

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

June 28, 2024

Via ECFThe Honorable Katherine Polk Failla, U.S.D.J.
United States District Court, Southern District of New YorkRe: SEC v. Coinbase, Inc. and Coinbase Global, Inc., 23 Civ. 4738

Dear Judge Failla:

Pursuant to Local Rule 37.2 and Your Honor's Individual Practices, the SEC respectfully requests an informal conference and leave to file a motion for a protective order and to quash an improper subpoena issued by Defendants Coinbase, Inc. and Coinbase Global, Inc. to the Chair of the SEC, purportedly in his personal capacity (the "Subpoena"). Ex. A. The Subpoena seeks nothing of relevance, imposes an undue burden on the SEC, and strongly disincentivizes public service. It should be quashed. The SEC met and conferred with Defendants on three occasions regarding the Subpoena but was unsuccessful in resolving the matter.

I. Factual and Procedural Background.

The SEC alleges that Defendants violated strict liability provisions of the federal securities laws through unregistered offerings and by operating as an unregistered broker, exchange, and clearing agency. *E.g.*, Compl. (D.E. 1) ¶ 3. Defendants raised affirmative defenses in their Answer (D.E. 22) ("Ans.") and Motion for Judgment on the Pleadings (D.E. 36) ("MJOP"). The Court denied the MJOP in part, rejecting three of those defenses as a basis for judgment on the pleadings and concluding that "the SEC has satisfied its [Due Process] obligations." D.E. 105 at 38-39.

On April 23, 2024, Defendants served requests for production of documents on the SEC ("RFPs"). *See* Ex. B. On June 14, 2024, Defendants notified the SEC of their intent to serve the supposedly "individual capacity" Subpoena. Ex. A at 3. The RFPs, read together, seek essentially all SEC documents, from 2017 to the present, that in any way, shape, or form touch upon the crypto asset markets. The Subpoena seeks from the Chair largely the same thing—all documents about crypto—for the same period, including the four years *before* his being sworn in on April 17, 2021. The Subpoena contains three requests that the RFPs do not. But two mirror a subpoena Defendants sent to the Massachusetts Institute of Technology, where the Chair previously taught, for documents such as course syllabi and assignments. *See* Ex. C ("MIT Subpoena"). The third seeks information about holdings, if any, of crypto assets. *See* Ex. A, No. 26. *See also* Ex. D (comparing the requests).

During the meet-and-confer process the SEC noted that though the Subpoena is styled as being in the Chair's *individual* capacity, it includes the period from 2021 through the present. Ex. A at 10 ¶ 1. Accordingly, many of the Subpoena's requests seek documents that relate solely to the Chair in his *official* capacity. *E.g.*, *id.* at Nos. 3-5, 13, 19 (communications with government officials or regarding legislation); *id.* at Nos. 16, 21-22, 24-25 (internal SEC decision-making including as to past litigations); *id.* at 23 (draft of Chair statements while serving as Chair); *see also* Ex. D. These

Hon. Katherine Polk Failla

June 28, 2024

Page 2

documents belong to the SEC, 17 C.F.R. § 200.30-14(g), not any individual employee. Defendants can and have made Fed. R. Civ. P. 34 requests for them from the SEC. *See* Ex. B. To the extent these documents are appropriately subject to discovery at all—and the SEC believes that most of them are not—RFPs to the SEC are the way to seek them. *See N'Diaye v. Metro. Life Ins. Co.*, 2018 WL 2316335, at *9 (S.D.N.Y. May 8, 2018) (granting protective order when Rule 45 subpoena requested documents from a nonparty that could have been sought from a party); Fed. R. Civ. P. 26(b)(2)(C)(ii) (the court “must limit ... discovery” where “the party seeking discovery has had ample opportunity to obtain the information by discovery in the action.”).

Defendants next stated an interest in documents predating the Chair’s service. In response, the SEC—without conceding relevance—noted that the Chair’s pre-SEC speeches or interviews are publicly available, as are his MIT courses and Senate questionnaires detailing his financial holdings. Defendants then indicated that at a minimum they sought a search of the Chair’s personal emails to determine if he used them to communicate his views about the federal securities laws and crypto assets—and even offered to pay for his lawyer. Defendants also asserted that these materials are relevant to “fair notice” given the Chair’s prominence in the field of crypto assets before he was Chair, coupled with his later service as Chair. The SEC rejected this position and proposal.

II. The Subpoena Must Be Quashed and A Protective Order Issued.

The Subpoena should be directed at the SEC. To the extent it is not, it is an improper intrusion into a public official’s private life, based on his decision to serve. Given also the utter lack of relevance of the requested documents, and the potential chilling effect on public service, the Court should quash the Subpoena and issue a protective order under Fed. R. Civ. P. 26(b) and 45(d).

A. The Discovery Sought From the Chair in His Individual Capacity is Irrelevant.

“[T]he Due Process Clause requires that agencies bringing an enforcement action ‘provide ... a person of ordinary intelligence fair notice’ that the regulated conduct was ‘prohibited.’” D.E. 105 at 35-36. The focus is on “‘the statute itself and other [pertinent] law,’ without reference to subjective perceptions or individual sensibilities.” *Frese v. MacDonald*, 512 F. Supp. 3d 273, 292 (D.N.H. 2021). Defendants have asserted a litany of complaints about the SEC’s actions and statements by SEC officials, arguing they deprived Defendants of fair notice. *E.g.*, Ans. ¶¶ 18, 71, 76; MJOP at 4-5. Surveying *Honey* and applicable law, and the SEC’s public “written guidance, litigation, and other actions,” the Court has held the SEC had provided fair notice. D.E. 105 at 35-39.

In reaching this conclusion, the Court looked not to individual conduct, but to the law and *the SEC’s* official actions. So too did the other courts who considered and rejected some version of the “fair notice” defense from similarly-situated defendants, including in *Zaslavskij*, *Kik*, *LBRY*, *Ripple*, and *Terraform*. None of these cases considered or mentioned, let alone relied on the interpretations of law by a private citizen, which “supports the conclusion that such discovery is not relevant.” *E.g.*, *Citizens Union of N.Y.C. v. Att’y Gen. of N.Y.*, 269 F. Supp. 3d 124, 143 (S.D.N.Y. 2017). Were this not the law, the private emails of all professors or others with experience purportedly related to their public duties thereafter would be subject to endless, intrusive discovery.

To the contrary, courts have rejected the fair notice defense as well as *discovery requests* into SEC internal and external communications as entirely irrelevant in strict liability registration cases

Hon. Katherine Polk Failla

June 28, 2024

Page 3

because, as one court put it, “the deliberations within an agency shed[] no light on the application of the statute.” *SEC v. Kik Interactive, Inc.*, No. 19 Civ. 5244 (AKH) (S.D.N.Y. Nov. 12, 2019) (D.E. 36). Another commented that in determining the applicability of the fair notice defense it “could care less” about what a prominent official “says when he speaks as a private citizen.” Ex. E at 15-16 (Tr. of Hr’g in *SEC v. LBRY*, No. 21 Civ. 260 (PB) (D.N.H. Feb. 23, 2022) (D.E. 50)); *see also id.* at 29 (denying discovery). *Cf. SEC v. Terraform Labs, Inc.* No. 23 Civ. 1346 (JSR) (S.D.N.Y. July 7, 2023) (denying discovery as to documents about SEC Chair speeches based on privilege).

These principles apply more forcefully here. The SEC’s Chair is not a fact witness. Nor can he be proffered as a legal expert—that job belongs to the Court. Any individual’s view as to whether a law applies to a fact pattern, is clear, or has been consistently applied, is simply irrelevant.

B. The Subpoena is Cumulative and Unduly Burdensome.

As noted, the Subpoena is “unreasonably cumulative or duplicative,” Fed. R. Civ. P. 26(b)(2)(C)(i), of the RFPs and the MIT Subpoena. *See also* Ex. D. But even whittling away at the requests, creating search protocols, or limiting the search to private emails reviewed by a Coinbase-hired lawyer does not eliminate the Subpoena’s unjustifiable burden on a high-ranking member of the SEC, or in any way lessen the Subpoena’s chilling effect on public service.

“High-ranking” government officials “have greater duties and time constraints than other witnesses” and, if the court did not limit discovery (a deposition in that case), “such officials would spend an inordinate amount of time tending to pending litigation.” *Lederman v. New York City Dep’t of Parks and Recreation*, 731 F.3d 199, 203 (2d Cir. 2013) (cleaned up). Fed. R. Civ. P. 26 and 45 accommodate “the government’s serious and legitimate concern that its employees not be commandeered into service by private litigants.” *In re Terrorist Attacks on Sept. 11, 2001*, 523 F. Supp. 478, 489 (S.D.N.Y. 2021). Without limits, subjecting *private* citizens to discovery based on their decision to serve would be a “significant deterrent to qualified candidates for public service’.” *In re Terrorist Attacks on Sept. 11, 2001*, 2020 WL 8611024, at *12 (S.D.N.Y. Aug. 27, 2020).

Defendants argue that the Chair’s views in his individual capacity are relevant in part because he became Chair. This proves too much. Requiring an official to retain personal counsel and subject his private emails to search by private litigants because of his public role triggers all the concerns animating *Lederman* and cases like it. In this context, it is incalculably intrusive and harassing to search a citizen’s communications with friends, colleagues, or even the press in his spare time. And what could possibly be the relevance of reading materials that Prof. Gensler may have assigned or emails he may have sent students? It is hardly surprising that Defendants can point to no enforcement action of a strict liability statute in which a court has endorsed such an unwarranted intrusion into an official’s personal life. Respectfully, the Court should decline to be the first.

The Court should quash the Subpoena or schedule an informal conference and potentially further briefing.¹

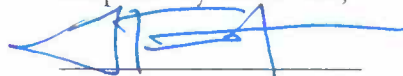
¹ The outcome would not change should Defendants broaden their relevancy argument, as none of their other defenses justify this intrusive discovery request on a private citizen. *E.g.*, D.E. 105 at 31-39 (rejecting APA and the Major Questions Doctrine as a basis for judgment on the pleadings); *Rojas-Reyes v. I.N.S.*, 235 F.3d 115, 126 (2d Cir. 2000) (rejecting “equitable estoppel” defense); *SEC v. Rayat*, 2021 WL 4868590 at *2-4 (S.D.N.Y. Oct. 18, 2021) (rejecting “laches” and “unclean hands” defenses).

Hon. Katherine Polk Failla

June 28, 2024

Page 4

Respectfully submitted,



Jorge G. Tenreiro
Counsel for Plaintiff

CC: All counsel of record (via ECF)

Exhibit A

WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON
HERBERT M. WACHTELL
EDWARD D. HERLIHY
DANIEL A. NEFF
STEVEN A. ROSENBLUM
JOHN F. SAVARESE
SCOTT K. CHARLES
JODI J. SCHWARTZ
ADAM O. EMMERICH
RALPH M. LEVENE
RICHARD G. MASON
ROBIN PANOVA
DAVID A. KATZ
ILENE KNABLE GOTTS
TREVOR S. NORWITZ
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEVEN A. COHEN
DEBORAH L. PAUL
DAVID C. KARP
RICHARD K. KIM
JOSHUA R. CAMMAKER

MARK GORDON
JEANNEMARIE O'BRIEN
WAYNE M. CARLIN
STEPHEN R. DiPRIMA
NICHOLAS G. DEMMO
IGOR KIRMAN
JONATHAN M. MOSES
T. EIKO STANGE
WILLIAM SAVITT
GREGORY E. OSTLING
DAVID B. ANDERS
ADAM J. SHAPIRO
NELSON O. FITTS
JOSHUA M. HOLMES
DAVID E. SHAPIRO
DAMIAN G. DIDDEN
IAN BOCZKO
MATTHEW M. GUEST
DAVID E. KAHAN
DAVID K. LAM
BENJAMIN M. ROTH
JOSHUA A. FELTMAN

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403-1000
FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)
LEONARD M. ROSEN (1965-2014)

OF COUNSEL

ANDREW R. BROWNSTEIN
MICHAEL H. BYOWITZ
KENNETH B. FORREST
BEN M. GERMANA
SELWYN B. GOLDBERG
PETER C. HEIN
JB KELLY
JOSEPH D. LARSON
LAWRENCE S. MAKOW
PHILIP MINDLIN
THEODORE N. MIRVIS
DAVID S. NEILL

ERIC S. ROBINSON
ERIC M. ROSOF
MICHAEL J. SEGAL
WON S. SHIN
DAVID M. SILK
ELLIOTT V. STEIN
LEO E. STRINE, JR.*
PAUL VIZCARRONDO, JR.
JEFFREY M. WINTNER
AMY R. WOLF
MARC WOLINSKY

ELAINE P. GOLIN
EMIL A. KLEINHAUS
KARESSA L. CAIN
RONALD C. CHEN
BRADLEY R. WILSON
GRAHAM W. MELI
GREGORY E. PESSIN
CARRIE M. REILLY
MARK F. VEBLEN
SARAH K. EDDY
VICTOR GOLDFELD
RANDALL W. JACKSON
BRANDON C. PRICE
KEVIN S. SCHWARTZ
MICHAEL S. BENN
ALISON Z. PREISS
TIJANA J. DVORNIC
JENNA E. LEVINE
RYAN A. McLEOD
ANITHA REDDY
JOHN L. ROBINSON
JOHN R. SOBOLEWSKI

STEVEN WINTER
EMILY D. JOHNSON
JACOB A. KLING
RAAJ S. NARAYAN
VIKTOR SAPEZHNIKOV
MICHAEL J. SCHOBEL
ELINA TETELBAUM
ERICA E. AHO
LAUREN M. KOFKE
ZACHARY S. PODOLSKY
RACHEL B. REISBERG
MARK A. STAGLIANO
CYNTHIA FERNANDEZ
LUMERMANN
CHRISTINA C. MA
NOAH B. YAVITZ
BENJAMIN S. ARFA
NATHANIEL D. CULLERTON
ERIC M. FEINSTEIN
ADAM L. GOODMAN
STEVEN R. GREEN
MENG LU

* ADMITTED IN DELAWARE

COUNSEL

DAVID M. ADLERSTEIN
SUMITA AHUJA
FRANCO CASTELLI
ANDREW J.H. CHEUNG
PAMELA EHRENKRANZ
ALINE R. FLODR
KATHRYN GETTLES-ATWA
ADAM M. GOGOLAK
ANGELA K. HERRING

MICHAEL W. HOLT
MARK A. KOENIG
CARMEN X.W. LU
J. AUSTIN LYONS
ALICIA C. McCARTHY
JUSTIN R. ORR
NEIL M. SNYDER
JEFFREY A. WATIKER

DIRECT DIAL: (212) 403-1329
DIRECT FAX: (212) 403-2329
E-MAIL: WDSAVITT@WLRK.COM

June 14, 2024

By Personal Service

Gary Gensler



Re: *Securities and Exchange Commission v. Coinbase, Inc. et al.*
Case No. 23 Civ. 4738 (KPF) (S.D.N.Y.)

To Mr. Gary Gensler:

Please find enclosed a subpoena calling for the production of certain documents and electronically stored information in connection with the above-referenced proceeding.

If you have any questions or wish to discuss this matter, please contact me or my colleagues Kevin Schwartz (KSchwartz@wlrk.com) and David Webb (DPTWebb@wlrk.com).

Sincerely,

William Savitt

WACHTELL, LIPTON, ROSEN & KATZ

Mr. Gary Gensler
June 14, 2024
Page 2

Enclosures:

U.S. District Court Subpoena to Produce Documents
Schedule A

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Securities and Exchange Commission)

Plaintiff)

v.)

Coinbase, Inc. and Coinbase Global, Inc.)

Defendant)

Civil Action No. 23 Civ. 4738 (KPF)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Mr. Gary Gensler (individual capacity), [REDACTED]

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A, attached.

Place: At a location mutually agreed upon by the parties or at Torri's Legal Services, 18403 Woodfield Rd., Suite A, Gaithersburg, MD 20879	Date and Time: July 18, 2024 5:00 p.m. EST
---	--

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: June 14, 2024

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Coinbase, Inc. and Coinbase Global, Inc., who issues or requests this subpoena, are:

William Savitt, Wachtell Lipton Rosen & Katz, 51 W. 52nd St., New York, NY 10019, WDSavitt@wlrk.com (212) 403-1000

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 23 Civ. 4738 (KPF)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

This subpoena requires the production of Documents described herein. The Requests are to be responded to in accordance with the following Definitions and Instructions.

DEFINITIONS

1. “Action” means the above-captioned civil action.
2. “Coinbase” means Coinbase, Inc., Coinbase Global, Inc., and any of their affiliates, subsidiaries, divisions, predecessors and successors, and any of their respective officers, directors, employees, agents, or attorneys.
3. “Coinbase Platform” means Coinbase’s digital asset spot exchange.
4. “Coinbase Prime” means the service described in the Coinbase Prime Product Guide. *See Coinbase Prime Product Guide*, Coinbase (2022), <https://tinyurl.com/mu89cran>.
5. “Coinbase Staking Services” means the services offered to individual Coinbase users through the “Coinbase Earn” program.
6. “Communication” or “communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether orally or in writing, or by any other means or medium, between or among two or more Persons or entities including but not limited to spoken words, inquiries, discussions, conversations, conferences, interviews, negotiations, agreements, reports, meetings, correspondence, letters, electronically transmitted messages (*e.g.*, email, text messages, instant messaging), postings on Internet bulletin boards, or other forms of written, verbal or electronic intercourse, however transmitted, ESI (as defined below), and documents, as defined herein.
7. “Complaint” means the Complaint filed in the Action on June 6, 2023.
8. “Defendants” means Coinbase, Inc. and Coinbase Global, Inc.

9. “Digital Asset” means any digital asset, including any cryptocurrency, virtual currency, or other blockchain-based coin or token.

10. “Digital Asset Platform” means any exchange or other platform on which Digital Assets are offered and sold.

11. “Document” or “documents” shall have the broadest meaning permitted under the Federal Rules of Civil Procedure and shall include, without limitation, the original and all non-identical copies of any handwritten, printed, typed, recorded, or other graphic material, or ESI (as defined below), of any kind and nature, including all drafts and transcriptions thereof, however produced or reproduced, and including but not limited to accounting materials, accounts, agreements, analyses, appointment books, books of account, calendars, catalogs, checks, communications (as defined herein), computer data, computer disks, contracts, correspondence, date books, diaries, diskettes, drawings, email messages, faxes, guidelines, instructions, inter-office communications, invoices, letters, logs, manuals, memoranda, minutes, notes, opinions, payments, plans, purchase confirmations, receipts, records, regulations, reports, sound recordings, spreadsheets, statements, studies, surveys, tickets, timesheets, trade records, vouchers, word processing materials (however stored or maintained), and all other means by which information is stored for retrieval in fixed form.

12. “ESI” means information that is stored in an electronic format, regardless of the media or whether it is in the original format in which it was created, and that is retrievable in perceivable form and includes but is not limited to metadata, system data, deleted data, and fragmented data.

13. “Government Entity” means any federal, state, or foreign agency or authority, or any current or former officer, employee, or agent thereof. For the avoidance of doubt, Government Entity includes, but is not limited to, the U.S. Securities and Exchange Commission (“SEC”), U.S.

Commodity Futures Trading Commission (“CFTC”), the U.S. Department of Justice, the U.S. Department of the Treasury, the Financial Crimes Enforcement Network (“FinCEN”), the U.S. Internal Revenue Service, and the New York Department of Financial Services (“DFS”).

14. “IEX Group, Inc.” or “Investors’ Exchange LLC” means IEX Group, Inc. or Investors’ Exchange LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

15. “Investigation” means the investigation(s) of individuals and entities that resulted in or contributed to the filing of the Complaint, including, but not limited to, the SEC investigation captioned *In the Matter of Coinbase, Inc.* (HO-14315).

16. “Named Digital Assets” means SOL, ADA, MATIC, FIL, SAND, AXS, CHZ, FLOW, ICP, NEAR, VGX, and DASH.

17. “Named Coinbase Services” means Coinbase Prime and Coinbase’s Staking Services.

18. “Person” means any natural person or individual, or any firm, partnership (general or limited), limited liability company, proprietorship, corporation, unincorporated association, trust, joint venture, or any other legal or Governmental Entity, organization, or body of any type whatsoever, as well as all agents, officers, directors, boards, committees, subcommittees, employees, consultants, representatives, or instrumentalities thereof.

19. “Prometheum, Inc.” means Prometheum, Inc., Prometheum Ember ATS Inc., Prometheum Capital LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers,

employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

20. “Securitize, Inc.,” “Securitize LLC,” or “Securitize Markets, LLC” means Securitize, Inc., Securitize LLC, or Securitize Markets, LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

21. “SEC” means the U.S. Securities and Exchange Commission, including any Divisions, Commissioners, Commission Staff, employees, subsidiaries, or individuals or entities acting on their behalf.

22. “Staking” means the proof of stake consensus mechanism used by certain blockchain protocols to validate, verify, and secure transactions on a blockchain.

