

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

BINANCE HOLDINGS LIMITED,
BAM TRADING SERVICES INC.,
BAM MANAGEMENT US HOLDINGS
INC., AND CHANGPENG ZHAO,

Defendants.

No. 1:23-cv-01599-ABJ-ZMF

**Defendants' Joint Response
to Plaintiff's Notice of Supplemental Authority**

Defendants respectfully submit this joint response to the Notice of Supplemental Authority filed by the SEC on March 4, 2024, *see* Dkt. 221, concerning the recent default-judgment decision in *SEC v. Wahi*, No. 2:22-cv-1009 (W.D. Wash. Mar. 1, 2024), ECF 119.¹

The *Wahi* opinion was issued in response to an unopposed motion for default judgment against one defendant, Sameer Ramani, and the decision simply recited the SEC's statutory arguments. *Compare* Mot. for Default Judgment 8–17, *SEC v. Wahi*, 2:22-cv-1009 (W.D. Wash. Jan. 18, 2024), ECF 118, *with* Order, *SEC v. Wahi*, 2:22-cv-1009 (W.D. Wash. Mar. 1, 2024), ECF 119, at 9–14. Thus, in *Wahi*, “none of the issues [wa]s actually litigated,” *Arizona v. California*, 530 U.S. 392, 414 (2000), and the court had no occasion to grapple with the arguments raised by Defendants here. For example, the SEC's unopposed motion for default judgment in *Wahi* failed

¹ Defendants asked the SEC to withdraw its filing in light of this Court's order on January 22, 2024 that no post-hearing briefs will be accepted, *see* Minute Order, Case No. 1:23-cv-01599 (Jan. 22, 2024), but the SEC refused to do so, necessitating this response.

to cite the Southern District of New York’s decision in *SEC v. Ripple Labs, Inc.*, 2023 WL 4507900, *1, 12–13 (S.D.N.Y. July 13, 2023), where the court rejected the SEC’s argument that blind sales of crypto tokens constitute “investment contracts.” *Wahi* also did not consider the D.C. Circuit’s decision in *SEC v. Life Partners, Inc.*, 87 F.3d 536, 545 (D.C. Cir. 1996), which controls in this case. *See, e.g.*, Joint Mot. to Dismiss at 18, Dkt. 118. Nor did *Wahi* consider the implications of contested discovery for a product-by-product analysis of the current “ecosystem” of hundreds of different crypto assets as would be required here.

When the SEC filed the *Wahi* case in July 2022, a sitting Commissioner of its sister agency, the CFTC, publicly criticized its broad labeling of digital assets, “including those that could be described as utility tokens,” as securities. Statement of CFTC Commissioner Pham (July 21, 2022), <https://tinyurl.com/2p96hsv8>. When two other defendants in *Wahi* filed a motion to dismiss that challenged the SEC’s interpretation of the securities laws, *see* Mot. to Dismiss, *SEC v. Wahi*, No. 2:22-cv-1009 (W.D. Wash. Feb. 6, 2023), ECF 33, the SEC settled with those defendants before the motion was fully briefed, *see* Mot. to Approve Consent Judgment, *SEC v. Wahi*, No. 2:22-cv-1009 (W.D. Wash. May 30, 2023), ECF 107, 108. It then pursued default against Mr. Ramani, who never appeared in the case, resulting in the default-judgment decision that is the subject of the SEC’s Notice. The SEC’s attempt to bootstrap a default judgment in *Wahi* as purported “authority” for its arguments today should be rejected out of hand.

Dated: March 8, 2024

Respectfully submitted,

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