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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
17 **WESTERN DIVISION – LOS ANGELES**  
18

19 YUGA LABS, INC.,  
20 Plaintiff and  
Counterclaim Defendant,  
21  
22 v.  
23 RYDER RIPPS, JEREMY CAHEN,  
24 Defendants and  
Counterclaim Plaintiffs.

Case No.: 2:22-cv-04355-JFW-JEM  
**DEFENDANTS’ OPPOSITION TO  
YUGA LABS’ APPLICATION TO  
SEAL**  
Judge: John F. Walter  
Discovery Cutoff Date: April 3, 2023  
Pre-Trial Conference Date: June 9, 2023  
Trial Date: June 27, 2023

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1 **I. INTRODUCTION**

2 Defendants Ryder Ripps and Jeremy Cahen respectfully oppose Plaintiff  
3 Yuga Labs’ (“Yuga”) Application to File Under Seal Exhibits 245, 246, 249, 250,  
4 251 (Dkt. 173). Yuga’s application is flawed in multiple respects including because  
5 (1) Yuga seeks to seal public materials that have been erroneously designated as  
6 confidential, (2) Yuga waived any right to file materials associated with  
7 Defendants’ opposition brief under seal by its violations of the Court’s Standing  
8 Order, and (3) the application itself is procedurally deficient as it fails to inform the  
9 Court of Defendants’ opposition under L.R. 79-5.2.2(i)(2) and is not limited to  
10 three documents as required under the Court’s Standing Order.

11 **II. BACKGROUND**

12 This Court has set clear and unambiguous procedures that parties should  
13 follow when they intend to file documents, or portions of documents, under seal.  
14 The Standing Order Provides that “[if] a party wishes to file a document that has  
15 been designated by another party, the submitting party must give any designating  
16 party five calendar days notice of intent to file. *If the designating party objects, it*  
17 *should notify the submitting party and file an application to file documents under*  
18 *seal within two days.*” Dkt. 14 at 18 (emphasis added). And if the designating  
19 party objects to more than three documents, then the parties must work together to  
20 “file a joint application and lodge a proposed order to file under seal all such  
21 documents with the required showing as to each document.” Dkt. 14 at 18.

22 Defendants’ opposition to summary judgment was due on March 27, 2023.  
23 Although the Standing Order requires only 5 days of notice, the Defendants noticed  
24 Yuga of its intent to file designated documents on March 20, 2023—7 days before  
25 the filing date. Gosma Decl. Ex. 2 at 8. Defendants identified not only the exhibits  
26 it would rely on, but also provided its best good faith identification of *the specific*  
27 *testimony that it intended to rely on*. Defendants also explained that “*Defendants’*  
28 *position is that none of this material meets the high bar for sealing. Please let us*

1 *know if Yuga intends to file an application to seal.” Id.* (emphasis added).

2 Under the Standing order, Yuga was required to “notify” Defendants that it  
3 “objects” and “file an application to file documents under seal within two court  
4 days.” Dkt. 14 at 18. But Yuga did not provide Defendants notice of *anything*  
5 within two days, nor did it file an application to file under seal prior to the due date  
6 for Defendants’ opposition. Yuga also never reached out to Defendants or  
7 suggested that the parties prepare a joint application to identify a finalized set of  
8 documents (and critically pages of those documents) that Defendants would use.  
9 Defendants accordingly prepared their opposition papers to be filed publicly,  
10 consistent with the Standing Order instruction that “there is a strong presumption of  
11 the public’s right of access to judicial proceedings and records in civil cases.” Dkt.  
12 14 at 16.

13 Two more days passed. And while Defendants diligently prepared their  
14 opposition brief (consisting of over 150 documents and thousands of pages), Yuga  
15 raised no concerns regarding the public filing of Defendants’ opposition. On  
16 Friday, March 24, 2024, Defendants sent a confirmatory email stating that “[w]e  
17 note that Yuga has elected to not file an application to file documents under seal  
18 pursuant to paragraph 9 of the Protective Order for these materials.” Gosma Decl.  
19 Ex. 2 at 7.

20 After close of business on the evening of Friday, March 24, 2023 (four days  
21 after it received notice from Defendants), Yuga *for the first time* raised its  
22 objections to the public filing of Defendant’s opposition and supporting materials.  
23 Gosma Decl. Ex. 2 at 1-4. Yuga sought voluminous redactions, including of  
24 facially public materials such as testimony regarding the contents of public  
25 websites. Yuga’s e-mail did not request a conference on filing a joint application to  
26 file under seal or otherwise suggest how the parties should proceed. Yuga simply  
27 lobbed their objection at the last minute—creating a crisis that prejudiced  
28 Defendants’ ability to prepare redactions to their long, complicated opposition

1 papers over the weekend.

