

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Douglas W. Dal Cielo (CA Bar No. 157109)  
ddalcielo@bwsllaw.com  
Brian M. Affrunti (CA Bar No. 227072)  
baffrunti@bwsllaw.com  
**BURKE, WILLIAMS & SORENSEN, LLP**  
60 South Market Street, Suite 1000  
San Jose, CA 95113  
Telephone: (408) 606-6300  
Fax: (408) 606-6333

Patricia L. Peden (CA Bar No. 206440)  
ppeden@bwsllaw.com  
**BURKE, WILLIAMS & SORENSEN, LLP**  
1901 Harrison Street, Suite 900  
Oakland, CA 94612-3501  
Telephone: (510) 273-8780  
Fax: (510) 839-9104

*Attorneys for Plaintiff*

Alexander D. Pencu (*pro hac vice*)  
adp@msf-law.com  
Christopher J. Major (*pro hac vice*)  
cjm@msf-law.com  
Jeffrey P. Weingart (*pro hac vice*)  
jpw@msf-law.com  
**MEISTER SEELIG & FEIN LLP**  
125 Park Avenue, 7<sup>th</sup> Floor  
New York, NY 10017  
Telephone: (212) 655-3500  
Fax: (646) 539-3649

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

LYNWOOD INVESTMENTS CY LIMITED,

Plaintiff,

vs.

MAXIM KONOVALOV, IGOR SYSOEV,  
ANDREY ALEXEEV, MAXIM DOUNIN, GLEB  
SMIRNOFF, ANGUS ROBERTSON, NGINX,  
INC. (BVI), NGINX SOFTWARE, INC., NGINX,  
INC. (DE), BV NGINX, LLC, RUNA CAPITAL,  
INC., EVENTURE CAPITAL PARTNERS II LLC  
and F5 NETWORKS, INC.,

Defendants.

Case No. 20-CV-03778-LHK

**AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 **AMENDED COMPLAINT**

2 Plaintiff Lynwood Investments CY Limited (“Lynwood” or “Plaintiff”), as the assignee of  
3 Rambler Internet Holding LLC and its affiliates, brings this action against Defendants, and, as and  
4 for its Amended Complaint, hereby alleges as follows:

5 **INTRODUCTION**

6 1. Defendants Igor Sysoev and Maxim Konovalov, along with their co-conspirators,  
7 brazenly stole an entire popular web server enterprise from their employer Rambler Internet Holding  
8 LLC (“Rambler”) in Russia, where the computer software, known as NGINX (pronounced “Engine-  
9 X”), was conceived, developed as a work for hire, and first publicly deployed.

10 2. The conspirators achieved the object of their conspiracy when they ultimately sold  
11 the purloined NGINX-based enterprise in 2019 for \$670 million to Defendant F5 Networks, Inc.  
12 (“F5”), a publicly traded United States company with annual revenue of approximately \$2.35 billion.

13 3. The conspirators, former high-level officers and employees of Rambler, the company  
14 that developed and deployed the web server technology in Russia, planned to seek, and specifically  
15 sought out, Silicon Valley to monetize their theft because they rightly assumed a large and profitable  
16 United States technology company would bid a high price.

17 4. The conspirators fraudulently concealed their conduct from their former employer  
18 Rambler in a highly-coordinated manner, including by hiding the true utility and value of the NGINX  
19 software and associated business opportunities that they had developed while employed at Rambler.

20 5. The conspirators covered up their scheme by, among other things, concealing NGINX  
21 proprietary code Sysoev and the co-conspirators were developing at Rambler, being purposefully  
22 opaque about their plans following their exit from Rambler, and deleting electronic communications  
23 and stealing and destroying Rambler servers containing evidence of their unlawful conduct.

24 6. The defendants in this action, including the co-conspirators, Runa Capital, Inc.  
25 (“Runa Capital”), E Venture Capital Partners II LLC, formerly known as BV Capital (“E. Ventures”),  
26 and F5, which aided and abetted the conspiracy, all acted unlawfully and with knowledge of the  
27 conspiracy detailed herein.

1           7. Rambler and its assignee, Plaintiff Lynwood, which along with its affiliated  
2 companies formerly owned 50% of Rambler, having been alerted to the scheme detailed below by a  
3 whistleblower in April 2019, conducted an extensive investigation into the defendants' conduct.

4           8. After learning of the scope and effect of the conspirators' unlawful scheme, Lynwood  
5 moved with all deliberate speed to investigate the conspirators' conduct and misdeeds. The  
6 investigation was hampered by the conspirators' extensive concealment of their wrongful actions,  
7 including the deletion of emails and other materials from the Rambler computer network, and their  
8 unauthorized removal of computer servers from Rambler's premises that contained evidence of the  
9 conspirators' disloyal and illicit actions.

10           9. The extensive investigation, which required forensic recovery of numerous smoking  
11 guns that the conspirators had gone to great lengths to attempt to hide and destroy, revealed that the  
12 conspirators engaged in a sophisticated conspiracy and cover-up to hijack an immensely valuable  
13 business enterprise based on their commercial exploitation of proprietary NGINX web server  
14 software developed while they were employees of Rambler, the demand for which is driven by  
15 NGINX software released to the public as "open source" code, which today is used by more than  
16 450 million websites worldwide ("Open Source NGINX").

17           10. The conspirators were well-placed in key positions at Rambler that enabled them to  
18 operate undetected at the company and to remove all traces of their activities when they departed  
19 from Rambler. For example, the software programmer conspirators (including Defendant Igor  
20 Sysoev) worked together in a tight-knit department devoted to product development within Rambler  
21 known as the Network Operation Center ("NOC") that was ring-fenced from the rest of the company.  
22 The NOC department utilized its own servers, including for email communications, and those servers  
23 were not integrated with the rest of the company. The gatekeepers responsible for providing  
24 oversight over the NOC department were Rambler's Chief Technology Officer Defendant Maxim  
25 Konovalov, Deputy Chief Technology Officer Viktor Popov and the Head of the NOC Department  
26 Defendant Gleb Smirnoff.

1           11.       The conspirators removed and destroyed key servers from the NOC department that  
2 exclusively housed NGINX proprietary commercial software code that Sysoev was developing  
3 unbeknownst to Rambler’s board of directors and senior management (with the exception of  
4 Konovalov). The conspirators also removed and wiped the NOC email server that they had used to  
5 communicate in furtherance of their common plan to clandestinely develop a business around Open  
6 Source NGINX, misappropriate it from Rambler and then sell it to a third-party U.S. technology  
7 company.

8           12.       Rambler’s internal inventory records memorializing the location and purpose behind  
9 the company’s servers and equipment were fabricated by Deputy Chief Technology Officer Popov  
10 and Smirnov to conceal the conspirators’ actions in removing and destroying key servers that  
11 contained the proprietary NGINX software code that was clandestinely developed by Sysoev. The  
12 fabricated inventory documents also concealed the existence of the conspirators’ NOC server hosting  
13 the conspirators’ walled off emails. As a result, no evidence of suspicious activity was found when  
14 Rambler performed a review of its records at the end of 2012 following the departures of Defendants  
15 Konovalov, Sysoev and Smirnov from Rambler.

16           13.       It was only after one of the co-conspirators, Alexander Korotkov, came forward in  
17 2019 and blew the whistle to Rambler and Lynwood concerning the conspirators’ scheme, including  
18 how it was carried out and where to search in Rambler’s facilities and warehouses that Rambler and  
19 Lynwood discovered the conspirators’ actions. Korotkov’s disclosures prompted Rambler and  
20 Lynwood to perform an internal investigation, including an exhaustive and manual review of its  
21 approximately ten thousand (10,000) servers. Ultimately, Rambler and Lynwood located an aging,  
22 non-descript server located in an offsite Rambler server farm that had been disconnected and had its  
23 data deleted. This “off the grid” server was also in queue for dismantlement (the “Yam Server”).

24           14.       After hiring a leading third-party forensic investigations firm to examine the Yam  
25 Server, Rambler and Lynwood discovered that it was a NOC server that the conspirators had  
26 commandeered for communicating between themselves and which had never been integrated with  
27

1 Rambler’s company-wide email systems. Rambler was previously unaware of the existence of the  
2 Yam Server.

3 15. In examining the Yam Server, the outside forensic investigations firm discovered that  
4 it contained a massive number of emails and other materials that the conspirators sought to hide and  
5 had previously deleted. After the forensics firm restored those emails, code snippets and other  
6 electronic meta data found on the Yam Server, Rambler and Lynwood discovered that the  
7 conspirators, while they were employed by Rambler, had secretly developed proprietary, commercial  
8 versions of NGINX software code never previously disclosed to others at Rambler (let alone  
9 Rambler’s board of directors or chief executive officer) and which were never released to the public  
10 as Open Source NGINX. The conspirators referred to this secret proprietary NGINX software code  
11 as “NGINX+” or “NGINX Plus”.

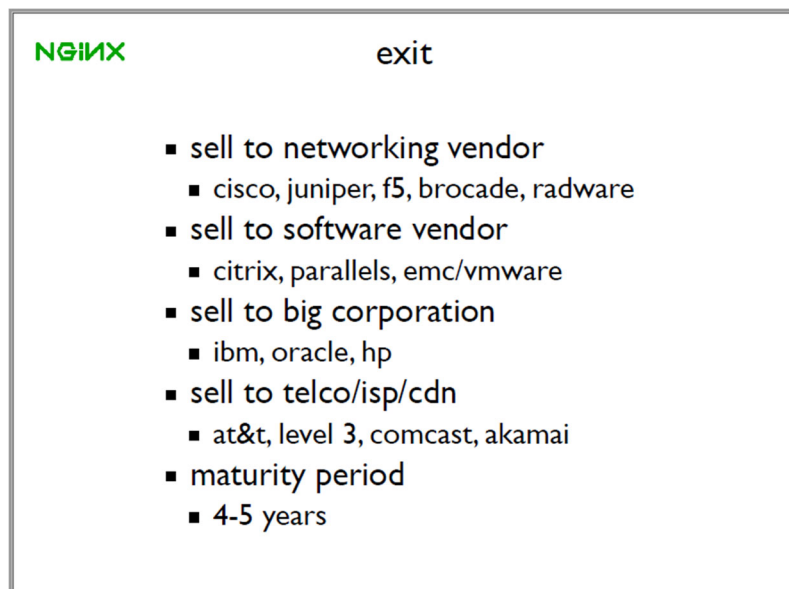
12 16. Rambler was not aware of the existence of NGINX Plus, which the conspirators were  
13 secretly developing inside of Rambler’s NOC department, using Rambler resources. To the contrary,  
14 Konovalov had repeatedly misrepresented to Rambler’s senior management and board of directors  
15 that Open Source NGINX had no intrinsic value and that its only use for Rambler was to solve  
16 Rambler’s internal technical issues surrounding the company’s management and hosting of Russia’s  
17 web traffic and to burnish Rambler’s reputation as a worldwide leader in technology innovation.

18 17. Konovalov repeatedly misrepresented to Rambler’s senior management that Open  
19 Source NGINX had no independent commercial value or prospects for monetization. Accordingly,  
20 Rambler only utilized Open Source NGINX that the company had directed Sysoev to develop;  
21 Rambler thought that Sysoev’s NGINX development work was limited to successive iterations of  
22 Open Source NGINX that was being deployed internally at Rambler.

23 18. In reality, however, the conspirators had decided, years before they left Rambler and  
24 unbeknownst to Rambler management, to pursue an “open core” business model, outside the  
25 confines of Rambler, with Open Source NGINX as its foundation. That model would entail  
26 developing and monetizing proprietary, non-open source NGINX software products on top of the  
27 Open Source NGINX layer that could be licensed to the huge installed user base of Open Source  
28

1 NGINX users around the world, in exchange for lucrative license and subscription fees and service-  
 2 related fees. NGINX Plus, the first of such fee-generating products, was clandestinely developed by  
 3 Sysoev and his fellow conspirators while they were still employed by Rambler.

4 19. The restored emails from the Yam Server also revealed that Defendants Sysoev and  
 5 Maxim Konovalov had conspired with outside venture capital firms to misappropriate the “open  
 6 core” NGINX business opportunity by raising capital, soliciting future customers and forming  
 7 entities outside of Russia while they were still employees of Rambler. The stated purpose of these  
 8 newly formed entities, in covert presentations made to the venture firms by Konovalov, Sysoev and  
 9 co-conspirator Defendant Andrey Alexeev in early 2011, while Konovalov and Sysoev were still  
 10 employed by Rambler, was to lift out of Rambler and gain control of the misappropriated NGINX  
 11 enterprise, grow it with the aid of private equity investments, and ultimately sell it to a large  
 12 American technology company for hundreds of millions of dollars. In a slide deck for those  
 13 presentations, a copy of which is attached as Exhibit A hereto, under the heading “Exit”, Defendant  
 14 F5 was specifically named as one of the companies the conspirators were targeting as a potential  
 15 purchaser of the purloined NGINX-related business opportunities and enterprise, proprietary NGINX  
 16 software (including NGINX Plus), Open Source NGINX, and related intellectual property and  
 17 goodwill (collectively, the “NGINX Enterprise”). A copy of the slide identifying F5 as an “exit”  
 18 target is below:



1           20.     The restored emails from the Yam Server also revealed that by early April, 2011,  
2 when Konovalov and Sysoev were still employed by Rambler, the conspirators had negotiated and  
3 finalized a term sheet for \$3 million in Series A Preferred Stock Financing for their covertly formed  
4 company with United States-based venture capital firms. Defendants BV Capital (now Defendant  
5 E. Ventures) and Defendant Runa Capital participated in that initial round of venture funding.

6           21.     The restored emails from the Yam Server also revealed extensive acts of concealment  
7 by co-conspirator Smirnoff and select Rambler employees throughout 2012 immediately after  
8 Sysoev and Konovalov left Rambler with the misappropriated NGINX Enterprise. Smirnoff and  
9 other Rambler employee conspirators deleted all electronic information concerning the conspirators'  
10 actions, removed and destroyed at least seven servers containing NGINX-related software and  
11 related development documentation, and fabricated Rambler chain of custody and inventory forms  
12 that concealed the existence and removal of this equipment from Rambler to avoid future discovery  
13 by Rambler of their actions.

14           22.     Accordingly, Plaintiff files this action to vindicate its rights to the highly innovative  
15 and valuable NGINX Enterprise, including NGINX Plus and its progeny, and the business  
16 opportunities associated with it, and to recover the extensive and ongoing damages caused by the  
17 Defendants' unlawful conduct.

18           23.     The life of the popular web server software that has become known worldwide as  
19 Open Source NGINX began on October 23, 2001 when Sysoev wrote his first line of NGINX-related  
20 software code. On this date, Sysoev had already been employed at Rambler for approximately one  
21 year and had signed his employment agreement with Rambler as a Systems Administrator three  
22 months earlier wherein he was tasked by the company with developing programs to solve Rambler-  
23 specific issues related to handling large volumes of web server traffic.

24           24.     Sysoev was a programming talent at Rambler and was compensated accordingly with  
25 frequent pay raises and outsized bonuses tied to his work on developing Open Source NGINX to  
26 solve Rambler's internal technical problems associated with hosting the high volume of Russia's  
27 web traffic. Moreover, Sysoev was insulated from Rambler senior management and board oversight  
28



1 by his co-conspirators Konovalov and Smirnoff who were his direct supervisors at Rambler. As  
2 Rambler's Chief Technology Officer ("CTO"), Konovalov enabled Sysoev and the other  
3 conspirators to operate clandestinely within Rambler to develop the NGINX Enterprise on Rambler's  
4 dime, using Rambler equipment, infrastructure, resources and talent, while simultaneously closely  
5 guarding the software's technical and commercial development and value from discovery by  
6 Rambler's senior management.

7 25. For the next 10 years, until the conspirators orchestrated their resignations from  
8 Rambler and stole the NGINX Enterprise that they had hidden and nurtured for themselves, Sysoev,  
9 who claims to have written ninety-seven (97) percent of Open Source NGINX himself during those  
10 years, did so during regular Rambler business hours at the Rambler office in Moscow, with extensive  
11 assistance from other Rambler employees, using Rambler equipment and software, and utilizing  
12 Rambler's large-scale Internet traffic and infrastructure as a convenient, no-cost software test bed.

13 26. As Konovalov repeatedly confirmed in internal Rambler documents, Sysoev's official  
14 job at Rambler was to develop Open Source NGINX. Indeed, in a Rambler organizational chart  
15 emailed by Konovalov on April 9, 2008, Sysoev was identified as a "Web-Servers Programmer" and  
16 "Development of nginx" was identified as one of his duties. Later, in an attachment to a  
17 Konovalov email dated April 22, 2009, Konovalov under the heading "Typical Tasks" for Sysoev  
18 identified "Nginx Development"; under the heading "Knowledge, experience and role in the team",  
19 Konovalov wrote "Lead developer"; in the same document, Konovalov identified Sysoev's  
20 "Responsibility" as "Product improvement".

21 27. In carrying out their sophisticated conspiracy to steal the NGINX Enterprise,  
22 including NGINX Plus, the conspirators violated multiple duties to Rambler that are enumerated in  
23 their employment agreements, internal Rambler policies and codes of ethics, as well as applicable  
24 Russian law.

25 28. Like Konovalov and the other former Rambler employees with whom Sysoev  
26 conspired, when arriving at Rambler, Sysoev signed employment agreements with Rambler that  
27



1 explicitly provided that what he developed while employed at Rambler constituted works for hire  
2 that Rambler automatically owned, in all respects.

3 29. Rambler was also fastidious in promulgating and maintaining internal employment  
4 policies, handbooks and a code of ethics when the conspirators were employed there which expressly  
5 provided that employee work product such as computer software and other technology would be  
6 owned by Rambler and which clearly stated that Rambler employees were obligated to maintain the  
7 strict confidentiality thereof.

8 30. Rambler also maintained extensive conflict-of-interest policies during the tenures of  
9 Sysoev, Konovalov, Smirnov and the other co-conspirators that explicitly restricted them from  
10 engaging in activities that could result in conflicts of interest with their employer Rambler.

11 31. Additionally, Russian law in effect at the time that the conspirators were employed  
12 by Rambler conferred on Rambler ownership of work product generated by its employees and  
13 imposed duties of loyalty on all Rambler employees, including the conspirators.

14 32. Sysoev, Konovalov, Smirnov and their co-conspirators violated their obligations  
15 imposed by their Rambler employment and separation agreements, Rambler's written code of ethics,  
16 employment policies and handbooks, conflict-of-interest policies that they received, reviewed and  
17 acknowledged in writing, and applicable Russian law that protected Rambler's intellectual property  
18 rights and imposed duties of loyalty on the co-conspirators.

19 33. Instead of complying with their legal obligations to Rambler, Sysoev, Konovalov,  
20 Smirnov and the other conspirators saw a huge financial opportunity in the NGINX Enterprise and  
21 related business opportunities, and rather than inform Rambler of it, they executed a covert scheme  
22 to misappropriate it for themselves.

23 34. After Sysoev first publicly released what became Open Source NGINX in 2004,  
24 without authorization from Rambler, it quickly surged in popularity among operators of large Web  
25 sites in Russia and soon, around the world.

26 35. While Sysoev had released Open Source NGINX under a simple "BSD-style" open  
27 source license for the world to use, the conspirators, with Konovalov at the helm after his arrival at  
28

1 Rambler in 2008 as CTO, soon identified the potentially lucrative NGINX Enterprise, which they  
2 decided to exploit for themselves, rather than for the benefit of Rambler.

3 36. Cognizant of their multi-layered legal obligations to Rambler and Rambler's  
4 ownership rights to the NGINX Enterprise, secrecy was paramount; and Sysoev, Konovalov,  
5 Smirnoff and the other co-conspirators at Rambler were in a perfect position to achieve it. Together,  
6 with Konovalov as CTO, they were able to freely operate below the radar and without drawing  
7 scrutiny from Rambler management. Indeed, the conspirators were able to carry out their scheme  
8 without Rambler's knowledge by virtue of Konovalov's high-level position as CTO, which he used  
9 to conceal from Rambler the true extent of Sysoev's software development at Rambler and the related  
10 business opportunities that resulted therefrom.

11 37. The conspirators' vision of the NGINX Enterprise was simple and elegant: They  
12 would draw on the growing momentum and popularity of Open Source NGINX among operators of  
13 large commercial Web sites around the world by developing, licensing and servicing proprietary,  
14 fee-based software, in executable form only, to provide paying customers, with enhanced  
15 functionality that did not exist in Open Source NGINX.

16 38. It was the perfect plan. No one in the world knew more about Open Source NGINX  
17 than Sysoev, its principal architect and coder. He had become the NGINX guru and a worldwide  
18 technology celebrity, all at Rambler's expense. He and his conspirators had free reign to determine  
19 what would be in the next public release of Open Source NGINX, and, more importantly, what new  
20 improvements and features, such as those contained in NGINX Plus, could be held back and released  
21 only as executable code to paying customers. Once released, no one but Sysoev and his conspirators  
22 would have the source code for those proprietary extensions and be able to effectively charge service  
23 fees, on top of license and/or subscription fees, to implement, debug and maintain them.

24 39. In short, Open Source NGINX was the razor, and proprietary NGINX extensions and  
25 add-ons such as NGINX Plus and derivatives thereof were the razor blades. The conspirators fully  
26 recognized that the value was in the blades and orchestrated a scheme to monetize the business of  
27 selling blades for themselves.

1           40. By 2008, Konovalov had arrived at Rambler and as CTO oversaw the company's  
2 entire technological product development. Konovalov recognized the potential for the NGINX  
3 Enterprise, and convinced Sysoev that they could enrich themselves by stealing it from Rambler and  
4 selling it to a large American technology company.

5           41. As the popularity of Open Source NGINX surged, the conspirators were able to  
6 surreptitiously attract venture capital investors to help them launch the NGINX Enterprise away from  
7 Rambler for their own enrichment.

8           42. With Sysoev's focus on the software, and Konovalov taking point with potential  
9 investors (while simultaneously misrepresenting to Rambler senior management that the company's  
10 NGINX-related assets were worthless), the scheme could not fail.

11           43. By early 2010, nearly two years before Sysoev exited Rambler, execution of the  
12 conspirators' covert scheme was well underway, under the protective cover of Konovalov and his  
13 tightknit circle of senior team leaders within Rambler's NOC – the department where Sysoev and  
14 most of the conspirators were employed.

15           44. By February 2010, the conspirators started to move on a key part of the plan that they  
16 referred to as "NGINX Plus," sometimes referred to in the early days as "NGINX+." NGINX Plus  
17 (or "NGINX+") is proprietary commercial software functioning as feature-rich extensions of Open  
18 Source NGINX that Sysoev had already begun quietly developing at Rambler, while employed by  
19 Rambler and using Rambler resources, without the company's knowledge.

20           45. That is when Sysoev and Konovalov enlisted the help of the whistleblower in this  
21 case, Alexander Germanovich Korotkov ("Korotkov"), who had served as Rambler Director of  
22 Management Information Systems (the "CIO") from August 23, 2007 until June 29, 2009, and  
23 Dmitry Galperin ("Galperin"), Rambler's Director of Strategic Development from April 16, 2009 to  
24 August 17, 2010, to help lay the groundwork for misappropriating the NGINX Enterprise that was  
25 conceived and developed at Rambler for the conspirators' personal enrichment.

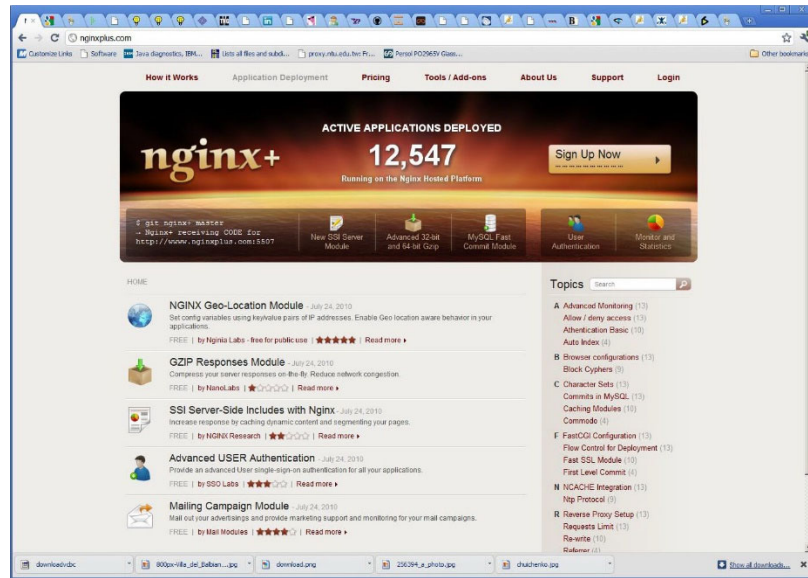
26           46. Sysoev and Konovalov needed conspirators outside of Rambler to lay the groundwork  
27 for stealing the NGINX Enterprise. They found their men in former Rambler employees Korotkov  
28

1 and Galperin who served as intermediaries between the conspirators (all of whom were still  
2 employed at Rambler) and the venture capital community willing to finance a new company that  
3 would be anchored by the stolen NGINX Enterprise. The object of the conspiracy was monetizing  
4 the misappropriated NGINX Enterprise by selling it to a large American technology company.

5 47. In an effort to avoid leaving their fingerprints behind, Sysoev and Konovalov solicited  
6 Korotkov to join the conspiracy and directed him to start executing on their scheme by first  
7 registering the Internet domain name “NGINXPLUS.COM”.

8 48. While he had exited Rambler seven months earlier, Korotkov, who initially was part  
9 of the conspiracy until Sysoev and Konovalov snubbed him, tried to position himself as the lead deal  
10 maker of the group. Korotkov had moved to Silicon Valley to work in the tech industry. There, he  
11 continued to assist Sysoev and Konovalov in their efforts to shop the NGINX Enterprise to Silicon  
12 Valley investors, both to finance the fledgling business and increase the financial exit reward down  
13 the road. Of course, Rambler could have incubated the NGINX Enterprise if only the conspirators  
14 had informed Rambler of its existence. But the conspirators wanted to steal the NGINX Enterprise  
15 and sell it themselves to a large American technology company.

16 49. Korotkov assisted the conspirators in promoting the NGINX Plus-based model to  
17 select venture capital investors. He also developed and populated a Web site, NGINXPLUS.COM,  
18 which promoted “NGINX+” (the “Korotkov Site”). A snapshot of the Korotkov Site which he  
19 submitted to the United States Patent and Trademark Office (“USPTO”) in support of a trademark  
20 application for the NGINX trademark filed on March 16, 2011 – shortly before Konovalov left  
21 Rambler and nine months before Sysoev exited the company – reveals that the conspirators were  
22 already carrying out their plan to monetize NGINX Plus. A copy of the Korotkov Site submitted to  
23 the USPTO in support of his trademark application is below:



50. The Korotkov Site shows that it was located at Internet URL nginxplus.com. In addition, it prominently displayed the term “nginx+”. Further, the page from the Korotkov Site shows that the group had already included a category called “Pricing” on the site.

51. The Korotkov Site also revealed, in bold letters, that there were already 12,547 “ACTIVE APPLICATIONS” of “nginx+” “DEPLOYED,” which were “[r]unning on the Nginx Hosted Platform.”

52. In his trademark application, Korotkov included a statement that the NGINX trademark had been *first used on February 1, 2010*, and *first used in commerce March 1, 2011*, even though Sysoev and Konovalov were still Rambler employees at those times and that Open Source NGINX was being deployed within Rambler.

53. Additionally, Korotkov included in his identification of goods and services for the NGINX trademark the following identification of services in International Class 42: “Computer services, namely, providing virtual and non virtual application servers, web servers, file servers, co-location servers, load balancing servers, redundancy servers, media servers and database servers of variable capacity to third party computing and data storage facilities; Platform as a service (PAAS) featuring computer software platforms for web applications, web server applications, web server

1 frameworks, cloud computing; Software as a service (SAAS) services featuring software in the field  
2 of web applications, web server applications, web server frameworks, cloud computing.”

3 54. In other words, according to Korotkov’s own sworn statements to the USPTO, as  
4 early as February 1, 2010, and by no later than March 1, 2011, the conspirators had already kicked  
5 off their new NGINX Plus business based on a fee-based license or subscription model that had  
6 already deployed at least 12,547 active applications without informing Rambler, the true owner of  
7 the NGINX Enterprise.

8 55. Korotkov’s identification of goods and services and the information contained in the  
9 Korotkov Site go well beyond the purported model that Sysoev was using for Open Source NGINX  
10 that consisted merely of posting on the Internet and maintaining a library of Open Source NGINX  
11 for download by third parties pursuant to a two-paragraph open source BSD-type license.

12 56. In reality, the conspirators’ seemingly innocuous handling of Open Source NGINX  
13 while they were still employed by Rambler was merely a smokescreen to camouflage the fledgling  
14 business they had already quietly built around their “open core” strategy and NGINX Plus, as  
15 confirmed in a videotaped interview given by Konovalov in November 2019 during a GoTech 19  
16 conference in Moscow, six months after the F5 merger. As Rambler and Lynwood would discover  
17 only in late 2019 and early 2020, and as confirmed in the 2019 Konovalov interview, Sysoev and the  
18 conspirators were hard at work conceiving and developing NGINX Plus product offerings well  
19 before they departed Rambler in 2011.

20 57. In the interview, available at <https://www.youtube.com/watch?v=X6SXE1SPu-8>, a  
21 transcript of which is attached as Exhibit B hereto (“Konovalov Tr.”), Konovalov stated: “In parallel,  
22 we – in 2011, we started to build commercial product, NGINX Plus, and started to sell it to enterprises  
23 and corporations.” Konovalov Tr. at 8.

24 58. Konovalov in his GoTech interview went on to acknowledge that he and his co-  
25 conspirators had discussed how to monetize Open Source NGINX since in or around 2009, adding,  
26 “So we spent a lot of time on talking and discussing and yeah.” Konovalov Tr. at 17. Konovalov  
27 stated further:

1 As I said previously, NGINX customer base -- it's not really  
2 customers but user base because it was an open-source and  
3 freeware project. So we can talk about users, not customers. So  
4 but anyway, by 2011, like six or eight percent all internet use  
5 NGINX, and it was -- it became crystal clear that there were some  
6 business opportunities. And three of us came together, Igor,  
7 myself and one -- we had a sort of co-founder -- and started to  
8 talk about that. And at some point we decided, okay, let's try.  
9 Let's try and explore these opportunities. And so that is how we  
10 decided to build a company and there are many -- there was a  
11 bunch of ideas of how to extract money from open-source and  
12 freeware product. But we decided to take like an easy one  
13 probably. We decided to explore the open core model. Open  
14 core model is when you take an open-source software and build  
15 something paid like commercial software on top. And this is  
16 what we have been doing since 2011. No changes surprisingly in  
17 our strategy. So we continue to develop NGINX open-source  
18 these days and continue to build a great open-source freeware  
19 software. In parallel, we -- in 2011, we started to build  
20 commercial product, NGINX Plus, and started to sell it to  
21 enterprises and corporates. So this is what we are doing today,  
22 yeah.

23 Konovalov Tr. at 7-8.

24 59. Indeed, in the course of their respective investigations, Rambler and Lynwood  
25 discovered that the conspirators and Korotkov spent 2010 and 2011 not only registering domain  
26 names and filing a trademark application in an effort to position NGINX Plus product offerings as  
27 their own, but they also, as part of their clandestine "open core" strategy, formed their own business



1 entities and secured outside investors to launch the NGINX Enterprise for themselves by  
2 misappropriating it from Rambler where they had developed both Open Source NGINX and NGINX  
3 Plus as works made for hire using Rambler’s resources.

4 60. In August 2010, Galperin left Rambler’s employment in furtherance of the conspiracy  
5 to approach targeted venture capital firms, including Defendant Runa Capital. Galperin solicited  
6 Runa Capital on behalf of Konovalov and Sysoev and disclosed their intentions and the object of the  
7 conspiracy (i.e., the misappropriation from Rambler and subsequent sale of the NGINX Enterprise  
8 to an American technology company).

9 61. Runa Capital joined the conspiracy and, in furtherance of securing an opportunity to  
10 invest in the NGINX Enterprise and score a big exit pay day, hired Galperin directly in February  
11 2011 explicitly for the purpose of encouraging and assisting Sysoev and Konovalov and coordinating  
12 with them to carry out the conspirators’ common plan (i.e., the misappropriation and subsequent sale  
13 of the NGINX Enterprise).

14 62. Runa Capital and Defendant E.Ventures, Silicon Valley venture capital firms, knew  
15 of Sysoev’s and Konovalov’s duties owed to Rambler and that Rambler maintained the ownership  
16 rights to Open Source NGINX, NGINX Plus and the NGINX Enterprise. Nevertheless, Runa Capital  
17 and E. Ventures assisted and encouraged Sysoev and Konovalov, while they were still employees at  
18 Rambler, to breach their duties to Rambler and to misappropriate the NGINX Enterprise for the  
19 benefit of the fledgling business that Sysoev and Konovalov were forming and that Runa Capital and  
20 E. Ventures intended on funding and ultimately did fund. All of the foregoing acts were undertaken  
21 by Sysoev, Konovalov, Runa Capital and E. Ventures in furtherance of the conspirators’ common  
22 plan to ultimately achieve a large payday by selling the purloined NGINX Enterprise to a large  
23 American technology company, expressly including F5.

24 63. The pre-separation work that Sysoev and the conspirators devoted to NGINX Plus  
25 specifically, and to the NGINX Enterprise more generally, while still employed at Rambler, enabled  
26 the conspirators to quickly roll out and license to paying customers commercial NGINX Plus  
27 products through their newly formed company, defendant NGINX, Inc. (“NGINX BVI”), officially  
28

1 in August of 2013, only 21 months after Sysoev departed from Rambler. In fact, Konovalov stated  
2 in his 2019 GoTech interview that the conspirators actually began quietly commercializing an earlier  
3 version of NGINX Plus as early as 2011, the same year that Konovalov and Sysoev both exited  
4 Rambler.

5 64. Unbeknownst to Rambler and Lynwood, from 2013 to 2019, when NGINX BVI  
6 merged with Defendant F5, NGINX Plus was the primary driver of revenue for the company and the  
7 reason that the company raised approximately \$100 million in venture funding. In short, NGINX  
8 Plus was the crown jewel of the NGINX Enterprise. But for the conspirators' breaches of their  
9 contractual and fiduciary duties as officers and employees of Rambler and their subsequent  
10 concealment of same, NGINX Plus and the NGINX Enterprise would have remained at Rambler as  
11 works made for hire and Rambler would have enjoyed the fruits of its investments.

12 65. NGINX Plus was also one the primary drivers of the F5 merger. In its 10K filing for  
13 2019 following the merger, F5 touted the NGINX acquisition, stating: "Under the NGINX brand we  
14 offer: NGINX Plus, an all-in-one load balancer, web server, content cache, and API gateway for  
15 modern applications. NGINX Controller, which provides centralized monitoring and management  
16 for NGINX Plus."

17 66. F5 has continued to aggressively market and sell NGINX Plus, including under a paid  
18 subscription model, in the two years since the merger. F5's message to the software world is stated  
19 very simply on its website: "If You Like NGINX, You'll Love NGINX Plus."

20 67. F5's website also states: "NGINX Plus is a software load balancer, web server, and  
21 content cache built on top of open source NGINX. NGINX Plus has exclusive enterprise-grade  
22 features beyond what's available in the open source offering, including session persistence,  
23 configuration via API, and active health checks. Use NGINX Plus instead of your hardware load  
24 balancer and get the freedom to innovate without being constrained by infrastructure."

25 68. F5 conducted extensive due diligence in early 2019 in connection with the NGINX,  
26 Inc. merger, as confirmed by Konovalov in his GoTech interview in which he confirmed having  
27 spoken with "dozens" of employees of F5 during the due diligence process. Konovalov Tr. at 16.

1 This due diligence included a review and analysis of NGINX Plus and Open Source NGINX, along  
2 with Sysoev's employment agreements with Rambler, which revealed that Open Source NGINX and  
3 NGINX Plus were written during the term of Sysoev's employment at Rambler.

4 69. F5 gained actual knowledge prior to the consummation of the merger that the  
5 conspirators had stolen the NGINX Enterprise from Rambler, including such assets as NGINX Plus  
6 and Open Source NGINX. For example, in its own filings with the United States Patent and  
7 Trademark Office following the merger, F5 recognized and confirmed that use by the conspirators  
8 of the NGINX trademark in commerce, including in connection with the software-as-a-service-type  
9 model that Korotkov had revealed in his previous trademark application, had predated the  
10 conspirators' departure from Rambler.

11 70. F5 took over a trademark application from NGINX BVI for the NGINX trademark  
12 originally filed on June 14, 2017 by having F5's legal counsel file a Statement of Use which claims  
13 that the first use of the NGINX trademark was in connection with not only server software, but also  
14 in connection with various commercial software-as-a-service offerings.

15 71. In the Statement of Use, the F5 attorney swore that the first use of the NGINX  
16 trademark in connection with such goods and services took place on December 14, 2009, and that  
17 the first use in commerce took place on April 12, 2011. These dates, which were generated out of  
18 whole cloth by the F5 attorney based on F5's own extensive diligence, not only closely align with  
19 the date of first use (February 1, 2010) and the date of first use in commerce (March 1, 2011) cited  
20 by Korotkov on his own trademark application on behalf of the conspirators, but also clearly  
21 demonstrate that F5 knew that NGINX Plus was developed by the conspirators while employed at  
22 Rambler and in furtherance of the scope of their employment responsibilities.

23 72. F5 proceeded with the merger despite such knowledge, in total disregard of how the  
24 conspirators had repeatedly violated Rambler's rights, resulting in vast damages to Rambler, and in  
25 turn, to Rambler's assignee Lynwood.

**THE PARTIES**

1  
2           73. Plaintiff Lynwood is a Cyprus limited company with a principal place of business  
3 located at Saifi, 1, Porto Bello, Floor 3, Flat 302 3042, Limassol, Cyprus. Until January 2015,  
4 Lynwood was known as A&NN Holdings Limited.

5           74. Lynwood is prosecuting this action in its capacity as assignee of all rights and interests  
6 of Rambler and its affiliates, which are located in Moscow, Russia.

7           75. Defendant Maxim Olegovich Konovalov (“Konovalov”) is a citizen of the Russian  
8 Federation who resides in Moscow, Russia.

9           76. Defendant Igor Vladimirovich Sysoev (“Sysoev”) is a citizen of the Russian  
10 Federation who resides in Moscow, Russia.

11           77. Defendant Andrey Victorovich Alexeev (“Alexeev”) is a citizen of the Russian  
12 Federation who resides in Moscow, Russia.

13           78. Defendant Maxim Sergeevich Dounin (“Dounin”) is a citizen of the Russian  
14 Federation who resides in Moscow, Russia.

15           79. Defendant Gleb Alexandrovich Smirnoff (“Smirnoff”) is a citizen of the Russian  
16 Federation who resides in Los Gatos, California.

