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*Attorneys for Plaintiff, The SCO Group, Inc.*

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

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|--|---|
| <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><b>SCO'S OPPOSITION TO NOVELL'S MOTION IN LIMINE NO. 9 TO PRECLUDE SCO FROM CONTESTING THAT AGREEMENTS THAT POST-DATE THE APA MAY CONSTITUTE SVRX LICENSES</b></p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p> |
|--|---|

Novell's Motion in Limine No. 9 seeks to preclude SCO from contesting that agreements that post-date the APA may constitute SVRX licenses. SCO does not intend to dispute at trial that it is possible for an agreement that post-dates the APA to constitute an SVRX License. However, insofar as Novell seeks to argue that SCOSource licensing agreements entered after the APA (or that would have been executed after the APA but for Novell's slander of title) are SVRX licenses, SCO not only strongly disagrees, but objects to Novell's argument.<sup>1</sup> In that event, the Court should grant the motion in part and deny it in part, as discussed below.

It has already been determined that SCOSource licenses are not SVRX royalty-bearing licenses. In the Findings of Fact and Conclusions of Law entered after the 2008 trial, Judge Kimball ruled that – notwithstanding his prior conclusion on summary judgment that a post-APA agreement may constitute an SVRX License – SCOSource agreements were not royalty-bearing “SVRX Licenses” under the APA, even though they were entered into after the APA. (Docket No. 542 at 28-35.) Judge Kimball specifically ruled that, except with respect to a unique provision in the 2003 Sun Agreement, SCO was entitled to all proceeds from the SCOSource agreements, because they were not SVRX Licenses in their entirety or merely licensed SVRX technology incidentally.<sup>2</sup> Novell did not appeal that ruling.

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<sup>1</sup> Novell's counsel in fact has informed SCO's counsel that this motion is intended to facilitate just such an argument.

<sup>2</sup> Novell also states (at 2) that “under the Tenth Circuit's limited mandate, the only issue to be resolved regarding ‘SVRX Licenses’ is whether that term refers to all three types of agreements bearing upon the licensing of SVRX technology – software agreements, sublicensing agreements, and product supplement agreements (or Product Schedule Licenses) – or just to product supplement agreements.” (Internal marks omitted.) The Tenth Circuit made clear that the scope of Novell's rights under Section 4.16(b) of the amended APA with respect to Novell's purported waiver of SCO's rights under contracts with IBM is a matter for trial. SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1224, 1227 (10th Cir. 2009). It is SCO's understanding that this motion does not seek to limit the evidence on that issue.

### **Conclusion**

The Court should grant the motion to the extent that Novell argues that agreements post-dating the APA may constitute SVRX Licenses, but deny the motion insofar as Novell seeks to relitigate the issue of whether SCOSource agreements (including those that would have been executed after the APA but for Novell's slander of title) are SVRX Licenses.

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. 9** was filed with the Court and served via electronic mail to the following recipients:

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