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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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COMPLAINT

ARTHUR BRITTO VS. JED MCCALEB ET AL

001C04792449

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Jed McCaleb, Stellar Development Foundaton, and Does 1-10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Arthur Britto

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER:
(Número del Caso): CGC-15-544135

Superior Court of California, County of San Francisco
400 McAllister Street, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Spencer Hosie, Hosie Rice LLP, 600 Montgomery St., 34th Fl., San Francisco, CA 94111 (415-247-6000)

DATE: February 13, 2015   **CLERK OF THE COURT**   Clerk, by   M.A. MORAN   Deputy
(Fecha)   *(Secretario)*   *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*

3. ☐ on behalf of *(specify):*

under: ☐ CCP 416.10 (corporation)   ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)   ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)   ☐ CCP 416.90 (authorized person)

☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

[SEAL]

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SUMMONS

Code of Civil Procedure §§ 412.20, 465
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ARTHUR BRITTO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

ARTHUR BRITTO, an individual. Plaintiff, vs. JED MCCALEB, an individual, and, STELLAR DEVELOPMENT FOUNDATION, a 501(c) corporation, and DOES 1-10, inclusive. Defendants.	Case No. **CGC - 15 - 544133** **CIVIL COMPLAINT FOR:** **1. BREACH OF CONTRACT;** **2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;** **3. CONVERSION; AND** **4. CONSPIRACY TO CONVERT.** **DEMAND FOR JURY TRIAL**

HOSIE RICE LLP
Transamerica Pyramid, 34th Floor
600 Montgomery Street
San Francisco, California 94111

Plaintiff Arthur Britto ("Plaintiff" or "Britto") brings this complaint against Defendants Jed McCaleb ("McCaleb"), Stellar Development Foundation ("Stellar") and DOES 1 through 10, inclusive, ("DOES")[1] and alleges as follows:[2]

NATURE OF ACTION

I. INTRODUCTION AND SUMMARY.

1. This case relates to the creation of a novel virtual currency, known as XRP's. XRP's are the native currency of the Ripple settlement protocol, which is maintained by Ripple Labs. The Ripple protocol enables essentially cost-free and instantaneous payments, both domestically and internationally, regardless of currency denomination. As such, it competes directly with the traditional, expensive, and cumbersome old-economy network of correspondent banks, wire transfers, and the foreign exchanges.

2. Ripple Labs was cofounded by three people: Arthur Britto ("Britto"), Chris Larsen ("Larsen"), and Jed McCaleb ("McCaleb"). Britto is an extremely sophisticated software engineer, with deep experience in systems programming, including in payments and artificial intelligence. McCaleb, although an engineer by training, is a businessman, known principally for founding the now-defunct Bitcoin exchange, Mt. Gox, discussed below. McCaleb also recently founded the Stellar Development Foundation ("Stellar"), also as set forth below. Larsen is a gifted, serial entrepreneur, who founded online loan companies, E-Loan, Inc. and Prosper Marketplace, Inc.

3. As a critical part of implementing the Ripple protocol, McCaleb approached Britto and asked that Britto contribute Britto's software and related IP to the Ripple protocol. This IP was and remains central to the Ripple protocol and its native currency, XRP's. In order to induce Britto to contribute this valuable IP, the three founders executed a founders' agreement, attached as Exhibit A (the Founders' Agreement").

4. This Founders' Agreement provided critical anti-dilution protection to Britto should McCaleb take Britto's IP and create a competitive payment platform. In that event, the

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[1] The term "Defendants" means defendants McCaleb, Stellar and DOES.
[2] Plaintiff makes these allegations on personal knowledge as to his own acts, and on information and belief as to all other matters.

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1 Founders' Agreement essentially states that McCaleb would make Britto whole economically.

2 Ripple Labs was not a party to the Founders' Agreement, and the company has no duty itself to

3 safeguard Britto's XRP stake, or to provide additional XRP's (or any other digital currency) to

4 Britto.

5   5.   In early 2014, even while a Ripple Labs Board Member, McCaleb copied the

6 Ripple protocol code, directly and in detail. He used this code base to create a directly

7 competitive protocol, which he called Stellar. Stellar's protocol is, in all material ways, a direct

8 replica of older versions of the Ripple protocol; it does the same things in the same way. At

9 bottom, the *labels* changed, *e.g.,* the native Stellar currency units are called Stellars ("STR's"), as

10 against Ripple's XRP's, but the functionality between Stellar and Ripple is the same.

11   6.   In September 2014, Britto demanded that McCaleb honor his obligations pursuant

12 to the Founders' Agreement. McCaleb refused to honor the Agreement, and denied having any

13 obligation whatsoever.

14   7.   Britto brings this action to right this wrong and secure the protections and benefits

15 afforded to him by the Founder's Agreement.

16 **II.**   **PARTIES.**

17   8.   Plaintiff Arthur Britto has been a programmer for over 35 years, and served as the

18 President and subsequently C.E.O. of one of the first ISP's. Britto cofounded Ripple Labs with

19 Jed McCaleb and Chris Larsen in September 2012, with the company then known as OpenCoin

20 Inc. The company was renamed Ripple Labs in October 2013. Currently, Britto acts as the Chief

21 Strategist for Ripple Labs. After cofounding Ripple Labs, Britto became a Board Member of

22 Bitstamp, a Bitcoin exchange in the U.K. As of September 2014, Bitstamp was the second largest

23 Bitcoin exchange by volume.

24   9.   Defendant Jed McCaleb founded the now defunct Bitcoin exchange Mt. Gox in

25 July 2010. In March 2014, and while McCaleb evidently was a 12% shareholder, Mt. Gox

26 suddenly declared bankruptcy and then announced that close to $500 million in Bitcoins had

27 "disappeared." While some of the missing assets have been recovered, the majority of the loss

28 remains outstanding. Prior to Mt. Gox, McCaleb founded e-Donkey.com, a peer-to-peer file

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sharing site. In 2014, McCaleb founded the Stellar Development Foundation, a nominal non-profit, as set forth in greater detail below. McCaleb also works for a Bitcoin investment firm, Pantera Capital, and is an investor in many payment and financial services start-up companies, including Maicoin and Bold.

10. Defendant Stellar Development Foundation is a 501(c)(3) non-profit corporation registered in Delaware. On information and belief, Stellar is headquartered in San Francisco, California. Stellar was founded by McCaleb and is a directly competitive payment and exchange platform to the Ripple platform. Stellar employs a fork (copy) of the Ripple code.

11. The true names and capacities, whether corporate, associate, individual, partnerships or otherwise of defendants DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff will amend this Complaint to show their true names and capacities when the same have been ascertained.

12. Plaintiff is informed and believes and thereon alleges that all defendants sued herein as DOES are in some manner responsible for the acts herein alleged, and legally and proximately caused damage to Plaintiff, and that their liability arises out of the same general set of facts as set forth herein. Plaintiff may amend this Complaint to assert other theories of liability against said fictitiously named DOE defendants when and if they are ascertained.

13. At all relevant times mentioned herein, each of the Defendants, including the defendants named as DOES herein, were the agents, predecessors, successors, parent companies, affiliates and/or employees of each of the reaming Defendants and, in doing the things mentioned herein, were acting within the scope of such capacity, agency, employment and/or other capacity.

III. **JURISDICTION AND VENUE.**

14. This Court has general personal jurisdiction over the Defendants. McCaleb is domiciled in California, and Stellar does substantial, continuous, and systematic business in California.

15. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395 and 395.5 because: McCaleb contracted to perform the obligation at issue in the County of

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San Francisco; this is where the contract was entered into and where the breach occurred; this is where the injury, in substantial part, resulting from the tortious conduct alleged herein occurred; and, on information and belief, this is where Stellar is headquartered.

16.   The damages sustained by Plaintiff as a result of the wrongful acts set forth in each of Plaintiff's causes of action exceed the jurisdictional minimum for an unlimited civil case in this Court.

IV.   FACTS.

A.   The Ripple Network and XRP.

17.   The Ripple development project that preceded creation of Ripple Labs Inc. was founded by Christian ("Chris") Larsen, Jed McCaleb, and Arthur Britto (collectively, the "Co-founders").

18.   The Co-founders of Ripple created both a new virtual currency, known as XRP, and a de-centralized network that can be utilized to make payments or exchange currencies (the "Ripple Network").

19.   Ripple is a math-based currency that can only be used on the Ripple Network. These Ripples, or "XRP's," are used to pay the small fee required by the Ripple network for each transaction. They can also be sent between two accounts, converted into other currencies, or spent at other venues.

20.   The Ripple Network is a distributed, peer to peer, open-sourced Internet protocol. Instead of a central server, owned by an individual or corporation, a distributed collection of servers around the globe runs the Ripple Network. These interconnected servers collectively maintain an official Ledger, which keeps track not only of every account and balance, but also of every transaction that takes place, thus preventing fraud and double-spending, *i.e.*, spending the same funds more than once. The servers agree on the correctness of the Ledger, a process known as consensus.

21.   The Ripple protocol consists of the following components:

- **Server**: A Server is any entity running the Ripple Server software.
- **Ledger**: The Ledger is a record of the amount of currency in each user's account

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and represents the fundamental backbone of the network. The Ledger is repeatedly updated with the transactions that successfully pass through the consensus process.

- **Last-Validated Ledger:** The Last-Validated Ledger is the most recent Ledger that has been ratified by the consensus process and thus represents the current state of the network.

- **Unique Nodes:** Each Server maintains a Unique Node List, *i.e.*, a set of other Servers that the first Server queries when determining consensus.

- **Open Ledger:** The Open Ledger is the current operating status of the nodes, as each node maintains its own Open Ledger. Transactions initiated by end users of a given Server are applied to the Open Ledger of that Server, but transactions are not considered final until they have passed through consensus process, at which point the Open Ledger becomes the Last-Validated Ledger.

22. The Co-founders were the sole creators, issuers and distributors of Ripple XRP; Ripple Labs was not a creator or an issuer of XRP.

23. The Co-founders agreed that only 100 billion XRP would be created on the official Ledger, and no additional Ripple-based credits could thereafter be created.

24. The corporate entity that became Ripple Labs Inc., was incorporated on September 19, 2012 in San Francisco, California. It was initially known as "NewCoin Inc.," and shortly thereafter, changed its name to "OpenCoin Inc.," and is now known as Ripple Labs. It is a very successful platform and is enjoying rapid consumer uptake and market success.

B.   The Parties' Agreement to Protect Britto From Dilution of His XRP Holdings From Any Founders' (McCaleb's) Subsequent Creation of a Derivative Ledger.

25. On or about September 17, 2012, Britto, McCaleb and Larsen entered into the "Founders' Agreement" (Exhibit A) regarding the creation and ownership of a virtual currency program code known as the Ripple protocol, and currency later to be known as XRP.

26. Prior to the execution of the Founders' Agreement, McCaleb approached Britto, asking that Britto contribute critical intellectual property ("IP") to what would become the Ripple

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1   protocol. Over the years prior, Britto had developed sophisticated IP designed to make online

2   digital payment networks function efficiently and securely. Prior to executing the Founders'

3   Agreement, McCaleb understood that Britto's IP was essential to the successful Ripple

4   development of the Ripple protocol, and so actively solicited Britto to contribute that IP to the

5   Ripple effort.

6   27.   Britto's IP related, in significant part, to designing an algorithm driving the Ledger

7   consensus process. For an electronic and virtual platform to work, all of the distributed servers

8   must agree on the correctness of the Ledger. The Servers must be able to distinguish between

9   correct and fraudulent transactions, must do so very quickly (low latency), and must reach

10   agreement (or its converse) in a coherent and reliable manner. Britto's IP related to a consensus

11   algorithm that made this critical Ledger process work well, reliably, and efficiently. To date, the

12   Ripple protocol has not had a consensus division or split, known as a Fork (and unlike Stellar, as

13   set forth below).

14   28.   Understanding and intending that the Ripple protocol would ultimately be open

15   sourced, Britto insisted, as a precondition of contributing his intellectual property, upon anti-

16   dilution protection. Specifically, Britto was concerned that McCaleb could take the Britto IP,

17   post-contribution to Ripple, and use it to develop a similar or identical competitive payment

18   protocol. It was quite one thing for Britto to contribute his valuable IP to an effort in which he

19   would be involved in and from which he would benefit, but quite another to give McCaleb

20   Britto's IP for McCaleb to exploit individually for McCaleb's exclusive benefit.

21   29.   After discussion, the Co-founders reached an agreement to provide Britto

22   protection should McCaleb create a competitive protocol or payment platform using Britto IP.

23   Specifically, McCaleb promised to ensure that Britto's percentage holding (2%) of Ripple credits

24   ("XRP's"), would be protected against dilution for 36 months due to the creation of any

25   derivative protocol or network. The agreement sets forth this protection in specifying that Britto

26   would receive no less than 2% of the credits (or XRP analogues) for any competitive payment

27   protocol or platform created within 36 months of the signing of the Founders' Agreement. The

28   key language of the Founders' Agreement states as follows:

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> The Founders further agree that Arthur Britto shall receive 2% of all the Ripple Credits of the Official Ledger . . . If the Official Ledger is revised, *or any other ledger is created within 36 months of the date of this Agreement that sets forth a lesser percentage of Credits for Britto than the number set forth in the Official Ledger, Britto shall have the right to acquire additional credits at no cost to him, sufficient to bring his Credit Grant to 2% of the total number of credits.*

(Emphasis added). Put simply, if McCaleb created another payment protocol to settle funds or exchange things of value with another Ledger, Britto was absolutely entitled – without cost, tax or otherwise – to 2% of the credits relating to that competitive Ledger.

30.   Thereafter, in reliance upon this promise from McCaleb, Britto joined the development effort and agreed to contribute his code and other IP to the Ripple venture. He did so contribute his IP, as is evidenced by Britto's copyrights on the Ripple code.

31.   The three founders soon thereafter co-founded Newcoin/OpenCoin, Inc., currently known as Ripple Labs, Inc. (the "Company").

32.   The Ripple network and its distributed Ledger have used the Ripple consensus protocol to operate unfailingly for over two years, and the network now manages approximately 1.5 million in daily volume. Ripple Labs has invested heavily to ensure network reliability and scalability.

C.   McCaleb's Wrongful Breach of the Agreement.

33.   McCaleb ceased working for the Ripple Labs and resigned as Chief Technology Officer in approximately May 2013 - eight months shy of completion of his promised period of employment and his corresponding XRP buyback period.

34.   He remained on the Board, however. While still serving as a director of Ripple Labs, McCaleb secretly began working on a rival crypto currency based on a "fork," *i.e.,* a protocol created using a direct copy of the Ripple protocol, a significant portion of which had been created by Britto.

35.   McCaleb's "secret Bitcoin project" – as he later took to calling it -- included creation of a derivative Ledger and a Ripple-based crypto currency called "Stellars" or "STR."

36.   There is no question but that the competitive platform, Stellar, mimics Ripple in all

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ways material to this case. For example, the table below compares Ripple to Stellar functionality:

Ripple Protocol vs Stellar Protocol

	Ripple Protocol (XRP)	Stellar Protocol (STR)
Decentralized Network	YES	YES
Shared Consensus Leger	YES	YES
Distributed Exchange	YES	YES
Multi-Currency Transactions	YES	YES
FX In-Stream	YES	YES
Pathfinding Algorithm	YES	YES
Inflation	NO	YES

37.   A review of the Stellar fork code base reflects that it was, in essential part, the Ripple code base. Over the months following Stellar funding, (described below) the few Stellar coders have been assiduously scrubbing direct references to "Ripple" and/or Ripple Labs from the code base.

38.   The only substantive and functional difference between the Ripple and Stellar is that, while the number of XRP's is immutably fixed, the number of STR's inflates slightly over time, nominally to track inflation. Significantly, McCaleb has engineered the inflation STR issuance mechanics to ensure that he, or his backers, effectively receives all of the new STR's issued.

39.   Stellar received initial seed funding, in the amount of $3 million, from Stripe. Stripe is a venture-backed, San Francisco based company serving as a merchant payment clearing house. Stripe competes to enable websites to use Stripe to process payments against other online payment processing platforms. In 2014, Stripe agreed to "loan" Stellar $3 million, which Stellar subsequently repaid with two billion STR's. Stripe now holds these STR's, and has the right to sell these STR's as it wishes. The C.E.O. and co-founder of Stripe, Patrick Collison, currently sits on the Stellar Board. Stripe received the same 2% stake that was due to Arthur Britto under the Founders' Agreement.

40.   Stellar was organized as, and purports to be, a non-profit enterprise.

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Fundamentally, it is not: it is an enterprise designed to make its founders, principally Jed McCaleb, and his Stripe backers, money. This is how it works:

- At creation, its founders created 100 billion Stellars. The Stellar Foundation, which purports to run the Stellar organization, promised that 50% of the original Stellars would be distributed free through educational programs. They also said that 25% would go to non-profits to reach under-served populations, with 20% more going to the Bitcoin program, and 5% reserved to Stellar to cover "operational costs."

- To seed its distribution, Stellar organized a free Facebook driven signup and giveaway. Anyone with a Facebook account could sign-up and with minimal effort secure a tranche of free Stellars. Stellar had essentially no security on the distribution, and reports of fraud, anonymous accounts, double-dipping, and false accounts are rife.

- The founders reserved 5% of the STR's for "operational" expenses; effectively they control these STR's. As the value of the virtual currency goes up, the value of the founder's holdings, both direct and indirect, increases correspondingly. Essentially, this is a for-profit business, from the perspective of the founders, cloaked as a not-for-profit charity. For its part, Stripe is an unabashedly for-profit enterprise, and is backed as such by several prominent venture firms.

41. On December 5, 2014, the Stellar Foundation announced that it had experienced a "Ledger Fork," *i.e.*, a division across the Ledger, with no Ledger consensus. Absent Ledger consensus and correctness, an electronic, virtual platform will not survive. Also at or near this time, Stellar announced that it was developing a new consensus algorithm. Stellar, falsely, blamed the Ripple Protocol for this failure. The Ripple Protocol was not responsible for the Stellar failure; Stellar's own conduct caused that failure.

D.   **Britto Exercises His Anti-Dilution Right.**

42. Under the express terms of the Founders' Agreement, upon creation of "another ledger within 36 months of the date of" the Founders' Agreement, Britto is therefore entitled to exercise his cost-free rights to 2%, or 2 billion, of the "STR's" created on the derivative Stellar Ledger.

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Civil Complaint

43. Britto exercised his purchase rights by notifying McCaleb and the directors of the Stellar Development Foundation of his exercise of purchase rights, and attempted in good faith to negotiate to acquire the STR. This effort failed.

44. On May 22, 2014, McCaleb publicly announced his intention to sell all of his remaining XRP to the public beginning on or about June 6, 2014.

45. McCaleb's announcement that he would "dump" all of his XRP on the market was intended to damage Ripple Labs and the principal investors and owners of XRP, including Britto, and the announcement *in itself* did in fact damage them, in an amount to be proved at trial.

46. On information and belief, McCaleb further damaged Britto and other XRP owners by using "puppets" or third party proxies to dump large amounts of XRP on the market, despite promising that he would not do so.

47. On information and belief, McCaleb has further damaged Britto and others by fraudulently promoting the rival STR currency through false Facebook accounts, denigrating Ripple, and spreading false rumors about alleged weaknesses in the Ripple protocol, all to benefit Stellar at Ripple's expense.

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FIRST CAUSE OF ACTION
(Breach of Contract)
(Against Defendant McCaleb)

</div>

48. Britto realleges and incorporates Paragraphs 1 through 47, inclusive, as though fully set forth herein.

49. Larsen, Plaintiff Britto and Defendant McCaleb entered into a founders' agreement effective as of September 17, 2012, which is attached hereto as Exhibit A, and incorporated herein by reference. McCaleb is subject to the Founders' Agreement.

50. Britto has performed or substantially performed under the Founders' Agreement and/or any non-performance by Britto under the Founders' Agreement has been excused.

51. McCaleb breached the Founders' Agreement by, among other things, failing to cause digital currency credits, in an amount sufficient to bring Britto's percentage holding of total outstanding digital currency credits back-up to 2%, to be delivered to Britto, at no cost, following the creation of a derivative ledger within 36 months of the Founders' Agreement's effective date

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1   and a demand by Britto to be made whole.

2   52.   Britto has suffered damage, and will continue to be damaged, as a direct and

3   proximate result of McCaleb's breaches of the Founders' Agreement.

4   53.   McCaleb will continue to breach the Founders' Agreement as described above

5   unless enjoined and/or specifically ordered to perform by this Court. Britto faces real, substantial

6   and irreparable injury of a continuing nature owing to McCaleb's continuing breaches of the

7   Founders' Agreement for which Britto has no adequate remedy at law.

8   54.   WHEREFORE, Britto prays for judgment as herein set forth.

9   **SECOND CAUSE OF ACTION**
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

10   **(Against Defendant McCaleb)**

11   55.   Britto realleges and incorporates Paragraphs 1 through 47, inclusive, as though

12   fully set forth herein.

13   56.   Larsen, Plaintiff Britto and Defendant McCaleb entered into a founders' agreement

14   effective as of September 17, 2012, which is attached hereto as Exhibit A, and incorporated

15   herein by reference. McCaleb is subject to the Founders' Agreement.

16   57.   Britto has performed or substantially performed under the Founders' Agreement

17   and/or any non-performance by Britto under the Founders' Agreement has been excused.

18   58.   McCaleb breached the implied covenant of good faith and fair dealing inherent in

19   the Founders' Agreement by, among other things, during the 36 months following the effective

20   date of the Founders' Agreement: causing and/or allowing a derivative ledger to be created

21   whereby all newly created digital currency credits were placed under the control of and/or

22   allocated by Stellar; publically announcing his intention to dump all of his remaining XRP's;

23   unloading his XRP's while knowing his actions with respect to Stellar's ledger had triggered

24   Britto's anti-dilution rights under the Founders' Agreement; encouraging and/or causing third-

25   persons to dump large amounts of XRP's; and wrongfully promoting the XRP rival currency

26   STR, denigrating Ripple, and spreading false rumors about alleged weaknesses in the Ripple

27   protocol.

28

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59. Britto has suffered damage, and will continue to be damaged, as a direct and proximate result of McCaleb's breaches of the Founders' Agreement.

60. McCaleb will continue to breach the Founders' Agreement as described above unless enjoined and/or specifically ordered to perform by this Court. Britto faces real, substantial and irreparable injury of a continuing nature owing to McCaleb's continuing breaches of the Founders' Agreement for which Britto has no adequate remedy at law.

61. WHEREFORE, Britto prays for judgment as herein set forth.

THIRD CAUSE OF ACTION
(Conversion)
(Against Stellar and DOES 1 through 10, Inclusive)

62. Britto realleges and incorporates Paragraphs 1 through 47, inclusive, as though fully set forth herein.

63. Britto owned or had a right of possession in 2 billion additional digital currency credits upon the creation of the Stellar Ledger (the "Converted Credits").

64. Stellar and DOES intentionally and wrongfully took possession of the Converted Credits, including, for the purported purpose of covering Stellar's operational expenses. Stellar and DOES, including through Stellar's agent McCaleb, had full knowledge of the Founders' Agreement, Britto's anti-dilution rights under the Founders' Agreement, and the implications of the creation of a derivative ledger based off of the Ripple code by, using or through McCaleb. Despite this knowledge, Stellar and DOES took possession of the Converted Credits.

65. Britto has not expressly or impliedly consented to the taking of the Converted Credits.

66. Britto made a demand of Stellar and DOES that the Converted Credits be returned to him, and Stellar and DOES refused.

67. As a direct and proximate result of Stellar's and DOES' wrongful taking Britto has suffered damages.

68. Stellar and DOES took the Converted Credits in conscious disregard of Britto's rights as alleged above. Stellar and DOES wrongful conduct was done with fraud, oppression and/or malice, such that Britto should be awarded punitive and exemplary damages to deter

- 12 -

conduct such as Stellar's and DOES'.

69.   WHEREFORE, Britto prays for judgment as herein set forth.

FOURTH CAUSE OF ACTION
(Conspiracy to Convert)
(Against Stellar and DOES 1 through 10, Inclusive)

70.   Britto realleges and incorporates Paragraphs 1 through 47, inclusive, as though fully set forth herein.

71.   Britto owned or had a right of possession in 2 billion additional digital currency credits upon the creation of the Stellar Ledger.

72.   Stellar and DOES were aware that each of them planned to convert digital currency credits that would belong to Britto upon, at least, creation of the Stellar Ledger.

