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

THE SCO GROUP, INC.,

**Plaintiff/Counterclaim-
Defendant,**

vs.

**INTERNATIONAL BUSINESS
MACHINES CORPORATION,**

**Defendant/Counterclaim-
Plaintiff.**

ORDER

Case No. 2:03CV294 DAK

This matter is before the court on Plaintiff/Counterclaim-Defendant The SCO Group, Inc.'s ("SCO") "Expedited Motion to Enforce the Court's Amended Scheduling Order Dated June 10, 2004," and SCO's Ex Parte Emergency Motion for a Scheduling Conference. The court has carefully considered the memoranda and other materials submitted by the parties. Now being fully advised, the court renders the following Order.

In its "Expedited Motion to Enforce the Court's Amended Scheduling Order Dated June 10, 2004," SCO essentially requests that the court relieve SCO from its obligation to respond to IBM's motions for summary judgment until the close of fact discovery in February 2005. However, there is nothing in the Amended Scheduling Order that precludes IBM from filing motions for summary judgment, and there is nothing in the Scheduling Order that relieves SCO from responding to such motions. Thus, it is puzzling that SCO seeks to "enforce" the Amended

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Scheduling Order when there is nothing in that Order to justify SCO's request for a significant delay in filing its responses. Rule 56(a) of the Federal Rules of Civil Procedure ("FRCP") plainly permits the filing of motions for summary judgment "at any time after the expiration of 20 days from the commencement of the action," and litigants routinely file summary judgment motions prior to the close of discovery. If SCO believes that it has not obtained discovery from IBM that is necessary to oppose the motions, the remedy is to comply with FRCP 56(f). This court has never dictated to litigants that the filing of summary judgment motions—or the responses to such motions—must be delayed until after discovery, and it declines to do so now.

The court has already granted a thirty-day extension to SCO to respond to the pending motions, and the court will permit up to thirty additional days, if requested by SCO. Such a delay in responding would necessitate a change in the December 9, 2004 hearing date.

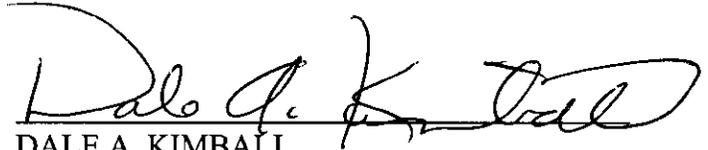
Additionally, the court declines to hold a scheduling conference, as requested by SCO. Although SCO blames IBM for the delay regarding the September 14, 2004 hearing before the Magistrate Judge, the delay was caused by SCO's filing of a supplemental reply memorandum just prior to the hearing. See docket # 254. Obviously, as the Magistrate Judge ruled, IBM was entitled to respond to SCO's supplemental brief, thus necessitating the delay. The magistrate has set a new hearing for the pending discovery motions on October 19, 2004. The court declines to hold a scheduling conference before that hearing.

Accordingly, IT IS HEREBY ORDERED that (1) SCO's "Expedited Motion to Enforce the Court's Amended Scheduling Order Dated June 10, 2004" is DENIED, and (2) SCO's Ex

Parte Emergency Motion for a Scheduling Conference is DENIED.

DATED this 30th day of September, 2004.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL
United States District Judge

United States District Court
for the
District of Utah
October 1, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00294

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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