23. “Staking as a Service” means services offered to individuals to facilitate the staking of their digital assets to a blockchain with a proof-of-stake consensus mechanism.

24. The terms “concerning,” “regarding,” “with regard to,” “relating to,” and “referring to” shall be read and applied as interchangeable and shall be construed in the broadest sense permitted to mean discussing, supporting, describing, concerning, regarding, with regard to, relating to, referring to, pertaining to, containing, analyzing, evaluating, studying, recording, memorializing, reporting on, commenting on, reviewed in connection or in conjunction with, evidencing, setting forth, contradicting, refuting, considering, recommending, or constituting, in whole or in part.

25. The language of the Requests shall be read liberally, so as to be inclusive rather than exclusive, and in particular: (i) the use of the singular shall be deemed to include the plural

and vice versa, and the use of one gender shall include the other; (ii) the terms “and” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of a Request all documents that might otherwise be construed as outside its scope; (iii) the present tense includes the past and future tenses, and vice versa; (iv) the terms “any” or “all” shall mean “any and all,” “each and every,” and “anyone and everyone”; and (v) “include,” “includes,” and “including” shall mean “including but not limited to.”

INSTRUCTIONS

Defendants request that you produce, wherever located, all documents described below that are in your possession, custody, or control, wherever located, regardless of whether they are possessed directly by you or any of your agents, representatives, employees, accountants, attorneys, or other persons acting or purporting to act on Your behalf.

1. Unless otherwise specified, the time period for these Requests is January 1, 2017 through the present.

2. Responsive Documents shall be produced in image format, with searchable text load files that are compatible with standard litigation support software, including Relativity, Concordance, and IPRO. The images shall be black and white, single-page, 300 DPI, Group IV .tiff images. Images for documents created with office or personal productivity software (e.g., wordprocessing documents, spreadsheets, presentations, databases, charts, and graphs) shall include tracked changes, comments, hidden rows, columns or worksheets, speakers notes, and any other similar content that can be made visible within the application. The load file shall include for each Document, the metadata fields listed below. For any Documents that have been globally de-duplicated, the custodian field shall reflect all custodians who had a copy of the Document during processing and before de-duplication. For each individual Document based on an electronic

file, the load file shall, unless such Document contains redactions, contain the path to the corresponding text that is extracted from the electronic file. Documents produced in redacted form shall contain text generated by optical character recognition (“OCR”) of the redacted image(s). In addition to the foregoing, for all email, the load file shall also include, to the extent practicable, header information including: (1) the individual(s) to whom the communication was directed (“To”); (2) the author of the e-mail communication (“From”); (3) all individuals who were copied (“cc”) and/or blind copied (“bcc”) on the communication; (4) the subject line of the communication (“Re” or “Subject”); and (5) the date and time sent. For each Document, the load file shall also contain: (1) the beginning Bates number (referring to the first page of the Document); (2) the ending Bates number (referring to the last page of the Document); and in the case of Documents with attachments; (3) the beginning attachment range number(s); and (4) the ending attachment range number(s), where the “attachment range” records the relationship of Documents to their attachments. The attachment range should be recorded from the first page of the first Document in the attachment range, to the last page of the last Document in the attachment range. In addition, all spreadsheet, presentation, audio, and audiovisual Documents that do not require redaction shall be produced in native format with a single-page placeholder (Group IV .tiff image) indicating that the file is being produced in native format. The right to demand production of any other responsive Documents in their native format (including all metadata) is expressly reserved.

3. A Request for a document shall be deemed to include a request for all transmittal sheets, cover letters, exhibits, enclosures, attachments, or other matters affixed to the document, in addition to the document itself.

4. Each Request seeks production of each document in its entirety without abbreviations, redaction, or expurgation.

5. Responsive documents and communications are to be designated clearly so as to reflect their owner and/or custodian. Any document not produced in electronic format is to be produced in its original file folder, with all labels or similar markings intact and included, and with the name of the Person from whose file it was produced.

6. Electronically stored information, or “ESI,” shall be produced in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable. Specifically, where the documents responsive to a Request are stored electronically, any responsive e-mails, Word documents, and other unstructured data are to be produced in TIFF plus metadata plus extracted text format. Any responsive Excel charts, PowerPoints, databases, and other structured data are to be produced in native format. The right to demand production of any other responsive documents in their native format (including all available metadata) is expressly reserved.

7. Each Request herein requires that You produce files from all reasonably accessible sources of information in or on which You store or maintain potentially responsive documents.

8. Draft or non-identical copies are to be considered separate documents for purposes of these Requests. Any and all drafts and copies of each document that are responsive to any Request for documents shall be produced, as shall all copies of such documents that are not identical in any respect, including, but not limited to, copies containing handwritten notes, markings, stamps, or interlineations, whether or not the original of such document is within Your possession, custody, or control. The author(s) of all handwritten notes should be identified.

9. You shall construe each Request independently and not with reference to any other Request for purposes of limitation.

10. The use of the term “the” shall not be construed as limiting the scope of any Request.

11. If it is not possible to produce any document called for by a Request, or if any part of a Request is objected to, the reasons for the failure to produce the documents or the objection should be stated specifically as to all grounds. If there are no documents or communications responsive to any particular Request or subpart thereof, You shall state so in writing.

12. If You claim any form of privilege or protection or other reason as a ground for withholding from production requested documents, You shall furnish a privilege log in compliance with Federal Rule of Civil Procedure 45(e)(2) and any other parameters agreed between You and Defendants.

13. If You contend that any Request is overly broad and/or unduly burdensome, identify all aspects of the Request that are overly broad or unduly burdensome and produce the documents and communications that are not subject to this contention.

14. These Requests are continuing in nature, and any document obtained or located after the production pursuant hereto, which would have been produced had it been available or its existence known at the time, is to be supplied promptly by way of a supplemental production.

15. Defendants serve these Requests without prejudice to their right to serve additional Requests for the production of documents.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1.

All Documents and Communications concerning Coinbase, the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, or the subject matter of the Investigation or the Action, including all Communications with any Person or entity not party to this Action concerning the foregoing.

REQUEST NO. 2.

Documents and/or Communications sufficient to establish when you first learned of the Coinbase Platform, the Named Digital Assets, and the Named Coinbase Services, and when you first learned that each of the Named Digital Assets had been listed or was planned to be listed on the Coinbase Platform, without limitation as to the applicable time period.

REQUEST NO. 3.

All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities Exchange Act of 1934) to Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 4.

All Communications and Documents concerning any investigation by a Government Entity concerning Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 5.

All Communications with, and Documents concerning Communications with, the Financial Industry Regulatory Authority (FINRA) or any Government Entity, including the SEC, or the CFTC, relating to the allegations in the Complaint, the Investigation, Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 6.

All Communications with, and Documents concerning Communications with, journalists or other employees or affiliates of news or media organizations concerning Coinbase, this Action, the Investigation, Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 7.

All Communications with, and Documents concerning Communications with, any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any Digital Assets or their associated blockchain networks, including any Documents or information provided to you by any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any Digital Assets, their affiliated blockchain networks, or their counsel.

REQUEST NO. 8.

All Documents and Communications concerning any discussions, instructions, advice, inquiries or other Communications between you and any Person concerning that Person's actual, planned, or potential business or other relationship with Coinbase or with a developer of or Person otherwise affiliated with Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 9.

All Communications with, and Documents concerning Communications with, Prometheus, Inc., Martin Kaplan, Aaron Kaplan, or Benjamin Kaplan; Securitize, Inc.; Securitize LLC; or Securitize Markets, LLC.

REQUEST NO. 10.

All Communications with, and Documents concerning Communications with, IEX Group, Inc. or Investors' Exchange LLC concerning Coinbase, Digital Assets, or Digital Asset Platforms.

REQUEST NO. 11.

All Communications with, and Documents concerning Communications with, any Person

concerning (i) any actual, planned, or potential registration by that Person as an exchange, broker, dealer, clearing agency, alternative trading system, or custodian that would or could facilitate the offer, sale, or custody of Digital Assets or any product or service relating to Digital Assets, including but not limited to the means or viability of such registration; or (ii) the registration with the SEC of any exchange-traded product that holds or references Digital Assets.

REQUEST NO. 12.

All Documents and Communications concerning (i) *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Exchange Act Release No. 81207 (July 25, 2017), (ii) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled “Digital Asset Transactions: When Howey Met Gary (Plastic)” (“Hinman Speech”), or (iii) FinHub’s April 2019 “Framework for ‘Investment Contract’ Analysis of Digital Assets.”

REQUEST NO. 13.

All Documents and Communications concerning any public statements by FINRA or any Government Agency, including but not limited to the SEC and CFTC, concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.

REQUEST NO. 14.

All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are “investment contract[s]” within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.

REQUEST NO. 15.

All Documents and Communications concerning (i) the role of a Digital Asset’s

ecosystem in the application of the federal securities laws, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities or (ii) the ecosystems of the Named Digital Assets, including, but not limited to, the components of such ecosystems, the identities of the alleged developers, issuers, and promoters affiliated with such ecosystems.

REQUEST NO. 16.

All Documents and Communications relating to the SEC’s assertion during Oral Argument that when someone “purchases tokens like [the Named Digital Assets], like these 13 examples . . . they are investing into the network behind it”—that is, “the ecosystem.” *See* Jan. 17, 2024 Hr’g Tr. at 21:20-22:5; *see also id.* at 57:17-21.

REQUEST NO. 17.

All Documents and Communications relating to Bitcoin’s ecosystem or lack thereof.

REQUEST NO. 18.

All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.

REQUEST NO. 19.

All Documents and Communications concerning potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity with respect to Digital Assets or Digital Asset Platforms.

REQUEST NO. 20.

All Documents and Communications concerning any meeting or call involving one or more Commissioner concerning Coinbase, the Coinbase Platform or any of the Named Digital Assets or Named Coinbase Services, including a list of the attendees of any such meeting or call.

REQUEST NO. 21.

All Documents and Communications concerning the following litigation matters:

- a. *SEC v. Kik Interactive Inc.*, Case No. 19-cv-5244 (S.D.N.Y.);
- b. *SEC v. Telegram Grp. Inc. and TON Issuer Inc.*, Case No. 19-cv-9439 (S.D.N.Y.);
- c. *SEC v. Ripple Labs, Inc. et al.*, Case No. 20-cv-10832 (S.D.N.Y.);
- d. *SEC v. LBRY, Inc.*, Case No. 21-cv-260 (D.N.H.);
- e. *SEC v. Wahi et al.*, Case No. 2:22-cv-1009 (W.D. Wash.);
- f. *SEC v. Binance Holdings Ltd. et al.*, Case No. 23-cv-1599 (D.D.C.);
- g. *SEC v. Bittrex, Inc. et al.*, Case No. 23-cv-580 (W.D. Wash.);
- h. *SEC v. Genesis Global Capital, LLC and Gemini Tr. Co., LLC*, Case No. 23-cv-287 (S.D.N.Y.);
- i. *SEC v. Terraform Labs PTE Ltd. and Kwon*, Case No. 23-cv-1346 (S.D.N.Y.);
- j. *SEC v. Payward, Inc. and Payward Ventures, Inc.*, Case No. 23-cv-6003 (N.D. Cal.); and
- k. *SEC v. Payward Ventures, Inc. (D/B/A Kraken) and Payward Trading, Ltd. (D/B/A Kraken)*, Case No. 23-cv-588 (N.D. Cal.).

REQUEST NO. 22.

All Documents and Communications concerning Coinbase's direct public offering or registration statement on Form S-1 (including any drafts of such registration statement), including but not limited to Documents and Communications concerning the application or potential application of the federal securities laws to Coinbase's business or operations.

REQUEST NO. 23.

All Documents and Communications concerning your public remarks about Digital Assets, Digital Asset Platforms, and Staking as a Service, without limitation as to the applicable time period, including but not limited to:

- a. Your May 6, 2021 testimony before the United States House Committee on Financial Services;
- b. Your May 7, 2021 appearance on CNBC;
- c. Your May 26, 2021 testimony before the United States House Subcommittee on Financial Services and General Government;
- d. Your August 3, 2021 remarks before the Aspen Security Forum;
- e. Your September 21, 2021 interview with the *Washington Post*;
- f. Your October 5, 2021 testimony before the United States House Committee on Financial Services;
- g. Your August 19, 2022 opinion piece published by the *Wall Street Journal*, titled “The SEC Treats Crypto Like the Rest of the Capital Markets”;
- h. Your December 7, 2022 interview with Yahoo! Finance;
- i. Your interview with Ankush Khardori, as reported in *Intelligencer*’s February 23, 2023 article, “Can Gary Gensler Survive Crypto Winter? D.C.’s Top Financial Cop on Bankman-Fried Blowback”;
- j. Your interview with CNBC’s *Squawk Box*, as reported in CNBC’s February 10, 2023 article, “SEC’s Gary Gensler on Kraken Staking Settlement: Other Crypto Platforms Should take Note of This”;
- k. Your March 29, 2023 testimony before the United States House Appropriations Subcommittee on Financial Services and General Government;
- l. Your statements regarding Digital Assets during “Office Hours with Gary Gensler” including but not limited to the episodes from August 16, 2021, July 28, 2022, August 4, 2022, October 3, 2022, February 9, 2023, and April 27, 2023;
- m. Your April 18, 2023 testimony before the United States House Committee on Financial Services;
- n. Your interview with CNBC’s *Squawk Box*, as reported in CNBC’s June 6, 2023 article, “SEC Chair Gensler doubts the need for more digital currency”;
- o. Your interview with the *Wall Street Journal*, as reported in the June 8, 2023 article, “SEC’s Gary Gensler Had Crypto in His Sights for Years. Now He’s Suing Binance and Coinbase.”;
- p. Your June 8, 2023 remarks before the Piper Sandler Global Exchange & Fintech Conference;

- q. Your interview with the *Wall Street Journal*, as broadcast in the June 14, 2023 podcast episode, “SEC Chair Gary Gensler on His Crypto Crackdown”;
- r. Your September 12, 2023 testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs;
- s. Your September 27, 2023 testimony before the United States House Committee on Financial Services; and
- t. Your statements concerning Digital Assets or Digital Asset Platforms made prior to your tenure as SEC Chair.

REQUEST NO. 24.

All Documents and Communications concerning the Petition for Rulemaking submitted by Coinbase on July 21, 2022, any comment letters submitted by Coinbase concerning its Petition for Rulemaking, or the Commission’s Order denying Coinbase’s Petition for Rulemaking issued on December 15, 2023, including any Communications with any third parties (including any Government Entity) concerning Coinbase’s Petition for Rulemaking or the Commission’s Order.

REQUEST NO. 25.

All Documents and Communications concerning the comment letter sent to Coinbase Global, Inc. by the Commission dated September 22, 2023 regarding Coinbase Global, Inc.’s Form 10-K for the year ended December 31, 2022, Form 10-Q for the period ended June 30, 2023, Form 8-K filed January 10, 2023, and Form 8-K filed May 4, 2023 (File No. 001-40289) and any subsequent correspondence relating thereto.

REQUEST NO. 26.

All Documents and Communications concerning your purchase, use, ownership, or trading of Digital Assets or use of Digital Asset Platforms.

REQUEST NO. 27.

All Documents and Communications concerning your courses “FinTech: Shaping the Financial World” and “Blockchain and Money,” including but not limited to syllabi, speaking

notes, presentations, distributed materials, assignments, and any classroom recordings.

REQUEST NO. 28.

All Documents and Communications concerning your work with the Massachusetts Institute of Technology's Digital Currency Initiative, including any speeches, publications, or reports concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.

Dated: June 14, 2024
New York, New York

WACHTELL, LIPTON, ROSEN & KATZ

/s/ William Savitt

William Savitt
Kevin S. Schwartz
Sarah K. Eddy
Adam M. Gogolak
David P.T. Webb
Emily R. Barreca
51 West 52nd Street
New York, New York 10019
(212) 403-1000
WDSavitt@wlrk.com
KSSchwartz@wlrk.com
SKeddy@wlrk.com
AMGogolak@wlrk.com
DPTWebb@wlrk.com
ERBarreca@wlrk.com

Steven R. Peikin
Kathleen S. McArthur
James M. McDonald
Julia A. Malkina
Olivia G. Chalos
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
(212) 558-4000

*Attorneys for Coinbase, Inc. and Coinbase Global,
Inc.*

Exhibit B

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COINBASE, INC. AND COINBASE GLOBAL, INC.,

Defendants.

23 Civ. 4738 (KPF)

**DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFF SECURITIES AND EXCHANGE COMMISSION**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, and the definitions and instructions set forth below, Defendants Coinbase, Inc. and Coinbase Global, Inc. (together, “Coinbase” or “Defendants”), by and through their undersigned counsel, hereby request that Plaintiff the Securities and Exchange Commission (the “SEC,” “Commission,” or “Plaintiff”) produce documents responsive to the following requests, within 30 days from the date of service, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, or at such other time and place as may be agreed among counsel or ordered by the Court.

DEFINITIONS

The following definitions shall apply to the Defendants’ First Request for Production of Documents Directed to Plaintiff the Securities and Exchange Commission (the “Requests”):

1. “Action” means the above-captioned civil action.
2. “BlackRock, Inc.” means BlackRock, Inc., as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on its behalf.

3. “Coinbase” means Coinbase, Inc., Coinbase Global, Inc., and any of their affiliates, subsidiaries, divisions, predecessors and successors, and any of their respective officers, directors, employees, agents, or attorneys.

4. “Coinbase Platform” means Coinbase’s digital asset spot exchange.

5. “Coinbase Prime” means the service described in the Coinbase Prime Product Guide. *See Coinbase Prime Product Guide*, Coinbase (2022), <https://tinyurl.com/mu89cran>.

6. “Communication” or “communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether orally or in writing, or by any other means or medium, between or among two or more Persons or entities including but not limited to spoken words, inquiries, discussions, conversations, conferences, interviews, negotiations, agreements, reports, meetings, correspondence, letters, electronically transmitted messages (*e.g.*, email, text messages, instant messaging), postings on Internet bulletin boards, or other forms of written, verbal or electronic intercourse, however transmitted, ESI (as defined below), and documents, as defined herein.

7. “Complaint” means the Complaint filed in the Action on June 6, 2023, and/or any subsequent amendments.

8. “Contact List” has the meaning assigned to this term in Section 3.2.9.4 of the SEC Enforcement Manual.

9. “Digital Asset” means any digital asset, including any cryptocurrency, virtual currency, or other blockchain-based coin or token.

10. “Digital Asset Platform” means any exchange or other platform on which Digital Assets are offered and sold.

11. “Document” or “documents” shall have the broadest meaning permitted under the Federal Rules of Civil Procedure and shall include, without limitation, the original and all non-identical copies of any handwritten, printed, typed, recorded, or other graphic material, or ESI (as defined below), of any kind and nature, including all drafts and transcriptions thereof, however produced or reproduced, and including but not limited to accounting materials, accounts, agreements, analyses, appointment books, books of account, calendars, catalogs, checks, communications (as defined herein), computer data, computer disks, contracts, correspondence, date books, diaries, diskettes, drawings, email messages, faxes, guidelines, instructions, inter-office communications, invoices, letters, logs, manuals, memoranda, minutes, notes, opinions, payments, plans, purchase confirmations, receipts, records, regulations, reports, sound recordings, spreadsheets, statements, studies, surveys, tickets, timesheets, trade records, vouchers, word processing materials (however stored or maintained), and all other means by which information is stored for retrieval in fixed form.

12. “Document Index” has the meaning assigned to this term in Section 3.2.9.4 of the SEC Enforcement Manual.

13. “ESI” means information that is stored in an electronic format, regardless of the media or whether it is in the original format in which it was created, and that is retrievable in perceivable form and includes but is not limited to metadata, system data, deleted data, and fragmented data.

14. “Government Entity” means any federal, state, or foreign agency or authority, or any current or former officer, employee, or agent thereof. For the avoidance of doubt, Government Entity includes, but is not limited to, the U.S. Commodity Futures Trading Commission (“CFTC”), the U.S. Department of Justice, the U.S. Department of the Treasury, the Financial Crimes

Enforcement Network (“FinCEN”), the U.S. Internal Revenue Service, and the New York Department of Financial Services (“DFS”).

15. “IEX Group, Inc.” or “Investors’ Exchange LLC” means IEX Group, Inc. or Investors’ Exchange LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

16. “Investigation” means the investigation(s) of individuals and entities that resulted in or contributed to the filing of the Complaint, including but not limited to the SEC investigation captioned *In the Matter of Coinbase, Inc.* (HO-14315).

17. “Named Coinbase Services” means Coinbase Prime and Coinbase’s Staking Services.

18. “Named Digital Assets” means SOL, ADA, MATIC, FIL, SAND, AXS, CHZ, FLOW, ICP, NEAR, VGX, and DASH.

19. “Oral Argument” means the parties’ January 17, 2024 oral argument before the Honorable Katherine Polk Failla on Coinbase’s Motion for Judgment on the Pleadings.

