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12 *Attorneys for Plaintiff WPENGINE, Inc.*

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

15 WPENGINE, INC., a Delaware corporation,

16 Plaintiff,

17 vs.

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

21 Defendants.

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

**PLAINTIFF WPENGINE, INC.’S
 ADMINISTRATIVE MOTION FOR AN
 ORDER TO SHORTEN TIME TO HEAR
 MOTION FOR A PRELIMINARY
 INJUNCTION**

[L.R. 6-3]

Judge: Hon. Araceli Martinez-Olguin
 Crtrm: 10 — 19th Floor

INTRODUCTION

1
2 Through this administrative motion, Plaintiff WPEngine, Inc. (“WPE”) seeks to shorten the
3 time for briefing and advance the hearing date on its Motion for a Preliminary Injunction filed earlier
4 today (the “PI Motion”) (Dkt. 17). Specifically, WPE requests that any Opposition be filed no later
5 than October 25, 2024 (rather than November 1 per the local rules), WPE’s Reply be filed no later
6 than October 30, 2024 (rather than November 8 per the local rules), and the PI Motion be heard in
7 early November 2024 (rather than the next available hearing date of March 6, 2025).

8 If there ever were a case that needed the emergency relief of shortened time requested here,
9 this is it. This case involves WordPress, the open source software platform on which more than
10 40% of the entire world’s websites are built, and which is being threatened by the capricious and
11 unhinged actions of Defendants. Thousands of paying customers and millions of free users rely on
12 the website management and hosting technology WPE has developed and built on top of WordPress.
13 WPE’s PI Motion seeks emergency injunctive relief to protect it from the “nuclear” war Defendants
14 recently launched against WPE, which relief is needed to ensure this technology will continue to
15 run reliably and securely, as it has for nearly 15 years. Defendants have abused their control over a
16 key gateway in the WordPress community to engage in acts of cyber-sabotage and extortion against
17 WPE, while openly promising more such bad acts to come—unless WPE pays Defendants an eight-
18 figure yearly ransom. By doing so Defendants threaten not just WPE, but effectively hold the entire
19 WordPress community—any member of which could be Defendants’ next victim—as their hostage.
20 Shortened time is warranted and should be granted.

ARGUMENT

21
22 A request to shorten time may be made by administrative motion. *See* Civil L. R. 6-1, 6-3.
23 The motion must: (1) set forth with particularity the reasons for the requested shortening of time;
24 (2) describe the efforts the party has made to obtain a stipulation to the time change; (3) identify the
25 substantial harm or prejudice that would occur without the time change; (4) describe the moving
26 party’s compliance with Civil L.R. 37-1(a), where applicable, and describe the nature of the
27 underlying dispute; (5) disclose previous modifications in the case; and (6) describe the effect the
28 requested time modification would have on the schedule of the case. Civil L. R. 6-3(a).

1 **I. SUMMARY OF THE UNDERLYING DISPUTE (L.R. 6-3(A)(4)(II))**

2 WordPress is an open source software program that allows users to build and maintain their
3 websites. Dkt. 19 (Decl. of Ramadass Prabhakar (“Prabhakar”)) ¶ 2. Open source software is free
4 to use by anyone, pursuant to an open source license. WPE is a technology company that offers a
5 hosting platform, plugins, themes, support, and other tools for websites built using WordPress. Dkt.
6 21 (Declaration of Heather Brunner (“Brunner”)) ¶ 3. WPE has been an important member of the
7 WordPress community for nearly 15 years, and employs more than 1100 people.

