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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VLADI ZAKINOV, et al.,  
Plaintiffs,  
v.  
RIPPLE LABS, INC., et al.,  
Defendants.

Case No. 18-cv-06753-PJH

**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS CONSOLIDATED FIRST AMENDED COMPLAINT**

Re: Dkt. No. 102, 103, 109

United States District Court  
Northern District of California

Before the court is Defendant Ripple Labs, Inc.’s (“Ripple”), defendant XRP II, LLC’s (“XRP II”), and Ripple’s Chief Executive Officer, Bradley Garlinghouse (“Garlinghouse”) (collectively, “defendants”) motion to dismiss plaintiff Bradley Sostack’s (“plaintiff”) consolidated first amended complaint. Dkt. 102. Having read the parties’ papers and carefully considered their argument and the relevant legal authority, and good cause appearing, the court hereby **GRANTS** in part and **DENIES** in part defendants’ motion to dismiss.

**BACKGROUND**

This order addresses defendants’ second motion to dismiss in a consolidated putative class action (“In re Ripple”) that arises out of the creation, dispersal, circulation, and sale of “XRP,” which is a sort of “cryptocurrency.” This action’s procedural posture is nuanced and, except as noted below, does not bear on the instant motion.

On February 26, 2020, the court granted in part and denied in part defendants’ first motion to dismiss plaintiff’s consolidated class action complaint (the “prior order”). Dkt. 85. The court denied that motion with respect to plaintiff’s claims for defendants’ alleged

1 at 40. However, the court granted that motion with respect to the following claims alleged  
2 in plaintiff's initial complaint:

- 3 • Violation of California Corporations Code § 25501 against Ripple and XRP II, as  
4 well as a parallel material assistance claim under § 25504.1 against Ripple and  
5 Garlinghouse, for misleading statements made in connection with the offer or sale  
6 of securities as prohibited by § 25401 (the "fourth cause of action").
- 7 • Violation of California Business & Professions Code § 17500 against defendants  
8 for misleading advertisements concerning XRP (the "sixth cause of action").
- 9 • Violation of California Business & Professions Code § 17200 against defendants  
10 for their unregistered offer or sale of securities in violation of federal and state law,  
11 false advertising practices, misleading statements, and offense to established  
12 public policy (the "seventh cause of action").

13 The court dismissed these three causes of action (collectively, the "fraud claims")  
14 because plaintiff failed to satisfy Rule 9(b)'s heightened pleading requirements as they  
15 pertain to the alleged misstatements underlying such claims. Dkt. 85 at 32-36. At core,  
16 the court reasoned that plaintiff failed to explain how and why the subject statements  
17 were false. Id. While the court generally dismissed the fraud claims without prejudice, it  
18 dismissed the sixth and seventh of causes of action (jointly, the "Business & Professions  
19 Code fraud claims") with prejudice to the extent they rested on the theory that XRP was a  
20 security. Id. at 37-40. The court based that determination on established state decisional  
21 law finding that claims brought under those sections may not extend to actions that relate  
22 to securities transactions. Id. Having drawn that distinction, the court nonetheless  
23 permitted plaintiff an opportunity to amend his pleadings to comply with Rule 9(b)'s  
24 requirements for claims brought under those sections, provided that he do so under the  
25 alternative theory that XRP is not a security. Id. at 40.

26 On March 25, 2020, plaintiff filed his consolidated first amended complaint. Dkt.  
27 87 ("CFAC"). Aside from further detailing the purported misstatements underlying the

28 fraud claims, the CFAC's factual allegations are materially similar to those alleged in

1 plaintiff's initial complaint. Dkt. 87-1 (redline demarcating pleading changes). In his  
2 CFAC, plaintiff identifies 17 alleged misstatements to substantiate his fraud claims.

3 Those statements fall into one of the following four categories of purported fraud:

- 4 • Defendants misrepresented XRP's "utility." CFAC ¶¶ 41-42, 47-48.
- 5 • Defendants conflated the adoption and use of their enterprise solutions software  
6 with that of XRP. Id. ¶¶ 64-75.
- 7 • Ripple misstated its XRP sales activity during the December 2017 through January  
8 2018 period. Id. ¶¶ 56-57.
- 9 • Garlinghouse misrepresented the scope and character of his XRP holdings. Id. ¶¶  
10 51-53.

11 The particular wording of all 17 alleged misstatements is critical to decide this  
12 motion. Rather than listing them here, the court will detail each statement in its analysis.

## 13 DISCUSSION

### 14 A. Legal Standard

#### 15 1. Rule 12(b)(6)

16 A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims  
17 alleged in the complaint. Ileto v. Glock, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). Rule 8  
18 requires that a complaint include a "short and plain statement of the claim showing that  
19 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Rule 12(b)(6), dismissal "is  
20 proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege  
21 sufficient facts to support a cognizable legal theory." Somers v. Apple, Inc., 729 F.3d 953,  
22 959 (9th Cir. 2013). While the court is to accept as true all the factual allegations in the  
23 complaint, legally conclusory statements, not supported by actual factual allegations,  
24 need not be accepted. Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009). The complaint  
25 must proffer sufficient facts to state a claim for relief that is plausible on its face. Bell  
26 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 558-59 (2007).

