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Northern District of California
San Jose

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ZL TECHNOLOGIES, INC.,

Plaintiff,

v.

GARTNER GROUP, INC. and CAROLYN
DiCENZO,

Defendants.

Case No. **CO9 02393**

) COMPLAINT FOR DEFAMATION,
) TRADE LIBEL, FALSE
) ADVERTISING (LANHAM ACT, §
) 43(A)), FALSE OR MISLEADING
) ADVERTISING (CAL. BUS. AND
) PROF. CODE §§ 17500 ET SEQ),
) UNFAIR COMPETITION (CAL. BUS.
) & PROF. CODE §§ 17200 ET SEQ),
) NEGLIGENT INTERFERENCE WITH
) PROSPECTIVE ECONOMIC
) ADVANTAGE
)
) DEMAND FOR JURY TRIAL
)

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1 Plaintiff ZL Technologies, Inc. (“ZL” or Plaintiff”) alleges as follows, upon actual
2 knowledge with respect to itself and its own acts, and upon information and belief as to all other
3 matters:

4 **I. NATURE OF THE ACTION**

5 1. ZL develops and markets products that, among other things, archive emails and files
6 (the “ZL Products”). Plaintiff brings this action in its individual capacity and on behalf of the
7 general public to address disparaging, false/misleading, and unfair statements about Plaintiff and
8 the ZL Products made by defendants Gartner, Inc and Carolyn DiCenzo (together, the “Gartner”
9 or “Defendants”). Defendant’s wrongful conduct has had, and continues to have, the effect of
10 destroying competition in the enterprise market for archiving. Defendant’s conduct also had, and
11 continues to have, the effect of harming large enterprises and organizations which made, and
12 continue to make, purchasing decisions based on Gartner’s recklessly prepared reports, whereby
13 many customers relying on Gartner’s research have ended up with failed solutions. In addition,
14 Defendant’s conduct has harmed, and continues to harm, the creative forces of American
15 innovation, and, consequently, the long-term competitiveness of the American economy.

16 2. Defendant Gartner, Inc. (“Gartner, Inc.”) is “the world’s leading information
17 technology research and advisory company”, as claimed by Gartner, Inc. in its 2008 Annual
18 Report on Form 10-K. Among other things, Gartner, Inc. produces and publishes product research
19 on information technology. Gartner, Inc. also leverages these research reports to sell its
20 consulting services, and to sell its marketing events, contributing to total 2008 revenues of \$1.3
21 billion, with net profit of \$104 million.

22 3. Since 2002, Ms. DiCenzo has been the lead analyst on the Gartner research that is
23 the subject of this Complaint. At all material times in this complaint, Ms. DiCenzo was an agent
24 of Gartner, Inc. and acted within the course and scope of that agency.

25 4. A key revenue driver is the Gartner “Magic Quadrant” report, or “MQ”, on IT
26 vendors, which heavily influences corporate IT purchase decisions.

27 5. The “MQ” report is an annual report which Gartner publishes for each IT product

1 category it covers. Gartner's research reports and advisory services are sold to Gartner's
2 customers and are widely distributed in inter-state commerce. The report purports to accurately
3 rank IT vendors for enterprise buyers in a proprietary map called the "Magic Quadrant" (MQ),
4 which simply divides vendors into four quadrants in declining order of desirability as follows:
5 Leader, Challenger, Visionary, Niche.

6 6. In every email archiving MQ report since 2005 when it first included ZL, Gartner
7 has consistently ranked ZL in the lowest "Niche" quadrant. By contrast, Gartner has consistently
8 ranked Symantec Corporation (Symantec) in the highest "Leader" quadrant and has even kept it
9 in the Leader quadrant in every MQ to date, including six years as the sole occupant of the Leader
10 quadrant.

11 7. However, the ZL Products are far superior to offerings from Symantec and other
12 competitors in the MQ, especially in serving the needs of large enterprises and public sector
13 organizations which comprise the most significant portion of Gartner's target audience. Inasmuch
14 as the perceived vendor gap in the MQ is the widest between highest-ranked vendor, Symantec,
15 and low-ranked ZL, the objective comparisons of ZL Products with Symantec's offerings prove
16 the false or misleading nature of the MQ. These comparisons also highlight how many large
17 enterprise customers are poorly advised by the MQ, and even more poorly served by Symantec's
18 archiving offerings, especially for critical functions in electronic discovery. In fact, by reading the
19 MQ, no reader could possibly know that in certain key functions such as enterprise-wide searches,
20 ZL outperforms Symantec by over a thousand-fold in search speed; searches with far greater
21 accuracy than Symantec; scales to one to two orders of magnitude above Symantec in any given
22 vault; and reduces the cost of servers, storage and administrative overhead to half that of
23 Symantec. Most of the comparisons can also be applied to other vendors ranked higher than ZL
24 by the MQ.

25 8. The MQ has had a deleterious effect on competition, the large customers it serves,
26 and on the innovation engine which drives the American economy. Notwithstanding the injuries
27 caused by Defendants, ZL has:

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- i. been in business for over ten years, and sustained and prospered through two economic downturns;
- ii. sustained itself through organic growth with 1/10th the capital ingested by its peers;
- iii. developed product which outperforms its peer group by a wide margin with proven large installations and happy customer references;
- iv. became profitable and grew sales steadily, while staying cash positive.

9. Despite ZL’s repeated objections to the Defendants’ conduct, and despite numerous attempts to provide facts showing the Defendants were wrong in their assessments, Gartner continues to harm ZL and help entrench vastly inferior products in the American economy whose principal virtue, according to Gartner, is good sales and marketing. As a change from previous years, and likely in response to ZL’s complaints, the 2009 MQ Report states that its rankings are primarily driven by 2 factors: (a) good product and (b) good sales and marketing:

It is important to remember that the Magic Quadrant does not just rate product quality or capabilities. While the product is an important part of the rating, the vendor’s ability to capture customers and expand its presence in the market and to grow product and service revenue is also important. A vendor that builds a strong product but is unable or unwilling to also invest in marketing and sales to capture a growing base of customers will find itself unable to invest in future development.

Magic Quadrant for E-Mail Active Archiving, ID Number G00167443, published May 19, 2009, at p. 3.

10. At the core of this action are not only the reckless statements made by Gartner as an influential member of the media, but an economic model championed by Defendants that elevates marketing puffery over serious technology. While paying lip service to the importance of “Product”, Defendants were egregiously wrong about the ZL Products, especially compared to the “Leader”, Symantec. And by giving undue weight to sales and marketing in the MQ, the MQ’s were, and are, consistently biased in favor of larger companies – that generally have lavish sales and marketing budgets. As a result of outrageously wrong product assessments, and misguided

1 analytical models, Defendants consistently provided a misleading impression that the ZL Products
2 were of poor quality – which in turn caused serious harm to ZL. Finally, Gartner’s conduct has
3 destroyed fair competition – which has resulted in injury to the public interest.

4 **II. JURISDICTION AND VENUE**

5 11. This Court has jurisdiction over the subject matter of this action pursuant to 15
6 U.S.C. § 1125(a) and 28 U.S.C. §§ 1331. This Court has supplemental jurisdiction of Plaintiff’s
7 pendent state-law causes of action under 28 U.S.C. §§ 1367 because those claims are so related to
8 the federal claims that they form part of the same case or controversy and derive from a common
9 nucleus of operative facts.

