USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 04/11/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

RIPPLE LABS, INC., et al.,

Defendants.

----------X

20-CV-10832 (AT) (SN)

OPINION & ORDER

SARAH NETBURN, United States Magistrate Judge:

By letter motion, the Securities and Exchange Commission ("SEC") moves for partial reconsideration or clarification of the Court's January 13, 2022 Order, which held in relevant part that emails concerning and draft versions of a June 14, 2018 speech given by then-Director William Hinman (the "Speech") are not shielded by the deliberate process privilege. The motion is DENIED as to reconsideration and GRANTED as to clarification.

BACKGROUND

The Court assumes the parties' familiarity with the facts. The SEC brings this action under Section 5 of the Securities Act of 1933, alleging that Defendants Bradley Garlinghouse, Christian Larsen, and Ripple Labs Inc. (collectively "Defendants") are currently engaging in the unlawful offer or sale of securities, and that Defendants Larsen and Garlinghouse aided and abetted Ripple's violations.

As relevant here, Defendants sought certain documents from the SEC to challenge the SEC's allegations that Larsen and Garlinghouse were objectively reckless in believing that XRP

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

was not a security and that Ripple was on "fair notice" that XRP was a security. Following the Court's ruling on the relevance of certain categories of documents, the SEC searched its files and raised objections to the production of certain challenged documents on the ground that they are protected by the deliberative process privilege. The Court conducted an *in camera* review of exemplar documents identified in Appendix A to Defendants' motion. ECF No. 289-11. Based on its review of the documents, the Court granted Defendants' motion to compel production as to certain parts of Entry 1 of Appendix A, and in full as to Entry 9 of Appendix A. ECF No. 413.

The SEC now asks the Court to reconsider its ruling as to Entry 9 of Appendix A or, in the alternative, to clarify whether the Court's January 13, 2022 Order compels production of all emails related to and drafts of the Speech on the SEC's privilege log. In support of its motion, the SEC has submitted 10 additional documents for the Court's *in camera* review.[1]

DISCUSSION

I. Reconsideration

A. Legal Standard

Reconsideration of a previous order by the court is an "extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." In re Health Mgmt. Sys. Inc. Sec. Litig., 113 F. Supp. 2d 613, 614 (S.D.N.Y. 2000) (cleaned up);

[1] After Judge Torres denied the Individual Defendants' motions to dismiss and the SEC's motion to strike Ripple's fair notice defense, the SEC filed a letter "supplementing" its motion for reconsideration, ECF No. 445, arguing that the SEC's motion for reconsideration should be granted because the SEC's internal documents are not relevant to the Individual Defendants' scienter. The Court declines to take such a narrow view of relevance in the context of discovery. "Although not unlimited, relevance, for purposes of discovery, is an extremely broad concept." Condit v. Dunne, 225 F.R.D. 100, 105 (S.D.N.Y. 2004) (citation omitted); see Daval Steel Prod., a Div. of Francosteel Corp. v. M/V Fakredine, 951 F.2d 1357, 1367 (2d Cir. 1991) (citing cases).

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Anwar v. Fairfield Greenwich Ltd., 164 F. Supp. 3d 558, 560 (S.D.N.Y. 2016) (same). [2] The decision to grant or deny such a motion is "committed to the sound discretion of the district court." Wilder v. News Corp., No. 11-cv-4947 (PGG), 2016 WL 5231819, at *3 (S.D.N.Y. Sept. 21, 2016) (quoting Liberty Media Corp. v. Vivendi Universal. S. A., 861 F. Supp. 2d 262, 265 (S.D.N.Y. 2012)). "The reconsideration rule must be 'narrowly construed and strictly applied so as to "avoid duplicative rulings on previously considered issues."'" Sigmon v. Goldman Sachs Mortg. Co., 229 F. Supp. 3d 254, 257 (S.D.N.Y. 2017) (quoting Merced Irrigation Dist. v. Barclays Bank PLC, 178 F. Supp. 3d 181, 183 (S.D.N.Y. 2016)).

