Nos. 24-7599 & 25-483

IN THE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN RE RIPPLE LABS, INC. LITIGATION,

BRADLEY SOSTACK, on behalf of himself and all others similarly situated,

Lead Plaintiff-Appellant,

v.

RIPPLE LABS, INC.; XRP II, LLC; BRADLEY GARLINGHOUSE,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California,
No. 4:18-cv-06753-PJH (Hon. Phillys J. Hamilton)

BRIEF OF THE AMERICAN ASSOCIATION FOR JUSTICE AND THE PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION AS AMICI CURIAE IN SUPPORT OF APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae the American Association for Justice and the Public Investors Advocate Bar Association certify that they are non-profit organizations. They have no parent corporations and no publicly owned corporation owns 10% or more of their stock.

Respectfully submitted this 14th day of April 2025.

/s/ Jeffrey R. White

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including securities fraud claims. Throughout its 78-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

Public Investors Advocate Bar Association ("PIABA") is an international organization of attorneys who advocate on behalf of savers, retail investors, and retirees ("public investors") in disputes with their financial professionals. Part of PIABA's mission is to protect savers, retail investors, and retirees and create a level playing field for them in securities and commodities disputes. PIABA has appeared as amicus curiae before the United States Supreme Court, Federal Circuit Courts of Appeals, and state supreme courts throughout the nation in cases involving issues important to public investors.

[1] All parties have consented to the filing of this brief. No party or party's counsel authored this brief in whole or in part. No person, other than amici curiae, their members, and their counsel, contributed money that was intended to fund the preparation or submission of this brief.

AAJ and PIABA are concerned that the District Court's interpretation of the statute of repose under 15 U.S.C. § 77m would unjustly shield issuers of unlawful securities from liability. This interpretation not only undermines the statutory protections afforded to investors under the federal securities laws, but also creates an inequitable framework in which retail investors are barred from seeking redress before they are even aware of the harm. Amici submit this brief to urge the Court to adopt an interpretation of the statute of repose that aligns with this Court's precedent, honors the purpose of the securities laws, and preserves meaningful access to justice for defrauded investors.

INTRODUCTION & SUMMARY OF ARGUMENT

In this case, Plaintiff alleges Defendants' sales of XRP, a cryptocurrency, were sales of unregistered securities in violation of 15 U.S.C. § 77l(a)(1). Defendants argued that such claims were time-barred by the statute of repose. The District Court concluded that Plaintiff's claims for selling unregistered securities were time-barred by the three-year statute of repose contained in 15 U.S.C. § 77m, which states: "In no event shall any such action be brought to enforce a liability created under section 77k or 77l(a)(1) of this title more than three years after the security was bona fide offered to the public."

The District Court's decision to grant summary judgment in favor of Defendants should be reversed for several reasons. First, the District Court

incorrectly relied on an insignificant number of unlawful trades on unregulated cryptocurrency exchanges to conclude that XRP was "bona fide" offered to the public before July 3, 2015, ignoring the true economic significance of these transactions. Second, the District Court erroneously treated listing XRP on unregulated cryptocurrency exchanges as equivalent to a public offering on a regulated exchange like the NYSE, overlooking the substantial differences between regulated and unregulated markets and undermining investor protections. Third, the District Court incorrectly concluded that all the sales of XRP that Defendants made over a multi-year period should be considered integrated, as opposed to separate offerings.

The District Court's erroneous decision establishes an inequitable precedent that allows issuers to escape liability for unregistered securities and leaves harmed investors without recourse. This would disrupt investor protections, undermine the regulatory framework designed to protect market participants, and create a roadmap for issuers to avoid civil liability by waiting until the statute of repose expires to expand their offering beyond niche decentralized exchanges that retail investors cannot access. For these reasons, amici urge this Court to reverse the District Court's ruling to ensure that the statute of repose is applied fairly and consistently, preserving the rights of investors and the integrity of securities law.

ARGUMENT

I. THE DISTRICT COURT'S RULING WAS ERRONEOUS AT THE SUMMARY JUDGMENT STAGE.

Concerning the statute of repose, the Court addressed two preliminary issues. The first issue was that the Parties disagreed on the commencement date of the lawsuit, largely because of Plaintiff's amended and consolidated complaint, with its genesis in some earlier filings. For purposes of its Summary Judgment Order, the Court accepted Plaintiff's contention that the commencement date of this lawsuit was July 3, 2018, so the claims would be time-barred only if the Ripple offering at issue began before July 3, 2015. Dkt. 419 at 5.

