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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN MATEO

15 AVNER GREENWALD, Individually and on
16 Behalf of All Others Similarly Situated,

17 Plaintiff,

18 v.

19 RIPPLE LABS, INC., a Delaware Corporation,
XRP II, LLC, a South Carolina Limited Liability
Company, BRADLEY GARLINGHOUSE,
20 CHRISTIAN LARSEN, RON WILL,
ANTOINETTE O'GORMAN, ERIC VAN
21 MILTENBURG, SUSAN ATHEY, ZOE
CRUZ, KEN KURSON, BEN LAWSKY,
22 ANJA MANUEL, and TAKASHI OKITA,

23 Defendants.

FILED
SAN MATEO COUNTY

JUL 03 2018

Clerk of the Superior Court

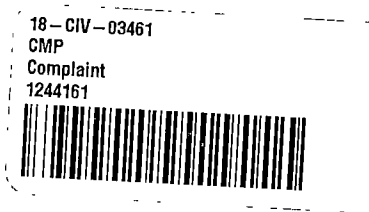
By _____
DEPUTY CLERK

18 CIV 03461

Case No.

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE SECURITIES ACT
OF 1933**

JURY TRIAL DEMANDED



FILE BY FAX

1 Plaintiff Avner Greenwald (“Plaintiff”), individually and on behalf of all others similarly
2 situated, by Plaintiff’s undersigned attorneys, alleges the following based upon personal knowledge as to
3 Plaintiff’s own acts, and upon information and belief as to all other matters based on the investigation
4 conducted by and through Plaintiff’s attorneys, which included, among other things, a review of
5 Securities and Exchange Commission (“SEC”) filings and commentary, publicly available reports and
6 information, analyst and media reports, and other commentary analysis. Plaintiff’s investigation into the
7 matters alleged herein is continuing and many relevant facts are known only to, or are exclusively within
8 the custody and control of, the Defendants. Plaintiff believes that substantial additional evidentiary
9 support will exist for the allegations set forth herein after a reasonable opportunity for formal discovery.

10 **NATURE AND SUMMARY OF ACTION**

11 1. Plaintiff brings this securities class action under §§5, 12(a)(1), and 15 of the Securities
12 Act of 1933 (the “Securities Act”) against (1) Ripple Labs, Inc. (“Ripple Labs” or the “Company”);
13 (2) Ripple Labs’ wholly owned subsidiary, XRP II, LLP (“XRP II”); and (3) certain of Ripple Labs’
14 controlling senior executives and directors (collectively, the “Individual Defendants”). Plaintiff alleges
15 that Defendants sold unregistered securities to investors in violation of the Securities Act. Defendants
16 are liable in their capacities as issuers, statutory sellers, and/or direct or indirect offerors of XRP.

17 2. Plaintiff brings this action on behalf of all investors who purchased Ripple tokens
18 (“XRP” or “Ripples”) on or after July 3, 2015 and were damaged thereby.

19 3. XRP qualify as securities under Section 2(a)(1) of the Securities Act, 15 U.S.C.
20 §77b(a)(1). The purchase of XRP constitutes an investment contract as XRP purchasers, including
21 Plaintiff, provided consideration (in the form of fiat, *i.e.*, U.S. dollars or other cryptocurrencies) in
22 exchange for XRP. XRP is in investment in a common enterprise and purchasers reasonably expected to
23 derive profits from their ownership of XRP. Defendants promoted this profit motive as a reason to
24 purchase XRP.

25 4. No registration statements have been filed with the SEC or have been in effect with
26 respect to the XRP offerings alleged herein.

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1 5. All 100 billion XRP in existence were created out of thin air by Ripple Labs.¹ Twenty
2 billion XRP, or 20% of all XRP in existence, were given to the individual founders of Ripple Labs,
3 including Defendant Chris Larsen, and the remaining 80 billion were retained by Ripple Labs.

4 6. Defendants have since earned massive profits by selling the retained XRP to the public,
5 without complying with federal securities laws, in what is essentially an ongoing initial coin offering
6 (“ICO”). Like an initial public offering (“IPO”), in an ICO, digital assets are sold to consumers in
7 exchange for legal tender or other cryptocurrencies (most often Bitcoin and Ethereum).

8 7. Defendants sell XRP from the retained supply and use the proceeds from the sales to fund
9 Company operations.

10 8. In order to increase demand for XRP, and thereby increase the profits derived by selling
11 XRP, Defendants portray XRP as a good investment, solicit sales, express optimistic price predictions,
12 and conflate Ripple Labs’ enterprise customer programs with usage and value of XRP. Ripple Labs
13 greatly increased these efforts to push XRP on the general public in recent years.

14 9. These solicitation efforts were conducted by interstate means, as were the sales of XRP.

15 **JURISDICTION AND VENUE**

16 10. The Court has subject matter jurisdiction over this action pursuant to the California
17 Constitution, Article VI, §10 and Section 22 of the Securities Act, 15 U.S.C. §77v. The claims alleged
18 herein arise under §§5, 12(a)(1), and 15 of the Securities Act. *See* 15 U.S.C. §§77e, 77l, and 77o.
19 Section 22 of the Securities Act, 15 U.S.C. §77v(a), expressly states that “[e]xcept as provided in section
20 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent
21 jurisdiction shall be removed to any court of the United States.” Section 77p(c) refers to “covered class
22 action[s] brought in any State court involving a covered security, as set forth in subsection (b),” and
23 subsection (b) of §77p in turn includes within its scope only covered class actions “based upon the
24
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26 ¹ This is unlike other cryptocurrencies like Bitcoin and Ethereum that are “mined” by those
27 validating transactions on their networks.

