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9 Attorneys for Plaintiff
 MOZILLA CORPORATION

11 UNITED STATES DISTRICT COURT
 12 DISTRICT OF ARIZONA

13 Mozilla Corporation,
 14 Plaintiff,
 15 v.

16 IO Phoenix One, LLC,
 17 Defendant.

Case No:
COMPLAINT

1 Plaintiff Mozilla Corporation (“Mozilla” or “Plaintiff”) hereby submits this Complaint for
2 Declaratory Judgment against IO Phoenix One, LLC (“IO” or “Defendant”), and alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Mozilla is a technology company dedicated to the use, development, and support of
5 free, open-source software products, such as the popular Mozilla Firefox web browser. Mozilla
6 aims to keep the Internet alive and accessible for all. Since December 2009, Mozilla has procured
7 data center services from Defendant IO pursuant to a Colocation Master Services Agreement (the
8 “Agreement”) between the parties. A true and correct copy of the Agreement is attached hereto as
9 Exhibit A.

10 2. This action involves a dispute between Mozilla and IO with respect to (1) the term of
11 the Agreement – in particular, whether a so-called amendment to the Agreement that purports to
12 bind Mozilla to a multi-year extension of the Agreement’s term, but which was not executed by an
13 authorized representative of Mozilla, is valid and enforceable; and (2) the validity and
14 enforceability of the limitation of liability provision in the Agreement, which – irrespective of the
15 Agreement’s term – on its face limits each party’s aggregate liability to the other at five-hundred
16 thousand dollars (\$500,000) (*see* Exhibit A, § 5.4).

17 3. By this action, Mozilla seeks entry of a judgment declaring (1) that the Agreement
18 terminates as of January 31, 2016; and (2) that, in any event, the Agreement limits Mozilla’s
19 liability to IO arising from or relating to the Agreement to an aggregate of five-hundred thousand
20 dollars (\$500,000).

21 **PARTIES**

22 4. Plaintiff Mozilla is a California corporation with its principal place of business in
23 Mountain View, California. Mozilla’s mission is to promote openness, innovation, and opportunity
24 on the Web. The Mozilla community uses, develops, spreads and supports Mozilla’s free software
25 and open-source products, such as the popular Mozilla Firefox web browser.

26 5. Defendant IO is a Delaware limited liability company that with its principal place of
27 business in Phoenix, Arizona. IO provides data center services to companies like Mozilla.

28 6. Together, Mozilla and Phoenix are referred to herein as the “Parties.”

1 **JURISDICTION & VENUE**

2 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, based on the complete
3 diversity of citizenship among and between Plaintiff and Defendant and because the amount in
4 controversy exceeds \$75,000, exclusive of interest and costs.

5 8. Personal jurisdiction and venue are proper in this Court pursuant to 28 U.S.C. §
6 1391(b) because, *inter alia*, a substantial part of the events giving rise to the claims herein occurred
7 in this judicial district, and Defendant resides in this judicial district, with its headquarters located
8 in Phoenix, Arizona.

9 9. This Court is the appropriate venue for the additional reason that the Parties
10 expressly agreed in Section 12.1 of the Agreement as follows:

11 “The parties hereby irrevocably consent to the personal and exclusive jurisdiction
12 and venue of the federal courts of Maricopa County, Arizona.”

13 10. This action seeks relief under the Federal Declaratory Judgment Act, 28
14 U.S.C. §§ 2201-02.

15 **FACTUAL ALLEGATIONS**

16 11. On or about December 7, 2009, Mozilla and IO entered into the Agreement, pursuant
17 to which IO would provide data center services to Mozilla for a term of 60 months – i.e., until
18 January 31, 2015. *See* Exhibit A, and Attachment A thereto.

19 12. The Agreement contains a clear limitation of liability provision which limits each
20 party’s aggregate liability to the other to five-hundred thousand dollars (\$500,000), as follows:

21 5.4 Maximum Liability. IN NO EVENT WILL EITHER PARTY’S AGGREGATE
22 LIABILITY TO THE OTHER PARTY ARISING FROM OR RELATED TO THIS
23 AGREEMENT WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR
OTHERWISE, EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

24 (the “Limitation of Liability Provision”) (*see* Exhibit A, § 5.4).

