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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 NOTICE
 OF MOTION AND MOTION FOR
 PRELIMINARY INJUNCTION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

Judge: Honorable Araceli Martínez-Olguín
 Courtroom: 10

Hearing Date: March 6, 2025

Hearing Time: 2:00 p.m.

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1 **NOTICE OF MOTION AND MOTION**

2 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE THAT on March 6, 2025, or as soon as the matter may be heard,
4 in the United States District Court for the Northern District of California, San Francisco Division,
5 Plaintiff WPEngine, Inc. (“WPE”) will and hereby does move this Court for a preliminary injunction
6 Order against Defendants, pursuant to Fed. R. Civ. P. 65, enjoining Defendants, and all those acting
7 at their direction or in concert with them, from the acts set forth in the accompanying proposed
8 order, namely: (a) interfering with WPE’s access to the WordPress community, including
9 wordpress.org and the WordPress Plugin Directory and repository, in any manner different from
10 how such access existed prior to September 20, 2024; (b) interfering with control over, access to, or
11 the listing or functioning of plugins or extensions published by WPE; (c) interfering with WPE’s
12 access to, or the functioning of, WordPress plugins, extensions, or WordPress community-related
13 resources in any way different from as they existed prior to September 20, 2024; and (d) engaging
14 in any other acts of extortion or tortious interference with respect to WPE. As set forth in the
15 proposed order, (i) such protections should extend to WPE’s affiliates, partners, employees, users,
16 and customers, and (ii) if access or operation has already been restricted or altered, then Defendants
17 shall cause such operations to return to the status quo as it existed prior to September 20, 2024.

18 This motion is made on the grounds that: (1) WPE is likely to succeed on the merits of its
19 claims; (2) absent a preliminary injunction, WPE is likely to suffer irreparable harm; (3) the balance
20 of equities tips sharply in WPE’s favor; and (4) the public interest supports an injunction. This
21 motion is based upon the Complaint in this action; this Notice of Motion; the Memorandum of Points
22 and Authorities; the Proposed Order; the Declarations of Jason Teichman (“Teichman”), Heather
23 Brunner (“Brunner”), Ramadass Prabhakar (“Prabhakar”), and Sara Jenkins (“Jenkins”) along with
24 accompanying exhibits; all matters with respect to which this Court may take judicial notice; and
25 such oral and documentary evidence as may be presented to the Court.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **STATEMENT OF ISSUES TO BE DECIDED**

28 WPE seeks an order enjoining Defendants from the acts set forth above.

INTRODUCTION

1
2 Plaintiff WPE recently filed this action against Defendants Automattic, Inc. and Matthew
3 Charles Mullenweg, asserting eleven causes of action arising from Defendants’ orchestrated
4 campaign of wrongdoing against WPE. In short, in recent weeks Defendants have engaged in a
5 self-proclaimed “nuclear” war aimed at destroying WPE’s business because WPE dared to stand up
6 and speak out against Defendants’ extortionate demand for tens of millions of dollars annually for
7 a purported “license” WPE does not even need. Defendants’ scheme, *brazenly memorialized by*
8 *Mullenweg’s own text messages*, gave WPE less than 24 hours to either sign the “license” and pay
9 up, or face a “scorched earth” “nuclear” war. When WPE refused to pay, the attacks began.

10 Through these attacks, Defendants have committed multiple wrongful and illegal actions
11 they *admit* were designed to destroy WPE and take its customers away—such as blocking WPE’s
12 access to business resources including those used to service its customers, blocking WPE’s
13 customers from accessing important security updates, making a litany of false and disparaging
14 statements, and even expropriating one of WPE’s most popular software products as its own. Facing
15 this onslaught of retaliatory actions, WPE had no choice but to file suit to protect its business, its
16 employees, its customers, and the entire community in which it operates.

17 Ordinarily, a rational actor on the receiving end of a federal complaint asserting multiple
18 serious causes of action such as cyber-extortion, defamation, and intentional interference with
19 contractual relations might pause to consider whether their course of conduct was prudent.
20 Defendants engaged in no such self-reflection here. They instead doubled down, attacking WPE
21 with escalating frequency and fury since the Complaint’s filing on October 2—while also *publicly*
22 *reaffirming* their extortionate intentions that this can all go away if WPE pays up and drops its suit.

23 Facing multiple forms of immediate irreparable harm—including loss of customers, market
24 share and goodwill—and with Defendants publicly promising more attacks in coming days, WPE
25 now seeks emergency injunctive relief from this Court. Despite immense public outcry within the
26 business community in which the parties operate as competitors, it is clear that Defendants’ illegal
27 acts against WPE will continue unabated unless stopped by a court of law. All of the relevant factors
28 strongly weigh in favor of injunctive relief, and a preliminary injunction should issue.

FACTUAL BACKGROUND

A. WordPress

WordPress is an open source software program that allows users to build and maintain their websites. Prabhakar ¶ 2. Open source software is free to use by anyone, pursuant to an open source license. *Id.* Mullenweg was one of the original developers of WordPress, which was created by “forking” (or copying) another earlier open source software program called b2/cafeblog. Prabhakar ¶ 2; Brunner Ex. A at 1. WordPress architecture allows third-party software developers to create “plugins” that can interact with a WordPress website. Prabhakar ¶ 3. For instance, if a user wants to add a “voting” button or a “sign up form” field to their website, a plugin can be created to offer those features. *Id.* Developers are strongly encouraged to share plugins, themes, and other tools by making them available on wordpress.org. *Id.* WPE and the vast majority of WordPress plugin developers, including Defendant Automattic, all use wordpress.org to do so. *Id.* Wordpress.org serves as a gateway to the WordPress software and community; it hosts the WordPress software as well as the WordPress plugins created by members of the WordPress community. Prabhakar ¶ 5.

Over the past 21 years since WordPress was released, a diverse ecosystem of users has formed, comprised of individuals, small businesses, larger companies, nonprofits, and the like. Brunner ¶ 6. The ecosystem has relied on promises of openness by Mullenweg, such as:

WordPress is designed for everyone. We believe great software should work with minimum set up, emphasizing accessibility, performance, security, and ease of use. The basic WordPress software is simple and predictable, offering powerful features for growth and success. WordPress is open source software. Supporting the idea of democratizing publishing and the freedoms that come with open source, is a large community of people collaborating on and contributing to this project. WordPress is welcoming and inclusive. Our contributors’ passion drives the success of WordPress which, in turn, helps you reach your goals. WordPress contributors work around the globe, and have dedicated countless hours to build a tool that offers anyone a voice.

Brunner Ex. A at 1-2; Brunner ¶ 7. Wordpress.org also describes its “four core freedoms” that encourage others to use the open source software. Brunner ¶ 9; Brunner Ex. A at 2-3. The four freedoms are: “The freedom to run the program for any purpose. The freedom to study how the program works and change it to make it do what you wish. The freedom to redistribute. The freedom to distribute copies of your modified versions to others.” Brunner Ex. A at 2-3.

1 WordPress is licensed to users under the GNU General Public License (“GPL”), which
2 wordpress.org states guarantees these “four core freedoms”—which it calls its “bill of rights.”
3 Brunner Exs. A, B; Jenkins Ex. 1. Wordpress.org explains that GPL licensing requirements include
4 licensing derivative works or things that link core WordPress functions (like themes, plugins, etc.)
5 under the GPL as well, thereby passing on the freedom of use for these works. Jenkins Ex. 1.
6 Wordpress.org explains that “[t]he WordPress community should emphasize that the freedoms in
7 the GPL help provide high quality software.” Brunner ¶ 10; Brunner Ex. B at 4.

8 Wordpress.org maintains a separate developer website to encourage third-party software
9 developers (such as WPE) to build plugins on its platform. Brunner ¶ 11. On that developer website,
10 wordpress.org states that “Wordpress.org offers free hosting to *anyone* who wishes to develop a
11 plugin in our directory.” Brunner ¶ 11; Brunner Ex. C at 1 (emphasis added). While WordPress as
12 an open source software program is free to use by anyone, various for-profit businesses (including
13 WPE and Automattic) have built their businesses around the WordPress ecosystem, to help users,
14 for a fee, to build, host, and operate their websites using WordPress. Brunner ¶ 12.

