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8 *Lead Counsel for Plaintiffs and the Proposed Class*

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, JONATHAN SMITH,
15 NEAL PATEL, HIREN PATEL, and
16 DAVID GRAND, Individually and on
17 Behalf of All Others Similarly Situated,

18 Plaintiffs,

19 v.

20 YUGA LABS, INC., WYLIE ARONOW,
21 GREG SOLANO, KEREM ATALAY,
22 ZESHAN ALI, NICOLE MUNIZ,
23 JASMIN SHOEMAKER, PATRICK
24 EHRLUND, CHRISTOPHER LYONS,
25 ALEXIS OHANIAN, AMY WU,
26 MAARIA BAJWA, SOTHEBY'S
27 HOLDINGS INC., GUY OSEARY, MIKE
28 WINKELMANN, MADONNA LOUISE
CICCONE, PARIS HILTON, JAMES
FALLON, ELECTRIC HOT DOG, INC.,
UNIVERSAL TELEVISION, LLC,
JUSTIN BIEBER, AUSTIN RICHARD
POST, CALVIN BROADUS JR.,
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

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

19 **I. NATURE OF THE CASE**

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

23 1. Plaintiffs bring this action on behalf of all investors who purchased
24 Yuga’s non-fungible tokens (“NFTs”) or ApeCoin tokens (“ApeCoin”)¹ between
25

26 _____
27 ¹ Yuga’s various collections of so-called “Bored Ape” NFTs (including the
28 Bored Ape Yacht Club (“BAYC”), Mutant Ape Yacht Club (“MAYC”), Bored Ape
Kennel Club (“BAKC” NFT collections), Meebits NFTs, ApeCoins, and virtual

1 April 23, 2021 and October 6, 2023 (the “Class Period”), and were damaged
2 thereby.

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

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

22
23
24 land in the Otherside (aka “Otherdeed” NFTs) are collectively referred to as the
“Yuga Financial Products” or the “Yuga securities.”

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

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

28

1 4. Investment in Yuga’s flagship NFT collection, the Bored Ape Yacht
2 Club, purportedly gave investors membership into the “Bored Ape ecosystem” (*i.e.*,
3 the overall brand and its synergistic relationship between the Yuga Financial
4 Products and related applications). The underlying marketing message was simple:
5 “joining the club” (*i.e.*, buying a Yuga NFT) brings investors status and provides
6 them access to events, benefits, and other lucrative investment opportunities
7 exclusive to Yuga Financial Product holders. The perceived exclusivity of Bored
8 Ape Yacht Club’s membership was driven by endorsements of highly influential
9 celebrities. But this purported interest in, and endorsement of the BAYC NFTs was
10 a sham manufactured by Oseary and MoonPay at the behest of the Company and
11 the Executive Defendants. While the Promoter Defendants publicly touted their
12 high-dollar “purchases” of BAYC NFTs, the truth is that they were given the NFTs
13 for free (often along with additional compensation) in exchange for promoting the
14 BAYC NFTs to an unsuspecting public.

15 5. In order to make the promotion of, and subsequent interest in, the
16 BAYC NFTs appear to be organic (as opposed to being solely the result of a paid
17 promotion), the Company needed a way to discreetly pay their celebrity cohorts.
18 To do this, Oseary tapped into a different part of his network: the MoonPay
19 Defendants. Oseary’s venture capital firm, Sound Ventures, was one of the early
20 investors in MoonPay, along with, *inter alia*, Defendants Justin Bieber, Paris
21 Hilton, Jimmy Fallon, Austin Post, Calvin Broadus, Jr., and Wardell Stephen Curry
22 II. MoonPay purports to be a white-glove service designed to help the super-rich
23 and celebrities buy NFTs “without all the hassle of setting up a wallet, buying
24 crypto, using that crypto to purchase an NFT and then taking custody of it.”⁴ In
25

26
27 ⁴ Ryan Weeks, *MoonPay has quietly set up a concierge service to help*
28 *celebrities buy NFTS*, THE BLOCK (Nov. 25, 2021), <https://www.theblock.co/>

1 truth, the Executive Defendants and Oseary used their connections to MoonPay and
2 its service as a covert way to compensate the Promoter Defendants for their
3 promotions of the BAYC NFTs without disclosing it to unsuspecting investors.
4 Moreover, certain of the Promoter Defendants failed to disclose that they
5 themselves had equity interests in MoonPay.

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

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

24 8. In addition, Executive Defendants Aronow, Solano, Atalay, and Ali
25 disguised their control of Yuga to avoid scrutiny and facilitate this scheme. This
26

27 [post/125483/moonpay-concierge-celebrities-nft?utm_source=rss&utm_medium=](https://www.post/125483/moonpay-concierge-celebrities-nft?utm_source=rss&utm_medium=vrss)
28 [vrss.](https://www.post/125483/moonpay-concierge-celebrities-nft?utm_source=rss&utm_medium=vrss)

1 conspiracy among the Executive Defendants and Oseary, then carried out with
2 assistance of the ApeDAO Board Defendants, the Promoter Defendants, and the
3 MoonPay Defendants, raked in millions of dollars for them all. Meanwhile,
4 investors were left with staggering losses.

5 9. Plaintiffs bring this class action on behalf of themselves and an
6 objectively identifiable Class consisting of all investors who purchased the
7 unregistered Yuga Financial Products between April 23, 2021 and October 6, 2023.

8 **II. PARTIES**

9 **A. Plaintiffs**

10 10. Lead Plaintiff Johnny Johnson (“Johnson”) is a citizen of Texas and
11 resides in Georgetown, Texas. As set forth in the previously filed certification
12 (ECF No. 74-2), Plaintiff Johnson invested in Yuga NFTs during the Class Period.
13 Plaintiff Johnson also purchased ApeCoin tokens on U.S. based cryptocurrency
14 exchanges. Johnson purchased the Yuga securities in reliance on the misleading
15 promotions from the Company and the Promoter Defendants (described in detail
16 below), and he suffered investment losses as a result of Defendants’ conduct. For
17 his NFT purchases, Plaintiff Johnson paid the 2.5% royalty fee directly to Yuga
18 Labs, placing him in direct privity with Yuga Labs for a portion of the sale.

19 11. Lead Plaintiff Ezra Boekweg is a citizen of Texas and resides in Waco,
20 Texas. As set forth in the previously filed certification (ECF No. 74-2), Plaintiff
21 Boekweg invested in Yuga NFTs during the Class Period. Plaintiff Boekweg also
22 purchased ApeCoin tokens on U.S. based cryptocurrency exchanges. He also
23 purchased Otherdeed NFTs associated with the Otherside metaverse Yuga was
24 purportedly developing. Boekweg also purchased a Meebits NFT following Yuga’s
25 acquisition of the collection from Larva Labs. Boekweg purchased the Yuga
26 securities in reliance on the misleading promotions from the Company and the
27 Promoter Defendants (described in detail below), and he suffered investment losses
28

1 as a result of Defendants’ conduct. For his NFT purchases, Plaintiff Boekweg paid
2 the 2.5% royalty fee directly to Yuga Labs, placing him in direct privity with Yuga
3 Labs for a portion of the sale.

4 12. Lead Plaintiff Mario Palombini (“Palombini”) is a resident and citizen
5 of Portugal. As set forth in the previously filed certification (ECF No. 74-2),
6 Plaintiff Palombini purchased the Mutant Ape Yacht Club, and Otherdeed NFTs on
7 a US-based exchange. Palombini purchased the Yuga Financial Products on a US-
8 based exchange in reliance on the misleading promotions from the Company and
9 the Promoter Defendants (described in detail below), and he suffered investment
10 losses as a result of Defendants’ conduct. For his NFT purchases, Plaintiff
11 Palombini paid the 2.5% royalty fee directly to Yuga Labs, placing him in direct
12 privity with Yuga Labs for a portion of the sale.

13 13. Plaintiff Adam Titcher (“Titcher”) is a resident and citizen of
14 California. As set forth in the previously filed certification (ECF No. 1-2), Plaintiff
15 Titcher purchased a Mutant Ape Yacht Club (“MAYC”) NFT via the U.S.-based
16 NFT exchange OpenSea. Titcher also purchased an Otherdeed NFT associated with
17 the Yuga metaverse, Otherside, via the U.S.-based NFT exchange on OpenSea.
18 Titcher purchased the Yuga Financial Products in reliance on the misleading
19 promotions from the Company and the Promoter Defendants (described in detail
20 below), and he suffered investment losses as a result of Defendants’ conduct. For
21 his NFT purchases, Plaintiff Titcher paid the 2.5% royalty fee directly to Yuga
22 Labs, placing him in direct privity with Yuga Labs for a portion of the sale.

23 14. Plaintiff Jonathan Smith (“Smith”) is a resident and citizen of
24 California. As set forth in the certification being filed herewith, Plaintiff Smith
25 purchased ApeCoin via U.S.-based cryptocurrency exchange Coinbase. Smith
26 made his purchases in reliance on the misleading promotions from the Company
27
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1 and the Promoter Defendants (described in detail below), and he suffered
2 investment losses as a result of Defendants’ conduct.

3 15. Plaintiff Neal Patel (“Patel”) is a resident and citizen of Florida. As set
4 forth in the certification being filed herewith, Plaintiff Patel purchased Yuga NFTs
5 on U.S.-based NFT exchanges, including OpenSea. Plaintiff Patel also purchased
6 ApeCoin tokens on U.S. based cryptocurrency exchanges. Patel made his
7 purchases in reliance on the misleading promotions from the Company and the
8 Promoter Defendants (described in detail below), and he suffered investment losses
9 as a result of Defendants’ conduct. For his NFT purchases, Plaintiff Patel paid the
10 2.5% royalty fee directly to Yuga Labs, placing him in direct privity with Yuga
11 Labs for a portion of the sale.

12 16. Plaintiff Hiren Patel (“H. Patel”) is a resident and citizen of Florida.
13 As set forth in the certification being filed herewith, Plaintiff H. Patel purchased
14 Yuga NFTs on U.S.-based NFT exchanges, including OpenSea. Plaintiff H. Patel
15 also purchased ApeCoin tokens on U.S. based cryptocurrency exchanges, including
16 Coinbase. H. Patel made his purchases in reliance on the misleading promotions
17 from the Company and the Promoter Defendants (described in detail below), and he
18 suffered investment losses as a result of Defendants’ conduct. For his NFT
19 purchases, Plaintiff H. Patel paid the 2.5% royalty fee directly to Yuga Labs,
20 placing him in direct privity with Yuga Labs for a portion of the sale.

21 17. Plaintiff David Grand (“Grand”) is a resident and citizen of Florida.
22 As set forth in the certification being filed herewith, Plaintiff Grand purchased
23 ApeCoin on U.S.-based cryptocurrency exchanges, including on Coinbase. Plaintiff
24 Grand made his purchases in reliance on the misleading promotions from the
25 Company and the Promoter Defendants (described in detail below), and he suffered
26 investment losses as a result of Defendants’ conduct.

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1 **B. Defendants**

2 18. Defendant Yuga is a Delaware corporation, registered on February 8,
3 2021, with its headquarters located at 1850 Towers Crescent Plaza, Suite 200,
4 Tysons, Virginia 22182. On June 16, 2022, Yuga registered with the California
5 Secretary of State to transact business within California.

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

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

20 21. Kerem Atalay (“Atalay”) is a resident and citizen of Missouri, living in
21 St. Louis, Missouri. Atalay is the co-founder/creator of the Company, served as a
22 developer, consultant and spokesperson for the Company, exercised control over
23 the Company and directed and/or authorized, directly or indirectly, the sale and/or
24 solicitations of Yuga Financial Products to the public.

25 22. Zeshan Ali (“Ali”) is a resident and citizen of California, living in Los
26 Angeles, California. Ali is the co-founder/creator of the Company, served as a
27 developer, consultant and spokesperson for the Company, exercised control over
28

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

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

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

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

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

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

8 28. Defendant Amy Wu (“Wu”) is a resident and citizen of California,
9 living in San Francisco, California. Wu served as a board member of the ApeDAO,
10 served as a consultant and spokesperson for the Company, exercised control over
11 the ApeDAO, Ape Foundation, and the Company and directed and/or authorized,
12 directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the
13 public.

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

20 30. Defendant Guy Oseary (“Oseary”) is a resident and citizen of
21 California, living in Santa Monica, California. Oseary acted as a minority partner,
22 consultant and spokesperson for the Company, exercised control over the Company
23 and directed and/or authorized, directly or indirectly, the sale and/or solicitations of
24 Yuga Financial Products to the public. Oseary’s Sound Ventures was one of
25 several investors in Yuga during the Seed funding rounds.

26 31. Defendant Mike “Beeple” Winkelmann (“Winkelmann”) is a resident
27 and citizen of South Carolina, living in North Charleston, South Carolina.
28

1 Winkelmann acted as a promoter for the Company and solicited sales of Yuga
2 securities to the public.

3 32. Defendant Paris Hilton (“Hilton”) is a resident and citizen of
4 California, living in Malibu, California. Hilton acted as a promoter for the
5 Company and solicited sales of Yuga securities to the public.

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

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

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

15 36. Defendant Electric Hot Dog, Inc. (“EHD” f/k/a Holiday Road) is a
16 New York corporation, with its headquarters located at 200 Park Avenue South, 8th
17 Floor, New York, New York 10003. EHD operates as the production company for
18 *The Tonight Show* (“*Tonight Show*”), of which Defendant Fallon is the host. EHD
19 is also the production company for several other projects, including the show
20 “Password,” filmed in Los Angeles County, California. EHD acted as a
21 spokesperson for the Company, exercised control over Defendant Fallon and the
22 content and disclosures of the *Tonight Show*, and directed and/or authorized,
23 directly or indirectly, the sale and/or solicitations of Yuga securities to the public.

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

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

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

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

15 41. Defendant adidas America Inc. (“Adidas”) is an Oregon corporation,
16 with its headquarters located at 5055 N Greeley Avenue, Portland, Oregon 97217.
17 On March 29, 2010, Adidas registered with the California Secretary of State to
18 transact business within California. Adidas is the parent of adidas Ventures B.V.,
19 the venture capital fund acquired by Adidas to make investments in start-up
20 companies. Throughout the Class Period, Adidas acted as an agent and direct or
21 indirect spokesperson for the Company by virtue of its capital investment in the
22 Company, and directed and/or authorized, directly or indirectly, the solicitations of
23 the Yuga Financial Products, as well as its own NFT collaboration with Yuga.
24 Upon information and belief, Adidas controls and/or oversees the operations and
25 management of the “adidas Originals” brand line, under which the “adidas
26 Originals: Into The Metaverse” NFT collaboration with Yuga was launched.

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1 42. Defendant adidas Ventures B.V. is a corporate venture capital firm
2 with its headquarters located at Hoogoorddreef 9 A, 1101BA, Amsterdam,
3 Netherlands. Founded in 2011, adidas Ventures B.V. started as a separate venture
4 capital fund called Hydra Ventures until it was fully incorporated into the Adidas
5 corporate structure in or around 2017. At the time of its acquisition by Adidas,
6 Hydra Ventures was focused on “pursuing opportunities in nascent, fast-growing
7 and American markets.”⁵ adidas Ventures B.V. currently operates as the
8 investment arm of Adidas. adidas Ventures B.V. is a backer of Yuga, having
9 participated in the Yuga seed funding round on March 22, 2022. adidas Ventures
10 B.V. acted as an agent for the Company by virtue of its capital investment in the
11 Company, and directed and/or authorized, directly or indirectly, the solicitations of
12 Yuga securities to the public.

13 43. Defendant Ivan Soto-Wright (“Soto-Wright”) is a resident and citizen
14 of Florida, living in Miami, Florida. Soto-Wright served as the CEO of MoonPay
15 during the Class Period, and acted as a promoter for the Company, and solicited
16 sales of Yuga securities to the public.

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

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26 ⁵ *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 45. Defendant Sotheby’s Holdings Inc. (“Sotheby’s”) is a Delaware
2 corporation, with its headquarters located at 1334 York Avenue, New York, New
3 York 10021. Sotheby’s acted as a promoter for the Company, and solicited sales of
4 Yuga securities to the public.

5 **III. JURISDICTION AND VENUE**

6 46. This Court has subject-matter jurisdiction over this action pursuant to
7 28 U.S.C. §1332. Plaintiffs bring this civil action seeking to represent a Class of
8 more than 100 plaintiffs pursuant to Federal Rule of Civil Procedure 23. Plaintiffs
9 are citizens of California, Florida, and Texas. Ten of the 29 named Defendants are
10 citizens of California; all of the other Defendants reside outside of California.
11 Plaintiffs seek an award exceeding \$5,000,000, exclusive of interest and costs, on
12 behalf of themselves and the putative Class.

13 47. The Court has general jurisdiction over Defendants Ali, Wu, Bajwa,
14 Oseary, Ciccone, Bieber, Hilton, Broadus, and Curry as they are all residents of the
15 State of California and are thus “at home” in the forum.

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

19 49. This Court may exercise jurisdiction over Defendants because they
20 have continuous and systematic contacts with this District, do substantial business
21 in this State and within this District, and engage in unlawful practices in this
22 District as described in this Complaint, so as to subject themselves to personal
23 jurisdiction in this District, thus rendering the exercise of jurisdiction by this Court
24 proper and necessary.

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

3 **IV. FACTUAL ALLEGATIONS**

4 51. Cryptocurrency, or crypto, is a form of digital asset that exists virtually
5 and uses cryptography to secure transactions. Cryptocurrencies use a decentralized
6 system to record transactions and issue new units. The first cryptocurrency was
7 Bitcoin, which was launched in 2009. As of March 2023, there were over 20,000
8 cryptocurrencies in existence.⁶

9 52. Anyone can create a new cryptocurrency. An internet search will
10 provide you step-by-step instructions with video for creating a new cryptocurrency
11 in less than an hour. Once created, the new cryptocurrency can be traded on
12 cryptocurrency exchanges. Exchanges can be centralized such as Coinbase,
13 Crypto.com, Gemini, BitMart and others, or decentralized (Dex) such as Uniswap,
14 Pancake Swap, and others.

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

19 54. Transactions of cryptocurrencies are recorded in a “blockchain,” which
20 serves as a distributed public ledger. The amount of cryptocurrency transacted, the
21 sender’s wallet address, the recipient’s wallet address and the date and time of the
22 transfer for every transfer of cryptocurrency between digital wallets can be publicly
23 viewed on the blockchain by using any number of websites like
24 www.blockchain.com/explorer or www.etherscan.io.

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27 ⁶ Josh Howarth, *How Many Cryptocurrencies are There In 2023?*, EXPLODING
28 TOPICS (Mar. 14, 2023), <https://explodingtopics.com/blog/number-of-cryptocurrencies>.

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

8 56. Like physical money, cryptocurrencies are fungible, meaning that they
9 can be traded or exchanged, one for another. For example, one bitcoin is always
10 equal in value to another bitcoin. Conversely, NFTs are cryptographic assets with
11 unique identification codes and metadata that distinguish them from each other and
12 cannot be replicated. Unlike fungible cryptocurrencies, NFTs cannot be traded or
13 exchanged at equivalency. However, the price of NFTs within a given collection is
14 highly correlated and the relative value of the collection can often be assessed by its
15 floor price – the lowest price an NFT in the collection can be purchased for. For
16 example, if the floor price for an NFT collection is five ether or ETH (the native
17 cryptocurrency for the Ethereum blockchain), it means that the lowest price
18 someone can pay for an NFT that is not currently in an auction is five of the
19 cryptocurrency token ether. Floor price is one of the key metrics investors consider
20 when evaluating the intrinsic value for an NFT.

21 57. Besides being traded and exchanged, some cryptocurrencies can also
22 be used for governance over the particular project or for some artificially created
23 purpose or use. For example, cryptocurrencies can be used as a form of in-game
24 virtual currency in an online video game. Cryptocurrencies can also be used as an
25 incentive for players who earn special tokens as part of the game that can be
26 swapped for other tokens or sold for cash.

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1 58. Similarly, a cryptocurrency can be used as virtual currency for
2 purchases made within the metaverse. The “metaverse” refers to a virtual-reality
3 space in which users can interact with a computer-generated virtual environment
4 and other users. Analysts predict that the metaverse has the potential to generate up
5 to \$5 trillion in value by 2030.⁷

6 **A. Yuga Labs Background**

7 **1. The Founders**

8 59. Yuga is a cryptocurrency-related NFT company founded in February
9 2021 by a group of friends: Defendants Aronow, Solano, Atalay, and Ali. The four
10 founders were joined by Defendant Muniz.

11 60. Ali first met Atalay when they were at the University of Virginia, and
12 then both met Solano while studying computer science at the University of
13 Maryland. Solano was also friends with Aronow, sharing a mutual interest in
14 literature and online gaming.

15 61. In February 2021, Solano contacted Aronow about starting an NFT
16 project. During the early conception of the BAYC brand, Aronow brought in
17 Muniz to discuss both the creative and business side of the project. According to an
18 interview of both Solano and Aronow, they described the early formation of Yuga
19 as follows:

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

27 ⁷ 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. 16, 2023).

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

7 Aronow sent Solano a “whole article” to plan the idea, where
8 the name “Bored Ape Yacht Club” came up. “As the great editor,
9 Solano said – ‘That’s it. That’s it’” recalls Aronow. The concept
10 evolved—in cryptocurrencies, [M]illionaires are real apes, and the term
11 “ape” means that someone living in 2021 will compulsively invest in
12 a new project without doing much research. Aronow said he and
13 Solano started a limited liability company the next day.⁸

14 62. Atalay and Ali served as the developers of the BAYC NFT collection,
15 working on the technical side of the ERC-721 token’s creation while Solano and
16 Aronow served as Yuga’s creative department.

17 63. Initially, Solano, Aronow, Atalay, and Ali hid their respective
18 identities from the public, instead operating under the following pseudonyms/alter
19 egos to avoid scrutiny from the public and investors during the early launch of the
20 Company:

- 21 a. Wylie Aronow went by “Gordon Goner”;
- 22 b. Greg Solano went by “Gargamel”;
- 23 c. Kerem Atalay went by “EmperorTomatoKetchup”; and
- 24 d. Zeshan Ali went by “Sass.”

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

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⁸ *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 65. Initially, the lion’s share of Yuga’s business comes from the sale of its
2 various NFT collections. Yuga also programmed its NFTs so that the Company
3 receives a 2.5% royalty every time one of its NFTs is resold on the secondary
4 market. Yuga reportedly earned \$127 million in profits from its NFT business in
5 2021.⁹ According to a Yuga pitch deck that was leaked online, the “BAYC
6 collections alone account for approximately 10% of the volume on OpenSea,” the
7 largest NFT marketplace in the world.¹⁰

8 66. On April 20, 2021, the Company and Executive Defendants Aronow,
9 Solano, Atalay, and Ali created the BAYC collection of NFTs, minting 10,000
10 BAYC NFTs. The Company boasted that ownership of these BAYC NFTs
11 “double[d] as [a] membership to a digital club” that would give its owners access to
12 “member’s-only benefits.”¹¹

13 67. To encourage followers to BAYC’s Twitter account, the Company
14 offered to give away a Bored Ape NFT to anyone who followed @boredapeyc in
15 Twitter and liked, commented on, and retweeted BAYC’s promotional giveaway.¹²

16 68. As the name suggests, the BAYC NFTs feature pictures of an animated
17 ape with a bored facial expression. The NFTs within the collection vary somewhat,
18 having certain unique traits and characteristics. In fact, these BAYC NFTs are
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20 ⁹ Ryan Weeks, *Bored Ape startup plans virtual land sales, APECoin token to*
21 *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)
22 [sales-metaverse](https://www.theblock.co/post/137829/bored-ape-yacht-club-yuga-labs-virtual-land-sales-metaverse).

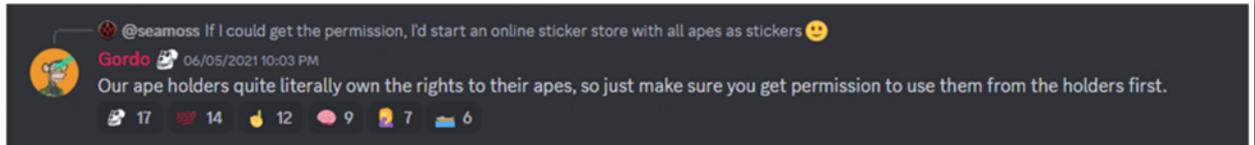
23 ¹⁰ *Yuga Labs Pitch Deck: BAYC founders raised \$450M from Andreessen*
Horowitz, at *28, YUGA LABS, INC. (Mar. 19, 2022),
24 [https://www.slideshare.net/PitchDecks/yuga-labs-pitch-deck-bayc-founders-project-](https://www.slideshare.net/PitchDecks/yuga-labs-pitch-deck-bayc-founders-project-455m-nft-revenue-2022)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

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

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

1 distinguished and valued by the accessories that adorn the digital ape. For example,
2 a BAYC NFT wearing sunglasses is generally considered to be rarer (and thus more
3 valuable) than one that does not have a similar fashion accessory.

4 69. On April 24, 2021, Yuga launched the BAYC NFT collection, selling
5 all 10,000 BAYC NFTs over the course of a week through the official public launch
6 date of April 30, 2021. On April 27, 2021, prior to the public launch, Solano falsely
7 represented that “Each Bored Ape owner has full commercial rights to their apes,
8 btw.”¹³ And again falsely represented on June 5, 2021 that “Our ape holders quite
9 literally own the rights to their apes, so just make sure you get permission to use
10 them from the holders first.”¹⁴



14 70. In fact, Yuga Labs LLC owns the commercial rights to the BAYC NFT
15 collection – not the ape holders – and grants a limited and restrictive license to the
16 NFT holders that dictates what the BAYC holders’ personal and commercial uses of
17 the NFTs.¹⁵

18 71. Insiders and influencers were given inside information concerning the
19 mint. For example, an influencer known as “Dingaling” is considered one of the
20 most successful NFT investors and one of the biggest, if not the biggest holder of
21 Yuga assets.¹⁶ On August 23, 2021, Dingaling tweeted that he had “100 apes from
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23 ¹³ Communication made via Bored Ape Yacht Club Discord chat.

24 ¹⁴ *Id.*

25 ¹⁵ Bored Ape Yacht Club, *Terms & Conditions*, <https://boredapeyachtclub.com/#/terms>.

26 ¹⁶ *This Bored Ape Yacht Club Whale Became The Club’s Largest Holder This*
27 *Weekend*, THE BORED APE GAZETTE (Dec. 5, 2021),
<https://www.theboredapegazette.com/post/this-bored-ape-yacht-club-whale-became-the-club-s-largest-holder-this-weekend>.

1 mint still untouched.”¹⁷ Dingaling’s identity was recently unmasked as Dinghau
2 Xiao, a high ranking Binance executive.¹⁸ Xiao was listed as a director in legal
3 documents filed in Bermuda for an entity named Binance (Bermuda) Ltd. Xiao
4 was also part of a joint venture between FTX’s Sam Bankman-Fried and Binance,
5 personally owning 5% of West Realm Shires Inc.¹⁹ West Realm Shires Inc. owned
6 100% of West Realm Shires Services, Inc.,²⁰ which was the entity that operated as
7 FTX US, the domestic arm of the FTX exchange.²¹

8 72. Xiao, with inside information based on his executive role at Binance
9 and/or FTX, minted dozens of Bored Ape NFTs in the opening mint. After the
10 BAYC mint went live on the evening of April 30, 2021, Xiao minted 40 BAYC
11 NFTs at 2:45am on May 1, 2021 in two transactions. Thereafter, Xiao minted 20
12 BAYC NFTs at 2:54am, another 20 BAYC NFTs at 3:03am, and another 20 at
13 3:15a.m.

14 73. Yuga’s portfolio of NFT collections is collectively worth billions. The
15 BAYC collection alone was valued in the billions of dollars, with the floor price at
16 around \$114,000 as of August 2022, according to *CoinGecko*. Capitalizing on the
17 success of its BAYC collection, Yuga also created a spinoff brand NFT collection,
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19 ¹⁷ Dingaling (@dingalingts), TWITTER (Aug. 23, 2021, 7:37 A.M.),
20 <https://twitter.com/dingalingts/status/1429814982959525897>.

21 ¹⁸ Nicholas Kitonyi, *Doxed NFT Whale’s Portfolio Shows Deep Ties to a Major*
22 *Crypto Exchange*, NFT GATORS (Nov. 8, 2022), <https://www.nftgators.com/doxed-nft-whales-portfolio-shows-deep-ties-to-a-major-crypto-exchange/>.

23 ¹⁹ *Id.*

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

26 ²¹ Press Release, *Order to Cease and Desist Issued to West Realm Shires*
27 *Services Inc. d/b/a FTS US Becomes Final*, GEORGIA DEP’T OF BANKING & FIN.
28 (Dec. 8, 2022), <https://dbf.georgia.gov/press-releases/2022-12-08/order-cease-and-desist-issued>.

1 the Mutant Ape Yacht Club collection, worth approximately \$427 million.²² In
2 addition, Yuga’s NFT collection portfolio contains acquisitions by the Company,
3 including owning the rights to the CryptoPunks (a series of avatars in an eight-bit
4 art style worth approximately \$970 million in total) and Meebits collections. These
5 acquisitions were funded thanks, in part, to the seed investments from a16z future
6 Yuga board member, Defendant Lyons.

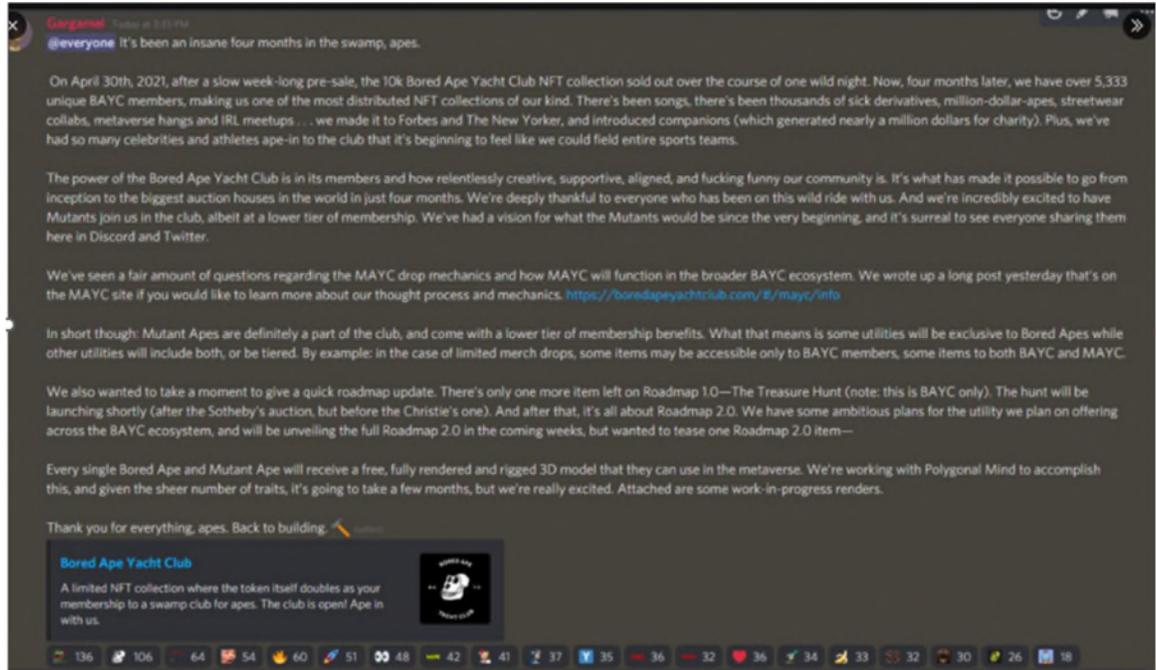
7 74. On June 18, 2021, the Company and Executive Defendants Aronow,
8 Solano, Atalay, and Ali launched a spinoff collection for Bored Ape holders called
9 Bored Ape Kennel Club (BAKC). These Defendants then launched the Mutant Ape
10 Yacht Club (MAYC) on August 28, 2021.

11 75. One of the main platforms that the Yuga founders (*i.e.* Executive
12 Defendants Solano and Aronow) used to solicit sales of the Yuga NFT collections
13 was on Discord. As Defendant Solano confirmed during a promotional interview
14 published on the YouTube page of Yuga backer a16z, Discord was “so important”
15 to Yuga’s efforts to solicit investments in Yuga Financial Products and he had spent
16 “14 hours a day . . . 16 hours a day” in the beginning.²³ On August 29, 2021,
17 Defendant Solano bragged to investors on Discord that the BAYC NFTs had “sold
18 out over the course of one wild night” and that they had become one of “the most
19 distributed NFT collections of our kind,” promoting the price increase of the BAYC
20 NFTs and growth prospects of the collection by touting that there were “million-
21 dollar apes” following the initial mint, and that they “had so many celebrities and
22 athletes ape-in to the club that it’s beginning to feel like we could field entire sports
23 teams.” The following is a screenshot of Solano’s Discord statements:

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26 ²² Mutant Ape Yacht Club (MAYC) NFTs are created by combining two digital
27 assets created by Yuga: a BAYC NFT and a SERUM NFT. The idea being that the
28 “serum” would turn the buyer’s “bored ape” into a “mutant ape.”

²³ <https://www.youtube.com/watch?app=desktop&v=azQJYFWQ9TY>.

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76. In September 2021, Defendant Muniz began serving as Yuga’s CEO and Defendant Ehrlund began as CCO.

77. On February 4, 2022 an article on BuzzFeed.com (“*BuzzFeed*”) revealed the identities of Defendants Solano and Aronow. Shortly thereafter, Aronow posted a picture of himself on his Gordon Goner Twitter account, offering that he was revealing his face because he was “doxxed²⁴ against my will.”²⁵ Similarly, Solano posted his own picture on his Crypto Gargamel (Garga.eth) Twitter account, stating “[g]ot doxed [sic] so why not.”²⁶

²⁴ “Dox” means to publicly identify or publish private information about someone without their consent.

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

²⁶ Garga.eth (Greg Solano) (@CryptoGarga), TWITTER (Feb. 4, 2022, 5:10 PM), <https://twitter.com/CryptoGarga/status/1489768443771596800?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

1 78. No later than February 7, 2022, Defendant Shoemaker began officially
2 serving as the Company’s chief operating officer.

3 79. After Executive Defendants Solano, Aronow, Atalay, Ali, Muniz,
4 Ehrlund, and Shoemaker were able to massively increase interest in the BAYC
5 NFTs and the idea of cross-utilization of those NFTs through the misleading
6 promotional campaign executed by the Promoter Defendants, these Executive
7 Defendants and Oseary turned towards expanding the Bored Ape brand beyond
8 NFTs. First, Muniz suggested new financial spin-off products like the MAYC and
9 Bored Ape Kennel Club NFT collections. The Executive Defendants would then
10 cross-promote the collections on BAYC’s Twitter account by encouraging people to
11 “adopt” Bored Ape Kennel Club dog NFTs through their BAYC NFT purchases²⁷
12 and boasting that the NFT combination raised “50 ETH . . . for charity.”²⁸

13 80. Next, came Yuga’s version of printing its own money: ApeCoin tokens
14 (discussed further below).

15 81. Finally, in an effort to artificially generate some actual use for these
16 various unregistered Yuga securities (beyond making corporate insiders filthy rich),
17 the Executive Defendants claimed to be creating its own collective virtual shared
18 space or “metaverse” platform, Otherside. The Otherside metaverse was billed to
19 be Yuga’s persistent, immersive virtual world that users could interact with using
20 digital avatars from the BAYC, MAYC, or other Yuga NFT collections. Executive
21 Defendants, Oseary, and the ApeDAO Board Defendants touted ApeCoin tokens as
22 the Otherside’s native currency. Yuga and its executives promoted the Otherdeed
23 NFTs (which served as plots of “land” in the Otherside metaverse) as an extension
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26 ²⁷ Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 21, 2021, 10:49
AM), <https://twitter.com/BoredApeYC/status/1407032879377534980>.

27 ²⁸ Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 26, 2021, 7:10
AM), <https://twitter.com/BoredApeYC/status/1408789893749350402>.

1 of the BAYC ecosystem and the place where the BAYC NFTs could grow, prosper,
2 and interact with others “in the club.”

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

4 82. On October 12, 2021, the Company announced in a *Variety* magazine
5 exclusive article that it had signed a representation deal with Defendant Oseary to
6 expand the BAYC NFTs into movies, TV, music, and gaming, and promoted the
7 *Variety* article through BAYC’s Twitter account.²⁹ In truth, Oseary was officially
8 brought in to actively recruit the Promoter Defendants to solicit sales of the BAYC
9 NFTs and other Yuga Financial Products, which they did.

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

19 84. Oseary has experience in soliciting unregistered crypto securities via
20 Hollywood promotions. In May 2018, Oseary introduced Ripple’s XRP token to
21 retail investors by organizing a highly publicized \$4 million donation from Oseary
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25 ²⁹ Shirley Halperin, *Bored Ape Yacht Club Creators Yuga Labs Sign*
26 *Representation Deal With Madonna, U2 Manager Guy Oseary (Exclusive)*,
27 *VARIETY* (Oct. 12, 2021), <https://variety.com/2021/digital/news/bored-ape-yacht-club-yuga-labs-sign-with-madonna-u2-manager-guy-oseary-1235086011/>; Bored
28 Ape Yacht Club (@BoredApeYC), *TWITTER* (Oct. 12, 2021, 6:50 AM), <https://twitter.com/BoredApeYC/status/1447922609266601990>.

1 and business partner Ashton Kutcher given to Ellen DeGeneres’s charity during the
2 show.³⁰ The donation was purportedly made in the form of XRP tokens.

3 85. Oseary also conducts business with Defendant Bieber’s manager
4 Scooter Braun via their start-up investment funds A-Grade Investments and SB
5 Projects, respectively. More directly, Oseary has been Defendant Ciccone’s
6 personal manager and business partner for decades. And Oseary’s social media
7 company Pearpop received its initial financial backing from Defendant Hilton
8 (along with ApeDAO Board Defendant Ohanian individually). Finally, Oseary’s
9 network extends to other talent management agencies like the Creative Arts Agency
10 (“CAA”), which also represents Defendants Ciccone and Fallon. Oseary’s Sound
11 Ventures partner, Ashton Kutcher, is also represented by CAA.

12 86. Oseary is further linked to several of the Promoter Defendants via their
13 mutual early investments in a cryptocurrency company, MoonPay. Significantly,
14 many of MoonPay’s early investors were made up of Oseary’s immediate and
15 extended network. For example, Oseary and Sound Ventures were also early
16 investors in MoonPay. Other early MoonPay backers include Defendants Paris
17 Hilton, Justin Bieber (and his manager Scooter Braun), Austin Post, and Calvin
18 Broadus, Jr. CAA is also an initial backer of MoonPay.

19 87. Oseary saw an opportunity to profit from using his celebrity contacts to
20 promote the sale of Yuga securities, and he took it. Oseary used NFT artist and
21 business partner Defendant Mike “Beeple” Winkelmann to facilitate a meeting with
22 Yuga and the Executive Defendants, so that Oseary could pitch his plan to promote
23 Yuga and the BAYC NFT collection. Defendant Aronow admitted that “[w]e
24 didn’t really know why he [*i.e.* Oseary] was so interested in us – it was a little
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26 ³⁰ 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.cnbc.com/2018/05/24/ashton-kutcher-gave-ellen-degeneres-ripples-xrp-for-charity.html>.

1 perplexing.” According to Aronow, Oseary eventually managed to “become
2 integral to the process of basically everything that we do.”³¹

3 88. Oseary had an overlapping financial interest in promoting MoonPay’s
4 services, which was synergistic with the related interest that he and the Yuga
5 executives had in promoting the BAYC NFT collection. His plan would effectively
6 allow him, the Executive Defendants, and MoonPay (as well as the Promoter
7 Defendants Bieber, Hilton, Post, and Broadus, who each separately had a financial
8 interest in MoonPay) to all financially benefit from the cross-pollination and
9 promotional efforts for the Yuga Financial Products. As ApeCoin DAO member
10 Dean Steinbeck admitted in an August 2022 ApeCoin Town Hall meeting, “[w]e as
11 a [Ape] community put a lot of faith, for example, in Guy Oseary. We said, you
12 know, here’s x amount of tokens and you know, please help us promote
13 ApeCoin.”³²

14 89. The Executive Defendants, in conjunction with Oseary, tapped into
15 their collective networks to recruit high-profile celebrities to promote the sale of
16 Yuga’s collections of NFTs, particularly the BAYC NFTs. Together, Oseary, the
17 MoonPay Defendants, and the Promoter Defendants each shared the strong motive
18 to use their influence to artificially create demand for the Yuga securities, which in
19 turn would increase use of MoonPay’s crypto payment service to handle this new
20 demand. At the same time, Oseary could also use MoonPay to obscure how he paid
21 off his celebrity cohorts for their direct or off-label promotions of the Yuga
22 Financial Products.

23 90. Upon information and belief, Oseary also worked as a fixer for Yuga
24 and the Executive Defendants. On June 24, 2022, Yuga filed a trademark
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26 ³¹ *Id.*

27 ³² TWITTER (Aug. 18, 2022, 54:13-55:03), <https://twitter.com/i/spaces/1YqKDqZeQwOGV>.

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1 infringement claim against artist Ryder Ripps (“Ripps”) related to the sale of Ripps’
2 satirical NFT collection that Ripps has indicated is meant to shed light on the use of
3 racist imagery and tropes within the BAYC NFT collection and its branding.

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

7 In December 2021, Guy Oseary, Yuga’s talent manager, called
8 me to discuss the public statements I had made about Yuga’s neo-Nazi
9 symbolism. On the call, Oseary made a series of vague threats, saying
10 “I can be a nice guy or I can be a not nice guy” and that I would be
11 better off being friends with Yuga. Oseary suggested that he
12 understood Yuga used racist dog whistles by stating “who am I to
13 judge someone’s art.” Oseary stated that he would help me if I kept
14 silent and that he could make my life difficult if I did not cooperate.
15 Oseary also offered to introduce me to Kanye West, not realizing that
16 I already worked with him, and later added me to a text message
17 thread with West’s manager. When I had not posted anything new
18 criticizing Yuga for about one week and unpinned a tweet criticizing
19 Yuga, Oseary left me a voice memo thanking me for my silence.³³

20 92. The same day that the *BuzzFeed* article exposed the identities of
21 Solano and Aronow, which were previously hidden from the public and investors,
22 Oseary posted the following message³⁴ on his Twitter account:
23
24

25 ³³ Declaration of Ryder Ripps, *Yuga Labs, Inc. v. Ryder Ripps et. al.*, No. 2:22-
26 cv-04355-JFW-JEM (C.D. Cal. Oct. 3, 2022) (ECF No. 48-1), ¶7.

27 ³⁴ Guy Oseary (@guyoseary), TWITTER (Feb. 4, 2022, 5:13 PM),
28 https://twitter.com/guyoseary/status/1489769181532753924?s=20&t=S3hmrMbihK_gkSvhVgBWJPw.

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

94. However, four days later, on February 8, 2022, Executive Defendants Atalay and Ali also posted pictures that revealed their true identities in the wake of the outing of Solano and Aronow.³⁵ Oseary, ever the promoter, immediately posted the uncropped picture he previously posted with the following statement:³⁶

³⁵ Sass (Zeshan Ali), (@SassBAYC), TWITTER (Feb. 8, 2022, 12:46 PM), <https://twitter.com/SassBAYC/status/1491151597682180096?s=20&t=g1mRpxWbWmWNzjxw385m2A>; EmperorTomatoKetchup (Kerem Atalay) (@TomatoBAYC), TWITTER (Feb. 8, 2022, 12:46 PM), <https://twitter.com/TomatoBAYC/status/1491151593055879168?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

³⁶ Guy Oseary (@guyoseary), TWITTER (Feb. 8, 2022, 1:04 PM), <https://twitter.com/guyoseary/status/1491155912718897154?lang=en>.

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3. The Facilitator – MoonPay

95. MoonPay is a company founded by Defendant Ivan Soto-Wright, which purports to provide a service that allows investors (particularly high-net-worth investors) to buy and trade NFTs “without hassle.” The mechanics of how such transactions are executed or who is ultimately paying to buy the NFTs is unclear. According to Soto-Wright, his business started operations in the United Kingdom (“UK”) before moving into other countries in Europe.

96. In an interview with the crypto news outlet Protos, Defendant Soto-Wright disclosed that he “started this in Europe, in the UK, [a]nd open banking wasn’t ready.”³⁷ Soto-Wright went on to reveal that regulators in the UK and/or

³⁷ *Bootstrapping an ambitious idea in crypto*, MIXERGY.COM (Aug. 25, 2021), <https://mixergy.com/interviews/moonpay-with-ivan-soto-wright/>.

1 potential users were “sketched out” by services offered by Soto-Wright’s proto-
2 version of MoonPay, Saveable, a start-up company offering crypto payment
3 services that was ultimately acquired by a UK competitor Plum: “Like, wait, I’m
4 going to give this random service that I’ve never heard of access to my bank
5 account so it can read my transaction history and then move money around. Uh, no
6 thanks. So yeah, I think I learned that the hard way.”³⁸

7 97. Soto-Wright further promoted himself and his crypto payment
8 businesses as having a fiduciary obligation to inform investors about the nature of
9 the financial products those investors purchased because of his services:

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

14 They’re gonna invest in stupid stuff. They’re going to invest in
15 meme coins and shit points. And, you know, the reality is part of that,
16 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.***³⁹

17 [Emphasis added.]

18 98. Later in the interview, when Soto-Wright was asked about the
19 particulars of why the crypto payment business in the UK “didn’t work,” Soto-
20 Wright vaguely claimed that his “waving the white flag” and selling his business to
21 Plum was because he was “focus[ed] too much on the regulatory side of getting our
22 regulatory approval.” Soto-Wright stated that he sold his “regulatory licenses” so
23 that his competitor could “skip the. . . pain . . . that I went through 13 months at the
24 financial conduct authority. So ***I could hold client money and move money into***
25

26 _____
27 ³⁸ *Id.*

28 ³⁹ *Id.*

1 *[a] security*. So, uh, that’s what happened. So it wasn’t like, it wasn’t a win for
2 me.” When discussing the “know your customer” responsibilities a business like
3 MoonPay is obligated to abide by, Soto-Wright acknowledged: “[*W]e’re selling a*
4 *financial instrument* to some extent, right?”⁴⁰ [Emphasis added.]

5 99. Soto-Wright went on to state that:

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

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

15 Uh, sketchy or, you know, I’d say like red or Amber on kind of
16 like the traffic light, uh, is now turning green.⁴¹

17 [Emphasis added.]

18 100. Soto-Wright further promoted that MoonPay’s diligence regarding its
19 regulatory and fiduciary obligations was part of an effort to “combat money
20 laundering” and the “risk of fraud.”⁴²

21 101. On May 26, 2021, the Malta Financial Services Authority (“MFSA”)
22 issued the following directive against MoonPay: “The MFSA considers that the
23 Company is not in a position to adhere in full to the requirements of Chapter 3 of
24 the Virtual Financial Assets Rulebook (“the Rules”) and therefore on 26 May 2021,
25 the MFSA directed the Company to cease the on-boarding of new clients with
26 immediate effect.”⁴³ Among other things, per Chapter 3 of the Rules, a license

27 ⁴⁰ *Id.*

28 ⁴¹ *Id.*

⁴² *Id.*

⁴³ Notice, *MoonPay Limited (“the Company”)* MALTA FIN. SERVS. AUTH. (May 26, 2021), <https://www.mfsa.mt/publication/moonpay-limited-the-company/>.

1 holder in Malta must maintain effective risk management and compliance policies
2 and procedures.

3 102. On April 13, 2022, MoonPay announced that “Music, sports, and
4 entertainment VIPs invest \$87 million in MoonPay,” stating that “60 influential
5 figures and organizations from the worlds of music, sports, media and entertainment
6 have collectively invested \$87M in the company.” Included on this list are
7 Anthony Kiedis of Red Hot Chili Peppers (managed by Oseary), Sound Ventures
8 (Oseary), Defendant Hilton, Defendant Bieber (and his manager Scooter Braun),
9 Defendant Post, Defendant Broadus, as well as Kevin Hart, Gwyneth Paltrow (via
10 Kinship Ventures), Thomas Pentz (Diplo), Alexander Pall and Andrew Taggart of
11 the Chainsmokers (via Mantis VC), Nayvadius Wilburn Cash (Future) (“Wilburn
12 Cash”) (via DreamCrew Entertainment), and Abel Tesfaye (The Weeknd)
13 (“Tesfaye”).⁴⁴ CAA is also an initial backer of MoonPay via Connect Ventures.
14 Additionally, Yuga securities promoter and wife of ApeDAO Board Defendant
15 Ohanian, Serena Williams, has ties to MoonPay via her board membership on
16 Sorare, a collection of fantasy soccer NFTs.

17 103. Behind the scenes, MoonPay’s entire business was a sham.

18 104. MoonPay’s alleged fraudulent and deceptive conduct (described in
19 detail below) is supported by the account of a former MoonPay employee
20 (“Confidential Witness 1” or “CW1”) who worked for the company for the majority
21 of 2022. CW1 was one of approximately five Compliance personnel at MoonPay.
22 According to CW1, Compliance personnel performed Enhanced Due Diligence
23 (“EDD”), Know Your Customer (“KYC”) and Anti-money Laundering (“AML”)
24 checks on MoonPay customers, which are required by law for certain types of
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26 ⁴⁴ Geoffrey Lyons, *Music, sports, and entertainment VIPs invest \$87 million in*
27 *MoonPay*, MOONPAY (Apr. 13, 2022), <https://www.moonpay.com/blog/investor-announcement>.
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1 financial transactions. Given CW1’s role in the Compliance group, CW1 had
2 unique heightened access to files and data associated with MoonPay customer
3 financial transactions: a level of access restricted to a small handful of personnel at
4 the Company.

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

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

21 107. As Confidential Witness 1 confirmed, all intra-crypto transactions are
22 captured on the Ethereum blockchain, but the missing element in that blockchain
23 transactional trail is the initial transaction, where fiat (*e.g.*, U.S. Dollar) is
24 exchanged for digital assets. Importantly, the MoonPay Dashboard captures the
25 transactional data – including the person in question and, as required, data such as
26 their address, proof of income and bank account statements, driver’s license,
27 passport, or other form of identification, and a picture of themselves (or “selfie”)
28

1 that utilizes technology to detect liveness – when fiat currency is utilized to
2 purchase ETH or by extension, an NFT.

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

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

25 110. MoonPay’s Concierge service was portrayed as an exclusive, by-
26 invitation-only service that catered to celebrities and other high-net worth
27 individuals by selling NFTs to these high-end clients, and providing additional
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1 ancillary services associated with the purchase of NFTs. According to CW1,
2 MoonPay’s Concierge associates attended various industry functions and pitched
3 the benefits of the Concierge service to this demographic. CW 1 was also present at
4 some of these functions, including one at Soho House during NFT.NYC,⁴⁵ and
5 another during New York Fashion Week 2022.

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

15 112. Standing alone, the fact that no Concierge clients had any presence on
16 the MoonPay Dashboard was troubling enough due to the representations MoonPay
17 and the Promoter Defendants had been making publicly in connection with the
18 ostensible purchase of NFTs. But this also raised a red flag for CW1 because not
19 including these celebrities in the Dashboard system ran contrary to the supposed
20 value-add MoonPay touted to its clients. According to CW1, after a client is
21 screened, approved, and in the MoonPay Dashboard system, they would be able to
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23 ⁴⁵ 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 engage in unlimited crypto transactions going forward – across all MoonPay’s
2 partners’ platforms and services through the MoonPay Passport service⁴⁶ – without
3 ever having to go through the compliance vetting and wallet-creation process again.
4 As such, notwithstanding whether the publicly reported/celebrity promoted
5 transactions actually occurred, the fact that no information was identified for these
6 celebrities anywhere within the MoonPay Dashboard suggested to CW1 that these
7 celebrities were not, and would not be in the future, availing themselves of the very
8 service MoonPay had claimed to provide them.

9 113. In early 2022, CW1 expressed interest to their supervisors – Elise
10 Messerli (“Messerli”) (Compliance Associate promoted to Head of Product Risk in
11 August 2022)⁴⁷ and Pieter Schoeman (“Schoeman”) (Compliance Associate
12 promoted to Head of Regulatory Compliance in August 2022) – in learning more
13 about the Concierge service. Schoeman and Messerli reported to MoonPay co-
14 founder, Chief Operating Officer, and Chief Financial Officer, Max Crown
15 (“Crown”) until late December 2021. After late December 2021, Schoeman and
16 Messerli reported to Compliance Director EMEA, Simon Knight. In turn, Knight
17 reported to Max Crown. Crown was deeply involved in all aspects of the MoonPay
18 business, and he was principally in charge of the Concierge service. In addition to
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21 ⁴⁶ SanKrit K, *Your passport to the Web3 economy*, MOONPAY (Nov. 22, 2022),
22 <https://www.moonpay.com/learn/web3/your-passport-to-the-web3-economy>; *Web3
Passport Home Page*, MoonPay (last visited Oct. 16, 2023),
<https://www.moonpay.com/web3-passport>.

23 ⁴⁷ 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 Oct. 16, 2023), [https://pitchbook.com/profiles/
investor/491088-88#team](https://pitchbook.com/profiles/investor/491088-88#team). According to a lawsuit filed in the Delaware Chancery
26 Court, HODL Venture Capital duped small investors into selling their stakes for
27 pittances as part of a scheme to “clear out” small partners before the \$555 million
28 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-before-
financing-suit-says](https://news.bloomberglaw.com/esg/moonpay-backers-duped-early-investor-before-financing-suit-says).

1 serving as CFO and COO and leading the Concierge program, Crown also oversaw
2 the Compliance department.⁴⁸

3 114. Based on CW1's ongoing interactions with Messerli and Schoeman,
4 CW1 got the impression that neither was knowledgeable (at least to any significant
5 degree) about the Concierge service beyond that of a typical employee. This
6 surprised CW1 as they expected a reasonable compliance department to have
7 greater insight into the workings of the Concierge program than what CW1
8 observed in Messerli and Schoeman.⁴⁹

9 115. Confidential Witness 1 later scheduled a meeting with London-based
10 Head of MoonPay Concierge, Charlotte Laborde. Laborde reported to COO
11 Crown. She was initially hired as "Strategy Lead to the COO" and was promoted to
12 Head of Concierge as of May 2022. During this meeting, CW1 sought to learn
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14 ⁴⁸ According to his LinkedIn profile, Crown is "Responsible for Compliance,
15 Legal, and Finance" for HODL.vc: the venture capital firm and incubator that
16 founded MoonPay. See *Max (Maximilian) Crown*, LinkedIn (last visited Oct. 16,
17 2023), <https://www.linkedin.com/in/maxcrown/?originalSubdomain=uk>. At
18 HODL, Crown serves alongside Soto-Wright, the entity's co-Founder. There does
19 not appear to be any record of Crown having attended law school or being licensed
20 to practice law. It is further noted that, consistent with the seemingly cavalier and
21 high-risk approach to legal compliance at MoonPay, Soto-Wright and Crown
22 derived the name "HODL" from an acronym that stands for "Hold On for Dear
23 Life." See *How MoonPay Plans to Onboard the World Into Web3*, NFT NOW (Jan.
24 25, 2023), <https://nftnow.com/podcasts/how-moonpay-plans-to-onboard-the-world-into-web3/>,
25 at 5:20. Soto-Wright's Instagram handle is Ivanhodl:
26 <https://www.instagram.com/ivanhodl/>.

27 ⁴⁹ In August 2022, MoonPay reorganized the reporting structure for the
28 Compliance team. From that point until October 2022, CW1 reported to the newly
29 hired Director of Governance and Regulatory Affairs, Eduardo Gutierrez
30 Fernandez, who, in turn, reported to the also newly hired Chief Compliance Officer,
31 Brent Crider. The only reporting line that remained the same was that Crown stood
32 at the top, receiving direct reports from Crider and his subordinates. It should also
33 be noted that around the same time, MoonPay brought on a number of new
34 executives including Asiff Hirji ("Hirji") who notably is the ex-president of
35 Coinbase, and an ex-operating adviser at the leading Yuga Labs backer, venture
36 capital firm Andreessen Horowitz. Hirji is now acting president of MoonPay. See
37 Ben Strack, *Latest in Crypto Hiring: MoonPay Adds Range of Senior Execs*,
38 BLOCKWORKS (July 15, 2022), [https://blockworks.co/news/latest-in-crypto-hiring-
moonpay-adds-range-of-senior-exec/](https://blockworks.co/news/latest-in-crypto-hiring-moonpay-adds-range-of-senior-exec/); *Asiff Hirji*, LINKEDIN (last visited Oct. 16,
2023), <https://www.linkedin.com/in/asiff-hirji/>.

1 more about the Company and the Concierge service specifically. Based on the
2 conversation with Laborde, CW1 concluded that insofar as the practices of the
3 Concierge service, MoonPay did not appear to pay any heed to financial regulations
4 within the U.S.

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

15 117. The primary concern that CW1 outlined in the memo was that
16 MoonPay was potentially running afoul of securities laws and other laws associated
17 with the financial services industry. CW1 expressed concerns that celebrities were
18 promoting the sale of these products without disclosing their own financial interests
19 in those very same products. CW1 also expressed concerns in the memo as to
20 whether MoonPay may have been in violation of certain licensing requirements
21 (*e.g.*, Broker-Dealer, FINRA, etc.) given the nature of its business. CW1 noted that
22 the Concierge service was developed and operated solely by sales personnel and
23 was seemingly detached from any internal legal oversight, including what CW1
24 deemed to be the required regulatory checks that the Compliance department should
25 have performed. As CW1 observed, MoonPay's Concierge service was being run
26 more like a used car dealership as opposed to a business selling sophisticated
27 financial instruments that were subject to securities laws.

28 * * *

1
2 118. Defendants sold and/or solicited the sales of Yuga securities by relying
3 on a tried-and-true marketing strategy: celebrity endorsements. With the approval
4 of the Executive Defendants and ApeDAO Board Defendants and assistance of the
5 MoonPay Defendants and Promoter Defendants, Oseary applied this classic strategy
6 to the modern world of blockchain-related financial products and securities.

7 119. Oseary, the MoonPay Defendants, and Promoter Defendants Hilton,
8 Bieber, Post, and Broadus, each had a financial interest in MoonPay. Likewise,
9 celebrity influencers Kevin Hart, Thomas Pentz (Diplo), Alexander Pall and
10 Andrew Taggart (The Chainsmokers), Wilburn Cash (Future), and Tesfaye (The
11 Weeknd) also had financial interests in MoonPay and were used by Defendant
12 Soto-Wright and/or MoonPay to misleadingly promote, and solicit sales of, the
13 Yuga Financial Products. Upon information and belief as investors in MoonPay,
14 Oseary, and the Promoter Defendants Hilton, Bieber, Post, and Broadus had direct
15 or indirect control over MoonPay and its marketing, particularly with respect to
16 those promotional efforts each of these individual Defendants personally engaged
17 in, respectively.

18 120. Ultimately, “[t]he [BAYC NFT] series serves as a kind of fan club on
19 steroids that encourages owners of the NFTs to move through an ever-growing and
20 exclusive list of events and opportunities.”⁵⁰ And the Company presents the Bored
21 Ape ecosystem as a brand that is organically beloved by some of the most famous
22 celebrities in the world. But the truth is that the Company’s entire business model
23 relies on using insidious marketing and promotional activities from A-list
24 celebrities that are highly compensated (without disclosing such), to increase

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26 ⁵⁰ Shirley Halperin, *From Maverick to Mogul, Madonna’s Manager Guy*
27 *Oseary Transcends the Music World to Take on NFTs*, VARIETY,
28 <https://variety.com/2022/music/news/guy-oseary-nft-madonna-u2-manager-1235325286/> (last visited Oct. 16, 2023).

1 demand of the Yuga securities by convincing potential retail investors that the price
2 of these digital assets would appreciate and that, as members of “the club,” these
3 investors would be given exclusive access to additional financial products and
4 benefits.

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

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

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

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

16 123. In the lead up to the BAYC auction, Sotheby’s representatives
17 misleadingly promoted both the auction and the BAYC NFT collection on the
18 Sotheby’s social media accounts and with statements to various news outlets.
19 These promotions were amplified and further disseminated by the Company
20 through its various social media accounts.

21 124. For example, on August 27, 2021, Sotheby’s Head of Contemporary
22 Art Auctions, Max Moore, posted an advertisement for the BAYC auction from his
23 Twitter account, which included an animation of gold Bored Ape walking his
24 golden Kennel Club dog, along with the Sotheby’s and BAYC logos and the dates
25 of the BAYC auction.⁵¹

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27 ⁵¹ Max Moore (@MaxMoore_Art) TWITTER (Aug. 27, 2021 9:58 AM),
28 https://twitter.com/MaxMoore_Art/status/1431300201738735618?s=20.

1 125. On August 28, 2021, Sotheby’s promoted the BAYC auction as a
2 landmark event for the storied arts dealer: “It’s official. For the first time in our
3 277-year history, apes and kennels are storming Sotheby’s. The @BoredApeYC
4 sale starts September 2. Ape In.”⁵² The promotion included the same animated
5 video of the gold Bored Ape walking his golden Kennel Club dog from Moore’s
6 earlier post. Sotheby’s official Twitter account also changed its profile picture to a
7 golden Bored Ape in front of a golden Bored Ape Kennel Club dog to publicize the
8 BAYC auction.

9 126. On August 30, 2021, the Sotheby’s Twitter account again promoted the
10 sale of BAYC NFTs, stating that “Bored Ape Yacht Club and Bored Ape Kennel
11 Club have paved the way for what NFT art communities can be. Whether it’s your
12 online identify, a shared culture, or you just want to ape in . . . the @BoredApeYC
13 sale starts September 2.”⁵³ The post then provided a link that leads investors to a
14 Sotheby’s website that solicits the sale of Yuga securities. In particular, the
15 Sotheby’s website on that day advised that there were “3 Days Until Bidding
16 Opens” on “2 September 2021 - 10:00 EDT - New York.”⁵⁴ On September 1, 2021,
17 the website had counted down to “1 Day Until Bidding Opens.”

18 127. The August 30, 2021 ad from Sotheby’s also contained an animated
19 video of various Bored Apes partying at “Club Sotheby’s” and promoting Yuga
20 Labs and its NFT collections. The video further directs investors to “Ape In” (*i.e.*,
21 to make a purchase of Yuga securities), inviting them to “learn more at
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23

24 ⁵² Sotheby’s (@Sothebys) TWITTER (Aug. 28, 2021 7:00 AM),
<https://twitter.com/Sothebys/status/1431617671842381831?s=20>.

25 ⁵³ Sotheby’s (@Sothebys) TWITTER (Aug. 30, 2021 9:00 AM),
<https://twitter.com/Sothebys/status/1432372722114433024?s=20>.

26 ⁵⁴ *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.
28

1 sothebys.com/boredape,” and it ends with images of the BAYC and Sotheby’s
2 logos.⁵⁵

3 128. Sotheby’s Co-Head of Digital Art Sales, Michael Bouhanna, reposted
4 Sotheby’s August 30 ad, advising investors: “This is your chance to own 1% of
5 @BoredApeYC and become the 3rd biggest owner of one of the most important
6 and in-demand NFT projects.”⁵⁶

7 129. On September 2, 2021 Moore reposted an announcement from Farokh
8 Sarmad that he would be hosting “the official Sotheby’s x Bored Ape Yacht sale on
9 Spaces at 11 AM ET!”⁵⁷ Notably Sarmad is the founder and host of Rug Radio, a
10 purportedly decentralized media platform that serves as a launchpad, incubator,
11 brand builder, and accelerator for blockchain-related projects. According to the
12 Rug Radio website, Yuga Labs is a “partner” with Rug Radio.

13 130. Moore publicly touted the BAYC auction during the @farokh x
14 @Sotheby’s Twitter Spaces live events.⁵⁸ For example, on September 3, 2021,
15 during the first Sotheby’s x BAYC Twitter Space hosted by Rug Radio, Moore
16 claimed that the BAYC NFT collection had “made it to the gold level of art” by
17 being offered for sale by an art dealer of Sotheby’s status,⁵⁹ stating:

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22 ⁵⁵ Sotheby’s Aug. 30, 2021 Tweet, *supra* n.52.

23 ⁵⁶ Michael Bouhanna (@michaelbouhanna) TWITTER (Aug. 30, 2021 9:02 AM),
24 <https://twitter.com/michaelbouhanna/status/1432373042521546752?s=20>.

25 ⁵⁷ Farokh (@farokh), TWITTER (Sept. 2, 2021 4:50 PM),
26 <https://twitter.com/farokh/status/1433532835722416132?s=20>.

27 ⁵⁸ *See Partner with Rug Radio*, RUG RADIO (last visited Oct. 16, 2023),
28 <https://www.rug.fm/lfg>.

⁵⁹ *See Wave Ninja, The Traditional Collector*, SUBSTACK (May 2, 2023),
<https://waveninja.substack.com/p/the-traditional-collector>.

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131. 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.***"⁶⁰ 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."⁶¹ [Emphasis added.]

132. 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,

⁶⁰ *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>.

⁶¹ *Id.*

1 Sotheby's opened a NFT trading platform called the "Sotheby's Metaverse,"⁶²
2 which, upon information and belief, operated (or attempted to operate) as an
3 unregistered broker of securities. During an interview for the launch of the
4 Sotheby's Metaverse, it stated that it planned on "extend[ing] NFT activities into
5 areas such as contemporary art, museums and masterworks, luxury and fashion,
6 sports, music and Entertainment, and science and technology."⁶³

7 133. Sebastian Fahey, Executive Lead for the Sotheby's Metaverse and
8 Managing Director of the company's business in Europe, the Middle East and Asia
9 noted that "[w]hen Sotheby's first entered the world of NFTs earlier this year, it
10 was immediately clear that we had so far only scratched the surface of the potential
11 of this new medium, and NFTs."⁶⁴ During the same interview with Fahey, Moore
12 added: "Since then, we have spent months exploring every aspect of the digital art
13 landscape, aligning with some of the most influential minds of the NFT movement
14 to architect a custom marketplace that prioritises curation and customisation."⁶⁵

15 134. This falls in line with Moore's statement April 2021 regarding
16 Sotheby's designs capitalizing on the booming NFT market and its investors: "My
17 primary focus right now is establishing these roots [with NFT investors like
18 Plaintiffs and the Class], these connections, establishing these relationships,
19 understanding what drives their collecting habit *Then we'll be able to kind of*
20 *target them in a way that we would never have done before.*"⁶⁶ [Emphasis added.]

21 _____
22 ⁶² Sotheby's Metaverse (@Sothebysverse) TWITTER (Oct. 14, 2021, 9:01 AM),
<https://twitter.com/Sothebysverse/status/1448680330194530312?s=20>.

23 ⁶³ 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-metaverse-featuring-paris-hilton-and-aoki>.

25 ⁶⁴ *Id.*

26 ⁶⁵ *Id.*

27 ⁶⁶ *Auction houses want to be part of the latest trend in art world*, ECONOMIC
28 *TIMES* (Apr. 14, 2021), <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>.

1 135. On September 9, 2021 the Sotheby’s Auction House held the promoted
2 auction on behalf of Yuga. As the auction was underway, Moore continued to
3 promote the sale of BAYC NFTs by pointing to the then-current bid of \$20 million
4 for the lot of BAYC NFTs.⁶⁷ In the end, Sotheby’s claimed to have sold the lot of
5 BAYC NFTs to a purportedly anonymous buyer for \$24.4 million. This bid far
6 exceeded the upper estimate of \$18 million, \$240,000 per BAYC NFT, that
7 Sotheby’s had publicly predicted.⁶⁸ This price was more than \$100,000 more than
8 the floor price for BAYCs at the time.

