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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

ADONIS REAL and ADAM TITCHER, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

YUGA LABS, INC., WYLIE ARONOW, GREG SOLANO, KEREM ATALAY, ZESHAN ALI, NICOLE MUNIZ, JASMIN SHOEMAKER, PATRICK EHRLUND, CHRISTOPHER LYONS, ALEXIS OHANIAN, AMY WU, MAARIA BAJWA, DEAN STEINBECK, GUY OSEARY, MIKE WINKELMANN, MADONNA LOUISE CICCONE, PARIS HILTON, JAMES FALLON, ELECTRIC HOT DOG, INC., UNIVERSAL TELEVISION, LLC, JUSTIN BIEBER, GWYNETH PALTROW, SERENA WILLIAMS, THOMAS PENTZ, AUSTIN RICHARD POST, CALVIN BROADUS JR., KEVIN HART, ALEXANDER PALL, ANDREW TAGGART, WARDELL STEPHEN CURRY II, NAYVADIUS WILBURN CASH, ABEL TESFAYE, KHALED MOHAMMED KHALED, ADIDAS AMERICA INC., ADIDAS VENTURE B.V., IVAN SOTO-WRIGHT, and MOONPAY USA LLC,

Defendants.

Case No. 2:22-cv-08909

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Adonis Real and Adam Titcher, individually and on behalf of all others similarly situated, bring this action against Yuga Labs, Inc. ("Yuga" or the "Company"), Wylie Aronow, Greg Solano, Kerem Atalay, Zeshan Ali, Nicole Muniz, Jasmin Shoemaker, Patrick Ehrlund, Christopher Lyons (the "Executive Defendants"), Alexis Ohanian, Amy Wu, Maaria Bajwa, Dean Steinbeck (the "Ape DAO Board Defendants"), Guy Oseary, Mike Winkelmann, Madonna Louise Ciccone, Paris Hilton, James Fallon, Electric Hot Dog, Inc., Universal Television, LLC, Justin Bieber, Gwyneth Paltrow, Serena Williams, Thomas Pentz, Austin Richard Post, Calvin Broadus, Jr., Kevin Hart, Alexander Pall, Andrew Taggart, Wardell Stephen Curry II, Nayvadius Wilburn Cash, Abel Tesfaye, Khaled Mohammed Khaled, adidas America Inc., adidas Ventures B.V. (the "Promoter Defendants"), Ivan Soto-Wright, and MoonPay USA LLC ("MoonPay," and together with Ivan Soto-Wright, the "MoonPay Defendants") (collectively, with the Company, the Executive Defendants, Ape DAO Board Defendants, and the Promoter Defendants, the "Defendants"). The following allegations are based upon personal knowledge as to Plaintiffs' own facts, upon investigation by Plaintiffs' counsel, and upon information and belief where facts are solely in possession of Defendants.

I. NATURE OF THE CASE

"Celebrities and NFTs Are a Match Made in Hell…
Somehow, star endorsements have found a new low."
-Amanda Mull, The Atlantic

1. Plaintiffs bring this action on behalf of all investors who purchased Yuga's non-fungible tokens ("NFTs") or ApeCoin tokens ("ApeCoin")[1] between April 23, 2021 and the present (the "Relevant Period"), and were damaged thereby.

[1] Yuga's various collections of NFTs (including, but not limited to, the Bored Ape Yacht Club NFT collection), ApeCoins, and virtual land in the Otherside are collectively referred to as the "Yuga Financial Products" or the "Yuga securities."

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

3. This case epitomizes these concerns as it involves a vast scheme between a blockchain start-up company, Yuga Labs, Inc. ("Yuga"), a highly-connected Hollywood talent agent (Defendant Guy Oseary), and a front operation (MoonPay), who all united for the purpose of promoting and selling a suite of digital assets. The executives at Yuga and Oseary together devised a plan to leverage their vast network of A-list musicians, athletes, and celebrity clients and associates to misleadingly promote and sell the Yuga Financial Products.

4. Yuga's flagship NFT collection, the so-called Bored Ape Yacht Club ("BAYC"), and related brand rely heavily on the perception that "joining the club" (*i.e.*, buying a BAYC NFT) brings investors status and provides them access to events, benefits, and other lucrative investment opportunities exclusive to BAYC holders. The exclusiveness of BAYC membership was entirely based on the

[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.

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

inclusion and endorsements of highly influential celebrities. But this purported interest in, and endorsement of, the BAYC NFTs by high-profile taste makers was entirely manufactured by Oseary at the behest of the Executive Defendants.

5. In order to make the promotion of, and subsequent interest in, the BAYC NFTs appear to be organic (as opposed to being solely the result of a paid promotion), the Company needed a way to discreetly pay their celebrity cohorts. To do this, Oseary tapped into a different part of his network: the MoonPay Defendants. Oseary's venture capital firm, Sound Ventures, was one of the early investors in MoonPay, along with, *inter alia*, Defendants Justin Bieber, Paris Hilton, Jimmy Fallon, Gwyneth Paltrow, Serena Williams, Austin Post, Thomas Pentz, Calvin Broadus, Jr., Kevin Hart, Alexander Pall, Andrew Taggart, Wardell Stephen Curry II, Nayvadius Cash, and Abel Tesfaye. MoonPay purports to be a white-glove service designed to help the super-rich and celebrities buy NFTs "'without all the hassle of setting up a wallet, buying crypto, using that crypto to purchase an NFT and then taking custody of it.'"[4] In truth, the Executive Defendants and Oseary used their connections to MoonPay and its service as a covert way to compensate the Promoter Defendants for their promotions of the BAYC NFTs without disclosing it to unsuspecting investors.

6. Defendants' promotional campaign was wildly successful, generating billions of dollars in sales and re-sales. The manufactured celebrity endorsements and misleading promotions regarding the launch of an entire BAYC ecosystem (the so-called Otherside metaverse) were able to artificially increase the interest in and price of the BAYC NFTs during the Relevant Period, causing investors to purchase these losing investments at drastically inflated prices.

[4] Ryan Weeks, *MoonPay has quietly set up a concierge service to help celebrities buy NFTS*, THE BLOCK (Nov. 5, 2021), https://www.theblock.co/post/125483/moonpay-concierge-celebrities-nft?utm_source=rss&utm_medium=rss.

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

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

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

II. PARTIES

A. Plaintiffs

10. Plaintiff Adam Titcher ("Titcher") is a resident and citizen of California. During the Relevant Period, Titcher purchased a Mutant Ape Yacht Club ("MAYC") NFT via the U.S.-based NFT exchange OpenSea. Titcher also purchased an Otherdeed NFT associated with the Yuga metaverse, Otherside, via the U.S.-based NFT exchange on OpenSea. Titcher purchased the Yuga securities in reliance on the misleading promotions from the Company and the Promoter Defendants (described in detail below), and he suffered investment losses as a result of Defendants' conduct.

11. Plaintiff Adonis Real ("Real") is a resident and citizen of Florida. During the Relevant Period, Real purchased ApeCoin tokens via the U.S.-based

cryptocurrency exchange Coinbase. Real purchased ApeCoin tokens in reliance on the misleading promotions from the Company and the Promoter Defendants (described in detail below) and suffered investment losses as a result of Defendants' conduct.

B. Defendants

12. Defendant Yuga Labs, Inc. ("Yuga") is a Delaware corporation, registered on February, 8, 2021, with its headquarters located at 1850 Towers Crescent Plaza, Suite 200, Tysons, VA 22182. On September 16, 2022, Yuga registered with the California Secretary of State to transact business within California.

13. Wylie Aronow ("Aronow") is a resident and citizen of South Carolina, living in Mount Pleasant, South Carolina. Aronow is the co-founder/creator of the Company, served as a consultant and spokesman for the Company, exercised control over the Company and directed and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the public.

14. Defendant Greg Solano ("Solano") is a resident and citizen of Florida, living in Fort Lauderdale, Florida. Solano is the co-founder/creator of the Company, served as a consultant and spokesman for the Company, exercised control over the Company and directed and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the public.

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

16. Zeshan Ali ("Ali") is a resident and citizen of California, living in Los Angeles, California. Ali is the co-founder/creator of the Company, served as a developer, consultant and spokesman for the Company, exercised control over the

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

17. Defendant Nicole Muniz ("Muniz") is a resident and citizen of New York, living in Brooklyn, New York. Muniz is the Chief Executive Officer ("CEO") of the Company, served as a consultant and spokesman for the Company, exercised control over the Company and directed and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the public.

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

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

20. Defendant Christopher Lyons ("Lyons") is a resident and citizen of Florida, living in Plantation, Florida. Lyons served as a board member, consultant and spokesman for the Company, exercised control over the Company and directed and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the public.

21. Defendant Alexis Ohanian ("Ohanian") is a resident and citizen of Florida, living in Jupiter, Florida. Ohanian served as a board member of the Ape DAO, served as a consultant and spokesman for the Company, exercised control over the Ape DAO, Ape Foundation, and the Company and directed and/or authorized,

directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the public. Ohanian's SevenSevenSix was one of several investors in Yuga during the $450 million funding round.

22. Defendant Amy Wu ("Wu") is a resident and citizen of California, living in San Francisco, California. Wu served as a board member of the Ape DAO, served as a consultant and spokesman for the Company, exercised control over the Ape DAO, Ape Foundation, and the Company and directed and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the public.

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

24. Defendant Dean Steinbeck ("Steinbeck") is a resident and citizen of California, living in Beverly Hills, California. Steinbeck served as a board member of the Ape DAO, served as a consultant and spokesman for the Company, exercised control over the Ape DAO, Ape Foundation, and the Company and directed and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga Financial Products to the public.

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

26. Defendant Mike "Beeple" Winkelmann ("Winkelmann") is a resident and citizen of South Carolina, living in North Charleston, South Carolina.

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

27. Defendant Madonna Louise Ciccone ("Ciccone") is a resident and citizen of California, living in Hidden Hills, California. Ciccone acted as a promotor for the Company and solicited sales of Yuga securities to the public.

28. Defendant Justin Bieber ("Bieber") is a resident and citizen of California, living in Hidden Hills, California. Bieber acted as a promotor for the Company and solicited sales of Yuga securities to the public.

29. Defendant James "Jimmy" Fallon ("Fallon") is a resident and citizen of New York, living in New York, New York. Fallon acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

30. Defendant Electric Hot Dog, Inc. ("EHD" f/k/a Holiday Road) is a New York corporation, with its headquarters located at 200 Park Avenue South, 8th Floor, New York, NY 10003. EHD is Defendant Fallon's personal production company, as well as being the production company for *The Tonight Show* ("*Tonight Show*"), of which Defendant Fallon is the host. EHD acted as a spokesman for the Company, exercised control over Defendant Fallon and the content and disclosures of the *Tonight Show*, and directed and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga securities to the public.

31. Defendant Universal Television, LLC ("Universal") is a New York corporation, with its headquarters located at 100 Universal City Plaza, Universal City, CA 91608. Universal is the production company for the *Tonight Show*, of which Defendant Fallon is the host. Universal acted as an indirect spokesman for the Company by virtue of its exercise of control over both Defendant Fallon and the content and disclosures of the *Tonight Show*, and directed and/or authorized, directly or indirectly, the sale and/or solicitations of Yuga securities to the public.

32. Defendant Paris Hilton ("Hilton") is a resident and citizen of California, living in Malibu, California. Hilton acted as a promotor for the Company and solicited sales of Yuga securities to the public.

33. Defendant Gwyneth Paltrow ("Paltrow") is a resident and citizen of California, living in Montecito, California. Paltrow acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

34. Defendant Serena Williams ("Williams") is a resident and citizen of Florida, living in Jupiter, Florida. Williams acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

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

36. Defendant Thomas "Diplo" Pentz ("Pentz") is a resident and citizen of California, living in Montecito, California. Pentz acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

37. Defendant Calvin "Snoop Dogg" Broadus, Jr. ("Broadus") is a resident and citizen of California, living in Diamond Bar, California. Broadus acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

38. Defendant Kevin Hart ("Hart") is a resident and citizen of California, living in Calabasas, California. Hart acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

39. Defendant Alexander Pall ("Pall") is a resident and citizen of California, living in Hollywood, California. Pall acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

40. Defendant Andrew Taggart ("Taggart") is a resident and citizen of California, living in Los Angeles, California. Taggart acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

41. Defendant Wardell Stephen Curry II ("Curry") is a resident and citizen of California, living in Atherton, California. Curry acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

42. Defendant Nayvadius "Future" Wilburn Cash ("Wilburn Cash") is a resident and citizen of Georgia, living in Decatur, Georgia. Wilburn Cash as a promotor for the Company, and solicited sales of Yuga securities to the public.

43. Defendant Abel "The Weeknd" Tesfaye ("Tesfaye") is a resident and citizen of California, living in Los Angeles, California. Tesfaye acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

44. Defendant Khaled Mohammed Khaled ("Khaled") is a resident and citizen of California, living in Los Angeles, California. Khaled acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

45. Defendant adidas America Inc. is an Oregon corporation, with its headquarters located at 5055 N Greeley Avenue, Portland, Oregon 97217. Adidas America Inc. is the parent of adidas Ventures B.V., and acted as an agent and direct or indirect spokesman for the Company by virtue of its capital investment in the Company, and directed and/or authorized, directly or indirectly, the solicitations of Yuga securities to the public. On March 29, 2010, adidas America Inc. registered with the California Secretary of State to transact business within California.

46. Defendant adidas Ventures B.V. is a corporate venture capital firm with its headquarters located at Hoogoorddreef 9 A, 1101BA, Amsterdam, Netherlands. adidas Ventures B.V. operates as the investment arm of adidas America Inc. and acted as an agent and direct or indirect spokesman for the Company by virtue of its capital investment in the Company, and directed and/or authorized, directly or indirectly, the solicitations of Yuga securities to the public.

47. Defendants adidas America Inc and adidas Ventures B.V. are collectively referred to as "Adidas."

48. Defendant Ivan Soto-Wright ("Soto-Wright") is a resident and citizen of Florida, living in Miami, Florida. Soto-Wright served as the CEO of MoonPay during the Relevant Period, and acted as a promotor for the Company, and solicited sales of Yuga securities to the public.

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

III. JURISDICTION AND VENUE

50. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §1332. Plaintiffs bring this civil action seeking to represent a class of more than 100 plaintiffs pursuant to Federal Rule of Civil Procedure 23. Plaintiffs are citizens of the State of California and the State of Florida. 17 of the 37 named Defendants are citizens of California; all of the other Defendants reside outside of California. Plaintiffs seek an award exceeding $5,000,000, exclusive of interest and costs, on behalf of themselves and the putative Class.

51. The Court has general jurisdiction over Defendants Ali, Wu, Bajwa, Steinbeck, Oseary, Ciccone, Bieber, Hilton, Paltrow, Pentz, Broadus, Hart, Pall, Taggart, Curry, Tesfaye, and Khaled as they are all residents of the State of California and are thus "at home" in the forum.

52. This Court may exercise jurisdiction over Defendants because they have continuous and systematic contacts with this District, do substantial business in this State and within this District, and engage in unlawful practices in this District as described in this Complaint, so as to subject themselves to personal jurisdiction in

this District, thus rendering the exercise of jurisdiction by this Court proper and necessary.

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

IV. FACTUAL ALLEGATIONS

54. Cryptocurrency, or crypto, is a form of digital asset that exists virtually and uses cryptography to secure transactions. Cryptocurrencies use a decentralized system to record transactions and issue new units. The first cryptocurrency was Bitcoin, which was founded in 2009. As of March 2022, there are 18,465 cryptocurrencies in existence.[5]

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

56. Cryptocurrency is stored in crypto "wallets", which are physical devices or online software used to store the private keys to the owner's cryptocurrencies securely. Wallets have unique identifiers called "Wallet IDs." There is no limit on the number of wallets a person can control.