10 12. This Court has personal jurisdiction over Gartner, Inc. because it actively carries on
11 business in this State and in this district. This Court has personal jurisdiction over Ms. DiCenzo in
12 that she resided in this district during the relevant periods mentioned in this Complaint.

13 13. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) in that a substantial
14 part of the events or omissions giving rise to this Complaint occurred in this district.

15 14. Intra-district assignment of this action to the San Jose division is appropriate
16 pursuant to Civil L.R. 3-2(c) as a substantial part of the events that give rise to the claims as
17 alleged herein occurred in the San Jose division, where ZL’s principal place of business is
18 located.

19 **III. BACKGROUND FACTS**

20 **A. THE BUSINESS OF GARTNER**

21 15. According to its own 2008 Annual Report, Gartner, Inc. is “the world’s leading
22 information technology research and advisory company”. The 2008 Annual Report continues to
23 claim that Gartner, Inc., through its “high quality” research, is a “thought-leader”:
24

25 We provide high-quality, independent and objective research and analysis of the
26 IT industry. Through our entire product portfolio, our global research team
27 provides thought leadership and insight about technology acquisition and
deployment to CIO’s, executives and other technology leaders.

1 Gartner, Inc., 2008 Annual Report on Form 10-K, filed Feb. 20, 2009, at 3.

2 16. Among other things, Gartner, Inc. sells its research reports, and also makes
3 recommendations to its clients about which products would be best-suited for the specific needs
4 of its clients:

5 Technology investors need exactly what Gartner provides: highly discerning
6 research that is objective, defensible, and credible to help do your job better.
7 Investor clients have full access to the combined strength of Gartner Core
8 Research, the most comprehensive analysis of technology anywhere, and Gartner
9 Dataquest, the technology world's definitive forecasting database. Use Gartner to
support buy/sell recommendations, perform due diligence, evaluate risks and
opportunity, and generate ideas.

10 http://www.gartner.com/it/about/why_use_gartner.jsp, visited May 27, 2009.

11 17. Gartner, Inc. is highly influential in impacting purchases of technology, especially
12 by large enterprises. Gartner, Inc.'s own swaggering advertising claims, whether made in SEC
13 reports or in their marketing collateral, repeatedly state that Gartner, Inc. is in a privileged
14 position to advise on technology:

15 Gartner offers the combined brainpower of 1,200 research analysts and
16 consultants who advise executives in 80 countries every day. We publish tens of
17 thousands of pages of original research annually and answer 200,000 client
questions every year.

18 We can help you make smarter and faster decisions. Our years of relevant
19 experience and institutional knowledge prevent costly and avoidable errors. Be
confident that with Gartner, your decisions are the right decisions.

20 Gartner is not just bigger, more networked, or more influential than the
21 competition. We are in a league of our own.

22 ...We can help you validate your plans, support your decisions, and achieve
23 senior management buy-in. We can show you how to buy, what to buy, and how
to get the best return on your technology investment. [emphasis added]

24 http://www.gartner.com/it/about/why_use_gartner.jsp, visited May 27, 2009.

25
26 18. Gartner, Inc. publicly claims that: "We can show you how to buy, what to buy, and
27 how to get the best return on your technology investments". Together, Gartner, Inc.'s claims that:

1 (a) its research is “high quality, independent and objective research”, (b) it is a “thought-leader”
2 in information technology, (c) it can “show how to get the best return on your technology
3 investment”, and similar such claims are all false (and referred to hereinafter as the “Expertise
4 Claims”).

5 19. What is most spectacular about these Expertise Claims is that Gartner, Inc.’s “high-
6 quality, independent and objective” research reports do not involve a single minute of
7 independent testing of the products that Gartner purports to evaluate.

8
9 **B. THE BUSINESS OF ZL**

10 20. ZL is a vendor of enterprise software, founded in 1999, based in San Jose,
11 California, and is in its 11th year of operation. It makes software for large enterprises to store,
12 index, search, extract and purge electronic data, primarily in the form of email and files. Its target
13 market is the large enterprise, typically with employee count from five thousand to hundreds of
14 thousands.

15 21. ZL is primarily self-funded; unlike its peers, it chose not to take in significant
16 amounts of venture capital, and consequently, is not controlled by venture capitalists.

17 22. Being self-funded allows ZL to make strategic decisions for the long term, as
18 opposed to making short-term tactical decisions to accommodate venture capital objectives.
19 Accordingly, ZL can make the hard decisions on product development for long-term benefits, an
20 option often unavailable to its peers. For example, ZL decided that, in order to support its
21 enterprise customers better, it must have in-house control of every line of source code for its
22 critical components. By contrast, its competitors mostly chose to get to market sooner and opted
23 to license key components, such as search engines, from third parties. Today, ZL believes that
24 100% control of the source code for its critical components is a key competitive advantage for a
25 very heavy computing-intensive application such as archiving.

26 23. After ten years in operation, ZL has the strongest product offering in the
27 marketplace. Where it has been able to get the customer to evaluate its product, it has typically

1 been successful in selling, deploying, and supporting its product to the satisfaction of some of the
2 world's largest enterprises, including the likes of Union Bank of Switzerland, Komatsu, and
3 Wachovia Bank. It became profitable and cash positive, while consistently growing sales on a
4 year-to-year basis for the last six years.

5
6 **C. THE EMAIL ARCHIVING MARKET**

7 24. One of the areas researched by Gartner, Inc. is the market known as email archiving.
8 This market refers to products which store copies of emails, either directly from an email server
9 or from individual mailboxes, into a separate storage repository. The benefits of such a system
10 are numerous. Initially, the genesis of email archiving technology was based on certain
11 information technology ("IT") benefits that would occur from freeing space on primary email
12 servers, such as Microsoft Exchange. Typically, it was, and still is, very expensive to store large
13 quantities of email on these primary email servers. Email archiving technologies allow large
14 amounts of emails (and attachments) which still have business value to be offloaded and stored in
15 a separate repository which is much cheaper to maintain than a primary email server. Moreover,
16 such email archiving technologies typically can further reduce the storage requirements of emails
17 and attachments – through compression and de-duplication or "Single Instance Storage" ("SIS") –
18 which means that the same mail or attachment sent to multiple recipients will be stored once only.

19 25. In addition to these "IT" benefits, email archive products can assist firms in
20 complying with various statutory regimes. The general name given to this market segment is
21 called "compliance". For instance, some brokers and dealers regulated by the Securities and
22 Exchange Commission use archive products to ensure that their employees are not engaging in
23 insider-trading or inappropriate conduct or communications.

24 26. Thirdly, one of the most important needs satisfied by email archiving products is
25 "records management", which means the orderly storage (and destruction) of business records.
26 Since email is the single most important type of communication in most businesses, being able to
27 access and use these records during their useful life is vital. At the same time, the tremendous

1 volume of email (and attachments) makes manually-based retention and retrieval extremely
2 difficult and expensive. Thus, email archiving is used to store and manage business records,
3 which includes the need to quickly search, retrieve, use and, at the end of their useful life, purge
4 emails.

