

1 GREGORY S. TAMKIN (State Bar No. 175009)  
2 CASE COLLARD (State Bar No. 245834)  
3 DORSEY & WHITNEY LLP  
4 1400 Wewatta Street, Suite 400  
5 Denver, CO 80202-5549  
6 Telephone: (303) 629-3400  
7 Facsimile: (303) 629-3450  
8 Email: tamkin.greg@dorsey.com  
9 Email: collard.case@dorsey.com

10 *Attorneys for Defendants Ameriprise Financial, Inc.*  
11 *and Ameriprise Financial Services, Inc.*

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 XIMPLEWARE CORP.,

15 Plaintiff,

16 v.

17 VERSATA SOFTWARE, INC. F/K/A  
18 TRILOGY SOFTWARE, INC.; TRILOGY  
19 DEVELOPMENT GROUP, INC.;  
20 AMERIPRISE FINANCIAL, INC.;;  
21 AMERIPRISE FINANCIAL SERVICES, INC.,  
22 AUREA SOFTWARE, INC. A/K/A AUREA,  
23 INC.;; PACIFIC LIFE INS. CO; UNITED  
24 HEALTHCARE SERVICES, INC.;;  
25 METROPOLITAN LIFE INS. CO.; THE  
26 PRUDENTIAL INS. CO. OF AMERICA;  
27 WELLMARK, INC.; WADDELL & REED  
28 FINANCIAL, INC.; AND AVIVA USA CORP.,

Defendants.

Case No. 5:13-cv-05161-PSG

**DEFENDANTS AMERIPRISE FINANCIAL,  
INC. AND AMERIPRISE FINANCIAL  
SERVICES, INC.’S ANSWER TO  
PLAINTIFF’S SECOND AMENDED  
COMPLAINT OF PATENT INFRINGEMENT  
AND COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Defendants Ameriprise Financial, Inc. and Ameriprise Financial Services, Inc., (“Ameriprise”) hereby answer Plaintiff XimpleWare Corp.’s (“XimpleWare”) Second Amended Complaint as follows. Ameriprise answers XimpleWare’s Second Amended Complaint using the same paragraph numbers used in XimpleWare’s pleading.

1 **GENERAL DENIAL**

2 Unless specifically admitted below, Ameriprise denies each and every allegation in the  
3 Complaint.

4 **NATURE OF ACTION**

5 1. This action involves claims of patent infringement under 35 U.S.C. § 271 et seq. and  
6 declaratory relief, including but not limited to whether certain defendants have falsely purported to  
7 grant patent licenses for Plaintiff’s patented computer software to each or the other defendants, and  
8 whether all such defendants do not have and have never been granted any license under any of the  
9 patents validity issued to and properly and exclusively owned by Plaintiff.

10 **Answer to Paragraph:** Ameriprise admits that the Complaint alleges claims of patent  
11 infringement arising under 35 U.S.C. § 271 et seq., and declaratory relief, but, to the extent that  
12 such allegations are directed at the Ameriprise Defendants, Ameriprise denies that any such  
13 infringement or other wrongful action has transpired and denies that Plaintiff is entitled to any  
14 relief.

15 **PARTIES**

16 2. Plaintiff XimpleWare Corp. (“XimpleWare”) is a corporation organized under the  
17 laws of, and registered to do business in, California, with its principal place of business in Milpitas,  
18 California.

19 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
20 belief about the truth of the allegations in Paragraph No. 2 of Plaintiff’s Complaint, and therefore  
21 denies all allegations contained therein.

22 3. Plaintiff XimpleWare is the designer, developer, and distributor of advanced  
23 computer software and, as an enterprise that practices its own patents, it has delivered to the  
24 marketplace advanced computer software that provides enterprises, Fortune 5000 corporations,  
25 firms, and other businesses with an advanced data processing solution for challenging data  
26 processing problems. Plaintiff XimpleWare has a number of licensed customers including Matrikon,  
27 Inc., Smith & Tinker, Inc., United Stationers Technology Services LLC, and Zoosk, Inc.  
28

1           **Answer to Paragraph:**       Ameriprise lacks sufficient knowledge or information to form a  
2 belief about the truth of the allegations in Paragraph No. 3 of Plaintiff’s Complaint, and therefore  
3 denies all allegations contained therein.

4           4.       Defendant Versata Software, Inc., f/k/a Trilogy Software, Inc. (“Versata”) is a private  
5 corporation registered to do business in California, organized under the laws of Delaware, with its  
6 principal place of business in Austin, Texas.

7           **Answer to Paragraph:**       Ameriprise lacks sufficient knowledge or information to form a  
8 belief about the truth of the allegations in Paragraph No. 4 of Plaintiff’s Complaint, and therefore  
9 denies all allegations contained therein.

10          5.       Defendant Trilogy Development Group, Inc. (“Trilogy”) is a corporation organized  
11 under the laws of California, with its principal place of business in Austin, Texas. On information  
12 and belief, Trilogy acquired Defendant Versata in or about February 2006, and Trilogy is now the  
13 parent company of Versata and its subsidiaries.

14          **Answer to Paragraph:**       Ameriprise lacks sufficient knowledge or information to form a  
15 belief about the truth of the allegations in Paragraph No. 5 of Plaintiff’s Complaint, and therefore  
16 denies all allegations therein.

17          6.       Defendant Aurea Software, Inc. a/k/a Aurea, Inc. (“Aurea”) is a corporation  
18 registered to do business in California, organized under the laws of Delaware with its principal place  
19 of business in Austin, Texas. On information and belief, Aurea merged with Trilogy and Versata in  
20 October, 2013.

21          **Answer to Paragraph:**       Ameriprise lacks sufficient knowledge or information to form a  
22 belief about the truth of the allegations in Paragraph No. 6 of Plaintiff’s Complaint, and therefore  
23 denies all allegations therein.

24          7.       Defendant Ameriprise Financial, Inc. is a corporation registered to do business in  
25 California, organized under the laws of Delaware, with its principal place of business located in  
26 Minneapolis, Minnesota. On information and belief, Ameriprise is a leading diversified financial  
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1 services provider, providing a range of financial planning products and is a customer of Versata and  
2 Trilogy.

3 **Answer to Paragraph:** Ameriprise admits that Ameriprise Financial, Inc. is a  
4 corporation registered to do business in California, organized under the laws of Delaware, with its  
5 principle place of business located in Minneapolis, Minnesota. Ameriprise admits it is a financial  
6 services provider and that it uses a product provided by Versata software. Unless specifically  
7 admitted, Ameriprise denies the remaining allegations in Paragraph No. 7 of Plaintiff's Complaint.

8 8. Defendant Ameriprise Financial Services, Inc. is a corporation registered to do  
9 business in California, organized under the laws of Delaware, with its principal place of business  
10 located in Minneapolis, Minnesota. On information and belief, Defendant Ameriprise Financial  
11 Services, Inc. is a subsidiary of Defendant Ameriprise Financial, Inc. (together, Ameriprise  
12 Financial, Inc. and Ameriprise Financial Services Inc. shall be referred to as "Ameriprise").

13 **Answer to Paragraph:** Ameriprise admits that Ameriprise Financial Services, Inc. is a  
14 corporation registered to do business in California, organized under the laws of Delaware, with its  
15 principle place of business located in Minneapolis, Minnesota. Ameriprise admits that Ameriprise  
16 Financial Services, Inc. is a subsidiary of Ameriprise Financial, Inc. Unless specifically admitted,  
17 Ameriprise denies the remaining allegations in Paragraph No. 8 of Plaintiff's Complaint.

18 9. Defendant Pacific Life Insurance Company ("Pacific Life") is a Nebraska corporation  
19 with its principal place of business in Newport Beach, California. On information and belief, Pacific  
20 Life is a customer of Versata and Trilogy.

21 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
22 belief about the truth of the allegations in Paragraph No. 9 of Plaintiff's Complaint, and therefore  
23 denies all allegations therein.

24 10. Defendant United HealthCare Services, Inc. ("UHS") is a public corporation  
25 registered to do business in California organized under the laws of Minnesota with its principal place  
26 of business in Minnetonka, Minnesota. On information and belief, UHS is a diversified managed  
27 health care company and a customer of Versata and Trilogy.  
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1           **Answer to Paragraph:**       Ameriprise lacks sufficient knowledge or information to form a  
2 belief about the truth of the allegations in Paragraph No. 10 of Plaintiff’s Complaint, and therefore  
3 denies all allegations therein.

4           11.       Defendant Metropolitan Life Insurance Company (“MetLife”) is a public corporation  
5 registered to do business in California organized under the laws of New York with its principal place  
6 of business in New York, New York. On information and belief, MetLife is a global provider of  
7 insurance, annuities, and employment benefit programs and is a customer of Versata and Trilogy.

8           **Answer to Paragraph:**       Ameriprise lacks sufficient knowledge or information to form a  
9 belief about the truth of the allegations in Paragraph No. 11 of Plaintiff’s Complaint, and therefore  
10 denies all allegations contained therein.

11           12.       Defendant The Prudential Insurance Company of America (“Prudential”) is a public  
12 corporation registered to do business in California organized under the laws of New Jersey with its  
13 principal place of business in Newark, New Jersey. On information and belief, Prudential provides  
14 insurance and financial services and is a customer of Versata and Trilogy.

15           **Answer to Paragraph:**       Ameriprise lacks sufficient knowledge or information to form a  
16 belief about the truth of the allegations in Paragraph No. 12 of Plaintiff’s Complaint, and therefore  
17 denies all allegations contained therein.

18           13.       Defendant Wellmark, Inc. (“Wellmark”) is a corporation organized under the laws of  
19 Iowa, operating under the fictitious names “Blue Cross and Blue Shield of Iowa” and “Wellmark  
20 Blue Cross and Blue Shield.” Wellmark has its principal place of business in Des Moines, Iowa. On  
21 information and belief, Wellmark is an insurance company and a customer of Versata and Trilogy.