57. Transactions of cryptocurrencies are recorded in a "blockchain," which serves as a distributed public ledger. The amount of cryptocurrency transacted, the sender's wallet address, the recipient's wallet address and the date and time of the

[5] Josh Howarth, *How Many Cryptocurrencies are There In 2022?*, EXPLODING TOPICS (July 19, 2022), https://explodingtopics.com/blog/number-of-cryptocurrencies.

transfer for every transfer of cryptocurrency between digital wallets can be publicly viewed on the blockchain by using any number of websites like www.blockchain.com/explorer or www.etherscan.io.

58. The identity of an owner of a particular wallet is not publicly available from the blockchain. However, an owner can choose to reveal themselves. Or, since users usually have to reveal their identity in order to receive services or goods, many times the owner of a wallet can be deduced from a wallet's transactions or by matching wallet data with other identifiable data points such as a user's IP address.

59. Like physical money, cryptocurrencies are fungible, meaning that they can be traded or exchanged, one for another. For example, one bitcoin is always equal in value to another bitcoin. Conversely, non-fungible tokens ("NFTs") are cryptographic assets with unique identification codes and metadata that distinguish them from each other and cannot be replicated. Unlike regular cryptocurrencies, NFTs cannot be traded or exchanged at equivalency. Instead, each NFT is assigned its own value. Notably, a given NFT collection may set a floor price for each of its NFTs. This is the lowest "Buy Now" price for an NFT within that collection. For example, if the floor price for an NFT collection is five ether, it means that the lowest price someone can pay for an NFT that is not currently in an auction is five of the cryptocurrency token ether. Floor price is one of the key metrics investors consider when evaluating the intrinsic value for an NFT.

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

61. Similarly, a cryptocurrency can be used as virtual currency for purchases made within the metaverse. The "metaverse" refers to a virtual-reality space in which

users can interact with a computer-generated virtual environment and other users. Analysts predict that the metaverse has the potential to generate up to $5 trillion in value by 2030.[6]

A. Yuga Labs Background

1. The Founders

62. Yuga Labs is a cryptocurrency-related NFT project founded in February 2021 by a group of four friends: Defendants Aronow, Solano, Atalay, and Ali, along with Defendant Muniz.

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

64. In February 2021, Solano contacted Aronow about starting an NFT project. During the early conception of the Bored Ape Yacht Club brand, Aronow brought in Muniz to discuss both the creative and business side of the project. According to an interview of both Solano and Aronow, they described the early formation of Yuga as follows:

> Despite his interest in digital collectibles, Solano did not buy his first NFT until early 2021. Shortly thereafter, in February, Solano texted Aronow to start an NFT project of their own. Aronow said: "We immediately started to conceive. One of the ideas was a public digital canvas, which Aronow shared with his longtime friend Nicole Muniz, who is now the CEO of Yuga. She keenly predicted that someone would paint on it. a little brother."
>
> These people did just that. Aronow said: "I was like, where would you draw a phallus? The answer was: on the bathroom wall of a dive bar. So what kind of people would go there?" The kind of people he knew on Crypto Twitter who made their fortunes in cryptocurrencies

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

> but still only wanted to play MMORPGs online and not live the luxury life of the expected multi-millionaire.
>
> Aronow sent Solano a "whole article" to plan the idea, where the name "Bored Ape Yacht Club" came up. "As the great editor, Solano said—'That's it. That's it'" recalls Aronow. The concept evolved–in cryptocurrencies, [M]illionaires are real apes, and the term "ape" means that someone living in 2031 will compulsively invest in a new project without doing much research. Aronow said he and Solano started a limited liability company the next day.[7]

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

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

a. Wylie Aronow went by "Gordon Goner";

b. Greg Solano went by "Gargamel";

c. Kerem Atalay went by "EmperorTomatoKetchup"; and

d. Zeshan Ali went by "Sass."

67. Yuga develops and sells to investors a variety of digital assets, which fall into two basic categories: (1) artwork from various NFT collections; and (2) a native token.

68. Initially, the lion's share of Yuga's business comes from the sale of its various NFT collections. And Yuga also gets a 2.5% royalty every time one of its NFTs is resold on the secondary market. Yuga reportedly earned $127 million in

[7] *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/.

profits from its NFT business in 2021.[8] According to a Yuga pitch deck that was leaked online, the "BAYC collections alone account for approximately 10% of the volume on OpenSea," the largest NFT marketplace in the world.[9]

69. On April 20, 2021, the Company created the Bored Ape Yacht Club collection of NFTs, minting 10,000 BAYC NFTs. As the name suggests, the BAYC NFTs feature pictures of an animated ape with a bored facial expression. These avatars can be customized with unique traits and characteristics. In fact, these BAYC NFTs are distinguished and valued by the accessories that are selected to adorn the digital ape. For example, a BAYC NFT wearing sunglasses is generally considered to be more rare (and thus more valuable) than one that does not have a similar fashion accessory.

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

71. Yuga's portfolio of NFT collections is collectively worth billions. The BAYC collection alone was valued in the billions of dollars, with the floor price at around $114,000 as of August 2022, according to CoinGecko. Yuga also created a spinoff brand NFT collection, the Mutant Ape Yacht Club collection, worth approximately $427 million.[10] In addition, Yuga's NFT collection portfolio contains acquisitions by the Company, including owning the rights to the CryptoPunks (a

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

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

[10] Mutant Ape Yacht Club (MAYC) NFTs are created by combining two digital assets created by Yuga: a BAYC NFT and a SERUM NFT. The idea being that the "serum" would turn the buyer's "bored ape" into a "mutant ape."

series of avatars in an eight-bit art style worth approximately $970 million in total) and Meebits collections. These acquisitions were funded thanks, in part, to the seed investments from a16z and Ape DAO Board member Christopher Lyons.

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

73. On February 4, 2022 an article on BuzzFeed.com ("*BuzzFeed*") revealed the identity 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 "doxxed[11] against my will."[12] Similarly, Solano posted his own picture on his Crypto Gargamel (Garga.eth) Twitter account, stating "[g]ot doxed [sic] so why not."[13]

74. After Defendants Solano, Aronow, Atalay, Ali, and Muniz were able to massively increase interest in the BAYC NFTs and the idea of cross-utilization of those NFTs through the misleading promotional campaign executed by the Promotor Defendants, the Executive Defendants and Oseary turned towards expanding the Bored Ape brand beyond NFTs. First, Muniz suggested new financial spin-off products like the MAYC and Bored Ape Kennel Club NFT collections. Next, came Yuga's version of printing its own money: ApeCoin tokens (discussed further below).

75. Finally, in an effort to artificially generate some actual use for these various unregistered Yuga securities (beyond making corporate insiders filthy rich), the Executive Defendants claimed to be creating its own collective virtual shared space or "metaverse" platform, Otherside. The Otherside metaverse was billed to be Yuga's persistent, immersive virtual world that users could interact with using digital

[11] "Dox" means to publicly identify or publish private information about someone without their consent.

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

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

avatars from the BAYC, MAYC, or other Yuga NFT collections. Executive Defendants, Oseary, and the Ape DAO Board Defendants touted ApeCoin tokens as the Otherside's native currency. Yuga and its executives promoted the Otherdeed NFTs (and related plots of "land" in the Otherside metaverse) as an extension of the BAYC ecosystem and the place where the BAYC NFTs could grow, prosper, and interact with others "in the club."

2. The Fifth Ape - Oseary

76. On October 12, 2021, the Company announced in a *Variety* Magazine exclusive article that it had signed a representation deal with Defendant Oseary to expand the BAYC NFTs into movies, TV, music, and gaming.[14] In truth, Oseary was officially brought in to actively recruit the Promoter Defendants to solicit sales of the BAYC NFTs and other Yuga Financial Products, which they did.

77. While each of the individual Executive Defendants played their part in the organizing of the misleading promotion scheme (discussed further below), none was more instrumental than the so-called "Fifth Ape" Defendant Oseary, who spent years in Hollywood building relationships with the Promoter Defendants. For example, when Defendant Fallon assumed the *Tonight Show* hosting role on February 17, 2014, one of his first two guests was the world-famous rock band U2. As the band's manager at the time, Oseary facilitated this appearance and helped Fallon's career take off. Fallon also regularly attends an annual MTV Video Music Awards after-party hosted by Oseary. Concurrently, Oseary also conducts business with Defendant Bieber's manager Scooter Braun via their start-up investment funds A-Grade Investments and SB Projects, respectively. More directly, Oseary has been Defendant Ciccone's personal manager and business partner for decades. And

[14] Shirley Halperin, *Bored Ape Yacht Club Creators Yuga Labs Sign Representation Deal With Madonna, U2 Manager Guy Oseary (Exclusive)*, VARIETY (Oct. 12, 2021), https://variety.com/2021/digital/news/bored-ape-yacht-club-yuga-labs-sign-with-madonna-u2-manager-guy-oseary-1235086011/.

Oseary's social media company Pearpop received its initial financial backing from Defendant Hilton (along with Ape DAO Board Defendant Ohanian individually). Finally, Oseary's network extends to other talent management agencies like the Creative Arts Agency ("CAA"), which also represents Defendants Ciccone, Fallon, and Paltrow. Oseary's Sound Ventures partner, Ashton Kutcher, is also represented by CAA.

78. Oseary is further linked to several of the Promoter Defendants via their mutual early investments in a cryptocurrency company, MoonPay. Significantly, many of MoonPay's early investors were made up of Oseary's immediate and extended network. For example, Oseary and Sound Ventures were also early investors in MoonPay. Other early MoonPay backers include Defendants Paris Hilton, Justin Bieber (and his manager Scooter Braun), Gwyneth Paltrow, Austin Post, Thomas Pentz, Calvin Broadus, Jr., Kevin Hart, Alexander Pall, Andrew Taggart, Nayvadius Wilburn Cash, and Abel Tesfaye. CAA is also an initial backer of MoonPay.

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

80. Oseary had an overlapping financial interest in promoting MoonPay's services, which was synergistic with the related interest that he and the Yuga executives had in promoting the BAYC NFT collection. His plan would effectively

[15] *Id.*

allow him, the Executive Defendants, and MoonPay (as well as the Promoter Defendants Bieber, Hilton, Paltrow, Post, Pentz, Broadus, Hart, Pall, Taggart, Wilburn Cash, and Tesfaye, who each separately had a financial interest in MoonPay) to all financially benefit from the cross-pollination and promotional efforts for the Yuga Financial Products.

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

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

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

> In December 2021, Guy Oseary, Yuga's talent manager, called me to discuss the public statements I had made about Yuga's neo-Nazi symbolism. On the call, Oseary made a series of vague threats, saying "I can be a nice guy or I can be a not nice guy" and that I would be better off being friends with Yuga. Oseary suggested that he understood Yuga used racist dog whistles by stating "who am I to judge someone's art." Oseary stated that he would help me if I kept silent and that he could make my life difficult if I did not cooperate. Oseary also offered to introduce me to Kanye West, not realizing that I already worked with

him, and later added me to a text message thread with West's manager. When I had not posted anything new criticizing Yuga for about one week and unpinned a tweet criticizing Yuga, Oseary left me a voice memo thanking me for my silence.[16]

84. The same day that the *BuzzFeed* article exposed the identities of Solano and Aronow, which were previously hidden from the public and investors, Oseary posted the following message[17] on his Twitter account:

85. 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.

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

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

86. 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.[18] Oseary, ever the promoter, immediately posted the uncropped picture he previously posted with the following statement:[19]

87. A week after the full unveiling of the BAYC founders, Yuga CEO Muniz tried to spin the revelation as some sort of wrongdoing by *BuzzFeed*. On February 16, 2022, Muniz was interviewed by the D3 Network on YouTube, and

[18] 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.

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

criticized the *BuzzFeed* revelation as being "'very, very dangerous.'"[20] Notably, Muniz claimed that exposing the identities of Defendants Aronow and Solano was somehow irresponsible and dangerous because it could potentially attract "'nefarious characters.'"[21] Muniz further complained that *BuzzFeed*'s story did not have a real purpose: "'The thing is, is like, if it was for something, it would have been okay . . . . It was a story about "what if" and that sort of leaves me with this feeling just like, it just felt so dangerous. And the only thing that people got out of it was just knowing their real names . . . .'"[22] Muniz then claimed that revealing the identities of the Yuga founders would possibly attract the so-called nefarious characters or "crypto whales" who have supposedly "'put people in severe jeopardy.'"[23] Muniz did not provide any details or sources for her concerns, which were entirely speculative to begin with and were undermined by the voluntary disclosures by the Executive Defendants themselves, particularly Defendants Atalay and Ali who were not outed in the *BuzzFeed* article. Muniz also did not address Oseary's eagerness to disseminate a picture of Solano and Aronow at a public event on the same day as the "dangerous" revelation. Instead, Muniz attempted to frame the Executive Defendants as victims that deserve sympathy, as opposed to what they really were: a group of "'nefarious characters'" purposefully hiding their identity while selling their digital assets at artificially inflated prices.

3. The Facilitator – MoonPay

88. 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

[20] Scott Chipolina, *Yuga Labs CEO: BuzzFeed Outing Bored Apes Founders Was 'Very, Very Dangerous'*, DECRYPT (Feb. 18, 2022), https://decrypt.co/93227/yuga-labs-ceo-buzzfeed-outing-bored-ape-founders-wvery-dangerous.

[21] *Id*.

[22] *Id*.

[23] *Id*.

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.

89. 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."[24] Soto-Wright went on to reveal that regulators in the UK and/or potential users were "sketched out" by services offered by Soto-Wright's proto-version of MoonPay, Saveable, a start-up company offering crypto payment services that was ultimately acquired by a UK competitor Plum: "Like, wait, I'm going to give this random service that I've never heard of access to my bank account so it can read my transaction history and then move money around. Uh, no thanks. So yeah, I think I learned that the hard way."[25]

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

> Like, you know, moving people into a savings product is kind of like flossing your teeth. It's like, you need to do that. Right. . . . And I think that's so good because people are now getting financial education in some way. Like, they're gonna make some mistakes.
>
> They're gonna invest in stupid stuff. They're going to invest in meme coins and shit points. And, you know, the reality is part of that, 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***.[26]

91. Later in the interview, when Soto-Wright was asked about the particulars of why the crypto payment business in the UK "didn't work," Soto-Wright

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

[25] *Id.*

[26] *Id.*

vaguely claimed that his "waving the white flag" and selling his business to Plum was because he was "focus[ed] too much on the regulatory side of getting our regulatory approval." Soto-Wright stated that he sold his "regulatory licenses" so that his competitor could "skip the. . . pain . . . that I went through 13 months at the financial conduct authority. So ***I could hold client money and move money into [a] security***. So, uh, that's what happened. So it wasn't like, it wasn't a win for me." When discussing the "know your customer" responsibilities a business like MoonPay is obligated to abide by, Soto-Wright acknowledged: "[***W]e're selling a financial instrument*** to some extent, right?"[27]

92. Soto-Wright went on to state that:

> [T]he reality is we had to turn it on first in Europe because in the United States, it was just extremely hard, like even getting bank 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***.
>
> And a lot of cases, banks just didn't want to take on the risk. They didn't understand it. It was too complex. Uh, but my, that was kind of the reason why I saw this as such a huge opportunity, because I felt that in the longterm banks would change their tune. And that's exactly what you're seeing now. Uh, something that was, can kind of consider it.
>
> Uh, sketchy or, you know, I'd say like red or Amber on kind of like the traffic light, uh, is now turning green.[28]

93. Soto-Wright further promoted that MoonPay's diligence regarding its regulatory and fiduciary obligations was part of an effort to "combat money laundering" and the "risk of fraud."[29]

94. On May 26, 2021, the Malta Financial Services Authority ("MFSA") issued the following directive against MoonPay: "The MFSA considers that the

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[27] *Id.*
[28] *Id.*
[29] *Id.*

Company is not in a position to adhere in full to the requirements of Chapter 3 of the Virtual Financial Assets Rulebook ("the Rules") and therefore on 26 May 2021, the MFSA directed the Company to cease the on-boarding of new clients with immediate effect."[30] Among other things, Chapter 3 of the Rules, a license holder in Malta must maintain effective risk management and compliance policies and procedures.

