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Plaintiff

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

JEFFREY VERNON MERKEY
Plaintiff,

vs.

BRUCE PERENS a.k.a. OSRM
PAMELA JONES a.k.a. GROKLAW.COM, a.k.a. OSRM
and GROKLAW.NET
GRENDEL a.k.a. PAGANSAVAGE.COM
MATT MERKEY a.k.a MERKEY.NET
BRANDON SUIT a.k.a. MERKEY.NET
JOHN SAGE a.k.a. FINCHHAVEN.COM
MRBUTTLE a.k.a. IP-WARS.NET
SLASHDOT.ORG
DOES 1 through 200,

Defendants.

VERIFIED COMPLAINT

Judge Dale A. Kimball
DECK TYPE: Civil
DATE STAMP: 06/21/2005 @ 16:29:15
CASE NUMBER: 2:05CV00521 DAK

Plaintiff complains of the above named Defendants and for causes of action against them, allege as follows:

NATURE OF THIS ACTION

1. This is a federal civil rights action pursuant to 42 U.S.C. § 1983 and § 1988, and the federal constitutional provisions and statutes referred to herein, by

Jeffrey Vernon Merkey ("Merkey") against the named Defendants (sometimes hereinafter collectively referred to as "Defendants").

2. Plaintiff seeks compensation from Defendants in the form of special, general, consequential, and punitive damages – except as prohibited by law – including the attorney's fees and costs reasonably incurred in the prosecution of this action.

3. The damages Plaintiff seeks from Defendants are the proximate, direct and consequential result of Defendants' willful, and/or malicious, and/or intentional, and/or reckless and/or deliberately indifferent actions and/or omissions, individually or in concert with others, which violated Plaintiffs' federal constitutional and statutory rights including – but not limited to – their conduct in:

A. Unlawfully depriving, and conspiring to deprive, Plaintiff of his well-established federal constitutional and statutory rights to freely associate, to exercise his religious beliefs and practices, to enjoy his rights to privacy, and his rights to enjoy the due process and equal protection of law and the equal application of the law, without intrusion or interference, his freedom of speech, and his right of expressive association by conspiring to murder and/or threatening to murder Plaintiff, enlisting and/or soliciting others to murder plaintiff, intentionally inflicting emotional distress upon Plaintiff and advocating through public Internet

postings and websites that Plaintiff commit suicide, in stealing Plaintiff's identity on the public Internet and posting comments and emails which defame him, in engaging in slander of title of Plaintiff's intellectual property, and in publicly defaming Plaintiff and tortiously interfering in Plaintiffs career and business and cultural relationships;

B. Unlawfully harassing, intimidating, threatening, and otherwise substantially burdening the Plaintiff in the exercise their fundamental religious beliefs, freedom of speech, and the right of expressive association, by conspiring to murder and/or threatening to murder Plaintiff, enlisting and/or soliciting others to murder plaintiff, intentionally inflicting emotional distress upon plaintiff and advocating through public Internet postings and websites that Plaintiff commit suicide; and in stealing Plaintiff's identity on the public Internet and posting comments and emails which defame him, in engaging in slander of title of Plaintiff's intellectual property, in publicly defaming Plaintiff and tortiously interfering in Plaintiffs career and business and cultural relationships;

3. Plaintiffs assert that Defendants' conduct challenged herein, has and/or continues to deprive Plaintiffs of their well-established federal constitutional and statutory rights to: (1) freedom of speech; (2) assembly; (3) anti-establishment of religion; (4) free exercise of religion; (5) privacy; (6) due process, and (8) equal protection of the laws, all guaranteed under the First Amendment, and/or

Fourth Amendment, and/or Fifth and/or Fourteenth Amendment to the United States Constitution, and/or the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.§2000cc et seq., PL 106274, and/or 42 U.S.C. §1996a, and/or Religious Freedom Restoration Act, 42 U.S.C. §2000bb-1 et seq.; and that each of the Defendants is personally and/or officially liable to the Plaintiffs for their malicious, and/or intentional, and/or deliberately indifferent violations and deprivations of Plaintiffs' federal constitutional and statutory rights under both Federal and Utah State Law.

4. Plaintiffs reserve their right to also assert additional, pendent claims against Defendants for violating Plaintiffs' rights under the Constitution and Laws of the State of Utah.

JURISDICTION AND VENUE

5. This Court has jurisdiction to hear and determine Plaintiffs' claims pursuant to 42 U.S.C. §§1983 and 1988; 28 U.S.C. §1331, 28 U.S.C. §1343, 28 U.S.C. §§2201 and 2202; the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution; the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc et seq., PL 106273, the Religious Freedom Restoration Act, 42 U.S.C. §2000 bb et seq.; and 28 U.S.C. §1367(a).

6. Defendants' unlawful actions complained of herein occurred within this judicial district via the public Internet located in Utah, making the venue of this

action in this Court proper pursuant to 28 U.S.C. §1391 (b)(2). Additionally, the known Defendants are diverse and do not reside within the State of Utah.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 in that diversity of citizenship exists between the parties and the amount of the controversy in damages claimed exceeds $75,000.

PARTIES

PLAINTIFF

8. Plaintiff Jeffrey Vernon Merkey ("Merkey") is an individual who resides at 1058 East 50 South, Lindon Utah 84042.

9. Merkey is engaged in the software industry as a computer scientist. Merkey has been awarded numerous patents by the United States Patent Office and is regarded by the computer industry as one of Utah's preeminent computer scientists.

10. Merkey has been recognized by the Utah Courts as an expert in computer science. Merkey has served as a Chief Scientist of Novell and several large computer companies during his career and is credited with creating some of the most powerful, scalable, and performant technologies in the world.

11. Merkey has been involved in Open Source Development relative to the Linux Operating System and other platforms for almost 10 years.

12. Merkey's contributions to Novell and other computer companies within Utah and the computer industry at large has resulted in over 10 billion dollars in revenue into the local Utah high tech community over his prestigious career and in particular, the Utah Valley High Technology economy based on technology he has created and/or patented which is held by Novell, the Canopy Group, and dozens of other local high tech companies as well as companies around the world.

13. Hundreds of Millions of people use technology and/or technology which is based on patents created by Merkey across the globe in a wide variety of applications, operating systems, and network communications systems.

14. Merkey is an American Indian based upon his race, religion, and political affiliation, and is a member of a Federally Recognized Tribe, Nation, or Community of Indians.

15. PG Frau Margit Meuller, a German Citizen, is married to Merkey and they reside in Lindon, Utah with their newborn son, Alexej Martin Merkey who was born October 11, 2004 in Orem Utah.

16. PG Frau Meuller was born in Stolzberg, West Germany, and has the German equivalent of a Medical Practitioners or Doctorate Degree in Psychology, Neurology, and Kienothology.

17. PG Frau Meuller has over 20 years of experience in the area of Child Psychology, and has specialized during her entire career in treating children with Downs Syndrome, mental retardation, and other severe social and mental disorders in an attempt to provide counseling and therapy for these unfortunate children who suffer from these disorders and their families in an attempt to adjust them to what would be considered to be a more normal lifestyle. Frau Meuller's patients are typically severe cases who have been given up on by more traditional institutions and treatments and have been permanently institutionalized due to severe social maladjustment, violence, psychotic episodes, and sociopath tendencies.

18. Merkey and Meuller met at a non-profit Native American prison youth counseling event funded by Merkey and the Utah Native American Church for the benefit of Native American Children who are incarcerated at the Decker Lake Correctional Facility. Merkey and the Utah NAC funds several groups who provide counseling for troubled youth in the Utah Prison System. Meuller regularly participates with these counseling groups and provides free counseling to troubled children in non-profit charity work with Merkey and other prominent members of the Utah Native American Community. Merkey and Meuller were married in a traditional Native American Wedding Ceremony on

September 11, 2004 after co-habitating for almost a year in a traditional Native American Courtship.

