

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

WAYNE R. GRAY,	)	
	)	
Plaintiff,	)	
	)	Case No. 8:06-cv-01950-JSM-TGW
vs.	)	
	)	
NOVELL, INC., and	)	
THE SCO GROUP, INC., and	)	
X/OPEN COMPANY LIMITED,	)	
	)	
Defendants.	)	
_____	/	

**NOVELL, INC'S ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant, Novell, Inc. (“Novell”), through undersigned counsel, hereby answers the allegations of Plaintiff Wayne R. Gray’s Complaint, paragraph by corresponding paragraph, and asserts its affirmative defenses to same.

**I. NATURE OF THE CASE.**

1. Novell admits that Plaintiff purports to assert various causes of action against Novell in paragraph 1 of the Complaint. Novell specifically denies each and every allegation of any such claims as fully as if specifically set forth and denied.

2. Novell denies the allegations contained in paragraph 2 of the Complaint.

3. Novell denies the allegations contained in paragraph 3 of the Complaint.

4. Novell admits that it transferred a certain assets to the Santa Cruz Operation Inc. through a September 19, 1995 Asset Purchase Agreement (“APA”), as alleged in paragraph 4 of the Complaint. Novell denies all other allegations contained in said paragraph.

5. Novell denies that it was a part of any corrupt enterprise or scheme as alleged in paragraph 5 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in said paragraph and, therefore, denies same and demands strict proof.

6. Novell admits that an Assignment was executed on November 13, 1998, as alleged in paragraph 6 of the Complaint. Novell denies the remaining allegations of said paragraph.

7. Upon information and belief, Novell admits that an Assignment was recorded in the United States PTO on or about June 22, 1999, as alleged in paragraph 7 of the Complaint. Novell avers that no answer is required of them with respect to the allegations of said paragraph related to X/Open, but to the extent an answer is required, said allegations are denied. Novell denies all remaining allegations of said paragraph.

8. Novell denies the allegations contained in paragraph 8 of the Complaint.

9. Upon information and belief, Novell admits that plaintiff has filed a federal application to register his alleged iNUX mark and that X/Open opposed the application as alleged in paragraph 9 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

10. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the Complaint and, therefore, denies same and demands strict proof.

11. Upon information and belief, Novell admits that plaintiff is a party to a TTAB proceeding with X/Open as alleged in paragraph 11 of the Complaint. Novell is without

knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

12. Novell admits that it is a party to a deed of assignment dated November 13, 1998, as alleged in paragraph 12 of the Complaint, but avers that said Assignment speaks for itself. Novell further admits that it is a Delaware corporation with executive offices in Waltham, Massachusetts, and that it does business in Florida, is a software company, and maintains a significant website presence. Novell denies the remaining allegations contained in paragraph 12 of the Complaint.

13. Upon information and belief, Novell admits that SCO is a Delaware corporation with executive offices in Lindon, Utah, and that SCO is Santa Cruz's successor in interest as alleged in paragraph 13 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

14. Upon information and belief, Novell admits that X/Open is a corporation headquartered in England and that X/Open does business in the United States as alleged in paragraph 14 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

15. Novell admits that this Court has subject matter jurisdiction over claims asserted under the statutes referenced in paragraph 15 of the Complaint. Novell avers that plaintiff has no valid claims under those statutes and denies the remaining allegations of said paragraph.

16. Novell admits the allegations contained in paragraph 16 of the Complaint, subject to its answers in paragraph 15, above.

17. Novell admits the allegations contained in paragraph 17 of the Complaint.

18. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 18 of the Complaint and, therefore, denies same and demands strict proof.

19. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 19 of the Complaint and, therefore, denies same and demands strict proof.

20. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of the Complaint and, therefore, denies same and demands strict proof.

21. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 21 of the Complaint and, therefore, denies same and demands strict proof.

22. Novell admits that American Telephone and Telegraph and/or related companies were the original owners of the UNIX trademarks as alleged in paragraph 22 of Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

23. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 23 and, therefore, denies same and demands strict proof.

24. Novell admits that it purchased USL, that a merger occurred and that a transfer of the UNIX marks was recorded in the Patent and Trademark Office on or about July 27, 1994 as

alleged in paragraph 24 of the Complaint. Novell denies the remaining allegations of said paragraph.

