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Attorneys for Plaintiff Ameranth, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AMERANTH, INC.

Plaintiff,

v.

SUBTLEDATA, INC.,

Defendant.

Case No. '12CV1647 AJB JMA

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its Complaint against defendant Subtledata, Inc. (herein
3 “Subtledata”), avers as follows:

4 **PARTIES**

5 1. Plaintiff Ameranth, Inc. (“Ameranth”) is a Delaware corporation having a principal
6 place of business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121. Ameranth
7 develops, manufactures and sells, *inter alia*, hospitality industry, entertainment, restaurant and
8 food service information technology solutions under the trademarks 21st Century
9 Communications™, and 21st Century Restaurant™, among others, comprising the
10 synchronization and integration of hospitality information and hospitality software applications
11 between fixed, wireless and/or internet applications, including but not limited to computer
12 servers, web servers, databases, affinity/social networking systems, desktop computers,
13 laptops, “smart” phones and other wireless handheld computing devices.

14 2. Defendant Subtledata, Inc. (herein “Subtledata”) is, on information and belief, a
15 Delaware corporation having a principal place of business and headquarters in Washington,
16 D.C. On information and belief, Subtledata makes, uses, sells and/or offers for sale, restaurant,
17 foodservice, point-of-sale and property management and other hospitality information
18 technology products, software, components and/or systems within this Judicial District,
19 including the Subtledata Products as defined herein.

20 **JURISDICTION AND VENUE**

21 3. This is an action for patent infringement arising under the Patent Laws of the United
22 States, 35 U.S.C. §§ 271, 281-285.

23 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
24 1338(a).

25 5. On information and belief, Defendant engages in (a) the offer for sale or license and
26 sale or license of hospitality, restaurant, food service, ordering, products and/or components in
27 the United States, including this Judicial District, including services, products, software, and
28 components, comprising wireless and internet POS and/or hospitality aspects; (b) the

1 installation and maintenance of said services, products, software, components and/or systems
2 in hospitality industry, restaurant, food service, and/or entertainment information technology
3 systems in the United States, including this Judicial District; and/or (c) the use of hospitality
4 industry, restaurant, food service, and/or entertainment information technology systems
5 comprising said services, products, software, components and/or systems in the United States,
6 including this Judicial District.

7 6. This Court has personal jurisdiction over Defendant because Defendant commits acts
8 of patent infringement in this Judicial District including, *inter alia*, making, using, offering for
9 sale or license, and/or selling or licensing infringing services, products, software, components
10 and/or systems in this Judicial District.

11 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and
12 1400(b).

13 **BACKGROUND**

14 8. Ameranth was established in 1996 to develop and provide its 21st Century
15 Communications™ innovative information technology solutions for the hospitality industry
16 (inclusive of, e.g., restaurants, hotels, casinos, nightclubs, cruise ships and other entertainment
17 and sports venues). Ameranth has been widely recognized as a technology leader in the
18 provision of wireless and internet-based systems and services to, *inter alia*, restaurants, hotels,
19 casinos, cruise ships and entertainment and sports venues. Ameranth's award winning
20 inventions enable, in relevant part, generation and synchronization of menus, including but not
21 limited to restaurant menus, event tickets, and other products across fixed, wireless and/or
22 internet platforms as well as synchronization of hospitality information and hospitality
23 software applications across fixed, wireless and internet platforms, including but not limited to,
24 computer servers, web servers, databases, affinity/social networking systems, desktop
25 computers, laptops, "smart" phones and other wireless handheld computing devices.

26 9. Ameranth began development of the inventions leading to the patent-in-suit and the
27 other patents in this patent family in the late Summer of 1998, at a time when the then-
28 available wireless and internet hospitality offerings were extremely limited in functionality,

1 were not synchronized and did not provide an integrated system-wide solution to the pervasive
2 ordering, reservations, affinity program and information management needs of the hospitality
3 industry. Ameranth uniquely recognized the actual problems that needed to be resolved in
4 order to meet those needs, and thereafter conceived and developed its breakthrough inventions
5 and products to provide systemic and comprehensive solutions directed to optimally meeting
6 these industry needs. Ameranth has expended considerable effort and resources in inventing,
7 developing and marketing its inventions and protecting its rights therein.

8 10. Ameranth's pioneering inventions have been widely adopted and are thus now
9 essential to the modern wireless hospitality enterprise of the 21st Century. Ameranth's
10 solutions have been adopted, licensed and/or deployed by numerous entities across the
11 hospitality industry.

