

1 QUINN EMANUEL URQUHART &
 2 SULLIVAN LLP
 3 Rachel Herrick Kassabian (SBN 191060)
 rachelkassabian@quinnemanuel.com
 4 Yury Kapgan (SBN 218366)
 yurykapgan@quinnemanuel.com
 5 Margret M. Caruso (SBN 243473)
 margretcaruso@quinnemanuel.com
 6 555 Twin Dolphin Dr., 5th Floor
 Redwood Shores, CA 94065
 7 Telephone: (650) 801-5000
 Facsimile: (650) 801-5100
 8 Brian Mack (SBN 275086)
 9 brianmack@quinnemanuel.com
 10 50 California Street, 22nd Floor
 San Francisco, CA 94111
 11 Telephone: (415) 875-6400
 Facsimile: (415) 875-6700

12 *Attorneys for Plaintiff WP Engine, Inc.*

1 ROSEMARIE T. RING, SBN 220769
 rring@gibsondunn.com
 2 JOSEPH R. ROSE, SBN 27902
 jrose@gibsondunn.com
 3 GIBSON, DUNN & CRUTCHER LLP
 One Embarcadero Center
 San Francisco, CA 94111-3715
 Telephone: 415.393.8200
 4 Facsimile: 415.801.7358
 5 JOSH A. KREVITT, SBN 208552
 jkrevitt@gibsondunn.com
 6 GIBSON, DUNN & CRUTCHER LLP
 310 University Ave
 Palo Alto, CA 94301-1744
 Telephone: 650.849.5300
 7 Facsimile: 650.849.5333

8 *[Additional Counsel listed on next page]*

9 *Counsel for Defendants Automattic Inc. and*
 10 *Matthew Charles Mullenweg*

11
**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 WP ENGINE, INC., a Delaware corporation,

13 Case No. 3:24-cv-06917-AMO

14 Plaintiff,

15 **JOINT CASE MANAGEMENT
 STATEMENT**

16 vs.

17 Judge: Honorable Araceli Martínez-Olguín

18 AUTOMATTIC INC., a Delaware corporation;
 19 and MATTHEW CHARLES MULLENWEG,
 20 an individual,

21 Date: February 27, 2025

22 Defendants.

23 Time: 10:00 AM

24 Location: San Francisco, Courtroom 10,
 25 19th Floor

26 Trial Date: None Set

27

28

1
2 ORIN SNYDER (*admitted pro hac vice*)
3 osnyder@gibsondunn.com
4 GIBSON, DUNN & CRUTCHER LLP
5 200 Park Avenue
6 New York, NY 10166-0193
7 Telephone: 212.351.2400
8 Facsimile: 212.351.6335

9
10 MICHAEL H. DORE, SBN 227442
11 mdore@gibsondunn.com
12 GIBSON, DUNN & CRUTCHER LLP
13 333 South Grand Avenue
14 Los Angeles, CA 90071-3197
15 Telephone: 213.229.7000
16 Facsimile: 213.229.6652

17
18 *Counsel for Defendants Automattic Inc. and*
19 *Matthew Charles Mullenweg*

20
21
22
23
24
25
26
27
28

1 Counsel for Plaintiff WP Engine, Inc. (“WPE”) and Defendants Automattic Inc.
 2 (“Automattic”) and Matthew Charles Mullenweg (“Mullenweg”) hereby jointly submit this
 3 Case Management Statement pursuant to Rule 26(f) of the Federal Rules of Civil Procedure,
 4 Civil Local Rule 16-9, the Court’s Standing Order for Civil Cases, and the Standing Order for All
 5 Judges of the Northern District of California.

6 WPE notes that, despite several requests from WPE, Defendants failed to provide their full
 7 portions of this Joint Case Management Statement until 11:19 a.m. on February 20, approximately
 8 40 minutes before the Court-ordered filing deadline. This has effectively denied WPE the
 9 opportunity to fully review or respond to Defendants’ portions, and thus, as of this filing, WPE has
 10 not been able to do so. However, WPE would be happy to answer any questions the Court may
 11 have at the February 27 Case Management Conference.

12 Defendants dispute the accuracy of Plaintiff’s assertions.

13 **I. JURISDICTION AND SERVICE [*The basis for the court’s subject matter*
 14 *jurisdiction over plaintiff’s claims and defendant’s counterclaims, whether any issues*
 15 *exist regarding personal jurisdiction or venue, whether any parties remain to be*
 16 *served, and, if any parties remain to be served, a proposed deadline for service.*]**

17 Subject matter jurisdiction is proper in this court because this litigation arises under federal
 18 law, namely 15 U.S.C. § 1051 et seq. (Lanham Act), 15 U.S.C. § 1 et seq. (Sherman Act) and 18
 19 U.S.C. § 1030 et seq. (Computer Fraud and Abuse Act). The Court has jurisdiction over this action
 20 under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 28 U.S.C. § 2201
 21 (Declaratory Judgment Act). This Court has supplemental jurisdiction over the remaining claims
 22 under 28 U.S.C. § 1337.

23 There are no issues regarding personal jurisdiction or venue.

24 All Defendants have been served. Dkt. 14, 15.

25 **II. FACTS [*A brief chronology of the facts and a statement of the principal factual issues*
 26 *in dispute*]**

27 **A. Plaintiff’s Statement**

28 This case concerns the multitude of wrongful acts committed by Defendants against Plaintiff
 WPE as part of their self-proclaimed nuclear war, launched after WPE refused Defendants’ extortionate

1 financial demands. Defendants publicly admitted their intention to destroy WPE “brick by brick”
2 and set out to accomplish their goal in various ways, forcing WPE to file this action seeking
3 emergency relief from this Court (which the Court granted) and compensation for the harm
4 Defendants have inflicted, and continue to inflict, upon WPE.

5 WordPress is an open source content management system developed in 2003 that allows
6 people to create and publish their own websites. The WordPress source code and trademarks were
7 initially owned and/or controlled by Defendant Matthew Mullenweg’s for-profit company,
8 Defendant Automattic. Defendants later represented that they transferred the WordPress code and
9 trademarks to the nonprofit WordPress Foundation, which Mullenweg created, and promised
10 perpetual free and open access for all.

11 In connection with announcing the transfer of the WordPress trademarks to the WordPress
12 Foundation in 2010, Defendants did not disclose that they had contemporaneously granted
13 irrevocable, exclusive, royalty-free rights in the trademarks back to Automattic. As a result, control
14 over the WordPress trademarks effectively never left Automattic’s hands. Defendants also
15 concealed that Mullenweg personally owned wordpress.org, the central directory and repository for
16 WordPress software and plugins vital to the functioning of WordPress websites. The founding
17 documents for the nonprofit WordPress Foundation, created in 2006, listed wordpress.org as its
18 website. However, Defendants now admit that wordpress.org has always been personally owned
19 by Mullenweg for his own benefit. Moreover, Mullenweg retains the ability to block anyone
20 Defendants deemed to be a competitive threat from accessing it.

