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Attorneys for Defendants
Ryder Ripps and Jeremy Cahen

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

20 Yuga Labs, Inc.,
 21 Plaintiff,
 22 v.
 23 Ryder Ripps, Jeremy Cahen, Does 1-10,
 24 Defendants.

Case No.: 2:22-cv-4355-JFW-JEM
**JOINT SCHEDULING
 CONFERENCE REPORT
 PURSUANT TO RULE 26(f)**

 Judge: Honorable John F. Walter

26 Plaintiff Yuga Labs, Inc. (“Yuga Labs”), and Defendants Ryder Ripps and
 27 Jeremy Cahen (collectively, “Defendants”), by and through their counsel of record,
 28 hereby submit this Joint Report per Rule 26(f) of the Federal Rules of Civil

1 Procedure (“FRCP”), L.R. 26-1, the Court’s Standing Order (Dkt. 14), and the
2 Court’s August 17, 2022 Scheduling Order (Dkt. 32). On October 3, 2022 at
3 10:30 a.m., the following counsel for the parties to this action met and conferred via
4 video conference concerning the topics outlined in this report and discovery plan:

- 5 • Eric Ball (Lead Counsel), Kimberly Culp, and Ethan Thomas for
6 Yuga Labs
- 7 • Louis Tompros (Lead Counsel), Derek Gosma, and Henry Nikogosyan
8 for Defendants

9 The parties’ conference lasted approximately thirty-five minutes.

10 **1. Jurisdiction and Service**

11 This Court has subject matter jurisdiction over this trademark infringement
12 action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367. Yuga Labs’ claims are, in
13 part, based on violations of the Lanham Act, as amended, 15 U.S.C. §§ 1051, *et seq.*
14 The Court has jurisdiction over the state law claims pursuant to 28 U.S.C.
15 §§ 1338(b) and 1367.

16 There are no issues regarding personal jurisdiction or venue. Defendants
17 have been served and/or accepted service.

18 **2. Brief Chronology of the Facts and Statement of Principal Factual Issues**

19 The case involves certain trademarks that Yuga Labs alleges that it owns:
20 BORED APE YACHT CLUB, BAYC, BORED APE, APE, BA YC Logo, BAYC
21 BORED APE YACHT CLUB Logo, and Ape Skull Logo (collectively, the “BAYC
22 Marks”). Yuga Labs began selling non-fungible tokens (“NFTs”) under the BAYC
23 Marks in April 2021. Yuga Labs alleges, and Defendants dispute, that in May 2022,
24 Defendants began selling NFTs under “RR/BAYC” that depict the same images as
25 the BAYC NFTs. Defendants allege, and Yuga Labs disputes, that RR/BAYC is an
26 artistic project meant to, among other things, criticize and call attention to racist
27 and neo-Nazi imagery in the BAYC NFTs. Yuga Labs brought this action on
28 June 24, 2022.

1 Because their motion to dismiss remains pending, Defendants have not yet
2 asserted counterclaims or affirmative defenses. The factual and legal issues
3 identified below relate only to the Plaintiff's claims and may be expanded if and
4 when Defendants answer and counterclaim.

5 The principal factual issues in this case are:

- 6 • The existence of, and scope of, Yuga Labs' alleged rights in the
7 BAYC marks
- 8 • Whether Defendants' promotion and sale of RR/BAYC NFTs:
 - 9 ○ is likely to cause confusion or has caused actual confusion
 - 10 relating to the source of the RR/BAYC NFTs or
 - 11 ○ suggests the RR/BAYC NFTs are connected with, sponsored by,
 - 12 affiliated with, or related to Yuga Labs
 - 13 ○ explicitly misleads consumers as to the source of the RR/BAYC
 - 14 NFTs
- 15 • Whether Defendants' advertising of RR/BAYC NFTs:
 - 16 ○ actually or impliedly claims that their RR/BAYC NFTs are
 - 17 equivalent to authentic BAYC NFTs
 - 18 ○ is likely to deceive consumers of NFTs about the material
 - 19 qualities of RR/BAYC NFTs
 - 20 ○ is likely to deceive consumers of NFTs into purchasing
 - 21 RR/BAYC NFTs based on actual or impliedly false statements
 - 22 ○ constitutes intentional and willful false statements
 - 23 ○ explicitly misleads consumers as to the source of the RR/BAYC
 - 24 NFTs
- 25 • Whether BAYC NFTs and RR/BAYC NFTs are similar, comparable,
26 or complementary products
- 27 • Whether Yuga Labs and Defendants are competitors in the market for
28 NFTs

