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ZL TECHNOLOGIES, INC.
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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 ZL TECHNOLOGIES, INC.,

14 Plaintiff,

15 v.

16 GARTNER, INC. and CAROLYN DiCENZO,

17 Defendants.
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Case No. 09-CV-02393-RS

**FIRST AMENDED COMPLAINT FOR
DEFAMATION AND TRADE LIBEL**

DEMAND FOR JURY TRIAL

Hon. Jeremy Fogel

1 1. Plaintiff ZL Technologies, Inc. (“ZL”) hereby alleges as follows:

2 **PARTIES**

3 2. ZL is a corporation organized under the laws of the State of California, with its
4 principal place of business in San Jose, California.

5 3. Defendant Gartner, Inc. (“Gartner”) is a corporation organized under the laws of
6 the State of Delaware, with its principal place of business in Stamford, Connecticut.

7 4. Defendant Carolyn DiCenzo (“DiCenzo,” collectively with Gartner,
8 “Defendants”) is, and at all times relevant was, a citizen of the state of Massachusetts residing in
9 Massachusetts. At all relevant times, DiCenzo has been employed by Gartner as its lead analyst
10 for email archiving software, and has had primary direct responsibility on behalf of the company
11 in connection with the conduct and events described in this complaint.

12 **JURISDICTION AND VENUE**

13 5. This Court has original jurisdiction under 28 United States Code section 1332, in
14 that this is a civil action between citizens of different states in which the matter in controversy
15 exceeds, exclusive of costs and interest, seventy-five thousand dollars.

16 6. Venue in the Northern District of California is proper pursuant to 28 United States
17 Code section 1391(a) in that a substantial part of the events or omissions giving rise to the claims
18 occurred in this district.

19 7. Intra-district assignment of this case to the San Jose Division is appropriate
20 pursuant to Civil Local Rule 3-2(c) in that a substantial part of the events giving rise to the
21 claims occurred in the San Jose Division.

22 **GENERAL ALLEGATIONS**

23 *ZL’s Superior Products and Services*

24 8. Founded in 1999, Plaintiff ZL makes and sells enterprise software, including
25 cutting-edge systems that allow large enterprises to store, index, search and extract electronic
26 data, primarily email and files. Those software systems belong to a category of products known
27 generally as “email archiving software.”
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1 9. Email archiving capabilities are vital to modern businesses, as well as other
2 institutions and governmental entities. As the volume of email and computer files increases, and
3 as corporations and other enterprises move more of their day-to-day functions online, the ability
4 to organize, search and retrieve information stored electronically becomes increasingly critical.

5 10. ZL's products allow businesses and other entities to archive massive stores of
6 electronic information cost-effectively, while preserving their ability to tap into that data as
7 needed without disrupting operations. Among other things, ZL's products allow regulated
8 entities to comply with governmental compliance regimes. The need for such archiving software
9 is also particularly acute for entities involved in or facing the possibility of litigation and the
10 concomitant obligation to preserve and produce all relevant electronic information. ZL's
11 products are tailored to assist its customers' compliance with those legal obligations, in addition
12 to their other archiving needs.

13 11. ZL's business model stands out from its peers in the high-technology arena. ZL
14 has forgone the typical backing from venture capitalists and instead has remained primarily self-
15 funded. As a result, ZL has been able to focus on steady product development without
16 sacrificing quality to the typical short-term needs of venture capital funders.

17 12. ZL now offers the strongest products with the broadest capabilities in the email
18 archiving market. Those products include features many of ZL's leading competitors do not, and
19 are based on superior technology that allows ZL's customers to archive and utilize their email
20 and electronic document stores more efficiently and effectively. ZL's products outperform its
21 competitors' offerings with respect to the most significant qualities for email archiving software:
22 (a) search accuracy, (b) search speed, and (c) completeness of search. ZL's software is also
23 more scalable, meaning that customers can more easily expand usage without incurring
24 disruption and significant additional expenditure on hardware. ZL has successfully deployed its
25 software in difficult large-scale environments that have broken solutions offered by its leading
26 competitors.

