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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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THE SCO GROUP, INC., a Delaware  
corporation,

Plaintiff and Counterclaim-  
Defendant

vs.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-  
Plaintiff.

**SECOND SUPPLEMENTAL  
DECLARATION OF KENNETH W.  
BRAKEBILL IN REPLY TO  
NOVELL'S MOTIONS FOR  
SUMMARY JUDGMENT**

*[REDACTED pursuant to the August 2,  
2006 Stipulated Protective Order]*

Case No. 2:04CV00139

Judge Dale A. Kimball

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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 the below:

**Reply in Support 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**

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

**Reply in Support of 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**

**Reply in Support of 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 copyright searches regarding "SCO Group" as "Claimant," as downloaded from the U.S. Copyright web site at:  
<http://www.loc.gov/cgi-bin/formprocessor/copyright/locis.pl>.

5. Attached as **Exhibit 2** is a true and correct copy of copyright searches regarding “SCO Group” as “Author,” as downloaded from the U.S. Copyright web site at:

<http://www.loc.gov/cgi-bin/formprocessor/copyright/locis.pl>.

6. Attached as **Exhibit 3** is a true and correct copy of copyright searches regarding “Santa Cruz Operation, Inc” as “Party 1,” as downloaded from the U.S. Copyright web site at:

<http://www.loc.gov/cgi-bin/formprocessor/copyright/locis.pl>.

7. Attached as **Exhibit 4** is a true and correct copy of copyright searches regarding “Santa Cruz Operation, Inc” as “Party 2,” as downloaded from the U.S. Copyright web site at:

<http://www.loc.gov/cgi-bin/formprocessor/copyright/locis.pl>.

8. Attached as **Exhibit 5** is a true and correct copy of copyright searches regarding “Caldera International, Inc” as “Party 2,” as downloaded from the U.S. Copyright web site at:

<http://www.loc.gov/cgi-bin/formprocessor/copyright/locis.pl>.

9. Attached as **Exhibit 6** is a true and correct copy of the press release from The SCO Group, “SCO Registers Unix Copyrights and Offers Unix License,” as downloaded from SCO’s web site at: <http://ir.sco.com/releasedetail.cfm?ReleaseID=114170>

10. Attached as **Exhibit 7** is a true and correct copy of an archived version of a page from Novell’s website, available as of April 1, 2004. This is an old version of the same webpage ([www.com/licensing/indemnity/legal.html](http://www.com/licensing/indemnity/legal.html)) cited by SCO in its Opposition to Novell’s Motion for Summary Judgment on the Copyright Ownership Portions of SCO’s Second Claim for Breach of Contract and Fifth Claim for Unfair Competition, filed April 20, 2007, at page 16, footnote 11. This webpage has been downloaded from the website “Internet Archive” at:

[http://web.archive.org/web/\\*/http://www.novell.com/licensing/indemnity/legal.html](http://web.archive.org/web/*/http://www.novell.com/licensing/indemnity/legal.html). I

understand that this website stores old versions of various websites. The April 1, 2004 version

attached hereto as Exhibit 7 can be accessed by first inputting the above website address ([http://web.archive.org/web/\\*/http://www.novell.com/licensing/indemnity/legal.html](http://web.archive.org/web/*/http://www.novell.com/licensing/indemnity/legal.html)), and then selecting the date, "April 1, 2004." When printed, the footer to this page includes "20040401," which is consistent with this being a webpage as available on April 1, 2004 (2004/04/01). Exhibit 7 also includes the webpage that appears after inputting the above website address, and before going to the Novell webpage.

11. Attached as **Exhibit 8** is a true and correct copy of Novell's current version of the archived webpage attached as Exhibit 7, which can be downloaded from: <http://www.novell.com/licensing/indemnity/legal.html>. As can be seen by comparing Exhibit 7 and Exhibit 8, the current content of this webpage is the same as the archived version available as of April 1, 2004.

12. Attached as **Exhibit 9** is a true and correct copy of excerpt pages from the transcript of Michael Danaher deposition, taken in the *SCO v. Novell* litigation on April 27, 2007.

13. Attached as **Exhibit 10** is a true and correct copy of excerpt pages from 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.

14. Attached as **Exhibit 11** is a true and correct copy of SCO's Initial Disclosures in the form that SCO produced to Novell on March 21, 2006.

15. Attached as **Exhibit 12** is a true and correct copy of excerpt pages from the transcript of Lawrence Bouffard deposition, taken in the *SCO v. Novell* litigation on February 16, 2007. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

16. Attached as **Exhibit 13** 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>.

17. Attached as **Exhibit 14** is a true and correct copy of excerpt pages from the transcript of Chris Sontag deposition, taken in the SCO v. Novell litigation on March 14, 2007.

18. Attached as **Exhibit 15** is a true and correct copy of excerpt pages from the transcript of Chris Sontag deposition, taken in the SCO v. IBM litigation on December 21, 2006.

19. Attached as **Exhibit 16** is a true and correct copy of the letter from Edward Roman at Raytheon, to Gregory Pettit at SCO, dated March 19, 2004, as produced by SCO in this litigation at BATES No. SCO 1512011-240. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

20. Attached as **Exhibit 17** is a true and correct copy of the internal email at HP, dated September 1, 2003, as produced by a third party in this litigation at BATES Nos. HPNOV 130 to HPNOV 131. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

21. Attached as **Exhibit 18** is a true and correct copy of the internal email at HP, dated September 3, 2003, as produced by a third party in the SCO v. IBM litigation at BATES Nos. HP

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012631 to HP 012632. This exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

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

Executed on this 25th day of May, 2007 in San Francisco, California.

A handwritten signature in black ink, appearing to read "K. W. Brakebill", written over a horizontal line.

Kenneth W. Brakebill

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25th day of May, 2007, I caused a true and correct copy of the foregoing **SECOND SUPPLEMENTAL DECLARATION OF KENNETH W. BRAKEBILL IN REPLY TO NOVELL'S MOTIONS FOR SUMMARY JUDGMENT** [REDACTED pursuant to the August 2, 2006 Stipulated Protective Order] to be served to the following:

*Via Hand Delivery:*

Brent O. Hatch  
Mark F. James  
HATCH JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
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*Via Overnight Mail:*

Stuart H. Singer  
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/s/ Heather M. Sneddon