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DUN & BRADSTREET, INC.; and  
LATTICE ENGINES, INC.,

Plaintiffs/Counterclaim  
Defendants,

v.

TROPARE, INC.,

Defendant/Counterclaimant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION

ESSEX COUNTY

Docket No.: ESX-L007424-20

Civil Action

**AMENDED COUNTERCLAIM OF  
TROPARE, INC.**

Defendant and Counterclaimant, Tropare, Inc. (“Counterclaimant” or “Tropare”), by and through its attorneys, OlenderFeldman LLP and Adkisson Pitet LLP, says by way of its Amended Counterclaim against Plaintiffs and Counterclaim Defendants Dun & Bradstreet, Inc. (“D&B”) and Lattice Engines, Inc. (“Lattice”), (D&B and Lattice, collectively “Counterclaim Defendants”), as follows:

## INTRODUCTION

1. D&B is known as a company that is responsible for safeguarding some of the world's most sensitive corporate and consumer data. This case will reveal that D&B is, in fact, a company that blatantly misappropriates sensitive company information and does so with the blessing, if not at the direction, of its most senior corporate executives.

2. This case could not provide a clearer example of a large corporate titan establishing and executing a plan to crush a small company by misappropriating its technology for its own financial benefit, and disclosing that small company's confidential and proprietary information to third parties. As described below, the misconduct at issue in this case was committed and/or ratified by the corporation's most senior executives, including its: Chief Operating Officer (Thomas Rauker); Chief Revenue Officer (Kevin Coop), President (Stephan Daffron); President, Global Sales & Marketing (Michael Bird); Head of Sales North America (Thomas Wickersham); and Chief Executive Officer (Anthony Jabbour) - who "crowed" about the demise of Tropare at a company "Global Town Hall" meeting.

3. Tropare is a small – *and now, as a result of Counterclaim Defendants' egregious conduct, effectively defunct* – software development company located in Laguna Beach, California. Tropare specializes in the development of mobile applications, high performance databases and related technology that help companies identify their target audiences and market and sell their products more effectively. Prior to 2012, Tropare, then known as Boopsie, Inc. (a name that will prove critical to the blatant effort of Counterclaim Defendants to misappropriate Tropare's technology), licensed its technology directly to end users such as AT&T, who paid Tropare a fee for using its mobile applications or other technology. Tropare's business model of

licensing its technology directly to customers worked well and would have continued to work well but for the fraudulent inducement of Counterclaim Defendant D&B.

4. In 2012, D&B fraudulently induced Tropare to enter into a business transaction through false promises that D&B would use its best efforts to market and license Tropare's mobile application and related technology to D&B's expansive customer base. Instead of using its best – or even commercially reasonable – efforts to market and license Tropare's technology, D&B did virtually nothing other than collect vast sums of money on the licensing of Tropare's technology. Over the course of this six-year relationship between the parties, D&B collected \$26 million in revenue on the licensing of Tropare's technology while paying just \$6.5 million to Tropare.

5. Ultimately, Tropare discovered that D&B was reaping the lion's share of the revenue generated from the licensing of Tropare's technology, which D&B had been concealing from Tropare, and decided to terminate its relationship with D&B and return to a "direct" licensing model. What Tropare did not know at that time, however, was that its decision to end its relationship with D&B, which had become a "cash cow" for D&B, would result in the wrath of D&B's executives and make them hell-bent on "killing" Tropare. In the words of Michael Bird, the President of D&B's Global Sales and Marketing, D&B was going to "bring the hammer down" on Tropare. And that is precisely what D&B proceeded to do - giving birth to a malicious and sinister plan to steal all of Tropare's customers (an edict by CRO, Kevin Coop) and put Tropare out of business.

6. In early 2019, after Tropare terminated its relationship with D&B, D&B, principally through executives Coop, Bird and Wickersham, hatched and executed a sinister and despicable plan, cynically named "Project Oopsie" after Tropare's original name "Boopsie," that was designed to destroy – and did destroy – Tropare's business. D&B's plan included, but was

not limited to: (1) stealing Tropare's pioneering technology; (2) using that technology to develop a new product with virtually the same name and functionality as Tropare's product; (3) using the new product based upon Tropare's product to steal Tropare's customers; and (4) destroying Tropare (which is what happened).

7. As a result of Counterclaim Defendants' misconduct, which is shown in spades by a trove of written communications and videos by and among some of Counterclaim Defendants' most senior executives, Tropare has suffered millions of dollars in damages, and Counterclaim Defendants have unlawfully obtained millions of dollars in profits. This Amended Counterclaim seeks to recover those damages and the disgorgement of those profits. It also seeks injunctive relief to prevent Counterclaim Defendants from continuing to be unjustly enriched by their continued use of Tropare's confidential and proprietary information and trade secrets. Finally, based upon Counterclaim Defendants' outrageous and egregious behavior as set forth in part herein, this Counterclaim also seeks punitive damages against Counterclaim Defendants to punish them for their misconduct and deter them from engaging in similar conduct in the future.