27 13. For example, compared to Enterprise Vault, the product sold by ZL's leading
28 competitor, Symantec Corporation ("Symantec"), ZL's software searches more than a thousand

1 times faster, with greater accuracy, scales up one to two orders of magnitude higher in any given
2 vault, all at half the cost for servers, storage and administrative overhead.

3 14. ZL also offers customer service that is superior to that of its competitors,
4 primarily due to product and organizational architecture and performance.

5 15. ZL has won a core of customers that include some of the world's largest
6 enterprises. Though ZL's growth has been primarily self-funded, the company has nevertheless
7 worked its way to profitability, much earlier and more consistently than most of its peers.

8 16. Despite its objectively superior products and service, however, ZL's sales have
9 remained only a fraction of those of its larger competitors, notably those of Symantec.

10 Gartner's Dominance of the Information Technology Market

11 17. Gartner, a company with \$1.3 billion in revenues, bills itself as "the world's
12 leading information technology research and advisory company." Gartner provides "research
13 and analysis" to its customers:

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

17 18. The large businesses, institutions and governmental entities that are the customers
18 for enterprise software like that sold by ZL rely heavily on outside advice when making their
19 purchasing decisions. Gartner dominates the market for providing such advice.

20 19. As a result of that dominance, Gartner exercises make-or-break power over the
21 technology providers whose products are aimed at such purchasers. In fact, large purchases of
22 technology are often based exclusively on Gartner's reports. For example, a Department of
23 Veterans' Affairs report recently found that \$16 million in purchases were made entirely on the
24 basis of Gartner's reports (a practice the Department's Inspector General found improperly
25 limited competition).

26 20. Gartner's own marketing materials tout the company's unique influence. Its
27 website states:

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

1 26. The Magic Quadrant Report places the vendors it covers into one of four
2 categories, “Leaders” (the highest category), “Challengers,” “Visionaries,” and “Niche Players”
3 (the lowest category). Vendors are arrayed in one of the four categories on a grid, called the
4 “Magic Quadrant”:

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

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12 27. Gartner describes a vendor in the “Leaders” quadrant as one that “[e]xecutes well
13 today and is well-positioned for tomorrow.” A vendor in the “Challengers” quadrant is similarly
14 described as one that “[e]xecutes well today or may dominate a large segment, but does not yet
15 understand market direction.” Gartner describes a vendor in the “Visionaries” quadrant is one
16 that “[u]nderstands where the market is going or has a vision for changing market rules, but does
17 not yet execute well.”

18 28. On the other hand, Gartner describes a “Niche Player” as a vendor that either
19 “[f]ocuses successfully on a small segment, or is unfocused and does not outinnovate or
20 outperform others.” The Magic Quadrant Reports define “Niche Player” as the lowest-ranked
21 quadrant and is widely perceived by buyers as identifying the least desirable vendors.

22 29. Gartner further elaborates that Niche Players who do not focus on a small
23 segment of the market “have limited ability to innovate or outperform other vendors.”
24 Customers are explicitly warned that selecting a Niche Player “may be a risky choice.”

25 30. Gartner claims that it places vendors within the “Magic Quadrant” based on
26 defined criteria. The y-axis of the quadrant is said to reflect “Ability to Execute,” while the x-
27 axis is said to reflect “Completeness of Vision.” The Magic Quadrant Reports themselves, along
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1 with Gartner's other publicly available materials, set out the components that comprise each of
2 those two variables.

3 31. Gartner states that the "Ability to Execute" is a weighted scoring of the following
4 components:

- 5 • Quality of goods and services,
- 6 • Overall ability,
- 7 • Sales execution,
- 8 • Market responsiveness and track record,
- 9 • Marketing execution,
- 8 • Customer experience, and
- 9 • Operations.

10 32. Gartner says that the x-axis of its analysis, "Completeness of Vision," is based on
11 the following components:

- 12 • Market understanding,
- 13 • Market strategy,
- 14 • Sales strategy,
- 15 • Product strategy,
- 16 • Business model
- 16 • Industry strategy,
- 17 • Innovation, and
- 17 • Geographic strategy.

