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Novell, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

NOVELL, INC., a Delaware corporation,

Plaintiff,

vs.

VIGILANT INSURANCE COMPANY, a
New York corporation,

Defendant.

) Case No. 2:09cv00496-TS

)
) Judge Ted Stewart

) **PLAINTIFF NOVELL, INC.'S MOTION**
) **FOR PARTIAL SUMMARY JUDGMENT**
) **RE VIGILANT INSURANCE**
) **COMPANY'S DUTY TO DEFEND**

) **[ORAL ARGUMENT REQUESTED]**
)
)
)

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 56 and Civil Local Rule 56.1 of the United States District Court for the District of Utah, Plaintiff Novell, Inc. (“Novell”) moves for summary judgment on the ground that Defendant Vigilant Insurance Company (“Vigilant”) owed a duty to defend Novell in *The SCO Group, Inc. v. Novell, Inc.*, Third Judicial District Court of Salt Lake County, State of Utah, Case No. 040900936, removed to the U.S.D.C., District of Utah, Case No. 2:04CV00139 (“the *SCO* action”) and breached this duty to defend.

Plaintiff Novell moves for partial summary judgment in its favor that: (1) the factual allegations in the *SCO* action and facts available to and inferable therefrom were sufficient to show a potential for coverage, giving rise to Vigilant’s duty to defend Novell in the *SCO* action; and (2) Vigilant breached its duty to defend Novell in the *SCO* action by refusing to pay Novell’s defense costs.

Dated: July 2nd, 2009

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By: /s/ David A. Gauntlett

Attorneys for Plaintiff, Novell, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 2009, I electronically filed the foregoing **PLAINTIFF NOVELL, INC.'s MOTION FOR PARTIAL SUMMARY JUDGMENT RE VIGILANT INSURANCE COMPANY'S DUTY TO DEFEND [ORAL ARGUMENT REQUESTED]** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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/s/ Peggy Murray