20. “Person” means any natural person or individual, or any firm, partnership (general or limited), limited liability company, proprietorship, corporation, unincorporated association, trust, joint venture, or any other legal or governmental entity, organization, or body of any type whatsoever, as well as all agents, officers, directors, boards, committees, subcommittees, employees, consultants, representatives, or instrumentalities thereof.

21. “Plaintiff,” “SEC,” “Commission,” “you,” or “your” means the U.S. Securities and Exchange Commission, including any Divisions, Commissioners, Commission Staff, employees, subsidiaries, or individuals or entities acting on its behalf.

22. “Prometheum, Inc.” means Prometheum, Inc., Prometheum Ember ATS Inc., or Prometheum Capital LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

23. “Securitize, Inc.,” “Securitize LLC,” or “Securitize Markets, LLC” means Securitize, Inc., Securitize LLC, or Securitize Markets, LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

24. “Staking as a Service” means services offered to individuals to facilitate the staking of their digital assets to a blockchain with a proof-of-stake consensus mechanism.

25. “Staking Services” means the services offered to individual Coinbase users through the “Coinbase Earn” program.

26. “Valkyrie Investments Inc.,” “Valkyrie Digital Assets LLC,” or “Valkyrie Funds LLC” means Valkyrie Investments Inc., Valkyrie Digital Assets LLC, or Valkyrie Funds LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

27. The terms “concerning,” “regarding,” “with regard to,” “relating to,” and “referring to” shall be read and applied as interchangeable and shall be construed in the broadest sense permitted, including by Local Civil Rule 26.3, to mean discussing, supporting, describing, concerning, regarding, with regard to, relating to, referring to, pertaining to, containing, analyzing, evaluating, studying, recording, memorializing, reporting on, commenting on, reviewed in connection or in conjunction with, evidencing, setting forth, contradicting, refuting, considering, recommending, or constituting, in whole or in part.

28. The language of the Requests shall be read liberally, so as to be inclusive rather than exclusive, and in particular: (i) the use of the singular shall be deemed to include the plural and vice versa, and the use of one gender shall include the other; (ii) the terms “and” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of a Request all documents that might otherwise be construed as outside its scope; (iii) the present tense includes the past and future tenses, and vice versa; (iv) the terms “any” or “all” shall mean “any and all,” “each and every,” and “anyone and everyone”; and (v) “include,” “includes,” and “including” shall mean “including but not limited to.”

INSTRUCTIONS

The following instructions shall apply to the Requests contained herein. The Requests call for the production of all responsive documents that are in your possession, custody, or control, wherever located, regardless of whether they are possessed directly by you or any of your agents, representatives, employees, accountants, attorneys, or other persons acting or purporting to act on your behalf.

1. Unless otherwise specified, the time period for these Requests is January 1, 2017 through June 6, 2023.

2. A Request for a document shall be deemed to include a request for any non-identical copies or drafts of the document, as well as all transmittal sheets, cover letters, exhibits, enclosures or attachments to the document, in addition to the document itself. Any document not produced in electronic format is to be produced in its original file folder, with all labels or similar markings intact and included, and with the name of the Person from whose file it was produced.

3. If it is not possible to produce any document called for by a Request, or if any part of a Request is objected to, the reasons for the failure to produce the documents or the objection should be stated specifically as to all grounds.

4. If any portion of any document or communication is responsive to any Request, the entire document must be produced.

5. You must respond to each Request separately and fully, unless it is objected to, in which event the reasons for the objection should be specifically and separately stated. If you object to part of a Request, you must produce all documents and communications responsive to the part of the Request to which you did not object.

6. If you claim any form of privilege or protection or other reason, whether based on statute or otherwise, as a ground for not producing requested documents, you shall furnish a privilege log identifying each document or communication for which the privilege or protection is claimed in compliance with Federal Rule of Civil Procedure 26(b)(5), and/or such other parameters as may be agreed between the parties.

7. Requests are not intended to limit or modify other Requests and should not be interpreted as limiting or modifying other Requests.

8. If you contend that any Request is overly broad and/or unduly burdensome, identify all aspects of the Request that are overly broad or unduly burdensome and produce the documents and communications that are not subject to this contention.

9. If there are no documents or communications responsive to any particular Request or subpart thereof, you shall state so in writing.

10. If any document or communication responsive to any Request has been destroyed or lost, you shall notify Defendants of that fact and shall thereafter meet and confer with Defendants regarding the information to be provided with respect to such documents and communications.

11. Any responsive documents or communications shall be produced in accordance with any confidentiality or protective order and any order concerning forms and format for document productions entered by the Court in this Action.

12. These Requests are continuing and require further and supplemental production by you whenever you locate, acquire, or create additional responsive documents or communications between the time of the initial production hereunder and the time of the trial in this Action.

13. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, you are instructed to promptly amend your responses to the Requests if you obtain information on the basis of which: (i) you know that the response was incorrect when made; or (ii) you know that the response, though correct when made, is no longer true, and failure to amend the response would be, in substance, a knowing concealment.

14. Defendants serve these Requests without prejudice to their right to serve additional requests for the production of documents.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1.

Your complete investigative file in connection with the Investigation, including but not limited to the following:

- a. All subpoenas, voluntary document requests, and other requests to provide documents, testimony, or an interview, including Documents concerning the terms of any testimony or interview (including proffer agreements) of any Person or entity from whom you gathered information in connection with the Investigation;
- b. All Documents received in response to any such requests, or otherwise obtained by you from third parties or third-party sources;
- c. All transcripts, transcript exhibits, recorded testimony, verbatim notes, declarations, affidavits, witness interview notes, and memos and witness statements;
- d. All Documents concerning any internal or external Communications concerning the Investigation. As examples, but without limitation, this category includes all correspondence (including email), cover letters, subpoenas, witness statements, declarations, affidavits, memoranda, summaries, or notes, and any drafts and versions of the foregoing, sent to, or received from, any witness, potential witness, entities, or their counsel. For the avoidance of doubt, this Request includes the formal order memorandum, the action memorandum, and emails and other communications between the staff of the Enforcement Division and SEC Commissioners or other SEC Divisions and their respective staff;
- e. All Documents memorializing, evidencing, or concerning any Communications

you had with any Government Entity and/or any other third party relating to the Investigation, including but not limited to any written submissions or presentations made by third parties;

- f. All Documents or Communications concerning a cooperation agreement between you and any Person or entity from whom you gathered information in connection with the Investigation; and
- g. Your Contact List and Document Index for the Investigation, as contemplated in Section 3.2.9.4 of the SEC Enforcement Manual.

REQUEST NO. 2.

All Documents and Communications concerning the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, or the subject matter of the Investigation or the Action, including all Communications with any Person or entity not party to this Action concerning the foregoing and any formal, informal, or voluntary requests by you for documents or information from any Person concerning the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, all Documents or Communications you received in response to such formal, informal, or voluntary requests, and all analyses (including but not limited to any regression and correlation, or event study analysis) whether done by you or on your behalf relating to the Coinbase Platform, any of the Named Digital Assets or Named Coinbase Services, the market performance of any of the Named Digital Assets relative to other Digital Assets or to public statements by Coinbase and/or the alleged issuers or promoters of such Named Digital Assets, and the size and value of sales of any of the Named Digital Assets over time.

REQUEST NO. 3.

Documents and/or Communications sufficient to establish when the SEC first learned of the Coinbase Platform, the Named Digital Assets, and the Named Coinbase Services, and when

the SEC first learned that each of the Named Digital Assets had been listed or was planned to be listed on the Coinbase Platform, without limitation as to the applicable time period.

REQUEST NO. 4.

All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities Exchange Act of 1934) to the Coinbase Platform, the Named Digital Assets, or the Named Coinbase Services.

REQUEST NO. 5.

All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning any investigation by a Government Entity concerning Coinbase, the Coinbase Platform, any of the Named Digital Assets, or any of the Named Coinbase Services.

REQUEST NO. 6.

All Communications with, and Documents concerning Communications with, any Government Entity, including the CFTC, or with the Financial Industry Regulatory Authority (FINRA), relating to the allegations in the Complaint, the Investigation, Staking as a Service, Digital Assets, or Digital Asset Platforms, including but not limited to:

- a. Any factual Documents prepared for or by the Commission, any Commissioner, and/or any Commission Staff or otherwise in the Commission Staff's custody or control, relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity, including the scope of regulatory and/or enforcement authorities as between the SEC and another Government Entity or potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity; and

- b. Any external Communications by the Commission, any Commissioner, and/or any Commission Staff, whether formal or informal, relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity, including the scope of regulatory and/or enforcement authorities as between the SEC and another Government Entity or potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity.

REQUEST NO. 7.

All Communications with, and Documents concerning Communications with, journalists or other employees or affiliates of news or media organizations concerning Coinbase, this Action, the Investigation, the Coinbase Platform, Digital Asset Platforms, any of the Named Digital Assets, or any of the Named Coinbase Services.

REQUEST NO. 8.

All Communications with, and Documents concerning Communications with, any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any of the Named Digital Assets or their associated blockchain networks, including any Documents or information provided to you by any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any of the Named Digital Assets, their affiliated blockchain networks, or their counsel.

REQUEST NO. 9.

All Documents and Communications concerning any discussions, instructions, advice, inquiries, or other Communications between the SEC and any Person concerning that Person's actual, planned, or potential business or other relationship with Coinbase.

REQUEST NO. 10.

Without limitation as to time period, all Communications with, and Documents

concerning Communications with: Prometheus, Inc., Martin Kaplan, Aaron Kaplan, or Benjamin Kaplan; Securitize, Inc.; Securitize LLC; or Securitize Markets, LLC.

REQUEST NO. 11.

All Communications with, and Documents concerning Communications with, IEX Group, Inc. or Investors' Exchange LLC concerning Coinbase, Digital Assets, or Digital Asset Platforms.

REQUEST NO. 12.

Without limitation as to time period, all Communications with, and Documents concerning Communications with, any Person concerning: (i) any actual, planned, or potential registration by that Person as an exchange, broker, dealer, clearing agency, alternative trading system, or custodian that would or could facilitate the offer, sale, or custody of Digital Assets or any product or service relating to Digital Assets, including but not limited to the requirements and process for or viability of such registration; or (ii) the registration with the SEC of any exchange-traded product that holds or references Digital Assets. For the purposes of this Request, "Person" includes but is not limited to BlackRock, Inc., Valkyrie Investments Inc., Valkyrie Digital Assets LLC, and Valkyrie Funds LLC.

REQUEST NO. 13.

All Documents and Communications concerning (i) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled "Digital Asset Transactions: When Howey Met Gary (Plastic)" ("Hinman Speech"), (ii) FinHub's April 2019 "Framework for 'Investment Contract' Analysis of Digital Assets," and (iii) *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Exchange Act Release No. 81207 (July 25, 2017), including but not limited to all Communications with any blockchain network or representative thereof and all Documents and Communications, including internal Communications, analyses, and other materials, that were prepared, reviewed, or relied upon by

any current or former SEC Commissioner, Division Director, or Staff member in reaching the conclusions and observations reflected in these statements, including drafts of the statements and analyses prepared or commented upon by SEC Staff.

REQUEST NO. 14.

All Documents and Communications concerning any public statements by the Commission or any SEC Division, Commissioner, or Staff member concerning the Named Digital Assets or Digital Asset Platforms, including but not limited to any internal or external Communications concerning such public statements and any analyses or other materials that were prepared or relied upon in reaching the conclusions and observations reflected in such public statements, including all Documents and Communications reflecting the Persons involved in such Communications or analyses.

REQUEST NO. 15.

All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are “investment contract[s]” within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.

REQUEST NO. 16.

All Documents and Communications concerning (i) the role of a Digital Asset’s ecosystem in the application of the federal securities laws to that asset, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities; or (ii) the ecosystems of the Named Digital Assets, including but not limited to the components of such ecosystems, the identities of the alleged developers, issuers, and

promoters affiliated with such ecosystems, and any decentralized applications or business platforms related to such ecosystems.

REQUEST NO. 17.

All Documents and Communications relating to your assertion during Oral Argument that when someone “purchases tokens like [the Named Digital Assets], like these 13 examples . . . they are investing into the network behind it”—that is, “the ecosystem.” *See* Jan. 17, 2024 Hr’g Tr. at 21:20-22:5; *see also id.* at 57:17-21.

REQUEST NO. 18.

All Documents and Communications relating to (i) Bitcoin’s ecosystem; or (ii) your assertion during Oral Argument that “there’s no ecosystem behind” Bitcoin. *See* Jan. 17, 2024 Hr’g Tr. at 30:7-15.

REQUEST NO. 19.

All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.

REQUEST NO. 20.

All Documents and Communications relating to all risks of loss that you contend are relevant to whether Coinbase’s Staking Services involves the offer and sale of investment contracts.

REQUEST NO. 21.

All Documents and Communications relating to all managerial efforts that you contend Coinbase undertakes in providing the Staking Services.

REQUEST NO. 22.

All Documents and Communications concerning potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity with respect to Digital Assets or Digital Asset Platforms.

REQUEST NO. 23.

All Documents and Communications concerning any meeting or call involving one or more Commissioner concerning Coinbase, the Coinbase Platform, or any of the Named Digital Assets or Named Coinbase Services, including a list of the attendees of any such meeting or call.

REQUEST NO. 24.

All Documents and Communications from the SEC to Coinbase concerning (i) Coinbase listing any Digital Assets or the sale of any of the Named Coinbase Services; or (ii) Coinbase's operations.

REQUEST NO. 25.

All Documents and Communications concerning any policy, guidance, clearance, or other permission or restriction given to current or former SEC Commissioners or employees concerning the purchase, use, ownership, or trading of Digital Assets or use of Digital Asset Platforms, including the purchase, use, ownership, or trading of any of the Named Digital Assets or Named Coinbase Services by such Person or their family members, including but not limited to general SEC policies and Communications with any Person.

REQUEST NO. 26.

To the extent such Documents and Communications concern any Communications, analyses, or other materials regarding Coinbase, any of the Named Digital Assets, or any of the Named Coinbase Services, your investigative files in connection with any investigations by the Commission or Commission Staff relating to the following litigation matters and all Documents and Communications produced to or by the Commission in discovery in the following litigation matters:

- a. *SEC v. Kik Interactive Inc.*, Case No. 19-cv-5244 (S.D.N.Y.);
- b. *SEC v. Telegram Grp. Inc. and TON Issuer Inc.*, Case No. 19-cv-9439 (S.D.N.Y.);
- c. *SEC v. Ripple Labs, Inc. et al.*, Case No. 20-cv-10832 (S.D.N.Y.);
- d. *SEC v. LBRY, Inc.*, Case No. 21-cv-260 (D.N.H.);
- e. *SEC v. Wahi et al.*, Case No. 2:22-cv-1009 (W.D. Wash.);
- f. *SEC v. Binance Holdings Ltd. et al.*, Case No. 23-cv-1599 (D.D.C.);
- g. *SEC v. Bittrex, Inc. et al.*, Case No. 23-cv-580 (W.D. Wash.);
- h. *SEC v. Genesis Global Capital, LLC and Gemini Tr. Co., LLC*, Case No. 23-cv-287 (S.D.N.Y.);
- i. *SEC v. Terraform Labs PTE Ltd. and Kwon*, Case No. 23-cv-1346 (S.D.N.Y.);
- j. *SEC v. Payward, Inc. and Payward Ventures, Inc.*, Case No. 23-cv-6003 (N.D. Cal.); and
- k. *SEC v. Payward Ventures, Inc. (D/B/A Kraken) and Payward Trading, Ltd. (D/B/A Kraken)*, Case No. 23-cv-588 (N.D. Cal.).

REQUEST NO. 27.

All Documents and Communications concerning Coinbase’s direct public offering or registration statement on Form S-1 (including any drafts of such registration statement), including but not limited to Documents and Communications concerning the application or potential application of the federal securities laws to Coinbase’s business or operations.

REQUEST NO. 28.

All Documents and Communications concerning SEC Chair Gary Gensler’s public remarks about Digital Assets, Digital Asset Platforms, and Staking as a Service, without limitation as to the applicable time period, including but not limited to:

- a. Chair Gensler’s May 6, 2021 testimony before the United States House Committee on Financial Services;
- b. Chair Gensler’s May 7, 2021 appearance on CNBC;
- c. Chair Gensler’s May 26, 2021 testimony before the United States House Subcommittee on Financial Services and General Government;
- d. Chair Gensler’s August 3, 2021 remarks before the Aspen Security Forum;
- e. Chair Gensler’s September 21, 2021 interview with the *Washington Post*;
- f. Chair Gensler’s October 5, 2021 testimony before the United States House Committee on Financial Services;
- g. Chair Gensler’s August 19, 2022 opinion piece published by the *Wall Street Journal*, titled “The SEC Treats Crypto Like the Rest of the Capital Markets”;
- h. Chair Gensler’s December 7, 2022 interview with Yahoo! Finance;
- i. Chair Gensler’s interview with Ankush Khardori, as reported in *Intelligencer’s* February 23, 2023 article, “Can Gary Gensler Survive Crypto Winter? D.C.’s Top Financial Cop on Bankman-Fried Blowback”;
- j. Chair Gensler’s interview with CNBC’s *Squawk Box*, as reported in CNBC’s February 10, 2023 article, “SEC’s Gary Gensler on Kraken Staking Settlement: Other Crypto Platforms Should take Note of This”;
- k. Chair Gensler’s March 29, 2023 testimony before the United States House Appropriations Subcommittee on Financial Services and General Government;

- l. Chair Gensler's statements regarding Digital Assets during "Office Hours with Gary Gensler" including but not limited to the episodes from August 16, 2021, July 28, 2022, August 4, 2022, October 3, 2022, February 9, 2023, and April 27, 2023;
- m. Chair Gensler's April 18, 2023 testimony before the United States House Committee on Financial Services;
- n. Chair Gensler's interview with CNBC's *Squawk Box*, as reported in CNBC's June 6, 2023 article, "SEC Chair Gensler doubts the need for more digital currency";
- o. Chair Gensler's interview with the *Wall Street Journal*, as reported in the June 8, 2023 article, "SEC's Gary Gensler Had Crypto in His Sights for Years. Now He's Suing Binance and Coinbase.";
- p. Chair Gensler's June 8, 2023 remarks before the Piper Sandler Global Exchange & Fintech Conference;
- q. Chair Gensler's interview with the *Wall Street Journal*, as broadcast in the June 14, 2023 podcast episode, "SEC Chair Gary Gensler on His Crypto Crackdown";
- r. Chair Gensler's September 12, 2023 testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs;
- s. Chair Gensler's September 27, 2023 testimony before the United States House Committee on Financial Services; and
- t. Chair Gensler's statements concerning Digital Assets or Digital Asset Platforms made prior to his tenure as SEC Chair.

REQUEST NO. 29.

Without limitation as to time period, all Documents and Communications concerning the Petition for Rulemaking submitted by Coinbase on July 21, 2022, any comment letters submitted by Coinbase concerning its Petition for Rulemaking, or the Commission's Order denying Coinbase's Petition for Rulemaking issued on December 15, 2023, including any Communications with any third parties (including any Government Entity) concerning Coinbase's Petition for Rulemaking or the Commission's Order.

REQUEST NO. 30.

Without limitation as to time period, all Documents and Communications concerning the comment letters sent to Coinbase Global, Inc. by the Commission dated September 22, 2023 and

April 17, 2024 regarding Coinbase Global, Inc.'s Form 10-K for the year ended December 31, 2023, Form 10-K for the year ended December 31, 2022, Form 10-Q for the period ended June 30, 2023, Form 8-K filed January 10, 2023, and Form 8-K filed May 4, 2023 (File No. 001-40289), and any subsequent correspondence relating thereto.

REQUEST NO. 31.

All Documents and Communications that you intend to use or otherwise rely upon for any purpose in this Action, including: (i) all Documents and Communications identified, quoted, or referenced in the Complaint, indicating the paragraph(s) of the Complaint to which each Document and Communication relates; and (ii) all Documents and Communications that were created, reviewed, considered, or relied upon by you in preparing the Complaint, including, without limitation, any computations or analyses prepared by you underlying any assertions in the Complaint.

REQUEST NO. 32.

All Documents and Communications relating to any Person that you have retained or intend to retain as an expert witness to testify or provide an affidavit or report in this Action, including: (i) a curriculum vitae for the expert; (ii) any Documents or Communications relied on, referred to, or consulted by the expert in formulating any opinions the expert intends to offer in any affidavit, report, or testimony in this Action; (iii) any Documents or Communications created by the expert related to this Action; (iv) all engagement letters or agreements concerning the expert's retention or employment in connection with this Action; (v) all articles, books, book chapters, speeches, and other presentations created by the expert during the past ten years that relate in any way to the opinions or conclusions reached by the expert in connection with the Action; (vi) all testimony given by and reports submitted by the expert as an expert witness during the past five years; and

(vii) all Documents and Communications provided, prepared, received, reviewed, or made available to the expert or a representative of the expert.

