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5 Attorney for Plaintiffs  
Automattic Inc. and  
6 Retraction Watch, LLC

7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9  
10 AUTOMATTIC INC. and  
RETRACTION WATCH, LLC,  
11  
12 Plaintiffs,  
13 v.  
14 NARENDRA CHATWAL,  
15 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR VIOLATION OF 17 U.S.C.  
§ 512(F)**

1 Plaintiffs AUTOMATTIC INC. a Delaware corporation and RETRACTION WATCH, LLC, a  
2 New York limited liability company, by and through their attorneys of record hereby state as follows:

3 **I. INTRODUCTION**

4 1. This is a case about the misuse of the copyright law in an attempt to suppress truthful  
5 reporting on public health issues. Plaintiff Retraction Watch, LLC (“Retraction Watch”) authored a  
6 number of blog posts, which were made available through the WordPress.com blog hosting service  
7 offered by Plaintiff Automattic Inc. (“WordPress.com”). Defendant falsely claimed to be the copyright  
8 owner in a number of those blog posts in order to cause WordPress.com to disable access to those posts.  
9 Defendant made knowing material misrepresentations in the notice of claimed infringement he submitted  
10 to WordPress.com, and Defendant must be held responsible for the harm that his misrepresentations  
11 caused.

12 **II. NATURE OF THE ACTION**

13 2. This is an action for violation of 17 U.S.C. § 512(f), which provides for a cause of action  
14 against one who knowingly materially misrepresents that material or activity is infringing.

15 **III. PARTIES**

16 3. Automattic Inc. is a corporation organized under the laws of the State of Delaware with its  
17 principal place of business at Automattic Inc., 132 Hawthorne St., San Francisco, California 94107.  
18 Automattic does business in the Northern District of California.

19 4. Retraction Watch, LLC is a limited liability company organized under the laws of the  
20 State of New York with its principal place of business at 560 W. 43rd St. #20E, New York, NY 10036.

21 5. On information and belief, Defendant Narendra Chatwal is an individual residing in the  
22 city of Noida, state of Uttar Pradesh, India. In his communications with Plaintiff Automattic, Defendant  
23 Chatwal gave the address of Plot No 15 & 16, Express Trade Tower, Archana Complex, Noida, Uttar  
24 Pradesh, India 201302.

25 **IV. JURISDICTION AND VENUE**

26 6. Plaintiffs’ claims arise under the Copyright Act (17 U.S.C. §§ 101 et seq.), and this Court  
27 has jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331 and 1338.  
28

1 7. Defendant has sufficient contacts with this district generally and, in particular, with the  
2 events herein alleged, that he is subject to the exercise of jurisdiction of this Court. For example, as  
3 discussed elsewhere herein, Defendant purposefully sent the communication that is the subject of this  
4 Action to Plaintiff Automattic Inc., which resides in this District.

5 8. Venue is proper in this district under 28 U.S.C. § 1391.

## 6 V. INTRADISTRICT ASSIGNMENT

7 9. This is an Intellectual Property Action to be assigned on a district-wide basis pursuant to  
8 Civil Local Rule 3-2(c).

## 9 VI. FACTUAL BACKGROUND

### 10 A. The Retraction Watch Blog

11 10. Plaintiff Retraction Watch is a blog hosted on the WordPress.com publishing platform.

12 11. Retraction Watch features news regarding retractions and other corrections to papers  
13 published in scientific and medical journals.

14 12. Wired Magazine named Retraction Watch among its 101 “best reporters, writers, and  
15 thinkers on the Internet—the people who understand what’s happening.”

16 13. Columbia Journalism Review’s Craig Silverman called Retraction Watch “required  
17 reading for anyone interested in scientific journalism or the issue of accuracy.”

18 14. Retraction Watch is run by Ivan Oransky and Adam Marcus, both experienced and  
19 respected science journalists.

20 15. Separately from his position as co-founder of Retraction Watch, Ivan Oransky is Vice  
21 President and Global Editorial Director of MedPage Today, and has taught medical reporting at New  
22 York University since 2002. Previously, he was executive editor of Reuters Health and managing editor,  
23 online, at Scientific American. From 2002 to 2008, he was at The Scientist, first as web editorial director  
24 and then as deputy editor. Under his leadership, the editorial team of The Scientist won numerous  
25 awards, including the 2008 American Society of Business Publication Editors’ Magazine of the Year and  
26 Gold Eddie Awards for science magazines from FOLIO in consecutive years. He has also served as  
27 founding editor in chief of Praxis Post, an online magazine of medicine and culture which was a finalist  
28 for the 2001 Online News Association Award for General Excellence in its first year of publication.