18 33. Each of those components is in turn comprised of sub-components. "Quality of
19 Goods and Services" is, for example, broken out into such factors as "capabilities, quality,
20 feature sets." The various components are assigned weights, designated as "heavy," "standard,"
21 or "low."

22 34. Gartner does not release or disclose the individual values for each criterion
23 underlying its assessment of any product.

24 *Gartner's Characterization of Its Statements as Factual*

25 35. The placement of a vendor, both within one of the four quadrants of a Magic
26 Quadrant and relative to the vendor's competitors in the Magic Quadrant, is a statement of fact.
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1 36. Gartner intends said placement within the Magic Quadrant to be understood as a
2 statement of fact, and the readers of the Magic Quadrant Reports understand the placement of a
3 vendor within the Magic Quadrant to be a statement of fact.

4 37. In the Magic Quadrant Reports and elsewhere, Gartner explicitly states that its
5 research and analysis, including the information contained in the Magic Quadrant Reports, is
6 intended to be understood as factual.

7 38. As a Gartner Vice President and analyst wrote on the Gartner website, the
8 company's placement of vendors in the Magic Quadrant Reports is based on a "rigorous
9 mathematical model." In an exchange with a former employee, the Gartner Vice President wrote
10 that since the 1990s Gartner has replaced qualitative analysis with a quantitative model: "In your
11 day, [Magic Quadrant Reports] were developed by smart analysts placing dots. Today, we have
12 a much more rigorous mathematical model – we don't just place dots."

13 39. Gartner also implicitly characterizes the content of the Magic Quadrant Reports as
14 factual by alleging that it gives vendors the opportunity to respond to "factual errors" contained
15 therein.

16 40. For example, the 2009 Magic Quadrant Report for email archiving states: "Prior
17 to publication, each vendor has the opportunity to look at its placement on the Magic Quadrant
18 and the strengths and challenges listed, and to respond to any factual errors."

19 41. Gartner also states that its research and analysis generally is factual. For example,
20 a page on its website titled "Why Use Gartner," states:

21 Technology investors need exactly what Gartner provides: highly
22 discerning research that is objective, defensible and credible to
 help do your job better.

23 42. A self-described "guide" to Gartner research published by the company similarly
24 claims: "Gartner Research is built on objectivity," and details a research methodology it claims
25 ensures the "ultimate objectivity": "By subjecting every Gartner Research project to this process,
26 Gartner assures ultimate objectivity for our clients."
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1 43. In Gartner’s 2008 SEC Form 10-K, the company stated, “Gartner consultants
2 provide fact-based consulting services to help our clients use and manage IT to enable business
3 performance.”

4 44. The company’s website also states: “We are fact-based and knowledge-centric.”

5 *The Unpublished Data Allegedly Underlying the Magic Quadrant Reports*

6 45. Gartner expressly asserts that the statements made in the Magic Quadrant Reports
7 are based on a large volume of undisclosed facts and data that the company compiles through
8 what it characterizes as a comprehensive research process.

9 46. For example, the 2009 Magic Quadrant Report for email archiving itself states:

10 Shaping Gartner’s view regarding proper vendor placement are
11 more than 1,000 conversations over the past year with Gartner
12 customers, as part of our inquiry service, survey responses and
13 updates from the vendors in the March/April 2009 time frame, and
14 over 70 conversations with vendor-supplied references in March
15 and April 2009. We learn from these conversations not only why a
16 client is choosing or has chosen a specific vendor, but why it did
17 not choose other vendors that were on its shortlist. We also learn
18 about experiences running the product in production environments,
19 and how effective the vendors are in responding to client issues.
20 Increasingly, we are learning about why a company is choosing to
21 replace an existing vendor with a new vendor solution.

22 47. As Gartner’s Research Director put it, in a statement on the company’s website
23 titled “How not to use a Magic Quadrant”:

24 Also, an MQ [the Magic Quadrant Report] reflects only a tiny
25 percentage of what an analyst actually knows about the vendor. Its
26 beauty is that it reduces a ton of quantified specific ratings (nearly
27 5 dozen, in the case of my upcoming MQ) to a point on a graph,
28 and a pile of qualitative data to somewhere between six and ten
29 one-or-two-sentence bullet points about a vendor.