5 27. Such records management use of archive products is particularly acute when there is
6 litigation, or the reasonable possibility of litigation – because there is a legal duty to preserve all
7 data that may be relevant to such litigation as soon as the litigation (or reasonable possibility
8 thereof) materializes. This is called the “litigation hold” duty – and there are serious sanctions
9 under for the failure to preserve and produce relevant information. By maintaining a complete and
10 easily searchable archive of all business records, archive products enable firms to comply with a
11 “litigation hold” quickly and efficiently by accessing a central repository. This means that a
12 litigant can access, search and preserve data using a single user interface, and access a single
13 repository to conduct “litigation holds” – rather than dedicating personnel to visit individual
14 computers and make “mirror” copies of local hard drives. This “litigation hold” duty is part of a
15 broader litigation task called “electronic discovery” or “E-Discovery”. Since December 2006, the
16 Federal Rules of Civil Procedure impose specific rules governing the preservation and production
17 of so-called “electronically stored information” or “ESI”.

18 IV. WRONGFUL ACTS OF GARTNER

19 A. GARTNER MADE FALSE AND DEFAMATORY STATEMENT CONCERNING ZL AND THE ZL 20 PRODUCTS

21 1. MQ Placement

22 28. Gartner has published the MQ Reports for email archiving on an annual basis since
23 2002. The opening paragraph of the 2008 MQ Report states that it is focused on products that
24 were “able to prove, through strong references, their ability to address the needs of an
25 organization looking to support thousands of users”. 2008 MQ Report, p. 2. See also 2007 MQ
26 Report, p. 2.

27 29. Gartner’s MQ Reports divide vendors into on a quadrant based on 2 axes:

1 “Completeness of Vision” and “Ability to Execute”. Figure #1, below, shows a sample of the so-
2 called Magic Quadrant.

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Ability to Execute ↑	Challengers	Leaders
	Niche Players	Visionaries
	Completeness of Vision →	

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30. Gartner’s “Ability to Execute” axis was, and is, based on the following criteria: quality of goods and services, overall viability, sales execution, market responsiveness and track record, marketing execution, customer experience, and operations (each, an “Execution Criterion”). Each Execution Criterion is weighted. Thus, for example, the assessment of a vendor’s Goods/Services was and is given a “high” weighting, whereas an assessment of “operations” is given a low weighting. Each of these Execution Criteria, in turn, is comprised of a number of sub-criteria (“Execution Sub-Criteria”). Thus, for example, Quality of Goods/Services as an Execution Criterion included and includes factors such as “capabilities, quality, feature sets”.

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31. Gartner’s “Completeness of Vision” axis was, and is, based on the following criteria: market understanding, market strategy, sales strategy, product strategy, business model, industry strategy, innovation, and geographic strategy (each, a “Vision Criterion”). As noted in the 2008 MQ Report at p. 17, “a vendor’s completeness of vision is evaluated based on its ability to convincingly articulate its future product direction and demonstrate innovation in meeting customer needs, enabling the vendor to more effectively compete in the market” . The Vision Criteria, in turn, were, and are, based on sub-criteria, such as market understanding, market

1 strategy, sales strategy, product strategy, business model, industry strategy, innovation and
2 geographic strategy (the “Vision Sub-Criteria”). As with the Execution Sub-Criteria, the Vision
3 Sub-Criteria had different weightings.

4 32. Since 2005, Gartner has placed the ZL in the bottom portions of the lower left-hand
5 quadrant in the MQ Reports, as Niche Player (the “MQ Placements”). These MQ Placements
6 were, and are, derogatory because they are understood by technology purchasers as a warning, by
7 Gartner, that ZL and the ZL Products are not good choices for enterprise email archive
8 applications.

9 **2. Cautions in the MQ**

10 33. The 2008 MQ Report at p. 14 further provides the following cautions about ZL: “ZL
11 is primarily a product and engineering-focused company. To remain viable vendor in the market,
12 the company must gain greater visibility and more aggressively expand its sales channels” (the
13 “Caution”).

14 **3. Other Statements**

15 34. At various times, Ms. DiCenzo and other representatives of Gartner, Inc. made
16 disparaging statements about ZL and the ZL Products. For instance, Ms. DiCenzo told one ZL
17 prospect that the ZL Products and Symantec’s Enterprise Vault (EV) “were the same”. These and
18 similar statements are referred to hereinafter as “Other Statements”.

19 35. Together, the MQ Placements, the Cautions and the “Other Statements” are referred
20 to hereinafter as the “Defamatory Statements”.

21 **B. GARTNER’S STATEMENTS WERE UNDERSTOOD TO BE DEFAMATORY AND PROXIMATELY 22 CAUSED INJURY TO PLAINTIFF.**

23 36. Prospective purchasers of the ZL Products have consistently and uniformly raised
24 objections to even consider purchasing the ZL Products because of the Defamatory Statements.
25 Even Oracle Corporation, one of the largest software vendors in the world, which resells the ZL
26 Products, complains that it gets “Gartnered” when pursuing prospective customers for the ZL
27 Products.

1 Products, i.e., that a prospect would not even consider looking at the ZL Products because of the
2 low Gartner rankings. The power of a positive ranking in Gartner is immense because it is often
3 the case that large purchases of technology are based exclusively on the MQ Reports.

4 37. For instance, the Office of the Inspector General, Department of Veterans Affairs
5 (VA) recently conducted an investigation into the use of the Gartner's MQ reports in connection
6 with the VA's \$16,000,0000 purchase of certain leases and services from Dell. The Office of
7 Inspector General reported that the VA made this large purchase based solely on the leadership
8 rankings in the relevant Gartner MQ report. The Office of Inspector General concluded that:
9 "there was no justification for restricting the PCs to be provided under the [Blanket Purchase
10 Agreement] to the brand names in the two identified Gartner Magic Quadrants and that this
11 requirement unnecessarily limited competition."¹

12 38. The overwhelming importance of a positive Gartner ranking was further evidenced
13 by the experience of Proofpoint, Inc, a venture-backed software company based in the Silicon
14 Valley. Sandra Vaughn, Proofpoint's Senior VP of Marketing and Products, states in an article in
15 Information Week in February 2006, that Gartner is particularly influential in large enterprises.
16 "This matters more than you want it to matter," says Vaughn, "Our target market is big
17 companies, so Gartner matters." The article goes on to say that: "Failure to get a favorable
18 mention in an analyst report could undermine years of product development. Acceptance, on the
19 other hand, boosts a company's exposure and is essential for buyers drawing up shortlists."²

20 39. Indeed, because of Gartner's Defamatory Statements, ZL is rarely invited by
21 customers to provide responses to Requests for Proposal ("RFPs"). And even ZL's biggest
22 customer wins to date were not generated by customer invitation to participate in an RFP.
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26 ¹ Department of Veterans Affairs, Office of the Inspector General, Review of Enterprise-
wide PC Lease awarded to Dell Marketing, LP , Report Number 08 -- 02213 – 138, June 4, 2008.

27 ² Credibility of Analysts, Information Week, February 6, 2006,
<http://informationweek.copm/story/showArticle.jhtml?articleID=178601879>.

1 **C. GARTNER’S DEFAMATORY STATEMENTS WERE, AND ARE, LITERALLY FALSE.**

2 40. The Defamatory Statements are false, and even the market starting to understand this
3 conclusion. In March 2009, ZL entered into contract to provide the email archive solution for one
4 of the largest and most influential companies in the Silicon Valley. What makes this customer
5 win especially relevant to this action is that: (a) the customer did not initially invite ZL to
6 compete because of the Defamatory Statements, and (b) ZL won the contract only after beating
7 out Symantec in an exhaustive, side-by-side “proof of concept” evaluation. Such a large
8 customer win demonstrates that, but for the Defamatory Statements, ZL would have made many
9 more sales than it has.