1 Oransky is the author or co-author of four books, including *The Common Symptom Answer Guide*  
2 (McGraw-Hill, 2004), and has written for numerous publications including the Boston Globe, The  
3 Lancet, The New Republic, and the Wall Street Journal Online. He received his BA at Harvard and his  
4 MD from NYU, and completed an internship at Yale. During medical school, he was co-editor-in-chief  
5 of the student section of the Journal of the American Medical Association. He has served on the board of  
6 directors of the Association of Health Care Journalists since 2002, as AH CJ treasurer from 2009 until  
7 2013, and as vice president since 2013.

8 16. Adam Marcus is the managing editor of Anesthesiology News, a monthly magazine for  
9 anesthesiologists. His freelance articles have appeared in Science, The Economist, The Christian Science  
10 Monitor, The Scientist, Sciam.com, and many other publications and web sites.

11 17. Retraction Watch performs an important role in scientific and medical journalism:  
12 highlighting and tracking situations where published results may not be everything they seem.

13 18. Some retractions are caused by honest mistakes; others by intentional fraud; and many by  
14 something in between. Retraction Watch covers these stories to inform scientists, doctors, and members  
15 of the public about developments that occur long after a journal article makes its initial splash.

#### 16 **B. Automattic Inc. and Its WordPress.com Service**

17 19. Automattic Inc. is a distributed company with a work space in San Francisco, California.  
18 Automattic operates WordPress.com, a web publishing platform for blogs and websites that is powered  
19 by the open source WordPress software.

20 20. WordPress.com is the host of the Retraction Watch blog.

21 21. WordPress.com is dedicated to protecting its users' ability to express themselves freely  
22 through their WordPress.com blogs and websites, within the constraints of the law.

23 22. There are more than 33 million WordPress.com blogs, and the WordPress.com network of  
24 sites receives about 14 billion page views each month.

25 23. WordPress.com is used by news organizations like Time, Inc., CNN, The New York Post  
26 and Atlantic Media; leading companies like UPS, the National Football League, and Samsung; and well-  
27 known blogs like GigaOm, TechCrunch, All Things D, and PandoDaily.

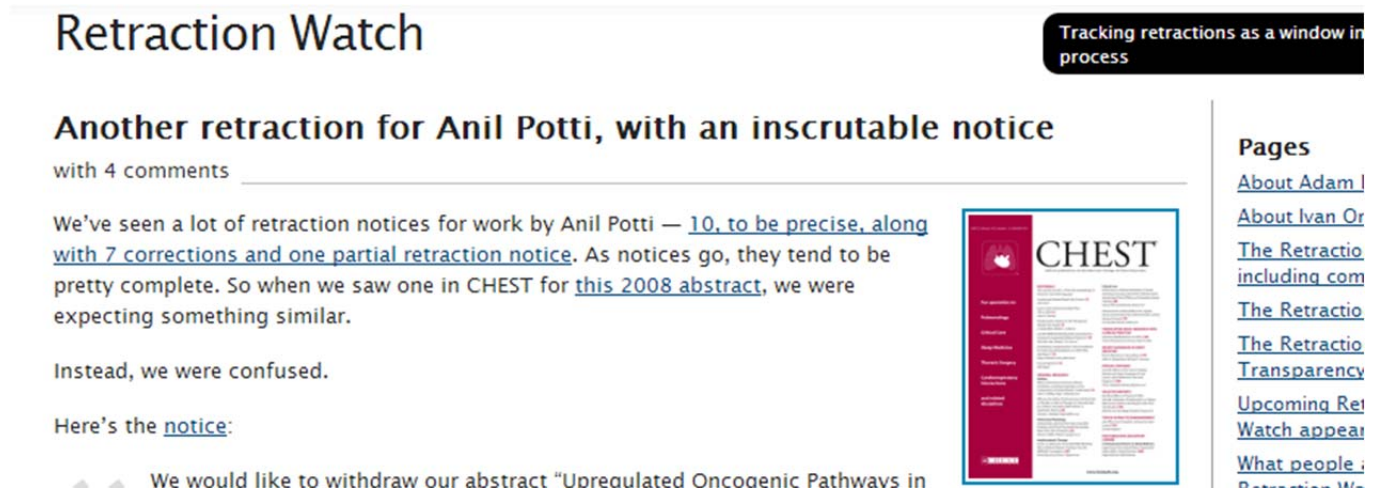
28

1           **C.       Defendant’s Misrepresentations**

2           24.       On October 5, 2012, Oransky published a post on Retraction Watch (the “October 5  
3 Post”). The URL for the post is available at [http://retractionwatch.wordpress.com/2012/10/05/another-](http://retractionwatch.wordpress.com/2012/10/05/another-retraction-for-anil-potti-with-an-inscrutable-notice/)  
4 [retraction-for-anil-potti-with-an-inscrutable-notice/](http://retractionwatch.wordpress.com/2012/10/05/another-retraction-for-anil-potti-with-an-inscrutable-notice/).