15 **B. WPENGINE, Inc.**

16 WPE is a technology company that offers a hosting platform, plugins, themes, support, and
17 other tools for websites built using WordPress software. *Id.* ¶ 3. It also develops support, training,
18 and advocacy resources for the WordPress community. *Id.* WPE was founded in 2010, and is
19 considered one of the most trusted platforms for WordPress sites in the world. *Id.* WPE is dedicated
20 solely to WordPress, having built its business on the promise of open source, and all of WPE’s
21 business caters exclusively to the community of users who have built their websites using
22 WordPress. *Id.* WPE directly competes with Defendant Automattic. *Id.* ¶ 12.

23 WPE is the current developer of a number of popular WordPress plugins, including
24 Advanced Custom Fields (“ACF”), WP Migrate, NitroPack, and many others. Prabhakar ¶ 4.
25 Millions of WordPress users use these plugins to enhance and operate their websites. *Id.* For
26 example, the ACF plugin, which WPE acquired in 2022 for a substantial sum of money, runs on
27 over two million websites. *Id.* WPE has invested thousands of engineering hours and millions of
28 dollars into the development of its WordPress plugins and themes, and the vast majority of its users

1 use these at no cost to themselves. *Id.* Most users who use WPE’s plugins (or any other WordPress
2 plugins) access those plugins, including feature and security updates for those plugins, from
3 wordpress.org, which is effectively the gateway for access. *Id.* ¶ 5. WordPress users typically either
4 go to wordpress.org to download those plugins directly, or they download those plugins from
5 wordpress.org through the administrative panel on their WordPress websites. *Id.*

6 As with nearly all plugin developers, WPE regularly updates its plugins to create new
7 functionality, fix bugs, or address security vulnerabilities. *Id.* WPE has been publishing these
8 updates to its plugins to wordpress.org for many years. *Id.* Once WPE publishes them to
9 wordpress.org, users are notified and can easily update their plugins. *Id.* Without access to these
10 updates, users’ websites with WPE’s plugins may break, stop functioning, or become insecure. *Id.*
11 Without access to wordpress.org, most WPE plugin users likely will not even know there are updates
12 available for WPE plugins. *Id.* Furthermore, while there may be other ways for WPE plugin users
13 to update their plugins without access to wordpress.org from within the administrative panel, a
14 meaningful number of WPE plugin users do not have the technological skills or knowledge to do
15 this without risking the security and/or stability of their websites. *Id.*

16 In addition to developing plugins, WPE also operates a managed hosting service for websites
17 built using WordPress. *Id.* ¶ 6. Customers of WPE can set up their websites using the WordPress
18 software on WPE’s hosting service. *Id.* WPE handles many of the technical details for these users,
19 including ongoing technical management of their websites. *Id.* WPE’s customers have historically
20 been able to install themes and plugins onto their WordPress installations from wordpress.org
21 directly through WordPress’s administrative panel. *Id.* WPE’s managed hosting service competes
22 with Automattic’s offerings, including wordpress.com, Pressable and WordPress VIP. *Id.*

23 Because WPE’s products and services are built to work with websites developed using
24 WordPress open source software and WooCommerce plugins, WPE naturally references
25 “WordPress” when referring to the software platform on which its customers’ websites are built,
26 and “WooCommerce” to reference the WooCommerce plugin used by certain of its customers—
27 and has done so for many years. Teichman ¶¶ 10-14, 19, 20; Teichman Exs. C – G, K, L. This type
28 of referential, or nominative, use of WordPress is not only legal, but it is essential to providing

1 consumers with the information they need. Further, it has long been condoned by the Defendants,
2 and is widely mirrored by the entire WordPress community. *See* Teichman ¶ 9; Dkt. 1 ¶ 22.

3 In recent years WPE has grown into a successful and thriving company, employing more
4 than 1,100 people and serving thousands of customers. Teichman ¶ 2.

5 **C. Defendant Mullenweg, His Entities—and His Resulting Conflicts of Interest**

6 Defendant Automatic is a for-profit company that offers WordPress related services.
7 Brunner ¶ 19. Mullenweg is Automatic’s CEO. *Id.* Mullenweg founded and is a director of the
8 WordPress Foundation, which claims to be a non-profit entity dedicated to educating the world
9 about WordPress. *Id.* In 2010, in response to mounting public concern regarding their private
10 ownership, the WordPress source code and trademarks were reportedly transferred to WordPress
11 Foundation, with Mullenweg and Automatic making sweeping promises of open access for all:
12 “Automatic has transferred the WordPress trademark to the WordPress Foundation, the nonprofit
13 dedicated to promoting and ensuring access to WordPress and related open source projects in
14 perpetuity. This means that the most central piece of WordPress’s identity, its name, is now fully
15 independent from any company.” *See* Jenkins Ex. 34; *see also* Ex. 35. Mullenweg and Automatic
16 reiterated this promise later: “*What’s important is that [] longer than I’m alive, longer than*
17 *Automatic is alive, longer than any of us are alive, there is something that holds the WordPress*
18 *code and trademark for the free access for the world.*” Jenkins Ex. 2 at 22 (emphasis added).

19 What Defendants’ assurances did not disclose is that while they were publicly touting their
20 purported good deed of moving this intellectual property away from a private company, and into the
21 safe hands of a nonprofit, Defendants in fact had quietly transferred irrevocable, exclusive, royalty-
22 free rights in the WordPress trademarks right back to Automatic that very same day in 2010. *See*
23 Jenkins Ex. 36. This meant that far from being “independent of any company” as Defendants had
24 promised, control over the WordPress trademarks effectively never left Automatic’s hands.

25 Until recently, Defendants had given the WordPress community the impression that
26 wordpress.org—the repository for the WordPress software and plugins—was owned and controlled
27 by the WordPress Foundation. Brunner ¶ 8, 21. The reasons for that belief were numerous,
28 including that the site had a suffix typically reserved for nonprofits; Mullenweg’s statements that

1 the WordPress code was owned by the Foundation for “free access to the world”; his role at the
2 Foundation; and his promotion of WordPress as an open-source software platform that is free and
3 accessible to everyone. Indeed, Automattic’s own counsel recently posted (and then mysteriously
4 deleted) a statement that wordpress.org is a non-profit. *Compare* Jenkins Ex. 3 at 1; *id.* Ex. 4.

5 So it came as a surprise to most in the WordPress community when Mullenweg revealed
6 recently that he *personally* owns and controls wordpress.org, and pays taxes related to it. Jenkins
7 Ex. 19 at 2-3. This disclosure revealed an inherent, troubling conflict between (1) Mullenweg’s
8 positions as a director of the nonprofit WordPress Foundation which promises to keep WordPress
9 free and open to the world and owns the WordPress trademark, (2) Mullenweg’s role as CEO of
10 Automattic, a for-profit corporation dedicated to profiting from the WordPress community and
11 competing with companies like WPE, and (3) Mullenweg’s quiet ownership and control of the for-
12 profit wordpress.org website that hosts WordPress and the community’s plugins, acting as a portal
13 to the entire WordPress community that Mullenweg alone wields the power to restrict.

