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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **WESTERN DIVISION**

12 JOHNNY JOHNSON, EZRA  
13 BOEKWEG, MARIO PALOMBINI, and  
14 ADAM TITCHER, Individually and on  
15 Behalf of All Others Similarly Situated,

16 Plaintiffs,

17 v.

18 YUGA LABS, INC., WYLIE ARONOW,  
19 GREG SOLANO, KEREM ATALAY,  
20 ZESHAN ALI, NICOLE MUNIZ,  
21 JASMIN SHOEMAKER, PATRICK  
22 EHRLUND, CHRISTOPHER LYONS,  
23 ALEXIS OHANIAN, AMY WU,  
24 MAARIA BAJWA, SOTHEBY'S  
25 HOLDINGS INC., GUY OSEARY, MIKE  
26 WINKELMANN, MADONNA LOUISE  
27 CICCONE, PARIS HILTON, JAMES  
28 FALLON, ELECTRIC HOT DOG, INC.,  
UNIVERSAL TELEVISION, LLC,  
JUSTIN BIEBER, AUSTIN RICHARD  
POST, CALVIN BROADUS JR., KEVIN  
HART, WARDELL STEPHEN CURRY  
II, ADIDAS AMERICA INC., ADIDAS  
VENTURE B.V., IVAN SOTO-WRIGHT,  
and MOONPAY USA LLC,

Defendants.

Case No. 2:22-cv-08909-FMO-PLA

**FIRST AMENDED CLASS  
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

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1           Lead Plaintiffs Johnny Johnson, Ezra Boekweg, Mario Palombini, and  
 2 additional named plaintiff Adam Titcher (collectively “Plaintiffs”), individually and  
 3 on behalf of all others similarly situated, bring this action against Yuga Labs, Inc.  
 4 (“Yuga” or the “Company”), Wylie Aronow, Greg Solano, Kerem Atalay, Zeshan  
 5 Ali, Nicole Muniz, Jasmin Shoemaker, Patrick Ehrlund, Christopher Lyons (the  
 6 “Executive Defendants”), Alexis Ohanian, Amy Wu, Maaria Bajwa (the “Ape DAO  
 7 Board Defendants”), Sotheby’s Holdings Inc., Guy Oseary, Mike Winkelmann,  
 8 Madonna Louise Ciccone, Paris Hilton, James Fallon, Electric Hot Dog, Inc.,  
 9 Universal Television, LLC, Justin Bieber, Austin Richard Post, Calvin Broadus, Jr.,  
 10 Kevin Hart, Wardell Stephen Curry II, adidas America Inc., and adidas Ventures  
 11 B.V. (the “Promoter Defendants”), Ivan Soto-Wright, and MoonPay USA LLC  
 12 (“MoonPay,” and together with Ivan Soto-Wright, the “MoonPay Defendants”)  
 13 (collectively, with the Company, the Executive Defendants, Ape DAO Board  
 14 Defendants, and the Promoter Defendants, the “Defendants”). The following  
 15 allegations are based upon personal knowledge as to Plaintiffs’ own facts, upon  
 16 investigation by Plaintiffs’ counsel, and upon information and belief where facts are  
 17 solely in possession of Defendants.

## 18 **I. NATURE OF THE CASE**

19                           *“Celebrities and NFTs Are a Match Made in Hell...  
 20                           Somehow, star endorsements have found a new low.”  
 21                           -Amanda Mull, The Atlantic*

22           1. Plaintiffs bring this action on behalf of all investors who purchased  
 23 Yuga’s non-fungible tokens (“NFTs”) or ApeCoin tokens (“ApeCoin”)<sup>1</sup> between  
 24 April 23, 2021 and the present (the “Class Period”), and were damaged thereby.

25           <sup>1</sup> Yuga’s various collections of so-called “Bored Ape” NFTs (including the  
 26 Bored Ape Yacht Club (“BAYC”), Mutant Ape Yacht Club (“MAYC”), Bored Ape  
 27 Kennel Club (“BAKC” NFT collections), ApeCoins, and virtual land in the Otherside  
 28 (aka “Otherdeed” NFTs) are collectively referred to as the “Yuga Financial Products”  
 or the “Yuga securities.”

1           2.     Celebrity promotions of cryptocurrencies are fraught with problems. As  
2 the U.S. Securities and Exchange Commission (“SEC”) previously stated:  
3 “Celebrities and others are using social media networks to encourage the public to  
4 purchase stocks and other investments. These endorsements may be unlawful if they  
5 do not disclose the nature, source, and amount of any compensation paid, directly or  
6 indirectly, by the company in exchange for the endorsement.”<sup>2</sup> According to *The*  
7 *Atlantic*: “Celebrity endorsements—of a product, a brand, an idea, a haircut—have  
8 been around for ages, but they’ve become especially thick on the ground in recent  
9 years, as stars have developed their own direct-advertising channels on social media.  
10 For people with something to sell, a celebrity’s fan base provides an easy, responsive  
11 audience.”<sup>3</sup>

12           3.     This case epitomizes these concerns as it involves a vast scheme  
13 between a blockchain start-up company, Yuga, a highly-connected Hollywood talent  
14 agent (Defendant Guy Oseary), and a front operation (MoonPay), who all united for  
15 the purpose of promoting and selling a suite of unregistered digital financial assets.  
16 Executive Defendants Aronow, Solano, Atalay, Ali and Muniz and Promotor  
17 Defendant Oseary together devised a plan to leverage their vast network of A-list  
18 musicians, athletes, and celebrity clients and associates to misleadingly promote and  
19 sell the unregistered Yuga Financial Products.

20           4.     Investment in Yuga’s flagship NFT collection, the Bored Ape Yacht  
21 Club, purportedly gave investors membership into the “Bored Ape ecosystem” (*i.e.*,  
22 the overall brand and its synergistic relationship between the Yuga Financial Products  
23 and related applications). The underlying marketing message was simple: “joining  
24

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25           <sup>2</sup>     Statement, *SEC Statement Urging Caution Around Celebrity Backed ICOS*,  
26 U.S. SEC. & EXCH. COMM’N (Nov. 1, 2017), <https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos>.

27           <sup>3</sup>     Amanda Mull, *Celebrities and NFTs Are a Match Made in Hell*, *THE ATLANTIC*  
28 (Feb. 4, 2022), available at <https://www.theatlantic.com/technology/archive/2022/02/nft-jimmy-fallon-paris-hilton-millionaire/621486/>.

1 the club” (*i.e.*, buying a Yuga NFT) brings investors status and provides them access  
2 to events, benefits, and other lucrative investment opportunities exclusive to Yuga  
3 Financial Product holders. The perceived exclusivity of Bored Ape Yacht Club’s  
4 membership was driven by endorsements of highly influential celebrities. But this  
5 purported interest in, and endorsement of the BAYC NFTs was a sham manufactured  
6 by Oseary and MoonPay at the behest of the Company and the Executive Defendants.  
7 While the Promoter Defendants publicly touted their high dollar “purchases” of  
8 BAYC NFTs, the truth is that they were given the NFTs for free (often along with  
9 additional compensation) in exchange for promoting the BAYC NFTs to an  
10 unsuspecting public.

11 5. In order to make the promotion of, and subsequent interest in, the BAYC  
12 NFTs appear to be organic (as opposed to being solely the result of a paid promotion),  
13 the Company needed a way to discreetly pay their celebrity cohorts. To do this,  
14 Oseary tapped into a different part of his network: the MoonPay Defendants.  
15 Oseary’s venture capital firm, Sound Ventures, was one of the early investors in  
16 MoonPay, along with, *inter alia*, Defendants Justin Bieber, Paris Hilton, Jimmy  
17 Fallon, Austin Post, Calvin Broadus, Jr., Kevin Hart, and Wardell Stephen Curry II.  
18 MoonPay purports to be a white-glove service designed to help the super-rich and  
19 celebrities buy NFTs “without all the hassle of setting up a wallet, buying crypto,  
20 using that crypto to purchase an NFT and then taking custody of it.”<sup>4</sup> In truth, the  
21 Executive Defendants and Oseary used their connections to MoonPay and its service  
22 as a covert way to compensate the Promoter Defendants for their promotions of the  
23 BAYC NFTs without disclosing it to unsuspecting investors. Moreover, certain of  
24 the Promoter Defendants failed to disclose that they themselves had equity interests  
25 in MoonPay.

26 \_\_\_\_\_  
27 <sup>4</sup> Ryan Weeks, *MoonPay has quietly set up a concierge service to help*  
28 *celebrities buy NFTS*, THE BLOCK (Nov. 5, 2021), [https://www.theblock.co/post/125483/moonpay-concierge-celebrities-nft?utm\\_source=rss&utm\\_medium=vrss](https://www.theblock.co/post/125483/moonpay-concierge-celebrities-nft?utm_source=rss&utm_medium=vrss).

1           6. Defendants’ promotional campaign was wildly successful, generating  
2 billions of dollars in sales and re-sales. The manufactured celebrity endorsements  
3 and misleading promotions regarding the launch of an entire BAYC ecosystem were  
4 able to artificially increase the interest in and price of the Yuga Financial Products  
5 during the Class Period, causing investors to purchase these losing investments at  
6 drastically inflated prices. Manipulative trading practices were also implemented by  
7 insiders in conjunction with the celebrity endorsements, in order to further generate  
8 artificial trading volume and price inflation.

9           7. The staggering profits of the BAYC NFTs were not enough for the  
10 Company and Executive Defendants. Next, they cut out the artifice of the NFT  
11 altogether and went a more direct route to making money: they created their own out  
12 of thin air. At the height of the BAYC NFT endorsement scheme, the Executive  
13 Defendants minted unregistered digital financial assets called ApeCoins and  
14 promoted that BAYC NFT owners would receive an airdrop of ApeCoins for  
15 membership in the club. In doing so, the Executive Defendants, Oseary, and the Ape  
16 DAO Board Defendants sought to obscure their own sales of their massive ApeCoin  
17 allocations directly to retail purchasers. At no point did any of the Defendants  
18 register these securities with the SEC.

19           8. In addition, Executive Defendants Aronow, Solano, Atalay, and Ali  
20 disguised their control of Yuga to avoid scrutiny and facilitate this scheme. This  
21 conspiracy among the Executive Defendants and Oseary, then carried out with  
22 assistance of the Ape DAO Board Defendants, the Promoter Defendants, and the  
23 MoonPay Defendants, raked in millions for them all. Meanwhile, investors were left  
24 with staggering losses.

25           9. Plaintiffs bring this class action on behalf of themselves and an  
26 objectively identifiable Class consisting of all investors that purchased the  
27 unregistered Yuga Financial Products between April 23, 2021 and the present.  
28



1 **II. PARTIES**

2 **A. Plaintiffs**

3 10. Lead Plaintiff Johnny Johnson (“Johnson”) is a citizen of Texas and  
4 resides in Georgetown, Texas. As set forth in the previously filed certification (ECF  
5 No. 74-2), Plaintiff Johnson invested in Yuga NFTs during the Class Period. Plaintiff  
6 Johnson also purchased ApeCoin tokens on U.S. based cryptocurrency exchanges.  
7 Johnson purchased the Yuga securities in reliance on the misleading promotions from  
8 the Company and the Promoter Defendants (described in detail below), and he  
9 suffered investment losses as a result of Defendants’ conduct.

10 11. Lead Plaintiff Ezra Boekweg is a citizen of Texas and resides in Waco,  
11 Texas. As set forth in the previously filed certification (ECF No. 74-2), Plaintiff  
12 Boekweg invested in Yuga NFTs during the Class Period. Plaintiff Boekweg also  
13 purchased ApeCoin tokens on U.S. based cryptocurrency exchanges. He also  
14 purchased Otherdeed NFTs associated with the Otherside metaverse Yuga was  
15 purportedly developing. Boekweg purchased the Yuga securities in reliance on the  
16 misleading promotions from the Company and the Promoter Defendants (described  
17 in detail below), and he suffered investment losses as a result of Defendants’ conduct.

18 12. Lead Plaintiff Mario Palombini (“Palombini”) is a resident and citizen  
19 of Portugal. As set forth in the previously filed certification (ECF No. 74-2), Plaintiff  
20 Palombini purchased the Mutant Ape Yacht Club, and Otherdeed NFTs on a US-  
21 based exchange. Palombini purchased the Yuga Financial Products on a US-based  
22 exchange in reliance on the misleading promotions from the Company and the  
23 Promoter Defendants (described in detail below), and he suffered investment losses  
24 as a result of Defendants’ conduct.

25 13. Plaintiff Adam Titcher (“Titcher”) is a resident and citizen of California.  
26 As set forth in the previously filed certification (ECF No. 1-2), Plaintiff Titcher  
27 purchased a Mutant Ape Yacht Club (“MAYC”) NFT via the U.S.-based NFT  
28



1 exchange OpenSea. Titcher also purchased an Otherdeed NFT associated with the  
2 Yuga metaverse, Otherside, via the U.S.-based NFT exchange on OpenSea. Titcher  
3 purchased the Yuga Financial Products in reliance on the misleading promotions  
4 from the Company and the Promoter Defendants (described in detail below), and he  
5 suffered investment losses as a result of Defendants’ conduct.

6 **B. Defendants**

7 14. Defendant Yuga is a Delaware corporation, registered on February 8,  
8 2021, with its headquarters located at 1850 Towers Crescent Plaza, Suite 200,  
9 Tysons, VA 22182. On June 16, 2022, Yuga registered with the California Secretary  
10 of State to transact business within California.

11 15. Defendant Wylie Aronow (“Aronow”) is a resident and citizen of South  
12 Carolina, living in Mount Pleasant, South Carolina. Aronow is the co-founder/creator  
13 of the Company, served as a consultant and spokesperson for the Company, exercised  
14 control over the Company and directed and/or authorized, directly or indirectly, the  
15 sale and/or solicitations of Yuga Financial Products to the public. Defendant Aronow  
16 was listed as Vice President in the official paperwork filed with the California  
17 Secretary of State.

18 16. Defendant Greg Solano (“Solano”) is a resident and citizen of Florida,  
19 living in Fort Lauderdale, Florida. Solano is the co-founder/creator of the Company,  
20 served as a consultant and spokesperson for the Company, exercised control over the  
21 Company and directed and/or authorized, directly or indirectly, the sale and/or  
22 solicitations of Yuga Financial Products to the public. Defendant Solano was listed  
23 as Yuga’s Chief Executive Officer on official paperwork filed with the California  
24 State of State.

25 17. Kerem Atalay (“Atalay”) is a resident and citizen of Missouri, living in  
26 St. Louis, Missouri. Atalay is the co-founder/creator of the Company, served as a  
27 developer, consultant and spokesperson for the Company, exercised control over the  
28

1 Company and directed and/or authorized, directly or indirectly, the sale and/or  
2 solicitations of Yuga Financial Products to the public.

3 18. Zeshan Ali (“Ali”) is a resident and citizen of California, living in Los  
4 Angeles, California. Ali is the co-founder/creator of the Company, served as a  
5 developer, consultant and spokesperson for the Company, exercised control over the  
6 Company and directed and/or authorized, directly or indirectly, the sale and/or  
7 solicitations of Yuga Financial Products to the public.

8 19. Defendant Nicole Muniz (“Muniz”) is a resident and citizen of New  
9 York, living in Brooklyn, New York. Muniz is the Chief Executive Officer (“CEO”)  
10 of the Company, served as a consultant and spokesperson for the Company, exercised  
11 control over the Company and directed and/or authorized, directly or indirectly, the  
12 sale and/or solicitations of Yuga Financial Products to the public. Defendant Muniz  
13 filed the paperwork with the California Secretary of State for Yuga to do business in  
14 the state of California and was listed as Chief Financial Officer (“CFO”) and  
15 Secretary.

16 20. Defendant Jasmin Shoemaker (“Shoemaker”) is a resident and citizen  
17 of New York, living in Brooklyn, New York. Shoemaker is the Chief Operating  
18 Officer (“COO”) of the Company, served as a consultant and spokesperson for the  
19 Company, exercised control over the Company and directed and/or authorized,  
20 directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the  
21 public.

22 21. Defendant Patrick Ehrlund (“Ehrlund”) is a resident and citizen of New  
23 York, living in Brooklyn, New York. Ehrlund is the Chief Creative Officer (“CCO”)  
24 and minority partner of the Company, served as a consultant and spokesperson for  
25 the Company, exercised control over the Company and directed and/or authorized,  
26 directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the  
27 public.

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1           22. Defendant Christopher Lyons (“Lyons”) is a resident and citizen of  
2 Florida, living in Plantation, Florida. Lyons served as a board member, consultant  
3 and spokesperson for the Company, exercised control over the Company and directed  
4 and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga  
5 Financial Products to the public.

6           23. Defendant Alexis Ohanian (“Ohanian”) is a resident and citizen of  
7 Florida, living in Jupiter, Florida. Ohanian served as a board member of the Ape  
8 DAO, served as a consultant and spokesperson for the Company, exercised control  
9 over the Ape DAO, Ape Foundation, and the Company and directed and/or  
10 authorized, directly or indirectly, the sale and/or solicitations of Yuga Financial  
11 Products to the public. Ohanian’s SevenSevenSix was one of several investors in  
12 Yuga during the \$450 million funding round.

13           24. Defendant Amy Wu (“Wu”) is a resident and citizen of California, living  
14 in San Francisco, California. Wu served as a board member of the Ape DAO, served  
15 as a consultant and spokesperson for the Company, exercised control over the Ape  
16 DAO, Ape Foundation, and the Company and directed and/or authorized, directly or  
17 indirectly, the sale and/or solicitations of Yuga Financial Products to the public.

18           25. Defendant Maaria Bajwa (“Bajwa”) is a resident and citizen of  
19 California, living in Glendale, California. Bajwa served as a board member of the  
20 Ape DAO, served as a consultant and spokesperson for the Company, exercised  
21 control over the Ape DAO, Ape Foundation, and the Company and directed and/or  
22 authorized, directly or indirectly, the sale and/or solicitations of Yuga Financial  
23 Products to the public.

24           26. Defendant Guy Oseary (“Oseary”) is a resident and citizen of California,  
25 living in Santa Monica, California. Oseary acted as a minority partner, consultant  
26 and spokesperson for the Company, exercised control over the Company and directed  
27 and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga  
28

1 Financial Products to the public. Oseary’s Sound Ventures was one of several  
2 investors in Yuga during the Seed funding rounds.

3 27. Defendant Mike “Beeple” Winkelmann (“Winkelmann”) is a resident  
4 and citizen of South Carolina, living in North Charleston, South Carolina.  
5 Winkelmann acted as a promoter for the Company and solicited sales of Yuga  
6 securities to the public.

7 28. Defendant Paris Hilton (“Hilton”) is a resident and citizen of California,  
8 living in Malibu, California. Hilton acted as a promoter for the Company and  
9 solicited sales of Yuga securities to the public.

10 29. Defendant Madonna Louise Ciccone (“Ciccone”) is a resident and  
11 citizen of California, living in Hidden Hills, California. Ciccone acted as a promoter  
12 for the Company and solicited sales of Yuga securities to the public.

13 30. Defendant Justin Bieber (“Bieber”) is a resident and citizen of  
14 California, living in Hidden Hills, California. Bieber acted as a promoter for the  
15 Company and solicited sales of Yuga securities to the public.

16 31. Defendant James “Jimmy” Fallon (“Fallon”) is a resident and citizen of  
17 New York, living in New York, New York. Fallon acted as a promoter for the  
18 Company, and solicited sales of Yuga securities to the public.

19 32. Defendant Electric Hot Dog, Inc. (“EHD” f/k/a Holiday Road) is a New  
20 York corporation, with its headquarters located at 200 Park Avenue South, 8th Floor,  
21 New York, NY 10003. EHD is Defendant Fallon’s personal production company, as  
22 well as being the production company for *The Tonight Show* (“*Tonight Show*”), of  
23 which Defendant Fallon is the host. EHD is also the production company for several  
24 other projects, including the show “Password,” filmed in Los Angeles, County,  
25 California. EHD acted as a spokesperson for the Company, exercised control over  
26 Defendant Fallon and the content and disclosures of the *Tonight Show*, and directed  
27  
28

1 and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga  
2 securities to the public.

3 33. Defendant Universal Television, LLC (“Universal”) is a New York  
4 corporation, with its headquarters located at 100 Universal City Plaza, Universal City,  
5 CA 91608. On May 17, 2011, Universal registered with the California Secretary of  
6 State to transact business within California. Universal is the production company for  
7 the *Tonight Show*, of which Defendant Fallon is the host. Universal acted as an  
8 indirect spokesperson for the Company by virtue of its exercise of control over both  
9 Defendant Fallon and the content and disclosures of the *Tonight Show*, and directed  
10 and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga  
11 securities to the public.

12 34. Defendant Paris Hilton (“Hilton”) is a resident and citizen of California,  
13 living in Malibu, California. Hilton acted as a promoter for the Company and  
14 solicited sales of Yuga securities to the public.

15 35. Defendant Austin Richard “Post Malone” Post (“Post”) is a resident and  
16 citizen of Utah, living in Cottonwood Heights, Utah. Post acted as a promoter for the  
17 Company, and solicited sales of Yuga securities to the public.

18 36. Defendant Calvin “Snoop Dogg” Broadus, Jr. (“Broadus”) is a resident  
19 and citizen of California, living in Diamond Bar, California. Broadus acted as a  
20 promoter for the Company, and solicited sales of Yuga securities to the public.

21 37. Defendant Kevin Hart (“Hart”) is a resident and citizen of California,  
22 living in Calabasas, California. Hart acted as a promoter for the Company, and  
23 solicited sales of Yuga securities to the public.

24 38. Defendant Wardell Stephen Curry II (“Curry”) is a resident and citizen  
25 of California, living in Atherton, California. Curry acted as a promoter for the  
26 Company, and solicited sales of Yuga securities to the public.

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1           39. Defendant adidas America Inc. (“Adidas”) is an Oregon corporation,  
2 with its headquarters located at 5055 N Greeley Avenue, Portland, Oregon 97217.  
3 On March 29, 2010, Adidas registered with the California Secretary of State to  
4 transact business within California. Adidas is the parent of adidas Ventures B.V., the  
5 venture capital fund acquired by Adidas to make investments in start-up companies.  
6 Throughout the Class Period, Adidas acted as an agent and direct or indirect  
7 spokesperson for the Company by virtue of its capital investment in the Company,  
8 and directed and/or authorized, directly or indirectly, the solicitations of the Yuga  
9 Financial Products, as well as its own NFT collaboration with Yuga. Upon  
10 information and belief, Adidas controls and/or oversees the operations and  
11 management of the “adidas Originals” brand line, under which the “adidas Originals:  
12 Into The Metaverse” NFT collaboration with Yuga was launched.

13           40. Defendant adidas Ventures B.V. is a corporate venture capital firm with  
14 its headquarters located at Hoogoorddreef 9 A, 1101BA, Amsterdam, Netherlands.  
15 Founded in 2011, adidas Ventures B.V. started as a separate venture capital fund  
16 called Hydra Ventures until it was fully incorporated into the Adidas corporate  
17 structure in or around 2017. At the time of its acquisition by Adidas, Hydra Ventures  
18 was focused on “pursuing opportunities in nascent, fast-growing and American  
19 markets.”<sup>5</sup> adidas Ventures B.V. currently operates as the investment arm of Adidas.  
20 adidas Ventures B.V. is a backer of Yuga, having participated in the Yuga seed  
21 funding round on March 22, 2022. adidas Ventures B.V. acted as an agent for the  
22 Company by virtue of its capital investment in the Company, and directed and/or  
23 authorized, directly or indirectly, the solicitations of Yuga securities to the public.  
24  
25

26 <sup>5</sup> *Did you hear? Adidas backs new venture investment and development firm*  
27 *called Hydra Ventures*, OUTSIDE BUS. J. (Aug. 29, 2011),  
28 <https://www.outsidebusinessjournal.com/brands/did-you-hear-adidas-backs-new-venture-investment-and-development-firm-called-hydra-ventures/>.

1           41. Defendant Ivan Soto-Wright (“Soto-Wright”) is a resident and citizen of  
2 Florida, living in Miami, Florida. Soto-Wright served as the CEO of MoonPay during  
3 the Class Period, and acted as a promoter for the Company, and solicited sales of  
4 Yuga securities to the public.

5           42. Defendant MoonPay USA LLC (“MoonPay”) is a Delaware  
6 corporation, with its headquarters located at 1111 Brickell Avenue, 10th Floor,  
7 Miami, Florida 33131. MoonPay acted as an agent and indirect spokesperson for the  
8 Company by virtue of it being controlled, in part, by Defendant Oseary, directed  
9 and/or authorized, directly or indirectly, the solicitations of Yuga securities to the  
10 public. On April 30, 2021, MoonPay registered with the California Secretary of State  
11 to transact business within California.

12           43. Defendant Sotheby’s Holdings Inc. (“Sotheby’s”) is a Delaware  
13 corporation, with its headquarters located at 1334 York Avenue, New York, New  
14 York 10021. Sotheby’s acted as a promoter for the Company, and solicited sales of  
15 Yuga securities to the public.

16 **III. JURISDICTION AND VENUE**

17           44. This Court has subject-matter jurisdiction over this action pursuant to 28  
18 U.S.C. §1332. Plaintiffs bring this civil action seeking to represent a Class of more  
19 than 100 plaintiffs pursuant to Federal Rule of Civil Procedure 23. Plaintiffs are  
20 citizens of California, Florida, and Texas. 10 of the 29 named Defendants are citizens  
21 of California; all of the other Defendants reside outside of California. Plaintiffs seek  
22 an award exceeding \$5,000,000, exclusive of interest and costs, on behalf of  
23 themselves and the putative Class.

24           45. The Court has general jurisdiction over Defendants Ali, Wu, Bajwa,  
25 Oseary, Ciccone, Bieber, Hilton, Broadus, Hart, and Curry as they are all residents of  
26 the State of California and are thus “at home” in the forum.

27  
28



1           46. The Court has general jurisdiction over Defendant Universal because its  
2 principal places of business are in California, and thus it is “at home” in the forum.

3           47. This Court may exercise jurisdiction over Defendants because they have  
4 continuous and systematic contacts with this District, do substantial business in this  
5 State and within this District, and engage in unlawful practices in this District as  
6 described in this Complaint, so as to subject themselves to personal jurisdiction in  
7 this District, thus rendering the exercise of jurisdiction by this Court proper and  
8 necessary.

9           48. Venue is proper in this judicial District pursuant to 28 U.S.C. §1391(b)  
10 because Defendants live and/or conduct business in this District, and a substantial  
11 part of the events or omissions giving rise to the claims alleged herein occurred in  
12 this District.

13 **IV. FACTUAL ALLEGATIONS**

14           49. Cryptocurrency, or crypto, is a form of digital asset that exists virtually  
15 and uses cryptography to secure transactions. Cryptocurrencies use a decentralized  
16 system to record transactions and issue new units. The first cryptocurrency was  
17 Bitcoin, which was launched in 2009. As of March 2022, there are 18,465  
18 cryptocurrencies in existence.<sup>6</sup>

19           50. Anyone can create a new cryptocurrency. An internet search will  
20 provide you step-by-step instructions with video for creating a new cryptocurrency  
21 in less than an hour. Once created, the new cryptocurrency can be traded on  
22 cryptocurrency exchanges. Exchanges can be centralized such as Coinbase,  
23 Crypto.com, Gemini, BitMart and others, or decentralized (Dex) such as Uniswap,  
24 Pancake Swap, and others.

25  
26  
27 <sup>6</sup> Josh Howarth, *How Many Cryptocurrencies are There In 2022?*, EXPLODING  
28 TOPICS (July 19, 2022), <https://explodingtopics.com/blog/number-of-cryptocurrencies>.

1           51. Cryptocurrency is stored in crypto “wallets”, which are physical devices  
2 or online software used to store the private keys to the owner’s cryptocurrencies  
3 securely. Wallets have unique identifiers called “Wallet IDs.” There is no limit on  
4 the number of wallets a person can control.

5           52. Transactions of cryptocurrencies are recorded in a “blockchain,” which  
6 serves as a distributed public ledger. The amount of cryptocurrency transacted, the  
7 sender’s wallet address, the recipient’s wallet address and the date and time of the  
8 transfer for every transfer of cryptocurrency between digital wallets can be publicly  
9 viewed on the blockchain by using any number of websites like  
10 [www.blockchain.com/explorer](http://www.blockchain.com/explorer) or [www.etherscan.io](http://www.etherscan.io).

11           53. The identity of an owner of a particular wallet is not publicly available  
12 from the blockchain. However, an owner can choose to reveal themselves. Or, since  
13 users usually have to reveal their identity in order to receive services or goods, many  
14 times the owner of a wallet can be deduced from a wallet’s transactions or by  
15 matching wallet data with other identifiable data points such as a user’s IP address or  
16 Know Your Customer (“KYC”) information provided to an exchange or other  
17 intermediary or market maker.

18           54. Like physical money, cryptocurrencies are fungible, meaning that they  
19 can be traded or exchanged, one for another. For example, one bitcoin is always  
20 equal in value to another bitcoin. Conversely, NFTs are cryptographic assets with  
21 unique identification codes and metadata that distinguish them from each other and  
22 cannot be replicated. Unlike fungible cryptocurrencies, NFTs cannot be traded or  
23 exchanged at equivalency. However, the price of NFTs within a given collection is  
24 highly correlated and the relative value of the collection can often be assessed by its  
25 floor price—the lowest price an NFT in the collection can be purchased for. For  
26 example, if the floor price for an NFT collection is five ether or ETH (the native  
27 cryptocurrency for the Ethereum blockchain), it means that the lowest price someone  
28

1 can pay for an NFT that is not currently in an auction is five of the cryptocurrency  
2 token ether. Floor price is one of the key metrics investors consider when evaluating  
3 the intrinsic value for an NFT.

4 55. Besides being traded and exchanged, some cryptocurrencies can also be  
5 used for governance over the particular project or for some artificially created  
6 purpose or use. For example, cryptocurrencies can be used as a form of in-game  
7 virtual currency in an online video game. Cryptocurrencies can also be used as an  
8 incentive for players who earn special tokens as part of the game that can be swapped  
9 for other tokens or sold for cash.

10 56. Similarly, a cryptocurrency can be used as virtual currency for purchases  
11 made within the metaverse. The “metaverse” refers to a virtual-reality space in which  
12 users can interact with a computer-generated virtual environment and other users.  
13 Analysts predict that the metaverse has the potential to generate up to \$5 trillion in  
14 value by 2030.<sup>7</sup>

15 **A. Yuga Labs Background**

16 **1. The Founders**

17 57. Yuga is a cryptocurrency-related NFT company founded in February  
18 2021 by a group of friends: Defendants Aronow, Solano, Atalay, and Ali. The four  
19 founders were joined by Defendant Muniz.

20 58. Ali first met Atalay when they were at the University of Virginia, and  
21 then both met Solano while studying computer science at the University of Maryland.  
22 Solano was also friends with Aronow, sharing a mutual interest in literature and  
23 online gaming.

24 59. In February 2021, Solano contacted Aronow about starting an NFT  
25 project. During the early conception of the BAYC brand, Aronow brought in Muniz

26 \_\_\_\_\_  
27 <sup>7</sup> See, e.g., *Value Creation in the Metaverse*, MCKINSEY & COMPANY,  
28 [https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights  
/value-creation-in-the-metaverse](https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights/value-creation-in-the-metaverse) (last visited Oct. 27, 2022).

1 to discuss both the creative and business side of the project. According to an interview  
2 of both Solano and Aronow, they described the early formation of Yuga as follows:

3           Despite his interest in digital collectibles, Solano did not buy his  
4 first NFT until early 2021. Shortly thereafter, in February, Solano  
5 texted Aronow to start an NFT project of their own. Aronow said: “We  
6 immediately started to conceive. One of the ideas was a public digital  
7 canvas, which Aronow shared with his longtime friend Nicole Muniz,  
8 who is now the CEO of Yuga. She keenly predicted that someone would  
9 paint on it. a little brother.”

10           These people did just that. Aronow said: “I was like, where  
11 would you draw a phallus? The answer was: on the bathroom wall of a  
12 dive bar. So what kind of people would go there?” The kind of people  
13 he knew on Crypto Twitter who made their fortunes in cryptocurrencies  
14 but still only wanted to play MMORPGs online and not live the luxury  
15 life of the expected multi-millionaire.

16           Aronow sent Solano a “whole article” to plan the idea, where the  
17 name “Bored Ape Yacht Club” came up. “As the great editor, Solano  
18 said—‘That’s it. That’s it’” recalls Aronow. The concept evolved—in  
19 cryptocurrencies, [M]illionaires are real apes, and the term “ape” means  
20 that someone living in 2021 will compulsively invest in a new project  
21 without doing much research. Aronow said he and Solano started a  
22 limited liability company the next day.<sup>8</sup>

23           60. Atalay and Ali served as the developers of the BAYC NFT collection,  
24 working on the technical side of the ERC-721 token’s creation while Solano and  
25 Aronow served as Yuga’s creative department.

26           61. Initially, Solano, Aronow, Atalay, and Ali hid their respective identities  
27 from the public, instead operating under the following pseudonyms/alter egos to  
28 avoid scrutiny from the public and investors during the early launch of the Company:

a. Wylie Aronow went by “Gordon Goner”;

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<sup>8</sup> *Interview with the founder of BAYC Boring [sic] Ape: the biggest success story in the NFT world*, COINYUPPIE (Aug. 8, 2022), <https://coinyuppie.com/interview-with-the-founder-of-bayc-boring-ape-the-biggest-success-story-in-the-nft-world/>.

- 1           b. Greg Solano went by “Gargamel”;
- 2           c. Kerem Atalay went by “EmperorTomatoKetchup”; and
- 3           d. Zeshan Ali went by “Sass.”

4           62. Yuga develops and sells to investors a variety of digital assets, which  
5 fall into two basic categories: (1) various NFT collections; (2) an ApeCoin native  
6 token, and titles to metaverse virtual land NFTs called Otherdeeds.

7           63. Initially, the lion’s share of Yuga’s business comes from the sale of its  
8 various NFT collections. Yuga also programmed its NFTs so that the Company  
9 receives a 2.5% royalty every time one of its NFTs is resold on the secondary market.  
10 Yuga reportedly earned \$127 million in profits from its NFT business in 2021.<sup>9</sup>  
11 According to a Yuga pitch deck that was leaked online, the “BAYC collections alone  
12 account for approximately 10% of the volume on OpenSea,” the largest NFT  
13 marketplace in the world.<sup>10</sup>

14           64. On April 20, 2021, the Company and Executive Defendants Aronow,  
15 Solano, Atalay, and Ali created the BAYC collection of NFTs, minting 10,000 BAYC  
16 NFTs. The Company boasted that ownership of these BAYC NFTs “double[d] as [a]  
17 membership to a digital club” that would give its owners access to “member’s-only  
18 benefits.”<sup>11</sup>

19  
20  
21 <sup>9</sup> Ryan Weeks, *Bored Ape startup plans virtual land sales, APECoin token to*  
22 *kickstart metaverse gaming project*, THE BLOCK (Mar. 25, 2022),  
[https://www.theblock.co/post/137829/bored-ape-yacht-club-yuga-labs-virtual-land-](https://www.theblock.co/post/137829/bored-ape-yacht-club-yuga-labs-virtual-land-sales-metaverse)  
23 [sales-metaverse](https://www.theblock.co/post/137829/bored-ape-yacht-club-yuga-labs-virtual-land-sales-metaverse).

24 <sup>10</sup> *Yuga Labs Pitch Deck: BAYC founders raised \$450M from Andreessen*  
25 *Horowitz*, at \*28, YUGA LABS, INC. (Mar. 19, 2022), [https://www.slideshare.net](https://www.slideshare.net/PitchDecks/yuga-labs-pitch-deck-bayc-founders-project-455m-nft-revenue-2022)  
26 [/PitchDecks/yuga-labs-pitch-deck-bayc-founders-project-455m-nft-revenue-2022](https://www.slideshare.net/PitchDecks/yuga-labs-pitch-deck-bayc-founders-project-455m-nft-revenue-2022)  
27 (“*Yuga Labs Pitch Deck*”).

28 <sup>11</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Apr. 17, 2021, 12:31 AM,  
<https://twitter.com/BoredApeYC/status/1383276899749691394>; Bored Ape Yacht  
Club (@BoredApeYC), TWITTER (Apr. 17, 2021, 1:04 PM),  
<https://twitter.com/BoredApeYC/status/1383466417329106949>.

1 65. To encourage followers to BAYC’s Twitter account, the Company  
2 offered to give away a Bored Ape NFT to anyone who followed @boredapeyc in  
3 Twitter and liked, commented on, and retweeted BAYC’s promotional giveaway.<sup>12</sup>

4 66. As the name suggests, the BAYC NFTs feature pictures of an animated  
5 ape with a bored facial expression. The NFTs within the collection vary somewhat,  
6 having certain unique traits and characteristics. In fact, these BAYC NFTs are  
7 distinguished and valued by the accessories that adorn the digital ape. For example,  
8 a BAYC NFT wearing sunglasses is generally considered to be more rare (and thus  
9 more valuable) than one that does not have a similar fashion accessory.

10 67. On April 24, 2021, Yuga launched the BAYC NFT collection, selling  
11 all 10,000 BAYC NFTs over the course of a week through the official public launch  
12 date of April 30, 2021.

13 68. Insiders and influencers were given inside information concerning the  
14 mint. For example, an influencer known as “Dingaling” is considered one of the most  
15 successful NFT investors and one of the biggest, if not the biggest holder of Yuga  
16 assets.<sup>13</sup> On August 23, 2021, Dingaling tweeted that he had “100 apes from mint  
17 still untouched.”<sup>14</sup> Dingaling’s identity was recently unmasked as Dinghau Xiao, a  
18 high ranking Binance executive.<sup>15</sup> Xiao was listed as a director in legal documents  
19 filed in Bermuda for an entity named Binance (Bermuda) Ltd. Xiao was also part of  
20

21 <sup>12</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (April 17, 2021, 1:03  
22 PM), <https://twitter.com/BoredApeYC/status/1383466067419299840>.

23 <sup>13</sup> *This Bored Ape Yacht Club Whale Became The Club’s Largest Holder This*  
24 *Weekend*, THE BORED APE GAZETTE (Dec. 5, 2021),  
25 [https://www.theboredapegazette.com/post/this-bored-ape-yacht-club-whale-](https://www.theboredapegazette.com/post/this-bored-ape-yacht-club-whale-became-the-club-s-largest-holder-this-weekend)  
26 [became-the-club-s-largest-holder-this-weekend](https://www.theboredapegazette.com/post/this-bored-ape-yacht-club-whale-became-the-club-s-largest-holder-this-weekend).

27 <sup>14</sup> Dingaling (@dingalingts), TWITTER (Aug. 23, 2021, 7:37 A.M.),  
28 <https://twitter.com/dingalingts/status/1429814982959525897>.

<sup>15</sup> Nicholas Kitonyi, *Doxed NFT Whale’s Portfolio Shows Deep Ties to a Major*  
*Crypto Exchange*, NFT GATORS (Nov. 8, 2022), [https://www.nftgators.com/doxed-](https://www.nftgators.com/doxed-nft-whales-portfolio-shows-deep-ties-to-a-major-crypto-exchange/)  
[nft-whales-portfolio-shows-deep-ties-to-a-major-crypto-exchange/](https://www.nftgators.com/doxed-nft-whales-portfolio-shows-deep-ties-to-a-major-crypto-exchange/).



1 a joint venture between FTX’s Sam Bankman-Fried and Binance, personally owning  
2 5% of West Realm Shires Inc.<sup>16</sup> West Realm Shires Inc. owned 100% of West Realm  
3 Shires Services, Inc.,<sup>17</sup> which was the entity that operated as FTX US, the domestic  
4 arm of the FTX exchange.<sup>18</sup>

5 69. Xiao, with inside information based on his executive role at Binance  
6 and/or FTX, minted dozens of Bored Ape NFTs in the opening mint. After the BAYC  
7 mint went live on the evening of April 30, 2021, Xiao minted 40 BAYC NFTs at  
8 2:45am on May 1, 2021 in two transactions. Thereafter, Xiao minted twenty BAYC  
9 NFTs at 2:54am, another twenty BAYC NFTs at 3:03am, and another 20 at 3:15a.m.

10 70. Yuga’s portfolio of NFT collections is collectively worth billions. The  
11 BAYC collection alone was valued in the billions of dollars, with the floor price at  
12 around \$114,000 as of August 2022, according to *CoinGecko*. Capitalizing on the  
13 success of its BAYC collection, Yuga also created a spinoff brand NFT collection,  
14 the Mutant Ape Yacht Club collection, worth approximately \$427 million.<sup>19</sup> In  
15 addition, Yuga’s NFT collection portfolio contains acquisitions by the Company,  
16 including owning the rights to the CryptoPunks (a series of avatars in an eight-bit art  
17 style worth approximately \$970 million in total) and Meebits collections. These  
18 acquisitions were funded thanks, in part, to the seed investments from a16z and Ape  
19 DAO Board member Christopher Lyons.

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21 <sup>16</sup> *Id.*

22 <sup>17</sup> Order Revoking Money-Transmitter License, *Dept. of Fin. Institutions v. West*  
23 *Realm Shire Servs. Inc. d/b/a FTX US*, Admin. Action No. 2022-AH-0024 (Ky. Dep’t  
24 of Fin. Institution Dec. 2, 2022), <https://kfi.ky.gov/Documents/NONDEP;%202022-AH-0024%20West%20Realm%20Shires%20Services%20Inc..pdf>.

25 <sup>18</sup> Press Release, *Order to Cease and Desist Issued to West Realm Shires Services*  
26 *Inc. d/b/a FTS US Becomes Final*, GEORGIA DEP’T OF BANKING & FIN. (Dec. 8, 2022),  
<https://dbf.georgia.gov/press-releases/2022-12-08/order-cease-and-desist-issued>.

27 <sup>19</sup> Mutant Ape Yacht Club (MAYC) NFTs are created by combining two digital  
28 assets created by Yuga: a BAYC NFT and a SERUM NFT. The idea being that the  
“serum” would turn the buyer’s “bored ape” into a “mutant ape.”



1           71. On June 18, 2021, the Company and Executive Defendants Aronow,  
2 Solano, Atalay, and Ali launched a spinoff collection for Bored Ape holders called  
3 Bored Ape Kennel Club (BAKC). These Defendants then launched the Mutant Ape  
4 Yacht Club (MAYC) on August 28, 2021.

5           72. In September 2021, Defendant Muniz began serving as Yuga’s CEO.

6           73. On February 4, 2022 an article on BuzzFeed.com (“*BuzzFeed*”) revealed  
7 the identity of Defendants Solano and Aronow. Shortly thereafter, Aronow posted a  
8 picture of himself on his Gordon Goner Twitter account, offering that he was  
9 revealing his face because he was “doxxed<sup>20</sup> against my will.”<sup>21</sup> Similarly, Solano  
10 posted his own picture on his Crypto Gargamel (Garga.eth) Twitter account, stating  
11 “[g]ot doxed [sic] so why not.”<sup>22</sup>

12           74. After Defendants Solano, Aronow, Atalay, Ali, and Muniz were able to  
13 massively increase interest in the BAYC NFTs and the idea of cross-utilization of  
14 those NFTs through the misleading promotional campaign executed by the Promoter  
15 Defendants, the Executive Defendants and Oseary turned towards expanding the  
16 Bored Ape brand beyond NFTs. First, Muniz suggested new financial spin-off  
17 products like the MAYC and Bored Ape Kennel Club NFT collections. The  
18 Company would then cross-promote the collections on BAYC’s Twitter account by  
19 encouraging people to “adopt” Bored Ape Kennel Club dog NFTs through their  
20  
21  
22

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23 <sup>20</sup> “Dox” means to publicly identify or publish private information about  
24 someone without their consent.

25 <sup>21</sup> GordonGoner.eth (Wylie Aronow) (@GordonGoner), TWITTER (Feb. 4, 2022,  
26 4:55 PM), <https://twitter.com/GordonGoner/status/1489764541084930048?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

27 <sup>22</sup> Garga.eth (Greg Solano) (@CryptoGarga), TWITTER (Feb. 4, 2022, 5:10 PM),  
28 <https://twitter.com/CryptoGarga/status/1489768443771596800?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

1 BAYC NFT purchases<sup>23</sup> and boasting that the NFT combination raised “50 ETH . . .  
2 for charity.”<sup>24</sup>

3 75. Next, came Yuga’s version of printing its own money: ApeCoin tokens  
4 (discussed further below).

5 76. Finally, in an effort to artificially generate some actual use for these  
6 various unregistered Yuga securities (beyond making corporate insiders filthy rich),  
7 the Executive Defendants claimed to be creating its own collective virtual shared  
8 space or “metaverse” platform, Otherside. The Otherside metaverse was billed to be  
9 Yuga’s persistent, immersive virtual world that users could interact with using digital  
10 avatars from the BAYC, MAYC, or other Yuga NFT collections. Executive  
11 Defendants, Oseary, and the Ape DAO Board Defendants touted ApeCoin tokens as  
12 the Otherside’s native currency. Yuga and its executives promoted the Otherdeed  
13 NFTs (and related plots of “land” in the Otherside metaverse) as an extension of the  
14 BAYC ecosystem and the place where the BAYC NFTs could grow, prosper, and  
15 interact with others “in the club.”

16 **2. The Fifth Ape - Oseary**

17 77. On October 12, 2021, the Company announced in a *Variety* Magazine  
18 exclusive article that it had signed a representation deal with Defendant Oseary to  
19 expand the BAYC NFTs into movies, TV, music, and gaming, and promoted the  
20 *Variety* article through BAYC’s Twitter account.<sup>25</sup> In truth, Oseary was officially  
21

22 <sup>23</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 21, 2021, 10:49  
23 AM), <https://twitter.com/BoredApeYC/status/1407032879377534980>.

24 <sup>24</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 26, 2021, 7:10 AM),  
24 <https://twitter.com/BoredApeYC/status/1408789893749350402>.

25 <sup>25</sup> Shirley Halperin, *Bored Ape Yacht Club Creators Yuga Labs Sign  
26 Representation Deal With Madonna, U2 Manager Guy Oseary (Exclusive)*, VARIETY  
27 (Oct. 12, 2021), [https://variety.com/2021/digital/news/bored-ape-yacht-club-yuga-  
28 labs-sign-with-madonna-u2-manager-guy-oseary-1235086011/](https://variety.com/2021/digital/news/bored-ape-yacht-club-yuga-labs-sign-with-madonna-u2-manager-guy-oseary-1235086011/); Bored Ape Yacht  
Club (@BoredApeYC), TWITTER (Oct. 12, 2021, 6:50 AM),  
<https://twitter.com/BoredApeYC/status/1447922609266601990>.

1 brought in to actively recruit the Promoter Defendants to solicit sales of the BAYC  
2 NFTs and other Yuga Financial Products, which they did.

3 78. While each of the Executive Defendants played their part in the  
4 organizing of the misleading promotion scheme (discussed further below), none was  
5 more instrumental than the so-called “Fifth Ape” Defendant Oseary, who spent years  
6 in Hollywood building relationships with the Promoter Defendants. For example,  
7 when Defendant Fallon assumed the *Tonight Show* hosting role on February 17, 2014,  
8 one of his first two guests was the world-famous rock band U2. As the band’s  
9 manager at the time, Oseary facilitated this appearance and helped Fallon’s career  
10 take off. Fallon also regularly attends an annual MTV Video Music Awards after-  
11 party hosted by Oseary.

12 79. Oseary has experience in soliciting unregistered crypto securities to  
13 retail investors via Hollywood promotions. In May 2018, Oseary introduced Ripple’s  
14 XRP token to retail investors by organizing a highly publicized \$4 million donation  
15 from Oseary and business partner Ashton Kutcher given to Ellen DeGeneres’s charity  
16 during the show.<sup>26</sup> The donation was purportedly made in the form of XRP tokens.

17 80. Oseary also conducts business with Defendant Bieber’s manager  
18 Scooter Braun via their start-up investment funds A-Grade Investments and SB  
19 Projects, respectively. More directly, Oseary has been Defendant Ciccone’s personal  
20 manager and business partner for decades. And Oseary’s social media company  
21 Pearpop received its initial financial backing from Defendant Hilton (along with Ape  
22 DAO Board Defendant Ohanian individually). Finally, Oseary’s network extends to  
23 other talent management agencies like the Creative Arts Agency (“CAA”), which  
24

25  
26 <sup>26</sup> Tom Huddleston Jr., *Ashton Kutcher gave Ellen DeGeneres \$4 million in*  
27 *cryptocurrency for her charity — here’s what you need to know about Ripple’s XRP,*  
28 *CNBC* (May 24, 2018), <https://www.cnn.com/2018/05/24/ashton-kutcher-gave-ellen-degeneres-ripples-xrp-for-charity.html>.

1 also represents Defendants Ciccone, Fallon. Oseary’s Sound Ventures partner,  
2 Ashton Kutcher, is also represented by CAA.

3 81. Oseary is further linked to several of the Promoter Defendants via their  
4 mutual early investments in a cryptocurrency company, MoonPay. Significantly,  
5 many of MoonPay’s early investors were made up of Oseary’s immediate and  
6 extended network. For example, Oseary and Sound Ventures were also early  
7 investors in MoonPay. Other early MoonPay backers include Defendants Paris  
8 Hilton, Justin Bieber (and his manager Scooter Braun), Austin Post, Calvin Broadus,  
9 Jr., and Kevin Hart. CAA is also an initial backer of MoonPay.

10 82. Oseary saw an opportunity to profit from using his celebrity contacts to  
11 promote the sale of Yuga securities, and he took it. Oseary used NFT artist and  
12 business partner Defendant Mike “Beeple” Winkelmann to facilitate a meeting with  
13 Yuga and the Executive Defendants, so that Oseary could pitch his plan to promote  
14 Yuga and the BAYC NFT collection. Defendant Aronow admitted that “[w]e didn’t  
15 really know why he [*i.e.* Oseary] was so interested in us – it was a little perplexing.”  
16 According to Aronow, Oseary eventually managed to “become integral to the  
17 process of basically everything that we do.”<sup>27</sup>

18 83. Oseary had an overlapping financial interest in promoting MoonPay’s  
19 services, which was synergistic with the related interest that he and the Yuga  
20 executives had in promoting the BAYC NFT collection. His plan would effectively  
21 allow him, the Executive Defendants, and MoonPay (as well as the Promoter  
22 Defendants Bieber, Hilton, Post, Broadus, and Hart, who each separately had a  
23 financial interest in MoonPay) to all financially benefit from the cross-pollination  
24 and promotional efforts for the Yuga Financial Products.

25 84. The Executive Defendants, in conjunction with Oseary, tapped into their  
26 collective networks to recruit high-profile celebrities to promote the sale of Yuga’s  
27

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28 <sup>27</sup> *Id.*

1 collections of NFTs, particularly the BAYC NFTs. Together, Oseary, the MoonPay  
2 Defendants, and the Promoter Defendants each shared the strong motive to use their  
3 influence to artificially create demand for the Yuga securities, which in turn would  
4 increase use of MoonPay’s crypto payment service to handle this new demand. At  
5 the same time, Oseary could also use MoonPay to obscure how he paid off his  
6 celebrity cohorts for their direct or off-label promotions of the Yuga Financial  
7 Products.

8 85. Upon information and belief, Oseary also worked as a fixer for Yuga  
9 and the Executive Defendants. On June 24, 2022, Yuga filed a trademark  
10 infringement claim against artist Ryder Ripps (“Ripps”) related to the sale of Ripps’  
11 satirical NFT collection that Ripps has indicated is meant to shed light on the use of  
12 racist imagery and tropes within the BAYC NFT collection and its branding.

13 86. In a declaration submitted by Ripps in support of his anti-SLAPP  
14 motion, he describes an interaction he had with Defendant Oseary regarding Ripps’  
15 claims that the BAYC NFTs contained hidden racist imagery:

16 In December 2021, Guy Oseary, Yuga’s talent manager, called  
17 me to discuss the public statements I had made about Yuga’s neo-Nazi  
18 symbolism. On the call, Oseary made a series of vague threats, saying  
19 “I can be a nice guy or I can be a not nice guy” and that I would be  
20 better off being friends with Yuga. Oseary suggested that he understood  
21 Yuga used racist dog whistles by stating “who am I to judge someone’s  
22 art.” Oseary stated that he would help me if I kept silent and that he  
23 could make my life difficult if I did not cooperate. Oseary also offered  
24 to introduce me to Kanye West, not realizing that I already worked with  
25 him, and later added me to a text message thread with West’s manager.  
26 When I had not posted anything new criticizing Yuga for about one  
27 week and unpinned a tweet criticizing Yuga, Oseary left me a voice  
28 memo thanking me for my silence.<sup>28</sup>

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<sup>28</sup> Declaration of Ryder Ripps, *Yuga Labs, Inc. v. Ryder Ripps et. al.*, No. 2:22-  
cv-04355-JFW-JEM (C.D. Cal. Oct. 3, 2022) (ECF No. 48-1), at ¶7.

1           87. The same day that the *BuzzFeed* article exposed the identities of Solano  
2 and Aronow, which were previously hidden from the public and investors, Oseary  
3 posted the following message<sup>29</sup> on his Twitter account:



16           88. Notably, Oseary cropped this photo in an effort to continue to hide the  
17 identities of Executive Defendants Ali and Atalay since they were not revealed in the  
18 *BuzzFeed* exposé.

19           89. However, four days later, on February 8, 2022, Executive Defendants  
20 Atalay and Ali also posted pictures that revealed their true identities in the wake of  
21

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<sup>29</sup> Guy Oseary (@guyoseary), TWITTER (Feb. 4, 2022, 5:13 PM), <https://twitter.com/guyoseary/status/1489769181532753924?s=20&t=S3hmrMbihKgkSvhVgBWJPw>.



1 the outing of Solano and Aronow.<sup>30</sup> Oseary, ever the promoter, immediately posted  
2 the uncropped picture he previously posted with the following statement:<sup>31</sup>



### 3. The Facilitator – MoonPay

18

19 90. MoonPay is a company founded by Defendant Ivan Soto-Wright, which

20 purports to provide a service that allows investors (particularly high-net-worth

21 investors) to buy and trade NFTs “without hassle.” The mechanics of how such

22 transactions are executed or who is ultimately paying to buy the NFTs is unclear.

23 <sup>30</sup> Sass (Zeshan Ali), (@SassBAYC), TWITTER (Feb. 8, 2022, 12:46 PM),

24 [https://twitter.com/SassBAYC/status/1491151597682180096?s=20&t=g1mRpxWb](https://twitter.com/SassBAYC/status/1491151597682180096?s=20&t=g1mRpxWbWmWNzjxw385m2A)

25 [WmWNzjxw385m2A](https://twitter.com/SassBAYC/status/1491151597682180096?s=20&t=g1mRpxWbWmWNzjxw385m2A); EmperorTomatoKetchup (Kerem Atalay) (@TomatoBAYC),

26 TWITTER (Feb. 8, 2022, 12:46 PM), [https://twitter.com/TomatoBAYC/status/1](https://twitter.com/TomatoBAYC/status/1491151593055879168?s=20&t=g1mRpxWbWmWNzjxw385m2A)

27 <sup>31</sup> Guy Oseary (@guyoseary), TWITTER (Feb. 8, 2022, 1:04 PM),

28 <https://twitter.com/guyoseary/status/1491155912718897154?lang=en>.