12 11. The adoption of Ameranth's technology by industry leaders and the wide acclaim
13 received by Ameranth for its technological innovations are just some of the many
14 confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received
15 twelve different technology awards (three with "end customer" partners) and has been widely
16 recognized as a hospitality wireless/internet technology leader by almost all major national and
17 hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and
18 many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for
19 the prestigious Computerworld Honors Award that Ameranth received in 2001 for its
20 breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres.
21 In his nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
22 information technology for the betterment of mankind." This prestigious award was based on
23 Ameranth's innovative synchronization of wireless/web/fixed hospitality software technology.
24 Subsequently, the United States Patent and Trademark Office granted Ameranth a number of
25 currently-issued patents, two of which are the basis for this lawsuit. Ameranth has issued press
26 releases announcing these patent grants on business wires, on its web sites and at numerous
27 trade shows since the first of the presently-asserted patents issued in 2002. A number of
28

1 companies have licensed patents and technology from Ameranth, recognizing and confirming
2 the value of Ameranth's innovations.

3 **RELATED CASES PREVIOUSLY FILED**

4 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the "850 patent"),
5 U.S. Patent No. 6,871,325 (the "325 patent"), and U.S. Patent No. 8,146,077 (the "077
6 patent"), are all patents in Ameranth's "Information Management and Synchronous
7 Communications" patent family.

8 13. Ameranth is also currently asserting claims of these same patents in separate
9 lawsuits, against other defendants, that are already pending in this Court. The first-filed
10 lawsuit asserts claims of the '850 and '325 patents and is entitled *Ameranth v. Pizza Hut, Inc.*
11 *et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits subsequently filed by Ameranth in this
12 Court, asserting claims of the '077 patent, include Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-
13 cv-00731-JLS-NLS; 3:12-cv-00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-
14 NLS; 3:12-cv-00738-JLS-NLS; 3:12-cv-00739-JLS-NLS; and 3:12-cv-00742-JLS-NLS.
15 Another lawsuit subsequently filed by Ameranth in this Court, asserting claims of the '850,
16 '325, and '077 patents, is Case No. 3:12-cv-00858-JLS-NLS.

17 **COUNT I**

18 **Patent Infringement (U.S. Pat. No. 6,384,850)**

19 **(35 U.S.C. § 271)**

20 14. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-13 above
21 as if fully set forth herein.

22 15. On May 7, 2002, United States Patent No. 6,384,850 entitled "Information
23 Management and Synchronous Communications System with Menu Generation" ("the '850
24 patent") (a true and copy of which is attached hereto as **Exhibit A**) was duly and legally issued
25 by the United States Patent & Trademark Office.

26 16. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in
27 and to the '850 patent.

1 17. On information and belief, defendant Subtledata has indirectly infringed and
2 continues to indirectly infringe one or more valid and enforceable claims of the ‘850 patent, in
3 violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct
4 infringement by other persons, by making, using, offering for sale or license and/or selling or
5 licensing infringing systems, products, and/or services in the United States without authority or
6 license from Ameranth, including but not limited to the Subtledata products/services, which
7 include, *inter alia*, application program interfaces (APIs), apps for smartphones and other
8 computing devices, and/or other software and/or hardware to enable clients’ online/mobile
9 ordering systems, integration with e-mail and affinity program and social media applications
10 such as Facebook, Twitter, Groupon, and YouTube, and/or other third-party web-based
11 applications, and other hospitality aspects (“Subtledata Products”).

12 18. On information and belief, systems including one or more of the Subtledata Products,
13 as deployed and/or used at or from one or more locations by Subtledata, its agents, distributors,
14 partners, affiliates, licensees, and/or their customers, infringe one or more valid and
15 enforceable claims of the ‘850 patent, by, *inter alia*, doing at least one of the following: (a)
16 Generating and transmitting menus in a system including a central processing unit, a data
17 storage device, a computer operating system containing a graphical user interface, one or more
18 displayable main menus, modifier menus, and sub-modifier menus, and application software
19 for generating a second menu and transmitting it to a wireless handheld computing device or a
20 Web page; and/or (b) Enabling ordering and other hospitality functions via iPhone, Android,
21 and other internet-enabled wireless handheld computing devices as well as via Web pages,
22 storing hospitality information and data on at least one central database, on at least one wireless
23 handheld computing device, and on at least one Web server and Web page, and synchronizing
24 applications and data, including but not limited to applications and data relating to ordering,
25 between at least one central database, wireless handheld computing devices, and at least one
26 Web server and Web page; utilizing an interface that provides a single point of entry that
27 allows the synchronization of at least one wireless handheld computing device and at least one
28 Web page with at least one central database; allowing information to be entered via Web pages,

1 transmitted over the internet, and automatically communicated to at least one central database
2 and to wireless handheld computing devices; allowing information to be entered via wireless
3 handheld computing devices, transmitted over the internet, and automatically communicated to
4 at least one central database and to Web pages.

