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MOZILLA CORPORATION

(ENDORSED)
FILED
DEC - 5 2017

Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA - UNLIMITED JURISDICTION

YAHOO HOLDINGS, INC., a Delaware corporation; OATH (EMEA) LTD., an Ireland company; and YAHOO! SINGAPORE DIGITAL MARKETING PTE. LTD., a Singapore company,

Plaintiffs,

v.

MOZILLA CORPORATION,
a California corporation,

Defendant.

Case No. 17-CV-319921

DEFENDANT MOZILLA CORPORATION'S CROSS-COMPLAINT AGAINST PLAINTIFFS:

(1) DECLARATORY RELIEF

(2) BREACH OF CONTRACT RE ██████████ PAYMENTS

(3) BREACH OF CONTRACT RE SEARCH PERFORMANCE

MOZILLA CORPORATION,
a California corporation,

Cross-Complainant,

Judge: Hon. Maureen Folan
Dept: 8

v.

YAHOO HOLDINGS, INC., a Delaware corporation; OATH (EMEA) LTD., an Ireland company; and YAHOO! SINGAPORE DIGITAL MARKETING PTE. LTD., a Singapore company,

Cross-Defendants.

PUBLIC—REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD

1 Cross-Complainant and Defendant Mozilla Corporation (“Mozilla”) alleges upon
2 knowledge as to itself and its own actions, and upon information and belief as to all other matters,
3 against Yahoo Holdings, Inc. (“Yahoo Holdings”), as well as Oath (EMEA) Ltd. (formerly
4 known as Yahoo! EMEA Ltd.), and Yahoo! Singapore Digital Marketing Pte. Ltd. (successor in
5 interest to Yahoo! Asia Pacific Pte. Ltd.) (collectively, “Yahoo”)¹, as follows:

6 **INTRODUCTION AND SUMMARY OF CLAIMS**

7 1. Mozilla brings this action to obtain the [REDACTED] payments of [REDACTED]
8 [REDACTED] it is owed through [REDACTED] and additional revenue payments owed following
9 [REDACTED] under a 2014 contract it entered into with Yahoo (the “Strategic
10 Agreement”) (Attached as Exhibit A, with amendments Exhibits B & C). Under the Strategic
11 Agreement, Yahoo was made the default search engine for the Mozilla Firefox web browser
12 (“Firefox”) in the U.S. market.² [REDACTED]

13 [REDACTED]
14 [REDACTED] As part of the consideration for the risk that
15 Mozilla took in adopting Yahoo as its default search provider, Yahoo provided [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 2. Mozilla originally developed Firefox to bring users the web experience they want
20 and to create competition in the browser space. A web browser is software that permits users to
21 access, browse, interact with, and search webpages on the Internet. Some key features of a web
22 browser are the speed at which it can access and display webpages, perform functions of the
23 webpages (*e.g.*, streaming video, play music, etc.), the security and privacy it provides for users
24 interacting with those webpages, and that it enables a user to search the web. From the user

25 ¹ Yahoo! Inc. later assigned the Strategic Agreement to Yahoo Holdings, and references to Yahoo
26 prior to the assignment include Yahoo! Inc.

27 ² Yahoo was also made the default search engine for Hong Kong and Taiwan after the Strategic
28 Agreement was entered.

1 perspective, search is integral to the browser experience. Thus, the key attributes of search are
2 attributed to the browser. Those key features of search are organic search (*i.e.*, search results that
3 result from the search algorithm rather than advertisers), trigger information (*i.e.*, information
4 displayed based on geographic location of the user, or by otherwise anticipating what the user
5 may be looking for), and links from advertisers.

6 3. The search engine is the software or service that a web browser uses to conduct
7 searches across the web and display the search results. Making a particular search engine the
8 default on Firefox means that if a user makes no change to the settings, when Firefox is used to
9 search the web, the default search engine will be used.

10 4. In this action, Mozilla seeks injunctive relief to force Yahoo and the company that
11 acquired it earlier this year to make the payments required under the Strategic Agreement.

12 Mozilla terminated its use of Yahoo as the default search engine for Firefox on November 10,
13 2017

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 5. The payments owed by Yahoo are significant to Mozilla for a number of reasons.
21 The payments owed by Yahoo are key to financing Mozilla's efforts to launch the new version of
22 its flagship product, Firefox. Indeed, the parties anticipated that [REDACTED]

23 [REDACTED] were
24 key elements of the negotiated deal to provide stability to Mozilla and to offset the high risk that
25 Mozilla was taking by choosing Yahoo Search as the default search provider. The official launch
26 of the new version, dubbed Firefox Quantum, began on November 14, 2017. The payments are
27 also key to financing Mozilla's mission of ensuring that the Internet is a global public resource,
28 open to all. Mozilla faces a critical time in advancing its mission of an open Internet, as key

1 Internet principles, such as net neutrality are under attack.

2 6. Mozilla also seeks to recover the damages it suffered as a result of Yahoo's breach
3 of the Strategic Agreement [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] Had Yahoo not breached the Strategic Agreement, the search functionality in
14 Firefox would have been used more and the Firefox product itself would have more users,
15 Mozilla would have been able to enter into a deal with a higher price following the termination of
16 the Strategic Agreement, and there would have been relevant search alternatives in the
17 marketplace, including Yahoo. The users and the revenue would have to be able to sustain and
18 increase both Mozilla's mission-oriented activities as well as its browser and Internet technology
19 related product development. The breach defeated the [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 7. To understand this situation, it is necessary to go back and understand the position
23 of the parties in 2014 when the contract was signed. Mozilla Corporation is a wholly owned
24 subsidiary of the Mozilla Foundation, a not-for profit organization that is guided by a Mozilla
25 Mission "to ensure the Internet is a global public resource, open and accessible to all."
26 <https://www.mozilla.org/en-US/mission/>. Exhibit D (Mozilla Mission). Mozilla is a leading
27 advocate for a safe and open Internet, dedicated to ensuring the Internet remains a global public
28 resource available to everyone. Mozilla's flagship product is Firefox.

1 8. In 2014, Mozilla’s Firefox browser competed against Google’s Chrome browser,
2 Microsoft’s Internet Explorer browser, and Apple’s Safari browser. To succeed in such
3 competition, Mozilla had to offer a superior or unique user experience to persuade users to elect
4 to use and download Firefox instead of the Microsoft, Google, and Apple browsers that were
5 frequently installed as default browsers on computers, tablets, and mobile phones, or associated
6 with other web-based software services. Mozilla sought to differentiate itself through a superior
7 user experience that put users first, prioritizing privacy and security, and cultivating trust in the
8 Mozilla brand. Search is a critical part of the user experience for a browser.

9 9. In 2014, Marissa Mayer was at the helm of Yahoo as its CEO, and Yahoo was
10 attempting to reinvigorate itself. While Yahoo had focused its energies on providing content
11 online, Yahoo’s share of Internet advertising had fallen, and Yahoo had also fallen behind in
12 Internet search, which is the key vehicle for advertising. CEO Mayer’s vision for the future of
13 Yahoo, along with her reputation as a talented technology executive and innovator in search
14 product design, suggested a comeback was possible.

15 10. As Mozilla and Yahoo discussed the potential for entering into a contract under
16 which Yahoo would become the default search provider for the Mozilla Firefox browser, Mozilla
17 understood that it was taking a big risk in relying on Yahoo to be its default search provider,
18 given that Yahoo had fallen behind the market and would require significant focus and
19 investment by Yahoo to achieve its stated ambitions. Mozilla nonetheless pursued the
20 opportunity—selecting Yahoo because it aligned with Mozilla’s larger goal of creating
21 meaningful choice in the market for search, and new CEO, Marissa Mayer, had a sterling
22 reputation and well-known expertise in search product design. Mozilla sought to create a new
23 strategy around search globally by ending the practice of having a single global default search
24 provider but instead adopting a more local and flexible approach to increase choice and
25 innovation on the web, with new and expanded search providers by country. CEO Mayer
26 presented a compelling vision for the future of Yahoo Search and was directly involved in
27 contract discussions with Mozilla. Yahoo assured Mozilla that [REDACTED]

28 [REDACTED] Yahoo also provided

1 assurances and shared its plans to invest significantly in Yahoo Search to deliver a competitive
2 and innovative search experience. Exhibit F (Oct. 9, 2014 Email).

3 11. But CEO Mayer's reputation and Yahoo's assurances alone were not enough to
4 persuade Mozilla to enter a deal with Yahoo given the risk. In exchange for taking this risk,
5 Mozilla sought and obtained contractual protections. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 12. Among those protections, Mozilla sought and obtained:

- 13 a. [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 b. [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 c. [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED]
- 24 [REDACTED]
- 25 [REDACTED]
- 26 d. [REDACTED]
- 27 [REDACTED]
- 28 [REDACTED]

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e.

In taking the risk in going with Yahoo, Mozilla required

Mozilla realized that if it had to replace Yahoo

, especially in a situation where it had lost market share while using Yahoo

Search, Mozilla would likely , and

that would materially impact Mozilla's ability to perform its mission. Yahoo agreed to these protections.

13. Yahoo issued a blog post at the time of the deal written by CEO Mayer again providing assurances that Yahoo would prioritize search and pledging that search was not only "an area of investment and opportunity" but also a "key growth area" for Yahoo. Exhibit G (Yahoo blog post). According to the blog post, the deal helped Yahoo "to expand [its] reach in search" and gave Yahoo "an opportunity to work even more closely with Mozilla to find ways to innovate in search, communications, and digital content." *Id.* CEO Mayer ultimately was unable to execute her vision for the future of Yahoo, as the company's turnaround efforts stalled and search was no longer treated as a key growth area or innovation opportunity.

14. Despite Yahoo's representations and contractual obligations under the Strategic Agreement, Yahoo failed to deliver what it promised. Yahoo Search did not meet the contractual specifications

Mozilla pointed Yahoo to its contractual obligations, and Yahoo acknowledged its obligations and promised to perform. But Yahoo still did not meet its contractual obligations and as a result, it was one of the significant factors that contributed to the decline of Firefox usage. Mozilla's revenue from Yahoo never met expectations. Yahoo did continue to make its

1 payments as required under the contract until [REDACTED], and on December 1, 2017, Yahoo
2 filed a complaint against Mozilla instead of continuing to pay its guaranteed payments.

3 15. In July 2016, Yahoo announced its intention to sell its operating business,
4 including Yahoo Search and other assets. In June 2017, a sale was completed with Verizon
5 Communications, Inc. (“Verizon”). On information and belief, in connection with that
6 transaction, Yahoo! Inc. had transferred and assigned its assets and liabilities related to its
7 operating business, including its rights and obligations under the Strategic Agreement, to an entity
8 called Yahoo Holdings and then sold the outstanding shares of Yahoo Holdings to Verizon. After
9 the sale, the payments continued until October 31, 2017.

10 16. The sale to Verizon triggered the change of control provisions under the Strategic
11 Agreement. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 17. After the triggering of the change of control provisions, Mozilla began a process to
19 evaluate whether it should exercise its change of control rights. As part of that process, Mozilla
20 analyzed the impact of the Yahoo brand and possible future branding based on entities owned by
21 Verizon. Mozilla also considered the prospects for improvement of the Yahoo Search product
22 and how the new parent (the “Yahoo Acquirer,” which includes Verizon Communications, Inc.
23 (“Verizon”) and its subsidiary Oath Inc. (“Oath”)) intended to operate Yahoo’s Operating
24 Business. Mozilla raised its concerns with Yahoo Holdings and related entities, including Yahoo
25 Acquirer’s leadership team, regarding anticipated harm to Mozilla’s brand and the quality of the
26 search product. See Exhibits I-M. [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED] Indeed, when told of Yahoo's

3 performance issues, the Yahoo Acquirer told Mozilla to explore other search providers.

4 18. Yahoo Acquirer's response to Mozilla's concerns was in stark contrast to Yahoo's
5 assurances from CEO Mayer at the time the Strategic Agreement was entered into. Yahoo
6 Acquirer's leadership provided no vision, no structured, documented and vetted strategic path
7 forward, and no assurances as to a commitment of the resources necessary to improve Yahoo
8 Search such that it would meet [REDACTED]

9 [REDACTED]
10 19. On November 10, 2017, Mozilla notified the Yahoo Acquirer that Mozilla was
11 exercising its right to terminate the Strategic Agreement [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED] Mozilla was able to negotiate an agreement with Google, made effective on
15 November 14, 2017, to make Google the default search provider in the countries where Yahoo
16 was the default search provider (United States, Hong Kong, and Taiwan) when Mozilla launched
17 its new version of its browser.

