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U.S. DISTRICT COURT
DISTRICT OF UTAH
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*Attorneys for Defendant/Counterclaim-Plaintiff
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim
Defendant,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim
Plaintiff.

**DECLARATION OF TODD M.
SHAUGHNESSY IN SUPPORT OF IBM'S
SECOND MOTION TO COMPEL
DISCOVERY**

Civil No. 2:03cv0294

Honorable Dale A. Kimball

Magistrate Judge Brooke Wells

87

I, Todd M. Shaughnessy, hereby declare as follows:

1. I am a partner with the law firm of Snell & Wilmer and co-counsel for Defendant / Counterclaim Plaintiff International Business Machines Corporation (“IBM”) in the above-captioned lawsuit.
2. I submit this declaration in further support of IBM’s Second Motion to Compel and, specifically, to respond to the contention by Plaintiff / Counterclaim Defendant The SCO Group, Inc. (“SCO”) that IBM failed to meet and confer in good faith prior to filing its Second Motion to Compel. SCO’s arguments in this regard are set forth at pages 1-2 of Plaintiff SCO’s Memorandum in Opposition to IBM’s Second Motion to Compel Discovery, dated November 24, 2003.
3. For the reasons explained below, and contrary to the arguments contained in SCO’s memorandum, I believe that IBM satisfied its obligation under Federal Rule of Civil Procedure 37(a)(2)(A) and DUCivR 37-1(a) to make a reasonable effort to reach agreement with counsel for SCO on the subject matter of IBM’s Second Motion to Compel prior to filing that motion.
4. I was personally involved in the majority of the discussions with counsel for SCO concerning the deficiencies in SCO’s responses to IBM’s First Set of Interrogatories and First Request for Production of Documents. In that regard, and as conceded in SCO’s own Motion to Compel Discovery and Certificate of Compliance with Rule 37(a)(2)(A) dated November 4, 2003, during September and October of 2003, counsel for IBM and counsel for SCO participated in an extended exchange of letters, emails, and telephone conferences concerning each party’s discovery responses to date.

5. One topic of extended discussion was SCO's answers to IBM's First Set of Interrogatories. Interrogatory No. 1 seeks the identification of the trade secrets or other confidential/proprietary information contained in Unix System V that form the basis of SCO's lawsuit against IBM; Interrogatory No. 2 asks SCO to identify who had access to this material, the nature and source of those rights, and efforts, if any, by SCO to keep that material confidential; and Interrogatory No. 4 asks SCO to describe each instance in which IBM allegedly misused or misappropriated each item of information identified. In the course of discussions concerning these interrogatories, both orally and in writing, we made it very clear to counsel for SCO exactly what information IBM was seeking and the level of detail that we believe an adequate response requires.

6. SCO failed to supplement adequately its answers to Interrogatory Nos. 1, 2, and 4, and, on October 1, 2003, IBM filed its first Motion to Compel, which is directed at those interrogatories, among others.

7. On or about October 23, 2003, SCO served its objections and responses to IBM's Second Set of Interrogatories and Second Request for Production of Documents (a copy is appended as Exhibit A to IBM's Memorandum in Support of Second Motion to Compel Discovery (Nov 6, 2003)). Interrogatory No. 12 of this set sought information concerning the material in Linux (not Unix) to which SCO claims rights and the nature of those rights; Interrogatory No. 13 asks SCO to identify whether it contends IBM has infringed SCO's rights to this material (and, if so, how), and whether SCO itself has ever publicly disclosed that material.

8. SCO's response to Interrogatory Nos. 12 and 13 simply incorporates by reference its responses to Interrogatory Nos. 1, 2, and 4, which are the subject of IBM's first Motion to Compel.

9. Although directed at entirely different issues, Interrogatory Nos. 12 and 13 ask SCO to identify the material in Linux in the same fashion as IBM's earlier interrogatories concerning the material in Unix System V -- i.e., by file and line of code.

10. Although I did not specifically confer with counsel for SCO on its answers to Interrogatory Nos. 12 and 13, I believe that doing so was unnecessary, and would have been pointless, for at least the following reasons:

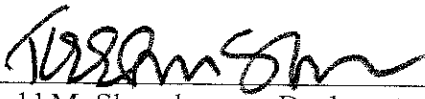
- a. SCO has, despite IBM's repeated efforts, refused to identify any material in Unix System V by file and line of code, and has resisted IBM's first Motion to Compel on this topic. Given the position SCO has taken on this topic, I believe it would have been entirely pointless to ask counsel for SCO to provide information by files and lines of code for Interrogatory Nos. 12 and 13.
- b. The deficiencies in SCO's answers to Interrogatory Nos. 1, 2 and 4 were the subject of discussion among counsel. In responding to Interrogatory Nos. 12 and 13, SCO does nothing more than incorporate by reference its responses to Interrogatory Nos. 1, 2 and 4 which, at the time, were the subject of IBM's first Motion to Compel. SCO did so knowing that IBM believes those responses were deficient. I believe it would have been pointless for the parties to discuss yet again the deficiencies in SCO's responses to Interrogatory Nos. 1, 2 and 4.

c. SCO's memorandum incorrectly states that counsel for IBM did not confer with counsel for SCO regarding the issue of SCO's failure to produce documents that should be available for review by IBM. This topic was the subject of several emails exchanged between myself and Mark Heise in early- to mid-October, 2003.

11. Finally, although SCO's memorandum criticizes IBM for not conferring on the specific topic of Interrogatory Nos. 12 and 13, notably absent from that discussion is any suggestion that doing so would have caused SCO to voluntarily supplement its answers to these interrogatories. On the contrary, SCO defends its answers and takes the position that they are adequate. Thus, SCO's memorandum itself makes clear that any attempt by IBM to further confer regarding these interrogatories would have been pointless.

I declare under penalty of perjury under the laws of the State of Utah that the foregoing is true and correct.

Dated this 3rd day of December, 2003.



Todd M. Shaughnessy, Declarant

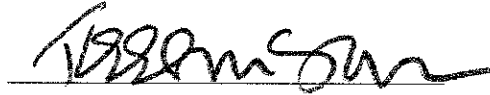
CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2003, a true and correct copy of the foregoing was hand delivered to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

A handwritten signature in black ink, appearing to read "Brent O. Hatch", is written over a horizontal line.