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JOAO CONTROL & MONITORING SYSTEMS OF
11 **CALIFORNIA, LLC N/K/A JOAO CONTROL &**
MONITORING SYSTEMS, LLC
12

13 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 **SAN FRANCISCO DIVISION**

15 JOAO CONTROL & MONITORING
SYSTEMS OF CALIFORNIA, LLC, N/K/A
16 JOAO CONTROL & MONITORING
SYSTEMS, LLC,
17

18 Plaintiff,

19 v.

20 SLING MEDIA, INC.,

21 Defendant.

Case No. 11-CV-06277-EMC

Judge: Hon. Edward M. Chen

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Jury Trial Demanded

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24 **PLAINTIFF'S SECOND AMENDED COMPLAINT**

25 Plaintiff Joao Control and Monitoring Systems of California, LLC now known as Joao
26 Control & Monitoring Systems, LLC ("Plaintiff"), by and through its undersigned counsel, files this
27

28 **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**
11-CV-06277-EMC

Second Amended Complaint against Sling Media, Inc. in accordance with the Local Rules and the Court's Order (Dkt. No. 228) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant's infringement of Plaintiff's United States Patent No. 6,549,130 entitled "*Control Apparatus and Method for Vehicles and/or for Premises*" (the "'130 patent"; a copy of which is attached hereto as Exhibit 1), and United States Patent No. 6,587,046 entitled "*Monitoring Apparatus and Method*" (the "'046 patent"; a copy of which is attached hereto as Exhibit 2) (collectively, "the patents-in-suit"). Plaintiff is the owner of the '130 patent, and '046 patent. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff Joao Control & Monitoring Systems, LLC ("Plaintiff") is a limited liability company organized and existing under the laws of the State of Delaware. Original Plaintiff Joao Control & Monitoring Systems of California, LLC merged with current Plaintiff and Original Plaintiff is no longer in existence. Plaintiff maintains its principal place of business at 122 Bellevue Place, Yonkers, New York 10703. Plaintiff is the owner of the patents-in-suit, and possesses the right to sue for infringement and recover past damages.

3. Upon information and belief, Sling Media, Inc. ("Sling") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1051 E. Hillsdale Blvd, Suite 500, Foster City, California 94404.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts with the State of California and the Northern District of California; Defendant has purposefully availed itself of the privileges of conducting business in the State of

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

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1 California and in the Northern District of California; Defendant has sought protection and benefit
2 from the laws of the State of California; Defendant regularly conducts business within the State of
3 California and within the Northern District of California; and Plaintiff's causes of action arise
4 directly from Defendant's business contacts and other activities in the State of California and in the
5 Northern District of California.

6 6. More specifically, Defendant, directly and/or through authorized intermediaries,
7 ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive
8 web page) its products and services in the United States, the State of California, and the Northern
9 District of California. Upon information and belief, Defendant has committed patent infringement in
10 the State of California and in the Northern District of California. Defendant solicits customers in the
11 State of California and in the Northern District of California. Defendant has many paying customers
12 who are residents of the State of California and the Northern District of California and who each use
13 Defendant's products and services in the State of California and in the Northern District of
14 California.

15 7. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§ 1391
16 and 1400(b).

17 **COUNT I – PATENT INFRINGEMENT**

18
19 8. The '130 patent was duly and legally issued by the United States Patent and
20 Trademark Office on April 15, 2003, after full and fair examination for systems and methods for
21 controlling vehicle or premises systems using at least three control devices. Plaintiff is the owner of
22 the '130 patent, and possesses all substantive rights and rights of recovery under the '130 patent with
23 respect to the Defendant, including the right to sue for infringement and recover past damages.

24 9. The '046 patent was duly and legally issued by the United States Patent and
25 Trademark Office on July 1, 2003, after full and fair examination for systems and methods for
26 vehicle and premises video monitoring. Plaintiff is the owner of the '046 patent, and possesses all

27 **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

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1 substantive rights and rights of recovery under the '046 patent with respect to the Defendant,
2 including the right to sue for infringement and recover past damages.