19. Both Merkey and Meuller or at present 45 years of age.

20. Frau Meuller is a member of the Church of Jesus Christ of Latter Day Saints (Mormons") and participates in numerous non-profit programs with the Mormons and local community.

21. Merkey is not a member of the Church of Jesus Christ of Latter Day Saints and practices the ancient beliefs of Ani-yv-wi-ha, the traditional religion of his culture and people.

22. Merkey is the presiding elder of the Utah Native American Church which is incorporated as a non-profit Corporation Sole in good standing with the State of Utah.

23. Although Native American Churches at times use peyote in their religious rituals, Merkey and Meuller, and the majority of the members of the Utah Native American Church do not use peyote as this is not the traditional religion of their culture. Some of the Dine (Navajo), Ute, and Delaware Indian members of the church do participate in these peyote ceremonies and use peyote as prescribed by their unique cultures. By Church policy these ceremonies are hosted only on the home Indian Reservations of specific members is who engage in this

practice and can only be attended by Indians as defined under the 1994 amendments to the American Indian Religious Freedom Act. Merkey has on many occasions made public statements discouraging peyote use by Native Americans who do not use peyote as part of their traditional culture. These statements have appeared in local articles and newspapers.

24. The Utah Native American Church charter is to support Native Ceremonies, Public Pow Wows and events, counseling and rehabilitation for American Indians incarcerated in the Utah and Federal Prisons, and donates over $100,000.00 per year to these programs. These programs include, but are not limited to, purchasing turkey dinners for prison inmates for Thanksgiving and Christmas for three prison facilities, repairing homes on local Utah Indian reservations which require new roofs, clothing for children, medical services for the elderly, food for impoverished families, and counseling and treatment services for Native Americans both incarcerated and released from Utah Correctional Facilities, including young people held in juvenile hall, and in funding Native American Pow wows and community social events, and promoting economic development in Indian Nations by donating intellectual property and developing education programs to increase core competency in advanced computer technology in Native Communities. Almost all of the monies and assets dispersed and used by the Utah Native American Church are personally donated by Merkey and his business associates each year to these events from surpluses he obtains based upon his income from the Computer Science industry.

DEFENDANTS

25. Defendant Bruce Perens ("Perens") is an Individual who resides at 1563 Solano Ave., Berkley, CA, 94707. Bruce Perens claims to be one of the principal leaders of the Open Source Movement and the Linux Operating System Movement. Perens make these claims in public speaking engagements and through books, press interviews, Internet news articles, and is regarded by many as the "Colonel" of Linux. Bruce Perens articles and interviews are distributed widely across the Internet and the world, and are read widely by hundreds of millions of people. Bruce Perens also serves on the Board of Directors of a group called OSRM – the Open Source Risk Management Group, and business entity that sells patent infringement insurance to commercial Linux customers.

26. Defendant Pamela Jones ("Jones") is an individual whose last known whereabouts were 34 North Central Ave. in Hartsdale, New York. Jones is a self-appointed spokesperson for legal matters for the Open Source Movement and for the Linux Operating System Movement. Pamela Jones writes articles for the Groklaw website, and these articles are read by hundreds of millions of people around the world. Jones is regarded as a right-wing legal reporter for Open Source. At the times alleged in the complaint regarding the actions of Pamela Jones, she was employed by OSRM as a legal reporting advisor – the Open Source Risk Management Group.

27. Defendants Groklaw.com and Groklaw.net ("Groklaw") are Internet websites which are alter-egos of Pamela Jones and are operated by Pamela Jones and hosted by the University of North Carolina. These websites are extreme right-wing and, among other things, seem to predominantly promote messages of hatred and violence directed against members of the Church of Jesus Christ of Latter Day Saints ("Mormons") , and against business entities who employee, are funded by, owned by, or operated by Mormons. These websites also attack other groups who support or espouse cherished beliefs or positive views of Native American Society, Culture, and Spirituality.

28. Defendants Brandon Suit and Matt Merkey are individuals who operate and run Merkey.net, an Internet website which "hacks" search engines on the Internet through google spamming, google bombing, and other unlawful practices designed to tamper with Internet hosting computers and search engines. The address and location of defendants is believed to be within the State of Florida, but is unknown at the present time.

29. Defendants Grendel and Pagan Savage.com is an Internet website which "hacks" search engines on the Internet through google spamming, google bombing, and other unlawful practices designed to tamper with Internet hosting computers and search engines. The address and location of defendants is believed to be within the State of Colorado, but is unknown at the present time.

30. Defendants mrbuttle and IP-WARS.NET is an Internet website which "hacks" search engines on the Internet through google spamming, google bombing, and other unlawful practices designed to tamper with Internet hosting computers and search engines and posts hate speech attacking individuals and groups on the basis of race, religion, and cultural affiliation. The address and location of defendants is believed to be within the State of California, but is unknown at the present time.

31. Defendant John Sage is an individual who resides at 14224 Glen Acres Road SW in Vashon, Washington 98070 and who operates the finchhaven.com website. finchaven.com is an Internet website which "hacks" search engines on the Internet through google spamming, google bombing, and other unlawful practices designed to tamper with Internet hosting computers and search engines.

32. Defendant slashdot.org is an far-right wing Internet news website that posts libelous and defamatory content and is used by Open Source Community members to anonymously post hate speech, death threats, threats to murder and promotes and advocates acts of domestic terrorism within the United States. The address and location of defendants is believed to be within the State of California, but is unknown at the present time.

33. Defendants DOES 1 through 200 are individuals whose identities are not yet known, but who acted in concert with the other named Defendants in violating

Plaintiffs' constitutional rights as alleged herein. The identities of these DOES and their specific actions will be disclosed to the Court as they are made known to Plaintiffs.

34. At all times referred to herein, Defendants, individually or in concert with others, acted maliciously, and/or intentionally, and/or with deliberate indifference to Plaintiffs' federal constitutional and statutory rights described herein and rights under Utah State Law.

35. The individual Defendants named herein are sued both in their official capacities and as individuals for damages and punitive damages, and/or for declaratory and prospective injunctive relief, as allowed by law.

FACTS COMMON TO ALL CAUSES OF ACTION

36. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 35 above, as if fully set forth herein.

37. The Linux Community ("Linux") is a globally distributed community of independent computer programmers who develop the Linux Operating System over the public Internet and comprises members of countries around the world. The Linux Operating System is controlled under a public license called the GNU Public License or GPL ("GPL").

38. The Open Source Movement ("OSS") is a globally distributed community of

independent individuals who promote development of open source computer technology under the GPL. The OSS also includes the majority of the members of the Linux Community.

39. Among other things, the OSS advocates that all computer technology should be free, and should be accessible to all people around the world at no charge and no cost.

40. Among other things, the OSS advocates the dismantling of all intellectual property laws that restrict the trade in free software, including the overthrow of the US patent system, intellectual property laws, and the overthrow of the European Union attempts to create a patent system to protect the intellectual property rights of individuals, and computer technology companies.

41. Members of OSS and Linux routinely reverse engineer, misappropriate, or by other means incorporate patented software methods, trade secrets, and other protected intellectual property into their projects under the cause of freedom to innovate, and in support of their socialist views that software should be free and owned by the masses. These activities have resulted in lawsuits and litigation from large computer companies around the world in an attempt to protect their investments in development of computer technology as the result of wide-spread theft of intellectual property by members of OSS and Linux.

42. Much of the activities of Linux and OSS have served to create a funneling

system allowing sensitive and advanced technology created by computer technology companies in the United States to be illegally exported out of the United States and into the hands of the citizens of other countries.

43. As a result of these activities, a large portion of US technology has been unwittingly placed into the hands of various groups around the world, including Al-Queda, and other groups who sponsor international terrorism.

44. As a result of these activities, a large portion of US technology has been unwittingly placed into the hands of various groups around the world, including radical governments and groups who sponsor and have used the technology in support of the creation of weapons of mass murder and mass destruction designed to murder American Citizens and their families.