73.   Stellar and DOES intentionally and wrongfully agreed to take possession of Converted Credits, including, for the purported purpose of covering Stellar's operational expenses, and agreed that the conversion of the Converted Credits should be perpetuated and/or completed, despite explicit knowledge (including through Stellar's agent McCaleb) of the Founders' Agreement, Britto's anti-dilution rights under the Founders' Agreement, and the implications of the creation of a derivative ledger based off of the Ripple code by, using or through McCaleb.

74.   Stellar and DOES intentionally and wrongfully took possession of the Converted Credits, including, for the purported purpose of covering Stellar's operational expenses. Among other things, Stellar and DOES conspired to take possession of the Converted Credits for the purported purpose of covering Stellar's operational expenses despite their knowledge of Britto's rights under the Founders' Agreement.

75.   Britto has not expressly or impliedly consented to the taking of the Converted Credits.

76.   Britto made a demand of Stellar and DOES that the Converted Credits be returned to him, and Stellar and DOES refused.

77.   As a direct and proximate result of Stellar's and DOES' wrongful taking Britto has

- 13 -

suffered damages.

78. Stellar and DOES conspired and took the Converted Credits in conscious disregard of Britto's rights as alleged above. Stellar and DOES wrongful conduct and conspiracy was done with fraud, oppression and/or malice, such that Britto should be awarded punitive and exemplary damages to deter conduct such as Stellar's and DOES'.

79. WHEREFORE, Britto prays for judgment as herein set forth.

PRAYER FOR RELIEF

Plaintiff Britto prays for judgment against Defendants, and each of them, as follows:

A. For damages in an amount to be proven at trial, but not less than the jurisdictional limit of this Court;

B. That Defendants be ordered to disgorge, restore and/or make restitution to Britto for all sums constituting unjust enrichment from their wrongful conduct;

C. That the Court enter a preliminary injunction against Defendants and their officers, agents, servants, employees, successors, assignees, subsidiaries, parents and/or those acting in concert or participation with Defendants, mandating that they maintain in their possession a sufficient number of XRP's and/or STR's to restore Britto's digital currency credit grant to 2% of the total combined number of issued XRP's and STR's;

D. That the Court enter a final injunction against Defendants and their officers, agents, servants, employees, successors, assignees, subsidiaries, parents and/or those acting in concert or participation with Defendants, mandating that they deliver to Britto digital currency credits in the form of XRP's and/or STR's in amount sufficient to restore Britto's digital currency credit grant to 2% of the total combined number of issued XRP's and STR's.

E. For a charge on Defendants of a constructive trust constituting a sufficient number of XRP's and/or STR's to restore Britto's digital currency credit grant to 2% of the total combined number of issued XRP's and STR's, and any and other benefit the Defendants wrongfully received, for the benefit of Britto, and an order to the Defendants as constructive trustees to covey all rights, title and interests in a sufficient number of XRP's and/or STR's to

- 14 -

Civil Complaint

restore Britto's digital currency credit grant to 2% of the total combined number of issued XRP's and STR's, and to convey any and other benefit Defendants wrongfully received, to Britto, free of any and all encumbrances;

F.   For punitive and exemplary damages as allowed by law according to proof;

G.   For reasonable attorneys' fees and costs of this action as permitted by law, statute and/or contract;

H.   That Britto be awarded prejudgment and post-judgment interest at the maximum legal rate provided by statute; and

I.   For such other relief as the Court deems just and proper.

Dated: February 13, 2015   HOSIE RICE LLP

By: _____
        SPENCER HOSIE
        Attorneys for Plaintiff Arthur Britto

Civil Complaint

DEMAND FOR JURY TRIAL

Plaintiff, by its undersigned attorneys, respectfully demands a trial by jury on all issues so triable.

Dated: February 13, 2015

HOSIE RICE LLP

By: _____

SPENCER HOSIE
Attorneys for Plaintiff Arthur Britto

- 16 -

Civil Complaint

ex. A

Agreement

With Arthur Britto

September 17, 2012

Chris Larsen, Jed McCaleb and Arthur Britto (the "Founders"), whom developed a distributed open source software platform for making and receiving payments and virtual currency ("Ripple") hereby agree, as of the date first written above (the "Effective Date"),as follows:

1. The Founders agree that 80% of all Ripple Credits shall be allocated to the Company, as determined by the percentage share of all existing Credits set forth in the ledger created, approved and adopted by the majority of Founders as the Official Ledger.

2. The Founders further agree that Arthur Britto shall receive 2% of all the Ripple Credits of the Official Ledger. The Founders acknowledge that these Credits have no value as of the Effective Date and that any compensation for work performed by Arthur Britto is provided in a separate consulting agreement with OpenCoin Inc. It is anticipated that a total of 100 billion credits shall be recorded on the Official Ledger. If the Official Ledger is revised, or any other ledger is created within 36 months of the date of this Agreement that sets forth a lesser percentage of Credits for Britto than the number set forth in the Official Ledger, Britto shall have the right to acquire additional credits at no cost to him, sufficient to bring his Credit Grant to 2% of the total number of credits.

3. The Founders further agree that the Ripple platform will be made available for distribution and licensed under a permissive Open Source license as soon as operationally optimal. It is agreed that Britto shall consent to "open source" his contribution to the Ripple platform at the same time that all other Ripple Founders do the same. In exchange for assigning to the Company his IP rights in Ripple, Britto shall have a lifetime, fully paid up license to develop apps or new functionalities on the Ripple platform.

Agreed:

_____
Jed McCaleb

_____
Chris Larsen

_____
Arthur Britto

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11
   Attorneys for Defendant JED McCALEB
12

13   **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14   **FOR THE COUNTY OF SAN FRANCISCO**

15   **UNLIMITED JURISDICTION**

16

17 ARTHUR BRITTO, an individual,   ) Case No.: CGC-15-544133
)
18   Plaintiff,   ) **DECLARATION OF JED MCCALEB IN**
) **SUPPORT OF SPECIAL MOTION TO**
19   vs.   ) **STRIKE PLAINTIFF'S SECOND CAUSE**
) **OF ACTION FOR BREACH OF THE**
20 JED MCCALEB, an individual, and   ) **IMPLIED COVENANT OF GOOD FAITH**
    STELLAR DEVELOPMENT   ) **AND FAIR DEALING**
21 FOUNDATION, a 501 (c) corporation, and)
    DOES 1-10, inclusive,   ) Date: November 16, 2015
22   ) Time: 9:30 a.m.
) Dept: 302
23   Defendants.   )
)
24 _____

25

26

27
                                   1
28   **MCCALEB DECLARATION IN SUPPORT OF**
           SPECIAL MOTION TO STRIKE; CASE NO. CGC-15-544133

I, Jed McCaleb, state and declare as follows:

1. I am an individual defendant in this action and co-founder of Stellar Development Foundation. I make this Declaration in support of Defendant Jed McCaleb's Special Motion to Strike Plaintiff's Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing, Pursuant to the Anti-SLAPP Statute, CCP § 425.16. I have personal knowledge of the facts set forth herein, and if called upon to testify to them under oath, could and would do so.

2. I have been called "one of the most important developers in the world of digital currency" by Wired Magazine and a "bitcoin pioneer" by the Wall Street Journal. Attached hereto as Exhibit A are true and correct copies of the following articles:

- The Wall Street Journal, "Mt. Gox, Ripple Founder Unveils Stellar, a New Digital Currency Project", July 31, 2014;

- Wired, "Bitcoin Maverick Returns for New Crack at Digital Currency", September 30, 2013.

3. I founded Opencoin, the company that was to become Ripple Labs ("Ripple"), to develop a new virtual currency and a decentralized network ("Ripple Network") that could be used to make payments or exchange currencies. I hired plaintiff as a programmer on February 19, 2012, and Chris Larsen as CEO on August 18, 2012.

4. Pursuant to paragraph 2 of the agreement attached as Exhibit A to plaintiff's Complaint (the "Founders Agreement"), plaintiff has received 2% of all "Ripple Credits" created.

5. The Official Ledger referenced in the Founders Agreement tracks accounts, balances and transactions only on the Ripple Network, and thus the Official Ledger does not and cannot track accounts, balances, and transactions that take place on different platforms or networks.

6. I stopped working for Ripple and resigned as Chief Technology Officer in July

2013. I have been a major donor to charities that support the use of science and technology for poverty alleviation and education. In March 2014, I began working on the formation of a nonprofit, the Stellar Development Foundation. Stellar's mission is to expand financial access and literacy worldwide, and to focus on areas and geographies where access to financial services can significantly impact people's achievement of basic education, healthcare and other human rights.

7.   I do not agree that STRs are a "rival currency" to XRPs, or to any other virtual currency, and I do not agree with plaintiff's characterizations concerning my alleged actions or concerning Stellar in his Complaint.

8.   Ripple and Stellar, my connections to Ripple and Stellar, and the relative merits and value of the Ripple and Stellar networks are matters of widespread public interest, including among the tech community, the virtual currency community, financial access, human rights, poverty alleviation and privacy advocates, the web standards community, and the financial community. Attached hereto as Exhibit B are true and correct copies of the following articles about Stellar:

- Wired, "An Algorithm to Make Online Currency as Trustworthy as Cash", April 8, 2015;
- American Banker, "Cryptocurrency Technology Set to Shake Up Correspondent Banking", March 3, 2015;
- The Wall Street Journal, "BitBeat: Stellar Takes a Step Into the Microfinance World", February 28, 2015;
- Twitter posting by Bill Gates (22.1 million followers) of article from Quartz, "Platforms, not products, are the way to bring financial services to the poor", February 6, 2015;
- Gigaom.com, "Stellar, South African nonprofit to bring digital savings to young girls", February 5, 2015;
- VentureBeat.com, "Stripe-backed Stellar's new integration gives poor South African girls savings accounts", February 5, 2015;

MCCALEB DECLARATION IN SUPPORT OF
SPECIAL MOTION TO STRIKE; CASE NO. CGC-15-544133

- Wired, "New Digital Currency Aims to Unite Every Money System on Earth", August 6, 2014;

- Upstart Business Journal, "Mt. Gox founder raises unconventional $3M 'investment' for his all-star bitcoin startup", August 1, 2014;

- Business Insider, "PayPal's Cofounder is Supporting A New Non-Profit That Will Tackle The Vision PayPal 'Never Accomplished'", July 31, 2014;

- NeuCoin, "Mt. Gox and Ripple Founder Jed McCaleb Unveils Project 'Stellar'", July 31, 2014.

Attached hereto as Exhibit C are true and correct copies of the following articles about Ripple:

- The Economist, "Business this Week", May 9, 2015;

- The Economist, "Blockchain: The next big thing", May 9, 2015;

- The Wall Street Journal, "BitBeat: Day After FinCEN Bombshell, Ripple Labs Addresses Concerns", May 6, 2015;

- The New York Times, "The Rush to Coin Virtual Money With Real Value", November 11, 2013;

- NeuCoin "10 things you need to know about Ripple", May 17, 2013;

9.   On May 22, 2014, I publicly announced my intention to sell all of my remaining XRP, by posting a message on a public internet forum about Ripple (XRPTalk). A true and correct copy of my announcement is attached hereto as Exhibit D.

10.   On May 22, 2014, plaintiff publicly responded to my announcement, by posting a message on a Ripple public internet forum. A true and correct copy of plaintiff's response is attached hereto as Exhibit E. A Ripple spokesperson also commented about my announcement to the media. A true and correct copy of an article from Bank Innovation, "Ripple Co-Founder Dumps Virtual Currency; Price Tanks", reporting the Ripple spokeperson's statement is attached hereto as Exhibit F.

I declare under penalty of perjury under the laws of the State of California that the

foregoing is true and correct.

Executed this 21st day of May, 2015, at San Francisco, California.

_____
JED McCALEB

MCCALEB DECLARATION IN SUPPORT OF
SPECIAL MOTION TO STRIKE; CASE NO. CGC-15-544133

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Attorneys for Defendant JED McCALEB

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

ARTHUR BRITTO, an individual, Plaintiff, vs. JED MCCALEB, an individual, and STELLAR DEVELOPMENT FOUNDATION, a 501 (c) corporation, and DOES 1-10, inclusive, Defendants.	) Case No.: CGC-15-544133)) **EXHIBITS A AND B TO DECLARATION**) **OF JED MCCALEB IN SUPPORT OF**) **SPECIAL MOTION TO STRIKE**) **PLAINTIFF'S SECOND CAUSE OF**) **ACTION FOR BREACH OF THE**) **IMPLIED COVENANT OF GOOD FAITH**) **AND FAIR DEALING**)) Date: November 16, 2015) Time: 9:30 a.m.) Dept: 302)))

EXHIBIT A

July 31, 2014, 12:00 PM ET

Mt. Gox, Ripple Founder Unveils Stellar, a New Digital Currency Project

ByMichael J. Casey and Paul Vigna
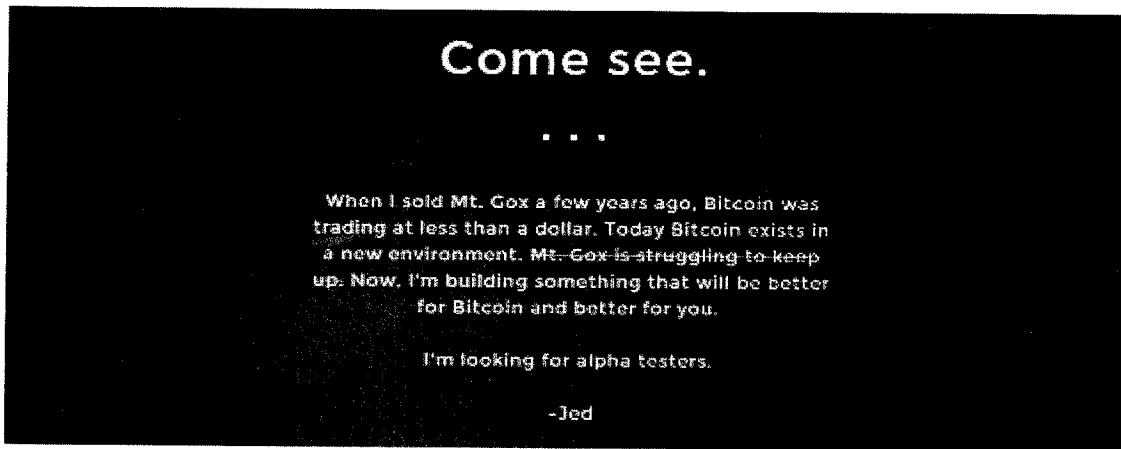
The home page of Jed McCaleb's "Secret Bitcoin Project."

Jed McCaleb, the reclusive bitcoin pioneer who founded both Mt. Gox and Ripple, unveiled his latest, much anticipated cryptocurrency project on Thursday, a user-friendly product that aims to encourage mainstream adoption of digital money.

Mr. McCaleb's new project is a network system called Stellar that promises a bridge between the virtual and traditional currency worlds . It will use a decentralized network of computers run by so-called "gateway" institutions – banks and other financial firms — to cheaply and efficiently manage and authenticate a public record of transactions. Those gateways provide the exchange services that allow outside customers to send money to others anywhere in the world.

Mr. McCaleb is media-shy, almost never talking to the press, but is well-known in the bitcoin community. He started Mt. Gox in 2010, which grew to become the biggest bitcoin exchange in the world before it collapsed this year after he'd sold it to Mark Karpeles. He also co-founded Ripple, a payments network that borrows some of bitcoin's ideas to facilitate cheap, efficient transfers of funds and assets denominated in any currency.

In unveiling Stellar, Mr. McCaleb ends months of speculation. Until now, the project was known only as the "Secret Bitcoin Project," with enticing references made to it in a single-page web site of the same name.

Like bitcoin and Ripple, the Stellar network will operate with an open-source protocol, meaning anybody can work to improve the software. Also as with bitcoin and Ripple, it will have its own internal digital

currency, called stellar.

But Stellar is consciously different in some key areas.

One key difference is that 95% of the currency is being given away for free at the outset, the bulk of it from an initial issuance of 100 billion coins created by the not-for-profit foundation that will run the project. New coins will be later added at no cost to the circulation at a rate of 1% per year.

The decision to give away nearly all the coins was colored by Mr. McCaleb's experience with Ripple, whose benefits as a groundbreaking technology were sometimes overwhelmed by the suspicions of digital-currency investors, some of whom derided it as a "pre-mined" scam. Whereas new bitcoins are constantly being brought into existence by "miners" who receive them as rewards for confirm transactions across network, Ripple Labs created the entire issuance of 100 billion of its own coins, known as XRP, in one fell swoop, retaining a large portion for the company and its founders. That was done so that a separate foundation, called OpenCoin, could coordinate release of XRP over time to designated gateways. But it inevitably created suspicions among some cryptocurrency enthusiasts.

Mr. McCaleb himself had a falling out with Ripple Labs management and he left the company in 2013. Then, in May, he announced that he would be selling his entire stake of XRP coins, a public display that drove down their price and which some in the market dubbed the "Jedageddon."

More In Bitcoin
BitBeat: ItBit Open Shop In U.S. As a Trust Company, Raises $25 Million
BitBeat: Day After FinCEN Bombshell, Ripple Labs Addresses Concerns
Goldman Sachs, Like Others on the Street, Dips a Toe in Bitcoin
BitBeat: Tackling Bitcoin Price Swings, With Eye on Emerging Markets
BitBeat: Latin America Facebook Rival to Use Bitcoin to Pay for Content
In an apparent attempt to distance itself from such internal conflict, Stellar is being built on a model of giveaways.

"We think of it like ICANN," says Joyce Kim, the Stellar Development Foundation's executive director, referring to the group that oversees the Internet protocol. "There are certain things that can't be owned by one company."

Of the 95 billion coins to be distributed, half of those will be available free to applicants who place orders via Facebook. The other half will be reserved for charities working in the fields of economic development and poverty alleviation and non-profits that are early adopters of digital money.

As with Ripple, a key selling point for Stellar will be that it allows people to make payments with traditional currencies while using the efficiency of a cryptocurrency network to lower costs and speed up processing.

"This is probably the best way to bring the best of both worlds together," said Ms. Kim.

The Stellar Development Foundation's board is comprised of Mr. McCaleb, Keith Rabois, the former COO at smartphone credit card swipe provider Square, and Patrick Collison, the CEO of Stripe, a maker of software for payment processing.. The development team is led by Mr. McCaleb and David Mazieres, a Stanford professor who heads up the school's Secure Computer Systems group. Advisors include Dan Kaminsky, Joi Ito, Greg Stein, Jackson Palmer, and Naval Ravikant.

Ms. Kim said the hope is that developers in different nations will tailor products and services around Stellar

that will best serve their local communities.

The biggest goal of Stellar, she said, is to spur adoption of cryptocurrencies, with the team focused on overcoming three specific hurdles: education, access, and volatility.

With other digital currencies, "you either put money in or you have to mine for it," Ms. Kim said, and that "eliminates most of the world." Stellar's goal, she said, is to make it cost-free for people to acquire a virtual currency.

ROBERT MCMILLAN   09.30.13   6:30 AM

BITCOIN MAVERICK RETURNS FOR NEW CRACK AT DIGITAL CURRENCY

Jed McCaleb. *Photo: Ariel Zambelich*

JED MCCALEB LIKES building things that make powerful people nervous.

In 2000, as Napster was starting to implode, he came up with a peer-to-peer filesharing network called eDonkey 2000 that soon became the world's most popular way of sharing music online. Six years later, following legal action from the Recording Industry Association of America, he got out of the game.

Act Two was Mt. Gox, which is now the world's largest exchange for Bitcoin, the popular digital currency. McCaleb started the site in 2010, using a leftover domain name he'd registered a few years earlier for a card-trading site. He wrote new code to handle Bitcoin-to-dollar trades, and the site was an instant hit. Within a few months, customers were wiring him large amounts of cash for their trading accounts, and McCaleb decided to bail, citing a hazy regulatory market. Sure enough, the feds are now starting to crack down.

So now it's time for Act Three: an alternative to Bitcoin known as Ripple. The project is, in some ways, an effort to hone and improve the digital currency, hoping to move us even further into a world that isn't so dependent on traditional money and the established organizations that control it. The only trouble is that McCaleb may once again raise the ire of the feds.

After selling Mt. Gox, McCaleb started thinking more deeply about Bitcoin. He was a huge fan, but he thought he could do some things better. First, he wanted to do away with Bitcoin mining — the process by which computers on the network verify transactions in exchange for Bitcoins. Because miners are rewarded in proportion to the processing power they add to the network, Bitcoin mining has become a bit of an arms race, with very specialized and powerful computers now doing the bulk of the work.

McCaleb, a 38-year-old surfer and Berkeley dropout from Little Rock, Arkansas, sees this as excessive. By his reckoning, there's $160 million spent annually on mining the Bitcoin network, "which is insane," he says. "And this isn't something that's going to go away. It just gets worse and worse."

So he hired some developers and started work on Ripple. Like Bitcoin, Ripple comes with its own digital currency — called the XRP — and its own peer-to-peer money-moving network. But there's a twist: Ripple makes it easy to move any type of money — you can trade dollars for Yen or Euros or even Bitcoins — and instead of exchanges, Ripple uses a set of independent operators, called gateways, who handle the business of taking and delivering the fiat cash. The company's ambitious plan is to build a network of open-source servers that can move money around the world at a tiny fraction of the cost of a bank or a company such as Western Union.

At the center of everything is the XRP. It acts as a kind of lingua franca for all trades on the network. Want to trade dollars for Bitcoins? Ripple takes your dollars and sells them for XRPs. Then it finds someone else who will trade those XRPs for Bitcoins.

That business model could make the XRP very valuable and McCaleb and his partners very rich. Although only about 4 percent of them are being actively traded, the theoretical total value of all 100 billion XRPs in existence is now about $1.4 billion. Compare that to Bitcoins, which are collectively worth just over $1.6 billion.

McCaleb and the company he created, Ripple Labs, have vowed to give away 55 percent of all XRPs, but they're sitting on the rest. In fact, that's the company's business model. Although they employ a staff of 20 to build and distribute the open-source Ripple software and work with government regulators, they don't sell anything.

Ripple Labs CEO Chris Chris Larsen compares his company to Linux maker Red Hat, which makes money selling services around open source software, but in reality, Ripple uses a different kind of open-source business model: You build a digital currency and get rich if it takes off.

The fact that one company controls so much of the XRP currency makes some Bitcoin backers nervous. But there's room for both Bitcoin and Ripple, says Faisal Islam, director of Compliance Advisory Services with Centra Payments Solutions, a financial services consultancy. "Bitcoin is to Android what Ripple is to Apple," he says. "I truly believe both of them are going to be successful."

So far, Silicon Valley seems to think McCaleb's idea worth a shot. Ripple Labs has taken $3 million in investments from well-heeled VCs such as Andreessen Horowitz and Google Ventures.

But there's a very tricky part to the business: finding companies willing to act as money

transmitters for a brand new digital currency. Regulators in the U.S. have had big problems with Bitcoin companies, and have effectively shut some early players out of the U.S. market, including Mt. Gox.

Ripple Labs is meeting with U.S. regulators and is working to address concerns and smooth things over, but if the feds get nervous, they could start squeezing Ripple's gateways.

If that happens, it probably won't be McCaleb's problem. He split from Ripple Labs back in July (he is, however, still on the Ripple Labs Board of Directors). But he and the other two company founders collectively own 20 billion XRPs, so he stands to benefit a lot if everything works out (how much, exactly, he won't say).

Meanwhile, McCaleb is spending his time looking into new things: man-made surf parks and artificial intelligence. That may seem like a departure. But like his past projects, it's all about freedom, about doing something just because you want to. "I do have a distrust of authority," he says. "Or maybe not a distrust of authority, but I really appreciate freedom. I think it's one of the fundamental things that people need."

