the design of XRP and the XRP Ledger “appealed more to a purchaser of XRP interested in making a profit than to financial institutions seeking to . . . [use] XRP as a bridge asset for cross-border asset transfers.”⁴² Differences in effects observed among various subsamples in the study (e.g., individual investors vs. representatives of financial institutions) can be tested. Alternatively, data can be examined for whether participants respond in a way that makes them naturally fall into two distinct groups of “investors for profit” and “cross-border transfer users,” and whether the share of “investors for profit” is statistically significantly different in the test group than in the control group. Mr. [REDACTED] makes no effort to

⁴¹ “If we observe statistically significant differences among the groups after a comparative randomized experiment, we have good evidence that the treatments actually caused these differences.” Yates, et al. (1999), p. 276.

⁴² [REDACTED] Report, ¶9.

establish that the two groups of XRP purchasers he purports exist actually exist, or to measure their relative sizes. He appears to assume that “[i]nvestment-[o]riented” purchasers are prevalent.⁴³

27. Mr. [REDACTED] does not appear to have any training or experience in designing and performing such a study. In any event, he did not carry it out in connection with offering his opinion in this case.

28. Other, non-experimental options are also available to evaluate perceptions and expected behavior, although they are less effective in isolating causal effects than the gold-standard methodology of conducting an experiment. For example, someone interested in how reasonable purchasers understand certain information could conduct a simple survey, without a control group, or carry out a qualitative study such as focus groups or qualitative phone interviews. While these methods would not allow a researcher to test a particular causal hypothesis, they are used to develop such hypotheses for subsequent experimental testing.⁴⁴

29. Mr. [REDACTED] does not appear to have any training or experience in designing and performing such a study, and he did not carry out such a study in connection with offering his opinion in this case.

⁴³ For example, in his Section 7 titled “Ripple Communications and Promotional Statements,” Mr. [REDACTED] includes Subsection 7.1, titled “Promotional Factors Considered by an Investment-Oriented Purchaser.” However, he does not include a parallel subsection that would address promotional factors presumably considered by the other group of XRP purchasers that he claims exists, “[p]urchasers of XRP for cross-border payments.” [REDACTED] Report, ¶86.

⁴⁴ Assael, Henry. *Consumer Behavior, A Strategic Approach*. Houghton Mifflin Company, 2004, p. 17. “Qualitative research is designed to learn more about consumers’ underlying motives by asking them questions in an unstructured manner. It allows researchers to form hypotheses regarding consumer actions and to better define research areas so as to know the kinds of questions to ask in more structured surveys or experiments. The two most frequently used qualitative approaches are focus groups interviews and projective techniques.”

Hague, et al. (2016) state that focus groups can be used to “identify and explore behaviour, attitudes and processes” and can be used “to enhance alternative means of data collection. Typically this would be as a precursor to a quantitative stage – determining the issues to be covered in the structured interviewing and giving insights into the problems or opportunities that are being researched.” Hague et al. *Market Research in Practice*. Kindle Edition, Third Edition. Kogan Page, 2016, p. 69.

30. It is also possible to conduct quasi-experiments using preexisting data. In fact, the 2021 Nobel Laureates in Economics received the Nobel Prize for their use of quasi-experimental designs and for their development of a “general [causal inference] framework applicable to both quasi-experimental and experimental work.”⁴⁵ In the current case, someone interested in testing whether the “statements, actions, and product offerings” at issue in Mr. ██████ report affected the “perspective” of “reasonable purchasers” could compare actual historical trading data for XRP (the real world) against that of other digital assets, which would serve as a proxy for the but-for world assuming that they are not affected by Ripple’s “statements, actions, and product offerings.” The critical element of such a study on preexisting data would be “controlling” for all other differences that are not related to the at-issue conduct. Shadish, et al. (2002) discuss that because “quasi-experimental control groups may differ from the treatment condition in many systematic (non-random) ways other than the presence of the treatment,” researchers have to worry about ruling out alternative explanations for the observed effect (e.g., by controlling for all other differences) “in order to get a more valid estimate of the treatment effect.”⁴⁶

31. It is not clear to me whether Mr. ██████ possesses the qualifications to conduct such a study on preexisting data, but he certainly did not carry it out.

⁴⁵ The Royal Swedish Academy of Sciences (2021), pp. 4, 27-28.

⁴⁶ Shadish, William R., Thomas D. Cook, and Donald T. Campbell. *Experimental and Quasi-Experimental Designs for Generalized Causal Inference*. Wadsworth Cengage Learning, 2002, p. 14. Specifically, “[i]n quasi-experiments, the cause is manipulable and occurs before the effect is measured. However, quasi-experimental design features usually create less compelling support for counterfactual inferences. For example, quasi-experimental control groups may differ from the treatment condition in many systematic (non-random) ways other than the presence of the treatment. Many of these ways could be alternative explanations for the observed effect, and so researchers have to worry about ruling them out in order to get a more valid estimate of the treatment effect.”

See also Meyer, Bruce D. “Natural and Quasi-Experiments in Economics.” *Journal of Business & Economic Statistics* 13(2): 151-161, April 1995, at pp. 153-156.

- B. Mr. [REDACTED] does not evaluate whether and to what degree XRP purchasers were exposed to the at-issue communications and does not attempt to empirically evaluate the causal effect, if any, of Ripple’s public communications on perceptions or purchase decisions of actual or potential purchasers of XRP**

32. Mr. [REDACTED] conducts his “analysis” in three sections of his report, 5, 6, and 7.⁴⁷ The three sections have a similar structure, where initial subsections lay out Ripple’s alleged conduct and theoretical discussions, while a final subsection jumps to conclusions about the “perspective of [a] reasonable purchaser” without offering any empirical support for such conclusions (some conclusions about “perspective” are also weaved into the initial subsections).

33. As a preliminary matter, I note that Mr. [REDACTED] does not distinguish between conclusions he makes on the basis of basic economic principles and those he makes based on Ripple’s communications. In his logic, it is impossible to distinguish where potential or actual purchasers would have arrived at a particular perception or purchase decision based on basic economic principles regardless of anything Ripple said or did (e.g., such as principles of demand and supply) or whether Ripple’s public communication or other at-issue conduct contributed to those perceptions and purchase decisions. The experimental method discussed above would allow an expert to distinguish between these potentially confounding influences. Such distinction is generally impossible when an “expert” does not apply the experimental method, as is the case with Mr. [REDACTED] “analysis.”

34. I address each of the three “analysis” sections of the [REDACTED] Report in the corresponding subsections below.⁴⁸

⁴⁷ Other sections include introduction, summaries of findings and conclusions, background, Ripple platform overview, and a note on right to supplement.

⁴⁸ I discuss in more detail section 5 of the [REDACTED] Report. The issues with sections 6 and 7 are largely similar.

a. [REDACTED] *Report Section 5 “Features of XRP Coin Economics and Suitability as a Bridge Asset”*

35. In Section 5.1 of his report, Mr. [REDACTED] explains that “[a]ll else equal, for any digital asset with a fixed-supply cap, increased demand for the coin increases the price of the coin. This is a basic economic result of supply and demand.”⁴⁹ Then he mentions that “Ripple directly and publicly made the case for this relationship between increased demand for XRP and the future price of XRP” and offers as an example Mr. Garlinghouse’s interview with Bloomberg Technology in 2017.⁵⁰ Mr. [REDACTED] then concludes: “Potential purchasers of XRP would have understood the simple economics behind the message being promoted by Ripple on this subject: XRP, as designed, provided a mechanism for passive XRP owners to benefit financially from Ripple’s success as a provider of financial service products built on the XRP Ledger, as a developer of the XRP ecosystem, and as a driver of demand for XRP.”⁵¹

36. The critical flaw of this “analysis” is that Mr. [REDACTED] does not investigate whether any XRP purchasers were exposed to the interview, paid attention to it, understood it in the way consistent with Mr. [REDACTED] interpretation (i.e., did XRP purchasers believe that increased demand for XRP would increase its price, and if so, was that belief due to the particular statement in the interview or due to some other source), or were impacted by it in their purchase decisions (e.g., purchased XRP due to the particular statement in the interview). Nor does he acknowledge that XRP had been offered for several years (since 2013) before this interview took place.

⁴⁹ [REDACTED] Report, ¶23.

⁵⁰ [REDACTED] Report, ¶25.

⁵¹ [REDACTED] Report, ¶26, footnote omitted.

37. Similarly, in section 5.2 of his report, Mr. [REDACTED] describes advantages of “stablecoin” over variable-price assets (e.g., XRP) for cross-border currency transfers.⁵² In this theoretical discussion, he states that Ripple’s CTO mentioned in 2016 one such supposed “shortcoming” of XRP “in a post on XRP Chat.”⁵³ Mr. [REDACTED] then concludes that the relationship between the success of the platform and price of the coin “is fantastic for investment-oriented purchasers of XRP, but not for the purchasers who are exclusively interested in the utility use of the cross-border payment product.”⁵⁴

38. This section is flawed for similar reasons as section 5.1. Mr. [REDACTED] does not investigate whether it is the general theoretical logic that he offers that would lead to the supposed perspective of the two types of potential XRP purchasers he identifies, rather than the CTO’s statement, which only touches upon one of two supposed “shortcomings.” Mr. [REDACTED] does not investigate whether any prospective purchasers were exposed to the CTO’s statement, paid attention to it, understood it in the way consistent with Mr. [REDACTED] interpretation (i.e., do XRP purchasers believe that XRP is a good investment but not a good instrument for cross-border transfers, and if so, did that belief come about due to the CTO’s chat statement), or were impacted by it in their purchase or post-purchase decisions (i.e., purchased XRP as investment and not for cross-border transfers because of the CTO’s chat statement). Mr. [REDACTED] also does not acknowledge that XRP had been offered for several years before the CTO’s statement. Neither does he offer any market segmentation or similar analysis to allow him to establish that the two types of purchasers he describes are actually distinct or that there are only two types of purchasers.

⁵² [REDACTED] Report, ¶¶27-29.

⁵³ [REDACTED] Report, ¶28.

⁵⁴ [REDACTED] Report, ¶31.

39. In section 5.3 of his report, Mr. [REDACTED] summarizes the “Perspective of a Reasonable Purchaser with Respect to XRP’s Fixed-Supply Model,” again splitting the purchasers into “investment-oriented purchasers of XRP” and “purchasers who are exclusively interested in the utility use of the cross-border payment product.” Again, he does not explain whether these two types of purchasers were exposed or paid attention to the specific Ripple statements, whether the perspectives (perceptions and purchase behaviors) of these two types of potential purchasers were affected by those statements or by general economic logic, why these two types of customers represent a relevant market segmentation, and whether there is any basis to say these two are the only types of potential purchasers that should be considered.

b. [REDACTED] Report Section 6 “XRP Sale and Escrow Mechanics”

40. In sections 6.1-6.5 of his report, Mr. [REDACTED] discusses “XRP Sale and Escrow Mechanics,” again intermingling theoretical logic, statements made by Ripple, and actions taken by Ripple.⁵⁵ This intermingling is flawed for the reasons I explain above. Then, in section 6.6, Mr. [REDACTED] describes the supposed “Perspective of a Reasonable Purchaser with Regards to Ripple’s XRP Sales and Escrow,” again discussing separately the perspective of “a potential investment-oriented purchaser of XRP” and “a reasonable purchaser of XRP that is exclusively considering the utility use of the coin.”⁵⁶ Again, he does not explain why his segmentation into these two types of purchasers is valid, or whether these two types of purchasers were exposed or

⁵⁵ [REDACTED] Report, ¶¶32-47. Occasionally, Mr. [REDACTED] would interject these descriptions with what appears to be his take on purchaser “perspective.” For example, he states that various aspects of institutional purchasing of XRP, “repeatedly communicated by Ripple in the XRP Markets Reports,” “would appeal to an individual purchaser with a long-term investment mindset.” [REDACTED] Report, ¶37. He does not identify any basis for distinguishing between subsets of potential XRP purchasers (for example, his “individual purchaser with a long-term investment mindset” versus an individual purchaser with a short-term investment mindset, or an individual purchaser with no investment mindset, or an entity purchaser) but also makes no attempt to argue that his conclusions hold as to all subsets of potential XRP purchasers.

⁵⁶ [REDACTED] Report, ¶¶48-49.

paid attention to the specific Ripple statements, whether they interpreted the statements the same way as Mr. [REDACTED] or whether the perspectives (perceptions and purchase behaviors) of these two types of potential purchasers are affected by those statements or by general economic logic. Each of these omissions is a critical flaw in Mr. [REDACTED] reasoning.

c. [REDACTED] Report Section 7 “Ripple Communications and Promotional Statements”

41. In Sections 7.2 to 7.7 of his report, Mr. [REDACTED] discusses various Ripple communications.⁵⁷ Then, in Section 7.8, he outlines the “Perspective of a Reasonable Purchaser with Respect to Ripple Communications,” again splitting the purchasers without explanation or support for his categorization of those purchasers into “Investment-oriented purchasers” of XRP and “Purchasers of XRP for cross-border payments.” For example, Mr. [REDACTED] states, without any empirical evidence, that “Ripple’s extensive public comments and reports about these topics likely served to inform and persuade investment-oriented purchasers about the potential reward of purchasing XRP for the purpose of generating a profit. Indeed, the use of terms such as ‘traction,’ ‘market fit,’ ‘total addressable market,’ and even ‘investors’ when describing Ripple’s

⁵⁷ These sections also occasionally include comments about purchasers’ “perspective,” such as “Such communications [by Ripple executives, linking the company’s efforts to increases in the price of XRP] would have appealed to potential purchasers who were interested in XRP as an investment.” [REDACTED] Report, ¶53. Similarly, Mr. [REDACTED] occasionally infuses these sections with theoretical logic like this statement: “[o]ne of the key aspects for evaluating whether a company or project has a viable business model is whether it has ‘traction’, i.e., to what extent is there is ‘product/market-fit’ where actual customers have signed up to use the company’s product or service such as to demonstrate that it solves a real problem.” [REDACTED] Report, ¶61. In another such instance, Mr. [REDACTED] explains, “[w]hen investment-oriented purchasers evaluate a company or project as a potential investment, they want to understand how the funds collected will be deployed by management to grow the venture.” [REDACTED] Report, ¶76. Some statements appear to be somewhere in between theoretical logic and conclusions on purchaser “perspective.” For example, Mr. [REDACTED] states, “Ripple’s ongoing replacement of released XRP into new escrows reinforced the positive effect of this reduction in circulating supply by showing a commitment to keeping those coins away from trading platforms for even longer.” [REDACTED] Report, ¶43. Another example is the statement that “Although the buyback activity would not have mattered to purely utility-oriented purchasers of XRP, buybacks are very important signals for investment-oriented purchasers. Open market purchases, and the public communications about those purchases, alter the potential risk and reward of an investment in XRP by increasing buying pressure on the coin and by reducing the probability and severity of a possible crash in the price of XRP. Like the escrow accounts described in Section 6.3, the buyback activities executed by Ripple would also have the effect of reducing the effective float of the coin.” [REDACTED] Report, ¶47.

progress and growth potential are words typically understood by market participants to mean that they should view buying XRP as a potentially profitable investment.”⁵⁸ He concludes, “[i]t is my opinion from carefully following the digital asset space that many of Ripple’s public communications conveyed to reasonable purchasers of XRP an expectation of future profit derived from the efforts of Ripple.”⁵⁹

42. Mr. ██████ supposedly supports this conclusion in part by section 7.1, where he describes which factors “a reasonable investment-oriented purchaser of XRP would consider” based on his own “experience as an investor in digital assets as well as [his] close observation of the digital asset space.”⁶⁰ Thus, as with the other sections of his report, the entirety of section 7 does not include any empirical analysis (e.g., survey) that would actually evaluate whether these are the appropriate segments of purchasers, whether purchasers of either type were exposed to or paid attention to the Ripple statements, whether they interpreted them the same way as Mr. ██████ or whether the statements had any effect on their perspectives. And, as with the other sections, he offers no support for distinguishing between the two purchaser types he chose to focus on, and no support for assuming that no other types of purchasers exist. He offers no empirical support for his opinions in this section; at most, Mr. ██████ offers the perspective of a single such purchaser or potential purchaser, Mr. ██████ himself, which is akin to conducting a survey of a single person, an egregious methodological error (discussed in greater detail in the next section).⁶¹

⁵⁸ ██████ Report, ¶85.

⁵⁹ ██████ Report, ¶87.

⁶⁰ ██████ Report, ¶50.

⁶¹ It is not clear if his perspective is solely of an “investment-oriented” purchasers or also a cross-border payment purchaser.

d. Other Flaws in Mr. [REDACTED] “Analysis”

43. In addition to the flaws discussed above, Mr. [REDACTED] does not explain how he made the selection of Ripple’s statements that he “review[s] and analy[zes]” or how he identified the passages that he considers likely to have affected the perspectives of actual or potential XRP purchasers. I note that the statements Mr. [REDACTED] discusses are not the same as the ones that the SEC alleged formed the basis of XRP purchasers’ beliefs about Ripple’s conduct. For example, the complaint identifies a statement made by Mr. Garlinghouse in 2018 in an interview with Bloomberg News as one that was likely to create expectations among XRP purchasers, while Mr. [REDACTED] does not address it:

“[W]e have found that part of the reason why XRP has performed well, is because people realize. . . if we work with the system to solve this problem and we can solve that problem at scale, a problem measured in the trillions of dollars, then there is a lot of opportunity to create value in XRP.” Garlinghouse also speculated in the December 14, 2017 interview that, if a company created “utility” for a digital asset like XRP, “then there will be demand for the tokens, [and] the price of the tokens will go up.”⁶²

Similarly, Mr. [REDACTED] identifies Mr. Garlinghouse’s interview with Bloomberg Technology in 2017, discussed above, as one that was likely to create expectations among XRP purchasers, while the complaint does not address it:

When Ripple uses XRP we’re solving a payments problem. I believe that the more utility you draw, the more demand you’re going to drive. And for most of these digital assets you have fixed supply. If you have fixed supply and increasing demand it’s going to drive price up.⁶³

⁶² Complaint, ¶348. This statement is mentioned as part of Section IV.C “Ripple Led Investors to Reasonably Expect a Profit from Their Investment Derived from Defendants’ Efforts.”

⁶³ [REDACTED] Report, ¶25.

44. Mr. [REDACTED] also highlights certain terms Ripple used, such as “investor”⁶⁴ to imply that Ripple itself treated purchasers of XRP as investors (even though he does not establish that a single XRP purchase was made for the purposes of investing as a result of the alleged conduct). However, Mr. [REDACTED] elsewhere acknowledges that jargon used in a given industry or setting does not necessarily align with traditional word uses; in particular, he points out that when he uses words like “coin” and “token” in his report, he does not imply “currency.”⁶⁵ Mr. [REDACTED] offers no explanation as to why he applies this understanding selectively throughout his report.

45. It is also worth noting that in section 7.2 of his report, Mr. [REDACTED] states, “[t]he most popular forum, by number of posts, on XRP Chat is the ‘XRP Trading and Price Speculation’ forum which currently has over 200,000 posts discussing issues related to the trading and investment case for XRP, as noted in its sub-header: ‘Speculation about trading and price of XRP. Technical trading tips, fundamental analysis.’”⁶⁶ This is the closest Mr. [REDACTED] gets to actual empirical analysis of the XRP purchaser “perspective” in the entire report. He does not, however, articulate what percentage of actual or potential XRP purchasers contribute to the chat or read it, whether this sample is representative of all the XRP actual and potential purchasers (including institutional ones), whether any of the 200,000 posts mention using XRP for transactions (or any other systematic analysis of the content), or whether it is feasible to establish a causal relationship between the content of the posts and the alleged conduct (or whether the posts are based entirely on pre-existing beliefs and general economic principles). There is a

⁶⁴ [REDACTED] Report, ¶¶52, 81.

⁶⁵ [REDACTED] Report, footnote 2.

⁶⁶ [REDACTED] Report, ¶54.

reliable analytical method that could have been applied to these posts to answer these questions;⁶⁷ Mr. [REDACTED] did not use it.

C. Mr. [REDACTED] “review and analysis” does not evaluate any actual or potential XRP purchaser’s perspective except for his own

46. One way of characterizing Mr. [REDACTED] analysis is that he conducted a survey of one actual or potential XRP purchaser – himself. This interpretation highlights the inadequacy of his method. To the best of my knowledge, no test of a causal proposition would be published in an academic journal or accepted by a court in litigation with a sample size of one.⁶⁸ For example, Yates, et al. (1999) state that such a study would not be trusted:

You would not trust the results of an experiment that fed each diet to only one rat. The role of chance is too large if we use two rats and toss a coin to decide which is fed the new diet. The more rats we use, the more likely it is that randomization will create groups that are alike on the average. When differences among the rats are averaged out, only the effects of the different treatments remain. Here is a third principle of statistical design of experiments, called *replication*: repeat each treatment on a large enough number of

⁶⁷ “[C]ontent analysis is a method of collecting social data through carefully specifying and counting social artifacts such as books, songs, speeches, and paintings. Without making any personal contact with people, you can use this method to examine a wide variety of social phenomena... [C]ontent analysis is the study of recorded human communications. Among the forms suitable for study are books, magazines, web pages, poems, newspapers, songs, paintings, speeches, letters, e-mail messages, bulletin board postings on the Internet, laws, and constitutions, as well as any components or collections thereof. ... Content analysis is particularly well suited to the study of communications and to answering the classic question of communications research: ‘Who says what, to whom, why, how, and with what effect?’... Common units of analysis in content analysis include elements of communications—words, paragraphs, books, and so forth. Standard probability-sampling techniques are sometimes appropriate in content analysis.” Babbie (2010), pp. 229, 333, 359.

⁶⁸ Hibberts, et al. (2012) note that a key decision when conducting a research study is “deciding the appropriate sample size. The simplest answer is that the bigger the sample the better, but this assumes the sampling method is appropriate and implemented correctly. In inferential statistics, bigger is better because it results in smaller standard errors, greater statistical power or fewer Type II errors in hypothesis testing, and tighter or narrower confidence intervals in estimation. A Type II error occurs when a researcher fails to reject a false null hypothesis. (In contrast, a Type I error occurs when a researcher rejects a true null hypothesis; the null hypothesis typically states that there is no relationship in the population).” Hibberts, Mary, R. Burke Johnson, and Kenneth Hudson. “Common Survey Sampling Techniques.” *Handbook of Survey Methodology for the Social Sciences*. Ed. Lior Gordon. Springer, 2012, p. 69.

See also Yates, et al. (1999), p. 276. “One important point should be made immediately, however: *experiments with many subjects are better able to detect differences among the effects of the treatments than similar experiments with fewer subjects.*” (emphasis in original).

experimental units or subjects to allow the systematic effects of the treatments to be seen.” (emphasis in original)

Babbie (2010) also discusses in a general example of sample size selection how “[o]bviously, it wouldn’t be a very good idea to select a sample of only one, because the chances are great that we’ll miss the true mean [] by quite a bit... The progression of sampling distributions is clear. Every increase in sample size improves the distribution of estimates of the mean.... The larger the sample selected, the more accurate it is as an estimation of the population from which it was drawn.”⁶⁹

47. Certain statements in the [REDACTED] Report make clear that Mr. [REDACTED] has effectively taken this unsupportable approach, akin to a survey of himself. For example, Mr. [REDACTED] states, “[b]ased on my experience investing in digital assets, a reasonable purchaser of XRP would understand that if Ripple’s ambitious cross-border payment business were successful, the ensuing demand for XRP would tremendously increase the price of XRP.”⁷⁰ That opinion is not grounded in any scientifically recognized methodology.

48. Evaluating Mr. [REDACTED] approach in this way demonstrates that it is unreliable and unscientific for a variety of reasons, some of which include:

- a. Mr. [REDACTED] is aware of the purpose and sponsor of the study as well as the desired outcome for the sponsor, thus the “survey” is “double-non-blind,” as opposed to the gold-standard “double-blind” approach. The importance of double-blindness of a study has been well-documented in the literature:

One way to protect the objectivity of survey administration is to avoid telling interviewers who is sponsoring the survey.

⁶⁹ Babbie (2010), pp. 201-202.

⁷⁰ [REDACTED] Report, ¶24, emphasis added. See also [REDACTED] Report, ¶88. “Based on my professional experience in the blockchain space, in part as an investor and trader in digital assets, as well as my analysis of the public statements, documents, and design decisions of Ripple, I am able to reach the following findings and conclusions” (emphasis added).

Interviewers who know the identity of the survey's sponsor may affect results inadvertently by communicating to respondents their expectations or what they believe are the preferred responses of the survey's sponsor. To ensure objectivity in the administration of the survey, it is standard interview practice in surveys conducted for litigation to do double-blind research whenever possible: Both the interviewer and the respondent are blind to the sponsor of the survey and its purpose. Thus, the survey instrument should provide no explicit or implicit clues about the sponsorship of the survey or the expected responses. Explicit clues could include a sponsor's letterhead appearing on the survey; implicit clues could include reversing the usual order of the yes and no response boxes on the interviewer's form next to a crucial question, thereby potentially increasing the likelihood that no will be checked.⁷¹ (Diamond (2011))

A double-blind experiment guards against experimenter bias, because neither the experimenter nor the subject knows which subjects are in the control group(s) and which in the experimental group(s).⁷² (Babbie (2010))

Experimenters must take great care to deal with all experimental units or subjects in exactly the same way, so that the treatments are the only systematic differences present. Unequal conditions introduce bias [An] experiment should therefore be double-blind.⁷³ (Yates, et al. (1999))

With double blinding, neither the study object (e.g., a patient) nor the implementer of the treatment is aware of which group the study object is assigned to. If participants in the experiment know which treatment was given to the subjects, their behavior may be affected, which may bias the estimate of the treatment effect from the experiment.⁷⁴ (The Royal Swedish Academy of Sciences (2021))

- b. The sample size of one is insufficient as discussed above.⁷⁵

⁷¹ Diamond (2011), at pp. 410-411.

⁷² Babbie (2010), p. 250.

⁷³ Yates, et al. (1999), pp. 277-278.

⁷⁴ The Royal Swedish Academy of Sciences (2021), p. 7, footnote 7.

⁷⁵ See, for example, Yates, et al. (1999), p. 276; Babbie (2010), pp. 201-202.

- c. As discussed above, the target population consists of “all elements (i.e., individuals or other units) whose characteristics or perceptions the survey is intended to represent.”⁷⁶ It is not clear whether Mr. [REDACTED] is in the relevant target population, which based on Mr. [REDACTED] report would be “individuals, institutional investors, and financial services companies,”⁷⁷ for two reasons:
- i. First, he does not specify whether he ever purchased or considered purchasing XRP or sufficiently similar digital assets personally;
 - ii. Second, even if Mr. [REDACTED] did have that experience, he provides no basis to suggest that he has any experience on which to describe how “institutional investors” or “financial services companies” would view at-issue “statements, actions, and product offerings.”
- d. There is no control group in Mr. [REDACTED] approach, *not* exposed to the at-issue conduct, thus it is impossible to separate the impact of the conduct on purchaser “perspective” from preexisting beliefs and other potential influences.⁷⁸ Mr. [REDACTED] “analysis” does not allow him to separate the supposed impact of Ripple’s conduct on the purchaser “perspective” from other potential influences such as preexisting beliefs (e.g., based on general principles of economics).
- e. Mr. [REDACTED] does not mention whether he was exposed to any of the alleged Ripple conduct prior to being retained as an expert in this matter and whether he purchased XRP as an “investment” as a result of such exposure.

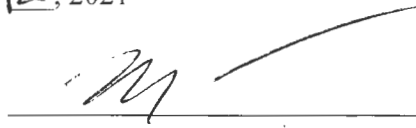
⁷⁶ Diamond (2011), at p. 376. (See also footnote 37 above).

⁷⁷ [REDACTED] Report, ¶2.

⁷⁸ For example, Diamond (2011) notes that “[w]ithout the control group, it is not possible to determine how much of the [outcome] is attributable to respondents’ preexisting beliefs or other background noise (e.g., respondents who misunderstand the question or misstate their responses).” Diamond (2011), at pp. 397-399.

49. Each of these defects is independently fatal to Mr. [REDACTED] analysis from a scientific perspective. Accordingly, it is my opinion that Mr. [REDACTED] report lacks any valid methodology, rendering its conclusions unreliable.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November
12, 2021



Kristina Shampanier

Appendix A – Curriculum Vitae

KRISTINA S. SHAMPANIER, PH.D.
Senior Vice President

T: +1 617 372 4928
 kshampanier@compasslexecon.com

55 South Lake Avenue, Suite 650
 Pasadena, CA 91101

Dr. Shampanier is an expert in consumer behavior and survey and experiment design. She has over 15 years of experience designing, conducting, and analyzing lab, field, and online studies in academic, consulting, and litigation settings, as well as evaluating studies carried out by others. She has worked on class action, false advertisement, consumer safety, trademark, trade dress, and patent infringement cases, as well as antitrust and healthcare matters. These cases span a wide variety of industries, including consumer products, banking, high tech, online retail, entertainment, hospitality, luxury, and auto industries. Dr. Shampanier has published in peer-reviewed journals in the fields of mathematics and marketing.