The second preliminary issue was that case law on the statutory words "three years after the security was bona fide offered to the public" has resulted in split authority: some courts had applied a "first-offered" rule, under which the three-year period begins when the alleged security was first offered to the public, and other courts had applied a "last-offered" rule, under which the three-year period begins when the alleged security was last offered to the public. The court ultimately concluded that the "first-offered" rule, as articulated in *P. Stolz Family Partnership L.P. v. Daum*, 355 F.3d 92 (2d Cir. 2004), was persuasive. Dkt. 419 at 4.

In order to grant partial summary judgment in favor of Defendants, the Court had to find not only that the "first-offered" rule applied, but also that there was no genuine factual dispute that: (1) XRP was first bona fide offered to the public before

July 3, 2015, and (2) the offers of XRP in 2017 were "integrated" with earlier offerings. For the reasons discussed in more detail below, there was—at a minimum—genuine factual dispute about those factual issues.

A. The District Court Improperly Relied Upon an Insignificant Number of Unlawful Trades on Unregulated Cryptocurrency Exchanges to Conclude That XRP Was Offered to the Public Before July 3, 2015.

In its Order on the Motion to Dismiss, the District Court determined that Plaintiff adequately alleged that XRP was first offered to the public when it was listed on a cryptocurrency exchange on May 18, 2017. The court acknowledged that Defendants had made various sales before that date, but held that these sales were neither sufficiently public nor economically significant enough to conclude that a public offering had been made. The District Court's analysis accorded due weight to the dollar value of sales made after May 18, 2017:

> Such conclusion is separately supported by the substantial volume of XRP sales that allegedly occurred after August 5, 2016. Significantly, the first date alleged detailing when defendants listed XRP on a cryptocurrency exchange is May 18, 2017. Around this same time, individuals purchased $31 million worth of XRP, comprising $21 million in sales to 'market participants' directly and $10 million in exchange rates. From 2017 Q2 onward, purchases by direct market participants, exchange participants, programmatic participants, and institutions rose from tens of millions to over $250 million quarterly.

Dkt. 85 at 18.

B. The District Court Disregarded the Dollar Value of XRP Sales.

In its Summary Judgment Order, the District Court held that XRP was bona fide offered to the public by Defendants before July 3, 2015, because "XRP was

listed on three digital asset exchanges (Kraken, Poloniex, and Bittrex) in 2013 and 2014, and [] on Poloniex alone, *before July 3, 2015*, there were over 100,000 XRP transactions involving over 2,000 different buyer accounts and 200 million XRP transacted." Dkt. 419 at 5 (emphasis added).

It bears repeating that, in considering the issue of repose in its Motion to Dismiss Order, the District Court gave due importance to the *dollar amount* of XRP traded. In its Summary Judgment Order, however, the District Court shifted its focus from dollar volumes to the *number of XRP units* traded. The dollar price of XRP stayed relatively constant at around $0.006 until mid-2017. Dkt. 416-1 at 10. Therefore, the 200 million XRP transacted on Poloniex represents a total dollar trading volume of only $1,175,000. If each of the 2,000 buyer accounts participated equally in this volume, the trading activity per account over that period would only total $587.50. Considering the subsequent dollar trading volumes of XRP, these dollar volumes seem more consistent with small-scale marketing tests of XRP and the cryptocurrency exchanges in question.

C. The District Court Incorrectly Treated Transactions on Unregulated Cryptocurrency Exchanges as Equivalent to Listing Assets on Regulated Security Exchanges.

In its Summary Judgment Order, the District Court improperly assumed that listing a digital asset on an unregulated cryptocurrency exchange constitutes a "bona fide offer to the public" because it is functionally equivalent to registering a security

on a regulated national securities exchange like the New York Stock Exchange. This assumption lacks support in the factual record and rests on a flawed legal premise. Relying on such reasoning to grant summary judgment is inappropriate, and affirming it would set a troubling precedent that blurs critical distinctions in securities law.

Regulated national securities exchanges, such as the NYSE, operate under a comprehensive statutory and regulatory framework designed to make the exchanges accessible and fair to retail investors. The exchanges are subject to rigorous oversight by the SEC, including rules governing registration, disclosure, surveillance, and compliance. In contrast, unregulated cryptocurrency exchanges are often inaccessible to retail investors because they are difficult to use, and they lack structural safeguards. It is wrong to assume that offers to sell on those unregulated exchanges constitute offers to the *public* that are legally equivalent to activity on registered exchanges. That assumption collapses important distinctions between regulated and unregulated markets, and risks undermining the regulatory objectives of the federal securities laws.

