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*Attorneys for The SCO Group, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

<p><b>THE SCO GROUP, INC.</b></p> <p>Plaintiff/Counterclaim-Defendant,</p> <p>v.</p> <p><b>INTERNATIONAL BUSINESS MACHINES CORPORATION,</b></p> <p>Defendant/Counterclaim-Plaintiff.</p>	<p><b>SCO'S SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8</b></p> <p>Case No. 2:03CV0294DAK Honorable Dale A. Kimball Magistrate Judge Brooke C. Wells</p>
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Pursuant to the District Court's Order dated July 1, 2005, Rules 33 and 34 of the Federal Rules of Civil Procedure, and the Local Rules for the United States District Court for the District of Utah, The SCO Group, Inc., ("SCO") hereby responds and objects to IBM's First Set of Interrogatories as follows<sup>1</sup>:

### **GENERAL OBJECTIONS**

SCO hereby incorporates by reference all of the General Objections set forth in SCO's prior Responses to IBM's Interrogatories (the "General Objections"). Each of the General Objections is incorporated by reference into each of the responses set forth below, which responses SCO now makes without waiver of the General Objections or specific objections to the following Interrogatories.

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<sup>1</sup> SCO hereby incorporates by reference SCO's responses and objections from SCO's Responses to IBM's First Set of Interrogatories and First Request for the Production of Documents dated August 4, 2003; Supplemental Response to Defendant's First Set of Interrogatories dated October 29, 2003; Response to IBM's Second Set of Interrogatories and Second Set of the Production of Documents dated October 29, 2003; Revised Supplemental Response to IBM's First and Second Set of Interrogatories dated January 15, 2004; Response to IBM's Third Set of Interrogatories dated April 19, 2004; Letter dated April 19, 2004, from B. Hatch to T. Shaughnessy; Amended Responses to IBM's Fourth Set of Interrogatories dated June 25, 2004; Responses to IBM's Fifth Set of Interrogatories dated September 8, 2004; and Responses to IBM's Sixth Set of Interrogatories and Sixth Request for Production of Documents dated March 2, 2005 (collectively, SCO's "prior Responses to IBM's Interrogatories").

**INTERROGATORY NO. 8:**

**Please identify all agreements with which plaintiff alleges IBM interfered and describe, in detail, each instance in which plaintiff alleges or contends that IBM interfered with those agreements, including but not limited to: (a) the date of the alleged interference; (b) all persons involved in the alleged interference; (c) the specific manner in which IBM is alleged to have interfered with the agreement; (d) the specific actions, if any, that IBM induced or encouraged plaintiff's customers or licensees to take; (e) the specific action, if any, that plaintiff's customer or licensee took as a result of the actions allegedly induced or encouraged by IBM; and (f) the specific trade secret or confidential or proprietary information, if any, involved in the alleged interference.**

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:**

Subject to SCO's continuing objection that the subject matter of all of SCO's claims is a matter of ongoing discovery that SCO reserves the right to use further to supplement its responses to interrogatories, this supplemental response identifies the scope of SCO's claim for Interference with Contract (Seventh Cause of Action) and Interference with Business Relationships (Ninth Cause of Action).

BayStar Corporation. BayStar became a shareholder in SCO in October 2003. The business relationship between BayStar and SCO was subsequently revised pursuant to agreement in February 2004. Following the BayStar investment in October 2003, IBM on one or more occasions communicated with BayStar in order to induce BayStar to threaten litigation against SCO and to terminate its business relationship with and/or withdraw or reduce its investment in

SCO. As a proximate result of IBM's communications with BayStar, BayStar terminated its business relationship with SCO in May 2004.

IBM sought to induce BayStar to threaten litigation against SCO and to terminate its business relationship with and/or reduce its investment in SCO with the primary purpose of harming SCO and undermining its financial viability. IBM undertook that conduct with the knowledge that BayStar would continue to remain a significant investor in SCO if IBM did not induce BayStar to end or significantly reduce its investment relationship. IBM also undertook its conduct through improper means. IBM communications with BayStar constituted common-law unfair competition, for example, inasmuch as IBM intended that BayStar's threats of litigation and termination of its investment in SCO would undercut SCO's financial resources and market value, thereby improving IBM's position in the market for UNIX operating systems on the 32-bit Intel architecture and compatibles. IBM also acted through deceit and misrepresentation. IBM did not disclose to BayStar, for example, that IBM was working to make Linux enterprise-ready (and therefore a legitimate commercial alternative to SCO's UnixWare and OpenServer products) by misappropriating SCO's proprietary technology and violating its agreements with SCO in making critical contributions and disclosures to Linux.

