WRITER'S DIRECT DIAL NO.
(650) 801-5005

WRITER'S EMAIL ADDRESS
rachelkassabian@quinnemanuel.com

September 23, 2024

<u>**Via Electronic Mail**</u>

Holly Hogan, Chief Legal Officer
Automattic Inc.
60 29th Street #343
San Francisco, CA 94110

Re: <u>Automattic's Actionable Misconduct Directed to WP Engine</u>

Dear Ms. Hogan:

We are litigation counsel for WP Engine and write to address the serious and repeated misconduct Automattic has directed toward WP Engine over the past several days.

Stunningly, Automattic's CEO Matthew Mullenweg threatened that if WP Engine did not agree to pay Automattic – his for-profit entity – a very large sum of money before his September 20th keynote address at the WordCamp US Convention, he was going to embark on a self-described "scorched earth nuclear approach" toward WP Engine within the WordPress community and beyond. When his outrageous financial demands were not met, Mr. Mullenweg carried out his threats by making repeated false claims disparaging WP Engine to its employees, its customers, and the world. Mr. Mullenweg has carried out this wrongful campaign against WP Engine in multiple outlets, including via his keynote address, across several public platforms like X, YouTube, and even on the Wordpress.org site, and through the WordPress Admin panel for all WordPress users, including directly targeting WP Engine customers in their own private WordPress instances used to run their online businesses.
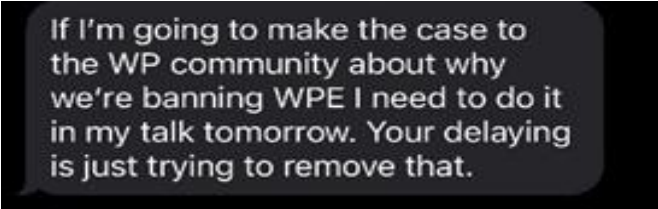
Mr. Mullenweg's covert demand that WP Engine hand over tens of millions to his for-profit company Automattic, while publicly masquerading as an altruistic protector of the WordPress community, is disgraceful. WP Engine will not accede to these unconscionable demands which not only harm WP Engine and its employees, but also threaten the entire WordPress community. WP Engine has sought to do the right thing at each stage of Mr. Mullenweg's wrongful campaign and will continue to do so, with the integrity and candor that are hallmarks of its own culture and that of many other participants in the WordPress ecosystem. Mr. Mullenweg's words and conduct constitute actionable wrongdoing and must cease immediately.

quinn emanuel urquhart & sullivan, llp

ABU DHABI | ATLANTA | AUSTIN | BEIJING | BERLIN | BOSTON | BRUSSELS | CHICAGO | DALLAS | DOHA | HAMBURG | HONG KONG | HOUSTON | LONDON |
LOS ANGELES | MANNHEIM | MIAMI | MUNICH | NEUILLY-LA DEFENSE | NEW YORK | PARIS | PERTH | RIYADH | SALT LAKE CITY | SAN FRANCISCO |
SEATTLE | SHANGHAI | SILICON VALLEY | SINGAPORE | STUTTGART | SYDNEY | TOKYO | WASHINGTON, DC | WILMINGTON | ZURICH

I. Automattic Makes Coercive Threats Demanding Monetary Payment In Exchange for Mr. Mullenweg's Silence.

In the days leading up to Mr. Mullenweg's September 20th keynote address at the WordCamp US Convention, Automattic suddenly began demanding that WP Engine pay Automattic large sums of money, and if it didn't, Automattic would wage a war against WP Engine. This demand was accompanied by allegations about WP Engine's business that were not only baseless but also bore no rational relation to the payment demand.

