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8 Attorneys for Plaintiff,  
9 Clarilogic, Inc.

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 CLARILOGIC, INC., a corporation  
13 Plaintiff,

14 vs.

15 FORMFREE HOLDINGS  
16 CORPORATION, a corporation,  
17 and DOES 1 through 25, inclusive,  
18 Defendants.

Case No. '15CV0041 BAS NLS

**COMPLAINT FOR  
DECLARATORY JUDGMENT OF:  
INVALIDITY,  
UNENFORCEABILITY, AND/OR  
NON-INFRINGEMENT OF  
U.S. PATENT NO. 8,762,243; and  
DEMAND FOR JURY TRIAL**

19 Plaintiff, Clarilogic, Inc., for its complaint against defendants, FormFree  
20 Holdings Corporation (“FormFree”) and the DOES, alleges as follows:  
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**JURISDICTION**

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2 1. This is an action for declaratory judgment of invalidity,  
3 unenforceability and/or non-infringement of a United States Patent, arising out of  
4 the patent laws of the United States, Title 35 of the United States Code. Jurisdiction  
5 is based on 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

6 2. On information and belief, United States Patent No. 8,762,243 issued  
7 from the United States Patent and Trademark office on June 24, 2014 based upon an  
8 application (Serial No. 13/354,411, the “’411 Application”) filed January 20, 2012.

9 3. A true and correct copy of the ’243 patent is attached hereto as  
10 Exhibit A and incorporated by reference.

11 4. FormFree claims to be the owner by assignment of all right, title and  
12 interest in and to the ’243 patent.

13 5. FormFree recently directed a letter to Clarilogic, addressing and  
14 sending it to Clarilogic within this Judicial District. A true and correct copy of the  
15 letter (without attachments) is attached hereto as Exhibit B and its allegations,  
16 admissions and demands are incorporated by reference.

17 6. FormFree contends that Clarilogic’s provision (through its dba  
18 DecisionLogic) of its Instant Account Verification (“IAV”) service “constitutes  
19 patent infringement under the laws of the United States.” (*See* Ex. B at 1.)

20 7. FormFree accuses DecisionLogic’s IAV service of “literal  
21 infringement of the ’243 patent,” and characterizes FormFree “[a]s an infringer of  
22 the ’243 patent.” (*See* Ex. B at 1, 5.)

23 8. FormFree has alleged that “DecisionLogic is liable to FormFree for  
24 monetary damages caused by its infringing actions,” and that DecisionLogic “may  
25 also be subject to an injunction directing [it] to immediately stop providing  
26 [the IAV] service.” (*See* Ex. B at 5.)

27 9. FormFree has demanded that Clarilogic “immediately cease any further  
28 use, sale, and advertising of IAV,” amongst other things. (*See* Ex. B at 5.)

1           10. FormFree has demanded a “favorable response and compliance” within  
2 a week of the receipt of its letter, and stated that if DecisionLogic failed to comply,  
3 “FormFree w[ould] seek any and all remedies afforded under the law.” (*See* Ex. B  
4 at 5.)

5           11. Clarilogic’s development, utilization, commercialization, and  
6 publication of documents disclosing and explaining its IAV service date back at  
7 least as far as 2010, predating the filing of the ’411 Application by more than a year.

8           12. Clarilogic is informed, believes and thereon alleges that it does not  
9 infringe the claims of the ’243 patent and that one or more of the claims are invalid.

10           13. Clarilogic is informed, believes, and thereon alleges that the  
11 ’243 patent is also unenforceable.

12           14. Clarilogic does not intend to cease offering its IAV service or capitulate  
13 to any of the other demands made by FormFree and therefore respectfully submits  
14 that there is a substantial controversy, between parties having adverse legal interests,  
15 of sufficient immediacy and reality to warrant the issuance of a declaratory  
16 judgment and other relief sought herein.

17           15. Clarilogic requests a judicial determination and declaration of the  
18 respective rights and duties of the parties based on the disputes recited herein.  
19 Clarilogic respectfully submits that such a determination and declaration are  
20 necessary and appropriate at this time so the parties may ascertain their respective  
21 rights and duties regarding the non-infringement, unenforceability, and invalidity of  
22 the ’243 patent.