REQUEST NO. 33.

All Documents and Communications produced by any third parties in connection with this Action (through subpoena, agreement, or otherwise).

REQUEST NO. 34.

(a) All Documents referenced in Plaintiff's initial disclosures, and (b) all Documents and Communications relating to any Person listed as an individual or an entity likely to have discoverable information in Plaintiff's initial disclosures and that also relate to any issue in this Action.

Dated: April 23, 2024
New York, New York

WACHTELL, LIPTON, ROSEN & KATZ

/s/ William Savitt

William Savitt
Kevin S. Schwartz
Sarah K. Eddy
Adam M. Gogolak
David P.T. Webb
Emily R. Barreca
51 West 52nd Street
New York, New York 10019
(212) 403-1000
WDSavitt@wlrk.com
KSSchwartz@wlrk.com
SEddy@wlrk.com
AMGogolak@wlrk.com
DPTWebb@wlrk.com
ERBarreca@wlrk.com

Steven R. Peikin
Kathleen S. McArthur
James M. McDonald
Julia A. Malkina
Olivia G. Chalos
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
(212) 558-4000

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, William Savitt, hereby certify that on April 23, 2024, I caused the foregoing to be served via electronic mail upon counsel of record in the above-captioned action.

/s/ William Savitt

William Savitt

Exhibit C

WACHTELL, LIPTON, ROSEN & KATZ

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150

TELEPHONE: (212) 403-1000

FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)
LEONARD M. ROSEN (1965-2014)

OF COUNSEL

ANDREW R. BROWNSTEIN
MICHAEL H. BYOWITZ
KENNETH B. FORREST
BEN M. GERMANA
SELWYN B. GOLDBERG
PETER C. HEIN
JB KELLY
JOSEPH D. LARSON
LAWRENCE S. MAKOW
PHILIP MINDLIN
THEODORE N. MIRVIS
DAVID S. NEILL

ERIC S. ROBINSON
ERIC M. ROSOF
MICHAEL J. SEGAL
WON S. SHIN
DAVID M. SILK
ELLIOTT V. STEIN
LEO E. STRINE, JR.*
PAUL VIZCARRONDO, JR.
JEFFREY M. WINTNER
AMY R. WOLF
MARC WOLINSKY

* ADMITTED IN DELAWARE

COUNSEL

DAVID M. ADLERSTEIN
SUMITA AHUJA
FRANCO CASTELLI
ANDREW J.H. CHEUNG
PAMELA EHRENKRANZ
ALINE R. FLODR
KATHRYN GETTLES-ATWA
ADAM M. GOGOLAK
ANGELA K. HERRING

MICHAEL W. HOLT
MARK A. KOENIG
CARMEN X.W. LU
J. AUSTIN LYONS
ALICIA C. MCCARTHY
JUSTIN R. ORR
NEIL M. SNYDER
JEFFREY A. WATIKER

DIRECT DIAL: (212) 403-1329

DIRECT FAX: (212) 403-2329

E-MAIL: WDSAVITT@WLRK.COM

MARTIN LIPTON
HERBERT M. WACHTELL
EDWARD D. HERLIHY
DANIEL A. NEFF
STEVEN A. ROSENBLUM
JOHN F. SAVARESE
SCOTT K. CHARLES
JODI J. SCHWARTZ
ADAM O. EMMERICH
RALPH M. LEVENE
RICHARD G. MASON
ROBIN PANOVA
DAVID A. KATZ
ILENE KNABLE GOTTS
TREVOR S. NORWITZ
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEVEN A. COHEN
DEBORAH L. PAUL
DAVID C. KARP
RICHARD K. KIM
JOSHUA R. CAMMAKER

MARK GORDON
JEANNEMARIE O'BRIEN
WAYNE M. CARLIN
STEPHEN R. DiPRIMA
NICHOLAS G. DEMMO
IGOR KIRMAN
JONATHAN M. MOSES
T. EIKO STANGE
WILLIAM SAVITT
GREGORY E. OSTLING
DAVID B. ANDERS
ADAM J. SHAPIRO
NELSON O. FITTS
JOSHUA M. HOLMES
DAVID E. SHAPIRO
DAMIAN G. DIDDEN
IAN BOCZKO
MATTHEW M. GUEST
DAVID E. KAHAN
DAVID K. LAM
BENJAMIN M. ROTH
JOSHUA A. FELTMAN

ELAINE P. GOLIN
EMIL A. KLEINHAUS
KARESSA L. CAIN
RONALD C. CHEN
BRADLEY R. WILSON
GRAHAM W. MELI
GREGORY E. PESSIN
CARRIE M. REILLY
MARK F. VEBLEN
SARAH K. EDDY
VICTOR GOLDFELD
RANDALL W. JACKSON
BRANDON C. PRICE
KEVIN S. SCHWARTZ
MICHAEL S. BENN
ALISON Z. PREISS
TIJANA J. DVORNIC
JENNA E. LEVINE
RYAN A. McLEOD
ANITHA REDDY
JOHN L. ROBINSON
JOHN R. SOBOLEWSKI

STEVEN WINTER
EMILY D. JOHNSON
JACOB A. KLING
RAAJ S. NARAYAN
VIKTOR SAPEZHNIKOV
MICHAEL J. SCHOBEL
ELINA TETELBAUM
ERICA E. AHO
LAUREN M. KOFKE
ZACHARY S. PODOLSKY
RACHEL B. REISBERG
MARK A. STAGLIANO
CYNTHIA FERNANDEZ
LUMERMANN
CHRISTINA C. MA
NOAH B. YAVITZ
BENJAMIN S. ARFA
NATHANIEL D. CULLERTON
ERIC M. FEINSTEIN
ADAM L. GOODMAN
STEVEN R. GREEN
MENG LU

June 4, 2024

By Personal Service

Office of the General Counsel
Massachusetts Institute of Technology
77 Massachusetts Avenue, 7-206
Cambridge, MA 02139-4307

Re: *Securities and Exchange Commission v. Coinbase, Inc. et al.*
Case No. 23 Civ. 4738 (KPF) (S.D.N.Y.)

To Whom it May Concern:


Please find enclosed a subpoena calling for the production of certain documents and electronically stored information in connection with the above-referenced proceeding.

If you have any questions or wish to discuss this matter, please contact me or my colleagues Kevin Schwartz (KSchwartz@wlrk.com) and David Webb (DPTWebb@wlrk.com).

WACHTELL, LIPTON, ROSEN & KATZ

Office of the General Counsel
Massachusetts Institute of Technology
June 4, 2024
Page 2

Sincerely,

A handwritten signature in blue ink, appearing to read "William Savitt", with a horizontal line extending to the right and a small flourish at the end.

William Savitt

Enclosures:

U.S. District Court Subpoena to Produce Documents
Schedule A

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Securities and Exchange Commission)

Plaintiff)

v.)

Coinbase, Inc. and Coinbase Global, Inc.)

Defendant)

Civil Action No. 23-Civ-4738 (KPF)

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Office of the General Counsel, Massachusetts Institute of Technology, 77 Massachusetts Avenue, 7-206
Cambridge, MA 02139

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A, attached.

Place: At a location mutually agreed upon by the parties or at Dewsnap & Assoc., 92 State St., 8th Floor, Boston, MA 02109	Date and Time: June 25, 2024 5:00 p.m. EST
--	--

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: June 4, 2024

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Coinbase, Inc.
and Coinbase Global, Inc. _____, who issues or requests this subpoena, are:

William Savitt, Wachtell Lipton Rosen & Katz, 51 W. 52nd St., New York, NY 10019, WDSavitt@wlrk.com,
(212) 403-1000

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 23-Civ-4738 (KPF)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

This subpoena requires the production of Documents described herein. The Requests are to be responded to in accordance with the following Definitions and Instructions.

DEFINITIONS

1. “Action” means the above-captioned civil action.
2. “Coinbase” means Coinbase, Inc., Coinbase Global, Inc., and any of their affiliates, subsidiaries, divisions, predecessors and successors, and any of their respective officers, directors, employees, agents, or attorneys.
3. “Coinbase Platform” means Coinbase’s digital asset spot exchange.
4. “Coinbase Prime” means the service described in the Coinbase Prime Product Guide. *See Coinbase Prime Product Guide*, Coinbase (2022), <https://tinyurl.com/mu89cran>.
5. “Coinbase Staking Services” means the services offered to individual Coinbase users through the “Coinbase Earn” program.
6. “Communication” or “communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether orally or in writing, or by any other means or medium, between or among two or more Persons or entities including but not limited to spoken words, inquiries, discussions, conversations, conferences, interviews, negotiations, agreements, reports, meetings, correspondence, letters, electronically transmitted messages (*e.g.*, email, text messages, instant messaging), postings on Internet bulletin boards, or other forms of written, verbal or electronic intercourse, however transmitted, ESI (as defined below), and documents, as defined herein.
7. “Complaint” means the Complaint filed in the Action on June 6, 2023.
8. “Defendants” means Coinbase, Inc. and Coinbase Global, Inc.

9. “Digital Asset” means any digital asset, including any cryptocurrency, virtual currency, or other blockchain-based coin or token, and the blockchain with which an asset is affiliated, if any.

10. “Digital Asset Platform” means any exchange or other platform on which Digital Assets are offered and sold.

11. “Document” or “documents” shall have the broadest meaning permitted under the Federal Rules of Civil Procedure and shall include, without limitation, the original and all non-identical copies of any handwritten, printed, typed, recorded, or other graphic material, or ESI (as defined below), of any kind and nature, including all drafts and transcriptions thereof, however produced or reproduced, and including but not limited to accounting materials, accounts, agreements, analyses, appointment books, books of account, calendars, catalogs, checks, communications (as defined herein), computer data, computer disks, contracts, correspondence, date books, diaries, diskettes, drawings, email messages, faxes, guidelines, instructions, inter-office communications, invoices, letters, logs, manuals, memoranda, minutes, notes, opinions, payments, plans, purchase confirmations, receipts, records, regulations, reports, sound recordings, spreadsheets, statements, studies, surveys, tickets, timesheets, trade records, vouchers, word processing materials (however stored or maintained), and all other means by which information is stored for retrieval in fixed form.

12. “ESI” means information that is stored in an electronic format, regardless of the media or whether it is in the original format in which it was created, and that is retrievable in perceivable form and includes but is not limited to metadata, system data, deleted data, and fragmented data.

13. “Government Entity” means any federal, state, or foreign agency or authority, or any current or former officer, employee, or agent thereof. For the avoidance of doubt, Government Entity includes, but is not limited to, the U.S. Securities and Exchange Commission (“SEC”), U.S. Commodity Futures Trading Commission (“CFTC”), the U.S. Department of Justice, the U.S. Department of the Treasury, the Financial Crimes Enforcement Network (“FinCEN”), the U.S. Internal Revenue Service, and the New York Department of Financial Services (“DFS”).

14. “Named Digital Assets” means SOL, ADA, MATIC, FIL, SAND, AXS, CHZ, FLOW, ICP, NEAR, VGX, and DASH.

15. “Named Coinbase Services” means Coinbase Prime and Coinbase’s Staking Services.

16. “Person” means any natural person or individual, or any firm, partnership (general or limited), limited liability company, proprietorship, corporation, unincorporated association, trust, joint venture, or any other legal or Governmental Entity, organization, or body of any type whatsoever, as well as all agents, officers, directors, boards, committees, subcommittees, employees, consultants, representatives, or instrumentalities thereof.

17. “Staking” means the proof of stake consensus mechanism used by certain blockchain protocols to validate, verify, and secure transactions on a blockchain.

18. “Staking as a Service” means services offered to individuals to facilitate the staking of their digital assets to a blockchain with a proof-of-stake consensus mechanism.

19. “You” or “Your” refers to the Massachusetts Institute of Technology, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on Your behalf.

20. The terms “concerning,” “regarding,” “with regard to,” “relating to,” and “referring to” shall be read and applied as interchangeable and shall be construed in the broadest sense permitted to mean discussing, supporting, describing, concerning, regarding, with regard to, relating to, referring to, pertaining to, containing, analyzing, evaluating, studying, recording, memorializing, reporting on, commenting on, reviewed in connection or in conjunction with, evidencing, setting forth, contradicting, refuting, considering, recommending, or constituting, in whole or in part.

21. The language of the Requests shall be read liberally, so as to be inclusive rather than exclusive, and in particular: (i) the use of the singular shall be deemed to include the plural and vice versa, and the use of one gender shall include the other; (ii) the terms “and” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of a Request all documents that might otherwise be construed as outside its scope; (iii) the present tense includes the past and future tenses, and vice versa; (iv) the terms “any” or “all” shall mean “any and all,” “each and every,” and “anyone and everyone”; and (v) “include,” “includes,” and “including” shall mean “including but not limited to.”

INSTRUCTIONS

Defendants request that You produce, wherever located, all documents described below that are in Your possession, custody, or control, wherever located, regardless of whether they are possessed directly by You or any of Your agents, representatives, employees, accountants, attorneys, or other persons acting or purporting to act on Your behalf.

1. Unless otherwise specified, the time period for these Requests is January 1, 2018 through April 17, 2021.

2. Responsive Documents shall be produced in image format, with searchable text load files that are compatible with standard litigation support software, including Relativity, Concordance, and IPRO. The images shall be black and white, single-page, 300 DPI, Group IV .tiff images. Images for documents created with office or personal productivity software (e.g., wordprocessing documents, spreadsheets, presentations, databases, charts, and graphs) shall include tracked changes, comments, hidden rows, columns or worksheets, speakers notes, and any other similar content that can be made visible within the application. The load file shall include for each Document, the metadata fields listed below. For any Documents that have been globally de-duplicated, the custodian field shall reflect the all custodians who had a copy of the Document during processing and before de-duplication. For each individual Document based on an electronic file, the load file shall, unless such Document contains redactions, contain the path to the corresponding text that is extracted from the electronic file. Documents produced in redacted form shall contain text generated by optical character recognition (OCR) of the redacted image(s). In addition to the foregoing, for all email, the load file shall also include, to the extent practicable, header information including: (1) the individual(s) to whom the communication was directed (“To”); (2) the author of the e-mail communication (“From”); (3) all individuals who were copied (“cc”) and/or blind copied (“bcc”) on the communication; (4) the subject line of the communication (“Re” or “Subject”); and (5) the date and time sent. For each Document, the load file shall also contain: (1) the beginning Bates number (referring to the first page of the Document); (2) the ending Bates number (referring to the last page of the Document); and in the case of Documents with attachments, (3) the beginning attachment range number(s), and (4) the ending attachment range number(s), where the “attachment range” records the relationship of Documents to their attachments. The attachment range should be recorded from the first page of the first Document

in the attachment range, to the last page of the last Document in the attachment range. In addition, all spreadsheet, presentation, audio, and audiovisual Documents that do not require redaction shall be produced in native format with a single-page placeholder (Group IV .tiff image) indicating that the file is being produced in native format. The right to demand production of any other responsive Documents in their native format (including all metadata) is expressly reserved.

3. Unless otherwise specified, these Requests are limited to Documents and Communications (i) sent to, from, cc, or bcc Gary Gensler's MIT email address, (ii) maintained on any laptop or desktop computer used by Gary Gensler at MIT, or (iii) maintained on any MIT network or shared drive or folder maintained, used, or accessed in the normal course by Gary Gensler or any individual acting on his behalf.

4. A Request for a document shall be deemed to include a request for all transmittal sheets, cover letters, exhibits, enclosures, attachments, or other matters affixed to the document, in addition to the document itself.

5. Each Request seeks production of each document in its entirety without abbreviations, redaction, or expurgation.

6. Responsive documents and communications are to be designated clearly so as to reflect their owner and/or custodian. Any document not produced in electronic format is to be produced in its original file folder, with all labels or similar markings intact and included, and with the name of the Person from whose file it was produced.

7. Electronically stored information, or "ESI," shall be produced in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable. Specifically, where the documents responsive to a Request are stored electronically, any responsive e-mails, Word documents, and other unstructured data are to be produced in TIFF plus metadata plus extracted

text format. Any responsive Excel charts, PowerPoints, databases, and other structured data are to be produced in native format. The right to demand production of any other responsive documents in their native format (including all available metadata) is expressly reserved.

8. Each Request herein requires that You produce files from all reasonably accessible sources of information in or on which You or Your document custodians store or maintain potentially responsive documents.

9. Draft or non-identical copies are to be considered separate documents for purposes of these Requests. Any and all drafts and copies of each document that are responsive to any Request for documents shall be produced, as shall all copies of such documents that are not identical in any respect, including, but not limited to, copies containing handwritten notes, markings, stamps, or interlineations, whether or not the original of such document is within Your possession, custody, or control. The author(s) of all handwritten notes should be identified.

10. You shall construe each Request independently and not with reference to any other Request for purposes of limitation.

11. The use of the term “the” shall not be construed as limiting the scope of any Request.

12. If it is not possible to produce any document called for by a Request, or if any part of a Request is objected to, the reasons for the failure to produce the documents or the objection should be stated specifically as to all grounds. If there are no documents or communications responsive to any particular Request or subpart thereof, You shall state so in writing

13. If You claim any form of privilege or protection or other reason as a ground for withholding from production requested documents, You shall furnish a privilege log in compliance

with Federal Rule of Civil Procedure 45(e)(2) and any other parameters agreed between You and Defendants.

14. If You contend that any Request is overly broad and/or unduly burdensome, identify all aspects of the Request that are overly broad or unduly burdensome and produce the documents and communications that are not subject to this contention.

15. These Requests are continuing in nature, and any document obtained or located after the production pursuant hereto, which would have been produced had it been available or its existence known at the time, is to be supplied promptly by way of a supplemental production.

16. Defendants serve these Requests without prejudice to their right to serve additional Requests for the production of documents.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1.

All Documents and Communications concerning Professor Gary Gensler's courses "FinTech: Shaping the Financial World" and "Blockchain and Money," including but not limited to syllabi, speaking notes, presentations, distributed materials (whether in person, through the Canvas system, or otherwise), assignments, and any classroom recordings.

REQUEST NO. 2.

All Documents and Communications concerning Professor Gary Gensler's work with Your Digital Currency Initiative, including speeches, publications, and reports concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.

REQUEST NO. 3.

All Communications and Documents concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities

Exchange Act of 1934) to Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service, including whether and to what extent any particular Digital Asset (*e.g.*, FIL, DASH, ETH, XRP, DAO, SOL), or transaction in any particular Digital Asset, is a “security” under the Securities Act of 1933 and/or the Securities Exchange Act of 1934.

REQUEST NO. 4.

All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are “investment contract[s]” within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.

REQUEST NO. 5.

All Documents and Communications concerning (i) the role of a Digital Asset’s ecosystem in the application of the federal securities laws, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities or (ii) the ecosystems of the Named Digital Assets, including, but not limited to, the components of such ecosystems, the identities of the alleged developers, issuers, and promoters affiliated with such ecosystems.

REQUEST NO. 6.

All Documents and Communications relating to Bitcoin’s ecosystem or lack thereof.

REQUEST NO. 7.

All Communications and Documents concerning the regulatory authority of the Financial Industry Regulatory Authority (FINRA) or any Government Entity, including the SEC or CFTC, with respect to Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.

REQUEST NO. 8.

All Documents and Communications concerning (i) *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Exchange Act Release No. 81207 (July 25, 2017), (ii) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled “Digital Asset Transactions: When Howey Met Gary (Plastic)” (“Hinman Speech”), or (iii) FinHub’s April 2019 “Framework for ‘Investment Contract’ Analysis of Digital Assets.”

REQUEST NO. 9.

All Documents and Communications concerning any public statements by any Government Entity, including but not limited to the SEC and any SEC Division, Commissioner, or Staff member, concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.

REQUEST NO. 10.

All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.

REQUEST NO. 11.

All Documents and Communications concerning any investigation or litigation by a Government Entity concerning Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 12.

All Documents and Communications concerning Coinbase, the Coinbase Platform, or the Named Coinbase Services.

REQUEST NO. 13.

All Documents and Communications concerning any discussions, instructions, advice, inquiries or other Communications between Professor Gensler and any Person concerning that

Person's actual, planned, or potential business or other relationship with a developer of or Person otherwise affiliated with Digital Assets, Digital Asset Platforms, or Staking as a Service provider.

Dated: June 4, 2024
New York, New York

WACHTELL, LIPTON, ROSEN & KATZ

/s/ William Savitt

William Savitt
Kevin S. Schwartz
Sarah K. Eddy
Adam M. Gogolak
David P.T. Webb
Emily R. Barreca
51 West 52nd Street
New York, New York 10019
(212) 403-1000
WDSavitt@wlrk.com
KSSchwartz@wlrk.com
SKEddy@wlrk.com
AMGogolak@wlrk.com
DPTWebb@wlrk.com
ERBarreca@wlrk.com

Steven R. Peikin
Kathleen S. McArthur
James M. McDonald
Julia A. Malkina
Olivia G. Chalos
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
(212) 558-4000

Attorneys for Coinbase, Inc. and Coinbase Global, Inc.