During calls on September 17th and 19th, for instance, Automattic CFO Mark Davies told a WP Engine board member that Automattic would "go to war" if WP Engine did not agree to pay its competitor Automattic a significant percentage of its gross revenues – tens of millions of dollars in fact – on an ongoing basis. Mr. Davies suggested the payment ostensibly would be for a "license" to use certain trademarks like WordPress, even though WP Engine needs no such license. WP Engine's uses of those marks to describe its services – as all companies in this space do – are fair uses under settled trademark law and consistent with WordPress' own guidelines.[1] Automattic's CFO insisted that WP Engine provide its response to this demand immediately and later, on the day of the keynote, followed up with an email reiterating a claimed need for WP Engine to concede to the demands "before Matt makes his WCUS keynote at 3:45 p.m. PDT today."

In parallel and throughout September 19 and 20, Mr. Mullenweg embarked on a series of harassing text messages and calls to WP Engine's board member and also its CEO, threatening that if WP Engine did not agree to pay up prior to the start of Mr. Mullenweg's livestreamed keynote address at 3:45pm on September 20, he would go "nuclear" on WP Engine, including by smearing its name, disparaging its directors and corporate officers, and banning WP Engine from WordPress community events. Here is one of Mr. Mullenweg's threatening texts:

While waiting for a response to his text messages, Mr. Mullenweg emailed WP Engine's CEO and a board member, making threatening references to his planned keynote: "We get a few thousand viewers on the livestream, and the videos on Youtube can get millions of views when we promote them." Mr. Mullenweg further stated that he had already created slides for his keynote speech, taking aim at WP Engine and its investor, and would present them to WordCamp attendees – and to millions of others via livestream on YouTube – if his financial demands were not met.
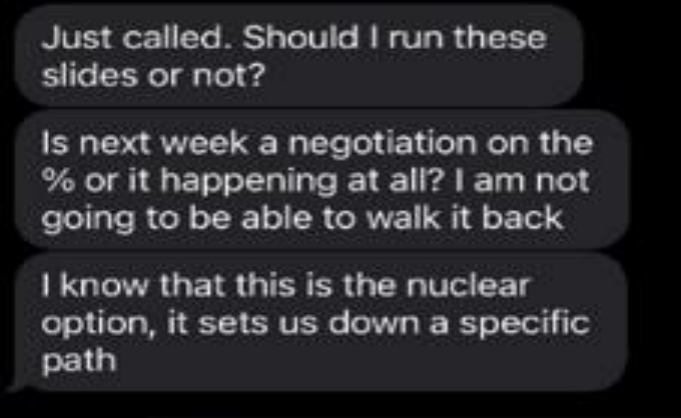
---

[1]   Trademark Policy, WordPress Foundation, last accessed September 23, 2024, https://wordpressfoundation.org/trademark-policy/.

I have 14 slides so far, working title for the talk: "How Private Equity can Hollow out and Destroy Open Source Communities, a Story in 4 Parts."

I've got quotes from current and former employees, some may even stand up and speak as well.

Mr. Mullenweg continued to send a barrage of texts throughout the evening of September 19 and the morning of September 20, attempting to pressure WP Engine into capitulating to Automattic's financial demands:
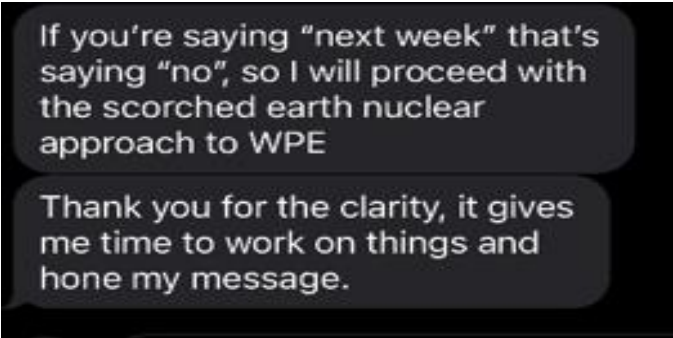

Just called. Should I run these slides or not?