45. As a result of these activities, a large portion of US technology has been unwittingly placed into the hands of various groups around the world, and has crippled and destroyed the commercial computer software technology markets in the United States by destroying their ability to charge money for their technology and has harmed the cause of commerce within the United States.

46. The beheading and murder of United States Citizens in Iraq, Saudi Arabia, and other countries have been videotaped, converted to MPEG and other images for viewing on the public Internet through the use of OSS and Linux software and computer technology developed and purloined by Linux and OSS

members and illegally exported from the United States.

47. Companies which sponsor, endorse, and support OSS and Linux, and those acting in concert as their advocates have been unwitting participants in wholesale technology theft of United States developed technology and sponsors of domestic and international terrorism.

48. Companies which sponsor, endorse, and support OSS and Linux, and those acting in concert as their advocates have been unwitting participants in wholesale technology theft of United States developed technology and sponsors of efforts to undermine the Government of the United States and the economic stability of computer technology development and industry within the United States.

49. Companies which sponsor, endorse, and support OSS and Linux, and those acting in concert as their advocates have been unwitting participants in wholesale technology theft of United States developed technology and sponsors of the creation of weapons of mass murder and mass destruction by the enemies of the United States.

49. Companies who attempt to protect their rights to their intellectual property by filing lawsuits against members of Linux and OSS are attacked publicly on the public Internet through a variety of means, including identity theft, defamation, interference in their business and cultural relationships, violation of their rights of expressive association and freedom of speech, threats to murder

them, intentional infliction of emotional distress to the extent they take their own lives, and Internet postings advocating they commit suicide.

50. Many of these methods employed by OSS and Linux Community members to oppress and suppress public viewpoints they do not agree with, do not differ in any way and in many cases resemble the same methods employed by international terrorists to promote their causes, in that they advocate through the posting of messages, emails, and public statements to Internet websites: murder, violence, death, oppression, mob mentality, intentional infliction of emotional distress, terror, defamation, identify theft, character assassination, threats to murder or firebomb the homes of individuals, and threats to overthrow governmental systems.

51. Although OSS and Linux both state goals and ideals which are attractive, such as freedom to innovate, freedom to develop new technology, and free access to software and computer technology, efforts by competing open source efforts to develop or create new development communities are routinely attacked publicly by OSS and Linux members through a variety of oppressive means over the public Internet, such as threats of: murder, violence, death, oppression, mob mentality, intentional infliction of emotional distress, terror, defamation, identify theft, character assassination, threats to murder or firebomb the homes of individuals, and threats to overthrow governmental systems.

52. Many of these activities fall within the definitions under the Patriot Act and other Federal Legislation designed to protect the American People as acts of domestic terrorism.

53. The Santa Cruz Operation ("SCO") recently filed lawsuits in State and Federal Court attempting to protect their intellectual property rights against Linux and OSS and subsequently alleged that IBM and other companies had participated in a scheme to steal it's intellectual property and place it into the OSS and Linux movements.

54. As a result of these filings, Perens, the leader of Linux and OSS, and members of OSRM Pamela Jones and other members of OSS and Linux erected websites and the public Internet in an attempt to undermine SCO's lawsuits and claims through a variety of oppressive means over the public Internet, such as threats of: murder, violence, death, oppression, mob mentality, intentional infliction of emotional distress, terror, defamation, identify theft, character assassination, tortious interference, negligent misrepresentation, threats to murder or firebomb the homes of individuals, and threats to overthrow governmental systems.

55. Not content to merely focus on the facts and claims of SCO and others brought in Federal and State Courts, the named defendants also participated in efforts to publicly attack not only SCO, but anyone in their view was considered an enemy of their viewpoints and goals for OSS and Linux.

56. Almost all of the companies, groups, and individuals attacked on the Groklaw websites and by Pamela Jones are members of the Church of Jesus Christ of Latter Day Saints ("Mormons") , and against business entities who employee, are funded by, owned by, or operated by Mormons. These websites also attack other groups who support or espouse cherished beliefs or positive views of Native American Society, Culture, and Spirituality.

57. During October of 2004, Mr. Merkey offered to purchase a fork of the Linux kernel from Linux and OSS members for an internal Open Source project whose intent was to support education and development of computer development skills within Native American Communities. Mr. Merkey secured $50,000.00 from private contributors to fund and sponsor this project within the Cherokee Nation.

58. This offer was originally suggested by Alan Cox, a Linux member who proposed to Plaintiff that he might wish to consider offering a buyout of certain Linux copyrights to support this project.

59. OSS and Linux responded in a venomous manner to this proposal and while many members accepted the proposal, Perens, OSRM, and Groklaw and those acting in concert with them opposed it, and used their influence with OSS and Linux members by posting messages through the public Internet to defame and threaten Plaintiff through a variety of means, such as threats of: murder,

violence, death, oppression, mob mentality, intentional infliction of emotional distress, terror, defamation, identify theft, character assassination, tortious interference, negligent misrepresentation, threats to murder or firebomb the homes of individuals, and threats to overthrow governmental systems.

60. Perens posted Internet messages on LWN.net stating to Linux and OSS members that "Merkey works for SCO," and that "Merkey should be placed in a file of people to be killed". Merkey has not or ever worked for SCO or the Canopy Group.

61. Perens made public statements to news reporters, in public speeches, emails, and Internet postings "Merkey works for SCO" and "Merkey works for the Canopy Group". Merkey has not or ever worked for SCO or the Canopy Group.

62. Perens made public statements to Linux and OSS members, news reporters, and in public speeches, "Merkey stole Novell's intellectual property", and that "Merkey contaminated Linux with Novell's Intellectual Property."

63. During the time period these events occurred, Jones and Perens were both employed by or affiliated with OSRM.

64. Jones subsequently obtained a copies of sealed and public Court Documents from sources unknown and posted them on the Groklaw website in a

deliberate attempt to defame Merkey by holding him in a "false light" as a liar, thief, and saboteur, as an undercover agent of SCO and the Canopy Group, and as an illegal drug user. The information presented and her statements were intended to create a misleading belief in OSS and Linux that Merkey "worked for Microsoft" and "worked for SCO" and "stole Novell's intellectual property." and falsely portrayed Merkey as a dangerously deranged criminal who used illegal drugs. These messages were a deliberate attempt to create hate, and publicly defame Merkey, invade his privacy, and tortiously interfere with his conduct. Jones also allowed Groklaw members and acted in concert with them to post libelous comments and postings on Groklaw impersonating Merkey and stealing his identity.

65. Jones then modified the content of her website by removing positive comments in support or Merkey and encouraging OSS and Linux members to post negative comments. In removing positive comments, Jones was in effect molding the content and message of the website to portray a message she wished to publish to the world, and subsequently acted as an alter-ego of Groklaw in exercising her right of Expressive Association of her message, and in doing so, became personally liable for the content and messages portrayed by Groklaw in these articles and postings.

66. Numerous other websites took up the call within Linux and OSS, including Merkey.net, Ip-Wars.net, slashdot.org, finchhaven.com, Yahoo.com, Pagan Savage.com, and others under the directives of their leader, Perens, the self

appointed "colonel" of Linux and OSS.

67. Finchahven hosted and published statements that "Merkey recants or does more peyote." and "Merkey works in close comfort with SCO".

68. Merkey.net posted comments stating "merkey is a homophobic nutcase" and comments that Merkey should be killed, murdered, and was a moron, peyote addict, worked for SCO, and language attacking his race and religion. Merkey.net also posted private emails and modified the content of these emails and invaded Merkey's privacy by publishing these emails on the Internet in an attempt to defame him and tortiously interfere with his conduct.

69. Ip-Wars.net posted stories and content stating Merkey worked for SCO and was a peyote user and drug addict, advocating his murder, and attacking his race, religion, and beliefs, and in posting content that invaded his privacy.

70. Pagansavage posted comments Merkey was a "fucktard", "Moron", advocated his murder and death, advocated he take his own life, made threats to murder and rape his wife and children, and even made threats to murder his unborn children in the womb. These statements were vile and outrageous. Pagan Savage also posted private emails that invaded Merkeys privacy, and modified many of these emails and engaged in identify theft.