1 statutory or common law of any State or subdivision thereof.” See 15 U.S.C. §77p. This is an action
2 asserting only federal law claims. Thus, this action is not removable to federal court.

3 11. Venue is proper in this jurisdiction pursuant to the provisions of California Code of
4 Civil Procedure §395(a) because certain Defendants reside in San Mateo County.

5 12. This Court has personal jurisdiction over Defendants as a result of acts of Defendants
6 occurring in and/or aimed at the state of California in connection with Defendants’ unregistered
7 offer and sale of securities in violation of §§5, 12(a)(1), and 15 of the Securities Act.

8 13. This Court also has personal jurisdiction over Defendants because they reside in or
9 have their principal places of business in California.

10 **PARTIES**

11 14. Lead Plaintiff Avner Greenwald is an individual and a resident of Israel. Plaintiff
12 bought and sold XRP in both USD and Bitcoin between December 14, 2017 and May 12, 2018, and
13 suffered losses on those investments as a result of the scheme alleged herein.

14 15. Defendant Ripple Labs, Inc. is a Delaware corporation with its principal place of
15 business at 300 Montgomery Street, 12th Floor, San Francisco, California. Ripple Labs operates
16 RippleNet, a global payments network based on blockchain technology. Through RippleNet, banks
17 and payment providers can use XRP to process, clear, and settle financial transactions in real-time
18 worldwide. Ripple Labs created XRP and, at all relevant times, solicited purchases of XRP by
19 Plaintiff and the Class for its own benefit and the benefit of its executives and owners.

20 16. Defendant XRP II, LLC is wholly owned subsidiary of Ripple Labs. XRP II is a
21 South Carolina limited liability company with its principal place of business in San Francisco,
22 California. XRP II sold XRP and solicited the purchases of XRP by Plaintiff and the Class for its
23 own benefit and the benefit of its parent, Ripple Labs, and its executives and owners.

24 17. Defendant Bradley Garlinghouse (“Garlinghouse”) is the Chief Executive Officer
25 (“CEO”) of Ripple Labs and has been since January 2017. Garlinghouse was Ripple Labs’
26 President and Chief Operating Officer from April 2015 through December 2016. Garlinghouse is a
27 California citizen and a resident of San Mateo County. Garlinghouse exercised control over Ripple
28

1 Labs and directed and/or authorized, directly or indirectly, the sale and/or solicitation of XRP to the
2 public.

3 18. Defendant Christian (Chris) Larsen (“Larsen”) is Executive Chairman of Ripple
4 Labs’ Board of Directors and has been since January 2017. Larsen is also a co-founder of Ripple
5 Labs and a former CEO of Ripple Labs (through December 2016). Larsen exercised control over
6 Ripple Labs and directed and/or authorized, directly or indirectly, the sale and/or solicitation of
7 XRP to the public.

8 19. Defendant Ron Will (“Will”) is Chief Financial Officer of Ripple Labs and has been
9 since November 2017. Will exercised control over Ripple Labs and directed and/or authorized,
10 directly or indirectly, the sale and/or solicitation of XRP to the public.

11 20. Defendant Antoinette O’Gorman (“O’Gorman”) is Chief Compliance Officer of
12 Ripple Labs. O’Gorman exercised control over Ripple Labs and directed and/or authorized,
13 directly or indirectly, the sale and/or solicitation of XRP to the public.

14 21. Defendant Eric van Miltenburg (“van Miltenburg”) is Senior Vice President for
15 Business Operations of Ripple Labs. Van Miltenburg exercised control over Ripple Labs and
16 directed and/or authorized, directly or indirectly, the sale and/or solicitation of XRP to the public.

17 22. Defendant Susan Athey (“Athey”) is a Director of Ripple Labs. As a Director, Athey
18 exercised control over Ripple Labs and directed and/or authorized, directly or indirectly, the sale
19 and/or solicitation of XRP to the public.

20 23. Defendant Zoe Cruz (“Cruz”) is a Director of Ripple Labs. As a Director, Cruz
21 exercised control over Ripple Labs and directed and/or authorized, directly or indirectly, the sale
22 and/or solicitation of XRP to the public.

23 24. Defendant Ken Kurson (“Kurson”) is a Director of Ripple Labs. As a Director,
24 Kurson exercised control over Ripple Labs and directed and/or authorized, directly or indirectly,
25 the sale and/or solicitation of XRP to the public.

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1 25. Defendant Ben Lawsky (“Lawsky”) is a Director of Ripple Labs. As a Director,
2 Lawsky exercised control over Ripple Labs and directed and/or authorized, directly or indirectly,
3 the sale and/or solicitation of XRP to the public.

4 26. Defendant Anja Manuel (“Manuel”) is a Director of Ripple Labs. As a Director,
5 Manuel exercised control over Ripple Labs and directed and/or authorized, directly or indirectly,
6 the sale and/or solicitation of XRP to the public.

7 27. Defendant Takashi Okita (“Okita”) is a Director of Ripple Labs. As a Director,
8 Okita exercised control over Ripple Labs and directed and/or authorized, directly or indirectly, the
9 sale and/or solicitation of XRP to the public.

10 28. The defendants referred to in ¶¶17-27 are referred to as the “Individual Defendants.”

11 **SUBSTANTIVE ALLEGATIONS**

12 **A. The Background of XRP**

13 29. Unlike cryptocurrencies such as Bitcoin and Ethereum, which are mined by those
14 validating transactions on their networks, all 100 billion XRP in existence were created out of thin
15 air by Ripple Labs in 2013. Twenty billion XRP, or 20% of the total XRP supply, were given to
16 the individual founders of Ripple Labs,² with the remaining 80 billion retained by Ripple Labs.