22           **Answer to Paragraph:**       Ameriprise lacks sufficient knowledge or information to form a  
23 belief about the truth of the allegations in Paragraph No. 13 of Plaintiff’s Complaint, and therefore  
24 denies all allegations contained therein.

25           14.       Defendant Waddell & Reed Financial, Inc. (“W&R”) is a public corporation  
26 registered to do business in California, organized under the laws of Delaware with its principal place  
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1 of business in Overland Park, Kansas. On information and belief, W&R provides asset management  
2 and financial planning services and is a customer of Versata and Trilogy.

3 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
4 belief about the truth of the allegations in Paragraph No. 14 of Plaintiff’s Complaint, and therefore  
5 denies all allegations contained therein.

6 15. Defendant Aviva USA Corporation (“Aviva”) is a company organized under the laws  
7 of Iowa with its principal place of business in West Des Moines, Iowa. On information and belief,  
8 Aviva is a subsidiary of Aviva, plc., a multinational insurance company headquartered in London,  
9 United Kingdom, and is a customer of Versata and Trilogy.

10 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
11 belief about the truth of the allegations in Paragraph No. 15 of Plaintiff’s Complaint, and therefore  
12 denies all allegations contained therein.

13 16. Plaintiff is informed and believes and on that basis alleges (collectively hereinafter  
14 “on information and belief”), that at all relevant times Trilogy was and is the operating entity of, and  
15 has effective, if not actual, control over the business decisions made by its subsidiaries, Versata and  
16 Aurea.

17 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
18 belief about the truth of the allegations in Paragraph No. 16 of Plaintiff’s Complaint, and therefore  
19 denies all allegations contained therein.

20 17. On information and belief, at all relevant times, Versata and Aurea were the mere  
21 solely controlled instrumentalities of Trilogy and functioned as Trilogy’s *alter egos*, and all  
22 undertakings by Versata and Aurea were known by, sanctioned, or done at the direction and under  
23 the sole control of Trilogy, or by others serving under Trilogy’s direction and/or sole control.

24 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
25 belief about the truth of the allegations in Paragraph No. 17 of Plaintiff’s Complaint, and therefore  
26 denies all allegations therein.

1 18. On information and belief, at all relevant times, Trilogy, Versata, Aurea, and a  
2 number of other entities have acted and continue to act in conspiracy to obscure Versata’s liability  
3 for Patent infringement, breaches of contract, and other wrongful conduct. On information and  
4 belief, those acts consist of, but are not limited to, the comingling of corporate funds and assets;  
5 failure to segregate funds and assets of the separate entities; concealment and misrepresentation of  
6 the identity and ownership of the corporations; disregard for formalities and failure to maintain  
7 arms’ length relationships among the various entities; the use of the corporate entity to procure labor,  
8 services, or merchandise for another entity; the manipulation of assets and liabilities between entities  
9 so as to concentrate the assets in one and the liabilities in another; contracting with one another with  
10 intent to avoid performance by use of a corporate entity as a shield against liability of another entity;  
11 and the use of a corporation to transfer to it the existing liability of another entity.

12 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
13 belief about the truth of the allegations in Paragraph No. 18 of Plaintiff’s Complaint, and therefore  
14 denies all allegations therein.

15 19. By reason of the foregoing, this Court should pierce the corporate veils of Versata  
16 and Aurea, and hold Trilogy or any other parent company or controlling persons or entities liable for  
17 Versata’s monetary and other obligations as determined at trial.

18 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
19 belief about the truth of the allegations in Paragraph No. 19 of Plaintiff’s Complaint, and therefore  
20 denies all allegations therein.

21 **JURISDICTION AND VENUE**

22 20. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and  
23 1338(a) because Federal courts have exclusive jurisdiction in patent cases, and because those claims  
24 are Federal questions.

25 **Answer to the Paragraph:** Ameriprise admits that this is a civil action for purported patent  
26 infringement claims, and that this court may have subject matter jurisdiction over certain patent  
27 claims under 28 U.S.C.§§1331 and 1338(a), but Ameriprise lacks sufficient knowledge or  
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1 information to admit or deny that subject matter jurisdiction exists over this case and therefore  
2 denies the same. Ameriprise denies the remaining allegations in Paragraph No. 20 of Plaintiff's  
3 Complaint, and therefore denies all allegations contained therein.

4 21. This Court has personal jurisdiction over all defendants because all Defendants do  
5 substantial business in this District.

6 **Answer to Paragraph:** Plaintiff's assertion that this Court has personal jurisdiction  
7 over all defendants is a legal conclusion. To the extent there are any factual allegations in Paragraph  
8 No. 21, Ameriprise denies all allegations contained therein.

9 22. Venue is proper, under 28 U.S.C. §§ 1331, 1391(c), 1391(d), and 1400(b). This action  
10 raises federal questions (patent infringement); substantial part of the events giving rise to this action  
11 occurred in this District; the creation, infringement, and sale of software at issue involved  
12 corporations registered to do business in California with California subsidiaries, branches, and  
13 partners found in and doing business in this district; and at least one act of infringement took place in  
14 this District.

15 **Answer to Paragraph:** Plaintiff's assertion that venue is proper is a legal conclusion.  
16 To the extent there are any factual allegations in Paragraph No. 22, Ameriprise denies all allegations  
17 contained therein.

## 18 **BACKGROUND FACTS**

### 19 **XML PARSING**

20 23. A parser is a piece of software that reads certain electronic files and makes the  
21 information from those files available to applications and programming languages, acting as a go-  
22 between as underlying code which can be written in any number of programming languages and  
23 what a user sees when the program runs.

24 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
25 belief about the truth of the allegations in Paragraph No. 23 of Plaintiff's Complaint, and therefore  
26 denies all allegations therein.



1 24. Extensible Markup Language (known as XML) is a set of rules for encoding  
2 documents electronically. Known as a metalanguage, XML allows one to design a markup language  
3 which is in turn used for the easy interchange of documents on the World Wide Web. XML is itself a  
4 subset of a standard called SGML, and can be used to design a tagging scheme that allows elements  
5 of a document to be marked according to their content rather than their format.

6 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
7 belief about the truth of the allegations in Paragraph No. 24 of Plaintiff’s Complaint, and therefore  
8 denies all allegations therein.

9 25. Information stored in XML documents can be used more effectively when parsed—  
10 read line by line or node by node to fetch pieces of information for the program to read and translate.  
11 In essence, parsing is the act of analyzing a set of characters or data and then determining,  
12 recognizing, deciphering, or acquiring the significant data and commands from a sequence of  
13 programming code, and translating the code which allows the program to do the job for which it was  
14 designed.

15 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
16 belief about the truth of the allegations in Paragraph No. 25 of Plaintiff’s Complaint, and therefore  
17 denies all allegations therein.

18 **FORMATION OF XIMPLEWARE**

19 26. In October 2002, Zhengyu “Jimmy” Zhang founded XimpleWare (the “Company”)  
20 with a since-departed co-founder Hui Tian. Mr. Ying Shum (who has since passed away) was an  
21 advisor to the Company during its early stages. Using experience gained from fifteen years in the  
22 software engineering field, Mr. Zhang started XimpleWare with the goal of achieving maximum  
23 efficiency for XML processing by using dedicated integrated circuits as a system on a chip (SOC).  
24 Mr. Tian left the venture in 2003, and since then Mr. Zhang has handled all creative and managerial  
25 responsibilities at XimpleWare.  
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1           **Answer to Paragraph:**           Ameriprise lacks sufficient knowledge or information to form a  
2 belief about the truth of the allegations in Paragraph No. 26 of Plaintiff’s Complaint, and therefore  
3 denies all allegations contained therein.

4           27.     Mr. Zhang chose the name “XimpleWare” for his new venture to evoke the  
5 efficiency, speed, and simplicity with which his innovative source code parses XML. The name also  
6 included the letters X-M-L, further identifying XimpleWare’s goal and product in the marketplace.

7           **Answer to Paragraph:**           Ameriprise lacks sufficient knowledge or information to form a  
8 belief about the truth of the allegations in Paragraph No. 27 of Plaintiff’s Complaint, and therefore  
9 denies all allegations contained therein.

10          28.     Mr. Zhang began writing the XimpleWare Source code (the “Source Code”) in 2004,  
11 and has since put in over 10,000 work hours of computer programming into developing and  
12 improving the XimpleWare product.

13          **Answer to Paragraph:**           Ameriprise lacks sufficient knowledge or information to form a  
14 belief about the truth of the allegations in Paragraph No. 28 of Plaintiff’s Complaint, and therefore  
15 denies all allegations contained therein.

16          29.     In its nascent stages, XimpleWare was funded entirely by seed money from friends  
17 and family of the original founders, mostly from Mr. Zhang and his parents. Mr. Tian still holds a  
18 minority stake in the company, but apart from Mr. Zhang, Mr. Tian, and Ying Shum, there are no  
19 other owners, venture capital groups, angel investors, or parties with an interest in XimpleWare.

20          **Answer to Paragraph:**           Ameriprise lacks sufficient knowledge or information to form a  
21 belief about the truth of the allegations in Paragraph No. 29 of Plaintiff’s Complaint, and therefore  
22 denies all allegations contained therein.

### 23   **OPEN SOURCE SOFTWARE**

24          30.     Open source software is software whose source code is available free of charge for  
25 the public to use, copy, modify, sublicense, or distribute. While some developers choose to provide  
26 their product entirely free of charge, many developers and companies—including large public  
27 companies like Oracle and IBM—make use of open source licensing and its collaborative nature to  
28

1 create or incorporate code into products that can be licensed for profit outside the open source  
2 community.