### **PARTIES**

8. Tropare is a corporation providing licensed software to data providers and other business entities. Tropare exists under the laws of State of Delaware, and its headquarters is located at in San Juan Capistrano, California.

9. D&B is now a publicly held corporation with annual revenue exceeding \$2 billion that provides commercial data, analytics and other information for businesses. D&B exists under the laws of the State of Delaware, and its headquarters is located at 101 JFK Parkway, Short Hills, New Jersey 07078.

10. Lattice is a California technology company that provides software development services to businesses. Lattice exists under the laws of State of Delaware and its headquarters is located at 101 JFK Parkway, Short Hills, New Jersey 07078 – the same location of D&B. Lattice is a wholly-owned subsidiary of D&B following D&B’s acquisition of the company in 2019.

### **ALLEGATIONS COMMON TO ALL COUNTS**

#### **A. D&B Pursues Tropare After Tropare Develops A Relationship With AT&T Based On Its Award-Winning Technology**

11. In 2009, when it had just three employees, Tropare won a contest in Las Vegas, Nevada sponsored by AT&T for the development of a sophisticated mobile application that could help companies identify potential “leads” for sales and marketing activities. As a result, Walt Rivenbark (“Rivenbark”) of AT&T approached Greg Carpenter (“Carpenter”) of Tropare and asked him to develop what eventually became known as the “Ultimate Prospector” (“UP”) mobile application for AT&T.

12. In May 2010, Tropare and AT&T entered into an agreement for AT&T to use the UP.

13. Tropare’s new relationship with AT&T apparently put Tropare on D&B’s radar. Recognizing Tropare’s acumen in developing cutting-edge technology, in September 2010, Brad George of D&B began attempting to persuade Tropare and AT&T to use D&B’s data in UP. D&B’s aggressive efforts continued for the next year-and-a-half.

14. In or about April 2012, other D&B executives joined in the efforts to persuade Tropare to join forces with D&B.

15. Whereas Tropare had been previously licensing its technology “directly” to AT&T, D&B began proposing an agreement pursuant to which D&B would diligently market and license Tropare’s technology to other companies (*e.g.*, Bank of America) and pay Tropare royalties.

16. Given Tropare's small size and D&B's 180-year history and massive customer network, and in reliance upon D&B's representations and projection of tens of millions of dollars in royalties to Tropare in connection with the deal, such an arrangement made sense to Tropare at the time. At that time, Tropare trusted D&B, believed D&B would do what it represented it would do, and had no reason to believe it was being duped.

**B. D&B Fraudulently Induces Tropare To Enter Into the Mobile Solutions Agreement**

17. As noted above, Tropare had been licensing its mobile application technology directly to customers and could have continued to do so. D&B, however, recognized the immense value of Tropare's technology and the substantial amounts of money that D&B could make acting as a licensor of Tropare's technology.

18. In an effort to induce Tropare to enter into an agreement pursuant to which D&B would license Tropare's technology to third parties, D&B promised that it would allocate substantial amounts of money and resources to market Tropare's technology to D&B's customers.

19. As a further part of its efforts to induce Tropare to enter into the agreement, D&B represented that Tropare would make much more money in royalties under an agreement with D&B than it would make continuing to directly license its technology to AT&T and other business entities based upon D&B's diligent efforts to pursue such licensing with its large customer base.

20. In reliance upon on D&B's promises and representations, on September 13, 2012, Tropare entered into a "Mobile Solutions Agreement" ("MSA") with D&B.<sup>1</sup> The MSA provided, *inter alia*, for "(i) the development, marketing and fulfillment of a D&B branded customer prospecting mobile application on [Tropare's] mobile application platform (as further defined

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<sup>1</sup> The MSA was executed by Tropare's predecessor-in-interest Boopsie, Inc.

below, the '**Mobile App**') and (ii) the payment of royalties to [Tropare] with respect to D&B's sales of the Mobile App . . . .”

21. The MSA had an initial one-year term. The MSA automatically renewed for successive one-year terms unless a party provided the other party with 90 days notice that it did not desire to renew the MSA.

### **C. The MSA's Provisions Relating To Intellectual Property And Confidential Information**

22. The MSA provided that each party would continue to own its respective intellectual property rights.

23. The MSA provided that Tropare “shall be the sole and exclusive owner of all Intellectual Property Rights relating to: (i) the Tropare Technology; (ii) all Mobile Apps and software currently existing or owned by Tropare prior to the execution of this Agreement, including the currently existing look and feel of any such Mobile Apps and software; (iii) Tropare's Marks; (iv) any graphics and text of the Mobile App that incorporate any of Tropare's Marks; (v) software and technology of Tropare, and (vi) any modifications to any of the foregoing (collectively, the '**[Tropare] Intellectual Property**').”

24. The MSA placed several obligations on the parties with respect to the handling of Intellectual Property, including but not limited to: “(a) Both parties will have the right to use the other party's Intellectual Property solely as necessary to perform its obligations under the Agreement. Neither party shall commit or knowingly permit any act or omission that would impair the other party's proprietary and intellectual property rights in their respective Intellectual Property; (b) Neither party shall be permitted to copy or otherwise reproduce any part of the other party's Intellectual Property without their prior written consent; and (c) Neither party shall be permitted to (i) voluntarily produce any of the other party's Intellectual Property in legal

proceedings, (ii) use any of the other party's Intellectual Property for its own internal purposes . . . .”

