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14 YUGA LABS, INC.

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION – Los Angeles

18  
19 YUGA LABS, INC.,  
20 Plaintiff and  
21 Counterclaim Defendant,  
22 v.  
23 RYDER RIPPS, JEREMY CAHEN,  
24 Defendants and  
25 Counterclaim Plaintiffs.

Case No.: 2:22-cv-04355-JFW-JEM  
**YUGA LABS, INC.’S REPLY IN  
SUPPORT OF APPLICATION FOR  
LEAVE TO FILE UNDER SEAL  
PURSUANT TO LOCAL RULE  
79-5.2.2(A)**  
Date: April 17, 2023  
Time: 1:30 p.m.  
Courtroom: 7A  
Judge: Honorable John F. Walter  
Trial Date: June 27, 2023

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1 Plaintiff Yuga Labs has demonstrated compelling reason to seal its  
2 confidential documents — including protection against violating the intent of the  
3 discovery stay imposed by the PSLRA, protecting Yuga Labs’ proprietary and  
4 competitively sensitive information, and protecting Yuga Labs from further abuse  
5 of this litigation by Defendants. Conversely, Defendants’ violations of the  
6 Protective Order (Dkt. 51), the Court’s Standing Order (Dkt. 14), and the Court’s  
7 sealing order (Dkt. 153) are numerous, egregious, and unjustified. Defendants filed  
8 voluminous highly confidential materials on the public docket, in some instances  
9 without consulting Yuga Labs *at all prior to filing* and in other instances by  
10 directly disregarding Yuga Labs’ specific request to redact or seal those materials  
11 and references to them in Defendants’ opposition papers.

12 ***Defendants and their counsel caused this situation*** through their flagrant  
13 disregard of the Court’s orders, their refusal to meet and confer in good faith, their  
14 refusal to follow proper procedures for filing Protected Material, and their failure to  
15 remedy known violations of the Protective Order in accordance with the clear  
16 requirements of the Protective Order. While Defendants’ counsel initially owned  
17 up to the mistake and claimed they were taking the matter seriously, their tune  
18 abruptly changed, and they filed an opposition attempting to evade responsibility  
19 and to shift the blame for their errors to Yuga Labs — the victim of the situation  
20 they created. The severe prejudice caused by Defendants’ actions is concrete: the  
21 press is planning to report on the highly confidential information that Defendants  
22 disclosed in their filing, and Defendants have admittedly ***provided the same highly***  
23 ***confidential information directly to reporters*** in violation of the Court’s orders.

24 Defendants’ knee-jerk response (Dkt. 176) to Yuga Labs raising Defendants’  
25 violations contains several knowing and material falsehoods and demonstrates a  
26 lack of diligence in following the Protective Order. This is a particularly egregious  
27 episode of Defendants’ habitual disregard of this Court’s rules and orders. And it is  
28

1 consistent with the Defendants’ “leveraging this litigation to promote and market”  
2 their sales of their infringing products. *See* Dkt. 178 at 4.

3 Yuga Labs’ Application to Seal should be granted in full for the reasons  
4 explained therein, and Defendants should be sanctioned under the Court’s inherent  
5 authority to sanction misconduct and violations of its orders, including the  
6 Protective Order’s monetary sanction of \$10,000 per violation.

7 **I. Defendants and Their Counsel Filed Protected Material Publicly in**  
8 **Violation of the Protective Order and Local Rule 79-5.2.2(b)**

9 As listed in the chart accompanying Yuga Labs’ Application to Seal  
10 (Dkt. 173-3), Defendants filed at least the following Protected Material publicly  
11 *without ever notifying or consulting* Yuga Labs before filing as required under the  
12 Standing Order and the Local Rules:

