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REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
National Capital Judicial Region
Branch 157, Pasig City

PEOPLE OF THE PHILIPPINES,
Plaintiff,

R-PSG-18-02983-CR
(NPS Docket No. XVI-INV-
18C-00052)

- versus -

*For: Violation of Section 255 of the
NIRC of 1997, as amended*

RAPPLER HOLDINGS
CORPORATION / MARIA A.
RESSA,

Accused,

X -----X



MEMORANDUM

Accused **RAPPLER HOLDINGS CORPORATION** ("RHC") and
MARIA A. RESSA ("Maria Ressa"), by counsel, respectfully state:¹

OPENING STATEMENT

*"x x x To travel, I had to post bond of P500,000/\$10,000 for just
1 charge! I learned 1st-hand how government abuses its powers,
weaponizing the law."*

---- Maria A. Ressa²

¹ On 10 July 2023, the Accused RHC and Maria Ressa, through the undersigned counsel, received an electronic copy of this Honorable Court's Resolution dated 10 July 2023 directing the Accused to file a Memorandum within thirty (30) days from notice, otherwise by 9 August 2023. Hence this Memorandum is timely filed.

² <https://twitter.com/mariaressa/status/1113275247485022208>.

The power to tax does not give the government the power to destroy.³ Our internal revenue laws are not political in nature.⁴ The purpose of taxation is to accumulate funds to defray the costs of government. It may not be used beyond the limits clearly set by the import of law.⁵ It must be exercised **fairly, equally and uniformly**.

This case exemplifies how the power of taxation has been used as a tool to cause a thousand cuts to our democracy. *Rappler* - which has been at the forefront of providing independent journalism in the Philippines - caught the ire of the Duterte Administration because of its hard-hitting investigative reports. As a result, this criminal tax case (along with four [4] other Criminal Informations intimately related to this case filed in the Court of Tax Appeals [the "CTA Tax Cases"]) was instituted against *Rappler's* parent company: Accused RHC.

In the Information filed for this case,⁶ RHC and its President Maria Ressa are being charged for allegedly failing to declare and pay value added tax ("VAT") in the basic amount of Php 294,258.58. The theory of the Plaintiff is that in July 2015, RHC failed to report in its second quarter VAT Return sales receipts coming from its alleged issue and sale of Philippine Depository Receipts ("PDRs") as a "dealer in securities" to NBM *Rappler* L.P. ("NBM").

RHC and Maria Ressa vehemently reject the theory of the Plaintiff.

First, RHC is not a dealer in securities. It was never engaged in business as a "merchant of stocks or securities". There is no evidence that RHC was involved in any "sale" of securities for which it would have been liable to declare "sales receipts". RHC does not have an "established place of business" as a dealer in securities.

Second, contrary to the Plaintiff's allegations, RHC was not selling *Rappler, Inc.* shares to NBM by issuing a PDR. The PDRs and its underlying *Rappler, Inc.* shares are totally different securities. They cannot be equated as the same security. A PDR is a derivative security evidenced by a receipt issued by an entity which holds shares in another corporation, usually an operating subsidiary, for a specified price, and after due compliance with certain conditions and obligations. In other words, the PDR gives the holder thereof an option

³ Tridharma Marketing Corporation vs. CTA, G.R. No. 215950, 20 June 2016, 794 SCRA 126.

⁴ Hilado v. the Collector of Internal Revenue, 53 O.G. 2471.

⁵ Philippine Health Care Providers Inc vs. CIR, G.R. No. 167330, 18 September 2009, 600 SCRA 413.

⁶ Records Vol. 1; Amended Information dated 2 October 2018.

to purchase, upon exercise of certain conditions, the underlying shares of the said PDR.

Third, RHC did not realize any taxable gain from its issuance of PDRs to NBM. Consistent with its operations as a holding company, the funds received by RHC from NBM were used to subscribe and invest in Rappler, Inc. and pay for related transaction costs. As shown from the evidence, the investment of NBM was made for particular purpose and may even be returned if certain conditions arise.

Fourth, during the trial, the witness of the Plaintiff claimed that the PDR issuance to NBM is subject to VAT because the issuance was made to a foreign entity and thus illegal. This argument is flawed and baseless. The Securities and Exchange Commission ("SEC") and the Court of Appeals both held that there was nothing illegal in RHC's PDR issuance to NBM. Even assuming *arguendo* that the issuance was illegal, the issuance of PDRs, by its very nature, would not result in a taxable event that would be subject to VAT, since there was no gain involved.

Finally, this is the first time in Philippine History that the Bureau of Internal Revenue ("BIR") classified a holding company that issued PDRs as a "dealer in securities" and described the issuance of PDRs as a "sale" subject to VAT. This position of the BIR was made despite there being precedent existing for more than twenty (20) years that PDRs are derivatives of stock, for which documentary stamp tax ("DST") would only be due for its issuance.

STATEMENT OF THE FACTS

1.1. This case involves the alleged failure of RHC to supply correct and accurate information in its quarterly VAT Return for the **Second Quarter of taxable year 2015.**

1.2. RHC is a holding company which is the parent company of Rappler, Inc.

1.3. Rappler, Inc. is a digital newsgroup that continues to provide independent and fearless journalism in the Philippines.⁷

1.4. On 24 July 2017, President Rodrigo Roa Duterte made the following remarks in his State of the Nation Address ("SONA")

⁷ Records Vol. 15, Exhibit "105", News Article entitled "*Duterte himself banned Rappler report from Malacañang coverage*" dated 20 February 2018.

implying to the public that Rappler is an American-owned newspaper⁸ (both statements below are untrue):

"Try to go out, sumama tayo – kayo sa akin. And try to see how hard it is for them to survive. Now ito ang... Gusto mo ganito ang pangyayari, tutal sobra-sobra naman 'yang pera ninyo, 'adre, sa totoo lang. Mayor ako eh, I can look at your corporate earnings, your sister company, I can pierce the corporate identity, kayo rin pala. And even diyan sa mga newspaper. When you are not supposed to... You know, 'pag newspaper ka you are supposed to be 100 percent Filipino. And yet when you start to pierce their identity, it is pala fully owned by Americans. Ganun ang nangyari eh. It's just a matter of piercing the...

*So wala masyado ako... ABS, Rappler kayo ba 'yan? Have you tried to pierce your identity and it will lead you to America? Do you know that? And yet the Constitution requires you to be 100 percent – media – Filipino. Rappler, try to pierce the identity and you will end up American ownership."*⁹

1.5. A few days after the SONA, the SEC filed an administrative case against Rappler, Inc. and RHC, which was docketed as SEC *En Banc* SP Case No. 08-17-001.¹⁰

1.6. On 11 January 2018, the SEC *En Banc* rendered a Decision ("SEC Decision") assailing the validity of the ON PDR. The SEC did not find anything irregular or illegal on the PDRs issued to NBM.¹¹

1.7. In February 2018, the Presidential Security Group barred reporter Ms. Pia Ranada of Rappler from entering Malacañang,¹² which included Maria Ressa in the informal ban.

⁸ Records Vol. 11, Judicial Affidavit of Maria Ressa dated 16 February 2022 [JA of Maria Ressa] pp. 28-29.

⁹ *Ibid.*

¹⁰ Records Vol. 15, Exhibit "75", In re: Rappler Inc. and Rappler Holdings Corporation, SP Case No. 08-17-001, Decision dated 11 January 2018.

¹¹ *Ibid.*

¹² Records Vol. 11, JA of Maria Ressa, pp. 39-41; Records Vol. 15, Exhibit "61", Inquirer Online Article entitled "*Duterte, Rappler clash over fake news, press freedom*" dated 18 January 2018; Records Vol. 15, Exhibit "70", news.abs-cbn.com Article entitled "*Rappler reporter now banned from entire Malacañang Complex*" dated 21 February 2018; Records Vol. 15, Exhibit "71", Inquirer Online Article entitled "*PSG chief won't apologize for 'unbecoming' remark to Rappler reporter*" dated 21 February 2018; Records Vol. 15, Exhibit "72", Inquirer Online Article entitled "*Roque: Duterte felt 'betrayed' by Rappler reporter*" dated 21 February 2018; Records Vol. 15, Exhibit "73", CNN Online Article entitled "*Pia Ranada's defense of Rappler 'fake news'*"

1.8. Meanwhile, Rappler, Inc. and RHC timely appealed the SEC Decision to the Court of Appeals. On 26 July 2018, the Court of Appeals rendered a Decision (“CA Decision”) stating that the issuance of PDRs by RHC is not illegal *per se*.¹³ The Court of Appeals also held that there was nothing illegal or irregular in the PDRs issued NBM:

“The SEC does not dispute that the issuance of PDRs is not illegal *per se*. As noted by petitioners, other corporations like ABS-CBN, GMA and Globe have issued PDRs in the past and the same were allowed by the SEC. Further, the SEC also reviewed the NBM PDR and found nothing illegal or irregular in its terms.”¹⁴

1.9. The Court Appeals recognized that in a PDR Transaction, the issued PDRs do not make the PDR Holder a shareholder of Rappler Inc. for as long as the shares are not exercised by the issuer:¹⁵

“A PDR is defined as a security which grants the holder the right to the delivery or sale of the underlying share, and to certain other rights including additional PDR or adjustments to the terms or upon the occurrence of certain events in respect of rights issues, capital reorganizations, offers and analogous events or the distribution of cash in the event of a cash dividend on the shares. PDRs are not evidences or statements nor certificates of a corporation. For as long as the PDRs are not exercised, the shares underlying the PDRs are and will continue to be registered in the name of, and owned by, and all rights pertaining to the shares shall be exercised by the issuer.

offended Duterte-Roque” dated 22 February 2018; Records Vol. 15, Exhibit “74”, Rappler Article entitled “Duterte says he banned Rappler due to ‘twisted’ reporting” dated 2 March 2018; and Records Vol. 15, Exhibit “67”, Inquirer Online Article entitled “Int’l press groups: Charges against Ressa ‘politically motivated’” dated 14 February 2019; Records Vol. 15, Exhibit “105”, News Article entitled “Duterte himself banned Rappler report from Malacañang coverage” dated 20 February 2018.

¹³ Records Vol. 15, Exhibit “30”, “30-1”, “30-2”, Decision of the Court of Appeals promulgated on 26 July 2018 in the case entitled “Rappler, Inc. and Rappler Holdings Corporation v. Securities and Exchange Commission Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017 [CA Decision].

¹⁴ Records Vol. 15, Exhibit “30”, CA Decision, p. 68.

¹⁵ Records Vol. 15, Exhibit, “30-1”, CA Decision, p. 46; Records Vol. 15, Exhibit “31”, Resolution of the Court of Appeals promulgated on 21 February 2019 in the case entitled “Rappler, Inc. and Rappler Holdings Corporation v. Securities and Exchange Commission Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017” docketed as C.A. G.R. SP No. 154292 [CA Resolution].

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The subject of the present case is the 7,217,257 PDRs issued by RHC to Omidyar only. It is undisputed that the said PDRs do not make Omidyar a shareholder of Rappler.”¹⁶

1.10. The NBM PDRs are valid. Both the SEC and the Court of Appeals have recognized that there is nothing illegal or irregular as to its terms. Separately, the Court of Appeals directed the SEC to conduct an evaluation of the legal effect of the supervening donation made by Omidyar Network Fund, L.L.C. (“ON”) of all the 7,217,257 PDRs to the staff of Rappler Inc.¹⁷ This remains pending to date.

1.11. However, on 24 January 2018, and without waiting for the SEC Decision to attain finality, the National Investigation Division of the Bureau of Internal Revenue (“NID”) took cognizance of the SEC Decision and assigned Revenue Officers Ed Al Renzi Salles, Rosanna Berba and Group Supervisor Editha Quilantang of the National Investigation Division (“Revenue Officers”) to conduct a **thorough evaluation** on the tax compliance of Rappler Inc. and RHC. The NID required the Revenue Examiners to submit a report on their findings within (30) days to enable the office **to issue the Letter of Authority (“LOA”) in the event further investigation of the taxpayer is warranted.**¹⁸

1.12. On 5 March 2018, the BIR served the LOA to RHC.¹⁹ The LOA indicated that the Revenue Officers were directed to examine RHC’s books of accounts and other accounting records for the period of 1 January 2014 to 31 December 2015.²⁰ The LOA was served to Mr. Arnold Gueco, an administrative staff of RHC.²¹

1.13. On 8 March 2018, in an unprecedented move and just three (3) days from the service of the LOA, the Revenue Officers instituted Criminal Complaints against RHC and Maria Ressa with the

¹⁶ Records Vol. 15, Exhibit “30”, CA Decision, p. 46.

¹⁷ Records Vol. 15, Exhibit, “31”, CA Resolution, p. 24.

¹⁸ Records Vol. 11, JA of Maria Ressa, pp. 26-27; *See also* Records Vol. 1, Respondent’s Formal Offer of Evidence [Respondent’s FOE], Exhibit “B”, NID Memo Assignment No. CRD/AJDC 2018- 01-024-0083 dated January 24, 2018.

¹⁹ Records Vol. 12, Judicial Affidavit of Fel Dalafu dated 18 May 2022 [JA of Fel Dalafu], p. 73.

²⁰ Records Vol. 15, Exhibit “111”, Letter of Authority No. eLA201600007403 dated 02 March 2018.

²¹ *Ibid*; Records Vol. 11, JA of Maria Ressa, p. 27.

Department of Justice ("DOJ").²² The Revenue Officers also included Mr. Noel Aguinaldo Baladiang ("Mr. Baladiang"), the auditor of KPMG for allegedly violating Section 257 of the Tax Code for making false entries in RHC's Reports.²³ Notably, all these criminal complaints were filed without conducting a physical and thorough examination of RHC's books of accounts and other accounting records as provided in the LOA.²⁴

1.14. In the Criminal Complaint filed in the DOJ and the Informations, the theory of the BIR and the Prosecution is that the PDR Transactions involved a "sale" of Rappler Inc. shares for which reason RHC is being assessed alleged deficiency income tax and VAT since RHC was allegedly acting as a "dealer in securities" that received income. The Revenue Officers claim that in taxable year 2015, RHC entered into six (6) taxable transactions.

1.15. Thereafter, the DOJ filed five (5) separate Informations against RHC and Maria Ressa for four (4) counts of violation of Section 255 of the Tax Code and (1) count of violation of Section 254 of the Tax Code. The three (3) counts for violation of Section 255 and (1) count of violation of Section 254 was prosecuted before the CTA First Division (the CTA Tax Cases). The CTA First Division promulgated a *Decision* on 18 January 2023 acquitting RHC and Maria Ressa of all criminal charges. The CTA First Division also found that no civil liability may be adjudged against the accused as the alleged unpaid tax obligations have not been factually and legally established and proven.

1.16. One of the Informations involving Section 255 was filed before this Honorable Court because the basic tax allegedly due to be declared in RHC's 2nd VAT Return is below Php 1,000,000.00.

1.17. A separate Information was filed against Mr. Baladiang in the Metropolitan Trial Court of Makati City, Branch 62 ("MTC") for alleged violation of which was docketed as M-MKT-19-00584-0CR. The trial of this case proceeded separately. On 8 April 2020, the MTC rendered a decision acquitting Mr. Baladiang.²⁵

²² *Id.*

²³ Records Vol. 1, Respondent's FOE, Exhibit "P", Joint Complaint-Affidavit of Revenue Officers Rosanna F. Berba, Ed Al Renzi B. Salles and Editha V. Quilantang dated 8 March 2018 with attachments.

²⁴ Records Vol. 12, JA of Fel Dalafu; Records Vol. 11, JA of Maria Ressa, pp. 26-27.

²⁵ Records Vol. 15, Exhibit "113", Decision dated 8 April 2020 of the Metropolitan Trial Court Branch 62 Makati City in Criminal Case No. M-MKT-19-00854-CR.

1.18. Meanwhile, during the trial before this Honorable Court, it could be observed that the Criminal Complaint was prepared without observing the due process rights of RHC. The Revenue Officers themselves admitted that they did not conduct an actual and thorough audit of RHC's books of accounts and other accounting records as required by law and regulations. Worst of all, it became apparent that the Revenue Officers conclusion that RHC acted as a "dealer in securities" was derived from their baseless conclusion that the NBM PDR is allegedly illegal and their malicious twisting of the RHC's corporate documents.

**A. RHC IS NOT, AND HAS NEVER
ACTED, NOR REPRESENTED
ITSELF TO THE PUBLIC, AS A
DEALER IN SECURITIES.**

1.19. A taxpayer is classified as a dealer in securities if: (i) the taxpayer is a merchant of stocks or securities with an established place of business; (ii) the taxpayer is regularly engaged in the purchase and resale of the same securities to customers; and (iii) the taxpayer is engaged in such purchase and sale to derive profit. This is clear from Section 22(U) of the National Internal Revenue Code ("Tax Code") which reads:

"(U) The term 'dealer in securities' means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and resale thereof to customers; that is, one who, as a merchant, buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom."²⁶

1.20. In this case, since its incorporation, RHC has always held itself to the public as a holding company. From its corporate name alone: "Rappler Holdings Corporation", it is clear that RHC does not represent itself to be a dealer in securities.²⁷

²⁶ Tax Code, Sec. 22(U); Emphasis and underscoring supplied.

²⁷ Records Vol. 12, JA of Fel Dalafu, p. 4; Records Vol. 15, Exhibit "1" RHC's Certificate of Incorporation dated 12 December 2014 with attached Articles of Incorporation.

1.21. RHC's records with different regulatory government bodies in the Philippines also show that RHC only represents itself to the public and operates as a holding company and not as a dealer in securities.

1.22. In the SEC, RHC's Certificate of Incorporation and Articles of Incorporation²⁸ show that it is registered to operate as a holding company²⁹ and this is reflected in its primary purpose:

"To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment x x x shares of capital stock, bonds, debentures, promissory notes, or other securities or obligations, created, negotiated or issued by any corporation, association, or other entity, foreign or domestic x x x while the owner, holder or possessor thereof, to exercise any and all rights, powers and privileges of ownership or any other interest therein, including the right to vote on any proprietary or other interest on any shares of the capital stock, and upon any bonds, debentures, or other securities having voting power, so owned or held and the right to receive, collect and dispose of, any and all rentals, dividends, interests and income derived therefrom, except the management of fund portfolios and similar assets of such managed entities; Provided it shall not act as a stockbroker or dealer of securities."³⁰

1.23. The Market and Securities Regulation Department of the SEC also issued a Certification,³¹ confirming that RHC is not a licensed broker and/or dealer of securities in its records:

"This is to certify that as per records on file with the Markets and Securities Regulation Department, RAPPLER HOLDINGS CORPORATION has not been issued any license to act as Broker and/or Dealer of Securities, Dealer in Government Securities,

²⁸ Records Vol. 15, Exhibit "1", RHC's Certificate of Incorporation dated 12 December 2014 with attached Articles of Incorporation; Records Vol. 12, JA of Fel Dalafu, pp. 4-10.

²⁹ Records Vol. 12, JA of Fel Dalafu, pp. 5-6; Records Vol. 15, Exhibit "1-1" Primary Purpose, Second Section of the Articles of Incorporation.

³⁰ *Id.*

³¹ Records Vol. 12, JA of Fel Dalafu, pp. 6-7; Records Vol. 15, Exhibit "2" and "2-1", Certification issued by the Market and Securities Regulation Department of the SEC dated 18 January 2019 to RHC, signed by its Director, Mr. Vicente Graciano P. Felizmenio, Jr.

Investment Adviser of an Investment Company, Investment House, and Transfer Agent and to sell, offer for sale or distribute securities to the public. Further, it has not filed nor has any pending application for said Certificates of Registration/Licenses.”³²

1.24. In the BIR, RHC is a registered taxpayer falling under the jurisdiction of BIR Revenue District Office No. 43 – Pasig City under Tax Identification Number 008-923-940-000.³³ RHC’s registered Line of Business/Industry states that it is engaged in “6694 Financial Holding Company Activities”.³⁴

1.25. In Pasig City, the local government where RHC operates, RHC’s Mayor’s Permits for years 2014, 2015 and 2018 all show that RHC business is “IN6 Holdings (MAIN OFFICE)”.³⁵ Certainly, RHC does not hold itself out as a dealer in securities in the city where it operates.

1.26. RHC’s actual operations in the Philippines has always been consistent with its purpose as a holding company. A holding company is one which controls another as a subsidiary or affiliate by the power to elect its management.³⁶

1.27. Records show that RHC has operated as the parent company of Rappler Inc. RHC owns 98% of Rappler Inc.’s shares.³⁷ Based on RHC’s General Information Sheets (“GIS”) filed with the SEC for years 2015, 2016, 2017 and 2018,³⁸ RHC operates as the parent corporation of its subsidiary Rappler, Inc.³⁹

³² Records Vol. 12, JA of Fel Dalafu, pp. 6-7; Records Vol. 15, Exhibit “2-1”, First Paragraph of the Certification dated 18 January 2019.

³³ Records Vol. 12, JA of Fel Dalafu, p. 7; Records Vol. 15, Exhibit “3”, RHC’s Certificate of Registration (BIR Form No. 2303) issued on 9 January 2015.

³⁴ Records Vol. 15, Exhibit “3-1”, RHC’s Certificate of Registration showing Line of Business.

³⁵ Records Vol. 12, JA of Fel Dalafu, pp. 8-9; Records Vol. 15, Exhibit “4”, “4-1”, Mayor’s Permit Number Nos. IN6 15-0033; Records Vol. 6, Exhibit “5”, “5-1”, Mayor’s Permit Number Nos. IN6 18-0231 issued by the Business Permit and License Office of Pasig City.

³⁶ Records Vol. 13, Amended Judicial Affidavit of Atty. Helen G. Tiu dated 21 September 2022 [Amended JA of Atty. Tiu] pp. 11; Records Vol. 15, Exhibit 76, SEC Opinion dated 03 November 1983.

³⁷ Records Vol. 12, JA of Fel Dalafu, pp. 9-14; Records Vol. 5, Exhibits “6 and 6-2”, “7 and 7-1” “8 and 8-1”, and “9 and 9-1”, General Information Sheets of Rappler Inc. for the period covered 31 July 2015, 12 August 2016 and 27 July 2018.

³⁸ Records Vol. 12, JA of Fel Dalafu, pp. 14-17; Records Vol. 15, Exhibits “6”, “7”, “8”, and “9”, General Information Sheets of RHC for years 2015, 2016, 2017 and 2018.

³⁹ *Ibid*; Records Vol. 12, JA of Fel Dalafu, pp. 9-14; Records Vol. 15, Exhibits “10” and “10-2”, “11 and 11-1”, “12 and 12-1” and “13 and 13-1”, General Information Sheets of RHC for the period covered 17 July 2015, 12 August 2016 and 1 August 2017 and 27 July 2018; Records Vol. 15, Exhibit “14”, Letter dated 23 February 2016 addressed to Mr. Noel A. Baladiang, Engagement Partner for RI, and sent by RI’s Corporate Secretary, Atty. Jose Maria G.

1.28. Also based on RHC’s Audited Financial Statements, RHC cannot be classified as a dealer in securities. RHC does not have an inventory of shares being held for sale to the public for profit that would allow it to engage in the active trading of securities.⁴⁰ The assets of RHC in taxable year 2015 found in its Separate Statement of Financial Position reflect the following:

	Note	2015	2014
ASSETS			
Current Assets			
Cash	5, 10	P10,391,074	P99,212
Other Current Assets		3,960	-
Total Current Assets		10,395,034	99,212
Noncurrent Asset			
Investment in shares of stock of a subsidiary	6	1,300,000	1,300,000
		P11,695,034	P1,399,212

B. RHC DID NOT ACT AS A DEALER IN SECURITIES IN RELATION TO THE PDR TRANSACTIONS. THESE WERE INVESTMENT/ CAPITAL RAISING TRANSACTIONS, WHICH RHC PERFORMED CONSISTENT WITH ITS OPERATIONS AS A HOLDING COMPANY.

1.29. In taxable year 2015, RHC entered in two (2) PDR Transactions. One was with NBM and the other was with ON (NBM and ON collectively referred to as “PDR Holders”).⁴¹

1.30. The PDR Transaction with NBM is what is relevant to this case. The NBM PDR Transaction did not involve any sale or reselling of securities.

Hofileña, on the list of RI shareholders of record as of 31 December 2015; Records Vol. 15, Exhibit “15”, Audited Consolidated Financial Statements of RHC and RI - 31 December 2015 and 2014, filed with SEC on 13 May 2016.

⁴⁰ Records Vol. 12, JA of Fel Dalafu, pp. 19-21; Records Vol. 15, Exhibits “16” and “16-1”, RHC Separate Financial Statements - 31 December 2015 and 2014 and page 8 thereof on Assets.