2 Compounding this crisis, Yuga also made its court-ordered production of  
3 highly-relevant documents at 10:30 p.m. on Friday, March 24, 2023, that  
4 Defendants needed for a deposition scheduled in Poughkeepsie, New York on the  
5 same day that the opposition papers were due. Gosma Decl. Ex. 3 at 1.  
6 Specifically, this deposition was scheduled weeks ago, but Defendant had to move  
7 the deposition to March 27, 2023, because Yuga was improperly withholding  
8 critical materials showing that Yuga had coerced the deponent (Mr. Lehman) into  
9 signing a misleading affidavit. *See* Dkt. 119 at 2. Yuga could have produced those  
10 materials earlier, but instead chose to wait until the last minute—forcing the  
11 Defendants to undergo emergency document review and deposition preparation as  
12 counsel was traveling across the country.

13 Defendants faced an untenable circumstance. They attempted their best to go  
14 through thousands of pages and make redactions, rapidly prepare an application to  
15 seal non-exhibit documents, and complete all other tasks associated with finalizing  
16 Defendants complex opposition papers. The filing that Defendants made, though  
17 not perfect, represented defense counsel’s best efforts under the circumstances.<sup>1</sup>

18 **III. ARGUMENT**

19 **A. Yuga Wrongly Seeks to File Under Seal Public Deposition**  
20 **Testimony**

21 This Court’s Standing Order makes clear that requests to file under seal  
22 “shall be narrowly tailored to serve the specific interest sought to be protected” and  
23 must “articulate compelling reasons supported by specific facts or legal justification

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24 <sup>1</sup> Yuga’s application to seal attaches a letter sent to Defense counsel on the evening  
25 of March 28 concerning inadvertent disclosures of alleged confidential information  
26 in Defendants’ opposition papers. Dkt. 173-4. Defendants responded to that letter  
27 in detail on the morning of March 29. Gosma Decl. Ex. 4. Despite receiving the  
28 letter several hours before their application to seal was filed, Yuga did not attach  
Defendants’ responsive letter to their motion to seal. As the Court is aware, the  
parties requested, and the Court granted, an emergency motion to temporarily seal  
certain documents while the sealing issues are adjudicated. Dkt. 175.

1 that the document or type of information should be protected.” Dkt. 14 at 16-17.  
2 And this Court’s Protective Order provides that “[m]ass, indiscriminate, or  
3 routinized designations are prohibited.” Dkt. 51 at 8. Yuga’s application to seal is  
4 contrary to the Court’s order because it seeks to file under seal sweeping portions of  
5 deposition testimony that plainly concerns public information. There is no  
6 reasonable basis to deny the public (including the Defendants themselves, who are  
7 less than 3 months from trial) access to this kind of public material.

8 **First**, Yuga contends that it seeks to file under seal testimony relating to  
9 proprietary information. But a cursory review of that testimony clearly shows that  
10 much of it is not proprietary at all. For example, Yuga states Exhibit 251 (Kerem  
11 Atalay Deposition) at 38:1-39:25, 127:4-133:1, 134:4-137:25, and 147:1-15  
12 concerns proprietary business information. Dkt. 173-3 at 4. But (1) 38:1-39:25  
13 concerns the date and circumstances of the public pre-sale of BAYC NFTs (an  
14 event in which hundreds of people participated and the records of which are  
15 recorded on the blockchain), (2) 127:4-133:1 and 136:24-137:25 relates to material  
16 displayed on Yuga’s own public website, (3) 134:4-136:23 relates to the designer of  
17 a Yuga treasure hunt puzzle whom Yuga has publicly recognized on Twitter<sup>2</sup>, and  
18 (4) 147:1-15 relates to the public release date for Otherdeed NFTs, which Yuga has  
19 also publicly recognized on Twitter.<sup>3</sup> Surely, the contents of a public website, the  
20 public release of NFTs, and public information regarding the creator of a puzzle  
21 does not satisfy the “compelling need” requirement for sealing documents.

22 Exhibit 251 is not the only document with these kinds of improper  
23 designations. Yuga also designates Ex. 250 (Greg Solano Deposition) at 62:25-  
24 66:16; 113:1-20; 138:1-25; 158:13-25; 160:1-162:25; 229:1-230:25. Dkt. 173-3 at

25 \_\_\_\_\_  
26 <sup>2</sup> In the following tweet (<https://twitter.com/boredapeyc/status/1468284690960420868>), Yuga publicly recognizes that Greg Pliska is the designer of its treasure  
27 hunt puzzle.

