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FILED  
U.S. DISTRICT COURT  
Sterling A. Brennan  
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March 11, 2010

Hon. Ted Stewart  
United States District Judge  
United States District Court, District of Utah  
350 South Main  
Room 148  
Salt Lake City, Utah 84101

Re: *The SCO Group v. Novell, Inc.*  
Case No. 2:04CV00139

Dear Judge Stewart:

We are responding in Novell's behalf to the letter to the Court from SCO's counsel earlier today regarding Novell's counter-designations of the videotaped deposition of Maureen O'Gara, taken on March 23, 2007. SCO reports that it intends to present Ms. O'Gara's videotaped deposition testimony during trial tomorrow. SCO requests that the Court exclude the counter-designated testimony at 39:2-19 (first designation at issue, referencing the Clintons); 47:3-48:25 (second designation at issue, referencing Ms. O'Gara's use of the word "Mormon"); and 64:10-65:3, 66:9-12, 66:17-67:13, and 67:23-69:24 (third designation at issue, referencing actions taken by Ms. O'Gara against an allegedly anti-SCO website after a request from her contact at SCO).

In deposition testimony not at issue here and not objected to by either side, Ms. O'Gara will testify to the jury regarding Ms. O'Gara testified to statements that she alleges Novell's former vice chairman, Christopher Stone, made to her during a telephone call, which Mr. Stone denies having made. These alleged statements by Mr. Stone are the centerpiece of SCO's argument as to malice. There are no witnesses to corroborate Ms. O'Gara's version of her telephone conversation with Mr. Stone. Accordingly, evidence of Ms. O'Gara's bias in favor of SCO—and against Novell—is critical for the jury to evaluate Ms. O'Gara's credibility compared to Mr. Stone's. The jurors should be allowed to assess all evidence which might bear on the accuracy and truth of Ms. O'Gara's testimony.

Novell will agree to excise the testimony in both the first and second designations at issue in the above-referenced letter. However, the third set of designations at issue (64:10-65:3; 66:9-12; 66:17-67:13; and 67:23-69:24) are highly probative, more probative than prejudicial, and should not be excluded from the jury.

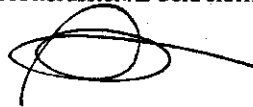
The third set of designations at issue show that Ms. O’Gara’s contact at SCO, Blake Stowell, sent a message to Ms. O’Gara requesting that she “send a jab” to the purported author of the Groklaw site, which SCO’s letter of earlier today states is an “anti-SCO” website. Within just over one month, Ms. O’Gara ran as a lead story an article on the purported author of the Groklaw site. In this article, Ms. O’Gara insulted the purported author by calling her a “harridan,” a word meaning “a woman regarded as scolding and vicious.” This section of Ms. O’Gara’s testimony is highly relevant to demonstrate the extent of Ms. O’Gara’s bias. The speed with which she drafted a lead story on the exact topic of Mr. Stowell’s request and the insulting tone of the story suggest a willingness on Ms. O’Gara’s part to step beyond her role as a disinterested journalist when it comes to matters involving SCO.

The Court has held that it was unable to grant SCO’s broad request for exclusion of litigation commentary and would rule on SCO’s objections as they arose during trial. (“Memorandum Decision and Order Taking Under Advisement Plaintiff’s Motion in Limine No. 4 to Exclude Reference to Litigation Commentary” [Docket, 713] at 2.) The designations at issue here do not refer to “Groklaw.com”; instead, they refer simply to “Groklaw.” Jurors would have to actively search to confirm the address of the website at issue, much as they would and could to find articles that SCO itself has introduced into evidence, such as the *Wall Street Journal*, or any other topics that have been and will be discussed in the case. The Court has regularly instructed the jury not to do any investigation on anything that could relate to this trial, and could do so again here.

Novell respectfully submits that, while it agrees to excise the first and second designations at issue, the third designation at issue should be viewed by the jury.

Sincerely,

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A PROFESSIONAL CORPORATION



Sterling A. Brennan

c: Counsel for The SCO Group, Inc. (via e-mail)