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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 style="text-align: center;">Plaintiff/Counterclaim-Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation,</p> <p style="text-align: center;">Defendant/Counterclaim-Plaintiff.</p>	<p>REPLY MEMORANDUM IN SUPPORT OF SCO'S OBJECTIONS TO NOVELL'S PROPOSED VERDICT FORM</p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p>
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Plaintiff/counterclaim-defendant, The SCO Group, Inc. (“SCO”), by and through the Chapter 11 Trustee in Bankruptcy, Edward N. Cahn, respectfully submits this Reply Memorandum in Support of SCO’s Objections to Novell’s Verdict Form.

I. Novell’s General Objections

A. SCO agrees that the form should reflect Novell’s claim. SCO took it that Novell would propose the questions for its claim. The questions regarding Novell’s slander of title claim, contrary to Novell’s view, should be the mirror image of the phrasing that SCO proposes for its slander of title claim (as set forth below).

B. SCO disputes Novell’s proposal regarding “severable damages.” As SCO shows in its Reply Memorandum in Support of its Objections to Novell’s Proposed Jury Instructions, if there is to be an instruction on the severability issue that Novell raises, the instruction should inform the jury that if damages are severable, then the jury will account for that instruction in assessing both causation and special damages. Accordingly, a question asking the jury to identify any special damages is sufficient, because it will incorporate the jury’s assessment of severability.

Novell’s Specific Objections

A. SCO disputes Novell’s proposed phrasing but will accept a question asking the jury to answer whether Novell has made its false statements to a third party. The language Novell proposes is misleading. The evidence will show that Novell “made” statements to SCO in certain private letters and then published those letters in press releases and on Novell’s website. The question Novell proposes may mistakenly suggest to the jury that when Novell published its letters, it was not “making” any statement. That would be incorrect under the law. Accordingly, and consistent with the need to show a statement made to a third party, the question

should ask whether Novell has “published” the statements to any third parties. SCO proposes the change from “make” to “publish” in several of the other questions, as also reflected below.

SCO disputes Novell’s proposal to limit the question to address only “UNIX copyrights.” The evidence will show that the UnixWare copyrights are at issue, including because they are among the UNIX copyrights. Novell has admitted in its Answer, for example, that “Novell has registered its claim to UNIX and UnixWare copyrights with the United States Copyright Office,” and that it has “publicly stated its belief that it owns UNIX and UnixWare copyrights.” (Novell’s Answer (Apr. 10, 2006) ¶¶ 7, 8.) Novell further admits in its Answer “that on May 28, 2003 Jack Messman sent a letter to Darl McBride of SCO in order to assert Novell’s claim to the UNIX and UnixWare copyrights.” (Id. ¶ 37(a).)

B. With respect to Novell’s three grounds for objecting, SCO states:

First, as shown in SCO’s Reply in Support of its Objections to Novell’s Proposed Jury Instructions, Novell is wrong about the burden of proof. In this trial, where the burden has not “shifted” to the plaintiff to show abuse of privilege, Ferguson v. Williams & Hunt, Inc., 221 P.3d 205, 212 (Utah 2005), the burden remains with the defendant to prove that a privilege applies.

Second, it is unnecessary, confusing, and unduly complex to ask the jury to answer the litany of questions that Novell proposes on the issue of privileges. The jury will have been instructed on privileges that may apply and, where relevant, if they have been abused. For clarity, SCO’s revised form reflects that a litigation privilege cannot be “abused.”

Third, SCO agrees that the form can be slightly modified to reflect that the jury must decide whether a particular privilege that applies has been abused.

C. SCO submits that as long as the jury has been told of the substance of the nature of the “damages” the plaintiff must prove, it does not matter if the term “special damages” appears in the form. In any event, SCO will accept a form that refers to “special damages.”

SCO’s Revised Proposed Verdict Form

SLANDER OF TITLE

1. Did SCO acquire ownership of some or all of the UNIX and UnixWare copyrights through the amended APA? Yes ____ No ____

If Yes, answer the next question. If No, do not answer any other questions; sign and return this form.

2. Has Novell published to any third parties one or more false statements with respect to SCO’s ownership of UNIX and UnixWare copyrights?

Yes ____ No ____

If Yes, answer the next question. If No, do not answer any other questions; sign and return this form.

3. Did Novell publish any of its false statements (a) without any litigation privilege, or (b) did Novell excessively publish any of its false statements?

(a) Yes ____ No ____

(b) Yes ____ No ____

If Yes to either (a) or (b), answer the next question. If No, do not answer any other questions; sign and return this form.

4. Did Novell publish any of its false statements (a) without any qualified privilege, or (b) in a manner that abused or exceeded any applicable qualified privilege?

(a) Yes _____ No _____

(b) Yes _____ No _____

If Yes to either (a) or (b), answer the next question. If No, do not answer any other questions; sign and return this form.

5. Did SCO show by clear and convincing evidence that Novell published one or more of its false statements with knowledge that the statements were false or with reckless disregard for the truth of the statements? Yes _____ No _____

If Yes, answer the next question. If No, do not answer any other questions; sign and return this form.

6. Did Novell cause SCO special damages in publishing any of its false statements?

Yes _____ No _____

If Yes, answer the next question. If No, do not answer any other questions; sign and return this form.

7. What is the amount of special damages that SCO has suffered? Please state the amount:

\$ _____

If you have awarded SCO special damages, please proceed to the following question regarding punitive damages.

PUNITIVE DAMAGES

1. Do you award punitive damages against Novell?

Yes _____ No _____

2. What is the amount of punitive damages that you award against Novell?

\$ _____

Dated this ____ day of March, 2010

Foreperson

DATED this 8th day of March, 2010.

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

I, Brent O. Hatch, hereby certify that on this 8th day of March, 2010, a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF SCO'S OBJECTIONS TO NOVELL'S PROPOSED VERDICT FORM** was filed with the court and served via electronic mail to the following recipients:

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