EDUCATION

2007	Ph.D., marketing (management science), MIT Sloan School of Management <i>Dissertation: "Essays in Behavioral Decision Making"</i>
2002	M.A., economics (<i>cum laude</i>), New Economic School, Moscow, Russia <i>Thesis: "Branding"</i>
2001	M.S., mathematics (<i>cum laude</i>), Moscow State University <i>Specialization: Algebra</i> <i>Thesis: "Ranks of Subalgebras of Free Non-Associative Algebras"</i>

EXPERIENCE

2005–2021	Compass Lexecon <i>Senior Vice President (2021–Present)</i>
2005–2021	Analysis Group Inc. <i>Consultant (2020–2021)</i> <i>Vice President (2016–2020)</i> <i>Manager (2009–2015)</i> <i>Associate (2007–2009)</i> <i>Intern Associate (2005)</i>

2003–2007 MIT Sloan School of Management
Research Assistant, Professor Dan Ariely (2003–2007)
Teaching Assistant, Consumer Behavior, Professor Yehoshua Tsal (2005–2006)
Teaching Assistant, Managerial Psychology Laboratory, Professors Tom Allen and Dan Ariely (2003–2005)

2002 New Economic School, Moscow, Russia
Teaching Assistant, Econometrics III, Professor Stanislav Anatoliev

SELECTED EXPERT CASES

- **Household chemicals false advertising class action**
 Conducted conjoint analysis survey and market simulations to evaluate the price premium associated with a challenged advertising claim on behalf of the defendants. Submitted a letter to counsel and expert declaration describing the methodology and results. The findings were used by counsel at mediation negotiations to evaluate potential range of damages. The case settled after one day of mediation.
 Conducted similar analysis for a related case involving an allegedly omitted warning. Submitted a letter to counsel and expert declaration.
- **Beauty products trademark infringement**
 Designed an experiment/survey to test for consumer confusion in a trademark infringement matter involving a beauty product for the defendant (applicant) before the Trademark Trial and Appeal Board of the US Patent and Trademark Office. Filed an expert report, after which the opposer withdrew all objections.
- **Banking false advertising class action**
 Conducted a choice experiment survey in the choice experiment format on behalf of the defendant to evaluate whether the allegedly misleading omission had an impact on consumer purchase decisions.
- **Fast food employment litigation**
 Evaluated the reliability of interviewing class members and reviewed the opposing expert's approach on behalf of the defendant, a fast-food chain.
- ***A.R., by and through Her Next Friend, Susan Root, et al., v. Elizabeth Dudek, in Her Official Capacity as Secretary of the Agency for Health Care Administration, et al. and United States of America v. The State of Florida***
US District Court, Southern District of Florida
 Evaluated on behalf of the defendant a set of unscripted interviews conducted by the plaintiffs' expert in a health care case involving preferences of patients' families. Submitted rebuttal expert report and was deposed.
- **Hospitality business trademark infringement**
 Designed and fielded an "Eveready" experiment/survey to test for consumer confusion in a trademark infringement matter in the hospitality business for the defendant (registrant) before the Trademark Trial and Appeal Board of the US Patent and Trademark Office.
- **Electronics false advertising**
 Submitted three reports on behalf of the challenged party in a case considered by the National Advertising Division of the Council of Better Business Bureaus. Opined on the merits of the design of a consumer electronics product test conducted for advertising claims.

SELECTED CONSULTING EXPERIENCE

Intellectual Property

▪ Trademark and trade dress infringement matters

Developed numerous online experimental design surveys in the “Eveready” and “Squirt” format and rebuttal analyses of “Eveready” surveys testing consumer perception and confusion with respect to wordmarks, design marks, trade dress, and an advertising slogan in a variety of cases, including in clothing, compliance, food, fashion, auto, luxury goods, entertainment, outdoor activities, and music industries. Addressed issues of [REDACTED] quality (via a choice experiment survey and open-ended purchase driver survey), dilution, and secondary meaning. Assisted experts in survey design, implementation, and analysis of surveys, as well as in drafting reports and preparations for depositions. Assisted counsels with preparation for depositions of opposing experts. Such cases include:

- ***Denimafia Inc. v. New Balance Athletic Shoe, Inc. et al. and New Balance Athletic Shoe, Inc. v. Denimafia Inc.***

US District Court, Southern District of New York

Supported Professor Joel Steckel, who was retained by New Balance, the defendant and counter-defendant in a trademark infringement matter involving the “less is more” <=> symbol used on New Balance Minimus footwear. Assisted Professor Steckel in designing, fielding, and analyzing an “Eveready” survey/experiment testing for reverse confusion (i.e., confusion with respect to the source, sponsorship, or affiliation of Denimafia products), drafting report, and preparation for deposition. In its summary judgment in favor of New Balance, the court credited Professor Steckel’s survey with showing “a zero percent rate of reverse confusion with respect to the source of jeans bearing the <=> mark” and discounted Denimafia’s objections to the survey design. Denimafia appealed the summary judgment decision, but ultimately did not pursue the appeal and the appellate court dismissed it.

- **Luxury goods trademark infringement and dilution matter**

Developed an online experimental design survey to test whether consumers noticed and how they perceived a logo briefly appearing in a TV commercial. Evaluated opposing expert’s survey. Assisted expert in survey design, implementation, and analysis of survey; developing rebuttal points for opposing expert’s survey; drafting reports; and preparation for depositions; assisted counsel in preparation for deposition of opposing expert.

▪ Smartphone and tablet patent infringement matters

Assisted experts in survey design, report drafting, and preparation for deposition and trial testimony. Evaluated opposing expert’s surveys (including a conjoint-style survey) aimed at isolating the value to consumers of the patented features in smartphones. Assisted counsel with preparation for and at depositions of opposing expert and data witnesses. Assisted at trial.

- ***Hitachi Maxell, Ltd. v. ZTE Corp. and ZTE USA Inc.***

US District Court, Eastern District of Texas, Texarkana Division

Supported Tülin Erdem, Professor of Business and Marketing at the NYU Stern School of Business, from case inception to trial on behalf of Maxell and Mayer Brown. Assisted in designing and implementing a survey of smartphone and tablet owners to assess the awareness and relative importance of a feature disclosed in one of the asserted patents: automatic GPS map orientation. The damages expert used the survey results to inform her

analysis of reasonable royalty damages. The jury found that the asserted patents were valid and infringed by ZTE, and awarded Maxell damages of \$43.3 million.

False Advertising

- ***Kenneth Hobbs v. Brother International Corporation***

US District Court, Central District of California

Supported Professor Joel Steckel of New York University Stern School of Business in conducting two surveys on behalf of Brother International Corporation, the defendant in a consumer class action false advertising case. The plaintiff claimed that the printers at issue did not scan complete pages, causing the edges of images [REDACTED] cated. One survey evaluated consumer awareness of a printer's alleged [REDACTED] oning. The other, a survey/experiment, addressed the materiality of this limitation to consumers. In its order denying class certification, the court cited the experiment involving more than 450 people who had purchased or planned to purchase a printer close to the time of the survey, which found that "consumers chose the Brother printer with nearly identical frequency regardless of whether they were made aware of the unscannable margin at the time of their selection." The plaintiff agreed to dismiss his case with prejudice and waive his right to appeal. Assisted Professor Steckel with design, implementation, and analysis of the studies; drafting reports and declarations; and preparation for deposition [REDACTED]

- **E-Retailer false advertising matter**

Supported Professor Joel Steckel in conducting two experiments on behalf of a major e-retailer accused of using misleading reference price terms (e.g., "Compare at"). In the first study, groups of consumers visiting the defendant's website were randomly assigned to view the reference price labels as either "MSRP" (manufacturer's suggested retail price) or "Compare" throughout their shopping session and subsequent website visits. No difference in the sales conversion rate was found. Further, a survey of consumers who made purchases during the study period showed no difference in recall of the product price, the reference price, or the term used with the reference price. The second study, conducted with an online consumer panel, found that consumers' understanding of reference prices did not depend on the label used (e.g., "was," "compare at," "compare," and "MSRP"). Assisted in design, implementation, and analysis of both studies, and in preparation of deposition and trial testimony.

- **Online services false advertising matter**

Evaluated opposing experts' surveys testing consumer perception of charges for an online service. Assisted in drafting report and counsel's briefs, as well as in preparation for depositions. Assisted counsel in preparation for depositions of opposing experts.

- **Cigarette false advertising matter**

Evaluated opposing counsel's survey-like methodology to evaluate consumer perception of cigarette packaging. Assisted expert in drafting declarations and report.

Corporate Acquisitions

- **AT&T's acquisition of DIRECTV – survey of consumer preferences**

Supported Professor Ravi Dhar of the Yale School of Management in developing, conducting, and analyzing a survey examining consumer attitudes toward bundled Internet and television services, in a case widely covered by the media. AT&T and DIRECTV cited the outcome of the study in their applications to the Federal Communications Commission (FCC), pointing to the benefit to consumers

when Internet and television services are delivered by the same provider. The FCC and the Department of Justice approved the acquisition. Assisted Professor Dhar in survey design, implementation, and analysis, as well as report drafting.

Antitrust

▪ Microsoft antitrust matters

- *Jim Hood, Attorney General ex rel. State of Mississippi v. Microsoft Corporation*
Chancery Court of Hinds County, Mississippi
- *Pro-Sys Consultants Ltd. and Neil Godfrey v. Microsoft Corporation and Microsoft Co./Microsoft Canada CIE*
Supreme Court of British Columbia

Developed affirmative damages analysis and rebuttals of the plaintiffs' damages analysis and class certification arguments in the cases involving allegations of Microsoft's overcharging consumers for its operating systems, word processors, and spreadsheet products.

▪ Credit cards [REDACTED] matter

Developed an online experimental design survey to expose issues with opposing expert's survey testing consumer reaction to retailers' potential credit card policies. Assisted expert in survey design, implementation, and analysis preparation of report; and in preparation for and at deposition. Assisted counsel in preparation for deposition of opposing expert.

▪ High tech antitrust matters, including *Advanced Micro Devices, Inc. v. Intel* *US District Court, District of Delaware*

Analyzed incremental costs for price/cost analysis. Assisted in data production and analysis, drafting reports, deposition preparation, and at deposition.

PUBLICATIONS

"Choice Experiments," with Joel Steckel, Rebecca Kirk Fair, and Anne Cai in *Legal Applications of Marketing Theory*, Cambridge University Press, Jacob Gersen and Joel Steckel, eds., 2021, forthcoming

"Patient Quality of Life and Benefits of Leptin Replacement Therapy (LRT) in Generalized and Partial Lipodystrophy (GL, PL)," with Omer Ali, Keziah Cook, Edward Tuttle, Charles Gerrits, and Rebecca Brown, *Diabetes*, Vol. 61, Supplement 1, 1331-P, 2018

"How To Interpret A Contract? Ask Those Who'd Sign It," with Omri Ben-Shahar, Lior Strahilevitz, Duo Jiang, and Rebecca Kirk Fair, *Law360*, March 21, 2018

"Survey And Real-World Data: A Winning Combination," with Peter Simon, Riddhima Sharma, and Rebecca Kirk Fair, *Law360*, July 2017

"What Consumers Really Think about Reference Price Labels," with Rebecca Kirk Fair, Laura O'Laughlin, Jesse Shea, and Joel Steckel, *Law360*, May 2017

"Probabilistic Price Promotions – When Retailing and Las Vegas Meet," with Dan Ariely and Nina Mazar, *Management Science*, Vol. 63, No. 1, pp. 250-266, 2016

“Zero as a Special Price. The True Value of Free Products,” with Dan Ariely and Nina Mazar, *Marketing Science*, Vol. 26, No. 6, pp. 742-757 (lead article), 2007

“How Small Is Zero Price? The True Value of Free Products,” *Advances in Consumer Research*, Vol. 33, pp. 254-255, 2006

“Algorithms Realizing Rank and Primitivity of Systems of Elements of Free Non-Associative Algebras,” *Fundamental and Applied Mathematics*, Vol. 6, No. 4, pp. 1229-1238, 2000

SELECTED PRESENTATIONS, POSTERS, AND SPEAKING ENGAGEMENTS

“Discrete Choice and SF-36 Estimating Patient Quality of Life and Benefits of Leptin Replacement Therapy (LRT) in Generalized and Partial Lipodystrophy (GL, PL),” poster with Omer Ali, Keziah Cook, Don Lee, and [REDACTED] Tuttle, 21st European Congress of Endocrinology, Lyon, France, May 2019

“Surveying the Truth: False Advertising and Trademark Litigation,” with August Horvath and Joel Steckel, first webinar in the series, *Deceit and Denial: The Role Surveys Play in False Advertising and Trademark Litigation*, American Bar Association’s Section of Antitrust Law Advertising Disputes & Litigation Committee, February 2016

“Listening to Customers— How to Ask the Right Question, Surveys in Litigation,” recurrent lecture at Professors Jiwoon [REDACTED] and Aniko Oery’s M.B.A. classes, *Listening to the Customer*, Yale School of Management, 2012, 2013, 2015, and 2016

“How Small is Zero Price? The True Value of Free Products,” Association for Consumer Research, North American Conference, San Antonio, TX, and London Business School, 2005

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- American Marketing Association
- *Marketing Science* “Ambassador” (until 2018)

ACADEMIC HONORS

- 2005–2006 The Zannetos Fund Fellow, Massachusetts Institute of Technology
- 2005–2006 The Stuart Fund Fellow, Massachusetts Institute of Technology
- 2006 AMA-Sheth Foundation Doctoral Consortium Fellow
- 2004–2005 MasterCard Fellow, Massachusetts Institute of Technology
- 2003 The Russell Sage Summer Institute, Trento, Italy
- 2002–2003 DuPont Fellow, Massachusetts Institute of Technology

LANGUAGES

Russian (native), French (intermediate)

Appendix B – Materials Considered

Court Documents

- Answer of Defendant Ripple Labs, Inc. to Plaintiff's Complaint, *Securities and Exchange Commission v. Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen*, 20-cv-10832 (AT), United States District Court, Southern District of New York, January 29, 2021.
- Answer of Defendant Ripple Labs, Inc. to Plaintiff's First Amended Complaint, *Securities and Exchange Commission v. Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen*, 20-cv-10832 (AT), United States District Court, Southern District of New York, March 4, 2021.
- First Amended Complaint, *Securities and Exchange Commission v. Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen*, 20 Civ. 10832 (AT), ECF Case, United States District Court, Southern District of New York, February 18, 2021.
- Expert Report of [REDACTED] October 4, 2021, *U.S. Securities and Exchange Commission v. Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larson*, United States District Court, Southern District of New York.
- *Securities and Exchange Commission v. W. J. Howey Co. et al*, No. 328 U.S. 293, Supreme Court of the United States, 1946.

Academic Articles and Books

- Assael, Henry. *Consumer Behavior, A Strategic Approach*. Houghton Mifflin Company, 2004.
- Babbie, Earl. *The Practice of Social Research*. Twelfth Edition. Wadsworth Cengage Learning, 2010.
- Diamond, Shari, S. "Reference Guide on Survey Research." *Reference Manual on Scientific Evidence*. Third Edition. Federal Judicial Center, 2011, pp. 359-423.
- Hague, et al. *Market Research in Practice*. Kindle Edition, Third Edition. Kogan Page, 2016.
- Hibberts, Mary, R. Burke Johnson, and Kenneth Hudson. "Common Survey Sampling Techniques." *Handbook of Survey Methodology for the Social Sciences*. Ed. Lior Gordon. Springer, 2012.
- Jacoby, Jacob, and Lynda Zadra-Symes. "Legal Issues That Can Be Examined via Surveys." *Trademark Surveys: Volume 1: Designing, Implementing, and Evaluating Surveys*. Jacob Jacoby. ABA Book Publishing, 2013.
- Meyer, Bruce D. "Natural and Quasi-Experiments in Economics." *Journal of Business & Economic Statistics* 13(2): 151-161, April 1995.
- Shadish, William R., Thomas D. Cook, and Donald T. Campbell. *Experimental and Quasi-Experimental Designs for Generalized Causal Inference*. Wadsworth Cengage Learning, 2002.
- Yates, Daniel, David Moore, and George McCabe. *The Practice of Statistics*. First Edition. W.H. Freeman, 1999.

Other Publicly Available Materials

- The Royal Swedish Academy of Sciences. "Scientific Background on the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2021 - Answering Causal Questions

Using Observational Data,” available at <https://www.nobelprize.org/uploads/2021/10/advanced-economicsciencesprize2021.pdf>.

- The Royal Swedish Academy of Sciences. “The Prize in Economic Sciences 2019,” available at <https://www.nobelprize.org/uploads/2019/10/press-economicsciences2019-2.pdf>.

[REDACTED]

Appendix C – Examples of Mr. [REDACTED] Unsupported Causal Propositions

¶	Statement (Unsupported conclusion bolded)	Section
8	Based on my experience in the digital asset space, I conclude that a reasonable purchaser would have had an expectation of future profit derived from the efforts of Ripple. Specifically, purchasers would have expected or hoped to profit by later re-selling their XRP at a higher price on a secondary market after XRP substantially increased in value [...] Although Ripple's development of the blockchain and broader XRP ecosystem, along with its promotion of the bull case for buying XRP , would not guarantee a profit, it would create the hope that a purchaser could passively earn profits by owning XRP while Ripple took steps to increase the value of the coin.	2. Summary of findings
9	there are certain elements in Ripple's and its founders' design of XRP, the XRP Ledger, and a variety of software products that appealed more to a purchaser of XRP interested in making a profit than to financial institutions seeking to embrace Ripple's stated vision of utilizing XRP as a bridge asset for cross-border asset transfers	2. Summary of findings
24	Based on my experience investing in digital assets, a reasonable purchaser of XRP would understand that if Ripple's ambitious cross-border payment business were successful, the ensuing demand for XRP would tremendously increase the price of XRP.	5. Features of XRP Coin Economics and Suitability as a Bridge Asset
26	Potential purchasers of XRP would have understood the simple economics behind the message being promoted by Ripple on this subject: XRP, as designed, provided a mechanism for passive XRP owners to benefit financially from Ripple's success as a provider of financial service products built on the XRP Ledger, as a developer of the XRP ecosystem, and as a driver of demand for XRP.	5. Features of XRP Coin Economics and Suitability as a Bridge Asset
31	The correlation between the success of the platform and price of the coin is fantastic for investment-oriented purchasers of XRP, but not for the purchasers who are exclusively interested in the utility use of the cross-border payment product. From the perspective of a reasonable investment-oriented purchasers, the fixed-supply and variable-price model provides a direct link between 1) the success of Ripple's efforts to build the XRP ecosystem and stimulate demand for XRP and 2) the financial performance of the purchaser's investment in XRP. From the perspective of a utility-oriented purchaser, as discussed above, the fixed-supply and variable price model of XRP presents significant disadvantages	5. Features of XRP Coin Economics and Suitability as a Bridge Asset

37	These points would appeal to an individual purchaser with a long-term investment mindset , and were repeatedly communicated by Ripple in the XRP Markets Reports.	6. XRP Sale and Escrow Mechanics
43	Although Ripple continued to sell XRP into the open market on a regular basis, this significant restriction of the XRP supply would have greatly encouraged potential investment-oriented purchasers of XRP to earn a speculative investment profit with their purchase.	6. XRP Sale and Escrow Mechanics
47	Although the buyback activity would not have mattered to purely utility-oriented purchasers of XRP, buybacks are very important signals for investment-oriented purchasers.	6. XRP Sale and Escrow Mechanics
48	The manner and mechanism of Ripple’s ongoing sales, distribution, escrow, and buybacks of XRP would have been extremely important to a potential investment-oriented purchaser of XRP	6. XRP Sale and Escrow Mechanics
49	On the other hand, a reasonable purchaser of XRP that is exclusively considering the utility use of the coin would be less concerned with some of these heavily promoted sales and distribution mechanisms.	6. XRP Sale and Escrow Mechanics
65	Another type of partnership that would have appealed to a purchaser interested in the investment use case for XRP was solidified by an agreement between Ripple and a provider of retirement investment accounts. Ripple announced that purchasers could buy XRP through Bitcoin IRA’s retirement accounts.	7. Ripple Communications and Promotional Statements
85	Ripple’s extensive public comments and reports about these topics likely served to inform and persuade investment-oriented purchasers about the potential reward of purchasing XRP for the purpose of generating a profit. Indeed, the use of terms such as “traction,” “market fit,” “total addressable market,” and even “investors” when describing Ripple’s progress and growth potential are words typically understood by market participants to mean that they should view buying XRP as a potentially profitable investment.	7. Ripple Communications and Promotional Statements
86	Purchasers of XRP for cross-border payments would also be interested in some of these topics, but not all. For example, a money transmitter likely cares deeply about specific topics like the liquidity of the digital asset trading platforms it needs to rely on to complete an ODL transaction, but is less interested in Ripple’s communications about the bull case for the price of XRP.	7. Ripple Communications and Promotional Statements
87	It is my opinion from carefully following the digital asset space that many of Ripple’s public communications conveyed to reasonable purchasers of XRP an expectation of future profit derived from the efforts of Ripple.	7. Ripple Communications and Promotional Statements

89	Over the course of the Issuance Period a reasonable purchaser of XRP would have had an expectation of generating profit based on the efforts of Ripple and its management to accomplish the growth strategies that Ripple advertised to the public as being already achieved or planned for the future.	8. Summary of Findings and Conclusions
89	Given this relationship between Ripple's performance and the price of XRP, a reasonable purchaser would have closely considered many factors that were publicized by Ripple such as disclosed partnerships with financial institutions, the quality of Ripple's management team, the target addressable market for Ripple's products, and the availability of liquidity on trading platforms for XRP.	8. Summary of Findings and Conclusions
90	Certain aspects of the design characteristics of XRP and the promotional activity of Ripple did not appeal to a pure utility use case.	8. Summary of Findings and Conclusions

Exhibit 43

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,) Case No.:
v.) 20-Civ-10832 (AT) (SN)
)
RIPPLE LABS, INC., BRADLEY)
GARLINGHOUSE, and CHRISTIAN)
LARSEN,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF

KRISTINA S. SHAMPANIER, Ph.D.

Monday, December 20, 2021

Reported by:
BRIDGET LOMBARDOZZI,
CSR, RMR, CRR, CLR
Job No. 211220BLO

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	Case No.:
v.)	20.Civ.10832(AT) (SN)
)	
RIPPLE LABS, INC., BRADLEY)	
GARLINGHOUSE, and CHRISTIAN)	
LARSEN,)	
)	
Defendants.)	
)	

Videotaped Deposition of KRISTINA S. SHAMPANIER,
Ph.D. taken on behalf of Plaintiff, held at the offices
of Debevoise & Plimpton, 919 Third Avenue, New York, New
York, commencing at 9:01 a.m. and ending at 4:41 p.m., on
Monday, December 20, 2021, before Bridget Lombardozzi,
CCR, RMR, CRR, CLR, and Notary Public of the States of
New York and New Jersey, pursuant to notice.

A P P E A R A N C E S (Via Remote where indicated):

For the Plaintiff:

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

NEW YORK REGIONAL OFFICE

BY: PASCALE GUERRIER, ESQUIRE

MARK SYLVESTER, ESQUIRE

New York Regional Office

200 Vesey Street

Suite 400

New York, New York 10281-1022

Telephone: 212.336.0153

Email: guerrierp@sec.gov

sylvesterm@sec.gov

A P P E A R A N C E S (Continued):

For Defendant Ripple Labs Inc.:

DEBEVOISE & PLIMPTON LLP

BY: PETER URMSTON, ESQUIRE (Remote)

LISA ZORNBERG, ESQUIRE (Remote)

ASHLEY HAHN, ESQUIRE (Remote)

919 Third Avenue

New York, New York 10022

Telephone: 212.909.6000

E-Mail: pcurmston@debevoise.com

lzornberg@debevoise.com

ahahn@debevoise.com

-and-

For Defendant Ripple Labs Inc. and the Witness:

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK PLLC

BY: BRADLEY E. OPPENHEIMER, ESQUIRE

JUSTIN BERG, ESQUIRE (Remote)

Sumner Square

1615 M Street, N.W.

Suite 400

Washington, D.C. 20036

Telephone: 202.326.7999

E-mail: Boppenheimer@kellogghansen.com

jberg@kellogghansen.com

1 A P P E A R A N C E S (Continued):

2
3 For Defendant Bradley Garlinghouse:

4
5 CLEARY GOTTlieb STEEN & HAMILTON

6 BY: JACKIE M. BRUNE, ESQUIRE (Remote)

7 One Liberty Plaza

8 New York, New York 10006

9 Telephone: 212.225.2951

10 E-mail: jabrune@cgsh.com

11
12 For Defendant Christian A. Larsen:

13
14 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

15 BY: SARAH PROSTKO, ESQUIRE (Remote)

16 1285 Avenue of the Americas

17 New York, New York 10019-6064

18 Telephone: 212.373.3067

19 E-mail: sprostko@paulweiss.com

20
21 ALSO PRESENT:

22
23 NICOLE FORBES, Paralegal, SEC

24 DAVID SHERECK, Videographer
25 Shereck Video Service

INDEX

WITNESS

EXAMINATION

KRISTINA S. SHAMPANIER, Ph.D.

BY MS. GUERRIER

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BY MR. OPPENHEIMER

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EXHIBITS

SEC

NUMBER

DESCRIPTION

PAGE

Exhibit 1

Curriculum Vitae of [REDACTED]

97

[REDACTED] Undated

NO BATES, 3 pages

Exhibit 4

Expert Rebuttal Report of

24

Kristina Shampanier, Ph.D.

dated November 12, 2021

NO BATES, 45 pages

Exhibit 5

Thesis Dissertation "Essays

64

in Behavioral Decision-

Making" dated May 2007 by

Dr. Shampanier

NO BATES, 159 pages

EXHIBITS

SEC NUMBER	DESCRIPTION	PAGE
Exhibit 7	Expert Report of [REDACTED] B. [REDACTED] dated October 4, 2021 NO BATES, 50 pages	96

DEPOSITION SUPPORT INDEX

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REQUEST FOR DOCUMENTS

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1 - - -

2 9:01 a.m.

3 December 20, 2021

4 - - -

5 THE VIDEOGRAPHER: Okay. We
6 are on the record. The time is
7 approximately 9:01 a.m. Today's date
8 is Monday, December 20th, 2021. This
9 is the video deposition of Kristina
10 Shampanier in the matter of the
11 Securities and Exchange Commission
12 versus Ripple Labs, et al. Index
13 number is 20-Civ-10832 in the United
14 States District Court, Southern
15 District of New York.

16 My name is David Shereck,
17 certified legal videographer with Shereck
18 Video, in association with Gradillas
19 Reporting of Glendale, California.

20 We're located today at the
21 offices of Debevoise & Plimpton located
22 at 919 Third Avenue, New York, New York.

23 All counsel that are present
24 will be noted on the stenographic record.

25 And the court reporter today is

1 Bridget Lombardozzi, also with Gradillas,
2 and will you please swear in the witness.

3 K R I S T I N A

4 S H A M P A N I E R, Ph.D., having been
5 duly sworn, was examined and testified as
6 follows:

7 THE REPORTER: Thank you.

8 You may proceed.

9 DIRECT-EXAMINATION

10 BY MS. GUERRIER:

11 Q. Good morning. I'm Pascal Guerrier with
12 the SEC. I'll be asking you questions today.
13 With me is my -- is also counsel, Mark Sylvester.

14 If you could please state your name for
15 the record.

16 A. Kristina Shampanier.

17 Q. Are you represented by counsel today?

18 A. Yes.

19 Q. Who's your counsel?

20 A. Brad Oppenheimer.

21 Q. And who is Brad Oppenheimer with?

22 A. Kellogg Hansen.

23 Q. Before we get started, I want to just
24 give you some of the rules that are going to
25 govern the deposition today so that the deposition

1 can go smoothly.

2 You understand that you're giving
3 testimony under oath?

4 A. Yes.

5 Q. And do you understand that your answers
6 today to my questions have the same force and
7 effect as if we were in a courtroom?

8 A. Yes.

9 Q. Is there anything that will prevent you
10 from testifying truthfully and accurately today?

11 A. No.

12 Q. If you don't understand any question
13 that I ask, I -- please let me know and I'll
14 rephrase it.

15 Please allow me to finish my question
16 before you start answering so that the court
17 reporter can have a clear record of your
18 testimony and my questions.

19 And if you could please respond verbally
20 because the court reporter cannot transcribe nods
21 and other nonverbal actions.

22 Do you have any questions about any of
23 the rules that I've just described to you?

24 A. No questions.

25 Q. Okay. Have you had --

1 MR. OPPENHEIMER: Could I
2 just put on the record here we'd like
3 to continue our prior practice of
4 having an objection by one defendant
5 count as an objection by all.

6 MS. GUERRIER: Sure.

7 MR. OPPENHEIMER: Thank you.

8 BY MS. GUERRIER:

9 Q. Have you had your deposition taken
10 before today?

11 A. Yes.

12 Q. Okay. Do you recall when you had your
13 deposition taken?

14 A. 2016.

15 Q. Any other time?

16 A. No.

17 Q. Do you recall the case where you had
18 your deposition taken in 2016?

19 A. It was several cases combined. One of
20 them was United States versus Florida.

21 Q. Do you recall what the case was about?

22 A. Was a health care case.

23 Q. When you say "it was several cases
24 combined," can you elaborate on that?

25 A. Why don't we open my report and it's

1 listed in my CV.

2 Q. Why don't you answer my questions,
3 please.

4 MR. OPPENHEIMER: Objection.

5 A. There were several cases combined
6 together. One of them had a very long name that I
7 cannot recollect from memory. The other one was
8 United States versus Florida.

9 Q. Okay. Were they all health care cases?

10 A. Yes.

11 Q. Did you do anything to prepare for your
12 deposition today?

13 A. Yes.

14 Q. What did you do to prepare for your
15 deposition?

16 A. I reviewed my report, Mr. [REDACTED]
17 report, the complaint, materials considered in my
18 report, Ripple's answer. I had several meetings
19 with my colleagues and with counsel.

20 Q. Which colleagues did you have meetings
21 with in preparation for your deposition?

22 A. Niall MacMenamin and Vendela Fehrm.

23 Q. And Vendela? I'm sorry?

24 A. Fehrm.

25 Q. Who is Niall MacMenamin?

1 A. He's a -- and I apologize in advance to
2 any of my colleagues whose names I mispronounce.
3 Same for counsel. Niall is my colleague at
4 Compass Lexecon.

5 Q. Does Mr. Niall MacMenamin work with you
6 at Con Lexecon?

7 A. Niall works with me at Compass Lexecon.

8 Q. Compass Lexecon.

9 So do you supervise Mr. Mc -- am I
10 saying his name correctly? Mc -- MacMenamin?

11 A. MacMenamin.

12 Q. MacMenamin.

13 Do you supervise Mr. MacMenamin?

14 MR. OPPENHEIMER: Objection.

15 You can answer.

16 A. No.

17 Q. Okay. So what is his role at Con
18 Lexecon?

19 A. His role at Compass Lexecon -- his
20 position at Compass Lexecon is senior vice
21 president.

22 Q. Were any attorneys present when you met
23 with Mr. MacMenamin?

24 A. Sometimes yes, sometimes no.

25 Q. Okay. Do you recall the times when the

1 attorneys were not present when you met with
2 Mr. MacMenamin?

3 MR. OPPENHEIMER: You can
4 answer that yes or no if you recall.

5 A. Yes.

6 Q. So can you tell me which times you met
7 with Mr. MacMenamin without your attorneys
8 present?

9 A. This would --

10 MR. OPPENHEIMER: Objection
11 to the form.

12 You can answer as to which
13 times you met with him if you understand
14 that.

15 A. This would be in the past two weeks or
16 so.

17 Q. Was Mr. MacMenamin involved in preparing
18 the report that you submitted in this case?

19 A. He assisted me.

20 Q. How did he assist you?

21 A. We had discussions about the report.

22 Q. Did he help you write the report?

23 A. He reviewed the report and gave me
24 feedback.

25 Q. Is Mr. MacMenamin your supervisor?

1 A. No.

2 Q. When you met with Mr. MacMenamin without
3 your attorneys present, did -- what did you
4 discuss?

5 MR. OPPENHEIMER: Objection.

6 I'll instruct you not to answer
7 that. That calls for privileged
8 information.

9 Q. Okay. Is Mr. -- was Mr. MacMenamin
10 retained by your counsel to assist you in this
11 case?

12 MR. OPPENHEIMER: Objection.

13 You can answer if you know.

14 A. I'm not sure about the technicalities.
15 I understand he was retained to assist me.

16 Q. You also mentioned Mr. -- I'm sorry,
17 Vendela Fehrm?

18 A. Vendela Fehrm. It's a she.

19 Q. Vendela Fehrm.

20 And who is Vendela Fehrm?

21 A. She's my colleague -- colleague at
22 Compass Lexecon.

23 Q. What is her title at Compass Lexecon?

24 A. Vice president.

25 Q. Does Ms. La Fehrm assist you with

1 preparing the report you submitted in this case?