#BITCOIN #BITCOINS

VIEW COMMENTS

WE RECOMMEND

Apple's Hugest Reveal This Week: Those Crazy New Batteries
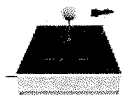
A Gizmo That Shows You What the Moon Will Look Like in 3015
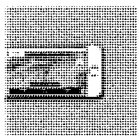
We Tested 4 GPS Apps That Work Even When You're Offline

EXHIBIT B

WIRED

CADE METZ   04.08.15   12:00 PM

AN ALGORITHM TO MAKE ONLINE CURRENCY AS TRUSTWORTHY AS CASH
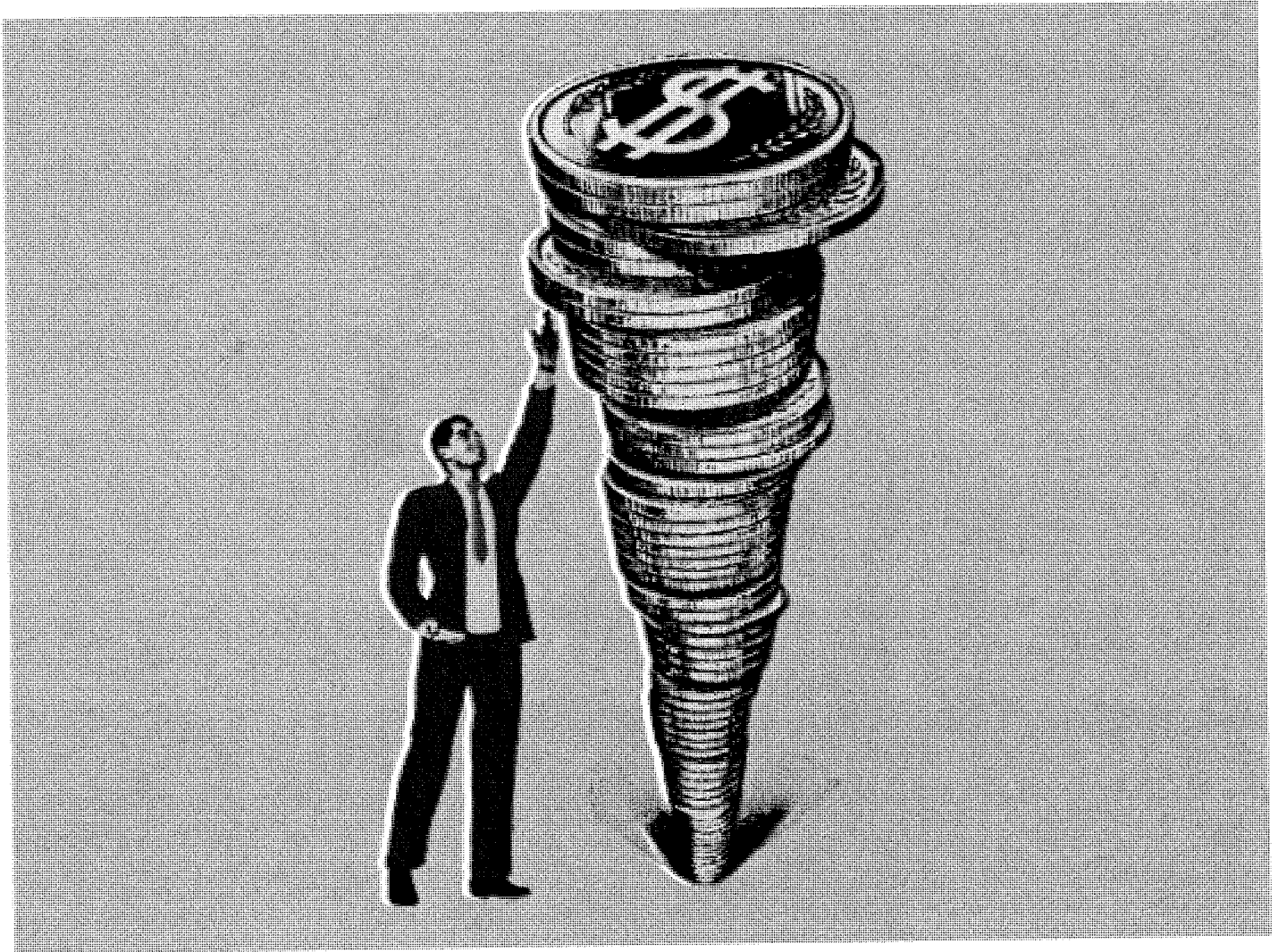
GETTY IMAGES

AN INTERNET OF money. That's the dream.

Through bitcoin and other digital currencies, so many activists, entrepreneurs, and opportunists are chasing the dream. They envision a world where we can trade money as easily as we trade data, where anyone can send and receive currency from any machine on earth, where our financial system is controlled not by big banks or big government but by the people.

The trouble is: we need a way ensuring that the people can be trusted, that this vast network of machines can reliably keep track of our money, that no one can game the system and make off with money that isn't rightful theirs (or, at least, that no one will game things too easily). Bitcoin tackles this issue using a rather elaborate online system where people build specialized computers, or "mining rigs," that do little more than solve random math problems all day long. But David Mazières is proposing a new method, one that affords trust—perhaps even a greater level of trust—without relying on the expensive and power-hungry mining operations that drive bitcoin.

David Mazières is a professor of computer science at Stanford University. But right now, he's on leave at Stellar, a San Francisco non-profit that's seeks an extreme version of that dream. Stellar aims to create a worldwide network of machines that lets anyone send any currency and have it arrive as any other—bitcoin could arrive as dollars, euros as yen, Brazilian real as dogecoin—and last summer, the organization asked Mazières to show that all those machines could keep each other accurate and honest.

The result is a new kind of algorithm. You can think of as a mathematical model for online trust, and it can help drive not only the Stellar network, but all sorts of other online systems that seek to operate without a central authority, from digital currencies to stock markets to email services. As Mazières describes it, at the highest of levels, the algorithm provides a

way for a vast network of machines to reach a reliable consensus. "It's a way of having everyone in the world agree on something," he says. And this include everyone agreeing that everyone else is on the up-and-up.

Achieving Consensus

It's a fascinating, if rather complicated, proof, and today, Stellar and Mazières are sharing it with the world. They're releasing a paper that describes this "consensus algorithm," seeking comment from outside academics and developers, and they're open sourcing a new version of the Stellar software that makes use of it. Stellar had previously open sourced software for running its money network, but according to project founder Jeb McCaleb, it didn't work all that well with a large number of machines —and it needed a way of ensuring trust. "We never really had a good proof for why the system works," he says. "We needed to show that anyone can plug into the system, and it can remain robust."

Dan Boneh, a computer science and electrical engineering professor at Stanford who specializes in cryptographic systems, has reviewed the paper, calling it "pretty interesting." The algorithm, he says, could help build a wide range of online systems that require many machines to securely and accurately work in concert. "It can serve any system that's based on quorums, where we must all agree on what the state of the world is," he says. "It can be used for payments transactions, the exchange of property rights, financial trading, all the standard applications of a trust ledger."

At least, that's the theory. Although he has reviewed the paper, Boneh has not reviewed the software code—and that code is still evolving. Stellar

must still turn theory into reality.

Trust Without Miners

Stellar was bootstrapped by McCaleb, an early bitcoiner, and Stripe, the startup that helps drive online payments for he likes of Apple, Facebook, and Twitter. Like bitcoin, McCaleb and Stellar aim to create a universal online ledger that securely controls the movement of money from one place to another. But unlike bitcoin, it will deal in many currencies, not just one. And it won't use miners.

Bitcoin miners serve multiple purposes. These are the machines that run bitcoin's universal ledger, or "blockchain." And if you set one up, you'll receive a fraction of the new bitcoin currency the system creates with each passing day. That's how the system encourages people to run its network. But mining requires a pretty large investment too: you can't win those new bitcoin unless you build a pretty hefty rig that performs more mathematical busy work than most miners on the network. That's how the system engenders trust. "If someone spends enough money on the infrastructure needed to mine bitcoin," Boneh says, "then they have incentive to keep the system running well."

With his algorithm—dubbed *federated byzantine agreement*—Mazières builds trust in a very different way. In short, he knits together a large trusted network from smaller trusted networks. In joining the network, you connect to people you know and trust. They, in turn, connect to machines they trust. And so on. If the system can show that none of the small quorums are separated from the rest, then we can all trust the larger whole. "As an individual, I choose users that I can trust and those users do the same," Boneh explains. "If we can achieve that combinatorial property, we can achieve consensus."

That may sound simple. But the proof is not. As McCaleb explain it, in analyzing how the network is organized, the system can mathematically

determine where the weak points are, and then work to shore up those weaknesses. Basically, it can help machines determine what other machines they should trust. "You can see where you need to plug in to make the system stronger," McCaleb says.

According to Boneh, who has worked alongside Mazières at Stanford but has no connection to the Stellar project, the algorithm is something new. Existing "byzantine fault-tolerance algorithms" do something similar, but they only work with a fixed number of machines. Stellar's algorithm, in theory, works with a unlimited number of machines. Plus, it allows more people to join the network because it doesn't require power-hungry mining rigs. "Anyone can potentially participate in the consensus—and you don't burn up a lot of power," Boneh says.

Where's the Incentive?

The rub is that this system doesn't encourage people to add machines to the network in the way that bitcoin does. You don't have miners paying people for their hardware resources. But according to McCaleb, who launched one of the first big bitcoin exchanges, all sorts of organizations will help run the Stellar network simply because they want that "internet of money."

Unlike bitcoin, McCaleb points out, Stellar is trying to build a system that handles all currencies, that means its audience is potentially larger, that more organizations will be interested in using it, from PayPal to Wells Fargo. These organizations will not just want to use the system, but help run it—so that they can ensure that it runs well. "Anyone who is running a business on Stellar will want to run their own node," he explains. "And because it's lightweight, asking people to run it is not a big thing."

It's an idealistic pitch. But that's the nature of the project. Stellar isn't an startup designed make money. It's a non-profit intent on building a way for others to move it. That's an ambitious undertaking. But at least some
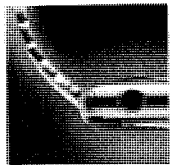
of the pieces are in place.

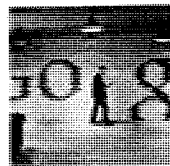#BITCOIN #STELLAR

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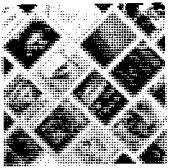
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BANK TECHNOLOGY NEWS

Cryptocurrency Technology Set to Shake Up Correspondent Banking

by Sarah Todd
MAR 3, 2015 5:47pm ET

If banks can't beat cryptocurrencies, they might as well join them.

That seemed to be the consensus at a Tuesday panel on correspondent banking sponsored by The Society for Worldwide Interbank Financial Telecommunication.

The multistep correspondent-banking model is being transformed by new entrants touting faster, cheaper services thanks to cryptocurrency technology, panelists said. They urged financial institutions to consider what they can learn from Bitcoin as well as digital currency developers like Ripple Labs and Stellar Development Foundation.

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"We really can't close our eyes," said Cheryl Gurz, managing director of the emerging technology segment at Bank of New York Mellon Treasury Services. "If we as traditional correspondent bankers don't keep looking and determining where [cryptocurrency technology] will take us, new entrants will completely take our space."

Bitcoin now gives correspondent banking customers the option of sending money to one another directly, cutting financial institutions out of the process, said Wim Raymaekers, Swift's head of banking markets. Meanwhile, Ripple Labs' distributed-ledger technology allows local banks to move money back and forth while sidestepping automated clearing houses.

Banks need to ask themselves "what is the technology that is enabling Bitcoin currency to move effectively with more visibility and at lower costs," Gurz said. "How can we take that into our current systems and make them more efficient, faster, cheaper and more transparent?"

Protocols like Ripple and Stellar are "getting rid of bilateral legacy processes that banks have been using for years to keep money in their pockets," she continued. Gurz recommended that banks consider "strategic partnerships and alliances" with such firms in order to keep up with customers' evolving expectations.

Some banks might hesitate to adopt distributed-ledger technology because of concerns about running afoul of regulators, some of whom have expressed reservations about cryptocurrency as a potential magnet for money laundering and other criminal activity.

But regulators' concerns may be overblown, said Houman Shadab, a law professor at New York Law School.

"From a compliance perspective, these distributed ledgers provide a database of transactions, and that's a good thing," he said. He pointed out that while Bitcoin was the currency of choice for the now-shuttered online black market Silk Road, "it was evidence based on the electronic paper trail from Bitcoin that was used to find the defendants in that case guilty."

"Once you look past the headlines, it's a great investment from a bank's perspective to go to these technologies," Shadab said. Whether banks adopt Ripple Labs' distributed ledger or use their own, he said, quicker settlements will help them reduce costs.

Banks can use some of those savings to invest in lines of business complementary to correspondent banking like supply-chain finance and trade finance, Shadab said.
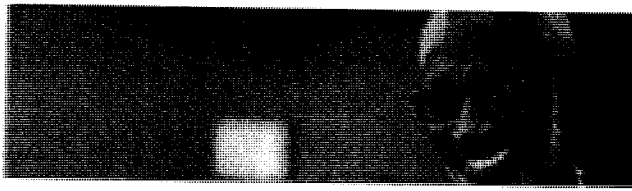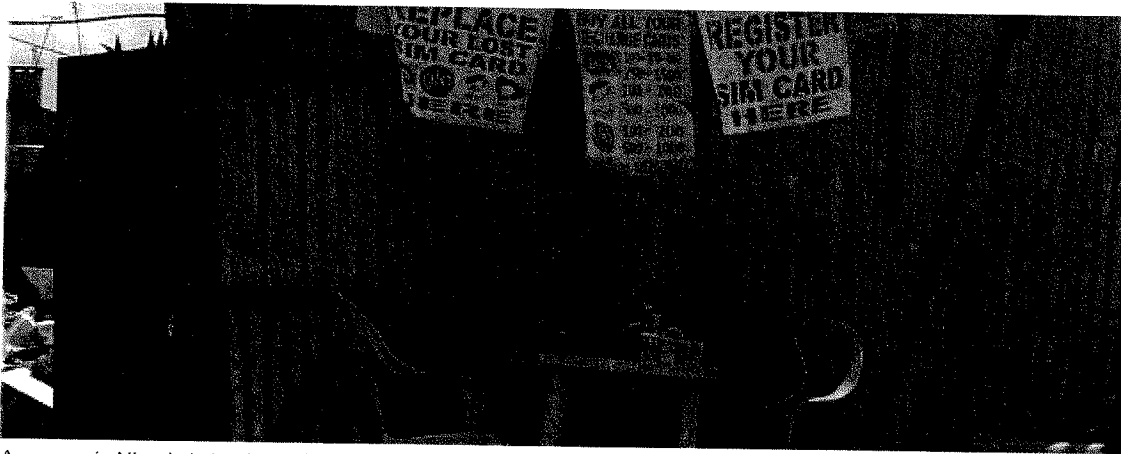
February 28, 2015, 10:38 AM ET

BitBeat: Stellar Takes a Step Into the Microfinance World

By Paul Vigna and Michael J. Casey

A woman in Nigeria is buying a SIM card and top-up credits from an agent; increasingly, such agents are also collecting money on behalf of microfinance institutions.

Oradian

Welcome to BitBeat, the latest in cryptocurrency news and analysis, written by Paul Vigna and Michael J. Casey.

Bitcoin Latest Price: $251.44, down 0.4% (via **CoinDesk**)

Crossing Our Desk:

- Stellar, the cryptocurrency-based payments system launched last year by Jed McCaleb, announced a partnership with banking-software company Oradian to use Stellar platform in its core banking software for microfinance institutions (MFI), with an eye toward using digital-currency based payments networks to improve the ability of financiers to work with each other.

Since launching Stellar in July 2014, the team behind it – led by Mr. McCaleb, who previously founded both Mt. Gox and Ripple – has been busy managing its growth and looking for different uses of its protocol. In looking at the world of the unbanked and the microfinance industry, they think they found a good use.

Microfinance is a field pioneered by Dr. Mohammad Yunus in Bangladesh in the 1970s. The idea behind it is to extend banking services on a very small level to people in emerging markets who don't have the resources to tap the traditional banking services. The industry has grown to the point where about 190 million families are currently served by microfinance, according to the World Bank. But it's not exactly a modernized industry. Physical security is an issue, and the growth of the industry itself has stretched its

ability to operate efficiently.

"There's no way for microfinance companies to communicate with each other," said Joyce Kim, executive director at the Stellar Development Foundation. The combined Oradian/Stellar product would allow microfinance companies to quickly send money to each other. "There's something like 100,000 microfinance institutions, how do we connect them? How do they get the kinds of efficiencies that will change their lives?"

The partnership is going to move slowly, beginning with a pilot program in Nigeria, where moving money often physically carrying cash on a 12-hour bus ride. Stellar could, obviously, change that dynamic. (*Paul Vigna*)

- Nathan Lands thinks that he's come up with bitcoin's proverbial killer app. Mr. Lands, just 30, and his business partner William Cotton have come up with what they hope will be a user-friendly product that will give people an easy way to access and utilize the blockchain.
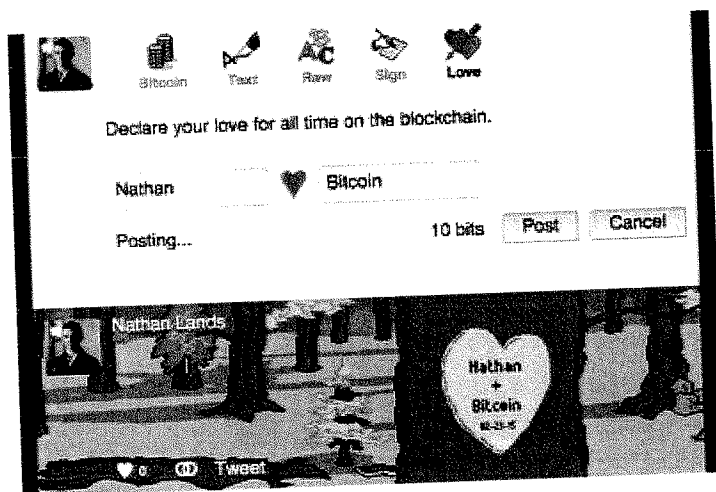
Mr. Lands declared his love for bitcoin.

Blockai

It's called Blockai ("The idea is it's an 'eye' into the blockchain," he said) and the duo hopes it does for bitcoin among the general public what Netscape did for the Internet, which is to be the first product that was broadly accessible to the general public.

Becoming the Netscape of the blockchain is a lofty goal, and plenty of competitors are aiming at the same target, but it's one upon which Mr. Lands' has been fixated. This is his second stab at the killer app. He launched QuickCoin in 2014, which was a program that nestled inside Facebook's platform, and allowed users to send small amounts of bitcoin to their friends.

The app got a flurry of attention at the outset, but it never really took off. Mr. Lands gleaned something from that failure, though. "Cash works fine," he said. "There's got to be other, unique reasons to use bitcoin."

In capitalizing on the promise of the blockchain, he thinks that he's found that unique reason. "Really, the blockchain at its core is the world's first reliable public database." That gives users an opportunity to upload anything from a simple message to a friend to a work of art or a legal document, and use bitcoin's currency to monetize that asset. What Blockai seeks to do is become the easy-to-use platform that facilitates that.

The team is working on the beta version now – perfecting the desktop version, building a mobile app – and doing the rounds on the fund-raising circuit. Mr. Lands expects to launch the product broadly in the next

two or three months.

"Netscape took regular people into the Internet," he said. "We want to do the same thing for the blockchain." (*Paul Vigna*)

Contacts: paul.vigna@wsj.com, @paulvigna / michael.casey@wsj.com, @mikejcasey

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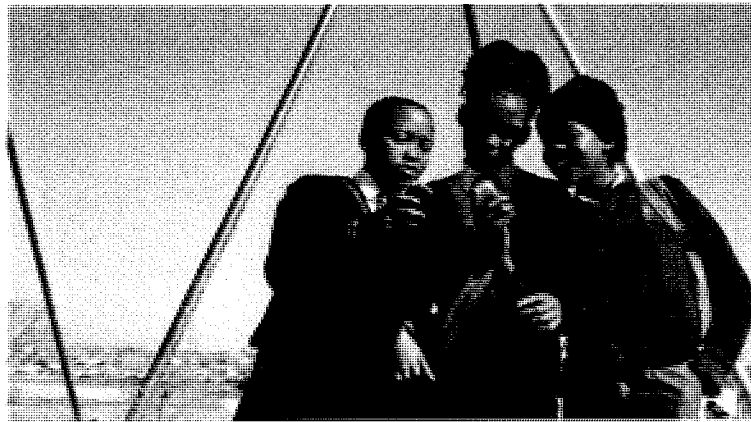**Ms Nashville** @MsNashville · Feb 12
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QUARTZ

Platforms, not products, are the way to bring financial services to the poor

Leo Mirani   February 6, 2015

📷 Much more than a phone. (Vumi/Maluleka & Nic Voutsas)

This post has been corrected.

In recent years, the banking and finance industries have not done a lot to earn the trust of consumers in the West. But in poor countries, basic financial services can be transformative.

Even in today's wired world, many people still stash cash under the mattress, where inflation erodes it away. When they want to send money, they have to find a way to physically transport it. Loans are doled out in bundles or envelopes from moneylenders, at exorbitant rates. Emergencies or unforeseen circumstances can drive a family into penury.

Mobile money from one provider can rarely be transferred to another network, let alone to another country in a different curren cy.

The financial services these people need may come via mobile banking, as Bill and Melinda Gates wrote recently in their annual letter. Basic banking services—from simple payments and transfers to insurance, savings, and loans—are now possible on the simplest of mobile phones, as Quartz has reported.

But most of these systems are hobbled by a lack of interoperability. Mobile money from one provider can rarely be transferred to another network, let alone to another country in a different currency.
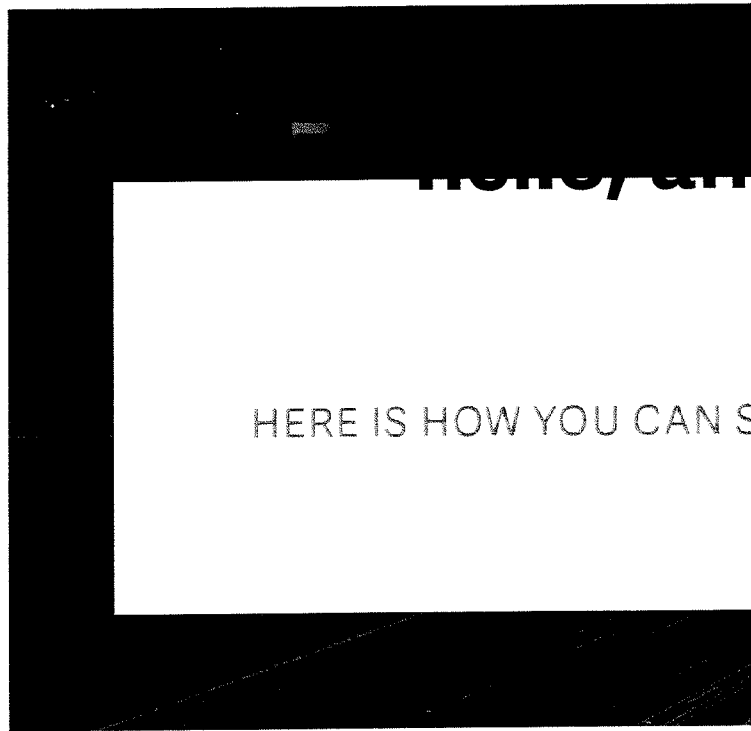
A new wave of financial services are focusing on overcoming these obstacles. They are setting themselves up as platforms, rather than individual products.

The perils of a paperless society

For many in the West, the idea that tech companies and financial firms are mining their internet activity to create an online "identity" for profit is seen as an invasion of privacy (paywall). It is a different story on the other side of the planet, argues Joyce Kim, who runs Stellar, a non-profit financial platform. "What we're hearing from folks in the developing world is that identity is a privilege," she says.

Many who lack a paper trail of birth certificates, driving licenses, and passports also have no online financial presence—which means

Lenddo uses

social media—chiefly Facebook—to assess the creditworthiness of any individual.

means no credit history. But the growing ubiquity of mobile phones offers something tangible to tie to their identities. And what people do with their mobile phones can help financial providers get a sense of their financial acumen.

The wizard of ID

One example of this new kind of financial services platform is Lenddo, a company that uses social media—chiefly Facebook—to assess the creditworthiness of any individual.

In the West, where advanced credit rating systems already crawl every financial transaction, this would seem a needless intrusion. But Lenddo operates in countries where only a small proportion of the population spends money in ways that are visible to credit ratings agencies, says Arjuna Costa of the Omidyar Network, a venture capital firm focused on social enterprise and which funds Lenddo. For the rest, their social media activity, combined with other sources signals such as financial performance over time, can make for a pretty good proxy.

These are people who live well above the poverty

Lenddo has made some 10,000 loans in the past three years as it tested its risk algorithms. Finally satisfied that the system works, Lenddo announced last month that it would open up its platform for other financial firms and startups to use. In the long term, the firm will stop making loans on its own

line, but who nonetheless have precarious financial lives.

and only license its technology to others.