The subject of IBM's interference with SCO's business relationship with BayStar is an express subject of ongoing discovery, and SCO will further refine the scope of these claims when that discovery is completed.

Hewlett-Packard Company/Compaq. Hewlett-Packard and SCO have been parties to an Original Equipment Manufacturer ("OEM") agreement for many years, and Hewlett-Packard has been party to a software licensing agreement for UNIX System V source code for many years.

During the LinuxWorld 2003 convention in New York in about January 2003, Darl McBride, SCO's CEO, discussed with Karen Smith of IBM that SCO intended to offer a software license to Linux users to allow for legal and authorized use of SCO's UNIX OpenServer shared libraries in a Linux implementation. Ms. Smith responded by saying that IBM was not pleased with SCO's plan to offer licenses for OpenServer shared library use in Linux, and that the licensing plan would kill Linux. Ms. Smith also said that as a result of SCO's licensing plan for SCO OpenServer shared libraries, IBM was going to cut off all of its business ties with SCO, and would have other IBM business partners do the same.

Ms. Smith contacted Rick Becker of Hewlett-Packard during or shortly after the LinuxWorld 2003 convention and stated that IBM was cutting off all business ties with SCO and wanted Hewlett-Packard to do the same. (On information and belief, IBM also contacted representatives from Intel Corporation, Computer Associates International, Inc., and Oracle Corporation for the same purpose and with the same general statement that IBM wanted each of those companies to cut off business ties with SCO.) IBM undertook the foregoing (and perhaps additional) communications with Hewlett-Packard with the knowledge that Hewlett-Packard would enter into additional business relationships with SCO if IBM did not encourage Hewlett-Packard to forego such prospective business relationships. As a proximate result of IBM's statements to Hewlett-Packard, that company has significantly reduced its business activities with SCO from what they would have been if IBM had not made its statements. Subsequent to Ms. Smith's statements, although the companies still have a good business relationship, Hewlett-Packard has provided SCO with significantly less support than it did in 2002.

IBM encouraged Hewlett-Packard to end its current business relationships with SCO, and interfered with SCO's prospective business relationships with Hewlett-Packard, with the primary purpose of harming SCO. IBM also undertook its conduct through improper means. IBM communications with Hewlett-Packard constituted common-law unfair competition, for example, inasmuch as IBM intended that interference with SCO's current and prospective business relationships with Hewlett-Packard would undercut SCO's financial resources and market value, thereby improving IBM's position in the market for UNIX operating systems on the 32-bit Intel architecture and compatibles. IBM also acted through deceit and misrepresentation. IBM did not disclose to Hewlett-Packard, for example, that IBM was working to make Linux enterprise-ready (and therefore a legitimate commercial alternative to UnixWare and OpenServer) by misappropriating SCO's proprietary technology and violating its software licensing agreements with SCO in making critical contributions and disclosures to Linux.

The subject of IBM's interference with SCO's business relationships with Hewlett-Packard is an express subject of ongoing discovery, and SCO will further refine the scope of these claims when that discovery is completed.

Intel Corporation. Intel and SCO (going back to the founding of The Santa Cruz Operation, Inc.) have had a business relationship since 1979, and have been strategic partners for many years, such that SCO and Intel have shared information about their respective product roadmaps on a regular basis to keep their products aligned. SCO and Intel are also parties to a software licensing agreement. Intel has for many years supported the creation of driver interface code for SCO's operating system products.

On information and belief, Ms. Smith contacted Intel during or shortly after the LinuxWorld 2003 convention (under the circumstances described above) and stated that IBM was cutting off all business ties with SCO and wanted Intel to do the same. IBM undertook the foregoing (and perhaps additional) communications with Intel with the knowledge that Intel would continue its existing business relationships with SCO if IBM did not encourage Intel to end its actual and forego its prospective business relationships with SCO. As a result of IBM's statements to Intel, that company significantly reduced its business activities with SCO from what they would have been if IBM had not made its statements to Intel. Following IBM's contacts, Intel cut off network interface card (NIC) driver development support by limiting support only to UnixWare (thereby making SCO's OpenServer significantly less attractive to end-users), and supported significantly fewer SCO platforms.