17           80. Defendant NGINX BVI is a British Virgin Islands corporation incorporated by  
18 Konovalov, Alexeev, and Sysoev on July 6, 2011. NGINX BVI is now a wholly-owned subsidiary  
19 of Defendant F5 Networks, Inc. NGINX BVI maintains its principal place of business at 795 Folsom  
20 Street, 6<sup>th</sup> Floor, San Francisco, California 94107. F5 refers to this office as “NGINX San  
21 Francisco.” NGINX BVI previously maintained an office at 85 Federal Street, San Francisco,  
22 California 94107.

23           81. Defendant NGINX Software, Inc. (“NGINX Software, Inc.”) is a Delaware  
24 corporation with a principal place of business located at 795 Folsom Street, Suite 600, San Francisco,  
25 California. NGINX Software, Inc. was incorporated in Delaware on May 4, 2011. NGINX Software,  
26 Inc. opened an office in San Francisco, California around that time. As part of registering to do  
27 business in California, on May 23, 2011 NGINX Software, Inc. filed a Statement and Designation  
28

1 by Foreign Corporation. The Statement and Designation by Foreign Corporation appointed an agent  
2 for service of process in California and it was executed on behalf of NGINX Software, Inc. by  
3 Konovalov as its Chief Executive Officer (“CEO”). NGINX Software, Inc. has appointed CT  
4 Corporation System as its agent for service in the State of California.

5 82. Defendant NGINX, Inc. is a Delaware corporation (“NGINX DE”) with a principal  
6 place of business located at 795 Folsom Street, Suite 600, San Francisco, California. NGINX DE  
7 was incorporated on August 8, 2011. Upon information and belief, NGINX DE did not register to  
8 do business in California.

9 83. Defendant BV NGINX, LLC (“BV NGINX”) is a Delaware limited liability company  
10 with a principal place of business located at 795 Folsom Street, Suite 600, San Francisco, California.

11 84. Defendant Angus “Gus” James Bruce Robertson (“Robertson”) is a citizen of the  
12 State of Florida, and resides at 300 South Point Drive, Apartment 2706, Miami Beach, Florida 33139.  
13 Robertson joined NGINX as CEO in 2012. Robertson joined F5 as a result of the merger between  
14 F5 and NGINX BVI, and like Konovalov and Sysoev, received restricted F5 stock as part of the  
15 transaction. Robertson is Senior Vice President and General Manager of NGINX at F5.

16 85. Defendant Runa Capital is a Delaware corporation engaged in the business of  
17 providing venture capital, headquartered at 459 Hamilton Avenue, Suite 306, Palo Alto, California  
18 94301.

19 86. Defendant E. Ventures is a Delaware limited liability company engaged in the  
20 business of providing venture capital, headquartered at 600 Montgomery Street, 43<sup>rd</sup> Floor, San  
21 Francisco, California 94111.

22 87. Defendant F5 is a Washington corporation headquartered at 801 5th Avenue, Seattle,  
23 Washington 98104. F5 is publicly traded on the NASDAQ exchange under the symbol FFIV. F5 is  
24 registered to do business in the State of California, does business in the State of California, and has  
25 appointed CT Corporation System as its agent for service of process in California.

**JURISDICTION AND VENUE**

1  
2 88. This action arises under the Copyright Laws of the United States, 17 U.S.C. §§ 1, *et*  
3 *seq.*, and the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* as well as under the Berne Convention for the  
4 Protection of Literary and Artistic Works (the “Berne Convention”). This Court therefore has subject  
5 matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6 89. This Court also has supplemental jurisdiction over the remaining claims pursuant to  
7 28 U.S.C. § 1367, as the remaining claims form part of the same case or controversy.

8 90. This Court has personal jurisdiction over Defendants under Cal. Code Civ. Proc.  
9 § 410.10 and the United States Constitution because Defendants regularly and systematically  
10 conduct business in California, including by maintaining headquarters, offices, and conducting  
11 commerce within California. Moreover, Defendants committed a substantial portion of the  
12 misconduct described in this Complaint in California.

13 91. In addition, NGINX Software, Inc. and F5 are registered to do business in California  
14 and have appointed agents for service of process in California.

15 92. Runa Capital and E. Ventures both have their headquarters in California and regularly  
16 do business in California.

17 93. Smirnoff resides in California.

18 94. NGINX BVI, NGINX DE, and BV NGINX have maintained their headquarters in  
19 California and regularly conducted business in California and therefore should have registered to do  
20 business in California and appoint an agent for service of process in California. By default, NGINX  
21 BVI, NGINX DE, and BV NGINX have appointed the California Secretary of State as their agent  
22 for service of process in California.

23 95. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because  
24 multiple defendants reside in this District and, additionally, pursuant to 28 U.S.C. § 1391(b)(2)  
25 because a substantial part of the events giving rise to the claims set forth herein occurred in this  
26 District.

**FACTS COMMON TO ALL COUNTS**

1  
2 96. Rambler is a limited liability company organized and existing under the laws of the  
3 Russian Federation and headquartered in Moscow, Russia.

4 97. Rambler is one of the largest media companies and web portals in Russia. Rambler  
5 was also the largest technology company and search engine in Russia during Sysoev’s employment  
6 with the company.

7 98. Lynwood with its affiliated companies owned 50% of Rambler up until December  
8 2014.

9 99. Defendants Konovalov, Sysoev and Smirnoff (the “Disloyal Employees”) all worked  
10 together at Rambler where they hatched and began executing their conspiracy to use Rambler’s  
11 resources to develop the NGINX Enterprise and sell it to a third party for their own ill-gotten profit  
12 and to the exclusion of Rambler. Co-Defendants Alexeev and Dounin were third-party acquaintances  
13 of the Disloyal Employees who joined their conspiracy at the outset. Dounin was himself a former  
14 Rambler employee from November 1, 2004 until September 14, 2007, during which time he served  
15 as the Head of Rambler’s Mail Development Department and worked with Sysoev on a variety of  
16 projects, including development of Open Source NGINX. After he left Rambler, Dounin  
17 reconnected with Sysoev and the other Disloyal Employees to carry out the conspiracy. Accordingly,  
18 the Disloyal Employees along with Alexeev and Dounin are collectively referred to as the “Team.”

19 **Defendant Konovalov’s Employment with Rambler**

20 100. Konovalov was employed by Rambler from March 18, 2008 until April 29, 2011.

21 101. Konovalov was appointed CTO of Rambler on March 18, 2008 and formed part of  
22 Rambler’s senior management.

23 102. On March 18, 2008, Rambler and Konovalov entered into a written employment  
24 agreement, which is identified as Contract No. 27/08 (the “Konovalov Employment Agreement”).  
25 The Konovalov Employment Agreement contained restrictions prohibiting the disclosure of  
26 Rambler’s proprietary information.

27 103. Specifically, the Konovalov Employment Agreement required Konovalov to:  
28



1 2.3.11 not disclose information constituting a trade secret owned by the employer and his  
2 counteractants, and not to use this information for personal purposes without their consent;

3 2.3.12 not disclose information constituting an official and/or commercial secret held by the  
4 Employer and his contractors after the termination of the Employment Contract within the period  
5 stipulated by the agreement between the employee and the employer concluded during the term of  
6 the Employment Contract, or within three years after the termination of the Employment Contract,  
7 if the specified agreement has not been concluded;

8 2.3.13 compensate the damage caused to the Employer, if the Employee has been guilty of divulging  
9 information constituting an official and/or commercial secret, which became known to him in  
10 connection with the performance of his labor duties;

11 2.3.14 transfer to the Employer the material information media used by the Employee containing  
12 information constituting official and/or commercial secrets, as well as all documents generated  
13 during the performance of the work, and material and technical means transferred to him by the  
14 Employer for the performance of labor duties upon termination of the Employment Contract.

15 104. The Konovalov Employment Agreement also contains works for hire protection for  
16 Rambler. Specifically, Section 5.1 of the Konovalov Employment Agreement provides: “As part of  
17 the Employee’s performance of his duties, he may be entrusted with the Legal Entity’s administration  
18 or its authorized person to create the works being the objects of copyright, such as computer  
19 programs, databases, photographs, videos, books, ringtones, articles and other works that are objects  
20 of copyright.”

21 105. In addition, Section 5.2 of the Konovalov Employment Agreement provides that  
22 “[t]he exclusive right to a computer program or database created by the Employee in connection with  
23 the performance of labor duties or on the instructions of the Employer shall belong to the Legal  
24 Entity, unless otherwise provided by an agreement between him or it and the Employee.”

25 106. The Board of Directors of Rambler Media Limited on September 14, 2007 adopted a  
26 “Rambler Code of Ethics” (the “Code of Ethics”), which expressly recites that “...it is the policy of  
27 Rambler Media Limited and all subsidiaries (the ‘Company’) that the Company’s management (the  
28

1 ‘Management’) adhere to and advocate the following principles governing their conduct in the  
2 fulfillment of their responsibilities with the Company.”

3 107. Konovalov, as CTO, and therefore part of Management, signed and dated a copy of  
4 the Code of Ethics on March 19, 2008.

5 108. Konovalov’s signature appears on a one-page attachment to the Code of Ethics,  
6 entitled “Rambler Code of Ethics Compliance Statement” in which he states: “1. I have read and  
7 understand the Code of Ethics of Rambler Media Limited and affiliates (the “Company”). 2. I have  
8 been given and instructed to retain a copy of the Code of Ethics for my future reference. 3. I agree  
9 to abide by the Code of Ethics, as amended from time to time by written notice, and any other  
10 guidelines adopted by the Company.”

11 109. Section 1 of the Rambler Code of Ethics is entitled “Honest and Ethical Conduct.”  
12 The introductory paragraph of such paragraph states as follows: “Management must conduct  
13 themselves honestly and ethically, and must strive to avoid the appearance of improper behavior in  
14 the conduct of their duties. This Code does not cover every issue that may arise, but sets out basic  
15 principles.”

16 110. In the same section, the subsection entitled “Conflict of Interest” provides, in part, as  
17 follows: “Management must make business decisions based on the best interest of the Company and  
18 must not allow his or her personal interest to influence such decisions.” That section further provides  
19 “Management must avoid even the appearance of dishonest or unethical behavior in the conduct of  
20 their duties.”

21 111. In the same section, the subsection entitled “Corporate Opportunities” provides as  
22 follows:  
23 “Management is prohibited from taking personal opportunities that are discovered through the use  
24 of corporate property, information or position without the consent of the Company. Management  
25 may not use corporate property, information or position for improper personal gain, and may not  
26 compete with the Company directly or indirectly.”

27 112. In the same section, the subsection entitled “Confidentiality” provides as follows:  
28

1 Management must take reasonable measures to maintain the confidentiality of confidential  
2 information entrusted to them by the Company or its customers or suppliers, except when disclosure  
3 is authorized or required by laws or regulations. Confidential information includes all non-public  
4 information that might be of use to competitors, or harmful to Company or its customers or suppliers,  
5 if disclosed. The obligation to preserve confidential information continues even after employment  
6 ends.

7 113. Lastly, Section 6 of the Rambler Code of Ethics provides as follows: “This Code is a  
8 policy of the Company. Management will be held responsible for any violation of this Code by the  
9 Company, which could include being relieved of his or her duties or termination of employment.”

#### 10 **Defendant Sysoev’s Employment with Rambler**

11 114. Sysoev is a former employee of Rambler. As detailed below, Sysoev was the central  
12 figure in the development of the Open Source NGINX for Rambler. Sysoev was employed by  
13 Rambler from November 14, 2000 until December 1, 2011.

14 115. In 2000, Rambler hired Sysoev as a System Administrator. Sysoev was highly  
15 talented, and rose steadily within Rambler. As part of his employment duties, Sysoev was tasked  
16 with developing software to address internal technical issues experienced by Rambler at the time.

17 116. On August 1, 2003, Rambler affiliate Rambler Telecom LLC (“Rambler Telecom”)  
18 hired Sysoev on an external part time basis as System Administrator for its Engineering Department.

19 117. As of December 29, 2004, Rambler promoted Sysoev to Lead Specialist of the  
20 Telecommunications Department/Server and Technology Network.

21 118. Beginning in December 2004 and continuing until Sysoev’s separation from Rambler  
22 in December 2011, Rambler paid Sysoev regular outsized bonuses on either a quarterly or semi-  
23 annual basis in recognition of his work in developing the NGINX Software for Rambler and the  
24 software code’s utility in solving the company’s various technical issues at that time related to  
25 hosting web traffic from Russia and the CIS territories.

1           119. On January 10, 2006, Rambler Telecom transferred Sysoev from the Engineering  
2 Department to the Network Control Division effective as of January 1, 2006, where he also served  
3 as System Administrator.

4           120. On September 14, 2006, Rambler transferred Sysoev to the position of Programmer  
5 within the DRT/Searching Systems Department.

6           121. Sysoev separated from his part time position with Rambler Telecom at his request on  
7 October 2, 2006. Sysoev continued his employment with Rambler.

8           122. From October 1, 2007 until May 23, 2011, Sysoev was Lead System Administrator  
9 for Rambler's Server and Technology Network.

10           123. In April 2011, while Sysoev was, unbeknownst to Rambler, scheming to launch a new  
11 company using Rambler's Open Source NGINX and NGINX Plus, Sysoev advised Rambler that he  
12 wished to terminate his employment contract with Rambler.

13           124. On May 20, 2011, Sysoev separated from Rambler as a full-time employee.

14           125. Given how integral Sysoev was to Rambler's operations, Rambler requested and  
15 Sysoev agreed to continue employment with Rambler on a part-time basis. On May 23, 2011,  
16 Rambler engaged Sysoev on a part-time basis as the Lead System Administrator for Rambler's  
17 Server and Technology Network.

18           126. On December 1, 2011, Sysoev separated entirely from Rambler and terminated his  
19 part-time employment.

20           127. In connection with his employment with Rambler, Sysoev entered into multiple  
21 agreements with Rambler.

22           128. Sysoev and Rambler entered into an employment agreement on August 9, 2001,  
23 identified as Contract No. 43 (as amended and supplemented, the "Sysoev Employment  
24 Agreement").

25           129. Section 1.4 of the Sysoev Employment Agreement, contains the following non-  
26 disclosure covenant:

1 The Employee shall undertake not to disclose information constituting the Business Entity's official  
2 and commercial secret, which became known to the Employee in connection with the performance  
3 of his labor duties, both during and after the term of the employment relations with the Business  
4 Entity. In addition, in the case of the implementation of reimbursable activities of other enterprises,  
5 organizations, institutions, the Employer shall notify the Business Entity in writing about this.

6 130. Section 7.1 of the Sysoev Employment Agreement grants Rambler the following  
7 works for hire protection:

8 As part of the Employee's performance of his official duties, he may be entrusted with the Business  
9 Entity's administration or its authorized person to create works that are objects of copyright, such as  
10 computer programs and databases. Such works is an official work. The exclusive property rights for  
11 the use of such works belong to the Business Entity.

12 131. Section 12.3 of the Sysoev Employment Agreement confirms that Sysoev's  
13 nondisclosure obligations survive the termination of his employment with Rambler:

14 The termination hereof shall not entail the termination of the obligation of the Employee not to  
15 disclose information constituting an official or commercial secret of the Business Entity, which  
16 became known to the Employee in connection with the performance of his labor duties, as long as  
17 the specified information has been an official or commercial secret of the Business Entity by virtue  
18 of the civil legislation of the Russian Federation.

19 132. Similarly, Section 12.4 of the Sysoev Employment Agreement provides:

20 In the event of termination hereof before receipt of the work book and settlement of accounts, the  
21 Employee shall be obligated to transfer to the Employer all the property and documents of the  
22 Business Entity kept by the Employee in connection with the performance of labor duties. The  
23 indicated property and documents shall also include documents, programs, databases, and their  
24 developments on magnetic media created as part of the Employee's performance of his duties.

25 133. On August 9, 2001, Sysoev and Rambler entered into a Supplementary Employment  
26 Agreement (the "Sysoev Supplementary Agreement"). Section 2.1 of the Sysoev Supplementary  
27 Agreement states as follows:

1 An Employee given access to documentary or other carriers of confidential information and  
2 trade secrets shall be obliged:

3 --to keep the carriers of confidential data and trade secrets separate from other media;

4 --to ensure the impossibility of their loss;

5 --to ensure the impossibility of unauthorized access to the media;

6 --to destroy, in the prescribed manner, drafts and other storage media used to create draft documents;

7 --in case of employment termination, surrender all carriers of confidential data and trade secrets  
8 within one business day to the head of the structural unit or to the head of the Company.

9 134. Section 2.2 of the Sysoev Supplementary Agreement states: “An employee given  
10 access to the carriers of confidential data shall be obligated to immediately inform the Company  
11 management of the fact of the loss of media or unauthorized access to them by third parties, as well  
12 as in relation to certificates, passes, seals, keys to office premises and safes.”

13 135. Section 2.3 of the Sysoev Supplementary Agreement states: “The employee must not  
14 disclose the confidential data in any form during the entire term of the labor agreement with the  
15 Company and within two years after its termination.”

16 136. Section 3.1 of the Sysoev Supplementary Agreement states: “Unauthorized access  
17 and/or disclosure of confidential information shall be a gross violation of the Employee’s duties.”

18 137. Section 3.2 of the Sysoev Supplementary Agreement states: “For unauthorized access  
19 and/or disclosure of confidential information, the Employee may be disciplined.”

20 138. Section 3.4 of the Sysoev Supplementary Agreement states: “An employee of the  
21 Company who unauthorizedly discloses confidential information and/or who has allowed access to  
22 confidential information or commercial information of other person is obliged to compensate the  
23 Company in full, including actual damages and lost profits, losses incurred by the Company and its  
24 counteractants by the fact of disclosure.”

25 139. On November 1, 2004, Sysoev and Rambler entered into an Amendment to the  
26 Sysoev Employment Agreement (“Sysoev 2004 Supplemental Agreement”), which granted Sysoev  
27 a raise in salary and reaffirmed that “[t]he remaining conditions of the previously concluded  
28

1 Employment Contract that have not been affected by this amendment shall not be subject to revision,  
2 and the parties shall confirm their obligations.”

3 140. On September 14, 2006, in connection with Rambler’s transfer of Sysoev to the  
4 position of Programmer within the DRT/Searching Systems Department, Sysoev and Rambler  
5 entered into a Supplementary Agreement (the “Sysoev September 2006 Supplemental Agreement”).

6 141. The Sysoev September 2006 Supplemental Agreement granted Sysoev a raise in  
7 salary and reaffirmed that “[t]he remaining conditions of the previously concluded Employment  
8 Contract that have not been affected by this amendment shall not be subject to revision, and the  
9 parties shall confirm their obligations.”

10 142. As of July 2, 2007, Sysoev and Rambler entered into a Supplementary Agreement  
11 (the “Sysoev July 2007 Supplemental Agreement”), which granted Sysoev a large raise in salary and  
12 reaffirmed that “[t]he remaining conditions of the previously concluded Employment Contract that  
13 have not been affected by this amendment shall not be subject to revision, and the parties shall  
14 confirm their obligations.”

15 143. On October 1, 2007, in connection with Rambler’s appointment of Sysoev as Lead  
16 System Administrator for Rambler’s Server and Technology Network, Sysoev and Rambler entered  
17 into a Supplementary Agreement (the “Sysoev October 2007 Supplemental Agreement”).

18 144. The Sysoev October 2007 Supplemental Agreement reaffirmed that “[t]he remaining  
19 conditions of the previously concluded Employment Contract that have not been affected by this  
20 amendment shall not be subject to revision, and the parties shall confirm their obligations.”

21 145. As of July 31, 2009, Sysoev and Rambler entered into a Supplementary Agreement  
22 (the “Sysoev July 2009 Supplemental Agreement”), which granted Sysoev a large raise in salary and  
23 reaffirmed that “[t]he remaining conditions of the previously concluded Employment Contract that  
24 have not been affected by this amendment shall not be subject to revision, and the parties shall  
25 confirm their obligations.”

26 146. In April 2011, Sysoev advised Rambler that he wished to separate from Rambler and  
27 terminate the Sysoev Employment Agreement.



1           147. Effective May 20, 2011, Sysoev separated as a full-time employee from Rambler, and  
2 the Sysoev Employment Agreement was terminated.

3           148. Of course, provisions of the Sysoev Employment Agreement that expressly survived  
4 termination of Sysoev’s employment remained in effect.

5           149. On May 23, 2011, Rambler appointed Sysoev on a part-time basis as the Lead  
6 Systems Administrator of Rambler’s server-technological complex (“Lead System Administrator”),  
7 and Rambler and Sysoev entered into a new employment agreement.

8           150. This new employment agreement between Sysoev and Rambler was effective as of  
9 May 18, 2011 (the “2011 Sysoev Employment Agreement”).

10           151. Section 1.3 of the 2011 Sysoev Employment Agreement states: “The work under the  
11 Contract is the external part-time work for the Employee.”

12           152. Section 2.1.3 of the 2011 Sysoev Employment Agreement states as follows:  
13 During the term of execution and after the termination of the Employee’s work with the Employer,  
14 the Employee shall be required to observe the strictest secrecy in relation to all information and/or  
15 documents that may become known to him, relating to the affairs, interests or operations of the  
16 Employer and any of its employees, customers or other persons or business partners associated with  
17 the Employer, and shall be obligated not to disclose such information, except upon receipt of the  
18 appropriate authority from the Employer, and as well as not use it for his personal purposes or for  
19 any purpose of the third party. The Employee shall comply with the business secrets non-disclosure  
20 obligation (Appendix 1).

21           153. Appendix No. 1 to the 2011 Sysoev Employment Agreement, entitled “Commitment  
22 of Business Secret Non-Disclosure,” requires Sysoev to:

23 1. Refrain from disclosing the information that constitutes the Company’s business secret, which will  
24 be conferred upon me [Sysoev] or will become known to me in the course of performance of the job  
25 duties;

26 2. Refrain from transfer to third parties and from public disclosures of the information that constitutes  
27 the Company’s business secrets;

1 ...

2 5. Refrain from using the Company's business secret for carrying out any business that may be  
3 prejudicial to the Company as a competitive action;

4 6. If any third parties try to get any information on the Company's business secret from me, promptly  
5 notify the Company's top management thereof.

6 154. Sysoev separated entirely from Rambler effective December 1, 2011.

7 155. As of November 28, 2011, Sysoev and Rambler entered into a separation agreement  
8 terminating the 2011 Sysoev Employment Agreement and memorializing the terms on which Sysoev  
9 separated from Rambler (the "Sysoev Separation Agreement").

10 156. The Sysoev Separation Agreement recited that the 2011 Agreement would terminate  
11 as of December 1, 2011.

12 157. Importantly, the Sysoev Separation Agreement contained, among other things, the  
13 following terms:

14 3. The Employee shall transfer all of the Company's assets and documents being in the Employee's  
15 possession in connection with the Employee's performance of the employment duties, including  
16 documents, software, databases and their developments in magnetic media, which were created as  
17 part of performance of job duties, to the Employer's representative on or before December 1, 2011.

18 ...

19 8. The Employee recognizes and confirms that the Employee will regard the provisions of this  
20 Agreement as strictly confidential and will not disclose them to any persons whatsoever. The  
21 Employee recognizes and confirms his/her obligation to comply with the confidential information  
22 provisions with respect to the Employer, including, but not limited to, the Employer's confidential  
23 information (the Confidential Information under this Termination Agreement means any information  
24 pertaining to Rambler Group of Companies, including but not limited to, its documents, products,  
25 plans, customers, customer list, employees, strategy, marketing plans and strategy, pricing policy,  
26 business processes, intellectual property, business secret, product development plans, corporate and  
27 financial information), of which the Employee receives information in the course of his/her business

1 operations and the companies, for which the Employer is a legal successor, and shall not disclose  
2 this information other than to the representative of the Employer, Rambler Group of Companies, by  
3 any method, either before or after signing hereof.

4 ...

5 9. This Agreement shall supersede all oral and/or written agreements concluded by the Parties before  
6 signing hereof.

7 ...

8 11. This Agreement shall be governed by and construed in accordance with the laws of the Russian  
9 Federation.

10 **Defendant Smirnov's Employment with Rambler**

11 158. Smirnov is a former employee of Rambler who was employed at the company from  
12 September 21, 2006 until his resignation on November 12, 2012.

13 159. During his employment with Rambler, Smirnov served as the Head of Rambler's  
14 Network Operations Center ("NOC"). Smirnov was Sysoev's immediate supervisor. Smirnov  
15 reported directly to Konovalov.

16 160. Smirnov remained an employee of Rambler for approximately eleven months longer  
17 than Sysoev before he resigned to join Konovalov and Sysoev at NGINX BVI .

18 161. Among the contractual obligations imposed on Smirnov under his Rambler  
19 Employment Agreement, dated September 21, 2006 ("Smirnov Employment Agreement") were:

20 2.3.1 Employee shall comply with the internal labor regulations of the Company.

21 2.3.2 Employee shall honestly and in good faith fulfill the labor duties assigned to him by the  
22 Employment Contract and job description, demonstrate the necessary initiative and perseverance in  
23 work constantly improving his professional qualification.

24 2.3.4 Employee shall take care of the property of the Employer and other employees; comply with  
25 the established procedure for the storage of material assets and documents.

26 2.3.5 Employee shall immediately inform the Company management of any theft of and damage  
27 to the Company's property.

1 2.3.13 Employee shall compensate for damages caused to the Employer, if the Employee is guilty  
2 of disclosing information constituting professional and/or trade secrets, which became known to him  
3 during performance of his labor duties.

4 2.3.14 Employee shall upon termination of the Employment Contract hand over to the Employer  
5 the material storage media used by the Employee and containing information constituting  
6 professional and/or trade secrets, as well as all documents created during the performance of work,  
7 as well as the material and technical means given to him by the Employer to perform his labor duties.

8 162. In addition, the Smirnoff Employment Agreement explicitly contained “Work Made  
9 For Hire” provisions including:

10 5.1 As part of the Employee’s official duties, he may be instructed by the Company  
11 management or its authorized person to create works protected by copyright, such as computer  
12 programs, databases, photographs, videos, books, ringtones, articles, and other works protected by  
13 copyright.

14 5.2 The exclusive right to a computer program or database created by the Employee during  
15 performance of his labor duties or as instructed by the Employer shall belong to the Company,  
16 unless otherwise provided by an agreement between the Company and the Employee.

17 **Rambler’s Internal Labor Rules and Regulations**

18 163. In addition to the contractual obligations set out above, Rambler established a written  
19 set of rules and regulations governing its employees’ conduct, which the Disloyal Employees agreed  
20 to abide by in connection with their Rambler employment.

21 164. As of September 1, 2008, Rambler issued a document entitled “Internal Labor Rules  
22 and Regulations” (the “Rambler Regulations”).

23 165. Article 18 of the Rambler Regulations provides:

24 “Each employee is obliged to maintain the confidentiality in relation to everything  
25 that relates to the facts and information of an economic, commercial nature, the  
26 know-how of the Company, which he became aware of during the performance or  
27 in connection with the performance of his labor duties. The management of the

1 Company informs each employee of a list of information that is confidential. Any  
2 use outside the employer’s duties or transfer to third parties of any documents and  
3 information relating to the activities of the Company is strictly prohibited.”

4 166. Annex 1 to the Rambler Regulations is entitled “List of Confidential Information”  
5 and comprises a list of what is deemed to be Rambler’s confidential information including:

6 10. Technologies used in the Company ... 15. Information contained in computer  
7 programs and databases related to the Company’s activities. This information,  
8 including information contained in computer programs and databases for PC,  
9 ORACLE, CRC, ADMIN, PILOT, Access, OASIS, ACS, as well as reports and  
10 queries received from these programs and databases. ... 18. Information about the  
11 created objects of copyright and related rights, their elements ... 21. Any special  
12 knowledge, including practical experience of employees, involved specialists,  
13 applied not only in production, but also in other areas of entrepreneurial activity:  
14 trade, marketing, management, having commercial value and the disclosure of  
15 which may result in damage to the Company.

16 167. Article XIV of the Rambler Regulations, entitled “Conflict of Interest,” states, in  
17 pertinent part: “In order to exclude the possibility of a conflict of interest, any employee of the  
18 Company who will be forced to assume obligations with respect to a competitor, supplier or client  
19 on terms that could damage his position in the Company should immediately notify his/her  
20 immediate boss or the HR department.”

21 168. In addition, the Rambler Regulations provide “[c]arrying out other professional  
22 activities by an employee shall not harm his work in the Company. Other professional activities  
23 should not compete with work in the Company or cause a conflict of interest.”

24 169. Rambler issued various iterations of the Rambler Regulations beginning as early as  
25 2000, as well as in 2005. Each of those versions published and distributed to Rambler employees  
26 contained provisions which were similar in scope, and similarly protective of Rambler’s rights, as  
27 those provisions contained in the September 1, 2008 Rambler Regulations.

1 **The Development of Open Source NGINX and Related Business Opportunities**

2 170. Sysoev spent years developing Open Source NGINX for Rambler while he was a  
3 Rambler employee as part of his official duties at Rambler, and with the assistance of Rambler  
4 infrastructure, personnel, resources, and Internet traffic. When the Disloyal Employees, with the  
5 assistance of Alexeev and Dounin, realized how valuable Open Source NGINX had become, they  
6 faithfully turned on Rambler and misappropriated the NGINX Enterprise for their own commercial  
7 gain and with the intent of selling it to a large U.S. technology company.

8 171. Sysoev is widely credited with developing Open Source NGINX. He developed Open  
9 Source NGINX during his 2000 through 2011 tenure as an employee of Rambler. Specifically,  
10 Sysoev wrote his first line of Open Source NGINX code on October 23, 2001 while employed at  
11 Rambler.

12 172. Sysoev started working on Open Source NGINX to solve problems with Rambler's  
13 utilization of the widely used open source web server known as Apache.

14 173. Apache was first released in 1995.

15 174. Webservers are an integral part of the Internet, and everyone from Fortune 50  
16 companies to startups and individuals utilize webservers to allow users to navigate their websites.

17 175. Web pages are comprised of HTML documents. The Internet works by allowing the  
18 visitor (or "web surfer") to request a document from a given web address, with domain name servers  
19 (i.e., a "DNS Server") and an Internet provider ("IP") system forwarding that request to the computer  
20 that hosts the requested web page. The computer that hosts the requested web page then "serves"  
21 the requested web page back to the visitor. To be able to serve different web pages to visitors, the  
22 "serving" computer requires a server program. That is where Apache and more recently Open Source  
23 NGINX come in.

24 176. Apache's open source web server software handles requests, analyzes them, and then  
25 delivers the requested web page (or HTML document) to the web surfer.

26 177. And since 2004, Open Source NGINX has done the same thing. NGINX now enjoys  
27 a larger market share than Apache.

1           178. While web server software like Apache and Open Source NGINX are provided on an  
2 open-source basis, the software is commercialized primarily by offering proprietary fee-based  
3 enhanced enterprise features, functionality and services relating to the web server software.

4           179. Companies use the web server software to enable efficient access to their websites,  
5 which of course have become increasingly more complex over time.

6           180. In the early 2000's, technical experts and businesses alike began to worry about the  
7 ability of the Internet and websites to accommodate exponentially increasing traffic.

8           181. The initial production version of Open Source NGINX was first released on the  
9 Internet in 2004 by Sysoev, without authorization from Rambler, after being made available to a  
10 small commercial software audience in Russia.

11           182. The Open Source NGINX web server was originally created as a scaling tool for  
12 Rambler's Internet-related properties and services.

13           183. After its open source release, Open Source NGINX was mostly used as a load  
14 balancer or reverse proxy in front of or on top of the Apache web server. However, as Open Source  
15 NGINX and the Internet evolved, websites began employing Open Source NGINX in lieu of Apache.

16           184. NGINX now comes in two categories: Open Source NGINX licensed under an open  
17 source Berkeley Software Distribution-style license ("BSD license"), and proprietary, non-open-  
18 source, fee-generating commercial products, made available only in executable form (i.e., not in  
19 source code form), including NGINX Plus and related commercial software products, which are  
20 licensed by defendants NGINX BVI, NGINX Software, Inc. and F5 to paying customers on a  
21 subscription basis and include fee-based support and additional revenue-generating enterprise  
22 features.

23           185. Numerous goods and services have been built off of Open Source NGINX, and the  
24 opportunities for commercializing proprietary extensions to Open Source NGINX that Sysoev wrote  
25 for Rambler are virtually infinite.

26           186. Following Sysoev's public release of Open Source NGINX in 2004, without  
27 authorization from Rambler, he spent the next seven years, during the time he was employed at  
28

1 Rambler (and some years also part-time at Rambler Telecom), working on further developing,  
2 testing, improving and releasing Open Source NGINX, all with the assistance of other Rambler  
3 engineers, using Rambler resources, infrastructure and Rambler Internet traffic, during regular  
4 Rambler business hours.

5 187. During that time, Sysoev received significant and ongoing technical assistance in this  
6 NGINX-focused endeavor to continuously test and improve Open Source NGINX from a number of  
7 senior Rambler computer/network department heads, software engineers and other technical staff,  
8 including, but certainly not limited to, his co-conspirators.

9 188. Following the 2004 public release of Open Source NGINX, the open source  
10 community began to quickly embrace the solution, and it became viable as a web server solution by  
11 2007.

12 189. The birth of the smart phone market led to a massive growth of mobile Internet users,  
13 which in turn highlighted the problem of optimizing network sockets to handle large numbers of  
14 clients simultaneously – the so-called “C10k problem.” At that moment, Open Source NGINX was  
15 poised to help programmers and system administrators solve this problem, as an alternative to the  
16 then market-leading Apache web server.

17 190. By 2010, Open Source NGINX already had six percent of the market share among all  
18 web servers.

19 191. Sysoev has maintained that he authored ninety-seven percent of Open Source NGINX  
20 as of 2011.

21 **Sysoev Developed Open Source NGINX For Rambler Using Rambler’s Resources**

22 192. One of Sysoev’s primary employment responsibilities as a Rambler employee was to  
23 develop Open Source NGINX as a key component of Rambler infrastructure.

24 193. In software development parlance, the term “commit” means when a software  
25 developer finalizes revisions to software code and saves them to the revision history of a body of  
26 software residing in a designated code repository, which functions as a version control tool, such as  
27 Mercurial or GitHub.



1           194. During the period from 2004 to mid-2011, all commits to Open Source NGINX were  
2 performed by Sysoev. The first commit made by someone other than Sysoev was done on August  
3 9, 2011, by Ruslan Ermilov (ru@nginx.com). Thus, at least until that date, *i.e.*, nearly his entire  
4 tenure as an employee of Rambler, Sysoev exclusively authored Open Source NGINX.

5           195. An analysis of Sysoev’s work during normal Rambler business hours demonstrates  
6 that his primary occupation was developing and testing Open Source NGINX on Rambler servers.  
7 Specifically, the time stamps of the Mercurial repository reveal that Sysoev spent nine years of his  
8 Rambler employment working primarily on Open Source NGINX and related development.

9           196. The open source software (OSS) code repositories (Mercurial and Github mirror)  
10 show that a significant number of modifications to Open Source NGINX were made by Sysoev  
11 during normal business hours (M-F 10:00-19:00). The repositories show 3,629 total changes from  
12 the start of January 1, 2004 through December 31, 2010. Narrowing the window to Monday-Friday,  
13 during the UTC time of 07:00-16:00 (+3:00 for Moscow Time), 2174 changes were committed, all  
14 by Sysoev. This shows that approximately 60% of the code commits were done by Sysoev during a  
15 standard business-hours workday window at Rambler.

16           197. Sysoev tested his changes, and then actually announced “Nginx Releases” once they  
17 were tested on the entirety of Rambler’s infrastructure.

18           198. Sysoev regularly and systematically used Rambler’s resources, including  
19 infrastructure, Internet traffic, money, and human resources to develop, test, and improve Open  
20 Source NGINX.

21           199. As Owen Garrett of NGINIX BVI and now F5 wrote: “NGINX was written  
22 specifically to address the performance limitations of Apache web servers. It was created in 2002  
23 by Igor Sysoev, a system administrator for a popular Russian portal site (Rambler.ru), as a scaling  
24 solution to help the site manage greater and greater volumes of traffic. It was open sourced in  
25 October 2004, on the 47th anniversary of the launch of Sputnik.”

26           200. In a February 22, 2006 email to his NGINX list service, Sysoev disclosed that he  
27 originally wrote Open Source NGINX to solve Rambler-related problems utilizing the open source  
28

1 Apache code, stating: “It was implement[ed], Nginx was planned not for mass-virtual hosting, but  
2 first of all for rambler.ru – what I did not like as an admin in Apache, is done differently in Nginx.”

3 201. By his own admissions, Sysoev’s development of Open Source NGINX was within  
4 the scope of his employment with Rambler. In early 2012, a few months after leaving Rambler,  
5 Sysoev admitted, this time in a media interview, that he had developed Open Source NGINX to solve  
6 Rambler-related problems:

7 I started the initial work in 2002, and in 2004 I opened NGINX to the public. Back  
8 then, I was trying to overcome certain barriers of scaling the web infrastructure of a  
9 large online media company I worked for.<sup>1</sup> In particular, the difficulties of handling  
10 many concurrent connections, reducing latency and offloading static content, SSL  
11 and persistent connections were my main interest. There weren’t any reliable  
12 production quality web server software to crack so-called C10K problem (handling  
13 of at least 10,000 of concurrent connections, outlined by Dan Kegel). So in a sense I  
14 decided to solve both practical and “academic” problems. I was very curious and  
15 excited to try it out and I’m really happy it turned to be a successful attempt and that  
16 NGINX is now used by the over 50,000,000 web sites on the Internet.

17 202. The slide deck presentation for potential venture funders that Sysoev and his co-  
18 conspirators on the Team created in March and April 2011, before the Disloyal Employees left  
19 Rambler with the NGINX Enterprise, contained an even more blunt admission that Open Source  
20 NGINX was specifically developed for the benefit of Rambler.

21 203. The slide deck, under the heading “history of development,” stated that Open Source  
22 NGINX was “crafted to handle 500 million page requests per day for a Russian search engine/portal”  
23 – an obvious reference to Rambler. *See* Exhibit A, at 7.

24 204. Dounin’s email correspondence with Sysoev regarding Open Source NGINX- related  
25 topics date from as early as 2005. For example, regarding Rambler mail, Dounin wrote “...I have  
26 good news – Nginx today worked as a por3 proxy for Rambler mail.”

27 \_\_\_\_\_  
28 <sup>1</sup> Sysoev’s reference to a large online media company is obviously his employer Rambler.

1           205. Regarding patches in Open Source NGINX, Dounin wrote to Sysoev: “Hello! I rolled  
2 out the patched Nginx....”

3           206. Regarding test loads of Open Source NGINX output, Dounin wrote: “But after  
4 receiving the finished patch, in 1-2 days we update Nginx in battle and another 1-2 days – we write  
5 and roll out the changes to send the information to the Runner” and “add a sample line to the end,  
6 then test the nginx configuration and send it to the HUP master if everything is fine. If necessary,  
7 all this also can be attached to mail.rambler.ru.”