25. The MSA also contemplated that both parties would exchange Confidential Information with each other.

26. The MSA defined “Confidential Information” as follows: “Prior to or during the Term, D&B or [Tropare] (the ‘**Disclosing Party**’) may disclose to the other Party (the ‘**Receiving Party**’) information in connection with the performance of or otherwise relating to this Agreement (including, without limitation, technical data, trade secrets, plans for products or services, customer or supplier lists, marketing plans, software, source code for software, financial documents or data, inventions, processes, technology and designs) which it maintains as confidential or proprietary and which: (i) if disclosed orally, it identifies in writing as Confidential Information within thirty (30) days of the date of disclosure and (ii) if disclosed in writing, it marks or identifies with the legend ‘Confidential,’ ‘Proprietary’ or a similar legend (collectively but subject to Section 9.2, ‘**Confidential Information**’).”

27. The MSA restricted the use and disclosure of Confidential Information, providing that “[a] Receiving Party will use the Confidential Information of a Disclosing Party *solely* to perform its duties under this Agreement, and all Confidential Information will remain the sole property of the Disclosing Party. A Receiving Party will hold all Confidential Information disclosed by a Disclosing Party in strict confidence and will not make any disclosure of the Confidential Information to any Person without the express written consent of the Disclosing Party, except to its Affiliates and its and their respective employees, consultants, and agents to whom disclosure is necessary for the performance of this Agreement and who are bound in writing



by the duties of confidentiality and nondisclosure at least as restrictive as those set forth herein.” (emphasis added).

28. The MSA also provided that “In no event shall D&B nor any of its employees, affiliates, agents or assignees be permitted to modify or reverse engineer the Mobile App or any [Tropare] Intellectual Property”.

29. Upon termination of the MSA, each party was required to return or destroy the other’s Confidential Information: “Upon termination or expiration of this Agreement for any reason each Party will return to the other Party, or provide the other Party with written certification of the destruction of, all Confidential Information belonging to the other Party (including all copies of any of the foregoing) within the possession or control of such Party or any of its Affiliates . . .”

30. The MSA also provided that the above-referenced sections and obligations related to Intellectual Property and Confidentiality shall survive any expiration or termination of the MSA – in other words, the termination or expiration of the MSA does not end or terminate either party’s obligations to respect the Intellectual Property rights of the other party, nor does it end the other party’s obligations with respect to Confidential Information.

#### **D. Tropare Agrees To Create A Database Selection Tool**

31. Recognizing Tropare’s ability to develop cutting-edge software, in February 2014, D&B sales personnel Angela Strange and Jen Kalember engaged Tropare to create a “Database Selection Tool” (“DST”). A data base selection tool is computer software that permits a user to “segment” large amounts of data in real time, for the purpose of creating and implementing marketing campaigns that target the user’s desired audience. D&B recognized that Tropare, unlike D&B, had the ability, knowledge and skill to create an effective DST.

32. The terms of the DST development are set forth in an “Addendum to Mobile Solutions Agreement,” dated February 28, 2014 (the “DST Addendum”).

33. The DST Addendum provided that the DST created by Tropare would be licensed to D&B, which, in turn, would sub-license it to Sprint/United Management Company (“Sprint”). The DST Addendum incorporated various provisions of the MSA, including the provisions relating to Intellectual Property and Confidentiality.

34. Pursuant to the DST Addendum and in reliance upon D&B’s various representations, Tropare proceeded to develop the DST.

35. After the DST was developed, D&B contracted with Sprint to provide several of D&B’s employees (in particular, Stephanie Tran, Kathy Harris and Jeff Gormley) to work at Sprint’s offices for the sole purpose of operating the DST and segmenting data for the creation of marketing campaigns for Sprint.

36. Based on its user interface, functionality and capabilities, the DST became an indispensable part of Sprint’s marketing activities for six years until the Counterclaim Defendants concocted and implemented the scheme described in more detail below.

**E. After Making D&B Millions Of Dollars For Essentially Doing Nothing, Tropare Terminates The MSA And Licenses Its Technology Directly To Customers Again**

37. To induce Tropare to enter into the MSA, D&B represented that it would allocate substantial financial resources for the purpose of diligently marketing Tropare’s technology to D&B’s vast customer base. Unfortunately for Tropare, D&B did not act in good faith to meet its obligations. In the end, D&B did nothing more than siphon off millions of dollars from the licensing of Tropare technology to customers with whom Tropare already had relationships (*e.g.*, AT&T) or would have had on its own without D&B’s involvement.

38. While the MSA was in effect from 2012 to 2018, D&B booked approximately \$26 million in revenue from the licensing of Tropare technology while Tropare received less than \$6.5 million.

39. In 2018, after serving as D&B's "cash cow" for six years, Tropare terminated the MSA pursuant to its terms and started to license its technology directly to customers without the "assistance" of D&B.