71. All of these websites subsequently attached their defamatory content to

googles search engines using a computer hacking technique known as "Google spamming" or "google bombing" to manipulate Google's page ranking system that ensured that Internet users searching for content on the name "Jeff Merkey" would display results for these stories and weblogs before any other entry and in affect intercepted searches on Mr. Merkey in order to promote libelous content to the world at large. In manipulating Googles ranking system thorugh external "hacking" and using these techniques to associate selected defamatory content with Merkey's name, including the posting of private emails, defendants engaged in identity theft and violated Merkey's first ammendment right of expressive association and rights to privacy.

72. Slashdot posted an article in response to Merkey filing an email complaint with the FBI in Richmond Virginia which alleged Merkey.net was hacking google and making threats to murder him. Slashdot then solicited comments, then posted comments Merkey should be murdered, killed, censored and other threats. These comments and threats remained posted on slashdot.org for over 6 months.

72. All of these comments and actions by members of OSS and Linux are a direct and proximate result of Perens posting and advocating Merkey's murder by posting statements on the public Internet that Merkey should be "placed in a file of people to be killed", and that he "stole Novell intellectual property" and that he "contaminated Linux within Novell intellectual property."

73. Subsequent to these comments, Perens also asserted his role of the leader of Linux and OSS in stating on public websites and public postings, he was meeting with Kris Magnusun of Novell and was negotiating Merkeys "contamination of Linux." In addition to engaging slander of title on Merkey's source projects in Linux, Perens was also engaging in conversion and tortious interference in inserting himself between Merkey and Novell and purporting to deal with business matters relative to Merkey's intellectual property.

74. Merkey contacted Jones at Groklaw via email and requested removal of the content and court pleadings on her website and stated if she did not comply, he would have a Subpoena issued from State Court in Utah to determine where she had obtained copies of sealed court records. In response to this email, Jones responded by email stating she wold spoil ate and destroy emails and other evidence should she be serveed with a subpoena. She then refused to provide an address of service and evaded attempts to located her physical address.

75. Merkey then initiated efforts to track down Jones and discover here physical address of service, and discovered a shocking trail of deception, identify theft, and misinformation. Jones left several addresses at the local Utah Courts, and all of them proved to be fraudulent. By way of example, Jones left an address of PO Box 1986 in White Plains, NY which was registered to Ben I. Auerbach in Queens, NY. Based upon the convoluted trail, Jones had clearly engaged in deliberate deception to Courts across the US and providing false

and fraudulent information to Court clerks, US Postal Service, and other officers of the Court as to true physical address for which she obtained public pleadings via the US mails.

76. Maureen O'Gara, a highly respected journalist in New York, tracked Jones to her physical address of service and published a news story disclosing the same.

77. To Jones credit, the effort of tracking down the physical address of Jones was considerable and took considerable concerted effort.

Plaintiff's relationship with Novell

78. Merkey was a Chief Scientist of Novell until he resigned from the company in April of 1997.

79. During the final 6 months of his employment at Novell, Merkey was subjected to Sexual Harassment by a Novell Executive which facts are more fully described in Civil Case number 2:98-CV-0311DB which is attached at Exhibit 1 to this complaint.

80. Merkey filed an internal compliant while at Novell with the Novell legal department after these events occurred against the Novell Executives involved in the incident.

in the incident.

81. Merkey was subsequently subjected to retaliation by Novell's management for filing the complaint, and the situation became so untenable, Merkey resigned from the company to pursue other interests.

82. After Merkey resigned, Novell filed a lawsuit in State Court alleging he misappropriated trade secrets, stole source code, and interfered with Novell's business interests in other ways.

83. After almost a year of litigation, multiple hearings, and failed attempts by Novell to produce any evidence Merkey took trade secrets, source code, or used it's intellectual property, with the exception of making claims that slides and public white papers presented at a public conference and distributed at "Brainshare Conference" to Microsoft and other attendees at the conference were trade secrets, and old marketing materials which were inadvertantly left in their homes, the State Court issued a preliminary injunction holding that Merkey took trade secrets by using his "work experience" and "negative knowledge" under a controversial legal doctrine called the doctrine of inevitable disclosure.

84. Novell presented in 4 separate hearings each lasting 3-4 days, and at the end of each hearing when their trade secret claims were shown to be baseless, moved for multiple continuances to prolong the State case. At the conclusion of final hearing, the court issued a ruling granting a preliminary injunction. This

ruling specifically stated "no Novell source code had been used by defendants."

85. Merkey filed a complaint with the EEOC and UADD alleging the lawsuit and Novell's actions were retaliation for filing sexual harassment charges against Novell's executives. At the time, the individuals directing the lawsuit internally at Novell were the same individuals Merkey had originally filed internal charges against for participating in sexual harassment and retaliation.

86. The EEOC, after 18 months of investigation as prescribed by Federal Law, issued Merkey right to sue Novell in Federal Court.

87. Merkey filed suit in US District Court against Novell, and the executives involved in the trade secret litigation alleging sexual harassment, retaliation, and violation of his civil rights in bring a frivolous trade secret case to harrass him and destroy his career, reputation, and business. Within 1 week of the suit being filed and served, Novell proposed settlement of both suits and submitted a proposed settlement to both litigations.

88. All of the executives involved with the exception of Eric Schmidt resigned and left the company under mysterious circumstances. Based upon their rapid and sudden departures, the only logical conclusion is that they were fired by Novell's Board of Directors and Eric Schmidt. Eric Schmidt also was reported to have been fired by Novell's Board of Directors on several news sites, for, among other things, viewing Internet pornography with Novell equipment and Novell

facilities.

89. Novell proposed in the settlement agreement attached at Exhibit 2 and filed under seal of the Court: a total release of past, present and future claims, patent cross license, and the right to use Novell's entire arsenal of trade secrets retained by Merkey in "intangible form."

90. The settlement agreement allowed future litigation and reasonable disclosure of it's terms in Federal Court proceedings by stating in Section 3, "It shall not be a violation of this Settlement agreement to refer members of the press or public ... to public records on file at the state and federal courthouse ... ".

91. The agreement stated, " .... The parties [Novell] in the Sexual Harassment and Trade Secret Litigation desire to compromise and settle .... the Sexual Harassment Litigation without further litigation..."

92. The agreement stated " ... Merkey is released from all past, present, and future claims whether known or unknown, and all obligations, agreements, and liability....." This release functioned as a patent cross license and covenant not to sue, and released and transferred all trade secrets, knowledge, skill, and any other non-tangible intellectual property possessed by Merkey by removing his obligations to maintain the information in confidence as required under the Uniform Trade Secret Act adopted by the State of Utah.

93. Novell further stated in the permanent injunction which was a part of the settlement agreement, Merkey was not allowed to posses 10 year old source code of NetWare or Wolf Mountain or use it in exchange for the right to use all "intangible" knowledge in his possession, whether considered a Novell trade secret or not. Since there was little value in antiquated and unused source code from Netware products which are no longer in use in Novell's relevant markets, Merkey viewed the permanent injunction as moot, since he had not possessed Novell source code unlawfully, and the State Court had issued a specific finding that "no Novell source was used by Merkey" during or following the trade secret litigation.

94. The affect of this language was to in affect grant to Merkey the unfettered right to use patents, trade secrets, and the sum total of Novell's vast body of intellectual property in any projects he wished and endeavored to create.

95. This agreement nullified the preliminary injunction and represented a 180 degree shift in Novell's position regarding it's professed concerns over protecting its trade secrets. This was particularly true given the fact Novell was facing at the time a multi-billion dollar Sexual Harassment action in Federal Court and possible criminal indictment of it's executives and Board of Directors for their actions in the trade secret litigation in setting up dozens of Novell employees to commit perjury in State Court in a futile attempt to prove it's merit less claims.