8           207. These examples of emails are demonstrative of the fact that the Disloyal Employees  
9 and Dounin were actively working for Rambler, at Rambler’s expense, to develop Open Source  
10 NGINX in furtherance of their employment responsibilities at Rambler.

11           208. Sysoev regularly received enhanced compensation in the form of bonuses and  
12 outsized raises from Rambler for his work developing Open Source NGINX for Rambler beginning  
13 in 2004 until his separation from Rambler in December 2011.

14           209. Sysoev’s work developing Open Source NGINX was disclosed to Rambler as being  
15 only in connection with Open Source NGINX that the company utilized internally to solve its web  
16 traffic hosting capability issues. It was for this reason that Rambler did not prevent Sysoev from  
17 releasing additional iterations of Open Source NGINX under a BSD license after he released the first  
18 version without Rambler’s authorization in 2004 as the company was using it only as an internal  
19 tool. Moreover, the open source nature of Open Source NGINX did not contravene Rambler’s  
20 ownership rights to Open Source NGINX under Russian law as work made for hire.

21           210. Rambler’s management made a business decision to permit Sysoev to continue  
22 releasing Open Source NGINX under the free BSD-style license because such releases highlighted  
23 the technical achievements of Rambler and its employee Sysoev, which inured to Rambler’s benefit  
24 for attracting top software programmers. For example, on November 25, 2009, Konovalov and other  
25 members of Rambler’s management, including Uliana Antonova (General Counsel), Pavel Rogozhin  
26 (Chief Business Development Officer) and Maxim Azarov (Chief Product Officer), held a meeting  
27 to discuss whether Rambler should permit Sysoev to continue releasing new iterations of Open  
28

1 Source NGINX on an open source basis under a BSD license. Konovalov convinced his colleagues  
2 that it was in Rambler’s best interests to continue to allow Sysoev to release Open Source NGINX  
3 under the BSD license particularly since the ownership rights to the software belonged to Rambler  
4 under the Russian Civil Code governing works made for hire.

5 211. In other words, Rambler viewed and used Open Source NGINX as an internal tool to  
6 solve its technical issues and to highlight its technical prowess, but did not conceive of such software  
7 as being capable of being monetized for sale or license to third-parties.

8 212. The responsibility for developing software and other technology products at Rambler  
9 rested with Konovalov who misrepresented to Rambler that Open Source NGINX had no value even  
10 though he, Sysoev and their conspirators were clandestinely developing the NGINX Enterprise  
11 within the NOC department at Rambler, including the first proprietary commercial extension thereof,  
12 namely NGINX Plus.

13 213. Therefore, during Sysoev’s employment with Rambler, the company had been  
14 deceived into believing that Sysoev’s time was devoted simply to improving Open Source NGINX  
15 for Rambler’s internal use when in reality Sysoev, Konovalov and their conspirators were developing  
16 NGINX Plus and an entire business built around Open Source NGINX and NGINX Plus (i.e., the  
17 NGINX Enterprise) with the ultimate goal of misappropriating it and then selling it to a large U.S  
18 technology company. Indeed, unbeknownst to Rambler, the Team had decided to pursue their “open  
19 core” strategy of monetizing Open Source NGINX. As Konovalov stated in his 2019 GoTech  
20 interview: “We decided to explore the open core model. Open core model is when you take an open-  
21 source software and build something paid like commercial software on top. And this is what we  
22 have been doing since 2011.” *See* Exhibit B, at 7-8.

23 **The Team Agrees to Conspire to Steal the NGINX Enterprise from Rambler and to Sell it to a**  
24 **Third Party for Their Own Ill-Gotten Profit**

25 214. The Team and other Rambler employees conspired with one another to steal the  
26 valuable NGINX Enterprise and monetize it for themselves and at the exclusion of Rambler by  
27 selling it to a third-party. The Team, namely Sysoev, Konovalov, Alexeev, Dounin and Smirnov,

1 agreed that together they would start their own company in San Francisco, California to  
2 commercialize Open Source NGINX by commercializing NGINX Plus and other proprietary Open  
3 Source NGINX extensions, and then achieve their multimillion dollar “exit” or “payday” by selling  
4 the entire NGINX Enterprise to a large U.S. technology company.

5 215. The Rambler employees who conspired with the Team in furtherance of their  
6 common plan were Galperin (Director of Strategic Development), Popov (Deputy Chief Technology  
7 Officer), and eight Rambler software programmers – at least three of whom staggered their  
8 resignations from Rambler after assisting the Disloyal Employees with removing and destroying  
9 evidence of the conspiracy – and years later in late 2013 and 2015 joined an affiliate of NGINX BVI  
10 (NGINX LLC Russia) as employees. These Rambler programmer conspirators were Fedor Dikarev,  
11 Oleg Mamontov, Konstantin Kukushkin, Alexander Nikoforenko, Konstantin Romamenko, Anton  
12 Ermolaev, Alexander Postnikov and Sergey Chesnokov (together with Galperin and Popov, the  
13 “Rambler Employee Conspirators”).

14 216. The common plan involved surreptitiously developing the NGINX Enterprise while  
15 the Disloyal Employees were employed at Rambler and then misappropriating the NGINX  
16 Enterprise to newly formed entities outside of Russia (and off Rambler’s radar) where the Team  
17 would grow it using capital raised from outside venture capital firms for purposes of quickly selling  
18 it to a large U.S. technology company. No later than early 2011, or earlier, the Team identified F5  
19 as a possible purchaser of the built-out commercial NGINX Enterprise they envisioned.

20 217. The exit strategy (i.e., the sale to a large American technology company) was the  
21 object of the conspiracy and venture capital firms Runa Capital and E.Ventures joined in the common  
22 plan to achieve it. While the conspirators aimed to accomplish the object of their conspiracy within  
23 five years of the Disloyal Employees’ departure from Rambler with the misappropriated NGINX  
24 Enterprise, they achieved it in less than seven years when the Merger Agreement with F5 closed on  
25 May 8, 2019.

26 218. The conspiracy was successful because its conspirators were well-placed within  
27 Rambler to develop the NGINX Enterprise without anyone else at Rambler knowing and then  
28

1 concealing all evidence of their conduct once the Disloyal Employees left Rambler with the stolen  
2 NGINX Enterprise.

3 219. Konovalov, was Sysoev's boss at the end of their Rambler tenure, and the Rambler  
4 CTO with oversight and responsibility for all of the company's technical departments tasked with  
5 developing new products. Konovalov was the leader of the Team.

6 220. Konovalov reported to and was answerable only to the CEO of Rambler.  
7 Konovalov's key senior management position at Rambler enabled him to provide Sysoev beginning  
8 in 2008 with an ecosystem within Rambler that was free from oversight or accountability.

9 221. The insulated ecosystem was the NOC department where Konovalov surrounded  
10 Sysoev with the Disloyal Employees and the Rambler Employee Conspirators. For example, co-  
11 defendant Smirnoff was Sysoev's immediate supervisor and "Team Leader" in the NOC department,  
12 the Rambler department responsible for the design and development of a variety of operating system  
13 management and other software products. In turn, Smirnoff reported directly to Konovalov.  
14 Moreover, many of the Rambler Employee Conspirators were the NOC programmers who worked  
15 with Sysoev and were supervised by Smirnoff.

16 222. In sum, everyone working in and overseeing the NOC department participated in the  
17 conspiracy. As explained further below, even the NOC department's servers and information  
18 infrastructure were not integrated with the rest of Rambler. Konovalov was the conduit between the  
19 technical NOC employees in this programming department and Rambler's senior management.

20 223. The Disloyal Employees and Rambler Employee Conspirators were a tight-knit  
21 group, which allowed them to keep the Disloyal Employees' planned misappropriation of the  
22 NGINX Enterprise a secret while still utilizing Rambler's full array of resources and infrastructure  
23 to continue testing, developing and refining Open Source NGINX to ensure the financial success of  
24 their planned releases of NGINX Plus and other NGINX-related commercial improvements,  
25 enhancements and related products.

26 224. Konovalov drove the effort to split off from Rambler, steal the NGINX Enterprise,  
27 solicit Silicon Valley investors, and destroy evidence of the Team's conspiracy.

1           225. By the time Konovalov resigned from Rambler effective April 29, 2011, the Team  
2 was already underway to executing on its plan to covertly misappropriate the entire NGINX  
3 Enterprise so that it could ultimately be sold to a large U.S. technology company.

4           226. By the time Sysoev separated from Rambler in December 2011, the Team had already  
5 secretly formed NGINX BVI, filed the first trademark application for the “NGINX” trademark,  
6 solicited and obtained outside venture capital investment to fund the Team, and garnered its first  
7 customer (Netflix, Inc.).

8           227. As the CTO of Rambler, Konovalov enjoyed substantial autonomy and the ability to  
9 conceal information from Rambler about the work Sysoev was performing for Rambler, particularly  
10 the conception and development of what would become the centerpiece of the NGINX Enterprise –  
11 namely, NGINX Plus.

12           228. Konovalov was thus able to, and did, conceal, and suppress from Rambler’s senior  
13 management and board of directors the content and value of the code development Sysoev was  
14 creating using Rambler’s infrastructure, and at Rambler’s expense.

15           229. Open Source NGINX was not a secret. But the Disloyal Employees successfully hid  
16 from Rambler the fact that development of the NGINX Enterprise was the principal occupation of  
17 Sysoev at Rambler. Rambler thought Sysoev was focused on improving Open Source NGINX to  
18 continue running Rambler’s web-based services and releasing his latest iterations of the Open Source  
19 NGINX under the BSD license as a testament to his creativity and Rambler’s accomplishments. In  
20 reality, however, the Disloyal Employees concealed from Rambler the massive investment of time  
21 and resources that the Disloyal Employees were undertaking at Rambler’s expense in developing  
22 Open Source NGINX as the foundation for launching NGINX Plus and other commercial products,  
23 as well as on the development of NGINX Plus itself.

24           230. The Disloyal Employees realized that the growing popularity of Open Source  
25 NGINX, *i.e.*, the “open core” – the razor in the above- referenced razor/razor-blade analogy – was  
26 what would open the door to monetizing proprietary commercial extensions of the core, including  
27 NGINX Plus; hence, the more Rambler-financed effort that went into enhancing and maintaining  
28



1 Open Source NGINX, the more web site operators would become dependent on it, and that “sticky”  
2 dependency would drive demand for fee-based NGINX Plus and related support services.

3 231. Unlike typical technology startups, the resources that the Disloyal Employees could  
4 devote to the foundation of their enterprise, were virtually unlimited, because Rambler was  
5 unwittingly funding the development program. At the same time, the Disloyal Employees were  
6 collecting generous Rambler salaries and bonuses. Thus, there was only upside for the Disloyal  
7 Employees. In short, the situation was every entrepreneur’s dream come true.

8 232. Once Open Source NGINX was sufficiently popular, and once the conception and  
9 development of NGINX Plus and related enhancements had been sufficiently advanced, all of which  
10 was made possible only with the financial, personnel and infrastructure resources of Rambler, the  
11 time would be right to cut the cord with Rambler and spin out the NGINX Enterprise, solely for the  
12 Team’s own benefit.

13 233. Konovalov worked fast. He joined Rambler as CTO in March 2008 but by the  
14 summer of 2008, he had already recognized the value of Open Source NGINX and conceived of the  
15 NGINX Enterprise. Despite his senior management role and duties as CTO of Rambler, Konovalov  
16 abused his power and authority to lead the conspirators with laying plans to steal the NGINX  
17 Enterprise from Rambler.

18 234. The Team agreed to form a conspiracy pursuant to which they would continue to use  
19 Rambler’s resources to develop Open Source NGINX and NGINX Plus, and in turn, the NGINX  
20 Enterprise.

21 235. The Disloyal Employees agreed that they would defraud Rambler by concealing the  
22 true nature and value of Open Source NGINX, NGINX Plus, and the NGINX Enterprise that they  
23 were building at Rambler’s cost, but without Rambler’s knowledge.

24 236. The Disloyal Employees agreed that they would flagrantly violate their statutory and  
25 contractual obligations to Rambler and steal the NGINX Enterprise and sell it to a third party for  
26 their own ill-gotten gains.

1           237. The Team further agreed that they would conceal their unlawful activity from  
2 Rambler by concealing their work and, even, destroying evidence.

3           238. The Team agreed that they would secretly raise capital for the NGINX Enterprise,  
4 even while the Disloyal Employees were still employed by Rambler, to start a new business without  
5 Rambler's participation built on the software that the Team knew Rambler rightfully owned as works  
6 made for hire.

7           239. The Disloyal Employees, utilizing Konovalov and his lofty position as camouflage,  
8 agreed to and did block the flow of information to Rambler about the immensely valuable open  
9 source and proprietary NGINX projects and the Team's scheme to steal the NGINX Enterprise.

10           240. The Disloyal Employees agreed that they would exploit profitable business  
11 opportunities based upon Open Source NGINX, including the proprietary code and concepts  
12 incorporated in NGINX Plus and other commercial products. In Konovalov's own words in 2019:  
13 "So but anyway, by 2011, like six or eight percent all internet use NGINX, and it was -- it became  
14 crystal clear that there were some business opportunities." *See* Exh. B, at 7:11-14.

15           241. The Team agreed to launch the business in San Francisco to enhance their capital  
16 raising potential and ultimate sale prospects, all to the exclusion of Rambler, the rightful owner of  
17 the NGINX Enterprise.

18           242. The Team agreed they would conceal from Rambler the causes of action for which  
19 the Team was and would become liable to Rambler as a result of their unlawful conduct.

20           243. With their conspiracy formed, the Team set about establishing their new business  
21 around Open Source NGINX, NGINX Plus and other proprietary NGINX extensions and  
22 derivations, as well as various valuable goodwill and business opportunities comprising the NGINX  
23 Enterprise.

24           244. Meanwhile, as further cover to the Team's secret conspiracy, Sysoev continued to  
25 portray himself to the world as a savant coder, when in reality he was an unethical businessman  
26 scheming to make his fortune on business opportunities he knew Rambler resourced and owned.

1 **The Team Launches the NGINX Enterprise and Runa Capital and E. Ventures**

2 **Join the Conspiracy**

3 245. The Team received substantial assistance in carrying out their scheme from Rambler  
4 employee Galperin and former Rambler employee Korotkov.

5 246. Galperin was Rambler's Director of Strategic Development and was friends with  
6 Sysoev and Konovalov. The Disloyal Employees brought Galperin into their confidences and into  
7 the conspiracy on or about September 2010. The Disloyal Employees disclosed to Galperin that  
8 Sysoev was clandestinely developing NGINX Plus at Rambler and that the Team was plotting to  
9 misappropriate the fledgling NGINX Enterprise for ultimate sale to a large American technology  
10 company. In order to do so, the Disloyal Employees informed Galperin that they needed to quickly  
11 grow the misappropriated NGINX Enterprise in order to position it for a sale in the near future.

12 247. Galperin offered to solicit Russian and American venture capital firms on behalf of  
13 the Team and in furtherance of their common plan. Galperin solicited Runa Capital, a venture capital  
14 firm with offices in Moscow and Palo Alto, in the Fall of 2010 and informed its principals Sergui  
15 Belousov and Dmitry Chikhachev of the Team's conspiracy to misappropriate the NGINX  
16 Enterprise, grow it and then quickly sell it to a large American technology company within five  
17 years.

18 248. Belousov and Chikhachev understood that the prospect of investing and then selling  
19 the purloined NGINX Enterprise would be wildly lucrative for Runa Capital. Belousov and  
20 Chikhachev agreed to have Runa Capital join the conspiracy. That is, Belousov and Chikhachev  
21 agreed to have Runa Capital not only finance the Team's entities that they were planning to form  
22 outside of Russia in the near term, but Runa Capital also agreed to assist the Team in its preparatory  
23 steps to surreptitiously misappropriate the NGINX Enterprise without triggering Rambler's  
24 suspicion.

25 249. In order to ensure that Runa Capital was at least one of the venture capital firms  
26 partnering with the Team, Belousov and Chikhachev hired Galperin in February 2011 to join Runa  
27 Capital as an employee and assigned him the responsibility of being the liaison between Runa Capital

1 and the Team. From February 2011 onward, Runa Capital assisted and advised the Team in carrying  
2 out their conspiracy.

3 250. In addition to Galperin, the Team also received assistance from the whistleblower  
4 Korotkov.

5 251. Rambler hired Korotkov as its CIO on August 23, 2007.

6 252. Korotkov was terminated by Rambler on June 29, 2009 as part of a staff reduction.

7 253. After his termination from Rambler, Korotkov, who was a friend of Sysoev, joined  
8 the Team's conspiracy. Korotkov served as a conduit throughout 2010 and 2011 between the Team  
9 and various outside Russian and American venture capital firms looking to fund the Team and their  
10 misappropriated NGINX Enterprise. During this time, the Disloyal Employees were still employed  
11 at Rambler, but were actively executing their scheme to launch a new business outside Rambler that  
12 would be built on the shoulders of the NGINX Enterprise developed at Rambler and which they  
13 intended to misappropriate and ultimately sell to a third-party U.S. technology company.

14 254. By early 2010, unbeknownst to Rambler, the efforts by Korotkov and the Team to steal  
15 the NGINX Enterprise from Rambler and monetize it for themselves were well underway.

16 255. On February 20, 2010, nearly two years before Sysoev exited Rambler in December  
17 2011, Korotkov first registered the Internet domain name NGINXPLUS.com.

18 256. Upon registering the NGINXPLUS.com domain name, Korotkov promptly began  
19 populating a Web site at the Internet address which promoted what he referred to as "Nginx+" (i.e.,  
20 the Korotkov Site).

21 257. Plaintiff Lynwood only discovered the NGINXPLUS.com domain and the Korotkov  
22 Site during its investigation in 2020 after the whistleblower Korotkov came forward to implicate the  
23 Disloyal Employees in 2019.

24 258. Lynwood and Rambler only discovered the Disloyal Employees' actions in  
25 misappropriating Open Source NGINX, NGINX Plus and the NGINX Enterprise while in the  
26 employment of Rambler after Lynwood and Rambler in 2019 undertook and completed a forensic  
27

1 investigation after Korotkov’s revelations, which resulted in the recovery of electronic evidence that  
2 had been deleted and wiped by the Disloyal Employees before they left Rambler.

3 259. The documents and correspondence identified below evidencing the Team’s scheme  
4 to misappropriate Rambler’s NGINX Enterprise with the knowledge and assistance of Runa Capital  
5 and E. Ventures comprise a portion of the Disloyal Employees’ communications on Rambler  
6 company email that were recovered in late 2019 by Lynwood and Rambler in the course of their  
7 investigation.

8 260. When Korotkov blew the whistle on the Disloyal Employees, he failed to mention  
9 that he, too, had been directly involved in the scheme before being snubbed by the Team.

10 261. While the Korotkov Site is now inaccessible, one page of that site which Korotkov  
11 submitted to the United States Patent and Trademark Office in support of a U.S. trademark  
12 application for the NGINX trademark that he filed on March 16, 2011 prominently displayed the  
13 term “nginx+” and includes a category called “Pricing.”

14 262. Further, the Korotkov Site also reveals, in bold letters, that as of March 16, 2011,  
15 there were already 12,547 “ACTIVE APPLICATIONS” of “nginx+” “DEPLOYED”, that were  
16 “[r]unning on the Nginx Hosted Platform.”

17 263. Korotkov’s application to register the trademark NGINX provides additional  
18 evidence that by early 2010, Korotkov and the Team had already begun to execute their plan to steal  
19 the NGINX Enterprise, including NGINX Plus.

20 264. Korotkov claimed in his NGINX trademark filing that the first use of the NGINX  
21 mark by his closely held company Infosens Inc., the applicant, in connection with the goods and  
22 services he described therein was February 1, 2010, and that the first use in commerce of same was  
23 March 1, 2011.

24 265. Acting on behalf of the Team, in his application to register the NGINX trademark  
25 (which he eventually abandoned), in addition to identifications of computer software in Class 9,  
26 Korotkov also included an identification of services in Class 42. That identification of services was  
27 as follows: “Computer services, namely, providing virtual and non-virtual application servers, web  
28

1 servers, file servers, co-location servers, load balancing servers, redundancy servers, media servers  
2 and database servers of variable capacity to third-party computing and data storage facilities;  
3 Platform as a service (PAAS) featuring computer software platforms for web applications, web  
4 server applications, web server frameworks, cloud computing; Software as a service (SAAS) services  
5 featuring software in the field of web applications, web server applications, web server frameworks,  
6 cloud computing.”

7 266. Korotkov’s identifications of goods and services and the information contained in the  
8 Korotkov Site go well beyond the open source model for Open Source NGINX that the Disloyal  
9 Employees were using as a ploy to divert Rambler’s attention away from the true value of the NGINX  
10 Enterprise.

11 267. Meanwhile, around the time of Korotkov’s February 2010 registration of the  
12 NGINXPLUS.com domain and the February 1, 2010 date of first use of the NGINX trademark  
13 Korotkov claimed in his NGINX trademark application, he, Alexeev and Konovalov, each became  
14 active in surreptitiously communicating with various third-parties to potentially fund the NGINX  
15 Enterprise.

16 268. In June 2010, for example, Korotkov, whose employment with Rambler, had been  
17 terminated approximately one year earlier, solicited investors Mathias Schilling and Thomas  
18 Gieselmann, partners of BV Capital based in New York, New York. BV Capital changed its name  
19 to E.Ventures in 2012.

20 269. In a joint email to Schilling dated June 6, 2010, Sysoev and Korotkov provided the  
21 following description of the Team and its intention to monetize the NGINX Enterprise:

22 We have worked out a comprehensive plan how to take NGINX to the next level:  
23 It basically involves not only commercializing some of the NGINX advanced  
24 features, but also building more comprehensive infrastructure platform with several  
25 network layers around NGINX. (As well as CDN and Private Cloud application  
26 which Igor is really adamant about). Eucalyptus.com would be a good and  
27 successful example.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

...

The NGINX team currently consists of a group of founders and developers with a passion to grow NGINX with adjacent technologies:

- Alex Korotkoff
- Igor Sysoev (inventor)
- Kurk McKusick (BSD UNIX founder and guru)

With a group of talented developers:

- Igor Golovko (works for OpenTable.com startup in SF)
- Leo Golubev (contracted for a long time for Hewlett Packard and CISCO in network dev.)
- Vladimir Venediktov (worked for many years for server dev. At UBS/Zurich, and now works for PIMCO)
- Andrei Kurzhonkov – a master of Erlang, Macros dev. and a network dev. pro

270. The June 6, 2010 joint email from Sysoev and Korotkov was revelatory of the scope of the Team’s scheme and the enterprise possibilities and value that the Team was concealing from Rambler:

In short, Igor has actually been contacted by BV Capital in the past, but he was reluctant to pursue the development path for NGINX which was offered – basically just trying to commercialize it with support contracts/subscriptions. While this can be done at the initial phase, this doesn’t reveal the *full potential of NGINX* – Igor and me have a *much broader vision for NGINX* as part of a Network Infrastructure stack for Real-Time Web and Wireless Acceleration of web content. (emphasis added).

271. Korotkov and Sysoev’s emphasis in their joint email on “NGINX as part of a Network Infrastructure stack ...” was consistent with Korotkov’s later May 27, 2011 registration of the Internet domain name “NGINXSTACK.com” – one of at least twelve domain name registrations that Korotkov obtained on behalf of the Team and which included the term “NGINX.”





1 NGINX Plus and the NGINX Enterprise; so a sale to a third-party in approximately five years was  
2 the Team's goal and appeared feasible to the Team.

3 278. For example, Konovalov emailed Sysoev on March 30, 2011 a forecast of the Team's  
4 exit strategy in which Sysoev, Alexeev and Konovalov stood to earn \$30 million in profits after a  
5 sale to a third-party of the NGINX Enterprise at \$100 million. Konovalov's forecast modeled two  
6 rounds of venture capital investment before the exit strategy was completed with a sale to a third-  
7 party. This email and accompanying excel spreadsheet were recovered as part of Rambler and  
8 Lynwood's internal investigation in 2019 that required the restoration of deleted emails and other  
9 data on the Yam Server.

10 279. The Team knew that the venture capital firms they were soliciting would be eager to  
11 invest in an enterprise that was already developed and that had a short exit plan (i.e., the sale to a  
12 third-party technology company in approximately five years).

13 280. By way of another example, the Team's slide deck presentation used with potential  
14 venture capital funders explicitly identified F5 as a potential acquirer that the Team and its venture  
15 capital partners intended on targeting as part of their exit strategy. *See* Exhibit A at 19. In this slide  
16 deck presentation made to potential investors in 2011 *before the Disloyal Employees left Rambler*,  
17 Sysoev, Konovalov, Alexeev and Dounin referred to themselves as "The Team" as Plaintiff does in  
18 this Amended Complaint with the addition of Smirnoff.

19 281. The aforementioned slide deck presentation to attract potential venture funders that  
20 Alexeev, together with Sysoev and Konovalov, created in March and April 2011, before the Disloyal  
21 Employees left Rambler with the NGINX Enterprise, emphasized what would become NGINX Plus  
22 as a primary driver of revenue for the purloined NGINX Enterprise. Like all the other  
23 communications identified herein, these slide presentations were deleted by the Disloyal Employees  
24 but forensically recovered from the Yam Server by Lynwood and Rambler in late 2019.

25 282. The Team's slide presentation, under the heading Business Model, explicitly  
26 referenced, in addition to fees from technical support, "new infrastructure products based on nginx"  
27 including "distributed storage", "high performance content filtering and manipulation", and "media  
28

1 server functionality.” Another page of the slides, referring to “commercial products”, referenced  
2 “paid services and products” and “new paid features (modules, custom features)”

3 283. The slides further pointed to Open Source NGINX as the key driver of demand for  
4 proprietary commercial products designed to enhance its utility, such as NGINX Plus. For example,  
5 one slide stated: “open source user community is key factor” and “community actively promotes  
6 nginx by word of mouth and makes the brand highly valuable.”

7 284. That is, the Team acknowledged that the underlying value of the NGINX Enterprise  
8 was the installed user base, notoriety and goodwill that had been generated over the years by Open  
9 Source NGINX – a fundamental asset that Rambler had funded on its own since the day that Sysoev  
10 began working at the company.

11 285. The Team’s March 2011 pitches to potential investors in Moscow and New York City  
12 regarding the revenue-generation capability of proprietary extensions to Open Source NGINX in the  
13 form that would come to be marketed under the NGINX Plus rubric were effective. By April 2011,  
14 the Team signed a funding term sheet with United States-based venture capital firms Greycroft  
15 Partners II L.P.(“Greycroft”), BV Capital and affiliates (“BV Capital”, now E. Ventures) and Runa  
16 Capital.

17 286. Defendants Runa Capital and BV Capital (now E. Ventures) took the lead in advising  
18 the Team on how to navigate through the thorny issues surrounding the Disloyal Employees’  
19 contractual and fiduciary duties to their employer Rambler and the core issue of Rambler’s ownership  
20 rights to Open Source NGINX, NGINX Plus, and the NGINX Enterprise.

21 287. Indeed, Runa Capital’s leadership team of Belousov, Chikhachev and Galperin and  
22 BV Capital’s team of Gieselmann and Schilling became involved in the granular details of the  
23 Team’s plans to misappropriate the NGINX Enterprise from Rambler and launch it under the banner  
24 of a new company formed by the Team and funded by its capital partners – Runa Capital and E.  
25 Ventures, which then become shareholders of the Team’s newly formed entity. For Runa Capital  
26 and BV Capital, the initial investment term sheet represented the first step in positioning Rambler’s  
27

1 NGINX Enterprise for an acquisition by an established American (preferably Silicon Valley)  
2 company – an objective the Team shared at the outset of their conspiracy.

3 288. In furtherance of the Team’s, Runa Capital’s and BV Capital’s interest in closing the  
4 definitive funding transaction, Runa Capital’s Chikhachev introduced Konovalov, Sysoev and  
5 Alexeev to Leonard Grayver at the Torrance, CA law firm of Greenberg, Whitcombe & Takeuchi,  
6 LLP on April 14, 2011 to handle the legal issues surrounding the formation of the new entities,  
7 funding documents and related due diligence issues.

8 289. The Team’s Alexeev responded to Grayver on the same day and, copying Runa  
9 Capital’s Chikhachev and Galperin, as well as Sysoev and Konovalov, stated, among other things:

10 In brief, we need the following:

- 11 1. Incorporation in Delaware, U.S. (all standard procedure), including help with  
12 office/postal contacts – Nginx, Inc.
- 13 2. Registration of the trademark (Nginx)
- 14 3. Additional legal opinion on some essential matters related to former employment  
15 and non-conflict with Nginx, Inc.
- 16 4. Legal support for investment round (issuing/selling securities to Greycroft)
- 17 5. Help with amending standard incorporation papers with the bylaws in accordance  
18 with investment/termsheet
- 19 6. Interaction with the Russian attorneys
- 20 7. Possibly also legal advice on a few matters related to work permits/immigration  
21 questions (optional)

22 Overall, we don’t have anything now (no company, no IP anywhere, no bank  
23 account, no office etc.). We need to establish a company in the U.S. and register IP  
24 (trademark, just this – nothing else) in the U.S./Internationally for the first time.  
25 We’re not going to register any IP in Russia (and the software has been open  
26 source/freeware/BSD license since the day one). Next we’ll be establishing a  
27 Russian legal entity that won’t be a subsidiary or a branch, just a separate company

1 that will be doing services (software development) for the U.S. one, again without  
2 any transfer of IP, just implementation works in full accordance with the  
3 specifications provided by the “U.S. company.”

4 290. Konovalov, then still Rambler’s CTO, was at the forefront of negotiating and  
5 finalizing the Term Sheet for Series A Preferred Stock Financing of the future NGINX entity with  
6 Runa Capital, BV Capital and Greycroft to raise a total of \$3 million in Series A funds (the “Term  
7 Sheet”).

8 291. In March of 2011, Kirill Sheynkman, Venture Partner at Greycroft, began  
9 transmitting drafts of the Term Sheet to Konovalov. A March 31, 2011 draft of the Term Sheet set  
10 the pre-money valuation of the NGINX Enterprise at \$5 million.

11 292. Rambler’s ownership rights to Open Source NGINX, NGINX Plus and the NGINX  
12 Enterprise loomed over the Term Sheet negotiations as the investors were aware that the foregoing  
13 constituted Rambler property rights.

14 293. Nevertheless, the Term Sheet was executed on or about April 6, 2011.

15 294. The investors’ concerns over Rambler’s ownership rights to Open Source NGINX,  
16 NGINX Plus and the NGINX Enterprise persisted and both the Team and Runa Capital, BV Capital  
17 and Greycroft continued scheming to find a workaround to Russia’s black-letter law concerning  
18 employer “work made for hire.”

19 295. Indeed, on April 15, 2011, Grayver, communicated to the Team two fundamental  
20 legal concerns on behalf of the investors following the execution of the Term Sheet:

21 The investors are particularly concerned about: 1. Your obligations to your  
22 current/former employers. I said that we would be prepared to submit a legal opinion  
23 from Russian counsel. For your information, we use our Russian affiliate – Salomons  
24 Partners (www.salomons.ru) for such tasks. 2. The issue with the open source. The  
25 investors want the company to make a representation and warranty that the open  
26 source applications in the company’s software won’t present any problems...

1           296. Grayver’s email was not surprising to the Team as they were already aware of their  
2 obligations to Rambler and they had previously sought advice from another potential investor, Leon  
3 Zilber, in responding to the Series A investors’ demand for some assurances that Rambler would not  
4 assert its rights to the NGINX Enterprise. Specifically, on April 6, 2011, Konovalov wrote Zilber as  
5 follows:

6           Leon, for your consideration: attached is the termsheet we signed with Greycroft. I  
7 think it’s pretty usual for you but would like to mention one important point. If you  
8 look at “Conditions to Close” section, page 4, you will find a paragraph GC [i.e.,  
9 Greycroft] worries more about and they need an official document regarding this  
10 issue: 3. A legal opinion of Company counsel, satisfactory to the ... It’s about our  
11 current employer, Rambler. *They want to be sure that Rambler will claim no rights*  
12 *for nginx and derived products.* [Emphasis added].

13           297. The Term Sheet section to which Konovalov referred in his email provided in Section  
14 3 under Conditions to Closing, as follows: “A legal opinion of the Company counsel, satisfactory to  
15 the Investors, shall be delivered to the Investors stating that the Founders’ activities with the  
16 Company do not and will not conflict with any agreement, commitment or other encumbrance placed  
17 on them by their current or former employer.”

18           298. Like the rest of documents identified above, Konovalov’s email of April 6, 2011 along  
19 with the Term Sheet, were recovered from Konovalov’s deleted Rambler emails from the Yam server  
20 by Lynwood and Rambler in late 2019 and unquestionably demonstrate that the Team and the Series  
21 A investors knew of Rambler’s ownership rights to Open Source NGINX, NGINX Plus and the  
22 NGINX Enterprise.

23           299. The Series A investors’ concern in closing on the Series A financing without  
24 assurances or efforts made by the Team to minimize Rambler’s future intervention to protect its  
25 ownership rights loomed large. This concern contributed to the Team’s coverup at Rambler that  
26 Konovalov directed so as to minimize the likelihood of Rambler discovering that the Team had  
27 misappropriated the NGINX Enterprise.

1           300. On May 4, 2011, the Team formed NGINX Software, Inc. The Team then formed  
2 NGINX BVI on July 6, 2011 and NGINX DE in August 2011.

3           301. As of May 4, 2011, NGINX Software, Inc. established its initial headquarters at 600  
4 Montgomery Street, 43rd Floor, San Francisco, California 94111.

5           302. That same day, May 4, 2011, NGINX Software, Inc. filed an application to register  
6 the NGINX trademark on a use basis, pursuant to 15 U.S.C. § 1051(a), in the United States Patent  
7 and Trademark Office (the “USPTO”), which was assigned U.S. Application Number 85/312,802.

8           303. On May 5, 2011, NGINX Software, Inc. filed an application to register the NGINX  
9 (Stylized) trademark on a use basis, pursuant to 15 U.S.C. § 1051(a), in the USPTO, which was  
10 assigned U.S. Application Number 85/312,806.

11           304. Sysoev duplicitously remained an employee of Rambler accepting his salary and  
12 benefits while he actively stole the NGINX Enterprise from Rambler.

13           305. On July 18, 2011, Sysoev announced to his list service recipients that he was going  
14 to “establish nginx as a company to fully dedicate [himself] to the [nginx] project” – a reference to  
15 Open Source NGINX and in keeping with the misrepresentations he made to Rambler’s management  
16 when he left the company (i.e., that he was simply forming a company that would provide  
17 consultancy and support services to companies using Open Source NGINX). Sysoev made no  
18 reference to NGINX Plus, the NGINX Enterprise or any of the steps that the Team was taking outside  
19 of Russia to form new entities, pursue customers and raise capital. Despite Sysoev’s July 18, 2011  
20 announcement, he stayed on as a part-time employee of Rambler until December 2011.

21           306. While the Team was busy laying the groundwork for misappropriating the NGINX  
22 Enterprise from Rambler and concealing their actions, Greycroft pulled out of the Series A financing  
23 shortly before it was scheduled to close in October 2011.

24           307. Upon information and belief, Greycroft pulled out of the closing because its concerns  
25 over Rambler’s ownership of Open Source NGINX, NGINX Plus and, more generally, the NGINX  
26 Enterprise remained unsatisfactorily addressed.



1           308. In contrast, Runa Capital and BV Capital went forward and closed on the Series A  
2 financing on or about October 23, 2011 after conducting their own due diligence, with full knowledge  
3 that Rambler was the legal owner of the entire NGINX Enterprise and assuming the risk that one day  
4 there would be a dispute over the ownership of the NGINX Enterprise.

5           309. To be clear, both Runa Capital and BV Capital knew that Rambler was the owner of  
6 the NGINX Enterprise under Russian law. The Team was unable to procure any agreement or other  
7 legal document evidencing Rambler's knowing waiver of its ownership rights to Open Source  
8 NGINX, NGINX Plus and the NGINX Enterprise. To the contrary, under applicable Russian law  
9 Rambler was the owner of same as explained in greater detail below.

10           310. Runa Capital did not need to perform its own due diligence to know that Rambler was  
11 the owner of the NGINX Enterprise and that Rambler was unaware that this enterprise was being  
12 misappropriated by the Team. Runa Capital knew of the particulars of the conspiracy since  
13 September 2010 when Galperin solicited Runa Capital on behalf of the Disloyal Employees and  
14 before Galperin joined Runa Capital explicitly to cement the relationship between the Team and  
15 Runa Capital.

16           311. The so-called due diligence performed by Runa Capital, BV Capital and Greycroft  
17 were defensive in nature to ascertain if anything could be done to mitigate the risk of Rambler later  
18 discovering and filing suit over the misappropriation of the NGINX Enterprise. Upon information  
19 and belief, Greycroft determined that the risk was too great and backed out of the Series A funding.  
20 Runa Capital and BV Capital went forward and agreed to fund the Team that had purloined the  
21 NGINX Enterprise from Rambler.

22           312. In sum, while Sysoev and Smirnoff were still employed at Rambler, the Team had  
23 incorporated its company, opened a San Francisco office, closed its first round of venture capital,  
24 and signed up its first customer (Netflix).

25 **The Disloyal Employees Misrepresented Their Intentions to Rambler When They Separated**

26           313. While Konovalov left Rambler on April 29, 2011, Sysoev did not separate from  
27 Rambler until December 2011 and Smirnoff did not resign from Rambler until November 2012.

1           314. Notably, the Disloyal Employees misrepresented to Rambler the reasons for their  
2 separation from the company and their future intentions.

3           315. In or about late April 2011, Konovalov and Sysoev separately met in-person with  
4 Rambler's Human Resources Director Julia Shulga concerning their resignations from Rambler. As  
5 part of his exit interview process, Konovalov informed Shulga that he and Sysoev were going into  
6 business together and forming a new company that would provide support services to the existing  
7 Open Source NGINX for third-parties. Konovalov characterized their intentions as purely an open  
8 source project that was not a profitable enterprise based on commercial add-on products.

9           316. In Sysoev's separate meetings with Shulga and Smirnoff (his direct superior), Sysoev  
10 agreed to Rambler's request to remain employed until the end of 2011 and he reaffirmed that his  
11 future endeavors with Konovalov would not compete with Rambler and that they were exclusively  
12 related to Open Source NGINX.

13           317. Neither Konovalov nor Sysoev disclosed that the Disloyal Employees had developed  
14 NGINX Plus and the NGINX Enterprise at Rambler. Nor did Konovalov or Sysoev disclose that the  
15 Team already was pursuing customers for NGINX Plus, forming entities outside of Russia that would  
16 gain control of the purloined NGINX Enterprise and that the Team was actively raising capital in  
17 furtherance of their conspiracy to grow and then sell the misappropriated NGINX Enterprise.