⁴¹ Records Vol. 11, JA of Maria Ressa, pp. 15-24.

1.31. The NBM PDR Transaction (and even the one with ON) were both investment/ capital raising transactions where RHC, consistent with its purpose as a holding company, was merely raising funds for its subsidiary Rappler, Inc.

1.32. As testified by Maria Ressa and Atty. Helen G. Tiu, the PDR Transactions were pursued because Rappler wanted to expand globally since it wanted to have operations in Indonesia and in Singapore.⁴²

1.33. However, before proceeding with the expansion, the incorporators of RHC first sought the proper legal and corporate advice to understand their options. The incorporators thus engaged the best experts and professionals who are known locally and internationally in their fields to provide advice for the restructuring and capital raising.⁴³ These experts were Atty. Helen G. Tiu ("Atty. Tiu"), Sycip Salazar Hernandez & Gatmaitan Law Offices and R.G. Manabat & Co/KPMG ("KPMG"), which included Mr. Baladiang.⁴⁴

1.34. Atty. Tiu was one of the experts hired by the incorporators of RHC. Based on her experience in PDR structures in the Philippines, a holding company ("HoldCo") is first incorporated which becomes the registered shareholder of the operating company ("OpCo"). Upon creation of the HoldCo, it will then subscribe to and control majority of the shares of the OpCo to become the parent company. Thereafter, the HoldCo will enter into an investment arrangement, where the HoldCo will issue PDRs. The PDRs are backed up with underlying shares of the OpCo, but the PDR Holders do not become shareholders of OpCo.⁴⁵

1.35. In this case, at the time Rappler Inc. wanted to expand, there was no holding company yet, and there was just Rappler, Inc. Atty. Tiu thus testified that she recommended for RHC to just follow precedent --- which was to pattern the PDR structure similar to those

⁴² *Id.*

⁴³ Records Vol. 11, JA of Maria Ressa, pp. 12-14, p. 24.

⁴⁴ Records Vol. 15, Exhibit "48", Request for Payment dated 15 January 2016, indicating Atty. Helen G. Tiu as payee; Records Vol. 15, Exhibit "53", Official Receipt No. 010450 dated 10 June 2016, issued by R.G. Manabat & Co.; Records Vol. 15, Exhibit "51", Official Receipt No. MKT000015255 dated 9 September 2016, issued by SyCip Law; Records Vol. 15, Exhibit "49", Official Receipt No. 0542 dated 15 January 2016, issued by H.G. Tiu Law Offices; Records Vol. 15, Exhibit "50", Official Receipt No. 0541 dated 15 January 2016, issued by H.G. Tiu Law Offices; Records Vol. 15, Exhibit "52", Check Request for Payment dated 16 June 2016, indicating R.G. Manabat & Co. as payee, Records Vol. 15, Exhibit "54", Official Receipt No. 010784 dated 24 June 2016, issued by R.G. Manabat & Co.

⁴⁵ Records Vol. 13, Amended JA of Atty. Tiu, pp. 10-11.

set up by ABS-CBN and GMA 7 where a holding company would be organized.⁴⁶ Since the idea was for the PDR structure to be set up, what the newly created RHC did was to subscribe to whatever was the remaining unissued shares of Rappler, Inc.⁴⁷ and with the money that came from the PDR Holders, the money was eventually invested by RHC in Rappler, Inc. and such investment was used to increase the capital stock of Rappler, Inc.⁴⁸

1.36. Maria Ressa also testified during the trial of the case that RHC was not created to perpetuate any fraud or to violate any law or the Constitution. It was not formed to sell or trade securities nor to evade the payment of any taxes. Maria Ressa explained that RHC was formed because the ideas behind the *Rappler* brand were cutting-edge, not just in the Philippines but globally. The incorporators of RHC wanted to take these ideas and compete in a regional and global landscape and to legally raise funds for this expansion.⁴⁹

1.37. As it was not RHC's intention to commit any fraud, it never hid the PDR Transactions. The issuance of the PDRs was announced to the public and disclosed to the relevant government agencies as shown from: (i) Public announcements made by RHC in relation to the PDR Issuances; (ii) RHC's Audited Financial Statements; (iii) RHC and RI's Consolidated Audited Financial Statements; and (iv) SEC Forms 10-1 dated 8 June 2015, 8 August 2015, and 1 December 2015.⁵⁰

1.38. It is also clear from the documentary evidence and the testimony of the witnesses of the Accused that the PDR Transactions are investment/ capital raising transactions. It did not involve an income-generating activity. As shown from the PDR Investment Agreement dated 29 September 2015 of RHC with ON⁵¹ ON invested money by subscribing to RHC's PDRs:

"2.1. The ON Investment; ON Subscription PDRs

⁴⁶ Records Vol. 13, Amended JA of Atty. Tiu, p. 9.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Records Vol. 11, JA of Maria Ressa, p. 12.

⁵⁰ Records Vol. 12, JA of Fel Dalafu, pp. 58-67; Records Vol. 15, Exhibit "43", Rappler online article entitled "*Top journalists' independent media fund invests in Rappler*", published on 31 May 2015; Records Vol. 15, Exhibit "44", Rappler online article entitled "*Omidyar Network invests in Rappler*", published on 5 November 2015; Records Vol. 15, Exhibit "45", Notice of/ Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 8 June 2015; Records Vol. 15, Exhibit "46" Notice of/ Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 8 August 2015; Records Vol. 15, Exhibit "47", Notice of Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 01 December 2015.

⁵¹ Records Vol. 15, Exhibit "17", PDR Investment Agreement executed among Omidyar Network, RHC, and RI dated 29 September 2015.

(a) Subject to the terms and conditions of the Transaction Documents, ON agrees to invest One Million Five Hundred Thousand US Dollars (US\$ 1,500,000) in RHC (the "ON Investment"). In consideration of the ON Investment, RHC agrees, among others, to issue to ON and ON agrees to subscribe to 7,217,257 PDRs (the "Subscription PDRs") at the subscription price of US\$ 0.2078 per Subscription PDR. The Subscription PDRs shall be backed up by an equal number of Underlying Shares (the "ON Underlying Shares") such that there shall be one (1) Underlying Share for each Subscriptions PDR."⁵²

1.39. The PDR Holders also each separately signed Subscription Agreements⁵³ with RHC. These Subscription Agreements show that RHC "issued" PDRs and the PDR Holders subscribed to PDRs. It was not selling any securities:

Agreements		Relevant Clauses
First Subscription Agreement of RHC with NBM ⁵⁴	PDR	"Section 2. Subscription to PDRs. Subject to the terms and conditions of this Agreement, in consideration of the amount of P2,452,154.87 (the "First Aggregate Subscription Price"), RHC agrees to <u>issue</u> to NBM <u>and NBM agrees to subscribe</u> , to 264,601 PDRs (the "First Subscription PDRs"). RHC acknowledges and agrees that from the date this Agreement, NBM shall be attributed and entitled to all economic benefit arising from the Underlying Shares in respect of the First Subscription PDRs, and RHC will take such necessary actions to deliver any accrued economic benefit to NBM as soon as possible net of applicable taxes."

⁵² Records Vol. 15, Exhibit "17-3", Clause 2.1 of the PDR Investment Agreement.

⁵³ Records Vol. 11, JA Maria Ressa; Records Vol. 12, JA Fel Dalafu; Records Vol. 15, Exhibits "18", "19", and "20", First and Second PDR Subscription Agreements executed between RHC and NBM dated 29 May 2015, and PDR Subscription Agreement executed between RHC and ON dated 2 October 2015.

⁵⁴ Records Vol. 15, Exhibit "18"; Records Vol. 15, Exhibit "18-2", Section 2 on page 2 of the Subscription Agreement.

Second PDR Subscription Agreement dated 29 May 2015 of RHC with NBM ⁵⁵	"Section 2. Subscription to PDRs. (a) Subject to the terms and conditions of this Agreement, in consideration of the amount of P109,022,399.23 (the "Second Aggregate Subscription Price"), RHC agrees to <u>issue</u> to NBM and <u>NBM agrees to subscribe</u>, to 11,764,117 PDRs (the "Second Subscription PDRs") at a date (the "Subscription Date") that is no longer than ten (10) Business Days from the date of approval by the Philippine Securities and Exchange Commission (the "SEC") of the increase in Rappler's authorized capital stock by such an amount twenty-five percent (25%) of which is equivalent to P110,900,000.00. (the "ACS Increase"). (b) RHC acknowledges and agrees that from the subscription, NBM shall be attributed and entitled to all economic benefit arising from the Underlying Shares in respect of the Second Subscription PDRs, and RHC will take such necessary actions to deliver any accrued economic benefit to NBM as soon as possible net of applicable taxes."
PDR Subscription Agreement entered between RHC and ON ⁵⁶	Page 2, Section 2, which reads: "Subject to the terms and conditions of this Agreement, in consideration of the amount of US\$1,499,983 or Php70,184,204.57 (the "Subscription Price"), RHC agrees to <u>issue</u> to ON and <u>ON agrees to subscribe</u>, to 7,217,257 PDRs (the "Subscription PDRs"). RHC acknowledges and agrees that from the date this Agreement, ON shall be attributed and entitled to all economic benefit arising from the Underlying Shares in respect of the Subscription PDRs, and RHC will take such necessary actions to deliver

⁵⁵ Records Vol. 15, Exhibit "19"; Records Vol. 15, Exhibit "19-2", Section 2 on page 2 of the Second PDR Subscription Agreement.

⁵⁶ Records Vol. 15, Exhibit "20"; Records Vol. 15, Exhibit "20-2", Section 2 on page 2 of the Subscription Agreement.

	any accrued economic benefit to ON as soon as possible net of applicable taxes.”
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1.40. Most importantly, RHC was not selling Rappler, Inc. shares to NBM by issuing a PDR. A PDR and the underlying RI Shares are totally different securities, and they cannot be equated as the same security. A PDR is a derivative security evidenced by a depositary receipt which is issued by an entity which holds shares in another corporation, usually an operating subsidiary, for a specified price, and after due compliance with certain conditions and obligations. A PDR gives the holder thereof an option to purchase, upon exercise of certain conditions, the underlying shares of the said PDR which is normally a share in the operating subsidiary.⁵⁷

1.41. In fact, Atty. Tiu testified that a PDR is a derivative security evidenced by a receipt, it is not evidence of ownership in the operating company:

“45. Q: What is a PDR?

A[tty Tiu]: Simply put, PDR is a derivative security evidenced by a depositary receipt which is issued by an entity which holds shares in another corporation. The receipt is issued to an investor who subscribes to or invests in the PDR. Usually, the underlying shares consist in shares in an operating subsidiary. The PDR issued gives the holder/investor thereof an option to purchase, upon fulfilment of certain conditions, the underlying shares of the said PDR which underlying shares consist normally in shares in an operating subsidiary. With respect to PDRs issued by media companies, one of the conditions for the exercise of the option to purchase the underlying shares is that the underlying shares may only be purchased by the PDR holder when the Constitution or other related Philippine Law allows the PDR holder to own shares of stock in the operating mass media company. Prior to the exercise of the option to purchase the

⁵⁷ Records Vol. 13, Amended JA of Atty. Tiu, pp. 9-10, p. 14.

underlying shares, the PDR holder is entitled to receive whatever dividends or cash distribution, that the PDR issuer received from its operating subsidiary, net of applicable taxes and administrative expenses.”

1.29. Consistent with an investment transaction, RHC’s records show that RHC subscribed to Rappler, Inc. shares as evidenced from the Subscription Agreements executed on 25 May 2015 and on 2 October 2015, thus making RHC the parent company of Rappler, Inc.

1.30. RHC did not purchase Rappler, Inc. shares. As emphasized by Atty. Tiu in her Amended Judicial Affidavit, each PDR instrument is backed up by one common share issued by Rappler Inc., registered in the name of RHC.⁵⁸ The Plaintiff’s assertion that there was “buying and reselling” of Rappler Inc. shares either shows ignorance or malice, without any basis whatsoever:

Agreements	Relevant Clauses
Subscription Agreement dated 25 May 2015 between RHC and RI ⁵⁹	Whereas Clause of the Subscription Agreement, which states: (A) RHC wishes to increase its investment in Rappler by subscribing to an additional 110,917,181 common shares with a par value of One Peso (Php 1.00) per share in the capital of Rappler (the “Subscription Shares”) and Rappler is willing to accept RHC’s subscription. (B) Rappler has agreed to issue, and RHC has agreed to subscribe to the Subscription Shares, subject to the terms and conditions of this Agreement.

⁵⁸ Records Vol. 13, Amended JA of Atty. Tiu, p. 22-23.
⁵⁹ Records Vol. 15, Exhibit “26-3”, Subscription Agreement between RHC and RI dated 25 May 2015.

Subscription Agreement dated 2 October 2015 between RHC and RI ⁶⁰	Whereas Clause of the Subscription Agreement, which states: (A) RHC wishes to increase its investment in Rappler by subscribing to an additional 7,217,257 common shares with a par value of One Peso (Php 1.00) per share in the capital of Rappler (the "Subscription Shares") and Rappler is willing to accept RHC's subscription. (B) Rappler has agreed to issue, and RHC has agreed to subscribe to the Subscription Shares, subject to the terms and conditions of this Agreement.
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1.31. The PDRs are evidenced by separate PDR Certificates. Evidence presented shows that NBM was issued PDR Certificate Nos. 001, 002. Whereas, ON was issued PDR Certificate No. 003.⁶¹ The underlying Rappler, Inc. shares covered by the PDR Certificates were put in the possession of an Escrow Agent⁶² as provided in the respective PDR Instruments executed between RHC and NBM/ON, in order to protect the PDR Holders.⁶³ **The Rappler, Inc. underlying shares remained to be owned and registered in the name of RHC as evidenced by Stock Certificates Nos. 44, 46 and 47.**⁶⁴

1.32. Certainly, the PDR Holders did not become shareholders of Rappler, Inc. RHC is a separate and distinct entity from Rappler Inc. and they cannot be equated with each other. RHC has a different primary purpose from Rappler, Inc. The corporations are also owned by different shareholders and they have separate books of accounts and records.

⁶⁰ Records Vol. 15, Exhibit "25-3", Subscription Agreement between RHC and RI dated 2 October 2015.

⁶¹ Records Vol. 15, PDR Certificate Nos. 001 and 002 issued to NBM, and PDR Certificate No. 003 issued to ON, marked as Exhibits "27" and "28", and "29", respectively.

⁶² Records Vol. 15, Exhibits "23" and "24", Certifications dated 15 January 2019, executed by Mr. Michael G. Acaban, for and on behalf of the Escrow Agent, GSE Law Firm.

⁶³ Records Vol. 15, Exhibits "21", "21-3", "22", "22-3", See Section 4.2 of the PDR Instruments issued by RHC.

⁶⁴ Records Vol. 15, JA of Fel Dalafu, p. 29, p. 32.

1.33. The corporate documents⁶⁵ of RHC and Rappler, Inc. reveal the following differences:

Factors	RHC	Rappler Inc.
Date of Incorporation	12 December 2014	25 July 2011
SEC Registration No.	CS201424077	CS201112835
Incorporators	Maria A. Ressa; Glenda M. Gloria; James C. Bitanga; Manuel J. Ayala; and Nico Jose S. Nollado	Ma. Teresa D. Vitug; Gemma B. Mendoza; Emilia H. Santiago; Ma. Rosario F. Hofileña; and Lilibeth Socorro L. Frondoso
Primary Purpose	To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of real and personal properties of every kind and description and wherever situated, as and to the extent permitted by law including but not limited to, shares of capital stock, bonds, debentures, promissory notes, or other securities	To design, develop, establish, market, sell, maintain, support, distribute, customize, sell, resell and/or operate news, information and social networks services including but not limited to contents, platforms, systems and/or applications via web, internal, mobile and other delivery formats, communications, advertising, corporate social responsibility, marketing, PR, events, brand affinity and other related services and packages, provided it

⁶⁵ Records Vol. 15, Exhibits "1", RHC's Certificate of Incorporation with Articles of Incorporation filed with the SEC and "1-1", Second Paragraph of the Articles of Incorporation.

	or obligations, created, negotiated or issued by any corporation, association, or other entity, foreign or domestic, and real estate, whether improved or unimproved, and any interest or right therein, as well as buildings, tenements, warehouses, factories, edifices and structures and other improvements, and while the owner, holder or possessor thereof, to exercise any and all right, powers and privileges of ownership or any other interest therein, including the right to vote on any proprietary or other interest on any shares of the capital stock, and upon any bonds, debentures, or other securities having voting power, so owned or held and the right to receive, collect and dispose of any and all rentals, dividends, interests and income derived therefrom, except the management of fund portfolios and similar assets of such managed entities; Provided it shall not act as a stockbroker or dealer of securities."	will not act as internet provider services.
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Shareholders	1. Dolphin Fire Group, Inc. 2. Public Trust and Media Group 3. Maria Ressa 4. Hatchd Group, Inc. 5. Glenda Gloria 6. Ma. Rosario Hofileña 7. Manuel Ayala 8. Solita Collas-Monsod 9. Lilibeth Frondoso 10. Emilia Santiago 11. Carlo Almendral	1. Rappler Holdings Corporation 2. Maria Ressa 3. Dolphin Fire Group, Inc. 4. DMT Ice Angels Holdings, Inc. 5. Benjamin So 6. Glenda Gloria 7. Ma. Rosario Hofileña 8. Ma. Teresa Vitug 9. Manuel Ayala 10. Solita Collas-Monsod 11. Carlo Almendral 12. Fulgencio Factoran, Jr. 13. Federico Prieto
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1.34. Also, in the PDR Instruments⁶⁶ executed with RHC, the PDR Holders themselves acknowledged that they do not have ownership or voting rights over the underlying Rappler, Inc. shares:

Agreement	Relevant Clauses
PDR Instrument executed between RHC and NBM ⁶⁷	In page 4, Ownership of Shares and Voting Rights which reads: "4. Ownership of Shares and Voting Rights 4.3 Neither the Escrow Agent nor any Holder shall have voting rights with respect to the Underlying Shares. Until an exercise of a PDR Exercise Right, the Issuer as owner of the Underlying Shares will retain and exercise such

⁶⁶ Records Vol. 15, Exhibits "21", "21-4", "22", and "22-4", Section 4.3 of the PDR Instruments issued by RHC.

⁶⁷ Records Vol. 15, Exhibits "21", PDR Instrument entered between RHC and NBM on 29 May 2015.

	voting rights relating to the Underlying Shares."
PDR Instrument between RHC and ON ⁶⁸	page 5 to 7, Ownership of Shares and Voting Rights which reads: "4. Ownership of Shares and Voting Rights 4.3 Neither the Escrow Agent nor any Holder shall have voting rights with respect to the Underlying Shares. Until an exercise of a PDR Exercise Right, the Issuer as owner of the Underlying Shares will retain and exercise such voting rights relating to the Underlying Shares."

1.35. The PDR Holders also acknowledged that they do not have any right to receive dividends from Rappler, Inc. This is found in the PDR Instruments.⁶⁹ Any dividends accruing from the underlying shares belong to RHC. The agreement was that NBM and ON can only receive "cash distributions" from RHC, but only after payment of such costs agreed in the PDR Instruments:

Agreement	Relevant Clauses
PDR Instrument between RHC and NBM	In page 6, Cash Dividends and Other Cash Distributions which reads: "9. Cash Dividends and Other Cash Distributions 9.2 If and whenever the Company shall issue any cash dividends or other cash distributions paid in respect of the Shares, such cash dividends or other cash distributions shall be applied to the following:

⁶⁸ Records Vol. 15, Exhibit "22", PDR Instrument entered between RHC and ON.

⁶⁹ Records Vol. 15, Exhibits "21", "21-5", "22", and "22-5", Section 9 of the PDR Instruments issued by RHC.

	9.2.1 the Shareholders' <i>pro rata</i> portion of the operating expenses then due (including but not limited to applicable taxes, auditors' fees, and administrative expenses, in connection with, among other things, distribution of notice to Holders) (the "Operating Expenses") of the Issuer for the preceding and current year as certified by the Auditor; and 9.2.2 a further amount equal to the Shareholders' <i>pro rata</i> portion of the Operating Expenses in the preceding year as certified by the Auditor (the "Operating Fund"), which shall be set aside to meet operating or other expenses for the succeeding year; and 9.2.3 any amount remaining in excess of the aggregate of the Operating Fund for such period (As certified by the Auditor), shall be distributed to Holders <i>pro rata</i> not less than the first Business Day after such cash dividends are received by the Issuer."
PDR Instrument between RHC and ON	9. Cash Dividends and Other Cash Distributions 9.2 If and whenever the Company shall issue any cash dividends or other cash distributions paid in respect of the Shares registered in the name of the Issuer, such cash dividends or other cash distributions shall be applied to the following: 9.2.1 the operating expenses then due (including but not limited to applicable taxes, auditors' fees, and administrative expenses, in connection with, among other things, distribution of notice to Holders) (the "Operating Expenses") of the Issuer for the preceding and current year as certified by the Auditor; and

	9.2.2 a further amount equal to the Operating Expenses in the preceding year as certified by the Auditor (the "Operating Fund"), which shall be set aside to meet operating or other expenses for the succeeding year; and 9.2.3 any amount remaining in excess of the aggregate of the Operating Expenses and the Operating Fund, shall be promptly distributed to PDR Holders <i>pro rata</i> after such cash dividends are received by the Issuer, net of applicable taxes on such distributions and direct expenses incurred in relation to such distributions (as applicable). The <i>pro rata</i> share of each PDR Holder in such distribution shall be determined by that certain fraction the numerator of which shall be the number of underlying shares pertaining to the PDRs held by such PDR Holder and the denominator of which shall be the total number of Shares registered in the name of the Issuer."
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C. THERE IS NO BASIS FOR THE BIR TO CONCLUDE THAT RHC GENERATED "SALES RECEIPTS" FROM THE PDR TRANSACTION WITH NBM. THE FUNDS THAT RHC RECEIVED FROM NBM (EVEN FROM ON) WERE INVESTMENTS. RHC PAID AND DECLARED THE CORRECT TAXES IN ITS 2ND QUARTER RETURNS AND FOR THE ENTIRE TAXABLE YEAR 2015.

1.36. There is no basis for the Plaintiff’s allegation in the Information that RHC generated “sales receipts” from its issuance of PDRs. The issuance of PDRs did not involve selling of any securities. It is incorrect to assume that RHC received gain based on the “Mark-Up” of the par value of the shares vis-à-vis the alleged price per PDR.

1.37. All the funds that RHC received from NBM (and even ON) were investments. RHC used the funds as: (i) part of its subscription price for Rappler Inc. shares, not only for the premium but also the additional paid-in capital; (ii) costs to be incurred in relation to the transaction such as DST; and (iii) the balance as advances/ special loan from the PDR Holders. The funds received from the PDR Transactions was reserved for a particular purpose and may even be returned given certain conditions.⁷⁰

1.38. On the NBM PDR Transaction, NBM invested the total amount of Php 111,474,554.10 to RHC, and the investment was provided in two tranches. Only the first tranche of investment is covered by this case as follows:⁷¹

First Tranche	Php 2,452,154.87
Second Tranche	Php 109,022,399.23
Total	Php 111,474,554.10

1.39. Thereafter, the funds which RHC received from NBM was partly used to pay for DST relating to the issuance of the PDR Certificates and were used by RHC to invest in Rappler, Inc., as follows:⁷²

Proceeds from NBM		
First tranche	2,452,154.87	
Second tranche	109,022,399.23	Php 111,474,554.10
Less:		
DST Payment 1st Tranche	12,260.00	
DST Payment 2nd Tranche	545,112.00	
Amount invested in RI	110,917,182.10	Php 111,474,554.10
DIFFERENCE		-

1.40. Consistent with an investment transaction, RHC invested the amount of Php110,917,182.10 in Rappler, Inc. This is evidenced by the Acknowledgment Receipts Nos. 040 and 041 dated 25 May 2015

⁷⁰ Records Vol. 12, JA of Fel Dalafu, pp. 44-45, p. 54.
⁷¹ Records Vol. 12, JA of Fel Dalafu, p. 44.
⁷² Records Vol. 12, JA of Fel Dalafu, p. 44-45.

and 26 May 2015 issued by Rappler, Inc. to RHC. The converted dollar amounts are also duly substantiated by RCBC Bank Certification showing that RHC converted a USD dollar remittance amounting to \$750,000.00 to its peso equivalent.⁷³

1.41. KPMG also issued an independent Report of Factual Findings of confirming that Rappler Inc. received the amount of Php110,917,181.00 from RHC as an investment, *i.e.*, a **“deposit for future stock subscription”**.⁷⁴

“For procedures 1, 2, 3 and 4, the schedule of cash received from RHC amounting to P110,917,181 as deposit for future stock subscription to the increase in authorized capital stock of the Company, was agreed with the balance of deposit for future stock subscription in the general ledger and cash receipt book.

