

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants,

JORDAN DEATON, JAMES LAMONTE,
TYLER LAMONTE, MYA LAMONTE,
MITCHELL MCKENNA, KRISTIANA WARNER and
ALL SIMILARLY SITUATED XRP HOLDERS,

Proposed
Intervenors.

20-cv-10832 (AT) (SN)

**PROPOSED INTERVENORS' MEMORANDUM OF LAW IN REPLY
TO PLAINTIFF'S OPPOSITION TO PROPOSED INTERVENORS'
MOTION TO INTERVENE**

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Proposed Intervenors (“XRP Holders”) respectfully submit this memorandum of law in reply to Plaintiff, Securities and Exchange Commission’s (“SEC”) opposition of Proposed Intervenors’ Motion to Intervene.

PRELIMINARY STATEMENT

The SEC’s opposition to intervention is riddled with red herrings, personal attacks, and irrelevant caselaw hoping to distract the Court from XRP Holders’ meritorious request for intervention. XRP Holders are not constitutionally or statutorily barred from intervention. They have a protectable interest that could be impeded, if not destroyed, by the disposition and outcome of this case. Moreover, the existing parties do not adequately represent their interest. XRP Holders should be allowed to speak for themselves. XRP Holders do not seek to broaden the scope of the SEC’s claims but rather protect their interests and provide the Court with critical information necessary for the fair disposition of this case. If intervention is granted, there will be no delay in the proceedings or adjudication of this case. The SEC cannot claim, with credibility, that it will suffer unfair prejudice from intervention. Considering the substantial public interest at stake, intervention will provide this Court with a more complete picture of the issues presented and contribute to a just and equitable adjudication of all claims and defenses.

ARGUMENT

I. XRP Holders Are Not Constitutionally or Statutorily Barred from Intervening

The SEC’s assertion that XRP Holders are constitutionally and statutorily barred from intervention is absurd. The Southern District, in *SEC v. Credit Bancorp, Ltd.*, 194 F.R.D. 457 (S.D.N.Y. 2000), dismantled the Section 21(g) argument. The Court held “there is no persuasive authority which suggests that section 21(g) ... bars intervention in all SEC enforcement actions.” *Id.* at 466 (quoting *SEC v. Prudential Sec. Inc.*, 171 F.R.D. 1, 4 (D.D.C. Mar. 26,

1997). Succinctly put, Section 21(g) of the Exchange Act does not bar intervention. *See Mem. Of Law in Supp. of Mot. to Intervene*, ECF No. 123, at 12; and *Def.s' Resp. to Mot. to Intervene*, ECF 152, at 13.

Citing *Heckler v. Chaney*, 470 U.S. 821 (1985), a case completely irrelevant to intervention, the SEC argues that intervention as a defendant in an SEC enforcement action is constitutionally barred as it violates the prosecutorial discretion of the SEC. *Pl.'s Memo. in Opp. Of Mot. to Intervene*, ECF 153, at 10-12. If the SEC were correct, intervention as a defendant, pursuant to Fed. R. Civ. P. 24, would never be granted in governmental enforcement actions. Yet, there are numerous authorities proving otherwise. *See SEC v. Founding Partners Cap. Mgmt. Co.*, 2009 U.S. Dist. LEXIS 136825 No. 2:09-cv-229-FtM-29DNF (M.D. Fla., Aug 28, 2009); *State of New York, et al. v. Scalia, et al.*, No. 1:20-cv-01689-GHW, Doc. 99, Jun.29, 2020; *SEC v. First Jersey Securities, Inc.*, 843 F.2d 74 (2d Cir. 1988); and *SEC v. TheStreet.com*, 273 F.3d 222 (2d Cir. 2001).

The SEC's claim that XRP Holders are constitutionally and statutorily barred from intervening as a defendant is simply without merit.

II. XRP Holders' Intervention Does Not Broaden the SEC's Claims

The SEC asserts that XRP Holders are attempting to "broaden the scope of the SEC's claims by intervening in this action." ECF 153, at 2. This is incorrect. XRP Holders' motion to intervene is completely within the scope of the Amended Complaint – the pleading that controls the entire cause of action. Just as the SEC "has distanced itself from the Hinman speech, arguing to Judge Netburn that it does not reflect the agency's 'official position'" (ECF 152, at 11) (citing *Hr'g Tr.* 50:13-16 (Apr. 6, 2021)), the SEC, faced with intervention, attempts to distance itself from its own Complaint. The SEC writes: "[t]he Amended Complaint alleges that,

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