Is next week a negotiation on the % or it happening at all? I am not going to be able to walk it back

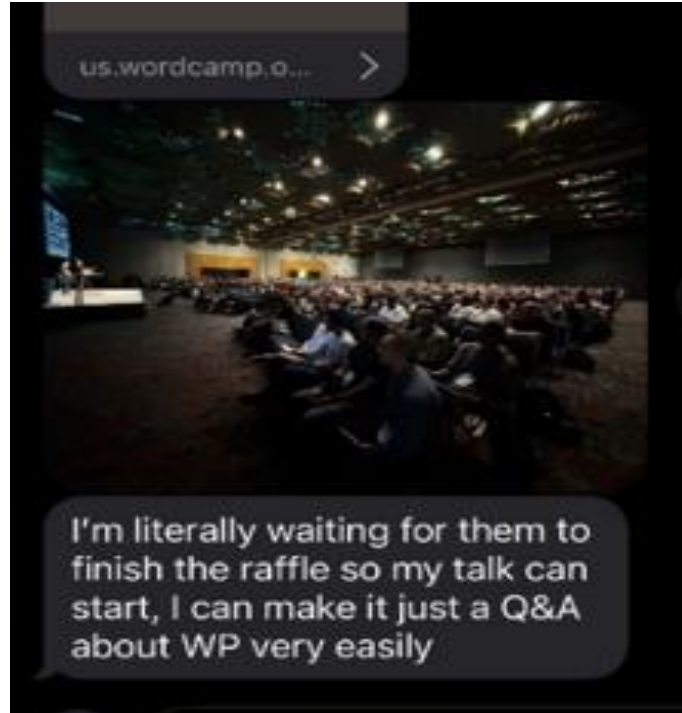I know that this is the nuclear option, it sets us down a specific path

When WP Engine's CEO and board member offered to speak with Mr. Mullenweg the following week to have a business discussion, Mr. Mullenweg refused, instead electing to manipulate WP Engine into paying Automattic by using fear-based pressure tactics tied to his keynote address that afternoon:

If you're saying "next week" that's saying "no", so I will proceed with the scorched earth nuclear approach to WPE

Thank you for the clarity, it gives me time to work on things and hone my message.

In the final minutes leading up to his keynote address, Mr. Mullenweg sent one last missive: a photo of the WordCamp audience waiting to hear his speech, with the message that he could shift gears and turn his talk into "just a Q&A" if WP Engine agreed to pay up:

I'm literally waiting for them to finish the raffle so my talk can start, I can make it just a Q&A about WP very easily

II.   Mr. Mullenweg Carries Out His Threats – During His WordCamp Keynote and Thereafter.

When WP Engine refused to capitulate to Automattic's astronomical and extortionate monetary demands, Mr. Mullenweg made good on his threats. Specifically, during the keynote address at WordCamp US on the afternoon of September 20, Mr. Mullenweg made a series of false and disparaging statements about WP Engine and its investor, including:

- Claiming that WP Engine is a company that just wants to "feed off" of the WordPress ecosystem without giving anything back.

- Suggesting that WP Engine employees may be fired for speaking up, supporting Mr. Mullenweg, or supporting WordPress, and offering to provide support in finding them new jobs if that were to occur.

- Stating that every WP Engine customer should watch his speech and then not renew their contracts with WP Engine when those contracts are up for renewal.

- Claiming that if current WP Engine customers switch to a different host they "might get faster performance."

- Alleging that WP Engine is "misus[ing] the trademark" including by using "WP" in its name.

- Claiming that WP Engine's investor doesn't "give a dang" about Open Source ideals.