30 48. Gartner does not, however, publish any of that data it alleges underlies the Magic
31 Quadrant Reports.

32 49. In fact, Gartner’s business model depends on the non-publication of the data it
33 claims underlies its Magic Quadrant Reports.

34 50. While Gartner sells the Magic Quadrant Reports, its receipts from such sales
35 constitute only a fraction of the company’s overall revenues. A large part of Gartner’s revenues

1 are derived instead from the sale of the additional information and analysis that are not disclosed
2 in the Magic Quadrant Reports, such as customized analyst reports, analyst consulting time,
3 inquiries and other related services. They comprise the bulk of the research segment of Gartner's
4 business, which is its largest and most profitable business unit.

5 51. In order to promote that part of its business, Gartner emphatically tells its
6 customers about the larger body of data Gartner claims to have in its possession but does not
7 disclose in the Magic Quadrant Reports themselves.

8 52. The company's website also touts the depth of that additional information, and its
9 value for clients who pay for the additional access, here referred to as "investor clients":

10 Investor clients have full access to the combined strength of
11 Gartner Core Research, the most comprehensive analysis of
12 technology anywhere, and Gartner Dataquest, the technology
13 world's definitive forecasting database. Use Gartner to support
14 buy/sell recommendations, perform due diligence, evaluate risks
15 and opportunities, and generate ideas.

16 53. As another part of Gartner's website explains, in a section entitled "How can
17 clients make better use of Gartner Research?":

18 Using gartner.com skillfully is important. It's the way to get at
19 everything we publish. Beyond that, it's important to talk to
20 Gartner analysts, particularly one who's studying your issue. It's
21 easy for us to provide written research to clients, but that's actually
22 only a fraction of what we know. Gartner Research really comes
23 alive when you spend 30 minutes on the telephone or face to face
24 with an analyst. Many people think Gartner Research is a library
25 or database. That's only one dimension. The written stuff is
26 reference material that helps you understand the eventual
27 conversation with the analyst, who can explain the most recent
28 findings specific to your business.

29 54. Gartner sells time with its analysts at a high price. As far back as 2004, Gartner
30 charged \$6,500 for a single engagement with an analyst over the phone, \$10,000 for a face-to-
31 face engagement with an analyst, \$12,000 for an engagement with an analyst involving an
32 external client audience and \$16,000 for engagements with non-Gartner clients. The list price
33 for an all-day session with an analyst was \$15,000. Gartner also sells packages to clients for
34 annual bundles of services totaling in the tens of thousands of dollars or more. On information
35 and belief, those prices have increased since 2004.

1 55. Gartner also touts its cross-selling of analyst time in public disclosures to its
2 investors. The company's 2008 SEC Form 10-K states: "Gartner core global research product
3 [like the Magic Quadrant Report] is the fundamental building block for all Gartner services ..."
4 and that the "foundation of our business model is our ability to create and distribute our
5 proprietary research content as broadly as possible via published reports and briefings" and other
6 channels. Once that wide foundation is laid, Gartner seeks to leverage its initial distribution of
7 research by cross-selling other research and analysis, focusing on the needs of its largest clients:
8 "A critical part of our long-term strategy is to increase business volume with our most valuable
9 clients, identifying relationships with the greatest sales potential and expanding those
10 relationships strategically by offering strategically relevant research and analysis."

11 56. In its 2008 SEC Form 10-K Gartner describes the results of those efforts as
12 follows: "These initiatives have created additional revenue streams through more effective
13 packaging, campaigning and cross-selling of our products and services."

14 57. Thus, Gartner's non-disclosure of the facts and data underlying Magic Quadrant
15 Reports is a deliberate part of its effort to sell the additional detailed research containing the
16 undisclosed information and more consulting time with its analysts who have access to it.