9 136. Bouhanna stated in a Twitter post on September 9, 2021: “Our Ape In!
10 auction @Sothebys just achieved an outstanding \$26.2M – a great indicator of the
11 level of confidence in this amazing NFT project. This is just the beginning.
12 Congrats to BAYC.”⁶⁹

13 137. More importantly, following the final bid on the lot of BAYC NFTs, a
14 Sotheby’s representative affirmed during the September 9, 2021 @farokh x
15 @Sotheby’s Twitter Space that the winning bidder was a “traditional” collector.⁷⁰
16 Upon information and belief, this Sotheby’s representative was Max Moore.
17 Notably, Moore has, during the promotion of another Sotheby’s NFT auction, both
18 used the term and confirmed its distinction from new crypto investors naïve to
19 Sotheby’s as a trading platform: ““These new crypto investors have a very different
20 aesthetic and a very different taste profile than a traditional collector would and so
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22 ⁶⁷ Max Moore (@MaxMoore_Art), TWITTER (Sept. 9, 2021 12:31 AM),
https://twitter.com/MaxMoore_Art/status/1435868430679175170?s=20.

23 ⁶⁸ *101 Bored Ape Yacht Club – Lot 1*, SOTHEBY’S (last visited Oct. 16, 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-sothebys-auction>.

26 ⁶⁹ Michael Bouhanna (@michaelbouhanna), TWITTER (Sept. 9, 2021),
<https://twitter.com/michaelbouhanna/status/1435971090061332488?s=20>.

27 ⁷⁰ See Wave Ninja, *supra* n.58 (claiming to have personally heard this
28 representation).

1 it's important to provide a mix and a range of collectible at Sotheby's to attract a
2 wide variety of audience.’’⁷¹

3 138. 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”
7 remark from a Sotheby's representative.⁷² For example, Sarmad stated: “Winner of
8 the \$24.4M lot of 101 Bored Apes is a traditional buyer and had to KYC through
9 Sotheby's.”⁷³ As another post from the day relayed the following:



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15 139. Likewise, a longstanding member of the BAYC community,
16 TheGovernoreth, also confirmed that Moore had “said that the buyer of the 101 ape
17 lot was a traditional art collector,” adding that such a feat hadn't “happened in an
18 NFT auction before.”⁷⁴

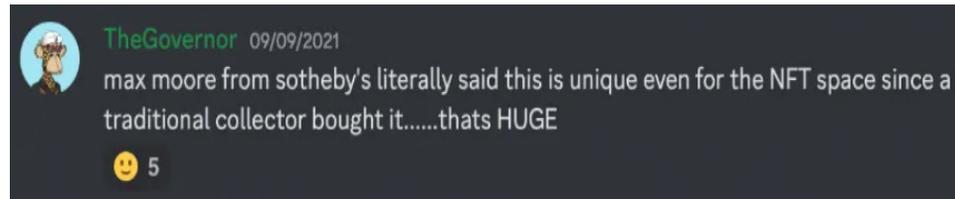
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24 ⁷¹ *Crypto-artist Pak's single grey pixel NFT sold for \$1.36 million*, ARTREVIEW
25 (Apr. 15, 2021), <https://artreview.com/crypto-artist-pak-single-grey-pixel-nft-sold-for-1-36-million-dollars/>.

26 ⁷² Wave Ninja, *supra* n.58.

27 ⁷³ *Id.*

28 ⁷⁴ *Id.*

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140. 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.”


141. 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.”⁷⁶

⁷⁵ Bored Ape Yacht Club (@BoredApeYC). TWITTER (Sept. 9, 2021), <https://twitter.com/BoredApeYC/status/1435976278797164551?s=20>.

⁷⁶ 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/>.

1 142. Bouhanna further directly promoted the BAYC NFT collection (and
2 implicitly confirmed the authenticity of Sotheby’s BAYC auction) in written
3 statements to traditional news outlets. For example, again on September 9, 2021,
4 Bouhanna downplayed the possibility of any danger to investors of there being an
5 NFT market bubble, particularly for the BAYC NFT collection. In particular,
6 Bouhanna stated that “although there is financial speculation on NFTs, [Bouhanna]
7 sees the Bored Apes as works of art.” Bouhanna then unambiguously declared “the
8 NFT market is not a bubble,” explaining:

9 People were talking about a bubble in March, in June etc, and
10 then we see that the market is even stronger today so I think they’ve
11 been proven wrong . . . I think it’s a very organic market with great
12 collectors who have great appreciation of art.”⁷⁷

12 143. Sotheby’s Senior Administrator of Contemporary Art, Hallie Freer,
13 also issued a statement justifying the high price of the BAYC NFT collection versus
14 a similar lot of Yuga’s Kennel Club NFT collection being auctioned by Sotheby’s.
15 In particular, on September 9, 2021, Freer explained that the disparity between the
16 two lots was chalked up to the relatively older vintage of the BAYC NFTs: “[T]he
17 apes have been on the market much longer – since late April – while the dogs were
18 released in early August.”⁷⁸

19 144. Bouhanna also made the rounds with the cryptocurrency-focused press
20 outlets following the auction and promoted the BAYC NFTs: “The Bored Ape
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24 ⁷⁷ Elizabeth Howcroft, *Set of “Bored Ape” NFTs sells for \$24.4 mln in*
25 *Sotheby’s online auction*, REUTERS (Sept. 9, 2021),
26 <https://www.reuters.com/lifestyle/set-bored-ape-nfts-sell-244-mln-sothebys-online-auction-2021-09-09/>.

27 ⁷⁸ Kevin Donovan, *Bored Ape NFT lots sell at auction for \$24.4m, \$1.8m,*
28 *CAPITAL.COM* (Sept. 9, 2021), <https://capital.com/bored-ape-nft-lots-sell-at-auction-for-24-4m-1-8m>.

1 Yacht Club project is one of the most exciting and creative NFT collectibles since
2 the launch of CryptoPunks, and has become a major force in pop culture.”⁷⁹

3 145. The promotions of the Sotheby’s auction of the BAYC NFT collection
4 were effective in cloaking the Yuga securities in the air of legitimacy. As one news
5 outlet observed: “The fact that this [BAYC NFT] auction is being handled by the
6 Contemporary Art department at Sotheby’s *speaks volumes*.”⁸⁰ [Emphasis added.]

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



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

80 Donovan, *supra* n.77.

1 147. This initial boost, however, was rooted in deception. Sotheby’s
2 representations that the undisclosed buyer was a “traditional” collector had
3 misleadingly created the impression that the market for BAYC NFTs had crossed
4 over to a mainstream audience. The Company and its founders likewise touted the
5 Sotheby’s stamp of approval that the auction was above board. But the reality of
6 the winning “bid” of the Sotheby’s auction exposes the falsity of those statements.
7 In truth, it was not a “traditional” buyer that made the winning bid in the BAYC
8 NFT auction, but rather the now-defunct cryptocurrency exchange FTX.⁸¹

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

16 149. According to the transaction data available on the Ethereum
17 blockchain, following the auction, on September 22, 2021, Sotheby’s transferred
18 the lot of BAYC NFTs to wallet address 0xf8e0C93Fd48B4C34A
19 4194d3AF436b13032E641F3,⁸² which, upon information and belief, is
20 owned/controlled by FTX. This wallet previously sent 13 ETH to a
21 “Blockfolio”/FTX US exchange in April of 2020 – prior to the launch of FTX US in
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24 ⁸¹ As of the filing of this complaint, top executives of FTX and its sister trading
25 arm Alameda Research (“Alameda”) have either pled guilty to or are defending
against significant criminal charges related to fraud, money laundering, and other
securities law violations.

26 ⁸² Transaction Hash: 0x43802846b97e4a5785a069ed6f845b8c96ad8a59ba
27 e6cbfebf2990dd1eb59f39 ETHERSCAN (Sept. 22, 2021, 4:57 PM),
28 <https://etherscan.io/tx/0x43802846b97e4a5785a069ed6f845b8c96ad8a59bae6cbfebf2990dd1eb59f39>.

1 May 2020 and FTX’s NFT sales platform in December 2021.⁸³ This form of
2 interaction often indicates a relationship between this wallet and the exchange.

3 150. Moreover, for the launch of its NFT platform, on December 1, 2021,
4 FTX put out a promotional video that featured more BAYC NFTs from the
5 Sotheby’s auction.⁸⁴ Promoter Defendant Stephen Curry, who as discussed further
6 below misleadingly promoted the FTX platform and the BAYC NFT collection,
7 tacitly endorsed this joint FTX/BAYC ad, replying: “Cool announcement video, but
8 my editing skills are missed 😊.”⁸⁵ Importantly, the promotional video showcased
9 certain BAYC NFTs which were plainly identifiable from the lot of BAYC NFTs
10 from the Sotheby’s auction. For example, BAYC NFT #5812 and #3432 can be
11 seen in the video, and as of the filing of this complaint, remain in wallets owned
12 and/or controlled by FTX.⁸⁶

13 151. FTX even promoted the listing of precisely “101” BAYC NFTs on
14 FTX US.⁸⁷ Moreover, when the BAYC NFTs were sold on the FTX US NFT
15 exchange, the securities initially needed to be transferred to a deposit wallet that
16 had frequent and large transactions with other known FTX and/or Alameda wallets.
17 In fact, as discussed further below, these wallets received millions of dollars’ worth
18 of ApeCoin under highly dubious circumstances.

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21 ⁸³ Transaction Hash: 0xdb8eee2a48976c47666ccf80c99d9dbe90f40e6ee
22 54835779145e1d3a0f9c499, ETHERSCAN (Apr. 14, 2020, 1:27 AM),
<https://etherscan.io/tx/0xdb8eee2a48976c47666ccf80c99d9dbe90f40e6ee54835779145e1d3a0f9c499>.

23 ⁸⁴ FTX (@FTX Official). TWITTER (Dec. 1, 2021 7:56 AM),
https://twitter.com/FTX_Official/status/1466073606618820610?s=20.

24 ⁸⁵ Stephen Curry (@StephenCurrv30). TWITTER (Dec. 3, 2021 10:52 AM),
<https://twitter.com/StephenCurrv30/status/1466842814738690049?s=20>.

25 ⁸⁶ *Token: BoredApeYachtClub*, ETHERSCAN (last visited Oct. 16, 2023),
26 <https://etherscan.io/token/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d?a=0xf02e86d9e0efd57ad034faf52201b79917fe0713>.

27 ⁸⁷ See Conor (Conor Grogan) (@gconorgrogan), TWITTER (Dec. 21, 2022 7:30
28 AM), <https://twitter.com/jconorgrogan/status/1605586391332552706?s=20>.

1 152. Indeed, screenshots of FTX’s NFT marketplace indicate that the only
2 BAYC NFTs available for purchase were exclusively from the lot of BAYC NFTs
3 at the Sotheby’s auction. For example, one image posted on November 23, 2021
4 showed BAYC NFTs #4465, 5211, 7468, 7824, 7826, 7976, 7978, and 8181,⁸⁸
5 which all were transferred to the same wallet that held BAYC NFTs #5812 and
6 #3432 discussed above. The floor price for BAYC NFTs fell 9.7% from 49 ETH on
7 November 19, 2021 (the same day Defendant Broadus promoted the BAYC NFT
8 collection as being in “excellent hands with . . . tech & entertainment maven
9 @guyoseary managing the overall BAYC IP”⁸⁹) down to 44.21 ETH on November
10 23, 2021 when news that FTX was the Sotheby’s auction’s real winning bidder was
11 revealed to the market.⁹⁰

12 153. Notably, FTX priced these BAYC NFTs so aggressively high that it
13 created arbitrage opportunities. As one BAYC NFT investor noted on December 5,
14 2021: “The real BAYC floor right now is on FTX. Apes offered at 49 [eth] vs.
15 Opensea at 52 [eth]. Almost an arb.”⁹¹

16 154. On January 2, 2022, a high-profile BAYC NFT trader,
17 @franklinisbored, confirmed that “101 apes are viewable on the @ftx_us
18 @Ftx_Nfts exchange . . . and some were listed and bought for under ape floor by
19 myself [and others] to arb.”⁹² As the transaction recorded on the Ethereum
20 blockchain reveals, @franklinisbored purchased BAYC NFT #5211 (which was
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22 ⁸⁸ alto – dollar.eth (@etheraltog), TWITTER (Nov. 23, 2022 7:08 AM),
<https://twitter.com/etheraltog/status/1595434120703778819?s=20>.

23 ⁸⁹ Cozomo de’ Medici (Snoop Dogg) (@CozomoMedici), TWITTER (Nov. 18,
24 2021), <https://twitter.com/CozomoMedici/status/1461483915189764103?s=20>.

25 ⁹⁰ *Bored Ape Yacht Club (BAYC)*, COINGECKO (last visited Oct. 16, 2023),
<https://www.coingecko.com/en/nft/bored-ape-yacht-club>.

26 ⁹¹ NFTstats.eth (@punk9059), TWITTER (Dec. 5, 2021 7:36 AM),
<https://twitter.com/punk9059/status/1467518139617341442?s=20>.

27 ⁹² Franklin (@franklinisbored), TWITTER (Jan. 1, 2022 9:05 PM),
<https://twitter.com/franklinisbored/status/1477506421923135494?s=20>.

1 included in the Sotheby’s auction) from the FTX.US NFT marketplace on January
2 2, 2022.⁹³

3 155. Ultimately, the Sotheby’s auction was a huge promotion for Yuga and
4 the BAYC NFT collection’s legitimacy as an investment. Behind this scheme,
5 Defendants Yuga and Sotheby’s were conspiring with FTX (and, upon information
6 and belief given her connection to both the Ape Coin DAO and FTX, Defendant
7 Amy Wu) to manipulate the price of the BAYC NFT collection. The misleading
8 promotions of the auction by the Company and Sotheby’s successfully induced
9 additional purchases of the BAYC NFT collection. Moreover, this first deceptive
10 scheme set the stage for Yuga to misleadingly offer and sell additional financial
11 products by raising the profile of the Bored Ape brand with the public.

12 2. The Second Scheme – Deceptive Marketing Campaign

13 a. Promoter Defendants

14 Defendants Fallon, EHD, Universal, and Winklemann

15 156. One instance of Oseary and MoonPay’s solicitation scheme being
16 executed took place during an episode of the *Tonight Show* that aired on November
17 11, 2021. In a broadcast to millions of viewers, Defendant Fallon promoted
18 MoonPay and the BAYC NFT collection during an interview with Defendant
19 Winklemann. Fallon announced that he “got his first NFT” through MoonPay,
20 claiming that he “did his homework” on how to purchase an NFT and found
21 MoonPay, which Fallon asserted was “like the PayPal of crypto.” After shilling
22 MoonPay’s services, credibility, and future growth prospects, Fallon announced
23 that he “bought an ape” (*i.e.*, BAYC NFT #599), to which guest Winklemann
24 expressed approval. Winkelman posted the *Tonight Show* promotion of the BAYC
25

26 ⁹³ Transaction Hash: 0x92e077608e8d2bc95f564531034ca128b635efb62a
27 522969af325c21760fa25b, ETHERSCAN (Jan. 02, 2022, 3:01 PM),
28 <https://etherscan.io/tx/0x92e077608e8d2bc95f564531034ca128b635efb62a522969af325c21760fa25b>.

1 NFTs and MoonPay to his personal Instagram account, wherein it received over
2 676,000 views.⁹⁴ Upon information and belief, MoonPay and/or Oseary, along with
3 the Executive Defendants, recruited and paid Fallon and Winkelmann to promote
4 both MoonPay and the BAYC collection of NFTs during this segment on the
5 *Tonight Show*. Notably, Winkelmann is direct business partners with Oseary in
6 another NFT platform company, WENEW.

7 157. Fallon did not disclose that he had a financial interest in MoonPay or
8 that he was likewise financially interested, directly or indirectly, in the increased
9 sale and popularity of Yuga securities. Fallon also did not disclose that MoonPay
10 had actually transferred BAYC NFT #599 as part of an elaborate scheme for Fallon
11 to promote unregistered securities Yuga Financial Products to his millions of
12 viewers.⁹⁵

13 158. Nor did EHD or broadcast partner Universal disclose that this
14 purportedly organic segment on the *Tonight Show* was in reality a paid
15 advertisement for the BAYC collection of NFTs and MoonPay by two celebrities
16 (Fallon and Winkelmann) who are business partners with an investor (Oseary) in
17 both Yuga and MoonPay.⁹⁶

18 159. That same day, the MoonPay Twitter account posted a clip from the
19 segment with Fallon promoting MoonPay and the BAYC NFTs with a caption
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21 ⁹⁴ Instagram, beetle_crap (Nov. 11, 2021), <https://www.instagram.com/p/CWJI-cJp5Fu/?hl=en>.

22 ⁹⁵ Transaction Hash: 0x25d594eab6dd5ea7c2189d2cf30b702f64ff3c75590d7c
23 41638c9d9a55cf0f76. ERC-721: 599, ETHERSCAN (Nov. 8, 2021, 12:37 AM
24 UTC), <https://etherscan.io/tx/0x25d594eab6dd5ea7c2189d2cf30b702f64ff3c75590d7c41638c9d9a55cf0f76>.

25 ⁹⁶ Adding to the web of interconnectivity amongst the Defendants, in May
26 2022, Defendants Winkelmann and Ciccone, with the help of MoonPay, together
27 launched another NFT project: The Mother of Creation. MoonPay promoted this
28 relationship on its Twitter account on May 11, 2022. MoonPay (@moonpay),
TWITTER (May 11, 2022, 12:50 PM), https://twitter.com/moonpay/status/1524477023393128451?s=20&t=r7ZcS2DtK_Vt4UPk03r1AQ.

1 stating: “So this just happened. @jimmyfallon reveals to @beeples on the
2 #TheTonightShow that he just bought his first Bored Ape by @BoredApeYC with
3 MoonPay! 🚀👁️.”⁹⁷ MoonPay’s statement that “[s]o this just happened”
4 misleadingly suggested to investors that the promotion of MoonPay and the BAYC
5 NFT collection on the *Tonight Show* was something that occurred spontaneously.
6 Likewise, MoonPay’s statement that Fallon had “just bought his first Bored Ape by
7 @BoredApeYC with MoonPay!” failed to disclose that in truth, Fallon’s segment
8 with Winkelmann was just a promotion of the BAYC NFTs and MoonPay that was
9 orchestrated behind the scenes by Oseary, Soto-Wright, and the Executive
10 Defendants.

11 160. MoonPay also posted a video of the Fallon segment to its TikTok
12 account with a message thanking Fallon, Winkelmann, and BAYC for the
13 promotion.⁹⁸ The video received more than 814,000 views.

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

16 162. On November 12, 2021, Fallon promoted the BAYC NFT he
17 supposedly “bought,” asking the Yuga official Twitter account if he had
18 “[p]ermission to come a bored?”⁹⁹ That same day, Defendant Soto-Wright
19 responded to Fallon’s promotion stating: “Congrats @jimmyfallon &
20 @BoredApeYC! We ❤️ you from @MoonPayHQ!”¹⁰⁰ On November 17, 2021,
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22 ⁹⁷ MoonPay (@moonpay), TWITTER (Nov. 11, 2021, 3:38 AM),
https://twitter.com/moonpay/status/1458761049075769351?s=20&t=ntA_vzg_M2p_oZo2ADKag7g.

23 ⁹⁸ Moonpayhq (@moonpayhq), TIKTOK (Nov. 11, 2021),
24 <https://www.tiktok.com/@moonpayhq/video/7029269499605945606>.

25 ⁹⁹ Jimmy Fallon (@jimmyfallon), TWITTER (Nov. 12, 2021, 6:20 AM),
https://twitter.com/jimmyfallon/status/1459164143626424321?s=20&t=pnZMGBip1cJ52yjSd_e3-g.

26 ¹⁰⁰ Ivan Soto-Wright (@isotowright), TWITTER (Nov. 12, 2021, 7:27 AM),
27 https://twitter.com/isotowright/status/1459181031186173980?s=20&t=pnZMGBip1cJ52yjSd_e3-g.

28

1 Fallon again promoted the BAYC NFTs, asking his 53.1 million Twitter followers
2 to “[n]ame my ape! Drop your suggestions below” and tagging “@BoredApeYC
3 #BAYC #BoredApeYachtClub #NFTs.”¹⁰¹ These promotions from Soto-Wright
4 and Fallon failed to disclose that Fallon’s promotion of the BAYC NFTs and
5 MoonPay was not because of Fallon’s genuine interest in BAYC NFTs but rather
6 solely due to the financial interest Fallon shared with Soto-Wright, Oseary, and the
7 Executive Defendants.

8 163. Following his *Tonight Show* promotion, Fallon continued to promote
9 the collection of BAYC NFTs and to solicit sales thereof on social media. For
10 example, Fallon created a Twitter account for his BAYC NFT #599 with the user
11 name “Bored and Breezy.” On November 23, 2021, Fallon posted the following
12 solicitations for the BAYC NFTs on his official and Bored and Breezy Twitter
13 accounts:¹⁰²

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¹⁰¹ Jimmy Fallon (@jimmyfallon), TWITTER (Nov. 17, 2021, 11:42 AM),
24 [https://twitter.com/jimmyfallon/status/1461011913479962630?s=20&t=b7UnEi0yc](https://twitter.com/jimmyfallon/status/1461011913479962630?s=20&t=b7UnEi0ycK49kgQy3FiFPg)
25 [K49kgQy3FiFPg](https://twitter.com/jimmyfallon/status/1461011913479962630?s=20&t=b7UnEi0ycK49kgQy3FiFPg).

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

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

1 166. Upon information and belief, Defendants Fallon and Winkelmann
2 received Yuga Financial Products and/or other forms of consideration as part or all
3 of their compensation for promoting the Yuga securities specifically or the Yuga
4 brand generally. Moreover, Defendants Fallon and Winkelmann directly financially
5 benefited from the increased valuation that MoonPay would experience with such
6 overwhelming celebrity exposure.

7 **Defendants Fallon, EHD, Universal, and Hilton**

8 167. Concurrently, Fallon also continued promoting BAYC NFTs on the
9 *Tonight Show*, and EHD and Universal continued to approve that such promotions
10 could be aired on the network without disclaimer. In an even more contrived
11 segment that aired during an episode of the *Tonight Show* on January 24, 2022,
12 Fallon interviewed Defendant Paris Hilton, and they both misleadingly promoted
13 the BAYC collection of NFTs. Fallon first tried to bolster Hilton’s credentials in
14 the NFT sector by telling the audience and investors that *Forbes* magazine had
15 named Hilton as one of the “top 50 most influential people in the NFT space.”
16 Fallon then immediately began promoting the BAYC NFT collection with Hilton.
17 Hilton claimed that she “saw” Fallon’s previous BAYC segment with Winkelmann,
18 and “copied” Fallon’s use of MoonPay to “buy an ape.” Hilton feigned interest in
19 the BAYC NFT collection and claimed BAYC NFT #1294 was “[her] ape” and she
20 selected it because it “reminded” Hilton of herself. When the audience snickered at
21 Hilton’s half-hearted explanation for “purchasing” that particular BAYC NFT
22 (which bore no apparent resemblance to Hilton’s appearance), Fallon jumped in to
23 show off his own BAYC NFT #599, which sported a boat captain’s hat and other
24 funny accessories. Fallon also insisted that he “bought” BAYC NFT #599 because
25 it reminded him of himself, to which the audience agreed and laughed off the
26 exchange. This original segment has been uploaded on the *Tonight Show*’s official
27 YouTube channel, which has received approximately 547,000 views as of the date
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1 of this filing.¹⁰³ Upon information and belief, the *Tonight Show*'s channel on
2 YouTube is owned and/or controlled by Defendant Universal.

3 168. Hilton and MoonPay also promoted Hilton's appearance on the
4 *Tonight Show* on their own extensive social media accounts. On January 24, 2022,
5 MoonPay posted that BAYC NFT #1294's owner "is known to enjoy 'The Simple
6 Life' even though they are appearing on prime time TV 'tonight.' Who could it be?
7 🙄"¹⁰⁴ Defendant Hilton responded to this message with a "wink" emoji.¹⁰⁵
8 MoonPay also posted a video of the *Tonight Show* segment on its TikTok page,
9 which received almost 14,000 views.¹⁰⁶

10 169. But neither Hilton nor MoonPay disclosed that MoonPay transferred
11 BAYC NFT #1294 to Hilton on January 25, 2022,¹⁰⁷ meaning Hilton did not
12 actually own BAYC NFT #1294 like she falsely claimed to millions of *Tonight*
13 *Show* viewers when the segment aired on January 25, 2022. And neither MoonPay
14 nor Hilton disclosed that Hilton did not "buy" BAYC NFT #1294 as she
15 represented – rather BAYC NFT #1294 was transferred to her as part of an
16 elaborate scheme to promote Yuga Financial Products. Fallon also falsely claimed
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19 ¹⁰³ The Tonight Show, *Paris Hilton Surprises Tonight Show Audience Members*
20 *By Giving Them Their Own NFTs*, YOUTUBE (Jan. 24, 2022),
<https://www.youtube.com/watch?v=5zi12wrh5So>.

21 ¹⁰⁴ MoonPay (@moonpay), TWITTER (Jan. 24, 2022, 6:40 AM),
22 [https://twitter.com/moonpay/status/1485623661897961476?s=20&t=F58_qyidVksn](https://twitter.com/moonpay/status/1485623661897961476?s=20&t=F58_qyidVksnSGdXuAyy-A)
The Simple Life.

23 ¹⁰⁵ Paris Hilton (@ParisHilton), TWITTER (Jan. 24, 2022, 10:01 PM),
24 [https://twitter.com/ParisHilton/status/1485855428563116034?s=20&t=F58_qyidVksn](https://twitter.com/ParisHilton/status/1485855428563116034?s=20&t=F58_qyidVksnSGdXuAyy-A)

25 ¹⁰⁶ Moonpavha (@moonpavha), TIKTOK (Jan. 25, 2022),
<https://www.tiktok.com/@moonpayhq/video/7057163074641366278>.

26 ¹⁰⁷ Transaction Hash: 0x34e77AD857217D8D93dcC0bAE752E2290A2EFb66,
27 ERC-721: 1294, ETHERSCAN (Jan. 25, 2022, 8:57 PM UTC),
[https://etherscan.io/tx/0x179498648c3904b2a8988c35915dd6d959ae2ce035336a55](https://etherscan.io/tx/0x179498648c3904b2a8988c35915dd6d959ae2ce035336a55837dbc8104474625)
28 837dbc8104474625.

1 that he “bought an ape,” even though MoonPay actually transferred BAYC NFT
2 #599 to him a couple months prior as part of the same promotional scheme.¹⁰⁸

3 170. 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:¹⁰⁹



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14 171. The *Tonight Show*’s official Twitter account posted a 1:44 minute clip
15 on January 25, 2022 of the entire segment promoting the BAYC NFT collection
16 through MoonPay.¹¹⁰ Defendant Fallon was also on Twitter that day reposting his
17 *Tonight Show* promotion of the BAYC NFT collection along with Defendant
18 Hilton. In addition to a link to the *Tonight Show*’s Twitter post, Defendant Fallon
19 included the caption “#WAGMI.”¹¹¹ The hashtag “#WAGMI” refers to the phrase
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21 ¹⁰⁸ Transaction Hash: 0x25d594eab6dd5ea7c2189d2cf30b702f64ff3c75590d7c
22 41638c9d9a55cf0f76. ERC-721: 599, ETHERSCAN (Nov. 8, 2021, 12:37 AM UTC),
23 [https://etherscan.io/tx/0x25d594eab6dd5ea7c2189d2cf30b702f64ff3c75590d7c416](https://etherscan.io/tx/0x25d594eab6dd5ea7c2189d2cf30b702f64ff3c75590d7c41638c9d9a55cf0f76)
24 38c9d9a55cf0f76.

25 ¹⁰⁹ Paris Hilton (@ParisHilton). TWITTER (Jan. 25, 2022, 7:19 PM),
26 [https://twitter.com/ParisHilton/status/1486131710895050756?s=20&t=8IDQAVCG](https://twitter.com/ParisHilton/status/1486131710895050756?s=20&t=8IDQAVCGIW19GRmFFIv1PQ)
27 IW19GRmFFIv1PQ.

28 ¹¹⁰ The Tonight Show (@FallonTonight), TWITTER (Jan. 25, 2022, 12:15 AM),
[https://twitter.com/FallonTonight/status/1485843736345161737?s=20&t=b7UnEi0](https://twitter.com/FallonTonight/status/1485843736345161737?s=20&t=b7UnEi0ycK49kgQy3FiFPg)
ycK49kgQy3FiFPg.

¹¹¹ Jimmy Fallon (@jimmyfallon), TWITTER (Jan. 25, 2022, 11:15 AM),
[https://twitter.com/jimmyfallon/status/1486009927999135754?s=20&t=b7UnEi0yc](https://twitter.com/jimmyfallon/status/1486009927999135754?s=20&t=b7UnEi0ycK49kgQy3FiFPg)
K49kgQy3FiFPg.

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

7 172. On January 31, 2022, Hilton posted the following message on Twitter
8 with an animated cartoon version of the Fallon interview of Hilton:¹¹²



19 173. Hilton’s Twitter promotions on January 25 and January 31, 2022 gave
20 investors the false impression that Hilton: (1) actually bought the BAYC NFT; and
21 (2) was enthusiastically “hanging out in the metaverse” with Fallon and that they
22 were “BoredApeBesties.” In truth, Hilton was only promoting the BAYC NFTs
23 and MoonPay because she was financially motivated to make those statements. Nor
24 did Hilton include an “ad” disclaimer in either of the January 25th or January 31st
25

26 ¹¹² Paris Hilton (@ParisHilton). TWITTER (Jan. 31, 2022, 10:59 PM).
27 <https://twitter.com/ParisHilton/status/1488361241512800258?s=20&t=KDOjfCCoS8Ch1PbuhBS-xw>.
28

1 posts that would disclose to investors that this was a paid advertisement for the
2 BAYC collection of NFTs and MoonPay. Plaintiffs saw the promotions by Fallon
3 and Hilton (which were authorized by Defendants Universal and EHD) on the
4 *Tonight Show* regarding the Company’s collection of BAYC NFTs, as well as
5 Hilton’s and Fallon’s promotions on their respective social media accounts.

6 174. Importantly, Hilton and MoonPay purposefully did not disclose
7 Hilton’s direct financial interest in MoonPay and, relatedly, the increased sale of
8 Yuga securities through MoonPay. And again, there was no disclosure from any of
9 the *Tonight Show*’s production companies, namely Defendants Universal or EHD,
10 regarding Hilton’s and/or Fallon’s financial interests in MoonPay or compensation
11 for promoting the BAYC NFTs. Notably, according to an internal workplace policy
12 mandated by Universal, all employees, including Defendant Fallon, must “disclose
13 and obtain approval for all outside work, financial interests and other personal
14 activities/relationships that may create or appear to create a conflict.”¹¹³ The same
15 policy says that employees should not “use company info, resources, time, etc. for
16 personal benefit.” Thus, upon information and belief, Universal knew about
17 Fallon’s ties to Oseary and Yuga, along with Hilton’s ties to MoonPay, and
18 approved the promotion of BAYC NFTs on the *Tonight Show* before it was publicly
19 aired without disclaimers. These omissions gave the public the false impression
20 that Hilton had been inspired to purchase a BAYC NFT after hearing that Fallon
21 had organically purchased one of his own, when, in truth, the entire *Tonight Show*
22 segment was just a paid promotion for the BAYC collection of NFTs and MoonPay.
23 Reporting on this segment noted that a “glossy-eyed Jimmy Fallon conducted one

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26 ¹¹³ Brian Contreras, *Jimmy Fallon hyped his Bored Ape NFTs on ‘The Tonight*
27 *Show.’ Conflict of Interest?*, L.A. TIMES (Jan. 26, 2022),
28 <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 of the most forced interviews” in the history of the *Tonight Show* during this
2 segment with Defendant Hilton.¹¹⁴ The journalist Max Read described their
3 exchange as “profoundly unsettling.”¹¹⁵

4 175. Plaintiffs were induced to purchase and/or continue to hold Yuga
5 securities as a result of these misleading promotions by Fallon and Hilton.

6 176. Upon information and belief, Fallon and Hilton received Yuga
7 Financial Products and/or other forms of consideration as part or all of their
8 compensation for promoting the Yuga securities specifically or the Yuga brand
9 generally. Moreover, Fallon and Hilton directly financially benefited from the
10 increased valuation that MoonPay would experience with such overwhelming
11 celebrity exposure.

12 177. 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 **Defendant Bieber**

17 178. Other members of Oseary’s network follow a similar pattern of
18 promoting the BAYC collection of NFTs in connection with MoonPay. Indeed,
19 Oseary, in particular, was the architect of Defendants’ plan for marketing the
20 BAYC NFTs. His primary business is managing various high-profile music acts
21 and other entertainment celebrities, including Defendant Madonna Ciccone. Oseary
22 previously ran a successful talent agency called Maverick Management
23 (“Maverick”), which, by itself and in conjunction with talent management
24

25 ¹¹⁴ Lucas Kwan Peterson, *Can NFTs save the restaurant industry or is the hype
just virtual?*, L.A. TIMES (Apr. 19, 2022), [https://www.latimes.com/food/story/
2022-04-19/bored-ape-nft-restaurant-la-long-beach](https://www.latimes.com/food/story/2022-04-19/bored-ape-nft-restaurant-la-long-beach).

26 ¹¹⁵ Max Read, *Mapping the celebrity NFT complex*, READ MAX (SUBSTACK),
27 (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).

1 powerhouse Live Nation, represented dozens of the most famous athletes and
2 entertainers in the United States. Several of these athletes and entertainers just so
3 happen to also have “joined the BAYC” in the “metaverse” and eagerly promoted
4 that fact to would-be investors.¹¹⁶

5 179. For example, on January 31, 2022, Defendant Bieber promoted his
6 purported purchase of BAYC NFT #3001 to his 262 million followers on
7 Instagram.¹¹⁷



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17 180. Reports indicated that Bieber paid approximately \$1.29M for his Bored
18 Ape purchase, which was upwards of five times the floor price with similar
19 characters. But this gross overpayment was meaningless to Bieber since, upon
20 information and belief, he did not actually pay any money of his own for this
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22 ¹¹⁶ For example, Oseary’s Maverick agency represented MoonPay investor
23 Tesfaye, who also shilled the BAYC brand in the thinly-veiled promotional music
24 video with Defendant Post. Similarly, Ape DAO Board Defendant Alexis Ohanian
25 recruited his wife, tennis superstar Serena Williams, to promote BAYC NFTs.
26 Likewise, upon information and belief, Ape DAO Board Defendant Amy Wu
utilized 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.

¹¹⁷ Justin Bieber (@justinbieber), INSTAGRAM (Jan. 31, 2022), https://www.instagram.com/p/CZZhdyzFITO/?utm_source=ig_web_copy_link.

1 BAYC NFT, but rather received it through a series of transactions for the purpose
2 of compensating him. Instead, Bieber received BAYC NFT #3001 as a form of
3 compensation for promoting the BAYC NFTs and Yuga Financial Products to his
4 hundreds of millions of social media followers.

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

10 182. Plaintiffs saw Defendant Bieber’s promotion of the Company’s
11 collection of BAYC NFTs and were induced to purchase and/or continue to hold
12 Yuga securities as a result of these misleading promotions.

13 183. Upon information and belief, Defendant Bieber received Yuga
14 Financial Products and/or other forms of consideration as part or all of their
15 compensation for promoting the Yuga securities specifically or the Yuga brand
16 generally. Moreover, Defendant Bieber directly financially benefited from the
17 increased valuation that MoonPay would experience with such overwhelming
18 celebrity exposure.

19 **Defendant Post**

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

25 185. In particular, on October 29, 2021, digital wallet address
26 0xbea020c3bd417f30de4d6bd05b0ed310ac586cc0 labeled as “Post Malone” (the
27 “Post Malone Wallet”) received 75.1 ether (valued at \$331,746.76 at the time of the
28

1 transaction) from MoonPay Wallet.¹¹⁸ Two days later, on October 31, 2021, the
2 Post Malone Wallet received 100 ether or \$429,010 from the MoonPay Wallet.¹¹⁹

3 186. On November 15, 2021, Defendant Post uploaded a music video onto
4 his official YouTube channel entitled “One Right Now.”¹²⁰ This video featured
5 Defendant Post and MoonPay investor Tesfaye (The Weeknd). The beginning of
6 the video features a segment where Post uses the MoonPay app on his phone to
7 purchase a BAYC NFT.

8 187. That same day, BAYC promoted the video from Post and Tesfaye on
9 its Twitter account:¹²¹



19 188. MoonPay also promoted the Post and Tesfaye video on its Twitter
20 account, only minutes before BAYC:¹²²

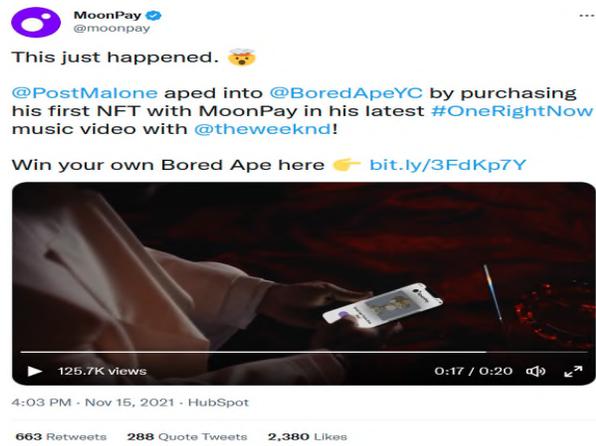
21
22 ¹¹⁸ Transaction Hash: 0xc50f01603b668b384d8ff595e9ddd1f69b7c97846f3c
23 4fc27852bbca91c25530, ETHERSCAN (Oct. 29, 2021, 8:54 AM),
24 https://etherscan.io/tx/0xc50f01603b668b384d8ff595e9ddd1f69b7c97846f3c4fc278
25 52bbca91c25530.

26 ¹¹⁹ Transaction Hash: 0x339efa1b3a6dff394b79a2703bc6a73e33eb4f8e99f3a02
27 26e707e251da0ac8d, ETHERSCAN (Oct. 31, 2021, 10:34 AM), https://etherscan.io
28 /tx/0x339efa1b3a6dff394b79a2703bc6a73e33eb4f8e99f3a0226e707e251da0ac8d.

¹²⁰ Post Malone, *One Right Now*, YOUTUBE (Nov. 15, 2021),
https://youtu.be/Tc0tLGWIqxA.

¹²¹ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 15, 2021, 1:14
PM), https://twitter.com/BoredApeYC/status/1460355554342227973.

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

190. On November 19, 2021, the Post Malone Wallet received another 50 ether (worth \$214,963.50) from the MoonPay Wallet.¹²³ The last payment that the Post Malone Wallet received from the MoonPay Wallet was on November 21, 2021 for 100 ether, which was then worth \$426,461.¹²⁴ In total, the MoonPay Defendants

¹²² MoonPay (@moonpay), TWITTER (Nov. 15, 2021, 1:03 PM), <https://twitter.com/moonpay/status/1460352762798084105?s=20&t=mHWXj4WYC5OUt2zg9LWA>.

¹²³ Transaction Hash: 0x729899f138ab93d6c20707783b62e16e04093e481d11e45bc2e3648b6ab3773b, ETHERSCAN (Nov. 19, 2021, 2:55 AM), <https://etherscan.io/tx/0x729899f138ab93d6c20707783b62e16e04093e481d11e45bc2e3648b6ab3773b>.

¹²⁴ Transaction Hash: 0xc21a66ee9a3d1ddf6f72c780e4165b7e915cf6cfb64209230c9af5993de284f9, ETHERSCAN (Nov. 21, 2021, 1:40 AM), <https://etherscan.io/tx/0xc21a66ee9a3d1ddf6f72c780e4165b7e915cf6cfb64209230c9af5993de284f9>.

1 facilitated the payment of \$1,402,181.26 to Defendant Post over the course of a
2 month.

3 191. Plaintiffs saw Defendant Post’s promotion of the Company’s collection
4 of BAYC NFTs and were induced to purchase and/or continue to hold Yuga
5 securities as a result.

6 192. Upon information and belief, Defendant Post received Yuga Financial
7 Products and/or other forms of consideration as part or all of his compensation for
8 promoting the Yuga securities specifically or the Yuga brand generally. Moreover,
9 as an equity investor in MoonPay, Defendant Post directly financially benefited
10 from the increased valuation that MoonPay would experience with such
11 overwhelming celebrity exposure.

12 **Defendant Broadus**

13 193. On December 15, 2021, MoonPay transferred BAYC NFT #6723 to
14 Defendant Broadus’s son, Cordell Broadus, who later transferred BAYC NFT
15 #6723 to Defendant Broadus at wallet address 0xa8E0681d9e870b457084Fb9223
16 F13401B20B4aD0 (the “Broadus address”) on March 1, 2022.¹²⁵

17 194. On December 21, 2021, Defendant Broadus posted a picture of BAYC
18 NFT#6723, the primates corresponding M1 and M2 Mutant Apes along with Bored
19 Ape Kennel Club Dog #894 to his 20+ million Twitter followers.¹²⁶ Broadus
20 further stated: “And a huge shout out 2 to @moonpay @isotowright
21 @C_Broadus21 and @j1mmyeth for making it happen and bringing The Who
22

23 ¹²⁵ Transaction Hash: 0xeb37ef145f21effe801a811e11239f4fce502bb39610
24 71230f2d4673b6d93708, ERC-721: 9049, ETHERSCAN (Dec. 16, 2021, 12:07 AM
25 UTC), <https://etherscan.io/tx/0xeb37ef145f21effe801a811e11239f4fce502bb3961071230f2d4673b6d93708>; Transaction Hash: 0x3e2c12cca277d980697ad09d02ccea092e8f8ace82c70fac08a1662d47bc84d1, ERC-721: 9049, ETHERSCAN (March 1, 2022, 06:28 AM UTC), <https://etherscan.io/tx/0x3e2c12cca277d980697ad09d02ccea092e8f8ace82c70fac08a1662d47bc84d1>.

27 ¹²⁶ Snoop Dogg (@SnoopDogg), TWITTER (Dec. 21, 2021 10:57 AM),
28 <https://twitter.com/SnoopDogg/status/1473367017172393987>.

1 familia together.”¹²⁷ Broadus boasted about BAYC a month later, calling BAYC “a
2 cultural juggernaut” and requesting to join its advisory board so they could elevate
3 the NFT “game to tha [sic] next level.”¹²⁸ MoonPay posted a similar promotional
4 video with Defendant Broadus and Soto-Wright on its TikTok page, falsely
5 claiming that Defendant Broadus “just bought \$370k in Bored Apes.”¹²⁹

6 195. Plaintiffs saw the promotions from Broadus regarding the Company’s
7 collection of BAYC NFTs and were induced to purchase and/or continue to hold
8 Yuga securities as a result of these misleading promotions. Indeed, Broadus’
9 promotion was particularly influential on Plaintiffs’ decision to purchase given
10 Broadus’ status as a savvy investor in NFTs. Broadus notably refers to himself as
11 the “King of NFTs” on social media.¹³⁰

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22 ¹²⁷ Snoop Dogg (@SnoopDogg), TWITTER (Dec. 21, 2021 1:57 PM),
(<https://twitter.com/SnoopDogg/status/1473367019542265858?s=20&t=1AVE0gdvmlZm3hKnJ4w5bg>).

23 ¹²⁸ Snoop Dogg (@SnoopDogg), TWITTER (Jan. 21, 2022 9:58 AM),
24 <https://twitter.com/SnoopDogg/status/1484586102182727682>.

25 ¹²⁹ Moonpayhq (@moonpayhq), TIKTOK (Dec. 22, 2021),
26 https://www.tiktok.com/@moonpayhq/video/7057163074641366278?is_from_webapp=1&sender_device=pc&web_id=7270912384079316523
[ideo/7044509454267698437](https://www.tiktok.com/@moonpayhq/video/7044509454267698437).

27 ¹³⁰ Snoop Dogg (@SnoopDogg), INSTAGRAM (Nov. 25, 2021),
28 https://www.instagram.com/p/CWt0yclrFgw/?img_index=1.

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196. In addition, as of March 1, 2022, Defendant Broadus promoted his BAYC “Dr. Bombay” to his more than 80 million Instagram followers:¹³¹



¹³¹ Snoop Dogg (@SnoopDogg), INSTAGRAM (Mar. 1, 2022), <https://www.instagram.com/p/Cakx-4HvpG6/?hl=en>.

1 197. Defendant Broadus also acquired intellectual property rights through
2 the Company and used his BAYC “Dr. Bombay” to personally profit from it.
3 Beginning on April 1, 2022, Broadus posted numerous photos to his Instagram
4 account promoting Dr. Bombay-branded merchandise such as apparel, marijuana,
5 an album cover, and even ice cream.¹³²

6 198. Broadus continued promoting his BAYC “Dr. Bombay” throughout
7 April, May, June, and July 2022,¹³³ including an April 29, 2022 video posted right
8 before Otherside NFT minting, as the price was about to increase, which garnered
9 nearly half a million views on Instagram.¹³⁴

10 199. Other Dr. Bombay augmented reality videos posted by Defendant
11 Broadus to his Instagram account, as a means to promote the expansive ability to
12 use the avatar across other platforms, also garnered millions of views. For example,
13 a May 8, 2022 Dr. Bombay video acquired 1.4 million Instagram views;¹³⁵ a May
14 15, 2022 video acquired over one million views;¹³⁶ a June 3, 2022 video acquired

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16 ¹³² Snoop Dogg (@SnoopDogg), INSTAGRAM (Apr. 1, 2022),
https://www.instagram.com/p/Cb0plnqOd-B/?img_index=1; Snoop Dogg
17 (@SnoopDogg), INSTAGRAM (Apr. 5, 2022), <https://www.instagram.com/p/Cb9kSU2OGlB/?hl=en>; Snoop Dogg (@SnoopDogg), INSTAGRAM (Apr. 20,
18 2022), <https://www.instagram.com/p/Cc1wCJQFLYQ/?hl=en>; Snoop Dogg
19 (@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.

20 ¹³³ Snoop Dogg (@SnoopDogg), INSTAGRAM (May 26, 2022),
<https://www.instagram.com/p/CeA1HoHLAHH/?hl=en>; Snoop Dogg
21 (@SnoopDogg), INSTAGRAM (May 29, 2022), <https://www.instagram.com/p/Ce1b9mlucXd/?hl=en>; Snoop Dogg (@SnoopDogg), INSTAGRAM (June 2, 2022),
22 <https://www.instagram.com/p/CeU3IFMJCxb/?hl=en>; Snoop Dogg
23 (@SnoopDogg), INSTAGRAM (June 17, 2022), <https://www.instagram.com/p/Ce7gRsdrcds/?hl=en>; Snoop Dogg (@SnoopDogg), INSTAGRAM (July 7, 2022),
https://www.instagram.com/p/CfuVBsql_tt/?hl=en.

24 ¹³⁴ Snoop Dogg (@SnoopDogg), INSTAGRAM (April 29, 2022),
25 https://www.instagram.com/p/Cc8pLB_pp7k/?hl=en.

26 ¹³⁵ Snoop Dogg (@SnoopDogg), INSTAGRAM (May 8, 2022),
<https://www.instagram.com/p/CdTAbSplARM/?hl=en>.

27 ¹³⁶ Snoop Dogg (@SnoopDogg), INSTAGRAM (May 15, 2022),
28 https://www.instagram.com/p/Cdkv_tKFYCV/?hl=en.

1 over 1.7 million views;¹³⁷ and a June 5, 2022 video acquired over 1.9 million
2 views.¹³⁸

3 200. 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;¹³⁹ a May 7, 2022
6 performance in Miami Beach, Florida;¹⁴⁰ a May 14, 2022 performance in Las
7 Vegas, Nevada;¹⁴¹ at the June 5, 2022 MTV Movie Awards in Los Angeles,
8 California;¹⁴² and during a July 17, 2022 performance at Law-di-Gras in Carlsbad,
9 California.¹⁴³

10 201. In addition, Defendant Broadus’s Instagram account is flooded with
11 photos of him wearing Dr. Bombay apparel and posing alongside fellow celebrity
12 friends.¹⁴⁴

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14 ¹³⁷ Snoop Dogg (@SnoopDogg), INSTAGRAM (June 3, 2022),
<https://www.instagram.com/p/CeVDPmUIGRH/?hl=en>.

15 ¹³⁸ Snoop Dogg (@SnoopDogg), INSTAGRAM (June 5, 2022),
<https://www.instagram.com/p/Ceb-8obFc6y/?hl=en>.

16 ¹³⁹ Snoop Dogg (@SnoopDogg), INSTAGRAM (April 29, 2022),
<https://www.instagram.com/p/Cc7vnzXroby/?hl=en>.

17 ¹⁴⁰ Snoop Dogg (@SnoopDogg), INSTAGRAM (May 7, 2022),
<https://www.instagram.com/p/CdQhoLNO-MH/?hl=en>.

18 ¹⁴¹ Snoop Dogg (@SnoopDogg), INSTAGRAM (May 14, 2022),
<https://www.instagram.com/p/Cdj0kd7JyTz/?hl=en>.

19 ¹⁴² Snoop Dogg (@SnoopDogg), INSTAGRAM (June 5, 2022),
<https://www.instagram.com/p/CecRhnzvxya/?hl=en>.

20 ¹⁴³ Snoop Dogg (@SnoopDogg), INSTAGRAM (July 17, 2022),
<https://www.instagram.com/p/CgILPhspwrC/?hl=en>.

21 ¹⁴⁴ Snoop Dogg (@SnoopDogg), INSTAGRAM (May 14, 2022),
22 https://www.instagram.com/p/Cdj_RGdrDvl/?hl=en; Snoop Dogg (@SnoopDogg),
23 INSTAGRAM (May 14, 2022), <https://www.instagram.com/p/CdkAT9Jr0MV/?hl=en>;
24 Snoop Dogg (@SnoopDogg), INSTAGRAM (May 15, 2022),
25 <https://www.instagram.com/p/Cdkfzfou9Gg/?hl=en>; Snoop Dogg (@SnoopDogg),
26 INSTAGRAM (May 15, 2022), <https://www.instagram.com/p/CdmIR1bv5bP/?hl=en>;
27 Snoop Dogg (@SnoopDogg), INSTAGRAM (June 5, 2022),
28 <https://www.instagram.com/p/CecCzHuPyY-/?hl=en>; Snoop Doog (@SnoopDogg),
INSTAGRAM (June 6, 2022), <https://www.instagram.com/p/CedEbJ4ui2p/?hl=en>;
Snoop Dogg (@SnoopDogg), INSTAGRAM (June 24, 2022),
<https://www.instagram.com/p/CfNbn7vsDMW/?hl=en>; Snoop Dogg

1 202. 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
3 awards in 2022.¹⁴⁵

4 203. Upon information and belief, Defendant Broadus received Yuga
5 Financial Products and/or other forms of consideration as part or all of his
6 compensation for promoting the Yuga securities specifically or the Yuga brand
7 generally. Moreover, Defendant Broadus directly financially benefited from the
8 increased valuation that MoonPay would experience with such overwhelming
9 celebrity exposure.

10 **Defendants Wu and Curry**

11 204. While Oseary was employing Defendant Broadus and other Promoter
12 Defendants to publicly promote the Bored Ape ecosystem and solicit sales of the
13 Yuga Financial Products, other Company insiders were also furthering the
14 manipulative scheme to sell the unregistered Yuga Financial Products. For
15 example, ApeDAO Board Defendant Wu leveraged her connections with FTX to
16 recruit Promoter Defendant Curry to solicit sales of the Yuga Financial Products. A
17 February 15, 2022 article titled “FTX’s Amy Wu: How Crypto and Gamers Can All
18 Get Along”¹⁴⁶ described Defendant Wu as a “prominent investor in gaming startups,
19 [who] recently jumped from Lightspeed Ventures to FTX to lead the crypto giant’s
20 new \$2 billion Web3 venture fund – a position that will entail spreading bets from
21 FTX’s war chest across new trends in gaming.” Wu explained that she believed

23 (@SnoopDogg), INSTAGRAM (June 25, 2022), <https://www.instagram.com/p/CfQKqrTL9ZI/?hl=en>.

24 ¹⁴⁵ Elle Reeve, *Snoop Dogg, his ape and a question of celebrity hype*, CNN
25 BUSINESS (Apr. 7, 2023), <https://www.cnn.com/2023/04/07/business/snoop-dogg-bored-apes/index.html>.

26 ¹⁴⁶ Jeff John Roberts, *FTX’s Amy Wu: How Crypto and Gamers Can All Get*
27 *Along*, DECRYPT (Feb. 15, 2022), <https://decrypt.co/92929/ftx-vc-amy-wu-how-crypto-nft-gamers-can-get-along>.

1 “[t]he fun is actually around the game mechanics and tokenomics of the game,
2 right? *There’s [sic] ways to make like 100x or 500x return on the token* And
3 that’s sort of the focus of a lot of these games, and so *it attracts a certain type of*
4 *player, which tends to be traders that are looking at the game as kind of like*
5 *almost like a financial instrument.*”¹⁴⁷ Wu’s “[c]ryptocurrency exchange FTX will
6 funnel a chunk of its growing war chest into a new venture capital arm, FTX
7 Ventures, the firm announced today. The \$2 billion VC fund will be led by Amy
8 Wu, previously General Partner at Lightspeed Venture Partners.”¹⁴⁸ [Emphasis
9 added.]

10 205. Wu previously led Lightspeed’s own investment into FTX, plus FTX
11 and Lightspeed teamed up with Solana Ventures in November 2021 to launch a
12 \$100 million Web3 gaming co-investment fund. In working with disgraced FTX
13 founder and CEO Sam Bankman-Fried, whom she described as an “extraordinary
14 CEO,” Wu began to see the potential benefits of joining the rising FTX firm:
15 “When I look at what company could potentially have the most impact in the
16 industry, but then also in the world,” she told Decrypt, “I think FTX is one of the
17 most impactful that I’ve had the pleasure of working with.”¹⁴⁹

18 206. On February 18, 2022, FTX Ltd (“FTX”) posted a teaser commercial
19 for its now-bankrupt cryptocurrency exchange, which featured Defendant Curry and
20 an ice sculpture of a Bored Ape. Curry can be seen brushing off flakes of ice from
21 the unmistakable features of the BAYC NFTs. FTX posted this teaser on its official
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25 ¹⁴⁷ *Id.*

26 ¹⁴⁸ Andrew Hayward, *FTX Launches \$2 Billion Web3 Venture Fund Led by*
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)
27 [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).

28 ¹⁴⁹ *Id.*

1 Twitter account with the following caption alluding to the BAYC NFTs: “When
2 learning about crypto, you’ll be anything but bored.”¹⁵⁰

3 207. BAYC retweeted FTX’s post as “cool as ice,” tagging both FTX and
4 Defendant Curry.¹⁵¹

5 208. Plaintiffs saw the off-brand promotion from Defendant Curry (and
6 enabled by Defendant Wu) regarding the Company’s collection of BAYC NFTs and
7 were induced to purchase and/or continue to hold Yuga securities as a result of this
8 misleading promotion.

9 209. Defendant Curry’s commercial with FTX was only one of several
10 promotions with BAYC.

11 210. After Defendant Curry purchased BAYC NFT #7990 on August 28,
12 2021 for 55 ETH from wallet address 0x3bEcf83939f34311b6bEe
13 143197872d877501B11 (the “SC30 Wallet”), he changed his Twitter picture to
14 BAYC NFT #7990 and added “BAYC” to his profile in front of his 15.4 million
15 Twitter followers:



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25 ¹⁵⁰ FTX (@FTX_Official), TWITTER (Feb. 18, 2022, 10:18 AM),
26 [https://twitter.com/FTX_Official/status/1494738098034458630?s=20&t=L-3ieebP](https://twitter.com/FTX_Official/status/1494738098034458630?s=20&t=L-3ieebPKIMIdv5LsTbcw)
KIMIdv5LsTbcw.

27 ¹⁵¹ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Feb. 18, 2022, 2:07
28 PM), <https://twitter.com/BoredApeYC/status/1494795754568929282>.

1 211. On March 29, 2022 FTX uploaded the full commercial with Defendant
2 Curry to its official YouTube channel.¹⁵² While the commercial itself was for FTX,
3 there were multiple not-so-hidden references to the BAYC collection of NFTs.
4 Notably, the thumbnail of the video prominently features Curry and the Bored Ape
5 sculpture:



16 212. The slogan for this campaign also contained the same BAYC reference
17 (*i.e.*, “bored”) that was in the teaser commercial. The commercial itself showed
18 Curry in various “everyday” activities while a narrator harasses Curry for advice
19 about cryptocurrency and what tokens to buy. The most significant of these
20 segments is when Curry can be seen working on an ice sculpture of a Bored Ape.
21 While it is unclear whether other NFT projects are being referenced in this
22 commercial, it is obvious that Curry is concurrently promoting BAYC NFTs given
23 the unmistakable similarity to the art style of the BAYC NFT collection and the ice
24 sculpture that Curry is working on. This promotion did not include any disclosure
25 or disclaimer concerning the connection between FTX and Yuga (via Defendants
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27 ¹⁵² FTX Official, *Steph Curry Is Not a Crypto Expert*, YOUTUBE (Mar. 29,
28 2022), <https://www.youtube.com/watch?v=gsy2N-XI04o>.

1 Wu or Sotheby’s), who had significant overlapping financial interests. Instead, the
2 commercial encouraged uninformed investors to invest into digital assets like the
3 BAYC NFTs, while at the same time giving a “wink” disclaimer that this was not
4 financial advice to attempt to provide Curry with plausible deniability regarding his
5 promotion of the Yuga Financial Products.

6 213. Defendant Curry also directly promoted BAYC NFT #7990 as his
7 social media profile picture. The NFT itself was transferred to wallet address
8 0x3becf83939f34311b6bee143197872d877501b11, which is labeled “SC30.”
9 Upon information and belief, this wallet is owned or controlled by either Defendant
10 Curry or Curry’s investment company “SC30” (or both). According to OpenSea,
11 BAYC NFT #7990 was transferred to a wallet that has been publicly labeled as
12 “SC30.”¹⁵³

13 214. Plaintiffs saw Curry’s thinly-veiled promotion of the collection of
14 BAYC NFTs in the FTX commercial, as well as Curry’s promotion of Yuga
15 securities on his social media account. Plaintiffs were induced to purchase and/or
16 continue to hold Yuga securities as a result of this misleading promotion.

17 215. Defendant Curry also lent his celebrity status in the Company’s
18 Discord, which, as noted, was a significant place for Yuga investors to congregate.
19 For example, Curry posted the following selfie on the Company’s Discord chat:

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26 ¹⁵³ *Bored Ape Yacht Club #7990*, OPENSEA, [https://opensea.io/assets/eth](https://opensea.io/assets/ethereum/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d/7990)
27 [ereum/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d/7990](https://opensea.io/assets/ethereum/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d/7990) (last visited Oct. 16,
28 2023).

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216. Curry’s appearance in the Company’s Discord had a significant impact on inducing investors to purchase Yuga Financial Products as they reasonably believed that Curry’s appearances were the result of organic interest in the BAYC NFT collection instead of being a part of his undisclosed agreement to promote FTX and its affiliates like Yuga in exchange for \$28 million.

217. Defendant Curry also wore clothing emblazoned with the BAYC logo, including to media events where he spoke as a representative of the Golden State Warriors:

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218. Upon information and belief, Defendant Curry received Yuga Financial Products and/or other forms of consideration (such as a portion of the \$28 million promotional payment from FTX allocated for the cross promotion of FTX affiliate, Yuga) as part or all of his compensation for promoting the Yuga securities specifically or the Yuga brand generally. Moreover, Defendant Curry directly financially benefited from the increased valuation that MoonPay would experience with such overwhelming celebrity exposure.

Defendant Winkelmann

219. Following his appearance on the *Tonight Show* with Defendant Fallon, Winkelmann continued to promote the Company and solicit sales of the Yuga Financial Products. For, example, on May 12, 2022, Defendant Winkelmann posted an original piece of art created by him, promoting the image of a Bored Ape and citing to “Yuga Labs” in the caption.¹⁵⁴ This was one of several such promotions of the Bored Ape ecosystem by Winkelmann. In fact, on one occasion

¹⁵⁴ Beeple (@beeples), TWITTER (Mar. 12, 2022), <https://twitter.com/beeples/status/1502824275929088006>.

1 on August 22, 2022, Winkelman went so far as to offer 1,000 ApeCoin tokens to
2 200 of his followers on Twitter as part of a promotional contest.¹⁵⁵

3 **Defendant Ciccone**

4 220. A combined search of Etherscan and OpenSea shows that a wallet
5 owned/controlled by Defendant Ciccone received BAYC NFT #4988 directly from
6 MoonPay. This transaction did not involve a purchase by Ciccone but rather the
7 NFT was simply transferred to her wallet address 0x8ea95Bdc5cDddC0b
8 7EbAd841F0c1f2cA6168b6a9 (the “Ciccone Wallet”). According to Etherscan and
9 OpenSea, on March 14, 2022, the MoonPay Wallet first paid 180 ether for BAYC
10 NFT #4988, which at the time was the equivalent \$466,461. On March 23, 2022,
11 the MoonPay wallet sent BAYC NFT #4988 to wallet address
12 0x6ef962ea7e64e771d3a81bce4f95328d76d7672b (which appears to have been
13 used as a pass-through wallet).¹⁵⁶ Finally, six weeks later, BAYC NFT #4988 was
14 sent to Ciccone’s wallet on May 7, 2022.¹⁵⁷ Ciccone received an NFT worth almost
15 a half million dollars from MoonPay for nothing except her statements promoting
16 Yuga securities.

17 221. Transactions within the Ciccone Wallet also reveal that Defendant
18 Ciccone received Otherdeed #4988 directly from the Otherside deployer wallet
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22 ¹⁵⁵ Beeples (@beeples), TWITTER (Aug. 22, 2022),
23 <https://twitter.com/beeples/status/1561703958854475777>.

24 ¹⁵⁶ Transaction Hash: 0xdf3b1b59de370deb5f6105600df55650e3e24cd10127a
25 33f93145b3ca038ac2d, ERC-721: 4988, ETHERSCAN (Mar. 23, 2022, 11:49 AM),
<https://etherscan.io/tx/0xdf3b1b59de370deb5f6105600df55650e3e24cd10127a33f93145b3ca038ac2d>.

26 ¹⁵⁷ Transaction Hash: 0x8935a6169a603b0cc3899c0b98fb40501f6c2a708dc
27 c4e03cdd89d6944eb5b70, ERC-721: 4988, ETHERSCAN (May 7, 2022, 7:44 AM),
<https://etherscan.io/tx/0x8935a6169a603b0cc3899c0b98fb40501f6c2a708dcc4e03cdd89d6944eb5b70>.

1 0x8ea95bdc5cdddc0b7ebad841f0c1f2ca6168b6a9 (the “Otherside Wallet”) on May
2 16, 2022.¹⁵⁸

3 222. The Ciccone Wallet also received 100 plots of virtual land in Otherside
4 on August 5, 2022.¹⁵⁹

5 223. But there are no free lunches and these were not simple gifts. Rather,
6 upon information and belief, MoonPay was an indirect way for Oseary and
7 Executive Defendants Aronow, Solano, Atalay, Ali, Muniz, Shoemaker, Ehrlund,
8 and Lyons to pay Ciccone to promote and/or solicit sales and re-sales of the Yuga
9 securities.

10 224. An examination of BAYC NFT transactions in the wallet by Ciccone
11 in conjunction with her social media accounts shows that she received this
12 particularly rare and valuable BAYC NFT #4988 before she promoted BAYC to
13 would-be investors. Shortly after MoonPay acquired BAYC NFT #4988 for
14 Ciccone, on March 24, 2022, Ciccone posted the following promotion of the BAYC
15 and its related metaverse to her Twitter account:¹⁶⁰

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22 ¹⁵⁸ Transaction Hash: 0x62300078ce92be1784e81e65cd0421a552e7f7
23 0f1b4931e63f87285086c3c6e6, ERC-721: 4988, ETHERSCAN (May 16, 2022, 5:43
24 PM), <https://etherscan.io/tx/0x62300078ce92be1784e81e65cd0421a552e7f70f1b4931e63f87285086c3c6e6>.

25 ¹⁵⁹ Transaction Hash: 0xcfbf3291091e6dc1e80577526e90dfdf2a438a96
26 03a313989c4833d8d978bc5d, ETHERSCAN (Aug. 5, 2022, 10:54 AM),
<https://etherscan.io/tx/0xcfbf3291091e6dc1e80577526e90dfdf2a438a9603a313989c4833d8d978bc5d>.

27 ¹⁶⁰ Madonna (@Madonna), TWITTER (Mar. 24, 2022, 7:30 PM),
28 <https://twitter.com/Madonna/status/1507183071551971330>.

 **Madonna** 
@Madonna

I finally entered the MetaVerse...,..... My very own Ape! 🙈 Thanks @moonpay 🌟 We all need protection from Evil Eye. 👁️



10:30 PM · Mar 24, 2022 · Twitter for iPhone

3,962 Retweets 3,687 Quote Tweets 24.9K Likes

12 225. Plaintiffs saw the promotion from Ciccone 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 this misleading promotion.

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

22 227. MoonPay responded to Ciccone’s tweet, stating that the company
23 chose BAYC NFT #4988 for Ciccone because “we heard it call your name and it
24 felt like home.”¹⁶¹

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26
27 ¹⁶¹ MoonPay (@moonpay), TWITTER (Mar. 25, 2022, 1:29 AM),
28 <https://twitter.com/moonpay/status/1507273486737281024?lang=en>.

1 228. 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
5 even 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
7 NFTs was fake.

8 229. 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
12 of 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
14 “was hellbent on getting an Ape and really specific about what I wanted: the Ape
15 with a leather motorcycle cap on and multicolored teeth.”¹⁶² Ciccone went on to
16 state: “I was told that it was inspired by me, and modeled after me, and it was
17 bought by a woman who’s a fan of mine. She was gonna sell it to me, but it was
18 way too expensive.”¹⁶³

19 230. 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
21 character she wanted.”¹⁶⁴ In addition to echoing the statements from the *Variety*
22

23 ¹⁶² Shirley Halperin, *From Maverick to Mogul, Madonna’s Manager Guy*
24 *Oseary Transcends the Music World to Take on NFTs*, VARIETY (July 27, 2022),
<https://variety.com/2022/music/news/guy-oseary-nft-madonna-u2-manager-1235325286/>.

25 ¹⁶³ *Id.*

26 ¹⁶⁴ Peony Hirwani, *‘I was hellbent on getting an Ape’: Madonna annoyed she*
27 *didn’t get the NFT character she wanted*, THE INDEPENDENT (July 28, 2022),
<https://www.independent.co.uk/arts-entertainment/music/news/madonna-angry-bored-ape-nft-b2132950.html>.

1 magazine interview, *The Independent* reported that the “63-year-old singer has
2 revealed that she was quite ‘mad’ over being beaten to a bid for Bored Ape No
3 3756.”¹⁶⁵

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

18 **Defendants Adidas**

19 232. On December 2, 2021, Adidas announced that it purchased a BAYC
20 NFT as part of an upcoming collaboration with the Company into “the
21 Metaverse,”¹⁶⁶ boasting the collaboration was “just the beginning 🚀” of going to
22
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25 ¹⁶⁵ *Id.*

26 ¹⁶⁶ Andrew Hayward, *Adidas enters Metaverse with Bored Ape Yacht Club*
27 *Ethereum NFT*, DECRYPT (Dec. 2, 2021), <https://decrypt.co/87467/adidas-metaverse-bored-ape-yacht-club-ethereum-nft>; adidas Originals (@adidasoriginals).
28 TWITTER (Dec. 2, 2021, 6:49 AM), <https://twitter.com/adidasoriginals/status/1466419185593036814>.