28 <sup>3</sup> In the following tweet (<https://twitter.com/OtherSideMeta/status/1518733999405137920>), Yuga publicly recognizes the April 30 release for Otherdeed NFTs.

1 3-4. A simple review shows that (1) 62:25-66:16 is testimony confirming the  
2 publicly known designers of Yuga’s marks and refusing to identify non-public  
3 designers (which is information already appearing on this Court’s public docket,  
4 *see* Dkt. 70-6 at 11), (2) 113:1-20 relates to the existence of public sales, (3) 138:1-  
5 25 concerns an entity unrelated to Yuga and a series of “I don’t know” answers, (4)  
6 158:13-25, 160:1-162:25, and 229:24-230:25 relate to public terms and conditions  
7 that Yuga’s officers have publicly spoken about at-length<sup>4</sup>, and (5) 229:1-23 relates  
8 to Defendants own activities. Again, there is no “compelling need” to seal any of  
9 this material.

10 For the convenience of the Court, Defendants file with this opposition a chart  
11 that goes through every single designation and provides a brief explanation on  
12 whether the material is properly designated and why it relates to public content.  
13 *See* Gosma Decl., Ex. 1. This chart makes clear that Yuga’s application fails to  
14 seek the “narrowly tailored” relief required by this Court’s Standing Order.

15 **Second**, Yuga also seeks to seal some testimony under a PSLRA stay. Dkt.  
16 173-2 ¶11. Yuga itself admits that that a PSLRA stay is simply when courts “limit  
17 discovery in non-securities cases.” *Id.* But this is not a discovery motion. Yuga  
18 does not even argue that the PSLRA alters the standard for sealing documents or  
19 otherwise comprises a “compelling reason” to withhold legal proceedings from the  
20 public. This is no surprise because, as a result of the PSLRA stay, Defendants did  
21 not take any discovery into securities issues and relied entirely on public  
22 information. Thus, the evidentiary record does not contain any non-public  
23 securities related information and, therefore, there categorically cannot be any  
24 PSLRA-barred evidence that should be withheld from public access.

25 In light of the foregoing, there are numerous designations that improperly  
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27 <sup>4</sup> The following twitter video ([https://twitter.com/ryder\\_ripps/status/16256591046](https://twitter.com/ryder_ripps/status/1625659104617238528)  
28 [17238528](https://twitter.com/ryder_ripps/status/1625659104617238528)) compiles public statements from multiple Yuga officers discussing the  
intent and purpose behind Yuga’s terms and conditions.

1 and unnecessarily seek to seal public information and testimony on public  
2 materials. The Court should accordingly deny Yuga’s application for failure to  
3 seek “narrowly tailored” relief.

4 **B. Yuga Waived Any Right to File Under Seal Documents Associated**  
5 **With Defendants’ Opposition**

6 In addition to simply over-designating material as confidential, Yuga also  
7 failed to follow the Court’s sealing procedures in advance of Defendants’ filing and  
8 therefore waived its right to seek confidential treatment of the documents filed in  
9 Defendants opposition.

10 Section 9 of the Standing Order requires that, following a filing party’s  
11 identification of its intention to file material designated as confidential by another  
12 party, a designating party must “notify” the filing party of any objection to the  
13 filing of documents and to file an application to file under seal “within two court  
14 days” of receiving notice of intent to file designated documents. Dkt. 14 at 18. The  
15 Standing Order sets forth this procedure due to the strong presumption in favor of  
16 public access to legal proceedings. *See id.* at 16. Thus, when the designating party  
17 makes no objection and elects to not file an application to seal within two days, the  
18 public filing of documents is permitted.

19 Defendants more than followed the Standing Orders’ procedures by  
20 providing notice of intent to file on March 20, 2023—seven days before its  
21 opposition was due. Yuga did not object or file an application to file under seal  
22 within two court days. Defendants accordingly relied on Yuga’s decision and  
23 prepared for the public filing of their vast and complicated opposition papers.  
24 Thus, by the close of March 22, Yuga acquiesced by choosing to not assert any  
25 confidentiality claims in connection with Defendants’ opposition to summary  
26 judgment, and thereby waived the confidentiality claims that it now seeks to assert  
27 (and that are at issue in Defendant’s letter, Dkt. 173-4).

