

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
NO. 14-CVS-9922

SITELINK SOFTWARE, LLC,

Plaintiff,

v.

RED NOVA LABS, INC.,

Defendant.

**DEFENDANT'S AMENDED ANSWER,  
DEFENSES, AND COUNTERCLAIMS  
TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

COMES NOW Defendant, Red Nova Labs, Inc. ("Red Nova" or "Defendant"), and files its Answer, Defenses, and Amended Counterclaims to the First Amended Complaint of Plaintiff Sitelink Software, LLC ("Plaintiff" or "Sitelink"), filed as of July 14, 2015 (hereinafter "Amended Complaint"), as follows:

FIRST DEFENSE AND ANSWER

Answering the specific allegations of the Amended Complaint, Red Nova responds to the correspondingly numbered paragraphs of the Amended Complaint as follows:

1. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1 of the Amended Complaint.
2. Defendant admits the allegations contained in Paragraph 2 of the Amended Complaint.
3. The allegations in Paragraph 3 of the Amended Complaint consist of legal conclusions to which no response is required. To the extent a response is necessary, Red Nova denies the allegations set forth in Paragraph 3 of the Amended Complaint.

4. The allegations in Paragraph 4 of the Amended Complaint consist of legal conclusions to which no response is required. To the extent a response is necessary, Red Nova admits the allegations set forth in Paragraph 4 of the Amended Complaint.

5. The allegations in Paragraph 5 of the Amended Complaint consist of legal conclusions to which no response is required. To the extent a response is necessary, Red Nova admits the allegations set forth in Paragraph 5 of the Amended Complaint.

6. The allegations in Paragraph 6 of the Amended Complaint consist of legal conclusions to which no response is required. To the extent a response is necessary, Red Nova admits the allegations set forth in Paragraph 6 of the Amended Complaint.

7. Red Nova admits that Sitelink purports to be engaged in the business of developing and marketing management software for the self-storage industry, but Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 7 of the Amended Complaint, and therefore denies them.

8. Red Nova admits that Sitelink offers a management software package called SiteLink Web Edition (“SLWE”), but currently lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 8 of the Amended Complaint, and therefore denies them.

9. The contents of the License and Service Agreement (“Licensing Agreement”) speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 9 of the Amended Complaint.

10. The contents of the Licensing Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 10 of the Amended Complaint.

11. The contents of the Licensing Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 11 of the Amended Complaint.

12. The contents of the Licensing Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 12 of the Amended Complaint.

13. The contents of the Licensing Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 13 of the Amended Complaint.

14. The contents of the Licensing Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 14 of the Amended Complaint.

15. The contents of the Licensing Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To

the extent a response is required, Red Nova denies the allegations contained in Paragraph 15 of the Amended Complaint.

16. The contents of the Licensing Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 16 of the Amended Complaint.

17. Red Nova admits that self-storage facility operators commonly retain third parties to provide services, including website design, call centers, and customer lead aggregation, in an effort to increase the number of units rented at their storage facilities. To the extent any further response is required, Red Nova denies the allegations in Paragraph 17 of the Amended Complaint.

18. Red Nova admits that Sitelink provides an Application Programming Interface (“API”) that allows its software to communicate with other software applications from other vendors that may be used by the customer. To the extent any further response is required, Red Nova denies the allegations in Paragraph 18 of the Amended Complaint.

19. Red Nova admits that Sitelink’s API is intended to allow Sitelink’s software to communicate with other software applications from other vendors that may be used by the customer, including websites with reservation and payment functions. To the extent any further response is required, Red Nova denies the allegations in Paragraph 19 of the Amended Complaint.

20. Red Nova denies the allegations contained in Paragraph 20 of the Amended Complaint.

21. The contents of the API User Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 21 of the Amended Complaint.

22. The contents of the API User Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 22 of the Amended Complaint.

23. The contents of the API User Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 23 of the Amended Complaint.

24. The contents of the API User Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 24 of the Amended Complaint.

25. The contents of the API User Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 25 of the Amended Complaint.

26. The contents of the API User Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To

the extent a response is required, Red Nova denies the allegations contained in Paragraph 26 of the Amended Complaint.

27. The contents of the API User Agreement speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova admits that Sitelink purported to make certain unilateral changes to the API User Agreement, including changes intended to stifle legitimate competition, on or about April 28, 2014, and denies the remaining allegations contained in Paragraph 27 of the Amended Complaint.

28. Red Nova admits the allegations contained in paragraph 28 of the Amended Complaint.

29. Red Nova admits that it formed StorageFront.com LLC on or about September 16, 2009. To the extent any further response is required, Red Nova denies the allegations in Paragraph 29 of the Amended Complaint.

30. Red Nova admits that it offered lead generation services under the Storagefront brand for a flat monthly fee. To the extent any further response is required, Red Nova denies the allegations in Paragraph 30 of the Amended Complaint.

31. Red Nova admits that it offered lead generation services under the StorageHounds brand for a variable fee per rental. To the extent any further response is required, Red Nova denies the allegations in Paragraph 31 of the Amended Complaint.

32. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 32 of the Amended Complaint.

33. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 33 of the Amended Complaint.

34. Red Nova denies the allegations contained in paragraph 34 of the Amended Complaint.

35. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 35 of the Amended Complaint.

36. Red Nova admits that it used StorageAhead to brand its web development services. To the extent any further response is required, Red Nova denies the allegations in Paragraph 36 of the Amended Complaint.

37. Red Nova admits that it generally sold the WebReady platform to self-storage operators with less than ten (10) facilities. To the extent any further response is required, Red Nova denies the allegations in Paragraph 37 of the Amended Complaint.

38. Red Nova admits that it generally sold the WebWorks platform to self-storage operators with more than ten (10) facilities. To the extent any further response is required, Red Nova denies the allegations in Paragraph 38 of the Amended Complaint.

39. Red Nova admits that its WebReady and WebWorks products were designed to create a web presence for self-storage facility operators and to drive traffic to that presence. To the extent any further response is required, Red Nova denies the allegations in Paragraph 39 of the Amended Complaint.

40. Red Nova denies the allegations contained in Paragraph 40 of the Amended Complaint.

41. Red Nova denies the allegations contained in Paragraph 41 of the Amended Complaint.

42. Red Nova denies the allegations contained in Paragraph 42 of the Amended Complaint.

43. Red Nova admits that Sitelink allowed Red Nova to access Sitelink's API in order to enable Sitelink's management software to communicate with the website and e-commerce platform developed by Red Nova for mutual customers. To the extent any further response is required, Red Nova denies the allegations in Paragraph 43 of the Amended Complaint.

44. Red Nova admits that it has accessed Sitelink's API on behalf of mutual customers. To the extent any further response is required, Red Nova denies the allegations in Paragraph 44 of the Amended Complaint.

45. Red Nova admits that it approached Sitelink in or about September 2012 to discuss the possibility of collaborating on a facility management solution that would address the needs of self-storage facility operators whose needs have not been adequately addressed by Sitelink's software offerings, and that Sitelink refused to work with Red Nova to provide such a solution. To the extent any further response is required, Red Nova denies the allegations in Paragraph 45 of the Amended Complaint.