21 Defendants’ promises and concealment of key facts enabled them to gain a monopoly over
22 several web-related markets and induced companies to build their businesses around WordPress.
23 One such company that relied on Defendants’ promises was WPE, founded in 2010. WPE has
24 devoted its entire business to WordPress over other similar open source platforms and web content
25 management systems, investing hundreds of millions of dollars and 14 years of hard work building
26 a successful business to serve and expand the WordPress community.

27 On September 19 and 20, 2024, Defendants threatened to ban WPE from the WordPress
28 community unless it agreed to pay tens of millions of dollars to Automattic for a purported

1 trademark license for marks WPE had openly used for many years. Although WPE did not need
2 this purported license, Defendants gave WPE less than 48 hours to either agree to pay them off or
3 face the consequences of being banned and publicly smeared. In that short time, Defendants
4 attempted to intimidate WPE into agreeing to make such payments. When WPE did not capitulate,
5 Defendants carried out their threats, including what they called a “nuclear” war against WPE.
6 Defendants defamed WPE in public presentations and articles, sent disparaging and inflammatory
7 messages through WPE customers’ software and the Internet, threatened WPE’s CEO and one of its
8 board members, encouraged WPE’s customers to take their business to Automattic’s competing
9 service providers, expropriated WPE’s Advanced Custom Fields plugin, blocked WPE and its
10 customers from accessing wordpress.org servers, and installed a checkbox on wordpress.org which
11 required anyone logging in—including customers, developers, and web hosts—to affirm “I am not
12 affiliated with WP Engine in any way, financially or otherwise.” By blocking access to
13 wordpress.org, Defendants prevented WPE from accessing a host of functionality typically available
14 to the WordPress community on wordpress.org, resulting in significant and irreparable harm.
15 Defendants have attempted to justify their conduct in various ways, none of which are even remotely
16 plausible. For instance, Defendants have claimed that the fact that WPE’s investor is a private equity
17 firm and that WPE is a for-profit company somehow justifies Defendants’ illegal conduct—despite
18 the fact that Defendant Automattic has private equity investors, and is a for-profit company, as well.

19 On October 2, 2024, WPE filed its Complaint in this matter, followed by a First Amended
20 Complaint on November 14, 2024. On October 18, 2024, WPE filed a motion for preliminary
21 injunction. The Court granted WPE’s motion on December 10, 2024, finding that WPE was likely
22 to succeed on its intentional interference with contract claim. As a result, the Court ordered
23 Defendants to, among other things: (i) restore WPE’s access to wordpress.org and its resources; (ii)
24 remove the list of WPE’s customers that Automattic had posted on wordpressenginetracker.com and
25 the associated GitHub repository, and (iii) return the Advance Custom Fields plugin to WPE. Dkt.
26 64 at 41-42.

27
28

1 **B. Defendants' Statement**

2 This lawsuit is a meritless attempt by WPE to distract from its own conduct, under the control
 3 of private equity, that poses an existential threat to the WordPress open-source project and to exact
 4 revenge against Matt Mullenweg for daring to hold WPE's private equity owner, Silver Lake, accountable for that conduct —*i.e.*, turning WPE into a “taker” by focusing on WPE's own revenue-generating services and freeriding on the contributions of “makers” who contribute to the maintenance and improvement of the “core” WordPress software for the benefit of the broader
 7 WordPress community, removing fundamental features from its WordPress services in an effort to
 8 reduce costs, and using trademarks in increasingly confusing ways. There is nothing new about this
 9 private equity game plan but having watched it destroy other open-source projects, Defendants
 10 attempted to address the “maker/taker” dichotomy and WPE's trademark infringement. WPE
 11 erroneously attempts to portray these efforts as a last-minute pressure campaign. But in reality,
 12 Defendants commenced business negotiations on these issues with WPE many months earlier. WPE
 13 only pretended to engage in these discussions and had no intention of closing a deal because of
 14 Silver Lake's plan to sell WPE later that year. At bottom, this lawsuit is an effort by WPE, under
 15 the control of private equity, to avoid addressing (and to construct a false narrative about) its own
 16 behavior that poses an existential threat to the WordPress open-source project to which Mullenweg
 17 has devoted his life.

19 Over twenty years ago, in an effort to “democratize publishing across the Internet,”
 20 Mullenweg and his co-founder Mike Little created WordPress software and made it accessible under
 21 an open-source license. Open-source projects, such as WordPress, rely on contributions from a
 22 community of users who maintain and improve the “core” open-source software. Mullenweg
 23 registered the domain name WordPress.org and has developed and managed the WordPress.org
 24 website for decades. Users download the WordPress software for free from WordPress.org and other
 25 third-party websites, and can choose to develop plugins and themes, as well as update those plugins
 26 and themes, on WordPress.org or through other channels. Use of WordPress.org is not necessary to
 27 access the WordPress software or to develop websites, plugins, and themes using WordPress
 28 software. A few years later, Mullenweg founded Automattic Inc., which owns companies offering

1 a variety of services, including for-profit hosting services for WordPress websites such as
 2 WordPress.com. Then, in September 2024, Matt Mullenweg launched the “Five for the Future”
 3 initiative (ma.tt/2014/09/five-for-the-future/), urging companies to dedicate 5% of their resources
 4 to the development of WordPress “core” software, embodying open source’s ethos of mutual
 5 benefit. Automattic contributed tens of thousands of hours annually, inspiring a community of
 6 Makers to follow. Mullenweg’s stewardship sought to grow impact and safeguard WordPress
 7 against exploitation—a risk WPE’s conduct now exemplifies.

8 Defendant WPE was founded in 2010 and is another for-profit hosting service for WordPress
 9 websites, which also develops plugins. Since 2018, WPE has held itself out as being owned and
 10 controlled by Silver Lake, a private equity firm.

11 Long before WordCamp 2024, WPE and Defendants had been discussing a deal to address
 12 concerns that, under the control of private equity, WPE (1) had become a “Taker” in the WordPress
 13 community, maximizing its own profits by free-riding on the contributions of “Makers” who invest
 14 in the WordPress open-source software, and (2) was using trademarks in increasingly confusing
 15 ways. Believing that WPE was stringing them along due to plans by its private equity owner to sell
 16 WPE, Mullenweg presented WPE with a choice: close a deal to address the Maker-Taker and
 17 trademark issues or Mullenweg would share his concerns with the WordPress community. WPE
 18 describes the deal as a demand to pay Automattic a trademark royalty, but WPE also had the option
 19 to commit WPE employees to work on the WordPress open-source software in lieu of any payment
 20 to Automattic—*i.e.*, to be a Maker. WPE rejected both options and Mullenweg gave his keynote,
 21 explaining: “I’ve been trying to talk to Heather [WPE CEO] and Lee [Silver Lake Managing
 22 Director]. I did not want to give this presentation. I was literally over there calling them, saying like,
 23 hey, are you all going to step up? Are you going to fix this? And yeah, that was scary for me. And,
 24 by the way, it’s scary going against the \$102 billion asset[] management.”