14 **D. Defendants’ Awareness of WPE’s Use of the WordPress Trademark**

15 Defendants have been aware of WPE’s descriptive use of the “WordPress” mark for more
16 than a decade and the WooCommerce trademark for more than five years. Among other things,
17 Mullenweg, through Automattic, invested in WPE in November 2011 and remained an investor until
18 2018. Brunner Ex. D at 1. The press release for Automattic’s investment in WPE described WPE
19 as “the WordPress hosting and security service for bloggers and small businesses.” Brunner ¶ 14;
20 Brunner Ex. D at 1. At that time, WPE’s website used the WordPress mark to accurately describe
21 the WordPress platform. Brunner ¶ 15; Teichman Ex. G. Over the years WPE and Automattic
22 maintained regular communications, including about WPE’s website. Brunner ¶ 17. WPE has also
23 been a longtime sponsor and attendee of the WordPress conferences known as WordCamp,
24 including having booths with promotional signage and materials referencing the WordPress mark,
25 dating back many years. *Id.* Never then, nor during the years of their investment in and relationship
26 with WPE, did Defendants request that WPE change any of these references. Teichman ¶ 9.

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1 **E. Defendants’ Coercive Threats To WPE**

2 Beginning on September 17, 2024, Defendants started making coercive, extortionate threats
3 to WPE. Specifically, Defendants threatened that, if WPE did not agree to pay Automattic a very
4 large sum of money in a matter of a few days, they would embark on a self-described “scorched
5 earth nuclear approach,” starting with a keynote speech Automattic’s CEO Mullenweg was going
6 to be making to the WordPress community just days later, on September 20. Brunner ¶ 22. During
7 calls on September 17 and 19, Automattic’s CFO told a WPE board member that Automattic would
8 “go to war” if WPE did not agree to pay Automattic on an ongoing basis. *Id.* ¶ 23. Mr. Davies
9 stated that he would send over an agreement that he expected WPE to sign or else the “war” would
10 commence. *Id.* On the morning of September 20, only hours before Mr. Mullenweg’s Keynote,
11 Mr. Davies sent WPE a one-page “trademark license agreement” document WPE had never seen
12 before, and which sought to impose an 8% royalty on WPE’s gross revenues (which would amount
13 to tens of millions of dollars), along with other onerous terms such as “full audit rights” of WPEs
14 internal records, including “access to employee records and time-tracking.” *Id.* ¶ 24. In return, the
15 “trademark license agreement” document purported to grant WPE the “right” to use the WordPress
16 trademark to describe the WordPress open source software. *Id.* Automattic’s CFO insisted that
17 WPE provide its response to this demand immediately. *Id.* ¶ 26. After he sent the “trademark
18 license agreement” document on September 20, Mr. Davies followed up with an email to a WPE
19 board member, on which WPE’s CEO was copied, reiterating that they needed WPE to agree to
20 their demands immediately, “before Matt makes his WCUS keynote at 3:45 p.m. PDT today.” *Id.*

21 In parallel, Mullenweg sent various texts and made phone calls to WPE’s CEO and a WPE
22 board member, pressuring WPE to pay up or face his wrath. *Id.* ¶ 17, Ex. F. He sent a message that
23 he had slides prepared that would smear WPE and its investor, and if WPE failed to capitulate to his
24 financial demands immediately, he would run the slides as part of his keynote speech and start down
25 a “nuclear” path. *Id.* ¶¶ 18-20, Brunner Ex. F. Mullenweg threatened that he would reach a wide
26 audience with his keynote speech: “[T]he videos on YouTube can get millions of views when we
27 promote them.” *Id.* ¶ 29. He further threatened that he would make a case for “banning” WPE from
28 the WordPress community altogether, if WPE refused to pay up. *Id.* ¶ 30, Ex. F. When WPE’s

1 CEO offered to have an actual business discussion with Automattic the following week, Mullenweg
2 declared that he took that as a “no,” and would “proceed with the scorched earth nuclear approach
3 to WPE.” *Id.* ¶ 31, Ex. F. Mullenweg sent a photo of the audience gathered for his keynote speech
4 moments before he took the stage, again threatening WPE that he would change his speech to just a
5 “Q&A” if WPE immediately capitulated to his extortionate payment demand. *Id.* ¶ 32, Ex. F.

6 **F. Defendants Carry Out Their Threats In An Effort to Destroy WPE’s Business**

7 WPE did not agree to Mullenweg’s extortionate demands. Brunner ¶ 33. In the days that
8 followed, including after WPE sent Defendants a cease and desist letter¹ and then filed the
9 Complaint (Dkt. 1), Defendants proceeded to carry out their threats in multiple ways, launching a
10 full-scale “nuclear war,” with Mullenweg himself describing that his goal was to disrupt WPE’s
11 customer relationships and to destroy its business. *E.g.*, Jenkins Ex. 5 at 1, Ex. 17.

12 **1. Defendants Make False and Disparaging Statements About WPE**

13 Most immediately, Defendants started a defamatory smear campaign against WPE, while
14 simultaneously offering WPE’s customers payments if they cancelled or breached their contracts.
15 For instance, Mullenweg made a series of false and disparaging statements about WPE during his
16 September 20 keynote speech, which was broadcasted across the Internet. Brunner ¶ 36. He claimed
17 that WPE is a company that “feeds off the host without giving anything back” and that every WPE
18 customer should watch his speech and then not renew their contracts with WPE. *Id.* He also falsely
19 suggested that WPE employees may be fired for speaking up, supporting Mullenweg or WordPress,
20 and offered to help them find new jobs if that were to occur. *Id.* None of that was true. *Id.*

21 After the speech, Mullenweg authored a post on wordpress.org, entitled “WP Engine is
22 not WordPress.” *Id.* ¶ 38; Jenkins Ex. 6. In that post he alleged that WPE “is a cancer to
23 WordPress” because it is “a cheap knock-off” and “not WordPress.” *Id.* These statements were,
24 and are, demonstrably false. Brunner ¶ 39. Mullenweg also accused WPE of wrongdoing for
25 disabling revisions, but in fact, this is a standard practice that Automattic’s wordpress.com does
26 as well, so Mullenweg’s suggestion that this somehow jeopardizes the “integrity” of user content
27

28 ¹ See <https://wpengine.com/wp-content/uploads/2024/09/Cease-and-Desist-Letter-to-Automattic-and-Request-to-Preserve-Documents-Sent.pdf>.

1 or fails to protect that content is also false. *Id.*

2 In a blog post on wordpress.org that Mullenweg posted on September 25, Mullenweg wrote
3 that “WP Engine is free to offer their hacked up, bastardized simulacra of WordPress’s GPL code
4 to their customers.” Prabhakar ¶ 10; Jenkins Ex. 7 at 1. This statement too is false. WPE uses the
5 standard WordPress GPL core code. Prabhakar ¶ 10.

6 Mullenweg has also levied personal attacks against WPE’s CEO and one of WPE’s board
7 members for failing to capitulate to his demands. Brunner ¶ 46. On September 26, Mullenweg sent
8 WPE’s CEO another blatantly extortionate text message, “offering” her a job at Automattic, while
9 also threatening her that if she didn’t “accept” the “offer” by midnight that night, Mullenweg would
10 tell the press that she had interviewed with Automattic. *Id.* ¶¶ 47-48; Brunner Ex. G.

11 **2. Defendants Block Access to WPE’s Plugins**

12 On September 24, WPE’s employees tried to access their wordpress.org accounts as they do
13 every day, only to learn that their accounts had been disabled. *See* Prabhakar ¶ 7. This meant that
14 WPE no longer was able to update the plugins that it makes available through wordpress.org. *Id.*
15 Stated another way, if WPE identified that one of the plugins it created had a bug or a security issue,
16 it would no longer be able to publish an update for that plugin on wordpress.org. *Id.* This could
17 cause the websites of WPE plugin users to stop working without any easy way to rectify the issue.
18 *Id.* WPE was forced to try to find workarounds needed to service WPE’s customers and update its
19 plugins. *Id.* ¶ 34. Those efforts are ongoing but cannot fully repair the damage Mr. Mullenweg did
20 to WPE’s systems. *Id.* Mullenweg publicly took credit for blocking WPE and its employees from
21 wordpress.org in various social media posts, claiming that he did so because WPE had sued
22 wordpress.org. *Id.* ¶ 9; Jenkins Ex. 7 at 1. This statement was false. Jenkins Ex. 8.