95. On April 13, 2022, MoonPay announced that "Music, sports, and entertainment VIPs invest $87 million in MoonPay," stating that "60 influential figures and organizations from the worlds of music, sports, media and entertainment have collectively invested $87M in the company." Included on this list are Anthony Kiedis of Red Hot Chili Peppers (managed by Oseary), Sound Ventures (Oseary), Defendants Hilton, Bieber (and his manager Scooter Braun), Paltrow (via Kinship Ventures), Post, Pentz, Broadus, Hart, Pall & Taggart (via Mantis VC), Wilburn Cash (via DreamCrew Entertainment), and Tesfaye.[31] CAA is also an initial backer of MoonPay via Connect Ventures. Additionally, Defendant Williams has ties to MoonPay via her board membership on Sorare, a collection of fantasy soccer NFTs.

* * *

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

97. Oseary, the MoonPay Defendants, and Promoter Defendants Hilton, Bieber, Paltrow, Post, Pentz, Broadus, Hart, Pall, Taggart, Wilburn Cash, and Tesfaye each had a financial interest in MoonPay. Upon information and belief as investors

[30] Notice, *MoonPay Limited ("the Company")* MALTA FIN. SERVS. AUTH. (May 26, 2021), https://www.mfsa.mt/publication/moonpay-limited-the-company/.

[31] Geoffrey Lyons, *Music, sports, and entertainment VIPs invest $87 million in MoonPay*, MOONPAY (Apr. 13, 2022), https://www.moonpay.com/blog/investor-announcement.

in MoonPay, these individual Defendants had direct or indirect control over MoonPay and its marketing, particularly with respect to those promotional efforts each of these individual Defendants personally engaged in, respectively.

98. Ultimately, "[t]he [BAYC NFT] series serves as a kind of fan club on steroids that encourages owners of the NFTs to move through an ever-growing and exclusive list of events and opportunities."[32] And the Company presents the Bored Ape ecosystem as a brand that is organically beloved by some of the most famous celebrities in the world. But the truth is that the Company's entire business model relies on using insidious marketing and promotional activities from A-list celebrities that are highly compensated (without disclosing such), to increase demand of the Yuga securities by convincing potential retail investors that the price of these digital assets would appreciate and that, as members of "the club," these investors would be given exclusive access to additional financial products and benefits.

B. The Misleading Promotion and Sale of Yuga Securities

99. As Defendant Soto-Wright admitted: the "hardest thing to solve" when building a new company was "getting those customers on your platform."[33] That is precisely where Oseary came in.

100. One of Oseary's first moves was to pull some strings to get a feature article in *Rolling Stone* magazine, which, upon information and belief, appears to be Oseary's go-to choice for promoting his business endeavors.[34]

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

[33] MIXERGY.COM, *supra*.

[34] For example, a May 4, 2021 article in *Rolling Stone* magazine titled "You Can Learn How to Perform Directly From Madonna, Now" promoted a business 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/.

101. On November 1, 2021, *Rolling Stone* published an article titled "How Four NFT Novices Created a Billion-Dollar Ecosystem of Cartoon Apes" (the "*Rolling Stone* article"), which likened Defendants Solano, Aronow, Atalay and Ali to "internet rock stars" and repeatedly touted the BAYC collection of NFTs and its related metaverse platform.[35] The *Rolling Stone* article candidly notes that Defendants Solano, Aronow, Atalay and Ali "started out with unsharpened goals of capitalizing on a very clear trend."[36]

102. In conjunction with the publication of the *Rolling Stone* article (which was a promotional piece about Yuga and its founders Defendants Solano, Aronow, Atalay and Ali in everything but name), the Company collaborated with *Rolling Stone* magazine on the latter's collector edition magazine featuring "never-before-seen BAYC artwork." The issue offered investors the chance to see "early sketches of the swamp club, get to know the original apes, and find out how the creative minds behind one of the most valuable NFT collections in history bring their ideas to life." Most importantly, the cover of this issue prominently featured a BAYC NFT. According to *Rolling Stone*'s online store, all 2,500 copies of the *Rolling Stone* x Bored Ape Yacht Club Limited-Edition Zine were sold out.[37]

103. On November 1, 2021, Oseary posted a picture of the cover of *Rolling Stone* magazine with the following caption: "First @RollingStone NFT cover… Congrats @BoredApeYC."[38]

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[35] Samantha Hissong, *How Four NFT Novices Created a Billion-Dollar Ecosystem of Cartoon Apes*, ROLLING STONE (Nov. 1, 2021), https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/.

[36] *Id.*

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

[38] Guy Oseary (@guyoseary), TWITTER (Nov. 1, 2021, 9:32 AM), https://twitter.com/guyoseary/status/1455211104448094211?s=20&t=s22ecLQKFgigc5iiuUVeew.

104. Another early instance of Oseary's solicitation scheme being executed took place during an episode of the *Tonight Show* aired on November 11, 2021. In a broadcast to millions of viewers, Defendant Fallon promoted MoonPay and the BAYC NFT collection during an interview with Defendant Winkelmann. Fallon announced that he "got his first NFT" through MoonPay, claiming that he "did his homework" on how to purchase an NFT and found MoonPay, which Fallon asserted was "like the PayPal of crypto." After shilling MoonPay's services, credibility, and future growth prospects, Fallon announced that he "bought an ape" (*i.e.*, BAYC NFT #599), to which guest Winkelmann expressed approval. Upon information and belief, MoonPay and/or Oseary, along with the Executive Defendants, recruited and paid Fallon and Winkelmann to promote both MoonPay and the BAYC collection of NFTs during this segment on the *Tonight Show*. Notably, Winkelmann is direct business partners with Oseary in another NFT platform company, WENEW.

105. Fallon did not disclose that he had a financial interest in MoonPay or that he was likewise financially interested, directly or indirectly, in the increased sale and popularity of Yuga securities. Nor did EHD or Universal disclose that this purportedly organic segment on the *Tonight Show* was in reality a paid advertisement for the BAYC collection of NFTs and MoonPay by two celebrities (Fallon and Winkelmann) who are business partners with an investor (Oseary) in both Yuga and MoonPay.[39]

106. That same day, the MoonPay Twitter account posted a clip from the segment with Fallon promoting MoonPay and the BAYC NFTs with a caption stating: "So this just happened. @jimmyfallon reveals to @beeple on the

[39] Adding to the web of interconnectivity amongst the Defendants, in May 2022, Defendants Winkelmann and Ciccone, with the help of MoonPay, together launched another NFT project: The Mother of Creation. MoonPay promoted this 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.

#TheTonightShow that he just bought his first Bored Ape by @BoredApeYC with MoonPay! 🚀👀."[40] MoonPay's statement that "[s]o this just happened" misleadingly suggested to investors that the promotion of MoonPay and the BAYC NFT collection on the *Tonight Show* was something that occurred spontaneously. Likewise, MoonPay's statement that Fallon had "just bought his first Bored Ape by @BoredApeYC with MoonPay!" failed to disclose that in truth, Fallon's segment with Winkelmann was just a promotion of the BAYC NFTs and MoonPay that was orchestrated behind the scenes by Oseary, Soto-Wright, and the Executive Defendants.

107. On November 12, 2021, Fallon promoted the BAYC NFT he supposedly "bought," asking the Yuga official Twitter account if he had "[p]ermission to come a bored?"[41] That same day, Defendant Soto-Wright responded to Fallon's promotion stating: "Congrats @jimmyfallon & @BoredApeYC! We ♡ you from @MoonPayHQ!"[42] On November 17, 2021, Fallon again promoted the BAYC NFTs, asking his 53.1 million Twitter followers to "[n]ame my ape! Drop your suggestions below" and tagging "@BoredApeYC #BAYC #BoredApeYachtClub #NFTs."[43] These promotions from Soto-Wright and Fallon failed to disclose that Fallon's promotion of the BAYC NFTs and MoonPay was not because of Fallon's genuine interest in BAYC NFTs but rather solely due to the financial interest Fallon shared with Soto-Wright, Oseary, and the Executive Defendants.

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[40] MoonPay (@moonpay), TWITTER (Nov. 11, 2021, 3:38 AM), https://twitter.com/moonpay/status/1458761049075769351?s=20&t=ntA_vzg_M2poZo2ADKag7g.

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

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

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

108. Plaintiffs saw the promotions by 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.

109. Notably, MoonPay's transfer to Fallon of BAYC NFT #599 was the first time that MoonPay ever transacted in a BAYC NFT. In total, MoonPay transferred or sold twenty-three Yuga securities between November 8, 2021 and February 25, 2022.

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

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

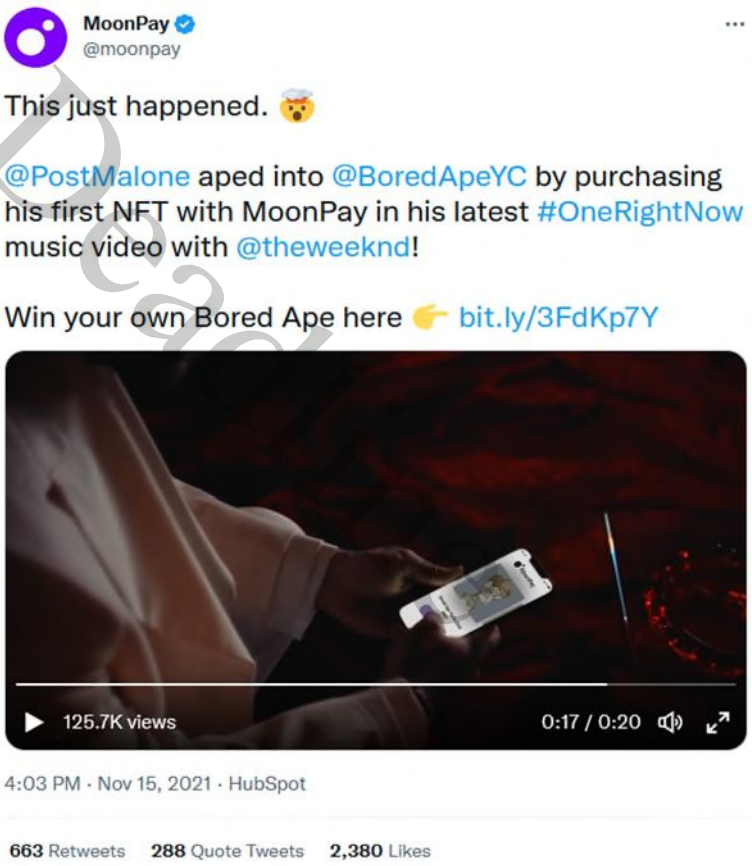
112. In particular, on October 29, 2021, digital wallet address 0xbea020c3bd417f30de4d6bd05b0ed310ac586cc0 labeled as "Post Malone" (the "Post Malone Wallet") received 75.1 ether (valued at $331,746.76 at the time of the transaction) from wallet address 0xd75233704795206de38cc58b77a1f660b5c60896, which is publicly labeled as "MoonPay" (the "MoonPay Wallet").[44] Two days later,

[44] Transaction Hash: 0xc50f01603b668b384d8ff595e9ddd1f69b7c97846f3c4fc27852bbca91c25530, ETHERSCAN (Oct. 29, 2021, 8:54 AM), https://etherscan.io/tx/0xc50f01603b668b384d8ff595e9ddd1f69b7c97846f3c4fc27852bbca91c25530.

on October 31, 2021, the Post Malone Wallet received 100 ether or $429,010 from the MoonPay Wallet.[45]

113. On November 15, 2021, Defendant Post uploaded a music video onto his official YouTube channel entitled "One Right Now."[46] This video featured Defendants Post and Tesfaye. The beginning of the video features a segment where Post uses the MoonPay app on his phone to purchase a BAYC NFT.

114. That same day, MoonPay promoted the video from Post and Tesfaye on its Twitter account[47]:



[45] Transaction Hash: 0x339efa1b3a6dff394b79a2703bc6a73e33eb4f8e99f3a0226e707e251da0ac8d, ETHERSCAN (Oct. 31, 2021, 10:34 AM), https://etherscan.io/tx/0x339efa1b3a6dff394b79a2703bc6a73e33eb4f8e99f3a0226e707e251da0ac8d.

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

[47] MoonPay (@moonpay), TWITTER (Nov. 15, 2021, 1:03 PM), https://twitter.com/moonpay/status/1460352762798084105?s=20&t=mHWXj4 WYC5OUt2zg9LWA.

115. 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 Defendants Post and 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.

116. On November 19, 2021, the Post Malone Wallet received another 50 ether (worth $214,963.50) from the MoonPay Wallet.[48] 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.[49] In total, the MoonPay Defendants facilitated the payment of $1,402,181.26 to Defendant Post over the course of a month.

117. Plaintiffs saw Post'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.

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

[48] Transaction Hash: 0x729899f138ab93d6c20707783b62e16e04093e481d11e45bc2e3648b6ab3773b, ETHERSCAN (Nov. 19, 2021, 2:55 AM), https://etherscan.io/tx/0x729899f138ab93d6c20707783b62e16e04093e481d11e45bc2e3648b6ab3773b.

[49] Transaction Hash: 0xc21a66ee9a3d1ddf6f72c780e4165b7e915cf6cfb64209230c9af5993de284f9, ETHERSCAN (Nov. 21, 2021, 1:40 AM), https://etherscan.io/tx/0xc21a66ee9a3d1ddf6f72c780e4165b7e915cf6cfb64209230c9af5993de284f9.

119. For example, on November 26, 2021, during Defendant Khaled's 46th birthday party he appeared in a live video with Defendant Soto-Wright,[50] where they both promoted the sale of BAYC NFTs in a staged transaction that was disseminated through social media. In particular, during the 15-second clip first posted by party attendee and BAYC member Austin Rosen, Soto-Wright supposedly helps Khaled to purchase a BAYC NFT using MoonPay's app. Khaled can be seen video chatting with celebrity producer SwizzBeats while Soto-Wright pretends to conduct the transaction for Khaled. Notably, Khaled tells SwizzBeats: "I just bought a bored ape. Some shit like . . . do you know about it?" Khaled can also be seen shrugging his shoulders, tilting his head, and gesturing to those viewing the video in a manner that suggested "I don't know what this is about but I'm going along with it." Khaled turns his phone and Soto-Wright confirms to SwizzBeats that they were discussing the BAYC NFTs. Soto-Wright then presses "confirm" and tells Khaled "you just bought an ape." Khaled appeared confused by the interaction in general and did not display any familiarity with the BAYC collection of NFTs at all when he was purportedly buying one of those NFTs for hundreds of thousands of dollars.

120. Plaintiffs saw Defendants Khaled and Soto-Wright's joint promotion of the Company's collection of BAYC NFTs and were induced to purchase and/or continue to hold Yuga securities as a result.

121. According to the outgoing transactions of Yuga securities in the MoonPay Wallet, on November 30, 2021 the MoonPay Wallet transferred BAYC NFT #7380 – valued at 55.5 ether or approximately $220,000 at the time – to wallet address 0xa0ac662f58d3507a6f4a37f8532df201d9010fe7 (the "Khaled Wallet").[51]

[50] Lugo.eth (@WWMLD), TWITTER (Nov. 27, 2021, 9:01 AM), https://twitter.com/WWMLD/status/1464640427315892229?s=20&t=p-6BxhtTTTr_HwM5U1ZywwQ.