18 20. Despite the clear contract language requiring Yahoo to make the [REDACTED]
19 payments [REDACTED] Yahoo has
20 failed to make those payments. On December 1, 2017, instead of paying [REDACTED]

21 [REDACTED]
22 Yahoo filed a lawsuit. Complaint, filed December 1, 2017.
23 [REDACTED]
24 [REDACTED]

25 21. Mozilla brings this action to enjoin Yahoo and related entities to continue to make
26 the [REDACTED] payments due [REDACTED] so that Mozilla will have
27 access to the money needed to continue to develop and market the new major upgrade version of
28 the Mozilla Firefox browser, and to fund the work that Mozilla is undertaking during this critical

1 period of policy development to keep the Internet a global public resource, open and accessible to
2 all.

3 22. Mozilla also seeks damages for Yahoo's failure to meet its contractual obligations
4 under the Strategic Agreement.

5 PARTIES

6 23. Cross-Complainant and Defendant Mozilla Corporation is, and at all relevant times
7 was, a corporation duly organized and existing under the laws of California with its principal
8 offices in San Francisco, California and Mountain View, California.

9 24. Cross-Defendant and Plaintiff Yahoo Holdings, Inc. is, and at all relevant times
10 was, a corporation duly organized under the laws of the State of Delaware with its principal place
11 of business in Sunnyvale, California.

12 25. Cross-Defendant and Plaintiff Oath (EMEA) Ltd. (formerly known as Yahoo!
13 EMEA Ltd.) is, and at all relevant times was, a corporation duly organized under the laws of the
14 Country of Ireland with its principal place of business in Dublin, Ireland.

15 26. Cross-Defendant and Plaintiff Yahoo! Singapore Digital Marketing Pte. Ltd.
16 (successor in interest to Yahoo! Asia Pacific Pte. Ltd.) is, and at all relevant times was, a
17 corporation duly organized under the laws of the Country of Singapore with its principal place of
18 business in Singapore.

19 FACTUAL BACKGROUND

20 I. The Mozilla Corporation ("Mozilla") is the Owner of Firefox, a Leading Internet 21 Browser.

22 A. Mozilla Was Started in August 2005, As a Subsidiary to the Mozilla 23 Foundation, Which Advocates for a Safe and Open Internet.

24 27. Mozilla is an Internet company and is a leading advocate for a safe and open
25 Internet, with a mission to ensure that the Internet is a global public resource open and accessible
26 to all. <https://www.mozilla.org/en-US/mission/>. Exhibit D (Mozilla Mission). Mozilla's vision
27 is "An Internet that truly puts people first, where individuals can shape their own experience and
28 are empowered, safe and independent." <https://www.mozilla.org/en-US/mission/>. The Mozilla

1 Foundation, a not-for-profit corporation (the “Foundation”), was started as an open source
2 community project of volunteers to support the Mozilla Mission. At the time, Microsoft had
3 around 96% of the browser market share with its Internet Explorer product which was tied to its
4 Windows operating system. In 2004, Mozilla created Firefox to offer a product that helped give
5 users the web experience they wanted as well as create competition in the browser market.
6 Mozilla was established in August 2005 as a wholly owned subsidiary of the Foundation. By
7 2010, by some measures, Firefox had captured roughly 30% of global desktop browser market
8 share.

9 28. The Mozilla Foundation and Mozilla are guided by the Mozilla Manifesto, a list of
10 principles that guides the Foundation’s mission to promote openness, innovation, and opportunity
11 on the web. Exhibit E (Mozilla Manifesto). Mozilla and the Foundation believe that the Internet
12 is a global and public resource that must remain open and accessible to all. Individuals must have
13 the ability to shape the Internet and their own experiences on it, but a user’s security and privacy
14 are fundamental and must not be treated as optional. To support and promote the Internet as a
15 public resource, Mozilla and the Foundation are committed to free and open source software that
16 reflects the values of the Mozilla Manifesto. Mozilla has identified the following key issues that
17 are critical to build the open Internet: (1) privacy and security, (2) open innovation,
18 (3) decentralization, (4) web literacy, and (5) digital inclusion.

19 29. Mozilla works with a worldwide community to create open source products like
20 the web browser Firefox, used by an estimated half billion people worldwide. Mozilla also
21 actively collaborates with other organizations around the world to develop core technology and
22 interoperability standards that power the Internet and the World Wide Web.

23 30. In support of its mission, Mozilla’s work extends far beyond the development of
24 Firefox. Mozilla uses the revenues from Firefox to fund policy activities related to the Mozilla
25 Mission. For example, Mozilla has been and continues to be a leading policy advocate for user
26 privacy and net neutrality rules, both of which are under threat in today’s broader environment.
27 Mozilla regularly files comments with judicial, regulatory and legislative bodies globally to
28 advocate for an open and secure Internet.

1 31. Mozilla also uses the market share it captures through the users of Firefox to have
2 a major influence on the outcome of the development of browsers and core Internet technologies
3 (including HTML, CSS, JavaScript, WebRTC, web standards bodies like the W3C,
4 WebAssembly, and WebVR) and in furtherance of its mission of user privacy, security and
5 control in their online lives. Mozilla has pioneered features like Tracking Protection that help
6 users gain control over their online lives and has influenced other major browser manufacturers to
7 do the same. Mozilla engineers help guide the development of key Internet security standards
8 and technologies, including helping to improve the underlying security layer of the web itself.
9 The size of Mozilla's market share with respect to Firefox impacts the influence that Mozilla is
10 able to exert on the development of these technologies.

11 32. The future of the Internet and the web, as it relates to issues such as net neutrality,
12 user privacy, and cybersecurity are being decided now, and this is a critical time for Mozilla and
13 its mission. For example, in the summer of 2017, the Federal Communications Commission
14 threatened to take back regulations that protect net neutrality. Mozilla has been actively working
15 to persuade the FCC to refrain from doing so when it votes later this month.

16 33. Mozilla undertakes a variety of activities to promote the Mozilla Mission. Those
17 activities include a myriad of projects such as grants, educational activities, and art. Mozilla also
18 uses its revenue to regularly make grants to groups and individuals making an impact aligned
19 with the Mozilla Mission that may not share Mozilla's ability to generate revenues.

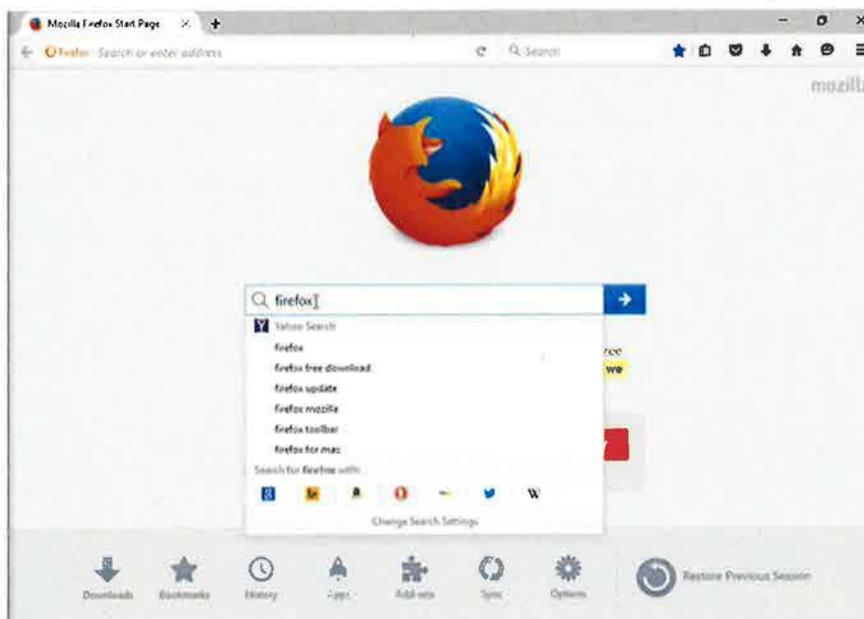
20 **B. Mozilla's Key Product Offering is a Web Browser, Firefox, Which Accesses**
21 **Third Party Search Providers to Search the Internet.**

22 34. Firefox is the key product at the center of Mozilla's efforts to promote a safe and
23 open Internet. A web browser is the software or service on a computer system or mobile device
24 that allows users to access, browse, interact with, and search webpages on the Internet. In order
25 to access a specific webpage, a user types a destination into the address bar and the browser takes
26 the user to the requested webpage. Some key features of a browser are the speed at which it can
27 access and display webpages, perform functions of the webpages (*e.g.*, streaming video, play
28 music, etc.), the security it provides for users interacting with those webpages, and that it enables

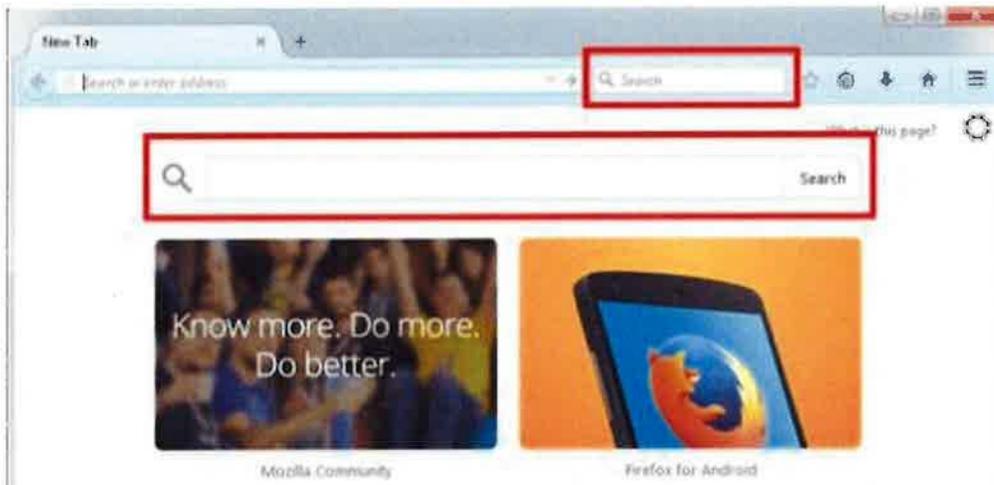
1 a user to search the web. Firefox reflects Mozilla's core values with a commitment to open
2 source software and transparency while championing user privacy and security with tools like
3 private browsing and tracking protection.

4 35. Unlike its major competitors, because Mozilla does not create a device or
5 operating system, users who opt to use Firefox must independently download the browser from
6 Mozilla or obtain it from one of its distribution partners. To persuade users to elect to use and
7 download Firefox instead of the Microsoft, Google, and Apple browsers that are frequently
8 installed as defaults in computers, tablets, and mobile phones or associated with other web-based
9 software services, Mozilla sought to differentiate itself through a superior user experience that put
10 users first, prioritizing privacy and security, and cultivating trust in the Mozilla brand. Search is
11 also a critical part of the user experience. Thus, the key attributes of search are attributed to the
12 browser.

13 36. Firefox opens to a default home page, (*i.e.*, the first webpage that appears when the
14 browser is opened for use), that presents a search field for users to input search terms to begin a
15 web search. (See below for screenshot of the Mozilla Firefox Start Page, in the version prior to
16 Quantum.)



1 37. Firefox also provides a search bar, a unified search bar (called the “Awesome
2 Bar”), and other search access points from where users can input their search terms into a search
3 engine and search the web. (See below for screenshot of the Mozilla Firefox search bar, with red
4 highlighting, in the version prior to Quantum.)



13

14 38. When a user types search terms into the search field, the search engine generates a
15 suggested list of possible webpage destinations called search results. Search engines themselves
16 are web services that enable users to search the Internet, and the results are displayed within the
17 web browser. Thus, when a user types into the search access point, such as Mozilla’s Awesome
18 Bar, search bar, or Mozilla start page, the user is actually accessing another party’s search
19 functionality.

20 39. Even if provided by a third party such as Yahoo, users closely associate the search
21 functionality with the web browser they are using. Thus, the quality of the search experience is
22 part of the user experience of Firefox.