40. On June 13, 2018, Tropare provided notice to D&B of its election to terminate the MSA pursuant to Section 7.1 of the MSA. The termination became effective 90 days later on September 11, 2018.

41. As noted above, upon termination of the MSA, D&B was obligated, among other obligations, to return or destroy all of Tropare's Confidential Information and continued to be prohibited from reverse engineering Tropare's software, including the DST.

#### **F. Tropare Enters Into A Direct Relationship With Sprint for the DST**

42. On December 31, 2018, following Tropare's termination of the MSA, Tropare and Sprint entered into a "Master Software as a Service Agreement" (the "Sprint Master Agreement").<sup>2</sup>

43. The essence of the Sprint Master Agreement was that Tropare would continue to provide the DST to Sprint, and the parties executed a "Statement of Work" to that effect.

44. The initial term of the Sprint Master Agreement was for one year.

45. In addition to entering into a direct relationship with Sprint, Tropare also renewed its direct relationship with AT&T.

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<sup>2</sup> The Sprint Agreement was between Tropare, Inc., on the one hand, and Sprint/United Management Company, on the other hand.

**G. Angered By The Termination Of The MSA And Tropare's Direct Relationships, D&B Develops And Executes A Scheme Called "Project Oopsie" To Misappropriate Tropare's Technology, Confidential Information, Intellectual Property and Trade Secrets To Develop The DMT Improperly Based On Tropare's DST, And Put Tropare Out Of Business**

46. Tropare's termination of the MSA and subsequent direct relationships with Sprint and AT&T greatly angered D&B's executives, particularly D&B's sales manager John Phillabaum ("Phillabaum").

47. Phillabaum's sales team had just lost nearly \$5 million in revenue as a result of Tropare's direct relationships with Sprint and AT&T.

48. As D&B's internal communications make abundantly clear, Phillabaum and other D&B executives were now on a mission to "crush" little Tropare and put the company out of business as punishment for Tropare's permissible termination of the MSA.

49. In September of 2018, Phillabaum considered how he would "get back" at Tropare for terminating the MSA. However, he quickly realized that D&B lacked the ability to provide Sprint with a competing product (i.e., anything comparable to the DST) by the target date of December 2018. He would have to wait a bit longer to execute on D&B's plan to put an end to Tropare.

50. In or around March of 2019, D&B's plan to even the score with Tropare began to pick up steam.

51. On March 18, 2019, Phillabaum sent an email to other D&B executives discussing his plan to "replace" Tropare's DST at Sprint:

**"Subject: Replacing the DST / Tropare @ Sprint**

...Spoke with Tom R.<sup>3</sup> earlier today, who asked me to connect with you to begin looking at developing an alternative offering for sprint to replace the T-studio/DST solutions @ Sprint. Based on our discussions in last year, the work the Sales Team completed with Sprint in Q4 specifically Stephanie Tran's documentation designed to developing an understanding of capabilities in relationship to DataVision, I believe we should be in a position to advance developing a plan.

52. D&B's executives were very excited about the prospect of developing a "plan" to crush Tropare by misappropriating its technology, Confidential Information and Intellectual Property through an array of other unlawful conduct. Bird stated that the idea of developing a plan to end Tropare was "awesome" and lauded his team for bringing the "hammer down on" Tropare.

53. At every step of developing and executing this plan to misappropriate Tropare's technology, Confidential Information and Intellectual Property and put it out of business, D&B's most senior executives, notably Coop, Bird and Wickersham, were intimately aware of and involved in the scheme and consistently encouraged their subordinates at the company to proceed as quickly as possible to execute on this scheme. Indeed, in the eyes of the subordinates, the "project" of destroying Tropare and misappropriating its technology, Confidential Information and Intellectual Property was "critical" as "Bird and Coop [have] their eyes on this."

54. In March 2019, however, D&B did not have the pieces in place to "replace" the DST and injure Tropare. D&B's "DataVision" product simply did not have anything close to the DST's capabilities, and D&B lacked the software development expertise to create a product that could compete with the DST. That all changed a few months later in mid-2019.

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<sup>3</sup> This is a reference to Tom Rauker, who is D&B's Chief Operating Officer.

## **H. “Project Oopsie”: The Acquisition Of Lattice And The Development Of The DMT Through The Misappropriation Of Tropare’s Technology, Confidential Information, Intellectual Property and Trade Secrets**

55. Sometime in or around May 2019, D&B developed and executed “Project Oopsie”, which was a plan to create, using Tropare’s technology, Intellectual Property and Confidential Information, a product that could perform the functions that the DST could perform. D&B, however, lacked the ability to create a tool that could function like the DST. In fact, the only way that D&B could create a product that could come close to the functionality of the DST would be to copy the DST. And that is precisely what D&B proceeded to do as part of Project Oopsie.

56. Given how D&B was blatantly flaunting the rights of Tropare, and as an indication of its intent to outright copy and misappropriate the DST, D&B even copied Tropare’s then corporate name “Boopsie” by calling this devious scheme and project “Project Oopsie.”