8 Recently, Defendants Automattic, Inc. and its CEO Matt Mullenweg—who both control
9 wordpress.org, the repository for the WordPress software and plugins, and also directly compete
10 with WPE—gave WPE less than 24 hours to agree to hand over 8% of its annual gross revenues, or
11 else face a “scorched earth” “nuclear” campaign. Brunner ¶¶ 22-24. When WPE refused, the attacks
12 began. As detailed in the PI Motion, those attacks have taken many forms, but have most notably
13 included Defendants’ abuse of their control over wordpress.org to block the normal functioning of
14 the websites WPE manages for its customers. *See generally, e.g.*, Prabhakar ¶¶ 4, 7-10, 20-27;
15 Brunner ¶¶ 38, 39, 59, 60; Dkt. 20 (Declaration of Jason Teichman (“Teichman”)) ¶¶ 21-27, 45, 46.
16 As detailed in the PI Motion, Defendants have tried to sow fear in the market by promising escalating
17 attacks. Defendants have admitted that the intended purpose of their actions is to force WPE’s
18 customers to migrate elsewhere, destroying WPE in the process, given WPE’s refusal to capitulate
19 to Defendants’ extortionate demands. WPE moved for a preliminary injunction today to restrain
20 and enjoin Defendants from (a) interfering with WPE’s access to the WordPress community,
21 including wordpress.org and the WordPress Plugin Directory and repository, in any manner
22 different from how such access existed prior to the extortion demand deadline of September 20,
23 2024; (b) interfering with control over, access to, or the listing or functioning of plugins or
24 extensions published by WPE; (c) interfering with WPE’s or its customers’ access to, or the
25 functioning of, WordPress plugins, extensions, or WordPress community-related resources in any
26 way different from as they existed prior to September 20, 2024; and (d) engaging in any other acts
27 of extortion or tortious interference with respect to WPE.

28

1 **II. WPE SEEKS TO SHORTEN TIME ON ITS PI MOTION OUT OF GRAVE**
 2 **NECESSITY (L.R. 6-3(A)(1))**

3 Defendants have openly admitted that their actions in recent weeks have been aimed at
 4 destroying WPE’s business, stealing its customers, and in the process breaking the normal function
 5 of millions of websites which use WPE’s technology. Among other things, Defendants have
 6 blocked WPE’s access to business resources, directly interfered with WPE’s relationships with its
 7 customers, made a litany of false and disparaging statements to WPE’s customers, and even forcibly
 8 hijacked one of WPE’s most popular software products known as the ACF plugin, which allows
 9 website operators to insert customized field features on their websites. Defendants took all of these
 10 actions as part of their wrongful effort to extort tens of millions of dollars from WPE.

11 Facing mounting misconduct by Defendants and grave harm to its business, WPE filed suit
 12 against Defendants on October 2, alleging eleven causes of action including cyber-extortion,
 13 intentional interference, unfair competition, defamation and other claims. Rather than pausing to
 14 reflect on their actions after WPE sued, Defendants have since only escalated their retaliatory
 15 misconduct, threatening not just WPE but the entire infrastructure on which millions of users rely.

16 Defendants’ extortive campaign against WPE began just last month. WPE worked diligently
 17 to file suit and then prepare its PI Motion and file it as soon as practicable. The Court’s Scheduling
 18 Notes indicate the next available hearing date in the regular course would not be until March 2025.
 19 *See* Declaration of Yvonne Zhang filed herewith (“Zhang”) ¶ 3. As discussed below and in the PI
 20 Motion, without expeditious court intervention, immeasurable harm will be inflicted upon WPE, its
 21 customers, and the WordPress community as a whole.

22 **III. SUBSTANTIAL HARM AND PREJUDICE WILL RESULT IF THE COURT DOES**
 23 **NOT SHORTEN TIME TO HEAR WPE’S PI MOTION (L.R. 3-6(A)(3)).**

24 If the PI Motion is not set for hearing expeditiously, as detailed in the PI Motion, WPE will
 25 suffer irreparable harm. As Defendants’ own words and actions demonstrate, they continue to wreak
 26 havoc on WPE and the normal operation of millions of websites, in an apparent bid to cause
 27 irreparable harm to WPE and steal its customers. *See* Prabhakar ¶¶ 4, 7-10, 20-27; Brunner ¶¶ 38,
 28 39, 59, 60; and Teichman ¶¶ 21-27, 45, 46. Defendants’ actions are harming not only WPE through
 loss of customers and market share as well as harm to its business reputation, but also WPE’s

1 customers who just want to know their websites will operate normally, and the WordPress
2 community at large, including WordPress developers who are themselves losing business as people
3 have begun doubting the stability of the WordPress platform. Teichman ¶¶ 45-47. Two months—
4 let alone five months—in this industry is a lifetime. Indeed, this entire saga is just weeks old, yet
5 the entire WordPress ecosystem—which powers *40% of all the world’s websites*—is already in
6 jeopardy. Teichman ¶¶ 48-49. Defendants’ campaign is starting to have its desired effect: in a few
7 short weeks, the data shows a 14% increase in WPE customer cancellation requests, 333 fewer new
8 contracts than expected from WPE’s “sales-assisted” channel, and a 29% drop in new customers
9 from its “self-service” channel. Teichman ¶¶ 30-36. October has already seen a 17% increase in
10 cancellation requests. *Id.* ¶ 37. And WPE has seen a 375% spike in the installation of migration-
11 assisting plugins, indicating more damage is still to come as customers contemplate migrating away
12 from WPE due to Defendants’ illegal and unprovoked conduct. *Id.* ¶ 39.