23 40. To provide this Internet search functionality, Mozilla teams with search providers
24 that conduct the search, return results, and produce a webpage presenting the results,
25 advertisements, and other information. In recognition of user behavior, where users tend not to
26 switch from the defaults provided, for search providers the default search engine setting is the
27

28

1 most valuable. Thus, search providers are willing to pay Mozilla or other browser owners for the
2 default position within the browser.

3 41. From December 1, 2014 to November 10, 2017, the default search provider for
4 Firefox in the United States was set to Yahoo under the Strategic Agreement. This means that
5 when a user opened Firefox, if the user had not made any changes to the browser's settings, the
6 search provider was Yahoo during this time. Starting November 14, 2017, the default search
7 provider for Mozilla in the United States was set to Google, as part of the launch of the major
8 upgrade version of Firefox, following the termination of Mozilla's Strategic Agreement with
9 Yahoo.

10 42. As with many other popular search engines, conducting a search on Yahoo or
11 Google results in links to webpages related to the search, as well as paid links from advertisers
12 that are related to the search terms. Search providers can differentiate their services by the quality
13 of their organic search results, the way they display information, the number of advertising links
14 that appear, and what other information they display related to the user's query, such as trigger
15 information (*i.e.*, information displayed based on geographic location of the user, or by
16 anticipating what the user may be looking for).

17 **II. Yahoo Was a Leading Internet Brand, But by 2014, Had Fallen Behind Industry**
18 **Leaders and Needed a Comeback.**

19 **A. Yahoo Was Founded in 1994 and Became a Leading Internet Brand.**

20 43. Yahoo was founded in 1994 as a web directory and then grew to become a leading
21 Internet brand. Since its founding and over time, Yahoo became a place to undertake
22 transactions, form groups, read news, and also conduct searches of the Internet. Yahoo went
23 public in 1996 and quickly became one of the best known brands in the burgeoning Internet
24 market. Throughout the 1990s, Yahoo continued to increase its user base and expand
25 internationally, targeting Asian and South American markets for growth.

26 44. By the early 2000s, Yahoo looked to expand its revenue streams. Yahoo
27 strengthened its Yahoo! Mail platform and expanded its Corporate Yahoo! and Yahoo! Broadcast
28 Services brands to provide better business and enterprise services. Yahoo also expanded its brand

1 to include more content-based initiatives, including personal finance and investing, commerce,
2 and digital entertainment.

3 **B. Yahoo! Invests Heavily in Content.**

4 45. By the late 2000s, Yahoo's brand in the technology world had faded. In 2001,
5 Yahoo tried to regain market share by making a heavy investment in the Internet content portion
6 of Yahoo's business. But the gamble on content failed to pay off. By 2007, news outlets reported
7 that Yahoo had fallen behind to Google and was "struggling." *See, e.g., Semel Out as Yahoo!*
8 *CEO*, June 18, 2007, http://money.cnn.com/2007/06/18/news/companies/yahoo_semel/. From
9 2007 to 2012, Yahoo continued to struggle. Once a dominant company in display advertising
10 revenue, Yahoo had fallen behind both Google and Facebook by 2012. News outlets reported
11 that Yahoo "ha[d] struggled to stay relevant" after missing two major Internet trends, social
12 networking and the move to mobile devices. *See, e.g., Mayer Hopes to Brighten User Experience*
13 *at Yahoo*, July 16, 2012, [http://www.nytimes.com/2012/07/17/technology/marissa-mayer-hopes-](http://www.nytimes.com/2012/07/17/technology/marissa-mayer-hopes-to-brighten-user-experience-at-yahoo.html)
14 [to-brighten-user-experience-at-yahoo.html](http://www.nytimes.com/2012/07/17/technology/marissa-mayer-hopes-to-brighten-user-experience-at-yahoo.html).

15 **C. Yahoo Attempts to Right Its Ship Under Marissa Mayer.**

16 46. In 2012, Marissa Mayer became the CEO of Yahoo, the fourth in four
17 years. *Google's Marissa Mayer Named Yahoo! CEO*, July 17, 2012,
18 <http://money.cnn.com/2012/07/16/technology/yahoo-ceo-marissa-mayer/index.htm>. At the time,
19 the perception was that Yahoo was a "fading Web icon", *id.*, and that Yahoo was "trying to
20 remain relevant." *A Yahoo Search Calls Up a Chief from Google*, July 16, 2012,
21 <https://dealbook.nytimes.com/2012/07/16/googles-marissa-mayer-tapped-as-yahoos-chief/>. It
22 was widely reported that CEO Mayer would attempt to turn Yahoo around. Yahoo's own press
23 release touted that her appointment "signals a renewed focus on product innovation to drive user
24 experience and advertising revenue for one of the world's largest consumer Internet brands,
25 whose leading properties include Yahoo! Finance, Yahoo! Sports, Yahoo! Mobile, Yahoo! Mail,
26 and Yahoo! Search." *Yahoo! Appoints Marissa Mayer Chief Executive Officer*
27 [http://www.businesswire.com/news/home/20120716006348/en/Yahoo%21-Appoints-Marissa-](http://www.businesswire.com/news/home/20120716006348/en/Yahoo%21-Appoints-Marissa-Mayer-Chief-Executive-Officer)
28 [Mayer-Chief-Executive-Officer](http://www.businesswire.com/news/home/20120716006348/en/Yahoo%21-Appoints-Marissa-Mayer-Chief-Executive-Officer).

1 47. With CEO Mayer at the helm, Yahoo refocused on search. In Yahoo’s 2013
2 annual filing with the Securities and Exchange Commission, Yahoo stated that “For Yahoo,
3 Search remains one of our biggest areas of focus, and in 2013 we enhanced Search to create a
4 better, more user-centered experience.”

5 48. In 2013, Yahoo, Inc.’s main source of revenue was from display and search
6 advertising, and search revenue was \$1.74 billion and 37% of its business. Yahoo’s search
7 revenue is generated when users click on text-based links to advertisers’ websites that appear
8 primarily on search results pages. Yahoo generates revenue via “paid clicks,” where a user clicks
9 on a sponsored listing on a Yahoo-affiliated website, for which an advertiser pays on a per-click
10 basis. Thus, for Yahoo to generate search revenue, users must use Yahoo’s search engine.

11 49. In 2013, Google was the market leader in search. In 2013, Google’s advertising
12 revenue was over \$50.5 billion. Google continues to be the dominant leader in search advertising.

13 **III. In November 2014, Mozilla and Yahoo Entered Into a Contract That Made Yahoo**
14 **the Default Search Engine for the Firefox Web Browser.**

15 **A. In 2014, Mozilla Sought to Increase Competition in the Search Market with a**
16 **Different Search Provider and Received Assurances from Yahoo About**
17 **Yahoo’s Vision for Search.**

18 50. In 2014, Mozilla’s contract with Google to be the default search provider for
19 Mozilla was expiring. Mozilla spoke with Yahoo, Bing, Google, and other search providers
20 about becoming Mozilla’s default search provider. Mozilla was concerned with the quality of the
21 search experience that each search provider could provide and desired to meaningfully increase
22 choice in the search marketplace.

23 51. Mozilla entered negotiations with Yahoo. Mozilla had concerns about the quality
24 of Yahoo’s search product and raised those concerns with Yahoo. 

25 

1 Yahoo repeatedly represented to Mozilla that Yahoo was committed to search and had a multi-
2 year plan designed to improve and enhance the Firefox search experience over time.

3 52. CEO Mayer was personally involved in the negotiations with Mozilla. She
4 presented a compelling vision for the future of Yahoo Search. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 53. Mozilla considered a number of strategic factors during negotiations with Yahoo.
8 One consideration was the future of the market for search in three to five years, after any deal
9 concluded. Another consideration was the impact of a deal on Firefox market share. Mozilla had
10 a unique opportunity in 2014 to create an impact on and increase domestic market share, based in
11 part on a major overhaul of the Firefox user interface. Yahoo presented the opportunity to create
12 a new voice in search that was significant enough to grow market share with Mozilla. Based on
13 Yahoo's reassurances regarding alignment of interests with Mozilla and Yahoo's commitment to
14 search, as well as protections that Mozilla negotiated for, Mozilla entered into a multi-year
15 agreement with Yahoo to replace Google with Yahoo Search as the default in the Firefox.

16 **B. The Strategic Agreement Was Intended to Develop a [REDACTED]
17 for Yahoo and a [REDACTED] for Mozilla.**

18 54. On or about November 15, 2014, Yahoo and Mozilla entered into the Strategic
19 Agreement, providing for Yahoo's search engine to become the default search engine in the
20 United States for Mozilla's browser, Firefox, in exchange for payments by Yahoo to Mozilla.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 55. By the terms of the Strategic Agreement, both Yahoo and Mozilla intended to
27 [REDACTED]
28 [REDACTED]

1 [REDACTED] Among other things, Mozilla
2 integrated Yahoo Search, and the parties promoted Mozilla's browsers [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 56. On November 19, 2014, Yahoo and Mozilla each publicly announced that they had
7 entered into the strategic five-year contract to make Yahoo the "default search experience" for
8 Firefox in the United States on mobile and desktop. Exhibits G & H (Yahoo and Mozilla blog
9 posts). In Yahoo's blog post announcing the contract, Yahoo's CEO Marissa Mayer, wrote that
10 search was "an area of investment and opportunity for [Yahoo]" and a "key growth area."
11 Exhibit G (Yahoo blog post). Yahoo stated that the contract would help expand its reach in
12 search and would give Yahoo and Mozilla the opportunity to work closely to find ways to
13 innovate in search, communications, and digital content generally. Yahoo also stated that the
14 interactive and integrated experience better leveraged its content and personalization
15 technologies.

16 57. By some measures, Firefox market share fell by approximately 25% from the first
17 year of the Strategic Agreement to the last year the Strategic Agreement was in effect. One such
18 widely cited measure is Statcounter, which estimates that Firefox U.S. desktop market share went
19 from averaging 16.05% for the months of December 2014 to November 2015, to 12.24% for the
20 months of December 2016 to November 2017.

21 58. Mozilla considered search to be a core part of the online experience for everyone.
22 Mozilla chief executive officer Chris Beard stated in Mozilla's announcement of the contract that
23 "[Mozilla's] new search strategy doubles down on [its] commitment to make Firefox a browser
24 for everyone . . . with more choice and opportunity to innovate." Exhibit H (Mozilla blog post).
25 In evaluating search options, Mr. Beard noted that Mozilla's "primary consideration was to
26 ensure [its] strategy aligned with [its] values of choice and independence, and position[] us to
27 innovate and advance our mission in ways that best serve our users and the Web."
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1 **C. The Terms of the Strategic Agreement Provided Contractual Protections**
2 **That Mozilla Would Benefit From Taking the Risk of Signing with Yahoo.**

3 59. Given Yahoo’s history, both Yahoo and Mozilla understood that Mozilla would be
4 taking a risk by selecting Yahoo as its search provider, and that Yahoo was committing to rapid
5 change and innovation [REDACTED] which
6 was necessary for Mozilla to compete with the other major browsers. The Strategic Agreement
7 included numerous protections for Mozilla, through contractual performance standards and
8 [REDACTED] payments including [REDACTED]

9 1. **Yahoo Was Required to Meet Certain [REDACTED] Specifications.**

10 60. The Strategic Agreement required Yahoo to meet certain [REDACTED] specifications
11 at the time Mozilla launched Firefox with Yahoo as the default search engine.
12 [REDACTED]

13 a. [REDACTED]

14 b. [REDACTED]

15 c. [REDACTED]

16 e. [REDACTED]

17 f. [REDACTED]

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[REDACTED]

61. The Strategic Agreement also required Yahoo to meet certain ongoing

[REDACTED]

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[REDACTED]

62.

[REDACTED]

Prior to the execution of the Strategic Agreement in

November 2014, Google search was the Search Market Leader with a dominant share for each of the preceding twelve months.

3. Yahoo Was Required to Pay

[REDACTED]

63. Each year, Yahoo was required to pay Mozilla in exchange for making Yahoo

Search the default search engine on Firefox and other Mozilla browsers.

[REDACTED]

[REDACTED]

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[REDACTED]

4. Yahoo Was Required to Pay

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[REDACTED]

5. Yahoo Was Required to Pay

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

a.

[REDACTED]

b.

[REDACTED]

[REDACTED]

71.