17 30. As for 80 billion XRP held by Ripple Labs, the plan was to sell them and use the
18 proceeds to fund and improve Company operations, including the XRP ledger network.

19 31. Ripple Labs’ own wiki notes that “Ripple Labs sells XRP to fund its operations and
20 promote the network. This allows Ripple Labs to have a spectacularly skilled team to develop and
21 promote the Ripple protocol and network.”³

22 32. In the first quarter of 2018, “market participants purchased \$16.6 million [of XRP]
23 directly from XRP II, LLC,” XRP II also “sold \$151.1 million worth of XRP” on exchange.⁴

24
25 ² Defendant Chris Larsen received 9.5 billion XRP.

26 ³ Ripple credits, https://wiki.ripple.com/Ripple_credits#XRP funds the development and
27 promotion of the protocol and the network (last visited June 29, 2018).

1 33. Ripple Labs' primary business involves the operation of an open ledger protocol,
2 payment, and exchange network. The native cryptocurrency for Ripple Labs' exchange network is
3 XRP. Thus, XRP is both an investment in the Company (as sales are used to fund Company
4 operations with the expectation that such investments in the Company will increase the value of
5 XRP) and an investment in itself (with the expectation that the value of XRP will increase), as well
6 as a means of exchange promoted by Ripple Labs.

7 34. Ripple Labs' exchange network is based around the XRP Ledger. The XRP Ledger
8 consists of many servers, called nodes, which accept and process transactions. Client applications
9 sign and send transactions to nodes, which then relay these candidate transactions throughout the
10 network for processing. Transactions are then verified and become part of the XRP Ledger through
11 a consensus process. Every XRP transaction must be made through Ripple Labs' XRP Ledger,
12 which is maintained by Defendants. In order to open an account on the XRP Ledger, users must
13 maintain a minimum account balance of 20 XRP. In addition, each time a transaction is made in
14 XRP, there is a transaction cost to users.

15 35. Ripple Labs' founders and other Company insiders have also profited individually
16 from their XRP holdings. In January 2018, Ripple co-founder Defendant Larsen was named one of
17 the richest people in the United States, with an estimated net worth of \$59.9 billion, primarily due
18 to the increase in value in XRP and his personal ownership of billions of XRP and his significant
19 stake in the Company.⁵

20 36. Defendants have control over how many XRP are in the market.

21 37. No registration statement has been filed for XRP with the SEC and no registration
22 statement is in effect for XRP.

25 ⁴ Q1 2018 XRP Markets Report, <https://ripple.com/insights/q1-2018-xrp-markets-report/> (last
26 visited June 29, 2018).

27 ⁵ [https://www.cnbc.com/2018/01/04/ripple-co-founder-is-now-richer-than-the-google-founders-
28 on-paper.html](https://www.cnbc.com/2018/01/04/ripple-co-founder-is-now-richer-than-the-google-founders-on-paper.html) (last visited on June 29, 2018).

1 **B. Defendants Solicit XRP Sales**

2 38. From 2013 to the present, Defendants and their affiliates have been engaged in an
3 ongoing scheme to sell XRP to the general public.

4 39. Ripple Labs dedicates an entire section of its website to providing advice on “How to
5 Buy XRP.” This section provides links to online exchanges and instructions on “[h]ow to buy
6 XRP” on those exchanges.⁶ It also has a section titled “Market Performance” which proclaims that
7 Ripple Labs is “committed to the long term health and stability of XRP markets.”⁷

8 40. Ripple Labs also consistently promotes the availability of XRP on exchanges. For
9 example, on May 18, 2017, its Senior Vice-President for Business Development, Patrick Griffin,
10 tweeted a link to the Kraken exchange with the caption: “Kraken Introduces New Fiat Pairs for
11 XRP Trading! USD, JPY, CAD, EUR @ Ripple.”⁸

12 41. Similarly, on or about December 21, 2017, Ripple Labs tweeted in Japanese that
13 XRP was now available on over 50 exchanges.⁹ That tweet linked to an article on Ripple Labs’
14 website which described XRP as “the fastest and most scalable [digital] asset on the market.”¹⁰ It
15 continued, “[t]he market is taking notice of XRP’s speed, reliability and scalability – which has
16 strengthened the demand for XRP and where it’s listed. In fact, we’re proud to announce that XRP
17 has gone from being listed on six exchanges earlier this year to more than 50 worldwide.” The
18 article also links to a number of online exchanges where XRP can be purchased, and states that
19 “XRP’s long-term value is determined by its utility – including its ability to help financial
20 institutions source liquidity for payments into and out of emerging markets.”

21 _____
22 ⁶ XRP Buying Guide, <https://ripple.com/xm/buy-xrp/> (last visited on June 29, 2018).

23 ⁷ Market Performance, <https://ripple.com/xrp/market-performance/> (last visited on June 29, 2018)

24 ⁸ @patgriffin9, <https://twitter.com/patgriffin9/status/865251321867231233> (last visited on June
25 29, 2018).

26 ⁹ @Ripple, <https://twitter.com/Ripple/status/943999526783905792> (last visited on June 29, 2018).

27 ¹⁰ XRP Now Available on 50 Exchanges Worldwide, [https://ripple.com/insights/xrp-now-
28 available-on-50-exchanges-worldwide/](https://ripple.com/insights/xrp-now-available-on-50-exchanges-worldwide/) (last visited on June 29, 2018).