1 the moon.¹⁶⁷ Adidas then changed its Twitter profile @adidasoriginals avatar to a
2 Bored Ape NFT, stating #NewProfilePic.¹⁶⁸

3 233. On December 11, 2021, Defendant Adidas joined the Company to
4 promote the “ADIDAS X BORED APE YACHT CLUB – INTO THE
5 METAVERSE” promotional video, which was published on the official BAYC
6 YouTube channel.¹⁶⁹ The video teased an upcoming collaboration between the
7 Company and Adidas by featuring an animated Bored Ape avatar with a yellow
8 Adidas tracksuit skydiving into an Adidas logo. On December 17, 2021, Adidas
9 launched the “adidas Originals: Into the Metaverse NFT (Phase 1)” collection of
10 30,000 NFTs, which included BAYC-related avatars wearing Adidas clothing and
11 merchandise. This collection almost immediately sold out after minting. 29,620
12 NFTs priced at 0.2 ETH each sold at launch generating \$43 million for Adidas and
13 its collaborators within 72 hours.¹⁷⁰ “Adidas and partners” held onto 380 Adidas
14 Metaverse NFTs for so-called “future events.”¹⁷¹ Adidas offered 20,000 of the
15 Adidas Metaverse NFTs in early access to, *inter alia*, BAYC and MAYC NFT
16 holders.¹⁷² Adidas sold \$15.5 million worth of those 20,000 Adidas Metaverse
17 NFTs during the early access mint, which had to pause and restart after several

18 _____
19 ¹⁶⁷ Adidas (@adidasoriginals), TWITTER (Dec. 2, 2021, 11:59 AM),
<https://twitter.com/adidasoriginals/status/1466451992516177933>.

20 ¹⁶⁸ adidas Originals (@adidasoriginals), TWITTER (Dec. 2, 2021, 8:36 AM),
<https://twitter.com/adidasoriginals/status/1466446117642584068>.

21 ¹⁶⁹ Bored Ape Yacht Club, *ADIDAS X BORED APE YACHT CLUB – INTO*
22 *THE METAVERSE*, YOUTUBE (Dec. 11, 2021), <https://www.youtube.com/watch?v=-1vdk6lksQ0>.

23 ¹⁷⁰ Ornella Hernandez, *Adidas Originals reaches second spot on OpenSea*
24 *rankings with debut NFT collection*, COINTELEGRAPH (Dec. 20, 2021),
<https://cointelegraph.com/news/adidas-originals-reaches-second-spot-on-opensea-rankings-with-debut-nft-collection>.

25 ¹⁷¹ Jay Peters, *Adidas sold more than \$22 million in NFTs, but it hit a few snags*
26 *along the way*, THE VERGE (Dec. 17, 2021 5:38 PM),
<https://www.theverge.com/2021/12/17/22843104/adidas-nfts-metaverse-sold-bored-ape>.

27 ¹⁷² *Id.*

1 hours due to technical issues with MAYC investors being able to mint. The day of
2 the launch, Adidas, via the @adidasoriginals Twitter account, solicited sales of the
3 Adidas Metaverse NFTs, tagging the @BoredApeYC Twitter account and
4 providing a link that led investors to the OpenSea NFT exchange and an image of
5 the BAYC avatar wearing an Adidas tracksuit.¹⁷³ On December 18, 2021,
6 ApeDAO Board Defendant Bajwa also promoted the exclusivity of the Adidas and
7 Yuga collaboration, remarking that investors could get around the limit of two
8 Adidas Metaverse NFTs per wallet.¹⁷⁴ The following day, December 19, 2021,
9 Bajwa promoted the success of the Adidas Metaverse NFT collaboration with
10 BAYC,¹⁷⁵ that Sotheby’s earned \$100M from NFT sales in 2021. 78% of bidders
11 were new to Sotheby’s and half were under 40,”¹⁷⁶ that Yuga was “co-developing a
12 play-to-earn game with [Yuga backer and promoter] @animocabrands. To be
13 launched in Q2 2022.”¹⁷⁷

14 234. On December 20, 2021, the @adidasoriginals Twitter account
15 promoted the success of its collaboration with Yuga on the Adidas Metaverse NFT
16 launch, touting it as “one of the most widely-distributed NFT drops in history.”¹⁷⁸
17 Adidas also addressed the issues with the minting process and promised investors
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20 ¹⁷³ adidas Originals (@adidasoriginals), TWITTER (Dec. 17, 2021 10:26 AM),
21 <https://twitter.com/adidasoriginals/status/1471909577658675204?s=20>; adidas
22 Originals (@adidasoriginals), TWITTER (Dec. 17, 2021 3:26 PM),
<https://twitter.com/adidasoriginals/status/1471985083280199680?s=20>.

23 ¹⁷⁴ Maaria.eth (@maariabajwa), TWITTER (Dec. 18, 2021, 9:51 AM),
<https://twitter.com/maariabajwa/status/1472263218726772736?s=20>.

24 ¹⁷⁵ Maaria.eth (@maariabajwa), TWITTER (Dec. 18, 2021 7:29 PM),
<https://twitter.com/maariabajwa/status/1472771183451860993?s=20>.

25 ¹⁷⁶ Maaria.eth (@maariabajwa), TWITTER (Dec. 19, 2021 7:29 PM),
<https://twitter.com/maariabajwa/status/1472771185528086530?s=20>.

26 ¹⁷⁷ *Id.*

27 ¹⁷⁸ adidas Originals (@adidasoriginals), TWITTER (Dec. 20, 2021 3:14 AM),
28 <https://twitter.com/adidasoriginals/status/1472888099994841090?s=20>.

1 that “[t]his NFT drop is the beginning of Into the Metaverse, not the end.”¹⁷⁹
2 Adidas ended this Twitter thread promotion by thanking Yuga as a “pioneer[] in the
3 space.”¹⁸⁰

4 235. These promotions by Adidas and its collaboration with BAYC
5 throughout December 2021 caused the floor price of the BAYC NFT collection to
6 spike, rising from approximately 47 ETH on December 1, 2021 before the
7 promotion, to approximately 58.6 ETH by December 31, 2021.

8 236. On April 27, 2022, Defendant Adidas promoted Phase 2 of the joint
9 BAYC and Adidas collaboration of Adidas Metaverse NFTs.¹⁸¹ The NFT featured
10 a moving image of a Bored Ape avatar wearing a yellow Adidas tracksuit. The
11 back of the image prominently featured the Company’s BAYC logo. According to
12 the Adidas “Frequently Asked Questions” for the “Metaverse” section of its
13 website, investors in Adidas x BAYC Into the Metaverse NFTs were entitled to
14 claim “physical products designed in collaboration with adidas Originals [and]
15 Bored Ape Yacht Club” as a part of Phase 2.¹⁸² Adidas created a false sense of
16 urgency with the purchase of the Adidas Metaverse NFTs by putting a time limit on
17 claiming the Adidas x BACY physical products. Investors only had from April 28,
18 2022 to May 18, 2022 to claim these BAYC-related products.¹⁸³ According to the
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22 ¹⁷⁹ adidas Originals (@adidasoriginals), TWITTER (Dec. 20, 2021 3:14 AM),
<https://twitter.com/adidasoriginals/status/1472888109205438473?s=20>.

23 ¹⁸⁰ adidas Originals (@adidasoriginals), TWITTER (Dec. 20, 2021 3:14 AM),
<https://twitter.com/adidasoriginals/status/1472888110375649282?s=20>.

24 ¹⁸¹ *adidas Originals: into the Metaverse (Phase 2)*, OPENSEA,
25 <https://opensea.io/assets/ethereum/0x28472a58a490c5e09a238847f66a68a47cc76f0f/1>.

26 ¹⁸² *FAQ: Physical Product Claims*, ADIDAS.COM, <https://www.adidas.com/metaverse/faq>.

27 ¹⁸³ *Id.*

28

1 website, “If you have an Into the Metaverse NFT, then claiming the physical merch
2 is completely free.”¹⁸⁴

3 **b. Yuga Defendants**

4 **Defendant Yuga Labs**

5 237. As Defendant Soto-Wright admitted: the “hardest thing to solve” when
6 building a new company was “getting those customers on your platform.”¹⁸⁵

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

12 239. One of Oseary’s first moves was to pull some strings at CAA whereby
13 “Jenkins the Valet,” one of the Bored Ape NFTs was purportedly signed in
14 September 2021 to be represented by CAA, “across Books, Film, TV, Podcast, and
15 more.”¹⁸⁶ CAA also announced that it was signing NFT collector “0xb1” to help
16 monetize their NFTs. 0xb1 confirmed the deal on Twitter, saying that they will
17 “work hard to bring open license NFT brands & properties mainstream,” starting
18 with their Bored Ape Yacht Club collection.¹⁸⁷

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¹⁸⁴ *Id.*

23 ¹⁸⁵ MIXERGY.COM, *supra* n.32.

24 ¹⁸⁶ Jenkins The Valet (@jenkinsthevalet), TWITTER (Sept. 22, 2021 9:27 AM),
25 <https://twitter.com/jenkinsthevalet/status/1440714371848572928?s=20>.

26 ¹⁸⁷ Yogita Khatri, *Hollywood talent agency CAA signs NFT collector ‘0xb1’ to*
27 *help them monetize their pieces*, THE BLOCK (Oct. 9, 2021),
[https://www.theblock.co/linked/119987/hollywood-talent-agency-caa-signs-nft-](https://www.theblock.co/linked/119987/hollywood-talent-agency-caa-signs-nft-collector-0xb1-to-help-them-monetize-their-pieces)
28 [collector-0xb1-to-help-them-monetize-their-pieces](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.

1 240. 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.¹⁸⁸

4 241. 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.¹⁸⁹ 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.”¹⁹⁰

11 242. 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*
14 *Stone* magazine on the latter’s collector edition magazine featuring “never-before-
15 seen BAYC artwork.” The issue offered investors the chance to see “early sketches
16 of the swamp club, get to know the original apes, and find out how the creative
17 minds behind one of the most valuable NFT collections in history bring their ideas
18 to life.” Most importantly, the cover of this issue prominently featured a BAYC
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23 ¹⁸⁸ For example, a May 4, 2021 article in *Rolling Stone* magazine titled “*You*
24 *Can Learn How to Perform Directly From Madonna, Now*” promoted a business
25 venture owned by Defendant Oseary: Bright, which, according to *Rolling Stone*, is
“a star-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/>.

26 ¹⁸⁹ Samantha Hissong, *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/>.

28 ¹⁹⁰ *Id.*

1 NFT. According to *Rolling Stone*'s online store, all 2,500 copies of the *Rolling*
2 *Stone* x Bored Ape Yacht Club Limited-Edition Zine were sold out.¹⁹¹

3 243. 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.¹⁹² The Company then promoted and held an auction on the BAYC
6 and MAYC NFT *Rolling Stone* covers on November 15, 2021,¹⁹³ and a similar
7 BAYC *Rolling Stone* cover auction in June 2022 for both a BAYC NFT and “a print
8 of the art signed by Yuga Labs’ founders, the artist, and the CEO of *Rolling*
9 *Stone*.”¹⁹⁴

10 244. The Company itself also solicited sales at various events like “ApeFest
11 2021” which was held in New York on November 3, 2021 as an exclusive event for
12 only BAYC or MAYC NFT owners.¹⁹⁵ Significantly, Yuga’s ApeFest 2021 event
13 was sponsored and promoted by MoonPay,¹⁹⁶ which promoted an ApeFest ticket
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17 ¹⁹¹ Rolling Stone x Bored Ape Yacht Club Limited-Edition Zine, ROLLING
18 STONE SHOP, <https://shop.rollingstone.com/products/rolling-stone-x-bored-ape-yacht-club-special-collectors-edition-zine> (last visited Oct. 16, 2023).

19 ¹⁹² Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 1, 2021, 8:26 AM),
<https://twitter.com/BoredApeYC/status/1455194570669576197>.

20 ¹⁹³ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 13, 2021, 9:11
21 AM), <https://twitter.com/BoredApeYC/status/1459569714796052488>. The *Rolling*
Stone covers ultimate sold for 100 ETH and 47 ETH. See Bored Ape Yacht Club
22 (@BoredApeYC), TWITTER (Nov. 15, 2021, 5:27 PM), <https://twitter.com/BoredApeYC/status/1460419265547407361>.

23 ¹⁹⁴ Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 22, 2022, 6:19
AM), <https://twitter.com/BoredApeYC/status/1539598893771628544>.

24 ¹⁹⁵ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Oct. 28, 2021 7:26 PM),
<https://twitter.com/BoredApeYC/status/1453911020137816068>.

25 ¹⁹⁶ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 3, 2021),
26 [https://twitter.com/BoredApeYC/status/1456143639634071556?s=20&t=g1mRpx](https://twitter.com/BoredApeYC/status/1456143639634071556?s=20&t=g1mRpxWbWmWNzixw385m2A)
WbWmWNzixw385m2A; MoonPay (@moonpay). TWITTER (Nov. 1, 2021, 10:49
27 AM). [https://twitter.com/moonpay/status/1455230583702003724?s=20&t=vrAWh](https://twitter.com/moonpay/status/1455230583702003724?s=20&t=vrAWh eqx4E0TSLTJj9xpIA)
eqx4E0TSLTJj9xpIA.
28

1 giveaway to Twitter followers.¹⁹⁷ NFT artist, Oseary associate, and Defendant
2 Winkelmann also promoted the ApeFest 2021 event on his Twitter account.¹⁹⁸

3 245. On March 16, 2022, the Company and BAYC announced the
4 formation of the ApeCoin DAO¹⁹⁹ and the launch of the ApeCoin Token²⁰⁰ as the
5 “official currency of the BAYC ecosystem.”²⁰¹ BAYC stated that ApeCoin would
6 be available “to all” and was “expected to begin trading on major crypto
7 exchanges.”²⁰² BAYC explained that the Yuga would be “gifting ApeCoin DAO as
8 a 1/1 NFT featuring a blue version of the BAYC logo,” and “[t]his NFT transfers
9 full IP rights of the derivative logo to the ApeCoin DAO, who will decide how the
10 IP should be used.”²⁰³ Further, 15% of the total supply of ApeCoin would be made
11 available to BAYC and MAYC NFT holders²⁰⁴ and 62% of the total ApeCoin
12 supply would be “allocated to the ApeCoin Community.”²⁰⁵ BAYC then directed
13 its followers to visit apecoin.com to learn more details.²⁰⁶

14
15 ¹⁹⁷ MoonPay (@MoonPay), TWITTER (Nov. 1, 2021, 10:49 AM),
<https://twitter.com/moonpay/status/1455230583702003724>.

16 ¹⁹⁸ Beeple (@beeple), TWITTER (Nov. 3, 2021, 8:49 PM),
17 <https://twitter.com/beeple/status/1456106243391623168?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

18 ¹⁹⁹ A “DAO” refers to a decentralized autonomous organization, sometimes
19 called a decentralized autonomous corporation. It is an entity that claims to have no
central leadership, and is collectively owned and managed by their members.

20 ²⁰⁰ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06
PM), <https://twitter.com/BoredApeYC/status/1504202508633362436>.

21 ²⁰¹ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06
PM), <https://twitter.com/BoredApeYC/status/1504202511837806598>.

22 ²⁰² Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06
PM), <https://twitter.com/BoredApeYC/status/1504202515805573123>.

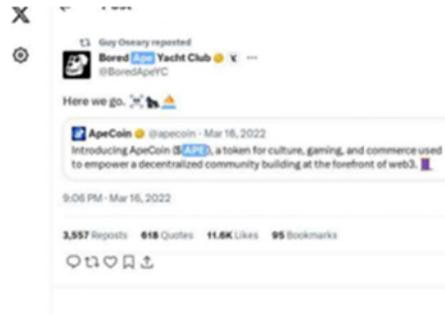
23 ²⁰³ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06
PM), <https://twitter.com/BoredApeYC/status/1504202512877948930>.

24 ²⁰⁴ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06
PM), <https://twitter.com/BoredApeYC/status/1504202514815721472>.

25 ²⁰⁵ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06
PM), <https://twitter.com/BoredApeYC/status/1504202513834201088>.

26 ²⁰⁶ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 16, 2022, 2:06
PM), <https://twitter.com/BoredApeYC/status/1504202516736663561>.

1 246. Executive Defendants, via the Company’s social media accounts,
2 further promoted the sale of Yuga securities:



9 **Defendant Oseary**

10 247. In addition to promoting the large number of celebrities that
11 purportedly “joined the club” (*i.e.*, purchased a BAYC NFT), Oseary used his own
12 personal Twitter account to promote BAYC NFTs.

13 248. In fact, Oseary’s Twitter feed is littered with promotions for BAYC
14 NFTs and other Yuga Financial Products. For example, on November 1, 2021,
15 Oseary posted a picture of the cover of *Rolling Stone* magazine with the following
16 caption: “First @RollingStone NFT cover . . . Congrats @BoredApeYC.”²⁰⁷

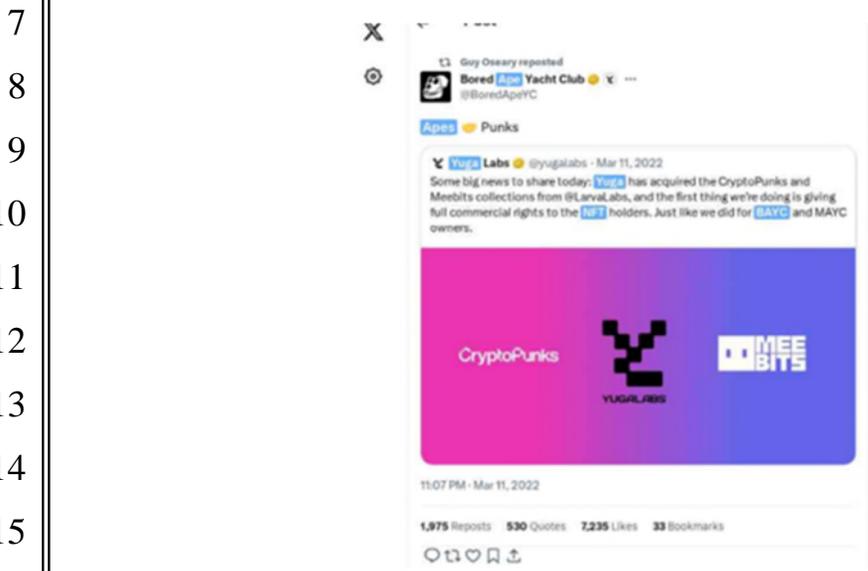
17 249. On January 20, 2022, Oseary promoted a tweet from Serena Williams
18 that posted her BAYC NFT (which she received from her husband, Defendant
19 Ohanian, who also happens to be a member of the ApeDAO board of directors).²⁰⁸
20 That same day, Oseary similarly promoted a tweet from professional soccer player
21 Neymar da Silva Santos, Jr. that said: “I am an ape! #community #art
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25 ²⁰⁷ Guy Oseary (@guyoseary), TWITTER (Nov. 1, 2021, 9:32 AM),
<https://twitter.com/guyoseary/status/1455211104448094211?s=20&t=s22ecLQKfgigc5iiuUveew>.

26 ²⁰⁸ Serena Williams (@serenawilliams), TWITTER (Jan. 20, 2022, 5:41 AM),
27 <https://twitter.com/serenawilliams/status/1484159217791647751?s=20&t=iNbPm5RANQEpugkz3Orziw>.

1 #BoredApeYC.’²⁰⁹ Notably, not only did these promotions take place on the same
2 day within a few hours, but both BAYC NFTs promoted by Oseary, Williams, and
3 Neymar were the rare “pink” Bored Apes, which were more valuable and indicate a
4 common source of origin.

5 250. On March 11, 2022, Oseary advertised the availability of new NFTs to
6 Yuga NFT holders:²¹⁰



17 251. Oseary also bragged about the early success of ApeCoin:²¹¹

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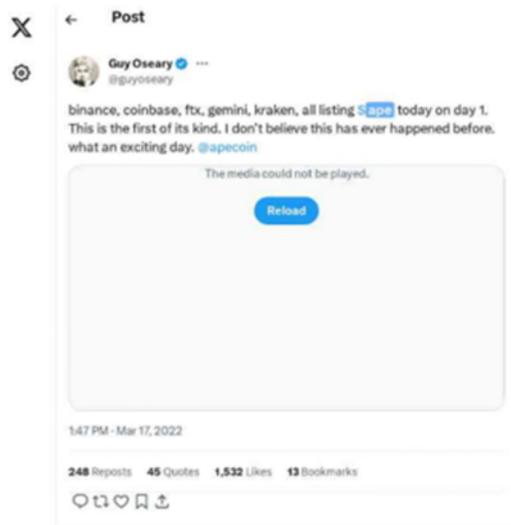
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24 ²⁰⁹ Neymar Jr (@neymarjr), TWITTER (Jan. 20, 2022, 10:24 AM),
25 <https://twitter.com/neymarjr/status/1484230264293318663?s=20&t=iNbPm5RANQEpuqkz3Orziw>.

26 ²¹⁰ Guy Oseary (@guyoseary), Twitter (Mar. 11, 2022, 5:07PM),
<https://twitter.com/yugalabs/status/1502420714527334406>.

27 ²¹¹ Guy Oseary (@guyoseary), Twitter (Mar. 16, 2022, 9:06PM),
28 <https://twitter.com/apecoin/status/1504201556165644298>.

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252. On April 30, 2022, Oseary promoted the success of an Otherdeed mint:



1 253. Oseary promoted the use of ApeCoin on OpenSea.²¹²



11 254. Plaintiffs saw the promotions from Defendant Oseary regarding the
12 Company’s collection of BAYC NFTs and were induced to purchase and/or
13 continue to hold Yuga Financial Products as a result of these misleading
14 promotions.

15 **Defendant Solano**

16 255. In addition to the promotions Solano made via the Company’s social
17 media accounts, Solano promoted the sale of Yuga Financial Products on his own
18 personal social media accounts. For example, on April 21, 2021, Defendant Solano
19 promoted the growth potential for the BAYC ecosystem (which could only be
20 accessed through the purchase of a BAYC NFT), stating: “The Bored Ape Yacht
21 Club is more than just an #NFT collection – the NFT grants access to a
22 collaborative art experiment in the form of a canvas only token-holders can draw
23 on.”²¹³ This statement was misleading in that it suggested to investors that there
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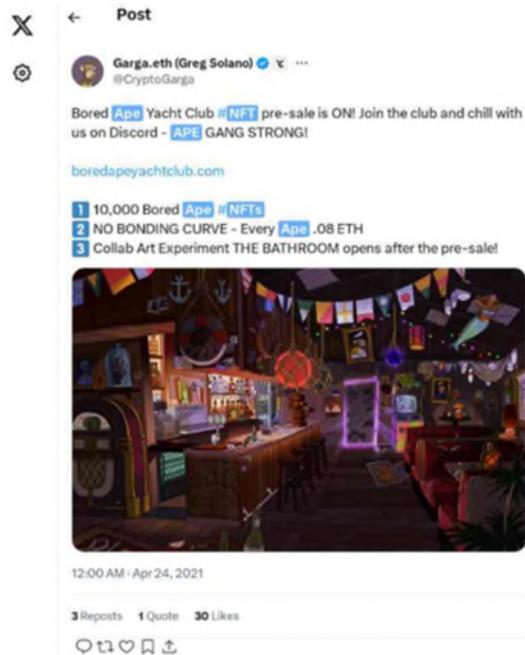
25 ²¹² Guy Oseary (@guyoseary), Twitter (Apr. 30, 2022, 4:01 PM),
26 <https://x.com/opensea/status/1520508693758062592?s=20>.

27 ²¹³ Garga.eth (Greg Solano), TWITTER (Apr. 21, 2021, 8:34 PM),
28 <https://twitter.com/CryptoGarga/status/1385074598241243138?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

1 would be a broader ecosystem for BAYC NFT holders to interact in and that the
2 BAYC brand was poised for significant growth, when, in truth, the BAYC NFTs
3 were just a vehicle to make insiders rich at the expense of investors.

4 256. The next day, April 22, 2021, Solano again touted BAYC NFTs,
5 claiming that these NFTs “double as membership cards to an exclusive club with
6 benefits” and soliciting investors to participate in the BAYC NFT pre-sale on April
7 23, 2021.²¹⁴

8 257. On April 24, 2021, Solano tweeted that the BAYC NFT presale had
9 started and that members could join the club on Discord:²¹⁵

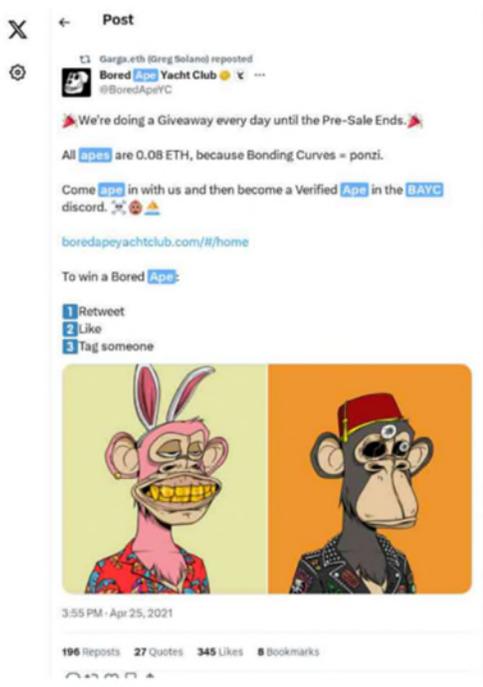


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22 258. On April 25, 2021, Solano promoted the Company’s promotional
23 giveaway for the presale.²¹⁶

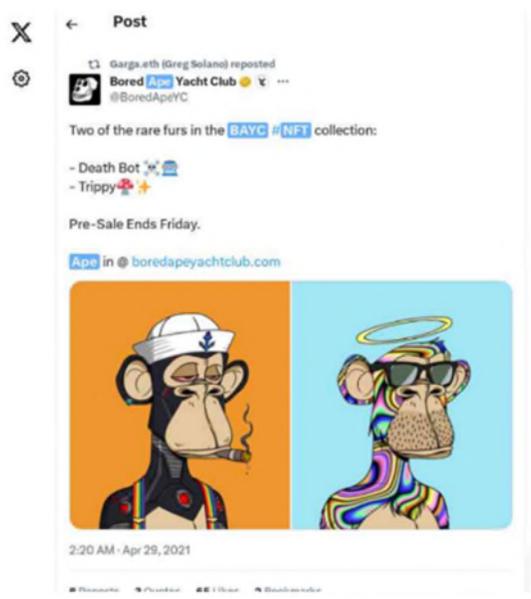
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25 ²¹⁴ Garga.eth (Greg Solano), TWITTER (Apr. 22, 2021, 3:16 PM),
26 <https://twitter.com/CryptoGarga/status/1385356793862397953?s=20&t=g1mRpxWbWmWNzjxw385m2A>.

27 ²¹⁵ Garga.eth (Greg Solano), TWITTER (Apr. 24, 2021, 12:00 AM),
28 <https://twitter.com/CryptoGarga/status/1385745347906048003>.

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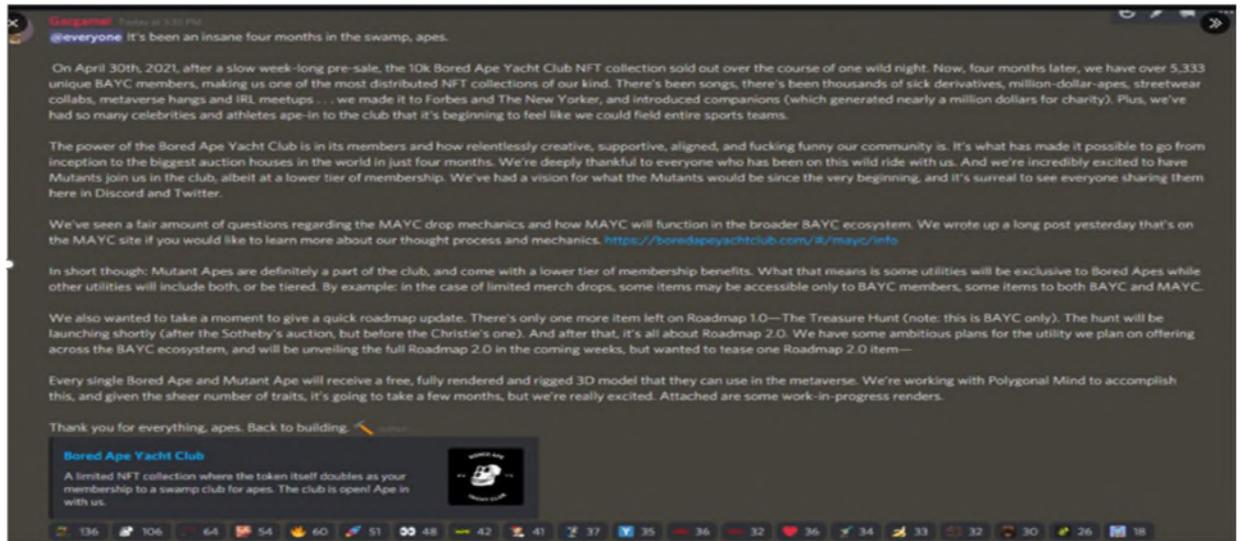


259. On April 29, 2021, Solano promoted the sale of two “rare” BAYC NFTs:



²¹⁶ Garga.eth (Greg Solano), TWITTER (Apr. 25, 2021, 3:55 PM), <https://twitter.com/CryptoGarga/status/1386393217168416772>.

1 260. On August 29, 2021, following the launch of the BAYC NFT
2 collection, Solano crowed on the Company’s Discord that the BAYC NFTs had
3 “sold out over the course of one wild night,” they had become one of “the most
4 distributed NFT collections of our kind,” there were “million-dollar apes,” and the
5 “had so many celebrities and athletes ape-in to the club that it’s beginning to feel
6 like we could field entire sports teams”:²¹⁷

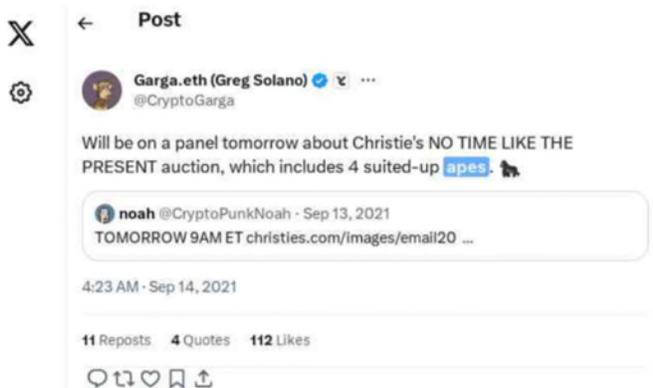


16 261. On September 14, 2021, days after the highly-promoted Sotheby’s
17 auction, Solano posted that he would be on a panel about a Christie’s auction of
18 four apes, furthering the fraudulent messaging from Sotheby’s and the Company
19 that traditional art collectors were interested in acquiring the BAYC NFT as
20 legitimate, high art.²¹⁸

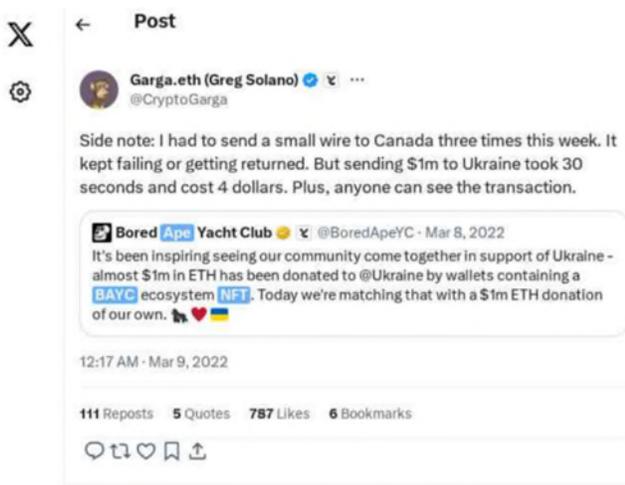
26 ²¹⁷ Garga.eth (Greg Solano), TWITTER (Aug. 29, 2021, 2:44 PM),
<https://twitter.com/BoredApeYC/status/1432066652749828099>.

27 ²¹⁸ Garga.eth (Greg Solano), TWITTER (Sep. 14, 2021, 4:23 AM),
<https://twitter.com/CryptoGarga/status/1437633118169620483>.

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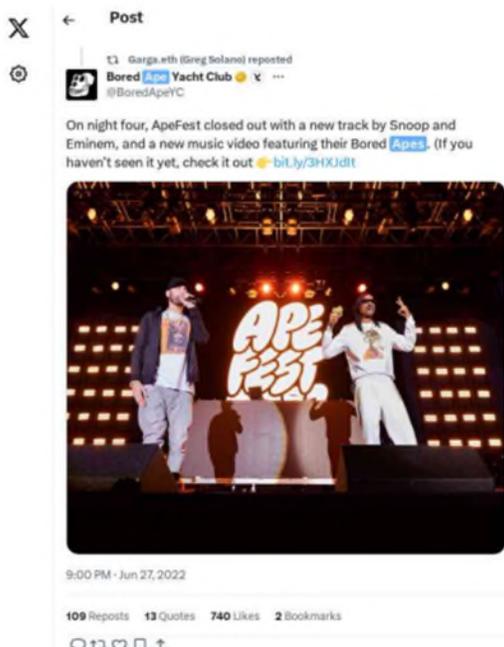
262. On March 9, 2022, Solano boasted about the \$1M in ETH donation to Ukraine matching donations from BAYC wallets, suggesting to investors that the Company was strong financially and poised for further growth in the future to continue its corporate donations.²¹⁹



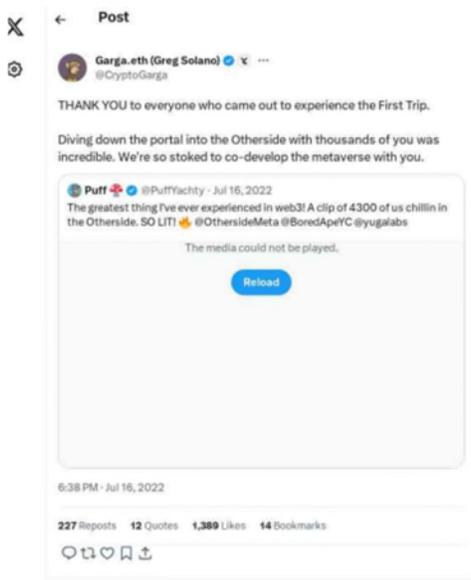
263. On June 27, 2022, Solano highlighted the song debut of celebrities Snoop Dogg (Defendant Broadus) and Eminem wearing their Bored Apes at ApeFest:

²¹⁹ Garga.eth (Greg Solano), TWITTER (Mar. 9, 2022, 12:17 AM), <https://twitter.com/CryptoGarga/status/1501351425695264768>.

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264. On July 16, 2022, Solano boasted about the thousands of users of Yuga’s new Otherside metaverse.²²⁰



²²⁰ Garga.eth (Greg Solano), TWITTER (Jul. 16, 2022, 10:53 PM), <https://twitter.com/CryptoGarga/status/1548153773704429568>.

1 265. On July 27, 2022, Solano congratulates promoter Oseary for appearing
2 on the cover of Variety as “NFT King”:



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16 266. Despite being an avid commenter to the BAYC’s members only
17 Discord chatroom between April 2021 and August 2021 under the username
18 “Garga03,” there are notably no comments from Solano between August 30, 2021
19 and December 4, 2021 and December 6, 2021 and March 31, 2022 during the
20 meteoric rise of the Yuga Financial Products. Yet Defendant Muniz noted in a
21 February 2022 interview that the “founders were living and breathing in Discord
22 with them 24 hours a day. Supporting [the BAYC members] and answering
23 questions and being truly a part of the community themselves.”²²¹ Solano’s notable
24 absence of messages, combined with Muniz’s statement that Solono, a founding
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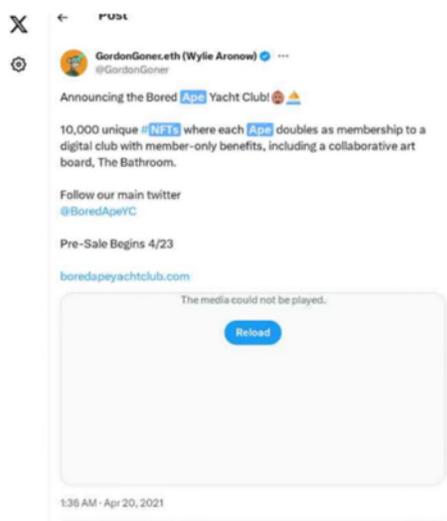
26 ²²¹ *Full Interview: Yuga Labs CEO on Bored Ape Yacht Club and the future of*
27 *Web3,* YOUTUBE (Feb. 18, 2022), 17:10-17:30,
28 <https://www.youtube.com/watch?v=DonKhINiI08>.

1 BAYC member, was on Discord “24 hours a day” to promote the Bored Ape
2 ecosystem and solicit sales of the Yuga Financial Products, indicates his discussions
3 may have been removed or deleted.

4 **Defendant Aronow**

5 267. Aronow made numerous Yuga Financial Product posts under his
6 @GordonGoner Twitter handle to his more than 150,000 followers.

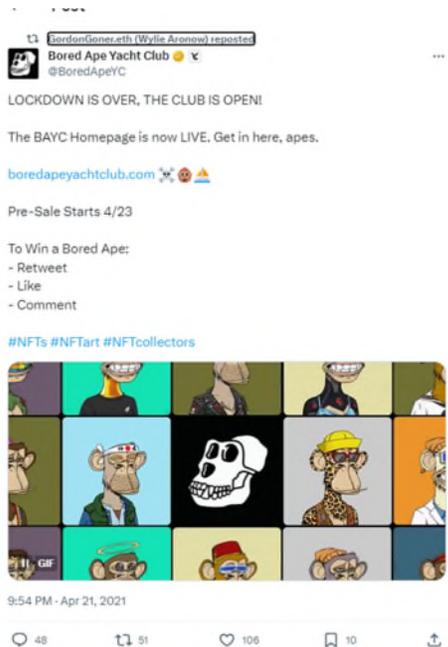
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8 268. On April 20, 2021, Aronow announced the launch of the BAYC:



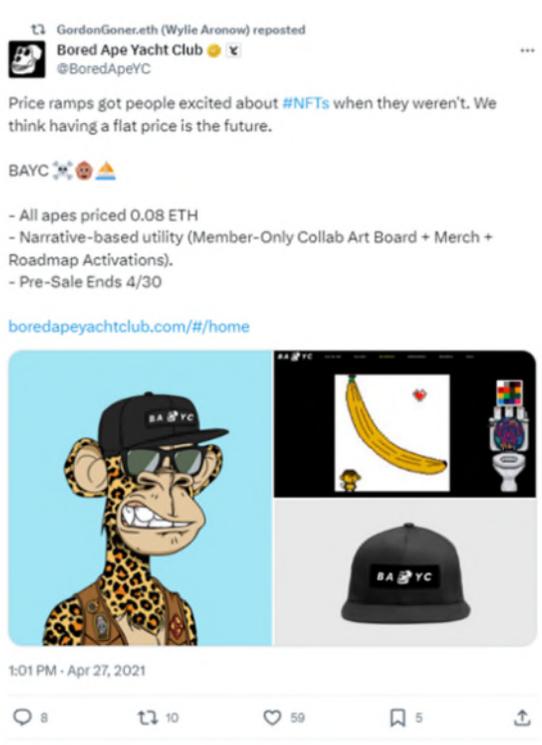
18 269. On April 26, 2021, Aronow promoted the promotional “Giveaway”
19 during presale of BAYCs in an effort to solicit further and increase sales of the
20 BAYC NFT collection.

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270. On April 27, 2021, Aronow hyped the pricing structure for the BAYC NFT collection and the purported excitement within the BAYC community and investors:

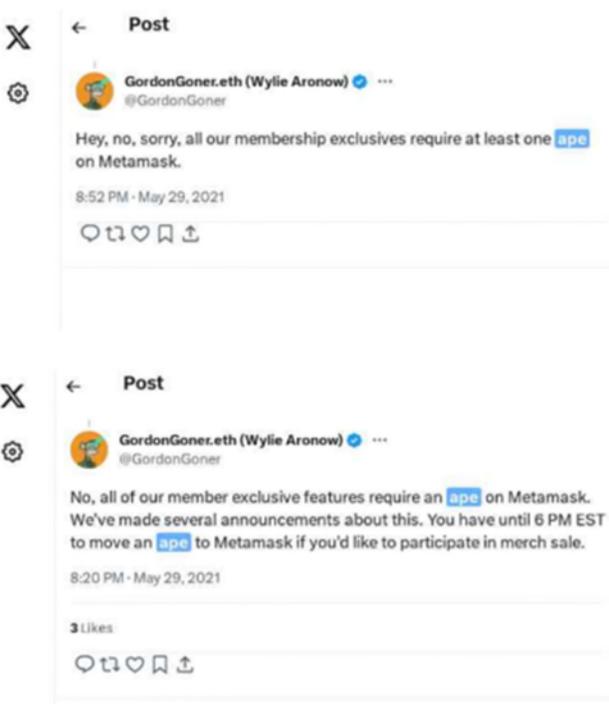


1 271. On April 30, 2021, Aronow encouraged people to “ape in” to BAYC
2 (i.e., purchase a Yuga Financial Product) so investors could “join in the fun” and
3 enjoy the future perks associated with membership:



272. On May 29, 2021, Aronow again touted the exclusivity of the BAYC and the incentives given to owners of Yuga Financial Products, advising that investors could only access “member exclusives” by moving at least one BAYC NFT to Metamask:

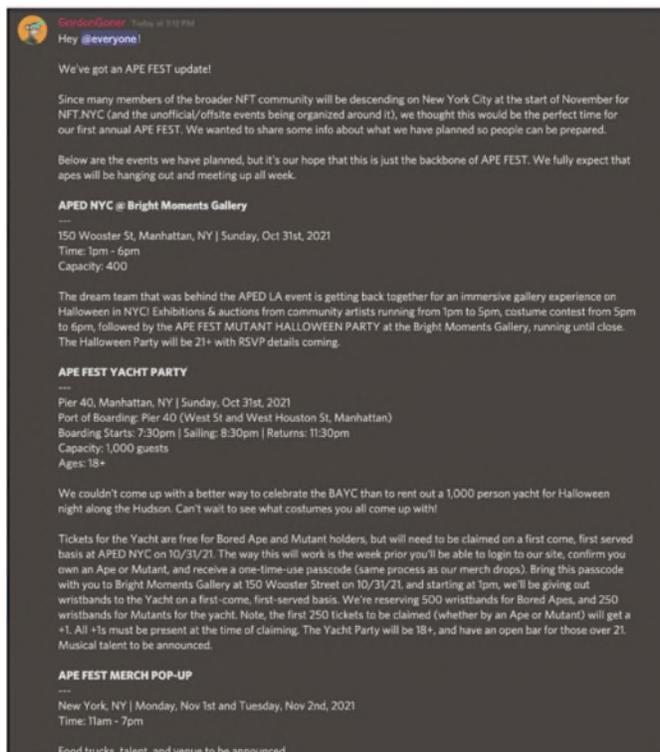
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273. On August 21, 2021, Defendant Aronow bragged “Not bad for a high school dropout” in response to a post that said, “Don’t look now but #BAYC Market Cap just crossed a BILLION.”²²² This exchange gave investors the false impression that BAYC NFTs were a sound investment experiencing organic growth that were poised to continue growing, when in fact the price and volume was inflated due to manipulative trading strategies.

²²² GordonGoner.eth (Wylie Aronow) (@GordonGoner), TWITTER (Apr. 21, 2021, 12:32 AM), <https://twitter.com/gordongoner/status/1428938116535042049?lang=en>.

1 274. On October 1, 2021, Aronow posted twice on the BAYC Discord
2 details of ApeFest 2021²²³ to generate excitement for BAYC and the exclusivity of
3 the club and the related ApeFest events. One post was as follows:
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18 275. Aronow reposted a picture of the November 2021 BAYC and Adidas
19 promotion on the Burj Khalifa, along with a reference to a since deleted Twitter
20 space conversation with Solano:
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27 ²²³ ApeFests are exclusive festivals hosted by BAYC for Bored Ape and Mutant
28 Ape NFT holders.

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276. Aronow repeatedly announced ApeCoin’s launch on March 16, 2022:



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277. Aronow boasted that ApeCoin was being listed by now defunct FTX, without disclosing that the Company has multiple ties to FTX via Defendant Wu, including, but not limited to, the Sotheby's auction and Defendant Curry's promotion:

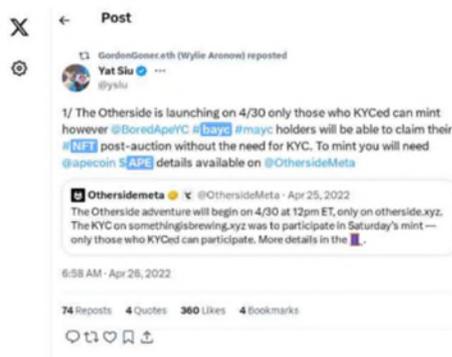


278. Aronow advised that holders of an NFT within the BAYC ecosystem would be able to claim ApeCoin tokens:

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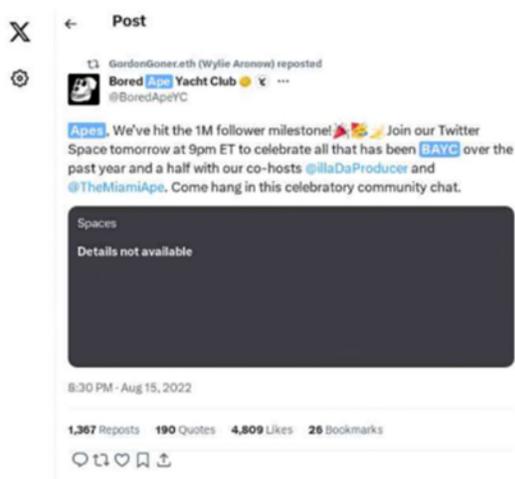
279. Aronow announced the Otherside launch on April 30, 2022:



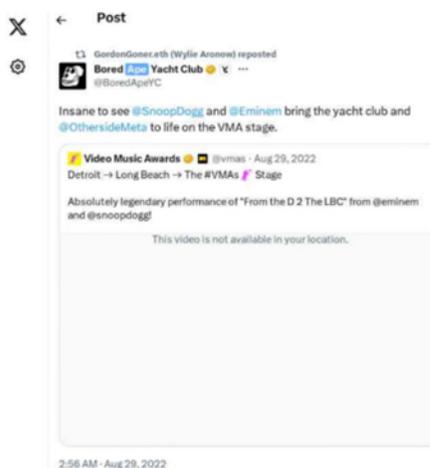
280. Aronow reposted a picture of Curry, a BAYC investor himself, wearing a BAYC sweatshirt promoting the product:



1 281. Aronow bragged that BAYC hit the one million follower milestone and
2 directed his followers to join a since deleted Twitter chat:



12 282. Aronow reposted that Defendant Broadus and rapper Eminem were
13 promoting the BAYC on MTV for the Video Music Awards:



28 283. Aronow also reposted an announcement that Defendant Curry was
promoting BAYC in his Twitter bio:

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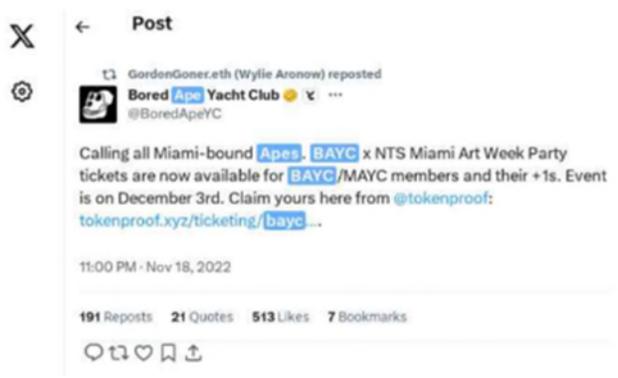


284. In addition, in an effort to suggest to investors that the BAYC ecosystem was expanding and preparing for future brand collaborations, Aronow announced Brand Bicycle was making BAYC NFT playing cards:



285. Aronow promoted a BAYC and MAYC promotional event held during Art Basel in Miami Beach:

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286. Despite being an avid commenter to the BAYC’s members-only Discord chatroom between April 2021 and October 2021 under the username “GordonGoner#0607,” there are notably no comments from Aronow in the chatroom after August 6, 2021 during the meteoric rise of the Yuga Financial Products. Yet Defendant Muniz noted in a February 2022 interview that the “founders were living and breathing in Discord with them 24 hours a day. Supporting [the BAYC members] and answering questions and being truly a part of the community themselves.”²²⁴ Aronow’s notable absence of messages, combined with Muniz’s statement that Aronow, a founding BAYC member, was on Discord “24 hours a day,” indicates his discussions may have been removed or deleted.

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

²²⁴ *Full Interview: Yuga Labs CEO on Bored Ape Yacht Club and the future of Web3*, YOUTUBE (Feb. 18, 2022), 17:10-17:30, <https://www.youtube.com/watch?v=DonKhINiI08>.

1 **Defendant Atalay**

2 288. Atalay made several promotional posts about the Company and the
3 Yuga Financial Products to his more than 33,000 Twitter followers. On November
4 4, 2021, Atalay showed the huge BAYC crowd at an ApeFest social event:²²⁵



20 289. On December 31, 2021, Atalay bragged to the followers of his Twitter
21 account about the Company's successes during 2021 and the prospects for 2022:²²⁶

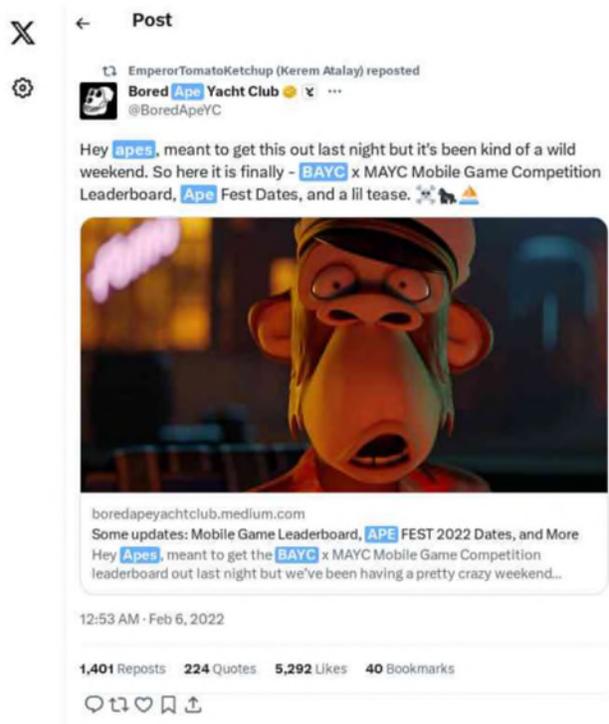
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25 ²²⁵ emperortomatoketchup.eth (Kerem Atalay) (@TomatoBAYC), TWITTER
(Nov. 03, 2021, 11:17PM), <https://twitter.com/TomatoBAYC/status/1456113347141775366/photo/1>.

26 ²²⁶ emperortomatoketchup.eth (Kerem Atalay) (@TomatoBAYC), TWITTER
27 (Dec 31, 2021, 5:03PM), <https://twitter.com/TomatoBAYC/status/1477052702769266688>.

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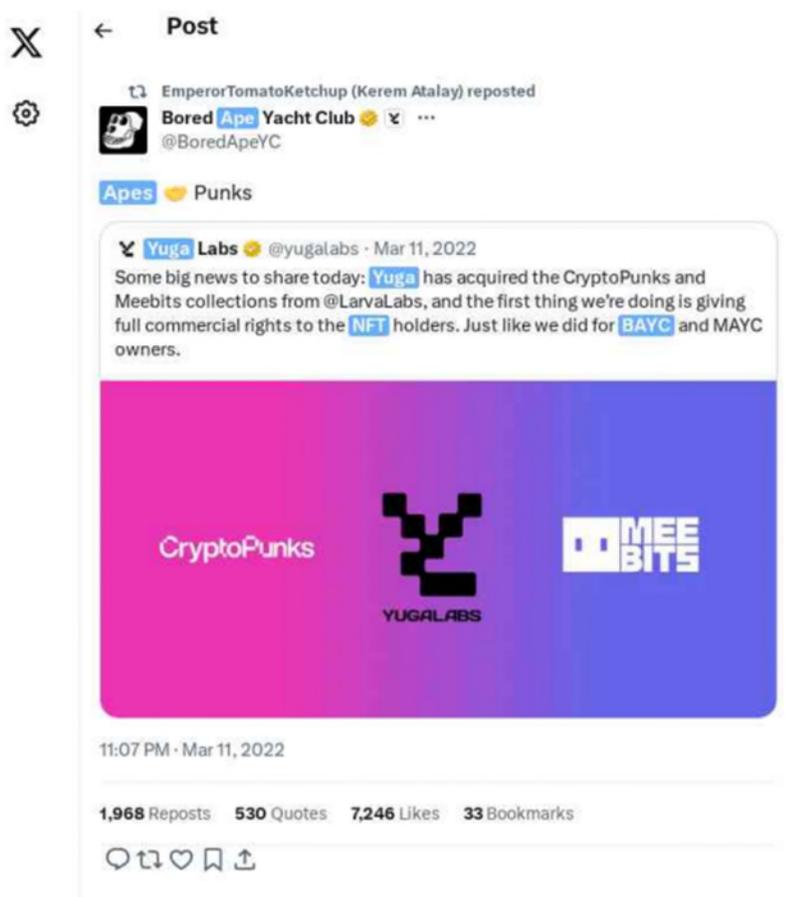


290. On February 6, 2022, Atalay posted about social events for BAYC and MAYC.²²⁷



²²⁷ emperortomatoketchup.eth (Kerem Atalay) (@TomatoBAYC), TWITTER (Feb. 6, 2022, 6:53PM), <https://twitter.com/BoredApeYC/status/1490126552272670720>.

1 291. On March 11, 2022, Atalay promoted that holders of any newly
2 acquired CryptoPunks and Meebits NFTs:²²⁸

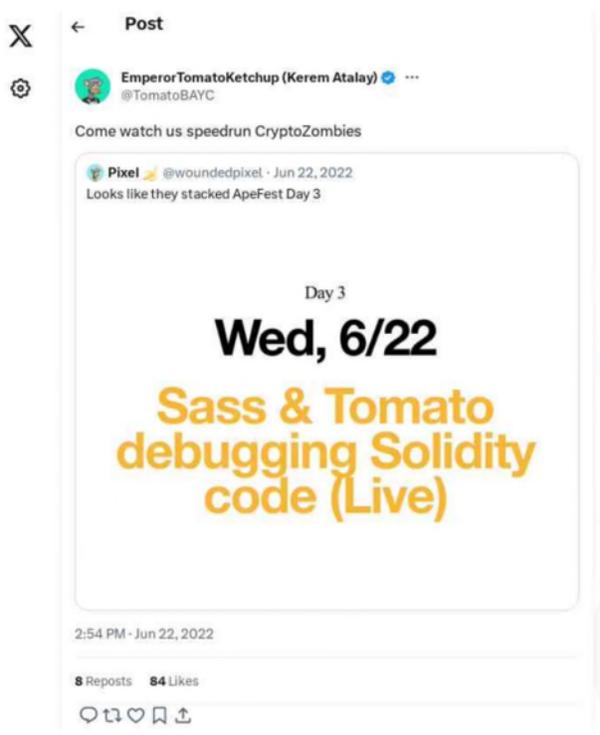


18 292. On June 22, 2022, Atalay promoted that he and Ali would be
19 debugging code as featured act of ApeFest 2022.²²⁹

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25 ²²⁸ emperortomatoketchup.eth (Kerem Atalay) (@TomatoBAYC), TWITTER
(Mar.11, 2022, 5:06PM), <https://twitter.com/yugalabs/status/1502420714527334406>.

26 ²²⁹ emperortomatoketchup.eth (Kerem Atalay) (@TomatoBAYC), TWITTER
27 (Jun.22, 2022, 9:54 AM), <https://twitter.com/TomatoBAYC/status/1539622900491239424>.

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293. Despite numerous members of the BAYC’s members-only Discord chatroom tagging Atalay in various chats as “@Tomato,” to signify his username “EmperorTomatoKetchup#0948,” there are notably no comments or discussions whatsoever from Atalay after August 26, 2021. Yet Defendant Muniz noted in a February 2022 interview that the “founders were living and breathing in Discord with them 24 hours a day. Supporting [the BAYC members] and answering questions and being truly a part of the community themselves.”²³⁰ Atalay’s notable absence of messages, combined with Muniz’s statement that Atalay, a founding BAYC member, was on Discord “24 hours a day,” indicates his discussions may have been removed or deleted.

²³⁰ Full Interview: Yuga Labs CEO on Bored Ape Yacht Club and the future of Web3, YOUTUBE (Feb. 18, 2022), 17:10-17:30, <https://www.youtube.com/watch?v=DonKhINiI08>.

1 **Defendant Ali**

2 294. Ali repeatedly promoted BAYC after its launch, including with the
3 following promotional posts, on August 2 and 6, 2021, and November 4, 14, and
4 28, 2021, to his more than 25,000 Twitter followers:

5 a. August 2, 2021²³¹



15 b. August 6, 2021²³²

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25 ²³¹ Zeshan Ali (@SassBAYC), Twitter (Aug. 2, 2021, 10:16 AM),
26 <https://x.com/BoredApeYC/status/1422214678596489218?s=20>.

27 ²³² Zeshan Ali (@SassBAYC), Twitter (Nov. 4, 2021, 12:24 AM),
28 <https://x.com/lilbaby4PF/status/1456130223012032516?s=20>

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c. November 4, 2021²³³



²³³ Zeshan Ali (@SassBAYC), Twitter (Aug. 6, 2021, 9:52 PM), <https://x.com/SassBAYC/status/142384019955242307?s=20>.

1 d. November 14, 2021²³⁴



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14 295. After Aronow's and Solano's identities were revealed, Ali no longer

15 felt the need to remain hidden and instead decided to reveal himself alongside his

16 BAYC NFT.²³⁵

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26 ²³⁴ Zeshan Ali (@SassBAYC), Twitter (Nov. 14, 2021, 6:11 PM), <https://x.com/SaintBayview/status/1460037657321422851?s=20>.

27 ²³⁵ Zeshan Ali (@SassBAYC), Twitter (Feb. 8, 2022, 2:46 PM), <https://x.com/SassBAYC/status/1491151597682180096?s=20>.

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296. Once revealed, Ali continued to promote the Yuga Financial Products, including ApeCoin’s launch, the Otherside’s launch, and ApeFest 2022. The following are examples thereof:

a. March 16, 2022



b. March 17, 2022:

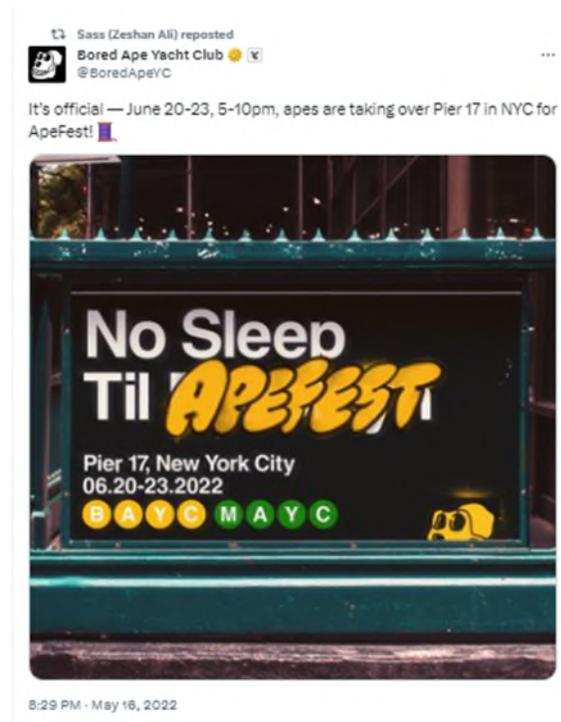


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c. March 18, 2022



d. May 16, 2022:



1 297. Ali also posted about the BAYC NFT piece he had commissioned
2 October 10, 2022, by artist LeMaow.²³⁶



15 298. Yet despite numerous members of the BAYC’s members only Discord
16 chatroom tagging Ali in various chats as “@Sass,” to signify his username
17 “Sass#3437,” there are notably no comments or discussions whatsoever from Ali
18 after August 28, 2021. Defendant Muniz noted in a February 2022 interview that
19 the “founders were living and breathing in Discord with them 24 hours a day.
20 Supporting [the BAYC members] and answering questions and being truly a part of
21 the community themselves.”²³⁷ Ali’s notable absence of messages, combined with
22 Muniz’s statement that Ali, a founding BAYC member, was on Discord “24 hours a
23 day,” indicates his discussions may have been removed or deleted.

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25 ²³⁶ Zeshan Ali (@SassBAYC), Twitter (Oct. 10, 2022, 10:58 AM),
26 <https://twitter.com/SassBAYC/status/157950171189887387>.

27 ²³⁷ *Full Interview: Yuga Labs CEO on Bored Ape Yacht Club and the future of*
28 *Web3*, YOUTUBE (Feb. 18, 2022), 17:10-17:30, <https://www.youtube.com/watch?v=DonKhINiI08>.

1 **Defendant Muniz**

2 299. On February 18, 2022, Defendant Muniz did an interview with D3
3 Network that was widely circulated on social media where she promoted investment
4 into Yuga Financial Products. Muniz stated that investing in Yuga Financial
5 Products “is a little bit like the next frontier, it’s the wild west, its opportunity! It’s
6 hope, it’s excitement!”²³⁸

7 300. On March 16, 2022, Defendant Muniz reposted a picture of a Bored
8 Ape holding an ApeCoin to her 15,000 Twitter followers to celebrate the launch of
9 the cryptocurrency.²³⁹



19 301. On March 19, 2022, Defendant Muniz falsely stated that “Already, a
20 new economy is possible with the IP of Apes, Punks, and Meebits, owned by the
21 community.”²⁴⁰

22 302. In a March 22, 2022 interview, Defendant Muniz falsely stated that
23 Otherside will be inclusive to NFTs beyond just those managed by Yuga Labs, and
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25 ²³⁸ <https://www.youtube.com/watch?v=Ehw2iM0A5H4>.

26 ²³⁹ Nicole Muniz (@VStrangeYUGA), Twitter (Mar. 16, 2022, 6:14 PM),
<https://x.com/offshoot3D/status/1504234679372857350?s=20>.

27 ²⁴⁰ <https://techstartups.com/2022/03/22/yuga-labs-creator-bored-ape-yacht-club-raises-450-million-build-nft-metaverse-now-valued-4-billion/>.

1 that “a few different game studios” are helping develop the game. “We’re opening
2 the door to effectively a walled garden and saying ‘Everybody’s welcome,’” Muniz
3 told The Verge.²⁴¹

4 303. In connection with the announcement of the purported Coinbase
5 movie, Defendant Muniz stated, “We’re seeing how NFTs are evolving to be
6 automobiles of entry and participation in networks, video games, merchandise, and
7 now interactive leisure.” Muniz furthered stated that “This can be a breakthrough
8 challenge and we’re excited to see how this shapes the way forward for Web3 for
9 all communities.”²⁴²

10 304. In an interview with Tech Crunch on July 19, 2022, Defendant Muniz
11 laid out a grand vision for the Yuga Financial Products in the metaverse, stating
12 “There will be lots of metaverses . . . A lot of the other metaverses out there, I think
13 the most interesting question will be: Are they open? Or are they closed?” Muniz
14 continued, “Do you own yourself in this world? I think that’s the first question.
15 Like, do you own you?”

16 305. In this interview, Muniz further promoted that just because gaming
17 startup Improbable’s technology would be used for Otherside, outside developers
18 would build on the platform as well. Muniz stated that “As a developer, you have
19 the flexibility to be able to build whatever makes sense in your world and whatever
20 vision you can come up with,” adding that “It’s a free, open world, do whatever you
21 want, say whatever you want – unless you’re invading on other people’s rights
22 effectively and their safe space.”²⁴³

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24 ²⁴¹ [https://decrypt.co/95706/bored-ape-cryptopunk-nfts-yuga-labs-450m-4b-
25 valuation.](https://decrypt.co/95706/bored-ape-cryptopunk-nfts-yuga-labs-450m-4b-valuation)

26 ²⁴² [https://cryptobizdaily.com/coinbase-is-creating-a-film-trilogy-featuring-bore-
26 ape-yacht-club-nft-characters-bitcoin-news/.](https://cryptobizdaily.com/coinbase-is-creating-a-film-trilogy-featuring-bore-ape-yacht-club-nft-characters-bitcoin-news/)

27 ²⁴³ [https://techcrunch.com/2022/07/19/bored-apes-founders-on-their-plans-for-
27 otherside-metaverse/?guccounter=1.](https://techcrunch.com/2022/07/19/bored-apes-founders-on-their-plans-for-otherside-metaverse/?guccounter=1)

1 306. Doubling down on Yuga’s capabilities, Muniz stated that “We’re really
2 seeing this as multiplatform. You know, it’s desktop and mobile . . . VR is going to
3 be an important platform for us,” Muniz added that, “While there is likely going to
4 be a local component to this where people are running a local version of the game
5 and the world, you still want the link and you still want someone to be able to tweet
6 something out and say ‘Hey, holy shit, I just slayed this dragon,’ and then anybody
7 can join and all of a sudden be popped into exactly where you are at that exact
8 moment and see it live.”²⁴⁴

9 307. On August 3, 2022, Muniz promoted the Company’s upcoming launch
10 of the Otherside along with an interview she had with Dean Takahashi at
11 VentureBeat.com touting the product.²⁴⁵



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17 308. In this interview, with Venture Beat, Defendant Muniz compared the
18 robustness and capabilities of Yuga to that of international media conglomerate
19 Disney. Defendant Muniz stated that

20 Our real vision for Otherside is for it to be an open, interoperable
21 world. If you think of this as – I’ll use a very strange analog that isn’t
22 right, but it’s the easiest way to explain it. This is our digital Disney
23 World. What’s cool about this digital Disney World and why it’s
24 differentiated is it’s an open world. It’s not just a place for our IP.
25 It’s not just a place for apes and mutants and punks and Otherside
characters. It’s a place for anybody. It’s for your own character.
That’s the identity part and the ownership part. If you’re a Cool Cat

26 ²⁴⁴ *Id.*

27 ²⁴⁵ Nicole Muniz (@VStrangeYUGA), Twitter (Aug. 3, 2022, 11:09 AM),
28 <https://x.com/VStrangeYUGA/status/1554861950030561282?s=20>.

1 you're welcome. If you're something new that you've cooked up in
2 your brain and you want to create a new character for yourself in this
3 world, you can use our SDK to do that. That's the vision.