IBM encouraged Intel to end its business relationships with SCO, and interfered with SCO's prospective business relationships with Intel, with the primary purpose of harming SCO. IBM also undertook its conduct through improper means. IBM's communications with Intel constituted common-law unfair competition, for example, inasmuch as IBM intended that the interference with such business relationships with Intel would undercut SCO's financial resources and market value, thereby improving IBM's position in the market for UNIX operating systems on the 32-bit Intel architecture and compatibles. IBM also acted through deceit and misrepresentation. IBM did not disclose to Intel, for example, that IBM was working to make Linux enterprise-ready (and therefore a legitimate commercial alternative to UnixWare and OpenServer) by misappropriating SCO's proprietary technology and violating its software licensing agreements with SCO in making critical contributions and disclosures to Linux.



The subject of IBM's interference with SCO's business relationships with Intel is an express subject of ongoing discovery, and SCO will further refine the scope of these claims when that discovery is completed.

OpenSource Conference in Scottsdale, Arizona. Darl McBride entered into an oral business relationship with John Terpstra, who was hosting an OpenSource Conference in Scottsdale, Arizona, in the spring of 2004, to speak at the conference. With the knowledge of Mr. Terpstra's and Mr. McBride's arrangement, IBM thereafter contacted Mr. Terpstra and informed him that IBM did not want Mr. McBride to speak at the conference, and intimated that IBM would withdraw its participation in the conference if Mr. McBride did speak. IBM acted with the primary purpose of harming SCO. As a proximate result of IBM's complaints, Mr. Terpstra withdrew his invitation to Mr. McBride. As a result, Mr. McBride and SCO were deprived of the opportunity to generate potential new business and establish goodwill in the open source community, which they would have had if IBM had not interfered with the foregoing, advantageous business relationship.

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IBM has interfered with SCO's prospective business relationships in the market for UNIX operating systems on the 32-bit Intel architecture and compatibles (or the "volume UNIX-on-Intel market") by encouraging and improperly enabling numerous companies to migrate to or to use an enterprise-hardened Linux platform operating on Intel-based hardware rather than use SCO's UnixWare or OpenServer products. IBM undertook that conduct with the knowledge that those companies who wanted an Intel-based UNIX platform would have used (or likely would

have used) SCO's UnixWare or OpenServer products but for IBM's improper conduct designed to stall and undermine SCO's marketing and sales ability to serve such companies. By intentionally stalling and undermining SCO's ability effectively to market and sell Intel-based UNIX (that is, OpenServer and UnixWare), IBM pre-empted SCO's foreseeable ability to capture a large percentage of the volume UNIX market. IBM continued its improper conduct designed to stall and undermine SCO's ability to acquire customers in the volume UNIX-on-Intel market until IBM could build an enterprise-hardened version of Linux that would be an acceptable alternative to SCO's OpenServer and UnixWare. Thus, the companies at issue include both former SCO customers who migrated to an enterprise-hardened Linux platform and potential SCO customers who chose such a Linux platform, but foreseeably would have chosen a SCO platform (OpenServer or UnixWare) but for IBM's improper interference.

IBM undertook its conduct through improper means, including conduct designed to intentionally mislead SCO of IBM's intentions regarding serving the volume UNIX-on-Intel market, to stall and undermine SCO's marketing and sales efforts that would have otherwise captured a large percentage of that market, and to develop Linux as a viable alternative targeted to that market. IBM's improper means include common-law unfair competition, breaches of IBM's software licensing agreements, and violations of SCO's copyrights, as follows:

When IBM and The Santa Cruz Operation, Inc. (hereafter "SCO") entered into Project Monterey in 1998, the parties agreed to create a family of products, the centerpiece of which would be a UNIX-based operating system designed to work with Intel Corporation's Itanium 64-bit processor chips, Intel's 32-bit processor chips, and IBM's RISC processor chips. IBM expected that the proposed 64-bit operating system for Itanium (the "Monterey IA-64") would

enable SCO and IBM to dominate the market for enterprise-hardened (that is, reliable under demanding real-world applications for large corporations) UNIX-on-Intel operating systems. In the IBM-SCO relationship the parties agreed to create in Project Monterey, SCO's products (OpenServer and UnixWare) would serve the volume UNIX-on-Intel market.

Indeed, IBM had agreed to enter into Project Monterey in order to take advantage of SCO's expertise in and domination of the market for UNIX-based operating systems for use on Intel's 32-bit chips. Under the specific conditions of the joint venture, IBM would have access to SCO's proprietary and copyrighted source code for IBM's own products only if and when the Monterey IA-64 had been commercially released.

As part of the joint venture, however, IBM decided internally in 1999 to control the volume 32-bit UNIX-on-Intel through build-up, implementation and support of Linux, rather than allow SCO to expand into that market. IBM never told SCO about its decision to abandon UnixWare and OpenServer as the volume 32-bit UNIX-on-Intel products it would support in the market and replace them with Linux, and thus effectively abandon Project Monterey. Rather, IBM claimed that its intent was to use Linux as a "development platform" to assist developers to create new applications for the volume UNIX-on-Intel market that would then be run by customers on one of SCO's UNIX products.

