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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.

**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**

Case No. 2:04CV00139

Judge Dale A. Kimball

Novell, Inc. (“Novell”) moves the Court for partial summary judgment as to The SCO Group, Inc.’s (“SCO’s”) non-compete claim in its Second Claim for breach of contract and Fifth Claim for unfair competition.

Federal Rule of Civil Procedure 56 permits the Court to grant partial summary judgment if the pleadings, discovery, and affidavits show that there is no genuine issue of material fact and that Novell is entitled to judgment as a matter of law.

SCO’s non-compete claim is based on the assertion that the Asset Purchase Agreement (“APA”) and Technology License Agreement (“TLA”) each contained a non-compete clause that prohibited Novell from using Licensed Technology to compete with SCO’s core operating-system products. SCO has asserted essentially the same non-compete claim as part of both its Second Claim for breach of contract, and its Fifth Claim for unfair competition.

Novell is entitled to summary judgment on SCO’s non-compete claim for three independent reasons. First, the plain language of the TLA and the APA demonstrates that the clause cited by SCO is merely a limitation on the scope of Novell’s retained license, and not an affirmative covenant not to compete. As a matter of law, SCO may not use this limitation on the scope of Novell’s license as a “sword” to bring a claim for breach of an affirmative covenant that simply does not exist.

Second, the contracts expressly provide that the limitation on the scope of Novell’s license shall “cease to exist” upon Santa Cruz’s sale of substantially all of its assets. The undisputed facts establish that Santa Cruz sold substantially all of its assets to SCO’s predecessor, Caldera, in 2001. This sale terminated the contractual limitation on which SCO relies.

Finally, under controlling California law, a covenant not to sell competing products is void except in narrow circumstances that do not apply here. Therefore, even if the TLA imposed an affirmative non-compete obligation that was not automatically terminated by the Change of Control, this obligation would be void as a matter of law.

Accordingly, Novell respectfully requests that its motion for partial summary judgment be granted.

DATED: April 20, 2007

ANDERSON & KARREMBERG

By: /s/ Heather M. Sneddon

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-and-

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April, 2007, I caused a true and correct copy of **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** to be served to the following:

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