2 MR. OPPENHEIMER: Objection.

3 You can answer.

4 A. Ms. Fehrm assisted me with the report.

5 Q. How did Ms. La Fehrm assist you with the
6 report?

7 A. She helped finding certain citations.

8 THE REPORTER: Repeat.

9 A. She helped finding certain citations.

10 Q. Are those citations report -- included
11 in the report you submitted?

12 A. That's correct.

13 Q. Do you recall which citations she helped
14 find for you?

15 MR. OPPENHEIMER: Objection.

16 You can answer that yes or no
17 if you recall.

18 A. To a degree.

19 Q. What do you recall regarding the
20 citations that she assisted you with?

21 MR. OPPENHEIMER: Objection.

22 I instruct you not to answer
23 that.

24 MS. GUERRIER: What is the
25 basis for your objection?

1 MR. OPPENHEIMER: You're
2 asking -- as I understand it, you're
3 asking about the substance of the
4 discussions that she had with her own
5 support team who are Compass Lexecon
6 employees retained by and acting at
7 the direction of counsel. I think
8 that's attorney work product and it's
9 privileged from discovery.

10 MS. GUERRIER: Okay.

11 BY MS. GUERRIER:

12 Q. You also stated you met with attorneys
13 in this case, is that correct?

14 A. That's correct.

15 Q. Who did you meet with?

16 A. Bradley Oppenheimer, Justin Berg, Andrew
17 whose last name I don't remember, Sarah Prostko.

18 Q. Do you recall how many times you met
19 with the attorneys in this case?

20 A. I haven't finished answering.

21 Q. I'm sorry.

22 A. And Jackie Brune, I believe.

23 Q. Can you repeat that, please?

24 A. Jackie Brune.

25 Q. Jackie Brune?

1 A. Yes.

2 Q. Okay. Okay. Did you meet with the
3 individuals that you've identified all together at
4 once?

5 A. I had several meetings. Some of them
6 were at all the meetings; some of them were at
7 only some of the meetings.

8 Q. Do you recall how many sessions you had
9 with the attorneys that you identified to prepare
10 for your deposition?

11 A. I do.

12 Q. How many sessions did you have?

13 A. Three.

14 Q. When was the first session?

15 A. Within the past two weeks.

16 Q. Do you recall the date?

17 A. No.

18 Q. When was the second session?

19 A. Within the past two weeks.

20 Q. Do you recall the date?

21 A. No.

22 Q. When was the third session?

23 A. Yesterday.

24 Q. Were all of the attorneys that you've
25 identified present at yesterday's session to

1 prepare you for your deposition?

2 A. No.

3 Q. Who was present?

4 A. Bradley Oppenheimer and Justin Berg.

5 Q. Do you recall how long the session
6 lasted?

7 A. About two hours.

8 Q. And the session -- the first session
9 that you had with the attorneys in the past two
10 weeks, do you recall how long the first session
11 lasted?

12 A. Yes.

13 Q. How long did the first session last?

14 A. Four hours.

15 Q. Do you recall how long the second
16 session that you had in the past two weeks with
17 your attorneys lasted?

18 A. Yes.

19 Q. How long did the first session last?
20 I'm sorry, the second session that you had with
21 your attorneys in the past two weeks last.

22 A. Three hours.

23 Q. Was anyone who was not an attorney
24 present during any of the sessions that you had
25 with your attorneys?

1 A. Yes.

2 Q. Who was present during the sessions that
3 you had with your attorney?

4 A. In the first two sessions, Niall
5 MacMenamin and Vendela Fehrm were also present.

6 Q. Anyone else?

7 A. No.

8 Q. Other than counsel, did you speak
9 with -- and -- other than counsel and the
10 individuals at Compass Lexecon that you described,
11 did you speak with anyone else about your
12 deposition?

13 A. My family knows I'm at a deposition.

14 Q. Who did you speak with in your family
15 about the deposition?

16 A. My husband and my parents know I'm in a
17 deposition.

18 Q. When did you speak with your husband
19 about the deposition?

20 A. I don't recall.

21 Q. Do you recall what you told your husband
22 about the deposition?

23 MR. OPPENHEIMER: You can
24 answer yes or no.

25 A. Yes.

1 Q. What did you tell your husband about the
2 deposition?

3 A. That I would be --

4 MR. OPPENHEIMER: Objection.

5 I don't think you are obligated
6 to disclose the substance of your
7 communications with your husband.

8 Counsel, maybe we can try
9 laying some foundation as to whether she
10 discussed any --

11 MS. GUERRIER: Well --

12 MR. OPPENHEIMER: --
13 substance relating to the deposition
14 with him before --

15 MS. GUERRIER: -- I'm
16 getting there, but I don't think
17 that's a proper objection. Your
18 objections are to form. I don't know
19 what privilege you're preserve --
20 preserving here.

21 MR. OPPENHEIMER: I believe
22 there's a marital communications
23 privilege between husbands and wives.

24 MS. GUERRIER: Are you
25 claiming the marital priv --

1 privilege here?

2 MR. OPPENHEIMER: I think
3 the witness may choose to claim that
4 if she wishes.

5 MS. GUERRIER: Do you
6 represent her personally?

7 MR. OPPENHEIMER: I'm here
8 representing Ripple Labs.

9 MS. GUERRIER: Right. So
10 how are you -- okay. So you -- you
11 cannot object to her own marital
12 privilege if she does choose to claim
13 it or not.

14 BY MS. GUERRIER:

15 Q. So what did you talk to your husband
16 about regarding the deposition?

17 A. I told him I would be deposed.

18 Q. Did you talk to him about the substance
19 of this case?

20 A. No.

21 Q. You also said you spoke with your
22 parents about the case?

23 A. That's correct.

24 Q. What did you tell your parents about the
25 case?

1 A. That I would be deposed.

2 Q. Did you speak about any substantive
3 aspect of the case?

4 A. No.

5 Q. Did you tell them what the case was
6 about?

7 A. No.

8 Q. Did you speak with anyone else other
9 than your family about the case?

10 A. No.

11 MS. GUERRIER: I'm going
12 to -- if you could also pass it down
13 to the court reporter.

14 THE REPORTER: Exhibit 4?

15 MS. GUERRIER: Yes.

16 (Whereupon, exhibit is received
17 and marked SEC Shampanier Deposition
18 Exhibit 4 for identification.)

19 THE REPORTER: Exhibit 4 for
20 identification.

21 BY MS. GUERRIER:

22 Q. I've handed you what's been premarked as
23 Exhibit 4.

24 Do you recognize the document that I've
25 handed you that's been premarked as Exhibit 4?

1 (Pause)

2 A. Yes.

3 Q. What is the document that's been
4 premarked as Exhibit 4?

5 A. This appears to be a copy of my report
6 in this case.

7 Q. Okay. If you could turn to page 34 of
8 the report.

9 Is that your signature on page 34 of the
10 report?

11 A. Yes.

12 Q. Do you recall when you finalized the
13 report?

14 A. November 12th.

15 Q. Do you recall when you started drafting
16 the report?

17 A. Yes.

18 Q. When did you start drafting the report?

19 A. October.

20 Q. Do you recall what date?

21 A. No.

22 Q. Is this the -- Exhibit 4 the only draft
23 of the report?

24 A. No.

25 Q. Okay. How many drafts are there of the

1 report?

2 A. I don't know.

3 Q. Where are the drafts of the report?

4 A. On the Compass Lexecon network.

5 Q. Is the report that you submitted today
6 final?

7 A. It is final but if new information comes
8 in, I reserve the right to change my opinions.

9 Q. Okay. Has any information since you
10 signed this report affected or altered the
11 opinions that are set forth in the report?

12 A. No.

13 Q. Are you ready to testify about the
14 opinions that you're offering in this case?

15 A. Yes.

16 Q. Do you recall when you were retained to
17 provide your expert services in this case?

18 A. Yes.

19 Q. When were you retained?

20 A. October.

21 Q. What year?

22 A. October 2021.

23 Q. Okay. Do you recall who retained you to
24 provide expert services in this case?

25 A. Counsel for Ripple.

1 Q. Do you recall what firm?

2 A. Kellogg Hansen.

3 Q. Okay. Are you just representing -- I'm
4 sorry.

5 Are -- did you submit the report on
6 behalf of Ripple only?

7 MR. OPPENHEIMER: Objection.

8 You can answer.

9 A. That's correct.

10 Q. Did you come to any arrangements with
11 Ripple regarding your fees in this case?

12 MR. OPPENHEIMER: Objection

13 to the form.

14 You can answer.

15 A. I didn't personally discuss my fees with
16 counsel.

17 Q. Well, do you know how much you're
18 charging for your services in this case?

19 A. Compass Lexecon is charging \$975 per
20 hour for my work.

21 Q. Okay. Do you know if you're expected to
22 provide any additional expert services other than
23 the report that you submitted in this case?

24 MR. OPPENHEIMER: Objection

25 to the form.

1 A. I don't know that -- that for sure. I
2 understand that I may testify at trial.

3 Q. Mm-hmm.

4 Do you know if your -- the rate that's
5 being charged for your services will change if
6 you testify at trial?

7 A. I know that.

8 Q. I'm sorry?

9 A. I know whether it will change or not.

10 Q. So what is the answer? Will it change
11 or not?

12 A. It -- it will not change.

13 Q. Do you -- do you know how many billable
14 hours you've spent on this case thus far?

15 A. No.

16 Q. How do you keep your time on this case?

17 A. I enter time usually daily in the system
18 in Compass Lexecon.

19 Q. Do you know what specific work that you
20 billed for in the case?

21 A. Yes, generally.

22 Q. So what -- what specific work have you
23 billed for in this case?

24 MR. OPPENHEIMER: Objection.

25 You can answer as to the types

1 of work you've performed. You should not
2 reveal the substance of any discussions
3 with counsel.

4 A. Reviewing case materials, meetings,
5 drafting report, preparation to deposition. These
6 are the major ones.

7 Q. What are the -- are -- are there other
8 types of work that you've done in the case other
9 than the ones that you just described?

10 A. Not that I recall.

11 Q. Do you have any --

12 THE VIDEOGRAPHER: Go ahead.

13 Q. Do you have any personal relationship
14 with any of -- with the defendants in this case?

15 A. No.

16 Q. Okay. Do you have any financial
17 relationships with the defendants in this case?

18 MR. OPPENHEIMER: Objection.

19 You can answer.

20 A. Compass Lexecon is compensated for my
21 work in this case.

22 Q. Are you familiar with XRP?

23 A. Yes.

24 Q. What is XRP?

25 A. It is --

1 MR. OPPENHEIMER: Objection.

2 You can answer.

3 A. XRP is the digital asset at issue in
4 this case.

5 Q. Do you own any XRP?

6 A. No.

7 Q. Does anyone in your family own any XRP?

8 A. No.

9 Q. Have you bought any XRP?

10 A. No.

11 Q. Have you sold any XRP?

12 A. No.

13 Q. Do you know if Compass Lexecon has
14 received any compensation in XRP?

15 A. I don't know the full extent of Compass
16 Lexecon's compensation, but I would be very
17 surprised if they received any compensation in
18 XRP.

19 Q. Why?

20 A. I've been in economic consulting for 15
21 years and I've never seen anyone being compensated
22 in anything but U.S. dollars or other traditional
23 currencies.

24 Q. Do you recall when you were first
25 contacted to render your expert services in this

1 case?

2 A. October.

3 Q. Do you know how the defendant knew how
4 to contact you in this case?

5 A. No.

6 Q. Was anyone present during this initial
7 contact from the defendant in this case?

8 A. Yes.

9 Q. Who was present at your initial contact
10 with the defendant in this case?

11 A. Just to clarify, by "defendant" I assume
12 you mean counsel. And the person present was
13 Niall MacMenamin.

14 Q. Were you provided with any assignment
15 during the first contact that you had with the
16 defendant in this case?

17 A. Yes.

18 Q. Do you recall what your assignment was
19 in your first contact in this case?

20 A. Yes.

21 Q. What was the assignment?

22 A. To evaluate the expert report of [REDACTED]

23 [REDACTED]

24 Q. Were you asked to render an opinion on
25 this initial contact?

1 MR. OPPENHEIMER: Objection.

2 I think the substance of individual
3 conversations is -- is privileged. I
4 think if you want to ask her what her
5 assignment was, you're welcome to do
6 that; but if you want to ask her the
7 substance of any particular
8 conversation, I'll instruct you not
9 to answer.

10 MS. GUERRIER: First of all,
11 I asked her whether she was asked to
12 render any opinion on the initial
13 contact. Number two, you shouldn't
14 be having any speaking objections.
15 I'm not sure what your objection is,
16 frankly.

17 MR. OPPENHEIMER: It's a
18 privilege objection. I just
19 explained the basis for it. If you'd
20 like me to elaborate, I can.

21 MS. GUERRIER: She can
22 answer yes or no.

23 MR. OPPENHEIMER: Hang on.

24 MS. GUERRIER: So I'll
25 repeat my question unless you have

1 anything else to add.

2 MR. OPPENHEIMER: Go ahead.

3 Why don't you ask your question.

4 BY MS. GUERRIER:

5 Q. Were you asked to render any opinion on
6 the initial contact?

7 MR. OPPENHEIMER: Objection.

8 I'm going to instruct you not
9 to answer that.

10 MS. GUERRIER: What's the
11 basis for your objection?

12 MR. OPPENHEIMER: It's
13 privileged. You're -- you're asking
14 her -- in substance that question
15 asks what the lawyers discussed with
16 her in the initial conversation and,
17 in particular, whether this
18 particular sentence, essentially
19 "Please render an opinion" came up.

20 You're not allowed to ask
21 questions that go --

22 MS. GUERRIER: You don't
23 have to tell me what I'm not allowed
24 to do. Your objection is noted.
25 We'll have that on the record and we

1 can deal with that later.

2 MR. OPPENHEIMER: Counsel,
3 you asked me the basis for the
4 objection. I'm giving you the basis
5 for the objection. It -- it is
6 within the scope of attorney work
7 product to inquire as to the
8 particular conversations the witness
9 had with counsel. I'm not going to
10 allow her to answer that.

11 MS. GUERRIER: Okay. Your
12 objection is noted.

13 BY MS. GUERRIER:

14 Q. Were you provided with any facts about
15 the case at the initial consultation?

16 MR. OPPENHEIMER: Same
17 objection.

18 I instruct you not to answer.

19 Q. Were you provided with any documents
20 about the case at the initial consultation?

21 MR. OPPENHEIMER: Same
22 objection. Same instruction.

23 Q. Did you receive any records for this
24 case when you were retained as an expert?

25 MR. OPPENHEIMER: You can

1 answer.

2 A. What do you mean by "records"?

3 Q. Do you have an understanding what the
4 term "records" means?

5 MR. OPPENHEIMER: Objection.

6 She -- objection to the form.

7 You can answer if you
8 understand.

9 A. It has several meanings.

10 Q. Did you get any documents when you were
11 retained in this case?

12 A. Yes.

13 Q. When did you receive the documents for
14 this case?

15 A. October.

16 Q. From whom did you receive the documents?

17 A. From Niall MacMenamin.

18 Q. Were there any facts that were provided
19 to you by your attorneys that you considered in
20 forming your opinion in this case?

21 A. Can you repeat that, please?

22 Q. Sure.

23 Were there any facts that were provided
24 to you by your attorneys that you considered in
25 forming your opinion in this case?

1 A. No.

2 Q. Okay. Were there any documents that
3 were provided by your attorneys that you
4 considered in forming your opinion in this case?

5 A. I under -- under -- I understand that
6 the documents I received from Niall were provided
7 to him by counsel.

8 Q. Did you consider any of the documents
9 that were provided to you by counsel in forming
10 your opinions?

11 MR. OPPENHEIMER: Objection.

12 You can answer if you know.

13 A. Not directly received.

14 Q. What do you mean by "not directly
15 received"?

16 A. Niall received documents from counsel.
17 I received documents from Niall.

18 Q. Okay. So the documents that ended up in
19 front of you, did you consider any of them in
20 forming your opinion?

21 A. Yes.

22 Q. What documents did you consider in
23 forming your opinions in this case?

24 A. The complaint, Ripple's response to the
25 complaint, Mr. [REDACTED] report, the Howey case.

1 Q. Anything else?

2 A. Nothing else.

3 Q. Were there any assumptions that you
4 relied on in formulating your opinions in this
5 case that were provided to you by counsel?

6 A. No.

7 Q. Did you personally do all the work in
8 support of the report that you submitted in this
9 case?

10 MR. OPPENHEIMER: Objection.

11 A. I had assistance from my team.

12 Q. Who makes up the "team" that you're
13 referring to?

14 A. Niall MacMenamin, Vendela Fehrm. And
15 there might have been -- there was another person
16 who worked directly with Vendela.

17 Q. Who is this other person who worked
18 directly with Vendela Fehrm?

19 A. I don't remember the name.

20 Q. Did you supervise this other person who
21 worked directly with Vendela Fehrm?

22 A. Vendela supervised this other person.

23 Q. Do you recall this other person's title?

24 A. No.

25 Q. Do you know what role this other person

1 played in form -- helping you formulate your
2 opinions in this case?

3 A. Yes.

4 Q. What role did this person play?

5 A. He verified citations.

6 Q. Do you recall which citations he
7 verified?

8 A. All of them or the majority.

9 Q. What did Vendela Fehrm do in support of
10 you -- your work in this case?

11 A. She helped finding certain citations.

12 Q. Did she do anything else?

13 A. She supervised this other person who
14 checked the citations.

15 Q. Is this other person that you're
16 referring to an employee of Compass Lexington --
17 Lexecon?

18 A. He's an employee of Compass Lex --
19 Lexecon.

20 Q. Other than finding certain citations and
21 supervising the person that you can't recall, what
22 else did Vendela Fehrm do?

23 A. Nothing else as I recall.

24 Q. Did you supervise Vendela Fehrm's work?

25 A. Yes.

1 Q. How did you supervise Vendela Fehrm's
2 work?

3 MR. OPPENHEIMER: Objection.

4 You can answer.

5 A. I asked her to look for citations and I
6 asked her to find someone to verify the cita --
7 citations and oversee them.

8 Q. Anything else?

9 A. Not that I recall.

10 Q. What exactly did Niall MacMenamin do in
11 support of your work in this case?

12 MR. OPPENHEIMER: Objection.

13 A. He reviewed the draft and provided me
14 with feedback.

15 Q. Anything else?

16 A. Not that I recall.

17 Q. Were you present when -- at all times
18 when Vendela Fehrm was performing the work that
19 you described in support of your report?

20 A. Present for?

21 Q. Well, where was Vendela Fehrm performing
22 the work that she -- you described that she
23 performed in support of your report?

24 A. These days everybody works from home, so
25 I assume she was working from home. I was working

1 from home.

2 Q. Okay. Well, how did you supervise her
3 work while she was working from home?

4 MR. OPPENHEIMER: Objection.

5 A. We had periodic Zoom calls.

6 Q. Did you have any Zoom calls with the
7 person that you cannot recall who helped your --
8 write your report?

9 MR. OPPENHEIMER: Objection

10 to the form.

11 A. The person whose name I cannot recall
12 did not help write the report. That person
13 verified footnotes and citations. I did not have
14 a Zoom call with that person.

15 Q. Other than Niall MacMen -- MacMenamin,
16 Vernon La Fehrm -- I'm sorry. Let -- Vendela
17 Fehrm and the person that you cannot recall, did
18 anyone else assist you with your report?

19 A. Not that I recall.

20 Q. Did any attorney help you draft your
21 report?

22 MR. OPPENHEIMER: Objection.

23 You can answer.

24 A. Counsel provided feedback.

25 Q. Which counsel provided feedback?

1 A. I don't recall.

2 Q. Is there any part of the report that
3 counsel drafted?

4 A. No.

5 Q. Is there any language in your report
6 that is not yours?

7 A. No.

8 Q. Did anyone check your work other than
9 the people that -- Niall MacMenamin and counsel?

10 MR. OPPENHEIMER: Objection.

11 You can answer.

12 A. The person whose last name or first name
13 I cannot recall verified citations.

14 Q. Did anyone verify any statements that
15 you made in the body of the report?

16 MR. OPPENHEIMER: Objection.

17 A. Can you clarify what you mean?

18 Q. Did anyone review any of the statements
19 that you made in the body of your report?

20 MR. OPPENHEIMER: Objection

21 to the form.

22 You can answer.

23 A. Niall reviewed my report and counsel
24 reviewed my report.

25 Q. Are all the records that you considered

1 in formulating your opinion listed in your report?

2 A. What do you mean by "records"?

3 Q. Everything that you've considered in
4 formulating your opinion, did you list that
5 information in your report?

6 MR. OPPENHEIMER: Objection
7 to form.

8 A. Materials considered are in my Appendix

9 B.

10 Q. Does that include all of the materials
11 that you've considered in formulating your
12 opinion?

13 A. Yes.

14 Q. Okay. Are there materials that you
15 reviewed that were not listed in your report?

16 A. No.

17 Q. Were there any documents that you wanted
18 to review but could not obtain?

19 A. No.

20 Q. What is the Appendix A that you've
21 attached to your report?

22 A. Appendix A is my CV.

23 Q. Okay. Is your CV complete?

24 MR. OPPENHEIMER: Objection.

25 A. Can you clarify what you mean by

1 "complete"?

2 Q. Does -- does your CV contain all of the
3 information that's current regarding your
4 professional position?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. I have been in economic consulting for
8 over 15 years and prior to that I obtained three
9 degrees. So in this document, which is under ten
10 pages, it would be impossible to list everything
11 that I ever did in my professional career and in
12 my time at school.

13 Q. Okay. Is there any education that
14 you -- that is not listed on your Appendix A?

15 MR. OPPENHEIMER: Objection;
16 form.

17 A. My secondary education is not listed
18 here.

19 Q. What do you mean by "secondary
20 education"?

21 A. High school, middle school, primary
22 school, --

23 Q. Okay.

24 A. -- kindergarten.

25 Q. Any education after high school that's

1 not listed on your CV?

2 MR. OPPENHEIMER: Objection
3 to the form.

4 A. The big ones are listed. There could
5 have been seminars, web -- webinars, lectures that
6 I'm not including, conferences.

7 Q. When was this Appendix A created?

8 A. Sometime between October and November.

9 Q. Did you have another CV prior to the one
10 that's attached to your report as Appendix A?

11 A. I first created a CV in the early 2000s
12 and it's been evolving since.

13 Q. Have you removed anything from the prior
14 CVs that's not included in the CV that you have
15 attached as Appendix A to your report?

16 MR. OPPENHEIMER: Objection
17 to form.

18 A. As I said, my CV is evolving. Some
19 items become more -- I include new items and
20 sometimes I retire something that's irrelevant or
21 just for space or old.

22 Q. What are some of the things that you
23 retired from your CV?

24 A. I had a brief internship back in Russia.
25 Probably prior to 2000. That's no longer in my

1 CV.

2 Q. Where was the internship?

3 A. At -- at a company selling consumer
4 goods. They were participating in an exhibition.
5 I worked at the exhibition.

6 Q. What did you do at the exhibition?

7 A. I presented the products. I sold some
8 products.

9 Q. Anything else that's been retired from
10 your CV?

11 A. There's probably a lot of things as my
12 CV has evolved in the past 20 years.

13 Q. So what else has been retired from your
14 CV?

15 A. I'm sure I would not be able to recall
16 all of them. There was a paper in mathematics
17 that at one point was accepted to a journal that I
18 listed for several years, but as I moved to the
19 United States I had different priorities so I
20 never finished the final touches on the paper and
21 it's never been published.

22 Q. Do you recall the -- the name of the
23 paper in mathematics?

24 A. It had to do with free nonassociative
25 algebras.

1 Q. Is this a paper that you were working
2 on?

3 A. I was working on this paper.

4 Q. Were you employed by a company when you
5 were working on this paper?

6 A. No.

7 MR. OPPENHEIMER: Objection
8 to form.

9 Q. Were you in school when you were working
10 on this paper?

11 A. Yes.

12 Q. What school?

13 A. Moscow State University, and then I
14 might have continued working on it when I was
15 already at the New Economic School. And I might
16 have brought it with me at MIT, but I don't think
17 I worked on that at MIT.

18 Q. Okay. Anything else?

19 A. I wouldn't be able to recall all the
20 changes I've made to my CV within the past 20
21 years.

22 Q. How about within the past ten years?

23 A. Same. I wouldn't be able to recall.

24 Q. Okay. Have you made any changes within
25 the past five years to your CV?

1 A. Yes. It's constantly evolving.

2 Q. So do you recall what changes you've
3 made in the past five years to your CV?

4 A. I can recall examples.

5 Q. Okay. Can you provide the examples?

6 A. Well, one example, I changed jobs this
7 past summer, so I added Compass Lexecon to my CV
8 and changed how I describe my prior employment.

9 Q. How did you change how you describe your
10 prior employment?

11 A. Well, I put a final date to it. Until
12 then it said "2005 to present."

13 Q. Other than those three schools that you
14 listed on your CV, is there anything -- other
15 school missing?

16 MR. OPPENHEIMER: Objection.

17 A. These are my three degrees. While I was
18 at MIT and Sloan School of Management, I also took
19 classes at MIT Economic Department and Harvard
20 Business School and Harvard Psychology Department.
21 Since I started my career, I've gone to several
22 conferences, some of which have educational
23 aspects; webinars, seminars. I don't think those
24 are listed.

25 Q. Anything else that's missing from your

1 CV?

2 MR. OPPENHEIMER: Objection
3 to form.

4 A. Nothing is missing from my CV.

5 Q. Well, anything else that you did not
6 list on your CV?

7 A. I did not list a lot of things that I've
8 done in the past 20 years or so.

9 Q. Other than what we discussed, is there
10 anything else that you did not list on your CV?

11 MR. OPPENHEIMER: Objection.
12 You can answer.

13 A. Well, I could give you more examples.

14 Q. That would be good.

15 A. The section of my CV that's titled
16 "Selective Consulting Experience" lists cases
17 where I supported other experts. And the list
18 here is short relative to all the cases I've done.
19 The majority of them are not listed here.

20 Q. Anything else that's not listed on your
21 CV?

22 MR. OPPENHEIMER: Objection.

23 A. I'm sure there are plenty of other
24 things I've done in the past 20 years that are not
25 listed on my CV. The point of a CV is not to have

1 an exhaustive list of every single little thing
2 I've done.

3 Q. Okay. Well, for the purpose of this
4 deposition, do you recall anything else that's not
5 listed on your CV other than what you just
6 discussed?

7 MR. OPPENHEIMER: Objection
8 to form.

9 A. I'll give you one more example. While I
10 was at the Analysis Group for many years, I
11 participated in teaching a Stata class and --

12 THE REPORTER: Repeat.

13 THE WITNESS: Stata class.

14 A. And for several years I was also the
15 head of the Stata teaching group.

16 Q. You testified that you took classes at
17 the Harvard Business School.

18 Do you recall when you took those
19 classes?

20 A. Yes.

21 Q. When did you take the classes at the
22 Harvard Business School?

23 A. One class I took in 2002 and there might
24 have been one other class, but I don't recall
25 precisely. But all of that would be during my

1 time at MIT.

2 Q. Okay. Do you recall what the subject of
3 the course you took at -- in 2002 at Harvard
4 Business School was?

5 A. Experimental economics.

6 Q. Do you recall the subject of the course
7 in 2004?

8 MR. OPPENHEIMER: Objection
9 to the form.

10 A. I don't think I mentioned anything about
11 2004.

12 Q. Well, let me read back. You said there
13 may have been another class.

14 Do you recall what year you took that
15 other class?

16 A. I'm not sure --

17 Q. Well --

18 A. -- the year or whether there even was
19 another class. I might have taken it without
20 credit. I don't recall the details.

21 Q. You also testified that you took a class
22 at the Harvard Psychology Department, is that
23 correct?

24 A. That's correct.

25 Q. Do you recall what year you took the

1 class at the Harvard Psychology Department?

2 A. I took several classes in Harvard
3 Psychology Department, at least three for credit
4 and some without credit. And that would be
5 probably starting in 2003 and until I graduated
6 from MIT.

7 Q. You testified that you participated in
8 teaching a statistics class -- teaching a class
9 when you were at the Analysis Group, is that
10 correct?

11 MR. OPPENHEIMER: Objection
12 to the form. Mischaracterizes
13 testimony.

14 A. I didn't say that.

15 Q. So what did -- what did you teach when
16 you were at Analysis Group?

17 A. Among other things, Stata.

18 Q. Stata?

19 A. Yes.

20 Q. Can you spell that?

21 A. S-T-A-T-A.

22 Q. What is Stata?

23 A. It's a statistical package to analyze
24 data.

25 Q. Okay. Is there anything else that you

1 taught when you were at Analysis Group?

2 A. Yes.

3 Q. What else?

4 A. Survey and experimental design.

5 THE REPORTER: Repeat.

6 A. Survey and experimental design.

7 Q. Anything else?

8 A. That's possible. I was there for over
9 15 years, but I don't recall anything other big.

10 Q. When did you graduate from the Moscow
11 State University?

12 A. 2001.

13 Q. What degree did you obtain from Moscow
14 State University?

15 A. MS in mathematics.

16 Q. When did you graduate from the New
17 Economic School in Russia?

18 A. 2002.

19 Q. What degree did you obtain from the New
20 Economic School in Russia?

21 A. MA in economics.

22 Q. When did you start attending MIT Sloan
23 School of Management?

24 A. 2002.

25 Q. And when did you obtain your degree from

1 MIT Sloan School of Management?

2 A. 2007.

3 Q. What did you obtain your degree in?

4 A. My diploma says management science, but
5 effectively it's a degree in marketing as I spent
6 over five years in the marketing group.