13 In Defendants’ own words, they are waging a “scorched earth” and “nuclear” campaign
14 trying to break the “trust” of WPE’s customers, so that “millions” leave in a matter of “weeks.”
15 Teichman ¶ 43; Brunner ¶ 52. In Defendants’ own words, they believe WPE has already been driven
16 to a “fraction” of its value, and is now ripe for a hostile takeover attempt. Teichman ¶ 25. In
17 Defendants’ own words, their campaign of interference is just getting started—they have promised
18 more “surprises,” have made clear “there’s more,” and say they “have a lot to work with” to inflict
19 pain on WPE and, by extension, WPE’s customers. *See* Teichman ¶¶ 24, 26, 27, 28; Brunner ¶¶ 44,
20 45, 51. Indeed, *other* service providers in the WordPress community are already losing business
21 out of concern about the stability of the WordPress platform, and developers are anxious about
22 whether they will be next to receive extortionate demands from Defendants, become their next target
23 of nuclear war, or next to have their plugins expropriated. Teichman ¶¶ 44-49.

24 Defendants’ ongoing, fast-moving, and continuously evolving wrongdoing poses serious
25 concerns as to the scope of the harm Defendants intend to inflict on WPE, its customers, and the
26 WordPress community at large. A timely injunction is needed to enjoin Defendants’ extortionate
27 and unfair conduct.

28

1 **IV. WPE HAS MADE EFFORTS TO OBTAIN A STIPULATION IN COMPLIANCE**
2 **WITH LOCAL RULE 37-1 (L.R. 6-3(A)(2) & (A)(4)).**

3 On October 18, 2024, lead counsel for WPE met and conferred via videoconference with
4 Defendants' counsel regarding the relief requested herein and WPE's need for an expedited briefing
5 and hearing schedule on WPE's PI Motion. Zhang ¶ 4. In response, Defendants indicated they
6 would prefer an *extended* briefing schedule rather than an expedited one. *Id.* WPE confirmed they
7 would consider such an option *if and only if* Defendants committed to maintaining the status quo
8 and refraining from taking *any* further adverse actions against WPE or its customers. *Id.* Defendants
9 were unwilling as of this filing to make such a commitment—which is gravely concerning in and of
10 itself, and only underscores the need for an expedited schedule here. *Id.* ¶¶ 5-6.

11 **V. THE REQUESTED TIME MODIFICATION WILL HAVE NO EFFECT ON THE**
12 **CASE SCHEDULE (L.R. 6-3(A)(6)).**

13 The time requested by this Application will not interfere with any existing deadlines in this
14 action. The Court has yet to enter a scheduling order, and trial has not been set. *Id.* ¶ 9.

15 **VI. THERE HAVE BEEN NO PREVIOUS TIME MODIFICATIONS (L.R. 6-3(A)(5)).**

16 No time modifications or extensions have yet been granted either by stipulation or Court
17 order. *Id.* ¶ 9. Defendants have requested an extension of time to file their response to the
18 Complaint, to which WPE has agreed, but Defendants have not yet filed the parties' stipulation. *Id.*

19 **CONCLUSION**

20 For good cause shown, WPE respectfully requests that the Court grant its Administrative
21 Motion to shorten time, and enter an Order setting Defendants' deadline to oppose WPE's PI Motion
22 for October 25, WPE's reply for October 30, and a hearing on WPE's PI Motion for November 7,
23 2024, or at the Court's earliest convenience in early November.

24 Dated: October 18, 2024

Respectfully submitted,

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25
26 By 

27 Rachel Herrick Kassabian

28 *Attorneys for Plaintiff WP Engine, Inc.*