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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.

ORDER

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

On December 20, 2005, Defendant/Counterclaim-Plaintiff International Business Machines Corporation's ("IBM's") Motion to Compel Production of Documents from SCO's Privilege Log (Docket No. 514) and Plaintiff/Counterclaim-Defendant The SCO Group, Inc.'s ("SCO") New Renewed Motion to Compel Discovery (Docket No. 537) came on for hearing before this Court. Ted Normand and Brent Hatch appeared for SCO. David Marriott and Todd Shaughnessy appeared for IBM. Based upon the memoranda, exhibits, and the arguments of counsel, and good cause appearing, the Court hereby orders as follows:

A. IBM's Motion to Compel Production of Documents from SCO's Privilege Log (Docket No. 514):

With regard to IBM's Motion to Compel the Production of Documents from SCO's Privilege Log, the Court finds as follows:

1. In the Novell to Santa Cruz transaction, Novell did not transfer to Santa Cruz the entirety of Novell's business;

2. In the Santa Cruz to Caldera transaction, Santa Cruz did not transfer to Caldera the entirety of Santa Cruz's business;

3. The declaration of Mr. Broderick is insufficient, by itself, to establish continuity of the business, and Mr. Broderick's declaration is contrary to statements made by him during his deposition;

4. SCO has not carried its burden of showing a sufficient continuity of the business; and

5. Any attorney-client privilege or work product protection that may have existed with respect to the documents on SCO's privilege log that were identified by IBM as part

of its motion, was waived in connection with either or both the Novell to Santa Cruz and Santa Cruz to Caldera transactions.

Accordingly, it is HEREBY ORDERED that IBM's motion is granted. SCO shall produce to IBM the documents at issue no later than January 6, 2006.

B. SCO's New Renewed Motion to Compel (Docket No. 537):

With regard to SCO's New Renewed Motion Compel, Docket No. 537, the Court finds as follows:

1. IBM has acted in good faith in terms of its reasonable search for documents as they relate to Mr. Palmisano and Mr. Wladawsky-Berger; and

2. The Court's March 3, 2004, Order Regarding SCO's Motion to Compel Discovery and IBM's Motion to Compel Discovery should have explicitly indicated that IBM undertake a reasonable search for responsive documents from the files of Paul Horn and Nick Bowen;

Accordingly, SCO's motion is granted in part and denied in part, as follows:

IT IS HEREBY ORDERED that IBM provide declarations from Paul Horn and Nick Bowen regarding the nature of the search that has been conducted with respect to the documents in their files, and that such declarations be filed no later than January 6, 2006;

IT IS FURTHER ORDERED that SCO may take the depositions of Messrs. Horn and Bowen on this topic, and such depositions shall not count against the 50 depositions SCO is permitted under the Court's prior orders; and

IT IS FURTHER ORDERED that except as set forth above, SCO's New Renewed Motion to Compel is DENIED.

DATED this 10 day of March, 2006.

BY THE COURT

Brooke C. Wells

U.S. Magistrate Judge
Brooke C. Wells

APPROVED AS TO FORM AND CONTENT:

HATCH, JAMES & DODGE, P.C.
Brent O. Hatch
Mark F. James

By /s/ Brent O. Hatch
Counsel for Plaintiff/Counterclaim-Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2006, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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