EXHIBIT B

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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.	**MEMORANDUM IN SUPPORT OF NOVELL, INC.'S MOTION TO STAY CLAIMS RAISING ISSUES SUBJECT TO ARBITRATION** ***[REDACTED pursuant to this Court's April 10, 2006 Order]*** Case No. 2:04CV00139 Judge Dale A. Kimball

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STATEMENT OF ISSUES

Novell's motion to stay presents the issue of whether the Court should stay proceedings on the claims in the recently filed Second Amended Complaint of Plaintiff The SCO Group, Inc. ("SCO"), pursuant to the Federal Arbitration Act, because SCO's claims raise issues that are subject to arbitration under the "UnitedLinux" contracts signed by SCO in May 2002.

STATEMENT OF FACTS

On Novell's motion to stay, the Court properly has before it:

(i) SCO's Second Amended Complaint, filed February 3, 2006;

(ii) The UnitedLinux contracts signed by SCO in May 2002, which contain clauses requiring any disputes arising under those contracts to be resolved by arbitration;

(iii) The Request for Arbitration recently filed against SCO, pursuant to the arbitration clause in the UnitedLinux contracts;

(iv) The Declaration of Michael A. Jacobs ("Jacobs Decl."), which attaches the preceding documents, as well as several exhibits to the Request for Arbitration.

When this record is taken into consideration, a stay of SCO's claims is required.[1]

A. SCO's Second Amended Complaint and the SUSE Linux Claims

SCO's original complaint, filed on January 20, 2004, was limited to a single claim for "slander of title." SCO alleged that Defendant Novell, Inc. ("Novell") slandered SCO's alleged

[1] Documentary evidence may properly be considered on a motion to stay litigation under the Federal Arbitration Act. *See Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 n.26 (1983) ("affidavits, legal briefs, and documentary evidence" properly considered in connection with application to stay litigation pending arbitration).

title in UNIX and UnixWare copyrights, by falsely and maliciously asserting that SCO did not own such copyrights.

SCO's Second Amended Complaint, filed on February 3, 2006, adds several new claims directed against "SUSE Linux." SUSE Linux is a version of the Linux operating system developed by SuSE Linux, GmbH ("SuSE"), a wholly-owned subsidiary of Novell. SUSE Linux is distributed by Novell pursuant to a license with SuSE. Linux is an "open source" operating system, meaning that many of its components are subject to an "open source" license that requires any modified versions of those components to be made freely available to the public.

SCO's Second Amended Complaint includes the following allegations regarding SUSE Linux:

- "On November 4, 2003, Novell announced its acquisition of SuSE Linux, one of the world's leading distributors of Linux. Since that time, Novell began distributing Linux worldwide."
- "Novell has infringed and continues to infringe SCO's copyrights by copying, reproducing, modifying, sublicensing, and/or distributing Linux products containing unauthorized contributions of SCO's copyrighted intellectual property"; and
- "Novell's unauthorized copying in its use and distribution of SuSE Linux includes but is not limited to the appropriation of numerous data structures and algorithms contained in or derived from SCO's copyrighted material. A partial listing of these data structures and algorithms is provided at Exhibit B."

(Jacobs Decl. Ex. 1, SCO's Second Am. Compl., ¶¶ 46, 116, 117.)

Thus, SCO is now claiming that Novell's distribution of SUSE Linux infringes SCO's alleged UNIX copyrights. (*Id.*, ¶¶ 116-17.) SCO further asserts that Novell's distribution of SUSE Linux constitutes unfair competition and a breach of contract. (*Id.*, ¶¶ 122, 97-99.) SCO's new claims for unfair competition and breach of contract make clear that SCO's new

"SUSE Linux" claims are closely related to its original "slander of title" claim, as they rely on allegations relating to *both* SUSE Linux and the alleged slander of title. (*Id.*, ¶¶ 122, 99.)