17 *Gartner's Alleged Opinions Are Explicitly Based on Those Undisclosed Facts*

18 58. In portions of Gartner's reports, it attempts to disclaim certain of its statements as
19 opinion. However, Gartner explicitly states that even its opinions, including those contained in
20 the Magic Quadrant Reports, are based on facts. Again, Gartner does not disclose those facts,
21 including those it claims underlie the statements contained in the Magic Quadrant Reports.

22 59. By those statements and otherwise, Gartner attempts to and does in fact create the
23 understanding that its opinions are to be construed as being based on undisclosed facts.

24 60. For example, in a brochure titled "The Gartner Research Process and
25 Methodologies" published on Gartner's website and otherwise made available to its customers,
26 Gartner states that its opinions are "valid" because they are based in fact: "Our opinions are
27 grounded in a solid base of facts verified by our own experienced analysts and others in business
28 and academia."

1 61. A publication by Gartner’s ombudsman similarly states: “Analysts’ opinions are
2 grounded in a consistent methodology and fact-based analysis.”

3 62. Gartner’s website also claims generally that its “insights” are based on a body of
4 undisclosed facts and data:

5 Gartner insights are drawn from a critical fact base not available
6 anywhere else.

7 63. In another example from its website, Gartner claims:

8 Gartner provides highly qualified, independent, objective and
9 accurate advice to our clients. As the world’s foremost authority
10 where business meets technology, we provide insight based on the
11 facts as our analysts see them, without unfair or undue influence.

12 64. Gartner has also attempted to disclaim its statements by drawing a distinction
13 between what it characterizes as “qualitative” as opposed to “quantitative” analysis or research.
14 However, Gartner’s own statements tell its customers that the two are founded on the same
15 factual basis, claiming that the qualitative components of the company’s analyses are reinforced
16 and validated by its quantitative research.

17 65. For example, the company’s guide to its research process states:

18 At Gartner, qualitative research is reinforced by quantitative
19 research. To validate Scenarios, analysts gather information
20 through formal and informal surveys. We analyze industry budget
21 information, financial reports, and government macroeconomic
22 reports. At this stage, ideas are brainstormed within cross-matrixed
23 Gartner research communities. Assumptions are also checked and
24 rechecked with CEOs, CIOs, CFOs, and vendors. No stone is left
25 unturned.

26 66. Gartner also specifically claims that its analysts’ statements generally are based in
27 fact. For example, one Gartner presentation stated that the company provides “[a]ccurate and
28 fact-based coverage created by well-timed and delivered vendor briefings and other analyst
interactions.”

 67. In those and other statements, Gartner attempts to, and in fact does, create the
understanding that all of its research and analysis—even that characterized as “opinion,”
“insight” or “qualitative” in nature—is based on verifiable fact.

Gartner's Inherent Bias

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2 68. Unlike other companies that provide ratings services, Gartner has a close
3 economic relationship with the companies it rates. On information and belief, Gartner's
4 revenues derived from the vendors it rates are greater than its revenues from any other customer
5 group.

6 69. First, Gartner actively markets time with its analysts to the vendors it rates.
7 Gartner tells those vendors that time with the analysts will help vendors understand Gartner's
8 view of the market and market trends. Gartner also tells those vendors and the public that the
9 vendors are evaluated, especially for the Magic Quadrant Reports' Completeness of Vision
10 standard, on how closely the "vendor's view of how the market will develop matches Gartner's
11 perspective." In those and similar statements, Gartner implies that a vendor can improve its
12 Magic Quadrant standing by tailoring its offerings to Gartner's view of the market and market
13 trends.

14 70. In order to obtain the information necessary to improving their rating, vendors—
15 including ZL—have entered into contracts with Gartner for analyst time. Payments to Gartner
16 on such contracts are substantial.

17 71. Vendors, for example, pay \$25,000 or more for a basic annual Gartner
18 subscription in order to obtain time with the analysts covering the vendor's market.

19 72. Without paying for such services, vendors are limited to "Vendor Briefings" with
20 Gartner. Vendor Briefings are one-way. In such briefings, vendors are limited to conveying
21 information they believe is relevant to Gartner, and provide no opportunity for vendors to obtain
22 information from Gartner.