23           16. Clarilogic respectfully submits that FormFree’s acts have created an  
24 actual, justiciable controversy between the parties regarding the invalidity,  
25 enforceability, and non-infringement by Clarilogic of the ’243 patent.  
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**VENUE**

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2 17. Clarilogic is a California corporation, with a principal place of business  
3 within this Judicial District at: 9820 Willow Creek Road, Suite 310, San Diego,  
4 California 92131.

5 18. Clarilogic does business within this Judicial District as DecisionLogic.

6 19. On information and belief, defendant FormFree is a Georgia  
7 corporation listing its principal office address as:  
8 3495 Peachtree Parkway, Suite D-177, Johns Creek, Georgia, 30024.

9 20. FormFree’s website lists its “Strategic Partners”  
10 (www.formfree.com/partners) to include a number of entities with substantial  
11 presences in California (one in this Judicial District), including:

- 12 a. EllieMae, a company listing “corporate headquarters” in  
13 Pleasanton, California and with an office in San Diego, listed at:  
14 9635 Granite Ridge Drive, Suite 130, San Diego,  
15 California 92123;
- 16 b. MeridianLink, which it represents as “[h]eadquartered in  
17 southern California,” which on information and belief, is located  
18 in Costa Mesa, California;
- 19 c. Roostify, on information and belief a company based in  
20 San Francisco, California that facilitates real estate transactions  
21 in California;
- 22 d. Seyfarth Shaw, on information and belief a law firm with offices  
23 in Sacramento, San Francisco, and Los Angeles, California  
24 indicating it has hundreds of attorneys in California; and
- 25 e. Veri-tax, a company listing its address in California, at:  
26 30 Executive Park, Suite 200, Irvine, California 92614.

27 21. On information and belief, FormFree has sought to, and done business  
28 with customers in California and within this Judicial District.

1           22. On information and belief, FormFree advertises its services to persons  
2 within this Judicial District, via: its website at: [www.formfree.com](http://www.formfree.com); twitter at:  
3 [twitter.com/formfree](https://twitter.com/formfree); facebook at: [facebook.com/formfree](https://facebook.com/formfree); and LinkedIn at:  
4 [linkedin.com/company/482583](https://linkedin.com/company/482583).

5           23. As is set forth in part above, and in Exhibit B, FormFree chose to direct  
6 communications to a resident of this Judicial District, Clarilogic, accusing  
7 Clarilogic/DecisionLogic within this Judicial District of “infringement of the  
8 ’243 patent” by its “use, sale, and advertising” of the IAV service. (*See* Ex. B at 1-  
9 6.)

10           24. Clarilogic has offered its IAV service for sale and/or advertised its IAV  
11 service within this Judicial District and intends to continue to do so.

12           25. Clarilogic has used its IAV service within this Judicial District and  
13 intends to continue to do so.

14           26. Clarilogic has sold its IAV service within this Judicial District and  
15 intends to continue to do so.

16           27. Clarilogic therefore respectfully submits that Venue is proper in this  
17 Judicial District pursuant to 28 U.S.C. § 1391(b)(2), (c)(2), and (d).

18  
19           **MORE ON THE PARTIES, PRODUCTS AND MARKETS**

20           28. There are a variety of products and/or services that electronically  
21 certify account information, some of which were disclosed in the public domain  
22 over a decade ago.

23           29. As the United States Patent and Trademark Office (“USPTO”)  
24 explained to FormFree, through its prosecuting counsel, during prosecution of the  
25 applications to which the ’243 patent claims priority, patent applications published  
26 in 2003 and 2004 disclose systems that electronically certify account information.  
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1           30. FormFree has admitted that a patent application published in 2004 “is  
2 directed to a method for an open-architecture system [that] automatically  
3 consolidates information from a plurality of financial systems into a single  
4 accounting system without the need for expensive and time-consuming manual  
5 backroom procedures.”

6           31. FormFree has admitted that a patent application published in 2004 “is  
7 directed to a method of automating the process used by an individual for viewing  
8 and requesting correction of data that is the basis of a credit score,” via an “analysis  
9 of individual transactions.” FormFree has characterized this publication as  
10 “reconciling contradictions between data sources.”