18           318. Rambler's management relied on Konovalov and Sysoev's misrepresentations  
19 because no one at Rambler besides the Disloyal and Rambler Employee Conspirators were aware  
20 that NGINX Enterprise was conceived and developed within the NOC department while the Disloyal  
21 Employees were employed at Rambler.

22           319. Moreover, Rambler only utilized Open Source NGINX as an internal tool to solve the  
23 company's problems in hosting the large volume of web traffic in Russia and the CIS territories.  
24 Rambler never undertook efforts to monetize or commercialize Open Source NGINX based on  
25 Konovalov's representations to the company that Open Source NGINX had no value. As Rambler's  
26 CTO, Konovalov was responsible for the development of Rambler's technological products  
27 (including software) and he was the officer responsible for advising the other senior management  
28

1 and the board of directors about corporate opportunities arising from concepts and projects developed  
2 at Rambler by its employees.

3 320. Between 2009 – 2011, numerous Rambler officers asked Konovalov whether Open  
4 Source NGINX had any commercial value for the company. Konovalov consistently informed the  
5 Rambler board of directors, CEO (Nikolai Molibog), Chief Product Officer (Maxim Azarov), Andrey  
6 Terekhov (Chief Financial Officer), Pavel Rogozhin (Director of Development and Distribution),  
7 Sergei Khrusov (Commercial Director) and General Counsel (Ulyana Antonova) that Open Source  
8 NGINX software had no value beyond its internal utility to Rambler to resolve unique technical  
9 issues associated with Rambler’s web hosting and internet streaming services.

10 321. For years leading up to his departure from Rambler, Konovalov had been listing Open  
11 Source NGINX on Rambler’s books and records as virtually worthless. In preparation for Rambler’s  
12 internal financials in 2010 and 2011, Konovalov provided a “no value” designation to Open Source  
13 NGINX.

14 322. In fact, Konovalov repeatedly stated to the Rambler management identified above  
15 over the approximate two and one-half years period (2009-2011) that Open Source NGINX’s only  
16 value to Rambler beyond its internal utility was Sysoev’s successive releases of updated Open Source  
17 NGINX iterations under a BSD-style license because it publicized the talent of Rambler’s  
18 programmers, which constituted an effective marketing and recruitment tool to attract top talent to  
19 the company. In other words, Konovalov misrepresented to Rambler that Open Source NGINX had  
20 no commercial value and could not be monetized.

21 323. During their separate exit interviews, Sysoev and Konovalov fraudulently concealed  
22 from Rambler that they were contemplating the prospect of providing proprietary products such as  
23 NGINX Plus and add-on services to Open Source NGINX in the future. In an attempt to avoid  
24 triggering suspicion at Rambler, Sysoev and Konovalov couched their statements as aspirational and  
25 deeply prospective in nature. Sysoev and Konovalov did so because they were cognizant of the fact  
26 that all of the proprietary information concerning the NGINX Enterprise belonged to Rambler.

1           324. As a result of the foregoing misrepresentations and Rambler’s belief that no NGINX  
2 Enterprise existed or was even possible, Rambler’s CEO (Nikolai Molibog) did not object to  
3 Konovalov and Sysoev earning an income off of Open Source NGINX as part of their stated  
4 consultancy and support work in servicing future customers utilizing Open Source NGINX. Neither  
5 Konovalov nor Sysoev asked Rambler to waive its ownership rights in Open Source NGINX either  
6 during their exit interviews or at any time thereafter. Nor did Sysoev or (or any of the Disloyal  
7 Employees) ever notify or claim that Sysoev was the owner of the proprietary rights to Open Source  
8 NGINX itself. The Team’s silence on this point is in keeping with Sysoev’s numerous public  
9 statements in which he merely claimed that he wrote, and was the author of, Open Source NGINX  
10 (as per the author-ownership dichotomy provided for under Russian law).

11           325. In reality, the Disloyal Employees were already executing their scheme to lift the  
12 entire NGINX Enterprise away from Rambler and transfer it to their newly formed NGINX BVI  
13 entity. The Disloyal Employees never disclosed to Rambler that they misappropriated the proprietary  
14 software code that would be publicly released as “NGINX Plus” only twenty-one months later by  
15 NGINX BVI or that the Team had already filed a trademark application for the “NGINX trademark”  
16 in furtherance of their plan to misappropriate the entire NGINX Enterprise from Rambler for their  
17 own benefit. Nor did the Disloyal Employees disclose that Korotkov had already registered the  
18 domain name NGINXPLUS.com and populated a Web site at that address that promoted Nginx+.

19           326. Konovalov, Sysoev and Smirnoff all owed contractual and statutory fiduciary duties  
20 under Russian law to disclose their intentions and actions with respect to the Team’s conspiracy to  
21 misappropriate and then sell the NGINX Enterprise to a large U.S. technology company. None of  
22 them disclosed their wrongful conduct to Rambler.

23           327. When Smirnoff separated from Rambler in November 2012, he participated in an exit  
24 interview with Popov and Julia Shulga. During his exit interview, Smirnoff simply informed  
25 Rambler that he was planning on joining Konovalov and Sysoev at their new company NGINX LLC  
26 in Moscow performing consultancy and support services for Open Source NGINX. At this time,  
27 NGINX LLC maintained approximately five employees and the Team had not formally released  
28

1 NGINX Plus. Nor was Rambler aware of the fact that the Team had formed NGINX entities outside  
2 of Russia (i.e., NGINX BVI and NGINX Software, Inc.) or that they had stolen the NGINX  
3 Enterprise.

4 328. As explained below, Smirnoff remained behind at Rambler for an additional year after  
5 Konovalov and Sysoev separated from Rambler to remove and destroy all evidence of the  
6 conspirators' actions and to ensure that Rambler never discovered that they misappropriated the  
7 NGINX Enterprise. During his exit interview, Smirnoff never disclosed his participation in the  
8 conspiracy either with respect to misappropriating the NGINX Enterprise or his destruction of at  
9 least seven servers evidencing the Team's wrongful conduct.

#### 10 **The Team Concealed its Misconduct from Rambler Including by Destroying Evidence**

11 329. In addition to concealing from Rambler that the Disloyal Employees had actively  
12 been preparing to steal the NGINX Enterprise from Rambler, Konovalov also made affirmative  
13 misrepresentations to Rambler during his tenure as CTO with respect to Open Source NGINX and  
14 the Disloyal Employees more generally. As the CTO of Rambler, Konovalov was responsible for  
15 generating regular internal reviews of Rambler's pipeline of technological products for the CEO and  
16 Board.

17 330. Even though Konovalov and the rest of the Disloyal Employees were fixated on  
18 misappropriating the NGINX Enterprise, which they viewed as a highly valuable business,  
19 Konovalov uniformly gave the Open Source NGINX software a rating of "1" on a scale of "1-5"  
20 with "1" being deemed "worthless" or "no value." Konovalov's designations were designed to and  
21 did lull Rambler into complacency with respect to the value of Open Source NGINX and to maintain  
22 the status quo at Rambler whereby the Disloyal Employees continued to operate in their own  
23 ecosystem, protected by Konovalov from any serious oversight by Rambler's senior management or  
24 board of directors.

25 331. By way of example, on April 5, 2011, when Konovalov was negotiating the investor  
26 Term Sheet for the Team and in the process of resigning from Rambler, the Chief Accountant Elena  
27 Sergeeva asked Konovalov to provide a report on Rambler's "Innovations, Patterns & Protections of  
28

1 IP Rights.” As part of this request, the accountant requested that Konovalov fill out the form once  
2 again identifying what software programs belonged to Rambler, and rate them in importance on a  
3 scale of one to five.

4 332. After delaying his response to the inquiry, Konovalov finally submitted a response in  
5 mid-April 2011 – roughly two weeks before he left Rambler – in which he fraudulently declined to  
6 identify Open Source NGINX as Rambler-owned software. Instead, Konovalov ranked all NGINX  
7 software programs with an “1” for insignificant or no tangible value or importance.

8 333. Konovalov fraudulently ranked the NGINX software programs with an “1” even  
9 though less than two weeks earlier he had emailed Sysoev an excel spreadsheet on March 30, 2011  
10 with his own internal projections forecasting that he, Sysoev and Alexeev stood to conservatively  
11 earn roughly \$30 million from the misappropriated NGINX Enterprise if the Team went through two  
12 projected rounds of venture capital financing and then sold the NGINX Enterprise for \$100 million.  
13 This email and the accompanying spreadsheet were additional documents recovered from  
14 Konovalov’s deleted emails by Rambler and Lynwood in 2019 after Korotkov’s revelations sparked  
15 their investigations.

16 334. Konovalov was Rambler’s CTO and the executive responsible for overseeing Sysoev  
17 and his efforts at developing and improving Open Source NGINX. Thus, it was incumbent on  
18 Konovalov to advise Rambler what it had with Open Source NGINX, including all of the work  
19 product (including existing and software code in development), proprietary information, future  
20 business plans and an honest assessment of Open Source NGINX and its enterprise value.

21 335. However, in furtherance of the conspiracy, Konovalov concealed the nature,  
22 commercial possibilities, and value of Open Source NGINX, as well as the revenue-generating  
23 potential of proprietary extensions to Open Source NGINX that would come to be marketed and sold  
24 under the NGINX Plus moniker. Konovalov’s fraudulent misrepresentations to Rambler and  
25 fraudulent concealment from Rambler was simultaneous with his and the Team’s presentations to  
26 potential venture capital backers in which they promoted such commercial extensions as a  
27 fundamental driver of revenue for the NGINX Enterprise.

1           336. Konovalov’s fraudulent duplicity in his dealings with Rambler were driven by a  
2 simple, selfish objective – he wanted the Team to fly below the radar at Rambler so that he and the  
3 rest of the Team could quietly steal the NGINX Enterprise from Rambler without raising the alarm,  
4 solely to enrich himself and the other members of the Team at Rambler’s expense upon the sale of  
5 the NGINX Enterprise to a third-party technology company.

6           337. The Team with the assistance of the Rambler Employee Conspirators went to great  
7 lengths to conceal their scheme by destroying evidence after they left Rambler. The Rambler  
8 Employee Conspirators in the NOC department (i.e., the NOC software programmers) worked  
9 together in a tight-knit department within Rambler devoted to web software product development.  
10 The NOC department was just one of numerous product development departments at Rambler but it  
11 was the one where Sysoev and his conspirators operated autonomously under the protective cover  
12 afforded by Konovalov.

13           338. The NOC department was ring-fenced from the rest of Rambler. The NOC  
14 department utilized its own servers, including for internal NOC email communications, and these  
15 servers were not integrated with the rest of the company. The gatekeepers responsible for providing  
16 oversight over the NOC department were Konovalov as the CTO, the Deputy CTO Popov, and  
17 Smirnoff, who was the Head of the NOC department. All three of the gatekeepers were active  
18 participants in the conspiracy and played central roles in the evidence destruction and concealment  
19 of same.

20           339. Although Smirnoff managed the NOC department, Konovalov was responsible for  
21 the allocation of resources, product development and advising Rambler’s board of directors and CEO  
22 of any noteworthy developments from the NOC department or any of the other departments under  
23 his office. Konovalov abused his position and provided Sysoev and Smirnoff with Rambler servers  
24 for Sysoev and Smirnoff to use in developing NGINX Plus as the first proprietary commercial add-  
25 on software to Open Source NGINX.

26           340. No one else within Rambler had access to the Sysoev and Smirnoff “personal  
27 servers,” which they used to develop NGINX Plus. Furthermore, Konovalov provided Sysoev,  
28



1 Smirnoff and the Rambler Employee Conspirators with additional servers where the Rambler  
2 Employee Conspirators assisted Sysoev and Smirnoff in testing and evaluating Sysoev's proprietary  
3 NGINX concepts and code. Konovalov's ability to clandestinely arm Sysoev, Smirnoff and the  
4 Rambler Employee Conspirators with Rambler infrastructure to enable them to develop software on  
5 company time and expense (while being full-time employees) was successful because Deputy CTO  
6 Popov, who was responsible for ensuring the integrity of Rambler's equipment and recordkeeping  
7 of same, was compromised and formed part of the conspiracy.

8 341. Popov's tenure as Rambler's Deputy CTO began in 2008. Popov's responsibilities  
9 have included operating Rambler's enormous server farm in excess of ten thousand servers, the  
10 organization of server placement in the company's data centers, repair of servers and server  
11 equipment and the subsequent disposal of servers. Popov was responsible for the recordkeeping,  
12 chain of custody forms and inventory documentation of all Rambler company equipment. In short,  
13 Popov is the key employee who could identify the location and purpose behind a piece of Rambler  
14 equipment.

15 342. Konovalov enlisted select Rambler employees including Smirnoff, Popov and  
16 Chesnokov into the conspiracy in 2008. Konovalov directed Popov not to record or otherwise  
17 memorialize in Rambler's records that he had provided Sysoev, Smirnoff and the Rambler Employee  
18 Conspirators with seven servers in 2008 that the conspirators would use to develop NGINX Plus,  
19 NGINX Open Source, and other NGINX-related concepts and work product.

20 343. Popov complied and along with Smirnoff deleted these seven servers from Rambler's  
21 inventory of active servers among Rambler's server farm of ten thousand. Therefore, there was no  
22 record of these seven "personal" servers in Rambler's records and no ability for someone other than  
23 Popov, the Disloyal Employees or the Rambler Employee Conspirators to reconcile them back to the  
24 conspirators who were utilizing them in furtherance of developing the NGINX Enterprise.

25 344. Separately, the NOC department used its own server that hosted its own email system  
26 for intra-NOC department communications and for hosting NOC-related software developmental  
27 work. This server was the Yam Server and it was not integrated with Rambler's company-wide  
28



1 server. Therefore, if an email communication was sent between Sysoev and one of the Rambler  
2 Employee Conspirators in the NOC department, said email existed only on the Yam Server and not  
3 on Rambler's company-wide Microsoft Exchange server. The Disloyal Employees and Rambler  
4 Employee Conspirators also maintained their regular Rambler email addresses that were hosted and  
5 integrated on the company-wide Rambler Microsoft Exchange server. However, as explained below,  
6 the Disloyal Employees and Rambler Employee Conspirators did not use the Rambler Microsoft  
7 Exchange server to communicate regarding the conspiracy to steal and sell the NGINX Enterprise.

8 345. The ring-fenced nature of the Yam Server was known only to the Disloyal Employees,  
9 Rambler Employee Conspirators (including Popov) and Rambler's Chief Information Officer,  
10 Korotkov (until his termination). It was a legacy holdover feature from successive mergers and  
11 acquisitions involving other Russian technology companies that Rambler had acquired. Konovalov  
12 ensured that he and the few Rambler Employee Conspirators outside of the NOC department were  
13 provided with email accounts hosted on the Yam server so that the Disloyal Employees and Rambler  
14 Employee Conspirators were able to communicate and operate in furtherance of their conspiracy  
15 without detection by Rambler.

16 346. Between September 2011 and November 2012, Smirnoff coordinated the removal and  
17 destruction of all the servers used by the Disloyal Employees and Rambler Employee Conspirators  
18 to develop the NGINX Enterprise. Popov, who remained at Rambler after the Disloyal Employees  
19 and Rambler Employee Conspirators all joined NGINX LLC in staggered stages, concealed the  
20 existence of these servers when Rambler performed investigations in 2012, 2014 and again in 2019  
21 into Sysoev's and Konovalov's tenure at Rambler.

22 347. For example, on September 20, 2011, Konovalov, who had already separated from  
23 Rambler, emailed Popov and Sergey Chesnokov (one of the Rambler Employee Conspirators) and  
24 copied Sysoev. Konovalov directed Chesnokov and Popov to urgently remove one of the Rambler  
25 servers that hosted the "unique data" and provide it to one of the Team's representatives (Oleg Bunin)  
26 who stood ready to personally pick up the server from Rambler. Chesnokov replied that he would  
27 remove and deliver the server to Bunin.

1           348. On January 24, 2012, immediately after Sysoev separated from Rambler, another  
2 Rambler Employee Conspirator from the NOC department (Alexey Loginov) emailed Smirnoff and  
3 Rambler Employee Conspirator Alexander Postnikov at 2:53 AM to confirm that he “cleaned the  
4 discs on yam.park.old, it is now possible to disassemble it and send it to storage.” The “yam.park.old”  
5 server, of course, is the same Yam Server that contained the ring-fenced NOC department emails  
6 and NGINX developmental code. Following whistleblower Korotkov’s disclosures, Rambler and  
7 Lynwood found the Yam Server in the Summer of 2019, disconnected and idle, in an off-site Rambler  
8 server farm, with its data wiped and in queue for dismantlement.

9           349. On March 16, 2012 at 3:21AM, Smirnoff emailed Postnikov and requested that one  
10 of Sysoev’s servers be removed and personally handed to him at a provided address. Smirnoff wrote:  
11 “Please take out of the rack and without disassembling bring it to Danilovskaya Manifaktura and hand  
12 over to me personally.” Smirnoff identified the location server in question as “Internal 2027” on  
13 Rack “I41008 I18I1BZDW60200264” in order for Postnikov to locate and retrieve for Smirnoff.

14           350. On April 8, 2012 at 4:45AM, Smirnoff emailed Postnikov to inform him that  
15 Smirnoff removed the “other NOC Server from the server room” located at the first floor of building  
16 3 of Rambler.

17           351. On November 13, 2012, which was the day following Smirnoff’s resignation from  
18 Rambler, Smirnoff emailed Anton Ermolaev (another Rambler Employee Conspirator) with  
19 instructions on how to handle four Rambler servers: (i) glebius.int.ru1U; (ii) behemoth.ramtel.ru 1U;  
20 (iii) glebius.int.ru.old 2U; (iv) jujik.ramtel.ry.1U. Smirnoff instructed Ermolaev to store the first  
21 two servers until Smirnoff could take possession of them and to scrap the other two servers.

22           352. In or about December 2012, the remaining Sysoev “personal server” (Server 2779),  
23 which hosted Sysoev’s NGINX software code and related work product was wiped of all its data by  
24 Oleg Manontov (another Rambler Employee Conspirator) at the instruction of Sysoev and the wiped  
25 server was donated to Moscow State Technological University (“Stankin”).

26           353. None of the servers above were returned by the Team and only the Yam Server was  
27 found by Rambler and Lynwood in the course of their internal investigation in 2019 after Korotkov

1 blew the whistle on the Defendants. The exemplar emails above detailing the stolen and destroyed  
2 Rambler servers were obtained from the forensically restored emails stored on the Yam Server. The  
3 Yam Server had all its data deleted. After it was located, Rambler suggested to Lynwood that it hire  
4 a specialist outside forensics firm to restore the data on the Yam Server. Lynwood hired Group iB,  
5 a leading global forensics investigations firm to restore the data on the Yam Server and whose  
6 findings informed Lynwood and Rambler of the Defendants' actions.

7 354. None of the stolen servers or the Yam Server were recorded in Rambler's inventory  
8 logs by Popov. In fact, the only reason Rambler and Lynwood are aware of the stolen servers was  
9 because of Korotkov's disclosures and their own internal painstaking investigation that included an  
10 in-person manual review of the servers at Rambler's various facilities to reconcile the information  
11 contained in the restored Yam Server emails against Rambler's equipment on hand. In other words,  
12 these servers did not appear in Rambler's inventory records despite the fact that they were company  
13 property.

14 355. The lack of inventory records evidencing the existence and subsequent removal of the  
15 Rambler servers was deliberate and the result of Popov's and Smirnov's actions taken to assist the  
16 Team in concealing their actions. Popov took direction from Konovalov, Sysoev and Smirnov,  
17 including after they separated from Rambler, to ensure that Rambler never discovered that the Team  
18 misappropriated the NGINX Enterprise. Indeed, Rambler undertook two prior investigations before  
19 Korotkov came forward in 2019 and found nothing suspicious precisely because the Rambler  
20 Employee Conspirators had successfully covered up the Team's wrongful actions.

21 356. After Sysoev left Rambler in December of 2011, Rambler's CEO directed that a  
22 review of Sysoev's and Konovalov's emails be conducted and sought confirmation that they had  
23 returned all company equipment. Smirnov, Chesnokov and Popov falsely reported to Rambler's  
24 management in 2012 that nothing out of the ordinary was found in such review and no equipment  
25 appeared to be missing from Rambler. At Smirnov's direction, Popov and Chesnokov failed to  
26 disclose to Rambler's management that the Disloyal Employees' communications and NGINX Plus  
27 proprietary code were hosted on the NOC servers and not Rambler's company-wide servers, which  
28

1 contained the innocuous communications from Konovalov and Sysoev with Rambler employees at  
2 large.

3 357. In the second-half of 2014, Sysoev appeared in local Russian industry journals that  
4 extolled his programming talent for writing Open Source NGINX. Although the Russian industry  
5 journals did not mention NGINX Plus, Rambler at the direction of its majority shareholder A&NN  
6 Group (of which Lynwood was then a member) decided to perform another review of Sysoev and  
7 Konovalov's emails and a review of the company's equipment inventory records given the attention  
8 he was receiving in Russia over Open Source NGINX.

9 358. In keeping with A&NN Group's instruction, Rambler's new CEO directed that such  
10 review once again be undertaken. However, the review of Sysoev's and Konovalov's Rambler  
11 company emails hosted on the Exchange Server revealed nothing unusual or suspicious.

12 359. Neither Rambler nor Lynwood knew of the Yam Server and that it contained the  
13 Disloyal Employees' communications concerning their misappropriation of the NGINX Enterprise,  
14 that its data had been deleted without being backed up on any other Rambler server, and that it had  
15 been deactivated and placed in queue for dismantlement without any identifier information so that  
16 all of the information hosted on the Yam Server could never again be recovered.

17 360. As explained further below, Popov sought to protect the Team once more in the  
18 summer of 2019 after Korotkov blew the whistle on the Defendants and provided Rambler and  
19 Lynwood with the particulars of the conspiracy. However, Korotkov's disclosures sparked an  
20 internal investigation by Rambler and Lynwood that ultimately revealed that Popov was close to both  
21 Konovalov and Sysoev and that contrary to his prior denials to Rambler, was found on email  
22 communications with the Disloyal Employees plotting with them to cover up their development and  
23 theft of the NGINX Enterprise, including NGINX Plus.

24 **Robertson Joins the Conspiracy and the NGINX Enterprise Gets Positioned for a Sale to a**  
25 **Large American Technology Company**

26 361. After the Disloyal Employees departed from Rambler and after the Team formed the  
27 various NGINX entities, the Team, Runa Capital and BV Capital (now E.Ventures) continued to  
28

1 quietly raise outside capital in pursuit of their common plan and ultimate object of their conspiracy  
2 – a sale of Rambler’s NGINX Enterprise to a large American technology company for their own ill-  
3 gotten gains, without any remuneration to Rambler.

4 362. Runa Capital and BV Capital, which became shareholders in NGINX BVI as of  
5 October 23, 2011, knowingly participated in multiple future rounds of financing to grow the NGINX  
6 entities and set the table for the Merger transaction with F5 in 2019. The two venture capital firms  
7 were anything but passive investors as both firms actively solicited and brought in outside investment  
8 into NGINX BVI despite their knowledge that NGINX BVI was anchored by the purloined NGINX  
9 Enterprise.

10 363. In addition to Runa Capital and BV Capital’s participation in future rounds of  
11 financings in October 2013, December 2014 and April 2016, Runa Capital’s Dmitry Chikhachev and  
12 BV Capital’s Thomas Gieselmann also held board seats on NGINX BVI’s board of directors up to  
13 the time of the company’s merger with F5 during which time Chikhachev and Gieselmann  
14 participated in material decisions undertaken by NGINX BVI including its public rollout of NGINX  
15 Plus that was owned by Rambler.

16 364. One of the first decisions made by Runa Capital and BV Capital was to convince the  
17 Team to hire Robertson in 2012 to act as the CEO of NGINX Software, Inc., and later NGINX BVI.

18 365. Runa Capital and BV Capital sought out Robertson because he had experience  
19 working in a start-up that culminated in a sale to Microsoft. Robertson also more recently had been  
20 Vice President of Business Development for leading open source software vendor Red Hat. That  
21 made Robertson appealing to Runa Capital and BV Capital as well as the Team.

22 366. Robertson readily joined the conspiracy, taking an equity stake in the scheme so he  
23 would personally profit when the ultimate object of the conspiracy – a sale to a large technology  
24 company – was achieved.

25 367. Through his nearly seven-year tenure with the NGINX entities, Robertson gained in-  
26 depth knowledge that Open Source NGINX, NGINX Plus, the NGINX Enterprise and all related  
27

1 business opportunities were conceived of and developed by Sysoev during his employment with  
2 Rambler and belonged to, and were stolen from, Rambler.

3 368. Despite this knowledge, Robertson proceeded to spearhead the unlawful commercial  
4 exploitation and ultimate sale of the NGINX Enterprise to the exclusion of its rightful owner,  
5 Rambler.

6 369. Robertson, the Team, Runa Capital and BV Capital started forming new NGINX  
7 entities such as NGINX Ltd. in the United Kingdom in 2013, NGINX International Limited in Ireland  
8 in 2015 and NGINX Asia Pacific Pte. Ltd. in Singapore in 2017.

9 370. On April 30, 2013, NGINX DE filed an application to register the NGINX PLUS  
10 trademark on an intent-to-use basis, pursuant to 15 U.S.C. § 1051(b), in the USPTO, which was  
11 assigned U.S. Application Number 85/918,273. Subsequently, on December 14, 2017, a Section 7  
12 Request Form was filed seeking to change the registrant to NGINX BVI.

13 371. On July 28, 2017, NGINX BVI filed an application to register the NGINX  
14 CONTROLLER trademark on an intent-to-use basis, pursuant to 15 U.S.C. § 1051(b), in the USPTO,  
15 which was assigned U.S. Application Number 87/547,139.

16 372. On July 28, 2017, NGINX BVI also filed an application to register the NGINX UNIT  
17 trademark on an intent-to-use basis, pursuant to 15 U.S.C. § 1051(b) in the USPTO, which was  
18 assigned U.S. Application Number 87/547,328.

19 373. In sum, between 2013 – 2017, Robertson, the Team, Runa Capital and BV Capital  
20 engaged in successive capital raises, formed new entities and filed trademark applications in the  
21 United States in an effort to position the misappropriated NGINX Enterprise for a sale to a large  
22 American technology company as originally planned by the Team in 2011.

23 **Sysoev Coyly Only Asserts Authorship, Not Ownership of Open Source NGINX**

24 374. From the beginning, Sysoev has been purposefully vague about Rambler’s role in the  
25 development of Open Source NGINX and what rights, if any, he was claiming in the software or the  
26 basis of that claim. Neither Sysoev nor any of the other co-conspirators ever communicated to  
27 Rambler or its representatives or successors to claim ownership rights in Open Source NGINX.

1 Moreover, Sysoev in multiple interviews with major media outlets throughout the world, repeatedly  
2 claimed that he wrote Open Source NGINX while working at Rambler, but was always silent on the  
3 subject of ownership.

4 375. Sysoev's downplaying of ownership rights, if any, he may claim in Open Source  
5 NGINX began in late September 2004 as he prepared to release it on October 4, 2004 pursuant to the  
6 terms of a FreeBSD version of the so-called 2 paragraph Berkeley Software Distribution (BSD) open  
7 source license. After two years of working on Open Source NGINX as part of his Rambler  
8 responsibilities, Sysoev, for the first time, inserted a copyright notice in a read-me file in the Open  
9 Source NGINX that contained his name and creation dates to show his authorship of the code.  
10 Russian law distinguishes between authorship and ownership rights to a work. Sysoev's choice of  
11 words were clearly designed to avoid a confrontation with Rambler over NGINX software ownership  
12 rights.

13 376. Sysoev chose to use a FreeBSD version of the BSD-style license terms for Open  
14 Source NGINX that contains no reference to the term "copyright holder", a term that is included in  
15 more popular BSD-style license terms, such as those published by the Open Source Initiative. The  
16 open source license language selected by Sysoev states that Open Source NGINX "... IS  
17 PROVIDED BY THE *AUTHOR AND CONTRIBUTORS* 'AS IS'..." and that "IN NO EVENT  
18 SHALL THE *AUTHOR OR CONTRIBUTORS* BE LIABLE FOR" consequential damages, etc.  
19 (emphasis added). In contrast, the Open Source Initiative 2-paragraph BSD open source license states  
20 that the software in question "IS PROVIDED BY THE *COPYRIGHT HOLDERS AND*  
21 *CONTRIBUTORS* 'AS IS', and that "IN NO EVENT SHALL THE *COPYRIGHT HOLDERS OR*  
22 *CONTRIBUTORS* BE LIABLE FOR" consequential damages, etc. (emphasis added). In this  
23 manner, Sysoev could take authorship credit for Open Source NGINX, in accordance with Russian  
24 law, while avoiding an express assertion that he was the holder of copyright rights in Open Source  
25 NGINX.



1 **The Team Sells the NGINX Enterprise to F5 Through a Merger**

2 377. On March 9, 2019, F5 entered into a Merger Agreement (the “Merger Agreement”)  
3 with NGINX BVI, Neva Merger Sub Limited, a British Virgin Islands company and a wholly owned  
4 subsidiary of F5 (“Merger Sub”), and Fortis Advisors LLC, a Delaware limited liability company,  
5 as security holder representative (the “Securityholder Representative”), pursuant to which, Merger  
6 Sub merged with and into NGINX BVI (the “Merger”), with NGINX BVI surviving the Merger and  
7 becoming a wholly-owned subsidiary of F5.

8 378. Before the Merger, F5 conducted extensive due diligence concerning the NGINX  
9 entities and its principals.

10 379. Most importantly, F5 conducted extensive due diligence concerning Open Source  
11 NGINX and its proprietary companion code, NGINX Plus, and their origins, which of course  
12 revealed that Sysoev developed Open Source NGINX for Rambler and NGINX Plus with Rambler’s  
13 resources while he was employed there. Indeed, a reconciliation between the dates of the code  
14 commits in Open Source NGINX and NGINX Plus modules and the dates of Sysoev’s employment  
15 at Rambler quickly and clearly demonstrate that the software was developed while he was an  
16 employee of Rambler.

17 380. F5 reviewed and analyzed Open Source NGINX and NGINX Plus itself, and therefore  
18 F5 knew that Sysoev wrote much of Open Source NGINX and NGINX Plus during normal working  
19 hours while employed by Rambler – a fact which confirmed that, Open Source NGINX and NGINX  
20 Plus were works made for hire that Rambler owned. Moreover, as to Open Source NGINX, F5,  
21 based on its due diligence, knew that Sysoev and/or the NGINX entities had never taken the overt  
22 position that they owned Open Source NGINX.

23 381. F5’s review and analysis of Open Source NGINX also revealed that the software code  
24 that was released publicly by Sysoev between 2004 and 2011 while employed by Rambler was still  
25 in the Open Source NGINX as of 2019 and, indeed, remained the core code driving the functionality  
26 of Open Source NGINX. In fact, more than 75 percent of the source code contained in Open Source  
27



1 NGINX today consists of software code that Sysoev wrote as works for hire while he was employed  
2 by Rambler.

3 382. Moreover, F5's review and analysis of NGINX Plus and the financials of the NGINX  
4 Enterprise necessarily revealed that (i) NGINX Plus was conceived of, designed and/or written by  
5 Sysoev while he was employed by Rambler, and (ii) that NGINX Plus's core architecture,  
6 functionality and commercial success, are dependent on Open Source NGINX.

7 383. F5 reviewed and analyzed Open Source NGINX itself, and therefore F5 knew that  
8 Sysoev and NGINX entities never overtly asserted a proprietary interest in it, either to Rambler or  
9 Lynwood or otherwise.

10 384. Instead, F5's due diligence revealed that Sysoev and the NGINX entities only asserted  
11 authorship of Open Source NGINX under Russian law, a claim that is consistent with Open Source  
12 NGINX being a work made for hire that Rambler owned.

13 385. F5 also had the opportunity to review Sysoev's admissions that he developed Open  
14 Source NGINX for Rambler to solve Rambler problems with Apache which impeded Rambler's  
15 ability to handle large quantities of web data and related user traffic.

16 386. F5's due diligence revealed that Sysoev and the other Disloyal Employees designed  
17 and developed Open Source NGINX and NGINX Plus while in the employment of Rambler using  
18 Rambler resources and in furtherance of their employment responsibilities thereby making Open  
19 Source NGINX a work made for hire that Rambler owned.

20 387. F5's due diligence thus revealed that the Team was seeking to sell a business that  
21 properly belonged to Rambler, not the Team.

22 388. After conducting all its due diligence, F5, both legally and ethically, should have  
23 declined to close on the Merger transaction so as to not aid and abet the Team's conspiracy to steal  
24 the NGINX Enterprise and related business opportunities from Rambler in order to sell it to a third-  
25 party for a profit.

26 389. Instead, with knowledge of the Team's conspiracy, F5 proceeded to provide the Team  
27 with substantial assistance toward the end goal of the Team's conspiracy – selling Rambler's  
28

1 NGINX-related business opportunity. F5 was motivated by its own financial gain in acquiring  
2 control of the highly valuable NGINX Enterprise.

3 390. The Merger closed on May 8, 2019, as announced by F5.

4 391. The result of the Merger is that (i) NGINX BVI became the wholly owned subsidiary  
5 of F5, (ii) Merger Sub was merged out of existence and with and into NGINX BVI, (iii) NGINX,  
6 BVI was the “surviving corporation” in the Merger and, thus, the separate legal existence of NGINX  
7 BVI survived, and continues following, the Merger, and (iv) all of the assets (including property),  
8 rights, privileges, powers and franchises of NGINX BVI and Merger Sub and all claims, debts,  
9 liabilities and duties of NGINX BVI and Merger Sub becomes the debts, liabilities and duties of  
10 NGINX BVI.

11 392. Subject to the terms and conditions of the Merger Agreement, F5 paid an aggregate  
12 amount of consideration worth approximately \$670,000,000 in cash, subject to certain adjustments  
13 set forth in the Merger Agreement, for all of the outstanding shares of NGINX BVI (excluding shares  
14 (i) owned by NGINX BVI or any subsidiary of NGINX BVI and (ii) held by NGINX BVI  
15 shareholders who perfected their dissenters’ rights with respect to the Merger) and all of the other  
16 outstanding equity securities of NGINX BVI (the “Merger Consideration”).

17 393. In its Form 10-K filing with the U.S. Securities and Exchange Commission for the  
18 fiscal year ended September 30, 2019, F5 allocated what it referred to as the total purchase price of  
19 \$643,414,000 as follows: \$44,494,000 to net tangible assets, \$62,500,000 to developed technologies,  
20 \$12,000,000 to customer relationships, \$14,500,000 to trade name, and \$509,414,000 to goodwill.

21 394. The terms of the Merger Agreement make apparent that F5 was cognizant of the legal  
22 risks associated with the history of Open Source NGINX and NGINX Plus having been developed  
23 by Sysoev and the other Disloyal Employees, while they were employed by Rambler, during work  
24 hours and with the resources and facilities of Rambler.

25 395. In its 8-K SEC filing in connection with the Merger, F5 described how, upon  
26 consummation of the Merger, “certain of Nginx’s former security holders will undertake certain  
27 indemnity obligations.”

1           396. In addition, F5 stated, “at the closing of the Merger, F5 will deposit with an escrow  
2 agent (i) \$2,000,000 of the Merger Consideration to fund potential payment obligations of certain  
3 former securityholders of NGINX BVI with respect to a post-closing purchase price adjustment, and  
4 (ii) 1% of the Merger Consideration to fund potential post-closing indemnification obligations of  
5 certain former securityholders of NGINX BVI, on the terms and conditions set forth in the Merger  
6 Agreement.” F5 added that it had obtained an insurance policy “[t]o supplement the potential post-  
7 closing indemnification obligations for breaches of Nginx’s representations and warranties and  
8 certain other matters....”

9           397. The Merger Agreement also recites that as a condition and inducement to F5’s  
10 willingness to enter into the agreement, each of the “Founders”, “Key Executives” and “Key  
11 Employees” was simultaneously entering into employment agreements with F5, “(including  
12 proprietary information and inventions assignment agreements)”. As a further condition of F5  
13 entering into the Merger Agreement, each of the Founders and Key Executives also entered into a  
14 “Holdback Agreement” with F5.

15           398. Defendant Konovalov, co-founder of NGINX BVI, is now Vice President of  
16 Engineering for F5.

17           399. Defendant Sysoev, co-founder of NGINX BVI, is now a Senior Architect at F5.

18           400. Defendant Alexeev, co-founder of NGINX BVI, is listed as the Product Owner for  
19 NGINX Amplify.

20           401. Defendant Robertson, NGINX BVI’s CEO, is a Senior Vice President of F5 and  
21 General Manager of the NGINX business for F5.

22           402. Defendant Dounin, a longtime employee of NGINX BVI, is now a Principal Software  
23 Engineer for F5.

24           403. The Merger Agreement contains a number of representations and warranties provided  
25 by NGINX BVI to F5 and the “Merger Sub” concerning intellectual property-related matters. For  
26 example, NGINX BVI represents and warrants that each person who contributed to “Company IP”  
27 has executed an irrevocable assignment of intellectual property to NGINX BVI; that “no Employee  
28

1 or former employer of any Employee has any claim, right or interest in or to any Company IP; and  
2 that “no employee or independent contractor of the Company or any Subsidiary is in breach of any  
3 Contract with any former employer or other Person concerning Intellectual Property Rights or  
4 confidentiality.”

5 404. A number of the representations and warranties in the Merger Agreement involve or  
6 encompass what the agreement defines as “Company Product”, a term that is defined as “...each and  
7 every product or service marketed, licensed, or sold by the Company or any Subsidiary at any time  
8 and any product or service currently under development by the Company or any subsidiary, including  
9 nginx (open source), NGINX, NGINX Plus, NGINX Amplify, NGINX Controller, NGINX Unit.”

10 405. Article IX of the Merger Agreement is entitled “Post-Closing Indemnification.”  
11 Section 9.1 provides, among other things, that representations and warranties regarding intellectual  
12 property matters survive the closing of the transaction for four years.

13 406. Upon information and belief, F5 negotiated the Post-Closing Indemnification  
14 obligation from NGINX BVI because F5 had actual knowledge from its own due diligence that  
15 Sysoev wrote Open Source NGINX and NGINX Plus while he was a Rambler employee and that the  
16 NGINX Enterprise was owned by Rambler (not NGINX BVI). Like Runa Capital and BV Capital,  
17 however, F5 was willing to proceed with the acquisition of the NGINX Enterprise and take a  
18 calculated risk that Rambler would not pursue its ownership rights in the future, but it protected itself  
19 by negotiating an indemnity from NGINX BVI for any breaches in NGINX BVI’s representations  
20 and warranties regarding the NGINX intellectual property.

21 **F5 Heavily Markets and Monetizes Open Source NGINX and NGINX Plus**

22 407. In announcing its acquisition of NGINX, F5 announced it “will maintain the brand  
23 with current NGINX CEO, Gus Robertson, and founders, Igor Sysoev and Maxim Konovalov,  
24 joining F5 to continue to lead NGINX.”