1 According to Soto-Wright, his business started operations in the United Kingdom  
2 (“UK”) before moving into other countries in Europe.

3 91. In an interview with the crypto news outlet Protos, Defendant Soto-  
4 Wright disclosed that he “started this in Europe, in the UK, [a]nd open banking wasn’t  
5 ready.”<sup>32</sup> Soto-Wright went on to reveal that regulators in the UK and/or potential  
6 users were “sketched out” by services offered by Soto-Wright’s proto-version of  
7 MoonPay, Saveable, a start-up company offering crypto payment services that was  
8 ultimately acquired by a UK competitor Plum: “Like, wait, I’m going to give this  
9 random service that I’ve never heard of access to my bank account so it can read my  
10 transaction history and then move money around. Uh, no thanks. So yeah, I think I  
11 learned that the hard way.”<sup>33</sup>

12 92. Soto-Wright further promoted himself and his crypto payment  
13 businesses as having a fiduciary obligation to inform investors about the nature of the  
14 financial products those investors purchased because of his services:

15 Like, you know, moving people into a savings product is kind of  
16 like flossing your teeth. It’s like, you need to do that. Right. . . . And I  
17 think that’s so good because people are now getting financial education  
18 in some way. Like, they’re gonna make some mistakes.

19 They’re gonna invest in stupid stuff. They’re going to invest in  
20 meme coins and shit points. And, you know, the reality is part of that,  
21 you know, ***we need to do our job, uh, in terms of a fiduciary to make  
sure that the people are doing their own research and, uh, diligencing  
what they’re buying.***<sup>34</sup>

22 93. Later in the interview, when Soto-Wright was asked about the  
23 particulars of why the crypto payment business in the UK “didn’t work,” Soto-Wright  
24 vaguely claimed that his “waving the white flag” and selling his business to Plum  
25

26 <sup>32</sup> *Bootstrapping an ambitious idea in crypto*, MIXERGY.COM (Aug. 25, 2021),  
27 <https://mixergy.com/interviews/moonpay-with-ivan-soto-wright/>.

28 <sup>33</sup> *Id.*

<sup>34</sup> *Id.*

1 was because he was “focus[ed] too much on the regulatory side of getting our  
2 regulatory approval.” Soto-Wright stated that he sold his “regulatory licenses” so  
3 that his competitor could “skip the . . . pain . . . that I went through 13 months at the  
4 financial conduct authority. So *I could hold client money and move money into [a]*  
5 *security*. So, uh, that’s what happened. So it wasn’t like, it wasn’t a win for me.”  
6 When discussing the “know your customer” responsibilities a business like MoonPay  
7 is obligated to abide by, Soto-Wright acknowledged: “[W]e’re *selling a financial*  
8 *instrument* to some extent, right?”<sup>35</sup>

9 94. Soto-Wright went on to state that:

10 [T]he reality is we had to turn it on first in Europe because in the United  
11 States, it was just extremely hard, like even getting bank accounts, uh,  
12 for crypto. I mean, *now it’s getting a little bit better, but even getting,*  
13 *you know, getting bank accounts related to cryptocurrency, I mean,*  
14 *you would get shut down.*

15 And a lot of cases, banks just didn’t want to take on the risk. They  
16 didn’t understand it. It was too complex. Uh, but my, that was kind of  
17 the reason why I saw this as such a huge opportunity, because I felt that  
18 in the longterm banks would change their tune. And that’s exactly what  
19 you’re seeing now. Uh, something that was, can kind of consider it.

20 Uh, sketchy or, you know, I’d say like red or Amber on kind of  
21 like the traffic light, uh, is now turning green.<sup>36</sup>

22 95. Soto-Wright further promoted that MoonPay’s diligence regarding its  
23 regulatory and fiduciary obligations was part of an effort to “combat money  
24 laundering” and the “risk of fraud.”<sup>37</sup>

25 96. On May 26, 2021, the Malta Financial Services Authority (“MFSA”)  
26 issued the following directive against MoonPay: “The MFSA considers that the  
27 Company is not in a position to adhere in full to the requirements of Chapter 3 of the  
28

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35 *Id.*

36 *Id.*

37 *Id.*

1 Virtual Financial Assets Rulebook (“the Rules”) and therefore on 26 May 2021, the  
2 MFSA directed the Company to cease the on-boarding of new clients with immediate  
3 effect.”<sup>38</sup> Among other things, Chapter 3 of the Rules, a license holder in Malta must  
4 maintain effective risk management and compliance policies and procedures.

5 97. On April 13, 2022, MoonPay announced that “Music, sports, and  
6 entertainment VIPs invest \$87 million in MoonPay,” stating that “60 influential  
7 figures and organizations from the worlds of music, sports, media and entertainment  
8 have collectively invested \$87M in the company.” Included on this list are Anthony  
9 Kiedis of Red Hot Chili Peppers (managed by Oseary), Sound Ventures (Oseary),  
10 Defendant Hilton, Defendant Bieber (and his manager Scooter Braun), Defendant  
11 Post, Defendant Broadus, Defendant Hart, as well as Gwyneth Paltrow (via Kinship  
12 Ventures), Thomas Pentz (Diplo), Alexander Pall and Andrew Taggart of the  
13 Chainsmokers (via Mantis VC), Nayvadius Wilburn Cash (Future) (“Wilburn Cash”)  
14 (via DreamCrew Entertainment), and Abel Tesfaye (The Weeknd) (“Tefsaye”).<sup>39</sup>  
15 CAA is also an initial backer of MoonPay via Connect Ventures. Additionally, Yuga  
16 securities promoter and wife of Ape DAO Board Defendant Ohanian, Serena  
17 Williams, has ties to MoonPay via her board membership on Sorare, a collection of  
18 fantasy soccer NFTs.

19 98. Behind the scenes, MoonPay’s entire business was a sham.

20 99. MoonPay’s alleged fraudulent and deceptive conduct (described in  
21 detail below) is supported by the account of a former MoonPay employee  
22 (“Confidential Witness 1” or “CW1”) that worked for the company for the majority  
23 of 2022. CW1 was one of approximately five Compliance personnel at MoonPay.  
24

25 <sup>38</sup> Notice, *MoonPay Limited (“the Company”)* MALTA FIN. SERVS. AUTH. (May  
26 26, 2021), <https://www.mfsa.mt/publication/moonpay-limited-the-company/>.

27 <sup>39</sup> Geoffrey Lyons, *Music, sports, and entertainment VIPs invest \$87 million in*  
28 *MoonPay*, MOONPAY (Apr. 13, 2022), <https://www.moonpay.com/blog/investor-announcement>.

1 According to CW1, Compliance personnel performed Enhanced Due Diligence  
2 (“EDD”), Know Your Customer (KYC) and Anti-money Laundering (“AML”)  
3 checks on MoonPay customers, which are required by law for certain types of  
4 financial transactions. Given CW1’s role in the Compliance group, CW1 had unique  
5 heightened access to files and data associated with MoonPay customer financial  
6 transactions: a level of access restricted to a small handful of personnel at the  
7 Company.

8 100. The Compliance group was charged with ensuring that each customer  
9 was properly screened, including customers that transacted through MoonPay’s  
10 partners. Low-risk customers – those that, for example, sought to transact at lower  
11 dollar value and/or in fewer instances – were automatically screened through  
12 automatic software. High-risk customers, including those who sought to transact at  
13 high volumes, were manually screened by a Compliance employee.

14 101. All Compliance employees, including Confidential Witness 1, utilized  
15 the MoonPay Dashboard – the company’s primary proprietary mainframe database  
16 and platform. The MoonPay Dashboard housed all customer information, including  
17 all customer profile and transactional data. The MoonPay Dashboard also included  
18 data associated with compliance checks for all NFT purchases, including those that  
19 occurred through one of MoonPay’s most prominent NFT partners, OpenSea. Such  
20 checks were also performed for all transactions that were executed by or on behalf of  
21 MoonPay executives. According to CW1, every customer that transacted through  
22 MoonPay would have gone through either automated screening, or for high-risk  
23 customers, manual screenings completed by the Compliance group.

24 102. As Confidential Witness 1 confirmed, all intra-crypto transactions are  
25 captured on the Ethereum blockchain, but the missing element in that blockchain  
26 transactional trail is the initial transaction, where fiat (e.g., U.S. Dollar) is exchanged  
27 for digital assets. Importantly, the MoonPay Dashboard captures the transactional  
28

1 data – including the person in question and, as required, data such as their address,  
2 proof of income and bank account statements, driver’s license, passport, or other form  
3 of identification, and a picture of themselves (or “selfie”) that utilizes technology to  
4 detect liveness – when fiat currency is utilized to purchase ETH or by extension, an  
5 NFT.

6 103. To perform their functions, the Compliance team was granted access to  
7 a restricted area in the MoonPay Dashboard. This enabled each of them (including  
8 CW1) to access, view, and make changes to sensitive customer information. All  
9 MoonPay customers were subject to standard, automated KYC and AML screening.  
10 However, any transactions that were above a certain monetary threshold – at or  
11 around \$25,000, cumulatively, over a certain timeframe – required the Compliance  
12 team to manually perform EDD as well. EDD checks were also triggered when  
13 customers were based in certain known high-risk countries. EDD checks also  
14 involved so-called “wallet-screening.” This screening is performed by the  
15 Compliance team using a third-party financial forensics platform called TRM Labs  
16 (“TRM”). TRM assisted the Compliance team in identifying wallets that were  
17 flagged for potential or actual sanctions violations, terrorist financing, darknet  
18 transactions, and other nefarious or suspicious activity. Any such hits on the TRM  
19 platform required the Compliance team to conduct additional reviews to either  
20 confirm such activities or approve the wallet, thereby enabling the customer  
21 associated with that wallet to perform transactions via MoonPay.

22 104. While at MoonPay, Confidential Witness 1 sought to become more  
23 familiarized with the Company’s offerings and began questioning MoonPay’s  
24 business practices, specifically surrounding its Concierge service. Moreover, CW1  
25 became aware of public reports that celebrities were being investigated and sued for  
26 unlawfully promoting the sale of crypto assets, which only increased CW1’s  
27 suspicions of MoonPay’s Concierge service.

28

1           105. MoonPay’s Concierge service was portrayed as an exclusive, by-  
2 invitation-only service that catered to celebrities and other high-net worth  
3 individuals. At its core, Concierge is a sales group charged with selling NFTs to  
4 these high-end clients, and providing additional ancillary services associated with the  
5 purchase of NFTs. According to CW1, MoonPay’s Concierge associates attended  
6 various industry functions and pitched the benefits of the Concierge service to this  
7 demographic. Confidential Witness 1 was also present at some of these functions,  
8 including one at Soho House during NFT.NYC,<sup>40</sup> and another during New York  
9 Fashion Week 2022.

10           106. As time went on, Confidential Witness 1’s concerns about MoonPay’s  
11 Concierge service increased, prompting further investigation by CW1. First, CW1  
12 began checking the MoonPay Dashboard to try to identify any compliance checks  
13 that might have been conducted on Concierge clients. In particular, CW1 ran targeted  
14 searches within the MoonPay Dashboard for all the highly publicized Concierge  
15 celebrity clientele, including, but not limited to, Defendants Bieber, Hilton, and  
16 Ciccone. Significantly, for Confidential Witness 1’s entire tenure at MoonPay, CW1  
17 did not identify a single (1) celebrity client profile, (2) related compliance check  
18 results for such clients, or (3) transactional information for such clients, in the  
19 MoonPay Dashboard.

20           107. Standing alone, the fact that no Concierge clients had any presence on  
21 the MoonPay Dashboard was troubling enough due to the representations MoonPay

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22  
23 <sup>40</sup> Soho House is a global private members club with a reputation for hosting  
24 high-profile “celebrity” and high-net worth individuals from the entertainment, art,  
25 and fashion industries. Soho House boasts an intensive application process with a  
26 waitlist of over 30,000 people globally. The exclusive and star-studded nature of  
27 Soho House is such a known fact that it served as the basis for the plot for a Season  
28 6 episode of Sex and the City, in which one of the characters unsuccessfully tries to  
infiltrate the same Soho House location in Manhattan’s Meatpacking District that the  
MoonPay Concierge team visited during NFT.NYC. Concierge Associate Justin  
Johnson also serves on the committee for Soho House’s Austin location.



1 and the Promoter Defendants had been making publicly in connection with the  
2 ostensible purchase of NFTs. But this also raised a red flag for CW1 because not  
3 including these celebrities in the Dashboard system ran contrary to the supposed  
4 value-add MoonPay touted to its clients. According to CW1, after a client is  
5 screened, approved, and in the MoonPay Dashboard system, they would be able to  
6 engage in unlimited crypto transactions going forward – across all MoonPay’s  
7 partners’ platforms and services through the MoonPay Passport service<sup>41</sup> – without  
8 ever having to go through the compliance vetting and wallet-creation process again.  
9 As such, notwithstanding whether the publicly reported/celebrity promoted  
10 transactions actually occurred, the fact that no information was identified for these  
11 celebrities anywhere within the MoonPay Dashboard suggested to Confidential  
12 Witness 1 that these celebrities were not, and would not be in the future, availing  
13 themselves of the very service MoonPay had claimed to provide them.

14 108. In early 2022, Confidential Witness 1 expressed interest to their  
15 supervisors – Elise Messerli (“Messerli”) (Compliance Associate promoted to Head  
16 of Product Risk in August 2022)<sup>42</sup> and Pieter Schoeman (“Schoeman”) (Compliance  
17 Associate promoted to Head of Regulatory Compliance in August 2022) – in learning

18 \_\_\_\_\_  
19 <sup>41</sup> SanKrit K, *Your passport to the Web3 economy*, MOONPAY (Nov. 22, 2022),  
20 <https://www.moonpay.com/learn/web3/your-passport-to-the-web3-economy>; *Web3*  
21 *Passport Home Page*, MoonPay (last visited Aug. 3, 2023),  
22 <https://www.moonpay.com/web3-passport>.

23 <sup>42</sup> Messerli and Defendant Soto-Wright were both previously involved with a  
24 venture capital firm, HODL Venture Capital. *See Hodl VC Team and Co-Investors*,  
25 PITCHBOOK (last visited Aug. 3, 2023),  
26 <https://pitchbook.com/profiles/investor/491088-88#team>. According to a lawsuit  
27 filed in the Delaware Chancery Court, HODL Venture Capital duped small investors  
28 into selling their stakes for pittance as part of a scheme to “clear out” small partners  
before the \$555 million series A financing round. *See Mike Lenoard, MoonPay*  
*Backers Duped Early Investor Before Financing, Suit Says*, BLOOMBERG (Mar. 23,  
2022), [https://news.bloomberglaw.com/esg/moonpay-backers-duped-early-investor-](https://news.bloomberglaw.com/esg/moonpay-backers-duped-early-investor-before-financing-suit-says)  
[before-financing-suit-says](https://news.bloomberglaw.com/esg/moonpay-backers-duped-early-investor-before-financing-suit-says).



1 more about the Concierge service. Schoeman and Messerli reported to MoonPay co-  
2 founder, Chief Operating Officer, and Chief Financial Officer, Max Crown  
3 (“Crown”) until late December 2021. After late December 2021, Schoeman and  
4 Messerli reported to Compliance Director EMEA, Simon Knight. In turn, Knight  
5 reported to Max Crown. Crown was deeply involved in all aspects of the MoonPay  
6 business, and he was principally in charge of the Concierge service. In addition to  
7 serving as CFO and COO and leading the Concierge program, Crown also oversaw  
8 the Compliance department.<sup>43</sup>

9 109. Based on CW1’s ongoing interactions with Messerli and Schoeman,  
10 CW1 got the impression that neither was knowledgeable (at least to any significant  
11 degree) about the Concierge service beyond that of a typical employee. This  
12 surprised CW1 as they expected a reasonable compliance department to have greater  
13 insight into the workings of the Concierge program than what CW1 observed in  
14 Messerli and Schoeman.<sup>44</sup>

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16 <sup>43</sup> According to his LinkedIn profile, Crown is “Responsible for Compliance,  
17 Legal, and Finance” for HODL.vc: the venture capital firm and incubator that  
18 founded MoonPay. *See Max (Maximilian) Crown*, LinkedIn (last visited Aug. 3,  
19 2023), <https://www.linkedin.com/in/maxcrown/?originalSubdomain=uk>. At HODL,  
20 Crown serves alongside Soto-Wright, the entity’s co-Founder. There does not appear  
21 to be any record of Crown having attended law school or being licensed to practice  
22 law. It is further noted that, consistent with the seemingly cavalier and high-risk  
23 approach to legal compliance at MoonPay, Soto-Wright and Crown derived the name  
24 “HODL” from an acronym that stands for “Hold On for Dear Life.” *See How  
25 MoonPay Plans to Onboard the World Into Web3*, NFT NOW (Jan. 25, 2023),  
26 <https://nftnow.com/podcasts/how-moonpay-plans-to-onboard-the-world-into-web3/>,  
27 at 5:20. Soto-Wright’s Instagram handle is Ivanhodl:  
28 <https://www.instagram.com/ivanhodl/>.

<sup>44</sup> In August 2022, MoonPay reorganized the reporting structure for the  
Compliance team. From that point until October 2022, CW1 reported to the newly  
hired Director of Governance and Regulatory Affairs, Eduardo Gutierrez Fernandez,  
who, in turn, reported to the also newly hired Chief Compliance Officer, Brent Crider.  
The only reporting line that remained the same was that Crown stood at the top,

1           110. Confidential Witness 1 later scheduled a meeting with London-based  
2 Head of MoonPay Concierge, Charlotte Laborde. Laborde reported to COO Crown.  
3 She was initially hired as “Strategy Lead to the COO” and was promoted to Head of  
4 Concierge as of May 2022. During this meeting, CW1 sought to learn more about  
5 the Company and the Concierge service specifically. Based on the conversation with  
6 Laborde, CW1 concluded that insofar as the practices of the Concierge service,  
7 MoonPay did not appear to pay any heed to financial regulations within the U.S.

8           111. Given the absence of Concierge client data in the MoonPay Dashboard,  
9 as well as the meeting with Laborde and the news reports about other unlawful  
10 celebrity endorsements of digital assets, Confidential Witness 1 drafted a  
11 memorandum expressing concerns with MoonPay’s seemingly unlawful business  
12 practices. CW1 submitted the memo to Messerli and Schoeman in or around May  
13 2022, but neither responded to the substance of the memo. Instead, both Messerli  
14 and Schoeman advised CW1 on more than one occasion over the course of at least  
15 five months that they were pressed for time and could not comment on CW1’s  
16 submission. To the knowledge of CW1, Messerli and Schoeman never addressed the  
17 contents of the memo.

18           112. The primary concern that Confidential Witness 1 outlined in the memo  
19 was that MoonPay was potentially running afoul of securities laws and other laws  
20 associated with the financial services industry. CW1 expressed concerns that  
21 celebrities were promoting the sale of these products without disclosing their own

22 \_\_\_\_\_  
23 receiving direct reports from Crider and his subordinates. It should also be noted that  
24 around the same time, MoonPay brought on a number of new executives including  
25 Asiff Hirji (“Hirji”) who notably is the ex-president of Coinbase, and an ex-operating  
26 adviser at the leading Yuga Labs backer, venture capital firm Andreessen Horowitz.  
27 Hirji is now acting president of MoonPay. *See Ben Strack, Latest in Crypto Hiring:*  
28 *MoonPay Adds Range of Senior Execs*, BLOCKWORKS (July 15, 2022),  
[https://blockworks.co/news/latest-in-crypto-hiring-moonpay-adds-range-of-senior-  
execs](https://blockworks.co/news/latest-in-crypto-hiring-moonpay-adds-range-of-senior-execs); *Asiff Hirji*, LINKEDIN (last visited Aug. 3, 2023),  
<https://www.linkedin.com/in/asiff-hirji/>.

1 financial interests in those very same products. CW1 also expressed concerns in the  
2 memo as to whether MoonPay may have been in violation of certain licensing  
3 requirements (*e.g.*, Broker-Dealer, FINRA, etc.) given the nature of its business.  
4 CW1 noted that the Concierge service was developed and operated solely by sales  
5 personnel and was seemingly detached from any internal legal oversight, including  
6 what CW1 deemed to be the required regulatory checks that the Compliance  
7 department should have performed. As Confidential Witness 1 observed, MoonPay’s  
8 Concierge service was being run more like a used car dealership as opposed to a  
9 business selling sophisticated financial instruments that were subject to securities  
10 laws.

11 \* \* \*

12 113. Oseary and the Executive Defendants sold and/or solicited the sales of  
13 Yuga securities by relying on a tried-and-true marketing strategy: celebrity  
14 endorsements. With the approval of the Executive Defendants and Ape DAO Board  
15 Defendants, Oseary applied this classic strategy to the modern world of blockchain-  
16 related financial products and securities.

17 114. Oseary, the MoonPay Defendants, and Promoter Defendants Hilton,  
18 Bieber, Post, Broadus, and Hart, each had a financial interest in MoonPay. Likewise,  
19 celebrity influencers Thomas Pentz (Diplo), Alexander Pall and Andrew Taggart  
20 (The Chainsmokers), Wilburn Cash (Future), and Tesfaye (The Weeknd) also had  
21 financial interests in MoonPay and each made promotional posts for Bored Ape  
22 NFTs. Upon information and belief as investors in MoonPay, the individual  
23 Defendants had direct or indirect control over MoonPay and its marketing,  
24 particularly with respect to those promotional efforts each of these individual  
25 Defendants personally engaged in, respectively.

26 115. Ultimately, “[t]he [BAYC NFT] series serves as a kind of fan club on  
27 steroids that encourages owners of the NFTs to move through an ever-growing and  
28

1 exclusive list of events and opportunities.”<sup>45</sup> And the Company presents the Bored  
2 Ape ecosystem as a brand that is organically beloved by some of the most famous  
3 celebrities in the world. But the truth is that the Company’s entire business model  
4 relies on using insidious marketing and promotional activities from A-list celebrities  
5 that are highly compensated (without disclosing such), to increase demand of the  
6 Yuga securities by convincing potential retail investors that the price of these digital  
7 assets would appreciate and that, as members of “the club,” these investors would be  
8 given exclusive access to additional financial products and benefits.

9 **B. The Misleading Promotion and Sale of Yuga Securities**

10 116. After the launch of the BAYC NFT collection in March 2021, the  
11 Company began a multi-pronged scheme to promote additional sales of the BAYC  
12 NFTs (and other Yuga-owned NFT collections), of which Yuga would take a 2.5%  
13 fee on every resale.

14 **1. The First Scheme – The Deceptive Sotheby’s Auction**

15 117. The first order of business for the Company and its founders was to  
16 create an air of legitimacy around the BAYC NFT collection to generate investors’  
17 interest and hype around the Bored Ape brand. To do this, Yuga colluded with fine  
18 arts broker, Defendant Sotheby’s, to run a deceptive auction of a lot of 101 BAYC  
19 NFTs. This special sale was called “Ape In!”

20 118. In the lead up to the BAYC auction, Sotheby’s representatives  
21 misleadingly promoted both the auction and the BAYC NFT collection on the  
22 Sotheby’s social media accounts and with statements to various news outlets. These  
23 promotions were amplified and further disseminated by the Company through its  
24 various social media accounts.

25  
26 <sup>45</sup> Shirley Halperin, *From Maverick to Mogul, Madonna’s Manager Guy Oseary*  
27 *Transcends the Music World to Take on NFTs*, VARIETY, [https://variety.com](https://variety.com/2022/music/news/guy-oseary-nft-madonna-u2-manager-1235325286/)  
28 [/2022/music/news/guy-oseary-nft-madonna-u2-manager-1235325286/](https://variety.com/2022/music/news/guy-oseary-nft-madonna-u2-manager-1235325286/) (last visited  
Oct. 27, 2022).

1 119. For example, on August 27, 2021, Sotheby’s Head of Contemporary Art  
2 Auctions, Max Moore, posted an advertisement for the BAYC auction from his  
3 Twitter account, which included an animation of gold Bored Ape walking his golden  
4 Kennel Club dog, along with the Sotheby’s and BAYC logos and the dates of the  
5 BAYC auction.<sup>46</sup>

6 120. On August 28, 2021, Sotheby’s promoted the BAYC auction as a  
7 landmark event for the storied arts dealer: “It’s official. For the first time in our 277-  
8 year history, apes and kennels are storming Sotheby’s. The @BoredApeYC sale  
9 starts September 2. Ape In.”<sup>47</sup> The promotion included the same animated video of  
10 the gold Bored Ape walking his golden Kennel Club dog from Moore’s earlier post.  
11 Sotheby’s official Twitter account also changed its profile picture to a golden Bored  
12 Ape in front of a golden Bored Ape Kennel Club dog to publicize the BAYC auction.

13 121. On August 30, 2021, the Sotheby’s Twitter account again promoted the  
14 sale of BAYC NFTs, stating that “Bored Ape Yacht Club and Bored Ape Kennel  
15 Club have paved the way for what NFT art communities can be. Whether it’s your  
16 online identify, a shared culture, or you just want to ape in . . . the @BoredApeYC  
17 sale starts September 2.”<sup>48</sup> The post then provided a link that leads investors to a  
18 Sotheby’s website that solicits the sale of Yuga securities. In particular, the  
19 Sotheby’s website on that day advised that there were “3 Days Until Bidding Opens”  
20 on “2 September 2021 - 10:00 EDT - New York.”<sup>49</sup> On September 1, 2021, the  
21 website had counted down to “1 Day Until Bidding Opens.”

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23 <sup>46</sup> Max Moore (@MaxMoore\_Art) TWITTER (Aug. 27, 2021 9:58 AM),  
[https://twitter.com/MaxMoore\\_Art/status/1431300201738735618?s=20](https://twitter.com/MaxMoore_Art/status/1431300201738735618?s=20).

24 <sup>47</sup> Sotheby’s (@Sothebys) TWITTER (Aug. 28, 2021 7:00 AM),  
<https://twitter.com/Sothebys/status/1431617671842381831?s=20>.

25 <sup>48</sup> Sotheby’s (@Sothebys) TWITTER (Aug. 30, 2021 9:00 AM),  
<https://twitter.com/Sothebys/status/1432372722114433024?s=20>.

26 <sup>49</sup> *Ape In! Auction Page – Archived*, SOTHEBY’S (Sept. 2, 2021),  
27 [https://web.archive.org/web/20210830162645/https://www.sothebys.com/en/buy/auction/2021/ape-in?cmp=social\\_\\_\\_\\_twitter\\_bored\\_ape\\_nft\\_aug-2021](https://web.archive.org/web/20210830162645/https://www.sothebys.com/en/buy/auction/2021/ape-in?cmp=social____twitter_bored_ape_nft_aug-2021).  
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1           122. The August 30, 2021 ad from Sotheby’s also contained an animated  
2 video of various Bored Apes partying at “Club Sotheby’s” and promoting Yuga Labs  
3 and its NFT collections. The video further directs investors to “Ape In” (*i.e.*, to make  
4 a purchase of Yuga securities), inviting them to “learn more at  
5 sothebys.com/boredape,” and it ending with images of the BAYC and Sotheby’s  
6 logos.<sup>50</sup>

7           123. Sotheby’s Co-Head of Digital Art Sales, Michael Bouhanna, reposted  
8 Sotheby’s August 30 ad, advising investors: “This is your chance to own 1% of  
9 @BoredApeYC and become the 3rd biggest owner of one of the most important and  
10 in-demand NFT projects.”<sup>51</sup>

11           124. On September 2, 2021 Moore reposted an announcement from Farokh  
12 Sarmad that he would be hosting “the official Sotheby’s x Bored Ape Yacht sale on  
13 Spaces at 11 AM ET!”<sup>52</sup> Notably Sarmad is the founder and host of Rug Radio, a  
14 purportedly decentralized media platform that serves as a launchpad, incubator, brand  
15 builder, and accelerator for blockchain-related projects. According to the Rug Radio  
16 website, Yuga Labs is a “partner” with Rug Radio.

17           125. Moore publicly touted the BAYC auction during the @farokh x  
18 @Sotheby’s Twitter Spaces live events.<sup>53</sup> For example, on September 3, 2021,  
19 during the first Sotheby’s x BAYC Twitter Space hosted by Rug Radio, Moore  
20 claimed that the BAYC NFT collection had “made it to the gold level of art” by being  
21 offered for sale by an art dealer of Sotheby’s status,<sup>54</sup> stating:

22 \_\_\_\_\_  
23 <sup>50</sup> Sotheby’s Aug. 30, 2021 Tweet, *supra* n.48.

24 <sup>51</sup> Michael Bouhanna (@michaelbouhanna) TWITTER (Aug. 30, 2021 9:02 AM),  
<https://twitter.com/michaelbouhanna/status/1432373042521546752?s=20>.

25 <sup>52</sup> Farokh (@farokh), TWITTER (Sept. 2, 2021 4:50 PM),  
<https://twitter.com/farokh/status/1433532835722416132?s=20>.

26 <sup>53</sup> *See Partner with Rug Radio*, RUG RADIO (last visited Aug. 3, 2023),  
<https://www.rug.fm/lfg>.

27 <sup>54</sup> *See Wave Ninja, The Traditional Collector*, SUBSTACK (May 2, 2023),  
28 <https://waveninja.substack.com/p/the-traditional-collector>.



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126. Notably, Moore, during the promotion of another NFT auction conducted by Sotheby’s, previously acknowledged that the stamp of approval from a Sotheby’s endorsement can induce investors to make purchases of NFTs: ***“I do expect some collectors who maybe have never purchased an NFT to make their first NFT purchase in this sale, given that it is a Sotheby’s sale.”***<sup>55</sup> Moore went on to acknowledge that Sotheby’s stood to gain from the sale of NFTs beyond simply the sales themselves. Sotheby’s hoped that NFT sales (facilitated by Sotheby’s) would enable it to tap into a younger demographic of investors. According to Moore, the “sales [of NFTs] should help Sotheby’s attract new collectors who may not have interacted with the house before.” Moore further added: “It’s a much younger audience, which I think is quite interesting for Sotheby’s as well.”<sup>56</sup>

127. Upon information and belief, Sotheby’s was aware of the vast amounts of money it stood to gain by soliciting sales of NFTs from investors through its promoted auctions. One month after the BAYC auction, in October 2021, Sotheby’s opened a NFT trading platform called the “Sotheby’s Metaverse,”<sup>57</sup> which, upon information and belief, operated (or attempted to operate) as an unregistered broker

<sup>55</sup> *Auction Houses Sotheby’s, Phillips Latest to Join NFT Craze*, NDTV (Apr. 13, 2021), <https://www.ndtv.com/world-news/auction-houses-sothebys-phillips-latest-to-join-nft-craze-2412260>.

<sup>56</sup> *Id.*

<sup>57</sup> Sotheby’s Metaverse (@Sothebysverse) TWITTER (Oct. 14, 2021, 9:01 AM), <https://twitter.com/Sothebysverse/status/1448680330194530312?s=20>.



1 of securities. During an interview for the launch of the Sotheby’s Metaverse, it stated  
2 that it planned on “extend[ing] NFT activities into areas such as contemporary art,  
3 museums and masterworks, luxury and fashion, sports, music and Entertainment, and  
4 science and technology.”<sup>58</sup>

5 128. Sebastian Fahey, Executive Lead for the Sotheby’s Metaverse and  
6 Managing Director of the company’s business in Europe, the Middle East and Asia  
7 noted that “[w]hen Sotheby’s first entered the world of NFTs earlier this year, it was  
8 immediately clear that we had so far only scratched the surface of the potential of this  
9 new medium, and NFTs.”<sup>59</sup> During the same interview with Fahey, Moore added:  
10 ““Since then, we have spent months exploring every aspect of the digital art  
11 landscape, aligning with some of the most influential minds of the NFT movement to  
12 architect a custom marketplace that prioritises curation and customisation.”<sup>60</sup>

13 129. This falls in line with Moore’s statement April 2021 regarding Sotheby’s  
14 designs capitalizing on the booming NFT market and its investors: “My primary  
15 focus right now is establishing these roots [with NFT investors like Plaintiffs and the  
16 Class], these connections, establishing these relationships, understanding what drives  
17 their collecting habit . . . . ***Then we’ll be able to kind of target them in a way that we***  
18 ***would never have done before.***”<sup>61</sup>

19 130. On September 9, 2021 the Sotheby’s Auction House held the promoted  
20 auction on behalf of Yuga. As the auction was underway, Moore continued to  
21 promote the sale of BAYC NFTs by pointing to the then-current bid of \$20 million

22 \_\_\_\_\_  
23 <sup>58</sup> Raffaele Redi, *Sotheby’s launches NFT Metaverse featuring Paris Hilton and*  
24 *Aoki*, CURRENCY.COM (Oct. 15, 2021), [https://currency.com/sotheby-s-launches-nft-](https://currency.com/sotheby-s-launches-nft-metaverse-featuring-paris-hilton-and-aoki)

25 <sup>59</sup> *Id.*

26 <sup>60</sup> *Id.*

27 <sup>61</sup> *Auction houses want to be part of the latest trend in art world*, ECONOMIC  
28 TIMES (Apr. 14, 2021), [https://economictimes.indiatimes.com/magazines/pana](https://economictimes.indiatimes.com/magazines/panache/auction-houses-want-to-be-part-of-the-latest-trend-in-art-world-sothebys-phillips-join-nft-craze/articleshow/82060210.cms?from=mdr)  
[che/auction-houses-want-to-be-part-of-the-latest-trend-in-art-world-sothebys-phillip](https://economictimes.indiatimes.com/magazines/panache/auction-houses-want-to-be-part-of-the-latest-trend-in-art-world-sothebys-phillips-join-nft-craze/articleshow/82060210.cms?from=mdr)  
[s-join-nft-craze/articleshow/82060210.cms?from=mdr](https://economictimes.indiatimes.com/magazines/panache/auction-houses-want-to-be-part-of-the-latest-trend-in-art-world-sothebys-phillips-join-nft-craze/articleshow/82060210.cms?from=mdr)

1 for the lot of BAYC NFTs.<sup>62</sup> In the end, Sotheby’s claimed to have sold the lot of  
2 BAYC NFTs to a purportedly anonymous buyer for \$24.4 million. This bid far  
3 exceeded the upper estimate of \$18 million, \$240,000 per BAYC NFT, Sotheby’s  
4 had publicly predicted.<sup>63</sup> This price was more than \$100,000 more than the floor  
5 price for BAYCs at the time.

6 131. Bouhanna stated in a Twitter post on September 9, 2021: “Our Ape In!  
7 auction @Sothebys just achieved an outstanding \$26.2M – a great indicator of the  
8 level of confidence in this amazing NFT project. This is just the beginning. Congrats  
9 to BAYC.”<sup>64</sup>

10 132. More importantly, following the final bid on the lot of BAYC NFTs, a  
11 Sotheby’s representative affirmed during the September 9, 2021 @farokh x  
12 @Sotheby’s Twitter Space that the winning bidder was a “traditional” collector.<sup>65</sup>  
13 Upon information and belief, this Sotheby’s representative was Max Moore.  
14 Notably, Moore has, during the promotion of another Sotheby’s NFT auction, both  
15 used the term and confirmed its distinction from new crypto investors naïve to  
16 Sotheby’s as a trading platform: ““These new crypto investors have a very different  
17 aesthetic and a very different taste profile than a traditional collector would and so  
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21 <sup>62</sup> Max Moore (@MaxMoore\_Art), TWITTER (Sept. 9, 2021 12:31 AM),  
22 [https://twitter.com/MaxMoore\\_Art/status/1435868430679175170?s=20](https://twitter.com/MaxMoore_Art/status/1435868430679175170?s=20).

23 <sup>63</sup> *101 Bored Ape Yacht Club – Lot 1*, SOTHEBY’S (last visited Aug. 3, 2023),  
24 <https://www.sothebys.com/en/buy/auction/2021/ape-in/101-bored-ape-yacht-club>;  
25 Darius McQuaid, *NFT of Bored Apes sells for over \$24m at Sotheby’s auction*,  
CURRENCY.COM (Sept. 10, 2021), <https://currency.com/nft-of-bored-apes-sells-for-over-24m-at-sotheby---s-auction>.

26 <sup>64</sup> Michael Bouhanna (@michaelbouhanna), TWITTER (Sept. 9, 2021),  
27 <https://twitter.com/michaelbouhanna/status/1435971090061332488?s=20>.

28 <sup>65</sup> See Wave Ninja, *supra* n.54 (claiming to have personally heard this representation).

1 it's important to provide a mix and a range of collectible at Sotheby's to attract a wide  
2 variety of audience.”<sup>66</sup>

3 133. Indeed, concurrent reports confirmed Sarmad's recap of the September  
4 9th Twitter Space conversation. While recordings of the @farokh x @Sotheby's  
5 Twitter spaces are not publicly available, contemporaneous accounts by those  
6 listening live during these spaces personally recalled hearing the “traditional” remark  
7 from a Sotheby's representative.<sup>67</sup> For example, Sarmad stated: “Winner of the  
8 \$24.4M lot of 101 Bored Apes is a traditional buyer and had to KYC through  
9 Sotheby's.”<sup>68</sup> As another post from the day relayed the following:



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16 134. Likewise, a longstanding member of the BAYC community,  
17 TheGovernor.eth, also confirmed that Moore had “said that the buyer of the 101 ape  
18 lot was a traditional art collector,” adding that such a feat hadn't “happened in an  
19 NFT auction before.”<sup>69</sup>

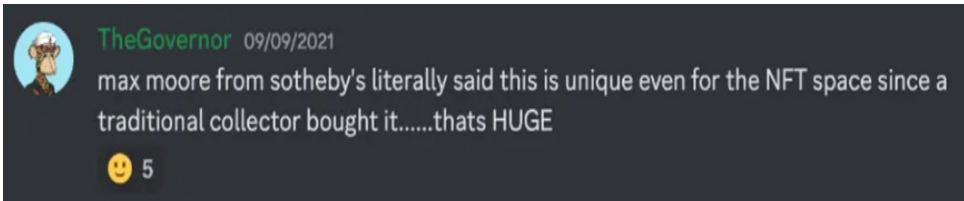
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25 <sup>66</sup> *Crypto-artist Pak's single grey pixel NFT sold for \$1.36 million*, ARTREVIEW  
26 (Apr. 15, 2021), <https://artreview.com/crypto-artist-pak-single-grey-pixel-nft-sold-for-1-36-million-dollars/>.

27 <sup>67</sup> Wave Ninja, *supra* n.54.

28 <sup>68</sup> *Id.*

<sup>69</sup> *Id.*

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135. The Company’s official Twitter account also promoted the successful sale of the BAYC NFT lot during the Sotheby’s auction and congratulated the undisclosed “buyer,” stating in particular: “What an historic moment for the club: the @Sotheby’s auction of 101 Bored Apes has closed at over \$24m. Congratulations and THANK YOU to the whole ape community. To the buyer, I think we speak for everybody when we say: WELCOME TO THE CLUB. 🦴👤🚢”<sup>70</sup>

136. Concurrently, in an *ARTnews* article published on the same day as the BAYC auction (*i.e.*, September 9, 2021) Sotheby’s Bouhanna discussed the BAYC auction and confirmed that “legacy art collectors were also heavily involved in the bidding.”<sup>71</sup>

137. Bouhanna further directly promoted the BAYC NFT collection (and implicitly confirmed the authenticity of Sotheby’s BAYC auction) in written

<sup>70</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Sept. 9, 2021), <https://twitter.com/BoredApeYC/status/1435976278797164551?s=20>.

<sup>71</sup> Shanti Escalante-De Mattei, *Sotheby’s Brings in \$26 Million with Bored Ape NFT Bundle*, ARTNEWS (Sept. 9, 2021), <https://www.artnews.com/art-news/market/sothebys-bored-ape-nft-sale-1234603344/>.

1 statements to traditional news outlets. For example, again on September 9, 2021,  
2 Bouhanna downplayed the possibility of any danger to investors of there being an  
3 NFT market bubble, particularly for the BAYC NFT collection. In particular,  
4 Bouhanna stated that “although there is financial speculation on NFTs, [Bouhanna]  
5 sees the Bored Apes as works of art.” Bouhanna then unambiguously declared “the  
6 NFT market is not a bubble,” explaining:

7           People were talking about a bubble in March, in June etc, and  
8           then we see that the market is even stronger today so I think they’ve  
9           been proven wrong . . . I think it’s a very organic market with great  
10           collectors who have great appreciation of art.”<sup>72</sup>

11           138. Sotheby’s Senior Administrator of Contemporary Art, Hallie Freer, also  
12 issued a statement justifying the high price of the BAYC NFT collection versus a  
13 similar lot of Yuga’s Kennel Club NFT collection being auctioned by Sotheby’s. In  
14 particular, on September 9, 2021, Freer explained that the disparity between the two lots  
15 was chalked up to the relatively older vintage of the BAYC NFTs: “[T]he apes have  
16 been on the market much longer – since late April – while the dogs were released in  
17 early August.”<sup>73</sup>

18           139. Bouhanna also made the rounds with the cryptocurrency-focused press  
19 outlets following the auction and promoted the BAYC NFTs: “The Bored Ape Yacht  
20 Club project is one of the most exciting and creative NFT collectibles since the launch  
21 of CryptoPunks, and has become a major force in pop culture.”<sup>74</sup>

22 <sup>72</sup> Elizabeth Howcroft, *Set of "Bored Ape" NFTs sells for \$24.4 mln in Sotheby's*  
23 *online auction*, REUTERS (Sept. 9, 2021), <https://www.reuters.com/lifestyle/set-bored-ape-nfts-sell-244-mln-sothebys-online-auction-2021-09-09/>.

24 <sup>73</sup> Kevin Donovan, *Bored Ape NFT lots sell at auction for \$24.4m, \$1.8m*,  
25 CAPITAL.COM (Sept. 9, 2021), <https://capital.com/bored-ape-nft-lots-sell-at-auction-for-24-4m-1-8m>.

26 <sup>74</sup> Tracy Wang, *Sotheby's Auction of 101 Bored Ape NFTs Fetches \$24M,*  
27 *Smashing Estimates*, COINDESK (Sept. 9, 2021),  
28 <https://www.coindesk.com/markets/2021/09/09/sothebys-auction-of-101-bored-ape-nfts-fetches-24m-smashing-estimates/>.

1 140. The promotions of the Sotheby’s auction of the BAYC NFT collection  
2 were effective in cloaking the Yuga securities in the air of legitimacy. As one news  
3 outlet observed: “The fact that this [BAYC NFT] auction is being handled by the  
4 Contemporary Art department at Sotheby’s *speaks volumes*.”<sup>75</sup>

5 141. Shortly after the Sotheby’s auction and its related promotions, BAYC  
6 NFTs hit a then new all-time high floor price around 43 ETH per NFT. The following  
7 chart indicates how much impact the Sotheby’s auction and its promotion had on the  
8 price of BAYC NFTs:



21 142. This initial boost, however, was rooted in deception. Sotheby’s  
22 representations that the undisclosed buyer was a “traditional” collector had  
23 misleadingly created the impression that the market for BAYC NFTs had crossed  
24 over to a mainstream audience. The Company and its founders likewise touted the  
25 Sotheby’s stamp of approval that the auction was above board. But the reality of the  
26 winning “bid” of the Sotheby’s auction exposes the falsity of those statements. In  
27

28 <sup>75</sup> Donovan, *supra* n.73 (emphasis added).



1 truth, it was not a “traditional” buyer that made the winning bid in the BAYC NFT  
2 auction, but rather the now-defunct cryptocurrency exchange FTX.<sup>76</sup>

3 143. FTX has several deep ties to Yuga such that it would be mutually  
4 beneficial for both Yuga and FTX (as well as Sotheby’s) if the BAYC NFT collection  
5 were to rise in price and trading volume activity. Upon information and belief, given  
6 the extensive financial interests shared by Yuga, Sotheby’s and FTX, each knew that  
7 FTX was the real buyer of the lot of BAYC NFTs at the Sotheby’s auction at the time  
8 that Sotheby’s representatives were publicly representing that a “traditional” buyer  
9 had made the purchase.

10 144. According to the transaction data available on the Ethereum blockchain,  
11 following the auction, on September 22, 2021, Sotheby’s transferred the lot of BAYC  
12 NFTs to wallet address 0xf8e0C93Fd48B4C34A4194d3AF436b13032E641F3,<sup>77</sup>  
13 which, upon information and belief, is owned/controlled by FTX. This wallet  
14 previously sent 13 ETH to a “Blockfolio”/FTX US exchange in April of 2020 —  
15 prior to the launch of FTX US in May 2020 and FTX’s NFT sales platform in  
16 December 2021.<sup>78</sup> This form of interaction often indicates a relationship between  
17 this wallet and the exchange.

18 145. Moreover, for the launch of its NFT platform, on December 1, 2021,  
19 FTX put out a promotional video that featured more BAYC NFTs from the Sotheby’s

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21 <sup>76</sup> As of the filing of this complaint, top executives of FTX and its sister trading  
22 arm Alameda Research (“Alameda”) have either pled guilty to or are defending  
23 against significant criminal charges related to fraud, money laundering, and other  
24 securities law violations,

25 <sup>77</sup> Transaction Hash: 0x43802846b97e4a5785a069ed6f845b8c96ad8a59ba  
26 e6cbfebf2990dd1eb59f39 ETHERSCAN (Sept. 22, 2021, 4:57 PM),  
27 <https://etherscan.io/tx/0x43802846b97e4a5785a069ed6f845b8c96ad8a59bae6cbfebf2990dd1eb59f39>.

28 <sup>78</sup> Transaction Hash: 0xdb8eee2a48976c47666ccf80c99d9dbe90f40e6e  
e54835779145e1d3a0f9c499, ETHERSCAN (Apr. 14, 2020, 1:27 AM),  
<https://etherscan.io/tx/0xdb8eee2a48976c47666ccf80c99d9dbe90f40e6ee54835779145e1d3a0f9c499>.



1 auction.<sup>79</sup> Promoter Defendant Stephen Curry, who as discussed further below  
2 misleadingly promoted the FTX platform and the BAYC NFT collection, tacitly  
3 endorsed this joint FTX/BAYC ad, replying: “Cool announcement video, but my  
4 editing skills are missed 😊.”<sup>80</sup> Importantly, the promotional video showcased  
5 certain BAYC NFTs which were plainly identifiable from the lot of BAYC NFTs  
6 from the Sotheby’s auction. For example, BAYC NFT #5812 and #3432 can be seen  
7 in the video, and as of the filing of this amended complaint, remain in wallets owned  
8 and/or controlled by FTX.<sup>81</sup>

9 146. FTX even promoted the listing of precisely “101” BAYC NFTs on FTX  
10 US.<sup>82</sup> Moreover, when the BAYC NFTs were sold on the FTX US NFT exchange,  
11 the securities initially needed to be transferred to a deposit wallet that had frequent  
12 and large transactions with other known FTX and/or Alameda wallets. In fact, as  
13 discussed further below, these wallets received millions of dollars’ worth of ApeCoin  
14 under highly dubious circumstances.

15 147. Indeed, screenshots of FTX’s NFT marketplace indicate that the only  
16 BAYC NFTs available for purchase were exclusively from the lot of BAYC NFTs at  
17 the Sotheby’s auction. For example, one image posted on November 23, 2021  
18 showed BAYC NFTs #4465, 5211, 7468, 7824, 7826, 7976, 7978, and 8181,<sup>83</sup> which  
19 all were transferred to the same wallet that held BAYC NFTs #5812 and #3432  
20

21 <sup>79</sup> FTX (@FTX\_Official), TWITTER (Dec. 1, 2021 7:56 AM),  
22 [https://twitter.com/FTX\\_Official/status/1466073606618820610?s=20](https://twitter.com/FTX_Official/status/1466073606618820610?s=20).

23 <sup>80</sup> Stephen Curry (@StephenCurry30), TWITTER (Dec. 3, 2021 10:52 AM),  
24 <https://twitter.com/StephenCurry30/status/1466842814738690049?s=20>.

25 <sup>81</sup> *Token: BoredApeYachtClub*, ETHERSCAN (last visited Aug. 4, 2023),  
26 <https://etherscan.io/token/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d?a=0xf02e86d9e0efd57ad034faf52201b79917fe0713>.

27 <sup>82</sup> See Conor (Conor Grogan) (@gconorgrogan), TWITTER (Dec. 21, 2022 7:30  
28 AM), <https://twitter.com/jconorgrogan/status/1605586391332552706?s=20>.

<sup>83</sup> alto – dollar.eth (@etheraltog), TWITTER (Nov. 23, 2022 7:08 AM),  
<https://twitter.com/etheraltog/status/1595434120703778819?s=20>.

1 discussed above. The floor price for BAYC NFTs fell 9.7% from 49 ETH on  
2 November 19, 2021 (the same day Defendant Broadus promoted the BAYC NFT  
3 collection as being in “excellent hands with . . . tech & entertainment maven  
4 @guyoseary managing the overall BAYC IP”<sup>84</sup>) down to 44.21 ETH on November  
5 23, 2021 when news that FTX was the Sotheby’s auction’s real winning bidder was  
6 revealed to the market.<sup>85</sup>

7 148. Notably, FTX priced these BAYC NFTs so aggressively high that it  
8 created arbitrage opportunities. As one BAYC NFT investor noted on December 5,  
9 2021: “The real BAYC floor right now is on FTX. Apes offered at 49 [eth] vs.  
10 Opensea at 52 [eth]. Almost an arb.”<sup>86</sup>

11 149. On January 2, 2022, a high-profile BAYC NFT trader,  
12 @franklinisbored, confirmed that “101 apes are viewable on the @ftx\_us @Ftx\_Nfts  
13 exchange . . . and some were listed and bought for under ape floor by myself [and  
14 others] to arb.”<sup>87</sup> As the transaction recorded on the Ethereum blockchain reveals,  
15 @franklinisbored purchased BAYC NFT #5211 (which was included in the  
16 Sotheby’s auction) from the FTX.US NFT marketplace on January 2, 2022.<sup>88</sup>

17 150. Ultimately, the Sotheby’s auction was a huge promotion for Yuga and  
18 the BAYC NFT collection’s legitimacy as an investment. Behind this scheme,  
19 Defendants Yuga and Sotheby’s were conspiring with FTX (and, upon information  
20

21 <sup>84</sup> Cozomo de’ Medici (Snoop Dogg) (@CozomoMedici), TWITTER (Nov. 18,  
2021), <https://twitter.com/CozomoMedici/status/1461483915189764103?s=20>.

22 <sup>85</sup> *Bored Ape Yacht Club (BAYC)*, COINGECKO (last visited Aug. 3, 2023),  
23 <https://www.coingecko.com/en/nft/bored-ape-yacht-club>.

24 <sup>86</sup> NFTstats.eth (@punk9059), TWITTER (Dec. 5, 2021 7:36 AM),  
<https://twitter.com/punk9059/status/1467518139617341442?s=20>.

25 <sup>87</sup> Franklin (@franklinisbored), TWITTER (Jan. 1, 2022 9:05 PM),  
<https://twitter.com/franklinisbored/status/1477506421923135494?s=20>.

26 <sup>88</sup> Transaction Hash: 0x92e077608e8d2bc95f564531034ca128b63  
27 5efb62a522969af325c21760fa25b, ETHERSCAN (Jan. 02, 2022, 3:01 PM),  
28 <https://etherscan.io/tx/0x92e077608e8d2bc95f564531034ca128b635efb62a522969af325c21760fa25b>.

1 and belief given her connection to both the Ape Coin DAO and FTX, Defendant Amy  
2 Wu) to manipulate the price of the BAYC NFT collection. The misleading  
3 promotions of the auction by the Company and Sotheby’s successfully induced  
4 additional purchases of the BAYC NFT collection. Moreover, this first deceptive  
5 scheme set the stage for Yuga to misleadingly offer and sell additional financial  
6 products by raising the profile of the Bored Ape brand with the public.

7 **2. The Second Scheme – Deceptive Celebrity Promotions**

8 151. As Defendant Soto-Wright admitted: the “hardest thing to solve” when  
9 building a new company was “getting those customers on your platform.”<sup>89</sup>

10 152. After the Sotheby’s auction set the stage, the Company brought in  
11 Defendant Oseary and his troupe of celebrity influencers and venture capital  
12 connections to begin the second scheme to sell Yuga securities: deceptively promote  
13 the artificially inflated BAYC NFTs to investors like Plaintiffs and the Class.

14 153. One of Oseary’s first moves was to pull some strings at CAA whereby  
15 “Jenkins the Valet”, one of the Bored Ape NFTs was purportedly signed in September  
16 2021 to be represented by CAA, “across Books, Film, TV, Podcast, and more.”<sup>90</sup>  
17 CAA also announced that it was signing NFT collector “0xb1” to help monetize their  
18 NFTs. 0xb1 confirmed the deal on Twitter, saying that they will “work hard to bring  
19 open license NFT brands & properties mainstream,” starting with their Bored Ape  
20 Yacht Club collection.<sup>91</sup>

21  
22  
23 <sup>89</sup> MIXERGY.COM, *supra* n.32.

24 <sup>90</sup> Jenkins The Valet (@jenkinsthevalet), TWITTER (Sept. 22, 2021 9:27 AM),  
25 <https://twitter.com/jenkinsthevalet/status/1440714371848572928?s=20>.

26 <sup>91</sup> Yogita Khatri, *Hollywood talent agency CAA signs NFT collector ‘0xb1’ to*  
27 *help them monetize their pieces*, THE BLOCK (Oct. 9, 2021),  
28 <https://www.theblock.co/linked/119987/hollywood-talent-agency-caa-signs-nft-collector-0xb1-to-help-them-monetize-their-pieces>; Oxb1 (@0x\_b1), TWITTER (Oct. 8, 2021 1:35 PM), [https://twitter.com/0x\\_b1/status/1446529804262678563?s=20](https://twitter.com/0x_b1/status/1446529804262678563?s=20).

1           154. Next, Oseary orchestrated the promotion of the BAYC NFT collection  
2 in a feature article in *Rolling Stone* magazine, which, upon information and belief,  
3 appears to be Oseary’s go-to choice for promoting his business endeavors.<sup>92</sup>

4           155. On November 1, 2021, *Rolling Stone* published an article titled “How  
5 Four NFT Novices Created a Billion-Dollar Ecosystem of Cartoon Apes” (the  
6 “*Rolling Stone* article”), which likened Defendants Solano, Aronow, Atalay and Ali  
7 to “internet rock stars” and repeatedly touted the BAYC collection of NFTs and its  
8 related metaverse platform.<sup>93</sup> The *Rolling Stone* article candidly notes that  
9 Defendants Solano, Aronow, Atalay and Ali “started out with unsharpened goals of  
10 capitalizing on a very clear trend.”<sup>94</sup>

11           156. In conjunction with the publication of the *Rolling Stone* article (which  
12 was a promotional piece about Yuga and its founders Defendants Solano, Aronow,  
13 Atalay and Ali in everything but name), the Company collaborated with *Rolling Stone*  
14 magazine on the latter’s collector edition magazine featuring “never-before-seen  
15 BAYC artwork.” The issue offered investors the chance to see “early sketches of the  
16 swamp club, get to know the original apes, and find out how the creative minds  
17 behind one of the most valuable NFT collections in history bring their ideas to life.”  
18 Most importantly, the cover of this issue prominently featured a BAYC NFT.

