

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
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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

1 ACR client software in televisions does not provide content or other data to
2 secondary devices. Nor does Gracenote search for or provide targeted content to
3 secondary devices.

4 26. eXelate does not provide content or other data to secondary devices.
5 Nor does eXelate search for or provide targeted content to secondary devices.

6 27. Plaintiffs have expended considerable effort and resources to design,
7 develop, test, produce, and license the Accused Products.

8 28. The accusations in Samba's Letter create a cloud over Plaintiffs'
9 businesses relating to the Accused Products.

10 29. As a result of Samba's allegations, there is an actual, immediate and
11 justiciable controversy between Samba and Plaintiffs regarding the infringement and
12 validity of the claims of the patents-in-suit. Declaratory judgment is necessary and
13 appropriate to determine the rights and obligations of Samba and Plaintiffs.

14 **COUNT I**

15 **(Declaratory Judgment of Noninfringement of the '772 Patent)**

16 30. Plaintiffs incorporate by reference all of the allegations set forth in each
17 of the preceding paragraphs of this Complaint as if fully set forth herein.

18 31. Samba has asserted that it is the owner of the '772 patent.

19 32. Samba has asserted that the Accused Products infringe the '772 patent.

20 33. The Accused Products do not infringe any valid claim of the '772
21 patent, directly or indirectly, literally or under the doctrine of equivalents.

22 34. All claims of the '772 patent require "a relevancy-matching server to
23 match primary data generated from the preliminary data with targeted data based on
24 a relevancy factor and search a storage for targeted data" or "a relevancy-matching
25 server to match primary data generated using a preliminary data with targeted data,
26 based on a relevancy factor, and search a storage for targeted data."

27 35. The Accused Products do not contain the claimed relevancy-matching
28 server, and thus, the Accused Products do not infringe any claim of the '772 patent.

1 36. Moreover, the Accused Products do not search for or identify targeted
2 data, nor do they match primary data with targeted data based on a relevancy factor.

3 37. All claims of the '772 patent also require "a client device capable of
4 being associated with the networked device to process an embedded object,
5 constrain an executable environment in a security sandbox, and execute a sandboxed
6 application in the executable environment" or "a client device to associate with the
7 networked device, constrain an executable environment in a security sandbox,
8 execute a sandboxed application in the executable environment capable of bypassing
9 at least one access control of the security sandbox, and process in the sandboxed
10 application an embedded object from the relevancy-matching server." The Accused
11 Products do not contain these elements, and thus, the Accused Products do not
12 infringe any claim of the '772 patent. In particular, for example, the Accused
13 Products do not use or incorporate a client device capable of being associated with a
14 networked device. Nor do the Accused Products use a security sandbox or execute
15 sandboxed applications.

16 38. All claims of the '772 patent also require "a content identification
17 server to process the preliminary data from the networked device and communicate
18 the primary data from the preliminary data to any of a number of devices with an
19 access to an identification data of at least one of the networked device and an
20 automatic content identification service of the networked device" or "a content
21 identification server to process the preliminary data from at least one of the
22 networked device and the client device, and communicate the primary data from the
23 preliminary data to any of a number of devices with access to an identification data
24 of at least one of the networked device and an automatic content identification
25 service of the networked device." The Accused Products do not contain these
26 elements, and thus, the Accused Products do not infringe any claim of the '772
27 patent. In particular, for example, the Accused Products do not communicate data to
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1 devices with access to identification data of a networked device or of an automatic
2 content identification service of a networked device.

3 39. As a result of Samba's allegations against Plaintiffs, an actual and
4 justiciable case or controversy exists between Samba and Plaintiffs as to
5 noninfringement of the claims of the '772 patent.

6 40. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
7 and to resolve the legal and factual questions raised by Samba and to afford
8 Plaintiffs relief from the uncertainty and controversy that Samba's allegations have
9 precipitated, Plaintiffs are entitled to a declaration that the Accused Products do not
10 infringe any claims of the '772 patent.

11 **COUNT II**

12 **(Declaratory Judgment of Invalidity of the '772 Patent)**

13 41. Plaintiffs incorporate by reference all of the allegations set forth in each
14 of the preceding paragraphs of this Complaint as if fully set forth herein.