4 Not only is it a place where all characters and all identities are
5 welcome, but also it's a place that's not just for our rides and
6 attractions, going back to the Disney World analogy. Anybody can
7 build. We're going to build things, rides and attractions for the world.
8 We're going to have layers of gameplay and different experiences that
9 people can do so it's engaging and fun. But that SDK will enable all
10 sorts of creators and developers, big and small. Hobbyists,
11 independents, game studios, they'll also be able to build rich creative
12 experiences for the world and for the audience.²⁴⁶

13 309. These statements above were false and misleading because they
14 significantly overstated Yuga's gaming and software development capabilities. In
15 reality, the rollout of Yuga's gaming was rocky, as Yuga was not optimized to build
16 and manage it in-house. Even attempting the grand vision set forth by Muniz would
17 spread the team too thin and required execution beyond Yuga's core competencies.

18 310. On December 20, 2022, Muniz touted the growth prospects of the
19 Company and the intellectual property rights granted to investors in Yuga's NFT
20 collections. In particular, Muniz acknowledged that she "like[d] to use the analog
21 of Web3 Disney" when promoting Yuga to investors, declaring that "BAYC is
22 Yuga Labs' Mickey Mouse . . . while CryptoPunks and Meebits are the company's
23 equivalent of the Star Wars and Marvel acquisitions. Otherside, the metaverse
24 platform Yuga is building, is like its Disney World."²⁴⁷ According to Muniz, a key
25 difference between Yuga and Disney was that, unlike Disney, Yuga shared the

26 ²⁴⁶ <https://venturebeat.com/games/how-yuga-labs-hopes-to-get-to-the-metaverse-first-with-otherside/#:~:text=Muniz%3A%20Our%20real%20vision%20for,is%20our%20digital%20Disney%20World.>

27 ²⁴⁷ [https://www.cnet.com/culture/features/inside-bored-ape-yacht-clubs-plans-to-master-the-metaverse/.](https://www.cnet.com/culture/features/inside-bored-ape-yacht-clubs-plans-to-master-the-metaverse/)

1 ownership of intellectual property rights with holders of Yuga Financial Products:
2 “We might own 30% to 40% of the market, but also our holders own 30% to 40%
3 of the market, and I mean that in an IP sense. *Our collections are some of the only*
4 *collections that truly give away IP rights. . . . You have exclusive commercial IP*
5 *rights, and that also means, by the way, Yuga does not.*”²⁴⁸ [Emphasis added.]

6 311. Further, despite the numerous indications of market manipulation of
7 the Yuga Financial Products (discussed further below), Muniz brushed aside
8 concerns there was a “contradiction in a Web3 company owning a set of collections
9 that are responsible for 30% to 40% of the market volume.”²⁴⁹ Instead, Muniz
10 publicly insisted in an interview recorded the month prior to ApeCoin’s launch that
11 Yuga Labs was “completely open” and “completely transparent” in their business
12 operations.²⁵⁰

13 312. Muniz also stated in this February 2022 interview that she (like
14 Executive Defendants Solano and Aronow) was an avid user of Twitter, Discord,
15 and Slack and used the username “@VStrange” on those platforms to discuss the
16 Yuga Financial Products with investors.²⁵¹ She repeated her devotion to the BAYC
17 Discord channels in November 2022, when she spoke on the mainstage at Web
18 Summit 2022²⁵² encouraging attendees to “go into the Discord and see it for
19 yourselves” and boasting about recent conversations she had BAYC Discord
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22 ²⁴⁸ See *id.*

23 ²⁴⁹ See *id.*

24 ²⁵⁰ Nicole Muniz. (@VStrangeYUGA). Twitter (Aug. 3, 2022).
<https://x.com/VStrangeYUGA/status/1554861950030561282?s=20> at 10:50-12:01.

25 ²⁵¹ *Id.* at 8:10-8:33

26 ²⁵² Web Summit advertised this event as “the largest tech conference in the
27 world, gathering more than 900 speakers, 2,300 startups, 1,200 investors, 2,500
28 global journalists and 70,000 attendees.” Web Summit 2022,
<https://www.andorrabusiness.com/en/events/web-summit-2022/>.

1 members discussing ApeFest.²⁵³ Yet after Plaintiffs filed their initial Complaint in
2 this action on December 8, 2022, Muniz’s VStrange Discord account no longer
3 exists, indicating her discussions about the Yuga Financial Products were deleted.

4 **Defendant Shoemaker**

5 313. Like other Defendants, Shoemaker displayed the following profile
6 image of MAYC NFT #547 as her Twitter profile @SodaOps in an effort to
7 promote sales of the BAYC NFT collection:



13 314. On April 23, 2023, Shoemaker posted the following to her Twitter
14 account, praising the work of BAYC and reviving the Adidas promotions from
15 2021:²⁵⁴

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26 ²⁵³ *Interview with Nicole Muniz at Web Summit 2022*, YOUTUBE (Nov 6, 2022),
12:30-13:36, <https://www.youtube.com/watch?v=DonKhINiI08>.

27 ²⁵⁴ Jasmin Shoemaker (@SodaOps), Twitter (Apr. 23, 2023, 1:15 PM),
28 <https://x.com/SodaOps/status/1650201780939259904?s=20>.

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315. On December 19, 2022, Shoemaker reposted a Tweet from the Yuga Labs Twitter account to her personal account, welcoming Daniel Alegre to the Yuga Labs executive team. The Tweet reached over 718,000 impressions:²⁵⁵



316. Shoemaker also promoted the exclusivity of joining the BAYC and the incentives to investors for doing so. For example, Shoemaker solicited sales of

²⁵⁵ Jasmin Shoemaker (@SodaOps), Twitter (Dec. 19, 2022, 7:07 AM), <https://x.com/yugalabs/status/1604825671305662464?s=20>.

1 ApeCoin to purchase exclusive BAYC merchandise on October 19, 2022 and June
2 15, 2022.²⁵⁶



20 317. On April 23, 2022, Shoemaker promoted the sale of Otherdeed NFTs
21 and other Yuga Financial Products by reposting the following tweet from the
22 OthersideMeta official Twitter account, which announced that the “The adventure
23 begins, Otherside” on April 30, 2022 at 12pm ET:²⁵⁷

24 _____
25 ²⁵⁶ Jasmin Shoemaker (@SodaOps), Twitter (Dec. 19, 2022, 11:01 AM),
https://x.com/BoredApeYC/status/1582763964769136642?s=20; Jasmin
26 Shoemaker (@SodaOps), Twitter (Jun. 15, 2022, 8:39 PM),
https://x.com/BoredApeYC/status/1537248498063507456?s=20.

27 ²⁵⁷ Jasmin Shoemaker (@SodaOps), Twitter (Apr. 23, 2022, 11:00 AM),
https://x.com/OthersideMeta/status/1517896181384368129?s=20.
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318. On June 23, 2022, Shoemaker further reposted promotions related to Defendant Broadus in order to solicit purchases of Yuga Financial Products by investors on Twitter.²⁵⁸



²⁵⁸ Jasmin Shoemaker (@SodaOps), Twitter (Jun. 23, 2022, 11:12 PM), <https://x.com/Eminem/status/1540186179265363970?s=20>; Jasmin Shoemaker (@SodaOps), Twitter (Jun. 23, 2022, 9:02 PM), <https://x.com/BoredApeYC/status/1540153474851246080?s=20>.

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319. On March 17, 2022, Shoemaker promoted to incentives provided to holders of Yuga NFTs and directed her Twitter followers to an ApeCoin tweet that reminded investors that “the claim period will be open for 90 days,” and on March 16, 2022, Shoemaker touted that ApeCoin was being adopted as the primary token for the BAYC ecosystem.

Defendant Lyons

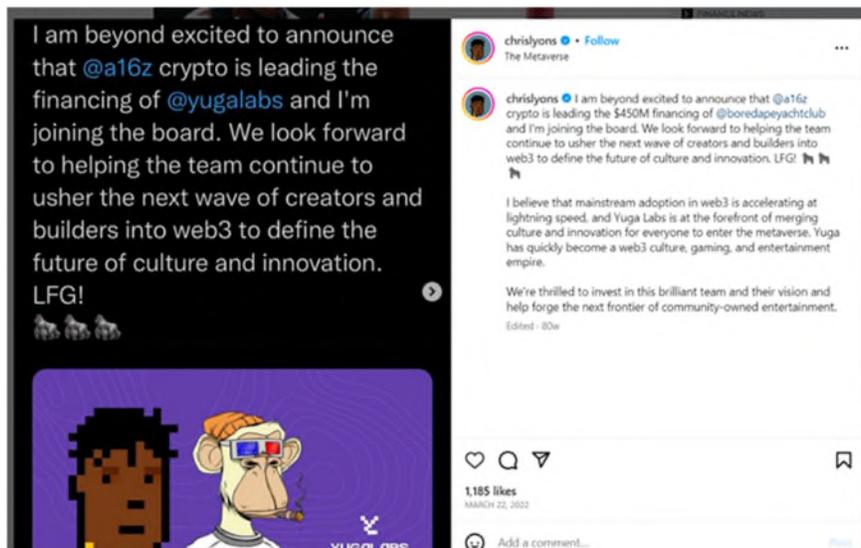
320. Prior to officially serving as a member of the Yuga board, Defendant Lyons operated as an agent of the Company to promote and solicit sales of the Yuga Financial Products. For example, early on, in August 2021, Lyons posted a cross promotion for BAYC and Cryptopunks to his Instagram page and more than 32,000 followers.²⁵⁹

²⁵⁹ Christopher Lyons (chrislyons), Instagram (Aug. 24, 2021), https://www.instagram.com/p/CS9dVHugqQJ/?hl=en&img_index=2.

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321. On March 22, 2022, Lyons again promoted his involvement in Yuga and BAYC financing.²⁶⁰

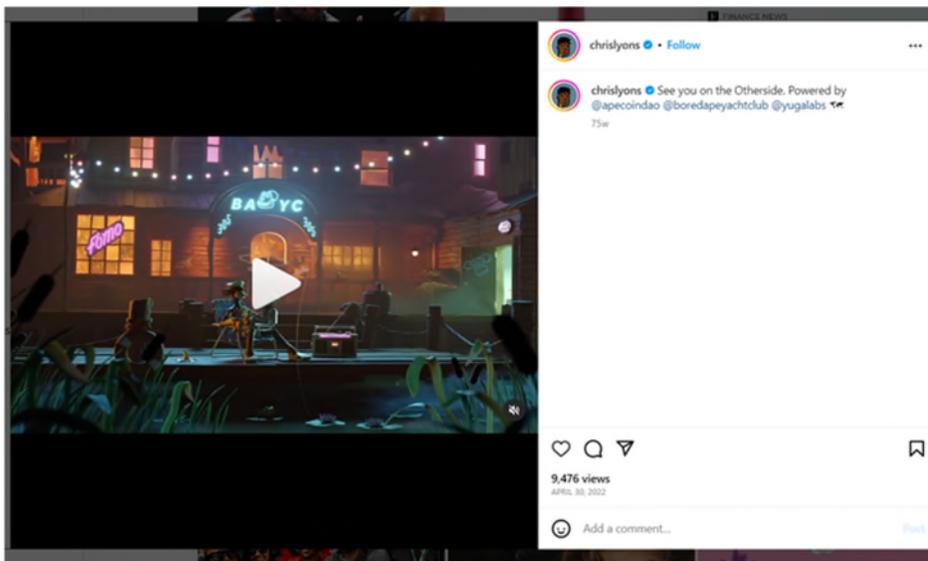


322. On April 30, 2022, Lyons again promoted the sale of the Yuga Financial Products by posting a BAYC video, and tagging the ApeCoin Dao, BAYC, and the Company:²⁶¹

²⁶⁰ Christopher Lyons (chrislyons), Instagram (Mar. 22, 2022), https://www.instagram.com/p/Cba4C2fvtkG/?hl=en&img_index=1.

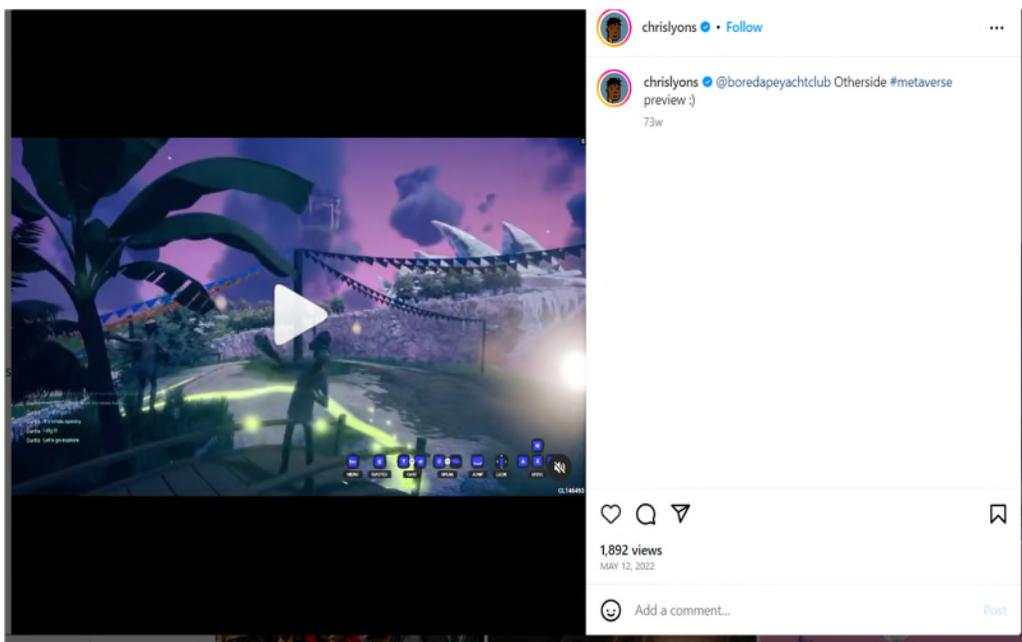
²⁶¹ Christopher Lyons (chrislyons), Instagram (Apr. 30, 2022), https://www.instagram.com/p/Cc_vKJGp379/?hl=en.

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10 223. On May 12, 2022, Lyons posted another BAYC promotional video in
11 his Instagram video:²⁶²

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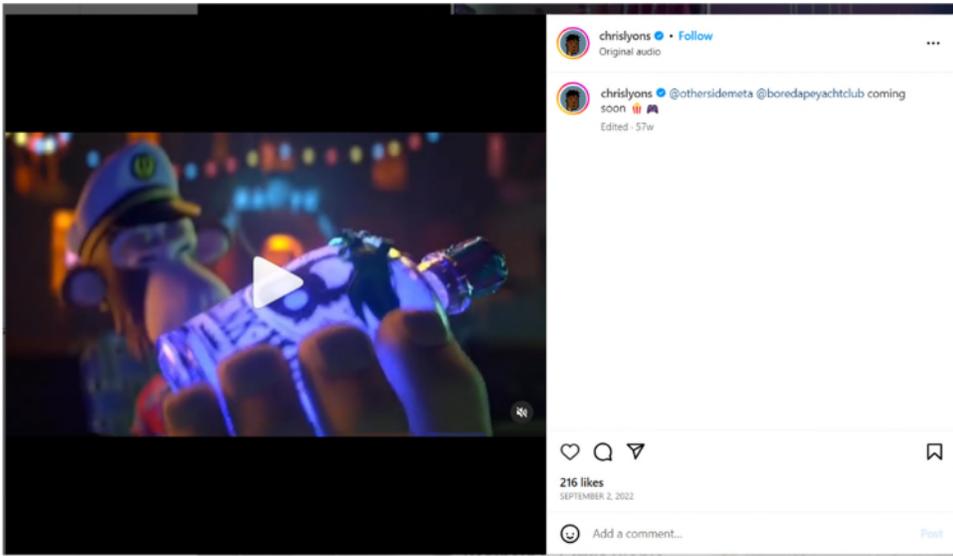


23 224. Lyons' promotion of the Bored Ape ecosystem continued via another
24 video post concerning the BAYC and the Otherside in September 2022:²⁶³

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26 ²⁶² Christopher Lyons (chrislyons), Instagram (May. 12, 2022),
<https://www.instagram.com/p/Cdd0IGhuqq1/?hl=en>.

27 ²⁶³ Christopher Lyons (chrislyons), Instagram (Sep. 2, 2022),
28 https://www.instagram.com/p/Ch_jnCjA4KM/?hl=en.

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325. The promotional efforts by Oseary, the Executive Defendants Aronow, Solano, Ataly, Ali, Muniz, Shoemaker, and Lyons, the MoonPay Defendants, and the Promoter Defendants (as well as the celebrity recruitment and solicitation efforts occurring behind the scenes with Oseary, the MoonPay Defendants, and Defendant Adidas) were effective at increasing the popularity of, and interest in, the Yuga Financial Products. Following these promotional activities, the floor price and trading volume for BAYC NFTs exploded. On April 30, 2022, the day of the BAYC metaverse launch, the floor price for BAYC NFTs reached the maximum price of 144.9 ether (at the time was worth approximately \$395,000), which represents a 145% increase from its floor price of 49.5 ether at the start of the Class Period. Trading volume also spiked to 12,698 ether on April 30, 2022 – up almost 280% from the 3345 ether trading volume at the start of the Class Period.

c. MoonPay Defendants

Defendant MoonPay

326. On-chain transactions confirm that MoonPay purchased, and then subsequently transferred, numerous Bored Ape NFTs from wallet address 0xd75233704795206de38cc 58b77a1f660b5c60896, publicly labeled as

1 “MoonPay” (the “MoonPay Wallet” or “MoonPay.eth Wallet”), to numerous
2 celebrities and several of the Promoter Defendants so they could promote the Yuga
3 Financial Products. Though MoonPay attempted to conceal these transactions
4 under the guise of its Concierge service, upon information and belief, these
5 celebrities and Promoter Defendants received Yuga Financial Products and/or other
6 forms of consideration as part or all of their compensation for promoting the Yuga
7 Financial Products specifically or the Yuga brand generally. Moreover, Promoter
8 Defendants directly financially benefited from the increased valuation that
9 MoonPay would experience with such overwhelming celebrity exposure. On
10 October 27, 2021, MoonPay transferred BAYC NFT #129 to rapper Lil Baby at
11 wallet address 0xc86B12d850FdBBF3260a7BAAE862F85857aAdBBa (the “Lil
12 Baby Wallet”).²⁶⁴ MoonPay then posted several TikTok videos of Defendant Soto-
13 Wright with Lil Baby and showing him how to mutate the BAYC NFT he just
14 “purchased.”²⁶⁵ The mutation video had 2.8 million views alone. On November 25,
15 2021, MoonPay posted another video of Lil Baby awkwardly attempting to explain
16 how he acquired BAYC NFT #129 from MoonPay to promote MoonPay’s
17 purported “concierge service.”²⁶⁶

18 327. On November 4, 2021, future board member of the ApeDAO,
19 Defendant Bajwa promoted a BAYC party taking place and teased that celebrity
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21 ²⁶⁴ Transaction Hash: 0x8a9d0e04a06b7250d21fd23d9f7fb472552871226bef
22 2303441df05eb9156450, ERC-721: 129, EtherScan (Oct. 28, 2021, 12:41 AM
23 UTC), [https://etherscan.io/tx/0x8a9d0e04a06b7250d21fd23d9f7fb472552871226](https://etherscan.io/tx/0x8a9d0e04a06b7250d21fd23d9f7fb472552871226bef2303441df05eb9156450)
[bef2303441df05eb9156450](https://etherscan.io/tx/0x8a9d0e04a06b7250d21fd23d9f7fb472552871226bef2303441df05eb9156450).

24 ²⁶⁵ Moonpayhq (@moonpayhq), TIKTOK (Nov. 8, 2021),
<https://www.tiktok.com/@moonpayhq/video/7028240795333446917>; Moonpayhq
25 (@moonpayhq), TIKTOK (Nov. 8, 2021), [https://www.tiktok.com/](https://www.tiktok.com/@moonpayhq/video/7028242145672826117)
[@moonpayhq/video/7028242145672826117](https://www.tiktok.com/@moonpayhq/video/7028242145672826117); Moonpayhq (@moonpayhq), TIKTOK
26 (Nov. 8, 2021), [https://www.tiktok.com/@moonpayhq/video/](https://www.tiktok.com/@moonpayhq/video/7028242782686907654)
[7028242782686907654](https://www.tiktok.com/@moonpayhq/video/7028242782686907654).

27 ²⁶⁶ Moonpayhq (@moonpayhq), TIKTOK (Nov. 8, 2021),
<https://www.tiktok.com/@moonpayhq/video/7034478397292121349>.

1 musician “Da Baby” had “mutated his ape right before going on stage at
2 @BoredApeYC party tonight 🐵 . . . probably nothing.”²⁶⁷ Bajwa’s celebrity-
3 related promotion was a precursor of what was to come.

4 328. On November 30, 2021, MoonPay transferred BAYC NFT #9883 to
5 Dutch DJ Martin Garrix at wallet address
6 0x3a8db289E94465181e54353571fa7880857c0d87 (the “Garrix Wallet”).²⁶⁸
7 Garrix promptly changed his Twitter profile picture to BAYC NFT #9883 to show
8 his 15.5 million Twitter followers.



17 329. On December 1, 2021, the MoonPay Wallet transferred BAYC NFT
18 #5384 to wallet address 0xc213e5d1ba49e3069b7ed5ce1f53ed299b966c73, which
19 is labeled as “diplo.eth.”²⁶⁹ That same day, MoonPay investor Thomas Pentz (a
20 famous DJ named Diplo) promoted the BAYC NFT he received from MoonPay on
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22 ²⁶⁷ Maaria.eth (@maariabajwa), TWITTER (Nov. 4, 2011, 1:23 AM),
23 <https://twitter.com/maariabajwa/status/1456130064270217217?s=20>.

24 ²⁶⁸ Transaction Hash: 0x57f5356a0edd2144701337508778b98d05
25 fae316cff548b9e3846bd9b9a88c62, ERC-721: 9883, ETHERSCAN (December 1,
2021, 1:24 AM UTC), <https://etherscan.io/tx/0x57f5356a0edd2144701337508778b98d05fae316cff548b9e3846bd9b9a88c62>.

26 ²⁶⁹ Transaction Hash: <https://etherscan.io/tx/0x05981522f7f1299678b38f14758921e200512a0292ff777102d0dafca8a11bf3>, ERC-721: 5384, ETHERSCAN (Dec.
27 1, 2021, 5:07 AM UTC), <https://etherscan.io/token/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d?a=0xc213e5d1ba49e3069b7ed5ce1f53ed299b966c73>.

1 his Twitter account with 2.4 million followers.²⁷⁰ MoonPay also posted a video on
2 its TikTok account of Soto-Wright and Diplo promoting BAYC.²⁷¹ Diplo’s video
3 was part of larger promotion of MoonPay and BAYC during Miami Beach’s Art
4 Basel week, as shown by another video MoonPay posted to its TikTok account
5 featuring Diplo, Garrix, and Soto-Wright.²⁷²

6 330. On December 3, 2021, MoonPay transferred BAYC NFT #2759 to
7 rapper Gunna at wallet address 0xd99D96fD90cF9F52f8Ad96d252DeD0ec
8 77F3D239 (the “Gunna Wallet”).²⁷³ Gunna then got BAYC NFT #2759 tattooed on
9 his leg and stated in a since deleted Instagram post, “I Bought A
10 @boredapeyachtclub NFT worth 300K No Cap!” Gunna wrote on IG. “His Name
11 is BUTTA Thanks @moonpay!”²⁷⁴

12 331. On December 31, 2021, MoonPay transferred BAYC NFT #6877 to
13 rapper Meek Mill at wallet address 0x82a8DD0Bd212A47780132CC2d1AA
14 56a70E7Fd9e9 (the “Meek Mill Wallet”).²⁷⁵ Defendant Soto-Wright, also known
15 as “IvanHodl,” then promoted this MoonPay transfer by posting a Happy New Year
16
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18 ²⁷⁰ Diplo (@diplo), TWITTER (Dec. 1, 2021 4:28 P.M.),
19 https://twitter.com/diplo/status/1466157259252240395?s=20&t=B6GM_EYH2EoTzTfPNF5fmQ.

20 ²⁷¹ Moonpavha (@moonpavha), TIKTOK (Dec. 2, 2021).
<https://www.tiktok.com/@moonpayhq/video/7037194439835553029>.

21 ²⁷² Moonpavha (@moonpavha), TIKTOK (Dec. 1, 2021).
<https://www.tiktok.com/@moonpayhq/video/7036781152300010758>.

22 ²⁷³ Transaction Hash: 0x4bfdef4ea57897166f2459312333a1cdbf9be6bd54d03c
23 10502e4b069dc7ec54, ERC-721: 2759, ETHERSCAN (December 3, 2021, 5:43 AM
24 UTC), <https://etherscan.io/tx/0x4bfdef4ea57897166f2459312333a1cdbf9be6bd54d03c10502e4b069dc7ec54>.

25 ²⁷⁴ See Harvey, *Gunna Spent \$300K on an NFT and Got a Tattoo of It*, STARBIZ
(Dec. 24, 2021), <https://starbiz.net/financial/gunna-spent-300k-on-an-nft-and-got-a-tattoo-of-it>.

26 ²⁷⁵ Transaction Hash: 0x4caccf57c88f55feea0de4a039d4d07614f5e6d1c
27 19254640d74b3f9d66a5c16, ERC-721: 6877 ETHERSCAN (Jan. 01, 2022, 3:24
28 AM), <https://etherscan.io/tx/0x4caccf57c88f55feea0de4a039d4d07614f5e6d1c19254640d74b3f9d66a5c16>.

1 message to his Instagram Stories with a picture of himself, Lil Baby, and Meek Mill
2 with BAYC NFT #6877.²⁷⁶



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332. On January 8, 2022, MoonPay transferred BAYC NFT #3980 to
Canadian DJ Vivie-Ann Bakos, known professionally as BLOND:ISH at wallet
address 0xAc0a7656b5D62e7D54b11F8b5294CE0ac1bb7118 (the “Blondish
Wallet”).²⁷⁷

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333. On January 14, 2022, MoonPay transferred BAYC NFT #9977 to
rapper Lil Durk at wallet address 0x1FFeAd999b467249AFd
2EfBA336a0b6c820E17aC (the “Lil Durk Wallet”).²⁷⁸ Lil Durk then changed his

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²⁷⁶ Kyle, *Meek Mill Rings In The New Year By Joining The Bored Ape Yacht Club* (Feb. 8, 2022) <https://www.theboredapegazette.com/post/meek-mill-rings-in-the-new-year-by-joining-the-bored-ape-yacht-club>.

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²⁷⁷ TransactionHash: 0x337ca9ab2b225724a87765d6a67909cb78f2b8ffd4b4b0855c4b4f5a58178435, ERC-721: 3980, ETHERSCAN (Jan. 08, 2022, 4:16 PM), <https://etherscan.io/tx/0x337ca9ab2b225724a87765d6a67909cb78f2b8ffd4b4b0855c4b4f5a58178435>.

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²⁷⁸ TransactionHash: 00xc745a3a23dcd996fc58c5e899b18a3d184b00f1eae961fd9e11997f3d272df06, ERC-721: 9977, ETHERSCAN (Jan. 14, 2022, 12:12 AM),

1 Instagram profile picture to BAYC NFT #9977 and posted a photograph with
2 Defendant Soto-Wright and his purported BAYC “purchase” to Instagram stories
3 and his 15 million followers.²⁷⁹ A few months later, MoonPay posted a video of
4 Soto-Wright giving Lil Durk an “Intro to NFTs” talk.²⁸⁰



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17 334. On January 26, 2022, MoonPay transferred BAYC NFT #6141 to
18 Gwennyth Paltrow at wallet address 0x31185f782A7C11044566d70d
19 FCF1c8175486f451 (the “Paltrow Wallet”).²⁸¹ Paltrow then announced to investors
20 and her 2.6 million Twitter followers that she had “joined” the BAYC, thanked

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22 <https://etherscan.io/tx/0xc745a3a23dcd996fc58c5e899b18a3d184b00f1eae961fd9e11997f3d272df06>.

23 ²⁷⁹ Kyle, *Moonpay Brought Rapper Lil Durk Into The Bored Ape Yacht Club* (Jan.
24 14, 2022) <https://www.theboredapegazette.com/post/moonpay-brought-rapper-lil-durk-into-the-bored-ape-yacht-club>.

25 ²⁸⁰ Moonpavha (@moonpavha). TIKTOK (May 23, 2022).
<https://www.tiktok.com/@moonpayhq/video/7100942954600123653>.

26 ²⁸¹ TransactionHash: 0x2703ade403717235e6cccec95133ed31d714908516c
27 723388f4ebe382088119, ERC-721: 6141, ETHERSCAN (Jan. 26, 2022, 11:18 PM),
<https://etherscan.io/tx/0x2703ade403717235e6cccec95133ed31d714908516c723388f4ebe3820881198>.

1 MoonPay’s fraudulent concierge service and posted a video of BAYC NFT #6141
2 transforming into a Bored Ape that resembled her.²⁸²



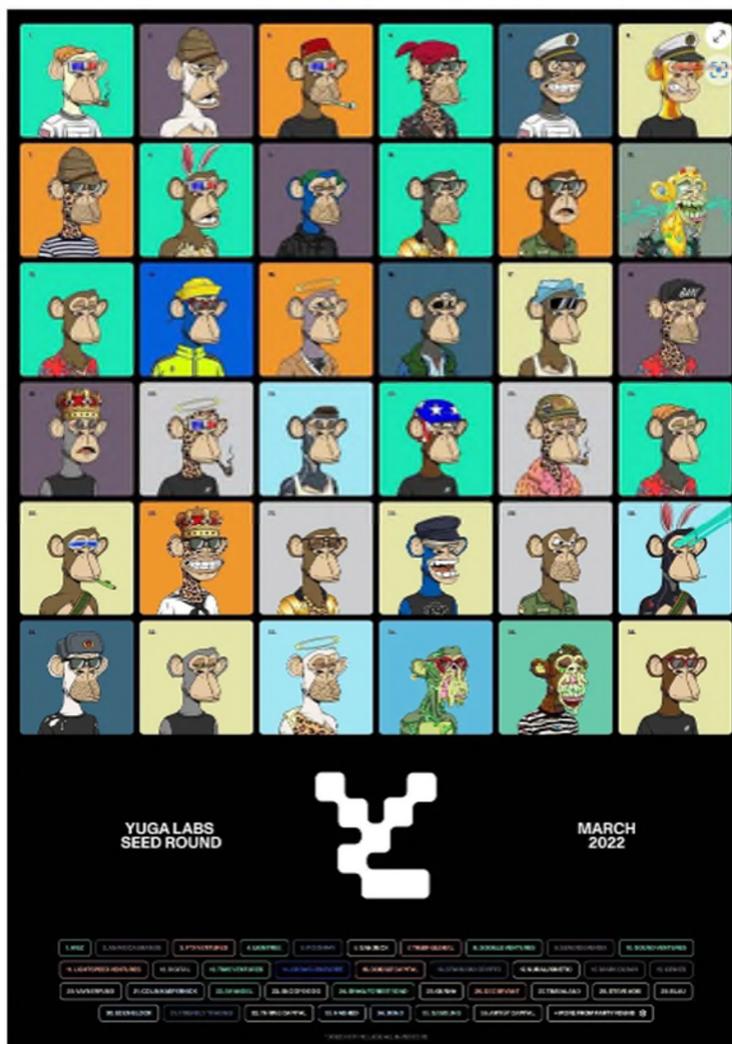
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14 335. All of these promotions for Yuga and facilitated by MoonPay (and its
15 founder Defendant Soto-Wright) failed to disclose that the various Promoter
16 Defendants were MoonPay backers and had a financial interest in its success,
17 which, in turn, caused them to have a vested interest in the increase in sales of Yuga
18 securities and the use of MoonPay.

19 336. On February 25, 2022, the MoonPay Wallet transferred BAYC NFT
20 #7434 to quarterback Colin Kaepernick at wallet address
21 0xAabD4b4837C5617D84fA06c976483F05bd9eDD7C (the “Kaepernick
22 Wallet”).²⁸³ Weeks later, Yuga listed Kaepernick and the BAYC NFT #7434 that
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24 ²⁸² Gwyneth Paltrow (@GwynethPaltrow). TWITTER (Jan. 26, 2022, 3:33 PM),
25 <https://twitter.com/GwynethPaltrow/status/1486482496883625984?s=20&t=8mace2uHFGDIOGYb5N0aWg>.

26 ²⁸³ TransactionHash: 0x57b0e567bd18a80b7d6e2fd685252d30bdd9a051325
27 e9a8c29f49e5328daffbf, ERC-721: 7434, ETHERSCAN (Feb. 25, 2022, 7:24 PM),
28 <https://etherscan.io/tx/0x57b0e567bd18a80b7d6e2fd685252d30bdd9a051325e9a8c29f49e5328daffbf>.

1 MoonPay gave him as one of the 36 people, brands, and venture capital firms that
2 took part in its seed round.



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21 337. On March 17, 2022, MoonPay transferred BAYC NFT #6045 to Major
22 League Soccer at wallet address 0xee1EbDc6FB5bf301c59411CFf6d87FbA
23 5A62c547 (the “MLS Wallet”).²⁸⁴ Major League Soccer named BAYC NFT #6045
24 “Striker” and touted him as “the first digital athlete to sign with a professional

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26 ²⁸⁴ TransactionHash: 0x8b82c4cb7ce0c5b0bcaef78fa785e40118f1448ed385f2c
27 2b1b34c410270c3d5, ERC-721: 6045, ETHERSCAN (Mar. 17, 2022, 5:57 PM),
28 <https://etherscan.io/tx/0x8b82c4cb7ce0c5b0bcaef78fa785e40118f1448ed385f2c2b1b34c410270c3d5>.

1 sports organization.”²⁸⁵ Major League Soccer then promoted “Striker” in the club
2 box at the 2022 MLS All Star game sitting with other BAYC NFTs MoonPay gave
3 to celebrities, including Defendants Ciccone and Broadus.²⁸⁶

4 338. On March 23, 2022, MoonPay transferred BAYC NFT #1506 to Wiz
5 Khalifa at wallet address 0xAB3768f534723e060423CE9BE47080EcC4b8beD5
6 (the “Khalifa Wallet”).²⁸⁷ Wiz Khalifa then promptly changed his Twitter profile
7 picture to BAYC NFT #1506 to show his 36 million Twitter followers and released
8 an eight track album exclusively for ApeCoin holders with Defendant Broadus.²⁸⁸

9 339. On May 17, 2022 and June 30, 2022, the MoonPay Wallet transferred
10 several BAYC NFTs, MAYC NFTs, and Otherdeed NFTs it purchased to the
11 Bicycle Playing Card Company at wallet address
12 0x34e77AD857217D8D93dcC0bAE752E2290A2EFb66 (the “Bicycle Wallet”),
13 including BAYC NFT ## 2263, 9202, 9921, 8708, 8353, 1837, 805, 5866, 7092,
14 6696, 4359, 667, 1700, 1227, MAYC NFT ## 1315, 11610, 14527,²⁸⁹ which the
15 Bicycle Playing Card Company used to make and promote a BAYC themed playing
16 card later that year.

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18 ²⁸⁵ Brian Bell, *Yes, Major League Soccer Really ‘Signed’ a Bored Ape NFT As a*
19 *‘Digital Athlete’* (Aug. 8, 2022), <https://www.pastemagazine.com/tech/nfts/major-league-soccer-mls-signs-bored-ape-nft-nwsl>.

20 ²⁸⁶ Press Release, *Suite Full of Celebrity Bored Apes Spotted at MLS All Star 2022*,
21 PR NEWSWIRE (Aug. 11, 2022), <https://www.prnewswire.com/news-releases/suite-full-of-celebrity-bored-apes-spotted-at-mls-all-star-2022-301604563.html>.

22 ²⁸⁷ TransactionHash: 0x8dabc8be15657f8a2120d7cf99f4d9ae9befe64929f67
23 fdb01cc5a9e81049142, ERC-721: 1506, ETHERSCAN (Mar. 23, 2022, 11:40 PM),
<https://etherscan.io/tx/0x8dabc8be15657f8a2120d7cf99f4d9ae9befe64929f67fdb01cc5a9e81049142>.

24 ²⁸⁸ Kyle, *Wiz Khalifa Joined The Bored Ape Yacht Club and Dropped New*
25 *Music with Snoop Dogg* (March 24, 2022)
<https://www.theboredapegazette.com/post/wiz-khalifa-joined-the-bored-ape-yacht-club-and-dropped-new-music-with-snoop-dogg>.

26 ²⁸⁹ Transaction Hash: 0x34e77AD857217D8D93dcC0bAE752E2290A2EFb66,
27 ERC-721: 1227, ETHERSCAN (Nov. 30, 2021, 4:20 AM),
<https://etherscan.io/address/0x34e77AD857217D8D93dcC0bAE752E2290A2EFb66>.

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340. MoonPay also directly solicited sales of Yuga securities. For example, on January 18, 2022, MoonPay promoted the BAYC Miami Competition by giving away BAYC NFT #570 – which MoonPay previously purchased – as a competition prize.²⁹⁰



²⁹⁰ MoonPay (@MoonPay), TWITTER (Jan. 18, 2022, 10:26 AM), <https://twitter.com/moonpay/status/1483460816070397955>.

1 341. MoonPay also posted the following picture of a joint MoonPay x
2 BAYC mural on its Twitter account:²⁹¹



14 342. In addition to the mural of a Bored Ape with the MoonPay and Yuga
15 corporate logos, the posted image contained a QR code that, if scanned, directed
16 investors to the MoonPay website. On the landing page it states: “Crypto just got
17 easy. A fast and simple way to buy and sell crypto” and there is a button stating,
18 “Buy crypto.”²⁹²

19 343. And as alleged above, MoonPay repeatedly posted videos of celebrities
20 with Soto-Wright, including Lil Baby, Defendant Post, Khaled, Defendant Fallon,
21 Defendant Hilton, Diplo, Garrix, and Wilburn Cash.

22 344. Upon information and belief, as the Company, Executive Defendants,
23 MoonPay Defendants, and Promoter Defendants were engaged in the
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26 ²⁹¹ MoonPay (@moonpay), TWITTER (Jan 11, 2022, 6:29 AM),
https://twitter.com/moonpay/status/1480909703387484165?s=20&t=4E_x-F8TZi8Sorr7QZls0g.

27 ²⁹² See <https://www.moonpay.com/>.

1 aforementioned fraudulent promotions, Defendant Adidas, along with assistance of
2 the MoonPay Defendants and the Executive Defendants, was engaging with other
3 celebrities, influencers, and tastemakers behind the scenes to recruit them into the
4 conspiracy to solicit and sell the Yuga securities through MoonPay.

5 345. On or about March 17, 2022, celebrity jeweler and social media
6 influencer Ben “Baller” Yang made a stunning disclosure regarding the promotion
7 of Yuga securities by the Company, the MoonPay Defendants, and Defendant
8 Adidas, confirming their collective participation in the fraudulent scheme concocted
9 by Oseary and the Executive Defendants. In a now-deleted Twitter Spaces live
10 video, which was memorialized in a YouTube video discussing Ripps’ troubling
11 claims regarding the Company and its founders Defendants Solano, Aronow,
12 Atalay, and Ali and their use of subliminal BAYC NFT collection’s purportedly
13 racist imagery,²⁹³ Yang describes his own personal experience with the conspiracy
14 as follows:

15 **[Yang]:** “Real talk, not once, not twice, three times I’ve been offered
16 a Bored Ape through MoonPay. I’ve had Adidas hit me up in my
17 DMs on Instagram: “Hey Ben, do you want to co-host a space with
18 us? Oh do you own a Bored Ape?” No I fucking don’t. . . . I don’t
19 know what it was but the fact that some of these super top tier all-star
20 NBA players have them, and I was like this is all cap.²⁹⁴ I mean, there
21 was an NDA they tried to send my agent

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

23 **[Yang]:** But what I’m saying if I was to accept one of the Bored Apes
24

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

26 ²⁹³ Philion, *BORED APE NAZI CLUB*, YOUTUBE (June 19, 2022),
27 <https://www.youtube.com/watch?v=XpH3O6mnZvw>.

28 ²⁹⁴ The term “cap” is slang for an exaggeration or outright lie.

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2 [Yang]: Exactly, yeah. You know what the craziest thing about that
3 is that a lot of celebrities who are going into this are probably just
4 stoked to get the ape and they don't even realize a lot of them
5 probably a lot of them don't consult their legal and shit like that
6 beforehand. *But they are actually asking you to commit fraud on
7 their behalf.*²⁹⁵

8 [Emphasis added.]

9 346. Yang's account of the MoonPay scheme is corroborated by another
10 social media influencer, Canadian DJ Vivie-Ann Bakos, known professionally as
11 BLONDISH. Beginning January 8, 2022, Bakos began posting her praise and
12 support of MoonPay and BAYC, and thanked MoonPay's "concierge" service:²⁹⁶

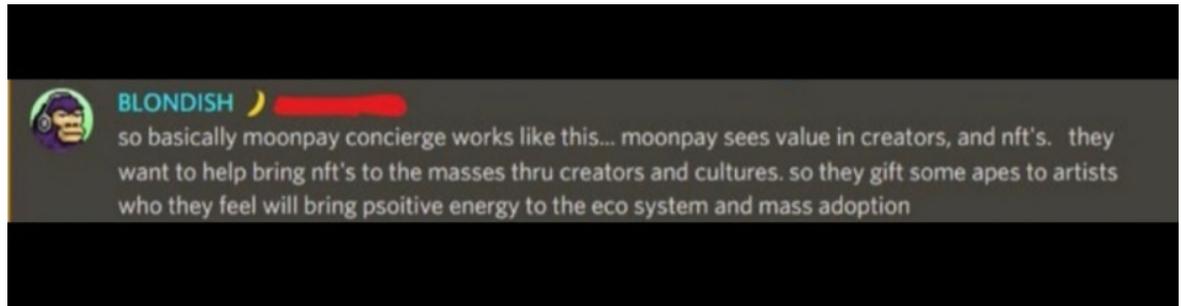


26 ²⁹⁵ Philion, *supra* n.323, at 50:40-51:53.

27 ²⁹⁶ BLONDISH (@blond_ish), TWITTER (Jan. 8, 2022 10:27 AM),
28 https://twitter.com/blond_ish/status/1479882505658507269?s=20.

1 347. 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.”²⁹⁷ That
4 same day, Bakos also promoted the BAYC NFT collection, tagging MoonPay
5 investor and actress Gwyneth Paltrow and announcing that it was “🧘 🧠 time for
6 an ape meditation collab.”

7 348. More significantly, Bakos explained the MoonPay scheme in a
8 message on Discord,²⁹⁸ admitting that “they gift some apes to artists.” Bakos noted
9 that the purpose of the scheme was meant to promote “mass adoption” of the Bored
10 Ape NFTs:



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17 349. 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
22 NFTs without expecting payment. While a MoonPay spokesperson said that it
23 charged its celebrity clients “in full for the price of the NFTs,” another
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25 ²⁹⁷ BLONDISH (@blond_ish), TWITTER (Jan. 27, 2022 6:08 AM),
26 https://twitter.com/blond_ish/status/1486702564943007752.

27 ²⁹⁸ 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 spokesperson declined to comment further when pressed on exactly when invoices
2 were sent and whether all MoonPay’s clients paid their bills.²⁹⁹

3 350. 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.”³⁰⁰ Confidential Witness 1’s disclosures, combined with the revelations
6 from Bakos and Baller, demonstrate that Soto-Wright (with the assistance of
7 Adidas) resorted to fraud to solve this problem for MoonPay and Yuga. And much
8 like 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 **Defendant Soto-Wright**

13 351. On December 7, 2021, MoonPay announced a partnership with the
14 FaZe Clan, a gaming and entertainment company based in Los Angeles through a
15 press release that was issued out of Los Angeles. Defendant Soto-Wright was
16 quoted in this press release, stating that the partnership “holds the potential to create
17 a crypto-gaming juggernaut the likes of which the world has never seen.”³⁰¹ This
18 partnership led to Yuga Financial Product promotions by FaZe Clan.

19 352. On March 3, 2022, Defendant Soto-Wright was quoted in a March 3,
20 2022 press release that was issued out of Los Angeles announcing a NFT
21 partnership between MoonPay and musician deadmau5 and artist Nick denBoer.

22
23 ²⁹⁹ Ryan Weeks, *Crypto hype machine MoonPay gifted Hollywood celebs Bored*
24 *Apes to promote itself: sources*, THE BLOCK (June 9, 2023),
https://www.theblock.co/post/233594/moonpay-gave-hollywood-celebs-bored-apes-to-promote-itself?utm_source=twitter&utm_medium=social.

25 ³⁰⁰ MIXERGY.COM, *supra* n.36.

26 ³⁰¹ Press Release, *FaZe Clan Announces MoonPay as Official Crypto and NFT*
27 *Partner in Multi-Year Deal*, PR NEWSWIRE (Dec. 7, 2021),
<https://www.prnewswire.com/news-releases/faze-clan-announces-moonpay-as-official-crypto-and-nft-partner-in-multi-year-deal-301438827.html>.

1 353. On March 29, 2022, Defendant Soto-Wright attended a FaZe Clan
2 promotional event in Los Angeles. At this event, Soto-Wright met with FaZe Clan
3 influencers that promoted the unregistered Yuga Financial Products.³⁰²

4 354. On March 30, 2022, Defendant Soto-Wright attended and presented at
5 “NFT LA” an NFT conference in Los Angeles that promoted NFTs and metaverse
6 investments.³⁰³

7 355. On April 13, 2022, Defendant Soto-Wright touted his involvement in
8 Hollywood, stating “Hollywood is using smart contracts and blockchain technology
9 to assert their creative intellectual property rights.” Soto-Wright continued, stating
10 that “Major global sports franchises have used digital tokens and NFT collectibles
11 to transform fan engagement. And recording artists are beginning to explore how
12 NFTs can give them more control over royalty rights. These are the underpinnings
13 of a creator economy renaissance.”³⁰⁴

14 356. On April 28, 2022, following the partnership with Defendant Soto-
15 Wright and MoonPay, FaZe Clan co-founder Banks heavily promoted investment
16 into Yuga Financial Products. While in Los Angeles, and pursuant to the
17 promotional agreement with MoonPay and Soto-Wright, Banks told his followers
18 that, “I’m praying and hoping that on the 30th this karma boomerang smacks this
19 d**k with this BAYC Otherside land sale. Again I have \$1,000,000 set aside
20 specifically to dump into this. Unsure if that’ll even be possible, but will be
21

22 ³⁰² *CyberKongz & FaZe Clan “Kongz Arcade” at FaZe Warehouse NFT*, GETTY
23 IMAGES (Mar. 29, 2022), <https://www.gettyimages.co.uk/detail/news-photo/lee-trink-ivan-soto-wright-and-kai-henry-attend-cyberkongz-news-photo/1388599455?adppopup=true>.

24 ³⁰³ *Key Speakers at NFT La Conference*, GETTY IMAGES (Mar. 30, 2022),
25 <https://www.gettyimages.co.uk/detail/news-photo/ivan-soto-wright-chief-executive-officer-and-co-founder-of-news-photo/1239628453?adppopup=true>.

26 ³⁰⁴ Anthony Cuthbertson, *Bitcoin: Justin Bieber, Snoop Dogg and other*
27 *celebrities pour millions into crypto startup MoonPay*, THE INDEPENDENT (Apr. 13,
28 2022), <https://www.independent.co.uk/tech/bitcoin-justin-bieber-moonpay-crypto-b2057025.html>.

1 investing as much as I can This play is truly the most obvious bulletproof play
2 there’s ever been in Web3.” Banks continued to promote the unregistered Yuga
3 Financial Products, stating, “Historically if you’ve ever had the opportunity to not
4 only mint BAYC product, but get in anywhere remotely close to mint you’re
5 probably rich if you weren’t already. Also, it’s only ever been a poor decision to
6 sell anything Yuga has dropped. Sellers have only ever been punished.” “People
7 will undersell this, jump on this opportunity,” he added. “It is reasonable to expect
8 a 10x gain on mint. Conservatively This could be a life-changing play for
9 me.”³⁰⁵

10 357. In the midst of the celebrity promotions like those described above,
11 Defendant Soto-Wright conducted a written Q&A interview with media outlet, *The*
12 *Block*. Soto-Wright falsely described the creation of the Concierge service as first
13 spreading via word of mouth among artists, stating: “So I helped one artist figure it
14 out. They told another who then asked for help. Word started to spread.” Soto-
15 Wright later falsely described it as an accident, stating “A really happy accident I’d
16 say. 100% organic.”³⁰⁶

17 358. When asked to confirm whether celebrities were not paid to promote
18 MoonPay, Soto-Wright demurred, vaguely stating: “Everyone that uses MoonPay
19 Concierge has a commercial relationship with the company in the sense that this is a
20 commercial service we offer our clients. We provide the support and then we
21 invoice for services rendered.” In a follow-up to a question on what fees are
22 charged to concierge clients, Soto-Wright even more vaguely responded that

23
24 ³⁰⁵ Jacob Hale, *FaZe Banks explains why he’s aiming to spend \$1m on BAYC*
25 *Otherside metaverse land*, DEXERTO (Apr. 28, 2022),
<https://www.dexerto.com/tech/faze-banks-explains-why-hes-aiming-to-spend-1m-on-bayc-otherside-metaverse-land-1813552/>.

26 ³⁰⁶ Ryan Weeks, *‘A really happy accident’: MoonPay boss sheds light on how*
27 *the 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-guiding-celebs-into-nfts>.

1 “[w]e’re focused on delivering value to our clients. And I think our growing list of
2 MoonPay concierge clients agrees.”³⁰⁷

3 **Non-Party Khaled**

4 359. On November 26, 2021, during celebrity musician DJ Khaled’s 46th
5 birthday party he appeared in a live video with Defendant Soto-Wright,³⁰⁸ where
6 they both promoted the sale of BAYC NFTs in a staged transaction that was
7 disseminated through social media. In particular, during the 15-second clip first
8 posted by party attendee and BAYC member Austin Rosen, Soto-Wright
9 supposedly helps Khaled to purchase a BAYC NFT using MoonPay’s app. Khaled
10 can be seen video chatting with celebrity producer SwizzBeats while Soto-Wright
11 pretends to conduct the transaction for Khaled. Notably, Khaled tells SwizzBeats:
12 “I just bought a bored ape. Some shit like . . . do you know about it?” Khaled can
13 also be seen shrugging his shoulders, tilting his head, and gesturing to those
14 viewing the video in a manner that suggested “I don’t know what this is about but
15 I’m going along with it.” Khaled turns his phone and Soto-Wright confirms to
16 SwizzBeats that they were discussing the BAYC NFTs. Soto-Wright then presses
17 “confirm” and tells Khaled “you just bought an ape.” MoonPay posted a shorter
18 version of this exchange to its TikTok account, which was viewed more than
19 310,000 times.³⁰⁹ Khaled appeared confused by the interaction in general and did
20 not display any familiarity with the BAYC collection of NFTs at all when he was
21 purportedly buying one of those NFTs for hundreds of thousands of dollars.

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³⁰⁷ *Id.*

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³⁰⁸ Lugo.eth (@WWMLD), TWITTER (Nov. 27, 2021, 9:01 AM), https://twitter.com/WWMLD/status/1464640427315892229?s=20&t=p-6BxhtTTTr_HwM5U1ZywQ.

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³⁰⁹ Moonpayhq (@moonpayhq), TIKTOK (Nov. 28, 2021), <https://www.tiktok.com/@moonpayhq/video/7035640608408620293>.

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1 360. According to the outgoing transactions of Yuga securities in the
2 MoonPay Wallet, on November 30, 2021 the MoonPay Wallet transferred BAYC
3 NFT #7380 – valued at 55.5 ether or approximately \$220,000 at the time – to wallet
4 address 0xa0ac662f58d3507a6f4a37f8532df201d9010fe7 (the “Khaled Wallet”).³¹⁰
5 Later that same day, Khaled promoted the BAYC NFTs on his Instagram,
6 announcing that he had joined the BAYC.³¹¹

7 361. Plaintiffs saw or were aware of Defendant Soto-Wright’s joint
8 promotion of the Company’s collection of BAYC NFTs with DJ Khaled and were
9 induced to purchase and/or continue to hold Yuga securities as a result.

10 362. Upon information and belief, DJ Khaled received Yuga Financial
11 Products and/or other forms of consideration as part or all of his compensation for
12 his use in Soto-Wright’s promotions of sales of the Yuga securities specifically or
13 the Yuga brand generally.

14 **Non-Party Wilburn Cash**

15 363. On November 28, 2021, the MoonPay Wallet transferred BAYC NFT
16 #4672 to wallet address 0x1616b4c7cdb4093befbcca62f3198993327a8e9e (the
17 “Wilburn Cash Wallet”).³¹² That same day, celebrity musician Wilburn Cash
18 (Future) posted BAYC NFT #4672 on his Twitter account.³¹³ The next day, on

19 _____
20 ³¹⁰ Transaction Hash: 0xdecec07f810b5f2c02489f96121bac5186cdf51f93
21 0d847024e0780cbaffe4, ERC-721: 7380, ETHERSCAN (Nov. 30, 2021, 4:20 AM),
22 [https://etherscan.io/tx/0xdecec07f810b5f2c02489f96121bac5186cdf51f930d84702](https://etherscan.io/tx/0xdecec07f810b5f2c02489f96121bac5186cdf51f930d847024e0780cbaffe4)
23 [4e0780cbaffe4](https://etherscan.io/tx/0xdecec07f810b5f2c02489f96121bac5186cdf51f930d847024e0780cbaffe4).

24 ³¹¹ *DJ Khaled Just Updated His Instagram Profile Photo To His Bored Ape*, THE
25 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>.

26 ³¹² Transaction Hash: 0xd8d155d1191c9c9381f1515c8d30483e5c8f01567d
27 c56e358987eb5d2b00d9e5, ERC-721: 4672, ETHERSCAN (Nov. 28, 2021, 5:01
28 AM), [https://etherscan.io/tx/0xd8d155d1191c9c9381f1515c8d30483e5c8f01567](https://etherscan.io/tx/0xd8d155d1191c9c9381f1515c8d30483e5c8f01567dc56e358987eb5d2b00d9e5)
[dc56e358987eb5d2b00d9e5](https://etherscan.io/tx/0xd8d155d1191c9c9381f1515c8d30483e5c8f01567dc56e358987eb5d2b00d9e5).

³¹³ Future/Freebandz (@1future), TWITTER (Nov. 28, 2021 12:47 A.M.),
[https://twitter.com/1future/status/1464833267710889990?s=20&t=b7UnEi0ycK49k](https://twitter.com/1future/status/1464833267710889990?s=20&t=b7UnEi0ycK49kgQy3FiFPg)
[gQy3FiFPg](https://twitter.com/1future/status/1464833267710889990?s=20&t=b7UnEi0ycK49kgQy3FiFPg).

1 November 29, 2021, MoonPay’s TikTok account “moonpayhq” posted a video³¹⁴
2 with MoonPay promotor Wilburn Cash wherein Wilburn Cash can be seen
3 changing his profile picture on Instagram to BAYC NFT #4672. Wilburn Cash can
4 also be heard saying “yessir” in approval as he endorses the BAYC NFT collection.

5 364. Plaintiffs saw or were aware of MoonPay’s joint promotion with
6 Wilburn Cash of the Company’s collection of BAYC NFTs and were induced to
7 purchase and/or continue to hold Yuga securities as a result.

8 365. Upon information and belief, Wilburn Cash received Yuga Financial
9 Products and/or other forms of consideration as part or all of his compensation for
10 his use in Soto-Wright’s promotion of sales of the Yuga securities specifically or
11 the Yuga brand generally.

12 **Non-Party Hart**

13 366. On January 23, 2022, the MoonPay Wallet transferred BAYC NFT
14 #9258 to Kevin Hart at wallet address 0xBBDaC7bA85AF15420AFd1F4aA3313
15 C3535b15Cde (the “Hart Wallet”).³¹⁵

16 367. Later that day, Watcher.guru posted about Kevin Hart’s BAYC NFT
17 #9258 acquisition on Twitter/X, improperly claiming Hart had purchased the NFT
18 for over \$200,000:

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24 ³¹⁴ Moonpayhq (@moonpayhq), TIKTOK (Nov. 28, 2021),
25 https://www.tiktok.com/@moonpayhq/video/7035876504391257349?is_from_webapp=v1&item_id=7035876504391257349.

26 ³¹⁵ Transaction Hash: 0xddbcd7fc92fb8d60b2dd22cf6e02c82dd0bb8fc2f79ff
27 53e38c9d30d104f6a506, ERC-721: 9258, ETHERSCAN (January 23, 2022, 8:13 PM
28 UTC), <https://etherscan.io/tx/0xddbcd7fc92fb8d60b2dd22cf6e02c82dd0bb8fc2f79ff53e38c9d30d104f6a50>.

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368. Hart also promoted his joining the BAYC with BAYC NFT #9258:

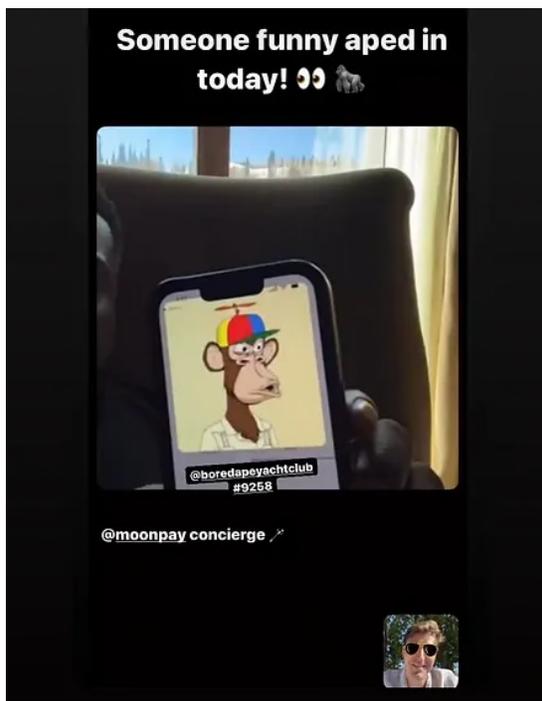
The actor subtly showed off his new Bored Ape #9258 by retweeting a Watcher.Guru post noting the sale. While many of his celebrity friends have decided to change their profile pictures on social media platforms to their BAYC NFTs, Hart chose to approach his purchase more subtly.

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.³¹⁶

³¹⁶ Hristina Yordanova, *Kevin Hart Joins the Bored Ape Family*, DAPPRADAR (Jan. 24, 2022), <https://dappradar.com/blog/kevin-hart-joins-the-bored-ape-family>.

1 MoonPay also posted the following picture of comedian Kevin Hart on its Twitter
2 account with the caption “Someone funny aped in today!”:³¹⁷



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14 369. Upon information and belief, Kevin Hart’s retweet of the
15 Watcher.Guru’s Twitter post appears to have been deleted.

16 370. Plaintiffs saw the MoonPay promotions from Kevin Hart and Soto-
17 Wright regarding the Company’s collection of BAYC NFTs and were induced to
18 purchase and/or continue to hold Yuga securities as a result of these misleading
19 promotions.

20 371. Upon information and belief, Kevin Hart received Yuga Financial
21 Products and/or other forms of consideration as part or all of his compensation for
22 his use in Soto-Wright’s promotions of the Yuga securities specifically or the Yuga
23 brand generally.

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26 ³¹⁷ Swensonk7, *Comedian Kevin Hart Joined The Bored Ape Yacht Club*,
27 *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>.

d. ApeCoin DAO Defendants

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2 372. As part of the announcement about the formation of the ApeDAO and
3 Ape Foundation, Defendant Ohanian stated: “Today we’re making the ‘Club’
4 bigger with ApeCoin Web3 is being integrated into our art, music, and culture
5 more and more everyday and it all starts with community. I believe this community
6 will build, expand, partner, and disrupt in a massive way.”³¹⁸

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

10 374. Defendant Wu posted a picture of an BAYC NFT with the following
11 thread on her official Twitter account: “So honored to join the @apecoin DAO
12 board, launched today along with the \$APE token.”³¹⁹ “Love or hate NFTs, they
13 have captured the consumer imagination and continue to be on the onboarding ramp
14 for the mainstream into web3. @BoredApeYC is leading the way as the #1 NFT
15 brand, becoming a household name and building the next gen “Disney” of our
16 generation.”³²⁰ “@BoredApeYC has led innovation on IP frameworks, like giving
17 NFT holders full commercial rights to their IP without a royalty. This has
18 accelerated awareness rather than leaked value.”³²¹ “More NFT brands are being
19 minted, creating hybrid entertainment and retail empires, licensing their IP and
20

21 ³¹⁸ Kate Irwin, *ApeCoin Launches for Bored Ape Ethereum NFT Holders with*
22 *Reddit, FTX, Animoca Execs on Board*, DECRYPT (Mar. 16, 2022),
[https://decrypt.co/95282/apecoin-ape-launches-for-bored-apes-nft-holders-with-](https://decrypt.co/95282/apecoin-ape-launches-for-bored-apes-nft-holders-with-reddit-ftx-animoca-on-board)
23 [reddit-ftx-animoca-on-board](https://decrypt.co/95282/apecoin-ape-launches-for-bored-apes-nft-holders-with-reddit-ftx-animoca-on-board).

24 ³¹⁹ Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), <https://twitter.com/amytongwu/status/1504238389737967622?s=20&t=bdw9Sbdaq71NFK8gF6oQqg>.

25 ³²⁰ Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), <https://twitter.com/amytongwu/status/1504238391323418628?s=20&t=bdw9Sbdaq71NFK8gF6oQqg>.

26 ³²¹ Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), <https://twitter.com/amytongwu/status/1504238392149745664>.

1 creating 1st and 3rd party merchandise, games, shows, etc. and using hybrid
2 web2/web3 marketing playbooks, leveraging and creating celebrity, and creating
3 culture.”³²² “I’m absolutely honored to play a supporting role with @FTX_Official
4 in the future of @ApeCoin DAO at the nexus of culture, gaming, entertainment.
5 LFG! 🚀🚀👊”³²³

6 375. Wu also touted Yuga Financial Products as “long term” investments.
7 For example, on May 12, 2022, Wu, replying to the May 11, 2022 promotion of
8 Yuga’s metaverse on the official @OthersideMeta Twitter account, touted the long-
9 term viability and growth prospects for the BAYC metaverse: “Step 1 open world
10 lobby, step 2 game studios building player experiences in game, step 3 #BAYC
11 metaverse. Roblox was founded 18 yrs ago. *Bullish for the long-term here with*
12 *this @yugalabs team!* 👊👊🚀.”³²⁴

13 376. On January 2, 2022, ApeDAO Board Defendant Bajwa promoted the
14 growth of Yuga Financial Products to investors, stating that celebrity rapper (and
15 close associate with Defendant Broadus) “@Eminem purchased a @BoredApeYC
16 NFT for 123.45 ETH” and touting that the MAYC NFTs “saw \$71M in trading
17 volumes the last week.”³²⁵

18 3. The ApeCoin Token Sale

19 377. As investor interest in the BAYC NFTs and broader ecosystem was
20 reaching a fevered pitch, Yuga and Executive Defendants Aronow, Solano, Atalay,
21 Ali, Muniz, Shoemaker, and Ehrlund launched the ApeCoin token (“APE”) in an
22

23 ³²² Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), <https://twitter.com/amytongwu/status/1504238394007764992>.

24 ³²³ Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM),
25 <https://twitter.com/amytongwu/status/1504238394892771333>.

26 ³²⁴ Amy Wu (@amytongwu), TWITTER May 12, 2022, 2:07 PM),
27 <https://x.com/amytongwu/status/1524813489520447489?s=20>

28 ³²⁵ Maaria.eth (@maariabajwa), TWITTER (Jan. 2, 2022 6:31 PM),
<https://twitter.com/maariabajwa/status/1477829825830084614>.

1 effort to cash in further on the misleading promotional schemes. This was a pure
2 cash grab by those Defendants cloaked in the air of altruistically giving back to the
3 BAYC community of investors.

4 378. Yuga and the Executive Defendants announced it would be publishing
5 the ApeCoin token on October 8, 2021 via a Twitter post.³²⁶ At the time, it was not
6 yet named. Yuga’s announcement starts, “Good evening, apes. Been hearing a
7 question around the club a lot: WEN TOKEN? Wen token indeed Some
8 thoughts below.” Yuga’s announcement further discusses that Yuga must
9 “construct a legally compliant token and set it up in a responsible, sustainable way.”
10 Yuga also mentions the token is meant to “benefit our club members, and bring the
11 BAYC ecosystem to a much wider audience.” Yuga represents it would launch the
12 token “in a sound way.” Yuga further announced that it planned to launch its token
13 in Q1, 2022, and hired legal team Fenwick West and cryptography company
14 Horizen Labs to aid in the creation of their token. Yuga finally links the coming
15 ApeCoin directly to Bored Ape Yacht Club and Yuga itself, saying that, “if info
16 [about the ApeCoin] doesn’t come from our official @BoredApeYC or @yugalabs
17 Twitter, it’s not us.”³²⁷

18 379. Defendants enriched themselves and other insiders with billions of
19 dollars of APE Coins. Eighty million APE (8%) went to the BAYC founders,
20 Defendants Solano, Aronow, Atalay and Ali. One hundred fifty million APE (15%)
21 went to the Company. One hundred forty million APE (14%) went to “launch
22 contributors” made up of Company partners and investors, including investors
23 Andreessen Horowitz and Animoca Brands. One hundred fifty million APE (15%)
24 went to holders of the BAYC, MAYC, and BAKC NFTs. One million APE (1%)
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26 ³²⁶ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Oct. 8, 2021, 1:12 PM).
27 <https://twitter.com/BoredApeYC/status/1446569318540615681>.

28 ³²⁷ *Id.*

1 went to the Jane Goodall Legacy Foundation. The remaining 470 million APE
2 (47%) went to the ApeCoin DAO treasury, of which Executive Defendants Solano,
3 Aronow, Atalay, Ali, the Company, and their investors and partners maintain
4 considerable influence through the voting rights granted by their hundreds of
5 millions of ApeCoins.³²⁸

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

11 381. ApeCoin reached an all-time high of over \$26 before plummeting to
12 approximately \$1.77 per coin in August 2023.³²⁹ The Company, its founders, and
13 its investors' allotment of 230 million total ApeCoins it issued to themselves were
14 thus worth about \$6 billion at ApeCoin's all-time high, and are currently still worth
15 more than \$410 million, even with prices reaching an all-time low in August 2023.

16 382. In an attempt to shield the Company and Executive Defendants (and
17 himself) from liability related to the solicitation and sale of the unregistered
18 securities, Oseary and Yuga's outside legal counsel belatedly formed the ApeCoin
19 DAO, in conjunction with the Ape Foundation. The ApeCoin DAO's board or
20 "Special Council," which consisted of ApeDAO Board Defendants Alexis Ohanian,
21 Amy Wu, Maaria Bajwa, and non-Defendants Yat Siu and Dean Steinbeck, who
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24 ³²⁸ *What is ApeCoin (APE)*, BITSTAMP LEARN, (Nov. 16, 2022),
25 <https://www.bitstamp.net/learn/cryptocurrency-guide/what-is-apecoin-ape/>;
26 *ApeCoin is rewarding Bored Ape insiders with billions of dollars*, QUARTZ (Mar.
27 23, 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)
28 [insiders](https://qz.com/2145867/apecoin-has-padded-the-pockets-of-bored-ape-insiders).

27 ³²⁹ *ApeCoin*, COINGECKO (last visited Oct. 16, 2023),
28 <https://www.coingecko.com/en/coins/apecoin>.