3 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
4 belief about the truth of the allegations in Paragraph No. 30 of Plaintiff’s Complaint, and therefore  
5 denies all allegations therein.

6 31. By licensing one’s source code as part of the open source community, or making  
7 modifications to someone else’s source code under an open source license, the creator retains certain  
8 protections, depending on the permissiveness of the particular license, from improper use of his or  
9 her intellectual property. To that end, most, if not all, open source licenses apply certain  
10 requirements and restrictions for the method and manner in which code extracted from an open  
11 source repository can be used, and attaches conditions to any such use.

12 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
13 belief about the truth of the allegations in Paragraph No. 31 of Plaintiff’s Complaint, and therefore  
14 denies all allegations therein.

15 32. There are many commonly used open source licenses, including the GNU General  
16 Public License, the BSD License, and the Apache License.

17 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
18 belief about the truth of the allegations in Paragraph No. 32 of Plaintiff’s Complaint, and therefore  
19 denies all allegations therein.

20 33. Due to the fundamental properties of XML technology, XML parsing innovations are  
21 very hard to sell. A parser is not an end-user product, *i.e.*, is a component that must be integrated into  
22 another existing product, analogous to how an engine is a component that must be integrated into a  
23 car—it has little utility on its own, but matters a great deal to the larger product. XimpleWare  
24 therefore made the business decision to license its Source Code under the GNU General Public  
25 License version 2 (“GPL”). A copy of the GPL is attached to this Complaint as **Exhibit 1**. By  
26 licensing its technology under the GPL, XimpleWare enabled potential commercial licensees to  
27 evaluate XimpleWare’s technology before going into commercial production, and allowed free non-  
28

1 commercial use of its technology, which would likely spur adoption in the overall market for high-  
2 efficiency XML processing software.

3 **Answer to Paragraph:** Ameriprise admits that a copy of the GPL appears to be  
4 attached as Exhibit 1. Ameriprise lacks sufficient knowledge or information to form a belief about  
5 the truth of the remaining allegations in Paragraph No. 33 of Plaintiff's Complaint, and therefore  
6 denies all allegations therein.

7 34. The GPL requires, among other things, (1) that any changes made to the code carry  
8 notices stating that the files were changed, and the date of all changes; (2) any code created or  
9 derived from GPL-protected code must also be licensed under the GPL; (3) copyright notices must  
10 print or display when the code is run; and (4) that when distributed, the program must be  
11 accompanied by the complete machine-readable source code.

12 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
13 belief about the truth of the allegations in Paragraph No. 34 of Plaintiff's Complaint, and therefore  
14 denies all allegations contained therein.

15 35. The text of the GPL contains a lengthy "Preamble" section. This preamble is not a  
16 legally operative part of the GPL, as is generally understood in the open source community. For  
17 example, Lawrence Rosen, an attorney and noted open source expert, states in a 2004 book:

18 The preamble, of course, is not an operative part of the GPL license. It is not  
19 among its *terms and conditions*. There is nothing in its words that must be  
20 obeyed. It is merely a helpful preface so that you can better understand the GPL in  
21 its context.

22 Lawrence Rosen, Open Source Licensing: Software Freedom And Intellectual Property Law 109  
23 (Prentice Hall 2004) (emphasis in original).

24 **Answer to Paragraph:** Ameriprise admits that the GPL includes a preamble. The  
25 remaining allegations are a legal conclusion and do not require a response by Ameriprise. To the  
26 extent the allegations of Paragraph No. 35 require a response, Ameriprise lacks sufficient knowledge  
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1 or information to form a belief about the truth of the allegations in Paragraph No. 35 of Plaintiff's  
2 Compliant, and therefore denies all allegations contained therein.

3 36. XimpleWare chose the GPL approach because it is one of the most restrictive open  
4 source licenses available, requiring that any derivative code incorporating GPL-protected code must  
5 be returned to the open source community in its entirety. This concept is often referred to as  
6 "copyleft," which the Free Software Foundation explains succinctly on its "Frequently Asked  
7 Questions" page for the GPL:

8 [Q:] You have a GPL'ed program that I'd like to link with my code to build a proprietary  
9 program. Does the fact that I link with your program mean I have to GPL my program?

10 [A:] Yes.

11 Frequently Asked Questions about version 2 of the GNU GPL, Free Software Foundation,  
12 <http://www.gnu.org/licenses/old-licenses/gpl-2.0-faq.html> (last accessed Dec. 16, 2013)  
13 (archived at <http://perma.cc/LLM9-3SED>). In other words, if Developer A creates Product A and  
14 licenses it under the GPL, and Developer B creates Product B which incorporates Product A, then  
15 Developer B must also license Product B under the GPL.

16 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
17 belief about the truth of the allegations in Paragraph No. 36 of Plaintiff's Compliant, and therefore  
18 denies all allegations contained therein.

19 37. In general, a computer cannot run source code directly. Before a computer can run a  
20 program, its source code must be translated into machine-readable form called "object code" which  
21 is also sometimes referred to as a "binary" or "binaries" because object code is not human-readable  
22 text, but rather machine-readable binary code.

23 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
24 belief about the truth of the allegations in Paragraph No. 37 of Plaintiff's Compliant, and therefore  
25 denies all allegations contained therein.

26 38. The GPL also requires that any distribution of the binary version of a GPL-licensed  
27 software must be accompanied by either source code or an offer to provide source code. This  
28

1 explained clearly in Section 3 of the GPL, as well as the Free Software Foundation's GPL  
2 "Frequently Asked Questions" page:

3 [Q:] I downloaded just the binary from the net. If I distribute copies, do I have to get the  
4 source and distribute that too?

5 [A:] Yes. The general rule is, if you distribute binaries, you must distribute the complete  
6 corresponding source code too. The exception for the case where you received a written offer  
7 for source code is quite limited.

8 **Answer to Paragraph:** The requirements of the GPL are a legal conclusion and do not  
9 require a response from Ameriprise. To the extent the allegations of Paragraph No. 38 require a  
10 response, Ameriprise lacks sufficient knowledge or information to form a belief about the truth of  
11 the allegations in Paragraph 38 of Plaintiff's Complaint and therefore denies all allegations  
12 contained therein.

13 39. The GPL requires strict compliance, and, under its Section 4, any failure to comply  
14 with **any** of the GPL's multiple conditions means there is no license granted and this means any use,  
15 distribution, or other exploitation is not licensed and all rights the violator could have obtained under  
16 the GPL are voided:

17 You may not copy, modify, sublicense, or distribute the Program except as  
18 expressly provided under this License. Any attempt otherwise to copy, modify,  
19 sublicense or distribute the Program is void, and will automatically terminate your  
20 rights under this License...

21 GPL at § 4.

22 **Answer to Paragraph:** The requirements of the GPL are a legal conclusion and do not  
23 require a response from Ameriprise. To the extent the allegations of Paragraph No. 39 require a  
24 response, Ameriprise lacks sufficient knowledge or information to form a belief about the truth of  
25 the allegations in Paragraph 39 of Plaintiff's Complaint and therefore denies all allegations  
26 contained therein.

1           40.     The GPL does not grant a patent license. The only mention of patents in the operative  
2 text of the GPL are in Sections 7 and 8. Those Sections state that if any conditions on a licensee’s  
3 use are imposed by a patent, then the licensee may not distribute the licensed program at all (Section  
4 7), and allowing a licensor to place geographic exclusions on the license for countries in which there  
5 are patent or other restrictions (Section 8). Neither of those Sections grant a patent license.

6           **Answer to Paragraph:**     Ameriprise denies the allegations contained in Paragraph 40 of  
7 Plaintiff’s Complaint.

8   **THE XIMPLEWARE PRODUCT**

9           41.     The complete XimpleWare software product, known as “VTD-XML” or “VTD-XML  
10 Extended” (collectively, the “Product”), is made up of a number of constituent parts, each with  
11 individual functions, and is written in several different programming languages. Most of the code,  
12 however, is written in Java, which is one of the most popular programming languages in use today.

13           **Answer to Paragraph:**     Ameriprise lacks sufficient knowledge or information to form a  
14 belief about the truth of the allegations in Paragraph No. 41 of Plaintiff’s Complaint, and therefore  
15 denies all allegations contained therein.

16           42.     XML is ubiquitous in today’s business world. For example, since 2007, the file  
17 formats for Microsoft Office are based on XML, and many web pages are coded in XML.

18           **Answer to Paragraph:**     Ameriprise lacks sufficient knowledge or information to form a  
19 belief about the truth of the allegations in Paragraph No. 42 of Plaintiff’s Complaint, and therefore  
20 denies all allegations contained therein.

21           43.     The XimpleWare Source Code and Product reads and parses XML at a rate estimated  
22 to be five to ten times faster than other current XML parsing programs, effecting greater efficiency  
23 and speed. It also provides indexing and incremental capabilities that are crucial to many high  
24 performance XML applications and are not available in any other XML parsing libraries. Efficiency  
25 and speed are critical in many applications of XML, especially in large scale enterprise data  
26 interchange applications where entire server computers are dedicated to handling streams of XML  
27 data. If XML data can be processed faster, then fewer servers are needed, less leased space in data  
28

1 centers is needed for those servers, and less energy is required to power those servers—altogether  
2 greatly reducing computing needs and costs.

3 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
4 belief about the truth of the allegations in Paragraph No. 43 of Plaintiff’s Complaint, and therefore  
5 denies all allegations contained therein.

6 44. The Product is an enabler for any program that uses XML in its applications, but to  
7 see the upside in the parsing speed, customers have to try it.

8 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
9 belief about the truth of the allegations in Paragraph No. 44 of Plaintiff’s Complaint, and therefore  
10 denies all allegations contained therein.