- 13 • Yuga Labs 30(b)(6) Deposition at 227:19-25
- 14 • Wylie Aronow Deposition at 39:1-40:25
- 15 • Wylie Aronow Deposition at 69:18-25
- 16 • Wylie Aronow Deposition at 232:1-25
- 17 • Guy Oseary Deposition at 102:1-103:25
- 18 • Greg Solano Deposition at 62:25-66:16
- 19 • Greg Solano Deposition at 229:1-230:25
- 20 • Kerem Atalay Deposition at 38:1-39:25
- 21 • Kerem Atalay Deposition at 147:1-25

22 Defendants do not and cannot deny their violation of the Court’s orders in failing to  
23 provide notice to Yuga Labs of Defendants’ filing of this Protected Material, nor  
24 can they plausibly claim it was a mistake where, as here, their violations are strewn  
25 across multiple separate deposition transcripts.

26 Defendants also publicly filed the following Protected Material despite  
27 asking Yuga Labs and *receiving explicit instructions to file under seal* and make  
28 appropriate redactions in their opposition papers:

- 1 • Yuga Labs 30(b)(6) Deposition at 160:12-162:2
- 2 • Kerem Atalay Deposition at 127:4-133:1

3 Further, Defendants’ Statement of Facts (Dkts. 163-1 and 164-3) quoted and  
4 (inaccurately) described material that was designated Highly Confidential —  
5 Attorneys’ Eyes Only and ordered sealed by the Court (Dkt. 153) (sealing Ball  
6 Decl. Ex. 43 in Support of Yuga Labs’ Motion for Summary Judgment).  
7 Defendants have provided no explanation for this admitted violation of the Court’s  
8 orders. While Defendants did belatedly seal this document to attempt to mitigate  
9 that particular violation of the Court’s orders (Dkt. 164), even their new filing  
10 (Dkt. 164-3) contains numerous unredacted quotations, citations, and references to  
11 the Protected Material enumerated above, including specific figures from Yuga  
12 Labs’ highly confidential financial information and direct quotations from  
13 documents ordered sealed by the Court (Dkt. 153).<sup>1</sup>

14 **II. Defendants Compounded Their Violations of the Protective Order by**  
15 **Sharing Yuga Labs’ Protected Material to Third Parties, Including**  
16 **Media Outlets, and Refusing to Adequately Remedy Those Violations**

17 Paragraph 12 of the Protective Order provides:

18 If a Receiving Party learns that, by inadvertence or otherwise, it has  
19 disclosed Protected Material to any person or in any circumstance  
20 not authorized under this Stipulated Protective Order, the Receiving  
21 Party immediately must (1) notify in writing the Designating Party

22 \_\_\_\_\_  
23 <sup>1</sup> Additionally, Defendants filed multiple pages of deposition testimony (for instance,  
24 the expert testimony of Laura O’Laughlin) that were still designated Highly  
25 Confidential — Attorneys’ Eyes Only by the automatic 30-day designation under the  
26 Protective Order. Dkt. 51 ¶ 6.3(b). The parties acknowledged on the record that the  
27 testimony was Highly Confidential — Attorneys’ Eyes Only until otherwise  
28 designated per the parties’ Protective Order. Though Yuga Labs ultimately does not  
request that this testimony be sealed after conducting a good-faith review,  
Defendants’ filing of such Protected Material without even asking the Designating  
Party is another blatant violation of the Protective Order.

1 of the unauthorized disclosures, (2) use its best efforts to retrieve all  
2 unauthorized copies of the Protected Material, (3) inform the person  
3 or persons to whom unauthorized disclosures were made of all the  
4 terms of this Stipulated Protective Order, and (4) request such  
5 person or persons to execute the “Acknowledgment and Agreement  
6 to be Bound” (Exhibit A).