23 Nowhere on the developer website for WordPress does it say that a plugin developer must
24 pay Mullenweg’s for-profit venture Automattic, to host their plugins on wordpress.org, or that a
25 developer can be excluded from wordpress.org if Mullenweg unilaterally sees fit. Brunner ¶ 11.

26 On September 25, Mullenweg banned WPE customers who host their WordPress
27 installations on WPE servers from accessing wordpress.org resources through the administration
28 panel, which includes downloading WordPress themes and plugins, including those developed by

1 WPE. Prabhakar ¶ 8. This means that customers no longer would be able to install new plugins
2 and themes from wordpress.org from the administrative panel. *Id.* This also means that if
3 WordPress users on WPE wanted to update their existing plugins and themes to address bugs and
4 security issues, they would no longer be able to do so from the administrative panel. *Id.* Mullenweg
5 later publicly took credit for carrying out these actions against WPE and its customers. *Id.* ¶ 9.

6 **3. Defendants Intentionally Sow Fear in the Marketplace**

7 Defendants made clear in numerous public communications that they will continue to search
8 for opportunities to disrupt the normal operation of WPE-powered websites and disrupt the
9 relationships between WPE and its customers, sowing fear and uncertainty in the marketplace in a
10 manner plainly designed to scare WPE’s customers into canceling their contracts and devalue WPE.

11 For instance, in a recent interview Mullenweg claimed that, because of the success of his
12 nuclear war, he is no longer satisfied with 8% of WPE’s revenues—“the deal they have to do next
13 could be taking over the company.” Jenkins Ex. 9 at 1. As to how he could cause WPE’s value to
14 sink to the point where it would have to sell itself to Defendants, Mullenweg said he had more cards
15 to play: “I have a lot to work with.” *Id.* at 2; Brunner ¶ 53. Elsewhere he bragged he was making
16 WPE a “distressed asset” worth only a “fraction” of its prior value. Brunner ¶ 54; Jenkins Ex. 10.

17 As another example, Mullenweg openly invited the WordPress community to brainstorm
18 how to manage a mass migration away from WPE’s ACF plugin, predicting “millions of sites
19 moving away from it in the coming weeks.” Brunner ¶ 57; Jenkins Ex. 11. He also told the
20 WordPress community to use “any other web host in the world” besides WPE. Jenkins Ex. 16; *see*
21 *also id.* Ex. 7 at 1. When someone asked why developers would invest time moving away from
22 WPE, Mullenweg responded ominously: “Hmm, I guess you’ll have to wait and see why people
23 might not trust ACF as much going forward.” Brunner ¶ 58, Brunner Ex. I.

24 **4. Defendants Manufacture a Sham Security Review of WPE’s Plugin**

25 After WPE filed its Complaint, Defendants did not so much as even pause their wrongdoing
26 for a moment of self-reflection. Instead, their attacks against WPE have only increased since that
27 filing, confirming the willfulness of Defendants’ misconduct. Recently, Automattic began sending
28 purported security alerts about WPE’s “ACF” plugin to WPE’s CEO, in another act of harassment.

1 Brunner ¶ 43, Ex. D at 1; Prabhakar ¶ 14. The (supposed) vulnerability was minor and WPE released
 2 a security patch within 72 hours, and despite WPE staff being unable to access wordpress.org, WPE
 3 managed to have the patch provided to WordPress staff for distribution to all WordPress users
 4 through wordpress.org. Prabhakar ¶ 15. But before WPE could release the patch, in an
 5 unprecedented and dangerous move, Defendants publicly announced in a social media post that they
 6 discovered a security vulnerability. *Id.* ¶ 16. As commentators noted, such action of publicly
 7 announcing a security vulnerability before it could be remedied was unprecedented, inconsistent
 8 with good practices across the entire technology industry, and potentially dangerous to WordPress
 9 users. *Id.* Hackers can take advantage of this information to attempt to hack websites before the
 10 patch is released. *Id.* Following intense public criticism, Mullenweg took the post down.

11 **5. Mullenweg Modifies wordpress.org’s Login Page to Require Loyalty 12 Pledges Disavowing Affiliation with WPE**

13 On or about October 8, 2024, Mullenweg changed the login page for wordpress.org to
 14 require that all WordPress users take a loyalty pledge. That is, Defendants began requiring all
 15 WordPress users to check a box agreeing that “I am not affiliated with WP Engine in any way,
 16 financially or otherwise”—and blocking login to the site if the box is not checked. Brunner ¶ 60;
 17 Prabhakar ¶ 17; Brunner Ex. L. So under threat of unspecified legal repercussion, Defendants have
 18 pressured WPE’s customers, partners, vendors, employees, and users to cut their ties with WPE, or
 19 face being banned from using resources that sit behind wordpress.org, including the WordPress code
 20 and plugins, which resources are supposed to be open to all.

21 WPE is informed and believes this “loyalty oath” mindset will soon escalate even further.
 22 WPE understands that Defendants will soon demand that agency partners must choose between
 23 doing business with WPE, or being similarly cut off from the WordPress community. Brunner ¶ 62.²

24 **6. Defendants Wrongfully Expropriate WPE’s Most Popular Plugin**

25 On October 12, 2024, Defendants initiated an unprecedented, hostile takeover of WPE’s
 26 most popular WordPress plugin, Advanced Custom Fields (“ACF”). Defendants placed themselves

27 _____
 28 ² Defendants’ draconian loyalty pledge is in line with how they have terminated with severance
 159 of their employees for not being supportive of their war against WPE. Jenkins Ex. 12 at 1.

1 in control of the plugin and updates thereto, thereby directly interfering with the relationships
2 between WPE and millions of its customers and prospective customers. Brunner ¶¶ 63-65.
3 Defendants admitted doing so to target WPE specifically in retaliation for WPE pursuing justice,
4 including in this lawsuit. Prabhakar ¶ 31; Prabhakar Ex. D at 1 (“This is a rare and unusual situation
5 brought on by WP Engine’s legal attacks, we do not anticipate this happening for other plugins.”).
6 Defendants forcibly took control of ACF through Mullenweg’s ownership of wordpress.org, where
7 ACF is hosted for the WordPress community to download. Prabhakar ¶¶ 20-21. Then they
8 misleadingly rebranded it as “Secure Custom Fields” (“SCF”). Brunner ¶ 63; Prabhakar ¶ 21;
9 Prabhakar Exs. A, B. Defendants justified these actions based on a purported security flaw, but at
10 the time they co-opted the plugin, WPE had already fixed the minor security flaw Defendants
11 identified. Prabhakar ¶ 21. The new page Defendants now control falsely states that SCF was
12 developed by wordpress.org (it was not), and Defendants retained all of the download counts and
13 user reviews for the ACF plugin written over a period of 12 years with a nearly 5 star rating, falsely
14 suggesting to consumers that SCF had obtained those reviews. Brunner ¶¶ 63-64; Prabhakar ¶¶ 20-
15 23; Prabhakar Ex. A.

16 Just as troubling, Defendants co-opted the ACF plugin’s unique identifier on wordpress.org
17 and published a new “update” to the plugin, meaning all active ACF users (more than two million)
18 using wordpress.org to update would be migrated over to the rebranded SCF plugin under
19 wordpress.org and Defendants’ unilateral control upon updating *without their consent or even*
20 *knowledge as the update appeared to have come from WPE*, and further jeopardizing the security
21 of WPE’s customers. Prabhakar ¶¶ 24-27; Jenkins Ex. 23. And in yet another act of interference,
22 Defendants removed WPE customers’ ability to purchase the paid “PRO” version of ACF from the
23 ACF plugin. Prabhakar ¶ 28. So complete is Defendants’ attempt to hijack ACF, that when
24 searching on the wordpress.org site for “advanced custom fields,” the site’s search result returns
25 Defendants’ “Secure Custom Fields” directory listing instead. *Id.* ¶ 29; Prabhakar Ex. C at 1.