Date Recorded in the Books	Acknowledgement Receipt Number	Name of Subscriber	Amount of Cash Received	Form of Payment
May 25, 2015	No. 040	RHC	P78,032,054	Fund Transfer
May 26, 2016	No. 041	RHC	32,885,127	Fund Transfer
			P110,917,181	

1.42. With respect to the ON PDR Transaction, (which matter was tried before the CTA) RHC invested the amount of 70,184,204.57 in Rappler, Inc. This is evidenced by the Acknowledgment Receipts Nos. 043 dated 2 October 2015 issued by Rappler, Inc. to RHC.⁷⁵ The funds which RHC received from ON were partly used as payment for DST relating to the issuance of the PDR Certificates and were used by RHC to invest in Rappler, Inc. There was an amount retained by RHC in its account, which was set aside for a specific purpose.⁷⁶ The breakdown is as follows:

⁷³ Records Vol. 15, Exhibit “35”, Rappler, Inc. Acknowledgment Receipt No. 040 dated 25 May 2015; Records Vol. 15, Exhibit “36”, Rappler, Inc. Acknowledgment Receipt No. 041 dated 26 May 2015; Records Vol. 15, Exhibit “38”, Bank Certification issued by RCBC dated 18 June 2015.

⁷⁴ Records Vol. 15, Exhibit “37”, Report of Factual Findings by R.G. Manabat & Co./KPMG dated 10 June 2015.

⁷⁵ Records Vol. 15, Exhibit “39”, Rappler, Inc. Acknowledgment Receipt No. 043 dated 2 October 2015.

⁷⁶ Records Vol. 12, JA of Fel Dalafu, p. 48.

Proceeds from ON		Php70,184,204.57
Less:		
DST Payment for PDRs	350,922.00	
Amount invested in RI	59,656,573.88	Php60,007,495.88
Difference		Php10,176,708.69

1.43. The difference was retained in RHC's account to finance reasonable general administrative expenses incurred by RHC and taxes for which RHC may be liable in the ordinary course of business as agreed under Clause 2.2(b) of the PDR Investment Agreement between RHC and ON, which reads:⁷⁷

"(b) Fifteen percent (15%) of the ON Investment, or US\$225,000 shall be retained by RHC to:

(i) pay the documentary stamp taxes related to the issuance to ON of the Subscription PDRs; and

(ii) finance reasonable general administrative expenses incurred by RHC and taxes for which it may be liable in the ordinary course of business."

1.44. All of the investments of RHC in Rappler, Inc. were used to expand Rappler, Inc.⁷⁸ Because of RHC's investments, Rappler Inc. was able to increase its authorized capital stock. Based on the Certificate of Increase duly approved by the SEC, Rappler, Inc.'s original 3,000,000 shares was increased to 446,600,000 shares:

"This is to certify that the increase of capital stock of the RAPPLER INC. from P3,000,000.00 divided into 3,000,000 shares of the par value of P1.00 each, to P446,600,000.00 divided into 446,600,000 shares of the par value of P1.00 each, approved by majority Board of Directors and the vote of the

⁷⁷ Records Vol. 15, Exhibit "17-4", page 3, Clause 2.2 of the PDR Investment Agreement with ON.

⁷⁸ Records Vol. 15, Exhibit "15" and "15-1", RHC and a Subsidiary Consolidated Financial Statements- 31 December 2015 and 2014, filed with SEC on 13 May 2016; Records Vol. 15, Exhibit "41", "41-1", Certificate of Approval of Increase of Capital Stock of RI dated 14 July 2015 issued by the SEC, with Certificate of Increase of Capital Stock of Rappler Inc.; Records Vol. 15, Exhibit "42", "42-1", Certificate of Filing of Rappler Inc's Amended Articles of Incorporation dated 14 July 2015 with its Amended Articles of Incorporation.

stockholders owning or representing at least two-thirds of the outstanding capital stock at a meeting held on May 25, 2015 certified to by the Chairman and the Secretary of the stockholders meeting and a majority of the Board of Directors of the corporation, was approved by the Commission on the date indicated hereunder in accordance with the provision of Section 38 of the Corporation Code of the Philippines (Batas Pambansa Blg. 68), approved on May 1, 1980. A copy of the Certificate of Increase of Capital Stock filed with the Commission is attached hereto.”

1.45. Under Sec. 55 of Revenue Regulation No. 2 (the very first Income Tax Regulations), it is clear that the receipt of a subscription price by a corporation for its capital stock upon original issuance shall not give rise to a taxable gain or deductible loss whether the issue price is in excess of or lower than the par/issue value.⁷⁹ Atty. Tiu thus advised that a PDR is considered a derivative security which is an original issuance and thus the only tax due is **DST**⁸⁰ and not subject to VAT.

1.46. Revenue Memorandum Circular No. 13-96 also clarifies that not all transactions involving securities are subject to VAT. Atty. Tiu testified (with reference to RMC No. 13-96) that **VAT will be triggered only in a situation where a security is sold by a dealer in securities**. Atty. Tiu explained that the issuance of PDRs will not make RHC a dealer in securities and that there has never been an assessment where the issuer of a security becomes a dealer in securities and therefore subject to VAT. Isolated transactions (*i.e.* sale of securities to not more than 19 persons) or those which are not repeated within the year and involves only few transactions are exempt from VAT.⁸¹

1.47. Atty. Tiu also testified said that in her thirty (35) years of practice as a lawyer, the BIR has never issued an assessment where the issuance of derivative securities such as PDRs makes an issuer a dealer in securities.⁸² This has been the BIR’s position for more than **twenty (20) years**, as evidenced by BIR Ruling No. 136-99 (“BIR Ruling No. 136-99”) and the International Tax Affairs Division Ruling No. 172-03

⁷⁹ Records, Presentation of Atty. Tiu - TSN dated 13 December 2022 [TSN dated 13 December 2022], p. 29.

⁸⁰ Records, Vol. 13, Amended JA of Atty. Tiu, p. 12, 14.

⁸¹ TSN dated 13 December 2022, pp. 29-30.

⁸² TSN dated 13 December 2022, p. 28.

("ITAD Ruling No. 172-03").⁸³ Atty. Tiu emphasized that RHC's case is the first and very novel instance where the BIR took the position that the issuer of a security becomes a dealer in securities.

1.48. Thus contrary to the BIR's proposition, RHC duly paid all taxes that were due to the government in 2nd quarter of taxable year 2015:

Return	Date Filed	Amount of DST Paid for the PDR Issuances
BIR Form No. 2000 ⁸⁴	4 June 2015	Php 12,260.77

1.49. All told, RHC's 2nd Quarter VAT Return in Taxable Year 2015 contained accurate information. The PDR Transactions did not involve any sale of securities.⁸⁵ Thus, there is no basis to tax RHC for deficiency VAT.

**D. MARIA RESSA, AS THE
PRESIDENT OF RHC, ACTED IN
GOOD FAITH IN RELATION TO
THE TAXABILITY OF PDR
TRANSACTIONS. THE FILING
OF THE CRIMINAL CASES
AGAINST RHC AND MARIA
RESSA IS POLITICALLY
MOTIVATED.**

1.50. Maria Ressa has been a journalist for more than thirty-seven (37) years. She is also an educator, researcher, author, and entrepreneur. She spent most of her career reporting for and running news groups for large international and domestic media organizations, and she also helped create two news organizations from scratch: Probe Productions, Inc. and Rappler, Inc. ⁸⁶

⁸³ Records, Vol. 15, Exhibits "32", "33", BIR Ruling No. 136-99 dated 30 August 1999 and BIR – International Tax Affairs Division Ruling No. 172-03 dated 17 November 2003.

⁸⁴ Records Vol. 15, Exhibit "57", Documentary Stamp Tax filed on 4 June 2015; Records Vol. 15, Exhibit "58" UnionBank Deposit Slip.

⁸⁵ Records Vol. 15, Exhibit "56", RHC's 2nd Quarter Value Added Tax ("VAT") Return (BIR Form No. 2550-Q) for 2015.

⁸⁶ Records, Vol. 11, JA of Maria Ressa, p. 2.

1.51. Maria Ressa spent more than two (2) decades working in a global landscape. As an educator, she taught for years at the University of the Philippines, helped the Department of Education with its curriculum, and was just named as a senior fellow at the newly-formed Institute of Global Politics at Columbia University, where she will soon be a professor of practice.

1.52. When it comes to technology, she was one of ten people appointed by the UN Sec General to form the Leadership Panel of the Internet Governance Forum. She co-chairs the working group on infodemics of the Forum on Information and Democracy, based in Paris, France and sits on the advisory board of the Design 4 Democracy Coalition, based in Washington, DC. She is a member of the board of directors of Philippine and international corporations, including Rappler, Inc, Rappler Holdings, Meedan (tech company), Impl (NGO). She is also part of the board of the Reuters Institute for School of Journalism at Oxford University⁸⁷ and board of trustees of De La Salle-College of St. Benilde. For many years, she's also part of the board of advisers of the Philippine Navy and the stakeholder advisory panel for AXA in France.⁸⁸

1.53. As a journalist, Maria Ressa has received numerous awards and citations globally, which recently include: the *Nobel Peace Prize*, the *2021 UNESCO/Guillermo Cano World Press Freedom Prize*, the *2020 Bloomberg 50 List*, the *2020 Journalist of the Year Award* by the Foreign Press Association in London, the *2020 John Aubuchon Press Freedom Award*, the *2020 Most Resilient Journalist Award* given by the Netherlands-based Free Press Unlimited; the *Tucholsky Prize* awarded by Swedish PEN; the *Truth to Power Award* given by the International Documentary Association; the *Elizabeth Seton Medal*; the *2020 Four Freedoms Award*; *Time 100 Women of the Year*; the *BBC 100 Women 2019*; *The World's Top 50 Thinkers*; the *Time 100 Most Influential People of 2019*; the *2018 Time Person of the Year* and named one of "The Guardians" in journalism's battle for truth.⁸⁹

1.54. Maria Ressa is globally known as a defender of Press Freedom and Human Rights. She has received several awards/citations such as: the *Sergei Magnitsky Human Rights Award*: Annual award given November 2019 for Outstanding Investigative Journalist; *The William J. Brennan Defense of Freedom Award*: Highest honor given

⁸⁷ Records, Presentation of Maria Ressa - TSN dated 22 March 2022 [TSN dated 22 March 2022], p. 14

⁸⁸ Records Vol. 11, JA of Maria Ressa, pp. 2-3.

⁸⁹ Records Vol. 11, JA of Maria Ressa, pp. 3-6.

annually by the Media Law Resource Center for courage and dedication to journalism. Accepted for journalists under attack abroad in November 2019; the *Oxi Courage Award*: Awarded in October 2019 by the Oxi Day Foundation in Washington, DC; the *2019 Shorenstein Journalism Award at Stanford University*: Awarded October 2019, it “recognizes accomplished journalists committed to critical reporting on the complexities of Asia.”; the *2019 Tribute Award*: Given annually by the Canadian Journalism Foundation in Toronto; it “recognizes Maria’s courage and conviction in holding the powerful to account” in June; the *2019 Columbia Journalism Award*: Columbia University’s highest journalism honor voted annually by the faculty “for singular journalistic performance in the public interest”; the *2018 Tully Award for Free Speech*; the *2018 Gwen Ifill Press Freedom Award*; the *2018 Knight International Journalism Award*: Annually awarded by the International Center for Journalists in November 2018; the *IX International Press Freedom Award*; the *2018 Golden Pen of Freedom Award*: Given annually by the World Association of Newspapers and News Publishers (WAN-IFRA) and the World Editors Forum (WEF); the *2018 Free Media Pioneer Award*; the *President (2018) & Jury Member (2015-2018), World Press Freedom Prize*; and the *Democracy Award, National Democratic Institute*: One of only 2 Filipinos, along with former Philippine President Corazon Aquino, to be given the W. Averell Harriman award for a “commitment to democracy and human rights.”⁹⁰

1.55. As to business/ professional awards and recognitions, Maria Ressa has received: Excellence in Broadcasting Lifetime Achievement Award, PMPC Star Awards, 2015; CEO Excel Award, International Association of Business Communicators, 2013; Gold Quill Award, International Association of Business Communicators, 2010, 2008; The Outstanding Women in the Nation’s Service (TOWNS) for Broadcast Journalism in the Philippines, 2007; an Emmy Nomination, *Best Newscast*, 2007 – the first time ever that a Philippine network was awarded this distinction: one of the four best newscasts in the world chosen by the International Academy of Television Arts & Sciences from 800 entries; Asian Television Awards, *Best Newscast*, 2007; and New York International Film & Television Awards, Silver, 2006. Also, Maria Ressa was once cited to being among the top taxpayers in the Philippines.⁹¹

⁹⁰ Records Vol. 11, JA of Maria Ressa, p. 6-9.

⁹¹ Records Vol. 15, Exhibit “59”, printout of the news article entitled “Celebrities, businessmen among top taxpayer”.

1.56. As President of RHC, Maria Ressa attested that all the activities of RHC are lawful and there was never an instance where RHC intended to willfully evade the payment of any taxes. Maria Ressa stressed that RHC hired well known experts in good faith because its goal is always to follow the global best practices.⁹²

1.57. RHC was not created to perpetuate any fraud or to violate any law or the constitution. It was not formed to sell or trade securities nor to evade the payment of any taxes. Maria Ressa explained that RHC was formed because the ideas behind the *Rappler* brand were cutting-edge, not just in the Philippines but globally. The incorporators of RHC wanted to take these ideas and compete in a regional and global landscape and to legally raise funds for this expansion.⁹³

1.58. In fact, RHC hired professionals to assist in determining how it could expand globally. These experts were Sycip Salazar Hernandez & Gatmaitan Law Office, KPMG (which included Mr. Baladiang) and Atty. Tiu. These professionals recommended to set up a holding company, RHC. After the holding company was set up, Rappler, Inc. would become a subsidiary and it would be RHC that would issue the PDRs to investors to raise funds for the subsidiary. The professionals confirmed to RHC that a number of holding companies have been created to implement PDR transaction which is a legal way to raise capital for their subsidiaries. These holding companies include those related to media companies like top television networks ABS-CBN and GMA 7.⁹⁴

1.59. While Maria Ressa has worked for large international and domestic media organizations, Maria Ressa however explained during the trial that she did not have any personal experience or technical knowledge of PDRs.⁹⁵ Thus she and the members of RHC relied in good faith on the advice of the expert professionals.

1.60. Maria Ressa also explained during the trial, that from the very beginning, NBM was aware of the constitutional restrictions. NBM understood that it would never own shares in Rappler, Inc. nor be able to exercise any form of control. NBM knew that RHC would only issue PDRs and not shares of stock. It likewise knew that the underlying shares of the PDR would be owned by, and registered only in the name of, RHC. NBM also understood that it would have no

⁹² Records Vol. 11, JA of Maria Ressa, p. 13.

⁹³ Records Vol. 11, JA of Maria Ressa, p. 12.

⁹⁴ Records Vol. 11, JA of Maria Ressa, p. 13.

⁹⁵ *Id.*

voting rights with respect to the underlying shares of the PDR as it is to be retained and exercised only by RHC. Further, NBM knew that it would not receive dividends from either the Rappler, Inc. shares or the RHC shares. Dividends accruing on the underlying shares are due to, and to be received by, RHC only. NBM, however, may receive cash distributions from RHC. NBM accepted these conditions because they believed in Rappler's ability to help shape the global media landscape. NBM, like the founders of Rappler, also believed in letting the journalists have full editorial control.⁹⁶

1.61. On the other hand, Omidyar Network would acquire its PDRs after NBM already acquired its PDRs, and Omidyar Network would acquire fewer PDRs than NBM, Omidyar Network was concerned that it may not be given equal rights under the PDRs as NBM. Omidyar Network therefore, negotiated with RHC to revise some terms to ensure that Omidyar Network is given equal rights as other PDR Holders of RHC.⁹⁷

1.62. All throughout, it was never RHC's intention to commit any fraud, thus it never hid the PDR Transactions. As mentioned, the issuance of the PDRs was announced to the public and disclosed to the required government agencies as shown from: (i) public announcements made by RHC in relation to the PDR Issuances; (ii) RHC's Audited Financial Statements; (iii) RHC and RI's Consolidated Audited Financial Statements; and (iv) SEC Forms 10-1 dated 8 June 2015, 8 August 2015, and 1 December 2015.⁹⁸

1.63. While Maria Ressa is indeed a person of good character and reputation, she however was charged in these Criminal Tax Cases for **being the President of RHC**.⁹⁹ Maria Ressa is one of its incorporators of RHC. She is also the President and its Chief Executive Officer. She also sits as a member of its board of directors. Maria Ressa is not the only shareholder of RHC. In fact, she only owns 23.77% of the total shareholdings of RHC.¹⁰⁰

⁹⁶ Records Vol. 11, JA of Maria Ressa, pp. 15-16.

⁹⁷ Records Vol. 11, JA of Maria Ressa, p. 21.

⁹⁸ Records Vol. 12, JA of Fel Dalafu, pp. 58-67; Records Vol. 15, Exhibit "43", Rappler online article entitled "*Top journalists' independent media fund invests in Rappler*", published on 31 May 2015; Records Vol. 15, Exhibit "44", Rappler online article entitled "*Omidyar Network invests in Rappler*", published on 5 November 2015; Records Vol. 15, Exhibit "45", Notice of/ Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 8 June 2015; Records Vol. 15, Exhibit "46" Notice of/ Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 8 August 2015; Records Vol. 15, Exhibit "47", Notice of Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 01 December 2015.

⁹⁹ See Records, Second Amended Informations.

¹⁰⁰ Records Vol. 11, JA of Maria Ressa, p. 12.

1.64. Maria Ressa explained during the trial of the case that she is not a tax evader. In fact, it is publicly known that she has been cited several times as one of the top paying taxpayers in the Philippines.¹⁰¹ As an investigative journalist, she always make sure to pay all her taxes to lead by example.¹⁰²

1.65. Maria Ressa said that RHC did not declare any “sales receipts” in its VAT Return for the second quarter of 2015 following the advice of the professionals they consulted. According to the professionals from Sycip Salazar Hernandez & Gatmaitan Law Office, KPMG (which included Mr. Baladiang) and Atty. Helen G. Tiu. Sycip, there is no reselling of shares of stocks which should be subjected to VAT. In fact, Atty. Tiu made sure RHC paid all the taxes.¹⁰³ Also, all the funds were invested by the PDR Holders to RHC.

1.66. Unfortunately, the Duterte Administration filed these Criminal Cases to silence the freedom of journalists of Rappler, Inc and Maria Ressa. There were also personal threats directed against Maria Ressa as a journalist. There is public documentation of the Duterte Administration’s statements calling Maria Ressa out in the public as a “fraud” and that President Duterte is “compiling” information against Maria Ressa.¹⁰⁴ There were also a slew of other criminal cases filed against Maria Ressa, some of which relate to the PDR Transactions.¹⁰⁵

1.67. Worse, it appears that RHC has been singled out by the government since this is the first time that a holding company is

¹⁰¹ Records Vol. 15, Exhibit “59”, printout of the news article entitled “Celebrities, businessmen among top taxpayer”.

¹⁰² Records, TSN dated 22 March 2022, p. 36

¹⁰³ Records, TSN dated 22 March 2022, pp. 17-18

¹⁰⁴ Records Vol. 11, JA of Maria Ressa, p. 28; Records Vol. 15, Exhibit “106”, news article entitled “Duterte threatens to expose journalist Ressa as a ‘fraud’” dated 8 July 2020; Records Vol. 15, Exhibit “61”, Inquirer Online Article entitled “Duterte, Rappler clash over fake news, press freedom” dated 18 January 2018.

¹⁰⁵ Records Vol. 1, PSG-18-02983-CR filed with the Regional Trial Court (“RTC”) of Pasig City, Branch 157 dated 2 October 2018; Records Vol. 15, Exhibit “66”, Information filed against Maria Angelita Ressa, et al. for violation of Section 4(c)(4) of RA No. 10175 or the Cybercrime Prevention Act of 2012 (Cyberlibel) in Case No. R-MNL-19-01141-CR filed with the RTC of Manila, Branch 46 dated 10 January 2019; Records, Vol. 15, Exhibit “68”, Information filed against Maria A. Ressa, et al. for violation of Section 2-A of Commonwealth Act No. 108 (Anti-Dummy Law) in Case No. R-PSG-19-00737-CR filed with the RTC of Pasig City, Branch 265 dated 20 March 2019; Records, Vol. 15, Exhibit “69”, Information filed against Maria A. Ressa, et al. for violation of Section 26.1 in relation to Section 73 of RA 8799 or the Securities Regulation Code in Case No. R-PSG-19-00738-CR filed in RTC Pasig Branch 265 dated 20 March 2019; Records, Vol. 15, Exhibit “82”, Investigation Data Form Sheet for NPS Docket No. 20B80626 dated 13 February 2020; and Records, Vol. 15, Exhibit “83”, Information filed against Maria Angelita Ressa, et al. for “Cyber Libel” in Criminal Case No. R-MNL-21-00130 filed with the RTC of Manila, Branch 24 dated 7 December 2020.

being classified by the BIR as a dealer in securities in relation to the issuance of PDRs. As early as 1999, or for more than twenty (20) years, the BIR’s position has been that PDRs are derivatives of stock and as a result of its issuance, DST is due to be paid.

1.68. In fact, the Revenue Officers who audited RHC both admit that this was the first criminal case that they filed against a holding company and its corporate officer involving a PDR Transaction.

WITNESS	TESTIMONY
Mr. Ed Al Renzi B. Salles	TSN dated 23 February 2021, page 47 to 48 reads: ATTY. TAN: Q: Directly, PDR is the first criminal case that you filed which involves the Philippine Depository Receipt transaction, correct? MR. ED AL RENZI B. SALLES: A: Yes Ma’am. Q: This is also the first time that you filed a criminal case against an officer of a holding company in relation to the issuance of Philippine Depository Receipt? A. Yes.”
Ms. Editha V. Quilantang	TSN dated 23 November 2021, page 44 reads: ATTY. TAN: Q: In your five (5) years with the BIR NID, this is the first time that you classified a holding company or the subscription of a holding company subject to vat, correct? MR. EDITHA V. QUILANTANG: A: Yes ma’am. TSN dated 23 November 2021, page 52 reads: COURT:

WITNESS	TESTIMONY
	Before you conduct your re-direct, I just want to ask a few questions. Is Rappler Inc. the only company who ever issued PDRs in the same manner in order to what, to secure investment or profits or whatever else is that you call it? WITNESS: No your Honor. COURT: Only Rappler but only Rappler Inc. was the one subjected for investigation? WITNESS: Yes your Honor. xxx COURT: So in short, you do not know why Rappler, Inc. was subjected for investigation? WITNESS: I have no knowledge your Honor. COURT: That is what you are saying? WITNESS: Yes your Honor. COURT: You have no knowledge why other companies who were engaged in similar transactions were

WITNESS	TESTIMONY
	never investigated in the same way that Rappler, Inc. was?
	WITNESS:
	Yes your Honor."

1.69. Unfortunately, these Criminal Cases have caused a great deal of physical, emotional and financial burden upon Maria Ressa and also to RHC. For Maria Ressa, this has taken away her focus from Rappler, Inc. She had to post bail ten times, eight within three months beginning February 2019. She has no freedom to travel since her right to travel has also been restricted having to seek permission from the courts every time she needs to travel outside the Philippines, and pay a travel bond or travel fees.¹⁰⁶ Maria Ressa also has to deal with lawyers' fees and costs of litigation.

1.70. To Maria Ressa, these Criminal Cases, are attempts to intimidate and silence her and Rappler's reporters. However, she has expressed that the attempts to silence her and Rappler, Inc. will not succeed because she and her fellow journalists will continue to do their jobs and pursue the truth. During the hearing she has expressed that she will continue to hold the line. The Nobel Peace Prize vindicates Rappler and journalists around the world who continue doing their jobs despite greater risks as documented by Reporters Without Borders and the Committee to Protect Journalists.

E. THE BIR ISSUED ITS ASSESSMENT A YEAR AFTER THE FILING OF THE CRIMINAL CASES. THIS IS A CLEAR INDICATION THAT THIS CASE WAS FILED AS PURE HARRASSMENT.

