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14
 15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17 WESTERN DIVISION – Los Angeles
 18

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

Case No.: 2:22-cv-04355-JFW-JEM
**PLAINTIFF YUGA LABS, INC.’S
 RESPONSE TO DEFENDANTS’
 15 U.S.C. §1116(A) DECLARATIONS**

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1 Plaintiff Yuga Labs, Inc. (“Yuga Labs”) respectfully submits this response to
2 Defendants’ declarations (Dkts. 464, 465), submitted pursuant to this Court’s
3 judgment and 15 U.S.C. § 1116(a), to address Defendants’ non-compliance with the
4 Court’s judgment.¹

5 Mr. Ripps’ declaration is misleading at best. As laid bare by the timeline of
6 this case and Mr. Ripps’ own words, he not only fails to establish compliance with
7 the Court’s judgment, but his claimed intentional destruction of “the private keys to
8 any and all cryptocurrency wallets which contains all RR/BAYC NFTs that were
9 formerly in [his] possession” (Dkt. 465 ¶ 2(i)) demonstrates a deliberate and bad-
10 faith effort to thwart the Court’s ordered remedies and to further harm Yuga Labs.
11 And, neither Defendant has complied with the Court’s orders to pay stipulated
12 attorney’s fees in connection with Yuga Labs’ successful anti-SLAPP motion or to
13 reimburse Yuga Labs for its portion of the Special Master’s fees.

14 **I. Mr. Ripps’ Deleted His Private Keys in Bad Faith to Undermine the**
15 **Court’s Authority and to Further Harm Yuga Labs**

16 **1. Mr. Ripps’ Purportedly Deleted His Private Keys Knowing He**
17 **Would Be Subject to an Injunction.**

18 On April 21, 2023, the Court determined that Yuga Labs was “entitled to
19 monetary damages and injunctive relief.” Dkt. 225 at 13. While the parties
20 disagreed about whether the injunctive relief should require that Defendants burn
21 their RR/BAYC NFTs or transfer them to Yuga Labs (*see, e.g.*, Dkt. 349 at 23; Dkt.
22 416 at 22; Dkt. 418-1 at 22; Dkt. 430-101 at 3), Mr. Ripps has indisputably known
23 since July 2023 that an injunction was forthcoming and that Yuga Labs’ proposed
24 injunction would require him to burn or transfer his RR/BAYC NFTs.² The

25 ¹ The declarations are not offered under penalty of perjury. *See* 28 U.S.C. § 1746.

26 ² For example, on July 17, 2023, Yuga Labs first proposed initial findings of fact
27 and conclusions of law including an injunctive term that “If Defendants own any
28 RR/BAYC NFT, they shall ‘burn’ (e.g., destroy) that NFT or provide it to Yuga
Labs to burn.” Dkt. 349 at 23. Then, after trial, on August 28, 2023 Yuga Labs
proposed the exact same injunctive term in its post-trial proposed findings of fact

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1 Court’s October 25, 2023 findings of fact and conclusions of law again confirmed
2 that the Court would enjoin use of the RR/BAYC NFTs because “the evidence at
3 trial demonstrated that Defendants’ infringing conduct has irreparably injured Yuga
4 by hindering its ability to control its reputation and brand.” Dkt. 431 at 21. The
5 Court further noted that an injunction would “allow Yuga to regain control over the
6 instrumentalities of commerce that bear its BAYC Marks and allow Yuga to protect
7 its brand and prevent future harm.” *Id.* at 21-22. On February 3, 2024, the Court
8 entered a final judgment in favor of Yuga Labs and entered an injunction which
9 required, *inter alia*: “[i]f Defendants own any RR/BAYC NFTs, they shall destroy
10 (e.g., ‘burn’) the NFTs or provide them to Yuga to burn” within two weeks of the
11 judgment. Dkt. 452 § 2(b).³

12 On February 21, 2024, *after* their compliance with the Court’s injunction was
13 due, and *after* agreeing to the stipulation with Plaintiffs, Mr. Ripps revealed for the
14 first time—through counsel—that more than two months earlier on December 9,
15 2023, he allegedly “destroyed” the private keys for wallets containing RR/BAYC
16 NFTs. Declaration of Eric Ball (“Ball Decl.”) Exhibit 1. Mr. Ripps confirmed this
17 in his declaration, by stating that he, as of December 9, 2023, had “destroyed the
18 private keys to any and all cryptocurrency wallets which [sic] contains all
19 RR/BAYC NFTs that were formerly in my possession.” Dkt. 465 ¶ 2(i).⁴ Mr.