25 13. By its terms, the Agreement auto-renewed for additional terms of one (1) year each,
26 unless either party provided the other party with advance written notice that it would not renew the
27 Agreement (*see* Exhibit A, § 8.1).
28

1 14. Between December 2009 and December 2015, IO provided data center services to
2 Mozilla. During this period, the Parties purported to amend the Agreement numerous times.

3 15. Amendments 1-11 and 13 to the Agreement involved incremental modifications to
4 the Parties' rights and obligations under the Agreement, modifying items such as the specific
5 amount/type storage space being provided by IO. True and correct copies of these purported
6 amendments are attached hereto as Exhibit B.

7 16. Amendment 12, however, was different. Rather than merely amending the
8 Agreement, Amendment 12 purported to re-define the initial 60-month term in the Agreement to a
9 period 108 months, thereby purporting to extend the Agreement's term by four (4) full years – to
10 January 31, 2019. In other words, Amendment 12 – by its terms – operated as a re-negotiation of
11 the entire Agreement, nearly doubling its term. A true and correct copy of the purported
12 Amendment 12 to the Agreement is attached hereto as Exhibit C.

13 17. Importantly, Amendment 12 was not executed by an authorized representative of
14 Mozilla with either authority or apparent authority to bind Mozilla thereto. The Amendment is
15 unenforceable and void.

16 18. Without a valid extension of the Agreement's term in Amendment 12, the initial
17 term of the Agreement ended on January 31, 2015, and was automatically renewed for a one-year
18 renewal term ending January 31, 2016. *See Exhibit A, § 8.1.*

19 19. On December 23, 2015, Mozilla provided IO with the requisite written notice of
20 termination of the Agreement, pursuant to Section 8.1 therein (the "Notice of Termination"). A true
21 and correct copy of the Notice of Termination is attached hereto as Exhibit D. The Notice of
22 Termination provided that, by the terms of the Agreement, the Agreement terminates as of January
23 31, 2016.

24 20. IO responded by letter dated January 14, 2016, contending that Mozilla's Notice of
25 Termination is invalid; that Amendment 12 is enforceable; and that the Agreement does not expire
26 until January 31, 2019. IO further contended, **without regard for the Limitation of Liability**
27 **Provision**, that Mozilla has committed an anticipatory breach of the Agreement, triggering the
28

1 obligation of Mozilla to immediately pay IO some \$9,199,168.99 in license fees, plus per diem
2 interest. A true and correct copy of that January 14 letter is attached hereto as Exhibit D.

3 21. On January 20, 2016, Mozilla responded to IO's January 14 letter, noting that, while
4 Mozilla disputes that it has committed a breach (or anticipatory breach) of the Agreement, in any
5 event, the Limitation of Liability Provision in the Agreement unequivocally limits Mozilla's
6 aggregate liability to IO to five-hundred thousand dollars (\$500,000).

7 22. IO does not agree that the Limitation of Liability Provision effectively caps
8 Mozilla's liability to five-hundred thousand dollars (\$500,000).

9 23. An actual controversy therefore exists between Mozilla and IO with respect to each
10 party's rights and obligations pursuant to the Agreement. By this action, Mozilla seeks a judgment
11 declaring (1) that the Agreement, in fact, terminates as of January 31, 2016 pursuant to Mozilla's
12 valid Notice of Termination; and (2) that, in any event, the Agreement limits Mozilla's liability to
13 IO arising from or relating to the Agreement to an aggregate of five-hundred thousand dollars
14 (\$500,000).

15 FIRST CAUSE OF ACTION

16 **(Declaratory Judgment that the Agreement terminates as of January 31, 2016)**

17 24. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1
18 through 23, inclusive, and incorporates them as though repeated verbatim herein.