B. The UnitedLinux Contracts

SCO's new "SUSE Linux" claims raise issues that are subject to arbitration under the Master Transaction Agreement ("MTA") and UnitedLinux Joint Development Contract ("JDC"), signed in May 2002 by SuSE and Caldera International, Inc., which is the predecessor-in-name to SCO.[2] These two contracts are collectively referred to as the "UnitedLinux contracts," and are attached as Exhibits 2 and 3 to the accompanying Declaration of Michael Jacobs.[3]

As explained in the preamble to the UnitedLinux contracts, the UnitedLinux project arose from the agreement of SCO, SuSE, and two other Linux vendors (Turbolinux and Conectiva) to jointly develop a standard form of the Linux operating system, referred to as "UnitedLinux." By combining their respective expertise and intellectual property to develop and promote a uniform Linux platform under the "UnitedLinux" brand, the four UnitedLinux members sought to encourage widespread adoption of UnitedLinux "as a standard for the information technology industry." (Jacobs Decl. Ex. 2, MTA, Background.)

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[2] SCO admitted in its Answer to Novell's Counterclaim that "SCO" is simply the new name of Caldera International, Inc. (*See* Jacobs Decl. Ex. 4, Novell's Answer and Counterclaims, filed July 29, 2005, at 14, ¶ 36 (alleging that Caldera changed its name to SCO in May 2003); Jacobs Decl. Ex. 5, SCO's Answer to Novell's Counterclaims, filed September 12, 2005, at 6, ¶ 36 (admitting the name change).)

[3] Because the UnitedLinux contracts require their terms to be kept confidential, the contracts are being filed under seal, and quotations of specific terms have been redacted from the public version of this motion and of the Request for Arbitration. Novell and SuSE have no objection to publicly releasing the terms of these contracts, provided that the other UnitedLinux members consent to such release.

Consistent with this goal, the UnitedLinux members agreed that each member would have a broad license to use the technology included in the UnitedLinux Software, including any related intellectual property rights of the other members. In particular, the members agreed that:

1.

2.

** REDACTED **

3.

(Jacobs Decl. Ex. 2, MTA, Section 3.2.2; Jacobs Decl. Ex. 3, JDC, Section 8.2.)

C. The ICC Arbitration Between SuSE and SCO

** REDACTED **

Pursuant to this arbitration clause, SuSE submitted a Request for Arbitration against SCO to the International Chamber of Commerce ("ICC") on April 10, 2006, a copy of which is attached as Exhibit 6 to the accompanying Jacobs Declaration.

SuSE contends in the arbitration that the UnitedLinux contracts preclude SCO from asserting that SUSE Linux infringes any copyrights of SCO for multiple reasons, including:

- The UnitedLinux contracts divested SCO of ownership of any copyrights in technology included in UnitedLinux;
- The UnitedLinux contracts confer a broad license on SuSE to use the technology included in UnitedLinux, including the right to sublicense such technology to Novell and others through multiple levels; and
- SCO agreed in the UnitedLinux contracts that any "open source" code included in UnitedLinux would remain subject to the terms of any open source license, and those terms prohibit SCO from asserting proprietary rights to modified versions of the Linux "kernel," which appears to be the target of SCO's infringement claims.

(Jacobs Decl. Ex. 6, Request for Arbitration, ¶¶ 46-52, 82.)

Consistent with this position, SuSE has requested the Arbitral Tribunal to declare that (1) SCO is precluded from asserting copyright infringement claims against SUSE Linux; and (2) the UnitedLinux contracts divested SCO of ownership of any copyrights related to technology included in UnitedLinux (except for Pre-Existing Technology and Enhancements). (Jacobs Decl. Ex. 6, Request for Arbitration, ¶ 89.)

D. SCO's Initial Support for UnitedLinux and the Release of SCO Linux and SUSE Linux

As noted in the Request for Arbitration, SCO was initially a strong supporter of the UnitedLinux project. (Jacobs Decl. Ex. 6, Request for Arbitration, ¶¶ 58-60.) For example, Ransom Love, the Chairman and CEO of SCO (then called "Caldera") announced in May 2002 that SCO "sees the formation of UnitedLinux as a tremendous benefit to the industry, to our customers, [and] to our 16,000-member reseller channel," and that SCO "plans to make Linux not just an alternative OS, but the dominant choice for businesses worldwide who are wanting to

take advantage of the benefits of online services." (Jacobs Decl. Ex. 7, UnitedLinux Press Release of May 30, 2002.)