[REDACTED]

IV. After Signing the Contract, Yahoo Failed to Meet [REDACTED] Standards Set Forth in the Contract and the Assurances Made to Mozilla, and Mozilla Suffered as a Result.

A. Yahoo Failed to Meet [REDACTED] Standards

72. The Strategic Agreement took effect [REDACTED]

[REDACTED] After signing the contract, Yahoo failed to meet its obligations.

1 73. Yahoo Search consistently failed to retain users and search volume over time,
2 reducing the potential revenue under the Strategic Agreement. Rather than focus on improving
3 the quality of its search product, as Yahoo assured Mozilla it would prior to entering into the deal
4 [REDACTED], Yahoo continually focused on short-term
5 monetization and special events such as the Olympics and the election, at the expense of product
6 quality. Yahoo also sought to use alternative branding in an effort to avoid the negative impact of
7 its own brand, but because there was no improvement in the product quality, tests demonstrated
8 that users continued to switch away from Yahoo Search, whether branded Yahoo or not.

9 74. These issues began early in the relationship. As early as January 2015, Mozilla
10 began discussions with Yahoo on the shortcomings of the quality of the search product. For
11 example, in a January 6, 2015 email to Yahoo with the subject line, “Yahoo Search Discussion,”
12 Mozilla’s product team outlined issues with the search product since launch, including search
13 engine results page and ad relevancy results, video results, and technical development queries.
14 Mozilla determined in January 2015 that the user experience Yahoo Search provided was sub-par
15 [REDACTED]. In response to these types of issues, in
16 February 2015 Mozilla identified “five areas I’d like to push Yahoo! on of the next few weeks”
17 that “come up time and again, and are the kinds of things that drive users away.” In no particular
18 order, these issues affecting search quality [REDACTED] included the relevancy of advertisements
19 served on users, aggressive autocorrect, sub-par relevancy results, the content of answers, and the
20 basis for triggering particular content.

21 75. Mozilla continued these types of discussions with Yahoo in March 2015,
22 reiterating that Mozilla “wants [REDACTED] improvement for both parties to grow marketshare,” but
23 the “current experience is causing users to move.” Again, at the July 15, 2015, quarterly business
24 review with Yahoo and Mozilla, the parties had a “[d]iscussion around the retention and
25 increasingly negative user experience by changing UI to drive monetization” and Mozilla asked
26 who it “need[ed] to talk to for Yahoo to recommit to our agreement and users.”

27 76. Yahoo continued to fail to meet [REDACTED] standards set forth in the contract
28 through 2016. [REDACTED]

1 [REDACTED] Throughout
2 the term of the Strategic Agreement, Mozilla communicated, escalated and documented the
3 deficiencies in the Yahoo product at [REDACTED]
4 [REDACTED] multiple times and also sent emails to Yahoo executives raising these concerns.

5 77. In addition to the deficiencies in search, it is well-known that Yahoo experienced
6 massive data breaches in 2013 and 2014 that are estimated to have compromised as many as three
7 billion accounts, and are the subject of ongoing lawsuits seeking millions of dollars in damages
8 and government inquiries including hearings before the Senate Commerce Committee, including
9 subpoenaed testimony by Yahoo's former CEO, Marissa Mayer. The breach impacted Yahoo's
10 brand exactly as it had predicted in its own 2013 SEC filing describing risks:

11 *If our security measures are breached, our products and services may be*
12 *perceived as not being secure, users and customers may curtail or stop using our*
13 *products and services, and we may incur significant legal and financial exposure.*

14 ...
15 *Any breach or unauthorized access could result in significant legal and financial*
16 *exposure, increased remediation and other costs, damage to our reputation and a*
17 *loss of confidence in the security of our products, services and networks that could*
18 *potentially have an adverse effect on our business. . . . If an actual or perceived*
19 *breach of our security occurs, the market perception of the effectiveness of our*
20 *security measures could be harmed and we could lose users and customers.*

21 The extent and severity of this data breach was not made known to the public or to Mozilla for
22 years, further denigrating the public's trust in the Yahoo brand.

23 **B. Mozilla's Business Suffered As a Result of Yahoo's Failure to Meet the**
24 **Agreed Upon Standards.**

25 78. Due to Yahoo's failure to meet the [REDACTED] standards set forth under the contract,
26 Mozilla suffered as a result. By mid-2016, Mozilla relayed to Yahoo that only 23% of users
27 opted to keep Yahoo Search as the default search engine in Firefox for the U.S. market, from a
28 high of 90% prior to entering into the Strategic Agreement. Mozilla believed that the user's
switch away from Yahoo being the default search provider was driven by the quality of Yahoo
Search. Under the Strategic Agreement, the only way for Mozilla to increase its revenue is for
users to continue to use Yahoo search.

1 79. Moreover, Mozilla believed that the use of Yahoo Search negatively impacted the
2 retention of Firefox users.

3 80. Under the Strategic Agreement, Mozilla and Yahoo had [REDACTED]
4 [REDACTED]
5 [REDACTED] Mozilla informed Yahoo that Mozilla's preference was to place Yahoo Search in the
6 agreed-upon territories, once the product quality was sufficient to ensure a successful rollout, but
7 that it could not place Yahoo in those non-U.S. territories unless Yahoo improved its search
8 [REDACTED] As a result, Mozilla spent sixteen months without a
9 revenue-bearing agreement in the countries [REDACTED]
10 [REDACTED] Mozilla ultimately entered into a deal with Google for certain
11 of those territories outside of the U.S., with Yahoo's knowledge.

12 81. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 82. Mozilla agreed to reduce [REDACTED] in part, so that Yahoo would
18 have more resources available to it to improve its search product.

19 **V. In 2017, Yahoo Was Sold, Triggering the Change of Control Provisions.**

20 **A. As the Situation at Yahoo Worsened, Yahoo Was Put Up for Sale.**

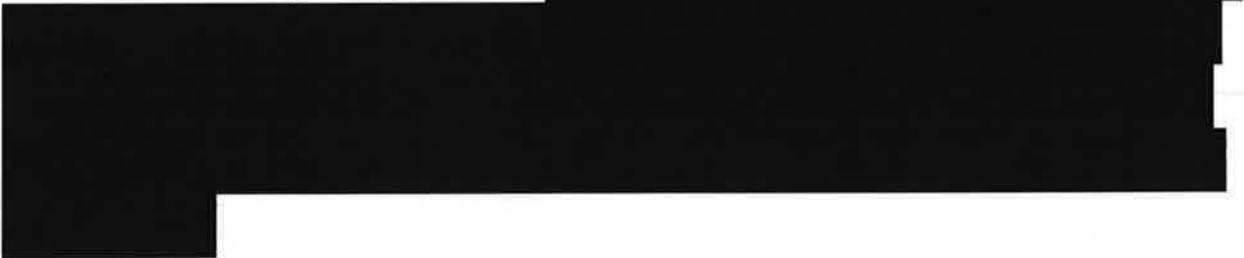
21 83. By 2016, Yahoo had not been able to stage the comeback that it had hoped for.
22 Despite having more users than any other site other than Google and Facebook, it was reported
23 that Yahoo had ceded a large volume of search traffic and advertising revenue to both
24 competitors. *See, e.g.*, Why Yahoo Sold Its Internet Business, June 13, 2017,
25 <https://www.nytimes.com/interactive/2016/technology/yahoo-sale.html>. Attempts to recommit
26 Yahoo to innovation in the search market and commission original video and print content failed
27 to increase revenue or profit. *See, e.g.*, Yahoo's Sale to Verizon Ends an Era for a Web Pioneer,
28 July 24, 2016, <https://www.nytimes.com/2016/07/25/business/yahoo-sale.html>.

1 84. By July 2016, Yahoo entered into a Stock Purchase Agreement with Verizon.
2 Before the deal closed, news of the massive data breach at Yahoo became public. Verizon
3 recognized the major harm to the Yahoo brand caused by the data breaches, and proceeded to
4 renegotiate the terms of the Stock Purchase Agreement in 2017 and reduce the purchase price by
5 \$350 million.

6 **B. The Sale to Verizon Completed in June 2017 Triggered the Change of Control**
7 **Provisions in the Strategic Agreement.**

8 85. The Stock Purchase Agreement between Yahoo and Verizon provided for Yahoo
9 to sell to Verizon for cash all of the outstanding shares of a newly-formed, wholly-owned
10 subsidiary of Yahoo called Yahoo Holdings. The same day, Yahoo entered into a Reorganization
11 Agreement with its subsidiary, Yahoo Holdings, under which Yahoo agreed to transfer “all of its
12 assets and liabilities relating to the operating business of Yahoo ... other than specific excluded
13 assets and retained liabilities, to Yahoo Holdings.”

14 86. On June 13, 2017, the transaction closed, with Verizon acquiring Yahoo Holdings,
15 and with it, Yahoo’s Operating Business. 

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19 87. On information and belief, Verizon has combined its Yahoo assets with its existing
20 AOL business, under a new subsidiary, Oath. According to Verizon, its new subsidiary Oath is
21 “a diverse house of more than 50 media and technology brands that engages more than a billion
22 people around the world.” [http://www.verizon.com/about/news/verizon-completes-yahoo-](http://www.verizon.com/about/news/verizon-completes-yahoo-acquisition-creating-diverse-house-50-brands-under-new-oath-subsiidiary)
23 [acquisition-creating-diverse-house-50-brands-under-new-oath-subsiidiary.](http://www.verizon.com/about/news/verizon-completes-yahoo-acquisition-creating-diverse-house-50-brands-under-new-oath-subsiidiary)
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1 **VI. Mozilla Terminated the Strategic Agreement Based on the Change of Control**
2 **Provisions Because It Reasonably Believed That Mozilla Would Be Harmed By**
3 **Continuing the Relationship.**

4 **A. Beginning Prior to the Close of the Verizon/Yahoo Transaction, Mozilla**
5 **Sought Assurances Concerning Yahoo Acquirer's Identity and Business**
6 **Practices.**

7 88. Beginning in the spring of 2017 and through November 2017, Mozilla sought
8 assurances from the Yahoo Acquirer concerning the Yahoo Acquirer and Yahoo Holdings'
9 identity and business practices as they relate to Mozilla and its brand.

10 89. Throughout those discussions, Mozilla reiterated its philosophy and the reasons
11 why Mozilla entered into a contract with Yahoo: Mozilla is committed to supporting and
12 promoting the Internet as a global public resource. Mozilla entered into the contract with Yahoo
13 to help meet Mozilla's mission of making the web more accessible to all, and to create a
14 differentiated experience and increase competition. Specifically, Mozilla sought to create
15 meaningful choice in search, while also providing an opportunity to differentiate Firefox. The
16 contract with Yahoo, however, had yet to live up to expectations or to the joint press statements
17 made at the commencement of the contract.

18 90. Even before the change of control occurred, Mozilla raised its concerns with the
19 Yahoo Acquirer regarding the quality of Yahoo Search and the need for major improvements
20 under the Strategic Agreement. For example, in Spring 2017, Mozilla requested a meeting with
21 the Yahoo Acquirer. In late March 2017, Tim Lemmon (formerly of AOL and now Chief
22 Operating Officer of Oath) confirmed a meeting for April 6, 2017, to be held at Mozilla's San
23 Francisco office. At the April 6, 2017 meeting, Mozilla made a presentation to the Yahoo
24 Acquirer regarding the state of the relationship and Mozilla's concerns regarding the Yahoo
25 Search product. Exhibit I (Mozilla presentation). Mozilla specifically asked the Yahoo Acquirer
26 for information regarding their plans for improvement and to address Mozilla's concerns. The
27 Yahoo Acquirer told Mozilla they could not talk about any plans for the future until after the
28 close of the Verizon/Yahoo transaction. At the time, the Yahoo Acquirer did not present a plan
for moving forward or remedying any quality concerns in Yahoo Search. On June 13, 2017, the
transaction closed.

1 91. The day after the transaction closed, Mozilla sent an email to the Yahoo Acquirer
2 search team, requesting a meeting in order to understand the Yahoo Acquirer's intentions and
3 business plans for the search product, [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 In the determination of our next steps, we'd like to hear from
9 Verizon/AOL as to how it plans to run the Yahoo business,
10 including the search business, and how it intends to meet its
11 obligations under the Agreement. I know we are meeting later this
12 month as part of [REDACTED]
13 [REDACTED] and we would also like to schedule some separate time
14 to address our concerns and our questions regarding your plans.