46. Red Nova admits that it began developing a facility management solution after Sitelink declined to work collaboratively with Red Nova to address the need for such a solution for smaller self-storage facility operators. Red Nova further admits that it uses the brand storEDGE for its facility management solution. To the extent any further response is required, Red Nova denies the allegations in Paragraph 46 of the Amended Complaint.

47. Red Nova denies the allegations contained in Paragraph 47 of the Amended Complaint.

48. Red Nova denies the allegations contained in Paragraph 48 of the Amended Complaint.



49. Red Nova admits the allegations contained in paragraph 49 of the Amended Complaint.

50. Red Nova denies the allegations contained in Paragraph 50 of the Amended Complaint.

51. Red Nova denies the allegations contained in Paragraph 51 of the Amended Complaint.

52. Red Nova denies the allegations contained in Paragraph 52 of the Amended Complaint.

53. Red Nova denies the allegations contained in Paragraph 53 of the Amended Complaint.

54. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 54 of the Amended Complaint.

55. Red Nova denies the allegations contained in Paragraph 55 of the Amended Complaint.

56. Red Nova denies the allegations in Paragraph 56 of the Amended Complaint.

57. Red Nova admits that it offered to establish a relationship with Sitelink related to Sitelink's API, including potential payment by Red Nova to Sitelink for use of the Sitelink API. Red Nova avers that Sitelink never responded to Red Nova's offer. To the extent any further response is required, Red Nova denies the allegations in Paragraph 57 of the Amended Complaint.

58. Red Nova denies the allegations in Paragraph 58 of the Amended Complaint.

59. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 59 of the Amended Complaint.

60. Red Nova denies the allegations contained in Paragraph 60 of the Amended Complaint.

61. Red Nova denies the allegations contained in Paragraph 61 of the Amended Complaint.

62. Red Nova denies the allegations in Paragraph 62 of the Amended Complaint.

63. Red Nova denies the allegations contained in Paragraph 63 of the Amended Complaint.

64. Red Nova denies the allegations in Paragraph 64 of the Amended Complaint.

65. Red Nova denies the allegations in Paragraph 65 of the Amended Complaint.

66. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 66 of the Amended Complaint.

67. Red Nova denies the allegations contained in Paragraph 67 of the Amended Complaint.

68. Red Nova denies the allegations contained in Paragraph 68 of the Amended Complaint.

69. The contents of the May 4, 2015 press release speak for themselves. To the extent a response is required, Red Nova denies the allegations contained in Paragraph 69 of the Amended Complaint.

70. Red Nova admits that Sitelink's conduct has been anti-competitive. To the extent any further response is required, Red Nova denies the allegations in Paragraph 70 of the Amended Complaint.

71. The allegations in Paragraph 71 of the Amended Complaint consist of legal conclusions to which no response is required. To the extent a response is necessary, Red Nova denies the allegations set forth in Paragraph 71 of the Amended Complaint.

**Count I**

**(Alleged Violations of North Carolina Trade Secret Protection Act –**

**N.C. Gen. Stat. § 66-152, *et.seq*)**

72. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 71 of the Amended Complaint as if set forth fully herein.

73. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 73 of the Amended Complaint.

74. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 74 of the Amended Complaint.

75. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 75 of the Amended Complaint.

76. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 76 of the Amended Complaint.

77. Red Nova denies the allegations contained in Paragraph 77 of the Amended Complaint.

78. Red Nova denies the allegations contained in Paragraph 78 of the Amended Complaint.

79. Red Nova denies the allegations contained in Paragraph 79 of the Amended Complaint.

80. Red Nova denies the allegations contained in Paragraph 80 of the Amended Complaint.

81. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 81 of the Amended Complaint.

82. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 82 of the Amended Complaint.

83. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 83 of the Amended Complaint.

84. Red Nova denies the allegations contained in Paragraph 84 of the Amended Complaint.

85. Red Nova denies the allegations contained in Paragraph 85 of the Amended Complaint.

86. Red Nova denies the allegations contained in Paragraph 86 of the Amended Complaint.

87. Red Nova denies the allegations contained in Paragraph 87 of the Amended Complaint.

88. Red Nova denies the allegations contained in Paragraph 88 of the Amended Complaint.

89. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 89 of the Amended Complaint.

90. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 90 of the Amended Complaint.

91. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 91 of the Amended Complaint.

92. Red Nova denies the allegations contained in Paragraph 92 of the Amended Complaint.

93. Red Nova denies the allegations contained in Paragraph 93 of the Amended Complaint.

94. Red Nova denies the allegations contained in Paragraph 94 of the Amended Complaint.

95. Red Nova denies the allegations contained in Paragraph 95 of the Amended Complaint.

96. Red Nova denies the allegations contained in Paragraph 96 of the Amended Complaint.

97. Red Nova denies the allegations contained in Paragraph 97 of the Amended Complaint.

98. Red Nova denies the allegations contained in Paragraph 98 of the Amended Complaint.

99. Red Nova denies the allegations contained in Paragraph 99 of the Amended Complaint.

100. Red Nova denies the allegations contained in Paragraph 100 of the Amended Complaint.

101. Red Nova denies the allegations contained in Paragraph 101 of the Amended Complaint.

**Count II**

**(Alleged Violations of Computer Fraud and Abuse Act (“CFAA”) –**

**18 U.S.C. § 1030, *et seq.*)**

102. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 101 of the Amended Complaint as if set forth fully herein.

103. Red Nova admits that it has been allowed to access the Sitelink API on behalf of mutual customers. To the extent any further response is required, Red Nova denies the allegations in Paragraph 103 of the Amended Complaint.

104. Red Nova denies the allegations contained in Paragraph 104 of the Amended Complaint.

105. Red Nova admits that it has been allowed to access the Sitelink API on behalf of mutual customers. To the extent any further response is required, Red Nova denies the allegations in Paragraph 105 of the Amended Complaint.

106. The contents of the Consent Order speak for themselves, and their interpretation and application is a legal conclusion to which no specific response is required. To the extent a response is required, Red Nova admits that it has been allowed to access the Sitelink API on behalf of mutual customers and denies any remaining allegations contained in Paragraph 106 of the Amended Complaint.

107. Red Nova denies the allegations contained in Paragraph 107 of the Amended Complaint.

108. Red Nova denies the allegations contained in Paragraph 108 of the Amended Complaint.

109. The allegations in Paragraph 109 of the Amended Complaint consist of legal conclusions to which no response is required. To the extent a response is necessary, Red Nova denies the allegations set forth in Paragraph 109 of the Amended Complaint.

110. The allegations in Paragraph 110 of the Amended Complaint consist of legal conclusions to which no response is required. To the extent a response is necessary, Red Nova denies the allegations set forth in Paragraph 110 of the Amended Complaint.

