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DISTRICT OF UTAH
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.

ORDER

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

On October 7, 2005, Plaintiff/Counterclaim-Defendant The SCO Group, Inc.'s ("SCO") Renewed Motion to Compel Discovery (Docket No. 366), Renewed Motion to Compel (Docket No. 503), and Expedited Motion and Supporting Memorandum for Leave to Take Additional Depositions (Docket No. 508) came on for hearing before this Court. Stuart Singer, Ted Normand, and Mark James appeared for SCO. David Marriott, Todd Shaughnessy, and Peter Ligh appeared for Defendant/Counterclaim-Plaintiff International Business Machines Corporation ("IBM"). Based upon the supporting memoranda, exhibits, the record hearing, and the arguments of counsel, the Court rules as follows:

A. SCO's Renewed Motion to Compel Discovery (Docket No. 366):

With regard to SCO's Renewed Motion Compel Discovery (Docket No. 366), in which SCO seeks to compel IBM to produce all documents from certain of its executives and Board of Directors that relate to Linux and witnesses who can speak to certain deposition topics SCO has noticed, the Court finds as follows:

1. In an Order dated January 18, 2005, the Court withheld decision regarding the production of documents from certain executives pending full briefing by the parties. Due to a docketing error, the issue was not scheduled for hearing upon the close of the parties' briefing;
2. Substantial discovery has been provided since SCO filed its Renewed Motion to Compel Discovery (Docket No. 366) in December 2004 and Judge Kimball has issued an order concerning the deposition of Samuel Palmisano, IBM's C.E.O.; and
3. Given the possibility that some discovery provided by IBM may address the concerns raised by SCO in the pending motion, SCO shall withdraw the pending motion and file a new motion removing any items from the motion which may have been provided by IBM in the intervening time.

Accordingly, it is HEREBY ORDERED that SCO shall file a new motion with the Court, no later than October 21, 2005, removing any items from the motion which may have been provided by IBM in the intervening time. IBM may oppose such motion and SCO may reply. The new motion will be heard with IBM's Motion to Compel Production of Documents on SCO's Privilege Log (Docket No. 514) on December 20, 2005 at 10:00 a.m., courtroom to be determined.

B. SCO's Renewed Motion to Compel (Docket No. 503):

With regard to SCO's Renewed Motion Compel, Docket No. 503, the Court finds as follows:

1. IBM did not agree to produce all documents relating to the development of Linux, as SCO contends;
2. The issue of the discovery from IBM of all documents relating to the development of Linux was not raised before the Court, was not understood by the Court to be a part of SCO's prior motions, and was not contemplated in the Court's March 3, 2004, January 18, 2005, and April 19, 2005 Orders (the "Orders");
3. IBM appropriately interpreted the Orders, and SCO's interpretation of the Orders takes out of context what the Court believes to be the clear meaning of the Orders;
4. The declarations of Todd M. Shaughnessy regarding discovery are sufficiently in compliance with the requirements of the Court to explain those efforts made and those documents not produced; and
5. At the hearing, IBM nevertheless offered to undertake a reasonable search for and produce non-privileged and non-public Linux programmer's notes, design documents, white papers, and interim or draft versions of Linux contributions from the files of 20 of the IBM

Linux developers whom SCO identifies as potential deponents and whose files it would like IBM to search.

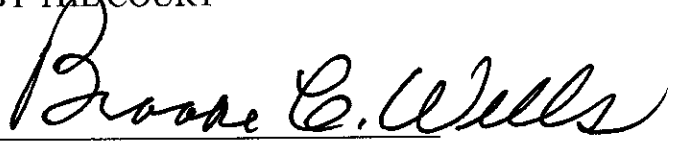
Accordingly, IT IS HEREBY ORDERED that IBM has complied with the Orders of the Court, and that SCO's Motion to Compel Discovery and request for sanctions therein is denied. In accord with IBM's offer, SCO is ordered to provide IBM, on or before October 12, 2005, with a list of the 20 Linux developers. IBM will endeavor to make its production on a rolling basis, but in any case shall complete the production by December 7, 2005. SCO must complete the depositions of these developers before January 27, 2006.

C. SCO's Expedited Motion and Supporting Memorandum for Leave to Take Additional Depositions (Docket No. 508):

The Court hereby increases the number of allowable depositions by 10 as to each side. However, all depositions must be completed by the applicable discovery cut-off date as set forth in Judge Kimball's July 1, 2005 Order. To the extent such depositions cannot be completed within that period of time, they must be foregone. The Court will not entertain any motion for an extension of time to complete depositions. IBM's request for additional time to depose SCO's witnesses is denied; both sides are required to adhere to the current rules on additional deposition days.

DATED this 12 day of October, 2005.

BY THE COURT



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 _____
Counsel for Plaintiff/Counterclaim-Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of October, 2005, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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