15 42. On information and belief, Samba contends that all claims of the '772
16 patent are valid.

17 43. Samba has asserted that the Accused Products infringe the '772 patent.

18 44. All claims of the '772 patent are invalid for failure to comply with at
19 least 35 U.S.C. §§ 101, 102, 103 and/or 112.

20 45. The '772 patent does not claim patent-eligible subject matter under 35
21 U.S.C. § 101. Unlike claims directed to solving particular technological problems,
22 the '772 patent does not claim any new solution, system or device. The claims of
23 the '772 patent are directed to the abstract idea of "determining what a person is
24 watching on television and, based on that information, delivering other content –
25 such as an advertisement – to a mobile device also being used by that person." *See*
26 *Free Stream Media Corp. v. Alphonso Inc.*, Case No. 17-cv-02107-RS, (N.D. Cal.),
27 Document 367, Order Granting Motion for Summary Judgment, Dec. 28, 2018. The
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1 claims do not recite any inventive concept to transform the abstract idea into patent-
2 eligible subject matter.

3 46. If the claims of the '772 patent are interpreted as broadly as Samba
4 interprets them, they are invalid as anticipated or rendered obvious under 35 U.S.C.
5 §§ 102 and/or 103 in light of the prior art.

6 47. In the chain of applications upon which priority is based on the face of
7 the '772 patent, U.S. Patent Application No. 13/904,015, filed on May 28, 2013, is
8 the earliest application that can be argued to disclose a "relevancy-matching server"
9 or any similar function. For at least the reason that all claims of the '772 patent
10 require a relevancy-matching server, May 28, 2013 is the earliest possible priority
11 date to which the claims of the '772 patent are entitled.

12 48. The claims of the '772 patent are anticipated under 35 U.S.C. § 102 by
13 U.S. Patent Application Publication No. US 2010/0205628 A1 to Davis and
14 Rodriguez (including all references incorporated by reference therein) ("Davis").
15 Davis was published on August 12, 2010 and is therefore prior art to all claims of
16 the '772 patent. Claim charts demonstrating how Davis anticipates the '772 patent
17 are attached hereto as Exhibit E.

18 49. In the alternative, the claims of the '772 patent are rendered obvious
19 under 35 U.S.C. § 103 by the combination of Davis with any or all of: (a) the
20 November 14, 2011 Oracle web page
21 <https://docs.oracle.com/javase/tutorial/java/javaOO/objects.html>; (b) *Understanding*
22 *the Keys to Java security – the sandbox and authentication*, JavaWorld, May 1,
23 1997 ([https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-](https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-security----the-sandbox-authentication.html)
24 [security----the-sandbox-authentication.html](https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-security----the-sandbox-authentication.html)); and (c) the 2002 Oracle web page
25 [https://docs.oracle.com/javase/7/docs/technotes/guides/security/spec/security-](https://docs.oracle.com/javase/7/docs/technotes/guides/security/spec/security-specTOC.fm.html)
26 [specTOC.fm.html](https://docs.oracle.com/javase/7/docs/technotes/guides/security/spec/security-specTOC.fm.html) and its hyperlinked web pages. The claim charts in Exhibit E
27 demonstrate how these references render the '772 patent obvious.

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1 the targeted data through the embedded object processed through the sandboxed
2 application of the client device, wherein the primary data is any one of a content
3 identification data and a content identification history"; or "through the relevancy-
4 matching server, receive primary data generated from fingerprint data of each of the
5 plurality of networked devices, match the primary data with targeted data based on a
6 relevancy factor, search a storage for the targeted data, and cause rendering of the
7 targeted data through the embedded object processed through the sandboxed
8 application of the client device, wherein the primary data is any one of a content
9 identification data and a content identification history."

10 57. The Accused Products do not contain the claimed relevancy-matching
11 server, and thus, the Accused Products do not infringe any claim of the '377 patent.

12 58. Moreover, the Accused Products do not search for or identify targeted
13 data, nor do they match primary data with targeted data. Nor do those products
14 match primary data with targeted data based on a relevancy factor. Additionally, the
15 Accused Products do not render targeted data, through a sandboxed application or
16 otherwise.