Exhibit D

Exhibit D

Page 1

Defendants' Subpoena to Mr. Gary Gensler, June 14 2024 (the "Subpoena") (Ex. A)	Defendants' Request for Production of Documents to SEC, April 23, 2024 ("RFPs") (Ex. B)	Defendants' Subpoena to MIT, June 4, 2023 ("MIT Subpoena") (Ex. C)
<p><u>Request No. 1</u></p> <p>All Documents and Communications concerning Coinbase, the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, or the subject matter of the Investigation or the Action, including all Communications with any Person or entity not party to this Action concerning the foregoing.</p>	<p><u>Request No. 2</u></p> <p>All Documents and Communications concerning the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, or the subject matter of the Investigation or the Action, including all Communications with any Person or entity not party to this Action concerning the foregoing and any formal, informal, or voluntary requests by you for documents or information from any Person concerning the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, all Documents or Communications you received in response to such formal, informal, or voluntary requests, and all analyses (including but not limited to any regression and correlation, or event study analysis) whether done by you or on your behalf relating to the Coinbase Platform, any of the Named Digital Assets or Named Coinbase Services, the market performance of any of the Named Digital Assets relative to other Digital Assets or to public statements by Coinbase and/or the alleged issuers or promoters of such Named Digital Assets, and the size and value of sales of any of the Named Digital Assets over time.</p>	<p><u>Request No. 12</u></p> <p>All Documents and Communications concerning Coinbase, the Coinbase Platform, or the Named Coinbase Services.</p>

Exhibit D

Page 2

Defendants' Subpoena to Mr. Gary Gensler, June 14 2024 (the "Subpoena") (Ex. A)	Defendants' Request for Production of Documents to SEC, April 23, 2024 ("RFPs") (Ex. B)	Defendants' Subpoena to MIT, June 4, 2023 ("MIT Subpoena") (Ex. C)
<p><u>Request No. 2</u></p> <p>Documents and/or Communications sufficient to establish when you first learned of the Coinbase Platform, the Named Digital Assets, and the Named Coinbase Services, and when you first learned that each of the Named Digital Assets had been listed or was planned to be listed on the Coinbase Platform, without limitation as to the applicable time period.</p>	<p><u>Request No. 3</u></p> <p>Documents and/or Communications sufficient to establish when the SEC first learned of the Coinbase Platform, the Named Digital Assets, and the Named Coinbase Services, and when the SEC first learned that each of the Named Digital Assets had been listed or was planned to be listed on the Coinbase Platform, without limitation as to the applicable time period.</p>	
<p><u>Request No. 3</u></p> <p>All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities Exchange Act of 1934) to Digital Assets, Digital Asset Platforms, or Staking as a Service.</p>	<p><u>Request No. 4</u></p> <p>All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities Exchange Act of 1934) to the Coinbase Platform, the Named Digital Assets, or the Named Coinbase Services.</p>	<p><u>Request No. 3</u></p> <p>All Communications and Documents concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities Exchange Act of 1934) to Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service, including whether and to what extent any particular Digital Asset (<i>e.g.</i>, FIL, DASH, ETH, XRP, DAO, SOL), or transaction in any particular Digital Asset, is a "security" under the Securities Act of 1933 and/or the Securities Exchange Act of 1934.</p>

Exhibit D

Page 3

Defendants' Subpoena to Mr. Gary Gensler, June 14 2024 (the "Subpoena") (Ex. A)	Defendants' Request for Production of Documents to SEC, April 23, 2024 ("RFPs") (Ex. B)	Defendants' Subpoena to MIT, June 4, 2023 ("MIT Subpoena") (Ex. C)
<p><u>Request No. 4</u></p> <p>All Communications and Documents concerning any investigation by a Government Entity concerning Digital Assets, Digital Asset Platforms, or Staking as a Service.</p>	<p><u>Request No. 5</u></p> <p>All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning any investigation by a Government Entity concerning Coinbase, the Coinbase Platform, any of the Named Digital Assets, or any of the Named Coinbase Services.</p>	<p><u>Request No. 11</u></p> <p>All Documents and Communications concerning any investigation or litigation by a Government Entity concerning Digital Assets, Digital Asset Platforms, or Staking as a Service.</p>

Exhibit D

Page 4

Defendants' Subpoena to Mr. Gary Gensler, June 14 2024 (the "Subpoena") (Ex. A)	Defendants' Request for Production of Documents to SEC, April 23, 2024 ("RFPs") (Ex. B)	Defendants' Subpoena to MIT, June 4, 2023 ("MIT Subpoena") (Ex. C)
<p><u>Request No. 5</u></p> <p>All Communications with, and Documents concerning Communications with, the Financial Industry Regulatory Authority (FINRA) or any Government Entity, including the SEC, or the CFTC, relating to the allegations in the Complaint, the Investigation, Digital Assets, Digital Asset Platforms, or Staking as a Service.</p>	<p><u>Request No. 6</u></p> <p>All Communications with, and Documents concerning Communications with, any Government Entity, including the CFTC, or with the Financial Industry Regulatory Authority (FINRA), relating to the allegations in the Complaint, the Investigation, Staking as a Service, Digital Assets, or Digital Asset Platforms, including but not limited to:</p> <p>a. Any factual Documents prepared for or by the Commission, any Commissioner, and/or any Commission Staff or otherwise in the Commission Staff's custody or control, relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity, including the scope of regulatory and/or enforcement authorities as between the SEC and another Government Entity or potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity; and</p>	<p><u>Request No. 7</u></p> <p>All Communication and Documents concerning the regulatory authority of the Financial Industry Regulatory Authority (FINRA) or any Government Entity, including the SEC or CFTC, with respect to Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.</p>

Exhibit D

Page 5

<p>Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)</p>	<p>Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)</p>	<p>Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)</p>
	<p>b. Any external Communications by the Commission, any Commissioner, and/or any Commission Staff, whether formal or informal, relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity, including the scope of regulatory and/or enforcement authorities as between the SEC and another Government Entity or potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity.</p>	
<p><u>Request No. 6</u></p> <p>All Communications with, and Documents concerning Communications with, journalists or other employees or affiliates of news or media organizations concerning Coinbase, this Action, the Investigation, Digital Assets, Digital Asset Platforms, or Staking as a Service.</p>	<p><u>Request No. 7</u></p> <p>All Communications with, and Documents concerning Communications with, journalists or other employees or affiliates of news or media organizations concerning Coinbase, this Action, the Investigation, the Coinbase Platform, Digital Asset Platforms, any of the Named Digital Assets, or any of the Named Coinbase Services.</p>	

Exhibit D

Page 6

Defendants' Subpoena to Mr. Gary Gensler, June 14 2024 (the "Subpoena") (Ex. A)	Defendants' Request for Production of Documents to SEC, April 23, 2024 ("RFPs") (Ex. B)	Defendants' Subpoena to MIT, June 4, 2023 ("MIT Subpoena") (Ex. C)
<p><u>Request No. 7</u></p> <p>All Communications with, and Documents concerning Communications with, any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any Digital Assets or their associated blockchain networks, including any Documents or information provided to you by any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any Digital Assets, their affiliated blockchain networks, or their counsel.</p>	<p><u>Request No. 8</u></p> <p>All Communications with, and Documents concerning Communications with, any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any of the Named Digital Assets or their associated blockchain networks, including any Documents or information provided to you by any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any of the Named Digital Assets, their affiliated blockchain networks, or their counsel.</p>	
<p><u>Request No. 8</u></p> <p>All Documents and Communications concerning any discussions, instructions, advice, inquiries or other Communications between you and any Person concerning that Person's actual, planned, or potential business or other relationship with Coinbase or with a developer of or Person otherwise affiliated with Digital Assets, Digital Asset Platforms, or Staking as a Service.</p>	<p><u>Request No. 9</u></p> <p>All Documents and Communications concerning any discussions, instructions, advice, inquiries, or other Communications between the SEC and any Person concerning that Person's actual, planned, or potential business or other relationship with Coinbase.</p>	<p><u>Request No. 13</u></p> <p>All Documents and Communications concerning any discussions, instructions, advice, inquiries or other Communications between Professor Gensler and any Person concerning that Person's actual, planned, or potential business or other relationship with a developer of or Person otherwise affiliated with Digital Assets, Digital Asset Platforms, or Staking as a Service provider.</p>
<p><u>Request No. 9</u></p> <p>All Communications with, and Documents concerning Communications with, Prometheus, Inc., Martin Kaplan, Aaron Kaplan, or Benjamin Kaplan; Securitize, Inc.; Securitize LLC; or Securitize Markets, LLC.</p>	<p><u>Request No. 10</u></p> <p>Without limitation as to time period, all Communications with, and Documents concerning Communications with: Prometheus, Inc., Martin Kaplan, Aaron Kaplan, or Benjamin Kaplan; Securitize, Inc.; Securitize LLC; or Securitize Markets, LLC.</p>	

Exhibit D

Page 7

Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)	Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)	Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)
<p><u>Request No. 10</u></p> <p>All Communications with, and Documents concerning Communications with, IEX Group, Inc. or Investors’ Exchange LLC concerning Coinbase, Digital Assets, or Digital Asset Platforms.</p>	<p><u>Request No. 11</u></p> <p>All Communications with, and Documents concerning Communications with, IEX Group, Inc. or Investors’ Exchange LLC concerning Coinbase, Digital Assets, or Digital Asset Platforms.</p>	
<p><u>Request No. 11</u></p> <p>All Communications with, and Documents concerning Communications with, any Person concerning (i) any actual, planned, or potential registration by that Person as an exchange, broker, dealer, clearing agency, alternative trading system, or custodian that would or could facilitate the offer, sale, or custody of Digital Assets or any product or service relating to Digital Assets, including but not limited to the means or viability of such registration; or (ii) the registration with the SEC of any exchange-traded product that holds or references Digital Assets.</p>	<p><u>Request No. 12</u></p> <p>Without limitation as to time period, all Communications with, and Documents concerning Communications with, any Person concerning: (i) any actual, planned, or potential registration by that Person as an exchange, broker, dealer, clearing agency, alternative trading system, or custodian that would or could facilitate the offer, sale, or custody of Digital Assets or any product or service relating to Digital Assets, including but not limited to the requirements and process for or viability of such registration; or (ii) the registration with the SEC of any exchange- traded product that holds or references Digital Assets. For the purposes of this Request, “Person” includes but is not limited to BlackRock, Inc., Valkyrie Investments Inc., Valkyrie Digital Assets LLC, and Valkyrie Funds LLC.</p>	

Exhibit D

Page 8

Defendants' Subpoena to Mr. Gary Gensler, June 14 2024 (the "Subpoena") (Ex. A)	Defendants' Request for Production of Documents to SEC, April 23, 2024 ("RFPs") (Ex. B)	Defendants' Subpoena to MIT, June 4, 2023 ("MIT Subpoena") (Ex. C)
<p><u>Request No. 12</u></p> <p>All Documents and Communications concerning (i) <i>Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO</i>, Exchange Act Release No. 81207 (July 25, 2017), (ii) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled "Digital Asset Transactions: When Howey Met Gary (Plastic)" ("Hinman Speech"), or (iii) FinHub's April 2019 "Framework for 'Investment Contract' Analysis of Digital Assets."</p>	<p><u>Request No. 13</u></p> <p>All Documents and Communications concerning (i) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled "Digital Asset Transactions: When Howey Met Gary (Plastic)" ("Hinman Speech"), (ii) FinHub's April 2019 "Framework for 'Investment Contract' Analysis of Digital Assets," and (iii) <i>Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO</i>, Exchange Act Release No. 81207 (July 25, 2017), including but not limited to all Communications with any blockchain network or representative thereof and all Documents and Communications, including internal Communications, analyses, and other materials, that were prepared, reviewed, or relied upon by any current or former SEC Commissioner, Division Director, or Staff member in reaching the conclusions and observations reflected in these statements, including drafts of the statements and analyses prepared or commented upon by SEC Staff.</p>	<p><u>Request No. 8</u></p> <p>All Documents and Communications concerning (i) <i>Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO</i>, Exchange Act Release No. 81207 (July 25, 2017), (ii) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled "Digital Asset Transactions: When Howey Met Gary (Plastic)" ("Hinman Speech"), or (iii) FinHub's April 2019 "Framework for 'Investment Contract' Analysis of Digital Assets."</p>

Exhibit D

Page 9

<p>Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)</p>	<p>Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)</p>	<p>Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)</p>
<p><u>Request No. 13</u></p> <p>All Documents and Communications concerning any public statements by FINRA or any Government Agency, including but not limited to the SEC and CFTC, concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.</p>	<p><u>Request No. 14</u></p> <p>All Documents and Communications concerning any public statements by the Commission or any SEC Division, Commissioner, or Staff member concerning the Named Digital Assets or Digital Asset Platforms, including but not limited to any internal or external Communications concerning such public statements and any analyses or other materials that were prepared or relied upon in reaching the conclusions and observations reflected in such public statements, including all Documents and Communications reflecting the Persons involved in such Communications or analyses.</p> <p><i>See also</i> Request No. 6 above.</p>	<p><u>Request No. 9</u></p> <p>All Documents and Communications concerning any public statements by any Government Entity, including but not limited to the SEC and any SEC Division, Commissioner, or Staff member, concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.</p>
<p><u>Request No. 14</u></p> <p>All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are “investment contract[s]” within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of <i>SEC v. W.J. Howey Co.</i>, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.</p>	<p><u>Request No. 15</u></p> <p>All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are “investment contract[s]” within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of <i>SEC v. W.J. Howey Co.</i>, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.</p>	<p><u>Request No. 4</u></p> <p>All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are “investment contract[s]” within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of <i>SEC v. W.J. Howey Co.</i>, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.</p>

Exhibit D

Page 10

<p>Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)</p>	<p>Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)</p>	<p>Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)</p>
<p><u>Request No. 15</u></p> <p>All Documents and Communications concerning (i) the role of a Digital Asset’s ecosystem in the application of the federal securities laws, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities or (ii) the ecosystems of the Named Digital Assets, including, but not limited to, the components of such ecosystems, the identities of the alleged developers, issuers, and promoters affiliated with such ecosystems.</p>	<p><u>Request No. 16</u></p> <p>All Documents and Communications concerning (i) the role of a Digital Asset’s ecosystem in the application of the federal securities laws to that asset, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities; or (ii) the ecosystems of the Named Digital Assets, including but not limited to the components of such ecosystems, the identities of the alleged developers, issuers, and promoters affiliated with such ecosystems, and any decentralized applications or business platforms related to such ecosystems.</p>	<p><u>Request No. 5</u></p> <p>All Documents and Communications concerning (i) the role of a Digital Asset’s ecosystem in the application of the federal securities laws, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities or (ii) the ecosystems of the Named Digital Assets, including, but not limited to, the components of such ecosystems, the identities of the alleged developers, issuers, and promoters affiliated with such ecosystems.</p>
<p><u>Request No. 16</u></p> <p>All Documents and Communications relating to the SEC’s assertion during Oral Argument that when someone “purchases tokens like [the Named Digital Assets], like these 13 examples . . . they are investing into the network behind it”—that is, “the ecosystem.” <i>See</i> Jan. 17, 2024 Hr’g Tr. at 21:20-22:5; <i>see also id.</i> at 57:17-21.</p>	<p><u>Request No. 17</u></p> <p>All Documents and Communications relating to your assertion during Oral Argument that when someone “purchases tokens like [the Named Digital Assets], like these 13 examples . . . they are investing into the network behind it”—that is, “the ecosystem.” <i>See</i> Jan. 17, 2024 Hr’g Tr. at 21:20-22:5; <i>see also id.</i> at 57:17-21.</p>	
<p><u>Request No. 17</u></p> <p>All Documents and Communications relating to Bitcoin’s ecosystem or lack thereof.</p>	<p><u>Request No. 18</u></p> <p>All Documents and Communications relating to (i) Bitcoin’s ecosystem; or (ii) your assertion during Oral Argument that “there’s no ecosystem behind” Bitcoin. <i>See</i> Jan. 17, 2024 Hr’g Tr. at 30:7-15.</p>	<p><u>Request No. 6</u></p> <p>All Documents and Communications relating to Bitcoin’s ecosystem or lack thereof.</p>

Exhibit D

Page 11

<p>Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)</p>	<p>Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)</p>	<p>Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)</p>
<p><u>Request No. 18</u></p> <p>All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.</p>	<p><u>Request No. 19</u></p> <p>All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.</p>	<p><u>Request No. 10</u></p> <p>All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.</p>
<p><u>Request No. 19</u></p> <p>All Documents and Communications concerning potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity with respect to Digital Assets or Digital Asset Platforms.</p>	<p><u>Request No. 22</u></p> <p>All Documents and Communications concerning potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity with respect to Digital Assets or Digital Asset Platforms.</p>	
<p><u>Request No. 20</u></p> <p>All Documents and Communications concerning any meeting or call involving one or more Commissioner concerning Coinbase, the Coinbase Platform or any of the Named Digital Assets or Named Coinbase Services, including a list of the attendees of any such meeting or call.</p>	<p><u>Request No. 23</u></p> <p>All Documents and Communications concerning any meeting or call involving one or more Commissioner concerning Coinbase, the Coinbase Platform, or any of the Named Digital Assets or Named Coinbase Services, including a list of the attendees of any such meeting or call.</p>	

Exhibit D

Page 12

Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)	Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)	Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)
<p><u>Request No. 21</u></p> <p>All Documents and Communications concerning the following litigation matters:</p> <ul style="list-style-type: none"> a. <i>SEC v. Kik Interactive Inc.</i>, Case No. 19-cv-5244 (S.D.N.Y.); b. <i>SEC v. Telegram Grp. Inc. and TON Issuer Inc.</i>, Case No. 19-cv-9439 (S.D.N.Y.); c. <i>SEC v. Ripple Labs, Inc. et al.</i>, Case No. 20-cv-10832 (S.D.N.Y.); d. <i>SEC v. LBRY, Inc.</i>, Case No. 21-cv-260 (D.N.H.); e. <i>SEC v. Wabi et al.</i>, Case No. 2:22-cv-1009 (W.D. Wash.); f. <i>SEC v. Binance Holdings Ltd. et al.</i>, Case No. 23-cv-1599 (D.D.C.); g. <i>SEC v. Bittrex, Inc. et al.</i>, Case No. 23-cv-580 (W.D. Wash.); h. <i>SEC v. Genesis Global Capital, LLC and Gemini Tr. Co., LLC</i>, Case No. 23-cv-287 (S.D.N.Y.); i. <i>SEC v. Terraform Labs PTE Ltd. and Kwon</i>, Case No. 23-cv-1346 (S.D.N.Y.); j. <i>SEC v. Payward, Inc. and Payward Ventures, Inc.</i>, Case No. 23-cv-6003 (N.D. Cal.); and k. <i>SEC v. Payward Ventures, Inc. (D/B/A Kraken) and Payward Trading, Ltd. (D/B/A Kraken)</i>, Case No. 23-cv-588 (N.D. Cal.). 	<p><u>Request No. 26</u></p> <p>To the extent such Documents and Communications concern any Communications, analyses, or other materials regarding Coinbase, any of the Named Digital Assets, or any of the Named Coinbase Services, your investigative files in connection with any investigations by the Commission or Commission Staff relating to the following litigation matters and all Documents and Communications produced to or by the Commission in discovery in the following litigation matters:</p> <ul style="list-style-type: none"> a. <i>SEC v. Kik Interactive Inc.</i>, Case No. 19-cv-5244 (S.D.N.Y.); b. <i>SEC v. Telegram Grp. Inc. and TON Issuer Inc.</i>, Case No. 19-cv-9439 (S.D.N.Y.); c. <i>SEC v. Ripple Labs, Inc. et al.</i>, Case No. 20-cv-10832 (S.D.N.Y.); d. <i>SEC v. LBRY, Inc.</i>, Case No. 21-cv-260 (D.N.H.); e. <i>SEC v. Wabi et al.</i>, Case No. 2:22-cv-1009 (W.D. Wash.); f. <i>SEC v. Binance Holdings Ltd. et al.</i>, Case No. 23-cv-1599 (D.D.C.); g. <i>SEC v. Bittrex, Inc. et al.</i>, Case No. 23-cv-580 (W.D. Wash.); h. <i>SEC v. Genesis Global Capital, LLC and Gemini Tr. Co., LLC</i>, Case No. 23-cv-287 (S.D.N.Y.); 	

Exhibit D
 Page 13

Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)	Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)	Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)
	i. <i>SEC v. Terraform Labs PTE Ltd. and Kwon</i> , Case No. 23-cv-1346 (S.D.N.Y.); j. <i>SEC v. Payward, Inc. and Payward Ventures, Inc.</i> , Case No. 23-cv-6003 (N.D. Cal.); and k. <i>SEC v. Payward Ventures, Inc. (D/B/A Kraken) and Payward Trading, Ltd. (D/B/A Kraken)</i> , Case No. 23-cv-588 (N.D. Cal.).	
<p><u>Request No. 22</u></p> <p>All Documents and Communications concerning Coinbase’s direct public offering or registration statement on Form S-1 (including any drafts of such registration statement), including but not limited to Documents and Communications concerning the application or potential application of the federal securities laws to Coinbase’s business or operations.</p>	<p><u>Request No. 27</u></p> <p>All Documents and Communications concerning Coinbase’s direct public offering or registration statement on Form S-1 (including any drafts of such registration statement), including but not limited to Documents and Communications concerning the application or potential application of the federal securities laws to Coinbase’s business or operations.</p>	