1 governed and controlled both the DAO and the Foundation.³³⁰ Executive
2 Defendants and ApeDAO Defendants used their influence and ApeCoin voting
3 rights to pay themselves exorbitant salaries of over \$20,000 per month using the
4 470 million ApeCoin in the ApeDAO treasury to further cash in on their scheme at
5 the expense of retail investors.³³¹

6 383. Put another way, Oseary – with the assistance of the Executive
7 Defendants and ApeDAO Board Defendants – created the Ape Foundation and
8 ApeDAO Board in order to maintain the “vener of plausible deniability – an
9 independent entity allocating tokens to a company and its founders, rather than that
10 company and its founders pumping their own investments.”³³²

11 384. But according to a July 25, 2022 article, “What is ApeCoin and Who is
12 Behind This Cryptocurrency?,” it is the Company (not the Foundation, DAO, or its
13 board) that is “responsible for all major projects and acquisitions related to the
14 Bored Ape Yacht Club family. If you want to do something with the intellectual
15 property of the collection, you have to go through the company.” Within that
16 article, Muniz is quoted as having plans to “adopt ApeCoin as the primary currency
17 for all new products and services,” which, as the article notes, “ties the asset’s value
18 to the success of the Bored Ape collection as one all.”³³³

19 385. Yuga and Executive Defendants’ attempts to distance themselves from
20 the issuance of the ApeCoin was nothing more than a façade. Indeed, the so-called
21 Ape Foundation and ApeCoin DAO were, in truth, just alter egos for the Company
22 and used as a front for the Company to obscure its and the Executive Defendants’
23

24 ³³⁰ Will Gottsegen, *What is ApeCoin and Who Is Behind It?*, COINDESK (Mar.
18, 2022), <https://www.coindesk.com/layer2/2022/03/18/what-is-apecoin-and-who-is-behind-it/>.

25 ³³¹ Michael (@MiKeMeUpP), TWITTER (Jun. 11, 2023, 9:18 AM).
26 <https://twitter.com/MiKeMeUpP/status/1667929299033407488>.

27 ³³² *Id.*

28 ³³³ *Id.*

1 role as statutory sellers and solicitors of unregistered securities, namely, ApeCoin.
2 Despite Yuga and Executive Defendants’ efforts to use shallow legal schemes to
3 shield themselves from liability for issuing the ApeCoin securities, Yuga admitted
4 publicly, as early as October 2021, that it would be responsible for the development
5 and issuance of the ApeCoin token.³³⁴

6 386. On March 16, 2022, ApeDAO Board Defendants announced the
7 impending launch of ApeCoin, releasing the following statements on the verified
8 ApeCoin Twitter account, which, upon information and belief, is owned/controlled
9 by ApeDAO Board Defendants:

- 10 • “Introducing ApeCoin (\$APE), a token for culture, gaming, and
11 commerce used to empower a decentralized community building at the
12 forefront of web3.”³³⁵
- 13 • “ApeCoin is owned and operated by the ApeCoin DAO, a
14 decentralized organization where each token holder gets to vote on
15 governance and use of the Ecosystem Fund. Holding ApeCoin is the
16 only requirement for membership in the ApeCoin DAO.”³³⁶
- 17 • “The DAO is supported by Ape Foundation, which was created to act
18 as the legal steward of ApeCoin and administer the decisions made by
19 the ApeCoin DAO community. (Basically someone needs to sign the
20 checks.)”³³⁷

21
22 ³³⁴ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Oct. 8, 2021, 1:12 PM).
23 <https://twitter.com/BoredApeYC/status/1446569318540615681>.

24 ³³⁵ ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM),
25 [https://twitter.com/apecoin/status/1504201556165644298?s=20&t=iudEUt2QH4G
UHTXCQ0maNg](https://twitter.com/apecoin/status/1504201556165644298?s=20&t=iudEUt2QH4GUHTXCQ0maNg).

26 ³³⁶ ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM),
<https://twitter.com/apecoin/status/1504201557147070465>.

27 ³³⁷ ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM),
28 <https://twitter.com/apecoin/status/1504201557914664962>.

- 1 • “62% of the total supply of ApeCoin is allocated to the ApeCoin
2 community, a portion of which (15% of total supply) will be available
3 to claim starting tomorrow at 8:30 am ET.”³³⁸
- 4 • “The airdrop claim consisting of 15% of the total supply of ApeCoin
5 will be made available to @BoredApeYC NFT holders (Bored Apes
6 and Mutant Apes, as well as #BAKC dogs paired with either #BAYC
7 or #MAYC).”³³⁹
- 8 • “*For everyone else who wants to ape in: ApeCoin will be available to*
9 *all and is expected to begin trading on major crypto exchanges*
10 *ASAP.* We’ll tweet as that happens!”³⁴⁰ [Emphasis added.]

11 387. On that same day, Yuga’s official Twitter proclaimed: “We’re excited
12 to announce we’re adopting ApeCoin as the primary token for the Bored Ape Yacht
13 Club ecosystem as well as future products and services.”³⁴¹ Yuga coordinated
14 ApeCoin’s adoption by various influencers and brands and highlighted that
15 adoption on its Twitter page.

16 388. Yuga advertised that ApeCoin would be the ecosystem’s governance
17 token, allowing ApeCoin holders to participate in the ApeCoin DAO by voting “on
18 how the Ecosystem Fund will be distributed by the APE Foundation to promote a
19 diverse and self-sustaining ecosystem.”³⁴²

22 ³³⁸ ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), <https://twitter.com/apecoin/status/1504201558917095427>.

23 ³³⁹ ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), <https://twitter.com/apecoin/status/1504201559781089280>.

24 ³⁴⁰ ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), <https://twitter.com/apecoin/status/1504201560624185346>.

25 ³⁴¹ Yuga Labs (@yugalabs), TWITTER (Mar. 16, 2022, 2:08 PM), <https://twitter.com/yugalabs/status/1504202913694031884?s=20>.

26 ³⁴² *ApeCoin DAO Governance*, APECOIN.COM (last visited Oct. 16, 2023), <https://apecoin.com/governance>.

1 389. Yuga also advertised that ApeCoin would also provide “access to
2 certain parts of the ecosystem that are otherwise unavailable, such as exclusive
3 games, merch, events, and services.”³⁴³

4 390. The day after the ApeCoin launch, March 17, 2022, ApeDAO
5 Defendant Bajwa provided instructions to investors like Plaintiffs and the Class on
6 how to review their ApeCoin token airdrop allocation.³⁴⁴

7 391. That same day, March 17, 2022, the ApeCoin Twitter account (which
8 was controlled by ApeDAO Defendants Ohanian, Wu, and Bajwa) promoted a
9 Twitter Space hosted by Yuga-affiliate Farokh and featuring each of the ApeDAO
10 Defendants who solicited purchases of ApeCoin during this event.

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

16 393. The Yuga Labs Pitch Deck signaled the importance of the celebrity
17 endorsements, bragging that “[c]elebrities are buying Apes to signal that they know
18 what’s up.”³⁴⁵ The Yuga Labs Pitch Deck also introduced ApeCoin, stating
19 “APECoin will be the currency of our metaverse. One unifying coin with which to
20 power our app store like marketplace.”³⁴⁶

21 394. Yuga planned for the Otherside MetaRPG to launch with a land sale.
22 These virtual plots of land would purportedly “corresponded to real land” in the
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24 ³⁴³ *About ApeCoin: ApeCoin Protocol*, APECOIN.COM (last visited Oct. 16,
25 2023), <https://apecoin.com/about>.

26 ³⁴⁴ Maaria.eth (@maariabajwa), TWITTER (Mar. 17, 2022 9:57 AM),
<https://twitter.com/maariabajwa/status/1504502258716725278?s=20>.

27 ³⁴⁵ *Yuga Labs Pitch Deck*, at *16.

28 ³⁴⁶ *Id.* at *62-*64.

1 Yuga game.³⁴⁷ In order to increase demand for its ApeCoin token, Yuga announced
 2 that these virtual plots of land could be purchased only with ApeCoin tokens.

3 395. The Yuga Labs Pitch Deck stated:

- 4 • The MetaRPG will be made up of 200k land plots total; all
 5 launched through Animoca.
- 6 • Genesis drop will be 100k plots.
 - 7 ○ 30% of that will go to BAYC/MAYC, leaving
 8 ~70k for public sale (and then another 100k in
 9 follow up drop).
 - 10 ○ The conservative estimate for the land price is 1
 11 ETH each plot = \$200M in primary sales for the
 12 genesis drop alone.³⁴⁸

13 396. The Yuga Pitch Deck also provided the following income statement:³⁴⁹

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%	
Expense			
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	\$ 455.20	\$ 127.11	
Net Revenue %	84.4%	92.4%	

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26 ³⁴⁷ *Id.* at *73.

27 ³⁴⁸ *Id.* at *74.

28 ³⁴⁹ *Id.* at *85.

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

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

7 399. 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
11 the 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.”³⁵⁰ Similarly, on
14 March 16, 2022 and March 17, 2022, the ApeCoin Twitter promoted the ApeCoin
15 token claim allocated for BAYC NFT holders. Yuga’s COO, Defendant
16 Shoemaker, amplified these promotions by disseminating them all through her own
17 Twitter account “@SodaOps.” In fact, Shoemaker consistently reposts the
18 solicitations and misleading statements from the main BAYC, Otherside, ApeCoin,
19 and Yuga Twitter accounts. For example, Shoemaker amplified the Company’s
20 March 11, 2022 promotion of Yuga’ acquisition of the CryptoPunks and Meetbits
21 NFT collections. Shoemaker also shared the April 23, 2022 promotions from the
22 Company’s Otherside Twitter account related to the Otherdeed mint. During late
23 May/early June of 2022, Shoemaker repeatedly promoted marketing messages from
24 the BAYC Twitter account for ApeFest 2022.

25 _____
26 ³⁵⁰ ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM),
27 <https://twitter.com/apecoin/status/1504201556165644298?s=20&t=oYZDBOcdZ4V1im5Ls9qmRg>;
28 Yuga Labs (@yugalabs), TWITTER (Mar. 16, 2022, 2:08 PM),
<https://twitter.com/yugalabs/status/1504202913694031884?s=20&t=oYZDBOcdZ4V1im5Ls9qmRg>.

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

3 401. Yuga’s NFT and ApeCoin schemes positioned it to raise capital and
4 launch another financial product: so-called virtual land NFTs or Otherdeeds.
5 Specifically, on March 22, 2022, the Company announced that it closed its Series
6 Seed funding round, led by a host of venture capital firms that had direct ties to
7 Yuga, including, but not limited to, Andreessen Horowitz’s a16z crypto fund
8 (Defendant Lyons), Sound Ventures (Defendant Oseary), SevenSevenSix
9 (Defendant Ohanian), Artist Capital Management (funded by ApeDAO board
10 member Steinbeck’s firm Horizen Labs, which also operated the ApeCoin staking
11 program for Yuga), Hashed (funded by Animoca Brands, which itself was
12 purchased by Yuga), Lightspeed Ventures (Defendant Wu formerly served as a
13 Lightspeed Ventures partner before leaving to join FTX Ventures), and FTX
14 Ventures (Defendant Wu served as the web3 investment leader before stepping
15 down from both FTX Ventures and the ApeDAO Board within days of the FTX
16 collapse). Yuga brought in another \$450 million during this round. The
17 announcement also revealed its metaverse virtual land project, Otherside.³⁵¹

18 402. The announcement contained the following statements from
19 Defendants Muniz, Lyons, and Oseary, respectively:

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

25 ³⁵¹ Press Release, *Yuga Labs Closes \$450 Million Seed Round of Funding,*
26 *Valuing the Company at \$4 Billion; Confirms Plans for Metaverse Project,*
27 BUSINESS 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>.
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1 “Yuga Labs has quickly become a web3 culture, gaming, and
2 entertainment empire,” said Chris Lyons, general partner at a16z
3 crypto. “Mainstream adoption in web3 is accelerating at lightning
4 speed, and Yuga is at the forefront of merging culture and innovation
5 for everyone to enter the metaverse. We’re thrilled to invest in this
6 brilliant team and their vision, and help forge the next frontier of
7 community-owned entertainment.”

8 “This capital will give Yuga speed to market on many things
9 underway, and bring in new partners with strategic thinking that share
10 the vision,” said Yuga Labs partner Guy Oseary.³⁵²

11 403. On March 27, 2022, Defendant Ohanian promoted ApeCoin tokens
12 and the Bored Ape Yacht Club brand in conjunction with the 2022 Academy
13 Awards show, posting a picture of an ApeCoin cufflink and the following text:
14 “#OSCARS2022 MUST-HAVE RED CARPET ACCESSORY
15 @BOREDAPEYACHTCLUB.”³⁵³ Ohanian posted pictures of himself and Serena
16 Williams on the red carpet at the Oscars and close up pictures of his ApeCoin
17 cufflinks.³⁵⁴

18 404. On April 26, 2022, Defendant Oseary submitted a proposal to the
19 ApeDAO titled: “AIP Idea: Guy Oseary as ApeCoin Representative,” which
20 essentially requested that Oseary be given up to 1% of the Ecosystem Fund as a
21 slush fund for him to “utilize on behalf of the APE Foundation.”³⁵⁵ The proposal is
22 listed below:

23 ³⁵² *Id.*

24 ³⁵³ Alexis Ohanian (@alexisohanian), TWITTER (Mar. 27, 2022, 2:53 PM),
25 <https://twitter.com/alexisohanian/status/1508200457214201858?s=20&t=We5UwwM3WMDYkGHgb3jgZg>.

26 ³⁵⁴ *Id.*; see also Chris Katje, *Here’s How Alexis Ohanian Sported The Bored Ape
27 Yacht Club at The Oscars*, BENZINGA (Mar. 28, 2022), [https://www.benzinga.com/
28 markets/cryptocurrency/22/03/26328054/heres-how-alexis-ohanian-sported-the-
bored-ape-yacht-club-at-the-oscars2](https://www.benzinga.com/markets/cryptocurrency/22/03/26328054/heres-how-alexis-ohanian-sported-the-bored-ape-yacht-club-at-the-oscars2).

³⁵⁵ 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](https://forum.apecoin.com/t/aip-idea-guy-oseary-as-apecoin-representative/5153).

1 ABSTRACT

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

6 * * *

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

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

21 RATIONALE

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

27 A LITTLE ABOUT ME

28 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.

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.

1
2 I've been working with and supporting artists ever since — for
3 over 30 years now. My passion and personal interests over the last
4 few decades have placed me at the intersection of entertainment and
5 tech. I've been investing with my partner and friend Ashton Kutcher,
6 who is also my co-founder in A-Grade Investments, Sound Ventures,
7 and Sound Ventures Blockchain. Our early-stage investments include
8 Airbnb, Uber, Spotify, Calm, Robinhood, Gitlab, Duolingo,
9 Superrare, Opensea, and many others.

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

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

21 SPECIFICATIONS

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

- 24 • This will only be spent on purchases and deals that directly
25 benefit the APE Foundation.
- 26 • Any ROI gained from deals I make will go back into the
27 Ecosystem Fund.
- 28 • 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.
- Details on all purchases and deals that I make will be made
fully available to the ApeCoin DAO community after the
fact via quarterly transparency reports that detail how much
was spent, on what, and why.
- This is separate from the budgets allocated in AIP-3.

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STEPS TO IMPLEMENT

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

TIMELINE

This would go into effect immediately if this AIP passes and would last until the next fiscal calendar closes at the end of 2023.

OVERALL COST

Up to 1% of the Ecosystem Fund, from when the proposal passes through Dec 31, 2023.³⁵⁶

[Emphasis added.]

405. On April 30, 2022, a few days after the Adidas Phase 2 promotion and Oseary’s ApeDAO proposal, the Company minted the virtual land for its Otherside metaverse. Within 24 hours, Yuga, Oseary, the Executive Defendants, and the ApeDAO Board Defendants generated more than \$561 million from Otherside’s “Otherdeed” NFT sales. Each Otherdeed NFT is meant to be the “key to claiming land” in Otherside and its metaverse game.

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

³⁵⁶ *Id.*

1 407. According to data from *CryptoSlam*, Otherdeed has already seen over
2 \$242 million in total secondary volume traded. Of that figure, over \$190 million
3 was on OpenSea.³⁵⁷

4 408. Due to the high number of NFTs and higher demand, the Otherdeed
5 mint, which began at 9:00 pm EST Saturday night, immediately caused an
6 Ethereum gas³⁵⁸ war. According to reports on the Otherdeed sale, “[t]raffic on
7 block explorer Etherscan also led to reports that the site wasn’t working for many
8 users. Worse, gas fees suddenly spiked to thousands of dollars per transaction.”³⁵⁹
9 Indeed, while some were able to get their transactions processed within a few hours
10 for a couple hundred dollars in gas fees, “others reported paying upwards of \$4,000
11 for a single transaction. (The average gwei, or price of Ethereum gas, over the
12 course of the night was over 6,000, *roughly 100 to 200 times normal*.)”³⁶⁰

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

17 410. Influencer and MoonPay investor Alexander Pall claimed to have
18 bought two BAYC NFTs along with his bandmate Andrew Taggart. Pall touted the
19 “power moves” that Yuga was making giving investors IP rights “to the people that
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22 ³⁵⁷ Kate Irwin, *Yuga Labs See \$561 Million in Otherside Ethereum NFT sales*
23 *Within 24 hours*, DECRYPT (May 1, 2022), <https://decrypt.co/99156/yuga-labs-sees-561-million-in-otherside-ethereum-nft-sales-within-24-hours>

24 ³⁵⁸ The term “gas” in the crypto context refers to a unit describing the amount of
25 computational power needed to execute specific operations on the network.
26 Because every Ethereum transaction (which included ApeCoin and Yuga NFT
transactions) consumes computational resources, transactions come with a cost.
Gas is the fee needed to conduct an Ethereum transaction.

27 ³⁵⁹ Irwin, *supra* n.343.

28 ³⁶⁰ *Id.*

1 bought those things.” “While . . . they are incredibly expensive, it was a . . . fun
2 social experiment and I think that’s a lot of what you are seeing in crypto.”³⁶¹

3 411. After the Otherside minting, the Company and BAYC held “ApeFest
4 2022” in New York, which like ApeFest 2021, was billed and promoted as an
5 exclusive event for only BAYC and MAYC NFT owners.³⁶² Defendant Broadus
6 and Eminem performed as the closing act of ApeFest 2022, where they dropped a
7 new track and music video featuring their Bored Apes.³⁶³ BAYC and MAYC NFT
8 holders could use ApeCoin to purchase exclusive ApeFest 2022 merchandise
9 featuring Broadus and Eminem.³⁶⁴

10 412. On July 16, 2022, Yuga published a “Litepaper” describing the
11 Otherside metaverse project. The Litepaper acknowledged that nearly all
12 significant functionalities had not yet been developed and that purchases of
13 Otherside land would thus need to rely on Yuga’s efforts to develop the
14 metaverse.³⁶⁵

15 413. On September 7, 2022, the Ape Foundation announced that it was
16 seeking a three-month extension for the ApeDAO Board Defendants’ six-month
17 inaugural term.³⁶⁶ In the letter to the “ApeCoin Community,” the Ape Foundation
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19 ³⁶¹ BanklessHQ (@banklessHQ), TIKTOK (June 21, 2022),
20 https://www.tiktok.com/@banklessHQ/video/7111625644068326699?is_from_webapp=v1&item_id=7111625644068326699.

21 ³⁶² Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 7, 2022, 6:27 PM),
<https://twitter.com/BoredApeYC/status/1534346420341424128>.

22 ³⁶³ Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 27, 2022, 2:00
23 PM), <https://twitter.com/BoredApeYC/status/1541526909951033347>.

24 ³⁶⁴ Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 23, 2022, 7:02
PM), <https://twitter.com/BoredApeYC/status/1540153474851246080>.

25 ³⁶⁵ *The Otherside Litepaper*, OTHERSIDE (July 16, 2022),
<https://otherside.xyz/litepaper>.

26 ³⁶⁶ Swensonk7, *The Ape Foundation Announced That Its Term Is Almost Up and*
27 *That They Want a 3 Month Extension*, THE BORED APE GAZETTE (Sep. 7, 2022),
<https://www.theboredapegazette.com/post/the-ape-foundation-announced-that-its-term-is-almost-up-and-that-they-want-a-3-month-extension>.

1 stated that “the community hasn’t submitted any viable AIPs specifying what this
2 handover looks like, who might take over, or how we might conduct an election.
3 This suggests the original election specifications were ambiguous.”³⁶⁷ Accordingly,
4 the Ape Foundation proposed to extend the term, claiming that keeping the
5 ApeDAO Board Defendants in their positions would “provide continuity and
6 stability: the Foundation doesn’t just execute what the community wants – it makes
7 sure we are compliant with legal and regulatory requirements and guidance so we
8 can operate effectively.”³⁶⁸ The letter proposal concluded by directing investors
9 with questions to speak with ApeDAO Board Defendant Bajwa.

10 414. That same day, Defendant Wu posted the following message on her
11 Twitter account: “Grateful for a dynamic 6 month serving on the first @apecoin
12 DAO Special Council! We are asking the community for an extension of 3 months
13 to focus on ironing out a first election process that balances continuity, fairness, and
14 transparency.”³⁶⁹ Wu’s post linked to “AIP-113: Extending AIP-1 – the DAO
15 Process,” which “propose[d] a three-month extension of the terms laid out in AIP-1
16 to (1) provide time for the development of a proper and thorough Ape Foundation
17 election framework and process; (2) allow the community to better understand and
18 ultimately engage with whatever process emerges; and (3) enable the DAO to
19 continue functioning coherently beyond September 30.”³⁷⁰

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22 ³⁶⁷ *Id.*

23 ³⁶⁸ *Id.*

24 ³⁶⁹ Amy Wu (@amytongwu), TWITTER (Sept. 7, 2022 1:20 P.M.),
<https://twitter.com/amytongwu/status/1567563499156676608?s=20&t=ptw4dASRf-r2XQWNZIM-EQ>.

25 ³⁷⁰ 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.

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

8 Never in my career have I seen such a complete failure of
9 corporate controls and such a complete absence of trustworthy
10 financial information as occurred here . . . From compromised
11 systems integrity and faulty regulatory oversight abroad, to the
12 concentration of control in the hands of a very small group of
13 inexperienced, unsophisticated and potentially compromised
14 individuals, this situation is unprecedented.³⁷¹

15 416. Wu was a senior executive at FTX during the time it suffered from an
16 “unprecedented and complete failure of corporate controls.” Eight days after
17 resigning from FTX, on November 19, 2022, Wu announced that she would not
18 continue to serve as an ApeDAO Board member after the expiration of her one-
19 year term in December 2022.³⁷² The announcement further disclosed that
20 Defendant Bajwa and board member Dean Steinbeck also resigned from the
21 ApeDAO Board under the same terms.

22 417. Another way that Yuga Labs promoted sales of its BAYC NFT
23 collection and ApeCoin tokens was through films. On April 11, 2022, Yuga
24 announced that the Company and Coinbase would be collaborating to produce a

24 ³⁷¹ Michelle Chapman, *FTX’s new CEO worked on Enron’s bankruptcy but he’s*
25 *still never seen such a ‘complete failure’ and ‘absence of trustworthy financial*
26 *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/)
27 [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/).

27 ³⁷² *Three ApeCoin Council Members Won’t Run Again*, LUCKYTRADER (Nov.
28 19, 2022), [https://luckytrader.com/news/three-ape-coin-council-members-won-t-](https://luckytrader.com/news/three-ape-coin-council-members-won-t-run-again)
[run-again](https://luckytrader.com/news/three-ape-coin-council-members-won-t-run-again).

1 three-part movie series, the “Degen Trilogy,” to promote BAYC and ApeCoin.
2 The first installment was released in June 2022 at the 4th annual “NFT.NYC”
3 event.³⁷³ The Company later published this first part of the trilogy on YouTube on
4 July 26, 2022. As part of the movie trilogy promotion, the Company announced
5 there was a “casting call” to holders of BAYC (and teased a second casting call for
6 holder of the Mutant Apes NFTs), to submit their NFTs to be considered for use in
7 the film. The owners of the selected NFTs would earn a licensing fee of \$10,000
8 worth of Bitcoin or ApeCoin.³⁷⁴

9 418. According to the description of Degen Trilogy: Part 1, it is a “three-
10 part film from the biggest names in crypto and you, the community. Enter a ragtag
11 bunch of Degens. Each with their own special skills and their own hidden
12 objectives. All chasing the same goal – ApeCoin.” The description further
13 declared that “if they don’t make it, we’re not gonna make it. Here begins the era
14 of the Degens.”³⁷⁵ This failed attempt of a movie trilogy was a thinly veiled attempt
15 to market both projects to the public and boost their value. In all likelihood that
16 was the plan from its inception.

17 419. After the release of this first part of the promotional trilogy, the
18 project was canceled at the end of 2022 after a poor reception by the broader NFT
19 community, which was still reeling from the collapse of FTX.

20 420. ApeCoin was misleadingly promoted as being able to be used for sale
21 of luxury goods, unique pieces of media, and other well-known brands. On March
22

23
24 ³⁷³ *Coinbase to Produce Bored Ape Yacht Club NFT Movie Trilogy*, WAYA
25 (Apr. 24, 2022), <https://waya.media/coinbase-to-produce-bored-ape-yacht-club-nft-movie-trilogy/>.

26 ³⁷⁴ *Id.*: Bored Ape Yacht Club (@BoredApeYC). Twitter (Apr. 11, 2022 12:00
27 PM), <https://twitter.com/BoredApeYC/status/1513592766307225600?s=20>.

28 ³⁷⁵ Coinbase, *The Degen Trilogy: Part 1*, YOUTUBE (July 26, 2022),
https://www.youtube.com/watch?v=I26DE3c48rY&ab_channel=Coinbase.

1 19, 2022, Snoop Dogg tweeted (retweeted by ApeCoin) that he would be releasing
2 an “all Ape mixtape” that was “only 4 \$Ape holders !!!.”³⁷⁶

3 421. On March 20, 2022, *Time* magazine announced that it would be
4 accepting ApeCoin for digital subscriptions.³⁷⁷ On March 23, 2022 online casino
5 BetOnline tweeted (retweeted by ApeCoin) that it would begin accepting ApeCoin
6 for its online sportsbook and casino.³⁷⁸

7 422. On April 30, 2022, the ApeCoin twitter announced that OpenSea was
8 now accepting ApeCoin to make NFT purchases on the platform.³⁷⁹ According to
9 the current version of the Help Center on OpenSea, however, it does not list
10 ApeCoin as a core currency you can use on the platform.³⁸⁰ Searching for
11 ApeCoin on the OpenSea Help Center yields zero results.³⁸¹

12 423. On August 2, 2022, ApeCoin tweeted that Gucci would begin to allow
13 customers to pay for purchases in store with ApeCoin.³⁸² Likewise on August 4,
14 2022, ApeCoin retweeted a tweet from luxury watch brand Tag Heuer that it would
15 also be accepting ApeCoin.³⁸³

16
17 ³⁷⁶ Snoop Dogg (@SnoopDogg), TWITTER (Mar. 19, 2022 9:31 PM),
18 <https://twitter.com/SnoopDogg/status/1505401536511324160>.

19 ³⁷⁷ Aaron Limbu, *Time Magazine to Start Accepting ApeCoin*,
20 BLOCKCHAIN.NEWS (Mar. 21, 2022), <https://blockchain.news/news/time-magazine-to-start-accepting-apecoin>.

21 ³⁷⁸ BetOnline.ag (@betonline_ag), TWITTER (Mar. 23, 2022 12:32 PM),
22 https://twitter.com/betonline_ag/status/1506715522125078529.

23 ³⁷⁹ ApeCoin (@apecoin), TWITTER (Apr. 30, 2022 6:41 AM),
24 <https://twitter.com/apecoin/status/1520397829323182080?s=20>.

25 ³⁸⁰ *What Currencies can I use on OpenSea?*, OPENSEA (last visited Oct. 16,
26 2023), <https://support.opensea.io/hc/en-us/articles/1500003082521-What-currencies-can-I-use-on-OpenSea>.

27 ³⁸¹ *Search Results*, <https://support.opensea.io/hc/en-us/search?utf8=%E2%9C%93&query=apecoin>.

28 ³⁸² ApeCoin (@apecoin), TWITTER (Aug. 2, 2022 7:19 AM),
<https://twitter.com/apecoin/status/1554472012139085825>.

³⁸³ ApeCoin (@apecoin), TWITTER (Aug. 4, 2022 8:16 PM),
<https://twitter.com/apecoin/status/1555392202968268806>.

1 volume, making it appear as if the NFT is being actively traded. Circular trading
2 undermines the integrity of the market by creating false demand, misleading
3 investors and affecting the prices.

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

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

13 430. Through these methods, pervasive wash trading has artificially inflated
14 the price and volume of the Yuga NFTs. BAYC #8099, for example, exhibits signs
15 of wash trading.³⁸⁶ Researchers found that related wallets significantly increased
16 the price from \$95,000 to \$166,000 in transactions between them, before selling the
17 artificially inflated priced NFT into the market. These inflated transactions affect
18 volume figures and sales averages and create a misleading picture for investors
19 about the popularity of the NFT collections.

20 431. The wash trading problem in the NFT industry has been extensively
21 studied by researchers and blockchain companies. Researchers with MIT and
22 Columbia University, for example, put out a research paper entitled NFT Wash
23 Trading Detection.³⁸⁷ In addition to BAYC NFT #8099, the researchers specifically

24 _____
25 ³⁸⁶ On the Mark Data, *Using Network Graphs to Visualize Potential Fraud on*
26 *Ethereum Blockchain*, MEDIUM (Dec. 20, 2022),
<https://onthemarkdata.medium.com/using-network-graphs-to-visualize-potential-fraud-on-ethereum-blockchain-1d8cc0ad361d>.

27 ³⁸⁷ Derek Liu, et al., *NFT Wash Trading Detection*, MIT AND COLUMBIA UNIV.
28 (Feb. 7, 2023), <https://arxiv.org/pdf/2305.01543.pdf>.

1 identified BAYC NFTs #6946, 1332, 8498, 5862, and 8259 as having their price
2 increased due to wash sales cycles. Even when using conservative detection
3 techniques, researchers flagged 72 wash sales cycles for BAYC NFTs, 52 wash sale
4 cycles for Mutant Apes, and 29 wash sales cycles for Otherdeeds.

5 432. Likewise, Zash, a company that launched a “Wash Trading Detection
6 Service” also identified BAYC NFT #3221 has exhibiting signs of wash trading.³⁸⁸
7 Furthermore, the Zash article highlights BAYC NFTs #947, 1763, 8739, and 3738
8 as exhibiting wash trading identifiers. Zash found that for BAYC NFTs #3221 and
9 8738, over 60% of transactions were identified as suspected wash trades. Likewise,
10 the trading volume from suspected wash traded BAYC NFTs accounted for 96-99%
11 of all trading volume associated with those NFTs.

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

14 434. Moreover, according to a report issued by *CoinTelegraph Research*
15 entitled “bitsCrunch NFT Wash Trade Report for 2022,” Yuga’s Otherdeeds NFT
16 collection was ranked as a Top 10 collection of 2022 by number of wash traded
17 NFTs.³⁸⁹

18 435. NFT wash trades are particularly prevalent in new NFT marketplaces
19 that offer reward tokens based on the volume traded. These marketplaces
20 incentivize wash trading behavior, making it easier for traders to engage in this
21 fraudulent activity to skew prices and the market data. Manipulative trading on one
22 platform can impact prices on other platforms. Indeed, the *CoinTelegraph*
23

24
25 ³⁸⁸ *Zash Launches ‘Wash Trading Detection Service,’* COINMARKETCAP (Dec.
26 22, 2022), <https://coinmarketcap.com/community/articles/63a509afd16ae879abc15cb8/>.

27 ³⁸⁹ *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 *Research* report identified wash trading patterns effectuated on incentivized
2 platforms later harming victims on NFT exchanges like OpenSea.

3 436. LooksRare is one of the largest incentivized NFT platforms, launching
4 in January 2022. LooksRare was created by two anonymous co-founders: “Zodd”
5 and “Guts.” High levels of buying and selling of NFTs results in \$LOOKS
6 rewards. The *CoinTelegraph Research* report revealed that a staggering 96% of the
7 total volume traded on LooksRare was wash trade volume. John Egan, CEO of
8 L’Atelier, an independent subsidiary of BNP Paribas that researches new
9 technologies, characterized the transactions on LooksRare reviewed by *Reuters* as
10 “wash trades” that would be banned in traditional markets like equities or debt
11 because they give a false impression of demand for an asset.³⁹⁰

12 **a. Suspected Wash Trading by Binance and**
13 **Dinghau Xiao**

14 437. Importantly, a Yuga Financial Product whale connected to Binance and
15 FTX, Dinghau Xiao (Dingaling), also serves as a key advisor to LooksRare. Xiao is
16 considered one of LooksRare’s biggest advocates. LooksRare did a private sale
17 where investors could send a maximum 37.5 ETH for an ownership interest in
18 LooksRare.³⁹¹ Xiao’s Dingaling address was LooksRare’s first investor listed on
19 the blockchain for these transactions. There were also newly created anonymous
20 wallets that put in the max value of 37.5 ETH, all sourced from Binance and for the
21 sole purpose of participating in the LooksRare private sale. In fact, Xiao is believed
22 to be the true identity of one of LooksRare’s anonymous founder, Zodd.³⁹²

23
24
25 ³⁹⁰ Elizabeth Howcroft, *Unreal demand? Irregular sales worth billions fire up*
26 *wild NFT market*, REUTERS (Feb. 6, 2022), <https://www.reuters.com/article/fintech-nft-looksrare-idCAKBN2KC0FZ>.

27 ³⁹¹ Kitonyi, *supra* n.18.

28 ³⁹² *Id.*

1 438. Shortly after the launch of LooksRare, in February 2022, Xiao became
2 the largest holder of Yuga assets.³⁹³ By the time of the ApeCoin air drop in March
3 2022, Xiao acquired 113 Bored Ape NFTs, 98 Mutant Ape NFTs, and 110 Kennel
4 Club NFTs. His airdrop was over 1.43 million ApeCoin.

5 439. After minting so many Bored Ape NFTs in the initial mint, Xiao’s
6 Dingaling wallet began to purchase Bored Ape NFTs far above the floor price in the
7 lead up to the Mutant Ape NFT launch. On August 21, 2021, when the floor price
8 was just 14.9, Xiao purchased 11 Bored Apes NFTs from 10:35am to 10:37am.
9 Each of these purchases was significantly above the floor price, from 21.89 ETH to
10 22.5 ETH. By August 24, 2021, the Bored Ape NFT floor price had risen to
11 23.25.³⁹⁴

12 440. Importantly, Xiao is a vocal supporter of wash trading, at one time
13 calling it “genius.”³⁹⁵ Indeed, immediately after the launch of LooksRare, Xiao
14 tweeted:³⁹⁶

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

19 441. In an interview with *Reuters*, Xiao, under his dingaling alias, admitted
20 to being an investor and advisor to LooksRare, stated that the wash trading looked
21 bad but may be part of the “necessary steps” to gain market share. He further was
22
23

24 ³⁹³ THE BORED APE GAZETTE, *supra* n.16.

25 ³⁹⁴ The “floor” refers to the market price of an NFT, *i.e.*, the lowest asking price
26 of a seller.

27 ³⁹⁵ Kitonyi, *supra* n.18.

28 ³⁹⁶ Dingaling (@dingalingts), TWITTER (Jan. 11, 2022 9:26 PM),
<https://twitter.com/dingalingts/status/1481135479940874241>.

1 quoted as saying: “People have been real mad about wash trading, but I’m
2 struggling to understand why. It’s a free market.”³⁹⁷

3 442. By February 3, 2022, just weeks after LooksRare launched, Bored Ape
4 NFTs had already amassed \$42.1 million on LooksRare’s platform.³⁹⁸ Price floors
5 rose significantly during this time. On January 9, 2022, before LooksRare
6 launched, the floor prices of the Yuga NFTs were 67 ETH for Bored Apes, 13.4
7 ETH for Mutant Apes, and 4.987 ETH for Kennel Clubs. By February 3, 2022, the
8 significant amount of NFT wash trading from Xiao’s LooksRare platform caused
9 the floor prices to rise to 98 ETH for Bored Apes, 19.8 ETH for Mutant Apes, and
10 8.35 ETH for Kennel Clubs.

11 **b. Suspected Wash Trading by Defendants**
12 **MoonPay and Soto-Wright**

13 443. Recently, LooksRare and MoonPay announced a multi-year
14 partnership.³⁹⁹

15 444. In sum, Yuga’s failure to register the Yuga Financial Products led to
16 the pervasive practices whereby bad actors, including those closely connected to
17 Defendants, were able to manipulate prices and effectuate the scheme identified
18 herein to inflate the price of the Yuga Financial Products.

19 445. These manipulative techniques, and more, were also used by MoonPay
20 and Ivan Soto-Wright as part of their orchestrated pump of the price of the Yuga
21 Financial Products.

22
23 ³⁹⁷ Howcroft, *supra* n.293.

24 ³⁹⁸ Alyssa Exposito, *OpenSea monthly volumes top \$5B as NFTs continue to*
25 *mainstream*, COINTELEGRAPH (Feb. 3, 2022), <https://cointelegraph.com/news/opensea-monthly-volumes-top-5b-as-nfts-continue-to-mainstream>.

26 ³⁹⁹ 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/>.

1 446. MoonPay itself, and Soto-Wright personally, traded in Yuga NFTs
2 while having material non-public information about the celebrity endorsement deals
3 and the sources of the funds used for these purchases.

4 447. Soto-Wright made these purchases through his “IvanHodl.eth” Wallet,
5 at Ethereum wallet address 0x695626A661831A618ae846482FE8abF6c8d4529C
6 (also referred to as the “Soto-Wright Wallet”). The IvanHodl wallet was funded by
7 the Moonpay.eth wallet as well as by the Ethereum wallet address
8 0x7AFC12C8DD2e6591581D95586eB2c2A4905a12a9 (the “Funding Wallet”).

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

14 449. To begin, on August 30, 2021, Ivan Soto-Wright used the Soto-Wright
15 Wallet to purchase Mutant Ape NFT #3016 for 9.899 ETH (\$31,958.53), a price far
16 exceeding the floor price, which was around 5 ETH at the time (\$13,300). Mutant
17 Apes NFTs were first released two days prior, on August 28, 2021.⁴⁰⁰

18 450. On September 18, 2021, Soto-Wright used the Soto-Wright Wallet to
19 purchase BAYC NFT #8410 for 45 ETH (\$154,609.20), a price far above the floor
20 price. The then-present floor price was approximately 35 ETH (\$119,000).⁴⁰¹

21 451. On September 24, 2021, Soto-Wright used the Soto-Wright Wallet to
22 purchase two Kennel Club NFTs, Kennel Club NFT #8386 at 13 ETH

23 _____
24 ⁴⁰⁰ TransactionHash: 0x29c75f71f0424dff30d8701e39c6dd252079fd8905b209
25 9847df1d53688a9c7e ETHERSCAN (Aug. 30, 2021, 01:24:55AM+UTC),
26 <https://etherscan.io/tx/0x29c75f71f0424dff30d8701e39c6dd252079fd8905b2099847df1d53688a9c7e>.

26 ⁴⁰¹ TransactionHash: 0x2ea9d20ee64ea16e83f1f0f7876bea3700ed52cda12e8d
27 0767bee31a774d83fa ETHERSCAN (Sept. 18, 2021, 12:11:10AM+UTC),
28 <https://etherscan.io/tx/0x2ea9d20ee64ea16e83f1f0f7876bea3700ed52cda12e8d0767bee31a774d83fa>.

1 (\$38,101.18)⁴⁰² and Kennel Club NFT #119 at 3.18 ETH (\$9,320.13),⁴⁰³ each above
2 the floor price, with the 13 ETH purchase being approximately 4.5 times the then-
3 present floor price of 2.85 ETH.

4 452. On October 5, 2021, Soto-Wright used the Soto-Wright Wallet to
5 purchase a BAYC NFT #2589 for 65 ETH (\$228,545.85), when the floor price was
6 38.5 ETH (\$130,395.65).⁴⁰⁴

7 453. On October 25, 2021, Soto-Wright used the Soto-Wright Wallet to
8 purchase a Bored Ape #1554 for 35.97 ETH (\$147,582), which was above the floor
9 price.⁴⁰⁵

10 454. On October 27, 2021, MoonPay, through its MoonPay Wallet,
11 purchased a BAYC NFT #129 above the floor price. The next day, MoonPay
12 transferred BAYC NFT #129 to Lil Baby, a hip hop star that was part of
13 MoonPay's Series A funding round.

14 455. On November 8, 2021, MoonPay purchased a Bored Ape NFT #599
15 for 46.6 ETH, far exceeding the floor price of 30 ETH. Less than ten minutes later,
16 MoonPay transferred Bored Ape NFT #599 to Jimmy Fallon.

17
18
19 ⁴⁰² TransactionHash: 0xc50d58cd605798dc4fec4f8b5c191c5e241096152f
20 55d1c9f2c921d4838cbd08 ETHERSCAN (Sept. 24, 2021, 3:22:07AM+UTC),
<https://etherscan.io/tx/0xc50d58cd605798dc4fec4f8b5c191c5e241096152f55d1c9f2c921d4838cbd08>.

21 ⁴⁰³ TransactionHash: 0x086145338ba6f4d01ef8f37aea89fe9c761fd041b1c4194c
22 2974fd1c1f3a7f38 ETHERSCAN (Sept. 24, 2021, 3:29:46 AM+UTC),
<https://etherscan.io/tx/0x086145338ba6f4d01ef8f37aea89fe9c761fd041b1c4194c2974fd1c1f3a7f38>.

23 ⁴⁰⁴ TransactionHash: 0x47418b87e2021c241a92b3a6957df97ebefba7e400bc
24 051e249b86a8225ddc7d ETHERSCAN Oct. 05, 2021, 11:06:23 PM+UTC),
<https://etherscan.io/tx/0x47418b87e2021c241a92b3a6957df97ebefba7e400bc051e249b86a8225ddc7d>.

25 ⁴⁰⁵ TransactionHash:
26 0xb67884438fe49f5dd847e7a93a4678959e7a6179999430004443f7b00df103fd
27 ETHERSCAN (Oct. 25, 2021, 07:09:16 AM+UTC),
<https://etherscan.io/tx/0xb67884438fe49f5dd847e7a93a4678959e7a6179999430004443f7b00df103fd>.

1 456. On November 11, 2021, MoonPay purchased a Bored Ape NFT #5384
2 for 54 ETH, far exceeding the floor price of 30 ETH.

3 457. On November 15, 2021, MoonPay purchased a Mutant Ape NFT
4 #1315 above the floor price.

5 458. Also on November 15, 2021, at approximately 7:34 PM, MoonPay
6 purchased a Bored Ape NFT for 250 ETH, a price that was many multiplies of the
7 floor price. Thereafter at 8:27pm, MoonPay purchased a Bored Ape NFT at 50
8 ETH, which was also significantly higher than the floor price. Two minutes later at
9 8:29 PM, MoonPay purchased a Bored Ape NFT for 55 ETH. Three minutes later
10 at 8:32 PM, MoonPay purchased a Bored Ape NFT for 45 ETH. One minute later
11 at 8:33 PM, MoonPay purchased a Bored Ape NFT for 50 ETH. At 8:51 PM,
12 MoonPay purchased a Bored Ape NFT for 44.9 ETH. Finally, at 8:53 PM,
13 MoonPay purchased a Bored Ape NFT for 48.88 ETH. Each of these transactions
14 were significantly above the then-current floor price. The floor price of Bored Apes
15 rose dramatically in the wake of these manipulative trades, rising from 30 ETH on
16 November 13, 2021 to around 39 ETH on November 16, 2021.

17 459. On November 18, 2021, MoonPay purchased a Bored Ape NFT #9883
18 for 60 ETH. The price floor went from 39 ETH on November 16, 2021 to 49 ETH
19 on November 19, 2021.

20 460. On November 26, 2021, MoonPay purchased a Bored Ape NFT #2263
21 for 69 ETH, far exceeding the floor price of 43.7 ETH.

22 461. On November 27, 2021, MoonPay purchased a Bored Ape NFT #7380
23 for 55.5 ETH, again significantly higher than the 43.7 ETH floor price.

24 462. On December 3, 2021, MoonPay purchased a Bored Ape NFT #2759
25 for 70 ETH, far above the floor price of 49 ETH.

26 463. On December 7, 2021, MoonPay purchased one BAYC NFT #6723,
27 Mutant Ape NFT ##23446 and 23447, and Kennel Club NFT #894 for 85 ETH.

28

1 This purchase was far above what would have been a combined floor price of
2 approximately 63.53 ETH for the four Yuga NFTs.

3 464. On December 23, 2021, MoonPay purchased a Bored Ape NFT #6958
4 for 54.44 ETH, far above the price floor of 49 ETH.

5 465. On January 1, 2022, MoonPay purchased a Bored Ape NFT for 65.2
6 ETH, significantly above the price floor of 58 ETH.

7 466. On January 6, 2022, MoonPay purchased a Mutant Ape NFT for 18.95
8 ETH, far exceeding the floor price of 14 ETH.

9 467. On January 7, 2022, MoonPay purchased a Mutant Ape NFT for 19.4
10 ETH, significantly above the floor price of approximately 14 ETH.

11 468. On January 9, 2022, MoonPay purchased a Bored Ape NFT for 79.5
12 ETH, far exceeding the floor price of 67 ETH.

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

16 470. On January 14, 2022, MoonPay purchased a BAYC NFT for 79 ETH,
17 far exceeding the 74 ETH floor price. Later that day, MoonPay made a purchase of
18 a BAYC NFT for 111 ETH, once again significantly exceeding the 74 ETH floor
19 price.

20 471. To make all of these purchases, as noted above, the Moonpay.eth
21 wallet was being funded by the Funding Wallet, as well as wallets associated with
22 FTX and Binance. On January 21, 2022, in two transactions, an FTX wallet sent
23 647 ETH and 249 ETH to the Moonpay.eth wallet address.

24 472. On January 22, 2022, MoonPay made a purchase of a BAYC NFT for
25 119 ETH, far exceeding the floor price of 83 ETH.

26 473. On January 24, 2022, MoonPay made a purchase of a BAYC NFT for
27 93.69 ETH, far exceeding the floor price of 83 ETH.

28

1 474. On January 26, 2022, MoonPay made a purchase of a BAYC NFT for
2 105 ETH, far exceeding the floor price of 83 ETH.

3 475. On February 9, 2022, MoonPay purchased a BAYC NFT for 100 ETH,
4 which exceeded the floor price. Also on February 9, 2022, MoonPay received 124
5 ETH from the Binance wallet.

6 476. On February 11, 2022, MoonPay received 250 ETH from the FTX
7 wallet. Thereafter on February 13, 2022, MoonPay received approximately 300
8 ETH from the FTX wallet in three transactions.

9 477. On February 16, 2022, MoonPay purchased a BAYC NFT for 105
10 ETH, far exceeding the floor price of 97 ETH. On February 17, 2022, MoonPay
11 received 250 ETH from the FTX wallet.

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

15 479. On February 22, 2022, MoonPay made a purchase of a BAYC NFT for
16 120 ETH, significantly above the floor price of 89 ETH. Also on February 22,
17 2022, MoonPay received 100 ETH from the FTX wallet.

18 480. On February 23, 2022, MoonPay made a purchase of a BAYC NFT for
19 95 ETH, far exceeding the floor price of 89 ETH. Also on February 23, 2022,
20 MoonPay received 99 ETH from the FTX wallet.

21 481. On February 25, 2022, MoonPay purchased a BAYC NFT for 569
22 ETH, approximately \$1.5 million, which was many multiples of the then-current
23 floor price of 89 ETH. Also on February 25, 2022, MoonPay received 550 ETH
24 from the FTX wallet.

25 482. On March 2, 2022, MoonPay purchased a BAYC NFT for 112.5 ETH,
26 significantly above the floor price of 82 ETH. Also on March 2, 2022, MoonPay
27 received 192 ETH from the Binance wallet.

28

1 483. On March 8, 2022, MoonPay received 75 ETH from the FTX wallet.

2 484. On March 9, 2022, MoonPay purchased a BAYC NFT for 86.9 ETH,
3 far exceeding the floor price of 65 ETH. Less than 20 minutes later, MoonPay
4 purchased another BAYC significantly above the floor price for 77 ETH. Also on
5 March 9, 2022, MoonPay received 160 ETH from the FTX wallet.

6 485. On March 10, 2022, MoonPay received 284 ETH in two transactions
7 from the FTX wallet. On March 11, 2022, MoonPay received 150 ETH from the
8 FTX wallet.

9 486. On March 13, 2022, MoonPay purchased a BAYC NFT for 100 ETH,
10 significantly above the floor price of 70 ETH.

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

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

17 489. On March 17, 2022, MoonPay purchased three BAYC NFTs in the
18 span of a minute. These purchases, at 106.9 ETH, 108 ETH, and 108.4 ETH, were
19 all significantly above the floor price of approximately 88 ETH. Also on March 17,
20 2022, MoonPay received 322 ETH from the FTX wallet.

21 490. On March 21, 2022, MoonPay made a purchase of a BAYC NFT for
22 110 ETH, far exceeding the floor price of 77 ETH. Also on March 21, 2022,
23 MoonPay received 110 ETH from the FTX wallet.

24 491. On March 23, 2022, MoonPay received 115 ETH from the FTX wallet.
25 On March 29, 2022, MoonPay received 217 ETH from the FTX wallet. On April 2,
26 2022, MoonPay received 42 ETH from the FTX wallet in two transactions. On
27

28

1 April 3, 2022, MoonPay received 6.9 ETH from the FTX wallet. On April 5, 2022,
2 MoonPay received 200 ETH from the FTX wallet.

3 492. On April 6, 2022, MoonPay purchased a BAYC NFT for 195 ETH, a
4 price significantly higher than the floor price of 107 ETH. Also on April 6, 2022,
5 MoonPay received 194 ETH from the FTX wallet.

6 493. On April 9, 2022, MoonPay made a purchase of a BAYC NFT for 130
7 ETH, far exceeding the floor price of 105 ETH.

8 494. On April 17, 2022, MoonPay made a purchase of a BAYC NFT for
9 130 ETH, far exceeding the floor price of 101 ETH. Also on April 17, 2022,
10 MoonPay received 130 ETH from the FTX wallet.

11 495. On April 20, 2022, MoonPay made a purchase of a BAYC NFT for
12 155 ETH, significantly higher than the floor price of approximately 101 ETH. Also
13 on April 20, 2022, MoonPay received 155 ETH from the FTX wallet.

14 496. On April 22, 2022, MoonPay made a purchase of a BAYC NFT for
15 129.99 ETH, significantly exceeding the floor price of approximately 108 ETH.

16 497. On April 23, 2022, MoonPay received 45 ETH from the FTX wallet.

17 498. On April 25, 2022, Soto-Wright received one Otherside Land NFT as
18 part of a mint of 360 Otherside NFTs. This insider mint was five days before the
19 public mint on April 30, 2022.

20 499. On April 30, 2022, MoonPay made a purchase of a BAYC NFT for
21 265 ETH, a price far exceeding the floor price of 128 ETH. Also on April 30, 2022,
22 MoonPay received transfers of 155 ETH and 265 ETH from the FTX wallet.

23 500. On May 13, 2022, MoonPay received 100 ETH from the FTX wallet.
24 On May 16, 2022, MoonPay received 150 ETH from FTX.

25 501. On May 19, 2022, MoonPay made a purchase of a BAYC NFT for
26 169.69 ETH, a significantly higher price than the floor price of approximately 92
27 ETH. Also on May 19, 2022, MoonPay received 97 ETH from the Binance wallet.

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1 502. On May 19, 2022, MoonPay made a purchase of a BAYC NFT for 97
2 ETH, which was again above the floor price.

3 503. On June 7, 2022, MoonPay made a purchase of a BAYC NFT for 103
4 ETH, significantly above the floor price of around 86 ETH. Also on June 7, 2022,
5 MoonPay received 100 ETH from the FTX wallet.

6 504. On July 5, 2022, MoonPay made a purchase of a BAYC NFT for 125
7 ETH, significantly above the floor price of 88.16 ETH. Also on July 5, 2022,
8 MoonPay received 125 ETH from the Binance wallet.

9 505. MoonPay continued to receive transfers from FTX in the summer of
10 2022, before FTX began experiencing the liquidity issues that ultimately led to its
11 downfall. After receiving just 1 ETH on October 17, 2022, and just 3 ETH on
12 October 27, 2022, the ETH transfers from FTX stopped. Without the steady flow
13 of liquidity from FTX, MoonPay was unable to continue to manipulate the price of
14 the Yuga NFTs, leading to significant drop in value and price floor among the
15 collections.

16 **C. Additional Evidence of Manipulative Acts**

17 506. Given the close relationships between Yuga and FTX, the ongoing
18 trial of Sam Bankman-Fried has provided a unique insight into the connections
19 between the companies and the various related entities. Exhibits placed into
20 evidence by the prosecution have specific references to Yuga Labs, BAYC, the
21 Sotheby's Auction, ApeCoin, and the Otherdeed land sale.

22 507. An internal FTX/Alameda spreadsheet of projects that FTX entities
23 invested in has a "Yuga Labs (BAYC)" entry. The entry reflects that the
24 investment was in Yuga equity, the status was closed, and the investment amount
25 was \$50 million. The lead was Amy Wu. Another entry notes that the valuation of
26 Yuga was \$4 billion. The closing date for the investment was March 7, 2022,
27 around the height of the celebrity promotions.

1 508. The spreadsheet also has a “BAYC (Sotheby Auction)” entry. The
2 entry reflects an “OTC, Token” investment for \$24,400,000. The token quantity is
3 listed at 101. This entry is noted as “exited” with a “Latest/Exit Token Price”
4 listed at \$334,503. The “Token P&L” entry shows a profit of over \$9.3 million.

5 509. The \$50 million equity investment into Yuga was made by FTX
6 Ventures Ltd. Internal Alameda documents put into evidence by prosecutors
7 showed that Alameda CEO Caroline Ellison conducted a “deep dive” for
8 “Ventures stuff we could sell.” Exhibits also demonstrate that Ellison had “regular
9 chats” with the FTX Ventures team.

10 510. Having an individual associated with FTX was important so that
11 inside information regarding ApeCoin could be shared with FTX’s sister
12 organization, the hedge fund Alameda Research. Thus, Amy Wu was installed on
13 the ApeDAO special council.

14 511. Alameda was one of the main market makers for ApeCoin, having
15 received a distribution of 750,000 ApeCoin tokens from the ApeCoin token
16 distributor contract before the public launch. Moreover, one of the entities that
17 was tasked with administering the Ape Foundation, Crestbridge Cayman Limited,
18 is led by individuals associated with Cayman-based FTX/Alameda entities, namely
19 LedgerPrime Digital Asset Opportunities Offshore Fund.

20 512. Finally, a file containing Caroline Ellison’s personal notes was
21 introduced by prosecutors. This exhibit evidences that, despite its role as a market
22 maker for ApeCoin, and despite FTX executive Amy Wu being on the ApeDAO
23 Council, and despite a large equity investment through FTX Ventures, Alameda
24 put in a large short position on ApeCoin tokens before the “land drop” or the
25 Otherdeed NFT launch. This position resulted in significant profit for Alameda as
26 the price of ApeCoin tokens crashed in the immediate aftermath of the Otherdeed
27 launch.

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1 **D. The Dump – The Price of Yuga Securities Plummet**

2 513. The meteoric rise of the BAYC NFTs did not last long, and the floor
3 price of the BAYC NFT collection began to deflate from its artificially inflated high
4 after the failed launch of the BAYC metaverse with the botched sale of virtual land
5 in the Otherside on April 30, 2022. With celebrity promoters distancing themselves
6 from the Yuga Financial Products; the disclosure of the U.S. Securities & Exchange
7 Commission (“SEC”) investigation of Yuga; the implosion of FTX and Alameda;
8 and further regulatory scrutiny of unregistered securities sold as crypto assets on
9 exchanges like Coinbase and Binance, the value of the Yuga Financial Products
10 dropped significantly.

11 514. In June 2022, exchanges that provided investors yield on their crypto
12 investments began to experience liquidity issues and lock users out. Voyager was
13 one of the largest such platforms, and was one of the few platforms where investors
14 could earn yield on their ApeCoin. On June 22, 2022, Voyager announced that it
15 had significant exposure to bankrupt hedge fund Three Arrows Capital, raising
16 significant survivability concerns at the exchange.⁴⁰⁶ In response, the price of
17 ApeCoin dropped from \$4.37 to \$3.97, or approximately 9%.

18 515. By August 2022, the MoonPay outlier transactions propping up the
19 floor prices had ceased. Fewer and fewer celebrities were promoting Bored Apes
20 and the Yuga ecosystem. Without the celebrities endorsing the Yuga assets and
21 without floor prices and volumes being pumped by MoonPay, the Yuga Financial
22 Products each suffered diminution in value with decreased sales volume and fewer

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26 ⁴⁰⁶ Sheldon Reback & Michael Bellusci, *Voyager Digital Plunges on Three*
27 *Arrows Exposure, Analyst Downgrade*, COINDESK (June 22, 2022),
<https://www.coindesk.com/business/2022/06/22/voyager-digital-requests-loan-repayment-from-3ac-considers-issuing-default-notice/>.

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1 unique buyers.⁴⁰⁷ All of the Yuga Financial Products hit visible low points between
2 August 19th and 23rd. The Bored Ape NFT floor price dropped from 82.48 ETH
3 on August 10, 2022 to 66.9 ETH on August 23, 2022. The Mutant Ape NFT floor
4 price also fell from 15.25 ETH on August 10, 2022, to a floor price of 11 ETH on
5 August 19, 2022. The Kennel Club NFT floor price also dropped from 7.99 ETH
6 on August 10, 2022, to 5.990 ETH on August 19, 2022. The Otherdeed NFTs fell
7 from a floor price of 2.02 ETH on August 7, 2022 to a floor price of 1.47 ETH on
8 August 22, 2022. Likewise, ApeCoin dropped from \$7.56 on August 5, 2022 to
9 \$4.64 on August 28, 2022.

10 516. In September 2022, the price of ApeCoin and the Yuga NFTs dropped
11 significantly in anticipation of a significant token unlock for “launch contributors”
12 of ApeCoin. In the 30 days prior to the unlock, ApeCoin dropped 26%.⁴⁰⁸ On
13 September 16, 2022 alone, ApeCoin dropped approximately 9% in advance of the
14 unlock on September 17, 2022.⁴⁰⁹

15 517. On October 11, 2022, *Bloomberg* reported that the SEC was
16 conducting an investigation of Yuga Labs over whether the sales of its digital assets
17 violate federal securities laws.⁴¹⁰ *Bloomberg* reported that the SEC was examining
18 whether certain NFTs are more akin to stocks and should follow the same
19 disclosure rules. *Bloomberg* also reported that the SEC was investigating the
20 distribution of ApeCoin. Yuga told *Bloomberg* in a statement that it was “fully
21

22 ⁴⁰⁷ Herman Hayes, *Purchases at Bored Ape Yacht Club Fall by 90% to 16-*
Month Low, BITKAN (Oct. 8, 2022), <https://bitkan.com/news/purchases-at-bored-ape-yacht-club-fall-by-90-to-16-month-low-5479>.

23 ⁴⁰⁸ Andrew Hayward, *ApeCoin Treasury Set to Unlock 25 Million APE Tokens*
24 *for Launch Contributors*, DECRYPT (Sept. 16, 2022),
<https://decrypt.co/109939/apecoin-treasury-unlock-25m-ape-tokens?amp=1>.

25 ⁴⁰⁹ *Id.*

26 ⁴¹⁰ Matt Robinson, *Bored-Ape Creator Yuga Labs Faces SEC Probe Over*
Unregistered Offerings, BLOOMBERG (Oct. 11, 2022),
27 <https://www.bloomberg.com/news/articles/2022-10-11/bored-ape-creator-yuga-labs-faces-sec-probe-over-unregistered-offerings#xj4y7vzkg>.

1 cooperating” with the inquiry. In response to the news regarding the SEC
2 investigation, the ApeCoin token dropped approximately 14%.⁴¹¹

3 518. Yuga’s NFTs likewise dropped in value in the wake of the disclosure
4 of the SEC investigation. The Bored Ape NFT floor price dropped from 75.5 ETH
5 on October 10, 2022 to 72.421 ETH on October 15, 2022. The Mutant Ape NFT
6 price floor dropped from 14.96 ETH on October 10, 2022 to 13.440 on October 13,
7 2022. The Kennel Club NFTs dropped from a floor price of 6.39 ETH on October
8 10, 2022 to 5.750 by October 17, 2022. The Otherside NFTs likewise dropped
9 from a price floor of approximately 1.6 ETH on October 10, 2022 down to 1.11
10 ETH on October 21, 2022.

11 519. The downfall of FTX had a significant impact on the price of the Yuga
12 Financial Products. When both FTX and Alameda Research filed for Chapter 11
13 Bankruptcy on November 11, 2022, each of the Yuga Financial Products had a
14 material drop in value in the days leading up to and following the announcement.
15 At the time of the bankruptcy, FTX and Alameda held a number of Yuga Financial
16 Products, which were now at risk of being subject to forced liquidation in the
17 bankruptcy.

18 520. At the time of the FTX meltdown, users identified dozens of Yuga
19 NFTs that were held by FTX/Alameda that could be subject to liquidation or
20 auction in connection with the bankruptcy.⁴¹² Nevertheless, on November 14, 2022,
21 the ApeDAO Defendants via the official ApeCoin Twitter account misleadingly
22 stated that the “Ape Foundation did not, and does not currently, hold any assets on
23

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25 ⁴¹¹ Andrew Hayward, *ApeCoin Sinks 10% After Report of SEC Probe Into Bored
26 Apes Creator Yuga Labs*, DECRYPT (Oct. 11, 2022),
<https://decrypt.co/111682/apecoin-crashes-sec-probe-bored-ape-yuga-labs>.

27 ⁴¹² Dr.Jones (@DrJones0305), TWITTER (Nov. 18, 2022 2:19 AM),
<https://twitter.com/DrJones0305/status/1593730628972863494?s=20&t=IHy6PXZgDHgX-Sc5h6rmRg>.

1 FTX.”⁴¹³ But on April 26, 2023, a director of Coinbase tweeted that NFTs
2 belonging to Alameda/FTX were transferred to a multi-signature wallet belonging
3 to the liquidator.⁴¹⁴ Thirty-two BAYC NFTs were identified as being affected,
4 including especially rare tokens in the form of four “trippy” Apes, three “gold”
5 apes, and one “suited” ape. Twenty-nine Otherside NFTs were also affected, as
6 were two Mutant Apes NFTs, three M1 mutant serum NFTs, and three M2 mutant
7 serum NFTs.

8 521. On November 5, 2022, prior to the disclosure of the liquidity issues
9 with FTX, the BAYC NFT floor price was 64.8 ETH. In the wake of the FTX
10 bankruptcy, the floor price of the BAYC NFT fell to approximately 50 ether (*i.e.*,
11 approximately \$62,000) on November 14, 2022. The floor price continued to drop,
12 reaching 48 ETH on November 17, 2022.

13 522. The same is true for Yuga’s Mutant Apes, which had a floor price of
14 11 ETH prior to the FTX disclosures. Following the FTX and Alameda bankruptcy,
15 the floor price of Mutant Apes dropped to 8.99 ETH on November 17, 2022.

16 523. Likewise, the floor price of the Otherdeed NFT dropped from 1.192
17 ETH on November 5, 2022 to 0.8 ETH on November 17, 2022.

18 524. 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.

20 525. Similarly, the FTX disclosures caused a significant drop in the price of
21 ApeCoin. On November 5, 2022, ApeCoin traded at \$5.10 per token, and dropped
22 to \$2.70 by November 13, 2022:

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24
25 ⁴¹³ ApeCoin (@apecoin), TWITTER, Nov. 14, 2022,
26 <https://x.com/apecoin/status/1592141303747575808?s=20>.

27 ⁴¹⁴ 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/>.

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526. On October 6, 2023, the Company announced on its website that it was laying off employees as part of a broader restructuring and pivoting towards online gaming. The Company’s new CEO, Daniel Alegre, admitted that Yuga “was not optimized to build and manage everything in house.” Alegre also conceded that there “have been a few rocky rollouts, particularly in our gaming execution. . . . We need to make greater progress with the development of Otherside.”⁴¹⁵

527. While investors suffered, Yuga insiders prospered. For example, Oseary made off with, upon information and belief, tens of millions of dollars (if not more) for his part in the misconduct alleged herein. Notably, Oseary admitted

⁴¹⁵ Richard Whiddington, *NFT Startup Yuga Labs Is Laying Off U.S. Employees Amid Its Ongoing Pivot to a Gaming Metaverse*, ARTNET NEWS (Oct. 11, 2023), <https://news.artnet.com/market/yuga-labs-lays-off-us-staff-2376181#:~:text=Yuga%20Labs%2C%20the%20Web3%20startup,Labs’s%20website%20on%20October%206.>

1 that his involvement with the alleged scheme to solicit and sell Yuga Financial
2 Products “changed [his] life financially beyond [his] wildest dreams.”⁴¹⁶

3 528. Prices of the Yuga Financial Products have dropped precipitously since
4 the heyday of the misleading and manipulative celebrity promotions. The BAYC
5 NFTs’ floor price continued to drop, reaching a Class Period low of 21.99 ETH
6 (approximately \$36,536.45) on August 22, 2023. This is down from the all-time
7 high of approximately 128 ETH (or \$369,891.84) that occurred on April 30, 2022 in
8 the midst of the celebrity promotions and as MoonPay was manipulating prices with
9 its outlier transactions.

10 529. Mutant Apes had a floor price high of 35.58 ETH (\$99,962.01) on
11 April 27, 2022, in the midst of the celebrity promotions and MoonPay outlier
12 transactions. Since that time, the floor price of the Mutant Apes has dropped
13 precipitously, reaching a low of 4.29 ETH (\$7,147.07) on August 22, 2023.

14 530. Kennel Club NFTs reached a Class Period high of 10.4 ETH (\$29,
15 218.80) on April 27, 2022, but have since dropped precipitously to Class Period
16 lows of 1.42 ETH on August 22, 2023. In dollar terms, Kennel Club NFTs reached
17 a Class Period low of \$2,391.38 on August 19, 2023.

18 531. The Otherdeed floor price went from a Class Period high of
19 approximately 5.0 ETH (about \$14,149.94) on May 1, 2022 all the way down to a
20 Class Period low of 0.4 ETH (worth only \$643.60) on September 25, 2023.

21 532. ApeCoin tokens have likewise suffered a severe diminution in value.
22 After reaching a Class Period high of \$23.65 on April 28, 2022 in the lead up the
23 Otherdeed launch, the price of ApeCoin has cratered. ApeCoin reached its all time
24 low on October 10, 2023 at just \$1.01.

25
26 ⁴¹⁶ Reepx (@reep_x), TWITTER (Feb. 4, 2023, 2:01 AM),
27 https://twitter.com/reep_x/status/1621765882627112961?t=u80YueKWgsut3kjiud_V-Q&s=19 (posting an excerpt from a Twitter Spaces recording where Oseary
28 made these statements).