111. Red Nova denies the allegations contained in Paragraph 111 of the Amended Complaint.

112. Red Nova denies the allegations contained in Paragraph 112 of the Amended Complaint.

113. Red Nova denies the allegations contained in Paragraph 113 of the Amended Complaint.

114. Red Nova denies the allegations contained in Paragraph 114 of the Amended Complaint.

115. Red Nova denies the allegations contained in Paragraph 115 of the Amended Complaint.

116. Red Nova denies the allegations contained in Paragraph 116 of the Amended Complaint.

117. Red Nova denies the allegations contained in Paragraph 117 of the Amended Complaint.

### **Count III**

**(Alleged Computer Trespass – Violation of N.C. Ge. Stat. § 14-458 and  
Recovery under § 1-539.2A)**

118. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 117 of the Amended Complaint as if set forth fully herein.

119. Red Nova denies the allegations contained in Paragraph 119 of the Amended Complaint.

120. Red Nova denies the allegations contained in Paragraph 120 of the Amended Complaint.

121. Red Nova denies the allegations contained in Paragraph 121 of the Amended Complaint.

#### **Count IV**

#### **(Breach of Contract)**

122. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 121 of the Amended Complaint as if set forth fully herein.

123. Red Nova denies the allegations contained in Paragraph 123 of the Amended Complaint.

124. Red Nova denies the allegations contained in Paragraph 124 of the Amended Complaint.

125. Red Nova denies the allegations contained in Paragraph 125 of the Amended Complaint.

126. Red Nova denies the allegations contained in Paragraph 126 of the Amended Complaint.

127. Red Nova denies the allegations contained in Paragraph 127 of the Amended Complaint.



128. Red Nova denies the allegations contained in Paragraph 128 of the Amended Complaint.

**Count V**

**(Unjust Enrichment)**

129. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 128 of the Amended Complaint as if set forth fully herein.

130. Red Nova denies the allegations contained in Paragraph 130 of the Amended Complaint.

131. Red Nova denies the allegations contained in Paragraph 131 of the Amended Complaint.

132. Red Nova denies the allegations contained in Paragraph 132 of the Amended Complaint.

133. Red Nova denies the allegations contained in Paragraph 133 of the Amended Complaint.

134. Red Nova denies the allegations contained in Paragraph 134 of the Amended Complaint.

135. Red Nova denies the allegations contained in Paragraph 135 of the Amended Complaint.

**Count VI**

**(Tortious Interference with Existing Contractual Relations)**

136. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 135 of the Amended Complaint as if set forth fully herein.

137. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 137 of the Amended Complaint.

138. Red Nova denies the allegations contained in Paragraph 138 of the Amended Complaint.

139. Red Nova denies the allegations contained in Paragraph 139 of the Amended Complaint.

140. Red Nova denies the allegations contained in Paragraph 140 of the Amended Complaint.

141. Red Nova denies the allegations contained in Paragraph 141 of the Amended Complaint.

142. Red Nova denies the allegations contained in Paragraph 142 of the Amended Complaint.

143. Red Nova denies the allegations contained in Paragraph 143 of the Amended Complaint.

### **Count VII**

#### **(Tortious Interference with Prospective Contracts)**

144. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 143 of the Amended Complaint as if set forth fully herein.

145. Red Nova currently lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 145 of the Amended Complaint.

146. Red Nova denies the allegations contained in Paragraph 146 of the Amended Complaint.

147. Red Nova denies the allegations contained in Paragraph 147 of the Amended Complaint.

148. Red Nova denies the allegations contained in Paragraph 148 of the Amended Complaint.

149. Red Nova denies the allegations contained in Paragraph 149 of the Amended Complaint.

150. Red Nova denies the allegations contained in Paragraph 150 of the Amended Complaint.

### **Count VIII**

#### **(Libel)**

151. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 150 of the Amended Complaint as if set forth fully herein.

152. Red Nova admits the allegations contained in paragraph 152 of the Amended Complaint.

153. Red Nova admits the allegations contained in paragraph 153 of the Amended Complaint.

154. Red Nova denies the allegations contained in Paragraph 154 of the Amended Complaint.

155. Red Nova denies the allegations contained in Paragraph 155 of the Amended Complaint.

156. Red Nova denies the allegations contained in Paragraph 156 of the Amended Complaint.

157. Red Nova denies the allegations contained in Paragraph 157 of the Amended Complaint.

158. Red Nova denies the allegations contained in Paragraph 158 of the Amended Complaint.

159. Red Nova denies the allegations contained in Paragraph 159 of the Amended Complaint.

160. Red Nova denies the allegations contained in Paragraph 160 of the Amended Complaint.

161. Red Nova denies the allegations contained in Paragraph 161 of the Amended Complaint.

**Count IX**

**(Unfair and Deceptive Trade Practices –**

**Violation of N.C. Gen. Stat. § 75-1.1)**

162. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 161 of the Amended Complaint as if set forth fully herein.

163. Red Nova denies the allegations contained in Paragraph 163 of the Amended Complaint.

164. Red Nova denies the allegations contained in Paragraph 164 of the Amended Complaint.

165. The allegations in Paragraph 165 of the Amended Complaint consist of legal conclusions to which no response is required. To the extent a response is necessary, Red Nova denies the allegations set forth in Paragraph 165 of the Amended Complaint.

166. Red Nova denies the allegations contained in Paragraph 166 of the Amended Complaint.

167. Red Nova denies the allegations contained in Paragraph 167 of the Amended Complaint.

168. Red Nova denies the allegations contained in Paragraph 168 of the Amended Complaint.

**Count X**

**(Uniform Declaratory Judgment Act – N.C. Gen. Stat. § 1-253, *et. seq.*)**

169. Red Nova reaffirms and incorporates by reference its answers to paragraphs 1 through 168 of the Amended Complaint as if set forth fully herein.

170. Red Nova denies the allegations contained in Paragraph 170 of the Amended Complaint.

171. Red Nova denies the allegations contained in Paragraph 171 of the Amended Complaint.

172. Red Nova denies the allegations contained in Paragraph 172 of the Amended Complaint.

173. Red Nova denies the allegations contained in Paragraph 173 of the Amended Complaint.

RED NOVA DENIES ANY AND ALL ALLEGATIONS CONTAINED IN THE AMENDED COMPLAINT TO WHICH NO SPECIFIC RESPONSE HAS BEEN MADE ABOVE.

SECOND DEFENSE

Some or all of Sitelink's claims and requests for relief are barred because Defendant's actions were authorized by license.

THIRD DEFENSE

Some or all of Sitelink's claims and requests for relief are barred by laches, waiver, and/or estoppel.

FOURTH DEFENSE

Some or all of Sitelink's claims and requests for relief are barred by Plaintiff's breach of contract and/or breach of license.

FIFTH DEFENSE

Some or all of Sitelink's claims and requests for relief are barred because Defendant at all times acted in good faith.

SIXTH DEFENSE

Some or all of Sitelink's claims and requests for relief are barred by the doctrine of unclean hands.

SEVENTH DEFENSE

Some or all of Sitelink's claims for injunctive relief are barred because Plaintiff possesses an adequate remedy at law.

EIGHTH DEFENSE

Some or all of Sitelink's claims for injunctive relief are barred because Plaintiff cannot demonstrate irreparable harm.

NINTH DEFENSE

Some or all of Sitelink's claims for injunctive relief are barred because the relief requested is not in the public interest.