25 On September 20, 2024, WPE rejected these options and chose the latter and Mullenweg
 26 gave his keynote. Mullenweg discussed the “maker/taker” problem in open-source communities and
 27 expressed his view that WPE, under the control of Silver Lake, had become a taker. Mullenweg
 28 expressed these views in a blog post the following day. Rather than address the concerns underlying

1 Mullenweg's views, WPE sent (and widely publicized) a cease-and-desist letter threatening
2 Defendants with litigation. After WPE's litigation threats, Mullenweg blocked WPE from accessing
3 WordPress.org on September 25, 2024. Mullenweg discussed that decision in a blog post the same
4 day and during a YouTube livestream the following day.

5 On October 2, 2024, WPE filed this lawsuit, in which it falsely claimed (among other things)
6 that it had been surprised by Defendants' concerns about the "maker/taker" problem and demand
7 for a trademark license, to assert claims for attempted extortion, defamation, promissory estoppel,
8 hacking, intentional interference with contractual relations and prospective economic relations, and
9 declaratory judgement of non-infringement and non-dilution (after taking steps to address the
10 trademark infringement issues Defendants had raised).

11 Because WPE's access to WordPress.org had been blocked, WordPress.org assumed
12 responsibility for maintaining and updating plugins previously uploaded to that website by WPE.
13 The WordPress.org security team identified a vulnerability in the advanced custom fields plugin
14 ("ACF plugin") and alerted WPE on October 4, 2024. When WPE's proposed solution did not
15 adequately address the issue, consistent with the WordPress.org Guidelines, the security team
16 addressed the issue by creating a new version of the ACF plugin (*i.e.*, "forking" it), which it called
17 the secure custom fields plugin ("SCF plugin"). WPE retained control over the ACF plugin, making
18 it available directly from WPE's own website.

19 Nearly six weeks later, on November 14, 2024, WPE filed an amended complaint, in which
20 it (again) falsely claimed, among other things, that its dispute with Defendants involves
21 monopolization of markets that do not exist to add claims for antitrust violations. This lawsuit was
22 (and remains) an attempt by WPE and its private equity owner to silence and punish Mullenweg for
23 calling out what he viewed (and continues to view) as an existential threat to the WordPress
24 community and taking steps to protect that open-source project and community to which he has
25 devoted his life.

26

27

28

1 **III. LEGAL ISSUES [A brief statement, without extended legal argument, of the disputed**
 2 *points of law, including reference to specific statutes and decisions.]*

3 Plaintiff contends the legal issues that the Court may be asked to resolve in this action
 4 include:

- 5 (1) whether Defendants intentionally interfered with WPE's contractual relations;
- 6 (2) whether Defendants intentionally interfered with WPE's prospective economic relations;
- 7 (3) whether Defendants violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(7);
- 8 (4) whether Defendants attempted to extort WPE;
- 9 (5) whether Defendants engaged in unfair competition under California's Business and
 10 Professions Code § 17200, *et seq.*;
- 11 (6) whether, under the doctrine of promissory estoppel, Defendants are liable for injuries
 12 caused to WPE based on its reliance on Defendants' promises;
- 13 (7) whether WPE's use of the "WordPress," "WooCommerce," and other similar marks¹
 14 (collectively the "Challenged Terms"), infringe upon any of Automattic's purported trademark
 15 rights;
- 16 (8) whether WPE's use of the Challenged Terms dilutes Automattic's purported trademark
 17 rights;
- 18 (9) whether Defendants' statements in their September 21 and 25 articles on wordpress.org
 19 defamed WPE and thus constituted libel;
- 20 (10) whether Defendants' statements in their September 21 and 25 articles on wordpress.org
 21 defamed WPE's products and thus constituted trade libel;
- 22 (11) whether Defendants' statements at their September 20, 2024 keynote address and
 23 September 26, 2024 interview defamed WPE and thus constituted slander;
- 24 (12) whether Defendants are liable for monopolization under Section 2 of the Sherman Act,
 25 15 U.S.C. § 2;

26 ¹ WORDPRESS, U.S. Reg. No. 3201424; WORDPRESS, U.S. Reg. No. 4764217; WORDPRESS,
 27 U.S. Reg. No. 4865558; WOOCOMMERCE, U.S. Reg. No. 5561427; , U.S. Reg. No.
 28 5561428; WOO, U.S. Reg. No. 5561425; and , U.S. Reg. No. 5561426.

(13) whether Defendants are liable for attempted monopolization under Section 2 of the Sherman Act, 15 U.S.C. § 2;

(14) whether Defendants engaged in illegal tying under Section 1 of the Sherman Act, 15 U.S.C. § 1;

(15) whether Defendants engaged in illegal tying under the California Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*;

(16) whether Automattic cannot enforce any rights in the Challenged Terms on grounds of trademark misuse;

9 (17) whether Defendants engaged in unfair competition under the Lanham Act, 15 U.S.C.
10 § 1125(a)(1);

11 (18) whether Defendants engaged in false advertising under the Lanham Act, 15 U.S.C.
12 § 1125(a)(1)(B);

13 (19) whether Defendants violated the Computer Fraud and Abuse Act, 18 U.S.C.
14 § 1030(a)(5);

15 (20) whether Defendants were unjustly enriched by receiving and unjustly retaining benefits
16 from WPE;

17 (21) the nature and extent of harm suffered by WPE as a result of Defendants' actions;

18 (22) the extent to which WPE is entitled to compensatory damages, restitution,
19 disgorgement, imposition of a constructive trust, exemplary and punitive damages, costs, fees, pre-
20 judgment interest, post-judgment interest, and any other damages the Court may deem appropriate;
21 and

22 (23) the extent to which WPE is entitled to permanent injunctive relief.

23 Defendants contend that the primary legal issues in the case, at this juncture, include: (1)
24 whether WPE has alleged facts sufficient to state a claim for relief against any Defendant under
25 counts 2–6 and 9–16, as set forth in the Amended Complaint; (2) whether WPE has alleged facts
26 sufficient to state a claim for relief against Automattic under counts 17–20, as set forth in the
27 Amended Complaint; and (3) whether WPE’s causes of action for libel, trade libel, and slander
28 (Counts 9–11) arise from an act or acts in furtherance of one or more Defendants’ right of free

1 speech under the United States Constitution or the California Constitution in connection with a
 2 public issue, and are therefore subject to a motion to strike pursuant to California Code of Civil
 3 Procedure section 425.16.

4 WPE's claims target protected First Amendment activities under, among other things, the
 5 Noerr-Pennington doctrine, the California litigation privilege (Cal. Civ. Code § 47(b)), U.S.
 6 Supreme Court precedent including *Moody v. NetChoice*, 603 U.S. ____ (2024), and Ninth Circuit
 7 precedent showing that Mullenweg's alleged defamatory statements were protected opinion,
 8 including *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148 (9th Cir. 2021).

9 Once the case proceeds beyond the pleading stage, the legal issues to be addressed will be
 10 whether WPE infringed WordPress and Woo Commerce trademarks and whether any of WPE's
 11 surviving claims have any merit.