1 533. In response to complaints of negligence and waste by the ApeDAO,
2 Yuga investors tried to diminish the ApeDAO Board’s control over the Ape
3 Foundation. But due to their self-appointed role as gatekeepers for any proposals to
4 the Foundation, the ApeDAO Defendants thwarted investors’ efforts to reform. For
5 example, on June 11, 2023, a Yuga investor submitted AIP-277: Re-evaluating
6 ApeCoin DAO Special Council Salary Structure.⁴¹⁷ This proposal sought an
7 “immediate salary cut of 50%” for the Special Council members (which included
8 Ohanian, Wu, and Bajwa).⁴¹⁸ The ApeDAO Board Defendants, however, did not
9 allow this proposal to be voted on by the ApeDAO members. In violation of the
10 ApeDAO guidelines, the ApeDAO Board refused to send the proposal to the larger
11 ApeCoin community and instead kicked it back as being “Returned for
12 Reconstruction” because, according to the ApeDAO Board, modifying the salaries
13 for the Special Council members would implicate certain pre-existing contractual
14 obligations entered into by the Special Council. But under the ApeCoin DAO
15 guidelines, a board member may be removed or replaced prior to the term pursuant
16 to a majority vote of token holders. Thus, it stands to reason that if a Special
17 Council member could be terminated for whatever reason regardless of the terms of
18 their contract, the Ape Foundation should be able to vote on salary modifications.
19 This inexplicable inability to vote on this AIP was directly raised on July 23, 2023
20 during the discussions on the AIP (which were reviewed by the ApeDAO Board).⁴¹⁹
21 Nevertheless, this AIP remains stuck in the line for review by the Special Council
22 despite them sending subsequently submitted and more complex AIPs to vote.

23 _____
24 ⁴¹⁷ *AIP-277: Re-evaluating ApeCoin DAO Special Council Salaries Structure*,
APECOIN.COM DAO FORUM (June 11, 2022), <https://forum.apecoin.com/t/aip-277-re-evaluating-apecoin-dao-special-council-salaries-structure/13703>.

25 ⁴¹⁸ *Id.*

26 ⁴¹⁹ *Response to AIP-277: Re-evaluating ApeCoin DAO Special Council Salaries*
Structure, APECOIN.COM DAO FORUM (July 23, 2022),
27 <https://forum.apecoin.com/t/aip-277-re-evaluating-apecoin-dao-special-council-salaries-structure/13703/317>

1 534. Relatedly, on October 8, 2023, an investor submitted an AIP to the
2 Ape Foundation seeking a vote of no confidence in the ApeCoin Special Council.
3 The abstract of the proposal stated as follows: “In a time of much economic
4 uncertainty as well as the rapidly declining value of the \$APE token and its failure
5 to reach its intended goals, this AIP also seeks to reduce the number of Special
6 Council members, reduce their salaries in the process, and enforce strict
7 professional guidelines for the nominations of the Special Council members.”⁴²⁰

8 535. The Vote of No Confidence AIP further revealed the unnecessary
9 expenditures by the ApeDAO (which were approved by the ApeDAO Board
10 Defendants): over \$1.2 million on Special Council salaries (*i.e.* \$20,833 per month
11 for each including Ohanian, Wu, and Bajwa); “\$900,000 on Webslingers (admin,
12 finance, etc) @ \$75k per month”; and various “undisclosed sums to third-parties
13 (e.g. Meta Law and others).”⁴²¹ The AIP went on to list several failures of the DAO
14 and issues where the DAO’s conduct benefitted the ApeDAO Board Defendants (as
15 well as Oseary, the Company, and Executive Defendants Solano and Aronow) at
16 the expense of investors:

17 As a startup created around Mar 22, the Special Council has
18 thus far failed not only to adhere to the guidelines setup by the
19 founders, but has also placed itself above those very same guidelines
20 in terms of performance, transparency and accountability. Some
examples:

21 1. It has failed to provide explanation to the community as to the
22 provenance surrounding a \$2.5M loan that is a part of the DAO
23 financial reports. . . .

24 2. It has failed to provide the DAO community with audited
25 financial reports as specified and required by the very same RFC that

26 ⁴²⁰ *Special Council – Vote of No Confidence*, APECOIN.COM DAO FORUM (Oct.
27 8, 2022), <https://forum.apecoin.com/t/special-council-vote-of-no-confidence/19275>.

28 ⁴²¹ *Id.*

1 hired the previous Cartan Group and their replacement, the current
2 WebSlingers group. . . .

3 3. It has failed to adhere to the very same AIP-2 that created the
4 voting process in which the community that voted on it was assured -
5 by the language of the AIP - that “Without a voting system in place,
6 arriving at consensus on proposals would be centralized, with only a
7 few people holding decision-making abilities. This proposal aims to
8 avoid this result.” The resulting and much-maligned voting system, in
9 the form of a few whale wallets (people)⁴²² controlling the outcomes
10 of the voting, has failed to uphold this simple concept of fairness and
11 equality.

12 4. It has failed to meet the goals and direction of the DAO by
13 refusing to take steps towards the prosperity of the DAO in terms of
14 the automation and speedy resolutions to approved AIPs. . . .

15 5. It has failed to meet the accountability and transparency
16 pledged to the DAO community in many instances. To the extent that
17 it recently required an AIP-282 (what does the SC actually do) and
18 AIP-305 (accountability practices).

19 6. It has seemingly placed itself above the rules of the DAO by
20 refusing to honor an AIP request by a long-standing community
21 member. In the fiasco over AIP-277 which sought to reduce the SC
22 salaries, the author was advised that his AIP could not be sent to vote
23 due to the fact that if it passed - as by all accounts it would have - it
24 would require the Ape Foundation to breach current employment
25 contracts that it had signed. And so, the author had to put up another
26 AIP-337 which only took into account future SC salaries. . . .

27 7. It has failed, as per “See Phase 9: Implementation, item at #3”
28 to disclose to the DAO community the failure in the disposition of
approved AIPs. To wit, AIP-209 which was voted for in May 2023,
still wasn’t funded as of Aug 9, 2023. For such an expensive and
impactful AIP, despite several inquiries, the SC has thus far failed to

⁴²² Upon information and belief, a significant percentage of these so-called ApeCoin whale wallets are collectively created/owned/controlled by the Company, Executive Defendants Aranow, Solano, Ali, and Atalay, the ApeDAO Board Defendants Ohanian, Wu, and Bajwa, and/or Individual Defendant Oseary.

1 provide any insight as to why this AIP was not funded during that
2 time span, nor to the current disposition of said AIP. . . .

3 8. Despite the fact that the DAO was setup as a not-for-profit
4 grants governing body, the historical record of the grants offered has
5 created a situation whereby a litany of whale wallets - who probably
6 would rather not see the treasury be spent because it affects their
7 holdings - determine the outcome and disposition of even the most
8 impactful AIPs which clearly benefit the DAO. The Special Council
9 has failed to take steps to uphold and maintain the fairness and
equality that the founding members envisioned and intended for the
DAO; and one in which One APE equals One APE was the rallying
cry.⁴²³

10 **V. THE YUGA FINANCIAL PRODUCTS ARE SECURITIES**
11 **UNDER *HOWEY***

12 536. The SEC Framework provides guidance for analyzing whether a digital
13 asset has the characteristics of one particular type of security – an “investment
14 contract.” As explained in the SEC Framework:

15 The U.S. Supreme Court’s *Howey* case and subsequent case law
16 have found that an “investment contract” exists when there is the
17 investment of money in a common enterprise with a reasonable
18 expectation of profits to be derived from the efforts of others. The so-
19 called “*Howey* test” applies to any contract, scheme, or transaction,
20 regardless of whether it has any of the characteristics of typical
21 securities. The focus of the *Howey* analysis is not only on the form
22 and terms of the instrument itself (in this case, the digital asset) but
23 also on the circumstances surrounding the digital asset and the manner
24 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.⁴²⁴

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27 ⁴²³ *Supra* n.419.

28 ⁴²⁴ SEC Framework §I (footnotes omitted).

1 537. 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.”⁴²⁵ 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**

8 538. 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.”⁴²⁶

12 539. 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
15 currency meets the first prong of *Howey*.

16 540. Defendants sold Yuga Financial Products to retail investors through
17 global, online cryptocurrency exchanges during various on-going, continuous
18 offerings.

19 541. 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**

23 542. The profits of each investor in Yuga Financial Products are
24 inextricably intertwined with the Company by virtue of the 2.5% royalty fee that the
25 Company retains on every resale of a Yuga NFT. Moreover, the success of the
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27 ⁴²⁵ *Id.*, §II.

28 ⁴²⁶ *Id.*, §II(A) (footnote omitted).

1 Bored Ape ecosystem and its native token ApeCoin depended entirely on the efforts
2 of the Company, Executive Defendants, and ApeDAO Board Defendants. These
3 same Defendants also held a significant number of Yuga Financial Products, which
4 gave them the same so-called “skin in the game” as Plaintiffs and the Class.

5 543. The SEC Framework states that “[i]n evaluating digital assets, we have
6 found that a ‘common enterprise’ typically exists.”⁴²⁷ The SEC Framework also
7 elaborates: “Based on our experiences to date, investments in digital assets have
8 constituted investments in a common enterprise because the fortunes of digital asset
9 purchasers have been linked to each other or to the success of the promoter’s
10 efforts.”⁴²⁸

11 544. Yuga Financial Products are no exception to the SEC Framework’s
12 observation regarding the “common enterprise” element of the *Howey* test. The
13 prospective profits of Plaintiffs and the Class, if any, are intertwined with the
14 fortunes of Yuga, its founders, and the Executive Defendants. Executive
15 Defendants have conceded that Yuga used the funds from its ApeCoin to partially
16 fund its operations. The Company, its founders, the Executive Defendants, and the
17 Company’s investors additionally issued themselves millions of ApeCoin tokens
18 with value inextricably linked to Yuga’s efforts.

19 545. Additionally, investors were passive participants in the Yuga Financial
20 Products’ continuous offering, and the profits of each Plaintiff and the Class were
21 intertwined with those of Defendants and of other investors.

22 546. The Executive Defendants were also responsible for supporting the
23 Yuga Financial Products, pooled investors’ assets, and controlled those assets.

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26 ⁴²⁷ *Id.*, §II(B) (footnote omitted).

27 ⁴²⁸ *Id.* at n.11 (citing *SEC v. Int’l Loan Network, Inc.*, 968 F.2d 1304, 1307 (D.C.
28 Cir. 1992)).

1 547. Further, Defendants held a significant stake in the Yuga Financial
2 Products, and thus shared in the profits and risk of the project.

3 **C. Investors Purchased the Yuga Financial Products with a**
4 **Reasonable Expectation of Profit from Owning Them**

5 548. With respect to the element of “reasonable expectation of profits,” the
6 SEC Framework states that “[a] purchaser may expect to realize a return through
7 participating in distributions or through other methods of realizing appreciation on
8 the asset, such as selling at a gain in a secondary market.”⁴²⁹

9 549. Investors in the Yuga Financial Products, including Plaintiffs and the
10 Class, made their investment with a reasonable expectation of profits. The primary
11 purpose for purchasing Yuga Financial Products was to make a profit or accumulate
12 interest.

13 550. The SEC Framework lays out a number of characteristics informative
14 of whether the “reasonable expectation of profits” element is met. The SEC
15 Framework states that “[t]he more the following characteristics are present, the
16 more likely it is that there is a reasonable expectation of profit”⁴³⁰ Based on
17 the facts above, each and every characteristic identified by the SEC Framework is
18 present in the case of the Yuga Financial Products:

- 19 • The digital asset gives the holder rights to share in the
20 enterprise’s income or profits or to realize gain from capital
21 appreciation of the digital asset.
- 22 • The opportunity may result from appreciation in the value of the
23 digital asset that comes, at least in part, from the operation,
24 promotion, improvement, or other positive developments in the
25 network, particularly if there is a secondary trading market that
26 enables digital asset holders to resell their digital assets and
realize gains.

27 ⁴²⁹ *Id.*, §II(C).

28 ⁴³⁰ SEC Framework, §II(C)(2).

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- The digital asset is transferable or traded on or through a secondary market or platform, or is expected to be in the future.
- Purchasers reasonably would expect that [the Defendants'] efforts will result in capital appreciation of the digital asset and therefore be able to earn a return on their purchase.
- The digital asset is offered broadly to potential purchasers as compared to being targeted to expected users of the goods or services or those who have a need for the functionality of the network.
- The digital asset is offered and purchased in quantities indicative of investment intent instead of quantities indicative of a user of the network. For example, it is offered and purchased in quantities significantly greater than any likely user would reasonably need, or so small as to make actual use of the asset in the network impractical.
- There is little apparent correlation between the purchase/offering price of the digital asset and the market price of the particular goods or services that can be acquired in exchange for the digital asset.
- There is little apparent correlation between quantities the digital asset typically trades in (or the amounts that purchasers typically purchase) and the amount of the underlying goods or services a typical consumer would purchase for use or consumption.
- The [Defendants have] raised an amount of funds in excess of what may be needed to establish a functional network or digital asset.
- The [Defendants are] able to benefit from [their] efforts as a result 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
8 digital asset is to develop the network or digital asset.
 - 9 ○ The future (and not present) functionality of the network
10 or 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
16 selling feature.
 - 17 ○ The potential profitability of the operations of the
18 network, or the potential appreciation in the value of the
19 digital asset, is emphasized in marketing or other
20 promotional materials.
 - 21 ○ The availability of a market for the trading of the digital
22 asset, particularly where the [Defendants] implicitly or
23 explicitly promise[] to create or otherwise support a
24 trading market for the digital asset.⁴³¹

25 **D. Investors Expected Profits from the Yuga Financial**
26 **Products to Be Derived from the Managerial Efforts of the**
27 **Executive Defendants**

28 551. The SEC Framework explains:

When a promoter, sponsor, or other third party (or affiliated group of third parties) (each, an “Active Participant” or “AP”) provides essential managerial efforts that affect the success of

⁴³¹ *Id.*

1 the enterprise, and investors reasonably expect to derive profit
2 from those efforts, then this prong of the test is met. Relevant
3 to this inquiry is the “economic reality” of the transaction and
4 “what character the instrument is given in commerce by the
5 terms of the offer, the plan of distribution, and the economic
6 inducements held out to the prospect.” The inquiry, therefore,
7 is an objective one, focused on the transaction itself and the
8 manner in which the digital asset is offered and sold.⁴³²

9 552. Specifically, with respect to the element of “[r]eliance on the [e]fforts
10 of [o]thers,” the SEC Framework states:

11 The inquiry into whether a purchaser is relying on the efforts of
12 others focuses on two key issues:

- 13 • Does the purchaser reasonably expect to rely on the
14 efforts of a[] [promoter]?
- 15 • Are those efforts “the undeniably significant ones, those
16 essential managerial efforts which affect the failure or
17 success of the enterprise,” as opposed to efforts that are
18 more ministerial in nature?⁴³³

19 553. Plaintiffs and the Class have entirely passive roles vis-à-vis the success
20 of the Yuga Financial Products or the Bored Ape ecosystem. Rather, the success of
21 the Bored Ape ecosystem, and the profits the Class reasonably expected to derive
22 from investing in the Yuga Financial Products, are dependent on the essential
23 technical, entrepreneurial, and managerial efforts of the Company, Executive
24 Defendants, and the ApeDAO Board Defendants.

25 554. For example, when NFT exchange OpenSea temporarily delisted
26 numerous Bored Apes from its platform in June 2022, the Company, Executive

27 ⁴³² *Id.*, §II(C) (footnotes omitted).

28 ⁴³³ *Id.*, §II(C)(1) (footnotes omitted).

1 Defendants, and ApeDAO Board Defendants used their managerial efforts to work
2 with OpenSea to resolve the issue and ensure that it did not happen again.⁴³⁴

3 555. And when issues arose with NFT purchases in March 2023, the
4 Company, Executive Defendants, and ApeDAO Board Defendants used their
5 managerial efforts to send ETH to the affected wallets “covering the difference
6 between the amount paid and floor.”⁴³⁵

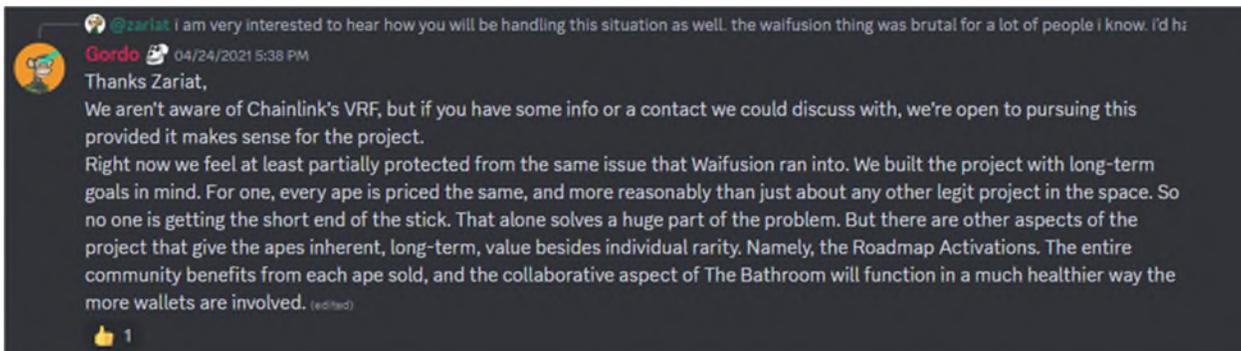
7 556. Plaintiffs and the Class reasonably expected Executive Defendants and
8 ApeDAO Board Defendants to provide significant managerial efforts, to develop
9 and improve the Bored Ape ecosystem, and to provide and/or secure exchanges
10 through which Yuga Financial Products can be traded or liquidated. Defendants
11 repeatedly represented that they would provide significant managerial efforts to
12 achieve these objectives and make Yuga Financial Products a profitable investment
13 by developing and attracting users to the Bored Ape ecosystem.

14 557. For example, on January 3, 2022, Yuga publicly stated that “we see
15 ourselves as temporary stewards of [the BAYC] IP that is in the process of
16 becoming more and more decentralized. Our ambition is for this to be a
17 community-owned brand, with tentacles in world-class gaming, events, and
18 streetwear. We think there’s still work to be done to ensure that what we hand over
19 to the community is in as strong a position as it can be.”⁴³⁶

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24 ⁴³⁴ Bored Ape Yacht Club (@BoredApeYC), TWITTER (June 29, 2022, 2:22
25 PM), <https://twitter.com/BoredApeYC/status/1542257147794300930>.

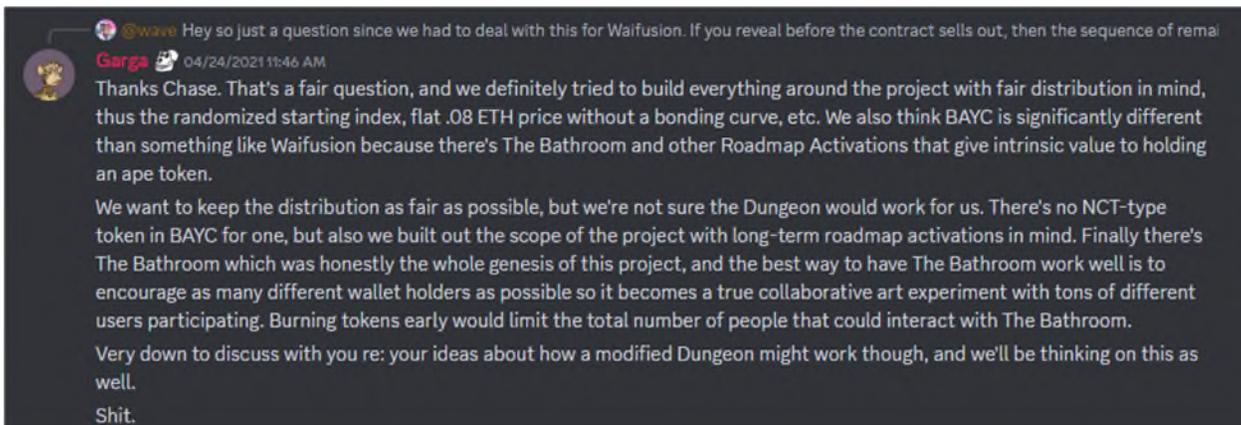
26 ⁴³⁵ Bored Ape Yacht Club (@BoredApeYC), TWITTER (Mar. 15, 2023, 8:20
27 PM), <https://twitter.com/BoredApeYC/status/1636205752753836033>.

28 ⁴³⁶ Yuga Labs (@YugaLabs), Twitter (Jan. 3, 2022 12:27 PM),
<https://twitter.com/yugalabs/status/1478100705542131713?s=20>.



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 14 558. Yuga, through Defendant Aronow, represented that the Yuga Financial
 15 Products would have “inherent, long-term, value” through Yuga’s own efforts,
 16 “Namely, the Roadmap Activations.”⁴³⁷

17 559. Yuga, through Defendant Solano, similarly represented that Yuga’s
 18 efforts, such as “The Bathroom and other Roadmap Activations . . . give intrinsic
 19 value to holding an ape token.”⁴³⁸

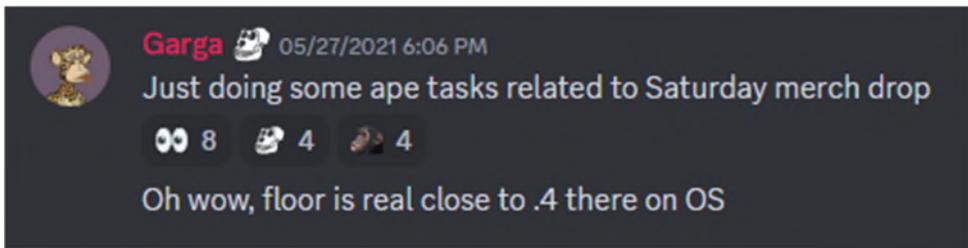
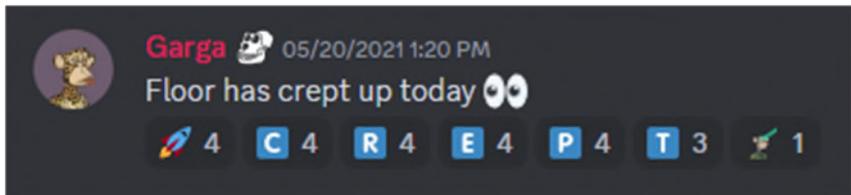


29 560. Yuga and the Executive Defendants also made comments on the price
 30 of the Yuga Financial Products, for example, noting that the “floor has crept up
 31 today,” and discussing the floor price on “OS” or marketplace OpenSea.

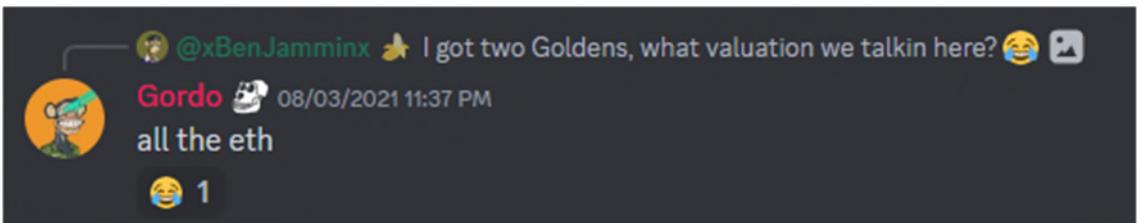
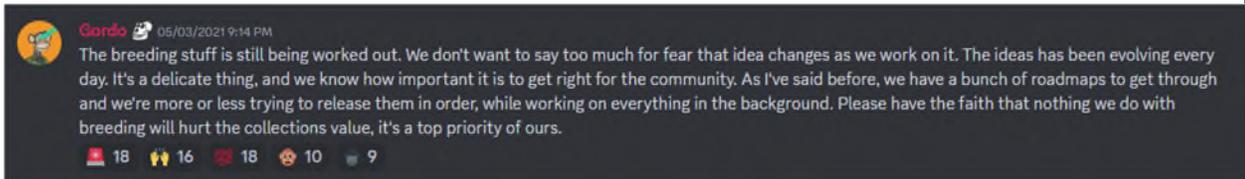
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 37 ⁴³⁷ Comment made through Bored Ape Yacht Club Discord.

38 ⁴³⁸ Comment made through Bored Ape Yacht Club Discord.

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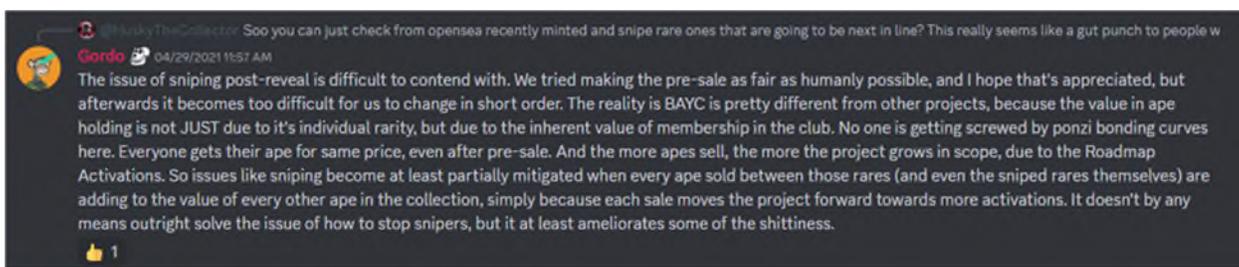
561. Yuga and the Executive Defendants also discussed the seemingly high value of the BAYC NFTs, noting that two “Goldens” were worth “all the eth.” These statements create a reasonable expectation of profits based on Yuga’s efforts, because Yuga and the Executive Defendants acknowledge both their efforts in creating intrinsic value of the NFTs, and the rising intrinsic value of the NFTs as the reasonable expectation of profits from their efforts begins to manifest.



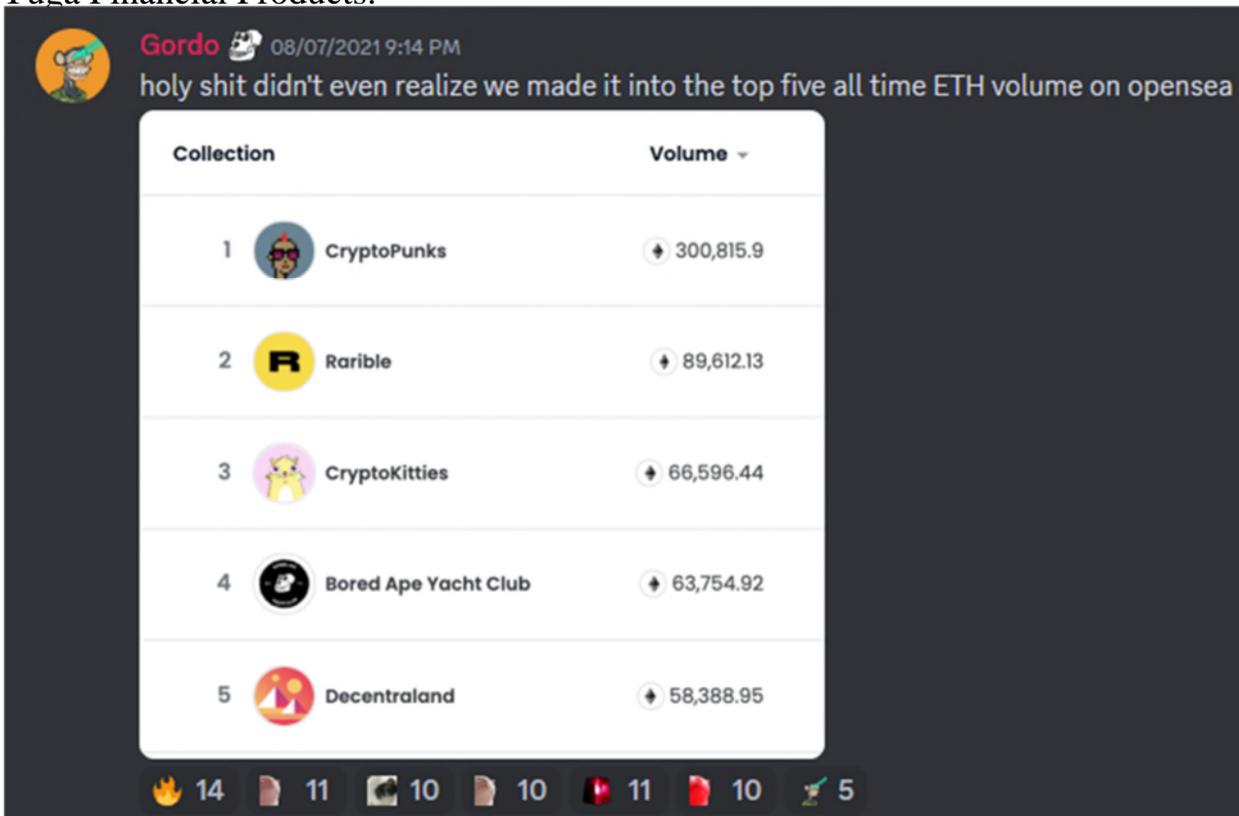
562. Yuga represented that the value of its Yuga Financial Products was “a top priority of ours.” For example, Yuga acknowledged that it would develop “breeding” which would generate additional valuable Yuga Financial Products for

1 BAYC holders, such as MAYC, and BAKC (which in turn generated additional
2 ApeCoins). Yuga represented that “nothing we do with breeding will hurt the
3 collections value, it’s a top priority of ours.”

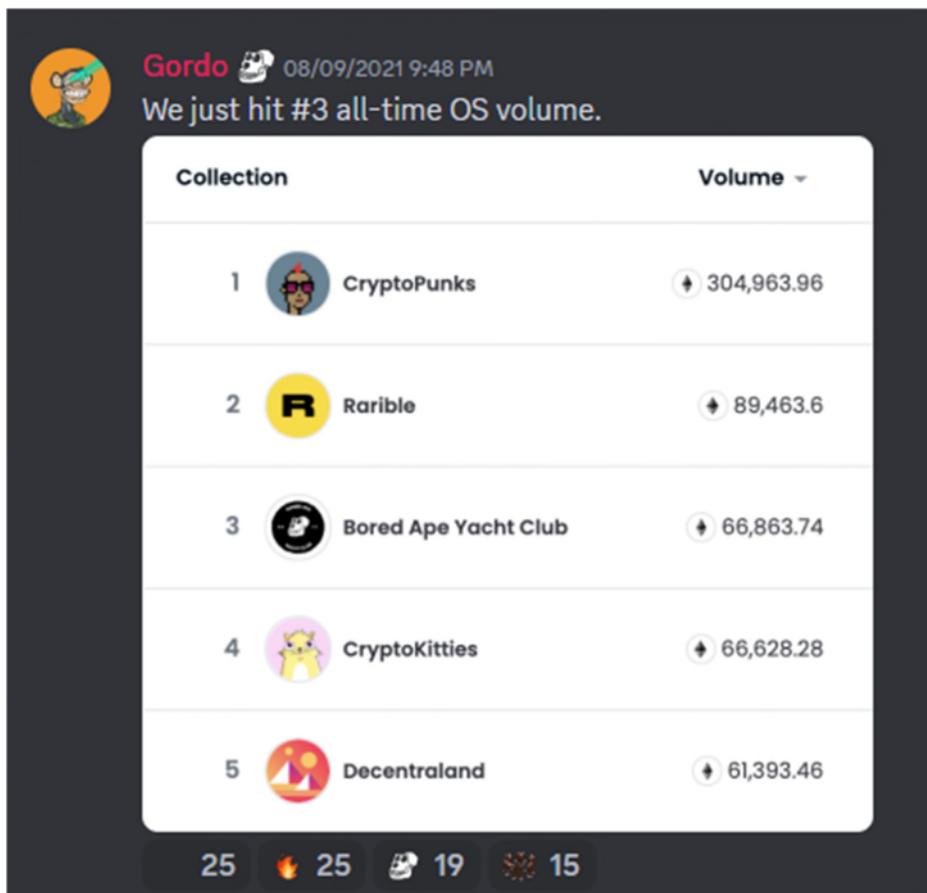
4 563. Yuga acknowledged that “the more apes sell, the more the project
5 grows in scope, due to the Roadmap Activations.” These Roadmap Activations
6 were a simple way for Yuga and the Executive Defendants to describe their efforts
7 to improve the value of the Yuga Financial Products through Yuga’s and Executive
8 Defendants’ efforts.



14 564. Yuga and Defendant Aronow would talk about the rising volume of the
15 Yuga Financial Products.



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565. Yuga used the proceeds of its sales and royalties of the Yuga Financial Products to purchase other valuable intellectual property, including CryptoPunks, one of the first and most valuable NFTs on the Ethereum blockchain.

566. Yuga Financial Products therefore derives its value entirely from the usefulness and popularity of the Bored Ape ecosystem, which is in turn highly, if not entirely, dependent on the significant technical, entrepreneurial, and managerial efforts of the Company and Executive Defendants. The purchase of Yuga Financial Products is thus an investment in a common enterprise, with an expectation of profits, based upon the efforts of its promoter, the Defendants.

567. The SEC Framework lays out a number of characteristics informative of whether the “[r]eliance on the [e]fforts of [o]thers” element is met. The SEC Framework notes that “[a]lthough no one of the following characteristics is

1 necessarily determinative, the stronger their presence, the more likely it is that a
2 purchaser of a digital asset is relying on the ‘efforts of others’⁴³⁹ Based on
3 the facts above, each and every characteristic identified by the SEC Framework is
4 present in the case of the Yuga Financial Products:

- 5 • [Defendants are] responsible for the development, improvement
6 (or enhancement), operation, or promotion of the network [and]
7 purchasers of the digital asset expect [Defendants] to be
8 performing or overseeing tasks that are necessary for the
9 network or digital asset to achieve or retain its intended purpose
10 or functionality.
- 11 • Where the network or the digital asset is still in development and
12 the network or digital asset is not fully functional at the time of
13 the offer or sale [both true of ApeCoin, the Otherside metaverse,
14 and the Bored Ape ecosystem] purchasers would reasonably
15 expect [Defendants] to further develop the functionality of the
16 network or digital asset (directly or indirectly). This particularly
17 would be the case where an AP promises further developmental
18 efforts in order for the digital asset to attain or grow in value.
- 19 • There are essential tasks or responsibilities performed and
20 expected to be performed by [Defendants], rather than an
21 unaffiliated, dispersed community of network users (commonly
22 known as “decentralized” network).
- 23 • [Defendants] create[] or support[] a market for, or the price of,
24 the digital asset. This can include, for example, an AP that: (1)
25 controls the creation and issuance of the digital asset; or (2)
26 takes other actions to support a market price of the digital asset,
27 such as by limiting supply or ensuring scarcity, through, for
28 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

⁴³⁹ *Id.*, §II(C)(1).

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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:
 - [Defendants] ha[ve] the ability to realize capital appreciation from the value of the digital asset. This can be demonstrated, for example, if the [Defendants] retain[] a stake or interest in the digital asset. In these instances, purchasers would reasonably expect [Defendants] to

1 undertake efforts to promote [their] own interests and
2 enhance the value of the network or digital asset.

3 ○ [Defendants] distribute[] the digital asset as compensation
4 to management or [Defendants'] compensation is tied to
5 the price of the digital asset in the secondary market. To
6 the extent these facts are present, the compensated
7 individuals can be expected to take steps to build the
8 value of the digital asset.

9 ○ [Defendants] own[] or control[] ownership of intellectual
10 property rights of the network or digital asset, directly or
11 indirectly.

12 568. [Defendants] monetize[] the value of the digital asset, especially where
13 the digital asset has limited functionality

14 569. Here, the Yuga Financial Products exhibit all of these characteristics.

15 **E. Investors Would Not Reasonably Have Understood that**
16 **the Financial Products Sold by Yuga Were Securities**

17 570. In connection with the launch of the Yuga Financial Products,
18 Defendants made statements that reasonably led Plaintiffs and Class members to
19 conclude that the Yuga Financial Products were not securities.

20 571. As a threshold matter, the Defendants refused to register any of the
21 Yuga Financial Products with the SEC, which indicated to investors that these were
22 not securities. No valid exemption from registration requirements existed for any
23 of the Yuga Financial Products.

24 572. At the time of the launch of the Yuga Financial Products, the
25 Company, Executive Defendants, and ApeDAO Board Defendants took advantage
26 of the market's lack of understanding and awareness concerning how
27 cryptocurrency projects work. Considering the new technology at issue and the
28 Company's other statements, many investors were understandably unaware that
Yuga Financial Products had fundamentally different features than Bitcoin, which
the SEC has determined is not a security.

1 573. The Company also indicated that it would benefit financially and use
2 the funds raised through the sale of the Yuga Financial Products to continue to fund
3 the Bored Ape ecosystem and support the growth of the project.

4 574. At the time the Yuga Financial Products were publicly released,
5 Defendants took advantage of the market's lack of understanding and awareness
6 concerning how this investment contract worked. With promises that Yuga NFTs
7 would outperform other NFT collections (and ApeCoin would outperform other
8 digital assets), many individuals were unaware that the Yuga Financial Products
9 had fundamentally different features than other cryptocurrencies, including being
10 more centralized than something like Bitcoin. One of these primary differences is
11 that all Yuga Financial Products were issued by the Company and Executive
12 Defendants at creation at very little economic cost – and enormous potential upside
13 – to them.

14 575. The creation of the Yuga Financial Products occurred through a
15 centralized process, in contrast to something like Bitcoin. This, however, would not
16 have been apparent at issuance to a reasonable investor. Rather, it was only after
17 the passage of time and disclosure of additional information about the issuer's
18 intent and process of management that a reasonable purchaser could have known
19 that he or she had acquired a security.

20 576. Purchasers were thereby misled into believing that the Yuga Financial
21 Products were something other than securities, when they were securities.

22 577. Accordingly, it was not apparent to a reasonable investor, at issuance,
23 that the Yuga Financial Products were securities under the law, and a reasonable
24 investor would not have believed they were securities.

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1 **F. Application of the SEC’s 2019 Framework Indicates that**
2 **the Yuga Financial Products Are Securities**

3 578. The Framework described how to analyze the various facts
4 surrounding an ICO in making the determination of whether a given digital asset is
5 a security.

6 579. In particular, the Framework provides that the “inquiry into whether a
7 purchaser is relying on the efforts of others focuses on two key issues: Does the
8 purchaser reasonably expect to rely on the efforts of an [Active Participant or
9 “AP”]? Are those efforts ‘the undeniably significant ones, those essential
10 managerial efforts which affect the failure or success of the enterprise,’ as opposed
11 to efforts that are more ministerial in nature?”⁴⁴⁰

12 580. The Framework further notes that the “stronger the[] presence” of the
13 following factors, “the more likely it is that a purchaser of a digital asset is relying
14 on the ‘efforts of others.’”⁴⁴¹

15 581. The first factor the SEC looked at was whether an AP is responsible
16 for the development, improvement (or enhancement), operation, or promotion of the
17 network, particularly if purchasers of the digital asset expect an AP to be
18 performing or overseeing tasks that are necessary for the network or digital asset to
19 achieve or retain its intended purpose or functionality.

20 582. At the time of the launch of each of the Yuga Financial Products, the
21 Executive Defendants, ApeDAO Board Defendants, MoonPay Defendants, and
22 Defendants Sotheby’s and Adidas actively marketed the launch and the tokens’
23 growth and utilization prospects, thereby necessitating the continued managerial
24 efforts of the Company, Executive Defendants, and ApeDAO Board Defendants.
25 Where the network or the digital asset is still in development and the network or

26 _____
27 ⁴⁴⁰ *Id.*

28 ⁴⁴¹ *Id.*

1 digital asset is not fully functional at the time of the offer or sale, purchasers would
2 reasonably expect an AP to further develop the functionality of the network or
3 digital asset (directly or indirectly).

4 583. Another factor the Framework considers is whether the AP creates or
5 supports a market for, or the price of, the digital asset. This includes, *inter alia*,
6 whether the AP “(1) controls the creation and issuance of the digital asset; or
7 (2) takes other actions to support a market price of the digital asset, such as by
8 limiting supply or ensuring scarcity, through, for example, buybacks, “burning,” or
9 other activities.”⁴⁴²

10 584. As noted above, all of the Yuga Financial Products in circulation were
11 created at the direction of the Executive Defendants, the ApeDAO Board
12 Defendants, and/or Defendant Oseary.

13 585. The framework further states that “[a]n AP has a continuing
14 managerial role in making decisions about or exercising judgment concerning the
15 network or the characteristics or rights the digital asset represents.”⁴⁴³

16 586. Here, the Company and Executive Defendants have discussed the long-
17 term prospects on extended frames, continually noting how the utilization of the
18 intellectual property rights granted to Yuga NFT owners will grow in the future as
19 the Company builds the Bored Ape ecosystem. Likewise, the Company and
20 Executive Defendants have touted how the use for ApeCoin tokens as a method of
21 payment within the ecosystem will grow (and, in turn, increase the price of the
22 ApeCoin tokens).

23 587. The ability to determine whether and where the digital asset will trade
24 is another factor discussed in the Framework. For example, “purchasers may
25 reasonably rely on an AP for liquidity, such as where the AP has arranged, or

26 ⁴⁴² *Id.*

27 ⁴⁴³ *Id.*

1 promised to arrange for, the trading of the digital asset on a secondary market or
2 platform.”⁴⁴⁴

3 588. 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.

6 589. Another factor the Framework notes is whether the AP has the ability
7 to determine who will receive additional digital assets and under what conditions.
8 This 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.”⁴⁴⁵

10 590. Here, the Company, Executive Defendants, and ApeDAO Board
11 Defendants are the arbiters of funding for Yuga and the Bored Ape ecosystem.

12 591. 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
14 generally.

15 592. The Framework also remarks that purchasers would reasonably expect
16 the AP to undertake efforts to promote its own interests and enhance the value of
17 the network or digital asset, including, but not limited to, the instances where the
18 AP “has the ability to realize capital appreciation from the value of the digital asset.
19 This can be demonstrated, for example, if the AP retains a stake or interest in the
20 digital asset.” According to the SEC, in these instances, “purchasers would
21 reasonably expect the AP to undertake efforts to promote its own interests and
22 enhance the value of the network or digital asset.”⁴⁴⁶

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26 ⁴⁴⁴ *Id.*

27 ⁴⁴⁵ *Id.*

28 ⁴⁴⁶ *Id.*

1 593. Here, the Executive Defendants and ApeDAO Board Defendants retain
2 a significant interest in the Company even after selling off many Yuga Financial
3 Products at the height of the initial launch.

4 594. On May 7, 2021, on CNBC’s “Squawk Box” television program,
5 chairman of the SEC Gary Gensler stated that “a lot of crypto tokens – I won’t call
6 them cryptocurrencies for this moment – are indeed securities.”⁴⁴⁷ In addition to
7 being the Chairman of the SEC, Mr. Gensler is also a world renowned expert on
8 cryptocurrencies and blockchain technology, having taught the “Blockchain and
9 Money” course at the Sloan School of Management at the Massachusetts Institute
10 of Technology (“MIT”).⁴⁴⁸

11 595. In a June 14, 2018 speech entitled “Digital Asset Transactions: When
12 Howey Met Gary (Plastic)” that is available on the SEC’s website,⁴⁴⁹ the following
13 observations were made on “when a digital transaction may no longer represent a
14 security offering”:

15 If the network on which the token or coin is to function is sufficiently
16 decentralized – where purchasers would no longer reasonably expect a
17 person or group to carry out essential managerial or entrepreneurial
18 efforts – the assets may not represent an investment contract.
19 Moreover, when the efforts of the third party are no longer a key factor
20 for determining the enterprise’s success, material information
21 asymmetries recede. As a network becomes truly decentralized, the
ability to identify an issuer or promoter to make the requisite dis-
closures becomes difficult, and less meaningful.

22 ⁴⁴⁷ Jesse Point, *SEC Chairman Gary Gensler says more investor protections are*
23 *needed for bitcoin and crypto markets*, CNBC (May 7, 2021), <https://www.cnn.com/2021/05/07/sec-chairman-gary-gensler-says-more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html>.

24 ⁴⁴⁸ Lectures and Materials from Chairman Gensler’s MIT course are available to
25 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/>.

26 ⁴⁴⁹ William Hinman, Director, Division of Corporation Finance, Remarks at the
27 Yahoo Finance All Markets Summit, *Digital Asset Transactions: When Howey Met*
28 *Gary (Plastic)* (June 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>.

1 And so, when I look at Bitcoin today, I do not see a central third
2 party whose efforts are a key determining factor in the enterprise. The
3 network on which Bitcoin functions is operational and appears to have
4 been decentralized for some time, perhaps from inception.

5 596. A key factor in determining whether a digital asset is a security or not
6 is whether there is a centralized entity behind the digital asset.⁴⁵⁰ The Company is a
7 registered Delaware corporation since February 8, 2021 and has maintained itself as
8 the centralized entity behind the Yuga Financial Products throughout their entire
9 existence, notwithstanding the creation of the shell entity of the so-called Ape
10 Foundation or ApeDAO.

11 **G. Government Enforcement Actions Demonstrate that the**
12 **Yuga Financial Assets Are Securities**

13 597. Government and regulator enforcement actions further demonstrate
14 that the Yuga Financial Products are securities. First, federal prosecutors in the
15 Southern District of New York brought wire fraud charges against a manager at
16 OpenSea based on insider trading in connection with the purchase and sale of NFTs
17 on the OpenSea platform. *See USA v. Chastain*, 1:22-cr-00305 (S.D.N.Y).

18 598. Second, on August 28, 2023, the SEC charged Impact Theory, LLC
19 with conducting an unregistered offering of crypto asset securities in the form of
20 purported non-fungible tokens. Like Yuga, Impact Theory emphasized it was
21 “trying to build the next Disney[.]” The SEC found that the NFTs offered and sold
22 to investors were investment contract and therefore securities.⁴⁵¹

23 599. Third, on September 13, 2023, the SEC charged Stoner Cats 2 LLC
24 (“Stoner Cats”) with conducting an unregistered offering of crypto asset securities

25 ⁴⁵⁰ *Id.* (noting that the “decentralized structure” of Bitcoin and Ethereum placed
26 these digital assets outside the “disclosure regime of the federal securities laws”).

27 ⁴⁵¹ Press Release, *SEC Charges LA-Based Media and Entertainment Co. Impact*
28 *Theory for Unregistered Offering of NFTs*, No. 2023-163, U.S. SEC (Aug. 28,
2023), <https://www.sec.gov/news/press-release/2023-163>.

1 in the form of purported non-fungible tokens. Like Yuga, Stoner Cats used well-
2 known actors and celebrities as part of its promotion, including Defendant Oseary’s
3 business partner Ashton Kutcher and his wife Mila Kunis. Like Yuga, Stoner Cats
4 obtained a 2.5% royalty for each secondary market transaction in the NFTs. The
5 SEC found that the NFTs offered and sold to investors was an unregistered offering
6 that was not exempt from registration. The SEC’s press release stated that “Stoner
7 Cats wanted all the benefits and offering and selling a security to the public but
8 ignored the legal responsibilities that come with doing so.”⁴⁵²

9 **VI. MECHANICS OF PLAINTIFFS’ PURCHASES**

10 600. Plaintiffs purchased their NFTs on exchanges based in the United
11 States, including OpenSea. Yuga NFTs are ERC-721 tokens on the Ethereum
12 blockchain, the nodes of which reside in the United States, including in California
13 and this District.

14 601. OpenSea’s website describes the mechanics of how purchases are
15 made and how fees are collected and distributed to OpenSea as well as the original
16 creators of the NFT. According to OpenSea’s Help Center, and consistent with the
17 experience of Plaintiffs, the buyer is responsible for paying the full item price, a
18 portion of which (2.5%) is received by OpenSea as its fees.⁴⁵³ In addition to
19 OpenSea’s fees, buyers pay what are known as “creator earnings” which refer to the
20 portion of the NFT sale price paid to the original creator of the NFT when the item
21 moves from wallet to wallet after a purchase. On OpenSea, creator earnings are
22 either optional or enforced. Pursuant to the OpenSea Help Center, if a purchase
23 included creator earnings “a portion of the item price you paid will go to the creator
24

25 ⁴⁵² Press Release, *SEC Charges Creator of Stoner Cats Web Series for*
26 *Unregistered Offering of NFTs*, No. 2023-178, U.S. SEC (Sept. 13, 2023),
<https://www.sec.gov/news/press-release/2023-178>.

27 ⁴⁵³ OpenSea Help Center, [https://support.opensea.io/hc/en-us/articles/](https://support.opensea.io/hc/en-us/articles/14068991090067-What-fees-do-I-pay-on-OpenSea-)
28 [14068991090067-What-fees-do-I-pay-on-OpenSea-](https://support.opensea.io/hc/en-us/articles/14068991090067-What-fees-do-I-pay-on-OpenSea-) (last visited Oct. 16, 2023).

1 of the NFT.”⁴⁵⁴ For the Yuga NFTs, the creator earning fees were enforced and
2 buyers were charged a 2.5% fee that was paid to Yuga.

3 602. In connection with their Yuga NFT purchases on OpenSea, Plaintiffs
4 paid this fee to Yuga. The fee structure described by the OpenSea Help Center is
5 consistent with the data captured on the Ethereum blockchain for Plaintiffs’
6 purchases.

7 603. By way of example, for his Mutant Ape NFT purchase on April 17,
8 2022, Plaintiff Johnson paid 30 ETH in total. 1.5 ETH of this purchase, or 5%, was
9 paid in fees. This 5% in fees aligns exactly with OpenSea’s 2.5% fee combined
10 with Yuga’s 2.5% creator earning royalty. Thus, 0.75 ETH (approximately
11 \$2,295.21 given eth’s price at the time) was paid to Yuga in connection with this
12 Yuga NFT purchase. The payment of this fee to Yuga thus places Plaintiff Johnson
13 in direct privity with Yuga Labs in connection with this transaction.

14 604. Similarly, in connection with his purchase of the Kennel Club Yuga
15 NFT, Plaintiff Johnson paid 10.95 ETH in total. 0.27375 ETH of this purchase, or
16 5%, was paid in fees. This 5% in fees likewise aligns exactly with OpenSea’s 2.5%
17 fee combined with Yuga’s 2.5% creator royalty. Thus, 0.136875 ETH
18 (approximately \$401.54 at the time) was paid to Yuga in connection with this Yuga
19 NFT purchase. The payment of this fee to Yuga thus places Plaintiff Johnson is in
20 direct privity with Yuga in connection with this transaction.

21 605. For his Mutant Ape NFT purchase on August 29, 2021, Plaintiff
22 Titcher paid a total of 5.3 ETH. 0.265 ETH of this purchase, or 5%, was paid in
23 fees. This 5% in fees aligns exactly with OpenSea’s 2.5% fee combined with
24 Yuga’s 2.5% creator royalty. Thus, 0.1325 ETH (approximately \$427.35 at the
25 time) was paid to Yuga in connection with this Yuga NFT purchase. The payment
26

27 _____
28 ⁴⁵⁴ *Id.*

1 of this fee to Yuga thus places Plaintiff Titcher in direct privity with Yuga in
2 connection with this transaction.

3 606. The creator royalty for the Otherdeed Yuga NFTs was set to 5%. For
4 his purchase of his Otherdeed Yuga NFT on May 1, 2022, Plaintiff Titcher paid a
5 total of 6.7 ETH. 0.5025 ETH of this purchase, or 7.5%, was paid in fees. This
6 7.5% in fees aligns exactly with OpenSea's 2.5% fee combined with Yuga's 5%
7 creator royalty for the Otherdeed NFTs. Thus, 0.335 ETH (approximately \$946.72
8 at the time) was paid to Yuga in connection with this Yuga NFT purchase. The
9 payment of this fee to Yuga thus places Plaintiff Titcher in direct privity with Yuga
10 in connection with this transaction.

11 607. Plaintiffs' Yuga NFT purchases on OpenSea followed the same pattern
12 with portions of their respective NFT purchase prices going directly to Yuga in the
13 form of the enforced creator royalties. Thus, these Plaintiffs are in direct privity
14 with Yuga for their NFT purchases.

15 608. Records of absent class members' transactions on OpenSea and the
16 concomitant fees paid to Yuga are likewise reflected on the Ethereum blockchain
17 and can be tracked using a common methodology.

18 609. Plaintiffs purchased ApeCoin on exchanges located in the United
19 States, including on Coinbase, which is based in California. The ApeCoin
20 purchased by Plaintiffs are ERC-20 tokens on the Ethereum blockchain, nodes of
21 which reside in the United States, including in California and this District.

22 610. Yuga released ApeCoin through a series of offshore legal fictions in an
23 attempt to avoid liability for a blatant ICO of unregistered securities.

24 611. ApeCoin was created by Yuga and the ApeDAO Special Council and
25 was provided to US based cryptocurrency exchanges. ApeCoin tokens were lent to
26 market makers like Alameda Research and Wintermute Trading LTD who provided
27 liquidity for exchanges where retail investors like Plaintiffs made purchases.

28

1 Because the tokens were loaned to the market makers, the legal title to the tokens
2 remained with the token issuers.

3 612. Plaintiffs purchased their ApeCoin tokens on U.S. based exchanges
4 like Coinbase. Coinbase's terms of service disavow that Coinbase pass title to retail
5 investors on its platform. Coinbase's terms of service explicitly foreclose the
6 possibility that, as an exchange facilitating the trading of ApeCoin tokens, Coinbase
7 took possession of the title to the ApeCoin tokens that were passed to investors who
8 purchased ApeCoin tokens on Coinbase. Instead, Coinbase positioned itself as a
9 mechanism for sellers like Yuga, the ApeDAO Special Council, and their market
10 marking partners to pass title of ApeCoin tokens directly to buyers like Plaintiffs
11 and other class members.

12 **VII. ADDITIONAL RELIANCE ALLEGATIONS**

13 613. Plaintiffs Smith, Titcher, Grand, Patel, and Palombini saw the
14 promotions by Sotheby's and the Company on the lead up to, during, and
15 immediately following the auction of a lot of BAYC NFTs held on September 9,
16 2021. These promotions of the auction and the winning bidder being a traditional
17 art collector, the legitimacy of Yuga and its NFT collections, and the
18 growth/adoption potential for Yuga Financial Products were a primary factor in
19 inducing Titcher to make his first purchase of a MAYC NFT on August 29, 2021
20 and then continue to hold on to that NFT subsequently. Similarly, the Sotheby's
21 promotion induced Plaintiff Palombini to make his purchase on April 30, 2021.
22 Likewise, Smith saw and relied on the representations from Sotheby's concerning
23 traditional art collectors when making his purchase of Yuga Financial Products on
24 March 22, 2022, March 23, 2022, March 24, 2022, May 9, 2022, May 11, 2022, and
25 July 22, 2022. Smith, Titcher, Grand, Patel, and Palombini are well aware of
26 Sotheby's longstanding reputation as one of the premier auction houses in the world
27 and relied on the representations by the Company and Sotheby's regarding the
28

1 auctions’ legitimacy. Smith, Titcher, Grand, Patel, and Palombini reasonably
2 believed that the fact that Sotheby’s was conducting an auction of the BAYC NFTs
3 was a positive indication of the Company’s future growth prospects for the Yuga
4 Financial Products being offered. In addition to Sotheby’s, Smith, Titcher, Grand,
5 Patel, Johnson, and Palombini are aware of *Rolling Stone* magazine and its
6 reputation as a high-profile publication that acts as a cultural tastemaker, and they
7 specifically saw the Company’s November 1, 2021 promotion of BAYC NFTs on
8 the cover of *Rolling Stone*. Smith, Titcher, Grand, Patel, Johnson, and Palombini
9 also saw Defendant Oseary’s promotion of the same as being the “First
10 @RollingStone NFT cover.” These promotions furthered the marketing message
11 from the Company and its insiders regarding the legitimacy of Yuga and the growth
12 potential for Yuga Financial Products, and it was a primary factor in inducing
13 Titcher to continue to hold onto his first purchase of a MAYC NFT as well as to
14 inducing Smith, Titcher, Grand, Johnson, and Palombini purchase additional Yuga
15 Financial Products subsequently. Smith, Titcher, Grand, Patel, Johnson, and
16 Palombini reasonably believed these promotions to be a validation of the relevancy
17 and legitimacy of the BAYC NFTs and Yuga as a NFT company with real staying
18 power.

19 614. Smith, Titcher, Grand, Johnson, Patel, H. Patel, and Palombini are
20 aware of Defendant Fallon from his many years as a famous comedian and
21 television talk show host. Similarly, Smith, Titcher, Grand, Patel and Palombini
22 know of Defendant Hilton from her years as a reality television star, as well as
23 being the heiress to the Hilton hotel empires. Titcher followed the social media
24 accounts of Fallon and Hilton during the Class Period, and he, Smith, Grand, Patel,
25 H. Patel, and Palombini regularly saw posts from and about Fallon and Hilton on
26 Twitter via the trending or discovery features of the platform. Smith, Titcher,
27 Grand, Patel, H. Patel, Johnson, and Palombini were likewise aware of Defendant
28

1 Winkelmann as being a famous contemporary digital artist. Smith, Titcher, Grand,
2 Patel, H. Patel, Johnson, and Palombini saw and/or were aware of the first
3 promotion of the BAYC NFT collection and the statements by Defendants Fallon
4 and Winkelmann regarding MoonPay during the November 11, 2021 episode of the
5 *Tonight Show*, as well as the related promotions by Fallon (November 12, 2021;
6 November 17, 2021), Winkelmann (November 11, 2021), and MoonPay (November
7 11, 2021) on their respective Twitter and/or Instagram accounts. Smith, Titcher,
8 Grand, Patel, Johnson, and Palombini also saw the second promotion of the BAYC
9 NFT collection and MoonPay occurring during the *Tonight Show* episode that aired
10 on January 24, 2022, and the related promotions by Fallon (January 25, 2022),
11 Hilton (January 24, 2022; January 25, 2022, January 31, 2022), MoonPay (January
12 24, 2022), and Universal (January 24, 2022). Smith, Titcher, Grand, Patel, and
13 Palombini reasonably believed that both Fallon and Hilton had purchased BAYC
14 NFTs (as opposed to being given them in exchange for promoting the Company,
15 MoonPay, and the Yuga Financial Products). Further, Smith, Titcher, Grand, Patel,
16 and Palombini reasonably believed that Fallon's and Hilton's promotions on the
17 *Tonight Show* were vetted and approved by Defendants Universal and EHD, since
18 these promotions were being aired nationally to millions of viewers during the show
19 and the *Tonight Show*'s official social media accounts continued to promote the
20 segment after the show. These promotions induced Titcher to continue to hold onto
21 his first purchase of a MAYC NFT as well as inducing Smith, Titcher, Grand, Patel,
22 H. Patel, and Palombini to purchase additional Yuga Financial Products
23 subsequently.

24 615. Smith, Titcher, Grand, Patel, H. Patel, and Palombini are also avid
25 music listeners, particularly of pop music. Thus, Smith, Titcher, Grand, Patel, H.
26 Patel, and Palombini have been aware of Defendant Ciccone from her decades of
27 being a world famous pop star. Smith, Titcher, Grand, Patel, H. Patel, and
28

1 Palombini regularly see posts from and about Ciccone on various social media
2 platforms via the trending or discovery features of the platform. Smith, Titcher,
3 Grand, Patel, H. Patel, and Palombini specifically saw Ciccone’s March 24, 2022
4 promotion of Yuga Financial Products and MoonPay, which was also promoted on
5 MoonPay’s Twitter account on March 24, 2022. Smith, Titcher, Grand, and
6 Palombini also saw and relied on Ciccone’s promotional statements in *Variety*
7 magazine. These promotions induced Smith and Titcher to continue to hold onto
8 their first purchases of Yuga Financial Products as well as inducing Smith, Titcher,
9 Grand, Patel, H. Patel, and Palombini to purchase additional Yuga Financial
10 Products subsequently, as they reasonably believed that Ciccone’s professed
11 enthusiasm for the Bored Ape ecosystem and purported use of the MoonPay
12 concierge service was genuine.

13 616. Smith, Titcher, Grand, Patel, Palombini, and Johnson similarly know
14 of Defendants Post and Bieber from their successful careers as pop singers and
15 often saw posts from and about these two Defendants on social media. Smith and
16 Palombini specifically saw Post’s November 15, 2021 music video promoting the
17 sale of BAYC NFTs via MoonPay and MoonPay’s promotion of Post’s video the
18 same day, and reasonably believed that this video depicted an actual purchase (or
19 reenacted an actual purchase) of Yuga Financial Products by Post using the
20 MoonPay service. This promotion in particular induced Smith to make his
21 purchases of Yuga Financial Products on March 22, 2022, March 23, 2022, March
22 24, 2022, May 9, 2022, May 11, 2022, and July 22, 2022; and on April 30, 2022,
23 May 2, 2022, May 5, 2022, and May 9, 2022, respectively. And this same
24 misleading promotion lead Patel to make his first purchase of Yuga Financial
25 Products on January 20, 2022 and additional purchases throughout the class period.
26 Defendant Bieber’s promotion induced H. Patel to make his purchases of Yuga
27 Financial Products on February 8, 2022, March 18, 2022, March 20, 2022, April 23,

28

1 2022, May 1, 2022, May 9, 2022, August 22, 2022, August 30, 2022, October 13,
2 2022, and December 20, 2022. Similarly, Smith, Titcher, Johnson, Grand, Patel, H.
3 Patel, and Palombini specifically saw and relied on the January 31, 2022 promotion
4 by Defendant Bieber that he had not only purchased a BAYC NFT, but had done so
5 at price that was significantly above the then-current floor price for BAYC NFTs.
6 Smith, Titcher, Grand, Johnson, H. Patel, and Palombini also saw Bieber's February
7 7, 2022 promotion of the BAYC NFT collection on his personal Twitter account.
8 Smith, Titcher, Grand, Patel, H. Patel, and Johnson reasonably believed that Bieber
9 genuinely purchased the BAYC NFTs at such a high price because Bieber
10 determined that was the true value of the BAYC NFT and was making the purchase
11 of the BAYC NFT was part of his multimillion-dollar investment strategy. This
12 promotion in particular induced Titcher to continue to hold onto his first purchase
13 of a MAYC NFT as well as inducing Smith, Titcher, Palombini, Grand, Patel, H.
14 Patel, and Johnson to purchase additional Yuga Financial Products when they
15 otherwise would not have done so.

16 617. Smith, Titcher, Grand, Patel, H. Patel, and Palombini are keenly aware
17 of Defendant Broadus from the latter's multi-decade career as a world-famous
18 rapper and television personality. Smith, Titcher, Grand, Patel, and Palombini
19 followed Broadus' social media accounts during the Class Period. Smith, Titcher,
20 Grand, Patel, H. Patel, and Palombini specifically saw Broadus' promotions of the
21 BAYC NFTs and his Dr. Bombay BAYC NFT in February, May, June, and July of
22 2022. These promotions, in particular, caused Smith, Titcher, Grand, Patel, H.
23 Patel, and Palombini to believe in the future growth prospects for the Bored Ape
24 ecosystem and to induce Titcher to continue to hold onto his first purchase of a
25 MAYC NFT as well as to induce Smith, Titcher, Grand, Patel, H. Patel, and
26 Palombini to purchase additional Yuga Financial Products when they otherwise
27 would not have done so.

28

1 618. In addition, Smith, Titcher, Grand, Patel, H. Patel, Johnson, and
2 Palombini are life-long fans of professional sports, particularly basketball. Smith,
3 Titcher, Grand, Patel, Johnson, and Palombini are aware of Defendant Curry as a
4 world champion basketball player with significant wealth and influence, Smith,
5 Titcher, Grand, Patel, H. Patel, Johnson, and Palombini saw Curry’s promotion of
6 the BAYC NFT collection within the FTX commercial posted on February 18,
7 2022. Smith, Grand, Patel, and Titcher also saw Curry’s September 2, 2021 post in
8 the BAYC Discord and believed that Curry’s participation with the BAYC Discord
9 indicated a genuine interest as opposed to being part of a manipulative promotional
10 scheme. Smith, Titcher, Grand, Patel, H. Patel, Johnson, and Palombini reasonably
11 believed that Curry was a legitimate purchaser of BAYC NFTs with a genuine
12 interest in the Bored Ape ecosystem, and that Curry had made his purchase of the
13 BAYC NFT as part of his multi-million dollar investment strategy. These
14 promotions in particular induced Titcher to continue to hold onto his first purchase
15 of a MAYC NFT as well as inducing Smith, Titcher, Grand, Patel, H. Patel,
16 Johnson, and Palombini to purchase additional Yuga Financial Products when they
17 otherwise would not have done so.

18 619. The statements and promotions by Defendants Fallon, Winkelmann,
19 Hilton, Ciccone, Post, Bieber, Broadus, and Curry gave Plaintiffs the false
20 impression that these celebrities had purchased BAYC NFTs as investors, and that
21 they were making the Yuga Financial Products a part of their respective
22 multimillion-dollar investment strategies. Each of these promotions, individually
23 and collectively, induced Smith to make his purchases of Yuga Financial Products
24 on March 2, 2022, March 23, 2022, and March 24, 2022; Titcher to make his
25 purchases of Yuga Financial Products on March 17, 2022, April 29, 2022, and May
26 1, 2022; Palombini to make his purchases of Yuga Financial Products on April 30,
27 2022, May 2, 2022, May 5, 2022, and May 9, 2022; Grand to make his purchases

1 on March 20, 2022: Patel to make his purchases from January 20, 2022 through
2 June 21, 2023; H. Patel to make his purchases of Yuga Financial Products on
3 February 8, 2022, March 18, 2022, March 20, 2022, April 23, 2022, May 1, 2022,
4 May 9, 2022, August 22, 2022, August 30, 2022, October 13, 2022, and December
5 20, 2022; and Johnson to make his purchases of Yuga Financial Products on
6 February 1, 2022, April 15, 2022, April 17, 2022, April 19, 2022, April 21, 2022,
7 April 24, 2022, April 26-27, 2022, and April 29, 2022. These promotions also
8 induced Titcher to continue to hold on to his MAYC NFT investment when he
9 otherwise would not have done so.

10 620. Smith, Titcher, Patel, H. Patel, and Palombini saw the promotions by
11 Defendant Adidas regarding the latter’s collaboration with Yuga on the “adidas
12 Originals: into the Metaverse (Phase 2)” NFT project. For example, Smith, Titcher,
13 Patel, and Palombini saw the “ADIDAS X BORED APE YACHT CLUB – INTO
14 THE METAVERSE” promotional video that was published on the official BAYC
15 YouTube channel on December 11, 2021, which featured an animated Bored Ape
16 avatar wearing the trademark Adidas jumpsuit and skydiving into an Adidas logo.
17 Likewise, Grand and Patel saw and relied on the December 20, 2021 promotion
18 from Adidas when making his purchases of Yuga Financial Products. Smith,
19 Titcher, Patel, and Palombini also specifically saw Adidas’ April 27, 2022
20 promotion of the same Bored Ape avatar wearing the Adidas jumpsuit with a
21 BAYC logo on the back. Smith, Titcher, Patel, and Palombini reasonably believed
22 the joint promotions by the Company and Adidas that suggested the BAYC NFT
23 collection had become mainstream and that future collaborations with an
24 established brand like Adidas were imminent. These particular promotions induced
25 Titcher to make further purchases of Yuga Financial Products on April 30, 2022,
26 May 2, 2022, May 5, 2022, and May 9, 2022; induced Patel to make his purchases
27 of Yuga Financial Productions from January 20, 2022 through June 21, 2023;

28

1 induced Smith to make his purchases of Yuga Financial Products on March 22,
2 2022, March 23, 2022, March 24, 2022, May 9, 2022, May 11, 2022, and July 22,
3 2022; H. Patel to make his purchase of Yuga Financial Products on February 8,
4 2022, March 18, 2022, March 20, 2022, April 23, 2022, May 1, 2022, May 9, 2022,
5 August 22, 2022, August 30, 2022, October 13, 2022, and December 20, 2022; and
6 Palombini to make his purchases of Yuga Financial Products on April 30, 2022,
7 May 2, 2022, May 5, 2022, and May 9, 2022.

