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FILED

U.S. DISTRICT COURT  
DISTRICT OF UTAH

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**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

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THE SCO GROUP, INC., a Delaware corporation,

Plaintiff and Counterclaim-Defendant

vs.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-Plaintiff.

**SUPPLEMENTAL DECLARATION  
OF KENNETH W. BRAKEBILL IN  
OPPOSITION TO SCO'S MOTION  
FOR SUMMARY JUDGMENT**

*[REDACTED pursuant to the August 2,  
2006 Stipulated Protective Order]*

Case No. 2:04CV00139

Judge Dale A. Kimball

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I, Kenneth W. Brakebill, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and a partner at the law firm of Morrison & Foerster LLP, counsel of record for Defendant and Counterclaim-Plaintiff Novell, Inc. ("Novell") in this action. I was admitted to practice before this Court *pro hac vice* by this Court's Order of June 7, 2005. The statements made herein are based on my personal knowledge.

2. I submit this declaration in support of Novell's Opposition to SCO's Motion For Partial Summary Judgment On SCO's First, Second, and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim (Copyright Ownership).

3. As discussed below, some of the exhibits attached hereto include information that may be subject to the August 2, 2006 Stipulated Protective Order. Accordingly, the complete version of this declaration, which includes full and unredacted copies of all exhibits, is being filed under seal. A public version of this declaration, which deletes or redacts confidential documents and information, is also being submitted.

4. Attached as **Exhibit 1** is a true and correct copy of the Intellectual Property Assignment dated May 7, 2001, as produced by third party Wilson Sonsini Goodrich & Rosati in this litigation at BATES Nos. WSGR 4429 to WSGR 4454.

5. Attached as **Exhibit 2** is a true and correct copy of excerpt pages from the transcript of Michael Danaher's deposition, taken in the SCO v. Novell litigation on April 27, 2007.

6. Attached as **Exhibit 3** is a true and correct copy of the letter from Wilson Sonsini Goodrich & Rosati to Caldera Systems, Inc., dated May 7, 2001, as produced by third party Wilson Sonsini Goodrich & Rosati in this litigation at BATES Nos. WSGR 3866 to WSGR 3871.

7. Attached as **Exhibit 4** is a true and correct copy of the letter from Barry Taylor at Wilson Sonsini Goodrich & Rosati to Steven Sabbath at The Santa Cruz Operation Inc., dated September 1, 1995, as produced by third party Wilson Sonsini Goodrich & Rosati in this litigation at BATES Nos. WILS 257 to WILS 261.

8. Attached as **Exhibit 5** is a true and correct copy of an email from Shana Solomon, outside counsel for Caldera, to Steven Liu, outside counsel for Santa Cruz, dated April 26, 2001, produced by third party Wilson Sonsini Goodrich & Rosati in this litigation.

9. Attached as **Exhibit 6** is a true and correct copy of an email from Regan Grilli, outside counsel for Santa Cruz, to Shana Solomon, outside counsel for Caldera, dated April 30, 2001, produced by third party Wilson Sonsini Goodrich & Rosati in this litigation.

10. Attached as **Exhibit 7** is a true and correct copy of an email from Shana Solomon, outside counsel for Caldera, dated May 3, 2001, produced by third party Wilson Sonsini Goodrich & Rosati in this litigation.

11. Attached as **Exhibit 8** is a true and correct copy of the "Declaration of Greg Jones on Behalf of Novell, Inc." submitted in the SCO v. IBM litigation, dated September 21, 2006.

12. Attached as **Exhibit 9** is a true and correct copy of an email from Greg Jones, dated November 20, 2002, as produced by Novell in this litigation at BATES No. NOV 39578.

13. Attached as **Exhibit 10** is a true and correct copy of an email from Greg Jones, dated December 4, 2002, as produced by Novell in this litigation at BATES Nos. NOV 39579 to NOV 39580.

14. Attached as **Exhibit 11** is a true and correct copy of excerpt pages from the transcript of Michael Anderer's deposition, taken in the SCO v. Novell litigation on March 30, 2007.

15. Attached as **Exhibit 12** is a true and correct copy of an email from Mike Anderer, dated January 4, 2003, as produced by SCO in this litigation at BATES Nos. SCO 1272179.

This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

16. Attached as **Exhibit 13** is a true and correct copy of an email from Greg Jones, dated February 25, 2003, as produced by Novell in this litigation at BATES Nos. NOV 39595.