23 73. Gartner's website describes paid time with analysts, or "client inquiries," as
24 follows: "During inquiries, the flow of information is mainly from analyst to vendor, and can be
25 highly interactive." In contrast, the unpaid "Vendor Briefings" are described as follows: "During
26 briefings, the flow of information is strictly from vendor to analysts and is not an interactive
27 analyst feedback session." Hence, during briefings, vendors receive no indication of the
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1 analyst's perspectives, and end up at a disadvantage in the analyst review, unless they pay for a
2 Gartner subscription to get analyst feedback.

3 74. Second, Gartner actively cross-sells to vendors. As described above, such cross-
4 selling is an explicit part of Gartner's business model. Gartner sells not just analyst time, but
5 also services related to marketing events and conventions, like booth spaces and presentations.
6 The fees for such services can also be substantial.

7 75. For example, vendors are encouraged to engage analysts for highly lucrative
8 marketing programs such as webinars and "Analyst Days." For example, Gartner's sales
9 executive for ZL proposed an expensive \$68,500 webcast with DiCenzo, in an email stating:
10 "It's how IBM and Symantec continue to leverage Gartner and Carolyn DiCenzo to open new
11 opportunities."

12 76. On information and belief, Gartner's analysts are paid commissions, amounting to
13 as much as 25 percent of total compensation. Thus, each individual analyst has a personal
14 conflict of interest with respect to his or her reviews of vendors.

15 77. On the larger scale, Gartner's entire business model sets up a conflict of interest
16 with respect to the vendors it reviews, who are also its customers. Vendors who are willing to
17 pay money to Gartner are given access to information Gartner explicitly states is relevant to how
18 vendors are reviewed, while vendors who do not pay are deprived of such information. A vendor
19 who spends more money is better able to understand the views of the analyst covering that
20 vendor, and better able to tailor its presentation to obtain a favorable review, all while forming a
21 relationship with the analyst—who receives a share of the fees paid by the vendor to Gartner. Of
22 course, Gartner itself also benefits from payments from vendors for other marketing and other
23 services.

24 78. Therefore, both Gartner and its analysts both have a strong interest in maintaining
25 or obtaining fees from vendors, and stand to benefit from their commercial relationships or
26 potential commercial relationships with those vendors by favorably reviewing them. Gartner's
27 website states that the intertwining of its analysts and its consulting and events business units
28

1 amounts to a “symbiotic relationship,” where analysts serve the role of enhancing business for all
2 units.

3 79. Furthermore, as Gartner’s public filings state, its business strategy targets its
4 largest customers for cross-selling of services. Those biases resulting from that strategy are
5 borne out in Gartner’s analyses, which are structured to favor large, established vendors over
6 smaller providers, even when those smaller vendors offer superior products and services.

7 80. Therefore, the “reviews” provided by Gartner are not objective opinions
8 expressed by an unbiased party, but statements made by an active participant in the market.
9 When Gartner expresses a favorable opinion of a particular vendor that has paid the company
10 substantial fees (or from which it hopes to obtain such fees) Gartner is not performing an
11 independent analysis, but making a self-interested statement about a business partner.

12 *Gartner’s Defamatory Statements in the Magic Quadrant Reports*

13 81. In each of the Magic Quadrant Reports for email archiving published from 2005
14 through the present, Gartner has designated ZL a “Niche Player,” placing it in the bottom left-
15 hand quadrant, which is the lowest possible quadrant, and in a position inferior to many of its
16 competitors on both the Ability to Execute and Completeness of Vision Axis.

17 82. Most notably, in each of those Magic Quadrant Reports, Gartner placed ZL in a
18 significantly inferior position, both with respect to the Ability to Execute axis and the
19 Completeness of Vision axis, with respect to Symantec. In each of those Magic Quadrant
20 Reports, Symantec was placed in the “Leaders” quadrant; in all but one year, Symantec was the
21 only “Leader.”

22 83. Gartner’s placement of ZL in the “Niche Players” category in those reports was
23 defamatory because a reader would understand that placement as indicating that ZL “is
24 unfocused and does not outinnovate or outperform others.”