This legal distinction is further underscored by repeated enforcement actions brought by federal regulators against unregistered cryptocurrency exchanges that failed to comply with securities or anti-money laundering laws, including those unregistered digital asset exchanges on which XRP was listed prior to July 3, 2015.

For instance, on August 9, 2021, Poloniex agreed to pay the SEC more than $10 million to settle charges of operating an unregistered online digital asset exchange in connection with its operation of a trading platform that facilitated buying and selling of digital asset securities. *See In the Matter of Poloniex, LLC*, Exchange Act Release No. 92607, 2021 WL 3501307 (Aug. 9, 2021).

Such enforcement actions make clear that federal regulators do not treat unregulated digital asset exchanges as equivalent to registered securities exchanges, nor should courts. By overlooking these well-established distinctions, the District Court departed from prevailing legal standards and enforcement practices. Affirming its reasoning would erode key investor protections and disrupt the regulatory framework Congress and the SEC have long maintained.

D. The District Court Misapplied *Stolz* by Ignoring Its Fact-Specific Holding and the Distinction Between Lawful and Unlawful Offers.

As noted above, the Second Circuit held in *P. Stolz Family Partnership, L.P. v. Daum* held that the statute of repose begins to run when the securities at issue are *first* bona fide offered to the public, not when the securities are *last* bona fide offered to the public. 355 F.3d at 102. However, the Second Circuit took pains to "cabin our discussion's structure to the facts of the present case, . . . dealing with a single public offering of unregistered securities that began more than three years before Stolz filed its complaint, but was concluded within the three-year repose period." *Id.* Based on this timeline, the court determined the case did not present "the situation of a

defendant's being granted immunity to continue illicit offers without civil liability after three years have passed." *Id*.

Unlike *Stolz*, the instant case does not involve an offering that "was concluded within the three-year repose period." *Id*. Instead, this case presents exactly the situation the Second Circuit warned against. Because many investors did not purchase XRP until more than three years after the date that XRP was *first* offered according to the District Court, Defendants were effectively "granted immunity to continue illicit offers" because many investors' claims were time-barred before they ever arose. *Id.*

There is nothing in *Stolz*—or any other circuit-court decision—to suggest that small, illicit trades of securities in the darkest corners of the financial markets will necessarily trigger the statute of repose. By misapplying the Second Circuit's holding to immunize Defendants' continued sales years after the initial offering, the District Court adopted a rule that is both inconsistent with *Stolz* itself and fundamentally at odds with the remedial purpose of the securities laws.

II. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE OFFERINGS OF XRP WERE INTEGRATED.

In this case, Defendants sold XRP through numerous transactions to a wide range of purchasers over the course of several years, but now contend that all of their sales should be treated as a single, integrated offering governed by a single repose period. Plaintiff correctly contends—consistent with Ninth Circuit precedent—that

certain of these sales constituted distinct offerings, each of which should independently trigger a new three-year statute of repose.

In analyzing the issue, the District Court recited the following five-factor test established by this Court in *SEC v. Murphy*, 626 F.2d 633, 645 (9th Cir. 1980): "(1) whether the offerings are part of a single plan of financing, (2) whether the offerings involve issuance of the same class of securities, (3) whether the offerings are made at or about the same time, (4) whether the same kind of consideration is to be received and (5) whether the offerings are made for the same general purposes." Dkt. 419 at 5-6.

Although the District Court acknowledged the applicable test, it failed to meaningfully analyze any of its factors in concluding that the XRP offerings should be considered "integrated," rather than separate, offerings. In granting partial Summary Judgment, the Court accepted Defendants' contention that all the sales of XRP that Defendants made over a multi-year period should be considered integrated, as opposed to separate offerings. Dkt. 419 at 5-6. This holding is inconsistent with the record for several reasons, including that many of the offerings had distinct terms, such as protections against loss; some were offered exclusively to accredited investors; some were offered not on cryptocurrency exchanges but rather through privately negotiated contracts, the terms of which are unknown at this juncture. Dkt. 416 at 14-19.

By failing to meaningfully apply the five *Murphy* factors, the District Court improperly accepted Defendants' integration theory and short-circuited the fact-intensive inquiry necessary at the summary judgment stage. The record shows that many of the XRP offerings differed in material ways—including in terms, purchaser qualifications, and methods of sale—making it inappropriate to treat them as a single offering. The Court's conclusory treatment of this issue undermines the fairness and accuracy of its repose analysis and warrants reversal.