Lenddo targets the so-called "emerging class"—people who work at call centers in Asia, for instance. These are people who live well above the poverty line, but who nonetheless have precarious financial lives. They tend to have little in the way of savings and are unlikely to get loans, says Costa. Many supplement their incomes with remittances from relatives abroad.

Costa says he hopes Lenddo will make loans cheaper as more institutions use the platform. "If you think about general interest rates, there is bank overhead, underwriting costs, and default rates you're trying to add a cushion for," he says. "If we can drive underwriting costs down and default rates down, that should drive the cost of borrowing down." But until (or unless) there is a critical mass of competitors using the system, it might simply pad early adopters' profits by lowering costs that they don't pass on to borrowers.

Starry-eyed

Another company that aims to provide a platform for financial services is Stellar. A non-profit, Stellar has created an open-source protocol for financial transactions, as well as a currency, dubbed the stellar. The initial batch of stellars—backed by $3 million in funds from payment provider Stripe—will be distributed in limited quantities to worthy causes, with another 1% created every year. Stellars are used as the intermediary currency for transactions that use the system.

The idea is to create what Joyce Kim, Stellar's executive

director, calls a "giant translation layer" for money, allowing easy and cheap transfers between any pair of currencies, whether fiat (such as the dollar), digital (such as bitcoin) or notional (such as cellphone talk time) that any financial provider can plug into. But instead of using existing systems such as wire transfers or banks to move money around—which rely on legacy software, and have slow verification procedures and built-in costs—it will use its own low-cost, open-source protocol. The stellar currency acts as a safeguard—if the system believes it is under attack or being used for fraud, it boosts the number of stellar required to complete the transactions.

Talktime savings

One example of how Stellar can work is a new mobile savings account launched this week as a pilot in South Africa. Called Vumi, it seeks to empower young girls, who its proponents believe are the key to reducing intergenerational poverty, to save money directly from their mobile phones. Unlike M-Pesa, it works no matter what network they are on or which mobile-money provider they use, using the stellar protocol (but not its currency). Based on the results, Vumi could expand to Nigeria and Kenya. It uses cellphone talk time as its currency, which can later be withdrawn as cash.

Vumi is itself is another good example of a finance platform. It started life as a communications suite that allows third parties to use text messages, a text-only data protocol called USSD, and voice calls, to contact and interact with mobile phone users across Africa. Vumi has been used by survey companies to reach respondents, aid agencies to spread health information, and governments to encourage voter registration. Having gained its users trust, it is now being used as a way to encourage saving.

Correction: This post mischaracterised Omidyar

Network as a non-profit. It is a venture capital firm. We
also said that Lenddo would immediately stop making
loans. Lenddo will continue to loan money for now
but intends to stop in the long run. The errors
are regretted.

Stellar, South African nonprofit to bring digital savings to young girls

by Biz Carson

Feb. 5, 2015 - 5:00 AM PDT

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Attorneys for Defendants
JED McCALEB and
STELLAR DEVELOPMENT FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

ARTHUR BRITTO, an individual,	) Case No.: CGC-15-544133
Plaintiff,	) **DEFENDANT STELLAR**
	) **DEVELOPMENT FOUNDATION'S**
vs.	) **MEMORANDUM OF POINTS AND**
	) **AUTHORITIES IN SUPPORT OF**
	) **DEMURRER TO COMPLAINT**
JED MCCALEB, an individual, and	)
STELLAR DEVELOPMENT	) Date: November 16, 2015
FOUNDATION, a 501 (c) corporation, and	) Time: 9:30 a.m.
DOES 1-10, inclusive,	) Dept.: 302
Defendants.	)
	) Action Filed: February 13, 2015

DEFENDANT STELLAR'S NOTICE OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

INTRODUCTION

This case involves a contractual dispute between two of the co-founders of a company, now called Ripple Labs -- plaintiff Arthur Britto ("plaintiff") and defendant Jed McCaleb ("McCaleb") -- concerning the interpretation of an agreement between them, called the Founders Agreement. The Founders Agreement concerns a "virtual currency," called Ripples or XRPs, for which Ripple Labs developed and maintains the software platform. The Founders Agreement provides that the Ripple platform will be "open source," meaning that companies and individuals across the world are free to copy, use, or modify the Ripple source code to create their own virtual currencies and virtual currency platforms, without paying any license or other fee to the creators of the Ripple platform. Despite plaintiff's express agreement to open source the Ripple code and let other companies use the code, plaintiff is attempting to misconstrue the intent and language of the Founders Agreement so that he can continue to extract financial gains from others, including nonprofit organizations that use the code.

The Founders Agreement provides that plaintiff will receive 2% of all "Ripple Credits" created on the "Official Ledger," any revisions to the Official Ledger , "or any other ledger . . . created within 36 months." Under this provision, plaintiff has received 2% of all Ripple Credits created. Plaintiff claims that the phrase in the Founders Agreement "or any other ledger" obligates McCaleb to pay plaintiff not just 2% of any ledger created for the Ripple software platform, but an *additional* 2% of *any* ledger created for *any other* virtual currency that utilizes in any way the open source code provided freely by Ripple – despite the fact that "open source" software means that the software can be used by anyone, anywhere in the world without making any payment to the creator or copyright owner of the software. As set forth in McCaleb's concurrently filed demurrer, plaintiff's claim for breach of contract against McCaleb fails as a matter of law.

Plaintiff compounds his misguided lawsuit by seeking to include Stellar Development Foundation ("Stellar") as a defendant. Stellar is a non-profit organization that is developing its own open-source financial software platform, using a new virtual currency, known as Stellars or

DEFENDANT STELLAR'S NOTICE OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

STRs, in order to provide financial access and digital financial literacy for all, and is dedicated to increasing financial inclusion in areas of the world where lack of financial access impacts people's ability to access basic human needs such as education and healthcare.

Stellar is not a party to the Founders Agreement between plaintiff and McCaleb, nor to any other agreement with plaintiff. Plaintiff nevertheless claims that Stellar is liable to him for conversion because Stellar, through McCaleb, had knowledge of plaintiff's Founders Agreement with McCaleb, but refused plaintiff's demand that Stellar pay plaintiff 2% of all STRs that are created. This conversion claim against Stellar fails as a matter of law because plaintiff's claimed right of ownership of STRs is based solely on his alleged contractual rights against McCaleb, and it is blackletter law that such an alleged contractual right of payment cannot support a claim for conversion.

Plaintiff also attempts to bring a claim for conspiracy against Stellar, making entirely conclusory allegations that Stellar conspired with unnamed Doe defendants to convert plaintiff's alleged 2% interest in STRs. Because conspiracy is not an independent cause of action, plaintiff's conspiracy claim fails for the same reason as his conversion claim. Moreover, plaintiff's boilerplate conspiracy allegations are insufficient to state a cause of action.

PLAINTIFF'S ALLEGATIONS

A.   The Ripple Network and Official Ledger

Plaintiff alleges that he, McCaleb, and a non-party, Chris Larsen, were the co-founders of the Ripple development project (Complaint ¶ 17), which "created both a new virtual currency, known as XRP, and a decentralized network that can be utilized to make payments or exchange currencies (the 'Ripple Network')" (Complaint ¶ 18). These XRPs are "a novel virtual currency" and "the native currency of the Ripple settlement protocol . . . which enables essentially cost-free and instantaneous payments, both domestically and internationally." Complaint ¶ 1. "The Ripple Network is a distributed, peer to peer, open-sourced Internet protocol" consisting of "a distributed collection of servers around the globe" and "[t]hese interconnected servers collectively maintain an *official Ledger*, which keeps track not only of

DEFENDANT STELLAR'S NOTICE OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

every account and balance, but also of every transaction that takes place." Complaint ¶ 20 (emphasis added). "The Ledger is a record of the amount of currency in each user's account . . . [and] is repeatedly updated with transactions." Complaint ¶ 21. XRPs "can only be used on the Ripple Network." Complaint ¶ 19.

B. The Agreement Among the Ripple Network Co-Founders

Plaintiff's claims in this case are based on a written agreement, attached as Exhibit A to plaintiff's Complaint (referred to by plaintiff as the "Founders Agreement"),[1] among the alleged co-founders of the Ripple development project (plaintiff Britto, defendant McCaleb, and non-party Chris Larsen) "regarding the creation and ownership of a virtual currency program code known as the Ripple protocol, and currency later to be known as XRP." Complaint ¶ 25. Stellar is not a party to the Founders Agreement, and plaintiff makes no allegation that Stellar has any contractual obligation to him under the Founders Agreement, or otherwise.

The Founders Agreement provides that "the Ripple platform will be made available for distribution and licensed under a permissive Open Source license," and that plaintiff "shall consent to 'open source' his contribution to the Ripple platform." Complaint, Ex. A, ¶ 3; *see also* Complaint ¶ 20 ("The Ripple Network is . . . "open-sourced"); *id.* ¶ 28 (plaintiff "[u]nder[stood] and intend[ed] that the Ripple protocol would ultimately be open sourced"). "Open source" software means "software for which the original source code is made freely available and may be redistributed and modified." Oxford English Dictionary.[2]

The Founders Agreement further provides -- in the provision on which plaintiff bases all of his claims -- that:

> [Plaintiff] shall receive 2% of all the Ripple Credits of the Official Ledger. . . . If the Official Ledger is revised, or any other ledger is created . . . that sets forth a lesser percentage of Credits for [plaintiff] than the number set forth in the Official Ledger, [plaintiff] shall have the right to acquire additional credits at no cost to him, sufficient to bring his Credit Grant to 2% of the total number of credits.

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[1] When an agreement is attached to a complaint and incorporated into the complaint, each provision of the contract is treated as if it is an allegation of the complaint. *Filet Menu, Inc. v. Cheng*, 71 Cal. App. 4th 1276, 1279 n.1 (1999).

[2] This definition can be found at: http://www.oxforddictionaries.com/definition/english/open-source. The Court may take judicial notice of this definition, pursuant to Cal. Evid. Code § 452(h).

DEFENDANT STELLAR'S NOTICE OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

Complaint, Ex. A, ¶ 2.[3]   The "Official Ledger" referenced in the Founders Agreement is the same "Official Ledger" described in Paragraph 20 of the Complaint, which is part of the Ripple Network and "keeps track of every account and balance . . [and] of every transaction that takes place [of XRPs in the Ripple Network]."   The Official Ledger tracks accounts, balances and transactions only on the Ripple Network, and thus the Official Ledger does not and cannot track accounts, balances, and transactions that take place on different platforms or networks. *See* Complaint ¶¶ 18-21.

C.   Plaintiff's Claims Against McCaleb

Plaintiff alleges that this provision in Paragraph 2 of the Founders Agreement means that, "if McCaleb created another payment protocol to settle funds or exchange things of value with another Ledger, [plaintiff] was absolutely entitled – without cost, tax or otherwise – to 2% of the credits relating to that competitive Ledger." Complaint ¶ 29. Plaintiff further alleges that the ledger maintained by Stellar is such a "competitive Ledger," and that McCaleb is therefore obligated under the Founders Agreement to pay plaintiff "2% or 2 billion of the 'STRs' created on the derivative Stellar Ledger." Complaint ¶ 42.

Thus, the key issue in this case is whether the phrase "or any other ledger" in Paragraph 2 of the Founders Agreement refers only to other ledgers created under the Ripple Network (defendants' position), or refers also to any other ledger created by a separate virtual currency company using the open source code distributed freely by the Ripple development project (plaintiff's position).

Based on the allegations described above, plaintiff brings claims against McCaleb for breach of contract (First Cause of Action) and breach of the implied covenant of good faith and fair dealing (Second Cause of Action). McCaleb has filed, concurrently with This demurrer by Stellar, a Demurrer to Plaintiff's First Cause of Action for breach of contract on the ground that the Founders Agreement referred only to ledgers utilizing the Ripple Network, and cannot reasonably be interpreted to apply to Stellar's ledger, which was created by a separate non-

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[3] Plaintiff makes no allegation that he failed to receive 2% of all the Ripple Credits of the Ripple Official Ledger.

DEFENDANT STELLAR'S NOTICE OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

Ripple affiliated company. McCaleb therefore has no obligation under the Founders Agreement to make any payment of STRs to plaintiff.

Plaintiff's complaint concedes that he agreed that the Ripple source code would be open-source, and therefore given freely to other companies to develop their own proprietary virtual currencies. Complaint ¶¶ 20, 28 & Ex. A, introduction & ¶ 3. The Complaint contains no allegation that the open source license for the Ripple protocol required any company that utilizes this open source license to create a separate virtual currency to pay a license fee of 2% of the total credits on the ledger for that virtual currency.

D.   Plaintiff's Claims Against Stellar

In addition to his contractual claims against McCaleb, plaintiff also attempts to bring tort claims against Stellar for conversion (Third Cause of Action) and Conspiracy to Convert (Fourth Cause of Action). Plaintiff alleges that, based on his contractual rights under his Founders Agreement with McCaleb, plaintiff "owned or had a right of possession in 2 billion [STRs] upon the creation of the Stellar Ledger," and that Stellar "intentionally and wrongfully took possession" of his 2 billion STRs "for the purported purpose of covering Stellar's operational expenses." Complaint ¶¶ 63-64. Plaintiff further alleges that Stellar conspired with unnamed Doe defendants in converting plaintiff's STRs. Plaintiff seeks punitive damages against Stellar. Complaint ¶¶ 68, 78.

ARGUMENT

I.   PLAINTIFF'S THIRD CAUSE OF ACTION FOR CONVERSION MUST BE DISMISSED

A.   Plaintiff's Conversion Claim Against Stellar Fails for the Same Reasons as Plaintiff's Breach of Contract Claim Against McCaleb

Plaintiff's conversion claim against Stellar is based entirely on his breach of contract claim against McCaleb. As set forth in McCaleb's concurrently filed Demurrer to Plaintiff's First Cause of Action for Breach of Contract ("McCaleb Demurrer"), however, plaintiff's breach of contract claim against McCaleb fails as a matter of law because McCaleb has no obligation under the Founders Agreement to make any payment of STRs to plaintiff. *See*

McCaleb Demurrer at 4-10. Accordingly, plaintiff's conversion claim against Stellar fails for the same reason.

B. **Plaintiff's Alleged Contractual Rights Against McCaleb Cannot Support a Conversion Claim Against Stellar Even if Plaintiff Has Alleged a Viable Breach of Contract Claim Against McCaleb**

Even if plaintiff has alleged a viable breach of contract claim against McCaleb, however, plaintiff's conversion claim against Stellar still fails as a matter of law because plaintiff cannot convert his breach of contract claim against McCaleb into a tort claim against Stellar.

Conversion is the wrongful exercise of dominion over the personal property of another. *Software Design & Application v. Hoefer & Arnett*, 49 Cal. App. 4th 472, 485 (1996). To establish a viable cause of action for conversion, a plaintiff must have either ownership and the right of possession, or actual possession of the property, at the time of the alleged conversion. *General Motors Acceptance Corp. v. Dallas*, 198 Cal. 365, 370 (1926); *see also Farmers Ins. Exchange v. Zerin*, 53 Cal. App. 4th 445, 452 (1997) (the plaintiff must be entitled to "immediate possession at the time of conversion"). "[A] mere contractual right of payment, without more, will not suffice" to support a claim for conversion. *Zerin*, 53 Cal. App. 4th at 452; *see also Kim v. Westmoore Partners, Inc.*, 201 Cal. App. 4th 267, 284 (2011) ("the simple failure to pay money owed does not constitute conversion").

Moreover, "[m]oney cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment." *McKell v. Washington Mutual, Inc.*, 142 Cal. App. 4th 1457, 1491 (2006); *see also Kim*, 201 Cal. App. 4th at 284 ("California cases permitting an action for conversion of money typically involve those who have misappropriated, commingled, or misapplied specific funds held for the benefit of others"). While "one who wrongfully withholds personal property from another who is entitled to it under a security agreement may be liable for conversion," under California law, "a mere contractual right of payment, without more, does not entitle the obligee to the immediate

possession necessary to establish a cause of action for the tort of conversion." *Del Bino v. Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999).

In the California Supreme Court case *Imperial Valley Land Co. v. Globe Grain & Milling Co.*, 187 Cal. 352 (1921), discussed in *Zerin*, *supra*, 53 Cal. App. 4th at 452, plaintiff landowner had entered into an agreement with lessee farmers to raise a cotton crop on his land in return for payment of one-fourth of the crop as rent. The farmers delivered the entire crop to a bank as security for a loan. The Supreme Court held that the plaintiff failed to state a cause of action for conversion against the farmers or the bank, because the lease did not give the landowner any title to or lien on the crop itself, but only established the measure of damages for breach of contract. *Imperial Valley*, 187 Cal. at 353-55; *see also Gerawan Farming, Inc. v. Rehrig Pac. Co*, 2012 U.S. Dist. LEXIS 28017, at *16 (E.D. Cal. Mar. 2, 2012) (dismissing a conversion claim based on failure to pay royalties because "there is nothing to suggest that the royalty payments due to [plaintiff] amounted to anything more than a contractual right to payment"); *Ginocchi v. Grand Home Holdings, Inc.*, 2011 U.S. Dist. LEXIS 88108, at **5-6 (S.D. Cal. Aug. 9, 2011) (dismissing a conversion claim based on a contractual right of payment, holding that "[p]laintiff cannot sufficiently allege a right of possession" to unpaid compensation under an employment agreement because "his right to possession is based on contract"); *Rodgers v. Roulette Records, Inc.*, 677 F. Supp. 731, 736-37 (S.D.N.Y. 1988) ("Defendants never held property belonging to plaintiff since they only held the proceeds of sales of their own property, the recordings, a part of which they were contractually obligated to pass onto plaintiff in the form of royalties").

Plaintiff's allegations in this case demonstrate that his conversion claim against Stellar fails as a matter of law because plaintiff's claim is based on "a mere contractual right of payment, without more." *Zerin*, 53 Cal. App. 4th at 452. Plaintiff claims that he "owned or had a right of possession in 2 billion [STRs] upon the creation of the Stellar Ledger." Complaint ¶ 63. This claim of ownership, however, is based entirely on the alleged Founders Agreement between plaintiff and McCaleb, to which Stellar was not a party. Plaintiff does not allege that his right to payment of 2 billion STRs is based on anything other than his Founders Agreement

DEFENDANT STELLAR'S NOTICE OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

with McCaleb.[4] The Founders Agreement simply creates a contractual obligation between plaintiff and McCaleb (and Larsen). The Founders Agreement does not create a lien or security interest for plaintiff in any STRs owned by Stellar, which is essential for plaintiff to state a cause of action for conversion. *See, e.g., Imperial Valley*, 187 Cal. at 353-54. Indeed, plaintiff admits that the Founders Agreement concerns "a mere contractual right of payment" (*Zerin*, 53 Cal. App. 4th at 452), when he alleges that the Founders Agreement "essentially states that McCaleb would make [plaintiff] whole economically." Complaint ¶ 4.

Plaintiff cannot argue that STRs do not constitute a form of payment. Plaintiff alleges that XRPs and STRs are "currency" and may be used for "instantaneous payments, both domestically and internationally, regardless of currency denomination" and that they "compete[] directly with the traditional . . . network of correspondent banks, wire transfers, and the foreign exchanges." Complaint ¶ 1; *see also* Complaint ¶ 18 ("a new virtual currency, known as XRP, and a de-centralized network that can be utilized to make payments or exchange currencies"); *id.* ¶ 19 ("a math-based currency"); *id.* ¶ 35 (STRs are "crypto currency"); *id.* ¶ 38 ("[t]he only substantive and functional difference between Ripple and Stellar is that, while the number of XRPs is immutably fixed, the number of STRs inflates slightly over time, nominally to track inflation").

Moreover, plaintiff does not allege any requisite specific property interest in any particular 2 billion STRs, as required by the cases discussed above, just a contractual right to have McCaleb make him "whole economically" by paying him 2 billion STRs. As discussed in the paragraph above, plaintiff *cannot* allege any specific property interest in any particular STRs, because, as plaintiff alleges, STRs are currency.

Plaintiff's conversion claim fails as a matter of law because plaintiff's alleged contractual right to payment by McCaleb cannot support a conversion claim against Steller.

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[4] For example, plaintiff does not claim that Stellar has infringed any of his intellectual property rights in creating the Stellar protocol -- which plaintiff alleges is based on the Ripple protocol -- admitting that the Ripple protocol is open source and that plaintiff has no "IP rights in Ripple." Complaint ¶¶ 20, 28 & Ex. A, ¶ 3.

1   Accordingly, plaintiff's Third Cause of Action for Conversion must be dismissed without leave

2   to amend.

3   **II.   PLAINTIFF'S FOURTH CAUSE OF ACTION FOR CONSPIRACY TO**
     CONVERT MUST BE DISMISSED
4

5   A.   **Plaintiff's Fourth Cause of Action for Conspiracy to Convert Is Entirely**
               Dependent on Plaintiff's Failed Third Cause of Action for Conversion and
6   **Thus Fails for the Same Reasons**

7   Conspiracy is not an independent cause of action. *Okun v. Superior Court*, 29 Cal. 3d

8   442, 454 (1981); *Faunce v. Cate*, 222 Cal. App. 4th 166, 172-73 (2013). "[A] civil conspiracy

9   does not give rise to a cause of action unless an independent civil wrong has been committed."

10   *Rusheen v. Cohen*, 37 Cal. 4th 1048, 1062 (2006). Because, as demonstrated in Point I, above,

11   plaintiff cannot state a claim for conversion against Stellar, he cannot state a claim for

12   conspiracy to convert, and both claims must be dismissed with prejudice.

13   B.   **Plaintiff's Boilerplate Allegations That Stellar Conspired With Unnamed**
               Doe Defendants Are Insufficient to Support a Cause of Action for
14   **Conspiracy**

15

16   Even if plaintiff had alleged a viable cause of action for conversion, which he has not,

17   plaintiff's boilerplate allegations of conspiracy are insufficient to support a cause of action for

18   conspiracy to convert. In order to state a cause of action for conspiracy, a plaintiff must allege

19   "the formation and operation of the conspiracy, the wrongful act or acts done pursuant to it, and

20   the damage resulting from such acts." *State of California ex rel. Metz v. CCC Info. Serv., Inc.*,

21   149 Cal. App. 4th 402, 419 (2007). "In making such allegations, bare legal conclusions,

22   inferences, generalities, presumptions, and conclusions are insufficient." *Id.* In *Metz*, the court

23   upheld an order sustaining a demurrer to a conspiracy cause of action without leave to amend

24   because the plaintiff's allegations that the named defendant had conspired with unnamed Doe

25   defendants to conceal improper loss valuations "amount[ed] to bare legal conclusions." *Id.*

26   Plaintiff's allegations here that Stellar conspired with unnamed Doe defendants similarly

27   consist entirely of bare legal conclusions. *See* Complaint ¶¶ 12, 13, 72-78. Plaintiff alleges no

28   specific facts in support of his conspiracy theory. Plaintiff does not allege any specific actions

by any Doe defendants. Indeed, the only possible factual allegation that could relate to plaintiff's conspiracy theory about unnamed defendants is Paragraph 43 of the Complaint, in which plaintiff alleges that he "notif[ied] McCaleb *and the directors of the Stellar Development Foundation* of his exercise of purchase rights, and attempted in good faith to negotiate to acquire the STR. This effort failed." Complaint ¶ 43 (emphasis added).[5] It is black letter law, however, that agents and employees of a company "cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage." *Reynolds v. Bement*, 36 Cal. 4th 1075, 1090 (2005); *see also Kerr v. Rose*, 216 Cal. App. 3d 1551, 1564 (1990) ("[a] corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation").

Plaintiff has not, and cannot, make any claim that McCaleb or any Doe defendant "acted as individuals for their individual advantage." First, this conspiracy cause of action alleges that Stellar conspired only with some unnamed and unexplained Doe defendants, not McCaleb, and refers only to notification of the directors of Stellar. Second, plaintiff should not be given leave to amend to assert that Stellar conspired with McCaleb while McCaleb "acted as [an] individual[] for [his] individual advantage," because plaintiff concedes that McCaleb is a founder of Stellar (Complaint ¶¶ 9, 10), and that he acted as "Stellar's agent" in "[taking] possession of the Converted Credits" and in "the creation of a derivative ledger" (Complaint ¶ 64). Thus, any claim that McCaleb conspired with Stellar fails as a matter of law, because Stellar could not conspire with an agent acting on its behalf.