1 42. Ripple Labs also hosts conferences to generate interest in XRP. For example,
2 between October 16 and October 18, 2017, it hosted a conference named “Swell” in Toronto.
3 Ripple Labs acknowledged that “[a]nticipation around the event spurred a meaningful spike in
4 XRP, pushing it up 100 percent[.]”¹¹

5 43. On the same day, CoinDesk, a subsidiary of Digital Currency Group, which has an
6 ownership interest in Ripple Labs, published an article titled “Ripple Price Passes Historic \$1
7 Milestone.”¹² This was just one of many instances in which Ripple Labs would promote price
8 movements of XRP.

9 44. Ripple Labs’ promotion of XRP’s price reached new highs in December 2017. In
10 one instance, Ripple’s XRP product manager retweeted a tweet exclaiming: “Wow, XRP at all-time
11 high! Forget about bitcoin, *we’re all in on XRP!*” (Emphasis added.)¹³

12 45. Around that same time, on or about December 7, 2017, Ripple Labs announced that
13 it had placed “55 billion XRP in a cryptographically-secured escrow account to create certainty of
14 XRP supply at any given time.”¹⁴ It had been previously announced in May 2017 that this would
15 happen along with a limited distribution schedule. This was done to limit the available supply of
16 XRP and drive price appreciation, which allowed Defendants to maximize profits from XRP sales.
17 The December 7, 2017 announcement stated:

18 By securing the lion’s share of XRP in escrow, people can now mathematically verify
19 the maximum supply that can enter the market. While Ripple has proved to be a
20 responsible steward of XRP supply for almost five years – and has clearly
21 demonstrated a tremendous track record of investing in and supporting the XRP

22 ¹¹ 14Q3 2017 XRP Markets Report, <https://ripple.com/xrp/q3-2017-xrp-markets-report/> (last
23 visited on June 29, 2018).

24 ¹² Ripple Price Passes Historic \$1 Milestone, <https://www.coindesk.com/ripple-price-passes-historic-1-milestone/> (last visited on June 29, 2018).

25 ¹³ @warpaul, https://twitter.com/yoshitaka_kitao/status/940785785925709829 (last visited on June
26 29, 2018).

27 ¹⁴ <https://ripple.com/insights/ripple-escrows-55-billion-xrp-for-supply-predictability> (last visited on
28 June 29, 2018).

ecosystem – this lockup eliminates any concern that Ripple could flood the market, which we’ve pointed out before is a scenario that would be bad for Ripple!¹⁵

46. The article contained a button to allow readers to share it on Twitter with the caption “Game changer for \$XRP! 55 billion XRP now in escrow.”¹⁶ Ripple also promoted this article through its own tweet, which proclaimed: “55B \$XRP is now in escrow. Interested in what this means for \$XRP markets?”¹⁷ Garlinghouse was even more enthusiastic, tweeting: “Boom! 55 B \$XRP now in escrow. Good for supply predictability and trusted, healthy \$XRP markets. Glad to finally let this #cryptokitty out of the bag!”¹⁸

47. Ripple’s public commitment to limit the supply of XRP had its intended effect. In the weeks that followed, the price of XRP rapidly increased, from approximately \$0.22 per token on December 7, 2017 to \$3.38 per token on January 7, 2018.¹⁹

48. Ripple Labs’ CEO, Brad Garlinghouse, has also been a vocal advocate for investing in XRP. In a December 14, 2017 interview with Canada’s Business News Network (“BNN”), when asked if he is personally invested in XRP, the CEO stated “I’m long XRO, I’m very, very long XRP as a percentage of my personal balance sheet.” He continued, stating that he is “not long some of the other [digital] assets, because it is not clear to me what’s the real utility, what problem are they really solving.” And ended by reiterating “if you’re solving a real problem, if it’s a scaled problem, then I think you have a huge opportunity to continue to grow that. We have been really fortunate obviously, *I remain very, very, very long XRP*, there is an expression in the industry HODL, instead of hold, its HODL . . . I’m on the HODL side” (emphasis added).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ <https://twitter.com/Ripple/status/938933967956389889>.

¹⁸ <https://twitter.com/bgarlinghouse/status/938933791145336832?lang=en>.

¹⁹ XRP would subsequently lose nearly all its value in just over three months, falling to a low of approximately \$0.48 per token on April 6, 2018.

1 49. Later that same day, Garlinghouse tweeted: “Bloomberg welcomes \$XRP to
2 @theterminal and gets it right – #2 market cap behind \$BTC at ~\$80BB!”²⁰

3 50. About a week later, on or about December 22, 2017, Garlinghouse tweeted an article
4 titled “Bitcoin Is So 2017 as Ripple Soars at Year End,” with the caption “I’ll let the headline speak
5 for itself. \$xrp.”²¹

6 51. On or about January 17, 2018, Garlinghouse tweeted a CNBC article titled “Ripple is
7 sitting on close to \$80 billion and could cash out hundreds of millions per month-but it isn’t,” with
8 the caption “A good read on why fostering a healthy \$XRP ecosystem is a top priority at @Ripple.”

9 52. However, the reality was that Ripple Labs was doing exactly that – cashing out.
10 Defendants sold at least \$167.7 million worth of XRP between January 1, 2018 and March 31,
11 2018.

12 53. Given its reliance on sales of XRP to fund its operations, it is unsurprising that
13 Ripple Labs’ aggressively markets XRP to drive demand, increase the price of XRP, and
14 consequently, its own profits.

15 54. Defendants’ advertising and social media postings also conflate adoption and use of
16 Ripple Labs’ xCurrent and xVia enterprise solutions with adoption and use of XRP, even though
17 they often have little to no correlation and do not involve the XRP Ledger. Defendants do this to
18 drive demand for XRP and thereby maximize profits from XRP sales.

