

1 Louis W. Tompros (*pro hac vice*)
 louis.tompros@wilmerhale.com
 2 Monica Grewal (*pro hac vice*)
 monica.grewal@wilmerhale.com
 3 Scott W. Bertulli (*pro hac vice*)
 scott.bertulli@wilmerhale.com
 4 **WILMER CUTLER PICKERING**
HALE AND DORR LLP
 5 60 State Street
 Boston, MA 02109
 6 Telephone: (617) 526-6000
 Fax: (617) 526-5000
 7

8 Derek Gosma (SBN 274515)
 derek.gosma@wilmerhale.com
 Henry Nikogosyan (SBN 326277)
 9 henry.nikogosyan@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
 10 350 South Grand Ave., Suite 2400
 11 Los Angeles, CA 90071
 Telephone: (213) 443-5300
 12 Fax: (213) 443-5400

13 Attorneys for Defendants
Ryder Ripps and Jeremy Cahen
 14

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

19
 20 Yuga Labs, Inc.,

21
 22 Plaintiff,

23 v.

24 Ryder Ripps, Jeremy Cahen, Does 1-10,

25
 26 Defendants.
 27
 28

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

REPLY IN SUPPORT OF ANTI-SLAPP MOTION TO STRIKE AND MOTION TO DISMISS

Hearing Date: Nov. 7, 2022, at 1:30p.m.,
 Pursuant to Standing Order ¶ 5(a)
 Judge: Hon. John F. Walter

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1 I. INTRODUCTION

2 Trademark law cannot be used to silence free speech. The First Amendment
3 limits a trademark holder’s right to muffle its critics, and to survive dismissal under
4 the *Rogers* test, Yuga would have had to plead that Mr. Ripps’s and Mr. Cahen’s use
5 of its alleged marks either is “not artistically relevant” or “explicitly misleads
6 consumers.” *Dr. Suess Enters., L.P. v. ComicMix LLC*, 983 F.3d 443, 462 (9th Cir.
7 2020). Yuga’s Opposition Brief confirms that it did not and cannot do either: its
8 effort to contest the artistic relevance of its marks to the RR/BAYC project is weak,
9 and it fails to identify even a *single consumer* that has ever been misled.

10 Instead, Yuga’s Opposition Brief tries to save its futile trademark claims
11 (Claims 1-7) by artificially separating the *sale* of RR/BAYC NFTs from Defendants’
12 free speech activity associated with the RR/BAYC *project*. But artwork—especially
13 performance and conceptual art—cannot be understood divorced from its context. As
14 the allegations of the Complaint make clear, the *sale* of RR/BAYC NFTs *was* part of
15 Defendants’ protected speech. In fact, Yuga itself alleges that Mr. Ripps described the
16 RR/BAYC project as “satire” and encouraged collectors to purchase RR/BAYC
17 project NFTs specifically to protest Yuga. Dkt. No. 1. ¶¶ 5, 56, 72, 116. The
18 Complaint, through its incorporation of the <https://rrbayc.com> website (Dkt. No. 1 ¶¶
19 34, 36, 48, 81), also explains that “RR/BAYC uses satire and appropriation to protest
20 and educate people regarding The Bored Ape Yacht Club and the framework of
21 NFTs” and that “[t]he work is an extension of and in the spirit of other artists who
22 have worked within the field of appropriation art.” Yuga cannot escape the *Rogers*
23 test by separating RR/BAYC sales from the overall RR/BAYC project—the sales
24 were an integral part of the artistic project.

25 Yuga’s Opposition Brief also attempts to dodge nominative fair use by claiming
26 that the Defendants improperly used exact copies of the BAYC digital images. Dkt.
27 No. 23 at 19. But Yuga ignores that Defendants’ commentary required reference to
28

1 those exact images to express that NFTs are not themselves digital images, but rather
2 are digital tokens that can point to digital images—a point that Mr. Ripps has
3 emphasized in his work for years. Had the RR/BAYC project used different images, it
4 could not have made the point that Yuga is not selling digital images when it sells
5 BAYC NFTs (and of course, if Yuga’s concern was that Mr. Ripps and Mr. Cahen
6 were using copies of protected images, their remedy would be in copyright law, not a
7 trademark action.) All claims should be dismissed.

