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

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

Case No.: 2:22-cv-04355-JFW-JEM

**DEFENDANTS' REPLY
REGARDING DEFENDANTS'
DECLARATIONS OF
COMPLIANCE**

Judge: John F. Walter

1 **I. INTRODUCTION**

2 This Court has repeatedly urged the parties to work together to resolve
3 disagreements before burdening this Court with additional briefing. Plaintiff Yuga
4 Labs, Inc.’s (“Yuga”) “response” to Defendants’ declarations of compliance ignores
5 that guidance, and instead (without motion, hearing, or conference of counsel) asks
6 this Court to order new and additional relief in the form of a sanction (yet another
7 declaration regarding various cryptocurrency wallets). No such extraordinary post-
8 judgment relief is warranted here. To the contrary, if Yuga has genuine questions
9 about the declarations that Mr. Ripps and Mr. Cahen submitted, it should have
10 contacted counsel for Defendants to resolve them. In fact, Yuga’s own exhibit 1
11 shows that the last communication between the parties on this issue was
12 *Defendants’* counsel’s offer to conduct additional investigation if Yuga had further
13 questions. *See* Dkt. 467-2 at 1. As their declarations make clear, Defendants acted
14 in good faith, complied to the best of their ability with the Court’s injunction, and
15 remain ready to provide any additional information that Yuga or the Court needs to
16 confirm that compliance.

17 Yuga’s “response” also urges the Court (again without motion, hearing, or
18 conference) to rule on an issue that has no connection to Defendants’ injunction
19 declarations—specific performance of a payment of a portion of the \$9 million
20 money judgment in this case. Yuga originally based this request on the false
21 statement in a declaration from Yuga’s counsel that Defendants’ counsel had not
22 responded to their email; in fact, Defendants’ counsel had and requested a
23 telephone conference (to which Yuga’s counsel did not respond). After
24 Defendants’ counsel informed Yuga’s counsel that it had no choice but to alert the
25 Court to this misrepresentation, Yuga filed a “notice of erratum” and corrected
26 declaration this morning (which removes the misrepresentation that was the basis
27 for Yuga’s request). But Yuga offers no explanation for the misrepresentation and

1 still asks the Court (now without any factual basis) to commit legal error by using
2 its contempt authority under Federal Rule of Civil Procedure 70 to order specific
3 performance of a money judgment controlled by Federal Rule of Civil Procedure
4 69. The Ninth Circuit has squarely rejected this approach, noting the Federal Rules
5 contemplate a single remedy for enforcement of a money judgment—a writ of
6 execution. *E.g.*, [Hilao v. Estate of Marcos](#), 95 F.3d 848, 854-855 (9th Cir. 1996);
7 [Shuffler v. Heritage Bank](#), 720 F.2d 1141, 1147-1148 (9th Cir. 1983). Yuga has
8 elected not to request a writ of execution. *See* Dkt. 467 (“Resp.”) at 7 n.11.

9 **II. BACKGROUND**

10 **A.** As this Court is no doubt aware, the parties disputed and briefed the
11 scope of an appropriate permanent injunction in this case for months. Dkt. Nos. 420,
12 427, 449, 251. While Defendants did not dispute that the Court’s injunction was
13 permitted to include a prohibition on marketing and promoting the RR/BAYC NFTs,
14 Defendants repeatedly objected to the several aspects of Yuga’s injunction that would
15 violate the First Amendment. For example, Defendants argued that a provision of
16 the proposed injunction that barred them from referencing the RR/BAYC project in
17 *any* way—even just to neutrally recite the facts of this case or to state “I am not
18 selling RR/BAYC NFTs.” Dkt. No. 427-100 at 4. Defendants also objected to a
19 provision of the proposed injunction that would require destroying the RR/BAYC
20 NFTs. Dkt. 427-101 at 3.

21 On October 25, 2023, this Court issued its decision on the scope of the
22 injunction. *See* Dkt. 431 at 21-23. The Court provided a detailed description of what
23 the injunction required, including (1) prohibiting “Defendants ... from marketing,
24 promoting, or selling product or services ... that use the BAYC marks,” (2)
25 “require[ing] Defendants to transfer control of” several websites, Twitter accounts,
26 and the RR/BAYC smart contract. *Id.* The Court’s ruling ended with the following
27 statement: “Accordingly, the Court concludes that Yuga is entitled to a permanent
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1 injunction against Defendant[s] *as described herein.*” *Id.* at 23.¹ Nothing in this
2 Court’s detailed description of the injunction required destruction or transfer of the
3 RR/BAYC NFTs themselves; rather, the Court appeared to have rejected that aspect
4 of Yuga’s request (among others).