15 Exhibit J (June 14, 2017 Email).

16 92. In early August 2017, Mozilla, Yahoo and the Yahoo Acquirer held the first post-
17 acquisition [REDACTED] meeting. Prior to that meeting, a Mozilla executive sent to a
18 Yahoo Acquirer executive an email laying out that Mozilla was "hopeful that Oath will begin to
19 lay out a product plan that meets the strategic intent of our agreement" and provided a list of
20 questions for the Yahoo Acquirer. Exhibit K (July 18, 2017 Email). During that meeting,
21 Mozilla again raised its concerns to Yahoo and the Yahoo Acquirer "about the quality of your
22 product and the need for major improvements [REDACTED]" Exhibit L (Meeting
23 minutes). Those concerns included "the ongoing failure for Yahoo to reach [REDACTED]
24 [REDACTED] as well as the need to improve certain areas [REDACTED]
25 [REDACTED]" During the same meeting Mozilla raised its concerns about "the ongoing negative
26 impact this and [Yahoo's] product's overall quality has on Firefox and [its] business." Another
27 issue raised was "the need to make changes and see progress quickly given where we are in the
28 Agreement." [REDACTED]

[REDACTED] At the meeting, attended by the
Yahoo Acquirer, the Yahoo Search strategy, as recorded in the meeting minutes, was simply [REDACTED]
[REDACTED]

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[REDACTED]

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[REDACTED]

94. On September 18, 2017, in response to a prior invitation, Mozilla sent to leadership of the Yahoo Acquirer an email making clear that Mozilla had concerns about staying in the Strategic Agreement. Exhibit M (Sept. 18, 2017 Email). Among other things, Mozilla told the leadership team that “Mozilla [was] faced with making a decision regarding the Oath-Mozilla relationship in the next few months” and had the following concerns:

The quality of the search product used as default in Firefox has significant implications to our users, the success of our Firefox product and our company. The importance of search is reflected explicitly in the Strategic Agreement that we entered into with Yahoo in 2014. Regrettably, Yahoo Search has failed and continues to fail to meet the basic requirements in the agreement. And now, we find ourselves in a tough spot. We are focused on a November Firefox launch that promises to be an even stronger competitor in the market across many key measurements. While we are excited about that future, we continue to be deeply concerned about the quality of the Yahoo search product.

We have concerns that staying in the Strategic Agreement would harm our brand, the Firefox product and our users, and we have not yet received adequate reassurances otherwise. We would like to meet with you to ensure that Mozilla has all of the information prior to any decisions.

Exhibit M (Sept. 18, 2017 Email).

95. The Yahoo Acquirer’s new search team did not address Mozilla’s request for assurances that the new team would put its efforts into improving Yahoo Search and the user experience [REDACTED] The quality of the search experience in Firefox is key to Mozilla’s success.

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[REDACTED]

Mozilla did not believe that the incremental changes proposed by the Yahoo Acquirer would lead Yahoo to [REDACTED]

Moreover, Verizon is a telecommunications company with no history of search experience beyond the experience that the Yahoo team brought with the acquisition. When Verizon acquired Yahoo, CEO Mayer resigned, and Yahoo no longer had access to her search expertise. [REDACTED]

[REDACTED]

97. Mozilla also had concerns that continuing a contract with Yahoo Holdings and its related entities would harm the Mozilla brand, particularly with respect to user privacy, in light of the data breaches at Yahoo. User privacy is a major differentiator for Mozilla to attract and retain users who might otherwise use competing browsers tied to operating systems or other Internet services.

98. In addition, Verizon poses significant brand issues for Mozilla and its reputation for protecting user privacy. Unlike Mozilla, Verizon has been subject to public government investigations and enforcement actions for failing to comply with privacy protections for its users. For example, in September 2014, Verizon agreed to pay \$7.4 million to settle a Federal Communications Commission (FCC) investigation over claims that the company used personal information from subscribers to serve targeted advertising without their consent. According to the FCC, at the time this was the largest-ever payment in a telephone customer privacy case. Verizon's policy positions are also diametrically opposed to Mozilla's positions on core issues such as net neutrality and cybersecurity.

1 **B. Mozilla Ultimately Concluded that the Yahoo Acquirer Was Likely to Harm**
2 **Mozilla's Brand and the Quality of Web Search and Terminated the**
3 **Contract.**

4 99. [REDACTED]

5 [REDACTED]
6 [REDACTED] Indeed, when told of Yahoo's performance issues, the Yahoo Acquirer told
7 Mozilla to explore other search providers.

8 100. On November 10, 2017, Mozilla provided notice that it was terminating the
9 Strategic Agreement. Exhibit N (Notice of Termination). In an email sent the same day to the
10 leadership at the Yahoo Acquirer, Mozilla provided a few of the reasons for its decision:

- 11 • Yahoo Holdings' and related parties' brands (especially in regard to user privacy and
12 security) continue to be highly problematic. This has been underscored by the continuing
13 issues with respect to the Yahoo security breaches and publicity around those breaches.
- 14 • Tests conducted by and for Mozilla demonstrate that the brand and quality of the search
15 product have had negative impacts and continue to have negative impacts on the user
16 views of the Mozilla browser.
- 17 • Mozilla has sought assurances that Yahoo Holdings and related parties will comply with
18 the terms of the contract regarding [REDACTED] In our
19 discussions we have asked several times for a clear path to meeting the requirements in
20 the Agreement, a product plan to address the deficiencies in the product, a plan for
21 improving the brand, and a commitment in terms of the number of people to address the
22 concerns. We haven't received sufficient assurances.

23 101. In light of these and other facts, Mozilla concluded that the Yahoo Acquirer's
24 identity and business practices and the way that the Yahoo Acquirer intends to operate the Yahoo
25 business will harm the Mozilla brand and the quality of the search product offered to Mozilla and
26 Firefox users.

27 102. Mozilla [REDACTED]

28 [REDACTED] has entered into an

1 agreement with Google to be the default search provider in the United States, Hong Kong and
2 Taiwan, [REDACTED] made effective on
3 November 14, 2017.

4 **VII. After Mozilla Terminated the Strategic Agreement, Yahoo Holdings Failed to Make**
5 **the Required [REDACTED] Payment**

6 103. On November 10, 2017, Mozilla terminated the Strategic Agreement [REDACTED]
7 [REDACTED] and provided notice to Yahoo Holdings
8 and Verizon Communications, Inc. in writing. Exhibit N (Notice of Termination).

9 104. [REDACTED]
10 [REDACTED]

11 105. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 106. After Mozilla terminated the Strategic Agreement, Mozilla received a letter from
17 the general counsel of Oath, indicating Oath's position that the termination of the Strategic
18 Agreement itself was a material breach of the Strategic Agreement, and purporting to put Mozilla
19 on notice of Mozilla's other material breaches of the now terminated Strategic Agreement.

20 107. On December 1, 2017, instead of paying [REDACTED]
21 [REDACTED] Yahoo filed a lawsuit. Complaint,
22 filed December 1, 2017.
23 [REDACTED]

24 [REDACTED]
25 108. [REDACTED]

26 [REDACTED]
27 Due to the termination of the Strategic Agreement on November 10, 2017,
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 109. In light of Yahoo's refusal to pay directly to Mozilla the [REDACTED]
5 [REDACTED] payments and its decision to pay the monies [REDACTED], Mozilla
6 believes that Yahoo does not intend to pay directly to Mozilla any future
7 [REDACTED] payments [REDACTED] required [REDACTED]
8 [REDACTED]

9 **VIII. As a Result of the Failure to Make the [REDACTED] Payment, Mozilla Will Suffer**
10 **Irreparable Injury**

11 **A. The Launch of the Upgrade Version of Mozilla's Browser, Firefox Quantum,**
12 **Provides a Unique and Limited Opportunity to Bring Users to Firefox.**

13 110. Mozilla's web browser, Firefox, is unique in the web browser market as it is a
14 standalone browser not tied to any particular operating system or search provider, in contrast to
15 Microsoft Edge, Apple Safari, and Google Chrome. Users must affirmatively choose to
16 download Firefox onto their computer, laptop, or mobile device. These devices typically already
17 have a preinstalled default web browser, which are each provided by Microsoft, Apple, and
18 Google, depending on the device. As a result, it is more difficult for Mozilla to gain new users of
19 Firefox, and the time following the launch of the new version of Firefox is a critical time for
20 Mozilla to gain users.

21 111. Mozilla launched the newly redesigned major upgrade version of its browser on
22 November 14, 2017. This launch is a rare opportunity for Mozilla to expand its market share to
23 reach both new customers and former customers who have switched browsers. This update to
24 Firefox, called Quantum, almost doubles the speed of previous versions, while maintaining
25 Mozilla's commitment to open source technology and user privacy. It also balances memory
26 usage, using less memory than market competitors. The browser utilizes a completely redesigned
27 user interface, optimized to be faster and more modern. Mozilla plans to continue to roll out new
28 features and heavily market the newly redesigned version of Firefox to attract a greater share of
the Internet browser market.

1 112. In order for Firefox Quantum and subsequent versions of Firefox rollout to achieve
2 success, Mozilla must use its resources to build and market a wide slate of new features and
3 products and is relying on the revenue stability under the Strategic Agreement to achieve its
4 goals.

5 **B. Mozilla Faces a Critical Time in Advancing Its Mission of the Open Internet,
6 as Key Internet Principles Such as Net Neutrality Are Under Attack.**

7 113. In support of its mission, Mozilla's work extends far beyond the development of
8 Firefox. Mozilla uses the revenues from Firefox to fund policy activities related to the Mozilla
9 Mission. For example, Mozilla has been and continues to be a leading policy advocate for user
10 privacy and net neutrality rules, both of which are under threat in today's broader environment.
11 Mozilla regularly files comments with judicial, regulatory and legislative bodies globally to
12 advocate for an open and secure Internet.

13 114. Mozilla also uses the market share it captures through the users of Firefox to have
14 a major influence on the outcome of the development of browsers and of core Internet
15 technologies (including HTML, CSS, JavaScript, WebRTC, web standards bodies like the W3C,
16 WebAssembly, and WebVR) and in furtherance of its mission of user privacy, security and
17 control in their online lives. Mozilla has pioneered features like Tracking Protection that help
18 users gain control over their online lives and has influenced other major browser manufacturers to
19 do the same. Mozilla engineers help guide the development of key Internet security standards
20 and technologies, including helping to improve the underlying security layer of the web itself.
21 The size of Mozilla's market share with respect to Firefox impacts the influence that Mozilla is
22 able to exert on the development of these technologies.

23 115. The future of the Internet and the web, as it relates to issues such as net neutrality,
24 user privacy, and cybersecurity are being decided now, and this is a critical time for Mozilla and
25 its mission. For example, in the summer of 2017, the Federal Communications Commission
26 threatened to take back regulations that protect net neutrality. Mozilla has been actively working
27 to persuade the FCC to refrain from doing so when it votes later this month.
28

1 **C. The [REDACTED] Payments Represents A Substantial Portion of Mozilla**
2 **Revenues, and Without These Payments and the Revenue Stability, Mozilla**
3 **Will Not Be Able to Take Advantage of This Unique Competitive**
4 **Opportunity and the Urgent Need to Protect Key Internet Principles.**

5 116. Because the [REDACTED] paid by Yahoo represents a substantial
6 portion of Mozilla's total revenues, Yahoo's failure to make the payments as required by the
7 Strategic Agreement will significantly reduce Mozilla's available resources. *See* Mozilla
8 Foundation's Consolidated Financial Statements for the Years Ended December 31, 2015 and
9 2016, available at
10 https://assets.mozilla.net/annualreport/2016/2016_Mozilla_Audited_Financial_Statement.pdf.

11 117. With the rollout of Firefox Quantum, Mozilla will begin to lead the market in
12 speed with certain key features in Firefox. Due to the immense resources of competitors such as
13 Google, Apple, and Microsoft, it is expected that a competitor will attempt to and may succeed in
14 overtaking Firefox in speed. Thus, the time during which Mozilla has a market competitive
15 product is a critical time during which Mozilla can get users to switch their browsers.
16 Additionally, Mozilla will begin to push on differentiating other key features, including in privacy
17 and security, to further solidify the user value proposition that would cause users to switch from
18 their other browser products. Without further investment into the product and marketing, Mozilla
19 will have no opportunity to sustain this lead and compete. Creating and pushing updated versions
20 of a browser is expensive and requires highly specialized talent.

