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SNELL & WILMER L.L.P.
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Amy F. Sorenson (8947)
15 West South Temple
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**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
LAWRENCE R. GOLDFARB**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, Lawrence R. Goldfarb, declare as follows:

1. This declaration is submitted in connection with the lawsuit entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). Unless stated otherwise, I make this declaration based upon personal knowledge.

2. I am one of the founders and managing members of BayStar Capital Management, LLC ("BayStar"). I have served as a managing member of BayStar since 1998. BayStar is the sole general partner of BayStar Capital II, L.P. (the "Fund"), an investment fund formed in 2001.

3. I am informed that SCO claims that IBM interfered with SCO's business relationship with BayStar by communicating with BayStar in order to induce BayStar to threaten litigation against SCO and terminate its business relationship with or reduce its relationship with SCO. These allegations are not true.

4. No one from IBM ever had any communications with me or, to my knowledge, anyone at BayStar relating to SCO. As I discuss below, BayStar terminated its relationship with SCO for multiple reasons. BayStar's decision to terminate its relationship with SCO had nothing whatsoever to do with any communications with or conduct of IBM.

5. In late 2003, the Fund and aligned investors invested a total of \$50 million in SCO. I was one of the three managing members of BayStar who approved the investment, and I was intimately involved with all details of the transaction.

6. Sometime in 2003, I was approached by Richard Emerson (Microsoft's senior vice president for corporate development and strategy) about investing in SCO, a company about which I knew little or nothing at the time. Mr. Emerson stated that Microsoft

wished to promote SCO and its pending lawsuit against IBM and the Linux operating system. But Microsoft did not want to be seen as attacking IBM or Linux. For that reason, Microsoft wanted to further its interest through independent investors like BayStar.

7. I did some research on SCO, and had conversations with Mr. Emerson about it as well. In the course of my research about SCO, I became concerned that SCO might be merely a litigation company. As a result, Mr. Emerson and I discussed a variety of investment structures wherein Microsoft would “backstop,” or guarantee in some way, BayStar’s investment. In addition, I had discussions with Kenneth Lustig, Microsoft’s managing director of intellectual property, and Tivanka Ellawala, from Microsoft’s corporate development department regarding the SCO deal. As part of these discussions, Microsoft assured me that it would in some way guarantee BayStar’s investment in SCO. However, Microsoft would not agree to put anything in writing on this point.

8. The other managing members of BayStar and I met with Darl McBride of SCO and heard his pitch about SCO’s business and SCO’s lawsuit against IBM. We also discussed SCO’s lawsuit with David Boies from SCO’s outside law firm, Boies, Schiller & Flexner LLP. Mr. Boies informed me that he believed that IBM would settle the case fairly quickly.

9. As a result of Microsoft’s and SCO’s assurances, the other managing members of BayStar and I voted unanimously to make the \$50 million investment in SCO. The transaction was completed on October 16, 2003.

10. Not long after making the investment, I became very concerned about it. Among other things, it became clear to me that the BayStar investment was used primarily to pay David Boies’ law firm. Beyond that, SCO’s stock price declined, Microsoft stopped returning

my phone calls and emails, and to the best of my knowledge, Mr. Emerson was fired from Microsoft.

11. I was also very concerned about SCO's high cash burn rate and whether its UNIX products were viable in the marketplace.

12. Thereafter, I had meetings with David Boies and asked him to provide me the evidence supporting SCO's case against IBM, so that my consultants could analyze the strength of the claims. Mr. Boies promised to provide the evidence but never did. Eventually, Mr. Boies stopped returning my calls.

13.

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14. Having received no satisfactory response from SCO, I determined that BayStar's obligations to its investors required the Fund to get out of this investment. I negotiated the terms of the deal to retire the investment on behalf of BayStar. SCO's outside law firm, negotiated the settlement on behalf of SCO, including the financial terms of the deal.

15. Ultimately, BayStar, on behalf of the Fund, agreed to sell its SCO Preferred Shares back to SCO for \$13 million cash payment to BayStar and the issuance of shares of SCO common stock.

16. BayStar's decision to redeem its shares in SCO and retire its investment in SCO had nothing whatsoever to do with IBM or any representative of IBM. No one from IBM ever contacted me or anyone else at BayStar about SCO, BayStar's investment in SCO, or anything else. Other than one investment that involved IBM years before BayStar's investment in SCO (and in connection with submitting this declaration), I have had no dealings with IBM or any of its representatives.

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

Executed: September 13, 2006

Larkspur, California

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned above a solid horizontal line.

Lawrence R. Goldfarb

EXHIBIT 1

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