Exhibit D

Page 14

<p>Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)</p>	<p>Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)</p>	<p>Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)</p>
<p><u>Request No. 23</u></p> <p>All Documents and Communications concerning your public remarks about Digital Assets, Digital Asset Platforms, and Staking as a Service, without limitation as to the applicable time period, including but not limited to:</p> <ul style="list-style-type: none"> a. Your May 6, 2021 testimony before the United States House Committee on Financial Services; b. Your May 7, 2021 appearance on CNBC; c. Your May 26, 2021 testimony before the United States House Subcommittee on Financial Services and General Government; d. Your August 3, 2021 remarks before the Aspen Security Forum; e. Your September 21, 2021 interview with the <i>Washington Post</i>; f. Your October 5, 2021 testimony before the United States House Committee on Financial Services; g. Your August 19, 2022 opinion piece published by the <i>Wall Street Journal</i>, titled “The SEC Treats Crypto Like the Rest of the Capital Markets”; h. Your December 7, 2022 interview with Yahoo! Finance; 	<p><u>Request No. 28</u></p> <p>All Documents and Communications concerning SEC Chair Gary Gensler’s public remarks about Digital Assets, Digital Asset Platforms, and Staking as a Service, without limitation as to the applicable time period, including but not limited to:</p> <ul style="list-style-type: none"> a. Chair Gensler’s May 6, 2021 testimony before the United States House Committee on Financial Services; b. Chair Gensler’s May 7, 2021 appearance on CNBC; c. Chair Gensler’s May 26, 2021 testimony before the United States House Subcommittee on Financial Services and General Government; d. Chair Gensler’s August 3, 2021 remarks before the Aspen Security Forum; e. Chair Gensler’s September 21, 2021 interview with the <i>Washington Post</i>; f. Chair Gensler’s October 5, 2021 testimony before the United States House Committee on Financial Services; g. Chair Gensler’s August 19, 2022 opinion piece published by the <i>Wall Street Journal</i>, titled “The SEC Treats Crypto Like the Rest of the Capital Markets”; h. Chair Gensler’s December 7, 2022 interview with Yahoo! Finance; 	

Exhibit D

Page 15

<p>Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)</p>	<p>Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)</p>	<p>Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)</p>
<p>i. Your interview with Ankush Khardori, as reported in <i>Intelligencer’s</i> February 23, 2023 article, “Can Gary Gensler Survive Crypto Winter? D.C.’s Top Financial Cop on Bankman-Fried Blowback”;</p> <p>j. Your interview with CNBC’s <i>Squawk Box</i>, as reported in CNBC’s February 10, 2023 article, “SEC’s Gary Gensler on Kraken Staking Settlement: Other Crypto Platforms Should take Note of This”;</p> <p>k. Your March 29, 2023 testimony before the United States House Appropriations Subcommittee on Financial Services and General Government;</p> <p>l. Your statements regarding Digital Assets during “Office Hours with Gary Gensler” including but not limited to the episodes from August 16, 2021, July 28, 2022, August 4, 2022, October 3, 2022, February 9, 2023, and April 27, 2023;</p> <p>m. Your April 18, 2023 testimony before the United States House Committee on Financial Services;</p> <p>n. Your interview with CNBC’s <i>Squawk Box</i>, as reported in CNBC’s June 6, 2023 article, “SEC Chair Gensler doubts the need for more digital currency”;</p>	<p>i. Chair Gensler’s interview with Ankush Khardori, as reported in <i>Intelligencer’s</i> February 23, 2023 article, “Can Gary Gensler Survive Crypto Winter? D.C.’s Top Financial Cop on Bankman-Fried Blowback”;</p> <p>j. Chair Gensler’s interview with CNBC’s <i>Squawk Box</i>, as reported in CNBC’s February 10, 2023 article, “SEC’s Gary Gensler on Kraken Staking Settlement: Other Crypto Platforms Should take Note of This”;</p> <p>k. Chair Gensler’s March 29, 2023 testimony before the United States House Appropriations Subcommittee on Financial Services and General Government;</p> <p>l. Chair Gensler’s statements regarding Digital Assets during “Office Hours with Gary Gensler” including but not limited to the episodes from August 16, 2021, July 28, 2022, August 4, 2022, October 3, 2022, February 9, 2023, and April 27, 2023;</p> <p>m. Chair Gensler’s April 18, 2023 testimony before the United States House Committee on Financial Services;</p> <p>n. Chair Gensler’s interview with CNBC’s <i>Squawk Box</i>, as reported in CNBC’s June 6, 2023 article, “SEC Chair Gensler doubts the need for more digital currency”;</p>	

<p>Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)</p>	<p>Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)</p>	<p>Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)</p>
<p>o. Your interview with the <i>Wall Street Journal</i>, as reported in the June 8, 2023 article, “SEC’s Gary Gensler Had Crypto in His Sights for Years. Now He’s Suing Binance and Coinbase.”;</p> <p>p. Your June 8, 2023 remarks before the Piper Sandler Global Exchange & Fintech Conference;</p> <p>q. Your interview with the <i>Wall Street Journal</i>, as broadcast in the June 14, 2023 podcast episode, “SEC Chair Gary Gensler on His Crypto Crackdown”;</p> <p>r. Your September 12, 2023 testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs;</p> <p>s. Your September 27, 2023 testimony before the United States House Committee on Financial Services; and</p> <p>t. Your statements concerning Digital Assets or Digital Asset Platforms made prior to your tenure as SEC Chair.</p>	<p>o. Chair Gensler’s interview with the <i>Wall Street Journal</i>, as reported in the June 8, 2023 article, “SEC’s Gary Gensler Had Crypto in His Sights for Years. Now He’s Suing Binance and Coinbase.”;</p> <p>p. Chair Gensler’s June 8, 2023 remarks before the Piper Sandler Global Exchange & Fintech Conference;</p> <p>q. Chair Gensler’s interview with the <i>Wall Street Journal</i>, as broadcast in the June 14, 2023 podcast episode, “SEC Chair Gary Gensler on His Crypto Crackdown”;</p> <p>r. Chair Gensler’s September 12, 2023 testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs;</p> <p>s. Chair Gensler’s September 27, 2023 testimony before the United States House Committee on Financial Services; and</p> <p>t. Chair Gensler’s statements concerning Digital Assets or Digital Asset Platforms made prior to his tenure as SEC Chair.</p>	

Exhibit D

Page 17

Defendants' Subpoena to Mr. Gary Gensler, June 14 2024 (the "Subpoena") (Ex. A)	Defendants' Request for Production of Documents to SEC, April 23, 2024 ("RFPs") (Ex. B)	Defendants' Subpoena to MIT, June 4, 2023 ("MIT Subpoena") (Ex. C)
<p><u>Request No. 24</u></p> <p>All Documents and Communications concerning the Petition for Rulemaking submitted by Coinbase on July 21, 2022, any comment letters submitted by Coinbase concerning its Petition for Rulemaking, or the Commission's Order denying Coinbase's Petition for Rulemaking issued on December 15, 2023, including any Communications with any third parties (including any Government Entity) concerning Coinbase's Petition for Rulemaking or the Commission's Order.</p>	<p><u>Request No. 29</u></p> <p>Without limitation as to time period, all Documents and Communications concerning the Petition for Rulemaking submitted by Coinbase on July 21, 2022, any comment letters submitted by Coinbase concerning its Petition for Rulemaking, or the Commission's Order denying Coinbase's Petition for Rulemaking issued on December 15, 2023, including any Communications with any third parties (including any Government Entity) concerning Coinbase's Petition for Rulemaking or the Commission's Order.</p>	
<p><u>Request No. 25</u></p> <p>All Documents and Communications concerning the comment letter sent to Coinbase Global, Inc. by the Commission dated September 22, 2023 regarding Coinbase Global, Inc.'s Form 10-K for the year ended December 31, 2022, Form 10-Q for the period ended June 30, 2023, Form 8-K filed January 10, 2023, and Form 8-K filed May 4, 2023 (File No. 001-40289) and any subsequent correspondence relating thereto.</p>	<p><u>Request No. 30</u></p> <p>Without limitation as to time period, all Documents and Communications concerning the comment letters sent to Coinbase Global, Inc. by the Commission dated September 22, 2023 and April 17, 2024 regarding Coinbase Global, Inc.'s Form 10-K for the year ended December 31, 2023, Form 10-K for the year ended December 31, 2022, Form 10-Q for the period ended June 30, 2023, Form 8-K filed January 10, 2023, and Form 8-K filed May 4, 2023 (File No. 001-40289), and any subsequent correspondence relating thereto.</p>	

Exhibit D

Page 18

Defendants’ Subpoena to Mr. Gary Gensler, June 14 2024 (the “Subpoena”) (Ex. A)	Defendants’ Request for Production of Documents to SEC, April 23, 2024 (“RFPs”) (Ex. B)	Defendants’ Subpoena to MIT, June 4, 2023 (“MIT Subpoena”) (Ex. C)
<p><u>Request No. 26</u></p> <p>All Documents and Communications concerning your purchase, use, ownership, or trading of Digital Assets or use of Digital Asset Platforms.</p>		
<p><u>Request No. 27</u></p> <p>All Documents and Communications concerning your courses “FinTech: Shaping the Financial World” and “Blockchain and Money,” including but not limited to syllabi, speaking notes, presentations, distributed materials, assignments, and any classroom recordings.</p>		<p><u>Request No. 1</u></p> <p>All Documents and Communications concerning Professor Gary Gensler’s courses “FinTech: Shaping the Financial World” and “Blockchain and Money,” including but not limited to syllabi, speaking notes, presentations, distributed materials (whether in person, through the Canvas system, or otherwise), assignments, and any classroom recordings.</p>
<p><u>Request No. 28</u></p> <p>All Documents and Communications concerning your work with the Massachusetts Institute of Technology’s Digital Currency Initiative, including any speeches, publications, or reports concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.</p>		<p><u>Request No. 2</u></p> <p>All Documents and Communications concerning Professor Gary Gensler’s work with Your Digital Currency Initiative, including speeches, publications, and reports concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.</p>

Exhibit E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *		*
SECURITIES AND EXCHANGE		*
COMMISSION,		*
	Plaintiff.	* No. 1:21-cv-00260-PB
		* February 23, 2022
		* 2:00 p.m.
v.		*
		*
LBRY, INC.,		*
	Defendant.	

* * * * *

TRANSCRIPT OF MOTION HEARING AND STATUS CONFERENCE
HELD VIA VIDEOCONFERENCE
BEFORE THE HONORABLE PAUL J. BARBADORO

APPEARANCES:

For the Plaintiff: Peter Moores, Esq.
Securities and Exchange Commission

For the Defendant: Keith Miller, Esq.
Perkins Coie LLP

Timothy John McLaughlin, Esq.
Shaheen & Gordon

Court Reporter: Brenda K. Hancock, RMR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1454

1 P R O C E E D I N G S

2 THE CLERK: This Court is in session and has for
3 consideration a motion hearing and status conference in civil
4 matter 21-cv-260-PB, U.S. Securities and Exchange Commission
5 versus LBRY, Inc.

6 THE COURT: I've been informed that some members of
7 the public have requested access to this hearing. We've
8 granted those requests. People who are not admitted as parties
9 or counsel need to keep their cameras off and their microphones
10 muted throughout the hearing; and of, of course, it is
11 forbidden to make any recording of this proceeding.

12 Okay. So, I have a Motion to Quash, I have a Motion
13 to Modify Scheduling Order, and I have a Motion for Protective
14 Order that's not ripe yet that I won't consider, unless the
15 parties jointly ask me to.

16 Let's start with the Motion to Quash. I'll hear the
17 SEC on that motion.

18 MR. MOORES: Thank you, your Honor. Peter Moores from
19 the Securities and Exchange Commission. We filed the Motion to
20 Quash the subpoena for the testimony of Director Bill Hinman.
21 We believe that the Morgan Doctrine is what controls here and
22 that Director Hinman is a high-ranking governmental official
23 afforded the protections of the Morgan Doctrine. As such, the
24 sort of burden to take Mr. or Director Hinman's deposition
25 switches over to the defendant here who is seeking the

1 deposition to establish that extraordinary circumstances are
2 present to warrant the circumstance of taking his deposition.
3 The test under the Morgan Doctrine for whether or not there are
4 exceptional circumstances has been phrased in a couple of
5 different ways, but essentially that the information sought is
6 not obtainable elsewhere and it is personally and uniquely
7 possessed by Director Hinman in this case; and, two, the second
8 prong, is that the information sought is essential, not merely
9 relevant to in this case the LBRY's case.

10 Many courts actually have a third prong, and, in fact,
11 the Ninth Circuit In Re: U.S. Department of Education, which
12 was cited on February 4th, 2022, has a third prong that there
13 has to be a showing of agency bad faith, and I don't believe
14 that that has been sort of argued here per se, but LBRY in its
15 papers has never suggested or offered that there is agency bad
16 faith and would fail under that third prong of the test. But
17 at least on the papers both parties, I believe, have argued
18 sort of the first and second prong that I identified, and we'll
19 go through that today, your Honor.

20 As I said, it is LBRY's burden to show these
21 extraordinary circumstances. LBRY has not shown that in its
22 papers. And, first, what LBRY has conceded is that Director
23 Hinman does not possess any knowledge of the case here. He
24 doesn't possess any knowledge about LBRY, doesn't possess any
25 knowledge about LBRY's offer and sales, nor LBC, which is LBRY

1 credits, token in question.

2 THE COURT: Let's back up, though, because I do think
3 they challenge your contention that he's a high-ranking
4 government official with a position -- formerly held a position
5 that would qualify for the privilege that you're invoking.
6 I've collected the cases that I can find, and certainly there
7 are cases where a court says this person is a high-ranking
8 official, this person is not a high-ranking official, but what
9 is the principal basis on which I should make the distinction
10 between someone who is sufficiently high ranking to be covered
11 by the privilege?

12 MR. MOORES: Your Honor, a lot of those cases that I
13 think we've all collected don't articulate a specific test. I
14 think that the case that -- one of the cases that LBRY has
15 cited says it has to be the sort of apex of the agency, but the
16 proof of the cases throughout have shown that it doesn't have
17 to be sort of the highest member of an executive agency, and so
18 I think it ultimately falls back as to the sort of first
19 principles of why the executive privilege or why that
20 protection is afforded, which is essentially that a member of
21 the sort of Executive Branch is not to be hauled into court to
22 testify or to be deposed based upon their decision-making
23 processes. Here we have Director Hinman who is, reports sort
24 of the second highest in terms of he's the head of the
25 division, is in charge of a lot of sort of internal decision

1 making at the Commission here and advising not only he's also
2 an attorney -- so advising as to policy as well as
3 attorney-client privilege up to the members of the Commission
4 itself. So, I believe that he qualifies in other cases,
5 including the Navellier case that we cited, where it upheld
6 that a division director was a high-ranking governmental
7 official.

8 THE COURT: Was that issue challenged by the plaintiff
9 in Navellier? I know that the judge applied the privilege and
10 concluded that the official was a high-ranking official, but I
11 didn't see in their evidence that that was a litigated point, a
12 disputed point. Can you help me out on that?

13 MR. MOORES: So, with respect to whether or not the
14 Morgan Doctrine applied, it was challenged, the Morgan Doctrine
15 specifically applied.

16 THE COURT: Did they make an argument to the judge
17 that the deponent was not a high-ranking government official
18 under Morgan?

19 MR. MOORES: My recollection, your Honor, is it at
20 least wasn't sort of foremost in the judge's ruling.

21 THE COURT: She didn't really explain. I agree she
22 applied it to someone at the same rank as we have here. I just
23 didn't see in her decision that she was evaluating competing
24 claims by the parties and coming down in a particular way on
25 it. So, I think it clearly applies to people like

1 cabinet-level secretaries, it clearly applies to people like
2 mayors of a city, and it has been widely applied to people who
3 are not at the very top of the agency that they're heading, and
4 I've got examples, and I can draw analogies, but I don't find
5 in any of the case law a detailed discussion of the way in
6 which a judge would go about determining whether someone is or
7 is not a high-ranking official.

8 The weakness of these kind of categorical approaches
9 to problems are that you don't get to weigh competing
10 considerations and a totality of relevant circumstances
11 sometimes that you would like to be able to do. For example,
12 here it appears that what LBRY wants to do is question the
13 former Director not about any facts about this particular case
14 that that person has knowledge of, because you've proffered
15 that he has no knowledge about this case, was not involved in
16 it, and has nothing to contribute based on personal knowledge
17 about it. Instead, it appears that LBRY is trying to depose
18 this person to gain access to his thought process about how the
19 general issue of how the Howey test applies to digital
20 currencies works, and that seems to be matters of which you
21 would ordinarily not get a deposition for reasons completely
22 unrelated to the Morgan Doctrine. It's the kind of thing that
23 either is simply not calculated to lead to any kind of relevant
24 information at all, or it's protected by the deliberative
25 process privilege. So, I think that's part of the struggle

1 here.

2 It is just not apparent to me what this person has to
3 say that could be at all helpful to me in resolving the case,
4 but I did want your thoughts on how I would go about
5 distinguishing between whether someone is a high-ranking
6 official or not. If you've got any other thoughts about it,
7 let me know.

8 MR. MOORES: Yeah, your Honor. I think that -- first
9 of all, I agree with a lot of what you just said about in terms
10 of the import of what Director Hinman's thoughts are and what
11 LBRY is seeking here, and I do think that there is a
12 relationship between the Morgan Doctrine and sort of
13 deliberative process privilege, which I think you were touching
14 a little bit upon, in terms of seeking the mental
15 decision-making processes of the deponent, and I think that
16 when you have someone who is cloaked with that decision-making
17 authority, which is, I believe, the sort of true import of why
18 LBRY is seeking Director Hinman, himself, they haven't noticed
19 somebody who is sort of lower on the staff or even a sort of,
20 you know, a low member of the staff. They wanted the Director
21 himself, who is cloaked with that authority of decision making
22 on behalf of the Division of Corporation Finance, and so I
23 think sort of the reasons that LBRY is seeking Director
24 Hinman's point of fact that he would be protected under the
25 Morgan Doctrine itself.

1 THE COURT: Although, the Morgan Doctrine appears to
2 be, rather than the deliberative process privilege, appears to
3 be focused primarily on the need to ensure that high-ranking
4 government officials aren't deluged with deposition requests,
5 because they supervise so many cases and deal with so many
6 issues that they should not be subjected to deposition as a
7 routine matter primarily because of the burden that it inflicts
8 on the person holding the position either as a current officer
9 or former official. So, that seems to be the primary
10 motivation for the doctrine. So, in one sense, if you were to
11 try to construct a test you would say, well, let's interpret
12 what a high-ranking official is in light of why we have the
13 rule, and we seem to have the rule because someone who is
14 sufficiently high up in a governmental structure can find their
15 lives completely consumed with testifying in depositions of
16 routine cases. I think your argument would be this person
17 oversees hundreds of matters that are potentially the subject
18 of litigation at any one time, and if you do not apply the
19 Morgan Doctrine to someone like this you will overburden the
20 holders of that office both while they currently hold the
21 office and after they complete their government service and
22 move on to other jobs. So, that would seem to be one way of
23 trying to distinguish when someone who is sufficiently high
24 ranking to qualify.

25 MR. MOORES: Your Honor, I agree. In terms of the

1 Division of Corporation Finance, it oversees the registration
2 of security offerings that, you know, equate to trillions of
3 dollars and hundreds, if not thousands, of various issuers.
4 So, to the extent that there was ever a decision on the
5 registration that would involve Director Hinman, just with
6 respect to digital assets this is the third case in which
7 Director Hinman has been at least noticed, if not more, and I'm
8 just basing this upon when there have been motions to quash in
9 the Kik case, which we cited in our briefs, and the Ripple
10 matter, which I'm sure you're going to hear at least about from
11 LBRY. So, this is the third time in which he's been hauled in
12 to testify as to his internal decision-making process with
13 respect to digital assets and --

14 THE COURT: One of the concerns, potential concerns,
15 about extending the doctrine too far down into an organization
16 is that you're unnecessarily insulating people from having to
17 provide information about things that might be very important
18 to a particular litigant. Say, for example, a person holding
19 the Director's position is a witness to allegations of sexual
20 harassment in the workplace. That would be a case in which the
21 availability of that person for deposition would be highly
22 important notwithstanding his or her high position in
23 government, but the way the privilege works, the Morgan
24 Doctrine works under those circumstances it would be relatively
25 easy for someone in LBRY's position to demonstrate that the

1 Director, although holding a high-ranking position, should not
2 be immune from having to cooperate because they have direct
3 personal knowledge and they are uniquely positioned to
4 contribute in an important way to the case, not simply because
5 they're high up in a chain, where the actual work is being done
6 by people many levels below. That's something that suggests to
7 me that we don't need to be, in determining what is high enough
8 for the Morgan Doctrine to apply, we don't need to be overly
9 concerned that will insulate people from being accountable for
10 their actions to the extent there's some reason to believe that
11 the person has engaged in conduct that might implicate them in
12 some kind of civil liability, or that they're a witness to
13 conduct. Then, even if the Morgan Doctrine applied, it would
14 fit within the exception.