3 10. Plaintiff is informed and believes that Sling owns, operates, advertises, controls, sells,
4 and otherwise provides hardware and software for “control apparatuses for video systems” including
5 the Sling Slingbox devices and associated hardware and software (“the Sling systems”). Sling has
6 infringed and continues to infringe one or more claims of the '130 patent by making, using,
7 providing, offering to sell, and selling (directly or through intermediaries), in this district and
8 elsewhere in the United States, systems for remotely controlling video systems, including the Sling
9 systems. Among its claims, the '130 patent requires at least in part as set forth in claim 1¹, three
10 separate control devices that are remote from one another and which communicate by sending
11 signals. The Sling Systems include at least three separate control devices that either literally or
12 under the doctrine of equivalents, infringe the claims of the '130 patent. The Slingbox devices
13 including Pro-HD, SOLO, 120, PRO and others constitute a first control device purchased and used
14 by the Sling Customer at the premises. The Slingbox devices record and transit video and other
15 signals to and from the television or other video output device. The second control device is the
16 Slingbox server system and associated software that supports its website “accounts.sling.com,” (the
17 “Slingbox Server System”) where a Sling Customer must set up a Sling Account in order to access
18 and utilize the Slingbox devices for the Sling Customer to remotely control television programming
19 and viewing. SlingPlayer and alternatively or in combination, SlingRemote, is the third control
20 device that enables the Sling Customer to remotely view television programming broadcast via the
21 Sling Customer’s home television. A Sling Customer must download the SlingPlayer software (or
22 SlingRemote software) from the Sling website to his PC, Mac, tablet, smartphone or Internet
23 connected device. With the SlingPlayer software, the Sling account and Sling Server System, and a
24 Slingbox, a Sling Customer is able to remotely control and view television programming due to the

25 _____
26 ¹ Claim 1 is referenced for exemplary purposes only. Plaintiff will identify its Asserted Claims against Sling
Media, Inc. in its Infringement Contentions that will be served in accordance with Local Rules.

1 exchange of signals between the third control device and the second control device, and the
 2 exchange of signals between the second control device and the first control device. Sling is liable
 3 under the theory of direct infringement² either literally or under the doctrine of equivalents, because
 4 it controls or directs a Sling Customer to infringe the '130 patent using its software and hardware as
 5 described herein.

6 11. Upon information and belief, Sling is vicariously liable for the Sling Customers'
 7 infringement of any or all of the claims of the '130 patent. Sling directs and controls the actions of
 8 Sling Customers and how they are able to remotely control, record and view video or television
 9 programming through the use of three different, remote control devices that Sling designed, built,
 10 controls and/or sells to its customers. Sling requires its Sling Customers to have an account with
 11 Sling, creating a contractual relationship through which Sling directs, controls, facilitates and/or
 12 participates in the infringement of one or more claims of the '130 patent.

13 12. Plaintiff is informed and believes that Sling owns, operates, advertises, controls, sells,
 14 and otherwise provides hardware and software for "control apparatuses for video systems" including
 15 the Sling Slingbox devices and associated hardware and software ("the Sling systems"). Sling has
 16 infringed and continues to infringe one or more claims of the '046 patent by making, using,
 17 providing, offering to sell, and selling (directly or through intermediaries), in this district and
 18 elsewhere in the United States, systems and methods for remotely controlling video systems,
 19 including the Sling systems. Among its claims, the '046 patent requires at least in part as set forth in
 20 claim 30³, a processing device – the Sling Systems server system and associated software ("Sling

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 22 ² See *Network Signatures, Inc. v. Nestle' USA, Inc.*, Case no. 8:11-cv-01614-JVS-RNB, Dkt. No. 25,
 23 page 3 ("a party that does not perform all steps of the process may be held liable for direct
 24 infringement where that party exercises "control or direction" over a third party that performs the
 25 remaining steps.") (N.D. Cal. April 16, 2012). See also, *Centillion Data Systems, LLC v. Qwest
 Communications Int'l*, 631 F.3d 1279, 1288-1287 (Fed. Cir. 2011) ("vicarious liability arises when
 one party controls or directs the actions of another;" infringement is "found when more than one
 party performs the steps of a method claim, an agency relationship or other contractual obligation to
 perform the steps must exist").