5           25.       Oransky authored the October 5 Post for Retraction Watch.

6           26.       That post began as follows:



7           27.       The October 5 Post was one of a number of posts on Retraction Watch about a particular  
8 researcher (the “Subject”) whose papers had been the subject of a number of retractions and other  
9 notices.

10           28.       The Retraction Watch posts about the Subject, including the October 5 Post, were in  
11 compliance with United States law in all respects.

12           29.       On information and belief, Defendant disagreed with the viewpoint expressed in the  
13 Retraction Watch posts about the Subject.

14           30.       On information and belief, Defendant desired that the Retraction Watch posts about the  
15 Subject be less accessible and receive less attention.

16           31.       On information and belief, in or around February 2013, Defendant devised a scheme for  
17 suppressing the posts with which he disagreed.

1 32. In or around February, 2013, Defendant copied ten of the Retraction Watch posts about  
2 the Subject, including the October 5 post, and published them on his own web site, at the domain name  
3 NewsBulet.in.

4 33. As an example, Defendant's copy of the October 5 Post appeared as follows:



19 34. At no time did Defendant or any entity associated with Defendant own any copyright in  
20 the Retraction Watch posts about the Subject.

21 35. On information and belief, Defendant chose the domain name "NewsBulet.in," with one  
22 letter "L," to cause confusion and make it appear that he was affiliated with ABP News, a legitimate  
23 news site in India, whose domain name is "NewsBullet.in," with two letter "L"s.

24 36. On information and belief, Defendant is not and has never been affiliated with ABP News.

25 37. The NewsBulet.in website included a copyright notice stating "Copyright © 2008-2013  
26 NEWS BULLET Inc. All Rights Reserved."

27 38. In fact, on information and belief, the NewsBulet.in website was created on or about  
28 October 3, 2012.

1 39. On information and belief, Defendant included a copyright notice with an incorrect, and  
2 earlier, year in order to mislead visitors into believing that the website had been in existence since 2008.

3 40. On February 4, 2013, Defendant sent a notice of claimed copyright infringement pursuant  
4 to 17 U.S.C. § 512(c) through the form provided on WordPress.com for such notices (the “Takedown  
5 Notice”). The Takedown Notice read as follows:

6 **Email Address:** narendrachatwal@newsbulet.in

7 **Location of copyrighted work (where your original material is located):**

8 <http://newsbulet.in/nil%20potti.html>

9 <http://newsbulet.in/north%20dakota.html>

10 <http://newsbulet.in/nil%20potti.html>

11 <http://newsbulet.in/Molecular%20Cancer.html>

12 <http://newsbulet.in/missouri%20medical.html>

13 <http://newsbulet.in/Coastal%20Cancer.html>

14 <http://newsbulet.in/retraction.html>

15 <http://newsbulet.in/clinical%20oncology.html>

16 <http://newsbulet.in/JCO.html>

17 <http://newsbulet.in/lawsuit.html>

18 **First Name:** Narendra

19 **Last Name:** Chatwal

20 **Company Name:** News Bullet

21 **Address Line 1:** Plot No 15 & 16, Express Trade Tower

22 **Address Line 2:** Archana Complex

23 **City:** Noida

24 **State/Region/Province:** Utter Pradesh

25 **Zip/Postal Code:** 201302

26 **Country:** India

27 **Telephone Number:** 8953171759

28 **Copyright holder you represent (if other than yourself):**

**Please describe the copyrighted work so that it may be easily identified:**

Hello Wordpress Team,

Myself Narendra Chatwal Senior editor in NewsBulet.In, a famous news firm in India. All the news we publish are individually researched by our reporters from all over India and then we publish them on our site and our news channel. Recently we found that some one had copied our material from the category Medical Reviews and published them on their site. So we request you to help us in protecting our content and copy right.