25 408. F5 further stated: “Together, F5 and NGINX will enable multi-cloud application  
26 services across all environments, providing the ease-of-use and flexibility developers require while  
27

1 also delivering the scale, security, reliability and enterprise readiness network operations teams  
2 demand.”

3 409. F5 stated it was “committed to continue innovation & investment in the NGINX open  
4 source project.”

5 410. F5 noted that at the time of the merger, “375 million sites globally run on NGINX,”  
6 including “60% of the busiest 100k sites run on NGINX.”

7 411. F5 further stated that NGINX BVI “founded in 2011,” had collected approximately  
8 \$26 million in revenue in calendar year 2018, which represented a sixty-five percent growth in  
9 revenue levels from the previous calendar year.

10 412. F5 has publicly stated that “NGINX...extends our reach to cloud-native and  
11 microservices environments and extends our role into application servers, web servers, and API  
12 gateways.”

13 413. According to F5:

14 Under the NGINX brand we offer: \* NGINX Plus, an all-in-one load balancer, web  
15 server, content cache, and API gateway for modern applications. \* NGINX Controller,  
16 which provides centralized monitoring and management for NGINX Plus. We believe  
17 the combined forces of F5 and NGINX will enable multi-cloud application services  
18 across a broader range of environments than either company could have addressed  
19 independently, providing the ease-of-use and flexibility developers require while also  
20 delivering the scale, security, reliability, and enterprise readiness network operations  
21 teams demand.

22 414. F5 is exploiting the newly acquired NGINX Enterprise in a number of ways.

23 415. One way is through licenses to customers, on a subscription basis or per-instance  
24 basis, of NGINX Plus.

25 416. According to F5, NGINX PLUS is a software load balancer, web server, and content  
26 cache built on top of Open Source NGINX. NGINX Plus has exclusive enterprise-grade features  
27 beyond what's available in the open source offering, including session persistence, configuration via  
28

1 API, and active health checks. As F5 advertises, “[u]se NGINX Plus instead of your hardware load  
2 balancer and get the freedom to innovate without being constrained by infrastructure.”

3 417. NGINX CONTROLLER is a cloud-native, secure, and high-performance application  
4 delivery platform.

5 418. NGINX UNIT is an App server, HTTP server, and reverse proxy that is designed from  
6 scratch around the needs of distributed applications.

7 419. Open Source NGINX is an open source web server that powers 400 million websites.

8 420. NGINX WAF is an App firewall providing security software for Apps by stopping  
9 SQL injection, LFI, RFI, and almost any Layer 7 attack—based on the widely used ModSecurity  
10 open source software.

11 421. The scope of F5’s market share in the open-source web server space, particularly after  
12 its acquisition of NGINX, is massive. As F5 states in its Corporate Flyer, “[w]hen you combine F5’s  
13 and NGINX’s expertise powering more than half of the world’s applications across all types of  
14 environments, with Shape’s insight from mitigating one billion application attacks per day, you have  
15 a company that knows how to deliver and secure more applications, and more value, than any  
16 company in the industry.”

17 422. F5 describes NGINX Plus as “a software load balancer, web server, and content cache  
18 built on top of open source NGINX.”

19 423. NGINX Plus has “exclusive enterprise-grade features beyond what’s available in the  
20 open source offering, including session persistence, configuration via API, and active health checks.”

21 **Open Source NGINX and NGINX Plus Now Being Exploited and Monetized by F5 Contains**  
22 **the Code Developed by the Team (Primarily Sysoev) at and for Rambler and at Rambler’s**  
23 **Expense**

24 424. Open Source NGINX and NGINX Plus deployed today by F5 contains open source  
25 NGINX software and proprietary commercial code that Rambler owned and that Lynwood now  
26 owns.

1           425. More than seventy-five percent (75%) of the current iteration of Open Source NGINX  
2 consists of the open source NGINX software that Sysoev developed and released prior to his exit  
3 from Rambler, during regular work hours and utilizing Rambler’s facilities, employees, financial  
4 resources, and Internet traffic.

5           426. NGINX Plus’ dependency on Open Source NGINX that Sysoev developed while an  
6 employee at Rambler is shown repeatedly in the NGINX Plus release statements, benchmark tests,  
7 documentation, and other descriptive sources. Sysoev and the other Disloyal Employees had already  
8 developed substantial portions of NGINX Plus while still employed at Rambler and using Rambler  
9 resources and infrastructure.

10 **Through Its Own Trademark Filings in The U.S. Patent and Trademark Office, F5 Confirmed**  
11 **That It Was Aware Prior To The Merger That the Team Had Begun To Commercialize Open**  
12 **Source NGINX And NGINX Plus While The Disloyal Employees Were Still Employed by**  
13 **Rambler**

14           427. In its own filings with the United States Patent and Trademark Office following the  
15 Merger, F5 confirmed, based on its own pre-Merger diligence, that it knew the Team had begun  
16 using the NGINX trademark, including in connection with the software-as-a-service-type model that  
17 Korotkov had claimed in his own trademark application, while the Disloyal Employees were still  
18 employed at Rambler.

19           428. In December 2019, F5 took over a trademark application for the NGINX trademark  
20 originally filed on June 14, 2017. In connection with such application, F5’s legal counsel to filed a  
21 Statement of Use in which he identified the dates of first use and first use in commerce of the NGINX  
22 trademark in connection with not only server software, but also in connection with various  
23 commercial software-as-a-service offerings.

24           429. In the Statement of Use, F5’s attorney declared that the first use of the NGINX  
25 trademark in connection with such goods and services took place on December 14, 2009, and that  
26 the first use in commerce took place on April 12, 2011. These dates of first use closely track the date  
27 of first use (February 10, 2010) and the date of first use in commerce (March 1, 2011) cited by  
28

1 Korotkov on his own trademark application in furtherance of his participation in the conspiracy with  
2 the Team as discussed above. F5 and its attorney provided those dates based on their own diligence,  
3 not on dates that Team or the NGINX entities had selected and inserted in the trademark application  
4 prior to the Merger.

5 430. In the trademark application, originally filed by NGINX BVI, F5 claims such dates  
6 of first use and first use in commerce apply to certain software-related products in Class 9, and also  
7 to certain services in Class 42.

8 431. The identification of goods claimed in the F5 trademark application are as follows:  
9 Class 9 Server software for use in web serving, reverse proxying, caching, load  
10 balancing, application delivery and media streaming; computer software for  
11 controlling and managing web servers; computer software for use in HTTP and  
12 reverse proxy servers and mail proxy servers, namely, for controlling and managing  
13 server applications in the nature of http and reverse proxy servers and mail proxy  
14 servers; software for providing data analysis, analytics, and reporting of information  
15 concerning web server performance; computer hardware; parts and fittings for all of  
16 the aforesaid.

17 432. The identification of services claimed in the F5 trademark application are as follows:  
18 Class 42: Software as a service (SaaS) featuring software for use in web serving,  
19 reverse proxying, caching, load balancing, application delivery, media streaming and  
20 controlling and managing web servers; platform as a service featuring computer  
21 platforms for web serving, reverse proxying, caching, load balancing, application  
22 delivery and media streaming; Software as a service (SaaS) services featuring software  
23 for use in HTTP and reverse proxy servers and mail proxy servers, namely, for  
24 controlling and managing server applications in the nature of http and reverse proxy  
25 servers and mail proxy servers; computer services, namely, providing web servers and  
26 load balancing servers; software as a service (SaaS) services featuring software for  
27 providing data analysis, analytics, and reporting of information concerning web server  
28



1 performance, design and development of computer hardware and software  
2 information, consultancy and advisory services relating to all of the aforesaid.

3 433. Thus, F5, which had conducted extensive due diligence in early 2019 in connection  
4 with the Merger, was well aware prior to the consummation of the Merger that the Team had taken  
5 concrete steps to steal the NGINX Enterprise from Rambler, and develop assets such as NGINX  
6 Plus, in furtherance of their monetization of the NGINX Enterprise, years before Sysoev exited  
7 Rambler to launch the Team's turnkey Open Source NGINX and NGINX Plus-based business  
8 enterprise.

9 434. Indeed, F5's own counsel confirmed with the United States Patent and Trademark  
10 Office that the Team's use in conjunction with the NGINX trademark of the described goods and  
11 services – *the scope of which goes far beyond the mere development and maintenance of the Open*  
12 *Source NGINX repository – had first occurred two years before Sysoev exited Rambler.*

13 435. Nevertheless, despite its possession of such information and knowledge, F5  
14 proceeded with the Merger, in disregard of the fact that the Team was violating Rambler's rights.

### 15 **A Whistleblower Comes Forward to Rambler Revealing the Conspiracy**

16 436. In the wake of the F5 Merger, during the late spring of 2019, Rambler was approached  
17 by Korotkov.

18 437. Korotkov, having been cut from the Team despite his early efforts on their behalf,  
19 blew the whistle on the conspiracy and scheme.

20 438. Korotkov informed Rambler that the Disloyal Employees conspired to conceal from  
21 Rambler that Open Source NGINX and NGINX Plus were developed by Sysoev and the Disloyal  
22 Employees while they were still employed at Rambler and at Rambler's expense.

23 439. Korotkov informed Rambler that the Disloyal Employees conspired to conceal from  
24 Rambler the value of Open Source NGINX and NGINX Plus, and more generally the NGINX  
25 Enterprise.

1           440. Korotkov further informed Rambler that the Disloyal Employees actively concealed  
2 their work on Open Source NGINX, NGINX Plus, and the NGINX Enterprise both during and after  
3 their employment with Rambler.

4           441. Korotkov also explained that Konovalov's position as CTO facilitated the Disloyal  
5 Employees' concealment of their work on Open Source NGINX and NGINX Plus as well as the  
6 pervasive concealment of the true utility and value of the NGINX Enterprise to Rambler.

7           442. Korotkov also disclosed to Rambler that during their employment with Rambler, the  
8 Disloyal Employees conspired to and consistently did conceal from Rambler the commercialization  
9 and monetization they recognized for Open Source NGINX and NGINX Plus and were planning to  
10 exploit.

11           443. Korotkov further disclosed to Rambler that the Disloyal Employees developed Open  
12 Source NGINX and NGINX Plus during their work hours utilizing Rambler's infrastructure.

13           444. In addition, Korotkov disclosed to Rambler that, in furtherance of their conspiracy,  
14 the Team directed Smirnoff who stayed behind at Rambler to help the Team cover their tracks, to  
15 misappropriate and then destroy the servers in the hope that it would conceal their scheme to steal  
16 the NGINX Enterprise from Rambler.

17           445. Korotkov also disclosed to Rambler and Lynwood where to investigate to find any  
18 remaining evidence of the Disloyal Employees' wrongful conduct. Specifically, Korotkov informed  
19 Rambler and Lynwood of the importance of the NOC department and its ring-fenced servers for  
20 hosting relevant information regarding the NGINX Enterprise. Neither Rambler's nor Lynwood's  
21 senior management knew of the NOC department's Yam Server.

22           446. Prior to Korotkov's disclosures, Rambler did not have reason to, and did not,  
23 understand the scope or value of the Disloyal Employees' work on Open Source NGINX and NGINX  
24 Plus code, which was developed at the expense and risk of Rambler, but under the office of  
25 Konovalov.

26           447. With the cover of reporting to Konovalov, the Disloyal Employees were able to  
27 successfully conceal the utility, scope, and value of the NGINX Enterprise from Rambler.

1 448. Immediately after Korotkov’s disclosures, Rambler and Lynwood conducted  
2 extensive investigations regarding the whistleblower’s assertions.

3 449. Rambler and Lynwood’s extensive investigations confirmed the veracity of the  
4 whistleblower’s assertions, and this lawsuit followed.

5 **Lynwood Acquires Rambler’s Rights to Open Source NGINX, NGINX Plus, Related**  
6 **Intellectual Property Rights, and The Claims Asserted Herein**

7 450. Lynwood’s former name prior to January 2, 2015 was A&NN Holdings Limited  
8 (“A&NN Holdings”). From 2013 until December 2014, A&NN Holdings indirectly owned 25% of  
9 Rambler while another 25% of Rambler was owned by A&NN Holdings’ sister companies. A&NN  
10 Holdings and its sister companies together formed a part of A&NN group of companies (“A&NN  
11 Group”). From 2013, A&NN Group was not only a 50% shareholder of Rambler but also a managing  
12 partner of Rambler.

13 451. In January 2015, Lynwood ceased to be an indirect shareholder but A&NN Group  
14 remained a 50% shareholder of Rambler and would go on to increase its ownership stake to 100% in  
15 2017. Tekso Holdings Limited (one of the companies that comprised part of A&NN Group in 2017)  
16 sold its approximate 50% stake in Rambler in July 2020.

17 452. Lynwood is a seasoned holding company that invests in a variety of industries across  
18 Europe.

19 453. In the second-half of 2014, Sysoev appeared in industry specific media outlets to give  
20 interviews concerning his authorship of Open Source NGINX, which was gaining popularity. In  
21 those interviews, Sysoev did not mention the Team’s “open core” strategy or the existence and  
22 commercialization of NGINX Plus. Nevertheless, as Rambler’s largest shareholder and its managing  
23 partner at the time, A&NN Group asked Rambler to investigate its records concerning Sysoev and  
24 Konovalov and the development of Open Source NGINX.

25 454. In January 2015, Rambler reported back to Lynwood (post-separation from A&NN  
26 Group) that its investigation revealed nothing out of the ordinary and that Sysoev’s and Konovalov’s  
27

1 email communications concerning Open Source NGINX centered on Rambler’s internal usage of  
2 Open Source NGINX to solve its web traffic issues.

3 455. Neither Rambler nor Lynwood knew of NGNIX Plus, let alone that it and the NGINX  
4 Enterprise had been conceived and developed at Rambler before the Disloyal Employees left  
5 Rambler.

6 456. Moreover, Rambler and Lynwood could not have known in 2015 that the reason their  
7 investigation did not uncover the Disloyal Employees’ conspiracy to steal the NGINX Enterprise  
8 was that the Team, together with the Rambler Employee Conspirators, had deliberately walled  
9 themselves off in the NOC, separate from the rest of Rambler, and that they had meticulously covered  
10 up their misdeeds by deleting revealing emails and other electronic files, removing, relocating and  
11 dismantling incriminating servers, and routing conspiracy-related email traffic through the Yam  
12 Server domain.

13 457. Nevertheless, Lynwood understood that Konovalov and Sysoev held important  
14 positions at Rambler, which gave both of them (especially Konovalov) access to Rambler’s  
15 confidential information. Given the importance of their former positions at Rambler and the fact that  
16 Sysoev was now appearing and giving interviews on his authorship of Open Source NGINX,  
17 Rambler and Lynwood prophylactically entered into an Assignment Agreement, dated January 15,  
18 2015 and amended on January 23, 2015 (the “2015 Assignment”). The 2015 Assignment assigned  
19 Rambler’s employment and intellectual property rights to Lynwood for enforcement in the event  
20 Sysoev or Konovalov would ever claim an ownership right to Open Source NGINX or had previously  
21 engaged in any illicit or wrongful conduct vis-à-vis their employment obligations or Russian law as  
22 it concerned Rambler and its proprietary information and products.

23 458. At that time, however, neither Rambler nor Lynwood were aware that the Disloyal  
24 Employees had conceived and developed the NGINX Enterprise, including NGINX Plus while in  
25 the employment of Rambler. Moreover, neither Sysoev nor any of the other Disloyal Employees  
26 had ever claimed to Rambler that Sysoev owned (as opposed to authored) Open Source NGINX .  
27

1           459. At that time, Rambler and Lynwood were also unaware of the value of the NGINX  
2 Enterprise precisely because Konovalov had consistently given it a “1” or worthless value in his  
3 internal reports as the company CTO responsible for product development and because neither  
4 Konovalov nor Sysoev ever disclosed the scope and magnitude of the Open Source NGINX project  
5 the Disloyal Employees were working on at Rambler; and also because the Disloyal Employees  
6 removed the servers containing the NGINX-related work product in 2012 before Smirnoff left  
7 Rambler. Moreover, Rambler had previously directed Popov and Chesnokov to perform a review  
8 of Sysoev and Konovalov’s emails and to ensure that they had returned their Rambler equipment,  
9 with no revealing evidence of wrongdoing to show for it. Unbeknownst to Rambler and Lynwood,  
10 Popov, Chesnokov and the other Rambler Employee Conspirators were active participants in the  
11 Team’s conspiracy and concealed from Rambler that the Team had misappropriated the NGINX  
12 Enterprise.

13           460. Therefore, as of January 15, 2015, Rambler reasonably understood it had lost  
14 considerable technical talent with Sysoev’s departure, but it reasonably did not suspect that talent  
15 was working on a massive heist from Rambler that would play out over the next several years.

16           461. It was only after the whistleblower Korotkov came forward in April 2019 and detailed  
17 to Rambler and Lynwood the scope of the Team’s conspiracy, and informed them, for the first time,  
18 of where the incriminating evidence of the conspiracy could be found, including the Yam server, and  
19 after Rambler and Lynwood conducted yet another investigation in 2019 based on Korotkov’s  
20 revelations, that evidence of the Team’s conspiracy and massive coverup was finally discovered.

21           462. Korotkov’s disclosure was the spark that lead Rambler and Lynwood to investigate  
22 his assertions and the possibility that Rambler (now Lynwood) had potential claims against the Team  
23 and potentially other participants. Rambler and Lynwood did not simply take Korotkov at his word.  
24 They assumed Korotkov had an axe to grind toward the Team. However, Korotkov provided  
25 Rambler and Lynwood with specific information about the extent to which the Team went to conceal  
26 the NGINX Enterprise and their misconduct from Rambler. Thus, Rambler and Lynwood  
27 investigated Korotkov’s allegations.

1           463. It was only after the completion of these time-consuming and expensive forensic  
2 investigations that Rambler and Lynwood independently verified and corroborated the information  
3 Korotkov provided them in April 2019.

4           464. The company-wide investigation that Rambler and Lynwood conducted in 2019,  
5 unlike the second-half 2014 investigation, had the game-changing benefit of the detailed conspiracy  
6 description and evidence roadmap provided by Korotkov. It also confirmed that without Korotkov's  
7 assistance in describing how the conspiracy was hatched and executed, including by using and then  
8 removing servers that were never accounted for in Rambler's inventory records and that no one  
9 outside of the conspirators had access to, including an entirely ring-fenced NOC email server (Yam),  
10 Rambler would have never discovered the Defendants' misconduct.

11           465. In Phase 1 of the 2019 investigation, Rambler searched for: email servers that could  
12 have contained email traffic for the years 2001 through 2012; backups in Unix infrastructure;  
13 inventory databases; `rm.rambler-co.ru` (new); `invkur.rambler.ru` (old), and  
14 `mediawiki.park.rambler.ru` (old). In addition, Rambler storage facilities in Malino, Stupino urban  
15 district in the Moscow Region and Ostapoviskiy DC in Moscow were searched to identify any servers  
16 that contained storage media and/or unutilized hard disks. No relevant information concerning the  
17 Disloyal Employees' conspiracy was contained in these repositories of information.

18           466. In Phase 2 of the 2019 investigation, Rambler and Lynwood searched for documents  
19 concerning the assignment of tasks related to the development, debugging and testing of Open Source  
20 NGINX from 2001 through 2012. In particular, the Rambler application systems `jira.rambler-co.ru`  
21 and `otrs.park.rambler.ru`, `otrs.park.rambler.ru`, and `otrs2.park.rambler.ru` were analyzed. No relevant  
22 information concerning the Disloyal Employees' conspiracy was contained in these repositories of  
23 information either.

24           467. In Phase 3 of the 2019 investigation, a search was conducted for servers on which  
25 Open Source NGINX could have been developed. During the course of such search, 120 hard drives  
26 found in Rambler storage facilities were analyzed. Once again, no relevant information concerning  
27 the conspiracy to steal and then sell the NGINX Enterprise was found.

1           468. The most significant find, by far, during the 2019 investigation was the Yam Server.  
2 In the course of the 2019 investigation, based on specific information from Korotkov, Rambler  
3 located the Yam Server, an aging, non-descript server located in an off-site Rambler server farm,  
4 disconnected from any network and in queue to be dismantled. It was discovered that the Yam Server  
5 had been used by Disloyal Employees and the Rambler Employee Conspirators to conduct and store  
6 internal NOC communications. The reason that the Yam Server had not been located in late  
7 2014/2015 was that it was not identified on Rambler’s inventory of servers or anywhere else in  
8 Rambler’s records. This omission was by design – the Disloyal Employees, in conjunction with the  
9 other Rambler Employee Conspirators, had ensured that the Yam Server was “off the grid” and was  
10 not identified in Rambler corporate records. The 2019 investigation revealed that the Yam Server  
11 had been shut down, was no longer in use, and was slated for disposal.

12           469. Once the Yam Server was identified, it became a focal point of Phase 4 of the 2019  
13 investigation (i.e., Fall of 2019). Rambler and Lynwood first examined the Yam Server for any  
14 information related to Open Source NGINX. As part of that analysis, it searched for traces of  
15 correspondence and/or email boxes of the Disloyal Employees, Popov, Korotkov, NOC personnel  
16 and other Rambler software programmers. While traces of correspondence were found, most  
17 mailboxes were not located, *i.e.*, had been removed, or their contents had been mostly or entirely  
18 deleted. Therefore, Lynwood hired outside forensics investigations firm Group iB, a leading cyber  
19 forensics firm to restore the Yam server so its contents could be reviewed.

20           470. Phase 5 of the 2019 investigation involved extensive searches in Rambler’s corporate-  
21 wide Exchange email server for mailboxes for those the same individuals and all other key Rambler  
22 employees and officers who could have had potential information concerning NGINX from 2001  
23 until 2019, including from backed-up email systems. The investigation found that the Disloyal  
24 Employees’ and Rambler Employee Conspirators’ Exchange emails contained only the innocuous  
25 communications. All of the illicit communications concerning the Disloyal Employees’ and Rambler  
26 Employee Conspirators’ misappropriation of the NGINX Enterprise were hosted and stored on the  
27 Yam server, which was walled-off from the Rambler company-wide server and never integrated.



1 Nor was the information on the Yam server backed-up prior to the Rambler Employee Conspirators  
2 deleting its data, moving it into an off-site server rack, disconnecting it and slating it to be dismantled.

3 471. In other words, Rambler and Lynwood undertook a full-blown internal investigation  
4 and uncovered no evidence of the Disloyal Employees' and Rambler Employee Conspirators' actions  
5 until they discovered the disabled Yam server in an off-site Rambler server farm, disconnected, with  
6 its data wiped, and in queue to be dismantled. The Rambler internal investigations team only knew  
7 to search for the Yam server because of Korotkov's revelations.

8 472. Moreover, the 2019 investigation re-confirmed that nothing existed on Rambler's  
9 integrated systems in 2012 or second-half of 2014/January 2015 when the company conducted its  
10 prior investigations. The only way Rambler would have discovered the conspiracy is if one of the  
11 co-conspirators had blown the whistle, like Korotkov finally did in April 2019. Instead, Rambler's  
12 previous searches in 2012 and second-half 2014/January 2015, unbeknownst to Rambler and  
13 Lynwood, had been obstructed by the Rambler Employee Conspirators at the explicit directions of  
14 Konovalov, Sysoev and Smirnoff.

15 473. While Rambler and Lynwood's internal investigation was underway, Popov was  
16 questioned anew by Rambler and Lynwood on May 17, 2019 in light of Korotkov's disclosures  
17 concerning the destruction of Rambler servers containing information concerning the development  
18 of the NGINX Enterprise. Popov denied knowledge of finding anything suspicious involving Sysoev  
19 and Konovalov and reaffirmed that he exhaustively searched Rambler's records including the  
20 company's inventory records and found nothing. Popov also denied that he assisted the Team in  
21 concealing their misappropriation of the NGINX Enterprise and evidence destruction.

22 474. After Group iB restored the deleted files stored on the Yam server, Rambler and  
23 Lynwood found electronic communications evidencing that Chesnokov and Popov had been actively  
24 assisting the Team to conceal their actions from 2008 until 2019 (at the direction of the Disloyal  
25 Employees). The contents of the Yam Server also revealed that the Team misappropriated the  
26 NGINX Enterprise, which was conceived and developed at Rambler by the Disloyal Employees.



1           475. Based on their own forensic investigatory findings and an internal investigation  
2 within Rambler, a new assignment agreement was entered into by Rambler and Lynwood to replace  
3 and supersede the 2015 Assignment.

4           476. On April 20, 2020, Rambler and Lynwood entered into an Assignment Agreement  
5 (the “Assignment”), pursuant to which Rambler on behalf of itself and its affiliates irrevocably  
6 assigned to Lynwood any and all rights to Open Source NGINX, derivative works derived therefrom,  
7 and related intellectual property and business opportunities, as well as any and all claims for damages  
8 arising out of or relating to, Rambler’s rights in or to Open Source NGINX, NGINX Plus and  
9 intellectual property and related business opportunities, and the exclusive right as the owner thereof  
10 to enforce all rights Rambler holds with respect to all related intellectual property and/or the legal  
11 and contractual duties owed to Rambler by Rambler’s former employees. The Assignment was  
12 authorized unanimously by the Rambler Board of Directors.

13           477. By virtue of the Assignment, Lynwood owns the causes of action asserted in this  
14 Complaint, and Lynwood is the proper Plaintiff to maintain this action against Defendants.

15 **Under Russian Law, Rambler Owned Open Source NGINX, NGINX Plus and Related**  
16 **Intellectual Property and Business Opportunities**

17           478. Under Russian law, Open Source NGINX and NGINX Plus were owned *ab initio* by  
18 Rambler, the employer of Sysoev, from the moment of its creation, as a work made for hire. The  
19 applicable Russian law to the Defendants’ conduct is law of the Russian Federation from July 9,  
20 1993 “On Copyright and Neighboring Rights” (the “1993 Law”) as well as the Law of the Russian  
21 Federation from September 23, 1992 No. 3523-1 “On Legal Protection of Computer’s Programs and  
22 Databases” (the “1992 Law”).

23           479. Both the 1992 Law and the 1993 Law were in effect at the time Sysoev first wrote  
24 Open Source NGINX for Rambler in 2001, and continued to govern the Disloyal Employees’  
25 misconduct as employees and Rambler’s ownership rights (and thus Lynwood’s ownership rights)  
26 throughout the relevant time period in this Complaint.

1           480. While Sysoev could rightfully claim under Russian law the right to be identified as  
2 the author of Open Source NGINX or NGINX Plus, neither he nor any other member of the Team  
3 could claim the proprietary copyright thereto, which always belonged to Sysoev’s employer,  
4 Rambler, and is now owned by Lynwood.

5           481. Sysoev’s unauthorized release of Open Source NGINX to the public, under the BSD  
6 open source license, and the Team’s continued commercial exploitation thereof and of NGINX Plus,  
7 eventually through NGINX Software, Inc. and NGINX BVI, and now through F5, constituted a gross  
8 violation under Russian law of Sysoev’s and the Disloyal Employees’ obligations as employees of  
9 Rambler as well as violations of the Rambler Code of Conduct, the Rambler Regulations and Russian  
10 civil law provisions governing “works made for hire.”

11           482. Section 2 of the 1992 Law and Section 7 of the 1993 Law includes programs for  
12 computational devices (“computer programs”) in literary works and recognizes them as objects of  
13 copyright.

14           483. Rights related to computer programs arise from the mere fact of their creation (and  
15 from the moment of their creation) and do not require separate registration with a relevant  
16 government authority (in Russia, – RosPatent).

17           484. Section 11 of the 1992 Law and Section 16 of the 1993 Law provides for the owner  
18 of copyright to exclusively use and/or dispose of such rights in any way that he or she deems  
19 appropriate, provided such use or disposal does not otherwise violate the law.

20           485. Copyright under Russian law consists of two elements: (i) the authorship right and  
21 (ii) the “exclusive proprietary right” to exploit the work.

22           486. Under Section 13 of the 1992 Law, the copyright for a computer program can be  
23 registered with RosPatent at any time, but failure to do so does not cancel or undermine the owner’s  
24 rights.

25           487. Under Russian law, protection of the proprietary rights/right of usage of the computer  
26 program applies to the program codes, as distinct from the authorship right, and may be assigned,  
27 passed on under contract, inherited, or otherwise transferred.

1           488. Pursuant to Section 9 of the 1993 Law and Section 13 of the 1992 Law, if the author  
2 of the computer program is employed at the time of the computer program creation, then the  
3 employer holds the proprietary rights to the program, unless the employee and the employer agree  
4 otherwise. The program then becomes a copyrighted object made while in employment and is then  
5 regulated by the applicable provisions of the Russian civil law.

6           489. Sections 12 of the Russian Civil Code, Sections 18 & 20 of the 1992 Laws, and  
7 Sections 48-49.1 of the 1993 Law provide remedies for the legitimate copyright owner in the event  
8 of the breach of copyright, including the recognition of rights, the restitution of the rights as they  
9 existed prior to the breach, compensatory damages, and the recovery of damages based on a violation  
10 of moral rights.

11           490. In addition, Section 20 of the 1992 Law and Section 50 of the 1993 Law provide  
12 protection of computer programs by authorizing the issuance of a preliminary protective court order  
13 or general civil law compensation provisions.

14           491. The basis for filing of the corresponding claim is the actual damage caused to the  
15 claimant per Section 15 of the Russian Civil Code and may be recovered in full.

16           492. Under Russian law, recoverable damages include costs that the person whose right is  
17 breached has incurred and will have to incur in order to remedy the breached right, loss or damage  
18 to the property of such person as well as unrealized profits gains that such person should have  
19 received if his or right was not violated.

20           493. Russia, like the United States, is a signatory to the Berne Convention.

21           494. Article 5 of the Berne Convention provides: “Authors shall enjoy, in respect of works  
22 for which they are protected under this Convention, in countries of the Union other than the country  
23 of origin, the rights which their respective laws do now or may hereafter grant to their nationals,”  
24 but the “extent of protection, as well as the means of redress afforded to the author to protect his  
25 rights, shall be governed exclusively by the laws of the country where protection is claimed.” Berne  
26 Convention Art. 5(1)–5(2).

1           495. Accordingly, with valid copyright claims in hand under Russian law against  
2 Defendants, U.S. Copyright law applies to a copyright infringement claim against those parties  
3 brought in United States federal courts based on infringing activity that occurs within the United  
4 States.

5           496. Plaintiff meets the standing test of 17 U.S.C. § 501(b), “which accords standing only  
6 to the legal or beneficial owner of an ‘exclusive right.’”

7           497. Where a work was created in a foreign country, the plaintiff’s ownership of the  
8 copyright in the work is governed by the law of the jurisdiction where the work was “‘created’ and  
9 ‘first published.’”

10           498. Open Source NGINX and NGINX Plus were created and/or first published and/or  
11 deployed in the Russian Federation, and therefore Russian law is the applicable law to determine  
12 issues of ownership of rights.

13           499. Under Russian law, Rambler was the owner of Open Source NGINX and NGINX  
14 Plus copyrights when they were developed and when the Team formed NGINX Software, Inc. in  
15 2011.

16           500. Sysoev developed Open Source NGINX and NGINX Plus while Sysoev was a full-  
17 time employee of Rambler.

18           501. The Sysoev Employment Agreement with Rambler, in pertinent part, states as  
19 follows: “7. WORKS FOR HIRE. As part of the Employee’s performance of his official duties, he  
20 may be entrusted with the Business Entity’s administration or his or her authorized person to create  
21 works that are objects of copyright, such as computer programs and databases. Such works is an  
22 official work. The exclusive property rights of such works belong to the Business Entity.”

23           502. The Sysoev Employment Agreement with Rambler contains the standard set of rights  
24 and obligations under Russian law that replicate the provisions of the Russian Labor Code. Under  
25 Russian law, the copyright in a work made for hire belongs to the employer.  
26  
27  
28



1           512. Konovalov has previously proclaimed in statements made to the Russian open source  
2 community that Rambler is the “Alma Mater of the popular NGINX web-server.”

3           513. Sysoev developed, tested, and used Open Source NGINX during his normal working  
4 hours and within the scope of his employment duties to Rambler.

5           514. The nginx.org website was hosted on the server hardware belonging to Rambler and  
6 at IP addresses belonging to Rambler, including (a) during the period from September 8, 2005 until  
7 October 24, 2009, IP address: 81.19.69.70; and (b) during the period from October 24, 2009 until  
8 July 28, 2011, at IP address: 81.19.68.137; (both of the aforementioned IP addresses belonged to  
9 Rambler).

10           515. The websites “sysoev.ru” and “nginx.org” were actually hosted on a Rambler server  
11 with the inventory number 2779, which from 2002 to 2012, was located in Rambler’s server  
12 hardware center (Data Center) at the address: 10 Vostochnaya Street, Moscow.

13           516. The first public version of Open Source NGINX was released by Sysoev in October  
14 2004 without Rambler’s authorization, while Sysoev was working full time for Rambler.

15           517. Open Source NGINX was developed in response to the professional tasks and  
16 challenges Rambler faced at a time when approximately twenty percent of overall Russian Internet  
17 traffic was routed *via* Rambler servers.

18           518. By that time, Rambler had launched many on-line products (ranging from photo apps  
19 to news to specialized mailing services) that required high levels of website responsiveness and lack  
20 of denials of service. Open Source NGINX was an important tool that Rambler used to provide  
21 adequate throughput and scalability to address this issue.

22           519. The NGINX Plus software was also designed and developed by Sysoev with  
23 assistance from the Disloyal Employees all of whom were employed by Rambler and utilized  
24 Rambler’s infrastructure and resources in the development thereof.

25           520. Although substantially completed, the NGINX Plus software may not have been fully  
26 developed by Sysoev or the Disloyal Employees while employed at Rambler. Under Russian law,  
27 the fact that the employees did not complete the development of the software program does not  
28

1 invalidate an employer’s proprietary right to the code as a work made for hire particularly where, as  
2 here, the NGINX Plus software was derivative of the original work made for hire, Open Source  
3 NGINX. In addition, here the Disloyal Employees deliberately delayed the completion of NGINX  
4 Plus so they could continue concealing its existence and prevent Rambler from discovering and  
5 utilizing it so that they could execute on their scheme of misappropriating the entirety of the NGINX  
6 Enterprise. Under such faithless-servant situations, Russian law provides that Rambler retains the  
7 ownership rights to NGINX Plus and any derivative works thereof.

8 521. Accordingly, under Russian law, Rambler was the owner of all proprietary copyright  
9 rights in and to Open Source NGINX, NGINX Plus and the related business opportunities comprising  
10 the NGINX Enterprise, and now Lynwood owns Open Source NGINX, NGINX Plus and the NGINX  
11 Enterprise by virtue of the assignment from Rambler to Lynwood.

12 **NGINX Software, Inc., NGINX DE, NGINX BVI and F5 Fraudulently Seek to Register**  
13 **Trademarks and Claim Rambler’s History As Its Own**

14 522. In addition to the employment agreements under which Sysoev and the other  
15 members of the Team were operating while employed at Rambler, Rambler’s Internal Policies and  
16 Procedures provided that: “The employee confirms that the exclusive property rights to all objects  
17 of copyright and related rights developed by him/her or with his/her participation are owned by the  
18 Company. The said objects are considered to have been developed as part of the employee’s job  
19 assignment ... and shall make every effort so that the Company can receive everywhere, at its own  
20 expense, patents, copyrights and other forms of the protection of intellectual property owned by the  
21 Company and acknowledges that all the material benefits from such inventions shall be owned  
22 exclusively by the Company.”

23 523. The NGINX trademark and NGINX (Stylized) trademark were first conceived of,  
24 developed as a work for hire, and first used by Rambler in connection with Open Source NGINX  
25 dating back to 2002 and first used in U.S. commerce by Rambler in connection with Open Source  
26 NGINX dating back to 2004.



1           524. Surreptitiously, NGINX Software, Inc. subsequently filed applications to register the  
2 NGINX trademark and the NGINX (Stylized) trademark in the U.S. in 2011, while Sysoev and the  
3 other members of the Team were still employed at Rambler and claimed a date of first use of the  
4 NGINX and NGINX (Stylized) trademarks as of May 1, 2002 and claimed a date of first use in U.S.  
5 commerce of the NGINX and NGINX (Stylized) trademarks as of May 1, 2004 while Sysoev was  
6 employed by Rambler.

7           525. The claim of ownership by NGINX Software, Inc. of the NGINX and NGINX  
8 (Stylized) trademarks is fraudulent where it did not own the marks as claimed, yet submitted sworn  
9 declarations to the USPTO regarding such ownership.

10           526. Subsequent applications to register the NGINX, NGINX PLUS, NGINX UNIT and  
11 NGINX CONTROLLER trademarks were also filed with the USPTO on similar fraudulent bases by  
12 NGINX DE and NGINX BVI.

13           527. By causing NGINX Software, Inc., NGINX DE, and NGINX BVI to use and  
14 fraudulently register the aforementioned NGINX-formative trademarks, the Team misappropriated  
15 the valuable name recognition and goodwill associated with the NGINX mark.

16           528. Through such misuse and wrongful appropriation of the NGINX-formative  
17 trademarks and NGINX brand and the name recognition and goodwill attendant thereto, the Team  
18 deliberately maximized the value of the stolen enterprise in order to make it as attractive as possible  
19 for potential acquisition by a large U.S. technology company.

20           529. Because of the notoriety of the NGINX trademark, F5 recognized that it would  
21 automatically have a compelling business case for completing the merger with NGINX BVI, as well  
22 as an engine for monetizing years of forthcoming commercial releases of NGINX Plus. By acquiring  
23 and deploying the NGINX formative trademarks, F5 would instantly raise its profile and financial  
24 value across a broad audience of the software development world, from the largest Internet and  
25 networking companies to the smallest software development companies.

1           530. NGINX Software, Inc. and NGINX BVI subsequently assigned the foregoing  
2 NGINX-formative trademarks to F5 at the end of 2019, which continued to make fraudulent  
3 statements to the USPTO regarding ownership of such trademarks.

4           531. As part of the scheme to circumvent Rambler, deprive it of the recognition that should  
5 be rightfully attributed to it and have the value of its achievements, Defendants have caused  
6 advertisements for Open Source NGINX and NGINX Plus to expressly exclude Rambler and only  
7 refer to “NGINX” “NGINX, Inc.” or “F5 Networks, Inc.” as the companies behind such products,  
8 even though such products would not have existed but for Rambler.

9           532. By the Defendants failing to attribute the history of Open Source NGINX and NGINX  
10 Plus to Rambler and claiming it for themselves, the Defendants have engaged in false advertising of  
11 the products.

12 **The Trademarks Used by Defendants Are Confusingly Similar**

13           533. The NGINX and NGINX (Stylized) trademarks used by Defendants are exactly the  
14 same in appearance, sound and commercial impression to the NGINX trademarks owned by  
15 Lynwood as the successor-in-interest to Rambler’s trademark rights.