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- Whether Yuga Labs and Defendants market to the same or similar types of consumers
- The extent of consumer sophistication and care in purchasing products like BAYC NFTs and RR/BAYC NFTs
- Whether Yuga Labs and Defendants use the same channels of trade to sell or promote their NFTs
- Whether Defendants’ alleged use of marks allegedly confusingly similar to BAYC Marks was intentional
- Whether either party will expand into new markets, and the likelihood of that expansion
- Whether Defendants’ promotion and sale of RR/BAYC NFTs is expressive and protected speech
- Whether Defendants made any statement that was misleading or which had the capacity, likelihood, or tendency to deceive or confuse the public
- Whether Defendants’ alleged use of the BAYC Marks was artistically relevant to the RR/BAYC project
- Whether Defendants’ RR/BAYC NFTs are a product not readily identifiable without the use of the BAYC Marks
- Whether Defendants used only so much of the BAYC Marks as is reasonably necessary to identify RR/BAYC NFTs
- Whether Defendants have done anything to suggest sponsorship or endorsement by Yuga Labs
- Whether Yuga Labs’ claims in this case arise from Defendants’ acts in furtherance of speech that is protected under the United States Constitution
- Whether Yuga Labs’ claims in this case arise from Defendants’ acts in furtherance of speech that is protected under the California constitution

- 1 • Whether Yuga Labs’ claims in this case would have a chilling effect
- 2 on the speech of others
- 3 • Whether Defendants used the domain names <https://rrbayc.com/> and
- 4 <https://apemarket.com/> with a bad faith intent to profit from their
- 5 allegedly confusing similarity to the BAYC Marks
- 6 • Whether Defendants intentionally interfered with an economic
- 7 relationship that existed between Yuga Labs and individuals who have
- 8 purchased BAYC NFTs
- 9 • Whether Defendants interfered with Yuga Labs’ ownership and rights
- 10 in the BAYC Marks by knowingly or intentionally using them to
- 11 promote their RR/BAYC NFTs
- 12 • Whether Yuga Labs has been monetarily damaged by the Defendants’
- 13 promotion and sale of the RR/BAYC NFTs and/or relating to the
- 14 causes of action alleged in the Complaint
- 15 • Whether Yuga Labs has engaged in any corrective marketing,
- 16 advertising, or other actions in response to any alleged consumer
- 17 confusion
- 18 • The amount of revenues received by Defendants (and any permissible
- 19 deductions) due to the promotion and sale of the RR/BAYC NFTs
- 20 and/or relating to the causes of action alleged in the Complaint
- 21 • Whether the Defendants have been unjustly enriched by the promotion
- 22 and sale of the RR/BAYC NFTs and/or relating to the causes of action
- 23 alleged in the Complaint
- 24 • Whether the Defendants have irreparably harmed Yuga Labs due to
- 25 the promotion and sale of the RR/BAYC NFTs and/or relating to the
- 26 causes of action alleged in the Complaint

27 Defendants further allege the following principal factual issues in this case.
28 Yuga Labs contends that these are not elements of any cause of action, or any

1 defense to a cause of action, set forth in the Complaint or Defendants' motions to
2 date. Yuga Labs therefore objects to the inclusion of these issues in this
3 submission:

- 4 • Whether Defendants' accusations of racism against Yuga Labs and its
5 founders have basis (see Complaint ¶ 49 ("Since early 2022, Ripps has
6 harassed and personally attacked Yuga Labs and its founders through
7 baseless accusations of racism over social media networks like Twitter
8 and Instagram."))
- 9 • Whether Defendants' accusations that Yuga Labs engaged in racist,
10 hateful, and pro-Nazi speech are true (see Complaint ¶ 49 ("Since
11 early 2022, Ripps has harassed and personally attacked Yuga Labs and
12 its founders through baseless accusations of racism over social media
13 networks like Twitter and Instagram."))
- 14 • Whether the statements made by Defendants related to Yuga Labs are
15 false (see Complaint ¶ 3 ("Ripps has targeted Yuga Labs in a campaign
16 of harassment based on false accusations of racism"))

17 The parties reserve the right to clarify, expand on, or resolve the issues above
18 as the case progress. In particular, the Defendants reserve the right to assert any
19 counterclaims and/or affirmative defenses in response to the Complaint.