TENTH DEFENSE

Some or all of Sitelink's claims for injunctive relief are barred because they are overly broad and not reasonably tailored to restrain the wrongful conduct alleged.

ELEVENTH DEFENSE

Some or all of Sitelink's claims are barred by the preemption provision of the United States Copyright Act, 17 U.S.C. § 301.

TWELFTH DEFENSE

Plaintiff's attempted termination of the API License is illegal and unenforceable because it was done for patently anticompetitive reasons in violation of North Carolina law and public policy.

THIRTEENTH DEFENSE

Some or all of Sitelink's claims are barred because the contractual provisions in the API License on which Sitelink's claims of breach rely are void due to vagueness.

FOURTEENTH DEFENSE

Some or all of Sitelink's claims are barred because Plaintiff permitted Red Nova to access the API on behalf of mutual customers without Red Nova's having accepted the terms of the API License.

FIFTEENTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because some or all of the matters alleged by Plaintiff to be a trade secret are information that is widely known in the industry and is in the public domain.

SIXTEENTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because some or all of the matters alleged by Plaintiff to be a trade secret are information well within the skill of an experienced software company; therefore, such matter is not protectable as a trade secret.

SEVENTEENTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because some or all of the matters alleged by Plaintiff to be a trade secret is information has already been published or otherwise disclosed by Plaintiff and are therefore not protectable as trade secret.

EIGHTEENTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because Defendant had authority to access Plaintiff's API.

NINETEENTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because Defendant did not damage Plaintiff's computers.

TWENTIETH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part due to Sitelink's copyright misuse.

TWENTY-FIRST DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because Defendant did not



- (1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network;
- (2) Cause a computer to malfunction, regardless of how long the malfunction persists;
- (3) Alter or erase any computer data, computer programs, or computer software;
- (4) Cause physical injury to the property of another;
- (5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network; or
- (6) Falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

#### TWENTY-SECOND DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because Plaintiff acquiesced in the actions and conduct of Defendants.

#### TWENTY-THIRD DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because Plaintiff's agreements are unconscionable.

TWENTY-FOURTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because of justification and/or privilege.

TWENTY-FIFTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because Defendant's statements were true.

TWENTY-SIXTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because of absence of malice.

TWENTY-SEVENTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part because Defendant's statements included fair comments.

TWENTY-EIGHTH DEFENSE

Some or all of Sitelink's claims are barred in whole or in part due to the parties' course of performance in their contractual relationship.

**TWENTY-NINTH DEFENSE AND COUNTERCLAIMS**

For its Counterclaims against Sitelink, Red Nova alleges as follows:

**Summary of Red Nova's Claims Against Sitelink**

1. This case is about two very different companies with sharply contrasting ways of doing business. Red Nova's business strategy is, in effect, to "build a better mousetrap" – i.e., to give consumers the best possible choices, to develop and offer superior products and outstanding services, to let customers decide for themselves what works best for them, and to compete fairly and ethically with others in the industry.

2. Sitelink, by far the dominant player in the marketplace for facility management software (“FMS”) for the self-storage industry, has a fundamentally different approach. Rather than focusing its efforts on offering consumers the best products and services at the best prices, Sitelink instead works aggressively to leverage its dominant position in the FMS marketplace to unfair advantage. Sitelink’s strategy is to snuff out competition, divide the market, and dictate third party winners and losers in an effort, among other things, to maintain excessively high prices for its outdated and inefficient products, and to protect those products from the salutary effects of legitimate competition. Using nakedly anti-competitive contractual provisions and collusive agreements, aggressive campaigns of retaliation against perceived competitors, and other coercive measures discussed below, Sitelink conspires with others in the industry to divide the market for software solutions for self-storage facilities artificially, to inflate prices, and to attempt to monopolize the self-storage FMS marketplace.

3. The result of Sitelink’s business methods is that the self-storage FMS marketplace, and the marketplace for software solutions for the self-storage industry in general, have become classic examples of underserved and inefficient markets. The self-storage industry generally is a nearly \$30 billion industry in the United States, but when it comes to software and technology solutions for that industry, there are significantly higher prices, significantly fewer viable choices available to consumers, and significantly fewer consumer needs being met, than would be the case if fair and healthy competition existed. Sitelink’s anticompetitive, coercive, and retaliatory actions are a prime reason for those high prices and limited choices, and they violate North Carolina’s Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1 *et seq.*, including specifically Sections 75-1, 75-1.1, 75-2, and 75-2.1.

4. Sitelink's behavior towards Red Nova, including its systematic campaign to destroy Red Nova's customer relationships, is a vivid case study in Sitelink's overall tactics. For several years, Sitelink and Red Nova have served many mutual customers, as many users have elected to use Sitelink's FMS product, which primarily involves internal business operations, while using Red Nova to provide the outward-facing capabilities that Sitelink's FMS lacks, including the website, web marketing, and e-commerce platform that is vital to storage facilities' interactions with paying customers. After learning that Red Nova was working on adding FMS functions to its own offerings in an attempt to meet the needs of many customers whose needs were not being adequately addressed by Sitelink, Sitelink specifically targeted Red Nova for retaliation. Sitelink embarked on an extraordinary campaign, devoting enormous time and resources, to intimidate its own FMS customers into terminating their website and e-commerce contracts with Red Nova and signing on with other third-party vendors chosen by Sitelink, on terms dictated by Sitelink.

5. Sitelink's campaign against Red Nova was highly organized and tightly coordinated with a select number of third-party vendors in the self-storage industry, all of whom compete directly with Red Nova in providing website marketing and e-commerce platforms, but who also have agreed never to attempt to compete with Sitelink. Sitelink's overriding goal in conspiring with these vendors was not to gain any new clients or sales for itself, as Sitelink does not even offer the kinds of website and e-commerce services that Red Nova offers. Rather, Sitelink's acknowledged goal was simply to punish Red Nova, to starve it of non-FMS revenue, and to destroy its reputation and as many of its customer relationships as possible, while providing those customers to other willing vendors, all in an effort to stop Red Nova's development of an integrated FMS solution in its tracks.

6. Central to Sitelink's campaign against Red Nova was Sitelink's dissemination to mutual Sitelink/Red Nova customers of knowingly false information and defamatory statements about Red Nova. These false statements were designed to coerce as many of those customers as possible to leave Red Nova and sign on with Red Nova's competitors before the terms of their contracts with Red Nova were complete. Sitelink openly and falsely accused Red Nova of numerous misdeeds, including "shameless theft and abuse" of Sitelink property, and knowingly violating a preexisting anti-competition restriction in the API License. In fact, Sitelink knew that there was no such restriction in the applicable API License, and Sitelink only added that provision months *after* it had already launched its campaign against Red Nova and began circulating its false statements. Sitelink also made numerous misstatements to Sitelink/Red Nova customers intended to mislead them into believing that switching website vendors would be a simple, non-disruptive task that, for example, would not affect customers' internet search rankings, when Sitelink knew that this was false.

