

Exhibit 4

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**
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20 Yuga Labs, Inc.,
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22 Plaintiff,
23 v.
24 Ryder Ripps, Jeremy Cahen, Does 1-10,
25
26 Defendants.
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Case No. 2:22-cv-04355-JFW-JEM
DISCOVERY MATTER
SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MR. RIPPS AND MR. CAHEN'S
MOTION TO COMPEL

Hearing: Jan. 24, 2023, at 10:00 p.m.

1 **I. INTRODUCTION**

2 Yuga has twisted the Court’s December 16, 2022, order to justify its refusal to
3 cooperate in discovery. Contrary to Yuga’s assertion, Judge Walter *did not* hold that
4 “the *Rogers* test does not apply in this case.” Dkt. No. 69-1 at 30. Rather, Judge
5 Walter issued a decision on a motion at the pleadings stage in which he was required
6 to assume that Yuga’s allegations were true, to determine whether the Complaint
7 alleged plausible claims for relief. Nothing about Judge Walter’s decision limits the
8 scope of this case or the scope of discovery. In fact, Judge Walter confirmed that
9 Yuga’s “pretextual expressive work” response to Defendants’ First Amendment
10 defenses is a key issue of dispute. *See* Dkt. No. 62 at 7. Defendants seek discovery
11 that would refute Yuga’s pretext theory.

12 Further, contrary to Yuga’s assertions, *this is not just a trademark case.*
13 Defendants Ryder Ripps and Jeremy Cahen have counterclaims alleging actions under
14 copyright law, the Declaratory Judgement Act, and California state law. Defendants
15 have alleged a claim for intentional infliction of emotional distress based on Yuga’s
16 pattern of harassing behavior. Defendants have alleged that Yuga took these actions
17 to punish and silence the Defendants for creating artworks criticizing Yuga’s use of
18 neo-Nazi messages and imagery. Defendants have also requested a declaration of no
19 defamation based on Yuga’s public accusations that Defendants used their artworks in
20 a way that was “slanderous,” to lie about Yuga’s use of racist imagery. The scope of
21 discovery is commensurate with these counterclaims and, thus, requires Yuga to
22 produce information under Interrogatory No. 14 and Document Requests Nos. 5, 7-9,
23 32-34, 39, 51, and 53.

24 **II. ARGUMENT**

25 **A. Defendants Are Entitled to Discovery on Yuga’s Pretext Theory**

26 Judge Walter made clear in his December 19, 2022, order that Yuga’s
27 trademark infringement claims depend on showing that Defendants engaged in First
28 Amendment activity only as a pretext, as Yuga has alleged. Dkt. No. 62 at 7 (holding

1 that use of a mark “would not be artistically relevant for a pretextual expressive work
2 meant only to disguise a business profiting from another’s trademark, which is
3 precisely what Plaintiff has *alleged* Defendants are doing in this case” (emphasis
4 added)). Thus, if Yuga’s pretext theory is incorrect as a factual matter, its trademark
5 claims will not prevail at trial.

6 Courts in this jurisdiction have recognized that a pretext theory can be refuted
7 by showing that the speech at issue is true. *See, e.g., Daniels v. G4s Secure Solutions*
8 *USA, Inc.*, 8:20-cv-00283-JGB-JDEx, 2021 WL 3742039, at *12-13 (C.D. Cal. Jan. 4,
9 202) (granting discovery on whether reasons for not hiring were truthful or
10 pretextual). And this is exactly what Defendants intend to do with Interrogatory No.
11 14 and Document Requests Nos. 5, 7-9, 32-34, 39, 51, and 53. Defendants seek
12 discovery that would confirm the truth of their criticism and disprove that their speech
13 activity is pretextual in any way. This discovery would effectively foreclose Yuga’s
14 trademark infringement theory and is therefore well within the scope of discovery set
15 forth in Federal Rule 26.

16 **B. Defendants Seek Discovery on Yuga’s Motive and Intent**

17 Defendants have asserted a counterclaim for intentional infliction of emotional
18 distress (“IIED”) based on Yuga’s systematic retaliation and harassment of
19 Defendants over the course of many months. Defendants have alleged that Yuga’s
20 pattern of misconduct includes using intimidation tactics to threaten the well-being of
21 Defendants and their families, explicit death threats by a Yuga employee, lying to the
22 media and on public platforms to make Defendants appear to be racist or criminal, and
23 submitting fraudulent DMCA notices to purge the internet of Defendants’ artworks.
24 Yuga has engaged in this outrageous behavior to silence Defendants’ artistic criticism
25 regarding Yuga’s use of neo-Nazi messages and imagery. Defendants seek to compel
26 discovery that would confirm Yuga’s motivation and intent behind its pattern of
27 harassing and threatening behavior.