11 45. XimpleWare has had interest and licensing discussions with several industry leaders,  
12 and has established its VTD-XML software as a leading technology in XML parsing.

13 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
14 belief about the truth of the allegations in Paragraph No. 45 of Plaintiff’s Complaint, and therefore  
15 denies all allegations contained therein.

16 **THE XIMPLEWARE SOURCE CODE**

17 46. Over the course of over ten years, Mr. Zhang updated and improved the Source Code  
18 and Product (and still does), checking out sections of code to work on and then checking it back into  
19 an open source database called SourceForge. SourceForge is a community-based website where  
20 software developers can publish source code to a global audience, and can join and collaborate on  
21 open source projects.

22 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
23 belief about the truth of the allegations in Paragraph No. 46 of Plaintiff’s Complaint, and therefore  
24 denies all allegations contained therein.

25 47. One of the principal tools SourceForge provides is version control systems. A version  
26 control system is a computer program that manages a set of source code. Programmers use version  
27 control systems by “checking out” a copy of the source code to their own computer, making  
28



1 changes, and then submitting those changes back into the version control system in a process called  
2 “checking in.” Each check-in is documented in the version control system with time, date, and  
3 contributor information, as well as comments from the programmer describing his or her changes.  
4 With a version control system, it is possible to review all changes to a set of source code and to  
5 know who made those changes.

6 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
7 belief about the truth of the allegations in Paragraph No. 47 of Plaintiff’s Complaint, and therefore  
8 denies all allegations contained therein.

9 48. SourceForge also provides a system where programmers not affiliated with a project  
10 may submit suggested changes to members of the project. The members may then choose to check  
11 those changes in to the version control system, or to reject them. As with any other check-in, time,  
12 date, contributor, and other information are logged in the version control system.

13 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
14 belief about the truth of the allegations in Paragraph No. 48 of Plaintiff’s Complaint, and therefore  
15 denies all allegations contained therein.

16 49. One version control system offered by SourceForge is the Concurrent Versions  
17 System, commonly known as “CVS”. Like other version control systems, CVS tracks who made  
18 which changes to the managed source code, and CVS keeps a log of those revisions.

19 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
20 belief about the truth of the allegations in Paragraph No. 49 of Plaintiff’s Complaint, and therefore  
21 denies all allegations contained therein.

22 50. XimpleWare placed its Source Code on SourceForge, and managed that Source Code  
23 in SourceForge’s CVS system.

24 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
25 belief about the truth of the allegations in Paragraph No. 50 of Plaintiff’s Complaint, and therefore  
26 denies all allegations contained therein.

**THE XIMPLEWARE ISSUED PATENTS**

1  
2 51. XimpleWare applied for, and the United States Patent and Trademark Office issued,  
3 three patents (the “Patents”):

4 A. U.S. Patent No. 7,133,857, issued Nov. 7, 2006, titled “Processing structured  
5 data” (the “857 Patent”)

6 B. U.S. Patent No. 7,620,652, issued Nov. 17, 2009, titled “Processing structured  
7 data” (the “652 Patent”)

8 C. U.S. Patent No. 7,761,459, issued July 20, 2010, titled “Processing structured  
9 data” (the “459 Patent”)

10 **Answer to Paragraph:** The U.S. Patent and Trademark Office appears to have issued  
11 the 7,133,857; 7,620,652; and 7,761,459 patents. Ameriprise lacks sufficient knowledge or  
12 information to form a belief about the truth of the remaining allegations in Paragraph No. 51 of  
13 Plaintiff’s Complaint, and therefore denies all allegations contained therein.

14 52. All of the Patents received a term extension to February 2024 under 35 U.S.C. §  
15 154(b). The named inventors on all of the Patents are Jimmy Zhang and Hui Tian, and all right, title,  
16 and interest are assigned to XimpleWare.

17 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
18 belief about the truth of the allegations in Paragraph No. 52 of Plaintiff’s Complaint, and therefore  
19 denies all allegations contained therein.

20 53. The first patent (the ‘857 Patent), filed in 2002 and issued in 2006, is titled  
21 “Processing Structured Data,” and contains 43 claims (including 7 independent claims) covering  
22 methods, apparatuses, and program storage devices for “efficiently processing a structured data file”  
23 or “efficiently processing structured data”—including XML. The ‘857 Patent has been cited by five  
24 other issued U.S. patents—including patents issued to IBM, HP, and Canon—and by three published  
25 U.S. patent applications.

26 **Answer to Paragraph:** The ‘857 patent and its claims speak for themselves.  
27 Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the  
28

1 remaining allegations in Paragraph No. 53 of Plaintiff's Complaint, and therefore denies all  
2 allegations contained therein.

3 54. The '652 Patent, filed in 2006 and issued in 2009, contains 35 claims (including 8  
4 independent claims) for methods, apparatuses, and program storage devices, and focuses on  
5 efficiently processing structured data like XML. The '652 Patent has been cited by two issued U.S.  
6 patents by IBM and Canon and by one published U.S. patent application.

7 **Answer to Paragraph:** The '652 patent and its claims speak for themselves.  
8 Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the  
9 remaining allegations in Paragraph No. 54 of Plaintiff's Complaint, and therefore denies all  
10 allegations contained therein.

11 55. The '459 Patent, filed in 2006 and issued in 2010, contains 24 claims (including 4  
12 independent claims) for methods, apparatuses, hardware devices, and program storage devices, and  
13 again focuses on efficiently processing structured data like XML. The '459 Patent has been cited by  
14 two issued U.S. patents and one published U.S. patent application.

15 **Answer to Paragraph:** The '459 patent and its claims speak for themselves.  
16 Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the  
17 remaining allegations in Paragraph No. 55 of Plaintiff's Complaint, and therefore denies all  
18 allegations contained therein.

19 56. There has been no challenge to any of the XimpleWare Patents or any other  
20 XimpleWare intellectual property rights.

21 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
22 belief about the truth of the allegations in Paragraph No. 56 of Plaintiff's Complaint, and therefore  
23 denies all allegations contained therein.

24 57. The XimpleWare Source Code and Product practice the XimpleWare Patents.

25 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
26 belief about the truth of the allegations in Paragraph No. 57 of Plaintiff's Complaint, and therefore  
27 denies all allegations contained therein.  
28

1           58.     XimpleWare owned the three XimpleWare Patents throughout the period of the  
2 Defendants' infringing acts, and still owns the patents. XimpleWare uses the patent numbers on its  
3 Product and in its documentation to give actual and constructive notice of the existence of the  
4 XimpleWare patents.

5           **Answer to Paragraph:**     Ameriprise lacks sufficient knowledge or information to form a  
6 belief about the truth of the allegations in Paragraph No. 58 of Plaintiff's Complaint, and therefore  
7 denies all allegations contained therein.

8           59.     XimpleWare's SourceForge project page also clearly indicates that the VTD-XML  
9 software is licensed under the GPL; the XimpleWare web site has always made clear that any and all  
10 commercial projects and those involving any distribution, requires a commercial license under the  
11 commercial terms and conditions to be concluded with XimpleWare, and that generally requires a  
12 signed written agreement between the parties and payment of commercial royalties to XimpleWare.  
13 Multiple other commercial parties who could not come within the GPL's strict conditions have  
14 agreed to sign and have signed commercial licenses with XimpleWare and the custom and practice  
15 in the industry is for the proposed licensee to do appropriate due diligence and to assure that his, her  
16 or its project is strictly within the GPL's conditions or else to contact XimpleWare to discuss the  
17 requirements for commercial licensing.

18           **Answer to Paragraph:**     Ameriprise lacks sufficient knowledge or information to form a  
19 belief about the truth of the allegations in Paragraph No. 59 of Plaintiff's Complaint, and therefore  
20 denies all allegations contained therein.

21           **Independent Contractors in the Financial Services Industry**

22           60.     According to industry publications, "For many core financial products and services,  
23 independent distribution is the leading sales channel in the industry. It accounts for half of life  
24 insurance new annualized premium and 40 percent of annuity business written.

25           **Answer to Paragraph:**     Ameriprise lacks sufficient knowledge or information to form a  
26 belief about the truth of the allegations in Paragraph No. 60 of Plaintiff's Complaint, and therefore  
27 denies all allegations contained therein.

1           61.     The majority of Ameriprise financial advisors are not Ameriprise employees.  
2     According to Ameriprise’s own 2012 Annual Report, filed publicly with the U.S. Securities and  
3     Exchange Commission, Ameriprise operates a “nationwide network of more than 9,700 advisors,”  
4     of which “more than 7,400 are independent franchisees or employees or contractors of franchisees.”

5           **Answer to Paragraph:** Ameriprise admits that a majority of Ameriprise financial advisors  
6     are not direct employees of Ameriprise. Ameriprise’s 2012 Annual Report speaks for itself.  
7     Ameriprise denies the remaining allegations in Paragraph No. 61 of Plaintiff’s Complaint.

8                           **DEFENDANTS COPY XIMPLEWARE’S PATENTED SOURCE CODE**

9           62.     In the summer of 2013, XimpleWare learned of a Texas lawsuit between Defendants  
10    Versata and Ameriprise over a contract dispute (the “Texas Litigation”).

11           **Answer to Paragraph:**     Ameriprise lacks sufficient knowledge or information to form a  
12    belief about the truth of the allegations in Paragraph No. 62 of Plaintiff’s Complaint, and therefore  
13    denies all allegations contained therein.

14           63.     According to documents filed in the Texas Litigation, Versata licensed its DCM  
15    software to Ameriprise until Ameriprise attempted to write its own software using programmers in  
16    India to replace the Versata product. Versata then sued for misappropriation, among other claims.

17           **Answer to Paragraph:**     The documents filed in the Texas Litigation speak for  
18    themselves. Ameriprise denies the allegations set forth in Paragraph 63 of Plaintiff’s Complaint.