11           32. Prior to 2010, Clarilogic developed a product and service that could  
12 electronically certify account information that was eventually offered on the market  
13 and disclosed in written publications in 2010. That product was called “Instant  
14 Account Verification,” or IAV, and is offered through the dba of DecisionLogic,  
15 which is wholly owned by Clarilogic.

16           33. From launch through today, sales of service that electronically certifies  
17 account information and related goods and services account for nearly all sales by  
18 DecisionLogic.

19           34. On information and belief, FormFree offers for sale and sells a product  
20 or products that electronically certify account information.

21           35. In certain markets, Clarilogic and FormFree are direct competitors.

22           36. Recently, as one example, both Clarilogic and FormFree made pitches  
23 to QuickenLoans to provide a product or products that would electronically certify  
24 account information. On information and belief, FormFree won that bid by  
25 explaining that their product performed one or more steps that Clarilogic’s product  
26 does not perform (which Clarilogic confirmed), including but not limited to  
27 performing a risk analysis based upon the data gathered.  
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1 37. On information and belief, FormFree sees Clarilogic as a current  
2 competitor in certain markets, and a potential competitor in other markets.

3 38. Based in part upon results that have been made public by public  
4 companies, in which they realized substantial reductions in their default rates for  
5 accounts for which they utilized Clarilogic's IAV system (when compared with their  
6 current methods), Clarilogic's business has been expanding rapidly.

7 39. On information and belief, each of the fictitiously named Defendants,  
8 DOES 1 through 25, inclusive, were responsible in some manner for the occurrences  
9 herein alleged and proximately caused plaintiff's damages and/or each was acting as  
10 agent for the others and/or FormFree.

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12 **FORMFREE'S PATENT APPLICATIONS**

13 40. On information and belief, the '411 Application claims priority to three  
14 previously filed applications: U.S. Application Serial No. 12/211,599 (the  
15 "Abandoned Application"); U.S. Provisional Application No. 61/079,761 (the  
16 "Second Provisional"); and U.S. Provisional Application No. 61/008,997 (the "First  
17 Provisional").

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19 **The First Provisional**

20 41. On information and belief, the First Provisional was filed on  
21 December 26, 2007 by named inventor Chadwick Glenn Jenkins.

22 42. On information and belief, the specification of the First Provisional as  
23 originally filed comprised 4 written pages (including the Abstract) and 3 figures.

24 43. On information and belief, the specification of the First Provisional  
25 does not contain the words "risk," "algorithm," or "algorithm engine."

26 44. On information and belief, the First Provisional does not teach or  
27 disclose a step including "applying an algorithm engine to the financial account  
28 data."

1 45. On information and belief, the First Provisional does not teach or  
2 disclose a step including “applying the algorithm engine to the additional data.”

3 46. On information and belief, the First Provisional does not teach or  
4 disclose a step including “marking the exceptions as valid exceptions when output  
5 of the algorithm engine validates the exceptions.”

6 On information and belief, the First Provisional does not teach or disclose a step  
7 step wherein an “algorithm engine identifies a pattern of financial risk.”

8 48. On information and belief, the applicant did not disclose any references  
9 during the pendency of the First Provisional, either in the text of the specification or  
10 in an Information Disclosure Statement (“IDS”).

11  
12 **The Second Provisional**

13 49. On information and belief, the Second Provisional was filed on July 10,  
14 2008 by named inventor Chadwick Glenn Jenkins.

15 50. On information and belief, the specification (including the Abstract) of  
16 the Second Provisional, as originally filed, comprised 5 written pages and 3 figures.

17 51. On information and belief, the specification of the First Provisional  
18 does not contain the words “alorithm,” or “algorithm engine.” Its only mentions  
19 of “risk” are limited to; 1) reducing “the risk of extending credit to consumers;”  
20 2) that “consumer credit score is a numerical reflection of a consumer's loan  
21 repayment risk;” and 3) that “some Creditors utilize proprietary scorecards in  
22 conjunction with credit scores to assess future payment performance and risks with  
23 lending to a consumer.”