The UnitedLinux members announced the release of United Linux 1.0 in November 2002. UnitedLinux was described as "the engine that powers products to be sold" by the four UnitedLinux members, including SCO and SuSE. (Jacobs Decl. Ex. 8, UnitedLinux Press Release of Nov. 19, 2002.)

On the same day, SCO proudly announced the release of SCO Linux 4.0, "powered by UnitedLinux." SCO emphasized that SCO Linux 4.0 is "based on UnitedLinux 1.0, the core standards-based Linux operating system co-developed in an industry initiative to streamline Linux development and certification around a global, uniform distribution of Linux." (Jacobs Decl., Ex. 9, SCO Press Release, Nov. 19, 2002.)

Also in November 2002, SuSE announced its release of SUSE Linux, "[b]ased on the joint industry standard, UnitedLinux 1.0." (Jacobs Decl., Ex. 10, SuSE Press Release, Nov. 19, 2002.)

E. SCO's Attacks on Linux and SUSE Linux.

Following the November 2002 release of United Linux, SCO Linux, and SUSE Linux, SCO suddenly changed its position and began attacking the Linux operating system. In particular, SCO asserted, for the first time, that all versions of the Linux operating system include code that infringes on SCO's alleged proprietary rights in the UNIX operating system. (*See* Jacobs Decl. Ex. 6, Request for Arbitration, ¶¶ 63-74.)

In March 2003, SCO filed a suit against IBM in this Court, based on IBM's allegedly improper contribution of UNIX code, methods, and concepts to the Linux operating system. In May 2003, SCO sent a letter to numerous Linux users (including Novell), asserting that Linux is

"an unauthorized derivative of UNIX," which infringes on SCO's alleged intellectual property rights in UNIX. (Jacobs Decl., Ex. 11, SCO letter to Novell, May 12, 2003.)

In response to SCO's attack on Linux, SuSE stated that SuSE and its customers were protected by the broad licenses in the UnitedLinux contracts. (Jacobs Decl., Ex. 12, May 5, 2003, Article of CNET News.com.) SCO's Senior Vice President, Chris Sontag, replied in May 2003 that SuSE and its customers were *not* protected by the UnitedLinux contracts:

> Regarding contracts we have with SuSE and UnitedLinux, I would unequivocally state that there is nothing in those contracts that provides them with any protection or shelter in the way they are characterizing this in the press. If I were them, I would not be making those kinds of statements.

(Jacobs Decl., Ex. 13, John Blau Interview with Chris Sontag of May 13, 2006.)

On January 13, 2004, Novell purchased 100% of the shares of SuSE. At the same time, SuSE granted an exclusive license to Novell to all of SuSE's intellectual property rights, including SuSE's rights under the UnitedLinux contracts.

Shortly after Novell completed its acquisition of SuSE, SCO filed this lawsuit against Novell on January 20, 2004. Although Novell had announced its plan to acquire SuSE and to distribute SuSE Linux several months earlier, SCO's original complaint did not include any claims directed against SUSE Linux. In fact, SCO did not assert claims against SUSE Linux in this litigation until it filed its Second Amended Complaint in February 2006.

As discussed below, the claims in SCO's Second Amended Complaint directly implicate the respective rights and obligations of SCO and SuSE under the UnitedLinux contracts, and hence should be stayed pending resolution of the ICC arbitration between SCO and SuSE.

SUMMARY OF ARGUMENT

The Federal Arbitration Act, 9 U.S.C. § 3, requires the Court to stay proceedings on a suit involving "any issue referable to arbitration under an agreement in writing for such arbitration," provided that there has been no default in proceeding with the arbitration.

As discussed below, four of the five claims in SCO's Second Amended Complaint raise issues referable to arbitration under the UnitedLinux contracts signed by SCO in May 2002. These issues include (1) whether the UnitedLinux contracts divest SCO of ownership of any copyrights in the UnitedLinux technology; (2) whether the UnitedLinux contracts preclude SCO from asserting copyright infringement claims against SUSE Linux, in view of the broad license conferred by those contracts, as well as the incorporation of the terms of any applicable open source licenses. The Court should stay proceedings on these claims until these issues are decided in the ICC arbitration. If SuSE prevails in the arbitration, this will moot some of SCO's claims entirely, and will substantially reduce the scope of other claims.