57. In June 2019, D&B acquired Lattice, which had a rudimentary segmentation tool. D&B’s acquisition of Lattice gave it access to a segmentation tool called “Atlas” and a team of software engineers it could use to make a knockoff of the DST.

58. Unfortunately for D&B, though acquiring Lattice and its Atlas tool, D&B still had a major problem. Atlas could only perform a small fraction of the functions that the DST could perform, and at a significantly slower pace (days compared to minutes). For instance, Atlas could not provide a function for blending and ingesting data on the front end, and lacked functions for producing the data in usable form at the back end. In other words, Atlas could not even come close to doing what the DST could do. If D&B had any chance of getting the Sprint business back and destroying Tropare at the same time, it had to come up with a solution, and fast.

59. The only way that D&B and Lattice could create a competing product to Tropare’s DST was by having access to Tropare’s DST – which, of course, was legally prohibited for this purpose as it all included and was comprised of Tropare’s Confidential Information and

Intellectual Property, only to be used for purposes set forth in the MSA and DST Addendum. This is where the next piece of the puzzle came into place.

60. D&B had an insider at Sprint named Stephanie Tran (“Tran”). Tran was a D&B employee who was still operating the DST for Sprint under Tropare’s direct relationship with Sprint.

61. On June 18, 2019, following D&B’s acquisition of Lattice, D&B’s Chris Pardo sent an email to several D&B and Lattice executives disclosing the existence of the “insider” (Tran) and the scheme to develop a product derived from the DST:

...Sprint uses a tool called DST from a small company called Tropare and I believe that Lattice can not only replace the DST but add more value. (The relationship with Tropare has gone sideways and Bird<sup>4</sup> wants to find alternatives.)

The following is a video that Madhu created that shows the DST.

The person that Madhu is talking to is somebody at D&B that works with the DST to run campaigns (and that is her primary role)...

62. D&B and Lattice were prohibited from using or accessing the DST for the purpose set forth in the above email.

63. The next day, on June 19, 2019, Julie Green of D&B sent an email to another D&B employee about plans for allowing Lattice to see the DST run in “parallel” to a Lattice product:

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<sup>4</sup> This is a reference to Michael Bird, who is President of D&Bs Global Sales and Marketing Solutions Division.

FYI> we are standing up an instance of Lattice for Sprint to run parallel to the DST through December [of 2019] to go head to head with Tropare. Hold on tight!

64. D&B and Lattice were prohibited from using or accessing the DST for the purposes set forth in the above email.

65. As demonstrated by a trove of emails and videos, D&B spent the next few months examining and copying the DST in every conceivable way so that they could develop a new product that could perform the functions of the DST – all of which was prohibited, which prohibition was known by D&B.

66. For the actual software development of its knock-off of the DST using Tropare's technology, Confidential Information and Intellectual Property, D&B used a team of software developers in India who worked at the direction of D&B personnel in the United States. Those developers and their manager, Savitry Venkatesh, knew absolutely nothing about the DST or its functionality prior to involvement in this scheme. Thus, they started at ground zero and meticulously dissected, examined and copied the functionality of the DST over the course of several months by impermissibly accessing Tropare's technology, Confidential Information and Intellectual Property.

67. Finally, after months of misappropriation of Tropare's technology, Confidential Information and Intellectual Property, D&B was finally able to come up with a product that could perform – albeit not as well – the functions of the DST. The results of D&B's unlawful conduct was a product that D&B unoriginally called the "DMT" – like "Project Oopsie," another play on Tropare's name (this time, using "DMT" for Tropare's "DST").



**I. D&B Successfully Lures Sprint Away From Tropare And Admits That It Was Able To Do So By Misappropriating Tropare’s Technology, Confidential Information, Intellectual Property And Trade Secrets**

68. With the DMT in hand, D&B now had the ability to steal the Sprint business away from Tropare, which is what it proceeded to do.

69. Despite the fact that Tropare had just recently made modifications to the DST at Sprint’s request, Sprint abruptly ended its contract with Tropare by notification from Rob St. Thomas on December 30, 2019 – days before it was set to renew. To say that Tropare was surprised by Sprint’s termination of its relationship with Tropare would be a gross understatement.

70. Two months later, on February 26, 2020, Madhu Subramanya of D&B wrote an email to another D&B executive explaining precisely how D&B was able to steal the Sprint business away from Tropare:

...we sold Lattice ATLAS to Sprint to replace another product called Tropare. We were partnered with Tropare until last year when they started misusing and we decided to sever ties with them.

We (Pardo's Team) has been on the Sprint engagement for almost 7-8 months now and we've had to reverse engineer the whole integration in Tropare. (emphasis added)

**J. D&B Discloses Tropare’s Confidential Information To Third Party Software Developers**

71. As a result of the MSA and DST Addendum, D&B came to possess a substantial amount of Tropare’s technology, Confidential Information, Intellectual Property and trade secrets concerning Tropare’s multi-patented mobile application technology – all solely for the explicit purpose of furthering the contractual relationship between Tropare and D&B.

