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IN THE UNITED STATES DISTRICT COURT**DISTRICT OF UTAH, CENTRAL DIVISION**THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff,

vs.

NOVELL, INC., a Delaware corporation,

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. 2:04CV00139

**NOVELL'S MOTION IN LIMINE
NO. 10 TO PRECLUDE SCO FROM
PRESENTING ARGUMENT
RELATING TO ISSUES STAYED
PENDING ARBITRATION**

Judge Ted Stewart

Judge Kimball has ruled that the portions of SCO's claims that relate to SUSE Linux, GmbH ("SUSE") are stayed pending arbitration. The parties have stipulated that the arbitration stay applies to SCO's copyright infringement claim, and to portions of SCO's breach of contract and unfair competition claims. SCO should be precluded from presenting argument on issues that relate to the portions of its claims that are stayed pending the SUSE arbitration.

I. UNDISPUTED FACTS

In April 2006, Novell moved for an order staying the claims raised in SCO's Second Amended Complaint ("Complaint") pending the resolution of an arbitration proceeding that was instituted on April 10, 2006, by SUSE against SCO in the International Chamber of Commerce. (Dkt. No. 106). Judge Kimball ruled on Novell's motion on August 21, 2006, ordering that "the portions of [SCO's] claims relating to SUSE should be stayed in this court pending SUSE's arbitration." (Ex. 10A (Dkt. No. 139) at 8.)

On August 17, 2007, at the request of the Court, the parties filed a Joint Statement identifying the claims that were proceeding to trial. (Ex. 10B (Dkt. No. 379).) The parties agreed as follows with respect to the effect of the Court's August 21, 2006 Order on SCO's claims:

- Second Claim for Breach of the Asset Purchase Agreement ("APA") and Technology License Agreement ("TLA"): The parties stipulated that issues under this claim not related to (1) UNIX and UnixWare copyrights, or (2) Novell's waiver of claims against IBM and Sequent are stayed pending the SUSE arbitration. (*Id.* at 2.)
- Fourth Claim for Copyright Infringement: The parties stipulated that this claim was stayed in its entirety pending the SUSE arbitration. (*Id.*)
- Fifth Claim for Unfair Competition: The parties stipulated that issues under this claim not related to (1) UNIX and UnixWare copyrights, or (2) Novell's waiver of claims against IBM and Sequent are stayed pending the SUSE arbitration. (*Id.* at 3.)

The SUSE arbitration is currently still pending and there have been no subsequent Court rulings or party stipulations that change any of the foregoing.

II. SCO SHOULD BE PRECLUDED FROM PRESENTING ARGUMENT RELATING TO ISSUES THAT HAVE BEEN STAYED PENDING ARBITRATION

Based on Judge Kimball's August 21, 2006 Order and the parties' August 17, 2007 Joint Statement, the following issues raised by the Complaint are stayed pending the SUSE arbitration:

- Whether Novell breached APA 1.6 and TLA II.A.(2) by distributing Licensed Technology as part of SUSE Linux. (Complaint, ¶¶97-98.)
- Whether Novell breached the covenant of good faith and fair dealing under the APA and TLA by distributing UNIX technology in SUSE Linux in violation of the APA and TLA's non-compete provisions. (*Id.*, ¶ 99.)
- Whether Novell infringed SCO's copyrights by copying, reproducing, modifying, sublicensing and/or distributing SUSE Linux products. (*Id.*, ¶ 116.)
- Whether Novell misappropriated SCO's UNIX technology in SUSE Linux. (*Id.*, ¶ 122.)

Accordingly, any argument that (1) Novell violated the APA or TLA (or any "non-compete" provisions therein) by distributing SUSE Linux, (2) Novell's distribution of SUSE Linux infringes SCO's copyrights, or (3) Novell misappropriated SCO's UNIX technology in SUSE Linux, has been stayed pending the SUSE arbitration and should be excluded from this trial.

DATED: February 8, 2010

Respectfully submitted,

By: /s/ Sterling A. Brennan
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