8 621. Smith, Titcher, Grand, Patel, H. Patel, Johnson, and Palombini also
9 followed the Yuga Twitter account (and related social media accounts controlled by
10 Yuga and its insiders like the official BAYC (@BoredApeYC), Otherside
11 (@othersidemeta) accounts), as well as being in the Company’s Discord during the
12 Class Period and saw the promotions that the Company, Executive Defendants
13 Aronow and Solano, and/or ApeDAO Board Defendants posted (or
14 approved/caused to be posted) on those platforms. For example, Smith, Titcher,
15 Johnson, and Palombini saw and relied on the statements by the Company and
16 Executive Defendants Muniz and Lyons contained in the March 16, 2022 press
17 release for ApeCoin and the Otherside NFT launch by the Company. Similarly,
18 Smith, Titcher, Grand, Patel, Johnson, and Palombini saw and relied on the
19 Company’s March 19, 2022 promotional video for the Otherside NFT collection
20 when making their subsequent purchases of Yuga Financial Products. The
21 misleading statements and omissions within these promotions from the Company
22 and Executive Defendants Aronow, Solano, Muniz, and Lyons, in conjunction with
23 the above-mentioned promotions from Defendants Fallon, Winkelmann, Hilton,
24 Post, Bieber, Ciccone, Broadus, and Curry induced Titcher to purchase Yuga
25 Financial Products on March 17, 2022, April 29, 2022, and May 1, 2022; induced
26 Palombini to purchase Yuga Financial Products on April 30, 2022, May 2, 2022,
27 May 5, 2022, and May 9, 2022; induced Smith to make his purchases of Yuga
28

1 Financial Products on March 22, 2022, March 23, 2022, March 24, 2022, May 9,
2 2022, May 11, 2022, and July 22, 2022; induced Grand to purchase Yuga Financial
3 Products on March 20, 2022; induced Patel to purchase Yuga Financial Products
4 from January 20, 2022 through June 21, 2023; induced H. Patel to make his
5 purchases of Yuga Financial Products on February 8, 2022, March 18, 2022, March
6 20, 2022, April 23, 2022, May 1, 2022, May 9, 2022, August 22, 2022, August 30,
7 2022, October 13, 2022, and December 20, 2022; and induced Johnson to make his
8 purchases of Yuga Financial Products on February 1, 2022, April 15, 2022, April
9 17, 2022, April 19, 2022, April 21, 2022, April 24, 2022, April 26-27, 2022, and
10 April 29, 2022.

11 622. Similarly, Smith, Titcher, Grand, Patel, H. Patel, and Johnson followed
12 the ApeCoin official twitter page (which, upon information and belief, is owned
13 and/or controlled by the ApeDAO Board Defendants and/or the Company) and saw
14 the March 16, 2022 promotion introducing ApeCoin tokens to investors and touting
15 this digital asset as being able to be used for gaming and “commerce.” These
16 promotions, in addition to the March 16 and March 19 promotions by the Company,
17 Executive Defendant Muniz and Lyons caused Smith, Titcher, Grand, Patel, and
18 Johnson to purchase Yuga Financial Products and to continue to hold their
19 investments in Yuga securities when they otherwise would not have done so.

20 623. Smith, Titcher, Johnson, Grand, Patel, and Palombini also saw the
21 statements and promotions from Defendant Aronow that were posted and/or
22 reposted on various social media platforms. For example, Smith, Titcher, Grand,
23 Patel, and Johnson saw Defendant Aronow’s August 21, 2021 Twitter post touting
24 the approximate increase of the BAYC NFTs’ market cap to \$1 billion. Smith,
25 Titcher, Grand, Patel, and Johnson reasonably believed Aronow’s statement
26 indicated that the price of Yuga Financial Products would continue to rise and that
27 this increase was the result of genuine investor interest. These misleading
28

1 statements and omissions by Aronow induced Smith, Titcher, Grand, Patel,
2 Johnson, and Palombini to purchase Yuga Financial Products and to continue to
3 hold their investments in Yuga securities when they otherwise would not have done
4 so.

5 **VIII. CLASS ACTION ALLEGATIONS**

6 624. Plaintiffs bring this action, individually and on behalf of a nationwide
7 Class, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3),
8 defined as follows:

9 All persons who, during the Class Period, purchased the Yuga
10 Financial Products and were subsequently damaged thereby.

11 625. The Class Period is defined as the period between April 24, 2021, and
12 October 6, 2023.⁴⁵⁵

13 626. Excluded from the Class are: (a) Defendants; (b) Defendants' affiliates,
14 agents, employees, officers and directors; (c) Plaintiffs' counsel and Defendants'
15 counsel; and (d) the judge assigned to this matter, the judge's staff, and any member
16 of the judge's immediate family. Plaintiffs reserve the right to modify, change, or
17 expand the Class definition set forth above based on discovery and further
18 investigation.

19 627. **Numerosity**: The Class is so numerous that joinder of all members is
20 impracticable. On December 1, 2022, there were more than 103,000 unique
21 account holders of Yuga securities.

22 628. **Commonality**: Common questions of law and fact exist as to all
23 members of each Class. These questions predominate over questions affecting
24 individual Class members. These common legal and factual questions include, but
25 are not limited to:

26 _____
27 ⁴⁵⁵ Plaintiffs reserve the right to expand or amend the Class Period based on
28 discovery produced in this matter.

1 a. whether the Executive Defendants with the Promoter Defendants
2 fraudulently marketed the Yuga securities;

3 b. whether Executive Defendants conspired to artificially inflate
4 the price of the Yuga Financial Products and then sell the Yuga securities to
5 unsuspecting investors;

6 c. whether Defendants have been unjustly and wrongfully enriched
7 as a result of their conduct;

8 d. whether the proceeds that the Defendants obtained as a result of
9 the sale of the Yuga Financial Products rightfully belong to Plaintiffs and Class
10 members;

11 e. whether Defendants should be required to return money they
12 received as a result of the sale of Yuga Financial Products to Plaintiffs and Class
13 members; and

14 f. whether Plaintiffs and Class members have suffered damages,
15 and, if so, the nature and extent of those damages.

16 629. **Typicality**: Plaintiffs have the same interest in this matter as all Class
17 members, and Plaintiffs' claims arise out of the same set of facts and conduct as the
18 claims of all Class members. Plaintiffs' and Class members' claims all arise out of
19 uniform misrepresentations, omissions, and unlawful, unfair, and deceptive acts and
20 practices related to the sale of Yuga Financial Products.

21 630. **Adequacy**: Plaintiffs have no interests that conflict with the interests
22 of the Class and are committed to pursuing this action vigorously. Plaintiffs have
23 retained counsel competent and experienced in complex consumer class action
24 litigation. Accordingly, Plaintiffs and their counsel will fairly and adequately
25 protect the interests of the Class.

26 631. **Superiority**: A class action is superior to all other available means of
27 fair and efficient adjudication of the claims of Plaintiffs and members of the Class.

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1 The injury suffered by each individual Class member is relatively small compared
2 to the burden and expense of individual prosecution of the complex and extensive
3 litigation necessitated by Defendants' conduct. It would be virtually impossible for
4 individual Class members to effectively redress the wrongs done to them. Even if
5 Class members could afford individualized litigation, the court system could not.
6 Individualized litigation would increase delay and expense to all parties, and to the
7 court system, because of the complex legal and factual issues of this case.
8 Individualized rulings and judgments could result in inconsistent relief for similarly
9 situated individuals. By contrast, the class action device presents far fewer
10 management difficulties, and provides the benefits of single adjudication, economy
11 of scale, and comprehensive supervision by a single court.

12 632. Defendants have acted or refused to act on grounds generally
13 applicable to the Class, thereby making appropriate final injunctive relief and
14 corresponding declaratory relief with respect to the Class as a whole.

15 **IX. PRESUMPTION OF RELIANCE**

16 633. Plaintiffs will rely, in part, upon the presumption of reliance
17 established by the fraud-on-the-market doctrine in that:

- 18 (a) Defendants made public misrepresentations or failed to disclose
19 material facts during the Class Period;
 - 20 (b) the omissions and misrepresentations were material;
 - 21 (c) Yuga Financial Products are traded in an efficient market;
 - 22 (d) the Yuga Financial Products were liquid and traded with
23 moderate to heavy volume during the Class Period;
 - 24 (e) the Yuga Financial Products traded on various national
25 cryptocurrency exchanges in the United States;
 - 26 (f) the Company was covered by securities analysts;
- 27
28

1 (g) the misrepresentations and omissions alleged would tend to
2 induce a reasonable investor to misjudge the value of the Yuga Financial Products;
3 and

4 (h) Plaintiffs and members of the Class purchased, acquired, and/or
5 sold Yuga Financial Products between the time the Defendants failed to disclose or
6 misrepresented material facts and the time the true facts were disclosed without
7 knowledge of the omitted or misrepresented facts.

8 634. Five factors are typically applied to determine whether a particular
9 security meets the “efficient market” requirement: (1) whether the security trades at
10 a high volume; (2) whether analysts follow and report on the security; (3) whether
11 the security has market makers and arbitrageurs; (4) whether the Company is
12 eligible to file SEC registration forms S-3; and (5) whether there are empirical facts
13 showing a cause-and-effect relationship between unexpected corporate events or
14 financial releases and an immediate response in the stock market. *See*
15 *ScriptsAmerica, Inc. v. Ironridge Glob. LLC*, No. CV14-03962 MMM(AGR_x), 2015
16 WL 12747908, at *19 (C.D. Cal. Mar. 26, 2015). As discussed more thoroughly
17 above, these factors weigh in favor of finding that the Yuga securities were traded
18 in an efficient market. For example, ApeCoin trades a daily average volume of
19 \$183.7M.⁴⁵⁶ Next, as detailed herein, analysts reported on the Yuga Financial
20 Products at issue repeatedly throughout the Class Period. Each of these analyst
21 reports was publicly available to investors. And the price of Yuga Financial
22 Products changed in relation to public statements or reports about the activities of
23 the Company. Indeed, the market price of Yuga securities reacted promptly to the
24 dissemination of public information regarding the Bored Ape Yacht Club, the
25 ApeDAO, Yuga Labs, and MoonPay. The Yuga securities also used the Executive

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27 ⁴⁵⁶ *ApeCoin*, BEINCRYPTO (last visited Oct. 16, 2023),
28 <https://beincrypto.com/price/apecoin/>.

1 Defendants and ApeDAO Board Defendants to serve as market makers for Yuga
2 securities liquidity. The Defendants also engaged firms like Alameda and
3 Wintermute to serve as market makers for the Yuga Financial Products' liquidity.

4 **A. Common Impact of Artificial Inflation of Prices of Yuga**
5 **Securities**

6 635. As set forth above, Defendants had a common scheme to artificially
7 inflate the price of Yuga securities. The prices of all of the Yuga securities were
8 manipulated by the same misconduct and therefore were subject to the same impact.
9 The misleading promotions and artificial increase in value of one Yuga security,
10 such as the BAYC NFTs, had an impact on and carried over to Plaintiffs' and Class
11 members' belief that the other Yuga products (MAYC, ApeCoin and Otherdeed)
12 marketed by those same defendants would also be successful and increase in price.

13 636. Defendants jointly marketed the Yuga securities to further enforce
14 their across-the-board marketing success. Defendants were motivated to maintain
15 artificially inflated prices for all Yuga securities. The profits of Defendants were
16 dependent on the 2.5% royalty fee that the Company retained on every resale of a
17 Yuga NFT. All of the Yuga securities derive their value entirely from the
18 usefulness and popularity of the Bored Ape ecosystem, which is in turn highly, if
19 not entirely, dependent on the perceived technical, entrepreneurial, and managerial
20 efforts of the Company and Executive Defendants. Plaintiffs and Class members
21 believed that their purchase of Yuga securities was an investment in a common
22 enterprise, with an expectation of profits, based upon the efforts of their promoters,
23 the Defendants.

24 637. Common impact as to all of the Yuga securities is evident by the fact
25 that prices of these securities dropped during the same time period as a result of the
26 same adverse disclosures about the Company.

1 **X. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violation of the California Unfair Competition Law**

4 **Cal. Bus. & Prof. Code §17200**

5 **(Based on Unlawful Acts and Practices)**

6 **(Against all Defendants)**

7 638. Plaintiffs restate and reallege all preceding allegations in the paragraphs above as if fully set forth herein, and further allege the following:

8 639. Plaintiffs Titcher and Smith are residents of the State of California.

9 640. Plaintiffs Titcher and Smith paid for or purchased Yuga Financial
10 Products in California and thus the deceptive transactions alleged herein occurred in
11 California.

12 641. At all relevant times there was in full force and effect the California
13 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §17200, *et seq.*, which
14 prohibits, *inter alia*, “any unlawful, unfair, or fraudulent business act or practice”
15 and “unfair, deceptive, untrue, or misleading advertising.”

16 642. “[A]n act can be alleged to violate any or all three of the three prongs
17 of the UCL – unlawful, unfair, or fraudulent.” *Stearns v. Select Comfort Retail*
18 *Corp.*, 763 F. Supp. 2d 1128, 1149 (N.D. Cal. 2010) (quoting *Berryman v. Merit*
19 *Prop. Mgmt., Inc.*, 152 Cal. App. 4th 1544, 1554 (2007)).

20 643. The “unlawful” prong of the UCL prohibits “anything that can
21 properly be called a business practice and that at the same time is forbidden by
22 law.” *Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180
23 (1999). By proscribing “any unlawful” business practice, the UCL permits injured
24 consumers to “borrow” violations of other laws and treat them as unlawful
25 competition that is independently actionable. In other words, an “unlawful”
26 business practice under the UCL is a practice that violates any other law.

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1 644. Any violation of the California false advertising laws (*e.g.*, Cal. Bus. &
2 Prof. Code §17500) necessarily violates the “unlawful” prong of the UCL.
3 Likewise, any violations of other state consumer protection laws, such as New York
4 G.B.L. §349(a); NJSA §§56:81-156 also constitutes a violation of the unlawful
5 prong of the UCL.

6 645. To meet the heightened pleading standard of Federal Rule of Civil
7 Procedure (“Rule”) 9(b) for claims that sound in fraud, plaintiffs must plead ““the
8 who, what, when, where, and how”” of the alleged fraud. *Vess v. Ciba-Geigy Corp.*
9 *USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

10 646. In order to have standing for a UCL claim, a plaintiff must meet the
11 injury-in-fact requirement. This requirement is met where a plaintiff can “show
12 that, by relying on a misrepresentation on a product label, they ‘paid more for a
13 product than they otherwise would have paid, or bought it when they otherwise
14 would not have done so.’” *Reid v. Johnson & Johnson*, 780 F.3d 952, 958 (9th Cir.
15 2015). A plaintiff’s claims under this California statute are governed by the
16 “reasonable consumer” test. *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir.
17 1995) (“[T]he false or misleading advertising and unfair business practices claim
18 must be evaluated from the vantage of a reasonable consumer.”). Under the
19 reasonable consumer standard, a plaintiff must “show that ‘members of the public
20 are likely to be deceived.’” *Id.* (quoting *Bank of the West v. Super. Ct.*, 2 Cal. 4th
21 1254, 1267 (1992)).

22 647. Defendants engaged in deceptive acts and practices under California
23 law by taking advantage of the lack of knowledge, ability, experience, or capacity
24 of Plaintiffs to a grossly unfair degree, including but not limited to, in the following
25 ways:

26 (a) knowingly and intentionally misrepresenting that it was not a
27 traditional art collector but rather the Yuga-affiliated FTX that was the purportedly
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1 winning bidder of the Sotheby's auction and that the entire auction was a scheme to
2 promote the BAYC NFT collection in order to artificially inflate their price;

3 (b) knowingly and intentionally concealing the specific roles and
4 overlapping ownership and/or financial interests in Yuga and MoonPay by the
5 Executive Defendants, ApeDAO Board Defendants, and Promoter Defendants
6 Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, and Broadus;

7 (c) failing to disclose that the promotions by Promoter Defendants
8 Fallon (with the approval and/or assistance of Defendants Universal and EHD),
9 Winkelmann, Hilton, Ciccone, Post, Bieber, Broadus, and Curry were the result of
10 them being paid to promote (or having a vested financial interest in the promotion
11 of) the Yuga Financial Products instead of an organic interest/support of the Bored
12 Ape ecosystem;

13 (d) knowingly and intentionally using and/or failing to disclose the
14 use of the Promoter Defendants to instill trust in uninformed investors to promote
15 the financial benefits of a highly speculative and risky investment in Yuga Financial
16 Products, in an effort to manipulate and artificially inflate the price and trading
17 volume of the Yuga Financial Products and allow the Company, Executive
18 Defendants, and ApeDAO Board Defendants to profit from the sale of Yuga
19 Financial Products at those inflated prices;

20 (e) knowingly and intentionally misrepresenting and/or failing to
21 disclose that the MoonPay Concierge service promoted by Defendants Soto-Wright,
22 MoonPay, Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, and Broadus was
23 being used as a front for the undisclosed payments from the Executive Defendants
24 and Defendant Oseary to Promoter Defendants Fallon, Winkelmann, Hilton, Post,
25 Ciccone, and Broadus in exchange for misleadingly promoting the Yuga Financial
26 Products to investors; and

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1 (f) failing to disclose that Defendant Adidas was working with
2 MoonPay and the Company to actively conceal that the promotions from Promoter
3 Defendants and other non-named celebrity influencers were paid for (as opposed to
4 a genuine interest).

5 648. The Company, Sotheby's, and the Executive Defendants Aronow and
6 Solano did not disclose that the winning bidder of the Sotheby's auction was FTX
7 and not a traditional art collector. Nor did the Company, Executive Defendants, or
8 ApeDAO Board Defendants disclose that the Promoter Defendants were paid
9 promoters and/or had overlapping underlying financial interests in Yuga and
10 MoonPay. Plaintiffs would have found it material to their decisions to purchase
11 Yuga Financial Products to know whether or not insiders, who were given the
12 Yuga Financial Products, had the ability to sell those Yuga Financial Products and
13 create massive downward pressure. Likewise, had Plaintiffs been made aware of
14 that information at the times of their respective purchases, it would have altered
15 their decision to both purchase the Yuga Financial Products for the price they paid
16 as well and hold on to those Yuga Financial Products when they otherwise would
17 not have done so.

18 649. The facts that the Defendants misrepresented and concealed were
19 material to the decisions of Plaintiff Titcher and the members of the Class about
20 whether to pay for or purchase Yuga Financial Products (at all or for the price they
21 paid), in that they would not have proceeded with their transactions but for the
22 deceptive, fraudulent, and false acts and practices.

23 650. Upon making a statement of fact regarding the winning bidder of the
24 Sotheby's auction, this gave rise to a duty to disclose that information, and by
25 failing to disclose that information, Defendants are liable for a UCL fraud by
26 omission claim. *See In re Carrier IQ, Inc.*, 78 F. Supp. 3d 1051, 1113-14 (N.D.
27 Cal. 2015) ("Finally, Plaintiffs have alleged that the information regarding the
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1 Carrier IQ Software was in the exclusive knowledge of Defendants. These
2 allegations are sufficient to plausibly allege that Defendants had exclusive
3 knowledge of a material fact that they had a duty to disclose but chose to omit.”);
4 *see also In re Solara Med. Supplies, LLC Customer Data Sec. Breach Litig.*, 613 F.
5 Supp. 3d 1284, 1303 (S.D. Cal. 2020) (finding that the plaintiffs adequately alleged
6 a fraudulent omission UCL claim where they pled “a duty to disclose based upon
7 [d]efendant’s exclusive knowledge of the alleged inadequacy of its security
8 measures”).

9 651. For example, the Company’s misleading statements and omissions
10 concerning the ability to use Yuga Financial Products and their related intellectual
11 property rights relate to “the central functionality of the product,” which is
12 required to plead a fraud by omission claim under the UCL. *See Hall v. SeaWorld*
13 *Ent., Inc.*, 747 F. App’x 449, 451 (9th Cir. 2018) (citing *Hodsdon v. Mars, Inc.*,
14 891 F.3d 857, 863 (9th Cir. 2018)). The omissions about the intellectual property
15 rights given to investors in the BAYC, MAYC, and BAKC NFT collections, as
16 well as the omissions concerning the ability to use ApeCoin and virtual land in the
17 Otherside, were only known to Executive Defendants and were contrary to
18 representations and omissions previously made concerning the ability to use Yuga
19 Financial Products to purchase goods and services.

20 652. Further Defendants, collectively and individually, had superior
21 knowledge of information regarding the ownership interests and ability to use the
22 Yuga Financial Products as advertised. The fact that the Promoter Defendants had
23 undisclosed financial interests in Yuga and MoonPay was not known to Plaintiffs
24 Titcher and Smith or the members of the Class when each was respectively
25 deciding whether or not to purchase Yuga Financial Products, as this information
26 was in the exclusive possession of the Company, Executive Defendants, and
27 ApeDAO Board Defendants.

1 653. To state a claim for active concealment, a plaintiff must allege specific
2 “affirmative acts on the part of the [D]efendants in hiding, concealing or covering
3 up the matters complained of.” *Herron v. Best Buy Co. Inc.*, 924 F. Supp. 2d
4 1161, 1176 (E.D. Cal. 2013) (citing *Lingsch v. Savage*, 213 Cal. App. 2d 729, 734
5 (1963)). Here, the Company and Executive Defendants used their business
6 associate Defendant Oseary to act as a middleman between the public and the
7 Company’s founders in order to actively conceal the true nature of the Promoter
8 Defendants’ business relationships with the Company, MoonPay, and the insiders
9 of both.

10 654. Defendants intended for Plaintiffs Titcher and Smith and the members
11 of the Class to pay for Yuga Financial Products in reliance upon the deceptive and
12 fraudulent acts and practices described herein.

13 655. Had any of the Defendants disclosed the omitted information, Plaintiffs
14 Titcher and Smith would have been aware of it because (a) he saw the actual
15 promotions by Promoter Defendants Sotheby’s, Fallon, Winkelman, Hilton, Post,
16 Bieber, Ciccone, Broadus, Curry, and Adidas, and would have concurrently seen
17 any disclosure on the promotions themselves had it been included, and (b) they
18 follow, directly or indirectly, the social media accounts of, and news reports on,
19 Defendants Sotheby’s, Fallon, Hilton, Post, Bieber, Broadus, Curry, and Adidas.

20 656. As a direct and proximate result of Defendants’ unlawful, unfair, and
21 deceptive practices, Plaintiffs and Class members suffered damages. The
22 Executive Defendants’ activities with the Promoter Defendants caused Plaintiffs
23 and the Class members to purchase and/or hold the Yuga Financial Products when
24 they otherwise would not have done so.

25 657. The statements from Executive Defendants and Promoter Defendants
26 Sotheby’s, Fallon, Hilton, Post, Bieber, and Broadus are actionable and not
27 puffery. “The distinguishing characteristics of puffery are vague, highly
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1 subjective claims as opposed to specific, detailed factual assertions.” *Orlick v.*
2 *Rawlings Sporting Goods Co.*, No. CV 12-6787-GHK (RZX), 2013 WL 12139142,
3 at *5 (C.D. Cal. Feb. 20, 2013). Under California law, there is no requirement that
4 for a statement to be actionable it must also be false – the UCL also prohibits
5 ““advertising which, although true, is either actually misleading or which has a
6 capacity, likelihood or tendency to deceive or confuse the public.”” *Williams v.*
7 *Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008). Significantly, even if
8 certain statements would be non-actionable on their own, where there are multiple
9 statements at issue, courts must consider “as a whole.” *Id.* at 939 n.3; *Lima v.*
10 *Gateway, Inc.*, 710 F. Supp. 2d 1000, 1007-08 (C.D. Cal. 2010) (denying motion to
11 dismiss where some specific representations could be considered puffery, but all of
12 defendants’ statements “taken as a whole” might be actionable); *In re NJOY, Inc.*
13 *Consumer Class Action Litig.*, No. CV 14-00428 MMM (JEMx), 2015 WL
14 12732461, at *10 (C.D. Cal. May 27, 2015) (““Even assuming . . . that some of the
15 statements would themselves be non-actionable, they “cannot be considered in
16 isolation because they contribute to the [potentially] deceptive context” of the
17 packaging and marketing “as a whole.””) (alteration in original).

18 658. For example, Executive Defendant Aronow’s August 21, 2021 post
19 stated that the BAYC NFT collection had over a billion dollars in market
20 capitalization. This statement from Aronow is a specific, detailed factual assertion
21 the Executive Defendants were using to encourage purchases and increase the price
22 of the Yuga Financial Products. At the same time, Aronow failed to disclose that
23 these metrics were the result of conduct by the Executive Defendants that allowed
24 insiders to disproportionately increase investments in the Yuga Financial Products.

25 659. Taken together, the misleading statements and omissions of the
26 Defendants contributed to the deceptive marketing tactics as a whole, which were
27 used to solicit sales of Yuga Financial Products.

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1 660. In the event that Plaintiffs’ securities and consumer law claims are
2 found to be inapplicable to the wrongdoing alleged herein against Defendants,
3 Plaintiffs will be unable to obtain monetary damages in an amount that would
4 make Plaintiffs and the members of the Class whole.

5 661. In addition, Plaintiffs Titcher and Smith and the Class lack an adequate
6 remedy at law because the elements of the other state securities and consumer law
7 claims require proof of conduct beyond that which must be shown to establish
8 liability under the UCL and FAL. *See M.O. Dion & Sons, Inc. v. VP Racing Fuels,*
9 *Inc.*, No. CV 19-5154-MWF (SSX), 2022 WL 18281526, at *8 (C.D. Cal. Nov. 2,
10 2022).

11 662. The lack of an adequate remedy at law entitles Plaintiffs and the Class
12 to pursue equitable restitution under the UCL.

13 663. Concurrently, “restitution under the . . . UCL would be more certain,
14 prompt, or efficient than the legal remedies” available with state securities and
15 consumer law claims. *See Anderson v. Apple Inc.*, 500 F. Supp. 3d 993, 1009
16 (N.D. Cal. 2020) (citing *Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937)).
17 For example, the price premium damages model will likely require expert analysis
18 to calculate, whereas equitable restitution will only require a showing of what each
19 member of the Class paid for their Yuga Financial Products. Restitution would,
20 therefore, be much more prompt and efficient than this remedy at law.

21 664. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts
22 or practices by Defendants, to obtain restitution and disgorgement of all monies
23 generated as a result of such practices, and for all other relief allowed under Cal.
24 Bus. & Prof. Code §17200.

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SECOND CAUSE OF ACTION
Violation of the California Unfair Competition Law
Cal. Bus. & Prof. Code §17200
(Based on Unfair Acts and Practices)
(Against All Defendants)

665. Plaintiffs restate and reallege all preceding allegations in the paragraphs above as if fully set forth herein, and further allege the following:

666. Plaintiffs Titcher and Smith are residents of the State of California.

667. Plaintiffs Titcher and Smith paid for or purchased Yuga Financial Products in California and thus the deceptive transactions alleged herein occurred in California.

668. At all relevant times there was in full force and effect the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §17200, *et seq.*, which prohibits, *inter alia*, “any unlawful, unfair, or fraudulent business act or practice” and “unfair, deceptive, untrue, or misleading advertising.”

669. “[A]n act can be alleged to violate any or all three of the three prongs of the UCL – unlawful, unfair, or fraudulent.” *Stearns*, 763 F. Supp. 2d at 1149 (quoting *Berryman*, 152 Cal. App. 4th at 1554).

670. Defendants engaged in business acts and practices deemed “unfair” under the UCL, because of the conduct, statements, and omissions described above. Unfair acts under the UCL have been interpreted using different tests, including: (1) whether the public policy which is a predicate to a consumer unfair competition action under the unfair prong of the UCL is tethered to specific constitutional, statutory, or regulatory provisions; (2) whether the gravity of the harm to the consumer caused by the challenged business practice outweighs the utility of the defendant’s conduct; and (3) whether the consumer injury is substantial, not outweighed by any countervailing benefits to consumers or competition, and is an injury that consumers themselves could not reasonably have avoided.

1 671. Defendants have engaged in, and continue to engage in, conduct that
2 violates the legislatively declared policies of: (1) California Civil Code
3 §§1572,1573, 1709, 1710, 1711 against committing fraud and deceit; (2) California
4 Civil Code §1770 against committing acts and practices intended to deceive
5 consumers regarding the representation of goods in certain particulars; and (3) the
6 Federal Tort Claims Act (“FTCA”), 15 U.S.C. §45(a)(1), against unfair or deceptive
7 practices. Defendants gain an unfair advantage over their competitors, whose
8 practices relating to other similar products must comply with these laws.

9 672. 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.

13 673. 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,
17 more than 46,000 people have reported losing over \$1 billion in crypto to scams –
18 that’s about one out of every four dollars reported lost, more than any other
19 payment method. The median individual reported loss? A whopping \$2,600.”⁴⁵⁷

20 674. 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
23 message on a social media platform.”⁴⁵⁸ Furthermore, “[d]uring this period, nearly
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25 ⁴⁵⁷ Emma Fletcher, *Data Spotlight: Reports show scammers cashing in on*
26 *crypto 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](https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze).

27 ⁴⁵⁸ *Id.* (“From January 1, 2021 through March 31, 2022, 49% of fraud reports to
28 the FTC indicating cryptocurrency as the payment method specified that the scam

1 four out of every ten dollars reported lost to a fraud originating on social media was
2 lost in crypto, far more than any other payment method.”⁴⁵⁹ Of the reported crypto
3 fraud losses that began on social media, most are investment scams.⁴⁶⁰ Indeed,
4 since 2021, \$575 million of all crypto fraud losses reported to the FTC were about
5 bogus investment opportunities, far more than any other fraud type. Defendants
6 engaged in the exact kind of bogus crypto “investment opportunity” scam that the
7 FTC Data Spotlight reported on as causing hundreds of millions (and rising) of
8 dollars of damage to investors.

9 675. The conduct of Defendants – including, but not limited to, failing to
10 disclose that (1) it was not a traditional art collector but rather the Yuga-affiliated
11 FTX that was the purportedly winning bidder of the Sotheby’s auction and that the
12 entire auction was a scheme to promote the BAYC NFT collection in order to
13 artificially inflate their price; (2) the promotions by Promoter Defendants Fallon
14 (with the approval and/or assistance of Defendants Universal and EHD),
15 Winkelmann, Hilton, Ciccone, Post, Bieber, Broadus, and Curry were the result of
16 them being paid to promote (or had a vested financial interest in the promotion of)
17 the Yuga Financial Products instead of an organic interest/support of the Bored Ape
18 ecosystem; (3) the MoonPay Concierge service promoted by Defendants Soto-
19 Wright, MoonPay, Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, and
20 Broadus was not the legitimate service described by them, but rather a vehicle by
21 which the Executive Defendants and Defendant Oseary made undisclosed payments

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23 started on social media, compared to 37% in 2020, 18% in 2019, and 11% in
24 2018.”).

24 ⁴⁵⁹ *Id.* (“From January 1, 2021 through March 31, 2022, \$1.1 billion was
25 reported to the FTC as lost to fraud originating on social media.”).

26 ⁴⁶⁰ *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 to Promoter Defendants Fallon, Winkelmann, Hilton, Post, Ciccone, and Broadus in
2 exchange for misleadingly promoting the Yuga Financial Products to investors; (4)
3 Defendant Adidas had conspired with the Company and MoonPay to facilitate the
4 Yuga promoter payments and then conceal such conduct afterwards; and (5)
5 Executive Defendants and ApeDAO Board Defendants held a significant portion of
6 the Float at the time of the ApeCoin token launch and thus, could (and did) create
7 massive downward pressure on the price of ApeCoin tokens by freely selling their
8 allocations to investors – was and is substantially injurious to consumers. Such
9 conduct has caused, and continues to cause, substantial injury to consumers because
10 consumers would not have continued with the transaction but for the deceptive,
11 fraudulent, false, and unfair acts and practices alleged herein. For example, the
12 Company and Executive Defendant Shoemaker continue to rely on the deceptive
13 celebrity promotions described herein to further solicit sales of the Yuga Financial
14 Products. On March 23, 2023, the Company posted a second-year anniversary
15 video that contained a montage of the deceptive promotions at issue here and of the
16 Promoter Defendants engaging in the same misconduct as occurred during the Class
17 Period. Shoemaker, once again, amplified the misleading Yuga promotions on her
18 personal Twitter account, reposting the anniversary video and stating that she was
19 “Super proud of everything this company and super epic community have achieved
20 in such a short time. Can’t wait to see what’s still to come 🚀 keep slaying BAYC
21 fam 🐶.”⁴⁶¹

22 676. Consumers have overpaid for Yuga Financial Products and the injury
23 alleged herein is not outweighed by any countervailing benefits to consumers or
24 competition. Indeed, no benefit to consumers or competition results from the
25 alleged conduct of Defendants. Since consumers reasonably rely on the
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27 ⁴⁶¹ Jasmine Shoemaker (@SodaOps), TWITTER (Apr. 23, 2022 2:15 PM),
28 <https://twitter.com/SodaOps/status/1650201780939259904?s=20>.

1 representations, and could not have known about the omitted disclosures, and the
2 injury results from ordinary use of their product, consumers could not have
3 reasonably avoided such injury.

4 677. Defendants willfully and knowingly engaged in the deceptive and
5 unfair acts and practices described above and knew or should have known that those
6 acts and practices were unlawful and thus in violation of Cal. Bus. & Prof. Code
7 §17200, *et seq.*

8 678. These particular facts that each Defendant omitted and concealed were
9 material to the decisions of Plaintiff Titcher and the members of the Class about
10 whether to pay for Yuga Financial Products, in that they would not have proceeded
11 with the transaction but for the deceptive and unfair acts and practices.

12 679. Defendants' conduct harmed competition. While the Company,
13 Executive Defendants, and ApeDAO Board Defendants cut corners and minimized
14 costs, their competitors spent the time and money necessary to promote financial
15 products and/or digital assets that complied with the applicable state and federal
16 laws. Further, the injuries suffered by Plaintiffs are not outweighed by any
17 countervailing benefits to consumers or competition. And because Defendants are
18 solely responsible for their respective promotional activities and related disclosures
19 (or lack thereof), there is no way Plaintiff Titcher, or the members of the Class
20 could have known about the payments that Promoter Defendants received for
21 pretending that they were interested in the BAYC NFT collection of the Bored Ape
22 ecosystem. There were reasonably available alternatives to further Yuga's and
23 MoonPay's legitimate business interests, such as including disclaimers, other than
24 the conduct alleged herein.

25 680. In order to have standing for a UCL claim, a plaintiff must meet the
26 injury-in-fact requirement. This requirement is met where a plaintiff can "show
27 that, by relying on a misrepresentation on a product label, they 'paid more for a
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1 product than they otherwise would have paid, or bought it when they otherwise
2 would not have done so.’” *Reid*, 780 F.3d at 958. A plaintiff’s claims under this
3 California statute are governed by the “reasonable consumer” test. *Freeman*, 68
4 F.3d at 289 (“[T]he false or misleading advertising and unfair business practices
5 claim must be evaluated from the vantage of a reasonable consumer.”). Under the
6 reasonable consumer standard, a plaintiff must “show that ‘members of the public
7 are likely to be deceived.’” *Id.* (quoting *Bank of the West*, 2 Cal. 4th at 1267).

8 681. To meet the heightened pleading standard of Rule 9(b) for claims that
9 sound in fraud, plaintiffs must plead “‘the who, what, when, where, and how’” of
10 the alleged fraud. *Vess*, 317 F.3d at 1106.

11 682. Defendants engaged in deceptive acts and practices under California
12 law by taking advantage of the lack of knowledge, ability, experience, or capacity
13 of Plaintiffs to a grossly unfair degree, including but not limited to, in the following
14 ways:

15 (a) knowingly and intentionally misrepresenting that it was not a
16 traditional art collector but rather the Yuga-affiliated FTX that was the purportedly
17 winning bidder of the Sotheby’s auction and that the entire auction was a scheme to
18 promote the BAYC NFT collection in order to artificially inflate their price;

19 (b) knowingly and intentionally concealing the specific roles and
20 overlapping ownership and/or financial interests in Yuga and MoonPay by the
21 Executive Defendants, ApeDAO Board Defendants, and Promoter Defendants
22 Oseary, Fallon (with the approval and/or assistance of Defendants Universal and
23 EHD), Winkelmann, Hilton, Post, Ciccone, and Broadus;

24 (c) failing to disclose that the promotions by Promoter Defendants Fallon
25 (with the approval and/or assistance of Defendants Universal and EHD),
26 Winkelmann, Hilton, Ciccone, Post, Bieber, Broadus, and Curry were the result of
27 them being paid to promote (or having a vested financial interest in the promotion
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1 of) the Yuga Financial Products instead of an organic interest/support of the Bored
2 Ape ecosystem;

3 (d) knowingly and intentionally using and/or failing to disclose the use of
4 the Promoter Defendants to instill trust in uninformed investors to promote the
5 financial benefits of a highly speculative and risky investment in Yuga Financial
6 Products, in an effort to manipulate and artificially inflate the price and trading
7 volume of the Yuga Financial Products and allow the Company, Executive
8 Defendants, and ApeDAO Board Defendants to profit from the sale of Yuga
9 Financial Products at those inflated prices;

10 (e) knowingly and intentionally misrepresenting and/or failing to disclose
11 that the MoonPay Concierge service promoted by Defendants Soto-Wright,
12 MoonPay, Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, and Broadus was
13 being used as a front for the undisclosed payments from the Executive Defendants
14 and Defendant Oseary to Promoter Defendants Fallon, Winkelmann, Hilton, Post,
15 Ciccone, and Broadus in exchange for misleadingly promoting the Yuga Financial
16 Products to investors; and

17 (f) failing to disclose that Defendant Adidas had conspired with the
18 Company and MoonPay to facilitate the Yuga promoter payments and then conceal
19 such conduct afterwards.

20 683. The facts that Defendants misrepresented and concealed were material
21 to the decisions of Plaintiffs Titcher and Smith 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.

25 684. Defendants intended for Plaintiffs Titcher and Smith and the members
26 of the Class to pay for Yuga Financial Products in reliance upon their deceptive and
27 fraudulent acts and practices.

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1 685. Had any of the Defendants disclosed the omitted information, Plaintiffs
2 would have been aware of it because (a) they saw the actual promotions by
3 Promoter Defendants Sotheby’s, Fallon (with the approval and/or assistance of
4 Defendants Universal and EHD), Hilton, Post, Bieber, Broadus, Curry, and Adidas,
5 and would have concurrently seen any disclosure on the promotions themselves had
6 it been included; and (b) they follow, directly or indirectly, the social media
7 accounts of, and news reports on, the Company and its affiliated social media
8 accounts and Defendants Sotheby’s, Fallon, Hilton, Post, Bieber, Broadus, Curry,
9 and Adidas.

10 686. As a direct and proximate result of Defendants’ unlawful, unfair, and
11 deceptive practices, Plaintiffs and Class members suffered damages. The activities
12 of Executive Defendants, ApeDAO Board Defendants, with Defendants MoonPay,
13 Soto-Wright, and the Promoter Defendants caused Plaintiffs and the Class members
14 to purchase and/or hold the Yuga Financial Products when they otherwise would
15 not have done so.

16 687. The statements from Executive Defendants and Promoter Defendants
17 Sotheby’s, Fallon (with the approval and/or assistance of Defendants Universal and
18 EHD), Winkelmann, Hilton, Post, Bieber, Broadus, and Curry are actionable and
19 not puffery. ““The distinguishing characteristics of puffery are vague, highly
20 subjective claims as opposed to specific, detailed factual assertions.”” *Orlick v.*
21 *Rawlings Sporting Goods Co.*, No. CV 12-6787-GHK (RZX), 2013 WL 12139142,
22 at *5 (C.D. Cal. Feb. 20, 2013). Under California law, there is no requirement that
23 for a statement to be actionable it must also be false – the UCL also prohibits
24 ““advertising which, although true, is either actually misleading or which has a
25 capacity, likelihood or tendency to deceive or confuse the public.”” *Williams v.*
26 *Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008). Significantly, even if certain
27 statements would be non-actionable on their own, where there are multiple
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1 statements at issue, courts must consider “as a whole.” *Id.* at 939 n.3; *Lima v.*
2 *Gateway, Inc.*, 710 F. Supp. 2d 1000, 1007-08 (C.D. Cal. 2010) (denying motion to
3 dismiss where some specific representations could be considered puffery, but all of
4 defendants’ statements “taken as a whole” might be actionable); *In re NJOY, Inc.*
5 *Consumer Class Action Litig.*, No. CV 14-00428 MMM (JEMx), 2015 WL
6 12732461, at *10 (C.D. Cal. May 27, 2015) (“Even assuming . . . that some of the
7 statements would themselves be non-actionable, they “cannot be considered in
8 isolation because they contribute to the [potentially] deceptive context” of the
9 packaging and marketing “as a whole.””) (alteration in original).

10 688. For example, Executive Defendant Aronow’s August 21, 2021 post
11 stated that the BAYC NFT collection had over a billion dollars in market
12 capitalization. This statement from Aronow is a specific, detailed factual assertion
13 the Executive Defendants were using to encourage purchases and increase the price
14 of the Yuga Financial Products. At the same time, Aronow failed to disclose that
15 these metrics were the result of conduct by the Executive Defendants that allowed
16 insiders to disproportionately increase investments in the Yuga Financial Products.

17 689. Taken together, the misleading statements and omissions of the
18 Defendants contributed to the deceptive marketing tactics as a whole, which were
19 used to solicit sales of Yuga Financial Products.

20 690. In the event that Plaintiffs’ securities and consumer law claims are
21 found to be inapplicable to the wrongdoing alleged herein against Defendants,
22 Plaintiffs will be unable to obtain monetary damages in an amount that would make
23 Plaintiffs and the members of the Class whole.

24 691. In addition, Plaintiffs and the Class lack an adequate remedy at law
25 because the elements of the other state securities and consumer law claims require
26 proof of conduct beyond that which must be shown to establish liability under the
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1 UCL and FAL. *See M.O. Dion & Sons, Inc. v. VP Racing Fuels, Inc.*, No. CV 19-
2 5154-MWF (SSX), 2022 WL 18281526, at *8 (C.D. Cal. Nov. 2, 2022).

3 692. The lack of an adequate remedy at law entitles Plaintiffs and the Class
4 to pursue equitable restitution under the UCL.

5 693. Concurrently, “restitution under the . . . UCL would be more certain,
6 prompt or efficient than the legal remedies” available with state securities and
7 consumer law claims. *See Anderson*, 500 F. Supp. 3d at 1009 (citing *Stewart*, 300
8 U.S. at 214). For example, the price premium damages model will likely require
9 expert analysis to calculate, whereas equitable restitution will only require a
10 showing of what each member of the Class paid for their Yuga Financial Products.
11 Restitution would, therefore, be much more prompt and efficient than this remedy
12 at law.

13 694. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts
14 or practices by Defendants, to obtain restitution and disgorgement of all monies
15 generated as a result of such practices, and for all other relief allowed under
16 California Business & Professions Code §17200.

17 **THIRD CAUSE OF ACTION**
18 **Violation of the California Unfair Competition Law**
19 **Cal. Bus. & Prof. Code §17200**
20 **(Based on Fraudulent Acts and Practices)**
21 **(Against All Defendants)**

22 695. Plaintiffs restate and reallege all preceding allegations in the
23 paragraphs above as if fully set forth herein, and further allege the following:

24 696. Plaintiffs Titcher and Smith are residents of the State of California.

25 697. Plaintiffs Titcher and Smith paid for or purchased Yuga Financial
26 Products in California and thus the deceptive transactions alleged herein occurred in
27 California.
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1 698. 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”
4 and “unfair, deceptive, untrue, or misleading advertising.”

5 699. “[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).

8 700. Any violation of the California false advertising laws (*e.g.*, §17500)
9 necessarily violates the “fraudulent” prong of the UCL.

10 701. 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
12 the alleged fraud. *Vess*, 317 F.3d at 1106.

13 702. 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
17 they otherwise would not have done so.’” *Reid*, 780 F.3d at 958.

18 703. 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).

24 704. 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.”
27 *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336 (1997). In fact, allegations of
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1 “intentional and systematic concealment by the defendants of highly material facts,
2 which were peculiarly within their knowledge and which [plaintiffs] did not suspect
3 and could not have discovered” satisfactorily pleads a claim of fraud by omission.
4 *See Sime v. Malouf*, 95 Cal. App. 2d 82, 99-100 (1949) (finding “significant” that
5 defendants “concealed their identity by proceeding entirely through agents acting
6 ostensibly in their own behalf”).

7 705. Further, a fraud by omission claim exists when “defendants not only
8 had exclusive knowledge of the material facts, but knew that [plaintiff] was acting
9 under a misapprehension, which they had cultivated.” *Id.* at 100 (citing *Stewart v.*
10 *Wyoming Cattle-Ranch Co.*, 128 U.S. 383, 388 (1888)); *Myers v. BMW of N. Am.,*
11 *LLC*, No. 16-CV-00412-WHO, 2016 WL 5897740, at *5 (N.D. Cal. Oct. 11, 2016)
12 (finding a duty to disclose where defendant had exclusive knowledge of a product
13 defect and made a partial representation about it and denying dismissal of UCL
14 claim under fraud by omission theory).

15 706. “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,
21 2016)). Indeed, under California law a duty to disclose “may arise without any
22 confidential relationship where defendant alone has knowledge of material facts
23 that are not accessible to the plaintiff.” 5 Witkin, SUMMARY OF CAL. LAW (10th ed.
24 2005) Torts, §799, p. 1156. These factors do not require a fiduciary relationship so
25 long as there exists “some relationship” between the defendant and plaintiff, such as
26 “between buyer and seller.” *LiMandri*, 52 Cal. App. 4th at 336. Promoter
27 Defendants’ omissions were fraudulent under these factors in *LiMandri*.

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1 707. These particular facts that each Defendant omitted and concealed were
2 material to the decisions of Plaintiffs Titcher and Smith and the members of the
3 Class about whether to pay for or purchase Yuga Financial Products (at all or for
4 the price they paid), in that they would not have proceeded with the transaction but
5 for the 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.

15 708. 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
19 members of the Class when each was respectively deciding whether or not to
20 purchase Yuga Financial Products, as this information was in the exclusive
21 possession of the Company, Executive Defendants, and ApeDAO Board
22 Defendants.

23 709. To state a claim for active concealment, a plaintiff must allege specific
24 “affirmative acts on the part of the [D]efendants in hiding, concealing or covering
25 up the matters complained of.” *Herron v. Best Buy Co. Inc.*, 924 F. Supp. 2d 1161,
26 1176 (E.D. Cal. 2013) (citing *Lingsch v. Savage*, 213 Cal. App. 2d 729, 734
27 (1963)). Here, the Company and Executive Defendants used their business
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1 associate Defendant Oseary to act as a middleman between the public and the
2 Company's founders in order to actively conceal the true nature of the Promoter
3 Defendants' business relationships with the Company, MoonPay, and the insiders
4 of both.

5 710. Defendants intended for Plaintiffs and the members of the Class to pay
6 for Yuga Financial Products in reliance upon the deceptive and fraudulent acts and
7 practices described herein.

8 711. Defendants engaged in deceptive acts and practices under California
9 law by taking advantage of the lack of knowledge, ability, experience, or capacity
10 of Plaintiffs to a grossly unfair degree, including but not limited to, in the following
11 ways:

12 (a) knowingly and intentionally misrepresenting that it was not a
13 traditional art collector but rather the Yuga-affiliated FTX that was the purportedly
14 winning bidder of the Sotheby's auction and that the entire auction was a scheme to
15 promote the BAYC NFT collection in order to artificially inflate their price;

16 (b) knowingly and intentionally concealing the specific roles and
17 overlapping ownership and/or financial interests in Yuga and MoonPay by the
18 Executive Defendants, ApeDAO Board Defendants, and Promoter Defendants
19 Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, and Broadus;

20 (c) failing to disclose that the promotions by Promoter Defendants
21 Fallon (with the approval and/or assistance of Defendants Universal and EHD),
22 Winkelmann, Hilton, Ciccone, Post, Bieber, Broadus, and Curry were the result of
23 them being paid to promote (or having a vested financial interest in the promotion
24 of) the Yuga Financial Products instead of an organic interest/support of the Bored
25 Ape ecosystem;

26 (d) knowingly and intentionally using and/or failing to disclose the
27 use of the Promoter Defendants to instill trust in uninformed investors to promote
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1 the financial benefits of a highly speculative and risky investment in Yuga Financial
2 Products, in an effort to manipulate and artificially inflate the price and trading
3 volume of the Yuga Financial Products and allow the Company, Executive
4 Defendants, and ApeDAO Board Defendants to profit from the sale of Yuga
5 Financial Products at those inflated prices;

6 (e) knowingly and intentionally misrepresenting and/or failing to
7 disclose that the MoonPay Concierge service promoted by Defendants Soto-Wright,
8 MoonPay, Oseary, Fallon, Winkelmann, Hilton, Post, Ciccone, and Broadus was
9 being used as a front for the undisclosed payments from the Executive Defendants
10 and Defendant Oseary to Promoter Defendants Fallon, Winkelmann, Hilton, Post,
11 Ciccone, and Broadus in exchange for misleadingly promoting the Yuga Financial
12 Products to investors; and

13 (f) failing to disclose that Defendant Adidas had conspired with the
14 Company and MoonPay to facilitate the Yuga promoter payments and then conceal
15 such conduct afterwards.

16 712. Had any of the Defendants disclosed the omitted information, Plaintiffs
17 would have been aware of it because (a) they saw the actual promotions by
18 Promoter Defendants Sotheby's, Fallon, Hilton, Post, Bieber, Broadus, Curry, and
19 Adidas, and would have concurrently seen any disclosure on the promotions
20 themselves had it been included, and (b) they follow, directly or indirectly, the
21 social media accounts of, and news reports on, Defendants Sotheby's, Fallon,
22 Hilton, Post, Bieber, Broadus, Curry, and Adidas.

23 713. As a direct and proximate result of Defendants' unlawful, unfair, and
24 deceptive practices, Plaintiffs and Class members suffered damages. The Executive
25 Defendants' activities with the Promoter Defendants caused Plaintiffs and the Class
26 members to purchase and/or hold the Yuga Financial Products when they otherwise
27 would not have done so.

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1 714. The statements from Executive Defendants and Promoter Defendants
2 are actionable and not puffery. ““The distinguishing characteristics of puffery are
3 vague, highly subjective claims as opposed to specific, detailed factual assertions.”
4 *Orlick*, 2013 WL 12139142, at *5. Under California law, there is no requirement
5 that for a statement to be actionable it must also be false – the UCL also prohibits
6 ““advertising which, although true, is either actually misleading or which has a
7 capacity, likelihood or tendency to deceive or confuse the public.”” *Williams*, 552
8 F.3d at 938. Significantly, even if certain statements would be non-actionable on
9 their own, where there are multiple statements at issue, courts must consider “as a
10 whole.” *Id.* at 939 n.3; *Lima*, 710 F. Supp. 2d at 1007-08 (denying motion to
11 dismiss where some specific representations could be considered puffery, but all of
12 defendants’ statements “taken as a whole” might be actionable); *NJOY*, 2015 WL
13 12732461, at *10 (““Even assuming . . . that some of the statements would
14 themselves be non-actionable, they “cannot be considered in isolation because they
15 contribute to the [potentially] deceptive context” of the packaging and marketing
16 “as a whole.”””) (alteration in original). The alleged misstatements from Executive
17 Defendants and Promoter Defendants are specific, detailed factual assertions these
18 Defendants were using to encourage purchases and increase the price of the Yuga
19 Financial Products. At the same time, the Executive Defendants and Promoter
20 Defendants each failed to disclose that the MoonPay service was a sham created to
21 effectuate undisclosed Yuga promoter payments and that the rise in the price and
22 trading activity for Yuga Financial Products was due to deceptive conduct by
23 Defendants as opposed to genuine interest from investors.

24 715. Taken together, the misleading statements and omissions of the various
25 Defendants contributed to the deceptive marketing tactics as a whole, which were
26 used to solicit sales of Yuga Financial Products.

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1 716. In the event that Plaintiffs’ securities and consumer law claims are
2 found to be inapplicable to the wrongdoing alleged herein against Defendants,
3 Plaintiffs will be unable to obtain monetary damages in an amount that would make
4 Plaintiffs and the members of the Class whole.

5 717. In addition, Plaintiffs and the Class lack an adequate remedy at law
6 because the elements of the other state securities and consumer law claims require
7 proof of conduct beyond that which must be shown to establish liability under the
8 UCL and FAL. *See M.O. Dion & Sons, Inc. v. VP Racing Fuels, Inc.*, No. CV 19-
9 5154-MWF (SSX), 2022 WL 18281526, at *8 (C.D. Cal. Nov. 2, 2022).

10 718. The lack of an adequate remedy at law entitles Plaintiffs and the Class
11 to pursue equitable restitution under the UCL.

12 719. Concurrently, “restitution under the . . . UCL would be more certain,
13 prompt, or efficient than the legal remedies” available with state securities and
14 consumer law claims. *See Anderson v. Apple Inc.*, 500 F. Supp. 3d 993, 1009 (N.D.
15 Cal. 2020) (citing *Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937)). For
16 example, the price premium damages model will likely require expert analysis to
17 calculate, whereas equitable restitution will only require a showing of what each
18 member of the Class paid for their Yuga Financial Products. Restitution would,
19 therefore, be much more prompt and efficient than this remedy at law.

20 720. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts
21 or practices by Defendants, to obtain restitution and disgorgement of all monies
22 generated as a result of such practices, and for all other relief allowed under Cal.
23 Bus. & Prof. Code §17200.

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1 17 C.F.R. §230.159A(a). The Securities Act in turn defines “issuer” to include
2 every person who issues or proposes to issue any security. 15 U.S.C. §77b(a)(4).
3 The Statutory Seller Defendants are issuers of Yuga Financial Products and, as
4 noted above, are in privity with every purchaser of Yuga’s various NFT collections
5 (i.e. the BAYC, MAYC, BAKC, and Otherdeed NFTs) via the “creator’s fee”
6 collected by the Company on every sale of Yuga NFTs and with every purchaser of
7 ApeCoin via their provisioning of ApeCoin tokens to the liquidity pools that
8 Plaintiffs and class members purchased from.

9 729. The Solicitation Defendants are also liable under the solicitation prong
10 of Section 12(a)(1). The U.S. Supreme Court has held that statutory sellers under
11 Section 12(a)(1) also include “the buyer’s immediate seller” and any person who
12 actively solicited the sale of the securities to plaintiff and did so for financial gain.
13 *See Pinter v. Dahl*, 486 U.S. 622, 644 n.21, 647 (1988); *accord, e.g., Steed Fin.*
14 *LDC v. Nomura Sec. Int’l, Inc.*, No. 00 Civ. 8058, 2001 WL 1111508, at *7
15 (S.D.N.Y. Sept. 20, 2001). That is, §12(a)(1) liability extends to sellers who
16 actively solicit the sale of securities with a motivation to serve their own financial
17 interest or those of the securities owner. *Pinter*, 486 U.S. at 647; *Capri v. Murphy*,
18 856 F.2d 473, 478 (2d Cir. 1988). As specifically alleged herein, the Solicitation
19 Defendants all actively solicited sales of the Yuga Financial Products on social
20 media, proprietary web sites, press releases, television, and/or traditional print
21 media. Thus they are each liable under the solicitation prong, in addition to any
22 liability flowing from their direct issuance of Yuga Financial Products. *See Wildes*
23 *v. BitConnect Int’l PLC*, 25 F.4th 1341, 1346 (11th Cir.) (“Broadly disseminated
24 communications . . . can convey a solicitation.”); *Pino v. Cardone Cap., LLC*, No.
25 21-55564, 2022 WL 17826876 (9th Cir. Dec. 21, 2022) (stating that “[t]o conclude
26 that their social media communications fall outside the Act’s protections would be
27 at odds with Congress’s remedial goals. As observed by the Eleventh Circuit in
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1 *Wildes*, under Defendants’ interpretation of the Act, a seller liable “for
2 recommending a security in a personal letter could not be held accountable for
3 making the exact same pitch in an internet video.”).

4 730. By reason of the foregoing, the Company, Executive Defendants
5 Aronow, Solano, Atalay, Ali, Muniz, Shoemaker, Ehrlund, Lyons, ApeDAO
6 Defendants Ohanian, Wu, Bajwa, MoonPay and its CEO Defendant Soto-Wright,
7 and Promoter Defendants Oseary, Winklemann, Ciccone, Hilton, Fallon, Universal,
8 EHD, Bieber, Post, Broadus, Curry, Sotheby’s and Adidas, each violated Sections
9 5(a), 5(c), and 12(a) of the Securities Act, 15 U.S.C. §§77e(a), 77e(c), and 771(a).

10 731. As a direct and proximate result of the Statutory Seller Defendants’
11 unregistered sale of securities and/or the Solicitation Defendants’ solicitation of
12 sales of unregistered securities, Plaintiffs and the Class have suffered damages in
13 connection with their Yuga Financial Product purchases.

14 **FIFTH CAUSE OF ACTION**
15 **Violation of Sections 15 of the Securities Act of 1933**
16 **(Against the Executive Defendants, ApeDAO Board Defendants, and**
17 **Individual Defendants Oseary and Soto-Wright)**

18 732. Plaintiffs restate and reallege all preceding allegations in the
19 paragraphs above as fully set forth herein, and further allege the following:

20 733. This Count is asserted against Executive Defendants Aronow, Solano,
21 Ataly, Ali, Muniz, Shoemaker, Ehrlund, Oseary, ApeDAO Board Defendants
22 Lyons, Ohanian, Wu, and Bajwa, and Defendants Oseary and Soto-Wright
23 (collectively referred to in this cause of action as the “Control Person Defendants”)
24 under Section 15 of the Securities Act of 1933, 15 U.S.C. §77o.

25 734. The Control Person Defendants, by virtue of their offices, ownership,
26 agency, agreements or understandings, and specific acts were, at the time of the
27 wrongs alleged herein, and as set forth herein, controlling persons within the
28 meaning of Section 15 of the Securities Act of 1933. The Control Person

1 Defendants, and each of them, had the power and influence and exercised the same
2 to cause the unlawful offer and sale of Yuga Financial Products securities as
3 described herein.

4 735. The Control Person Defendants, separately or together, possess,
5 directly or indirectly, the power to direct or cause the direction of the management
6 and policies of Yuga and/or MoonPay, through ownership of voting securities, by
7 contract, subscription agreement, or otherwise.

8 736. The Control Person Defendants also have the power to direct or cause
9 the direction of the management and policies of the Company and/or MoonPay.

10 737. The Control Person Defendants, separately or together, have sufficient
11 influence to have caused the Company and/or MoonPay to submit a registration
12 statement for the Yuga Financial Products.

13 738. The Control Person Defendants, separately or together, jointly
14 participated in the Company's and MoonPay's failure to register Yuga Financial
15 Products.

16 739. By virtue of the conduct alleged herein, the Control Person Defendants
17 are liable for the wrongful conduct complained of herein and are liable to Plaintiffs
18 and the Class for rescission and/or damages suffered.

19 **SIXTH CAUSE OF ACTION**
20 **Violations of California Corporate Securities Law of 1968**
21 **Cal. Corp. Code §§25110 & 25503**
22 **(Qualification)**
23 **(Against the Company, Executive Defendants, ApeDAO Board Defendants,**
24 **MoonPay, and Promoter Defendants Sotheby's and Adidas)**

25 740. Plaintiffs restate and reallege all preceding allegations in the
26 paragraphs above as if fully set forth herein, and further allege the following:

27 741. Plaintiffs Titcher and Smith bring this claim individually and on behalf
28 of the members of the Class against the Company, Executive Defendants Aronow,
Solano, Atalay, Ali, and Muniz, ApeDAO Board Defendants Shoemaker, Ehrlund,

1 Lyons, Ohanian, Wu, and Bajwa, MoonPay, and Promoter Defendants Sotheby’s
2 and Adidas, collectively referred to in this cause of action as the “Statutory Seller
3 Defendants.”

4 742. Each of the Statutory Seller Defendants are the primary violators under
5 this cause of action.

6 743. The Yuga Financial Products are securities within the meaning of the
7 California Corporations Code.

8 744. The Yuga Financial Products were and are required to be registered
9 with the Commissioner of Corporations under California law.

10 745. Section 25110 (similar to a Section 12(a)(1) claim under the federal
11 securities law) makes it illegal, in connection with the purchase or sale of any
12 security, for any person, directly or indirectly, to offer or sell a security in
13 California “unless such security or transaction is exempted or not subject to
14 qualification under Chapter 1 (commencing with Section 25100) of this part.”
15 Further, the offer or sale of such a security “in a manner that varies or differs from,
16 exceeds the scope of, or fails to conform with either a material term or material
17 condition of qualification of the offering . . . shall be an unqualified offer or sale.”
18 Cal. Corp. Code §25110.

19 746. Section 25503 establishes a private remedy for damages under Section
20 25110 of the California Corporations Code. In particular, violators of Section
21 25110 “shall be liable to any person acquiring from them the security sold in
22 violation of that section, who may sue to recover the consideration they paid for that
23 security with interest thereon at the legal rate, and reasonable attorney’s fees, less
24 the amount of any income received therefrom, upon the tender of that security, or
25 for damages, if they no longer own the security, or if the consideration given for the
26 security is not capable of being returned.” In the event that the plaintiff no longer
27 owns the security, damages “shall be equal to the difference between (a) the
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1 purchase price plus interest at the legal rate from the date of purchase, plus
2 reasonable attorney’s fees, and (b) the value of the security at the time it was
3 disposed of by the plaintiff plus the amount of any income received therefrom by
4 the plaintiff.” Cal. Corp. Code §25503.

5 747. Conversely, Section 25503 provides that, if the consideration given for
6 the security is not capable of being returned then damages shall be equal to the
7 value of that consideration plus interest at the legal rate from the date of purchase,
8 provided the security is tendered, plus reasonable attorney’s fees; and if the plaintiff
9 no longer owns the security, damages in that case shall be equal to the difference
10 between (a) the value of the consideration given for the security plus interest at the
11 legal rate from the date of purchase, plus reasonable attorney’s fees; and (b) the
12 value of the security at the time it was disposed of by the plaintiff plus the amount
13 of any income received therefrom by the plaintiff. *Id.*

14 748. Under Section 25503, “[a]ny person on whose behalf an offering is
15 made and any underwriter of the offering, whether on a best efforts or a firm
16 commitment basis, shall be jointly and severally liable under this section.”

17 749. The Yuga Financial Products have not been registered with the
18 Commissioner, are not exempt from registration, and are not federally covered. No
19 registration statements have been filed with any state or federal government entity
20 or have been in effect with respect to any of the offerings alleged herein.

21 750. The Statutory Seller Defendants, by engaging in the conduct described
22 above, directly or indirectly, sold and/or offered to sell securities, making each
23 liable for both issuer and solicitation violations under Section 25503.

24 751. Plaintiffs purchased Yuga Financial Products securities from the
25 Statutory Seller Defendants. For example, the ApeCoin tokens were provided
26 and/or sold into the ApeCoin liquidity pool by Executive Defendants and ApeDAO
27 Board Defendants. Upon information and belief, given the limited and measurable
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1 amount of individuals selling or providing the cryptocurrency to the ApeCoin token
2 liquidity pool, a large portion (if not all) of the ApeCoin token liquidity pool were
3 provided by Executive Defendants and ApeDAO Board Defendants (or market
4 makers for Yuga like Wintermute and FTX who were given undisclosed loans of
5 Yuga Financial Products to sell to the market on behalf of the Company). These
6 actions coincided with Plaintiffs and Class members transacting with the liquidity
7 pools as buyers. Thus, by providing ApeCoin tokens to the liquidity pool at the
8 time in which Plaintiffs and the members of the Class made their ApeCoin token
9 purchases from the liquidity pool, privity between Executive Defendants
10 (personally and through the Company), ApeDAO Board Defendants (personally
11 and through the Ape Foundation and/or the Company), and Plaintiffs is established
12 even in the absence of a direct contract linking the two parties.

13 752. Privity also exists between the issuers of every Yuga NFT collection
14 (*i.e.*, the Company and Executive Defendants) and all those making purchases (*e.g.*,
15 Plaintiffs and the members of the Class) regardless of which cryptocurrency
16 exchange was used to facilitate the transaction because these Defendants are
17 receiving the benefit of a 2.5% fee per resale of a Yuga NFT.

18 753. As discussed above, the Company, Executive Defendants, ApeDAO
19 Board Defendants, MoonPay, and Promoter Defendants Sotheby's and Adidas also
20 actively solicited the purchase of Yuga Financial Products through social media,
21 promotional video, press releases, traditional press, and online.

22 754. By reason of the foregoing, each of the Statutory Seller Defendants
23 have violated Sections 25110 and 25503 of the California Corporations Code.

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SEVENTH CAUSE OF ACTION
Violation of Sections 10b of the Securities Exchange Act of 1934
and Rule 10b-5(b) thereunder
(Fraudulent Statement Liability)
(Against the Executive Defendants, the MoonPay Defendants,
the ApeDAO Board Defendants, and Sotheby’s)

755. Plaintiffs restate and reallege all preceding allegations in the paragraphs above as if fully set forth herein, and further allege the following:

756. Plaintiffs bring this claim for violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §78j(b), and Rule 10b-5(b) promulgated thereunder, 17 C.F.R. §240.10b-5(b).

757. 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).

758. Section 10(b) and Rule 10b-5(b) make it illegal, in connection with the purchase or sale of any security, “for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange . . . to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” *Id.*

759. The Executive Defendants, the MoonPay Defendants, Wu, and Sotheby’s (with the aid of the other Defendants) carried out a plan, scheme, and course of conduct that was intended to and did deceive the retail investors – Plaintiffs and the other Class members – who acquired Yuga Financial Products pursuant to the continuous offering and thereby caused them to purchase Yuga Financial Products at artificially inflated prices.

760. In connection with the continuous offer and sale of the Yuga Financial Products, the Executive Defendants, the MoonPay Defendants, Wu, and Sotheby’s disseminated, approved, and/or endorsed the false statements described herein,

1 which they knew or recklessly should have known were materially misleading in
2 that they contained material misrepresentations and failed to disclose material facts
3 necessary in order to make the statements made, in light of the circumstances under
4 which they were made, not materially misleading.

5 761. The Executive Defendants, the MoonPay Defendants, Wu, and
6 Sotheby's employed devices, schemes, and artifices to defraud; made untrue
7 statements of material fact and omitted to state material facts necessary to make the
8 statements made not misleading; and engaged in acts, practices, and a course of
9 business that operated as a fraud and deceit upon the Class members that resulted in
10 artificially high market prices for the Yuga Financial Products, in violation of
11 Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

12 762. Yuga fundamentally misrepresented the nature of the Yuga Financial
13 Products, hawking them as memberships into a "fan club on steroids that
14 encourages owners of the NFTs to move through an ever-growing and exclusive list
15 of events and opportunities" instead of unregistered securities with highly inflated
16 prices due to wash trading and other manipulative practices. Yuga also represented
17 that the Bored Ape NFT collection had achieved over \$1 billion in trading volume,
18 but failed to disclose that the NFT collections were significantly plagued by wash
19 trading.

20 763. Further, in offering the Yuga Financial Products, the Executive
21 Defendants failed to disclose material aspects of Yuga's business, and made
22 materially misleading statements, or omitted to state material facts necessary to
23 make statements made, in the light of the circumstances under which the statements
24 were made, not misleading.

25 764. Likewise, in promoting the Yuga Financial Products, the MoonPay
26 Defendants made materially misleading and incomplete statements. MoonPay
27 falsely stated the celebrities had bought their Bored Apes, when in fact they had
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1 been gifted them from MoonPay. MoonPay omitted the material information that it
2 was engaging in manipulative trading.