III. AFFIRMANCE OF THE DISTRICT COURT'S RULING WILL REWARD UNSCRUPULOUS ISSUERS WITH THE SHIELD OF THE STATUTE OF REPOSE BASED ON FINANCIALLY INSIGNIFICANT SECURITIES SALES IN UNLAWFUL TRANSACTIONS.

The District Court's holding carries serious policy consequences for retail investors, effectively extinguishing their claims before they even accrue. Under the Court's reasoning, any investor who purchases an unlawful offering of securities more than three years after the securities were first offered would be categorically barred from bringing a civil claim under 15 U.S.C. § 77m. This harsh result is compounded by the fact that statutes of repose, unlike statutes of limitation, are not subject to equitable tolling.

As discussed above, the Second Circuit held that the "first offered" rule applied under the specific circumstances of one case where the offering lasted for less than three years, but the Second Circuit expressly noted that it would be concerned about applying a "first offered" rule to a case where the offering lasted

more than three years because doing so would effectively grant civil immunity from claims brought by later purchasers. *Stolz*, 355 F.3d at 102. The U.S. District Court for the Southern District of Florida articulated the same concern in rejecting the "first offered" rule:

> The defendants' interpretation of the statute is simply at odds with the remedial purposes of the Securities Act of 1933. To hold as the defendants suggest would be to give individuals a license to sell unregistered securities to whomsoever they wished if they first offered the security to a group of people and, so to speak, "ran the gauntlet" for three years. It is doubtful that Congress intended the 1933 Act's goals of registration, disclosure, and private enforcement to be so easily frustrated. As a result, the defendants' interpretation of section 13 must be rejected in favor of the plaintiffs' interpretation, according to which the limitations period began on the date the alleged "security" was last offered to the public.

In re Bestline Prods. Sec. & Antitrust Litig., No. MDL 162-CIV-JLK, 1975 WL 386, at *2 (S.D. Fla. Mar. 21, 1975).

The District Court's holding—that investor claims are time-barred before they even arise if the investor's purchase occurred more than three years after the securities were initially sold on decentralized exchanges—is especially troubling in this case because the early investors' purchases were small. For investors who make relatively small investments, litigation is too expensive to be tenable absent a dire financial loss; their losses may scarcely cover the filing fee for a civil case in federal court. The dollar amount of damages sustained in these types of transactions would scarcely merit pursuing a *pro se* case in a small claims court, let alone engaging a

lawyer to pursue a securities law case. As a result, the initial investors will not bring claims in practice because bringing those claims would not be affordable, and later investors will not be able to bring claims because their claims will be time-barred before they ever arise.

Moreover, the "first offer" rule, combined with the District Court's liberal approach to integrating offerings, has very troubling consequences when the securities are initially offered only to highly sophisticated industry insiders capable of using niche exchanges, and only later offered to retail investors via more mainstream, user friendly exchanges. By the time the securities are offered to retail investors, all of those purchasers may be time-barred from bringing their claims before their claims ever arise.

That *de facto* civil immunity for issuers of unregistered securities, which will arise in many circumstances, is an especially troubling prospect because currently, private litigation may be the primary deterrent for issuing unregistered cryptocurrency. Recently, the SEC voluntarily dismissed cases against large issuers, including crypto.com, that have sold unregistered cryptocurrency, and the SEC has signaled that pursuing such actions in the future will not be a priority. *See* Press Release, SEC, SEC Announces Dismissal of Civil Enforcement Action Against Coinbase (Feb. 27, 2025), https://www.sec.gov/newsroom/press-releases/2025-47. If private litigation also becomes untenable because retail investors' claims are

barred before they ever even arise, many swindlers may be able to issue unregistered securities with impunity.

CONCLUSION

For the foregoing reasons, the District Court's decision granting partial summary judgment in favor of Defendants-Appellees should be reversed.

Respectfully submitted,

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Dated: April 14, 2025

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and Circuit Rule 29-2 because this brief contains 3,175 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Times New Roman type style.

Date: April 14, 2025

/s/ Jeffrey R. White
JEFFREY R. WHITE

CERTIFICATE OF SERVICE

I, Jeffrey R. White, a member of the Bar of this Court, hereby certify that on April 14, 2025, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system. I also certify that the foregoing document is being served on this day on all counsel of record via transmission of the Notice of Electronic Filing generated by ACMS. All participants in this case are registered ACMS users:

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