19  
20  
21  
22 <sup>92</sup> For example, a May 4, 2021 article in *Rolling Stone* magazine titled “You Can  
23 Learn How to Perform Directly From Madonna, Now” promoted a business venture  
24 owned by Defendant Oseary: Bright, which, according to *Rolling Stone*, is “a star-  
25 studded educational livestreaming platform that pledges classes and lessons from  
celebrities.” See <https://www.rollingstone.com/pro/news/madonna-bright-celebrity-classes-guy-oseary-1164390/>.

26 <sup>93</sup> Samantha Hisson, *How Four NFT Novices Created a Billion-Dollar*  
27 *Ecosystem of Cartoon Apes*, ROLLING STONE (Nov. 1, 2021), <https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/>.

28 <sup>94</sup> *Id.*

1 According to *Rolling Stone*'s online store, all 2,500 copies of the *Rolling Stone* x  
2 Bored Ape Yacht Club Limited-Edition Zine were sold out.<sup>95</sup>

3 157. The Company tweeted a video of the *Rolling Stone* cover showcasing  
4 the BAYC NFT and told its BAYC followers that auction details would be  
5 forthcoming.<sup>96</sup> The Company then promoted and held an auction on the BAYC and  
6 MAYC NFT *Rolling Stone* covers on November 15, 2021,<sup>97</sup> and a similar BAYC  
7 *Rolling Stone* cover auction in June 2022 for both a BAYC NFT and "a print of the  
8 art signed by Yuga Labs' founders, the artist, and the CEO of Rolling Stone."<sup>98</sup>

9 158. On November 1, 2021, Oseary posted a picture of the cover of *Rolling*  
10 *Stone* magazine with the following caption: "First @RollingStone NFT cover...  
11 Congrats @BoredApeYC."<sup>99</sup>

12 159. On November 4, 2021, future board member of the Ape DAO,  
13 Defendant Bajwa promoted a BAYC party taking place and teased that celebrity  
14 musician "Da Baby" had "mutated his ape right before going on stage at  
15  
16  
17

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18 <sup>95</sup> Rolling Stone x Bored Ape Yacht Club Limited-Edition Zine, ROLLING STONE  
19 SHOP, [https://shop.rollingstone.com/products/rolling-stone-x-bored-ape-yacht-club-](https://shop.rollingstone.com/products/rolling-stone-x-bored-ape-yacht-club-special-collectors-edition-zine)  
20 [special-collectors-edition-zine](https://shop.rollingstone.com/products/rolling-stone-x-bored-ape-yacht-club-special-collectors-edition-zine) (last visited Nov. 29, 2022).

21 <sup>96</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 1, 2021, 8:26 AM),  
<https://twitter.com/BoredApeYC/status/1455194570669576197>.

22 <sup>97</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 13, 2021, 9:11 AM),  
23 <https://twitter.com/BoredApeYC/status/1459569714796052488>. The *Rolling Stone*  
24 covers ultimate sold for 100 ETH and 47 ETH. See Bored Ape Yacht Club  
25 (@BoredApeYC), TWITTER (Nov. 15, 2021, 5:27 PM),  
<https://twitter.com/BoredApeYC/status/1460419265547407361>.

26 <sup>98</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 22, 2022, 6:19 AM),  
<https://twitter.com/BoredApeYC/status/1539598893771628544>.

27 <sup>99</sup> Guy Oseary (@guyoseary), TWITTER (Nov. 1, 2021, 9:32 AM),  
28 [https://twitter.com/guyoseary/status/1455211104448094211?s=20&t=s22ecLQKFg](https://twitter.com/guyoseary/status/1455211104448094211?s=20&t=s22ecLQKFgigc5iiuUVEew)  
[igc5iiuUVEew](https://twitter.com/guyoseary/status/1455211104448094211?s=20&t=s22ecLQKFgigc5iiuUVEew).

1 @BoredApeYC party tonight 🐼 . . . probably nothing.”<sup>100</sup> Bajwa’s celebrity-related  
2 promotion was a precursor of what was to come.

3 160. Another early instance of Oseary’s solicitation scheme being executed  
4 took place during an episode of the *Tonight Show* that aired on November 11, 2021.  
5 In a broadcast to millions of viewers, Defendant Fallon promoted MoonPay and the  
6 BAYC NFT collection during an interview with Defendant Winkelmann. Fallon  
7 announced that he “got his first NFT” through MoonPay, claiming that he “did his  
8 homework” on how to purchase an NFT and found MoonPay, which Fallon asserted  
9 was “like the PayPal of crypto.” After shilling MoonPay’s services, credibility, and  
10 future growth prospects, Fallon announced that he “bought an ape” (*i.e.*, BAYC NFT  
11 #599), to which guest Winkelmann expressed approval. Winkelmann posted the  
12 *Tonight Show* promotion of the BAYC NFTs and MoonPay to his personal Instagram  
13 account, wherein it received over 676,000 views.<sup>101</sup> Upon information and belief,  
14 MoonPay and/or Oseary, along with the Executive Defendants, recruited and paid  
15 Fallon and Winkelmann to promote both MoonPay and the BAYC collection of NFTs  
16 during this segment on the *Tonight Show*. Notably, Winkelmann is direct business  
17 partners with Oseary in another NFT platform company, WENEW.

18 161. Fallon did not disclose that he had a financial interest in MoonPay or  
19 that he was likewise financially interested, directly or indirectly, in the increased sale  
20 and popularity of Yuga securities. Nor did EHD or broadcast partner Universal  
21 disclose that this purportedly organic segment on the *Tonight Show* was in reality a  
22 paid advertisement for the BAYC collection of NFTs and MoonPay by two celebrities  
23  
24  
25  
26

27 <sup>100</sup> Maaria.eth (@maariabajwa), TWITTER (Nov. 4, 2011, 1:23 AM),  
<https://twitter.com/maariabajwa/status/1456130064270217217?s=20>.

28 <sup>101</sup> <https://www.instagram.com/p/CWJI-cJp5Fu/?hl=en>



1 (Fallon and Winkelmann) who are business partners with an investor (Oseary) in both  
2 Yuga and MoonPay.<sup>102</sup>

3 162. That same day, the MoonPay Twitter account posted a clip from the  
4 segment with Fallon promoting MoonPay and the BAYC NFTs with a caption  
5 stating: “So this just happened. @jimmyfallon reveals to @beeples on the  
6 #TheTonightShow that he just bought his first Bored Ape by @BoredApeYC with  
7 MoonPay! 🚀👁️.”<sup>103</sup> MoonPay’s statement that “[s]o this just happened”  
8 misleadingly suggested to investors that the promotion of MoonPay and the BAYC  
9 NFT collection on the *Tonight Show* was something that occurred spontaneously.  
10 Likewise, MoonPay’s statement that Fallon had “just bought his first Bored Ape by  
11 @BoredApeYC with MoonPay!” failed to disclose that in truth, Fallon’s segment  
12 with Winkelmann was just a promotion of the BAYC NFTs and MoonPay that was  
13 orchestrated behind the scenes by Oseary, Soto-Wright, and the Executive  
14 Defendants.

15 163. On November 12, 2021, Fallon promoted the BAYC NFT he supposedly  
16 “bought,” asking the Yuga official Twitter account if he had “[p]ermission to come a  
17 bored?”<sup>104</sup> That same day, Defendant Soto-Wright responded to Fallon’s promotion  
18 stating: “Congrats @jimmyfallon & @BoredApeYC! We ❤️ you from  
19  
20

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21 <sup>102</sup> Adding to the web of interconnectivity amongst the Defendants, in May 2022,  
22 Defendants Winkelmann and Ciccone, with the help of MoonPay, together launched  
23 another NFT project: The Mother of Creation. MoonPay promoted this relationship  
24 on its Twitter account on May 11, 2022. MoonPay (@moonpay), TWITTER (May 11,  
25 2022, 12:50 PM), [https://twitter.com/moonpay/status/1524477023393128451?s=20&t=r7ZcS2DtK\\_Vt4UPk03r1AQ](https://twitter.com/moonpay/status/1524477023393128451?s=20&t=r7ZcS2DtK_Vt4UPk03r1AQ).

26 <sup>103</sup> MoonPay (@moonpay), TWITTER (Nov. 11, 2021, 3:38 AM), [https://twitter.com/moonpay/status/1458761049075769351?s=20&t=ntA\\_vzg\\_M2poZo2ADKag7g](https://twitter.com/moonpay/status/1458761049075769351?s=20&t=ntA_vzg_M2poZo2ADKag7g).

27 <sup>104</sup> Jimmy Fallon (@jimmyfallon), TWITTER (Nov. 12, 2021, 6:20 AM),  
28 [https://twitter.com/jimmyfallon/status/1459164143626424321?s=20&t=pnZMGBip1cJ52yjSd\\_e3-g](https://twitter.com/jimmyfallon/status/1459164143626424321?s=20&t=pnZMGBip1cJ52yjSd_e3-g).

1 @MoonPayHQ!”<sup>105</sup> On November 17, 2021, Fallon again promoted the BAYC  
2 NFTs, asking his 53.1 million Twitter followers to “[n]ame my ape! Drop your  
3 suggestions below” and tagging “@BoredApeYC #BAYC #BoredApeYachtClub  
4 #NFTs.”<sup>106</sup> These promotions from Soto-Wright and Fallon failed to disclose that  
5 Fallon’s promotion of the BAYC NFTs and MoonPay was not because of Fallon’s  
6 genuine interest in BAYC NFTs but rather solely due to the financial interest Fallon  
7 shared with Soto-Wright, Oseary, and the Executive Defendants.

8 164. Plaintiffs saw the promotions by Fallon and Winkelmann (which were  
9 authorized by Defendants Universal and EHD) on the *Tonight Show* regarding the  
10 Company’s collection of BAYC NFTs, as well as Fallon’s promotions on his social  
11 media accounts. Plaintiffs were induced to purchase and/or continue to hold Yuga  
12 securities as a result of these misleading promotions.

13 165. Notably, MoonPay’s transfer to Fallon of BAYC NFT #599 was one of  
14 the first times that MoonPay ever transacted in a BAYC NFT.

15 166. Upon information and belief, each of the Promoter Defendants received  
16 a BAYC NFT and/or other fiat or cryptocurrency from MoonPay and/or Yuga as  
17 compensation for fraudulently promoting the sale of the Yuga securities.

18 167. For example, a combined search of the Ethereum Blockchain Explorer  
19 (“Etherscan”) and the NFT marketplace OpenSea shows that a wallet owned and  
20 controlled by Defendant Post received over \$1.4M in ether cryptocurrency directly  
21 from MoonPay in addition to a BAYC NFT at the same time Post released a  
22 promotion for MoonPay and Yuga disguised as a music video.

23  
24  
25 <sup>105</sup> Ivan Soto-Wright (@isotowright), TWITTER (Nov. 12, 2021, 7:27 AM),  
26 [https://twitter.com/isotowright/status/1459181031186173980?s=20&t=pnZMGBip1cJ52yjSd\\_e3-g](https://twitter.com/isotowright/status/1459181031186173980?s=20&t=pnZMGBip1cJ52yjSd_e3-g).

27 <sup>106</sup> Jimmy Fallon (@jimmyfallon), TWITTER (Nov. 17, 2021, 11:42 AM),  
28 <https://twitter.com/jimmyfallon/status/1461011913479962630?s=20&t=b7UnEi0ycK49kgQy3FiFPg>.

1           168. In particular, on October 29, 2021, digital wallet address  
2 0xbea020c3bd417f30de4d6bd05b0ed310ac586cc0 labeled as “Post Malone” (the  
3 “Post Malone Wallet”) received 75.1 ether (valued at \$331,746.76 at the time of the  
4 transaction) from wallet address 0xd75233704795206de38cc58b77a1f660b5c60896,  
5 which is publicly labeled as “MoonPay” (the “MoonPay Wallet”).<sup>107</sup> Two days later,  
6 on October 31, 2021, the Post Malone Wallet received 100 ether or \$429,010 from  
7 the MoonPay Wallet.<sup>108</sup>

8           169. On November 15, 2021, Defendant Post uploaded a music video onto  
9 his official YouTube channel entitled “One Right Now.”<sup>109</sup> This video featured  
10 Defendant Post and MoonPay investor Tesfaye (The Weeknd). The beginning of the  
11 video features a segment where Post uses the MoonPay app on his phone to purchase  
12 a BAYC NFT.

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<sup>107</sup> Transaction Hash: 0xc50f01603b668b384d8ff595e9ddd1f69b7c97846f3c  
23 4fc27852bbca91c25530, ETHERSCAN (Oct. 29, 2021, 8:54 AM),  
24 [https://etherscan.io/tx/0xc50f01603b668b384d8ff595e9ddd1f69b7c97846f3c4fc278](https://etherscan.io/tx/0xc50f01603b668b384d8ff595e9ddd1f69b7c97846f3c4fc27852bbca91c25530)  
25 52bbca91c25530.

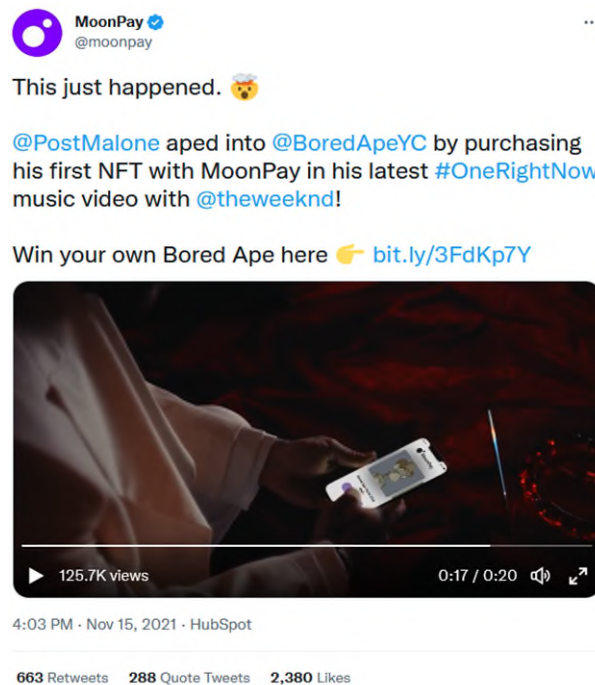
<sup>108</sup> Transaction Hash: 0x339efa1b3a6dff394b79a2703bc6a73e33eb4f8e99f3a02  
26 26e707e251da0ac8d, ETHERSCAN (Oct. 31, 2021, 10:34 AM), [https://etherscan.io](https://etherscan.io/tx/0x339efa1b3a6dff394b79a2703bc6a73e33eb4f8e99f3a0226e707e251da0ac8d)  
27 [/tx/0x339efa1b3a6dff394b79a2703bc6a73e33eb4f8e99f3a0226e707e251da0ac8d](https://etherscan.io/tx/0x339efa1b3a6dff394b79a2703bc6a73e33eb4f8e99f3a0226e707e251da0ac8d).

<sup>109</sup> Post Malone, *One Right Now*, YOUTUBE (Nov. 15, 2021),  
28 <https://youtu.be/Tc0tLGWIqxA>.

1 170. That same day, BAYC promoted the video from Post and Tesfaye on its  
2 Twitter account<sup>110</sup>:



12 171. MoonPay also promoted the Post and Tesfaye video on its Twitter  
13 account, only minutes before BAYC<sup>111</sup>:



25 <sup>110</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 15, 2021, 1:14 PM),  
26 <https://twitter.com/BoredApeYC/status/1460355554342227973>.

27 <sup>111</sup> MoonPay (@moonpay), TWITTER (Nov. 15, 2021, 1:03 PM), <https://twitter.com/moonpay/status/1460352762798084105?s=20&t=mHWXj4WYC5OUt2zg9LWA>.

1 172. MoonPay’s statement that “this just happened” misleadingly suggested  
2 to investors that the promotion of MoonPay and the BAYC NFT collection within  
3 the so-called music video from Defendant Post and MoonPay investor Tesfaye was  
4 something that occurred because of their genuine interest in the BAYC NFTs. This,  
5 and MoonPay’s statement that Post had “aped into @BoredApeYC by purchasing his  
6 first NFT with MoonPay,” failed to disclose that this music video was just a  
7 promotion of the BAYC NFTs and MoonPay that was orchestrated behind the scenes  
8 by Oseary, Soto-Wright, and the Executive Defendants.

9 173. On November 19, 2021, the Post Malone Wallet received another 50  
10 ether (worth \$214,963.50) from the MoonPay Wallet.<sup>112</sup> The last payment that the  
11 Post Malone Wallet received from the MoonPay Wallet was on November 21, 2021  
12 for 100 ether, which was then worth \$426,461.<sup>113</sup> In total, the MoonPay Defendants  
13 facilitated the payment of \$1,402,181.26 to Defendant Post over the course of a  
14 month.

15 174. Plaintiffs saw Post’s promotion of the Company’s collection of BAYC  
16 NFTs and were induced to purchase and/or continue to hold Yuga securities as a  
17 result.

18 175. The MoonPay Wallet also sent BAYC NFTs to other Promoter  
19 Defendants during November 2021 in order to solicit the sales of Yuga securities, of  
20 which the Company held a perpetual 2.5% ownership interest in and received as much  
21 in royalty fees from any subsequent sales of those same NFTs.

22  
23 <sup>112</sup> Transaction Hash: 0x729899f138ab93d6c20707783b62e16e04093e481  
24 d11e45bc2e3648b6ab3773b, ETHERSCAN (Nov. 19, 2021, 2:55 AM),  
25 <https://etherscan.io/tx/0x729899f138ab93d6c20707783b62e16e04093e481d11e45bc2e3648b6ab3773b>.

26 <sup>113</sup> Transaction Hash: 0xc21a66ee9a3d1ddf6f72c780e4165b7e915cf6cfb642092  
27 30c9af5993de284f9, ETHERSCAN (Nov. 21, 2021, 1:40 AM), <https://etherscan.io/tx/0xc21a66ee9a3d1ddf6f72c780e4165b7e915cf6cfb64209230c9af5993de284f9>.  
28

1           176. For example, on November 26, 2021, during celebrity musician DJ  
2 Khaled’s 46th birthday party he appeared in a live video with Defendant Soto-  
3 Wright,<sup>114</sup> where they both promoted the sale of BAYC NFTs in a staged transaction  
4 that was disseminated through social media. In particular, during the 15-second clip  
5 first posted by party attendee and BAYC member Austin Rosen, Soto-Wright  
6 supposedly helps Khaled to purchase a BAYC NFT using MoonPay’s app. Khaled  
7 can be seen video chatting with celebrity producer SwizzBeats while Soto-Wright  
8 pretends to conduct the transaction for Khaled. Notably, Khaled tells SwizzBeats: “I  
9 just bought a bored ape. Some shit like . . . do you know about it?” Khaled can also  
10 be seen shrugging his shoulders, tilting his head, and gesturing to those viewing the  
11 video in a manner that suggested “I don’t know what this is about but I’m going along  
12 with it.” Khaled turns his phone and Soto-Wright confirms to SwizzBeats that they  
13 were discussing the BAYC NFTs. Soto-Wright then presses “confirm” and tells  
14 Khaled “you just bought an ape.” Khaled appeared confused by the interaction in  
15 general and did not display any familiarity with the BAYC collection of NFTs at all  
16 when he was purportedly buying one of those NFTs for hundreds of thousands of  
17 dollars.

18           177. Plaintiffs saw or were aware of Defendant Soto-Wright’s joint  
19 promotion of the Company’s collection of BAYC NFTs with DJ Khaled, and were  
20 induced to purchase and/or continue to hold Yuga securities as a result.

21           178. According to the outgoing transactions of Yuga securities in the  
22 MoonPay Wallet, on November 30, 2021 the MoonPay Wallet transferred BAYC  
23 NFT #7380 – valued at 55.5 ether or approximately \$220,000 at the time – to wallet  
24  
25

26 \_\_\_\_\_  
27 <sup>114</sup> Lugo.eth (@WWMLD), TWITTER (Nov. 27, 2021, 9:01 AM), [https://twitter](https://twitter.com/WWMLD/status/1464640427315892229?s=20&t=p-6BxhtTTTr_HwM5U1ZywQ)  
28 [.com/WWMLD/status/1464640427315892229?s=20&t=p-6BxhtTTTr\\_HwM5U1ZywQ](https://twitter.com/WWMLD/status/1464640427315892229?s=20&t=p-6BxhtTTTr_HwM5U1ZywQ).



1 address 0xa0ac662f58d3507a6f4a37f8532df201d9010fe7 (the “Khaled Wallet”).<sup>115</sup>  
2 Later that same day, Khaled promoted the BAYC NFTs on his Instagram, announcing  
3 that he had joined the BAYC.<sup>116</sup>

4 179. As this was occurring, on November 28, 2021, the MoonPay Wallet  
5 transferred BAYC NFT #4672 to wallet address 0x1616b4c7cdb4093befbcca62  
6 f3198993327a8e9e (the “Wilburn Cash Wallet”).<sup>117</sup> That same day, celebrity  
7 musician Wilburn Cash (Future) posted BAYC NFT #4672 on his Twitter account.<sup>118</sup>  
8 The next day, on November 29, 2021, MoonPay’s TikTok account “moonpayhq”  
9 posted a video<sup>119</sup> with MoonPay promotor Wilburn Cash wherein Wilburn Cash can  
10 be seen changing his profile picture on Instagram to BAYC NFT #4672. Wilburn  
11 Cash can also be heard saying “yessir” in approval as he endorses the BAYC NFT  
12 collection. Plaintiffs saw or were aware of MoonPay’s joint promotion with Wilburn  
13 Cash of the Company’s collection of BAYC NFTs and were induced to purchase  
14 and/or continue to hold Yuga securities as a result.

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17 <sup>115</sup> Transaction Hash: 0xdecec07f810b5f2c02489f96121bac5186cdf51f93  
18 0d847024e0780cbaffe4, ERC-721: 7380, ETHERSCAN (Nov. 30, 2021, 4:20 AM),  
19 <https://etherscan.io/tx/0xdecec07f810b5f2c02489f96121bac5186cdf51f930d847024e0780cbaffe4>.

20 <sup>116</sup> *DJ Khaled Just Updated His Instagram Profile Photo To His Bored Ape*, THE  
21 BORED APE GAZETTE (Nov. 30, 2021), <https://www.theboredapegazette.com/post/dj-khaled-just-updated-his-instagram-profile-photo-to-his-bored-ape-the-full-story-here>.

22 <sup>117</sup> Transaction Hash: 0xd8d155d1191c9c9381f1515c8d30483e5c8f01567d  
23 c56e358987eb5d2b00d9e5, ERC-721: 4672, ETHERSCAN (Nov. 28, 2021, 5:01 AM),  
24 <https://etherscan.io/tx/0xd8d155d1191c9c9381f1515c8d30483e5c8f01567dc56e358987eb5d2b00d9e5>.

25 <sup>118</sup> Future/Freebandz (@1future), TWITTER (Nov. 28, 2021 12:47 A.M.),  
26 <https://twitter.com/1future/status/1464833267710889990?s=20&t=b7UnEi0ycK49kgQy3FiFPg>.

27 <sup>119</sup> Moonpayhq (@moonpayhq), TIKTOK (Nov. 28, 2021),  
28 [https://www.tiktok.com/@moonpayhq/video/7035876504391257349?is\\_from\\_webapp=v1&item\\_id=7035876504391257349](https://www.tiktok.com/@moonpayhq/video/7035876504391257349?is_from_webapp=v1&item_id=7035876504391257349).

1           180. On December 1, 2021, the MoonPay Wallet transferred BAYC NFT  
2 #5384 to wallet address 0xc213e5d1ba49e3069b7ed5ce1f53ed299b966c73, which is  
3 labeled as “diplo.eth”.<sup>120</sup> That same day, MoonPay investor Thomas Pentz (a famous  
4 DJ named Diplo) promoted the BAYC NFT he received from MoonPay on his  
5 Twitter account with 2.4 million followers.<sup>121</sup>

6           181. Following his *Tonight Show* promotion, Fallon continued to promote the  
7 collection of BAYC NFTs and to solicit sales thereof on social media. For example,  
8 Fallon created a Twitter account for his BAYC NFT #599 with the user name “Bored  
9 and Breezy.” On November 23, 2021, Fallon posted the following solicitations for  
10 the BAYC NFTs on his official and Bored and Breezy Twitter accounts:<sup>122</sup>

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20 <sup>120</sup> Transaction Hash: [https://etherscan.io/tx/0x05981522f7f1299678b38f147](https://etherscan.io/tx/0x05981522f7f1299678b38f14758921e200512a0292ff777102d0dafca8a11bf3)  
21 [58921e200512a0292ff777102d0dafca8a11bf3](https://etherscan.io/tx/0x05981522f7f1299678b38f14758921e200512a0292ff777102d0dafca8a11bf3), ERC-721: 5384, ETHERSCAN (Dec.  
22 1, 2021, 5:07 AM), [https://etherscan.io/token/0xbc4ca0eda7647a8ab7c20](https://etherscan.io/token/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d?a=0xc213e5d1ba49e3069b7ed5ce1f53ed299b966c73)  
[61c2e118a18a936f13d?a=0xc213e5d1ba49e3069b7ed5ce1f53ed299b966c73](https://etherscan.io/token/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d?a=0xc213e5d1ba49e3069b7ed5ce1f53ed299b966c73).

23 <sup>121</sup> Diplo (@diplo), TWITTER (Dec. 1, 2021 4:28 P.M.),  
24 [https://twitter.com/diplo/status/1466157259252240395?s=20&t=B6GM\\_EYH2EoT](https://twitter.com/diplo/status/1466157259252240395?s=20&t=B6GM_EYH2EoTzTfPNF5fmQ)  
[zTfPNF5fmQ](https://twitter.com/diplo/status/1466157259252240395?s=20&t=B6GM_EYH2EoTzTfPNF5fmQ).

25 <sup>122</sup> Jimmy Fallon (@jimmyfallon), TWITTER (Nov. 23, 2021, 10:24 AM),  
26 [https://twitter.com/jimmyfallon/status/1463166515289669650?s=20&t=b7UnEi0yc](https://twitter.com/jimmyfallon/status/1463166515289669650?s=20&t=b7UnEi0ycK49kgQy3FiFPg)  
27 [K49kgQy3FiFPg](https://twitter.com/jimmyfallon/status/1463166515289669650?s=20&t=b7UnEi0ycK49kgQy3FiFPg); Bored and Breezy (@BoredAndBreezy), TWITTER (Nov. 23,  
28 2021, 9:46 AM); [https://twitter.com/BoredAndBreezy/status/1463156965308354](https://twitter.com/BoredAndBreezy/status/1463156965308354584?s=20&t=gq3WJjWI7a_A4C49ucZPgg)  
[584?s=20&t=gq3WJjWI7a\\_A4C49ucZPgg](https://twitter.com/BoredAndBreezy/status/1463156965308354584?s=20&t=gq3WJjWI7a_A4C49ucZPgg).

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 Jimmy Fallon  
@jimmyfallon

Thanks for the suggestions, Twitter. Meet Captain Breezy aka @BoredAndBreezy. Stay tuned for updates from the calm ocean waters.



10:24 AM · Nov 23, 2021

387 Retweets 83 Quote Tweets 3,656 Likes

 Bored and Breezy  
@BoredAndBreezy

Captain Breezy reporting for duty. All a-bored!



9:46 AM · Nov 23, 2021 · Twitter Web App

158 Retweets 35 Quote Tweets 1,709 Likes

1           182. These promotions gave investors the false impression that Fallon was  
2 going to be a leader or “captain” in the future BAYC community, suggesting that his  
3 continued involvement and leadership with BAYC would grow the BAYC ecosystem  
4 and calmly increase the value of their investments therein. Plaintiffs saw Fallon’s  
5 promotion of the Company’s collection of BAYC NFTs and were induced to  
6 purchase and/or continue to hold Yuga securities as a result of these misleading  
7 promotions.

8           183. On December 2, 2021, Defendant Adidas changed its Twitter profile  
9 @adidasoriginals avatar to a Bored Ape NFT, stating #NewProfilePic.<sup>123</sup>

10           184. On December 11, 2021, Defendant Adidas joined the Company to  
11 promote the “ADIDAS X BORED APE YACHT CLUB – INTO THE  
12 METAVERSE” promotional video, which was published on the official BAYC  
13 YouTube channel.<sup>124</sup> The video teased an upcoming collaboration between the  
14 Company and Adidas by featuring an animated Bored Ape avatar with a yellow  
15 Adidas tracksuit skydiving into an Adidas logo. On December 17, 2021, Adidas  
16 launched the “adidas Originals: Into the Metaverse NFT (Phase 1)” collection of  
17 30,000 NFTs, which included BAYC-related avatars wearing Adidas clothing and  
18 merchandise. This collection almost immediately sold out after minting. 29,620  
19 NFTs priced at 0.2 ETH each sold at launch generating \$43 million for Adidas and  
20 its collaborators within 72 hours.<sup>125</sup> “Adidas and partners” held onto 380 Adidas  
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22 \_\_\_\_\_  
23 <sup>123</sup> adidas Originals (@adidasoriginals), TWITTER (Dec. 2, 2021, 8:36 AM),  
<https://twitter.com/adidasoriginals/status/1466446117642584068>.

24 <sup>124</sup> Bored Ape Yacht Club, *ADIDAS X BORED APE YACHT CLUB – INTO THE*  
25 *METAVERSE*, YOUTUBE (Dec. 11, 2021), <https://www.youtube.com/watch?v=-1vdk6IksQ0>.

26 <sup>125</sup> Ornella Hernandez, *Adidas Originals reaches second spot on OpenSea*  
27 *rankings with debut NFT collection*, COINTELEGRAPH (Dec. 20, 2021),  
28 <https://cointelegraph.com/news/adidas-originals-reaches-second-spot-on-opensea-rankings-with-debut-nft-collection>.

1 Metaverse NFTs for so-called “future events.”<sup>126</sup> Adidas offered 20,000 of the  
2 Adidas Metaverse NFTs in early access to, *inter alia*, BAYC and MAYC NFT  
3 holders.<sup>127</sup> Adidas sold \$15.5 million dollars’ worth of those 20,000 Adidas  
4 Metaverse NFTs during the early access mint, which had to pause and restart after  
5 several hours due to technical issues with MAYC investor being able to mint. The  
6 day of the launch, Adidas, via the @adidasoriginals Twitter account, solicited sales  
7 of the Adidas Metaverse NFTs, tagging the @BoredApeYC Twitter account and  
8 providing a link that led investors to the Opensea NFT exchange and an image of the  
9 BAYC avatar wearing an Adidas tracksuit.<sup>128</sup> On December 18, 2021, Ape DAO  
10 Board Defendant Bajwa also promoted the exclusivity of the Adidas and Yuga  
11 collaboration, remarking that investors could get around the limit of 2 Adidas  
12 Metaverse NFTs per wallet.<sup>129</sup> The following day, December 19, 2021, Bajwa  
13 promoted the success of the Adidas Metaverse NFT collaboration with BAYC,<sup>130</sup> that  
14 Sotheby’s earned \$100M from NFT sales in 2021. 78% of bidders were new to  
15 Sotheby’s and half were under 40,”<sup>131</sup> that Yuga was “co-developing a play-to-earn  
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18 <sup>126</sup> Jay Peters, *Adidas sold more than \$22 million in NFTs, but it hit a few snags*  
19 *along the way*, THE VERGE (Dec. 17, 2021 5:38 PM),  
20 [https://www.theverge.com/2021/12/17/22843104/adidas-nfts-metaverse-sold-bored-](https://www.theverge.com/2021/12/17/22843104/adidas-nfts-metaverse-sold-bored-ape)  
21 [ape](https://www.theverge.com/2021/12/17/22843104/adidas-nfts-metaverse-sold-bored-ape).

22 <sup>127</sup> *Id.*

23 <sup>128</sup> adidas Originals (@adidasoriginals), TWITTER (Dec. 17, 2021 10:26 AM),  
<https://twitter.com/adidasoriginals/status/1471909577658675204?s=20>; adidas  
24 Originals (@adidasoriginals), TWITTER (Dec. 17, 2021 3:26 PM),  
<https://twitter.com/adidasoriginals/status/1471985083280199680?s=20>.

25 <sup>129</sup> Maaria.eth (@maariabajwa), TWITTER (Dec. 18, 2021, 9:51 AM),  
<https://twitter.com/maariabajwa/status/1472263218726772736?s=20>.

26 <sup>130</sup> Maaria.eth (@maariabajwa), TWITTER (Dec. 18, 2021 7:29 PM),  
<https://twitter.com/maariabajwa/status/1472771183451860993?s=20>.

27 <sup>131</sup> Maaria.eth (@maariabajwa), TWITTER (Dec. 19, 2021 7:29 PM),  
28 <https://twitter.com/maariabajwa/status/1472771185528086530?s=20>.



1 game with [Yuga backer and promoter] @animocabrands. To be launched in Q2  
2 2022.”<sup>132</sup>

3 185. On December 20, 2021, the @adidasoriginals Twitter account promoted  
4 the success of its collaboration with Yuga on the Adidas Metaverse NFT launch,  
5 touting it as “one of the most widely-distributed NFT drops in history.”<sup>133</sup> Adidas  
6 also addressed the issues with the minting process and promised investors that “[t]his  
7 NFT drop is the beginning of Into the Metaverse, not the end.”<sup>134</sup> Adidas ended this  
8 Twitter thread promotion by thanking Yuga as a “pioneer[] in the space.”<sup>135</sup>

9 186. These promotions by Adidas and its collaboration with BAYC  
10 throughout December 2021 caused the floor price of the BAYC NFT collection to  
11 spike, rising from approximately 47 ETH on December 1, 2021 before the promotion,  
12 to approximately 58.6 ETH by December 31, 2021.

13 187. On January 2, 2022, Ape DAO Board Defendant Bajwa promoted Yuga  
14 Financial Products to investors, stating that celebrity rapper (and close associate with  
15 Defendant Broadus) “@Eminem purchased a @BoredApeYC NFT for 123.45 ETH”  
16 and touting that the MAYC NFTs “saw \$71M in trading volumes the last week.”<sup>136</sup>

17 188. Concurrently, Fallon also continued promoting BAYC NFTs on the  
18 *Tonight Show*, and EHD and Universal continued to approve that such promotions  
19 could be aired on the network without disclaimer. In an even more contrived segment  
20 that aired during an episode of the *Tonight Show* on January 24, 2022, Fallon  
21 interviewed Defendant Paris Hilton, and they both misleadingly promoted the BAYC  
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23 <sup>132</sup> *Id.*

24 <sup>133</sup> adidas Originals (@adidasoriginals), TWITTER (Dec. 20, 2021 3:14 AM),  
<https://twitter.com/adidasoriginals/status/1472888099994841090?s=20>.

25 <sup>134</sup> adidas Originals (@adidasoriginals), TWITTER (Dec. 20, 2021 3:14 AM),  
<https://twitter.com/adidasoriginals/status/1472888109205438473?s=20>.

26 <sup>135</sup> adidas Originals (@adidasoriginals), TWITTER (Dec. 20, 2021 3:14 AM),  
<https://twitter.com/adidasoriginals/status/1472888110375649282?s=20>.

27 <sup>136</sup> Maaria.eth (@maariabajwa), TWITTER (Jan. 2, 2022 6:31 PM),  
28 <https://twitter.com/maariabajwa/status/1477829825830084614>.



1 collection of NFTs. Fallon first tried to bolster Hilton’s credentials in the NFT sector  
2 by telling the audience and investors that *Forbes* magazine had named Hilton as one  
3 of the “top 50 most influential people in the NFT space.” Fallon then immediately  
4 began promoting the BAYC NFT collection with Hilton. Hilton claimed that she had  
5 “saw” Fallon’s previous BAYC segment with Winkelmann, and “copied” Fallon’s  
6 use of MoonPay to “buy an ape.” Hilton feigned interest in the BAYC NFT collection  
7 and claimed to have selected hers because it “reminded” Hilton of herself. When the  
8 audience snickered at Hilton’s half-hearted explanation for “purchasing” that  
9 particular BAYC NFT (which bore no apparent resemblance to Hilton’s appearance),  
10 Fallon jumped in to show off his own BAYC NFT #599, which sported a boat  
11 captain’s hat and other funny accessories. Fallon also insisted that he “bought” that  
12 particular BAYC NFT because it reminded him of himself, to which the audience  
13 agreed and laughed off the exchange. This original segment has been uploaded on the  
14 *Tonight Show*’s official YouTube channel, which has received approximately  
15 547,000 views as of the date of this filing.<sup>137</sup> Upon information and belief, the  
16 *Tonight Show*’s channel on YouTube is owned and/or controlled by Defendant  
17 Universal.

18 189. Hilton and MoonPay also promoted Hilton’s appearance on the *Tonight*  
19 *Show* on their own extensive social media accounts. On January 24, 2022, MoonPay  
20 posted that BAYC NFT #1294’s owner “is known to enjoy ‘The Simple Life’ even  
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27 <sup>137</sup> The *Tonight Show*, *Paris Hilton Surprises Tonight Show Audience Members*  
28 *By Giving Them Their Own NFTs*, YOUTUBE (Jan. 24, 2022),  
<https://www.youtube.com/watch?v=5zi12wrh5So>.

1 though they are appearing on prime time TV ‘tonight’. Who could it be? 🙄”<sup>138</sup>  
2 Defendant Hilton responded to this message with a “wink” emoji.<sup>139</sup>

3 190. The next day, on January 25, 2022, in response to a Twitter post that  
4 proclaimed: “Wait @ParisHilton bought my ape?! HOLY @\$%!”, Hilton  
5 stated:<sup>140</sup>



13 191. The *Tonight Show*’s official Twitter account posted a 1:44 minute clip  
14 on January 25, 2022 of the entire segment promoting the BAYC NFT collection  
15 through MoonPay.<sup>141</sup> Defendant Fallon was also on Twitter that day reposting his  
16 *Tonight Show* promotion of the BAYC NFT collection along with Defendant Hilton.  
17 In addition to a link to the *Tonight Show*’s Twitter post, Defendant Fallon included  
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20 <sup>138</sup> MoonPay (@moonpay), TWITTER (Jan. 24, 2021, 6:40 AM),  
21 [https://twitter.com/moonpay/status/1485623661897961476?s=20&t=F58\\_qyidVksnSGdXuAyy-A](https://twitter.com/moonpay/status/1485623661897961476?s=20&t=F58_qyidVksnSGdXuAyy-A). Notably, Defendant Hilton appeared in a reality TV show called *The Simple Life*.

23 <sup>139</sup> Paris Hilton (@ParisHilton), TWITTER (Jan. 24, 2021, 10:01 PM),  
24 [https://twitter.com/ParisHilton/status/1485855428563116034?s=20&t=F58\\_qyidVksnSGdXuAyy-A](https://twitter.com/ParisHilton/status/1485855428563116034?s=20&t=F58_qyidVksnSGdXuAyy-A).

25 <sup>140</sup> Paris Hilton (@ParisHilton), TWITTER (Jan. 25, 2021, 7:19 PM),  
26 <https://twitter.com/ParisHilton/status/1486131710895050756?s=20&t=8IDQAVCGIW19GRmFFIv1PQ>.

27 <sup>141</sup> The Tonight Show (@FallonTonight), TWITTER (Jan. 25, 2022, 12:15 AM),  
28 <https://twitter.com/FallonTonight/status/1485843736345161737?s=20&t=b7UnEi0ycK49kgQy3FiFPg>.

1 the caption “#WAGMI.”<sup>142</sup> The hashtag “#WAGMI” refers to the phrase “we are all  
2 gonna make it.” This acronym is widely used by crypto investors to build confidence  
3 and as a rallying cry that encourages the community to have hope for the project(s)  
4 being discussed. The inclusion of this hashtag with the BAYC NFT solicitation  
5 suggested to investors that Defendant Fallon was personally aligned with them  
6 instead of promoting the interests of himself and his cohorts Defendants Oseary and  
7 Hilton.

8 192. On January 31, 2022, Hilton posted the following message on Twitter  
9 with an animated cartoon version of the Fallon interview of Hilton:<sup>143</sup>



25 <sup>142</sup> Jimmy Fallon (@jimmyfallon), TWITTER (Jan. 25, 2022, 11:15 AM),  
26 <https://twitter.com/jimmyfallon/status/1486009927999135754?s=20&t=b7UnEi0ycK49kgQy3FiFPg>.

27 <sup>143</sup> Paris Hilton (@ParisHilton), TWITTER (Jan. 31, 2021, 10:59 PM),  
28 <https://twitter.com/ParisHilton/status/1488361241512800258?s=20&t=KDOjfCCoS8Ch1PbuhBS-xw>.

1           193. Hilton’s Twitter promotions on January 25 and January 31, 2022 gave  
2 investors the false impression that Hilton: (1) actually bought the BAYC NFT; and  
3 (2) was enthusiastically “hanging out in the metaverse” with Fallon and that they  
4 were “BoredApeBesties.” In truth, Hilton was only promoting the BAYC NTFs and  
5 MoonPay because she was financially motivated to make those statements. Nor did  
6 Hilton include an “ad” disclaimer in either of the January 25th or January 31th posts  
7 that would disclose to investors that this was a paid advertisement for the BAYC  
8 collection of NFTs and MoonPay. Plaintiffs saw the promotions by Fallon and Hilton  
9 (which were authorized by Defendants Universal and EHD) on the *Tonight Show*  
10 regarding the Company’s collection of BAYC NFTs, as well as Hilton’s and Fallon’s  
11 promotions on their respective social media accounts. Plaintiffs were induced to  
12 purchase and/or continue to hold Yuga securities as a result of these misleading  
13 promotions by Fallon and Hilton.

14           194. Importantly, Hilton and MoonPay purposefully did not disclose Hilton’s  
15 direct financial interest in MoonPay and, relatedly, the increased sale of Yuga  
16 securities through MoonPay. And again, there was no disclosure from any of the  
17 *Tonight Show’s* production companies, namely Defendants Universal or EHD,  
18 regarding Hilton’s and/or Fallon’s financial interests in MoonPay or compensation  
19 for promoting the BAYC NFTs. Notably, according to an internal workplace policy  
20 mandated by Universal, all employees, including Defendant Fallon, must “disclose  
21 and obtain approval for all outside work, financial interests and other personal  
22 activities/relationships that may create or appear to create a conflict.”<sup>144</sup> The same  
23 policy says that employees should not “use company info, resources, time, etc. for  
24

25 <sup>144</sup> Brian Contreras, *Jimmy Fallon hyped his Bored Ape NFTs on ‘The Tonight*  
26 *Show.’ Conflict of Interest?*, L.A. TIMES (Jan. 26, 2022),  
27 [https://www.latimes.com/business/technology/story/2022-01-26/jimmy-fallon-nft-](https://www.latimes.com/business/technology/story/2022-01-26/jimmy-fallon-nft-ape-nbc)  
28 [ape-nbc](https://www.latimes.com/business/technology/story/2022-01-26/jimmy-fallon-nft-ape-nbc) (discussing Fallon’s potential conflict of interest and providing a link to the  
Universal policy).

1 personal benefit.” Thus, upon information and belief, Universal knew about Fallon’s  
2 ties to Oseary and Yuga, along with Hilton’s ties to MoonPay, and approved the  
3 promotions of BAYC NFTs on the *Tonight Show* before it was publicly aired without  
4 disclaimers. These omissions gave the public the false impression that Hilton had  
5 been inspired to purchase a BAYC NTF after hearing that Fallon had organically  
6 purchased one of his own, when, in truth, the entire *Tonight Show* segment was just  
7 a paid promotion for the BAYC collection of NFTs and Moonpay. Reporting on this  
8 segment noted that a “glossy-eyed Jimmy Fallon conducted one of the most forced  
9 interviews” in the history of the *Tonight Show* during this segment with Defendant  
10 Hilton.<sup>145</sup> The journalist Max Read described their exchange as “profoundly  
11 unsettling.”<sup>146</sup>

12 195. If the Sotheby’s auction and the *Rolling Stone* article put the Company  
13 and its founders on the map, Fallon and Hilton’s *Tonight Show* promotions brought  
14 the BAYC directly into the homes of mainstream America. But this was just the  
15 beginning for Oseary’s plans for Defendants.

16 196. On December 2, 2021, Adidas announced that it purchased a BAYC  
17 NFT as part of an upcoming collaboration with the Company into “the Metaverse,”<sup>147</sup>  
18 boasting the collaboration was “just the beginning 🚀” of going to the moon.<sup>148</sup>

19  
20 <sup>145</sup> Lucas Kwan Peterson, *Can NFTs save the restaurant industry or is the hype*  
21 *just virtual?*, L.A. TIMES (Apr. 19, 2022), <https://www.latimes.com/food/story/2022-04-19/bored-ape-nft-restaurant-la-long-beach>.

22 <sup>146</sup> Max Read, *Mapping the celebrity NFT complex*, READ MAX (SUBSTACK),  
23 (Feb. 2, 2022), [https://maxread.substack.com/p/mapping-the-celebrity-nft-comple-x?utm\\_source=substack&utm\\_medium=email&utm\\_content=share](https://maxread.substack.com/p/mapping-the-celebrity-nft-comple-x?utm_source=substack&utm_medium=email&utm_content=share).

24 <sup>147</sup> Andrew Hayward, *Adidas enters Metaverse with Bored Ape Yacht Club*  
25 *Ethereum NFT*, DECRYPT (Dec. 2, 2021), <https://decrypt.co/87467/adidas-metaverse-bored-ape-yacht-club-ethereum-nft>; adidas Originals (@adidasoriginals), TWITTER  
26 (Dec. 2, 2021, 6:49 AM), <https://twitter.com/adidasoriginals/status/1466419185593036814>.

27 <sup>148</sup> Adidas (@adidasoriginals), TWITTER (Dec. 2, 2021, 11:59 AM),  
28 <https://twitter.com/adidasoriginals/status/1466451992516177933>.



1           197. Other members of Oseary’s network follow a similar pattern of  
2 promoting the BAYC collection of NFTs in connection with MoonPay. Indeed,  
3 Oseary, in particular, was the architect of Defendants’ plan for marketing the BAYC  
4 NFTs. His primary business is managing various high-profile music acts and other  
5 entertainment celebrities, including Defendant Madonna Ciccone. Oseary previously  
6 ran a successful talent agency called Maverick Management (“Maverick”), which, by  
7 itself and in conjunction with talent management powerhouse Live Nation,  
8 represented dozens of the most famous athletes and entertainers in the United States.  
9 Several of these athletes and entertainers just so also happen to have “joined the  
10 BAYC” in the “metaverse” and eagerly promoted that fact to would-be investors.<sup>149</sup>

11           198. Upon information and belief, the Promoter Defendants each received  
12 Yuga Financial Products and/or other forms of consideration as part or all of their  
13 compensation for promoting the Yuga securities specifically or the Yuga brand  
14 generally. Moreover, as equity investors in MoonPay, the Promoter Defendants  
15 directly financially benefited from the increased valuation that MoonPay would  
16 experience with such overwhelming celebrity exposure.

17           199. For example, on January 31, 2022, Defendant Bieber promoted his  
18 purported purchase of BAYC NFT #3001 to his 262 million followers on  
19 Instagram.<sup>150</sup> Reports indicated that Bieber paid approximately \$1.29M for his Bored  
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21 <sup>149</sup> For example, Oseary’s Maverick agency represented MoonPay investor  
22 Tesfaye, who also shilled the BAYC brand in the thinly-veiled promotional music  
23 video with Defendant Post. Similarly, Ape DAO Board Defendant Alexis Ohanian  
24 recruited his wife, tennis superstar Serena Williams, to promote BAYC NFTs.  
25 Likewise, upon information and belief, Ape DAO Board Defendant Amy Wu utilized  
26 her relationships at crypto exchange FTX to recruit world champion athlete  
27 Defendant Curry to solicit sales of the BAYC collection of NFTs. None of these  
28 celebrity endorsements of BAYC NFTs disclosed the underlying financial interests  
and relationships involved.

<sup>150</sup> Justin Bieber (@justinbieber), INSTAGRAM (Jan. 31, 2022), [https://www.instagram.com/p/CZZhdyzFITO/?utm\\_source=ig\\_web\\_copy\\_link](https://www.instagram.com/p/CZZhdyzFITO/?utm_source=ig_web_copy_link).



1 Ape purchase, which was upwards of five times the floor price with similar  
2 characters. But this gross overpayment was meaningless to Bieber since, upon  
3 information and belief, he did not actually pay any money of his own for this BAYC  
4 NFT, but rather received it through a series of transactions for the purpose of  
5 compensating him. Instead, Bieber received BAYC NFT #3001 as a form of  
6 compensation for promoting the BAYC NFTs and Yuga Financial Products to his  
7 hundreds of millions of social media followers.

8 200. On February 7, 2022, Bieber announced that he had “purchased” a  
9 second NFT from the Bored Ape collection (*i.e.*, BAYC NFT #3850) for around  
10 \$470,000. This BAYC NFT is considered to be particularly rare, ranking below 1%  
11 in rarity. Upon information and belief, BAYC NFT #3850 was given to Bieber as  
12 compensation for continuing to promote and solicit sales of the Yuga securities.

13 201. Plaintiffs saw Bieber’s promotion of the Company’s collection of  
14 BAYC NFTs and were induced to purchase and/or continue to hold Yuga securities  
15 as a result of these misleading promotions.

16 202. Around that same time, on January 26, 2022, celebrity Gwyneth Paltrow  
17 similarly announced to investors that she had “joined” the BAYC and thanked  
18 MoonPay’s fraudulent concierge service.<sup>151</sup> MoonPay and Paltrow failed to disclose  
19 that she was a MoonPay backer and had a financial interest in its success, which, in  
20 turn, caused Paltrow to have a vested interest in the increase in sales of Yuga  
21 securities and the use of MoonPay.

22 203. Defendant Hart also promoted his joining the BAYC with BAYC NFT  
23 #9258:

24 While many of his celebrity friends have decided to change their profile  
25 pictures on social media platforms to their BAYC NFTs, Hart chose to  
26 approach his purchase more subtly. . . .

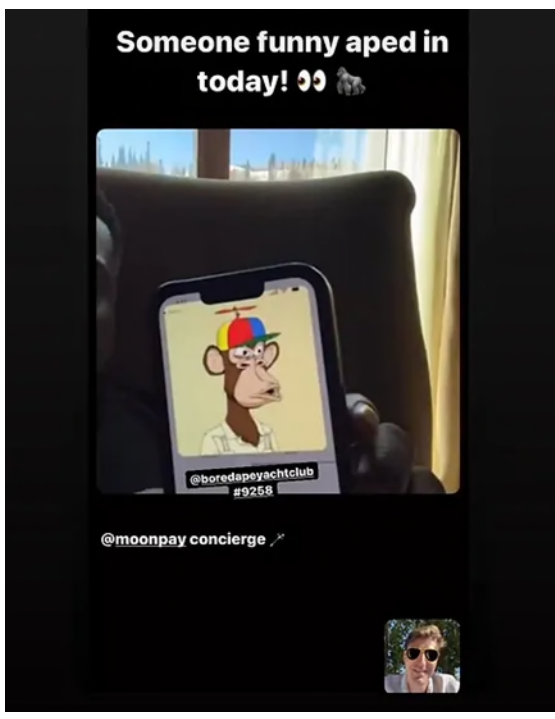
27 <sup>151</sup> Gwyneth Paltrow (@GwynethPaltrow), TWITTER (Jan. 26, 2022, 3:33 PM),  
28 <https://twitter.com/GwynethPaltrow/status/1486482496883625984?s=20&t=8mace2uHFGDI0GYb5N0aWg>.

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Interestingly, [Hart] is among the growing list of celebrities who decided to make their first NFT purchases with the help of MoonPay. The crypto firm paid 79.5 ETH or about \$200.000 for the NFT and then transferred it to Hart’s wallet.

Impressively, despite the fact that BAYC #9258 has several of the rarest properties, MoonPay snagged the NFT below the floor price. Of course, considering the integrity of the crypto firm and the intended final owner, this shouldn’t come as much of a surprise.<sup>152</sup>

MoonPay also posted the following picture of Defendant Hart on its Twitter account with the caption “Someone funny aped in today!”:<sup>153</sup>



<sup>152</sup> Hristina Yordanova, *Kevin Hart Joins the Bored Ape Family*, DAPPRADAR (Jan. 24, 2022), <https://dappradar.com/blog/kevin-hart-joins-the-bored-ape-family>.

<sup>153</sup> Swensonk7, *Comedian Kevin Hart Joined The Bored Ape Yacht Club, According to Moonpay*, THE BORED APE GAZETTE (Jan. 24, 2022), <https://www.theboredapegazette.com/post/comedian-kevin-hart-joined-the-bored-ape-yacht-club-according-to-moonpay>.

1           204. Plaintiffs saw the promotions from Defendants Hart and Soto-Wright  
2 regarding the Company’s collection of BAYC NFTs and were induced to purchase  
3 and/or continue to hold Yuga securities as a result of these misleading promotions.

4           205. On December 21, 2021, Defendant Broadus posted a picture of BAYC  
5 NFT#6723, the primates corresponding M1 and M2 Mutant Apes along with Bored  
6 Ape Kennel Club Dog #894 to his 20+ million Twitter followers.<sup>154</sup> Broadus further  
7 stated: “And a huge shout out 2 to @moonpay @isotowright @C\_Broadus21 and  
8 @j1mmyeth for making it happen and bringing The Who familia together.”<sup>155</sup>  
9 Broadus boasted about BAYC a month later, calling BAYC “a cultural juggernaut”  
10 and requesting to join its advisory board so they could elevate the NFT “game to tha  
11 [sic] next level.”<sup>156</sup>

12           206. Plaintiffs saw the promotions from Broadus regarding the Company’s  
13 collection of BAYC NFTs and were induced to purchase and/or continue to hold  
14 Yuga securities as a result of these misleading promotions. Indeed, Broadus’  
15 promotion was particularly influential on Plaintiffs’ decision to purchase given  
16 Broadus’ status as a savvy investor in NFTs. Broadus notably refers to himself as  
17 the “King of NFTs” on social media.<sup>157</sup>

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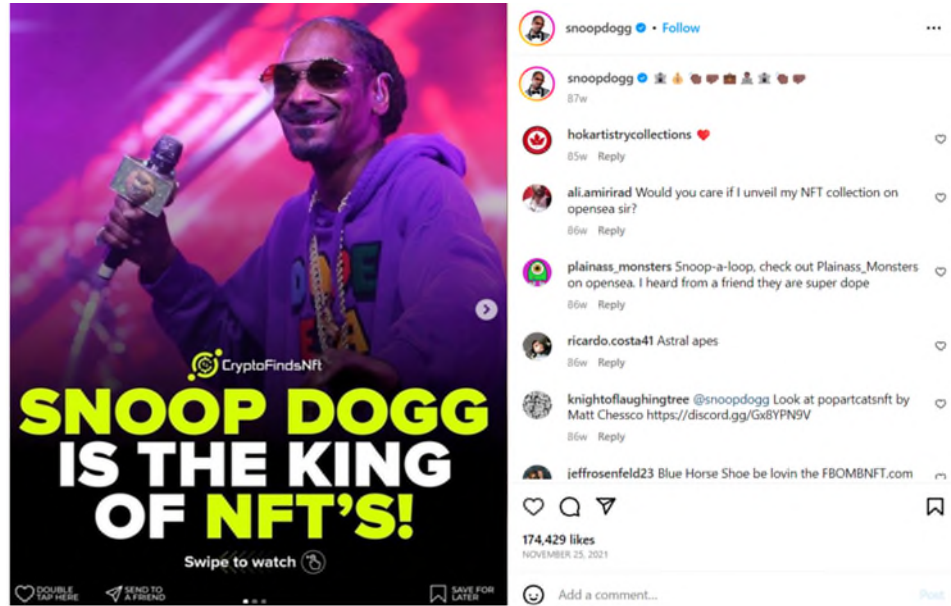
<sup>154</sup> Snoop Dogg (@SnoopDogg), TWITTER (Dec. 21, 2021 10:57 AM),  
23 <https://twitter.com/SnoopDogg/status/1473367017172393987>.

