

FILED IN UNITED STATES DISTRICT
COURT DISTRICT OF UTAH

JAN - 3 2006

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BY _____

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Attorneys for The SCO Group, Inc.

**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.

**DECLARATION OF MARK F. JAMES
IN SUPPORT OF PLAINTIFF'S
MOTION TO COMPEL**

(FILED UNDER SEAL)

Case No. 2:03CV0294DAK
Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

I, Mark F. James, 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 PC, counsel for the plaintiff, The SCO Group, Inc., in the pending action.
3. Attached hereto and filed herewith as Exhibit 1 is a true and correct copy of a document entitled "Plaintiff's Fifth Request for the Production of Documents", dated December 20, 2004.
4. Attached hereto and filed herewith as Exhibit 2 is a true and correct copy of a letter dated February 3, 2005 enclosing a document entitled "IBM's Responses and Objections to SCO's Fifth Request for the Production of Documents."
5. Attached hereto and filed herewith as Exhibit 3 is a true and correct copy of a letter dated November 11, 2005 sent from Edward Normand to Todd Shaughnessy.
6. Attached hereto and filed herewith as Exhibit 4 is a true and correct copy of a document entitled "IBM Linux Plan" with Bates No. 181012526.
7. Attached hereto and filed herewith as Exhibit 5 is a true and correct copy of a document entitled "2005 Business Plan Strategic Growth Initiative" with Bates No. 181699939.
8. Attached hereto and filed herewith as Exhibit 6 is a true and correct copy of a document entitled "2004 Linux EBO Fall Plan" with Bates No. 1710165257.

9. Attached hereto and filed herewith as Exhibit 7 is a true and correct copy of an e-mail dated October 5, 2001 sent by Dan Frye of IBM to Georgina Castanon of IBM with the subject "Red Hat intent letter – modified with measurements", with Bates No. 1710010966.

10. Attached hereto and filed herewith as Exhibit 8 is a true and correct copy of a document entitled "AIX Brand Strategy" with Bates No. 181525720.

11. Attached hereto and filed herewith as Exhibit 9 is a true and correct copy of an excerpt from the deposition of Steven Mills taken on January 7, 2005.

12. Attached hereto and filed herewith as Exhibit 10 is a true and correct copy of a document entitled "RS/6000 Division" with Bates No. 181484512.

13. Attached hereto and filed herewith as Exhibit 11 is a true and correct copy of an e-mail dated October 15, 1999 sent by Ken Stokes of IBM to Rajiv Samant of IBM with the subject "IBM Confidential: Re: Monterey Proposal", with Bates No. 181675351.

14. Attached hereto and filed herewith as Exhibit 12 is a true and correct copy of a document entitled "Monterey/64 Business Plan", with Bates No. 181428641.

15. Attached hereto and filed herewith as Exhibit 13 is a true and correct copy of a document entitled "IBM Linux Strategy Update", with Bates No. 181444126.

16. Attached hereto and filed herewith as Exhibit 14 is a true and correct copy of an e-mail dated June 2, 1999 sent by Bill Sandve of IBM to Elias Kourpas of IBM with the subject "IBM Confidential: Re: 1999 Marketing Metrics", with Bates No. 181510904.

17. Attached hereto and filed herewith as Exhibit 15 is a true and correct copy of a document entitled "Metrics UNIX Organization" with Bates No. 181528585.

18. Attached hereto and filed herewith as Exhibit 16 is a true and correct copy of a document entitled "Linux Strategy Updated" with Bates No. 1710129062.

19. Attached hereto and filed herewith as Exhibit 17 is a true and correct copy of an excerpt from the deposition of Steven Mills taken on January 7, 2005.

20. Attached hereto and filed herewith as Exhibit 18 is a true and correct copy of a document entitled "Plaintiff's Seventh Request for Production of Documents", dated August 12, 2005.

21. Attached hereto and filed herewith as Exhibit 19 is a true and correct copy of a document entitled "IBM's Responses and Objections to SCO's Seventh Request for the Production of Documents", dated September 19, 2005.

22. Attached hereto and filed herewith as Exhibit 20 is a true and correct copy of a letter dated December 8, 2005 sent from Edward Normand to Todd Shaughnessy.

23. Attached hereto and filed herewith as Exhibit 21 is a true and correct copy of an excerpt from the deposition of Craig Schneider taken on December 14, 2005.

24. Attached hereto and filed herewith as Exhibit 22 is a true and correct copy of a document entitled "SCO's Amended Notice of 30(b)(6) Deposition", dated August 15, 2005.