1.71. On 19 November 2018, a Notice of Informal Conference was issued on RHC. The same, however, was improperly served to Arnold Gueco, a member of the administrative staff who was not part

¹⁰⁶ Records Vol. 15, Exhibits "84" to "104", various RTC Resolutions resolving Maria Ressa's Motions to Travel filed from 2018 to 2022.

of management. During the informal conference, the Examining Officers repeatedly just informed RHC to just raise its arguments with the Court rather than with them as they will merely issue the assessment to comply with the period found in the Tax Code.

1.72. On 18 December 2018, a *Preliminary Assessment Notice* ("PAN") was issued which was again improperly served on the same administrative staff, Arnold Gueco. On 3 January 2019, RHC timely filed their Reply to the PAN.¹⁰⁷ In the Reply, RHC raised the point that the Revenue Examiners failed to follow the minimum audit procedures. The Revenue Examiners did not conduct an actual examination of RHC's books and records or schedule a visit for the audit.

1.73. On 15 April 2019, a *Formal Letter of Demand with Final Assessment Notices* ("FLD/FAN") was issued and once again served on Arnold Gueco. The FLD/FAN contained the following findings:

DEFICIENCY INCOME TAX	2015
Taxable income per investigation	162,412,783.67
Multiply: Tax Rate (30%)	30%
Deficiency Tax Due	48,723,835.10
50% Surcharge	24,361,917.55
Interest (up to 12/31/17)	16,659,546.91
Interest (up to 04/15/19)	7,512,814.90
Deficiency Income Tax	97,258,114.46
DEFICIENCY VALUE ADDED TAX	2015
Sales of Securities (2 nd Quarter)	2,452,154.87
Multiply: Vat Rate (12%)	12%
Deficiency Vat	294,258.58
50% Surcharge	147,129.29
Interest (up to 12/31/17)	143,501.45
Interest (up to 04/15/19)	45,372.26
Deficiency Value Added Tax	630,261.58
Sales of Securities (3 rd Quarter)	109,022,399.23
Multiply: Vat Rate (12%)	12%
Deficiency Vat	13,082,687.91
50% Surcharge	6,541,343.95
Interest (up to 12/31/17)	5,720,539.70
Interest (up to 04/15/19)	2,017,242.95
Deficiency Value Added Tax	27,361,814.51
DEFICIENCY VALUE ADDED TAX	2015
Sales of Securities (4 th Quarter)	70,184,204.57
Multiply: Vat Rate (12%)	12%
Deficiency Vat	8,422,104.55
50% Surcharge	4,211,052.27

¹⁰⁷ The Reply to PAN was filed on 3 January 2019 since the fifteenth day was declared a non-working day for all government offices. Thus, the Reply became due the next working day which was 3 January 2019.

Interest (up to 12/31/17)	3,253,470.52
Interest (up to 04/15/19)	<u>1,298,619.30</u>
Deficiency Value Added Tax	17,185,246.65
Total Deficiency Value added Tax	<u>45,177,322.73</u>
TOTAL DEFICIENCY TAX	<u>142,435,437.19</u>

1.74. On 15 May 2019, RHC filed a Protest and assailed the FLD/FAN for lack of legal and factual bases and flagrant procedural irregularities.

STATEMENT OF THE CASE

2.1. The Information for this case was filed with this Honorable Court on 14 November 2018. On 03 December 2018, Accused Maria Ressa voluntarily appeared and posted a cash bail bond in the amount of Php 60,000.00.

2.2. On 04 December 2018, Accused filed an *Ex Abudanti Ad Cautelam* Urgent Motion a. To Quash Information and/or b. To Remand to the DOJ and/or c. Suspend Proceedings.

2.3. In response to the *Ex Abudanti Ad Cautelam* Urgent Motion, Plaintiff filed Comment/Opposition on 21 December 2018. Accused then filed a Reply on 21 January 2019 following Plaintiff’s Comment/Opposition dated 21 December 2018.

2.4. On 01 February 2019, Accused filed *Ex Abundanti Ad Cautela* Urgent Omnibus Motion (1) For Leave to Serve and File the Attached Supplemental Urgent Motion to Suspend Proceedings; and (2) To Defer Preliminary Conference, Arraignment and Pre-Trial (“Urgent Omnibus Motion”).

2.5. On 20 February 2019, Plaintiff filed a Rejoinder to the *Ex Abundanti Ad Cautelam* Reply dated 21 January 2019.

2.6. On 21 February 2019, Presiding Judge Maria Cheryl B. Laqui-Ceguera of Branch 265 voluntarily inhibited herself from the case since she is a relative of one of the partners of the counsel of the Accused.

2.7. The case was transferred to this Honorable Court Branch 157 and a Notice was posted on 26 February 2019 informing the parties that the records of the case has been transferred/ re-raffled.

2.8. On 04 April 2019, Plaintiff filed a Comment/Opposition to the *Ex Abundanti Ad Cautelam* Urgent Omnibus Motion dated 01 February 2019 objecting to the deferment of the Accused's arraignment irrespective of whether Accused's Petition for Review shall have been resolved by the DOJ.

2.9. On 08 April 2019, the Plaintiff filed an Urgent Motion with Leave of Court to Amend the Amended Informations dated 13 December 2018 and Motion to Admit Attached Second Amended Informations.

2.10. On 16 March 2020, this Honorable Court resolved to deny the *Ex Abundanti Ad Cautela* Urgent Motion to Quash Information, Remand the Case to the Department of Justice and/ or Suspend Proceedings dated 04 December 2018 filed by the Accused and scheduled a pre-trial for the case.

2.11. On 22 June 2020, Accused filed *Ex Abundanti Ad Cautelam* Motion for Reconsideration of the Order dated 16 March 2020. The Plaintiff in response filed a Comment/Opposition against the said Motion for Reconsideration on 26 June 2020.

2.12. On 17 July 2020, Accused submitted a Pre-Trial Brief.

2.13. Through a Resolution dated 21 July 2020, this Honorable Court denied the Motion for Reconsideration of the Order dated 16 March 2020.

2.14. On 27 August 2020, Plaintiff submitted its Pre-trial brief to this Honorable Court. Then on 01 September 2020, Accused filed an Amended Pre-Trial Brief.

2.15. On 20 October 2020, the Parties appeared for the Pre-Trial Conference and the arraignment of RHC. The following below are the facts that were stipulated by the Parties during the Pre-Trial Conference:

2.15.1. RHC is a domestic corporation registered as a holding company.

2.15.2. The existence, genuineness and due execution of RHC's Certificate of Incorporation with Articles of Incorporation filed with the SEC to be marked as Exhibit "1".

2.15.3. Maria Ressa is the President of RHC.

2.15.4. The existence, genuineness and due execution of RHC's 2017 General Information Sheet to be marked as Exhibit "8".

2.15.5. RHC's registered address is at 3/F, North Wing Estancia Offices, Capitol Commons, Pasig City 1605.

2.15.6. RHC is registered with the BIR Revenue District Office RDO No. 43-Pasig City under Tax Identification No. ("TIN") No. 008-923-940-000.

2.15.7. The BIR approved RHC's Certificate of Registration on 9 January 2015, classifying RHC's business/industry as a "Financial Holding Company.

2.15.8. The existence, genuineness and due execution of RHC's Certificate of Registration with the BIR ("COR") marked to be marked as Exhibit "3".

2.15.9. On 2 March 2018, a Letter of Authority eLa201600007402 was issued to RHC by the Commissioner of Internal Revenue in favor of Ed Al Renzi Salles, Rosanna Berba and Editha Quilantang .

2.15.10. The Complainants Salles, Berba and Quilantang filed this criminal complaint against RHC and Maria Ressa with the Department of Justice on 8 March 2018.

2.15.11. RHC received the LOA eLa201600007402 dated 2 March 2018 from the BIR on 5 March 2018

2.15.12. RHC issued Philippine Depositary Receipts (PDR) to NBM Rappler, L.P. and Omidyar Network Fund, L.L.C. (PDR Holders.

2.15.13. The existence, genuineness, and due execution of RHC's 2015 Audited Financial Statements marked as Exhibit "16".

2.15.14. R.G. Manabat & Co audited the books and certified the Financial Statements of RHC for the year 2015

2.15.15. Maria Ressa is the same person charged in the criminal informations that are filed with this Honorable Court

2.15.16. RHC paid the DST that were due from its issuance of the PDRs

2.15.17. The existence, genuineness, and due execution of RHC's DST Returns filed and paid on 04 June 2015.

2.15.18. The existence, genuineness, and due execution of BIR Ruling No. 136-99

2.15.19. The existence, genuineness, and due execution of BIR Ruling No. 172-03.

2.16. Thereafter, trial ensued. On 23 February 2021, Ed Al Renzi B. Salles was presented as Plaintiff's first witness. Mr. Salles' testimony was offered to prove the following: (a) that he is a Revenue Officer of the BIR and was a member of the investigating team that conducted an

investigation on Accused RHC and its President Ms. Maria Ressa; (b) that he was authorized to investigate taxpayers for internal revenue purposes and to submit reports thereon, to recommend prosecution for criminal violations of the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and to perform such other duties and functions that may be assigned by superiors from time to time; (c) that Accused willfully failed to supply correct and accurate information in its VAT Return for 2nd quarter of taxable year 2015; (d) other matters related to the foregoing, which includes the identification of documents in support thereof; and I other material allegations in the Information.

2.17. On 23 November 2021, Plaintiff presented its second witness, Ms. Editha V. Quilantang. Her testimony was offered to prove the following: (a) that she is a Revenue Officer of the BIR and was a member of the investigating team that conducted an investigation on accused RHC and its President Ms. Maria Ressa; (b) that she was authorized to investigate taxpayers for internal revenue purposes and to submit reports thereon, to recommend prosecution for criminal violations of the provisions of the NIRC of 1997, as amended, and to perform such other duties and functions that may be assigned by superiors from time to time; (c) that accused willfully failed to supply correct and accurate information in its VAT Return for 2nd quarter of taxable year 2015; (d) that notices were validly issued and served to accuseI(e) other matters related to the foregoing, which includes the identification of documents in support thereof; and (f) other material allegations in the Information.

2.18. On 02 December 2021, Plaintiff filed its Formal Offer of Evidence (FOE). In response, Accused filed a Comment and/or Objection to the Plaintiff's FOE.

2.19. On 21 March 2022, this Honorable Court acted and resolved to admit all of the Exhibits on the Plaintiff's Formal of Evidence.

2.20. On 22 March 2022 Maria Ressa was presented as the first witness of the defense. Her testimony was offered to prove the following: (a) Maria Ressa is a corporate officer of RHC; (b) as an officer of RHC, she has acted in good faith in relation to the taxability of the PDR; (c) She relied in good faith in the opinions of legal and tax experts in relation to the PDR transactions who were hired by RHC; (d) the circumstances surrounding the filing of the criminal cases

against RHC and herIf; (e) the filing of the criminal cases against her is politically motivated and was issued in violation of due process rights; and (f) the power of taxation is being used as a power to destroy; and (g) to identify documents relevant to the case and prove other material allegations.

2.21. On 24 May 2022, Ms. Marie Fel Dalafu was also presented. Her testimony was offered to prove the following: (a) RHC is not and has never been engaged in business as a dealer in securities; (b) RHC did not act as a dealer in securities in relation to the PDRs it issued to NBM Rappler, L.P. (NBM) and Omidyar Network Fund, L.L.C.; (c) RHC did not "ain any "sales"receipts" in relation to any of the said PDR Transactions; (d) the theory of the Bureau of Internal Revenue that RHC gained profit from the mark-up between the par value of the Rappler, Inc. share and the total amount it received from the PDR Transactions is only based on specItion; (e) RHC had no intention / willful intention to file an inaccurate return. In fact, it acted in good faith and sought advice from professionals who are experts in their fields regarding the taxability of PDRs; (f) PDRs are not illegal *per se*. The Securities and Exchange Commission and the Court of Appeals has recognized that there is nothing illegal with the NBM PDRs issued by RHC; (g) There was no proper and legal assessment of the supposed tax liability of RHC as the BIR 'iolated RHC's due process rights as a taxpayer; and (h) the information pro'ide^d in RHC's 2nd quarter 2015 Value Added Tax Return was accurate. In fact, RHC has duly paid all taxes that were due to the government in the said taxable period of 2015.

2.22. On 22 June 2022, Accused filed submission of the Judicial Affidavit of Atty. Helen G. Tiu, CPA as its expert witness.

2.23. However, on 16 September 2022, Plaintiff filed a Motion for leave to file embodied motion to disqualify Atty. Helen G. Tiu, CPA as witness for accused to testify as expert.

2.24. On 21 September 2022, Accused also filed a motion to admit the amended Judicial Affidavit of Atty. Helen G. Tiu, CPA.

2.25. On 27 September 2022, Plaintiff filed a Comment/Opposition to the Motion for leave to file embodied Motion to disqualify.

2.26. On 13 December 2022, this Honorable Court resolved to deny the Plaintiff's Motion to Disqualify Atty. Helen G. Tiu as an expert witness. This is Honorable Court found that Atty. Helen Tiu was being presented as an expert in the field of taxation and securities law and not merely on PDRs. Atty. Helen Tiu was thus called to the witness stand and her testimony was offered for the following purpose of her presentation was as follows: (a) to be qualified as an expert witness in the field of securities and taxation law, specific to Philippine Depositary Receipt (PDR); (b) to testify that RHC and Maria Ressa sought her legal and professional opinion on PDRs before RHC issued the PDRs subject of this case; (c) to identify documents relevant to RHC; (d) to prove that RHC is not the first Philippine entity that filed PDRs; (e) to prove that the shareholders of RHC issued PDRs to expand the business of Rappler Inc. globally and to legally raise funds; (f) to prove that PDRs are different from and are not the same as the underlying securities; and (g) to discuss the tax implications of PDRs.

2.27. After Atty. Helen Tiu's testimony, this Honorable Court ordered the Accused to file their Formal Offer of Evidence.

2.28. Accordingly, Accused filed a Formal Offer of Documentary Evidence with Submission of Original Marked and Certified Documents on 12 January 2023. In response, the Plaintiff filed a comment on the FOE on 13 February 2023.

2.29. On 08 June 2023, this Honorable Court resolved to admit all of the Accused's exhibits with their sub markings, as part of the testimony of the defense witnesses and for not otherwise being excluded by the law or rules.

2.30. On 10 July 2023, the Accused received from this Honorable Court an Order dated 10 July 2023, directing the Parties to submit their respective Memoranda within thirty (30) days from receipt of the Order.

2.31. Since the inception of this criminal case, this Honorable Court's records will show that Maria Ressa has been constrained to file thirty-eight (38) motions to travel for her to travel outside the Philippines. Maria Ressa always complied with all the conditions imposed by the Court for her to travel. Moreover, records will also show that Maria Ressa has posted a total of Php1,200,000.00 in travel bond with this Honorable Court. In fact, Php 1,000,000.00 of this

amount remains deposited with this Honorable Court to date (under Travel Bond O.R. Nos. 6567911 and 6633774).

ISSUE

Whether or not the Accused are guilty beyond reasonable doubt of Section 255 of the Tax Code.

ARGUMENTS

I.

THE ACCUSED DID NOT VIOLATE SECTION 255 OF THE TAX CODE.

- A. THE PLAINTIFF'S EVIDENCE DOES NOT ESTABLISH BEYOND REASONABLE DOUBT THAT ACCUSED COMMITTED AN ACT IN VIOLATION OF SECTION 255. THE PDR TRANSACTION OF RHC WITH NBM IS NOT ILLEGAL.**
- B. RHC IS NOT AND HAS NEVER BEEN ENGAGED IN BUSINESS AS A DEALER IN SECURITIES. THE PDR TRANSACTION IS A LEGITIMATE INVESTMENT/ CAPITAL RAISING TRANSACTION. THE PLAINTIFF'S ACCUSATION THAT RHC ISSUED AND SOLD SECURITIES AND GAINED "SALES RECEIPTS" IS MALICIOUS, BASELESS AND ERRONEOUS.**
- C. RHC DID NOT GENERATE ANY SALES RECEIPTS THAT NEEDED TO BE DECLARED FROM ITS PDR TRANSACTION WITH NBM. THE MARK-UP THEORY ADVANCED BY THE PLAINTIFF IS MALICIOUS AND BASELESS. EVIDENCE SHOWS THAT RHC DECLARED AND PAID THE CORRECT TAXES IN ACCORDANCE WITH EXISTING PRECEDENT AND AS ADVISED BY PROFESSIONALS. THE VAT RETURN FILED BY RHC FOR THE SECOND QUARTER OF TAXABLE YEAR 2015 CONTAINED ACCURATE INFORMATION. THERE IS NO BASIS TO HOLD RHC CIVILLY LIABLE.**

II.

THERE IS NO EVIDENCE TO HOLD MARIA RESSA CRIMINALLY LIABLE FOR SECTION 255. MARIA RESSA, BEING PRESIDENT OF RHC, DOES NOT MAKE HER *IPSO FACTO* CRIMINALLY LIABLE.

III.

THESE CRIMINAL CASES ARE POLITICALLY MOTIVATED. THE POWER TO TAX IS BEING MISUSED BY THE GOVERNMENT AS A POWER TO DESTROY/HARM A CITIZEN TAXPAYER AND AMOUNTS TO A PRIOR RESTRAINT TO THE FREEDOM OF THE PRESS.

IV.

THE PLAINTIFF UNNECESSARILY SPLIT THIS CASE FROM THE CTA TAX CASES RESULTING IN MULTIPLICITY OF SUITS. THE OFFENSE CHARGED IN THE INFORMATION SHOULD HAVE BEEN DISMISSED BECAUSE IT FORMS PART AND WAS IMPELLED UNDER AN ALLEGED SINGLE CRIMINAL MOTIVE THAT IS ALREADY BEING PROSECUTED BEFORE THE COURT OF TAX APPEALS, WHICH IS A SPECIALIZED COURT THAT HAS ALREADY TAKEN JURISDICTION OF OTHER CASES TO THE EXCLUSION OF THIS HONORABLE COURT.

DISCUSSION

I.

THE ACCUSED DID NOT VIOLATE SECTION 255 OF THE TAX CODE.

5.1. The Accused are being charged for violation of Section 255 due to their alleged willful and unlawful failure to supply correct and accurate information in RHC's second quarter VAT Return for taxable year 2015.

5.2. The following are the elements of Section 255:

"a. *First*, a corporate taxpayer is required under the Tax Code to pay any tax, make a return, keep any record, or supply correct and accurate information; and

"b. *Second*, a corporate taxpayer failed to pay the required tax, make a return or keep the required record of supply the correct and accurate information, or withhold or remit taxes withheld or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and

"c. *Third*, Accused, as the employee responsible for the violation, willfully failed to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the times or times required by law or rules and regulations."¹⁰⁸

A. THE PLAINTIFF'S EVIDENCE DOES NOT ESTABLISH BEYOND REASONABLE DOUBT THAT ACCUSED COMMITTED AN ACT IN VIOLATION OF SECTION 255. THE PDR TRANSACTION OF RHC WITH NBM IS NOT ILLEGAL.

5.3. In this case, the Plaintiff failed to establish beyond reasonable doubt that Accused committed acts that would amount to a violation of Section 255.

5.4. **The first element of Section 255 is clearly absent.** The Plaintiff stated in the Information that there was willful and unlawful failure to supply correct and accurate information in the VAT return filed by RHC since it failed to report sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a

¹⁰⁸ Suarez v. People, G.R. No. 253429, 6 October 2021.

dealer in securities to NBM thereby resulting in deficiency VAT to the prejudice of the government.¹⁰⁹

5.5. The definition of a dealer in security in the Tax Code and as affirmed by the Plaintiff's witnesses¹¹⁰ is as follows:

"The term '**dealer in securities**' means (1) a merchant of stocks or securities, whether an individual, partnership or corporation, (2) with an established place of business, (3) regularly engaged in the purchase of securities and the resale thereof to customers; that is, one who, as a merchant, buys securities and re-sells them to customers (4) with a view to the gains and profits that may be derived therefrom."¹¹¹

5.6. The Plaintiff failed to adduce any evidence that RHC acted as a "merchant of stocks or securities".

5.7. The Plaintiff's evidence does not establish that RHC was "regularly" engaged in the business of buying and reselling of securities in 2015. The term "regularly" is not defined in the Tax Code. However, Revenue Regulation No. 7-2003 and Revenue Regulation No. 11-2018 both provide that for there to be a presumption of regularity, there must be at least six taxable transactions preceding the transaction. Also in Revenue Regulation No. 11-2018, to be classified as a "regular supplier", there should be at least six (6) prior transactions of selling. Following this logic, for RHC to be considered a dealer, there should be evidence that it had at least sold securities six times prior to the transaction in 2015 for it to be considered to be "regularly" engaged as a dealer in securities. In this case, there was no selling of any securities.

5.8. RHC does not have an "established place of business" as a dealer in securities. The evidence of the Accused shows that RHC's place of business is in Pasig City and its Mayor's Permits for years 2014, 2015 and 2018 all show that RHC business is "IN6 Holdings (MAIN OFFICE)".¹¹² Certainly, RHC does not hold itself out as a dealer in securities in the city where it operates. From the date of its incorporation up to the present, there is nothing in RHC's office

¹⁰⁹ See Records, Vol. 1, Amended Information dated 2 October 2018 (*Emphasis supplied*).

¹¹⁰ Records, Vol. 9, Ed Al Renzi Salles Judicial Affidavit dated 3 February 2021 [JA Salles], Question 47; Vol. 9, Quilantang Testimony, p. 6, Q&A. 19.

¹¹¹ Tax Code, Section 22(U); *Emphasis and numbering supplied*.

¹¹² Records Vol. 12, JA of Fel Dalafu, pp. 8-9; Records Vol. 15, Exhibit "4", "4-1", Mayor's Permit Number Nos. IN6 15-0033; Records Vol. 6, Exhibit "5", "5-1", Mayor's Permit Number Nos. IN6 18-0231 issued by the Business Permit and License Office of Pasig City.

premises that would show that it has presented itself to have an established place of business meant for the business of buying and selling of securities.

5.9. There is also no evidence of any resale of the same securities as required in Section 22(U) of the Tax Code. The Plaintiff failed to establish its accusation that RHC issued and sold Rappler Inc. shares, or that RHC purchased/resold PDRs. Furthermore, no reliable testimony was provided to support the classification of RHC’s PDR Transactions as securities-dealing.

5.10. The documentary evidence¹¹³ presented by the Plaintiff do not establish that RHC was involved in any “resale” of securities in 2015:

Exhibit/s	Description/s	Comments/Observations
Exhibit G	General Information Sheet (GIS) of RHC for the period of 17 July 2015 ¹¹⁴	This document does not establish that RHC was engaged in any “purchase” or “sale” of securities in 2015. This document is prepared and submitted to the Securities and Exchange Commission (SEC) pursuant to Section 26 of the Corporation Code as part of a corporation’s reportorial obligations. In fact, the document in page 7 shows that RHC invested corporate funds in another corporation . There was no sale or purchase of PDRs.
Exhibit H	Financial Statements of RHC for the year ended December 31,	This document does not establish that RHC was engaged in any “purchase” and “sale” of securities in 2015. The document does not contain any statement that would show that

¹¹³ During trial, the witnesses of the Prosecution testified that the following documents allegedly confirmed that RHC’s transactional activities consisted of purported “purchase” of RI shares and subsequent “sale” of the PDRs to NBM Rappler, LP (NBM Rappler) and Omidyar Network Fund LLC (Omidyar): General Information Sheet (GIS) of RHC for the period of 17 July 2015 (Exhibit G); Audited Financial Statement (AFS) of RHC for 2014 (Exhibit H); AFS of RHC for 2015 (Exhibit I); AFS of Rappler Inc. for 2015 (Exhibit J); the three (3) SEC Forms 10-1 filed by RHC (Exhibits K to M); PDR Instrument dated 29 May 2015 (Exhibit R); and PDR Instrument in favor of Omidyar Network Fund LLC (Exhibit S).