Accordingly, plaintiff's cause of action for conspiracy must be dismissed without leave to amend.

CONCLUSION

For the reasons set forth above, Stellar's demurrer should be sustained, and plaintiff's Third Cause of Action for Conversion and Fourth Cause of Action for Conspiracy to Convert

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[5] This allegation is not contained in the conspiracy cause of action. Plaintiff uses the "disfavored shotgun or chain letter style of pleading in which each cause of action incorporates by reference all preceding paragraphs." *International Billing Serv., Inc. v. Emigh*, 84 Cal. App. 4th 1175, 1179 (2000).

DEFENDANT STELLAR'S NOTICE OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

1   dismissed with prejudice.

2   Dated: April 24, 2015   GROSS BELSKY ALONSO LLP

3

4   By: _Adam C. Belsky /pb._
5   ADAM C. BELSKY

6   Attorneys for Defendants
                                             JED McCALEB and STELLAR
7   DEVELOPMENT FOUNDATION

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PROOF OF SERVICE

RE: ***Arthur Britto v. Jed McCaleb et al.,***
San Francisco Superior Court Case No.:CGC-15-544133

I am a citizen of the United States and employed in the County of San Francisco, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is GROSS BELSKY ALONSO LLP, 1 Sansome Street, Suite 3670, San Francisco, CA 94104. On the date set forth below, I served the following documents in the manner indicated on the below named parties and/or counsel of record:

- DEFENDANT STELLAR DEVELOPMENT FOUNDATION'S NOTICE OF DEMURRER TO COMPLAINT
- DEFENDANT STELLAR FOUNDATION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT

XX   **U.S. Mail**, with First Class postage prepaid and deposited in a sealed envelope at San Francisco, California.

Spencer Hosie, Esq.
Diane S. Rice, Esq.
Darrell R. Atkinson, Esq.
HOSIE RICE LLP
Transamerica Pyramid, 34th Floor
600 Montgomery Street
San Francisco, California 94111
Telephone: (415)247-6000
Facsimile: (415) 247-6001

Attorneys for Plaintiff
Arthur Britto

I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service, and said correspondence would be deposited with the United States Postal Service, California that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 24, 2015 at San Francisco, California.

_____.
JESSICA DEAN

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12

                 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
                      FOR THE COUNTY OF SAN FRANCISCO
14
                            UNLIMITED JURISDICTION
15

16 ARTHUR BRITTO, an individual,   ) Case No.: CGC-15-544133
)
17   Plaintiff,   ) **DEFENDANT JED McCALEB'S**
) **MEMORANDUM OF POINTS AND**
18   ) **AUTHORITIES IN SUPPORT**
              vs.   ) **DEMURRER TO PLAINTIFF'S FIRST**
19   ) **CAUSE OF ACTION**
)
20 JED MCCALEB, an individual, and   )
   STELLAR DEVELOPMENT   ) Date: November 16, 2015
21 FOUNDATION, a 501 (c) corporation, and) Time: 9:30 a.m.
   DOES 1-10, inclusive,   ) Dept.:   302
22   )
                    Defendants.   )
23   )
   _____) Action Filed: February 13, 2015

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INTRODUCTION

This case involves a contractual dispute between two of the co-founders of a company, now called Ripple Labs -- plaintiff Arthur Britto ("plaintiff") and defendant Jed McCaleb ("McCaleb") -- concerning the interpretation of an agreement between them. This agreement, called the Founders Agreement, concerns a "virtual currency," called Ripples or XRPs, for which Ripple Labs developed and maintains the software platform.

The agreement at issue provides that the Ripple software platform will be open source, meaning that companies and individuals across the world are free to copy, use, or modify the Ripple software to create their own virtual currencies and virtual currency platforms, without paying any license or other fee to the creators of the Ripple platform. The agreement further provides that plaintiff will receive 2% of all "Ripple Credits" created on the "Official Ledger," any revisions to the Official Ledger , "or any other ledger . . . created within 36 months." Under this provision, plaintiff has received 2% of all Ripple Credits created.

Plaintiff claims that the phrase in the agreement "or any other ledger" obligates McCaleb to pay plaintiff not just 2% of any ledger created for the Ripple software platform, but an *additional* 2% of *any* ledger created for *any other* virtual currency that utilizes in any way the open source code provided freely by Ripple – despite the fact that "open source" software means that the software can be used by anyone, anywhere in the world without making any payment to the creator or copyright owner of the software. Under longstanding principles of California law governing contract interpretation, the agreement cannot be reasonably interpreted to apply to virtual currencies created and maintained by other companies on non-Ripple platforms, even if McCaleb has some involvement with the non-Ripple platform. Accordingly, plaintiff's cause of action for breach of contract claim fails as a matter of law and must be dismissed.

PLAINTIFF'S ALLEGATIONS

A.   The Ripple Network and Ripple Official Ledger

Plaintiff alleges that he, McCaleb, and a non-party, Chris Larsen, were the co-founders of "[t]he Ripple development project" (Complaint ¶ 17), which "created both a new virtual currency, known as XRP, and a decentralized network that can be utilized to make payments or

exchange currencies (the 'Ripple Network')" (Complaint ¶ 18). These XRPs are "a novel virtual currency" and "the native currency of the Ripple settlement protocol . . . which enables essentially cost-free and instantaneous payments, both domestically and internationally." Complaint ¶ 1. "The Ripple Network is a distributed, peer to peer, open-sourced Internet protocol" consisting of "a distributed collection of servers around the globe" and "[t]hese interconnected servers collectively maintain an *official Ledger*, which keeps track not only of every account and balance, but also of every transaction that takes place." Complaint ¶ 20 (emphasis added). "The Ledger is a record of the amount of currency in each user's account . . . [and] is repeatedly updated with transactions." Complaint ¶ 21. XRPs "can only be used on the Ripple Network." Complaint ¶ 19.

B.   The Agreement Among the Ripple Network Co-Founders

Plaintiff's claims in this case are based on a written agreement, attached as Exhibit A to plaintiff's Complaint (referred to by plaintiff as the "Founders Agreement"),[1] among the alleged co-founders of the Ripple development project (plaintiff Britto, defendant McCaleb, and non-party Larsen), "regarding the creation and ownership of a virtual currency program code known as the Ripple protocol, and currency later to be known as XRP." Complaint ¶ 25.

The Founders Agreement provides that "the Ripple platform will be made available for distribution and licensed under a permissive Open Source license," and that plaintiff "shall consent to 'open source' his contribution to the Ripple platform." Complaint, Ex. A, section 3; *see also* Complaint ¶ 20 ("The Ripple Network is . . . "open-sourced"); *id.* ¶ 28 (plaintiff "[u]nder[stood] and intend[ed] that the Ripple protocol would ultimately be open sourced"). "Open source" software means "software for which the original source code is made freely available and may be redistributed and modified." Oxford English Dictionary.[2]

The Founders Agreement further provides, in the provision on which plaintiff bases his breach of contract claim, that:

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[1] When an agreement is attached to a complaint and incorporated into the complaint, each provision of the contract is treated as if it is an allegation of the complaint. *Filet Menu, Inc. v. Cheng*, 71 Cal. App. 4th 1276, 1279 n.1 (1999).
[2] This definition can be found at: http://www.oxforddictionaries.com/definition/english/open-source. The Court may take judicial notice of this definition, pursuant to Cal. Evid. Code § 452(h).

DEFENDANT McCALEB'S MEM OF POINTS AND AUTHORITEIS IN SUPPORT OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

[Plaintiff] shall receive 2% of all the Ripple Credits of the Official Ledger. . . . If the Official Ledger is revised, or any other ledger is created . . . that sets forth a lesser percentage of Credits for [plaintiff] than the number set forth in the Official Ledger, [plaintiff] shall have the right to acquire additional credits at no cost to him, sufficient to bring his Credit Grant to 2% of the total number of credits.

Complaint, Ex. A, ¶ 2.[3] The "Official Ledger" referenced in the Agreement is the same "Official Ledger" described in Paragraph 20 of the Complaint, which is part of the Ripple Network and "keeps track of every account and balance . . [and] of every transaction that takes place [of XRPs in the Ripple Network]." The Official Ledger tracks accounts, balances and transactions only on the Ripple Network, and thus the Official Ledger does not and cannot track accounts, balances, and transactions that take place on different platforms or networks. *See* Complaint ¶¶ 18-21.

C.   Plaintiff's Breach of Contract Claim Against McCaleb

Plaintiff alleges that this provision in Paragraph 2 of the Founders Agreement means that "if McCaleb created another payment protocol to settle funds or exchange things of value with another Ledger, [plaintiff] was absolutely entitled – without cost, tax or otherwise – to 2% of the credits relating to that competitive Ledger." Complaint ¶ 29. Plaintiff further alleges that: (1) the ledger maintained by Stellar for its virtual currency, which plaintiff refers to as "STRs", is such a "competitive Ledger"; (2) McCaleb is therefore obligated under the Founders Agreement to pay plaintiff "2% or 2 billion of the 'STRs' created on the derivative Stellar Ledger" (Complaint ¶ 42); and (3) McCaleb breached the Founders Agreement by failing to do so (Complaint ¶ 51).

Plaintiff's claim for breach of contract thus turns on whether the phrase "or any other ledger" in Paragraph 2 of the Founders Agreement refers only to other ledgers created for the Ripple Network (McCaleb's position), or refers also to any other ledger created by a separate virtual currency company using the open source code distributed freely by the Ripple development project (plaintiff's position). McCaleb now demurs to plaintiff's breach of contract

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[3] Plaintiff makes no allegation that he failed to receive 2% of all the Ripple Credits of the Official Ledger. (Indeed, when Ripple Labs replaced the original Official Ledger with a second Official Ledger, plaintiff was issued 2% of all Ripple Credits on the replacement Official Ledger, which is the manifest purpose of this provision.)

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1 cause of action on the ground that the Founders Agreement is not reasonably susceptible to

2 plaintiff's interpretation.

3   **ARGUMENT**

4 **I.   PLAINTIFF'S FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT
        MUST BE DISMISSED BECAUSE THE AGREEMENT IS NOT REASONABLY
5   SUSCEPTIBLE TO PLAINTIFF'S INTERPRETATION OF IT**

6   When, as here, a contract has been attached to and incorporated in the complaint, a court

7 considering a demurrer to a cause of action for breach of that contract must construe the

8 language of the contract on its face to determine "whether the alleged agreement is 'reasonably

9 susceptible' to the meaning ascribed to it in the complaint." *Klein v. Chevron U.S.A., Inc.*, 202

10 Cal. App. 4th 1342, 1384 (2012). "The rule on demurrer is simply a variation on the well-

11 recognized theme that 'it is solely a judicial function to interpret a written instrument unless the

12 interpretation turns upon the credibility of extrinsic evidence.'" *Davies v. Sallie Mae, Inc.*, 168

13 Cal. App. 4th 1086, 1091 (2008) (citation omitted); *see also Morris v. Redwood Empire Bancorp*,

14 128 Cal. App. 4th 1305, 1314 (2005) ("[a]lthough on demurrer a reviewing court ordinarily

15 assumes as true the facts alleged in the complaint, a pleader's legal characterization of a contract

16 is not controlling"). If the court determines that the contract is not reasonably susceptible to the

17 plaintiff's interpretation, "the case is over." *Horath v. Hess*, 225 Cal. App. 4th 456, 464 (Cal.

18 App. 4th 2014).

19   Under the general rules of contract interpretation, a contract must be interpreted "to give

20 effect to the mutual intention of the parties as it existed at the time of contracting." Cal. Civ.

21 Code § 1636. "When a contract is reduced to writing, the intention of the parties is to be

22 ascertained from the writing alone, if possible." Cal. Civ. Code § 1639; *see also Klein*, 202 Cal.

23 App. 4th at 1385 (the parties' intent "is interpreted according to objective, rather than subjective,

24 criteria"). "The whole of a contract is to be taken together, so as to give effect to every part, if

25 reasonably practicable, each clause helping to interpret the other." Cal. Civ. Code § 1641; *see*

26 *also* Cal. Civ. Code § 1650 ("[p]articular clauses of a contract are subordinate to its general

27 intent"); *Signal Co. v. Harbor Ins. Co.*, 27 Cal. 3d 359, 375 (1980) ("the contract must be

28 construed as a whole and the intention of the parties must be ascertained from the consideration

of the entire contract, not some isolated portion"). Interpretation of a contract "must be fair and reasonable, not leading to absurd conclusions." *Transamerica Ins. Co. v. Sayble*, 193 Cal. App. 3d 1562, 1566 (1987); *see also California Nat'l Bank v. Woodbridge Plaza LLC*, 164 Cal. App. 4th 137, 143 (2008) (contract interpretation "cannot lead to unfair or absurd results but must be reasonable and fair").

A.   The Founders Agreement Taken As A Whole Refers Only to Ledgers Created For the Ripple Network

When the one-page Founders Agreement is considered as a whole, as it must be, it is clear that the phrase "or any other ledger" in Paragraph 2 of the Founders Agreement must be interpreted to refer to any other ledger *on the Ripple platform*, because the entire Founders Agreement concerns the Ripple platform. Indeed, as plaintiff alleges it is a "*'Founders' Agreement'* regarding the creation and ownership of a virtual currency program code known as *the Ripple protocol, and currency later to be known as XRP.*" Complaint ¶ 25 (emphasis added).

Paragraph 1 of the Founders Agreement defines the "Official Ledger" as "the ledger created, approved and adopted by the majority of Founders" for "Ripple Credits," and allocates 80% of all Ripple Credits set forth in the Official Ledger to "the Company," now known as Ripple Labs.[4] Complaint, Ex. A, ¶ 1. Paragraph 2 of the Founders Agreement provides that an anticipated total of 100 billion Ripple Credits will be recorded on the Official Ledger, and that plaintiff will receive "2% of all the Ripple Credits of the Official Ledger." *Id.* ¶ 2. Paragraph 2 then provides, in the provision at issue here, that: "*If the Official Ledger is revised, or any other ledger is created* within 36 months of the date of this Founders Agreement that sets forth a lesser percentage of Credits for [plaintiff] than the number set forth in the Official Ledger, [plaintiff] shall have the right to acquire additional credits at no cost to him, sufficient to bring his Credit Grant to 2% of the total number of credits." *Id.* (emphasis added).

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[4] Although "the Company" is undefined in the Agreement, "the company" clearly refers to "OpenCoin Inc.," referenced in Paragraph 2 of the Agreement, which is now called Ripple Labs, based on plaintiff's allegations. Plaintiff alleges that he "cofounded Ripple Labs with Jed McCaleb and Chris Larsen in September 2012, with the company then known as OpenCoin Inc" (Complaint ¶ 8), and that "the three founders executed a founders' agreement, attached as Exhibit A" (Complaint ¶ 3).

DEFENDANT McCALEB'S MEM OF POINTS AND AUTHORITEIS IN SUPPORT OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

Thus, when considered as a whole, the Founders Agreement's unmistakable intent is that plaintiff will be provided with 2% of the Ripple Credits on the Official Ledger for Ripples; and that if the Official Ledger for Ripples is revised, or some other ledger within the Ripple platform is created, plaintiff's 2% interest in the total number of Ripple credits on the Ripple platform will be protected. This is established by the fact that the Founders Agreement first refers to "credits" by using the capitalized term "Ripple Credits." Complaint Ex. A, ¶ 1 ("80% of all Ripple Credits" shall be allocated to the Company). Every subsequent use of the term "credits" clearly refers to this definition of "Ripple Credits." For example, Paragraph 1 in full uses both "the term Ripple Credits" and the term "Credits," and it is clear from this usage that these terms are identical, and "Credits" is a shorthand for "Ripple Credits": "The Founders agree that 80% of all **Ripple Credits** shall be allocated to the Company, as determined by the percentage share of all existing **Credits** set forth in the ledger created, approved and adopted by the majority of Founders as the Official Ledger." *Id.* The same use of the term "Credits" to mean "Ripple Credits" continues in Paragraph 2: "The Founders further agree that [plaintiff] shall receive 2% of all the **Ripple Credits** of the Official Ledger. The Founders acknowledge that these **Credits** have no value as of the Effective Date." *Id.* ¶ 2.

The sentence that is at the heart of plaintiff's Complaint is also in Paragraph 2: "If the Official Ledger is revised, or any other ledger is created within 36 months of the date of this Agreement that sets forth a lesser percentage of **Credits** for [plaintiff] than the number set forth in the Official Ledger, [plaintiff] shall have the right to acquire additional credits at no cost to him, sufficient to bring his **Credit Grant** to 2% of the total number of credits." *Id.* Under the bedrock principle of contract interpretation that "[t]he whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other" (Cal. Civ. Code § 1641), the capitalized term "Credits" in the phrase in Paragraph 2 about "any other ledger . . . created within 36 months of the date of this Agreement that sets forth a lesser percentage of **Credits**" refers only to Ripple Credits. "Credits" as used in the Founders Agreement cannot reasonably be construed to refer to units of value that did not yet exist (and which might not be called "credits" or have the same form, function, or characteristics of Ripple

Credits), on platforms that did not exist, but that could be created in the future, if at all, by anyone, anywhere in the world.

Because the only reasonable interpretation of the Founders Agreement is that the capitalized term "Credits" means "Ripple Credits," the Founders Agreement is not reasonably susceptible to the interpretation that plaintiff asserts, and plaintiff as a matter of law has no contractual right under the Founders Agreement to receive from McCaleb any percentage of a ledger created for an alternative virtual currency that is not operated on the Ripple platform. Therefore, plaintiff's claim for breach of contract against McCaleb for failure to pay plaintiff 2% of Stellar's ledger fails as a matter of law.

B.   Plaintiff's Proposed Interpretation Would Lead To An Absurd Result

Plaintiff's interpretation of the provision at issue – that "any other ledger" and "Credits" refer to a ledger and credits for any other virtual currency -- simply does not make sense. Plaintiff contends that the Founders Agreement "provide[s] [plaintiff] protection should McCaleb create a competitive protocol or payment platform using [plaintiff's] IP . . . set[ting] forth this protection in specifying that [plaintiff] would receive no less than 2% of the credits (or XRP analogues) *for any competitive payment protocol or platform.*" Complaint ¶ 29 (emphasis added); *see also* Complaint ¶ 42 ("[u]nder the express terms of the Founders' Agreement, upon creation of 'another ledger within 36 months of the date of' the Founders' Agreement, [plaintiff] is therefore entitled to exercise his cost-free rights to 2%, or 2 billion, of the 'STRs' created on the derivative Stellar Ledger"). The problem with plaintiff's interpretation, however, is that the Founders Agreement does not say this. Instead, as noted in Point I.A, the term "Credits" clearly refers to "Ripple Credits" and thus the term "any other ledger" must refer to any ledger issued for the Ripple virtual currency.

The interpretation proffered by plaintiff would also lead to an absurd result. The Founders Agreement explicitly provides that the Ripple software platform is *"open source,"* meaning that any person or entity in the world is free to use the Ripple source code to create their own virtual currency software platform without paying plaintiff a dime. The preamble to the Founders Agreement states that the Founders Agreement concerns "a distributed *open source*

software platform for making and receiving payments and virtual currency ('Ripple')."

Complaint Ex. A (emphasis added). The Founders Agreement then provides in Paragraph 3 that the "the Ripple platform will be made available for distribution and licensed under a permissive Open Source license," and that plaintiff "shall consent to 'open source' his contribution to the Ripple platform at the same time that all other Ripple Founders do the same." *Id*

But under plaintiff's interpretation of the Founders Agreement, plaintiff would be entitled to 2% of *any ledger* created by any entity that creates an alternate virtual currency within 36 months. Such an interpretation runs afoul of the bedrock principle that any contract interpretation "must be fair and reasonable, not leading to absurd conclusions" because it would impose costs and central control over software that is, by definition and express agreement, available for use by anyone for free. Plaintiff concedes that Ripple's code base and software is open source. Complaint ¶ 20 ("The Ripple Network is . . open-sourced"); *id.* ¶ 28 (plaintiff "underst[ood] and intend[ed] that the Ripple protocol would ultimately be open sourced"); *id.* Ex. A, introduction ("a distributed open source software platform"); *id.* Ex. A, § 3 ("the Ripple platform will be made available for distribution and licensed under a permissive Open Source license"). This means that plaintiff's allegations that Stellar utilized any of Ripple's code base to create Stellar's virtual currency protocol -- Complaint ¶ 5 ("McCaleb . . . copied the Ripple protocol code . . . [and] used this code base to create a directly competitive protocol, which he called Stellar"), *id.* ¶ 34 (McCaleb "began working on a rival crypto currency based on a 'fork,' *i.e.,* a protocol using a direct copy of the Ripple protocol"); *id.* ¶ 37 (Stellar, in creating its virtual currency software platform, utilized "in essential part the Ripple code base") – are irrelevant to whether there has been any breach of contract, because the Founders Agreement expressly provides, and plaintiff concedes in the Complaint, that this software is "open source" and therefore freely available without payment for use by anyone – including by McCaleb.

Plaintiff attempts to avoid the express "open source" provisions of the Founders Agreement by alleging that the Founders Agreement means that: "should McCaleb create a competitive protocol or payment platform using [plaintiff] Britto's IP . . . McCaleb promised to ensure that Britto's percentage holding (2%) of Ripple credits ("XRP's)", would be protected

1   against dilution for 36 months . . . by specifying that Britto would receive no less than 2% of the

2   credits (or XRP analogues)[5] for any competitive payment protocol or platform." Complaint ¶ 29.

3   Plaintiff's interpretation, however, is not a valid interpretation. First, the language of the

4   Founders Agreement does not actually say this. It provides that the Ripple software is open

5   sourced, but does not say the 2% fee is owed only for "any other ledger *with which McCaleb or*

6   *Larsen is associated.*" Second, there is nothing in the Founders Agreement that refers to "XRP

7   analogues" -- it refers only to Ripple Credits. Third, plaintiff's interpretation contradicts

8   Paragraph 3 of the Founders Agreement, because it would mean that any company in the world

9   could freely create its own "software platform for making and receiving payments and virtual

10 currency" that was based on the Ripple platform – except if the company had any association

11 with McCaleb or Larsen, in which case there would be in effect a 2% license fee. But that is not

12 what "open source" means. "Open source" means that any person or entity (including Stellar)

13 can create a "competitive payment protocol or platform" based on the Ripple platform, without

14 any financial obligation to plaintiff. The parties did not insert restrictive language that would

15 have accomplished what plaintiff now seeks -- namely, a requirement that the license be open

16 sourced, except if Larsen or McCaleb is involved in a project – and plaintiff cannot argue that

17 such a restriction should be read into the Founders Agreement because he was somehow at a

18 disadvantage in negotiating its terms. As plaintiff alleges, he is a sophisticated and savvy

19 computer scientist and businessman. Complaint ¶ 8 (noting 35 years of experience and service

20 as "the President and subsequently C.E.O. of one of the first ISP's" and board membership on

21 //

22 //

23 //

24 //

25 //

26

27

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[5] Plaintiff's use of the term "XRP analogues" here demonstrates that plaintiff understands that the term "Credits" in the Founders Agreement refers only to Ripple Credits. But there is nothing in the Founders Agreement that refers to "XRP analogues," so this contractual interpretation by plaintiff must be rejected.

28

DEFENDANT McCALEB'S MEM OF POINTS AND AUTHORITEIS IN SUPPORT OF DEMURRER TO COMPLAINT; CASE NO. CGC-15-544133

"the second largest Bitcoin exchange by volume").[6]

CONCLUSION

For the reasons set forth above, McCaleb's demurrer should be sustained, and plaintiff's

First Cause of Action for Breach of Contract dismissed with prejudice.

Dated: April 24, 2015   GROSS BELSKY ALONSO LLP

By: _Adam C. Belsky /pp._
                    Adam C. Belsky

Attorneys for Defendants
JED McCALEB and STELLAR
DEVELOPMENT FOUNDATION

ORRICK, HERRINGTON & SUTCLIFFE LLP

Attorneys for Defendant JED McCALEB

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[6] California's strong public policy against restrictive covenants is a further reason why the Founders Agreement cannot be interpreted as plaintiff contends, which would require McCaleb to have to pay a 2% fee if he wants to go work for another virtual currency company that might use the Ripple open source code base. Business and Professions Code section 16600 generally prohibits covenants not to compete, and California public policy strongly favors employee mobility. *Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1462 (2002). Allowing a company to impose a 2% fee on employees if they go work for a competitor would impose a *de facto* noncompetition agreement in violation of California law.