[51] Transaction Hash: 0xdecec07f810b5f2c02489f96121bac5186cdcf51f930d847024e0780cbafffe4, ERC-721: 7380, ETHERSCAN (Nov. 30, 2021, 4:20 AM),

Later that same day, Khaled promoted the BAYC NFTs on his Instagram, announcing that he had joined the BAYC.[52]

122. As this was occurring, on November 28, 2021, the MoonPay Wallet transferred BAYC NFT #4672 to wallet address 0x1616b4c7cdb4093befbcca62f3198993327a8e9e (the "Wilburn Wallet").[53] That same day, Defendant Wilburn Cash posted BAYC NFT #4672 on his Twitter account.[54] The next day, on November 29, 2021, MoonPay's TikTok account "moonpayhq" posted a video[55] with Defendant Wilburn Cash wherein Wilburn Cash can be seen changing his profile picture on Instagram to BAYC NFT #4672. Wilburn Cash can also be heard saying "yessir" in approval as he endorses the BAYC NFT collection.

123. Plaintiffs saw Wilburn Cash's promotions of the Company's collection of BAYC NFTs and were induced to purchase and/or continue to hold Yuga securities as a result.

124. On December 1, 2021, the MoonPay Wallet transferred BAYC NFT #5384 to wallet address 0xc213e5d1ba49e3069b7ed5ce1f53ed299b966c73, which is

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https://etherscan.io/tx/0xdecec07f810b5f2c02489f96121bac5186cdcf51f930d847024e0780cbafffe4.

[52] *DJ Khaled Just Updated His Instagram Profile Photo To His Bored Ape*, THE 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.

[53] Transaction Hash: 0xd8d155d1191c9c9381f1515c8d30483e5c8f01567dc56e358987eb5d2b00d9e5, ERC-721: 4672, ETHERSCAN (Nov. 28, 2021, 5:01 AM), https://etherscan.io/tx/0xd8d155d1191c9c9381f1515c8d30483e5c8f01567dc56e358987eb5d2b00d9e5.

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

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

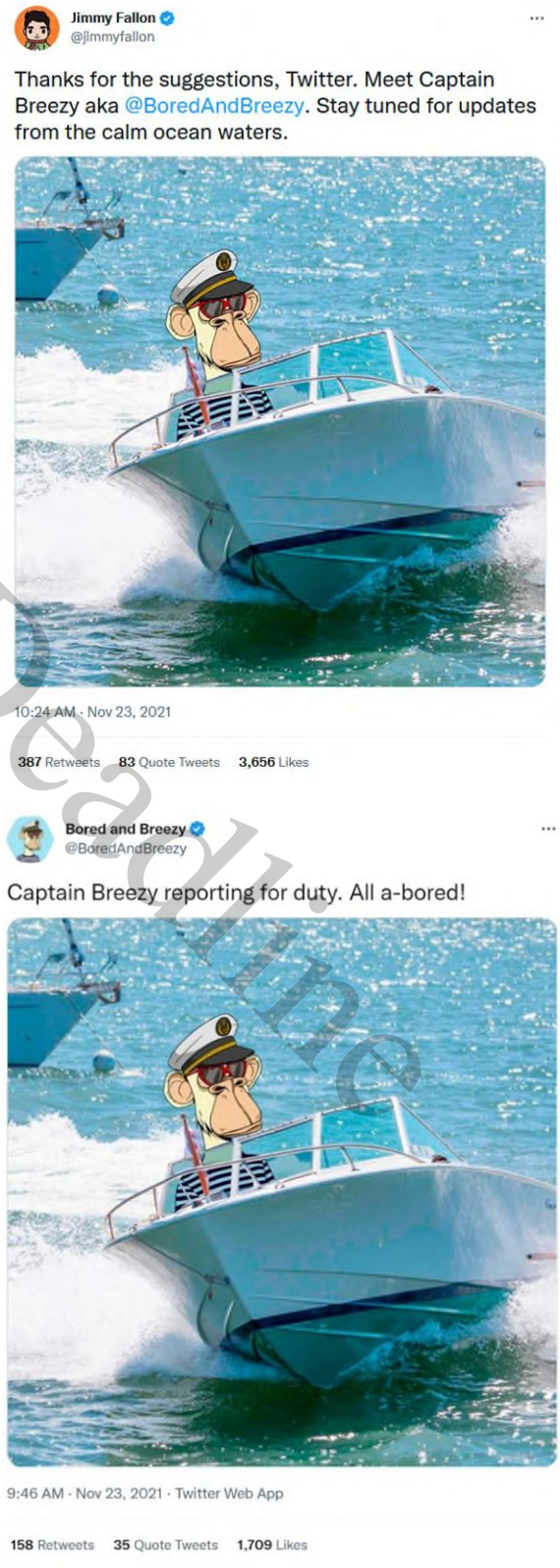
labeled as "diplo.eth" (the "Pentz Wallet").[56] That same day, Defendant Pentz promoted the BAYC NFT he received from MoonPay on his Twitter account with 2.4 million followers.[57] Plaintiffs saw Pentz's promotion of the Company's collection of BAYC NFTs and were induced to purchase and/or continue to hold Yuga securities as a result.

125. Following his *Tonight Show* promotion, Fallon continued to promote the collection of BAYC NFTs and to solicit sales thereof on social media. For example, Fallon created a Twitter account for his BAYC NFT #599 with the user name "Bored and Breezy." On November 23, 2021, Fallon posted the following solicitations for the BAYC NFTs on his official and Bored and Breezy Twitter accounts:[58]

[56] Transaction Hash: https://etherscan.io/tx/0x05981522f7f1299678b38f14758921e200512a0292ff777102d0dafca8a11bf3, ERC-721: 5384, ETHERSCAN (Dec. 1, 2021, 5:07 AM), https://etherscan.io/token/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d?a=0xc213e5d1ba49e3069b7ed5ce1f53ed299b966c73.

[57] Diplo (@diplo), TWITTER (Dec. 1, 2021 4:28 P.M.), https://twitter.com/diplo/status/1466157259252240395?s=20&t=B6GM_EYH2EoTzTfPNF5fmQ.

[58] Jimmy Fallon (@jimmyfallon), TWITTER (Nov. 23, 2021, 10:24 AM), https://twitter.com/jimmyfallon/status/1463166515289669650?s=20&t=b7UnEi0ycK49kgQy3FiFPg; Bored and Breezy (@BoredAndBreezy), TWITTER (Nov. 23, 2021, 9:46 AM); https://twitter.com/BoredAndBreezy/status/1463156965308354584?s=20&t=gq3WJjWI7a_A4C49ucZPgg.



126. 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.

127. Fallon also continued promoting BAYC NFTs on the *Tonight Show*, and EHD and Universal continued to approve that such promotions could be aired on the network without disclaimer. In an even more contrived segment that aired during an episode of the *Tonight Show* on January 24, 2022, Fallon interviewed Defendant Paris Hilton, and they both misleadingly promoted the BAYC collection of NFTs. Fallon first tried to bolster Hiton's credentials in the NFT sector by telling the audience and investors that *Forbes* magazine had named Hilton as one of the "top 50 most influential people in the NFT space." Fallon then immediately began promoting the BAYC NFT collection with Hilton. Hilton claimed that she had "saw" Fallon's previous BAYC segment with Winkelmann, and "copied" Fallon's use of MoonPay to "buy an ape." Hilton feigned interest in the BAYC NFT collection and claimed to have selected hers because it "reminded" Hilton of herself. When the audience snickered at Hilton's half-hearted explanation for "purchasing" that particular BAYC NFT (which bore no apparent resemblance to Hilton's appearance), Fallon jumped in to show off his own BAYC NFT #599, which sported a boat captain's hat and other funny accessories. Fallon also insisted that he "bought" that particular BAYC NFT because it reminded him of himself, to which the audience agreed and laughed off the exchange. This original segment has been uploaded on the *Tonight Show*'s official YouTube channel, which has received approximately 496,000 views as of the date of this filing.[59] Upon information and belief, the *Tonight Show*'s channel on YouTube is owned and/or controlled by Defendant Universal.

[59] The Tonight Show, *Paris Hilton Surprises Tonight Show Audience Members By Giving Them Their Own NFTs*, YOUTUBE (Jan. 24, 2022), https://www.youtube.com/watch?v=5zi12wrh5So.

128. Hilton and MoonPay also promoted Hilton's appearance on the *Tonight Show* on their own extensive social media accounts. On January 24, 2022, MoonPay posted that BAYC NFT #1294's owner "is known to enjoy 'The Simple Life' even though they are appearing on prime time TV 'tonight'. Who could it be? 👀"[60] Defendant Hilton responded to this message with a "wink" emoji.[61]

129. The next day, on January 25, 2022, in response to a Twitter post that proclaimed: "Wait @ParisHilton bought my ape?! HOLY @#$%!!!," Hilton stated:[62]

130. The *Tonight Show*'s official Twitter account posted a 1:44 minute clip on January 25, 2022 of the entire segment promoting the BAYC NFT collection through MoonPay.[63] Defendant Fallon was also on Twitter that day reposting his *Tonight Show* promotion of the BAYC NFT collection along with Defendant Hilton.

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[60] MoonPay (@moonpay), TWITTER (Jan. 24, 2021, 6:40 AM), https://twitter.com/moonpay/status/1485623661897961476?s=20&t=F58_qyidVksnSGdXuAyy-A. Notably, Defendant Hilton appeared in a reality TV show called *The Simple Life*.

[61] Paris Hilton (@ParisHilton), TWITTER (Jan. 24, 2021, 10:01 PM), https://twitter.com/ParisHilton/status/1485855428563116034?s=20&t=F58_qyidVksnSGdXuAyy-A.

[62] Paris Hilton (@ParisHilton), TWITTER (Jan. 25, 2021, 7:19 PM), https://twitter.com/ParisHilton/status/1486131710895050756?s=20&t=8lDQAVCGlWl9GRmFFIv1PQ.

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

In addition to a link to the *Tonight Show*'s Twitter post, Defendant Fallon included the caption "#WAGMI."[64] The hashtag "#WAGMI" refers to the phrase "we are all gonna make it." This acronym is widely used by crypto investors to build confidence and as a rallying cry that encourages the community to have hope for the project(s) being discussed. The inclusion of this hashtag with the BAYC NFT solicitation suggested to investors that Defendant Fallon was personally aligned with them instead of promoting the interests of himself and his cohorts Defendants Oseary and Hilton.

131. On January 31, 2022, Hilton posted the following message on Twitter with an animated cartoon version of the Fallon interview of Hilton:[65]

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

[65] Paris Hilton (@ParisHilton), TWITTER (Jan. 31, 2021, 10:59 PM), https://twitter.com/ParisHilton/status/1488361241512800258?s=20&t=KDOjfCCoS8Ch1PbuhBS-xw.

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

133. Importantly, Hilton and MoonPay purposefully did not disclose Hilton's direct financial interest in MoonPay and, relatedly, the increased sale of Yuga securities through MoonPay. And again, there was no disclosure from any of the *Tonight Show's* production companies, namely Defendants Universal or EHD, regarding Hilton's and/or Fallon's financial interests in MoonPay or compensation for promoting the BAYC NFTs. Notably, according to an internal workplace policy mandated by Universal, all employees, including Defendant Fallon, must "disclose and obtain approval for all outside work, financial interests and other personal activities/relationships that may create or appear to create a conflict."[66] The same policy says that employees should not "use company info, resources, time, etc. for personal benefit." Thus, upon information and belief, Universal knew about Fallon's

[66] Brian Contreras, *Jimmy Fallon hyped his Bored Ape NFTs on 'The Tonight Show.' Conflict of Interest?*, L.A. TIMES (Jan. 26, 2022), 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).

ties to Oseary and Yuga, along with Hilton's ties to MoonPay, and approved the promotions of BAYC NFTs on the *Tonight Show* before it was publicly aired without disclaimers. These omissions gave the public the false impression that Hilton had been inspired to purchase a BAYC NTF after hearing that Fallon had organically purchased one of his own, when, in truth, the entire *Tonight Show* segment was just a paid promotion for the BAYC collection of NFTs and MoonPay. Reporting on this segment noted that a "glossy-eyed Jimmy Fallon conducted one of the most forced interviews" in the history of the *Tonight Show* during this segment with Defendant Hilton.[67] The journalist Max Read described their exchange as "profoundly unsettling."[68]

134. If the *Rolling Stone* article put the Company and its founders on the map, Fallon and Hilton's *Tonight Show* promotions brought the BAYC directly into the homes of mainstream America. But this was just the beginning for Oseary's plans for Defendants.

135. Other members of Oseary's network follow a similar pattern of promoting the BAYC collection of NFTs in connection with MoonPay. Indeed, Oseary, in particular, was the architect of Defendants' plan for marketing the BAYC NFTs. His primary business is managing various high-profile music acts and other entertainment celebrities, including Defendant Madonna Ciccone. Oseary previously ran a successful talent agency called Maverick Management ("Maverick"), which, by itself and in conjunction with talent management powerhouse Live Nation, represented dozens of the most famous athletes and entertainers in the United States.

[67] 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.

[68] Max Read, *Mapping the celebrity NFT complex*, READ MAX (SUBSTACK), (Feb. 2, 2022), https://maxread.substack.com/p/mapping-the-celebrity-nft-complex?utm_source=substack&utm_medium=email&utm_content=share.

Several of these athletes and entertainers just so also happen to have "joined the BAYC" in the "metaverse" and eagerly promoted that fact to would-be investors.[69]

136. Upon information and belief, the Promoter Defendants each received Yuga Financial Products and/or other forms of consideration as part or all of their compensation for promoting the Yuga securities specifically or the Yuga brand generally.

137. For example, on January 31, 2022, Defendant Bieber promoted his purported purchase of BAYC NFT #3001 to his 262 million followers on Instagram.[70] Reports indicated that Bieber paid approximately $1.29M for his Bored Ape purchase, which was upwards of five times the floor price with similar characters. But this gross overpayment was meaningless to Bieber since, upon information and belief, he did not actually pay any money of his own for this BAYC NFT, but rather received it through a series of transactions for the purpose of compensating him. Instead, Bieber received BAYC NFT #3001 as a form of compensation for promoting the BAYC NFTs and Yuga Financial Products to his hundreds of millions of social media followers.

138. On February 7, 2022, Bieber announced that he had "purchased" a second NFT from the Bored Ape collection (*i.e.*, BAYC NFT #3850) for around $470,000. This BAYC NFT is considered to be particularly rare, ranking below 1%

[69] For example, Oseary's Maverick agency represented Defendant Tesfaye, who also shilled the BAYC brand in the thinly-veiled promotional music video with Defendant Post. Similarly, Ape DAO Board Defendant Alexis Ohanian recruited his wife, tennis superstar Defendant Serena Williams, to promote BAYC NFTs. Likewise, upon information and belief, Ape DAO Board Defendant Amy Wu utilized her relationships at crypto exchange FTX to recruit world champion athlete Defendant Curry to solicit sales of the BAYC collection of NFTs. None of these celebrity endorsements of BAYC NFTs disclosed the underlying financial interests and relationships involved.

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

in rarity. Upon information and belief, BAYC NFT #3850 was given to Bieber as compensation for continuing to promote and solicit sales of the Yuga securities.

139. Plaintiffs saw Bieber'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.

140. Around that same time, on January 26, 2022, Defendant Gwyneth Paltrow similarly announced to investors that she had "joined" the BAYC and thanked MoonPay's fraudulent concierge service.[71] Paltrow failed to disclose that she was a MoonPay backer and had a financial interest in its success, which, in turn, caused Paltrow to have a vested interest in the increase in sales of Yuga securities. Plaintiffs saw Paltrow'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.

