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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., a Delaware corporation, Plaintiff and Counterclaim-Defendant vs. NOVELL, INC., a Delaware corporation, Defendant and Counterclaim-Plaintiff.	**DECLARATION OF KENNETH W. BRAKEBILL** *[REDACTED pursuant to the August 2, 2006 Stipulated Protective Order]* Case No. 2:04CV00139 Judge Dale A. Kimball

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 Motion for Partial Summary Judgment on:

Novell's Motion for Partial Summary Judgment on SCO's Non-Compete Claim in Its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition

Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance

Novell's Motion for Partial Summary Judgment on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition

Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages

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 Second Amended Complaint filed in this action on February 3, 2006.

5. Attached as **Exhibit 2** is a true and correct copy of the Asset Purchase Agreement ("APA"), dated September 19, 1995. For ease in referencing this document as a citation, this exhibit has been Bates stamped with new page numbers 001 through 097.

6. Attached as **Exhibit 3** is a true and correct copy of the Schedule 1.1(a) to the Asset Purchase Agreement ("APA"), dated September 19, 1995. For ease in referencing this document as a citation, this exhibit is an excerpt of Exhibit 2 the APA.

7. Attached as **Exhibit 4** is a true and correct copy of the Schedule 1.1(b) to the Asset Purchase Agreement ("APA"), dated September 19, 1995. For ease in referencing this document as a citation, this exhibit is an excerpt of Exhibit 2 the APA.

8. Attached as **Exhibit 5** is a true and correct copy of the Technology License Agreement, signed by Novell and SCO on December 6, 2005, as produced by Novell in this litigation at BATES Nos. NOV 593 to NOV 597.

9. Attached as **Exhibit 6** is a true and correct copy of the SCO's August 2, 2000 Press Release, as downloaded from http://ir.sco.com/releasedetail.cfm?ReleaseID=38489.

10. Attached as **Exhibit 7** is a true and correct copy of the SCO's February 9, 2001 Press Release, as downloaded from http://ir.sco.com/releasedetail.cfm?ReleaseID=39578.

11. Attached as **Exhibit 8** is a true and correct copy of the SCO's May 7, 2001 Press Release, as downloaded from http://ir.sco.com/releasedetail.cfm?ReleaseID=41484.

12. Attached as **Exhibit 9** is a true and correct copy of excerpt pages of The SCO Group's Form 10-Q for the quarter ending April 30, 2003, as downloaded from the SEC website at: http://www.sec.gov/Archives/edgar/data1102542/000110465903012299/j2045_10q.htm.

13. Attached as **Exhibit 10** is a true and correct copy of excerpt pages of The Joint Proxy Statement and Prospectus of The Santa Cruz Operation and Caldera Systems, Inc., issued

on March 26, 2001, as produced by SCO in this litigation at BATES Nos. SCOF 3299-3302, SCOF 3312, SCOF 3314, SCOF 3317, SCOF 3348, SCOF 3396-99, SCOF 3421-22.

14. Attached as **Exhibit 11** is a true and correct copy of excerpt pages of Caldera's Form S-4, filed with the SEC on March 26, 2001, as downloaded from the SEC website at: http://www.sec.gov/Archives/edgar/data/1102542/000103570401000238/d8098a5s-4a.txt.

15. Attached as **Exhibit 12** is a true and correct copy of the "Declaration of Steven M. Sabbath" submitted in the SCO v. IBM litigation, dated December 22, 2003, as produced by SCO in this litigation at BATES Nos. SCON0022024 to SCON0022117.

16. Attached as **Exhibit 13** is a true and correct copy of excerpt pages of Tarantella's Form 10-K for fiscal year ended September 30, 2001, as produced by SCO in this litigation at BATES Nos. SCON0020898 to SCON0020959.

17. Attached as **Exhibit 14** is a true and correct copy of a memorandum titled "The Caldera Connection," dated October 31, 2000, as produced by SCO in this litigation at BATES Nos. SCO1337710 to SCO1337713. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

18. Attached as **Exhibit 15** is a true and correct copy of "Declaration of William M. Broderick In Support SCO's Memorandum in Opposition to IBM's Motion to Compel Production of Documents on SCO's Privilege Log" submitted in the SCO v. IBM litigation, dated October 21, 2005, as produced by SCO in this litigation at BATES Nos. SCON0018575 to SCON0018578.

19. Attached as **Exhibit 16** is a true and correct copy of excerpt pages from the transcript of Darl McBride's deposition, taken in the SCO v. IBM litigation on December 2, 2005.

20. Attached as **Exhibit 17** 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.

21. Attached as **Exhibit 18** is a true and correct copy of excerpt pages of The Santa Cruz Operation, Inc.'s Form 10-K for the quarter ending September 30, 1994.

22. Attached as **Exhibit 19** is a true and correct copy of the letter from Novell to SCO, dated October 7, 2003, as produced by SCO in this litigation at BATES Nos. SCON0024164 to SCON0024165.