8 **II. ARGUMENT**

9 **A. The Entirety of the RR/BAYC Project Is Protected Speech**

10 The allegations in the Complaint contradict Yuga’s argument that that the
11 RR/BAYC project has “no expressive content or transformation” and is unprotected
12 “commercial speech.” Dkt. No. 53 at 7, 10. Yuga can only reach this conclusion by
13 artificially severing the *sale* of RR/BAYC NFTs from the public commentary by Mr.
14 Ripps and Mr. Cahen in the RR/BAYC *project*. But the RR/BAYC project as a
15 whole—which includes the sale of RR/BAYC NFTs—was created as an act of protest
16 and criticism of Yuga, as the Complaint itself alleges. For example, the Complaint
17 alleges that Mr. Ripps explained in a May 25th tweet “how the website rrbayc.com
18 works” stating that you pick an ape “it will get transferred to your wallet, Then you
19 can say fuck off to @BoredApeYC!” Dkt. No. 1 ¶ 53. This allegation shows that the
20 *sale* of the RR/BAYC NFTs—the “transfer[] to your wallet”—was not a separate act
21 distinct from the protest against Yuga but was inextricably intertwined with it.

22 The Complaint further alleges that Mr. Ripps has described RR/BAYC as
23 “satire,” stated that he “would like to illuminate what nfts are, and show bayc for what
24 it really is,” and has encouraged collectors to purchase RR/BAYC NFTs to protest
25 Yuga’s racist messages and imagery. Dkt. No. 1 ¶¶ 3, 5, 49, 56, 57, 72, 116. The
26 Complaint also incorporates by reference <https://rrbayc.com> by repeatedly discussing
27 and including hyperlinks to the webpage. See *Khoja v. Orexigen Therapeutics, Inc.*,
28

1 [899 F.3d 988, 1007 \(9th Cir. 2018\)](#) (affirming incorporation by reference of a
2 document repeatedly referenced in the complaint); [Battle v. Taylor James, LLC, No.](#)
3 [21-cv-07915-FWS-KES, 2022 WL 2162930, at *6 \(C.D. Cal. June 15, 2022\)](#) (holding
4 that a hyperlink in a complaint incorporated the linked document); [United States v.](#)
5 [Ritchie, 342 F.3d 903, 908 \(9th Cir. 2003\)](#) (“Even if a document is not attached to a
6 complaint, it may be incorporated by reference into a complaint”). The webpage
7 explains:

8 Through the process of “re-minting”, the original BAYC images are
9 recontextualized – illuminating truths about their origins and meanings as
10 well as the nature of Web3 – the power of NFTs to change meaning,
11 establish provenance and evade censorship.

12 RR/BAYC uses satire and appropriation to protest and educate people
13 regard The Bored Ape Yacht Club and the framework of NFTs. The work
14 is an extension of and in the spirit of other artists who have worked within
15 the field of **appropriation art**.

16 These allegations show that the sale RR/BAYC NFTs and the public commentary of
17 the RR/BAYC project are inextricably linked. Specifically, The RR/BAYC project is
18 performance and conceptual art that uses the *sale* of unique NFTs to recontextualize
19 BAYC images in a manner that sheds light on Yuga’s racist and neo-Nazi messaging.