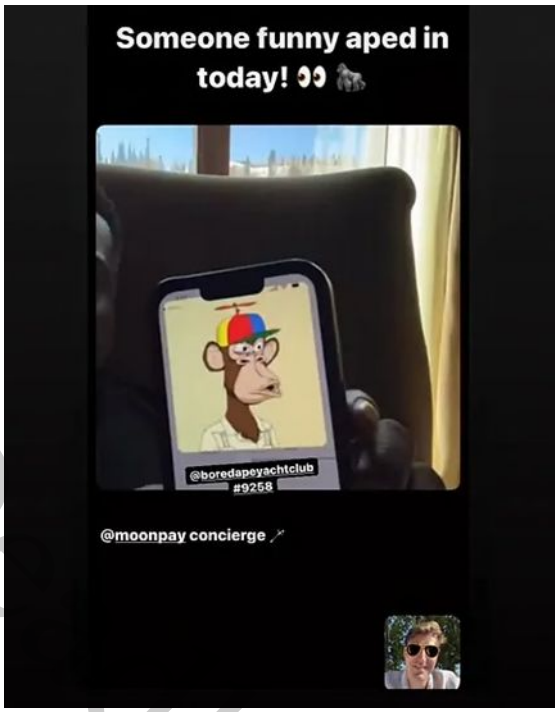
141. Defendant Hart also promoted his joining the BAYC with BAYC NFT #9258:

> 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.[72]

[71] Gwyneth Paltrow (@GwynethPaltrow), TWITTER (Jan. 26, 2022, 3:33 PM), https://twitter.com/GwynethPaltrow/status/1486482496883625984?s=20&t=8mace2uHFGDI0GYb5N0aWg.

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

MoonPay also posted the following picture of Defendant Hart on its Twitter account with the caption "Someone funny aped in today!":[73]



142. Plaintiffs saw the promotions from Defendants Hart and Soto-Wright regarding 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.

143. On February 8, 2022, Defendant Broadus posted a picture of BAYC NFT#6723, the primates corresponding M1 and M2 Mutant Apes along with Bored Ape Kennel Club Dog #894. Broadus further stated: "And a huge shout out 2 to @moonpay @isotowright @C_Broadus21 and @j1mmyeth for making it happen and

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

bringing The Who familia together."[74] Plaintiffs saw the promotions from Broadus regarding 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. Indeed, Broadus' promotion was particularly influential on Plaintiffs' decision to purchase given Broadus' status as a savvy investor in NFTs.

144. A February 15, 2022 article titled "FTX's Amy Wu: How Crypto and Gamers Can All Get Along"[75] described Defendant Wu as a "prominent investor in gaming startups, [who] recently jumped from Lightspeed Ventures to FTX to lead the crypto giant's new $2 billion Web3 venture fund – a position that will entail spreading bets from FTX's war chest across new trends in gaming." Wu explained that she believed "'[t]he fun is actually around the game mechanics and tokenomics of the game, right? ***There's ways to make like 100x or 500x return on the token*** . . . . And that's sort of the focus of a lot of these games, and so ***it attracts a certain type of player, which tends to be traders that are looking at the game as kind of like almost like a financial instrument.***"[76] Wu's "[c]ryptocurrency exchange FTX will funnel a chunk of its growing war chest into a new venture capital arm, FTX Ventures, the firm announced today. The $2 billion VC fund will be led by Amy Wu, previously General Partner at Lightspeed Venture Partners."[77]

145. Wu previously led Lightspeed's own investment into FTX, plus FTX and Lightspeed teamed up with Solana Ventures in November 2021 to launch a $100

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[74] Snoop Dogg (@SnoopDogg), TWITTER (Dec. 21, 2021 1:57 PM), (https://twitter.com/SnoopDogg/status/1473367019542265858?s=20&t=lAVE0gdvm1Zm3hKnJ4w5bg.

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

[76] *Id*.

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

million Web3 gaming co-investment fund. In working with FTX founder and CEO Sam Bankman-Fried, who she described as an "extraordinary CEO," Wu began to see the potential benefits of joining the rising firm. "When I look at what company could potentially have the most impact in the industry, but then also in the world," she told Decrypt, "I think FTX is one of the most impactful that I've had the pleasure of working with."[78]

146. On February 18, 2022, FTX Ltd ("FTX") posted a teaser commercial for its now-bankrupt cryptocurrency exchange, which featured Defendant Curry and an ice sculpture of a Bored Ape. Curry can be seen brushing off flakes of ice from the unmistakable features of the BAYC NFTs. FTX posted this teaser on its official Twitter account with the following caption alluding to the BAYC NFTs: "When learning about crypto, you'll be anything but bored."[79]

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

148. On March 16, 2022, the Company announced the formation of the ApeCoin DAO.[80] As part of that announcement, Defendant Ohanian stated: "Today we're making the 'Club' bigger with ApeCoin . . . . Web3 is being integrated into our art, music, and culture more and more everyday and it all starts with community. I believe this community will build, expand, partner, and disrupt in a massive way."[81]

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[78] *Id.*

[79] FTX (@FTX_Official), TWITTER (Feb. 18, 2022, 10:18 AM), https://twitter.com/FTX_Official/status/1494738098034458630?s=20&t=L-3ieebPKlMIdev5LsTbcw.

[80] A "DAO" refers to a decentralized autonomous organization, sometimes 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.

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

149. Defendant Wu posted a picture of an BAYC NFT with the following thread on her official Twitter account: "So honored to join the @apecoin DAO board, launched today along with the $APE token."[82] "Love or hate NFTs, they have captured the consumer imagination and continue to be on the onboarding ramp for the mainstream into web3. @BoredApeYC is leading the way as the #1 NFT brand, becoming a household name and building the next gen "Disney" of our generation."[83] "@BoredApeYC has led innovation on IP frameworks, like giving NFT holders full commercial rights to their IP without a royalty. This has accelerated awareness rather than leaked value."[84] "More NFT brands are being minted, creating hybrid entertainment and retail empires, licensing their IP and creating 1st and 3rd party merchandise, games, shows, etc. and using hybrid web2/web3 marketing playbooks, leveraging and creating celebrity, and creating culture."[85] "I'm absolutely honored to play a supporting role with @FTX_Official in the future of @ApeCoin DAO at the nexus of culture, gaming, entertainment. LFG! 🚀🚀🦾"[86]

150. Additionally, a combined search of Etherscan and OpenSea shows that a wallet owned/controlled by Defendant Ciccone received BAYC NFT #4988 directly from MoonPay. This transaction did not involve a purchase by Ciccone but rather the NFT was simply transferred to her wallet address 0x8ea95Bdc5cDddC0b7EbAd841F0c1f2cA6168b6a9 (the "Ciccone Wallet").

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

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

[84] Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), https://twitter.com/amytongwu/status/1504238392149745664.

[85] Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), https://twitter.com/amytongwu/status/1504238394007764992.

[86] Amy Wu (@amytongwu), TWITTER (Mar. 16, 2022, 4:29 PM), https://twitter.com/amytongwu/status/1504238394892771333.

According to Etherscan and OpenSea, on March 14, 2022, the MoonPay Wallet first paid 180 ether for BAYC NFT #4988, which at the time was the equivalent $466,461. On March 23, 2022, the MoonPay wallet sent BAYC NFT #4988 to wallet address 0x6ef962ea7e64e771d3a81bce4f95328d76d7672b (which appears to have been used as a pass-through wallet).[87] Finally, six weeks later, BAYC NFT #4988 was sent to Ciccone's wallet on May 7, 2022.[88] Ciccone received an NFT worth almost a half million dollars from MoonPay for nothing except her statements promoting Yuga securities.

151. Transactions within the Ciccone Wallet also reveal that Defendant Ciccone received Otherdeed #4988 directly from the Otherside deployer wallet 0x8ea95bdc5cdddc0b7ebad841f0c1f2ca6168b6a9 (the "Otherside Wallet") on May 16, 2022.[89]

152. The Ciccone Wallet also received 100 plots of virtual land in Otherside on August 5, 2022.[90]

153. But there are no free lunches and these were not simple gifts. Rather, upon information and belief, MoonPay was an indirect way for Oseary and the

[87] Transaction Hash: 0xdf3b1b59de370deb5f6105600df55650e3e24cd10127a33f93145b3ca038ac2d, ERC-721: 4988, ETHERSCAN (Mar. 23, 2022, 11:49 AM), https://etherscan.io/tx/0xdf3b1b59de370deb5f6105600df55650e3e24cd10127a33f93145b3ca038ac2d.

[88] Transaction Hash: 0x8935a6169a603b0cc3899c0b98fb40501f6c2a708dcc4e03cdd89d6944eb5b70, ERC-721: 4988, ETHERSCAN (May 7, 2022, 7:44 AM), https://etherscan.io/tx/0x8935a6169a603b0cc3899c0b98fb40501f6c2a708dcc4e03cdd89d6944eb5b70.

[89] Transaction Hash: 0x62300078ce92be1784e81e65cd0421a552e7f70f1b4931e63f87285086c3c6e6, ERC-721: 4988, ETHERSCAN (May 16, 2022, 5:43 PM), https://etherscan.io/tx/0x62300078ce92be1784e81e65cd0421a552e7f70f1b4931e63f87285086c3c6e6.

[90] Transaction Hash: 0xcbfb3291091e6dc1e80577526e90dfdf2a438a9603a313989c4833d8d978bc5d, ETHERSCAN (Aug. 5, 2022, 10:54 AM), https://etherscan.io/tx/0xcbfb3291091e6dc1e80577526e90dfdf2a438a9603a313989c4833d8d978bc5d.

Executive Defendants to pay Ciccone to promote and/or solicit sales and re-sales of the Yuga securities.

154. An examination of BAYC NFT transactions in the wallet by Ciccone in conjunction with her social media accounts shows that she received this particularly rare and valuable BAYC NFT #4988 before she promoted BAYC to would-be investors. Shortly after MoonPay acquired BAYC NFT #4988 for Ciccone, on March 24, 2022, Ciccone posted the following promotion of the BAYC and its related metaverse to her Twitter account:[91]

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

156. Neither MoonPay nor Ciccone disclosed that Ciccone's manager and business partner Oseary had a financial interest in MoonPay and, relatedly, the

[91] Madonna (@Madonna), TWITTER (Mar. 24, 2022, 7:30 PM), https://twitter.com/Madonna/status/1507183071551971330.

increased sale of BAYC NFTs. Further, Ciccone failed to include an "ad" disclaimer in this post to disclose to investors that this was a paid advertisement for the BAYC collection of NFTs and MoonPay (as opposed to a genuine expression of interest in the BAYC collection or gratitude to the MoonPay Defendants for assisting in her "enter[ing] the Metaverse").

157. MoonPay responded to Ciccone's tweet, stating that the company chose BAYC NFT #4988 for Ciccone because "we heard it call your name And it felt like home."[92]

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

159. In the following weeks, Ciccone further promoted BAYC in several news outlets, including *Variety* magazine and the London newspaper *The Independent*. For example, in the July 27, 2022 issue of *Variety* magazine – which featured Defendant Oseary on the cover with the tagline that stated "Music Mogul of the Year - NFT King: Madonna and U2 Manager Guy Oseary is Leveraging His Success to Become the Next Great Tech Whisperer" – Ciccone insisted that she "'was hellbent on getting an Ape and really specific about what I wanted: the Ape with a leather motorcycle cap on and multicolored teeth.'"[93] Ciccone went on to state: "'I

[92] MoonPay (@moonpay), TWITTER (Mar. 25, 2022, 1:29 AM), https://twitter.com/moonpay/status/1507273486737281024?lang=en.

[93] Shirley Halperin, *From Maverick to Mogul, Madonna's Manager Guy 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-123532 5286/.

was told that it was inspired by me, and modeled after me, and it was bought by a woman who's a fan of mine. She was gonna sell it to me, but it was way too expensive.'"[94]

160. Then, on July 28, 2022, *The Independent* published an article titled: "'I was hellbent on getting an Ape': Madonna annoyed she didn't get the NFT character she wanted."[95] In addition to echoing the statements from the *Variety* magazine interview, *The Independent* reported that the "63-year-old singer has revealed that she was quite 'mad' over being beaten to a bid for Bored Ape No 3756."[96]

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

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94 *Id.*

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

96 *Id.*

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

163. Oseary's Twitter feed is littered with promotions for BAYC NFTs and other Yuga Financial Products. For example, on January 20, 2022, Oseary promoted a tweet from Defendant Serena Williams that posted her BAYC NFT (which she received from her husband, Defendant Ohanian, who also happens to be a member of the Ape DAO board of directors).[97] That same day, Oseary similarly promoted a tweet from professional soccer player Neymar da Silva Santos, Jr. that said: "I am an ape! #community #art #BoredApeYC."[98] Notably, not only did these promotions take place on the same day within a few hours, but both BAYC NFTs promoted by Oseary, Williams, and Neymar were the rare "pink" Bored Apes, which were more valuable and indicate a common source of origin.

164. Plaintiffs saw the promotions from Defendants Oseary, Williams, and Ohanian regarding the Company's collection of BAYC NFTs and were induced to purchase and/or continue to hold Yuga securities as a result of this misleading promotion.

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

166. For example, on April 21, 2021, Defendant Solano promoted the growth potential for the BAYC ecosystem (which could only be accessed through the purchase of a BAYC NFT), stating: "The Bored Ape Yacht Club is more than just an #NFT collection – the NFT grants access to a collaborative art experiment in the form

[97] Serena Williams (@serenawilliams), TWITTER (Jan. 20, 2022, 5:41 AM), https://twitter.com/serenawilliams/status/1484159217791647751?s=20&t=iNbPm5RANQEpugkz3Orziw.

[98] Neymar Jr (@neymarjr), TWITTER (Jan. 20, 2022, 10:24 AM), https://twitter.com/neymarjr/status/1484230264293318663?s=20&t=iNbPm5RANQEpugkz3Orziw.

of a canvas only token-holders can draw on."[99] This statement was misleading in that it suggested to investors that there would be a broader ecosystem for BAYC NFT holders to interact in and that the BAYC brand was poised for significant growth, when, in truth, the BAYC NFTs were just a vehicle to make insiders rich at the expense of investors.

167. The next day, April 22, 2021, Solano again touted BAYC NFTs, claiming that these NFTs "double as membership cards to an exclusive club with benefits" and soliciting investors to participate in the BAYC NFT pre-sale on April 23, 2021.[100]

168. 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."[101] This exchange gave investors the false impression that BAYC NFTs were a sound investment that were poised to continue growing.

169. 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.

[99] Garga.eth (Greg Solano), TWITTER (Apr. 21, 2021, 8:34 PM), https://twitter.com/CryptoGarga/status/1385074598241243138?s=20&t=g1mRpxWbWmWNzjxw385m2A.

[100] Garga.eth (Greg Solano), TWITTER (Apr. 22, 2021, 3:16 PM), https://twitter.com/CryptoGarga/status/1385356793862397953?s=20&t=g1mRpxWbWmWNzjxw385m2A.

[101] GordonGoner.eth (Wylie Aronow) (@GordonGoner), TWITTER Apr. 22, 2021, 3:16 PM), https://twitter.com/gordongoner/status/1428938116535042049?lang=en.

