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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. 17 TO EXCLUDE CERTAIN TESTIMONY FROM TY MATTINGLY 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 Ty Mattingly on the grounds that Mr. Mattingly 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 Mr. Mattingly's experience and testimony.¹

Mr. Mattingly was the Vice President for Strategic Relations at Novell at the time of the APA. (Ex. 1 at 10-11.) He also participated in the APA negotiations, as the personal liaison of Novell CEO Robert Frankenberg with the Novell negotiating team. (Id.) In the summer of 1995, Mr. Mattingly and the rest of the Novell deal team met with Santa Cruz representatives, including Jim Wilt and Geoff Seabrook, for a series of meetings lasting "probably a month and a half to two months." (Id. at 20.) He "was very heavily involved" in the negotiation of the APA, "interfacing between Bob Frankenberg and the SCO team and participating in the meetings that we would have at times with Alok Mohan and Doug Michels." (Id. at 22-23.) Mr. Mattingly testified to his "firm belief" and intent that SCO had acquired the UNIX business "lock-stock-and-barrel," including the software, and including the copyrights. (Id. at 29-32.)

Such testimony is admissible. Mr. Mattingly has personal knowledge of the business negotiators' intent concerning the transaction, because he participated in the negotiations. His testimony constitutes relevant extrinsic evidence of the circumstances in which the APA was drafted; of the negotiations that occurred leading up to the execution of the APA; of the object, nature, and subject matter of the APA; and of circumstances helping to explain the execution and meaning of Amendment No. 2. SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1211, 1217 (10th Cir. 2009). His testimony is integral to helping the factfinder place itself in the same

¹ This is the sixth 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.

situation in which the parties found themselves in negotiating and executing the APA. 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. Novell's arguments go to the weight of Mr. Mattingly's testimony, not its relevance.

CONCLUSION

SCO respectfully submits, for the reasons set forth above, that the Court should deny Novell's Motion in Limine No. 17.

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. 17** was filed with the court and served via electronic mail to the following recipients:

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