26 Thus, Defendants wrongfully usurped the relationships and goodwill developed between
27 WPE and its millions of loyal users, conveyed the false impression that the plugin was developed
28 by wordpress.org, and violated their own open-source guidelines, promises they had made, and basic

1 tenets of the open-source community. Defendants have openly admitted that their expropriation of
 2 ACF was to retaliate against WPE. Prabhakar Ex. D at 1, Jenkins Ex. 26.

3 **7. Defendants Threaten More Harm to WPE**

4 Mullenweg continues to make public statements promising to inflict more harm on WPE
 5 with each passing day. On October 7, Mullenweg bragged that he had caused chaos even while he
 6 was still on vacation, promising more “surprises for you all on Tuesday, Wednesday, Thursday” in
 7 connection with his war against WPE. Brunner ¶ 59, Brunner Ex. J at 1. On October 14, Mullenweg
 8 promised: “Oh, there’s more.” Teichman ¶ 28. Further confirming their malicious, anticompetitive
 9 intentions in blocking WPE from wordpress.org, Defendants have started contacting WPE
 10 customers to induce them to terminate their relationship with WPE and contract with Automattic
 11 instead. Defendants have targeted customers using fear tactics among other things, noting that
 12 WPE’s ban from wordpress.org (that, notably, Defendants themselves caused) “could impact sites,”
 13 plugins, or updates. Teichman ¶ 29. Defendants added veiled threats that while the ban on WPE
 14 “*might* not affect your site in the *short term*,” *id.* (emphasis added), WPE’s customers should
 15 consider switching to Defendant Automattic. WPE also understands from multiple sources that
 16 Defendants are plotting more harmful acts against WPE, including, among other things, the forced
 17 take-overs of other WPE plugins, and additional bans from other WordPress-related resources.

18 **G. Defendants Have Caused, and Will Continue to Cause, Irreparable Harm**

19 WPE saw cancellation requests between September 26 and September 30 increase by 14%
 20 as compared to the average cancellation rate request in September prior to the wordpress.org block.
 21 Teichman ¶ 30. WPE also lost new customers. The “sales-assisted” new-business channel saw 63
 22 potential new purchases or upgrades lost, where during negotiations those lost customers expressly
 23 cited Defendants’ actions as a reason for pulling back. *Id.* ¶¶ 31-35 (*e.g.*, “I’m not sure I’m
 24 comfortable until all this drama on your guys end with Wordpress [SIC] is figured out . . . I’ve had
 25 a bunch of website issues this week that I’m not used to having and many clients contact me. It’s
 26 costing me money.”). And those are just the lost customers that gave a specific reason. *Id.* Overall,
 27 the sales-assisted channel secured 333 less new contracts or upgraded contracts during the month,
 28 as compared to WPE’s prior projections. *Id.* Meanwhile, self-service signups dropped 29%

1 between September 25 and September 30, as compared to the prior September average. *Id.* ¶ 36.

2 And there are signs that this is just the beginning—the data also show a 375% increase in
3 customers that have installed tools that will allow them to migrate to another provider, even if they
4 have not yet announced they are terminating WPE’s contract. *Id.* ¶ 39. Even where a customer has
5 not personally explained their rationale to WPE, the cause-and-effect can be seen not just in the
6 contemporaneous nature of the drops, but also by statements made publicly by both WPE’s
7 customers and Defendants. *E.g., id.* ¶¶ 35-37, 49. For instance, public posts have shown WPE
8 customers saying such things as Defendants’ takeover of ACF “gave me a minor heart attack.”
9 Teichman ¶¶ 44-45. For his part, Mullenweg has also provided a “forecast” of his own making,
10 claiming that “millions” of customers will lose trust in WPE in the coming weeks, after he unveils
11 future parts of his extortionate and vengeful campaign. *Id.* ¶ 43; Jenkins Ex. 11.

12 Defendants have actively encouraged such defections, including to increase their own
13 market share—offering to pay WPE’s customers to breach their contracts while WPE is blocked
14 from wordpress.org, and move to service providers owned by Mullenweg. Teichman ¶ 22; Jenkins
15 Ex. 13 at 1.

16 By forcibly co-opting WPE’s ACF plugin and passing it off as their own, Defendants have
17 also wrongfully usurped all of the goodwill and brand recognition WPE has developed with millions
18 of ACF users over the past decade. Prabhakar ¶¶ 20-21. Those actions have also undermined the
19 integrity and reliability of the plugin at wordpress.org, resulting in significant reputational harm to
20 WPE that will only grow over time because the plugin is no longer maintained by WPE. *Id.* ¶ 30.
21 In addition, Defendants’ co-opting has eliminated a channel for generating new customers; 15% of
22 ACF PRO paid subscriptions come from (now unavailable) click-throughs from the standard ACF
23 plugin. Teichman ¶ 40. Additional takeovers of WPE plugins, which Defendants have threatened,
24 would further interfere with WPE’s relationships to its customers.

25 WPE’s customers have also been harmed. Website operators stand to lose *their own*
26 goodwill with *their* customers, if their website misfunctions. They are being harmed with increased
27 monitoring and planning efforts to ensure websites remain operational no matter what Defendants
28 may do next. *Id.* ¶ 47. Those customers that instead decide to leave have lost WPE’s services, and

1 are needlessly incurring the monetary and personnel costs of switching between managers. *Id.*
2 Customers have complained about these hassles publicly, confirming the harm to them and further
3 evidencing loss of WPE’s goodwill. *Id.* ¶¶ 48; Jenkins Exs. 10, 14, 15, 28.

4 The WordPress community more widely is also being harmed by Defendants’ actions.
5 Website operators must devote extra resources and incur costs, while WordPress developers—not
6 just WPE—are seeing cancelled contracts due to concerns over the stability of the WordPress
7 platform. Teichman ¶¶ 45-48. And while Defendants have tried to claim that WPE is a special case,
8 it is not and there is no indication they will stop with WPE. Defendants have shown the power and
9 willingness to unilaterally inflict real damage to any member of the WordPress community, at their
10 whim. Other developers thus fear becoming Defendants’ next target. *Id.* ¶ 49. Public comments
11 about the situation confirm people are fearful of the damage Defendants’ actions have done, and
12 will continue to do, to the WordPress ecosystem generally. *Id.* ¶¶ 48-49; Jenkins Ex. 14, 33.
13 Moreover, Defendants’ forced and retaliatory takeover of the ACF plugin—and, any similar act with
14 respect to other plugins—have introduced heightened security issues into the WordPress
15 community, as Defendants are rushing to tamper with code and products they did not create.

16 In response to the public outcry in the WordPress community, Defendants have attempted
17 to justify their malicious and illegal behavior by offering various and sundry excuses, such as that
18 WPE supposedly does not “contribute” enough to the WordPress community in terms of hours or
19 dollars, or WPE is infringing the WordPress trademark in describing the WordPress software its
20 customers used to build their sites, or that WPE is a bad actor because it has a private equity investor.
21 Defendants’ excuse *du jour* vacillates seemingly based on the whims of Mullenweg and the audience
22 to whom he is speaking. But no matter—the justifications are factually baseless, legally meritless,
23 and ultimately irrelevant, as none would justify Defendants’ outrageous actions.

24 **LEGAL STANDARD**

25 A “preliminary injunction is an equitable remedy.” *Sony Comput. Ent. Am., Inc. v.*
26 *Gamemasters*, 87 F. Supp. 2d 976, 983 (N.D. Cal. 1999). “District courts have broad latitude in
27 fashioning equitable relief when necessary to remedy an established wrong.” *Boardman v. Pac.*
28 *Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016). “The purpose of a preliminary injunction is to

1 preserve the status quo ante litem pending a determination of the action on the merits.” *Id.* A
 2 plaintiff seeking a preliminary injunction must establish: “[1] that he is likely to succeed on the
 3 merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that
 4 the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Alliance*
 5 *for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A stronger showing on one of
 6 these four elements may offset a weaker showing on another. *Cottrell*, 632 F.3d at 1131, 1134-35.
 7 “Thus, when plaintiffs establish that the balance of hardships tips sharply in their favor, there is a
 8 likelihood of irreparable injury, and the injunction is in the public interest, they need only show
 9 ‘serious questions’ on the merits.” *Where Do We Go Berkeley v. Cal. Dep’t of Transp.*, 32 F.4th
 10 852, 859 (9th Cir. 2022) (citation omitted). Moreover, “‘serious questions going to the merits’ and
 11 a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction,
 12 assuming the other two elements of the *Winter* test are also met.” *See Cottrell*, 632 F.3d at 1132.

