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PUBLIC VERSION

VIA E-MAIL & U.S. MAIL

The Honorable Joseph C. Spero
Magistrate Judge
U.S. District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Augme Techs. v. Yahoo*!**, Case No. C-09-5386 JCS**

Dear Judge Spero:

I am writing to the Court to address Yahoo!'s failure to comply with the Court's November 16, 2011 Order, which explicitly ordered Yahoo! to produce "the source code for the end to end flow of how advertising is requested and provided using the RMX front end or external ad server call front end." (Dkt. No. 205.) Yahoo! still has not provided the complete source code, including the RMX front end software ordered during the prior hearing. Augme's purpose in writing to the Court is to seek assistance from the Court in enforcing the Order and relief from the prejudice caused by Yahoo!'s failure to abide by the Court's Order.

Yahoo! has delayed its source code production throughout this matter, and this delay is well-documented in the Joint Letter (Dkt. No. 204) sent to the Court on October 31, 2011. Since that time, Yahoo! has continued its delay tactics and false promises, which include failing to abide by the Court's Order:

- The parties' joint letter dated October 25, 2011 stated "Yahoo! will determine all additional source code, if any, necessary to trace the end-to-end data flow for the ad serving process associated with the script.js architecture and produce any code not already produced by November 21, 2011." (Dkt. No. 204 at 2.)

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- On November 15, 2011, at the hearing before Judge Spero regarding document and source
  code production, counsel for Yahoo! confirmed that APEX source code for the end-to-end ad
  serving process had been produced. (Ex.1.)

- On November 21, 2011, John Blake again confirmed that Yahoo! had produced source code
  necessary to trace the end-to-end data flow for the ad serving process associated with the
  APEX system. (Ex.2.)

- Pursuant to the Court's Order (Dkt. No. 205), Yahoo! stated "Yahoo has completed its RMX-
  and external ad server-related production." (Ex.3.)

Despite these assurances as well as the Court's Order, Yahoo! failed to produce all the code.
(*See* Ex.4.) As a result, Augme has lost precious time and resources repeatedly bringing its
expert to Yahoo!'s counsel's office in vain attempts to review Yahoo!'s source code.

Yahoo! acknowledges that it has not produced all the source code for its ad serving systems.
(Exs. 5 and 6.)

Continuing to prove that it is either unwilling or incapable of producing the complete source
code, Yahoo! now mentions that it has provided additional code –
              (Ex.6.) There is no explanation as to why this code was not produced months
ago.

This continued delay in production of Yahoo!'s source code is inexcusable. Reviewing source
code is a difficult and time-consuming process, which is only exacerbated when parts of the
source code are withheld. Discovery closes on March 16, 2012, and Yahoo!'s delays have
caused prejudice to Augme, both financially and procedurally, and continues to cause such
prejudice. In light of Yahoo!'s delay and unwillingness to comply with the Court's Order,
Augme requests appropriate sanctions from the Court. Specifically, Augme requests the Court to
order Yahoo! turn over to Augme its source code repository for its ad serving systems as it is
maintained in the ordinary course of business and other sanctions the Court deems necessary.

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Respectfully submitted,

Gregory S. Bishop
Attorney for Plaintiff Augme Technologies, Inc.

cc: Rachel Krevans
        Attorney for Defendant Yahoo! Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DENIED

Judge Joseph C. Spero

Dated: Feb. 1, 2012