19 55. According to its site, “xCurrent is Ripple’s enterprise software solution that enables
20 banks to instantly settle cross-border payments with end-to-end tracking. Using xCurrent, banks
21 message each other in real-time to confirm payment details prior to initiating the transaction and to
22 confirm delivery once it settles.”²²

23
24 ²⁰ @bgarlinghouse, <https://twitter.com/bgarlinghouse/status/941375649549246464> (last visited on June 29, 2018).

25 ²¹ @bgarlinghouse, <https://twitter.com/bgarlinghouse/status/944325730338357248> (last visited on June 29, 2018).

26 ²² Process Payments, xCurrent, <https://ripple.com/solutions/process-payments/> (last visited on June 29, 2018).

1 56. xCurrent doesn't operate on the same technology as XRP or even require the use of
2 XRP. In short, there is no reason to believe that adoption of xCurrent would correlate in any way
3 with adoption of XRP.

4 57. Nor does use of Ripple Labs' xVia product require adoption of XRP. Ripple Labs
5 states that its xVia product is "for corporates, payment providers and banks who want to send
6 payments across various networks using a standard interface."²³

7 58. Ripple Labs nevertheless conflates the adoption of xCurrent and xVia with the
8 adoption of XRP.

9 59. Another of Ripple Labs' enterprise solutions, xRapid, which does use XRP, is also
10 used to drive XRP sales (xRapid, along with xCurrent and xVia, are together referred to herein as
11 "Ripple Labs' Enterprise Solutions").

12 60. Indeed, Ripple Labs regularly promotes its improvements to the XRP ecosystem,
13 which are intended to increase demand for XRP and thus potential returns for XRP investors. For
14 example, in describing the reasons behind the dramatic price appreciation of XRP during the fourth
15 quarter of 2017, Ripple specifically cited as of "particular importance," the Company's various business
16 initiatives, including: (i) Ripple's partnership with American Express/Santander; (ii) Ripple's activation
17 of the previously discussed escrow of XRP to limit periodic offers and distributions; and (iii) a
18 Japanese/Korean banking consortium backed by the Company.²⁴ In the report, Ripple stated that its
19 "consistent and steadfast support of XRP is a major advantage as the payments industry continues to
20 seriously consider it as an alternative liquidity solution."²⁵

21 61. A November 2015 white paper by the Company highlighted "XRP's Role on Ripple
22 and the Internet of Value" and how the Company's technologies could turn a "Spark to a Wildfire"

24 ²³ Send Payments, xVia, <https://ripple.com/solutions/send-payments/> (last visited on June 29,
25 2018).

26 ²⁴ Q4 2017 XRP Markets Report, <https://ripple.com/insights/q4-2017-xrp-markets-report/>.

27 ²⁵ *Id.*

1 by increasing liquidity and efficiencies for cross-border transactions for the Company's banking
2 clients. A February 2016 white paper followed up on those purported "network effects," claiming
3 that the use of the Ripple network at XRP would increase banks' returns on investment by
4 improving the global payment infrastructure.

5 62. In addition, on March 20, 2017, Ripple Labs retweeted a Bloomberg article regarding
6 adoption of Ripple Labs Enterprise Solutions, proclaiming "Ripple is the only company in this
7 space with real customers who are really in production."²⁶

8 63. The price of XRP increased rapidly following this tweet and on March 24, 2017
9 Ripple Labs tweeted: "The price of #XRP continues to surge showing that people are looking for
10 #bitcoin alternatives."²⁷

11 64. On April 26, 2017, Ripple Labs tweeted a link to an article on its own site,
12 proclaiming "#Ripple welcomes 10 additional customers to our #blockchain #paymentsnetwork."²⁸
13 Neither this tweet nor the article it linked to informed readers that the blockchain payments
14 network did not refer to the XRP Ledger, but rather Ripple's xCurrent enterprise solution.

15 65. Just days later, on May 3, 2017, with the price of XRP continuing to rise, Ripple
16 Labs tweeted: "#Ripple adoption is sparking interest in XRP 'which has had an impressive rally in
17 the last months' via @Nasdaq."²⁹

18 66. Articles such as "Ripple XRP price picks up pace as demand for xVia API increases"
19 have made the direct connection between the price of XRP and the adoption of the Company's
20
21
22

23
24 ²⁶ @Ripple, <https://twitter.com/Ripple/status/844009778309357568> (last visited on June 29, 2018).

25 ²⁷ @Ripple, <https://twitter.com/Ripple/status/845347809830195200> (last visited June 29, 2018).

26 ²⁸ @Ripple, <https://twitter.com/Ripple/status/857267304618278912> (last visited June 29, 2018).

27 ²⁹ @Ripple, <https://twitter.com/Ripple/status/859904105916923904> (last visited June 29, 2018).

1 Enterprise Solutions.³⁰ Ripple itself has made this link, for example tweeting on May 16, 2017: “The
2 appeal that Ripple has towards traditional financial institutions is a big advantage it has over Bitcoin.”³¹

3 67. On June 29, 2017, Ripple Labs tweeted a clip of an interview its CEO Brad
4 Garlinghouse gave on CNBC with the caption: “#XRP-up 4000% this year-has shown the market
5 favors a real use case for #digitalassets”³² In that interview, Garlinghouse proclaims that
6 “digital assets are in a position to be more valuable than gold,” and describes XRP as “solving a
7 real-world use case, it’s not just about speculators.”