19           64.     During the prosecution of the Texas Litigation, Ameriprise informed XimpleWare  
20    that it had discovered portions of XimpleWare’s Source Code in the source code of Versata’s DCM  
21    product, and with said XimpleWare Source code, none of the conditions of the GPL license had been  
22    met. There was also no evidence of any commercial license from XimpleWare and no reproduction  
23    of XimpleWare’s copyright notice in Versata’s DCM product.

24           **Answer to Paragraph:**     Ameriprise admits that it has no evidence of any commercial  
25    license from XimpleWare and avers that it only received DCM object code specific to Ameriprise.  
26    Ameriprise denies the remaining allegations in Paragraph No. 64 of Plaintiff’s Complaint.

1           65.     Based upon documents XimpleWare received from Ameriprise, for months and  
2 without ever contacting XimpleWare to check on the validity of its alleged reliance, Versata asserted  
3 a theory in the Texas Litigation that XimpleWare’s Source Code was licensed under an Oracle-based  
4 exception to the GPL known as the “classpath exception.” The “classpath exception” is an Oracle-  
5 based exception to the GPL that has been promulgated by Oracle Corporation (www.oracle.com) of  
6 Redwood City, California (owner of the Java programming language) for certain Java-related  
7 software packages. XimpleWare has never used and never authorized this exception or any  
8 exception other than commercial licensing directly with XimpleWare; neither Oracle nor any other  
9 company is authorized to make any statement on behalf of XimpleWare.

10           **Answer to Paragraph:**     The documents filed in the Texas Litigation speak for  
11 themselves. Ameriprise admits that in the Texas litigation Versata produced an Oracle version of the  
12 GPL in response to an Ameriprise request regarding XimpleWare’s code. Ameriprise lacks  
13 sufficient knowledge or information to form a belief about the truth of the remaining allegations in  
14 Paragraph No. 65 of Plaintiff’s Complaint, and therefore denies all allegations contained therein.

15           66.     The only copyright or license notices that XimpleWare has ever placed on its VTD-  
16 XML Source Code give notice that the Source Code is licensed under the GPL for those strictly  
17 complying with all conditions of the GPL, and that it is otherwise commercially available through  
18 license directly from XimpleWare. XimpleWare has never utilized the “classpath exception,” nor has  
19 it ever made any exceptions to licensing its Source Code under the unaltered GPL other than through  
20 paid commercial licenses obtained directly from XimpleWare.

21           **Answer to Paragraph:**     Ameriprise lacks sufficient knowledge or information to form a  
22 belief about the truth of the allegations in Paragraph No. 66 of Plaintiff’s Complaint, and therefore  
23 denies all allegations contained therein.

24           67.     None of the defendants in this case did, have done, or have attempted to do any  
25 appropriate due diligence with XimpleWare, and therefore none of the Defendants in this case can  
26 assert truthfully that they are innocent infringers or that they otherwise relied reasonably in any way  
27 in commencing, continuing, or refusing to discontinue their respective infringements.  
28

1           **Answer to Paragraph:**       Ameriprise denies the allegations in Paragraph No. 67 of  
2 Plaintiff's Complaint to the extent they relate to Ameriprise. Ameriprise lacks sufficient knowledge  
3 or information to form a belief about the truth of the remaining allegations in Paragraph No. 67 of  
4 Plaintiff's Complaint, and therefore denies all allegations contained therein.

5           68.       On October 23, 2013, counsel for XimpleWare gave formal notice of the  
6 XimpleWare patents to counsel for Versata. On information and belief, both Versata and Ameriprise  
7 knew about the XimpleWare Patents even before that date, and have been on at least inquiry notice  
8 since Ameriprise's assertion against Versata in the Texas Litigation of defenses based on  
9 XimpleWare's contractual and copyright rights. Based on those assertions, both Versata and  
10 Ameriprise should have conducted proper diligence on XimpleWare, in which they would have  
11 discovered the XimpleWare patents. Versata's willfulness is also evidenced by its attempts in the  
12 Texas Litigation to conceal its unlicensed copying of VTD-XML into its DCM software, as well as  
13 its lack of candor and progress in patching DCM to remove VTD-XML.

14           **Answer to Paragraph:**       Ameriprise denies the allegations in Paragraph No. 68 of  
15 Plaintiff's Complaint to the extent they are directed towards Ameriprise. Ameriprise lacks sufficient  
16 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
17 No. 68 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

18           69.       Versata's commercial distribution of the XimpleWare Product or Source Code  
19 outside the terms of the GPL was knowing and willful. According to documents filed in the Texas  
20 Litigation, Versata maintained in the course of business a list of open source software components  
21 that it included in its DCM product, and that list included VTD-XML as well as the fact that VTD-  
22 XML and several other components were licensed under the GPL—without any mention of the  
23 “classpath exception.”

24           **Answer to Paragraph:**       The documents filed in the Texas Litigation speak for  
25 themselves. Ameriprise denies any allegations which are inconsistent with the documents.  
26 Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the  
27  
28

1 remaining allegations in Paragraph No. 69 of Plaintiff's Complaint, and therefore denies all  
2 allegations contained therein.

3 70. XimpleWare has never granted Versata any commercial license, permission, or  
4 authorization to use and redistribute any XimpleWare Product or Source Code.

5 **Answer to Paragraph:** To the extent any of the allegations of Paragraph No. 70 pertain  
6 to Ameriprise, Ameriprise denies the allegations. Ameriprise lacks sufficient knowledge or  
7 information to form a belief about the truth of the remaining allegations in Paragraph No. 70 of  
8 Plaintiff's Complaint, and therefore denies all allegations contained therein.

9 71. The only license the Versata Defendants have ever had was the GPL. However, by  
10 failing to meet any of the required conditions of the GPL license, no license was granted to any of  
11 the Versata Defendants and any alleged rights any of them had or purported to have to XimpleWare's  
12 VTD-XML computer software were void *ab initio* and terminated instantly and automatically, and  
13 all distributions and other exploitations including all attempts to sublicense were unauthorized, void,  
14 and without effect, and each constituted a wilful infringement of XimpleWare's rights.

15 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
16 belief about the truth of the allegations in Paragraph No. 71 of Plaintiff's Complaint, and therefore  
17 denies all allegations contained therein.

18 72. On information and belief, Versata has distributed thousands of unauthorized copies  
19 of the Product or the Source Code to a number of customers like the Customer Defendants and  
20 Ameriprise Defendants, and Versata has illegally collected revenues on the sale and distribution of  
21 the derivative DCM product incorporating XimpleWare's Source Code, in violation of  
22 XimpleWare's Patents. XimpleWare estimates Versata's total sales of the infringing DCM product  
23 to exceed \$300,000,000.

24 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
25 belief about the truth of the allegations in Paragraph No. 72 of Plaintiff's Complaint, and therefore  
26 denies all allegations contained therein.



1           73.     On information and belief, Ameriprise distributed DCM and VTD-XML to its  
2 thousands of non-employee financial advisors. According to its 2012 Annual Report, “The support  
3 [Ameriprise] offer[s] to [its] franchisee advisors includes generalist and specialist leadership support,  
4 **technology platforms and tools**, training and marketing programs” (emphasis added). On  
5 information and belief, DCM is among the “technology platforms and tools” that Ameriprise  
6 provides its outside advisors.

7           **Answer to Paragraph:**     Ameriprise’s 2012 Annual Report speaks for itself. Ameriprise  
8 denies the allegations in Paragraph No. 73 of Plaintiff’s Complaint.

9           74.     On information and belief, when Ameriprise made its outside distributions of DCM  
10 and VTD-XML, it did so under a commercial license (and not the GPL) without any attribution to  
11 XimpleWare, without any XimpleWare copyright notice, without any XimpleWare Source Code,  
12 and without any offer to convey the XimpleWare Source Code—all in violation of the GPL and all  
13 of which were void under the GPL.

14           **Answer to Paragraph:**     Ameriprise denies the allegations in Paragraph No. 75 of  
15 Plaintiff’s Complaint.

16           75.     According to its website, “Prudential [Insurance Company of America] sells its  
17 products through both **independent** and Prudential financial professionals.” (emphasis added) On  
18 information and belief, these “financial professionals”, some of whom are “independent” (*i.e.*, non-  
19 employees of Prudential), are the beneficiaries of the DCM software, which calculates their  
20 compensation.

21           **Answer to Paragraph:**     Ameriprise lacks sufficient knowledge or information to form a  
22 belief about the truth of the allegations in Paragraph No. 75 of Plaintiff’s Complaint, and therefore  
23 denies all allegations contained therein.

24           76.     Among the risk factors discussed in United Health’s recent 10-Q quarterly report,  
25 filed with the U.S. Securities Exchange Commission on May 6, 2014, United Health stated that “our  
26 ability to attract, retain and provide support to a network of **independent producers** (*i.e.*, brokers  
27 and agents) and consultants” could materially impact the company’s financial performance.  
28

1 (emphasis added) On information and belief, these “independent producers” (*i.e.*, non-employees of  
2 United Health) are the beneficiaries of the DCM software, which calculates their compensation.

3 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
4 belief about the truth of the allegations in Paragraph No. 76 of Plaintiff’s Complaint, and therefore  
5 denies all allegations contained therein.

6 77. In its most recent 10-Q quarterly report, filed with the U.S. Securities Exchange  
7 Commission on May 15, 2014, Metropolitan Life Insurance Company discussed its relationships  
8 with non-employee: “The Company has entered into various agreements **with affiliates** for services  
9 necessary to conduct its activities. Typical services provided under these agreements include  
10 personnel, policy administrative functions and **distribution services.**” (emphasis added) On  
11 information and belief, these “affiliates” (*i.e.*, non-employees of Metropolitan Life) are the  
12 beneficiaries of the DCM software, which calculates their compensation.

