

1 Plaintiffs eXelate, Inc. ("eXelate") and Gracenote, Inc. ("Gracenote")
2 (collectively, "Plaintiffs") allege as follows for their Complaint for Declaratory
3 Judgment against Free Stream Media Corp. d/b/a Samba TV ("Samba"):

4 **NATURE OF THE ACTION**

5 1. This is an action for declaratory judgment of noninfringement and
6 invalidity of U.S. Patent Nos. 9,519,772 ("the '772 patent"); 10,142,377 ("the '377
7 patent"); and 9,386,356 ("the '356 patent") (collectively, "the patents-in-suit")
8 arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the
9 patent laws of the United States, including Title 35 of the United States Code, §§ 1
10 *et seq.*

11 2. Plaintiffs seek a declaration that they do not infringe the patents-in-suit
12 and that the patents-in-suit are invalid.

13 3. An actual and justiciable controversy exists between Plaintiffs and
14 Samba.

15 **THE PARTIES**

16 4. eXelate is a corporation organized and existing under the laws of the
17 State of Delaware, with its principal place of business at 85 Broad Street, New
18 York, New York, 10004.

19 5. Gracenote is a corporation organized and existing under the laws of the
20 state of Delaware, with its principal place of business at 2000 Powell Street, Suite
21 1500, Emeryville, California, 94608.

22 6. On information and belief, Samba is a corporation organized and
23 existing under the laws of the State of Delaware, with a principal place of business
24 at 528 Folsom Street, San Francisco, California, 94105.

25 **JURISDICTION AND VENUE**

26 7. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§
27 2201 and 2202, and the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* An
28

1 actual and justiciable controversy exists between Plaintiffs and Samba that requires
2 a declaration by this Court.

3 8. This Court has subject matter jurisdiction over this action under 28
4 U.S.C. §§ 1331, 1338(a) and 2201(a).

5 9. This Court has personal jurisdiction over Samba because, among other
6 things, Samba has continuous and systematic contacts with the State of California,
7 including maintaining its headquarters at 528 Folsom Street, San Francisco,
8 California, 94105. Samba has purposefully availed itself of the privileges and
9 protections of the State of California in general, and this District in particular, by
10 engaging in business here.

11 10. Samba has previously and voluntarily submitted to jurisdiction and
12 venue in this District. *See, e.g., Free Stream Media Corp. v. Alphonso Inc.*, Case
13 No. 3:17-cv-02107-RS (N.D. Cal.).

14 11. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c).
15 Samba is subject to personal jurisdiction in this District and resides in this District.

16 **INTRADISTRICT ASSIGNMENT**

17 12. Pursuant to Civil L.R. 3-2(c) and 3-5(b), this is an Intellectual Property
18 Rights action subject to assignment on a district-wide basis.

19 **PATENTS-IN-SUIT**

20 13. The '772 patent, entitled "Relevancy improvement through targeting of
21 information based on data gathered from a networked device associated with a
22 security sandbox of a client device," states on its face that it issued on December 13,
23 2016. A copy of the '772 patent is attached as Exhibit A.

24 14. The '377 patent, entitled "Relevancy improvement through targeting of
25 information based on data gathered from a networked device associated with a
26 security sandbox of a client device," states on its face that it issued on November 27,
27 2018. A copy of the '377 patent is attached as Exhibit B.

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1 18. As shown above, Samba's Letter accuses Gracenote's automatic content
2 recognition ("ACR") client software and eXelate's NMC (collectively, "the Accused
3 Products") of infringing the patents-in-suit.

4 19. As also shown above, Samba's Letter expressly refers to the Accused
5 Products as an "unauthorized use of Samba's technology."

6 20. As further shown above, Samba's Letter "demands" that eXelate and
7 Gracenote "stop using Samba's intellectual property, and . . . stop encouraging
8 others to use the intellectual property."

9 21. Samba's Letter expounds upon its infringement allegations, arguing that
10 eXelate's NMC "generates audience models for targeted ad campaigns using, among
11 other things, data from Gracenote's ACR client software . . . [and] incorporates the
12 claimed features [of Samba's patents] including by using artificial intelligence, a
13 'real-time technology' to 'automate audience model creation and optimization.'"

14 22. Gracenote's ACR system receives from televisions the IP addresses of
15 the televisions, and Gracenote then generates viewership data about programs being
16 displayed on those televisions. Gracenote licenses this viewership data to its
17 customers. Gracenote does not encourage, direct, or control its customers to take
18 any particular action regarding the viewership data.

19 23. eXelate receives a list of IP addresses from Gracenote and creates
20 "segments," which are classifications of the IP addresses in various categories
21 (demographic or otherwise). eXelate licenses these segments to its customers.
22 eXelate does not encourage, direct, or control its customers to take any particular
23 action regarding the segments.

24 24. In certain instances, Plaintiffs license both segments and viewership
25 data to their customers. Plaintiffs do not encourage, direct, or control their
26 customers to take any particular action regarding the segments and viewership data.

27 25. Despite the fact that Samba's letter specifically calls out "the
28 integration of Gracenote's ACR client software into millions of TVs," Gracenote's

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