24 52. On information and belief, the First Provisional does not teach or  
25 disclose a step including “applying an algorithm engine to the financial account  
26 data.”

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1           53.    On information and belief, the First Provisional does not teach or  
2 disclose a step including “applying the algorithm engine to the additional data.”

3           54.    On information and belief, the First Provisional does not teach or  
4 disclose a step including “marking the exceptions as valid exceptions when output  
5 of the algorithm engine validates the exceptions.”

6           55.    On information and belief, the First Provisional does not teach or  
7 disclose a step wherein an “algorithm engine identifies a pattern of financial risk.”

8           56.    On information and belief, the applicant did not disclose any references  
9 during the pendency of the Second Provisional, either in the text of the specification  
10 or in an Information Disclosure Statement (“IDS”).

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12           **The Abandoned Application**

13           57.    On information and belief, the Abandoned Application was filed  
14 September 16, 2008 by named inventor Chadwick Glenn Jenkins.

15           58.    On information and belief, the specification (including the Abstract and  
16 Claims) of the Abandoned Application, as originally filed, comprised 38 pages of  
17 text and 23 figures.

18           59.    On information and belief, the Abandoned Application is not a  
19 continuation of either the First Provisional or the Second Provisional, or both.  
20 It adds new matter.

21           60.    On information and belief, the only mentions of “algorithm” in the  
22 Abandoned Application are to: “conversion algorithms [that] may be used in order  
23 to convert electronically obtained and stored data into (“EAC”) data structures.”

24           61.    On information and belief, the First Provisional does not teach or  
25 disclose a step including “applying an algorithm engine to the financial account  
26 data.”

27           62.    On information and belief, the First Provisional does not teach or  
28 disclose a step including “applying the algorithm engine to the additional data.”

1           63. On information and belief, the First Provisional does not teach or  
2 disclose a step including “marking the exceptions as valid exceptions when output  
3 of the algorithm engine validates the exceptions.”

4           64. On information and belief, the First Provisional does not teach or  
5 disclose a step wherein an “algorithm engine identifies a pattern of financial risk.”

6           65. On information and belief, the applicant did not disclose any references  
7 during the pendency of the Abandoned Application, either in the text of the  
8 specification or in an Information Disclosure Statement (“IDS”).

9           66. On information and belief, in an Office Action dated February 28,  
10 2011, the USPTO rejected all claims of novelty for the claims in the Abandoned  
11 Application, citing, *inter alia*, patent applications published between 1999 and 2008.  
12 FormFree did not respond and that application went abandoned.

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14           **The '411 Application**

15           68. On information and belief, the '411 Application was filed January 20,  
16 2012 by Nigamnarayan Acharyan (“Prosecuting Counsel”), then at Barnes &  
17 Thornburg LLP, now at Seyfarth Shaw LLP (identified by FormFree as a “Strategic  
18 Partner” of FormFree) naming inventors Chadwick Glenn Jenkins and Brent A.  
19 Chandler.

20           69. On information and belief, as filed, the specification (including the  
21 Abstract and Claims) of the '411 Application comprised 52 pages of text and  
22 24 figures.

23           70. On information and belief, the '411 Application claimed priority to the  
24 First Provisional, the Second Provisional, and the Abandoned Application.

25           71. On information and belief, the specification of the '411 Application  
26 included, at page 5, line 14, through page 6, line 15, a description of “exemplary”  
27 and/or “preferred” embodiments that included, *inter alia*, an “algorithm engine”  
28 which could “be programmed with knowledge of patterns of risk of financial risk.”

1 “The algorithm engine can also be programmed to know additional information  
2 regarding proprietary strategies to detect exceptions.” “Using knowledge of  
3 financial risk or risky behaviors that have been programmed, the algorithm engine  
4 can identify exceptions.”

5 72. On information and belief, the specification of the ’411 Application  
6 included, at page 5, line 14, through page 6, line 15, a description of an exemplary  
7 embodiment that includes, *inter alia*, the steps of: “validating the financial account  
8 data by applying an algorithm engine to the financial account data to identify  
9 exceptions” (the “first validation step”); “confirming the exceptions by collecting  
10 additional data and applying the algorithm engine to the additional data” (the  
11 “confirm, gather, and re-apply step”); “marking the exceptions as valid exceptions  
12 when output of the algorithm engine validates the exceptions” (the “second  
13 validation step”); and “generating a report from the financial data and the valid  
14 exceptions” (the “report step”).