20 Yuga also attempts to drive a wedge between the RR/BAYC’s founders,
21 suggesting that somehow only Mr. Ripps and not Mr. Cahen engaged in protected
22 speech. Dkt. No. 53 at 10. But again, this contradicts the allegations of the
23 Complaint. Yuga has alleged that “Ripps, Cahen, and Does 1-5 ... promote *their*
24 RR/BAYC NFT collection” and that “in May 2022, Ripps, Cahen, *and* Does 1-5
25 created a website that allows users ‘reserve’ RR/BAYC NFTS”—this is the same
26 website (<https://rrbayc.com>) that explains the context behind the satirical RR/BAYC
27 project. Dkt. No. 1 at ¶¶ 33, 34. According to the allegations of the Complaint, Mr.
28 Cahen undoubtedly participated in the free speech activity alongside Mr. Ripps.

1 Last, Yuga argues that its silencing of First Amendment protected speech is
2 somehow superfluous to this litigation, because Yuga is solely interested in enforcing
3 trademark rights. Dkt. No. 53 at 11. But, as discussed in detail below, the
4 enforcement of trademark rights stops at the door of the First Amendment—that is the
5 point of the *Rogers* test and the nominative fair use doctrine. Moreover, Yuga’s
6 argument that this lawsuit is about commercial protection flies in the face of its actual
7 conduct: there are countless entities that profit from counterfeit BAYC or Yuga NFTs.
8 *See* Dkt. No. 48-2. But Yuga has not sued any actual knock-offs. Instead, it sued
9 only Mr. Ripps and Mr. Cahen, who have been publicly criticizing Yuga’s use of
10 racist and neo-Nazi messages and imagery.

11 **B. Yuga’s Claims Fail the *Rogers* Test**

12 Yuga’s trademark infringement claims (Claims 1-7) are fundamentally flawed
13 because they do not and cannot allege that the underlying conduct was not artistically
14 relevant. Dkt. No. 53 at 13. To the contrary, as explained above, the Complaint
15 confirms that the RR/BAYC project is conceptual art aimed at criticizing Yuga’s use
16 of racist messages and imagery. These allegations go well beyond the *Rogers* test’s
17 “above zero” requirement for artistic relevance. [Gordon v. Drape Creative, Inc., 909](#)
18 [F.3d 257, 268 \(9th Cir. 2018\)](#).

19 Despite the Complaint’s repeated allegations of artistic expression, Yuga argues
20 that the RR/BAYC project “is no more artistic than the sale of a counterfeit handbag,
21 making the *Rogers* test inapplicable.” Dkt. No. 53 at 9. But the handbag cases that
22 Yuga cites, such as [Chanel, Inc. v. Hsio Yin Fu, No. 16-cv-02259, 2017 WL 1079544,](#)
23 [at *4 \(N.D. Cal. Mar. 22, 2017\)](#) and [Givenchy S.A. v. BCBG Max Azria Group, Inc.,](#)
24 [No. 10-cv-08394, 2012 WL 3072327, at *6 n.8 \(C.D. Cal. Apr. 25, 2012\)](#), are
25 inapposite. These handbag cases involve garden-variety counterfeiting operations
26 where there was no credible claim of artistic expression. This is not such a case.
27 Here, the Defendants include a well-known artist, and their work has triggered
28

1 widespread public commentary about Yuga’s use of racist and neo-Nazi messages and
2 imagery and the nature of an emerging technology (NFTs).

3 The Complaint also fails to plead that the RR/BAYC project is explicitly
4 misleading. Rather, Yuga concedes that use of a mark is *not* explicitly misleading
5 when “the junior user employed the mark in *different contexts* and markets than the
6 senior users.” Dkt. No. 53 at 14 (emphasis added). Context matters. As explained
7 earlier, the Complaint alleges that Mr. Ripps and Mr. Cahen created RR/BAYC to
8 “show bayc for what it really is” and to allow collectors to say “fuck off to
9 @BoredApeYC!” Dkt. No. 1 ¶¶ 53, 57. The Complaint also admits that Mr. Ripps
10 and Mr. Cahen primarily marketed and sold RR/BAYC NFTs on their Twitter pages,
11 <https://rrbayc.com>, and Foundation.app—none of which are marketplaces that sell any
12 Yuga products and (but for Foundation.app) are replete with content critical of Yuga.
13 *See, e.g., id.* ¶¶ 34, 48, 53, 57. These allegations contradict a claim of explicitly
14 misleading conduct.