10 **1. ZL Products have the Fastest Search Performance**

11 41. Archiving is not about storing; it’s all about finding. There’s no point to storing
12 anything, if it cannot be found and retrieved – accurately, quickly, completely.

13 42. Search accuracy is the core capability of any archive. Perhaps the most basic and
14 important feature in search accuracy is “proximity search” – such as, find “securities” within 8
15 words of “fraud”. This would ensure that only those documents with “securities” and “fraud”
16 occurring close together would be selected. This excludes a lot of unrelated documents where the
17 two words may be far apart and have nothing to do with each other. Symantec cannot do
18 proximity search. Instead, Symantec uses wild-card searches to try to deliver proximity search. It
19 is unworkable for two reasons set forth below.

20 a. Symantec’s “Proximity” Requires Unwieldy Use of Wildcards.

21 43. First, Symantec EV’s search command is ridiculously cumbersome. The above
22 search would require the user to type in:
23

24 “securities * * * * * fraud” “securities * * * * * fraud”
25 “securities * * * * * fraud” “securities * * * * * fraud” “securities *
26 * * fraud” “securities * * fraud” “securities * fraud”
27
*Source: Symantec, “Enterprise Vault, Technical Overview:
Configuring Effective Litigation Searches, July 2007”, p, 26*

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44. The Symantec proximity search is also inaccurate, because the word order affects the result. Ideally, the search should return the same results whether it's "securities" within 8 words of "fraud" or vice versa. In Symantec's case, to avoid the word order problem, one would have to type in the above command twice, the second time with the words in reverse order, i.e.,

```
"securities * * * * * fraud" "securities * * * * * fraud" "securities *
* * * * fraud" "securities * * * * fraud" "securities * * * fraud"
"securities * * fraud" "securities * fraud" "fraud * * * * * securities"
"fraud * * * * * securities" "fraud * * * * * securities" "fraud * * * *
securities" "fraud * * * securities" "fraud * * securities" "fraud *
securities"
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45. By contrast, the same search under the ZL Products requires only typing the words of the search (once):

Type of Search:	Proximity
Search Terms:	"securities, fraud"
Proximity Value:	"8"

46. Proximity search involving clusters of more than 2 words is impossible or impractical with Symantec.

b. Symantec's Search Is So Slow As To Render It Useless For Its Intended Purpose

47. Symantec search speed has always been extremely slow due its outdated architecture. For example, it creates an index for each mailbox. This is a legacy of its old design which was geared towards searching within individual mailboxes, not across all mailboxes. To search through the entire archive of, say, 300 million documents, EV typically takes days. By contrast, the ZL Products takes only seconds. The impact on the user is very significant for the following reasons:

- i. Fast search enables the user to "zero-in" on the target and fine-tune searches along the way. This is very difficult to do if the search results come back, say, two days later, and the user has forgotten what exactly he was looking for.

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- ii. For litigation-related searches, fast search is a necessary capability because hundreds of searches may have to be executed in order to find relevant data.
- iii. To search across mailboxes, Symantec must load the index of each mailbox, and then search it, one by one. For a large enterprise of, say, 25,000 users, this can take days. Symantec’s own manuals disclose this weakness:

Source: Symantec Enterprise Vault Performance Guide, Windows, 7.0, last update: May 19, 2008, page 60

Searching indexes

There are many factors that determine the time taken to return a search result. When a user searches an index, the index is opened and some of the files are brought into memory. The first search in a series of searches takes longer. For example, typical response times for a user with 100,000 items archived are as follows:

First search	3 to 10 seconds
Subsequent searches	0.5 to 3 seconds

If each index is loaded and takes 3 to 10 seconds, or an average of 6.5 seconds, then an enterprise with 25,000 mailboxes would take over 45 hours, and that’s assuming nothing goes wrong with the storage devices, network, or other resources. In this day and age of escalating demands in e-discovery, such a long search time is simply unacceptable, especially when iterative searches are required.

- iv. Symantec’s EV can only perform searches sequentially, which slows down the search considerably. Its own manuals outline this limitation. The ZL Products have no such limitation.

Source: Symantec Enterprise Vault, Reducing E-Discovery Cost And Risk With Discovery Accelerator, Chris Dooley, last update July 23, 2007, page 16

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“Within one customer database, all searching or production requests are serially queued to perform their tasks one request at a time, even if the commands originate from different cases within the database.”

v. Also, Symantec’s storage and index architecture is usually oriented around time, whereby emails get stored in a vault until it fills up and then Symantec “rolls over” to start a new vault. This scheme tends to produce multiple vaults, databases and indices, which then makes it tediously slow to search by parameters other than time. It is analogous to stacking all the newspapers from around the world received in a library by date, and then receiving a request to retrieve every “New York Times” for the last five years. Practically every newspaper batch in the library will have to be laboriously opened and searched. The ZL Products have no such limitations.

c. Enterprise Search v. Custodian Search

48. “Custodian Search” means search requests restricted to certain mailboxes, and possibly, within certain periods. “Enterprise Search” is where the search is applied across all mailboxes and across all periods. A Custodian Search is much easier to accomplish than an Enterprise Search, since the search is applied to a very small fraction of the email database.

49. George Socha, of Socha Consulting, Inc., a well-known e-discovery consultancy confirms states that Enterprise Search is now a requisite capability.

“The traditional search by selected custodian mailboxes alone often is no longer adequate. E-Discovery has developed to the point where for many the ability to search across mailboxes in a quick and timely manner has become a critical requirement.”
– George Socha

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50. In practical terms, Symantec EV is restricted to Custodian Search. The ZL Products can do both Custodian and Enterprise Search quickly. Symantec EV cannot do Enterprise Search quickly because it has very weak search architecture and takes too long to scan all mailboxes. While Symantec would literally take days to do an Enterprise Search of 300 million emails, the ZL Products typically take seconds. Symantec’s practical restriction to Custodian Search means it is constantly peering through a keyhole, while the ZL Products, with Enterprise Search, can open wide the door for a full view.

51. Symantec’s practical restriction to Custodian Search means it cannot accomplish Early Case Assessment – which is the investigative process that takes place at the beginning of any litigation to determine the merits of the case – which in turns drives litigation strategy. This is because a comprehensive assessment of case risk cannot be done by searching select mailboxes. For example, if the Los Angeles office of a business is sued for gender-bias, it may be prudent to search offices across all the country to ensure that there is no systemic problem. Otherwise, the risk of the litigation escalating to a class-action may multiply. In other words, the situation may call for an Enterprise Search across all mailboxes, which the ZL Products can do with ease.