16           534. The NGINX and NGINX (Stylized) trademarks used by Defendants are used in  
17 connection with the exact same software goods and related services as used by Rambler.

18           535. The NGINX PLUS trademark used by Defendants is exactly the same in appearance,  
19 sound and commercial impression to the NGINX PLUS trademark owned by Lynwood as Rambler’s  
20 successor-in-interest. Further, the goods and services are the same as or are closely related to as the  
21 goods and services of Rambler (now Lynwood).

22           536. The NGINX CONTROLLER trademark used by Defendants is confusingly similar  
23 in sound, appearance and commercial impression to the NGINX and NGINX (Stylized) trademarks  
24 owned by Lynwood as Rambler’s successor-in-interest. Further, the goods and services are the same  
25 as or are closely related to the goods and services provided in connection with the NGINX and  
26 NGINX (Stylized) trademarks of Rambler (now Lynwood).

1           537. The NGINX UNIT trademark used by Defendants is confusingly similar in sound,  
2 appearance and commercial impression to the NGINX and NGINX (Stylized) trademarks owned by  
3 Lynwood as Rambler’s successor-in-interest. Further, the goods and services are the same as or are  
4 closely related to the goods and services provided in connection with the NGINX and NGINX  
5 (Stylized) trademarks of Rambler (now Lynwood).

6           538. Defendants’ use of the NGINX-formative trademarks is in bad faith.

7 **The Team, Robertson, Runa Capital, E. Ventures, NGINX BVI, NGINX DE and NGINX**  
8 **Software, Inc. Joined in the Conspiracy to Misappropriate from Rambler the NGINX**  
9 **Enterprise so that the Conspirators Could Then Sell the NGINX Enterprise to a Large U.S.**  
10 **Technology Company and Are Therefore Jointly and Severally Liable For Each of the Co-**  
11 **Conspirator’s Acts Taken in Furtherance of the Conspiracy**

12           539. Konovalov joined Rambler as its CTO in 2008, at which time he began supervising  
13 Sysoev, including Sysoev’s ongoing development of Open Source NGINX.

14           540. The Team recognized that Open Source NGINX was gaining recognition and use in  
15 Russia and internationally.

16           541. The Team further recognized that there were highly valuable business opportunities  
17 associated Open Source NGINX and NGINX Plus, which was already under development by Sysoev,  
18 additional enhancements and commercial applications that could be licensed on subscription and  
19 other fee bases, support services, and the intellectual property rights inherent in Open Source  
20 NGINX, NGINX Plus, NGINX trademarks, and the overall NGINX Enterprise.

21           542. The Team knew that Open Source NGINX, NGINX Plus, business opportunities and  
22 therefore the NGINX Enterprise were owned by Rambler and not Sysoev or any member of the  
23 Disloyal Employees or Team

24           543. However, the Disloyal Employees wished to cash in on the NGINX Enterprise to the  
25 exclusion of their employer.

26           544. Specifically, by the summer of 2008, the Disloyal Employees in conjunction with  
27 Alexeev and Dounin, agreed that they would violate their duties to Rambler and divest Rambler of  
28

1 the highly valuable NGINX Enterprise, move its epicenter to Northern California, and ultimately sell  
2 the enterprise to a large American technology company for their own ill-gotten profit and at the  
3 exclusion of their employer, Rambler.

4 545. The sale to a large U.S. technology or Silicon Valley-type company was always the  
5 end goal of the Team's conspiracy.

6 546. The Team recognized and agreed that they could use Konovalov's position as  
7 Rambler's CTO and supervisor of Sysoev, as well as Rambler's lack of institutional understanding  
8 of Sysoev's work and the possibilities of the various NGINX software code products to plan, execute,  
9 and ultimately conceal their theft of the NGINX Enterprise, which is exactly what the Team did as  
10 Rambler and Plaintiff's investigation in 2019 and 2020 confirms.

11 547. Konovalov fraudulently represented to Rambler as its CTO that Open Source NGINX  
12 was virtually worthless, despite the fact that he and the rest of the Team knew it was highly valuable  
13 and gaining mass recognition within the technical community, and that the NGINX Enterprise  
14 inclusive of both Open Source NGINX and the proprietary NGINX Plus had vast promise as a  
15 lucrative business.

16 548. The Team recognized and agreed that in addition to concealing the value and  
17 opportunities associated with the NGINX Enterprise, they would need to conceal their activities in  
18 secretly launching their new company.

19 549. The Team concealed their activity by, among other things, enlisting former Rambler  
20 employee Korotkov to solicit investors, destroying evidence, concealing from Rambler that Open  
21 Source NGINX, NGINX Plus and related business opportunities were the predominant work Sysoev  
22 performed for Rambler, concealing their intention to offshore Open Source NGINX, NGINX Plus  
23 and related business opportunities to the United States to ultimately sell the NGINX Enterprise to a  
24 large American technology company, lying to Rambler about the value and commercialization of  
25 Open Source NGINX and related corporate opportunities, fraudulently misrepresenting to Rambler  
26 that their only intentions with NGINX were to support an open source project, and concealing from  
27 Rambler that instead of working for Rambler and in Rambler's interests they were really scheming

1 against Rambler so they could eventually steal from Rambler what they knew to be an extremely  
2 valuable business in the NGINX Enterprise.

3 550. While members of the Team remained employees of Rambler, the Team engaged  
4 California legal counsel to form NGINX Software, Inc. on May 4, 2011 and formed NGINX BVI on  
5 July 6, 2011 and NGINX DE in August 2011.

6 551. These entities joined the conspiracy as co-conspirators with the Team.

7 552. The intra-corporate conspiracy doctrine is inapplicable to NGINX Software, Inc.,  
8 NGINX DE and NGINX BVI (collectively, the “NGINX Conspirators”) because the entities were  
9 incorporated after the formation of the conspiracy and thus cannot constitute single actors.

10 553. During the time when the Disloyal Employees remained employees of Rambler,  
11 NGINX Software, Inc. established its headquarters in San Francisco, California.

12 554. While members of the Disloyal Employees remained employees of Rambler, NGINX  
13 Software, Inc. engaged California legal counsel to facilitate NGINX Software, Inc.’s fraudulent  
14 filing of an application to register the trademark NGINX, which in reality was owned by Rambler.

15 555. From the headquarters in San Francisco, California, the conspirators continued to  
16 execute their plan of further building out, funding, and then selling to a large American technology  
17 company the NGINX Enterprise the Team was hijacking from Rambler.

18 556. The Team was able to and did operate out of the view of Rambler. Based on the  
19 Disloyal Employees’ affirmative misrepresentations that Open Source NGINX was virtually  
20 worthless and not susceptible to meaningful commercialization, and their concealment of their efforts  
21 to the contrary, including the wholesale concealment of NGINX Plus, Rambler had no reason to track  
22 the Team and the NGINX Conspirators’ progress.

23 557. The Team hid from Rambler the true nature of what it owned – a valuable enterprise  
24 built around Open Source NGINX on the basis of an “open core” model – and therefore Rambler  
25 reasonably did not know to investigate (or even where to investigate) when it went missing until  
26 Korotkov came forward and the F5 Merger occurred.

1           558. Konovalov, Sysoev and Smirnov owed statutory fiduciary duties under Russian law  
2 to deal honestly and fairly with Rambler during and after their employment ended at Rambler.  
3 Accordingly, Konovalov, Sysoev and Smirnov had a duty to correct their affirmative  
4 misrepresentations made to Rambler and to disclose the facts that they concealed from Rambler (i.e.,  
5 that the Team misappropriated the NGINX Enterprise from Rambler to sell to a third-party  
6 technology company).

7           559. In late March 2011, the Team invited Runa Capital and BV Capital (now E.Ventures)  
8 to join the conspiracy by soliciting their outside investment in exchange for an ownership stake in  
9 the NGINX Conspirators and the opportunity to actively participate in growing the NGINX  
10 Conspirators with Rambler's stolen intellectual property for the ultimate objective of selling the  
11 NGINX Enterprise to a large American technology company.

12           560. Runa Capital and BV Capital knowingly joined the conspiracy in April 2011 by  
13 agreeing to financially invest in the Team and becoming the Series A investors for NGINX BVI.  
14 Runa Capital and BV Capital also advised the Team on how to misappropriate the NGINX Enterprise  
15 while the Disloyal Employees remained employed at Rambler and how to quietly lay the groundwork  
16 for the formation of the NGINX Conspirators without triggering Rambler's attention.

17           561. Runa Capital was not only aware that the NGINX Enterprise was purloined from  
18 Rambler by the Team but Runa Capital was a key decision-maker and advisor to the Team through  
19 Galperin whom it hired in February 2011 in a deliberate move to gain influence over the Team going  
20 forward. Separate and aside from the information received by Runa Capital from the Team directly,  
21 Galperin provided Runa Capital with detailed information of Rambler's inner workings and the  
22 Team's conspiracy of clandestinely developing the NGINX Enterprise within the NOC department  
23 and under Konovalov's protective cover.

24           562. Runa Capital and BV Capital remained in the conspiracy from April 2011 until the  
25 objective of the conspiracy was completed in the form of the Merger transaction with F5. Runa  
26 Capital and BV Capital made investments in NGINX BVI in October 2011, October 2013, December  
27

1 2014, and April 2016 and became active in the management of NGINX BVI by each securing a board  
2 seat on the company through Chikhachev and Gieselmann.

3 563. In 2012, the Team invited Robertson to join the conspiracy by hiring Robertson as the  
4 CEO of the NGINX Enterprise.

5 564. Robertson, who was fully familiar with the origins of Open Source NGINX, NGINX  
6 Plus and the Team's conspiracy, willingly joined as a co-conspirator.

7 565. As Robertson boasts on F5's website: "Robertson joined NGINX as CEO in 2012  
8 when the company had no commercial offerings or revenue and a staff of 8. Over the next 6 years,  
9 he grew NGINX to more than 250 employees and raised over \$100 million in venture capital from  
10 such investors as Goldman Sachs and NEA."

11 566. Throughout Robertson's reign as CEO, NGINX BVI continued to grow market share  
12 and develop commercial products and service offerings that made it poised for high profitability and  
13 the ultimate object of the conspirators' conspiracy – a sale of Rambler's NGINX Enterprise.

14 567. In furtherance of the conspirators' exit strategy, Robertson formed new NGINX  
15 entities in the United Kingdom in 2013 (NGINX Ltd.), Ireland in 2015 (NGINX International  
16 Limited) and Singapore in 2017 (NGINX Asia Pacific Pte. Ltd.). Furthermore, Robertson directed  
17 NGINX DE and NGINX BVI to file successive trademark applications between 2013 and 2017 with  
18 the USPTO for NGINX Plus, NGINX Controller and NGINX UNIT in further effort at building the  
19 NGINX Enterprise's goodwill and brand.

20 568. In 2019, the conspirators achieved the ultimate object of their conspiracy when they  
21 sold Rambler's NGINX Enterprise to F5 through the Merger for \$670 million. The NGINX  
22 Enterprise, which Konovalov repeatedly represented to Rambler as being worthless was, as the  
23 conspirators knew all along, immensely valuable.

24 569. The conspirators conspired to breach the Disloyal Employees' duties to Rambler, to  
25 tortiously interfere with Rambler's contractual rights, to tortiously interfere with Rambler's  
26 prospective business advantage, and to defraud Rambler.





1 obligations to Rambler and hijack Rambler’s business opportunities which Rambler resourced and  
2 for which Rambler compensated the Disloyal Employees to create.

3 579. Konovalov breached his obligations to Rambler under the Konovalov Employment  
4 Agreement, the Rambler Code of Ethics, the Rambler Regulations and in his capacity as an executive  
5 of Rambler, by failing to protect Rambler’s rights in the various intellectual property associated with  
6 Rambler’s NGINX Enterprise, but on the contrary by actively subverting those rights, including by  
7 fraudulently seeking and/or assisting in the seeking of dominion and control over Rambler’s  
8 intellectual property rights for the benefit of himself, Sysoev, the NGINX Conspirators, and F5.

9 580. Konovalov breached his obligations to Rambler under the Konovalov Employment  
10 Agreement, the Rambler Regulations, the Rambler Code of Ethics, and in his capacity as an executive  
11 of Rambler, by selling Rambler’s NGINX Enterprise for his own ill-gotten profits at the exclusion  
12 of Rambler.

13 581. Konovalov’s breaches of his obligations to Rambler under the Konovalov  
14 Employment Agreement, the Rambler Code of Ethics, the Rambler Regulations and in his capacity  
15 as an executive of Rambler have caused Rambler vast damages, and Lynwood is entitled to collect  
16 damages in an amount to be determined at trial but presently believed to be well in excess of \$750  
17 million.

18 **SECOND CLAIM FOR RELIEF**

19 ***Breach of Employment Obligations Owed by Sysoev to Rambler***

20 582. Plaintiff realleges and incorporates by reference the allegations contained in  
21 paragraphs 1 through 581 above as if fully set forth and repeated herein.

22 583. Sysoev is bound by the obligations set forth in the Sysoev Employment Agreement<sup>2</sup>,  
23 Sysoev Separation Agreement, the Rambler Code of Ethics and the Rambler Regulations.

24  
25  
26 <sup>2</sup> The “Sysoev Employment Agreement” hereinafter defined includes the Sysoev Employment  
27 Agreement, the Supplementary Agreement, the Sysoev 2004 Supplemental Agreement, the Sysoev  
28 2006 Supplemental Agreement, the Sysoev July 2007 Supplemental Agreement, the Sysoev October  
2007 Supplemental Agreement, the Sysoev July 2009 Supplemental Agreement, the 2011 Sysoev  
Employment Agreement.





1 members to breach their obligations to Rambler and hijack Rambler’s business opportunities which  
2 Rambler resourced and for which Rambler compensated the Team to create.

3 600. Smirnov breached his obligations to Rambler under the Smirnov Employment  
4 Agreement, Rambler Code of Ethics and Rambler Regulations by failing to protect Rambler’s rights  
5 in the various intellectual property associated with Rambler’s NGINX Enterprise, but on the contrary  
6 actively subverting those rights including by providing substantial assistance to the Team and  
7 NGINX Conspirators in fraudulently seeking and/or assisting in the seeking of dominion and control  
8 over Rambler’s intellectual property rights for the benefit of himself, Sysoev, Konovalov, the  
9 NGINX Conspirators, and F5.

10 601. For example, Smirnov stayed behind at Rambler and helped the Team destroy  
11 evidence of their ongoing conspiracy.

12 602. Smirnov breached his obligations to Rambler under the Smirnov Employment  
13 Agreement, Rambler Code of Ethics and Rambler Regulations by providing substantial assistance to  
14 the Team and the NGINX Conspirators in selling Rambler’s NGINX Enterprise for their own ill-  
15 gotten profits at the exclusion of Rambler.

16 603. Smirnov’s breaches of his obligations to Rambler under the Smirnov Employment  
17 Agreement, Rambler Code of Ethics and Rambler Regulations have caused Rambler vast damages  
18 and Lynwood is entitled to collect damages in an amount to be determined at trial but presently  
19 believed to be well in excess of \$750 million.

20 **FOURTH CLAIM FOR RELIEF**

21 ***Breach of Konovalov’s Duty to Act Fairly and Honestly With Rambler***

22 604. Plaintiff realleges and incorporates by reference the allegations contained in  
23 paragraphs 1 through 603 above as if fully set forth above and repeated herein.

24 605. Konovalov in his capacity as CTO of Rambler was a high-level officer of Rambler.  
25 As such, he owed Rambler a heightened duty under Russian statutory law to behave in a fair and  
26 reasonable way vis-à-vis Rambler in accordance with the Rambler Regulations and Articles 53.1 and  
27 53.3 of the Russian Civil Code. Konovalov owed Article 53.1 and 53.3 duties by virtue of his senior  
28

1 management position as CTO of Rambler, his access to confidential information, extensive  
2 discretion afforded by Rambler to Konvalov's decision-making authority and because Rambler  
3 provided Konvalov with a Power of Attorney with high financial thresholds to act on behalf of the  
4 company.

5 606. Under Russian law, Konvalov's Article 53.1 and 53.3 duties continued after he left  
6 the employment of Rambler. Konvalov was still under the legal duty to act fairly and honestly vis-  
7 à-vis Rambler and refrain from misappropriating corporate opportunities and assets such as the  
8 NGINX Enterprise and to disclose any harmful actions he undertook to the detriment of Rambler.

9 607. Konvalov had a duty under Articles 53.1 and 53.3 to pursue the NGINX Enterprise  
10 for the financial benefit of Rambler, to timely and accurately disclose to Rambler the value of the  
11 NGINX Enterprise, to refrain from misappropriating the NGINX Enterprise and to refrain from  
12 participating in the Team's subsequent acts of concealment wherein the Team destroyed evidence of  
13 its fraud perpetrated against Rambler.

14 608. Konvalov breached his duties to act fairly, reasonably and in the best interests of  
15 Rambler by concealing from Rambler the scope of the NGINX Enterprise developed by the Disloyal  
16 Employees while they were still employed at Rambler, by participating in the conspiracy with the  
17 Team whereby the Team misappropriated Rambler's NGINX Enterprise and by covering up their  
18 actions through the destruction of evidence so as to prevent Rambler and Lynwood from timely  
19 discovering the Team's misconduct.

20 609. Konvalov's breaches of his duties of fairness and reasonableness under Articles 53.1  
21 and 53.3 of the Russian Civil Code have caused Rambler vast damages and Lynwood is entitled to  
22 collect damages in an amount to be determined at trial but presently believed to be well in excess of  
23 \$750 million.

24 **FIFTH CLAIM FOR RELIEF**

25 ***Breach of the Duty to Act Fairly and Honestly With Rambler As To Sysoev and Smirnoff***

26 610. Plaintiff realleges and incorporates by reference the allegations contained in  
27 paragraphs 1 through 609 above as if fully set forth above and repeated herein.

1           611. Sysoev was treated uniquely at Rambler. He was the company's top talent in terms  
2 of product and software development. In recognition of his value and importance to the company,  
3 Rambler compensated Sysoev accordingly by regularly providing him with substantial raises and  
4 bonuses tied to his work, including the development of Open Source NGINX. As such, he owed  
5 Rambler a heightened duty under Russian statutory law to behave in a fair and reasonable way vis-  
6 à-vis Rambler in accordance with the Rambler Regulations and Articles 53.1 and 53.3 of the Russian  
7 Civil Code.

8           612. During his employment at Rambler, Smirnoff served as the company's Head of the  
9 NOC department. As such, Smirnoff owed Rambler a heightened duty under Russian statutory law to  
10 behave in a fair and reasonable way vis-à-vis Rambler in accordance with the Rambler Regulations  
11 and Article 53.1 and 53.3 of the Russian Civil Code.

12           613. Sysoev's and Smirnoff's Article 53.1 and 53.3 duties existed during and after their  
13 employment with Rambler and they both were obligated to continue to act fairly and honestly vis-à-  
14 vis Rambler after they separated from the company.

15           614. Sysoev and Smirnoff owed Rambler duties under Articles 53.1 and 53.3 to pursue the  
16 NGINX Enterprise for the financial benefit of Rambler, to timely and accurately disclose to Rambler  
17 the value of the NGINX Enterprise, to refrain from misappropriating the NGINX Enterprise and to  
18 refrain from participating in the Team's subsequent acts of concealment wherein the Team destroyed  
19 evidence of its fraud perpetrated against Rambler.

20           615. Sysoev and Smirnoff breached their duties to act fairly, reasonably and in the best  
21 interests of Rambler by concealing from Rambler the scope of the NGINX Enterprise developed by  
22 the Disloyal Employees while they were still employed at Rambler, by participating in the conspiracy  
23 with the Team whereby the Team misappropriated Rambler's NGINX Enterprise and by covering  
24 up their actions through the destruction of evidence so as to prevent Rambler and Lynwood from  
25 timely discovering the Team's misconduct.

26           616. Sysoev's and Smirnoff's breaches of their duties of fairness and reasonableness under  
27 Articles 53.1 and 53.3 of the Russian Civil Code have caused Rambler vast damages and Lynwood



1 is entitled to collect damages in an amount to be determined at trial but presently believed to be well  
2 in excess of \$750 million.

3 **SIXTH CLAIM FOR RELIEF**

4 ***Aiding and Abetting by Alexeev and Dounin of the Disloyal Employees' Breaches of Their***  
5 ***Duties of Honesty and Loyalty to Rambler***

6 617. Plaintiff realleges and incorporates by reference the allegations contained in  
7 paragraphs 1 through 616 above as if fully set forth and repeated herein.

8 618. Alexeev and Dounin were longtime acquaintances of Konovalov and Sysoev. Dounin  
9 had even worked with Sysoev at Rambler up until 2007. Both Alexeev and Dounin knew that  
10 Rambler owned the rights to Open Source NGINX, NGINX Plus and the NGINX Enterprise.

11 619. Alexeev and Dounin knew Konovalov, Sysoev, and Smirnoff owed duties to deal  
12 honestly and fairly with Rambler under Russian Civil Code Articles 53.1 and 53.3. Prior to joining  
13 the Team, Alexeev and Dounin were informed by Konovalov and Sysoev of their employment  
14 obligations to Rambler and Russian law concerning "works made for hire." Moreover, in the course  
15 of the Team's efforts at securing financing from various potential venture capital investors, including  
16 Runa Capital, BV Capital and Greycroft, Alexeev and Dounin were informed by the venture capital  
17 investors themselves and the Team's own lawyers that their plans concerning the misappropriation  
18 of the NGINX Enterprise was violative of the Disloyal Employees' employment duties and  
19 obligations to their employer Rambler and ran afoul of Russian law.

20 620. Nevertheless, Alexeev and Dounin went forward and provided substantial assistance  
21 to Konovalov, Sysoev and Smirnoff in breach their duties of honesty and loyalty to Rambler by  
22 collaborating with Runa Capital and BV Capital in securing funding, aiding the Disloyal Employees  
23 and Korotkov in pursuing trademarks for the NGINX Enterprise and working with the Disloyal  
24 Employees in forming the Team's various NGINX entities and simultaneously pursuing customers  
25 for the NGINX Enterprise. Specifically, Alexeev provided substantial assistance to the Disloyal  
26 Employees in the pursuit of seed capital to further develop the NGINX Enterprise after lifting it out  
27 of Rambler and in forming all of the NGINX-related entities. Alexeev and Dounin engaged in this

1 conduct with knowledge that the Disloyal Employees were disclosing Rambler’s confidential and  
2 proprietary information to venture capital firms, including Runa Capital, BV Capital and Greycroft  
3 and ultimately F5, and with knowledge that the Disloyal Employees were acting in contravention of  
4 Rambler’s intellectual property rights.

5 621. Rambler was harmed by the Disloyal Employees’ breaches of their obligations to  
6 Rambler and Alexeev and Dounin’s aiding and abetting thereof.

7 622. Alexeev and Dounin were substantial factors in causing the harm suffered by  
8 Rambler.

9 623. As a result of Alexeev and Dounin’s aiding and abetting of the Disloyal Employees’  
10 wrongful conduct, Rambler suffered vast damages and Lynwood as assignee is entitled to collect  
11 damages in an amount to be determined at trial but presently believed to be well in excess of \$750  
12 million.

### 13 **SEVENTH CLAIM FOR RELIEF**

#### 14 ***Aiding and Abetting by Runa Capital and E.Ventures of the Disloyal Employees’ Fraud and*** 15 ***Breaches of Their Duties of Honesty and Loyalty to Rambler***

16 624. Plaintiff realleges and incorporates by reference the allegations contained in  
17 paragraphs 1 through 623 above as if fully set forth and repeated herein.

18 625. Runa Capital and BV Capital (now E.Ventures) conducted extensive due diligence  
19 leading up to their Series A investment in October 2011 concerning the Team and the Disloyal  
20 Employees’ contractual obligations to Rambler and the development of Open Source NGINX,  
21 NGINX Plus and the NGINX Enterprise more generally.

22 626. As a result of the due diligence, Runa Capital and BV Capital knew that Rambler  
23 owned the NGINX Enterprise, that the Disloyal Employees were breaching their contractual and  
24 statutory obligations to Rambler and that the Disloyal Employees were defrauding Rambler.

25 627. Runa Capital had actual knowledge of the Disloyal Employees’ fraudulent conduct  
26 and breaches of their Article 53 duties from sources that were independent of its due diligence. For  
27 example, Rambler Employee and Conspirator, Dmitry Galperin, whom Runa Capital hired in  
28

1 February 2011 for the explicit purpose of cementing Runa Capital's relationship with the Team  
2 disclosed to Runa Capital the granular details of the Disloyal Employees' scheme.

3 628. Galperin informed Runa Capital that the NGINX Enterprise was being developed by  
4 the Disloyal Employees clandestinely at Rambler's NOC department even though Konovalov  
5 misrepresented to Rambler's senior management and board of directors that it had no commercial  
6 value. Galperin also informed Runa Capital of the agreement the Disloyal Employees had in place  
7 with Rambler Employee Conspirators who assisted the Disloyal Employees in concealing their  
8 fraudulent activities from Rambler in exchange for promises of future employment at the entities  
9 formed with the purloined NGINX Enterprise.

10 629. As sophisticated entities with international offices, Runa Capital and BV Capital also  
11 knew that the Disloyal Employees' obligations were ongoing. Indeed, the Disloyal Employees'  
12 obligations to Rambler and the Russian law protecting Rambler's rights as the employer to the  
13 NGINX Enterprise were extensively discussed by Runa Capital and BV Capital with the Team prior  
14 to the initial Series A investment.

15 630. Moreover, Runa Capital and BV Capital knew that the Disloyal Employees would be  
16 violating those obligations to Rambler by misappropriating the NGINX Enterprise from Rambler  
17 and that the Team would succeed in its fraudulent scheme aimed at victimizing Rambler if the Team  
18 were able to misappropriate the NGINX Enterprise for themselves for the purpose of then selling the  
19 NGINX Enterprise to a large U.S. technology or Silicon Valley company.

20 631. Nevertheless, Runa Capital and BV Capital sought to cash in on Rambler's NGINX  
21 Enterprise so they provided the Disloyal Employees and Team with substantial assistance in  
22 achieving the ultimate goal of their conspiracy – the misappropriation of Rambler's NGINX  
23 Enterprise and its ultimate sale to F5 for their own ill-gotten profits at the exclusion of Rambler.

24 632. Indeed, Runa Capital and BV Capital not only advised the Team on how to execute  
25 on their conspiracy for misappropriating the NGINX Enterprise from Rambler beginning in March  
26 2011 but fueled the conspiracy through their financings from 2011 through 2016 and active  
27 participation on NGINX BVI's board of directors up to and including 2019 when they along with  
28

1 the Team ultimately achieved their objective – the sale of the NGINX Enterprise to F5 via the Merger  
2 transaction.

3 633. As Runa Capital and BV Capital intended and knew would happen as a result of their  
4 substantial assistance, the Disloyal Employees violated their ongoing obligations to Rambler,  
5 including by, without limitation, divesting Rambler of the NGINX Enterprise, disclosing Rambler’s  
6 confidential information to third-parties, including other venture capital investors and later F5, and  
7 acting in contravention of Rambler’s intellectual property rights.

8 634. Rambler was harmed by the Disloyal Employees’ breaches of their obligations to  
9 Rambler and Runa Capital and BV Capital’s aiding and abetting thereof.

10 635. Runa Capital and BV Capital’s misconduct was a substantial factor in causing the  
11 harm suffered by Rambler.

12 636. As a result of Runa Capital and BV Capital’s aiding and abetting of the Disloyal  
13 Employees’ wrongful conduct and the Team’s fraudulent conduct, Rambler was harmed and  
14 Lynwood is entitled to collect damages in an amount to be determined at trial but presently believed  
15 to be well in excess of \$750 million.

16 **EIGHTH CLAIM FOR RELIEF**

17 ***Aiding and Abetting by F5 of the Disloyal Employees’ Fraud and Breaches of Their***

18 ***Duties of Honesty and Loyalty to Rambler***

19 637. Plaintiff realleges and incorporates by reference the allegations contained in  
20 paragraphs 1 through 636 above as if fully set forth and repeated herein.

21 638. F5 conducted extensive due diligence leading up to the Merger concerning the Team  
22 and the Disloyal Employees, including with respect to the Disloyal Employees’ contractual  
23 obligations to Rambler and the development of Open Source NGINX NGINX Plus and the NGINX  
24 Enterprise more generally.

25 639. F5’s due diligence included a review of the Disloyal Employees’ past employment  
26 and separation agreements with Rambler and an analysis of Open Source NGINX and NGINX Plus  
27 along with the other proprietary NGINX commercial add-on software developed from the purloined  
28

1 NGINX Enterprise. The software modules from Open Source NGINX and NGINX Plus revealed  
2 that the code commits by Sysoev for the software in question were performed while he was a Rambler  
3 employee.

4 640. F5's due diligence included a review of the Disloyal Employees' contemporaneous  
5 electronic communications from the time when the Disloyal Employees were scheming to lift the  
6 NGINX Enterprise out of Rambler.

7 641. As a result of the due diligence, F5 knew about the Disloyal Employees' Article 53  
8 duties to act fairly and honestly with Rambler, the Disloyal Employees' violations of those duties,  
9 and their fraudulent conduct against Rambler.

10 642. As a sophisticated entity with international offices, F5 also knew that the Disloyal  
11 Employees' obligations were ongoing and postdated their respective separations from Rambler.

12 643. Moreover, F5 knew that the Disloyal Employees would be violating those obligations  
13 to Rambler by selling Rambler's NGINX Enterprise to F5 and that the Disloyal Employees would  
14 succeed in their fraudulent scheme aimed at enriching themselves and victimizing Rambler if the  
15 Team were able to sell the NGINX Enterprise to F5.

16 644. Nevertheless, F5 sought to seize Rambler's NGINX Enterprise so it provided the  
17 Disloyal Employees and Team with substantial assistance in achieving the ultimate goal of their  
18 conspiracy – a sale of Rambler's NGINX Enterprise to a large American technology company like  
19 F5 for their own ill-gotten profits at the exclusion of Rambler.

20 645. As F5 intended and knew would happen as a result of its assistance, the Disloyal  
21 Employees violated their ongoing obligations to Rambler, including by, without limitation, divesting  
22 Rambler of the NGINX Enterprise and selling the NGINX Enterprise to F5, disclosing Rambler's  
23 confidential and proprietary information to F5, and acting in contravention of Rambler's intellectual  
24 property rights.

25 646. Rambler was harmed by the Disloyal Employees' breaches of their obligations to  
26 Rambler and F5's aiding and abetting thereof.

27 647. F5's conduct was a substantial factor in causing the harm suffered by Rambler.



1           656. Konovalov's knowledge concerning Sysoev's ongoing obligations to Rambler is  
2 imputed onto the NGINX Conspirators and/or the NGINX Conspirators otherwise knew of Sysoev's  
3 ongoing obligations.

4           657. In addition, based on his knowledge of Sysoev's employment history, the conspiracy,  
5 concerns raised by investors over the fact that Sysoev developed Open Source NGINX and NGINX  
6 Plus at Rambler, and his own experience in business, Robertson knew of Sysoev's ongoing  
7 obligations to Rambler.

8           658. Beginning in the summer of 2008 and continuing through 2019, Konovalov actively  
9 encouraged and persuaded Sysoev to breach his obligations to Rambler by concealing the true utility  
10 and value of Open Source NGINX, concealing the existence of NGINX Plus as a work made for hire  
11 and related business opportunities from Rambler, refusing to assist Rambler in protecting its  
12 intellectual property rights associated with the NGINX Enterprise, secretly planning to divest  
13 Rambler of the NGINX Enterprise so the Team could sell it to a third-party for their own ill-gotten  
14 profits, and disclosing Rambler's confidential and proprietary information.

15           659. Beginning in May 2011 and continuing through 2019, the NGINX Conspirators and  
16 (beginning in 2012) Robertson actively encouraged and persuaded Sysoev to breach his obligations  
17 to Rambler by concealing the true utility and value of Open Source NGINX, concealing the existence  
18 of NGINX Plus as a work made for hire and related business opportunities from Rambler, refusing  
19 to assist Rambler in protecting its intellectual property rights associated with the NGINX Enterprise,  
20 secretly planning to divest Rambler of the NGINX Enterprise so the Team and Robertson could sell  
21 it to a third-party for their own ill-gotten profits, and disclosing Rambler's confidential and  
22 proprietary information.

23           660. Konovalov, Robertson, and the NGINX Conspirators intended to cause Sysoev to  
24 breach his obligations to Rambler so that they could profit from the unlawful sale of Rambler's  
25 NGINX Enterprise and reap ill-gotten profits for themselves to the exclusion of Rambler.





1           669. Smirnov and Rambler were parties to and bound by the Smirnov Employment  
2 Agreement, the Rambler Code of Ethics and Rambler Regulations.

3           670. Leading up to their Series A investment, Runa Capital and BV Capital (later renamed  
4 E. Ventures) conducted extensive due diligence concerning the Team and the Disloyal Employees,  
5 including the Disloyal Employees' contractual obligations to Rambler and the development of Open  
6 Source NGINX, NGINX Plus and related business opportunities. As a result of the due diligence,  
7 Runa Capital and BV Capital knew about the Disloyal Employees' contractual obligations to  
8 Rambler. Moreover, Runa Capital and BV Capital knew that the Disloyal Employees would be  
9 breaching those obligations to Rambler by misappropriating Rambler's NGINX Enterprise.

10           671. For the avoidance of doubt, Runa Capital and BV Capital each separately demanded,  
11 received and reviewed all of the Rambler employment and separation agreements for Sysoev,  
12 Konovalov and Smirnov. Runa Capital and BV Capital each separately knew that Sysoev,  
13 Konovalov and Smirnov were each separately violating their respective employment agreements,  
14 separation agreements, Rambler Code of Ethics and the Rambler Regulations.

15           672. Separately, Runa Capital was aware of Sysoev, Konovalov, and Smirnov's  
16 contractual obligations under the employment and separation agreements from former Rambler  
17 employee Dmitry Galperin who joined Runa Capital as a principal of the firm. Upon joining Runa  
18 Capital in February 2011, Galperin informed Runa Capital's Belousov and Chikhachev of each of  
19 the Disloyal Employees' contractual obligations.

20           673. Runa Capital and BV Capital intended to cause the Disloyal Employees to breach  
21 their contractual obligations to Rambler so that they could capitalize on the misappropriated NGINX  
22 Enterprise by investing in the Team and the NGINX Conspirators with an exit strategy of selling the  
23 NGINX Enterprise to a large American technology company for a substantial profit and to the  
24 detriment and exclusion of Rambler.

25           674. Runa Capital and BV Capital knew that as a result of their conduct disruption of the  
26 Disloyal Employees' performance of their ongoing obligations to Rambler was certain or  
27 substantially certain to occur.



1 related business opportunities. As a result of the due diligence, F5 knew about the Disloyal  
2 Employees' contractual obligations to Rambler. Moreover, F5 knew that the Disloyal Employees  
3 would be breaching those obligations to Rambler by selling Rambler's NGINX Enterprise to F5.

4 684. For the avoidance of doubt, F5 separately demanded and received all of the Rambler  
5 employment and separation agreements for Sysoev, Konovalov and Smirnoff from NGINX BVI as  
6 part of its due diligence during the Merger negotiations. F5 knew that Sysoev, Konovalov and  
7 Smirnoff were each separately violating their respective employment agreements, separation  
8 agreements, Rambler Code of Ethics and the Rambler Regulations.

9 685. F5 intended to cause the Disloyal Employees to breach their contractual obligations  
10 to Rambler so that F5 could seize Rambler's NGINX Enterprise.

11 686. F5 knew that as a result of its conduct disruption of Disloyal Employees' performance  
12 of their ongoing obligations to Rambler was certain or substantially certain to occur.

13 687. As F5 intended and knew would happen as a result of its interference, the Disloyal  
14 Employees breached their ongoing obligations to Rambler, including by, without limitation,  
15 divesting Rambler of the NGINX Enterprise and selling the NGINX Enterprise to F5, disclosing  
16 Rambler's confidential and proprietary information to F5, and acting in contravention of Rambler's  
17 intellectual property rights.

18 688. Rambler was harmed by the Disloyal Employees' breaches of their obligations to  
19 Rambler and F5's tortious interference.

20 689. F5's conduct was a substantial factor in causing the harm suffered by Rambler.

21 690. As a result of F5's tortious interference with contract, Rambler was harmed and  
22 Lynwood is entitled to collect damages in an amount to be determined at trial but presently believed  
23 to be well in excess of \$750 million.

24 **TWELFTH CLAIM FOR RELIEF**

25 ***Tortious Interference with Prospective Business Advantage Against All Defendants***

26 691. Plaintiff realleges and incorporates by reference the allegations contained in  
27 paragraphs 1 through 690 above as if fully set forth and repeated herein.

1           692. Plaintiff's predecessor-in-interest, Rambler, had a prospective economic advantage in  
2 the form of the NGINX Enterprise that, but for Defendants' unlawful conduct detailed herein,  
3 Rambler could have and would have sold for a massive profit.

4           693. Defendants knew full well the existence and value of Rambler's prospective  
5 economic advantage with the NGINX Enterprise and that it could be sold for a massive profit.

6           694. Defendants engaged in repeated illegal conduct as detailed herein in order to interfere  
7 with Rambler's prospective economic advantage with the NGINX Enterprise, including, without  
8 limitation, breaches of the Disloyal Employees' duties of honesty and loyalty to Rambler; aiding and  
9 abetting those breaches; fraud; aiding and abetting fraud; fraud on the USPTO; tortious interference  
10 with contract; false advertising; copyright infringement; fraudulent concealment, and civil  
11 conspiracy.

12           695. Defendants engaged in this unlawful activity intending to interfere with Rambler's  
13 prospective economic advantage or knew that this unlawful activity was substantially certain to  
14 interfere with Rambler's prospective economic advantage.

15           696. By the Team members' own admissions, as reflected in their slide presentations to  
16 potential venture capital investors in early 2011, if Rambler had been informed of the existence of  
17 the NGINX Enterprise, it would have had many options for developing and selling the NGINX  
18 Enterprise to a number of large American technology companies.

19           697. In their slide presentation, the Team identified the following potential purchasers of  
20 the fully financed and developed NGINX Enterprise: (i) networking vendors: Cisco, Juniper  
21 Networks; Defendant F5, Brocade and Radware; (ii) software vendors: Citrix, Parallels, EMC/VM  
22 Ware; (iii) "big corporations": IBM, Oracle, Hewlett-Packard; and (iv) telco/ISP/CDN: AT&T,  
23 Level 3, Comcast, and Akamai.

24           698. The Team sold Runa Capital and E. Ventures, among other potential investor partners,  
25 on the idea of funding and developing the NGINX Enterprise to the point where one of the U.S.  
26 technology companies identified in its slide presentation would purchase the NGINX Enterprise.

1           699. The NGINX Conspirators' sale of the NGINX Enterprise to Defendant F5 confirms  
2 that Rambler, had it been informed of the existence and value of the NGINX Enterprise, would have  
3 had the same or similar opportunities to benefit from such sale, if only the Defendants had not  
4 covertly stolen the NGINX Enterprise and monetized it for themselves.

