

FILED  
19 FEBRUARY 2:18  
DISTRICT COURT  
BY: \_\_\_\_\_

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

THE SCO GROUP, INC.

Plaintiff/Counterclaim-  
Defendant,

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant/Counterclaim-  
Plaintiff.

**MEMORANDUM OF  
DEFENDANT/COUNTERCLAIM-  
PLAINTIFF IBM IN RESPONSE TO  
PLAINTIFF'S MOTION FOR LEAVE TO  
FILE AMENDED PLEADINGS**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball  
Magistrate Judge Brooke Wells

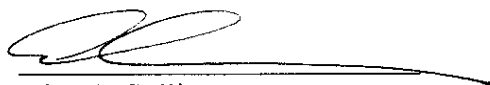
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Pursuant to DUCivR 7-1(b)(3), Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) submits the following response to Plaintiff’s Motion for Leave to File Amended Pleadings filed on February 4, 2004.

As will be set out in IBM’s answer to plaintiff’s proposed Second Amended Complaint—should the Court permit plaintiff to file it—plaintiff’s amended allegations are meritless. Nevertheless, and without conceding the grounds on which the amended pleadings are based, IBM does not oppose plaintiff’s second motion for leave to amend, subject to IBM’s right to move against the amended pleadings.

DATED this 17<sup>th</sup> day of February, 2004.

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**CERTIFICATE OF SERVICE**

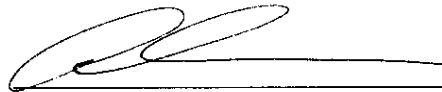
I hereby certify that on the 19<sup>th</sup> day of February, 2004, a true and correct copy of the foregoing **MEMORANDUM OF DEFENDANT/COUNTERCLAIM-PLAINTIFF IBM IN RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED PLEADINGS** was hand delivered to the following:

Brent O. Hatch  
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Kevin P. McBride  
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and 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  
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A handwritten signature in black ink, consisting of a stylized, cursive name followed by a horizontal line.