SCO's "alternative" claim for specific performance of Novell's alleged obligation to transfer UNIX copyrights to SCO does not raise arbitrable issues, but is related to SCO's other claims, which do raise arbitrable issues. Indeed, SCO has presented this claim as an "alternative" that is contingent on the Court's rulings on SCO's other claims. Because SCO's alternative claim is related to, and contingent on, SCO's other claims, the stay of proceedings on SCO's claims should encompass this alternative claim.

ARGUMENT

I. THE FEDERAL ARBITRATION ACT REQUIRES A STAY OF ANY CLAIM RAISING AN ISSUE SUBJECT TO ARBITRATION.

Section 3 of the Federal Arbitration Act, 9 U.S.C. § 3, provides that:

> If any suit or proceeding be brought in any of the courts of the United Statues upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action, until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

The Supreme Court has emphasized that the Federal Arbitration Act expresses "a liberal federal policy favoring arbitration agreements," which requires that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration...." *Moses H. Cone Memorial Hosp.*, 460 U.S. at 24-25; *see Perry et al. v. Thomas*, 482 U.S. 483, 489 (1987) (privately negotiated agreements to arbitrate "must be 'rigorously enforce[d]'") (citation omitted); *National Am. Ins. Co. v. SCOR Reinsurance Co.*, 362 F.3d 1288, 1290-92 (10th Cir. 2004) (applying this policy in granting motion to dismiss complaint and to compel arbitration).

Consistent with the policy favoring arbitration, federal courts have broadly construed their authority to stay litigation of arbitrable issues. For example, Section 3 has been interpreted as requiring a stay of *all* proceedings, including pre-trial discovery, even though it refers to a stay of "trial." *See, e.g., Corpman v. Prudential-Bache Secs., Inc.*, 907 F.2d 29, 31 (3d Cir. 1990) ("[w]here an action has been stayed pending arbitration, a district court may not permit the parties to conduct discovery under the Federal Rules of Civil Procedure").

Similarly, federal courts have held that when a claim involves both arbitrable and non-arbitrable issues, it is proper to stay proceedings on the entire claim, especially when

resolution of the arbitrable issues will have a substantial impact on the non-arbitrable issues. *See, e.g., Rain v. Schiffer Publ'g Ltd.*, 964 F.2d 1455, 1461 (4th Cir. 1992) (reversing the district court's denial of a stay as to fifteen of sixteen claims because "it will not be necessary for the district court to render a decision on the non-arbitrable issue of the determination of royalty amounts if the arbitrable issues are decided in favor of the defendants"); *Turner v. Bain & Co.*, No. 97-C-4755, 1997 U.S. Dist. LEXIS 16007, *12 (N.D. Ill. Oct. 6, 1997) (staying claim for tortious interference with contract because the arbitration involves the validity of the underlying contract and hence "clearly influences this claim") (attached as Ex. A hereto).

Moreover, federal courts have stayed litigation and/or compelled arbitration even when the party requesting the stay was not a signatory to the arbitration agreement. For example, in *Waste Mgmt., Inc. v. Residuous Industriales Multiquim, S.A. de C.V.*, 372 F.3d 339, 340-41 (5th Cir. 2004), the Fifth Circuit held that defendant was entitled to a stay of litigation in view of an ICC arbitration between the plaintiff and defendant's corporate parent, even though defendant was not a party to the arbitration. The Fifth Circuit noted that "*any* of the parties to the suit" may request a stay pending arbitration, and hence "nonsignatories do have the right to ask the court for a *mandatory* stay of litigation, in favor of pending arbitration to which they are not a party." *Id.* at 342 (emphasis in original). The Fifth Circuit found that the district court should have stayed the litigation, because the arbitration involved the same basic dispute, even though the specific legal theories were different. *Id.* at 345. The Fifth Circuit emphasized that "there is a valid concern here about the integrity of the arbitration," given that "[a]llowing the instant litigation to proceed would risk inconsistent results, and 'substantially impact' the arbitration." *Id.*

Similarly, in *Continental Cas. Co. v. Am. Nat'l Ins. Co.*, 417 F.3d 727, 728-29 (7th Cir. 2005), the Seventh Circuit held that the defendant insurer could rely on the arbitration clause in a "Participation Agreement" for a reinsurance pool that plaintiff had signed, even though defendant had not signed that agreement. The Seventh Circuit emphasized that the Participation Agreement provided a "framework" that was "central" to plaintiff's relationship with all members of the reinsurance pool, including defendant, and hence defendant "may enforce the Participation Agreement's arbitration provision as a third-party beneficiary...." *Id.* at 734-35.