17 59. All the claims of the '377 patent also require "a client device capable of
18 being associated with a plurality of networked devices through a computer network
19 to process an embedded object, constrain an executable environment in a security
20 sandbox, and execute a sandboxed application in the executable environment, the
21 embedded object being processed through the sandboxed application"; "associating
22 a client device with a plurality of networked devices through a computer network;
23 processing an embedded object through the client device; constraining an executable
24 environment in a security sandbox of the client device; executing a sandboxed
25 application in the executable environment of the client device, the embedded object
26 being processed through the sandboxed application"; or "associate the client device
27 with a plurality of networked devices through a computer network; process an
28 embedded object through the client device; constrain an executable environment in a

1 the '377 patent are directed to the abstract idea of "determining what a person is
2 watching on television and, based on that information, delivering other content –
3 such as an advertisement – to a mobile device also being used by that person." *See*
4 *Free Stream Media Corp. v. Alphonso Inc.*, Case No. 17-cv-02107-RS, (N.D. Cal.),
5 Document 367, Order Granting Motion for Summary Judgment, Dec. 28, 2018. The
6 claims do not recite any inventive concept to transform the abstract idea into patent-
7 eligible subject matter.

8 67. If the claims of the '377 patent are interpreted as broadly as Samba
9 interprets them, they are invalid as anticipated or rendered obvious under 35 U.S.C.
10 §§ 102 and/or 103 in light of the prior art.

11 68. In the chain of applications upon which priority is based on the face of
12 the '377 patent, U.S. Patent Application No. 13/904,015, filed on May 28, 2013, is
13 the earliest application that can be argued to disclose a "relevancy-matching server"
14 or any similar function. For at least the reason that all claims of the '377 patent
15 require a relevancy-matching server, May 28, 2013 is the earliest possible priority
16 date to which the claims of the '377 patent are entitled.

17 69. The claims of the '377 patent are anticipated under 35 U.S.C. § 102 by
18 Davis. Davis was published on August 12, 2010 and is therefore prior art to all
19 claims of the '377 patent. Claim charts demonstrating how Davis anticipates the
20 '377 patent are attached hereto as Exhibit E.

21 70. In the alternative, the claims of the '377 patent are rendered obvious
22 under 35 U.S.C. § 103 by the combination of Davis with any or all of: (a) the
23 November 14, 2011 Oracle web page
24 <https://docs.oracle.com/javase/tutorial/java/javaOO/objects.html>; (b) *Understanding*
25 *the Keys to Java security – the sandbox and authentication*, JavaWorld, May 1,
26 1997 ([https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-](https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-security----the-sandbox-authentication.html)
27 [security----the-sandbox-authentication.html](https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-security----the-sandbox-authentication.html)); and (c) the 2002 Oracle web page
28 [COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NONINFRINGEMENT AND INVALIDITY
CASE No. _____](https://docs.oracle.com/javase/7/docs/technotes/guides/security/spec/security-</p></div><div data-bbox=)

1 specTOC.fm.html and its hyperlinked web pages. The claim charts in Exhibit E
2 demonstrate how these references render the '377 patent obvious.

3 71. As a result of Samba's allegations against Plaintiffs, an actual and
4 justiciable case or controversy exists between Samba and Plaintiffs as to the validity
5 of the claims of the '377 patent.

6 72. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
7 and to resolve the legal and factual questions raised by Samba and to afford
8 Plaintiffs relief from the uncertainty and controversy that Samba's allegations have
9 precipitated, Plaintiffs are entitled to a declaration that the claims of the '377 patent
10 are invalid under one or more provisions of 35 U.S.C. §§ 101, 102, 103 and 112, or
11 other judicially created bases for invalidity. Such a declaration is necessary and
12 appropriate at this time to determine the rights and obligations of the parties.

13 COUNT V

14 **(Declaratory Judgment of Noninfringement of the '356 Patent)**

15 73. Plaintiffs incorporate by reference all of the allegations set forth in each
16 of the preceding paragraphs of this Complaint as if fully set forth herein.

17 74. Samba has asserted that it is the owner of the '356 patent.

18 75. Samba has asserted that the Accused Products infringe the '356 patent.

19 76. The Accused Products do not infringe any valid claim of the '356
20 patent, directly or indirectly, literally or under the doctrine of equivalents.