13 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a belief  
14 about the truth of the allegations in Paragraph No. 77 of Plaintiff’s Complaint, and therefore denies  
15 all allegations contained therein.

16 78. In its most recent 10-Q quarterly report, filed with the U.S. Securities Exchange  
17 Commission on May 2, 2014, Waddell & Reed Financial, Inc. discussed its “advisors, who are  
18 **independent contractors**”. (emphasis added) Similarly, according to a prior filing, a 10-K annual  
19 report for 2013, Waddell stated: “Our retail products are distributed through third-parties such as  
20 other broker/dealers, registered investment advisors and various retirement platforms, (collectively,  
21 the ‘Wholesale channel’) or through our sales force of independent financial advisors (the ‘Advisors  
22 channel’).” On information and belief, these “independent contractor” “advisors” are the  
23 beneficiaries of the DCM software, which calculates their compensation.

24 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
25 belief about the truth of the allegations in Paragraph No. 78 of Plaintiff’s Complaint, and therefore  
26 denies all allegations contained therein.

1           79. Various documents show Pacific Life’s use of non-employee “producers”, including a  
2 “Contract Summary” document which states: “We pay the independent producer or the independent  
3 producer’s third party selling firm for selling the contract to you.” On information and belief, these  
4 “independent producer[s]” are the beneficiaries of the DCM software, which calculates their  
5 compensation.

6           **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
7 belief about the truth of the allegations in Paragraph No. 79 of Plaintiff’s Complaint, and therefore  
8 denies all allegations contained therein.

9           80. Aviva USA also contracts with non-employee producers, as shown by forms  
10 published on its website, including an “Independent Producer Contract Appointment Application and  
11 Agreement.” On information and belief, these “independent producer[s]” are the beneficiaries of the  
12 DCM software, which calculates their compensation.

13           **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
14 belief about the truth of the allegations in Paragraph No. 80 of Plaintiff’s Complaint, and therefore  
15 denies all allegations contained therein.

16           81. Wellmark also contracts with non-employee producers or “brokers.” Wellmark’s  
17 online agent directory states that “All agents represented by Wellmark on this website are authorized  
18 independent agents for Wellmark...”<sup>10</sup> On information and belief, these “independent agents” are  
19 the beneficiaries of the DCM software, which calculates their compensation.

20           **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
21 belief about the truth of the allegations in Paragraph No. 81 of Plaintiff’s Complaint, and therefore  
22 denies all allegations contained therein.

23           82. XimpleWare has never granted any Defendant in this case any commercial license,  
24 permission, or authorization to use and redistribute any XimpleWare Product or Source Code.

25           **Answer to Paragraph:** Ameriprise denies the allegations made in Paragraph No. 82 of  
26 Plaintiff’s Complaint.

1 83. Defendants have infringed, and are still infringing on XimpleWare's intellectual  
2 property rights by making, selling, and using the DCM product that practices the XimpleWare  
3 Patents, and the Defendants will continue to do so unless this Court enjoins them.

4 **Answer to Paragraph:** Ameriprise denies the allegations made in Paragraph No. 83 of  
5 Plaintiff's Complaint.

6 **FIRST CLAIM FOR RELIEF**

7 **DIRECT PATENT INFRINGEMENT**

8 **(AGAINST ALL DEFENDANTS)**

9 84. Ameriprise incorporates its denials of paragraphs 1-83 of Plaintiff's Second Amended  
10 Complaint.

11 85. XimpleWare designs and licenses software designed to more effectively and more  
12 efficiently parse XML in an almost limitless range of products and applications.

13 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
14 belief about the truth of the allegations in Paragraph No. 85 of Plaintiff's Complaint, and therefore  
15 denies all allegations contained therein.

16 86. XimpleWare has made substantial investments of time and money, as well as great  
17 efforts over a period of ten or more years developing a faster, more efficient way to parse XML.  
18 These investments in research and development have, over the years, yielded many innovations,  
19 including the innovations disclosed and claimed in the Patents.

20 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
21 belief about the truth of the allegations in Paragraph No. 86 of Plaintiff's Complaint, and therefore  
22 denies all allegations contained therein.

23 87. The '857, '652, and '459 were duly and legally issued to XimpleWare, as assignee of  
24 the inventors named therein, for an invention entitled "Processing Structured Data." True and correct  
25 copies of the Patents are attached as **Exhibits 2, 3, and 4**, respectively.

26 **Answer to Paragraph:** Ameriprise admits that copies of the '857, '652 and '459  
27 patents appear to be attached as Exhibits 2, 3, and 4. Ameriprise lacks sufficient knowledge and  
28

1 information to form a belief about whether they were duly and legally issued. Ameriprise lacks  
2 sufficient knowledge or information to form a belief about any remaining allegations in Paragraph  
3 87, and therefore denies them.

4 88. The Patents are valid and enforceable.

5 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 88 of  
6 Plaintiff's Complaint.

7 89. At all material times since the original issue dates, XimpleWare has been the owner  
8 of the entire right, title, and interest in the Patents.

9 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
10 belief about the truth of the allegations in Paragraph No. 89 of Plaintiff's Complaint, and therefore  
11 denies all allegations contained therein.

12 90. XimpleWare's Product as well as its Source Code practices each of the independent  
13 claims of the Patents.

14 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
15 belief about the truth of the allegations in Paragraph No. 90 of Plaintiff's Complaint, and therefore  
16 denies all allegations contained therein.

17 91. On information and belief, Defendants have infringed and continue to infringe  
18 XimpleWare's Patents and each of them by making, using, selling, and/or offering for sale in the  
19 United States a number of products that practice the claims contained in the Patent, and will continue  
20 to do so unless enjoined by this Court.

21 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 91 of  
22 Plaintiff's Complaint.

23 92. Without entering a commercial license with XimpleWare and without strict  
24 compliance with any of the conditions for the GPL license, the Versata Defendants incorporated the  
25 XimpleWare Product and/or Source Code into a number of their own products (the "Versata  
26 Products"), including but not limited to the Versata DCM product. Therefore, the Versata Products  
27  
28

1 necessarily practice at least independent Claims 1 and 7 the '857 Patent, independent Claims 1 and  
2 9 of the '652 Patent, and independent Claim 1 of the '459 Patent.

3 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 92 of  
4 Plaintiff's Complaint to the extent they apply to Ameriprise. Ameriprise lacks sufficient knowledge  
5 or information to form a belief about the truth of the remaining allegations in Paragraph No. 92 of  
6 Plaintiff's Complaint and therefore denies them.

7 93. The Versata Products and each of them literally infringe because every element of  
8 each of those Claims is included in DCM, and are necessarily included in any other product into  
9 which Defendants incorporated the XimpleWare Source Code or Product. The Versata Defendants  
10 used and sold its infringing products in the United States, and did so willfully.

11 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 93 of  
12 Plaintiff's Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
13 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
14 No. 93 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

15 94. On information and belief, and without entering a commercial license with  
16 XimpleWare and without strict compliance with any of the conditions for the GPL license, the  
17 Ameriprise Defendants, Customer Defendants, and others purchased the Versata Products from the  
18 Versata Defendants without authorization. The Ameriprise Defendants and Customer Defendants  
19 infringed and continue to willfully infringe the Patents by using the infringing Versata Products,  
20 incorporated into the Ameriprise Defendants' and Customer Defendants' software systems which  
21 those Defendants used and continue to use in their daily course of business.

22 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 94 of  
23 Plaintiff's Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
24 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
25 No. 94 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

26 95. On information and belief, and without entering a commercial license with  
27 XimpleWare and without strict compliance with any of the conditions for the GPL license, the  
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1 Ameriprise Defendants and Customer Defendants have distributed without authorization DCM and  
2 VTD-XML to thousands of non-employee independent contractor or franchisee advisors or  
3 “producers.”

4 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 95 of  
5 Plaintiff’s Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
6 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
7 No. 95 of Plaintiff’s Complaint, and therefore denies the remaining allegations contained therein.

8 96. Defendants’ conduct constitutes direct infringement of XimpleWare’s patent rights  
9 under 35 U.S.C. § 271(a).

10 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 96 of  
11 Plaintiff’s Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
12 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
13 No. 96 of Plaintiff’s Complaint, and therefore denies the remaining allegations contained therein.

14 97. The Versata Defendants’ patent infringement was and is knowing and willful. The  
15 GPL, a copy of which must be included with all GPL-licensed source code, was always included  
16 with every version of the XimpleWare Source Code available on SourceForge. XimpleWare’s  
17 SourceForge project page—which XimpleWare has records of the Versata Defendants visiting—  
18 clearly indicates that VTD-XML is licensed under the GPL. Further, according to documents filed in  
19 the Texas Litigation, Versata maintained in the course of business a list of open source software  
20 components that it included in its DCM product, and that list included VTD-XML, and included the  
21 fact that VTD-XML was licensed under the GPL version 2. Therefore, Defendants actually knew or  
22 reasonably should have known that the Source Code was the work of XimpleWare, for which  
23 Defendants did not have a commercial license, and Defendants did in fact copy, adapt, and distribute  
24 works practicing the XimpleWare patents, derived from the Source Code in either source or  
25 compiled form without authorization from XimpleWare. No Defendants have ever obtained a  
26 commercial license from XimpleWare. The Versata Defendants were on actual notice before the  
27 filing of this lawsuit, and were on inquiry notice long before given Ameriprise’s assertions in the  
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1 Texas Litigation of defenses based on Versata's incorporation of unlicensed XimpleWare software  
2 into DCM.

3 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 97 of  
4 Plaintiff's Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
5 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
6 No. 97 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

7 98. Defendants' direct infringement of XimpleWare's exclusive patent rights has  
8 damaged, and/or will damage XimpleWare's business, causing irreparable harm for which there is no  
9 adequate remedy at law, unless Defendants are enjoined by this Court pursuant to 35 U.S.C. § 283.