1 This court has previously held that an IIED claim permits parties to take
2 discovery into the plaintiff’s theory of motive. *Burke v. Basil*, No. 82-CV-0635-JVS-
3 JDEx, 2020 WL 7872965, at *2 (C.D. Cal. Nov. 16, 2020). In *Burke*, the plaintiff
4 alleged that the defendant inflicted emotional distress by making “false accusations of
5 sexual abuse to silence Plaintiff’s complaints [about defendant’s sexually
6 inappropriate conduct].” *Id.* The court granted discovery into the defendant’s own
7 sexual misconduct because the truth of the defendant’s misconduct would prove the
8 plaintiff’s motivation theory for his IIED claim. *Id.* Yuga has in fact conceded that
9 “*Burke* is about what discovery a plaintiff can get into the defendant’s motives for the
10 defendant’s actions” and that it concerns “classic intent discovery.” Dkt. No. 69-1 at
11 36.

12 Here, Defendants’ interrogatories and document requests serve a similar
13 purpose of proving Yuga’s motive. Yuga’s pattern of harassment and bullying was
14 aimed at silencing Defendants’ criticism relating to Yuga’s use of neo-Nazi messages
15 and imagery. With sufficient discovery, Defendants will demonstrate motive and
16 intent by pointing to evidence that Yuga was aware of the truth behind Defendants’
17 criticism and, therefore, attempted to conceal that truth by silencing Defendants. In
18 Yuga’s own words, this is “classic intent discovery.”

19 **C. Defendants are Entitled to Discovery that Shows No Defamation**

20 Defendants have also asserted a claim for declaratory judgment of no
21 defamation based on Yuga’s repeated statements that Defendants are using their
22 artworks to lie about Yuga’s use of racist imagery. For example, Yuga sent two of its
23 four co-founders, Wylie Aronow and Greg Solano, on the Full Send Podcast where
24 they associated Defendants’ artworks with spreading a “conspiracy theory” and lying
25 about Yuga’s use of neo-Nazi messages and imagery. These statements alone reached
26 an audience of at least 1.7 million people. Yuga has also publicly stated that
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1 Defendants’ statements are “slanderous.” Accordingly, Defendants seek a declaratory
2 judgment that the criticism associated with Defendants’ artworks is not defamatory.

3 Defendants Interrogatory No. 14 and Document Requests Nos. 5, 7-9, 32-34,
4 39, 51, and 53. seek discovery that would show no defamation based on the
5 affirmative defense of truth. The law is clear that “[t]ruth, of course, is an absolute
6 defense to any libel action.” *Campanelli v. Regents of Univ. of Cal.*, 44 Cal. App. 4th
7 572, 581-582 (Cal. 1996); *see also Eisenburg v. Alameda Newspapers*, 74 Cal. App.
8 4th 1359, 1382 (Cal. 1999) (“In defamation actions generally, factual truth is a
9 defense which it is the defendant’s burden to prove.”). Discovery relating to Yuga’s
10 use of racist messages and imagery would provide the evidence necessary to show that
11 Defendants’ criticism is true and that no defamation has occurred.

12 **D. Yuga’s Supplements Are Inadequate**

13 Yuga incorrectly states that it has made adequate supplements to Interrogatory
14 No. 2 and Document Requests Nos. 17, 28, 29, and 48. Yuga’s production is woefully
15 inadequate. As noted in Defendants’ January 3, 2023, supplemental memorandum
16 (Dkt. No. 70), even including its most recent supplement, Yuga has produced *fewer*
17 *than 200 non-public documents* in this entire litigation to date. This extraordinary
18 deficiency after four months of discovery suggests that Yuga is not complying in good
19 faith with its discovery obligations.

20 With regards to Interrogatory No. 2, Yuga provided a supplemental response
21 stating that “Wylie Aronow, Greg Solano, and a third-party designer engaged by
22 Wylie Aronow and Greg Solano participated in the design or creation of the Asserted
23 Marks.” Dkt. No. 70-6 at 11. This response improperly omits the identity of the third
24 party retained by Aronow and Solano. The response also omits all designers
25 associated with the creation of the BAYC images, which Yuga admits were marketed
26 in commerce together with the Asserted Marks and which also contain many of the
27 racist traits subject to discovery in this litigation.

1 Document Request No. 17 requests documents relating to Yuga’s document
2 retention practices. But Yuga has produced absolutely no documents responsive to
3 this request. Yuga notes that it does not have a “formal” document retention policy,
4 but that does not excuse producing documents that disclose Yuga’s document
5 retention practices.

6 Document Requests Nos. 28 and 29 request documents on lack of consumer
7 confusion. Here, Yuga has produced only a few samples. This is not the standard for
8 discovery. Yuga is obligated to produce *all* responsive documents in its possession
9 after conducting a reasonable investigation, and this Court should order Plaintiff to do
10 so.

11 Finally, Document Request No. 48 seeks documents relating to damages. But
12 again, Yuga has produced absolutely no documents associated with any damages that
13 Yuga has suffered because of Defendants’ artworks.

14 **III. CONCLUSION**

15 Defendants request that this Court grant Defendants’ motion to compel.
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18 Dated: January 10, 2023

By: /s/ Louis W. Tompros

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all attorneys of record via the Court’s ECF system on January 10, 2023.

By: /s/ Louis W. Tompros

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