Thanks & Regards,

Narendra Chatwal

NewsBulet.In

**Location (URL) of the unauthorized material on a WordPress.com site (NOT simply the primary URL of the site - example.wordpress.com; you must provide the full and exact permalink of the post, page, or image where the content appears, one per line) :**

1. <http://retractionwatch.wordpress.com/2012/10/05/another-retraction-for-anil-potti-with-an-inscrutable-notice/>

2. <http://retractionwatch.wordpress.com/2012/08/20/anil-potti-resurfaces-with-job-at-north-dakota-cancer-center/>

- 1 3. <http://retractionwatch.wordpress.com/2012/06/04/lead-author-of-major-breast-cancer-study-announced-at-asco-co-authored-two-corrected-papers-with-anil-potti/>
- 2
- 3 4. <http://retractionwatch.wordpress.com/2012/04/02/a-retraction-in-part-for-anil-potti-and-colleagues-in-molecular-cancer-therapeutics/>
- 4
- 5 5. <http://retractionwatch.wordpress.com/2012/03/10/missouri-medical-board-reprimands-anil-potti/>
- 6
- 7 6. <http://retractionwatch.wordpress.com/2012/02/22/developing-anil-pottis-future-at-coastal-cancer-center-seems-unclear/>
- 8
- 9 7. <http://retractionwatch.wordpress.com/2012/02/14/the-anil-potti-retraction-record-so-far/>
- 10
- 11 8. <http://retractionwatch.wordpress.com/2012/02/10/two-mega-corrections-for-anil-potti-in-the-journal-of-clinical-oncology/>
- 12
- 13 9. <http://retractionwatch.wordpress.com/2012/02/06/anil-potti-and-colleagues-retract-ninth-paper-this-one-in-jco/>
- 14
- 15 10. <http://retractionwatch.wordpress.com/2011/12/29/seven-retractions-a-resignation-and-lawsuit-settlements-havent-stopped-anil-potti-from-publishing/>

16 **If the infringement described above is represented by a third-party link to a downloadable file (e.g. <http://rapidshare.com/files/...>), please provide the URL of the file (one per line):**

17 **I have a good faith belief that use of the copyrighted materials described above as allegedly infringing is not authorized by the copyright owner, its agent, or the law.: Yes**

18 **I swear, under penalty of perjury, that the information in the notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.: Yes**

19 **Signed on this date of (today's date, MM/DD/YYYY): 02/02/2013**

20 **Signature (your digital signature is legally binding): Narendra Chatwal**

21 41. The Takedown Notice contains a number of knowing material misrepresentations.

22 42. *First*, and most critically, Defendant was not “the copyright owner” or “authorized to act  
23 on behalf of the owner of an exclusive right that is allegedly infringed.”

24 43. *Second*, the news articles at issue on NewsBulet.in were not “individually researched by  
25 [NewsBulet.in’s] reporters from all over India,” but instead copied from the Retraction Watch blog.

26 44. *Third*, it was not the case that Defendant “found that some one had copied  
27 [NewsBulet.in’s] material from the category Medical Reviews and published them on their site.”  
28 Instead, the material in question on NewsBulet.in was copied from the Retraction Watch blog.

45. In reliance on Defendant’s misrepresentations, pursuant to the procedure set forth in the  
DMCA, Automattic acted expeditiously to disable access to the Retraction Watch posts identified in the



1 notice. But for those misrepresentations, Automattic would not have disabled access to the Retraction  
2 Watch posts identified in the notice.

3 46. On or about February 6, 2013, Retraction Watch sent Automattic a counter-notification  
4 pursuant to 17 U.S.C. § 512(g)(3), and Automattic later restored access to the posts in question.

5 47. Automattic expended staff time and resources in reviewing the Takedown Notice,  
6 disabling access to the posts identified in the Takedown Notice, notifying Retraction Watch of the  
7 Takedown Notice, reviewing the counter-notification, notifying Defendant of the counter-notification,  
8 and restoring access to the posts identified in the Takedown Notice.

9 48. Automattic also expended staff time and resources in addressing issues that resulted from  
10 the Takedown Notice, such as handling requests for comment from the press and pursuing the present  
11 Action.

12 49. For its part, Retraction Watch expended staff time and resources in corresponding with  
13 Automattic about the Takedown Notice and addressing issues that resulted from the Takedown Notice.

14 50. Retraction Watch also suffered harm in that its reporting on a matter of legitimate and  
15 substantial public concern was silenced, albeit temporarily, as a result of the misrepresentations in the  
16 Takedown Notice.

## 17 **FIRST CAUSE OF ACTION**

### 18 **(Misrepresentation under 17 U.S.C. § 512(f))**

19 51. Plaintiffs incorporate herein by reference the allegations of the preceding paragraphs of  
20 this Complaint.

21 52. The Takedown Notice represented that the Retraction Watch Posts infringed copyrights  
22 owned by Defendant or other entities on whose behalf Defendant was authorized to act.

23 53. The Retraction Watch Posts do not infringe any copyright owned by Defendant or by any  
24 entity on whose behalf Defendant was authorized to act.

25 54. The Takedown Notice contained misrepresentations that material or activity was  
26 infringing.

27 55. On information and belief, Defendant knew at the time he sent the Takedown Notice that  
28 the representations in the Takedown Notice that material or activity was infringing were false.