25. Novell denies the allegations contained in paragraph 25 of the Complaint.

26. Novell admits that it purchased the UNIX operating system and entities owning or controlling the office programs known as WordPerfect and Quattro Pro, and that the Federal Trade Commission served requests for information on Novell to which Novell responded as alleged in paragraph 26 of the Complaint. Novell denies the remaining allegations of said paragraph.

27. Novell denies the allegations contained in paragraph 27 of the Complaint.

28. Novell denies the allegations contained in paragraph 28 of the Complaint.

29. Novell denies the allegations contained in paragraph 29 of the Complaint.

30. Novell denies the allegations contained in paragraph 30 of the Complaint.

31. Upon information and belief, Novell admits that the referenced article exists on the internet as alleged in paragraph 31 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph.

32. Upon information and belief, Novell admits that the referenced article exists on the internet as alleged in paragraph 32 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

33. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 33 of the Complaint and, therefore, denies same and demands strict proof.

34. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 34 of the Complaint and, therefore, denies same and demands strict proof.

35. Novell denies the allegations contained in paragraph 35 of the Complaint, subparagraphs a. through d., inclusive.

36. Novell admits that the language “UNIX is a registered trademark in the United States and other countries, licensed exclusively through X/Open Company Ltd” appears in a publication on the internet as alleged in paragraph 36 of the Complaint. Novell denies the remaining allegations of said paragraph.

37. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 37 of the Complaint and, therefore, denies same and demands strict proof.

38. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 38 of the Complaint and, therefore, denies same and demands strict proof.

39. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 39 of the Complaint and, therefore, denies same and demands strict proof.

40. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 40 of the Complaint and, therefore, denies same and demands strict proof.

41. Upon information and belief, Novell admits that the referenced article appears on the internet as alleged in paragraph 41 of the Complaint. Novell denies the remaining allegations of said paragraph.

42. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 42 of the Complaint and, therefore, denies same and demands strict proof.

43. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 43 of the Complaint and, therefore, denies same and demands strict proof.

44. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 44 of the Complaint and, therefore, denies same and demands strict proof.

45. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 45 of the Complaint and, therefore, denies same and demands strict proof.

46. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 46 of the Complaint and, therefore, denies same and demands strict proof.

47. Upon information and belief, Novell admits that a now terminated matter, Opposition No. 91095813, may have been executed and filed before the TTAB on or about August 29, 1994, as alleged in paragraph 47 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of

said paragraph, subparagraphs a through c inclusive and, therefore, denies same and demands strict proof.

48. Novell admits the allegations contained in paragraph 48 of the Complaint.

49. Novell admits that it entered minutes of a September 18, 1995 Board Meeting, only a portion of which are quoted in paragraph 49 of the Complaint, in the case styled *SCO Group v. Novell*, in the United States District Court for the District of Utah. Novell denies the remaining allegations of said paragraph.

50. Novell admits that Novell and Santa Cruz entered an Asset Purchase Agreement (“APA”) on or about September 19, 1995, admits that there are several schedules to the APA, including Schedules 1.1(a) and 1.1(b), and alleges that the Schedules speak for themselves,. Novell denies the remaining allegations of paragraph 50 of the Complaint..

51. Novell denies the allegations contained in paragraph 51 of the Complaint.

52. Novell denies as stated the allegations contained in paragraph 52 of the Complaint.

53. Novell admits the allegations contained in paragraph 53 of the Complaint.

54. Novell admits that Amendments No. 1 and No. 2 are the only Amendments to the APA, as alleged in paragraph 54 of the Complaint. Novell denies the remaining allegations of said paragraph.

55. Novell denies the allegations contained in paragraph 55 of the Complaint.

56. Novell denies the allegations contained in paragraph 56 of the Complaint.

57. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 57 of the Complaint and, therefore, denies same and demands strict proof.



58. Novell admits that on or about August 23, 1996 it executed a document entitled “Confirmation Agreement” as alleged in paragraph 58 of the Complaint. Novell denies the remaining allegations of said paragraph.

