

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

WAYNE R. GRAY,

Plaintiff,

vs.

CASE NO.: 8:06-cv-01950-JSM-TGW

NOVELL, INC., and
THE SCO GROUP, INC., and
X/OPEN COMPANY LIMITED,

Defendants.

**UNOPPOSED MOTION OF DEFENDANT NOVELL, INC.
FOR ENLARGEMENT OF TIME TO RESPOND TO
COMPLAINT AND SUPPORTING MEMORANDUM OF LAW**

The Defendant, NOVELL, INC. ("Novell"), by and through its undersigned counsel, hereby moves for a thirty (30) day enlargement of time to respond to the Complaint and as grounds therefore, the Defendant Novell states:

1. On or about December 4, 2006, Novell was served with the summons and a copy of the Complaint in this action. Novell's response to the Complaint is due on December 26, 2006.
2. The Complaint filed by the Plaintiff contains eleven (11) claims for relief and approximately eighty-three (83) pages of allegations.
3. Counsel for Novell requires the requested extension to prepare its response to the Complaint. John Mullen, lead counsel for Novell, is scheduled to have surgery later this week and will require some time to recuperate before he can proceed with preparing a response on behalf of Novell.

4. Pursuant to Local Rule 3.01(g), undersigned counsel for the Defendant Novell hereby certifies that lead counsel for Novell has conferred with Plaintiff's counsel regarding the relief requested in this motion and that the Plaintiff does not oppose the relief requested herein.

Accordingly, the Defendant Novell, Inc., respectfully requests that this Court enter an order granting Novell a thirty (30) day extension, i.e., to and until Thursday, January 25, 2007, to file and serve its response to the Complaint.

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED
MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT**

Rule 6(b) of the Federal Rules of Civil Procedure provides in part:

When by these rules or by a notice given thereunder or by order of a court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), (d), and (e) and 60(b), except to the extent and under the conditions stated in them.

The award of the requested enlargement of time for Novell to file and serve its response to the Complaint constitutes a proper use of this Court's discretion. Novell has requested the enlargement of time prior to the service deadline specified by the Federal Rules of Civil Procedure. The Plaintiff's Complaint consists of eleven (11) separate claims for relief and eighty-three (83) pages of allegations. Given lead counsel's scheduled surgery, Novell requires the requested enlargement of time to properly develop and prepare Novell's

response to the Complaint. The Plaintiff does not oppose Novell's enlargement request. Further, other defendants in this action have sought and received similar enlargements of time. In light of these circumstances, Novell respectfully submits that the Court's discretion is best utilized by granting the requested extension.

/s/Richard G. Salazar
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 21, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: David L. Partlow, Esquire, David L. Partlow, P.A., Post Office Box 82963, Tampa, FL 33682-2934. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: John P. Mullen, Esquire, Anderson & Karrenberg, 50 West 300 South Suite 700, Salt Lake City, Utah 84101.

/s/Richard G. Salazar
Richard G. Salazar