

SEC, Richard Heart Clash in Dueling Motions Over \$1 Billion Unregistered Securities Litigation

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Cryptocurrency



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What You Need to Know

- The U.S. Securities and Exchange Commission sued Richard Heart over the offer and sale of over \$1 billion in unregistered securities.
- Both sides filed dueling motions on Thursday spanning over 140 pages.
- An uninvolved expert noted the implications of the litigation on the industry at large.

The U.S. Securities and Exchange Commission and the litigators for an embattled cryptocurrency founder escalated their clash this week over a \$1 billion unregistered securities lawsuit before a federal district court in Brooklyn.

Defendant Richard Heart is represented by several law firms, including Am Law 100 firm Quinn Emanuel Urquhart & Sullivan and its partners Michael Liftik and Kristin Tahler. Heart claimed that the plaintiff, the SEC, “further seeks to cement a role it has assumed for itself as the global governor of blockchain technology—a role exceeding both the limited mandate and the bounds of personal jurisdiction” and the “case should be dismissed with prejudice.”

Within hours of the defendant’s filing, the SEC filed a motion in opposition. Matthew Gulde, a trial attorney who penned the motion for the SEC, pinpointed five points that Heart asserted and doubled down against the notion that the complaint is “deficient in any respect.”

Now, a hearing has been scheduled in October before U.S. District Judge Carol Amon of the Eastern District of New York before she rules on the matter.

Ishmael Green, a partner at [Diaz, Reus & Targ](#) in Miami and uninvolved crypto expert, said the ruling and its fallout could impact other digital assets because “Pulsechain is essentially a copy of Ethereum, and Hex is essentially Bitcoin but with a certificate of deposit function.”

“This provides a roadmap for anyone creating a cryptocurrency who wants to remain outside of the SEC’s enforcement arm,” Green said. “This case will go down in history as one of those cases that nobody saw coming, and it is very important.”

Five Points

In the complaint, the SEC alleged that Heart raised over \$1 billion in the unregistered offer and sale of crypto asset securities to retail investors in the U.S. and elsewhere and personally directed the creation and development of three crypto-assets called Hex, Pulse (PLS) and PLSX. In doing so, Heart personally promoted the securities to investors and misappropriated millions of dollars of Pulsechain investor funds to buy cars, watches and diamonds.

In the [69-page motion to dismiss](#), Heart argued five key points and the SEC, in [74 pages](#), disputed each point.

First, the lawsuit cannot escape the starting gate because exercising personal jurisdiction over Heart in this action would not comport with due process since Heart lives abroad, has not alleged to have set foot in the U.S. during the time period, and the availability of his speech on the internet does not satisfy the requirements for asserting personal jurisdiction.

The SEC claimed that Heart has direct activity in the U.S. through the offer, sale and purchase of the three crypto assets and that these contacts with the U.S. demonstrated that he “should reasonably have anticipated the possibility of being haled into court in the United States.”

Second, Heart argued that the SEC has not plausibly alleged a domestic securities transaction, as the U.S. Supreme Court has held that the securities laws do not apply extraterritorially. However, the SEC claimed the transactions and conduct at issue are domestic and not impermissibly extraterritorial under *Morrison v. National Australia Bank*.

Third, the SEC failed to satisfy basic pleading requirements for its securities fraud scheme claim regarding PulseChain, per the motion. Heart argued that the SEC failed to allege deceptive conduct or that any of his statements were false or misleading. The SEC countered that Heart misappropriated investor funds and took steps to conceal his actions.

Fourth, Heart claimed that the SEC has not plausibly alleged that the three software programs at issue constitute “investment contracts” subject to federal securities laws. The SEC, in response, argued that *SEC v. W.J. Howey Co.* recognized that investment contracts include “contracts, transactions or schemes.”

Fifth, Heart argued that the SEC’s case amounts to an unconstitutional infringement on the First Amendment guarantees of freedom of speech and association for Heart and those who execute the Hex, PulseChain and PulseX software programs through their commentary. The SEC claimed that the federal district court should not adopt Heart’s “novel position.”

“The SEC does not seek to remove Heart or any crypto enthusiast from the internet; it seeks, as always, to prevent the unregistered offers and sales of securities and to fight securities fraud,” the SEC argued. “Importantly, no case cited by Heart stands for the proposition that a financial software constitutes a ‘public square’ or ‘public forum’ that deserves First Amendment protection.”