59. Novell denies the allegations contained in paragraph 59 of the Complaint, subparagraphs a through e inclusive.

60. Novell denies the allegations contained in paragraph 60 of the Complaint.

61. Novell denies the allegations contained in paragraph 61 of the Complaint, subparagraphs a through c inclusive.

62. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 62 of the Complaint and, therefore, denies same and demands strict proof.

63. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 63 of the Complaint and, therefore, denies same and demands strict proof.

64. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 64 of the Complaint and, therefore, denies same and demands strict proof.

65. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 65 of the Complaint and, therefore, denies same and demands strict proof.

66. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 66 of the Complaint and, therefore, denies same and demands strict proof.

67. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 67 of the Complaint and, therefore, denies same and demands strict proof.

68. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 68 of the Complaint and, therefore, denies same and demands strict proof.

69. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 69 of the Complaint and, therefore, denies same and demands strict proof.

70. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 70 of the Complaint and, therefore, denies same and demands strict proof.

71. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 71 of the Complaint and, therefore, denies same and demands strict proof.

72. Novell admits that it was a party to a November 13, 1998 Assignment as identified in paragraph 72 of the Complaint. Novell denies all other allegations of said paragraph.

73. Novell admits that the Assignment occurred on or about November 13, 1998, that Novell was the assignor, and that X/Open was the assignee as alleged in paragraph 73 of the Complaint. Novell denies the remaining allegations of said paragraph.

74. Novell admits that on June 29, 1999, the PTO apparently recorded the Novell-X/Open assignment, as alleged in paragraph 74 of the Complaint. Novell is without knowledge

or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

75. Novell denies the allegations contained in paragraph 75 of the Complaint.

76. Novell denies the allegations contained in paragraph 76 of the Complaint.

77. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 77 of the Complaint and, therefore, denies same and demands strict proof.

78. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 78 of the Complaint and, therefore, denies same and demands strict proof.

79. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 79 of the Complaint and, therefore, denies same and demands strict proof.

80. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 80 of the Complaint and, therefore, denies same and demands strict proof.

81. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 81 of the Complaint and, therefore, denies same and demands strict proof.

82. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 82 of the Complaint and, therefore, denies same and demands strict proof.

83. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 83 of the Complaint and, therefore, denies same and demands strict proof.

84. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 84 of the Complaint and, therefore, denies same and demands strict proof.

85. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 85 of the Complaint and, therefore, denies same and demands strict proof.

86. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 86 of the Complaint and, therefore, denies same and demands strict proof.

87. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 87 of the Complaint and, therefore, denies same and demands strict proof.

88. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 88 of the Complaint and, therefore, denies same and demands strict proof.

89. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 89 of the Complaint and, therefore, denies same and demands strict proof.

90. Upon information and belief, Novell admits that SCO is the successor in interest to Santa Cruz as alleged in paragraph 90 of the Complaint. Novell is without knowledge or

information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

91. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 91 of the Complaint and, therefore, denies same and demands strict proof.

92. Novell denies the allegations contained in paragraph 92 of the Complaint.

93. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 93 of the Complaint and, therefore, denies same and demands strict proof.

94. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 94 of the Complaint and, therefore, denies same and demands strict proof.

95. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 95 of the Complaint and, therefore, denies same and demands strict proof.

96. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 96 of the Complaint and, therefore, denies same and demands strict proof.

97. Novell admits that SuSE Linux is a version of the Linux operating system developed by SuSE Linux, GmbH (“SuSE”), a wholly owned subsidiary of Novell and that SUSE Linux is distributed by Novell pursuant to a license with SuSE as alleged in paragraph 97 of the Complaint. Novell denies the remaining allegations of said paragraph.

98. Novell admits that it is the defendant and counter-claimant in lawsuit *The SCO Group v. Novell*, No. 2:04cv 00139 in Utah's Federal District Court, and that Novell owns the copyrights at issue as alleged in paragraph 98 of the Complaint. Novell denies the remaining allegations of said paragraph.

99. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 99 of the Complaint and, therefore, denies same and demands strict proof.

100. Novell denies the allegations, as stated, in paragraph 100 of the Complaint.

101. Novell admits that Amendments Nos. 1 and 2 are the only amendments to the APA as alleged in paragraph 101 c of the Complaint. Novell denies, as stated, the remaining allegations of said paragraph, subparagraphs a, b, and d inclusive.

102. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 102 of the Complaint and, therefore, denies same and demands strict proof.

103. Novell admits that it submitted the referenced correspondence to the PTO and that the language set forth in paragraph 103 of the Complaint is correctly quoted. Novell denies the remaining allegations of said paragraph.

104. Novell denies that it was a part of any alleged scheme as alleged in paragraph 104 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

105. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 105 of the Complaint and, therefore, denies same and demands strict proof.

106. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 106 of the Complaint and, therefore, denies same and demands strict proof.

107. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 107 of the Complaint and, therefore, denies same and demands strict proof.

108. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 108 of the Complaint and, therefore, denies same and demands strict proof.

109. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 109 of the Complaint and, therefore, denies same and demands strict proof.

110. Novell admits that Gray served a Subpoena on it to which Novell properly and timely objected as alleged in paragraph 110 of the Complaint. Novell denies the remaining allegations of said paragraph.

111. Novell denies that it engaged in any actions, coordinated or otherwise, to allegedly conceal any fraud or obstruct discovery as alleged in paragraph 111 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph.

112. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 112 of the Complaint and, therefore, denies same and demands strict proof.

113. Novell admits that it timely and properly objected to Plaintiff's Subpoena as alleged in paragraph 113 of the Complaint. Novell denies the remaining allegations of said paragraph.

114. Upon information and belief, Novell admits that SCO objected to Gray's Subpoena as alleged in paragraph 114 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

115. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 115 of the Complaint and, therefore, denies same and demands strict proof.

116. Novell admits that it received a copy of a Motion from X/Open's counsel as alleged in paragraph 116 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

117. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 117 of the Complaint and, therefore, denies same and demands strict proof.

118. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 118 of the Complaint and, therefore, denies same and demands strict proof.



119. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 119 of the Complaint and, therefore, denies same and demands strict proof.

120. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 120 of the Complaint and, therefore, denies same and demands strict proof.

121. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 121 of the Complaint and, therefore, denies same and demands strict proof.

122. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 122 of the Complaint and, therefore, denies same and demands strict proof.

123. Novell denies, as stated, the allegations contained in paragraph 123 of the Complaint.

124. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 124 of the Complaint and, therefore, denies same and demands strict proof.

125. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 125 of the Complaint and, therefore, denies same and demands strict proof.

126. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 126 of the Complaint and, therefore, denies same and demands strict proof.

127. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 127 of the Complaint and, therefore, denies same and demands strict proof.

128. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 128 of the Complaint and, therefore, denies same and demands strict proof.

129. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 129 of the Complaint and, therefore, denies same and demands strict proof.

130. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 130 of the Complaint and, therefore, denies same and demands strict proof.

131. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 131 of the Complaint and, therefore, denies same and demands strict proof.

132. Novell denies, as stated and characterized, the allegations contained in paragraph 132 of the Complaint.

133. Novell denies, as stated and characterized, the allegations contained in paragraph 133 of the Complaint.

134. Novell denies, as stated and characterized, the allegations contained in paragraph 134 of the Complaint.

135. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 135 of the Complaint and, therefore, denies same and demands strict proof.

136. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 136 of the Complaint and, therefore, denies same and demands strict proof.

137. Novell denies the allegations contained in paragraph 137 of the Complaint.

138. Novell denies, as stated and characterized, the allegations contained in paragraph 138 of the Complaint.

139. Novell denies, as stated and characterized, the allegations contained in paragraph 139 of the Complaint.

140. Novell denies, as stated and characterized, the allegations contained in paragraph 140 of the Complaint.

141. Novell admits that plaintiff's attorney sent a letter dated March 23, 2005 as alleged in paragraph 141 of the Complaint. The remaining allegations of said paragraph are denied.

142. Novell admits that plaintiff's attorney sent a letter to it dated March 23, 2005 as alleged in paragraph 142 of the Complaint. Novell denies, as stated, the remaining allegations of said paragraph.

143. Novell denies the allegations contained in paragraph 143 of the Complaint.

144. Novell denies the allegations contained in paragraph 144 of the Complaint.

145. Novell admits that it produced the APA to plaintiff's attorney and acknowledged that the document was publicly available to Gray as alleged in paragraph 145 of the Complaint. Novell denies the remaining allegations of said paragraph.

