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6 Attorneys for Plaintiff

LUKASZ PALKA

7 **UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA**

9  
10 LUKASZ PALKA,

11 Plaintiff,

12 vs.

13 AUTOMATTIC, INC.,

14 Defendant.

**Case Number: 3:20-cv-00722**

**Copyright Infringement**

**Demand for Jury Trial**

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17 **COMPLAINT FOR COPYRIGHT INFRINGEMENT**  
18 **(INJUNCTIVE RELIEF DEMANDED)**

19 Plaintiff LUKASZ PALKA by and through his undersigned counsel, hereby  
20 brings this Complaint against Defendant AUTOMATTIC, INC. for damages and  
21 injunctive relief, and in support thereof states as follows:

22 **SUMMARY OF THE ACTION**

23 1. Plaintiff LUKASZ PALKA (“Palka”) brings this action for violations of  
24 exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Palka's  
25 original copyrighted works of authorship.

1           2.       Born in Poland and raised in the USA, and residing in Japan since 2008,  
2 Palka is an urban photographer interested in all aspects of the Tokyo Metropolis, its  
3 people, its infrastructure and the endless stories that unfold in the city's streets.

4           3.       Palka photographs in multiple genres: street photography, urban  
5 landscape, urbex, and others. Though his work is varied, it is aimed at one goal: a  
6 personal portrait of a great city. Palka is intoxicated by this environment of light and  
7 concrete, a stage to the dramas of life, and strives to comprehend and convey his notions,  
8 through photography, of Tokyo as a city that breathes like a living organism that energy  
9 ebbs and flows within it while humans and traffic pump through its arteries as though  
10 propelled by a beating heart.

11           4.       Palka is the Co-Founder of EYExplore Inc., a company based in Japan  
12 providing photo adventures in Tokyo, Kyoto and Osaka. Palka believes that photography  
13 can be fun and easy to learn, all while exploring the city and its hidden gems. EYExplore  
14 provides coaching and feedback on its customers' photographs in a friendly atmosphere.

15           5.       Palka has been featured in Tokyo Weekender, Fubiz.net, Creative Boom,  
16 Feedspot.com Top 75 Street Photography Blogs - #13, Feedspot.com Top 20 Night  
17 Photography Blogs - #8, Fstoppers, ePhotozine, Iberia, Culturamas.es, and many others..

18           6.       Defendant AUTOMATTIC, INC. (“Automatic”) is the company behind  
19 websites such as WordPress.com, WooCommerce, Jetpack, Simplenote, Longreads,  
20 VaultPress, Akismet, Gravatar, Crowdsignal, Cloudup, Tumblr and more.

21           7.       Palka alleges that Automatic copied Palka's copyrighted work from the  
22 internet in order to advertise, market and promote its business activities. Automatic  
23 committed the violations alleged in connection with Automatic's business for purposes  
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1 of advertising and promoting sales to the public in the course and scope of Automattic's  
2 business.

3 **JURISDICTION AND VENUE**

4 8. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

5 9. This Court has subject matter jurisdiction over these claims pursuant to 28  
6 U.S.C. §§ 1331, 1338(a).

7 10. Automattic is subject to personal jurisdiction in California.

8 11. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and  
9 1400(a) because the events giving rise to the claims occurred in this district, Defendant  
10 engaged in infringement in this district, Defendant resides in this district, and Defendant  
11 is subject to personal jurisdiction in this district.

12 **DEFENDANT**

13 12. Automattic, Inc. is a California corporation with its principal place of  
14 business at 60 29th Street #343, San Francisco, CA 94110, and can be served by serving  
15 its Registered Agent, CT Corporation System, 818 West Seventh Street, Suite 930, Los  
16 Angeles, CA 90017.

17 **THE COPYRIGHTED WORK AT ISSUE**

18 13. In 2016, Palka created a photograph entitled “Shibuya Crossing”, which is  
19 shown below and referred to herein as the “Work”.

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14. Palka registered the Work with the Register of Copyrights on February 28, 2018 and was assigned the registration number VA 2-091-503. The Certificate of Registration is attached hereto as Exhibit 1.

15. At all relevant times Palka was the owner of the copyrighted Work at issue in this case.

**INFRINGEMENT BY DEFENDANT**

16. Automatic has never been licensed to use the Work at issue in this action for any purpose.

17. On a date after the Work at issue in this action was created, but prior to the filing of this action, Automatic copied the Work.

18. Automatic copied Palka's copyrighted Work without Palka's permission.

19. After Automatic copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of an ad for a WooBookings bundle on their WooCommerce site.

1 20. Automattic copied and distributed Palka's copyrighted Work in connection  
2 with Automattic's business for purposes of advertising and promoting Automattic's  
3 business, and in the course and scope of advertising and selling products and services.

4 21. Palka's Work is protected by copyright but are not otherwise confidential,  
5 proprietary, or trade secrets.

6 22. Automattic committed copyright infringement of the Work as evidenced  
7 by the documents attached hereto as Exhibit 2.

8 23. Palka never gave Automattic permission or authority to copy, distribute or  
9 display the Work at issue in this case.

10 24. Palka notified Automattic of the allegations set forth herein on April 4,  
11 2018 and April 19, 2018. To date, to the parties have failed to resolve this dispute.

12 **COUNT I**  
13 **COPYRIGHT INFRINGEMENT**

14 25. Plaintiff incorporates the allegations of paragraphs 1 through 24 of this  
15 Complaint as if fully set forth herein.

16 26. Palka owns a valid copyright in the Work at issue in this case.

17 27. Palka registered the Work at issue in this case with the Register of  
18 Copyrights pursuant to 17 U.S.C. § 411(a).

19 28. Automattic copied, displayed, and distributed the Work at issue in this  
20 case and made derivatives of the Work without Palka's authorization in violation of 17  
21 U.S.C. § 501.

22 29. Automattic performed the acts alleged in the course and scope of its  
23 business activities.

24 30. Automattic's acts were willful.

25 31. Palka has been damaged.

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32. The harm caused to Palka has been irreparable.

WHEREFORE, Plaintiff prays for judgment against the Defendant Automatic, Inc. that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiff his actual damages and Defendant's profits attributable to the infringement as provided in 17 U.S.C. § 504;

c. Plaintiff be awarded costs of suit under the applicable statutes sued upon;

d. Plaintiff be awarded pre and post judgment interest; and

e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: January 31, 2020

/s/ Jonah A. Grossbardt  
JONAH A. GROSSBARDT  
SRIPLAW  
Attorneys for Plaintiff Lukasz Palka

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