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FILED

JAN 27 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

CV 06 30025 MISC. MHP

12 THE SCO GROUP, INC., a Michigan
13 corporation,

14 Plaintiff,

15 v.

16 INTERNATIONAL BUSINESS
17 MACHINES CORPORATION, a New
18 York corporation,

19 Defendant.

)
) **DECLARATION OF JOHN V.**
) **WADSWORTH IN SUPPORT OF ORACLE**
) **CORP.'S MOTION TO QUASH THIRD**
) **PARTY SUBPOENA DUCES TECUM OR,**
) **IN THE ALTERNATIVE, FOR A**
) **PROTECTIVE ORDER**

) [CASE NO.: MISC., U.S. DISTRICT COURT FOR THE
) DISTRICT OF UTAH, CASE NO. 2:03CV-0294]

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22 I, John V. Wadsworth, declare as follows:

23 1. I am an attorney duly licensed to practice law before this Court. I am Managing
24 Counsel for Non-Party Oracle Corporation ("Oracle"). The following statements are made of my
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DECLARATION OF JOHN V. WADSWORTH

1 own personal knowledge, and if called upon as a witness in this action, I could and would
2 competently testify thereto.

3 2. Attached hereto as Exhibit A is a true and correct copy of the Second Amended
4 Complaint, dated February 27, 2004, filed by Plaintiff The SCO Group, Inc. ("SCO") in this
5 action.

6 3. Attached hereto as Exhibit B is a true and correct copy of the Second Amended
7 Counterclaim filed by Defendant International Business Machines Corp. ("IBM") in this action.

8 4. Attached hereto as Exhibit C is a true and correct copy of a Subpoena *Duces*
9 *Tecum* to Oracle dated January 10, 2006 ("Subpoena"), which was served on Oracle by SCO on
10 January 11, 2006.

11 5. Attached hereto as Exhibit D is a true and correct copy of SCO's Notice of
12 30(b)(6) Deposition ("Deposition Notice"), which was served on Oracle by SCO on January 11,
13 2006 by U.S. Mail.

14 6. The corporate headquarters of Oracle are located in Redwood City, California.
15 All of the witnesses who would testify on the subjects listed in the Deposition Notice are located
16 at Oracle's headquarters in Redwood City. I also work at Oracle's headquarters in Redwood
17 City.
18 City.

19 7. In addition to the Subpoena and Deposition Notice recently served on Oracle,
20 Oracle has been served with three other Rule 45 subpoenas. The first subpoena was issued by
21 IBM on March 19, 2004 and requested various documents relating to Oracle's business
22 relationships with SCO and another affiliated company called The Canopy Group, Inc. The
23 subpoena also requested documents relating to the Unix or Linux operating systems. I have been
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1 informed that IBM served a copy of the subpoena on SCO. Given the broad scope of the
2 requests and the marginal relevancy to the action, Oracle objected to the vast majority of the
3 requests and produced several documents. IBM agreed not to pursue the requests further.