Mr. Mullenweg's statements during his keynote address at the WordCamp US Convention were demonstrably false and self-serving. As just a few examples:

- Contrary to Mr. Mullenweg's statements that WP Engine does not contribute to his narrow and self-serving definition of the WordPress community, WP Engine has been deeply dedicated to advancing the use and adoption of WordPress through innovation, investment, and active community involvement. WP Engine has contributed tens of millions of dollars in ongoing support for the broader community through events, sponsorships, and the development of educational resources, including sponsorship of WordCamps worldwide and producing DE{CODE}; educating and empowering the WordPress community through content like the WordPress Roundup and the Building WordPress series; hosting, funding and actively maintaining multiple Open Source projects (e.g., ACF, WPGraphQL, faust.js) within the ecosystem used by millions of websites around the world; and producing informative webinars, podcasts, and tutorials. Even considering Mr. Mullenweg's incorrect statement that contribution is only based on hours worked and contributors to Five for the Future, Mr. Mullenweg falsely stated that WP Engine is failing on this metric. In reality, WP Engine is ranked 30 out of 189 in hours contributed and 16 out of 189 in contributors, significantly outpacing multiple other contributors relative to our revenue.

- As for Mr. Mullenweg's claim that WP Engine is misusing the WordPress trademark, that too is false, and reflects a profound misunderstanding of both trademark law and WordPress Foundation's trademark policy. First, WP Engine's use of "WP" is explicitly permitted by WordPress Foundation's trademark policy: "The abbreviation 'WP' is not covered by the WordPress trademarks and you are free to use it in any way you see fit."[2] Moreover, WP Engine's use of the WordPress mark is entirely compliant with governing trademark law. For more than a decade, WP Engine has fairly used that term to describe its services, as other members of the WordPress ecosystem do.

- Likewise, Mr. Mullenweg's speculation that WP Engine might retaliate against employees for supporting the WordPress ecosystem is not just false and wholly unsubstantiated – it is also absurd.

Not satisfied with the harm he inflicted at WordCamp, Mr. Mullenweg has continued his smear campaign since then. For example, Mr. Mullenweg authored a post on Wordpress.org, the site of the non-profit WordPress Foundation, entitled "WP Engine is not WordPress." The post falsely states, "What WP Engine gives you is not WordPress, it's something that they've chopped up, hacked, butchered to look like WordPress, but actually they're giving you a cheap knock-off and charging you more for it." In truth, WP Engine's WordPress installations are identical to the WordPress.org ZIP file which defines WordPress. Disabling revisions is a built-in feature of WordPress and has been since before WP Engine was founded (a quick Google search returns about 140,000 articles discussing the practice). Furthermore, this feature has been officially
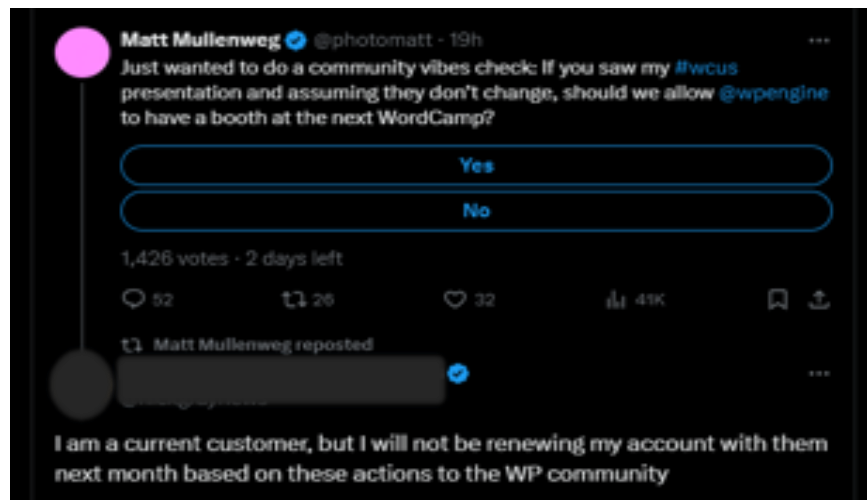
---

[2] *See* https://wordpressfoundation.org/trademark-policy/.

documented by WordPress[3] and limiting revisions is also a feature touted by Automattic's own product, JetPack.[4] Mr. Mullenweg then caused a post from his personal blog entitled "On WP Engine," containing these same false and disparaging statements, to be placed onto the WordPress admin dashboard, which is provided to every WordPress hosting provider, including WP Engine, and seen by those providers' customers.