3 765. Similarly, in promoting the Yuga Financial Products, Sotheby’s falsely
4 stated that the winning bidder in the Sotheby’s BAYC auction that the winning
5 bidder was a “traditional” collector and that “legacy art collectors were also heavily
6 involved in the bidding.”

7 **A. Misrepresentations and Omissions**

8 766. Defendants’ untrue statements and omissions of material facts in
9 connection with the sale of Yuga Financial Products include, but are not limited to
10 the following examples:

- 11 a. Sotheby’s falsely stating that the winning “bid” of the Sotheby’s auction
12 was a traditional art collector, and omitting that it was cryptocurrency
13 industry insiders at FTX that won the auction.
- 14 b. Defendant Solano stated that “The Bored Ape Yacht Club is more than
15 just an #NFT collection – the NFT grants access to a collaborative art
16 experiment in the form of a canvas only token-holders can draw on.” This
17 statement was misleading in that it suggested to investors that there would
18 be a broader ecosystem for BAYC NFT holders to interact in and that the
19 BAYC brand was poised for significant growth, when, in truth, the BAYC
20 NFTs were just a vehicle to make insiders rich at the expense of investors.
- 21 c. Defendant Solano stated that the Bored Ape NFTs “double as membership
22 cards to an exclusive club with benefits.” This statement was misleading
23 in that it suggested to investors that there would be a broader ecosystem
24 for BAYC NFT holders to interact in and that the BAYC brand was
25 poised for significant growth, when, in truth, the BAYC NFTs were just a
26 vehicle to make insiders rich at the expense of investors.

- 1 d. Defendant Aronow bragged “Not bad for a high school dropout” in
2 response to a post that said “Don’t look now but #BAYC Market Cap just
3 crossed a BILLION.” This exchange gave investors the false impression
4 that BAYC NFTs were a sound investment experiencing organic growth
5 that were poised to continue growing, when in fact the price and volume
6 was inflated due to manipulative trading practices.
- 7 e. The MoonPay Twitter account posted a clip from the segment with
8 Defendant Fallon promoting MoonPay and the BAYC NFTs with a
9 caption stating: “So this just happened. @jimmyfallon reveals to @beeples
10 on the #TheTonightShow that he just bought his first Bored Ape by
11 @BoredApeYC with MoonPay! 🚀👀.” MoonPay’s statement that “[s]o
12 this just happened” misleadingly suggested to investors that the promotion
13 of MoonPay and the BAYC NFT collection on the Tonight Show was
14 something that occurred spontaneously. Likewise, MoonPay’s statement
15 that Fallon had “just bought his first Bored Ape by @BoredApeYC with
16 MoonPay!” failed to disclose that in truth, Fallon’s segment with
17 Winkelmann was just a promotion of the BAYC NFTs and MoonPay that
18 was orchestrated behind the scenes by Oseary, Soto-Wright, and the
19 Executive Defendants.
- 20 f. MoonPay’s statement that “this just happened” in connection with the
21 Defendant Post’s video with The Weeknd video misleadingly suggested to
22 investors that the promotion of MoonPay and the BAYC NFT collection
23 within the so-called music video from Defendant Post was something that
24 occurred because of their genuine interest in the BAYC NFTs. This, and
25 MoonPay’s statement that Post had “aped into @BoredApeYC by
26 purchasing his first NFT with MoonPay,” failed to disclose that this music
27 video was just a promotion of the BAYC NFTs and MoonPay that was
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1 orchestrated behind the scenes by Oseary, Soto-Wright, and the Executive
2 Defendants.

3 g. MoonPay’s statement that “Someone funny aped in today!” in reference to
4 the Kevin Hart promotion misleadingly suggested Kevin Hart actually
5 paid for his Ape, and failed to disclose that it was a promotion
6 orchestrated by MoonPay, Oseary, Soto-Wright, and the Executive
7 Defendants.

8 h. The Company and Solano’s statements that BAYC NFT holders own the
9 “full commercial rights to their apes,” and “literally own the rights to their
10 apes,” were false and misleading because NFT holders did not have full
11 commercial rights to the apes.

12 i. Wu’s statement that Yuga has “led innovation on IP frameworks, like
13 giving NFT holders full commercial rights to their IP without a royalty”
14 was false and misleading because NFT holders did not have full
15 commercial rights to the IP.

16 j. Bajwa falsely stated that celebrity rapper (and close associate with
17 Defendant Broadus) “@Eminem purchased a @BoredApeYC NFT for
18 123.45 ETH” and touting that the MAYC NFTs “saw \$71M in trading
19 volumes the last week.”

20 k. Soto-Wright falsely described the creation of the Concierge service as first
21 spreading via word of mouth among artists, stating, “So I helped one artist
22 figure it out. They told another who then asked for help. Word started to
23 spread.” Soto-Wright later falsely described it as an accident, stating “A
24 really happy accident I’d say. 100% organic.”

25 l. When asked to confirm whether celebrities were not paid to promote
26 MoonPay, Soto-Wright falsely stated that “Everyone that uses MoonPay
27 Concierge has a commercial relationship with the company in the sense
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1 that this is a commercial service we offer our clients. We provide the
2 support and then we invoice for services rendered.”

3 m. The Yuga pitch deck falsely proclaims that “[c]elebrities are buying Apes
4 to signal that they know what’s up” when in reality the celebrity
5 promotions were not organic and were orchestrated by Defendant Oseary
6 and MoonPay.

7 n. ApeCoin was repeatedly falsely promoted that it could be used for
8 magazine subscriptions, luxury items like Gucci and Tag Heuer, and that
9 it could be used on OpenSea for NFTs. These statements were marketing
10 ploys and were never followed up on.

11 767. In order to make those statements not misleading, Defendants were
12 obligated to disclose that:

13 a. The buyer at the Sotheby’s auction was not a traditional art buyer, but was
14 instead cryptocurrency industry insiders with FTX;

15 b. The price and volume of the Yuga NFTs was heavily impacted by wash
16 trading and other manipulative practices;

17 c. A large number of the original mints of the Bored Ape NFTs were minted
18 by Binance and/or FTX insiders;

19 d. MoonPay, Soto-Wright, and Oseary were orchestrating a widespread
20 celebrity shilling scheme;

21 e. MoonPay and Soto-Wright were making manipulative trades themselves
22 to increase trading volume and price;

23 f. The Promotor Defendants had ownership interests in MoonPay and stood
24 to financially gain from their promotions;

25 g. MoonPay was gifting Bored Ape NFTs to influencers and not expecting
26 payment for them;

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1 h. ApeCoin would not actually be used on NFT exchanges and would not be
2 accepted to buy luxury goods; and

3 i. Market making firms like Alameda Research and Wintermute were given
4 secret loans of ApeCoin.

5 **B. Materiality**

6 768. The forgoing misrepresentations and omissions were each material.
7 These representations related to critical issues concerning the viability of the Yuga
8 Financial Product holders' investments.

9 769. These misrepresentations and omissions related to, among other things:
10 (i) the extent to which the Yuga Financial Products were subject to manipulative
11 trading practices; and (ii) whether the hype around the Yuga Financial Products was
12 genuine and organic or orchestrated pursuant to a fraudulent scheme. If a
13 reasonable investor knew that the Yuga Financial Products were subject to
14 manipulative trading practices and were the subject of a celebrity shilling scheme,
15 then that investor would reasonably expect the price of Yuga Financial Products to
16 be substantially lower, given that the investment would be much riskier.

17 770. Accordingly, there is a substantial likelihood that the disclosure of the
18 omitted facts would have been viewed by the reasonable investor as having
19 significantly altered the "total mix" of information made available.

20 **C. Scienter**

21 771. The Executive Defendants, MoonPay Defendants, Wu, and Sotheby's
22 acted with scienter in engaging in the forgoing misconduct, in that they either had
23 actual knowledge of the misrepresentations and omissions of material facts set forth
24 herein, or acted with reckless disregard for the truth in that they failed to ascertain
25 and to disclose such facts, even though such facts were available to them.

26 772. The Executive Defendants knew that the trading done by Binance
27 and/or FTX insiders close to the mint had outsized impacts. Yuga knew that the
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1 celebrity promotions had been done at the behest of Oseary and MoonPay. Based
2 on their control of the smart contracts to mint the Bored Apes and their oversight of
3 trading activity, the Executive Defendants knew that the Yuga Financial Products
4 were being subjected to manipulative trading that increased volume and prices.

5 773. The MoonPay Defendants knew that the Promotor Defendants had not
6 paid for their Bored Apes and that MoonPay had gifted them to promote the Yuga
7 Financial Products. The MoonPay Defendants knew that they were making
8 manipulative outlier transactions to boost floor prices and increase trading volumes.

9 774. The ApeDAO Board Defendants knew that the Promoter Defendants
10 had not actually paid for their Bored Apes and that it was a marketing ploy. The
11 ApeDAO Board Defendants also knew ApeCoin was subject to price manipulation
12 as entities like Alameda Research and Wintermute were given secret loans. The
13 ApeDAO Board Defendants knew that there was significant marketing to promote
14 that ApeCoin could be used for luxury items, but knew that there would be no
15 follow through. The ApeDAO Defendants knew that that ApeDAO structure was a
16 pure legal fiction, and an attempt by Yuga to effectuate a pure unregistered
17 securities offering.

18 775. Sotheby's knew that a traditional art collector was not the winning
19 bidder for the Bored Ape Auction. Sotheby's knew that FTX was the winning
20 bidder but hid this fact in order for the Yuga Financial Products to have a veneer of
21 credibility in the mainstream art world.

22 **D. Reliance, Economic Loss, and Loss Causation**

23 776. As a result of the publication and dissemination of the materially false
24 and misleading information and failure to disclose material facts, as set forth above,
25 the prices of the Yuga Financial Products were artificially inflated.

26 777. In ignorance of the fact that the prices of the Yuga Financial Products
27 were artificially inflated, and relying directly or indirectly on the false, misleading,
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1 and materially incomplete statements that the Executive Defendants, MoonPay
2 Defendants, and Sotheby's made and approved, or upon the integrity of the market
3 in which the Yuga Financial Products were sold, or on the absence of material
4 adverse information that these Defendants knew or recklessly should have known of
5 but failed to disclose in public statements, Plaintiffs and the other Class members
6 acquired Yuga Financial Products at artificially high prices and were damaged
7 thereby.

8 778. As a direct and proximate result of the Executive Defendants,
9 MoonPay Defendants, and Sotheby's wrongful conduct, Plaintiffs and the other
10 Class members suffered damages in connection with the respective purchases of
11 Yuga Financial Products and are entitled to an award compensating them for such
12 damages.

13 779. Indeed, the price of the Yuga Financial Products dropped significantly
14 as Defendants disclosed, and the market discovered, the truth concerning the
15 celebrity promotions, the true demand for Yuga NFTs, and the Yuga ecosystem's
16 prospects for the future.

17 780. For example, in June 2022, exchanges that provided investors yield on
18 their crypto investments began to experience liquidity issues and lock users out.
19 Voyager was one of the largest such platforms, and was one of the few platforms
20 where investors could earn yield on their ApeCoin. On June 22, 2022, Voyager
21 announced that it had significant exposure to bankrupt hedge fund Three Arrows
22 Capital, raising significant survivability concerns at the exchange.⁴⁶² In response,
23 the price of ApeCoin dropped from \$4.37 to \$3.97, or approximately 9%.

24 781. By August 2022, the celebrity endorsements had dried up. Without
25 celebrities endorsing the Yuga assets and without floor prices being pumped by
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27 ⁴⁶² Reback, *supra* n.302

1 MoonPay, the Yuga Financial Products each suffered diminution in value with
2 decreased sales volume and fewer unique buyers.⁴⁶³ All of the Yuga Financial
3 Products hit visible low points between August 19th and 23rd. The Bored Ape NFT
4 floor price dropped from 82.48 ETH on August 10, 2022, to 66.9 ETH on August
5 23, 2022. The Mutant Ape NFT floor price also fell from 15.25 ETH on August 10,
6 2022, to a floor price of 11 ETH on August 19, 2022. The Kennel Club NFT floor
7 price also dropped from 7.99 ETH on August 10, 2022, to 5.990 ETH on August
8 19, 2022. The Otherdeed NFTs fell from a floor price of 2.02 ETH on August 7,
9 2022 to a floor price of 1.47 ETH on August 22, 2022. Likewise, ApeCoin dropped
10 from \$7.56 on August 5, 2022 to \$4.64 on August 28, 2022.

11 782. In September 2022, the price of ApeCoin and the Yuga NFTs dropped
12 significantly in anticipation of a significant token unlock for “launch contributors”
13 of ApeCoin. In the 30 days prior to the unlock, ApeCoin dropped 26%.⁴⁶⁴ On
14 September 16, 2022 alone, ApeCoin dropped approximately 9% in advance of the
15 unlock on September 17, 2022.⁴⁶⁵

16 783. On October 11, 2022, *Bloomberg* reported that the SEC was
17 conducting an investigation of Yuga Labs over whether the sales of its digital assets
18 violate federal securities laws.⁴⁶⁶ *Bloomberg* reported that the SEC is examining
19 whether certain NFTs are more akin to stocks and should follow the same
20 disclosure rules. *Bloomberg* also reported that the SEC is investigating the
21 distribution of ApeCoin. Yuga told *Bloomberg* in a statement that it was “fully
22 cooperating” with the inquiry. In response to the news regarding the SEC
23 investigation, the ApeCoin token dropped approximately 11%.⁴⁶⁷

24 ⁴⁶³ Hayes, *supra* n.303.

25 ⁴⁶⁴ Hayward, *supra* n.304.

26 ⁴⁶⁵ *Id.*

27 ⁴⁶⁶ Robinson, *supra* n.306.

28 ⁴⁶⁷ Hayward, *supra* n.307.

1 784. Yuga’s NFTs likewise dropped in value in the wake of the disclosure
2 of the SEC investigation. The Bored Ape NFT floor price dropped from 75.5 ETH
3 on October 10, 2022 to 72.421 ETH on October 15, 2022. The Mutant Ape NFT
4 price floor dropped from 14.96 ETH on October 10, 2022 to 13.440 on October 13,
5 2022. The Kennel Club NFTs dropped from a floor price of 6.39 ETH on October
6 10, 2022 to 5.750 by October 17, 2022. The Otherside NFTs likewise dropped
7 from a price floor of approximately 1.6 ETH on October 10, 2022 down to 1.11
8 ETH on October 21, 2022.

9 785. The downfall of FTX had a significant impact on the Yuga Financial
10 Products. When both FTX and Alameda Research filed for Chapter 11 Bankruptcy
11 on November 11, 2022, each of the Yuga Financial Products had a material drop in
12 value in the days leading up to and following the announcement. At the time of the
13 bankruptcy, FTX and Alameda held a number of Yuga Financial Products, which
14 were now at risk of being subject to forced liquidation in the bankruptcy.

15 786. On November 5, 2022, prior to the disclosure of the liquidity issues
16 with FTX, the BAYC NFT floor price was 64.8 ETH. In the wake of the FTX
17 bankruptcy, the floor price of the BAYC NFT fell to 50 ETH (*i.e.*, approximately
18 \$62,000) on November 14, 2022. The floor price continued to drop, reaching 48
19 ETH on November 17, 2022.

20 787. The same is true for Yuga’s Mutant Apes, which had a floor price of
21 11 ETH prior to the FTX disclosures. Following the FTX and Alameda bankruptcy,
22 the floor price of Mutant Apes dropped to 8.99 ETH on November 17, 2022.

23 788. Likewise, the floor price of the Otherdeed NFT dropped from 1.192
24 ETH on November 5, 2022 to 0.8 ETH on November 17, 2022.

25 789. Prices for the Bored Ape Kennel Club likewise dropped from a floor
26 price of 4.69 ETH on November 5, 2022 to 3.65 ETH on November 17, 2022.

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1 790. Similarly, the FTX disclosures caused a significant drop in the price of
2 ApeCoin. On November 5, 2022, ApeCoin traded at \$5.10 per token, and dropped
3 to \$2.70 by November 13, 2022.

4 791. On October 6, 2023, Yuga announced a series of layoffs. In connection
5 with the layoffs, Yuga CEO Daniel Alegre admitted that upon joining the company
6 in Spring 2023, that he “quickly realized that there were a number of projects that,
7 while well-intentioned, either spread the team too thin or required execution
8 expertise beyond our core competencies.” Alegre also admitted that there had
9 “been a few rocky rollouts, particularly in our gaming execution, because we
10 learned along the way that we weren’t optimized to build and manage everything
11 in-house, nor should we be. We also know we need to make greater progress with
12 the development of Otherside.”

13 792. Prices of the Yuga Financial Products have dropped precipitously since
14 the heyday of the misleading and manipulative celebrity promotions. The BAYC
15 NFTs’ floor price continued to drop, reaching a Class Period low of 21.99 ETH
16 (approximately \$36,536.45) on August 22, 2023. This is down from the all-time
17 high of approximately 128 ETH (or \$369,891.84) that occurred on April 30, 2022 in
18 the midst of the celebrity promotions and as MoonPay was manipulating prices with
19 its outlier transactions.

20 793. Mutant Apes had a floor price high of 35.58 ETH (\$99,962.01) on
21 April 27, 2022, in the midst of the celebrity promotions and MoonPay outlier
22 transactions. Since that time, the floor price of the Mutant Apes has dropped
23 precipitously, reaching a low of 4.29 ETH (\$7,147.07) on August 22, 2023.

24 794. Kennel Club NFTs reached a Class Period high of 10.4 ETH (\$29,
25 218.80) on April 27, 2022, but have since dropped precipitously to Class Period
26 lows of 1.42 ETH on August 22, 2023. In dollar terms, Kennel Club NFTs reached
27 a class period low of \$2,391.38 on August 19, 2023.

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1 795. The Otherdeed floor price went from a Class Period high of
2 approximately 5.0 ETH (about \$14,149.94) on May 1, 2022 all the way down to a
3 class period low of 0.4 ETH (worth only \$643.60) on September 25, 2023.

4 796. ApeCoin tokens have likewise suffered a severe diminution in value.
5 After reaching a class period high of \$23.65 on April 28, 2022 in the lead up the
6 Otherdeed launch, the price of ApeCoin has cratered. ApeCoin reached its all time
7 low on October 10, 2023 at just \$1.01.

8 797. In addition, as a direct and proximate result of the Executive
9 Defendants, the MoonPay Defendants, and Sotheby’s wrongful conduct, these
10 Defendants have generated and retained ill-gotten gains in connection with the
11 promotion and sale of the Yuga Financial Products, such that Plaintiffs and the
12 other Class members are entitled to the disgorgement of Defendants’ ill-gotten
13 gains acquired from such misconduct.

14 798. As a direct and proximate result of the false and misleading statements
15 and omissions made by the Executive Defendants, the MoonPay Defendants, and
16 Sotheby’s to investors in order to solicit the sale of unregistered securities, Plaintiffs
17 and the Class have suffered damages in connection with their Yuga Financial
18 Product purchases.

19 799. Plaintiffs bring this claim for violations of Section 10(b) of the
20 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §78j(b), and Rule
21 10b-5(b) promulgated thereunder, 17 C.F.R. §240.10b-5(b).

22 800. The Yuga Financial Products are securities within the meaning of
23 Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

24 801. Section 10(b) and Rule 10b-5(b) make it illegal, in connection with the
25 purchase or sale of any security, “for any person, directly or indirectly, by the use of
26 any means or instrumentality of interstate commerce, or of the mails or of any
27 facility of any national securities exchange . . . to make any untrue statement of a
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1 material fact or to omit to state a material fact necessary in order to make the
2 statements made, in the light of the circumstances under which they were made, not
3 misleading.” *Id.*

4 **EIGHTH CAUSE OF ACTION**
5 **Violation of Sections 10b of the Securities Exchange Act of 1934 and**
6 **Rule 10b-5(a) and (c) thereunder**
7 **(Scheme Liability)**
8 **(Against all Defendants)**

8 802. Plaintiffs restate and reallege all preceding allegations in the
9 paragraphs above as if fully set forth herein, and further allege the following:

10 803. The Class Period for this cause of action is defined as the period
11 between April 23, 2021 and the date of this filing.

12 804. Plaintiffs bring this claim for violations of Section 10(b) of the
13 Securities Exchange Act of 1934, 15 U.S.C. §78j(b), and Rule 10b-5(a) and (c)
14 promulgated thereunder, 17 C.F.R. §240.10b-5(a) and (c).

15 805. 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).

17 806. Subsections (a) and (c) of Rule 10b-5 allow a allow a suit against
18 defendants who, with scienter, “employ any device, scheme, or artifice to defraud,”
19 or “engage in any act, practice, or course of business which operates or would
20 operate as a fraud or deceit upon any person.” 17 C.F.R. §240.10b-5.

21 807. “Unlike a claim under subsection (b) of Rule 10b-5, a claim of liability
22 for violations of subsections (a) and (c) does not require an allegation that the
23 defendant made a false or misleading statement; rather, liability is premised on a
24 course of deceptive or manipulative conduct.” *See Affiliated Ute Citizens of Utah v.*
25 *United States*, 406 U.S. 128, 152-53 (1972) (observing that “the second
26 subparagraph of [Rule 10b-5] specifies the making of an untrue statement of a
27 material fact and the omission to state a material fact, [but] [t]he first and third
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1 subparagraphs are not so restricted”); *In re DVI, Inc. Sec. Litig.*, 639 F.3d 623, 643
2 (3d Cir. 2011) (“We refer to claims under Rule 10b-5(a) and (c) as ‘scheme liability
3 claims’ because they make deceptive conduct actionable, as opposed to Rule 10b-
4 5(b), which relates to deceptive statements.”).

5 808. Defendants, individually and in concert, directly and indirectly, by the
6 use, means, or instrumentalities of interstate commerce and/or the mails, carried out
7 a plan, scheme, and course of conduct which was intended to, and throughout the
8 Class Period, did manipulate the price and trading activity of Yuga Financial
9 Products to the detriment of the investing public, including Plaintiffs and other
10 Class members, in connection with the purchase and/or sale of Yuga Financial
11 Products.

12 809. Defendants conspired and employed devices, schemes, and artifices
13 and engaged in acts, practices, and a course of business as alleged herein to
14 unlawfully manipulate and profit from the manipulation for the price of and market
15 for Yuga Financial Products.

16 810. Defendants’ actions alleged herein constitute manipulative acts.
17 Through fraudulent market making and price signaling conduct, the Company,
18 Executive Defendants, ApeDAO Board Defendants, Sotheby’s, and MoonPay
19 Defendants falsely increased both the price of the Yuga Financial Products and
20 appearance of market activity for the same. Concurrently, the Company, Executive
21 Defendants, ApeDAO Board Defendants, MoonPay Defendants, and Promoter
22 Defendants engaged in a scheme to use a misleading marketing campaign meant to
23 leverage the celebrity Promoter Defendants’ influence in order to artificially inflate
24 the price of and market for Yuga Financial Products.

25 811. These manipulative acts were intended to and did deceive the retail
26 investors – Plaintiffs and the other Class members – who acquired Yuga Financial
27 Products during the Class Period and thereby caused them to purchase Yuga
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1 Financial Products at artificially inflated prices. Thus, Plaintiffs and other Class
2 members suffered losses as a result of the Scheme Liability Defendants’ two
3 primary deceptive schemes and related acts, which manipulated the Yuga Financial
4 Product marketplace.

5 812. Plaintiffs and other members of the Class were damaged by relying on
6 an assumption of an honest and fair market, free of manipulation, when buying and
7 selling Yuga Financial Products in the marketplace.

8 813. Defendants acted with scienter in connection with the manipulative
9 acts alleged herein in that they acted knowingly and/or recklessly when they
10 artificially inflated the price of the Yuga Financial Products and thereby interfered
11 with the market for Yuga securities.

12 814. As a direct and proximate result of Defendants’ wrongful conduct,
13 Plaintiffs and other members of the Class were damaged as a result of their
14 purchase or sale of Yuga Financial Products.

15 815. By virtue of the foregoing, each Defendant has violated Section 10(b)
16 of the Exchange Act, and Rule 10b-5(a) and (c) promulgated thereunder.

17 **NINTH CAUSE OF ACTION**

18 **Violation of Sections 20(a) of the Securities Exchange Act of 1934**
19 **(Against the Executive Defendants, ApeDAO Board Defendants, and**
20 **Individual Defendants Oseary and Soto-Wright)**

21 816. Plaintiffs restate and reallege all preceding allegations in the
22 paragraphs above as if fully set forth herein, and further allege the following:

23 817. This Count is asserted against Executive Defendants Aronow, Solano,
24 Atalay, Ali, Muniz, Shoemaker, Ehrlund, ApeDAO Board Defendants Lyons,
25 Ohanian, Wu, and Bajwa, and Defendants Oseary and Soto-Wright, (collectively,
26 the “Control Person Defendants”) under Section 20(a) of the Securities Exchange
27 Act of 1934, 15 U.S.C. §78t(a).
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1 818. The Control Person Defendants, by virtue of their offices, ownership,
2 agency, agreements or understandings, and specific acts were, at the time of the
3 wrongs alleged herein, and as set forth herein, controlling persons within the
4 meaning of Section 20(a) of the Securities Exchange Act. The Control Person
5 Defendants, and each of them, had the power and influence and exercised the same
6 to cause the unlawful scheme to artificially increase the interest in and price of the
7 Yuga Financial Products.

8 819. The Control Person Defendants, separately or together, possess,
9 directly or indirectly, the power to direct or cause the direction of the management
10 and policies of the Company and/or MoonPay, through ownership of voting
11 securities, by contract, subscription agreement, or otherwise.

12 820. Executive Defendants Aronow, Solano, Atalay, Ali, Muniz,
13 Shoemaker, Ehrlund, and Lyons were all directors and officers of the Company for
14 the relevant time period. While not explicitly named as directors of the Company,
15 ApeDAO Board Defendants Ohanian, Wu, and Bajwa nevertheless were
16 responsible for making high-level decisions for the Company that would normally
17 be carried out by directors. Thus, the Executive Defendants and ApeDAO Board
18 Defendants have the power to direct or cause the direction of the management and
19 policies of Yuga. Similarly, Defendants Soto-Wright serves as the CEO of
20 MoonPay, and thus has the power to direct or cause the direction of the
21 management and policies of MoonPay.

22 821. The Control Person Defendants, separately or together, have sufficient
23 influence to have caused the Company and MoonPay to engage in the fraudulent
24 conduct described above.

25 822. The Control Person Defendants, separately or together, jointly
26 participated in the Company's and MoonPay's fraudulent conduct described above.

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1 823. By virtue of the conduct alleged herein, the Control Person Defendants
2 are liable for the wrongful conduct complained of herein and are liable to Plaintiffs
3 and the Class for rescission and/or damages suffered.

4 **TENTH CAUSE OF ACTION**
5 **Violation of Sections 25401 and 25501 of the California Corporations Code**
6 **(Misrepresentation Sections)**
7 **(Against All Defendants)**

8 824. Plaintiffs restate and reallege all preceding allegations in the
9 paragraphs above as if fully set forth herein, and further allege the following:

10 825. Plaintiffs bring this claim individually and on behalf of the members of
11 the California Subclass against the Executive Defendants.

12 826. This Count is asserted against Executive Defendants for violation of
13 Sections 25401 and 25501 of the California Corporations Code.

14 827. Section 25401 (similar to Rule 10b-5(b) under the federal securities
15 law) makes it illegal, in connection with the purchase or sale of any security, for
16 any person, directly or indirectly, to offer or sell a security in California “by means
17 of any written or oral communications which includes an untrue statement of a
18 material fact or omits to state a material fact necessary in order to make the
19 statements made . . . not misleading.” Cal. Corp. Code, §25401.

20 828. Executive Defendants carried out a plan, scheme, and course of
21 conduct that intended to and did deceive the retail investors – Plaintiffs and the
22 other Class members – who acquired Yuga Financial Products pursuant to the
23 continuous offering and thereby caused them to purchase Yuga Financial Products
24 at artificially inflated prices.

25 829. In connection with the continuous offering of Yuga Financial Products,
26 Executive Defendants, ApeDAO Defendants, MoonPay Defendants, and the
27 Promoter Defendants each disseminated, approved, and/or endorsed the false
28 statements and omissions described herein, which these Defendants knew or

1 recklessly should have known were materially misleading in that the statements
2 contained material misrepresentations and failed to disclose material facts necessary
3 in order to make the statements made, in light of the circumstances under which
4 they were made, not materially misleading.

5 830. Defendants each employed devices, schemes, and artifices to defraud;
6 made untrue statements of material fact and omitted to state material facts necessary
7 to make the statements made not misleading; and engaged in acts, practices, and a
8 course of business that operated as a fraud and deceit upon the Class members that
9 resulted in artificially high market prices for Yuga Financial Products in connection
10 with the continuous offering, in violation of Section 25401 and 25501.

11 831. Defendants, separately or together, directly or indirectly, caused a false
12 statement or omission to be made in connection with the offers or sales of a
13 security.

14 832. In ignorance of the fact that the price of Yuga Financial Products was
15 artificially inflated, and relying directly or indirectly on the false, misleading, and
16 materially incomplete statements that Executive Defendants made and approved, or
17 upon the integrity of the market in which the Yuga Financial Products were sold, or
18 in the absence of material adverse information that these Executive Defendants
19 knew or recklessly should have known of but failed to disclose in public statements,
20 Plaintiffs and the other Class members acquired Yuga Financial Products at
21 artificially high prices and were damaged thereby.

22 833. Plaintiffs purchased Yuga Financial Products securities from the
23 Company, Executive Defendants, ApeDAO Defendants, Sotheby's, MoonPay,
24 and/or Adidas. For example, the ApeCoin tokens were provided and/or sold into
25 the ApeCoin liquidity pool by Executive Defendants and ApeDAO Board
26 Defendants. Upon information and belief, given the limited and measurable amount
27 of individuals selling or providing the cryptocurrency to the ApeCoin token
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1 liquidity pool, a large portion (if not all) of the ApeCoin token liquidity pool was
2 provided by Executive Defendants and ApeDAO Board Defendants (or market
3 makers like Wintermute and FTX who were given undisclosed loans of Yuga
4 Financial Products to sell to the market on behalf of the Company). These actions
5 coincided with Plaintiffs and Class members transacting with the liquidity pools as
6 buyers. Thus, by providing ApeCoin tokens to the liquidity pool at the time in
7 which Plaintiffs and the members of the Class made their ApeCoin token purchases
8 from the liquidity pool, privity between Executive Defendants (personally and
9 through the Company), ApeDAO Board Defendants (personally and through the
10 Ape Foundation and/or the Company), and Plaintiffs is established even in the
11 absence of a direct contract linking the parties.

12 834. Privity also exists between the issuers of every Yuga NFT collection
13 (*i.e.*, the Company and Executive Defendants) and all those making purchases (*e.g.*,
14 Plaintiffs and the members of the Class) regardless of which cryptocurrency
15 exchange was used to facilitate the transaction because these Defendants are
16 receiving the benefit of a 2.5% fee per resale of a Yuga NFT.

17 835. As discussed above, the Company, Executive Defendants, ApeDAO
18 Board Defendants, MoonPay, and Promoter Defendants Sotheby's and Adidas
19 actively solicited the purchase of Yuga Financial Products through a misleading
20 marketing campaign social media, promotional video, press releases, traditional
21 press, and online.

22 836. As a direct and proximate result of Executive Defendants' wrongful
23 conduct, Plaintiffs and the other Class members suffered damages in connection
24 with the respective purchases of Yuga Financial Products and are entitled to an
25 award compensating them for such damages.

26 837. Indeed, the price of Yuga Financial Products dropped significantly as,
27 *inter alia*, the celebrity promoters distanced themselves from the project; the SEC
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1 investigation was disclosed; FTX and Alameda imploded; MoonPay’s manipulative
2 trading ceased; and further regulatory scrutiny of unregistered securities increased.

3 838. By virtue of the conduct alleged herein, Executive Defendants are
4 liable, jointly or severally, for the wrongful conduct complained of herein and are
5 liable to Plaintiffs and the Class for rescission and/or damages suffered.

6 **ELEVENTH CAUSE OF ACTION**
7 **Violations of California Corporate Securities Law of 1968**
8 **Cal. Corp. Code §§25400 and 25500**
9 **(Manipulation Sections)**
10 **(Against the Company, Executive Defendants, ApeDAO Board Defendants,**
11 **MoonPay, Soto-Wright, Promoter Defendants, and Sotheby’s)**

11 839. Plaintiffs restate and reallege all preceding allegations in the
12 paragraphs above as if fully set forth herein, and further allege the following:

13 840. Plaintiffs Titcher and Smith bring this claim individually and on behalf
14 of the members of the Class against the Company, Executive Defendants Aronow,
15 Solano, Atalay, Ali, Muniz, Shoemaker, Ehrlund, and Lyons, ApeDAO Board
16 Defendants Ohanian, Wu, and Bajwa, MoonPay, Defendant Soto-Wright, and
17 Sotheby’s are collectively referred to in this cause of action as the “Market
18 Manipulation Defendants.”

19 841. Section 25400 makes it illegal, in connection with the purchase or sale
20 of any security, for any person in California, directly or indirectly, to effect, alone
21 or with one or more other persons, a series of transactions in any security creating
22 actual or apparent active trading in such security or raising the price of such
23 security, for the purpose of inducing the purchase or sale of such security by others.
24 Cal. Corp. Code §25400(b).

25 842. Other common examples of manipulation include, but are not limited
26 to: (i) transferring record ownership of securities in order to hide the true identity of
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1 the beneficial owner, which is known as “parking”; (ii) sending a false pricing
2 signal to the public market; and (iii) price leadership by the manipulator.

3 843. The Company and MoonPay, and their respective executives (*i.e.*,
4 Executive Defendants, ApeDAO Board Defendants, and Defendant Soto-Wright),
5 directly or indirectly, singly or in concert, by the use of the means or
6 instrumentalities of interstate commerce, of the mails, for the purpose of creating a
7 false or misleading appearance of active trading in ApeCoin tokens, or a false or
8 misleading appearance with respect to the market for the Yuga Financial Products:
9 (a) have engaged in improper parking; (b) have sent a false price signal to the
10 market for Yuga NFTs; (c) have engaged in unlawful “price leadership.”
11 Concurrently, MoonPay and Soto-Wright (on behalf of the Company and Executive
12 Defendants) engaged in various manipulative wash trading activities, including
13 using circular trades, seller funded wash trading, and making outlier transactions.

14 844. As noted above, the Company and MoonPay, with the assistance
15 and/or approval of Executive Defendants, ApeDAO Board Defendants, and
16 Defendant Soto-Wright, manipulated the price of Yuga Financial Products by: (a)
17 transferring record ownership of ApeCoin tokens between the Company, MoonPay,
18 and non-party FTX in order to hide the true identity of the beneficial owner (*i.e.*,
19 Executive Defendants, ApeDAO Board Defendants, and Soto-Wright) in these
20 seller funded wash trades, (b) having sent a false price increase signal to the market
21 for Yuga NFTs by having MoonPay repeatedly purchase Yuga NFTs at a price
22 significantly higher than the then-current floor price for those Yuga NFTs (*i.e.*,
23 outlier transactions), (c) having engaged in unlawful “price leadership” by having
24 MoonPay repeatedly bidding for and purchasing Yuga NFTs at a price significantly
25 higher than the then-current floor price for those Yuga NFTs, and/or (d) having
26 engaged in circular trades to create the appearance of trading activity and a market
27 for the Yuga Financial Products. Scheme Liability Defendants each made
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1 misleading statements regarding the exponential increase in the price of Yuga
2 Financial Products since launch. The Company purposefully did not disclose to
3 investors that the percentage increases that they were collectively touting were the
4 result of price manipulation as opposed to real trading activity of Yuga Financial
5 Products.

6 845. Concurrently, Defendant Sotheby's engaged in a series of transactions
7 with FTX during the Sotheby's auction that created apparent active trading in the
8 Yuga NFTs and/or raising the price of Yuga NFTs, for the purpose of inducing the
9 purchase or sale of Yuga NFTs by others.

10 846. Promoter Defendants engaged in a series of BAYC transactions,
11 creating actual or apparent active trading, for the purpose of inducing the purchase
12 or sale of BAYC NFTs and Yuga Financial Products by others, including Plaintiffs.
13 Upon information and belief, each of the Promoter Defendants received a BAYC
14 NFT and/or other fiat or cryptocurrency from MoonPay and/or Yuga as
15 compensation for promoting the sale of the Yuga securities, including BAYC NFTs.
16 The statements and promotions by Defendants Fallon, Winkelmann, Hilton,
17 Ciccone, Post, Bieber, Broadus, and Curry gave Plaintiffs the false impression that
18 these celebrities had purchased BAYC NFTs as investors, and that they were
19 making the Yuga Financial Products a part of their respective multimillion-dollar
20 investment strategies, and as a result, induced Plaintiffs Titcher, Palombini, and
21 Smith to make purchases of Yuga Financial Products. In addition to the allegations
22 set forth above, these transactions that created actual or apparent active trading, for
23 the purpose of inducing the purchase or sale of BAYC NFTs and Yuga securities by
24 others, including Plaintiffs, included:

- 25 • Ciccone obtained BAYC NFT #4988 from MoonPay and
26 subsequently promoted the BAYC collection of NFTs.

- 1 • Hilton announcing on the *Tonight Show* that she “copied”
2 Fallon’s use of MoonPay to “buy an ape” and acknowledged
3 purchasing BAYC NFT #1294 on Twitter.
- 4 • Fallon announcing on the *Tonight Show* that he “bought an ape,”
5 *i.e.*, BAYC NFT #599, after being paid to promote MoonPay
6 and the BAYC collection of NFTs. In addition, Fallon
7 promoting the purchases of other Promoter Defendants,
8 including Hilton and Winklemann.
- 9 • Winkelmann being paid to promote MoonPay and the BAYC
10 collection of NFTs, and Winkelmann’s additional promotion and
11 marketing of the purchases made by Fallon and Hilton.
- 12 • Bieber announcing his purchase of a \$1.29M BAYC NFT,
13 which he did not actually pay for, but rather received it through
14 a series of transactions for the purpose of compensating him.
15 Instead, Bieber received BAYC NFT #3001 as a form of
16 compensation for promoting the BAYC NFTs and Yuga
17 Financial Products to his hundreds of millions of social media
18 followers. In addition, On February 7, 2022, Bieber announced
19 that he had “purchased” a second NFT from the Bored Ape
20 collection (*i.e.*, BAYC NFT #3850) for around \$470,000. This
21 BAYC NFT is considered to be particularly rare, ranking below
22 1% in rarity. Upon information and belief, BAYC NFT #3850
23 was given to Bieber as compensation for continuing to promote
24 and solicit sales of the Yuga securities.
- 25 • Post’s music video promoted the sale of BAYC NFTs via
26 MoonPay led Plaintiff Palombini to reasonably believed that this
27 video depicted an actual purchase (or reenacted an actual
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1 purchase) of Yuga Financial Products by Post using the
2 MoonPay service.

- 3 • Broadus’ promotion and solicitation of the BAYC collection of
- 4 NFTs and Yuga Financial Products in exchange for payment.
- 5 • Curry’s promotion and solicitation of the BAYC Collection of
- 6 NFTs and Yuga Financial Products in exchange for payment.

7 847. 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.

11 848. 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
14 after the manipulative conduct alleged herein ceased further demonstrates that the
15 Company, Executive Defendants, ApeDAO Board Defendants, MoonPay, Soto-
16 Wright, Promoter Defendants, and Sotheby’s violated Cal. Corp. Code, §25500(a)-
17 (b).

18 849. Plaintiffs and other members of the Class were damaged by relying on
19 an assumption of an honest and fair market, free of manipulation, when buying and
20 selling Yuga Financial Products in the marketplace.

21 850. The Company, Executive Defendants, ApeDAO Board Defendants,
22 MoonPay, Soto-Wright, Celebrity Defendants, and Sotheby’s acted with scienter in
23 connection with the manipulative acts alleged herein in that they acted knowingly
24 and/or recklessly when they artificially inflated the trading volume and price of
25 Yuga Financial Products and thereby interfered with the market for Yuga Financial
26 Products. Further, statements by Defendants coupled with the transactions history
27 on the Ethereum blockchain and the testimony of a Confidential Witness plausibly
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1 indicate that each of them knew that they were engaging in wash trading, outlier
2 transactions, circular trading, matching orders, and other manipulative efforts to
3 raise the price of the Yuga Financial Products.

4 851. As a direct and proximate result of the wrongful conduct of the
5 Company, Executive Defendants, ApeDAO Board Defendants, MoonPay, Soto-
6 Wright, and Sotheby's, Plaintiffs and other members of the Class were damaged as
7 a result of their purchase or sale of Yuga Financial Products.

8 852. By reason of the foregoing, the Company, Executive Defendants,
9 ApeDAO Board Defendants, MoonPay, Soto-Wright, and Sotheby's have violated,
10 and unless restrained and enjoined will again violate, Cal. Corp. Code, §25500(a)-
11 (b).

12 853. By virtue of the conduct alleged herein, the Company, Executive
13 Defendants, ApeDAO Board Defendants, MoonPay, Soto-Wright, and Sotheby's
14 are liable for the wrongful conduct complained of herein and are liable to Plaintiffs
15 and the Subclass for rescission and/or damages suffered.

16 **TWELFTH CAUSE OF ACTION**
17 **Violation of Sections 25403(b), 25504 and 25504.1 of the**
18 **California Corporations Code**
19 **(Secondary Liability Sections)**
20 **(Against Executive Defendants, ApeDAO Board Defendants,**
21 **and Defendant Soto-Wright)**

22 854. Plaintiffs restate and reallege all preceding allegations in the
23 paragraphs above as if fully set forth herein, and further allege the following:

24 855. This Count is asserted against Executive Defendants Aronow, Solano,
25 Atalay, Ali, Muniz, Shoemaker, Ehrlund, Lyons, ApeDAO Board Defendants
26 Ohanian, Wu, and Bajwa, and Defendant Soto-Wright (collectively referred to for
27 this cause of action as the "Secondary Liability Defendants") for violations of
28 Sections 25403(b), 25504 and 25504.1 of the California Corporations Code.

1 856. To the extent that the Company and/or MoonPay instead of the
2 Secondary Liability Defendants are determined to be the primary violator of
3 Sections 25110 (qualification failure) or 25401 (misrepresentations), this Count is
4 asserted against Executive Defendants because, as officers and executives of the
5 Company, they are each secondarily liable under Section 25504. Secondary
6 Liability Defendants are likewise alternatively secondarily liable under Sections
7 25504.1 and 25403(b) for materially aiding and abetting and/or providing
8 substantial assistance to the Company’s and MoonPay’s primary violations of
9 California securities laws.

10 857. This Count is also asserted against the Secondary Liability Defendants
11 because they are secondarily liable under Section 25403(b) for providing substantial
12 assistance to the Company’s, MoonPay’s, and/or Sotheby’s primary violations of
13 Section 25400 (manipulation of price).

14 858. Section 25504 makes the following people liable for Qualification
15 Section (*i.e.*, Cal. Corp. Code §§25110 and 25503) violations: a “principal
16 executive officer or director of a corporation so liable, every person occupying a
17 similar status or performing similar functions, every employee of a person so liable
18 who materially aids in the act or transaction constituting the violation, and every
19 broker-dealer or agent who materially aids in the act or transaction constituting the
20 violation.” Cal. Corp. Code, §25004.

21 859. Section 25403(b) makes it unlawful for any person to knowingly
22 provide “substantial assistance” to another person violating Cal. Corp. Code §25000
23 *et seq.*

24 860. Section 25504.1 makes anyone who, with “intent to deceive or
25 defraud,” “materially assists” the primary perpetrator of a Misrepresentation
26 Section (*i.e.*, Cal. Corp. Code §25401 and 25501) violation.

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1 861. The conduct of Secondary Liability Defendants described above,
2 directly or indirectly, provided substantial assistance to the Company, MoonPay,
3 and Sotheby's, who issued the false statements and omissions made in connection
4 with the offers or sales of Yuga Financial Products alleged herein. This aid and
5 assistance provides for secondary liability for the other Defendants' primary
6 violations.

7 862. Secondary Liability Defendants had knowledge of the falsity or
8 misleading nature of the statements or omissions made in connection with the offers
9 or sales of the Yuga Financial Products.

10 863. By virtue of the conduct alleged herein, Secondary Liability
11 Defendants are liable, jointly or severally, for the wrongful conduct of primary
12 violators the Company, MoonPay, and Sotheby's complained of herein, and are
13 liable to Plaintiffs and the Class for rescission and/or damages suffered.

14 **THIRTEENTH CAUSE OF ACTION**
15 **Unjust Enrichment/Restitution**
16 **(California Common Law, in the Alternative)**
17 **(Against All Defendants)**

18 864. Plaintiffs restate and reallege all preceding allegations in the
19 paragraphs above as if fully set forth herein, and further allege the following:

20 865. This cause of action for equitable relief is pled in the alternative
21 because, if Plaintiffs' state consumer or securities law claims are found to be
22 inapplicable to the wrongdoing alleged herein, Plaintiffs will lack an adequate
23 remedy at law since they will be unable to obtain monetary damages in an amount
24 that would make Plaintiffs and the members of the Class whole.

25 866. The lack of an adequate remedy at law entitles Plaintiffs and the Class
26 to pursue equitable restitution and/or disgorgement.

27 867. Plaintiffs and members of the Class conferred a monetary benefit on
28 Defendants by raising the price and trading volume of the Yuga Financial Products,

1 which allowed Defendants to sell their Yuga Financial Products to Plaintiffs and
2 Class members at inappropriately and artificially inflated prices.

3 868. Defendants received a financial benefit from the sale of their Yuga
4 Financial Products at inflated prices and are in possession of this monetary value
5 that was intended to be used for the benefit of, and rightfully belongs to, Plaintiffs
6 and members of the Class.

7 869. Plaintiffs seek restitution in the form of the monetary value of the
8 difference between the purchase price of the Yuga Financial Products and the price
9 those Yuga Financial Products sold for.

10 **FOURTEENTH CAUSE OF ACTION**
11 **Violation of the Florida Securities and Investor Protection Act**
12 **Fl. Stat. Section 517.07**
13 **(Sale of Unregistered Securities)**
14 **(Against All Defendants)**

15 870. Plaintiffs restate and reallege all preceding allegations in the
16 paragraphs above as if fully set forth herein, and further allege the following:

17 871. Plaintiffs Grand and Patel are residents of the State of Florida.

18 872. Plaintiffs Grand and Patel paid for or purchased Yuga Financial
19 Products in Florida and thus the deceptive transactions alleged herein occurred in
20 Florida.

21 873. The Yuga Financial Products, individually and collectively, are each a
22 “security” within the meaning of the term as defined by Section 517.021(22), Fla.
23 Stat.

24 874. Section 517.07(1) of the Florida Statute provides that it is unlawful and
25 a violation for any person to sell or offer to sell a security within the State of Florida
26 unless the security is exempt under Florida Statute §517.051, is sold in a transaction
27 exempt under Florida Statute §517.061, is a federally covered security, or is
28 registered pursuant to Chapter 517 of the Florida Statute.

1 875. Section 517.211 extends liability to any “director, officer, partner, or
2 agent of or for the seller, if the director, officer, partner, or agent has personally
3 participated or aided in making the sale, is jointly and severally liable to the
4 purchaser in an action for rescission, if the purchaser still owns the security, or for
5 damages, if the purchaser has sold the security.” Fla. Stat. §517.211(1).

6 876. Under §2(a)(1) of the Securities Act of 1933, a “security” is defined to
7 include an “investment contract.” 15 U.S.C. §77b(a)(1). The Supreme Court in
8 *Howey* established the prevailing test for determining whether something is an
9 investment contract, which is defined as “an investment of money in a common
10 enterprise with profits to come solely from the efforts of others.” *Howey*, 328 U.S.
11 at 301. Specifically, a transaction qualifies as an investment contract and, thus, a
12 security if it is: (1) an investment; (2) in a common enterprise; (3) with a reasonable
13 expectation of profits; and (4) to be derived from the entrepreneurial or managerial
14 efforts of others. *See Forman*, 421 U.S. at 852-53. This definition embodies a
15 “flexible rather than a static principle, one that is capable of adaptation to meet the
16 countless and variable schemes devised by those who seek the use of the money of
17 others on the promise of profits,” and thereby “permits the fulfillment of the
18 statutory purpose of compelling full and fair disclosure relative to the issuance of
19 ‘the many types of instruments that in our commercial world fall within the
20 ordinary concept of a security.’” *Howey*, 328 U.S. at 299. Accordingly, in
21 analyzing whether something is a security, “‘form should be disregarded for
22 substance,’” and the emphasis should be “on the economic realities underlying a
23 transaction, and not on the name appended thereto.” *Forman*, 421 U.S. at 848-49.

24 877. The Yuga Financial Products are each a security pursuant to Fla. Stat.
25 §517.021(22)(a).

26 878. Defendants, and each of them, by engaging in the conduct described
27 above within Florida, directly or indirectly, sold and offered to sell securities.

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1 879. Defendants and others called for an investment of money or assets by
2 Plaintiffs in exchange for non-functional Yuga Financial Products.

3 880. Plaintiffs Grand and Patel and the members of the Class purchased
4 Yuga Financial Products from the Executive Defendants and ApeDAO Defendants
5 through the liquidity pools that they provided for trading on exchanges.

6 881. The funds paid by Plaintiffs were pooled by the Executive Defendants
7 and ApeDAO Defendants in the process of securing a profit for themselves and
8 Plaintiffs. As a result, Plaintiffs were investors who shared in the risks and benefits
9 of the Yuga Financial Product investment scheme.

10 882. The proposed transactions at issue constitute investment contracts and
11 are therefore securities subject to Florida blue-sky laws and the FSIPA.

12 883. The Yuga Financial Products sold and offered for sale to Plaintiffs and
13 Class members were not:

- 14 a. exempt from registration under Fla. Stat. §517.051;
- 15 b. a federal covered security;
- 16 c. registered with the Office of Financial Regulations (OFR); or
- 17 d. sold in a transaction exempt under Fla. Stat. §517.061.

18 884. Section 517.07 is a binding provision that obligates the Executive
19 Defendants and ApeDAO Defendants to register the Yuga Financial Products as a
20 security with the Florida Office of Financial Regulation.

21 885. Because the Yuga Financial Products were never registered as required
22 under the FSIPA, Defendants violated section 517.07 and are subject to liability
23 because they solicited and participated in or aided the making of an offer of Yuga
24 Financial Products for sale.

25 886. Defendants Aronow, Solano, Ali, Atalay, Muniz, Shoemaker, Ehrlund,
26 Lyons, Ohanian, Wu, and Bajwa are directors, officers, and/or partners of the
27 Company pursuant to Fla. Stat. §517.211. Concurrently, Defendants Oseary,
28

1 Winklemann, Ciccone, Hilton, Fallon, Bieber, Post, Broadus, Curry, Adidas,
2 Sotheby's, Universal, EHD, MoonPay, and Soto-Wright are agents of the Company
3 pursuant to Fla. Stat. §517.211.

4 887. Investors who bought Yuga Financial Products invested money or
5 other valuable consideration in a common enterprise. Investors had a reasonable
6 expectation of profit based upon the efforts of the Defendants, including, among
7 other things, Defendants' promotional efforts and business operations.

8 888. Based on Yuga's marketing materials, as well as public statements by
9 the Executive Defendants and ApeDAO Defendants, the Yuga website and Yuga-
10 affiliate websites, and the Yuga and BAYC social media handles, purchasers of
11 Yuga Financial Products would have had a reasonable expectation of profits from
12 their investment in the Yuga Financial Products.

13 889. Based on Defendants' public statements, purchasers of the Yuga
14 Financial Products would have had a reasonable expectation that Yuga and its
15 agents would expend significant efforts to develop the so-called Bored Ape
16 ecosystem, which would increase the value of their Yuga Financial Products,
17 resulting in investor profit. Yuga's marketing materials highlighted that the
18 Company (including Executive Defendants Aronow, Solano, Ali, Atalay, Muniz,
19 Shoemaker, Ehrlund, and Lyon and ApeDAO Defendants Ohanian, Wu, and
20 Bajwa) and its agents (namely Defendants Oseary, Winklemann, Ciccone, Hilton,
21 Fallon, Bieber, Post, Broadus, Curry, Adidas, Sotheby's, Universal, EHD,
22 MoonPay, and Soto-Wright) would ensure a secondary trading market for Yuga
23 Financial Products by creating a trading market for Yuga Financial Products.

24 890. Yuga's marketing materials, moreover, contained numerous statements
25 indicating that the Yuga Financial Products would rise in value as a result of the
26 efforts of the Company and its agents, including by touting future brand deals
27 related to the Bored Ape intellectual property rights and by promising to develop
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1 various utilities for the Yuga Financial Products, including the so-called Otherside
2 metaverse, various video games, future rewards and staking programs, event
3 partnerships, and a general expansion of the Yuga Financial Product ecosystem.

4 891. Plaintiffs and Class members invested fiat, including U.S. dollars, and
5 digital currencies, such as Bitcoin and Ethereum, to purchase Yuga Financial
6 Products.

7 892. Defendants sold Yuga Financial Products to the general public on
8 various cryptocurrency exchanges.

9 893. Every purchase of Yuga Financial Products by a member of the public
10 is an investment contract.

11 894. Additionally, investors were passive participants in the Yuga Financial
12 Products launch and the profits of each Plaintiff and the Class were intertwined with
13 those of Defendants.

14 895. The Executive Defendants and ApeDAO Defendants also were
15 responsible for supporting the Yuga Financial Products and its code, pooling
16 investors' assets, and controlling those assets. Investors' profits in the Yuga
17 Financial Products were to be derived from the managerial efforts of others –
18 specifically the Company, the Executive Defendants and/or the ApeDAO
19 Defendants or any Yuga personnel responsible for developing the networks on
20 which these Yuga Financial Products will operate and/or managing the proprietary
21 trading codes. Yuga Financial Product investors relied on the managerial and
22 entrepreneurial efforts of the Company and the Executive Defendants and ApeDAO
23 Defendants to manage, oversee, and/or develop the Yuga business and sales of
24 Yuga Financial Products.

25 896. This dependency, however, on the managerial efforts of the Company,
26 Executive Defendants, and ApeDAO Defendants was not apparent at issuance to a
27 reasonable investor. Considering the limited available information about how these
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1 Yuga Financial Products were designed and intended to operate, if such an investor
2 were even able to interpret the relevant law at the time, a reasonable investor lacked
3 sufficient bases to conclude whether the Yuga Financial Products were securities
4 until the platform at issue, and its relevant “ecosystem,” had been given time to
5 develop. In the interim, the investor lacked the facts necessary to conclude – let
6 alone formally allege in court – that the Yuga Financial Products they had acquired
7 were securities.

8 897. Here, the Company, Executive Defendants, and ApeDAO Defendants
9 have discussed the long-term prospects on extended frames, continually noting how
10 the utilization of Yuga Financial Products as a method of payment will grow in the
11 future.

12 898. Here, the agents of the Company, in particular Sotheby’s and the
13 MoonPay Defendants, had access to and did manipulate the sales of BAYC NFTs,
14 which had a dramatic impact on the Yuga Financial Products’ price and effected the
15 Yuga Financial Product liquidity pool.

16 899. Another factor the Framework notes is whether the AP has the ability
17 to determine who will receive additional digital assets and under what conditions.
18 This could be, for example, “[m]aking or contributing to managerial level business
19 decisions, such as how to deploy funds raised from sales of the digital asset.”

20 900. Further, the Company, Executive Defendants, and ApeDAO
21 Defendants are the arbiters of funding for Yuga and the Bored Ape ecosystem and
22 also control what proposals even make it to the Ape Foundation for voting via the
23 AIP process, making other managerial judgements or decisions that will directly or
24 indirectly impact the success of the network or the value of the digital asset
25 generally.

1 **FIFTEENTH CAUSE OF ACTION**
2 **Violation of the Florida Securities and Investor Protection Act**
3 **Fl. Stat. Section 517.07**
4 **(Sale of Unregistered Securities)**
5 **(Against All Defendants)**

6 901. Plaintiffs restate and reallege all preceding allegations in the
7 paragraphs above as if fully set forth herein, and further allege the following:

8 902. Plaintiffs Grand and Patel are residents of the State of Florida.

9 903. Plaintiffs Grand and Patel paid for or purchased Yuga Financial
10 Products in Florida and thus the deceptive transactions alleged herein occurred in
11 Florida.

12 904. Chapter 501, Fla. Stat., FDUTPA is to be liberally construed to protect
13 the consuming public, such as Plaintiffs in this case, from those who engage in
14 unfair methods of competition, or unconscionable, deceptive or unfair acts or
15 practices in the conduct of any trade or commerce.

16 905. Plaintiffs are “consumers” within the meaning of Fla. Stat.
17 §501.203(7).

18 906. By soliciting investor funds in the manner in which they did,
19 Defendants engaged in “trade and commerce” within the meaning of Fla. Stat.
20 §501.203(8).

21 907. The elements comprising a consumer claim for damages under
22 FDUTPA are: (1) a deceptive act or unfair practice; (2) causation; and (3) actual
23 damages. *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 983 (11th Cir. 2016) (citing
24 *City First Mortg. Corp. v. Barton*, 988 So. 2d 82, 86 (Fla. Dist. Ct. App. 2008)).

25 908. Under FDUTPA, “deception occurs if there is a representation,
26 omission, or practice that is likely to mislead the consumer acting reasonably in the
27 circumstances, to the consumer’s detriment.” *Zlotnick v. Premier Sales Grp., Inc.*,
28 480 F.3d 1281, 1284 (11th Cir. 2007) (quoting *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003)). “Under Florida law, an objective test is

1 employed in determining whether the practice was likely to deceive a consumer
2 acting reasonably. That is, “[a] party asserting a deceptive trade practice claim need
3 not show actual reliance on the representation or omission at issue.” *Carriuolo*,
4 823 F.3d at 984 (quoting *Davis v. Powertel, Inc.*, 776 So. 2d 971, 973 (Fla. Dist. Ct.
5 App. 2000).

6 909. Here, Plaintiffs Grand and Patel nevertheless did, in fact, reasonably
7 rely on the alleged misleading statements and omissions when making their
8 respective decisions to purchase the Yuga Financial Products.

9 910. A plaintiff’s claims under FDUPTA are governed by the “reasonable
10 consumer” test. *Piescik v. CVS Pharmacy, Inc.*, 576 F. Supp. 3d 1125, 1132 n.2
11 (S.D. Fla. 2021) (“This case was brought under California’s consumer protection
12 laws, which apply the same ‘reasonable consumer’ test for deception as applied in
13 interpreting FDUTPA.”).

14 911. Plaintiffs Grand and Patel relied on the misleading statements and
15 omissions alleged herein when deciding to purchase the Yuga Financial Products at
16 artificially inflated prices.

17 912. To establish an unfair practice, the plaintiff must show that it is “one
18 that ‘offends established public policy’ and one that is ‘immoral, unethical,
19 oppressive, unscrupulous or substantially injurious to consumers.’” *Marrache v.*
20 *Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1098 (11th Cir. 2021) (quoting *PNR*, 842 So.
21 2d at 777); *see also CMR Constr. & Roofing, LLC v. UCMS, LLC*, No. 21-11183,
22 2022 WL 3012298, at *4 (11th Cir. July 29, 2022).

23 913. Defendants engaged in business acts and practices deemed “deceptive”
24 because of the conduct, statements, and omissions described above, including, but
25 not limited to, the following:

- 26 a. knowingly and intentionally concealing the specific roles and
27 economic interests related to Yuga and the Yuga Financial Products of
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1 the Executive Defendants, ApeDAO Defendants, Promoter
2 Defendants, and MoonPay Defendants;

3 b. failing to disclose that the huge increase in price of the BAYC NFT
4 collection in December 2021 was caused by manipulation by
5 Defendants Aronow, Solano, Ali, Atalay, Muniz, Oseary, and
6 Sotheby's instead of being due to an organic increase in interest from
7 traditional art investors;

8 c. leading investors to believe that the ApeCoin token would be available
9 for use as a native currency within the larger Bored Ape ecosystem
10 when there was no such capability; and

11 d. knowingly and intentionally using and/or failing to disclose the use of
12 the Promotor Defendants to instill trust in uninformed investors to
13 promote the financial benefits of a highly speculative and risky
14 investment in Yuga Financial Products, in an effort to manipulate and
15 artificially inflate the price and trading volume of the Yuga Financial
16 and allow Defendants to sell their own allocations of Yuga Financial
17 Products at those artificially inflated prices and/or to collect increased
18 fees from the secondary sales of the BAYC, MAYC, BAKC, and
19 Otherdeed NFT collections.

20 914. These acts and omissions constitute both deceptive and unfair trade
21 practices because the false representations and omissions made by Defendants have
22 a tendency or capacity to deceive consumers, such as Plaintiffs, into investing in the
23 Yuga Financial Products to their collective financial detriment. Such conduct is
24 immoral, unethical, oppressive, unscrupulous, or substantially injurious to
25 consumers.

26 915. Had the Promoter Defendants, Executive Defendants, or ApeDAO
27 Defendants disclosed the omitted information, Plaintiffs would have been aware of

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1 it because (a) they saw the actual promotions by these Defendants and would have
2 concurrently seen any disclosure on the promotions themselves had it been
3 included, and (b) because they each follow, directly or indirectly, the social media
4 accounts of, and news reports on, the Company, Executive Defendants, ApeDAO
5 Defendants, and Promoter Defendants.

6 916. As a direct and proximate result of Defendants’ deceptive trade
7 practices, Plaintiffs Grand and Patel, and the members of the Class, suffered
8 damages. The activities of the Defendants caused Plaintiffs Grand and Patel and
9 the members of the Class to purchase and/or hold the Yuga Financial Products
10 when they otherwise would not have done so.

11 917. The materially false statements and omissions as described above, and
12 the fact that this was a misleading investment, were unfair, unconscionable, and
13 deceptive practices perpetrated on Plaintiffs which would have likely deceived a
14 reasonable person under the circumstances.

15 918. Defendants were on notice at all relevant times that the false
16 representations of material facts described above were being communicated to
17 prospective investors (such as Plaintiffs) by their authorized agents.

18 919. As a result of the false representations and violations of the laws
19 described above, Plaintiffs have been damaged by, among other things, overpaying
20 for the Yuga Financial Products that were artificially inflated by Defendants.

21 920. Plaintiffs have also been damaged in other and further ways subject to
22 proof at trial. For example, an injury under FDUPTA is found when “the
23 [defendant] made an allegedly misleading advertisement by making an offer or
24 promise which the [defendant] did not intend to keep.” *Stires v. Carnival Corp.*,
25 No. 6:02-CV-542-ORL31JGG, 2003 WL 21356781, at *2 (M.D. Fla. Jan. 2, 2003).
26 As alleged herein, the Executive Defendants promoted the ability to use the BAYC
27 NFTs and ApeCoin tokens within the forthcoming Otherside metaverse. As noted
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1 above, Plaintiffs were induced to purchase ApeCoin and NFTs within the Bored
2 Ape ecosystem because of these particular promotions.

3 921. The statements from Defendants Aronow, Solano, Ali, Atalay, Muniz,
4 Shoemaker, Ehrlund, and Lyons (individually or on behalf of the Company as Yuga
5 executives with authority and control over Yuga’s social media account);
6 statements from ApeDAO Defendants Ohanian, Wu, and Bajwa (individually or on
7 behalf of the ApeDAO as members of the ApeDAO Special Council with authority
8 and control over the ApeDAO website and social media accounts); and statements
9 from Promoter Defendants Sotheby’s, Adidas, Oseary, Winklemann, Ciccone,
10 Hilton, Fallon (with the consent of and/or aided and abetted by Defendants
11 Universal and EHD), Bieber, Post, Broadus, and Curry are all actionable and not
12 puffery. Under Florida law, “‘specific and measurable claims’ are not puffery ‘and
13 may be the subject of deceptive advertising claims.’” *Wyndham Vacation*
14 *Ownership v. Reed Hein & Assocs., LLC*, No. 618CV02171GAPDCI, 2019 WL
15 3934468, at *6 (M.D. Fla. Aug. 20, 2019) (citing *Fed. Trade Comm’n v. World*
16 *Patent Mktg., Inc.*, No. 17-CV-20848, 2017 WL 3508639, at *12 (S.D. Fla. Aug.
17 16, 2017)); *Luczak v. Nat’l Beverage Corp.*, 812 F. App’x 915, 925 (11th Cir. 2020)
18 (finding that certain statements were actionable because, while National Beverage’s
19 statements expressed optimism, they did so by citing to specific strategies and
20 metrics the company said it was using). And while statements of opinion and
21 puffery (*i.e.*, exaggerated advertising, blustering, and boasting upon which no
22 reasonable buyer would rely) are not actionable, a statement of opinion may be
23 actionable if it “‘fairly implies a [factual] basis.’” *Duty Free Americas, Inc. v.*
24 *Estee Lauder Cos., Inc.*, 797 F.3d 1248, 1277 (11th Cir. 2015) (quoting *Osmose,*
25 *Inc. v. Viance, LLC*, 612 F.3d 1298, 1311 (11th Cir. 2010) (alteration in original).
26 As the Eleventh Circuit Court observed: “A conclusion that a statement constitutes
27 puffery doesn’t absolve the reviewing court of the duty to consider the possibility –
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1 however remote – that in context and in light of the ‘total mix’ of available
2 information, a reasonable investor might nonetheless attach importance to the
3 statement.” *Carvelli v. Ocwen Fin. Corp.*, 934 F.3d 1307, 1320–21 (11th Cir.
4 2019).

5 922. As alleged further above, Defendants’ statements claimed, among
6 other things, that the price and trading volume was poised for continued upward
7 growth, that various Promotor Defendants paid for the BAYC NFT they touted on
8 social media, and that Yuga investors gained all of the intellectual property rights
9 available for the BAYC NFT collection upon purchase of a Yuga Financial
10 Products. These statements are specific and measurable, and they relate to specific
11 strategies and metrics the Company said it was using to encourage purchases and
12 increase the price of the Yuga Financial Products. At the same time, each of the
13 Defendants failed to disclose that these metrics were the result of manipulations by
14 the MoonPay Defendants, Executive Defendants, and Sotheby’s to
15 disproportionately increase the price of the Yuga Financial Products.

16 923. Taken together the misleading statements and omissions of Defendants
17 contributed to the deceptive marketing tactics as a whole, which were used to solicit
18 sales of Yuga Financial Products.

19 924. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts
20 or practices by Defendants, to obtain restitution and disgorgement of all monies
21 generated as a result of such practices, and for all other relief allowed under Florida
22 law.

23 925. Pursuant to Fla. Stat. §§501.211(1) and 501.2105, Plaintiffs are
24 entitled to recover from Defendants the reasonable amount of attorneys’ fees
25 Plaintiffs have had to incur in representing their interests in this matter.
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1 **XI. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly
3 situated, respectfully request that this Court:

4 A. Determine that the claims alleged herein may be maintained as a class
5 action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order
6 certifying the Class defined above;

7 B. Appoint Plaintiffs as representatives of the Class and their counsel as
8 Class counsel;

9 C. Award all actual, general, special, incidental, statutory, punitive, and
10 consequential damages and restitution to which Plaintiffs and Class members are
11 entitled;

12 D. Award post-judgment interest on such monetary relief;

13 E. Grant appropriate injunctive and/or declaratory relief;

14 F. Award reasonable attorneys' fees and costs; and

15 G. Grant such further relief that this Court deems appropriate.

16 **XII. JURY DEMAND**

17 Plaintiffs, individually and on behalf of the putative Class, demand a trial by
18 jury on all issues so triable.

19 DATED: October 17, 2023

/s/ John T. Jasnoch

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 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: October 17, 2023

/s/ John T. Jasnoch
John T. Jasnoch