170. The Company itself also solicited sales at various events like "ApeFest 2021" held in New York on November 3, 2021. Significantly, Yuga's ApeFest 2021 event was sponsored and promoted by MoonPay.[102] NFT artist, Oseary associate, and Defendant Winkelmann also promoted the ApeFest 2021 event on his Twitter account.[103]

171. Likewise, MoonPay also directly solicited sales of Yuga securities. For example, on January 11, 2022, MoonPay promoted the BAYC Miami Competition and posted the following picture on its Twitter account:[104]

[102] Bored Ape Yacht Club (@BoredApeYC), TWITTER (Nov. 3, 2021), https://twitter.com/BoredApeYC/status/1456143639634071556?s=20&t=g1mRpxWbWmWNzjxw385m2A; MoonPay (@moonpay), TWITTER (Nov. 1, 2021, 10:49 AM), https://twitter.com/moonpay/status/1455230583702003724?s=20&t=vrAWheqx4E0TSLTJj9xpIA.

[103] Beeple (@beeple), TWITTER (Nov. 3, 2021, 8:49 PM), https://twitter.com/beeple/status/1456106243391623168?s=20&t=g1mRpxWbWmWNzjxw385m2A.

[104] MoonPay (@moonpay), TWITTER (Jan 11, 2022, 9:29 AM), https://twitter.com/moonpay/status/1480909703387484165?s=20&t=4E_x-F8TZi8Sorr7QZls0g.

172. In addition to the mural of a Bored Ape with the MoonPay and Yuga corporate logos, the posted image contained a QR code that, if scanned, directed investors to the MoonPay website. On the landing page it states: "Crypto just got easy. A fast and simple way to buy and sell crypto" and there is a button stating "Buy crypto."[105]

173. The promotional efforts by Oseary, the Executive Defendants, 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 BAYC NFTs. 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 an 145% increase from its floor price of 49.5 ether at the start of the Relevant Period. Trading volume also spiked to 12698 ether on April 30, 2022 – up almost 280% from the 3345 ether trading volume at the start of the Relevant Period.

174. As investor interest in the BAYC NFTs and broader ecosystem was reaching a fevered pitch, Yuga, along with the Executive Defendants, Ape DAO Board Defendants, and Defendant Oseary, launched the ApeCoin token. This was a pure cash grab by those Defendants cloaked in the air of altruistically giving back to the BAYC community of investors.

175. In an attempt to shield themselves from liability related to the solicitation and sale of these unregistered tokens, the Executive Defendants formed the ApeCoin DAO, the Ape Foundation, and the Ape DAO Board (which governed and controlled the Ape Foundation). "This organization manages the highbrow assets

[105] *See* https://www.moonpay.com/.

at the back of Bored Apes. But a cautiously coordinated advertising and marketing campaign went to incredible lengths to dissociate ApeCoin from any mainstream corporation . . . . And completely unofficially, Yuga Labs put this all together."[106] Put another way, the Executive Defendants created the Ape Foundation and Ape DAO Board in order to maintain the "veneer of plausible deniability — an independent entity allocating tokens to a company and its founders, rather than that company and its founders pumping their own investments."[107]

176. According to a July 25, 2022 article, "What is ApeCoin and Who is Behind This Cryptocurrency?," the Company is "responsible for all major projects and acquisitions related to the Bored Ape Yacht Club family. If you want to do something with the intellectual property of the collection, you have to go through the company." Within that article, Muniz is quoted as having plans to "adopt ApeCoin as the primary currency for all new products and services," which, as the article notes, "ties the asset's value to the success of the Bored Ape collection as one all."[108]

177. On March 16, 2022, Defendants announced the impending launch of ApeCoin, releasing the following statements on the verified ApeCoin Twitter account:

- "Introducing ApeCoin ($APE), a token for culture, gaming, and commerce used to empower a decentralized community building at the forefront of web3."[109]
- "ApeCoin is owned and operated by the ApeCoin DAO, a decentralized organization where each token holder gets to vote on governance and

[106] *What is ApeCoin and Who Is Behind This Cryptocurrency?*, VISUALMODO (July 25, 2022), https://visualmodo.com/what-is-apecoin-and-who-is-behind-this-cryptocurrency/.

[107] *Id.*

[108] *Id.*

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

use of the Ecosystem Fund. Holding ApeCoin is the only requirement for membership in the ApeCoin DAO."[110]

- "The DAO is supported by Ape Foundation, which was created to act as the legal steward of ApeCoin and administer the decisions made by the ApeCoin DAO community. (Basically someone needs to sign the checks.)."[111]
- "62% of the total supply of ApeCoin is allocated to the ApeCoin community, a portion of which (15% of total supply) will be available to claim starting tomorrow at 8:30 am ET."[112]
- "The airdrop claim consisting of 15% of the total supply of ApeCoin will be made available to @BoredApeYC NFT holders (Bored Apes and Mutant Apes, as well as #BAKC dogs paired with either #BAYC or #MAYC)."[113]
- "***For everyone else who wants to ape in: ApeCoin will be available to all and is expected to begin trading on major crypto exchanges ASAP***. We'll tweet as that happens!"[114]

178. Plaintiff Real saw this solicitation regarding the Company's native token ApeCoin and was induced to purchase and/or continue to hold Yuga securities as a result of this misleading promotion.

[110] ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), https://twitter.com/apecoin/status/1504201557147070465.

[111] ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), https://twitter.com/apecoin/status/1504201557914664962.

[112] ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), https://twitter.com/apecoin/status/1504201558917095427.

[113] ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), https://twitter.com/apecoin/status/1504201559781089280.

[114] ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2:02 PM), https://twitter.com/apecoin/status/1504201560624185346.

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

180. The Yuga Labs Pitch Deck signaled the importance of the celebrity endorsements, bragging that "[c]elebrities are buying Apes to signal that they know what's up."[115] The Yuga Labs Pitch Deck also introduced ApeCoin, stating "APECoin will be the currency of our metaverse. One unifying coin with which to power our app store like marketplace."[116]

181. Yuga planned for the Otherside MetaRPG to launch with a land sale. These virtual plots of land would purportedly "corresponded to real land" in the Yuga game.[117]

182. The Yuga Labs Pitch Deck stated:

- The MetaRPG will be made up of 200k land plots total; all launched through Animoca.
- Genesis drop will be 100k plots.
    - 30% of that will go to BAYC/MAYC, leaving ~70k for public sale (and then another 100k in follow up drop).
    - The conservative estimate for the land price is 1 ETH each plot = $200M in primary sales for the genesis drop alone.[118]

115 *Yuga Labs Pitch Deck*, at *16.
116 *Id.*, at *62-*64.
117 *Id.*, at *73.
118 *Id.*, at *74.

183. The Yuga Pitch Deck also provided the following income statement: [119]

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%

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

185. ApeCoin is touted as the main cryptocurrency of the BAYC ecosystem and, its sales exploded as a result of Defendants' promotional efforts.

186. For example, on March 16, 2022, the official ApeCoin Twitter account posted the following statement: "Introducing ApeCoin ($APE), a token for culture, gaming, and commerce used to empower a decentralized community building at the forefront of web3." The BAYC Twitter account replied to this statement. So did the Company's official account along with a caption that stated: "We're excited to announce we're adopting ApeCoin as the primary token for the Bored Ape Yacht Club ecosystem as well as future Yuga products and services."[120] Yuga's COO,

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119 *Id.*, at *85.

120 ApeCoin (@apecoin), TWITTER (Mar. 16, 2022, 2;02 PM), https://twitter.com/apecoin/status/1504201556165644298?s=20&t=oYZDBOcdZ4V1im5Ls9qmRg; Yuga Labs (@yugalabs), TWITTER (Mar. 16, 2022, 2:08 PM), https://twitter.com/yugalabs/status/1504202913694031884?s=20&t=oYZDBOcdZ4V1im5Ls9qmRg.

Defendant Shoemaker, disseminated all of these particular solicitations through her own Twitter account "@SodaOps."

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

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

189. On or about March 17, 2022, celebrity jeweler and social media influencer Ben "Baller" Yang made a stunning disclosure regarding the promotion of Yuga securities by the Company, the MoonPay Defendants, and Defendant Adidas, confirming their collective participation in the fraudulent scheme concocted by Oseary and the Executive Defendants. In a now-deleted Twitter Spaces live video, which was memorialized in a YouTube video discussing Ripps' troubling claims regarding the Company and its founders Defendants Solano, Aronow, Atalay, and Ali and their use of subliminal BAYC NFT collection's purportedly racist imagery,[121] Yang describes his own personal experience with the conspiracy as follows:

> **[Yang]:** "Real talk, not once, not twice, three times I've been offered a Bored Ape through MoonPay. I've had Adidas hit me up in my DMs on Instagram: "Hey Ben, do you want to co-host a space with us? Oh do you own a Bored Ape?" No I fucking don't. . . . I don't know what it was but the fact that some of these super top tier all-star NBA players have them, and I was like this is all cap.[122] I mean, there was an NDA they tried to send my agent . . .
>
> **[Other Speaker]:** There's definitely NDAs in everything they do. . . .

[121] Philion, *BORED APE NAZI CLUB*, YOUTUBE (June 19, 2022), https://www.youtube.com/watch?v=XpH3O6mnZvw.

[122] The term "cap" is slang for an exaggeration or outright lie.

> **[Yang]:** But what I'm saying if I was to accept one of the Bored Apes…
>
> **[Other Speaker 2]:** They want you to not disclose that they had purchased the Ape for you.
>
> **[Yang]:** Exactly, yeah. You know what the craziest thing about that is that a lot of celebrities who are going into this are probably just stoked to get the ape and they don't even realize a lot of them probably a lot of them don't consult their legal and shit like that beforehand. ***But they are actually asking you to commit fraud on their behalf***.[123]

190. On March 22, 2022, the Company announced that it closed its Series Seed funding round, led by a16z crypto (Defendant Lyons), and, including but not limited, to Sound Ventures (Defendant Oseary), SevenSevenSix (Defendant Ohanian), Artist Capital Management (funded by Defendant Steinbeck's firm Horizen Labs, which also operated the ApeCoin staking program for Yuga), Hashed (funded by Animoca Brands, which itself was purchased by Yuga), Lightspeed Ventures (Defendant Wu formerly served as a partner before leaving to join FTX Ventures), and FTX Ventures (Defendant Wu served as the web3 investment leader before stepping down from both FTX Ventures and the Ape DAO Board within days of the FTX collapse). Yuga brought in another $450 million during this round. The announcement also revealed its metaverse project, Otherside.[124]

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

> "Already, a new economy is possible with the IP of Apes, Punks, and Meebits, owned by the community," said Nicole Muniz, CEO of Yuga Labs. "The possibilities for blockchain's impact on culture are

[123] Philion, *supra*., at 50:40-51:53.

[124] Press Release, *Yuga Labs Closes $450 Million Seed Round of Funding, Valuing the Company at $4 Billion; Confirms Plans for Metaverse Project*, 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.

> endless, and so we are building a beautiful, interoperable world for people to explore and play in. There's a lot to come."
>
> "Yuga Labs has quickly become a web3 culture, gaming, and entertainment empire," said Chris Lyons, general partner at a16z crypto. "Mainstream adoption in web3 is accelerating at lightning speed, and Yuga is at the forefront of merging culture and innovation for everyone to enter the metaverse. We're thrilled to invest in this brilliant team and their vision, and help forge the next frontier of community-owned entertainment."
>
> "This capital will give Yuga speed to market on many things underway, and bring in new partners with strategic thinking that share the vision," said Yuga Labs partner Guy Oseary.[125]

192. On March 27, 2022, Defendant Ohanian promoted ApeCoin tokens and the Bored Ape Yacht Club brand in conjunction with the 2022 Academy Awards show, posting a picture of an ApeCoin cufflink and the following text: "#OSCARS2022 MUST-HAVE RED CARPET ACCESSORY @BOREDAPEYACHTCLUB.[126] Ohanian posted pictures of himself and Serena Williams on the red carpet at the Oscars and close up pictures of his ApeCoin cufflinks.[127]

193. Plaintiff Real saw Ohanian's promotion of ApeCoin and the BAYC ecosystem and was induced to purchase and/or continue to hold Yuga securities as a result of this misleading promotion.

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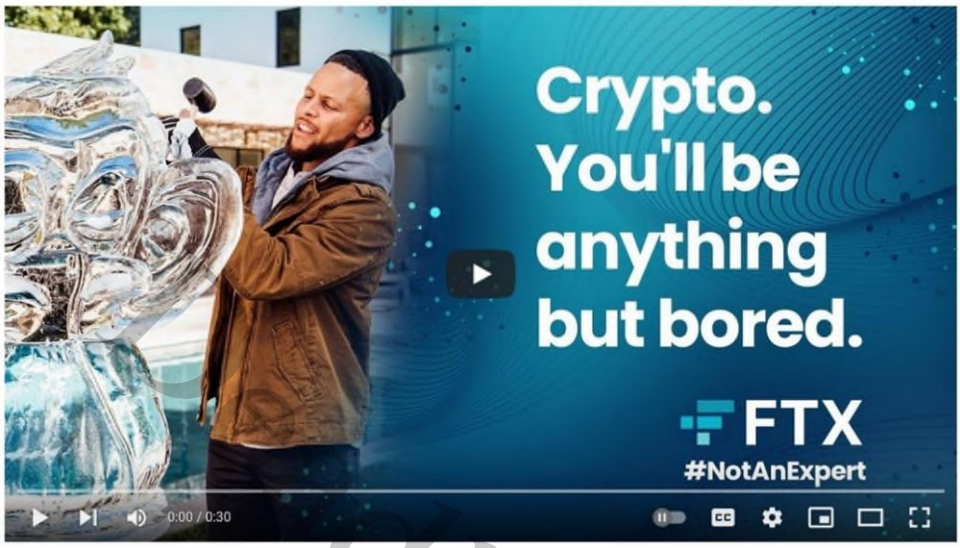
[125] *Id.*

[126] Alexis Ohanian (@alexisohanian), TWITTER (Mar. 27, 2022, 2:53 PM), https://twitter.com/alexisohanian/status/1508200457214201858?s=20&t=We5UwwM3WMDYkGHgb3jgZg.

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

194. On March 29, 2022 FTX uploaded the full commercial with Defendant Curry to its official YouTube channel.[128] While the commercial itself was for FTX, there were multiple not-so-hidden references to the BAYC collection of NFTs. Notably, the thumbnail of the video prominently features Curry and the Bored Ape sculpture:



195. The slogan for this campaign also contained the same BAYC reference (i.e. "bored") that was in the teaser commercial. The commercial itself showed Curry in various "everyday" activities while a narrator harasses Curry for advice about cryptocurrency and what tokens to buy. The most significant of these segments is when Curry can be seen working on an ice sculpture of a Bored Ape. While it is unclear whether other NFT projects are being referenced in this commercial, it is obvious that Curry is concurrently promoting BAYC NFTs given the unmistakable similarity to the art style of the BAYC NFT collection and the ice sculpture that Curry is working on. This promotion did not include any disclosure or disclaimer concerning the connection between FTX and Yuga via Defendant Wu, who had significant financial interest in both companies. Instead, the commercial encouraged

[128] FTX Official, *Steph Curry Is Not a Crypto Expert*, YOUTUBE (Mar. 29, 2022), https://www.youtube.com/watch?v=gsy2N-XI04o.

uninformed investors to invest into digital assets like the BAYC NFTs, while at the same time giving a "wink" disclaimer that this was not financial advice to provide Curry with plausible deniability regarding his promotion of the Yuga Financial Products.

196. Defendant Curry also promoted BAYC NFT #7990 as his social media profile picture. The NFT itself was transferred to wallet address 0x3becf83939f34311b6bee143197872d877501b11, which is labeled "SC30." Upon information and belief, this wallet is owned or controlled by either Defendant Curry or Curry's investment company "SC30" (or both). According to OpenSea, BAYC NFT #7990 was transferred to a wallet that has been publicly labeled as "SC30."[129]

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

198. Approximately one month later, on April 26, 2022, Defendant Oseary submitted a proposal to the Ape DAO titled: "AIP Idea: Guy Oseary as ApeCoin Representative," which essentially requested that Oseary be given up to 1% of the Ecosystem Fund as a slush fund for him to "utilize on behalf of the APE Foundation."[130] The proposal is listed below:

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

[129] *Bored Ape Yacht Club #7990*, OPENSEA, https://opensea.io/assets/ethereum/0xbc4ca0eda7647a8ab7c2061c2e118a18a936f13d/7990 (last visited Dec. 4, 2022).

