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12 *Attorneys for Plaintiff WP Engine, Inc.*

13
 14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 WPENGINE, INC., a Delaware corporation,

17 Plaintiff,

18 vs.

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

21 Defendants.

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

**PLAINTIFF WP ENGINE, INC.’S
 OBJECTION TO DEFENDANTS’ REPLY
 EVIDENCE**

Judge: Honorable Araceli Martínez-Olguín

Courtroom: 10

Hearing Date: June 5, 2025

Hearing Time: 2:00 p.m.

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1 Pursuant to Northern District of California Civil Local Rule 7-3(d)(1), Plaintiff WP Engine
 2 (“WPE”) objects to new evidence Defendants Automattic Inc. and Matthew Charles Mullenweg
 3 (“Defendants”) filed in support of their Reply in Support of Motion to Dismiss and Strike Plaintiff’s
 4 Amended Complaint (Dkt. 106, “Reply”). Specifically, WPE objects to the six exhibits (the
 5 “Exhibits”) attached to Defendants’ Supplemental Request for Judicial Notice (Dkt. 107) and cited in
 6 Defendants’ Reply (Dkt. 106 at 1, 6, 10-16), on the grounds below.

7 **ARGUMENT**

8 **I. EXHIBITS 5 AND 6 ARE MISDESCRIBED AND EXHIBIT 5 IS FACIALLY**
 9 **INCOMPLETE**

10 Defendants claim Exhibit 5 is a copy of a September 21, 2024 article available at
 11 <https://wordpress.org/news/2024/09/wp-engine/> and Exhibit 6 is a copy of a September 25, 2024
 12 article available at <https://wordpress.org/news/2024/09/wp-engine-banned/>. Dkt. 107 at 1. Yet, the
 13 content of Exhibits 5 and 6 differ from what appears if one clicks on these URLs. Based on the
 14 markings on Exhibits 5 and 6, it appears that they may be printouts from the Wayback Machine.
 15 *Compare* <https://wordpress.org/news/2024/09/wp-engine/> (“And they’re profiting off of the
 16 confusion. WP Engine needs a trademark license to continue their business. I spoke yesterday at
 17 WordCamp . . . ”), *with* 107-5 at 2 (“And they’re profiting off of the confusion. I spoke yesterday at
 18 WordCamp . . . ”); *compare* https://wordpress.org/news/2024/09/wp-engine-banned (“Any WP
 19 Engine customers having trouble with their sites should contact WP Engine support and ask them to
 20 fix it. WP Engine needs a trademark license, they don’t have one. I won’t bore you with the story . .
 21 .”), *with* 107-6 at 2 (“Any WP Engine customers having trouble with their sites should contact WP
 22 Engine support and ask them to fix it. I won’t bore you with the story . . . ”). Because Exhibits 5 and
 23 6 do not appear to be authentic copies of what Defendants claim them to be, they do not constitute
 24 facts that are not subject to a reasonable dispute and they should not be admitted under Rule 201 of
 25 the Federal Rules of Evidence. Fed. R. Evid. 201(b). For the avoidance of doubt, WPE has no
 26 objection to the Court taking judicial notice of the existence of these articles if they accurately
 27 depicted their contents.
 28

1 Exhibit 5 is also objectionable for the independent reason that it is apparent from the face of
2 the document that it is incomplete. *M.O.R.E., LLC v. United States*, 2015 WL 5093621, at *3 (N.D.
3 Cal. Aug. 28, 2015) (denying request for judicial notice of document that “appears to be both
4 incomplete and with pages out of order”); see *City of Miami Gen. Emps.’ & Sanitation Emps’ Ret.*
5 *Tr. v. RH, Inc.*, 302 F. Supp. 3d 1028, 1033 n.1 (N.D. Cal. 2018) (“Courts frequently decline to take
6 judicial notice of filings which are incomplete or truncated”). Exhibit 5 purports to be an article,
7 but it contains incomplete sentences that are unintelligible. See Dkt. 107-5 at 3 (incomplete sentence
8 that reads “Every change”), Dkt. 107-5 at 5 (incomplete sentence that says “We must set a higher
9 standard to”). It is also apparent on the face of Exhibit 5 that it is missing other substantive content.
10 Exhibit 5 specifically refers to a screenshot and states that the screenshot is pasted into the text, but
11 the screenshot is not visible in Exhibit 5. See Dkt. 107-5 at 3 (stating “Here is a screenshot of their
12 support page saying they disable this across their 1.5 million WordPress installs”).

13 **II. THE CONTENTS OF EXHIBITS 1, 2, 5, AND 6 MAY NOT BE ADMITTED FOR**
14 **THEIR TRUTH**

15 WPE objects to Exhibit 1, a printout of a webpage titled “Plugin Developer FAQ” from
16 wordpress.org, Exhibit 2, a printout of a webpage titled “Detailed Plugin Guidelines” from
17 wordpress.org and Exhibits 5 and 6, to the extent the above objection to Exhibits 5 and 6 in their
18 entirety is not sustained, because these exhibits cannot be considered for their truth. The Ninth Circuit
19 has established a clear rule: when courts take judicial notice (as Defendants request here) of the
20 existence of documents such as public websites, such notice does not extend to deeming the entire
21 contents of those documents as true. *Threshold Enterprises Ltd. V. Pressed Juicery, Inc.*, 445 F.
22 Supp. 3d 139, 146 (N.D. Cal. 2020) (“To the extent the Court takes judicial notice that these
23 [screenshots and printouts of websites of the parties, social media websites, and information and news
24 websites] contain certain information, the Court notices only the fact that the documents contain the
25 referenced content. The Court does not take judicial notice of the truth of that content.”) “Just
26 because the document itself is susceptible to judicial notice does not mean that every assertion of fact
27 within that document is judicially noticeable for its truth.” *Khoja v. Orexigen Therapeutics, Inc.*, 899
28 F.3d 988, 999 (9th Cir. 2018). Rather, only facts within documents that are “not subject to reasonable

1 dispute” are candidates for judicial notice. *Id.* (quoting Fed. R. Evid. 201(b)). Accordingly, WPE
2 objects to the admission of the content of these exhibits for their truth, which contradicts the well-
3 established Ninth Circuit rule.

4 **III. THE CONTENTS OF EXHIBITS 3 AND 4 MAY NOT BE ADMITTED FOR THEIR**
5 **TRUTH**

6 Exhibits 3 and 4 are purported transcripts of Defendants’ own online speeches. For the same
7 reasons described above, WPE objects to the use of these exhibits for the truth of the statements
8 contained therein. *Khoja*, 899 F.3d at 999-1000.

9 **CONCLUSION**

10 For the foregoing reasons, WPE respectfully requests that the Court sustain this objection
11 under L.R. 7-3(d)(1), decline to take judicial notice of the evidence in Exhibits 5 and 6 because they
12 are subject to reasonable dispute, and refuse to consider the statements in any of the exhibits for
13 their truth.

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15 Dated: February 26, 2025

16 Respectfully submitted,
QUINN EMANUEL URQUHART & SULLIVAN LLP

17 By /s/ Rachel Herrick Kassabian
18 Rachel Herrick Kassabian
19 *Attorneys for Plaintiff, WPEngine, Inc.*