7. Red Nova brings this action to obtain redress, including damages and injunctive relief, for the harms and damages it has suffered, and will continue to suffer, as a result of Sitelink's wrongful conduct, including its illegal acts, contracts, combinations, and conspiracies in restraint of trade; its unfair methods of competition and unfair and deceptive acts and practices in commerce in this state; its attempts, including through combining and conspiring with others, to monopolize the self-storage FMS market; its false and defamatory statements about Red Nova; its repudiation of its own contractual duties under the API License; and its tortious interference with Red Nova's valuable customer relationships.

### **The Parties**

8. Red Nova is a corporation organized and existing under the laws of the State of Kansas, with a principal place of business in Westwood, Kansas.

9. Red Nova currently offers a variety of online software services (“Services”) to storage facilities and other companies (“Red Nova Customers”), pursuant to contracts with those Customers (“Red Nova Contracts”).

10. Upon information and belief, SiteLink is a limited liability company organized and existing under the laws of the State of North Carolina, with a principal place of business in Wake County, North Carolina.

11. Similar to Red Nova, Sitelink provides certain software and online services to the self-storage industry, including management software for self-storage facilities.

12. Upon information and belief, Sitelink is by far the dominant player in the market for management software for self-storage facilities. Sitelink’s client base of approximately eleven thousand (11,000) facility locations is approximately 35-40% of the addressable market of self-storage facilities in the United States.

### **Red Nova’s Business**

13. Founded in 2009, Red Nova focuses on identifying commercial technology needs that are not being adequately served in self storage, putting a highly skilled team of developers to work creating solutions to address those needs, and then marketing and selling those solutions into the self storage market.

14. Soon after Red Nova was founded, its team identified the self-storage industry – facilities where individual consumers, and sometimes businesses, rent storage space and are

responsible for moving their possessions in and out – as one in which owners’ and operators’ commercial technology needs were not being adequately served.

15. Software technology is used in the self-storage industry to perform a variety of tasks, from internal office tasks to external, customer-facing operations. Less than half of self-storage facilities use facility management software, often referred to by the acronym “FMS”, to handle a range of internal office functions, including booking, inventory management, revenue optimization, financial reporting, and payment processing. Self-storage facility operator’s needs go well beyond internal office functions, however, and include internet-based activities such as lead generation, online reservations, e-commerce, customer relationship management (“CRM”), phone integration, lead tracking and much richer business analytics.

16. Initially, Red Nova focused on online marketing and website design. It began developing and offering online services including internet-based lead generation through its StorageFront platform in 2009, and moved into web design and other online marketing services in 2011.

17. Red Nova did not initially offer an FMS solution. Nevertheless, as Red Nova interacted with clients to determine their needs and preferences, and observed the industry, it became increasingly evident that a well-functioning and highly integrated FMS was a linchpin to customers’ technological needs. It also became clear that the available FMS products and services – including those offered by Sitelink, the dominant player – were falling woefully short of meeting those needs. While working with the customers of lead generation, web design, and marketing online services, Red Nova recognized that the self-storage industry lagged considerably behind other industries in the robustness and cost-effectiveness of the software that had been developed to meet their needs.

18. More specifically, Red Nova received feedback from many of its customers that they were unhappy with the FMS products then available, including the dominant Sitelink FMS. Both existing and potential Red Nova customers said that they wanted better and more cost-effective alternative software solutions than Sitelink and others in the market were offering, including more user-friendly technological features, richer functionality, and better integration with other aspects of their other technology and business platforms.

19. One shortcoming in particular, which was exemplified by Sitelink's dominant FMS software, known as Sitelink Web Edition ("SLWE"), was that FMS functionality was focused heavily on core internal office functions, and was not well-integrated with marketing, e-commerce, and other client-facing technological functionality.

20. As a result of this perception of consumer needs and preferences, Red Nova began exploring the possibility of developing FMS that would have much more effective integration with the other key technological needs of self-storage facilities, including in marketing and e-commerce.

#### **Sitelink Tries to Deter Red Nova From Competing in the FMS Space**

21. In the fall of 2012, Red Nova approached Sitelink as a potential collaborator. Red Nova's CEO Dan Miller reached out to Sitelink's Chief Operating Officer, Mr. Markus Hecker, to discuss the possibility of working together on an FMS solution that would address Red Nova Customer's concerns. Mr. Miller related his observation that the FMS market was underserved, and that a less expensive solution with better integration would be appealing to many more customers at both the high and low ends of the market. To Mr. Miller's surprise, Mr. Hecker voiced an intense, negative reaction. He told Mr. Miller that "it's a stupid idea to compete on price," and that "customers will either pay \$200 per month [per facility], or they won't get to use



our software.” After his outburst, Mr. Hecker hung up the phone on Mr. Miller. Soon, however, Mr. Hecker called Mr. Miller back, apologized for his outburst, and offered Red Nova the opportunity to be listed as a “partner” on the Sitelink website.

22. As of the time of the fall 2012 discussion, a significant number of Red Nova’s web services customers were also users of one of Sitelink’s FMS offerings. Given Sitelink’s dominance of the FMS marketplace, it would have been practically impossible for Red Nova not to have encountered significant numbers of Sitelink FMS users as it offered its own products and services. By early 2014, approximately 40% of Red Nova customers were also customers of Sitelink.

23. Following the fall 2012 discussion, Red Nova continued to grow its customer base for its lead generation, web design, and marketing online services, including by adding numerous customers who also used Sitelink’s FMS. As part of this growth, Red Nova continued to offer products and services to mutual Sitelink customers that involved accessing the Sitelink API to allow the Sitelink FMS and the Red Nova marketing and e-commerce platform to share data.

24. Meanwhile, Red Nova continued to explore the possibility of developing a FMS solution that would better address the needs of the self-storage market. Having been rebuffed by Mr. Hecker and Sitelink, Red Nova decided to go forward on its own, initiating onsite visits with major customers to seek product input in the fourth quarter of 2012. Eventually, in approximately April 2013, Red Nova began software development work on its own FMS. The work continues to this day. Red Nova released a “beta” version of its FMS, known as StorEdge, to two facilities in January 2014. It released the first generally available (“GA”) version of the product in April 2015.

25. Red Nova's FMS was shown to a small set of "alpha" testers (i.e., early testers that were provided a pre-lease, early-stage, and incomplete version of the software) in or about Fall 2013, to help identify shortcomings and additional features that the software required.

26. Sitelink had long been aware of Red Nova's development efforts, and at no time prior to January 13, 2014, did Red Nova believe that Sitelink took issue with Red Nova's attempts to create its own FMS. While Red Nova had become aware of the existence of an API Agreement (though not until many months after asking Sitelink whether there was such an agreement), Red Nova did not imagine that Sitelink would take the position that it was in some way a violation of that agreement for Red Nova simply to attempt to develop an FMS product that might eventually compete against Sitelink, or that doing so would give Sitelink valid grounds for terminating Red Nova's Customers' ability to exchange data between their Sitelink FMS and their Red Nova web marketing platform.