21 118. Yahoo's refusal to pay the [REDACTED] payment as required under the
22 Strategic Agreement would cause irreparable injury to Mozilla. The payments are key to
23 financing the new upgraded version of Firefox, any disruption of which will cause lost market
24 share and lost business goodwill. The payments are also key to financing Mozilla's mission of
25 ensuring that the Internet is global public resource, open and accessible to all. Mozilla faces a
26 critical time in advancing its mission of the open Internet, as core Internet principles such as net
27 neutrality are under attack. This loss cannot not be remedied with any amount of monetary
28 damages. Attempting to compensate Mozilla at a later date for the withheld [REDACTED]
 payments would not adequately account for this loss.

1 119. Moreover, should Yahoo Search and Yahoo's brand name continue to decline,
2 Yahoo's revenues may also dwindle. Thus, without the immediate receipt of the [REDACTED]
3 [REDACTED] payments, Mozilla may never receive its required [REDACTED] payments under
4 the Strategic Agreement.

5 **D. [REDACTED] May Prevent the Recovery of Indirect**
6 **Damages Regarding the Loss of This Unique Opportunity to Win Back**
7 **Market Share.**

8 120. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 **FIRST CAUSE OF ACTION (DECLARATORY RELIEF)**

15 121. Mozilla alleges and incorporates herein by reference each and every allegation
16 contained in paragraphs 1 through 120 above as though set forth herein in full.

17 122. An actual controversy has arisen and now exists relating to the rights and duties of
18 the parties herein in that Yahoo contends that it did not have to make a [REDACTED]
19 payment to Mozilla [REDACTED]
20 and will not have to make [REDACTED]
21 [REDACTED] or any future [REDACTED]
22 [REDACTED] payments to Mozilla [REDACTED]

23 123. Mozilla desires a judicial determination of its rights and Yahoo's duties, and a
24 declaration that (1) Mozilla is entitled to the [REDACTED] payment from Yahoo for
25 [REDACTED] (2) Mozilla is entitled
26 to [REDACTED]
27 [REDACTED] payments from Yahoo [REDACTED]
28 [REDACTED] and (3) Mozilla is

1 entitled to [REDACTED]
2 [REDACTED]

3 124. A judicial declaration is necessary and appropriate at this time under the
4 circumstances in order that Mozilla may ascertain its rights [REDACTED]

5 [REDACTED] Without such a determination, Yahoo will continue to assert
6 that it is not required to make further payments under the Strategic Agreement.

7 **SECOND CAUSE OF ACTION (BREACH OF CONTRACT RE [REDACTED]**
8 **PAYMENTS)**

9 125. Mozilla alleges and incorporates herein by reference each and every allegation
10 contained in paragraphs 1 through 124 above as though set forth herein in full.

11 126. On or about November 15, 2014, Mozilla and Yahoo entered into a contract, the
12 Strategic Agreement, effective as of December 1, 2014. The consideration for the Strategic
13 Agreement was valid and appropriate.

14 127. On information and belief, on or about July 23, 2016, Yahoo Holdings assumed
15 the rights and obligations of the Strategic Agreement pursuant to the Reorganization Agreement,
16 dated as of July 23, 2016, as amended as of February 20, 2017, between Yahoo and Yahoo
17 Holdings.

18 128. Mozilla and Yahoo have mutual obligations under the Strategic Agreement.

19 129. Mozilla has performed all conditions covenants and promises required to be
20 performed by it in accordance with the terms and conditions of the Strategic Agreement.

21 130. On November 10, 2017, Mozilla terminated the Strategic Agreement [REDACTED]
22 [REDACTED]

23 131. Yahoo breached the terms and conditions of the Strategic Agreement [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 132. On information and belief, Yahoo intends to continue to breach the terms and
28

1 conditions of the Strategic Agreement by failing to make the [REDACTED]

2 [REDACTED] payment due [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 133. If Yahoo continues to fail to make [REDACTED]

8 [REDACTED] payments, Mozilla will suffer irreparable injury, such that a preliminary and permanent

9 injunction ordering Yahoo to pay Mozilla the remaining [REDACTED] payments is

10 necessary and proper.

11 134. As a direct and proximate result of Yahoo's breach and intended future breaches,

12 Mozilla has and will continue to suffer substantial damages in excess of the jurisdictional

13 minimum of this and in an amount to be proven at trial.

14 **THIRD CAUSE OF ACTION (BREACH OF CONTRACT RE SEARCH**

15 **PERFORMANCE)**

16 135. Mozilla alleges and incorporates herein by reference each and every allegation

17 contained in paragraphs 1 through 134 above as though set forth herein in full.

18 136. Yahoo breached the terms and conditions of the Strategic Agreement [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 137. As a direct and proximate result of Cross-Defendants' breaches, Mozilla has and

25 will continue to suffer substantial damages in excess of the jurisdictional minimum of this and in

26 an amount to be proven at trial.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Mozilla prays for itself against Yahoo:

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1. A preliminary and permanent injunction ordering Yahoo to pay Mozilla the

[REDACTED]

payments

required

2. A declaration that (1) Mozilla is entitled to the [REDACTED] payment from

Yahoo [REDACTED]

(2)

Mozilla is entitled to [REDACTED]

[REDACTED]

and (3) Mozilla is entitled to [REDACTED]

3. Judgment of breach of the Strategic Agreement;

4. General, specific, and compensatory damages according to proof and that may be appropriate;

5. Costs of the proceedings herein; and

6. All such further relief as the Court deems just and proper.

Dated: December 5, 2017

CROWELL & MORING LLP



Gregory D. Call
Emily T. Kuwahara
Kristin J. Madigan

Attorneys for Defendant and Cross-Complainant
MOZILLA CORPORATION

EXHIBIT A

**CONDITIONALLY FILED UNDER SEAL
SUBJECT TO MOTION TO SEAL**

EXHIBIT B

**CONDITIONALLY FILED UNDER SEAL
SUBJECT TO MOTION TO SEAL**

EXHIBIT C

**CONDITIONALLY FILED UNDER SEAL
SUBJECT TO MOTION TO SEAL**

EXHIBIT D



We're building a better Internet

Our mission is to ensure the Internet is a global public resource, open and accessible to all. An Internet that truly puts people first, where individuals can shape their own experience and are empowered, safe and independent.



Watch the video above to learn more about who we are, where we came from and how we're making the Web better for you.

At Mozilla, we're a global community of technologists, thinkers and builders working together to keep the Internet alive and accessible, so people worldwide can be informed contributors and creators of the Web. We believe this act of human collaboration across an open platform is essential to individual growth and our collective future.

Read the Mozilla Manifesto to learn even more about the values and principles that guide the pursuit of our mission.

Get Involved »

Volunteer opportunities in a number of different areas.

History »

Where we come from and how we got to where we are.

Forums »

Topics include support, products, and technologies.

Governance »

Our structure, organization, and the broader Mozilla community.



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EXHIBIT E

The Mozilla Manifesto

These are the principles that guide our mission to promote openness, innovation & opportunity on the Web.

← SHARE

OUR 10 Principles

- The Internet is an integral part of modern life—a key component in education, communication, collaboration, business, entertainment and society as a whole.*
- The Internet is a global public resource that must remain open and accessible.*
- The Internet must enrich the lives of individual human beings.*
- Individuals' security and privacy on the Internet are fundamental and must not be treated as optional.*
- Individuals must have the ability to shape the Internet and their own experiences on it.*
- The effectiveness of the Internet as a public resource depends upon interoperability (protocols, data formats, content), innovation and decentralized participation worldwide.*
- Free and open source software promotes the development of the Internet as a public resource.*
- Transparent community-based processes promote participation, accountability and trust.*
- Commercial involvement in the development of the Internet brings many benefits; a balance between commercial profit and public benefit is critical.*

10 *Magnifying the public benefit aspects of the internet is an important goal, worthy of time, attention and commitment.*

[Read the entire manifesto »](#)

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EXHIBIT F

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EXHIBIT G

Search Yahoo

Follow yahoo

YAHOO!

Search

Yahoo and Mozilla Partner to Bring Yahoo Search to Firefox

By: Marissa Mayer, Yahoo CEO

Today, I'm thrilled to announce that we've entered into a five-year partnership with [Mozilla](#) to make Yahoo the default search experience on Firefox across mobile and desktop. Mozilla is an inspirational industry leader who puts users first and focuses on building forward-leaning, compelling experiences. This is the most significant partnership for Yahoo in five years and we're so proud that Mozilla has chosen us as their long-term partner in search.

At Yahoo, we believe deeply in search – it's an area of investment and opportunity for us. It's also a key growth area for us - we've now seen 11 consecutive quarters of growth in our search revenue on an ex-TAC basis. This partnership helps to expand our reach in search and gives us an opportunity to work even more closely with Mozilla

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Search

Tumblr

News

Sports

Finance

Lifestyle

Corporate ▼

Yahoo

Accessibility/UX

Advertising

Life @ Yahoo

Policy

Research

Security

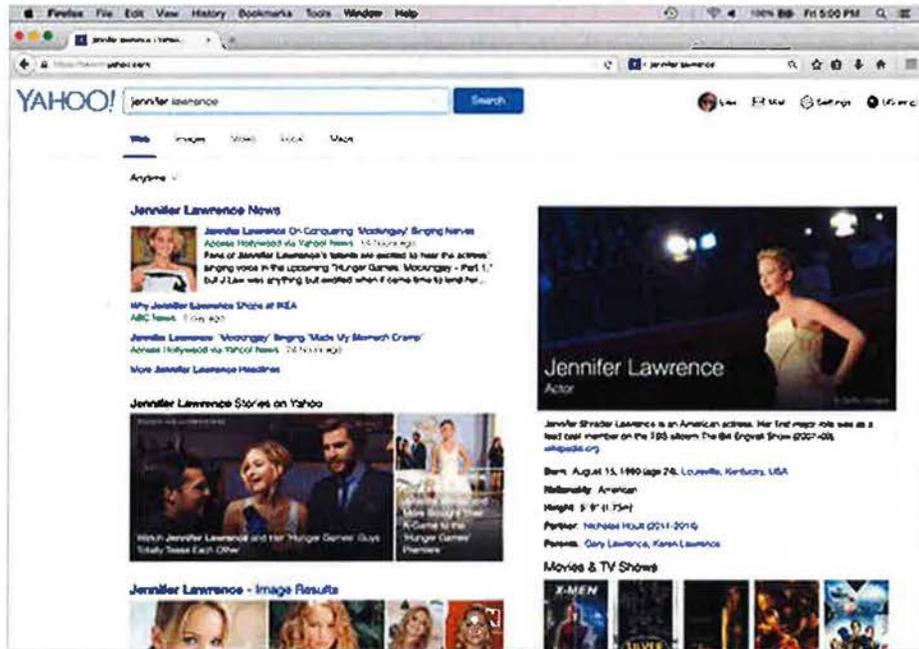
About

Press Center

to find ways to innovate in search, communications, and digital content. I'm also excited about the long-term framework we developed with Mozilla for future product integrations and expansion into international markets.

Our teams worked closely with Mozilla to build a clean, modern, and immersive search experience that will launch first to Firefox's U.S. users in December and then to all Yahoo users in early 2015. The interactive and integrated experience also better leverages our world-class content and personalization technologies.

Search inspires us because we think it's something that will change and improve dramatically, and because fundamentally, search is about human curiosity — and that is something that will never be finished.



Find Yahoo On

Media Inquiries: press@yahoo-inc.com
Yahoo Theme created by Style Hatch

EXHIBIT H



ABOUT MOZILLA

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MOZILLA NEWS

Twitter

Facebook

New Search Strategy for Firefox: Promoting Choice & Innovation

Chris Beard November 19, 2014

Ten years ago, we built Firefox to keep the Internet in each of our hands — to create choice and put people in control of their lives online. Our focus has been on building products that drive the competition, energy and innovation we all need to keep the Web open, everywhere and independent. And last week, [we pledged to do more.](#)

Firefox & Web Search

Search is a core part of the online experience for everyone — Firefox users alone search the Web more than 100 billion times per year.

