UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
SECURITIES AND EXCHANGE
COMMISSION,

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Plaintiff,

-against-

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

Defendants.

20 Civ. 10832 (AT) (SN)

ORDER

ANALISA TORRES, District Judge:

Plaintiff, the Securities and Exchange Commission (the "SEC"), brings this action against

Defendants Ripple Labs, Inc. ("Ripple"), and two of its senior leaders, Bradley Garlinghouse and

Christian A. Larsen, alleging that Defendants engaged in the unlawful offer and sale of securities

in violation of Section 5 of the Securities Act of 1933 ("Section 5" of the "Securities Act"), 15

U.S.C. §§ 77e(a) and (c). *See* Amend. Compl. ¶ 9, ECF No. 46. The SEC also alleges that

Garlinghouse and Larsen (together, the "Individual Defendants") aided and abetted Ripple's

Section 5 violations. *Id.* The Individual Defendants move separately under Federal Rule of

Civil Procedure 12(b)(6) to dismiss Plaintiff's complaint for failure to state a claim. Larsen

Mot., ECF No. 105; Garlinghouse Mot., ECF No. 110. For the reasons stated below, the

Individual Defendants' motions are DENIED.

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BACKGROUND

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The following facts are taken from the amended complaint and "are presumed to be true"

for the purpose of considering the Individual Defendants' motions to dismiss for failure to state a

claim. *Fin. Guar. Ins. Co. v. Putnam Advisory Co., LLC*, 783 F.3d 395, 398 (2d Cir. 2015).

The SEC alleges that, from 2013 to the filing of this action in 2020, Ripple violated

Section 5 by selling XRP—which the SEC claims is an "investment contract" for which

registration is required—without filing a registration statement. *See* Amend. Compl. ¶¶ 4, 9, 60, 230–31, 241–42, 289–94, 392–93. The SEC contends that Ripple and its executives promoted XRP as an investment into a common enterprise that would increase in value and price based on Ripple's efforts. *See, e.g., id.* ¶¶ 104, 111, 230–57, 294. For the purposes of these motions, the Individual Defendants do not contest that the SEC's allegations plausibly show that Ripple's sale of XRP violated Section 5. *See* Larsen Mem. at 1–2, ECF No. 106; Garlinghouse Mem. at 2, ECF No. 111.

Ripple was founded in 2012 by Larsen and a co-founder (the "Co-Founder"). *See* Amend. Compl. ¶¶ 16, 18, 38. Around the time of Ripple's founding, the Co-Founder began creating the XRP Ledger, a software code that "operates as a peer-to-peer database, spread across a network of computers, that records data respecting transactions, among other things." *Id.* ¶¶ 38–39. After Ripple's founding, the Co-Founder and others associated with Ripple created a fixed supply of 100 billion XRP, *id.* ¶ 45, "a digital asset and the native token on the XRP Ledger," *id.* ¶ 48.

Larsen served as Ripple's Chief Executive Officer ("CEO") from September 2012 through December 2016. *Id.* ¶ 18. When Larsen was hired, Ripple was intended to "continue the XRP Ledger and XRP projects." *Id.* ¶ 42. In April 2015, Garlinghouse joined Ripple as its Chief Operating Officer ("COO"). *Id.* ¶ 17. Then, in January 2017, Garlinghouse took over as CEO, and Larsen began serving as the executive chairman of Ripple's board of directors. *Id.* ¶¶ 17–18, 74.

I.   Larsen as CEO

In 2012, before Ripple began distributing XRP, Larsen and other Ripple executives received two legal memoranda from a law firm. *Id.* ¶¶ 51–52, 56. These memoranda analyzed

the risks associated with Ripple's distribution and monetization of XRP. *Id.* ¶¶ 51–53. The law

firm warned that there was some risk XRP would be considered an investment contract by the

SEC, and would, therefore, be subject to federal securities laws. *Id.* ¶ 53. Specifically, the

memoranda stated that Ripple would face an increased risk of XRP being deemed a security if

individuals purchased XRP as a speculative investment, or if Ripple employees promoted the

idea that XRP could increase in price. *See id.*; *see also* ECF Nos. 108-1, 108-2.[1] The

memoranda also explained that XRP would likely not be classified as currency, Amend. Compl.

¶ 54, an opinion reiterated in a memorandum Ripple's accountants sent to Larsen in 2013, *id.*

¶ 400.

By at least 2013, Larsen was aware of the contents of the memoranda and the possibility

that the SEC would consider XRP a security. *See id.* ¶ 56. In in a May 2014 email, Larsen

acknowledged that he received a large quantity of XRP because the legal memoranda advised

that XRP may be deemed a security, and he was being compensated for "personally assum[ing]

th[e] risk" of being classified as an issuer of securities. *Id.* ¶¶ 57–58; *see also* ECF No. 179-3.[2]

From 2013 to 2014, Ripple and Larsen made efforts to create a market for XRP by

having Ripple distribute approximately 12.5 billion XRP to programmers through "bounty

programs" that paid them for reporting problems in the XRP Ledger's code. Amend. Compl.

