

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

WAYNE R. GRAY,

Plaintiff,

v.

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

Defendants.

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

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant, The SCO Group, Inc. ("SCO"), by and through its counsel provides the Court with this Notice of Supplemental Authority regarding SCO's Motion to Dismiss and Memorandum of Law in Support ("Motion to Dismiss"). The United States Supreme Court recently decided *Bell Atlantic Corp. v. Twombly*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1955 (2007) which dismissed a cause of action under the Sherman Act prohibiting certain anti-competitive agreements for failure to state a claim. In applying the general pleading standard of Fed. R. Civ. P. 8, the Court held that a complaint must contain allegations "plausibly suggesting (not merely consistent with)" an entitlement to relief.

*Id.* at 1966:

In applying these general standards to a § 1 claim, we hold that stating such a claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made. Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. (*Id.*)

A copy of *Bell Atlantic v. Twombly*, is attached to this filing for the Court's convenience as Exhibit A. This case provides supplemental authority for dismissal of the

Plaintiff's claims. For the reasons set forth in SCO's Motion to Dismiss, Plaintiff's Complaint fails to meet the pleading standards required by *Bell Atlantic v. Twombly*, *supra*.

Respectfully submitted this September 11, 2007.

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Attorneys for Defendant The SCO Group,  
Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 11, 2007, 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, David L. Partlow, P.A., PO Box 82963, Tampa, FL 33682-2963; William Cooper Guerrant, Jr., Hill, Ward & Henderson, PA, PO Box 2231, Tampa, FL 33601-2231; Evan A. Raynes and Mark Sommers, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Avenue, NW, Washington, DC 20001-4413; Frederick H.L. McClure and E. Colin Thompson, DLA Piper US, LLP, 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602-5148; John P. Mullen and Heather M. Sneddon, Anderson & Karrenberg, 700 Chase Tower, 50 West Broadway, Salt Lake City, UT 84101.

s/ George R. Coe

George R. Coe