15 Yuga’s reliance on the *Hermès* decision (Opp at 15) is likewise unavailing
16 because it likewise ignores the context of the RR/BAYC project. In *Hermès*, the
17 defendant made statements *praising* the Hermès brand, typical of those made when
18 parties are working collaboratively. [*Hermes Int’l v. Rothschild*, No. 22-CV-384](#)
19 [*\(JSR\)*, 2022 WL 1564597, at *6 \(S.D.N.Y. May 18, 2022\)](#). As a result, the *Hermès*
20 complaint alleged multiple accounts of explicitly misleading use of the mark,
21 including consumers posting that they believed there was an affiliation between
22 Hermès and the NFT collection, and several news articles, including in *Elle* and the
23 *New York Post*, that reported (incorrectly) the NFTs were made in partnership with
24 Hermès. *Id.* at *2. Here, by contrast, the Complaint alleges that the RR/BAYC
25 project has been heavily critical of Yuga (Dkt. No. 1 ¶¶ 3, 5, 49, 56, 57, 72), which
26 precludes a reasonable consumer from believing that Yuga partnered with Mr. Ripps
27 and Mr. Cahen for the RR/BAYC collection. Put more simply: who could ever
28

1 believe that Yuga was sponsoring the artists making “accusations of racism” and
2 encouraging people to “say fuck off to @BoredApeYC!”? Dkt. No. 1 ¶¶ 3, 49, 53.
3 And of course, the Complaint also fails to allege even a single instance of actual
4 confusion; in fact, it fails to mention actual confusion entirely.

5 Finally, Yuga concedes that that collectors of RR/BAYC NFTs would sign a
6 disclaimer that explained that RR/BAYC NFTs have no association with Yuga. Dkt.
7 No. 53 at 16. This is an admission by Yuga that Defendants acted in good faith and
8 explained to the public the context of RR/BAYC NFTs, how they criticize Yuga, and
9 that they point to the same digital images as BAYC NFTs to educate the public about
10 the framework of NFTs (that NFTs are not digital images). Yuga tries to fix this hole
11 in its Complaint by stating for the first time in their Opposition Brief that the
12 RR/BAYC NFTs “explicitly misled other consumers through both initial interest and
13 post-sale confusion.” Dkt. No. 53 at 7. But the Complaint makes no such allegation.

14 **C. Defendants’ Conduct Is Protected as Nominative Fair Use**

15 Yuga argues that it is improper to address nominative fair use at the pleadings
16 stage. Yuga is wrong. It is well-established that trademark claims can be dismissed
17 pursuant to Rule 12(b)(6) under nominative fair use. [Applied Underwriters, Inc. v.](#)
18 [Lichtenegger, 913 F.3d 884, 897 \(9th Cir. 2019\)](#) (affirming dismissal of complaint due
19 to nominative fair use). The Ninth Circuit held in *Applied Underwriters* that dismissal
20 under nominative fair use was appropriate when (1) defendants were critical of
21 plaintiff’s products, (2) defendants used a disclaimer, and (3) defendants used
22 plaintiff’s mark in a manner that identified the defendants. *Id.*

23 The allegations in this case plainly meet all three elements of the *Applied*
24 *Underwriters* test. With respect to the first factor (criticism), the Complaint itself
25 confirms that RR/BAYC is critical of Yuga by alleging that it is “satire,” meant to
26 “show bayc for what it really is,” that Mr. Ripps has made “accusations of racism,”
27 and that the project allows collectors to say, “fuck off to @BoredApeYC!” Dkt. No. 1
28