7 Q. What year did you -- I'm sorry. You did
8 answer that.

9 Were there any breaks between 2002 and
10 2007 that you took in your schooling?

11 MR. OPPENHEIMER: Objection.

12 You can answer.

13 A. No.

14 Q. Are you a member of any professional
15 organization?

16 A. I'm a member of American Marketing
17 Association.

18 Q. How long have you been a member of
19 American Marketing Association?

20 A. Several years.

21 Q. Do you -- do you have a number for the
22 several years?

23 A. No.

24 Q. Is it less than five years?

25 A. I'm not sure.

1 Q. What is the American Marketing
2 Association?

3 A. It's an association of economics and
4 practitioners doing marketing.

5 Q. Is your membership current in the
6 American Marketing Association?

7 A. I believe so.

8 Q. Any other professional associations or
9 organizations that you're a member of?

10 A. No.

11 Q. Have you taken any marketing courses
12 regarding digital assets?

13 A. No.

14 Q. Have you taken any courses regarding
15 digital assets?

16 A. No.

17 Q. Have you received any training in the
18 area of digital assets?

19 A. No.

20 Q. Have you conducted any marketing work in
21 the area of digital assets?

22 A. No.

23 Q. Have you ever taught a class about
24 digital assets?

25 A. No.

1 Q. Have you ever conducted any experiments
2 regarding digital assets?

3 A. No.

4 Q. Have you ever conducted any surveys
5 regarding digital assets?

6 A. No.

7 Q. How long have you been employed at
8 Compass Lexecon?

9 A. I've been employed at Compass Lexecon
10 since this past summer.

11 Q. What is your role at Compass Lexecon?

12 A. Senior vice president.

13 Q. Where did you work prior to this last
14 summer?

15 A. Analysis Group.

16 Q. I'm sorry?

17 A. Analysis Group.

18 Q. Did you start working at Compass Lexecon
19 while you were still working at Analysis Group?

20 A. No.

21 Q. Okay. So in your CV, you listed your
22 experience at Compass Lexecon from 2005 to 2021,
23 is that correct?

24 A. That's a typo. That should be 2021 to
25 present as it says next to "Senior Vice

1 President."

2 Q. Okay. What are your job duties at
3 Compass Lexecon?

4 A. I focus on causal inference, designing
5 and conducting experiments, surveys, analyzing and
6 evaluating experiments and surveys conducted by
7 others, assisting experts or serving myself in an
8 expert role, among other things.

9 Q. What are some of the other things that
10 you do at Compass Lexecon?

11 A. One example is hiring.

12 Q. Anything else?

13 A. Overseeing the work of junior colleagues
14 or more junior colleagues.

15 Q. Anything else?

16 A. It's an economic consulting environment,
17 so the standard economic consulting experience.

18 Q. What's the "standard economic consulting
19 experience"?

20 A. Communicating with clients,
21 communicating with experts, reviewing materials.

22 Q. Anything else?

23 MR. OPPENHEIMER: Objection
24 to the form.

25 A. I'm sure there are other more nuanced

1 tasks that I carry out and it's probably a very
2 long list. Similar as with the CV, I can only
3 give you examples.

4 Q. So can you give some of the examples of
5 the other tasks that you conduct at Compass
6 Lexecon?

7 A. Review of academic literature.

8 THE REPORTER: Repeat.

9 A. Review of academic literature.

10 Q. Anything else?

11 MR. OPPENHEIMER: Objection
12 to form.

13 A. Another example would be review of data.

14 Q. Anything else?

15 A. Another example would be review of
16 documents.

17 Q. Is there anything else?

18 A. There probably is a lot of else.

19 Q. Do you recall what else?

20 A. Assisting lawyers with preparation for
21 depositions, assisting experts with preparation
22 for a deposition, preparing for my own deposition.

23 Q. Any other job duties that you have at
24 Compass Lexecon?

25 A. Drafting my report or assisting others

1 with drafting their reports.

2 Q. Have you discussed all the job duties
3 that you have at Compass Lexecon?

4 A. I'm sure the list is very long and I'm
5 probably missing something, but I've given you
6 plenty of examples.

7 Q. Is there anything that you recall that
8 you have not stated?

9 MR. OPPENHEIMER: Objection
10 to form.

11 A. Zoom calls.

12 Q. Is that a job duty?

13 A. What do you mean by a "duty"?

14 Q. Well, what are you hired to do at
15 Compass Lexecon? That's what I mean by "duty."

16 A. All of those things that I listed and
17 probably more things.

18 Q. Okay. Other than everything that we've
19 discussed including the Zoom calls, is there
20 anything else that you recall and have not stated?

21 MR. OPPENHEIMER: Objection
22 to form.

23 A. I can recall more if you'd like.

24 Q. If you can recall your job duties, if
25 you could state what they are for the record other

1 than what you've already described.

2 A. Reviewing case documents.

3 Q. Have you described all of your job
4 duties at Compass Lexecon?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. I don't think it's feasible to describe
8 all the duties because it's a very long list and
9 not specifically defined.

10 Q. Well, what else have you not told us
11 about today?

12 MR. OPPENHEIMER: Objection
13 to form.

14 A. I believe I've given you the major
15 things but if you'd like I can try to remember
16 more nuanced details.

17 Q. Well, if you can recall.

18 A. Well, I'm relatively new at Compass
19 Lexecon, so I haven't done all of these -- all of
20 the calling, but I'm pretty sure it will happen
21 soon.

22 Q. Can I --

23 A. For example, being present at someone
24 else's deposition --

25 Q. Can I stop you right there? If you have

1 not -- I'm asking you for the duties that you
2 currently have.

3 A. Right.

4 Q. I -- I -- I'm not asking you about what
5 could happen in the future or not.

6 A. Right. So it is part of my job, but it
7 maybe hasn't happened yet, but I'm sure I'll be
8 present at someone else's deposition eventually.
9 For this case I will be reviewing the transcript
10 for the errata sheet. I will probably do this for
11 other people's depositions in the future. I
12 communicate with survey panels and other vendors
13 who help carrying out surveys and experiments.

14 Q. Okay. Where did you work prior to
15 Compass Lexecon?

16 A. Analysis Group.

17 Q. How long did you work at Analysis Group?

18 A. Be -- between 2005 and 2021. In 2005, I
19 was an intern associate for a summer, and then in
20 2007, I started full time.

21 Q. Okay. Were you an associate between
22 2007 and 2009?

23 A. Yes.

24 Q. Okay. What were your duties as an
25 associate at Analysis Group, Inc.?

1 A. I did a lot of data analysis. I
2 assisted with drafting reports. I taught the
3 Stata class. I probably assisted with depositions
4 or were present at depositions, but I cannot say
5 for sure whether it was while I was still an
6 associate or once I became manager.

7 In many respects the job definition is
8 the same throughout the career in economic
9 consulting. It's the level of responsibility that
10 shifts.

11 Q. Okay. So you became a manager in 2009?

12 A. Yes.

13 Q. How long were you a manager at Analysis
14 Group?

15 A. Until 2015.

16 Q. Did your responsibilities change from
17 the time you were an associate until when you
18 became a manager in 2009?

19 A. The way things work at Analysis Group is
20 that there is really no dramatic shift. Once a
21 person is promoted, they say there that you should
22 already be working at a manager level for a year
23 before you are promoted to a manager.

24 But, generally, as one grows there in
25 their career, that means more responsibility, less

1 day-to-day activities such as programming and data
2 analysis, more communication with clients and
3 experts and possibly starting as an expert
4 yourself.

5 Q. Okay. You became a vice president at
6 Analysis Group?

7 A. That's correct.

8 Q. When did you become a vice president at
9 Analysis Group?

10 A. 2016.

11 Q. And how long were you a vice president?

12 A. Until 2020.

13 Q. What did you do at Analysis Group after
14 2020?

15 A. I was a consultant.

16 Q. What were your duties as a consultant?

17 A. Largely similar to my duties as vice
18 president. The structure of my compensation
19 changed.

20 THE REPORTER: The structure
21 of the organization?

22 THE WITNESS: Compensation.
23 Of my compensation.

24 Q. Can you describe your duties as a
25 consultant?

1 A. I was an expert on one case. I
2 supported other experts on other cases, assisted
3 with data analysis, drafting reports, with
4 developing rebuttals. In the case where I was the
5 expert, I conducted a conjoined analysis survey
6 and market simulations.

7 Q. Okay. And how long were you a
8 consultant at Analysis Group?

9 A. Until 2021.

10 Q. Did you have any jobs between the time
11 you left Analysis Group and started at Compass
12 Lexecon?

13 A. No.

14 Q. Okay. Going back to your Ph.D. at MIT
15 Sloan School of Management, what was the topic of
16 your dissertation?

17 A. Essays in behavioral decision-making.

18 Q. Okay. Can you describe what your
19 dissertation was about at MIT Sloan School?

20 A. It consisted of three chapters that were
21 largely unrelated streams of research. One stream
22 of research had to do with consumers overvaluing
23 products that are -- that they can get for free
24 and wanting them more than they should from a
25 standard economics perspective.

1 Another stream of research was related
2 to mood regulation. For example, what kind of
3 movie would you see in a good mood or in a bad
4 mood?

5 And the third stream of research had to
6 do with whether wanting and liking are aligned.

7 (Whereupon, exhibit is received
8 and marked SEC Shampanier Deposition
9 Exhibit 5 for identification.)

10 THE REPORTER: Exhibit 5 for
11 identification.

12 BY MS. GUERRIER:

13 Q. Okay. I've handed you what's been
14 marked as Exhibit 5.

15 Do you recognize the document that's
16 been marked as Exhibit 5?

17 A. This appears to be a copy of my
18 dissertation.

19 Q. Okay. Were you examining causal
20 relationships in the subject matter of your
21 dissertation?

22 A. Yes.

23 Q. Can you explain the type of causal
24 relationships you were examining?

25 A. I'll need to refresh my memory.

1 For example, the first essay in my
2 dissertation is entitled "Zero as a Special Price:
3 The True Value of Free Products."

4 The main causal proposition tested in
5 this chapter in my dissertation is whether when
6 consumers are exposed to a free product they
7 reacted in a way that is essentially rational.

8 Q. Are you done?

9 A. This is a very short summary of the
10 first chapter of my dissertation.

11 Q. Were you evaluating perceptions of
12 consumers in your dissertation?

13 A. Can you repeat the question, please?

14 Q. Sure.

15 Were you evaluating perceptions of
16 consumers in your dissertation?

17 A. Yes.

18 Q. Okay. Can you summarize what
19 perceptions you were evaluating in your
20 dissertation with respect to consumers?

21 MR. OPPENHEIMER: Objection
22 to form.

23 A. Participants in the experiment were
24 asked to evaluate how attractive they found
25 certain offers.

1 Q. Okay. So was there a cause-and-effect
2 connection with the perception that you were
3 evaluating?

4 A. Yes.

5 Q. What was the cause-and-effect
6 connection?

7 A. The cause was the presence of a free
8 product.

9 Q. And what was the effect?

10 A. Attitude. Attitude.

11 Q. How did you connect the cause and effect
12 of the perception of the consumer?

13 A. Using an experiment.

14 Q. What type of experiment?

15 A. Randomized control experiments.

16 THE REPORTER: Randomized?

17 THE WITNESS: Control.

18 Q. What's a randomized control experiment?

19 A. In a randomized control experiment, a
20 group of participants is randomly split into two
21 groups. We can call them a test group and a
22 control group. And they go through a similar
23 procedure, but there is a difference and that
24 difference is the cause that we're testing.

25 Then we measure those participants which

1 is a measure of interest to us. And if there is a
2 difference in the outcome between the two groups
3 which is statistically significant, we can
4 conclude -- or at least we cannot reject the
5 hypothesis that there is no impact. So usually --

6 THE REPORTER: There is no?

7 THE WITNESS: Impact.

8 A. So in lay terms that means we conclude
9 that there is a cause and effect.

10 Q. Okay. Would it be possible to evaluate
11 the perception of these consumers without
12 conducting a randomized control experiment?

13 MR. OPPENHEIMER: Objection
14 to form.

15 A. If you simply want to record perceptions
16 without investigating the cause of those
17 perceptions, then we can conduct other studies.

18 Q. What types of other studies can you
19 conduct if you just want to look at perception and
20 not cause and effect?

21 A. For example, a survey.

22 Q. Anything else?

23 A. At the preliminary stage of research,
24 when we want to simply hypothesize of what the
25 perceptions are, we can conduct qualitative

1 studies such as focus groups or phone interviews.

2 Q. Can you explain what qualitative studies
3 are?

4 A. Qualitative studies are studies from
5 which we don't make numeric conclusions such as X
6 percent of people think Y.

7 Q. Is this different from quantitative
8 studies?

9 A. That's correct.

10 Q. What's a quantitative study?

11 A. In quantitative studies, we make
12 quantitative conclusions.

13 Q. What are quantitative conclusions?

14 A. An example would be X percent of
15 purchasers of this yogurt believe that this yogurt
16 is very tasty.

17 Q. Do you need to rely on data to conduct
18 quantitative studies?

19 A. Yes.

20 Q. We'll get back to that.

21 So going back to your CV, did you have
22 any other professional employment that's not
23 listed on your risumi or your CV?

24 MR. OPPENHEIMER: Objection
25 to form.

1 A. Not anything major.

2 Q. Do you recall what else you didn't list
3 with regards to your professional employment?

4 MR. OPPENHEIMER: Objection.

5 A. Can you repeat the question, please?

6 Q. I had asked you whether you had any
7 other professional employment that's not listed on
8 your risumi or CV. And you responded "not
9 anything major."

10 So my question is, do you recall what
11 else you didn't list with regard to your
12 professional employment?

13 MR. OPPENHEIMER: Same
14 objection.

15 A. I did not list my minor and very old
16 engagements like the internship and the exhibition
17 I described previously.

18 MS. GUERRIER: Do you want
19 to take a --

20 MR. OPPENHEIMER: Sure.

21 MS. GUERRIER: --
22 ten-minute break?

23 MR. OPPENHEIMER: That's
24 fine.

25 MS. GUERRIER: Okay.

1 THE VIDEOGRAPHER: Okay.

2 Going off the record at 10:36.

3 (Whereupon, a recess is taken.)

4 THE VIDEOGRAPHER: Okay.

5 Back on the record at 10:52.

6 BY MS. GUERRIER:

7 Q. Okay. Did you testify that you have
8 experience conducting quantitative studies?

9 A. I don't know if I testified to that, but
10 I do have experience.

11 Q. Is it, yes, you have experience
12 conducting quantitative studies?

13 A. I have experience conducting
14 quantitative studies.

15 Q. When you've conducted those studies, on
16 occasion, have you observed a statistically
17 significant correlation between two variables?

18 MR. OPPENHEIMER: Objection
19 to form.

20 You can answer.

21 A. I've observed statistically significant
22 effects. I'm not sure specifically if I ever
23 looked at correlations. Most likely I have.

24 Q. So is it most likely you have observed
25 statistically significant correlations?

1 MR. OPPENHEIMER: Objection

2 to form.

3 A. I have observed statistically
4 significant effects. Those could have been
5 correlations, but usually I don't look at
6 correlations.

7 Q. Okay. If you observe a statistically
8 significant correlation, what, if anything,
9 does -- does that observation permit you to
10 conclude regarding cause and effect?

11 MR. OPPENHEIMER: Objection

12 to form.

13 A. There could be a causal relationship or
14 there could be no causal relationship.

15 Q. Can you please elaborate on what you
16 mean by "there could be a causal relationship or
17 there could be no causal relationship"?

18 A. If there is a statistically significant
19 correlation between two variables, it could be
20 because one of them causes the other or it could
21 -- it could be that none of them causes that.

22 Q. I believe you testified that you have
23 observed statistically significant effects, is
24 that correct?

25 A. That's correct.

1 Q. So in such studies, are you able to
2 observe a statistically significant effect between
3 two variables?

4 MR. OPPENHEIMER: Objection
5 to form.

6 A. In an experiment, a statistically
7 significant effect is usually the difference,
8 statistically significant difference, between the
9 outcomes of the test group and the control group.

10 Q. If you observe a statistically
11 significant effect, does that observation permit
12 you to conclude -- make any conclusions regarding
13 cause and effect?

14 MR. OPPENHEIMER: Objection
15 to form.

16 A. If I conduct a randomized controlled
17 experiment and there's a statistically significant
18 difference between the outcomes in the test group
19 and the control group, I can conclude in lay terms
20 that there is a causal effect between the
21 manipulated variable and the outcome.

22 Q. Okay. Do you have an area of expertise?

23 MR. OPPENHEIMER: Objection
24 to form.

25 A. I'm an expert in several areas.

1 Q. What are your areas of expertise?

2 A. Experimental design, survey design,
3 consumer behavior, judgment and decision-making.

4 Q. Do you consider yourself an expert with
5 regards to surveys of digital asset holders?

6 MR. OPPENHEIMER: Objection
7 to form.

8 A. I consider myself an expert in surveys
9 done with -- if I am provided background on
10 digital assets or another product, I can design a
11 reliable survey on that topic. In fact, I have
12 designed numerous surveys or assisted others in
13 designing them and oftentimes the subject matter
14 or the exact product in those cases was relatively
15 new to me or entirely new to me.

16 Q. Have you designed a survey concerning
17 digital assets?

18 A. No.

19 Q. Have you assisted anyone in designing a
20 survey concerning digital assets?

21 A. I believe that's covered by an NDA.

22 Q. Well, I don't need to know the substance
23 of what you've done. I'm asking you if you've
24 actually designed -- assisted anyone in conducting
25 a survey regarding digital assets.

1 A. That's covered by an NDA.

2 Q. You need to answer the question yes or
3 no.

4 A. Can I consult counsel?

5 MR. OPPENHEIMER: Why don't
6 you start with a yes or a no to just
7 whether you've assisted anyone in
8 designing a survey concerning digital
9 assets. We can take each question as
10 we go.

11 A. Yes.

12 Q. Do you recall when you assisted in
13 conducting a survey in -- regarding digital
14 assets?

15 A. Within the last couple of years.

16 Q. Was the survey done in connection with
17 this case?

18 A. No.

19 Q. Was the survey that you assisted with
20 with regard to the digital assets in connection
21 with litigation?

22 A. That's covered by an NDA.

23 Q. You need to answer yes or no.

24 A. Can I consult counsel?

25 MR. OPPENHEIMER: Why don't

1 we go off the record for a minute.

2 MS. GUERRIER: No. The
3 question is still pending. I'm
4 sorry.

5 MR. OPPENHEIMER: Counsel,
6 if she believes she's subject to an
7 NDA, then I'm not sure she can
8 answer. If we go off the record, we
9 can try to sort this out. That's --

10 MS. GUERRIER: Well, I'm not
11 asking her about names. I'm asking
12 her a general question. Was her
13 survey that she assisted with in
14 connection with litigation?

15 MR. OPPENHEIMER: Without
16 the opportunity to discuss that with
17 her, I don't know whether that would
18 be covered by the NDA.

19 MS. GUERRIER: Well, you
20 don't represent her in that capacity
21 so you wouldn't have a role in
22 determining whether or not it's
23 covered by anything.

24 MR. OPPENHEIMER: I'm not
25 sure that's accurate.

1 But if you -- if you understand
2 the question and you think you can answer
3 it as asked, you can go ahead. I think
4 you can answer yes or no.

5 THE WITNESS: Can you repeat
6 the question, please?

7 BY MS. GUERRIER:

8 Q. Was the survey that you assisted with
9 with regard to the digital assets in connection
10 with litigation?

11 A. To the best of my recollection, yes.

12 Q. Did you submit an expert report in
13 connection with the survey that you assisted with
14 with regard to the digital assets?

15 A. If I'm assisting another expert, I do
16 not submit reports.

17 THE REPORTER: I'm sorry,
18 repeat.

19 A. If I assist other experts, I do not
20 submit reports.

21 Q. So is the answer no?

22 A. The answer is no.

23 Q. Did the person you assisted submit an
24 expert report in connection with the survey that
25 was done regarding the digital assets?

1 A. No.

2 Q. Have you listed all of the publications
3 that you have made in the last ten years in your
4 report?

5 A. That's correct.

6 Q. Okay. Do any of the publications that
7 you've listed in your report concern digital
8 assets?

9 A. No.

10 Q. Have you listed all of the cases where
11 you testified at trial in the past four years in
12 your report?

13 MR. OPPENHEIMER: Objection
14 to form.

15 A. Can you repeat the question, please?

16 Q. Have you listed all of the cases where
17 you testified at trial in the past four years in
18 your report?

19 MR. OPPENHEIMER: Same
20 objection.

21 A. I have not testified at trial in the
22 past four years.

23 Q. Okay. Does your report identify all
24 deposition testimony that you gave in the last
25 four years?

1 MR. OPPENHEIMER: Objection

2 to form.

3 A. I did not testify at deposition in the
4 past four years.

5 Q. Did you testify at trial prior to the
6 last four years?

7 A. No.

8 Q. Did you testify at a deposition prior to
9 the last four years?

10 A. Yes.

11 Q. Okay. Is that -- what -- is that what
12 you described earlier in your deposition today?

13 A. Yes, I did.

14 Q. Okay. Any other time that you testified
15 at a deposition prior to the last four years?

16 A. No.

17 Q. Turning to page 36 of your report, what
18 is the "Selected Expert Casework" that you've
19 listed?

20 A. This section of my CV, these cases where
21 I was retained as an expert.

22 Q. In the household chemical advertising
23 class action, were you evaluating causation in
24 that case?

25 A. Yes.

1 Q. Okay. Do you know if your -- the expert
2 declaration that you submitted in the household
3 chemicals false advertising class action was
4 submitted to the court?

5 A. There are two declarations here and I
6 believe they were submitted just like any other
7 declaration.

8 Q. What do you mean?

9 A. I submitted it to counsel. Counsel must
10 have done what counsel usually does with
11 declarations.

12 Q. Do you know for a fact whether this
13 declaration was submitted to the court?

14 MR. OPPENHEIMER: Objection
15 to form.

16 A. I haven't verified, but I believe they
17 did submit it -- them.

18 Q. Did the court in that case accept you as
19 an expert?

20 MR. OPPENHEIMER: Objection
21 to form.

22 A. Could you clarify on that?

23 Q. Do you know if the court accepted your
24 expert declaration in that case?

25 MR. OPPENHEIMER: Objection

1 to form.

2 A. So regarding the first case, the case
3 settled so I don't know what kind of opinion the
4 court had.

5 Q. Okay.

6 A. And regarding the second case, I believe
7 it's ongoing.

8 Q. When you say "the second case," are you
9 referring to the last sentence where you state
10 that you "conducted similar analysis for a related
11 case..."?

12 A. Yes.

13 Q. Okay. Did that case also involve
14 causation?

15 A. Yes.

16 Q. Okay. So the second item listed under
17 your "Selected Expert Casework," do you recall
18 when you filed an expert report in the beauty
19 products trademark infringement case?

20 A. That was a few years ago.

21 Q. Do you know if the call -- the court
22 accepted the report that you filed in that case?

23 MR. OPPENHEIMER: Objection
24 to form.

25 A. This was a case before the Trademark

1 Trial and Appeal Board of the U.S. Patent and
2 Trademark Office. I don't know if the court was
3 involved.

4 Q. Okay. In the banking false advertising
5 class action, did you prepare an expert report?

6 A. No.

7 Q. Did you prepare an expert report in the
8 fast food employment litigation?

9 A. No.

10 Q. In the Next of Friend Susan Root -- and
11 I'm paraphrasing -- case that's listed, you
12 submitted a rebuttal report?

13 A. That's correct.

14 Q. Did your rebuttal report involve
15 causation?

16 MR. OPPENHEIMER: Objection
17 to form.

18 A. Yes.

19 Q. And you -- were you deposed in that
20 case, the Susan Root case?

21 A. Yes.

22 Q. Do you recall when you were deposed in
23 the Susan Root case?

24 A. 2016.

25 Q. Okay. Is that the deposition that you

1 described earlier?

2 A. Yes.

3 Q. Do you know if the court accepted your
4 rebuttal report?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. To the best of my recollection, the
8 client won the case in court and the court never
9 ruled on the Daubert motion. So I assume that
10 means that the court accepted it.

11 Q. Well, do you know for a fact if the
12 court accepted your report for this --

13 MR. OPPENHEIMER: Objection
14 to form.

15 A. What specifically do you mean by
16 "accepted"? I know how a court can reject an
17 expert report by Dauberting it. I'm not sure what
18 means "accepting."

19 Q. So was your report subject to a Daubert
20 motion?

21 A. I believe there was a Daubert motion.
22 And to the best of my recollection, the court
23 never ruled on it and ruled on the overall matters
24 in the case in favor of my client.

25 Q. Okay. So there was no ruling on your

1 report?

2 A. To the best of my recollection last time
3 I checked.

4 Q. Okay. Did you submit an expert report
5 in the hospitality business trademark infringement
6 case?

7 A. No.

8 Q. Did -- so you submitted three reports in
9 the electronics false advertising case?

10 A. That's correct.

11 Q. What types of reports did you submit in
12 the electronic false advertising case?

13 A. I opined on the merits of the design of
14 the consumer electronics product test conducted
15 for advertising claims.

16 Q. So was it three reports on the same
17 subject matter?

18 A. Yes.

19 Q. Do you know if your report, any of your
20 reports, that you submitted in the electronics
21 false advertising case were accepted?

22 MR. OPPENHEIMER: Objection
23 to form.

24 A. Accepted by who?

25 Q. Well, was this a litigation?

1 A. This was a case in front of the National
2 Advertising Division of the Council of Better
3 Business Bureaus.

4 Q. Well, do you -- you know if the National
5 Advertising Division of the Council of Better
6 Business Bureaus accepted your report?

7 MR. OPPENHEIMER: Objection
8 to form.

9 A. To the best of my knowledge.

10 Q. So what is the answer?

11 A. I'm not sure what you mean by
12 "accepted." It wasn't rejected.

13 Q. How do you know it wasn't rejected?

14 A. Because I would have been informed.
15 I -- this is to the best of my knowledge, and no
16 one ever informed me that it was rejected, so I
17 have no reason to believe that it was rejected.

18 Q. Did anyone inform you that your report
19 was accepted?

20 MR. OPPENHEIMER: Objection
21 to form.

22 A. I never heard anyone say to anyone that
23 their report was accepted. I understand in -- in
24 a court setting, which I'm not sure this is
25 considered a court setting, there can be a Daubert

1 motion and the court can reject a -- a report.

2 In this particular case, for example, I
3 don't think there was a Daubert motion.

4 Q. Okay. Did anybody tell you anything
5 about the report that you submitted with regard to
6 whether or not the accountant -- the report that
7 you submitted to the Council of Better Business
8 Bureaus was accepted by the Council of Business
9 Bureaus?

10 MR. OPPENHEIMER: Objection
11 to form.

12 A. I don't think anyone used those specific
13 words with me, but my general understanding is
14 this report was not rejected in any form.

15 Q. Did someone tell you that the report was
16 not rejected?

17 MR. OPPENHEIMER: Objection
18 to form.

19 A. I don't recall specifics.

20 Q. Other than the case that you described
21 where your report was -- your rebuttal was subject
22 to a Daubert challenge and you don't know -- that
23 the court did not rule on, have you ever submitted
24 a -- an expert report in any litigation that was
25 subject to a Daubert motion?

1 MR. OPPENHEIMER: Objection

2 to form.

3 A. Regarding the case where there was a
4 Daubert motion, my understanding is that the court
5 did not rule on the motion and ruled on the
6 overall case in favor of my client. There were no
7 other Daubert motions against me as far as I know.

8 Q. Have you ever qualified as an expert in
9 any court?

10 MR. OPPENHEIMER: Objection

11 to form.

12 A. That sounds like a legal statement.

13 Q. Do you know if your report ever -- have
14 you ever submitted a report in any case that was
15 accepted by the court?

16 MR. OPPENHEIMER: Objection

17 to form.

18 A. As I explained, I'm not sure what you
19 mean by "accepted." I know that none of my
20 reports were explicitly rejected by a court.

21 Q. Has a court ruled on any report that
22 you've ever submitted in a litigation?

23 MR. OPPENHEIMER: Objection

24 to form.

25 A. I'm not sure what you mean by the "court

1 ruled" other than in the Daubert motion situation.
2 And in one Daubert motion, I know the court did
3 not rule on that and ruled on the overall case in
4 favor of my client.

5 Q. Do you know if any expert report that
6 you've submitted in any litigation was subject to
7 a motion to strike the report?

8 A. I don't know the difference between
9 Daubert motion and motion to strike.

10 Q. Okay. Have you ever testified as an
11 expert in court?

12 MR. OPPENHEIMER: Objection;
13 asked and answered.

14 A. No.

15 Q. Is the answer no?

16 A. The answer is no.

17 Q. Okay. Moving on to page 37 of your
18 report, the trademark and trade dress infringement
19 matter, did that involve determining causation?

20 A. Yes.

21 Q. Were you testing consumer perception in
22 that case?

23 A. These are numerous cases and all of them
24 involved testing causation and consumer
25 perception.

1 Q. Okay. Did any of these cases in the
2 trademark and trade dress infringement matters
3 involve testing perception only?

4 A. What do you mean by "only"?

5 Q. Without cause and effect.

6 MR. OPPENHEIMER: Objection
7 to form.

8 A. In trademark and trade dress cases, we
9 would want to understand how the trademark at
10 issue impacts consumer perception. So there is
11 always a causal link of interest. I don't recall
12 all the cases, whether one of the experts said --
13 was on the other side maybe did not test the
14 causal link. I don't recall.

15 Q. Is it poss -- I'm sorry. Were you done?

16 A. Standard trademark/trade dress cases all
17 are interested in causal effect of the trademark
18 on consumer perception.

19 Q. Okay. Is it possible to test consumer
20 perception without conducting a quantitative
21 analysis?

22 MR. OPPENHEIMER: Objection
23 to form.

24 A. What do you mean by "test consumer
25 perception"?

1 Q. Can you evaluate consumer perception
2 without conducting a cause-and-effect analysis?

3 MR. OPPENHEIMER: Objection
4 to form.

5 A. If one is interested in consumer
6 perception as -- as it exists currently without
7 any interest in to what caused those perceptions,
8 one can evaluate those perceptions without
9 conducting an experiment.

10 Q. Have you ever evaluated a consumer
11 perception without conducting a causal-and-effect
12 analysis?

13 MR. OPPENHEIMER: Objection
14 to the form.

15 A. Can you rephrase, please?

16 Q. Have you ever evaluated a consumer
17 perception without conducting a causal-and-effect
18 analysis?

19 MR. OPPENHEIMER: Objection
20 to the form.

21 A. Do you mean cause-and-effect analysis?

22 Q. Yes.

23 A. I don't recall specifically. I might
24 have evaluated others' work of this type.

25 Q. In your -- the page 38 of your report

1 where you list the "False Advertising" heading --

2 A. Yes.

3 Q. -- did you conduct a survey in the
4 Kenneth Hobbs v. Brother International Corp. case?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. Can you repeat the question?