Mr. Mullenweg also has continued to repeat his various false and defamatory statements about WP Engine on his X account and to encourage customers to switch away from WP Engine. He has even disparagingly called WP Engine a "cancer" to WordPress – despite the countless contributions WP Engine has made to the WordPress community (as described above) and the obvious harm such aspersions inflict upon WP Engine's business reputation. Mr. Mullenweg's self-declared "nuclear war" against WP Engine for daring not to capitulate to Automattic's extortionate monetary demands has continued up through this writing.

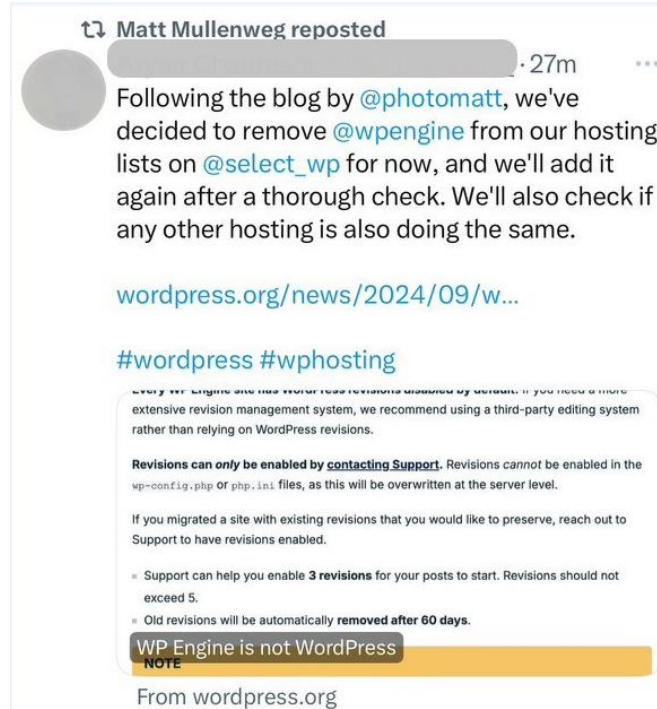## III.   Automattic Must Cease and Desist.

Mr. Mullenweg's false, misleading, and disparaging statements are legally actionable. They were made to key members of the WordPress and broader software and technology ecosystem, including WP Engine employees and customers at WordCamp US, and were livestreamed across the world via YouTube. Among other things, Mr. Mullenweg's words and actions threaten to – and appear intended to – harm WP Engine's business and reputation within the WordPress community and beyond, and tortiously interfere with WP Engine's contractual relationships with its employees and customers.

Indeed, some WP Engine customers and community members have already expressed an intention to stop doing business with WP Engine due to Mr. Mullenweg's misconduct:

---

[3] "wp_revisions_to_keep()", WordPress Developer Resources, last accessed September 23, 2024, https://developer.wordpress.org/reference/functions/wp_revisions_to_keep/.
[4]   WordPress Revisions: How to Enable, Disable, Limit & Delete Them, JetPack.com, last accessed September 23, 2024, https://jetpack.com/blog/wordpress-revisions/.

Mr. Mullenweg's statements also reflect a clear abuse of his conflicting roles as both (1) the Director of the non-profit WordPress Foundation, and (2) the CEO of at least two for-profit businesses that compete with WP Engine. From his sham assertion of trademark rights, to his market-wide disparagement, to disruption of known business relationships by either convincing or coercing WP Engine's customers from doing any further business with it, these acts reflect just a few examples of Mr. Mullenweg's unethical abuse of power. That Mr. Mullenweg quietly demanded tens of millions from WP Engine for his for-profit company while publicly claiming to be selflessly safeguarding the interests of the community is shameful.