RE: ***Arthur Britto v. Jed McCaleb et al.,***
San Francisco Superior Court Case No.:CGC-15-544133

I am a citizen of the United States and employed in the County of San Francisco, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is GROSS BELSKY ALONSO LLP, 1 Sansome Street, Suite 3670, San Francisco, CA 94104. On the date set forth below, I served the following documents in the manner indicated on the below named parties and/or counsel of record:

- DEFENDANT JED McCALEB'S NOTICE OF DEMURRER TO PLAINTIFFS FIRST CAUSE OF ACTION
- DEFENDANT McCALEB'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT

<u>XX</u>   **U.S. Mail**, with First Class postage prepaid and deposited in a sealed envelope at San Francisco, California.

	Attorneys for Plaintiff
Spencer Hosie, Esq.	Arthur Britto
Diane S. Rice, Esq.	
Darrell R. Atkinson, Esq.	
HOSIE RICE LLP	
Transamerica Pyramid, 34th Floor	
600 Montgomery Street	
San Francisco, California 94111	
Telephone: (415)247-6000	
Facsimile: (415) 247-6001	

I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service, and said correspondence would be deposited with the United States Postal Service, California that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 24, 2015 at San Francisco, California.

_____
JESSICA DEAN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

ARTHUR BRITTO, an individual, Plaintiff, vs. JED MCCALEB, an individual, and STELLAR DEVELOPMENT FOUNDATION, a 501 (c) corporation, and DOES 1-10, inclusive, Defendants.	Case No.: CGC-15-544133 **EXHIBITS C AND D TO DECLARATION OF JED MCCALEB IN SUPPORT OF SPECIAL MOTION TO STRIKE PLAINTIFF'S SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING** Date: November 16, 2015 Time: 9:30 a.m. Dept: 302

EXHIBIT C

Business this week

May 9th 2015 | From the print edition

The European Union outlined its strategy to create a *digital single market*. The thrust of the proposals include establishing standard rules for buying goods online, pruning cross-border regulations on telecoms and reducing the tax burden on businesses. But the plan also calls for a "comprehensive assessment" of whether Google, Facebook and other internet platforms distort competition. Still, the strategy was broadly welcomed. The EU expects it will generate €415 billion ($468 billion) a year for the economy and produce 3.8m new jobs. See article (http://www.economist.com/news/business/21650558-eus-digital-master-plan-all-right-far-it-goes-disconnected-continent) .

American authorities levied their first civil penalty against a *virtual-currency exchange*. Ripple Labs, a startup backed by investors in Silicon Valley which operates a digital payment known as XRP that is similar to Bitcoin, was fined $700,000 for not complying with anti-money-laundering rules. It does not face criminal charges as it has promised to rejig its systems.

Royal overthrow

PIMCO's Total Return Fund lost the crown it has worn for two decades as the *world's largest bond fund*. It was usurped by Vanguard's Total Bond Market Index Fund, which had $117 billion in assets in April, compared with $110 billion in Total Return. Investors have withdrawn roughly $110 billion from PIMCO since Bill Gross, its founder, widely known as the Bond King, was ousted in September.

Europe's blue-chip banks posted decent results. Profit at *UBS* almost doubled in the first quarter compared with the same period last year, to SFr2 billion ($2.1 billion), as business picked up at its streamlined investment bank. This was despite the soaring value of the Swiss franc. Net profit at *Société Générale*, a French bank, soared to €868m ($977m), as its investment bank also benefited from increased global trading.

The chief executive of *HSBC*, Stuart Gulliver, suggested that the bank would make a decision about whether to move its headquarters away from London by the end of the year. It is the second time recently that senior management at HSBC, which makes most of its profit in Asia,

has raised the idea of relocating because of tougher regulations in the City. Any move abroad would involve hundreds rather than thousands of its staff.

Imports, exports and ports

A surge in imports after the end of an industrial dispute at ports on the West Coast helped to push America's *trade deficit* in March to $51.4 billion, the biggest monthly gap since October 2008. A recent initial estimate of GDP showed the economy growing by 0.2% in the first quarter; a second estimate that accounts for the wider trade gap will probably register a contraction.

The European Commission said that "positive economic tailwinds" such as cheaper oil and the European Central Bank's quantitative-easing programme mean that GDP should increase in the *euro zone* by 1.5% this year, slightly higher than had been previously forecast. Following four months of deflation, consumer prices in the currency bloc are estimated to have been flat in April, and are expected to pick up later in the year.

Although the *oil price* remains far below its 2014 peak, Brent crude touched $70 a barrel, the most since December. Oil is now 50% higher than in mid-January. The rebound helps to explain why yields on government *bonds* in America, Britain and Germany have sharply reversed the downward trend of recent weeks and risen to new highs for the year.

The Chinese government took more action to shake-up China's state-controlled giants. Trading in the shares of two of China's biggest *carmakers*, Dongfeng (which holds a 14% stake in Peugeot) and FAW, were suspended temporarily amid rumours that Beijing wants them to merge. And the senior management ranks were reshuffled at China's biggest *oil producers*, Sinopec, CNOOC and China National Petroleum Corporation.

Tesla Motors' net loss tripled in the first quarter compared with the same three months of last year, to $154m, despite a big increase in revenue and record deliveries of its Model S vehicle. Meanwhile, the maker of luxury electric cars unveiled a new range of battery packs, branded the "Powerwall", that store energy from solar panels for use in homes.

Super cruise control

Daimler showed off its new *autonomous lorry*, which has been issued the first licence in the world to drive on public roads, by Nevada. The German company reckons self-driving commercial vehicles will come to market before driverless cars, as they spend most of their time on main roads with few obstructions. America's truckers need not fret about losing their jobs just yet; Daimler's 18-wheeler still needs a driver to perform tricky motoring off the highway, and to take the wheel when it crosses Nevada's state line.

From the print edition: The world this week

The Economist

Blockchain
The next big thing

Or is it?

May 9th 2015 | From the print edition

ASKED TO NAME an event that has reshaped
finance in recent years, bankers will point to the
collapse of Lehman Brothers on September 15th
2008, the nadir of the financial crisis. Fintech
types are more likely to mention something that
happened six weeks later. On October 31st 2008
Satoshi Nakamoto, a pseudonymous
cryptography buff whose real identity remains a
mystery, unveiled a project he dubbed bitcoin, "a new electronic cash system that's fully peer-to-
peer, with no trusted third party". It described what appeared to be a robust framework for a
currency that could run without the backing of any government. Enthusiasts proclaimed that
finance was about to enter the era of crypto-currencies. Since the need for a trusted third party
has traditionally been a large part of the banks' *raison d'être*, this could mean that in future
they will no longer be required—potentially a much more radical change than the other inroads
fintech has made on their business.
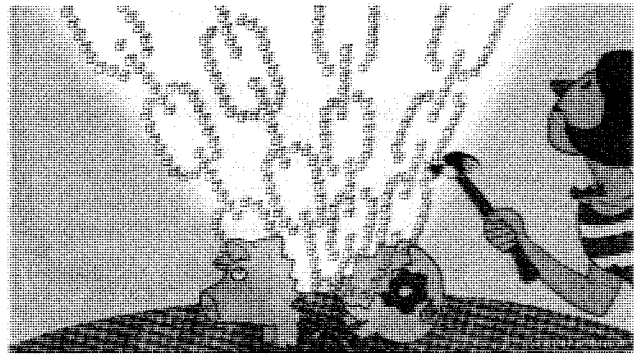
Six-and-a-half years on, the bankers may feel they can relax a little. Interest in bitcoin has
waned. After spiking at $1,100 in November 2013, its value has dropped to $225 (see chart). A
few online retailers and trendy coffee bars accept it, but its yo-yoing value is one reason why its
use in the legitimate economy is barely measurable (though it remains a favourite with drug-
dealers). The general public has not forsaken cash or credit cards.

Interest in the underlying mechanics of the currency, however, has continued to grow. The
technological breakthroughs that made bitcoin possible, using cryptography to organise a

Flash in the pan?

Bitcoin

Volume of daily transactions, m   *Market price, $*
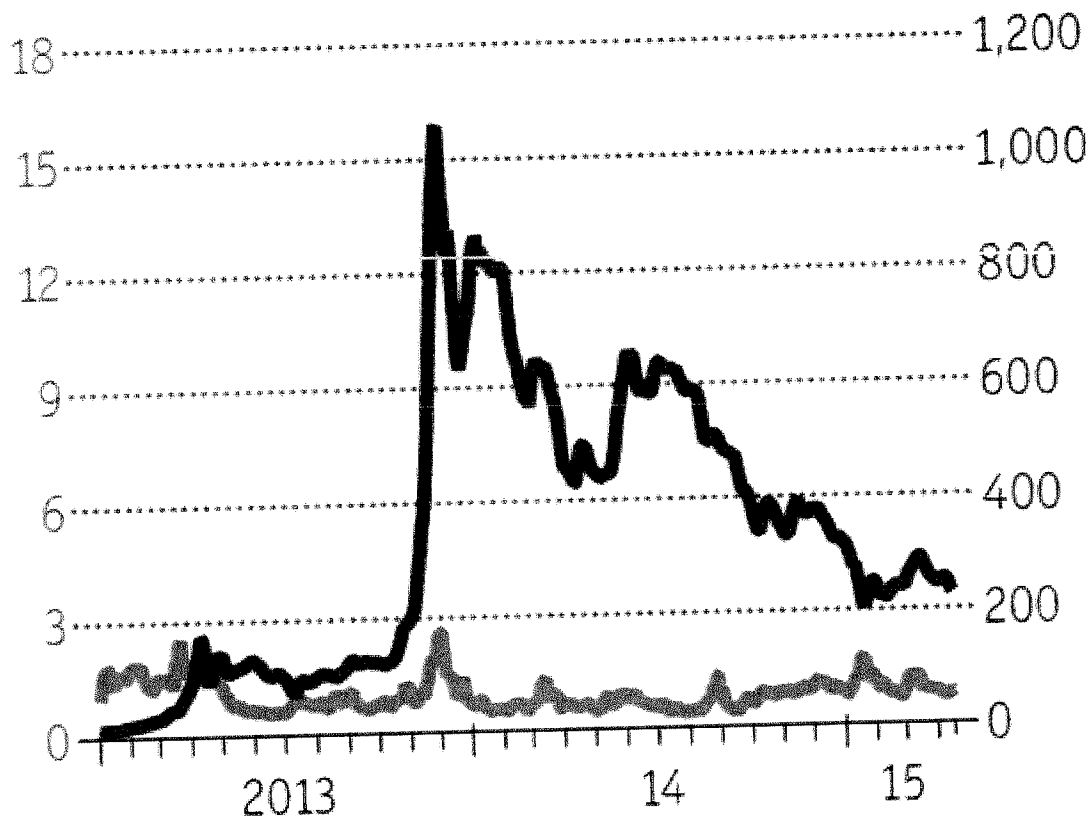
Source: Blockchain.info

Economist.com

complex network, fascinate leading figures in Silicon Valley. Many of them believe parts of Mr Nakamoto's idea can be recycled for other uses. The "blockchain" technology that underpins bitcoin, a sort of peer-to-peer system of running a currency, is presented as a piece of innovation on a par with the introduction of limited liability for corporations, or private property rights, or the internet itself.

In essence, the blockchain is a giant ledger that keeps track of who owns how much bitcoin. The coins themselves are not physical objects, nor even digital files, but entries in the blockchain ledger: owning bitcoin is merely having a claim on a piece of information sitting on the blockchain.

The same could be said of how a bank keeps track of how much money is kept in each of its

accounts. But there the similarities end. Unlike a bank's ledger, which is centralised and private, the blockchain is public and distributed widely. Anyone can download a copy of it. Identities are protected by clever cryptography; beyond that the system is entirely transparent.

As well as keeping track of who owns bitcoin today, the blockchain is a record of who has owned every bitcoin since its inception. Units of currency are transferred from one party to another as part of a new "block" of transactions added to the existing chain—hence the name. New blocks are tacked on to the blockchain every ten minutes or so, extending it by a few hundred lines (it is already over 8,000 times the length of the Bible).

The proposed transactions contained in new blocks do not have to be approved by some central arbiter, as in conventional banking. Rather, a large number of computers dedicate themselves to keeping the system running. Rewards are high enough for vast data centres across the world to want to participate. Known as "miners", they authenticate transactions by reaching a consensus on what the latest version of the blockchain should look like. In exchange, they are given newly minted bitcoin.
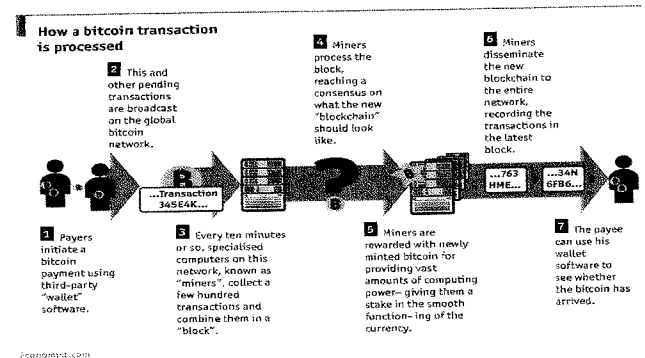
Chaining blocks together sequentially prevents anyone spending the same bitcoin twice, a bane of previous digital currencies. And the system is beyond tampering by any one party. Unlike a bank ledger, which can be altered by its owner (or a government), the blockchain cannot be changed without simultaneously overwriting all of the thousands of copies used by the miners at any one time. The definitive version of the blockchain is whatever a majority of the participating computers accepts. None of them is connected to any centralised organisation. There is no bitcoin central bank to sway them. To overwhelm the system, someone would need to control 51% of the computing capacity of the 10,000 or so "miners"—not impossible but unlikely.

This system of consensus by distributed co-operation sounds complicated, but it allows something of value to be transferred from one person to another without a middleman to verify the transaction. Fans think this is a way of changing the centralised, institution-dominated shape of modern finance. It is genuinely new. The question is whether it is useful.

Proponents envisage an "internet of value" that can make money flow as freely as data are flowing already

Proponents envisage an "internet of value" that can make money flow as freely as data are flowing already. Ridding the world of credit-card fees and foreign-exchange charges would be merely the first step of a much broader revolution. In the same way that e-mail did much more

than replace letters sent in stamped envelopes, the internet of value would be a platform for myriad as-yet-unthought-of innovations. Just as nobody forecast social networks, blogging or Netflix in the 1990s, the absence for now of any tangible applications other than bitcoin for the blockchain merely points to humankind's deficient imagination.

All that is needed, blockchain boosters argue, is a "killer app" to find a use for the breakthrough, in the same way that web browsers made the internet useful. Some still think that a currency is the most promising application, but plenty of engineers are throwing other ideas against the wall to see what sticks. CoinSpark, based in Tel Aviv, is among those who want to be able to add messages to the bitcoin blockchain. That would be a way of cheaply notarising information: once something is in the blockchain, it cannot be removed (crypto-geeks post their wedding vows there). Lighthouse, developed by Mike Hearn, a former Google engineer, runs a decentralised crowdfunding platform on bitcoin. Neither of these are killer apps, but they may lead to something bigger.

Now for the tweaks

Techies are (just about) united in their enthusiasm for decentralised ledgers, but divided on whether bitcoin's blockchain can work in its current form or whether an improved version is needed. Rival blockchains are nothing new: alternative currencies inspired by bitcoin, dubbed "alt-coins", have proliferated ever since it was launched. Some are quasi-Ponzi schemes where the currency's founder (and so default owner of much of the blockchain) profits when he sells bits of it to newcomers. Others have re-engineered Mr Nakamoto's blockchain to make it more suitable for non-currency uses.

Critics point out that bitcoin in its present form can process just seven transactions per second, whereas a large credit-card company like Visa can comfortably take on tens of thousands. Users may have to wait up to half an hour for a transaction to be processed, and mining guzzles a lot of power.

But enthusiasts say the blockchain is so robust precisely because of the large number of miners involved, and point out that it has survived untold numbers of cyber-attacks. Alas, using hacker-proof bitcoin requires going through intermediaries such as exchanges to convert real-world currency into crypto-cash, and "wallets" to store it. These have proved anything but secure, which arguably defeats the purpose of bitcoin's trust-free world.

New blockchains far removed from currencies are being spawned. Ethereum, widely seen as the most ambitious crypto-ledger project, wants its blockchain to go beyond transferring value: it should also be able to execute simple tasks such as verifying if a party to a contract has fulfilled its side of the bargain. Its boosters think such a machine could support "smart contracts", where

a computer can verify or enforce an agreement. The next step is for robots to go into business for themselves, for example a computer server renting out processing capacity, and using the profits to upgrade itself.

That, for now, is science-fiction. In the short term, distributed-ledger technology is far more likely to be used by incumbents in financial services. The New York Stock Exchange in January bought a stake in Coinbase, a bitcoin wallet, in case stock exchanges decided to go for decentralisation. Banks think that some of the plumbing for settling financial contracts could be decentralised, too, perhaps with their own private blockchains. Payment networks are also keeping an eye on blockchains, attracted by their tiny transactions costs. If a network like Visa were to be built today, it would almost certainly be decentralised, says Jim McCarthy, its head of innovation.

One well-funded new blockchain is Ripple Labs, which wants to enable "secure, instant and nearly free global financial transactions". It is working with financial incumbents to draw up a payment protocol based on decentralised ledgers. Its aim is not to supplant the current financial system but to make it more efficient. "We are builders, not disrupters," says its boss, Chris Larsen, a veteran of the fintech scene who founded Prosper, a lending platform. The problem Ripple is trying to solve is not the omnipotence of the banks but the antiquated way that money is transferred among them. At present two banks in different countries have to use one of a handful of large "correspondent banks" to transfer money between them. With Ripple, they should be able to interact directly.

Seasoned crypto-anarchists are not excited by the idea of reforming the global banks' back offices. Some complain that Ripple is taking an idea with the potential for revolutionary innovation and using it for something far more humdrum. Yet if Ripple succeeds in bringing a critical mass of the banks onto its platform, it will have rendered a service similar to the people who turned a raft of disparate academic computer networks into a single internet in the 1990s. That is not to be scoffed at.

All large banks already have teams poring over blockchain. Many of their back-office settlement platforms seem destined for a move to decentralised ledgers. One barrier is the difficulty of finding staff who can get them up to speed on the technology. "The sort of people who understand blockchains don't usually want to put on a suit and go work for a bank," says Gideon Greenspan of CoinSpark. Because they lack central administrators by definition, blockchain-based systems are unforgiving: there is no helpdesk to reset a lost password, say. Bank bosses may be tempted to stick with the slower, pricier systems they know.

Are blockchains here to stay, in one guise or another? "Just because bitcoin didn't succeed as a currency doesn't mean blockchain will succeed as a technology, but the experiment is important

to run," says Patrick Collison of Stripe, a payments processor. The possible uses are legion, but the killer app is still missing.

From the print edition: Special report

May 6, 2015, 11:31 PM ET

BitBeat: Day After FinCEN Bombshell, Ripple Labs Addresses Concerns

ByMichael J. Casey

REUTERS

Welcome to BitBeat, the latest in cryptocurrency news and analysis, written by Paul Vigna and Michael J. Casey.

Bitcoin Latest Price: $230.47, down 2.57% (via **CoinDesk**)

Crossing Our Desk:

–If there's one eye-catching clause in the settlement that Ripple Labs signed with U.S. financial regulators over compliance breaches, it's the agreement to make "enhancements to the Ripple protocol" to allow monitoring of counterparties that use the core software program on which the Ripple payments network runs.

This got the bitcoin community up in arms. How could the government seek to force changes to an open-source software platform that's supposed to be free from any party's centralized control? Could it feasibly apply to other digital currencies – including bitcoin, whose governance structure has no go-to management actor like Ripple Labs? How will users react to the notion that Ripple is snooping on them even if the company is not itself a counterparty to their trades?

When we put these concerns to Ripple Labs' new Bank Secrecy Act officer, Antoinette O'Gorman, she suggested there was a misunderstanding and that "enhancements to Ripple protocol" was an imperfect choice of wording in the agreement struck with the U.S. Financial CrimesEnforcement Network. All that Ripple had agreed to, she said, was to build enhanced "analytical transaction monitoring tools for monitoring transactions across the protocol" and to furnish information drawn from that monitoring to U.S. authorities upon request. The changes had "nothing to do with the protocol itself," she said.

These monitoring tools are secondary applications that anyone could have built to analyze the flow of data across the publicly transparent ledger of Ripple transactions, she said. Ripple already had lesser versions of such tools in place, Ms. O'Gorman added, explaining that these were built because Ripple "wanted to be good citizens and promote a compliant ecosystem."

Addressing another contentious point, Ms. Gorman said her company had argued that Ripple Trade, a wallet application with which people can view and manage their balances of XRP, Ripple's native currency, should not be registered as a money service business, or MSB, under FinCEN rules because it was merely a software tool without power to take custody of funds or directly exchange currency. However, FinCEN was insistent, demanding that Ripple Trade be migrated to a properly registered MSB, which means that its users must submit customer identification information.

FinCEN did not immediately respond to questions on this matter.

Even with these clarifications, questions and speculation will continue to percolate around FinCEN's dramatic action against the second-biggest digital currency in market capitalization terms.

Some wondered whether recognizing Ripple Trade as an MSB would set a precedent for pure-software bitcoin wallets such as that offered by Blockchain.info, where there are similarly no custodial or exchange service provided. But Blockchain.info global policy counsel Marco Santori said Ripple's situation "was a very special case" and that the terms of the settlement "do not set a legal precedent... that much we know."

It also seems impossible that FinCEN could wield similar influence over the management or monitoring of bitcoin's decentralized protocol — there is, after all, no core company leading the development and adoption of bitcoin's technology in the way that Ripple Labs leads the ripple network. But that didn't stop bitcoiners from worrying about whether the government might try.

Prominent bitcoin developer Peter Todd, for one, took to Twitter put this question to Gavin Andresen, who leads a team of five core developers charged with updating and maintaining bitcoin's core code:

So @gavinandresen, thoughts on FinCEN forcing Ripple to change their core protocol to add AML? How do we protect Bitcoin from that pressure?

— Peter Todd (@petertoddbtc) May 6, 2015

And Jerry Brito, executive director of Washington-based think tank the Coin Center said, "It makes me nervous that FinCEN is asking protocol level changes from a company. Ripple is a special case and I hope that FinCEN understands that."

Others, including New York Law School Professor Houman Shadab, made the case that FinCEN had proven that the comprehensive state-by-state regulation of bitcoin companies as money transmitters was redundant.

FinCEN's fine of Ripple suggests that federal enforcement of AML laws is robust and that state-level regulation is unnecessary. #Bitcoin

---

— Houman Shadab (@HoumanShadab) May 6, 2015

One thing's for sure, however, this action comes as as reminder that digital currencies are on enforcement agencies' radars.

"Rock solid anti-money laundering compliance should be at the forefront of every digital currency company's agenda," said Perianne Boring, President of the Washington-based Digital Chamber of Commerce. *(Michael Casey)*

Contacts: paul.vigna@wsj.com, @paulvigna / michael.casey@wsj.com, @mikejcasey

The New York Times

The Rush to Coin Virtual Money With Real Value
By Nathaniel Popper

November 11, 2013

Updated, 5:46 p.m. |
If cash is king, virtual cash may be the crown prince in waiting.

Programmers around the world have been churning out new digital currencies that try to improve on the concept of bitcoin, the hot but controversial virtual money that has swept the Internet.

As questions still swirl around bitcoin's legality, many technology entrepreneurs are trying to sidestep the currency's pitfalls by devising new ways to make payments in a cashless future.

Already, dozens of ideas are jockeying for the market. At last count, a website that tracks the market, coinmarketcap.com, listed 36 so-called crypto-currencies, with names like bitbar, freicoin and cryptogenic bullion, and new ones are being added each month. Collectively, these digital moneys had a recent market value of about $4.3 billion, of which $4.1 billion was from the dominant currency, bitcoin.

The online payment system viewed by many insiders as having the best chance of supplanting bitcoin, however, is not even on the list: Ripple. Founded in San Francisco by former bitcoin developers, Ripple holds out the promise not just of a new currency, but also of a novel method to send money around the world. With that potential, it is winning something that has proved elusive for virtual currencies: involvement from more mainstream players in the financial system.

"I haven't seen anything else as interesting as Ripple," said Jesse Powell, the founder of Payward, which runs an exchange where digital currencies can be bought and sold. "As far as I'm concerned, bitcoin and Ripple are the only ones that have a real shot at being a big deal."