10 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 98 of  
11 Plaintiff's Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
12 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
13 No. 98 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

14 99. Defendants' direct infringement of XimpleWare's Patents is the direct and proximate  
15 cause of damages to XimpleWare, and XimpleWare is entitled to compensatory damages in an  
16 amount to be determined at trial.

17 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 99 of  
18 Plaintiff's Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
19 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
20 No. 99 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

21 100. Defendants' direct infringement of the Patents entitles XimpleWare to preliminary  
22 and permanent injunctive relief pursuant to 35 U.S.C. § 283, an award of all damages sustained by  
23 XimpleWare as a result of Defendants' infringement, and enhanced damages adequate to  
24 compensate for Defendants' collective and willful infringement of XimpleWare's patent rights  
25 together with attorneys' fees and costs, pursuant to 35 U.S.C. §§ 284 and 285.

26 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 100 of  
27 Plaintiff's Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
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1 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph  
2 No. 100 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

3 **SECOND CLAIM FOR RELIEF**

4 **INDUCING PATENT INFRINGEMENT**

5 **(AGAINST VERSATA DEFENDANTS)**

6 101-109. Plaintiff does not assert this claim against Ameriprise, so it need not respond to  
7 the legal conclusions and factual allegations in paragraphs 101-109. To the extent any of the  
8 allegations require a response from Ameriprise, Ameriprise lacks sufficient knowledge or  
9 information to form a belief about the truth of any allegations in Paragraphs No. 101-109 of  
10 Plaintiff's Complaint, and therefore denies all allegations contained therein.

11 **THIRD CLAIM FOR DECLARATORY RELIEF**

12 **(AGAINST ALL DEFENDANTS)**

13 110. Ameriprise incorporates its denials of paragraphs 1-109 of Plaintiff's Complaint.

14 111. XimpleWare owns each and every of the three issued Patents.

15 **Answer to Paragraph:** Ameriprise lacks sufficient knowledge or information to form a  
16 belief about the truth of the allegations in Paragraph No. 111 of Plaintiff's Complaint, and therefore  
17 denies all allegations contained therein.

18 112. XimpleWare has the superior, and indeed only, right to continue to use, make, sell, or  
19 offer for sale its Source Code, subject to the GPL, as the lawful owner of the Patents.

20 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 112 of  
21 Plaintiff's Complaint.

22 113. Versata improperly downloaded and exploited XimpleWare's Source Code without a  
23 commercial license with XimpleWare, and without strict compliance with any of the conditions for  
24 the GPL license, all to XimpleWare's detriment. On information and belief, Versata has incorporated  
25 the Source Code into its DCM product, and sold it to, among others, Ameriprise and a number of  
26 other companies.

1           **Answer to Paragraph:**       Ameriprise denies the allegations in Paragraph No. 113 of  
2 Plaintiff's Complaint to the extent they pertain to Ameriprise. Ameriprise lacks sufficient  
3 knowledge or information to form a belief about the truth of the remaining allegations in Paragraph.  
4 No. 113 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

5           114. XimpleWare requests that this Court declare that United States Patents Nos.  
6 7,133,857, 7,620,652, and 7,761,459 and each of them are valid and enforceable.

7           **Answer to Paragraph:**       Ameriprise admits that XimpleWare requests that this Court  
8 declare that United States Patent Nos. 7,133,875; 7,620,652 and 7,761,459 are valid and enforceable  
9 but denies that XimpleWare is entitled to such relief.

10           115. XimpleWare also requests a declaration from the Court confirming that the GPL does  
11 not confer a patent license, which, as far as XimpleWare is aware, is a question of first impression in  
12 any court. As discussed above, there is no express patent grant in the GPL, and whether the GPL  
13 confers any implied license is a matter of debate in the open source community as well as a matter of  
14 public concern. The open source community, the public, and all the parties before the Court would  
15 benefit from a clear resolution of this question.

16           **Answer to Paragraph:**       Ameriprise denies the allegations in Paragraph No. 115.

17           116. XimpleWare also requests a declaration from the Court that any purported grant of  
18 patent licenses for XimpleWare's patented computer software by any Defendant to any other of the  
19 Defendants are invalid, and that no such Defendants have ever been granted any license under any of  
20 the patents validly issued to and properly and exclusively owned by Plaintiff.

21           **Answer to Paragraph:**       Ameriprise admits that XimpleWare requests that this Court  
22 declare that any purported grant of patent licenses for XimpleWare's patented computer software by  
23 any Defendant to any other of the Defendants are invalid, and that no such Defendants have ever  
24 been granted any license under any of the patents validly issued to and properly and exclusively  
25 owned by Plaintiff but denies that XimpleWare is entitled to such relief.

1 117. The requested declaration is necessary and appropriate at this time to affirm  
2 XimpleWare’s rights to exclusive use and sale of its protected intellectual property rights under  
3 federal patent law.

4 **Answer to Paragraph:** Ameriprise denies the allegations in Paragraph No. 117.

5 118. Plaintiff has no adequate remedy at law.

6 **Answer to Paragraph:** This is a legal conclusion and does not require a response by  
7 Ameriprise. To the extent the allegations of Paragraph No. 118 require a response, Ameriprise  
8 denies the allegations in Paragraph No. 118 of Plaintiff’s Complaint.

9 **RESPONSE TO PRAYER FOR RELIEF**

10 To the extent a response is required, Ameriprise denies that Plaintiff is entitled to any of the  
11 relief requested in the Complaint.

12 **RESPONSE TO DEMAND FOR JURY TRIAL**

13 Ameriprise respectfully demands a trial by jury on all issues so triable.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST DEFENSE**

16 **INVALIDITY**

17 The claims of the ‘857 Patent, the ‘652 Patent and the ‘459 Patent (collectively the “patents-  
18 in-suit”) are invalid pursuant to one or more of the provisions of Title 35 of the United States Code,  
19 including, but not limited to, 35 U.S.C. §§ 101 (lack of patentable subject matter), 102 (anticipation),  
20 103 (obviousness), and/or 112 (indefiniteness and failure to satisfy the written description and/or  
21 enablement requirements).

22 **SECOND DEFENSE**

23 **NON-INFRINGEMENT**

24 Ameriprise does not infringe and has not infringed any claim of the patents-in-suit, either  
25 directly or indirectly, or literally or under the doctrine of equivalents.  
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1 **THIRD DEFENSE**

2 **LICENSE**

3 The claims alleged in the Complaint are barred, in whole or part, by Ameriprise's valid  
4 license to use the software at issue.

5 **FOURTH DEFENSE**

6 **FAILURE TO STATE A CLAIM**

7 The Plaintiff has failed to state a claim upon which relief can be granted.

8 **FIFTH DEFENSE**

9 **IMPLIED LICENSE/ESTOPPEL**

10 The claims alleged in the Complaint are barred, in whole or part, by the doctrine of implied  
11 license and/or estoppel.

12 **SIXTH DEFENSE**

13 **NO ENTITLEMENT TO INJUNCTIVE RELIEF**

14 Plaintiff is not entitled to an injunctive relief because any harm to Plaintiff is not irreparable  
15 and Plaintiff has an adequate remedy at law.

16 **SEVENTH DEFENSE**

17 **WAIVER/UNCLEAN HANDS**

18 The claims alleged in the Complaint are barred, in whole or part, by the doctrine of waiver  
19 and/or unclean hands.

20 **EIGHTH DEFENSE**

21 **INDEMNITY**

22 The claims alleged in the Complaint against Ameriprise are barred, in whole or part, because  
23 Ameriprise is indemnified.

24 **NINTH DEFENSE**

25 **ACQUIESCENCE**

26 The claims alleged in the Complaint are barred, in whole or part, because Plaintiff has  
27 acquiesced to the conduct at issue.  
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1 **TENTH DEFENSE**

2 **PATENT MISUSE**

3 The claims alleged in the Complaint are barred, in whole or part, because Plaintiff has  
4 misused its patents.

5 **ELEVENTH DEFENSE**

6 **HARM CAUSED BY OTHERS/THIRD-PARTY LIABLE**

7 The claims alleged in the Complaint are barred, in whole or part, because any harm was not  
8 caused by Ameriprise and to the extent any harm was caused, a third party is liable for such harm.

9 **TWELFTH DEFENSE**

10 **LACHES**

11 The claims alleged in the Complaint are barred, in whole or part, due to laches.

12 **RESERVATION OF RIGHTS AND DEFENSES**

13 Ameriprise is investigating the facts relating to the procurement and maintenance of the  
14 patents-in-suit and the assertion of infringement against Ameriprise, and will continue to do so  
15 throughout the discovery process. To the extent that this investigation reveals any improprieties in  
16 connection with such matters, Ameriprise reserves the right to seek leave to amend to assert such  
17 allegations and /or defenses based thereon that may be appropriate.

18 Furthermore, because Ameriprise's investigation continues, to the extent not already pled,  
19 Ameriprise reserves its right to add additional defenses pending further investigation and discovery.

20  
21 **AMERIPRISE'S COUNTERCLAIMS**

22 **THE PARTIES**

23 1. Defendant and Counterclaimant Ameriprise Financial, Inc. is a corporation registered to  
24 do business in California, organized under the laws of Delaware, with its principle place of business  
25 located in Minneapolis, Minnesota. Defendant and Counterclaimant Ameriprise Financial Services,  
26 Inc. is a corporation registered to do business in California, organized under the laws of Delaware,  
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1 with its principle place of business located in Minneapolis, Minnesota. Collectively Ameriprise  
2 Financial, Inc. and Ameriprise Financial Services, Inc. are referred to as “Ameriprise” herein.