72. One piece of Tropare's Confidential Information that D&B possessed pursuant to the MSA and DST Addendum were two very detailed training manuals for the "Sprint Prospector" mobile application. The manuals, which were clearly marked as Tropare's Confidential Information, contained an overview of the Sprint Prospector application, detailed screen shots and information on how to use the application. These documents were effectively a detailed roadmap and blueprint for the Prospector.

73. On August 14, 2019, Chris Pardo of D&B sent Michael Bird a detailed overview of his plans to use SalesRabbit as a replacement for Tropare's mobile application.

74. Subsequently, despite the MSA's prohibitions against the use and disclosure of Tropare's Confidential Information (among other prohibitions), on August 23, 2019, Chris Pardo of D&B forwarded Tropare's Confidential training manuals (which per the MSA should have been destroyed on termination) and a sales guide for the Sprint Prospector to several employees at "SalesRabbit," a developer of mobile application technology (*i.e.*, a Tropare competitor). To be clear, pursuant to D&B's legal obligations, D&B was ***explicitly prohibited from*** even having a copy of Tropare's training manuals, and was further ***explicitly prohibited from*** using or sharing those training manuals for any purpose other than furthering the contractual relationship between Tropare and D&B. That is, D&B knowing, intentionally, and for its own profit, misappropriated and misused Tropare's Confidential Information – something it continued to do, and continues to do through the present.

75. Upon information and belief, SalesRabbit has used Tropare's Confidential Information – unlawfully provided to it by D&B – to develop and sell mobile application technology to the financial detriment of Tropare.

76. Upon information and belief, D&B has disclosed similar Tropare Confidential Information to other mobile application developers for the purpose of allowing these developers to create mobile applications to be sold or licensed by D&B – all based on D&B’s unlawful use and disclosure of Tropare’s technology, Confidential Information and Intellectual Property, as further described in detail in the “Tropare Options v3.pptx” status document shared internally by D&B.

77. As Counterclaim Defendants intended, as a result of the misconduct described above, Tropare’s business has been destroyed. Tropare lost its lucrative contract with Sprint for the DST.

78. As a result of their improper and actionable conduct, including as set forth herein, Counterclaim Defendants have been unjustly enriched to the extent that they have licensed, sold and/or used (or allowed to be used) the DMT that they created by blatantly misappropriating and reverse engineering Tropare’s valuable technology, Confidential Information and Intellectual Property.

79. Further, upon information and belief, Tropare has been and will be severely damaged by D&B’s disclosure of Tropare’s mobile application technology, Confidential Information and Intellectual Property to companies such as SalesRabbit. The extent of Tropare’s damages is presently unknown but is believed to be a sum in the many millions of dollars.

### **FIRST COUNT**

#### **BREACH OF CONTRACT**

80. Tropare repeats and realleges each and every preceding allegation as if set forth fully herein.

81. The MSA is a valid and enforceable contract.

82. Tropare performed all its material obligations under these contracts.

83. D&B breached the MSA by, among other things:

a) Using and reverse engineering Tropare's Confidential Information relating to the DST for purposes unrelated to the performance D&B's obligations under the MSA and otherwise in violation of the MSA and D&B's rights and obligations in connection therewith;

b) Using and reverse engineering Tropare's Intellectual Property relating to the DST for purposes unrelated to the performance of D&B's obligations under the MSA and otherwise in violation of the MSA and D&B's rights and obligations in connection therewith;

c) Using and reverse engineering Tropare's Confidential Information relating to Tropare's mobile application technology for purposes unrelated to the performance D&B's obligations under the MSA and otherwise in violation of the MSA and D&B's rights and obligations in connection therewith;

d) Using and reverse engineering Tropare's Intellectual Property relating to Tropare's mobile application technology for purposes unrelated to the performance D&B's obligations under the MSA and otherwise in violation of the MSA and D&B's rights and obligations in connection therewith;

e) Improperly disclosing Tropare's Confidential Information relating to the DST to third parties;

f) Improperly disclosing Tropare's Intellectual Property relating to the DST to third parties;

g) Improperly disclosing Tropare's Confidential Information relating to Tropare's mobile application technology to third parties;

h) Improperly disclosing Tropare's Intellectual Property relating to Tropare's mobile application technology to third parties; and

i) Improperly reverse engineering the DST and Tropare's Confidential Information and Intellectual Property, all in violation of D&B's obligations and Tropare's rights therein.

84. As a direct and proximate result of D&B's breaches and wrongful acts as set forth herein, Tropare has suffered and will continue to suffer damages.

## **SECOND COUNT**

### **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

85. Tropare repeats and realleges each and every preceding allegation as if set forth fully herein.

86. The MSA is a valid and enforceable contract.

87. There is, in all contracts, including those between D&B and Tropare, an implied covenant of good faith and fair dealing.

88. D&B, by conducting business with Tropare, had implied in their contracts and dealings with Tropare, a duty of good faith and fair dealing.

89. As set forth herein and based upon the facts set forth herein, D&B breached the implied duty of good faith and fair dealing in connection with all of its agreements with Tropare as identified herein.

90. D&B's breach of the implied duty of good faith and fair dealing has caused and will continue to cause Tropare to suffer substantial damages.