23. Attached as **Exhibit 20** is a true and correct copy of a letter from SCO to Novell, dated October 9, 2003, as downloaded from http://www.novell.com/licensing/indemnity/pdf/10_9_03_sco-n.pdf.

24. Attached as **Exhibit 21** 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 February 10, 2007.

25. Attached as **Exhibit 22** is a true and correct copy of the Operating Agreement, signed by Novell and The Santa Cruz Operation, effective on December 6, 1995, as produced by Novell in this litigation at BATES Nos. NOV 10141 to NOV 10162.

26. Attached as **Exhibit 23** is a true and correct copy of the "Declaration of Michael J. DeFazio" submitted in the SCO v. IBM litigation, dated October 3, 2003, as produced by SCO in this litigation at BATES Nos. SCON0008817 to SCON0008842.

27. Attached as **Exhibit 24** is a true and correct copy of the letter from Brobeck Phleger & Harrison to Novell Board of Directors, dated December 6, 1995, as produced by

Novell in this litigation at BATES Nos. NOV 16186 to NOV 16188. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

28. Attached as **Exhibit 25** is a true and correct copy of excerpt pages from the transcript of Burt Levine deposition taken in the SCO v. Novell litigation on March 23, 2007.

29. Attached as **Exhibit 26** is a true and correct copy of Amendment No. 1 to the APA, dated December 6, 1995, which SCO attached as part of Exhibit A to its Complaint, filed January 20, 2004.

30. Attached as **Exhibit 27** is a true and correct copy of the Bill of Sale, dated December 6, 1995, as produced by Novell in this litigation at BATES No. NOV 42308.

31. Attached as **Exhibit 28** is a true and correct copy of Amendment No. 2 to the APA, dated October 16, 1996, which SCO attached as part of Exhibit A to its Complaint, filed January 20, 2004.

32. Attached as **Exhibit 29** is a true and correct copy of excerpt pages of SCO's Form 10-K for the fiscal year ending on October 31, 2006, as downloaded from SCO's website at: http://ir.sco.com/sec.cfm.

33. Attached as **Exhibit 30** is a true and correct copy of an email from Jeff Hunsaker, dated December 3, 2002, as produced by SCO in this litigation at BATES Nos. SCO1287058 to SCO1287059. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

34. Attached as **Exhibit 31** is a true and correct copy of excerpt pages from the transcript of Jeff Hunsaker's deposition, taken in the SCO v. Novell litigation on March 30, 2007. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

35. Attached as **Exhibit 32** is a true and correct copy an email from Geoff Seabrook, dated January 13, 2003, as produced by SCO in this litigation at BATES Nos. SCO1270678 to SCO1270679. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

36. Attached as **Exhibit 33** is a true and correct copy of excerpt pages from the transcript of Alok Mohan deposition taken in the SCO v. Novell litigation on February 23, 2007.

37. Attached as **Exhibit 34** is a true and correct copy of an email from Jeff Hunsaker, dated January 28, 2003, as produced by SCO in this litigation at BATES Nos. SCO1622838 to SCO1622839 and marked as Exhibit 248 from Jeff Hunsaker's March 30, 2007 deposition. 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 an email from Chris Sontag, dated March 14, 2007, as produced by third party in this litigation at BATES Nos. SCH13089 to SCH13107 and marked as exhibit 91 from the March 14, 2007 Chris Sontag deposition. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

39. Attached as **Exhibit 36** 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 March 14, 2007.

40. Attached as **Exhibit 37** is a true and correct copy of the Garter Research Note, "SCO's Suit Against IBM: An Update and Recommendations" from George Weiss dated April 27, 2005, as produced by SCO in this litigation as BATES Nos. SCO 1671431 to 1671435. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

41. Attached as **Exhibit 38** is a true and correct copy of the Gartner Research Note, "What to Do During SCO's Protracted Lawsuit Against Linux" from George Weiss dated March 23, 2004, as produced by Novell in this litigation as BATES Nos. 44690 to 44695.

42. Attached as **Exhibit 39** is a true and correct copy of an email from Blake Stowell, dated August 12, 2003, as produced by SCO in this litigation at BATES Nos. SCON0048308 to SCON0048309. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

43. Attached as **Exhibit 40** is a true and correct copy of a TechNewsWorld July 29, 2003 Press Release, as produced by third party in this litigation at BATES Nos. RV00584 to RV00585.

44. Attached as **Exhibit 41** is a true and correct copy of the OSI Position Paper on the SCO vs. IBM Complaint from Eric Raymond and Rob Landley dated May 15, 2003, as produced by SCO in this litigation at BATES Nos. CAN000531 to CAN000553 (as originally produced by a third party in the SCO v. IBM litigation). This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

45. Attached as **Exhibit 42** is a true and correct copy of an email from Blake Stowell, dated May 21, 2003, as produced by SCO in this litigation at BATES Nos. SCO1292241 to SCO1292242 and marked as exhibit 252 from the March 30, 2007 Jeff Hunsaker deposition. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

46. Attached as **Exhibit 43** is a true and correct copy of an email from Jeff Hunsaker, dated August 5, 2003, as produced by SCO in this litigation at BATES No. SCO1492988 and marked as exhibit 253 from Jeff Hunsaker's March 30, 2007 deposition. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

47. Attached as **Exhibit 44** is a true and correct copy of an email from Jeff Hunsaker dated December 11, 2003, as produced by SCO in this litigation at BATES Nos. SCON0048484 to SCON0048487 and marked as exhibit 1229 during Michael Olson's March 3, 2006 deposition

in the SCO v. IBM litigation. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

48. Attached as **Exhibit 45** is a true and correct copy of excerpt pages from the transcript of Michael Olson's deposition, taken in the SCO v. IBM litigation on March 3, 2006.