20 _____
21 and conclusions of law. Dkt. 416 at 22. Defendants were aware of and responded
22 to both of these submissions.

22 ³ NFTs cannot be erased from the blockchain, so to “burn” an NFT is to transfer it
23 to the null address, 0x00, effectively
24 making it unowned and unusable.

24 ⁴ Importantly, Mr. Ripps did not claim to have destroyed the seed phrase for any of
25 his wallets. A seed phrase is a set of common words that can be used to recover
26 private keys and regain access to a user’s wallets at any point. *See*
27 <https://www.coinbase.com/learn/crypto-basics/what-is-a-seed-phrase> (“The reason
28 [a] recovery phrase is a series of 12 to 24 simple words . . . rather than a numeric
password is because long strings of numbers are difficult for humans to remember
or even transcribe correctly — think of how hard it can be to input a too-long wifi
password. Your recovery phrase unlocks your wallet, along with the private keys
associated with all the crypto *in* the wallet.”).

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1 Ripps claims he took this action to “permanently ensure that [he] did not
2 inadvertently engage in any activity on any cryptocurrency wallet that could be
3 interpreted as violating the Court’s earlier October 25, 2023 injunction.” *Id.* Mr.
4 Ripps stated that he has “taken all action possible in compliance” with the
5 injunction, because—by design—he now does not “possess or control” any
6 RR/BAYC NFTs. *Id.* ¶ 2(j).

7 **2. Mr. Ripps’ Actions Frustrate the Effect of the Court’s Judgment**

8 Mr. Ripps’ professed compliance provides no assurance of finality to this
9 dispute. Mr. Ripps can recover access to the NFTs in his wallets at any time if he
10 has physical or digital backups of his private keys; if he recalls or accesses a copy
11 of the seed phrase required to regenerate the keys; or if he recovers either the
12 private keys or the seed phrase from a device on which they were stored and
13 purportedly deleted.

14 Additionally, Mr. Ripps, through counsel, only disclosed to Yuga Labs
15 following the judgment two wallets containing RR/BAYC NFTs⁵ and claimed that
16 “[he] is not aware of any other wallet that he ever controlled that included any
17 RR/BAYC” NFTs. Ball Decl. Exhibit 1. However, Mr. Ripps previously admitted
18 under oath that he controls a third wallet, which currently contains 10 RR/BAYC
19 NFTs that have not been transferred or burned in accordance with the Court’s
20 judgment.⁶ Mr. Ripps’ declaration does not specify whether the private keys to this
21 wallet were allegedly destroyed, and Yuga Labs has no way of ascertaining whether
22 Mr. Ripps controls additional, undisclosed wallets.

23 _____
24 ⁵ These wallets correspond to addresses
25 0x592814ff14e030b51f6087032db0f88f4214f254 (*see* Dkt. 320-1 at 3-4
26 (stipulating to Mr. Ripps’ control of this wallet)) and
27 0xbaf287cb2281841d9f5ba929d7dde87048fcf1b (*see id.* (same)).

28 ⁶ This third wallet corresponds to address
0xaaD263954FA877B370d6E518ed2dC55992FfA47A. *See* Ripps Dep. Tr. at 170-
173, 172:16 (“It’s my wallet.”); *see also* [https://etherscan.io/token/
0x2ee6af0dff3a1ce3f7e3414c52c48fd50d73691e?a=0xaaD263954FA877B370d6E
518ed2dC55992FfA47A#inventory](https://etherscan.io/token/0x2ee6af0dff3a1ce3f7e3414c52c48fd50d73691e?a=0xaaD263954FA877B370d6E518ed2dC55992FfA47A#inventory) (containing 10 RR/BAYC NFTs).

1 Mr. Ripps’ actions only further harm Yuga Labs by frustrating the purpose of
 2 the Court’s injunction. To be clear, simply deleting private keys only means that
 3 Mr. Ripps can no longer access the infringing NFTs in his wallets—he still owns
 4 the NFTs, and they are still associated with him. The effect of Mr. Ripps’ actions is
 5 to leave the infringing RR/BAYC NFTs forever in his wallets, which undermines
 6 Yuga Labs’ ability to “regain control over the instrumentalities of commerce that
 7 bear its BAYC Marks and allow Yuga to protect its brand and prevent future harm.”
 8 Dkt. 431 at 21-22. To add insult to injury, certain of those infringing RR/BAYC
 9 NFTs are now forever held in *a wallet publicly known as ryder-ripps.eth* and held
 10 alongside a genuine Yuga Labs NFT, further damaging Yuga Labs’ brand.