7 Dkt. 51 at ¶ 12. Though Defendants provided notice of only one violation, they  
8 failed to address (or even acknowledge) their multiple other violations enumerated  
9 above. Despite Yuga Labs’ reasonable attempts to mitigate the damage Defendants  
10 caused, Defendants and their counsel have failed to exercise the necessary diligence  
11 to determine to whom Protected Materials were provided and have refused to  
12 provide their communications with third parties containing Yuga Labs’ Protected  
13 Material. Worse still, Defendants refuse to provide any declaration that they have  
14 destroyed the sealed documents. Nor will they provide any declaration or assurance  
15 that they will not share the sealed documents or discuss the Protected Material in  
16 the sealed documents with anyone for any purpose. On this important matter of  
17 Yuga Labs’ Protected Material, assurance through briefing by counsel is not  
18 enough in light of Defendants’ propensity to make misrepresentations to this  
19 Court.<sup>2</sup> Each Defendant should be required to verify under oath that they have  
20 complied with the Protective Order and provide details and documents relating to  
21 whom they have shared Yuga Labs’ Protected Material (much of which Defendants  
22 themselves should have never been allowed to view).

23 \_\_\_\_\_  
24 <sup>2</sup> Defendants have lied before in response to orders from this Court, including in a  
25 Court-ordered verification under penalty of perjury by Ripps that he produced all  
26 relevant and non-privileged information. Despite this verification, and only in the  
27 face of evidence that Mr. Ripps did not produce the court ordered materials, did  
28 Mr. Ripps provide multiple further productions. Judge McDermott recently  
expressed the Court’s “dim view of Defendants’ blanket withholding of pre-litigation  
communications between Ripps and Cahen” even after Ripps verified under penalty  
of perjury that such documents were not being withheld. Dkt. 145 at 3.

1 Concerns of compounded harm from Defendants’ violations of the Protective  
2 Order are not hypothetical. Defendants *admit they shared Protected Material* with  
3 individuals at CNN, Bloomberg, and the New York Times, and Yuga Labs is aware  
4 that the media plans to run a story citing the highly confidential information that  
5 they obtained from Defendants.

6 Remarkably, and falsely, Defendants deny that they communicated with  
7 others about Yuga Labs’ confidential information even after Yuga Labs provided  
8 Defendants’ counsel with evidence of Defendants’ communications with other third  
9 parties. Defendants’ counsel has refused to further correspond with Yuga Labs’  
10 counsel after being confronted with this information, and Defendants’ refusal to  
11 provide an accounting of who received Yuga Labs’ Protected Material is an  
12 ongoing violation of the Protective Order. Dkt. 51 ¶ 12. Defendants’ continued  
13 abuse of this litigation for their own games and marketing should not be allowed.

14 **III. Defendants and Their Counsel’s Violations of the Protective Order**  
15 **Resulted from Their Own Refusal to Follow the Court’s Procedures, and**  
16 **the Violations Were Not Justified**

17 Defendants’ response to Yuga Labs’ Application to Seal seeks to deflect and  
18 blame-the-victim, rather than acknowledge the severe and injurious nature of their  
19 actions and attempt to remedy the harm they caused. These accusations are  
20 unwarranted.

21 First, Defendants blame Yuga Labs for designating too much material under  
22 the Protective Order. This is meritless. The Protective Order provides a remedy for  
23 disputes about designations. Dkt. 51 ¶ 7. That remedy is not to ignore the Court’s  
24 orders and Local Rules and file the materials publicly. Not only does this argument  
25 fail to excuse the misconduct of Defendants and their counsel, but it is simply not  
26 true. Yuga Labs’ confidentiality assertions are justified as set forth in the  
27 Application to Seal, and Yuga Labs meticulously reviewed all of the materials  
28 Defendants proposed to file to reduce the need for sealing. This excuse also fails to



1 explain why Defendants publicly filed materials that the Court *already ordered*  
2 *sealed*. Defendants’ disagreement with the Court’s orders should be addressed  
3 through motion practice, not willful defiance.