15 73. On information and belief, the ’411 Application is not a continuation of  
16 any and/or all of: the First Provisional, the Second Provisional, and/or the  
17 Abandoned Application. It adds new matter.

18 74. On information and belief, FormFree has never informed the USPTO  
19 that the ’411 Application is not a continuation of the Abandoned Application, or the  
20 First Provisional, or the Second Provisional.

21 75. On information and belief, FormFree is aware that the ’411 Application  
22 is a continuation-in-part of the Abandoned Application, but has never disclosed that  
23 to the USPTO.

24 76. On information and belief, FormFree, through Prosecuting Counsel, is  
25 aware and/or should be aware that no claim that was pending in the  
26 ’411 Application is entitled to a priority date prior to January 20, 2012, but never  
27 disclosed that to the USPTO.  
28

1           77. On information and belief, the applicant did not disclose any references  
2 when the '411 Application was originally filed, either in the text of the specification  
3 or in an Information Disclosure Statement ("IDS").

4           78. On information and belief, during the pendency of the  
5 '411 Application, the applicant did not disclose any references to the USPTO as  
6 being potentially material.

7           79. To obtain the '243 patent, FormFree, through Prosecuting Counsel,  
8 distinguished the claims of the '243 patent from a number of prior references,  
9 including but not limited to "U.S. Patent Publication No. 2003/0212615 to  
10 Whitehead" ("Whitehead"), "U.S. Patent No. 7,778,915 to Angle" ("Angle"),  
11 "U.S. Patent Publication No. 2004/0205011 to Northington" ("Northington"), and  
12 "U.S. Patent Publication No. 2004/0111359 to Hudock" ("Hudock").

13           80. In an Office Action dated December 20, 2012, the USPTO rejected all  
14 pending claims in the '411 Application as lacking novelty in light of applications  
15 published earlier: Whitehead and Zucchetti (both of which had been cited against  
16 the Abandoned Application); and Angle.

17           81. On information and belief, FormFree, through Prosecuting Counsel and  
18 named inventor Brent Chandler, went personally to the USPTO on March 28, 2013  
19 for an Applicant-Initiated Interview. In that Interview, FormFree argued that the  
20 claims of the '411 Application, including in particular the following steps, "were not  
21 taught" by Whitehead and Angle:

22           “(d) validating the financial account data by applying an algorithm engine to  
23 the financial data to identify exceptions, wherein the exceptions  
24 indicate incorrect data or financial risk;” and

25           “(e) confirming the exceptions by collecting additional data and applying  
26 the algorithm engine to the additional data.”  
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1           82. On information and belief, subsequently, in a Response and  
2 Amendment filed June 20, 2013 (the “June Response”), FormFree, through  
3 Prosecuting Counsel, amended its claims to include, inter alia that “the method is  
4 computer implemented” and argued that Claim 1 “includes the limitation of  
5 providing certified financial data indicating financial risk about an individual,” and  
6 that “the word ‘risk’ is not mentioned a single time” in Whitehead.

7           83. On information and belief, in the June Response, FormFree, through  
8 Prosecuting Counsel, amended its claims and argued “[t]he methods include a [sic]  
9 algorithm engine identifies [sic] a pattern of financial risk.” FormFree continued to  
10 distinguish the references by arguing that neither “disclose a method involving an  
11 algorithm capable of identifying patterns of risk,” and that “[t]he process of  
12 reconciliation . . . is different from analysis of risk.”

13           84. On information and belief, in the June Response, FormFree, through  
14 Prosecuting Counsel, argued “[t]he method includes an algorithm engine that  
15 implements one or more of [sic] rules associated with financial analysis,” “financial  
16 reporting,” “risk analysis,” “risk reporting,” and “financial scoring.”