8 68. On September 11, 2017, Garlinghouse stated in an interview with CNBC: “People are
9 looking at the success Ripple has been having as a company, *and I think that’s increased the value of*
10 *XRP.*”³³ (emphasis added). He continued by stating that Ripple wants “to keep focusing on making
11 XRP a valuable payments tool, and that value will increase accordingly,” and he was “voting with my
12 . . . pocketbook on the future increased value of cryptocurrencies.”³⁴

13 69. On November 27, 2017, Garlinghouse tweeted “Ripple & \$XRP are giving business
14 ‘what they want in a #blockchain,’” along with a link to a Motley Fool tweet.³⁵ That Motley Fool
15 tweet in turn stated that “AmEx and Banco Santander will use Ripple’s blockchain network for
16 instant intl. fund transfers. *Could be a big deal for Ripple’s XRP cryptocurrency. \$ASP \$SAN*”
17 (emphasis added.)³⁶

19 ³⁰ <https://globalcoinreport.com/ripple-xrp-price-picks-up-pace-as-demand-for-xvia-api-increases/>.

20 ³¹ @Ripple, <https://twitter.com/Ripple/status/864635614020251649>.

21 ³² @Ripple, <https://twitter.com/Ripple/status/880532198025121793> (last visited June 29, 2018).

22 ³³ <https://www.cnbc.com/2017/09/11/ripple-ceo-brad-garlinghouse-on-bitcoin-and-xrp.html> (last
23 visited June 29, 2018).

24 ³⁴ *Id.*

25 ³⁵ @bgarlinghouse, <https://twitter.com/bgarlinghouse/status/935225940845711366> (last visited on
26 June 29, 2018).

27 ³⁶ @themotleyfool, <https://twitter.com/themotleyfool/status/934850515640471553> (last visited on
28 June 29, 2018).

1 70. Similarly, on December 14, 2017, Ripple Labs tweeted: “The Japan Bank
2 Consortium launched a Ripple pilot with two large Korean Banks – the first time money moves
3 from Japan to Korea over RippleNet.”³⁷ On that same day, Ripple Labs tweeted “@garlinghouse
4 [its CEO’s twitter handle] on why crypto prices will be driven by real utility, the multi-trillion \$
5 problem @Ripple is solving and why \$XRP will come out on top.”³⁸

6 71. Ripple Labs would later acknowledge that “neither the AMEX news nor the Korean
7 bank initiative involved XRP.”

8 72. Nevertheless, this tweet linked to a BNN interview with Mr. Garlinghouse, in which
9 he says:

10 The reason why XRP has performed so well this year, we’re solving a real problem,
11 it’s a multi-trillion dollar problem around cross-border payments. There is a lot of
12 friction its very slow its expensive, we’re working with the institutions to deal with
13 that, so people have gotten excited. We now have over 100 customers we’ve
14 announced publicly.

15 He continues,

16 [A]t the end of the day the value of digital assets will be driven by their utility. If
17 they are solving a real problem, and that problem has scale, and that problem, you
18 know there is real value there, then there will be demand for the tokens and the price
19 will go up. For XRP we have seen because *its required*, its something that can really
20 reduce the friction, and we’re talking about a multi-trillion dollar problem in how
21 cross-border payments flow. And so, I think if you drive real utility, yes there’s
22 going to be demand for that. *XRP is up 100x this year*, and I think it’s *because the
23 problem we are solving people realize is a real problem, it’s a big problem.*

24 (Emphasis added.)

25 73. On January 4, 2018, following XRP’s rapid price increase, The *New York Times*
26 published an article by Nathaniel Popper titled: “Rise of Bitcoin Competitor Ripple Creates Wealth
27 to Rival Zuckerberg.”³⁹ Mr. Popper tweeted a link to this article with the caption: “On the rise of
28

24 ³⁷ @Ripple, <https://twitter.com/Ripple/status/941501026267316224> (last visited on June 29, 2018).

25 ³⁸ @Ripple, <https://twitter.com/Ripple/status/941352005058011137> (last visited on June 29, 2018).

26 ³⁹ @nathanielpopper, “Rise of Bitcoin Competitor Ripple Creates Wealth to Rival Zuckerberg,”
27 NY TIMES (Jan. 4, 2018).

1 Ripple. If this is a tulip fever, the fever has spread to chrysanthemums and poppies”⁴⁰. He further
2 commented, “I’ve asked several people close to banks if banks are indeed planning to begin using
3 Ripple’s token XRP, in a serious way, which is what investors seem to assume when they buy in at
4 the current XRP prices. This is a sampling what I heard back:

- 5 • Actual use of XRP by banks is not something I’ve heard about, I find the
6 run up absolutely bluffing, as do all the blockchain folks I know at large
7 Fis.
- 8 • XRP isn’t used for anything. The hope is that someday it will be by
9 banks, but there really aren’t banks signaling that yet.
- 10 • I would be surprised if there have been any real bank transactions done
11 with it (outside of maybe test transactions), despite people making claims
12 to the contrary.
- 13 • It’s not clear to me why XRP would be used by banks at all. XRP could
14 potentially be adopted by consumers as a payment rail, although they
15 don’t yet have meaningful traction in that regard.
- 16 • I haven’t seen a sufficiently large catalyst in the fundamentals of Ripple to
17 justify a greater than 10x move in the price of \$XRP in the last month.
- 18 • In a few years we’re going to look back on 2017 and think WTF were we
19 thinking.”⁴¹

20 74. Defendant Garlinghouse publicly responded to this, tweeting: “Over the last few
21 months I’ve spoken with ACTUAL banks and payment providers. They are indeed planning to use
22 xRapid (our XRP liquidity product) in a serious way” He follows up stating, “I don’t think
23 you want to hear about validation for XRP. The @NYTimes should be above spreading
24 anonymous FUD.”⁴² FUD, which stands for fear, uncertainty, and doubt, is an expression
25 frequently used among crypto-investors to deride or undermine criticism of an asset.