11 3. Mr. Ripps Lacks a Good-Faith Excuse for His Actions

12 It is not credible that Mr. Ripps would delete his private keys to inadvertently
 13 avoid violating the order when he continued to use at least one of the wallets for 45
 14 days after the Court’s order. Mr. Ripps signed seven transactions involving a
 15 wallet containing RR/BAYC NFTs after October 25, 2023—including swapping
 16 \$23,000 in cryptocurrencies, purchasing a Yuga Labs Mutant Ape Yacht Club NFT,
 17 and withdrawing his remaining cryptocurrency to an exchange on December 9,
 18 2023.⁷

19 Mr. Ripps’ technological sophistication undermines any contention that this
 20 was the only viable path to compliance or to prevent violation of the Court’s
 21 orders.⁸ A cryptocurrency/NFT wallet must be deliberately used, because wallet
 22 transactions must be deliberately signed with a private key. There is no plausible

23
 24 ⁷ See [https://etherscan.io/address/
 0x592814FF14E030B51F6087032DB0f88F4214F254](https://etherscan.io/address/0x592814FF14E030B51F6087032DB0f88F4214F254).

25 ⁸ Far from a novice, Mr. Ripps claims he has been “mining ETH since 2017,”
 26 [https://web.archive.org/web/20220618155214/https://twitter.com/ryder_ripps/
 status/1538187794622709761](https://web.archive.org/web/20220618155214/https://twitter.com/ryder_ripps/status/1538187794622709761), and his wallet has over 20,000 transactions—nearly
 27 200 of which occurred during the pendency of this case. [https://etherscan.io/
 address/0x592814FF14E030B51F6087032DB0f88F4214F254](https://etherscan.io/address/0x592814FF14E030B51F6087032DB0f88F4214F254). At any time, Mr.
 28 Ripps could have created a new wallet to use instead of one containing RR/BAYC
 NFTs that were subject to litigation.

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1 explanation for Mr. Ripps’ purported fear of unintentionally interacting with the
2 RR/BAYC NFTs stored in his wallets, nor is there a reasonable basis for
3 permanently destroying his private keys instead of simply abstaining from using the
4 wallet. Mr. Ripps made a deliberate and unnecessary decision to make compliance
5 with an injunction impossible, but only after withdrawing thousands of dollars in
6 cryptocurrency stored in his wallets.

7 As further evidence of Mr. Ripps’ bad faith, the parties entered a stipulation
8 at Defendants’ request on February 6, 2024, which the Court approved, specifying
9 that Defendants may comply with the terms of the October 25, 2023 injunction by
10 transferring their RR/BAYC NFTs to Yuga Labs. Dkts. 454, 455. At no time
11 before entry of that stipulation did Defendants disclose to Yuga Labs that Mr. Ripps
12 purportedly relinquished his control of *all* RR/BAYC NFTs he was now ordered to
13 transfer to Yuga Labs.

14 **II. Separately, Neither Defendant Has Fully Complied with the Judgment**

15 In addition, Mr. Ripps and Mr. Cahen have violated the Court’s judgment in
16 two other respects.

17 First, to resolve the dispute over Yuga Labs’ attorneys’ fees in connection
18 with its successful anti-SLAPP motion against Defendants’ counterclaims,
19 Defendants represented that *within two weeks* of the final judgment, they would
20 pay \$120,000 in stipulated attorneys’ fees. Dkt. 227. Defendants have filed their
21 brief in the appeal of this matter, which does not even challenge the anti-SLAPP
22 Order of Yuga Labs’ entitlement to the \$120,000 attorneys’ fee award. Defendants’
23 specific promise to Yuga Labs, on which Yuga Labs reasonably relied to its
24 detriment by forgo its full attorneys’ fees, was “Defendants will of course comply
25 with whatever the court orders. If the court orders payment within a specific
26 timeframe, Defendants will comply.” Ball Decl. Exhibit 3. In line with these
27 promises, the Court ordered Defendants to “pay \$120,000 to Yuga for attorneys’
28 fees pursuant to the terms of the Court’s previous Order (Dkt. No. 227) in

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1 connection with Yuga’s anti-SLAPP motion (Dkt. No. 156), for which Defendants
2 shall be jointly and severally liable” within two weeks. Dkt. 452; *see also* Dkt. 227
3 (“Defendants will make the payment of \$120,000 to Yuga Labs within two weeks
4 of the Court’s final judgment”). This order was separate from the monetary
5 judgment for Yuga Labs’ claims. Defendants have refused to make that promised
6 payment and have refused to identify what they have done with those funds since
7 making their promise. Ball Decl. ¶ 4.