1 ¶¶ 5, 49, 53, 57. As to the second factor (disclaimer), the incorporated website
2 <https://rrbayc.com> explains that RR/BAYC is not a Yuga affiliated project, and Yuga
3 admits that collectors were required to acknowledge a disclaimer before purchasing
4 RR/BAYC NFTs on <https://rrbayc.com>. And for the third factor (identification), the
5 Complaint alleges that that the RR/BAYC project was carried out in a manner that
6 identified Defendants, such as on their personal Twitter and Instagram accounts, and
7 the website <https://rrbayc.com>. Dkt. No. 1 ¶¶ 5, 49, 57. Even the token tracker that
8 the Complaint incorporates by discussing and hyperlinking (<https://etherscan.io/address/0x2ee6af0dff3a1ce3f7e3414c52c48fd50d73691e>) identifies “*ryder-ripps.eth” as
9 the creator. Compl. ¶ 39; Dkt. No. 48 at 16. And of course, the “RR” in the name of
10 the project are Mr. Ripps’ own initials.

12 Nor is Defendants’ use of Yuga’s exact marks¹ an issue. As alleged in the
13 Complaint, the RR/BAYC project uses satire to criticize Yuga. That criticism cannot
14 exist without referencing the BAYC collection by name, and the Ninth Circuit has
15 recognized that nominative fair use protects this kind of referential use of trademarks
16 so that defendants can identify specific brands or products without using descriptive
17 phrases. *Applied Underwriters*, 913 F.3d at 894.

18 Further, the RR/BAYC project necessarily requires using pointers to digital
19 images that include the entirety of Yuga’s Nazi-derived logo. As explained on
20 <https://rrbayc.com>, one of the purposes of RR/BAYC was to “educate[] people
21 regarding . . . the framework of NFTs.” The RR/BAYC project shows that NFTs offer
22 no exclusivity with associated digital resources by using verifiably unique NFTs to
23 point to the same (publicly available) digital images as the BAYC NFTs. Had
24 Defendants altered the digital images (and the marks contained therein) in any way,
25 the RR/BAYC project would no longer expose that Yuga is not selling digital images
26

27 ¹ Notably, since filing its Complaint, Yuga has abandoned its application for federal
28 registration of the asserted mark APE. (Dkt. No. 1 ¶ 27).

1 when it sells BAYC NFTs. In a similar vein, pointers to the BAYC digital images,
2 and the Yuga marks contained therein, were necessarily used to identify the BAYC
3 collection as the subject of this critique and to recontextualize “the original BAYC
4 images ... illuminating truths about their origins and meanings.” Dkt. No. 48-4
5 (excerpt from <https://rrbayc.com> webpage).

6 **D. Yuga’s Cybersquatting Claim Also Fails The *Rogers* Test**

7 Contrary to Yuga’s position, the Court can and should apply the *Rogers* test to
8 the cybersquatting claim at issue here. The Ninth Circuit has held that the *Rogers* test
9 “requires courts to construe the Lanham Act to apply to artistic works only where the
10 public interest in avoiding consumer confusion outweighs the public interest in free
11 expression.” [E.S.S. Ent. 2000, Inc. v. Rock Star Videos, Inc., 547 F.3d 1095, 1099](#)
12 [\(9th Cir. 2008\)](#) (internal quotation omitted). Thus, the root of the test is a balancing of
13 First Amendment protections against “the public’s right to be free from consumer
14 confusion....” [Brown v. Elec. Arts, Inc., 724 F.3d 1235, 1242 \(9th Cir. 2013\)](#). The
15 *Rogers* test, therefore, applies to any trademark-related claims that involve consumer
16 confusion, and cybersquatting is undisputedly one of those claims. See [Calista](#)
17 [Enters. Ltd. v. Tenza Trading Ltd., 43 F. Supp. 3d 1099, 1031 \(9th Cir. 2014\)](#)
18 (holding that cybersquatting claims require likelihood of confusion).