¹¹⁴ Records, Vol. 10, pp. 1055-1064, Plaintiff’s Formal Offer of Evidence [Plaintiff’s FOE], Exhibit “G”, General Information Sheet of RHC for the period of 17 July 2015,

Exhibit/s	Description/s	Comments/Observations
	2014 stamped as received by the BIR ¹¹⁵	RHC “purchased” shares from Rappler Inc. On the contrary, the document says that the transaction involved an investment in shares of stock of a subsidiary. Particularly, the heading of Note 6, page 7 of this AFS shows that RHC was involved in the: “Investment in Shares of a Stock of a Subsidiary” .
Exhibit I	Financial Statements of RHC for the year ended December 31, 2015 stamped as received by the BIR ¹¹⁶	This document does not establish that RHC was engaged in any “purchase” or “sale” of securities in 2015. The document does not contain any statement that would show that RHC “purchased” and “sold” PDRs. On the contrary, the heading of Note 6, page 7 of this AFS shows that RHC was involved in the: “Investment in Shares of a Stock of a Subsidiary” .
Exhibit J	Financial Statements of Rappler, Inc. for the year ended December 31, 2015 stamped as received by the BIR ¹¹⁷	This document does not establish that RHC was engaged in any “purchase” or “sale” of securities in 2015. The document does not contain any statement that would show that there was a “purchase” and “sale of RI Shares. In fact, in page 12 of this AFS, it is stated that the company “issued” RI common shares which confirms that there was a “subscription” and <u>not</u> a “sale” of RI shares.
Exhibit K	SEC Form No. 10-1 of	This document does not establish that RHC was engaged in any “purchase” or “sale” of securities in

¹¹⁵ Records, Vol. 1, pp. 113-218, Plaintiff’s FOE, Exhibit “H”, Financial Statements of RHC for the year ended 31 December 2014 stamped as received by the BIR.

¹¹⁶ Records, Vol. 10, pp. 1065-1084, Plaintiff’s FOE, Exhibit “I”, Financial Statements of RHC for the year ended 31 December 2015 stamped as received by the BIR.

¹¹⁷ Records, Vol. 10, pp. 1085-1112, Plaintiff’s FOE, Exhibit “J”, Financial Statements of Rappler, Inc. for the year ended 31 December 2015 stamped as received by the BIR.

Exhibit/s	Description/s	Comments/Observations
	RHC dated June 8, 2015 ¹¹⁸	2015. The word "sale" in the first page of the said SEC Form No. 10-1 is a <i>pro-forma</i> term. Moreover, it is clear from the form that RHC was acting as an original "issuer" of the PDRs. It was not selling PDRs. In fact, the relevant portions of the forms requiring disclosure of sale of securities have been marked as "not applicable".
Exhibit L	SEC form No. 10-1 of RHC dated August 8, 2015 ¹¹⁹	This document does not establish that RHC was engaged in any "purchase" or "sale" of securities in 2015. The word "sale" in the first page of the said SEC Form No. 10-1 is a <i>pro-forma</i> term. Moreover, it is clear from the form that RHC was acting as an original "issuer" of the PDRs. It was not selling PDRs. In fact, the relevant portions of the forms requiring disclosure of sale of securities have been marked as "not applicable".
Exhibit M	SEC form No. 10-1 of RHC dated December 1, 2015 ¹²⁰	This document does not establish that RHC was engaged in any "purchase" or "sale" of securities in 2015. The word "sale" in the first page of the said SEC Form No. 10-1 is a <i>pro-forma</i> term. Moreover, it is clear from the form that RHC was acting as an original "issuer" of the PDRs. It was not selling PDRs. In fact, the relevant portions of the forms requiring disclosure of sale of

¹¹⁸ Records, Vol. 10, pp. 1113-1120, Plaintiff's FOE, Exhibit "K" SEC Form No. 10-1 of RHC dated 8 June 2015.

¹¹⁹ Records, Vol. 10, pp. 1121-1128, Plaintiff's FOE, Exhibit "L", SEC Form No. 10-1 of RHC dated 8 August 2015.

¹²⁰ Records, Vol. 10, pp. 1129-1136, Plaintiff's FOE, Exhibit "M", SEC Form No. 10-1 of RHC dated 1 December 2015.

Exhibit/s	Description/s	Comments/Observations
		securities have been marked as “not applicable”.
Exhibit R	PDR Instrument dated May 29, 2015 ¹²¹	This document does not establish that RHC was engaged in any “purchase” or “sale” of securities in 2015. The document does not contain any statement that would show that RHC “purchased” and “sold” PDRs. In fact, it is clear from the document that RHC retained ownership and voting rights over the Rappler Inc. shares and the PDR Holders do not even receive dividends from RI and RHC.
Exhibit S	PDR Instrument in favor of Omidyar Network Fund LLC ¹²²	This document does not establish that RHC was engaged in any “purchase” or “sale” of securities in 2015. The document does not contain any statement that would show that RHC “purchased” and “sold” PDRs. In fact, it is clear from the document that RHC retained ownership and voting rights over the Rappler Inc. shares and the PDR Holders do not even receive dividends from RI and RHC.

5.11. The Prosecution’s witnesses themselves **admitted** that the documents they presented show that RHC was involved in an investment transaction and do **not** reflect that RHC was involved in any “purchase” or “sale” of securities in 2015. The witnesses did not controvert their admissions during their re-direct examination.

¹²¹ Records, Vol. 10, pp. 1144-1084, Plaintiff’s FOE, Exhibit “R”, PDR Instrument dated 29 May 2015.

¹²² Records, Vol. 10, pp. 1159-1176, Plaintiff’s FOE, Exhibit “S”, PDR Instrument in favor of Omidyar Network Fund LLC.

Exhibits	Descriptions	Witness Admissions
Exhibit A-1	Verified Explanation filed by RI and RHC dated August 26, 2017 before the SEC in the case entitled "In Re: Rappler, Inc. and Rappler Holdings Corporation" docketed as SP Case No. 08-17-001 ¹²³	Transcript of Stenographic Notes ("TSN") dated 23 November 2021, pages 31 to 43 reads: ATTY. TAN: Okay. Now I turn to Question 18 of your judicial affidavit, in Question 18 you sated that you fund Rappler Holdings Corporation as the dealer in securities? WITNESS [Ms. Editha V. Quilantang]: Yes ma'am. ATTY. TAN: Dealers of securities? WITNESS: Yes ma'am. ATTY. TAN: And based from Question 18, you made this conclusion based on the documents you enumerated here in Question 11, is that correct? WITNESS: Yes ma'am. ATTY. TAN: Okay. You referred here to the verified explanation, correct?

¹²³ Records, Vol. 10, pp. 952-1039, Plaintiff's FOE, Exhibit "A-1", Verified Explanation filed by RI and RHC dated 26 August 2017 before the SEC in the case entitled "In Re: Rappler, Inc. and Rappler Holdings Corporation" docketed as SP Case No. 08-17-001.

Exhibits	Descriptions	Witness Admissions
		WITNESS: Yes ma'am. ATTY. TAN: Okay, now let us go to this verified explanation, you will confirm that this is consisting of 88 pages? WITNESS: Yes ma'am. ATTY. TAN: Okay, you confirm that this verified explanation is not a deed of sale? WITNESS: No it is not ma'am. ATTY. TAN: And you confirm that there is nothing attach to this verified explanation that is denominated as a deed of sale? WITNESS: Yes ma'am. ATTY. TAN: Okay, now let us go over this verified explanation, in paragraph 1.9, can you please read this? WITNESS:

Exhibits	Descriptions	Witness Admissions
		(Reading paragraph 1.9 of the verified explanation attached to the records of the case) 1.9. In order, however, to successfully catapult the business of RAPPLER globally, it needed a boost through additional funding, and more importantly, the recognition by key global institutional impact investors, which would provide value, build the brand, and generate interest in the business. ATTY. TAN: So from this sentence, you will confirm that Rappler wanted to secure additional funding for its global expansion, correct? WITNESS: No ma'am. ATTY. TAN: from these words... additional funding (interrupted) WITNESS: (interrupting) From those words, I confirmed ma'am. ATTY. TAN: Additional funding, you confirm? WITNESS:

Exhibits	Descriptions	Witness Admissions
		Yes ma'am. ATTY. TAN: Now let us go to 1.12, can you please read this. WITNESS: (Reading paragraph 1.12 of the verified explanation attached to the records of the case) 1.12 RAPPLER sought advice on how to properly and legally structure its business for global growth and to secure investments from relevant impact investors. ATTY. TAN: So Ms. Witness from the sentence, you confirm that Rappler Holdings wanted to secure investments, correct? WITNESS: Yes ma'am. ATTY. TAN: So from this, the verified explanation actually explains that Rappler Holdings Corporation is seeking investment, correct? WITNESS: Yes ma'am. ATTY. TAN:

Exhibits	Descriptions	Witness Admissions
		Okay, now in this verified explanation, there is attached two (2) Philippine Depositary Receipt Instrument, is that correct? WITNESS: Yes ma'am. ATTY. TAN: And based on your examination of this verified explanation, you will confirm that there were only two (2) PDR Holders, correct? WITNESS: Yes ma'am. ATTY. TAN: NBM and Omidyar? WITNESS: Yes ma'am. ATTY. TAN: Correct? WITNESS: Yes ma'am. ATTY. TAN:

Exhibits	Descriptions	Witness Admissions
		Let us go this whereas clause, can you please read the first whereas clause. WITNESS: (Reading the whereas clause of the Philippine Depositary Receipt Instrument attached to the records of the case.) (A) The Issuer is, and shall become upon approval by the Philippine Securities and Exchange Commission (the "SEC") of the increase in authorized capital stock of Rappler Inc. (the "Company") the registered and beneficial owner of certain shares of the Company with a par value of P1.00 per share. ATTY. TAN: So from this statement, you will confirm that Rappler Holdings Corporation, the Issuer would subscribed to the increase in the authorized capital stock of Rappler Inc. correct? WITNESS: Yes ma'am. ATTY. TAN: You also confirm as you can see in clause 4, I am showing you clause 4, it is stated here that the underlying shares of PDR instrument shall be

Exhibits	Descriptions	Witness Admissions
		owned and registered in the name of the issuer, is that correct? WITNESS: Yes ma'am. ATTY. TAN: In other words, it is registered in the name of Rappler Holdings Corporation? WITNESS: Yes ma'am. ATTY. TAN: I am going to clause 5, can you please read 5.1. WITNESS: (Reading clause 5.1 of the Philippine Depositary Receipt Instrument attached to the records of the case) 5.1 The Issuer hereby grants, upon payment of the amount stated in Condition 5.5 hereof, the PDR Exercise Right unto each Holder, in respect of each PDR to be issued pursuant to this Instrument. ATTY. TAN: In other words, you confirm that this was not an option? WITNESS:

Exhibits	Descriptions	Witness Admissions
		Yes ma'am. xxx ATTY. TAN: Yes but in the verified explanation, is there a PDR Receipt Certificate? WITNESS: No ma'am, it is just the verified explanation with no annexes. ATTY. TAN: I understand I am showing to you Annex "E" of the verified explanation, Annex "D" and "E", are these Philippine Depositary Receipt Certificate Ms. Witness? WITNESS: Yes ma'am ATTY. TAN: There are three (3) Depositary Receipt Certificate attached, correct? WITNESS: Yes ma'am ATTY. TAN: Can you please read paragraph, the 2nd to the last paragraph to this Honorable Court.

Exhibits	Descriptions	Witness Admissions
		WITNESS: (Reading the 2nd to the last paragraph of the Philippine Depositary Receipt Certificate attached to the records of the case.) The PDR represented by the Certificate does NOT represent shares of stock but only confers a right to the delivery or sale of existing shares of stock of Rappler, Inc. owned by the Issuer under the terms and conditions stated herein and in the PDR Instrument ATTY. TAN: Ms. Witness you will confirm that this verified explanation, I am showing you the end of the verified explanation, you will confirm that in page 41 this document was prepared by the counsel of Rappler, Inc. and Rappler Holdings Corporation then, correct? WITNESS: Yes ma'am."
Exhibit I	Financial Statements of RHC for the year ended December 31, 2015 stamped as received by the BIR	TSN dated 23 February 2021, pages 63 to 65 reads: ATTY. TAN: Q: Okay now I am going to Exhibit I, okay now on Page 7 of Exhibit I, you would confirm Mr. Witness that under Note 6 of this Page 7 or certified true copy Page 18 of 20 pages, Note 6 is clear that there were

Exhibits	Descriptions	Witness Admissions
		investments in shares of stocks of a subsidiary, you confirm this on the documents? WITNESS [Mr. Ed Al Renzi Salles] A: Yes. COURT: Q: This is RHC's 2015 Financial Statement? ATTY. TAN: A: Yes your Honor. xxx COURT: Q: Alright so there is a note? ATTY. TAN: A: Yes your Honor Exhibit I your Honor of the witness. COURT: Q: Okay. So in other words, these involve the PDRs Mr. witness, correct if you read Note 6? MR. ED AL RENZI B. SALLES: A: There is no disclosure about PDR in Note 6 because Note 6 only pertains to the investment of Rappler, Inc. ah investment of. COURT: Q: RHC in Rappler. A: RHC Rappler, Inc. but there is no any statement about PDRs.

Exhibits	Descriptions	Witness Admissions
		Q: How about in the prior page Mr. witness, in Page 17, Note 4 you confirm that there is a disclosure of the Philippine Depository Receipts? A: Yes Ma'am there is. COURT: Q: This is in the same FS? ATTY. TAN: A: Yes your Honor.
Exhibits K to M	SEC form No. 10-1 of RHC dated June 8, 2015; SEC form No. 10-1 of RHC dated August 8, 2015; SEC form No. 10-1 of RHC dated December 1, 2015	TSN dated 23 February 2021, page 65 to 67 reads: ATTY. TAN: Q: x x x Let us now move on to Question 45 and you referred here Mr. Witness to Annex K, the SEC Forms 10-1, correct Mr. witness? MR. ED AL RENZI B. SALLES: A: Yes, ma'am. xxx ATTY. TAN: Q: Exhibit K sorry. Mr. witness can you please go over the document, you would confirm that under Paragraph 3A of this document the table, Rappler Holdings Corporation specified as an issuer, correct? A: Based on the form, there is a no.

Exhibits	Descriptions	Witness Admissions
		Q: 3A, exact name of issuer? Is it not Rappler Holdings state there? Issuer, you confirm this? A: Okay, yes. Q: And in the next page under No. 5 and No. 4, you confirm that under this 4, under 4 A, B and C, it all says that if securities are being sold, please disclose and it all says not applicable, correct? A: Yes Ma'am.
Exhibit R	PDR Instrument dated May 29, 2015 (marked as Annex "9" as attached in Joint Counter-Affidavit of accused RHC and Ms. Ressa)	TSN dated 23 February 2021, pages 67 to 69 reads: ATTY. TAN: Q: And Mr. witness in Question 54, you identified certain PDR Instruments, correct? MR. ED AL RENZI B. SALES: A: Yes Ma'am. Q: Okay let us go to Exhibit R under Page 1 of Exhibit R, you confirm that the issuer is defined as Rappler Holdings Corporation? A: Yes Ma'am. Q: Okay now let us go to Page 4 specifically 4.1, xxx COURT:

Exhibits	Descriptions	Witness Admissions
		Just ask him directly that do you agree that Rappler, RHC is the issuer of all the PDRs as state in the documents attached to your JA? ATTY. TAN: Yes, your Honor. Q: Okay Mr. witness, clause 4.1 you confirm that it is stated there that the PDRs shall be owned and registered in the name of the issuer Rappler Holdings Corporation? A: Yes Ma'am based on the documents. Q: And you also confirm in 4.2 that in fact, the shares, the underlying shares shall be placed by the issuer Rappler Holdings Corporation in escrow? A: Yes Ma'am. Q: That is now on the Philippine Depository Receipt Instrument? A: Yes Ma'am.

5.12. The other documentary evidence presented by the prosecution do **not** establish that RHC was involved in purchasing or reselling of any securities in 2015:

EXHIBITS	DESCRIPTIONS	OBSERVATIONS
Exhibit A	Securities and Exchange Commission (SEC) <i>En Banc</i> Decision entitled: " In Re: Rappler, Inc. and Rappler Holdings Corporation (RHC)", S.P. Case No. 08-	There is nothing in the decision which shows that RHC was involved in a sale of PDRs in 2015. While the word "sold" is found in several parts of the SEC

EXHIBITS	DESCRIPTIONS	OBSERVATIONS
	17-001 dated January 11, 2018	Decision, it may be observed that the term was loosely used. In fact, in page 2, the SEC indicated the heading “PDR Issuances in 2015”. The SEC did not refer to the transaction as a “sale” of PDRs. The SEC also used the term “issuer” to describe RHC rather than “seller”. ¹²⁴ The SEC also cited portions of the PDR Instrument in the SEC Decision which all point out that RHC was acting as an “issuer” and not as a “seller” of PDRs. ¹²⁵
Exhibit “A-1”	SEC Verified Explanation dated August 26, 2017, filed by accused before the SEC in the case entitled “In Re: Rappler, Inc. and Rappler Holdings Corporation” docketed as SP Case No. 08-17-001	This document is not evidence of a sale or purchase of PDRs. While the term “sale” may be found on the document, this appears to be loosely used. The underlying documents nonetheless show that what was involved was an investment arrangement and not a “sale” of PDRs.

5.13. The Plaintiff relied solely on the evaluation made by their witnesses on the substance of the PDR Transactions to establish that it amounts to securities-dealing.¹²⁶ However, these witnesses are not experts in evaluating PDR Transactions. The witness Mr. Ed Al Renzi

¹²⁴ Records, Vol. 10, pp. 923-951, Plaintiff’s FOE, Exhibit “A”, Securities and Exchange Commission (SEC) *En Banc* Decision entitled: “In Re: Rappler, Inc. and Rappler Holdings Corporation (RHC)”, S.P. Case No. 08-17-001 dated 11 January 2018.

¹²⁵ Records, Vol. 10, pp. 923-951, Plaintiff’s FOE, Exhibit “A”, p. 4, p. 12 and p. 22.

¹²⁶ Records, Vol. 9, JA Salles, Q&A. 40-53; Records, Vol. 9, Quilantang Testimony, pp. 5-6, Q&A. 15-18.

B. Salles admits that he was only in his second month of service in the NID when he filed the criminal case.¹²⁷

5.14. Both of the Plaintiff’s witnesses admitted that this is the first time that the BIR has taxed a financial holding company involved in the issuance of PDRs in the same classification of a “dealer in securities”:

WITNESS	TESTIMONY
Mr. Ed Al Renzi B. Salles	TSN dated 23 February 2021, page 47 to 48 reads: ATTY. TAN: Q: Directly, PDR is the first criminal case that you filed which involves the Philippine Depository Receipt transaction, correct? MR. ED AL RENZI B. SALLES: A: Yes Ma’am. Q: This is also the first time that you filed a criminal case against an officer of a holding company in relation to the issuance of Philippine Depository Receipt? A. Yes.”
Ms. Editha V. Quilantang	TSN dated 23 November 2021, page 44 reads: ATTY. TAN: Q: In your five (5) years with the BIR NID, this is the first time that you classified a holding company or the subscription of a holding company subject to vat, correct? MR. EDITHA V. QUILANTANG: A: Yes ma’am. TSN dated 23 November 2021, page 52 reads: COURT:

¹²⁷ Records, TSN dated 23 February 2021, p. 48.

WITNESS	TESTIMONY
	Before you conduct your re-direct, I just want to ask a few questions. Is Rappler Inc. the only company who ever issued PDRs in the same manner in order to what, to secure investment or profits or whatever else is that you call it? WITNESS: No your Honor. COURT: Only Rappler but only Rappler Inc. was the one subjected for investigation? WITNESS:
	Yes your Honor. xxx COURT: So in short, you do not know why Rappler, Inc. was subjected for investigation? WITNESS: I have no knowledge your Honor. COURT: That is what you are saying? WITNESS: Yes your Honor. COURT: You have no knowledge why other companies who were engaged in similar transactions were

WITNESS	TESTIMONY
	never investigated in the same way that Rappler, Inc. was?
	WITNESS:
	Yes your Honor.”

5.15. During the trial of this case, the Plaintiff’s witness, Mr. Salles was asked several times what was the basis of the BIR for saying that there was a sale of securities. Mr. Salles could not point to any sale document. Instead, Mr. Salles explained said that the BIR classified RHC as a dealer in securities because the PDR Transaction was illegal as it was made with foreign entities and cites the SEC Decision as his basis -

(TSN dated 23 February 2021, pp. 72-81)

“COURT Hindi kaya nga so the question is why, why do you say that it is a purchase?

A We say it is a purchase because there a lot of circumstantial or there are lot of documents that state or when you sum it up (interrupted)

COURT Kaya nga so what are these particular documents?

A Hold on Maám I will just browse my judicial affidavit.

ATTY. TAN Your Honor we would like to make it of record that the witness was asked regarding the document which he evaluated and the witness has to refresh his memory during the testimony.

A Yes based on the SEC records that we gathered, the following documents is considered the General Information Sheet,

the Financial Statement of Rapper Holdings (interrupted)

COURT Di kaya nga that is already stated in your JA, what about those documents?

A Yes, these documents,

COURT Why do you say that it is a purchase based on those documents?

A These documents,

COURT It is just the FS, it is the, so what?

A Maám in totality if we look at it, it is like that RHC is only set up as a company in order to facilitate the sale between the RI and those (Interrupted)

COURT Hindi the question is, why is it a sale? Why do you say that based on those documents, it is a sale and not an investment because you know they can always an RHC and still accept kasi iyan ang purpose ng holding company e to accept investments from other entities or individuals para mafinance iyong iba nilang mga subsidiaries o so what makes it different, why do you say it is a sale?

A But Maám they cannot actually, they cannot really set or they cannot really gather investment from foreign because that is the ruling already in the (interrupted)

COURT No it doesn't matter whether foreign or local okay? My point is, as a general rule, what makes it unusual?

A That there is,

COURT Why is it a sale? Why is it not an investment?

A There is unusual Ma'am because it is only set up in order to facilitate the sale.

COURT No that is your conclusion okay?

A Yes.

COURT (continuing) That it is only set up for that, but why did you conclude that?

A Aside from that Maám, based on the verified explanation that we have read **already in the part of the SEC Decision** that there is already transaction ongoing or there is already a negotiation on how they will finance the company.

COURT Is there anything unusual about that?

A On the point of view of the BIR (interrupted)

COURT is there anything unusual with negotiating ahead of time with future investors or with people who will invest, I mean is there anything unusual about that?

A Maám the setting up of the RHC as a dealer (interrupted)

COURT Yes but you know as far as my experience goes okay because I worked in SJV okay if we want to get investments we negotiate with potential investors and then we think of what the proper investment vehicle is, okay? So to the mind of the court, there is nothing unusual about that? So what if they set it up after they talked to the investors that is why I am asking what's unusual about that?

A Ma'am, there is unusual because there is attached consequence on setting up RHC.

COURT Of course there is attached consequence but I am talking about this ano iyong basis mo for saying it is a sale, yon yong main question okay that is the question of your own counsel, what is the basis for you saying that it is a sale, you are citing the circumstance that they already talked to Omidyar and NBM Rappler before they set up RHC but my next question is that, why is it unusual?

A Ah,

COURT Why do you say it is a sale based on that circumstance?

A Ma'am it is a sale because when they set or it just made to appear that it is just an investment.

COURT Hindi nga iyon nga e why do you say that, that is your conclusion okay but what is unusual about that set up for you to conclude that it is actually a sale and not an investment?

A Ma'am because it is already stated also in my JA about the transactions and activities.

COURT Yes we are asking you now to clarify it, okay we are asking you to clarify it?

A Alright, based on my (interrupted)

COURT Kasi parang ang sinasabi mo sa judicial affidavit mo based on the separate ano, e automatic it is a sale, okay but why? How?

A No Ma'am, what I am stating in my JA is that the RHC is set up in such a way that it made it appear that this is just an investment activity that actually in reality or in our appreciation this is ah, RHC is actually a dealer (interrupted)

COURT Kaya nga that is the question how did RHC become a dealer, how was it a sale?

A Okay because Maám when RHC invest or acquire the shares of stock of RI, the Rappler, Inc., it is actually sold or resold or in their forms it is issued to the investment, to the foreign investors through the use of the terms PDR but actually the PDRs and the shares from the Rappler, Inc. is actually almost the same (interrupted)

COURT Kaya nga so what you are saying is that under no circumstance can this be done by any other company, any other holding company because if they do it, it will be considered as a sale which makes them liable for vat now?

A Yes Maám.

COURT So you are saying it is unusual for a holding company to buy shares from its subsidiaries and then subsequently issue PDRs?

A Yes Maam if that's the case.

COURT In all instances?

A Yes Maám they will be also allow exception if the company is, if the company can be invested by foreign entities but in this case Maám, that is the reason why the BIR (interrupted)

COURT What do you mean? No we are not talking about foreign, local we are just talking about the transaction, okay?

A Máam because I want to clarify that
(interrupted)

COURT Even if they sell it to local, they sell it to foreign, does it make the transaction different?

A Yes Maám because,

COURT If they sell to a foreigner, it is a sale? If they sell to a local, it is not a sale, is that what you are saying?

A Yes Maam.

COURT Why?

A Because RHC or the Rappler, Inc. cannot sell or cannot gather investment from foreign individuals because as far as I can remember they are prohibited since they are considered to be a media company, they are prohibited to
(interrupted)

COURT No we are not talking about that, I am just talking about the characterization of the transaction.