4 8. Oracle was served with a second subpoena from IBM on or about January 13,
5 2005. I have been informed that IBM served a copy of the subpoena on SCO. This subpoena
6 requested testimony relating to a series of topics similar to the topics in the previous request.
7 Oracle responded to that subpoena to IBM's satisfaction.
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9 9. Oracle was served with a third subpoena dated October 24, 2005. This subpoena
10 was issued by SCO and sought documents relating to any meetings, conversations, etc. between a
11 group of seven large technology vendors, including Oracle, relating to creation of a so-called
12 Linux Consortium. Oracle searched for any responsive documents and found none (the Oracle
13 employee who had interfaced with this group no longer works for Oracle). However, Oracle
14 worked with the other members of the group, who had also been subpoenaed, and on information
15 and belief, documents were produced to SCO by Dell Inc.
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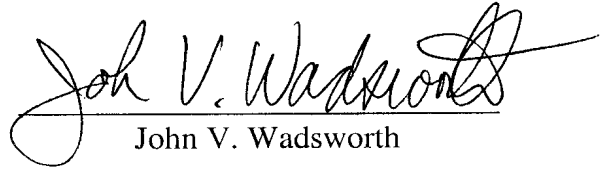
17 10. The Subpoena was served on Oracle by SCO on January 11, 2006 via Oracle's
18 agent for service of process, Corporation Service Company. No witness fees were tendered at
19 that time, or since. I received the Subpoena from CSC on January 12, 2006. The Deposition
20 Notice was served on Oracle by SCO on January 11, 2006 by U.S. Mail. At no time prior to
21 serving the Subpoena or the Deposition Notice did SCO confer with me or anyone else at Oracle
22 about the date on which it wished to conduct the deposition. Nor did SCO confer with me or
23 anyone else at Oracle after SCO served them.
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1 11. On January 19th, I contacted counsel for SCO, Edward Normand, via email and
2 advised him that SCO's Subpoena and Deposition Notice were defective because, among other
3 things, the applicable witness fees were not tendered; the Subpoena was issued out of the
4 "District of California," which does not exist; and because the Deposition Notice specifies that
5 the deposition is to take place in Armonk, New York (even though the Subpoena specifies the
6 deposition site as Oakland, California). I also stated that the topics are overbroad, seek irrelevant
7 testimony, and would require the production of several different witnesses. I requested that SCO
8 confer to discuss the possibility of agreeing to narrow the scope, or else Oracle would be required
9 to file a motion to quash. Finally, I advised Mr. Normand that I was already scheduled to be in
10 Burbank, California on the date specified for the deposition (January 27th) for a long-planned
11 board of directors meeting of the Civil Justice Association of California, on whose board I sit.

12 12. Mr. Normand responded via email on January 21st. Since that day was a Saturday,
13 I did not receive the response until Monday, January 23rd. Mr. Normand stated that SCO might
14 be willing to agree to modify the scope of the Subpoena. However, Mr. Normand stated that the
15 discovery cutoff in the case was Friday, January 27th, and SCO could not agree to move the date
16 of the deposition. Mr. Normand did not respond as to where SCO expected the deposition to
17 take place, Armonk or Oakland. Nor did Mr. Normand offer to tender the necessary witness fees.
18 Mr. Normand stated that he expected "that Oracle would file a motion for protective order
19 regarding (at least) the timing of the subpoena before January 27."

20 13. I was recently informed by counsel for another non-party that has been
21 subpoenaed by SCO that SCO has only recently noticed Rule 30(b)(6) depositions of IBM on the
22 same topics on which SCO seeks non-party testimony, including testimony from Oracle.
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1 I declare under the penalty of perjury that the foregoing is true and correct. Executed on
2 January 26, 2006 at Redwood Shores, California.

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5 John V. Wadsworth

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PROOF OF SERVICE
THE SCO GROUP, INC. v. INTERNATIONAL BUSINESS MACHINES CORP.

I, Maya Beech, declare:

I am employed in the County of San Mateo, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to the within action. My business address is 500 Oracle Parkway, Mailstop 5op7, Redwood City, California, 94065. On the date set forth below I served the following:

DECLARATION OF JOHN V. WADSWORTH IN SUPPORT OF ORACLE CORP.'S MOTION TO QUASH THIRD PARTY SUBPOENA *DUCES TECUM* OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER


- By placing such a copy enclosed in a sealed envelope postage thereon fully prepaid, in the United States Postal Service for collection and mailing this day.
- By hand delivery on this date.
- By consigning such a copy to an express mail service for guaranteed delivery on this date.
- By consigning such a copy to a facsimile operator for transmittal on this date.

I served the above on:

Edward Normand, Esq.
Boies, Schiller & Flexner LLP
333 Main St.
Armonk, NY 10504

Amy F. Sorenson, Esq.
Snell & Wilmer LLP
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

I declare under penalty of perjury that the foregoing is true and correct. Executed in Redwood City, California on January 26, 2006.


Maya Beech
Legal Assistant