21 77. All claims of the '356 patent require "a relevancy-matching server to
22 match primary data generated from the fingerprint data with targeted data, based on
23 a relevancy factor, and search a storage for the targeted data; wherein the primary
24 data is any one of a content identification data and a content identification history";
25 "[a] relevancy matching server communicatively coupled with a television and a
26 mobile device through a network, comprising . . . instructions stored in the memory
27 and executed using the processor configured to match primary data generated using
28 a fingerprint data with targeted data, based on a relevancy factor comprising at least

1 one of a category of the primary data, a behavioral history of a user, a category of a
2 sandboxed application, and another information associated with the user, search a
3 storage for the targeted data, wherein the primary data is any one of a content
4 identification data and a content identification history"; or "[a] method of a
5 relevancy-matching server comprising a set of instructions when executed through a
6 machine using a processor and a memory to comprise the operations of matching
7 primary data generated from a fingerprint data with targeted data, based on a
8 relevancy factor and to search a storage for the targeted data using the processor
9 communicatively coupled with the memory; wherein the primary data is any one of
10 a content identification data and a content identification history." The Accused
11 Products do not contain these elements, and thus, the Accused Products do not
12 infringe any claim of the '356 patent. In particular, for example, the Accused
13 Products do not contain a relevancy-matching server. Moreover, the Accused
14 Products do not match primary data with targeted data or search for or identify
15 targeted data. Nor do the Accused Products match primary data with targeted data
16 based on a relevancy factor.

17 78. Claims 1-9 and 18-21 of the '356 patent require "a content
18 identification server to process the fingerprint data from the television, and
19 communicate the primary data from the fingerprint data to any of a number of
20 devices with an access to an identification data of at least one of the television and
21 an automatic content identification service of the television" or "a content
22 identification server to process the fingerprint data from at least one of the television
23 and the mobile device, and communicate the primary data from the fingerprint data
24 to any of a number of devices with an access to an identification data of at least one
25 of the television and an automatic content identification service of the television."
26 The Accused Products do not contain these elements, and thus, the Accused
27 Products do not infringe claims 1-9 or 18-21 of the '356 patent. In particular, the
28 Accused Products do not contain the required content identification server.

1 Moreover, the Accused Products do not communicate primary data to any devices
2 with access to identification data of a television or an automatic content
3 identification service of the television.

4 79. Claims 10-17 of the '356 patent require "wherein the relevancy-
5 matching server is to cause a rendering of the targeted data to the user through the
6 sandboxed application of the mobile device" or "wherein the relevancy-matching
7 server is to cause a rendering of the targeted data to the user through the sandboxed
8 application of a mobile device." The Accused Products do not contain these
9 elements, and thus, the Accused Products do not infringe claims 10-17 of the '356
10 patent. In particular, the Accused Products do not contain a relevancy-matching
11 server. Nor do the Accused Products render targeted data to users or employ
12 sandboxed applications of mobile devices.

13 80. As a result of Samba's allegations against Plaintiffs, an actual and
14 justiciable case or controversy exists between Samba and Plaintiffs as to
15 noninfringement of the claims of the '356 patent.

16 81. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
17 and to resolve the legal and factual questions raised by Samba and to afford
18 Plaintiffs relief from the uncertainty and controversy that Samba's allegations have
19 precipitated, Plaintiffs are entitled to a declaration that the Accused Products do not
20 infringe any claims of the '356 patent.

21 COUNT VI

22 **(Declaratory Judgment of Invalidity of the '356 Patent)**

23 82. Plaintiffs incorporate by reference all of the allegations set forth in each
24 of the preceding paragraphs of this Complaint as if fully set forth herein.

25 83. On information and belief, Samba contends that all claims of the '356
26 patent are valid.

27 84. Samba has asserted that the Accused Products infringe the '356 patent.
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1 85. All claims of the '356 patent are invalid for failure to comply with at
2 least 35 U.S.C. §§ 101, 102, 103 and/or 112.