5 19. On information and belief, customers of Subtledata, including consumers and
6 restaurant operators, use the Subtledata Products. Subtledata provides instruction and direction
7 regarding the use of the Subtledata Products, and advertises, promotes, and encourages the use
8 of the Subtledata Products.

9 20. Subtledata has long had knowledge of the '850 patent, and knew or should have
10 known that its continued offering and deployment of the Subtledata Products, and its continued
11 support of consumers, restaurant operators, and other users of the Subtledata Products, would
12 induce direct infringement by those users. Additionally, Subtledata intended that its actions
13 would induce direct infringement by those users.

14 21. On information and belief, Defendant has indirectly infringed and continues to
15 indirectly infringe one or more valid and enforceable claims of the '850 patent, in violation of
16 35 U.S.C. § 271(c).

17 22. By distributing, selling, offering, offering to sell or license and/or selling or licensing
18 the Subtledata Products, Subtledata provides non-staple articles of commerce to others for use
19 in infringing systems, products, and/or services. Additionally, Subtledata provides instruction
20 and direction regarding the use of the Subtledata Products, and advertises, promotes, and
21 encourages the use of the Subtledata Products. Users of systems including one or more of the
22 Subtledata Products directly infringe one or more valid and enforceable claims of the '850
23 patent for the reasons set forth hereinabove.

24 23. On information and belief, Subtledata has had knowledge of the '850 patent,
25 including knowledge that the Subtledata Products, which are non-staple articles of commerce,
26 have been used as a material part of the claimed invention of the '850 patent, and that there are
27 no substantial non-infringing uses for the Subtledata Products.

28

1 24. On information and belief, the aforesaid infringing activities of defendant Subtledata
2 have been done with knowledge and willful disregard of Ameranth's patent rights, making this
3 an exceptional case within the meaning of 35 U.S.C. § 285.

4 25. The aforesaid infringing activity of defendant Subtledata has directly and
5 proximately caused damage to plaintiff Ameranth, including loss of profits from sales it would
6 have made but for the infringements. Unless enjoined, the aforesaid infringing activity will
7 continue and cause irreparable injury to Ameranth for which there is no adequate remedy at
8 law.

9 **COUNT II**

10 **Patent Infringement (U.S. Pat. No. 6,871,325)**

11 **(35 U.S.C. § 271)**

12 26. Plaintiff reiterates and reincorporates the allegations set forth in paragraphs 1-28
13 above as if fully set forth herein.

14 27. On March 22, 2005, United States Patent No. 6,871,325 entitled "Information
15 Management and Synchronous Communications System with Menu Generation" ("the '325
16 patent") (a true and correct copy of which is attached hereto as **Exhibit B**) was duly and legally
17 issued by the United States Patent & Trademark Office.

18 28. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in
19 and to the '325 patent.

20 29. On information and belief, defendant Subtledata has indirectly infringed and
21 continues to indirectly infringe one or more valid and enforceable claims of the '325 patent, in
22 violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct
23 infringement by other persons, by making, using, offering for sale or license and/or selling or
24 licensing infringing systems, products, and/or services in the United States without authority or
25 license from Ameranth, including but not limited to the Subtledata Products.

26 30. On information and belief, systems including one or more of the Subtledata Products,
27 as deployed and/or used at or from one or more locations by Subtledata, its agents, distributors,
28 partners, affiliates, licensees, and/or their customers, infringe one or more valid and

1 enforceable claims of the '325 patent, by, *inter alia*, doing at least one of the following: (a)
2 Generating and transmitting menus in a system including a central processing unit, a data
3 storage device, a computer operating system containing a graphical user interface, one or more
4 displayable main menus, modifier menus, and sub-modifier menus, and application software
5 for generating a second menu and transmitting it to a wireless handheld computing device or a
6 Web page; and/or (b) Enabling ordering and other hospitality functions via iPhone, Android,
7 and other internet-enabled wireless handheld computing devices as well as via Web pages,
8 storing hospitality information and data on at least one central database, on at least one wireless
9 handheld computing device, and on at least one Web server and Web page, and synchronizing
10 applications and data, including but not limited to applications and data relating to orders,
11 between at least one central database, wireless handheld computing devices, and at least one
12 Web server and Web page; and sending alerts, confirmations, and other information regarding
13 orders to various wireless mobile devices.