8 Q. On page 38 of your report where you list
9 the "False Advertising" heading, did you conduct a
10 survey in the Kenneth Hobbs v. Brother
11 International Corp. case?

12 MR. OPPENHEIMER: Same
13 objection.

14 A. I supported Professor Joel Steckel.

15 Q. Did he conduct a survey in that case?

16 A. He conducted two surveys.

17 Q. Were those surveys -- did those surveys
18 have to do with cause and effect?

19 A. One of them.

20 Q. I'm sorry?

21 A. One of them.

22 Q. Which one?

23 A. There is a sentence that starts with
24 "The other, a survey/experiment, addressed the
25 materiality of this limitation to consumers. In

1 its order denying class certification, the court
2 cited the experiment involving more than 450
3 people who had purchased or planned to purchase a
4 printer close to the time of the survey, which
5 found that 'consumers chose the Brother printer
6 with nearly identical frequency regardless of
7 whether they were made aware of the unscannable
8 margin at the time of their selection.'"

9 Q. What was the second survey about?

10 MR. OPPENHEIMER: Objection

11 to form.

12 A. The survey that's listed here as the
13 first is described as "One survey evaluated
14 consumer awareness of a printer's alleged
15 malfunctioning."

16 Q. Okay. So did that survey that evaluated
17 the consumer awareness of printer's alleged
18 malfunctioning involve cause and effect?

19 A. No.

20 Q. So what was being evaluated in that
21 survey?

22 A. Awareness.

23 Q. Was this a quantitative survey or a
24 qualitative survey?

25 A. What is a qualitative survey?

1 Q. I don't know. Is there such a thing as
2 a qualitative survey?

3 A. If there is, it's an obscure term.

4 Q. Can you explain what you mean?

5 A. Normally --

6 MR. OPPENHEIMER: Objection.

7 A. -- when one speaks about surveys, it's a
8 quantitative matter.

9 Q. Okay. So was there a qualitative
10 analysis with regards to the first survey?

11 A. There was no qualitative analysis.

12 Q. So what type of analysis was conducted?

13 A. Quantitative.

14 Q. With regards to the E-Retailor false
15 advertising matter, did that case involve
16 cause-and-effect relationships?

17 A. Yes.

18 Q. Okay. And the online services false
19 advertising matter, did that case involve
20 cause-and-effect relationships?

21 A. Yes.

22 Q. In the cigarette false advertising
23 matter, did that case involve cause-and-effect
24 relationships?

25 A. This was a rebuttal. I believe the

1 subject matter involved the causal relationship,
2 but the method proposed by the opposing counsel
3 did not address it properly.

4 THE REPORTER: Address it?

5 THE WITNESS: Properly.

6 Q. Who submitted the rebuttal in the case?

7 MR. OPPENHEIMER: Objection
8 to form.

9 A. The expert is not listed in my CV, which
10 means that information is not public or was not
11 public when I drafted this portion of my CV.

12 Q. Did you submit a rebuttal in that case?

13 A. No. I supported an expert.

14 Q. Do you know whether the rebuttal was the
15 subject of a Daubert motion?

16 A. I don't recall.

17 Q. Under your "Corporate Acquisitions"
18 heading, did the AT&T case involve a causal --
19 cause-and-effect analysis?

20 A. Yes.

21 Q. Okay. And on page 39, the cases you
22 listed under the "Antitrust" heading, did they all
23 involve cause-and-effect relationships?

24 A. Not to the best of my recollection.

25 Q. Okay.

1 A. The cases themselves might -- might have
2 involved causal relationships, but not the parts I
3 worked on.

4 Q. Okay. So which case -- did you perform
5 any cause-and-effect work in the Microsoft
6 antitrust matters?

7 MR. OPPENHEIMER: Objection
8 to form.

9 A. I don't recall the specifics.

10 Q. Did you perform any cause-and-effect
11 work in the credit cards antitrust matter?

12 MR. OPPENHEIMER: Objection
13 to form.

14 A. The opposing expert developed a survey
15 in an experimental form to test causal
16 propositions. The expert I assisted with revised
17 that survey to expose its drawbacks.

18 THE REPORTER: Its?

19 THE WITNESS: Drawbacks.

20 Q. So was your deposition taken in the
21 high-tech antitrust matter?

22 A. I was not an expert in this case and my
23 deposition was not taken.

24 Q. Do you recall what your assignment was
25 in this case?

1 A. Could you repeat that, please?

2 Q. Do you recall what your assignment was
3 in this case?

4 A. Yes.

5 Q. What was your assignment?

6 A. To evaluate the expert report of

7 Mr. [REDACTED]

8 Q. Is there a specific subject matter that
9 you were evaluating with regard to Mr. [REDACTED]
10 report?

11 MR. OPPENHEIMER: Objection
12 to form.

13 A. I am evaluating the entire report.

14 Q. What specifically were you evaluating?

15 MR. OPPENHEIMER: Objection.

16 A. The entire report.

17 Q. Do you recall what subject matter you
18 evaluated in the [REDACTED] report?

19 MR. OPPENHEIMER: Objection;
20 asked and answered.

21 Answer again.

22 A. The entire report.

23 Q. Well, let's go through the report. Let
24 me hand you...

25 THE WITNESS: Can I have one

1 more?

2 MR. OPPENHEIMER: There's
3 two there.

4 THE WITNESS: Oh.

5 (Whereupon, exhibit is received
6 and marked SEC Shampanier Deposition
7 Exhibit 7 for identification.)

8 THE REPORTER: Exhibit 7 for
9 identification.

10 BY MS. GUERRIER:

11 Q. I've handed you what's been marked as
12 Exhibit 7.

13 Do you recognize the document that's
14 been premarked as Exhibit 7?

15 A. Yes. This appears to be Mr. [REDACTED]
16 report but without the appendices.

17 MS. GUERRIER: I'm going to
18 mark this as an exhibit. This is the
19 appendix to Mr. [REDACTED] report.

20 MR. OPPENHEIMER: Do you
21 have additional copies?

22 MS. GUERRIER: I don't. I
23 don't know why this wasn't included
24 in the report.

25 THE REPORTER: What did you

1 want to mark this?

2 MS. GUERRIER: That could be
3 1, Exhibit 1.

4 (Whereupon, exhibit is received
5 and marked SEC Shampanier Deposition
6 Exhibit 1 for identification.)

7 THE REPORTER: Exhibit 1 for
8 identification.

9 BY MS. GUERRIER:

10 Q. Okay. Are you providing any rebuttal
11 regarding the summary of findings in [REDACTED]
12 report which starts on page 6 of the report?

13 A. Just for the record, we still don't have
14 the full report. Exhibit 1 is some of the
15 appendices, I believe.

16 Q. Okay. Right now I'm looking at Exhibit
17 7. That -- the last page where he signed on page
18 49, that's -- I'm looking at that document, not
19 the document marked Exhibit 1. I don't have any
20 questions about Exhibit 1.

21 A. Okay. Exhibit 7 is a partial report of

22 [REDACTED]

23 Q. Okay. Is there a signature page on
24 Exhibit 7?

25 A. There is a signature page.

1 Q. Okay. Who -- who signed it as far as
2 you can see on page 49 of the report?

3 A. [REDACTED]

4 Q. Okay. So going back to page 6 of the
5 report, are you providing any rebuttal regarding
6 the summary of findings outlined in Mr. [REDACTED]
7 report on page 6 --

8 MR. OPPENHEIMER: Objection
9 to form.

10 Q. -- to 8?

11 A. I provide rebuttal to Mr. [REDACTED] entire
12 report.

13 Q. Okay. So what specifically on the
14 summary of findings are you rebutting?

15 A. The entire summary of findings.

16 Q. So what in -- what exactly are you
17 rebutting?

18 MR. OPPENHEIMER: Objection;
19 asked and answered.

20 A. Mr. [REDACTED] report.

21 Q. Are there any facts under the summary of
22 findings that you're rebutting?

23 MR. OPPENHEIMER: Objection
24 to form.

25 A. I'm rebutting the entire summary of

1 findings.

2 Q. Okay. So what -- can you show -- can
3 you let me know exactly in paragraph 8 what you
4 are rebutting?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. I'm rebutting entire summary of
8 findings, including all of paragraph 8 and 7 and
9 9.

10 Q. Okay. So in paragraph 8, the first
11 sentence, "The design of XRP as a fixed-supply..."
12 You see that sentence?

13 A. I see that sentence.

14 Q. What exactly are you rebutting?

15 MR. OPPENHEIMER: Objection
16 to form.

17 A. This sentence, as well as Mr. [REDACTED]
18 general conclusion in this report, is causal.

19 Q. Okay.

20 A. It says that "Statements made by Ripple
21 were consistent with promoting an investment use
22 case for XRP as well as the design of XRP as a
23 fixed-supply coin." So he is saying that those
24 two items caused investment use case for XRP.

25 Q. So you stated that you're rebutting the

1 first sentence.

2 What -- what are you rebutting in the
3 first sentence?

4 MR. OPPENHEIMER: Objection
5 to form.

6 A. The entire first sentence.

7 Q. So what specifically?

8 MR. OPPENHEIMER: Objection
9 to form; asked and answered.

10 A. The entire first sentence.

11 Q. What -- can you explain what you mean by
12 that?

13 MR. OPPENHEIMER: Objection.
14 You can answer.

15 A. I rebut the entire first sentence.

16 Q. What are you presenting to contradict
17 that sentence?

18 A. This is a causal statement and Mr. [REDACTED]
19 did not use any reliable methodology to test it.

20 Q. Are you rebutting Mr. [REDACTED]
21 methodology or are you rebutting the facts that he
22 used in this paragraph --

23 MR. OPPENHEIMER: Objection
24 to form.

25 Q. -- 8?

1 A. I'm rebutting Mr. [REDACTED] methodology
2 and, as a result, I also rebut his conclusions.

3 Q. So are you rebutting any facts that are
4 stated in this paragraph?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. Which specific facts are you referring
8 to?

9 Q. I'm asking you.

10 MR. OPPENHEIMER: Objection
11 to form.

12 A. I'm rebutting the entirety of the
13 sentence.

14 Q. Okay. So what -- what critique do you
15 have with the first sentence?

16 MR. OPPENHEIMER: Objection;
17 asked and answered.

18 A. It's a causal statement and Mr. [REDACTED]
19 did not use any reliable methodology to test that
20 causal proposition.

21 Q. What facts are you relying on in support
22 of your rebuttal of the first sentence in
23 paragraph 8?

24 MR. OPPENHEIMER: Objection.

25 A. I rely on the materials listed as

1 materials considered --

2 Q. Can you list the --

3 A. -- in my report.

4 Q. Can you list the specific materials that
5 you're relying on that rebut this first sentence
6 in paragraph 8?

7 MR. OPPENHEIMER: Objection
8 to form.

9 A. Appendix B of my report lists materials
10 I considered. I rely on all of them.

11 Q. Can you point to the materials that
12 you're specifically relying on for your rebuttal
13 of paragraph 8?

14 MR. OPPENHEIMER: Were you
15 done with that last answer?

16 THE WITNESS: Sorry, I
17 didn't hear you.

18 MR. OPPENHEIMER: Were you
19 done with that last answer?

20 THE WITNESS: I was done,
21 yes.

22 MR. OPPENHEIMER: Okay.

23 A. I rely on all of my materials
24 considered.

25 Q. Can you name the materials that you

1 considered in support of your rebuttal of
2 paragraph 8?

3 MR. OPPENHEIMER: Objection;
4 asked and answered.

5 A. I rely on court documents for background
6 and I rely on the remainder of my materials
7 considered to support the appropriate methodology
8 for testing causal proposition.

9 Q. Can you -- I'm sorry, were you done?

10 A. Mr. [REDACTED] did not use a reliable
11 methodology to test his causal propositions.

12 Q. Can you identify by name the specific
13 documents that you're relying on in support of
14 paragraph 8?

15 MR. OPPENHEIMER: Objection;
16 asked and answered for probably the
17 eighth time now.

18 A. As I said, it's the entirety of my
19 materials considered, but I can give you examples.

20 Q. Go ahead, please.

21 A. For example, third item from bottom on
22 page 41 discusses "Experimental and
23 Quasi-Experimental Designs for Generalized Causal
24 Inference." And this book discusses specifically
25 the gold standard of testing causal propositions

1 is an experiment.

2 And I'll actually read what it says.
3 Paragraph -- paragraph 18 on page 10 of my report
4 cites the book of Shadish, Cook and Campbell, the
5 sentence that adds in Footnote 22, and it reads:
6 "Shadish, et al, (2002) also state that
7 'experiments are well-suited to studying causal
8 relationships. No other scientific method
9 regularly matches the characteristics of causal
10 relationships so well.'"

11 Q. Can you turn to page 3 of Mr. [REDACTED]
12 report?

13 A. Yes, I'm there.

14 Q. Can you please read the first sentence
15 of paragraph 2 of Mr. [REDACTED] assignment?

16 A. Mr. [REDACTED] states "The SEC retained me to
17 independently analyze and render opinions on the
18 perspective of a reasonable purchaser of XRP on
19 Ripple's statements, actions, and product
20 offerings." Footnote 1. I will -- Footnote 1
21 says "I also was retained to provide analysis
22 and/or rebuttal to defendants' expert reports, if
23 and as needed."

24 Q. Does Mr. [REDACTED] state that he was
25 retained to evaluate cause-and-effect

1 relationships between Ripple's statements,
2 actions, and specific outcomes or behaviors?

3 MR. OPPENHEIMER: Objection

4 to form.

5 A. Yes.

6 Q. Does he state that he was retained to
7 evaluate cause and effect?

8 MR. OPPENHEIMER: Objection.

9 A. He's evaluating the perspective of a
10 reasonable purchaser of XRP on Ripple's
11 statements, actions, and product offerings. In
12 other words, he evaluates the impact of
13 statements, actions, and product offerings of
14 Ripple on the perspective of a reasonable
15 purchaser of XRP.

16 Q. Is that your interpretation of this
17 sentence that you -- you read?

18 MR. OPPENHEIMER: Objection

19 to form.

20 A. That is what the sentence states.

21 Q. Does the sentence use the term "cause
22 and effect"?

23 A. The sentence does not use those two
24 words.

25 Q. So where did you come up with the cause

1 and effect in the sentence that you just read?

2 MR. OPPENHEIMER: Objection
3 to form.

4 A. That's the content of the sentence.

5 Q. Is that your interpretation of the
6 sentence?

7 MR. OPPENHEIMER: Objection.

8 A. This is what the sentence states.

9 Q. Is the word "cause" used anywhere in
10 this sentence?

11 MR. OPPENHEIMER: Objection;
12 asked and answered.

13 A. The word "cause" is not used in the
14 sentence.

15 Q. Is the word "effect" used anywhere in
16 this sentence?

17 MR. OPPENHEIMER: Objection;
18 asked and answered.

19 A. The word "effect" is not used in the
20 sentence.

21 Q. Do you have an understanding what the
22 term "perspective" means?

23 A. Yes.

24 Q. What does the term "perspective" mean?

25 A. Perception and behavior.

1 Q. Do you have an understanding of the term
2 "cause"?

3 A. Yes.

4 Q. What does cause mean?

5 A. Impact a fact.

6 Q. I'm sorry?

7 A. Impact a fact.

8 Q. Does the term "perspective" mean the
9 same thing as the term "cause"?

10 A. Perspective is the outcome here.

11 Q. My question is, does the term
12 "perspective" mean the same thing as the term
13 "cause"?

14 A. No.

15 Q. Is the rebuttal that you provided in
16 this case based on applying cause and effect to
17 Ripple's statements and actions?

18 MR. OPPENHEIMER: Objection
19 to form.

20 A. I'm not sure what the sentence means.

21 Q. Did you conduct a cause-and-effect
22 analysis in your rebuttal report?

23 MR. OPPENHEIMER: Objection.

24 A. I evaluated Mr. [REDACTED] "analysis." I
25 did not conduct my own analysis.

1 Q. And when you describe the methodology
2 that you reviewed in your report, are you using a
3 cause-and-effect methodology?

4 MR. OPPENHEIMER: Objection.

5

6 A. I'm using the literature on cause and
7 effect to evaluate Mr. [REDACTED] report which, in
8 paragraph 2, states that he was retained to
9 evaluate the causal proposition.

10 Q. Where does it say that he was retained
11 to evaluate the causal proposition in paragraph 2?

12 MR. OPPENHEIMER: Objection;
13 asked and answered.

14 A. Paragraph 2 has a cause and an effect.
15 The cause is the statement, actions, and product
16 offerings of Ripple; and the effect is the
17 perspective of a reasonable purchaser of XRP.

18 Q. Is that an opinion that you're rendering
19 regarding what paragraph 2 means?

20 MR. OPPENHEIMER: Objection
21 to form.

22 A. That's what the paragraph states.

23 Q. Can you point to the word "cause" in
24 paragraph 2?

25 MR. OPPENHEIMER: Objection;

1 asked and answered.

2 A. There is no word "cause" in paragraph 2.

3 Q. Okay. Turning to page 8 of Mr. [REDACTED]
4 report, "Background," is there anything in the
5 background section that you're providing a
6 rebuttal to?

7 MR. OPPENHEIMER: Objection
8 to form.

9 (Pause)

10 A. Section 3 is called "Background." It's
11 provided in Mr. [REDACTED] report for background.
12 And I rebut his entire report.

13 Q. So what are the facts that you're
14 providing a rebuttal to in paragraph 10?

15 MR. OPPENHEIMER: Objection
16 to form.

17 A. I take the background of this case as
18 given as provided in Mr. [REDACTED] report and the
19 complaint and the answer to the complaint. My
20 opinions are regarding Mr. [REDACTED] conclusions and
21 the unreliable methodology which he reached them
22 with.

23 Q. Okay. I want -- I just want to clarify
24 because you stated earlier that you are rebutting
25 the entire report.

1 So are you rebutting the conclusions and
2 methodology that Mr. [REDACTED] provided or is there
3 anything in addition to the conclusions and
4 methodology that you're rebutting?

5 MR. OPPENHEIMER: Objection

6 to form.

7 A. I'm rebutting the entire report.

8 Q. Okay. So with regard to the background,
9 did you state that you're -- let me -- that you're
10 taking the background as a given?

11 MR. OPPENHEIMER: Objection.

12 A. I don't recall anymore that I stated.
13 What is it that I said?

14 MS. GUERRIER: Could you --

15 THE WITNESS: Could you read
16 my answer, please?

17 MS. GUERRIER: Could you
18 read her answer to the question "So
19 what are the facts that are you
20 providing a rebuttal to in paragraph
21 10?" I think it starts at line 34,
22 10. Her answer starts at line 34,
23 13.

24 (Whereupon, the record was read
25 back.)

1 BY MS. GUERRIER:

2 Q. So can you clarify whether you're
3 rebutting any facts in the background section?

4 MR. OPPENHEIMER: Objection
5 to form.

6 A. I am taking the background as given and
7 I'm rebutting the entire report.

8 Q. Okay. Is there anything in paragraph 10
9 that you disagree with?

10 MR. OPPENHEIMER: Objection
11 to form.

12 (Pause)

13 A. I take this paragraph as given.

14 Q. Is there anything in paragraph 11 that
15 you disagree with?

16 MR. OPPENHEIMER: Objection
17 to form.

18 A. I take paragraph 11 as given.

19 Q. Is there anything in paragraph 12 that
20 you disagree with?

21 MR. OPPENHEIMER: Objection
22 to form.

23 A. I take paragraph 12 as given.

24 Q. Is there anything in paragraph 13 that
25 you disagree with?

1 MR. OPPENHEIMER: Objection

2 to form.

3 A. I take paragraph 13 as given.

4 Q. Moving on to Section 4 of Mr. [REDACTED]
5 report titled "Ripple Platform Overview," is there
6 anything under Section 4, including the
7 subsections 4.1, 4.2, that you disagree with?

8 MR. OPPENHEIMER: Objection

9 to form.

10 (Pause)

11 A. Can you repeat the question, please?

12 Q. The question was "Moving on to Section 4
13 of Mr. [REDACTED] report titled 'Ripple' Plat --

14 THE REPORTER: Platform.

15 Q. -- "'Ripple Platform Overview,' is there
16 anything under Section 4, including the
17 subsections 4.1 and 4.2, that you disagree with?"

18 MR. OPPENHEIMER: Objection

19 to form.

20 A. To the extent that this section
21 describes background facts and history, I take it
22 as given. To the extent that this section
23 describes or implies perspective of a reasonable
24 purchaser of XRP on Ripple's statement, action,
25 product offering, those conclusions are not

1 supported by any valid methodology and, thus, are
2 unreliable.

3 Q. Is there any statement in paragraph 14
4 of Mr. [REDACTED] report where he implies the
5 perspective of a reasonable purchaser of XRP on
6 Ripple's statements, actions, product offerings?

7 (Pause)

8 A. All of these sentences describe Ripple's
9 actions. If there is any implications about how
10 those actions affected prospective purchasers or
11 purchasers, Mr. [REDACTED] did not provide reliable
12 methodology for those implications if they exist
13 here.

14 Q. So were you able to identify
15 specifically where Mr. [REDACTED] makes those
16 implications in paragraph 14?

17 MR. OPPENHEIMER: Objection
18 to form.

19 A. I don't see anything explicit, but if
20 Mr. [REDACTED] implies something, then he has no
21 support for such implications.

22 Q. Well, when you say "if" he implies
23 something, did he, in fact, imply any of the
24 perspective that you describe --

25 MR. OPPENHEIMER: Objection

1 to form.

2 Q. -- in paragraph 14?

3 A. If Mr. [REDACTED] implies here that any of
4 the actions of Ripple that he lists caused certain
5 perspective -- for example, he mentions the
6 public; he implies the public cause and
7 perspective of the actions of Ripple -- then those
8 implications are not supported by a valid
9 methodology.

10 Q. What were you just reading?

11 A. Second sentence of paragraph 14 mentions
12 the public.

13 Q. So what -- what do you take issue with
14 in the second sentence of paragraph 14?

15 MR. OPPENHEIMER: Objection
16 to form.

17 A. If this sentence is used by Mr. [REDACTED] to
18 imply any perspective of the public, even though
19 such a perspective is not stated here explicitly,
20 but if there is such an implication, that
21 implication is not based on any methodology.

22 Q. Can you identify anywhere in the report
23 where there's an implication regarding perspective
24 of XRP purchasers with regard to the second
25 sentence in paragraph 14?

1 MR. OPPENHEIMER: Objection

2 to form.

3 A. Throughout his report, Mr. [REDACTED]
4 discusses numerous cases of the public
5 perspective; specifically, the perspective of the
6 purchasers or prospective purchasers of XRP.

7 Q. Okay. Is there any statement about
8 perspective in the second sentence of paragraph
9 14?

10 A. The word "perspective" is not in the
11 second paragraph.

12 Q. Do you disagree with the statement that
13 "In 2012, the XRP blockchain was released to the
14 public and went live for the first time with a
15 maximum supply of 100 billion XRP created"?

16 MR. OPPENHEIMER: Objection

17 to form.

18 A. I take it as given.

19 Q. Okay.

20 A. I'm not opining here on the history or
21 mechanics of XRP or Ripple.

22 Q. Is there anything in paragraph 15 that
23 you disagree with?

24 MR. OPPENHEIMER: Objection,

25 form.

1 A. The first sentence says "In the early
2 years, Ripple released products geared towards
3 prospective individual users and traders."

4 If there is an implication here of how
5 the prospective purchasers end up -- what they
6 ended up doing with XRP or this other products
7 that Ripple released, if there is such an
8 implication here, then it's not supported by any
9 reliable methodology.

10 Q. Is there such an implication, in fact,
11 in paragraph 15?

12 MR. OPPENHEIMER: Objection

13 to form.

14 A. To the extent that they reach such an
15 implication and if there is such an implication,
16 it's not supported by any reliable methodology.

17 Q. Well, what do you mean "to the extent"
18 that there is such ampli -- implication?

19 A. If Mr. [REDACTED] implies here that
20 prospective purchasers of Ripple products engaged
21 in certain activities with those products after
22 the purchase, there is no systematic analysis of
23 what those individuals did.

24 Q. Do you disagree with the -- the
25 statement that "Ripple released products geared

1 towards prospective individual users and traders"?

2 MR. OPPENHEIMER: Objection

3 to form.

4 A. To the extent that it describes
5 historical -- history of XRP and Ripple, I take it
6 as given. If there is any implication about the
7 perspective of purchasers and how it was caused by
8 actions, statements, and offerings of Ripple,
9 Mr. [REDACTED] did not provide a reliable methodology
10 to support such statements.

11 Q. Do you disagree with the second -- the
12 facts in the second sentence in paragraph 15?

13 MR. OPPENHEIMER: Objection
14 to form.

15 A. To the extent this sentence describes
16 the history of XRP and Ripple, I take it as given.
17 To the extent there is an implication of what
18 individuals did with this app, there is no
19 systematic analysis.

20 Q. Do you disagree with the next
21 sentence -- the facts contained in the next
22 sentence following the third sentence in paragraph
23 15?

24 MR. OPPENHEIMER: Objection
25 to form.

1 A. I'm not offering any opinions on the
2 history or mechanics of XRP or Ripple's other
3 products. To the extent that the statements --
4 any statements in this report imply a causal
5 relationship between XRP -- between Ripple's
6 statements, actions, and offerings and perspective
7 of purchasers and potential purchasers, Mr. [REDACTED]
8 did not offer a reliable methodology to evaluate
9 such a causal relationship.

10 THE REPORTER: Did not offer
11 a reliable?

12 THE WITNESS: Methodology to
13 evaluate such a causal relationship.

14 Q. Can you -- I'm sorry.

15 Can you identify any statement in
16 paragraph 15 that implies a causal relationship
17 between XRP, Ripple's statements, actions, and
18 offerings and the perspective of purchasers and
19 potential purchasers of XRP?

20 MR. OPPENHEIMER: Objection
21 to form.

22 A. There may be an implied relationship
23 here between the upgrades and the branding on the
24 one hand and trading becoming number one use case.

25 THE REPORTER: Number one?

1 THE WITNESS: Use case.

2 Q. How is there an implied relationship
3 between the upgrades and the branding and on --
4 and the trading becoming number one --

5 MR. OPPENHEIMER: Objection
6 to form.

7 Q. -- on use case of Ripple?

8 A. The sentence read -- reads "After
9 several upgrades, Ripple Client was rebranded in
10 2014 as Ripple Trade, with Ripple recognizing that
11 'Trading has rapidly become the number one use
12 case of Ripple.'"

13 Q. Okay. So where is the implication of
14 the relationship between the upgrade and the
15 branding?

16 MR. OPPENHEIMER: Objection;
17 asked and answered.

18 A. The implication is in the sentence.

19 Q. Okay. So do you disagree that Ripple
20 Client was rebranded in 2014 as Ripple Trade?

21 MR. OPPENHEIMER: Objection
22 to form.

23 A. I'll answer the question, but maybe we
24 can take a break soon.

25 Q. Yeah, you can -- yes. I'll finish with

1 this section and we can take a break.

2 A. Can you repeat the last question,
3 please?

4 Q. Do you disagree that Ripple Client was
5 rebranded in 2014 as Ripple Trade?

6 MR. OPPENHEIMER: Objection;
7 form.

8 A. I don't offer any opinions about the
9 history or mechanics of XRP or Ripple and its
10 other products.

11 Q. Okay. Do you disagree with the
12 quotation that "Trading has rapidly become the
13 number one use case of Ripple," which includes the
14 footnote citation in Footnote 8?

15 MR. OPPENHEIMER: Objection
16 to form.

17 A. I don't offer any opinions regarding the
18 history of Ripple or the veracity of statements
19 cited in -- cited -- cited in the report of
20 Mr. [REDACTED]

21 Q. Okay. So is this your position with
22 regard to the last sentence in paragraph 15?

23 MR. OPPENHEIMER: Objection
24 to form.

25 A. I'm not offering any opinions about the

1 history of Ripple or XRP.

2 Q. Okay. Thank you.

3 MS. GUERRIER: I think this
4 is a good time for a break. We can
5 go off the record.

6 THE VIDEOGRAPHER: Okay.
7 Going off the record at 12:22.

8 (Whereupon, a luncheon recess
9 is taken.)

1 A F T E R N O O N S E S S I O N

2 (Record notes the appearance of
3 Attorney Lisa Zornberg and Attorney
4 Justin Berg at this time.)

5 THE VIDEOGRAPHER: Okay.

6 Back on the record at 1:07.

7 BY MS. GUERRIER:

8 Q. Okay. Doctor, if you could turn to page
9 11 of Mr. [REDACTED] report.

10 Are you providing any rebuttal to any of
11 the statements in paragraph 16 of Mr. [REDACTED]
12 report?

13 MR. OPPENHEIMER: Objection
14 to the form.

15 A. I don't offer any opinions with respect
16 to the history of Ripple. To the extent any of
17 the statements have other implications, Mr. [REDACTED]
18 has not supported them with a reliable
19 methodology.

20 Q. Can you identify any statements in
21 paragraph 16 that have causal implications?

22 MR. OPPENHEIMER: Objection
23 to form.

24 A. The sentence that states "Next, the
25 RippleNet Committee was announced, laying the

1 foundation for various products geared towards
2 global payment problems," this sentence might have
3 an implication of how the announcement of
4 RippleNet Committee impacted perceptions of
5 potential Ripple clients and Ripple clients.

6 Q. Is that your interpretation of this
7 sentence that you just read?

8 MR. OPPENHEIMER: Objection;
9 form.

10 A. This is what the state -- this is what
11 the sentence says.

12 Q. Did you check Footnote 12 to determine
13 whether or not that sentence could be verified?

14 A. Did I specifically click on the URL in
15 Footnote 12? I don't recall.

16 Q. So how does this sentence have an
17 implication of how the announcement of RippleNet
18 Committee impacted perceptions of potential Ripple
19 clients and Ripple -- Ripple clients?

20 MR. OPPENHEIMER: Objection
21 to form.

22 A. The statement -- the sentence mentions
23 that the committee was announced and then it says
24 that that laid a "foundation for various products
25 geared toward global payments problems." The

1 impli -- possible implication here is that the
2 future users of RippleNet Committee or any
3 associated products took something away from the
4 announcement as relating to the global payment
5 problem.

6 Q. Does Mr. [REDACTED] in his report, state --
7 make the implication that the users of RippleNet
8 Committee or any associated products took
9 something away from the announce -- announcement,
10 announcement as relating to the global payments
11 problem?

12 MR. OPPENHEIMER: Objection

13 to form.