25 84. Gartner defines a “Niche Player” as either having that meaning or indicating that
26 the vendor “operates successfully in a small segment.” Readers of the Magic Quadrant Report,
27 especially ZL’s potential customers, would understand that Gartner’s placement of ZL in the
28 “Niche Player” quadrant did not indicate that ZL “operates successfully in a small segment.”

1 Gartner does not state that ZL operates in a small segment, and it is widely known, especially to
2 the target audience of the Magic Quadrant Report, that ZL does not operate in a small segment.

3 85. In fact, ZL operates in the same segment as those in the “Leaders” quadrant and,
4 in many ways, operates in a much broader segment than Symantec. ZL targets the same
5 customers and geographic markets that Symantec does. In addition, ZL’s software can be used
6 with nearly all of the email server platforms used in the enterprise market, a contrast with
7 Symantec’s product, which for most of the past six years was compatible with only one email
8 server platform. Also, ZL is able to run on most of the popular operating systems and databases
9 in diverse enterprise environments, while Symantec is able to run on only a small subset of those
10 operating systems and databases. Therefore, Gartner’s placement of ZL in the “Niche Players”
11 quadrant is defamatory because it was intended to be, and in fact was, understood by the readers
12 of the Magic Quadrant Reports to indicate that ZL “is unfocused and does not outinnovate or
13 outperform others.”

14 86. Gartner’s placement of ZL in the “Niche Players” category in those reports was
15 defamatory because a reader would understand that placement as indicating that ZL does not
16 “[e]xecute[] well today” and that it is not “well-positioned for tomorrow.”

17 87. Gartner’s placement of ZL in a position inferior to its competitors in each of those
18 Magic Quadrant Reports, including but not limited to its placement of ZL in a position inferior to
19 Symantec, was derogatory because it was a statement that ZL was inferior with respect to the
20 criteria expressly stated in the Magic Quadrant Report itself and set forth above. Gartner
21 intended the placement to be understood in that manner, and the readers of those Magic Quadrant
22 Reports did in fact understand ZL’s placement on the Magic Quadrant in that manner.

23 88. In particular, Gartner’s placement of ZL in an inferior position on the “Ability to
24 Execute” axis was a statement about the inferiority of ZL’s products, service and customer
25 satisfaction. Again, Gartner intended the placement to be understood in that manner, and the
26 readers of those Magic Quadrant Reports did in fact understand ZL’s placement on the Magic
27 Quadrant in that manner.

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1 89. Gartner's placement of ZL in an inferior position in the Magic Quadrant Reports
2 were also intended to and in fact did convey a warning to potential customers that selection of
3 ZL "may be a risky choice." Those warnings were derogatory in themselves, but also because
4 they were understood by readers of the Magic Quadrant Reports to mean that ZL's products were
5 not good choices for enterprise email archive applications.

6 90. Gartner's placement of ZL in its Magic Quadrant Reports was also defamatory
7 because it implied the existence of undisclosed facts underlying the statements made by means of
8 the placement in the Magic Quadrant. That placement, taken together with Gartner's repeated
9 claims that the statements contained in its Magic Quadrant Reports and its research generally are
10 based on a body of undisclosed facts and data supported by a quantifiable, objective, and
11 verifiable methodology, implied that Gartner's placement of ZL in the Magic Quadrant Reports
12 was based on facts supporting the statement that Gartner's products, service and future prospects
13 were inferior in the manner described above.

14 91. The Magic Quadrant Reports containing those defamatory statements were widely
15 published to third persons by Gartner. The readers of those Magic Quadrant Reports to whom
16 they were published by Gartner included most if not all of ZL's potential customers.

17 *Gartner's Express and Implied Statements of Fact Were False*

18 92. The statements expressly made Gartner's inferior placement of ZL on the Magic
19 Quadrant Reports, as well as the statements implied by that placement, were false.

20 93. The truth is that ZL's products are not inferior to those of its competitors,
21 especially the email archiving product offered by Symantec, which was deemed a "Leader" in
22 each of the relevant Magic Quadrant Reports.