13 ARGUMENT

14 I. WPE IS LIKELY TO SUCCEED ON THE MERITS

15 A. WPE Is Likely To Succeed On Its CFAA and Extortion Claims

16 The Computer Fraud and Abuse Act (“CFAA”) makes it a violation of federal law to, with
 17 an “intent to extort,” use a “threat to cause damage to a protected computer” or to “demand . . .
 18 money . . . in relation to damage to a protected computer, where such damage was caused to facilitate
 19 the extortion.” 18 U.S.C. § 1030(a)(7). The computers at issue here—WPE’s systems, those behind
 20 WordPress, and those of WPE’s customers—involve systems accessed by users via the Internet
 21 globally, and therefore qualify as “protected computers.”³ To “damage” a computer in this context
 22 means “*any impairment to the integrity or availability of data, a program, a system, or information.*”
 23 18 U.S.C. § 1030(e)(8) (emph. added). The CFAA provides for injunctive relief. *Id.* § 1030(g)
 24 (“Any person who suffers damage or loss by reason of a violation of [Section 1030] may maintain
 25 a civil action against the violator to obtain compensatory damages and injunctive relief ...”).

27 ³ *See* 18 U.S.C. § 1030(e)(2)(B) (“protected computer” includes one “which is used in or affecting
 28 interstate or foreign commerce or communication”); *United States v. Sutcliffe*, 505 F.3d 944, 953
 (9th Cir. 2007) (“the Internet is an instrumentality and channel of interstate commerce”).

1 Here, Defendants’ actions and words reveal a deliberate, blatant, and ongoing extortion
2 scheme. They demanded tens of millions of dollars under threat of “nuclear” war unless WPE
3 agreed to a sham license within 24 hours. *E.g.*, Brunner ¶¶ 22-34, Brunner Exs. E, F; Jenkins Ex.
4 21 at 1, Ex. 5 at 1. The use and promise to continue to use technological warfare has made collateral
5 damage of WPE’s customers and the WordPress community. Teichman ¶¶ 30-49. Defendants
6 weaponized wordpress.org, and those actions put WPE and its customers at risk of further harm.
7 This is no good-faith trademark dispute. This is extortion. Pay up today, or else.

8 The extortionate acts were carried out via texts, calls, emails and other communications
9 using the Internet in interstate or foreign commerce. *E.g.*, Brunner ¶¶ 22-34. The CFAA is thus
10 triggered because Defendants’ campaign has included threats and actual acts to deprive WPE and
11 its customers of access to the computers and servers behind wordpress.org and to deprive WPE and
12 its customers of the normal functioning of their own websites, including by undermining the security
13 and integrity of WPE’s most popular plugin, ACF, as a result of Defendants’ complete takeover of
14 the plugin—all because WPE refused to pay Defendants’ ransom demands. Prabhakar ¶¶ 7-11, 20-
15 33. This is classic, actionable misconduct under the CFAA. *Chegg, Inc. v. Doe*, 2023 WL 7392290,
16 at *7 (N.D. Cal. Nov. 7, 2023) (granting preliminary injunction under CFAA and UCL);
17 *SuccessFactors, Inc. v. Softscape, Inc.*, 544 F. Supp. 2d 975, 981 (N.D. Cal. 2008) (same); *Inplant*
18 *Enviro-Sys. 2000 Atlanta, Inc. v. Lee*, 2015 WL 12746702, at *2-4 (N.D. Ga. Feb. 10, 2015)
19 (granting TRO, finding refusal to give access to a domain likely violated Section 1030(a)(7)).⁴

20 For the same reasons and based on the same conduct, WPE is also likely to prevail on its
21 common-law attempted extortion claim. *See TaiMed Biologics, Inc. v. Numoda Corp.*, 2011 WL
22 1630041, at *5 (N.D. Cal. Apr. 29, 2011) (allowing amendment to add claim of attempted extortion
23

24 ⁴ *See also SkyHop Techs., Inc. v. Narra*, 58 F.4th 1211, 1226 (11th Cir. 2023) (defendant’s
25 “withholding of the passwords and [plaintiff’s] other digital property” unless plaintiff paid up, had
26 “diminished [plaintiff’s] ability to use its computer system or the associated data” and constituted
27 “damage[s]” under 1030(a)(7)); *United States v. Soybel*, 13 F.4th 584, 595 (7th Cir. 2021) (“a
28 reasonable jury could find that” by preventing the victim from accessing his computer system, “[the
defendant] ‘impaired the availability of the system’ by temporarily diminishing its readiness for [the
victim’s] immediate use.”); *Sewell v. Bernardin*, 795 F.3d 337, 340 (2d Cir. 2015) (locking victim
out of her social media accounts “impaired the integrity” of them).

1 where defendant threatened to damage plaintiff's business reputation in order to coerce payment of
 2 large sum of money); *S & C Elec. Co. v. Contreras*, 2011 WL 673740, at *2 (N.D. Cal. Feb. 17,
 3 2011) (granting preliminary injunction for attempted extortion).

4 **B. WPE Is Likely To Succeed On Its UCL Claim**

5 California's Unfair Competition Law ("UCL") is designed "to protect both consumers and
 6 competitors by promoting fair competition in commercial markets for goods and services." *Payroll*
 7 *Res. Grp. v. HealthEquity Inc.*, 2024 WL 4194795, at *4 (N.D. Cal. Sept. 12, 2024). It prohibits
 8 any business practice that is "unlawful," "unfair," or "fraudulent," and it provides injunctive relief.
 9 Cal. Bus. & Prof. Code § 17200; *see* § 17203 ("Any person who engages, has engaged, or proposes
 10 to engage in unfair competition may be enjoined in any court of competent jurisdiction").⁵ *Solis v.*
 11 *Specialized Loan Servicing, LLC*, 2024 WL 4002612, at *3 (C.D. Cal. July 12, 2024) (granting TRO
 12 on UCL claim); *Campos v. Dyck O'Neal, Inc.*, 2024 WL 2941656, at *3 (E.D. Cal. May 10, 2024)
 13 (same). A business practice is "unlawful" under the UCL if it violates any other law. *Chabner v.*
 14 *United Omaha Life Ins. Co.*, 225 F.3d 1042, 1048 (9th Cir. 2000). Thus, Defendants' violations of
 15 the CFAA, as well as attempted extortion (which is a violation of the Penal Code) can serve as the
 16 basis for a UCL claim. *Russell v. Micheletti*, 2023 WL 2620896, at *7 (N.D. Cal. Mar. 23, 2023)
 17 ("claims of extortion and fraud . . . could sustain Plaintiff's UCL claim").

18 But the UCL is broader than the combined effect of other laws. A business practice is
 19 "unfair" when the conduct violates even the "policy or spirit" or is "comparable" to a violation of
 20 the antitrust laws, or "otherwise significantly threatens or harms competition." *Cel-Tech Commc'ns,*
 21 *Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 187 (1999). Defendants' scheme is "unfair"
 22 for similar reasons as it is extortionate—it has involved, among other things, attempts to block
 23 WPE's ability to deliver services to its customers. And most recently, the scheme involved the
 24 takeover of the ACF plugin and unconscionable usurpation of all of WPE's goodwill and
 25

26 ⁵ *See also Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143 (2003) ("The UCL
 27 covers a wide range of conduct. It embraces anything that can properly be called a business practice
 28 and that at the same time is forbidden by law Section 17200 'borrows' violations from other
 laws by making them independently actionable as unfair competitive practices"); *id.* at 1152 (the
 UCL "allows any consumer to combat unfair competition by seeking an injunction").