A Yes Maám so that is the reason why the BIR (interrupted)

COURT Why does it change into a sale if it is a foreign entity that they deal with?

A Because normally this transaction is acceptable if the one that will invest or the one that will be facilitated by the holding companies only through local or

gathering of capitalization through local investment but since the funds or the proceeds coming from this issuance of the PDR and shares of stock is actually a foreign funds so for us (interrupted)

COURT So that changes the transaction to a sale?

A Yes Maám it changes the transaction to sale it characterized that this RHC is only set up in order to facilitate that.

COURT Okay so just let it stay on record x x x."

5.16. The Plaintiffs reliance on the SEC Decision is erroneous. It should be noted that Rappler, Inc. and RHC timely appealed the SEC Decision to the Court of Appeals. On 26 July 2018, the Court of Appeals rendered the CA Decision stating that the issuance of PDRs by RHC is not illegal *per se*.¹²⁸ The Court of Appeals also held that there was nothing illegal or irregular in the PDRs issued to NBM, which is the transaction subject of this Criminal Case:

"The SEC does not dispute that the issuance of PDRs is not illegal *per se*. As noted by petitioners, other corporations like ABS-CBN, GMA and Globe have issued PDRs in the past and the same were allowed by the SEC. Further, the SEC also reviewed the NBM PDR and found nothing illegal or irregular in its terms."¹²⁹

5.17. The NBM PDRs are valid. Both the SEC and the Court of Appeals have recognized that there is nothing illegal or irregular as to its terms.¹³⁰

5.18. Finally, the Plaintiff also failed to establish that RHC realized taxable gain from the PDR issuance. For income to be taxable, it must be realized.¹³¹ Income is realized when the sale proceeds exceed

¹²⁸ Records Vol. 15, Exhibit "30", "30-1", "30-2", Decision of the Court of Appeals promulgated on 26 July 2018 in the case entitled "Rappler, Inc. and Rappler Holdings Corporation v. Securities and Exchange Commission Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017 [CA Decision].

¹²⁹ Records Vol. 15, Exhibit "30", CA Decision, p. 68.

¹³⁰ Records Vol. 15, Exhibit, "31", CA Resolution, p. 24.

¹³¹ Chamber of Real Estate and Builders' Associations, Inc. v. Romulo, G.R. No. 160756, 614 SCRA 605, 9 March 2010.

the costs of assets sold and related expenses. To be clear, RHC issued the PDRs to raise funds consistent with its registered purpose.

5.19. The Plaintiff has failed to establish that RHC received any “sales receipts” from any sale of the PDRs that would give rise to a taxable event. The Revenue Officers involved were not competent to say that RHC received taxable income as they themselves admitted that they did not conduct an actual physical audit of RHC’s books of accounts.

5.20. There is certainly no evidence to conclude that RHC can be classified as a dealer in security. The failure of the Plaintiff to establish that RHC is a dealer in security is fatal to its claim that RHC has any obligation to pay VAT. The existence of the second and third elements of Section 255 is dependent on the existence of the first element.

5.21. In fact, the Court of Tax Appeals (CTA) has acquitted accused in the following criminal cases:

5.21.1. In *People v. Dimson*,¹³² the CTA *En Banc* stressed that there can be no willful failure to pay a tax if there is no requirement to pay the same:

“Since the corporate taxpayer, *i.e.*, DMI, cannot be treated as one required to pay tax as there is no valid assessment to speak of, the first element of the crime charged is not present, and there is no valid assessment to speak of, **the first element of the crime charged is not present**, and there is no basis to sustain the charges against the accused Bienvenido S. Dimson. As such, **it becomes unnecessary to discuss the existence of the second and third elements of the crime charged.**”¹³³

5.21.2. In *People v. Coronel*¹³⁴ a CTA acting in Division, held that the requirement to pay any tax under the Tax Code arises from either of two (2) specific instances: (1) upon being required by the said law to pay a particular tax, simultaneous with the filing of the pertinent tax return; or, (2) upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay

¹³² C.T.A. EB Crim. Case No. 044, 9 July 2019.

¹³³ *Ibid*; Emphasis and underscoring supplied.

¹³⁴ C.T.A. Crim. Case Nos. O-585 & O-586, 8 October 2019.

the assessed tax within a specific period as set forth in the said tax assessment. In said case, the CTA acquitted the accused and adjudged that the BIR failed to inform the accused of the tax assessments issued against him. The CTA ruled that:

“Considering that the first element of the offense charged, i.e., the person is required to pay a tax, is not present, accused deserves to be exonerated for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Court finds it unnecessary and futile to discuss the existence of the second and third elements of the offense charged as the same are dependent on the first element, the existence of which was not established by the prosecution by required quantum of proof.”¹³⁵

5.21.3. In *People v. Matanguihan*,¹³⁶ the CTA acquitted an accused from the charged tax evasion upon prosecution’s failure to establish receipt of assessment notices. The CTA held that when a tax assessment is issued by the BIR demanding from a taxpayer the payment of the assessed deficiency tax within a specific period, the legal obligation to pay the assessed tax arises only upon notice and demand. In said case, the CTA ruled it unnecessary and futile to “discuss the existence of the second and third elements of the offense charge as the same are dependent on the first element, the existence of which was not established by the prosecution by the required quantum of proof.”

5.22. Given the foregoing, it is clear that when first element of Section 255 is not present, it becomes unnecessary to discuss the second and the third elements of Section 255.

5.23. **A discussion of the second element is unnecessary** since RHC was under no obligation to pay or supply information in its VAT Return in relation to the PDR Transactions for the second quarter of taxable year 2015. Since there was no sale of PDRs or any securities, there are no sales receipts that will give rise to the taxable liability.

¹³⁵ *Ibid*; Emphasis and underscoring supplied.

¹³⁶ C.T.A. Crim. Case No. A-5 (Criminal Case No. 01-194392), 7 March 2019.

5.24. A discussion of the third element is also unnecessary. RHC cannot be said to have “willfully failed to pay the tax or failed to supply correct information in return” since there is no taxable event that would give rise to an obligation on the part of RHC to pay or supply such information in its second quarter VAT Return. Moreover, in order to establish the third element, the law requires there to be positive proof that the offender is aware or knows the existence of an obligation to pay a tax liability but voluntarily and intentionally failed to pay it.

5.25. In *People v. Mahusay*,¹³⁷ the CTA ruled that the crime of failure to pay tax under Section 255 is defined by the element of “willfulness” of not paying the tax, which in turn, requires the showing of “knowledge” and “voluntariness”. The offender should be shown to be aware or knows the existence of an obligation to pay a tax liability but voluntarily and intentionally failed to pay it.

5.26. In *People v. Judy Anne Santos*,¹³⁸ the accused was acquitted on the charge of Section 255 due to the failure to establish willfulness. The CTA held:

“Citing Black’s Law Dictionary, the term ‘willful’ is defined as voluntary and intentional. And in Merten’s Law of Federal Income Taxation, ‘willful’ in tax crimes statutes is defined as voluntary, intentional violation of a known legal duty.

Applying the foregoing in the case at bench, **the element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts.”**

5.27. In this case, the only evidence provided by the Prosecution on alleged “willfulness” were the testimonies of Mr. Salles and Ms. Quilantang where they stated that “[i]t is our position that accused RHC could not have been unaware and/or ought to have been aware of the tax consequence of its business strategy xxx”¹³⁹ and “[i]t was our position that by making this conscious decision, accused RHC could not have been unaware

¹³⁷ People of the Philippines v. Mahusay, CTA Crim. Case Nos. O-424 and O-426, 4 April 2019

¹³⁸ CTA Crim Case No. O-012, 16 January 2019.

¹³⁹ Records, Vol. 9, JA Salles, Question 65.

of the tax consequence of the resultant transactions and should have reported the same in its pertinent tax returns, which it failed to do".¹⁴⁰

5.28. Certainly, the testimony of Mr. Salles and Ms. Quilantang are insufficient to establish willfulness as these testimonies are based on speculation.

B. RHC IS NOT AND HAS NEVER BEEN ENGAGED IN BUSINESS AS A DEALER IN SECURITIES. THE PDR TRANSACTION IS A LEGITIMATE INVESTMENT/ CAPITAL RAISING TRANSACTION. THE PLAINTIFF'S ACCUSATION THAT RHC ISSUED AND SOLD SECURITIES AND GAINED "SALES RECEIPTS" IS MALICIOUS, BASELESS AND ERRONEOUS.

5.29. The evidence presented by the Accused proves that RHC is not and has never engaged in business as a dealer in securities as defined in Section 22 (U) of the Tax Code.¹⁴¹

5.30. **First, RHC operates as a holding company it is not a merchant of stocks or securities.** From its corporate name alone, "Rappler Holdings Corporation" is a holding company.¹⁴² It has never represented itself to be a buyer and seller of securities. The BIR Certificate of Registration of RHC, which was approved by the BIR itself states that it is a holding company.¹⁴³ From the date of its incorporation until the filing of the Criminal complaint, the BIR has not challenged RHC's tax type registration. RHC's registration and primary purpose¹⁴⁴ with the SEC also reflects that it is a holding company and the subsequent reports to the SEC, namely its General Information Sheets¹⁴⁵ and Financial Statements¹⁴⁶ all show that RHC

¹⁴⁰ Records, Vol. 9, Quilantang Testimony, Question 35.

¹⁴¹ Tax Code, Section 22(U) defines term 'dealer in securities' means (1) a merchant of stocks or securities, whether an individual, partnership or corporation, (2) with an established place of business, (3) regularly engaged in the purchase of securities and the resale thereof to customers; that is, one who, as a merchant, buys securities and re-sells them to customers (4) with a view to the gains and profits that may be derived therefrom

¹⁴² Records Vol. 12, JA of Fel Dalafu, p. 4; Records Vol. 15, Exhibit "1" RHC's Certificate of Incorporation dated 12 December 2014 with attached Articles of Incorporation.

¹⁴³ Records Vol. 12, JA of Fel Dalafu, p. 7; Records Vol. 15, Exhibit "3", RHC's Certificate of Registration (BIR Form No. 2303) issued on 9 January 2015.

¹⁴⁴ Records Vol. 12, JA of Fel Dalafu, pp. 5-6; Records Vol. 15, Exhibit "1-1" Primary Purpose, Second Section of the Articles of Incorporation.

¹⁴⁵ Records Vol. 12, JA of Fel Dalafu, pp. 14-17; Records Vol. 15, Exhibits "6", "7", "8", and "9", General Information Sheets of RHC for years 2015, 2016, 2017 and 2018.

¹⁴⁶ Records Vol. 12, JA of Fel Dalafu, pp. 19-21; Records Vol. 15, Exhibits "16" and "16-1", RHC Separate Financial Statements - 31 December 2015 and 2014 and page 8 thereof on Assets.

has only operated as a holding company. RHC's local business permits do not show that it has represented itself to be a buyer and seller of securities.¹⁴⁷

5.31. **Second, RHC does not have an "established place of business" as a dealer in securities.** RHC's place of business is in Pasig City.¹⁴⁸ From the date of its incorporation up to the present, there is nothing in RHC's office premises that would show that it has presented itself to have an established place of business meant for the business of buying and selling of securities.

5.32. **Third, there is no evidence that there was any "purchase of securities".** RHC subscribed to Rappler, Inc.'s common shares. All of the underlying shares are **original issuances and subscriptions** of RHC in Rappler Inc.¹⁴⁹ RHC did not purchase shares from Rappler Inc. Under the Tax Code, subscription and purchase of shares are treated differently. The Tax Code imposes a different type of DST for subscription¹⁵⁰ and a different type of DST on transactions involving purchase of shares.¹⁵¹

¹⁴⁷ Records Vol. 12, JA of Fel Dalafu, pp. 8-9; Records Vol. 15, Exhibit "4", "4-1", Mayor's Permit Number Nos. IN6 15-0033; Records Vol. 6, Exhibit "5", "5-1", Mayor's Permit Number Nos. IN6 18-0231 issued by the Business Permit and License Office of Pasig City.

¹⁴⁸ *Ibid.*

¹⁴⁹ Records Vol. 15, Exhibit "25-3", Subscription Agreement between RHC and RI dated 2 October 2015; and Records Vol. 15, Exhibit "26-3", Subscription Agreement between RHC and RI dated 25 May 2015.

¹⁵⁰ Tax Code, Sec. 174 provides: Stamp Tax on Original Issue of Shares of Stock. - On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the par value, of such shares of stock: Provided, That in the case of the original issue of shares of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: provided, further, That in the case of stock dividends, on the actual value represented by each share.

¹⁵¹ Tax Code, Sec. 175 provides: Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligation, or Shares of Certificates of Stock. - On all sales, or agreements to sell, or memoranda of sale, or deliveries, or transfer of due-bills, certificates of obligation, or shares of certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of Seventy five centavos (P0.75) on each Two hundred pesos (P200) or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock; Provided, That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer: and Provided, further, That in the case of stock without par value the amount of documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock.

5.33. Furthermore, the Tax Code's use of the term "resale thereof" in Section 22(U) ¹⁵² indicates the congressional intent that the subject matter of such sale would be the same shares purchased. This interpretation is supported by the immediately preceding paragraph -- Section 22 (T) of the Tax Code,¹⁵³ where Congress defined "securities" to mean "shares of stock in a corporation and rights to subscribe for or to receive **such shares**". The evidence on record clearly show that there are two (2) different securities involved - the underlying shares and PDRs which are legally distinct from each other.

5.34. **Fourth, there was no "resale to customers" of securities that was made "with the view to the gains and profits"** - RHC issued PDRs. It did not sell any shares. The PDR Holders were not customers who purchased shares. They were subscribers to the PDRs.

5.35. RHC did not issue PDRs with the intention to receive any gain or profit. The PDR Transactions were legitimate investment/capital raising transactions made in good faith by a holding company to raise funds for its subsidiary.

5.36. As duly testified by Maria Ressa and Atty. Tiu, RHC and its shareholders performed the PDR transactions because they wanted to expand Rappler Inc. globally. RHC was not created to perpetuate any fraud or to violate any law or the constitution. It was not formed to sell or trade securities nor to evade the payment of any taxes. Maria Ressa explained that RHC was formed because the ideas behind the *Rappler* brand were cutting-edge, not just in the Philippines but globally. The incorporators of RHC wanted to take these ideas and compete in a regional and global landscape and to legally raise funds for this expansion. ¹⁵⁴

¹⁵² Tax Code, Section 22 (U) provides: "The term '*dealer in securities*' means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and resale thereof to customers; that is, one who, as a merchant, buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom."

¹⁵³ Tax Code, Section 22 (T) provides: "The term '*securities*' means shares of stock in a corporation and rights to subscribe for or to receive such shares. The term includes bonds, debentures, notes or certificates, or other evidence or indebtedness, issued by any corporation, including those issued by a government or political subdivision thereof, with interest coupons or in registered form."

¹⁵⁴ Records Vol. 11, JA of Maria Ressa, p. 12; and Records Vol. 13, Amended JA of Atty. Tiu, p. 9.

5.37. Also, a close look into the agreements executed by RHC clearly show that the PDR Transactions were investment transactions and not a sale of Rappler Inc. shares.

5.38. The Accused presented the following documents: the *PDR Investment Agreement* dated 29 September 2015 of RHC with ON;¹⁵⁵ the *Subscription Agreements*¹⁵⁶ signed by the PDR Holders with RHC; the respective *PDR Instruments* executed between RHC and NBM and ON;¹⁵⁷ and the *Subscription Agreements* dated 25 May 2015¹⁵⁸ and 2 October 2015¹⁵⁹ between RHC and Rappler, Inc. Notably, in the *PDR Instruments* executed by RHC separately with each of the PDR Holders, the PDR Holders acknowledged that they are not a shareholder of Rappler, Inc. and that they do not have ownership, voting rights, or a right to receive dividends from the underlying Rappler, Inc. shares.

5.39. The PDRs are separate instruments from the Rappler, Inc. shares. PDRs are evidenced by PDR Certificate Nos. 001, 002, and 003 which are registered under the names of NBM and ON.¹⁶⁰ The underlying Rappler Inc. shares were put in the possession of an Escrow Agent¹⁶¹ as provided in the respective PDR Instruments executed between RHC and NBM/ON, in order to protect the PDR Holders.¹⁶² The Rappler, Inc. underlying shares remained to be owned and registered in the name of RHC as the issuer of the PDRs. The Rappler Inc. shares are in the name of RHC as evidenced by Stock Certificates Nos. 44, 46 and 47.¹⁶³

5.40. All the funds that RHC received from the PDR Holders were investments. These are not VATable sales. RHC used the funds as: (i) part of its subscription price for Rappler Inc. shares, not only for

¹⁵⁵ Records Vol. 15, Exhibit "17", PDR Investment Agreement executed among Omidyar Network, RHC, and RI dated 29 September 2015.

¹⁵⁶ Records Vol. 11, JA Maria Ressa; Records Vol. 12, JA Fel Dalafu; Records Vol. 15, Exhibits "18", "19", and "20", First and Second PDR Subscription Agreements executed between RHC and NBM dated 29 May 2015, and PDR Subscription Agreement executed between RHC and ON dated 2 October 2015.

¹⁵⁷ Records Vol. 15, Exhibits "21", "21-4", "22", and "22-4", Section 4.3 of the PDR Instruments issued by RHC.

¹⁵⁸ Records Vol. 15, Exhibit "26-3", Subscription Agreement between RHC and RI dated 25 May 2015.

¹⁵⁹ Records Vol. 15, Exhibit "25-3", Subscription Agreement between RHC and RI dated 2 October 2015.

¹⁶⁰ Records Vol. 15, PDR Certificate Nos. 001 and 002 issued to NBM, and PDR Certificate No. 003 issued to ON, marked as Exhibits "27" and "28", and "29", respectively.

¹⁶¹ Records Vol. 15, Exhibits "23" and "24", Certifications dated 15 January 2019, executed by Mr. Michael G. Acaban, for and on behalf of the Escrow Agent, GSE Law Firm.

¹⁶² Records Vol. 15, Exhibits "21", "21-3", "22", "22-3", See Section 4.2 of the PDR Instruments issued by RHC.

¹⁶³ Records Vol. 15, JA of Fel Dalafu, p. 29, p. 32.

the premium but also the additional paid-in capital; (ii) costs to be incurred in relation to the transaction such as DST; and (iii) the balance as advances/ special loan from the PDR Holders. The funds received from the PDR Transactions was reserved for a particular purpose and may even be returned given certain conditions.¹⁶⁴

5.41. RHC's Chief Financial Officer, Ms. Dalafu duly testified and presented evidence clearly proving that RHC invested the funds received from NBM in Rappler, Inc. less the taxes due.¹⁶⁵ Rappler, Inc. confirmed receipt of the funds as evidenced from Acknowledgment Receipts dated 25 May 2015 and 26 May 2015 issued by Rappler Inc. to RHC.¹⁶⁶ KPMG and/or R.G. Manabat & Co. also issued an Independent Report of Factual Findings of confirming that Rappler, Inc. received the amounts.¹⁶⁷ Ms. Dalafu also testified that the funds invested by ON were invested in Rappler, Inc. There is documentation that Rappler, Inc. received the funds.¹⁶⁸ There was a minimal amount retained by RHC in its account, which was set aside for a specific legitimate purpose.¹⁶⁹

5.42. All of the investments of RHC in Rappler, Inc. were used to expand Rappler Inc. Because of RHC's investments, Rappler, Inc. was able to increase its authorized capital stock. Based on the Certificate of Increase duly approved by the SEC, Rappler, Inc.'s original 3,000,000 shares was increased to 446,600,000 shares.¹⁷⁰

5.43. The Plaintiff however improperly depicts the PDR Transaction to be a scheme of tax evasion. The Prosecution presented the SEC Decision and the Verified Petition to show that the PDR Transaction is illegal.

¹⁶⁴ Records Vol. 12, JA of Fel Dalafu, pp. 44-45, p. 54.

¹⁶⁵ Records Vol. 12, JA Fel Dalafu, p. 44-45.

¹⁶⁶ Records Vol. 15, Exhibit "35", Rappler, Inc. Acknowledgment Receipt No. 040 dated 25 May 2015; Records Vol. 15, Exhibit "36", Rappler, Inc. Acknowledgment Receipt No. 041 dated 26 May 2015; Records Vol. 15, Exhibit "38", Bank Certification issued by RCBC dated 18 June 2015.

¹⁶⁷ Records Vol. 15, Exhibit "37", Report of Factual Findings by R.G. Manabat & Co. dated 10 June 2015.

¹⁶⁸ Records Vol. 15, Exhibit "39", Rappler, Inc. Acknowledgment Receipt No. 043 dated 2 October 2015.

¹⁶⁹ Records Vol. 12, JA of Fel Dalafu, p. 48.

¹⁷⁰ Records Vol. 15, Exhibit "15" and "15-1", RHC and a Subsidiary Consolidated Financial Statements- 31 December 2015 and 2014, filed with SEC on 13 May 2016; Records Vol. 15, Exhibit "41", "41-1", Certificate of Approval of Increase of Capital Stock of RI dated 14 July 2015 issued by the SEC, with Certificate of Increase of Capital Stock of Rappler Inc.; Records Vol. 15, Exhibit "42", "42-1", Certificate of Filing of Rappler Inc's Amended Articles of Incorporation dated 14 July 2015 with its Amended Articles of Incorporation.

5.44. The Plaintiff is incorrect in relying and presenting the SEC Decision in such way. The SEC Decision is **not a final and executory decision**. Rappler Inc. and RHC timely appealed the SEC Decision to the Court of Appeals. On 26 July 2018, the Court of Appeals rendered the CA Decision stating that the issuance of PDRs by RHC is not illegal *per se*.¹⁷¹ The Court of Appeals also upheld that there was nothing illegal or irregular in the PDRs issued NBM:

“The SEC does not dispute that the issuance of PDRs is not illegal *per se*. As noted by petitioners, other corporations like ABS-CBN, GMA and Globe have issued PDRs in the past and the same were allowed by the SEC. Further, the SEC also reviewed the NBM PDR and found nothing illegal or irregular in its terms.”¹⁷²

5.45. The Court Appeals also recognized that in a PDR Transaction, the issued PDRs do **not** make the PDR Holder a shareholder of Rappler Inc. for as long as the shares are not exercised by the issuer:¹⁷³

“A PDR is defined as a security which grants the holder the right to the delivery or sale of the underlying share, and to certain other rights including additional PDR or adjustments to the terms or upon the occurrence of certain events in respect of rights issues, capital reorganizations, offers and analogous events or the distribution of cash in the event of a cash dividend on the shares. PDRs are not evidences or statements nor certificates of a corporation. For as long as the PDRs are not exercised, the shares underlying the PDRs are and will continue to be registered in the name of, and owned by, and all rights pertaining to the shares shall be exercised by the issuer.

x x x

¹⁷¹ Records Vol. 15, Exhibit “30”, “30-1”, “30-2”, Decision of the Court of Appeals promulgated on 26 July 2018 in the case entitled “Rappler, Inc. and Rappler Holdings Corporation v. Securities and Exchange Commission Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017 [CA Decision].

¹⁷² Records Vol. 15, Exhibit “30”, CA Decision, p. 68.

¹⁷³ Records Vol. 15, Exhibit “30-1”, CA Decision, p. 46; Records Vol. 15, Exhibit “31”, Resolution of the Court of Appeals promulgated on 21 February 2019 in the case entitled “Rappler, Inc. and Rappler Holdings Corporation v. Securities and Exchange Commission Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017” docketed as C.A. G.R. SP No. 154292 [CA Resolution].

The subject of the present case is the 7,217,257 PDRs issued by RHC to Omidyar only. It is undisputed that the said PDRs do not make Omidyar a shareholder of Rappler.”¹⁷⁴

5.46. The Court of Appeals directed the SEC to conduct an evaluation of the legal effect of the supervening donation made by ON of all the 7,217,257 PDRs to the staff of Rappler Inc.¹⁷⁵ This remains pending to date. However, the result will have no legal consequence to this Criminal Cases. The Court of Appeals itself has already long recognized with finality that “the PDRs do not make a ON a shareholder of Rappler, Inc.”.

C. RHC DID NOT GENERATE ANY SALES RECEIPTS FROM ITS PDR TRANSACTION WITH NBM. THE MARK-UP THEORY ADVANCED BY THE PLAINTIFF IS MALICIOUS AND BASELESS. EVIDENCE SHOWS THAT RHC DECLARED AND PAID THE CORRECT TAXES IN ACCORDANCE WITH EXISTING PRECEDENT AND AS ADVISED BY PROFESSIONALS. THE VAT RETURN FILED BY RHC FOR THE SECOND QUARTER OF TAXABLE YEAR 2015 CONTAINED ACCURATE INFORMATION. THERE IS NO BASIS TO HOLD RHC CIVILLY LIABLE.