19 **E. Yuga’s False Advertising Claim Is Insufficiently Pleaded**

20 Yuga fails to allege any misleading representations of fact to support its false
21 advertising claim. Instead, Yuga’s Opposition Brief offers the conclusory assertion
22 that Defendants “advertised their copycat ‘Ryder Ripps Bored Ape Yacht Club’ as
23 equivalent to the Bored Ape Yacht Club” without providing any statements or
24 supporting allegations. Dkt. No. 53 at 21. And without presenting any statements
25 where Defendants equated Defendants’ artwork to Bored Ape Yacht Club, Yuga
26 further argues that these “false equivalences” could deceive reasonable consumers.
27 Dkt. No. 53 at 21.
28

1 Yuga’s Opposition Brief conveniently ignores instances where Defendants
2 expressly distinguished between RR/BAYC and Bored Ape Yacht Club. The
3 Complaint alleges that Mr. Ripps set up a website for his RR/BAYC NFT collection
4 (<https://rrbayc.com>) and, on its main page, informed potential consumers that the
5 RR/BAYC project is satirical and uses appropriation to criticize Yuga and shed light
6 on nature of NFTs. Dkt. No. 1 ¶¶ 34, 48. The Complaint further alleges that Mr.
7 Ripps explained in a May 25th tweet that collectors can purchase RR/BAYC NFTs on
8 his website to protest Yuga’s use of racist and neo-Nazi messaging. Dkt. No. 1 ¶ 53.
9 Yuga also admits that the website required consumers to acknowledge a disclaimer
10 explaining that RR/BAYC NFTs are not associated with Yuga. Dkt. No. 53 at 16.
11 Thus, according to the allegations in the Complaint, Mr. Ripps and Mr. Cahen’s
12 representations regarding the nature of the RR/BAYC artwork were not misleading.

13 **F. Yuga’s Dropped Unjust Enrichment Claim Should Be Stricken**

14 Because Yuga has stated in its Opposition Brief that it has withdrawn its unjust
15 enrichment claim (but has not actually amended its Complaint), Defendants’ motion to
16 strike it on anti-SLAPP grounds is unopposed and should be granted.

17 **G. Yuga’s Conversion Claim Is Not Cognizable**

18 Yuga admits that its conversion claim rests on the premise that Defendants have
19 misappropriated Yuga’s trademarks. But as outlined in Defendants’ initial brief and
20 herein, Yuga has failed to plead an actionable claim of trademark infringement and,
21 therefore, failed to establish a wrongful disposition of property necessary for
22 conversion. [*Kremen v. Cohen*, 337 F.3d 1024, 1029 \(9th Cir. 2003\)](#) (to state a claim
23 for conversion you must allege “right to possession of property, wrongful disposition
24 of the property right and damages.”) (internal citation and quotation omitted).

25 But even if Yuga had pleaded an actionable trademark infringement claim, its
26 conversion claim should still be dismissed. Although courts have “split on whether
27 [conversion] is a cognizable claim” in the trademark context ([*Nam v. Alpha Floors*](#),

28

1 [Inc., No. 216CV6810JLSJCGX, 2017 WL 11635994, at *8 \(C.D. Cal. Jan. 4, 2017\)](#)),
2 the Court here should follow those cases that have found that the application of
3 conversion to intangible property “should not be expanded to displace other, more
4 suitable law.” [Tethys Bioscience, Inc. v. Mintz, No. 09–5115, 2010 WL 2287474, at](#)
5 [*7 \(N.D. Cal. June 4, 2010\)](#) (internal citation and quotation omitted). Accordingly,
6 Yuga’s should not be able to use conversion to supplant its trademark-related claims,
7 which better address the nature of trademarks, the interests at stake, and the
8 appropriate determination of remedies.

9 **H. Yuga’s Intentional and Negligent Interference Claims Are Deficient**

10 Yuga’s Opposition provides no additional factual information regarding its
11 intentional interference and negligent interference claims. Yuga largely rests on the
12 arguments they already made in their Complaint and, thus, fails to plausibly allege
13 intentional interference or negligent interference. Specifically, Yuga attempts to use
14 their trademark infringement claims (Claims 1-7) to meet many of the elements of
15 their interference claims (such as independent wrongful acts). Dkt. No. 53 at 22-23.
16 But this attempt fails because, as stated above, Yuga has not plausibly alleged its
17 trademark-related claims.