WP Engine is fully prepared to take all necessary steps to protect its business, employees and customers, as well as the entire WordPress ecosystem, from the harm Automattic is attempting to inflict upon them. To that end, WP Engine here by demands that Automattic immediately take the following steps:

1.   <u>Cease Making False Factual Statements Regarding WP Engine.</u>

Automattic and its CEO Matthew Mullenweg must immediately cease and desist from disparaging WP Engine and/or its investor by making false factual statements. This includes immediately taking down the false statements from the various channels on which Automattic has posted them, such as Wordpress.org and the WordPress admin dashboard, and from public channels such as YouTube and X.

2. <u>Cease Interfering with WP Engine's Contractual Relationships With its Employees.</u>

Automattic and its CEO Matthew Mullenweg must immediately cease and desist from interfering with WP Engine's contractual relationships with its employees, including ceasing and desisting from providing false and misleading information to WP Engine's employees to encourage those employees to end their employment relationships with WP Engine.

3. <u>Cease Interfering with WP Engine's Contractual Relationships With its Customers.</u>

Automattic and its CEO Matthew Mullenweg must immediately cease and desist from interfering with WP Engine's contractual relationships with its business partners and customers, including by ceasing and desisting from providing false and misleading information to customers in order to encourage customers to stop doing business with WP Engine.

4. <u>Preserve All Potentially Relevant Documents and Data.</u>

Automattic and its CEO Matthew Mullenweg must immediately take all necessary steps to preserve, and not destroy, any and all documents or information in their possession, custody, or control that may be relevant to any dispute between WP Engine and Automattic, including, but not limited to correspondence (such as text messages, emails, chats, voicemails), memos, social media posts, blog posts, direct messages, PowerPoints (or other presentations), hardcopy materials or any other documents concerning:

- Mr. Mullenweg's conduct as described above, including, but not limited to, text messages, emails, chats, voicemails and all other documents and data, including through any and all ephemeral messaging channels that he may use;

- Automattic's interactions with or about WP Engine and its investor, including communications, documents related to contracts or agreements, or analyses that relate to Automattic's relationship with WP Engine;

- WordCamp US 2024 in Portland, Oregon, including Mr. Mullenweg's keynote presentation, all versions thereof, and all communications regarding the same;

- Any analyses, discussions, or assessments of WP Engine's business, its services, or its website;

- Any and all documents that relate to internal or external communications about WP Engine or its services, marketing materials, statements, or publications concerning WP Engine;

- Automattic's communications with third parties, including customers, partners, or other entities, about WP Engine or its service;

- Any analyses, discussions, or assessments of WP Engine's business, its services, or its website, including comparisons to Automattic or WordPress products and services;

- WP Engine's standing in the marketplace, including any strategies, initiatives, or discussions aimed at competing with WP Engine;

- Any potential or actual collaboration, partnerships, or competition between Automattic and WP Engine;

- Automattic's and WordPress Foundation's trademarks and trademark applications, including WORDPRESS and WOOCOMERCE, as well as any materials pertaining to the use, registration, or enforcement of those trademarks that may be relevant to this dispute;

- Any evidence of recent page changes to the Wordpress.com site, including any concerning revisions, including whether revisions are turned on by default;

- Automattic's current financial position and any recent plans for monetization in light of that position; and

- Any requests or demands by Automattic to other parties concerning purported licensing or partnership agreements.

The duty of preservation applies to Automattic, Wordpress.com, as well as WordPress Foundation which employs Automattic staff.

***

WP Engine reserves all rights, including the right to pursue all available legal remedies to address the wrongful actions of Automattic.

Very truly yours,

Rachel Herrick Kassabian

cc: Matt Mullenweg (via email)
       Mark Davies (via email)
       Legal Department (via email)
       Toni Schneider (via email)
       Phil Black (via FedEx)
       Ann Dunwoody (via FedEx)
       Sue Decker (via FedEx)

13245-00001/15247414.1

9