5.47. In the Information for this case, the Plaintiff stated that RHC received “sales receipts” and this was derived by computing the difference between the aggregate book value of the underlying stocks of said PDRs and the total consideration paid for the said PDRs (“Mark-Up Theory”).

5.48. However, this Mark-Up Theory advanced by the Plaintiff is baseless, erroneous and malicious conclusion that assumes that RHC performed acts as a dealer in securities. As fully set out above, RHC is not a dealer in securities.

5.49. It is also erroneous for the BIR to use the Mark-Up Theory because, as it assumes without basis, that their alleged computed Mark-Up should be classified as a realized gain. The proceeds from the

¹⁷⁴ Records Vol. 15, Exhibit “30”, CA Decision, p. 46.

¹⁷⁵ Records Vol. 15, Exhibit, “31”, CA Resolution, p. 24.

PDR Transactions are reserved for a purpose and may even be returned if certain conditions arise. RHC does not have a “freedom of choice” on its disposition. Hence, the alleged proceeds from the PDR Transactions cannot be considered as “realized gains” which can be classified as taxable income.

5.50. RHC used the funds raised from the PDR Holders to subscribe and invest in Rappler Inc. (*i.e.*, for their par value and premium) and the related transaction costs. RHC also has the obligation to use such funds in paying for taxes and costs if RHC eventually issues the shares to the PDR Holders, or even return the entire funds raised if RHC should fail to meet certain conditions under its agreement.¹⁷⁶

5.51. Records show that RHC hired several professionals to give advice on the taxes due from the PDR Transactions. One of these professionals was Atty. Tiu, who was presented as an expert witness during the trial of this case.¹⁷⁷

5.52. Atty. Tiu explained that for purposes of taxation in the Philippines, a PDR is considered a derivative security which is an original issuance of shares of stock and thus the only tax due would be DST as supported by existing precedent:

ATTY. TIU

A Ok I would like to comment that ah, in my 35 years of practice as a lawyer, the BIR has never issued an assessment saying that the issuance of a derivative security makes the issuer a dealer in security and if they have, I would know because the PDRs, most of the PDRs issued, are issued by publicly registered companies and public registered companies are required to disclose or file a disclosure with the Philippine Stock Exchange if there should be a material assessment by the BIR. So this is the first and very noble instance by the BIR for the issuer of a security becomes a dealer in security. I would like to take note that in Revenue Regulation No. 2, the mother of income tax regulations in Section 55 thereof, it says that the restrict of

¹⁷⁶ Records Vol. 12, JA of Fel Dalafu, p. 44, Question 159.

¹⁷⁷ Records, Vol. 13, Amended JA of Atty. Tiu, p. 9, Question 43 and 44.

subscription price by corporation for its capital stock upon original issuance shall not be priced to a taxable gain or deductible loss whether the issue price or subscription price is in excess or or lower than the par value or the issue value. In short, whenever there is an original issuance of shares of stock and in this case PDR, it will only give rise to a documentary stamp tax. There has never been an assessment saying that the issuer of the security becomes a dealer in securities.

COURT

And therefore subject to VAT?

ATTY. TIU

And therefore subject to VAT, in fact in a Clarificatory Revenue Memorandum Circular No. 13-96, the BIR clarify that only in the situation for the security was sold by dealer in security will the transaction basically trigger a VAT so I have here a copy of the Revenue Memorandum Circular No. 13-96 and the question that was being answered by the BIR, it says here Clarification of Issues Affecting Dealers in Securities. In question No. 6 it says, "are all transactions involving securities subject to VAT?" No. transactions of a transferor of who is not a dealer in securities under the following cases are exempt from VTA. Can I proceed to enumerate judicial sale, foreclosure by mortgage or a pledgee, isolated transactions, distribution of stock dividends, merger of position, exchange of convertible currency, trustee to any bank, trust company, insurance company, any corporation, broker's transaction and pre-incorporation subscription.

COURT

Excuse me, does Rappler Holdings fall under any of those enumerations, those exceptions?

ATTY. TIU

The exceptions here that is applicable would be isolated transaction.

COURT

Okay.

ATTY. TIU

Which is a term of art that define in the revenue, in the Revised, in the Securities Regulation Code under Section 10.1, it states there the following sale of security are exempt from registration with the Securities and Exchange Commission because any security that is sold to more than 19 persons is considered public issue and the SEC will basically require the issuer to go to the SEC for approval because it is now in public sale and one of the exception would be if it is an isolated transaction, meaning that the sale of security is not repeated is ah, within a year only a few transactions it is not really repeated that's the definition of isolated transaction which the Honorable Court can take judicial notice of by referring to Section 10.1 of the Securities Regulation Code.¹⁷⁸

5.53. Under Sec. 55 of Revenue Regulation No. 2 (the very first Income Tax Regulations), it is clear that the receipt of a subscription price by a corporation for its capital stock upon original issuance shall not give rise to a taxable gain or deductible loss whether the issue price is in excess of or lower than the par/issue value.¹⁷⁹ Atty. Tiu thus advised that a PDR is considered a derivative security which is an original issuance and thus the only tax due is **DST**¹⁸⁰ and not subject to VAT.

5.54. RMC No. 13-96 also clarifies that not all transactions involving securities are subject to VAT. Atty. Tiu testified (with reference to RMC No. 13-96) that **VAT will be triggered only in a situation where a security is sold by a dealer in securities**. Atty. Tiu explained that the issuance of PDRs will not make RHC a dealer in

¹⁷⁸ TSN dated 13 December 2022, pp. 28-31.

¹⁷⁹ TSN dated 13 December 2022, p. 29.

¹⁸⁰ Records, Vol. 13, Amended JA of Atty. Tiu, p. 12, 14.

securities and that there has never been an assessment where the issuer of a security becomes a dealer in securities and therefore subject to VAT. Isolated transactions (*i.e.* sale of securities to not more than 19 persons) or those which are not repeated within the year and involves only few transactions are exempt from VAT.¹⁸¹

5.55. Thus contrary to the BIR’s proposition, RHC duly paid all taxes that were due to the government in second quarter of taxable year 2015:

Return	Date Filed	Amount of DST Paid for the PDR Issuances
BIR Form No. 2000 ¹⁸²	4 June 2015	Php 12,260.77

5.56. All told, RHC’s Second Quarter VAT Return in Taxable Year 2015 contained accurate information. The PDR Transactions did not involve any sale of securities.¹⁸³ Thus, there is no basis to tax RHC for deficiency VAT.

II.

THERE IS NO EVIDENCE TO HOLD MARIA RESSA CRIMINALLY LIABLE FOR SECTION 255. MARIA RESSA, BEING PRESIDENT OF RHC, DOES NOT MAKE HER *IPSO FACTO* CRIMINALLY LIABLE.

5.57. Based on the *Information*, Maria Ressa was charged in this case because she is the President of RHC.

5.58. However, being a corporate of a corporation does not make one *ipso facto* criminally liable for an offense charged. In criminal law, it is basic that willfulness must be established as a positive act or a state of mind.¹⁸⁴ It cannot be inferred. The criminal act must be voluntarily and intentionally done.¹⁸⁵

¹⁸¹ TSN dated 13 December 2022, pp. 29-30.

¹⁸² Records Vol. 15, Exhibit “57”, Documentary Stamp Tax filed on 4 June 2015; Records Vol. 15, Exhibit “58” UnionBank Deposit Slip.

¹⁸³ Records Vol. 15, Exhibit “56”, RHC’s 2nd Quarter Value Added Tax (“VAT”) Return (BIR Form No. 2550-Q) for 2015.

¹⁸⁴ People v. Judy Anne Santos, CTA Criminal Case No. O-012, 16 January 2013.

¹⁸⁵ *Id.* See People of the Philippines vs. Eren O. Docena et al., CTA EB Crim No. 030, 4 January 2016.

5.59. Thus, in *Suarez v. People*,¹⁸⁶ the Supreme Court acquitted the Executive President of a corporation charged of violating the Tax Code. The Supreme Court held, that to be criminally liable for the acts of a corporation, there must be a showing that its officers actively participated in or had the power to prevent the wrongful act. In other words, the accused must be officer responsible for the violation.

5.60. Sections 253(d) and 256 of the Tax Code clearly requires proof of participation because both provisions use the words: “responsible” for the violation. Consequently, mere title as President is not sufficient to implicate a corporate officer.

5.61. Both Sections 254 and 255 of the Tax Code also requires “willfulness”. In the context of tax crime statutes, “willfulness” connotes a voluntary, intentional violation of a known legal duty.¹⁸⁷ It is deliberate intent on the part of the accused to evade or defeat the payment of taxes, constituting overt or affirmative acts showing an accompanying evil state of mind.¹⁸⁸

5.62. In this case, there is no basis to hold Maria Ressa criminally liable since there is no evidence to convict RHC for the crimes being charged. As exhaustively discussed and as supported by the evidence on record, the PDR Transactions do not make RHC a dealer in securities. RHC correctly paid the right taxes and its VAT Return for the second quarter of taxable year 2015, contained accurate information.

5.63. Moreover, the Plaintiff has failed to show, let alone prove, that Maria Ressa performed specific acts which constitutes the offenses for which she is being charged. There is no showing of “willfulness”- no suggestion that Maria Ressa deliberately evaded or defeated the payment of any taxes. There is also no evidence on the part of Maria Ressa that would show that she was responsible or had any participation in the filing of any inaccurate tax return of RHC.

5.64. Maria Ressa also explained during the trial of the case that she is not a tax evader. In fact, it is publicly known that she has been cited several times as one of the top paying taxpayers in the

¹⁸⁶ G.R. No. 253429, 6 October 2021.

¹⁸⁷ *People v. Santos*, C.T.A. Crim. Case No. O-246, 20 May 2015; and *People v. Kintanar*, C.T.A. Crim. Case No. O-030, 11 August 2010 *citing* *People v. Delos Angeles*, CTA Crim. Case No. O-027, 25 November 2009 *citing in turn* Mertens (Law of Federal Income Taxation) Chapter 47.05, page 28, Volume 13.

¹⁸⁸ *People v. Laxamana*, C.T.A. Crim. Case No. O-445, 17 January 2018.

Philippines¹⁸⁹ The evidence on record shows that Maria Ressa did not receive any profit from the PDR Transactions in her personal capacity. All the funds were invested by the PDR Holders to RHC and which were invested in Rappler Inc.

5.65. RHC was not created to perpetuate any fraud or to violate any law or the constitution. It was not formed to sell or trade securities nor to evade the payment of any taxes. Maria Ressa explained that RHC was formed because the ideas behind the *Rappler* brand were cutting-edge, not just in the Philippines but globally. The incorporators of RHC wanted to take these ideas and compete in a regional and global landscape and to legally raise funds for this expansion.¹⁹⁰

5.66. While Maria Ressa has worked for large international and domestic media organizations, Maria Ressa however explained during the trial that she did not have any personal experience or technical knowledge of PDRs.¹⁹¹

5.67. Thus as shown from the evidence on record, she and the members of RHC relied in good faith in their legal and tax experts who have given professional advice that PDR Transactions are legal and that there is precedent in the Philippines allowing such transactions in the past.

III.

**THIS CRIMINAL CASE SHOULD BE DISMISSED
BECAUSE THE DUE PROCESS RIGHTS OF THE
ACCUSED WERE VIOLATED.**

**A. THIS CRIMINAL CASE IS POLITICALLY
MOTIVATED. THE POWER TO TAX IS BEING
USED BY THE GOVERNMENT AS A POWER TO
DESTROY/HARM A CITIZEN TAXPAYER AND
AMOUNTS TO A PRIOR RESTRAINT TO THE
FREEDOM OF THE PRESS.**

5.68. The power of taxation has its inherent limitations. It must have a legitimate government objective, it must not be arbitrary, oppressive, excessive and confiscatory. In fact, the Supreme Court has

¹⁸⁹ Records Vol. 15, Exhibit "59", printout of the news article entitled "Celebrities, businessmen among top taxpayer".

¹⁹⁰ Records Vol. 11, JA of Maria Ressa, p. 12.

¹⁹¹ *Id.*

held that our internal revenue laws are **not political in nature**.¹⁹² Tax laws cannot be used by the government to destroy a taxpayer and most especially should not be used to violate a citizen's basic Constitutional Rights.

5.69. Article III, Section 4 of the 1987 Philippine Constitution provides that no law shall be passed abridging the freedom of speech, of expression or of the press.¹⁹³ The restriction and limitation of the press freedom need not be in the form of total suppression: even the restriction of circulation itself constitutes censorship.¹⁹⁴ Thus, in *Chavez v. Gonzales* the Supreme Court held:¹⁹⁵

“[F]reedom of the press is crucial and so inextricably woven into the right to free speech and free expression, that any attempt to restrict it must be met with an examination so critical that only a danger that is clear and present would be allowed to curtail it.

Indeed, we have not wavered in the duty to uphold this cherished freedom...When on its face, it is clear that a governmental act is nothing more than a naked means to prevent the free exercise of speech, it must be nullified.”

5.70. Thus, the Supreme Court has more than once sanctioned government acts which amount to a prior restraint to press freedom. The Supreme Court held in *Burgos v. Chief of Staff* that the padlocking or closure of broadcasting company to be a violation of press freedom.¹⁹⁶

“Such closure is in the nature of previous restraint or censorship abhorrent to the freedom of the press guaranteed under the fundamental law, and constitutes a virtual denial of petitioners' freedom to express themselves...This state of being is patently anathematic to a democratic framework where a free, alert and even militant press is essential for the political enlightenment and growth of the citizenry.”

¹⁹² Hilado v. the Collector of Internal Revenue, 53 O.G. 2471

¹⁹³ Const., Article III, Sec. 4.

¹⁹⁴ Grosjean v. American Press Co., 297 U.S. 233.

¹⁹⁵ G.R. No. 168338, 15 February 2008, 545 SCRA 441.

¹⁹⁶ G.R. No. L-64261, 26 December 1984, 133 SCRA 800.

5.71. Also, in *Eastern Broadcasting Corporation (Dyre) v. Dans*,¹⁹⁷ involving a petition filed by the Radio Station DYRE, which was summarily closed on grounds of national security, the Supreme Court issued the following guidelines, among others:

“(3) All forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause. The test for limitations on freedom of expression continues to be the clear and present danger rule — that words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the lawmaker has a right to prevent.

xxx

(6) The freedom to comment on public affairs is essential to the vitality of a representative democracy. In the 1918 case of *United States v. Bustos* (37 Phil. 731) this Court was already stressing that.

The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted.”¹⁹⁸

5.72. This Criminal Case was filed against RHC and Maria Ressa because of their connection with Rappler, Inc.

5.73. Rappler, Inc. is a digital newsgroup that continues to provide independent and fearless journalism in the Philippines.¹⁹⁹

¹⁹⁷ G.R. No. L- 59329, 19 July 1985, 137 SCRA 628.

¹⁹⁸ *Ibid.* Emphasis supplied.

¹⁹⁹ Records Vol. 15, Exhibit “105”, Rappler Online Article entitled “Duterte himself banned Rappler report from Malacañang coverage” dated 20 February 2018.

RHC is the parent and holding company of Rappler Inc.²⁰⁰ Accused Maria Ressa on the other hand is also a shareholder of Rappler, Inc.

5.74. It is of matter of public knowledge that in the early years of the Duterte Administration (approximately from 2016-2017) and until present, Rappler Inc. and Maria Ressa have been at the forefront of fearlessly reporting on human rights violations, questionable transaction of the said Administration²⁰¹ and information operations. It is also publicly known that Maria Ressa is a well reputable and globally renowned journalist²⁰² known to be defender of Press Freedom and Human Rights.²⁰³

5.75. In the SONA of 24 July 2017, Rappler was specially mentioned (along with media company ABS-CBN) by President Rodrigo Duterte and it was maliciously implied with impunity to the public that Rappler is an American-owned newspaper.²⁰⁴ About a week after the SONA, the SEC proceeded to investigate Rappler Inc. and RHC and from this investigation, the BIR took cognizance of the SEC's Decision which eventually led to the filing of these Criminal Complaints against RHC. Apart from this, Rappler, Inc. also received a *subpoena* which began other investigations. Worse, warrants of arrest were issued against Maria Ressa, where eight (8) out of the ten (10) were issued in just a span of three (3) months.

²⁰⁰ Records Vol. 12, Exhibits "1", "1-1", "2", "2-1", "3", "3-1", "4", "4-1", "5", and "5-1" JA Fel Dalafu, pp. 4-13; Records Vol. 15, Exhibits "6" to "9-2", General Information Sheets of Rappler Inc. for the period covered 31 July 2015, 12 August 2016 and 27 July 2018; Exhibit "14", Letter dated 23 February 2016 addressed to Mr. Noel A. Baladiang, Engagement Partner for RI, and sent by RI's Corporate Secretary, Atty. Jose Maria G. Hofileña, on the list of RI shareholders of record as of 31 December 2015; Exhibit "15", RHC and a Subsidiary Consolidated Financial Statements- 31 December 2015 and 2014, filed with SEC on 13 May 2016.

²⁰¹ Records Vol. 12, Exhibits "60"-"74", JA Fel Dalafu, pp. 78-89; Records Vol. 15, Exhibit "61", Inquirer Online Article entitled "Duterte, Rappler clash over fake news, press freedom" dated 18 January 2018; Records Vol. 15, Exhibit "70" ABS-CBN News Online Article entitled "Rappler reporter now banned from entire Malacañang Complex" dated 21 February 2018; Exhibit "71", Inquirer Online Article entitled "PSG chief won't apologize for 'unbecoming' remark to Rappler reporter" dated 21 February 2018; Exhibit "72", Inquirer Online Article entitled "Roque: Duterte felt 'betrayed' by Rappler reporter" dated 21 February 2018; Exhibit "73", CNN Philippines Online Article entitled "Pia Ranada's defense of Rappler 'fake news' offended Duterte-Roque" dated 22 February 2018; Exhibit "74", Rappler Article entitled "Duterte says he banned Rappler due to 'twisted' reporting" dated 2 March 2018; and Exhibit "67", Inquirer Online Article entitled "Int'l press groups: Charges against Ressa 'politically motivated'" dated 14 February 2019; Records Vol. 15, Exhibit "105", Rappler Online Article entitled "Duterte himself banned Rappler report from Malacañang coverage" dated 20 February 2018".

²⁰² Records Vol. 11, JA Maria Ressa, pp. 2-8.

²⁰³ Records Vol. 11, JA Maria Ressa, pp. 2-8.

²⁰⁴ Records Vol. 11, JA Maria Ressa, pp. 28-29.

5.76. It cannot be denied that this Criminal Case in itself constitutes a form of **prior restraint** to Rappler, Inc. and Maria Ressa's press freedom. By reason of this Criminal Case, the plan for Rappler, Inc. to expand globally has been suppressed because the government purposely targeted RHC and made it appear to be engaged in illegal activity. During the course of the investigations, the government also issued an unwritten policy preventing Rappler's reporters and Maria Ressa from physically attending press briefings in Malacañang. Over time, that evolved to private and public events attended by President Rodrigo Duterte, including campaign rallies for the May 2019 elections as well as his international trips.

5.77. Also, because of this Criminal Case, Maria Ressa's press freedom as a journalist was restrained because the government restricted her movement of travel outside the Philippines. Maria Ressa had to post bail in the total amount of Php 60,000.00.

5.78. Maria Ressa's ability to travel has also been restricted because she needs to seek permission from the courts every time she travels outside the Philippines. Maria Ressa is made to shoulder the corresponding travel fees, lawyers' fees and bond requirements just to secure these travel orders from the courts. Records will show that she has provided a cash bond of Php1,150,000.00 for her to be permitted to travel, where Php 1,000,000.00 remains to be deposited with this Honorable Court.²⁰⁵

5.79. The government's actions against Maria Ressa is **oppressive and excessive**. It must be emphasized that the basic amount of tax involved in this case only amounts to Php 294,258.58. And yet, Maria Ressa has been made to defray cash certainly more than the basic amount sought to be collected --- all for her to exercise her right to liberty, her right to travel, and to pursue and push for her advocacies as a world renowned journalist during the pendency of this case.

5.80. The Duterte Administration also issued personal threats against Maria Ressa as a journalist. On 8 July 2020, President Duterte attacked Maria Ressa personally on a nationwide address publicly broadcast on television and on social media, calling her a "fraud" and

²⁰⁵ This Honorable Court already issued an Order granting the withdrawal of Php150,000.00 of this amount that is posted under O.R. No. 6196078, 6196079 and 6196080. However, the Regional Trial Court is still processing the release.

saying that he is “compiling” information against her as shown from these online articles.²⁰⁶

5.81. Certainly, this Criminal Case should be dismissed as this is a form of prior restraint to press freedom and is an illegitimate means to destroy/harm RHC and Maria Ressa.

B. THE REVENUE OFFICERS DID NOT CONDUCT A FORMAL INVESTIGATION AND FAILED TO COMPLY WITH THE REQUIREMENTS UNDER REVENUE MEMORANDUM ORDER NOS. 27-2010 AND 24-08.

5.82. The Revenue Officers who instituted this Criminal Case are members of the NID. The NID is governed by Revenue Memorandum Order No. 027-10 (“RMO No. 27-10”) with *Subject: Re-invigorating the Run After Tax Evaders (RATE) Program and amending Certain Portions of RMO No. 24-2008* (“RMO No. 24-2008”).

5.83. The evidence on record however reveals that the Revenue Officers did not observe the procedures required under RMO Nos. 27-10 and 24-2008.

5.84. *First*, there was no formal investigation. Under RMO No. 27-10, the members of the NID are required to conduct an actual formal investigation which includes the examination of the taxpayer’s books of accounts, accounting records and third party records. It is only after this formal investigation that the Revenue Officers can forward the case to the legal division for appropriate action:

“C. Conduct of Investigation

“1. The formal investigation of a RATE case, including the examination of the taxpayer’s books of accounts, accounting records and third-party records through the issuance of LAs and/or access letters (if warranted), shall be commenced only after *prima facie* evidence of fraud or tax evasion has been established. In such investigations, the provisions of Section 235

²⁰⁶ Records Vol. 11, JA Maria Ressa, pp. 39-41 ; Records Vol. 15 Exhibit “106”, Rappler Online Article entitled “Duterte ‘compiling’ information vs Maria Ressa” dated 8 July 2020 and “106”, CNN Philippines Online Article entitled “Duterte threatens to expose journalist Ressa as a ‘fraud’” dated 8 July 2020; Records Vol. 15, Exhibit “61”, Inquirer Online Article entitled “Duterte, Rappler clash over fake news, press freedom” dated 18 January 2018.

(Preservation of Books of Accounts and Other Accounting Records) of the Tax Code shall be fully observed.

x x x

“D. Evaluation of RATE Cases

“1. Following the conclusion of the formal investigation, the NID/SID shall refer the RATE case, together with the complete set of supporting documents, to the National Office (NO) RATE Team/Legal Division, for evaluation and appropriate action.”

5.85. In this case, the Revenue Officers admit that they did not actually examine the books of accounts and records of RHC. There was no formal investigation conducted. The Revenue Officers Ed Al Renzi B. Salles and Editha V. Quilantang admitted during their cross-examination that they did not conduct an actual physical audit of RHC’s books of accounts despite this being required under the LOA:

WITNESSES	TESTIMONY
Ed Al Renzi B. Salles	TSN dated 23 February 2021, pages 46 to 47 reads: “Q: You did not conduct an actual and physical examination of RHC’s books in his office? A: Yes Ma’am. Q: You never went and conducted an inquiry into the book of accounts of RHC? A: Yes Ma’am. Q: Ms. Quilantang also did not go and conduct an actual audit? x x x A: As far as I know Ma’am, no we did not.

WITNESSES	TESTIMONY
	Q: Ms. Berba did not conduct? A: Yes Ma'am.
Editha V. Quilantang	TSN dated 23 November 2021, pages 28 to 30 reads: "ATTY. TAN: Q: And I am showing you your judicial affidavit specifically Question No. 4, as a group supervisor and as you mentioned here in Question 4, you are aware that you are required to conduct an actual audit of the books of accounts and records of taxpayers? WITNESS: A: Yes, ma'am. ATTY. TAN: Q. And when this criminal case was filed with the Department of Justice on March 8, 2018, you confirm that you did not yet conduct an audit on the books of accounts? WITNESS: A. No Ma'am ATTY. TAN: Q: You did not conduct? WITNESS: A. No Ma'am ATTY. TAN: Q: So you did not yet conduct the audit of their books of accounts and the accounting records of Rappler Holdings Corporation? WITNESS:

WITNESSES	TESTIMONY
	A. We requested documents from different agencies and that is part of the preliminary investigation ma'am. ATTY. TAN: Q: But the books of accounts, you did not? WITNESS: A. As for the ... ATTY. TAN: Q: It is a yes or no answer ma'am WITNESS: A. Yes, ma'am. "

5.86. RHC’s Chief Financial Officer, Ms. Fel Dalafu also testified that she never saw the BIR go to the office of RHC to conduct the actual audit. In fact, she stated that given the short timeframe between the sending of a Letter of Authority from the BIR and the actual date when it filed the Tax Criminal Cases shows that the BIR had no intention to audit RHC's books.²⁰⁷

5.87. Notably, under Section 269(d) of the Tax Code, the filing of a report or assessment on a taxpayer without the appropriate examination of the books of accounts amounts to a criminal offense.