18 Yuga also ignores Defendants’ argument that it is insufficient to plead a
19 “market theory” of liability by suggesting that Defendants generally disrupted Yuga’s
20 relationship with the entire market of BAYC customers. Dkt. No. 48 at 24 (citing
21 [Sybersound Records, Inc. v. UAV Corp., 517 F.3d 1137, 1151 \(9th Cir. 2008\)](#)).
22 Instead, Yuga simply concludes, without citing any allegations, that their Complaint
23 “sufficiently alleges a business relationship with Bored Ape holders.” Dkt. No. 53 at
24 22. Yuga then cites to [Settimo Assocs. v. Environ Sys., Inc., 14 Cal. App. 4th 842, 846](#)
25 [\(1993\)](#) to argue that “California law does not prohibit alleging loss of customers for
26 intentional interference claims.” Dkt. No. 53 at 22. But *Settimo Associates* dealt with
27 a competitive bidding process among sub-contractors and is completely silent on
28

1 whether interference claims apply to the general market of costumers. Settimo
2 Assocs., 14 Cal. App. 4th at 845. Further, Yuga has yet to allege more than
3 conclusory statements about their loss of customers. *See* Dkt. No. 1 ¶¶ 145, 157.

4 **I. Yuga’s Substantive Arguments in Its Objections to Defendants’**
5 **Exhibits Should Be Rejected**

6 Yuga’s objections should be ignored (if not stricken outright) for violating the
7 Local Rules and this Court’s Standing Order, which make clear that “oppositions to
8 motions shall not exceed 25 pages.” Dkt. No. 14 at ¶ 5(c); L.R. 11-6. Courts in this
9 district recognize that litigants may not circumvent these page limits by making
10 multiple filings. Vaccarino v. Midland Nat. Life Ins. Co., No. 2:11-CV-05858-CAS,
11 2014 WL 572365, at *4 (C.D. Cal. Feb. 3, 2014); New Show Studios LLC v. Needle,
12 No. 2:14-CV-01250-CAS, 2014 WL 2988271, at *1 (C.D. Cal. June 30, 2014). Here,
13 in addition to Yuga’s 25-page Opposition Brief, Yuga has filed a 51-page objection
14 that packages substantive arguments that should have been in the Opposition Brief.
15 For example, the objection raises arguments about (1) the veracity of Defendants’
16 accusations of racism, (2) the relevance of Defendants’ critical commentary to the
17 RR/BAYC project, (3) whether the RR/BAYC project is artistic expression,
18 (4) whether the court should take judicial notice of public documents, and (5) which
19 documents have been incorporated by reference in the Complaint. *See, e.g.,* Dkt. No.
20 54 at 1-3, 8-9, 13, 14, 15, 17. At a minimum, Yuga should have sought leave of Court
21 before filing such extensive additional briefing.

22 In any event, there was nothing improper about Defendants’ use of exhibits in
23 their motion. Defendants request relief from this Court based solely on the allegations
24 in the Complaint and documents the Complaint incorporated by reference, such as
25 <https://rrbayc.com>, <https://etherscan.io/address/0x2ee6af0dff3a1ce3f7e3414c52c48fd5>
26 <https://apemarket.com/>. *See* Dkt. No. 1 ¶¶ 34, 36, 39, 46, 48, 81; *see*
27 *also* Halle Props., L.L.C. v. Bassett, No. 06-cv-7694-ABC-JWJ, 2007 WL 2344931, at
28 *6 (C.D. Cal. Aug. 14, 2007) (“a court may consider documents which are not

1 physically attached to the complaint but ‘whose contents are alleged in [the] complaint
 2 and whose authenticity no party questions.’”); [Gotham Ins. Co. v. Shasta Techs., LLC,](#)
 3 [No. 13-cv-3810-PJH, 2014 WL 1347766, at *3 \(N.D. Cal. April 3, 2014\)](#) (“[T]he
 4 court may consider ... documents referenced extensively in the complaint and
 5 documents that form the basis of the plaintiff’s claims.”).