24 <sup>155</sup> Snoop Dogg (@SnoopDogg), TWITTER (Dec. 21, 2021 1:57 PM),  
25 ([https://twitter.com/SnoopDogg/status/1473367019542265858?s=20&t=1AVE0gdv  
m1Zm3hKnJ4w5bg](https://twitter.com/SnoopDogg/status/1473367019542265858?s=20&t=1AVE0gdvm1Zm3hKnJ4w5bg)).

26 <sup>156</sup> Snoop Dogg (@SnoopDogg), TWITTER (Jan. 21, 2022 9:58 AM),  
27 <https://twitter.com/SnoopDogg/status/1484586102182727682>.

28 <sup>157</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (Nov. 25, 2021),  
[https://www.instagram.com/p/CWt0yclrFgw/?img\\_index=1](https://www.instagram.com/p/CWt0yclrFgw/?img_index=1).

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207. In addition, as of March 1, 2022, Defendant Broadus promoted his BAYC “Dr. Bombay” to his more than 80 million Instagram followers.<sup>158</sup>



208. Defendant Broadus also acquired intellectual property rights through the Company and used his BAYC “Dr. Bombay” to personally profit from it. Beginning

<sup>158</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (Mar. 1, 2022), <https://www.instagram.com/p/Cakx-4HvpG6/?hl=en>.

1 on April 1, 2022, Broadus posted numerous photos to his Instagram account  
2 promoting Dr. Bombay-branded merchandise such as apparel, marijuana, an album  
3 cover, and even ice cream.<sup>159</sup>

4 209. Broadus continued promoting his BAYC “Dr. Bombay” throughout  
5 April, May, June, and July 2022,<sup>160</sup> including an April 29, 2022 video posted right  
6 before Otherside NFT minting, as the price was about to increase, which garnered  
7 nearly half a million views on Instagram.<sup>161</sup>

8 210. Other Dr. Bombay augmented reality videos posted by Defendant  
9 Broadus to his Instagram account, as a means to promote the expansive ability to use  
10 the avatar across other platforms, also garnered millions of views. For example, a  
11 May 8, 2022 Dr. Bombay video acquired 1.4 million Instagram views,<sup>162</sup> a May 15,  
12  
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14 <sup>159</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (Apr. 1, 2022),  
15 [https://www.instagram.com/p/Cb0plnqOd-B/?img\\_index=1](https://www.instagram.com/p/Cb0plnqOd-B/?img_index=1); Snoop Dogg  
16 (@SnoopDogg), INSTAGRAM (Apr. 5, 2022),  
17 <https://www.instagram.com/p/Cb9kSU2OGIB/?hl=en>; Snoop Dogg (@SnoopDogg),  
18 INSTAGRAM (Apr. 20, 2022), <https://www.instagram.com/p/CcjuCJQFLYQ/?hl=en>;  
19 Snoop Dogg (@SnoopDogg), INSTAGRAM (June 21, 2022),  
<https://www.instagram.com/p/CfE7Y2tOw92/?hl=en>; Snoop Dogg (@SnoopDogg),  
INSTAGRAM (June 30, 2022), [https://www.instagram.com/p/Cfb\\_4RXJtyI/?hl=eN](https://www.instagram.com/p/Cfb_4RXJtyI/?hl=eN).

20 <sup>160</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (May 26, 2022),  
21 <https://www.instagram.com/p/CeA1HoHLAHH/?hl=en>; Snoop Dogg  
22 (@SnoopDogg), INSTAGRAM (May 29, 2022),  
<https://www.instagram.com/p/CeIb9mlucXd/?hl=en>; Snoop Dogg (@SnoopDogg),  
23 INSTAGRAM (June 2, 2022), <https://www.instagram.com/p/CeU3IFMJCxb/?hl=en>;  
24 Snoop Dogg (@SnoopDogg), INSTAGRAM (June 17,  
25 2022), <https://www.instagram.com/p/Ce7gRsdrdcs/?hl=en>; Snoop Dogg  
26 (@SnoopDogg), INSTAGRAM (July 7, 2022),  
[https://www.instagram.com/p/CfuVBsql\\_tt/?hl=en](https://www.instagram.com/p/CfuVBsql_tt/?hl=en).

26 <sup>161</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (April 29, 2022),  
27 [https://www.instagram.com/p/Cc8pLB\\_pp7k/?hl=en](https://www.instagram.com/p/Cc8pLB_pp7k/?hl=en).

28 <sup>162</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (May 8, 2022),  
<https://www.instagram.com/p/CdTAbSplaRM/?hl=en>.



1 2022 video acquired over one million views;<sup>163</sup> a June 3, 2022 video acquired over  
2 1.7 million views;<sup>164</sup> and a June 5, 2022 video acquired over 1.9 million views.<sup>165</sup>

3 211. Defendant Broadus also posted numerous photos of himself to his  
4 Instagram followers wearing Dr. Bombay apparel at many high-profile events, such  
5 as his performance at Charger’s Draft Fest 2022 at SoFi Stadium;<sup>166</sup> a May 7, 2022  
6 performance in Miami Beach, Florida;<sup>167</sup> a May 14, 2022 performance in Las Vegas,  
7 Nevada;<sup>168</sup> at the June 5, 2022 MTV Movie Awards in Los Angeles, California;<sup>169</sup>  
8 and during a July 17, 2022 performance at Law-di-Gras in Carlsbad, California.<sup>170</sup>

9 212. In addition, Defendant Broadus’s Instagram account is flooded with  
10 photos of him wearing Dr. Bombay apparel and posing alongside fellow celebrity  
11 friends.<sup>171</sup>

12  
13 <sup>163</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (May 15, 2022),  
[https://www.instagram.com/p/Cdkv\\_tKFYCV/?hl=en](https://www.instagram.com/p/Cdkv_tKFYCV/?hl=en).

14 <sup>164</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (June 3, 2022),  
15 <https://www.instagram.com/p/CeVDPmUIGRH/?hl=en>.

16 <sup>165</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (June 5, 2022),  
<https://www.instagram.com/p/Ceb-8obFc6y/?hl=en>.

17 <sup>166</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (April 29, 2022),  
18 <https://www.instagram.com/p/Cc7vnzXroby/?hl=en>.

19 <sup>167</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (May 7, 2022),  
<https://www.instagram.com/p/CdQhoLNO-MH/?hl=en>.

20 <sup>168</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (May 14, 2022),  
21 <https://www.instagram.com/p/Cdj0kd7JyTz/?hl=en>.

22 <sup>169</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (June 5, 2022),  
<https://www.instagram.com/p/CecRhnzvxya/?hl=en>.

23 <sup>170</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (July 17, 2022),  
<https://www.instagram.com/p/CgILPhspwrC/?hl=en>.

24 <sup>171</sup> Snoop Dogg (@SnoopDogg), INSTAGRAM (May 14, 2022),  
25 [https://www.instagram.com/p/Cdj\\_RGdrDvl/?hl=en](https://www.instagram.com/p/Cdj_RGdrDvl/?hl=en); Snoop Dogg (@SnoopDogg),  
26 INSTAGRAM (May 14, 2022), <https://www.instagram.com/p/CdkAT9Jr0MV/?hl=en>;  
27 Snoop Dogg (@SnoopDogg), INSTAGRAM (May 15, 2022),  
<https://www.instagram.com/p/Cdkfzfou9Gg/?hl=en>; Snoop Dogg (@SnoopDogg),  
28 INSTAGRAM (May 15, 2022), <https://www.instagram.com/p/CdmIR1bv5bP/?hl=en>;



1           213. According to Court documents filed in the *Ripps* matter, Broadus was  
2 paid “around \$1 million” to perform as a Bored Ape at the MTV Video Music awards  
3 in 2022.<sup>172</sup>

4           214. While Defendant Broadus and other Promoter Defendants were publicly  
5 promoting the Bored Ape ecosystem and soliciting sales of the Yuga Financial  
6 Products, other Company insiders were also furthering the manipulative scheme to  
7 sale the unregistered Yuga Financial Products. For example, a February 15, 2022  
8 article titled “FTX’s Amy Wu: How Crypto and Gamers Can All Get Along”<sup>173</sup>  
9 described Defendant Wu as a “prominent investor in gaming startups, [who] recently  
10 jumped from Lightspeed Ventures to FTX to lead the crypto giant’s new \$2 billion  
11 Web3 venture fund – a position that will entail spreading bets from FTX’s war chest  
12 across new trends in gaming.” Wu explained that she believed “[t]he fun is actually  
13 around the game mechanics and tokenomics of the game, right? *There’s [sic] ways*  
14 *to make like 100x or 500x return on the token . . . .* And that’s sort of the focus of a  
15 lot of these games, and so *it attracts a certain type of player, which tends to be*  
16 *traders that are looking at the game as kind of like almost like a financial*  
17 *instrument.*”<sup>174</sup> Wu’s “[c]ryptocurrency exchange FTX will funnel a chunk of its

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19 \_\_\_\_\_  
20 Snoop Dogg (@SnoopDogg), INSTAGRAM (June 5, 2022),  
21 <https://www.instagram.com/p/CecCzHuPyY-/?hl=en>; Snoop Doog (@SnoopDogg),  
22 INSTAGRAM (June 6, 2022), <https://www.instagram.com/p/CedEbJ4ui2p/?hl=en>;  
23 Snoop Dogg (@SnoopDogg), INSTAGRAM (June 24, 2022),  
24 <https://www.instagram.com/p/CfNbn7vsDMW/?hl=en>; Snoop Dogg  
25 (@SnoopDogg), INSTAGRAM (June 25, 2022),  
26 <https://www.instagram.com/p/CfQKqrTL9ZI/?hl=en>.

27 <sup>172</sup> Elle Reeve, *Snoop Dogg, his ape and a question of celebrity hype*, CNN  
28 BUSINESS (Apr. 7, 2023), <https://www.cnn.com/2023/04/07/business/snoop-dogg-bored-apes/index.html>.

<sup>173</sup> Jeff John Roberts, *FTX’s Amy Wu: How Crypto and Gamers Can All Get Along*, DECRYPT (Feb. 15, 2022), <https://decrypt.co/92929/ftx-vc-amy-wu-how-crypto-nft-gamers-can-get-along>.

<sup>174</sup> *Id.*

1 growing war chest into a new venture capital arm, FTX Ventures, the firm announced  
2 today. The \$2 billion VC fund will be led by Amy Wu, previously General Partner at  
3 Lightspeed Venture Partners.”<sup>175</sup>

4 215. Wu previously led Lightspeed’s own investment into FTX, plus FTX  
5 and Lightspeed teamed up with Solana Ventures in November 2021 to launch a \$100  
6 million Web3 gaming co-investment fund. In working with FTX founder and CEO  
7 Sam Bankman-Fried, who she described as an “extraordinary CEO,” Wu began to  
8 see the potential benefits of joining the rising firm. “When I look at what company  
9 could potentially have the most impact in the industry, but then also in the world,”  
10 she told Decrypt, “I think FTX is one of the most impactful that I’ve had the pleasure  
11 of working with.”<sup>176</sup>

12 216. On February 18, 2022, FTX Ltd (“FTX”) posted a teaser commercial for  
13 its now-bankrupt cryptocurrency exchange, which featured Defendant Curry and an  
14 ice sculpture of a Bored Ape. Curry can be seen brushing off flakes of ice from the  
15 unmistakable features of the BAYC NFTs. FTX posted this teaser on its official  
16 Twitter account with the following caption alluding to the BAYC NFTs: “When  
17 learning about crypto, you’ll be anything but bored.”<sup>177</sup>

18 217. BAYC retweeted FTX’s post as “cool as ice,” tagging both FTX and  
19 Defendant Curry.<sup>178</sup>

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22 <sup>175</sup> Andrew Hayward, *FTX Launches \$2 Billion Web3 Venture Fund Led by*  
23 *Lightspeed’s Amy Wu*, DECRYPT (Jan. 14, 2022), [https://decrypt.co/90409/ftx-](https://decrypt.co/90409/ftx-launches-2-billion-web3-venture-fund-led-lightspeed-amy-wu)  
24 [launches-2-billion-web3-venture-fund-led-lightspeed-amy-wu](https://decrypt.co/90409/ftx-launches-2-billion-web3-venture-fund-led-lightspeed-amy-wu).

25 <sup>176</sup> *Id.*

26 <sup>177</sup> FTX (@FTX\_Official), TWITTER (Feb. 18, 2022, 10:18 AM),  
[https://twitter.com/FTX\\_Official/status/1494738098034458630?s=20&t=L-3ieebP](https://twitter.com/FTX_Official/status/1494738098034458630?s=20&t=L-3ieebPKlMIdev5LsTbcw)  
27 [KlMIdev5LsTbcw](https://twitter.com/FTX_Official/status/1494738098034458630?s=20&t=L-3ieebPKlMIdev5LsTbcw).

28 <sup>178</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Feb. 18, 2022, 2:07 PM),  
<https://twitter.com/BoredApeYC/status/1494795754568929282>.

1 218. Plaintiffs saw the off-brand promotion from Defendant Curry regarding  
2 the Company’s collection of BAYC NFTs and were induced to purchase and/or  
3 continue to hold Yuga securities as a result of this misleading promotion.

4 219. On May 12, 2022, Defendant Winkelman posted an original piece of art  
5 created by him, promoting the image of a Bored Ape and citing to “Yuga Labs” in  
6 the caption.<sup>179</sup> This was one of several such promotions of the Bored Ape ecosystem  
7 by Winkelman. In fact, on one occasion on August 22, 2022, Winkelman went so far  
8 as to offer 1,000 ApeCoin tokens to 200 of his followers on Twitter as part of a  
9 promotional contest.<sup>180</sup>

10 220. On March 16, 2022, the Company and BAYC announced the formation  
11 of the ApeCoin DAO<sup>181</sup> and the launch of the ApeCoin Token<sup>182</sup> as the “official  
12 currency of the BAYC ecosystem.”<sup>183</sup> BAYC stated that ApeCoin would be available  
13 “to all” and was “expected to begin trading on major crypto exchanges.”<sup>184</sup> BAYC  
14 explained that the Yuga would be “gifting ApeCoin DAO as a 1/1 NFT featuring a  
15 blue version of the BAYC logo,” and “[t]his NFT transfers full IP rights of the  
16 derivative logo to the ApeCoin DAO, who will decide how the IP should be used.”<sup>185</sup>  
17 Further, 15% of the total supply of ApeCoin would be made available to BAYC and

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19 <sup>179</sup> Beeple (@beeples), TWITTER (Mar. 12, 2022),  
<https://twitter.com/beeples/status/1502824275929088006>.

20 <sup>180</sup> Beeple (@beeples), TWITTER (Aug. 22, 2022),  
<https://twitter.com/beeples/status/1561703958854475777>.

21 <sup>181</sup> A “DAO” refers to a decentralized autonomous organization, sometimes called  
22 a decentralized autonomous corporation. It is an entity that claims to have no central  
23 leadership, and is collectively owned and managed by their members.

24 <sup>182</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06 PM),  
<https://twitter.com/BoredApeYC/status/1504202508633362436>.

25 <sup>183</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06 PM),  
<https://twitter.com/BoredApeYC/status/1504202511837806598>.

26 <sup>184</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06 PM),  
<https://twitter.com/BoredApeYC/status/1504202515805573123>.

27 <sup>185</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06 PM),  
28 <https://twitter.com/BoredApeYC/status/1504202512877948930>.

1 MAYC NFT holders<sup>186</sup> and 62% of the total ApeCoin supply would be “allocated to  
2 the ApeCoin Community.”<sup>187</sup> BAYC then directed its followers to visit apecoin.com  
3 to learn more details.<sup>188</sup>

4 221. As part of that Ape DAO announcement, Defendant Ohanian stated:  
5 “Today we’re making the ‘Club’ bigger with ApeCoin . . . . Web3 is being integrated  
6 into our art, music, and culture more and more everyday and it all starts with  
7 community. I believe this community will build, expand, partner, and disrupt in a  
8 massive way.”<sup>189</sup>

9 222. Defendant Wu posted a picture of an BAYC NFT with the following  
10 thread on her official Twitter account: “So honored to join the @apecoin DAO board,  
11 launched today along with the \$APE token.”<sup>190</sup> “Love or hate NFTs, they have  
12 captured the consumer imagination and continue to be on the onboarding ramp for  
13 the mainstream into web3. @BoredApeYC is leading the way as the #1 NFT brand,  
14 becoming a household name and building the next gen “Disney” of our  
15 generation.”<sup>191</sup> “@BoredApeYC has led innovation on IP frameworks, like giving  
16 NFT holders full commercial rights to their IP without a royalty. This has accelerated  
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18 <sup>186</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06 PM),  
19 <https://twitter.com/BoredApeYC/status/1504202514815721472>.

20 <sup>187</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06 PM),  
21 <https://twitter.com/BoredApeYC/status/1504202513834201088>.

22 <sup>188</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06 PM),  
23 <https://twitter.com/BoredApeYC/status/1504202516736663561>.

24 <sup>189</sup> Kate Irwin, *ApeCoin Launches for Bored Ape Ethereum NFT Holders with  
25 Reddit, FTX, Animoca Execs on Board*, DECRYPT (Mar. 16, 2022),  
26 [https://decrypt.co/95282/apecoin-ape-launches-for-bored-apes-nft-holders-with-  
27 reddit-ftx-animoca-on-board](https://decrypt.co/95282/apecoin-ape-launches-for-bored-apes-nft-holders-with-reddit-ftx-animoca-on-board).

28 <sup>190</sup> Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), <https://twitter.com/amytongwu/status/1504238389737967622?s=20&t=bdw9Sbdaq71NFK8gF6oQqg>.

<sup>191</sup> Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), <https://twitter.com/amytongwu/status/1504238391323418628?s=20&t=bdw9Sbdaq71NFK8gF6oQqg>.

1 awareness rather than leaked value.”<sup>192</sup> “More NFT brands are being minted, creating  
2 hybrid entertainment and retail empires, licensing their IP and creating 1st and 3rd  
3 party merchandise, games, shows, etc. and using hybrid web2/web3 marketing  
4 playbooks, leveraging and creating celebrity, and creating culture.”<sup>193</sup> “I’m  
5 absolutely honored to play a supporting role with @FTX\_Official in the future of  
6 @ApeCoin DAO at the nexus of culture, gaming, entertainment. LFG! 🚀🚀👤”<sup>194</sup>

7 223. Additionally, a combined search of Etherscan and OpenSea shows that  
8 a wallet owned/controlled by Defendant Ciccone received BAYC NFT #4988  
9 directly from MoonPay. This transaction did not involve a purchase by Ciccone but  
10 rather the NFT was simply transferred to her wallet address  
11 0x8ea95Bdc5cDddC0b7EbAd841F0c1f2cA6168b6a9 (the “Ciccone Wallet”).  
12 According to Etherscan and OpenSea, on March 14, 2022, the MoonPay Wallet first  
13 paid 180 ether for BAYC NFT #4988, which at the time was the equivalent \$466,461.  
14 On March 23, 2022, the MoonPay wallet sent BAYC NFT #4988 to wallet address  
15 0x6ef962ea7e64e771d3a81bce4f95328d76d7672b (which appears to have been used  
16 as a pass-through wallet).<sup>195</sup> Finally, six weeks later, BAYC NFT #4988 was sent to  
17 Ciccone’s wallet on May 7, 2022.<sup>196</sup> Ciccone received an NFT worth almost a half  
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19 <sup>192</sup> Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), <https://twitter.com/amytongwu/status/1504238392149745664>.

20 <sup>193</sup> Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), <https://twitter.com/amytongwu/status/1504238394007764992>.

21 <sup>194</sup> Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM),  
22 <https://twitter.com/amytongwu/status/1504238394892771333>.

23 <sup>195</sup> Transaction Hash: 0xdf3b1b59de370deb5f6105600df55650e3e24cd10127a33  
24 f93145b3ca038ac2d, ERC-721: 4988, ETHERSCAN (Mar. 23, 2022, 11:49 AM),  
25 <https://etherscan.io/tx/0xdf3b1b59de370deb5f6105600df55650e3e24cd10127a33f93145b3ca038ac2d>.

26 <sup>196</sup> Transaction Hash: 0x8935a6169a603b0cc3899c0b98fb40501f6c2a708dc  
27 c4e03cdd89d6944eb5b70, ERC-721: 4988, ETHERSCAN (May 7, 2022, 7:44 AM),  
28 <https://etherscan.io/tx/0x8935a6169a603b0cc3899c0b98fb40501f6c2a708dcc4e03cdd89d6944eb5b70>.



1 million dollars from MoonPay for nothing except her statements promoting Yuga  
2 securities.

3 224. Transactions within the Ciccone Wallet also reveal that Defendant  
4 Ciccone received Otherdeed #4988 directly from the Otherside deployer wallet  
5 0x8ea95bdc5cdddc0b7ebad841f0c1f2ca6168b6a9 (the “Otherside Wallet”) on May  
6 16, 2022.<sup>197</sup>

7 225. The Ciccone Wallet also received 100 plots of virtual land in Otherside  
8 on August 5, 2022.<sup>198</sup>

9 226. But there are no free lunches and these were not simple gifts. Rather,  
10 upon information and belief, MoonPay was an indirect way for Oseary and the  
11 Executive Defendants to pay Ciccone to promote and/or solicit sales and re-sales of  
12 the Yuga securities.

13 227. An examination of BAYC NFT transactions in the wallet by Ciccone in  
14 conjunction with her social media accounts shows that she received this particularly  
15 rare and valuable BAYC NFT #4988 before she promoted BAYC to would-be  
16 investors. Shortly after MoonPay acquired BAYC NFT #4988 for Ciccone, on March  
17 24, 2022, Ciccone posted the following promotion of the BAYC and its related  
18 metaverse to her Twitter account.<sup>199</sup>

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22 <sup>197</sup> Transaction Hash: 0x62300078ce92be1784e81e65cd0421a552e7f7  
23 0f1b4931e63f87285086c3c6e6, ERC-721: 4988, ETHERSCAN (May 16, 2022, 5:43  
24 PM), <https://etherscan.io/tx/0x62300078ce92be1784e81e65cd0421a552e7f70f1b4931e63f87285086c3c6e6>.

25 <sup>198</sup> Transaction Hash: 0xcbfb3291091e6dc1e80577526e90dfdf2a438a96  
26 03a313989c4833d8d978bc5d, ETHERSCAN (Aug. 5, 2022, 10:54 AM),  
27 <https://etherscan.io/tx/0xcbfb3291091e6dc1e80577526e90dfdf2a438a9603a313989c4833d8d978bc5d>.

28 <sup>199</sup> Madonna (@Madonna), TWITTER (Mar. 24, 2022, 7:30 PM),  
<https://twitter.com/Madonna/status/1507183071551971330>.



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228. Plaintiffs saw the promotion from Ciccone regarding the Company’s collection of BAYC NFTs and were induced to purchase and/or continue to hold Yuga securities as a result of this misleading promotion.

229. Neither MoonPay nor Ciccone disclosed that Ciccone’s manager and business partner Oseary had a financial interest in MoonPay and, relatedly, the increased sale of BAYC NFTs. Further, Ciccone failed to include an “ad” disclaimer in this post to disclose to investors that this was a paid advertisement for the BAYC collection of NFTs and MoonPay (as opposed to a genuine expression of interest in the BAYC collection or gratitude to the MoonPay Defendants for assisting in her “enter[ing] the Metaverse”).

230. MoonPay responded to Ciccone’s tweet, stating that the company chose BAYC NFT #4988 for Ciccone because “we heard it call your name and it felt like home.”<sup>200</sup>

<sup>200</sup> MoonPay (@moonpay), TWITTER (Mar. 25, 2022, 1:29 AM), <https://twitter.com/moonpay/status/1507273486737281024?lang=en>.

1           231. Ciccone’s promotion of the BAYC NFTs and its related metaverse  
2 implied to investors that she personally selected her BAYC NFT because she was  
3 genuinely interested in the BAYC ecosystem and wanted to be a part of its growing  
4 future. But given MoonPay’s statement, it appears that, in truth, Ciccone did not even  
5 bother to choose her BAYC NFT herself, but rather it was selected for her by  
6 MoonPay, thus demonstrating that her enthusiasm for the collection of BAYC NFTs  
7 was fake.

8           232. In the following weeks, Ciccone further promoted BAYC in several  
9 news outlets, including *Variety* magazine and the London newspaper *The*  
10 *Independent*. For example, in the July 27, 2022 issue of *Variety* magazine – which  
11 featured Defendant Oseary on the cover with the tagline that stated “Music Mogul of  
12 the Year – NFT King: Madonna and U2 Manager Guy Oseary is Leveraging His  
13 Success to Become the Next Great Tech Whisperer” – Ciccone insisted that she ““was  
14 hellbent on getting an Ape and really specific about what I wanted: the Ape with a  
15 leather motorcycle cap on and multicolored teeth.””<sup>201</sup> Ciccone went on to state: ““I  
16 was told that it was inspired by me, and modeled after me, and it was bought by a  
17 woman who’s a fan of mine. She was gonna sell it to me, but it was way too  
18 expensive.””<sup>202</sup>

19           233. Then, on July 28, 2022, *The Independent* published an article titled: ““I  
20 was hellbent on getting an Ape’: Madonna annoyed she didn’t get the NFT character  
21 she wanted.””<sup>203</sup> In addition to echoing the statements from the *Variety* magazine

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23 <sup>201</sup> Shirley Halperin, *From Maverick to Mogul, Madonna’s Manager Guy Oseary*  
24 *Transcends the Music World to Take on NFTs*, VARIETY (July 27, 2022),  
25 [https://variety.com/2022/music/news/guy-oseary-nft-madonna-u2-manager-123532](https://variety.com/2022/music/news/guy-oseary-nft-madonna-u2-manager-1235325286/)  
26 [5286/](https://variety.com/2022/music/news/guy-oseary-nft-madonna-u2-manager-1235325286/).

27 <sup>202</sup> *Id.*

28 <sup>203</sup> Peony Hirwani, *‘I was hellbent on getting an Ape’: Madonna annoyed she*  
*didn’t get the NFT character she wanted*, THE INDEPENDENT (July 28, 2022),  
[https://www.independent.co.uk/arts-entertainment/music/news/madonna-angry-](https://www.independent.co.uk/arts-entertainment/music/news/madonna-angry-bored-ape-nft-b2132950.html)  
[bored-ape-nft-b2132950.html](https://www.independent.co.uk/arts-entertainment/music/news/madonna-angry-bored-ape-nft-b2132950.html).

1 interview, *The Independent* reported that the “63-year-old singer has revealed that  
2 she was quite ‘mad’ over being beaten to a bid for Bored Ape No 3756.”<sup>204</sup>

3 234. Defendant Ciccone’s statements about her inability to obtain the BAYC  
4 NFT that was her first choice misleadingly suggested to investors that the Yuga  
5 securities were in such high demand and so exclusive that even a highly-connected  
6 celebrity like Defendant Ciccone could not get any specific NFT that she wanted.  
7 Likewise, Ciccone’s statement that she wanted to buy a particular BAYC NFT but  
8 did not because it was “too expensive” indicated to investors that the BAYC NFT  
9 were highly valuable such that one of the most successful and iconic pop singers in  
10 the world could not afford to enter the exclusive club on her own terms. These  
11 statements were made to induce investors into believing that the Yuga securities were  
12 investments that held extraordinary value, growth potential, and would provide future  
13 financial opportunities. Indeed, Plaintiffs saw the various promotions from  
14 Defendants Ciccone, Oseary, and the MoonPay Defendants regarding the Company’s  
15 collection of BAYC NFTs and were induced to purchase and/or continue to hold  
16 Yuga securities as a result of this misleading promotion.

17 235. In addition to promoting the large number of A-list celebrities like  
18 Ciccone that purportedly “joined the club” (*i.e.*, purchased a BAYC NFT), Oseary  
19 used his own personal Twitter account to promote BAYC NFTs.

20 236. Oseary’s Twitter feed is littered with promotions for BAYC NFTs and  
21 other Yuga Financial Products. For example, on January 20, 2022, Oseary promoted  
22 a tweet from Serena Williams that posted her BAYC NFT (which she received from  
23 her husband, Defendant Ohanian, who also happens to be a member of the Ape DAO  
24 board of directors).<sup>205</sup> That same day, Oseary similarly promoted a tweet from  
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26 <sup>204</sup> *Id.*

27 <sup>205</sup> Serena Williams (@serenawilliams), TWITTER (Jan. 20, 2022, 5:41 AM),  
28 <https://twitter.com/serenawilliams/status/1484159217791647751?s=20&t=iNbPm5RANQEugkz3Orziw>.

1 professional soccer player Neymar da Silva Santos, Jr. that said: “I am an ape!  
2 #community #art #BoredApeYC.”<sup>206</sup> Notably, not only did these promotions take  
3 place on the same day within a few hours, but both BAYC NFTs promoted by Oseary,  
4 Williams, and Neymar were the rare “pink” Bored Apes, which were more valuable  
5 and indicate a common source of origin.

6 237. Plaintiffs saw the promotions from Defendants Oseary and Ohanian  
7 regarding the Company’s collection of BAYC NFTs and were induced to purchase  
8 and/or continue to hold Yuga securities as a result of these misleading promotions.

9 238. The individual Executive Defendants, under the guise of anonymity,  
10 also fraudulently promoted the Yuga securities.

11 239. For example, on April 21, 2021, Defendant Solano promoted the growth  
12 potential for the BAYC ecosystem (which could only be accessed through the  
13 purchase of a BAYC NFT), stating: “The Bored Ape Yacht Club is more than just an  
14 #NFT collection – the NFT grants access to a collaborative art experiment in the form  
15 of a canvas only token-holders can draw on.”<sup>207</sup> This statement was misleading in  
16 that it suggested to investors that there would be a broader ecosystem for BAYC NFT  
17 holders to interact in and that the BAYC brand was poised for significant growth,  
18 when, in truth, the BAYC NFTs were just a vehicle to make insiders rich at the  
19 expense of investors.

20 240. The next day, April 22, 2021, Solano again touted BAYC NFTs,  
21 claiming that these NFTs “double as membership cards to an exclusive club with  
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25 <sup>206</sup> Neymar Jr (@neymarjr), TWITTER (Jan. 20, 2022, 10:24 AM),  
26 <https://twitter.com/neymarjr/status/1484230264293318663?s=20&t=iNbPm5RANQEpugkz3Orziw>.

27 <sup>207</sup> Garga.eth (Greg Solano), TWITTER (Apr. 21, 2021, 8:34 PM),  
28 <https://twitter.com/CryptoGarga/status/1385074598241243138?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

1 benefits” and soliciting investors to participate in the BAYC NFT pre-sale on April  
2 23, 2021.<sup>208</sup>

3 241. On August 21, 2021, Defendant Aronow bragged “Not bad for a high  
4 school dropout” in response to a post that said “Don’t look now but #BAYC Market  
5 Cap just crossed a BILLION.”<sup>209</sup> This exchange gave investors the false impression  
6 that BAYC NFTs were a sound investment experiencing organic growth that were  
7 poised to continue growing, when in fact the price and volume was inflated due to  
8 manipulative trading strategies.

9 242. The scheme to promote the BAYC NFTs is not the first time Aronow  
10 has been accused of attempting to mislead investors. In May 2021, a crypto company  
11 called Bitmex took Aronow to arbitration over a disputed domain name in the action  
12 *HDR Global Trading Limited v. Aronow*, Claim No. FA2104001943672. According  
13 to the complaint, Aronow had bought the domain name bitmex.guru in 2018, which  
14 Bitmex argued was clearly designed to trick people looking for the real Bitmex  
15 website. Aronow did not appear, and the arbitrator ordered that the domain name be  
16 transferred after his default in the proceeding.

17 243. The Company itself also solicited sales at various events like “ApeFest  
18 2021” which was held in New York on November 3, 2021 as an exclusive event for  
19 only BAYC or MAYC NFT owners.<sup>210</sup> Significantly, Yuga’s ApeFest 2021 event  
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23 <sup>208</sup> Garga.eth (Greg Solano), TWITTER (Apr. 22, 2021, 3:16 PM),  
24 <https://twitter.com/CryptoGarga/status/1385356793862397953?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

25 <sup>209</sup> GordonGoner.eth (Wylie Aronow) (@GordonGoner), TWITTER (Apr. 21,  
26 2021, 12:32 AM),  
27 <https://twitter.com/gordongoner/status/1428938116535042049?lang=en>.

28 <sup>210</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Oct. 28, 2021 7:26 PM),  
<https://twitter.com/BoredApeYC/status/1453911020137816068>.



1 was sponsored and promoted by MoonPay,<sup>211</sup> which promoted an ApeFest ticket  
2 giveaway to Twitter followers.<sup>212</sup> NFT artist, Oseary associate, and Defendant  
3 Winkelmann also promoted the ApeFest 2021 event on his Twitter account.<sup>213</sup>

4 244. Likewise, MoonPay also directly solicited sales of Yuga securities. For  
5 example, on January 11, 2022, MoonPay promoted the BAYC Miami Competition  
6 and posted the following picture of a joint MoonPay x BAYC mural on its Twitter  
7 account:<sup>214</sup>



20 <sup>211</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 3, 2021),  
21 <https://twitter.com/BoredApeYC/status/1456143639634071556?s=20&t=g1mRpxWbWmWNzjxw385m2A>; MoonPay (@moonpay), TWITTER (Nov. 1, 2021, 10:49  
22 AM), <https://twitter.com/moonpay/status/1455230583702003724?s=20&t=vrAWh eqx4E0TSLTJj9xpIA>.

23 <sup>212</sup> MoonPay (@MoonPay), TWITTER (Nov. 1, 2021, 10:49 AM),  
24 <https://twitter.com/moonpay/status/1455230583702003724>.

25 <sup>213</sup> Beeple (@beeples), TWITTER (Nov. 3, 2021, 8:49 PM),  
26 <https://twitter.com/beeples/status/1456106243391623168?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

27 <sup>214</sup> MoonPay (@moonpay), TWITTER (Jan 11, 2022, 6:29 AM),  
28 [https://twitter.com/moonpay/status/1480909703387484165?s=20&t=4E\\_x-F8TZi8Sorr7QZls0g](https://twitter.com/moonpay/status/1480909703387484165?s=20&t=4E_x-F8TZi8Sorr7QZls0g).



1           245. In addition to the mural of a Bored Ape with the MoonPay and Yuga  
2 corporate logos, the posted image contained a QR code that, if scanned, directed  
3 investors to the MoonPay website. On the landing page it states: “Crypto just got  
4 easy. A fast and simple way to buy and sell crypto” and there is a button stating, “Buy  
5 crypto.”<sup>215</sup>

6           246. In the midst of the celebrity promotions, Defendant Soto-Wright  
7 conducted a written Q&A interview with media outlet, The Block. Soto-Wright  
8 falsely described the creation of the Concierge service as first spreading via word of  
9 mouth among artists, stating: “So I helped one artist figure it out. They told another  
10 who then asked for help. Word started to spread.” Soto-Wright later falsely  
11 described it as an accident, stating “A really happy accident I’d say. 100%  
12 organic.”<sup>216</sup>

13           247. When asked to confirm whether celebrities were not paid to promote  
14 MoonPay, Soto-Wright demurred, vaguely stating: “Everyone that uses MoonPay  
15 Concierge has a commercial relationship with the company in the sense that this is a  
16 commercial service we offer our clients. We provide the support and then we invoice  
17 for services rendered.” In a follow-up to a question on what fees are charged to  
18 concierge clients, Soto-Wright even more vaguely responded that “[w]e’re focused  
19 on delivering value to our clients. And I think our growing list of MoonPay concierge  
20 clients agrees.”<sup>217</sup>

21           248. The promotional efforts by Oseary, the Executive Defendants, the  
22 MoonPay Defendants, and the Promoter Defendants (as well as the celebrity  
23 recruitment and solicitation efforts occurring behind the scenes with Oseary, the  
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25 <sup>215</sup> See <https://www.moonpay.com/>.

26 <sup>216</sup> Ryan Weeks, ‘A really happy accident’: MoonPay boss sheds light on how the  
27 startup is shepherding big-ticket NFT purchases, THE BLOCK (Dec. 24, 2021),  
[https://www.theblock.co/post/128517/moonpay-boss-on-how-the-startup-is-](https://www.theblock.co/post/128517/moonpay-boss-on-how-the-startup-is-guiding-celebs-into-nfts)  
28 [guiding-celebs-into-nfts.](https://www.theblock.co/post/128517/moonpay-boss-on-how-the-startup-is-guiding-celebs-into-nfts)

<sup>217</sup> *Id.*

1 MoonPay Defendants, and Defendant Adidas) were effective at increasing the  
2 popularity of, and interest in, the BAYC NFTs. Following these promotional  
3 activities, the floor price and trading volume for BAYC NFTs exploded. On April  
4 30, 2022, the day of the BAYC metaverse launch, the floor price for BAYC NFTs  
5 reached the maximum price of 144.9 ether (at the time was worth approximately  
6 \$395,000), which represents an 145% increase from its floor price of 49.5 ether at the  
7 start of the Class Period. Trading volume also spiked to 12,698 ether on April 30,  
8 2022 – up almost 280% from the 3345 ether trading volume at the start of the Class  
9 Period.

### 10 **The ApeCoin Token Sale**

11 249. As investor interest in the BAYC NFTs and broader ecosystem was  
12 reaching a fevered pitch, Yuga and its founders Defendants Aronow and Solano  
13 launched the ApeCoin token (“APE”) in an effort to cash in further on the misleading  
14 promotional schemes. This was a pure cash grab by those Defendants cloaked in the  
15 air of altruistically giving back to the BAYC community of investors.

16 250. Defendants enriched themselves and other insiders with billions of  
17 dollars of APE Coins. 80 million APE (8%) went to the BAYC founders, Defendants  
18 Solano, Aronow, Atalay and Ali. 150 million APE (15%) went to the Company. 140  
19 million APE (14%) went to “launch contributors” made up of Company partners and  
20 investors, including investors Andreessen Horowitz and Animoca Brands. 150  
21 million APE (15%) went to holders of the BAYC, MAYC, and BAKC NFTs. 1  
22 million APE (1%) went to the Jane Goodall Legacy Foundation. The remaining 470  
23 million APE (47%) went to the ApeCoin DAO treasury, of which Executive  
24 Defendants Solano, Aronow, Atalay, Ali, the Company, and their investors and  
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1 partners maintain considerable influence over through the voting rights granted by  
2 their hundreds of millions of ApeCoins.<sup>218</sup>

3 251. Much like a stock issuance, Defendants thus issued themselves  
4 exorbitant amounts of ApeCoin that would grant themselves voting rights to  
5 influence and control any decision surrounding ApeCoin. In addition, Defendants,  
6 through the Company, the Ape DAO, and the Ape Foundation (the ApeCoin DAO's  
7 Board) would promote and market the token.

8 252. ApeCoin reached an all-time high of over \$26 before plummeting to  
9 approximately \$1.77 per coin in August 2023.<sup>219</sup> The Company, its founders, and its  
10 investors' allotment of 230 million total ApeCoins it issued to themselves were thus  
11 worth about \$6 billion at ApeCoin's all time high, and is currently still worth more  
12 than \$410 million, even with prices reaching an all time low in August 2023.

13 253. In an attempt to shield the Company, its executives, and Oseary from  
14 liability related to the solicitation and sale of the unregistered securities, Oseary  
15 formed the ApeCoin DAO, the Ape Foundation, and the Ape DAO Board (which was  
16 governed and controlled by the Ape Foundation). An Ape Foundation subcommittee  
17 served as the ApeCoin DAO's board, which consisted of Ape DAO Board  
18 Defendants Alexis Ohanian, Amy Wu, Maaria Bajwa, and non-Defendants Yat Siu  
19 and Dean Steinbeck.<sup>220</sup> Executive Defendants and Ape DAO Defendants used used  
20 their influence and ApeCoin voting rights to pay themselves exorbitant salaries of  
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22 <sup>218</sup> *What is ApeCoin (APE)*, BITSTAMP LEARN, (Nov. 16, 2022),  
23 <https://www.bitstamp.net/learn/cryptocurrency-guide/what-is-apecoin-ape/>;  
24 *ApeCoin is rewarding Bored Ape insiders with billions of dollars*, QUARTZ (Mar. 23,  
25 2022), [https://qz.com/2145867/apecoin-has-padded-the-pockets-of-bored-ape-](https://qz.com/2145867/apecoin-has-padded-the-pockets-of-bored-ape-insiders)  
26 [insiders](https://qz.com/2145867/apecoin-has-padded-the-pockets-of-bored-ape-insiders).

25 <sup>219</sup> *ApeCoin*, COINGECKO (last visited Aug. 3, 2023),  
26 <https://www.coingecko.com/en/coins/apecoin>.

27 <sup>220</sup> Will Gottsegen, *What is ApeCoin and Who Is Behind It?*, COINDESK (Mar. 18,  
28 2022), [https://www.coindesk.com/layer2/2022/03/18/what-is-apecoin-and-who-is-](https://www.coindesk.com/layer2/2022/03/18/what-is-apecoin-and-who-is-behind-it/)  
[behind-it/](https://www.coindesk.com/layer2/2022/03/18/what-is-apecoin-and-who-is-behind-it/).

1 over \$20,000 per month using the 470 million Coin in the Ape DAO treasury to  
2 further cash in on their scheme at the expense of retail investors.<sup>221</sup>

3 254. Put another way, Oseary – with the assistance of the Executive  
4 Defendants and Ape DAO Board Defendants – created the Ape Foundation and Ape  
5 DAO Board in order to maintain the “vener of plausible deniability — an  
6 independent entity allocating tokens to a company and its founders, rather than that  
7 company and its founders pumping their own investments.”<sup>222</sup>

8 255. But according to a July 25, 2022 article, “What is ApeCoin and Who is  
9 Behind This Cryptocurrency?,” it is the Company (not the foundation, DAO, or its  
10 board) that is “responsible for all major projects and acquisitions related to the Bored  
11 Ape Yacht Club family. If you want to do something with the intellectual property  
12 of the collection, you have to go through the company.” Within that article, Muniz  
13 is quoted as having plans to “adopt ApeCoin as the primary currency for all new  
14 products and services,” which, as the article notes, “ties the asset’s value to the  
15 success of the Bored Ape collection as one all.”<sup>223</sup>

16 256. On March 16, 2022, Ape DAO Board Defendants announced the  
17 impending launch of ApeCoin, releasing the following statements on the verified  
18 ApeCoin Twitter account, which, upon information and belief, is owned/controlled  
19 by Ape DAO Board Defendants:

- 20 • “Introducing ApeCoin (\$APE), a token for culture, gaming, and  
21 commerce used to empower a decentralized community building at the  
22 forefront of web3.”<sup>224</sup>

23  
24 <sup>221</sup> Michael (@MiKeMeUpP), TWITTER (Jun. 11, 2023, 9:18 AM).  
25 <https://twitter.com/MiKeMeUpP/status/1667929299033407488>

26 <sup>222</sup> *Id.*

27 <sup>223</sup> *Id.*

28 <sup>224</sup> ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM),  
<https://twitter.com/apecoin/status/1504201556165644298?s=20&t=iudEUt2QH4GUHTXCQ0maNg>.

- 1 • “ApeCoin is owned and operated by the ApeCoin DAO, a decentralized  
2 organization where each token holder gets to vote on governance and  
3 use of the Ecosystem Fund. Holding ApeCoin is the only requirement  
4 for membership in the ApeCoin DAO.”<sup>225</sup>
- 5 • “The DAO is supported by Ape Foundation, which was created to act as  
6 the legal steward of ApeCoin and administer the decisions made by the  
7 ApeCoin DAO community. (Basically someone needs to sign the  
8 checks.)”<sup>226</sup>
- 9 • “62% of the total supply of ApeCoin is allocated to the ApeCoin  
10 community, a portion of which (15% of total supply) will be available  
11 to claim starting tomorrow at 8:30 am ET.”<sup>227</sup>
- 12 • “The airdrop claim consisting of 15% of the total supply of ApeCoin  
13 will be made available to @BoredApeYC NFT holders (Bored Apes and  
14 Mutant Apes, as well as #BAKC dogs paired with either #BAYC or  
15 #MAYC).”<sup>228</sup>
- 16 • “*For everyone else who wants to ape in: ApeCoin will be available to*  
17 *all and is expected to begin trading on major crypto exchanges ASAP.*  
18 *We’ll tweet as that happens!*”<sup>229</sup>

19 257. On that same day, Yuga’s official Twitter proclaimed: “We’re excited  
20 to announce we’re adopting ApeCoin as the primary token for the Bored Ape Yacht  
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22 <sup>225</sup> ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM),  
<https://twitter.com/apecoin/status/1504201557147070465>.

23 <sup>226</sup> ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM),  
24 <https://twitter.com/apecoin/status/1504201557914664962>.

25 <sup>227</sup> ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), <https://twitter.com/apecoin/status/1504201558917095427>.

26 <sup>228</sup> ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), <https://twitter.com/apecoin/status/1504201559781089280>.

27 <sup>229</sup> ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), <https://twitter.com/apecoin/status/1504201560624185346>.

1 Club ecosystem as well as future products and services.”<sup>230</sup> Yuga coordinated  
2 ApeCoin’s adoption by various influencers and brands and highlighted that adoption  
3 on its Twitter page.

4 258. Yuga advertised that ApeCoin would be the ecosystem’s governance  
5 token, allowing ApeCoin holders to participate in the ApeCoin DAO by voting “on  
6 how the Ecosystem Fund will be distributed by the APE Foundation to promote a  
7 diverse and self-sustaining ecosystem.”<sup>231</sup>

8 259. Yuga also advertised that ApeCoin would also provide “access to certain  
9 parts of the ecosystem that are otherwise unavailable, such as exclusive games,  
10 merch, events, and services.”<sup>232</sup>

11 260. The day after the ApeCoin launch, March 17, 2022, Ape DAO  
12 Defendant Bajwa provided instructions to investors like Plaintiffs and the Class on  
13 how to review their ApeCoin token airdrop allocation.<sup>233</sup>

14 261. According to the Yuga Labs Pitch Deck that, upon information and  
15 belief, was used to secure the funding for Yuga, the Company and the Executive  
16 Defendants had made staggering profits off of the sales of the Yuga Financial  
17 Products in 2021, and the focus for 2022 would be on the Company’s entrance to the  
18 metaverse and online gaming.

19 262. The Yuga Labs Pitch Deck signaled the importance of the celebrity  
20 endorsements, bragging that “[c]elebrities are buying Apes to signal that they know  
21 what’s up.”<sup>234</sup> The Yuga Labs Pitch Deck also introduced ApeCoin, stating

22 \_\_\_\_\_  
23 <sup>230</sup> Yuga Labs (@yugalabs), TWITTER (Mar. 16, 2022 2:08 PM),  
<https://twitter.com/yugalabs/status/1504202913694031884?s=20>.

24 <sup>231</sup> *ApeCoin DAO Governance*, APECOIN.COM (last visited Aug. 3, 2023),  
<https://apecoin.com/governance>.

25 <sup>232</sup> *About ApeCoin: ApeCoin Protocol*, APECOIN.COM (last visited Aug. 3, 2023),  
26 <https://apecoin.com/about>.

27 <sup>233</sup> Maaria.eth (@maariabajwa), TWITTER (Mar. 17, 2022 9:57 AM),  
<https://twitter.com/maariabajwa/status/1504502258716725278?s=20>.

28 <sup>234</sup> *Yuga Labs Pitch Deck*, at \*16.



1 “APECoin will be the currency of our metaverse. One unifying coin with which to  
 2 power our app store like marketplace.”<sup>235</sup>

3 263. Yuga planned for the Otherside MetaRPG to launch with a land sale.  
 4 These virtual plots of land would purportedly “corresponded to real land” in the Yuga  
 5 game.<sup>236</sup> In order to increase demand for its ApeCoin token, Yuga announced that  
 6 these virtual plots of land could be purchased only with ApeCoin tokens.

7 264. The Yuga Labs Pitch Deck stated:

- 8 • The MetaRPG will be made up of 200k land plots total; all launched
- 9 through Animoca.
- 10 • Genesis drop will be 100k plots.
  - 11 ○ 30% of that will go to BAYC/MAYC, leaving ~70k for
  - 12 public sale (and then another 100k in follow up drop).
  - 13 ○ The conservative estimate for the land price is 1 ETH each
  - 14 plot = \$200M in primary sales for the genesis drop
  - 15 alone.<sup>237</sup>

16 265. The Yuga Pitch Deck also provided the following income statement:<sup>238</sup>

Income Statement		\$ IN MILLIONS	
	Budget 2022	Actual 2021	
Total Revenue	\$ 539.30	\$ 137.58	
Cost of Goods Sold	6.49	6.23	
Gross Profit	\$ 532.81	\$ 131.35	
Profit %	98.8%	95.5%	
<b>Expense</b>			
Advertising and Community Building	15.25	2.03	
Product and Technology	37.06	0.19	
Payroll and Benefits	17.10	0.06	
Legal and Professional	3.20	0.64	
Other Expenses	5.00	1.32	
Total Expense	\$ 77.61	\$ 4.24	
Net Revenue	\$ 465.20	\$ 127.11	
Net Revenue %	84.4%	92.4%	

26 <sup>235</sup> *Id.*, at \*62-\*64.

27 <sup>236</sup> *Id.*, at \*73.

28 <sup>237</sup> *Id.*, at \*74.

<sup>238</sup> *Id.*, at \*85.

1           266. Notably, Yuga’s expenses for “Advertising and Community Building”  
2 in 2021 was \$2,030,000, whereas the budget for 2022 was \$15,250,000. This massive  
3 650% increase in expenditures for promotions occurred right around the same time  
4 that Defendant Oseary joined the Company as a minority partner.

5           267. ApeCoin is touted as the main cryptocurrency of the BAYC ecosystem  
6 and, its sales exploded as a result of Defendants’ promotional efforts.

7           268. For example, on March 16, 2022, the official ApeCoin Twitter account  
8 posted the following statement: “Introducing ApeCoin (\$APE), a token for culture,  
9 gaming, and commerce used to empower a decentralized community building at the  
10 forefront of web3.” The BAYC Twitter account replied to this statement. So did the  
11 Company’s official account along with a caption that stated: “We’re excited to  
12 announce we’re adopting ApeCoin as the primary token for the Bored Ape Yacht  
13 Club ecosystem as well as future Yuga products and services.”<sup>239</sup> Similarly, on March  
14 16, 2022 and March 17, 2022, the ApeCoin Twitter promoted the ApeCoin token  
15 claim allocated for BAYC NFT holders. Yuga’s COO, Defendant Shoemaker,  
16 amplified these promotions by disseminating them all through her own Twitter  
17 account “@SodaOps.” In fact, Shoemaker consistently reposts the solicitations and  
18 misleading statements from the main BAYC, Otherside, ApeCoin, and Yuga Twitter  
19 accounts. For example, Shoemaker amplified the Company’s March 11, 2022  
20 promotion of Yuga’ acquisition of the CryptoPunks and Meetbits NFT collections.  
21 Shoemaker also shared the April 23, 2022 promotions from the Company’s Otherside  
22 Twitter account related to the Otherdeed mint. During late May/early June of 2022,  
23  
24

25 <sup>239</sup> ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM),  
26 [https://twitter.com/apecoin/status/1504201556165644298?s=20&t=oYZDBOcdZ4](https://twitter.com/apecoin/status/1504201556165644298?s=20&t=oYZDBOcdZ4V1im5Ls9qmRg)  
27 [V1im5Ls9qmRg](https://twitter.com/apecoin/status/1504201556165644298?s=20&t=oYZDBOcdZ4V1im5Ls9qmRg); Yuga Labs (@yugalabs), TWITTER (Mar. 16, 2022, 2:08 PM),  
28 [https://twitter.com/yugalabs/status/1504202913694031884?s=20&t=oYZDBOcdZ4](https://twitter.com/yugalabs/status/1504202913694031884?s=20&t=oYZDBOcdZ4V1im5Ls9qmRg)  
[V1im5Ls9qmRg](https://twitter.com/yugalabs/status/1504202913694031884?s=20&t=oYZDBOcdZ4V1im5Ls9qmRg).

1 Shoemaker repeatedly promoted marketing messages from the BAYC Twitter  
2 account for ApeFest 2022.

3 269. After just one day of trading, the Ethereum-based ApeCoin had a market  
4 capitalization of almost \$2 billion.

5 270. Upon information and belief, as the Company, Executive Defendants,  
6 MoonPay Defendants, and Promoter Defendants were engaged in the aforementioned  
7 fraudulent promotions, Defendant Adidas, along with assistance of the MoonPay  
8 Defendants and the Executive Defendants, were engaging with other celebrities,  
9 influencers, and tastemakers behind the scenes to recruit them into the conspiracy to  
10 solicit and sell the Yuga securities through MoonPay.

11 271. On or about March 17, 2022, celebrity jeweler and social media  
12 influencer Ben “Baller” Yang made a stunning disclosure regarding the promotion of  
13 Yuga securities by the Company, the MoonPay Defendants, and Defendant Adidas,  
14 confirming their collective participation in the fraudulent scheme concocted by  
15 Oseary and the Executive Defendants. In a now-deleted Twitter Spaces live video,  
16 which was memorialized in a YouTube video discussing Ripps’ troubling claims  
17 regarding the Company and its founders Defendants Solano, Aronow, Atalay, and  
18 Ali and their use of subliminal BAYC NFT collection’s purportedly racist imagery,<sup>240</sup>  
19 Yang describes his own personal experience with the conspiracy as follows:

20 **[Yang]:** “Real talk, not once, not twice, three times I’ve been offered a  
21 Bored Ape through MoonPay. I’ve had Adidas hit me up in my DMs  
22 on Instagram: “Hey Ben, do you want to co-host a space with us? Oh  
23 do you own a Bored Ape?” No I fucking don’t. . . . I don’t know what  
24 it was but the fact that some of these super top tier all-star NBA players  
25 have them, and I was like this is all cap.<sup>241</sup> I mean, there was an NDA  
26 they tried to send my agent . . .