23 94. Measured objectively, ZL's products and service are superior to, or at least equal
24 to, the products and service of its competitors. For example, based on objective, quantifiable and
25 verifiable measures, ZL's offerings outperform those of Symantec in the areas of (a) search
26 accuracy, (b) search speed, and (c) completeness of search, which are the critical measures for
27 email archiving software. In addition, the future prospects for ZL's products are also superior to
28

1 those of Symantec, which sells software based on search technology widely acknowledged to be
2 outdated.

3 95. ZL has proven the superiority of its product by successfully deploying its software
4 in difficult large-scale environments that have broken solutions offered by competitors rated
5 more favorably by Gartner.

6 96. Though Gartner claims that its placement of vendors in the Magic Quadrants is
7 based on a “rigorous mathematical model” and objective, verifiable fact, the reality is that its
8 placement is highly subjective and inherently biased. Gartner does not disclose that subjectivity
9 or its biases, and in fact goes to great lengths to conceal it. Therefore, the readers of the Magic
10 Quadrant Reports understand the statements contained in those reports, whether characterized as
11 factual in nature, opinion or qualitative assessments, to be based on a body of accurate, objective
12 facts.

13 *Defendants’ Other Defamatory Statements*

14 97. At other times, DiCenzo and other Gartner representatives have made other
15 defamatory statements about ZL and its products.

16 98. For example, DiCenzo told a group of potential ZL customers and business
17 partners that ZL’s products and Symantec’s Enterprise Vault software were “the same.”

18 99. That statement, and other similar statements believed to have been made to other
19 potential ZL customers, were defamatory because they were meant and were understood by those
20 who heard the statements to mean that ZL’s products and Symantec’s Enterprise Vault were
21 identical with respect to features, performance, value and quality.

22 100. That statement, and other similar statements believed to have been made to other
23 potential ZL customers, were also defamatory because they implied the existence of undisclosed
24 facts supporting the statement, to the effect that ZL’s products and Symantec’s Enterprise Vault
25 were identical with respect to features, performance, value and quality.

26 101. In fact, as stated above, ZL’s products are superior to Symantec’s Enterprise
27 Vault, include different and superior features, and are based on core technology that operates
28 differently and in a superior fashion to Enterprise Vault.

1 110. Said statements were heard or read by persons other than ZL and Defendants,
2 including ZL's customers and potential customers, and were foreseeably made known to ZL's
3 customers, potential customers and others in the general public.

4 111. Said statements were made about and concerned ZL, and were so understood by
5 those who heard and/or read the publications.

6 112. The statements were false as they pertained to ZL.

7 113. The statements are defamatory on their face because they exposed ZL to hatred,
8 contempt, ridicule, and obloquy because ZL's reputation for producing high-quality products,
9 providing high-quality service and otherwise performing well with respect to its customers'
10 needs is vital to its business.

11 114. The statements were understood by listeners and/or readers in a way that defamed
12 ZL, and/or were understood to imply statements of undisclosed fact that were disparaging and
13 defamatory to ZL.

14 115. The statements of all Defendants were unlawful and caused damage to ZL in the
15 form of damage to its reputations, disparagement of its character, and economic damage, and
16 special damage directly arising from the defamation alleged herein.

17 116. These statements were unprivileged and made with actual malice, hatred, ill will,
18 improper and malevolent purpose and with knowledge of falsity or with reckless disregard for
19 the truth.

20 117. The above-described statements were malicious, fraudulent, oppressive, base, vile
21 and contemptible and were done with a willful and conscious disregard for ZL's rights and with
22 the intent to injure ZL, thus entitling ZL to an award of exemplary or punitive damages in an
23 amount according to proof.

24 118. WHEREFORE, Plaintiff prays for judgment as set forth below.

25 **SECOND CLAIM: TRADE LIBEL**

26 **(Against all Defendants)**

27 119. ZL incorporates herein by reference each and every allegation of the above
28 paragraphs as though fully set forth herein. This claim is asserted against all Defendants.