[130] 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.

* * *

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

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

RATIONALE

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

A LITTLE ABOUT ME

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

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

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

Airbnb, Uber, Spotify, Calm, Robinhood, Gitlab, Duolingo, Superrare, Opensea, and many others.

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

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

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

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

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.[131]

199. On April 27, 2022, Defendant Adidas promoted the BAYC and the Company's metaverse project with the launch of its own NFT project called "adidas Originals: into the Metaverse (Phase 2).[132] The NFT itself featured a moving image of a Bored Ape avatar wearing an Adidas jumpsuit. The back of the image prominently featured the Company's BAYC logo.

200. On April 30, 2022, a few days after the Adidas promotion and Oseary's proposal, the Company minted the virtual land for its Otherside metaverse. Within 24 hours, Yuga, Oseary, the Executive Defendants, and the Ape DAO 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.

201. 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.

131 *Id.*

132 *adidas Originals: into the Metaverse (Phase 2)*, OPENSEA, https://opensea.io/assets/ethereum/0x28472a58a490c5e09a238847f66a68a47cc76f0f/1 (last visited Dec. 4, 2022).

202. According to data from CryptoSlam, Otherdeed has already seen over $242 million in total secondary volume traded. Of that figure, over $190 million was on OpenSea.[133]

203. Due to the high number of NFTs and higher demand, the Otherdeed mint, which began at 9:00 pm EST Saturday night, immediately caused an Ethereum gas[134] war. According to reports on the Otherdeed sale, "[t]raffic on block explorer Etherscan also led to reports that the site wasn't working for many users. Worse, gas fees suddenly spiked to thousands of dollars per transaction."[135] Indeed, while some were able to get their transactions processed within a few hours for a couple hundred dollars in gas fees, "others reported paying upwards of $4,000 for a single transaction. (The average gwei, or price of Ethereum gas, over the course of the night was over 6,000, ***roughly 100 to 200 times normal***.)."[136]

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

205. Defendant Pall claimed to have bought two BAYC NFTs along with Defendant Taggart. Pall touted the "power moves" that Yuga was making giving investors IP rights "to the people that bought those things." "While . . . they are

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

134 The term "gas" in the crypto context refers to a unit describing the amount of computational power needed to execute specific operations on the network. 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.

135 Kate Irwin, *Yuga Labs Sees $561 Million in Otherside Ethereum NFT Sales Within 24 Hours*, DECRYPT (May 1, 2022), https://decrypt.co/99156/yuga-labs-sees-561-million-in-otherside-ethereum-nft-sales-within-24-hours.

136 *Id*.

incredibly expensive, it was a . . . fun social experiment and I think that's a lot of what you are seeing in crypto."[137] Plaintiffs saw the promotions with Defendants Pall and Taggart, and were induced to purchase and/or continue to hold Yuga securities instead of selling as a result of this misleading promotions.

206. On September 7, 2022, the Ape Foundation announced that it was seeking a three-month extension for the Ape DAO Board Defendants' six-month inaugural term.[138] In the letter to the "ApeCoin Community," the Ape Foundation stated that "the community hasn't submitted any viable AIPs specifying what this handover looks like, who might take over, or how we might conduct an election. This suggests the original election specifications were ambiguous."[139] Accordingly, the Ape Foundation proposed to extend the term, claiming that keeping the Ape DAO Board Defendants in their positions would "provide continuity and stability: the Foundation doesn't just execute what the community wants – it makes sure we are compliant with legal and regulatory requirements and guidance so we can operate effectively."[140] The letter proposal concluded by directing investors with questions to speak with Ape DAO Board Defendant Bajwa.

207. That same day, Defendant Wu posted the following message on her Twitter account: "Grateful for a dynamic 6 month serving on the first @apecoin DAO Special Council! We are asking the community for an extension of 3 months to focus on ironing out a first election process that balances continuity, fairness, and

[137] Banklesshq (@banklesshq), TIKTOK (June 21, 2022), https://www.tiktok.com/@banklesshq/video/7111625644068326699?is_from_webapp=v1&item_id=7111625644068326699.

[138] Swensonk7, *The Ape Foundation Announced That Its Term Is Almost Up and 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.

[139] *Id.*

[140] *Id.*

transparency."[141] Wu's post linked to "AIP-113: Extending AIP-1 – the DAO Process," which "propose[d] a three-month extension of the terms laid out in AIP-1 to (1) provide time for the development of a proper and thorough Ape Foundation election framework and process; (2) allow the community to better understand and ultimately engage with whatever process emerges; and (3) enable the DAO to continue functioning coherently beyond September 30."[142]

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

> Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced, unsophisticated and potentially compromised individuals, this situation is unprecedented.[143]

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[141] Amy Wu (@amytongwu), TWITTER (Sep. 7, 2022 1:20 P.M.), https://twitter.com/amytongwu/status/1567563499156676608?s=20&t=ptw4dASRf-r2XQWNZIM-EQ

[142] btang, *AIP-113: Extending AIP-1 – the DAO Process*, APECOIN.COM (Sep. 7, 2022), https://forum.apecoin.com/t/aip-113-extending-aip-1-the-dao-process/8236. Notably, AIP-113 was submitted by user "btang" and authored by Animoca. Btang 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.

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

209. Wu was a senior executive at FTX during the time it suffered from an "unprecedented and complete failure of corporate controls." Eight days after resigning from FTX, on November 19, 2022, Wu announced that she would not continue to serve as an Ape DAO Board member after the expiration of her one-year term in December 2022. The announcement further disclosed that Defendants Steinbeck and Bajwa also resigned from the Ape DAO Board under the same terms.

C. The Dump – The price of Yuga Securities plummets

210. The meteoric rise of the BAYC NFTs did not last long, and the floor price of the BAYC NFT collection began to deflate immediately after the failed launch of the BAYC metaverse and botched sale of virtual land in the Otherside, on April 30, 2022.

211. In the following months, the floor price of the BAYC NFT fell to a Relevant Period low of 50 ether (*i.e.*, approximately $62,000) on November 14, 2022. Trading volume decreased to a mere 899 ether, down 92.9% from its height at the launch.

212. Similarly, the price of ApeCoin tokens dropped to a Relevant Period low of $2.70 on November 13, 2022. This was down approximately 90% from its all time high price of $26.91 on April 28, 2022. Trading volume of ApeCoins decreased to $160.7 million, down a staggering 99.7% from its high point during the Relevant Period of $5.5B on April 28, 2022:

213. Likewise, the floor price of the Otherdeed NFT went from a Relevant Period high of 4.7 ether (about $13,200) on May 1, 2022 all the way down to a low of 0.8 ether (worth only $1,000) on November 15, 2022. Trading volume decreased to a mere 788 ether, which was a step drop of 99.7% down from its height around the launch.

V. CLASS ACTION ALLEGATIONS

214. Plaintiffs bring this action, individually and on behalf of a nationwide Class, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3), defined as follows:

> All persons who, during the Class Period, purchased the Yuga securities and were subsequently damaged thereby.

215. The Class Period is defined as the period between April 24, 2021, and the present.[144]

216. Excluded from the Class are: (a) Defendants; (b) Defendants' affiliates, agents, employees, officers and directors; (c) Plaintiffs' counsel and Defendants'

[144] Plaintiffs reserve the right to expand or amend the Class Period based on discovery produced in this matter.

counsel; and (d) the judge assigned to this matter, the judge's staff, and any member of the judge's immediate family. Plaintiffs reserve the right to modify, change, or expand the Class definition set forth above based on discovery and further investigation.

217. **Numerosity**: The Class is so numerous that joinder of all members is impracticable. On December 1, 2022, there were more than 103,000 unique account holders of Yuga securities.

218. **Commonality**: Common questions of law and fact exist as to all members of each Class. These questions predominate over questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

a. Whether the Executive Defendants with the Promoter Defendants fraudulently marketed the Yuga securities;

b. Whether Executive Defendants conspired to artificially inflate the price of BAYC NFTs and then sell their Yuga securities to unsuspecting investors;

c. Whether Defendants have been unjustly and wrongfully enriched as a result of their conduct;

d. Whether the proceeds that the Defendants obtained as a result of the sale of the Yuga securities rightfully belong to Plaintiffs and Class members;

e. Whether Defendants should be required to return money they received as a result of the sale of Yuga securities to Plaintiffs and Class members; and

f. Whether Plaintiffs and Class members have suffered damages, and, if so, the nature and extent of those damages.

219. **Typicality**: Plaintiffs have the same interest in this matter as all Class members, and Plaintiffs' claims arise out of the same set of facts and conduct as the claims of all Class members. Plaintiffs' and Class members' claims all arise out of

uniform misrepresentations, omissions, and unlawful, unfair, and deceptive acts and practices related to the sale of Yuga securities.

220. **Adequacy**: Plaintiffs have no interests that conflict with the interests of the Class and are committed to pursuing this action vigorously. Plaintiffs have retained counsel competent and experienced in complex consumer class action litigation. Accordingly, Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

221. **Superiority**: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiffs and members of the Class. The injury suffered by each individual Class member is relatively small compared to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for individual Class members to effectively redress the wrongs done to them. Even if Class members could afford individualized litigation, the court system could not. Individualized litigation would increase delay and expense to all parties, and to the court system, because of the complex legal and factual issues of this case. Individualized rulings and judgments could result in inconsistent relief for similarly situated individuals. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

222. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

VI. PRESUMPTION OF RELIANCE

223. Plaintiffs will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) the omissions and misrepresentations were material;

(c) Yuga securities are traded in an efficient market;

(d) the Company's securities were liquid and traded with moderate to heavy volume during the Class Period;

(e) the Company's securities traded on various cryptocurrency exchanges in the United States;

(f) the Company was covered by securities analysts;

(g) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

(h) Plaintiffs and members of the Class purchased, acquired, and/or sold Yuga securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed without knowledge of the omitted or misrepresented facts.

224. Five factors are typically applied to determine whether a particular security meets the "efficient market" requirement: (1) whether the security trades at a high volume; (2) whether securities analysts follow and report on the security; (3) whether the security has market makers and arbitrageurs; (4) whether the Company is eligible to file SEC registration forms S-3; and (5) whether there are empirical facts showing a cause-and-effect relationship between unexpected corporate events or financial releases and an immediate response in the stock market. *See ScripsAmerica, Inc. v. Ironridge Glob. LLC*, No. CV14-03962 MMM(AGRx), 2015 WL 12747908, at *19 (C.D. Cal. Mar. 26, 2015). As discussed more thoroughly above, these factors weigh in favor of finding that the Yuga securities were traded in an efficient market. For example, ApeCoin trades a daily average volume of $183.7M.[145] Next, as detailed herein, securities analysts reported on the Yuga securities at issue repeatedly throughout the Class Period. Each of these analyst reports was publicly available to

[145] *ApeCoin*, BEINCRYPTO https://beincrypto.com/price/apecoin/ (last visited Dec. 4, 2022).

investors. And the price of Yuga securities changed in relation to public statements or reports about the activities of the Company. Indeed, the market price of Yuga securities reacted promptly to the dissemination of public information regarding the Company. The Yuga securities also used the Executive Defendants and Ape DAO Board Defendants to serve as market makers for Yuga securities liquidity.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of the California Unfair Competition Law
Cal. Bus. & Prof. Code §17200
(Against All Defendants)

225. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

226. Plaintiff Titcher is a resident of the State of California.

227. 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."

228. Yuga 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. Defendants' conduct is unfair under each of these tests.

229. Plaintiff Titcher saw each of the promotions from Defendants Oseary, Winkelmann, Ciccone, Hilton, Fallon, Bieber, Paltrow, Williams, Pentz, Post, Broadus, Hart, Pall, Taggart, Curry, Wilburn Cash, Tesfaye, Khaled, Adidas, Soto-Wright, and MoonPay concerning the BAYC ecosystem and was induced to purchase and/or continue to hold Yuga securities as a result of this misleading promotion.

230. As a direct and proximate result of Defendants' unlawful, unfair, and deceptive practices, Plaintiff and Class members suffered damages. The Executive Defendants' activities with the Promoter Defendants and MoonPay Defendants caused Plaintiff and the Class members to purchase and/or hold the BAYC NFTs when they otherwise would not have done so. Indeed, had Plaintiff known that the aforementioned endorsements by the Promoter Defendants were paid for by the Company, as opposed to being the result of an organic and genuine interest, they would not have purchased or held onto the Yuga securities that they did. Furthermore, had each Promoter Defendant disclosed the omitted information, Plaintiff Titcher would have seen or been aware of it as he follows the Promoter Defendants' social media accounts and the Company's official accounts. Plaintiff Titcher also stays abreast of current cryptocurrency news and would have seen any disclosures had they been made by the Promoter Defendants.

231. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Yuga to obtain restitution and disgorgement of all monies generated as a result of such practices, and for all other relief allowed under California Business & Professions Code §17200.

SECOND CAUSE OF ACTION

Violation of the California Consumers Legal Remedies Act Cal. Civil Code §1770 (Against All Defendants)

232. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

233. Plaintiff Titcher is a resident of the State of California.

234. At all relevant times there was in full force and effect Cal. Civ. Code §1770, which prohibits, *inter alia*, various methods of "unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer," including, but not limited to, "[m]isrepresenting the affiliation, connection, or association with, or certification by, another" and "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have." Cal. Civ. Code §1770(a)(3)-(5).

235. Defendants engaged in business acts and practices deemed "deceptive" because of the conduct, statements, and omissions described above, including, but not limited to, the following:

(a) knowingly and intentionally concealing the Executive Defendants' specific roles and ownership interests in the Company; and

(b) knowingly and intentionally using and/or failing to disclose the use of the Promotor Defendants to promote the financial benefits of joining a supposedly exclusive club that would provide early access to digital assets poised to become more valuable, all in an effort to manipulate and artificially inflate the price and trading volume of the BAYC NFTs and allow Defendants to sell their BAYC NFTs at those inflated prices.

236. Plaintiff Titcher saw each of the promotions from Defendants Oseary, Winkelmann, Ciccone, Hilton, Fallon, Bieber, Paltrow, Williams, Pentz, Post, Broadus, Hart, Pall, Taggart, Curry, Wilburn Cash, Tesfaye, Khaled, Adidas, Soto-Wright, and MoonPay concerning the BAYC ecosystem and was induced to purchase and/or continue to hold Yuga securities as a result of this misleading promotion.

237. As a direct and proximate result of Defendants' unlawful, unfair, and deceptive practices, Plaintiff and Class members suffered damages. Defendants' activities caused Plaintiff and the Class members to purchase and/or hold the BAYC

NFTs when they otherwise would not have done so. Indeed, had Plaintiff known that the aforementioned endorsements by the Promoter Defendants were paid for by the Company, as opposed to being the result of an organic and genuine interest, they would not have purchased or held onto the Yuga securities that they did. Furthermore, had each Promoter Defendant disclosed the omitted information, Plaintiff Titcher would have seen or been aware of it as they follow the Promoter Defendants' social media accounts and the Company's official accounts. Plaintiff Titcher also stay abreast of current cryptocurrency news and would have seen any disclosures had they been made by the Promoter Defendants.

238. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Defendants, to obtain restitution and disgorgement of all monies generated as a result of such practices, and for all other relief allowed under Cal. Civ. Code §1780.