With Firefox, we popularized the integration of search in the browser. We partnered with Internet companies including Google, Yahoo and others to provide an improved search experience and generate revenue to advance [Mozilla's mission.](#)

When we instituted a default search option, we broke from the industry standard by refusing commercial terms that demanded exclusivity. And throughout the last 10 years, we have always provided pre-installed alternatives, and easy ways for our users to change, add or remove search engines.

Google has been the Firefox global search default since 2004. Our agreement came up for renewal this year, and we took this as an opportunity to review our competitive strategy and explore our options.

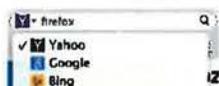
In evaluating our search partnerships, our primary consideration was to ensure our strategy aligned with our values of choice and independence, and positions us to innovate and advance our mission in ways that best serve our users and the Web. In the end, each of the partnership options available to us had strong, improved economic terms reflecting the significant value that Firefox brings to the ecosystem. But one strategy stood out from the rest.

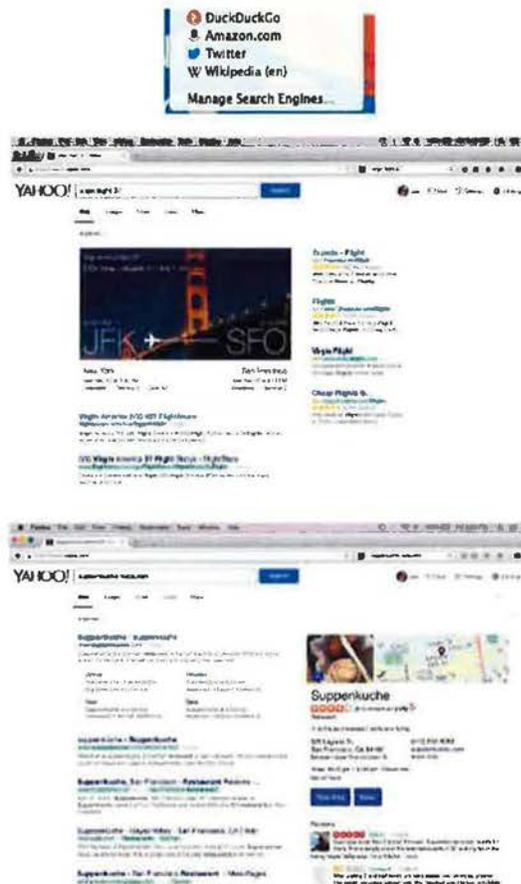
Promoting Choice and Innovation

Today we are announcing a change to our strategy for Firefox search partnerships. We are ending our practice of having a single global default search provider. We are adopting a more local and flexible approach to increase choice and innovation on the Web, with new and expanded search partnerships by country:

United States

- Under a new five-year strategic partnership [announced today](#), Yahoo Search will become the default search experience for Firefox in the U.S.
- Starting in December, Firefox users will be introduced to a new enhanced Yahoo Search experience that features a clean, modern interface that brings the best of the Web front and center.
- Under this partnership, Yahoo will also support [Do Not Track \(DNT\)](#) in Firefox.
- Google, Bing, DuckDuckGo, eBay, Amazon, Twitter and Wikipedia will continue to be built-in as alternate search options.





Russia

- Yandex Search will become the default search experience for Firefox in Russia
- Google, DuckDuckGo, OZON.ru, Price.ru, Mail.ru, and Wikipedia will continue to be built-in as alternate search options.



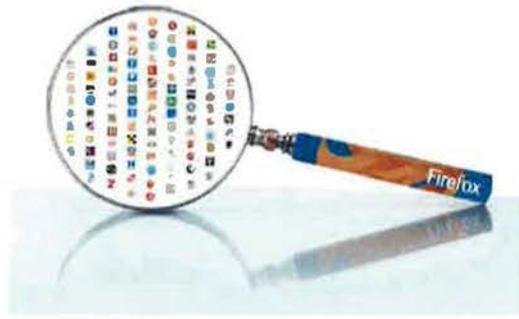
China

- Baidu will continue to be the default search experience for Firefox in China
- Google, Bing, Youdao, Taobao and other local options will continue to be built-in as alternate search options.



All Countries

- Firefox is a browser for everyone, regardless of search preference.
- Firefox will now have more choice in search provider than any other browser, with 61 search providers pre-installed in Firefox across 88 different language versions
- While we have decided to not renew our agreement for global default placement, Google will continue to be a pre-installed search option.
- Google will also continue to power the [Safe Browsing](#) and [Geolocation](#) features of Firefox.
- We will now focus on expanding our work with motivated partners to explore innovative new search interfaces, content experiences, and privacy enhancements across desktop and mobile.



Our new search strategy doubles down on our commitment to make Firefox a browser for everyone. We believe it will empower more people, in more places with more choice and opportunity to innovate and ultimately put even more people in control over their lives online.

This is why our independence matters. Being non-profit lets us make different choices. Choices that keep the Web open, everywhere and independent. We think today is a big step in that direction.

[Press Release](#)

previous article

First Firefox OS Smartphones

next article

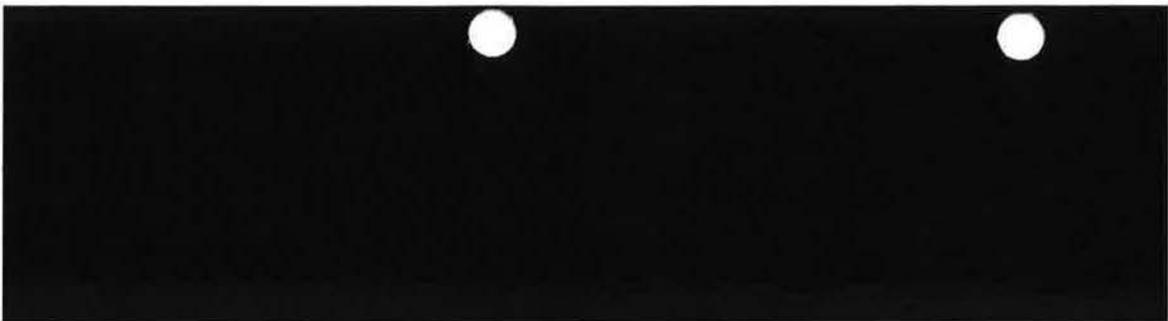
Mozilla Now Accepts Bitcoin

EXHIBIT I

**CONDITIONALLY FILED UNDER SEAL
SUBJECT TO MOTION TO SEAL**

EXHIBIT J

**PUBLIC-REDACTED MATERIALS FROM
CONDITIONALLY SEALED RECORD**



From: Timothy Lemmon [redacted]
Date: June 14, 2017 at 2 15 57 AM HST
To: Denelle Dixon-Thayer [redacted]
Cc: Jeff Bonforte [redacted]
Subject: Re: close of Yahoo deal

Hi Denelle!

+ Jeff who is running search overall

Thank you for your note. It is an exciting day, after a very long process. Wow.

As I underlined when we met earlier in the year, we remain fully committed to the success of our relationship with Mozilla and really look forward to pursuing that together.

Oath and Mozilla have a unique partnership opportunity, with the increased breadth of our capabilities through the Aol-Yahoo combination, our shared vision of open/partner-driven business models and highly talented teams.

We look forward to getting together on this soon once the dust of the next couple of weeks settles.

Rest assured that Mozilla/growth is a top strategic priority for us and the team is energized here.

Very best regards,

Tim Lemmon
[redacted]

On Jun 14, 2017, at 4:22 AM, Denelle Dixon-Thayer [redacted] wrote:

Tim -

Congratulations on the close of Verizon's acquisition of Yahoo. I'm sure it felt like a long time coming.

As you know, under the Agreement, dated December 1, 2014, Mozilla has certain rights [redacted]
[redacted]

In the determination of our next steps, we'd like to hear from Verizon/AOL as to how it plans to run the Yahoo business, including the search business, and how it intends to meet its obligations under the Agreement. I know we are meeting later this month as part of the [redacted] and we would also like to schedule some separate time to address our concerns and our questions regarding your plans

I'm sure you have lots going on with respect to the integration - but please let me know when we could schedule a call or meeting in the next few weeks.

All the best, and thank you -

EXHIBIT K

**PUBLIC-REDACTED MATERIALS FROM
CONDITIONALLY SEALED RECORD**

----- Forwarded message -----

From: Denelle Dixon Thayer [REDACTED]
Date: Tue, Jul 18, 2017 at 5:56 PM
Subject: Hello and [REDACTED]
To: <tim.lemmon@oath.com> [REDACTED]

Tim -

I'm looking forward to seeing you again on August 1 [REDACTED]. [REDACTED] will be great to engage with the new team. And, thanks for making the trip over to our offices.

I know there is a lot of focus on getting the meeting pulled together and I thought it might be helpful if I sent along some thoughts and expectations for that meeting. I'm happy to hear the same from you.

When you visited us in May we discussed how we have not made progress on our collective goal to change the dynamics of the search market - one of the main reasons that we entered into this arrangement to begin with - because of issues with the Yahoo product and brand. As we enter into this new phase of our relationship, I'm hopeful that Oath will begin to lay out a product plan that meets the strategic intent of our agreement. You may remember that we ended the presentation in May with a few questions that I thought I would highlight here as these are areas we would like to understand so that we can get comfortable with our alignment:

- How will Oath meet the requirements in the agreement?

[REDACTED]

- What is the investment profile that allows Oath to meet the product plan?

- What is roadmap for the search product?

- Are there things that Oath is doing to address the negative brand impact for Yahoo's search product?

If there is anyway that we can line up some of these topics for inclusion in our [REDACTED] meeting, I would greatly appreciate it.

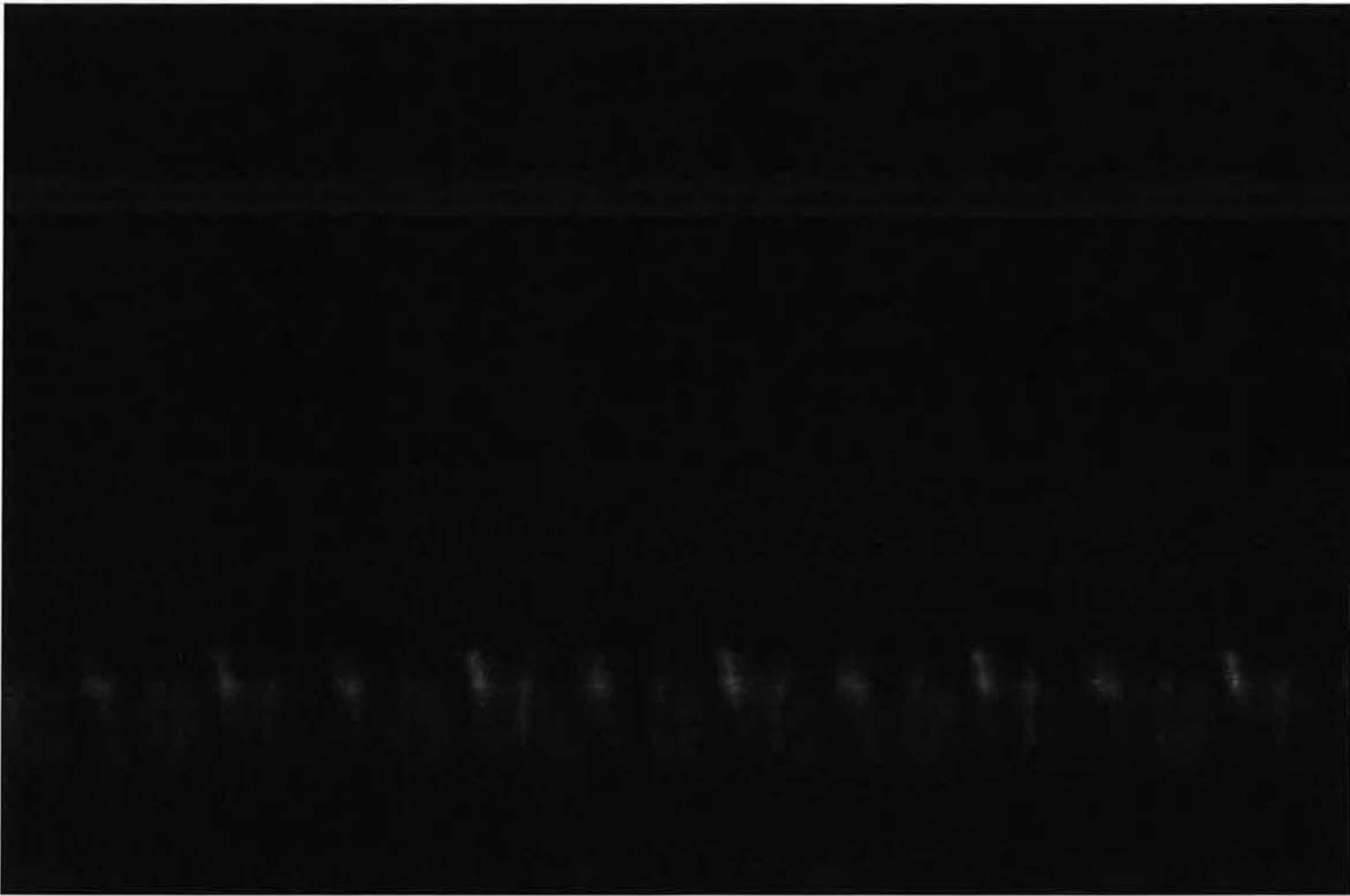
I hope you are surviving the summer weather in NYC. I was out there a few weeks ago - despite the stifling heat from time to time it is a city that I never tire of.