8 Second, Defendants have not reimbursed Yuga Labs for its portion of fees
9 paid to the Special Master, which they were ordered to do “immediately.” Dkt.
10 452. Defendants paid their remaining \$69,275 balance to the Special Master but
11 have not explained their failure to pay the \$27,875 reimbursement owed to Yuga
12 Labs in the 35 days since final judgment was entered.

13 Contrary to their prior promises, Defendants claim that they cannot make any
14 payments, but their actions belie their bad faith. Since the Court’s order, Mr. Cahen
15 withdrew \$30,000 in cryptocurrency from his known wallet to an exchange,⁹ and—
16 on the same day he filed his declaration of purported compliance—he purchased an
17 NFT for \$11,200.¹⁰

18 **III. The Court Should Sanction Mr. Ripps and Order Defendants to Comply**
19 **with the Judgment**

20 Yuga Labs has no adequate remedy for Mr. Ripps’ intentional destruction of
21 his private keys and malfeasance in refusing to relinquish his ownership of the
22 infringing RR/BAYC NFTs. These actions were transparently a bad-faith defiance
23 of the Court’s authority after the outcome of the case had become clear.
24

25 ⁹ [https://etherscan.io/tx/
0x3b1f7c4bcd24ea18e2406cf945da8d8cbe32d2cf386b6033bfd56be7c56bc9a;](https://etherscan.io/tx/0x3b1f7c4bcd24ea18e2406cf945da8d8cbe32d2cf386b6033bfd56be7c56bc9a)
26 [https://etherscan.io/tx/
0xaa76299508a06df9bb0dfd94ca8cf35ec00d838e1c39b2f5ee970795aa665c11.](https://etherscan.io/tx/0xaa76299508a06df9bb0dfd94ca8cf35ec00d838e1c39b2f5ee970795aa665c11)

27 ¹⁰ [https://etherscan.io/tx/
28 0x78ebe05b26ecc78e739af1957467d3c2555248891133eeebb24f224cdc0b12a3.](https://etherscan.io/tx/0x78ebe05b26ecc78e739af1957467d3c2555248891133eeebb24f224cdc0b12a3)

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1 District courts have inherent power to sanction “a full range of litigation
2 abuses.” Chambers v. NASCO, Inc., 501 U.S. 32, 46 (1991). These powers
3 supplement the courts’ sanctioning authority under statutes and rules, but also
4 “exist to fill in the interstices” of that body of authority. Id. “A specific finding of
5 bad faith, however, must ‘precede any sanction under the court’s inherent powers.’”
6 United States v. Stoneberger, 805 F.2d 1391, 1393 (9th Cir. 1986) (quoting
7 Roadway Express, Inc. v. Piper, 447 U.S. 752, 767(1980)). A court may also
8 punish “[d]isobedience or resistance to its lawful writ, process, order, rule, decree,
9 or command” as contempt. 18 U.S.C. § 401(3).

10 Given Mr. Ripps’ bad-faith destruction of his private keys, misleading
11 declaration, and continued misrepresentations to Yuga Labs and the Court, the
12 Court should exercise its inherent power and hold Mr. Ripps in contempt. The
13 Court should additionally order Defendants to comply immediately with the
14 judgment as to the transfer of \$120,000 in stipulated fees and \$27,875 in
15 reimbursements for Special Master fees, or ordered to show cause as to why their
16 non-compliance should not be sanctioned.¹¹

17 **IV. Conclusion**

18 Yuga Labs respectfully submits that the Court should consider an appropriate
19 sanction for the actions admitted in Mr. Ripps’ declaration. Additionally, to further
20 assess the degree of Mr. Ripps’ non-compliance, Yuga Labs requests that the Court
21 order Mr. Ripps to declare, under penalty of perjury: (1) the complete address of all
22 wallets under his possession, custody, or control that have ever held RR/BAYC
23 NFTs; (2) whether he has possession, custody or control over those wallets; (3)
24 whether he has private keys, seed phrases, back-ups, or the ability to access each of
25 the wallets. Yuga Labs also requests that the Court order the immediate transfer of
26 the 10 RR/BAYC NFTs held in wallet

27 _____
28 ¹¹ Defendants also have not paid any portion of the monetary judgment, which
Yuga Labs will address through appropriate enforcement proceedings.