96. Subsequent to execution of the Settlement Agreement, Novell employees, acting contrary to Novell's wishes and the wishes of it's management, embarked on a press campaign to convince the industry Merkey had been "silenced", "put in his place", "dealt with", "admitted his wrongdoing". Novell subsequent to receiving emails and complaints from Merkey sent an internal announcement admonishing it's employees and directing them to cease in making any comments publicly regarding Merkey or the litigation. Novell also directed Merkey to keep the terms and his "carte blanche" grant of rights to use Novell's body of intellectual property, patents, trade secrets, and other intellectual property confidential outside of State and Federal legal proceedings for purposes unknown to Plaintiff, but surely known to Novell.

97. The language of the agreement reflects a belief in asking the parties to state publicly "... we are not inclined to speculate at this time about what, if any, business opportunities may evolve between the parties in the future..." that Novell potentially was considering or anticipating future business opportunities between the parties.

98. The settlement agreement between the parties also granted Novell Audit rights into Merkey's development efforts in Section 5. The agreement provide Novell the right to conduct 3 audits over a 2 year period. Novell subsequently audited Merkey twice relative to the terms of this agreement and determined that Merkey neither possessed nor was using any Novell Source code.

99. Based on these facts, Perens in making statements Merkey had "Walked out of Novell with Source Code" and that Merkey had "contaminated Linux with Novell's IP" and that Merkey's work "contained Novell's IP" are libel, defamation, and slander of title, and were made with reckless disregard for the truth.

100. Based on these facts, Jones and Groklaw in posting preliminary rulings from the Novell vs. Merkey lawsuit, holding Merkey in a "false light" and misrepresenting the final adjudication of the case, have enaged in libel, defamation, and slander of title relative to Merkey's work in Linux and OSS and other areas of the industry.

101. As the result of Defendants' unlawful conduct acting in concert to intentionally and maliciously deprive the Plaintiffs of their federal and state constitutional and statutory rights set forth herein, Plaintiff continues to suffer the irreparable loss and deprivation of their federal and state constitutional and statutory rights alleged herein; damage to their reputations, good name and standing in the community; the expenditure of funds for the substantial attorney's fees and costs, in the malicious and unfounded defamation, severe emotional distress, slander of title to his intellectual property, and being subjected to domestically sponsored terrorism by threatening to murder him and his family.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

To Redress Defendants' Deprivation Of Plaintiffs' Rights To Freely

Associate And Freely Exercise Their Fundamental Religious Beliefs And Practices, Right to Expressively Associate, and Protected Freedom of Speech, all Guaranteed To Plaintiffs Under The First And Fourteenth Amendments

102. Plaintiffs hereby reallege and incorporate each and every allegation contained in Paragraphs 1 through 101 as if fully set forth herein.

103. By engaging in the conduct described herein, one or more of the Defendants have and continue to deprive Plaintiffs of their rights to freely associate for religious purposes and to freely exercise of their religious beliefs and practices, engage in freedom of speech and the right of expressive association, in violation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

104. As a direct and proximate result of the conduct of one or more of the Defendants described above, Plaintiffs have and continue to suffer general and special damages in amounts to be determined and proved at the time of trial.

105. The acts of one or more of the Defendants described above, were intentional, wanton, malicious and oppressive, thus entitling Plaintiffs to an award of punitive damages against the responsible Defendants.

106. Wherefore, Plaintiffs pray for judgment against Defendants, jointly and severally, for compensatory general, special, consequential and punitive damages in amounts to be proved at trial, declaratory judgment, and temporary,

preliminary and permanent injunctive relief, plus costs of this action, attorney's fees and costs, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

SECOND CLAIM FOR RELIEF

(Intentional Infliction of Emotional Distress)

107. Plaintiffs hereby reallege and incorporate each and every allegation contained in paragraphs 1 through 106, as if fully set forth herein.

108. By engaging in the conduct described above, one or more of the Defendants were and/or are acting maliciously, arbitrarily, capriciously, and oppressively, and with the intent to murder or cause the death of Plaintiff, by inflicting severe emotional distress on Plaintiff and his family by threatening to murder plaintiff, firebomb his home, murder his wife and children, by defaming Plaintiff publicly, engaging in slander of title, and other vile and outrageous conduct committed with the express purpose of inflicting a level of emotional distress to such an extent, that Plaintiff and his family to commit suicide, and by advocating Plaintiff commit suicide in emails, statements, newspaper articles and other public forums.

109. By engaging in the conduct described above, one or more of the Defendants were and/or are intentionally subjecting Plaintiffs to severe emotional distress, and said conduct is vile, outrageous, malicious, and oppressive.

110. As a direct and proximate result of Defendants' conduct, Plaintiffs have and will continue to suffer compensatory and special damages in amounts to be determined and proved at the time of trial.

111. Defendants' acts as described above were and are intentional, wanton, malicious and oppressive, thus entitling Plaintiffs to an award of punitive damages on this claim against the responsible Defendants.

112. Wherefore, Plaintiffs pray for judgment against Defendants, jointly and severely, for compensatory and special damages in an amount to be proved at trial, for declaratory, preliminary and permanent injunctive relief against such unlawful conduct, and for punitive damages in an amount to be proved at trial, plus costs of this action, attorney's fees and costs and such other relief as the Court deems fair and appropriate under the circumstances.

THIRD CLAIM FOR RELIEF

(Slander of Title)

113. Plaintiffs hereby reallege and incorporate each and every allegation contained in paragraphs 1 through 112, as if fully set forth herein.

114. By engaging in the foregoing conduct, one or more of the Defendants

arbitrarily and capriciously deprived Plaintiff of his intellectual property rights and/or liberty without due process or equal protection of law, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.

115. As a direct and proximate result of the conduct of one or more of the Defendants as described above, Plaintiffs have and will continue to suffer general and special damages in amounts to be proved at the time of trial.

116. Defendants acted intentionally, wantonly, maliciously and oppressively, thus entitling Plaintiffs to an award of punitive damages against Defendants.

117. Wherefore, Plaintiffs pray for judgment against the Defendants, jointly and severally for general, special, consequential and punitive damages in an amount to be proved at trial, preliminary and permanent injunctive relief enjoining the Defendants' unlawful conduct, plus costs of this action, attorney's fees and such other and further relief as the court deems fair and appropriate under the circumstances.

FOURTH CLAIM FOR RELIEF

To Redress Defendants' Deprivation Of Plaintiffs' Privacy Guaranteed To Plaintiffs Under the First Amendment and Fourteenth Amendments To The United States Constitution

118. Plaintiffs hereby reallege and incorporate each and every allegation contained in paragraphs 1 through 117, as if fully set forth herein.

119. By unlawfully obtaining access to sealed court documents and private emails; publishing these records, modifying their content and portraying their content in a false light; and by publicly holding the Plaintiff in a "false light" -- by falsely and maliciously accusing Plaintiff of engaging in criminal activity and illegal drug use of peyote – to the public, including by means of the public news media, one or more Defendants violated the Plaintiffs' right to privacy guaranteed by the First and Fourteenth Amendments to the United States Constitution.

120. As a direct and proximate result of the foregoing conduct of one or more of the Defendants as described above, Plaintiff has and will continue to suffer general and special damages in amounts that cannot yet be determined but will be proved at the time of trial.

121. The acts of one or more of the Defendants described above were intentional, wanton, malicious and oppressive, thus entitling Plaintiffs to an award of punitive damages against these Defendants.

122. Wherefore, Plaintiffs pray for judgment against Defendants, jointly and severally, for general, special and punitive damages in amounts to be proved at trial, declaratory judgment, and temporary, preliminary and permanent injunctive relief against Defendants' unlawful conduct, plus costs of this action, attorney's fees and such other and further relief as the Court deems fair and appropriate

under the circumstances.

FIFTH CLAIM FOR RELIEF

(Defamation)

123. Plaintiffs hereby reallege and incorporate each and every allegation contained in paragraphs 1 through 122, as if fully set forth herein.