25. Attached hereto and filed herewith as Exhibit 23 is a true and correct copy of a letter dated September 20, 2005 from Edward Normand to Amy Sorenson.

26. Attached hereto and filed herewith as Exhibit 24 is a true and correct copy of a letter dated November 2, 2005 from Todd Shaughnessy to Edward Normand.

27. Attached hereto and filed herewith as Exhibit 25 is a true and correct copy of a letter dated December 1, 2005 from Todd Shaughnessy to Edward Normand.

28. Attached hereto and filed herewith as Exhibit 26 is a true and correct copy of a document that has been previously marked as Exhibit 682 to the deposition of Daniel Frye on November 18, 2005. The document is an e-mail dated April 8, 2003 sent by Randy Swanberg of IBM to Amir Bimon, Tom Matthews, Kaena Freitas, Randy Greenbeg, Kumer Nellapall, Robert Ruyfa, Rakesh Shamna and Michael Lyons, all of IBM, with the subject "pLinux Work", with Bates No. 181019724.

29. Attached hereto and filed herewith as Exhibit 27 is a true and correct copy of an excerpt from the 30(b)(6) deposition of Daniel Frye taken on November 18, 2005.

30. Attached hereto and filed herewith as Exhibit 28 is a true and correct copy of an excerpt from the fact deposition of Daniel Frye taken on January 12, 2005.

31. Attached hereto and filed herewith as Exhibit 29 is a true and correct copy of an excerpt from the deposition of Paul McKenney taken on December 2, 2005.

32. Attached hereto and filed herewith as Exhibit 30 is a true and correct copy of a document entitled "SCO's Amended Notice of 30(b)(6) Deposition", dated November 11, 2005.

33. Attached hereto and filed herewith as Exhibit 31 is a true and correct copy of letter dated December 16, 2005 from Todd Shaughnessy to Edward Normand.

34. Attached hereto and filed herewith as Exhibit 32 is a true and correct copy of a document entitled "CRN Interview: SCO's Darl McBride and Chris Sontag", with Bates No. 171013795.

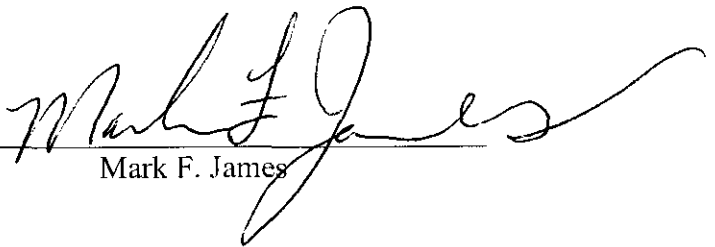
35. Attached hereto and filed herewith as Exhibit 33 is a true and correct copy of an e-mail dated July 16, 2003 sent by Dirk Hohndel of Intel to Melissa Laird, David Brown,

Richard Wirt, Will Swope and Douglas Fisher, all of Intel, with the subject "Dirk Hohndel MSR ww29/2003" with Bates No. 00001.

36. Attached hereto and filed herewith as Exhibit 34 is a true and correct copy of a letter dated November 22, 2005 from Christopher Popov to Edward Normand.

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

DATED this 29th day of December, 2005.

By 
Mark F. James

CERTIFICATE OF SERVICE

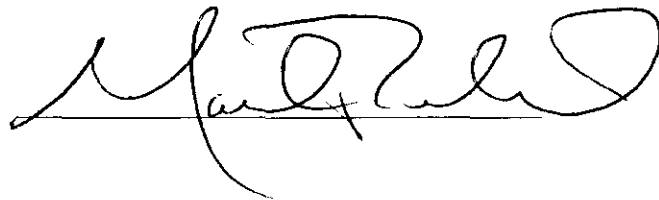
Plaintiff, The SCO Group, Inc., hereby certifies that a true and correct copy of the foregoing Declaration of Mark F. James in Support of Plaintiff's Motion to Compel was served on Defendant International Business Machines Corporation on the 29th day of December, 2005:

By U.S. Mail and Facsimile:

David Marriott, Esq.
Cravath, Swaine & Moore LLP
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Donald J. Rosenberg, Esq.
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Todd Shaughnessy, Esq.
Snell & Wilmer LLP
1200 Gateway Tower West
15 West South Temple
Salt Lake City, Utah 84101-1004

A handwritten signature in black ink, appearing to read "Mark F. James", written over a horizontal line.