26 75. On January 4, 2018, Ripple’s XRP product manager also attacked Mr. Popper,
27 tweeting: “Do you think I left #Bitcoin and joined @Ripple to build bank software? Think again.

28 ⁴⁰ @nathanielpopper, <https://twitter.com/bgarlinghouse/status/949129952716234752> (last visited on June 29, 2018).

⁴¹ @nathanielpopper, <https://twitter.com/bgarlinghouse/status/949129952716234752> (last visited on June 29, 2018).

⁴² @nathanielpopper, <https://twitter.com/bgarlinghouse/status/949129952716234752> (last visited on June 29, 2018).

1 \$XRP.”⁴³ This tweet linked to a Ripple Labs tweet stating that “3 of the top 5 global money
2 transfer companies plan to use XRP in payment flows in 2018. Even more in the pipeline.”

3 76. In January 2018, Ripple Labs touted “a partnership with MoneyGram – one of the
4 world’s largest money transfer companies – to use xRapid and XRP for near real-time cross-border
5 payments. In addition, there are a number of other xRapid deals at various stages of completion in
6 the pipeline.” It also stated that it wanted “to build the necessary markets infrastructure for
7 eventual direct usage of XRP by financial institutions.” Defendant Garlinghouse commented on
8 this partnership, saying: “And to be clear: @MoneyGram announcement is one step in a marathon
9 ahead to truly make \$XRP the global liquidity solution for payment providers and banks.”⁴⁴

10 77. By way of the internet, including Ripple Labs’ website, Twitter, and the over 50
11 cryptocurrency exchanges that trade XRP, interstate means are used in connection with the offer
12 and sale of XRP.

13 C. XRP Is a Security

14 78. Plaintiff and the Class invested fiat, including U.S. dollars, and other digital
15 currencies, such as Bitcoin and Ethereum, to purchase XRP.

16 79. Defendants sold XRP to the general public through global, online cryptocurrency
17 exchanges. XRP can be bought or sold on over 50 exchanges.

18 80. Every purchase of XRP by a member of the public is an investment contract.

19 81. Under Section 2(a)(1) of the Securities Act, a “security” is defined to include an
20 “investment contract.” 15 U.S.C. § 77b(a)(1). An investment contract is “an investment of money
21 in a common enterprise with profits to come solely from the efforts of others.” *S.E.C. v. W.J.*
22 *Howey Co.*, 328 U.S. 293, 301 (1946). Specifically, a transaction qualifies as an investment
23 contract and, thus, a security if it is: (1) an investment; (2) in a common enterprise; (3) with a
24

25 ⁴³ @Warren Paul Anderson, <https://twitter.com/warpaul> (last visited on June 29, 2018).

26 ⁴⁴ @bgarlinghouse, <https://twitter.com/bgarlinghouse/status/951461582424358912> (last visited on
27 June 29, 2018).

1 reasonable expectation of profits; (4) to be derived from the entrepreneurial or managerial efforts of
2 others. See *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852-53 (1975). This
3 definition embodies a “flexible rather than a static principle, one that is capable of adaptation to
4 meet the countless and variable schemes devised by those who seek the use of the money of others
5 on the promise of profits,” and thereby “permits the fulfillment of the statutory purpose of
6 compelling full and fair disclosure relative to the issuance of ‘the many types of instruments that in
7 our commercial world fall within the ordinary concept of a security.’” *Howey*, 328 U.S. at 299.
8 Accordingly, in analyzing whether something is a security, “form should be disregarded for
9 substance,” and the emphasis should be “on economic realities underlying a transaction, and not on
10 the name appended thereto.” *Forman*, 421 U.S. at 849.

11 82. Plaintiff and the Class were investing in a common enterprise with a reasonable
12 expectation of profits when they invested in XRP.

13 83. The profits of Plaintiff and the Class are intertwined with the fortunes of Ripple
14 Labs. Ripple Labs concedes that it “sells XRP to fund its operations and promote the network.
15 This allows Ripple Labs to have a spectacularly skilled team to develop and promote the Ripple
16 protocol and network.”⁴⁵

17 84. Notably, the SEC has already concluded that virtual currency substantially similar to
18 XRP are “securities and therefore subject to the federal securities laws.” As stated by the SEC,
19 “issuers of distributed ledger or blockchain technology-based securities must register offers and
20 sales of such securities unless a valid exemption applies.”⁴⁶

21 85. No such valid exemption from registration requirements exists for XRP.

22 86. The current SEC Chairman, Jay Clayton, III, recently said, “I have yet to see an ICO
23 that doesn’t have a sufficient number of hallmarks of a security.”⁴⁷

24 ⁴⁵ Ripple credits, https://wiki.ripple.com/Ripple_credits#XRP (last visited on June 29, 2018).

25 ⁴⁶ Press Release: *SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were*
26 *Securities*, SEC (July 25, 2017), <https://www.sec.gov/news/press-release/2017-131>.

27 ⁴⁷ Dave Michaels and Paul Vigna, “SEC Fires Warning Shot Against Coin
28 Offerings,” WALL STREET JOURNAL (Nov. 9, 2017).

1 CLASS ACTION ALLEGATIONS

2 87. This suit is brought as a class action pursuant to Section 382 of the California Code
3 of Civil Procedure, on behalf of a Class of all persons or entities who purchased XRP from July 3,
4 2015 through the present. Excluded from the Class are Defendants; the officers and directors of the
5 Company and XRP II at all relevant times; members of their immediate families and their legal
6 representatives, heirs, successors, or assigns; and any entity in which Defendants have or had a
7 controlling interest.