52. Symantec’s practical restriction to Custodian Search means there is also a risk of doing incomplete searches. Identifying the custodian mailboxes may be one thing, but the custodian mailbox is not the complete repository for that custodian. Additional repositories for that custodian would include shared mailboxes, IM / chat repositories, application emails (e.g., CRM systems), etc. To do a complete search for key persons or keywords, the person doing the search must be aware of what else needs to be searched and where they might be located, beyond just the custodian mailbox. This is a tedious and error-prone task, and sometimes overlooked. With the ZL Products, it is a simple matter of doing an Enterprise Search, which Symantec EV cannot do.

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d. Completeness of Search.

53. Even if search accuracy and speed are offered by the archive, it is of limited value if there is no assurance that the search was made against a complete archive. If there are missing emails in the archive, the validity of the search is compromised. To build a complete archive, complete capture and indexing of email is required.

54. The ZL Products provide far better accountability of email capture, indexing and searching, including reporting, than EV. Emails often go missing for a multitude of reasons, including server failure, storage failure, insufficient disk space, virus attacks, etc. However, ZL can minimize the risk of losing emails because:

- i. the ZL Products can capture email at the gateway (where the email comes in from the Internet). Symantec EV may have to use another vendor’s product to do this, and integration is difficult to make seamless.
- ii. the ZL Products can perform Straight-Through-Processing (STP), while Symantec EV cannot. STP is usually used by processors of high-value transactions (e.g., banks, exchanges, brokers) to ensure no item is lost. In STP, there is only one entry and one exit, and all processes are done in one place, minimizing risk of loss. Symantec does not do this.
- iii. the ZL Products minimize risk of email loss by automating tasks such as Index Reconciliation, which periodically takes a “roll call” to highlight any emails needing attention and call for action, where needed. To ZL’s knowledge, Symantec has no similar capability.
- iv. Even if the archive completes email capture, the indices may not be complete or fully available during the search. For example, if any one of Symantec’s many indices is down or corrupted or rendered unavailable, then the search is

1 incomplete and, consequently, invalid. To ZL’s knowledge, this Symantec
2 problem of incomplete searches due to unavailable indices is a structural one.
3 Further, EV does not appear to do a good job at exporting search results with a
4 report on whether any index was unavailable on that search. Consequently,
5 counsel may not know if the search was truly complete. By contrast, the ZL
6 Products do a far better job of email accountability and reporting, especially with
7 advanced tools such as Index Reconciliation Reports, etc.
8

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10 **2. Low “Total Cost of Ownership” (“TCO”)**

11 a. Single Instance Storage or “SIS”

12 55. “SIS” is the ability to de-duplicate multiple copies of the same email so that only one
13 copy is stored, resulting in significant storage savings. While Symantec EV has claimed SIS for
14 the last six years, its SIS has been so brittle that very little storage savings was possible. In fact,
15 its own manual on storage sizing describes it best when it advises that there may be no savings at
16 all, with a storage ratio of 1:1 after SIS!

17 *Source: Symantec - "Sizing An Enterprise Vault Solution For Exchange
18 Archiving", v1.1, Feb 15, 2007, Symantec 7.0, page 11*

19 **Multiple Vault Stores**

20 The Vault Store sizing is based on a typical single-instance ratio (SIR) of
21 1.3. This means that for, say, every 130 messages found in users’
22 mailboxes there are only 100 different messages, the other 30 being
23 duplicates. This SIR is commonly observed in production Symantec sites,
24 where single Vault Stores are used. However, if multiple Vault Stores are
25 used (either to have a “logical” split – e.g. per Exchange Server – or a
26 physical split, because multiple Symantec servers are needed) then this
27 single-instancing will be less effective because single-instancing does not
span across multiple Vault Stores. If multiple Vault Stores are used it
should be assumed that there is a lower rate of single-instancing (i.e. the
SIR equals 1.1, or even 1.0) and then any additional single-instancing
that does occur can be seen as upside.

56. Symantec’s SIS has historically been very brittle and its de-duplication capability

1 has broken by a multitude of factors, including:

- 2
- 3 i. If the emails come from different applications, such as file archiving, or email
- 4 archiving, Symantec's SIS is broken.
- 5 ii. If the emails come from a different source or location, such as gateway, or
- 6 stubbing, or journaling, Symantec's SIS is broken.
- 7 iii. If the email comes from a different email server, such as Microsoft Exchange or
- 8 Lotus Domino, Symantec's SIS is broken.
- 9 iv. If the emails are linked to different vaults, Symantec's SIS is broken.
- 10 v. If the emails belong to different groups in the same server, the SIS is broken.
- 11 vi. If de-duping is required at the attachment level, Symantec's SIS is broken.³
- 12

13 57. Further adding to the storage penalty, Symantec stores not just the original email but

14 adds another copy in HTML for display purposes. This is tantamount to asking the user to pay

15 more to store an additional copy in Latin, even though the user has no use for it. The marketing

16 spin from Symantec is that the HTML copy is for "future-proofing" long-term access to the data.

17 However, HTML is itself a changing standard, having changed significantly in the last decade.

18 Gartner's analyst seemed to have missed this wasteful storage issue entirely or neglected to

19 mention it. Ironically, long-term access to the data was not on Symantec's architects' minds when

20 they put the original email together with the HTML copy and then wrapped it in a proprietary

21 wrapper, thus locking-in the customer to Symantec. Again, Gartner's analyst missed this

22 important vendor lock-in issue entirely or neglected to mention it. By contrast, ZL Products store

23 one and only one copy.

24

25 _____

26 ³ The recent release of EV 8.0 appears to fix only a few of the above problems, including

27 attachment-level SIS and across-vault SIS, which are belated enhancements that finally catch up

with ZL capabilities. Gartner's MQ, however, glosses over this fact.

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58. Overall, SIS and storage architecture in the ZL Products enable customers to slash storage costs to half or less than half of Symantec's storage costs. The MQ failed to recognize this for many years and still continues to do so.

b. GRID Architecture Slashes TCO, While Increasing Performance

59. The ZL Products offer a true GRID architecture, whereby computing resources are pooled together and used as needed. It is analogous to installing one water tower for a 100-unit apartment building, versus installing 100 water tanks in each apartment. ZL's GRID scales up simply by adding servers; utilizes servers fully; enables automatic failover when any server goes down; and distributes work load evenly across all servers. It is the most important reason why ZL is able to scale up far better, and get more work done faster and cheaper than its competitors. For example, in a typical replacement of a competitor's configuration of 27 servers, ZL was deployed with only seven of the same servers, but doing much more work at a much faster rate. ZL's GRID is unique amongst its competitors and the source of so many capabilities prized by the large enterprise, but Gartner has neither appreciated nor mentioned it in the MQ in all these years.

60. Symantec's architecture was intended for mailbox management and it scaled by adding more vaults, which in turn needed more and more database instances. Today, an enterprise deploying Symantec may need 7 database instances to start, even before the first email is archived. As the email data grows, the number of database instances begins to proliferate. In time, a 25,000-seat archive can generate scores of database instances. This causes multiple problems for the enterprise user. First, the cost of database administration begins to escalate. A full-time database administrator (DBA) can take care of 20 databases, at a cost of \$100,000 to \$140,000 per year. Second, the proliferation of database instances with Symantec produces these problems:

- i. the application becomes difficult to support;
- ii. upgrades are difficult to do;

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- iii. high availability is difficult to architect;
- iv. search downtime escalates (since the search is incomplete if any database is unavailable);
- v. backup becomes a logistical horror, where a snapshot backup is almost impossible to do;
- vi. the only way to do a complete snapshot backup is to shut down all disk-writes, which is unacceptable to a 24x7 multinational enterprise

61. By contrast, the ZL Products consolidate all data into one database, which results in: economies of scale and administration; far superior performance; better SIS and lower storage costs. Gartner has never discussed this important issue of proliferation of database instances in the MQ.

3. Export And Ingestion Speed

62. Large enterprises usually have huge volumes of data to ingest and export, typically within a short timeframe. However, outdated architectures pose a challenge, often requiring too much time to ingest or export. The ZL Products have a distinct advantage: ZL’s GRID architecture allows it to scale to very large volumes. For example, in recent discussion with a prospect using EV for e-discovery, it was frustrated over a maximum export rate of 125,000 emails per production work day. By contrast, a large customer using ZL was able to export several million emails in a day.

4. The High Cost Of Replacing The Alta Vista Search Engine

63. Symantec uses the Alta Vista Search Engine, which was end-of-lifed (“EOL”) four years ago. Alta Vista is a dead-end product, with no significant development in recent years. Vendors have already moved to replace Alta Vista, and Symantec is likely to replace it soon. When Symantec does replace Alta Vista, the user’s costs are likely to climb due to the cost of migrating data from old to new format, which could easily exceed the original system cost.

1 Conceivably, Symantec could suggest that the user can avoid migration by running the old
2 archive in place, while starting a new archive with the new search engine. This could actually end
3 up doubling the costs of administration, since the old archive is still running and changing and
4 deleting data, which means that backup, restore and database fine-tuning still need to be done on
5 this second installation. The administration of the new archive must now be added on top, but:

- 6
- 7 i. Searches in these two archives will become even more complex and
8 cumbersome, especially with co-ordination of policies, de-duplication of
9 searches, etc.
 - 10 ii. Reliability also declines, since either archive going down will render any search
11 incomplete
- 12

13 64. By contrast, the ZL Products do not have this replacement issue. Indeed, ZL controls
14 the source code of all critical components and has developed it to where it outperforms all other
15 competitors in the search function by a wide margin. Gartner has never addressed Symantec's
16 search engine replacement risk in its MQ, an issue which can prove extremely costly to the user.

17 **5. ZL Runs In Enterprise's Existing Environment, Imposes No Costly Changes**

18 65. The ZL Products run on popular multiple operating systems, including Linux,
19 Windows, Solaris, etc. The ZL Products also run on popular databases, including Oracle, DB2,
20 and MS SQL. And the ZL Products run with any email platform, including Domino, Exchange,
21 SunMail, and other email servers. By contrast, Symantec runs on a narrower set of options –
22 potentially resulting in increased deployment and operating costs.

23 **6. ZL Products Can Halve Storage and System Costs With "EUJS"**

24 66. Symantec creates two distinct archives, one for storage reduction (so-called
25 "stubbing") and one for discovery or compliance (journaling). This creates two copies of the data.
26 However, if the user does not want "stubbing" (where the attachment is moved to the archive and
27

1 a URL link is left in the original email), but still wants the storage reduction benefits while
2 providing end-users long term access to their emails, then the ZL Products can offer End-User
3 Journal Search (EUJS). This allows the user to get the benefit of an “infinite” mailbox, but storing
4 only one copy instead of two. Symantec cannot offer EUJS.

5
6 **7. ZL Offers better Support than Symantec**

7 67. ZL offers large enterprises superior support due to the following reasons:

- 8 i. ZL policy is to control every line of code for each critical component in the
9 application. This is necessary to diagnose and fix problems as they arise. If
10 there is licensed code from a third party, it is effectively a black hole, making
11 diagnosis difficult. Even where diagnosis has been made, it is even more
12 difficult to fix, if the third party does not share the same urgency to fix it.
- 13 ii. Since ZL targets the large enterprise, it tailors its support structure
14 accordingly. It designates experienced engineers, at least two per account,
15 who then take support calls directly from enterprise customers. Enterprise
16 customers like the fact that they get immediate recognition and familiarity of
17 their system configuration and immediate access to product expertise, instead
18 of wasting their time explaining to lesser-trained call center personnel and
19 waiting for a callback.
- 20 iii. ZL’s model has produced effective results. ZL’s time-to-problem-resolution
21 is probably the fastest in the industry, which in turn produces happy
22 enterprise customers. Even Gartner is unable to dispute this.
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26 **D. IMPLIED FALSITY: THE MQ IS DECEPTIVE AND MISLEADING**

27 68. The relative MQ placement of ZL versus Symantec gives a clear message that ZL’s

1 offerings are significantly inferior to Symantec's.

2 69. Gartner provides an ostensible guide to its MQ placement by citing the various
3 criteria it weights along the two axes of "Ability to Execute" and "Completeness of Vision".

4 70. ZL believes that the MQ model has inherently deceptive components. The individual
5 weights of MQ criteria are not specified beyond vague descriptions of how heavily they are
6 weighted, i.e., heavy, standard, low. Further, Gartner refuses to disclose individual values for
7 each criterion to the vendor being evaluated. This lends itself to arbitrary and misleading
8 assessments.

9 71. The MQ is also highly subjective. There is no mathematical discipline or process
10 disclosed which can compute to a definitive point on the MQ map. Absent such mathematical
11 discipline in determining an MQ placement, the process must necessarily degrade into a
12 subjective assessment, which would then render as window dressing all the weights and measures
13 preceding this exercise.

14 72. The MQ is a "linear" model based on simple weightings of criteria, which can be
15 highly misleading. For example, if one assigns 5 points each to 20 criteria, including comfort, in
16 renting a car, then a certain car, perfect in every way but comfort, could score as high as 95 points
17 out of a possible 100, thus beating out many other cars. However, that score is misleading if the
18 driver's seat is locked in the fully reclined position. The ensuing discomfort would disqualify the
19 car, no matter how high the other scores. The MQ fails to specify how it can overcome such "non-
20 linear" evaluations to avoid misleading conclusions.

21 73. In other words, if high accuracy and speed of search were absolutely necessary to
22 enterprise customers (which they usually are), and if Symantec fails to satisfy the customer here,
23 then it should be disqualified from the MQ, no matter how well it did in "Vision" or "Execution".
24 The MQ does not address this problem, and, consequently, becomes a misleading yardstick.

25 74. Finally, Gartner's Group VP and Ombudsman, Nancy Erskine, in her email to ZL
26 dated 15 May 2009, informed ZL that, for the MQ, ZL was among the top-rated vendors in the
27 product area: "ZL was given credit for great product performance as well as good prices and

1 consistent support.” However, she adds, “areas where ZL did not score highly were in
2 Product/Offering Strategy and Geographic Strategy in the Vision area. In Execution, scores on
