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Attorneys for Defendant
VIGILANT INSURANCE COMPANY

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

NOVELL, INC., a Delaware corporation,)
) Plaintiff,)
) vs.)
) VIGILANT INSURANCE COMPANY, a)
) New York corporation;)
) Defendant.)

Case No.: 2:09-cv00496 TS
Assigned to: Stewart, Ted
**VIGILANT INSURANCE COMPANY'S
ANSWER TO COMPLAINT FOR
DECLARATORY JUDGMENT AND
JURY DEMAND**

In response to the Complaint for Declaratory Judgment filed by plaintiff NOVELL, INC. (“NOVELL”), defendant VIGILANT INSURANCE COMPANY (“VIGILANT”) pleads as follows:

1. VIGILANT is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and, on that basis, denies each and every allegation in Paragraph 1.

2. VIGILANT states that its principal place of business is located in Warren, New Jersey and, subject to the foregoing, admits the remaining allegations in Paragraph 2.

3. VIGILANT states that it is also a citizen of New Jersey and, subject to the foregoing, admits the allegations of Paragraph 3.

4. VIGILANT is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 4 and, on that basis, denies each and every allegation in Paragraph 4.

5. VIGILANT admits the allegations of Paragraph 5.

6. VIGILANT admits the allegations of Paragraph 6.

7. VIGILANT denies that it has failed to defend Novell to the extent that allegation implies VIGILANT had a duty to do so in this situation and states that the dispute concerns VIGILANT’s determination that it has no duty to defend NOVELL in the underlying SCO Action. Subject to the foregoing, VIGILANT admits the remaining allegations of Paragraph 7.

8. VIGILANT states that the Vigilant Policies apply anywhere provided the insured’s responsibility to pay damages, to which this insurance applies, is determined in a suit

on the merits brought in the United States of America, Canada, or Puerto Rico. Subject to the foregoing, VIGILANT admits the allegations of Paragraph 8.

9. VIGILANT admits the allegations of Paragraph 9.

10. VIGILANT states that Exhibit 1 does not include the Schedule of Forms and, subject to the foregoing, admits the allegations of Paragraph 10.

11. VIGILANT states that Exhibit 1 does not include the Schedule of Forms and, subject to the foregoing, admits the allegations of Paragraph 11.

12. Paragraph 12 is not an allegation of fact or law which VIGILANT can admit or deny.

13. VIGILANT states that the Policies have a per occurrence limit of \$2 million and, subject to the foregoing admits the allegations of Paragraph 13.

14. VIGILANT states that the Vigilant Policies contain other pertinent provisions and, subject to the foregoing, admits the allegations of Paragraph 14.

15. VIGILANT states that the Vigilant Policies contain other pertinent defense provisions and, subject to the foregoing, admits the allegations of Paragraph 15.

16. VIGILANT states that the Vigilant Policies contain other exclusions and definitions and, subject to the foregoing, admits the allegations of Paragraph 16.

17. VIGILANT admits the allegations of Paragraph 17.

18. VIGILANT admits the allegations of Paragraph 18.

19. VIGILANT states that the SCO complaint contains additional pertinent allegations and, subject to the foregoing, admits the allegations of Paragraph 19.

20. VIGILANT admits that SCO filed an amended complaint on or about July 9, 2004 and that it is attached as Exhibit 4. VIGILANT states that the amended complaint filed by SCO speaks for itself and, except as so admitted, denies the remaining allegations of Paragraph 20.

21. VIGILANT admits the allegations of Paragraph 21.

22. VIGILANT states that the letter of February 11, 2004 contains other pertinent parts and, subject to the foregoing, admits the allegations of Paragraph 22.

23. VIGILANT admits that the language of the Expected or Intended Injury Exclusion is contained in the Appendix but denies that VIGILANT did not explain its position that the exclusion applied.

24. VIGILANT admits that it determined it had no duty to defend NOVELL in the SCO Action and has maintained that position. Except as so admitted, VIGILANT denies the remaining allegations of Paragraph 24.