17           85. On information and belief, in an Office Action dated August 27, 2013  
18 (the “August OA”), the USPTO again rejected all pending claims of the  
19 ’411 Application on several bases, including that the claims were directed to an  
20 abstract idea, and hence not patentable subject matter, and were not novel in light of  
21 Whitehead and U.S. Patent No. 7,480,631 to Merced (“Merced”), also mentioning  
22 Zucchetti.

23           86. On information and belief, FormFree, through Prosecuting Counsel,  
24 responded to the August OA with a Response and Amendment dated November 27,  
25 2013 (the “November Response”). In the November Response, FormFree amended  
26 Claim 1 to explicitly require that steps (c), (e), (f), and (g) are implemented using a  
27 computer or computers.

28

1           87. In the November Response, FormFree, through Prosecuting Counsel,  
2 argued that Whitehead “does not disclose a method involving an algorithm capable  
3 of identifying patterns of risk,” and that “[t]he process of reconciliation (i.e., *making*  
4 *data consistent*) is different from analysis of risk.”

5           88. In the November Response, FormFree, through Prosecuting Counsel,  
6 argued that Merced discloses “automatic detection of transactions that have a high  
7 risk of being fraudulent,” and that Merced “provides an automatic detection process  
8 for detected [sic] of potentially fraudulent transactions based upon the  
9 characteristics of those transactions.” FormFree argued “[t]his is analysis of  
10 individual transactions (not even multiple transactions), and plainly is not assessing  
11 an account as a whole.”

12           89. On information and belief, in the November Response, FormFree,  
13 through Prosecuting Counsel, argued that Whitehead and Merced “are directed at  
14 identifying particular items that are apparently defective, neither one nor the  
15 combination is directed to assessing the overall level of financial risk or quality.”

16           90. On information and belief, in an Office Action dated December 23,  
17 2013, the USPTO again rejected all pending claims, as then amended, as not novel  
18 in light of Northington in view of Hudock.

19           91. On information and belief, FormFree, through Prosecuting Counsel  
20 filed a Response and Amendment dated February 17, 2014 (the “2014 Response”).  
21 With the 2014 Response, FormFree sent in an affidavit from its Chief Technical  
22 Officer (the “CTO Affidavit”) in which he declared that he had “done research” and  
23 “been actively employed in the field of financial data analysis and credit risk  
24 analysis technologies for at least ten (10) years,” and was the named inventor on  
25 several patents.

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1           92. On information and belief, the CTO Affidavit declared that  
2 Northington “is directed to a method for an open-architecture system [that  
3 automatically] consolidates information from a plurality of financial systems into a  
4 single accounting system without the need for expensive and time-consuming  
5 manual backroom procedures.”

6           93. On information and belief, the CTO Affidavit declared that Hudock  
7 “is directed to a method for automating the process used by an individual for  
8 viewing and requesting correction of data that is the basis of a credit score”  
9 involving “analysis of individual transactions,” and that the “method [is] directed to  
10 reconciling contradictions between data sources or complaints of inaccuracy.”

11           94. On information and belief, FormFree’s Chief Technical Officer also  
12 declared, with reference to the Northington and Hudock, that “neither one nor the  
13 combination is directed at assessing the overall level of risk or quality of multiple  
14 accounts.”

15           95. On information and belief, in keeping with the CTO Affidavit,  
16 FormFree, through Prosecuting Counsel, again argued to the USPTO regarding the  
17 limitations of its claims, including that they “include an algorithm engine that  
18 identifies a pattern of financial risk,” and “an algorithm engine that implements one  
19 or more rules associated with financial analysis,” “financial reporting,” “risk  
20 analysis,” “risk reporting,” and “financial scoring.” FormFree argued that neither  
21 Northington nor Hudock, nor the combination “is directed at assessing the overall  
22 level of risk or quality of multiple accounts.”

23           96. On information and belief, FormFree, through Prosecuting Counsel,  
24 characterized Northington as being “directed to a method for an open-architecture  
25 system [that] automatically consolidates information from a plurality of financial  
26 systems into a single accounting system,” as part of a “process or program.”  
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1 97. On information and belief, FormFree, through Prosecuting Counsel,  
2 characterized Hudock as “a method of verifying the information on which credit  
3 scores,” and “directed to a method for automating the process for viewing and  
4 requesting correct of data.”