27 **[Other Speaker]:** There’s definitely NDAs in everything they do. . . .

28 <sup>240</sup> Phillion, *BORED APE NAZI CLUB*, YOUTUBE (June 19, 2022),  
<https://www.youtube.com/watch?v=XpH3O6mnZvw>.

<sup>241</sup> The term “cap” is slang for an exaggeration or outright lie.

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[Yang]: But what I’m saying if I was to accept one of the Bored Apes...

[Other Speaker 2]: They want you to not disclose that they had purchased the Ape for you.

[Yang]: Exactly, yeah. You know what the craziest thing about that is that a lot of celebrities who are going into this are probably just stoked to get the ape and they don’t even realize a lot of them probably a lot of them don’t consult their legal and shit like that beforehand. **But they are actually asking you to commit fraud on their behalf.**<sup>242</sup>

272. Yang’s account of the MoonPay scheme is corroborated by another social media influencer, Canadian DJ Vivie-Ann Bakos, known professionally as BLOND:ISH. Beginning January 8, 2022, Bakos began posting her praise and support of MoonPay and BAYC, and thanked MoonPay’s “concierge” service.<sup>243</sup>

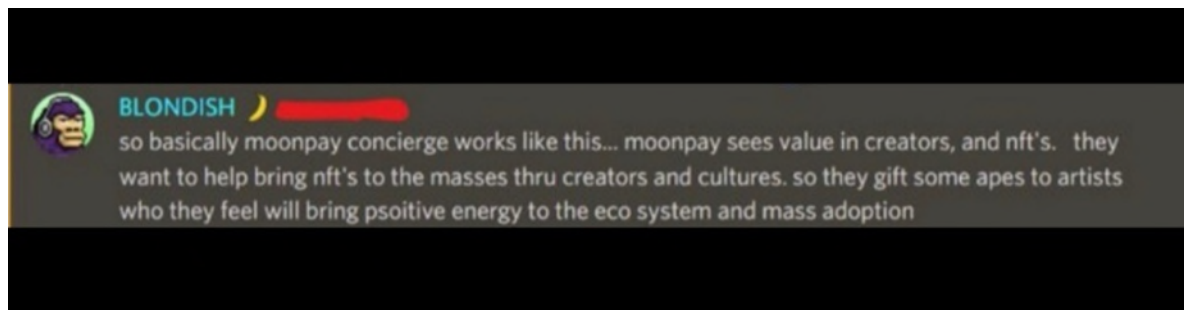


<sup>242</sup> Philion, *supra* n.240, at 50:40-51:53.

<sup>243</sup> BLONDISH (@blond\_ish), TWITTER (Jan. 8, 2022 10:27 AM), [https://twitter.com/blond\\_ish/status/1479882505658507269?s=20](https://twitter.com/blond_ish/status/1479882505658507269?s=20).

1           273. Bakos continued to promote MoonPay and the BAYC NFT collection  
2 in January 2022. For example, on January 27, 2022, Bakos replied to a MoonPay  
3 promotional announcement for its NFT Checkout with “Tothemoonpay.”<sup>244</sup> That  
4 same day Bakos also promoted the BAYC NFT collection, tagging MoonPay investor  
5 and actress Gwyneth Paltrow and announcing that it was “🧘 🧠 time for an ape  
6 meditation collab.”

7           274. More significantly, Bakos explained the MoonPay scheme in a message  
8 on Discord,<sup>245</sup> admitting that “they gift some apes to artists.” Bakos noted that the  
9 purpose of the scheme was meant to promote “mass adoption” of the Bored Ape  
10 NFTs:



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17           275. Media reports have likewise confirmed the allegations of improper  
18 celebrity promotion on the part of MoonPay. On June 9, 2022, *The Block* reported  
19 that MoonPay presented top celebrities Bored Ape Yacht Club NFTs as gifts in the  
20 hope of boosting its profile. Two people with direct knowledge of the matter told  
21 *The Block* that MoonPay did give at least some of the celebrities the Bored Ape NFTs  
22 without expecting payment. While a MoonPay spokesperson said that it charged its  
23 celebrity clients “in full for the price of the NFTs,” another spokesperson declined to  
24

25 <sup>244</sup> BLONDISH (@blond\_ish), TWITTER (Jan. 27, 2022 6:08 AM),  
26 [https://twitter.com/blond\\_ish/status/1486702564943007752](https://twitter.com/blond_ish/status/1486702564943007752).

27 <sup>245</sup> See ZachXBT (@zachxbt), TWITTER (Jan. 18, 2022 3:49 PM),  
28 <https://twitter.com/zachxbt/status/1483587376043769859?s=20> (posting a  
screenshot of Bakos’ Discord statement).

1 comment further when pressed on exactly when invoices were sent and whether all  
2 MoonPay’s clients paid their bills.<sup>246</sup>

3 276. As Defendant Soto-Wright previously admitted, the “hardest thing to  
4 solve” when building a new company was “getting those customers on your  
5 platform.”<sup>247</sup> Confidential Witness 1’s disclosures, combined with the revelations  
6 from Bakos and Baller, demonstrate that Soto-Wright (with the assistance of Adidas)  
7 resorted to fraud to solve this problem for MoonPay and Yuga. And much like  
8 Sotheby’s knowingly directly promoted and facilitated the first scheme to sell  
9 unregistered BAYC NFTs to investors, MoonPay knowingly promoted and  
10 facilitated the second scheme to misleadingly offer and solicit sales of BAYC NFTs  
11 via the MoonPay platform.

12 277. Yuga’s NFT and ApeCoin schemes positioned it to raise capital and  
13 launch another financial product: so-called virtual land NFTs or Otherdeeds.  
14 Specifically, on March 22, 2022, the Company announced that it closed its Series  
15 Seed funding round, led by a host of venture capital firms that had direct ties to Yuga,  
16 including, but not limited to, Andreessen Horowitz’s a16z crypto fund (Defendant  
17 Lyons), Sound Ventures (Defendant Oseary), SevenSevenSix (Defendant Ohanian),  
18 Artist Capital Management (funded by Ape DAO board member Steinbeck’s firm  
19 Horizen Labs, which also operated the ApeCoin staking program for Yuga), Hashed  
20 (funded by Animoca Brands, which itself was purchased by Yuga), Lightspeed  
21 Ventures (Defendant Wu formerly served as a Lightspeed Ventures partner before  
22 leaving to join FTX Ventures), and FTX Ventures (Defendant Wu served as the web3  
23 investment leader before stepping down from both FTX Ventures and the Ape DAO  
24

25 <sup>246</sup> Ryan Weeks, *Crypto hype machine MoonPay gifted Hollywood celebs Bored*  
26 *Apes to promote itself: sources*, THE BLOCK (June 9, 2023),  
27 [https://www.theblock.co/post/233594/moonpay-gave-hollywood-celebs-bored-apes-to-promote-itself?utm\\_source=twitter&utm\\_medium=social](https://www.theblock.co/post/233594/moonpay-gave-hollywood-celebs-bored-apes-to-promote-itself?utm_source=twitter&utm_medium=social).

28 <sup>247</sup> MIXERGY.COM, *supra* n.32.



1 Board within days of the FTX collapse). Yuga brought in another \$450 million  
2 during this round. The announcement also revealed its metaverse virtual land project,  
3 Otherside.<sup>248</sup>

4 278. The announcement contained the following statements from Defendants  
5 Muniz, Lyons, and Oseary, respectively:

6 “Already, a new economy is possible with the IP of Apes, Punks,  
7 and Meebits, owned by the community,” said Nicole Muniz, CEO of  
8 Yuga Labs. “The possibilities for blockchain’s impact on culture are  
9 endless, and so we are building a beautiful, interoperable world for  
people to explore and play in. There’s a lot to come.”

10 “Yuga Labs has quickly become a web3 culture, gaming, and  
11 entertainment empire,” said Chris Lyons, general partner at a16z  
12 crypto. “Mainstream adoption in web3 is accelerating at lightning  
13 speed, and Yuga is at the forefront of merging culture and innovation  
14 for everyone to enter the metaverse. We’re thrilled to invest in this  
brilliant team and their vision, and help forge the next frontier of  
community-owned entertainment.”

15 “This capital will give Yuga speed to market on many things underway,  
16 and bring in new partners with strategic thinking that share the vision,”  
17 said Yuga Labs partner Guy Oseary.<sup>249</sup>

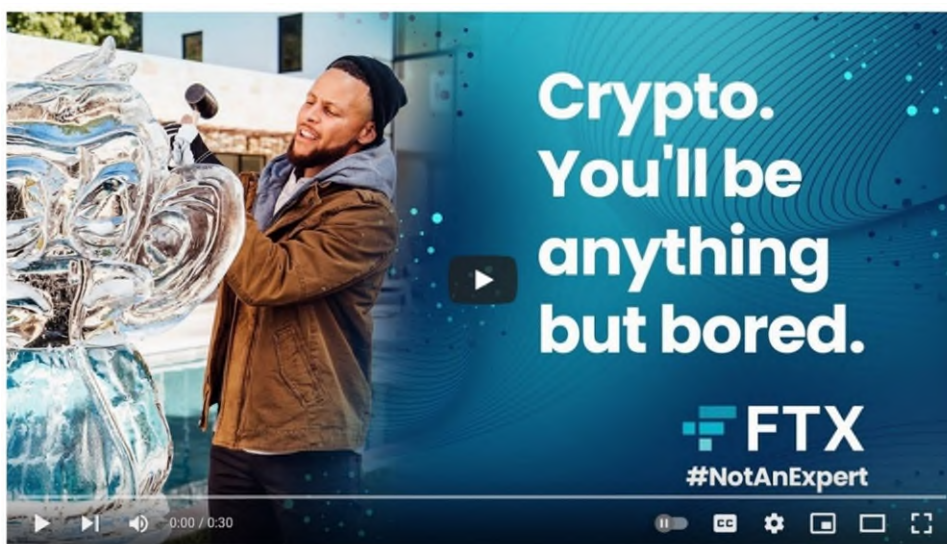
18 279. On March 27, 2022, Defendant Ohanian promoted ApeCoin tokens and  
19 the Bored Ape Yacht Club brand in conjunction with the 2022 Academy Awards  
20 show, posting a picture of an ApeCoin cufflink and the following text:  
21 “#OSCARS2022 MUST-HAVE RED CARPET ACCESSORY  
22  
23

24 \_\_\_\_\_  
25 <sup>248</sup> Press Release, *Yuga Labs Closes \$450 Million Seed Round of Funding,*  
26 *Valuing the Company at \$4 Billion; Confirms Plans for Metaverse Project*, BUSINESS  
27 WIRE (Mar. 22, 2022), <https://www.businesswire.com/news/home/20220322006088/en/Yuga-Labs-Closes-450-Million-Seed-Round-of-Funding-Valuing-the-Company-at-4-Billion-Confirms-Plans-for-Metaverse-Project>.

28 <sup>249</sup> *Id.*

1 @BOREDAPEYACHTCLUB.<sup>250</sup> Ohanian posted pictures of himself and Serena  
2 Williams on the red carpet at the Oscars and close up pictures of his ApeCoin  
3 cufflinks.<sup>251</sup>

4 280. On March 29, 2022 FTX uploaded the full commercial with Defendant  
5 Curry to its official YouTube channel.<sup>252</sup> While the commercial itself was for FTX,  
6 there were multiple not-so-hidden references to the BAYC collection of NFTs.  
7 Notably, the thumbnail of the video prominently features Curry and the Bored Ape  
8 sculpture:



19 281. The slogan for this campaign also contained the same BAYC reference  
20 (i.e. “bored”) that was in the teaser commercial. The commercial itself showed Curry  
21 in various “everyday” activities while a narrator harasses Curry for advice about  
22

23 <sup>250</sup> Alexis Ohanian (@alexisohanian), TWITTER (Mar. 27, 2022, 2:53 PM),  
24 <https://twitter.com/alexisohanian/status/1508200457214201858?s=20&t=We5UwwM3WMDYkGHgb3jgZg>.

25 <sup>251</sup> *Id.*; see also Chris Katje, *Here’s How Alexis Ohanian Sported The Bored Ape*  
26 *Yacht Club at The Oscars*, BENZINGA (Mar. 28, 2022), <https://www.benzinga.com/markets/cryptocurrency/22/03/26328054/heres-how-alexis-ohanian-sported-the-bored-ape-yacht-club-at-the-oscars2>.

27 <sup>252</sup> FTX Official, *Steph Curry Is Not a Crypto Expert*, YOUTUBE (Mar. 29, 2022),  
28 <https://www.youtube.com/watch?v=gsy2N-XI04o>.

1 cryptocurrency and what tokens to buy. The most significant of these segments is  
2 when Curry can be seen working on an ice sculpture of a Bored Ape. While it is  
3 unclear whether other NFT projects are being referenced in this commercial, it is  
4 obvious that Curry is concurrently promoting BAYC NFTs given the unmistakable  
5 similarity to the art style of the BAYC NFT collection and the ice sculpture that Curry  
6 is working on. This promotion did not include any disclosure or disclaimer  
7 concerning the connection between FTX and Yuga (via Defendants Wu or  
8 Sotheby's), who had significant overlapping financial interests. Instead, the  
9 commercial encouraged uninformed investors to invest into digital assets like the  
10 BAYC NFTs, while at the same time giving a "wink" disclaimer that this was not  
11 financial advice to attempt to provide Curry with plausible deniability regarding his  
12 promotion of the Yuga Financial Products.

13 282. Defendant Curry also directly promoted BAYC NFT #7990 as his social  
14 media profile picture. The NFT itself was transferred to wallet address  
15 0x3becf83939f34311b6bee143197872d877501b11, which is labeled "SC30." Upon  
16 information and belief, this wallet is owned or controlled by either Defendant Curry  
17 or Curry's investment company "SC30" (or both). According to OpenSea, BAYC  
18 NFT #7990 was transferred to a wallet that has been publicly labeled as "SC30."<sup>253</sup>

19 283. Plaintiffs saw Curry's thinly-veiled promotion of the collection of  
20 BAYC NFTs in the FTX commercial, as well as Curry's promotion of Yuga securities  
21 on his social media account. Plaintiffs were induced to purchase and/or continue to  
22 hold Yuga securities as a result of this misleading promotion.

23 284. Approximately one month later, on April 26, 2022, Defendant Oseary  
24 submitted a proposal to the Ape DAO titled: "AIP Idea: Guy Oseary as ApeCoin  
25 Representative," which essentially requested that Oseary be given up to 1% of the

26 \_\_\_\_\_  
27 <sup>253</sup> *Bored Ape Yacht Club #7990*, OPENSEA, [https://opensea.io/assets/eth](https://opensea.io/assets/ethereum/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d/7990)  
28 [ereum/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d/7990](https://opensea.io/assets/ethereum/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d/7990) (last visited Dec. 4, 2022).

1 Ecosystem Fund as a slush fund for him to “utilize on behalf of the APE  
2 Foundation.”<sup>254</sup> The proposal is listed below:

3 ABSTRACT

4 This document proposes to make me, Guy Oseary, a  
5 representative of ApeCoin. This role will make it my job to support  
6 ApeCoin through impactful partnerships and initiatives. I will not  
7 receive any payment for my services.

8 \* \* \*

9 Web3 is more than just digital. The coin that will power your  
10 metaverse experience will also be powering your real-life experience.  
11 You could earn ApeCoin in the metaverse and use it as payment to  
12 attend a show by your favorite artist. Pay for a hotel with it one day and  
13 meet your friends there virtually. We are at the very early days here.  
14 Keeping ApeCoin solely in the metaverse would limit it.

15 ***The request is for an allocation of 1% of the Ecosystem Fund  
16 for me to spend strategically on opportunities and partnerships that  
17 benefit the brand and community.*** These initiatives could include – but  
18 are not limited to – events, partnerships, and projects across gaming,  
19 TV, film, and music. ***To execute on this successfully, it is important  
20 for me to be able to engage in individual negotiations discreetly,  
21 driving more favorable terms and costs that result in higher ROI.***

22 RATIONALE

23 To promote a diverse and self-sustaining ecosystem, ApeCoin  
24 should be so ubiquitous that it’s part of mainstream culture. It’s my core  
25 belief that ApeCoin can lead the way in bringing more people,  
26 companies, and brands to web3, and that we can do so in an inclusive  
27 way that reflects the ApeCoin DAO values.

28 A LITTLE ABOUT ME

My experience in working with brands across entertainment and  
tech allows me to be uniquely positioned to make strategic decisions  
and leverage my network to close exceptional deals for ApeCoin.

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<sup>254</sup> Guy Oseary (@guyoseary), *AIP Idea: Guy Oseary as ApeCoin Representative*, APECOIN.COM (Apr. 26, 2022), <https://forum.apecoin.com/t/aip-idea-guy-oseary-as-apecoin-representative/5153>.

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I am an entrepreneur, tech investor, and talent manager. As a teen, I started my career as an A&R executive and later as a partner in Maverick Records. We sold over 100 million albums before selling the company to Warner Music.

I've been working with and supporting artists ever since — for over 30 years now. My passion and personal interests over the last few decades have placed me at the intersection of entertainment and tech. I've been investing with my partner and friend Ashton Kutcher, who is also my co-founder in A-Grade Investments, Sound Ventures, and Sound Ventures Blockchain. Our early-stage investments include Airbnb, Uber, Spotify, Calm, Robinhood, Gitlab, Duolingo, Superrare, Opensea, and many others.

*I am also currently working with or a partner with some of the best NFT talent, including Bored Ape Yacht Club, Mutant Ape Yacht Club, CryptoPunks, Meebits, World of Women, Sandbox, Pixel Vault, Beeple, and 10KTF.*

Empowering artists and protecting them from day 1 has been a priority for me. Today, one of the most powerful tools to enable that is web3. *I was fortunate to be one of the contributors to ApeCoin.* Like you, I was inspired by this amazing community and I've been supporting it from the moment I understood how far it can go. I want it to succeed and I'm incentivized to do all that I can to ensure that it does.

**SPECIFICATIONS**

Up to 1% of the Ecosystem Fund as a budget for me to utilize on behalf of the APE Foundation.

- This will only be spent on purchases and deals that directly benefit the APE Foundation.
- Any ROI gained from deals I make will go back into the Ecosystem Fund.
- Any ApeCoin from this budget that is not used during the specified period will be returned to the Ecosystem Fund.
- I will not receive any payment for my services.
- I will consult with the Board about potential deals.



- 1 • Details on all purchases and deals that I make will be made
- 2 fully available to the ApeCoin DAO community after the fact
- 3 via quarterly transparency reports that detail how much was
- 4 spent, on what, and why.
- This is separate from the budgets allocated in AIP-3.

5 STEPS TO IMPLEMENT

- 6 1. Cartan to set up a separate Coinbase account and transfer 1% of
- 7 the Ecosystem Fund.
- 8 2. Set up the account so that one of the ApeCoin DAO Board
- 9 members must approve transactions.
3. Execute commercial services agreement with Ape Foundation.

10 TIMELINE

11 This would go into effect immediately if this AIP passes and

12 would last until the next fiscal calendar closes at the end of 2023.

13 OVERALL COST

14 Up to 1% of the Ecosystem Fund, from when the proposal passes

15 through Dec 31, 2023.<sup>255</sup>

16 285. On April 27, 2022, Defendant Adidas promoted Phase 2 of the joint

17 BAYC and Adidas collaboration of Adidas Metaverse NFTs.<sup>256</sup> The NFT featured a

18 moving image of a Bored Ape avatar wearing a yellow Adidas tracksuit. The back

19 of the image prominently featured the Company’s BAYC logo. According to the

20 Adidas “Frequently Asked Questions” for the “Metaverse” section of its website,

21 investors in Adidas x BAYC Into the Metaverse NFTs were entitled to claim

22 “physical products designed in collaboration with adidas Originals [and] Bored Ape

23

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26 <sup>255</sup> *Id.*

27 <sup>256</sup> *adidas Originals: into the Metaverse (Phase 2)*, OPENSEA,

28 [https://opensea.io/assets/ethereum/0x28472a58a490c5e09a238847f66a68a47cc76f0](https://opensea.io/assets/ethereum/0x28472a58a490c5e09a238847f66a68a47cc76f0f/1)  
f/1 (last visited Dec. 4, 2022).



1 Yacht Club” as a part of Phase 2.<sup>257</sup> Adidas created a false sense of urgency with the  
2 purchase of the Adidas Metaverse NFTs by putting a time limit on claiming the  
3 Adidas x BACY physical products. Investors only had from April 28, 2022 to May  
4 18, 2022 to claim these BAYC-related products.<sup>258</sup> According to the website, “If you  
5 have an Into the Metaverse NFT, then claiming the physical merch is completely  
6 free.”<sup>259</sup>

7 286. On April 30, 2022, a few days after the Adidas promotion and Oseary’s  
8 proposal, the Company minted the virtual land for its Otherside metaverse. Within  
9 24 hours, Yuga, Oseary, the Executive Defendants, and the Ape DAO Board  
10 Defendants generated more than \$561 million from Otherside’s “Otherdeed” NFT  
11 sales. Each Otherdeed NFT is meant to be the “key to claiming land” in Otherside  
12 and its metaverse game.

13 287. Some 55,000 NFTs were minted at 305 APE each, which means each  
14 Otherdeed cost about \$5,800 given ApeCoin’s price (approximately \$19) at time of  
15 mint. Yuga raked in over \$318.7 million from this mint alone. To add insult to injury,  
16 the minting process itself was poorly planned and executed, resulting in investors  
17 having to pay over approximately \$8,000 in Ethereum gas fees, making the true cost  
18 being around \$13,000 per Otherdeed.

19 288. According to data from *CryptoSlam*, Otherdeed has already seen over  
20 \$242 million in total secondary volume traded. Of that figure, over \$190 million was  
21 on OpenSea.<sup>260</sup>

22  
23  
24 <sup>257</sup> *FAQ: Physical Product Claims*, ADIDAS.COM (last visited Aug. 3, 2023),  
25 <https://www.adidas.com/metaverse/faq>.

26 <sup>258</sup> *Id.*

27 <sup>259</sup> *Id.*

28 <sup>260</sup> Kate Irwin, *Yuga Labs See \$561 Million in Otherside Ethereum NFT sales Within 24 hours*, DECRYPT (May 1, 2022), <https://decrypt.co/99156/yuga-labs-sees-561-million-in-otherside-ethereum-nft-sales-within-24-hours>

1           289. Due to the high number of NFTs and higher demand, the Otherdeed  
2 mint, which began at 9:00 pm EST Saturday night, immediately caused an Ethereum  
3 gas<sup>261</sup> war. According to reports on the Otherdeed sale, “[t]raffic on block explorer  
4 Etherscan also led to reports that the site wasn’t working for many users. Worse, gas  
5 fees suddenly spiked to thousands of dollars per transaction.”<sup>262</sup> Indeed, while some  
6 were able to get their transactions processed within a few hours for a couple hundred  
7 dollars in gas fees, “others reported paying upwards of \$4,000 for a single transaction.  
8 (The average gwei, or price of Ethereum gas, over the course of the night was over  
9 6,000, *roughly 100 to 200 times normal*.)”<sup>263</sup>

10           290. Otherside-related transactions have consumed over 64,000 ETH in gas  
11 fees at the time of this writing, which is almost \$180 million. Critics of Yuga’s land  
12 sale pointed out that fees would not have to be that bad had Yuga implemented a few  
13 backend optimizations.

14           291. Influencer and MoonPay investor Alexander Pall claimed to have  
15 bought two BAYC NFTs along with his bandmate Andrew Taggart. Pall touted the  
16 “power moves” that Yuga was making giving investors IP rights “to the people that  
17 bought those things.” “While . . . they are incredibly expensive, it was a . . . fun social  
18 experiment and I think that’s a lot of what you are seeing in crypto.”<sup>264</sup>

19           292. After the Otherside minting, the Company and BAYC held “ApeFest  
20 2022” in New York, which like ApeFest 2021, was billed and promoted as an  
21

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22 <sup>261</sup> The term “gas” in the crypto context refers to a unit describing the amount of  
23 computational power needed to execute specific operations on the network. Because  
24 every Ethereum transaction (which included ApeCoin and Yuga NFT transactions)  
25 consumes computational resources, transactions come with a cost. Gas is the fee  
26 needed to conduct an Ethereum transaction.

26 <sup>262</sup> Irwin, *supra*. n.260.

27 <sup>263</sup> *Id.*

28 <sup>264</sup> BanklessHQ (@banklessHQ), TIKTOK (June 21, 2022),  
[https://www.tiktok.com/@banklessHQ/video/7111625644068326699?is\\_from\\_webapp=v1&item\\_id=7111625644068326699](https://www.tiktok.com/@banklessHQ/video/7111625644068326699?is_from_webapp=v1&item_id=7111625644068326699).

1 exclusive event for only BAYC and MAYC NFT owners.<sup>265</sup> Defendant Broadus and  
2 Eminem performed as the closing act of ApeFest 2022, where they dropped a new  
3 track and music video featuring their Bored Apes.<sup>266</sup> BAYC and MAYC NFT holders  
4 could use ApeCoin to purchase exclusive ApeFest 2022 merchandise featuring  
5 Broadus and Eminem.<sup>267</sup>

6 293. On July 16, 2022, Yuga published a “Litepaper” describing the  
7 Otherside metaverse project. The Litepaper acknowledged that nearly all significant  
8 functionality had not yet been developed and that purchases of Otherside land would  
9 thus need to rely on Yuga’s efforts to develop the metaverse.<sup>268</sup>

10 294. On September 7, 2022, the Ape Foundation announced that it was  
11 seeking a three-month extension for the Ape DAO Board Defendants’ six-month  
12 inaugural term.<sup>269</sup> In the letter to the “ApeCoin Community,” the Ape Foundation  
13 stated that “the community hasn’t submitted any viable AIPs specifying what this  
14 handover looks like, who might take over, or how we might conduct an election. This  
15 suggests the original election specifications were ambiguous.”<sup>270</sup> Accordingly, the  
16 Ape Foundation proposed to extend the term, claiming that keeping the Ape DAO  
17 Board Defendants in their positions would “provide continuity and stability: the  
18 Foundation doesn’t just execute what the community wants – it makes sure we are  
19

20 <sup>265</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 7, 2022, 6:27 PM),  
<https://twitter.com/BoredApeYC/status/1534346420341424128>.

21 <sup>266</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 27, 2022, 2:00 PM),  
<https://twitter.com/BoredApeYC/status/1541526909951033347>.

22 <sup>267</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 23, 2022, 7:02 PM),  
<https://twitter.com/BoredApeYC/status/1540153474851246080>.

23 <sup>268</sup> *The Otherside Litepaper*, OTHERSIDE (July 16, 2022),  
<https://otherside.xyz/litepaper>.

24 <sup>269</sup> Swensonk7, *The Ape Foundation Announced That Its Term Is Almost Up and*  
25 *That They Want a 3 Month Extension*, THE BORED APE GAZETTE (Sep. 7, 2022),  
26 [https://www.theboredapegazette.com/post/the-ape-foundation-announced-that-its-](https://www.theboredapegazette.com/post/the-ape-foundation-announced-that-its-term-is-almost-up-and-that-they-want-a-3-month-extension)  
27 [term-is-almost-up-and-that-they-want-a-3-month-extension](https://www.theboredapegazette.com/post/the-ape-foundation-announced-that-its-term-is-almost-up-and-that-they-want-a-3-month-extension).

28 <sup>270</sup> *Id.*

1 compliant with legal and regulatory requirements and guidance so we can operate  
2 effectively.”<sup>271</sup> The letter proposal concluded by directing investors with questions  
3 to speak with Ape DAO Board Defendant Bajwa.

4 295. That same day, Defendant Wu posted the following message on her  
5 Twitter account: “Grateful for a dynamic 6 month serving on the first @apecoin DAO  
6 Special Council! We are asking the community for an extension of 3 months to focus  
7 on ironing out a first election process that balances continuity, fairness, and  
8 transparency.”<sup>272</sup> Wu’s post linked to “AIP-113: Extending AIP-1 – the DAO  
9 Process,” which “propose[d] a three-month extension of the terms laid out in AIP-1  
10 to (1) provide time for the development of a proper and thorough Ape Foundation  
11 election framework and process; (2) allow the community to better understand and  
12 ultimately engage with whatever process emerges; and (3) enable the DAO to  
13 continue functioning coherently beyond September 30.”<sup>273</sup>

14 296. On November 11, 2022, Defendant Wu resigned from her position as  
15 the leader of FTX’s investment arm following the revelations that FTX executives  
16 had been improperly commingling investor assets and receiving personal loans from  
17 the FTX hedge fund, Alameda Research. Replacement CEO John Ray III (known as  
18 the person brought in to clean up the Enron bankruptcy), in a filing with the Delaware  
19 bankruptcy court, stated the following regarding FTX’s Lehman Brothers-style  
20 collapse that occurred during Wu’s tenure:

21  
22 <sup>271</sup> *Id.*

23 <sup>272</sup> Amy Wu (@amytongwu), TWITTER (Sep. 7, 2022 1:20 P.M.),  
24 <https://twitter.com/amytongwu/status/1567563499156676608?s=20&t=ptw4dASRf-r2XQWNZIM-EQ>

25 <sup>273</sup> btang, *AIP-113: Extending AIP-1 – the DAO Process*, APECOIN.COM (Sep. 7,  
26 2022), <https://forum.apecoin.com/t/aip-113-extending-aip-1-the-dao-process/8236>.  
27 Notably, AIP-113 was submitted by user “btang” and authored by Animoca. Btang  
28 also proposed the staking protocol for ApeCoin. Btang is also the founder of the  
Cartan Group LLC, a small consulting company operating out of the Cayman Islands,  
which, pursuant to AIP-1, receives \$150,000 per month in consulting fees.

1 Never in my career have I seen such a complete failure of  
2 corporate controls and such a complete absence of trustworthy financial  
3 information as occurred here . . . From compromised systems integrity  
4 and faulty regulatory oversight abroad, to the concentration of control  
5 in the hands of a very small group of inexperienced, unsophisticated  
and potentially compromised individuals, this situation is  
unprecedented.<sup>274</sup>

6 297. Wu was a senior executive at FTX during the time it suffered from an  
7 “unprecedented and complete failure of corporate controls.” Eight days after  
8 resigning from FTX, on November 19, 2022, Wu announced that she would not  
9 continue to serve as an Ape DAO Board member after the expiration of her one-year  
10 term in December 2022.<sup>275</sup> The announcement further disclosed that Defendant  
11 Bajwa and board member Dean Steinbeck also resigned from the Ape DAO Board  
12 under the same terms.

13 298. Another way that Yuga Labs promoted sales of its BAYC NFT  
14 collection and ApeCoin tokens was through films. On April 11, 2022, Yuga  
15 announced that the Company and Coinbase would be collaborating to produce a  
16 three-part movie series, the “Degen Trilogy”, to promote BAYC and ApeCoin. The  
17 first installment was released in June 2022 at the 4th annual “NFT.NYC” event.<sup>276</sup>  
18 The Company later published this first part of the trilogy on YouTube on July 26,  
19 2022. As part of the movie trilogy promotion, the Company announced there was a  
20 “casting call” to holders of BAYC (and teased a second casting call for holder of the  
21

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22 <sup>274</sup> Michelle Chapman, *FTX’s new CEO worked on Enron’s bankruptcy but he’s*  
23 *still never seen such a ‘complete failure’ and ‘absence of trustworthy financial*  
24 *information’*, FORTUNE (Nov. 17, 2022), [https://fortune.com/2022/11/17/ftx-](https://fortune.com/2022/11/17/ftx-bankruptcy-filing-john-ray-never-seen-complete-failure-sam-bankman-fried/)  
[bankruptcy-filing-john-ray-never-seen-complete-failure-sam-bankman-fried/](https://fortune.com/2022/11/17/ftx-bankruptcy-filing-john-ray-never-seen-complete-failure-sam-bankman-fried/).

25 <sup>275</sup> *Three ApeCoin Council Members Won’t Run Again*, LUCKYTRADER (Nov. 19,  
26 2022), [https://luckytrader.com/news/three-ape-coin-council-members-won-t-run-](https://luckytrader.com/news/three-ape-coin-council-members-won-t-run-again)  
[again](https://luckytrader.com/news/three-ape-coin-council-members-won-t-run-again).

27 <sup>276</sup> *Coinbase to Produce Bored Ape Yacht Club NFT Movie Trilogy*, WAYA (Apr.  
28 24, 2022), [https://waya.media/coinbase-to-produce-bored-ape-yacht-club-nft-movie-](https://waya.media/coinbase-to-produce-bored-ape-yacht-club-nft-movie-trilogy/)  
[trilogy/](https://waya.media/coinbase-to-produce-bored-ape-yacht-club-nft-movie-trilogy/).

1 Mutant Apes NFTs), to submit their NFTs to be considered for use in the film. The  
2 owners of the selected NFTs would earn a licensing fee of \$10,000 worth of Bitcoin  
3 or ApeCoin.<sup>277</sup>

4 299. According to the description of Degen Trilogy: Part 1, it is a “three-part  
5 film from the biggest names in crypto and you, the community. Enter a ragtag bunch  
6 of Degens. Each with their own special skills and their own hidden objectives. All  
7 chasing the same goal—ApeCoin.” The description further declared that “if they  
8 don’t make it, we’re not gonna make it. Here begins the era of the Degens.”<sup>278</sup> This  
9 failed attempt of a movie trilogy was a thinly veiled attempt to market both projects  
10 to the public and boost their value. In all likelihood that was the plan from its  
11 inception.

12 300. After the release of this first part of the promotional trilogy, the project  
13 was canceled at the end of 2022 after a poor reception by the broader NFT  
14 community, which was still reeling from the collapse of FTX.

15 301. ApeCoin was misleadingly promoted as being able to be used for sale  
16 of luxury goods, unique pieces of media, and other well-known brands. On March  
17 19, 2022, Snoop Dogg tweeted (retweeted by ApeCoin) that he would be releasing  
18 an “all Ape mixtape” that was “only 4 \$Ape holders !!!”.<sup>279</sup>

19 302. On March 20, 2022, Time Magazine announced that it would be  
20 accepting ApeCoin for digital subscriptions.<sup>280</sup> On March 23, 2022 online casino  
21

22  
23 <sup>277</sup> *Id.*; Bored Ape Yacht Club (@BoredApeYC), Twitter (Apr. 11, 2022 12:00  
PM), <https://twitter.com/BoredApeYC/status/1513592766307225600?s=20>.

24 <sup>278</sup> Coinbase, *The Degen Trilogy: Part 1*, YOUTUBE (July 26, 2022),  
25 [https://www.youtube.com/watch?v=I26DE3c48rY&ab\\_channel=Coinbase](https://www.youtube.com/watch?v=I26DE3c48rY&ab_channel=Coinbase).

26 <sup>279</sup> Snoop Dogg (@SnoopDogg), TWITTER (Mar. 19, 2022 9:31 PM),  
<https://twitter.com/SnoopDogg/status/1505401536511324160>.

27 <sup>280</sup> Aaron Limbu, *Time Magazine to Start Accepting ApeCoin*,  
28 BLOCKCHAIN.NEWS (Mar. 21, 2022), <https://blockchain.news/news/time-magazine-to-start-accepting-apecoin>.



1 BetOnline tweeted (retweeted by ApeCoin) that it would begin accepting ApeCoin  
2 for its online sportsbook and casino.<sup>281</sup>

3 303. On April 30, 2022, the ApeCoin twitter announced that OpenSea is now  
4 accepting ApeCoin to make NFT purchases on the platform.<sup>282</sup> According to the  
5 current version of the Help Center on OpenSea, however, does not list ApeCoin as  
6 a core currency you can use on the platform.<sup>283</sup> Searching for ApeCoin on the  
7 OpenSea Help Center yields zero results.<sup>284</sup>

8 304. On August 2, 2022, ApeCoin tweeted that Gucci would begin to allow  
9 customers to pay for purchases in store with ApeCoin.<sup>285</sup> Likewise on August 4,  
10 2022, ApeCoin retweeted a tweet from luxury watch brand Tag Heuer that it would  
11 also be accepting ApeCoin.<sup>286</sup>

12 305. On August 18, 2022, the ApeCoin twitter confirmed that Defendant  
13 Oseary had onboarded Gucci and Tag Heuer as part of his AIP-36 promotion. It is  
14 unclear whether Gucci or Tag Heuer ever actually allowed customers to make in-  
15 store payments using ApeCoin as the promotions were never followed up with by  
16 either brand. A search for ApeCoin on both the Gucci and Tag Heuer websites yields  
17 zero results. In any event, the tweet from Tag Heuer has since been deleted.<sup>287</sup>

18  
19 <sup>281</sup> BetOnline.ag (@betonline\_ag), TWITTER (Mar. 23, 2022 12:32 PM),  
20 [https://twitter.com/betonline\\_ag/status/1506715522125078529](https://twitter.com/betonline_ag/status/1506715522125078529).

21 <sup>282</sup> ApeCoin (@apecoin), TWITTER (Apr. 30, 2022 6:41 AM),  
22 <https://twitter.com/apecoin/status/1520397829323182080?s=20>.

23 <sup>283</sup> *What Currencies can I use on OpenSea?*, OPENSEA (last visited Aug. 3, 2023),  
24 [https://support.opensea.io/hc/en-us/articles/1500003082521-What-currencies-can-I-](https://support.opensea.io/hc/en-us/articles/1500003082521-What-currencies-can-I-use-on-OpenSea-)  
25 [use-on-OpenSea-](https://support.opensea.io/hc/en-us/articles/1500003082521-What-currencies-can-I-use-on-OpenSea-)

26 <sup>284</sup> *Search Results*, <https://support.opensea.io/hc/en-us/search?utf8=%E2%9C%93&query=apecoin>.

27 <sup>285</sup> ApeCoin (@apecoin), TWITTER (Aug. 2, 2022 7:19 AM),  
28 <https://twitter.com/apecoin/status/1554472012139085825>.

29 <sup>286</sup> ApeCoin (@apecoin), TWITTER (Aug. 4, 2022 8:16 PM),  
30 <https://twitter.com/apecoin/status/1555392202968268806>.

31 <sup>287</sup> *Search Results*, <https://twitter.com/TAGHeuer/status/1554532900590292996>.

\* \* \*

306. Ultimately, as one marketing report noted, the BAYC NFT collection (and Yuga itself) “would have never become so popular if it wasn’t for its aggressive and engaging social media marketing strategies, particularly on Twitter.”<sup>288</sup>

### 3. Other Manipulation of the Price and Market for Yuga Financial Products

307. Like the cryptocurrency industry, the NFT industry is plagued by illicit trading activity. Wash trading, or transactions in which a seller is on both sides of the trade in order to paint a misleading picture of an asset’s value and liquidity, is a particular area of concern for NFTs. Throughout the Class Period, this practice was especially easy with NFTs, including the Yuga NFTs, as many NFT trading platforms allowed users to trade by simply connecting their various wallets to the platform, with no need to demonstrate arm’s length transactions.

308. “Circular Trades” are well-known techniques used by wash traders, in which the same wallets repeatedly buy and sell the same or different NFT. The process involves the transfer of funds between two wallets to create fake trading volume, making it appear as if the NFT is being actively traded. Circular trading undermines the integrity of the market by creating false demand, misleading investors and affecting the prices.

309. In the “Seller Funded” washing trading pattern, the seller provides funds to facilitate the sale of the NFT in the marketplace. The fake transactions in Seller Funded wash trading inflates the volume and the price of the NFT artificially. The illusion of high demand drives up the price, especially when the purported purchaser is a celebrity or influential taste maker.

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<sup>288</sup> *3 Lessons To Learn From The Incredible Success Of Bored Ape Yacht Club NFTs*, DIGITALNOD (Mar. 29, 2022), <https://digitalnod.co/blog/3-lessons-to-learn-from-bored-ape-yacht-club-nfts/>.

1 310. “Outlier transactions” are another form of wash trades. Outlier  
2 transactions occur when parties trade at highly inflated prices outside of the overall  
3 pattern of trades. Outlier transactions can significantly deviate the average value of  
4 prices paid for an NFT, especially if it was a supposed celebrity purchase.

5 311. Through these methods, pervasive wash trading has artificially inflated  
6 the price and volume of the Yuga NFTs. BAYC #8099, for example, exhibits signs  
7 of wash trading.<sup>289</sup> Researchers found that related wallets significantly increased the  
8 price from \$95,000 to \$166,000 in transactions between them, before selling the  
9 artificially inflated priced NFT into the market. These inflated transactions affect  
10 volume figures and sales averages and create a misleading picture for investors about  
11 the popularity of the NFT collections.

12 312. The wash trading problem in the NFT industry has been extensively  
13 studied by researchers and blockchain companies. Researchers with MIT and  
14 Columbia University, for example, put out a research paper entitled NFT Wash  
15 Trading Detection.<sup>290</sup> In addition to BAYC NFT #8099, the researchers specifically  
16 identified BAYC NFTs #6946, 1332, 8498, 5862, and 8259 as having their price  
17 increased due to wash sales cycles. Even when using conservative detection  
18 techniques, researchers flagged 72 wash sales cycles for BAYC NFTs, 52 wash sale  
19 cycles for Mutant Apes, and 29 wash sales cycles for Otherdeeds.

20 313. Likewise, Zash, a company that launched a “Wash Trading Detection  
21 Service” also identified BAYC NFT #3221 has exhibiting signs of wash trading.<sup>291</sup>

22  
23 <sup>289</sup> On the Mark Data, *Using Network Graphs to Visualize Potential Fraud on*  
24 *Ethereum Blockchain*, MEDIUM (Dec. 20, 2022),  
25 <https://onthemarkdata.medium.com/using-network-graphs-to-visualize-potential-fraud-on-ethereum-blockchain-1d8cc0ad361d>.

26 <sup>290</sup> Derek Liu, et al., *NFT Wash Trading Detection*, MIT AND COLUMBIA UNIV.  
27 (Feb. 7, 2023), <https://arxiv.org/pdf/2305.01543.pdf>.

28 <sup>291</sup> *Zash Launches 'Wash Trading Detection Service'*, COINMARKETCAP (Dec. 22,  
2022), <https://coinmarketcap.com/community/articles/63a509afd16ae879abc15cb8/>.

1 Furthermore, the Zash article highlights BAYC NFTs #947, 1763, 8739, and 3738 as  
2 exhibiting wash trading identifiers. Zash found that for BAYC NFTs #3221 and  
3 8738, over 60% of transactions were identified as suspected wash trades. Likewise,  
4 the trading volume from suspected wash traded BAYC NFTs accounted for 96-99%  
5 of all trading volume associated with those NFTs.

6 314. Zash also found that, for 30 days on the OpenSea platform, over 5% of  
7 the Mutant Ape NFT trading volume was from suspected wash trades.

8 315. Moreover, according to a report issued by *CoinTelegraph Research*  
9 entitled “bitsCrunch NFT Wash Trade Report for 2022,” Yuga’s Otherdeeds NFT  
10 collection was ranked as a Top 10 collection of 2022 by number of wash traded  
11 NFTs.<sup>292</sup>

12 316. NFT wash trades are particularly prevalent in new NFT marketplaces  
13 that offer reward tokens based on the volume traded. These marketplaces incentivize  
14 wash trading behavior, making it easier for traders to engage in this fraudulent  
15 activity to skew prices and the market data. Manipulative trading on one platform  
16 can impact prices on other platforms. Indeed, the *CoinTelegraph Research* report  
17 identified wash trading patterns effectuated on incentivized platforms later harming  
18 victims on NFT exchanges like OpenSea.

19 317. LooksRare is one of the largest incentivized NFT platforms, launching  
20 in January 2022. LooksRare was created by two anonymous co-founders: “Zodd”  
21 and “Guts.” High levels of buying and selling of NFTs results in \$LOOKS  
22 rewards. The *CoinTelegraph Research* report revealed that a staggering 96% of the  
23 total volume traded on LooksRare was wash trade volume. John Egan, CEO of  
24 L’Atelier, an independent subsidiary of BNP Paribas that researches new  
25 technologies, characterized the transactions on LooksRare reviewed by Reuters as

26 \_\_\_\_\_  
27 <sup>292</sup> *bitsCrunch NFT Wash Trade Report for 2022*, COINTELEGRAPH RESEARCH  
28 (2022), <https://research-backend.cointelegraph.com/uploads/attachments/clgcb40t96zp5zyqn1qto49k8-bitscrunch-nft-wash-trade-report-for-2022-ct-team-0-2-3.pdf>.

1 “wash trades” that would be banned in traditional markets like equities or debt  
2 because they give a false impression of demand for an asset.<sup>293</sup>

3 318. Importantly, Yuga Financial Asset whale connected to Binance and  
4 FTX, Dinghau Xiao (Dingaling), also serves as a key advisor to LooksRare. Xiao is  
5 considered one of LooksRare’s biggest advocates. LooksRare did a private sale  
6 where investors could send a maximum 37.5 ETH for an ownership interest in  
7 LooksRare.<sup>294</sup> Xiao’s Dingaling address was LooksRare’s first investor listed on the  
8 blockchain for these transactions. There were also newly created anonymous wallets  
9 that put in the max value of 37.5 ETH, all sourced from Binance and for the sole  
10 purpose of participating in the LooksRare private sale. In fact, Xiao is believed to be  
11 the true identity of one of LooksRare’s anonymous founder, Zodd.<sup>295</sup>

12 319. Shortly after the launch of LooksRare, in February 2022, Xiao became  
13 the largest holder of Yuga assets.<sup>296</sup> By the time of the ApeCoin air drop in March  
14 2022, Xiao acquired 113 Bored Ape NFTs, 98 Mutant Ape NFTs, and 110 Kennel  
15 Club NFTs. His airdrop was over 1.43 million ApeCoin.

16 320. After minting so many Bored Ape NFTs in the initial mint, Xiao’s  
17 Dingaling wallet began to purchase Bored Ape NFTs far above the floor price in the  
18 lead up to the Mutant Ape NFT launch. On August 21, 2021, when the floor price  
19 was just 14.9, Xiao purchased 11 Bored Apes NFTs from 10:35am to 10:37am. Each  
20 of these purchases was significantly above the floor price, from 21.89 ETH to 22.5  
21 ETH. By August 24, 2021, the Bored Ape NFT floor price had risen to 23.25.

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23  
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25 <sup>293</sup> Elizabeth Howcroft, *Unreal demand? Irregular sales worth billions fire up wild NFT market*, REUTERS (Feb. 6, 2022), <https://www.reuters.com/article/fintech-nft-looksrare-idCAKBN2KC0FZ>.

26 <sup>294</sup> Kitonyi, *supra* n.15.

27 <sup>295</sup> *Id.*

28 <sup>296</sup> THE BORED APE GAZETTE, *supra* n.13.

1 321. Importantly, Xiao is a vocal supporter of wash trading, at one time  
2 calling it “genius.”<sup>297</sup> Indeed, immediately after the launch of LooksRare, Xiao  
3 tweeted:<sup>298</sup>

4 I see a lot of people talking about the wash trading on  
5 @LooksRareNFT. So is it actually happening? Yes. Is it by  
6 design? Probably. Is it a bad thing? I don’t think so. In fact, I  
7 think its genius.

8 322. In an interview with *Reuters*, Xiao, under his dingaling alias, admitted  
9 to being an investor and advisor to LooksRare, stated that the wash trading looked  
10 bad but may be part of the “necessary steps” to gain market share. He further was  
11 quoted as saying ““People have been real mad about wash trading, but I’m struggling  
12 to understand why. It’s a free market.”<sup>299</sup>

13 323. By February 3, 2022, just weeks after LooksRare launched, Bored Ape  
14 NFTs had already amassed \$42.1 million on LooksRare’s platform.<sup>300</sup> Price floors  
15 rose significantly during this time. On January 9, 2022, before LooksRare launched,  
16 the floor prices of the Yuga NFTs were 67 ETH for Bored Apes, 13.4 ETH for Mutant  
17 Apes, and 4.987 ETH for Kennel Clubs. By February 3, 2022, the significant amount  
18 of NFT wash trading from Xiao’s LooksRare platform caused the floor prices to rise  
19 to 98 ETH for Bored Apes, 19.8 ETH for Mutant Apes, and 8.35 ETH for Kennel  
20 Clubs.

21  
22  
23 <sup>297</sup> Kitonyi, *supra* n.15.

24 <sup>298</sup> Dingaling (@dingalingts), TWITTER (Jan. 11, 2022 9:26 PM),  
25 <https://twitter.com/dingalingts/status/1481135479940874241>.

26 <sup>299</sup> Howcroft, *supra* n.293.

27 <sup>300</sup> Alyssa Exposito, *OpenSea monthly volumes top \$5B as NFTs continue to*  
28 *mainstream*, COINTELEGRAPH (Feb. 3, 2022),  
[https://cointelegraph.com/news/opensea-monthly-volumes-top-5b-as-nfts-continue-](https://cointelegraph.com/news/opensea-monthly-volumes-top-5b-as-nfts-continue-to-mainstream)  
[to-mainstream](https://cointelegraph.com/news/opensea-monthly-volumes-top-5b-as-nfts-continue-to-mainstream).



1 324. Recently, LooksRare and MoonPay announced a multi-year  
2 partnership.<sup>301</sup>

3 325. In sum, Yuga’s failure to register the Yuga Financial Products led to the  
4 pervasive practices whereby bad actors, including those closely connected to  
5 Defendants, were able to manipulate prices and effectuate the scheme identified  
6 herein to inflate the price of the Yuga Financial Products.

7 326. These manipulative techniques, and more, were also used by MoonPay  
8 and Ivan Soto-Wright as part of their orchestrated pump of the price of the Yuga  
9 Financial Products.

10 327. MoonPay itself, and Soto-Wright personally, traded in Yuga NFTs  
11 while having material non-public information about the celebrity endorsement deals  
12 and the sources of the funds used for these purchases.

13 328. Soto-Wright made these purchases through his “IvanHodl.eth” wallet.  
14 The IvanHodl wallet was funded by the Moonpay.eth wallet as well as by the  
15 Ethereum wallet address 0x7AFC12C8DD2e6591581D95586eB2c2A4905a12a9  
16 (the “Funding” Wallet).

17 329. The Moonpay.eth wallet was funded by the Funding Wallet, as well as  
18 wallets associated with Binance and FTX. Wallets associated with FTX provided  
19 millions of dollars’ worth of ETH during the Class Period, much of which was used  
20 in the various transactions identified below that were effectuated to artificially inflate  
21 the price and trading volume of Yuga NFTs.

22 330. To begin, on August 30, 2021, Ivan Soto Wright purchased Mutant Ape  
23 NFT #3016 for 9.899 ETH (\$31,958.53), a price far exceeding the floor price, which  
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26 <sup>301</sup> Jamie Redman, *Moonpay and Looksrare Partner to Bring Convenient NFT*  
27 *Purchasing to the Masses*, BITCOIN.COM (Feb. 9, 2023),  
28 <https://news.bitcoin.com/moonpay-and-looksrare-partner-to-bring-convenient-nft-purchasing-to-the-masses/>.

1 was around 5 ETH at the time (\$13,300). Mutant Apes NFTs were first released two  
2 days prior, on August 28, 2021.

3 331. On September 18, 2021, Soto Wright purchased a BAYC NFT for 45  
4 ETH (\$154,609.20), a price far above the floor price. The then-present floor price  
5 was approximately 35 ETH (~\$119,000).

6 332. On September 24, 2021, Soto-Wright purchased two Kennel Club NFTs,  
7 one for 13 ETH (\$38,101.18) and one for 3.18 ETH (\$9,320.13), each above the floor  
8 price, with the 13 ETH purchase being approximately 4.5 times the then-present floor  
9 price of 2.85 ETH.

10 333. On October 5, 2021, Soto-Wright purchased a BAYC for 65 ETH  
11 (\$228,545.85), when the floor price was 38.5 ETH (\$130,395.65).

12 334. On October 25, 2021, Soto-Wright purchased a Bored Ape for 35.97  
13 ETH (\$147,582), which was above the floor price.

14 335. On October 27, 2021, MoonPay purchased a BAYC NFT above the  
15 floor price. The next day, MoonPay transferred this BAYC NFT to Lil Baby, a hip  
16 hop star that was part of MoonPay's Series A funding round.

17 336. On November 8, 2021, MoonPay purchased a Bored Ape NFT for 46.6  
18 ETH, far exceeding the floor price of 30 ETH. Less than ten minutes later, this NFT  
19 was transferred to Jimmy Fallon.

20 337. On November 11, 2021, MoonPay purchased a Bored Ape NFT for 54  
21 ETH, far exceeding the floor price of 30 ETH.

22 338. On November 15, 2021, MoonPay purchased a Mutant Ape NFT above  
23 the floor price.

24 339. Also on November 15, 2021, at approximately 7:34 PM, MoonPay  
25 purchased a Bored Ape NFT for 250 ETH, a price that was many multiplies of the  
26 floor price. Thereafter at 8:27pm, MoonPay purchased a Bored Ape NFT at 50 ETH,  
27 which was also significantly higher than the floor price. Two minutes later at 8:29  
28

1 PM, MoonPay purchased a Bored Ape NFT for 55 ETH. Three minutes later at 8:32  
2 PM, MoonPay purchased a Bored Ape NFT for 45 ETH. One minute later at 8:33  
3 PM, MoonPay purchased a Bored Ape NFT for 50 ETH. At 8:51 PM, MoonPay  
4 purchased a Bored Ape NFT for 44.9 ETH. Finally, at 8:53 PM, MoonPay purchased  
5 a Bored Ape NFT for 48.88 ETH. Each of these transactions were significantly above  
6 the then-current floor price. The floor price of Bored Apes rose dramatically in the  
7 wake of these manipulative trades, rising from 30 ETH on November 13, 2021 to  
8 around 39 ETH on November 16, 2021.

9 340. On November 18, 2021, MoonPay purchased a Bored Ape NFT for 60  
10 ETH. The price floor went from 39 ETH on November 16, 2021 to 49 ETH on  
11 November 19, 2021.

12 341. On November 26, 2021, MoonPay purchased a Bored Ape NFT for 69  
13 ETH, far exceeding the floor price of 43.7 ETH.

14 342. On November 27, 2021, MoonPay purchased a Bored Ape NFT for 55.5  
15 ETH, again significantly higher than the 43.7 ETH floor price.

16 343. On December 3, 2021, MoonPay purchased a Bored Ape NFT for 70  
17 ETH, far above the floor price of 49 ETH.

18 344. On December 7, 2021, MoonPay purchased one BAYC NFT, two  
19 Mutant Apes, and one Kennel Club NFT for 85 ETH. This purchase was far above  
20 what would have been a combined floor price of approximately 63.53 ETH for the  
21 four Yuga NFTs.

22 345. On December 23, 2021, MoonPay purchased a Bored Ape NFT for  
23 54.44 ETH, far above the price floor of 49 ETH.

24 346. On January 1, 2022, MoonPay purchased a Bored Ape NFT for 65.2  
25 ETH, significantly above the price floor of 58 ETH.