8 88. Plaintiff reserves the right to amend the Class definition if further investigation and/or
9 discovery indicate that the Class definition should be modified.

10 89. The members of the Class are so numerous that joinder of all members is impracticable.
11 While the exact number of Class members is unknown to Plaintiff at this time and can only be
12 ascertained through appropriate discovery, Plaintiff believes that there are thousands of members of the
13 proposed Class. The members of the proposed Class may be identified from records maintained by the
14 Company and may be notified of the pendency of this action by mail, using customary forms of notice
15 that are commonly used in securities class actions.

16 90. Plaintiff's claims are typical of the claims of the members of the Class as all members of
17 the Class are similarly affected by Defendants' wrongful conduct.

18 91. Plaintiff will fairly and adequately protect the interests of the members of the Class and
19 has retained counsel competent and experienced in class and securities litigation.

20 92. Common questions of law and fact exist as to all members of the Class and predominate
21 over any questions solely affecting individual members of the Class. Among the questions of law and
22 fact common to the Class are:

- 23 (a) whether XRP are securities under the Securities Act;
- 24 (b) whether the sale of XRP violates the registration requirements of the Securities
25 Act; and
- 26 (c) to what extent Plaintiff and members of the Class have sustained damages and the
27 proper measure of damages.

1 93. A class action is superior to all other available methods for the fair and efficient
2 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
3 damages suffered by individual Class members may be relatively small, the expense and burden of
4 individual litigation make it impossible for members of the Class to individually redress the wrongs
5 done to them. There will be no difficulty in the management of this action as a class action.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Unregistered Offering and Sale of Securities in Violation of**
9 **Sections 5 and 12(a)(1) of the Securities Act**
10 **(Against All Defendants)**

11 94. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates
12 herein by reference each and every allegation contained in the preceding paragraphs of this complaint,
13 and further alleges as follows:

14 95. Defendants, and each of them, by engaging in the conduct described above, directly or
15 indirectly, made use of means or instruments of transportation or communication in interstate commerce
16 or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried
17 through the mails or in interest commerce for the purpose of sale or for delivery after sale.

18 96. XRP are securities within the meaning of Section 2(a)(1) of the Securities Act, 15 U.S.C.
19 §77b(a)(1).

20 97. Plaintiff and members of the Class purchased XRP securities.

21 98. No registration statements have been filed with the SEC or have been in effect with
22 respect to any of the offerings alleged herein. No exemption to the registration requirement applies.

23 99. SEC Rule 159A provides that, for purposes of Section 12(a)(2), an “issuer” in “a primary
24 offering of securities” shall be considered a statutory seller. 17 C.F.R. § 230.159A(a). The Securities
25 Act in turn defines “issuer” to include every person who issues or proposes to issue any security. 15
26 U.S.C. § 77b(a)(4). Ripple Labs and XRP II are issuers of XRP.

27 100. The U.S. Supreme Court has held that statutory sellers under §12(a)(1) also include “the
28 buyer’s immediate seller” and any person who actively solicited the sale of the securities to plaintiff and

1 did so for financial gain. See *Pinter v. Dahl*, 486 U.S. 622, 644 n.21 & 647 (1988); accord, e.g., *Steed*
2 *Finance LDC v. Nomura Sec. Int'l, Inc.* No. 00 Civ. 8058, 2001 WL 1111508, at *7 (S.D.N.Y. Sept. 20,
3 2001). That is, §12(a)(1) liability extends to sellers who actively solicit the sale of securities with a
4 motivation to serve their own financial interest or those of the securities owner. *Pinter v. Dahl*, 486 U.S.
5 622, 647 (1988); *Capri v. Murphy*, 856 F.2d 473, 478 (2d Cir. 1988). Ripple Labs, XRP II, and the
6 Individual Defendants are all statutory sellers.

7 101. By reason of the foregoing, each of the Defendants have violated Sections 5(a), 5(c), and
8 12(a) of the Securities Act, 15 U.S.C. §§77e(a), 77e(c), and 771(a).

9 102. As a direct and proximate result of Defendants' unregistered sale of securities, Plaintiff
10 and the Class have suffered damages in connection with their XRP purchases.

11 SECOND CAUSE OF ACTION

12 Violation of Section 15 of the Securities Act 13 (Against Ripple Labs and the Individual Defendants)

14 103. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates
15 herein by reference, each and every allegation contained in the preceding paragraphs of this Complaint,
16 and further alleges as follows:

17 104. This Count is asserted against Defendants Ripple Labs and the Individual Defendants
18 (collectively, the "Control Person Defendants") under Section 15 of the Securities Act, 15 U.S.C. §77o.

19 105. The Control Person Defendants, by virtue of their offices, ownership, agency, agreements
20 or understandings, and specific acts were, at the time of the wrongs alleged herein, and as set forth
21 herein, controlling persons within the meaning of Section 15 of the Securities Act. The Control Person
22 Defendants, and each of them, had the power and influence and exercised the same to cause the
23 unlawful offer and sale of XRP securities as described herein.

24 106. The Control Person Defendants, separately or together, possess, directly or indirectly, the
25 power to direct or cause the direction of the management and policies of XRP II, through ownership of
26 voting securities, by contract, subscription agreement, or otherwise.

27 107. The Control Person Defendants also have the power to direct or cause the direction of the
28 management and policies of Ripple Labs.

1 I Awarding Plaintiff and the other members of the Class such other and further relief as the
2 Court may deem just and proper.

3 DATED: July 3, 2018

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