The standard for granting a motion for reconsideration "is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). "[A] party may not advance new facts, issues, or arguments not previously presented to the Court" on a motion for reconsideration. Nat'l Union Fire Ins. Co. of Pittsburgh, PA. v. Stroh Companies, Inc., 265 F.3d 97, 115 (2d Cir. 2001) (quoting Polsby v. St. Martin's Press, Inc., No. 97-cv-690 (MBM), 2000 WL 98057, at *1 (S.D.N.Y. Jan. 18, 2000)). Nor are motions for reconsideration "a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple." Analytical Surys., Inc. v. Tonga Partners, L.P., 684 F.3d 36, 52 (2d Cir. 2012), as amended (July 13, 2012) (quoting Sequa Corp. v. GBJ Corp., 156 F.3d 136, 144 (2d Cir. 1998)) (cleaned up); Schrader, 70

[2] Because the standards for motions brought under Local Civil Rule 6.3 and Federal Rule of Civil Procedure 59(e) are "identical," the Court considers case law arising under both. Sigmon v. Goldman Sachs Mortg. Co., 229 F. Supp. 3d 254, 256 (S.D.N.Y. 2017) (citing cases).

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

F.3d at 257 ("[A] motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided.").

Reconsideration may be granted because of "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Luv n' Care Ltd. v. Goldberg Cohen, LLP, No. 15-cv-9248 (NRB), 2016 WL 6820745, at *1 (S.D.N.Y. Nov. 10, 2016) (internal quotation marks omitted) (quoting Hollander v. Members of the Bd. of Regents, 524 F. App'x 727, 729 (2d Cir. 2013)); accord Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992). "To these ends, a request for reconsideration . . . must demonstrate controlling law or factual matters *put before the court in its decision on the underlying matter* that the movant believes the court overlooked and that might reasonably be expected to alter the conclusion reached by the court." RST (2005) Inc. v. Rsch. in Motion Ltd., 597 F. Supp. 2d 362, 365 (S.D.N.Y. 2009) (emphasis added). "[A] reconsideration motion cannot be used as a vehicle to make new arguments that contradict or are inconsistent with a party's earlier submission." Wilder, 2016 WL 5231819, at *5 (citing RST (2005) Inc., 597 F. Supp. 2d at 365; then citing Davidson v. Scully, 172 F. Supp. 2d 458, 461 (S.D.N.Y. 2001)). The strict and narrow application of the reconsideration rule "ensure[s] the finality of decisions and [prevents] the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters." Henderson v. Metro. Bank & Tr. Co., 502 F. Supp. 2d 372, 376 (S.D.N.Y. 2007) (citation omitted).

B. Application

The SEC has identified no intervening change of controlling law or any other controlling decisions unaddressed by the Court's January 13, 2022 Order.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

The SEC claims, however, that the Court overlooked two factual issues: first, the comments left by SEC staff on drafts of the Speech (as well as the drafts and the final text themselves) show that Hinman made the Speech in order to communicate the approach of the SEC's Division of Corporation Finance on the regulation of digital asset offerings, as confirmed by the relevant regulations governing SEC employees' public statements. Relatedly, the SEC argues that the Speech was the end-product of "significant collaboration" by many staffers across the SEC, as evidenced by the 68 drafts and associated commentary in the SEC's privilege logs. Deliberations regarding the Speech's content were, according to the SEC, an essential link in the agency's deliberations about whether transactions in a particular digital asset involve the sale of a security.

1. The Speech's Purpose

The SEC's assertion that the Speech was intended to communicate Corporation Finance's approach to regulating digital asset offerings is inconsistent with the SEC's and Hinman's previous position that the Speech was intended to and did reflect his personal views. See ECF No. 255 (SEC Letter Motion to Quash Subpoena) at 3 ("Director Hinman . . . [made] a public speech on June 14, 2018, in which he expressed *his own* view that the offers and sales of the digital asset Ether at that time were 'not securities transactions,' based on *his* understanding of the specific facts and circumstances of Ether and the structure of the Ethereum blockchain at the time." (emphases added)); ECF No. 255-2 (Hinman Decl.) ¶¶ 11-13 (noting that the Speech was "intended to express [Hinman's] own personal views"); ECF 492-2 (SEC Hinman Dep. Tr.) at 132:9-10 (Hinman believed that the speech "provided clarity as to how [he] was looking at those issues"); ECF No. 436-3 (Defs.' Hinman Dep. Tr.) at 233:14-15, 19-20 ("The speech reflects [Hinman's] thoughts. . . . They [statements made during the speech] are intended to be a speech

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.