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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.

**IBM'S OBJECTIONS TO
THE SCO GROUP, INC.'S PROPOSED
PARTIAL JUDGMENT**

Civil No. 2:03-CV-0294-DN

Honorable David Nuffer

Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits these objections to the [Proposed] Judgment Dismissing SCO’s Claims Mooted by the Final Judgment in SCO v. Novell (the “Proposed Partial Judgment”), submitted by Plaintiff/Counterclaim-Defendant The SCO Group, Inc.(n/k/a TSG Group, Inc.) (“SCO”) ([Dkt. No. 1119-1](#)).

Objections

1. In an order dated June 14, 2013, this Court directed SCO to file “a brief statement identifying its claims which it agrees are foreclosed by the *Novell* judgment and the form of a judgment dismissing those claims”. ([Dkt. No. 1115](#) at ¶ 1.) The Court then provided that “[o]n or before June 28, 2013, IBM may file any objection to the form of that order”. ([Dkt. No. 1115](#) at ¶ 2.) SCO timely filed its statement and its Proposed Partial Judgment.

2. IBM has no objection to SCO’s Proposed Partial Judgment insofar as it seeks to dismiss Counts I-V, Count VIII and SCO’s copyright-infringement claim pertaining to Linux with prejudice. IBM also has no objection to SCO’s Proposed Partial Judgment insofar as it seeks to dismiss certain branches of Count VI with prejudice.

3. IBM has the following objections to SCO’s Proposed Partial Judgment:

a. IBM objects to SCO’s Proposed Partial Judgment insofar as it states that the claims to be dismissed are moot. The claims are not moot; they are barred under principles of issue preclusion (or collateral estoppel). The Novell Judgment decided essential elements of these claims against SCO on the merits, and SCO is precluded from relitigating them against IBM.

b. IBM objects to SCO’s Proposed Partial Judgment insofar as it provides

that the Novell Judgment “has no bearing” on Count VII, Count IX and the part of Count VI concerning Project Monterey. (Proposed Partial Judgment at 2.) IBM disagrees, and IBM will address these issues in its forthcoming summary judgment motion.

c. IBM objects to SCO’s Proposed Partial Judgment insofar as it uses the phrase “joint venture” to describe Project Monterey. The Project Monterey agreement expressly provides that it did not establish a joint venture.

d. IBM objects to SCO’s Proposed Partial Judgment insofar as it provides that each party is “to bear its own fees and costs with regard to the dismissed claims”. (Proposed Partial Judgment at 2.) As a “prevailing party”, IBM is at least entitled to seek fees and costs under the Copyright Act. IBM proposes to defer the issue of fees and costs until after the entry of final judgment on all claims and issues in this case.

4. While IBM believes the Novell Judgment forecloses more claims than does SCO (and more claims than are covered by SCO’s Proposed Partial Judgment), IBM will address the impact of the Novell Judgment on all of SCO’s remaining claims and IBM’s counterclaims in its forthcoming summary judgment motion, as directed by the Court in its order of June 14, 2013. (Dkt. No. 1115 at ¶ 3.)

5. Finally, we note that SCO has changed its name to “TSG Group, Inc.”, and that its bankruptcy has been converted to Chapter 7. (See In re TSG Group, Inc., No.1:07-bk-11337, Dkt. Nos. 1291, 1439 (Del. Bankr. May 19, 2011, Aug. 24, 2012) (Exs. C, D).) IBM suggests the Proposed Partial Judgment reflect SCO’s name change, but that the caption need not be amended.

6. For the Court’s convenience, we attach “clean” and “blackline” versions of the

Proposed Partial Judgment, as amended, as Exhibits A and B, respectively.

DATED this 28th day of June, 2013.

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