6 Defendants attached additional exhibits to their motion only as background
 7 information and context to the First Amendment-protected activity in this case, as is
 8 typical for anti-SLAPP motions at the pleadings stage.² *See, e.g.,* [Tensor Law P.C. v.](#)
 9 [Rubin, 2019 WL 3249595, at *4 \(C.D. Cal. April 10, 2019\)](#) (“Although the Court
 10 provided an overview of Defendant’s account of the facts in this Order, the Court need
 11 not refer to any of the evidence submitted by Defendant in deciding whether Plaintiff
 12 has set forth a legally sufficient claim against Defendant.”); [Garcia v. Allstate Ins.,](#)
 13 [1:12-cv-00609-AWI-SKO, 2012 WL 4210113, at *14 \(E.D. Cal. Sep. 18, 2012\)](#)
 14 (granting anti-SLAPP motion at the pleadings stage “[b]ased on consideration of the
 15 declarations, pleadings, and exhibits to the present motion.”).

16 III. CONCLUSION

17 For the reasons set forth above, Yuga’s objections (Dkt. No. 54) should be
 18 stricken under the Local Rules and Standing Order, Yuga’s state law claims (Claims
 19 4-11) should be stricken under the California anti-SLAPP statute, and Yuga’s federal
 20 law claims (Claims 1-3) should be dismissed pursuant to Federal Rule 12(b)(6).

21
 22
 23 ² It is routine practice to use exhibits in an anti-SLAPP motion at the pleadings stage
 24 when those exhibits solely serve as background information for the accused First
 25 Amendment activity and not as grounds for relief. *See e.g.,* [Tatiana Sauquillo v.](#)
 26 [California Highway Patrol, No. 2:19-cv-07651 \(C.D. Cal. Sep 11, 2019\) \(Dkt. No.](#)
 27 [11\); Word Aflame Tabernacle, Inc. v. City of La Habra Heights, No. 2:20-cv-09899](#)
 28 [\(C.D. Cal. Nov 5, 2021\) \(Dkt. Nos. 88, 90, 91\); Scottsdale Ins. Co. v. Grant & Weber,](#)
[No. 2:16-cv-00610 \(C.D. Cal. Feb 17, 2017\) \(Dkt. Nos. 106, 107\).](#)

1 Dated: October 24, 2022

By: /s/ Louis W. Tompros

2 Louis W. Tompros (*pro hac vice*)
louis.tompros@wilmerhale.com
3 Monica Grewal (*pro hac vice*)
monica.grewal@wilmerhale.com
4 Scott W. Bertulli (*pro hac vice*)
scott.bertulli@wilmerhale.com
5 **WILMER CUTLER PICKERING**
HALE AND DORR LLP
6 60 State Street
Boston, MA 02109
7 Telephone: (617) 526-6000
Fax: (617) 526-5000

8
9 Derek Gosma (SBN 274515)
derek.gosma@wilmerhale.com
Henry Nikogosyan (SBN 326277)
10 henry.nikogosyan@wilmerhale.com
11 **WILMER CUTLER PICKERING**
HALE AND DORR LLP
12 350 South Grand Ave., Suite 2400
Los Angeles, CA 90071
13 Telephone: (213) 443-5300
Fax: (213) 443-5400

14 Attorneys for Defendants
15 *Ryder Ripps and Jeremy Cahen*
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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 October 24, 2022.

By: /s/ Louis W. Tompros

Louis W. Tompros (*pro hac vice*)
louis.tompros@wilmerhale.com
**WILMER CUTLER PICKERING
HALE AND DORR LLP**
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Fax: (617) 526-5000