3 2. Upon information and belief, Plaintiff XimpleWare Corp. (“XimpleWare”) is a  
4 corporation organized under, and registered to do business in, California, with its principal place of  
5 business in Milpitas, California.

### 6 **JURISDICTION AND VENUE**

7  
8 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338  
9 with respect to claims arising under the Patent Act, 35 U.S.C. § 101 et seq., and pursuant to the  
10 Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

11 4. This Court has personal jurisdiction over XimpleWare, which has availed itself of the  
12 California courts by making in this Court claims of alleged infringement of the patents-in-suit.

13 5. Venue exists under 28 U.S.C. § 1391(b)-(c). Because XimpleWare filed suit in this  
14 judicial district, Ameriprise is pleading its counterclaims herein.

### 15 **COUNT 1 – NON-INFRINGEMENT OF THE ‘857 PATENT**

16 6. Ameriprise repeats and re-alleges the allegations contained in the immediately  
17 preceding paragraphs as if fully set forth herein.

18 7. XimpleWare claims that it is the assignee of the U.S. Patent No. 7,133,857 Patent  
19 (“857 Patent”) and that is it the owner of all rights, title and interest to the ‘857 Patent.  
20 XimpleWare has expressly charged Ameriprise with infringement of the ‘857 Patent by filing the  
21 First Amended Complaint against Ameriprise on December 17, 2013.

22 8. Ameriprise has not been and is not now infringing any claim of the ‘857 Patent. In  
23 light of XimpleWare’s Second Amended Complaint, there exists an actual and justiciable  
24 controversy between Ameriprise and XimpleWare regarding this patent.

25 9. Accordingly, Ameriprise desires a judicial determination and declaration of the  
26 respective rights and duties of the parties herein. Such a determination and declaration is necessary  
27 and appropriate at this time so that the parties may ascertain their respective rights and duties.  
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1           10. Ameriprise is entitled to a declaratory judgment that it has not infringed and is not  
2 infringing the ‘857 Patent.

3                                   **COUNT 2 – INVALIDITY OF THE ‘857 PATENT**

4           11. Ameriprise repeats and re-alleges the allegations contained in the immediately  
5 preceding paragraphs as if fully set forth herein.

6           12. Ameriprise contends that the asserted claims of the ‘857 Patent are invalid pursuant to  
7 one or more provisions of Title 35 of the United States Code, including, but not limited to, 35 U.S.C.  
8 §§ 101 (lack of patentable subject matter), 102 (anticipation), 103 (obviousness) and/or 112  
9 (indefiniteness and failure to satisfy the written description and/or enablement requirements).

10           13. Ameriprise is informed and believes, and on that basis alleges, that XimpleWare  
11 contends that the ‘857 Patent is valid and enforceable.

12           14. Accordingly, Ameriprise desires a judicial determination and declaration of the  
13 respective rights and duties of the parties herein. Such a determination and declaration is necessary  
14 and appropriate at this time so that the parties may ascertain their respective rights and duties.

15           15. Ameriprise is entitled to a declaratory judgment that the asserted claims of the ‘857  
16 Patent are invalid.

17                                   **COUNT 3 – NON-INFRINGEMENT OF THE ‘652 PATENT**

18           16. Ameriprise repeats and re-alleges the allegations contained in the immediately  
19 preceding paragraphs as if fully set forth herein.

20           17. XimpleWare claims that it is the assignee of the U.S. Patent No. 7,620,652 Patent  
21 (“‘652 Patent”) and that it is the owner of all rights, title and interest to the ‘652 Patent.  
22 XimpleWare has expressly charged Ameriprise with infringement of the ‘652 Patent by filing the  
23 First Amended Complaint against Ameriprise on December 17, 2013.

24           18. Ameriprise has not been and is not now infringing any claim of the ‘652 Patent. In  
25 light of XimpleWare’s Second Amended Complaint, there exists an actual and justiciable  
26 controversy between Ameriprise and XimpleWare regarding this patent.  
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1           19.      Accordingly, Ameriprise desires a judicial determination and declaration of the  
2      respective rights and duties of the parties herein. Such a determination and declaration is necessary  
3      and appropriate at this time so that the parties may ascertain their respective rights and duties.

4           20.      Ameriprise is entitled to a declaratory judgment that it has not infringed and is not  
5      infringing the ‘652 Patent.

6                                 **COUNT 4 – INVALIDITY OF THE ‘652 PATENT**

7           21.      Ameriprise repeats and re-alleges the allegations contained in the immediately  
8      preceding paragraphs as if fully set forth herein.

9           22.      Ameriprise contends that the asserted claims of the ‘652 Patent are invalid pursuant to  
10     one or more provisions of Title 35 of the United States Code, including, but not limited to, 35  
11     U.S.C. §§ 101 (lack of patentable subject matter), 102 (anticipation), 103 (obviousness) and/or 112  
12     (indefiniteness and failure to satisfy the written description and/or enablement requirements).

13          23.      Ameriprise is informed and believes, and on that basis alleges, that XimpleWare  
14     contends that the ‘652 Patent is valid and enforceable.

15          24.      Accordingly, Ameriprise desires a judicial determination and declaration of the  
16     respective rights and duties of the parties herein. Such a determination and declaration is necessary  
17     and appropriate at this time so that the parties may ascertain their respective rights and duties.

18          25.      Ameriprise is entitled to a declaratory judgment that the asserted claims of the ‘652  
19     Patent are invalid.

20                                 **COUNT 5 – NON-INFRINGEMENT OF THE ‘459 PATENT**

21          26.      Ameriprise repeats and re-alleges the allegations contained in the immediately  
22     preceding paragraphs as if fully set forth herein.

23          27.      XimpleWare claims that it is the assignee of the U.S. Patent No. 7,761,459 Patent  
24     (“‘459 Patent”) and that it is the owner of all rights, title and interest to the ‘459 Patent.  
25     XimpleWare has expressly charged Ameriprise with infringement of the ‘459 Patent by filing the  
26     First Amended Complaint against Ameriprise on December 17, 2013.  
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1 28. Ameriprise has not been and is not now infringing any claim of the '459 Patent. In  
2 light of XimpleWare's Second Amended Complaint, there exists an actual and justiciable  
3 controversy between Ameriprise and XimpleWare regarding this patent.

4 29. Accordingly, Ameriprise desires a judicial determination and declaration of the  
5 respective rights and duties of the parties herein. Such a determination and declaration is necessary  
6 and appropriate at this time so that the parties may ascertain their respective rights and duties.

7 30. Ameriprise is entitled to a declaratory judgment that it has not infringed and is not  
8 infringing the '459 Patent.

9 **COUNT 6 – INVALIDITY OF THE '459 PATENT**

10 31. Ameriprise repeats and re-alleges the allegations contained in the immediately  
11 preceding paragraphs as if fully set forth herein.

12 32. Ameriprise contends that the asserted claims of the '459 Patent are invalid pursuant to  
13 one or more provisions of Title 35 of the United States Code, including, but not limited to, 35  
14 U.S.C. §§ 101 (lack of patentable subject matter), 102 (anticipation), 103 (obviousness) and/or 112  
15 (indefiniteness and failure to satisfy the written description and/or enablement requirements).

16 33. Ameriprise is informed and believes, and on that basis alleges, that XimpleWare  
17 contends that the '459 Patent is valid and enforceable.

18 34. Accordingly, Ameriprise desires a judicial determination and declaration of the  
19 respective rights and duties of the parties herein. Such a determination and declaration is necessary  
20 and appropriate at this time so that the parties may ascertain their respective rights and duties.

21 35. Ameriprise is entitled to a declaratory judgment that the asserted claims of the '459  
22 Patent are invalid.

23 **JURY DEMAND**

24 Ameriprise demands a trial by jury on all issues so triable.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, having fully answered Plaintiff's Second Amended Complaint and having  
27 asserted Affirmative Defenses and Counterclaims, Ameriprise prays for judgment as follows:  
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A. That this Court fully and finally dismiss XimpleWare’s claims against Ameriprise and order that XimpleWare take nothing from Ameriprise;

B. That this Court enter judgment and/or declarations that Ameriprise does not infringe the patents-in-suit and that the patents-in-suit are invalid and/or unenforceable against Ameriprise;

C. That this Court enter a judgment declaring this case exceptional under 35 U.S.C. § 285 and awarding Ameriprise its attorneys’ fees and prejudgment interest;

D. That this Court award Ameriprise all of its costs in this action; and

E. That this Court grant Ameriprise such other and further relief as the Court deems just and proper.

Dated: June 16, 2014

Respectfully Submitted,

/s/ Case Collard  
Gregory S. Tamkin  
Case Collard  
DORSEY & WHITNEY, LLP  
Email: tamkin.greg@dorsey.com  
Email: collard.case@dorsey.com  
1400 Wewatta Street, Suite 400  
Denver, CO 80202-5549  
Telephone:(303) 629-3400  
Facsimile: (303) 629-3450

*Attorneys for Defendants and Counter Claimants  
Ameriprise Financial, Inc. and Ameriprise Financial  
Services, Inc.*

CERTIFICATE OF SERVICE

On June 16, 2014, I caused the foregoing document, titled **DEFENDANTS AMERIPRISE FINANCIAL, INC. AND AMERIPRISE FINANCIAL SERVICES, INC.’S ANSWER TO PLAINTIFF’S SECOND AMENDED COMPLAINT AND COUNTERCLAIMS**, to be electronically filed with the court, which will cause a Notice of Electronic Filing to be automatically generated by the court’s electronic filing system and sent to all parties in this case. Pursuant to General Order No. 45, Sections II.G. and IX, the Notice of Electronic Filing when emailed to the email addresses of record for counsel in the case constitutes service on the receiving parties.

/s/ Case Collard  
Case Collard

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