1 engineering hours in developing the plugin. This is also plainly “unfair” and “unlawful” even on
 2 its own, as Defendants are giving the false impression that Defendants developed the plugin. *Chegg*,
 3 2023 WL 7392290, at *7 (granting preliminary injunction under CFAA and UCL); *Simpson Strong-*
 4 *Tie Co. Inc. v. MiTek Inc.*, 2021 WL 1253803, at *7 (N.D. Cal. Apr. 5, 2021) (rejecting dismissal of
 5 UCL claim based on false advertising). WPE is thus likely to prevail on its UCL claim as well.

6 **C. WPE Is Likely To Succeed On Its Interference Claims**

7 This claim requires: (1) a valid contract; (2) defendant’s knowledge of this contract; (3)
 8 defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship;
 9 (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. *Quelimane*
 10 *Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26, 55 (1998). Injunctive relief is available. *See hiQ*
 11 *Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1194 (9th Cir. 2022) (affirming preliminary injunction
 12 on tortious interference claim where LinkedIn blocked the plaintiff’s access to data it had previously
 13 made available). The facts here demonstrate a straightforward example of tortious interference.

14 This is the rare case where Defendants have brazenly admitted to their intention to interfere
 15 with WPE’s customer relationships. The contracts at issue are those between WPE and its
 16 customers, as well as its agency partners’ customers, which include WordPress website hosting and
 17 support contracts. Teichman ¶¶ 4-5. Defendants’ declaration of “nuclear” war on WPE and
 18 extortionate acts, coupled with their offer to pay WPE’s customers to breach their contracts with
 19 WPE and move to service providers owned by Defendants while they were simultaneously blocking
 20 WPE from accessing wordpress.org under false pretenses, as well as the hijacking of WPE’s popular
 21 ACF plugin, demonstrates not just Defendants’ knowledge of the existence of WPE’s contracts, but
 22 also Defendants’ desire for WPE customers to breach and/or not renew those contracts. *E.g.*,
 23 Brunner ¶ 23; Teichman ¶¶ 21-23; Jenkins Ex. 13 at 1, Exs. 15, 17. Defendants knew they were
 24 interfering not just with *a* contractual relationship; they deliberately set out to interfere with *all* of
 25 them. *See Quelimane Co.*, 19 Cal. 4th at 56 (intent met where defendants had purpose to interfere
 26 *or* when defendant was “substantially certain” that interference would occur).⁶ Mullenweg changed
 27

28 ⁶ *See also Altera Corp. v. Clear Logic, Inc.*, 424 F.3d 1079, 1092 (9th Cir. 2005) (“When the

1 the login page for wordpress.org to require all users to pledge loyalty that they are “not affiliated
2 with WP Engine in any way.” Brunner ¶ 60; Brunner Ex. L; Prabhakar ¶ 17.

3 Plainly, WPE’s performance on those contracts is being disrupted at least by adding burdens
4 and expenses to WPE’s and its customers’ performance. *See Cellco P’ship v. Hope*, 469 Fed. Appx.
5 575, 577 (9th Cir. 2012) (affirming preliminary injunction based on interference with contractual
6 relationships where the “necessary consequence” of defendant’s interference “was to burden
7 [plaintiff’s] contracts with its [] subscribers by making it more costly for [plaintiff] to meet its
8 obligation”); *Credit Bureau Connection, Inc. v. Pardini*, 726 F. Supp. 2d 1107, 1120-22 (E.D. Cal.
9 2010) (granting preliminary injunction because defendants “impermissib[ly] revo[ked]” an implied
10 license for a software program and “restricted [plaintiff’s] access to the software and ability to
11 service existing and new clients,” where plaintiff had “marketed the software under its name and
12 has enjoyed unlimited use of, and access to, the software” for years prior to revocation). That WPE
13 will be able to show harm is further confirmed by the loss of customers, which will increase if
14 Defendants are allowed to continue a rolling set of cyber-attacks. Teichman ¶¶ 30-40. Again,
15 Defendants have stated that their belief is that customers have already left in “droves,” and that
16 “millions” more will leave in the coming “weeks”—presumably after more of Defendants’
17 “surprises” are unveiled. *See* Brunner ¶¶ 54, 57, 59; Jenkins Exs. 10, 11. Defendants have also
18 intentionally interfered with WPE’s relations with its ACF users because Defendants have taken
19 over the plugin, removing WPE’s ability to provide users with an upgrade path to the more advanced
20 and paid version of the plugin, ACF PRO, and impairing the goodwill WPE has built over many
21 years. Brunner ¶¶ 42-44; Prabhakar ¶¶ 20-28; Teichman ¶ 21. All the elements of this tort are met.

22 Defendants may argue that they had a right or privilege to act as they did. This fails.
23 Defendants have tried to justify their behavior with multiple ever-shifting excuses, including
24 allegations that WPE infringed WordPress trademarks. Defendants’ sham trademark argument is
25 meritless. WPE’s use is unquestionably fair, and Automattic’s 14-year delay in enforcing the
26 WordPress mark—if it even has standing to do so in the first place given that the WordPress
27

28 defendant performs the act that causes the interference, the defendant need not know exactly who is
a party to the contract, so long as he knows he is interfering with a contractual relationship.”).

1 Foundation owns it—dooms their specious effort under the doctrine of laches. *See, e.g., Grupo*
 2 *Gigante SA De CV v. Dallo & Co.*, 391 F.3d 1088, 1102–03 (9th Cir. 2004) (plaintiff “cannot simply
 3 wait . . . and then ask for an injunction to take away good will developed by defendant in the
 4 interim.”). The same is true for the WooCommerce marks. Nor could Defendants’ extortion
 5 campaign and other wrongful actions, designed to inflict devastating harm upon a competitor and
 6 threaten the operation and security of millions of websites, be justified by a supposed trademark
 7 disagreement. WPE is likely to prevail on its interference claims.

8 **II. WPE WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION**

9 Irreparable harm “is traditionally defined as harm for which there is no adequate legal
 10 remedy.” *SolarPark Korea Co. v. Solaria Corp.*, 2023 WL 4983159 at *8 (N.D. Cal. Aug. 2, 2023)
 11 (Martínez-Olguín, J.). Courts recognize that intangible and unquantifiable injuries often lack an
 12 adequate legal remedy and, therefore, constitute irreparable harm. *See Rent-A-Center, Inc. v.*
 13 *Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (“intangible injuries,
 14 such as damage to ongoing recruitment efforts and goodwill, qualify as irreparable harm”). As
 15 explained in the concurrently filed declarations, Defendants’ actions—and Defendants’ clear intent
 16 to continue their misdeeds—have caused and will continue to cause irreparable harm to WPE.

17 ***Loss of customers and damage to customer relationships.*** The threat of losing customers
 18 supports a finding of irreparable harm. *Am. Rena Int’l Corp. v. Sis-Joyce Int’l Co.*, 534 Fed. Appx.
 19 633, 636 (9th Cir. 2013) (affirming finding of irreparable harm where plaintiff provided “evidence
 20 of threatened loss of [] customers”). Even where a specific customer has not yet left, the Ninth
 21 Circuit recognizes that interfering with a company’s relationship with its customers can constitute
 22 irreparable harm. *Henry Schein, Inc. v. Cook*, 191 F. Supp. 3d 1072, 1077 (N.D. Cal. 2016) (finding
 23 irreparable harm based on likelihood of losing established customer relationships).