3 Viability, Marketing Execution and Sales were lower than others.” Given these statements, it is
4 impossible to reconcile how the these non-product criteria can be weighted with such force
5 against ZL and so heavily in favor of Symantec that the placement differentials in the MQ can
6 possibly be explained or justified.

7 75. With regard to the MQ ranking process, the ZL Placement is rendered even more
8 opaque by Ms. Erskine’s comment in her email: “As you know, Gartner does not share specific
9 “scores” rated for each criterion category.” This lack of transparency is precisely what ZL has
10 been fighting all these years. Without transparency, the MQ exercise deteriorates into a charade,
11 where arbitrary scores cannot be challenged.

12 76. Ultimately, perhaps the most revealing point made by Ms. Erskine was the
13 following: “My sense is that there has been a relationship issue for many years with Carolyn
14 DiCenzo, and at this point it’s come down to level of trust and respect.”

15 77. While Ms. Erskine’s assessment may explain much of what has transpired, it begs
16 the question how Gartner management can allow the analyst’s personal likes or dislikes to affect
17 the production of such an influential report that impacts so many parties to the Gartner contract:
18 vendors, buyers, partners, the fostering of innovation and the high tech economy at large. For the
19 last six years, ZL has suffered under the yoke of an analyst who went out of her way to injure ZL
20 due to a “personality conflict”.

21 **E. GARTNER KNEW THAT THE DEFAMATORY STATEMENTS ABOUT ZL AND THE ZL PRODUCT**
22 **WERE FALSE, OR WAS RECKLESS WITH RESPECT TO SUCH FALSITY.**

23 78. Gartner continues to maintain that it has no knowledge of the performance problems
24 with Symantec, even when there was, and is, an ample and persistent stream of evidence, from
25 dissatisfied customers and partners; user blogs and postings; trade publications; and Symantec’s
26 own collateral, including its technical manuals.

27 79. Gartner’s continued disavowal of knowledge of Symantec’s performance gap is

1 incredulous in the face of:

- 2
- 3 i. Gartner’s claim of pre-eminent expertise in technology matters;
- 4 ii. ZL’s continuous attempts to make Gartner aware of the performance gaps over
- 5 many years; and
- 6 iii. The ground-swell of market information concerning customers who are
- 7 extremely dissatisfied with Gartner’s “leader”.⁴
- 8

9 80. At the same time that it disavows any knowledge of Symantec’s problems, Gartner

10 acknowledges some of the principal challenges in email archiving: the time to index large

11 volumes of data, and the time to search them, “continues to be a key concern”. (emphasis added)

12 2008 MQ Report, p.2. Together with most industry experts, Gartner agrees that managing the

13 tremendous volumes of email in large organizations (called “scalability”), and being able to

14 quickly and efficiently search these large volumes of data are critical to any enterprise product.

15 Indeed, the 2008 MQ states that so-called “leaders” must have robust search: “Robust search,

16 review and export features are not only required but are the focus for most scalability concerns”.

17 2008 MQ Report, p. 6.

18 81. The dual issues of scalability and search are critical to the ability of any archive

19 product to satisfy the minimum requirements of electronic discovery.

20 82. Despite numerous attempts by ZL to provide relevant product and company

21 information to Gartner since 2005, Gartner has continued to disparage ZL and the ZL Products by

22 placing it at or near the bottom of the MQ Reports.

23 83. In fact, the ZL Products significantly out-perform the products of vendors who are

24

25 ⁴ Examples of dissatisfied EV buyers which are looking to replace or have replaced EV

26 include: a media player with 17,000 employees, healthcare player with over 60,000 employees,

27 Public sector customer with over 35,000 employees, Industrial manufacturer with over 20,000

employees, Industrial conglomerate with over 100,000 employees.

1 ranked by Gartner much higher in the MQ Reports. Indeed, Gartner readily acknowledged in
2 meetings with ZL that the ZL Products were strong.

3 84. While acknowledging that ZL Products were strong, Gartner also knew, or was
4 reckless with respect to the fact that Gartner's "leading" product was seriously inferior to the ZL
5 Product with respect to the same issues that Gartner itself said were the "key concerns" i.e.
6 scalability and search.

7 85. For instance, the critical e-discovery requirement of searching across the entire data
8 archive, ZL Products is estimated to have search speeds which range from at least 10 to as much
9 as 1,000 times faster than that of the Symantec. Public materials also note the problems with
10 Symantec EV:

11 The product has at least one major weakness, though: relying on Alta Vista for
12 searching and indexing. Alta Vista has reached the end of its life, and though
13 Symantec asserts that it won't move away from this solution, EV customers have
14 consistently told us that search and retrieval can be very slow. This has been
15 enough of a shortcoming for some customers who have to routinely run complex
16 queries (e.g., for discovery) to switch to other systems.⁵

17 **F. GARTNER INTERFERED WITH ZL'S PROSPECTIVE SALES**

18 86. Gartner is imperially aware of its own power to influence the purchases of
19 technology, especially by large enterprise customers. At all relevant times to this complaint,
20 Gartner knew that ZL was targeting large enterprise customers – precisely the market in which
21 Gartner has most influence.

22 87. And yet, in the face of overwhelming concerns about Symantec in the public
23 domain, and ZL's own protests that ZL was the only product that could serve the large enterprise
24 market – Gartner continued a reckless campaign to hoist its champion, Symantec, to the "Leader"
25 position, while ZL languished as a "Niche" player. Moreover, on many occasions since 2005,

26 _____
27 ⁵ Expert Insight: Symantec Enterprise Vault, Byte & Switch, June 26, 2008.
<http://www.byteandswitch.com/storage/backup-recovery/expert-insight-symantec-enterprise-vault.php>

1 Defendant DiCenzo actively discouraged prospective customers regarding the purchase of ZL
2 Products.

3 **V. PUBLIC AND PRIVATE INJURIES CAUSED BY GARTNER'S WRONGFUL**
4 **CONDUCT**

5 **A. LOST SALES FOR ZL**

6 88. The MQ's influence has resulted in lost sales and opportunities for ZL in many types
7 of situations. The following cases are examples where a ZL prospect refused to consider ZL at
8 the very beginning of the sales process, because of the Defamatory Statements:

- 9
- 10 i. A services company with over 140,000 employees
 - 11 ii. A financial services company concentrated in the West and Midwest with over 700
12 branches and 11,000 employees
 - 13 iii. A medical university with 15,000 faculty and staff
 - 14 iv. A diversified industrial manufacturer with over 70,000 employees
 - 15 v. One of the world's largest suppliers of electronics with over 90,000 employees

16

17 89. The following cases are examples where a ZL prospect refused to continue
18 discussions with ZL in the middle of the sales process, because of the Defamatory Statements:

- 19
- 20 i. An IT company with over 50,000 employees
 - 21 ii. An insurance company with over 10,000 employees
 - 22 iii. An industrial manufacturer with over 25,000 employees
 - 23 iv. A manufacturer with over 20,000 employees
 - 24 v. A media company with 15,000 employees

25

26 90. Perhaps the most significant injuries to ZL are associated with the companies that
27 ZL never becomes aware of – because they would not even consider a vendor considered “niche”

1 by Gartner.⁶

2 **B. INJURY TO THE PUBLIC**

3
4 91. The MQ Report and lack of transparency harm the public good and stifle innovation
5 – because the MQ is biased in favor of large vendors with large sales and marketing budgets. ZL
6 has developed the strongest solution in the marketplace, with mostly bootstrapped funding and
7 without being controlled by venture capitalists. It achieved profitability early, maintains moderate
8 sales growth rates and profit margins, and has succeeded in building a satisfied customer base of
9 large enterprises. This contrasts with many of its peers which typically got VC funding, spent
10 heavily in promotion, sales and marketing, shipped product too early, struggled with unhappy
