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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 JEREMY O. EVANS
IN SUPPORT OF SCO'S MEMORANDUM
IN OPPOSITION TO IBM'S MOTION FOR
SUMMARY JUDGEMENT ON BREACH
OF CONTRACT CLAIMS**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke Wells

Portions Filed Under Seal

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I, Jeremy O. Evans, declare:

1. I am a citizen of the United States, am over the age of 21, and am competent to testify to the matters set forth herein.
2. I am an attorney at law duly licensed to practice before all the Courts of the State of Utah, and an attorney with the firm of HATCH, JAMES & DODGE, P.C., counsel for the plaintiff, The SCO Group, Inc. in the pending action.
3. Attached hereto and filed herewith are true and correct copies of the below-listed exhibits.

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

Dated this 1 day of December 2004.

By:


Jeremy O. Evans

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EXHIBITS

Exhibit No.	Date	Description
1	04/18/85	Software Agreement between AT&T Technologies, Inc. and Sequent Computer Systems, Inc.
2	02/01/85	Software Agreement between AT&T Technologies, Inc. and IBM Corp.
3	02/01/85	Side Letter Agreement between AT&T Technologies, Inc. and IBM Corp.
4	11/04/04	Declaration of Evelyn Davis
5	11/15/04	Deposition of Geoffrey Green [Cited Excerpts]
6	02/01/85	Sublicensing Agreement between AT&T Technologies, Inc. and IBM Corp.
7	11/23/04	Declaration of Burton Levine
8	09/07/04	Declaration of Martin Pfeffer
9	06/24/04	Declaration of Ira Kistenberg
10	11/12/04	Declaration of Ira Kistenberg
11	04/26/04	Declaration of Otis Wilson
12	12/10/92	Deposition of Otis Wilson [Cited Excerpts]
13	11/12/85	Educational Software Agreement between The Regents of the University of California and AT&T Information Systems, Inc.
14	11/04/04	Declaration of Mitzi Bond
15	07/27/87	Letter from O. Wilson to IBM Corp.
16	07/27/87	Letter from O. Wilson to Sequent Computer Systems, Inc.
17	06/10/04	Deposition of Otis Wilson [Cited Excerpts]
18	03/28/04	Declaration of David Frasure
19	12/08/92	Deposition of David Frasure [Cited Excerpts]
20	06/08/04	Deposition of David Frasure [Cited Excerpts]
21	10/07/03	Declaration of David Frasure
22	06/17/04	Declaration of Geoffrey Green
23	11/05/03	Declaration of David Rodgers
24	12/09/92	Deposition of Mitzi Bond [Cited Excerpts]
25	12/11/03	Declaration of Otis Wilson
26	02/21/85	Letter from O. Wilson to Digital Equipment Corp.
27	06/18/90	Letter from O. Wilson to F. Kovacs
28	06/29/90	Letter from O. Wilson to B. Factor
29	08/03/90	Letter from O. Wilson to R. Tevonian
30	05/06/86	Software Agreement between The Santa Cruz Operation, Inc. and AT&T Information Systems, Inc.

31	01/04/89	Software Agreement between Systech Computer Corp. and AT&T Information Systems, Inc.
32	03/01/90	Software Agreement between Gates Rubber Co. and AT&T Information Systems, Inc.
33	11/24/92	Software Agreement between Information Foundation, Inc. and UNIX System Laboratories, Inc.
34	06/21/94	Software Agreement between Green Hills Software, Inc. and Novell, Inc.
35	03/28/96	Software Agreement between Modcomp/Cerplex L.P. and The Santa Cruz Operation, Inc.
36	09/05/84	Letter from O. Wilson to Digital Equipment Corp.
37	08/85	\$ echo Newsletter
38	09/19/95	Asset Purchase Agreement between The Santa Cruz Operation, Inc. and Novell, Inc.
39	10/1/04	Declaration of Ed Chatlos
40	11/23/04	Declaration of Jim Wilt
41	12/16/96	Amendment 2 to the Asset Purchase Agreement between The Santa Cruz Operation, Inc. and Novell, Inc.
42	11/19/04	Declaration of Steve Sabbath
43	12/06/95	Amendment 1 to the Asset Purchase Agreement between The Santa Cruz Operation, Inc. and Novell, Inc.
44	11/30/04	Declaration of Jean Acheson
45	03/23/04	Press Release, Novell, Inc., Novell Finalizes IBM Investment (3/23/04)
46	11/05/03	Hiawatha Bray, <i>Novell to Buy SuSE Linux for \$210M; Firm's Commitment to Software Boosted</i> , The Boston Globe, Nov. 5, 2003.
47	03/25/04	Bob Mims, <i>Novell, IBM and HP unite efforts to put Linux on top; Three companies unite to boost Linux and topple Microsoft</i> , The Salt Lake Tribune, Mar. 25, 2004, at E1.
48	12/06/95	Technology License Agreement between Novell, Inc. and The Santa Cruz Operation, Inc.
49	11/30/04	Declaration of Christopher Sontag
50	11/30/04	Declaration of Erik Hughes
51		IBM Dictionary of Computing, 18 (George McDaniel ed., 1994)
52	10/24/03	Computerworld: IBM's Mills sets sights on middleware, Linux, Oct. 24, 2003
53		"IBM Small and Medium Business Advantage," Frequently Asked Questions, http://www-1.ibm.com/partnerworld/pwhome.nsf/weblook/smb_offerings_sol_linux_faq.html
54	1/28/86	Sublicensing Agreement between Sequent Computer Systems, Inc. and AT&T Information Systems, Inc.
55	10/28/04	Letter from E. Normand to D. Marriott

