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DISTRICT OF UTAH
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International Business Machines Corporation*

**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.

**EX PARTE MOTION FOR EXTENSION
OF TIME TO SUBMIT OBJECTIONS TO
DISCOVERY ORDER**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Defendant and Counterclaim-Plaintiff International Business Machines Corporation (“IBM”), through counsel, respectfully moves the Court for entry of an order extending the time for IBM to file its objections, pursuant to Federal Rule of Civil Procedure 72(a), to the Magistrate Judge’s January 18, 2005, discovery order.

On January 18, 2005, Magistrate Judge Wells entered an Order Regarding SCO’s Renewed Motion to Compel (the “Discovery Order”). IBM has a number of objections to the Discovery Order, and there are certain provisions in the order that we believe require clarification. IBM believes at least some of its objections could be resolved by raising them in the first instance with the Magistrate Judge, and would prefer to give the Magistrate Judge an opportunity to consider these objections before raising them with Your Honor.

Rule 72 of the Federal Rules of Civil Procedure, however, states that “[w]ithin 10 days after being served with a copy of the magistrate judge’s order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge’s order to which objection was not timely made.” Fed. R. Civ. P. 72(a). Thus, while IBM is hopeful that at least some of its objections can be resolved by the Magistrate Judge, and would prefer that they be addressed by her in the first instance, we do not want to waive IBM’s right to appeal the Discovery Order, in particular IBM’s right to seek Your Honor’s review of each of the rulings made by the Magistrate Judge in the January 18, 2005, order.

For the foregoing reasons, we respectfully request that IBM be given an extension of time to lodge its objections to the Discovery Order. Specifically, IBM requests that the Court enter an order that would (1) require IBM to file a Motion for Reconsideration/Clarification of the January 18, 2005, Discovery Order no later than February 11, 2005, and (2) give IBM until 10

days after being served with a copy of the Magistrate Judge's order on that motion to file with the District Court any remaining objections to the Discovery Order.

IBM submits herewith a proposed form of order consistent with the foregoing request for relief.

DATED this 15th day of February, 2005.

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By 
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2005, a true and correct copy of the foregoing was served by hand delivery to the following:

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