26 347. On January 6, 2022, MoonPay purchased a Mutant Ape NFT for 18.95  
27 ETH, far exceeding the floor price of 14 ETH.

28

1 348. On January 7, 2022, MoonPay purchased a Mutant Ape NFT for 19.4  
2 ETH, significantly above the floor price of approximately 14 ETH.

3 349. On January 9, 2022, MoonPay purchased a Bored Ape NFT for 79.5  
4 ETH, far exceeding the floor price of 67 ETH.

5 350. On January 11, 2022, MoonPay purchased a BAYC NFT for 80 ETH,  
6 far exceeding the floor price of 67 ETH. Less than 15 seconds later, MoonPay  
7 purchased a BAYC NFT for 90 ETH, again far exceeding the 67 ETH floor price.

8 351. On January 14, 2022, MoonPay purchased a BAYC NFT for 79 ETH,  
9 far exceeding the 74 ETH floor price. Later that day, MoonPay made a purchase of  
10 a BAYC NFT for 111 ETH, once again significantly exceeding the 74 ETH floor  
11 price.

12 352. To make all of these purchases, as noted above, the Moonpay.eth wallet  
13 was being funded by the Funding Wallet, as well as wallets associated with FTX and  
14 Binance. On January 21, 2022, in two transactions, an FTX wallet sent 647 ETH and  
15 249 ETH to the Moonpay.eth wallet address.

16 353. On January 22, 2022, MoonPay made a purchase of a BAYC NFT for  
17 119 ETH, far exceeding the floor price of 83 ETH.

18 354. On January 24, 2022, MoonPay made a purchase of a BAYC NFT for  
19 93.69 ETH, far exceeding the floor price of 83 ETH.

20 355. On January 26, 2022, MoonPay made a purchase of a BAYC NFT for  
21 105 ETH, far exceeding the floor price of 83 ETH.

22 356. On February 9, 2022, MoonPay purchased a BAYC NFT for 100 ETH,  
23 which exceeded the floor price. Also on February 9, 2022, MoonPay received 124  
24 ETH from the Binance wallet.

25 357. On February 11, 2022, MoonPay received 250 ETH from the FTX  
26 wallet. Thereafter on February 13, 2022, MoonPay received approximately 300 ETH  
27 from the FTX wallet in three transactions.

28

1           358. On February 16, 2022, MoonPay purchased a BAYC NFT for 105 ETH,  
2 far exceeding the floor price of 97 ETH. On February 17, 2022, MoonPay received  
3 250 ETH from the FTX wallet.

4           359. On February 18, 2022, MoonPay won an auction to buy a BAYC NFT  
5 for 200 WETH (“wrapped” eth), which far exceeded the price floor of approximately  
6 97 ETH.

7           360. On February 22, 2022, MoonPay made a purchase of a BAYC NFT for  
8 120 ETH, significantly above the floor price of 89 ETH. Also on February 22, 2022,  
9 MoonPay received 100 ETH from the FTX wallet.

10           361. On February 23, 2022, MoonPay made a purchase of a BAYC NFT for  
11 95 ETH, far exceeding the floor price of 89 ETH. Also on February 23, 2022,  
12 MoonPay received 99 ETH from the FTX wallet.

13           362. On February 25, 2022, MoonPay purchased a BAYC NFT for 569 ETH,  
14 approximately \$1.5 million, which was many multiples of the then-current floor price  
15 of 89 ETH. Also on February 25, 2022, MoonPay received 550 ETH from the FTX  
16 wallet.

17           363. On March 2, 2022, MoonPay purchased a BAYC NFT for 112.5 ETH,  
18 significantly above the floor price of 82 ETH. Also on March 2, 2022, MoonPay  
19 received 192 ETH from the Binance wallet.

20           364. On March 8, 2022, MoonPay received 75 ETH from the FTX wallet.

21           365. On March 9, 2022, MoonPay purchased a BAYC NFT for 86.9 ETH,  
22 far exceeding the floor price of 65 ETH. Less than 20 minutes later, MoonPay  
23 purchased another BAYC significantly above the floor price for 77 ETH. Also on  
24 March 9, 2022, MoonPay received 160 ETH from the FTX wallet.

25           366. On March 10, 2022, MoonPay received 284 ETH in two transactions  
26 from the FTX wallet. On March 11, 2022, MoonPay received 150 ETH from the  
27 FTX wallet.

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1           367. On March 13, 2022, MoonPay purchased a BAYC NFT for 100 ETH,  
2 significantly above the floor price of 70 ETH.

3           368. On March 14, 2022, MoonPay purchased a BAYC NFT for 180 ETH, a  
4 price far exceeding the floor price of 88.16 ETH. The floor price rose from 70 ETH  
5 on March 13, 2022 to 88 ETH on March 16, 2022. Also on March 14, 2022,  
6 MoonPay received 125 ETH from the FTX wallet.

7           369. On March 15, 2022, MoonPay received 88 ETH from the FTX wallet.  
8 On March 16, 2022, MoonPay received 12 ETH from the FTX wallet.

9           370. On March 17, 2022, MoonPay purchased three BAYC NFTs in the span  
10 of a minute. These purchases, at 106.9 ETH, 108 ETH, and 108.4 ETH, were all  
11 significantly above the floor price of approximately 88 ETH. Also on March 17,  
12 2022, MoonPay received 322 ETH from the FTX wallet.

13           371. On March 21, 2022, MoonPay made a purchase of a BAYC NFT for  
14 110 ETH, far exceeding the floor price of 77 ETH. Also on March 21, 2022,  
15 MoonPay received 110 ETH from the FTX wallet.

16           372. On March 23, 2022, MoonPay received 115 ETH from the FTX wallet.  
17 On March 29, 2022, MoonPay received 217 ETH from the FTX wallet. On April 2,  
18 2022, MoonPay received 42 ETH from the FTX wallet in two transactions. On April  
19 3, 2022, MoonPay received 6.9 ETH from the FTX wallet. On April 5, 2022,  
20 MoonPay received 200 ETH from the FTX wallet.

21           373. On April 6, 2022, MoonPay purchased a BAYC NFT for 195 ETH, a  
22 price significantly higher than the floor price of 107 ETH. Also on April 6, 2022,  
23 MoonPay received 194 ETH from the FTX wallet.

24           374. On April 9, 2022, MoonPay made a purchase of a BAYC NFT for 130  
25 ETH, far exceeding the floor price of 105 ETH.

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1           375. On April 17, 2022, MoonPay made a purchase of a BAYC NFT for 130  
2 ETH, far exceeding the floor price of 101 ETH. Also on April 17, 2022, MoonPay  
3 received 130 ETH from the FTX wallet.

4           376. On April 20, 2022, MoonPay made a purchase of a BAYC NFT for 155  
5 ETH, significantly higher than the floor price of approximately 101 ETH. Also on  
6 April 20, 2022, MoonPay received 155 ETH from the FTX wallet.

7           377. On April 22, 2022, MoonPay made a purchase of a BAYC NFT for  
8 129.99 ETH, significantly exceeding the floor price of approximately 108 ETH.

9           378. On April 23, 2022, MoonPay received 45 ETH from the FTX wallet.

10           379. On April 25, 2022, Soto-Wright received one Otherside Land NFT as  
11 part of a mint of 360 Otherside NFTs. This insider mint was five days before the  
12 public mint on April 30, 2022.

13           380. On April 30, 2022, MoonPay made a purchase of a BAYC NFT for 265  
14 ETH, a price far exceeding the floor price of 128 ETH. Also on April 30, 2022,  
15 MoonPay received transfers of 155 ETH and 265 ETH from the FTX wallet.

16           381. On May 13, 2022, MoonPay received 100 ETH from the FTX wallet.  
17 On May 16, 2022, MoonPay received 150 ETH from FTX.

18           382. On May 19, 2022, MoonPay made a purchase of a BAYC NFT for  
19 169.69 ETH, a significantly higher price than the floor price of approximately 92  
20 ETH. Also on May 19, 2022, MoonPay received 97 ETH from the Binance wallet.

21           383. On May 19, 2022, MoonPay made a purchase of a BAYC NFT for 97  
22 ETH, which was again above the floor price.

23           384. On June 7, 2022, MoonPay made a purchase of a BAYC NFT for 103  
24 ETH, significantly above the floor price of around 86 ETH. Also on June 7, 2022,  
25 MoonPay received 100 ETH from the FTX wallet.

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1           385. On July 5, 2022, MoonPay made a purchase of a BAYC NFT for 125  
2 ETH, significantly above the floor price of 88.16 ETH. Also on July 5, 2022,  
3 MoonPay received 125 ETH from the Binance wallet.

4           386. MoonPay continued to receive transfers from FTX in the summer of  
5 2022, before FTX began experiencing the liquidity issues that ultimately led to its  
6 downfall. After receiving just 1 ETH on October 17, 2022, and just 3 ETH on  
7 October 27, 2022, the ETH transfers from FTX stopped. Without the steady flow of  
8 liquidity from FTX, MoonPay was unable to continue to manipulate the price of the  
9 Yuga NFTs, leading to significant drop in value and price floor among the  
10 collections.

11           **C. The Dump – The price of Yuga Securities plummets**

12           387. The meteoric rise of the BAYC NFTs did not last long, and the floor  
13 price of the BAYC NFT collection began to deflate from its artificially inflated high  
14 after the failed launch of the BAYC metaverse with the botched sale of virtual land  
15 in the Otherside on April 30, 2022. With celebrity promoters distancing themselves  
16 from the Yuga Financial Products; the disclosure of the U.S. Securities & Exchange  
17 Commission (“SEC”) investigation of Yuga; the implosion of FTX and Alameda;  
18 and further regulatory scrutiny of unregistered securities sold as crypto assets on  
19 exchanges like Coinbase and Binance, the value of the Yuga Financial Products  
20 dropped significantly.

21           388. In June 2022, exchanges that provided investors yield on their crypto  
22 investments began to experience liquidity issues and lock users out. Voyager, was  
23 one of the largest such platforms, and was one of the few platforms where investors  
24 could earn yield on their ApeCoin. On June 22, 2022, Voyager announced that it had  
25 significant exposure to bankrupt hedge fund Three Arrows Capital, raising significant  
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1 survivability concerns at the exchange.<sup>302</sup> In response, the price of ApeCoin dropped  
2 from 4.37 to \$3.97, or approximately 9%.

3 389. By August 2022, the MoonPay outlier transactions propping up the  
4 prices had ceased. Fewer and fewer celebrities were promoting Bored Apes and the  
5 Yuga ecosystem. Without the celebrities endorsing the Yuga assets and without floor  
6 prices and volumes being pumped by MoonPay, the Yuga Financial Products each  
7 suffered diminution in value with decreased sales volume and fewer unique buyers.<sup>303</sup>  
8 All of the Yuga Financial Products hit visible low points between August 19th and  
9 23rd. The Bored Ape NFT floor price dropped from 82.48 ETH on August 10, 2022  
10 to 66.9 ETH on August 23, 2022. The Mutant Ape NFT floor price also fell from  
11 15.25 ETH on August 10, 2022, to a floor price of 11 ETH on August 19, 2022. The  
12 Kennel Club NFT floor price also dropped from 7.99 ETH on August 10, 2022, to  
13 5.990 ETH on August 19, 2022. The Otherdeed NFTs fell from a floor price of 2.02  
14 ETH on August 7, 2022 to a floor price of 1.47 ETH on August 22, 2022. Likewise,  
15 ApeCoin dropped from \$7.56 on August 5, 2022 to \$4.64 on August 28, 2022.

16 390. In September 2022, the price of ApeCoin and the Yuga NFTs dropped  
17 significantly in anticipation of a significant token unlock for “launch contributors” of  
18 ApeCoin. In the 30 days prior to the unlock, ApeCoin dropped 26%.<sup>304</sup> On  
19  
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22 <sup>302</sup> Sheldon Reback & Michael Bellusci, *Voyager Digital Plunges on Three*  
23 *Arrows Exposure, Analyst Downgrade*, COINDESK (Jun. 22, 2022),  
24 <https://www.coindesk.com/business/2022/06/22/voyager-digital-requests-loan-repayment-from-3ac-considers-issuing-default-notice/>.

25 <sup>303</sup> Herman Hayes, *Purchases at Bored Ape Yacht Club Fall by 90% to 16-Month*  
26 *Low*, BITKAN (Oct. 8, 2022), <https://bitkan.com/news/purchases-at-bored-ape-yacht-club-fall-by-90-to-16-month-low-5479>.

27 <sup>304</sup> Andrew Hayward, *ApeCoin Treasury Set to Unlock 25 Million APE Tokens for*  
28 *Launch Contributors*, DECRYPT (Sept. 16, 2022), <https://decrypt.co/109939/apecoin-treasury-unlock-25m-ape-tokens?amp=1>.

1 September 16, 2022 alone ApeCoin dropped approximately 9% in advance of the  
2 unlock on September 17, 2022.<sup>305</sup>

3 391. On October 11, 2022, *Bloomberg* reported that the SEC was conducting  
4 an investigation of Yuga Labs over whether the sales of its digital assets violate  
5 federal securities laws.<sup>306</sup> *Bloomberg* reported that the SEC was examining whether  
6 certain NFTs are more akin to stocks and should follow the same disclosure rules.  
7 *Bloomberg* also reported that the SEC was investigating the distribution of ApeCoin.  
8 Yuga told *Bloomberg* in a statement that it was “fully cooperating” with the inquiry.  
9 In response to the news regarding the SEC investigation, the ApeCoin token dropped  
10 approximately 14%.<sup>307</sup>

11 392. Yuga’s NFTs likewise dropped in value in the wake of the disclosure of  
12 the SEC investigation. The Bored Ape NFT floor price dropped from 75.5 ETH on  
13 October 10, 2022 to 72.421 ETH on October 15, 2022. The Mutant Ape NFT price  
14 floor dropped from 14.96 ETH on October 10, 2022 to 13.440 on October 13, 2022.  
15 The Kennel Club NFTs dropped from a floor price of 6.39 ETH on October 10, 2022  
16 to 5.750 by October 17, 2022. The Otherside NFTs likewise dropped from a price  
17 floor of approximately 1.6 ETH on October 10, 2022 down to 1.11 ETH on October  
18 21, 2022.

19 393. The downfall of FTX had an impact on the Yuga Financial Products.  
20 When both FTX and Alameda Research filed for Chapter 11 Bankruptcy on  
21 November 11, 2022, each of the Yuga Financial Products had a material drop in value  
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23 <sup>305</sup> *Id.*

24 <sup>306</sup> Matt Robinson, *Bored-Ape Creator Yuga Labs Faces SEC Probe Over*  
25 *Unregistered Offerings*, BLOOMBERG (Oct. 11, 2022),  
26 <https://www.bloomberg.com/news/articles/2022-10-11/bored-ape-creator-yuga-labs-faces-sec-probe-over-unregistered-offerings#xj4y7vzkg>.

27 <sup>307</sup> Andrew Hayward, *ApeCoin Sinks 10% After Report of SEC Probe Into Bored*  
28 *Apes Creator Yuga Labs*, DECRYPT (Oct. 11, 2022),  
<https://decrypt.co/111682/apecoin-crashes-sec-probe-bored-ape-yuga-labs>.

1 in the days leading up to and following the announcement. At the time of the  
2 bankruptcy, FTX and Alameda held a number of Yuga Financial Products, which  
3 were now at risk of being subject to forced liquidation in the bankruptcy.

4 394. At the time of the FTX meltdown, users identified dozens of Yuga NFTs  
5 that were held by FTX/Alameda that could be subject to liquidation or auction in  
6 connection with the bankruptcy.<sup>308</sup> On April 26, 2023, a director of Coinbase tweeted  
7 that NFTs belonging to Alameda/FTX were transferred to a multi-signature wallet  
8 belonging to the liquidator.<sup>309</sup> 32 BAYC NFTs were identified as being affected,  
9 including especially rare tokens in the form of four “trippy” Apes, three “gold” apes,  
10 and one “suited” ape. 29 Otherside NFTs were also affected, as were two Mutant  
11 Apes NFTs, three M1 mutant serum NFTs, and three M2 mutant serum NFTs.

12 395. On November 5, 2022, prior to the disclosure of the liquidity issues with  
13 FTX, the BAYC NFT floor price was 64.8 ETH. In the wake of the FTX bankruptcy,  
14 the floor price of the BAYC NFT fell to a Class Period low of 50 ether (*i.e.*,  
15 approximately \$62,000) on November 14, 2022. The floor price continued to drop,  
16 reaching 48 ETH on November 17, 2022. Prices continued to drop, reaching a Class  
17 Period low of 28.49 ETH (approximately \$55,201.63) on July 2, 2023. This is down  
18 from the all-time high of 153.70 ETH (or \$420,430) that occurred in the midst of the  
19 celebrity promotions and as MoonPay was manipulating prices with its outlier  
20 transactions on April 30, 2022.

21 396. The same is true for Yuga’s Mutant Apes, which had a floor price of 11  
22 ETH prior to the FTX disclosures. Following the FTX and Alameda bankruptcy, the  
23 floor price of Mutant Apes dropped to 8.99 ETH on November 17, 2022. Mutant  
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25 <sup>308</sup> Dr.Jones (@DrJones0305), TWITTER (Nov. 18, 2022 2:19 AM),  
26 <https://twitter.com/DrJones0305/status/1593730628972863494?s=20&t=IHy6PXZgDHgX-Sc5h6rmRg>.

27 <sup>309</sup> Oluwapelumi Adejumo, *FTX takes control of NFTs worth over \$4M*,  
28 CRYPTOSLATE (Apr. 27, 2023), <https://cryptoslate.com/ftx-takes-control-of-nfts-worth-over-4m/>.

1 Apes had a floor price high of 40.0 ETH (\$109,416) on April 30, 2022 in the midst  
2 of the celebrity promotions and MoonPay outlier transactions. Since the FTX  
3 disclosures, the floor price continued to drop, reaching a low of 4.88 ETH (\$9,475.49)  
4 on July 2, 2023.

5 397. Likewise, the floor price of the Otherdeed NFT dropped from 1.192  
6 ETH on November 5, 2022 to 0.8 ETH on November 17, 2022. The Otherdeed floor  
7 price went from a Class Period high of 5.0 ETH (about \$14,149.94) on May 1, 2022  
8 all the way down to a low of 0.592 ETH (worth only \$1,100.59) on July 27, 2023.

9 398. Prices for the Bored Ape Kennel Club likewise dropped from a floor  
10 price of 4.69 ETH on November 5, 2022 to 3.65 ETH on November 17, 2022. Kennel  
11 Club NFTs reached a Class Period high of 10.4 ETH on April 27, 2022, but have  
12 since dropped to Class Period lows of 1.85 ETH on July 3, 2023.

13 399. Similarly, the FTX disclosures caused a significant drop in the price of  
14 ApeCoin. On November 5, 2022, ApeCoin traded at \$5.10 per token, and dropped to  
15 \$2.70 by November 13, 2022. Trading volume of ApeCoin likewise decreased to  
16 \$160.7 million, down a staggering 99.7% from its high point during the Class Period  
17 of \$5.5B on April 28, 2022:

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## V. THE YUGA FINANCIAL PRODUCTS ARE SECURITIES UNDER *HOWEY*

400. The SEC Framework provides guidance for analyzing whether a digital asset has the characteristics of one particular type of security – an “investment contract.” As explained in the SEC Framework:

The U.S. Supreme Court’s *Howey* case and subsequent case law have found that an “investment contract” exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others. The so-called “*Howey* test” applies to any contract, scheme, or transaction, regardless of whether it has any of the characteristics of typical securities. The focus of the *Howey* analysis is not only on the form and terms of the instrument itself (in this case, the digital asset) but also on the circumstances surrounding the digital asset and the manner in which it is offered, sold, or resold (which includes secondary market sales). Therefore, issuers and other persons and entities engaged in the marketing, offer, sale, resale, or distribution of any digital asset will need to analyze the relevant transactions to determine if the federal securities laws apply.<sup>310</sup>

<sup>310</sup> SEC Framework §I (footnotes omitted).

1           401. The SEC Framework makes clear that “[w]hether a particular digital  
2 asset at the time of its offer or sale satisfies the *Howey* test depends on the specific  
3 facts and circumstances.”<sup>311</sup> The specific facts and circumstances relating to Yuga  
4 support the conclusion that the Yuga Financial Products are securities under the  
5 *Howey* test.

6           **A. Yuga Financial Products Investors Invested Money**  
7           **Securities**

8           402. The SEC Framework states that: “The first prong of the *Howey* test is  
9 typically satisfied in an offer and sale of a digital asset because the digital asset is  
10 purchased or otherwise acquired in exchange for value, whether in the form of real  
11 (or fiat) currency, another digital asset, or other type of consideration.”<sup>312</sup>

12           403. Plaintiffs and the Class invested fiat, including U.S. dollars, and digital  
13 currencies, such as Bitcoin and Ethereum, to purchase Yuga Financial Products. As  
14 explained below in the SEC Framework, investment of both fiat and digital currency  
15 meets the first prong of *Howey*.

16           404. Defendants sold Yuga Financial Products to retail investors through  
17 global, online cryptocurrency exchanges during various on-going, continuous  
18 offerings.

19           405. Every purchase of Yuga Financial Products by a member of the public  
20 was an investment contract.

21           **B. Yuga Financial Products Investors Were Intertwined in a**  
22           **Common Enterprise with Defendants**

23           406. The profits of each investor in Yuga Financial Products are inextricably  
24 intertwined with the Company by virtue of the 2.5% royalty fee that the Company  
25 retains on every resale of a Yuga NFT. Moreover, the success of the Bored Ape  
26 ecosystem and its native token ApeCoin depended entirely on the efforts of the

27 <sup>311</sup> *Id.*, §II.

28 <sup>312</sup> *Id.*, §II(A) (footnote omitted).

1 Company, Executive Defendants, and Ape DAO Board Defendants. These same  
2 Defendants also held a significant number of Yuga Financial Products, which gave  
3 them the same so-called “skin in the game” as Plaintiffs and the Class.

4 407. The SEC Framework states that “[i]n evaluating digital assets, we have  
5 found that a ‘common enterprise’ typically exists.”<sup>313</sup> The SEC Framework also  
6 elaborates: “Based on our experiences to date, investments in digital assets have  
7 constituted investments in a common enterprise because the fortunes of digital asset  
8 purchasers have been linked to each other or to the success of the promoter’s  
9 efforts.”<sup>314</sup>

10 408. Yuga Financial Products are no exception to the SEC Framework’s  
11 observation regarding the “common enterprise” element of the *Howey* test. The  
12 prospective profits of Plaintiffs and the Class, if any, are intertwined with the fortunes  
13 of Yuga, its founders, and the Executive Defendants. Executive Defendants have  
14 conceded that Yuga used the funds from its ApeCoin to partially fund its operations.  
15 The Company, its founders, the Executive Defendants, and the Company’s investors  
16 additionally issued themselves millions of ApeCoin tokens with value inextricably  
17 linked to Yuga’s efforts.

18 409. Additionally, investors were passive participants in the Yuga Financial  
19 Products’ continuous offering, and the profits of each Plaintiff, and the Class were  
20 intertwined with those of Defendants and of other investors.

21 410. The Executive Defendants also were responsible for supporting the  
22 Yuga Financial Products, pooled investors’ assets, and controlled those assets.

23 411. Further, Defendants held a significant stake in the Yuga Financial  
24 Products, and thus shared in the profits and risk of the project.

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27 <sup>313</sup> *Id.*, §II(B) (footnote omitted).

28 <sup>314</sup> *Id.* at n.11 (citing *SEC v. Int’l Loan Network, Inc.*, 968 F.2d 1304, 1307 (D.C. Cir. 1992)).

1 **C. Investors Purchased the Yuga Financial Products with a**  
2 **Reasonable Expectation of Profit from Owning Them**

3 412. With respect to the element of “reasonable expectation of profits,” the  
4 SEC Framework states that “[a] purchaser may expect to realize a return through  
5 participating in distributions or through other methods of realizing appreciation on  
6 the asset, such as selling at a gain in a secondary market.”<sup>315</sup>

7 413. Investors in the Yuga Financial Products, including Plaintiffs and the  
8 Class, made their investment with a reasonable expectation of profits. The primary  
9 purpose for purchasing Yuga Financial Products was to make a profit or accumulate  
10 interest.

11 414. The SEC Framework lays out a number of characteristics informative of  
12 whether the “reasonable expectation of profits” element is met. The SEC Framework  
13 states that “[t]he more the following characteristics are present, the more likely it is  
14 that there is a reasonable expectation of profit . . . .”<sup>316</sup> Based on the facts above,  
15 each and every characteristic identified by the SEC Framework is present in the case  
16 of the Yuga Financial Products:

- 17 • The digital asset gives the holder rights to share in the enterprise’s  
18 income or profits or to realize gain from capital appreciation of  
19 the digital asset.
- 20 • The opportunity may result from appreciation in the value of the  
21 digital asset that comes, at least in part, from the operation,  
22 promotion, improvement, or other positive developments in the  
23 network, particularly if there is a secondary trading market that  
enables digital asset holders to resell their digital assets and  
realize gains.

24 \* \* \*

27 <sup>315</sup> *Id.*, §II(C).

28 <sup>316</sup> SEC Framework, §II(C)(2).

- 1       • The digital asset is transferable or traded on or through a  
2       secondary market or platform, or is expected to be in the future.
- 3       • Purchasers reasonably would expect that [the Defendants'] efforts  
4       will result in capital appreciation of the digital asset and therefore  
5       be able to earn a return on their purchase.
- 6       • The digital asset is offered broadly to potential purchasers as  
7       compared to being targeted to expected users of the goods or  
8       services or those who have a need for the functionality of the  
9       network.
- 10      • The digital asset is offered and purchased in quantities indicative  
11      of investment intent instead of quantities indicative of a user of  
12      the network. For example, it is offered and purchased in  
13      quantities significantly greater than any likely user would  
14      reasonably need, or so small as to make actual use of the asset in  
15      the network impractical.
- 16      • There is little apparent correlation between the purchase/offering  
17      price of the digital asset and the market price of the particular  
18      goods or services that can be acquired in exchange for the digital  
19      asset.
- 20      • There is little apparent correlation between quantities the digital  
21      asset typically trades in (or the amounts that purchasers typically  
22      purchase) and the amount of the underlying goods or services a  
23      typical consumer would purchase for use or consumption.
- 24      • The [Defendants have] raised an amount of funds in excess of  
25      what may be needed to establish a functional network or digital  
26      asset.
- 27      • The [Defendants are] able to benefit from [their] efforts as a result  
28      of holding the same class of digital assets as those being  
    distributed to the public.
- The [Defendants] continue[] to expend funds from proceeds or  
    operations to enhance the functionality or value of the network or  
    digital asset.

- 1       •     The digital asset is marketed, directly or indirectly, using any of  
2       the following:
  - 3           ○     The expertise of [Defendants] or [their] ability to build or  
4           grow the value of the network or digital asset.
  - 5           ○     The digital asset is marketed in terms that indicate it is an  
6           investment or that the solicited holders are investors.
  - 7           ○     The intended use of the proceeds from the sale of the digital  
8           asset is to develop the network or digital asset.
  - 9           ○     The future (and not present) functionality of the network or  
10          digital asset, and the prospect that [the Defendants] will  
11          deliver that functionality.
  - 12          ○     The promise (implied or explicit) to build a business or  
13          operation as opposed to delivering currently available  
14          goods or services for use on an existing network.
  - 15          ○     The ready transferability of the digital asset is a key selling  
16          feature.
  - 17          ○     The potential profitability of the operations of the network,  
18          or the potential appreciation in the value of the digital asset,  
19          is emphasized in marketing or other promotional materials.
  - 20          ○     The availability of a market for the trading of the digital  
21          asset, particularly where the [Defendants] implicitly or  
22          explicitly promise[] to create or otherwise support a trading  
23          market for the digital asset.<sup>317</sup>

21       **D. Investors Expected Profits from the Yuga Financial Products to Be**  
22       **Derived from the Managerial Efforts of the Executive Defendants**

23       415. The SEC Framework explains:

24               When a promoter, sponsor, or other third party (or affiliated  
25               group of third parties) (each, an “Active Participant” or “AP”) provides essential managerial efforts that affect the success of the  
26               enterprise, and investors reasonably expect to derive profit from  
27               those efforts, then this prong of the test is met. Relevant to this

28       <sup>317</sup> *Id.*



1 inquiry is the “economic reality” of the transaction and “what  
2 character the instrument is given in commerce by the terms of the  
3 offer, the plan of distribution, and the economic inducements  
4 held out to the prospect.” The inquiry, therefore, is an objective  
5 one, focused on the transaction itself and the manner in which  
6 the digital asset is offered and sold.<sup>318</sup>

7 416. Specifically, with respect to the element of “[r]eliance on the [e]fforts of  
8 [o]thers,” the SEC Framework states:

9 The inquiry into whether a purchaser is relying on the efforts of  
10 others focuses on two key issues:

- 11 • Does the purchaser reasonably expect to rely on the efforts  
12 of a[] [promoter]?
- 13 • Are those efforts “the undeniably significant ones, those  
14 essential managerial efforts which affect the failure or  
15 success of the enterprise,” as opposed to efforts that are  
16 more ministerial in nature?<sup>319</sup>

17 417. Plaintiffs and the Class have entirely passive roles vis-à-vis the success  
18 of the Yuga Financial Products or the Bored Ape ecosystem. Rather, the success of  
19 the Bored Ape ecosystem, and the profits the Class reasonably expected to derive  
20 from investing in the Yuga Financial Products, are dependent on the essential  
21 technical, entrepreneurial, and managerial efforts of the Company, Executive  
22 Defendants, and the Ape DAO Board Defendants.

23 418. For example, when NFT exchange OpenSea temporarily delisted  
24 numerous Bored Apes from its platform in June 2022, the Company, Executive  
25 Defendants, and Ape Dao Board Defendants used their managerial efforts to work  
26 with OpenSea to resolve the issue and ensure that it did not happen again.<sup>320</sup>

26 <sup>318</sup> *Id.*, §II(C) (footnotes omitted).

27 <sup>319</sup> *Id.*, §II(C)(1) (footnotes omitted).

28 <sup>320</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 29, 2022, 2:22 PM),  
<https://twitter.com/BoredApeYC/status/1542257147794300930>.

1 419. And when issues arose with NFT purchases in March 2023, the  
2 Company, Executive Defendants, and Ape DAO Board Defendants used their  
3 managerial efforts to send ETH to the affected wallets “covering the difference  
4 between the amount paid and floor.”<sup>321</sup>

5 420. Plaintiffs and the Class reasonably expected Executive Defendants and  
6 Ape DAO Board Defendants to provide significant managerial efforts, to develop and  
7 improve the Bored Ape ecosystem, and to provide and/or secure exchanges through  
8 which Yuga Financial Products can be traded or liquidated. Defendants repeatedly  
9 represented that they would provide significant managerial efforts to achieve these  
10 objectives and make Yuga Financial Products a profitable investment by developing  
11 and attracting users to the Bored Ape ecosystem.

12 421. For example, in January 3, 2022, Yuga publicly stated that “we see  
13 ourselves as temporary stewards of [the BAYC] IP that is in the process of becoming  
14 more and more decentralized. Our ambition is for this to be a community-owned  
15 brand, with tentacles in world-class gaming, events, and streetwear. We think there’s  
16 still work to be done to ensure that what we hand over to the community is in as  
17 strong a position as it can be.”<sup>322</sup>

18 422. Yuga used the proceeds of its sales and royalties of the Yuga Financial  
19 Products to purchase other valuable intellectual property, including CryptoPunks, one  
20 of the first and most valuable NFTs on the Ethereum blockchain.

21 423. Yuga Financial Products therefore derives its value entirely from the  
22 usefulness and popularity of the Bored Ape ecosystem, which is in turn highly, if not  
23 entirely, dependent on the significant technical, entrepreneurial, and managerial  
24 efforts of the Company and Executive Defendants. The purchase of Yuga Financial  
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26 <sup>321</sup> Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 15, 2023, 8:20 PM),  
27 <https://twitter.com/BoredApeYC/status/1636205752753836033>.

28 <sup>322</sup> Yuga Labs (@YugaLabs), Twitter (Jan. 3, 2022 12:27 PM),  
<https://twitter.com/yugalabs/status/1478100705542131713?s=20>.

1 Products is thus an investment in a common enterprise, with an expectation of profits,  
2 based upon the efforts of its promoter, the Defendants.

3 424. The SEC Framework lays out a number of characteristics informative of  
4 whether the “[r]eliance on the [e]fforts of [o]thers” element is met. The SEC  
5 Framework notes that “[a]lthough no one of the following characteristics is  
6 necessarily determinative, the stronger their presence, the more likely it is that a  
7 purchaser of a digital asset is relying on the ‘efforts of others . . . .’”<sup>323</sup> Based on the  
8 facts above, each and every characteristic identified by the SEC Framework is present  
9 in the case of the Yuga Financial Products:

- 10 • [Defendants are] responsible for the development, improvement  
11 (or enhancement), operation, or promotion of the network [and]  
12 purchasers of the digital asset expect [Defendants] to be  
13 performing or overseeing tasks that are necessary for the network  
14 or digital asset to achieve or retain its intended purpose or  
15 functionality.
- 16 • Where the network or the digital asset is still in development and  
17 the network or digital asset is not fully functional at the time of  
18 the offer or sale [both true of ApeCoin, the Otherside metaverse,  
19 and the Bored Ape ecosystem] purchasers would reasonably  
20 expect [Defendants] to further develop the functionality of the  
21 network or digital asset (directly or indirectly). This particularly  
22 would be the case where an AP promises further developmental  
23 efforts in order for the digital asset to attain or grow in value.
- 24 • There are essential tasks or responsibilities performed and  
25 expected to be performed by [Defendants], rather than an  
26 unaffiliated, dispersed community of network users (commonly  
27 known as “decentralized” network).
- 28 • [Defendants] create[] or support[] a market for, or the price of, the  
digital asset. This can include, for example, an AP that: (1)  
controls the creation and issuance of the digital asset; or (2) takes  
other actions to support a market price of the digital asset, such as

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323 *Id.*, §II(C)(1).

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by limiting supply or ensuring scarcity, through, for example, buybacks, “burning,” or other activities.

- [Defendants] ha[ve] a lead or central role in the direction of the ongoing development of the network or the digital asset. In particular, [Defendants] play[] a lead or central role in deciding governance issues, code updates, or how third parties participate in the validation of transactions that occur with respect to the digital asset.
- [Defendants] ha[ve] a continuing managerial role in making decisions about or exercising judgment concerning the network or the characteristics or rights the digital asset represents including, for example:
  - Determining whether and how to compensate persons providing services to the network or to the entity or entities charged with oversight of the network.
  - Determining whether and where the digital asset will trade. For example, purchasers may reasonably rely on [Defendants] for liquidity, such as where the [Defendants have] arranged, or promised to arrange for, the trading of the digital asset on a secondary market or platform.
  - Determining who will receive additional digital assets and under what conditions.
  - Making or contributing to managerial level business decisions, such as how to deploy funds raised from sales of the digital asset.
  - Playing a leading role in the validation or confirmation of transactions on the network, or in some other way having responsibility for the ongoing security of the network.
  - Making other managerial judgements or decisions that will directly or indirectly impact the success of the network or the value of the digital asset generally.
- Purchasers would reasonably expect [Defendants] to undertake efforts to promote [their] own interests and enhance the value of the network or digital asset, such as where:

- 1           ○ [Defendants] ha[ve] the ability to realize capital  
2           appreciation from the value of the digital asset. This can  
3           be demonstrated, for example, if the [Defendants] retain[]  
4           a stake or interest in the digital asset. In these instances,  
5           purchasers would reasonably expect [Defendants] to  
6           undertake efforts to promote [their] own interests and  
7           enhance the value of the network or digital asset.
- 8           ○ [Defendants] distribute[] the digital asset as compensation  
9           to management or [Defendants'] compensation is tied to  
10          the price of the digital asset in the secondary market. To  
11          the extent these facts are present, the compensated  
12          individuals can be expected to take steps to build the value  
13          of the digital asset.
- 14          ○ [Defendants] own[] or control[] ownership of intellectual  
15          property rights of the network or digital asset, directly or  
16          indirectly.

17           425. [Defendants] monetize[] the value of the digital asset, especially where  
18          the digital asset has limited functionality

19           426. Here, the Yuga Financial Products exhibit all of these characteristics.

20           **E. Investors Would Not Reasonably Have Understood that the**  
21           **Financial Products Sold by Yuga Were Securities**

22           427. In connection with the launch of the Yuga Financial Products,  
23          Defendants made statements that reasonably led Plaintiffs and Class members to  
24          conclude that the Yuga Financial Products were not securities.

25           428. As a threshold matter, the Defendants refused to register any of the Yuga  
26          Financial Products with the SEC, which indicated to investors that these were not  
27          securities. No valid exemption from registration requirements existed for any of the  
28          Yuga Financial Products.

          429. At the time of the launch of the Yuga Financial Products, the Company,  
Executive Defendants, and Ape DAO Board Defendants took advantage of the  
market's lack of understanding and awareness concerning how cryptocurrency  
projects work. Considering the new technology at issue and the Company's other

1 statements, many investors were understandably unaware that Yuga Financial  
2 Products had fundamentally different features than Bitcoin, which the SEC has  
3 determined is not a security.

4 430. The Company also indicated that it would benefit financially and use the  
5 funds raised through the sale of the Yuga Financial Products to continue to fund the  
6 Bored Ape ecosystem and support the growth of the project.

7 431. At the time the Yuga Financial Products were publicly released,  
8 Defendants took advantage of the market's lack of understanding and awareness  
9 concerning how this investment contract worked. With promises that Yuga NFTs  
10 would outperform other NFT collections (and ApeCoin would outperform other  
11 digital assets), many individuals were unaware that the Yuga Financial Products had  
12 fundamentally different features than other cryptocurrencies, including being more  
13 centralized than something like Bitcoin. One of these primary differences is that all  
14 Yuga Financial Products were issued by the Company and Executive Defendants at  
15 creation at very little economic cost – and enormous potential upside – to them.

16 432. The creation of the Yuga Financial Products occurred through a  
17 centralized process, in contrast to something like Bitcoin. This, however, would not  
18 have been apparent at issuance to a reasonable investor. Rather, it was only after the  
19 passage of time and disclosure of additional information about the issuer's intent and  
20 process of management that a reasonable purchaser could have known that he or she  
21 had acquired a security.

22 433. Purchasers were thereby misled into believing that the Yuga Financial  
23 Products were something other than securities, when they were securities.

24 434. Accordingly, it was not apparent to a reasonable investor, at issuance,  
25 that the Yuga Financial Products were securities under the law, and a reasonable  
26 investor would not have believed they were securities.

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1       **F. Application Of The SEC’s 2019 Framework Indicates That The**  
2       **Yuga Financial Products are Securities**

3           435. The Framework described how to analyze the various facts surrounding  
4 an ICO in making the determination of whether a given digital asset is a security.

5           436. In particular, the Framework provides that the “inquiry into whether a  
6 purchaser is relying on the efforts of others focuses on two key issues: Does the  
7 purchaser reasonably expect to rely on the efforts of an [Active Participant or “AP”]?  
8 Are those efforts ‘the undeniably significant ones, those essential managerial efforts  
9 which affect the failure or success of the enterprise,’ as opposed to efforts that are  
10 more ministerial in nature?”<sup>324</sup>

11           437. The Framework further notes that the “stronger the[] presence” of the  
12 following factors, “the more likely it is that a purchaser of a digital asset is relying  
13 on the ‘efforts of others.’”<sup>325</sup>

14           438. The first factor the SEC looked at was whether an AP is responsible for  
15 the development, improvement (or enhancement), operation, or promotion of the  
16 network, particularly if purchasers of the digital asset expect an AP to be performing  
17 or overseeing tasks that are necessary for the network or digital asset to achieve or  
18 retain its intended purpose or functionality.

19           439. At the time of the launch of each of the Yuga Financial Products, the  
20 Executive Defendants, Ape DAO Board Defendants, MoonPay Defendants, and  
21 Defendants Sotheby’s and Adidas actively marketed the launch and the tokens’  
22 growth and utilization prospects, thereby necessitating the continued managerial  
23 efforts of the Company, Executive Defendants, and Ape DAO Board Defendants.  
24 Where the network or the digital asset is still in development and the network or  
25 digital asset is not fully functional at the time of the offer or sale, purchasers would  
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27 <sup>324</sup> *Id.*

28 <sup>325</sup> *Id.*

1 reasonably expect an AP to further develop the functionality of the network or digital  
2 asset (directly or indirectly).

3 440. Another factor the Framework considers is whether the AP creates or  
4 supports a market for, or the price of, the digital asset. This includes, *inter alia*,  
5 whether the AP “(1) controls the creation and issuance of the digital asset; or (2) takes  
6 other actions to support a market price of the digital asset, such as by limiting supply  
7 or ensuring scarcity, through, for example, buybacks, “burning,” or other  
8 activities.”<sup>326</sup>

9 441. As noted above, all of the Yuga Financial Products in circulation were  
10 created at the direction of the Executive Defendants, the Ape DAO Board  
11 Defendants, and/or Defendant Oseary.

12 442. The framework further states that “[a]n AP has a continuing managerial  
13 role in making decisions about or exercising judgment concerning the network or the  
14 characteristics or rights the digital asset represents.”<sup>327</sup>

15 443. Here, the Company and Executive Defendants have discussed the long-  
16 term prospects on extended frames, continually noting how the utilization of the  
17 intellectual property rights granted to Yuga NFT owners will grow in the future as  
18 the Company builds the Bored Ape ecosystem. Likewise, the Company and  
19 Executive Defendants have touted how the use for ApeCoin tokens as a method of  
20 payment within the ecosystem will grow (and, in turn, increase the price of the  
21 ApeCoin tokens).

22 444. The ability to determine whether and where the digital asset will trade  
23 is another factor discussed in the Framework. For example, “purchasers may  
24 reasonably rely on an AP for liquidity, such as where the AP has arranged, or  
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27 <sup>326</sup> *Id.*

28 <sup>327</sup> *Id.*

1 promised to arrange for, the trading of the digital asset on a secondary market or  
2 platform.”<sup>328</sup>

3 445. Here, the Executive Defendants and Sotheby’s had access to and did  
4 manipulate the sales of Yuga Financial Products in the first days, which had a  
5 dramatic impact on the Yuga Financial Products’ price and market.

6 446. Another factor the Framework notes is whether the AP has the ability to  
7 determine who will receive additional digital assets and under what conditions. This  
8 could be, for example, “[m]aking or contributing to managerial level business  
9 decisions, such as how to deploy funds raised from sales of the digital asset.”<sup>329</sup>

10 447. Here, the Company, Executive Defendants, and Ape DAO Board  
11 Defendants are the arbiters of funding for Yuga and the Bored Ape ecosystem.

12 448. Making other managerial judgements or decisions that will directly or  
13 indirectly impact the success of the network or the value of the digital asset generally.

14 449. The Framework also remarks that purchasers would reasonably expect  
15 the AP to undertake efforts to promote its own interests and enhance the value of the  
16 network or digital asset, including, but not limited to, the instances where the AP “has  
17 the ability to realize capital appreciation from the value of the digital asset. This can  
18 be demonstrated, for example, if the AP retains a stake or interest in the digital asset.”  
19 According to the SEC, in these instances, “purchasers would reasonably expect the  
20 AP to undertake efforts to promote its own interests and enhance the value of the  
21 network or digital asset.”<sup>330</sup>

22 450. Here, the Executive Defendants and Ape DAO Board Defendants retain  
23 a significant interest in the Company even after selling off many Yuga Financial  
24 Products at the height of the initial launch.

25  
26 <sup>328</sup> *Id.*

27 <sup>329</sup> *Id.*

28 <sup>330</sup> *Id.*

1 451. On May 7, 2021, on CNBC’s “Squawk Box” television program,  
2 chairman of the SEC Gary Gensler stated that “a lot of crypto tokens – I won’t call  
3 them cryptocurrencies for this moment – are indeed securities.”<sup>331</sup> In addition to  
4 being the Chairman of the SEC, Mr. Gensler is also a world renowned expert on  
5 cryptocurrencies and blockchain technology, having taught the “Blockchain and  
6 Money” course at the Sloan School of Management at the Massachusetts Institute of  
7 Technology (“MIT”).<sup>332</sup>

8 452. In a June 14, 2018 speech entitled “Digital Asset Transactions: When  
9 Howey Met Gary (Plastic)” that is available on the SEC’s website,<sup>333</sup> the following  
10 observations were made on “when a digital transaction may no longer represent a  
11 security offering”:

12 If the network on which the token or coin is to function is sufficiently  
13 decentralized – where purchasers would no longer reasonably expect a  
14 person or group to carry out essential managerial or entrepreneurial  
15 efforts – the assets may not represent an investment contract. Moreover,  
16 when the efforts of the third party are no longer a key factor for  
17 determining the enterprise’s success, material information asymmetries  
18 recede. As a network becomes truly decentralized, the ability to identify  
19 an issuer or promoter to make the requisite dis-closures becomes  
20 difficult, and less meaningful.

21 And so, when I look at Bitcoin today, I do not see a central third  
22 party whose efforts are a key determining factor in the enterprise. The

23 <sup>331</sup> Jesse Point, *SEC Chairman Gary Gensler says more investor protections are  
24 needed for bitcoin and crypto markets*, CNBC (May 7, 2021), <https://www.cnbc.com/2021/05/07/sec-chairman-gary-gensler-says-more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html>.

25 <sup>332</sup> Lectures and Materials from Chairman Gensler’s MIT course are available to  
26 the public for free at: <https://ocw.mit.edu/courses/sloan-school-of-management/15-s12-blockchain-and-money-fall-2018/video-lectures/session-1-introduction/>.

27 <sup>333</sup> William Hinman, Director, Division of Corporation Finance, Remarks at the  
28 Yahoo Finance All Markets Summit, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (June 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>.

1 network on which Bitcoin functions is operational and appears to have  
2 been decentralized for some time, perhaps from inception.

3 453. A key factor in determining whether a digital asset is a security or not is  
4 whether there is a centralized entity behind the digital asset.<sup>334</sup> The Company is a  
5 registered Delaware corporation since February 8, 2021 and has maintained itself as  
6 the centralized entity behind the Yuga Financial Products throughout their entire  
7 existence, notwithstanding the creation of the shell entity of the so-called Ape  
8 Foundation or Ape DAO.

9 **VI. ADDITIONAL RELIANCE ALLEGATIONS**

10 454. Plaintiffs Titcher and Palombini saw the promotions by Sotheby's and  
11 the Company on the lead up to, during, and immediately following the auction of a  
12 lot of BAYC NFTs held on September 9, 2021. These promotions of the auction and  
13 the winning bidder being a traditional art collector, the legitimacy of Yuga and its  
14 NFT collections, and the growth/adoption potential for Yuga Financial Products were  
15 a primary factor in inducing Titcher to make his first purchase of a MAYC NFT on  
16 August 29, 2021 and then continue to hold on to that NFT subsequently. Similarly,  
17 the Sotheby's promotion induced Plaintiff Palombini to make his purchase on April  
18 30, 2021. Titcher and Palombini are well aware of Sotheby's longstanding reputation  
19 as one of the premier auction houses in the world and relied on the representations by  
20 the Company and Sotheby's regarding the auctions' legitimacy. Titcher and  
21 Palombini reasonably believed that the fact that Sotheby's was conducting an auction  
22 of the BAYC NFTs was a positive indication of the Company's future growth  
23 prospects for its NFT collections. In addition to Sotheby's, Titcher, Johnson, and  
24 Palombini are aware of *Rolling Stone* magazine and its reputation as a high-profile  
25 publication that acts as a cultural tastemaker, and they specifically saw the  
26

27 <sup>334</sup> *Id.* (noting that the “decentralized structure” of Bitcoin and Ethereum placed  
28 these digital assets outside the “disclosure regime of the federal securities laws”).

1 Company’s November 1, 2021 promotion of BAYC NFTs on the cover of *Rolling*  
2 *Stone*. Titcher, Johnson, and Palombini also saw Defendant Oseary’s promotion of  
3 the same as being the “First @RollingStone NFT cover.” These promotions furthered  
4 the marketing message from the Company and its insiders regarding the legitimacy  
5 of Yuga and the growth potential for Yuga Financial Products, and it was a primary  
6 factor in inducing Titcher to continue to hold onto his first purchase of a MAYC NFT  
7 as well as to inducing Titcher, Johnson, and Palombini purchase additional Yuga  
8 Financial Products subsequently. Titcher, Johnson, and Palombini reasonably  
9 believed these promotions to be a validation of the relevancy and legitimacy of the  
10 BAYC NFTs and Yuga as a NFT company with real staying power.

11 455. Titcher, Johnson, and Palombini are aware of Defendant Fallon from his  
12 many years as a famous comedian and television talk show host. Similarly, Titcher  
13 and Palombini know of Defendant Hilton from her years as a reality television star,  
14 as well as being the heiress to Hilton hotel empires. Titcher followed the social media  
15 accounts of Fallon and Hilton during the Class Period, and he and Palombini regularly  
16 saw posts from and about Fallon and Hilton on Twitter via the trending or discovery  
17 features of the platform. Titcher, Johnson, and Palombini were likewise aware of  
18 Defendant Winkelmann as being a famous contemporary digital artist. Titcher,  
19 Johnson, and Palombini were aware of the first promotion of the BAYC NFT  
20 collection and the statements by Defendants Fallon and Winkelmann regarding  
21 MoonPay during the November 11, 2021 episode of the *Tonight Show*, as well as the  
22 related promotions by Fallon (November 12, 2021; November 17, 2021),  
23 Winkelmann (November 11, 2021), and MoonPay (November 11, 2021) on their  
24 respective Twitter and/or Instagram accounts. Titcher and Palombini also saw the  
25 second promotion of the BAYC NFT collection and MoonPay occurring during the  
26 *Tonight Show* episode that aired on January 24, 2022, and the related promotions by  
27 Fallon (January 25, 2022), Hilton (January 24, 2022; January 25, 2022, January 31,  
28



1 2022), MoonPay (January 24, 2022), and Universal (January 24, 2022). Titcher and  
2 Palombini reasonably believed that both Fallon and Hilton had purchased BAYC  
3 NFTs (as opposed to being given them in exchange for promoting the Company,  
4 MoonPay, and the Yuga Financial Products). Further, Titcher and Palombini  
5 reasonably believed that Fallon's and Hilton's promotions on the *Tonight Show* were  
6 vetted and approved by Defendants Universal and EHD, since these promotions were  
7 being aired nationally to millions of viewers during the show and the *Tonight Show's*  
8 official social media accounts continued to promote the segment after the show.  
9 These promotions induced Titcher to continue to hold onto his first purchase of a  
10 MAYC NFT as well as inducing Titcher and Palombini to purchase additional Yuga  
11 Financial Products subsequently.

12 456. Titcher and Palombini are also avid music listeners, particularly of pop  
13 music. Thus, Titcher and Palombini have been aware of Defendant Ciccone from her  
14 decades of being a world famous pop star. Titcher and Palombini regularly sees posts  
15 from and about Ciccone on various social media platforms via the trending or  
16 discovery features of the platform. Titcher and Palombini specifically saw Ciccone's  
17 March 24, 2022 promotion of Yuga Financial Products and MoonPay, which was  
18 also promoted on MoonPay's Twitter account on March 24, 2022. This promotion  
19 induced Titcher to continue to hold onto his first purchase of a MAYC NFT as well  
20 as inducing Titcher and Palombini to purchase additional Yuga Financial Products  
21 subsequently, as he reasonably believed that Ciccone's professed enthusiasm for the  
22 Bored Ape ecosystem and purported use of the MoonPay concierge service was  
23 genuine.

24 457. Titcher, Palombini, and Johnson similarly know of Defendants Post and  
25 Bieber from their successful careers as pop singers and often sees posts from and  
26 about these two Defendants on social media. Palombini specifically saw Post's  
27 November 15, 2021 music video promoting the sale of BAYC NFTs via MoonPay  
28

1 and MoonPay’s promotion of Post’s video the same day, and reasonably believed that  
2 this video depicted an actual purchase (or reenacted an actual purchase) of Yuga  
3 Financial Products by Post using the MoonPay service. This promotion in particular  
4 induced Titcher to continue to hold onto his first purchase of a MAYC NFT as well  
5 as inducing Palombini to purchase additional Yuga Financial Products on April 30,  
6 2022, May 2, 2022, May 5, 2022, and May 9, 2022. Similarly, Titcher, Johnson, and  
7 Palombini specifically saw and relied on the January 31, 2022 promotion by  
8 Defendant Bieber that he had not only purchased a BAYC NFT, but had done so at  
9 price that was significantly above the then-current floor price for BAYC NFTs.  
10 Titcher, Johnson, and Palombini also saw Bieber’s February 7, 2022 promotion of  
11 the BAYC NFT collection on his personal Twitter account. Titcher reasonably  
12 believed that Bieber genuinely purchased the BAYC NFTs at such a high price  
13 because Bieber determined that was the true value of the BAYC NFT and was making  
14 the purchase of the BAYC NFT was part of his multimillion-dollar investment  
15 strategy. This promotion in particular induced Titcher to continue to hold onto his  
16 first purchase of a MAYC NFT as well as inducing Titcher, Palombini, and Johnson  
17 to purchase additional Yuga Financial Products when he otherwise would not have  
18 done so.

19 458. Titcher and Palombini are keenly aware of Defendant Broadus from the  
20 latter’s multi-decade career as a world-famous rapper and television personality.  
21 Titcher and Palombini followed Broadus’ social media accounts during the Class  
22 Period. Titcher and Palombini specifically saw Broadus’ promotions of the BAYC  
23 NFTs and his Dr. Bombay BAYC NFT in February, May, June, and July of 2022.  
24 These promotions, in particular, caused Titcher and Palombini to believe in the future  
25 growth prospects for the Bored Ape ecosystem and to induce Titcher to continue to  
26 hold onto his first purchase of a MAYC NFT as well as to induce Titcher and  
27  
28

1 Palombini to purchase additional Yuga Financial Products when he otherwise would  
2 not have done so.

3 459. In addition, Titcher, Johnson, and Palombini are life-long fans of  
4 professional sports, particularly basketball. Titcher, Johnson, and Palombini are  
5 aware of Defendant Curry as a world champion basketball player with significant  
6 wealth and influence, Titcher, Johnson, and Palombini saw Curry's promotion of the  
7 BAYC NFT collection within the FTX commercial posted on February 18, 2022.  
8 Titcher also saw Curry's September 2, 2021 post in the BAYC Discord and believed  
9 that Curry's participation with the BAYC Discord indicated a genuine interest as  
10 opposed to being part of a manipulative promotional scheme. Titcher, Johnson, and  
11 Palombini reasonably believed that Curry was a legitimate purchaser of BAYC NFTs  
12 with a genuine interest in the Bored Ape ecosystem, and that Curry had made his  
13 purchase of the BAYC NFT as part of his multi-million dollar investment strategy.  
14 These promotions in particular induced Titcher to continue to hold onto his first  
15 purchase of a MAYC NFT as well as inducing Titcher, Johnson, and Palombini to  
16 purchase additional Yuga Financial Products when they otherwise would not have  
17 done so.