5 On January 26, 2024, Yuga asked this Court to reconsider the scope of the
6 injunction as part of a short joint filing related to the text of the final judgment. *See*
7 Dkt. 451 at 1-2. Yuga’s portion of the filing acknowledged that its proposed final
8 judgment included “*additional* provisions” that went beyond this Court’s October
9 2023 ruling, including a requirement that Defendants give up “their remaining
10 inventory.” *Id.* 2 & n.1; *but see id.* at 7-8 (Defendants’ objections to the broader
11 injunction request, including on the ground that Plaintiff was improperly seeking
12 reconsideration without meeting requirements of Local Rule 7-18). This Court
13 adopted the broader injunction with the new destruction provision in the final
14 judgment entered on February 3, 2024. *See generally* Dkt. 452.

15 **B.** In order to avoid burdening this Court with a request for emergency
16 relief to prevent destruction of the NFTs, the parties stipulated to a limited stay—i.e.,
17 that the Defendants would transfer “all RR/BAYC NFTs they control to Yuga” for
18 Yuga to maintain while any appeals are pending. Dkt. 454, 455. Yuga does not
19 dispute that Mr. Cahen has transferred all of the remaining RR/BAYC NFTs within
20 his control to Yuga. *See* Dkt. 464 at 4.

21 On February 21, 2024, Yuga’s counsel contacted Defendants’ counsel
22 regarding the status of Mr. Ripps’ transfer of RR/BAYC NFTs. *See* Ex. 1 at 3-4.
23 Defendants’ counsel responded that same day, informing Yuga’s counsel that Mr.
24 Ripps had previously “destroyed the private keys to all cryptocurrency wallets that
25 he previously controlled that contain any RR/BAYC NFTs” and did so to

26 _____
27 ¹ Emphasis added unless noted.

1 “permanently ensure that he did not inadvertently engage in any activity ... that could
2 be interpreted as violating the Court’s earlier October 25, 2023 injunction.” Dkt.
3 467-2 at 3. In response to follow-up questions from Yuga’s counsel, Defendant’s
4 counsel explained that Mr. Ripps was in compliance with the injunction because (1)
5 “on December 9th 2023, Mr. Ripps destroyed the seed phrase for [two specific
6 wallets] as well as any wallets that were created by the seed phrase,” (2) “Mr. Ripps
7 did not ever control any RR/BAYC NFTs except in wallets for which the seed phrase
8 was destroyed, and (3) “Mr. Ripps has not had access to or control over any wallet
9 with an RR/BAYC NFT since December 9th, 2023.” Dkt. 467-2 at 2. On February
10 29, 2024, Defendants’ counsel also confirmed that the “two wallet addresses that we
11 identified were the ones that Mr. Ripps knows corresponding to the destroyed seed
12 phrase,” but offered “to investigate” if Yuga believed there were any other affected
13 wallets. *Id.* Yuga’s counsel did not respond to that email; it also never requested
14 that Mr. Ripps provide a supplemental declaration.

15 C. In a separate chain of correspondence beginning on February 9, 2024,
16 Yuga’s counsel asked Defendants’ counsel about the status of payment of portions
17 of the money judgment, including the portion of the judgment reflecting an award of
18 attorney’s fees and a reimbursement for the costs of employing a Special Master. *See*
19 *generally* Dkt. 467-3. Defendants’ counsel responded the next business day to
20 explain that he “underst[ood] from Mr. Ripps and Mr. Cahen that they are not able
21 to satisfy the monetary award” and that payment would have to proceed through
22 “enforcement proceedings.” Dkt. 467-3 at 2-3.

23 The parties exchanged several further emails regarding payment of the money
24 judgment, including Yuga’s counsel’s email on Friday, February 23, 2024—which
25 is the final email that Yuga elected to include in its Exhibit 2. Yuga’s counsel then,
26 in a sworn declaration filed last Friday afternoon, attested that “Counsel for
27 Defendants did not respond to the most recent email.” Dkt. 467 at 1. But this sworn

1 statement by Yuga’s counsel was false: on Monday, February 26, 2024—in an email
2 that is *not* included in Yuga’s exhibit—Defendants’ counsel responded with the
3 following message: “Eric – I think we are talking past each other and it may be easier
4 to talk through these issues through by phone. Let me know when would work for
5 you, or feel free to give me a call at your convenience.”² Dkt. 468-2 at 1. Yuga’s
6 counsel never called or otherwise responded to the final email.