124. Defendants, acting individual or in concert, acted unreasonably and in reckless disregard for the truth, in wrongfully posting defamatory emails, statements, and news articles, and public court rulings from a preliminary proceeding in a public forum which were based upon information which was, and which Defendants could reasonably have ascertained was, false, malicious, inaccurate, irrelevant and inadequate.

125. One or more of the foregoing Defendants failed to take any reasonable actions to verify the information provided, in the face of positive information which they knew cast doubt on the validity of this information, but chose to rely upon the misinformation even after informed that certain information was false, irrelevant or misleading.

126. As a result of their above described conduct, one or more of these Defendants deprived Plaintiffs of their fundamental rights as citizens of the United States of America to freely associate, expressively associate, and tortiously interfered with Plaintiff and engaged in slander of title.

127. As a direct and proximate result of Defendants' foregoing conduct, Plaintiffs have and continue to suffer general and special damages in an amounts to be proved at trial.

128. The acts of one or more of the Defendants as described above, acting individually or in concert, were intentional, wanton, malicious and oppressive, thus entitling Plaintiffs to an award of punitive damages against these Defendants.

129. Wherefore, Plaintiffs pray for judgment against Defendants, jointly and severally, for general, special and punitive damages in an amount to be proved at trial, for declaratory and preliminary and permanent injunctive relief against such defamatory statements, plus costs of this action, attorney's fees and such other and further relief as the Court deems fair and appropriate under the circumstances.

SIXTH CLAIM FOR RELIEF

(Tortious Interference)

130. Plaintiffs hereby reallege and incorporate each and every allegation contained in paragraphs 1 through 129, as if fully set forth herein.

131. The conduct of one or more of the Defendants, including but not limited to,

their conduct of: Unlawfully harassing, intimidating, threatening, and otherwise substantially burdening the Plaintiff in the exercise their fundamental religious beliefs, freedom of speech, and the right of expressive association, by conspiring to murder and/or threatening to murder Plaintiff, enlisting and/or soliciting others to murder plaintiff, intentionally inflicting emotional distress upon plaintiff and advocating through public Internet postings and websites that Plaintiff commit suicide; and in stealing Plaintiff's identity on the public Internet and posting comments and emails which defame him, in engaging in slander of title of Plaintiff's intellectual property, in publicly defaming Plaintiff and tortiously interfering in Plaintiffs career and business and cultural relationships;

132. As a direct and proximate result of the actions of one or more of the Defendants, acting individually or in concert, Plaintiffs have and continue to suffer general and special damages in the amounts that to be determined and proved at the time of trial.

133. Defendants' acts as described above were and are intentional, wanton, malicious, and oppressive, thus entitling Plaintiffs to an award of punitive damages.

134. Wherefore, Plaintiffs pray for judgment against Defendants, jointly and severally, for compensatory general and special damages in an amount to be proved at trial, and for declaratory, preliminary and permanent injunctive relief against such unlawful conduct, and for punitive damages in an amount to be

proved at trial, plus costs of this action, attorney's fees and such other and further relief as the court deems fair and appropriate under the circumstances.

SEVENTH CLAIM FOR RELIEF

For A Temporary Restraining Order, Preliminary And Permanent Injunctions Restraining The Defendants From Further Deprivations Of Plaintiffs' Federal Constitutional Rights and Rights granted under Utah Law

135. Plaintiffs hereby reallege and incorporate each and every allegation contained in Paragraphs 1through 134 as if fully set forth herein.

136. As a proximate result of the Defendants' unlawful policies, practices, customs, procedures, acts and omissions described herein, Plaintiff has and continues to suffer and be subjected to the immediate and irreparable injury and harm described herein.

137. As a further proximate result of the Defendants' unlawful policies, practices, customs, procedures, acts and omissions described herein, Plaintiff has and continues to suffer and be subjected to immediate and irreparable injury and harm, including physical, psychological and emotional injury, and continuing fear, anxiety, depression, outrage.

138. Plaintiffs have no plain, speedy, adequate or complete remedy at law to redress the wrongs and continuing wrongs described herein. Plaintiff will continue to be irreparably harmed and injured unless the Court grants Plaintiff

the temporary and permanent injunctive relief sought.

DEMAND FOR JURY TRIAL

139. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a jury trial on all issues of fact triable to a jury as of the time of trial.

PRAYER FOR RELIEF

Now, wherefore, Plaintiffs pray for relief against Defendants, as follows:

1.That the Court declare that the conduct of the Defendants alleged herein violated and/or continues to violate Plaintiffs' federal constitutional and statutory rights alleged herein;

2.That the Court permanently restrain and enjoin the responsible Defendants, and all persons or entities acting in concert with them, from obstructing, withholding, seizing, or in any other manner, interfering with the conduct of Plaintiff in the exercise of his Constitutionally protected rights.

4.That the Court temporarily and permanently order the responsible Defendants and all persons acting in concert with them, to cease and desist in harassing, threatening, intimidating, threatening to murder, conspiring to murder Plaintiff and Plaintiff's family, posting Internet messages advocating their murder or

suicide, and other vile and outrageous conduct intended to inflict severe emotional distress on Plaintiff and his family.

5.That the Court temporarily and permanently order the responsible Defendants to cease and desist from defaming and invading the privacy of the Plaintiff, by holding him in a "false light", and by portraying him as an illegal drug user in the public news media and other public forums, and from engaging in identity theft by posting Internet messages falsely attributed to Plaintiff.

6.That the Court temporarily and permanently order the Defendants and all persons acting in concert with them, to cease and desist in harassing, threatening, intimidating, and obstructing Plaintiffs title to intellectual property created by him and engaging in slander of title.

7.That the Court temporarily and permanently order the responsible Defendants and all persons or entities acting in concert with them, to cease and desist in their malicious and bad-faith interference with Plaintiff's business relationships, and from engaging in unfair competition by defaming Plaintiff, engaging in slander of title, tortious interference, and interfering in Plaintiffs efforts to promote economic development in Native American Communities.

9.That the Court retain jurisdiction over this case until the temporarily, preliminarily and permanent injunctive relief ordered by this Court is carried out;

10.That the jury award Plaintiffs with such general, consequential, special and punitive damages sought herein in the amounts proved at trial; and

11.That the Court award Plaintiff the reasonable attorney's fees and costs incurred in the prosecution of this action together with such additional relief as to the Court appears necessary and just in the premises.

DATED this 21 day of ~~April~~ June, 2005

Jeffrey Vernon Merkey

VERIFICATION
STATE OF UTAH)
:ss
COUNTY OF _____)

I hereby swear and affirm that the statements made in the foregoing Complaint are true and correct to the best of my knowledge and ability.

Jeffrey V. Merkey

JEFFREY V. MERKEY personally appeared before me this ___ day of June, 2005, swore on his oath that the facts stated in the foregoing document are true and correct to the best of his knowledge and ability and executed the foregoing before me.

NOTARY

Exhibit 1

(Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jeff V. Merkey,

DEFENDANTS

Novell, Inc., a Delaware Corporation,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Utah
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Utah
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Jeff V. Merkey (801) 222-9129
Attorney Pro Se
895 West Center Street
Orem, Utah 84057

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☒ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

HABEAS CORPUS:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ open

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 4/30/98

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

COPY

JEFF V. MERKEY
Attorney Pro Se
895 West Center Street
Orem, Utah 84057
Telephone: (801) 222-9129

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

---oooOooo---

JEFF V. MERKEY, Plaintiff, vs. NOVELL INC., a Delaware Corporation, Defendant.	:	VERIFIED COMPLAINT Case No.

---oooOooo---

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

Jeff V. Merkey, for cause of action against Defendant, alleges as follows:

PARTIES

1. Jeff V. Merkey is a citizen of the United States of America and a resident of Utah County, State of Utah.

2. Defendant Novell, Inc., is a Delaware Corporation with its principal place of business in Utah County, State of Utah, and engages regularly in business activities directly affecting interstate commerce. For purposes of this action brought pursuant

to 42 U.S.C. § 2000e(b) and 12111(5) Novell employed more than fifteen (15) persons, including Plaintiff and Denise Gibson.