146. Novell denies the allegations contained in paragraph 146 the Complaint.

147. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 147 of the Complaint and, therefore, denies same and demands strict proof.

148. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 148 of the Complaint and, therefore, denies same and demands strict proof.

149. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 149 of the Complaint and, therefore, denies same and demands strict proof.

150. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 150 of the Complaint and, therefore, denies same and demands strict proof.

151. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 151 of the Complaint and, therefore, denies same and demands strict proof.

152. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 152 of the Complaint and, therefore, denies same and demands strict proof.

153. Novell is without knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 153 of the Complaint and, therefore, denies same and demands strict proof.

154. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 154 of the Complaint , therefore, denies same and demands strict proof.

155. Novell denies that it ever engaged in any false or fraudulent activities or cooperated in any false or fraudulent activities as alleged in paragraph 155 of the Complaint. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph and, therefore, denies same and demands strict proof.

156. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 156 of the Complaint and, therefore, denies same and demands strict proof.

157. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 157 of the Complaint and, therefore, denies same and demands strict proof.

158. Novell is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 158 of the Complaint and, therefore, denies same and demands strict proof.

159. Novell denies, as stated, the allegations contained in paragraph 159 of the Complaint, subparagraphs (a) through (c), inclusive.

160. Novell denies the allegations contained in paragraph 160 the Complaint.

161. Novell is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 161 of the Complaint and, therefore, denies same and demands strict proof.

162. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 162 of the Complaint and, therefore, denies same and demands strict proof.

163. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 163 of the Complaint and, therefore, denies same and demands strict proof.

164. Novell denies the allegations contained in paragraph 164 of the Complaint.

165. Novell denies the allegations contained in paragraph 165 of the Complaint.

166. Novell denies the allegations contained in paragraph 166 of the Complaint.

167. Novell denies the allegations contained in paragraph 167 of the Complaint.

168. Novell denies the allegations contained in paragraph 168 of the Complaint.

169. Novell denies the allegations contained in paragraph 169 of the Complaint.

170. Novell denies, as stated and characterized, the allegations set forth in paragraph 170 of the Complaint.

171. Novell denies the allegations contained in paragraph 171 of the Complaint.

172. Novell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 172 of the Complaint and, therefore, denies same and demands strict proof.

173. Novell denies the allegations contained in paragraph 173 of the Complaint.

174. Novell denies the allegations contained in paragraph 174 of the Complaint.

175. Novell denies that the allegations contained in paragraph 175 of the Complaint.

176. Novell admits that it received and timely and properly responded to the subpoena as alleged in paragraph 176 of the Complaint. Novell denies the remaining allegations of said paragraph.

177. Novell denies the allegations contained in paragraph 177 of the Complaint.

178. Novell denies the allegations contained in paragraph 178 of the Complaint.

179. Novell denies the allegations contained in paragraph 179 of the Complaint.

180. Novell denies the allegations contained in paragraph 180 of the Complaint.

181. Novell denies the allegations contained in paragraph 181 of the Complaint.

182. Novell denies the allegations contained in paragraph 182 of the Complaint.

183. Novell denies the allegations contained in paragraph 183 of the Complaint.

#### **COUNT 1**

184. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-183 of the Complaint.

185. Novell denies the allegations contained in paragraph 185 of the Complaint.

186. Novell denies the allegations contained in paragraph 186 of the Complaint.

187. Novell denies the allegations contained in paragraph 187 of the Complaint.

188. Novell denies the allegations contained in paragraph 188 of the Complaint.

189. Novell denies the allegations contained in paragraph 189 of the Complaint.

190. Novell denies the allegations contained in paragraph 190 of the Complaint.

#### **COUNT 2**

191. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-190 of the Complaint.

192. Novell denies the allegations contained in paragraph 192 of the Complaint.

193. Novell denies the allegations contained in paragraph 193 of the Complaint.

194. Novell denies the allegations contained in paragraph 194 of the Complaint.

195. Novell denies the allegations contained in paragraph 195 of the Complaint.

**COUNT 3**

196. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-195 of the Complaint.