15 MR. MOORES: Yes, your Honor. I believe the
16 hypothetical you provided does not really touch upon a lot of
17 the main primary concerns of the Morgan Doctrine. You know, if
18 it's an issue of sexual assault, that seems potentially a more
19 of a one-off situation that wouldn't overburden the
20 governmental official as well as something that's, you know,
21 within their knowledge as a potentially percipient witness and
22 does not go to their sort of decision-making in their official
23 duties.

24 THE COURT: And if there is an allegation, say, that
25 someone at the director level harbored a particular bias and

1 participated in decisions in a way that potentially provided
2 the target of the decision with a defense, say there was a
3 selective enforcement claim that survived, I've said the
4 selective enforcement defense doesn't survive here, one could
5 say that there's a general Morgan Doctrine applicability; but
6 where the subjective mental state of the Director bears
7 directly on a viable defense, that would be a case where you
8 would find an exception to the Morgan Doctrine.

9 MR. MOORES: Right, which I think is why you find, if
10 you read the Ninth Circuit's recent opinion and some of the
11 other court opinions that impose the bad-faith prong to the
12 sort of exceptional -- to whether or not the Morgan Doctrine
13 would apply or not, if there is a colorable argument of bad
14 faith, as you're suggesting, with the selective enforcement
15 claim, then that would fall outside of the Morgan Doctrine
16 potentially or at least it would be an exceptional --
17 extraordinary circumstance which would fall out of the
18 protection of the Morgan Doctrine.

19 THE COURT: All right. What else did you want to say
20 in support of your argument?

21 MR. MOORES: Thank you, your Honor. So, with respect
22 to the prong of whether or not the information is otherwise
23 available, this is not something that LBRY, who, again, has the
24 burden to establish is under the Morgan Doctrine, has really
25 put forth in their papers. If we look at some of the topics

1 that they believe that Dr. Hinman, sorry, Director Hinman would
2 be testifying about, the perception in the marketplace, so if
3 this is what the marketplace was thinking, then that clearly
4 would be available from another source other than Director
5 Hinman. And then the other sort of topics that they've
6 identified, which is the Commission's application of the Howey
7 test, or the Commission's approach in response to market
8 participants, or the status of the Commission's adoption, these
9 are not necessarily topics that are limited to Director Hinman,
10 and, again, if subject to discovery, then they could be
11 achieved in other ways than taking Director Hinman's testimony.
12 So, that would just, that prong alone LBRY fails in its effort
13 to take Director Hinman's testimony.

14 But more importantly I think, perhaps, is just whether
15 or not it is indeed relevant to this case, and as the standard
16 is, it's not just mere relevance. It actually has to be
17 essential to the defense's argument here, LBRY's argument, and
18 primarily they're offering or they're proffering it that
19 Director Hinman's testimony would be somehow relevant to their
20 fair notice defense for --

21 THE COURT: I think I've got your argument on that,
22 and my initial reaction is that argument is persuasive, that
23 fair notice defenses really turn on objective evaluations of
24 the available information and not the subjective understandings
25 of the people who are enforcing or promulgating the doctrine

1 that's being challenged. So, I understand you make that
2 argument. At least my preliminary assessment is that argument
3 is persuasive with me, so I don't need to hear you say more,
4 unless you feel you need to.

5 MR. MOORES: No, your Honor. The one thing I would
6 note sort of interestingly is LBRY is putting a lot of focus on
7 Director Hinman's speech and believes that it somehow supports
8 their position that the Howey test is too vague as applied to
9 at least LBRY's offer and sales. But Director Hinman
10 throughout his speech in 2018 upholds the Howey test. He's
11 simply applying the Howey test, and the references that he
12 makes to the Howey test are essentially just quoting the prongs
13 of it, where he might say if a promoter does not satisfy prong
14 two, then it's not an investment contract, or if it doesn't
15 satisfy prong three, then it's not an investment contract. So,
16 in any sort of way it doesn't sort of make logical sense that
17 the speech in and of itself would be evidence that the Howey
18 test is too vague, because Director Hinman himself is saying
19 that the Howey test is what controls and, you know, the
20 application of it is the facts and circumstances of the
21 situation.

22 So, the last point I would make, your Honor, is really
23 just the notion that, even if it was relevant, what they're
24 ultimately seeking, what LBRY is ultimately seeking is stuff
25 that is protected by the deliberative process privilege or the

1 attorney-client privilege. As I mentioned beforehand, Director
2 Hinman is an attorney, and in his role he would be providing
3 advice to the Commission or the Commissioners, and in terms of
4 developing policy, internal discussions about how that Howey
5 test would apply, the deliberative process privilege would also
6 apply. So, in terms of how --

7 THE COURT: I think you may be right on that, but if
8 that were all we were dealing with my inclination would be to
9 say you should have the deposition and you object and instruct
10 not to answer, and then the Court can evaluate on a
11 question-by-question basis claims of a deliberative process.

12 The basic problem for me is I haven't seen anything in
13 LBRY's requests that gives me any encouragement that he has
14 anything to say that would be relevant. I understand your
15 point is that the test here, to the extent the doctrine
16 applies, is much more than mere relevance, but I'm just not
17 seeing what he has to say that's useful at all in this
18 litigation, and so that would be a basis on which to
19 potentially quash a deposition subpoena. If it was just, well,
20 he's got things to say that are protected by the
21 attorney-client or deliberative process privilege, my view is,
22 well, let's see what he says in a deposition and you instruct
23 him not to answer on those questions where there's a potential
24 privilege, and then I evaluate those on a motion to compel.
25 Something like that's the way I would ordinarily do it.

1 MR. MOORES: I would agree, your Honor. I was just
2 suggesting that under this Morgan Doctrine specifically, and I
3 think you were talking a little bit perhaps outside the Morgan
4 Doctrine just on relevance, but within the construct of the
5 Morgan Doctrine, where LBRY has to establish extraordinary
6 circumstances, ultimately what they're seeking is not available
7 from Director Hinman due to the privileges, and that sort of
8 guts their argument that it is actually relevant or satisfies
9 the extraordinary circumstance.

10 THE COURT: Your point is to the extent they want to
11 get from him, Tell us what you guys were talking about inside
12 the agency when you were formulating your policies about what
13 would qualify as an investment contract under Howey, your view
14 is that's deliberative process and/or attorney-client, and he
15 would never get it anyway, so he can't satisfy the
16 extraordinary circumstances exception based on that. Okay. I
17 understand your argument.

18 MR. MOORES: Right. And then, lastly, I know that
19 LBRY has suggested that Director Hinman's testimony would be
20 relevant to its sort of defense in chief, which is just that
21 the offer and sales do not satisfy the Howey test itself, but
22 it doesn't seem that Director Hinman --

23 THE COURT: No offense to him, but that's my job here,
24 not his. What he says when he speaks as a private citizen,
25 what he says when he gives speeches, my reaction is I could

1 care less. I mean, that's not something that's entitled to
2 deference under any doctrine that I'm aware of, and in the end
3 of the day I'll make the decision whether the SEC has a viable
4 claim here or not. So, I don't think what he has to say about
5 how he thinks the doctrine works matters at all. Does it? I
6 mean, how does it -- I don't defer to government employees
7 giving speeches on their own dime talking about the way they
8 think the law works. I'm not giving any deference to that. Am
9 I right about that? Do you understand my concern?

10 MR. MOORES: I do, and I think you are right, your
11 Honor, that the deference is to the precedent and the
12 controlling case law, not to director --

13 THE COURT: And any regulations or actions that are
14 taken under doctrines like Chevron or similar doctrines in
15 which, when the agency speaks in ways that entitle it to
16 deference, then, of course, the Court would grant deference,
17 but the Court doesn't give deference to agency employees, even
18 high-ranking ones, when they try to say to people what they
19 think the law is. That doesn't get any deference, and so it
20 wouldn't affect my decision making one way or the other.

21 MR. MOORES: So, your Honor, subject to your questions
22 or rebuttal to what LBRY has to argue, I'll cede the floor.

23 THE COURT: Okay. Let me see what LBRY has to say.
24 Go ahead, Counsel.

25 MR. MILLER: Good afternoon, your Honor. My name is

1 Keith Miller. I represent LBRY, Inc. I'm a partner at Perkins
2 Coie.

3 Your Honor, I thought you made a good observation
4 regarding the rationale for the doctrine, and I'd like to
5 elaborate a little bit further on it. First, as I understand,
6 the rationale for the rule is twofold. One is to prevent a
7 chilling effect, if you will, on senior official government
8 officials so that they do not -- their discussions amongst
9 members of the agency are not chilled because of a threat of
10 being deposed. The second rationale, as you stated, is the
11 need to ensure that an official, because of his title, he's not
12 engaged in litigation depositions because of his title.

13 So, with that rationale I would argue, your Honor, we
14 need to look at what we're trying to get from Mr. Hinman.
15 First of all, we're trying to obtain as a private citizen -- as
16 he said, These are my personal statements -- what he believed
17 was relevant in making determination under Howey whether a
18 digital asset is a security. It's his speech that we're asking
19 to depose him about, not what did the other staff members talk
20 to you about about digital assets. That's not what we're here
21 to ask Mr. Hinman about. We're here -- he made a speech where
22 he drew conclusions as a personal individual. We believe it is
23 very dispositive on the issue of fair notice.

24 If the Director of -- I'm sorry. If the Director of
25 Corporate Finance has a theory about what the industry does

1 know and what the industry doesn't know, that's important
2 because it provides a standard. If the entire industry, and we
3 will be presenting evidence at trial on this, if the entire
4 industry doesn't know if a digital asset under these types of
5 circumstances is an investment contract under Howey, okay, that
6 is relevant to evidence at trial to prove that they didn't have
7 fair notice.

8 THE COURT: So, if he thought -- if a person in his
9 position gave a deposition in this case and took the position
10 that he subjectively thought that LBRY's offerings were
11 registrable securities offerings, that's a fact that I could
12 take into account in deciding whether your client is liable or
13 not? That seems really weird to me. We want to make decisions
14 about whether your client is liable based on the law, not based
15 on what random private citizens think about it.

16 MR. MILLER: It goes to fair notice, your Honor, what
17 in our papers we've shown. We have Mr. Hinman talking about
18 two digital assets, Bitcoin and Ether, and he concludes that
19 they are not securities, and he also concludes that at some
20 point in time, and his speech is clear on this, and it's also
21 cited by Chairman Clayton in his letter to Congress, that
22 securities that are initially securities can morph if the
23 efforts of others are no longer there. So, we think, and
24 there's never been any communication by the SEC about what are
25 those factors, like when is something a security in the

1 beginning and then morphs into a non-security? And so, we've
2 raised that as a defense here. In our answer we said, even if
3 it was at some point in time and it is no longer a security
4 because the efforts of others are ministerial, and so, if
5 Hinman were to testify, I went through this process in writing
6 my article and in connection with that I met with industry
7 leaders, I met with lots of different attorneys, and that was
8 the impetus of writing this speech, I think that goes to show
9 or support our argument of fair notice, that there really
10 wasn't fair notice here.

11 THE COURT: Let's assume that you're right, at least
12 insofar as it bears on your fair notice defense, what Hinman
13 actually publicly says, but that's not what you're seeking to
14 obtain in this deposition, because you already have what he
15 publicly says.

16 MR. MILLER: Right.

17 THE COURT: You're trying to get at things he hasn't
18 publicly said but that you think are useful in understanding
19 his thought process. I don't see how that has any bearing on
20 your fair notice defense.

21 MR. MILLER: Well, we would ask him, What was the
22 rationale for your speech? Why did you put it out? What were
23 your communications with third parties in connection with your
24 speech? What was your application at the time -- how did you
25 apply Howey to Bitcoin and Ether? You know, I think those are

1 the things that we would explore to try to figure out whether
2 our fair notice defense has further evidence that can be
3 demonstrated at the trial.

4 THE COURT: Okay. Well, look, I think that's helpful
5 to me, because it does -- you're being frank with me about the
6 kinds of things you want, which I appreciate. It helps me
7 evaluate your request. But I do understand you to be saying
8 that we really want to know what led into his speech, what his
9 thinking was, who he was talking to, what input he was getting
10 for it, because we think that bears on our fair notice defense.
11 That's primarily what you want to talk to him about. Is that
12 fair to say?

13 MR. MILLER: That's fair to say, and that's, frankly,
14 consistent in how the Court in the Ripple case has approached
15 this, and that is allow Hinman's deposition to occur and to
16 allow limited discovery regarding --

17 THE COURT: In that Ripple case I'm remembering, if
18 I've got it wrong, you'll tell me, wasn't there an aiding and
19 abetting allegation in that case, and didn't the Court
20 specifically have to be concerned with the subjective mental
21 state of the deponent to evaluate a claim? Much in the nature
22 of before I precluded it you asserted a selective enforcement
23 defense and a kind of bad-faith argument on the part of
24 decision makers, if I allowed that defense this case would look
25 more like Ripple, but it isn't really a Ripple case as it

1 currently is postured. So, isn't that a way to distinguish
2 Ripple? I think the government makes that point.

3 MR. MILLER: They do, and in our response, your Honor,
4 we demonstrate why the Court's opinion wasn't solely focused on
5 the aiding and abetting. Ripple and the individuals brought
6 the motion. And so, yes, the Court did mention that the
7 individuals have to substantiate a knowledge prong for aiding
8 and abetting, but it was also for the benefit of Ripple. It
9 wasn't just, Okay, individuals, you can take the deposition,
10 and I think we mention that in our brief at pages 12 and 13.

11 THE COURT: So, you argue that, but what about Judge
12 Bowler's decision in Navellier? She reached the conclusion
13 that the Morgan Doctrine did apply and protect someone at the
14 very same level. You just say she got it wrong on this one and
15 I should --

16 MR. MILLER: I think that case, if I remember it
17 correctly, your Honor, I believe that the depositions did take
18 place, but, again, the deliberative process privilege was
19 invoked at the deposition. It wasn't a blanket, absolute
20 prohibition, unless I'm mixing that case --

21 THE COURT: I may have misunderstood that. Let me ask
22 the government. Just tell me. You're the one that cited
23 Navellier. Is that right, the depositions already took place
24 and it's just a selective -- because that wouldn't make sense
25 to me. That would be a deliberative process privilege, not a

1 Morgan Doctrine problem.

2 MR. MOORES: Your Honor, I'll double check on this,
3 but it's my understanding that those depositions did not go
4 forward. It was a former Commissioner and it was the Director
5 of Enforcement. My understanding is that neither of those went
6 forward.

7 THE COURT: Yeah, the Morgan Doctrine is designed to
8 prevent the deposition entirely, not to prevent selective -- to
9 protect certain answers once the deposition is underway.
10 That's really more deliberative-process privilege kind of
11 issues. If you allow the deposition, the ordinary rules govern
12 how the deposition takes place. That's the way I thought the
13 Morgan Doctrine worked. Okay. So, you'll both check on that
14 and let me know if you come up with anything, and I'll go back
15 over it, but I didn't recollect that the depositions, in fact,
16 occurred. There were other depositions, but those depositions
17 I don't think did occur.

18 Okay. So, Counsel, can you help me out on this? What
19 do you think is the way to distinguish a high-ranking official
20 from a non-high-ranking official for purposes of the doctrine?

21 MR. MILLER: I think you need to go back to the
22 rationale again, which is the need to ensure that an official
23 in his official capacity isn't being burdened. Mr. Hinman is
24 no longer an official. So, that argument I think is much more
25 supportive of our argument.

1 THE COURT: I do think it's a relevant factor in
2 determining if they are a high-ranking official potentially
3 able to invoke the Morgan Doctrine whether there should be an
4 exception. I think it's a factor but not determinative.
5 That's how I process it. Do you agree or disagree?

6 MR. MILLER: Yeah, I agree. I do agree. And we also
7 say in terms of looking at, as you said, there are cases on
8 both sides where a mayor is clearly, you know, a top-ranking
9 official and when there's other deputies, things like that,
10 depending on the agency. So, we need to look at the SEC. The
11 SEC is run by the Chairman and four Commissioners. We're not
12 asking for their depositions. Underneath are five Division
13 Directors and 25 other offices that report to the office of the
14 Chairman. You've got Chief Accountant's office, you have Head
15 of Public Affairs, you have legislation and inter-government
16 affairs, you have the various divisions, Enforcement, things
17 like that. Our position would be in this context Mr. Hinman is
18 not a high-ranking official because he's not at the apex of the
19 decision making. And so, a lot of these cases talk about the
20 apex, and I've been trying to figure out what is apex, what
21 isn't, and I think it comes down to can they make the ultimate
22 decision.

23 THE COURT: Well, if you believe in the unitary
24 executive theory, there's only one person at the apex of the
25 Federal Government, and that's the President of the United

1 States. So, it clearly doesn't mean that, because it applies
2 to a secretary, it applies to cabinet secretaries, and it would
3 clearly apply to the SEC Commissioners and the Chair of the
4 Commission. The question is does it ever apply below that
5 level in an organization like the SEC, and I don't think
6 there's been a well-reasoned decision that I've seen that helps
7 inform how a court should go about undertaking that analysis,
8 so what we're left with are a bunch of analogies where the
9 court applied it this way and the other court applied it that
10 way.

11 What I'm inclined to do is to say that we should
12 evaluate high ranking not in any kind of absolutist or
13 categorical way; we should really look at what the functions of
14 the office are, and if those functions are such that that
15 person is likely to be involved in highly voluminous, complex,
16 discretionary decision making, where the person exercises a
17 policy formulation role and isn't simply executing policies
18 established at lower levels, that you probably ought to think
19 of that person as high ranking because, given the exposure that
20 that person has to potential litigation, the burdens on the
21 office could be extraordinary, as opposed to, say, a line SEC
22 attorney, like the one that's currently arguing in front of me,
23 who's not a high-ranking official, but when you go sufficiently
24 up the policy chain that that person is effectively a manager
25 of a big portfolio where hundreds and thousands of decisions

1 are being made by subordinates and reviewed that that person is
2 sufficiently high ranking to potentially qualify.

3 And then, in my mind, we should police the
4 extraordinary circumstances exception reasonably to allow
5 exceptions like the one I proposed, where someone has direct
6 personal knowledge of a matter that isn't part of his
7 management portfolio where he's indirectly supervising a bunch
8 of stuff but he, in fact, or she, in fact, witnessed something
9 if it happened in the office that gives rise to potential
10 liability. Then you would easily find the exception satisfied,
11 because that person has unique and very important information
12 as opposed to information that is largely derivative about
13 policymaking or execution of policy.

14 So, that's how I'm inclined to look at it, and
15 anything else you want to say on that subject go ahead, and
16 then make any other points you want to make on the particular
17 issue.

18 MR. MILLER: Just a final point is, again, I think the
19 Court should view this as an individual, yes, he was at an
20 agency, but expressed an opinion, their personal opinion, and
21 for that reason I think the exceptions to Morgan, the Morgan
22 Doctrine, apply, and the rationale for the Morgan Doctrine
23 would not apply in this situation.

24 THE COURT: All right. Thank you. I appreciate the
25 argument on it.

1 So, in preparation for the hearing today I carefully
2 reviewed the Supreme Court's decision in Morgan. I read the
3 First Circuit's decision in Bogan against the City of Boston
4 reported at 489 F.3d 417, a 2017 First Circuit decision, which
5 is, of course, controlling precedent in my case.

6 I tried to look at how other courts dealt with the
7 issue of whether someone is a high-ranking official or not,
8 and, as I have suggested to you, I don't think there are an
9 abundance of well-reasoned decisions, certainly nothing that's
10 controlling on me. Let me just identify a couple of examples
11 that I think are somewhat helpful, although the reasoning
12 provided is very limited.

13 I did look at the case of RI, Inc. against Gardner,
14 which is reported at 2011 Westlaw 4974834, an Eastern District
15 of New York decision from 2011 that held that the Solicitor
16 General of the United States Department of Labor was a
17 sufficiently high-ranking official to qualify under the Morgan
18 Doctrine.

19 I looked at a decision from the District of New
20 Jersey, U.S. against Sensient, S-e-n-s-i-e-n-t Colors, Inc.,
21 reported at 649 F.Supp. 2d 309, a 2009 District of New Jersey
22 decision, where the Court held that an EPA regional
23 administrator was a high-ranking government official.