12 **IV. MOTIONS [*All prior and pending motions, their current status, and any anticipated*
 13 *motions*]**

14 **A. Prior Motions**

15 On October 18, 2024, Plaintiff filed its Motion for Preliminary Injunction, Dkt. 17, and an
 16 Administrative Motion to Shorten Time to Hear the Motion for Preliminary Injunction, Dkt. 22.
 17 The Administrative Motion to Shorten Time was granted on October 22, 2024, Dkt. 34, and the
 18 Motion for Preliminary Injunction was granted on December 10, 2024, Dkt. 64.

19 On October 30, 2024 Defendants filed a Motion to Dismiss, Dkt. 36, and an anti-SLAPP
 20 Motion to Strike, Dkt. 38. And, on November 1, 2024, Defendants filed a Motion to Shorten Time
 21 in connection with these motions. Dkt. 43. On November 15, 2024, all three motions were denied
 22 as moot in light of Plaintiff's Amended Complaint. Dkt. 52.

23 **B. Pending Motions**

24 On December 19, 2024, Defendants filed a combined Motion to Dismiss and Strike
 25 Plaintiff's Amended Complaint. Dkt. 68. This motion is fully briefed, and the related hearing is
 26 currently set for June 5, 2025, at 2:00 p.m.

27 On January 13, 2025, putative intervenor Michael Willman filed a Motion to Intervene and
 28 a Motion to Hold Defendants in Contempt. Dkts. 70, 71. These motions are fully briefed. On

1 February 1, 2025, Willman also filed a Motion for Order to Show Cause against former Defense
 2 Counsel. Dkt. 99. A response to this motion has been filed, Dkt. 105, and Willman's reply is due
 3 on February 25, 2025. The hearing for all of Willman's motions is currently set for June 5, 2025,
 4 at 2:00 p.m.

5 **C. Anticipated Motions**

6 Plaintiff anticipates filing a motion for summary judgment and/or summary adjudication
 7 after the close of fact and expert discovery. Plaintiff also anticipates filing Daubert motions and
 8 discovery motions as indicated in section XV.

9 Defendants intend to file a motion to stay discovery until after the resolution of Defendants'
 10 pending Motion to Dismiss and Strike. Defendants anticipate filing additional motions, including
 11 (without limitation) a motion for summary judgment and/or summary adjudication on Plaintiffs'
 12 causes of action that remain after the resolution of Defendants' Motion to Dismiss and Strike.

13 **V. AMENDMENT OF PLEADINGS [*The extent to which parties, claims, or defenses
 14 are expected to be added or dismissed and a proposed deadline for amending the
 pleadings.*]**

15 Plaintiff reserves the right to amend its Amended Complaint to the extent the Court
 16 determines any of its claims are insufficiently pleaded in response to Defendants' pending Motion
 17 to Dismiss and Strike. Dkt. 68. Plaintiff also anticipates it may amend its Amended Complaint
 18 based on further information and investigation, including newly discovered facts, events or legal
 19 developments. Plaintiff proposes a deadline of June 30, 2025, for amending pleadings, other than
 20 amendments made in response to orders on motions to dismiss with leave to amend.

21 Defendants reserve the right to object to Plaintiff amending its complaint in response to the
 22 Court's ruling on Defendants' Motion to Dismiss and Strike. Defendants intend to file a timely
 23 Answer once Plaintiff's pleadings are settled. Defendants reserve the right to file counterclaims on
 24 or before the deadline for Defendants' Answer, and to amend their pleading(s) as necessary based
 25 on further information and investigation, including newly discovered facts, events or legal
 26 developments. Defendants believe it is premature to set a deadline for amended pleadings until the
 27 Court has ruled on Defendants' Motion to Dismiss and Strike.

28

1 **VI. EVIDENCE PRESERVATION [A brief report certifying that the parties have**
 2 *reviewed the Guidelines Relating to the Discovery of Electronically Stored*
 3 *Information (“ESI Guidelines”), and confirming that the parties have met and*
 4 *conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate*
 5 *steps taken to preserve evidence relevant to the issues reasonably evident in this*
 6 *action.]*

7 Plaintiff certifies that it has reviewed the Guidelines Relating to the Discovery of
 8 Electronically Stored Information (“ESI Guidelines”) and the Court’s Checklist for ESI Meet and
 9 Confer. The parties have met and conferred pursuant to Fed. R. Civ. P. 26(f). Plaintiff confirms
 10 that it has taken reasonable and proportionate steps to preserve relevant evidence, such as
 11 implementing a litigation hold with respect to documents and information reasonably likely to be
 12 subject to discovery in this litigation.

13 Defendants certify that they have reviewed the Guidelines Relating to the Discovery of
 14 Electronically Stored Information (“ESI Guidelines”) and the Court’s Checklist for ESI Meet and
 15 Confer. The parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding the
 16 allegations in Plaintiff’s original Complaint, which is no longer operative. Defendants confirm that
 17 they have taken reasonable and proportionate steps to preserve relevant evidence, including
 18 implementing a litigation hold with respect to documents and information reasonably likely to be
 19 subject to discovery in this litigation.

20 **VII. DISCLOSURES [Whether there has been full and timely compliance with the initial**
 21 *disclosure requirements of Fed. R. Civ. P. 26, and a description of the disclosures*
 22 *made.]*

23 Per Rule 26(a)(1)(C), Plaintiff and Defendants exchanged Initial Disclosures on November
 24 14, 2024, including the information required under Rule 26(a)(1).

25 **VIII. DISCOVERY [Discovery taken to date, if any, the scope of anticipated discovery, any**
 26 *proposed limitations or modifications of the discovery rules, a brief report on*
 27 *whether the parties have considered entering into a stipulated e-discovery order, a*
 28 *proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified*
discovery disputes.]

29 **A. Discovery Taken to Date**

30 The Parties conducted their Rule 26(f) conference on October 31, 2024, and to date, the
 31 following discovery has been taken:

1 **1. Plaintiff's Discovery:**

2 a) On November 1, 2024, Plaintiff served its First Set of Interrogatories on
3 Defendants. Pursuant to an extension agreed to among the parties, Defendants
4 separately served responses and objections on December 2, 2024.

5 b) On November 6, 2024, Plaintiff served its First Set of Requests for Production
6 of Documents (“RFPs”) on Defendants. Defendants have yet to produce any
7 documents in response to Plaintiff’s RFPs. The Parties’ dispute regarding these
8 RFPs is noted below.

9 **2. Defendants’ Discovery:**

10 a) On October 31, 2024, Defendant Automattic served its First Set of
11 Interrogatories to Plaintiff. Pursuant to an extension agreed to among the
12 parties, Plaintiff served its responses and objections on December 2, 2024.

13 b) On October 31, 2024, Defendant Automattic served its First Set of RFPs to
14 Plaintiff. Pursuant to an extension agreed to among the parties, Plaintiff served
15 responses and objections on December 2, 2024. As of the date of this Case
16 Management Statement, Plaintiff has produced more than 17,500 pages of
17 documents in response to Defendants’ RFPs .