197. Novell denies the allegations contained in paragraph 197 of the Complaint.

198. Novell denies the allegations contained in paragraph 198 of the Complaint.

199. Novell denies the allegations contained in paragraph 199 of the Complaint.

200. Novell denies the allegations contained in paragraph 200 of the Complaint.

201. Novell denies the allegations contained in paragraph 201 of the Complaint.

**COUNT 4**

202. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-201 of the Complaint.

203. Novell denies the allegations contained in paragraph 203 of the Complaint.

204. Novell denies the allegations contained in paragraph 204 of the Complaint.

205. Novell denies the allegations contained in paragraph 205 of the Complaint.

206. Novell denies the allegations contained in paragraph 206 of the Complaint.

**COUNT 5**

207. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-206 of the Complaint.

208. Novell denies the allegations contained in paragraph 208 of the Complaint.



209. Novell denies the allegations contained in paragraph 209 of the Complaint.

210. Novell denies the allegations contained in paragraph 210 of the Complaint.

211. Novell denies the allegations contained in paragraph 211 of the Complaint.

212. Novell denies the allegations contained in paragraph 212 of the Complaint.

213. Novell denies the allegations contained in paragraph 213 of the Complaint.

**COUNT 6**

214. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-213 of the Complaint.

215. Novell denies the allegations contained in paragraph 215 of the Complaint.

216. Novell denies the allegations contained in paragraph 216 of the Complaint.

217. Novell denies the allegations contained in paragraph 217 of the Complaint.

218. Novell denies the allegations contained in paragraph 218 of the Complaint.

219. Novell denies the allegations contained in paragraph 219 of the Complaint.

**COUNT 7**

220. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-219 of the Complaint.

221. Novell denies the allegations contained in paragraph 221 of the Complaint.

222. Novell denies the allegations contained in paragraph 222 of the Complaint.

223. Novell denies the allegations contained in paragraph 223 of the Complaint.

224. Novell denies the allegations contained in paragraph 224 of the Complaint.

225. Novell denies the allegations contained in paragraph 225 of the Complaint.

226. Novell denies the allegations contained in paragraph 226 of the Complaint.

227. Novell denies the allegations contained in paragraph 227 of the Complaint.

**COUNT 8**

228. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-227 of the Complaint.

229. Novell denies the allegations contained in paragraph 229 of the Complaint.

230. Novell denies the allegations contained in paragraph 230 of the Complaint.

231. Novell denies the allegations contained in paragraph 231 of the Complaint.

232. Novell denies the allegations contained in paragraph 232 of the Complaint.

233. Novell denies the allegations contained in paragraph 233 of the Complaint.

**COUNT 9**

234. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-233 of the Complaint.

235. Novell denies the allegations contained in paragraph 235 of the Complaint.

236. Novell denies the allegations contained in paragraph 236 of the Complaint.

237. Novell denies the allegations contained in paragraph 237 of the Complaint.

238. Novell denies the allegations contained in paragraph 238 of the Complaint.

239. Novell denies the allegations contained in paragraph 239 of the Complaint.

**COUNT 10**

240. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-239 of the Complaint.

241. Novell denies the allegations contained in paragraph 241 of the Complaint.

242. Novell denies the allegations contained in paragraph 242 of the Complaint.

243. Novell denies the allegations contained in paragraph 243 of the Complaint.

**COUNT 11**

244. Novell incorporates herein by reference as fully as if specifically set forth herein its responses to paragraphs 1-243 of the Complaint.

245. Novell denies the allegations contained in paragraph 245 of the Complaint.

246. Novell denies the allegations contained in paragraph 246 of the Complaint.

247. All allegations of the Complaint not hereinbefore admitted, denied, or explained are here and now denied as fully as if specifically set forth and denied.

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim on which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Complaint is barred by the applicable statute of limitations.

AND NOW, having fully answered, Novell respectfully requests that plaintiff's Complaint be dismissed and that it go hence without day and that Novell be awarded its costs incurred in this matter.

Respectfully submitted,

/s/ E. Colin Thompson  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on January 26, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing on Fredrick H.L. McClure, E. Colin Thompson, and David L. Partlow.

/s/ E. Colin Thompson

Attorney