Other courts, including the Tenth Circuit, have likewise allowed nonsignatories to invoke an arbitration clause to stay litigation and/or to compel arbitration. *See, e.g., Gibson v. Wal-Mart Stores*, 181 F.3d 1163, 1170 n.3 (10th Cir. 1999) (compelling arbitration and dismissing suit even though defendant had not signed the arbitration agreement, because "[defendant] was, at the very least, a third party beneficiary of the Agreement") (citations omitted); *Long v. Silver*, 248 F.3d 309, 320 (4th Cir. 2001) (defendant shareholders are entitled to stay litigation based on arbitration agreement between plaintiff shareholder and corporation, because "the facts and claims against the Corporation and its shareholders are so closely intertwined that [plaintiff's] claims against the non-signatory shareholders of the Corporation are properly referable to arbitration even though the shareholders are not formal parties to the 1972 [arbitration] Agreement"); *Paramedics Electromedicina Comercial Ltda. v. GE Med. Sys. Info. Techs., Inc.*, No. 02-Civ.-9369-DFE, 2003 U.S. Dist. LEXIS 26928, *32 (S.D.N.Y. June 14, 2003) (arbitration clause in contract between U.S. company and Brazilian company requires arbitration of Brazilian company's claims against both the U.S. company and its Brazilian affiliate, because the claims are intertwined and enforcement of the clause by the non-signatory Brazilian affiliate was foreseeable) (attached as Ex. B hereto).

II. SCO'S CLAIMS SHOULD BE STAYED BECAUSE THEY RAISE ISSUES SUBJECT TO ARBITRATION UNDER THE UNITEDLINUX CONTRACTS.

A. SCO's Copyright Infringement Claim Raises Arbitrable Issues.

SCO's copyright infringement claim alleges that (1) SCO "is the sole and exclusive owner of the copyrights in UNIX, UnixWare, and the associated supporting materials"; (2) Novell's "distribution of SuSE Linux" infringes SCO's alleged UNIX copyrights; and (3) Novell's "unauthorized copying" involves "numerous data structures and algorithms contained in or derived from SCO's copyright material." (Jacobs Decl. Ex. 1, Second Am. Compl., ¶¶ 111, 116, 117.)

SCO's copyright infringement claim is wholly dependent on the results of the arbitration in three critical respects. First, SCO's copyright claim requires SCO to prove that it owns the copyrights at issue. However, SuSE has asserted in the arbitration that SCO does *not* own these copyrights because the UnitedLinux contracts transferred any such copyrights from SCO to UnitedLinux LLC.[4] (Jacobs Decl. Ex. 6, Request for Arbitration, ¶¶ 46, 48, 82.) If the Arbitral Tribunal agrees with SuSE's position, this ruling will be dispositive of SCO's infringement claim.

Second, SuSE has asserted in the arbitration that the UnitedLinux contracts confer a broad, royalty-free license on SuSE to use any intellectual property rights of SCO in the UnitedLinux technology, including the right to sublicense such technology to others. (*Id.*,

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[4] This transfer does not include "Pre-Existing Technology" identified in Exhibit C to the JDC, but this is irrelevant because SCO's infringement allegations do not appear to relate to "Pre-Existing Technology." (*See id.*, ¶ 81.)

¶¶ 46-48, 75, 82.) If the Arbitral Tribunal agrees, this will preclude SCO from asserting infringement claims against SuSE or Novell, which has a sublicense from SuSE.

Third, SuSE has asserted in the arbitration that the UnitedLinux contracts obligate SCO to comply with any open source licenses, including the "General Public License" that requires modified versions of the Linux "kernel" to be made freely available to the public.[5] (Jacobs Decl. Ex. 6, Request for Arbitration, ¶¶ 29-32, 51, 61, 82.) SCO's infringement claim appears to be directed against technology included in the UnitedLinux kernel. (*Id.*, ¶ 80.) Thus, if the Arbitral Tribunal agrees that the UnitedLinux contracts require SCO to make the Linux kernel freely available, this would require dismissal of SCO's infringement claim.