7 Counsel for Defendants alerted Yuga’s counsel about this false statement,
8 explained that Defendants had no choice to bring the false statement to the Court’s
9 attention quickly given the nature of the relief that Yuga was seeking without
10 opportunity for Defendants to respond, and afforded counsel for Yuga an opportunity
11 to explain the statement and withdraw the declaration. Tompros Decl., Ex. A. Yuga
12 responded that it would “submit a correct declaration tomorrow morning” (*id.*) and
13 subsequently filed a “Notice of Erratum” admitting that Counsel’s sworn statement
14 was incorrect (Dkt. 468). Surprisingly, Yuga’s “Notice of Erratum” offers no
15 explanation for how the false statement got into its Friday afternoon filing in the first
16 place, nor does Yuga in any way account for its failure to respond to communications
17 from Defendants’ counsel prior to requesting the extreme relief of contempt
18 sanctions. Dkt. 468 at 1. Instead, Yuga argues—inexplicably—that its “corrections
19 do not affect the substance of the response to which the declaration was attached”
20 (*id.* at 1), despite Yuga’s response repeatedly relying on counsel’s now withdrawn
21 declaration repeatedly throughout its response (*see* Dkt. 467 at 2, 3, 5, 6).

22 **II. ARGUMENT**

23 **A. Mr. Ripps Fully Complied With The October 2023 Injunction**

24 There is no apparent dispute that Mr. Ripps has fully complied with every
25 aspect of the injunction as it stood in October 2023 and that he has complied with

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27 ² Defendants informed Yuga of this false statement in Eric Ball’s sworn declaration
and Yuga has filed an amended declaration.

1 every aspect of the expanded February 2024 injunction except for his inability to
2 transfer RR/BAYC NFTs to Yuga from wallets that he no longer has access to.
3 Accordingly, the only issue raised by Yuga’s “response” is whether Mr. Ripps should
4 be sanctioned for his efforts to comply with the Court’s injunction as issued in
5 October 2023. He should not be.

6 *First*, as to the October 2023 injunction: Yuga misleadingly suggests that the
7 destruction of the RR/BAYC NFTs was part of the injunction ordered in October
8 2023. *See* Dkt. 467 at 2. It unequivocally was not. Nothing in this Court’s detailed
9 description of the scope of the injunction required such destruction. The two
10 passages that Yuga quotes come from (1) a section finding irreparable injury to Yuga
11 (i.e., not ruling on the scope of the injunction), Dkt. 431 at 21, and (2) a passage
12 ordering the transfer of *six specific items*, which it described as “instrumentalities of
13 commerce that bear [Yuga’s] BAYC Marks.” Those specific items were
14 “rrbayc.com, apemarket.com, rrbayc-v0.netlify.app, the @ApeMarketplace Twitter
15 account, the @ApeMarketBot Twitter account, and the RR/BAYC smart contract.”
16 Dkt. 431 at 22. (There is no dispute that each of those items that Defendants
17 controlled were transferred to Yuga.) By ruling this narrowly and specifically, the
18 Court necessarily rejected Yuga’s pending request for further injunctive relief,
19 including destruction of the RR/BAYC NFTs themselves. This reading of the
20 October 2023 injunction is confirmed by Yuga’s own subsequent briefing, which
21 described the destruction provision as an “additional” requirement that did not exist
22 in the October 2023 order. *See supra* p. 3.

23 *Second*, as to the February 2024 injunction: the new, broader injunction
24 requires Mr. Ripps to surrender those RR/BAYC NFTs that are within his possession
25 and control. Due to his pre-injunction deletion of his private keys and seed phrase to
26 the two relevant wallets by December 9, 2023, Mr. Ripps did not have possession or
27 control over any RR/BAYC NFTs when the injunction entered (and still does not),
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1 and therefore has nothing to transfer. *See* Dkt. 465 at 4.

2 *Finally*, Yuga speculates that—beyond the two wallets for which Mr. Ripps
3 has already destroyed his private keys and seed phrase—Mr. Ripps controls a *third*
4 wallet that contains RR/BAYC NFTs. Dkt. 467 at 3. While Yuga asserts that Mr.
5 Ripps testified under oath that he controlled the wallet, the deposition transcript Yuga
6 cites does not bear that out. The phrase Yuga excerpts (“It’s my wallet”) appears to
7 refer to the wallet Mr. Ripps *used to mint the RR/BAYC NFTs*—and not to the wallet
8 that received 10 specific RR/BAYC NFTs. *See* Ryder Dep. Tr. 171-173; *see also id.*
9 173 (“Q: Other than owning possession *of the wallet from which you claim the*
10 *RR/BAYC NFTs were minted*, how were the ten that were sent to [the third wallet]
11 ... How were they sent to –how did [the RR/BAYC NFTs] get from your wallet to
12 the wallet address we see here.”).³ Again, as Defendants’ counsel informed Yuga
13 weeks ago, the wallet that minted the RR/BAYC NFTs is one of the wallets for which
14 the private keys and seed phrase have been destroyed. *See* Dkt. 467-2.