14 31. On information and belief, customers of Subtledata, including consumers and
15 restaurant operators, use the Subtledata Products in a manner that infringes upon one or more
16 valid and enforceable claims of the '325 patent. Subtledata provides instruction and direction
17 regarding the use of the Subtledata Products and advertises, promotes, and encourages the use
18 of the Subtledata Products.

19 32. On information and belief, Defendant actively induces others to infringe the '325
20 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting
21 customers of Subtledata, including consumers and restaurant operators, to use the infringing
22 Subtledata Products in the United States without authority or license from Ameranth.

23 33. On information and belief, Defendant contributorily infringes and continues to
24 contributorily infringe one or more valid and enforceable claims of the '325 patent, in violation
25 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims
26 of the '325 patent read, constituting a material part of the invention, knowing that the
27 components were especially adapted for use in systems which infringe claims of the '325
28 patent.

1 34. By distributing, selling, offering, offering to sell or license and/or selling or licensing
2 the Subtledata Products, Defendant provides non-staple articles of commerce to others for use
3 in infringing systems, products, and/or services. Additionally, Subtledata provides instruction
4 and direction regarding the use of the Subtledata Products and advertises, promotes, and
5 encourages the use of the Subtledata Products. Users of the Subtledata Products directly
6 infringe one or more valid and enforceable claims of the '325 patent, for the reasons set forth
7 hereinabove.

8 35. Subtledata has had knowledge of the '325 patent, including knowledge that the
9 Subtledata Products, which are non-staple articles of commerce, have been used as a material
10 part of the claimed invention of the '325 patent, and that there are no substantial non-infringing
11 uses for the Subtledata Products.

12 36. On information and belief, the aforesaid infringing activities of defendant Subtledata
13 have been done with knowledge and willful disregard of Ameranth's patent rights, making this
14 an exceptional case within the meaning of 35 U.S.C. § 285.

15 37. The aforesaid infringing activity of defendant Subtledata has directly and
16 proximately caused damage to plaintiff Ameranth, including loss of profits from sales it would
17 have made but for the infringements. Unless enjoined, the aforesaid infringing activity will
18 continue and cause irreparable injury to Ameranth for which there is no adequate remedy at
19 law.

20 **COUNT III**

21 **Patent Infringement (U.S. Pat. No. 8,146,077)**

22 **(35 U.S.C. § 271)**

23 38. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-42 above
24 as if fully set forth herein.

25 39. On March 27, 2012, United States Patent No. 8,146,077 entitled "Information
26 Management and Synchronous Communications System with Menu Generation, and
27 Handwriting and Voice Modification of Orders" (a true copy of which is attached hereto as
28

1 **Exhibit C** and incorporated herein by reference) was duly and legally issued by the United
2 States Patent & Trademark Office.

3 40. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in
4 and to the '077 patent.

5 41. On information and belief, defendant Subtledata has indirectly infringed and
6 continues to indirectly infringe one or more valid and enforceable claims of the '077 patent, in
7 violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct
8 infringement by other persons, by making, using, offering for sale or license and/or selling or
9 licensing infringing systems, products, and/or services in the United States without authority or
10 license from Ameranth, including but not limited to the Subtledata Products.

11 42. On information and belief, systems including one or more of the Subtledata Products,
12 as deployed and/or used at or from one or more locations by Subtledata, its agents, distributors,
13 partners, affiliates, licensees, and/or their customers, infringe one or more valid and
14 enforceable claims of the '077 patent, by, *inter alia*, doing at least one of the following: (a)
15 Configuring and transmitting menus in a system including a central processing unit, a data
16 storage device, a computer operating system containing a graphical user interface, one or more
17 displayable master menus, menu configuration software enabled to generate a menu
18 configuration for a wireless handheld computing device in conformity with a customized
19 display layout, and enabled for synchronous communications and to format the menu
20 configuration for a customized display layout of at least two different wireless handheld
21 computing device display sizes, and/or (b) Enabling ordering and other hospitality functions
22 via iPhone, Android, and other internet-enabled wireless handheld computing devices as well
23 as via Web pages, storing hospitality information and data on at least one database, on at least
24 one wireless handheld computing device, and on at least one Web server and Web page, and
25 synchronizing applications and data, including but not limited to applications and data relating
26 to orders, between at least one database, wireless handheld computing devices, and at least one
27 Web server and Web page; utilizing communications control software enabled to link and
28 synchronize hospitality information between at least one database, wireless handheld

1 computing device, and web page, to display information on web pages and on different
2 wireless handheld computing device display sizes, and to allow information to be entered via
3 Web pages, transmitted over the internet, and automatically communicated to at least one
4 database and to wireless handheld computing devices; allowing information to be entered via
5 wireless handheld computing devices, transmitted over the internet, and automatically
6 communicated to at least one database and to Web pages.