5           700. A number of the American technology companies identified in the Team's 2011 slide  
6 presentation to venture capital firms use Open Source NGINX as a building block for their  
7 networking, telecom and software application products and services. By way of example, Juniper  
8 Networks, in publicly available documentation, explains how the NGINX HTTP Server may be  
9 integrated with Juniper Networks' JSA line of Secure Analytics Appliances. As another example,  
10 Cisco, with which Defendant Alexeev met in early 2011 to discuss business opportunities around the  
11 development and sale of the NGINX Enterprise, publishes documentation describing the integration  
12 of NGINX/HTTP Web security features with Cisco's own line of networking hardware and software.  
13 Any one of these identified companies would have benefitted from purchasing the NGINX Enterprise  
14 from Rambler.

15           701. Another potential buyer of the NGINX Enterprise from Rambler would have been  
16 leading open source software vendor Red Hat, where Defendant Robertson was Vice President of  
17 Business Development before exiting to join the conspirators.

18           702. In addition, Rambler had deep commercial ties with many leading American and  
19 Russian technology companies that would have had an interest in acquiring the NGINX Enterprise  
20 if the Disloyal Employees had disclosed its existence.

21           703. For example, since 2015, Rambler became the biggest commercial partner of Yandex  
22 (Russia's largest search engine company that generates 50% of the search traffic in Russia) in the  
23 ads network space. Similarly, Rambler partnered with Mail.ru (another Russian technology company  
24 focusing on email, instant messaging apps, online games and social media sites) in 2015 to launch a  
25 MyTarget (a Russian advertising platform targeted to social media networks).

26           704. By way of another example, since 2013, Rambler has been one of the major partners  
27 for Google AdWords (an advertising platform developed by Google where advertisers pay to place  
28

1 ads in the results of search engines like Google Search) through Rambler's subsidiary Price.ru.  
2 Moreover, NGINX Plus is available to customers on a paid subscription basis for deployment on the  
3 Google Cloud Platform.

4 705. These American and Russian technology companies are just illustrative examples of  
5 Rambler's business partners in the digital media space where the NGINX Enterprise could have been  
6 sold by Rambler to a receptive buyer given the software's load balancer attributes.

7 706. Defendants' unlawful activity did in fact disrupt and interfere with Rambler's  
8 prospective economic advantage with the NGINX Enterprise.

9 707. Rambler was harmed by Defendants' interference with Rambler's prospective  
10 economic advantage with the NGINX Enterprise.

11 708. Defendants' misconduct was a substantial factor in causing the harm suffered by  
12 Rambler.

13 709. As a result of Defendants' tortious interference with Rambler's prospective business  
14 advantage, Rambler was harmed and Lynwood, through its assignment from Rambler, is entitled to  
15 collect damages in an amount to be determined at trial but presently believed to be well in excess of  
16 \$750 million.

17 **THIRTEENTH CLAIM FOR RELIEF**

18 ***Fraud Against the Disloyal Employees, NGINX Software, Inc.,***

19 ***NGINX DE and NGINX BVI***

20 710. Plaintiff realleges and incorporates by reference the allegations contained in  
21 paragraphs 1 through 709 above as if fully set forth and repeated herein.

22 711. The Disloyal Employees engaged in a continuous campaign of fraud against Rambler  
23 that culminated with the Disloyal Employees, Alexeev, Dounin, Runa Capital, E.Ventures and the  
24 NGINX Conspirators selling Rambler's NGINX Enterprise to F5 in 2019.

25 712. Substantial acts and concealments in furtherance of the Disloyal Employees' fraud  
26 campaign occurred in California after they moved Rambler's NGINX Enterprise to California in the  
27 spring of 2011 unbeknownst to Rambler.



1           713. The Disloyal Employees intentionally misrepresented to Rambler the value of Open  
2 Source NGINX and related business opportunities both before and after the incorporation and  
3 headquartering of NGINX Software, Inc. in San Francisco on May 4, 2011. The Disloyal Employees  
4 also fraudulently concealed the existence of NGINX Plus that had been developed by Sysoev with  
5 the assistance of the Disloyal Employees as part of their employment with Rambler and utilizing  
6 Rambler's infrastructure and resources.

7           714. The Disloyal Employees fraudulently concealed from Rambler the existence of the  
8 lucrative business opportunities associated with Open Source NGINX and NGINX Plus both before  
9 and after the incorporation and headquartering of NGINX Software, Inc. in San Francisco.

10           715. The Disloyal Employees fraudulently concealed from Rambler the existence and  
11 ongoing development of the proprietary, commercial enhancements and extensions to Open Source  
12 NGINX including the proprietary, commercial NGINX Plus software, as well as the existence of the  
13 NGINX Enterprise, both before and after the incorporation and headquartering of NGINX Software,  
14 Inc. in San Francisco.

15           716. The Disloyal Employees fraudulently induced Rambler to continue investing  
16 resources in Open Source NGINX and NGINX Plus both before and after the incorporation and  
17 headquartering of NGINX Software, Inc. in San Francisco despite the fact that the Disloyal  
18 Employees were already executing their plan to divest Rambler of the NGINX Enterprise and sell it  
19 to a third-party American company.

20           717. Even after Sysoev separated from Rambler, the Disloyal Employees brazenly and  
21 unlawfully stole server equipment from Rambler and had it destroyed to cover up their unlawful  
22 activities.

23           718. The Disloyal Employees and the NGINX Conspirators engaged in the fraud by  
24 directing the theft of Rambler's equipment and destruction of evidence. In addition, the NGINX  
25 Conspirators are also vicariously liable for the fraudulent acts and concealments conducted by the  
26 Disloyal Employees.

1           719. The Disloyal Employees and the NGINX Conspirators fraudulently concealed  
2 Rambler's causes of action against them by hiding the true nature, utility, and value of Open Source  
3 NGINX, the existence of the NGINX Plus software and the existence and value of the NGINX  
4 Enterprise; misrepresenting their true intentions to commercialize products and services relating to  
5 Open Source NGINX and then sell that enterprise to an American company; and stealing and  
6 destroying evidence of their unlawful activities.

7           720. By concealing the true nature, utility, and value of Open Source NGINX, NGINX  
8 Plus and the NGINX Enterprise more generally, Rambler was never on notice, until the  
9 whistleblower came forward, that it had such a valuable suite of assets that warranted protection or  
10 that the Disloyal Employees could be embarking on such a nefarious conspiracy that would justify  
11 Rambler undertaking an investigation.

12           721. Konovalov, Sysoev and Smirnov owed Rambler statutory duties under Article 53.1  
13 and 53.3 to act honestly and fairly with Rambler before and after they separated from Rambler.  
14 Accordingly, Konovalov, Sysoev and Smirnov were under an obligation to disclose to Rambler that  
15 the Disloyal Employees misappropriated the NGINX Enterprise and destroyed Rambler equipment  
16 in furtherance of their conspiracy and to conceal their actions to avoid detection.

17           722. The Team formed NGINX Software, Inc. on May 4, 2011. The Team also formed  
18 NGINX BVI on July 6, 2011 and NGINX DE in August 2011. At the time that the NGINX  
19 Conspirators were all formed, Sysoev and Smirnov were still employees of Rambler. Since the  
20 Team were the principals of all three of the NGINX Conspirators, Sysoev and Smirnov's duties to  
21 disclose their fraudulent conduct were imputed to the NGINX Conspirators.

22           723. As a direct and proximate cause of the Disloyal Defendants' and the NGINX  
23 Conspirators' fraud, Rambler has been damaged and Lynwood is entitled to collect damages in an  
24 amount to be determined at trial but presently believed to be well in excess of \$750 million.

25           724. In addition, the Disloyal Defendants and the NGINX Conspirators' actions as alleged  
26 herein were willful, fraudulent, and malicious and were done with the intent to injure and oppress  
27 Rambler and improve their own economic opportunities. Thus, Lynwood should be awarded  
28

1 punitive damages in an amount to be determined at trial to punish these defendants and deter similar  
2 unlawful conduct by others in the future.

3 **FOURTEENTH CLAIM FOR RELIEF**

4 ***Berne Convention for the Protection of Literary and Artistic Works and the Copyright Act (17***  
5 ***U.S.C. § 101, et seq.) based on Direct Copyright Infringement Against Defendants***

6 ***Konovalov, Sysoev, Alexeev, Dounin, Smirnoff, NGINX BVI, NGINX Software, Inc.,***

7 ***NGINX DE, Robertson and F5***

8 ***(collectively, the “Direct Copyright Infringement Defendants”)***

9 725. Plaintiff realleges and incorporates by reference the allegations contained in  
10 paragraphs 1 through 724 above as if fully set forth and repeated herein.

11 726. The Berne Convention for the Protection of Literary and Artistic Works (the “Berne  
12 Convention”) Article 5(1) provides that “[a]uthors shall enjoy, in respect of works for which they  
13 are protected under this Convention, in countries of the Union other than the country of origin, the  
14 rights which their respective laws do now or may hereafter grant to their nationals, as well as rights  
15 specifically granted by this Convention.”

16 727. The Berne Convention provides further that “[t]he enjoyment and exercise of those  
17 rights shall not be subject to any formality; such enjoyment and such exercise shall be independent  
18 of the existence of protection in the country of origin of the work.” Berne Convention, Article 5(2).

19 728. For infringing acts occurring in the U.S., ownership of a copyright right is determined  
20 based on the jurisdiction of the creation (*i.e.*, Russia); whether infringement has occurred is evaluated  
21 under U.S. copyright law.

22 729. According to Section 2 of the 1992 Law and Section 7 of the 1993 Law, “programs  
23 for computational devices” (“computer programs”) are protected under the same copyright  
24 regulations as literary works and are entitled to copyright protection. Rights related to computer  
25 programs arise from the mere fact of their creation (and from the moment of their creation) and do  
26 not require separate registration or any other formality (*i.e.*, registration with RosPatent).



1           735. Sysoev then elected to release Open Source NGINX as publicly available open source  
2 code on his own volition and without authorization from Rambler in 2004.

3           736. Sysoev continued to test and improve Open Source NGINX using Rambler resources,  
4 infrastructure, personnel and Internet traffic, during normal business hours, in connection with the  
5 further development of Open Source NGINX and the development of NGINX Plus, as first revealed  
6 through the Rambler/Lynwood investigations following Korotkov's revelations in 2019.

7           737. As Korotkov's promotion of NGINX Plus beginning in early 2010 confirms, and as  
8 Korotkov's and F5's trademark filings re-confirm, by late 2009 or early 2010 at the latest, the  
9 Disloyal Employees and the Team had already commenced their commercialization of NGINX Plus,  
10 which itself was, and still is, heavily reliant, both technically and commercially, on Open Source  
11 NGINX, which Rambler paid Sysoev to develop.

12           738. The Disloyal Employees held back the NGINX Plus modules that Sysoev had  
13 conceived and developed at Rambler as part of his employment duties at Rambler prior to Sysoev's  
14 departure from Rambler so that the Team could quickly kick-start their commercial operation with  
15 the introduction of such proprietary products to the market promptly after their departure from  
16 Rambler.

17           739. The Team used the promise of forthcoming NGINX Plus to help sell their business  
18 plan to potential investors. The venture capital investors such as Runa Capital and BV Capital bought  
19 into the plan and funded it, and within twenty-one (21) months of Sysoev's departure from Rambler,  
20 with only a skeleton development crew, the Team formally introduced their first tranche of  
21 commercial NGINX Plus products, which was the purloined commercial NGINX code initially  
22 conceived and developed by Sysoev while employed at Rambler.

23           740. The first formal announcement of the general commercial availability of the initial  
24 release of NGINX Plus (a prior version of which Konovalov acknowledged in his November 2019  
25 GoTech interview was being commercially exploited by 2011) by the Direct Copyright Infringement  
26 Defendants was issued on August 22, 2013 – just two weeks after Robertson joined NGINX BVI as  
27 CEO. The release notes to that initial "R1" release of NGINX Plus stated: "NGINX Plus is the fully  
28

1 supported, commercial version of NGINX. It includes most NGINX open source modules and adds  
2 further features”. The R1 release notes also stated that NGINX Plus was “[b]ased on NGINX Open  
3 Source 1.5.3-1”. Among the “further features” identified as being part of R1 of NGINX Plus were  
4 “Application health checks”; “Live activity monitoring (implemented in the Extended Status  
5 module)”; “Advanced load balancing”; “On-the-fly reconfiguration of load-balanced upstream  
6 groups”; “Extended logging capabilities”; “High availability setup”; and “Adaptive media  
7 streaming”.

8 741. The R1 Release of NGINX Plus – like all successive NGINX Plus releases – was and  
9 are provided to customers of NGINX BVI and NGINX Software, Inc. and, since 2019, F5, in binary,  
10 executable form (*i.e.*, not the source code but rather in binary form that only computers can  
11 understand) on a paid subscription basis, along with revenue-generating support services and  
12 professional customization services. The Direct Copyright Infringement Defendants’ decision to  
13 release NGINX Plus in proprietary, pre-built, binary packages only, rather than in source code form  
14 that can be understood and manipulated by humans (like Open Source NGINX) was part of what  
15 Konovalov described in his 2019 GoTech interview as their “open core” strategy for monetizing  
16 Open Source NGINX, which the Disloyal Employees hatched behind closed doors in the Rambler  
17 NOC when they were employed there.

18 742. NGINX Plus is the linchpin of that “open core” strategy, as highlighted in Robertson’s  
19 September 6, 2017 announcement of “NGINX Application Platform”, in which he described NGINX  
20 Plus as “the commercial variant of our popular NGINX Open Source offering”. *See*  
21 <https://www.nginx.com/blog/introducing-nginx-application-platform/>. According to the  
22 announcement, NGINX Application Platform is a “suite of four products”, namely NGINX Plus,  
23 NGINX ModSecurity, NGINX Unit, and NGINX Controller, the latter of which was “built to manage  
24 NGINX Plus instances”. The entire NGINX Application Platform suite is centered around NGINX  
25 Plus – without NGINX Plus, NGINX Controller and the other commercial NGINX product offerings  
26 under the NGINX Application Platform umbrella would not exist.

1           743. As verified by Konovalov’s GoTech interview admissions, while NGINX Plus was  
2 not formally announced by any of the Direct Copyright Infringement Defendants until August of  
3 2013, by 2011, it had been in development for some time and was quietly being deployed by  
4 customers such as Netflix.

5           744. NGINX Plus is based to a large extent on Open Source NGINX. This dependency is  
6 evidenced repeatedly in NGINX Plus release statements, benchmark tests, documentation, and other  
7 descriptive sources. Indeed, in his own Twitter feed, Sysoev has publicly admitted that “[t]he two  
8 products have a lot of overlap.”

9           745. Based on the Disloyal Employees’ employment and separation agreements with  
10 Rambler, Rambler internal policies and procedures, and applicable Russian law, Rambler, which has  
11 assigned its rights to Lynwood, was the owner, and Lynwood is now the owner by assignment, of all  
12 right, title and interest in and to NGINX Plus and Open Source NGINX, in both source code and  
13 executable form, conceived and/or developed before the end of 2011, when Sysoev left the employ  
14 of Rambler (collectively, “Pre-2012 NGINX Software”), including all copyright rights inherent  
15 therein or appurtenant thereto.

16           746. Up until the time that the Disloyal Employees left Rambler with the NGINX  
17 Enterprise secreted away for themselves, Open Source NGINX was used by Rambler in Russia to  
18 conduct its business and such software resided on Rambler-owned servers located in Moscow,  
19 Russia.

20           747. Sysoev made Release 0.1.0 of Open Source NGINX available to the public in early  
21 October 2004, without authorization from Rambler. Sysoev has claimed in various media interviews  
22 that, prior to such publication, without Rambler’s knowledge or authorization, Open Source NGINX  
23 was deployed on the Russian Internet music portal located at the Web address zvuki.ru.

24           748. The Rambler and Lynwood investigations in 2019 and 2020 following Korotkov’s  
25 disclosures revealed email communications indicating that as to the alleged zvuki.ru implementation  
26 of Open Source NGINX, such use involved Sysoev’s then colleague at Rambler, Andrey Kopeyko,  
27



1 the Head of Network Operations, who publicly stated on May 10, 2004, in an email from his Rambler  
2 email address, that he had “been using nginx on http://www.zvuki.ru for almost a year\*.mp3”.

3 749. Soon after Kopeyko was hired by Rambler Telecom on or about August 1, 2003, he  
4 began communicating extensively with Sysoev via email to and from their rambler-co.ru email  
5 accounts, during regular business hours, regarding Open Source NGINX development. Topics of  
6 such communications include NGINX-related beta testing, debugging, algorithms, functionality,  
7 syntax, processing, deployment and uses of Open Source NGINX within Rambler. At one point, in  
8 an email dated July 22, 2005, Kopeyko exclaimed: “I look – all around in Rambler nginxs are used  
9 everywhere ....”

10 750. Open Source NGINX was used by Rambler and stored on Rambler-owned servers  
11 located in Moscow, Russia, including the creation of DNS-zones “nginx.org” and “sysoev.ru” from  
12 at least 2002 until shortly after Sysoev’s separation from Rambler.

13 751. In light of Sysoev’s alleged first deployment and publication of Open Source NGINX,  
14 with the involvement of other Rambler employees, on the Russian music portal zvuki.ru in Russia,  
15 and Rambler’s heavy use of Open Source NGINX in Moscow prior to Sysoev’s October 2004 public  
16 general release, and given the admitted significant overlap between Open Source NGINX and  
17 NGINX Plus, pursuant to the terms of the Berne Convention, Open Source NGINX and NGINX Plus  
18 are foreign works that are exempt from registration in the United States Copyright Office as a  
19 prerequisite to Lynwood commencing this action for copyright infringement.

20 752. Rambler has assigned to Plaintiff all of its rights, including all intellectual property  
21 rights and the right to sue for past and present infringement, and to seek and collect damages, with  
22 respect to NGINX Plus and Open Source NGINX.

23 753. 17 U.S.C. § 106 provides a list of exclusive rights the owner of a copyright holds,  
24 including the right to copy the work, prepare derivative works, to distribute copies, and other acts.

25 754. 17 U.S.C. § 501 provides that the owner of a copyright may bring a cause of action  
26 against a party who violates the owner’s exclusive rights under § 106.

1           755. The Direct Copyright Infringement Defendants have engaged in and are engaging in  
2 reckless, blatant, willful, and repeated infringement of Plaintiff's copyright rights in and to the Pre-  
3 2012 NGINX Software, under both international and U.S. law.

4           756. The Direct Copyright Infringement Defendants have reproduced, distributed, offered  
5 for sale and/or license, sold, licensed, and/or provided to customers and business partners on a paid  
6 subscription basis, the Pre-2012 NGINX Software and derivative works thereof, and have developed  
7 derivative works thereof, in an unauthorized manner for commercial use, in violation of Rambler's,  
8 and now Plaintiff's, exclusive rights, in violation of 17 U.S.C. § 106.

9           757. Such infringement has occurred both in the United States and internationally,  
10 including because individuals and entities in the United States have downloaded the Pre-2012  
11 NGINX Software and derivatives thereof, as well as copied, distributed and created derivative works  
12 of same, without the Plaintiff's or Rambler's authorization.

13           758. Further, the Direct Copyright Infringement Defendants have downloaded the Pre-  
14 2012 NGINX Software and derivatives thereof, as well as copied, distributed and created derivative  
15 works of same, from their respective offices and servers located in the U.S. and have imported and/or  
16 exported such infringing works to and from others throughout the world without authorization via  
17 such U.S. offices.

18           759. Further, from 2013 through the present, the Direct Copyright Infringement  
19 Defendants, including F5 since the Merger, have introduced 20 or more commercial releases of  
20 NGINX Plus and related extensions that are based on, and to a significant degree are derived from  
21 and/or dependent upon, the Pre-2012 NGINX Software.

22           760. The Direct Copyright Infringement Defendants' conduct has been without the  
23 permission, consent, or license of Plaintiff or the previous owner of the Pre-2012 NGINX Software,  
24 Rambler.

25           761. The Direct Copyright Infringement Defendants, by virtue of the above-described acts,  
26 directly infringed upon Plaintiff's copyright rights in and to the Pre-2012 NGINX Software, in  
27 violation of 17 U.S.C. § 101 *et seq.*, including 17 U.S.C. § 501.

1           762. The Direct Copyright Infringement Defendants’ acts of infringement have been  
2 willful, intentional, and purposeful, in disregard of, and with indifference to, the rights of Rambler  
3 and now Plaintiff.

4           763. The Direct Copyright Infringement Defendants will continue their infringing activity  
5 throughout the course of this action, further demonstrating their reckless disregard of Plaintiff’s  
6 intellectual property rights.

7           764. As a direct and proximate result of the Direct Copyright Infringement Defendants’  
8 infringement of Plaintiff’s copyrights in the Pre-2012 NGINX Software, Plaintiff is entitled to the  
9 election of its actual damages or to statutory damages pursuant to 17 U.S.C. § 504(c). Plaintiff is  
10 further entitled to its attorneys’ fees and costs pursuant to 17 U.S.C. § 505.

11           765. The Direct Copyright Infringement Defendants’ infringements were committed  
12 “willfully” within the meaning of 17 U.S.C. § 504(c)(2), and any statutory damages against the Direct  
13 Copyright Infringement Defendants should be enhanced in accordance with that section.

14           766. As a result of Direct Copyright Infringement Defendants’ acts of infringement of the  
15 Pre-2012 NGINX Software, Plaintiff has suffered injury to its business and property in an amount to  
16 be determined at trial as damages pursuant to 17 U.S.C. § 504, presently believed to be well in excess  
17 of \$750 million, and will continue to suffer damages in the future.

18           767. The Direct Copyright Infringement Defendants’ conduct is causing, and, unless  
19 enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that  
20 cannot be fully compensated or measured in money. Plaintiff has no adequate remedy at law.  
21 Pursuant to 17 U.S.C. §§’s 502 and 503, Plaintiff is entitled to injunctive relief prohibiting the Direct  
22 Copyright Infringement Defendants from further infringement of Plaintiff’s copyright rights in the  
23 Pre-2012 NGINX Software, and ordering the Direct Copyright Infringement Defendants to destroy  
24 all copies of the Pre-2012 NGINX Software and all derivative works thereof made in violation of  
25 Plaintiff’s exclusive rights.

26           768. Unless an injunction pursuant to 17 U.S.C. § 502 is issued enjoining the Direct  
27 Copyright Infringement Defendants and their officers, agents, servants, employees, and attorneys,

1 and all those persons in active concert or participation with them from directly or indirectly infringing  
2 the Pre-2012 NGINX Software, Plaintiff will suffer irreparable injury for which there is no adequate  
3 remedy at law.

4 **FIFTEENTH CLAIM FOR RELIEF**

5 ***Berne Convention for the Protection of Literary and Artistic Works and the Copyright Act (17***

6 ***U.S.C. § 101, et seq.) based on Contributory Copyright Infringement Against***

7 ***Defendants Runa Capital and E. Ventures***

8 769. Plaintiff realleges and incorporates by reference the allegations contained in  
9 paragraphs 1 through 768 above as if fully set forth and repeated herein.

10 770. As detailed above, the Berne Convention allows the owner of a foreign copyright to  
11 bring infringement claims in the U.S.

12 771. In August 2010, Galperin left Rambler's employment in furtherance of the conspiracy  
13 to approach targeted venture capital firms, including Defendant Runa Capital. Galperin solicited  
14 Runa Capital on behalf of Konovalov and Sysoev and disclosed their intentions and the object of the  
15 conspiracy (i.e., the misappropriation from Rambler and subsequent sale of the NGINX Enterprise  
16 to an American technology company).

17 772. Runa Capital joined the conspiracy and hired Galperin directly in February 2011  
18 explicitly for the purpose of inducing, coordinating with, and assisting Sysoev and Konovalov to  
19 carry out the conspirators' common plan (i.e., the misappropriation and subsequent sale of the  
20 NGINX Enterprise, including the infringement of Rambler's, and now Lynwood's, copyright rights  
21 in the Pre-2012 NGINX Software).

22 773. Runa Capital and Defendant E.Ventures, Silicon Valley venture capital firms, knew  
23 of Sysoev's and Konovalov's duties owed to Rambler and that Rambler maintained the ownership  
24 rights to NGINX Plus, Open Source NGINX and the NGINX Enterprise. Nevertheless, Runa Capital  
25 and E. Ventures assisted, encouraged, enabled, and induced Sysoev and Konovalov, while they were  
26 still employees at Rambler, to breach their duties to Rambler and to misappropriate the NGINX  
27

1 Enterprise for the benefit of the fledgling business that the Team was forming and that Runa Capital  
2 and E. Ventures intended on funding and ultimately did fund.

3 774. Defendants Runa Capital and BV Capital (now E.Ventures), which became  
4 shareholders in NGINX BVI as of October 23, 2011, knowingly participated in multiple future  
5 rounds of financing to grow the NGINX entities and set the table for the Merger transaction with F5  
6 in 2019, as a result of which they profited handsomely. In addition to Runa Capital and BV Capital's  
7 participation in future rounds of financing in October 2013, December 2014 and April 2016, Runa  
8 Capital's Chikhachev and BV Capital's Giesemann also held board seats on NGINX BVI's board  
9 of directors up to the time of the company's merger with F5. During that time, Chikhachev and  
10 Giesemann participated in material decisions undertaken by NGINX BVI including its commercial  
11 rollout of NGINX Plus, which was owned by Rambler.

12 775. Runa Capital, in particular, drove and supported the conspiracy since Day One, both  
13 monetarily, through millions of dollars in investments, and by providing its expertise in pursuing exit  
14 strategies (*i.e.*, ultimate sale or IPO) for the Team's NGINX startup, as confirmed in an article that  
15 Chikhachev posted online on March 12, 2019, within 24 hours of F5 publicly announcing the Merger  
16 with NGINX BVI. *See* <https://medium.com/runacapital/nginx-and-runa-story-6e27e2a4ab5d>.

17 776. In his article, Chikhachev wrote that by the time Sysoev exited Rambler in 2011,  
18 "...we already knew this team [Sysoev, Konovalov and Alexeev] well and were impressed with the  
19 technical expertise and vision of the founders." Chikhachev added that "...due to our strong  
20 enthusiasm on opportunity to turn NGINX into a global leader (we were impressed by the beauty of  
21 the product and felt confident about its potential) and support from the founders, Runa became part  
22 of a syndicate and co-led [a] \$3M Series A round together with [E. Ventures] and MSD Capital (as  
23 part of our due diligence process, we introduced Michael Dell to the founders and he then became  
24 part of the syndicate). The deal was closed in August 2011, and we invested our first \$1M into the  
25 company."

26 777. In other words, even before Sysoev and Konovalov had left Rambler, the Runa  
27 Capital team had established deep ties with the Disloyal Employees, including through Galperin,  
28

1 whom they had poached from Rambler in furtherance of the conspiracy, and had coached, counseled,  
2 encouraged, induced, enabled, facilitated and caused the Disloyal Employees to steal the NGNIX  
3 Enterprise from Rambler and monetize it for the benefit of themselves and their investors, including  
4 Runa Capital and E. Ventures.

5 778. As a shareholder of NGINX BVI, Runa Capital also participated in the identification  
6 and recruitment of Robertson as CEO.

7 779. Through their actions, Defendants Runa Capital and E. Ventures enabled, induced,  
8 facilitated, and materially contributed to the Direct Copyright Infringement Defendants'  
9 infringements of Plaintiff's copyrights in the Pre-2012 NGINX Software.

10 780. At all times when they enabled, induced, facilitated, and materially contributed to the  
11 Direct Copyright Infringement Defendants' infringements of Plaintiff's copyrights in the Pre-2012  
12 NGINX Software, Runa Capital and E. Ventures knew that Rambler, not any of the Direct Copyright  
13 Infringement Defendants, was the true owner of the Pre-2012 NGINX Software.

14 781. Defendants Runa Capital and E. Ventures are liable as contributory copyright  
15 infringers for the infringing acts of the Direct Copyright Infringement Defendants.

16 782. Runa Capital and E. Ventures' acts of contributory infringement were willful,  
17 intentional, and purposeful, in disregard of, and with indifference to, the rights of Plaintiff.

18 783. As a direct and proximate result of Runa Capital's and E. Ventures' contributory  
19 infringement of the Pre-2012 NGINX Software, Plaintiff is entitled to the election of its actual  
20 damages or to statutory damages pursuant to 17 U.S.C. § 504(c). Plaintiff is further entitled to its  
21 attorneys' fees and costs pursuant to 17 U.S.C. § 505.

22 784. Runa Capital's and E. Ventures' contributory infringements were committed  
23 "willfully" within the meaning of 17 U.S.C. § 504(c)(2), and any statutory damages against  
24 Defendants should be enhanced in accordance with that section.

25 785. As a result of Runa Capital's and E. Ventures' acts of contributory infringement of  
26 the Plaintiff's copyright rights in the Pre-2012 NGINX Software, Plaintiff has suffered injury to its  
27 business and property in an amount to be determined at trial as damages pursuant to 17 U.S.C. § 504,  
28

1 presently believed to be well in excess of \$750 million, and will continue to suffer damages in the  
2 future.

3 786. Runa Capital's and E. Ventures' conduct is causing, and, unless enjoined and  
4 restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot be  
5 fully compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17  
6 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief prohibiting Runa Capital and E.  
7 Ventures from further contributing to the infringement of the Pre-2012 NGINX Software.

8 **SIXTEENTH CLAIM FOR RELIEF**

9 ***Berne Convention for the Protection of Literary and Artistic Works and the Copyright Act (17***  
10 ***U.S.C. § 101, et seq.) based on Vicarious Copyright Infringement Against Defendants***

11 ***NGINX BVI, NGINX Software, Inc. and F5***

12 787. Plaintiff realleges and incorporates by reference the allegations contained in  
13 paragraphs 1 through 786 above as if fully set forth and repeated herein.

14 788. As detailed above, the Berne Convention allows the owner of a foreign copyright to  
15 bring infringement claims in the U.S.

16 789. Defendants NGINX BVI and NGINX Software, Inc., beginning at least as early as  
17 2011, and F5 immediately following the Merger until the present, have provided NGINX Plus and  
18 derivative works thereof to their customers, on a paid subscription basis, pursuant to written terms  
19 of use set forth in subscription and/or license agreements (the "NGINX Plus Terms"). *See, e.g.*, F5  
20 End User License Agreement, DOC-0355-16, at [https://www.f5.com/pdf/customer-support/end-](https://www.f5.com/pdf/customer-support/end-user-license-agreement.pdf)  
21 [user-license-agreement.pdf](https://www.f5.com/pdf/customer-support/end-user-license-agreement.pdf).

22 790. Pursuant to the NGINX Plus Terms, NGINX BVI, NGINX Software, Inc. and F5  
23 have the right and ability to supervise and/or control their customers' use of NGINX Plus and its  
24 derivatives.

25 791. The uses of NGINX Plus and its derivatives by customers of NGINX BVI, NGINX  
26 Software, Inc. and F5 constitute infringements of Plaintiff's copyright rights in and to NGINX Plus.



1           792. Pursuant to the NGINX Plus Terms, among other means, NGINX BVI, NGINX  
2 Software, Inc. and F5 could have prevented their customers from continuing to use and make copies  
3 of NGINX Plus and its derivatives in violation of Plaintiff’s copyright rights in NGINX Plus.

4           793. NGINX BVI, NGINX Software, Inc. and F5 directly benefit from their customers’  
5 use and copying of NGINX Plus and its derivatives because those customers pay NGINX BVI,  
6 NGINX Software, Inc. and F5 license, subscription and support fees in consideration for such use.  
7 Stated differently, NGINX BVI, NGINX Software, Inc. and F5 benefit financially by their  
8 customers’ infringing uses of NGINX Plus and its derivatives.

9           794. NGINX BVI, NGINX Software, Inc. and F5 are vicariously liable for the infringing  
10 acts of their customers arising from their infringing uses of NGINX Plus and its derivatives.

11           795. NGINX BVI’s, NGINX Software, Inc.’s and F5’s acts of vicarious infringement have  
12 been willful, intentional, and purposeful, in disregard of, and with indifference to, the rights of  
13 Plaintiff in and to NGINX Plus.

14           796. As a direct and proximate result of NGINX BVI’s, NGINX Software, Inc.’s and F5’s  
15 vicarious infringement of Plaintiff’s copyright rights in NGINX Plus, Plaintiff is entitled to the  
16 election of its actual damages or to statutory damages pursuant to 17 U.S.C. § 504(c). Plaintiff is  
17 further entitled to its attorneys’ fees and costs pursuant to 17 U.S.C. § 505.

18           797. NGINX BVI’s, NGINX Software, Inc.’s and F5’s vicarious infringements were  
19 committed “willfully” within the meaning of 17 U.S.C. § 504(c)(2), and any statutory damages  
20 against NGINX BVI, NGINX Software, Inc. and F5 should be enhanced in accordance with that  
21 section.

22           798. As a result of NGINX BVI’s, NGINX Software, Inc.’s and F5’s acts of vicarious  
23 infringement of Plaintiff’s copyright rights in NGINX Plus, Plaintiff has suffered injury to its  
24 business and property in an amount to be determined at trial as damages pursuant to 17 U.S.C. § 504,  
25 presently believed to be well in excess of \$750 million, and will continue to suffer damages in the  
26 future.



1           806. The NGINX trademark application, U.S. Application Number 85/312,802, covers  
2 the following goods in Class 9: “Computer software for HTTP and reverse proxy servers and mail  
3 proxy servers, namely, for controlling and managing server applications in the nature of HTTP and  
4 reverse proxy servers and mail proxy servers.”

5           807. In U.S. Application Number 85/312,802, Nginx Software, Inc. signed the application  
6 declaration through its Silicon Valley attorney, Leonard Grayver.

7           808. The declaration in the NGINX trademark application stated in relevant part: “to the  
8 best of his/her knowledge and belief no other person, firm, corporation, or association has the right  
9 to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto  
10 as to be likely, when used on or in connection with the goods/services of such other person, to cause  
11 confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge  
12 are true; and that all statements made on information and belief are believed to be true.”

13           809. These statements were false as applied to the NGINX trademark and known to be  
14 false by Sysoev and the other members of the Team that comprised NGINX Software, Inc. and  
15 authorized Grayver to make those representations on behalf of NGINX Software, Inc.

16           810. Sysoev was still working for Rambler at that time U.S. Application Number  
17 85/312,802 was filed for the NGINX trademark, and he and the rest of the Team knew well that  
18 Sysoev had developed Open Source NGINX for Rambler using Rambler’s resources.

19           811. The Sysoev Employment Agreement and Rambler’s Internal Company Policies and  
20 Procedures explicitly provided that Sysoev’s work product for Rambler was the property of Rambler  
21 and required Sysoev to disclose and turnover his work to Rambler.

22           812. There was no transfer of trademark rights from Rambler to Sysoev or to any of the  
23 other Disloyal Employees in the NGINX trademark such that any such rights could have been  
24 subsequently transferred to NGINX Software, Inc. giving it a right to seek registration of the NGINX  
25 trademark.

26           813. To the Team, Rambler’s rights to Open Source NGINX and associated NGINX  
27 trademark were clearly established.

1           814. Despite this knowledge, and more directly despite the Disloyal Employees’  
2 knowledge that Open Source NGINX and the associated NGINX trademark were properly owned  
3 by Rambler because the Disloyal Employees had developed such software and associated trademark  
4 for Rambler as part of their duties as Rambler employees, NGINX Software, Inc. fraudulently, and  
5 with an intent to deceive, represented to the USPTO that no other person or entity had any rights to  
6 the NGINX trademark.

7           815. NGINX Software, Inc. had engaged Grayver as its legal counsel for the trademark  
8 application. Upon information and belief, Grayver advised NGINX Software, Inc. and the Team of  
9 the importance of the representations they were making to the USPTO.

10           816. The NGINX trademark was registered in the name of NGINX Software, Inc. on  
11 August 28, 2012 under U.S. Registration Number 4,196,757.

12           817. NGINX Software, Inc. continued its fraudulent misrepresentations to the USPTO by  
13 continuing to maintain U.S. Registration Number 4,196,757 for the NGINX trademark by filing the  
14 “Combined Declaration of Use and Incontestability under Sections 8 & 15” of the Trademark Act  
15 on July 5, 2018.

16           818. By signing the requisite declarations for U.S. Registration Number 4,196,757,  
17 NGINX Software, Inc. made knowingly false statements to the USPTO that no one else had the right  
18 to use the NGINX trademark. This was not true in view of the knowledge of Rambler’s ownership  
19 rights in the NGINX trademark.

20           819. Subsequently, U.S. Registration Number 4,196,757 was purportedly assigned to F5  
21 on January 22, 2020, which assignment was recorded in the USPTO on February 6, 2020 at  
22 reel/frame 006858/0385.

23           820. F5 had conducted extensive due diligence in early 2019 prior to the Merger and knew  
24 that the Team had stolen Open Source NGINX, NGINX Plus and related intellectual property rights,  
25 including the NGINX trademark, from Rambler.

1 821. F5 could not have acquired any legitimate rights in the NGINX trademark, because  
2 the Team had no rights to transfer to NGINX Software, Inc. such that it could have assigned rights  
3 in the NGINX trademark to F5.

4 822. U.S. Registration Number 4,196,757 should be cancelled in view of the fraudulent  
5 representations of exclusive ownership of the NGINX trademark to the USPTO.

6 823. Defendants NGINX Software, Inc. and F5 should pay Plaintiff all damages caused by  
7 the fraudulent registration of the NGINX trademark in an amount to be determined at trial.

8 **EIGHTEENTH CLAIM FOR RELIEF**

9 ***Cancellation of NGINX (Stylized) Trademark Registration, U.S. Reg. No. 4,200,791 and***

10 ***Payment of Damages for Fraud, 15 U.S.C. §§ 1064, 1119, 1120 as to***

11 ***NGINX Software, Inc. and F5***

12 824. Plaintiff incorporates and realleges the allegations contained in paragraphs 1 through  
13 823 above as is fully repeated and realleged herein.

14 825. Plaintiff is the owner of the NGINX (Stylized) trademark by assignment of the  
15 trademark and all other intellectual property rights from its predecessor-in-interest, Rambler.

16 826. On May 5, 2011, the newly-formed NGINX Software, Inc. filed an application to  
17 register the NGINX (Stylized) trademark on a use basis, pursuant to 15 U.S.C. 1051(a), in the  
18 USPTO, which was assigned U.S. Application Number 85/312,806.

19 827. As of May 5, 2011, NGINX Software, Inc. disclosed its headquarters as 600  
20 Montgomery Street, 43<sup>rd</sup> Floor, San Francisco, California.

21 828. As of May 5, 2011, Sysoev and other of the Disloyal Employees were still employed  
22 by Rambler.