15 **B. Yuga’s Tacked-On Request To Enforce A Portion Of The Money**
16 **Judgment Is Irrelevant To The Injunction And Asks This Court**
17 **To Commit Legal Error**

18 In a brief section at the end of Yuga’s “response” regarding Defendants’
19 *injunction* declarations, it asserts that “*separately*, neither Defendant has fully
20 complied with the *judgment*.” Resp. 5-6. As Yuga’s careful phrasing makes clear,
21 this second request for relief has nothing to do with the injunction and is thus
22 improper in this “response.” In any event, Yuga’s assertions are factually
23 inaccurate and legally meritless.

24 As to the former (the facts), Yuga’s assertion that Defendants have “refused”
25 to explain the status of attorney’s fees and reimbursement of the Special Master

26 ³ In a passage that Yuga ignores, Mr. Ripps stated that he was not sure about the
27 origins or ownership of the third wallet. *See* Ripps Dep. Tr. 173 (“[T]hat’s a wallet
28 address perhaps I created to reserve some for my dad.”).

1 fees is simply false. Yuga’s own exhibit establishes that Defendants have stated
2 that those sums are part of the money judgment, that Defendants are unable to
3 satisfy that judgment, and that Yuga could, if it chose, seek to a writ of execution to
4 enforce that judgment. Dkt. 467-3. And the original sworn statement of Yuga’s
5 counsel that Defendants failed to respond to Yuga’s February 23, 2024 email is
6 false (as Yuga has now conceded in its “amended” declaration): Defendants’
7 counsel responded on February 26—i.e., nearly two weeks ago—requesting a
8 phone call to resolve these issues. *See* Dkt. 468-2. Yuga still has never responded.

9 As to the latter (the law), Yuga asks this Court to consider contempt
10 sanctions for failure to pay a portion of the overall money judgment without citing a
11 single case that has ever authorized such an approach. *See* Dkt. 467-2 at 6, 8. Yuga
12 silence is for a good reason—the Ninth Circuit has made clear that “the proper
13 means ... to secure compliance with a money judgment is to seek a writ of
14 execution, not obtain a fine of contempt for the period of non-payment.” *Shuffler*,
15 [720 F.2d at 1147](#) (reversing district court’s use of sanctions to force payment of a
16 monetary judgment). To be sure, the Ninth Circuit has recognized that contempt—
17 or one of the other mechanisms established under Rule 70 for “enforcing a
18 judgment for a specific act”—is appropriate in exceptional circumstances, such as
19 when the non-paying party is a state. *See Hilao, 95 F.3d at 855*. But the *Shuffler*
20 Court expressly rejected the notion that contempt was appropriate when its only
21 purpose was to penalize a party for failing to pay a stipulated amount by a specific
22 date set by court order. [720 F.2d at 1143, 1147](#); *see also Spain v. Mountanos, 690*
23 [F.2d 742, 744 \(9th Cir. 1982\)](#) (noting, in case involving failure to pay an attorney’s
24 fee award, that “ordinarily, the equitable remedies under Federal Rule 70 are not
25 appropriate in enforcing a monetary judgment”).

26 In short, the mere fact that “[t]he subject matter of this case is unusual” does
27 not change the remedies that are available to Yuga. *Hilao, 95 F.3d at 855*. To the

1 extent that Yuga seeks to attempt to collect on the money judgment while the
2 appeal is pending in front of the Ninth Circuit, Yuga’s recourse is a writ of
3 execution, not piecemeal complaints and requests for sanctions.⁴

4 **III. CONCLUSION**

5 Defendants respectfully request that this Court deny Yuga’s requested relief.

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8 Dated: March 11, 2024

By: /s/ Louis W. Tompros

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26 ⁴ Defendants’ opening appellate brief was filed on March 1, 2024. *See Yuga Labs,*
27 *Inc. v. Ripps*, No. 24-879 (9th Cir.), ECF No. 14. One week later, the Ninth Circuit
28 set oral argument for the July 2024 calendar. *Id.*, ECF No. 23.

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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 11, 2024

By: /s/ Louis W. Tompros

Louis W. Tompros

CERTIFICATE OF COMPLIANCE

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

By: /s/ Louis W. Tompros

Louis W. Tompros