18 460. The statements and promotions by Defendants Fallon, Winkelmann,  
19 Hilton, Ciccone, Post, Bieber, Broadus, and Curry gave Plaintiffs the false impression  
20 that these celebrities had purchased BAYC NFTs as investors, and that they were  
21 making the Yuga Financial Products a part of their respective multimillion-dollar  
22 investment strategies. Each of these promotions, individually and collectively,  
23 induced Titcher to make his purchases of Yuga Financial Products on March 17,  
24 2022, April 29, 2022, and May 1, 2022; Palombini to make his purchases of Yuga  
25 Financial Products on April 30, 2022, May 2, 2022, May 5, 2022, and May 9, 2022;  
26 and Johnson to make his purchases of Yuga Financial Products on February 1, 2022,  
27 April 15, 2022, April 17, 2022, April 19, 2022, April 21, 2022, April 24, 2022, April  
28

1 26-27, 2022, and April 29, 2022. These promotions also induced Titcher to continue  
2 to hold on to his MAYC NFT investment when he otherwise would not have done  
3 so.

4 461. Titcher and Palombini saw the promotions by Defendant Adidas  
5 regarding the latter's collaboration with Yuga on the "adidas Originals: into the  
6 Metaverse (Phase 2)" NFT project. For example, Titcher and Palombini saw the  
7 "ADIDAS X BORED APE YACHT CLUB – INTO THE METAVERSE"  
8 promotional video that was published on the official BAYC YouTube channel on  
9 December 11, 2021, which featured an animated Bored Ape avatar wearing the  
10 trademark Adidas jumpsuit and skydiving into an Adidas logo. Titcher and  
11 Palombini also specifically saw Adidas' April 27, 2022 promotion of the same Bored  
12 Ape avatar wearing the Adidas jumpsuit with a BAYC logo on the back. Titcher and  
13 Palombini reasonably believed the joint promotions by the Company and Adidas that  
14 suggested the BAYC NFT collection had become mainstream and that future  
15 collaborations with an established brand like Adidas were imminent. These particular  
16 promotions induced Titcher to make further purchases of Yuga Financial Products on  
17 April 30, 2022, May 2, 2022, May 5, 2022, and May 9, 2022 and induced Palombini  
18 to make his purchases of Yuga Financial Products on April 30, 2022, May 2, 2022,  
19 May 5, 2022, and May 9, 2022.

20 462. Titcher, Johnson, and Palombini also followed the Yuga Twitter account  
21 (and related accounts controlled by Yuga and its insiders like the official BAYC  
22 (@BoredApeYC), Otherside (@othersidemeta) accounts) during the Class Period  
23 and saw the promotions that the Company, Executive Defendants Aronow and  
24 Solano, and/or Ape DAO Board Defendants posted (or approved/caused to be posted)  
25 on that platform. For example, Titcher, Johnson, and Palombini saw and relied on  
26 the statements by the Company and Executive Defendants Muniz and Lyons  
27 contained in the March 16, 2022 press release for ApeCoin and the Otherside NFT  
28

1 launch by the Company. Similarly, Titcher, Johnson, and Palombini saw and relied  
2 on the Company’s March 19, 2022 promotional video for the Otherside NFT  
3 collection when making their subsequent purchases of Yuga Financial Products. The  
4 misleading statements and omissions within these promotions from the Company and  
5 Executive Defendants Aronow, Solano, Muniz, and Lyons, in conjunction with the  
6 above-mentioned promotions from Defendants Fallon, Winkelmann, Hilton, Post,  
7 Bieber, Ciccone, Broadus, and Curry induced Titcher to purchase Yuga Financial  
8 Products on March 17, 2022, April 29, 2022, and May 1, 2022; induced Palombini  
9 to purchase Yuga Financial Products on April 30, 2022, May 2, 2022, May 5, 2022,  
10 and May 9, 2022; Palombini to make his purchases of Yuga Financial Products on  
11 April 30, 2022, May 2, 2022, May 5, 2022, and May 9, 2022; and Johnson to make  
12 his purchases of Yuga Financial Products on February 1, 2022, April 15, 2022, April  
13 17, 2022, April 19, 2022, April 21, 2022, April 24, 2022, April 26-27, 2022, and  
14 April 29, 2022.

15 463. Similarly, Titcher and Johnson followed the ApeCoin official twitter  
16 page (which, upon information and belief, is owned and/or controlled by the Ape  
17 DAO Board Defendants and/or the Company) and saw the March 16, 2022 promotion  
18 introducing ApeCoin tokens to investors and touting this digital asset as being able  
19 to be used for gaming and “commerce.” These promotions, in addition to the March  
20 16 and March 19 promotions by the Company, Executive Defendant Muniz and  
21 Lyons caused Titcher and Johnson to purchase Yuga Financial Products and to  
22 continue to hold their investments in Yuga securities when they otherwise would not  
23 have done so.

24 464. Titcher, Johnson, and Palombini also saw the statements and promotions  
25 from Defendants Aronow that were posted and/or reposted on various social media  
26 platforms. For example, Titcher and Johnson saw Defendant Aronow’s August 21,  
27 2021 Twitter post touting the approximately increase in of the BAYC NFTs’ market  
28

1 cap to \$1 billion dollars. Titcher and Johnson reasonably believed Aronow's  
2 statement indicated that the price of Yuga Financial Products would continue to rise  
3 and that this increase was the result of genuine investor interest. These misleading  
4 statements and omissions by Aronow induced Titcher, Johnson, and Palombini to  
5 purchase Yuga Financial Products and to continue to hold their investments in Yuga  
6 securities when they otherwise would not have done so.

7 **VII. CLASS ACTION ALLEGATIONS**

8 465. Plaintiffs bring this action, individually and on behalf of a nationwide  
9 Class, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3),  
10 defined as follows:

11 All persons who, during the Class Period, purchased the Yuga  
12 Financial Products and were subsequently damaged thereby.

13 466. The Class Period is defined as the period between April 24, 2021, and  
14 the present.<sup>335</sup>

15 467. Excluded from the Class are: (a) Defendants; (b) Defendants' affiliates,  
16 agents, employees, officers and directors; (c) Plaintiffs' counsel and Defendants'  
17 counsel; and (d) the judge assigned to this matter, the judge's staff, and any member  
18 of the judge's immediate family. Plaintiffs reserve the right to modify, change, or  
19 expand the Class definition set forth above based on discovery and further  
20 investigation.

21 468. **Numerosity**: The Class is so numerous that joinder of all members is  
22 impracticable. On December 1, 2022, there were more than 103,000 unique account  
23 holders of Yuga securities.

24 469. **Commonality**: Common questions of law and fact exist as to all  
25 members of each Class. These questions predominate over questions affecting  
26

27 <sup>335</sup> Plaintiffs reserve the right to expand or amend the Class Period based on  
28 discovery produced in this matter.



1 individual Class members. These common legal and factual questions include, but  
2 are not limited to:

3 a. Whether the Executive Defendants with the Promoter Defendants  
4 fraudulently marketed the Yuga securities;

5 b. Whether Executive Defendants conspired to artificially inflate the  
6 price of the Yuga Financial Products and then sell the Yuga securities to unsuspecting  
7 investors;

8 c. Whether Defendants have been unjustly and wrongfully enriched  
9 as a result of their conduct;

10 d. Whether the proceeds that the Defendants obtained as a result of  
11 the sale of the Yuga Financial Products rightfully belong to Plaintiffs and Class  
12 members;

13 e. Whether Defendants should be required to return money they  
14 received as a result of the sale of Yuga Financial Products to Plaintiffs and Class  
15 members; and

16 f. Whether Plaintiffs and Class members have suffered damages,  
17 and, if so, the nature and extent of those damages.

18 470. **Typicality**: Plaintiffs have the same interest in this matter as all Class  
19 members, and Plaintiffs' claims arise out of the same set of facts and conduct as the  
20 claims of all Class members. Plaintiffs' and Class members' claims all arise out of  
21 uniform misrepresentations, omissions, and unlawful, unfair, and deceptive acts and  
22 practices related to the sale of Yuga Financial Products.

23 471. **Adequacy**: Plaintiffs have no interests that conflict with the interests of  
24 the Class and are committed to pursuing this action vigorously. Plaintiffs have  
25 retained counsel competent and experienced in complex consumer class action  
26 litigation. Accordingly, Plaintiffs and their counsel will fairly and adequately protect  
27 the interests of the Class.

28

1           472. **Superiority:** A class action is superior to all other available means of  
2 fair and efficient adjudication of the claims of Plaintiffs and members of the Class.  
3 The injury suffered by each individual Class member is relatively small compared to  
4 the burden and expense of individual prosecution of the complex and extensive  
5 litigation necessitated by Defendants' conduct. It would be virtually impossible for  
6 individual Class members to effectively redress the wrongs done to them. Even if  
7 Class members could afford individualized litigation, the court system could not.  
8 Individualized litigation would increase delay and expense to all parties, and to the  
9 court system, because of the complex legal and factual issues of this case.  
10 Individualized rulings and judgments could result in inconsistent relief for similarly  
11 situated individuals. By contrast, the class action device presents far fewer  
12 management difficulties, and provides the benefits of single adjudication, economy  
13 of scale, and comprehensive supervision by a single court.

14           473. Defendants have acted or refused to act on grounds generally applicable  
15 to the Class, thereby making appropriate final injunctive relief and corresponding  
16 declaratory relief with respect to the Class as a whole.

17 **VIII. PRESUMPTION OF RELIANCE**

18           474. Plaintiffs will rely, in part, upon the presumption of reliance established  
19 by the fraud-on-the-market doctrine in that:

20           (a) Defendants made public misrepresentations or failed to disclose  
21 material facts during the Class Period;

22           (b) the omissions and misrepresentations were material;

23           (c) Yuga Financial Products are traded in an efficient market;

24           (d) the Yuga Financial Products were liquid and traded with moderate  
25 to heavy volume during the Class Period;

26           (e) the Yuga Financial Products traded on various national  
27 cryptocurrency exchanges in the United States;

28

1 (f) the Company was covered by securities analysts;

2 (g) the misrepresentations and omissions alleged would tend to  
3 induce a reasonable investor to misjudge the value of the Yuga Financial Products;  
4 and

5 (h) Plaintiffs and members of the Class purchased, acquired, and/or  
6 sold Yuga Financial Products between the time the Defendants failed to disclose or  
7 misrepresented material facts and the time the true facts were disclosed without  
8 knowledge of the omitted or misrepresented facts.

9 475. Five factors are typically applied to determine whether a particular  
10 security meets the “efficient market” requirement: (1) whether the security trades at  
11 a high volume; (2) whether analysts follow and report on the security; (3) whether  
12 the security has market makers and arbitrageurs; (4) whether the Company is eligible  
13 to file SEC registration forms S-3; and (5) whether there are empirical facts showing  
14 a cause-and-effect relationship between unexpected corporate events or financial  
15 releases and an immediate response in the stock market. *See ScripsAmerica, Inc. v.*  
16 *Ironridge Glob. LLC*, No. CV14-03962 MMM(AGR<sub>x</sub>), 2015 WL 12747908, at \*19  
17 (C.D. Cal. Mar. 26, 2015). As discussed more thoroughly above, these factors weigh  
18 in favor of finding that the Yuga securities were traded in an efficient market. For  
19 example, ApeCoin trades a daily average volume of \$183.7M.<sup>336</sup> Next, as detailed  
20 herein, analysts reported on the Yuga Financial Products at issue repeatedly  
21 throughout the Class Period. Each of these analyst reports was publicly available to  
22 investors. And the price of Yuga Financial Products changed in relation to public  
23 statements or reports about the activities of the Company. Indeed, the market price  
24 of Yuga securities reacted promptly to the dissemination of public information  
25 regarding the Bored Ape Yacht Club, the Ape DAO, Yuga Labs, and MoonPay. The  
26

27 <sup>336</sup> *ApeCoin*, BEINCRYPTO (last visited Dec. 4, 2022),  
28 <https://beincrypto.com/price/apecoin/>.

1 Yuga securities also used the Executive Defendants and Ape DAO Board Defendants  
2 to serve as market makers for Yuga securities liquidity. The Defendants also engaged  
3 firms like Alameda and Wintermute to serve as market makers for the Yuga Financial  
4 Products' liquidity.

5 **IX. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**  
7 **Violation of the California Unfair Competition Law**  
8 **Cal. Bus. & Prof. Code §17200**  
9 **(Based on Unlawful Acts and Practices)**  
10 **(Against all Defendants)**

11 476. Plaintiffs restate and reallege all preceding allegations in paragraphs 1  
12 to 399, 454-475 above as if fully set forth herein, and further allege the following:

13 477. Plaintiff Titcher is a resident of the State of California.

14 478. Plaintiff Titcher paid for or purchased Yuga Financial Products in  
15 California and thus the deceptive transactions alleged herein occurred in California.

16 479. At all relevant times there was in full force and effect the California  
17 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §17200, *et seq.*, which  
18 prohibits, *inter alia*, "any unlawful, unfair, or fraudulent business act or practice" and  
19 "unfair, deceptive, untrue, or misleading advertising."

20 480. "[A]n act can be alleged to violate any or all three of the three prongs  
21 of the UCL — unlawful, unfair, or fraudulent." *Stearns v. Select Comfort Retail*  
22 *Corp.*, 763 F. Supp. 2d 1128, 1149 (N.D. Cal. 2010) (quoting *Berryman v. Merit*  
23 *Prop. Mgmt., Inc.*, 152 Cal. App. 4th 1544, 1554 (2007)).

24 481. The "unlawful" prong of the UCL prohibits "anything that can properly  
25 be called a business practice and that at the same time is forbidden by law." *Cel-*  
26 *Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). By  
27 proscribing "any unlawful" business practice, the UCL permits injured consumers to  
28 "borrow" violations of other laws and treat them as unlawful competition that is

1 independently actionable. In other words, an “unlawful” business practice under the  
2 UCL is a practice that violates any other law.

3 482. Any violation of the California false advertising laws (*e.g.*, Cal. Bus. &  
4 Prof. Code §17500) necessarily violates the “unlawful” prong of the UCL. Likewise,  
5 any violations of other state consumer protection laws, such as New York G.B.L.  
6 §349(a); NJSA §§56:81-156 also constitutes a violation of the unlawful prong of the  
7 UCL.

8 483. To meet the heightened pleading standard of Federal Rule of Civil  
9 Procedure (“Rule”) 9(b) for claims that sound in fraud, plaintiffs must plead ““the  
10 who, what, when, where, and how”” of the alleged fraud. *Vess v. Ciba-Geigy Corp.*  
11 *USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

12 484. In order to have standing for a UCL claim, a plaintiff must meet the  
13 injury-in-fact requirement. This requirement is met where a plaintiff can “show that,  
14 by relying on a misrepresentation on a product label, they ‘paid more for a product  
15 than they otherwise would have paid, or bought it when they otherwise would not  
16 have done so.”” *Reid v. Johnson & Johnson*, 780 F.3d 952, 958 (9th Cir. 2015). A  
17 plaintiff’s claims under this California statute are governed by the “reasonable  
18 consumer” test. *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995) (“[T]he  
19 false or misleading advertising and unfair business practices claim must be evaluated  
20 from the vantage of a reasonable consumer.”). Under the reasonable consumer  
21 standard, a plaintiff must “show that ‘members of the public are likely to be  
22 deceived.’” *Id.* (quoting *Bank of the West v. Super. Ct.*, 2 Cal. 4th 1254, 1267 (1992)).

23 485. Defendants engaged in deceptive acts and practices under California law  
24 by taking advantage of the lack of knowledge, ability, experience, or capacity of  
25 Plaintiffs to a grossly unfair degree, including but not limited to, in the following  
26 ways:

1 (a) knowingly and intentionally misrepresenting that it was not a  
2 traditional art collector but rather the Yuga-affiliated FTX that was the purportedly  
3 winning bidder of the Sotheby's auction and that the entire auction was a scheme to  
4 promote the BAYC NFT collection in order to artificially inflate their price;

5 (b) knowingly and intentionally concealing the specific roles and  
6 overlapping ownership and/or financial interests in Yuga and MoonPay by the  
7 Executive Defendants, Ape DAO Board Defendants, and Promoter Defendants  
8 Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, Hart, and Broadus;

9 (c) failing to disclose that the promotions by Promoter Defendants  
10 Fallon (with the approval and/or assistance of Defendants Universal and EHD),  
11 Winkelmann, Hilton, Ciccone, Post, Bieber, Broadus, and Curry were the result of  
12 them being paid to promote (or having a vested financial interest in the promotion of)  
13 the Yuga Financial Products instead of an organic interest/support of the Bored Ape  
14 ecosystem;

15 (d) knowingly and intentionally using and/or failing to disclose the  
16 use of the Promoter Defendants to instill trust in uninformed investors to promote the  
17 financial benefits of a highly speculative and risky investment in Yuga Financial  
18 Products, in an effort to manipulate and artificially inflate the price and trading  
19 volume of the Yuga Financial Products and allow the Company, Executive  
20 Defendants, and Ape DAO Board Defendants to profit from the sale of Yuga  
21 Financial Products at those inflated prices;

22 (e) knowingly and intentionally misrepresenting and/or failing to  
23 disclose that the MoonPay Concierge service promoted by Defendants Soto-Wright,  
24 MoonPay, Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, Hart, Broadus was  
25 being used as a front for the undisclosed payments from the Executive Defendants  
26 and Defendant Oseary to Promoter Defendants Fallon, Winkelmann, Hilton, Post,  
27  
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1 Ciccone, Hart, and Broadus in exchange for misleadingly promoting the Yuga  
2 Financial Products to investors; and

3 (f) failing to disclose that Defendant Adidas was working with  
4 MoonPay and the Company to actively conceal that the promotions from Promoter  
5 Defendants and other non-named celebrity influencers were paid for (as opposed to  
6 a genuine interest).

7 486. The Company, Sotheby's, and the Executive Defendants Aronow and  
8 Solano did not disclose that the winning bidder of the Sotheby's auction was FTX  
9 and not a traditional art collector. Nor did the Company, Executive Defendants, or  
10 Ape DAO Board Defendants disclose that the Promoter Defendants were paid  
11 promoters and/or had overlapping underlying financial interests in Yuga and  
12 MoonPay. Plaintiffs would have found it material to their decisions to purchase Yuga  
13 Financial Products to know whether or not insiders, who were given the Yuga  
14 Financial Products, had the ability to sell those Yuga Financial Products and create  
15 massive downward pressure. Likewise, had Plaintiffs been made aware of that  
16 information at the times of their respective purchases, it would have altered their  
17 decision to both purchase the Yuga Financial Products for the price they paid as well  
18 and hold on to those Yuga Financial Products when they otherwise would not have  
19 done so.

20 487. The facts that the Defendants misrepresented and concealed were  
21 material to the decisions of Plaintiff Titcher and the members of the Class about  
22 whether to pay for or purchase Yuga Financial Products (at all or for the price they  
23 paid), in that they would not have proceeded with their transactions but for the  
24 deceptive, fraudulent, and false acts and practices.

25 488. Upon making a statement of fact regarding the winning bidder of the  
26 Sotheby's auction, this gave rise to a duty to disclose that information, and by failing  
27 to disclose that information, Defendants are liable for a UCL fraud by omission  
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1 claim. *See In re Carrier IQ, Inc.*, 78 F. Supp. 3d 1051, 1113-14 (N.D. Cal. 2015)  
2 (“Finally, Plaintiffs have alleged that the information regarding the Carrier IQ  
3 Software was in the exclusive knowledge of Defendants. These allegations are  
4 sufficient to plausibly allege that Defendants had exclusive knowledge of a material  
5 fact that they had a duty to disclose but chose to omit.”); *see also In re Solara Med.*  
6 *Supplies, LLC Customer Data Sec. Breach Litig.*, 613 F. Supp. 3d 1284, 1303 (S.D.  
7 Cal. 2020) (finding that the plaintiffs adequately alleged a fraudulent omission UCL  
8 claim where they pled “a duty to disclose based upon [d]efendant’s exclusive  
9 knowledge of the alleged inadequacy of its security measures”).

10 489. For example, the Company’s misleading statements and omissions  
11 concerning the ability to use Yuga Financial Products and their related intellectual  
12 property rights relate to “the central functionality of the product,” which is required  
13 to plead a fraud by omission claim under the UCL. *See Hall v. SeaWorld Ent., Inc.*,  
14 747 F. App’x 449, 451 (9th Cir. 2018) (citing *Hodsdon v. Mars, Inc.*, 891 F.3d 857,  
15 863 (9th Cir. 2018)). The omissions about the intellectual property rights given to  
16 investors in the BAYC, MAYC, and BAKC NFT collections, as well as the  
17 omissions concerning the ability to use ApeCoin and virtual land in the Otherside,  
18 were only known to Executive Defendants and were contrary to representations and  
19 omissions previously made concerning the ability to use Yuga Financial Products to  
20 purchase goods and services.

21 490. Further Defendants, collectively and individually, had superior  
22 knowledge of information regarding the ownership interests and ability to use the  
23 Yuga Financial Products as advertised. The fact that the Promoter Defendants had  
24 undisclosed financial interests in Yuga and MoonPay was not known to Plaintiff  
25 Titcher or the members of the Class when each was respectively deciding whether  
26 or not to purchase Yuga Financial Products, as this information was in the exclusive  
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1 possession of the Company, Executive Defendants, and Ape DAO Board  
2 Defendants.

3 491. To state a claim for active concealment, a plaintiff must allege specific  
4 “affirmative acts on the part of the [D]efendants in hiding, concealing or covering  
5 up the matters complained of.” *Herron v. Best Buy Co. Inc.*, 924 F. Supp. 2d 1161,  
6 1176 (E.D. Cal. 2013) (citing *Lingsch v. Savage*, 213 Cal. App. 2d 729, 734 (1963)).  
7 Here, the Company and Executive Defendants used their business associate  
8 Defendant Oseary to act as a middleman between the public and the Company’s  
9 founders in order to actively conceal the true nature of the Promoter Defendants’  
10 business relationships with the Company, MoonPay, and the insiders of both.

11 492. Defendants intended for Plaintiff Titcher and the members of the Class  
12 to pay for Yuga Financial Products in reliance upon the deceptive and fraudulent  
13 acts and practices described herein.

14 493. Had any of the Defendants disclosed the omitted information, Plaintiff  
15 Titcher would have been aware of it because (a) he saw the actual promotions by  
16 Promoter Defendants Sotheby’s, Fallon, Winkelman, Hilton, Post, Bieber, Ciccone,  
17 Broadus, Curry, and Adidas, and would have concurrently seen any disclosure on  
18 the promotions themselves had it been included, and (b) he follows, directly or  
19 indirectly, the social media accounts of, and news reports on, Defendants Sotheby’s,  
20 Fallon, Hilton, Post, Bieber, Broadus, Curry, and Adidas.

21 494. As a direct and proximate result of Defendants’ unlawful, unfair, and  
22 deceptive practices, Plaintiffs and Class members suffered damages. The Executive  
23 Defendants’ activities with the Promoter Defendants caused Plaintiffs and the Class  
24 members to purchase and/or hold the Yuga Financial Products when they otherwise  
25 would not have done so.

26 495. The statements from Executive Defendants and Promoter Defendants  
27 Sotheby’s, Fallon, Hilton, Post, Bieber, and Broadus are actionable and not puffery.  
28

1 ““The distinguishing characteristics of puffery are vague, highly subjective claims  
2 as opposed to specific, detailed factual assertions.”” *Orlick v. Rawlings Sporting*  
3 *Goods Co.*, No. CV 12-6787-GHK (RZX), 2013 WL 12139142, at \*5 (C.D. Cal.  
4 Feb. 20, 2013). Under California law, there is no requirement that for a statement to  
5 be actionable it must also be false — the UCL also prohibits ““advertising which,  
6 although true, is either actually misleading or which has a capacity, likelihood or  
7 tendency to deceive or confuse the public.”” *Williams v. Gerber Prods. Co.*, 552  
8 F.3d 934, 938 (9th Cir. 2008). Significantly, even if certain statements would be  
9 non-actionable on their own, where there are multiple statements at issue, courts  
10 must consider “as a whole.” *Id.* at 939 n.3; *Lima v. Gateway, Inc.*, 710 F. Supp. 2d  
11 1000, 1007-08 (C.D. Cal. 2010) (denying motion to dismiss where some specific  
12 representations could be considered puffery, but all of defendants' statements “taken  
13 as a whole” might be actionable); *In re NJOY, Inc. Consumer Class Action Litig.*,  
14 No. CV 14-00428 MMM (JEMx), 2015 WL 12732461, at \*10 (C.D. Cal. May 27,  
15 2015) (“Even assuming . . . that some of the statements would themselves be non-  
16 actionable, they “cannot be considered in isolation because they contribute to the  
17 [potentially] deceptive context” of the packaging and marketing “as a whole.””)”  
18 (alteration in original).

19 496. For example, Executive Defendant Aronow’s August 21, 2021 post  
20 stated that the BAYC NFT collection had over a billion dollars in market  
21 capitalization. This statement from Aronow is a specific, detailed factual assertion  
22 the Executive Defendants were using to encourage purchases and increase the price  
23 of the Yuga Financial Products. At the same time, Aronow failed to disclose that  
24 these metrics were the result of conduct by the Executive Defendants that allowed  
25 insiders to disproportionately increase investments in the Yuga Financial Products.  
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1           497. Taken together, the misleading statements and omissions of the  
2 Defendants contributed to the deceptive marketing tactics as a whole, which were  
3 used to solicit sales of Yuga Financial Products.

4           498. In the event that Plaintiffs’ securities and consumer law claims are found  
5 to be inapplicable to the wrongdoing alleged herein against Defendants, Plaintiffs  
6 will be unable to obtain monetary damages in an amount that would make Plaintiffs  
7 and the members of the Class whole.

8           499. In addition, Plaintiff Titcher and the Class lack an adequate remedy at  
9 law because the elements of the other state securities and consumer law claims  
10 require proof of conduct beyond that which must be shown to establish liability  
11 under the UCL and FAL. *See M.O. Dion & Sons, Inc. v. VP Racing Fuels, Inc.*, No.  
12 CV 19-5154-MWF (SSX), 2022 WL 18281526, at \*8 (C.D. Cal. Nov. 2, 2022).

13           500. The lack of an adequate remedy at law entitles Plaintiffs and the Class  
14 to pursue equitable restitution under the UCL.

15           501. Concurrently, “restitution under the . . . UCL would be more certain,  
16 prompt, or efficient than the legal remedies” available with state securities and  
17 consumer law claims. *See Anderson v. Apple Inc.*, 500 F. Supp. 3d 993, 1009 (N.D.  
18 Cal. 2020) (citing *Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937)). For  
19 example, the price premium damages model will likely require expert analysis to  
20 calculate, whereas equitable restitution will only require a showing of what each  
21 member of the Class paid for their Yuga Financial Products. Restitution would,  
22 therefore, be much more prompt and efficient than this remedy at law.

23           502. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts  
24 or practices by Defendants, to obtain restitution and disgorgement of all monies  
25 generated as a result of such practices, and for all other relief allowed under Cal.  
26 Bus. & Prof. Code §17200.

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1           509. Defendants have engaged in, and continue to engage in, conduct that  
2 violates the legislatively declared policies of: (1) California Civil Code §§1572,1573,  
3 1709, 1710, 1711 against committing fraud and deceit; (2) California Civil Code  
4 §1770 against committing acts and practices intended to deceive consumers  
5 regarding the representation of goods in certain particulars; and (3) the Federal Tort  
6 Claims Act (“FTCA”), 15 U.S.C. §45(a)(1), against unfair or deceptive practices.  
7 Defendants gain an unfair advantage over their competitors, whose practices relating  
8 to other similar products must comply with these laws.

9           510. Defendants’ affirmative acts in soliciting sales of Yuga Financial  
10 Products are unfair within the meaning of the UCL, because they constituted  
11 immoral, unethical, oppressive, and unscrupulous activity, caused substantial injury  
12 to consumers, and provided no benefit to consumers or competition.

13           511. The gravity of the harm to consumers caused by actions of Defendants  
14 far outweighs the utility of their conduct. According to a “Data Spotlight” from the  
15 Federal Trade Commission from June 3, 2022 (the “FTC Data Spotlight”), entitled:  
16 “Reports show scammers cashing in on crypto craze,” “[s]ince the start of 2021, more  
17 than 46,000 people have reported losing over \$1 billion in crypto to scams – that’s  
18 about one out of every four dollars reported lost, more than any other payment  
19 method. The median individual reported loss? A whopping \$2,600.”<sup>337</sup>

20           512. The FTC Data Spotlight further stated that “[r]eports point to social  
21 media and crypto as a combustible combination for fraud. Nearly half the people  
22 who reported losing crypto to a scam since 2021 said it started with an ad, post, or  
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26 <sup>337</sup> Emma Fletcher, *Data Spotlight: Reports show scammers cashing in on crypto*  
27 *craze*, FED. TRADE COMM’N (June 3, 2022), <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze>.  
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1 message on a social media platform.”<sup>338</sup> Furthermore, “[d]uring this period, nearly  
2 four out of every ten dollars reported lost to a fraud originating on social media was  
3 lost in crypto, far more than any other payment method.”<sup>339</sup> Of the reported crypto  
4 fraud losses that began on social media, most are investment scams.<sup>340</sup> Indeed, since  
5 2021, \$575 million of all crypto fraud losses reported to the FTC were about bogus  
6 investment opportunities, far more than any other fraud type. Defendants engaged in  
7 the exact kind of bogus crypto “investment opportunity” scam that the FTC Data  
8 Spotlight reported on as causing hundreds of millions (and rising) of dollars of  
9 damage to investors.

10 513. The conduct of Defendants – including, but not limited to, failing to  
11 disclose that (1) it was not a traditional art collector but rather the Yuga-affiliated  
12 FTX that was the purportedly winning bidder of the Sotheby’s auction and that the  
13 entire auction was a scheme to promote the BAYC NFT collection in order to  
14 artificially inflate their price; (2) the promotions by Promoter Defendants Fallon  
15 (with the approval and/or assistance of Defendants Universal and EHD),  
16 Winkelmann, Hilton, Ciccone, Post, Bieber, Broadus, and Curry were the result of  
17 them being paid to promote (or had a vested financial interest in the promotion of)  
18 the Yuga Financial Products instead of an organic interest/support of the Bored Ape  
19 ecosystem; (3) the MoonPay Concierge service promoted by Defendants Soto-  
20 Wright, MoonPay, Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, Hart, and  
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22 <sup>338</sup> *Id.* (“From January 1, 2021 through March 31, 2022, 49% of fraud reports to  
23 the FTC indicating cryptocurrency as the payment method specified that the scam  
started on social media, compared to 37% in 2020, 18% in 2019, and 11% in 2018.”).

24 <sup>339</sup> *Id.* (“From January 1, 2021 through March 31, 2022, \$1.1 billion was reported  
25 to the FTC as lost to fraud originating on social media.”).

26 <sup>340</sup> *Id.* (“From January 1, 2021 through March 31, 2022, people reported to the  
27 FTC that \$417 million in cryptocurrency was lost to fraud originating on social  
28 media. \$273 million of these losses were to fraud categorized as investment related,  
followed by romance scams (\$69 million), and business imposters (\$35 million).”).

1 Broadus was not the legitimate service described by them, but rather a vehicle by  
2 which the Executive Defendants and Defendant Oseary made undisclosed payments  
3 to Promoter Defendants Fallon, Winkelmann, Hilton, Post, Ciccone, Hart, and  
4 Broadus in exchange for misleadingly promoting the Yuga Financial Products to  
5 investors; (4) Defendant Adidas had conspired with the Company and MoonPay to  
6 facilitate the Yuga promoter payments and then conceal such conduct afterwards; and  
7 (5) Executive Defendants and Ape DAO Board Defendants held a significant portion  
8 of the Float at the time of the ApeCoin token launch and thus, could (and did) create  
9 massive downward pressure on the price of ApeCoin tokens by freely selling their  
10 allocations to investors – was and is substantially injurious to consumers. Such  
11 conduct has caused, and continues to cause, substantial injury to consumers because  
12 consumers would not have continued with the transaction but for the deceptive,  
13 fraudulent, false, and unfair acts and practices alleged herein. For example, the  
14 Company and Executive Defendant Shoemaker continue to rely on the deceptive  
15 celebrity promotions described herein to further solicit sales of the Yuga Financial  
16 Products. On March 23, 2023, the Company posted a second year anniversary video  
17 that contained a montage of the deceptive promotions at issue here and of the  
18 Promoter Defendants engaging in the same misconduct as occurred during the Class  
19 Period. Shoemaker, once again, amplified the misleading Yuga promotions on her  
20 personal Twitter account, reposting the anniversary video and stating that she was  
21 “Super proud of everything this company and super epic community have achieved  
22 in such a short time. Can’t wait to see what’s still to come 🚀 keep slaying BAYC  
23 fam 🙌.”<sup>341</sup>

24 514. Consumers have overpaid for Yuga Financial Products. And the injury  
25 alleged herein is not outweighed by any countervailing benefits to consumers or  
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27 <sup>341</sup> Jasmine Shoemaker (@SodaOps), TWITTER (Apr. 23, 2022 2:15 PM),  
28 <https://twitter.com/SodaOps/status/1650201780939259904?s=20>.

1 competition. Indeed, no benefit to consumers or competition results from the alleged  
2 conduct of Defendants. Since consumers reasonably rely on the representations, and  
3 could not have known about the omitted disclosures, and the injury results from  
4 ordinary use of their product, consumers could not have reasonably avoided such  
5 injury.

6 515. Defendants willfully and knowingly engaged in the deceptive and unfair  
7 acts and practices described above and knew or should have known that those acts  
8 and practices were unlawful and thus in violation of Cal. Bus. & Prof. Code §17200,  
9 *et seq.*

10 516. These particular facts that each Defendant omitted and concealed were  
11 material to the decisions of Plaintiff Titcher and the members of the Class about  
12 whether to pay for Yuga Financial Products, in that they would not have proceeded  
13 with the transaction but for the deceptive and unfair acts and practices.

14 517. Defendants' conduct harmed competition. While the Company,  
15 Executive Defendants, and Ape DAO Board Defendants cut corners and minimized  
16 costs, their competitors spent the time and money necessary to promote financial  
17 products and/or digital assets that complied with the applicable state and federal laws.  
18 Further, the injuries suffered by Plaintiffs are not outweighed by any countervailing  
19 benefits to consumers or competition. And because Defendants are solely responsible  
20 for their respective promotional activities and related disclosures (or lack thereof),  
21 there is no way Plaintiff Titcher, or the members of the Class could have known about  
22 the payments that Promoter Defendants received for pretending that they were  
23 interested in the BAYC NFT collection of the Bored Ape ecosystem. There were  
24 reasonably available alternatives to further Yuga's and MoonPay's legitimate  
25 business interests, such as including disclaimers, other than the conduct alleged  
26 herein.

1           518. In order to have standing for a UCL claim, a plaintiff must meet the  
2 injury-in-fact requirement. This requirement is met where a plaintiff can “show that,  
3 by relying on a misrepresentation on a product label, they ‘paid more for a product  
4 than they otherwise would have paid, or bought it when they otherwise would not  
5 have done so.’” *Reid*, 780 F.3d at 958. A plaintiff’s claims under this California  
6 statute are governed by the “reasonable consumer” test. *Freeman*, 68 F.3d at 289  
7 (“[T]he false or misleading advertising and unfair business practices claim must be  
8 evaluated from the vantage of a reasonable consumer.”). Under the reasonable  
9 consumer standard, a plaintiff must “show that ‘members of the public are likely to  
10 be deceived.’” *Id.* (quoting *Bank of the West*, 2 Cal. 4th at 1267).

11           519. To meet the heightened pleading standard of Rule 9(b) for claims that  
12 sound in fraud, plaintiffs must plead “‘the who, what, when, where, and how’” of the  
13 alleged fraud. *Vess*, 317 F.3d at 1106.

14           520. Defendants engaged in deceptive acts and practices under California law  
15 by taking advantage of the lack of knowledge, ability, experience, or capacity of  
16 Plaintiffs to a grossly unfair degree, including but not limited to, in the following  
17 ways:

18           (a) knowingly and intentionally misrepresenting that it was not a traditional  
19 art collector but rather the Yuga-affiliated FTX that was the purportedly winning  
20 bidder of the Sotheby’s auction and that the entire auction was a scheme to promote  
21 the BAYC NFT collection in order to artificially inflate their price;

22           (b) knowingly and intentionally concealing the specific roles and  
23 overlapping ownership and/or financial interests in Yuga and MoonPay by the  
24 Executive Defendants, Ape DAO Board Defendants, and Promoter Defendants  
25 Oseary, Fallon (with the approval and/or assistance of Defendants Universal and  
26 EHD), Winkelmann, Hilton, Post, Ciccone, Hart, and Broadus;

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1 (c) failing to disclose that the promotions by Promoter Defendants Fallon  
2 (with the approval and/or assistance of Defendants Universal and EHD),  
3 Winkelmann, Hilton, Ciccone, Post, Bieber, Broadus, and Curry were the result of  
4 them being paid to promote (or having a vested financial interest in the promotion of)  
5 the Yuga Financial Products instead of an organic interest/support of the Bored Ape  
6 ecosystem;

7 (d) knowingly and intentionally using and/or failing to disclose the use of  
8 the Promoter Defendants to instill trust in uninformed investors to promote the  
9 financial benefits of a highly speculative and risky investment in Yuga Financial  
10 Products, in an effort to manipulate and artificially inflate the price and trading  
11 volume of the Yuga Financial Products and allow the Company, Executive  
12 Defendants, and Ape DAO Board Defendants to profit from the sale of Yuga  
13 Financial Products at those inflated prices;

14 (e) knowingly and intentionally misrepresenting and/or failing to disclose  
15 that the MoonPay Concierge service promoted by Defendants Soto-Wright,  
16 MoonPay, Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, Hart, Broadus was  
17 being used as a front for the undisclosed payments from the Executive Defendants  
18 and Defendant Oseary to Promoter Defendants Fallon, Winkelmann, Hilton, Post,  
19 Ciccone, Hart, and Broadus in exchange for misleadingly promoting the Yuga  
20 Financial Products to investors; and

21 (f) failing to disclose that Defendant Adidas had conspired with the  
22 Company and MoonPay to facilitate the Yuga promoter payments and then conceal  
23 such conduct afterwards.

24 521. The facts that Defendants misrepresented and concealed were material  
25 to the decisions of Plaintiff Titcher and the members of the Class about whether to  
26 pay for or purchase Yuga Financial Products (at all or for the price they paid), in that  
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1 they would not have proceeded with their transactions but for the deceptive,  
2 fraudulent and false acts and practices.

3 522. Defendants intended for Plaintiff Titcher and the members of the Class  
4 to pay for Yuga Financial Products in reliance upon their deceptive and fraudulent  
5 acts and practices.

6 523. Had any of the Defendants disclosed the omitted information, Plaintiffs  
7 would have been aware of it because (a) they saw the actual promotions by Promoter  
8 Defendants Sotheby's, Fallon (with the approval and/or assistance of Defendants  
9 Universal and EHD), Hilton, Post, Bieber, Broadus, Curry, and Adidas, and would  
10 have concurrently seen any disclosure on the promotions themselves had it been  
11 included; and (b) they follow, directly or indirectly, the social media accounts of, and  
12 news reports on, the Company and its affiliated social media accounts and Defendants  
13 Sotheby's, Fallon, Hilton, Post, Bieber, Broadus, Curry, and Adidas.

14 524. As a direct and proximate result of Defendants' unlawful, unfair, and  
15 deceptive practices, Plaintiffs and Class members suffered damages. The activities  
16 of Executive Defendants, Ape DAO Board Defendants, with Defendants MoonPay,  
17 Soto-Wright, and the Promoter Defendants caused Plaintiffs and the Class members  
18 to purchase and/or hold the Yuga Financial Products when they otherwise would not  
19 have done so.

20 525. The statements from Executive Defendants and Promoter Defendants  
21 Sotheby's, Fallon (with the approval and/or assistance of Defendants Universal and  
22 EHD), Winkelmann, Hilton, Post, Bieber, Broadus, and Curry are actionable and not  
23 puffery. "The distinguishing characteristics of puffery are vague, highly subjective  
24 claims as opposed to specific, detailed factual assertions." *Orlick v. Rawlings*  
25 *Sporting Goods Co.*, No. CV 12-6787-GHK (RZX), 2013 WL 12139142, at \*5 (C.D.  
26 Cal. Feb. 20, 2013). Under California law, there is no requirement that for a statement  
27 to be actionable it must also be false — the UCL also prohibits "advertising which,  
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1 although true, is either actually misleading or which has a capacity, likelihood or  
2 tendency to deceive or confuse the public.” *Williams v. Gerber Prods. Co.*, 552 F.3d  
3 934, 938 (9th Cir. 2008). Significantly, even if certain statements would be non-  
4 actionable on their own, where there are multiple statements at issue, courts must  
5 consider “as a whole.” *Id.* at 939 n.3; *Lima v. Gateway, Inc.*, 710 F. Supp. 2d 1000,  
6 1007-08 (C.D. Cal. 2010) (denying motion to dismiss where some specific  
7 representations could be considered puffery, but all of defendants’ statements “taken  
8 as a whole” might be actionable); *In re NJOY, Inc. Consumer Class Action Litig.*, No.  
9 CV 14-00428 MMM (JEMx), 2015 WL 12732461, at \*10 (C.D. Cal. May 27, 2015)  
10 (“Even assuming . . . that some of the statements would themselves be non-  
11 actionable, they “cannot be considered in isolation because they contribute to the  
12 [potentially] deceptive context” of the packaging and marketing “as a whole.””) )  
13 (alteration in original).

14 526. For example, Executive Defendant Aronow’s August 21, 2021 post  
15 stated that the BAYC NFT collection had over a billion dollars in market  
16 capitalization. This statement from Aronow is a specific, detailed factual assertion  
17 the Executive Defendants were using to encourage purchases and increase the price  
18 of the Yuga Financial Products. At the same time, Aronow failed to disclose that  
19 these metrics were the result of conduct by the Executive Defendants that allowed  
20 insiders to disproportionately increase investments in the Yuga Financial Products.

21 527. Taken together, the misleading statements and omissions of the  
22 Defendants contributed to the deceptive marketing tactics as a whole, which were  
23 used to solicit sales of Yuga Financial Products.

24 528. In the event that Plaintiffs’ securities and consumer law claims are found  
25 to be inapplicable to the wrongdoing alleged herein against Defendants, Plaintiffs  
26 will be unable to obtain monetary damages in an amount that would make Plaintiffs  
27 and the members of the Class whole.

28

1 529. In addition, Plaintiff and the Class lack an adequate remedy at law  
2 because the elements of the other state securities and consumer law claims require  
3 proof of conduct beyond that which must be shown to establish liability under the  
4 UCL and FAL. *See M.O. Dion & Sons, Inc. v. VP Racing Fuels, Inc.*, No. CV 19-  
5 5154-MWF (SSX), 2022 WL 18281526, at \*8 (C.D. Cal. Nov. 2, 2022).

6 530. The lack of an adequate remedy at law entitles Plaintiffs and the Class  
7 to pursue equitable restitution under the UCL.

8 531. Concurrently, “restitution under the . . . UCL would be more certain,  
9 prompt or efficient than the legal remedies” available with state securities and  
10 consumer law claims. *See Anderson*, 500 F. Supp. 3d at 1009 (citing *Stewart*, 300  
11 U.S. at 214). For example, the price premium damages model will likely require  
12 expert analysis to calculate, whereas equitable restitution will only require a showing  
13 of what each member of the Class paid for their Yuga Financial Products. Restitution  
14 would, therefore, be much more prompt and efficient than this remedy at law.

15 532. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts  
16 or practices by Defendants, to obtain restitution and disgorgement of all monies  
17 generated as a result of such practices, and for all other relief allowed under California  
18 Business & Professions Code §17200.

19 **THIRD CAUSE OF ACTION**  
20 **Violation of the California Unfair Competition Law**  
21 **Cal. Bus. & Prof. Code §17200**  
22 **(Based on Fraudulent Acts and Practices)**  
23 **(Against All Defendants)**

24 533. Plaintiffs restate and reallege all preceding allegations in paragraphs 1  
25 to 399, 454-475 above as if fully set forth herein, and further allege the following:

26 534. Plaintiff Titcher is a resident of the State of California.

27 535. Plaintiff Titcher paid for or purchased Yuga Financial Products in  
28 California and thus the deceptive transactions alleged herein occurred in California.

1           536. At all relevant times there was in full force and effect the California  
2 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §17200, *et seq.*, which  
3 prohibits, *inter alia*, “any unlawful, unfair, or fraudulent business act or practice” and  
4 “unfair, deceptive, untrue, or misleading advertising.”

5           537. “[A]n act can be alleged to violate any or all three of the three prongs  
6 of the UCL — unlawful, unfair, or fraudulent.” *Stearns*, 763 F. Supp. 2d at 1149  
7 (quoting *Berryman*, 152 Cal. App. 4th at 1554).

8           538. Any violation of the California false advertising laws (*e.g.*, §17500)  
9 necessarily violates the “fraudulent” prong of the UCL.

10           539. To meet the heightened pleading standard of Rule 9(b) for claims that  
11 sound in fraud, plaintiffs must plead “‘the who, what, when, where, and how’” of the  
12 alleged fraud. *Vess*, 317 F.3d at 1106.

13           540. In order to have standing under California law for a UCL claim, a  
14 plaintiff must meet the injury-in-fact requirement. This requirement is met where a  
15 plaintiff can “show that, by relying on a misrepresentation on a product label, they  
16 ‘paid more for a product than they otherwise would have paid, or bought it when they  
17 otherwise would not have done so.’” *Reid*, 780 F.3d at 958.

18           541. A plaintiff’s claims under this California statute are governed by the  
19 “reasonable consumer” test. *Freeman*, 68 F.3d at 289 (“[T]he false or misleading  
20 advertising and unfair business practices claim must be evaluated from the vantage  
21 of a reasonable consumer.”). Under the reasonable consumer standard, a plaintiff  
22 must “show that ‘members of the public are likely to be deceived.’” *Id.* at 289  
23 (quoting *Bank of the West*, 2 Cal. 4th at 1267).

24           542. Nondisclosure or concealment may also constitute actionable fraud  
25 when, *inter alia*, the defendant “actively conceals a material fact from the plaintiff”  
26 or “makes partial representations but also suppresses some material facts.” *LiMandri*  
27 *v. Judkins*, 52 Cal. App. 4th 326, 336 (1997). In fact, allegations of “intentional and  
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1 systematic concealment by the defendants of highly material facts, which were  
2 peculiarly within their knowledge and which [plaintiffs] did not suspect and could  
3 not have discovered” satisfactorily pleads a claim of fraud by omission. *See Sime v.*  
4 *Malouf*, 95 Cal. App. 2d 82, 99-100 (1949) (finding “significant” that defendants  
5 “concealed their identity by proceeding entirely through agents acting ostensibly in  
6 their own behalf”).

7 543. Further, a fraud by omission claim exists when “defendants not only had  
8 exclusive knowledge of the material facts, but knew that [plaintiff] was acting under  
9 a misapprehension, which they had cultivated.” *Id.* at 100 (citing *Stewart v. Wyoming*  
10 *Cattle-Ranche Co.*, 128 U.S. 383, 388 (1888)); *Myers v. BMW of N. Am., LLC*, No.  
11 16-CV-00412-WHO, 2016 WL 5897740, at \*5 (N.D. Cal. Oct. 11, 2016) (finding a  
12 duty to disclose where defendant had exclusive knowledge of a product defect and  
13 made a partial representation about it and denying dismissal of UCL claim under  
14 fraud by omission theory).

15 544. “Generally, courts have not defined “exclusive” literally, but have  
16 found such claims cognizable if the defendant had “superior” knowledge of a defect  
17 that was not readily apparent and there is no or only . . . limited publicly available  
18 information about the defect.” *Mosqueda v. Am. Honda Motor Co., Inc.*, 443 F.  
19 Supp. 3d 1115, 1133 (C.D. Cal. 2020) (quoting *Salas v. Toyota Motor Sales, U.S.A.,*  
20 *Inc.*, No. CV 15-08629 FMO, 2016 WL 7486600, at \*10 (C.D. Cal. Sept. 27, 2016)).  
21 Indeed, under California law a duty to disclose “may arise without any confidential  
22 relationship where defendant alone has knowledge of material facts that are not  
23 accessible to the plaintiff.” 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts,  
24 §799, p. 1156. These factors do not require a fiduciary relationship so long as there  
25 exists “some relationship” between the defendant and plaintiff, such as “between  
26 buyer and seller.” *LiMandri*, 52 Cal. App. 4t at 336. Promoter Defendants’  
27 omissions were fraudulent under these factors in *LiMandri*.

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1           545. These particular facts that each Defendant omitted and concealed were  
2 material to the decisions of Plaintiff Titcher and the members of the Class about  
3 whether to pay for or purchase Yuga Financial Products (at all or for the price they  
4 paid), in that they would not have proceeded with the transaction but for the  
5 deceptive, fraudulent, and false acts and practices. For example, misleading  
6 statements and omissions concerning the ability to use Yuga Financial Products and  
7 their related intellectual property rights relate to “the central functionality of the  
8 product,” which is required to plead a fraud by omission claim under the UCL. *See*  
9 *Hall*, 747 F. App’x at 451 (citing *Hodsdon*, 891 F.3d at 863. The omissions about  
10 the intellectual property rights given to investors in the BAYC, MAYC, and BAKC  
11 NFT collections, as well as the omissions concerning the ability to use ApeCoin and  
12 virtual land in the Otherside, were only known to Executive Defendants and were  
13 contrary to representations and omissions previously made concerning the ability to  
14 use Yuga Financial Products to purchase goods and services.

15           546. Defendants, collectively and individually, had superior knowledge of  
16 information regarding the ownership interests and ability to use the Yuga Financial  
17 Products as advertised. The fact that the Promoter Defendants had undisclosed  
18 financial interests in Yuga and MoonPay was not known to Plaintiffs or the members  
19 of the Class when each was respectively deciding whether or not to purchase Yuga  
20 Financial Products, as this information was in the exclusive possession of the  
21 Company, Executive Defendants, and Ape DAO Board Defendants.

22           547. To state a claim for active concealment, a plaintiff must allege specific  
23 “affirmative acts on the part of the [D]efendants in hiding, concealing or covering  
24 up the matters complained of.” *Herron v. Best Buy Co. Inc.*, 924 F. Supp. 2d 1161,  
25 1176 (E.D. Cal. 2013) (citing *Lingsch v. Savage*, 213 Cal. App. 2d 729, 734 (1963)).  
26 Here, the Company and Executive Defendants used their business associate  
27 Defendant Oseary to act as a middleman between the public and the Company’s  
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1 founders in order to actively conceal the true nature of the Promoter Defendants'  
2 business relationships with the Company, MoonPay, and the insiders of both.

3 548. Defendants intended for Plaintiffs and the members of the Class to pay  
4 for Yuga Financial Products in reliance upon the deceptive and fraudulent acts and  
5 practices described herein.

6 549. Defendants engaged in deceptive acts and practices under California law  
7 by taking advantage of the lack of knowledge, ability, experience, or capacity of  
8 Plaintiffs to a grossly unfair degree, including but not limited to, in the following  
9 ways:

10 (a) knowingly and intentionally misrepresenting that it was not a  
11 traditional art collector but rather the Yuga-affiliated FTX that was the purportedly  
12 winning bidder of the Sotheby's auction and that the entire auction was a scheme to  
13 promote the BAYC NFT collection in order to artificially inflate their price;

14 (b) knowingly and intentionally concealing the specific roles and  
15 overlapping ownership and/or financial interests in Yuga and MoonPay by the  
16 Executive Defendants, Ape DAO Board Defendants, and Promoter Defendants  
17 Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, Hart, and Broadus;

18 (c) failing to disclose that the promotions by Promoter Defendants  
19 Fallon (with the approval and/or assistance of Defendants Universal and EHD),  
20 Winkelmann, Hilton, Ciccone, Post, Bieber, Broadus, and Curry were the result of  
21 them being paid to promote (or having a vested financial interest in the promotion of)  
22 the Yuga Financial Products instead of an organic interest/support of the Bored Ape  
23 ecosystem;

24 (d) knowingly and intentionally using and/or failing to disclose the  
25 use of the Promoter Defendants to instill trust in uninformed investors to promote the  
26 financial benefits of a highly speculative and risky investment in Yuga Financial  
27 Products, in an effort to manipulate and artificially inflate the price and trading  
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1 volume of the Yuga Financial Products and allow the Company, Executive  
2 Defendants, and Ape DAO Board Defendants to profit from the sale of Yuga  
3 Financial Products at those inflated prices;

4 (e) knowingly and intentionally misrepresenting and/or failing to  
5 disclose that the MoonPay Concierge service promoted by Defendants Soto-Wright,  
6 MoonPay, Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, Hart, and Broadus  
7 was being used as a front for the undisclosed payments from the Executive  
8 Defendants and Defendant Oseary to Promoter Defendants Fallon, Winkelmann,  
9 Hilton, Post, Ciccone, Hart, and Broadus in exchange for misleadingly promoting the  
10 Yuga Financial Products to investors; and

11 (f) failing to disclose that Defendant Adidas had conspired with the  
12 Company and MoonPay to facilitate the Yuga promoter payments and then conceal  
13 such conduct afterwards.

14 550. Had any of the Defendants disclosed the omitted information, Plaintiffs  
15 would have been aware of it because (a) they saw the actual promotions by Promoter  
16 Defendants Sotheby's, Fallon, Hilton, Post, Bieber, Broadus, Curry, and Adidas, and  
17 would have concurrently seen any disclosure on the promotions themselves had it  
18 been included, and (b) they follow, directly or indirectly, the social media accounts  
19 of, and news reports on, Defendants Sotheby's, Fallon, Hilton, Post, Bieber, Broadus,  
20 Curry, and Adidas.

21 551. As a direct and proximate result of Defendants' unlawful, unfair, and  
22 deceptive practices, Plaintiffs and Class members suffered damages. The Executive  
23 Defendants' activities with the Promoter Defendants caused Plaintiffs and the Class  
24 members to purchase and/or hold the Yuga Financial Products when they otherwise  
25 would not have done so.

