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Attorneys for Plaintiff, The SCO Group, Inc.

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC., a Delaware corporation,</p> <p style="text-align: center;">Plaintiff/Counterclaim-Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation,</p> <p style="text-align: center;">Defendant/Counterclaim-Plaintiff.</p>	<p>SCO'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR ENTRY OF FINAL JUDGMENT</p> <p>Civil No. 2:04 CV-00139 Judge Dale A. Kimball Magistrate Brooke C. Wells</p>
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Plaintiff/Counterclaim-Defendant, The SCO Group, Inc. (“SCO”), respectfully submits this Reply Memorandum in Support of its Motion for Entry of Final Judgment.

ARGUMENT

In order to expedite the resolution of this case and foreclose further disputes about finality, SCO will voluntarily dismiss with prejudice those portions of its severed and stayed claims that remain pending. While SCO believes that the position set forth in its initial motion is legally correct – that its voluntary dismissal of pending claims with the right to pursue them upon remand perfects finality under controlling law – it is more important for SCO to avoid extended litigation on this issue. Accordingly, SCO has attached hereto a revised proposed form of Final Judgment that simply dismisses with prejudice those portions of the severed and stayed claims not resolved by this Court’s summary judgment decision (that is, that part of the claims for copyright infringement, breach of the APA and TLA, and unfair competition that concern any SCO copyrights obtained after the Asset Purchase Agreement). As that is the sole substantive issue with respect to the entry of a Final Judgment, SCO respectfully submits that, with this Court’s approval of the dismissal, there should be no question that a Final Judgment may now be entered.

The procedural issue Novell raises – that these claims had been stayed pending arbitration by SuSE – is easily disposed of. The stay of those claims obviously was entered to prevent their litigation, not to prevent their dismissal. In any event, SCO respectfully requests that the Court treat SCO’s pending applications as a motion to vacate the stay to permit the dismissal with prejudice of those parts of these claims not resolved by the Court’s summary judgment decision.

The requested dismissal will complete resolution of all claims in this case:

- All of SCO's unstayed claims, as well as the portions of SCO's stayed claims based on pre-APA copyrights, were dismissed by the Summary Judgment Order.
- Several of Novell's counterclaims were dismissed by motion or stipulation.
- All of Novell's other counterclaims were resolved by the Summary Judgment and Trial Orders, except the issue of the amount of the constructive trust. Subsequently, the parties stipulated to that amount.
- Therefore, the only claims that remain open are the stayed claims based on post-APA copyrights and other UNIX technology indisputably owned by SCO.¹

The dismissal of SCO's pending claims with prejudice will thus resolve the only issues pending before the Court. If the motion for voluntary dismissal is granted, there will be nothing left for the Court to do but execute judgment. Accordingly, SCO respectfully requests expedited consideration of its Motion for Voluntary Dismissal of Its Unresolved Stayed Claims and Motion for Entry of Final Judgment.

CONCLUSION

For the foregoing reasons, SCO respectfully requests that the Court permit SCO voluntarily to dismiss its unresolved stayed claims with prejudice and moves the Court to enter Final Judgment in this action.

¹ Novell states (at 9, 10, and 13) that unresolved "aspects of the case" include "any issues still outstanding in Bankruptcy Court" which allegedly "remain to be resolved in Bankruptcy Court." These vague assertions contradict Novell's plain statements (in its responses to the Court's order to submit a proposed Final Judgment) that the only two matters that remained open were the unresolved stayed claims and the amount of the constructive trust. Both of those issues are now fully resolved: the first, by this motion, and the second, by stipulation.

DATED this 20th day of October, 2008.

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