26 ³ Claim 30 is referenced for exemplary purposes only. Plaintiff will identify its Asserted Claims against Sling
 27 Media, Inc. in its Infringement Contentions that will be served in accordance with Local Rules.

1 Server System”) – which receives video information from a video recording device – the Slingbox
2 devices (Pro-HD, SOLO, 120, PRO and others) where the Slingbox device(s) is located at a premises
3 and the Sling Server System is remote from the premises. The Sling Server System receives signals
4 transmitted from a communication device that is remote from the Sling Server System and remote
5 from the premises. The communication device is any of the following: PC, Mac, tablet, smartphone
6 or Internet connected device. The Sling Customer sets up a Sling Account at “account.sling.com”
7 via the communication device and downloads software as an account holder to his PC, Mac, tablet,
8 smartphone or Internet connected device. The Sling Customer downloads software provided by
9 Sling Server Systems and uses the software as provided and directed by Sling Systems in order to
10 transmit signals to the Sling Server System to have video information transmitted from the Slingbox
11 to the communication device using the Sling Server System. Sling is liable under the theory of
12 direct infringement either literally or under the doctrine of equivalents, because it controls or directs
13 a Sling Customer to infringe the ‘046 patent using its software and hardware as described herein.

14 13. Upon information and belief, Sling is vicariously liable for the Sling Customers’
15 infringement of any or all of the claims of the ‘046 patent. Sling directs and controls the actions of
16 Sling Customers and how they are able to remotely control, record and view video or television
17 programming using the Sling Systems including Slingbox, Sling Server Systems and associated
18 software that Sling designed, built, controls and/or sells to its customers. Sling requires its Sling
19 Customers to have an account with Sling, creating a contractual relationship through which Sling
20 directs, controls, facilitates and/or participates in the infringement of one or more claims of the ‘046
21 patent.

22 14. Defendant’s aforesaid activities have been without authority and/or license from
23 Plaintiff.

24 15. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff
25 as a result of the Defendant’s wrongful acts in an amount subject to proof at trial, which, by law,
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1 cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under
2 35 U.S.C. § 284.

3 16. Defendant's respective infringement of Plaintiff's rights under the '130 patent and the
4 '046 patent will continue to damage Plaintiff, causing irreparable harm for which there is no
5 adequate remedy at law, unless enjoined by this Court.

6 **JURY DEMAND**

7 17. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of
8 Civil Procedure.

9 **PRAYER FOR RELIEF**

10 Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that
11 the Court grant Plaintiff the following relief:

- 12 A. An adjudication that one or more claims of the '130 patent have been infringed, either
13 literally and/or under the doctrine of equivalents, by one or more Defendants;
- 14 B. An adjudication that one or more claims of the '046 patent have been infringed, either
15 literally and/or under the doctrine of equivalents, by one or more Defendants;
- 16 C. An adjudication that Defendant Sling Media has infringed one or more claims of the
17 '130 patent and/or the '046 patent, either literally and/or under the doctrine of
18 equivalents, and/or has contributed to the infringement of such patents, and/or that
19 such infringement was induced and/or willful;
- 20 D. An award to Plaintiff of damages adequate to compensate Plaintiff for the
21 Defendant's acts of infringement together with pre-judgment and post-judgment
22 interest;
- 23 E. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the
24 Defendants from further acts of infringement with respect to the claims of the '130
25 patent and the '046 patent;
- 26

1 F. That this Court declare this to be an exceptional case and award Plaintiff its
2 reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285; and

3 G. Any further relief that this Court deems just and proper.
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6 Dated: May 7, 2012

Respectfully submitted,

8 /s/ Maureen V. Abbey

9 Maureen V. Abbey

Attorney for Plaintiff

10 JOAO CONTROL & MONITORING SYSTEMS OF
11 CALIFORNIA, LLC, N/K/A

12 JOAO CONTROL & MONITORING
13 SYSTEMS, LLC
14

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that a copy of the foregoing has been served upon all counsel of record to this
17 proceeding by the Court's CM-ECF system on this, the 7th day of May, 2012.
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19
20 /s/ Maureen V. Abbey

Maureen V. Abbey
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