14 A. That's a possible implication. There
15 are numerous places in Mr. [REDACTED] report where he
16 makes a specific connection between statements and
17 perceptions. I'm looking for an example.

18 For example, in my report, in Appendix
19 C, in the row of the table that starts with number
20 85, which is a reference to Mr. [REDACTED] report
21 paragraph, the last sentence says "Indeed, the use
22 of terms such as 'traction,' 'market fit,' 'total
23 addressable market,' and even 'investors' when
24 describing Ripple's progress and growth" -- "and
25 growth potential are words typically understood by

1 market participants to mean that they should be
2 buying XRP as a potentially profitable
3 investment."

4 So this specifically discusses that
5 certain words used by Ripple are predicted by
6 Mr. [REDACTED] to have an effect on market partic --
7 market participants and, in particular, on the
8 understanding or perception of the market
9 participants.

10 Q. Well, can you identify where Mr. [REDACTED]
11 connects the RippleNet Committee that was
12 announced laying a foundation for various products
13 geared towards global payments problems to the
14 perception of XRP purchases?

15 MR. OPPENHEIMER: Objection
16 to form.

17 A. I don't say that he connected to the
18 perception of XRP purchasers, but he mentions the
19 announcement and he stated that it's laid a
20 foundation for various products geared towards
21 global payment problems.

22 Laying a foundation is potentially a
23 causal proposition. There might be a causal
24 inference implied here by Mr. [REDACTED]

25 THE REPORTER: By?

1 THE WITNESS: Mr. [REDACTED]

2 Q. Do you know whether Ripple, in the
3 Footnote 12, the URL, made the statement that
4 Mr. [REDACTED] included in his report in the sentence
5 that we're discussing?

6 MR. OPPENHEIMER: Objection
7 to form.

8 A. Mr. [REDACTED] does not use direct quotes.
9 Whether the substance of the sentence feeds the
10 source, I don't recall if I checked.

11 Q. So you -- do you recall -- I'm sorry,
12 did you testify you don't recall if you checked to
13 see if the sentence is included in the URL that's
14 on -- in Footnote 12?

15 A. I --

16 MR. OPPENHEIMER: Objection.

17 A. It's unlikely that this exact sentence
18 is included in the source because Mr. [REDACTED] does
19 not use quotation marks. I did not check -- or I
20 don't recall whether I checked whether the
21 substance of the sentence reflects the source.

22 Q. So assume that the statement is included
23 in "Our Story" link at Footnote 12, would that
24 change your opinion regarding the so-called
25 implications that you claim Mr. [REDACTED] made with

1 respect to this sentence?

2 MR. OPPENHEIMER: Objection

3 to form.

4 A. You're saying Mr. [REDACTED] quoted the

5 sentence without using quotation --

6 Q. Assuming that --

7 A. -- without using a quotation mark?

8 Q. Yeah. Assuming that he did, does that
9 change your statement that Mr. [REDACTED] is making an
10 implication here?

11 MR. OPPENHEIMER: Objection.

12 A. If Mr. [REDACTED] quoting directly someone
13 else, then he's just quoting someone else.

14 Q. So how does that affect your opinion
15 regarding the connection that you testified
16 Mr. [REDACTED] made between this statement and the
17 perspective of XRP purchasers?

18 MR. OPPENHEIMER: Objection;
19 mischaracterizes testimony.

20 A. Can you repeat the question, please?

21 Q. So I'll start with your answer. You
22 stated "If Mr. [REDACTED] quoting directly someone
23 else, then he's just quoting someone else."

24 And I asked "So how does that affect
25 your opinion regarding the connection that you

1 testified Mr. [REDACTED] made between this statement
2 and the perspective of XRP purchasers?"

3 MR. OPPENHEIMER: Same
4 objection.

5 A. If Mr. [REDACTED] did not write this
6 sentence, then Mr. [REDACTED] is just using someone
7 else's sentence.

8 Q. How does this affect your opinion
9 regarding the connection between this statement
10 and the perspective of XRP purchasers?

11 MR. OPPENHEIMER: Objection
12 to form.

13 A. If Mr. [REDACTED] quotes without quotation
14 marks someone else's statement, then he is quoting
15 that statement. Whether he put in some additional
16 meaning into it, that you'll have to ask
17 Mr. [REDACTED] But if it's just someone else's
18 statement quoted here without quotation marks,
19 then that's someone else's statement.

20 Q. Is there anything you're rebutting in
21 paragraph 17 of Mr. [REDACTED] report?

22 MR. OPPENHEIMER: Objection
23 to form.

24 (Pause)

25 A. I don't offer any opinion with respect

1 to the history of XRP or Ripple or ODL. To the
2 extent that Mr. [REDACTED] implies here any causal
3 relationships between action, statements, and
4 offerings of Ripple and perspective -- perspective
5 of a reasonable purchaser or potential purchaser,
6 such implications are unsupported by any valid
7 methodology.

8 Q. Can you identify any statement in
9 paragraph 17 where Mr. [REDACTED] implies a causal
10 relationship between action, statements, and
11 offerings of Ripple and the perspective of a
12 reasonable purchaser of XRP?

13 MR. OPPENHEIMER: Objection
14 to form.

15 A. The state -- the sentence starts by
16 saying "ODL was intended to facilitate
17 cross-border transactions between money
18 transmitters' domestic and foreign accounts," and
19 then it lists three steps.

20 If there is a potential implication here
21 that the presence of ODL indeed facilitated
22 cross-border transactions and that the purchasers
23 or clients perceived it in that way, that
24 statement has not been tested by Mr. [REDACTED] That
25 implication has not been tested by Mr. [REDACTED]

1 Q. Is there, in fact, the implication that
2 the presence of ODL facilitated cross-border
3 transactions and that the purchasers of ODL
4 proceeded "in that way"?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. Can you please repeat the question?

8 Q. Is there, in fact, the implication that
9 the presence of ODL facilitated cross-border
10 transactions and that the purchasers of ODL
11 proceeded "in that way" --

12 MR. OPPENHEIMER: Objection.

13 Q. -- in paragraph 17 of Mr. [REDACTED]
14 report?

15 A. I don't think that's what I said.

16 MS. GUERRIER: Could you
17 please read her answer which starts
18 at 7, 10 please.

19 (Whereupon, the record was read
20 back.)

21 THE WITNESS: I believe the
22 word was perceived, not proceeded.

23 BY MS. GUERRIER:

24 Q. So are you prepared to answer the
25 question or would you like me to repeat the

1 question again?

2 MR. OPPENHEIMER: Objection.

3 A. Can you repeat the question again?

4 Q. Yeah.

5 Is there, in fact, the implication that
6 the presence of ODL facilitated cross-border
7 transactions and that the purchasers of ODL
8 perceived it in that way?

9 MR. OPPENHEIMER: Objection

10 to form; asked and answered.

11 A. If there is such an implication, Mr.

12 [REDACTED] did not --

13 THE REPORTER: Repeat.

14 A. If there is such an implication,

15 Mr. [REDACTED] did not test it.

16 Q. Is there such an implication?

17 MR. OPPENHEIMER: Objection

18 to form.

19 A. I'm reading what the sentence states.

20 Q. So is this your interpretation of the
21 sentence that Mr. [REDACTED] wrote in his report in
22 paragraph 17?

23 MR. OPPENHEIMER: Objection.

24 A. There may have been an implication here.

25 Q. Is there -- are you offering any

1 rebuttal to any statement in paragraph 18 of

2 Mr. [REDACTED] report?

3 MR. OPPENHEIMER: Objection

4 to form.

5 A. I don't define the mechanics of ODL.

6 Q. Are you providing any -- any rebuttal to
7 paragraph 19 of Mr. [REDACTED] report?

8 MR. OPPENHEIMER: Objection

9 to form.

10 A. He, Mr. [REDACTED] mentions the promotion of
11 the growth of ODL and he specifically mentions an
12 excerpt from an announcement on the Ripple
13 website. In general, in his report, he eventually
14 links actions and announcements of Ripple with
15 pro -- with the perspective of the purchaser of
16 XRP.

17 To the extent that he plans to do -- or
18 does this elsewhere in the report with this
19 particular statement and this particular
20 promoted -- promotion of the growth, he's -- the
21 causal link has not been established by Mr. [REDACTED]
22 with a reliable methodology.

23 Q. Do you disagree with the statement that
24 Ripple promoted the growth of ODL users and
25 transaction volume?

1 MR. OPPENHEIMER: Objection

2 to form.

3 A. I don't opine on what Ripple did or --

4 THE REPORTER: I'm sorry. I

5 don't what on what Ripple did?

6 THE WITNESS: I don't opine

7 on what Ripple did.

8 Q. Are you providing any opinion on Figure

9 3 referenced in paragraph 19?

10 MR. OPPENHEIMER: Objection

11 to form.

12 A. I don't opine on the mechanics of ODL or

13 Ripple.

14 Q. Are you providing any rebuttal to

15 paragraph 20 of Mr. [REDACTED] report?

16 MR. OPPENHEIMER: Objection

17 to form.

18 A. I don't opine on the history of Ripple

19 or MoneyGram.

20 Q. Are you providing any rebuttal to

21 paragraph 21 of Mr. [REDACTED] report?

22 MR. OPPENHEIMER: Objection

23 to form.

24 A. I don't offer any opinions with respect

25 to the history of ODL or MoneyGram.

1 Q. Turning to your report, does paragraph 9
2 contain all of the opinions that you formulated in
3 this case?

4 MR. OPPENHEIMER: Objection
5 to form.

6 A. My opinions are my entire report. This
7 is a summary.

8 Q. Does -- does the summary that you've
9 included in paragraph 9.a through f include
10 summaries of all the opinions that you formulated
11 in this case?

12 MR. OPPENHEIMER: Objection;
13 form.

14 A. All my opinions are my entire report.
15 This is a summary.

16 Q. Well, my question is whether the summary
17 that you've included -- the summaries that you've
18 included in paragraphs 9.a through f include
19 summaries of all the opinions that you formulated
20 in this case.

21 MR. OPPENHEIMER: Objection;
22 asked and answered.

23 A. All my opinions are my entire report.
24 Paragraph 9 is a summary.

25 Q. Are you providing any opinion of whether

1 or not XRP is a security for federal securities
2 laws purposes?

3 A. I'm not offering any legal opinions.

4 Q. So is the question -- I'm sorry.

5 Is the answer no?

6 A. I'm not offering --

7 MR. OPPENHEIMER: Objection
8 to form.

9 A. -- any legal opinions.

10 Q. Okay. Are you offering any factual
11 opinion regarding whether or not XRP is a
12 security?

13 MR. OPPENHEIMER: Objection
14 to the form.

15 A. Could you clarify what you mean by
16 "factual opinion"?

17 Q. Is XRP a security in fact?

18 MR. OPPENHEIMER: Objection
19 to form.

20 A. I'm not offering any legal opinions.

21 Q. Okay. Can you turn to paragraph 15 of
22 your report? And if you could please read
23 paragraph 15 into the record.

24 A. "Mr. [REDACTED] opinions concern the
25 effects that Ripple's 'statements, actions, and

1 product offerings' supposedly had on the
2 'perspectives' of reasonable purchasers of XRP.
3 For example, he opines that actions by Ripple
4 'would create' certain expectations for 'a
5 reasonable purchaser.'" Footnote 20 refers to
6 ██████ report, paragraph 8. "Conclusions of this
7 sort are considered 'causal,' in the sense that he
8 implies that Ripple's 'statements, actions, and
9 product offerings' caused changes in the
10 'perspective of a reasonable purchaser.'"

11 Q. What do you mean by "conclusions of this
12 sort"?

13 A. Conclusions that have a cause and an
14 effect.

15 Q. And you stated that the so-called
16 conclusions are considered causal.

17 Are considered causal by whom?

18 MR. OPPENHEIMER: Objection.

19 A. I did not say "so-called conclusions."

20 Q. That's my term.

21 So the question is: You stated that the
22 so-called conclusions are considered causal.

23 MR. OPPENHEIMER: Objection.

24 Q. So going back to your statement about
25 the conclusions are considered causal, who are

1 they considered causal by?

2 MR. OPPENHEIMER: Objection

3 to form.

4 A. My sentence states "Conclusions of this
5 sort are considered 'causal' in the sense that he
6 implies that Ripple's 'statements, actions, and
7 product offerings caused changes in the
8 'perspective of a reasonable purchaser.'"

9 I might have missed a closing quotation
10 mark after "offerings."

11 So conclusions that have a cause and an
12 effect are causal conclusions. And who considers
13 them causal? That's the academic world and the
14 economic consulting world, the literature in
15 social sciences.

16 Q. So are you providing a legal opinion
17 here in your paragraph 15 about what is considered
18 causal or not?

19 MR. OPPENHEIMER: Objection.

20 A. I'm not offering any legal opinions.

21 Q. Why isn't your statement analyzing
22 Mr. [REDACTED] sentence a legal opinion?

23 MR. OPPENHEIMER: Objection

24 to form.

25 A. I'm not offering any legal opinions.

1 Q. What is your basis for the statement
2 that Mr. [REDACTED] implies that Ripple's statements,
3 actions, and product offerings cause changes in
4 the perspective of a reasonable purchaser?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. So in paragraph 8 of his report,
8 Mr. [REDACTED] makes numerous causal statements of this
9 sort. For example, he says, in the second
10 sentence, "I conclude that a reasonable purchaser
11 would have had an expectation of future profit
12 derived from the efforts of Ripple." Efforts of
13 Ripple falls under statements, actions, and
14 product offerings. And execution falls under
15 perspective. And reasonable purchaser -- let me
16 restate. Expectations of reasonable purchaser
17 falls under perspective of reasonable purchaser.

18 Next, he says "Specifically, purchasers
19 would have expected or hoped to profit by later
20 reselling their" XIP -- "XRP at a higher price on
21 a secondary market after XRP substantially
22 increased in value." Here he expands on what that
23 perspective or that expectation would be.

24 Later in the paragraph he says "Ripple
25 also promoted a variety of its achievements,

1 initiatives, and strategy that created a
2 well-understood bullish thesis for the price of
3 XRP and encouraged speculative investment flows
4 into the digital asset." Here, Ripple's promotion
5 of a variety of its achievements, initiatives, and
6 strategy is an example of statements, actions, and
7 product offerings.

8 And then the "speculative investment
9 flows into digital assets," that's a perspective.
10 That's the characterization of Mr. [REDACTED] of the
11 perspective of the purchasers because it implies
12 here that they purchased to invest.

13 Next, he states "This promotional
14 activity included advertising new partnerships
15 with financial institutions, highlighting the
16 experience and expertise of Ripple's team members,
17 making public statements about why XRP was poised
18 to increase in price, publishing positive
19 commentary about the future growth trajectory of
20 Ripple's products, and describing the plans for
21 developing the XRP ecosystem." Here Mr. [REDACTED]
22 expands on what statements, actions, and product
23 offerings were.

24 Next, he says "Although Ripple's
25 development of the blockchain and broader XRP

1 ecosystem, along with its promotion of the bull
2 case for buying XRP, would not guarantee a profit,
3 it would create the hope that a purchaser could
4 passively earn profits by owning XRP while Ripple
5 took steps to increase the value of the coin."
6 Here the statements, actions, and product
7 offerings are Ripple's development of the
8 blockchain and broader XRP ecosystem along with
9 its promotion of the bull case for buying XRP.
10 And the perspective is the hope that the purchaser
11 could possibly earn profit by owning XRP while
12 Ripple took steps to increase the value of the
13 coin.

14 Next, he says "In my experience as an
15 investor and close observer of the digital asset
16 space, the statements, actions, background, and
17 competence of the founders and companies that
18 create and support a blockchain project are
19 extremely important to the decision-making
20 process of purchasers of digital assets." Here
21 he expands his causal proposition outside of
22 Ripple and XRP to founders and companies that
23 create and support blockchain projects. And here
24 he refers to that statements, actions, and
25 product offerings of such companies and their

1 founders, and that's the cause. And the effect
2 is the decision-making process of purchasers of
3 digital assets.

4 So pretty much every word in this
5 paragraph is either a -- as -- a discussion of
6 the statements, actions, and product offerings of
7 Ripple and in one case of a broad category of
8 founders and companies. And then -- or it is a
9 discussion of a perspective of a reasonable
10 purchaser or it's a statement that connects the
11 two in a causal statement -- in a causal form.

12 Q. So going back to your statement in the
13 second sentence where you quote Mr. [REDACTED]
14 statement, "I conclude that a reasonable purchaser
15 would have had an expectation of future profit
16 derived from the efforts of Ripple," you stated
17 that "an expectation falls under perspective" --
18 I'm sorry, I think you stated -- "expectations of
19 reasonable purchaser falls under perspective of
20 reasonable purchaser."

21 What do you mean by that?

22 MR. OPPENHEIMER: Objection

23 to form.

24 A. Expectation is the type of a
25 perspective.

1 Q. Is perspective causation?

2 MR. OPPENHEIMER: Objection.

3 A. No. A perspective can be caused by
4 something.

5 Q. Next you say "Specifically, purchasers
6 would have expected or hoped to profit by later
7 reselling their XRP at a higher price on a" second
8 -- "secondary market after XRP substantially
9 increased in value," and then you state "he
10 expands on what that perspective or that
11 expectation would be."

12 Can you explain what you mean here?

13 MR. OPPENHEIMER: Objection
14 to form.

15 A. Mr. [REDACTED] talks about what purchasers
16 would expect when he describes the purchaser's
17 expectations or purchaser's perspective.

18 Q. So the next sentence you highlighted in
19 the paragraph, you state Ripple also promoted a
20 variety of its achievements, initiatives, and
21 strategy that created a well understood bullish
22 thesis for the price of XRP. It encouraged
23 speculative investment into the digital asset.
24 I'm paraphrasing. And you state that Ripple's
25 promotion of a variety of its achievements,

1 initiatives, and strategy is an example of
2 statements, actions, and product offerings.

3 Could you please explain what you mean?

4 MR. OPPENHEIMER: Objection

5 to form.

6 A. Where we initially started the
7 discussion or where you initially started your
8 questioning, this last line of questioning, was
9 the last sentence of my paragraph 15 where I
10 mention Mr. [REDACTED] causal -- causal --
11 Mr. [REDACTED] -- let me restart.

12 This line of questioning started when
13 you directed me to the last sentence of my
14 paragraph 15. Here I state that Mr. [REDACTED]
15 conclusions are causal because he links what he
16 calls statements, actions, and product offerings
17 of Ripple in a causal manner with what he calls
18 perspective of a reasonable purchaser.

19 I don't remember the exact question you
20 asked me about paragraph 8, but my long answer was
21 to point out which of the pieces in paragraph 8
22 reflect statements, actions, and product
23 offerings, which ones reflect the perspective of
24 reasonable purchasers, and where Mr. [REDACTED] makes a
25 causal link.

1 Q. Okay. So with respect to this statement
2 where you stated that he -- you read into -- from
3 his report that Ripple also promoted a variety of
4 its achievements, initiatives, and strategies. So
5 that -- that would be the last -- before the last
6 sentence in paragraph 8 on page 6.

7 Can you identify the cause and effect in
8 this statement?

9 MR. OPPENHEIMER: Objection
10 to form.

11 A. Ripple's promotion of a variety of its
12 achievements, initiatives, and strategy here
13 serves as a cause. The bullish thesis may be an
14 effect, but more generally the effect is at the
15 end of this paragraph where Mr. [REDACTED] makes a more
16 general conclusion not just about Ripple, but
17 generally about founders and companies. And he
18 says that statements and actions and background
19 and competence of the founders impact or create an
20 -- impact decision-making process of purchasers of
21 digital assets. So the decision-making process of
22 purchasers of digital assets is the outcome.

23 Q. Okay. So going back to the sentence
24 before the last on page 6, is there no effect in
25 that sentence?

1 MR. OPPENHEIMER: Objection

2 to form.

3 A. The well-understood bullish thesis may
4 be an effect in this particular sentence, but the
5 general purpose of this sentence is to list all
6 the actions and statements and product offerings
7 of Ripple that eventually culminated in the end of
8 this paragraph, led to the decision-making
9 process -- or impacted the decision-making process
10 -- process of purchasers of digital assets.

11 Q. How do you know what the general purpose
12 of this single statement is?

13 MR. OPPENHEIMER: Objection.

14 A. I'm taking this paragraph in this report
15 as a whole.

16 Q. So is this your interpretation of the
17 sentence before the last in paragraph 8 of
18 Mr. [REDACTED] report?

19 A. This is what the paragraph states.

20 Q. According to your interpretation --

21 MR. OPPENHEIMER: Objection

22 to form.

23 Q. -- of the paragraph?

24 MR. OPPENHEIMER: Objection

25 to form.

1 A. This is what the paragraph states.

2 Q. Are you equating expectation with
3 causation?

4 MR. OPPENHEIMER: Objection;
5 asked and answered.

6 A. Expectations can be caused by something;
7 but, generally speaking, the word "expectation"
8 and "causation" mean different things.

9 Q. Okay. Are you opining about Mr. [REDACTED]
10 state of mind?

11 A. I'm not offering any psychological
12 evaluation.

13 Q. So how do you know what he implied?

14 MR. OPPENHEIMER: Objection
15 to form.

16 A. I'm reading the text and, in certain
17 places, there appears to be an implication, but
18 generally based on the totality of his report.

19 Q. Were you done with your answer?

20 A. Yes.

21 Q. So if you turn to paragraph 16 of --
22 of -- of your report where you discuss the
23 scientific grounded methodology to assess whether
24 causal relationships "of this sort exist."

25 Can you give us some examples of the

1 scientifically grounded methodology?

2 A. The sentence reads "There are
3 scientifically grounded and reliable methodologies
4 to assess whether causal relationships of this
5 sort exist."

6 My next section is titled "The
7 established, reliable, and supportable method for
8 evaluating causal propositions is the experimental
9 method." And that section describes experiments.

10 THE REPORTER: Describes?

11 THE WITNESS: Experiments.

12 Q. Can you give us some examples of these
13 types of experiments that are used to evaluate
14 causal relationships?

15 A. Well, for example, the 2019 -- and I'm
16 reading from paragraph 18. "The 2019 Sveriges
17 Riksbank Prize in Economic Sciences in Memory of
18 Alfred Nobel (commonly referred to as the 'Nobel
19 Prize' in economics) was awarded to Abhijit
20 Banerjee, Esther Duflo, and Michael Kremer for
21 their use of experiments in the field of
22 developmental economics and, similarly, in 2021,
23 Nobel Prize in Economics was awarded to do David
24 Card, Joshua Angrist, and Guido Imbens for their
25 work related to experiments and

1 quasi-experiments."

2 Q. Is an experiment and survey the same
3 thing scientifically?

4 A. An experiment can be conducted in the
5 survey form, but not necessarily. A survey can be
6 conducted in experimental form, but not
7 necessarily.

8 Q. Are the methodologies described in your
9 report applicable to determining causal
10 relationships?

11 MR. OPPENHEIMER: Objection
12 to form.

13 A. Which methodologies are you referring
14 to?

15 Q. The methodologies you described in your
16 report.

17 MR. OPPENHEIMER: Objection;
18 vague.

19 A. Well, the first sentence in paragraph 18
20 says "The gold standard for testing a causal
21 hypothesis is an experiment." That's the gold
22 standard. Then I discuss experiments.

23 Then in paragraph 28 I say "Other,
24 non-experimental options are also available to
25 evaluate perceptions and expected behavior,

1 although they are less effective in isolating
2 causal effects than the gold standard methodology
3 of conducting an experiment."

4 And then I discuss examples.

5 Q. Does paragraph 26 of your report contain
6 the steps that would be used, in your opinion, to
7 evaluate the perception of a reasonable XRP
8 purchaser?

9 MR. OPPENHEIMER: Objection
10 to form.

11 A. Paragraph 26 describes some elements of
12 how a causal hypothesis that certain statements,
13 actions, and offerings caused perception and
14 perspective of -- or generally the perspective of
15 purchasers and potential purchasers of XRP can be
16 tested.

17 Q. Did you conduct any test in the manner
18 described in paragraph 26 with regard to this
19 case?

20 A. No.

21 Q. Are you providing a rebuttal to
22 Mr. [REDACTED] analysis of the perceptions of XRP
23 purchasers?

24 MR. OPPENHEIMER: Objection
25 to form.

1 A. I don't believe what Mr. [REDACTED] provided
2 is an appropriate or reliable analysis. I do
3 provide rebuttal for his entire report.

4 Q. If you did not conduct any tests in this
5 case, how are you able to rebut Mr. [REDACTED]
6 analysis of XR -- the reasonable expectations of
7 XRP purchasers' perception?

8 I'm sorry, let me repeat the sentence.

9 If you did not conduct any tests in this
10 case, how are you able to rebut Mr. [REDACTED]
11 analysis of the perception of a reasonable XRP
12 purchaser?

13 MR. OPPENHEIMER: Objection

14 to form.

15 A. If you are quoting anything I said
16 previously, I believe I've been using the word
17 "perspective" over "perception" words to an
18 extent.

19 I also wouldn't call what Mr. [REDACTED] did
20 an analysis. Mr. [REDACTED] makes causal conclusions
21 and he did not use a methodology, a reliable
22 methodology, that would allow him to make such
23 conclusions and, as such, his conclusions are
24 invalid.

25 Q. Is the methodology that you described

1 the only manner of evaluating the perception of a
2 reasonable purchaser of XRP?

3 MR. OPPENHEIMER: Objection

4 to form.

5 A. An experiment is a gold standard of
6 evaluating a causal relationship between the
7 actions, statements, and offerings of Ripple and
8 the perspective of purchasers or potential
9 purchasers, including perceptions.

10 Q. Assuming that -- I'm sorry, were you
11 done?

12 A. No.

13 Q. Well, go ahead. You can finish your
14 sentence.

15 A. I'm figuring out my thoughts because I
16 was interrupted.

17 There are, as I discuss in paragraph 28,
18 "Other, nonexperimental options also available to
19 evaluate perceptions and expected behavior" --
20 which is perspective -- "although they're less
21 effective in isolating causal effects than the
22 gold standard methodology of conducting an
23 experiment."

24 I'm done with my answer.

25 Q. Assume that you -- Mr. [REDACTED] is only

1 evaluating perception without cause and effect.

2 Are you familiar with the type of analysis that
3 could be conducted to evaluate perception without
4 cause and effect?

5 MR. OPPENHEIMER: Objection.

6 You can answer.

7 A. With respect to perceptions or beliefs,
8 in paragraph 22 of my report, I explain that the
9 most direct outcome -- the most direct way of
10 measuring such an outcome is through a survey.

11 And then, in paragraph 23, I describe
12 surveys that can be appropriate when the goal is
13 to learn about prevalent opinions -- again,
14 perceptions -- or preferences rather than causal
15 relationships. And there are examples in
16 parentheses.

17 Q. Is the survey the only means of
18 determining perception when you're not looking at
19 cause and effect?

20 A. Surveys are the most direct ways. There
21 are indirect ways of measuring perception.

22 Q. What are the indirect ways of measuring
23 perception?

24 A. For example, a conjoined analysis survey
25 or any other choice experiment can establish the

1 impact of a certain feature of a product on
2 consumer choices. And to the extent that we
3 establish that the feature impacts the choices or
4 doesn't impact the choices, we often can make
5 inference about the underlying perceptions.

6 Q. Can an expert in your field rely on his
7 or her experience to evaluate perception when
8 cause and effect is not at issue?

9 MR. OPPENHEIMER: Objection
10 to form.

11 A. In my field, perceptions are an
12 empirical question.

13 Q. What do you mean by "perceptions are an
14 empirical question"?

15 A. Researchers in my field would want some
16 data or would conduct a study to obtain such data
17 in order to evaluate perceptions.

18 Q. Are you aware of any percept -- consumer
19 perception evaluations that are conducted without
20 scientific data?

21 MR. OPPENHEIMER: Objection
22 to form.

23 A. I've assisted others and, in fact, in
24 rebutting other experts -- and, in fact, I
25 rebutted one such expert other than Mr. [REDACTED] --

1 where nonscientific matters or pure introspection
2 is used. And in all those cases they -- either
3 the expert I supported or myself as the expert
4 held the opinion that that approach is
5 unscientific and meritless and unreliable.

6 Q. Would it surprise you to know that
7 courts in this district that govern this case
8 allow experts to testify about consumer perception
9 without presenting scientific information?

10 MR. OPPENHEIMER: Objection

11 to form.

12 A. I'm not offering any legal opinions.

13 Q. Have you ever heard of experts
14 testifying about consumer perception without
15 offering scientific analysis?

16 MR. OPPENHEIMER: Objection

17 to form.

18 A. I already answered that question.

19 Q. I don't think I asked you if you've ever
20 heard of experts testifying about consumer
21 perception without offering scientific analysis.

22 So can you please answer the question?

23 A. I'll repeat.

24 MR. OPPENHEIMER: Objection.

25 You can answer.

1 A. I rebutted an expert who was offering
2 nonscientific testimony and I supported several
3 experts in rebutting nonscientific testimony with
4 respect to consumer perceptions.

5 Q. In all the cases where you rebutted
6 experts who were providing nonscientific testimony
7 with respect to consumer perception, did you
8 submit a report?

9 MR. OPPENHEIMER: Objection.

10 You can answer.

11 A. I was an expert in one such case. In
12 that case, the expert I rebutted did a little bit
13 more than Mr. [REDACTED] and actually conducted a
14 study. However, she herself admitted it was not
15 scientific. And I submitted a rebuttal report in
16 that case.

17 And in other cases where I supported
18 experts, I did not submit reports, but the experts
19 I supported submitted their own reports.

20 Q. In the case where you submitted a
21 rebuttal report, was your rebuttal report subject
22 to a Daubert challenge?

23 MR. OPPENHEIMER: Objection;
24 asked and answered.

25 A. We discussed the case previously where

1 the court chose not to rule on the Daubert motion
2 and rule on the merits of the case and rule in
3 favor of my client.

4 Q. So is it fair to say you've never
5 presented your expert opinion about the
6 methodology to test consumer perception to a
7 court?

8 MR. OPPENHEIMER: Objection
9 to form.

10 A. Can you repeat the question?

11 Q. Is it fair to say that you've never
12 presented your expert opinion about the mailed --
13 methodology to test consumer perception to a
14 court?

15 MR. OPPENHEIMER: Same
16 objection.

17 A. I don't think it's fair to say this.

18 Q. So have you ever presented your -- an
19 expert opinion about the methodology to test
20 consumer perception to a judge?

21 MR. OPPENHEIMER: Objection
22 to form.

23 A. I have never testified in court. I have
24 submitted reports.

25 Q. Have you conducted any surveys in a case

1 similar to the case before the court?