IBM needed to string SCO along, because it was only through Project Monterey (and by virtue of SCO's belief of IBM's purported intent to create the Monterey IA-64 product) that IBM would have access to SCO's proprietary and copyrighted UNIX System V Release 4 source code ("SVR4"), including but not limited to the binary compatibility code and programming interface code originally created in, and licensed as part of, SVR4. Although IBM had a license for UNIX

System V Release 3 ("SVR3") source code (an older version of SCO's UNIX operating system), IBM did not have a license for SCO's SVR4 source code.

The ostensible purpose of IBM's access to SCO's SVR4 source code was to permit IBM to use that source code to make IBM's AIX operating system competitive with SVR4-based operating systems, such as Sun's Solaris operating system. Under the joint venture, however, SCO limited IBM's access to the SVR4 code solely to development of the Monterey IA-64 product. As noted above, IBM could not use the SVR4 code in IBM's AIX operating system unless and until the Monterey IA-64 product had been commercially released.

Although by IBM's own admission there was never such a release, IBM used SCO's SVR4 source code in IBM's AIX for Power operating system anyway, beginning no later than October 2000 – over six months before IBM even made the pretextual, non-commercial release of a non-functioning Monterey IA-64 product. In addition, IBM contributed to Linux crucial SVR4 code and technologies that IBM obtained, improperly, through Project Monterey. Even before IBM's pretextual, non-commercial release of the non-functioning Monterey IA-64 product, and without SCO's knowledge, IBM arranged for Red Hat to distribute for contribution to Linux SVR4-derived source code that IBM had obtained through Project Monterey.

IBM's foregoing conduct involves deceit and misrepresentation, and constitutes common-law unfair competition, as also set forth in SCO's responses to other interrogatories that SCO will supplement at an appropriate time based on additional discovery. In addition, IBM's unauthorized copying of SCO's SVR4 source code in AIX for Power constitutes a violation of the Copyright Act. Furthermore, IBM's use and distribution of AIX and Dynix/ptx source code in contributions to Linux constitutes a violation of IBM's agreements with SCO, as also set forth

in SCO's responses to other interrogatories. The subject of IBM's misconduct during and arising out of Project Monterey is an express subject of ongoing discovery, and SCO will further refine the scope of these claims when that discovery is completed.

The former SCO customers who migrated to an enterprise-hardened Linux platform as a result of IBM's foregoing misconduct (on or about the date indicated) and whom SCO is making part of these claims based on discovery to date are Actual Systems (2005), Advantage Business Computers (1997-98), AmCom Software (2002), AutoZone, Inc. (2001), Avaya (2002-03), Avnet (2004), Bebe (2005), Frazee Paints (2005), Kmart (2005), Prime Clinical (2005), Radical System (2005), Safeway (2003-04), Save Mart (2005-06), Shaw's Supermarkets (2002), Sherwin Williams (2001), Shopper's Drug Mart (2005), Snyder Drug Stores (2003), Target Pharmacies (2003), and West Communications (2002).

The identity of the other Linux users who chose an enterprise-hardened Linux platform as a result of IBM's foregoing misconduct is a subject of expert analysis and ongoing discovery, and may be peculiarly within the knowledge of IBM. On information and belief, among the customers who chose an enterprise-hardened Linux platform as a result of IBM's having made Linux enterprise-hardened through the foregoing misconduct (on or about the date indicated) are Adler (9/02), AGIP (1/03), Air New Zealand (6/02), AIST SCC (12/03), Alecta (12/03), Amway (China) (11/02), AOL (9/02), AOL (AG/Media) (1/03), Aramco (10/02), Aramco Powers (12/02), ASL (10/02), AstraZeneca (7/02), ATAC S.p.A (Italy) (12/02), Autotrade (8/02), Aviva (8/02), Banca Carige (Italy) (12/02), Banco Bilbao-Vizcaya Argentaria (12/03), Bandai (6/02), Bayrische Landesamt fur Statistik (Bavarian Ministry of Statistics) (12/02), British Telecom (12/03), Business Partner (7/02), Cambridge University (10/02), Casas Bahia (7/02), Case