5 98. On information and belief, the USPTO issued a Notice of Allowance  
6 (the “Notice”), rescinding the rejection of obviousness “in view of the applicant’s  
7 arguments and affidavit.” In the Notice, the USPTO stated that the ’411 Application  
8 “is directed towards indicating financial risk.”

9 99. On information and belief, FormFree, through Prosecuting Counsel, is  
10 aware and/or should be aware that no allowed claim in the ’411 Application or  
11 ’243 patent was or is entitled to a priority date prior to January 20, 2012, but never  
12 disclosed that to the USPTO.

13 100. On information and belief, the Notice specifically recited that the prior  
14 art of record did not appear to disclose or teach: first validation step; the confirm,  
15 gather, and re-apply step; the second validation step; the report step; and that “the  
16 algorithm engine identifies a pattern of financial risk.”

17  
18 **FORMFREE’S PATENT MISUSE**

19 101. On information and belief, FormFree, through Prosecuting Counsel and  
20 its CTO, is aware that a variety of publications predating any purported application  
21 to which the ’243 patent does or can claim priority, which disclose a method or  
22 methods “that electronically certifies account information,” including but not limited  
23 to Whitehead, Zucchetti, and Hudock.

24 102. On information and belief, FormFree, through Prosecuting Counsel  
25 represented to the USPTO in the November Response that Whitehead “states that  
26 the process or program is for tracking the actions of the user responsible for the  
27 financial data so that a business can manage large amounts of data.”  
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1           104. Whitehead is entitled “Method, computer program product and system  
2 for verifying financial data” and states: “[t]he businesses include not only banks,  
3 saving and loan companies, mortgage companies, investment firms, brokerage  
4 companies, insurance companies, and the like, but also any type of business that  
5 manages multiple internal and/or external accounts, regardless of the size of the  
6 business.”

7           105. In its letter of January 2, 2015, FormFree represents that it “has  
8 developed proprietary, pioneering technology relating to the world’s first automated  
9 asset verification system for the lending industry,” and that its “intellectual property  
10 covering its innovation . . . includ[es the ’243 patent].” (Ex. B at 1.)

11           106. On information and belief, FormFree and its Prosecuting Counsel are  
12 aware that the purported invention(s) of the ’243 patent is neither pioneering nor the  
13 world’s first “automated asset verification system,” nor even the first suitable for  
14 use by the lending industry.

15           107. In its letter of January 2, 2015, FormFree, through Prosecuting  
16 Counsel, allege that Clarilogic’s IAV service infringes the ’243 patent. (*See* Ex. B  
17 at 1-6.) The letter does not identify any other patent. (*See* Ex. B at 1-6.)

18           108. On information and belief, FormFree, through Prosecuting Counsel, is  
19 aware that the claims of the ’243 patent do not and can not read on “any . . . service  
20 that electronically certifies account information.”

21           109. On information and belief, FormFree, through Prosecuting Counsel, is  
22 aware that the claims of the ’243 patent do not and can not cover “any . . . service  
23 that electronically certifies account information.”

24           110. On information and belief, FormFree, through Prosecuting Counsel, is  
25 aware that the claims of the ’243 patent do not and can not cover all “service[s] that  
26 electronically certifies account information.”  
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1 111. In its letter of January 2, 2015, FormFree, through Prosecuting  
2 Counsel, “demand that [Clarilogic] immediately cease any further use, sale and  
3 advertising of IAV *or any other service that electronically certifies account*  
4 *information.*” (Ex. B at 5 [emphasis added].)

5 112. In its letter of January 2, 2015, FormFree, through Prosecuting  
6 Counsel, states FormFree “require[s] [Clarilogic’s] favorable response and  
7 compliance . . . no later than the close of business on January 9, 2015,” and  
8 threatens that, if [Clarilogic] “fail[s] to comply with this letter, FormFree will seek  
9 any and all remedies afforded under the law.” (Ex. B at 5.)

10 113. In its letter of January 2, 2015, FormFree, through Prosecuting  
11 Counsel, represents that [Clarilogic] “may also be subject to an injunction directing  
12 [it] to immediately stop providing this service.”