27 As a general matter, the court should limit its Rule 12(b)(6) analysis to the

28 contents of the complaint, although it may consider documents "whose contents are

1 alleged in a complaint and whose authenticity no party questions, but which are not  
 2 physically attached to the plaintiff's pleading." Knievel v. ESPN, 393 F.3d 1068, 1076 (9th  
 3 Cir. 2005); Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007) ("a court can consider a  
 4 document on which the complaint relies if the document is central to the plaintiff's claim,  
 5 and no party questions the authenticity of the document"). The court may also consider  
 6 matters that are properly the subject of judicial notice, Lee v. City of L.A., 250 F.3d 668,  
 7 688–89 (9th Cir. 2001), exhibits attached to the complaint, Hal Roach Studios, Inc. v.  
 8 Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1989), and documents  
 9 referenced extensively in the complaint and documents that form the basis of the  
 10 plaintiff's claims, No. 84 Emp'r-Teamster Jt. Counsel Pension Tr. Fund v. Am. W. Holding  
 11 Corp., 320 F.3d 920, 925 n.2 (9th Cir. 2003).

12 Lastly, a district court "should grant [a] plaintiff leave to amend if the complaint can  
 13 possibly be cured by additional factual allegations," however, dismissal without leave "is  
 14 proper if it is clear that the complaint could not be saved by amendment." Somers, 729  
 15 F.3d at 960. Relevant here, the Ninth Circuit has recognized that in circumstances  
 16 "where plaintiff has previously amended the complaint," the district court's discretion to  
 17 deny further leave "is particularly broad." Metzler Inv. GMBH v. Corinthian Colleges, Inc.,  
 18 540 F.3d 1049, 1072 (9th Cir. 2008).

## 19 2. Rule 9(b)

20 For actions alleging fraud, "a party must state with particularity the circumstances  
 21 constituting fraud or mistake." Fed. R. Civ. Pro. 9(b). To satisfy Rule 9(b), a plaintiff  
 22 must allege "the 'time, place, and specific content of the false representations as well as  
 23 the identities of the parties to the misrepresentations.'" Swartz v. KPMG LLP, 476 F.3d  
 24 756, 764 (9th Cir. 2007). "Averments of fraud must be accompanied by 'the who, what,  
 25 when, where, and how' of the misconduct charged," and "a plaintiff must set forth *more*  
 26 than the neutral facts necessary to identify the transaction. The plaintiff must set forth  
 27 what is false or misleading about a statement, and why it is false." Vess v. Ciba-Geigy

28 Corp. USA, 317 F.3d 1007, 1106 (9th Cir. 2002) (emphasis in the original). Plaintiff's

1 allegations of fraud “must be specific enough to give defendants notice of the particular  
2 misconduct which is alleged to constitute the fraud charged so that they can defend  
3 against the charge and not just deny that they have done anything wrong.” Swartz, 476  
4 F.3d at 764.

## 5 **B. Analysis**

6 In their motion, defendants move to dismiss only the fraud claims, which, as  
7 previously noted, comprise the CFAC’s fourth, sixth, and seventh causes of action.  
8 Defendants principally argue that plaintiff again failed to show how or why each of the  
9 alleged misstatements is false. Dkt. 102 at 10-11. The court analyzes each alleged  
10 misstatement per category of fraud below.

### 11 **1. Statements Concerning XRP’s Utility**

12 To substantiate the first basis for his fraud claims, plaintiff relies on five statements  
13 by defendants concerning XRP’s utility. Plaintiff’s theory of falsity for all five statements  
14 is the same. It rests on only two allegations, paragraph 43 and paragraph 48. In  
15 paragraph 43, plaintiff alleges that the subject statements are false because, when made,  
16 approximately 60 percent of XRP was owned by Ripple and the “vast majority, if not all”  
17 of the remaining forty percent of XRP was “not used for bridging international  
18 transactions but for investment purpose.” In paragraph 48, plaintiff adds that “demand for  
19 XRP from financial institutions did not represent a significant portion of the demand for  
20 XRP and little, if any, XRP was used to ‘help financial institutions source liquidity for  
21 payments into and out of emerging markets.’”

22 It is important to clarify that this theory does not assert that the subject statements  
23 are false because XRP could not, theoretically, serve a useful purpose (e.g., as a  
24 surrogate for traditional currency). Instead, as alleged in paragraphs 43 and 48, plaintiff  
25 asserts that the subject statements are false because they impart the misleading  
26 impression that XRP was, in practice, being widely used for such purposes. Plaintiff  
27 doubles down on that theory in his opposition brief. Dkt. 105 at 9 (“Thus, Ripple touted

28 XRP’s purported utility. However, as Plaintiff alleges, XRP has no such utility.

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