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Attorneys for Defendant Novell, Inc.

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 06 2004

BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

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

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff,

vs.

NOVELL, INC., a Delaware corporation,

Defendant.

**DECLARATION OF DAVID E.
MELAUGH IN SUPPORT OF
NOVELL, INC.'S MOTION TO
DISMISS**

Case No. 2:04CV00139

Judge Dale A. Kimball

David Melaugh, under penalty of perjury, declares the following:

1. I am an attorney duly licensed to practice law in the State of California and an associate in the law firm of Morrison & Foerster LLP, counsel of record for defendant Novell, Inc. ("Novell") in this action. I was admitted to practice before this Court *pro hac vice* by this Court's July 29, 2004 order. I submit this declaration in support of Novell's Motion to Dismiss. The statements made herein are based on my personal knowledge and investigation.

2. Attached as Exhibit A hereto is a copy of the complaint filed on March 6, 2003 by SCO in *The SCO Group, Inc. v. Int'l Bus. Machines Corp.*, Case No. 03-CV-0294, United States District Court for the District of Utah. This Exhibit is a true and correct copy of the document obtained from the Court's docket.

3. Attached as Exhibit B hereto is a copy of the amended complaint filed on July 22, 2003 by SCO in that suit. This Exhibit is a true and correct copy of the document obtained from the Court's docket.

4. On July 28, 2004, I performed a search on LexisNexis's "News, Most Recent Two Years (English, Full Text)" database (CURNWS). I searched for all news articles dated on or after the filing of SCO's suit against IBM (March 7, 2003) including the terms "SCO" and "IBM." The search returned 2,845 results. Attached as Exhibit C is a true and correct copy of the first section of those results, covering the first 50 articles. Neither the full text of the articles nor the full list of results is attached due to their volume.

5. I then limited the search described in Paragraph 4 to those articles dated on or after March 7, 2003 and before the date of the first public statement by Novell alleged in SCO's Amended Complaint (May 28, 2003), again including the terms "SCO" and "IBM." The narrowed search returned 317 results. Attached as Exhibit D is a true and correct copy of the first section of those results, covering the first 50 articles. Neither the full text of the articles nor the full list of results is attached due to their volume.


6. Attached as Exhibit E hereto is a copy of SCO's answer to IBM's amended counterclaims, filed on October 24, 2003 in *The SCO Group, Inc. v. Int'l Bus. Machines Corp.*, Case No. 03-CV-0294, United States District Court for the District of Utah. This Exhibit is a true and correct copy of the document obtained from the Court's docket.

7. Attached as Exhibit F hereto is a true and correct copy of the SCO press release available at <http://ir.sco.com/ReleaseDetail.cfm?ReleaseID=114170>.

8. Attached as Exhibit G hereto is a copy of SCO's opening brief in support of its motion to dismiss Red Hat's complaint, filed on October 24, 2003 in *Red Hat, Inc. v. The SCO Group, Inc.*, Case No. 03-772-SLR, United States District Court for the District of Delaware. This Exhibit is a true and correct copy of the document obtained from the court's docket.

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

Executed on this 5th day of August, 2004 in San Francisco, California.



David E. Melaugh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of August, 2004, I caused a true and correct copy of the foregoing **DECLARATION OF DAVID E. MELAUGH IN SUPPORT OF NOVELL, INC.'S MOTION TO DISMISS** to be served via first class mail, postage prepaid, to the following:

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1. I am an attorney duly licensed to practice law in the State of California and an associate in the law firm of Morrison & Foerster LLP, counsel of record for defendant Novell, Inc. ("Novell") in this action. I was admitted to practice before this Court *pro hac vice* by this Court's July 29, 2004 order. I submit this declaration in support of Novell's Motion to Dismiss. The statements made herein are based on my personal knowledge and investigation.

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

Executed on this 5th day of August, 2004 in San Francisco, California.



David E. Melaugh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of August, 2004, I caused a true and correct copy of the foregoing **DECLARATION OF DAVID E. MELAUGH IN SUPPORT OF NOVELL, INC.'S MOTION TO DISMISS** to be served via first class mail, postage prepaid, to the following:

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