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Attorneys for Plaintiff, The SCO Group, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC., by and through the Chapter 11 Trustee in Bankruptcy, Edward N. Cahn,</p> <p>Plaintiff/Counterclaim-Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation,</p> <p>Defendant/Counterclaim-Plaintiff.</p>	<p>SCO'S OPPOSITION TO NOVELL'S MOTION IN LIMINE NO. 14 TO EXCLUDE CERTAIN TESTIMONY FROM JEAN ACHESON FOR LACK OF PERSONAL KNOWLEDGE AND VIOLATION OF PAROL EVIDENCE RULE</p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p>
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Novell seeks to preclude SCO from offering certain testimony of Jean Acheson on the grounds that Ms. Acheson did not participate in negotiating the APA or Amendment No. 2. Novell adopts an unduly restrictive interpretation of the law and of the nature of Ms. Acheson's experience and testimony.¹

Ms. Acheson was a revenue manager for Novell in 1995 and participated in the transition in which Novell worked to transfer the entire UNIX and UnixWare business to Santa Cruz. In the course of that process, she acquired an understanding of the parties' intent under the APA, including through company meetings and through her own effort to interpret and apply the APA. Ms. Acheson concluded from that process that Novell had transferred its intellectual property to SCO. (Ex. 1 at 270, 274.)

Such testimony is admissible. Ms. Acheson has personal knowledge of the parties' course of performance. Ms. Acheson need not have personally negotiated the terms of the APA or Amendment No. 2 in order to give admissible testimony of the parties' intent. SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1211, 1217 (10th Cir. 2009). Her testimony constitutes relevant, extrinsic evidence of the parties' course of performance under the APA, which the Tenth Circuit has specifically identified as a relevant – perhaps even the best – evidence of the parties' intent. Consistent with well-established California law, the Tenth Circuit has necessarily rejected the argument that only the testimony of the individuals who negotiated the language of the APA or Amendment No. 2 is relevant. SCO will not present any testimony from Ms. Acheson in which she presently reads or interprets the language of the APA or Amendment No. 2. Novell's arguments go to the weight of Ms. Acheson's testimony, not its relevance.

¹ This is the third of Novell's eight similar motions (Motions in Limine Nos. 12-19) regarding witness testimony. SCO sets forth the controlling law governing the admissibility of such testimony in its Memorandum in Opposition to Novell's Motion in Limine No. 12, and hereby incorporates that discussion.

CONCLUSION

SCO respectfully submits, for the reasons set forth above, that the Court should deny Novell's Motion in Limine No. 14.

DATED this 19th day of February, 2010.

By: /s/ Brent O. Hatch
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CERTIFICATE OF SERVICE

I, Brent O. Hatch, hereby certify that on this 19th day of February, 2010, a true and correct copy of the foregoing **SCO'S OPPOSITION TO NOVELL'S MOTION IN LIMINE NO. 14** was filed with the court and served via electronic mail to the following recipients:

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