26 552. The statements from Executive Defendants and Promoter Defendants  
27 are actionable and not puffery. "The distinguishing characteristics of puffery are  
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1 vague, highly subjective claims as opposed to specific, detailed factual assertions.”  
2 *Orlick*, 2013 WL 12139142, at \*5. Under California law, there is no requirement that  
3 for a statement to be actionable it must also be false — the UCL also prohibits  
4 ““advertising which, although true, is either actually misleading or which has a  
5 capacity, likelihood or tendency to deceive or confuse the public.”” *Williams.*, 552  
6 F.3d at 938. Significantly, even if certain statements would be non-actionable on  
7 their own, where there are multiple statements at issue, courts must consider “as a  
8 whole.” *Id.* at 939 n.3; *Lima*, 710 F. Supp. 2d at 1007-08 (denying motion to dismiss  
9 where some specific representations could be considered puffery, but all of  
10 defendants’ statements “taken as a whole” might be actionable); *NJOY*, 2015 WL  
11 12732461, at \*10 (“Even assuming . . . that some of the statements would  
12 themselves be non-actionable, they “cannot be considered in isolation because they  
13 contribute to the [potentially] deceptive context” of the packaging and marketing “as  
14 a whole.””) (alteration in original). The alleged misstatements from Executive  
15 Defendants and Promoter Defendants are specific, detailed factual assertions these  
16 Defendants were using to encourage purchases and increase the price of the Yuga  
17 Financial Products. At the same time, the Executive Defendants and Promoter  
18 Defendants each failed to disclose that the MoonPay service was a sham created to  
19 effectuate undisclosed Yuga promoter payments and that the rise in the price and  
20 trading activity for Yuga Financial Products was due to deceptive conduct by  
21 Defendants as opposed to genuine interest from investors.

22 553. Taken together, the misleading statements and omissions of the various  
23 Defendants contributed to the deceptive marketing tactics as a whole, which were  
24 used to solicit sales of Yuga Financial Products.

25 554. In the event that Plaintiffs’ securities and consumer law claims are found  
26 to be inapplicable to the wrongdoing alleged herein against Defendants, Plaintiffs  
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1 will be unable to obtain monetary damages in an amount that would make Plaintiffs  
2 and the members of the Class whole.

3 555. In addition, Plaintiff and the Class lack an adequate remedy at law  
4 because the elements of the other state securities and consumer law claims require  
5 proof of conduct beyond that which must be shown to establish liability under the  
6 UCL and FAL. *See M.O. Dion & Sons, Inc. v. VP Racing Fuels, Inc.*, No. CV 19-  
7 5154-MWF (SSX), 2022 WL 18281526, at \*8 (C.D. Cal. Nov. 2, 2022).

8 556. The lack of an adequate remedy at law entitles Plaintiffs and the Class  
9 to pursue equitable restitution under the UCL.

10 557. Concurrently, “restitution under the . . . UCL would be more certain,  
11 prompt, or efficient than the legal remedies” available with state securities and  
12 consumer law claims. *See Anderson v. Apple Inc.*, 500 F. Supp. 3d 993, 1009 (N.D.  
13 Cal. 2020) (citing *Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937)). For  
14 example, the price premium damages model will likely require expert analysis to  
15 calculate, whereas equitable restitution will only require a showing of what each  
16 member of the Class paid for their Yuga Financial Products. Restitution would,  
17 therefore, be much more prompt and efficient than this remedy at law.

18 558. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts  
19 or practices by Defendants, to obtain restitution and disgorgement of all monies  
20 generated as a result of such practices, and for all other relief allowed under Cal. Bus.  
21 & Prof. Code §17200.

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**FOURTH CAUSE OF ACTION**  
**Unregistered Offering and Sale of Securities in**  
**Violation of Sections 5 and 12(a)(1) of the Securities Act of 1933**  
**(Against the Company, Executive Defendants, Ape DAO Board Defendants,**  
**MoonPay, Sotheby’s, Adidas)**

559. Plaintiffs, on behalf of themselves and all others similarly situated, reallege and incorporate herein by reference paragraphs 1 to 399 and 454-475 and further allege as follows:

560. The Company, Executive Defendants, Ape DAO Board Defendants, MoonPay Defendants, and Promoter Defendants Sotheby’s and Adidas, are collectively referred to in this cause of action as the “Statutory Seller Defendants.”

561. Statutory Seller Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interest commerce for the purpose of sale or for delivery after sale.

562. Yuga Financial Products are securities within the meaning of Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

563. Plaintiffs and members of the Class purchased Yuga Financial Product securities.

564. No registration statements have been filed with the SEC or have been in effect with respect to any of the offerings alleged herein. No exemption to the registration requirement applies.

565. SEC Rule 159A provides that, for purposes of Section 12(a)(2), an “issuer” in “a primary offering of securities” shall be considered a statutory seller. 17 C.F.R. §230.159A(a). The Securities Act in turn defines “issuer” to include every person who issues or proposes to issue any security. 15 U.S.C. §77b(a)(4). The Statutory Seller Defendants are issuers of Yuga Financial Products.

1           566. These Statutory Seller Defendants are also liable under the solicitation  
2 prong of Section 12(a)(1). The U.S. Supreme Court has held that statutory sellers  
3 under Section 12(a)(1) also include “the buyer’s immediate seller” and any person  
4 who actively solicited the sale of the securities to plaintiff and did so for financial  
5 gain. *See Pinter v. Dahl*, 486 U.S. 622, 644 n.21, 647 (1988); *accord, e.g., Steed Fin.*  
6 *LDC v. Nomura Sec. Int’l, Inc.*, No. 00 Civ. 8058, 2001 WL 1111508, at \*7 (S.D.N.Y.  
7 Sept. 20, 2001). That is, §12(a)(1) liability extends to sellers who actively solicit the  
8 sale of securities with a motivation to serve their own financial interest or those of  
9 the securities owner. *Pinter*, 486 U.S. at 647; *Capri v. Murphy*, 856 F.2d 473, 478  
10 (2d Cir. 1988). As specifically alleged herein, the Statutory Seller Defendants all  
11 actively solicited sales of the Yuga Financial Products on social media, proprietary  
12 web sites, press releases, and traditional print media. Thus they are each liable under  
13 the solicitation prong, in addition to any liability flowing from their direct issuance  
14 of Yuga Financial Products. *See Wildes v. BitConnect Int’l PLC*, 25 F.4th 1341, 1346  
15 (11th Cir.) (“Broadly disseminated communications . . . can convey a solicitation.”);  
16 *Pino v. Cardone Cap., LLC*, No. 21-55564, 2022 WL 17826876 (9th Cir. Dec. 21,  
17 2022) (stating that “[t]o conclude that their social media communications fall outside  
18 the Act’s protections would be at odds with Congress’s remedial goals. As observed  
19 by the Eleventh Circuit in *Wildes*, under Defendants’ interpretation of the Act, a seller  
20 liable “for recommending a security in a personal letter could not be held accountable  
21 for making the exact same pitch in an internet video.”).

22           567. By reason of the foregoing, the Company, Executive Defendants  
23 Aronow, Solano, Atalay, Ali, and Muniz, Ape DAO Board Defendants Shoemaker,  
24 Ehrlund, Lyons, Ohanian, Wu, Bajwa, MoonPay and its CEO Soto-Wright, and  
25 Promoter Defendants Sotheby’s and Adidas, each violated Sections 5(a), 5(c), and  
26 12(a) of the Securities Act, 15 U.S.C. §§77e(a), 77e(c), and 771(a).

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1 568. As a direct and proximate result of the Statutory Seller Defendants'  
2 unregistered sale of securities, Plaintiffs and the Class have suffered damages in  
3 connection with their Yuga Financial Product purchases.

4 **FIFTH CAUSE OF ACTION**  
5 **Violation of Sections 15 of the Securities Act of 1933**  
6 **(Against the Executive Defendants, Oseary, Ape DAO Board Defendants,**  
7 **adidas Ventures, B.V. and Individual Defendant Soto-Wright)**

8 569. Plaintiffs, on behalf of themselves and all others similarly situated,  
9 reallege and incorporate herein by reference paragraphs 1-475, and further allege as  
10 follows:

11 570. This Count is asserted against Executive Defendants Aronow, Solano,  
12 Ataly, Ali, Muniz, Shoemaker, Ehrlund, Oseary, Ape DAO Board Defendants Lyons,  
13 Ohanian, Wu, and Bajwa, and Defendant Soto-Wright (collectively referred to in this  
14 cause of action as the “Control Person Defendants”) under Section 15 of the  
15 Securities Act of 1933, 15 U.S.C. §77o.

16 571. The Control Person Defendants, by virtue of their offices, ownership,  
17 agency, agreements or understandings, and specific acts were, at the time of the  
18 wrongs alleged herein, and as set forth herein, controlling persons within the meaning  
19 of Section 15 of the Securities Act of 1933. The Control Person Defendants, and  
20 each of them, had the power and influence and exercised the same to cause the  
21 unlawful offer and sale of Yuga Financial Products securities as described herein.

22 572. The Control Person Defendants, separately or together, possess, directly  
23 or indirectly, the power to direct or cause the direction of the management and  
24 policies of Yuga and/or MoonPay, through ownership of voting securities, by  
25 contract, subscription agreement, or otherwise.

26 573. The Control Person Defendants also have the power to direct or cause  
27 the direction of the management and policies of the Company and/or MoonPay.  
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1           581. The Yuga Financial Products were and are required to be registered with  
2 the Commissioner of Corporations under California law.

3           582. Section 25110 (similar to a Section 12(a)(1) claim under the federal  
4 securities law) makes it illegal, in connection with the purchase or sale of any  
5 security, for any person, directly or indirectly, to offer or sell a security in California  
6 “unless such security or transaction is exempted or not subject to qualification under  
7 Chapter 1 (commencing with Section 25100) of this part.” Further, the offer or sale  
8 of such a security “in a manner that varies or differs from, exceeds the scope of, or  
9 fails to conform with either a material term or material condition of qualification of  
10 the offering . . . shall be an unqualified offer or sale.” Cal. Corp. Code §25110.

11           583. Section 25503 establishes a private remedy for damages under Section  
12 25110 of the California Corporations Code. In particular, violators of Section 25110  
13 “shall be liable to any person acquiring from them the security sold in violation of  
14 that section, who may sue to recover the consideration they paid for that security with  
15 interest thereon at the legal rate, and reasonable attorney’s fees, less the amount of  
16 any income received therefrom, upon the tender of that security, or for damages, if  
17 they no longer own the security, or if the consideration given for the security is not  
18 capable of being returned.” In the event that the plaintiff no longer owns the security,  
19 damages “shall be equal to the difference between (a) the purchase price plus interest  
20 at the legal rate from the date of purchase, plus reasonable attorney’s fees, and (b) the  
21 value of the security at the time it was disposed of by the plaintiff plus the amount of  
22 any income received therefrom by the plaintiff.” Cal. Corp. Code §25503.

23           584. Conversely, Section 25503 provides that, if the consideration given for  
24 the security is not capable of being returned then damages shall be equal to the value  
25 of that consideration plus interest at the legal rate from the date of purchase, provided  
26 the security is tendered, plus reasonable attorney’s fees; and if the plaintiff no longer  
27 owns the security, damages in that case shall be equal to the difference between (a)  
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1 the value of the consideration given for the security plus interest at the legal rate from  
2 the date of purchase, plus reasonable attorney’s fees; and (b) the value of the security  
3 at the time it was disposed of by the plaintiff plus the amount of any income received  
4 therefrom by the plaintiff. *Id.*

5 585. Under Section 25503, “[a]ny person on whose behalf an offering is made  
6 and any underwriter of the offering, whether on a best efforts or a firm commitment  
7 basis, shall be jointly and severally liable under this section.”

8 586. The Yuga Financial Products have not been registered with the  
9 Commissioner, are not exempt from registration, and are not federally covered. No  
10 registration statements have been filed with any state or federal government entity or  
11 have been in effect with respect to any of the offerings alleged herein.

12 587. The Statutory Seller Defendants, by engaging in the conduct described  
13 above, directly or indirectly, sold and/or offered to sell securities, making each liable  
14 for both issuer and solicitation violations under Section 25503.

15 588. Plaintiffs purchased Yuga Financial Products securities from the  
16 Statutory Seller Defendants. For example, the ApeCoin tokens were provided and/or  
17 sold into the ApeCoin liquidity pool by Executive Defendants and Ape DAO Board  
18 Defendants. Upon information and belief, given the limited and measurable amount  
19 of individuals selling or providing the cryptocurrency to the ApeCoin token liquidity  
20 pool, a large portion (if not all) of the ApeCoin token liquidity pool were provided  
21 by Executive Defendants and Ape DAO Board Defendants (or market makers for  
22 Yuga like Wintermute and FTX who were given undisclosed loans of Yuga Financial  
23 Products to sell to the market on behalf of the Company). These actions coincided  
24 with Plaintiffs and Class members transacting with the liquidity pools as buyers.  
25 Thus, by providing ApeCoin tokens to the liquidity pool at the time in which  
26 Plaintiffs and the members of the Class made their ApeCoin token purchases from  
27 the liquidity pool, privity between Executive Defendants (personally and through the  
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1 Company), Ape DAO Board Defendants (personally and through the Ape Foundation  
2 and/or the Company), and Plaintiffs is established even in the absence of a direct  
3 contract linking the two parties.

4 589. Privity also exists between the issuers of every Yuga NFT collection  
5 (i.e., the Company and Executive Defendants) and all those making purchases (e.g.,  
6 Plaintiffs and the members of the Class) regardless of which cryptocurrency  
7 exchange was used to facilitate the transaction because these Defendants are  
8 receiving the benefit of a 2.5% fee per resale of a Yuga NFT.

9 590. As discussed above, the Company, Executive Defendants, Ape DAO  
10 Board Defendants, MoonPay, and Promoter Defendants Sotheby's and Adidas  
11 actively solicited the purchase of Yuga Financial Products through social media,  
12 promotional video, press releases, traditional press, and online.

13 591. By reason of the foregoing, each of the Statutory Seller Defendants have  
14 violated Sections 25110 and 25503 of the California Corporations Code.

15 **SEVENTH CAUSE OF ACTION**  
16 **Violation of Sections 10b of the Securities Exchange Act of 1934 and Rule 10b-**  
17 **5(b) thereunder**  
18 **(Fraudulent Statement Liability)**  
19 **(Against the Executive Defendants, the MoonPay Defendants, the Ape DAO**  
20 **Board Defendants, and Sotheby's)**

21 592. Plaintiffs, on behalf of themselves and all others similarly situated,  
22 reallege and incorporate herein by reference paragraphs 1-475, and further allege as  
23 follows:

24 593. Plaintiffs bring this claim for violations of Section 10(b) of the  
25 Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-  
26 5(b) promulgated thereunder, 17 C.F.R. §240.10b-5(b).

27 594. The Yuga Financial Products are securities within the meaning of  
28 Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

1           595. Section 10(b) and Rule 10b-5(b) make it illegal, in connection with the  
2 purchase or sale of any security, “for any person, directly or indirectly, by the use of  
3 any means or instrumentality of interstate commerce, or of the mails or of any facility  
4 of any national securities exchange . . . to make any untrue statement of a material  
5 fact or to omit to state a material fact necessary in order to make the statements made,  
6 in the light of the circumstances under which they were made, not misleading.” *Id.*

7           596. The Executive Defendants, the MoonPay Defendants, Wu, and  
8 Sotheby’s (with the aid of the other Defendants) carried out a plan, scheme, and  
9 course of conduct that was intended to and did deceive the retail investors – Plaintiffs  
10 and the other Class members – who acquired Yuga Financial Products pursuant to  
11 the continuous offering and thereby caused them to purchase Yuga Financial  
12 Products at artificially inflated prices.

13           597. In connection with the continuous offer and sale of the Yuga Financial  
14 Products, the Executive Defendants, the MoonPay Defendants, Wu, and Sotheby’s  
15 disseminated, approved, and/or endorsed the false statements described herein, which  
16 they knew or recklessly should have known were materially misleading in that they  
17 contained material misrepresentations and failed to disclose material facts necessary  
18 in order to make the statements made, in light of the circumstances under which they  
19 were made, not materially misleading.

20           598. The Executive Defendants, the MoonPay Defendants, Wu, and  
21 Sotheby’s employed devices, schemes, and artifices to defraud; made untrue  
22 statements of material fact and omitted to state material facts necessary to make the  
23 statements made not misleading; and engaged in acts, practices, and a course of  
24 business that operated as a fraud and deceit upon the Class members that resulted in  
25 artificially high market prices for the Yuga Financial Products, in violation of Section  
26 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

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1           599. Yuga fundamentally misrepresented the nature of the Yuga Financial  
2 Products, hawking them as memberships into a “fan club on steroids that encourages  
3 owners of the NFTs to move through an ever-growing and exclusive list of events  
4 and opportunities” instead of unregistered securities with highly inflated prices due  
5 to wash trading and other manipulative practices. Yuga also represented that the  
6 Bored Ape NFT collection had achieved over \$1 billion in trading volume, but failed  
7 to disclose that the NFT collections were significantly plagued by wash trading.

8           600. Further, in offering the Yuga Financial Products, the Executive  
9 Defendants failed to disclose material aspects of Yuga’s business, and made  
10 materially misleading statements, or omitted to state material facts necessary to make  
11 statements made, in the light of the circumstances under which the statements were  
12 made, not misleading.

13           601. Likewise, in promoting the Yuga Financial Products, the MoonPay  
14 Defendants made materially misleading and incomplete statements. MoonPay  
15 falsely stated the celebrities had bought their Bored Apes, when in fact they had been  
16 gifted them from MoonPay. MoonPay omitted the material information that it was  
17 engaging in manipulative trading.

18           602. Similarly, in promoting the Yuga Financial Products, Sotheby’s falsely  
19 stated that the winning bidder in the Sotheby’s BAYC auction that the winning bidder  
20 was a “traditional” collector and that “legacy art collectors were also heavily involved  
21 in the bidding.”

22 **Misrepresentations and Omissions**

23           603. Defendants’ untrue statements and omissions of material facts in  
24 connection with the sale of Yuga Financial Products include, but are not limited to  
25 the following examples:  
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- 1 a. Sotheby’s falsely stating that the winning “bid” of the Sotheby’s auction  
2 was a traditional art collector, and omitting that it was cryptocurrency  
3 industry insiders at FTX that won the auction.
- 4 b. Defendant Solano stated that “The Bored Ape Yacht Club is more than just  
5 an #NFT collection – the NFT grants access to a collaborative art  
6 experiment in the form of a canvas only token-holders can draw on.” This  
7 statement was misleading in that it suggested to investors that there would  
8 be a broader ecosystem for BAYC NFT holders to interact in and that the  
9 BAYC brand was poised for significant growth, when, in truth, the BAYC  
10 NFTs were just a vehicle to make insiders rich at the expense of investors.
- 11 c. Defendant Solano stated that the Bored Ape NFTs “double as membership  
12 cards to an exclusive club with benefits.” This statement was misleading  
13 in that it suggested to investors that there would be a broader ecosystem for  
14 BAYC NFT holders to interact in and that the BAYC brand was poised for  
15 significant growth, when, in truth, the BAYC NFTs were just a vehicle to  
16 make insiders rich at the expense of investors.
- 17 d. Defendant Aronow bragged “Not bad for a high school dropout” in  
18 response to a post that said “Don’t look now but #BAYC Market Cap just  
19 crossed a BILLION.” This exchange gave investors the false impression  
20 that BAYC NFTs were a sound investment experiencing organic growth  
21 that were poised to continue growing, when in fact the price and volume  
22 was inflated due to manipulative trading practices.
- 23 e. The MoonPay Twitter account posted a clip from the segment with  
24 Defendant Fallon promoting MoonPay and the BAYC NFTs with a caption  
25 stating: “So this just happened. @jimmyfallon reveals to @beeples on the  
26 #TheTonightShow that he just bought his first Bored Ape by  
27 @BoredApeYC with MoonPay! 🚀👀.” MoonPay’s statement that “[s]o  
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1 this just happened” misleadingly suggested to investors that the promotion  
2 of MoonPay and the BAYC NFT collection on the Tonight Show was  
3 something that occurred spontaneously. Likewise, MoonPay’s statement  
4 that Fallon had “just bought his first Bored Ape by @BoredApeYC with  
5 MoonPay!” failed to disclose that in truth, Fallon’s segment with  
6 Winkelmann was just a promotion of the BAYC NFTs and MoonPay that  
7 was orchestrated behind the scenes by Oseary, Soto-Wright, and the  
8 Executive Defendants.

9 f. MoonPay’s statement that “this just happened” in connection with the  
10 Defendant Post’s video with The Weeknd video misleadingly suggested to  
11 investors that the promotion of MoonPay and the BAYC NFT collection  
12 within the so-called music video from Defendant Post was something that  
13 occurred because of their genuine interest in the BAYC NFTs. This, and  
14 MoonPay’s statement that Post had “aped into @BoredApeYC by  
15 purchasing his first NFT with MoonPay,” failed to disclose that this music  
16 video was just a promotion of the BAYC NFTs and MoonPay that was  
17 orchestrated behind the scenes by Oseary, Soto-Wright, and the Executive  
18 Defendants.

19 g. MoonPay’s statement that “Someone funny aped in today!” in reference to  
20 the Kevin Hart promotion misleadingly suggested Kevin Hart actually paid  
21 for his Ape, and failed to disclose that it was a promotion orchestrated by  
22 MoonPay, Oseary, Soto-Wright, and the Executive Defendants.

23 h. Wu’s statement that Yuga has “led innovation on IP frameworks, like  
24 giving NFT holders full commercial rights to their IP without a royalty”  
25 was false and misleading because NFT holders did not have full commercial  
26 rights to the IP.

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- 1 i. Bajwa falsely stated that celebrity rapper (and close associate with  
2 Defendant Broadus) “@Eminem purchased a @BoredApeYC NFT for  
3 123.45 ETH” and touting that the MAYC NFTs “saw \$71M in trading  
4 volumes the last week.”
- 5 j. Soto-Wright falsely described the creation of the Concierge service as first  
6 spreading via word of mouth among artists, stating, “So I helped one artist  
7 figure it out. They told another who then asked for help. Word started to  
8 spread.” Soto-Wright later falsely described it as an accident, stating “A  
9 really happy accident I’d say. 100% organic.”
- 10 k. When asked to confirm whether celebrities were not paid to promote  
11 MoonPay, Soto-Wright falsely stated that “Everyone that uses MoonPay  
12 Concierge has a commercial relationship with the company in the sense that  
13 this is a commercial service we offer our clients. We provide the support  
14 and then we invoice for services rendered.”
- 15 l. The Yuga pitch deck falsely proclaims that “[c]elebrities are buying Apes  
16 to signal that they know what’s up” when in reality the celebrity promotions  
17 were not organic and were orchestrated by Defendant Oseary and  
18 MoonPay.
- 19 m. ApeCoin was repeatedly falsely promoted that it could be used for  
20 magazine subscriptions, luxury items like Gucci and Tag Heuer, and that it  
21 could be used on OpenSea for NFTs. These statements were marketing  
22 ploys and were never followed up on.

23 604. In order to make those statements not misleading, Defendants were  
24 obligated to disclose that:

- 25 a. The buyer at the Sotheby’s auction was not a traditional art buyer, but was  
26 instead cryptocurrency industry insiders with FTX;
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- 1 b. The price and volume of the Yuga NFTs was heavily impacted by wash
- 2 trading and other manipulative practices;
- 3 c. A large number of the original mints of the Bored Ape NFTs were minted
- 4 by Binance and/or FTX insiders;
- 5 d. MoonPay, Soto-Wright, and Oseary were orchestrating a widespread
- 6 celebrity shilling scheme;
- 7 e. MoonPay and Soto-Wright were making manipulative trades themselves to
- 8 increase trading volume and price;
- 9 f. The Promotor Defendants had ownership interests in MoonPay and stood
- 10 to financially gain from their promotions;
- 11 g. MoonPay was gifting Bored Ape NFTs to influencers and not expecting
- 12 payment for them;
- 13 h. ApeCoin would not actually be used on NFT exchanges and would not be
- 14 accepted to buy luxury goods; and
- 15 i. Market making firms like Alameda Research and Wintermute were given
- 16 secret loans of ApeCoin.

17 **Materiality**

18 605. The forgoing misrepresentations and omissions were each  
19 material. These representations related to critical issues concerning the viability of  
20 the Yuga Financial Product holders' investments.

21 606. These misrepresentations and omissions related to, among other things:  
22 (i) the extent to which the Yuga Financial Products were subject to manipulative  
23 trading practices; and (ii) whether the hype around the Yuga Financial Products was  
24 genuine and organic or orchestrated pursuant to a fraudulent scheme. If a reasonable  
25 investor knew that the Yuga Financial Products were subject to manipulative trading  
26 practices and were the subject of a celebrity shilling scheme, then that investor would  
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1 reasonably expect the price of Yuga Financial Products to be substantially lower,  
2 given that the investment would be much riskier.

3 607. Accordingly, there is a substantial likelihood that the disclosure of the  
4 omitted facts would have been viewed by the reasonable investor as having  
5 significantly altered the “total mix” of information made available.

6 **Scienter**

7 608. The Executive Defendants, MoonPay Defendants, Wu, and Sotheby’s  
8 acted with scienter in engaging in the forgoing misconduct, in that they either had  
9 actual knowledge of the misrepresentations and omissions of material facts set forth  
10 herein, or acted with reckless disregard for the truth in that they failed to ascertain  
11 and to disclose such facts, even though such facts were available to them.

12 609. The Executive Defendants knew that the trading done by Binance and/or  
13 FTX insiders close to the mint had outsized impacts. Yuga knew that the celebrity  
14 promotions had been done at the behest of Oseary and MoonPay. Based on their  
15 control of the smart contracts to mint the Bored Apes and their oversight of trading  
16 activity, the Executive Defendants knew that the Yuga Financial Products were being  
17 subjected to manipulative trading that increased volume and prices.

18 610. The MoonPay Defendants knew that the Promotor Defendants had not  
19 paid for their Bored Apes and that MoonPay had gifted them to promote the Yuga  
20 Financial Products. The MoonPay Defendants knew that they were making  
21 manipulative outlier transactions to boost floor prices and increase trading volumes.

22 611. The Ape DAO Board Defendants knew that the Promoter Defendants  
23 had not actually paid for their Bored Apes and that it was a marketing ploy. The Ape  
24 DAO Board Defendants also knew ApeCoin was subject to price manipulation as  
25 entities like Alameda Research and Wintermute were given secret loans. The Ape  
26 DAO Board Defendants knew that there was significant marketing to promote that  
27 ApeCoin could be used for luxury item, but knew that there would be no follow  
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1 through. The ApeDAO defendants knew that that ApeDAO structure was a pure  
2 legal fiction, and an attempt by Yuga to effectuate a pure unregistered securities  
3 offering.

4 612. Sotheby's knew that a traditional art collector was not the winning  
5 bidder for the Bored Ape Auction. Sotheby's knew that FTX was the winning bidder  
6 but hid this fact in order for the Yuga Financial Products to have a veneer of  
7 credibility in the mainstream art world.

### 8 **Reliance, Economic Loss, and Loss Causation**

9 613. As a result of the publication and dissemination of the materially false  
10 and misleading information and failure to disclose material facts, as set forth above,  
11 the prices of the Yuga Financial Products were artificially inflated.

12 614. In ignorance of the fact that the prices of the Yuga Financial Products  
13 were artificially inflated, and relying directly or indirectly on the false, misleading,  
14 and materially incomplete statements that the Executive Defendants, MoonPay  
15 Defendants, and Sotheby's made and approved, or upon the integrity of the market  
16 in which the Yuga Financial Products were sold, or on the absence of material adverse  
17 information that these Defendants knew or recklessly should have known of but failed  
18 to disclose in public statements, Plaintiffs and the other Class members acquired  
19 Yuga Financial Products at artificially high prices and were damaged thereby.

20 615. As a direct and proximate result of the Executive Defendants, MoonPay  
21 Defendants, and Sotheby's wrongful conduct, Plaintiffs and the other Class members  
22 suffered damages in connection with the respective purchases of Yuga Financial  
23 Products and are entitled to an award compensating them for such damages.

24 616. Indeed, the price of the Yuga Financial Products dropped significantly  
25 as Defendants disclosed, and the market discovered the truth concerning the celebrity  
26 promotions, the true demand for Yuga NFTs, and the Yuga ecosystem's prospects  
27 for the future.

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1           617. For example, in June 2022, exchanges that provided investors yield on  
2 their crypto investments began to experience liquidity issues and lock users out.  
3 Voyager, was one of the largest such platforms, and was one of the few platforms  
4 where investors could earn yield on their ApeCoin. On June 22, 2022, Voyager  
5 announced that it had significant exposure to bankrupt hedge fund Three Arrows  
6 Capital, raising significant survivability concerns at the exchange.<sup>342</sup> In response, the  
7 price of ApeCoin dropped from 4.37 to \$3.97, or approximately 9%.

8           618. By August 2022, the celebrity endorsements had dried up. Without  
9 celebrities endorsing the Yuga assets and without floor prices being pumped by  
10 MoonPay, the Yuga Financial Products each suffered diminution in value with  
11 decreased sales volume and fewer unique buyers.<sup>343</sup> All of the Yuga Financial  
12 Products hit visible low points between August 19th and 23rd. The Bored Ape NFT  
13 floor price dropped from 82.48 ETH on August 10, 2022, to 66.9 ETH on August 23,  
14 2022. The Mutant Ape NFT floor price also fell from 15.25 ETH on August 10, 2022,  
15 to a floor price of 11 ETH on the August 19, 2022. The Kennel Club NFT floor price  
16 also dropped from 7.99 ETH on August 10, 2022, to 5.990 ETH on August 19, 2022.  
17 The Otherdeed NFTs fell from a floor price of 2.02 ETH on August 7, 2022 to a floor  
18 price of 1.47 ETH on August 22, 2022. Likewise, ApeCoin dropped from \$7.56 on  
19 August 5, 2022 to \$4.64 on August 28, 2022.

20           619. In September 2022, the price of ApeCoin and the Yuga NFTs dropped  
21 significantly in anticipation of a significant token unlock for “launch contributors” of  
22 ApeCoin. In the 30 days prior to the unlock, ApeCoin dropped 26%.<sup>344</sup> On September  
23 16, 2022 alone, ApeCoin dropped approximately 9% in advance of the unlock on  
24 September 17, 2022.<sup>345</sup>

25  
26 <sup>342</sup> Reback, *supra* n.302

27 <sup>343</sup> Hayes, *supra* n.303.

28 <sup>344</sup> Hayward, *supra* n.304.

<sup>345</sup> *Id.*

1           620. On October 11, 2022, *Bloomberg* reported that the SEC was conducting  
2 an investigation of Yuga Labs over whether the sales of its digital assets violate  
3 federal securities laws.<sup>346</sup> *Bloomberg* reported that the SEC is examining whether  
4 certain NFTs are more akin to stocks and should follow the same disclosure rules.  
5 *Bloomberg* also reported that the SEC is investigating the distribution of ApeCoin.  
6 Yuga told *Bloomberg* in a statement that it was “fully cooperating” with the inquiry.  
7 In response to the news regarding the SEC investigation, the ApeCoin token dropped  
8 approximately 11%.<sup>347</sup>

9           621. Yuga’s NFTs likewise dropped in value in the wake of the disclosure of  
10 the SEC investigation. The Bored Ape NFT floor price dropped from 75.5 ETH on  
11 October 10, 2022 to 72.421 ETH on October 15, 2022. The Mutant Ape NFT price  
12 floor dropped from 14.96 ETH on October 10, 2022 to 13.440 on October 13, 2022.  
13 The Kennel Club NFTs dropped from a floor price of 6.39 ETH on October 10, 2022  
14 to 5.750 by October 17, 2022. The Otherside NFTs likewise dropped from a price  
15 floor of approximately 1.6 ETH on October 10, 2022 down to 1.11 ETH on October  
16 21, 2022.

17           622. The downfall of FTX had a significant impact on the Yuga Financial  
18 Products. When both FTX and Alameda Research filed for Chapter 11 Bankruptcy  
19 on November 11, 2022, each of the Yuga Financial Products had a material drop in  
20 value in the days leading up to and following the announcement. At the time of the  
21 bankruptcy, FTX and Alameda held a number of Yuga Financial Products, which  
22 were now at risk of being subject to forced liquidation in the bankruptcy.

23           623. On November 5, 2022, prior to the disclosure of the liquidity issues with  
24 FTX, the BAYC NFT floor price was 64.8 ETH. In the wake of the FTX bankruptcy,  
25 the floor price of the BAYC NFT fell to 50 ETH (*i.e.*, approximately \$62,000) on  
26

27 <sup>346</sup> Robinson, *supra* n.306.

28 <sup>347</sup> Hayward, *supra* n.307.

1 November 14, 2022. The floor price continued to drop, reaching 48 ETH on  
2 November 17, 2022. Prices continued to drop, reaching a Class Period low of 28.49  
3 ETH (approximately \$55,201.63) on July 2, 2023. This is down from the all-time  
4 high of 153.70 ETH (or \$420,430) that occurred in the midst of the celebrity  
5 promotions and as MoonPay was manipulating prices with its outlier transactions on  
6 April 30, 2022.

7 624. The same is true for Yuga's Mutant Apes, which had a floor price of 11  
8 ETH prior to the FTX disclosures. Following the FTX and Alameda bankruptcy, the  
9 floor price of Mutant Apes dropped to 8.99 ETH on November 17, 2022. Mutant  
10 Apes had a floor price high of 40.0 ETH (\$109,416) on April 30, 2022 in the midst  
11 of the celebrity promotions and MoonPay outlier transactions. Since the FTX  
12 disclosures, the floor price continued to drop, reaching a low of 4.88 ETH (\$9,475.49)  
13 on July 2, 2023.

14 625. Likewise, the floor price of the Otherdeed NFT dropped from 1.192  
15 ETH on November 5, 2022 to 0.8 ETH on November 17, 2022. The Otherdeed floor  
16 price went from a Class Period high of 5.0 ETH (about \$14,149.94) on May 1, 2022  
17 all the way down to a low of 0.592 ETH (worth only \$1,100.59) on July 27, 2023.

18 626. Prices for the Bored Ape Kennel Club likewise dropped from a floor  
19 price of 4.69 ETH on November 5, 2022 to 3.65 ETH on November 17, 2022. Kennel  
20 Club NFTs reached a Class Period high of 10.4 ETH on April 27, 2022, but have  
21 since dropped to Class Period lows of 1.85 ETH on July 3, 2023.

22 627. Similarly, the FTX disclosures caused a significant drop in the price of  
23 ApeCoin. On November 5, 2022, ApeCoin traded at \$5.10 per token, and dropped  
24 to \$2.70 by November 13, 2022. Trading volume of ApeCoin likewise decreased to  
25 \$160.7 million, down a staggering 99.7% from its high point during the Class Period  
26 of \$5.5B on April 28, 2022. ApeCoin price reached a Class Period low of \$1.77 on  
27 July 31, 2022.

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1           628. In addition, as a direct and proximate result of the Executive Defendants,  
2 the MoonPay Defendants, and Sotheby’s wrongful conduct, these Defendants have  
3 generated and retained ill-gotten gains in connection with the promotion and sale of  
4 the Yuga Financial Products, such that Plaintiffs and the other Class members are  
5 entitled to the disgorgement of Defendants’ ill-gotten gains acquired from such  
6 misconduct.

7           629. As a direct and proximate result of the false and misleading statements  
8 and omissions made by the Executive Defendants, the MoonPay Defendants, and  
9 Sotheby’s to investors in order to solicit the sale of unregistered securities, Plaintiffs  
10 and the Class have suffered damages in connection with their Yuga Financial Product  
11 purchases.

12           630. Plaintiffs bring this claim for violations of Section 10(b) of the  
13 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §78j(b), and Rule 10b-  
14 5(b) promulgated thereunder, 17 C.F.R. §240.10b-5(b).

15           631. The Yuga Financial Products are securities within the meaning of  
16 Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

17           632. Section 10(b) and Rule 10b-5(b) make it illegal, in connection with the  
18 purchase or sale of any security, “for any person, directly or indirectly, by the use of  
19 any means or instrumentality of interstate commerce, or of the mails or of any facility  
20 of any national securities exchange . . . to make any untrue statement of a material  
21 fact or to omit to state a material fact necessary in order to make the statements made,  
22 in the light of the circumstances under which they were made, not misleading.” *Id.*

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**EIGHTH CAUSE OF ACTION**  
**Violation of Sections 10b of the Securities Exchange Act of 1934 and Rule 10b-5(a) and (c) thereunder**  
**(Scheme Liability)**  
**(Against all Defendants)**

633. Plaintiffs, on behalf of themselves and all others similarly situated, reallege and incorporate herein by reference paragraphs 1-475, and further allege as follows:

634. The Class Period for this cause of action is defined as the period between April 23, 2021 and the date of this filing.

635. Plaintiffs bring this claim for violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b), and Rule 10b-5(a) and (c) promulgated thereunder, 17 C.F.R. §240.10b-5(a) and (c).

636. The Yuga Financial Products are securities within the meaning of Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

637. Subsections (a) and (c) of Rule 10b-5 allow a suit against defendants who, with scienter, “employ any device, scheme, or artifice to defraud,” or “engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.” 17 C.F.R. §240.10b-5.

638. “Unlike a claim under subsection (b) of Rule 10b-5, a claim of liability for violations of subsections (a) and (c) does not require an allegation that the defendant made a false or misleading statement; rather, liability is premised on a course of deceptive or manipulative conduct.” *See Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 152-53 (1972) (observing that “the second subparagraph of [Rule 10b-5] specifies the making of an untrue statement of a material fact and the omission to state a material fact, [but] [t]he first and third subparagraphs are not so restricted”); *In re DVI, Inc. Sec. Litig.*, 639 F.3d 623, 643 (3d Cir. 2011) (“We refer to claims under Rule 10b-5(a) and (c) as ‘scheme liability claims’ because they make



1 deceptive conduct actionable, as opposed to Rule 10b-5(b), which relates to deceptive  
2 statements.”).

3         639. Defendants, individually and in concert, directly and indirectly, by the  
4 use, means, or instrumentalities of interstate commerce and/or the mails, carried out  
5 a plan, scheme, and course of conduct which was intended to, and throughout the  
6 Class Period, did manipulate the price and trading activity of Yuga Financial Products  
7 to the detriment of the investing public, including Plaintiffs and other Class members,  
8 in connection with the purchase and/or sale of Yuga Financial Products.

9         640. Defendants conspired and employed devices, schemes, and artifices and  
10 engaged in acts, practices, and a course of business as alleged herein to unlawfully  
11 manipulate and profit from the manipulation for the price of and market for Yuga  
12 Financial Products.

13         641. Defendants’ actions alleged herein constitute manipulative acts.  
14 Through fraudulent market making and price signaling conduct, the Company,  
15 Executive Defendants, Ape DAO Board Defendants, Sotheby’s, and MoonPay  
16 Defendants falsely increased both the price of the Yuga Financial Products and  
17 appearance of market activity for the same. Concurrently, the Company, Executive  
18 Defendants, Ape DAO Board Defendants, MoonPay Defendants, and Promoter  
19 Defendants engaged in a scheme to use a misleading marketing campaign meant to  
20 leverage the celebrity Promoter Defendants’ influence in order to artificially inflate  
21 the price of and market for Yuga Financial Products.

22         642. These manipulative acts were intended to and did deceive the retail  
23 investors – Plaintiffs and the other Class members – who acquired Yuga Financial  
24 Products during the Class Period and thereby caused them to purchase Yuga Financial  
25 Products at artificially inflated prices. Thus, Plaintiffs and other Class members  
26 suffered losses as a result of the Scheme Liability Defendants’ two primary deceptive  
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1 schemes and related acts, which manipulated the Yuga Financial Product  
2 marketplace.

3 643. Plaintiffs and other members of the Class were damaged by relying on  
4 an assumption of an honest and fair market, free of manipulation, when buying and  
5 selling Yuga Financial Products in the marketplace.

6 644. Defendants acted with scienter in connection with the manipulative acts  
7 alleged herein in that they acted knowingly and/or recklessly when they artificially  
8 inflated the price of the Yuga Financial Products and thereby interfered with the  
9 market for Yuga securities.

10 645. As a direct and proximate result of Defendants' wrongful conduct,  
11 Plaintiffs and other members of the Class were damaged as a result of their purchase  
12 or sale of Yuga Financial Products.

13 646. By virtue of the foregoing, each Defendant has violated Section 10(b) of  
14 the Exchange Act, and Rule 10b-5(a) and (c) promulgated thereunder.

15 **NINTH CAUSE OF ACTION**

16 **Violation of Sections 20(a) of the Securities Exchange Act of 1934**  
17 **(Against the Executive Defendants, Ape DAO Board Defendants, Adidas**  
18 **Ventures, B.V., and Individual Defendant Soto-Wright)**

19 647. Plaintiffs, on behalf of themselves and all others similarly situated,  
20 reallege and incorporate herein by reference paragraphs 1-475, and further allege as  
21 follows:

22 648. This Count is asserted against Executive Defendants Aronow, Solano,  
23 Atalay, Ali, Muniz, Shoemaker, Ehrlund, Oseary, Ape DAO Board Defendants  
24 Lyons, Ohanian, Wu, and Bajwa, and Defendant Soto-Wright, (collectively, the  
25 "Control Person Defendants") under Section 20(a) of the Securities Exchange Act of  
26 1934, 15 U.S.C. §78t(a).

27 649. The Control Person Defendants, by virtue of their offices, ownership,  
28 agency, agreements or understandings, and specific acts were, at the time of the

1 wrongs alleged herein, and as set forth herein, controlling persons within the meaning  
2 of Section 20(a) of the Securities Exchange Act. The Control Person Defendants,  
3 and each of them, had the power and influence and exercised the same to cause the  
4 unlawful scheme to artificially increase the interest in and price of the Yuga Financial  
5 Products.

6 650. The Control Person Defendants, separately or together, possess, directly  
7 or indirectly, the power to direct or cause the direction of the management and  
8 policies of the Company and/or MoonPay, through ownership of voting securities, by  
9 contract, subscription agreement, or otherwise.

10 651. Executive Defendants Aronow, Solano, Atalay, Ali, Muniz, Shoemaker,  
11 and Ehrlund were all directors and officers of the Company for the relevant time  
12 period. While not explicitly named as directors of the Company, Ape DAO Board  
13 Defendants Lyons, Ohanian, Wu, and Bajwa nevertheless were responsible for  
14 making high-level decisions for the Company that would normally be carried out by  
15 directors. Thus, the Executive Defendants and Ape DAO Board Defendants have the  
16 power to direct or cause the direction of the management and policies of Yuga.  
17 Similarly, Defendants Soto-Wright serves as the CEO of MoonPay, and thus has the  
18 power to direct or cause the direction of the management and policies of MoonPay.

19 652. The Control Person Defendants, separately or together, have sufficient  
20 influence to have caused the Company and MoonPay to engage in the fraudulent  
21 conduct described above.

22 653. The Control Person Defendants, separately or together, jointly  
23 participated in the Company's and MoonPay's fraudulent conduct described above.

24 654. By virtue of the conduct alleged herein, the Control Person Defendants  
25 are liable for the wrongful conduct complained of herein and are liable to Plaintiffs  
26 and the Class for rescission and/or damages suffered.

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1 in order to make the statements made, in light of the circumstances under which they  
2 were made, not materially misleading.

3 661. Defendants each employed devices, schemes, and artifices to defraud;  
4 made untrue statements of material fact and omitted to state material facts necessary  
5 to make the statements made not misleading; and engaged in acts, practices, and a  
6 course of business that operated as a fraud and deceit upon the Class members that  
7 resulted in artificially high market prices for Yuga Financial Products in connection  
8 with the continuous offering, in violation of Section 25401 and 25501.

9 662. Defendants, separately or together, directly or indirectly, caused a false  
10 statement or omission to be made in connection with the offers or sales of a security.

11 663. In ignorance of the fact that the price of Yuga Financial Products was  
12 artificially inflated, and relying directly or indirectly on the false, misleading, and  
13 materially incomplete statements that Executive Defendants made and approved, or  
14 upon the integrity of the market in which the Yuga Financial Products were sold, or  
15 in the absence of material adverse information that these Executive Defendants knew  
16 or recklessly should have known of but failed to disclose in public statements,  
17 Plaintiffs and the other Class members acquired Yuga Financial Products at  
18 artificially high prices and were damaged thereby.

19 664. Plaintiffs purchased Yuga Financial Products securities from the  
20 Company, Executive Defendants, Ape DAO Defendants, Sotheby's, MoonPay,  
21 and/or Adidas. For example, the ApeCoin tokens were provided and/or sold into the  
22 ApeCoin liquidity pool by Executive Defendants and Ape DAO Board Defendants.  
23 Upon information and belief, given the limited and measurable amount of individuals  
24 selling or providing the cryptocurrency to the ApeCoin token liquidity pool, a large  
25 portion (if not all) of the ApeCoin token liquidity pool were provided by Executive  
26 Defendants and Ape DAO Board Defendants (or market makers like Wintermute and  
27 FTX who were given undisclosed loans of Yuga Financial Products to sell to the  
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1 market on behalf of the Company). These actions coincided with Plaintiffs and Class  
2 members transacting with the liquidity pools as buyers. Thus, by providing ApeCoin  
3 tokens to the liquidity pool at the time in which Plaintiffs and the members of the  
4 Class made their ApeCoin token purchases from the liquidity pool, privity between  
5 Executive Defendants (personally and through the Company), Ape DAO Board  
6 Defendants (personally and through the Ape Foundation and/or the Company), and  
7 Plaintiffs is established even in the absence of a direct contract linking the two parties.

8 665. Privity also exists between the issuers of every Yuga NFT collection  
9 (i.e., the Company and Executive Defendants) and all those making purchases (e.g.,  
10 Plaintiffs and the members of the Class) regardless of which cryptocurrency  
11 exchange was used to facilitate the transaction because these Defendants are  
12 receiving the benefit of a 2.5% fee per resale of a Yuga NFT.

13 666. As discussed above, the Company, Executive Defendants, Ape DAO  
14 Board Defendants, MoonPay, and Promoter Defendants Sotheby's and Adidas  
15 actively solicited the purchase of Yuga Financial Products through a misleading  
16 marketing campaign social media, promotional video, press releases, traditional  
17 press, and online.

18 667. As a direct and proximate result of Executive Defendants' wrongful  
19 conduct, Plaintiffs and the other Class members suffered damages in connection with  
20 the respective purchases of Yuga Financial Products and are entitled to an award  
21 compensating them for such damages.

22 668. Indeed, the price of Yuga Financial Products dropped significantly as,  
23 *inter alia*, the celebrity promoters distanced themselves from the project; the SEC  
24 investigation was disclosed; FTX and Alameda imploded; Moonpay's manipulative  
25 trading ceased; and further regulatory scrutiny of unregistered securities increased.

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1           674. The Company and MoonPay, and their respective executives (*i.e.*,  
2 Executive Defendants, Ape DAO Board Defendants, and Defendant Soto-Wright),  
3 directly or indirectly, singly or in concert, by the use of the means or instrumentalities  
4 of interstate commerce, of the mails, for the purpose of creating a false or misleading  
5 appearance of active trading in ApeCoin tokens, or a false or misleading appearance  
6 with respect to the market for the Yuga Financial Products: (a) have engaged in  
7 improper parking; (b) have sent a false price signal to the market for Yuga NFTs; (c)  
8 have engaged in unlawful “price leadership.” Concurrently, MoonPay and Soto-  
9 Wright (on behalf of the Company and Executive Defendants) engaged in various  
10 manipulative wash trading activities, including using circular trades, seller funded  
11 wash trading, and making outlier transactions.

12           675. As noted above, the Company and MoonPay , with the assistance and/or  
13 approval of Executive Defendants, Ape DAO Board Defendants, and Defendant  
14 Soto-Wright, manipulated the price of Yuga Financial Products by: (a) transferring  
15 record ownership of ApeCoin tokens between the Company, MoonPay, and non-  
16 party FTX in order to hide the true identity of the beneficial owner (*i.e.*, Executive  
17 Defendants, Ape DAO Board Defendants, and Soto-Wright) in these seller funded  
18 wash trades, (b) having sent a false price increase signal to the market for Yuga NFTs  
19 by having MoonPay repeatedly purchase Yuga NFTs at a price significantly higher  
20 than the then-current floor price for those Yuga NFTs (*i.e.*, outlier transactions), (c)  
21 having engaged in unlawful “price leadership” by having MoonPay repeatedly  
22 bidding for and purchasing Yuga NFTs at a price significantly higher than the then-  
23 current floor price for those Yuga NFTs, and/or (d) having engaged in circular trades  
24 to create the appearance of trading activity and a market for the Yuga Financial  
25 Products. Scheme Liability Defendants each made misleading statements regarding  
26 the exponential increase in the price of Yuga Financial Products since launch. The  
27 Company purposefully did not disclose to investors that the percentage increases that  
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1 they were collectively touting was the result of price manipulation as opposed to real  
2 trading activity of Yuga Financial Products.

3 676. Concurrently, Defendant Sotheby's engaged a series of transactions  
4 with FTX during the Sotheby's auction that created apparent active trading in the  
5 Yuga NFTs and/or raising the price of Yuga NFTs, for the purpose of inducing the  
6 purchase or sale of Yuga NFTs by others.

7 677. The subsequent collapse of the market for, and price of, the Yuga  
8 Financial Products after the manipulative activity has ceased following the collapse  
9 of FTX further demonstrates the manipulative nature of the alleged conduct by the  
10 Market Manipulation Defendants.

11 678. These manipulations of the Yuga Financial Products were part of the  
12 Defendants' goal of selling their unregistered securities to Plaintiffs and the Class at  
13 artificially inflated prices. The collapse of the price of Yuga Financial Products after  
14 the manipulative conduct alleged herein ceased further demonstrates that the  
15 Company, Executive Defendants, Ape DAO Board Defendants, MoonPay, Soto-  
16 Wright, and Sotheby's violated Cal. Corp. Code, §25500(a)-(b).

17 679. Plaintiffs and other members of the Class were damaged by relying on  
18 an assumption of an honest and fair market, free of manipulation, when buying and  
19 selling Yuga Financial Products in the marketplace.

20 680. The Company, Executive Defendants, Ape DAO Board Defendants,  
21 MoonPay, Soto-Wright, and Sotheby's acted with scienter in connection with the  
22 manipulative acts alleged herein in that they acted knowingly and/or recklessly when  
23 they artificially inflated the trading volume and price of Yuga Financial Products and  
24 thereby interfered with the market for Yuga Financial Products. Further, statements  
25 by Defendants coupled with the transactions history on the Ethereum blockchain and  
26 the testimony of a confidential witness plausibly indicate that each of them knew that  
27 they were engaging in wash trading, outlier transactions, circular trading, matching  
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1 orders, and other manipulative efforts to raise the price of the Yuga Financial  
2 Products.

3 681. As a direct and proximate result of the wrongful conduct of the  
4 Company, Executive Defendants, Ape DAO Board Defendants, MoonPay, Soto-  
5 Wright, and Sotheby's, Plaintiffs and other members of the Class were damaged as a  
6 result of their purchase or sale of Yuga Financial Products.

7 682. By reason of the foregoing, the Company, Executive Defendants, Ape  
8 DAO Board Defendants, MoonPay, Soto-Wright, and Sotheby's have violated, and  
9 unless restrained and enjoined will again violate, Cal. Corp. Code, §25500(a)-(b).

10 683. By virtue of the conduct alleged herein, the Company, Executive  
11 Defendants, Ape DAO Board Defendants, MoonPay, Soto-Wright, and Sotheby's are  
12 liable for the wrongful conduct complained of herein and are liable to Plaintiffs and  
13 the Subclass for rescission and/or damages suffered.

14 **TWELTH CAUSE OF ACTION**

15 **Violation of Sections 25403(b), 25504 and 25504.1 of the California  
16 Corporations Code**

17 **(Secondary Liability Sections)**

18 **(Against Executive Defendants, Ape DAO Board Defendants, and Defendant  
19 Soto-Wright)**

20 684. Plaintiffs, on behalf of themselves and all others similarly situated,  
21 reallege and incorporate herein by reference paragraphs 1-475, and further alleges as  
22 follows:

23 685. This Count is asserted against Executive Defendants Aronow, Solano,  
24 Atalay, Ali, Muniz, Shoemaker, Ehrlund, Lyons, Ape DAO Board Defendants  
25 Ohanian, Wu, and Bajwa, and Defendant Soto-Wright (collectively referred to for  
26 this cause of action as the "Secondary Liability Defendants") for violations of  
27 Sections 25403(b), 25504 and 25504.1 of the California Corporations Code.

28 686. To the extent that the Company and/or MoonPay instead of the  
Secondary Liability Defendants are determined to be the primary violator of Sections

1 25110 (qualification failure) or 25401 (misrepresentations), this Count is asserted  
2 against Executive Defendants because, as officers and executives of the Company,  
3 they are each secondarily liable under Section 25504. Secondary Liability Defendants  
4 are likewise alternatively secondarily liable under Sections 25504.1 and 25403(b) for  
5 materially aiding and abetting and/or providing substantial assistance to the  
6 Company's and MoonPay primary violations of California securities laws.

7 687. This Count is also asserted against the Secondary Liability Defendants  
8 because they are secondarily liable under Section 25403(b) for providing substantial  
9 assistance to the Company's, MoonPay's, and/or Sotheby's primary violations of  
10 Section 25400 (manipulation of price).

11 688. Section 25504 makes the following people liable for Qualification  
12 Section (*i.e.* Cal. Corp. Code §25110 and 25503) violations: a "principal executive  
13 officer or director of a corporation so liable, every person occupying a similar status  
14 or performing similar functions, every employee of a person so liable who materially  
15 aids in the act or transaction constituting the violation, and every broker-dealer or  
16 agent who materially aids in the act or transaction constituting the violation." Cal.  
17 Corp. Code, §25004.

18 689. Section 25403(b) makes it unlawful for any person to knowingly provide  
19 "substantial assistance" to another person violating Cal. Corp. Code §25000 *et seq.*

20 690. Section 25504.1 makes anyone who, with "intent to deceive or defraud,"  
21 "materially assists" the primary perpetrator of a Misrepresentation Section (*i.e.* Cal.  
22 Corp. Code §25401 and 25501) violation.

23 691. The conduct of Secondary Liability Defendants described above,  
24 directly or indirectly, provided substantial assistance to the Company, MoonPay, and  
25 Sotheby's, who issued the false statements and omissions made in connection with  
26 the offers or sales of Yuga Financial Products alleged herein. This aid and assistance  
27 provides for secondary liability for the other Defendants' primary violations.

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1 699. Plaintiffs seek restitution in the form of the monetary value of the  
2 difference between the purchase price of the Yuga Financial Products and the price  
3 those Yuga Financial Products sold for.

4 **X. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
6 situated, respectfully request that this Court:

7 A. Determine that the claims alleged herein may be maintained as a class  
8 action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order  
9 certifying the Class defined above;

10 B. Appoint Plaintiffs as representatives of the Class and their counsel as  
11 Class counsel;

12 C. Award all actual, general, special, incidental, statutory, punitive, and  
13 consequential damages and restitution to which Plaintiffs and Class members are  
14 entitled;

15 D. Award post-judgment interest on such monetary relief;

16 E. Grant appropriate injunctive and/or declaratory relief;

17 F. Award reasonable attorneys' fees and costs; and

18 G. Grant such further relief that this Court deems appropriate.

19 **XI. JURY DEMAND**

20 Plaintiffs, individually and on behalf of the putative Class, demands a trial by  
21 jury on all issues so triable.

22 DATED: August 4, 2023

*/s/ John T. Jasnoch*

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 4, 2023, I electronically filed the foregoing with the Clerk using CM / ECF, which will send notification via electronic means to all counsel of record.

DATED: August 4, 2023

/s/ John T. Jasnoch  
John T. Jasnoch