18 c) On November 6, 2024, Defendant Automattic served a subpoena on non-party
19 Silver Lake Technology Management, LLC (“Silver Lake”) seeking documents
20 and noticing Silver Lake’s 30(b)(6) deposition for December 16. On November
21 19, 2024, Silver Lake served responses and objections to the subpoena’s
22 document requests, and on December 4, 2024, Silver Lake served responses
23 and objections to the 30(b)(6) deposition topics. On December 5, 2024,
24 Automattic took the 30(b)(6) deposition date off calendar but did not withdraw
25 the subpoena.

26 **B. The Scope of Anticipated Discovery**

27 **1. Plaintiff’s Statement**

1 Plaintiff anticipates it will take further written discovery, including by serving requests for
 2 admissions and additional interrogatories and RFPs. Plaintiff also intends to take depositions of
 3 Defendants and their officers and employees.

4 Plaintiff intends to subpoena documents and potentially testimony from third parties,
 5 including (a) Defendant Mullenweg's investment company Audrey Capital, LLC; (b) certain of
 6 Defendants' former employees; and (c) various web hosts that have been the target of Defendants'
 7 financial and purported licensing demands.

8 The scope of Plaintiff's anticipated discovery includes the following subjects, many of
 9 which are also addressed by Plaintiff's previously served interrogatories and RFPs:

- 10 1. Defendants' "nuclear" campaign against WPE;
- 11 2. Defendants' efforts to block / change WPE's and its customers' access to wordpress.org,
 including suspending accounts, adding a checkbox, and any other efforts;
- 12 3. Defendants' interference with WPE customer relationships and employee relationships;
- 13 4. Defendants' takeover of the ACF plugin, plans to take over any other plugin, and
 statements regarding same;
- 14 5. Defendants' access to WPE's customers' computers without authorization in connection
 with Defendants' expropriation of the ACF plugin;
- 15 6. Customer confusion regarding the SCF plugin, including confusion regarding approval
 of SCF by WPE and applicability of ACF's reviews, ratings, and download counts to
 SCF;
- 16 7. The ownership, management, organizational structure, and relevant financial
 information of Automattic, wordpress.org, and the WordPress Foundation;
- 17 8. The ownership of the Challenged Terms and any transfer of ownership or rights to the
 Challenged Terms;
- 18 9. Any licensing of or enforcement efforts (or lack thereof) concerning the Challenged
 Terms referenced in Automattic and WooCommerce, Inc.'s September 23, 2024 letter,
 including communications with potential licensees;

10. Defendants' past and current policies, practices, demands, and efforts regarding
2 licensing of any of the Challenged Terms;
- 3 11. Defendants' extortive threats and demands to WPE and others;
- 4 12. Any evidence of alleged confusion in the marketplace related to WPE's alleged use of
5 the Challenged Terms;
- 6 13. Statements made by Defendants regarding WPE, including the defamatory statements
7 referenced in the Amended Complaint, and Defendants' claimed basis for same;
- 8 14. Defendants' knowledge regarding the subjects of their defamatory statements
9 concerning WPE, including Defendants' knowledge regarding the falsity of these
10 statements;
- 11 15. The scope of Mullenweg's employment at Automattic and elsewhere;
- 12 16. Defendants' knowledge of WPE's and others' use of the Challenged Terms on their
13 websites and marketing materials over the past many years;
- 14 17. Documents related to Automattic's investment in WPE and 2018 buyout;
- 15 18. Documents related to wordpress.org's and Defendants' statements that WordPress and
16 the wordpress.org portal would remain free, open, and accessible for all, including
17 statements promising open access to the WordPress GPL code base and the resources
18 available on wordpress.org, including the plugin and theme directories, forums, message
19 boards, and other resources;
- 20 19. Documents related to Defendants' statements and omissions regarding the ownership
21 and/or control of wordpress.org;
- 22 20. Documents related to the public's understanding regarding the ownership and/or control
23 of wordpress.org;
- 24 21. Documents regarding new trademark applications for Hosted WordPress, Managed
25 WordPress, and Hosted WooCommerce;
- 26 22. Defendants' dominance and monopoly power in the web content management systems
27 market, WordPress web hosting services market, WordPress custom field plugin market,

1 and WordPress plugin distribution market, as well as Defendants' use of their monopoly
 2 power;

3 23. Defendants' attempts to acquire monopoly power in the web content management
 4 systems market, WordPress web hosting services market, WordPress custom field plugin
 5 market, and WordPress plugin distribution market;

6 24. Defendants' illegal tying conduct and the effects of the same;

7 25. The extent to which Defendants have been unjustly enriched by WPE's contributions to
 8 WordPress and co-opting WPE's ACF software.

9 26. Defendants' financial information, including revenue and profits; and

10 27. Defendants' defenses and affirmative defenses, if any.

11 Defendants now indicate they intend to move for a stay of all discovery pending a ruling
 12 on Defendants' motion to dismiss. Any request for a stay should be rejected. First, Defendants
 13 cannot meet the high standard required for a stay because their pending motion does not address
 14 all claims and will not resolve the entire case. Dkt. 75 at 1 ("The motion does not challenge four
 15 [of WPE's] claims"). Second, Defendants have already served extensive discovery requests on
 16 WPE, in response to which WPE produced more than 17,500 pages of documents, yet Defendants
 17 have refused to produce any documents to date or even to provide written responses to WPE's
 18 document requests. Thus, Defendants are effectively requesting an unwarranted and
 19 unprecedeted one-way discovery stay. Third, Defendants should not be permitted to disregard
 20 the Federal Rules by failing to respond to discovery for months, and then retroactively attempt to
 21 legitimize their behavior by seeking a stay they effectively granted themselves without leave of
 22 Court.

23 **2. Defendants' Statement:**

24 Defendants intend to request a stay of discovery until after the resolution of their pending
 25 Motion to Dismiss and Strike Plaintiff's Amended Complaint, on the grounds that the proper scope
 26 of discovery will be dictated in large part by the resolution of that Motion. A stay is necessary and
 27 appropriate in light of recent developments in the case, all of which postdated the parties' previous
 28 Rule 26(f) conference and exchange of initial discovery requests, including (1) Plaintiff's filing of

1 an Amended Complaint adding nine new causes of action, including antitrust claims, which
 2 fundamentally alter the nature and scope of legal and factual issues in the case; (2) Defendants'
 3 filing of a Motion to Dismiss and Strike, which remains pending; and (3) the substitution of defense
 4 counsel in late January 2025. Defendants contend that it is inefficient for the parties to engage in
 5 discovery at this juncture, in light of the foregoing considerations.

6 Defendants anticipate that once discovery resumes, they will take further written discovery,
 7 including by serving requests for admissions and additional interrogatories and RFPs, deposition
 8 notices, and third-party discovery on the following and other subjects, without limitation:

- 9 1. Plaintiff's and its investors' strategic plans and efforts to monetize and freeride on the
 10 WordPress open-source community to maximize its investors' return on investment;
- 11 2. Plaintiff's misuse of Defendants' trademarks and efforts to sow and/or capitalize on
 12 customer confusion arising from such misuse;
- 13 3. Plaintiff's modification of WordPress and/or disabling of WordPress features in
 14 connection with its products and services;
- 15 4. Customer complaints regarding Plaintiff's products and services;
- 16 5. Security issues related to Plaintiff's plugins and/or modification of WordPress features;
- 17 6. Plaintiff's failure to make adequate contributions and commitments to the WordPress
 18 community;
- 19 7. Plaintiff's organizational structure, management, ownership, and operational systems;
- 20 8. Plaintiff's and its investors' business plans and strategic initiatives, including strategic
 21 efforts to profit from Plaintiff's participation the WordPress open-source community;
- 22 9. Plaintiff's communications regarding Defendants, WordPress.org, WordPress.com,
 23 and/or the WordPress Foundation; and
- 24 10. Plaintiff's financial information, including financial projections, revenues, and profits.