17. Attached as **Exhibit 14** is a true and correct copy of excerpt pages from the transcript of Darl McBride's deposition, taken in the SCO v. Novell litigation on March 27, 2007.

18. Attached as **Exhibit 15** is a true and correct copy of excerpt pages from the transcript of Greg Jones's deposition, taken in the SCO v. Novell litigation on January 26, 2007.

19. Attached as **Exhibit 16** is a true and correct copy of the "Declaration of Christopher Sontag" submitted in the SCO v. IBM litigation, dated November 4, 2006.

20. Attached as **Exhibit 17** is a true and correct copy of notes from Christopher Stone, as produced by Novell in this litigation at BATES Nos. NOV 39458 to NOV 39462.

21. Attached as **Exhibit 18** is a true and correct copy of excerpt pages from the transcript of Christopher Stone's deposition, taken in the SCO v. Novell litigation on February 6, 2007.

22. Attached as **Exhibit 19** is a true and correct copy of excerpt pages from the transcript of Joseph LaSala's deposition, taken in the SCO v. Novell litigation on February 8, 2007.

23. Attached as **Exhibit 20** is a true and correct copy of the letter from Edward Normand, counsel for SCO, to myself, dated April 17, 2007.

24. Attached as **Exhibit 21** is a true and correct copy of an email from Sashi Bach Boruchow, counsel for SCO, to David Melaugh, counsel for Novell, dated April 16, 2007.
25. Attached as **Exhibit 22** is a true and correct copy of excerpt pages from the transcript of Burt Levine's deposition, taken in the SCO v. Novell litigation on March 23, 2007.
26. Attached as **Exhibit 23** is a true and correct copy of excerpt pages from the transcript of Chris Sontag's deposition, taken in the SCO v. Novell litigation on April 30, 2007.
27. Attached as **Exhibit 24** is a true and correct copy of excerpt pages from the transcript of Greg Jones's deposition, taken in the SCO v. Novell litigation on May 10, 2007.
28. Attached as **Exhibit 25** is a true and correct copy of excerpt pages of SCO's Responses and Objections to Novell's Second and Third Sets of Interrogatories, dated December 28, 2006.
29. Attached as **Exhibit 26** is a true and correct copy of excerpt pages of Novell's Second Set of Interrogatories to The SCO Group, Inc., dated September 27, 2006.
30. Attached as **Exhibit 27** is a true and correct copy of excerpt pages from the transcript of R. Duff Thompson's deposition, taken in the SCO v. Novell litigation on February 13, 2007.
31. Attached as **Exhibit 28** is a true and correct copy of excerpt pages from the transcript of Aaron Alter's deposition, taken in the SCO v. Novell litigation on April 27, 2007.
32. Attached as **Exhibit 29** is a true and correct copy of the draft Schedule 1.1(a) to the Asset Purchase Agreement ("APA"), dated September 19, 1995, as produced by Novell in this litigation at BATES Nos. NOV 42670 to NOV 42677. Also attached to this exhibit is a true and correct copy of a transmittal from Shannon Whisenant, dated September 18, 1995, as produced by third party in this litigation at BATES Nos. WILS 78 to WILS 85.

33. Attached as **Exhibit 30** is a true and correct copy of a letter from Jeffrey Higgins, dated September 16, 1995, as produced by Novell in this litigation at BATES Nos. NOV 43465 to NOV 43466.

34. Attached as **Exhibit 31** is a true and correct copy of excerpt pages from the transcript of Edward Chatlos' deposition, taken in the SCO v. Novell litigation on March 22, 2007.

35. Attached as **Exhibit 32** is a true and correct copy of excerpt pages from the transcript of Robert Frankenberg's deposition, taken in the SCO v. Novell litigation on March 10, 2007.

36. Attached as **Exhibit 33** is a true and correct copy of excerpt pages from the transcript of Ty Mattingly's deposition, taken in the SCO v. Novell litigation on January 19, 2007.

37. Attached as **Exhibit 34** is a true and correct copy of excerpt pages from the transcript of Edward Chatlos' deposition, taken in the SCO v. IBM litigation on February 15, 2006. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

38. Attached as **Exhibit 35** is a true and correct copy of excerpt pages from the transcript of Burt Levine's deposition, taken in the SCO v. IBM litigation on January 19, 2005.