Best regards,

Denelle

EXHIBIT L

**PUBLIC-REDACTED MATERIALS FROM
CONDITIONALLY SEALED RECORD**



From: Susan Chen [mailto:]
Sent: Thursday, August 17, 2017 10:08 PM
To: 'Dinesh de Silva' ; ""Andre Vanier"" ; ""Dariusz Paczuski"" ; ""Dennis Ferrell"" ; ""Himanshu Bafna"" ; ""Jeffrey Bonforte"" ; ""Josh Cobb"" ; ""Kevin Wandryk"" ; ""Kristina Rudinskas"" ; ""Luke Salmon"" ; ""Oriana Behroozi"" ; ""Parameswaran Thrissur Krishnamoorthy"" ; ""Rohit Chandra"" ; ajay.dalv ; ddixon ; ejosted ; gcarter ; inage ; mcrandor ; mmayc ; nate ; tim.lemmor ; wbowden
Subject: RE: Mozilla / Yahoo Meeting Minutes

Hi Dinesh,

Thanks for this. Your notes are missing a few things that were important for us in our conversation.

The first is our discussion about the quality of your product and the need for major improvements per the Search Agreement. In particular, we talked about the ongoing failure for Yahoo to [REDACTED] as well as the need to improve certain areas including [REDACTED]. We also spoke about the ongoing negative impact this and your product's overall quality has on Firefox and our business. Finally, we chatted about the need to make changes and see progress quickly given where we are in the Agreement.

We look forward to productive product brainstorming sessions in the coming weeks.

Thanks,

Susan

From: Dinesh de Silva [mailto:[REDACTED]]
Sent: Wednesday, August 9, 2017 7:55 AM
To: "Andre Vanier" [REDACTED]; "Dariusz Paczuski" [REDACTED]; "Dennis Ferrell" [REDACTED]; "Himanshu Bafna" [REDACTED]; "Jeffrey Bonforte" [REDACTED]; "Josh Cobb" [REDACTED]; "Kevin Wandryk" [REDACTED]; "Kristina Rudinkas" [REDACTED]; "Luke Salmon" [REDACTED]; "Oriana Behroozi" [REDACTED]; "Parameswaran Thrissur Krishnamoorthy" [REDACTED]; "Rohit Chandra" [REDACTED]; ajay.dalvi [REDACTED]; ddixon [REDACTED]; ejostedt [REDACTED]; gcarter [REDACTED]; inage [REDACTED]; mcrandon [REDACTED]; mmayc [REDACTED]; nate [REDACTED]; scher [REDACTED]; tim.lemmon [REDACTED]; wbowder [REDACTED]
Subject: Mozilla / Yahoo [REDACTED] Meeting Minutes

Hello All,

Thank you to everyone for a very open and productive [REDACTED] meeting last week. Notes from the meeting are below and the deck is attached. Please let me know if you have any questions.

Attendees

- Mozilla: Denelle Dixon, Mark Mayo, Mark Crandon, Susan Chen, Winston Bowden, Greg Carter, Joanne Nagel, and Nate Weiner
- Oath: Tim Lemmon, Jeff Bonforte, Josh Cobb, Andre Vanier, Kevin Wandryk, Dariusz Paczuski, Oriana Behroozi, Kristina Rudinkas, Himanshu Bafna, Param Krishnamoorthy, Dennis Ferrell, Dinesh de Silva, and Luke Salmon

Mozilla Philosophy

- Mozilla is a for-profit corporation with licensed rights from the non-profit Mozilla Foundation and hence must stay aligned with the foundation's mission
- Mission is related to a free and independent internet for all
- Recently acquired Pocket to help the internet stay open

Why Mozilla Entered into a Partnership with Yahoo

- Help meet mission of making the web more accessible to developers and creators
- To create a differentiated experience and increase competition
- Deal has yet to live up to expectations or move marketshare (or to the joint PR statement made at the commencement of the partnership)

Firefox Product Strategy and Roadmap

- Firefox is Mozilla's flagship product and is the last major independent browser
- Needs to be the best. Speed of load and product delivery is critical.
- Content discovery also very important
- Mobile browsers in their current form need to be re-examined. They need to be different than desktop browsers and better render web pages.
- Latest desktop version is 100% faster than previous release.
- Mozilla has spent significant effort to reduce their tech debt. Now wants to focus on differentiation.
- Integrating Pocket into their November release
- Key 2017 Firefox OKRs- increase mobile users by 10M and grow desktop marketshare by 2%

- 
- Reasons why disruption occurs:

- Structural change in the marketplace and user behavior (e.g., the migration to mobile)
- Government restrictions
- Smaller players are able to innovate in ways larger incumbents can't

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Marketing:

- Mozilla not seeing sufficient value from the purple spend campaigns to be willing at this point to commit to  Wants to target more conscious choosers. Currently most users are 35+.

- Teams from both companies are excited to start testing across other Oath properties. This is covered under terms of the current agreement.
- Mozilla ok testing [REDACTED]

General Comments:

- Mozilla in agreement that we need to disrupt/flank the current marketplace
- Denelle needs to be able to go her founder and convincingly explain why Mozilla should stay in this partnership.
- Mozilla isn't comfortable launching with the current state of the Firefox Branded Search product as a distribution vehicle for acquiring new volume. But Mozilla is committed to cooperating through "tiger team" collaboration between the two companies over the next 2-4 weeks to jointly determine what the roadmap should be to build the Firefox Branded Search product to that state.
- Both companies need to better collaborate and build that disruptive search experience. Focus should be on values such as transparency, crowdsourcing, and discovery.
- Need to determine why only [REDACTED] is dropping when according to Mozilla volume is stable and other search partners [REDACTED] are also stable
- Search experience needs to understand the Mozilla user base and speak to their users

Next Steps:

- Schedule a series of "tiger team" meetings between Mozilla and Yahoo, in person and focused on ideation and developing a roadmap for Firefox Branded Search
- [REDACTED]
- Re-align marketing campaigns to better meet the objectives of both parties
- [REDACTED]
- Determine why [REDACTED] is declining if other search providers [REDACTED] are experiencing stable metrics

Thanks,

Dinesh

--
Brian Smith
Product & Commercial Counsel
Mozilla Corporation
2 Harrison St.
San Francisco, CA 94105
Mobile: [REDACTED]

EXHIBIT M

**PUBLIC-REDACTED MATERIALS FROM
CONDITIONALLY SEALED RECORD**

----- Forwarded message -----

From: **Denelle Dixon-Thayer** [REDACTED]

Date: Mon, Sep 18, 2017 at 12:45 PM

Subject: Request for a meeting

To: [fa](#) [REDACTED]

Cc: "[cbearc](#)" [REDACTED]

Tim -

A late congratulations to you on the completion of the Yahoo! acquisition and the creation of the Oath brand. It seems like a very exciting time.

I'm following up on the note you sent to Chris Beard a few months back suggesting we get together.

We have spent a lot of time with the Yahoo team over the last few years, and most recently time with the new Oath team. The individual team members are thoughtful, creative and engaged. However, there is a lot of work that needs to be done to "right the ship" so to speak.

I am writing to you now because as you undoubtedly know, Mozilla is faced with making a decision regarding the Oath-Mozilla relationship in the next few months. And while the product teams have spent time together, I would like for Chris and I to sit down with you to discuss where we are.

The quality of the search product used as default in Firefox has significant implications to our users, the success of our Firefox product and our company. The importance of search is reflected explicitly in the Strategic Agreement that we entered into with Yahoo in 2014. Regrettably, Yahoo Search has failed and continues to fail to meet the basic requirements in the agreement. And now, we find ourselves in a tough spot. We are focused on a November Firefox launch that promises to be an even stronger competitor in the market across many key measurements. While we are excited about that future, we continue to be deeply concerned about the quality of the Yahoo search product.

We have concerns that staying in the Strategic Agreement would harm our brand, the Firefox product and our users, and we have not yet received adequate reassurances otherwise. We would like to meet with you to ensure that Mozilla has all of the information prior to any decisions.

We would be happy to meet in New York, or wherever else is convenient for you - hopefully within the next few weeks. Please let us know your thoughts.

I look forward to meeting.

Best,

denelle

Denelle Dixon
Chief Business and Legal Officer
Mozilla



EXHIBIT N

**CONDITIONALLY FILED UNDER SEAL
SUBJECT TO MOTION TO SEAL**

1 **PROOF OF SERVICE**

2 I, Tessie Spagna, state:

3 My business address is 3 Embarcadero Center, 26th Floor, San Francisco, CA 94111. I
4 am over the age of eighteen years and not a party to this action.

5 On the date set forth below, I served the foregoing document(s) described as:

6 **DEFENDANT MOZILLA CORPORATION'S CROSS-
7 COMPLAINT AGAINST PLAINTIFFS: (1)
8 DECLARATORY RELIEF; (2) BREACH OF CONTRACT
9 RE [REDACTED] PAYMENTS (3) BREACH OF
10 CONTRACT RE SEARCH PERFORMANCE
11 [PUBLIC—REDACTS MATERIALS FROM
12 CONDITIONALLY SEALED RECORD]**

13 on the following person(s) in this action:

14 Dennis L. Wilson
15 Kollin J. Zimmermann
16 Kilpatrick Townsend & Stockton LLP
17 9720 Wilshire Boulevard, Penthouse Suite
18 Beverly Hills, CA 90212-2018
19 Telephone: (310) 248-3830
20 Facsimile: (310) 860-0363
21 Email: dwilson@kilpatricktownsend.com;
22 kzimmermann@kilpatricktownsend.com

- 23 BY FIRST CLASS MAIL: I am employed in the City and County of San
24 Francisco where the mailing occurred. I enclosed the document(s) identified
25 above in a sealed envelope or package addressed to the person(s) listed above,
26 with postage fully paid. I placed the envelope or package for collection and
27 mailing, following our ordinary business practice. I am readily familiar with this
28 firm's practice for collecting and processing correspondence for mailing. On the
same day that correspondence is placed for collection and mailing, it is deposited
in the ordinary course of business with the United States Postal Service.
- BY MESSENGER SERVICE: I caused to be served the document(s) identified
above by placing them in an envelope or package addressed to the person(s) listed
above and providing them to a professional messenger service for service.
- BY OVERNIGHT DELIVERY: I enclosed the document(s) identified above in a
sealed envelope or package addressed to the person(s) listed above, in an envelope
or package designated by the overnight delivery carrier with delivery fees paid or
provided for. I placed the envelope or package for collection and overnight
delivery at an office or a regularly utilized drop box of the overnight delivery
carrier, or by delivering to a courier or driver authorized by the overnight delivery
carrier to receive documents.
- BY FACSIMILE: Based on an agreement of the parties to accept service by
facsimile transmission, I faxed the document(s) identified above to the person(s) at
the fax number(s) listed above. The transmission was reported complete and

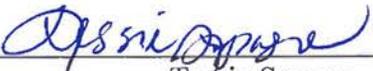
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without error. I have attached a copy of the transmission report that was issued by the facsimile machine.

- BY ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept service by electronic mail, I caused the document(s) identified above to be transmitted electronically to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on December 5, 2017, at San Francisco, California.



Tessie Spagna