28 Further complicating matters, after two more days passed, Yuga raised for

1 the first time its objections on the Friday evening before a large Monday filing.  
2 And, while Yuga sought the redaction of at least 10 different documents, it did not  
3 initiate or even suggest any process with the Defendants to prepare a joint  
4 application to file under seal as required under Section 9 of the Standing Order.  
5 Dkt. 14 at 17-18 (requiring a joint application when more than 3 documents should  
6 be filed under seal). Yuga’s decision to not work with Defendants was a critical  
7 mistake, as the preparation of a joint application would have (1) allowed the parties  
8 to determine the final the set of documents and pages at issue, (2) agree on  
9 redactions that are narrowly tailored, and (3) alleviate the need for Defendants to  
10 unilaterally address a crisis that Yuga itself had created. But instead, Yuga chose to  
11 drop its problems on Defendants and look away even though its own (waived)  
12 confidentiality claims and alleged proprietary information were at stake.

13 Yuga’s violations of the Standing Order placed Defendants in an untenable  
14 situation because they had to rapidly sort through thousands of pages to apply a  
15 large amount of improper and overbroad confidentiality designations (while at the  
16 same time dealing with an emergency document review and traveling to take a  
17 deposition on the opposite side of the country). Yuga’s indifference toward the  
18 Court’s sealing procedures and its violations of the Standing Order undermines its  
19 claim of confidentiality in its application.

20 **C. Yuga’s Application To File Under Seal Is Procedurally Deficient**

21 Yuga’s application should also be denied for failure to comply with the  
22 applicable Local Rules and the requirements of the Court’s Standing Order.

23 Local Rule 79-5.2.2(i)(2) requires that an application to file under seal must  
24 be accompanied by a declaration “informing the Court whether anyone opposes the  
25 Application.” Here, Yuga was well-aware that Defendants oppose the application  
26 because Defendants’ March 20, 2023, correspondence states in no uncertain terms  
27 that “Defendants’ position is that none of this material meets the high bar for  
28 sealing. Please let us know if Yuga intends to file an application to seal.” Gosma

1 Decl., Ex. 2 at 8. But Yuga’s application does not identify for the Court  
2 Defendant’s opposition. To the contrary, Yuga’s application wrongly states that  
3 “Defendants requests that Yuga Labs file this application but have not indicated  
4 whether they intend to oppose the sealing of these materials.” Dkt. 173 at 1.  
5 Notably, the application does explain why Yuga believes that Defendants have  
6 requested the filing of an application to file under seal. And Defendants do in fact  
7 oppose the application and do in fact believe that the vast majority of the deposition  
8 exhibits should be publicly available because they do not meet this Court’s high bar  
9 for sealing. *See* Section III.A, *supra*.

10 Section 9 of the Standing Order also requires that “an application to file  
11 documents under seal must meet the requirements of the Local Rules and shall be  
12 limited to three documents by a party, unless otherwise ordered by the Court.” Dkt.  
13 14 at 16. Yuga’s application fails to comply with this rule because it seeks to file  
14 under seal at least five documents: Exhibits 245, 246, 249, 250, and 251. Again, an  
15 application of this scale is supposed be made with a joint application. Yuga did not  
16 even bother to attempt to work with Defendants to file a joint application for  
17 materials as required by the Standing Order.

18 **D. Exhibits That Yuga Does Not Seek To Seal Should Be Made Public**

19 Yuga Labs does not seek to seal Exhibit 252, which includes excerpts of a  
20 deposition that took place of March 22, 2023. Yuga initially designated the entire  
21 transcripts as HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY, but has  
22 now withdrawn its entire claim of confidentiality with respect to this document.  
23 This is yet another sweeping, overbroad designation that unnecessarily contributed  
24 to a crisis precipitated by Yuga’s failure to comply with the clear sealing  
25 procedures set forth in the Court’s Standing Order. Defendants accordingly  
26 request that the Court order the entirety of Exhibit 252 to be filed publicly.

27 **IV. CONCLUSION**

28 For the foregoing reasons, Defendants request that the Court:

1           1.     Deny Yuga’s application to file under seal and order the public filing of  
2 Exhibits 245, 246, 249, 250, 251, and 252; and

3           2.     Order the public filing of Defendant’s opposition brief (Dkt. 163) and  
4 Defendants’ statement of genuine disputes of material fact (Dkt. 163-1), which  
5 Defendants redacted based on Yuga’s waived objections to Exhibits 245, 246, 249,  
6 250, 251, and 252.

7           Even if the Court does not order the public filing of Yuga confidential  
8 information, the Court should at least order Yuga to re-file its application with  
9 significantly narrowed confidentiality designations.

10           Dated: March 30, 2023

By: /s/ Derek Gosma

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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 March 30, 2023

By: /s/ Derek Gosma  
Derek Gosma

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing document is in compliance with the word limit Local Rule 11-6.1

By: /s/ Derek Gosma  
Derek Gosma