11 customers and wound up with losses, which eventually prompted VCs to put them on the selling
12 block. Plaintiff prides itself on competing and winning in a fair fight and, indeed, embraces
13 robust competition. However, Gartner, as a third party, waded into the fray in the role of the
14 influential analyst, and tilted the playing field toward the vendors it favored with a high MQ
15 position, based on assessment that were fundamentally flawed.

16 92. Since Gartner refuses to share the specifics of the evaluation which leads to the MQ,
17 the end-result is an arbitrary grade which cannot be intelligently questioned. It is clear from ZL's
18 experience that Gartner's market power and conduct can crush a startup's potential and stifle
19 innovation if it suits its purpose.

20 93. It is also important to note that due to Gartner's long shadow in the Silicon Valley,
21 very few startups have had the resources or the courage to loosen Gartner's oppressive chokehold.

22
23 ⁶ In a recent account, ZL engaged a major IT player with over 75,000 employees that was on the
24 verge of purchasing EV. However, ZL was blocked from consideration, after many repeated
25 attempts by ZL to open the door, the customer relented. ZL succeeded in going to POC. The
26 differences were so stark, the customer remarked that ZL was four to five times better than EV in
27 overall performance. As usual, someone asked why we were so low on the MQ. It was only through
the POC, that ZL was able to disprove the MQ placement and eventually won the account.
The situation begs the question what harm large enterprise customers could have avoided had they
been accurately apprised of the capabilities of the ZL Products.

1 Neither are the startups' VC shareholders in any rush to upset Gartner, since they have to take
2 care of their other startup investments, which may be seeking to get into Gartner's good graces.
3 In the meantime, since the U.S. technology sector, which has traditionally been a key driver of the
4 U.S. economy, is poorly served by the Gartner hegemony. And this, at a time when American
5 influence and economic weight appear to be flagging. To release American innovation and allow
6 it to flourish in open competition, without the capricious interference of third parties to dictate
7 winners and losers, ZL believes it is time to rectify the situation in the court system to
8 reinvigorate competition and innovation in the U.S. technology sector.

9
10 **FIRST CAUSE OF ACTION**
(Defamation of Character)

11 94. ZL re-alleges and incorporates herein paragraphs 1- 93 above.

12 95. The Defamatory Statements disparaged Plaintiff's business reputation because they
13 expressly characterized Plaintiff as having negative "Completeness of Vision" and "Ability to
14 Execute". These negative assessments were published to thousands of prospective purchasers of
15 the ZL Products, who regularly referred to the MQ as the leading reason for not purchasing ZL.

16 96. The Defamatory Statements were false because, among other things, the ZL
17 Products were, and are, superior to most competing products (including those ranked much higher
18 in the MQ Report) in terms of functionality required by customers for email archiving
19 technology, including speed of search for electronic discovery purposes.

20 97. Because market research could not support the Defamatory Statements, Gartner
21 knew, or was reckless as to the fact that, the Defamatory Statements were false.

22 98. Defendant's publications are ongoing, and its industry reports (including the MQ
23 Reports) continue to be published. Money damages will not make Plaintiff whole for the injury
24 occasioned by these statements. Unless enjoined by this Court, these false and damaging
25 statements will continue.

26 99. As a direct and proximate result of Gartner's Defamatory Statements, ZL has
27 suffered damages of at least \$132,000,000 to its business.

1 products and services of Gartner, Inc. with the intent to induce the public to purchase Gartner's
2 goods and services.

3 109. The Expertise Claims were a material reason for the reliance placed on Gartner by
4 members of Gartner, Inc.'s target audience – IT purchasers for large enterprises.

5 110. Gartner has consistently promoted Symantec despite the serious product limitations
6 in Symantec – which Gartner, as the self-proclaimed “expert”, knew, or ought to have known.

7 111. As a consequence of the reliance on the Expertise Claims, and the false
8 representations made by Gartner about the ZL Products, purchasers of email archiving solutions
9 typically choose to purchase Symantec (and not ZL Products). Consequently, ZL has suffered
10 competitive harm as a result of Gartner's false Expertise Claims.

11 112. Had the Expertise Claims been true, Gartner would have provided more accurate
12 assessments of both ZL and Symantec, with the result that there would have been fair competition
13 in the marketplace.

14
15 **FOURTH CAUSE OF ACTION**
(False Statements under Lanham Act, § 43(a) concerning the Products of Symantec)

16 113. ZL re-alleges and incorporates herein paragraphs 1- 112 above.

17 114. The “Leadership” ranking (“Leadership Ranking”) bestowed on Symantec by
18 Gartner was a material reason that IT purchasers tend to purchase Symantec.

19 115. The Leadership Ranking was, and is, false or misleading.

20 116. The Leadership Ranking was, and is, relied upon by the purchasers of email
21 archiving software in large enterprises.

22 117. But for the Leadership Ranking, ZL Products would have likely been chosen by
23 customers instead of Symantec.

24 **FIFTH CAUSE OF ACTION**
25 **(False or Misleading Advertising – Cal. Bus. & Prof. Code § 17500)**

26 118. ZL re-alleges and incorporates herein paragraphs 1- 117 above.

27 119. As noted by Gartner itself, Gartner's “objective and independent” research is the

1 core of its operations – and it is this research that drives Gartner’s revenues in “consulting” and
2 events”. Thus, Gartner’s research, such as the MQ Reports, - are communications made with the
3 intent of selling Gartner’s services, including its consulting services, as well as its marketing
4 events.

5 120. As alleged in the foregoing paragraphs of this complaint, the MQ Reports contain
6 statements which are false or misleading, and which have caused direct harm to ZL and which
7 have misled the public.

8
9 **SIXTH CAUSE OF ACTION**
(Unfair Competition – Cal. Bus. & Prof. Code § 17200)

10 121. ZL re-alleges and incorporates herein paragraphs 1- 120 above.

11 122. The acts of Gartner complained of herein, including the Defamatory Statements and
12 the false Expertise Claims constitute unfair competition in violation of Cal. Bus. & Prof. Code §§
13 17200, *et. seq.*, and have caused ZL to lose sales that it would have made but for Defendant’s
14 wrongful conduct.

15 123. Due to the conduct of Gartner, ZL has suffered irreparable harm, has suffered injury
16 in fact and has lost money or property as a result of Gartner’s unfair acts and business practices.
17 It would be difficult to ascertain the amount of money damages that would afford Plaintiff
18 adequate relief at law. Plaintiff’s relief at law is not adequate to compensate ZL for the injuries
19 inflicted by Defendants. Accordingly, Plaintiff is entitled to preliminary and permanent
20 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

21 124. Garner’s conduct has been intentional and willful and in conscious disregard of ZL’s
22 rights, and therefore, ZL is entitled to its attorney’s fees.

23 **SEVENTH CAUSE OF ACTION**
24 **(Negligent Interference with Prospective Economic Advantage)**

25 125. ZL re-alleges and incorporates herein paragraphs 1- 124 above.

26 126. Gartner knew, or should have known that ZL was engaged with large enterprise
27 customers – the very audience that is targeted by the MQ.

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DATED: May 29, 2009

Respectfully submitted,
NARANCIC & KATZMAN, P.C.

By /s/ Perry J. Narancic
Perry J. Narancic

Attorneys for Plaintiff
ZL TECHNOLOGIES, INC.

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VII. DEMAND FOR JURY TRIAL

Plaintiff ZL Technologies, Inc. hereby requests a jury trial on all issues so triable.

DATED: May 29, 2009

Respectfully submitted,

NARANCIC & KATZMAN, P.C.

By /s/ Perry J. Narancic
Perry J. Narancic

Attorneys for Plaintiff
ZL TECHNOLOGIES, INC.