39. Attached as **Exhibit 36** is a true and correct copy of a transmittal from Burt Levine, dated September 18, 1995, as produced by Novell in this litigation at BATES Nos. NOV 40608 to NOV 40638.

40. Attached as **Exhibit 37** is a true and correct copy of excerpt pages from the transcript of William Broderick's deposition, taken in the SCO v. Novell litigation on February 1, 2007.

41. Attached as **Exhibit 38** is a true and correct copy of excerpt pages from the transcript of Alok Mohan's deposition, taken in the SCO v. Novell litigation on February 23, 2007.

42. Attached as **Exhibit 39** is a true and correct copy of excerpt pages from the transcript of Doug Michels's deposition, taken in the SCO v. Novell litigation on March 28, 2007.

43. Attached as **Exhibit 40** is a true and correct copy of excerpt pages from the transcript of James Wilt's deposition, taken in the SCO v. Novell litigation on January 26, 2007.

44. Attached as **Exhibit 41** is a true and correct copy of the "Declaration of Kim Madsen," submitted in the SCO v. IBM litigation, dated November 4, 2006.

45. Attached as **Exhibit 42** is a true and correct copy of excerpt pages from the transcript of Kim Madsen's deposition, taken in the SCO v. Novell litigation on February 13, 2007.

46. Attached as **Exhibit 43** is a true and correct copy of Novell's September 20, 1995 Press Release, as produced by Novell in this litigation at BATES Nos. NOV 39597 to NOV 39599 and available online at: <http://www.novell.com/news/press/archive/1995/09/pr95220.html>.

47. Attached as **Exhibit 44** is a true and correct copy of Novell's December 6, 1995 Press Release, as produced by Novell in this litigation at BATES No. NOV 39600 and available online at: <http://www.novell.com/news/press/archive/1995/12/pr95274.html>.

48. Attached as **Exhibit 45** is a true and correct copy of excerpt pages from the transcript of Lawrence Bouffard's deposition, taken in the SCO v. Novell litigation on February 16, 2007. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

49. Attached as **Exhibit 46** is a true and correct copy of excerpt pages from the transcript of Steven Sabbath's deposition, taken in the SCO v. Novell litigation on February 12, 2007.

50. Attached as **Exhibit 47** is a true and correct copy of excerpt pages from the transcript of Jack Messman's deposition, taken in the SCO v. IBM litigation on April 14, 2006.

51. Attached as **Exhibit 48** is a true and correct copy of excerpt pages from the transcript of Jack Messman's deposition, taken in the SCO v. Novell litigation on February 7, 2007.

52. Attached as **Exhibit 49** is a true and correct copy of excerpt pages from the transcript of Joseph LaSala's deposition, taken in the SCO v. Novell litigation on February 8, 2007.

53. Attached as **Exhibit 50** is a true and correct copy of the letter from Joseph LaSala to Darl McBride, dated June 26, 2003, available at [http://www.novell.com/licensing/indemnity/pdf/6\\_26\\_03\\_n-sco.pdf](http://www.novell.com/licensing/indemnity/pdf/6_26_03_n-sco.pdf).

54. Attached as **Exhibit 51** is a true and correct copy of the "Declaration of Bruce Lowry In Support of Novell, Inc.'s Motion to Dismiss" submitted in the SCO v. Novell litigation, dated August 6, 2004.

55. Attached as **Exhibit 52** is a true and correct copy of the letter from Joseph LaSala to Darl McBride, dated August 4, 2003, available at [http://www.novell.com/licensing/indemnity/pdf/8\\_4\\_03\\_n-sco.pdf](http://www.novell.com/licensing/indemnity/pdf/8_4_03_n-sco.pdf).

56. Attached as **Exhibit 53** is a true and correct copy of a chain of emails between Ted Normand and Sashi Bach Boruchow, counsel for SCO, and myself, dated from May 4, 2007 to May 14, 2007.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 14th day of May, 2007 in San Francisco, California.



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Kenneth W. Brakebill

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of May, 2007, I caused a true and correct copy of the foregoing **SUPPLEMENTAL DECLARATION OF KENNETH W. BRAKEBILL IN OPPOSITION TO SCO'S MOTION FOR SUMMARY JUDGMENT** *[REDACTED pursuant to the August 2, 2006 Stipulated Protective Order]* to be served to the following via U.S. Mail, postage prepaid:

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