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

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN FRANCISCO DIVISION**

22 WPENGINE, INC., a Delaware corporation,

23 Plaintiff,

24 vs.

25 AUTOMATTIC INC., a Delaware
26 corporation; and MATTHEW CHARLES
27 MULLENWEG, an individual,

28 Defendants.

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

**DECLARATION OF LAUREN B. CURY
IN SUPPORT OF DEFENDANTS'
ADMINISTRATIVE MOTION FOR AN
ORDER TO SHORTEN TIME FOR
BRIEFING AND TO ADVANCE
HEARING ON MOTION TO DISMISS
AND MOTION TO STRIKE**

[L.R. 6-3]

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

DECLARATION

I, Lauren B. Cury, declare:

1. I am Counsel in the law firm of Hogan Lovells US LLP, counsel of record for Defendants Automattic, Inc. and Matthew Charles Mullenweg. I am one of the attorneys responsible for representing Defendants in this action. I make this Declaration in support of Defendants’ administrative motion for an order to shorten time for briefing and to advance the hearing on Defendants’ motion to dismiss and motion to strike (“the Motions”). I have personal knowledge of the facts stated in this declaration and would, if called as a witness, competently testify to those facts.

2. On October 30, 2024, Defendants filed a Motion to Dismiss (ECF No. 36) and a Motion to Strike (ECF No. 38). Immediately following Defendants’ filing, I contacted Plaintiff’s counsel by email requesting to meet and confer about an expedited briefing and hearing schedule for the Motions. On the afternoon of October 31, 2024, my colleague Anna Kurian Shaw and I participated in a Zoom conference with Plaintiff’s counsel, including Rachel Kassabian and Yury Kapgan.

3. During our discussion with Plaintiff’s counsel, I explained that Defendants wanted to advance the hearing on the Motions to the same date as the hearing on the motion for preliminary injunction because we believe (i) the issues in the motion to dismiss and the motion for preliminary injunction overlap and the Court would benefit both substantively and from an efficiency perspective in addressing the issues at the same time, (ii) the legal insufficiency of Plaintiff’s claims is an important consideration in assessing Plaintiff’s (un)likelihood of prevailing, and (iii) the motion to strike is related to the motion to dismiss and so it make sense for those two motions also to be heard at the same time. Specifically, I proposed that Plaintiff’s opposition to Defendants’ Motions be due on November 11, Defendants’ reply briefs be due on November 18, and the hearing on the Motions be advanced to November 26, 2024, the same date as the hearing on Plaintiffs’ preliminary injunction motion.

4. In an October 31, 2024 email to me, Plaintiff’s counsel Yury Kapgan advised me that Plaintiff would not agree to expedite the briefing or advance the hearing on Defendants’ Motions.

1 Mr. Kapgan informed me that Plaintiff (i) does not believe the issues in the motion to strike are
2 related to the preliminary injunction motion, (ii) thinks the different standards involved in the
3 motion to dismiss and the preliminary injunction motion means there is no reason to hear them
4 together, and (iii) is considering amending its Complaint in light of Defendants' motion, which
5 would make it unnecessary to expedite the briefing or hearing.

6 5. This case was filed less than a month ago. The Court has not yet issued a scheduling
7 order and trial has not been set. Defendants requested, and Plaintiff agreed to, a short extension of
8 a few additional days (to October 30, 2024) for Defendants to respond to Plaintiff's Complaint,
9 while simultaneously resolving a disagreement between the parties over the validity of service.
10 Plaintiff moved to expedite the briefing and advance the hearing on Plaintiff's preliminary
11 injunction motion, and the Court granted the motion and advanced the preliminary injunction
12 hearing to November 26, 2024. No other extensions or modifications of any deadline have been
13 granted either by stipulation or Court order.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct.

16 Executed on this 1st day of November, 2024, in McLean, Virginia.

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20 Lauren B. Cury

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