#### **Sitelink's Facility Management Software ("FMS") and its Market Dominance**

27. Upon information and belief, Sitelink has long known that self-storage facility customers' technology needs go well beyond what it has been able or willing to offer through its FMS products, including SLWE. However, rather than doing the work necessary to develop and add those capabilities to its own products, Sitelink has chosen to leverage other technology vendors to do that work. Sitelink takes a variety of measures, however, to mitigate the risk that other technology vendors attracted to the market to provide these collateral offerings to Sitelink clients might attempt to create products that compete with Sitelink.

28. One key aspect of Sitelink's effort to keep potentially competitive products from emerging is its so-called "Partner" program. Through the Partner program, Sitelink provides access to segments of the market to vendors who agree not to develop products that might

compete with Sitelink's FMS. Relying on vague and ambiguous provisions in its end-user license agreements and vendor license agreements, Sitelink obtains leverage to threaten vendors and their mutual Sitelink customers with termination of their data-sharing ability with Sitelink's FMS.

29. In order for Sitelink's FMS to function with the products offered by other vendors, an interface is required. Sitelink provides this interfacing function through an application programming interface ("API"), through which Sitelink's FMS product can make use of data captured by other vendors' products (e.g., call centers, websites, and lead aggregation).

30. Although Sitelink makes its API freely and widely available, Sitelink asserts that access to its API is governed by an Application Programming Interface and User Agreement ("Sitelink API License"). Sitelink also claims that access to the API is governed by the Sitelink Web Edition License and Service Agreement ("Sitelink Software License").

31. Sitelink now requires vendors who create products that would share data with Sitelink's FMS, and customers who wish to use those products, to enter into contracts under which they agree not only never to compete with Sitelink, but also never to do business with any other third-party that competes with Sitelink. These contractual provisions, which are unbounded in scope – whether temporal, geographical, or otherwise – are per se anticompetitive, as any reasonable person with even a rudimentary knowledge of economics would recognize their anticompetitive nature and effect.

32. Upon information and belief, Sitelink's API has become a standard integration point within the self-storage industry for a variety of software offerings, including the lead generation, web design, and marketing services offered by Red Nova, as well as for kiosks, call centers, insurance providers, and others.

### **Sitelink's Retaliation Campaign Against Red Nova**

33. In the fall of 2013, a year after Red Nova had informed Sitelink of its interest in developing a better FMS product, Sitelink learned that Red Nova had deployed its StorEdge FMS to an "alpha" client.

34. Upon learning of the alpha-client deployment, Sitelink moved quickly to develop a plan to use its FMS market dominance to stop Red Nova's FMS from progressing. In January 2014, Sitelink launched its campaign against Red Nova, in close coordination with competitors of Red Nova's web marketing and e-commerce business.

35. On or about January 14, 2014, Sitelink sent a letter to Red Nova that purported to terminate Red Nova's license to use Sitelink's API to exchange data belonging to joint customers of Sitelink and Red Nova. At approximately the same time, Sitelink began systematically contacting all Red Nova Customers that were also customers of Sitelink ("Mutual Customers") to inform them that Sitelink intended to prevent them from using the API to share data between programs so long as they remained customers of Red Nova.

36. Dan Miller, Red Nova's CEO, immediately called Sitelink to try to work out a solution that would not disrupt customers' businesses, but Sitelink rebuffed Mr. Miller's efforts at compromise. Sitelink made clear that it would press forward with contacting all Red Nova/Sitelink clients and would terminate their ability to exchange data through the Sitelink API unless they agreed to stop using Red Nova for web marketing services and switch to one of the web marketing vendors who had agreed not to develop a competing product.

37. Sitelink was aware, at all relevant times, of the contractual relationships Red Nova had with the Red Nova Customers ("Red Nova Contracts"). Sitelink nevertheless

consciously sought to cause as many Red Nova Customers as possible to terminate those contracts.

38. As part of its campaign, Sitelink has made numerous false statements, both orally and in writing, to Red Nova Customers that have led them to believe, falsely, that certain of Red Nova's actions in serving its clients are unlawful and in knowing violation of preexisting contractual provisions. Such false statements include, but are not limited to, claims that Red Nova has knowingly violated contracts with Sitelink, and that Red Nova engaged in "flagrant, shameless theft and abuse" of Sitelink property, including having taken Sitelink's proprietary information and incorporated it into a competing product.

39. Sitelink also made numerous false statements to Red Nova Customers minimizing the impact that the change in website/e-commerce vendors will have on customers' businesses. For example, in an effort to persuade customers that the switch to Sitelink's stable of non-competing vendors would be "easy," Sitelink told numerous customers that their internet search engine rankings would not be affected, despite knowing that to be false.

40. In addition, as part of its campaign against Red Nova, Sitelink offered financial incentives to Red Nova customers if they would agree to leave Red Nova, and also dictated terms for those relationships with the replacement vendors.

41. In short, Sitelink used numerous tactics, including but not limited to threats, intimidation, false statements, and financial and other incentives, to direct its own customers to drop Red Nova and sign on with one of Sitelink's non-competing vendors.

42. As a result of Sitelink's false and misleading communications, some Red Nova Customers have ceased to perform under the Red Nova Contracts, including, but not limited to,

ceasing to make payments for the Services that Red Nova provides, and purporting to cancel their contracts.

43. In or about April 2014, Sitelink unilaterally added a new “Subsection R” to the Sitelink API License. The new Subsection R states that users of the Sitelink API “shall not compete directly, or through an affiliate company, or through related third-party with Sitelink,” and defined “related third-party” as the user’s “other vendors or services providers.” Subsection R was not negotiated with Red Nova, nor did Red Nova agree to this modification.

44. Upon information and belief, it is Sitelink’s position that there is no limitation on the “other vendors or service providers” clause in Subsection R of the Sitelink API License. In other words, it is Sitelink’s position that none of its customers can use any vendor or service provider, for software or otherwise, that has any product or product line that competes or is purported to compete with Sitelink in any way.

45. The new restrictions in Subsection R of the API Agreement openly purport to prevent competition and punish competitors by requiring any vendor who wants to have any customers that use Sitelink’s management software for self-storage facilities—by far the most prevalent management software in the market—to agree never to expand into any market that Sitelink considers its own and never to do business with any other company that does so. This provision is per se anticompetitive.

46. Upon information and belief, Sitelink’s above-described actions, including its attempts to enforce anticompetitive contractual restrictions through its “Partner” program, its campaign of retaliation against Red Nova, its false and misleading statements about Red Nova, its interference with Red Nova’s customer relationships, and its unilateral imposition of new, anticompetitive contractual terms, were done for anticompetitive purposes, including to protect

an inferior product from competition, to divert potential competitors, to maintain artificially high prices, to punish competitors and potential competitors, to make an example out of Red Nova, to monopolize the market for FMS, and to leverage its domination of the market for FMS to control and dictate winners and losers, pricing, and other terms, in the broader market for technology for self-storage industry. Sitelink's actions were intended to, and did, have the effect of stifling legitimate competition in the market for self-storage FMS products and services.