2 MR. OPPENHEIMER: Objection
3 to form.

4 A. What do you mean, "before the court"?

5 Q. Did you review the complaint in this
6 case?

7 A. I reviewed the complaint in this case.

8 Q. Do you recall the claims against Ripple
9 in this case?

10 A. I cannot restate the entire complaint,
11 but the background section of my report offers a
12 summary of the claims.

13 Q. Okay. So have you conducted a survey
14 with regard to expectation of a reasonable
15 purchaser in a case that's similar to the case
16 that you were asked to submit a report?

17 MR. OPPENHEIMER: Objection
18 to form.

19 A. I have conducted surveys in cases where
20 the subject matter was the impact of certain
21 stimuli on consumer perceptions and behavior,
22 which is similar to this report in this -- and to
23 this case in the sense that Mr. [REDACTED] makes causal
24 propositions about how stimuli impacted the
25 perspective of the purchasers and potential

1 purchasers.

2 Q. Have you submitted a survey in a case
3 where the SEC was the plaintiff in a case?

4 MR. OPPENHEIMER: Objection
5 to form.

6 A. No.

7 Q. I believe you testified that you
8 reviewed the Howey case, is that correct?

9 A. That is correct.

10 Q. Did the Howey case inform your opinions
11 in your -- in the report that you submitted?

12 A. I reviewed it for background.

13 Q. If you could please turn to Appendix C
14 of your report.

15 Could you describe Appendix C to your
16 report?

17 MR. OPPENHEIMER: Objection
18 to the form.

19 You can answer.

20 A. These are examples of Mr. [REDACTED]
21 unsupported causal propositions.

22 Q. How are the statements that you
23 highlighted of Mr. [REDACTED] unsupported?

24 A. These are causal propositions and they
25 are not supported by any reliable methodology that

1 would allow Mr. [REDACTED] to test a causal
2 proposition.

3 Q. Okay. To clarify, when you say "they
4 are not supported," are you limiting your critique
5 to methodology?

6 MR. OPPENHEIMER: Objection
7 to form.

8 A. If you are asking me whether the
9 outcomes of Mr. -- if Mr. [REDACTED] conclusions
10 themselves of the methodology match reality, that
11 could happen by total coincidence, just like a
12 broken clock shows correct time twice a day.

13 But all Mr. [REDACTED] causal propositions,
14 all his conclusions, are not supported by any
15 reliable methodology. So any match between his
16 conclusions and reality would be purely
17 coincidental.

18 Q. Going to the para -- I guess paragraph
19 31 on -- that you've listed on Appendix C, can you
20 identify the cause in this statement?

21 A. Look at the last sentence here. It says
22 "From the perspective of a utility-oriented
23 purchaser, as discussed above, the fixed-supply
24 and variable price model of XRP presents
25 significant disadvantages."

1 The cause here is the fixed-supply
2 variable price model of XRP and the effect is the
3 perspective of a utility-oriented purchaser if
4 such purchaser indeed exists.

5 The previous sentence is more
6 complicated.

7 Q. How so?

8 A. It has multiple causes.

9 Q. Can you identify the causes in the
10 previous sentence?

11 A. Well, it also lists the perspective and
12 that perspective is the effect.

13 THE REPORTER: Is?

14 THE WITNESS: The effect.

15 A. And that perspective is all the
16 investment-oriented purchaser -- purchasers -- it
17 says purchasers -- indeed exist, and the cause is
18 the fixed-supply and variable price models
19 provide -- and variable price models.

20 Q. What is the effect in that sentence?

21 MR. OPPENHEIMER: Objection
22 to form.

23 A. The fact that the perspective of "a
24 reasonable investment-oriented purchasers."

25 Q. And if you go to paragraph 47, that's on

1 the next page of Appendix C, page 44.

2 Can you identify the cause in this
3 statement?

4 A. The cause is the buyback activity. And
5 the effect -- there are two effects: One is the
6 perspective of utility-oriented purchasers if
7 those exist, as stated by Mr. [REDACTED] and the other
8 is the perception of the investment-oriented
9 purchasers if those exist.

10 Q. The same question for paragraph 48:
11 What is the cause and what is the effect?

12 A. The cause is the manner and mechanism of
13 Ripple's ongoing sales, distribution, escrow, and
14 buybacks of XRP, and the effect is the perspective
15 of the potential investment-oriented purchaser of
16 XRP if said purchaser exists.

17 Q. Same question for paragraph 49: What is
18 the cause and the effect?

19 A. The cause is these heavily promoted
20 sales and distribution mechanisms. The effect is
21 the perspective of the reasonable purchaser of XRP
22 that is exclusively considering the utility use of
23 the coin if such a reasonable purchaser exists.

24 Q. Paragraph 86, can you identify the cause
25 and effect?

1 A. There are several causes here. They're
2 all combined into specific topics. Examples are
3 the liquidity of the digital asset trading
4 platforms it needs to rely on to complete the ODL
5 transaction. And another example is
6 communications about the bull case for the price
7 of XRP. And the effect is the perspective of
8 purchasers of XRP for cross-border payments. I
9 also referred to, I believe, as a money
10 transmitter.

11 Q. Anything else?

12 MR. OPPENHEIMER: Objection

13 to form.

14 A. The causes are also called some of these
15 topics.

16 Q. I'm sorry, what do you mean "the causes
17 are also called some of these topics"?

18 A. Some of these topics is a cause from
19 this paragraph. Mr. [REDACTED] refers to the causes in
20 different ways. He uses the term "some of these
21 topics," and then for some of these topics, he
22 says "specific topics" and he leaves those
23 specific topics and then he has another example
24 about communications.

25 Q. Turning to -- staying with paragraph 86

1 that you -- did Ripple's communications cause a
2 money transmitter to be interested of some of
3 these topics --

4 MR. OPPENHEIMER: Objection.

5 Q. -- or does the interest in certain
6 aspects or lack of interest in other aspects exist
7 prior to the Ripple communication?

8 MR. OPPENHEIMER: Objection
9 to form.

10 A. So Mr. [REDACTED] is saying here that a money
11 transmitter is less interested in Ripple's
12 communications about the bull case for the price
13 of XRP. If there are no such communications, then
14 we cannot measure the interest of -- of the money
15 transmitter in such communications. So it's the
16 communication that causes or doesn't cause or
17 causes less interest on the part of the money
18 transmitter.

19 Q. So assume that a company is a
20 money-transmitting institution and its executives'
21 perspective is that, you know, they like economic
22 incentives such as rebates and volumes -- and
23 volume bonuses.

24 If Ripple announced that it would
25 provide economic incentives in the form of rebates

1 and volume bonuses, would that cause its
2 executives to have a perspective to like the
3 economic incentive or would that perspective have
4 already existed prior to the announcement?

5 MR. OPPENHEIMER: Objection

6 to form.

7 A. While taking this incomplete
8 hypothetical, a company can have a preference for
9 higher profits or smaller costs and high revenues,
10 its actions can be impacted by announcements and
11 other stimuli.

12 THE REPORTER: Other?

13 THE WITNESS: Stimuli.

14 Q. Are you done?

15 A. Yes.

16 Q. Why is the hypothetical incomplete?

17 A. Because it's missing the majority of
18 information that we could potentially have in --
19 in the marketplace.

20 Q. Such as?

21 A. Such as what is the company? What is
22 the product? What is the company that sells the
23 product?

24 Q. Why does that matter?

25 A. What?

1 Q. Why does that matter?

2 A. Because perspective is an empirical
3 matter. We can hypothesize about it from
4 theoretical perspective and from incomplete
5 hypothetical, but ultimately such hypotheses need
6 to be tested empirically.

7 Q. So assume a digital asset investor views
8 it favorably when a wealthy businessperson
9 announces that they will buy a digital asset such
10 as bitcoin. So if a wealthy investor announces
11 that he's buying bitcoin, would the invest -- the
12 hypothetical investor view bitcoin more favorably
13 because of the announcement?

14 MR. OPPENHEIMER: Objection
15 to form.

16 A. It's an incomplete hypothesis.

17 Q. Well, this is the hypothetical. So
18 can -- would the perspective change after the
19 announcement that the wealthy investor will be
20 buying bitcoin?

21 MR. OPPENHEIMER: Objection
22 to form.

23 A. It may change; it may not change. Both
24 cases are possible.

25 Q. Okay.

1 A. It's an empirical question.

2 THE WITNESS: Can we take a
3 break? Should we take break?

4 MS. GUERRIER: Okay. You
5 can take a break.

6 THE VIDEOGRAPHER: Okay.
7 Going off the record at 2:34.

8 (Whereupon, a recess is taken.)

9 THE VIDEOGRAPHER: Okay.
10 Back on the record at 2:49.

11 BY MS. GUERRIER:

12 Q. Are you aware of any survey results
13 related to the perspect -- perspective of a
14 reasonable purchaser on which the SEC -- in which
15 the SEC was a plaintiff?

16 MR. OPPENHEIMER: Objection;
17 form.

18 A. That's covered by NDA.

19 Q. Well, the answer -- you can answer yes
20 or no.

21 A. Yes.

22 Q. Did you review any of those reports in
23 writing the report that you submitted in this
24 case?

25 MR. OPPENHEIMER: Objection

1 to form.

2 You can answer.

3 A. I believe your previous question was not
4 about the report. If it was, I will need to
5 answer differently.

6 Q. I'm sorry, what was that answer?

7 A. In your previous question, I believe you
8 didn't ask about the report. So in your current
9 question, there is no logical link, but maybe I
10 misheard. And if so, I'll change -- I'll respond.
11 Maybe you can go back to the previous question.

12 Q. You want me to ask the question again?

13 A. The --

14 MR. OPPENHEIMER: Counsel,
15 she stated her answer.

16 MS. GUERRIER: I'm -- I'm
17 not -- let me fin -- you know, let
18 her answer the question.

19 MS. JONES: She has answered
20 the question repeatedly.

21 MS. GUERRIER: I'm asking
22 her if she -- you're interrupting for
23 no reason. I'm asking her if she
24 wants me to ask the question again.

25 A. I would like the previous question to be

1 read back.

2 Q. Are you aware of any survey results
3 relating to the perspective of a reasonable
4 purchaser on which the SEC -- in which the SEC was
5 the plaintiff?

6 A. Now you can ask your current question.

7 Q. No, you -- let me finish.

8 You answered "That's covered by an NDA."

9 And I said, "Well, you can answer yes or
10 no."

11 And you answered "Yes."

12 And I asked, "Did you review any of
13 those reports in writing the report that you
14 submitted in this case?"

15 A. What --

16 MR. OPPENHEIMER: Objection.

17 You can answer.

18 A. What reports are you referring to?

19 Q. How are the survey results provided?

20 A. That's covered by NDA.

21 Q. Well, were they provided in a document?

22 A. That's covered by NDA.

23 Q. What's covered by an NDA?

24 A. Everything I learned in that case.

25 Q. I'm not asking you what you learned in

1 the case. I'm asking you how those survey results
2 were provided.

3 MR. OPPENHEIMER: Objection
4 to the form.

5 You can answer if you believe
6 you're able to.

7 A. That's covered by NDA.

8 Q. Did you rely on any of the survey
9 results relating to the perspective of a
10 reasonable purchaser in which the SEC was a
11 plaintiff in formulating your opinion in this
12 case?

13 MR. OPPENHEIMER: Objection
14 to form.

15 A. No.

16 Q. If you could turn to paragraph 26 of
17 your report.

18 Looking at Footnote 39 to paragraph 26,
19 the first sentence refers to "Mr. [REDACTED] claims
20 that in a certain passage in an interview with
21 Bloomberg Technology, Ripple's CEO, Brad
22 Garlinghouse, contributed to certain underrating
23 of XRP potential purchasers about XRP."

24 Is that -- did you mean understanding?

25 A. I mean understanding.

1 Q. Is that a typo?

2 A. That's a typo.

3 Q. Going to the second paragraph, you
4 state, I believe the third sentence, "Mr. [REDACTED]
5 believes that because of" his statement -- "this
6 statement, 'potential purchasers of XRP would have
7 understood XRP, as designed, provided a mechanism
8 for passive XRP owners to benefit financially from
9 Ripple's success as a provider of financial
10 service products built on the XRP ledger, as a
11 developer of the XRP ecosystem, and as a driver of
12 demand for XRP.'"

13 What is the basis for the claim that
14 Mr. [REDACTED] believed that because of the statement
15 that I read from Footnote 39, that potential
16 purchasers of XRP would have understood that XRP
17 as designed provided mechanisms for passive XRP
18 owners, et cetera?

19 MR. OPPENHEIMER: Objection

20 to form.

21 A. Well, setting aside that this may not be
22 a perfect rendering of the footnote, looking at
23 paragraph 25 and 26 of Mr. [REDACTED] report, that's
24 what he says.

25 Q. What specifically does he say in

1 paragraph 26 of his report that supports your
2 claim that because of the statement read into the
3 record that, "Potential purchasers of XRP would
4 have understood that XRP, as designed, provided a
5 mechanism for passive XRP owners to benefit
6 financially from Ripple's success as a provider of
7 financial service products built on the XRP
8 ledger, as a developer of the XRP ecosystem, and
9 as a driver of demand for XRP"?

10 MR. OPPENHEIMER: Objection

11 to form.

12 A. Paragraph 26 of Mr. [REDACTED] report
13 states "Potential purchasers of XRP would have
14 understood the simple economics behind the message
15 being promoted by Ripple on this subject: XRP, as
16 designed, provided a mechanism for passive XRP
17 owners to benefit financially from Ripple's
18 success as a provider of financial service
19 products built on the XRP ledger" -- Footnote 25,
20 which I'll read later -- "as a developer of the
21 XRP ecosystem and as a driver of demand for XRP."

22 And Footnote 25 states "Although some
23 Ripple products did not use XRP, this report
24 focuses on what Ripple communicated publicly,
25 including its assertions that usage of its

1 products by financial institutions would
2 ultimately lead to greater demand for XRP. This
3 is further discussed in Section 7."

4 Q. Is Mr. [REDACTED] describing perception or
5 causation in paragraph 26?

6 MR. OPPENHEIMER: Objection
7 to form.

8 A. He's describing perception that's caused
9 by Ripple's statements.

10 THE REPORTER: Ripple?

11 THE WITNESS: Ripple's
12 statements, among possibly other
13 things.

14 A. To quote from his paragraph, he is
15 describing the understanding that's caused by
16 the -- the message being promoted by Ripple.

17 Q. Is he describing the effect on the
18 reasonable purchaser of XRP as opposed to whether
19 or not the messaging caused the reaction?

20 A. He's describing --

21 MR. OPPENHEIMER: Object to
22 form.

23 A. He is describing both the cause and the
24 effect and, in particular, one example of the
25 cause is described in paragraph 25.

1 Q. Can you describe specifically what
2 you're referring to in paragraph 25?

3 A. It states "Ripple directly and publicly
4 made the case for this relationship between
5 increased demand for XRP and the future price of
6 XRP. In an interview with Bloomberg Technology,
7 for example, Garlinghouse ties Ripple's efforts to
8 provide payment solutions with increased demand
9 and higher prices, all enabled by XRP's fixed
10 supply model," colon, and that's followed by the
11 quote "When Ripple uses XRP, we're solving a
12 payments problem. I believe that the more utility
13 you draw, the more demand you're going to drive.
14 And for most of these digital assets, you have
15 fixed supply. If you have fixed supply and
16 increasing demand, it's going to drive price up."

17 And footnote "YouTube. Ripple CEO
18 Garlinghouse sees real value in bitcoin at 2:06."
19 And a URL to a YouTube video and year, in
20 parentheses, 2017.

21 Q. Can you describe the cause and effect in
22 paragraph 25?

23 MR. OPPENHEIMER: Objection
24 to form.

25 A. This mainly discusses the cause. The

1 effects are discussed in paragraph 26. They made
2 some implications here about the effect when it
3 says "the case for this relationship between
4 increased demand for XRP and the future price of
5 XRP." There is an implication here that that was
6 the perception of purchasers or potential
7 purchasers. And it also states the effect, but
8 mostly it focuses on the cause.

9 Q. How did you determine the implication
10 that you just described?

11 MR. OPPENHEIMER: Objection

12 to form.

13 A. That's what the sentence states.

14 Q. Does the sentence use the term
15 "implications"?

16 A. The sentence does not use the word
17 "implications."

18 Q. Okay. Going back to Footnote 39 where
19 you're describing what Mr. [REDACTED] believed.

20 How do you know what Mr. [REDACTED] believes?

21 MR. OPPENHEIMER: Objection;

22 asked and answered.

23 A. I'm describing what he states in his
24 report.

25 Q. Are you providing any opinion about

1 Mr. [REDACTED] state of mind?

2 A. I'm not offering a psychological
3 evaluation of Mr. [REDACTED]

4 Q. In Footnote 39 you also refer, in the
5 third paragraph, to the Garlinghouse's message
6 being replaced by a placebo, is that correct?

7 A. I state "In the experiment, respondents
8 in the test group could be exposed to the
9 interview the way it occurred, while the control
10 group respondents could be exposed to the same
11 interview but where the passage identified by
12 Mr. [REDACTED] would be removed or replaced by a
13 'placebo.'"

14 Q. What do you mean by a "placebo?"

15 A. A placebo would be a different statement
16 that does not cause concern to SEC.

17 Q. I'm sorry, can you repeat your answer,
18 please?

19 A. A placebo would be a statement that does
20 not cause concern to SEC or to Mr. [REDACTED]

21 Q. So what -- what is the placebo that
22 would be used that would not cause concern to the
23 SEC or to Mr. [REDACTED]

24 MR. OPPENHEIMER: Objection
25 to form.

1 You can answer.

2 A. That would be part of developing the
3 survey/experiment. I outlined in my report some
4 elements at the very high level of a potential
5 survey/experiment. One of the decisions that
6 would need to be made while developing, designing,
7 such a study and possibly even after pretesting or
8 through the help of pretesting is whether the
9 statement can be removed entirely, whether it
10 needs to be replaced with placebo, and what's the
11 appropriate placebo.

12 Q. How would you phrase the survey question
13 to understand the perspective of a reasonable
14 purchaser of XRP in this context?

15 MR. OPPENHEIMER: Objection
16 to form.

17 A. On page 17, paragraph h. of my report, I
18 say "Both groups will then be evaluated on a
19 'dependent measure' which would aim at gaining the
20 unbiased 'perspective of a reasonable purchaser.'
21 For example, respondents could be asked in
22 open-ended and closed-ended formats about their
23 perception of the digital asset described to them,
24 whether they would expect its price to grow
25 because of the efforts of the company discussed in

1 the study, whether they would expect the digital
2 asset to be usable in transactions, including
3 cross-border transactions, and what their own
4 intentions would be with respect to the asset
5 discussed (e.g., whether they would consider
6 purchasing it, and what they would potentially do
7 with it afterwards)."

8 Q. Would there be a focus group?

9 MR. OPPENHEIMER: Objection
10 to form.

11 A. One potential stage of designing a
12 survey/experiment is to conduct focus groups.

13 Q. So in the context of Footnote 35, who
14 would be -- I'm sorry, Footnote 39, who would be
15 part of the focus group?

16 MR. OPPENHEIMER: Objection.
17 You can answer.

18 A. In Footnote 39, I don't think I
19 mentioned focus groups.

20 Q. I'll repeat the question.

21 In the context of Footnote 39, who would
22 be part of the focus group?

23 MR. OPPENHEIMER: Objection.
24 You can answer again.

25 A. Paragraph 39 describes an experiment not

1 a focus group.

2 Q. Do you use focus groups for experiments?

3 A. Some --

4 MR. OPPENHEIMER: Objection.

5 You can answer.

6 A. Sometimes focus groups are used as part
7 of the -- of designing of an experiment or a
8 survey.

9 Q. With regard to paragraph h. of your
10 report, page 17, paragraph h., would you use a
11 focus group?

12 MR. OPPENHEIMER: Objection.

13 A. Paragraph h. discusses potential
14 questions or other dependent measures that can be
15 measured in a survey or experiment. It does not
16 discuss specifically a focus group.

17 Q. I'm asking you, would you use a focus
18 group?

19 MR. OPPENHEIMER: Objection

20 to form.

21 A. In designing a survey or an experiment,
22 focus groups is a potential step. Sitting here
23 today, I cannot tell you whether, in this
24 particular study, a focus group would be used as
25 part of designing a study. And I would need much

1 more time than this deposition to design a study.

2 Q. Okay. Other than designing a study,
3 which I don't think I asked about, how would you
4 recruit a focus group to participate in a survey
5 in the context of your paragraph h.?

6 MR. OPPENHEIMER: Objection
7 to form.

8 A. Would you read back the question,
9 please?

10 (Whereupon, the record was read
11 back.)

12 A. You asked about focus groups which are
13 used as part of designing a survey or an
14 experiment. That's why I answered about focus
15 groups.

16 Q. How would you recruit members of a focus
17 group in the context of conducting a survey?

18 MR. OPPENHEIMER: Objection
19 to form.

20 A. Focus groups would be carried out in the
21 context of designing a survey if they need to be
22 conducted.

23 Q. Assume you're conducting a survey to
24 determine the effect of Mr. Garlinghouse's
25 statements with respect to XRP. How would you

1 recruit a focus group for that survey?

2 MR. OPPENHEIMER: Objection
3 to form.

4 A. I don't understand what it means to
5 "recruit" a focus group for a survey.

6 Q. Well, how do you get people to
7 participate in a focus group?

8 A. Usually you target the same population
9 as you would eventually target in your survey or
10 experiment unless the focus groups or some
11 intermediate step changes that design decision.

12 Q. In paragraph -- in Footnote 39 of your
13 report, you refer to the "test group."

14 Does "test group" mean something
15 different than "focus group"?

16 A. Yes.

17 Q. What is a test group?

18 A. On page 16, paragraph d., I say
19 "Respondents who qualify would be randomly
20 assigned to a test group or a control group."

21 Q. What is a test group?

22 A. I then say in paragraph e., "Test group
23 respondents would be exposed to a set of tested
24 statements and actions by Ripple: Specifically,
25 the 'statements, actions, and product offerings'

1 that Mr. [REDACTED] describes in his report. These
2 could be presented in a form of a vignette
3 accompanied by news articles, video interviews, or
4 other stimuli approximating the marketplace
5 realities." Footnote 38, which I'll read
6 afterward.

7 "The" name "Ripple and XRP" -- sorry.

8 "The names Ripple and XRP could be an anonymized
9 to control for prior knowledge."

10 And Footnote 38 describes the importance
11 of realism in experiments.

12 THE REPORTER: The
13 importance of?

14 THE WITNESS: Realism.

15 Q. What kind of people would be members of
16 the test group?

17 MR. OPPENHEIMER: Objection
18 to form.

19 A. On page 15, paragraph d., I state
20 "Actual and potential purchasers of XRP (the
21 target population) would be recruited to
22 participate in a survey. Those could be drawn,
23 for example, from the three types of purchasers
24 that Mr. [REDACTED] highlighted: 'individuals,
25 institutional investors, and financial services

1 companies.'"

2 Q. What do you mean by "control group" in
3 Footnote 39 of your report?

4 A. Control group is the other group that is
5 not a test group.

6 Q. Is that the scientific definition for
7 control group?

8 MR. OPPENHEIMER: Objection;
9 form.

10 A. Yes, in part. If you'd like more
11 details, the control group is the group that's not
12 exposed to the tested stimulus and is exposed to
13 something else, usually with placebo elements.

14 Q. Does control group mean the same thing
15 as focus group?

16 A. No.

17 Q. How are the two terms different?

18 A. Test group and control group, in terms
19 for splitting the sample in a survey or experiment
20 into two subsamples which have a different
21 experience within that experiment and whose
22 outcomes are eventually measured as a part of the
23 experiment.

24 A focus group is a separate study that
25 may or may not be conducted prior to the

1 experiment as part of designing the experiment or
2 surveys.

3 THE REPORTER: The last
4 part?

5 THE WITNESS: Or surveys.

6 THE REPORTER: Thank you.

7 Q. Going back to your paragraph 9 of your
8 rebuttal, you state -- could you please read
9 paragraph 9.d into the record?

10 A. "Mr. [REDACTED] does not evaluate whether and
11 to what degree XRP purchasers were exposed to
12 Ripple's statement that he 'reviews and analyzes.'
13 A proper analysis of the impact of such statements
14 on potential purchasers would include such an
15 evaluation.

16 Q. What is the basis of your statement that
17 Mr. [REDACTED] does not evaluate whether and to what
18 degree XRP purchasers were exposed to Ripple's
19 statements that he -- and I'm -- in your quotes
20 "reviews and analyzes"?

21 A. Such an evaluation would often result in
22 a conclusion that a certain percentage of relevant
23 population was exposed to the relevant statements.
24 I did not see such a conclusion in Mr. [REDACTED]
25 report.

1 Q. Well, if -- can you turn to paragraph 56
2 of Mr. [REDACTED] report on page 32?

3 Can you read the last sentence on page
4 32 starting with "In a public statement..." and
5 going on to page 33 up to the Footnote 66?

6 A. Do you want me to read the sentence that
7 starts with "In a public statement..."?

8 Q. Yes.

9 A. "In a public statement on CoinDesk, one
10 of the leading digital asset news sites,
11 Garlinghouse commented, 'We have had a significant
12 rally in XRP prices, but it is reflective of a lot
13 of work we have done to make Ripple a very
14 compelling solution.'"

15 Footnote 66. "CoinDesk. Use or
16 speculation: What's driving Ripple's price to"
17 all high -- "to all-time highs?" 2017, and there
18 is a URL.

19 Q. So is the statement that you just read a
20 statement that's made by Mr. Garlinghouse
21 according to Mr. [REDACTED] report?

22 MR. OPPENHEIMER: Objection

23 to form.

24 You can answer.

25 A. According to Mr. [REDACTED] report,

1 Mr. Garlinghouse made this statement.

2 Q. If you could please look at paragraph 57
3 of Mr. [REDACTED] report, does Mr. [REDACTED] include
4 another statement by Mr. Garlinghouse in paragraph
5 57 of his report?

6 A. Paragraph 57 contains another statement
7 by Mr. Garlinghouse.

8 Q. If you could go to paragraph 58 of
9 Mr. [REDACTED] report, does Mr. [REDACTED] quote another
10 statement by Mr. Garlinghouse?

11 A. Paragraph 58 lists another statement by
12 Mr. Garlinghouse. However, for all of the
13 statements we just discussed in paragraph 56, 57
14 and 58, there is no analysis of exposure.

15 Q. Is it possible that XRP purchasers might
16 have been exposed to the statements that Mr. [REDACTED]
17 includes in paragraphs 56, 57 and 58 of his
18 report?

19 MR. OPPENHEIMER: Objection;
20 calls for speculation.

21 You can answer.

22 A. It's a testable hypothesis.

23 THE REPORTER: It's a what
24 hypothesis?

25 THE WITNESS: Testable.

1 A. It is possible that some purchasers were
2 exposed; however, how many and what percent of
3 relative population, whether it's zero or more
4 than zero but still negligible or whether it's
5 substantial, that's all testable hypothesis. And
6 Mr. [REDACTED] does not offer any analysis to evaluate
7 to what degree purchasers or potential purchasers
8 of XRP were exposed to any of these statements.

9 Q. Was that -- was Mr. [REDACTED] assigned with
10 evaluating whether and to what degree XRP
11 purchasers were exposed to Ripple's statements?

12 MR. OPPENHEIMER: Objection

13 to form.

14 A. Mr. [REDACTED] was asked to evaluate a causal
15 relationship between the statement, actions, and
16 product offering on the one hand and the
17 perspective of a reasonable purchaser on the other
18 hand. And in order to evaluate whether certain
19 statements had an effect on the perspective of a
20 reasonable purchaser, we first need to establish
21 whether the reasonable purchaser was ever exposed
22 to those statements and to what degree.

23 Q. Can you point to where in Mr. [REDACTED]
24 report, where he states that he was asked to
25 evaluate a causal relationship between the

1 statements, actions, and product offering on the
2 one hand and the perspective of a reasonable
3 purchaser on the other hand?

4 MR. OPPENHEIMER: Objection
5 to the form.

6 A. In paragraph 2, Mr. Ripple -- Mr. [REDACTED]
7 states "The SEC retained me to independently
8 analyze and render opinions on the perspective of
9 a reasonable purchaser of XRP on Ripple's
10 statements, actions, and product offerings."

11 Q. Is there any word that -- let me
12 rephrase this.

13 Does the sentence include the word
14 "cause"?

15 A. The sentence does not involve -- include
16 the word "cause."

17 Q. And going back to your opinion in
18 paragraph 9.c, can you read for the record
19 paragraph 9.c?

20 A. "Mr. [REDACTED] 'analysis' does not allow
21 him to separate the supposed impact of Ripple's
22 conduct on the purchaser's 'perspective' from
23 other potential influences, such as preexisting
24 beliefs or general principles of economics."

25 Q. Can you explain what you mean by this

1 sentence?

2 A. The reason that experiments are gold
3 standard of testing causal propositions is because
4 they can separate the impact of what's
5 hypothesized to be the cause on the outcome from
6 the impact of all other potential inferences.

7 Because Mr. [REDACTED] did not conduct an experiment or
8 any other reliable -- he did not use any other
9 reliable approach to test a causal proposition, he
10 cannot separate the impact of the specific alleged
11 conduct from the impact of all other inferences
12 such as preexisting beliefs or general economic
13 principles.

14 Q. Assuming that Mr. [REDACTED] is not testing
15 any causal proposition, would your opinion in
16 paragraph 9.c change?

17 MR. OPPENHEIMER: Objection

18 to form.

19 You can answer.

20 A. If Mr. [REDACTED] is not testing any causal
21 proposition, then his report does not exist, so I
22 wouldn't need -- I would not need to rebut it.

23 Q. Can you explain what you mean by your
24 statement that his report does not exist if he's
25 not causing -- if -- I'm sorry, if he's not

1 testing causal proposition?

2 A. Well, to start with, he's not testing
3 causal propositions, but he is making causal
4 conclusions. And he cannot make those conclusions
5 and not make them at the same time.

6 Q. And the determination that Mr. [REDACTED] is
7 making causal conclusions, is that an opinion that
8 you're providing in this case?

9 MR. OPPENHEIMER: Objection
10 to form.

11 A. If I look at Mr. [REDACTED] summary of
12 findings, for example, I think I've gone in great
13 detail for paragraph 8 where almost every -- every
14 word is either a part of the cause or an effect;
15 every sentence either -- almost every sentence
16 either describes a cause or an effect or a causal
17 combined proposition.

18 Q. Is that an expert opinion that you're
19 providing?

20 MR. OPPENHEIMER: Objection
21 to form.

22 A. That is what paragraph 8 states.

23 Q. I'm sorry?

24 A. That is what paragraph 8 states.

25 Q. Is that your interpretation of paragraph

1 8?