5.88. Records only show that on 24 January 2018, and without waiting for the SEC Decision to become final and executory, the NID took cognizance of the SEC Decision and assigned the Revenue Officers to conduct a thorough evaluation on the tax compliance of Rappler Inc. and RHC. The NID required the Revenue Examiners to submit a report on their findings within (30) days to enable the office to issue the LOA in the event further investigation of the taxpayer is warranted.

5.89. However there was no thorough evaluation. The BIR served the LOA to RHC on 5 March 2022.²⁰⁸ On 8 March 2018, which is just three (3) days from the service of the LOA, the Revenue Officers

²⁰⁷ Records Vol. 12, JA Fel Dalafu, pp. 72-73.
²⁰⁸ Records Vol. 15, Exhibit "81". Letter of Authority No. eLA201600007403 dated 02 March 2018

proceeded to institute the criminal complaints against RHC and Maria Ressa with the DOJ.²⁰⁹

5.90. *Second*, there was no valid assessment as of the time the Criminal Information was filed in this Honorable Court of Tax Appeals. Under RMO No. 24-08, RATE Cases filed in the courts must be accompanied by an initial assessment:

“C. POLICIES

“1. In the prosecution of criminal cases for violation of internal revenue laws, the service of the Assessment Notice to the taxpayer is not a requirement as enunciated by the Supreme Court in the cases of *Ungab vs. Cusi* (G.R. No. L-41919-24 dated May 30, 1980) and *CIR vs. Pascor Realty & Development Corp., et al.* (G.R. No. 128315 dated June 29, 1999).

However, considering the provisions of Section 7 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the CTA, etc.) which provides that the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with and jointly determined in the proceedings before the CTA and that the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, no right to reserve the filing of such civil action separately from the criminal action will be recognized. **RATE cases filed with the Court of Tax Appeals (CTA) must, as much as possible, be accompanied by an initial assessment.”**

5.91. In this case, records show that the Criminal Information was filed on 14 November 2018. During this time, the civil aspect was still at the Notice of Informal Conference Stage and no assessment had been issued. The Plaintiff’s evidence show that it was only on 18 December 2018 that a PAN was issued against RHC.²¹⁰

²⁰⁹ Records Vol. 1, Exhibit “P”, Joint Complaint-Affidavit of Revenue Officers Rosanna F. Berba, Ed Al Renzi B. Salles and Editha V. Quilantang dated 8 March 2018; Records Vol. 11, Exhibit “A-81”, “A-81-1”, “A-81-2”, JA Maria Ressa, pp. 26-27.

²¹⁰ See Records, Vol. 10, Plaintiff’s FOE, Exhibit “T”, Notice of Informal Conference dated 12 November 2018; Exhibit “U”, Preliminary Assessment Notice dated 13 December 2018.

5.92. While it may be said that a prior assessment is not a prerequisite for a criminal prosecution for tax evasion, this rule however assumes that the facts giving rise to a criminal prosecution is well established. Certainly, in this case, the Plaintiff could not have sufficient evidence since it did not even conduct an audit of RHCs books of accounts. This clear indication that this case was filed for pure harassment.

5.93. *Third*, the LOA²¹¹ that was issued was not signed by the Deputy Commissioner of the Legal and Inspection Group ("DCIR-LIG"). Under RMO No. 27-10, all LAs issued for RATE cases shall be signed by the DCIR-LIG.

IV.

THE PLAINTIFF UNNECESSARILY SPLIT THIS CASE FROM THE CTA CASES RESULTING IN MULTIPLICITY OF SUITS. THE OFFENSE CHARGED IN THE INFORMATION SHOULD HAVE BEEN DISMISSED BECAUSE IT FORMS PART AND WAS IMPELLED UNDER AN ALLEGED SINGLE CRIMINAL MOTIVE THAT IS ALREADY BEING PROSECUTED BEFORE THE COURT OF TAX APPEALS, WHICH IS A SPECIALIZED COURT THAT HAS ALREADY TAKEN JURISDICTION OF OTHER CASES TO THE EXCLUSION OF THIS HONORABLE COURT.

5.94. This Honorable Court will note that the information in this case is intimately related to four (4) other criminal informations that were filed with the First Division of the Court of Tax Appeals (the CTA Cases)

5.95 The facts of this case are intimately related to the CTA Cases such that the DOJ itself in its Resolution had considered the

²¹¹ Records Vol. 15, Exhibit "81", Letter of Authority No. eLA201600007403 dated 02 March 2018; Records, Vol. 10, Plaintiff's FOE, Exhibit "N", Letter of Authority No. eLA201600007403 dated 02 March 2018.

transactional activities²¹² of RHC to form part of a **sequence** that constituted securities dealing **within a single tax year**.²¹³

5.96. Certainly, this Honorable Court should have dismissed this case.

5.97. *First*, public policy is firmly set against unnecessary multiplicity of suits. Undoubtedly, the re-litigation of the same issues merely burdens the courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases. As the Roman maxim goes, *Non bis in idem*.

5.98. *Second*, the theory of the BIR is that the PDR Transactions allegedly had two taxable consequences – income tax and value added tax (VAT). The income tax aspect was filed with the Court of Tax Appeals. The 2nd Quarter VAT aspect, was filed with the RTC. The rest of the VAT aspects, for the 3rd and 4th Quarter were filed with the Court of Tax Appeals. Certainly, this Honorable Court should not have separately heard an incident or matter that is pending before the Court of Tax Appeals. In *Balais v. Velasco*,²¹⁴ this Supreme Court declared: “[w]ell-settled is the principle that regular courts have no jurisdiction to hear and decide questions which **arise** and are **incidental** to the enforcement of decisions, orders or awards rendered in labor cases by appropriate officers and tribunals of the Department of Labor and Employment. To hold otherwise, is to sanction split jurisdiction which is obnoxious to the orderly administration of justice.”²¹⁵

5.99. *Third*, the Court of Tax Appeals is a specialized court. The Court of Tax Appeals was created under the constitutional power of Congress with the clear legislative policy was to divest ordinary tribunals of their jurisdiction over matters involving internal revenue

²¹² DOJ Resolution, p. 8, the DOJ held: “To advance the dealer status of respondent RHC, complainant BIR looks into the following transactional activities: respondent RHS’s initial purchase of 1,300,000 RI common shares in December 2014, followed by another of 110,917,181 on 25 May 2015; the subsequent issuance and sale on 9 May 9, 2015 of 264,601 PDRs followed by 11,764,117 more on July 29, 2015, all to NBM Rappler (hereinafter NBM PDRs); its August 28, 2015 purchase of 7,217,257 RI common shares, followed by the issuance of equivalent number of PDRs to Omidyar (ON PDRs) on October 2, 2015. In this regard, we agree that the foregoing transactional activities constituted ‘securities dealing’, and respondent RHC is deemed dealer in securities, and should be taxed accordingly on profits or gains earned from such transactions” (emphasis and underscoring supplied).

²¹³ DOJ Resolution, p. 9.

²¹⁴ See *Balais v. Velasco*, G.R. No. 118491, 31 January 1996, 252 SCRA 707; Also cited in *Air Services Cooperative v. the Court of Appeals*, G.R. No. 118693, 23 July 1998, 293 SCRA 101.

²¹⁵ Emphasis supplied.

taxes and duties.²¹⁶ Considering that there are four (4) CTA Cases (that have already been decided where Accused were acquitted) and which are intimately related to the information filed with this Honorable Court, this has created a risk that this court could render a decision or resolution that could contradict the findings of the specialized tax court. For instance, the CTA could make a finding that Accused RHC is not a dealer in securities. While, a regional trial court could conclude differently. It is basic that trial courts have no power to interfere on matters being tried by a court of concurrent or coordinate jurisdiction.

5.100. *Fourth*, the Court of Tax Appeals, the specialized court has already obtained jurisdiction over the four (4) CTA Cases. Consequently, the CTA acquired jurisdiction over matters incidental or intimately related to the said four (4) CTA Cases. The CTA's jurisdiction necessarily excludes the jurisdiction of all other courts.

5.101. *Finally*, it is basic that a person who commits a series of acts under a singular intent may only be indicted once. Thus, in the landmark case *People v. Sabbun*, the Supreme Court upheld the quashal of an information which sought to charge an accused for several illegal collections made on different dates. The Supreme Court found that the said illegal collections formed part of a single agreement relating to the filing of a claim for U.S. Veterans benefit. As the collections were agreed upon under one service, the Supreme Court found that the collections were impelled by the same criminal motive.²¹⁷

5.102. Thus, assuming *arguendo* that a crime was committed, the offense charged in this case should be considered to have been impelled by an alleged single criminal motive consistent with *People v. Sabbun*.

²¹⁶ The Secretary of Finance et al. v. Hon. Agana, G.R. No. L-36276, 17 January 1975, 62 SCRA 28.

²¹⁷ G.R. No. L-18510, 31 January 1964, 10 SCRA 156; The dispositive portion reads: "Without considering the other legal issues raised in the appeal. We hold that the offense charged is a continuing offense. The first collection of P600 made in 1949 is an integral part of the offense committed, and so are the collections thereafter up to September, 1957. The collections made on different dates, i.e., P600 in December 1949; P1,480 from January, 1950 to February, 1956; the amount of P170 from March, 1956 to September, 1957; are all part of the fees agreed upon in compensation for the service rendered in filing the claim, and collecting the pensions received by the offended party from time to time. The periodical collections form part of a single criminal offense of collecting a fee which is more than the prescribed amount fixed by the law. The collections were impelled by the same motive, that of collecting fees for services rendered, and all acts of collection were made under the same criminal impulse (*People vs. Lawas*, G.R. No. L-7618, June 30, 1955). Only one offense was, therefore, committed and since the last act of collection was made within the period of prescription, the offense has not prescribed as yet at the time of the filing of the information. The offense may not be considered divided into different acts, each act subject to prescription independently of the others."

5.103. As mentioned, the DOJ itself in its Resolution had considered the transactional activities²¹⁸ of RHC to form part of a **sequence** that constituted securities dealing **within a single tax year**.²¹⁹ Moreover, the tax liability, if any, all arose from the same PDR Transaction. Consequently, RHC should not have been charged separately for each taxable quarter for failure to report or supply an accurate return. RHC should have only been charged for one offense of Section 255.

5.104. Certainly, this Honorable Court should not have taken cognizance of this case because it forms part and was impelled under an alleged single criminal motive and from the same PDR Transaction that was prosecuted in the Court of Tax Appeals. The Plaintiff has unnecessarily split the information in this case resulting to multiplicity of suits and harassment to the Accused.

CLOSING STATEMENT

Since its establishment, to this very day, RHC has not evaded the payment of any tax obligations. RHC is not a tax evader. The allegations in the *Information* filed by the Plaintiff for this case is not only legally flawed but are also baseless, erroneous and malicious. As there is no basis to conclude that RHC is a dealer in securities, certainly, there is no basis to make RHC, or its President Maria Ressa, liable for evasion of Income Tax or VAT, or any failure to allege the same in a tax return. There is certainly no basis to hold RHC civilly liable for any deficiency taxes. The demands of justice and fair play behoove this Honorable Court to resolve to acquit the Accused and cause the dismissal of these Criminal Case.

Moreover, last 18 January 2023, a *Decision* was rendered by the Honorable First Division of the CTA in the cases entitled “*People of the Philippines vs. Rappler Holdings Corporation/Maria A. Ressa*”, docketed as Criminal Case Nos. O-679, O-680, O-681, and O-682 (the CTA Cases).

²¹⁸ DOJ Resolution, p. 8, the DOJ held: “To advance the dealer status of respondent RHC, complainant BIR looks into the following transactional activities: respondent RHS’s initial purchase of 1,300,000 RI common shares in December 2014, followed by another of 110,917,181 on 25 May 2015; the subsequent issuance and sale on 9 May 9, 2015 of 264,601 PDRs followed by 11,764,117 more on July 29, 2015, all to NBM Rappler (hereinafter NBM PDRs); its August 28, 2015 purchase of 7,217,257 RI common shares, followed by the issuance of equivalent number of PDRs to Omidyar (ON PDRs) on October 2, 2015. In this regard, we agree that the foregoing transactional activities constituted ‘securities dealing’, and respondent RHC is deemed dealer in securities, and should be taxed accordingly on profits or gains earned from such transactions” (emphasis and underscoring supplied).

²¹⁹ DOJ Resolution, p. 9.

A certified true copy of the *Decision* has been submitted to this Honorable Court where the dispositive portion of the *Decision* reads:

“WHEREFORE, in light of the foregoing considerations, the Court rules as follows:

1. In CTA Crim. Case Nos. 0-679, 0-680, 0-681 and 0-682, accused Rappler Holdings Corporation and Maria A. Ressa are **ACQUITTED**, for failure of the prosecution to prove their guilt beyond reasonable doubt;
2. No civil liability may be adjudged against the accused as the alleged unpaid tax obligations have not been factually and legally established and proven; and
3. The respective cash bail bonds of the accused for the said cases are likewise **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.”

As manifested by counsel, considering that the *Decision* of the CTA Cases involves the same parties, the same PDR Transaction and the same taxable year 2015 --- this Honorable Court may take judicial notice of the *Decision* pursuant to Under Section 1, Rule 129 of the Revised Rules of Evidence²²⁰ and consider the same in resolving this criminal case.

PRAYER

WHEREFORE, RAPPLER HOLDINGS CORPORATION and its President, **MARIA A. RESSA** respectfully pray that this Honorable Office issue a Decision:

²²⁰ RULES OF COURT, Rule 129, Sec. 1, Judicial notice, when mandatory. – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

1. **ACQUITTING** both Rappler Holdings Corporation and Maria A. Ressa from this case due to the failure of the prosecution to prove their guilt beyond reasonable doubt; and
2. Declare the **DISMISSAL** of any civil action relating to the VAT directed against RHC for lack of merit.

Other reliefs, just and equitable are likewise prayed for.

Taguig City for Pasig City, 09 August 2023.

ANGARA ABELLO CONCEPCION REGALA & CRUZ

Counsel for Rappler Holdings Corporation and Maria A. Ressa

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Second Avenue corner 30th Street

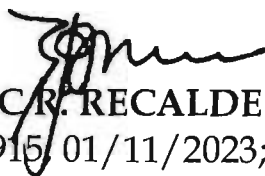
Crescent Park West, Bonifacio Global City

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By:



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MCLE Compliance No. VII-0004795; 11/23/21



JACQUELINE ANN A. TAN

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MCLE Compliance No.: VII-0011431; 02/24/22



PRINCESS REXILLE V. LIBOON

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REX WILBERT L. RIVERA

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IBP No. 249253; 01/06/2023; Tarlac

Roll No. 77646

MCLE Exemption No. VIII-BEP002562; 02/28/23



KEVIN JOHN B. LUMBRE

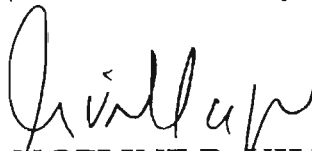
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Roll No. 77971

MCLE Compliance No. N/A

(Admitted in May 2022)



EVANGELINE R. VILLAJUAN

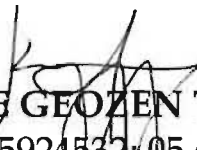
PTR No. A-5797301; 01/11/2023; Taguig City

IBP No. 249262; 01/06/2023; Quezon City

Roll No. 81474

MCLE Compliance No. N/A

(Admitted in May 2022)



KAYE GEOZEN T. EBUENGAN

PTR No. A-5924532; 05/16/2023; Taguig City

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(Admitted in May 2023)

Copy furnished by Registered and Electronic Mail:

SENIOR ASSISTANT STATE PROSECUTOR

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Senior Assistant State Prosecutor

BENEDICTO A. MALCONTENTO

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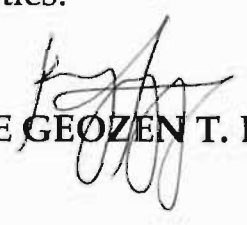
City Prosecutor for Branch 157

OFFICE OF THE CITY PROSECUTOR

Pasig City Hall, Pasig City 1600

**EXPLANATION FOR SERVICE BY REGISTERED MAIL AND
FILING AND SERVICE BY ELECTRONIC MAIL**

In compliance with Rule 13 of the Rules of Court, counsel respectfully manifests that the foregoing **MEMORANDUM** will be served by registered and filed and served by electronic mail, consistent with the mutual practice between the parties.


KAYE GEOZEN T. EBUENGAN

REPUBLIC OF THE PHILIPPINES)
TAGUIG CITY, METRO MANILA) S.S.

AFFIDAVIT OF SERVICE

I, **HAROLD B. SANTOS**, as Messenger and Clerk of the law firm **ANGARA ABELLO CONCEPCION REGALA & CRUZ**, with office address at the 22nd Floor, **ACCRALAW Tower**, Second Avenue corner 30th Street, Crescent Park West, Bonifacio Global City, 1635 Taguig, Metro Manila, after being duly sworn, depose and say that:

On 9 August 2023, I served copies **MEMORANDUM** in the case entitled "**PEOPLE OF THE PHILIPPINES v. RAPPLER HOLDINGS CORPORATION / MARIA A. RESSA**," docketed as **R-PSG-18-02983-CR** (NPS Docket No. **XVI-INV-18C-00052**) For: Violation of Section 255 of the NIRC of 1997, as amended in the **REGIONAL TRIAL COURT**, National Capital Judicial Region, Branch 157, Pasig City, pursuant to Section 11 of Rule 13 of the Rules of Court and A.M. No. 12-8-8-SC as follows:

By Registered mail to:

SENIOR ASSISTANT STATE PROSECUTOR
ZENEMAR J.L. MACHACON-CAPARROS
zlmc.doj@gmail.com

Senior Assistant State Prosecutor

RF 749 985 812 22

BENEDICTO A. MALCONTENTO

Prosecutor General

DEPARTMENT OF JUSTICE

Padre Faura, Manila 1000

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ATTY. GRACE E. UNTALAN

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ATTY. ROBERTO G. DAMIAN JR.

roberto.damian@bir.gov.ph

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Counsels for Complainants Rosanna F. Berba,

Ed Al Renzi B. Salles, and Editha V. Quilantang

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Bureau of Internal Revenue

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National Office Bldg

Diliman, Quezon City 1101

RF 749 985 826 22

ATTY. NIKO R. BATINGANA

nikorb3@gmail.com

City Prosecutor for Branch 157

OFFICE OF THE CITY PROSECUTOR

Pasig City Hall, Pasig City 1600

RF 749 985 830 22

by depositing a copy thereof on 9 August 2023 in the post office at Pasig in sealed envelope plainly addressed to them, with postage fully prepaid, as evidenced by Registry Receipt Nos. _____ and _____ attached hereto after the names of the addressee/s, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.

9 August 2023, Taguig City, Philippines.

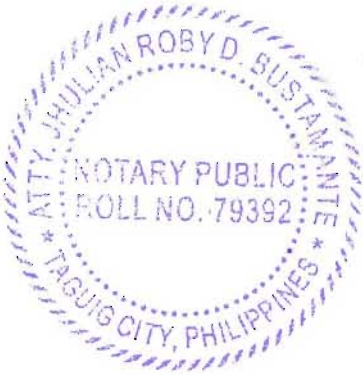


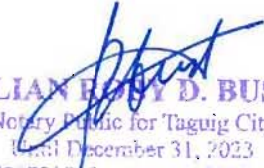
HAROLD B. SANTOS
Affiant

SUBSCRIBED AND SWORN to before me this 9th day of August 2023 at Taguig City Philippines, affiant who is personally known to me, exhibiting to me the following:

Affiant	Competent Evidence of Identity		
		Type of ID	ID Number and Expiry Date (if applicable)
HAROLD B. SANTOS	1	SSS ID	No. 33-1709712-7
	2	Voter's ID	VIN: 7605-0430A-F1574HBS10001-4 Precint No.: 0430A

Doc. No. 114;
Page No. 24;
Book No. 112;
Series of 2023.




ATTY. JHULIAN ROBY D. BUSTAMANTE
Notary Public for Taguig City
Until December 31, 2023
PTR No. A-5797299, January 11, 2023 – Taguig City
IRP No. 21734, May 17, 2022 – Pampanga
Accreditation / License No. 26 (2022-2023)
J-01 NL, 99792
Atty. Abella Concepcion Regain & Cruz Law Offices
22F ACCRALAW Tower
Luz Avenue corner 30th St., Crescent Park West,
Wentworth Global City, 1635 Taguig, Metro Manila
MCLE Compliance No. NA (Admitted in May 2022)

ORIGINAL

REPUBLIC OF THE PHILIPPINES)
TAGUIG CITY, METRO MANILA) S.S.

AFFIDAVIT OF ELECTRONIC SERVICE

I, **KAYE GEOZEN T. EBUENGAN**, a lawyer of the law firm **ANGARA ABELLO CONCEPCION REGALA & CRUZ**, with office address at the 22nd Floor, **ACCRALAW Tower**, Second Avenue corner 30th Street, Crescent Park West, Bonifacio Global City, 1635 Taguig, Metro Manila, after being duly sworn, depose and say that:

On 9 August 2023, I served copies of **MEMORANDUM** in the case entitled "**PEOPLE OF THE PHILIPPINES v. RAPPLER HOLDINGS CORPORATION / MARIA A. RESSA**" docketed as **R-PSG-18-02983-CR** (NPS Docket No. **XVI-INV-18C-00052**) in the **REGIONAL TRIAL COURT, Branch 157, Pasig City**, pursuant to Section 11 of Rule 13 of the Rules of Court and A.M. No. 12-8-8-SC as follow:

By Electronic Mail To:

REGIONAL TRIAL COURT
National Capital Judicial Region
Branch 157, Pasig City
rtc2pas157@judiciary.gov.ph

SENIOR ASSISTANT STATE PROSECUTOR
ZENEMAR J.L. MACHACON-CAPARROS
zlmc.doj@gmail.com
Senior Assistant State Prosecutor

BENEDICTO A. MALCONTENTO
Prosecutor General
DEPARTMENT OF JUSTICE
Padre Faura, Manila 1000

ATTY. CATHERINE ROSE R. TORTOLES
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ATTY. GRACE E. UNTALAN

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ATTY. ROBERTO G. DAMIAN JR.

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*Counsels for Complainants Rosanna F. Berba,
Ed Al Renzi B. Salles, and Editha V. Quilantang*

PROSECUTION DIVISION

Bureau of Internal Revenue

Room 704, 7th Floor,

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Diliman, Quezon City

ATTY. NIKO R. BATINGANA

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City Prosecutor for Branch 157

OFFICE OF THE CITY PROSECUTOR

Pasig City Hall, Pasig City

as evidenced by the paper copies of the pleadings transmitted.

9 August 2023, Taguig City, Philippines.

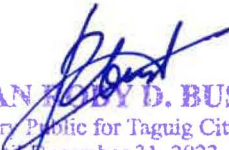

KAYE GEOZEN T. EBUENGAN
Affiant

SUBSCRIBED AND SWORN to before me this 9th day of August 2023 at Taguig City Philippines, affiant who is personally known to me, exhibiting to me the following:

Affiant	Competent Evidence of Identity		
		Type of ID	ID Number and Expiry Date
KAYE GEOZEN T. EBUENGAN	1	PRC ID	0183821 valid until 12/01/2023
	2	Driver's License	C06-23-000831 will expire on 12/01/2027

Doc. No. 115 ;
Page No. 24 ;
Book No. 11 ;
Series of 2023.




ATTY. JULIAN ROBY D. BUSTAMANTE
Notary Public for Taguig City
Until December 31, 2023
P.E.R. No. A-5792249; January 11, 2023 – Taguig City
B.P. No. 217705; May 27, 2022 – Parapanga
Apprenticeship Registration No. 96 (2022-2023)
Roll No. 79392
Angela Abella Concepcion Regula & Cruz Law Offices
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MCLE Compliance No. NA (Admitted in May 2022)