3 86. The '356 patent does not claim patent-eligible subject matter under 35
4 U.S.C. § 101. Unlike claims directed to solving particular technological problems,
5 the '356 patent does not claim any new solution, system or device. The claims of
6 the '356 patent are directed to the abstract idea of "determining what a person is
7 watching on television and, based on that information, delivering other content –
8 such as an advertisement – to a mobile device also being used by that person." *See*
9 *Free Stream Media Corp. v. Alphonso Inc.*, Case No. 17-cv-02107-RS, (N.D. Cal.),
10 Document 367, Order Granting Motion for Summary Judgment, Dec. 28, 2018. The
11 claims do not recite any inventive concept to transform the abstract idea into patent-
12 eligible subject matter.

13 87. If the claims of the '356 patent are interpreted as broadly as Samba
14 interprets them, they are invalid as anticipated or rendered obvious under 35 U.S.C.
15 §§ 102 and/or 103 in light of the prior art.

16 88. In the chain of applications upon which priority is based on the face of
17 the '356 patent, U.S. Patent Application No. 13/904,015, filed on May 28, 2013, is
18 the earliest application that can be argued to disclose a "relevancy-matching server"
19 or any similar function. For at least the reason that all claims of the '356 patent
20 require a relevancy-matching server, May 28, 2013 is the earliest possible priority
21 date to which the claims of the '356 patent are entitled

22 89. The claims of the '356 patent are anticipated under 35 U.S.C. § 102 by
23 Davis. Davis was published on August 12, 2010 and is therefore prior art to all
24 claims of the '377 patent. Claim charts demonstrating how Davis anticipates the
25 '356 patent are attached hereto as Exhibit E.

26 90. In the alternative, the claims of the '356 patent are rendered obvious
27 under 35 U.S.C. § 103 by the combination of Davis with any or all of: (a) the
28 November 14, 2011 Oracle web page

1 <https://docs.oracle.com/javase/tutorial/java/javaOO/objects.html>; (b) *Understanding*
2 *the Keys to Java security – the sandbox and authentication*, JavaWorld, May 1,
3 1997 ([https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-](https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-security----the-sandbox-authentication.html)
4 [security----the-sandbox-authentication.html](https://www.javaworld.com/article/2076945/understanding-the-keys-to-java-security----the-sandbox-authentication.html)); and (c) the 2002 Oracle web page
5 [https://docs.oracle.com/javase/7/docs/technotes/guides/security/spec/security-](https://docs.oracle.com/javase/7/docs/technotes/guides/security/spec/security-specTOC.fm.html)
6 [specTOC.fm.html](https://docs.oracle.com/javase/7/docs/technotes/guides/security/spec/security-specTOC.fm.html) and its hyperlinked web pages. The claim charts in Exhibit E
7 demonstrate how these references render the '356 patent obvious.

8 91. As a result of Samba's allegations against Plaintiffs, an actual and
9 justiciable case or controversy exists between Samba and Plaintiffs as to the validity
10 of the claims of the '356 patent.

11 92. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
12 and to resolve the legal and factual questions raised by Samba and to afford
13 Plaintiffs relief from the uncertainty and controversy that Samba's allegations have
14 precipitated, Plaintiffs are entitled to a declaration that the claims of the '356 patent
15 are invalid under one or more provisions of 35 U.S.C. §§ 101, 102, 103 and 112, or
16 other judicially created bases for invalidity. Such a declaration is necessary and
17 appropriate at this time to determine the rights and obligations of the parties.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs request that the Court enter judgment in their favor
20 and against Samba as follows:

- 21 (a) Declaring that Plaintiffs have not infringed and will not infringe,
22 directly or indirectly, literally or under the doctrine of equivalents, any
23 claim of the '772, '377 or '356 patents;
- 24 (b) Declaring that the '772, '377 and '356 patents are invalid;
- 25 (c) Denying any request by Samba for injunctive relief;
- 26 (d) Finding this case exceptional under 35 U.S.C. § 285 and awarding
27 Plaintiffs their costs and reasonable attorneys' fees;
- 28 (e) Awarding Plaintiffs any other relief that the Court finds just and proper.

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Dated: June 14, 2019

Respectfully submitted,

KELLEY DRYE & WARREN LLP

By: /s/ Kevin E. Cadwell
Kevin E. Cadwell

Attorney for Plaintiffs,
eXelate, Inc. and Gracernote, Inc.