7 43. On information and belief, customers of Subtledata, including consumers and
8 restaurant operators, use the Subtledata Products in a manner that infringes upon one or more
9 valid and enforceable claims of the '077 patent. Subtledata provides instruction and direction
10 regarding the use of the Subtledata Products and advertises, promotes, and encourages the use
11 of the Subtledata Products.

12 44. On information and belief, Defendant actively induces others to infringe the '077
13 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting
14 customers of Subtledata, including consumers and restaurant operators, to use the infringing
15 Subtledata Products in the United States without authority or license from Ameranth.

16 45. On information and belief, Defendant contributorily infringes and continues to
17 contributorily infringe one or more valid and enforceable claims of the '077 patent, in violation
18 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims
19 of the '077 patent read, constituting a material part of the invention, knowing that the
20 components were especially adapted for use in systems which infringe claims of the '077
21 patent.

22 46. By distributing, selling, offering, offering to sell or license and/or selling or licensing
23 the Subtledata Products, Defendant provides non-staple articles of commerce to others for use
24 in infringing systems, products, and/or services. Additionally, Subtledata provides instruction
25 and direction regarding the use of the Subtledata Products and advertises, promotes, and
26 encourages the use of the Subtledata Products. Users of the Subtledata Products directly
27 infringe one or more valid and enforceable claims of the '077 patent, for the reasons set forth
28 hereinabove.

1 47. On information and belief, Subtledata has had knowledge of the '077 patent,
2 including knowledge that the Subtledata Products, which are non-staple articles of commerce,
3 have been used as a material part of the claimed invention of the '077 patent, and that there are
4 no substantial non-infringing uses for the Subtledata Products.

5 48. On information and belief, the aforesaid infringing activities of defendant Subtledata
6 have been done with knowledge and willful disregard of Ameranth's patent rights, making this
7 an exceptional case within the meaning of 35 U.S.C. § 285.

8 49. The aforesaid infringing activity of defendant Subtledata has directly and
9 proximately caused damage to plaintiff Ameranth, including loss of profits from sales it would
10 have made but for the infringements. Unless enjoined, the aforesaid infringing activity will
11 continue and cause irreparable injury to Ameranth for which there is no adequate remedy at
12 law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against Defendant,
15 as follows:

16 1. Adjudging that the manufacture, use, offer for sale or license and /or sale or
17 license of the Subtledata Products indirectly infringes valid and enforceable claims of the '850
18 patent, and the '325 patent, and the '077 patent, as set forth hereinabove;

19 2. Adjudging that Defendant has infringed, actively induced others to infringe
20 and/or contributorily infringed valid and enforceable claims of the '850 patent, and the '325
21 patent, and the '077 patent, as set forth hereinabove;

22 3. Adjudging that Defendant's indirect infringement of the valid and enforceable
23 claims of the '850 patent, and the '325 patent, and the '077 patent, has been knowing and
24 willful;

25 4. Enjoining Defendant, and its officers, directors, employees, attorneys, agents,
26 representatives, parents, subsidiaries, affiliates and all other persons acting in concert,
27 participation or privity with Defendant, and their successors and assigns, from infringing,
28

1 contributorily infringing and/or inducing others to infringe the valid and enforceable claims of
2 the '850 patent, and the '325 patent, and the '077 patent;

3 5. Awarding Ameranth the damages it has sustained by reason of Defendant's
4 infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

5 6. Awarding Ameranth increased damages of three times the amount of damages
6 found or assessed against Defendant by reason of the knowing, willful and deliberate nature of
7 Defendant's acts of infringement pursuant to 35 U.S.C. § 284;

8 7. Adjudging this to be an exceptional case and awarding Ameranth its attorney's
9 fees pursuant to 35 U.S.C. §285;

10 8. Awarding to Ameranth its costs of suit, and interest as provided by law; and

11 9. Awarding to Ameranth such other and further relief that this Court may deem
12 just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Ameranth demands trial by jury of its claims set forth herein to the maximum extent
15 permitted by law.

16 Respectfully submitted,

17 Dated: June 29, 2012

CALDARELLI HEJMANOWSKI & PAGE LLP

18 By: /s/ William J. Caldarelli
William J. Caldarelli

19 FABIANO LAW FIRM, P.C.
20 Michael D. Fabiano

21 OSBORNE LAW LLC
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24 **Attorneys for Plaintiff AMERANTH, INC.**