23 829. In the application for the NGINX (Stylized) trademark, NGINX Software, Inc.  
24 alleged that the date of first use of the trademark was May 1, 2002, while Sysoev was employed by  
25 Rambler, and that the date of first use in commerce was May 1, 2004, while Sysoev was employed  
26 by Rambler. Accordingly, such uses of the NGINX (Stylized) trademark and the goodwill that arose  
27 from such uses inured to the benefit of Rambler.

1           830. The application for the NGINX (Stylized) trademark covers the following goods in  
2 Class 9: “Computer software for HTTP and reverse proxy servers and mail proxy servers, namely,  
3 for controlling and managing server applications in the nature of HTTP and reverse proxy servers  
4 and mail proxy servers.”

5           831. In U.S. Application Number 85/312,802, Nginx Software, Inc. signed the application  
6 declaration through its Silicon Valley attorney, Leonard Grayver.

7           832. The declaration in the NGINX (Stylized) trademark application stated in relevant part:  
8 “to the best of his/her knowledge and belief no other person, firm, corporation, or association has the  
9 right to use the mark in commerce, either in the identical form thereof or in such near resemblance  
10 thereto as to be likely, when used on or in connection with the goods/services of such other person,  
11 to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own  
12 knowledge are true; and that all statements made on information and belief are believed to be true.”

13           833. These statements as applied to the NGINX (Stylized) trademark were false and known  
14 to be false by Sysoev and the other members of the Team who authorized Grayver to make that  
15 representation on behalf of NGINX Software, Inc.

16           834. Sysoev was still working for Rambler at that time the U.S. Application Number  
17 85/312,806 was filed for the NGINX (Stylized) trademark, and he and the rest of the Team knew  
18 well that Sysoev had developed Open Source NGINX for Rambler using Rambler’s resources.

19           835. The Sysoev Employment Agreement and Rambler’s Internal Company Policies and  
20 Procedures explicitly provided that Sysoev’s work product for Rambler was the property of Rambler  
21 and required Sysoev to disclose and turnover his work to Rambler.

22           836. There was no transfer of trademark rights from Rambler to Sysoev or to any of the  
23 other Disloyal Employees in the NGINX (Stylized) trademark such that any such rights could have  
24 been subsequently transferred to NGINX Software, Inc. giving it a right to seek registration of the  
25 NGINX (Stylized) trademark.

26           837. To the Team, Rambler’s rights to Open Source NGINX and associated NGINX  
27 (Stylized) trademark were clearly established.

1           838. Despite this knowledge, and more directly despite the Disloyal Employees’  
2 knowledge that Open Source NGINX and the associated NGINX (Stylized) trademark were properly  
3 owned by Rambler because the Disloyal Employees had developed such software and associated  
4 trademark for Rambler as part of their duties as Rambler employees, NGINX Software, Inc.  
5 fraudulently, and with an intent to deceive, represented to the USPTO that no other person or entity  
6 had any rights to the NGINX (Stylized) trademark.

7           839. NGINX Software, Inc. had engaged Grayver as its legal counsel for the trademark  
8 application. Upon information and belief, Grayver advised NGINX Software Inc. and the Team of  
9 the importance of the representations they were making to the USPTO.

10           840. The NGINX (Stylized) trademark was registered in the name of NGINX Software,  
11 Inc. on September 4, 2012 under U.S. Registration Number 4,200,791.

12           841. NGINX Software, Inc. continued its fraudulent misrepresentations to the USPTO by  
13 continuing to maintain U.S. Registration No. 4,200,791 for the NGINX (Stylized) trademark by  
14 filing the “Combined Declaration of Use and Incontestability under Sections 8 & 15” of the  
15 Trademark Act on July 5, 2018.

16           842. By signing the requisite declarations for U.S. Registration No. 4,200,791, NGINX  
17 Software, Inc. made knowingly false statements to the USPTO that no one else had the right to use  
18 the NGINX (Stylized) trademark. This was not true in view of the knowledge of Rambler’s  
19 ownership rights in the NGINX (Stylized) trademark.

20           843. Subsequently, U.S. Registration Number 4,200,791 was purportedly assigned to F5  
21 on January 22, 2020, which was recorded in the USPTO on February 6, 2020 at reel/frame  
22 006858/0385.

23           844. F5 had conducted extensive due diligence in early 2019 prior to the Merger and knew  
24 that the Team had stolen Open Source NGINX, NGINX Plus and related intellectual property rights,  
25 including the NGINX trademark, from Rambler.





1           853. In the application for the NGINX PLUS trademark, NGINX DE subsequently filed a  
2 Statement of Use and alleged that the date of first use of the NGINX PLUS trademark was April 13,  
3 2013 and that the date of first use in commerce of the NGINX PLUS trademark was August 22,  
4 2013.

5           854. NGINX DE fraudulently claimed that the NGINX PLUS trademark was owned and  
6 first used by it with the intent to deceive the USPTO.

7           855. Both the application declaration to register the NGINX PLUS trademark and  
8 declaration in support of the Statement of Use were signed by NGINX DE through its attorney,  
9 Grayver.

10           856. The declaration in the application for the NGINX PLUS trademark stated in relevant  
11 part: “to the best of his/her knowledge and belief no other person, firm, corporation, or association  
12 has the right to use the mark in commerce, either in the identical form thereof or in such near  
13 resemblance thereto as to be likely, when used on or in connection with the goods/services of such  
14 other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of  
15 his/her own knowledge are true; and that all statements made on information and belief are believed  
16 to be true.”

17           857. The declaration for the Statement of Use for the NGINX PLUS trademark contained  
18 similar language in relevant part, as follows: “to the best of the signatory's knowledge and belief, no  
19 other person has the right to use the mark in commerce, either in the identical form or in such near  
20 resemblance as to be likely, when used on or in connection with the goods/services of such other  
21 person, to cause confusion or mistake, or to deceive.”

22           858. These statements were false and known to be false by Sysoev and the other members  
23 of the Team who authorized Grayver to make the representations on behalf of NGINX DE.

24           859. There was no transfer of trademark rights from Rambler to Sysoev or to any of the  
25 other Disloyal Employees in the NGINX trademark, the NGINX PLUS trademark or the NGINX+  
26 trademark such that any such rights could have been subsequently transferred to NGINX DE giving  
27 it a right to seek registration of the NGINX PLUS trademark.

1           860. The April 13, 2013 alleged date of first use of the NGINX PLUS trademark and the  
2 August 22, 2013 alleged date of first use in commerce of the NGINX PLUS trademark were falsely  
3 claimed by NGINX DE, as confirmed by the whistleblower Alexander Korotkov's prior USPTO  
4 application to register the NGINX trademark, U.S. Application Serial No. 85/268,567, which he later  
5 abandoned after being snubbed by the Team. Korotkov filed the application as part of the conspiracy  
6 to steal the NGINX Enterprise from Rambler. Such application was filed through Korotkov's own  
7 company, Infosens Inc.

8           861. In reality, well before 2013, the conspirators were using the *nginxplus.com* domain  
9 name in connection with a Web site, along with the "NGINX+" trademark, to promote and sell  
10 NGINX Plus, as shown in the Web page specimen that Korotkov submitted in support of his  
11 trademark application. Korotkov's specimen shows that those earlier iterations of the NGINX PLUS  
12 trademark were being used as early as February 1, 2010, and used in commerce as early as March 1,  
13 2011, in connection with the promotion and sale of NGINX Plus. These dates coincide with when  
14 Sysoev and the other Disloyal Employees were still employed with Rambler.

15           862. NGINX DE's claim that the NGINX PLUS trademark was used in commerce more  
16 than two years later than Korotkov's specimen constitutes a blatant attempt to place the first  
17 commercialization of the NGINX Plus software more than 20 months after Sysoev exited Rambler,  
18 rather than the during the period when the Disloyal Employees still worked at Rambler. In doing so,  
19 NGINX DE sought to make it seem that the NGINX Plus software was first developed and  
20 commercialized outside of Rambler after the Disloyal Employees had exited, rather than as a work  
21 made for hire owned by Rambler.

22           863. The false first-use dates submitted to the USPTO by NGINX DE establish that  
23 NGINX DE's claim of ownership of the NGINX PLUS trademark based on use in 2013 is fraudulent  
24 because, as shown by the Korotkov trademark application, the conspirators' use of the NGINX PLUS  
25 trademark in connection with the NGINX Plus software occurred in 2010 and 2011, while the  
26 Disloyal Employees were still employed by Rambler. As such, use of the NGINX PLUS mark inured  
27 solely to the benefit of Rambler, the true owner of the NGINX PLUS trademark.

1           864. Accordingly, the NGINX PLUS trademark was fraudulently registered in the name  
2 of NGINX DE on October 20, 2015 under Registration Number 4,837,175 and such registration  
3 should therefore be cancelled.

4           865. On December 14, 2017, Sally M. Abel, Esq. of Fenwick & West LLP, filed a Section  
5 7 Request form claiming that Grayver had mistakenly listed NGINX DE as the applicant and asked  
6 that the registrant be changed to NGINX BVI. The Section 7 Request form incorrectly states that  
7 the registrant should be changed to NGINX BVI because NGINX DE did not exist as of the  
8 registration filing date. In reality, NGINX DE was incorporated in Delaware on August 8, 2011  
9 (four months before Sysoev left Rambler's employment) and remains in existence as of April 2021.

10           866. Even if the change of entities was accurate, it was meaningless where NGINX BVI  
11 also had no rights to the NGINX, NGINX PLUS or NGINX+ trademarks. Rambler had not assigned  
12 its rights to such trademark to Sysoev or any of the other Disloyal Employees such that there could  
13 have been any transfer of such trademark rights to NGINX BVI.

14           867. The NGINX PLUS trademark registration was then purportedly assigned from  
15 NGINX BVI to F5 on November 27, 2019, which assignment was recorded with the USPTO on  
16 December 3, 2019 at reel/frame number 006807/0517.

17           868. As there was no legitimate transfer of trademark rights to NGINX BVI, there could  
18 be no further transfer of rights to F5.

19           869. Having done extensive due diligence prior to the Merger, F5 had knowledge that none  
20 of the Disloyal Employees or their subsequent companies, NGINX DE and NGINX BVI had any  
21 rights to the NGINX, NGINX PLUS or NGINX + trademarks. F5 knowingly turned a blind eye to  
22 the fraudulent misrepresentations filed by NGINX DE and/or NGINX BVI and continued the fraud  
23 upon the USPTO by filing the purported assignment of the NGINX PLUS trademark registration.

24           870. U.S. Registration Number 4,837,175 should be cancelled in view of the fraudulent  
25 representations of ownership of the NGINX PLUS trademark made to the USPTO.

26           871. Defendants NGINX DE, NGINX BVI and F5 should pay Plaintiff all damages caused  
27 by the fraudulent registration of the NGINX PLUS trademark in an amount to be determined at trial.

**TWENTIETH CLAIM FOR RELIEF**

***Cancellation of NGINX Trademark Registration, U.S. Reg. No. 5,973,515 and Payment of Damages for Fraud, 15 U.S.C. §§ 1064, 1119, 1120 as to NGINX BVI and F5***

872. Plaintiff incorporates and realleges the allegations contained in paragraphs 1 through 871 above as is fully repeated and realleged herein.

873. Plaintiff is the owner of the NGINX trademark by assignment of the trademark and all other intellectual property rights from its predecessor-in-interest, Rambler.

874. The first use of the NGINX trademark dates back to 2002, and the first use in U.S. commerce of the NGINX trademark dates back to 2004. Such uses of the NGINX trademark and the goodwill that arose from such uses had inured to the benefit of Rambler.

875. On June 14, 2017, NGINX BVI applied to register the NGINX trademark, on an intent-to-use basis, pursuant to 15 U.S.C. § 1051(b), in the USPTO, which was assigned U.S. Application Number 87/487,184.

876. U.S. Application Number 87/487,184 covers the following goods and services:  
Class 9: Server software for use in web serving, reverse proxying, caching, load balancing, application delivery and media streaming; computer software for controlling and managing web servers; computer software for use in HTTP and reverse proxy servers and mail proxy servers, namely, for controlling and managing server applications in the nature of http and reverse proxy servers and mail proxy servers; software for providing data analysis, analytics, and reporting of information concerning web server performance; computer hardware; parts and fittings for all of the aforesaid.

Class 42: Software as a service (SaaS) featuring software for use in web serving, reverse proxying, caching, load balancing, application delivery, media streaming and controlling and managing web servers; platform as a service featuring computer platforms for web serving, reverse proxying, caching, load balancing, application delivery and media streaming; Software as a service (SaaS) services featuring software

1 for use in HTTP and reverse proxy servers and mail proxy servers, namely, for  
2 controlling and managing server applications in the nature of http and reverse proxy  
3 servers and mail proxy servers; computer services, namely, providing web servers and  
4 load balancing servers; software as a service (SaaS) services featuring software for  
5 providing data analysis, analytics, and reporting of information concerning web server  
6 performance; design and development of computer hardware and software;  
7 information, consultancy and advisory services relating to all of the aforesaid.

8 877. The declaration in U.S. Application No. 87/487,184 for the NGINX trademark stated  
9 in relevant part:

10 The signatory believes that the applicant is entitled to use the mark in commerce; The  
11 applicant has a bona fide intention to use the mark in commerce on or in connection  
12 with the goods/services in the application; and To the best of the signatory's  
13 knowledge and belief, the facts recited in the application are accurate... To the best  
14 of the signatory's knowledge, information, and belief, formed after an inquiry  
15 reasonable under the circumstances, the allegations and other factual contentions made  
16 above have evidentiary support....

17 878. These statements were false and known to be false by the Team when such declaration  
18 was signed by Mark Elchinoff, CFO, of NGNIX BVI, where Rambler was the rightful owner of the  
19 NGINX trademark.

20 879. U.S. Application Number 87/487,184 was then purportedly assigned from NGINX  
21 BVI to F5 on November 27, 2019, which assignment was recorded with the USPTO on December  
22 3, 2019 at reel/frame number 006807/0517. Subsequently, on December 11, 2019, a Statement of  
23 Use for the NGINX trademark was filed by F5.

24 880. F5 recited the following in the Statement of Use for the NGINX trademark: “The  
25 mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in  
26 interest at least as early as 12/14/2009, and first used in commerce at least as early as 04/12/2011,  
27 and is now in use in such commerce.” These first-use dates were independently selected and asserted

1 by F5 – prior to such assertion, no dates of use or dates of first use in commerce had been include in  
2 such trademark application.

3 881. The date of first use claimed as of December 14, 2009 was while Sysoev and the other  
4 Disloyal Employees were still employed by Rambler, and the date of first use in commerce claimed  
5 as of April 12, 2011 was also while Sysoev and the other Disloyal Employees were still employed  
6 by Rambler. Accordingly, such uses of the NGINX trademark inured to the benefit of Rambler –  
7 not to the benefit of the Disloyal Employees.

8 882. In view of its pre-merger due diligence, F5 knew that the Disloyal Employees were  
9 still employed at Rambler during those dates and that such dates were all before any of the entities:  
10 NGINX DE, NGINX BVI or NGINX Software, Inc. were formed.

11 883. Further, the identification of goods in Class 9 is virtually identical to the identification  
12 of goods in U.S. Trademark Registration No. 4,196,757 for the NGINX trademark in which the dates  
13 of first use and first use in commerce were claimed as of May 1, 2002 and May 1, 2004, respectively,  
14 and such uses of the NGINX mark inured to the benefit of Rambler.

15 884. The declaration in the Statement of Use stated in relevant part:

16 To the best of the signatory’s knowledge and belief, no other persons, except, if  
17 applicable, authorized users, members, and/or concurrent users, have the right to use  
18 the mark in commerce, either in the identical form or in such near resemblance as to  
19 be likely, when used on or in connection with the goods/services/collective  
20 membership organization of such other persons, to cause confusion or mistake, or to  
21 deceive.

22 To the best of the signatory’s knowledge, information, and belief, formed after an  
23 inquiry reasonable under the circumstances, the allegations and other factual  
24 contentions made above have evidentiary support.

25 885. The declaration was signed on behalf of F5 by its attorney, Eugene Belyi.

26 886. The Statement of Use declaration statements were false as applied to the ownership  
27 of the NGINX trademark where such trademark rights were with Rambler and were never assigned  
28



1 to Sysoev or anyone else on the Team such that there could have been a transfer of rights to NGINX  
2 BVI and then to F5. Neither NGINX BVI nor F5 had the right to register the NGINX trademark.

3 887. F5's independent assertion of, and reliance on, the alleged dates of first use of the  
4 NGINX trademark (which information it had learned through the pre-Merger due diligence process)  
5 when Sysoev and the other Disloyal Employees were still employed at Rambler is further definitive  
6 proof that F5 does not have any ownership rights in the NGINX trademark and underscores F5's  
7 intent to deceive the USPTO.

8 888. F5 is not the rightful owner of the NGINX trademark.

9 889. The NGINX trademark was fraudulently registered in the name of F5 on January 28,  
10 2020 under U.S. Registration Number 5,973,515.

11 890. U.S. Registration Number 5,973,515 should be cancelled in view of the fraudulent  
12 representations of ownership of the NGINX trademark made to the USPTO.

13 891. Defendants NGINX BVI and F5 should pay Plaintiff all damages caused by the  
14 fraudulent registration of the NGINX trademark in an amount to be determined at trial.

15 **TWENTY-FIRST CLAIM FOR RELIEF**

16 ***Cancellation of NGINX CONTROLLER Trademark Registration, U.S. Reg. No. 5,973,527 and***  
17 ***Payment of Damages, 15 U.S.C. §§ 1064, 1119, 1120, as to NGINX BVI and F5***

18 892. Plaintiff incorporates and realleges the allegations contained in paragraphs 1 through  
19 891 above as is fully repeated and realleged herein.

20 893. Plaintiff is the owner of the NGINX trademark by assignment of the trademark and  
21 all other intellectual property rights from its predecessor-in-interest, Rambler.

22 894. The first use of the NGINX trademark dates back to 2002, and the first use in U.S.  
23 commerce of the NGINX trademark dates back to 2004. Such uses of the NGINX trademark and  
24 the goodwill that arose from such uses inured to the benefit of Rambler.

25 895. On July 28, 2017, NGINX BVI filed an application to register the NGINX  
26 CONTROLLER trademark, on an intent-to-use basis, pursuant to 15 U.S.C. § 1051(b), in the  
27 USPTO, which was assigned U.S. Application Number 87/547,319. The word "controller" in the  
28

1 Trademark was required to be disclaimed because it is descriptive of the goods and services. The  
2 predominant portion of the trademark is NGINX.

3 896. The NGINX CONTROLLER trademark registration covers the following goods and  
4 services:

5 Class 9: Server software for use in web serving, reverse proxying, caching, load  
6 balancing, application delivery and media streaming; computer software for  
7 controlling and managing web servers; computer software for use in HTTP and  
8 reverse proxy servers and mail proxy servers, namely, for controlling and managing  
9 server applications in the nature of http and reverse proxy servers and mail proxy  
10 servers; software for providing data analysis, analytics, and reporting of information  
11 concerning web server performance; computer hardware; parts and fittings for all of  
12 the aforesaid.

13 Class 42: Software as a service (SaaS) featuring software for use in web serving,  
14 reverse proxying, caching, load balancing, application delivery, media streaming and  
15 controlling and managing web servers; platform as a service featuring computer  
16 platforms for web serving, reverse proxying, caching, load balancing, application  
17 delivery and media streaming; Software as a service (SaaS) services featuring software  
18 for use in HTTP and reverse proxy servers and mail proxy servers, namely, for  
19 controlling and managing server applications in the nature of http and reverse proxy  
20 servers and mail proxy servers; computer services, namely, providing web servers and  
21 load balancing servers; software as a service (SaaS) services featuring software for  
22 providing data analysis, analytics, and reporting of information concerning web server  
23 performance; design and development of computer hardware and software;  
24 information, consultancy and advisory services relating to all of the aforesaid.”

25 897. The declaration for the NGINX CONTROLLER application stated in relevant part:  
26 “The signatory believes that the applicant is entitled to use the mark in commerce; The  
27 applicant has a bona fide intention to use the mark in commerce on or in connection  
28

1 with the goods/services in the application; and To the best of the signatory's  
2 knowledge and belief, the facts recited in the application are accurate...

3 898. These statements were false and known to be false by Sysoev and the Team when  
4 such application declaration was signed by Mark Elchinoff, CFO, of NGNIX BVI.

5 899. The NGINX CONTROLLER trademark application was purportedly assigned from  
6 NGINX BVI to F5 on November 27, 2019, which assignment was recorded with the USPTO on  
7 December 3, 2019 at reel/frame number 006807/0517.

8 900. Curiously, on December 11, 2019, a Statement of Use was filed by F5 claiming a date  
9 of first use of use and date of first use in commerce as of June 26, 2018.

10 901. Further, the declaration in the Statement of Use stated in relevant part:

11 The signatory believes that the applicant is the owner of the mark sought to be registered.  
12 For a trademark or service mark application, the mark is in use in commerce on or in  
13 connection with all the goods/services in the application or notice of allowance, or as  
14 subsequently modified... To the best of the signatory's knowledge, information, and belief,  
15 formed after an inquiry reasonable under the circumstances, the allegations and other factual  
16 contentions made above have evidentiary support...

17 902. The NGINX CONTROLLER trademark covers the exact same goods and services as  
18 the NGINX trademark, U.S. Registration No. 5,973,515, for which F5 claimed a date of first use as  
19 of December 14, 2009, while Sysoev and the other Disloyal Employees were still employed by  
20 Rambler, and a date of first use in commerce claimed as of April 12, 2011 also while Sysoev and all  
21 the Disloyal Employees were still employed by Rambler.

22 903. In view of its pre-merger due diligence, F5 knew that the Disloyal Employees were  
23 still employed at Rambler during those dates and that such dates were all before any of the entities:  
24 NGINX DE, NGINX BVI or NGINX Software, Inc. were formed.

25 904. There had been no transfer of trademark rights in the NGINX trademark from  
26 Rambler to Sysoev or any of the other Disloyal Employees such that any rights could have been  
27

1 subsequently transferred to NGINX BVI and then to F5 to support seeking to register the NGINX  
2 CONTROLLER trademark.

3 905. The claimed dates of first use and first use in commerce by F5 of the NGINX  
4 CONTROLLER trademark of June 26, 2018 was an attempt by it to circumvent the actual earlier  
5 first use dates of the NGINX CONTROLLER trademark in 2009 and 2011, respectively, when Sysoev  
6 and the other Disloyal Employees were still employed with Rambler, and such use of the mark inured  
7 to the benefit of Rambler, and with the intent to deceive the USPTO.

8 906. The NGINX CONTROLLER trademark was fraudulently registered in the name of  
9 F5 on January 28, 2020 under U.S. Registration Number 5,973,527.

10 907. F5 is not the rightful owner of the NGINX CONTROLLER trademark.

11 908. U.S. Registration Number 5,973,527 should be cancelled in view of the fraudulent  
12 representations of ownership of the NGINX CONTROLLER trademark made to the USPTO.

13 909. Defendants NGINX BVI and F5 should pay Plaintiff all damages caused by the  
14 fraudulent registration of the NGINX CONTROLLER trademark in an amount to be determined at  
15 trial.

16 **TWENTY-SECOND CLAIM FOR RELIEF**

17 ***Cancellation of NGINX UNIT Trademark Registration, U.S. Reg. No. 5,978,630 and Payment of***  
18 ***Damages for Fraud, 15 U.S.C. §§ 1064, 1119, 1120 as to NGINX BVI and F5***

19 910. Plaintiff incorporates and realleges the allegations contained in paragraphs 1 through  
20 909 above as is fully repeated and realleged herein.

21 911. Plaintiff is the owner of the NGINX trademark by assignment of the trademark and  
22 all other intellectual property rights from its predecessor-in-interest, Rambler.

23 912. The first use of the NGINX trademark dates back to 2002, and the first use in U.S.  
24 commerce of the NGINX trademark dates back to 2004. Such uses of the NGINX trademark and  
25 the goodwill that arose from such uses inured to the benefit of Rambler.

26 913. On July 28, 2017, NGINX BVI filed an application to register the NGINX UNIT  
27 trademark on an intent-to-use basis pursuant to 15 U.S.C., which was assigned U.S. Application  
28

1 Number 87/547,328 The word “unit” was required to be disclaimed in the trademark because it is  
2 descriptive of the goods and services. The predominant portion of the trademark is NGINX.

3 914. The NGINX UNIT trademark registration covers the following goods and services:

4 Class 9: Server software for use in web serving, reverse proxying, caching, load  
5 balancing, application delivery and media streaming; computer software for  
6 controlling and managing web servers; computer software for use in HTTP and  
7 reverse proxy servers and mail proxy servers, namely, for controlling and managing  
8 server applications in the nature of http and reverse proxy servers and mail proxy  
9 servers; software for providing data analysis, analytics, and reporting of information  
10 concerning web server performance; computer hardware; parts and fittings for all of  
11 the aforesaid.

12 Class 42: Software as a service (SaaS) featuring software for use in web serving,  
13 reverse proxying, caching, load balancing, application delivery, media streaming and  
14 controlling and managing web servers; platform as a service featuring computer  
15 platforms for web serving, reverse proxying, caching, load balancing, application  
16 delivery and media streaming; Software as a service (SaaS) services featuring software  
17 for use in HTTP and reverse proxy servers and mail proxy servers, namely, for  
18 controlling and managing server applications in the nature of http and reverse proxy  
19 servers and mail proxy servers; computer services, namely, providing web servers and  
20 load balancing servers; software as a service (SaaS) services featuring software for  
21 providing data analysis, analytics, and reporting of information concerning web server  
22 performance; design and development of computer hardware and software;  
23 information, consultancy and advisory services relating to all of the aforesaid.

24 915. The declaration in the NGINX UNIT trademark application stated in relevant part:

25 The signatory believes that the applicant is entitled to use the mark in commerce; The  
26 applicant has a bona fide intention to use the mark in commerce on or in connection  
27 with the goods/services in the application; and To the best of the signatory’s  
28

1 knowledge and belief, the facts recited in the application are accurate... To the best  
2 of the signatory's knowledge, information, and belief, formed after an inquiry  
3 reasonable under the circumstances, the allegations and other factual contentions made  
4 above have evidentiary support.

5 916. These statements were false and known to be false by Sysoev and the other members  
6 of the Team when such declaration was signed by Mark Elchinoff, CFO, of NGNIX BVI.

7 917. The NGINX UNIT trademark application was purportedly assigned from NGINX  
8 BVI to F5 on November 27, 2019, which assignment was recorded with the USPTO on December  
9 3, 2019 at reel/frame number 006807/0517.

10 918. Subsequently, on December 10, 2019, a Statement of Use was filed by F5. As to the  
11 dates of first use and first use in commerce claimed for the NGINX UNIT mark, F5 stated in relevant  
12 part: "The mark was first used by the applicant, or the applicant's related company, licensee, or  
13 predecessor in interest at least as early as 09/22/2017, and first used in commerce at least as early as  
14 09/22/2017, and is now in use in such commerce."

15 919. Further, the declaration in the Statement of Use stated in relevant part:

16 The signatory believes that the applicant is the owner of the mark sought to be  
17 registered. For a trademark or service mark application, the mark is in use in  
18 commerce on or in connection with all the goods/services in the application or notice  
19 of allowance, or as subsequently modified...To the best of the signatory's knowledge,  
20 information, and belief, formed after an inquiry reasonable under the circumstances,  
21 the allegations and other factual contentions made above have evidentiary support.

22 920. The NGINX UNIT trademark covers the exact same goods and services as the  
23 NGINX trademark, U.S. Registration No. 5,973,515, for which F5 claimed a date of first use as of  
24 December 14, 2009 while Sysoev and the other Disloyal Employees were still employed by Rambler,  
25 and a date of first use in commerce claimed as of April 12, 2011, also while Sysoev and all the  
26 Disloyal Employees were still employed by Rambler.





1           930. Defendants have used the NGINX suite of trademarks to advertise and market to  
2 relevant licensees of Open Source NGINX and NGINX Plus and services associated therewith as if  
3 such accomplishments were theirs.

4           931. Defendants have systematically claimed as their own, Rambler’s (and now Plaintiff’s)  
5 Open Source NGINX and NGINX Plus software.

6           932. All promotion and advertising of Open Source NGINX and NGINX Plus by the  
7 Defendants which attributes such accomplishments as their own, rather than Rambler’s, are literally  
8 false.

9           933. For example, it was touted on the “nginx.com” website in 2019 that “NGINX, Inc. is  
10 the company behind NGINX, the popular open source project trusted by more than 400 million sites.”

11           934. Subsequently in 2020, F5 has touted the exact same advertising message on the  
12 “nginx.com” website, only substituting in itself for NGINX, Inc.: “F5 Networks, Inc. is the company  
13 behind NGINX, the popular open source project trusted by more than 400 million sites.”

14           935. By Sysoev’s own admissions, Open Source NGINX was developed within the scope  
15 of his employment at Rambler. In addition, NGINX Plus was also developed by Sysoev with  
16 assistance from the Disloyal Employees within the scope of their employment responsibilities at  
17 Rambler and using Rambler resources and infrastructure. Hence, both software products are  
18 Rambler’s. Yet, commercial advertisements for the products by the Defendants falsely designate  
19 themselves for the history and achievement of Open Source NGINX and falsely attribute credit for  
20 NGINX Plus to themselves.

21           936. The Sysoev Employment Agreement and Rambler’s Internal Company Policies and  
22 Procedures mandate that Open Source NGINX, NGINX Plus, the NGINX Enterprise, and all related  
23 corporate opportunities were and are owned by Rambler and now Lynwood.

24           937. Rambler, and now in turn Lynwood, have been denied the advertising value and  
25 goodwill that would come from the public knowledge of Open Source NGINX and NGINX Plus  
26 having been Rambler’s and now Lynwood’s.

1 938. Consumers have been deceived where they have not known the true source of Open  
2 Source NGINX and NGINX Plus.

3 939. Defendants have violated the Lanham Act by falsely and misleadingly designating  
4 Open Source NGINX and NGINX Plus as their own in advertising.

5 940. Defendants' false and misleading designations regarding Open Source NGINX and  
6 NGINX Plus as their own are material.

7 941. Defendants' false and misleading designation of the NGINX suite of trademarks,  
8 Open Source NGINX and NGINX Plus as their own occurred in interstate commerce.

9 942. As a result of Defendants' false and misleading advertising, Rambler, and Plaintiff as  
10 its assignee, has suffered vast economic damages in an amount to be determined at trial, but presently  
11 believed to be well in excess of \$750 million.

12 **TWENTY-FOURTH CLAIM FOR RELIEF**

13 ***Infringement of the NGINX, NGINX (Stylized) and NGINX PLUS Trademarks, 15 U.S.C. §§***

14 ***1125(a)(1)(A) as to All Defendants***

15 943. Plaintiff incorporates and realleges the allegations contained in paragraphs 1 through  
16 942 above as if fully repeated and realleged herein.

17 944. Plaintiff is the legitimate owner of the NGINX trademark, the NGINX (Stylized)  
18 trademark, the NGINX PLUS (including NGINX+) trademark and any associated and derivative  
19 trademarks by assignment from its predecessor-in-interest, Rambler.

20 945. NGINX is a coined term and is known worldwide in connection with NGINX  
21 software and related services offered in connection with such trademark.

22 946. The NGINX and NGINX (Stylized) trademarks are valid trademarks owned by  
23 Rambler, and now Lynwood by assignment. Use of the NGINX and NGINX (Stylized) trademarks  
24 began in 2002 and use of the trademarks in U.S. commerce began in 2004. Such uses of the NGINX  
25 and NGINX (Stylized) trademarks inured to the benefit of Rambler.

26 947. The NGINX PLUS trademark is a valid trademark owned by Rambler, and now  
27 Lynwood by assignment. Use of the NGINX PLUS trademark began in February 2010 and use of  
28

1 the NGINX PLUS trademark in U.S. commerce began in March 2011. Such uses of the NGINX  
2 PLUS trademark inured to the benefit of Rambler.

3 948. Defendants have been using the NGINX trademark, NGINX (Stylized) trademark,  
4 NGINX PLUS trademark, NGINX UNIT trademark and NGINX CONTROLLER trademark in U.  
5 S. commerce in connection with Open Source NGINX, NGINX Plus, and related software goods and  
6 services in violation of Rambler's and now Lynwood's rights.

7 949. Such uses have caused confusion, mistake, and deception where Lynwood is the  
8 actual owner of the NGINX, NGINX (Stylized) and NGINX PLUS trademarks.

9 950. The NGINX, NGINX (Stylized) and NGINX PLUS trademarks used by Defendants  
10 are identical in sound, appearance, and commercial impression to Lynwood's NGINX, NGINX  
11 (Stylized) and NGINX PLUS trademarks.

12 951. The NGINX CONTROLLER and NGINX UNIT trademarks used by Defendants are  
13 confusingly similar in sound, appearance, and commercial impression to Lynwood's NGINX  
14 trademark.

15 952. The goods and services offered in connection with the NGINX trademarks by  
16 Defendants are identical to Open Source NGINX, NGINX Plus and related services and/or are  
17 closely related to such goods and services.

18 953. Consumers are actually confused because consumers have been deceptively told and  
19 have been misled to believe that NGINX Software, Inc., NGINX DE, NGINX BVI, and/or F5 were  
20 or are the owners of the NGINX-formative trademarks and software offered in connection therewith,  
21 when in fact Rambler, and now Lynwood, is the legitimate owner.

22 954. Consumers continue to be actually confused because Defendant F5 has continued the  
23 false designation of the origin of the NGINX trademarks, Open Source NGINX and NGINX Plus  
24 after having acquired NGINX BVI through the Merger and purportedly having the NGINX, NGINX  
25 (Stylized), NGINX PLUS, NGINX CONTROLLER, and NGINX UNIT trademarks assigned to it.

26 955. Defendant NGINX Software, Inc.'s and the Team's intent in selecting the NGINX  
27 and NGINX (Stylized) trademark was in bad faith, including because the Team knew they were  
28

1 stealing these trademarks from Rambler as part of their conspiracy to sell Rambler's NGINX  
2 Enterprise for their own ill-gotten profit.

3 956. Defendant NGINX Software, Inc.'s and the Team's intent in selecting the NGINX  
4 and NGINX (Stylized) trademarks was in bad faith, including because the Team knew they used the  
5 marks and registered the marks in direct contravention of their employment obligations with  
6 Rambler.

7 957. Defendants NGINX DE, NGINX BVI and F5's continued actions in expanding the  
8 unauthorized use of the NGINX trademark by also selecting and using the NGINX PLUS, NGINX  
9 CONTROLLER and NGINX UNIT trademarks was with an intention of seeking, in bad faith, to  
10 build on the stolen trademark rights of Rambler.

11 958. Lynwood has been damaged by the years of unauthorized use of the NGINX  
12 trademark, NGINX (Stylized) trademark, NGINX PLUS trademark, NGINX CONTROLLER  
13 trademark and NGINX UNIT trademark by NGINX BVI, NGINX DE, NGINX Software, Inc. and  
14 now F5, and the other Defendants in an amount to be determined at trial, but presently believed to  
15 be well in excess of \$750 million.

16 959. Defendants should be permanently enjoined from further use of the NGINX  
17 trademark, the NGINX (Stylized) trademark, the NGINX PLUS trademark, the NGINX  
18 CONTROLLER trademark, the NGINX UNIT trademark, the NGINX APP PROTECT trademark  
19 and from any other trademark that includes the NGINX trademark, and any trademark confusingly  
20 similar therewith.

21 **TWENTY-FIFTH CLAIM FOR RELIEF**

22 **Unjust Enrichment as to All Defendants**

23 960. Plaintiff incorporates and realleges the allegations contained in paragraphs 1 through  
24 959 above as if fully repeated and realleged herein.

25 961. By their wrongful acts and omissions, Defendants were unjustly enriched at the  
26 expense of and to the detriment of Rambler, and by assignment, Plaintiff.



1 the NGINX UNIT trademark, the NGINX APP PROTECT trademark and any other trademark that  
2 includes NGINX or any mark confusingly similar therewith;

3 J. A declaration that Lynwood owns the NGINX trademark, the NGINX (Stylized) trademark,  
4 the NGINX PLUS trademark, the NGINX CONTROLLER trademark, the NGINX UNIT trademark,  
5 the NGINX APP PROTECT trademark and any other trademark that includes NGINX;

6 K. Plaintiff's Attorneys' Fees and costs; and

7 L. A grant to Plaintiff of such other and further relief as the Court may deem just and proper.

8 Dated: April 29, 2021

9 By: /s/Brian M. Affrunti

10 Douglas W. Dal Cielo (CA Bar No. 157109)

11 ddalcielo@bwsllaw.com

12 Brian M. Affrunti (CA Bar No. 227072)

13 baffrunti@bwsllaw.com

14 **BURKE, WILLIAMS & SORENSEN, LLP**

15 60 South Market Street, Suite 1000

16 San Jose, CA 95113

17 Telephone: (408) 606-6300

18 Fax: (408) 606-6333

19 Patricia L. Peden (CA Bar No. 206440)

20 ppeden@bwsllaw.com

21 **BURKE, WILLIAMS & SORENSEN, LLP**

22 1901 Harrison Street, Suite 900

23 Oakland, CA 94612-3501

24 Telephone: (510) 273-8780

25 Fax: (510) 839-9104

26 Alexander D. Pencu (*pro hac vice*)

27 adp@msf-law.com

28 Christopher J. Major (*pro hac vice*)

cjm@msf-law.com

Jeffrey P. Weingart (*pro hac vice*)

jpw@msf-law.com

**MEISTER SEELIG & FEIN LLP**

125 Park Avenue, 7th Floor

New York, NY 10017

Telephone: (212) 655-3500

Fax: (646) 539-3649

*Attorneys for Plaintiff*

**JURY DEMAND**

Plaintiff demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: April 29, 2021

By: /s/ Douglas W. Dal Cielo

/s/ Brian M. Affrunti

Douglas W. Dal Cielo (CA Bar No. 157109)

ddalcielo@bwsllaw.com

Brian M. Affrunti (CA Bar No. 227072)

baffrunti@bwsllaw.com

**BURKE, WILLIAMS & SORESENSEN, LLP**

60 South Market Street, Suite 1000

San Jose, CA 95113

Telephone: (408) 606-6300

Fax: (408) 606-6333

Patricia L. Peden (CA Bar No. 206440)

ppeden@bwsllaw.com

**BURKE, WILLIAMS & SORESENSEN, LLP**

1901 Harrison Street, Suite 900

Oakland, CA 94612-3501

Telephone: (510) 273-8780

Fax: (510) 839-9104

Alexander D. Pencu (*pro hac vice*)

adp@msf-law.com

Christopher J. Major (*pro hac vice*)

cjm@msf-law.com

Jeffrey P. Weingart (*pro hac vice*)

jpw@msf-law.com

**MEISTER SEELIG & FEIN LLP**

125 Park Avenue, 7th Floor

New York, NY 10017

Telephone: (212) 655-3500

Fax: (646) 539-3649

*Attorneys for Plaintiff*