13 114. On information and belief, FormFree made the foregoing  
14 representations and threats with an anti-competitive intention to cause Clarilogic to  
15 surrender rights exceeding those FormFree could ever hope to lawfully obtain  
16 through its patent rights with the purpose of shutting down Clarilogic’s business  
17 and/or eliminating and/or reducing competition.

18  
19 **COUNT I**

20 **Declaratory Judgment of Unenforceability**

21 116. Clarilogic realleges Paragraphs 1 through 114.

22 117. Clarilogic respectfully submits that FormFree’s demand that Clarilogic  
23 cease offering “any . . . service that electronically certifies account information,” as  
24 alleged herein constitutes patent misuse, justifying declaratory judgment that the  
25 ’243 patent is unenforceable and the other relief sought herein.

1 **COUNT II**

2 **Declaratory Judgment of Invalidity**

3 118. Clarilogic realleges Paragraphs 1 through 114.

4 119. Clarilogic alleges that each of the claims of the '243 patent is invalid  
5 for failing to comply with the conditions and requirements for patentability as set  
6 forth in Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101,  
7 102, 103, 112 and/or 132. Specifically, but without limitation:

- 8 (a) the subject matter of the claimed invention of the '243 patent is  
9 not patentable subject matter;
- 10 (b) the claimed invention of the '243 patent was patented, described  
11 in a printed publication, or in public use, on sale, or otherwise  
12 available to the public before the effective filing date of the  
13 claimed invention;; and/or the claimed invention was described  
14 in an issued, or in an application for patent published or deemed  
15 published, in which the patent or application, as the case may be,  
16 names another inventor and was effectively filed before the  
17 effective filing date of the claimed invention;
- 18 (c) the applicants themselves did not invent the subject matter  
19 sought to be patented in the '243 patent;
- 20 (d) the subject matter sought to be patented in the '243 patent and  
21 the prior art are such that the differences between the claimed  
22 invention and the prior art are such that the claimed invention as  
23 a whole would have been obvious before the effective filing date  
24 of the claimed invention to a person having ordinary skill in the  
25 art to which the claimed invention pertains and/or are not  
26 patentable subject matter; and
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(e) the specification of the '243 patent fails to contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same.

**COUNT III**

**Declaratory Judgment of Non-Infringement**

120. Clarilogic realleges Paragraphs 1 through 114.

121. Clarilogic has not infringed, is not now infringing, and has not threatened to infringe the '243 patent.

19. Clarilogic has not contributed to the infringement, and is not now contributing to the infringement of the '243 patent.

20. Clarilogic has not induced others to infringe, and is not now inducing others to infringe the '243 patent.

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**PRAYER**

WHEREFORE, Clarilogic prays for:

- 1. A declaration that:
  - A. The '243 patent, and each and every claim thereof, is invalid, unenforceable, void, and without force and effect;
  - B. Clarilogic has not infringed or induced infringement of the '243 patent, nor has it contributed to any alleged infringement thereof by others; and/or
  - C. Defendant FormFree, and its officers, agents, employees, attorneys, and licensees and all those acting in privity or concert therewith be enjoined preliminary and permanently from directly or indirectly asserting that the '243 patent or any claim thereof is infringed by Clarilogic, DecisionLogic, or any person using their products or from threatening patent infringement litigation against Clarilogic or any of its affiliates or customers, for the manufacture, sale or use of Clarilogic's products or systems.
- 2. A finding that this case is exceptional pursuant to 35 U.S.C. § 285, and award to Clarilogic its costs, expenses, and reasonable attorneys' fees; and
- 3. Such other and further relief, in law or equity, as this Court deems just and proper.

Dated: January 8, 2015

By: s/Arthur A. Wellman, Jr.  
Arthur A. Wellman, Jr.  
Attorney for Defendants/Cross-complainants

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**DEMAND FOR JURY TRIAL**

Plaintiff Clarilogic demands trial by jury of all causes of action herein properly triable to a jury, consistent with Federal Rule of Civil Procedure 38.

Dated: January 8, 2015

By: s/Arthur A. Wellman, Jr.  
Arthur A. Wellman, Jr.  
Attorney for Defendants/Cross-complainants