2 MR. OPPENHEIMER: Objection
3 to form. Asked and answered
4 repeatedly.

5 You can answer again.

6 A. That's what the paragraph states.

7 Q. Okay. In paragraph 9.d of your report,
8 you state that "[REDACTED] does not explain how he
9 selected Ripple's statements that he 'reviews and
10 analyzes.'"

11 What is the basis for this statement?

12 A. "That Mr. [REDACTED] does not explain how he
13 selected Ripple's statements that he 'reviews and
14 analyzes.'"

15 Q. In your expert opinion, how is he
16 supposed to explain how he selected Ripple's
17 statements that he reviews and analyzes?

18 MR. OPPENHEIMER: Objection
19 to form.

20 A. There are multiple ways to do it. For
21 example, Mr. [REDACTED] could have a section in his
22 report where he could list all the statements that
23 he reviews and analyzes and say, for example, all
24 the statements come from the complaint; which
25 would not be the case here, but if it were the

1 case, he could say I have read the complaint. The
2 complaint makes me think I should be testing these
3 statements and I'm going to test them. None of
4 this is happening in Mr. [REDACTED] report.

5 Another example is that SEC could have
6 instructed him to test specific statements and he
7 could have described that in his report. That
8 also doesn't happen.

9 Q. Can you turn to paragraph 68 of
10 Mr. [REDACTED] report?

11 The sentence in quotations that's
12 included in paragraph 68, the first quotation, is
13 that a sentence that Mr. [REDACTED] included in his
14 report? Is that -- I'm sorry. Is that a
15 statement that Mr. [REDACTED] reported in his report?

16 MR. OPPENHEIMER: Objection

17 to form.

18 You can answer.

19 A. Mr. [REDACTED] states that this sentence
20 comes -- this quote comes from a Ripple --
21 Ripple's post on its blog.

22 Q. Does Mr. [REDACTED] state who is the author
23 of the statement?

24 A. If by "who" you refer to a particular
25 person, then I don't see it here.

1 Q. Okay. If you turn to page 38, does
2 the -- is there a reference to Miguel Vias in
3 paragraph 68?

4 A. He does mention Miguel Vias.

5 Q. And who is Miguel Vias according to
6 Mr. [REDACTED]

7 A. According to Mr. [REDACTED] Miguel Vias is
8 the head of Ripple's XRP markets team, or was
9 at -- at that time.

10 Q. Okay. Does Mr. [REDACTED] cite in his report
11 to -- I'm sorry.

12 Does Mr. [REDACTED] provide a cite in his
13 report with regard to that statement?

14 A. I'm not sure what you mean.

15 Q. Does -- what does Footnote 90 refer to?

16 A. Footnote 90 refers to presumably the
17 source of this, where Mr. [REDACTED] found this
18 statement.

19 Q. Okay. So if you look at paragraph 39 --
20 I'm sorry, 69 of Mr. [REDACTED] report, does
21 paragraph 30 -- 69 include a statement?

22 MR. OPPENHEIMER: Objection
23 to form.

24 A. Paragraph 69 of Mr. [REDACTED] report
25 quotes a statement on Ripple's Insights blog

1 supposedly made by Garlinghouse.

2 Q. Is there a citation to the statement in
3 paragraph 69?

4 MR. OPPENHEIMER: Objection.

5 You can answer.

6 A. There is a Footnote 93, which is
7 cross-referencing Footnote 92.

8 Q. And what -- what is Footnote 92?

9 A. It says "Ripple. Zoe Cruz Joins
10 Ripple's Board of Directors (2017)" and the URL.

11 Q. If you turn to paragraph 73 of
12 Mr. [REDACTED] report, does paragraph 73 include a
13 statement?

14 MR. OPPENHEIMER: Objection
15 to form.

16 A. Paragraph 73 includes a portion of an
17 interview which was a part of the Cryptocurrency
18 Investor Forum.

19 Q. According to Mr. [REDACTED] whose statement
20 is included in paragraph 73?

21 A. According to Mr. [REDACTED] the statement
22 was made by Breanne Magidan, Ripple's former head
23 of Global Institutional Markets.

24 Q. Going back to your report, in paragraph
25 9.e, can you explain what you mean by "market

1 segmentation"?

2 A. Market segmentation is an analysis that
3 allows to split one's addressable markets into
4 segments.

5 THE REPORTER: Allows what
6 markets?

7 THE WITNESS: Addressable.

8 Q. Why would market segmentation be
9 applic -- applicable in evaluating the perception
10 of reasonable XRP purchasers?

11 MR. OPPENHEIMER: Objection
12 to form.

13 You can answer.

14 A. Mr. [REDACTED] throughout his report
15 describes two types of perspectives or two
16 different perspectives: One of investor-oriented
17 purchasers and the other cross-border
18 transfer-oriented purchase -- purchasers. Nowhere
19 in his report does Mr. [REDACTED] offer any empirical
20 evidence that would support the existence of these
21 two types of purchasers or that those are the only
22 two types of purchasers.

23 One way to establish whether purchasers
24 of a particular product are, indeed -- indeed
25 belong to two separate segments is to conduct

1 market segmentation.

2 Q. Does Mr. [REDACTED] state anywhere in his
3 report that investment-oriented purchasers and
4 cross-border transfer-oriented purchasers are the
5 only two types of XRP purchasers?

6 A. He evaluates only those two types. And
7 in particular, he seems to suggest that
8 investment-oriented purchasers are predominant,
9 but he offers no empirical support for that.

10 Q. But does he state that these are the
11 only two types of XRP purchasers anywhere in the
12 report?

13 MR. OPPENHEIMER: Objection

14 to form.

15 A. His assignment is to "analyze and render
16 opinions on the perspective of a reasonable
17 purchaser of XRP on Ripple's statements, actions,
18 and product offerings." So "reasonable purchaser"
19 is very general here.

20 Then further in his report, he offers
21 two perspectives: One of investment-oriented
22 purchaser and one of a cross-border
23 transfer-oriented purchaser. He doesn't mention
24 any other type. For his report to be exhaustive,
25 if there -- if he believes there are other types,

1 he would need to mention them.

2 Q. Is that an opinion?

3 MR. OPPENHEIMER: Objection

4 to form.

5 A. My entire report is that of my opinions
6 in this case.

7 Q. And so the answer is yes?

8 MR. OPPENHEIMER: Objection.

9 A. Everything I state in my report is my
10 opinion in this case.

11 Q. Have you provided any expert opinion
12 about the qualifications or experience of an
13 expert in your professional capacity?

14 MR. OPPENHEIMER: Objection
15 to form.

16 A. In paragraph f on page 5, I state
17 "Mr. [REDACTED] does not appear to possess the
18 qualifications or experience needed to address
19 certain aspects of the 'perspective of a
20 reasonable purchaser' or the effect of Ripple's
21 'statements, actions, and product offerings' on
22 those aspects of the purchaser's perspective, such
23 as purchasers' perceptions of Ripple's at-issue
24 statements."

25 I might have missed a closing quotation

1 mark after "reasonable purchaser."

2 Q. Other than paragraph f in this case,
3 have you provided any expert opinion about the
4 qualifications or experience of an expert in your
5 professional capacity?

6 MR. OPPENHEIMER: Objection
7 to form.

8 A. I might have in the United States versus
9 Florida case. I don't remem -- I don't recall the
10 specifics.

11 Q. Has an expert report ever been rejected
12 based on your expert opinion about that expert's
13 qualifications or experience?

14 MR. OPPENHEIMER: Objection
15 to form.

16 A. To the best of my recollection, in the
17 United States versus Florida case, the court chose
18 not to opine on any Daubert motions and instead
19 opined on the case's merits and ruled in favor of
20 my client.

21 MR. OPPENHEIMER: Counsel, I
22 don't know if you're planning on
23 starting a new topic, but if we could
24 take a break sometime soon.

25 MS. GUERRIER: Sure. Why

1 don't we take a break now. Ten
2 minutes?

3 THE VIDEOGRAPHER: Okay.

4 Going off the record, 3:47.

5 (Whereupon, a recess is taken.)

6 THE VIDEOGRAPHER: Okay.

7 Back on the record at 4:01.

8 BY MS. GUERRIER:

9 Q. In Section --

10 THE VIDEOGRAPHER: Your mic.

11 MS. GUERRIER: Oh, yes,

12 that's important.

13 BY MS. GUERRIER:

14 Q. Okay. In Section B to your report on
15 page 21, you state that "Mr. [REDACTED] does not
16 evaluate whether and to what degree XRP purchasers
17 were exposed to the at-issue communications and
18 does not attempt to empirically evaluate the
19 causal effect, if any, of Ripple's public
20 communications on perceptions or purchase
21 decisions of actual or potential purchasers of
22 XRP."

23 Was this part of Mr. [REDACTED] assignment?

24 MR. OPPENHEIMER: Objection

25 to form.

1 A. Going back to paragraph 2 of Mr. [REDACTED]
2 report, the SEC retained him "to independently
3 analyze and render opinions on the perspective of
4 a reasonable purchaser of XRP on Ripple's
5 statements, actions" -- "statements, actions, and
6 product offerings."

7 And then throughout his report, he lists
8 numerous communications by Ripple and arrives at
9 causal conclusions regarding what effect those
10 communications had on perceptions or purchase
11 decisions of actual or potential purchasers of
12 XRP.

13 So that's part of his assignment and his
14 report.

15 Q. Is that your interpretation of
16 Mr. [REDACTED] assign -- assignment?

17 MR. OPPENHEIMER: Objection

18 to form.

19 A. That's what's in his report.

20 Q. Is this an opinion that you're providing
21 concerning whether or not Mr. [REDACTED] was asked to
22 do what I've described in Section B on page 21 of
23 your report?

24 MR. OPPENHEIMER: Objection

25 to form.

1 A. My entire report is my opinions.

2 Q. Do you have a criticism of Section 5 of
3 Mr. [REDACTED] expert report which starts on page 15
4 of his report and goes through page 19 of the
5 report?

6 A. One of the sections in my report
7 specifically addresses Section 5 of Mr. [REDACTED]
8 report.

9 Q. What is the specific rebuttal that
10 you're providing with respect to Section 5 of
11 Mr. [REDACTED] report?

12 MR. OPPENHEIMER: Objection;
13 form.

14 A. Section -- Section VI.B.a. of my report
15 is called "[REDACTED] Report Section 5" featured --
16 "Features of XRP Coin Economics and Suitability as
17 a Bridge Asset."

18 In that section I specifically address
19 Section 5 of Mr. [REDACTED] report.

20 Q. So what is the specific criticism that
21 you have of Section 5 of Mr. [REDACTED] report?

22 MR. OPPENHEIMER: Objection
23 to form.

24 A. That's my entire Section VI.B.a.

25 Q. I'm sorry?

1 A. That's my entire Section VI.B.a.

2 Q. Can you verbalize what your rebuttal is
3 on Section 5 of Mr. [REDACTED] report?

4 MR. OPPENHEIMER: Objection

5 to form.

6 A. I can read to you examples from my
7 Section VI.B.a. For example, in paragraph 39, I
8 state "In Section 5.3 of his report, Mr. [REDACTED]
9 summarizes the 'Perspective of a reasonable
10 purchaser with respect to XRP's fixed-supply
11 model,' again splitting the purchasers into
12 'investment-oriented purchasers of XRP' and
13 'purchasers who are exclusively interested in the
14 utility use of the cross-border payment product.'
15 Again, he does not explain whether these two types
16 of purchasers were exposed or paid attention to
17 the specific Ripple statements, whether the
18 perspectives (perceptions and purchase behaviors)
19 of these two types of potential purchasers were
20 affected by those statements or by general
21 economic logic, why these two types of customers
22 represent a relevant market segmentation, and
23 whether there is any basis to say these two are
24 the only types of potential purchasers that should
25 be considered."

1 Q. Turning to Section 6 of Mr. [REDACTED]
2 report, which starts on page 19 of his report and
3 ends on page 26, are you providing any rebuttal to
4 Section 6 of Mr. [REDACTED] report?

5 MR. OPPENHEIMER: Objection
6 to form.

7 A. Well, as I stated before, all of my
8 report is my opinions and my rebuttal of
9 Mr. [REDACTED] entire report. With respect to
10 Section 6 of his report, there is a section in my
11 report, that's Section VI.B.b, called "[REDACTED]
12 Report Section 6 'XRP Sale and Escrow'" mechanism
13 -- 'Mechanics.'

14 Q. Can you verbalize the rebuttal that
15 you're providing to Section 6 of Mr. [REDACTED]
16 report?

17 MR. OPPENHEIMER: Objection
18 to form.

19 A. I can read to you excerpts from my
20 Section B.b, but my entire Section VI.B.b is the
21 rebuttal. It's the one that specifically
22 addresses Mr. [REDACTED] Section 6. It's only one
23 paragraph, so I'll read it in its entirety.

24 "In Sections 6.1-6.5" in -- "of his
25 report, Mr. [REDACTED] discusses 'XRP Sale and Escrow

1 Mechanics,' again intermingling theoretical logic,
2 statements made by Ripple, and actions taken by
3 Ripple."

4 Footnote 55, which I'll -- which reads

5 "[REDACTED] Report, paragraphs 32 to 47.

6 Occasionally, Mr. [REDACTED] would interject these
7 descriptions with what appears to be his take on
8 purchaser 'perspective.' For example, he states
9 that various aspects of institutional purchasing
10 of XRP, 'repeatedly communicated by Ripple in the
11 XRP markets reports,' 'would appeal to an
12 individual purchaser with a long-term investment
13 mindset.' [REDACTED] report, paragraph 37. He does
14 not identify any basis for distinguishing between
15 subsets of potential XRP purchasers (for example,
16 his 'individual purchaser with a long-term
17 investment mindset' versus an individual
18 purchaser with a short-term investment mindset,
19 or an individual purchaser with no investment
20 mindset, or an entity purchaser, but also makes
21 no attempt to argue that his conclusions hold as
22 to all subsets of potential XRP purchasers."

23 Continuing with the paragraph: "This
24 intermingling is flawed for the reason I explain
25 above. Then, in Section 6.6, Mr. [REDACTED] describes

1 the supposed 'perspective of a reasonable
2 purchaser with regards to Ripple's XRP sales and
3 escrow,' again discussing separately the
4 perspective of 'a potential investment-oriented
5 purchaser of XRP' and 'a reasonable purchaser of
6 XRP that is exclusively considering the utility
7 use of the coin.'"

8 Footnote 56, "[REDACTED] report, paragraphs
9 48 to 49."

10 "Again, he does not explain why his
11 segmentation into these two types of purchasers is
12 valid, or whether these two types of purchasers
13 were exposed or paid attention to the specific
14 Ripple statements, whether they interpreted the
15 statements the same way as Mr. [REDACTED] or whether
16 the perspectives (perceptions and purchase
17 behaviors) of these two types of potential
18 purchasers are affected by those statements or by
19 general economic logic. Each of these omissions
20 is" critic -- "is a critical flaw in Mr. [REDACTED]
21 reasoning."

22 So both for Section 5 and Section 6 of
23 Mr. [REDACTED] report, the general rebuttal that I
24 offer -- and there is more detail in my report,
25 but at a high level is that the statements that

1 Mr. [REDACTED] highlights in those sections, it
2 doesn't test whether the perspective of the
3 purchaser was affected by these statements.

4 He doesn't -- he also doesn't analyze
5 whether purchasers or potential purchasers were
6 even exposed to those statements. And he
7 repeatedly made separate conclusions for two types
8 of potential purchasers, but he offers no
9 explanation -- or let me rephrase -- no reliable
10 methodology that would allow one to conclude that
11 these two types of potential purchasers or
12 purchasers exist and those are the only two types.

13 Q. Okay. Did you conduct any of the tests
14 that you described in paragraph 40 of your report?

15 MR. OPPENHEIMER: Objection
16 to form.

17 Q. In this case.

18 A. I don't know if I used the word "test"
19 here specifically.

20 Q. Well, did you do any of the things that
21 you've described in paragraph 40 of your report in
22 this case?

23 MR. OPPENHEIMER: Objection
24 to form.

25 A. My assignment in this case is to

1 evaluate Mr. [REDACTED] report. In order to do that,
2 I do not need to conduct an empirical study.

3 Q. So is the answer no?

4 A. The answer is I did not conduct
5 empirical studies because I didn't need to.

6 Q. Okay. Looking at Section 7 of
7 Mr. [REDACTED] report, which starts at page 26 of the
8 report and ends at page 49, are you -- what
9 rebuttal are you providing to Section 7 of
10 Mr. [REDACTED] report?

11 MR. OPPENHEIMER: Objection
12 to form.

13 A. If you're referring to Section 7 of
14 Mr. [REDACTED] report, it ends on page 47 of his
15 report.

16 Q. Yes, I'm sorry. Page 47.
17 What rebuttal are you providing to
18 Section 7 of Mr. Ripple's -- I'm sorry,
19 Mr. [REDACTED] report?

20 A. Section VI.B.c. of my report is called
21 "[REDACTED] Report Section 7 'Ripple Communications and
22 Promotional Statements.'" And that section of my
23 report specifically addresses Section 7 of
24 Mr. [REDACTED] report.

25 Q. Can you verbalize the rebuttal that

1 you're providing to Section 7 of Mr. [REDACTED]
2 report?

3 MR. OPPENHEIMER: Objection

4 to form.

5 A. My entire opinion is in my report. The
6 general, the main highlights of it is that, again,
7 Mr. [REDACTED] lists numerous statements and makes
8 causal conclusions about how those statements
9 affected the perspective of purchasers and
10 potential purchasers of XRP, but he doesn't
11 evaluate that causal proposition with any reliable
12 methodology. He doesn't evaluate whether a
13 relevant population was even exposed or to what
14 degree to those statements.

15 He, again, offers two separate
16 perspectives for the two types of purchasers he
17 defines without offering any empirical evidence
18 that those two types exist or that no other types
19 exist.

20 I have not finished.

21 Another criticism of Section 7, as well
22 as 5 and 6, is that with respect to the statements
23 of Mr. [REDACTED] -- it's not all -- he doesn't
24 evaluate to what degree potential and actual
25 purchasers were exposed to this statement. He

1 doesn't evaluate whether they paid any attention
2 to the statement or whether they recall them at
3 the time of the potential purchase.

4 In Section 7, on my Sections V and VI,
5 he has an incremental section that is called
6 Section 7.1 and it's called -- it starts on page
7 26 of his report and it's called "Promotional
8 Factors Considered by an Investment-Oriented
9 Purchaser."

10 Mr. [REDACTED] does not have a parallel
11 subsection for the other type of purchaser he
12 claims exist and that suggests that Mr. [REDACTED]
13 believes that the promotional -- that the
14 investment-oriented purchaser is the predominant
15 purchaser type or he's not interested or less
16 interested than the other type for some reason.

17 I'm done with my answer.

18 Q. Could you go to page 29, your header
19 paragraph C. You state that "Mr. [REDACTED] 'review
20 and analysis' does not evaluate any actual or
21 potential XRP purchaser's perspective except for
22 his own."

23 Is -- is it possible to evaluate
24 perception of a consumer based upon the expert's
25 experience alone?

1 MR. OPPENHEIMER: Objection

2 to form.

3 A. From a scientific point of view, if you
4 are interested in the perceptions of purchasers or
5 perspective purchasers, we should measure those
6 perceptions empirically or evaluate them in some
7 indirect way empirically.

8 Q. Do you know whether any experts have
9 evaluated the perception of a hypothetical
10 consumer without conducting any scientific
11 analysis but relying on this expert's experience?

12 MR. OPPENHEIMER: Objection

13 to form.

14 A. I have supported several experts
15 providing such opinions.

16 Q. Were the cases that you supported in
17 rebutting an expert that may have evaluated the
18 perception of a hypothetical purchaser based on
19 that expert's experience, were those cases
20 litigation cases?

21 MR. OPPENHEIMER: Objection;

22 form.

23 A. Yes. And I think I should clarify that
24 the cases, or at least one case I'm referring to,
25 the expert on the other side did not present an

1 opinion of his own introspections as a potential
2 consumer but, rather, what he believed the
3 consumers would think based on literature.

4 Q. Is it possible that an expert can
5 evaluate the perception of a hypothetical consumer
6 without the need to conduct an experiment?

7 MR. OPPENHEIMER: Objection;
8 form.

9 A. From a scientific perspective, we have a
10 hypothesis about the impact of stimulus on
11 perceptions.

12 THE REPORTER: I'm sorry,
13 repeat.

14 A. From a scientific perspective, we have
15 an hypothesis about the impact of a stimulus on
16 perceptions or perspectives. The gold standard is
17 to conduct a sur -- an experiment.

18 Q. So my question is, is it possible that
19 an expert can evaluate the perception of a
20 hypothetical consumer without the need to conduct
21 any experiment?

22 MR. OPPENHEIMER: Objection
23 to form.

24 A. There are some other methods that are
25 less effective in establishing causation but

1 nevertheless can establish causation to some
2 degree. Mr. [REDACTED] did not use any of those
3 methods.

4 Q. Assuming that we're not trying to
5 establish causation and we're just looking at the
6 perception of a hypothetical consumer, is it
7 possible that an expert can evaluate the
8 perception of that hypothetical consumer without
9 the need to conduct an experiment?

10 MR. OPPENHEIMER: Objection

11 to form.

12 A. If we're not going after a causal
13 proposition and they're evaluating perceptions,
14 the most direct way of doing that would be a
15 survey.

16 If we are looking at some hypothetical
17 imaginary person, then the question is: Who is to
18 decide what that person's thinking? From a
19 scientific perspective, the best way -- or the
20 most direct way. The most direct way to establish
21 what a person is thinking is to ask about people
22 who are similar to that imaginary hypothesized
23 person.

24 Q. Can an expert evaluate the perception of
25 a hypothetical consumer based on specialized

1 experience alone, without talking about cause and
2 effect?

3 MR. OPPENHEIMER: Objection
4 to form.

5 A. If we're evaluating perceptions of
6 consumers -- was it consumers in your question?

7 Q. I'll repeat the question.

8 Can an expert evaluate the perception of
9 a hypothetical consumer based on specialized
10 experience alone, without talking about cause and
11 effect?

12 MR. OPPENHEIMER: Same
13 objection.

14 A. From a scientific perspective, that way
15 to -- one way, a direct way, to identify what a
16 hypothetical consumer thinks is to ask actual
17 consumers what they think. Otherwise, it's not
18 clear how we're going to figure out what this
19 imaginary person imaginary thoughts -- imaginary
20 person's imaginary thoughts are.

21 Q. Is it your testimony that no expert has
22 evaluated the perception of a hypothetical
23 consumer based on specialized knowledge alone?

24 MR. OPPENHEIMER: Objection
25 to form.

1 A. I am not offering any legal opinions in
2 this case. There might have been experts who did
3 something. That's not scientifically valid.

4 Q. What is the basis for your statement
5 that analyze -- evaluating consumer perception
6 based on specialized knowledge alone, without
7 trying to determine cause and effect, is not
8 scientifically valid?

9 MR. OPPENHEIMER: Objection
10 to form.

11 A. So the base case scenario of this
12 methodology, quote/unquote, is that we're getting
13 the perception of a single person, a person who
14 knows the hypothesis in the current case, knows
15 the sponsor of this, quote/unquote, study and is
16 just one person. That does not allow us to
17 evaluate what a representative consumer believes.

18 Q. Are you aware that experts have been
19 accepted in courts in this jurisdiction based on
20 their specialized knowledge alone with respect to
21 evaluating the perspective of a hypothetical
22 consumer?

23 MR. OPPENHEIMER: Objection
24 to form.

25 A. If you represent that to me, I believe

1 you, and I'm not offering any legal opinions.

2 From a scientific perspective, introspecting will
3 give us perception of one person, not of a
4 representative consumer. And that one person is
5 not even necessarily the consumer of the product
6 of interest.

7 THE REPORTER: The consumer
8 of --

9 THE WITNESS: Of the product
10 of interest. Or a potential consumer
11 of the product of interest.

12 Q. Could the expert look at online -- for
13 example, online reviews by consumers to determine
14 the perception of hypothetical consumers without
15 trying to determine cause and effect but just
16 perception?

17 MR. OPPENHEIMER: Objection
18 to form.

19 A. There is a scientific methodology called
20 content analysis as discussed in Footnote 67 of my
21 report. "Content analysis is a method of
22 collecting social data through carefully
23 specifying and counting social artifacts such as
24 books, songs, speeches, and paintings. Without
25 making any personal contact with people, you can

1 use this method to examine a wide variety of
2 social phenomena. Content analysis is the study
3 of recorded human communications. Among the forms
4 suitable for study are books, magazines, web
5 pages, poems, newspapers, songs, paintings,
6 speeches, letters, email messages, bulletin board
7 postings on the internet, laws, and constitutions,
8 as well as any components or collections thereof.
9 Content analysis is particularly well suited to
10 the study of communications and to answering the
11 classic question of communications research: 'Who
12 says what, to whom, why, how, and with what
13 effect?' Common units of analysis in content
14 analysis include elements of communications -
15 words, paragraphs, books and so forth. Standard
16 probability-sampling techniques are sometimes
17 appropriate in content analysis."

18 If an expert wanted to conduct content
19 analysis of product reviews, that would, if
20 properly conducted, be a reliable methodology.

21 Q. So is scientific -- I'm sorry.

22 Is a -- is a scientific analysis
23 mandatory for determining the perspective of a
24 reasonable purchaser if all you're doing is
25 determining the perspective of a reasonable

1 purchaser?

2 MR. OPPENHEIMER: Objection

3 to form.

4 A. From a scientific perspective, the
5 perspective of a reasonable purchaser can be
6 measured as the perspective of -- on average, of a
7 sample of relevant purchasers.

8 There could be also indirect methods but
9 also empirical methods. Introspecting into what I
10 think about this product will, at best, only tell
11 you what I think about it, not what consumers of
12 this product think. And even if I am a consumer
13 of this product or a potential consumer of this
14 product, I'm only one person. That could be an
15 outlier.

16 And obviously the same applies to
17 Mr. [REDACTED] His introspections into what he
18 believes, what his perspective is in this case,
19 it's only his perspective. Even if he's a
20 relevant purchaser or potential purchaser of XRP,
21 that's only his belief and his belief may be
22 biased because he knows the sponsor of -- of his,
23 quote/unquote, analysis.

24 Q. So can Mr. [REDACTED] provide a nonscientific
25 opinion regarding the perspective of a reasonable

1 XRP purchaser based on his specialized experience
2 in digital assets?

3 MR. OPPENHEIMER: Objection
4 to form.

5 A. From the scientific perspective -- from a
6 scientific point of view, the reasonable
7 purchaser -- until -- unless we're talking about
8 imaginary people and their imaginary thoughts, a
9 reasonable purchaser is a representation of an
10 average -- of average across actual purchasers.

11 Usually it's infeasible to reach every
12 single purchaser, so a sample of the purchasers is
13 evaluated. That becomes a survey. If we're also
14 interested in a causal proposition with respect to
15 the perspective, that would be a survey with a
16 control group or some other experiment.

17 Q. So if we're not talking about a
18 cause-and-effect situation and we're just speaking
19 about evaluating how XRP purchasers viewed certain
20 statements and actions by Ripple, is your
21 testimony that there's no nonscientific method of
22 doing this?

23 MR. OPPENHEIMER: Objection;
24 asked and answered.

25 You can answer again.

1 A. When you say that consumers viewed
2 certain statements, that's the impact of those
3 statements on consumers' perception. So that's a
4 causal proposition.

5 Q. Isn't that a separate theory from
6 viewing -- from having a perspective -- a perception
7 about a statement and whether the statement caused
8 a certain perception?

9 MR. OPPENHEIMER: Objection
10 to form.

11 A. If a person has a perception of a
12 statement and wouldn't have the same perception
13 without that statement, then the statement causes
14 that perception.

15 Q. Is there any way that the perception
16 could exist prior to the person even hearing the
17 statement?

18 A. If a perception exists prior to the
19 person hearing the statement, then that perception
20 is not caused by the statement.

21 Q. Okay.

22 A. And if such a perception exists, that's
23 what's called a preexisting belief and that's what
24 an experiment controls for.

25 Q. You would do the experiment if you're

1 trying to determine cause and effect?

2 MR. OPPENHEIMER: Objection
3 to form.

4 A. An experiment is a gold standard of
5 evaluating causal propositions.

6 Q. Okay.

7 MS. GUERRIER: Okay. I
8 don't have any other questions.

9 MR. OPPENHEIMER: Okay. Can
10 we go off the record for just a
11 minute for me to circle my notes?

12 THE VIDEOGRAPHER: Okay.
13 Going off the record at 4:38.

14 (Whereupon, a recess is taken.)

15 THE VIDEOGRAPHER: Okay.
16 Back on the record, 4:41.

17 CROSS-EXAMINATION

18 BY MR. OPPENHEIMER:

19 Q. You were asked some questions earlier
20 about the meaning of the term "placebo."

21 Can you clarify what the scientific
22 definition of a placebo is?

23 A. A placebo is a stimulus that's the same
24 as a test stimulus except for the aspect that's
25 being tested.

1 Q. You were also asked some questions about
2 whether certain causal statements in Mr. [REDACTED]
3 report used the word "cause."

4 Is it possible to state a causal
5 inference or a causal conclusion without using the
6 word "cause"?

7 A. Yes, it's possible.

8 MR. OPPENHEIMER: No further
9 questions.

10 MS. GUERRIER: I don't have
11 anything.

12 THE VIDEOGRAPHER: Okay.

13 This concludes the video deposition
14 of Kristina Shampanier. I said it
15 right. The time is 4:41. Going off
16 the record.

17 (Whereupon, the deposition
18 concluded at 4:41 p.m.)
19
20
21
22
23
24
25

1 STATE OF NEW YORK)

2) ss:

3 COUNTY OF NEW YORK)

4 I hereby certify that the witness in the
5 foregoing deposition, KRISTINA SHAMPANIER, Ph.D. was by
6 me duly sworn to testify to the truth, the whole truth
7 and nothing but the truth, in the within-entitled cause;
8 that said deposition was taken at the time and place
9 herein named; and that the deposition is a true record of
10 the witness's testimony as reported by me, a duly
11 certified shorthand reporter and a disinterested person,
12 and was thereafter transcribed into typewriting by
13 computer.

14 I further certify that I am not interested in
15 the outcome of the said action, nor connected with nor
16 related to any of the parties in said action, nor to
17 their respective counsel.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this 22nd day of December, 2021.

20 Reading and Signing was:

21 ___ requested ___ waived _X_ not requested.
22
23

24 _____
25 BRIDGET LOMBARDOZZI, CSR, RMR, CRR

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