JURISDICTION AND VENUE

3. This action is brought pursuant to 42 U.S.C. § 2000e, et seq., and Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e - 5(f)(3) and 12117(a).

4. Venue lies properly in this District pursuant to 42 U.S.C. § 2000e - 5(f)(3) and 12117(a) because the claims arose out of incidents occurring in Utah County, in this District.

5. On or about July 17, 1997, Plaintiff timely filed charges of discrimination with the United States Equal Employment Opportunity Commission and with the Utah Industrial Commission. Those agencies have terminated any further proceedings related to Plaintiff's charge of discrimination.

6. Pursuant to 42 U.S.C. § 2000e - 5, the EEOC issued a Notice of Right to Sue to Plaintiff, dated February 4, 1998, signed by William W. Ryan, the enforcement supervisor of the EEOC. A copy of the charge of discrimination together with a copy of the Notice of Right to Sue are attached hereto, labeled Exhibits "A" and "B", and incorporated by reference herein.

7. From the date Plaintiff received the Notice of Right to Sue to the date of filing of this action, less than ninety (90) days have expired.

GENERAL ALLEGATIONS

8. In and before August, 1996, Plaintiff was employed by Defendant as chief scientist for the Wolf Mountain Project, a developmental project designed to advance "clustering" of computers, and to design a new operating system for computers working together in groups.

9. Due to office politics, Plaintiff's project was given an independent budget and transferred from the main office building campus in Provo, Utah to a separate campus in Orem. Various employees of Defendant attempted to gain control over the project, to gain their own political objectives.

10. In approximately July, 1996, Defendant hired Ms. Denise Gibson and put her in charge of its Netware Products Group in Provo, Utah. Ms. Gibson immediately commenced attempts to obtain control over the Wolf Mountain Project, in order to increase her prestige and power within Novell.

11. In August, 1996, Plaintiff met with Ms. Gibson to discuss the Wolf Mountain Project. During that meeting, Ms. Gibson approached Plaintiff from the rear, rubbed her breasts against him, and placed her hands on Plaintiff's buttocks.

12. The actions of Ms. Gibson at this time were seductive and inappropriate; and Plaintiff did his best to communicate to her that her advances were unwanted.

13. Plaintiff and Ms. Gibson met again approximately three weeks later. During this meeting, Plaintiff and Ms. Gibson walked down a hallway. While so walking, Ms. Gibson placed her hand onto Plaintiff's groin area and began to rub it.

14. Plaintiff verbally told Ms. Gibson to stop such conduct, and not to touch him in this manner.

15. Plaintiff thereafter made all reasonable attempts to avoid Ms. Gibson; and Ms. Gibson retaliated towards Plaintiff by becoming increasingly hostile.

16. Notwithstanding the foregoing, Ms. Gibson requested Plaintiff to come to her office at Novell Corporation for a meeting at 11:00 p.m., in August or September, 1996. Despite misgivings, Plaintiff did go to her office; and he found Ms. Gibson on a couch in her outer office, where Ms. Gibson attempted to entice Plaintiff to lie down next to her. Plaintiff again told Ms. Gibson her conduct was inappropriate, and that he wanted nothing further to do with her. This time, Plaintiff threatened to file a sexual harassment complaint against Ms. Gibson.

17. In September, 1996, Ms. Gibson embarked on a deliberate campaign to destroy the Wolf Mountain Project; and Plaintiff

received several threatening letters from Ms. Gibson and other employees of Defendant, who were associated with Ms. Gibson.

18. Plaintiff turned over some of the material received to Dr. Glenn Ricart, a Novell employee who indicated that he would give the correspondence to David Bradford, the counsel for Defendant.

19. Having obtained no response from Novell to his informal complaints, Plaintiff submitted a formal sexual harassment complaint against Ms. Gibson within the corporate structure of Defendant.

20. An outside attorney, Jan Smith, investigated the complaint in behalf of Novell, resulting in a dismissal of the complaint as without evidence.

21. Upon information and belief, Plaintiff believes that there was a recommendation that action be taken after the investigation was completed, but that Novell management, for reasons on its own, refused to accept the recommendation.

22. After the internal complaint was filed, Ms. Gibson and Defendant teamed together to retaliate against Plaintiff; and Plaintiff was placed under the direct supervision of Ms. Gibson, thus making it impossible for the Wolf Mountain Project to continue at Novell and for Plaintiff to continue his employment at Novell.

23. After termination from employment at Novell in April, 1997, Novell commenced litigation against Plaintiff, claiming Plaintiff had misappropriated Novell's trade secrets, and seeking to prevent Plaintiff from pursuit of his vocation.

24. During the litigation, Ms. Gibson terminated her employment from Novell under suspicious circumstances; but Novell continues to attempt to retaliate against Plaintiff for his sexual complaint against Ms. Gibson.

25. From the time Plaintiff was hired until the time of the termination of his employment, his job performance and his observation of Defendant's policies and procedures met or exceeded Novell's legitimate expectations.

26. Immediately prior to the termination of his employment, Plaintiff was asked to be a company spokesman at an annual trade fair posted by Defendant entitled "Brainshare" in which new products and innovations were unveiled to other professionals in the field.

27. The pervasive, unwelcome and offensive harassment and disparate treatment of Plaintiff was intentional; and it unreasonably interfered with his employment.

FIRST CLAIM FOR RELIEF
(Sexually Hostile Environment Discrimination)

28. Plaintiff herein incorporates by reference Paragraphs 1 through 27 as set forth above.

29. Ms. Gibson was a manager and supervisory employee with authority over Plaintiff which makes Defendant liable for her conduct.

30. Ms. Gibson, was a management level employee whose knowledge is attributed to Defendant which, given that knowledge, was negligent or reckless in failing to remedy or prevent her conduct.

31. Defendant failed to effectively train its employees to refrain from sexual harassment, failed to address and eliminate the sexually hostile environment and further failed to fairly and effectively enforce complaint procedures.

32. Defendant knew or should have known that Plaintiff was required to work in a sexually hostile environment.

33. Ms. Gibson's managers and employees who sexually harassed Plaintiff had actual and apparent authority from Novell which aided them in sexually harassing Plaintiff.

34. As a result of these violations of his rights under Title VII, Plaintiff was deprived of a workplace free from a sexually hostile environment, causing him to sustain a loss of income and benefits, incur expenses and suffer emotional, mental and physical injury.

SECOND CLAIM FOR RELIEF
(Sex Discrimination)

35. Plaintiff herein incorporates by reference Paragraphs 1 through 34 as set forth above.

36. Ms. Gibson was a managerial agent of Defendant and supervisor over Plaintiff, thus making Novell liable for her conduct.

37. In making threats and in creating a hostile work environment, Ms. Gibson and various employees of Defendant in concert with her, Novell discriminated against Plaintiff on the basis of sex.

38. In making it necessary to terminate Plaintiff's employment, and in litigating other matters against him in effort to deprive him of his livelihood after the termination of his employment, Defendant discriminated against Plaintiff on the basis of sex.

39. The acts alleged herein were undertaken by Defendant in an intentional effort to discriminate against Plaintiff on the basis of sex, to prevent him from performing his job satisfactorily, and to effect the termination of his employment.

40. Defendant's claims against Plaintiff concerning alleged misappropriation of trade secrets is a pretext for unlawful sex discrimination.

41. Because of the result of these violations of his rights under Title VII, Plaintiff was deprived of his employment and caused to sustain a loss of income and benefits, incur expenses, and suffer emotional, mental and physical injury.

THIRD CLAIM FOR RELIEF
(Retaliation)

42. Plaintiff herein incorporates by reference Paragraphs 1 through 41 as set forth above.

43. Ms. Gibson was a managerial agent of Defendant and supervisor over Plaintiff, thus making Novell liable for her conduct.