**FIRST CLAIM FOR RELIEF**  
**(Tortious Interference with Contract)**

47. Red Nova realleges and incorporates by reference all preceding paragraphs of its Counterclaim.

48. Red Nova has valid business relationships, pursuant to contracts with the Red Nova Customers, that confer upon Red Nova certain contractual rights, including, but not limited to, payment for the Services that Red Nova provides.

49. Upon information and belief, at all relevant times, Sitelink has known of the existence of the contractual relationships between Red Nova and the Red Nova Customers.

50. Upon information and belief, by its actions alleged above, including making false statements to Red Nova Customers, Sitelink induced the Red Nova Customers not to perform their obligations under the Red Nova Contracts, including, but not limited to, ceasing to make payments for the Services that Red Nova provides.

51. Upon information and belief, Sitelink had no justification nor any sufficient lawful reason to interfere with the contracts between Red Nova and the Red Nova Customers. Sitelink does not even offer the kinds of web marketing and e-commerce services that those contracts involved, and therefore did not stand to gain for itself any sales, or any resulting revenue, from contacting Red Nova's Customers and inducing them to terminate their contracts,

Thus, Sitelink's purpose was not to compete with Red Nova in web marketing and e-commerce services, but rather to punish Red Nova for its efforts to compete in the FMS market, and to attempt to stop those efforts. Such purpose is anticompetitive, improper, and unlawful.

52. As a direct result of Sitelink's interference with the contracts between Red Nova and the Red Nova Customers, Red Nova has been damaged in an amount to be proven at trial in excess of \$25,000.

**SECOND CLAIM FOR RELIEF  
(Anticipatory Repudiation of Contract)**

53. Red Nova realleges and incorporates by reference all preceding paragraphs of its Counterclaim.

54. Sitelink's January 13, 2014 letter, which purported to advise Red Nova that it would begin preventing Red Nova Customers from accessing their data through use of the API in the manner allowed by one or more applicable licenses, constitutes a clear refusal to perform the obligations undertaken under those licenses, and is an anticipatory repudiation of those licenses.

55. As a direct result of Sitelink's repudiation of the Data Access License, Red Nova has been damaged in an amount to be proven at trial in excess of \$25,000.

**THIRD CLAIM FOR RELIEF  
(Defamation: Libel and Slander)**

56. Red Nova realleges and incorporates by reference all preceding paragraphs of its Counterclaim.

57. Upon information and belief, Sitelink has made false statements to Red Nova Customers both in writing and verbally, including that Red Nova is engaged in unlawful activity, that Red Nova has knowingly violated contracts with Sitelink, that Red Nova has engaged in



“shameless theft and abuse,” and that Red Nova has taken Sitelink's proprietary information and used that information to build a competing product (“Defamatory Statements”).

58. Upon information and belief, Sitelink, through its officer and employee, Mr. Markus Hecker, has made Defamatory Statements on numerous occasions during and since a January 20-23, 2014 workshop at the Canyons Grand Summit Hotel in Park City, Utah.

59. Defamatory Statements also include the following electronic mail messages sent by Mr. Hecker to various members of the public, including Red Nova customers:

- April 22, 2014 – Mr. Hecker stated that Red Nova engaged in “flagrant, shameless, theft and abuse”;
- April 27, 2014 – Mr. Hecker stated that he wants “users to know” about the “stealing” that Red Nova did;
- March 11, 2014 – Mr. Hecker stated that Red Nova “violated [the Sitelink] licensing agreement” and said that Red Nova was “still stealing from [Sitelink] to enrich themselves and compete against [Sitelink]”; and
- Upon information and belief, other instances to be proven through discovery and at trial.

60. Upon information and belief, Sitelink continues to make such Defamatory Statements.

61. Sitelink’s Defamatory Statements about Red Nova and its business tend to impeach Red Nova in its trade or profession, and have damaged the goodwill Red Nova has in its business, causing pecuniary harm to Red Nova, including, but not limited to, by causing certain Red Nova Customers to end their relationships with Red Nov in an amount excess of \$25,000.

62. As a direct and proximate result of false written and spoken defamatory statements, Red Nova has been damaged in an amount to be proven at trial in excess of \$25,000.

**FOURTH CLAIM FOR RELIEF**  
**(Unfair and Deceptive Trade Practices; N.C. Gen. Stat. §§ 75-1, 75-1.1, 75-2, 75-2.1)**

63. Red Nova realleges and incorporates by reference all preceding paragraphs of its Counterclaim.

64. Sitelink has made numerous false statements to Red Nova Customers both in writing and verbally, including that Red Nova is engaged in unlawful activity, that Red Nova has knowingly violated contracts with Sitelink, that Red Nova has engaged in “shameless theft and abuse,” and that Red Nova has taken Sitelink's proprietary information and used that information to build a competing product.

65. Sitelink has also made false statements to Red Nova Customers about the supposed “ease” of switching web marketing services to other vendors, in an attempt to induce those Customers to make that switch as part of Sitelink’s campaign to punish Red Nova. Among other things, Sitelink told many customers that the switch would be “easy,” and would not threaten their search engine rankings, which are vital to their businesses. Upon information and belief, Sitelink knows such statements to be false.

66. These statements by Sitelink have been made in or affecting commerce in North Carolina and they have a tendency to deceive and have deceived a material number of customers, causing injury to Red Nova.

67. In addition, Sitelink has engaged in specific acts, contracts, and combinations, as well as an overall pattern of activity, both unilaterally and in combination with others in the industry, that are in restraint of trade or commerce in North Carolina and violate the principles of the common law; are unfair methods of competition in or affecting commerce; are unfair and

deceptive acts or practices in or affecting commerce; and are attempts to monopolize the market for self-storage FMS, including within North Carolina.

68. Sitelink's unfair and deceptive trade practices include threatening, intimidating, and coercing actual and potential customers of Red Nova not to deal with Red Nova; making false statements to Red Nova's customers; entering into the above-described end-user licenses and API licenses, including the provisions under which Sitelink and its licensees agree that the licensees will not do business with any competitors of Sitelink; and collusion with other vendors to take away a substantial portion of Red Nova's customer base and transfer it to those vendors on condition that those vendors agree not to attempt to compete with Sitelink. Such agreements constitute contracts in commerce made on the condition, agreement, or understanding that the licensee, lessee, or purchaser must not use or deal in the goods of a competitor of the lessor or seller, with the effect of substantially lessening competition and tending to create a monopoly in the market for self-storage FMS in North Carolina and elsewhere.

69. Sitelink dominates the market for management software for self-storage facilities in the United States, possessing a market share equal to or exceeding 35-40% of the addressable market.

70. There are significant and high barriers to the relevant market entry that prevent other manufacturers from meaningfully entering or expanding in the relevant market, including the onerous contract provisions in the Sitelink License Agreements that prevent other software companies in the self-storage industry from creating competing management software offerings; customer investment in learning the functions of the management software; high cost of moving from one management software solution to another, including data conversion costs; and high monetary and time investment required to build a competing FMS offerings.

71. Red Nova is a participant and competitor in the relevant market and has suffered damages as a direct result of Sitelink's actions.