Because the arbitration involves the critical issue of whether the UnitedLinux contracts preclude SCO from asserting a copyright infringement claim against SUSE Linux, the Court should stay proceedings on this claim until the arbitration is completed. *See Rain*, 964 F.2d at 1461 (claims raising both arbitrable and non-arbitrable issues should be stayed in their entirety, because resolution of the arbitrable issues may dispose of these claims). Allowing the litigation to proceed would not only result in inefficient duplicative litigation, it would threaten the integrity of the arbitration by creating a risk of "inconsistent results." *See Waste Mgmt.*, 372 F.3d at 345. Moreover, the UnitedLinux contracts authorize SuSE to sublicense the UnitedLinux technology "through multiple levels," and create an overall framework for the rights and obligations of SCO and SuSE regarding Linux products. Thus, Novell is entitled to rely on the arbitration clause in the UnitedLinux Contracts, as a third-party beneficiary of SuSE's sublicense

[5] As explained in the Request for Arbitration, the "kernel" is a set of software files that provide certain functions that are essential for every operating system. (*See* Jacobs Decl. Ex. 6, Request for Arbitration, ¶ 27.)

rights. *See Continental Cas. Co.*, 417 F.3d at 734-35 (allowing third-party beneficiary of "framework" agreement to rely on the arbitration clause in that agreement).

B. SCO's Slander of Title Claim Raises Arbitrable Issues.

SCO's slander of title claim alleges that (1) "SCO is the sole and exclusive owner of all copyrights related to the UNIX and UnixWare source code"; and (2) Novell has slandered SCO's alleged title to the UNIX copyrights by falsely and maliciously asserting that SCO does not own these copyrights. (Jacobs Decl. Ex. 1, Second Am. Compl., ¶¶ 90-92.) Thus, as indicated by SCO's own pleading, SCO must prove that it is "the sole and exclusive owner" of UNIX copyrights to prevail on its slander of title claim.

Whether SCO owns the UNIX copyrights depends on two issues. The first is whether SCO acquired ownership of the UNIX copyrights by purchasing certain assets of the Santa Cruz Operation, which allegedly acquired these copyrights from Novell through the 1995 Asset Purchase Agreement (including its amendments). This is a disputed issue in this litigation related to the meaning of these agreements between Novell and the Santa Cruz Operation, which is not subject to arbitration.

However, SCO's ownership claim raises a second issue that is subject to arbitration. As noted above, SuSE has asserted in the arbitration that the UnitedLinux contracts transferred any intellectual property rights of SCO in the UnitedLinux technology to UnitedLinux LLC. (Jacobs Decl. Ex. 6, Request for Arbitration, ¶¶ 46, 48, 82.) Thus, even if it were assumed that SCO acquired ownership of UNIX copyrights from Novell, SuSE contends that the UnitedLinux contracts divested SCO of such ownership with respect to any claims by SCO directed against technology included in UnitedLinux.

If the Arbitral Tribunal accepts SuSE's position, this ruling would preclude SCO from asserting a "slander of title" claim as to copyrights that allegedly cover UnitedLinux technology, as SCO would not have "title" to such copyrights. Because resolution of this issue in the arbitration will have a substantial impact on SCO's slander of title claim, the Court should stay all proceedings on this claim. *See, e.g., Rain*, 964 F.2d at 1461 (claims raising both arbitrable and non-arbitrable issues should be stayed in their entirety, because resolution of the arbitrable issues may dispose of these claims).

C. SCO's Unfair Competition Claim Raises Arbitrable Issues.

SCO's unfair competition claim is extremely vague, but appears to combine its slander of title and copyright infringement claims. Thus, SCO alleges that Novell has (1) "falsely claimed ownership of SCO's copyrights in UNIX and UnixWare"; (2) "misappropriated SCO's UNIX technology in Linux and forced SCO to compete in the marketplace against its own intellectual property"; and (3) wrongfully attempted to thwart SCO's rights and efforts to bring legal claims in defense of its UNIX intellectual property." (Jacobs Decl. Ex. 1, Second Am. Compl., ¶ 122.)

