

January 24, 2024

VIA ECF

Hon. Sarah Netburn
United States Magistrate Judge
Southern District of New York
40 Foley Square
New York, NY 10007

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

Dear Judge Netburn:

Defendant Ripple Labs Inc. (“Ripple”) respectfully moves for leave to file a short sur-reply letter in response to the SEC’s reply in support of their motion to compel (ECF No. 932). Ripple’s proposed sur-reply letter seeks to correct a significant factual mischaracterization made by the SEC for the first time in its reply. The Court would benefit from the sur-reply letter because it will clarify the issues in dispute and allow the Court to rule on an accurate record. “Motions for leave to file sur-reply information [] are subject to the sound discretion of the court,” and are often granted where, as here, a party seeks to address new arguments raised in a reply. *See, e.g., Barbour v. Colvin*, 993 F. Supp. 2d 284, 288 (E.D.N.Y. 2014) (internal quotation marks and citation omitted); *see also Stepski v. M/V Norasia Alya*, 2010 WL 11526765, at *1 (S.D.N.Y. Mar. 3, 2010).

The proposed sur-reply letter is attached hereto as **Exhibit A**. The SEC does not oppose this request.

Respectfully submitted,

/s/ Andrew J. Ceresney

Andrew J. Ceresney
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cc: All Counsel of Record (via ECF)

EXHIBIT A

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

Dear Judge Netburn:

We write on behalf of Defendant Ripple Labs Inc. (“Ripple”) in connection with the SEC’s reply letter in support of its motion to compel certain remedies-related discovery. *See* ECF No. 932 (“Reply Letter”). While Ripple does not agree with many contentions in the Reply Letter, we write solely to correct a significant misstatement of fact in the Reply Letter.

The SEC claims that Ripple “does not ... argue that it would be burdened in producing” post-complaint contracts. Reply Letter at 2. That is false: Ripple specifically objected to the SEC’s request as “overly burdensome.” *See* ECF No. 925-2 at 7-8. The SEC then doubles down on its misstatement, asserting that Ripple “recently catalogued and presumably produced, in the ongoing class action suit, all of Ripple’s XRP sales contracts from 2020 to June 2023, including determining the identity of the counterparties to those contracts.” Reply Letter at 2 (citing Ex. A, Decl. of C. Dicharry in *Zakinov v. Ripple Labs Inc.*, No. 18 Civ. 6753, ECF No. 329-29 (N.D. Cal. Jan. 10, 2024)). That is false as well. Ripple did not produce *any* contracts post-dating December 22, 2020 in *Zakinov*. Nor did Ripple “catalogue” these contracts in connection with the class action litigation. Further, the discovery request seeks contracts beyond the ODL contracts referenced generally in the Declaration, including contracts with or relating to vendors, consultants, independent contractors, grants, donations and other counterparties — *i.e.*, contracts that would relate to “Other Distributions,” which the Court held at summary judgment are not sales of investment contracts. *See* ECF No. 874 at 26-27.

The Court should disregard these misstatements of fact raised for the first time in the SEC’s reply.

Respectfully submitted,

/s/ Andrew J. Ceresney

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KELLOGG, HANSEN, TODD, FIGEL,
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