**THIRD COUNT**

**UNJUST ENRICHMENT**

91. Tropare repeats and realleges each and every preceding allegation as if set forth fully herein.

92. Unjust enrichment is shown when a party received a benefit and the retention of that benefit without payment would be unjust.

93. By and through all of their wrongful acts as set forth herein, Counterclaim Defendants were able to create and sell the DMT.

94. Upon information and belief, Counterclaim Defendants have, and continue to, to sell or license the DMT (using that name or any other name) and/or products that incorporate features of the DMT.

95. By engaging in the wrongful conduct described in this Counterclaim, Counterclaim Defendants have been unjustly enriched at the expense of Tropare and in violation of the rights of Tropare.

96. As a direct and proximate result of Counterclaim Defendants' unjust enrichment, Tropare is entitled to disgorgement of all of the benefits wrongfully obtained by Counterclaim Defendants.

**FOURTH COUNT**

**MISAPPROPRIATION OF TRADE SECRETS**

97. Tropare repeats and realleges each and every preceding allegation as if set forth fully herein.

98. Tropare has established its leadership position in the software development industry in part due to its development of proprietary products that are not available from competitors or that are of superior quality to those of competitors.

99. Tropare's investments in product development efforts include an extensive, continuing commitment to develop unique, proprietary products for licensing to end users.

100. Tropare's DST was developed at great expense over a long period of time, and its availability to a competitor would cause Tropare to lose a significant competitive advantage and cause a significant loss to Tropare.

101. The DST is not generally known to the public or the industry and has been the subject of reasonable efforts to maintain its confidentiality, including restricting access to the DST to those who must use the DST in connection with Tropare's agreement with Sprint for the sole purpose of providing services to Sprint.

102. The Confidential Information and Intellectual Property of and related to the DST is not generally known to the public or in the industry and has been the subject of reasonable efforts to maintain its confidentiality, including through restricting access to same.

103. While employed by, and acting as an agent of, D&B while contracted to Sprint, Stephanie Tran and others from or under the control of D&B improperly accessed and disclosed the DST and Tropare's Confidential Information and Intellectual Property to D&B for purposes other than to service Sprint pursuant to Tropare's agreement with Sprint and otherwise in violation of Tropare's rights and D&B's obligations

104. D&B improperly misappropriated the DST and Tropare's Confidential Information and Intellectual Property secretly and without lawful permission by reverse engineering the DST, copying and using written and visual Confidential Information and other information concerning

the DST, sharing videos of the operation of the DST, running the DST “in parallel” to Lattice’s Atlas product and other nefarious and unlawful conduct to develop the DMT – all in violation of the rights of Tropare.

105. Counterclaim Defendants have used Tropare’s technology, Confidential Information, Intellectual Property, trade secrets, and proprietary information Counterclaim Defendants misappropriated from Tropare to design and develop products that directly compete with those developed by Tropare, giving Counterclaim Defendants an economic advantage that they would not have had without knowledge and use of Tropare’s technology, Confidential Information and Intellectual Property, including trade secrets and proprietary information.

106. The acts of Counterclaim Defendants as alleged constitute misappropriation and theft of trade secrets and confidential information under New Jersey statutory and common law.

107. As a direct proximate result of Counterclaim Defendants acts set forth herein, Tropare has suffered, and will continue to suffer, the loss of profits and good will from the licensing of its technology in the amount to be proven at trial, and will continue to lose profits and good will until Counterclaim Defendants are enjoined from using or profiting from Tropare’s technology, Confidential Information and Intellectual Property, including trade secrets and proprietary information.

108. As an additional direct and proximate result of Counterclaim Defendants acts as set forth herein, Tropare has sustained, and unless this court intervenes to restrain Counterclaim Defendants’ conduct, Tropare will continue to sustain, great and irreparable injury. Tropare has no adequate remedy at law for these injuries as unless Counterclaim Defendants are restrained from using Tropare’s technology, Confidential Information and Intellectual Property, including trade secrets and proprietary information.



109. Counterclaim Defendants committed their wrongful acts set forth herein willfully and maliciously, and knowingly in violation of their rights and obligations in connection therewith. Counterclaim Defendants' conduct justifies an award to Tropare of exemplary damages and attorneys' fees.

**FIFTH COUNT**

**VIOLATION OF NEW JERSEY TRADE SECRETS ACT**

110. Tropare repeats and realleges each and every preceding allegation as if set forth fully herein.

111. Tropare's DST and the technology and documents in connection therewith constitute Tropare's trade secrets of Tropare under the New Jersey Trade Secrets Act, N.J.S.A. 56:15-1 to 9 (the "TSA").

112. Tropare derives independent economic value, as well as prospective and potential independent economic value, from its trade secrets, including in connection with the DST and the technology and documents in connection therewith, not being generally known to, and not being readily ascertainable by proper means by other persons or entities who/which can obtain economic value from its/their disclosure.

113. Tropare's DST and the technology and documents in connection therewith are subject to efforts that are reasonable under the circumstances to maintain their secrecy.