¶ 61. Ripple also distributed small amounts of XRP to anonymous developers and others to help

establish a trading market for XRP. *Id.* During that time, Ripple began to make public

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[1] The Court shall consider the legal memoranda and other such documents relied on in the complaint because they are "integral" to the amended complaint. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002); *see also* Amend. Compl. ¶¶ 51–60. But, in doing so, the Court continues to draw all reasonable inferences in the SEC's favor. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003 (9th Cir. 2018).
[2] *See supra* n.1.

statements with respect to XRP that gave investors reason to believe that Ripple's efforts would produce profits. *Id*. ¶¶ 62–64.

In August 2013, Ripple started selling XRP in exchange for fiat currencies and other digital assets, such as bitcoin. *Id*. ¶ 72. Both Ripple and Larsen intended for their distribution of XRP to achieve "[n]etwork [g]rowth" and raise funds for Ripple's operations. *Id*. ¶ 65. As Larsen explained, Ripple was "keeping 25% of . . . XRP . . . to cover the bills, and using the rest of it to incent market makers, gateways, [and] consumers to come onto the protocol." *Id*. ¶ 300. Larsen planned the initial stage of Ripple's XRP offering by approving the timing and amount of the offers and sales to: (1) purchasers in the open market ("Market Sales"); (2) investment funds, wealthy individuals, or other sophisticated investors ("Institutional Sales"); and (3) others enlisted to assist Ripple's efforts to develop an XRP market (the "Other XRP Distributions"). *Id*. ¶ 73; *see also id*. ¶¶ 205, 207. As CEO, Larsen initiated and approved Ripple's Market Sales of XRP. *Id*. ¶ 92; *see also id*. ¶ 100. He had final decision-making authority over which trading venues to use for Market Sales and how much XRP to sell in a particular venue. *Id*. ¶ 98; *see also id*. ¶ 101. And, Larsen strategized with other Ripple employees to adjust their selling plan to "stabilize and/or increase the XRP price." *Id*. ¶ 101; *see also id*. ¶¶ 205–06.

The goal of Ripple's XRP sales was achieving as widespread a distribution of XRP as possible, which was necessary to promote an "aftermarket" of buyers and sellers of XRP. *Id*. ¶ 89. In a public interview, Larsen explained that one of Ripple's "key roles is making sure that [Ripple] distribute[s] [XRP] as broadly in a way that adds as much utility and liquidity as [it] possibly can." *Id*. ¶ 265. He stated that he thought the incentives of Ripple and XRP purchasers "are very well aligned" because, "for [Ripple] to do well [it] [has] to do a very good job in

protecting the value of XRP and the value of the network." *Id.* Larsen described protecting the value of XRP as the "guiding principle" of Ripple's distribution. *Id.*

When Garlinghouse joined Ripple as COO, he began assisting in Ripple's distribution of XRP. He worked with Larsen to coordinate the distribution strategy to increase XRP's price. *See id.* ¶¶ 101, 205, 207, 211. Garlinghouse also began to oversee, direct, and lead Ripple's efforts to make XRP available for purchasers to buy and sell on digital asset trading platforms incorporated in the United States and abroad. *Id.* ¶¶ 154–59. And, he participated in weekly XRP sales meetings where he exercised decision-making authority over the timing and amount of Ripple's XRP sales. *Id.* ¶ 424.

Since at least 2013, Ripple and Larsen tried to make Institutional Sales "to obtain essential funding for Ripple's operations and develop a speculative trading market in XRP." *Id.* ¶ 102; *see also id.* ¶¶ 104, 110–24. Garlinghouse participated in these efforts when he was hired as COO. *See id.* ¶ 110. Larsen and Garlinghouse both played significant roles in negotiating and approving Ripple's Institutional Sales as well as other offers and sales of XRP to institutional investors. *Id.* In 2015, Garlinghouse negotiated an institutional investor's purchase of XRP in connection with the investor's formation of a private investment fund "whose sole purpose would have been to speculate on XRP as an investment." *Id.* ¶ 111. Both Garlinghouse and Larsen received drafts of the potential offering documents for that fund. *Id.* During those negotiations, Larsen received an email from the fund's attorney advising him of some concerns about XRP being regulated as a security even though it was considered a "virtual currency" in some contexts. *See id.* ¶ 401. In 2016, Larsen and Garlinghouse approved a sale to an institutional investor described as an "institutional reseller." *Id.* ¶ 116. This institutional

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