56		Schedule for UNIX System V, Release 2.0 Version 1
57	10/16/96	Amendment X to Software and Sublicensing Agreements between AT&T Technologies, Inc. and IBM Corp.

SEALED EXHIBITS

Exhibit No.	Date	Description
S1	06/10/04	Deposition of David Rodgers [Cited Excerpts]
S2	11/03/97	E-mail from Ron Smith to Terry McKenna
S3	01/22/02	E-mail from Bill Sandve to Kim Tran
S4	02/09/99	Agreement for Licensing of AIX Source Code and Related Products between Argus Systems Group, Inc. and IBM Corp.
S5	06/30/87	IBM Royalty Statement
S6	02/02/01	IBM/Supplier Technical Services Agreement between IBM Corp. and CETIA
S7		IBM Linux Strategy Presentation Version 1.0
S8	11/22/04	Declaration of Michael Davidson

AUTHORITIES

A	<i>Brightway Adolescent Hosp. v. Health Plan of Nev.</i> , No. Civ. 2:98CV0729C, 2000 WL 33710845, (D. Utah Sept. 20, 2000)
B	<i>HotSamba, Inc. v. Caterpillar Inc.</i> , No. 01 C 5540, 2004 WL 609797, (N.D. Ill. Mar. 25, 2004)
C	<i>EPN Ingenieria S.A. de C.V. v. General Electric Co.</i> , No. 92 Civ. 1563 (KMW), 1996 WL 531867, (S.D.N.Y. Sept. 19, 1996)
D	<i>Viacao Aerea Sao Paulo, S.A. v. Int'l Lease Fin. Corp.</i> , 859 F.2d 924, 1988 WL 103286, (9 th Cir. 1988)
E	<i>Ramming v. Barnard</i> , No. E030334, 2002 WL 393118, (Cal. Ct. App. March 13, 2002)
F	<i>McDarren v. Marvel Entertainment Group Inc.</i> , 94 CIV. 0910 (LMM), 1995 WL 214482, (S.D.N.Y. Apr. 11, 1995)
G	<i>T.W.A. Trading, Inc. v. Gold Coast Freightways, Inc.</i> , No. 2001-900 KC, 2002 WL 1311648 (N.Y. App. Term. Apr. 2, 2002)
H	<i>Dunlop-McCullen v. Pascarella</i> , No. 97 Civ. 0195 (PKL) (DFE), 2002 WL 31521012, (S.D.N.Y. Nov. 13, 2002)
I	<i>King Airway Co. v. Routt County</i> , No. 97 CJ C.A.R. 563, 1997 WL 186256, (10th Cir. Apr. 17, 1997)
J	<i>Holt v. Wesley Med. Ctr., LLC</i> , No. 00-1318-JAR, 2002 WL 31778785, (D. Kan. Nov. 25, 2002)
K	<i>Quark, Inc. v. Harley</i> , 141 F.3d 1185, 1998 WL 161035, (10th Cir. 1998)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Declaration of Jeremy O. Evans in Support of SCO's Memorandum in Opposition to IBM's Motion for Summary Judgment on Breach of Contract Claims on this 1st day of December, 2004, by U.S. mail postage prepaid or by hand delivery to:

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