On Tuesday, the company overseeing Ripple's development, Ripple Labs, will announce $3.5 million in financing from six new investors. The company will also announce that it has attracted funds from Pantera Capital, which includes money from executives at the Fortress Investment Group. Chris Larsen, the co-founder of Ripple Labs, said the company had also been talking with banks large and small about joining Ripple's payment network.

"There's a lot of interest from the big banks in what's going on here," said Mr. Larsen, who previously founded two financial start-ups. "I've never seen anything like it before."

The rapidly growing industry of alternative currencies owes a lot of credit to bitcoin's surprising success.

Bitcoin has confronted a number of issues that have led to market crashes, but has recovered each time. The latest stumble came after the founder of a popular online marketplace, known as Silk Road, was arrested and accused of using bitcoin to traffic in drugs and other illegal goods. The price of an individual bitcoin initially dropped after Silk Road was shut down, but since then it has risen steadily and recently stood around $260, near a record high.

Still, the entire world of virtual currencies could be rendered irrelevant almost overnight if law enforcement agencies decided to crack down on transactions. Several state and federal authorities have said that they are looking at how to police the market, worried that the anonymous nature of the online transactions make the currencies attractive for criminals. A recent study by researchers at the University of California, San Diego found that

most bitcoin transactions were being used for gambling.

Even without such legal hurdles, some critics expect that virtual currencies will eventually come to be seen as a speculative bubble with no foundation.

"It really does sound 21st century, but at the end of the day, do you really want to put your money at stake in that?" said Brian Riley, who covers payment systems for CEB TowerGroup.

Despite the questions, the concept of digital currencies has won a growing number of proponents. In the technology sector, many have been drawn to the broader possibility that virtual currencies could allow money to zip around the world without going through banks and payment processors, with all the fees they impose, not to mention onerous government regulations.

One set of competitors are the so-called centralized currencies, which are operated and overseen from a single hub. These work like the loyalty points distributed and overseen by airlines or retailers and can allow regulators to keep a closer eye on transactions. One such currency, known as ven, is tied to a basket of global currencies that keeps the price stable.

But most online entrepreneurs are dismissive of centralized currencies, saying they give too much power to the companies that run them. Prosecutors have said that one centralized currency service, Liberty Reserve, was devised solely to evade government authorities. Its co-founder, Vladimir Kats, pleaded guilty to money laundering last month in federal court in Manhattan.

In recent months, there has been much more excitement in the industry about decentralized currencies, which exist independently of any company. Such platforms have computer code that is usually open source, or available for editing by any programmer. This setup is seen as a benefit because it

means that no central authority can determine things like fees, and who can and cannot have access to the currency.

One of the most popular decentralized currencies is litecoin, which was founded by a former Google programmer and intended to improve on some of the flaws in bitcoin, like the somewhat slow transaction times.

Mr. Powell of Payward and many other industry experts, though, say that litecoin and competitors are just tweaked versions of bitcoin.

Ripple is being heralded in some quarters as a more significant innovation than its competitors. Ripple maintains not only a currency, but also a system on which any currency, even bitcoin, can be moved around or traded — akin to a cross between Western Union and a currency exchange, without the hefty fees.

A person using the system can deposit any sort of money into a personal Ripple wallet through a business that is signed up as a Ripple gateway. That money can then be moved to the wallet of another Ripple user, without going through a bank or a credit card system.

People moving the same type of currency, say dollars or pounds, to another account on the Ripple system will not have to use its currency, known as ripple or xrp, pronounced letter by letter. But ripple is meant to provide the fastest and cheapest conversions, of one nation's currency to another or among various types of digital money. The hope is that once people begin using ripple they will keep some of their money in the currency and eventually use it directly to make purchases.

Stefan Thomas, an early bitcoin programmer and now the chief technology officer of Ripple Labs, said he was drawn to the company because it improved on the flaws in bitcoin. For instance, he said, users of Ripple put money into the system through so-called gateways, which should allow regulators to monitor transactions more easily. Ripple also does away

with the process of "mining" bitcoins, which has eaten up enormous computing power.

"You kept running into the same criticism," Mr. Thomas said. "Now there is a thing that has solved all these problems in a fundamental way."

As with bitcoin, a finite number of ripple will be created — 100 billion. Ripple Labs will distribute 55 percent of those free to encourage people and companies to use the system. The 7.5 billion ripple that have been released are worth about $60 million.

The company, with 25 employees, is keeping 25 percent of the currency to sell off to fund its operations.

This setup has drawn criticism from some supporters of bitcoin, who think it gives too much power to Mr. Larsen's company. But the company will also allow for quicker and more coordinated responses to crises and regulators.

Angela Angelovska Wilson, a lawyer at Latham & Watkins specializing in alternative payment systems, said that Ripple's more centralized control had allowed it to benefit from some of the bad press surrounding bitcoin, while maintaining the benefits of a decentralized currency.

"Obviously bitcoin was the first mover," Ms. Wilson said. "But Ripple was right behind it. And then there are a lot of others coming through."

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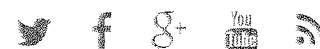
10 things you need to know about Ripple

Ariella Brown (@AriellaBrown) | Published on May 17, 2013 at 11:00 BST

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1. What is Ripple?

Ripple is the name for both a digital currency (XRP)
and an open payment network within which that
currency is transferred. It is a distributed, open-source
payments system that's still in beta. The goal of the
ripple system, according to its website, is to enable
people to break free of the "walled gardens" of
financial networks – ie, credit cards, banks, PayPal
and other institutions that restrict access with fees, charges for currenc[y]
processing delays.

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2. What does Ripple do?

According to is OpenCoin, the company behind ripple, the currency addresses the need to keep
money flowing freely. A company blog post titled "Ripple and the Purpose of Money" gives a brief
history of money and its transportability, and points to the frustration of having banks and other
institutions impede the transfer of funds with transaction fees and processing delays. The goal of
Ripple, it says, is to build on the decentralized digital currency approach set by bitcoin and do "for
money what the internet did for all other forms of information."

3. How would Ripple function like the internet?

Ripple's chief cryptographer, David Schwartz, explains it like this:

"Payment systems today are where email was in the early '80s. Every provider built their own
system for their customers and if people used different systems they couldn't easily interact with
each other. Ripple is designed to connect different payment systems together."

Schwartz also anticipates the possibility of seeing "big companies lose their control over the flow
of other people's money just as they've lost control over the flow of information."

4. Who's behind Ripple?

The company building the Ripple protocol, OpenCoin, was co-founded by CEO Chris Larsen and
CTO Jed McCaleb. McCaleb is well-grounded in digital currency, coming from Mt. Gox, which
currently handles the majority of the world's bitcoin trades. Larsen previously co-founded and led
the online financial company E-LOAN. Other developers on Ripple's team also have a bitcoin
background.

OpenCoin recently picked up a round of funding from Andreessen Horowitz, FF Angel IV,
Lightspeed Venture Partners, Vast Ventures and the Bitcoin Opportunity Fund.

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(Note: OpenCoin is not to be confused with OpenCoin.org, which is developing an open-source version of an electronic cash system developed by David Chaum.)

5. Is Ripple like Bitcoin?

In many ways, yes. Like Bitcoin, Ripple's XRP unit is a digital form of currency based on mathematical formulae and has a limited number of units that can ultimately be mined. Both forms of currency can be transferred from account to account (peer-to-peer, or P2P) without the need for any intervening third party. And both provide digital security to guard against the possibility of counterfeit coins.

6. Does that mean Ripple is a Bitcoin rival?

Ripple positions itself as a complement to, rather than a competitor with, Bitcoin. In fact, the site has a page dedicated to Ripple for bitcoiners.

The Ripple network is designed to allow the seamless transfer of any form of currency, whether dollars, euros, pounds, yen or bitcoins.

"Ripple will open up many more gateways for bitcoin users and easier ways to bridge bitcoin with the mainstream world of finance," says Stephen Thomas, a senior developer for the ripple protocol and a bitcoin advocate.

7. How would Ripple benefit bitcoin users?

In addition to giving Bitcoin more ways to connect with those using other forms of currency, Ripple promises expedited transactions and increased stability. As a distributed network, Ripple does not depend on a single company to manage and secure the transaction database. Consequently, there is no waiting on block confirmations, and transaction confirmations can go through the network quickly.

Another advantage of using peer-to-peer is the absence of a "central target or point of failure in the system," Ripple's backers note.

8. How many Ripples will there be?

The company plans to ultimately create 100 billion ripples. Half of those are to be released for circulation, while the company plans to retain the other half.

9. Why is Ripple described as "free(ish)" rather than free?

Ripple doesn't collect transaction fees the way PayPal, banks and credit cards do. However, it does take "a small portion of a ripple (equivalent to ~1/1000th of a cent)" from each transaction. That amount is destroyed rather than retained. The deduction is meant as to safeguard against the system being swamped by any one individual who might try to put through millions of transactions at once.

10. How much is a Ripple worth?

According to Bitcoin Charts, ripples were trading at around 115 per $1 (US) on May 17, 2013. (In early April, the price was about 1,000 per $1, so the currency has appreciated.)

FAQ Payments Network Ripple

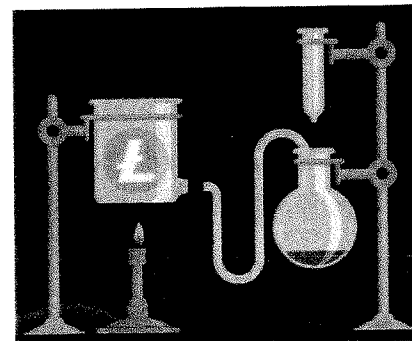🐦 23   f 41   g+   in   ⊙   ✉

EXHIBIT D

Selling my XRP

Started by jed, May 22 2014 04:18 AM

jed   Posted 22 May 2014 - 04:18 AM

-----BEGIN PGP SIGNED MESSAGE-----
Hash: SHA512

Hi Everyone,
I started working on ripple in the summer of 2011. I soon hired Arthur and David to help me. In 2012, I met Chris Larsen. He joined us about 5 months before ripple was launched. Chris, Arthur and I kept 20 billion XRP, of which 9 billion were mine. We gave the remaining 80 billion to OpenCoin.
I have given away and donated some of my 9 billion XRP to charities such as MIRI (http://intelligence.org), Literacy Bridge (http://literacybridge.org), Give Directly (http://givedirectly.org), Mission Bit (http://missionbit.org) and others. I plan to start selling all of my remaining XRP beginning in two weeks. Because I have immense respect for the community members and want to be transparent, I'm publicly announcing this before I start. So just fyi.... xrp sales incoming.
Thanks,
Jed.
-----BEGIN PGP SIGNATURE-----
Version: Keybase OpenPGP v0.1.15
Comment: https://keybase.io/crypto (https://keybase.io/crypto)

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-----END PGP SIGNATURE-----

I didn't want people to wonder if this was from me or not so I signed it with my public key which can be found and verified here: keybase.io/jed/key.asc (https://keybase.io/jed/key.asc)

EXHIBIT E

Re: Jed's Message at XRPTalk

by ahbritto » Thu May 22, 2014 6:43 pm

I have been following this thread along with the rest of you today. I wanted to comment on behalf of the Ripple Labs team.

Ripple is unique. It is the only distributed protocol that enables value to move like information moves today. Our vision is for an inclusive value web, built by enterprise financial services firms and innovative developers. It greatly improves, rather than replaces, the incumbent system.

Many of you are concerned about what impact these sales will have on the market. What affects XRP price long-term is adoption of the protocol and growth of the ecosystem. As the value of the protocol (i.e. utility)

increases, so does the value of XRP. The price of XRP doesn't impair the functionality of the Ripple protocol or network.

Similarly, the short-term price of XRP does not hinder our ability to execute on the vision. Our company is well-funded. We're not dependent on XRP.

A critical ingredient to Ripple's success is regulatory compliance. We're committed to support a compliant protocol and network. Expect significant developments from us on security and consumer protection features.

We've heard and shared your concern about the founders' XRP allotment. Prior to today, we've been working on a founders' XRP lock up plan, which Chris and I are participating in. You can rest assured that a dumping event like this won't happen from other co-founders.

It's heartening to see Ripple's tremendous progress as of late. On the enterprise front, there are five Wall Street funds trading on Ripple, and the <u>first bank, Fidor, signed on</u> to use Ripple as its real-time settlement infrastructure. The news, along with the tireless efforts of our business development team, has led to very productive conversations with top 20 banks around the world.

<u>On the developer front</u>, we've established a dedicated developer relations program and engineering resources to create tools to make building on Ripple easy.

On the regulatory front, <u>our compliance and risk chiefs</u> have made lots of headway positioning Ripple as a real-time settlement system, solving fundamental deficiencies in finance. It was a big day when <u>VP of the St. Louis Fed, David Andolfatto, expressed his view</u> that "there's room for beneficial coexistence [between central banks] and Ripple."

Some of you have asked what Jed's intentions are with his sale, you'll have to ask him. He hasn't been on the operating team for about a year, and hasn't been on the board since April.

In the near term, our team is focused on building a banking infrastructure on the protocol. It's a necessary, foundational step to enable other types of applications and activity on Ripple (e.g. remittance, merchant solutions, etc.). We're 54 employees strong and continue to hire.

Our purpose is to reinvent the foundation on which global finance is built. Your support and active involvement in building the value web is mission critical - thank you.

- Arthur Britto
Ripple Labs, Co-founder and Chief Strategist

ahbritto
    Co-Founder

    CO-FOUNDER

EXHIBIT F

Ripple Co-Founder Dumps Virtual Currency; Price Tanks

May 23, 2014 by Ian Kar

Ripple Labs co-founder Jed McCaleb announced yesterday that he would be selling all of his shares in Ripple's internal cryptocurrency, XRP (better known as ripples), which led to share prices tanking overnight.

In a forum post on XRP Talk titled "Selling My XRP" McCaleb wrote that he would be selling all of his XRP over the next two weeks. McCaleb wrote:

"I plan to start selling all of my remaining XRP beginning in two weeks. Because I have immense respect for the community members and want to be transparent, I'm publicly announcing this before I start. So just fyi.... xrp sales incoming."

McCaleb is a well-known figure in the cryptocurrency community. He formed Mt. Gox, which was once the world's largest bitcoin exchange, and sold it to Mark Karpeles in 2011 to creat Ripple Labs. Mt. Gox collapsed and declared bankruptcy in late 2013. TechCrunch writes that McCaleb may be working on a "secret project." Ripple Labs declined to comment.

The Ripple platform was created by Ripple Labs and is a decentralized open-source peer-to-peer payment system designed so that users can quickly and efficiently send money internationally. What sets Ripple apart is that its platform accepts any currency, including any virtual currency. This means that there are a number of potential uses for XRP, or ripples the currency, including international transactions, which can be cumbersome and costly.

In order to exchange XRP into another currency, users need to go through gateways, often banks, that charge a nominal fee. In other words, any currency can enter Ripple's platform, but gateways are used to get currency out.

There were 100 billion XRP created, and the cofounders kept 20 billion to themselves. According to McCaleb's post, he kept 9 billion and the other two co-founders, Chris Larsen and Arthur Britto, shared the remaining 11 billion XRP.

Since McCaleb announced his intentions to sell, the price of XRP has declined significantly, falling 65% over a 24-hour period to $0.003516 per ripple at press time. XRP is now number 7 on the digital currency market cap rankings, behind Bitcoin, Litecoin, Darkcoin, and Dogecoin.

Ripple Labs maintains that this selloff from McCaleb isn't as devastating as it looks.

"While there was definitely a lot of conversation and activity around Jed's post yesterday, the real takeaway is that it had no impact on the functioning of the protocol and did not change the vision for Ripple as a global value web. It was business as usual for the platform," a spokeperson told **Bank Innovation. "**Personally, I think that is a huge vote of confidence for what the team has built already and what they are building towards tomorrow."

Britto, another co-founder, took to the forums to talk about McCaleb's departure:

"Many of you are concerned about what impact these sales will have on the market. What affects XRP price long-term is adoption of the protocol and growth of the ecosystem. As the value of the protocol (i.e. utility) increases, so does the value of XRP. The price of XRP doesn't impair the functionality of the Ripple protocol or network. Similarly, the short-term price of XRP does not hinder our ability to execute on the vision. Our company is well-funded. We're not dependent on XRP."

Britto is right on a number of accounts. Ripple Labs has raised $6.5 million from venture capitalist firms like Google Ventures, Lightspeed Venture Partners, and Andreessen Horowitz. Also, Ripple Labs – as a platform – has been very successful, recently partnering with Fidor to help the bank integrate with Ripple's payment protocol. Ripple Labs also added Susan Athey, an economics professor at Stanford University, cradle of so many startups, to its board of directors.

Britto also assured the community that he and Chris Larsen are building a "lock up plan," saying, "You can rest assured that a dumping event like this won't happen from other co-founders."

He went on to write about how Ripple Labs has experienced tremendous growth and that this massive selloff will not affect that. Britto's full post is here.

While prices for XRP have fallen significantly, Ripple Labs is betting that XRP has staying power and can survive this setback. It remains to be seen if it can, but strides that Ripple has made, such as the partnership with Fidor, are positive signs.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

ARTHUR BRITTO, an individual, Plaintiff, vs. JED MCCALEB, an individual, and STELLAR DEVELOPMENT FOUNDATION, a 501 (c) corporation, and DOES 1-10, inclusive, Defendants.	Case No.: CGC-15-544133 **DEFENDANT JED MCCALEB'S MEMORANDUM IN SUPPORT OF SPECIAL MOTION TO STRIKE PLAINTIFF'S SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, PURSUANT TO THE ANTI-SLAPP STATUTE, CCP § 425.16** Date: November 16, 2015 Time: 9:30 a.m. Dept: 302

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CASE NO. CGC-15-544133

INTRODUCTION

This case involves a contractual dispute between two of the co-founders of a company, now called Ripple Labs ("Ripple") -- plaintiff Arthur Britto ("plaintiff") and defendant Jed McCaleb ("McCaleb") -- concerning the interpretation of an agreement between them. This agreement, which plaintiff refers to as the "Founders Agreement," concerns a "virtual currency," called ripples or XRPs, for which Ripple developed and maintains the software platform. After leaving Ripple, McCaleb co-founded defendant Stellar Development Foundation ("Stellar"), a non-profit focused on increasing financial access to underserved communities.

This is a straightforward breach of contract case, and, as set forth in McCaleb's Demurrer to Plaintiff's First Cause of Action, filed April 24, 2015, plaintiff's First Cause of Action for breach of contract fails as a matter of law because the Founders Agreement is not reasonably susceptible to plaintiff's interpretation of it.

Plaintiff also attempts to bring a separate claim against McCaleb for breach of the implied covenant of good faith and fair dealing, based on alleged statements made by McCaleb to the general public concerning Ripple and Stellar. Complaint, Second Cause of Action. Because plaintiff's claim for breach of the implied covenant targets speech-related activity by McCaleb, it is subject to a special motion to strike under the California anti-SLAPP statute, which places a summary-judgment-like burden on plaintiff at the outset of the case to demonstrate a probability of prevailing on his claim by competent and admissible evidence.

Plaintiff cannot meet his burden because none of the alleged breaches of the implied covenant are actionable as a matter of law. Accordingly, plaintiff's Second Cause of Action for breach of the implied covenant of good faith and fair dealing must be dismissed with prejudice, and McCaleb awarded his reasonable attorney's fees incurred in defending against this claim.

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DEFENDANT MCCALEB'S MEMORANDUM IN SUPPORT OF SPECIAL MOTION TO STRIKE;
CASE NO. CGC-15-544133

STATEMENT OF FACTS

A.   The Creation of the Ripple Network and the Ripple Official Ledger

McCaleb, who has been called "one of the most important developers in the world of digital currency" by Wired Magazine and a "bitcoin pioneer" by the Wall Street Journal, founded Opencoin, the company that was to become Ripple Labs ("Ripple"), to develop a new virtual currency and a decentralized network ("Ripple Network") that could be used to make payments or facilitate the exchange of currencies. Declaration of Jed McCaleb in Support of Special Motion to Strike ("McCaleb Dec.") ¶¶ 2-3 & Ex. A. McCaleb brought on plaintiff as a programmer on February 19, 2012, and then Chris Larsen as CEO on August 18, 2012. *Id.* ¶ 3.

As alleged by plaintiff in his Complaint, the XRP is "a novel virtual currency" and "the native currency of the Ripple settlement protocol . . . which enables essentially cost-free and instantaneous payments, both domestically and internationally." Complaint ¶ 1. As set forth in the Complaint, "[t]he Ripple Network is a distributed, peer to peer, open-sourced Internet protocol" consisting of "a distributed collection of servers around the globe" and "[t]hese interconnected servers collectively maintain an official Ledger, which keeps track not only of every account and balance, but also of every transaction that takes place." Complaint ¶ 20. The Complaint explains that the "Ledger is a record of the amount of currency in each user's account . . . [and] is repeatedly updated with transactions," and that XRPs "can only be used on the Ripple Network." Complaint ¶ 19.

B.   The Founders Agreement

Plaintiff's claims in this case are based on a one-page written agreement, attached as Exhibit A to plaintiff's Complaint (referred to by plaintiff as the "Founders Agreement"), among plaintiff Britto, defendant McCaleb, and non-party Chris Larsen. The Founders Agreement provides that "the Ripple platform will be made available for distribution and licensed under a permissive Open Source license," and that plaintiff "shall consent to 'open source' his contribution to the Ripple platform." Complaint, Ex. A, section 3; *see also* Complaint ¶ 20 ("The Ripple Network is . . . "open-sourced"); *id.* ¶ 28 (plaintiff "[u]nder[stood] and intend[ed]

DEFENDANT MCCALEB'S MEMORANDUM IN SUPPORT OF SPECIAL MOTION TO STRIKE;
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that the Ripple protocol would ultimately be open sourced"). "Open source" software means "software for which the original source code is made freely available and may be redistributed and modified." Oxford English Dictionary.[1]

The Founders Agreement further provides, in the provision on which plaintiff bases his breach of contract claim, that:

> [Plaintiff] shall receive 2% of all the Ripple Credits of the Official Ledger. . . . If the Official Ledger is revised, or any other ledger is created . . . that sets forth a lesser percentage of Credits for [plaintiff] than the number set forth in the Official Ledger, [plaintiff] shall have the right to acquire additional credits at no cost to him, sufficient to bring his Credit Grant to 2% of the total number of credits.

Complaint, Ex. A, ¶ 2. Plaintiff alleges in the Complaint that the purpose of this provision was "to protect [plaintiff] from dilution of his XRP holdings." Complaint, p. 5 (Heading B) & ¶¶ 28-29. Pursuant to this provision, plaintiff has received 2% of all "Ripple Credits" created. McCaleb Dec. ¶ 4. The "Official Ledger" referenced in the Agreement is the same "Official Ledger" described in Paragraph 20 of the Complaint, which is part of the Ripple Network and "keeps track of every account and balance . . [and] of every transaction that takes place [of XRPs in the Ripple Network]." The Official Ledger tracks accounts, balances and transactions only on the Ripple Network, and thus the Official Ledger does not and cannot track accounts, balances, and transactions that take place on different platforms or networks. McCaleb Dec. ¶ 5; *see also* Complaint ¶¶ 18-21.

C.   The Creation of the Stellar Network

McCaleb stopped working for Ripple and resigned as Chief Technology Officer in July 2013. McCaleb Dec. ¶ 6. In March 2014, McCaleb, who has been a major donor to charities that support the use of science and technology for poverty alleviation and education, began working on the formation of a nonprofit, the Stellar Development Foundation. Stellar's mission is to expand financial access and literacy worldwide, and to focus on areas and geographies

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[1] This definition can be found at: http://www.oxforddictionaries.com/definition/english/open-source. The Court may take judicial notice of this definition, pursuant to Cal. Evid. Code § 452(h).