239. Plaintiffs additionally seek punitive damages under Cal. Civ. Code §1780(a)(4).

240. Plaintiffs have complied with Cal. Civ. Code §1780(d), which requires the concurrent filing of an "affidavit stating facts showing that the action has been commenced in a county described in this section as a proper place for the trial of the action."

THIRD CAUSE OF ACTION

Aiding and Abetting
California Common Law
(Against the Promoter Defendants and MoonPay)

241. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

242. Under California law, aiding and abetting requires not agreement, but simply assistance. The elements of aiding and abetting liability have cited the elements of the tort as they are set forth in the RESTATEMENT (SECOND) OF TORTS

§876, and have omitted any reference to an independent duty on the part of the aider and abettor.

243. Under California law, "'[l]iability may . . . be imposed on one who aids and abets the commission of an intentional tort if the person (a) knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person.'" *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1118 (C.D. Cal. 2003).

244. "Unlike a conspirator, an aider and abettor does not 'adopt as his or her own' the tort of the primary violator. Rather, the act of aiding and abetting is distinct from the primary violation; liability attaches because the aider and abettor behaves in a manner that enables the primary violator to commit the underlying tort." *Id.* at 1134.

245. The Promoter Defendants have previous knowledge and experience with making misleading promotional statements. Defendant Ciccone had already received a cease and desist letter concerning Ciccone's improper promotion of another NFT project related to her manager, Defendant Oseary, and, as such, knew or should have known that the marketing strategy employed by the Executive Defendants for the BAYC NFTs was unlawful, deceitful, fraudulent, and/or violated the terms of the California state statutes described in this Complaint.

246. By promoting the BAYC NFTs on their social media platforms and through their reported conduct, the Promotor Defendants provided assistance that was a substantial factor causing the BAYC NFTs price to both surge and do so long enough to allow all Defendants to sell their BAYC NFTs for huge profits at the expense of their followers and investors. Without the help of the Promoter Defendants' activities, the Executive Defendants would have been unable to use the misleading marketing strategy devised by Oseary, and Defendants would not have

been able to commit the violations of California state consumer protection statutes alleged herein.

247. As a direct and proximate result of the Promotor Defendants' unlawful, unfair, and deceptive practices, Plaintiffs and Class members suffered damages. The Executive Defendants' activities with the Promoter Defendants and MoonPay Defendants caused Plaintiffs and the Class members to purchase and/or hold the BAYC NFTs when they otherwise would not have done so.

248. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Yuga, to obtain monetary damages, restitution and disgorgement of all monies generated as a result of such practices, and for all other relief allowed under California law.

FOURTH CAUSE OF ACTION

Civil Conspiracy
California Common Law
(Against the Executive Defendants, Oseary, the Promoter Defendants, and the MoonPay Defendants)

249. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

250. Beginning in October 2021, and continuously thereafter up to and including the date of the filing of the Complaint, the Executive Defendants and Oseary did engage in the formation and operation of a conspiracy with the Promotor Defendants and MoonPay to misleadingly promote BAYC NFTs to retail investors to artificially inflate the price so that the Executive Defendants could sell the BAYC NFTs at substantial profits.

251. As alleged above, each Defendant acted in furtherance of the conspiracy by, among other things, concealing the identity and ownership interests of, and association with, the Yuga founders (*i.e.*, the Executive Defendants) and falsely promoting the BAYC NFTs as sound investments with significant growth potential.

252. As a proximate result of said conspiracy, as described in the foregoing paragraphs, Plaintiffs suffered, continue to suffer, and will suffer in the future, the damages alleged herein.

253. For Defendants' conduct in the alleged conspiracy, Plaintiffs seek compensatory damages against all Defendants, and each of them, jointly and severely, in an as-yet undetermined amount; punitive damages, injunctive relief enjoining Defendants from continuing to falsely and misleadingly promote the BAYC NFTs; and divestiture of all money wrongfully obtained, whether directly or indirectly, as part of the alleged conspiracy.

254. In furtherance of this conspiracy, the Executive Defendants hired Oseary to recruit the Promotor Defendants and others to promote the BAYC NFT collection specifically and the overall Bored Ape brand generally. Neither Oseary nor the Promoter Defendants disclosed their financial ties to and interests in the Company and/or MoonPay. The purpose of these overt acts was to enable the Executive Defendants to compensate the Promoter Defendants without having to disclose that the Promoter Defendants' promotions were bought and paid for (instead of genuine expressions of interest).

255. Defendants' actions falsely promoting the BAYC NFTs enriched themselves to the detriment of Plaintiffs and Class members. While the Executive Defendants made hundreds of millions of dollars, investors were left with NFTs worth a fraction of their artificially inflated value.

256. As a direct and proximate result of Defendants' actions, Plaintiffs and Class members were damaged in the amount of the difference between the fair market price of their BAYC NFTs but for the Defendants' actions and the price they paid for their BAYC NFTs.

FIFTH CAUSE OF ACTION

Violations of §10(b) of the Exchange Act and Rule 10b-5 (Against All Defendants)

257. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

258. This Count is asserted against Defendants and is based upon §10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

259. During the Class Period, Defendants engaged in a plan, scheme, conspiracy, and course of conduct pursuant to which they knowingly or recklessly engaged in acts, transactions, practices, and courses of business that operated as a fraud and deceit upon Plaintiffs and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes, and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Yuga securities; and (iii) cause Plaintiffs and other members of the Class to purchase or otherwise acquire Yuga securities at artificially inflated prices. In furtherance of this unlawful scheme, plan, and course of conduct, Defendants, and each of them, took the actions set forth herein.

260. Pursuant to the above plan, scheme, conspiracy, and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the SEC filings, press releases, and other statements and documents, as described above, including statements made to the media, that were designed to influence the market for Yuga securities. Such reports, filings, releases, and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Yuga's business and operations.

261. By virtue of their positions at the Company, Ape Foundation, and Ape DAO Board, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiffs and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted, as described above.

262. Information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within Defendants' knowledge and control. As senior executives and directors of Yuga/Ape Foundation, the Executive Defendants and Ape DAO Board Defendants had knowledge of the details of Yuga's internal affairs.

263. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to, and did, directly or indirectly, control the content of the statements of Yuga. The Individual Defendants had duties to disseminate timely, accurate, truthful, and complete information with respect to Yuga's businesses, operations, future financial condition, and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases, and public statements, the market price of Yuga securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Yuga's business and financial condition, which were concealed by Defendants, Plaintiffs and other members of the Class purchased or otherwise acquired Yuga securities at artificially inflated prices and relied upon the price of the securities, the integrity of

the market for the securities, and/or statements disseminated by Defendants, and were damaged thereby.

264. During the Class Period, Yuga securities were traded on an active and efficient market. Plaintiffs and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued, or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired Yuga securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiffs and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiffs and the Class, the true value of Yuga securities was substantially lower than the prices paid by Plaintiffs and the other members of the Class. The market price of Yuga securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiffs and Class members.

265. By reason of the conduct alleged herein, Defendants have knowingly or recklessly, directly or indirectly, violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

266. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases, acquisitions, and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating false and/or misleading statements to the investing public.

SIXTH CAUSE OF ACTION

Violations of §20(a) of the Exchange Act (Against the Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary)

267. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

268. During the Class Period, the Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary participated in the operation and management of Yuga and conducted and participated, directly and indirectly, in the conduct of Yuga's business affairs. Because of their senior positions, the Individual Defendants knew the adverse non-public information about Yuga's promotional efforts and future business prospects.

269. As officers and/or directors of Yuga and/or the Ape Foundation, the Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary had duties to disseminate accurate and truthful information, with respect to Yuga's business practices, and promptly correct any public statements issued by or on behalf of Yuga that had become materially false or misleading.

270. Because of their positions of control and authority as senior directors or officers and executive team members, the Individual Defendants were able to, and did, control the contents of the various reports, press releases, and public filings that Yuga disseminated in the marketplace during the Class Period concerning the Company's business, operational, and accounting policies. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Yuga to engage in the wrongful acts complained of herein. The Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary, therefore, were "controlling persons" of Yuga within the meaning of §20(a) of the Exchange Act. In this capacity, the Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary participated in the unlawful conduct alleged herein that artificially inflated the market price of Yuga securities.

271. The Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary, therefore, acted as controlling persons of Yuga. By reason of their senior management positions and/or being directors of Yuga, they had the power to direct the actions of, and exercised the same to cause Yuga to engage in the unlawful acts and conduct complained of herein. The Executive Defendants, the

Ape DAO Board Defendants, and Individual Defendant Oseary exercised control over the general operations of Yuga and possessed the power to control the specific activities that comprise the primary violations about which Plaintiffs and the other members of the Class complain.

272. By reason of the above conduct, the Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary are liable pursuant to §20(a) of the Exchange Act for the violations committed by Yuga.

SEVENTH CAUSE OF ACTION

Violations of § 10(b) of the Exchange Act and Rule 10b-5(b) Promulgated Thereunder (Against the Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary)

273. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

274. For the purposes of this cause of action, the Executive Defendants, the Ape DAO Board Defendants, and Individual Defendant Oseary are collectively referred to as the "Scheme Defendants."

275. During the Class Period, the Scheme Defendants carried out a plan, scheme and course of conduct which was intended to, and throughout the Class Period, did: (1) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (2) cause Plaintiffs and other members of the Class to purchase Yuga securities at artificially inflated and distorted prices; and (3) cause Plaintiffs and other members of the Class not to sell Yuga securities until the Scheme Defendants and other Company insiders could sell Yuga securities at artificially inflated and distorted prices. In furtherance of this unlawful scheme, plan and course of conduct, the Scheme Defendants made the false statements alleged herein.

276. The Scheme Defendants, directly and indirectly, by the use, means, or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to misrepresent the true nature of the promotional

activities of the Company and conceal adverse material information about the business, operations and future prospects of Yuga as specified herein.

277. The Scheme Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Yuga's revenue, income, value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Yuga and its business operations and financial condition in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers Yuga securities during the Class Period.

278. The Scheme Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. The material misrepresentations and/or omissions made by the Scheme Defendants were done knowingly or recklessly and for the purpose and effect of concealing Yuga's financial condition from the investing public and supporting the artificially inflated price of its securities. As demonstrated by the false and misleading statements during the Class Period of the Scheme Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were highly reckless in failing to obtain such knowledge by failing to take steps necessary to discover whether those statements were false or misleading.

279. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price for Yuga securities was artificially inflated during the Class Period.

280. In ignorance of the fact that market prices of Yuga securities were artificially inflated or distorted, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the Yuga securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by the Scheme Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiffs and the other members of the Class acquired Yuga securities during the Class Period at artificially high prices and were damaged thereby.

281. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding Yuga's promotional activities Plaintiffs and other members of the Class would not have purchased or otherwise acquired Yuga's securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices or distorted prices at which they did.

282. By virtue of the foregoing, the Scheme Defendants have violated §10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

283. As a direct and proximate result of the wrongful conduct of the Scheme Defendants, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

284. This action was filed within two years of discovery of the fraud and within five years of Plaintiffs' purchases of securities giving rise to the cause of action.

EIGHTH CAUSE OF ACTION

Unregistered Offering and Sale of Securities in Violation of §§5 and 12(a)(1) of the Securities Act (Against All Defendants)

285. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

286. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

287. The Yuga Financial Products are securities within the meaning of §2(a)(1) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77b(a)(1).

288. Plaintiffs and members of the Class purchased Yuga securities.

289. No registration statements have been filed with the SEC or have been in effect with respect to any of the offerings alleged herein. No exemption to the registration requirement applies.

290. SEC Rule 159A provides that, for purposes of §12(a)(2), an "issuer" in "a primary offering of securities" shall be considered a statutory seller. 17 C.F.R. §230.159A(a). The Securities Act, in turn, defines "issuer" to include every person who issues or proposes to issue any security. 15 U.S.C. §77b(a)(4). Yuga is an issuer of Yuga securities.

291. The U.S. Supreme Court has held that statutory sellers under §12(a)(1) also include "the buyer's immediate seller" and any person who actively solicited the sale of the securities to plaintiff and did so for financial gain. *See Pinter v. Dahl*, 486 U.S. 622, 644 n.21 & 647 (1988). That is, §12(a)(1) liability extends to sellers who actively solicit the sale of securities with a motivation to serve their own financial interest or those of the securities owner. *Id*. at 647. The Company, the Executive Defendants, the Ape DAO Board Defendants, and the Promoter Defendants are all statutory sellers.

292. By reason of the foregoing, each of the Defendants have violated §§5(a), 5(c), and 12(a) of the Securities Act, 15 U.S.C. §§77e(a), 77e(c), and 77l(a).

293. As a direct and proximate result of Defendants' unregistered sale of securities, Plaintiffs and the Class have suffered damages in connection with their Yuga securities purchases.

NINTH CAUSE OF ACTION

Violation of §15 of the Securities Act (Against the Company, the Executive Defendants, Ape DAO Board Defendants, and Individual Defendant Oseary)

294. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

295. This cause of action is asserted against the Company, the Executive Defendants, Ape DAO Board Defendants, and Individual Defendant Oseary (collectively, the "Control Person Defendants") under Section 15 of the Securities Act, 15 U.S.C. §77o.

296. The Control Person Defendants, by virtue of their offices, ownership, agency, agreements or understandings, and specific acts were, at the time of the wrongs alleged herein, and as set forth herein, controlling persons within the meaning of Section 15 of the Securities Act. The Control Person Defendants, and each of them, had the power and influence and exercised the same to cause the unlawful offer and sale of Yuga securities as described herein.

297. The Control Person Defendants, separately or together, possess, directly or indirectly, the power to direct or cause the direction of the management and policies of Yuga, the Ape Foundation, and Ape DAO, through ownership of voting securities, by contract, subscription agreement, or otherwise.

298. The Control Person Defendants also have the power to direct or cause the direction of the management and policies of Yuga, the Ape Foundation, and Ape DAO.

299. The Control Person Defendants, separately or together, have sufficient influence to have caused Yuga securities and/or the Company to submit a registration statement.

300. The Control Person Defendants, separately or together, jointly participated in Yuga's failure to register the Yuga securities.

301. By virtue of the conduct alleged herein, the Control Person Defendants are liable for the wrongful conduct complained of herein and are liable to Plaintiffs and the Class for rescission and/or damages suffered.

TENTH CAUSE OF ACTION

Unjust Enrichment/Restitution
(California Common Law, in the Alternative)
(Against the Company and the Executive Defendants)

302. Plaintiffs restate and reallege all preceding allegations above as if fully set forth herein.

303. Plaintiffs and Class members conferred a monetary benefit on Defendants by raising the price and trading volume of the BAYC NFTs, which allowed the Executive Defendants to sell their BAYC NFTs to Plaintiffs and Class members at inappropriately and artificially inflated prices.

304. Executive Defendants received a financial benefit from the sale of their BAYC NFTs at inflated prices and are in possession of this monetary value that was intended to be used for the benefit of, and rightfully belongs to, Plaintiffs and members of the Class.

305. Plaintiffs and Class members seek restitution in the form of the monetary value of the difference between the purchase price of BAYC NFTs and the price those BAYC NFTs sold for.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that this Court:

A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying the Class defined above;

B. Appoint Plaintiffs as representatives of the Class and their counsel as Class counsel;

C. Award all actual, general, special, incidental, statutory, punitive, and consequential damages and restitution to which Plaintiffs and Class members are entitled;

D. Award post-judgment interest on such monetary relief;

E. Grant appropriate injunctive and/or declaratory relief;

F. Award reasonable attorneys' fees and costs; and

G. Grant such further relief that this Court deems appropriate.

IX. JURY DEMAND

Plaintiffs, individually and on behalf of the putative Class, demands a trial by jury on all issues so triable.

DATED: December 8, 2022

/s/ *John T. Jasnoch*

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