72. Sitelink's anticompetitive scheme to substantially lessen competition and create a monopoly in the relevant trade and commerce has been carried out with the clear intent to specifically eliminate Red Nova as a viable competitor and threat to Sitelink's management software for self-storage facilities business, to enable Sitelink to enjoy monopoly influence over the market for self-storage FMS, and to suppress competition in general in the market.

73. Sitelink's overall anticompetitive scheme includes threatening, intimidating, and coercing actual and potential customers of Red Nova software not to deal with Red Nova or other potential competitors; conditioning access to and use of certain features of its FMS on unlawful agreements not to compete and/or not to deal with or purchase any software offerings from Red Nova or other potential competitors; conditioning access to self-storage facility customers on agreements not to compete or do business with those who may attempt to compete, including Red Nova; retaliating against Red Nova and other potential competitors by making false statements about them, attempting to disrupt their customer relationships, and filing meritless legal claims; colluding with other technology vendors to divide the market for self-storage industry software solutions, including parceling out Red Nova's customers to vendors who agree not to compete.

74. Sitelink's anticompetitive and exclusionary conduct described in these Counterclaims is not motivated or driven by technological or efficiency interests and has no valid or legitimate business justification. Sitelink's retaliatory actions against Red Nova did not even directly benefit Sitelink by obtaining sales or revenues for Sitelink. Rather, the purpose and effect of Sitelink's retaliatory campaign against Red Nova was simply to punish Red Nova for

attempting to compete, and the purpose and effect of Sitelink's broader anticompetitive conduct is to ensure that Red Nova and other competitive rivals in the relevant market cannot successfully erode Sitelink's currently dominant and entrenched market position.

75. As described in these Counterclaims, Sitelink's conduct has produced antitrust injury, and unless enjoined by this Court, will continue to produce anticompetitive, exclusionary and injurious effects on competition in interstate commerce.

76. Sitelink's practices, described above, have foreclosed competition in a substantial share of the relevant market and/or have substantially suppressed competition or tended to create a monopoly for Sitelink in the relevant market.

77. Sitelink's exclusionary agreements, arrangements, or contracts have caused antitrust injury to Red Nova, the industry, and to consumers, as it tends to make the market unresponsive to consumer preferences and unduly limits consumers' choices to one source of output. This causes cognizable antitrust injury by preventing its victims from making free and unhindered choices between market alternatives.

78. By reason of, and as a direct and proximate result of, Sitelink's practices and conduct, Red Nova has suffered, and will continue to suffer, financial injury to its business and property. As a result, Red Nova has been deprived of revenues and profits it would have otherwise made, it has suffered diminished market growth, and has sustained a loss of goodwill.

79. In addition, since at least the release of SLWE and continuing up to and including the date of filing these Counterclaims, Sitelink has attempted to monopolize trade and commerce in management software for self-storage facilities. Such violations are continuing and will continue unless the relief prayed for is granted.

80. Pursuant to and in furtherance of its attempt to monopolize, Sitelink has pursued policies that have prevented actual and potential providers of management software for self-storage facilities from having an adequate opportunity to effectively compete for business in the self-storage FMS market, and has done, among other acts, the following:

- Restrained and attempted to restrain competitors from entering or remaining in the management software for self-storage facilities market by including onerous provisions in the Sitelink License Agreements that prevented its customer from using any software or software services of any kind that were provided by a competitor in self-storage FMS market;
- Colluded with vendors to punish Red Nova by taking away its customers and steering them to Red Nova's competitors on the condition that those competitors agree not to compete with Sitelink;
- Engaged in various pricing and marketing practices with regard to its software for the purpose or with the effect of restraining or attempting to restrain its competitors from entering, remaining in, or expanding in the self-storage FMS market; and
- Maintained pricing and marketing policies that had the purpose or effect of creating or maintaining an environment that make it difficult for potential customers to switch providers of self-storage FMS, so as to raise the barriers to entry or expansion into that market.

81. Upon information and belief, Sitelink has acted with the intent to leverage its existing market dominance to achieve a monopoly in the market for management software for self-storage facilities.

82. The violations described above have had the following effects, among others:

- Actual and potential competition in the market for management software for self-storage facilities has been restrained; and
- Purchasers of self-storage FMS have been denied the benefits of a free and competitive market.

83. The combination of Sitelink's conduct and its existing market share makes it likely that Sitelink will achieve a monopoly in the market for self-storage FMS unless the relief prayed for is granted.

84. Through the exercise of its dominance and control over the market for self-storage FMS, Sitelink forced potential customers to not do business with Red Nova and attempted to keep Red Nova from entering the market for such management software.

85. Consequently, as alleged in these Counterclaims, Sitelink has engaged in conduct in violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1 *et seq.*

86. Because of Sitelink's anticompetitive actions, there has been a substantial lessening of competition and a substantial impact on interstate commerce resulting from loss of sales and profits by Red Nova and other possible competitors in the market self-storage FMS, and Red Nova has been substantially damaged in its business and property, including, but not limited to, numerous losses in money, sales, profits, and customer relationships.

87. Sitelink's actions as described above have been unfair and deceptive, an inequitable assertion of its power or position, and an improper restraint of trade.

88. Sitelink's actions were willful and intentional and were in or affecting commerce.

89. As a direct and proximate result of Sitelink's actions, false statements, unfair methods of competition, and unlawful restraint of trade, in or affecting the commerce in North Carolina, Red Nova has suffered actual damages. Red Nova is entitled to an order awarding treble damages, plus attorneys' fees, pursuant to N.C. Gen. Stat. §§ 75-16 and 75-16.1.

WHEREFORE, Red Nova, respectfully prays that the Court:

1. Dismiss all of Sitelink's claims against Red Nova with prejudice;
2. Deny all of Sitelink's requests for damages and for injunctive relief;
3. Enter judgment in Red Nova's favor and against Sitelink on all of Sitelink's claims, such that Sitelink have and recover nothing from Red Nova;
4. Enter judgment in Red Nova's favor against Sitelink with respect to each of Red Nova's Amended Counterclaims in an amount to be determined at trial;
5. Award damages to Red Nova for damages to business and property proximately resulting from Sitelink's wrongful actions;
6. Treble such damages as may be awarded against Sitelink as a result of Sitelink's violations of N.C. Gen. Stat. § 75-1 *et seq.*;
7. Permanently restrain and enjoin Sitelink from engaging in further anticompetitive acts and making further false statements as set forth above;
8. Award Red Nova its costs and a reasonable attorney's fee as provided by applicable law; and
9. Award Red Nova such other and further relief as the Court may deem just and proper.



This the 25th day of November, 2015.

WOOD JACKSON PLLC

/s/ W. Swain Wood

W. Swain Wood

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J. Christopher Jackson

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*Attorneys for Red Nova Labs, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, the foregoing was served by electronic service pursuant to Rule 6.5 of the Local Rules for the North Carolina Business Court and by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

Luther D. Starling, Jr.  
Daughtry Woodard Lawrence & Starling  
Post Office Drawer 1960  
Smithfield, NC 27577

This 25th day of November, 2015.

/s/ W. Swain Wood  
\_\_\_\_\_  
W. Swain Wood  
*Attorney for Red Nova Labs, Inc.*

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