19 25. The Agreement provides that the Agreement's term is for a period of 60 months –
20 i.e., until January 31, 2015, and that – unless terminated – the Agreement automatically renews for
21 additional terms of one (1) year. *See* Exhibit A, Attachment A and § 8.1.

22 26. Amendment 12 to the Agreement, which purports to extend that Agreement's term
23 to January 31, 2019, was not executed by a representative of Mozilla with authority or apparent
24 authority to bind the company to the amendment, and is therefore void and unenforceable.

25 27. Mozilla provided IO with proper written Notice of Termination of the Agreement,
26 effective January 31, 2016.

27 28. Accordingly, pursuant to 28 U.S.C. §§ 2201-02, the Court should enter a declaratory
28 judgment that the Agreement is terminated as of January 31, 2016.

1 29. Pursuant to Section 12.1 of the Agreement, the prevailing party is entitled to
2 reimbursement of its reasonable attorneys' fees and costs incurred in this action. Accordingly,
3 Mozilla should be awarded recovery of its reasonable attorneys' fees and costs pursuant to the
4 Agreement.

5 30. This action arises out of contract. Mozilla has been required to retain the services of
6 attorney in order to prosecute this action and is thus entitled to recovery of its reasonable attorneys'
7 fees pursuant to A.R.S. § 12-341.01.

8 31. WHEREFORE, Mozilla prays for relief as set forth below.

9 **SECOND CAUSE OF ACTION**

10 **(Declaratory Judgment that the Limitation of Liability Provision in the Agreement Limits**
11 **Mozilla's Liability to IO to an Aggregate of Five-Hundred Thousand Dollars (\$500,000))**

12 32. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1
13 through 31, inclusive, and incorporates them as though repeated verbatim herein.

14 33. The Agreement limits each party's aggregate liability to the other at five-hundred
15 thousand dollars (\$500,000), as follows.

16 5.4 Maximum Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE
17 LIABILITY TO THE OTHER PARTY ARISING FROM OR RELATED TO THIS
18 AGREEMENT WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR
19 OTHERWISE, EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

20 34. Accordingly, pursuant to 28 U.S.C. §§ 2201-02, the Court should enter a declaratory
21 judgment that the Agreement limits Mozilla's liability to IO arising from or relating to the
22 Agreement at an aggregate of five-hundred thousand dollars (\$500,000).

23 35. Pursuant to Section 12.1 of the Agreement, the prevailing party is entitled to
24 reimbursement of its reasonable attorneys' fees and costs incurred in this action. Accordingly,
25 Mozilla should be awarded recovery of its reasonable attorneys' fees and costs pursuant to the
26 Agreement.

27 36. This action arises out of contract. Mozilla has been required to retain the services of
28 attorney in order to prosecute this action and is thus entitled to recovery of its reasonable attorneys'
29 fees pursuant to A.R.S. § 12-341.01.

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37. WHEREFORE, Mozilla prays for relief as set forth below.

PRAYER FOR RELIEF

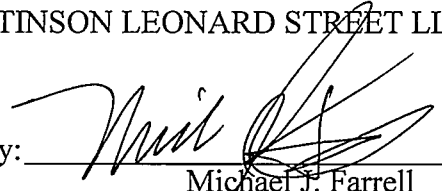
WHEREFORE, Plaintiff respectfully requests entry of judgment in their favor and against Defendant as follows:

- 1. Declaring that the Agreement is terminated as of January 31, 2016;
- 2. Declaring that the Agreement limits Mozilla's liability to IO to an aggregate of five-hundred thousand dollars (\$500,000);
- 3. Awarding Plaintiff recovery of its reasonable attorneys' fees and costs incurred in this action, pursuant to Section 12.1 of the Agreement, and to A.R.S. § 12-341.01; and
- 4. Granting such other and further relief as this Court may deem just and appropriate.

Dated: February 11, 2016

STINSON LEONARD STREET LLP

By: _____



Michael J. Farrell

Attorneys for Claimant
Mozilla Corporation