25 Defendants propose that all discovery be stayed, as is common in cases involving antitrust
 26 claims. *See, e.g., Arcell v. Google*, 2022 WL 16557600, at *1 (N.D. Cal. Oct. 31, 2022) (staying
 27 discovery and holding that "discovery in antitrust cases tends to be broad, time-consuming and
 28 expensive") (quotations omitted). The vast majority of WPE's claims are subject to a pending

1 motion to dismiss and strike. Many of the existing RFPs (addressed further below) relate to several
 2 claims that are in glaring conflict with the First Amendment. *See Herring Networks, Inc. v. Maddow*,
 3 8 F.4th 1148, 1160 (9th Cir. 2021). And they predate WPE’s addition of (equally deficient) antitrust
 4 claims, which if they remain in the case could result in significant additional discovery requests
 5 beyond what WPE already has served. Defendants do not propose a “one-way” stay of discovery,
 6 and since the Amended Complaint and retention of new counsel, will wait to serve any additional
 7 requests or demand further compliance with any previous requests until the stay is denied or, if the
 8 stay is granted, until it is lifted. Defendants will present their further arguments to the Court
 9 regarding a proposed stay of discovery through an appropriate motion or joint letter brief.

10 **C. Proposed Limitations or Modification of the Discovery Rules**

11 During the Rule 26(f) conference, the parties agreed that they would negotiate a schedule
 12 for the simultaneous exchange of privilege logs. Plaintiff proposes, as permitted under Rule I.(5)
 13 of the Court’s standing order, that (1) the Parties commit to first exchanging privilege logs on
 14 March 3, 2025, or two weeks after Defendants’ first production of documents, whichever is later,
 15 and (2) commit to making a second exchange of privilege logs on October 2, 2025, one week after
 16 Plaintiff’s proposed date for the substantial completion of production of documents. Plaintiff also
 17 proposes that the Parties’ obligation to produce privilege logs be limited to documents and
 18 communications created before October 2, 2024, the date the original complaint in this action was
 19 filed.

20 Defendants contend that it is premature to determine a schedule for exchanging privilege
 21 logs in light of the fact that (1) Defendants intend to seek a stay of discovery until after the
 22 resolution of their Motion to Dismiss and Strike, which will determine the scope of legal and
 23 factual issues for discovery; and (2) the parties have not agreed upon other related dates, including
 24 a discovery cutoff date. Defendants have told Plaintiff that they are willing to meet and confer
 25 regarding a mutually agreeable schedule for the exchange of privilege logs.

26 Other than as set forth above, the Parties do not currently propose any modifications to the
 27 discovery limits set under the Federal Rules of Civil Procedure. All Parties reserve the right to ask
 28 for additional discovery (including additional depositions, additional time for certain depositions,

1 and additional interrogatories), as discovery unfolds.

2 **D. Whether the Parties Have Considered Entering into a Stipulated E-Discovery**
3 **Order**

4 The parties have not entered into an e-discovery stipulation.

5 **E. Discovery Schedule**

6 The parties propose the schedule for discovery set forth in Section XV below.

7 **F. Identified Discovery Disputes:**

8 **1. Plaintiff's Statement:**

9 **(a) Plaintiff's First Set of RFPs to Defendants**

10 WPE served RFPs on November 6, 2024. Defendants failed to serve responses to WPE's
11 RFPs, instead claiming that responding to the 119 requests was unduly burdensome, and indicating
12 their intention to seek a protective order. The parties met and conferred, discussing WPE's claim
13 of entitlement to written responses and production of responsive documents, and Defendants' claim
14 of entitlement to a protective order. No agreement was reached. On December 6, 2024 at 8:37 pm
15 PT, Defendants emailed WPE their portion of a draft joint statement regarding this discovery
16 dispute, requesting WPE's portion by December 12. Following the parties' exchange of several
17 rounds of revisions, on January 31, 2025. WPE authorized Defendants to file the joint statement.
18 To date, Defendants have not filed the joint statement, nor served written responses or produced
19 documents. Thereafter, on February 4, 2025, WPE sent Defendants its portion of a Joint Statement
20 on WPE's motion to compel these same responses and documents.

21 As discussed in Plaintiff's portion of the Joint Statement, Defendants' motion for a
22 protective order, should they proceed with filing it, should be denied. Defendant has no colorable
23 basis for refusing to even respond to Plaintiff's RFPs. In this case, WPE asserts 20 causes of action
24 arising from Defendants' self-proclaimed nuclear war against WPE. The Court has issued a
25 preliminary injunction order enjoining Defendants from their ongoing wrongful conduct, both
26 parties have served document requests, and WPE already has produced thousands of pages of
27 documents in response to Defendants' requests. Despite this, Defendants now seek a protective
28 order asking to be excused from their discovery obligations. However, WPE's requests are

appropriate, and Defendants should be ordered to serve responses immediately. Moreover, any objections Defendants have should be deemed waived because they failed to serve objections or move for a protective order by their deadline to respond to the RFPs.

4 WPE is also cross-moving to compel Defendants to respond to Plaintiff's First set of RFPs.
5 As explained in the parties' Joint Statement regarding same, despite being served with RFPs more
6 than 100 days ago, Defendants have not responded to WPE's requests, nor produced any documents.
7 Defendants have no colorable excuse for their failure to respond to WPE's discovery requests. By
8 failing to respond to WPE's RFPs by their December 6, 2024 deadline, Defendants have waived any
9 objections. Defendants should be ordered to respond to WPE's requests and WPE should be
10 awarded its related attorney's fees in being forced to bring a motion on this issue.

(b) Defendants' Responses to Plaintiff's First Set of Interrogatories

12 On January 17, 2025, Plaintiff sent Defendants a letter indicating that Defendants' responses
13 to Plaintiff's Interrogatory Nos. 1-6 and 9 are deficient and that Defendants' responses as a whole are
14 deficient because they are unverified. To date, Defendants have not responded to WPE's letter.

15 Defendants' responses to Plaintiff's Interrogatories as a whole are deficient because
16 Defendants have failed to provide the required verifications. Further, Defendants' responses to
17 Interrogatory Nos. 1-6 and 9 are deficient in various respects. For instance, Defendants have offered
18 only partial responses by responding "by way of example only" (Interrogatory No. 2); limited the
19 scope of their responses to only certain facets of Plaintiff's interrogatories (Interrogatory Nos. 3, 5, 9);
20 and appear to be withholding discoverable, nonprivileged information under the guise of privilege
21 objections (Interrogatory Nos. 1, 6). Further, although Defendants have agreed to "meet and confer
22 with WP Engine regarding a narrowed scope" for Interrogatory No. 4, Defendants have yet to
23 respond to Plaintiff's request for a date on which they are available to meet and confer.