25. VIGILANT admits that the Vigilant Polices require it to defend suits alleging “personal injury” and, except as so admitted, denies the remaining allegations of Paragraph 25.

26. VIGILANT denies the allegations of Paragraph 26.

27. VIGILANT denies the allegations of Paragraph 27.

28. VIGILANT denies the allegations of Paragraph 28.

29. VIGILANT denies the allegations of Paragraph 29.

30. VIGILANT denies the allegations of Paragraph 30.

31. VIGILANT denies the allegations of Paragraph 31.

32. VIGILANT denies the allegations of Paragraph 32.

33. VIGILANT incorporates by reference its responses to each and every allegation set forth in Paragraphs 1 through 32 of NOVELL's complaint as though fully set forth in response to Paragraph 33.

34. VIGILANT admits the allegations of Paragraph 34.

35. VIGILANT denies the allegations of Paragraph 35.

36. VIGILANT denies the allegations of Paragraph 36.

37. VIGILANT admits the allegations of Paragraph 37.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

38. NOVELL is not entitled to judgment in its favor as a matter of law.

SECOND AFFIRMATIVE DEFENSE

39. NOVELL's claim for coverage is barred in whole or in part by the terms, conditions, limitations and exclusions contained in the Vigilant Policies.

THIRD AFFIRMATIVE DEFENSE

40. VIGILANT has complied with all duties and obligations emanating from or related to the Vigilant Policies which are the subject of NOVELL's Complaint for Declaratory Judgment.

FOURTH AFFIRMATIVE DEFENSE

41. NOVELL is not entitled to coverage under the Vigilant policies in that the underlying SCO Action does not seek damages that potentially not fall within the scope of the policies' insuring agreements.

FIFTH AFFIRMATIVE DEFENSE

42. VIGILANT has, at all times, exercised due care concerning any actions, conduct or other matters alleged in the Complaint for Declaratory Judgment or any purported claim asserted by NOVELL therein.

SIXTH AFFIRMATIVE DEFENSE

43. To the extent that NOVELL has failed to mitigate or minimize or avoid any damages allegedly sustained, a recovery against VIGILANT, if any, must be reduced by the amount of said failure.

SEVENTH AFFIRMATIVE DEFENSE

44. To the extent that the defense fees and costs incurred by NOVELL in the underlying SCO action were unreasonable and/or unnecessary, recovery against VIGILANT, if any, must be reduced by the amount of those fees and costs.

EIGHTH AFFIRMATIVE DEFENSE

45. An award of attorneys' fees to NOVELL for bringing its Complaint for Declaratory Judgment against VIGILANT is not legally available.

NINTH AFFIRMATIVE DEFENSE

46. VIGILANT's liability, if any, may be limited to the extent that there is "other insurance" available to cover the claims asserted in the underlying SCO Action

TENTH AFFIRMATIVE DEFENSE

47. VIGILANT reserves the right to raise additional affirmative defenses as relevant facts and circumstances are identified in the course of discovery

WHEREFORE, VIGILANT prays for judgment in its favor and against NOVELL as follows:

1. That NOVELL takes nothing by reason of its Complaint;
2. For a declaration that VIGILANT has no duty to defend NOVELL in the SCO Action and that it has no obligation to reimburse NOVELL for any of the attorneys' fees and/or costs NOVELL incurred or will incur to defend that Action;
3. That VIGILANT be awarded costs of suit herein and such other and further relief as the Court deems just and proper.

JURY DEMAND

Vigilant Insurance Compant hereby makes demand and requests that this case be tried to a jury.

DATED: July 1, 2009

NEWTON REMMEL

By: /s/ Stephen L. Newton
Stephen L. Newton
Lenell Topol McCallum
Attorneys for Defendant
VIGILANT INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2009, I electronically filed the foregoing **VIGILANT INSURANCE COMPANY'S ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT AND JURY DEMAND** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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