4 Second, Defendants claim Yuga Labs did not follow the Court’s sealing  
5 procedures. This is also wrong. As Yuga Labs has pointed out several times to  
6 Defendants, the Court’s Standing Order requires a party who expected to file more  
7 than three documents under seal to raise those documents “during the Local Rule  
8 7-3 conference,” “meet and confer” regarding each document, and then file a “joint  
9 application.” Dkt. 14 at 17–18. On March 2, 2023, Yuga Labs asked Defendants if  
10 they intended to file more than three documents under seal, but Defendants would  
11 not say and refused to meet and confer on the issue. Declaration of Eric Ball (“Ball  
12 Decl.”) Exhibit 1. Defendants did not raise an intention to file more than three  
13 documents under seal at the parties’ Local Rule 7-3 Conference. Ball Decl. ¶ 6.  
14 Instead, Defendants notified Yuga Labs on March 20, 2023 of their intention to file  
15 10 documents and over 440 pages of deposition transcripts (from seven  
16 depositions) that were Protected Material. Ball Decl. Exhibit 2. They then stated  
17 that they expected Yuga Labs to move to seal these materials, despite the joint  
18 application procedure set forth in the Protective Order. Ball Decl. Exhibit 2.  
19 Defendants raised no other concerns or arguments regarding Yuga Labs’ sealing  
20 requests and never attempted to arrange the required meet and confer.

21 Notwithstanding Defendants’ violation of the Standing Order, Yuga Labs  
22 diligently reviewed the voluminous proposed materials and provided clear, line-by-  
23 line instructions on what to redact or seal. Ball Decl. Exhibit 3. Yuga Labs  
24 promptly and timely filed its Application to Seal, after Defendants filed their  
25 opposition papers, and responded to what Defendants actually filed.

26 Defendants want to ignore all of this process. The absurdity of Defendants’  
27 interpretation of the sealing procedures is only highlighted by their opposition  
28 papers: had Yuga Labs filed an application to seal last week, it would have sought



1 sealing of dozens of pages that Defendants identified but *did not* rely on in their  
2 opposition, and it would have failed to apply to seal many more pages that  
3 Defendants did not identify, but *did* rely on in their opposition papers. Defendants’  
4 March 20 notification was a waste of the parties’ resources as it bared slim  
5 resemblance to the exhibits Defendants actually filed.

6 But even if Yuga Labs’ interpretation of the Court’s Standing Order was  
7 incorrect, Yuga Labs reasonably attempted to comply with L.R. 79-5.2.2(b).  
8 Defendants’ procedural excuse also fails to carry any weight where Defendants  
9 ***filed Protected Material without asking, or against the express directions of, the***  
10 ***Designating Party*** — this is inexcusable under any interpretation of any applicable  
11 order or rule.

12 Third, Defendants blame Yuga Labs for producing unrelated documents on  
13 the date ordered by the Court (Dkt. 159) (ordering production within three days of  
14 March 21, 2023).<sup>3</sup> Defendants also blame Yuga Labs for Defendants’ counsel’s  
15 need to attend the deposition *that Defendants noticed and in the location that*  
16 *Defendants selected*. The rationale behind these excuses is unclear, but Defendants  
17 have a large team of attorneys; document review and their own scheduled  
18 deposition is not an adequate excuse for their misconduct.

19 In addition to the above, it bears emphasis that though Defendants created the  
20 “untenable circumstance” of which they complain, there were a number of ways to  
21 address it. They did not ask for relief from the Court or even attempt to seek a  
22 resolution with Yuga Labs. Indeed, ***they ignored Yuga Labs’ invitation to meet***  
23

24 \_\_\_\_\_  
25 <sup>3</sup> Defendants falsely characterize documents produced by Yuga Labs as showing  
26 that “critical materials showing that Yuga had coerced the deponent (Mr. Lehman)  
27 into signing a misleading affidavit.” Defendants and their counsel have these  
28 documents, and they know that there is no good-faith basis for making this claim.  
Moreover, Defendants have now deposed Mr. Lehman and he repeatedly affirmed  
his declaration.

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1 **and confer about sealing issues.** They instead took the worst possible route at the  
2 expense of their adversary and simply broke the rules. This is not excusable.

3 **IV. Sanctions Are Warranted**

4 A court may impose sanctions under its inherent powers “when a party has  
5 acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” Chambers v.  
6 NASCO, Inc., 501 U.S. 32, 45–46 (1991) (internal quotation marks omitted). A  
7 court may exercise this power by requiring the sanctioned party to pay the opposing  
8 party’s attorney’s fees. Id. Specifically, Federal Rule of Civil Procedure 37(b)(2)  
9 authorizes a district court “to impose a wide range of sanctions when a party fails to  
10 comply with the rules of discovery or with court orders enforcing those rules,”  
11 including a protective order. Wyle v. R.J. Reynolds Industries, Inc., 709 F.2d 585,  
12 589 (9th Cir. 1983); Falstaff Brewing Corp. v. Miller Brewing Co., 702 F.2d 770,  
13 784 (9th Cir. 1983); *see also* Cleveland v. Ludwig Inst. for Cancer Rsch. Ltd., No.  
14 19-CV-02141-JM (JLB), 2021 WL 4993025, at \*4 (S.D. Cal. Oct. 27, 2021) (“Rule  
15 37 . . . grants courts the authority to impose sanctions where a party has violated . . .  
16 a protective order.”).

17 Further, “[d]istrict courts have the inherent power to sanction a lawyer for a  
18 ‘full range of litigation abuses,’” including violation of a protective order. Evon v.  
19 Law Offices of Sidney Mickell, 688 F.3d 1015, 1034–35 (9th Cir.2012) (quoting  
20 Chambers v. NASCO, Inc., 501 U.S. 32, 55 (1991)). “[A] district court may levy  
21 sanctions pursuant to its inherent power for ‘willful disobedience of a court order  
22 . . . or when the losing party has acted in bad faith, vexatiously, wantonly, or for  
23 oppressive reasons.’” Id. at 1035 (quoting Fink v. Gomez, 239 F.3d 989, 991-993  
24 (9th Cir. 2001)). “[A] ‘willful’ violation of a court order does not require proof of  
25 mental intent such as bad faith or an improper motive, but rather, it is enough that a  
26 party acted deliberately.” Id. at 1035.

27 Defendants and their counsel should be required, at minimum, to pay Yuga  
28 Labs’ attorneys’ fees and costs in connection with remedying the severe and

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1 irreparable prejudice associated with Defendants’ willful violations. In addition,  
2 the Protective Order provides that:

3 Any violation of this Stipulated Order may be punished by any and  
4 all measures including, without limitation, contempt proceedings,  
5 default judgment, and/or monetary sanctions of at least \$10,000 for  
6 each violation against both the Parties and Counsel.

7 Defendants should be assessed monetary sanctions of \$10,000 per violation.  
8 This includes but is not limited to the 11 exhibits filed in violation of the protective  
9 order, the Statement of Facts which contains numerous violations, and the three  
10 instances Defendants have confirmed in which they disseminated this information  
11 to third parties. The minimum monetary sanction is accordingly at least \$150,000.

12 Defendants and their counsel should further be ordered to identify, under  
13 penalty of perjury, everyone who they know to have received Protected Material in  
14 violation of the Protective Order and to disclose any related communications.

15 **CONCLUSION**

16 For the reasons stated above, Yuga Labs respectfully asks the Court to grant  
17 its Application to Seal and to award all remedies it deems appropriate, including  
18 sanctions of Defendants, sanctions of Defense counsel, and ordering each  
19 Defendant to verify under penalty of perjury that they have complied with the  
20 Protective Order and provide details and documents relating to whom they have  
21 shared Yuga Labs’ Protected Material.

22

23 Dated: March 30, 2023

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25

By: /s/ Eric Ball

26

Eric Ball

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