(c) Defendants' Failure to Preserve Documents

25 The Parties have a pending dispute as to whether Defendants are properly preserving
26 documents and electronically stored information. Defendants have made public statements about
27 deleting materials relevant to the lawsuit. Plaintiff and Defendants have exchanged several letters
28 and emails regarding this issue, and the Parties' meet-and-confer process is ongoing. Because

1 Defendants have failed to produce even a single page of documents, the full extent of Defendants'
 2 potential failure to preserve is not yet known.

3 **2. Defendants' Statement:**

4 Plaintiff's characterization of the status of discovery and related "disputes" between the
 5 parties is inaccurate, both with respect to whether disputes exist, and where they do exist that they
 6 are ripe for the Court's intervention. While it appears the meet and confer process between the
 7 parties stalled, Plaintiff and Defendants' new counsel have just begun the meet and confer process,
 8 which, so far, has been successful in resolving "disputes" where they actually exist. Plaintiff's
 9 attempt to litigate these discovery issues through a Case Management Statement, and before meet
 10 and confer efforts have progressed in earnest, let alone been exhausted, is improper under Section I
 11 of the Court's Standing Order.

12 Defendants' new counsel appeared in this case on January 24, 2025. *E.g.*, Dkt. 79. In the
 13 less than one month since then, WPE has delivered three draft letter briefs and four letters about
 14 matters it had let sit for weeks, and in some instances well over a month, before new counsel
 15 appeared. Whether or not WPE's newfound urgency was genuine, Defendants' new counsel has
 16 investigated all of the issues raised promptly and sought to avoid burdening the Court. For example,
 17 Defendants' new counsel agreed to a compromise that mooted a WPE letter brief as to the entry of
 18 a protective order. Dkt. 103.

19 With respect to Plaintiffs' RFPs, new counsel and Plaintiffs discussed them for less than five
 20 minutes in early February 5 during a meet and confer on other issues. Still, Defendants told WPE
 21 they were investigating the issues and have done so. WPE nevertheless followed up days later with
 22 yet another letter brief (a motion to compel) and said it would file the motion unilaterally unless
 23 Defendants provided their portion within days. Defendants provided their response on February 14,
 24 and Plaintiffs have (consistent with prior practice) not done anything to get the statement on file
 25 with the Court since then.

26 In short, Plaintiffs' representations regarding prior counsel's efforts to resolve the RFPs
 27 dispute are not accurate. Defendants objected in writing within hours of receiving the 238 RFPs
 28 (119 identical RFPs to each Defendant) on February 7, one week before WPE amended its complaint

1 to add antitrust and other claims. *See* Dkt. 51. That same day, November 14, 2024, Defendants
 2 informed WPE that they wanted to quickly bring the dispute to the Court via joint telephone
 3 conference. WPE refused. Defendants then provided their portion of a joint letter brief for a motion
 4 for a protective order to WPE on December 6, less than 30 days after they received the RFPs. Since
 5 then, the parties have exchanged multiple drafts. Always intent to have the last word, Plaintiff's
 6 revisions have delayed the resolution of this matter for more than eight weeks.

7 Defendants maintain their long-stated objections to the 238 total RFPs, but to try to avoid
 8 burdening the Court, Defendants informed WPE they will produce responses and objections to
 9 WPE's RFPs by next week. Defendants will be producing responsive, non-privileged documents
 10 as soon as reasonably practicable. Defendants asked if WPE would agree that Defendants'
 11 objections would be timely and withdraw its threatened motion to compel. WPE refused. As WPE
 12 refused to stipulate, Defendants' portion of the joint letter brief that WPE has not filed asked the
 13 Court to extend the deadline for Defendants to provide responses/objections until February 26, 2025.

14 Defendants will continue to investigate the matters raised by WPE and diligently seek to
 15 resolve them without the need for Court intervention. New counsel does not want to provide rushed
 16 representations and responses that are not accurate. To the extent the parties are unable to resolve
 17 any discovery issues (including those raised by Defendants), Defendants propose that those issues
 18 be raised to the Court through an appropriate joint letter brief pursuant to the Court's Standing Order
 19 once meet and confer efforts have been exhausted.

20 **IX. CLASS ACTIONS [If a class action, a proposal for how and when the class will be
 21 certified, and whether all attorneys of record for the parties have reviewed the
 22 Procedural Guidance for Class Action Settlements.]**

23 Not applicable.

24 **X. RELATED CASES [Any related cases or proceedings pending before another judge
 25 of this court, or before another court or administrative body.]**

26 None.

27 **XI. RELIEF [All relief sought through complaint or counterclaim, including the amount
 28 of any damages sought and a description of the bases on which damages are**

calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.]

3 WPE seeks remedies to address the harm caused by Defendants' alleged misconduct. This
4 includes monetary damages, encompassing compensatory damages for actual losses incurred, such
5 as lost profits and business opportunities, damage to reputation and goodwill, and expenses incurred
6 in mitigating the harm. The specific amount of monetary damages will be determined through
7 discovery and expert testimony and presented at the appropriate time. WPE also seeks restitution,
8 disgorgement, imposition of a constructive trust, exemplary and punitive damages, costs, fees, pre-
9 judgment interest, post-judgment interest, and any other damages the Court may deem appropriate.
10 WPE also seeks an injunction to make permanent the preliminary injunctive relief the Court already
11 ordered in its December 10, 2024 order granting WPE's Motion for Preliminary Injunction. Dkt.
12 64. WPE also seeks a judgment declaring that it does not infringe or dilute any enforceable, valid
13 trademarks owned by Automattic, that Automattic may not enforce any purported trademark rights
14 on grounds of trademark misuse, and such further relief as set forth in the Amended Complaint.
15 Dkt. 51.

16 Defendants contend that Plaintiff is not entitled to any of the relief identified in the foregoing
17 paragraph or requested in the Amended Complaint.

18 **XII. SETTLEMENT AND ADR** [*Prospects for settlement, ADR efforts to date, and a*
19 *specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a*
 description of key discovery or motions necessary to position the parties to negotiate a
 resolution.]

As required by ADR Local Rule 3.5(a), the Parties met and conferred on December 18, 2024, to select an ADR process and filed their ADR Certifications on the same day. Dkts. 65-67. The parties are amenable to either private mediation or a settlement conference with a magistrate judge, to occur within 90 days of the Court's Case Management Order, pursuant to ADR Local Rule 3-7.

XIII. OTHER REFERENCES [Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.]

26 This case is not suitable for reference to binding arbitration, a special master, or the Judicial
27 Panel on Multidistrict Litigation.