49. Attached as **Exhibit 46** is a true and correct copy of the collection of charts as produced by SCO in this litigation at BATES No. SCO1753830 to 1753967.

50. Attached as **Exhibit 47** is a true and correct copy of an email from Craig Bushman dated April 21, 2004, as produced by SCO in this litigation at BATES No. SCO1725823. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

51. Attached as **Exhibit 48** is a true and correct copy of the letter from Gavin Roy to Philip Langer, dated January 21, 2004, as produced by SCO in this litigation at BATES No. SCO17844744. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

52. Attached as **Exhibit 49** is a true and correct copy of the letter from McCoy Smith to Darl McBride, dated June 12, 2003, as produced by SCO in this litigation at BATES No. SCO1512026. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

53. Attached as **Exhibit 50** is a true and correct copy of the letter from Sylvia Khatcherian to Gregory Pettit, dated March 24, 2004, as produced by SCO in this litigation at BATES No. SCO1512023. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

54. Attached as **Exhibit 51** is a true and correct copy of an email from Gregory Pettit, dated April 14, 2004, as produced by SCO in this litigation at BATES Nos. SCOR7745 to

SCOR7747. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

55. Attached as **Exhibit 52** is a true and correct copy of the letter from Patricia Romain to Gregory Pettit, dated May 21, 2004, as produced by SCO in this litigation at BATES Nos. SCON0114012 to SCON0114013. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

56. Attached as **Exhibit 53** are true and correct copies of letters from various third parties to SCO concerning SCO's "licensing" campaign against Linux users, as produced by SCO in this litigation at BATES Nos. SCO1448008, SCO1448027, SCO1448031, SCO1448056, SCO1512006-240, SCO1512007-240, SCO1512012-240, SCO1512015-240, SCO1512016-240, SCO1512021-240, SCO1512022-240, SCO1512029-240, SCO1765148 to SCO1765149, and SCOR7680 to SCOR 7681. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

57. Attached as **Exhibit 54** is a true and correct copy of the Press Release "SCO Announces Availability of SCO IP License," as downloaded from SCO's website at: http://ir.sco.com/releasedetail.cfm?ReleaseID=115527.

58. Attached as **Exhibit 55** is a true and correct copy of the Pricing of SCO IP License for Linux Servers, as produced by SCO in this litigation at BATES Nos. SCO1769390 to SCO1769433. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

59. Attached as **Exhibit 56** is a true and correct copy of the SCO Internal Product Announcement, "SCO IP Compliance Program for Linux End Users", as produced by SCO in

this litigation at BATES Nos. SCO1463814 to SCO1463818. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

60. Attached as **Exhibit 57** is a true and correct copy of excerpt pages of Novell, Inc.'s Third Set of Interrogatories to the SCO Group, Inc. taken on September 29, 2006.

61. Attached as **Exhibit 58** is a true and correct copy of excerpt pages of SCO's Responses and Objections to Novell's Second and Third Sets of Interrogatories in the form that SCO produced to Novell on December 28, 2006.

62. Attached as **Exhibit 59** is a true and correct copy of an email I received from Ted Normand, counsel of SCO, dated March 19, 2007.

63. Attached as **Exhibit 60** is a true and correct copy of SCO's Responses to Novell, Inc.'s Interrogatory No. 15, in the form that SCO produced to Novell on April 6, 2007.

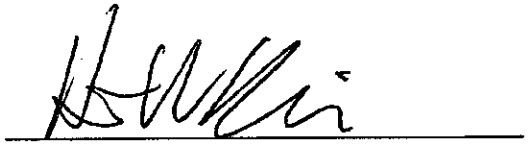
64. Attached as **Exhibit 61** is a true and correct copy of a letter I sent to Edward Normand, counsel for SCO, dated March 5, 2007.

65. Attached as **Exhibit 62** is a true and correct copy of an email I received from Sashi Bach Boruchow, counsel for SCO, dated April 17, 2007.

66. Attached as **Exhibit 63** is a true and correct copy of excerpt pages from the transcript of Darl McBride deposition taken in the SCO v. Novell litigation on March 27, 2007.

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

Executed on this 20th day of April, 2007 in San Francisco, California.



Kenneth W. Brakebill

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April, 2007, I caused a true and correct copy of the foregoing **DECLARATION OF KENNETH W. BRAKEBILL *[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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