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where access to financial services can significantly impact people's achievement of basic

education, healthcare and other human rights. *Id.*

D. Plaintiff's First Cause of Action for Breach of Contract and McCaleb's Demurrer to That Claim

Plaintiff claims that the phrase in Paragraph 2 of the Founders Agreement "or any other

ledger" obligates McCaleb to pay plaintiff not just 2% of any ledger created using or in

connection with the Ripple software platform, but an ***additional*** 2% of *any* ledger created that

uses *any other* virtual currency that utilizes in any way the open source code provided freely by

Ripple. Plaintiff makes this assertion despite the fact that "open source" software can be used by

anyone, anywhere in the world, without making any payment to the creator or copyright owner

of the software -- and despite the fact that plaintiff's own Complaint states that the purpose of the

Agreement was to protect plaintiff from dilution of his XRP holdings (not holdings in any other

virtual currency that exist or is developed). On April 24, 2015, McCaleb filed a demurrer to

plaintiff's First Cause of action for breach of contract on the ground that the phrase "or any other

ledger" in the Founders Agreement applies only to ledgers on the Ripple Network, and cannot be

reasonably interpreted to apply to virtual currencies related to other companies on non-Ripple

platforms, even if McCaleb has some involvement with the non-Ripple platform. McCaleb

argued in the demurrer that to interpret the Founders Agreement in the way plaintiff suggests

would lead to the absurd result that McCaleb and Larsen would have a virtually unlimited

obligation to plaintiff and be responsible for paying a fee to plaintiff for a potentially infinite

number of ledgers that could be created by anyone in the world using this open source software.

McCaleb Demurrer, Point I.B.

E. Plaintiff's Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing

This motion focuses on plaintiff's Second Cause of Action against McCaleb, which is for

breach of the Founders Agreement's implied covenant of good faith and fair dealing. Plaintiff

alleges that McCaleb breached the implied covenant by:

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causing and/or allowing a derivative ledger to be created whereby all newly created digital currency credits were placed under the control of and/or allocated by Stellar; publically [*sic*] announcing his intention to dump all of his remaining XRP's; unloading his XRP's while knowing his actions with respect to Stellar's ledger had triggered Britto's anti-dilution rights under the Founders' Agreement; encouraging and/or causing third-persons to dump large amounts of XRP's; and wrongfully promoting the XRP rival currency STR, denigrating Ripple, and spreading false rumors about alleged weaknesses in the Ripple protocol."

Complaint ¶ 58.[2] McCaleb now moves to strike the Second Cause of Action pursuant to the California anti-SLAPP statute.

<div align="center">

ARGUMENT

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I. THE ANTI-SLAPP STATUTE APPLIES TO PLAINTIFF'S SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

<div align="center">

A. The Anti-SLAPP Statute Applies Broadly to Protect Free Speech Activities

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The California Legislature enacted the anti-SLAPP statute, Cal. Code Civ. Proc. ("CCP") § 425.16, to dispose quickly of claims that target the exercise of free speech rights. *Braun v. Chronicle Publ'g,* 52 Cal. App. 4th 1036, 1042-43 (1997). Under the statute, any "cause of action against a person arising from any act of that person in furtherance of the person's right of . . . free speech . . . in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." CCP § 425.16(b)(1). The anti-SLAPP statute must be construed broadly to accomplish its goal of protecting free speech rights. CCP § 425.16(a); *Briggs v. Eden Council for Hope & Opportunity,* 19 Cal. 4th 1106, 1119 (1999).

A special motion to strike under CCP § 425.16 involves two steps. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." *Navellier v. Sletten,* 29 Cal. 4th 82, 88 (2002). A defendant meets this burden by showing that a cause of action arises from actions by the

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[2] Though not necessary for a determination of this motion, McCaleb does not agree that the STR is a "rival currency" to XRPs, or to any other virtual currency, and does not agree with plaintiff's characterizations concerning McCaleb's alleged actions or concerning Stellar. McCaleb Dec. ¶ 7.

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defendant that fit within one of the four categories set forth in CCP § 425.16(e), including under subdivision (e)(4): "any . . . conduct in furtherance of the exercise of the constitutional right . . . of free speech in connection with a public issue or an issue of public interest." CCP § 425.16(e)(4); *Navellier*, 29 Cal. 4th at 88.

Once a defendant has made this showing, the burden shifts to the plaintiff to establish a probability of prevailing on his claims, by competent and admissible evidence. *Navellier*, 29 Cal. App. 4th at 88; *Ludwig v. Superior Court*, 37 Cal. App. 4th 8, 15-16, 21 n.16, 25 (1995). The court must evaluate the merits of the plaintiff's cause of action "using a summary-judgment-like procedure at an early stage of the litigation." *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 192 (2005). The motion to strike must be granted and the cause of action dismissed with prejudice "unless the plaintiff establishes a probability of prevailing on the merits." *Fahlen v. Sutter Cent. Valley Hosp.*, 58 Cal. 4th 655, 665 n.3 (2014). A prevailing defendant on a motion to strike is entitled to recover his attorney's fees and costs. CCP § 425.16(c)(1).

B.   Plaintiff's Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing Arises From McCaleb's Exercise of Free Speech

As set forth above, a cause of action arises from protected activity within the meaning of the anti-SLAPP statute if the defendant's conduct on which the cause of action is based was in furtherance of "the constitutional right of free speech in connection with a public issue or an issue of public interest." CCP§ 425.16(e)(4). Whether conduct is protected under the anti-SLAPP statute depends on the nature of the conduct rather than cause of action alleged. *Navellier*, 29 Cal. 4th at 92 ("[t]he anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech"); *Wallace v. McCubbin*, 196 Cal. App. 4th 1169, 1175 (2011) ("[t]he anti-SLAPP statute focuses on the acts on which liability is based, not the gestalt of the cause of action"). Thus, in *Navellier*, the Supreme Court found that "conduct alleged to constitute breach of contract may also come within constitutionally protected speech." *Id.* at 92-93; *see also Digerati Holdings, LLC v. Young Money*

Entertainment, LLC, 194 Cal. App. 4th 873, 888 (2011) (finding that plaintiff's claim for breach of the implied covenant of good faith and fair dealing arises from protected activity under the anti-SLAPP statute); *Hecimovich v. Encinal School Parent Teacher Org.*, 203 Cal. App. 4th 450, 473-74 (2012) (same); *Nygard, Inc. v. Uusi-Kertula*, 159 Cal. App. 4th 1027, 1041-43 (2008) (same). Plaintiff's Second Cause of Action, which alleges that McCaleb exercised his constitutional right to free speech on an issue of public interest, is exactly the sort of claim subject to California's anti-SLAPP statute.

> **1. Plaintiff's allegations of speech-related conduct by McCaleb are not "merely incidental" to plaintiff's cause of action for breach of the implied covenant**

When a cause of action involves both protected and unprotected activity, the cause of action is subject to a motion to strike under the anti-SLAPP statute "if at least one of the underlying acts is protected conduct, unless the allegations of protected conduct are merely incidental to the unprotected activity." *Salma v. Capon*, 161 Cal. App. 4th 1275, 1287 (2008); *see also Haight Ashbury Free Clinics, Inc. v. Happening House Ventures*, 184 Cal. App. 4th 1539, 1550-53 (2010); *Gallanis-Politis v. Medina*, 152 Cal. App. 4th 600, 614 (2007); *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP*, 133 Cal. App. 4th 658, 672 (2005).

Plaintiff's cause of action for breach of the implied covenant of good faith and fair dealing is based almost entirely on protected activity and thus is subject to the anti-SLAPP statute. Plaintiff's cause of action identifies seven alleged breaches of the implied covenant. Complaint ¶ 58. Of the seven alleged breaches, five undisputedly involve speech-related conduct by McCaleb:

(1) *"publically [sic] announcing* his intention to dump all of his remaining XRP's" (Complaint ¶ 58); *see also id.* ¶ 44 ("[o]n May 22, 2014, McCaleb *publicly announced* his intention to sell all of his remaining XRP to the public beginning on or about June 6, 2014"); *id.* ¶ 45 ("McCaleb's *announcement . . .* was intended to damage Ripple Labs and the principal investors and owners of XRP, including [plaintiff], and *the announcement in itself* did in fact damage them");

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(2) *"encouraging and/or causing* third persons to dump large amounts of XRP's" (Complaint ¶ 58);

(3) *"wrongfully promoting* the XRP rival currency STR" (Complaint ¶ 58); *see also id.* ¶ 47 (*"fraudulently promoting* the rival STR currency through false Facebook accounts");

(4) *"denigrating* Ripple" (Complaint ¶ 58); *see also id.* ¶ 47 (same); and

(5) *"spreading false rumors* about alleged weaknesses in the Ripple protocol") (Complaint ¶ 58); *see also id.* ¶ 47 (same).

These allegations of protected activity constitute the heart of plaintiff's cause of action for breach of the implied covenant and are not "merely incidental" to it. Indeed, any one of these five alleged breaches of the implied covenant standing alone would be sufficient to subject plaintiff's cause of action to the anti-SLAPP statute. *See Haight Ashbury Free Clinics*, 184 Cal. App. 4th at 1550-51 (even though the alleged protected activity only "constitutes a quantitatively small proportion of the total activity on which the cause of action is based," the cause of action is still subject to the anti-SLAPP statute because each of the allegations "purports to identify a breach").

The other two breaches of the implied covenant alleged by plaintiff in the Second Cause of Action add nothing substantive to plaintiff's claim for breach of the implied covenant:

(6) "causing and/or allowing a derivative ledger to be created whereby all newly created digital currency credits were placed under the control of and/or allocated by Stellar [with none being allocated to plaintiff]" (Complaint ¶ 58); and

(7) "unloading his XRP's while knowing his actions with respect to Stellar's ledger had triggered [plaintiff's] anti-dilution rights under the Founders' Agreement" (Complaint ¶ 58).[3]

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[3] As discussed below (see Point II.C, infra), the sixth alleged breach of the implied covenant simply repeats the same breach of contractual duty alleged in plaintiff's First Cause of Action for breach of contract, and thus provides no independent basis for liability. The seventh alleged breach is nonsensical and fails to state a claim.

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2. Plaintiff's allegations of speech-related conduct by McCaleb involve a "public issue or an issue of public interest"

The courts have "broadly construed" the "public interest" requirement. *Cross v. Cooper*, 197 Cal. App. 4th 357, 372-73 (2011). An "issue of public interest" within the meaning of the anti-SLAPP statute is "*any issue in which the public is interested.*" *Nygard, Inc. v. Uusi-Kertula*, 159 Cal. App. 4th 1027, 1042 (2008) (emphasis in original). Although "[t]he precise boundaries of an issue of 'public interest' have not been defined, . . . in each case where it was determined that an issue of public interest existed, 'the subject statements either concerned a person or entity in the public eye, conduct that could directly affect a large number of people beyond the direct participants, or a topic of widespread, public interest." *Grenier v. Taylor*, 234 Cal. App. 4th 471, 482 (2015); *see also Cross*, 197 Cal. App. 4th at 373-74 ("Courts have adopted these categories as a useful framework for analyzing whether a statement implicates an issue of public interest").

In *Grenier*, the court held that allegedly defamatory statements on an internet blog concerning a church pastor were made in connection with an issue of public interest under the anti-SLAPP statute because they were of interest to the community of church members, who numbered between 550 and 1,000 people, and because the situation "is analogous to consumer protection information" because the defendants "were attempting to warn people away from attending the Church with plaintiff as the pastor." *Id.* at 483. Similarly, in *Wilbanks v. Wolk*, 121 Cal. App. 4th 883 (2004), the court held that allegedly defamatory statements about a viatical settlements insurance broker were made in connection with an issue of public interest, because the statements "were a warning not to use plaintiff's services" and made "[i]n the context of information ostensibly provided to aid consumers choosing among brokers." *Id.* at 900; *see also Fonain v. Wells Fargo Inv., LLC*, 129 Cal. App. 4th 719, 732 (2005) (defendant former employer's statement on a form submitted to the NASD as to why plaintiff broker-dealer was terminated involved a public issue protected by the anti-SLAPP statute because the statement that the broker-dealer "misrepresented information when selling annuities concerns conduct that 'could directly affect a large number of people'").

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Here, plaintiff's allegations of protected activity by McCaleb (Item Nos. 1-5, above) were made in connection with an issue of public interest within the meaning of the anti-SLAPP statute because McCaleb, his relationship to Ripple and Stellar, and the relative merits and value of the two new networks are matters of widespread public interest, including among: the tech community; the virtual currency community; financial access, human rights, poverty alleviation, and privacy advocates; the web standards community; and the financial community. *See* McCaleb Dec. Exs. A-C. Plaintiff concedes in his Complaint that Item No. 1 above, McCaleb's announced intention to sell his XRPs, was a statement concerning an issue of public interest, as the gravamen of his allegation is that McCaleb "*publicly announced* his intention to sell all of his remaining XRP to the public." Complaint ¶ 45; see also McCaleb Dec. ¶ 9 & Ex. D. Indeed, both plaintiff and Ripple made public statements in response to McCaleb's announcement (McCaleb Dec. ¶ 8 & Ex. E). Moreover, McCaleb's alleged conduct concerning the sale of XRPs (Item Nos. 1 & 2, above) clearly concerned "conduct that could directly affect a large number of people." *Fonain*, 129 Cal. App. 4th at 732. Plaintiff's allegations that McCaleb "wrongfully promot[ed] the XRP rival currency STR, denigrat[ed] Ripple, and spread[] false rumors about alleged weaknesses in the Ripple protocol" (Item Nos. 3-5, above) also satisfy the public interest standard because, as in *Grenier* and *Wilbanks*, *supra*, they are analogous to consumer protection information because they educate people about the concerns and issues related to the various protocols and networks.

II. PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY OF PREVAILING ON HIS SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Because plaintiff's cause of action for breach of the implied covenant arises from conduct in furtherance of the constitutional right of free speech in connection with a public issue or an issue of public interest, the burden shifts to plaintiff to establish a probability of prevailing on his claims, by competent and admissible evidence. *Navellier*, 29 Cal. App. 4th at 88; *Ludwig v. Superior Court*, 37 Cal. App. 4th 8, 15-16, 21 n.16, 25 (1995). As noted in Point I.B.1, above, plaintiff alleges seven distinct breaches of the implied covenant in his Second Cause of Action.

1 Plaintiff cannot meet his burden of establishing a probability of prevailing on any of these

2 alleged breaches.

3   **A.**   **Plaintiff Cannot Prevail on His Alleged Breaches Concerning Public Statements About Sales of XRPs (Items 1 and 2)**

4

5   Plaintiff's claim that McCaleb breached the implied covenant by allegedly "publically

6 [*sic*] announcing his intention to dump all of his remaining XRP's" and by "encouraging and/or

7 causing third persons to dump large amounts of XRP's" (Complaint ¶ 58) fails as a matter of

8 law.

9   "It is universally recognized [that] the scope of conduct prohibited by the covenant of

10 good faith is circumscribed by the purposes and express terms of the contract." *Carma Dev.*

11 *(Calif.), Inc. v. Marathon Dev. Calif., Inc.*, 2 Cal. 4th 342, 373 (1992). "The covenant of good

12 faith is read into contracts in order to protect the express covenants or promises of the contract,

13 not to protect some general public policy interest not directly tied to the contract's purpose."

14 *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 690 (1988). The implied covenant "exists

15 merely to prevent one contracting party from unfairly frustrating the other party's right to receive

16 *the benefits of the agreement actually made*." *Guz v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 349

17 (2000) (emphasis in original); *see also Avidity Partners, LLC v. State of California*, 221 Cal.

18 App. 4th 1180, 1206 (2013) (the implied covenant "cannot be extended to create an obligation

19 not intended by *both parties*"). The implied covenant "cannot impose substantive duties or

20 limits on the contracting parties beyond those incorporated in the specific terms of their

21 agreement." *Guz*, 24 Cal. 4th at 349-50.

22   Plaintiff never makes clear how any of these actions he alleges McCaleb undertook

23 actually breached the implied covenant, *i.e.,* interfered with the plaintiff's contractual rights

24 under the Founders Agreement "to receive *the benefits of the agreement actually made*." *Guz*, 24

25 Cal. 4th at 349. By alleging that McCaleb threatened to sell XRPs at a low price or encouraged

26 others to do so as part of his claim for breach of the implied covenant, plaintiff is presumably

27

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implying that such actions by McCaleb caused the value or market price of XRPs to decline

(even though there are no allegations that any such decline or harm occurred).

There is nothing in the Founders Agreement, however, that would be adversely affected

by any of the actions plaintiff alleges McCaleb undertook in connection with the Second Cause

of Action. The Founders Agreement creates only three separate sets of rights and

responsibilities: (1) that 80% of all Ripple Credits be allocated to the Company (Complaint Ex.

A (Founders Agreement) ¶ 1); (2) that plaintiff receive "2% of all the Ripple Credits of the

Official Ledger" and if the Official Ledger is revised, or any other ledger is created within 36

months" additional Ripple Credits to keep him at 2% (*id.* ¶ 2); and (3) that "the Ripple platform

shall be made available for distribution and licensed under a permissive Open Source license, . . .

[plaintiff] shall consent to 'open source' his contribution to the Ripple platform" and plaintiff

"shall have a lifetime, fully paid up license to develop apps or new functionalities on the Ripple

platform" (*id.* ¶ 3). Thus, an allegation that McCaleb may have taken actions that had an

incidental effect of lowering the market price for XRPs cannot interfere with any of the stated

purposes of the contract.

There is no term in the Founders Agreement that places any restriction on McCaleb's

ability to sell his XRPs or to encourage others to sell their XRPs, nor is there any provision that

suggests the parties have any obligation to help maintain the market price of XRPs. *See*

Complaint Ex. A. Plaintiff is attempting to impose an obligation on McCaleb -- to refrain from

any discussion about selling his holdings of XRPs -- that simply has no relationship to any

provision or purpose of the Founders Agreement.

Indeed, plaintiff's description of the purpose of the Founders Agreement demonstrates

that such purpose would not be frustrated by McCaleb publicly discussing selling XRPs or

encouraging others to sell XRPs. According to plaintiff, the purpose of the Founders Agreement

was to provide "anti-dilution protection to Britto should McCaleb take Britto's IP and create a

competitive payment platform." Complaint ¶ 4; *see also id.* at ¶¶ 22-23 (Heading B: "The

Parties' Agreement to Protect Britto From Dilution of His XRP Holdings From any Founders'

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(McCaleb's) Subsequent Creation of a Derivative Ledger"); *id.* ¶ 28 ("Britto insisted . . . upon

anti-dilution protection"); *id.* ¶ 29 ("the Co-founders reached an agreement to provide Britto

protection should McCaleb create a competitive protocol or payment platform"). Assuming that

this is an accurate statement of the purpose of the Founders Agreement, this alleged purpose is in

no way relevant to McCaleb's ability to discuss sales of XRPs.

B. **Plaintiff Cannot Prevail on His Alleged Breaches Concerning Public Statements About Other Virtual Currencies or Weaknesses in Ripple's Protocol (Items 3, 4 and 5)**

Plaintiff's claims that McCaleb breached the implied covenant by "wrongfully promoting

the XRP rival currency STR, denigrating Ripple, and spreading false rumors about alleged

weaknesses in the Ripple protocol" (Complaint ¶ 58) fail for the same reasons as plaintiff's

alleged breaches concerning public statements about sales of XRPs, discussed in the preceding

section. Again, plaintiff never makes clear how any of these actions breached the implied

covenant, *i.e.*, interfered with the plaintiff's contractual rights under the Founders Agreement "to

receive *the benefits of the agreement actually made." Guz,* 24 Cal. 4th at 349. Again, by making

these allegations part of his claim for breach of the implied covenant, plaintiff presumably is

claiming that such actions by McCaleb caused the value or market price of XRPs to decline

(even though again there are no allegations that any such decline or harm occurred).

There is nothing in the Founders Agreement that precludes McCaleb from "promoting"

another virtual currency. There is nothing in the Founders Agreement that prohibits McCaleb

from making statements that are critical of Ripple. Plaintiff is attempting to impose new

"substantive duties or limits on the contracting parties beyond those incorporated in the specific

terms of their agreement." *Guz,* 24 Cal. 4th at 349-50; *see also Avidity Partners,* 221 Cal. App.

4th at 1206. Since an obligation not to make statements that are critical of Ripple is not

encompassed in the Founders Agreement, such statements cannot be a breach of the implied

covenant.

//

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C. Plaintiff Cannot Prevail on His Non-Speech Alleged Breaches Concerning Breach of Contract (Items 6 and 7)

There are two remaining alleged breaches of the implied covenant in the Second Cause of Action. The first alleged breach concerns McCaleb "causing and/or allowing a derivative ledger to be created whereby all newly created digital currency credits were placed under the control of and/or allocated by Stellar [with none being allocated to plaintiff]." Complaint ¶ 58. This is in essence the exact same claim of breach of contract alleged in the First Cause of Action. *See* Complaint ¶ 51 ("McCaleb breached the Founders' Agreement by . . . failing to cause digital currency credits, in an amount sufficient to bring [plaintiff's] percentage holding of total outstanding digital currency credits back up to 2% . . . following the creation of a derivative ledger"). Because this alleged breach of the implied covenant is identical to plaintiff's first cause of action for alleged breach of contract, it fails to provide any basis for liability independent of the breach of contract claim. As such, it fails to provide a basis for a claim concerning a breach of an implied covenant. *See, e.g., Nygard,* 159 Cal. App. 4th at 1046 (granting motion to strike cause of action for breach of the implied covenant on this basis).

The final alleged breach concerns McCaleb allegedly "unloading his XRP's while knowing his actions with respect to Stellar's ledger had triggered [plaintiff's] anti-dilution rights under the Founders' Agreement." Complaint ¶ 58. This is nonsensical. Plaintiff refers to alleged actions by McCaleb concerning "Stellar's ledger" that plaintiff alleges triggered his anti-dilution rights under the Founders Agreement, *i.e.,* the same claim that he is making in his First Cause of Action for breach of contract. But the Complaint contains no allegations that suggest that a sale of XRPs by McCaleb, at a time when he allegedly knew that plaintiff allegedly had rights to 2% of Stellar's ledger interferes with the purpose of the Founders Agreement. There is simply nothing in the Founders Agreement that prevents McCaleb from selling XRPs, so the allegation that McCaleb sold XRPs cannot be actionable as a breach of the implied covenant. Moreover, there are no allegations that link a sale of XRPs to any rights plaintiff might have under the

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Founders Agreement to a percentage of Stellar's ledger. This language simply fails to state any claim whatsoever.

CONCLUSION

Plaintiff's Second Cause of Action expressly alleges that McCaleb's exercise of his rights to free speech in public affected an issue of public interest, bringing it within California's anti-SLAPP law. Plaintiff is unable to overcome the high hurdle that the anti-SLAPP statute sets forth, and cannot make the "summary-judgment-like" showing necessary on any aspect of his Second Cause of Action necessary to overcome dismissal. For the reasons set forth above, the Court should grant McCaleb's Special Motion to Strike, dismiss plaintiff's Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing with prejudice, and award McCaleb his reasonable attorney's fees incurred in defending against this claim.

Dated: May 22, 2015

GROSS BELSKY ALONSO LLP

By: _Adam C. Belsky_.
    Adam C. Belsky

Attorneys for Defendants
JED MCCALEB and STELLAR
DEVELOPMENT FOUNDATION

RE: *Arthur Britto v. Jed McCaleb et al.,*
        San Francisco Superior Court Case No.:CGC-15-544133

I am a citizen of the United States and employed in the County of San Francisco, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is GROSS BELSKY ALONSO LLP, 1 Sansome Street, Suite 3670, San Francisco, CA 94104. On the date set forth below, I served the following documents in the manner indicated on the below named parties and/or counsel of record:

DEFENDANT JED MCCALEB'S NOTICE OF MOTION AND MOTION IN SUPPORT OF SPECIAL MOTION TO STRIKE PLAINTIFF'S SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, PURSANT OT THE ANTI-SLAPP STATUE, CCP § 425.16

[PROPOSED] ORDER GRANTING DEFENDANT JED MCCALEB'S SPECIAL MOTION TO STRIKE PLAINTIFF'S SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, PURSANT OT THE ANTI-SLAPP STATUE, CCP § 425.16

DEFENDANT JED MCCALEB'S MEMORANDUM IN SUPPORT OF SPECIAL MOTION TO STRIKE PLAINTIFF'S SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, PURSUANT TO THE ANTI-SLAPP STATUTE, CCP § 425.16

DECLARATION OF JED McCALEB IN SUPPORT OF SPECIAL MOTION TO STRIKE PLAINTIFF'S SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; EXHIBITS A-F IN SUPPORT

<u>XX</u>   **U.S. Mail**, with First Class postage prepaid and deposited in a sealed envelope at San Francisco, California.

                                          Attorneys for Plaintiff
Spencer Hosie, Esq.   Arthur Britto
Diane S. Rice, Esq.
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I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service, and said correspondence would be deposited with the United States Postal Service, California that same day in the ordinary course of business.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 22, 2015 at San Francisco, California.

Jessica Dean

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