24 As discussed above, there is ample evidence showing that WPE has lost, and will continue
 25 to lose, customers if Defendants are able to continually threaten WPE and its customers with service
 26 interruptions. Even though Defendants’ “war” is just weeks old, the data show a 14% increase in
 27 cancellation requests, 333 fewer new contracts than expected from the “sales-assisted” channel, and
 28 a 29% drop in new customers from the “self-service” channel. Teichman ¶¶ 30-36. October has

1 seen a 17% increase in cancellation requests. *Id.* ¶ 37. And WPE has seen a 375% spike in the
2 installation of migration-assisting plugins, indicating more is still coming. *Id.* ¶ 39. The common-
3 sense conclusion that these events are the direct result of Defendants’ efforts to interrupt only
4 WordPress sites managed by WPE is confirmed by the words of WPE’s customers, as well as those
5 of Defendants themselves. *Id.* ¶¶ 22-49 & Ex. N; Brunner ¶¶ 36-59; *e.g.*, Jenkins Exs. 10, 11, 13 at
6 1. Defendants’ takeover of the ACF plugin has also impacted WPE’s ability to provide an upgrade
7 path to the advanced, paid version of ACF—ACF PRO—and has irreparably harmed WPE’s
8 relationships with its customers and prospective customers of the ACF PRO plugin. Prabhakar ¶ 28;
9 Teichman ¶ 39. These facts amply demonstrate irreparable harm. *See Accretive Specialty Ins. Sols.,*
10 *LLC v. XPT Partners, LLC*, 2024 WL 1699509, at *12-13 (C.D. Cal. Mar. 28, 2024) (granting TRO
11 on CFAA claim; “continued loss of . . . clients” demonstrates irreparable harm).

12 ***Loss of market share.*** Relatedly, “[a]mple case law supports [the] arguments that loss of
13 market share and lost profits constitute irreparable harm.” *Synopsys, Inc. v. InnoGrit, Corp.*, 2019
14 WL 2617091, at *4 (N.D. Cal. June 26, 2019); *see also SolarPark Korea Co.* 2023 WL 4983159, at
15 *8 (“there is a likelihood of irreparable harm because absent a preliminary injunction, [plaintiff]
16 will likely suffer a loss of market position, loss of current and prospective customers . . .”).

17 Here, the same facts that show WPE is at an increasing risk of losing customers also show
18 it is at an increasing risk of losing market share. *See supra.* Mullenweg told the WordPress
19 community to leave WPE and use other web hosts. Jenkins Ex. 7 at 1, Ex. 16. Conveniently, his
20 examples included Automattic companies. Jenkins Ex. 29 at 10-11. Defendants even offered to
21 pay WPE customers to breach their contracts with WPE. Teichman ¶ 22; Jenkins Ex. 13 at 1.

22 ***Damage to reputation and goodwill.*** Harming a company’s reputation or goodwill can
23 constitute irreparable harm. *Rent-A-Center*, 944 F.2d at 603 (“intangible injuries, such as damage
24 to ongoing recruitment efforts and goodwill, qualify as irreparable harm”); *Moonbug Entm’t Ltd. v.*
25 *HappyKidsTV*, 2022 WL 18859471, at *10 (N.D. Cal. Dec. 15, 2022) (damage to “business,
26 reputation, and goodwill . . . are intangible quantities sufficient to establish an irreparable harm”).

27 The Court has an ample record to conclude that WPE has suffered and will suffer these
28 categories of harm, too. WPE is one of the organizations that can provide assistance “at scale,” and

1 WPE focuses on customers that put a premium on stability and enterprise readiness. Teichman ¶¶
 2 7, 41. WPE’s customer base is thus particularly sensitive to even the perceived possibility of service
 3 interruptions. *Id.* ¶ 41. By, among other things, trying to break the functionality of WPE-managed
 4 websites, cutting off WPE-managed websites from automatic security updates, barring WPE
 5 customers from wordpress.org resources, ginning up “security” concerns about WPE’s plugins, and
 6 hijacking WPE’s most popular plugin, Defendants are influencing WPE customers to doubt the
 7 *future* reliability of WPE’s offerings. Customers are leaving or threatening to leave, explaining that
 8 they cannot justify paying a premium for WPE when they “have these problems.” *See* Teichman ¶¶
 9 32-34, 44-49; Jenkins Exs. 14, 15, 17. This has and will continue to erode WPE’s goodwill and
 10 reputation as a reliable service provider, built up over a decade of service. Teichman ¶¶ 41-49.

11 Again, the Court can find evidence of this existing and future harm in Mullenweg’s own
 12 words. Mullenweg recently openly invited the WordPress community to brainstorm how to manage
 13 a mass migration away from WPE’s ACF plugin, predicting “millions of sites moving away from it
 14 in the coming weeks.” Brunner ¶ 57; Jenkins Ex. 11. When someone asked why developers would
 15 invest time moving away from WPE, Mullenweg responded ominously: “Hmm, I guess you’ll have
 16 to wait and see why people might not trust ACF as much going forward.” Brunner Ex. I.

17 Given Defendants have declared an intent to unveil “surprises” that will break the “trust”
 18 people have for WPE, leading to “millions” of customers leaving in a matter of “weeks,” this Court
 19 should not countenance any defense argument that WPE has not been put under an imminent and
 20 continuous threat of irreparable harm. Brunner ¶ 59, Brunner Exs. I, J; Jenkins Ex. 11.

21 **III. THE EQUITIES TIP SHARPLY IN FAVOR OF RESTORING AND THEN**
 22 **PRESERVING THE PRIOR STATUS QUO**

23 Courts “balance the competing claims of injury and . . . consider the effect on each party of
 24 the granting or withholding of the requested relief.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7,
 25 24 (2008). Absent judicial relief, Defendants will continue to inflict death by a thousand cuts upon
 26 WPE, as Defendants try to break the functionality of WPE websites, cause the marketplace to lose
 27 trust in WPE, and otherwise drive away WPE’s customers. By sharp contrast, Defendants face no
 28 burden here. The requested relief amounts merely to returning to the status quo prior to Defendants’

1 extortive and unprovoked declaration of war. WPE’s products were plugged into wordpress.org for
2 many years without incident. Prabhakar ¶ 4. The balance of equities strongly favor granting relief.

3 **IV. THE PUBLIC INTEREST ALSO STRONGLY FAVORS RELIEF**

4 The public interest in this dispute also strongly favors quickly restoring and then preserving
5 the status quo as it existed just a few weeks ago. WPE’s customers are themselves at risk of
6 irreparable harm, as a result of the impairment of functionality in their websites, exerting time and
7 resources in an attempt to preempt such occurrence, or switching service providers just to avoid
8 these risks. Teichman ¶¶ 44-48; Jenkins Exs. 14, 28, 33. Moreover, service providers in the
9 WordPress community other than WPE are also losing business because website operators are
10 concerned about the stability of the WordPress platform, and developers are anxious and want
11 assurance they will not be next to receive another extortionate demand from Mullenweg, become
12 his next target of nuclear war, or next to have their plug-ins expropriated. Teichman ¶¶ 44-49. And
13 Defendants’ ham-fisted takeover attempts are increasing the security risk for everyone in the
14 WordPress community. An order here will make clear that everyone’s data and systems will be
15 respected while WPE and Defendants litigate their dispute. It will also help stabilize the entire
16 WordPress ecosystem, and keep the system that powers over 40% of websites running.

17 **CONCLUSION**

18 WPE respectfully requests that the Court issue a preliminary injunction restoring and
19 preserving the status quo as it existed prior to Defendants’ wrongful actions described above. The
20 preliminary injunction requires no security because returning the situation to the status quo will have
21 no negative effect on Defendants. *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (“The
22 district court may dispense with the filing of a bond when it concludes there is no realistic likelihood
23 of harm to the defendant from enjoining his or her conduct.”); *Comet Techs. United States of Am.*
24 *Inc. v. Beuerman*, 2018 WL 1990226, at *6 (N.D. Cal. Mar. 15, 2018) (bond not required for
25 injunctive relief that “simply enjoin[s] Defendant from doing something Defendant never had a right
26 to do in the first place”).

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Respectfully submitted,

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