SCO's allegations regarding SCO's ownership of UNIX copyrights and alleged interference with SCO's efforts to enforce those copyrights relate to SCO's slander of title claim. SCO's allegations regarding Novell's supposed misappropriation of "SCO's UNIX technology in Linux" relate to SCO's claim that Novell's distribution of SUSE Linux infringes SCO's copyrights.

As demonstrated above, SCO's claims for slander of title and copyright infringement should be stayed, because they raise potentially dispositive issues that will be resolved in the ICC arbitration between SuSE and SCO. SCO's unfair competition claim is basically just a new label

for its slander of title and copyright infringement claims, and hence should be stayed for the same reasons.

D. SCO's Breach of Contract Claim Raises Arbitrable Issues.

SCO's breach of contract claim should also be stayed because it overlaps, in substantial part, with its claims for copyright infringement and slander of title. SCO alleges that Novell has breached the 1995 Asset Purchase Agreement (as amended) with the Santa Cruz Operation by (1) distributing "Licensed Technology" as part of Novell's Linux product; (2) "undermining" SCO's business by "distributing UNIX technology in Linux"; and (3) "making false and misleading statements denying SCO's ownership of the copyrights in UNIX and UnixWare." (Jacobs Decl. Ex. 1, Second Am. Compl., ¶ 99.)

SCO's first and second arguments regarding Novell's distribution of Linux are related to its copyright infringement claim, and hence raise the same arbitrable issues discussed above in connection with the copyright claim. SCO's third argument regarding Novell's allegedly false statements about SCO's copyright ownership is a repeat of its slander of title claim, and hence raises the arbitrable issue of whether the UnitedLinux contracts divested SCO of any such ownership. Because all three of these grounds for SCO's breach of contract claim raise arbitrable issues, the Court should stay proceedings on this claim.[6]

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[6] SCO's breach of contract claim also alleges that Novell breached the "covenant of good faith and fair dealing" by "purporting to waive and revoke SCO's rights and claims against IBM." (Jacobs Decl. Ex. 1, Second Am. Compl., ¶ 99.) This argument does not appear to directly raise arbitrable issues. However, the other three bases for SCO's contract claim do raise arbitrable issues, and SCO's "IBM" argument may relate to the arbitration in that IBM is a distributor of SUSE Linux, and hence IBM's distribution of SUSE Linux is covered by the broad license in the UnitedLinux contracts.

E. SCO's Alternative Claim for Specific Performance Should Be Stayed Because It Is Closely Related to SCO's Other Claims.

SCO has asserted an "alternative breach-of-contract claim seeking specific performance," which requests an order requiring Novell to take all actions necessary to transfer the UNIX copyrights to SCO. (Jacobs Decl. Ex. 1, Second Am. Compl., pp. 25-26.) This is phrased as an "alternative" because SCO's primary position, as stated in its slander of title and copyright infringement claims, is that SCO is *already* "the sole and exclusive owner" of the UNIX copyrights. (*Id.*, ¶¶ 90, 111.) Thus, SCO's "alternative" claim applies only if the Court *rejects* SCO's primary position that SCO already owns the copyrights.

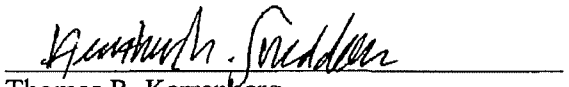
SCO's alternative claim for specific performance does not directly raise arbitrable issues, as it is limited to the parties' rights and obligations under the 1995 Asset Purchase Agreement. However, it is logical to stay this claim as well, since it is related to SCO's other claims, which do raise arbitrable issues. Indeed, there is no need for the Court to consider SCO's alternative claim until and unless the Court first considers and rejects SCO's primary position that SCO is the owner of the UNIX copyrights.

CONCLUSION

For the foregoing reasons, Novell respectfully requests that this Court stay all proceedings on the claims asserted by SCO in its Second Amended Complaint.

DATED: April 10, 2006

ANDERSON & KARRENBERG



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2006, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF NOVELL, INC.'S MOTION TO STAY CLAIMS RAISING ISSUES SUBJECT TO ARBITRATION [*REDACTED pursuant to this Court's April 10, 2006 Order*]** to be served via first class mail, postage prepaid, to the following:

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