114. Counterclaim Defendants, including as set forth herein, misappropriated Tropare's trade secrets while Counterclaim Defendants knew or should have known that same was acquired by them by improper means as set forth herein.

115. Counterclaim Defendants, including as set forth herein, used and disclosed Tropare's trade secrets without the express or implied consent of Tropare and in violation of Tropare's rights.

116. Counterclaim Defendants, including as set forth herein, used improper means to acquire Tropare's trade secrets and knowledge thereof.

117. Counterclaim Defendants, including as set forth herein, knew or had reason to know at the time they improperly used Tropare's trade secrets and that such knowledge and use by Counterclaim Defendants was improper.

118. Counterclaim Defendants' possession of, sharing, disclosure, and use of Tropare's trade secrets as set forth herein went beyond any rights authorized to them by Tropare and was contrary to Counterclaim Defendants' rights at the time same was used, shared and disclosed both before and after the termination of D&B's contractual relationship with Tropare.

119. Based upon the foregoing, Tropare is entitled to and seeks injunctive relief precluding Counterclaim Defendants from using or gaining any advantage from the use of Tropare's trade secrets, the recovery of all damages resulting from Counterclaim Defendants' actions, including but not limited to a reasonable royalty from all such prior usage, usage not enjoined and from the unauthorized disclosure and/or use thereof.

120. Counterclaim Defendants actions as set forth herein were willful and malicious, and in bad faith.

121. As a direct and proximate result of Counterclaim Defendants' conduct, Tropare has suffered and will continue to suffer damages.

122. Based upon the foregoing, Tropare also seeks all relief and remedies available to it pursuant to the TSA.

**SIXTH COUNT**

**UNFAIR COMPETITION**

123. Tropare repeats and realleges each and every preceding allegation as if set forth fully herein.

124. Counterclaim Defendants have become competitors of Tropare as a result of their misappropriation of the DST to create the DMT.

125. Counterclaim Defendants have unfairly competed with the business of Tropare by using Tropare's Confidential Information, Intellectual Property, trade secrets and technology, and as a result, improperly interfering with Tropare's business and contractual relationships with their clients and prospective clients.

126. Counterclaim Defendants have used Tropare's Confidential Information, Intellectual Property, trade secrets and technology they misappropriated from Tropare to design and develop products, including but not necessarily limited to, the DMT, that directly compete with those developed by Tropare, giving Counterclaim Defendants an unfair economic advantage that they would not have had without such misappropriation and related bad acts, including the reverse engineering of the DST, as set forth herein.

127. Counterclaim Defendants' actions as set forth herein were willful and malicious, and in bad faith.

128. As a direct and proximate result of Counterclaim Defendants' conduct as set forth herein, Tropare has suffered and will continue to suffer damages.

129. Based upon the foregoing, Tropare also seeks all relief and remedies available to it pursuant to applicable law regarding unfair competition.

**SEVENTH COUNT**

**CIVIL CONSPIRACY**

130. Tropare repeats and realleges each and every preceding allegation as if set forth fully herein.

131. Counterclaim Defendants, through the unlawful agreement of their executives, principals, agents, officers, management, and/or other employees, intentionally conspired among themselves and among and between D&B and Lattice, to commit the unlawful acts described herein against Tropare for unlawful purpose.

132. Specifically, angered by Tropare's termination of the MSA, Counterclaim Defendants, individually and in conspiracy with each other, developed and executed the Project Oopsie scheme to misappropriate and reverse engineer Tropare's technology, Confidential Information, Intellectual Property and trade secrets to develop the DMT based on Tropare's DST, and put Tropare out of business.

133. Counterclaim Defendants' conduct, individually and as part of this conspiracy, all as set forth herein, is the result of an unlawful agreement and conspiracy among and between Counterclaim Defendants and their respective executives, principals, agents, officers, management, and/or other employees to inflict wrong and injury on Tropare, all for the financial benefit of said individuals and entities.

134. Counterclaim Defendants' actions as set forth herein were willful and malicious, and in bad faith.

135. As a direct and proximate result of Counterclaim Defendants' conduct, Tropare has suffered and will continue to suffer damages.

136. Based upon the foregoing, Tropare also seeks all relief and remedies available to it pursuant to applicable law.

**PRAYERS FOR RELIEF**

**WHEREFORE**, Tropare requests judgment be entered against the Counterclaim Defendants as follows:

- a. Compensatory Damages;
- b. Consequential Damages;
- c. Punitive Damages;
- d. Injunctive Relief;
- e. Interest;
- f. Attorneys' Fees;
- g. Statutory Damages;
- h. All Damages permitted under law;
- i. Costs; and
- j. Such other relief as the Court may deem appropriate.

**OLENDERFELDMAN LLP**

Dated: February 3, 2023

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**CERTIFICATION PURSUANT TO R. 4:5-1**

In accordance with R. 4:5-1, I certify that based upon the information currently in my possession, the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding and that I know of no other person or persons at this time who should be joined in this action at this time.

Dated: February 3, 2023

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**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Michael J. Feldman, Esq. has been designated as trial counsel on behalf of Defendant and Counterclaimant.

Dated: February 3, 2023

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