Depagne (French Bank) (12/03), CDAC: India (9/02), CERT (8/02), CGG (8/02), CGNU (6/02), CLS (8/02), Columbian Financial Group (12/02), Compagnie Generale de Geophysique (France) 12/02), CVS (11/02), DaimlerChrysler (12/03), Deutsche Bank (Germany) (12/02), Deutsche Bahn (German Railways) 12/02), Deutsche Boerse (9/02), Dia Internacional (8/02), Diesel 10/02), DIR (8/02), DKV (7/02), DKV Euro Service (9/02), Eastman Kodak Company (6/02), Endres & Hauser (Germany) (12/02), Exxon Mobil Travel Guide (9/02), Fracarro RadioIndustrie S.p.A. (7/02), France Telecom (8/02), Freddie Mac (6/02), Fujisoft DIS (AP) (12/02), Geico Insurance (7/02), Glaxo Smith Kline (10/02), Gobierno Del Distrito Federal (12/03), Herzberg Institute Astronomy (12/03), Hon Industries (1/03), HUK (7/02), HVB (Luxembourg) (10/02), ICTP (10/02), IMC Korea (12/02), Inferenzia c/o Barilla (business partner – Avnet) (8/02), Infocamere (7/02), Informatika (Slovenia) (11/02), Institute for Molecular Biotechnology (7/02), Intel India (12/03), Interland (12/03), Internet Group (Brazil) (11/02), IN2P3 (8/02), Jetco (12/03), John Deere (7/02), Karmann (10/02), KDD (Slovenia) (11/02), KOC (8/02), Kraft Foods (12/03), Kroger (10/02), Labo du verre (7/02), Lasiomatica (Italy) 10/02), Lehman Brothers (6/02), Linneman (10/02), LUGA (a government agency) (1/03), Magyar Oil Company (12/03), Mars (1/03), Merck-Medco (6/02), Mercury Insurance (10/02), Ministry of Interior (Kuwait) (11/02), Ministry of Railway (AP) (1/03), MIT (10/02), Mobifon (Romania) (11/02), Moliste Date (8/02), Morgan Stanley (6/02), Mount Sinai Hospital (12/03), MSS (12/03), Navy Weather System, San Diego (10/02), Nokia Networks (11/02), OFWAT (7/02), Online Traveler Assistance (12/03), Orange Romania (8/02), PAIC (China) (10/02), PDO (8/02), Penn State University (6/02), Pinellas County (6/02), Pinkroccade (1/03), Radiamobil (Telco) (12/03), Raindance (1/03), RDA Life Sciences (10/02), Regal Entertainment Group (9/02), Renault

(9/02), REWE Supermarket (9/02), SAS Automotive Systems (9/02), SBC Communications Inc. (12/02), Schlumberger (Russia) (1/03), SDirect (9/02), Sdirekt (7/02), Serviware (7/02), SKF KFCC (Korea) (10/02), Slovenska Sporitelna (12/03), SMS-Demag (9/02), SNCF (9/02), Societe (9/02), Societe Marseillaise de Credit (France/FSS) (12/02), Sonera (1/03), Sportingbet.com (9/02), Sprint (12/02), Standard Chartered Bank (Dubai) (12/02), Supervalu (7/02), SWR (Media Industry) (11/02), T-Systems CSM (10/02), T-Systems (a subsidiary of Deutsche Telekom) (11/02), Taiwan Securities Central Depository Co., Ltd. (7/02), Telemar (Brazil) (10/02), Telenet (Belgium) (6/02), Theorema (Italy) (12/03), Thomson/West Group (AG/Media) (12/02), TimeWarner (AG/Media) (1/03), TNT Express WW UK (12/03), Tokyo Gas (12/03), Transport Giraud (10/02), TransUnion (12/03), UCM (Public Sector Belgium) (11/02), University of Alabama (10/02), University of Muenster (8/02), US Federal (ACS) (10/02), US Federal DOE ASCI (12/03), US Federal DOE Sandia (12/03), US Federal Navy (12/03), USDA (10/02), Verizon (8/02), Virgin Money(Bank) (12/03), Volvo (6/02), Volkswagen (6/02), West Yorkshire Police – Sagitta (9/02), Weta Digital (New Zealand) (12/02), World Gaming plc (7/02), Worldspan (10/02), YKK (USA) (6/02), Zennoh (Japan) (12/02), Zhongguancon Science Park (China) (10/02), ZhongXing Corp. – ZTE (China) (11/02), and 7-Eleven, HK (10/02).

DATED this 13th day of January, 2006.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Plaintiff, The SCO Group, Inc., hereby certifies that a true and correct copy of the foregoing Supplemental Response to Defendant's Interrogatory No. 8 was served on Defendant International Business Machines Corporation on the 13th day of January, 2006:

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