1 **XIV. NARROWING OF ISSUES** [*Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses. The parties shall jointly identify (in bold or highlight) one to three issues which are the most consequential to the case and discuss how resolution of these issues may be expedited.]*

5 Defendants contend that their pending Motion to Dismiss and Strike is likely to narrow the
 6 issues in the case. Plaintiff contends that, for the reasons set forth in Plaintiff's Opposition to
 7 Defendants' Motion to Dismiss and Strike, Defendants' Motion should be denied in full and thus
 8 will not narrow any of the issues in the case. Separate and apart from that Motion, the parties are
 9 not aware of any issues that can be narrowed at this time and do not currently have any suggestions
 10 to expedite the evidence at trial. The parties do not wish to bifurcate issues, claims, or defenses in
 11 this action.

12 **XV. SCEDULING** [*Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.]*

13 Plaintiff proposes the following schedule:

Event	Plaintiff's Proposed Date
First Exchange of Privilege Logs	Monday, March 3, 2025, or two weeks after Defendants' first production of confidential documents, whichever is later.
Deadline to Complete Court Ordered ADR Process	May 30, 2025 (or 90 days after issuance of the Court's Case Management Order)
Substantial Completion of the Production of Documents	Thursday, September 10, 2025
Second Exchange of Privilege Logs	Thursday, October 2, 2025
Non-expert discovery cutoff	Thursday, November 20, 2025
Expert reports for the party bearing the substantive burden of proof on an issue	Thursday, January 15, 2026

1	Expert reports for the party not bearing the substantive burden of proof on an issue	Thursday, February 26, 2026
2	Expert discovery cutoff	Thursday, March 19, 2026
3	Deadline for Defendants to file their dispositive motion	Thursday, April 9, 2026
4	Deadline for Plaintiff's combined cross-dispositive-motion and opposition to Defendants' dispositive motion	Thursday, May 14, 2026
5	Deadline for Plaintiff's Daubert motion(s)	Thursday, May 14, 2026
6	Deadline for Defendants' combined opposition to cross-dispositive-motion and reply in support of Defendants' dispositive motion	Thursday, June 11, 2026
7	Deadline for Defendants' Daubert motion(s) and opposition(s) to Plaintiff's Daubert motion(s)	Thursday, June 11, 2026
8	Deadline for Plaintiff's reply in support of cross-dispositive-motion	Thursday, July 2, 2026
9	Deadline for Plaintiff's reply in support of Plaintiff's Daubert motion(s) and opposition(s) to Defendants' Daubert Motion(s)	Thursday, July 2, 2026
10	Deadline for Defendants' reply in support of their Daubert motion(s)	Thursday, July 16, 2026
11	Deadline to hear dispositive motions	Thursday, August 27, 2026 at 2:00 p.m.
12	Pretrial conference	Thursday, October 1, 2026 at 11:00 a.m.
13	Trial	Tuesday, November 3, 2026 at 8:30 a.m.

25 Defendants' propose the following schedule, which could be shortened in the event the Court
 grants Defendants' Motion to Dismiss:

Event	Proposed Date
Non-expert discovery cutoff	Thursday, March 19, 2026

1	Designation of experts and opening expert reports	Thursday, April 16, 2026
2	Designation of rebuttal experts and rebuttal expert reports	Thursday, May 14, 2026
3	Expert discovery cutoff	Thursday, June 18, 2026
4	Deadline to file dispositive motions	Thursday, July 16, 2026
5	Deadline to file oppositions to dispositive motions and related Daubert motions	Thursday, September 3, 2026
6	Deadline to file replies in support of dispositive motions and related Daubert oppositions	Thursday, October 15, 2026
7	Deadline to file replies to Daubert motions	Thursday, November 12, 2026
8	Hearing on dispositive motions	Thursday, January 14, 2027
9	Pretrial conference	To be set by Court
10	Trial	

13
14 **XVI. TRIAL** [*Whether the case will be tried to a jury or to the court and the expected length of the trial.*]
15 Plaintiff has demanded a jury trial on all claims so triable. Plaintiff estimates the trial will
16 require approximately 10-15 days. Defendants estimate that the trial will require approximately 5-
17 10 days, depending on the scope of the issues remaining after motion practice.

18 **XVII. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**
19 [*Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. In any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim.*]
20
21
22
23
24

25 All Parties have filed Certifications of Interested Entities or Persons pursuant to Civil Local
26 Rule 3-15. Pursuant to section 17 of the Standing Order for All Judges of the Northern District of
27 California:
28

1. WPE hereby restates “the contents of its certification” by restating the following listed
 2 persons, associations of persons, firms, partnerships, corporations (including parent
 3 corporations) or other entities (i) have a financial interest in the subject matter in
 4 controversy or in a party to the proceeding, or (ii) have a non-financial interest in that
 5 subject matter or in a party that could be substantially affected by the outcome of this
 6 proceeding:
 - 7 (a) WPEngine, Inc.
 - 8 (b) SLP Cannonball Holdings, L.P.
 - 9 (c) North Bridge Growth Equity II, L.P.
 - 10 (d) Shareholders who own less than 10% of WPEngine, Inc.
- 11 2. Defendants hereby restate “the contents of [their] certification[s]” as follows: Automattic
 12 Inc. has no parent corporation. Salesforce is a publicly held corporation which owns
 13 10% or more of Automattic’s stock. The following listed persons, associations of
 14 persons, firms, partnerships, corporations (including parent corporations) or other
 15 entities (i) have a financial interest in the subject matter in controversy or in a party to
 16 the proceeding, or (ii) have a non-financial interest in that subject matter or in a party
 17 that could be substantially affected by the outcome of this proceeding:
 - 18 (a) Automattic Inc.
 - 19 (b) Matthew Charles Mullenweg
 - 20 (c) WordPress Foundation (owner of trademarks implicated by proceeding)
 - 21 (d) Tiger Global (shareholder of Automattic Inc.)
 - 22 (e) Shareholders who own less than 10% of Automattic Inc.

23 **XVIII. PROFESSIONAL CONDUCT [Whether all attorneys of record for the parties have
 24 reviewed the Guidelines for Professional Conduct for the Northern District of
 25 California.]**

26 Attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct
 27 for the Northern District of California.

28

1 **XIX. OTHER [Such other matters as may facilitate the just, speedy and inexpensive**
2 **disposition of this matter.]**

3 The Parties are unaware of other matters that may facilitate the just, speedy and inexpensive
4 disposition of this matter.

5 Dated: February 20, 2025

6 Respectfully submitted,
7 QUINN EMANUEL URQUHART & SULLIVAN LLP

8 By /s/ Rachel Herrick Kassabian
9 Rachel Herrick Kassabian
10 *Attorneys for Plaintiff, WP Engine, Inc.*

11 GIBSON, DUNN & CRUTCHER LLP

12 By /s/ Rosemarie T. Ring
13 Rosemarie T. Ring
14 *Attorneys for Defendants Automattic Inc. and*
15 *Matthew Charles Mullenweg*

1 **E-FILING ATTESTATION**

2 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I hereby attest that counsel for
3 Defendants has concurred in this filing.

4 Dated: February 20, 2025

Respectfully submitted,

5 QUINN EMANUEL URQUHART & SULLIVAN LLP

6 By /s/ Rachel Herrick Kassabian

7 Rachel Herrick Kassabian

8 *Attorneys for Plaintiff, WP Engine, Inc.*

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28