24 And I looked at a decision from the District Court of
25 the District of Columbia, Low against Whitman, reported at 207

1 F.R.D. 9, where the Court concluded that the EPA's Deputy Chief
2 of Staff did qualify as a sufficiently high-ranking person.

3 Finally, I looked at, again, a District of -- Columbia
4 District Court decision, *Sourgoutsis, S-o-u-r-g-o-u-t-s-i-s*,
5 against United States Capitol Police, 323 F.R.D. 100, a 2017
6 District of Columbia District Court decision where the Court
7 held that the Inspector General of the United States Capitol
8 Police was a high-ranking official for the purpose of the
9 Morgan Doctrine.

10 As I said, my inclination, in the absence of more
11 specific guidance from the First Circuit or the Supreme Court,
12 is to suggest that in determining whether someone's a
13 high-ranking official you shouldn't look at a simple
14 categorical approach of are they the highest ranking official
15 in their agency. Rather, I think you should look at it
16 functionally, and do they perform functions that involve
17 supervision of a large number of subordinate employees that are
18 responsible for carrying out the day-to-day operations of that
19 particular governmental agency, whether they are involved in
20 overseeing substantial amounts of government activity that
21 could potentially expose them to hundreds of thousands of
22 lawsuits if they were routinely subject to deposition, and
23 judged by that standard -- and I do believe, as I said, that
24 the Navellier case that I've previously cited supports this.

25 I do believe that potentially that the former Director

1 does qualify as a high official. The fact that he's a former
2 official is a factor to consider but isn't dispositive,
3 because, again, we don't want people who take these positions
4 when they do leave office to spend the rest of their life
5 taking depositions, responding to efforts to establish whatever
6 it is that the litigant wants to establish. So, I do think
7 that this former Director does have a position that potentially
8 qualifies him under the Morgan Doctrine for protection against
9 deposition.

10 What's really important to me here, though, is I just
11 do not understand how the former Director has anything to
12 contribute here. And I respect Mr. Miller's argument, and I
13 appreciate his frankness. I don't think that questions about
14 what drove him to make the speech, who he communicated with
15 when he made the speech, what his internal thought process was,
16 or who he may have been deliberating with while formulating his
17 views on this matter come anywhere close to satisfying an
18 extraordinary circumstance test. To the extent he wants to use
19 the testimony to convince me that it was widely understood in
20 the marketplace that there was a particular view about how the
21 Howey test applies, that could be established from people other
22 than the former Director. One could imagine an expert witness
23 that might testify about that, one could imagine people engaged
24 in the industry that might be able to testify about that, and I
25 don't believe that that information would be uniquely available

1 from the former Director.

2 More fundamentally, I just don't see how that
3 information has any potential relevance to the proceeding. The
4 way I'm seeing it, the primary defenses here are this just
5 doesn't qualify under Howey, it's not an investment contract,
6 the SEC can't prove its case, and, in any event, we have a
7 viable fair notice defense. Both of those issues turn on
8 objective facts, the Director has no personal knowledge of the
9 particulars of this case, and in my view the fair notice
10 defense really turns on objective criteria, not subjective
11 thought process of the individual involved, and I do agree that
12 it's likely that, to the extent one wants to get into that,
13 it's hard for me to see how it isn't protected by the
14 deliberative process privilege, and so it wouldn't be
15 available, in any event. So, I don't believe that the
16 exceptional circumstances test comes anywhere close to being
17 satisfied here.

18 So, for those reasons and the additional reasons set
19 forth in the SEC's supporting memorandum I'm going to grant the
20 Motion for Protective Order and bar the deposition of the
21 former Director.

22 Does anybody need me to make any additional findings
23 or rulings with respect to that particular issue?

24 Is there anything else from the SEC that you feel I
25 need to take up that I haven't taken up?

1 MR. MOORES: Not as to that motion, your Honor.

2 THE COURT: All right. Mr. Miller, anything else?
3 Your objections are all preserved, of course, for purposes of
4 appeal. Is there anything else you need me to take up that I
5 haven't taken up on that particular --

6 MR. MILLER: No, your Honor.

7 THE COURT: All right. So, let's turn to the next
8 matter, which is a proposal by the SEC to delay the scheduling
9 of this case.

10 Counsel, one thing that has really resonated with me
11 in this case is that LBRY feels extremely burdened by this
12 litigation. Now, you make arguments that everything you've
13 done is appropriate and the discovery requests to date have not
14 been overly burdensome, but this is a company that is clearly
15 not in great financial circumstances. This has a big bearing
16 on their efforts to survive. This has been going on for years.
17 To the extent they oppose delays, I want to try to keep this
18 matter moving. On the other hand, your point is you think that
19 they have -- if I'm understanding your position correctly, your
20 position is that LBRY, without making it clear to you
21 initially, has arbitrarily drawn a self-imposed line on what
22 discovery they're going to produce and that they're not -- they
23 haven't produced anything post filing of the complaint. Am I
24 overstating your position, or is that your position?

25 MR. MOORES: Your Honor, there's a lot that's true.

1 There's, I'm sure, things that just need to be clarified on the
2 edges. But, you know, our position is we're not seeking sort
3 of additional number of depositions, we're not seeking
4 additional interrogatory numbers. What we're really seeking
5 here is a little bit more time for LBRY to produce the
6 documents that are responsive to the requests and that have
7 been sort of outstanding since October and that LBRY just has
8 not yet produced, either sort of inadvertent oversight or
9 potentially they just hadn't gotten to it at that point, and
10 one of the things --

11 THE COURT: I'll let you finish in a minute, but as
12 specifically as you can and as narrowly as you can do it and
13 consistent with your responsibilities, what is it that you're
14 seeking from LBRY that you believe you've requested but have
15 not yet received?

16 MR. MOORES: Just as sort of a chronology, your Honor,
17 is that essentially LBRY was doing a rolling production. It
18 had made a substantial production towards the end of January.
19 We looked -- and they reported they were mostly done with their
20 production. We started looking at it, you know, soon after it
21 got in and it was processed, and we noticed that there were a
22 lot of gaps in their production. Some of them were gaps about
23 what custodians that they had collected documents from. Some
24 were as to the types of documents. So, for example, business
25 records like memoranda, Excel spreadsheets, presentations to

1 investors. So, all of that type of documentation was not
2 produced.

3 Their filing system is like a Google Drive, and that
4 is where the company stores its documents, and those documents
5 hadn't been produced.

6 THE COURT: Well, let me stop you. This is not
7 Facebook; this is a company that has got a very small
8 operation. It's hard for me to understand why you can't meet
9 and confer and specifically lay out for them. This is what I
10 think you have that you haven't produced. We don't need these
11 kind of mass over-productions where people just, like, dump the
12 hard drive on someone else. At this point you've had years to
13 get your act together. You should be able to be very specific
14 about -- you know who's involved in this company that makes
15 representations regarding the LBRY currency. You know what
16 they've been doing and saying. Why can't you just be a little
17 more specific with them, rather than making kind of blanket
18 requests that they then have to just kind of blindly poke
19 around in their files for?

20 MR. MOORES: Well, your Honor, we did actually go
21 through that meet-and-confer process just like you're
22 suggesting. We provided a long list of items that we thought
23 that they hadn't produced that were responsive and were
24 relevant and important to their claims or defenses -- our
25 claims or their defenses -- but they have endeavored after that

1 meet and confer to actually produce a large volume of those
2 documents that we noticed that were missing, and they're still
3 endeavoring to produce it, like, as I mentioned, sort of the
4 Google Drive documents, which, you know, it's a company that
5 does a lot of their work, my understanding is, virtually
6 because, you know, the employees might be scattered at
7 different places, and they save their documents to a Google
8 Drive, at which point they will link their communications, even
9 with investors, that will say, Go to our Google Drive and look
10 at documents in connection with an offer. And those are the
11 types of documents that we were seeking and that hadn't been
12 produced and the company is still producing.

13 THE COURT: What depositions do you have left that you
14 need to do?

15 MR. MOORES: So, we had previously noticed the
16 depositions of Mr. Kauffman and Mr. Grin. We also have a
17 30(b)(6) deposition that has been noticed, and there's
18 potentially a couple of other depositions that we would take,
19 depending on the Court's --

20 THE COURT: And you want to delay these depositions
21 until you've had what you think is a more complete production
22 from LBRY? You're not planning to take more; you want to do
23 those depositions after you've had a reasonable time to process
24 a full document disclosure?

25 MR. MOORES: Right. So, there are potentially a

1 couple of depositions -- to be candid, your Honor, our schedule
2 ends at the end of -- a week from Friday, and if the Court did
3 not extend the schedule, then next week would be full of as
4 many depositions as possible. So, there are other depositions
5 that we hadn't noticed that we were contemplating taking, but,
6 you know, there just isn't enough time under the current
7 schedule. But to your point, your Honor, that is fundamentally
8 the important piece, is that we wanted to be able to receive
9 the documents, review them, process them in order to use them
10 at these depositions, and there just isn't enough time. There
11 was a production made last night; there was a production that
12 was made earlier this morning. We anticipate that LBRY will
13 continue to make productions over the next couple of weeks in
14 order to fulfill those items. There is a discovery dispute.

15 And specifically as to that cutoff that you had
16 mentioned, your Honor, where LBRY has sort of arbitrarily cut
17 the date of the complaint off as what is discoverable, we
18 disagree with that. Now, the company has produced some
19 documents that postdate the date of the complaint, but they're
20 withholding a number of others, and we have sent that to the
21 Magistrate for her attention and mediation.

22 THE COURT: So, have they presented a log of documents
23 that are responsive but they believe should not be produced?

24 MR. MOORES: Negative, your Honor. They just have
25 sort of said the date of the complaint is a date that we would

1 not be receiving any electronic communications or business
2 records.

3 THE COURT: I'm the last one to want to encourage
4 discovery motion practice. I abhor discovery motion practice.
5 I usually ask the Magistrate Judge to oversee it for me, and,
6 frankly, it's not in either of your side's interest to involve
7 me in those matters, because it becomes unpleasant quickly.
8 So, I want to try to avoid having to become engaged with those
9 kind of specific back and forth. I will offer some general
10 thoughts.

11 You have an argument where you are going to be
12 requesting injunctive relief, and you have allegations of what
13 you say are continuing violations. The date of the complaint
14 is not an arbitrary cutoff date. On the other hand, I am
15 sympathetic to LBRY's expressed concern. I keep in mind when
16 they say the million documents -- you make a good point that,
17 as is usually the case when you make electronic production
18 nowadays, what in the paper world 30 years ago would have been
19 three file boxes is now a million documents. So, I don't make
20 too much of the number of documents. But you've had a long
21 time to do pre-filing investigation here; you've had a
22 substantial amount of time to engage with this litigation.
23 Ordinarily, when we get to the end of a discovery period you
24 should be, and you're trying to be, courteous and cooperative,
25 and let's meet and confer, all of which I encourage, but as the

1 discovery deadline approaches that's when you have to sort of
2 get tough and you have to say, Look, I need A, B and C, and I
3 need them by this date, or we're going to have to extend the
4 discovery deadline by X amount of time.

5 So, I'm sympathetic to the extent that LBRY has not
6 produced post-filing documents that are responsive to your
7 request. In my view, a company that isn't producing what's
8 requested either should seek a protective order from the Court
9 on the grounds that it's overly burdensome, or they should
10 withhold the documents and produce a privilege log explaining
11 the legal reasons why, although responsive, they don't have to
12 be produced. Absent that, I expect the moving party to file a
13 motion to compel so that we then can order a person to compel
14 and then moderately extend the deadline. We haven't done any
15 of that here. My inclination is to say, all right, let's --
16 what are you requesting, a 60-day extension?

17 MR. MOORES: Yes, your Honor, which actually doesn't
18 impact the trial date as proposed.

19 THE COURT: My proposal is that we try to cut this
20 thing down, we extend everything by 30 days, we keep the trial
21 date as we schedule it. That will put pressure on me. It will
22 take time away from me to resolve the summary judgments
23 motions, but I'm willing to try to assign this matter as an
24 expedited matter in my chambers so that, when the motions
25 become ripe, we hold argument and I try to resolve those on an

1 expedited basis.

2 So, that gives you a little more time, but I think
3 what you would need to do is you need to be very specific with
4 LBRY and say, These are the things out there that I really need
5 before I can do these remaining depositions, and then, if they
6 don't get them, I think what you probably need to do is take
7 the depositions with the documents you've got, file a motion to
8 compel, and at the risk of, if LBRY doesn't produce and I later
9 determine that they have failed to produce, I'll reopen
10 discovery, allow you to do a limited re-deposition about the
11 new documents at LBRY's expense.

12 I want to keep the case moving. I recognize we're
13 close to the deadline, and so a month seems to be reasonable.
14 You'll have to work hard to get everything in. But at this
15 point I think the two things you need to do is take a look back
16 at your demands, see what reasonable focus you can bring to
17 them, renew your demands, schedule the remaining depositions.
18 If you don't get the documents you want, file a motion to
19 compel and remind me that I told you that you should go ahead
20 and take the depositions with what you've got, and if I allow
21 additional relevant discovery I'll consider a request to reopen
22 limited depositions at LBRY's expense if they're improperly
23 withholding information. Okay? So, that's how I would say to
24 practically resolve it.

25 Let me hear from LBRY. As I said, I'm sympathetic to

1 your desire to move ahead, but I also -- I don't believe, to
2 the extent you're using some kind of arbitrary filing date
3 cutoff, that that's justifiable, and I do think you should be
4 able at this point -- that the SEC should be able to be quite
5 specific with you as to what they need, and then you need to
6 assign it as a priority. But we need to get those depositions
7 taken, complete the record here, get our motion practice
8 underway and get this matter resolved. That's sort of where I
9 am in my thinking.

10 But, Mr. Miller, what did you want to say?

11 MR. MILLER: I just want to make sure the record is
12 clear on certain things and it's really on what's occurring in
13 discovery. In our objections to their initial request for
14 document productions we claim we are going to produce between
15 this time and this time. You need to have, as I explained to
16 counsel, there's got to be a point in time when you have to
17 stop collecting. I can't go to the company and say, Last week
18 did you -- did you -- were you responding on a slot chain (ph)?
19 That's not fair and reasonable. We did say to them after this
20 was raised -- and when was this raised? And I think it's
21 interesting, you Honor, to find out when it was raised. It was
22 raised in the beginning, right after we submitted our expert
23 report, which was February 4th. The SEC did not submit an
24 expert report, and since then we've been deluged with, Oh, we
25 don't have this, we don't have that, we don't have this, and

1 we've been trying to work with them.

2 The Google Drive. We've produced almost everything
3 except for 226 loose documents from Google Drive that are being
4 reviewed right this second, and that's how we've been making
5 production since last week. If you say this is what we need
6 past this point, we're willing to consider it. But you can't
7 tell us, You take the subpoena and you interpret it and you
8 produce everything that's responsive as of last week. That's
9 not fair and reasonable.

10 THE COURT: I'm sympathetic to that concern. We're
11 getting towards the end of discovery, so at this point we've
12 got to have the SEC reasonably say, Give us what you've got to
13 this point, and then let's move on, and then, of course, if
14 there is some unusual development in the last few weeks, if
15 someone needs to move to reopen discovery, you can try and do
16 that, but I agree we've got to try to bring this matter to
17 closure. I would have to imagine that the SEC will have
18 virtually everything it needs to bring its case when it takes
19 those few remaining depositions, and we've just got to get on
20 with the matter. So, I hear you on that, and I am sympathetic
21 and just would, you know, tell you I will do what I can to
22 expedite my part of it once the motions are ripe and I can
23 consider it.

24 I did take a long time, in my book, to resolve the
25 selective enforcement claim, and I will tell you that, because

1 of the arguments that the parties were taking and my own view
2 -- so the ground on which I decided that matter was a narrow
3 ground, but I have a broader view about how selective
4 enforcement works. I would have come out the same way without
5 dealing with the narrower ground. I don't believe the SEC is
6 completely right on its position of a kind of categorical, We
7 can never be charged with selective enforcement approach, that
8 it was arguing. I also don't believe that LBRY's position --
9 regarding how you deal with selective enforcement defenses, I
10 have my own view, which I spent a lot of time thinking about
11 and ultimately decided, you know, that wasn't an argument that
12 the parties presented, and so out of fairness to the parties I
13 went back and looked at the narrower argument on which I
14 believed from the beginning that the SEC was correct and
15 followed that. So, that took me a while, because that, as I
16 think you both will acknowledge, is a pretty challenging area
17 of law where the Supreme Court has not been as clear as we
18 would all like it to be about how you deal with the issues of
19 selective enforcement post Engquist.

20 So, I apologize for that. That took me longer than I
21 expected, but I will assign a priority to this matter when it
22 comes up on the remaining issues, and I should be able to put
23 out an order within, like, 60 days of the time the matter is
24 argued to me, if not sooner. So, I'll work on my end. I want
25 you to work on your end.

1 I will grant a 30-day extension of the deadlines you
2 propose, not 60.

3 I will instruct the parties to meet and confer again.
4 I'll tell the SEC that I agree with LBRY's position that we
5 can't expect it to make open-ended, every day they're doing
6 something different they need to go back and they're, Have you
7 got any more now that we need to produce? It's reasonable to
8 impose a cutoff date, and so you'll explain what that is, agree
9 to it, be specific in your requests, they'll comply, you'll go
10 ahead and schedule all the remaining depositions you propose to
11 take within the next 30-or-so days that we have left in the
12 discovery period, and then we'll move on. Okay?

13 So, the parties' positions on that are preserved, to
14 the extent they disagree with that. It's a practical approach
15 to try to address I think legitimate concerns on both sides.

16 Did you want to say something else, Mr. Miller?

17 MR. MILLER: Yeah, I just wanted, for point of
18 clarification, the extension of 30 days is simply for the
19 completion of discovery; it doesn't include expert disclosures
20 and reports. Is that correct?

21 THE COURT: All right. I'm glad you raised that. You
22 alluded to this, and we need to explore it. I think maybe I'm
23 reading too much into your remarks, but you've left me with the
24 impression that what you think is going on here is that the SEC
25 was caught flatfooted by your expert disclosure, and what it's

1 really trying to do here is bargain for more time to find a
2 last-minute expert and make a report? Am I reading too much
3 into your remarks?

4 MR. MILLER: I think that's correct, your Honor.

5 THE COURT: All right. So, are you trying to get an
6 extension of the expert disclosure deadline, and, if so, why?
7 I'm talking to the SEC now.

8 MR. MOORES: Your Honor, that's not a part of our
9 proposal.

10 THE COURT: Okay.

11 MR. MOORES: But I would reserve, you know, if we were
12 to come back and propose to the Court a rebuttal expert report
13 deadline, but at this time we are not seeking an extension of
14 the expert report deadline.

15 THE COURT: Okay. So, that's covered, and you reserve
16 your right to try to get an extension, if you need one, on the
17 rebuttal disclosure deadline.

18 So, that should give you some comfort, Mr. Miller.

19 Okay. So, that takes care of that issue. The other
20 issue really isn't ripe yet. I can't really, out of fairness
21 to LBRY, the government filed a motion for protective order
22 with respect to the 30(b)(6) deposition. I do need to hear
23 LBRY's response to it. On the other hand, I do think there is
24 information that the parties can glean from this hearing that
25 should give them some ability to predict how I'm likely to rule

1 on some of these matters. So, do what you need to do, but we
2 should probably not hold the 30(b)(6) deposition until LBRY
3 responds and I have a chance to rule on LBRY's response. And
4 I'm completely open-minded on this with respect to specific
5 issues, but, as I said, I am inclined to think of the fair
6 notice defense, and this isn't an investment contract defense,
7 as largely issues that are resolved based on what's in the
8 public record and not on what's in the internal deliberative
9 processes of the SEC. So, I think to the extent LBRY is
10 seeking all of the things it's listed in that enumerated list
11 with the government's filing there are going to be some
12 problems with that based on what I've said to you up to now.
13 But I'm open to hearing your views, and perhaps the parties
14 between now and then can reach some kind of reasonable
15 compromise on a narrower subset of proposals. But if you
16 can't, file your objection. I'll rule on it when I get the
17 objection, and I'll rule on it on the papers and try to do it
18 expeditiously so we can keep this thing moving.

19 All right. Is there anything more from the SEC?

20 MR. MOORES: No, thank you, your Honor.

21 THE COURT: Anything else from LBRY, Mr. Miller?

22 MR. MILLER: Nothing further. Thank you, your Honor.

23 THE COURT: All right. Thank you. That concludes the
24 hearing. I appreciate the good quality of the argument. The
25 parties in their dealings with me have been nothing but

1 cooperative and responsive, and I hope you'll continue to work
2 that way with me and with each other so that we can focus on
3 the legitimate legal issues that are being raised here. So, I
4 appreciate your efforts in that regard.

5 All right. Thank you. That concludes the hearing.

6 MR. MOORES: Thank you, your Honor.

7 (WHEREUPON, the proceedings adjourned at 3:10 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of the within proceedings.

Date: 2/25/22

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter