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 YUGA LABS, INC.

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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 Yuga Labs and
 Counterclaim Defendant,
 21
 v.
 22
 23 RYDER RIPPS, JEREMY CAHEN,
 24 Defendants and
 Counterclaim Plaintiffs.
 25

Case No.: 2:22-cv-04355-JFW-JEM
**YUGA LABS, INC.’S RESPONSE
 TO DEFENDANTS RYDER RIPPS’
 AND JEREMY CAHEN’S
 COUNTERCLAIMS**
JURY TRIAL DEMANDED

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1 Yuga Labs and Counterclaim Defendant Yuga Labs, Inc. (“Yuga Labs”)
2 hereby answers the counterclaims of Defendants and Counterclaim Plaintiffs Ryder
3 Ripps and Jeremy Cahen (“Defendants”) as follows:

4 **NATURE OF THE CASE**

5 1. Yuga Labs denies the allegations set forth in paragraph 1 of
6 Defendants’ counterclaims, except that Yuga Labs admits that the Bored Ape Yacht
7 Club is a commercially successful collection of Non-Fungible Tokens (“NFTs”)
8 sold by Yuga Labs.

9 2. Yuga Labs denies the allegations set forth in paragraph 2 of
10 Defendants’ counterclaims, except that Yuga Labs admits that Defendants used
11 Yuga Labs’ trademarks including Yuga Labs’ BAYC logo.

12 3. Yuga Labs denies the allegations set forth in paragraph 3 of
13 Defendants’ counterclaims.

14 **PARTIES AND JURISDICTION**

15 4. Yuga Labs admits the allegations set forth in paragraph 4 of
16 Defendants’ counterclaims.

17 5. Yuga Labs is without knowledge or information sufficient to form a
18 belief as to the truth of the allegations in paragraph 5 of Defendants’ counterclaims,
19 and therefore denies them.

20 6. Yuga Labs admits the allegations set forth in paragraph 6 of
21 Defendants’ counterclaims.

22 7. Yuga Labs admits that Defendants’ surviving cause of action is under
23 the Copyright Act. Otherwise, these allegations pertain to Defendants’
24 counterclaims two through six which were dismissed on March 17, 2023 and
25 therefore require no response. To the extent a response is required, Yuga Labs
26 denies these allegations set forth in paragraph 7 of Defendants’ counterclaims.

27 8. Paragraph 8 sets forth conclusions of law to which no response is
28 required. To the extent a response is deemed to be required, Yuga Labs admits that

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1 personal jurisdiction and venue are proper in the Central District of California,
2 Western District.

3 **FACTUAL BACKGROUND**

4 9. Yuga Labs is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations in paragraph 9 of Defendants' counterclaims,
6 and therefore denies them.

7 10. Yuga Labs is without knowledge or information sufficient to form a
8 belief as to the truth of the allegations in paragraph 10 of Defendants'
9 counterclaims, and therefore denies them.

10 11. Yuga Labs is without knowledge or information sufficient to form a
11 belief as to the truth of the allegations in paragraph 11 of Defendants'
12 counterclaims, and therefore denies them.

13 12. Yuga Labs is without knowledge or information sufficient to form a
14 belief as to the truth of the allegations in paragraph 12 of Defendants'
15 counterclaims, and therefore denies them.

16 13. Yuga Labs is without knowledge or information sufficient to form a
17 belief as to the truth of the allegations in paragraph 13 of Defendants'
18 counterclaims, and therefore denies them.

19 14. Yuga Labs denies the allegations set forth in paragraph 14 of
20 Defendants' counterclaims, except that Yuga Labs admits that an NFT is, in part
21 (but not solely), an entry on a blockchain.

22 15. Yuga Labs denies as phrased the vaguely worded allegations set forth
23 in paragraph 15 of Defendants' counterclaims, except that Yuga Labs admits that
24 BAYC NFTs and RR/BAYC NFTs are in part on the Ethereum blockchain.

25 16. Yuga Labs denies as phrased the vaguely worded allegations in
26 paragraph 16 of Defendants' counterclaims.

27 17. Yuga Labs denies the allegations set forth in paragraph 17 of
28 Defendants' counterclaims, except that Yuga Labs admits that the terms and NFT

1 metadata allegations set for the BAYC NFTs are “stored elsewhere.”

2 18. Yuga Labs denies as phrased the vaguely worded allegations in
3 paragraph 18 of Defendants’ counterclaims.

4 19. Yuga Labs denies as phrased the vaguely worded allegations set forth
5 in paragraph 19 of Defendants’ counterclaims, except that Yuga Labs admits that
6 the Bored Ape Yacht Club smart contract was transferred to a null address.

7 20. Yuga Labs denies as phrased the vaguely worded allegations in
8 paragraph 20 of Defendants’ counterclaims.

9 21. Yuga Labs denies the allegations set forth in paragraph 21 of
10 Defendants’ counterclaims, except that Yuga Labs admits the allegations set forth
11 in paragraph 21 as they relate to BAYC NFTs.

12 22. Yuga Labs denies the allegations set forth in paragraph 22 of
13 Defendants’ counterclaims.

14 23. Yuga Labs denies as phrased the vaguely worded allegations set forth
15 in paragraph 23 of Defendants’ counterclaims.

16 24. Yuga Labs denies the allegations set forth in paragraph 24 of
17 Defendants’ counterclaims.

18 25. Yuga Labs denies as phrased the vaguely worded allegations set forth
19 in paragraph 25 of Defendants’ counterclaims.

20 26. Yuga Labs denies the allegations set forth in paragraph 26 of
21 Defendants’ counterclaims.

22 27. Yuga Labs denies the allegations set forth in paragraph 27 of
23 Defendants’ counterclaims as an inaccurate and incomplete excerpt, and Yuga
24 Labs’ website speaks for itself.

25 28. Yuga Labs denies the allegations set forth in paragraph 28 of
26 Defendants’ counterclaims, including Defendants’ incomplete excerpts of Yuga
27 Labs’ website, except that Yuga Labs admits that the BAYC Terms & Conditions
28 are available on its website and speaks for themselves.

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1 29. Yuga Labs denies the allegations set forth in paragraph 29 of
2 Defendants' counterclaims.

3 30. Yuga Labs denies the allegations set forth in paragraph 30 of
4 Defendants' counterclaims.

5 31. Yuga Labs denies the allegations set forth in paragraph 31 of
6 Defendants' counterclaims.

7 32. Yuga Labs denies the allegations set forth in paragraph 32 of
8 Defendants' counterclaims as an incomplete excerpt, and Yuga Labs' Complaint
9 speaks for itself.

10 33. On March 17, 2023, the Court dismissed Defendants' second through
11 sixth counterclaims and therefore no response is required. To the extent a response
12 is required, Yuga Labs denies the allegation set forth in paragraph 33 of
13 Defendants' counterclaims.

14 34. On March 17, 2023, the Court dismissed Defendants' second through
15 sixth counterclaims and therefore no response is required. To the extent a response
16 is required, Yuga Labs denies the allegations set forth in paragraph 34 of
17 Defendants' counterclaims.

18 35. On March 17, 2023, the Court dismissed Defendants' second through
19 sixth counterclaims and therefore no response is required. To the extent a response
20 is required, Yuga Labs denies the allegations set forth in paragraph 35 of
21 Defendants' counterclaims.

22 36. On March 17, 2023, the Court dismissed Defendants' second through
23 sixth counterclaims and therefore no response is required. To the extent a response
24 is required, Yuga Labs denies the allegations set forth in paragraph 36 of
25 Defendants' counterclaims.

26 37. On March 17, 2023, the Court dismissed Defendants' second through
27 sixth counterclaims and therefore no response is required. To the extent a response
28 is required, Yuga Labs denies the allegations set forth in paragraph 37 of

1 Defendants' counterclaims.

2 38. On March 17, 2023, the Court dismissed Defendants' second through
3 sixth counterclaims and therefore no response is required. To the extent a response
4 is required, Yuga Labs denies the allegations set forth in paragraph 38 of
5 Defendants' counterclaims.

6 39. On March 17, 2023, the Court dismissed Defendants' second through
7 sixth counterclaims and therefore no response is required. To the extent a response
8 is required, Yuga Labs denies the allegations set forth in paragraph 39 of
9 Defendants' counterclaims.

10 40. On March 17, 2023, the Court dismissed Defendants' second through
11 sixth counterclaims and therefore no response is required. To the extent a response
12 is required, Yuga Labs denies the allegations set forth in paragraph 40 of
13 Defendants' counterclaims.

14 41. On March 17, 2023, the Court dismissed Defendants' second through
15 sixth counterclaims and therefore no response is required. To the extent a response
16 is required, Yuga Labs denies the allegations set forth in paragraph 41 of
17 Defendants' counterclaims.

18 42. Yuga Labs denies the allegations set forth in paragraph 42 of
19 Defendants' counterclaims.

20 43. Yuga Labs denies the allegations set forth in paragraph 43 of
21 Defendants' counterclaims, except that Yuga Labs admits that Defendants'
22 RR/BAYC NFTs point to the same digital images as the Bored Ape Yacht Club
23 collection.

24 44. Yuga Labs denies the allegations set forth in paragraph 44 of
25 Defendants' counterclaims.

26 45. On March 17, 2023, the Court dismissed Defendants' second through
27 sixth counterclaims and therefore no response is required. To the extent a response
28 is required, Yuga Labs denies the allegations set forth in paragraph 45 of

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1 Defendants' counterclaims.

2 46. On March 17, 2023, the Court dismissed Defendants' second through
3 sixth counterclaims and therefore no response is required. To the extent a response
4 is required, Yuga Labs denies the allegations set forth in paragraph 46 of
5 Defendants' counterclaims.

6 47. Yuga Labs denies the allegations set forth in paragraph 47 of
7 Defendants' counterclaims.

8 48. Yuga Labs denies the allegations set forth in paragraph 48 of
9 Defendants' counterclaims.

10 49. Yuga Labs is without knowledge or information sufficient to form a
11 belief as to the truth of the allegations in paragraph 49 of Defendants'
12 counterclaims, and therefore denies them.

13 50. Yuga Labs denies the allegations set forth in paragraph 50 of
14 Defendants' counterclaims, except that Yuga Labs admits that Defendants'
15 infringing NFTs were sold on marketplaces such as Opensea.

16 51. Yuga Labs denies the allegations set forth in paragraph 51 of
17 Defendants' counterclaims.

18 52. Yuga Labs denies the allegations set forth in paragraph 52 of
19 Defendants' counterclaims, except admits that Defendants used Yuga Labs'
20 trademarks in connection with the Defendants infringement on the Foundation
21 marketplace.

22 53. Yuga Labs denies the allegations set forth in paragraph 53 of
23 Defendants' counterclaims.

24 54. Yuga Labs is without knowledge or information sufficient to form a
25 belief as to the truth of the allegations in paragraph 54 of Defendants'
26 counterclaims, and therefore denies them. Yuga Labs further specifically denies
27 Defendants' purported intent given Defendants' willful infringement.

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1 55. On March 17, 2023, the Court dismissed Defendants’ second through
2 sixth counterclaims and therefore no response is required. To the extent a response
3 is required, Yuga Labs denies the allegations set forth in paragraph 55 of
4 Defendants’ counterclaims.

5 56. On March 17, 2023, the Court dismissed Defendants’ second through
6 sixth counterclaims and therefore no response is required. To the extent a response
7 is required, Yuga Labs denies the allegations set forth in paragraph 56 of
8 Defendants’ counterclaims.

9 57. On March 17, 2023, the Court dismissed Defendants’ second through
10 sixth counterclaims and therefore no response is required. To the extent a response
11 is required, Yuga Labs denies the allegations set forth in paragraph 57 of
12 Defendants’ counterclaims.

13 58. On March 17, 2023, the Court dismissed Defendants’ second through
14 sixth counterclaims and therefore no response is required. To the extent a response
15 is required, Yuga Labs denies the allegations set forth in paragraph 58 of
16 Defendants’ counterclaims.

17 59. On March 17, 2023, the Court dismissed Defendants’ second through
18 sixth counterclaims and therefore no response is required. To the extent a response
19 is required, Yuga Labs denies the allegations set forth in paragraph 59 of
20 Defendants’ counterclaims.

21 60. On March 17, 2023, the Court dismissed Defendants’ second through
22 sixth counterclaims and therefore no response is required. To the extent a response
23 is required, Yuga Labs denies the allegations set forth in paragraph 60 of
24 Defendants’ counterclaims.

25 61. Yuga Labs denies the allegations set forth in paragraph 61 of
26 Defendants’ counterclaims, except that Yuga Labs admits that its trademark
27 applications speak for themselves.

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1 62. Yuga Labs denies the allegations set forth in paragraph 62 of
2 Defendants' counterclaims.

3 63. On March 17, 2023, the Court dismissed Defendants' second through
4 sixth counterclaims and therefore no response is required. To the extent a response
5 is required, Yuga Labs denies the allegations set forth in paragraph 63 of
6 Defendants' counterclaims.

7 64. On March 17, 2023, the Court dismissed Defendants' second through
8 sixth counterclaims and therefore no response is required. To the extent a response
9 is required, Yuga Labs denies the allegations set forth in paragraph 64 of
10 Defendants' counterclaims.

11 65. On March 17, 2023, the Court dismissed Defendants' second through
12 sixth counterclaims and therefore no response is required. To the extent a response
13 is required, Yuga Labs denies the allegations set forth in paragraph 65 of
14 Defendants' counterclaims.

15 66. On March 17, 2023, the Court dismissed Defendants' second through
16 sixth counterclaims and therefore no response is required. To the extent a response
17 is required, Yuga Labs denies the allegations set forth in paragraph 66 of
18 Defendants' counterclaims.

19 67. On March 17, 2023, the Court dismissed Defendants' second through
20 sixth counterclaims and therefore no response is required. To the extent a response
21 is required, Yuga Labs denies the allegations set forth in paragraph 67 of
22 Defendants' counterclaims.

23 68. On March 17, 2023, the Court dismissed Defendants' second through
24 sixth counterclaims and therefore no response is required. To the extent a response
25 is required, Yuga Labs denies the allegations set forth in paragraph 68 of
26 Defendants' counterclaims.

27 69. On March 17, 2023, the Court dismissed Defendants' second through
28 sixth counterclaims and therefore no response is required. To the extent a response

1 is required, Yuga Labs denies the allegations set forth in paragraph 69 of
2 Defendants' counterclaims.

3 70. On March 17, 2023, the Court dismissed Defendants' second through
4 sixth counterclaims and therefore no response is required. To the extent a response
5 is required, Yuga Labs denies the allegations set forth in paragraph 70 of
6 Defendants' counterclaims.

7 71. On March 17, 2023, the Court dismissed Defendants' second through
8 sixth counterclaims and therefore no response is required. To the extent a response
9 is required, Yuga Labs denies the allegations set forth in paragraph 71 of
10 Defendants' counterclaims.

11 72. On March 17, 2023, the Court dismissed Defendants' second through
12 sixth counterclaims and therefore no response is required. To the extent a response
13 is required, Yuga Labs denies the allegations set forth in paragraph 72 of
14 Defendants' counterclaims.

15 73. On March 17, 2023, the Court dismissed Defendants' second through
16 sixth counterclaims and therefore no response is required. To the extent a response
17 is required, Yuga Labs denies the allegations set forth in paragraph 73 of
18 Defendants' counterclaims.

19 **FIRST COUNT**

20 74. To the extent paragraph 74 requires a response, Yuga Labs reasserts its
21 answers to all preceding paragraphs contained above as though fully set forth
22 herein.

23 75. Yuga Labs denies the allegations set forth in paragraph 75 of
24 Defendants' counterclaims.

25 76. Yuga Labs denies the allegations set forth in paragraph 76 of
26 Defendants' counterclaims.

27 77. Yuga Labs denies the allegations set forth in paragraph 77 of
28 Defendants' counterclaims.

SECOND COUNT

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2 78. To the extent paragraph 78 requires a response, Yuga Labs reasserts its
3 answers to all preceding paragraphs contained above as though fully set forth
4 herein.

5 79. On March 17, 2023, the Court dismissed Defendants’ second through
6 sixth counterclaims and therefore no response is required. To the extent a response
7 is required, Yuga Labs denies the allegations set forth in paragraph 79 of
8 Defendants’ counterclaims.

9 80. On March 17, 2023, the Court dismissed Defendants’ second through
10 sixth counterclaims and therefore no response is required. To the extent a response
11 is required, Yuga Labs denies the allegations set forth in paragraph 80 of
12 Defendants’ counterclaims.

13 81. On March 17, 2023, the Court dismissed Defendants’ second through
14 sixth counterclaims and therefore no response is required. To the extent a response
15 is required, Yuga Labs denies the allegations set forth in paragraph 81 of
16 Defendants’ counterclaims.

THIRD COUNT

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18 82. To the extent paragraph 82 requires a response, Yuga Labs reasserts its
19 answers to all preceding paragraphs contained above as though fully set forth
20 herein.

21 83. On March 17, 2023, the Court dismissed Defendants’ second through
22 sixth counterclaims and therefore no response is required. To the extent a response
23 is required, Yuga Labs denies the allegations set forth in paragraph 83 of
24 Defendants’ counterclaims.

25 84. On March 17, 2023, the Court dismissed Defendants’ second through
26 sixth counterclaims and therefore no response is required. To the extent a response
27 is required, Yuga Labs denies the allegations set forth in paragraph 84 of
28 Defendants’ counterclaims.

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1 **PRAYER FOR RELIEF**

2 Yuga Labs denies that Defendants are entitled to the relief requested, or to
3 any other relief in law or equity.

4 **AFFIRMATIVE DEFENSES**

5 By alleging the Defenses set forth below, Yuga Labs does not agree or
6 concede that it bears the burden of proof or persuasion on any of these issues,
7 whether in whole or in part. For its Defenses to Defendants' counterclaims, Yuga
8 Labs alleges as follows:

9 **FIRST DEFENSE**

10 **(Failure to State a Claim)**

11 1. Defendants' counterclaims fail to state a claim upon which relief can
12 be granted.

13 **SECOND DEFENSE**

14 **(Lack of Standing)**

15 2. Defendants' counterclaims for relief are barred in whole or in part
16 because Defendants cannot prove that they have suffered any legally cognizable
17 harm and therefore lack standing to bring their counterclaims.

18 **THIRD DEFENSE**

19 **(Unclean Hands)**

20 3. Defendants' claims for relief are barred in whole or in part by the
21 doctrine of unclean hands based on various unlawful activities associated with the
22 sale and promotion of the RR/BAYC NFT collection including Defendants' willful
23 infringement of Yuga Labs' Bored Ape trademarks.

24 **FOURTH DEFENSE**

25 **(Unjust Enrichment)**

26 4. Defendants' claims for relief are barred in whole or in part because the
27 relief Defendants seek would constitute unjust enrichment, especially to the extent
28 that they seek relief relating to the sale and promotion of the RR/BAYC NFT

1 collection and Defendants' willful infringement of Yuga Labs' Bored Ape
2 trademarks.

3 **FIFTH DEFENSE**

4 **(Failure to Mitigate)**

5 5. To the extent Defendants' have suffered any harm, to which Yuga
6 Labs does not admit, Defendants have failed to meet their legal obligation to take
7 reasonable steps to mitigate any alleged damages and is therefore barred from
8 recovering damages, if any, from Yuga Labs.

9 **SIXTH DEFENSE**

10 **(Good Faith)**

11 6. Defendants' counterclaims are barred because Yuga Labs acted in
12 good faith in their activities associated with the Bored Ape Yacht Club project. If
13 any conduct by Yuga Labs is found to be unlawful, such conduct was not
14 oppressive, fraudulent, or committed with malice.

15 **SEVENTH DEFENSE**

16 **(Speculative Damages)**

17 7. Defendants are barred from recovering, in whole or in part, on any of
18 the claims alleged in their counterclaims because the damages are speculative.

19 **EIGHTH DEFENSE**

20 **(Justification)**

21 8. Defendants' counterclaims are barred based on Yuga Labs' privilege
22 to protect their own economic interest in the Bored Ape Yacht Club NFT project.

23 **NINTH DEFENSE**

24 **(Equitable Estoppel)**

25 9. The relief Defendants seek is barred by the doctrine of equitable
26 estoppel.

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TENTH DEFENSE

(Waiver)

10. The relief Defendants seek is barred by the doctrine of waiver.

ELEVENTH DEFENSE

(No Damages)

11. Defendants have not suffered any injury or damages whatsoever.

RESERVATION OF ADDITIONAL DEFENSES

12. Yuga Labs has not waived any other applicable affirmative defenses and reserves the right to assert and rely upon such defenses as they may become apparent or available throughout the proceedings. Yuga Labs reserves any and all additional defenses available under applicable rules, regulations, and laws related thereto and/or otherwise in law or equity, now existing or later arising as may be discovered.

Dated: March 31, 2023

FENWICK & WEST LLP

By: Eric Ball
Eric Ball
Attorneys for Yuga Labs and
Counterclaim Defendant
YUGA LABS, INC.

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