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XIMPLEWARE CORP.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 **XimpleWare Corp.**, a California
Corporation,

13 Plaintiff;

14 v.

15 **Versata Software, Inc.**, f/k/a **Trilogy**
16 **Software, Inc.**, a Delaware corporation;
17 **Trilogy Development Group, Inc.**, a
California corporation; **Ameriprise**
18 **Financial, Inc.**, a Delaware corporation; and
19 **Ameriprise Financial Services, Inc.**, a
Delaware corporation,

20 Defendants.

Case No. 3:13-cv-5160-NC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
XIMPLEWARE'S *EX PARTE* APPLICATION
FOR TEMPORARY RESTRAINING ORDER, FOR
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION, AND FOR
EXPEDITED DISCOVERY**

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INTRODUCTION

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2 Plaintiff XimpleWare, Inc. has sued Versata Software, Inc. and its affiliated companies, as
3 well as an also infringing customer, Ameriprise Financial, for copyright infringement and related
4 claims. This case arises from Versata's wholesale appropriation of XimpleWare's copyrighted
5 VTD-XML software into Versata's own DCM product—without authorization from XimpleWare
6 and in clear violation of the limited GPL license under which XimpleWare makes its software
7 available—and Versata's multi-million dollar sales (and Ameriprise's multi-million dollar use)
8 of its DCM product, which includes XimpleWare's unlicensed VTD-XML software.

9 A temporary restraining order and preliminary injunction are warranted because, to date,
10 Versata has denied and concealed its infringement from both XimpleWare and Ameriprise, its
11 major distributor to tens if not hundreds of thousands of independent contractors, all continuing
12 even after repeated notices to each Defendant. The VTD-XML software that Versata has
13 misappropriated is XimpleWare's principal asset. Absent injunctive relief, XimpleWare will
14 continue to be irreparably harmed by loss of control over its sole asset.

STATEMENT OF FACTS

15
16 XimpleWare is a California corporation that develops and licenses software for extremely
17 efficient data processing. XimpleWare holds all the rights—including copyrights and patents—in
18 its software and its source code, including for its main product, which it calls VTD-XML.

19 Versata is an enterprise software company that sells several products, one of which is a
20 complex system for insurance companies called Distribution Channel Management, or DCM,
21 which it licenses for millions of dollars per customer. Ameriprise, a national financial services
22 company, has been a DCM customer for many years.

23 Recently, XimpleWare learned through Ameriprise that Versata had incorporated
24 XimpleWare's VTD-XML source code into DCM—but without obtaining a commercial license
25 from XimpleWare. Based on XimpleWare's discussions with Ameriprise, and according to filings
26 in Texas state court litigation between Versata and Ameriprise (but not XimpleWare), during
27
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