20 **3. Brief Statement of the Disputed Points of Law**

21 The disputed points of law in this case are principally as follows:

- 22 • Whether Defendants infringed the BAYC Marks
- 23 • Whether Defendants' actions violated the Anti-Cybersquatting
24 Consumer Protection Act
- 25 • Whether Defendants' actions constitute false designation of origin,
26 false advertising, unfair competition, unjust enrichment, conversion, or
27 tortious interference

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- 1 • Whether Yuga Labs is entitled to damages from Defendants, and if so,
2 what type and in what amount
- 3 • Whether Yuga Labs is entitled to equitable relief from Defendants, and
4 if so, in what form
- 5 • Whether Defendants use of any BAYC Marks is protected speech
6 under *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989)
- 7 • Whether Defendants’ use of any marks is protected under the doctrine
8 of nominative fair use
- 9 • Whether Defendants’ First Amendment arguments provide a defense
10 to unjust enrichment as a remedy
- 11 • Whether Yuga Labs’ conversion claim extends to intangible property
12 such as trademarks
- 13 • Whether Yuga Labs can assert an intentional or negligent interference
14 with prospective economic advantage claims based on a market theory
15 of liability
- 16 • Whether Defendants owed Yuga Labs a duty of care
- 17 • Whether Defendants are entitled to prevail on any of their as-yet un-pled
18 defenses and/or counterclaims
- 19 • Whether any party is entitled to attorneys’ fees and costs

20 The parties reserve the right to clarify, expand on, or resolve the issues above
21 as the case progress. In particular, the Defendants reserve the right to assert any
22 counterclaims and/or affirmative defenses in response to the Complaint.

23 **4. Prior, Pending, and Anticipated Motions**

24 Defendants re-filed their motion to strike Yuga Labs’ California law causes
25 of action under California’s Anti-SLAPP statute (Cal. Civ. Proc. Code. § 425.16(c))
26 and to dismiss the Complaint under Fed. R. Civ. P 12(b)(6) on October 3, 2022.
27 There are no other pending motions or those that the parties anticipate, other than
28 those described in Section 15, *infra*.

1 **5. Parties, Claims, or Defenses Expected to Be Added or Dismissed**

2 The Complaint names ten John Doe defendants whose identities may become
3 known as the case and discovery progress. Yuga Labs states that additional
4 defendants may be added as discovery and its investigation progress.

5 Defendants anticipate stating defenses if and when they file their Answers.
6 Defendants may also file counterclaims.

7 **6. Initial Disclosures**

8 The parties have exchanged the initial disclosures required under FRCP
9 26(a)(1).

10 **7. Discovery Taken to Date, Scope of Anticipated Discovery, Proposed**
11 **Limitations or Modifications of the Discovery Rules, and Proposed**
12 **Discovery Plan**

13 Per the Court's Standing Order, the parties have begun discovery. The
14 parties presently believe that discovery will be needed as to the elements of the
15 claims and remedies placed in issue by the pleadings, and defenses that can be
16 asserted with respect thereto. A proposed schedule is provided in Section 11, *infra*.
17 The parties do not presently believe that discovery should be conducted in phases or
18 be limited to or focused upon particular issues, except that expert discovery will
19 follow the close of non-expert fact discovery.

20 The parties do not presently believe that any changes should be made to the
21 limitations on discovery imposed by the Federal Rules or Local Rules and expect to
22 be able to cooperatively resolve any issues that may arise with respect to such
23 limitations.

24 The parties agreed that a protective order is appropriate to the extent this
25 matter will involve the disclosure of confidential business or financial information,
26 and information protected by California's right of privacy. On October 10, 2022,
27 Magistrate Judge McDermott entered the parties' proposed protective order
28 (Dkt. 51).

1 The parties are not presently aware of any unique issues concerning the
2 disclosure, discovery, or preservation of electronically stored information. Such
3 information will most likely be produced in native or TIFF format. The parties will
4 meet and confer as appropriate.

5 The parties are not presently aware of any issues relating to claims of
6 privilege or of protection as trial-preparation materials.

7 The parties have agreed that communications reflecting attorney advice or
8 work-product related to this litigation and occurring on or after the date this lawsuit
9 was filed are not subject to discovery in this case and need not be logged on any
10 privilege log.

11 **8. Related Cases or Proceedings**

12 There are no related cases or proceedings pending before another judge of
13 this court, or before another court or administrative body.

14 **9. Relief Sought, Including Amount of Damages and a Description of the**
15 **Bases on Which Damages are Calculated.**

16 Yuga Labs seeks all of the relief stated in the Complaint, including actual
17 damages including but not limited to lost sales and lost profits, enhanced damages
18 under 15 U.S.C. § 1117, reasonable royalties, costs of corrective advertising,
19 punitive damages for willful infringement, attorneys' fees, costs, pre-judgment
20 interest, injunctive relief, equitable relief (including without limitation restitution,
21 disgorgement of Defendants' profits and unjust enrichment, and the imposition of a
22 constructive trust), and orders pursuant to 15 U.S.C. §§ 1116(a) and 1118. Yuga
23 Labs may elect statutory damages in the amount of not less than \$1,000 and not
24 more than \$100,000 per domain name under its 15 U.S.C. § 1125(d) claim.