44. In retaliation for Plaintiff objecting to being discriminated against and stating that he had been sexually harassed, Novell took adverse employment actions against Plaintiff, including, but not limited to, the following:

a. termination of the Wolf Mountain Project as an independent project;

b. restructuring that put Plaintiff directly under the supervision of Ms. Gibson, despite knowledge of Plaintiff's complaints against Ms. Gibson;

c. interference at all levels with his conduct of his work;

d. numerous false allegations concerning Plaintiff's general character and dishonesty;

e. service of a Writ of Replevin on Plaintiff's home and the alleged attempt to obtain evidence of misappropriation of trade secrets;

f. continued litigation and other activities designed to deprive Plaintiff of his livelihood since his termination from Defendant;

45. This retaliation constitutes unlawful discrimination in violation of Title VII.

46. As a result of this retaliation, Plaintiff was deprived of his employment and caused to sustain in loss of income, benefits, incur expenses, and suffer emotional, mental and physical injury.

FOURTH CLAIM FOR RELIEF
(Punitive Damages)

47. Plaintiff herein incorporates by reference Paragraphs 1 through 46 as set forth above.

48. Those violations of 42 U.S.C. § 2000 et seq. and 42 U.S.C. § 12101 et seq., were made with malice or with reckless indifference to Plaintiff's federally protected rights for which Plaintiff is entitled to punitive damages pursuant to 42 U.S.C. § 1981A.

49. At all material times, Defendant employed more than 500 employees.

REQUEST FOR ATTORNEYS FEES AND COSTS

Plaintiff has been forced, or may be forced, to retain counsel, and therefore is entitled to reasonable attorneys fees and costs pursuant to common law and 42 U.S.C. § 2000e - 5(k) and 42 U.S.C. § 12205.

DEMAND FOR JURY TRIAL

Plaintiff is entitled to, and hereby demands, a jury pursuant to 42 U.S.C. § 1981A(c).

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

1. For actual damages, back pay and benefits with pre-judgment interest thereon in an amount to be proved at trial.

2. For forward pay for pecuniary loss, emotional pain and suffering, inconvenience and compensatory damages in an amount to be proved at trial.

3. For punitive damages in an amount to be proved at trial.

4. For Plaintiff's costs in this action, including any reasonable attorneys fees incurred.

5. For such other and further relief as the Court deems equitable and proper in the premises.

DATED this 29 day of April, 1998.

Jeff V. Merkey
Attorney Pro Se

Plaintiff's address:

895 West Center Street
Orem, Utah 84057

SUBSCRIBED AND SWORN to before me this 29th day of April, 1998.

Notary Public

My Commission Expires:

Residing at:

NOTARY PUBLIC
MARY CLEGG
853 W. Center Str.
Orem, UT 84057
My Commission Expires: 8-21-99
State of Utah

wpdocs\trg\gibson.com

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY	CHARGE NUMBER
☒ FEPA ☐ EEOC	

Utah Industrial Commission Anti-Discrimi and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)	HOME TELEPHONE (Include Area Code)
Mr. Jeff V. Merkey	(801) 796-3816
STREET ADDRESS CITY, STATE AND ZIP CODE	DATE OF BIRTH
1058 East 50 South, Lindon, UT 84042	07/13/60

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
Novell Inc - Attn Eric Schmidt	501+ Employees	(800) 453-1267
STREET ADDRESS CITY, STATE AND ZIP CODE		COUNTY
1555 Technology Way, Orem, UT 84057		049

NAME	TELEPHONE NUMBER (Include Area Code)
STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST LATEST
/ / 10/01/96
☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

PERSONAL HARM: I was subjected to sexual harassment.

RESPONDENT'S REASON: None.

DISCRIMINATION STATEMENT: I have reason to charge this employer with unlawful employment discrimination which I attribute to my gender, male, sexual harassment, in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Utah Antidiscrimination Act of 1965, as amended, in that:

From August 1996 through October 1996, I was subjected to sexual harassment by the Senior Vice President of the Network Products Group in the forms of inappropriate touching and a proposition for sex. I complained to management and no action was taken. I feel that I have been singled out and treated differently based on my gender and sexually harassed.

NOTARY PUBLIC
ARLENE H. MCCULLOCH
160 E. 300 So. 3rd Fl.
S.L.C., UT 84114
COMMISSION EXPIRES
MAY 1, 2001
STATE OF UTAH

☒ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

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

X
Date 7/17/97 Charging Party (Signature)

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
X

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)
17 July 1997 Arlene H. McCulloch

EEOC FORM 5 (Rev. 06/92)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY: [X] FEPA [ ] EEOC

CHARGE NUMBER:

Utah Industrial Commission Anti-Discrimi and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)	HOME TELEPHONE (Include Area Code)
Mr. Jeff V. Merkey	(801) 796-3816
STREET ADDRESS / CITY, STATE AND ZIP CODE	**DATE OF BIRTH**
1058 East 50 South, Lindon, UT 84042	07/13/60

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
Novell Inc - Attn Eric Schmidt	501+ Employees	(800) 453-1267
STREET ADDRESS / CITY, STATE AND ZIP CODE		**COUNTY**
1555 Technology Way, Orem, UT 84057		049

NAME	TELEPHONE NUMBER (Include Area Code)
STREET ADDRESS / CITY, STATE AND ZIP CODE	**COUNTY**

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[X] RETALIATION [ ] AGE [ ] DISABILITY [ ] OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST / / LATEST 04/20/97
[X] CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

PERSONAL HARM: I was retaliated against for complaining about discrimination and forced to quit my position of Cheif Scientist due to the hostile work environment.

RESPONDENT'S REASON: None.

DISCRIMINATION STATEMENT: I have reason to charge this employer with unlawful employment discrimination which I attribute to retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Utah Antidiscrimination Act of 1965, as amended, in that:

I complained to management about sexual harassment. The company hired an outside attorney to investigate the complaint. After the investigation, the actual results were withheld from me, and I was told that there was no merit to my claims. No action was taken against the Senior Vice President of the Network Products Group. I feel that I was retaliated against in the forms of attempts by the Senior Vice President of the Network Products Group to transfer me, put a letter of reprimand in my personnel file, and terminate me. On April 20, 1997, I was forced to quit due to the hostile work environment. I feel that I have been retaliated against for complaining about discrimination.

NOTARY PUBLIC
ARLENE H. MCCULLOCH
160 E. 300 So. 3rd Fl.
S.L.C., UT 84114
COMMISSION EXPIRES
MAY 1, 2001
STATE OF UTAH

[X] I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

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

X 7/17/97
Date

X
Charging Party (Signature)

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

X

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)
17 July 1997

EEOC FORM 5 (Rev. 06/92)

EEOC Form 161 (10/96)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Mr. Jeff V. Merkey
1058 East 50 South
Lindon, UT 84042

From: U. S. Equal Employment Opportunity Commission
3300 North Central Avenue, Suite #690
Phoenix, Arizona 85012-1848

[ ] *On behalf of person(s) aggrieved whose identity is Confidential (29CFR & 1601).7(a))*

Postal Certification # Z 450 376 973

Charge Number	EEOC Representative	Telephone Number
35C-97-707 & 708	William W. Ryan, Supervisor	(602) 640-5012

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

[ ] The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

[ ] Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.

[ ] The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

[ ] We cannot investigate your charge because it was not filed within the time limit required by law.

[ ] Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

[ ] While reasonable efforts were made to locate you, we were not able to do so.

[ ] You had 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[ ] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

[ ] Other *(briefly state)* _____

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may pursue this matter further by bringing suit in federal or state court against the respondent(s) named in the charge. **If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice.** Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.** (if you file suit, Please send a copy of your court complaint to this office.)

On behalf of the Commission

Charles D. Burtner, District Director

FEB 04 1998
(date mailed)

Enclosure(s)
cc:Novell, Inc.

Exhibit 2

REDACTED/SEALED
PER ORDER OF COURT #2

6/22/05