25 A precise calculation of damages is not available at this time.

26 Defendants seek their attorneys' fees and costs, and reserve the right to seek
27 any and all relief to which they are entitled arising from any counterclaims that may
28 be asserted in their answer.

1 **10. Interested Parties or Persons**

2 The parties have filed the Certifications as to Interested parties or persons
3 required by the Local Rules. Dkts. 5, 20.

4 Yuga Labs has no parent corporation and no publicly held corporation owns
5 10% or more of its stock.

6 Neither Yuga Labs nor Defendants are aware of other parties have either (i) a
7 financial interest in the subject matter in controversy or in a party to the proceeding;
8 or (ii) any other kind of interest that could be substantially affected by the outcome
9 of the proceeding.

10 Mr. Ripps and Mr. Cahen are individual Defendants and are not aware of any
11 party or entity that has an interest that could be substantially affected by the
12 outcome of this case.

13 **11. Case Schedule**

14 The parties propose the following case schedule:

Activity	Yuga Labs' Proposal	Defendants' Proposal
Deadline to Amend Pleadings or Add Parties	March 1, 2023	December 30, 2022
Fact Discovery Cut-Off	March 31, 2023	January 31, 2022
Initial Expert Disclosures and Reports Due	April 21, 2023	February 10, 2023
Rebuttal Expert Disclosures and Reports Due	May 5, 2023	February 24, 2023
Expert Discovery Cut-Off	May 19, 2023	March 3, 2023
Settlement Conference Deadline	June 30, 2023	December 30, 2022
Deadline to Hear Dispositive Motions	June 26, 2023	April 14, 2023
Deadline to File: <ul style="list-style-type: none"> • Proposed Pretrial Conference Order; 	September 29, 2023	May 5, 2023

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Activity	Yuga Labs’ Proposal	Defendants’ Proposal
<ul style="list-style-type: none"> • Memoranda and Contentions of Fact and Law; • Joint Witness List; • Joint Exhibit List and Exhibit Stipulation; • Proposed Verdict Form(s); • Proposed Jury Instructions / Disputed Jury Instructions; • Proposed Voir Dire Questions; • Joint Statement of the Case; • Joint Report re: Settlement 		
Final Pretrial Conference and Deadline to File Motions in Limine	October 13, 2023	May 26, 2023
Hearing on Motions in Limine	October 27, 2023	June 2, 2023
Last Date to File Final Trial Exhibit Stipulation	November 3, 2023	June 9, 2023
Jury Trial Estimated Length: 5-7 days	November 6, 2023	June 12, 2023

12. Whether the Case Will Be Tried to a Jury or to the Court and Preliminary Estimate of Time Required for Trial

The case will be tried to a jury on all claims so triable. The parties estimate trial will require 5–7 days, assuming full trial days.

1 **13. Settlement**

2 The parties' counsel have engaged in preliminary settlement discussions but
3 have exchanged no proposals. Yuga Labs is amenable to private mediation (ADR
4 Procedure No. 3). Defendants are amenable to either mediation before an assigned
5 magistrate judge or a member of the Court's mediation panel, and would prefer that
6 mediation occur as soon as possible after resolution of Defendants' motion to
7 dismiss.

8 **14. Complex Litigation**

9 The parties do not believe this is a "complex case" for purposes of applying
10 all or any part of the procedures of the Manual for Complex Litigation.

11 **15. Dispositive and Partially Dispositive Motions**

12 Yuga Labs anticipates making a motion for summary judgment relating to at
13 least its trademark infringement claims.

14 Defendants have made a motion to dismiss the Complaint under Fed. R. Civ.
15 P. 12(b)(6) and/or a motion to strike the California-law claims under California's
16 anti-SLAPP statute (Cal. Code Civ. Proc. § 425.16). If any claims survive,
17 Defendants anticipate making a motion for summary judgment on all claims.

18 **16. Unusual Legal Issues Presented by the Case**

19 Apart from the issues addressed in Defendants' motion to strike and/or
20 dismiss, the parties have not identified any unusual legal issues at this time.

21 **17. Proposals Regarding Severance, Bifurcation, or Other Ordering of Proof**

22 The parties do not believe any such orders are necessary at this time.

23 **18. Consent to Electronic Service**

24 The parties have agreed to service by email for this matter. Service by email
25 will be considered the same as hand delivery.

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Respectfully submitted,

Dated: October 20, 2022

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ATTESTATION OF CONCURRENCE IN FILING

Pursuant to the United States District Court for the Central District of California’s Civil L.R. 5-4.3.4(a)(2)(i), Eric Ball attests that concurrence in the filing of this document has been obtained from Louis Tompros.

Dated: October 20, 2022

/s/ Eric Ball
Eric Ball