



OAKLAND JUDGE RAE LEE CHABOT
COUNTY SCO GROUP INC V DAIMLERCHRY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE SCO GROUP, INC., 2004 APR 15 P 4:14

Plaintiff,

vs.

OAKLAND COUNTY CLERK Civil Action No. 04-056587-CKB

BY: DAIMLERCHRYSLER CORPORATION, INC. Honorable Rae Lee Chabot

Defendant.

Joel H. Serlin (P20224)
Barry M. Rosenbaum (P26487)
SEYBURN, KAHN, GINN, BESS AND
SERLIN, P.C.
Attorneys for Plaintiff
2000 Town Center, Suite 1500
Southfield, MI 48075
(248) 353-7620

James P. Feency (P13335)
Thomas S. Bishoff (P53753)
Stephen L. Tupper (P53918)
DYKEMA GOSSETT PLLC
Attorneys for DaimlerChrysler Corporation
39577 Woodward Avenue, Suite 300
Bloomfield Hills, Michigan 48304-2820
(248) 203-0700

**ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT DAIMLERCHRYSLER CORPORATION**

Defendant DaimlerChrysler Corporation ("DCC"), through its counsel, Dykema Gossett PLLC, for its Answer and Affirmative Defenses to the Complaint ("Complaint") of Plaintiff The SCO Group, Inc. ("Plaintiff") states as follows:

INTRODUCTION

1. DCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 of the Complaint.

2. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 2 of the Complaint. DCC denies the allegations contained in the second sentence of paragraph 2 of the Complaint.

3. DCC denies the allegations of paragraph 3 of the Complaint, except that it admits that it is the successor in interest to Chrysler Motors Corporation for an agreement designated SOFT-01341 between AT&T Information Systems and Chrysler Motors Corporation.

4. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first and second sentences of paragraph 4 of the Complaint. DCC denies the allegations contained in the third sentence of paragraph 4 of the Complaint.

5. DCC denies the allegations contained in paragraph 5 of the Complaint.

PARTIES, JURISDICTION AND VENUE

6. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

7. DCC admits that it is a Delaware corporation with its principal place of business in the County of Oakland, State of Michigan.

8. Paragraph 8 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations contained in paragraph 8 of the Complaint.

9. Paragraph 9 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations contained in paragraph 9 of the Complaint.

BACKGROUND FACTS

10. DCC admits that UNIX is a computer software operating system. DCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10 of the Complaint.

11. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations contained in paragraph 15 of the Complaint.

16. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

17. DCC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

**FIRST CAUSE OF ACTION
(BREACH OF CONTRACT/DECLARATORY JUDGMENT)**

18. DCC incorporates its responses to the preceding paragraphs as if set forth fully herein.

19. Paragraph 19 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations set forth in paragraph 19 of the Complaint and further states that the AT&T Information Systems, Inc. Software Agreement, Agreement No. SOFT-01341, entered into by Chrysler Motors Corporation and AT&T Information Systems, Inc. (the "License Agreement") speaks for itself. To the extent

that paragraph 19 contains allegations which purport to characterize the contents of the License Agreement, DCC denies them.

20. Paragraph 20 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations set forth in paragraph 20 of the Complaint and further states that the License Agreement speaks for itself. To the extent that paragraph 20 contains allegations which purport to characterize the contents of the License Agreement, DCC denies them.

21. Paragraph 21 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations set forth in paragraph 21 of the Complaint and further states that the License Agreement speaks for itself. To the extent that paragraph 21 contains allegations which purport to characterize the contents of the License Agreement, DCC denies them.

22. Paragraph 22 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations set forth in paragraph 22 of the Complaint and further states that the License Agreement speaks for itself. To the extent that paragraph 22 contains allegations which purport to characterize the contents of the License Agreement, DCC denies them.

23. Paragraph 23 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations set forth in paragraph 23 of the Complaint and further states that the License Agreement speaks for itself. To the extent that paragraph 23 contains allegations which purport to characterize the contents of the License Agreement, DCC denies them.

24. Paragraph 24 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations set forth in paragraph 24 of the Complaint and further states that the License Agreement speaks for itself. To the extent that paragraph 24 contains allegations which purport to characterize the contents of the License Agreement, DCC denies them.

25. Paragraph 25 of the Complaint states legal conclusions to which no answer is required. To the extent an answer may be required, DCC denies the allegations set forth in paragraph 25 of the Complaint and further states that the License Agreement speaks for itself. To the extent that paragraph 25 contains allegations which purport to characterize the contents of the License Agreement, DCC denies them.

26. DCC denies the allegations set forth in paragraph 26 of the Complaint and states that the letter dated December 18, 2003 alleged in paragraph 26 of the Complaint (the "SCO Letter") speaks for itself. To the extent that paragraph 26 contains allegations which purport to characterize the contents of the SCO Letter, DCC denies them.

27. DCC denies the allegations contained in paragraph 27 of the Complaint.

28. DCC denies the allegations contained in paragraph 28 of the Complaint.

29. DCC denies the allegations contained in paragraph 29 of the Complaint.

WHEREFORE, Defendant DaimlerChrysler Corporation respectfully requests that this Court dismiss Plaintiff's Complaint with prejudice, award DCC its costs and attorney's fees as may be permitted by law, and grant such other relief as may be appropriate.

AFFIRMATIVE DEFENSES

Defendant DaimlerChrysler Corporation ("DCC"), through its counsel, Dykema Gossett PLLC, for its Affirmative Defenses to the Complaint ("Complaint") of Plaintiff The SCO Group, Inc. states as follows:

1. Failure to State a Claim. The Complaint fails to state a claim against DCC upon which relief can be granted.
2. Waiver, Estoppel, Laches, Unclean Hands and Acquiescence. Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, unclean hands and/or acquiescence.
3. Lack of Capacity to Sue. Plaintiff is not a party to the License Agreement attached to the Complaint, and therefore Plaintiff may lack the capacity to sue.
4. Lack of Standing. Plaintiff is not a party to the License Agreement attached to the Complaint, and therefore Plaintiff may lack standing to sue. Plaintiff also lacks standing to sue because the terms of Plaintiff's contract with Novell, Inc. ("Novell") require Plaintiff to waive its right to enforce the License Agreement upon Novell's request, which, upon information and belief, Novell has expressly requested Plaintiff to do.
5. Lack of Case or Controversy. Plaintiff's action for declaratory judgment fails for lack of a case or controversy because DCC did not breach the License Agreement.
6. Lack of Breach/Cure of Alleged Breach. Plaintiff fails to identify a duty under the License Agreement that DCC breached, and DCC has cured any alleged failure to comply with an actual duty under the License Agreement. Nothing set forth herein shall be construed as an admission by DCC that it has failed to comply with any duty under the License Agreement.
7. Mitigation of Damages. The damages sought by Plaintiff are not recoverable because Plaintiff has failed to mitigate its damages.

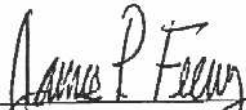
8. Plaintiff's Claims are Moot. The claims asserted in the Complaint are moot because DCC has provided Plaintiff with a proper certification under the License Agreement.

9. Bar by Third-Party Contract. Plaintiff is barred from asserting the claims in the Complaint by its contract with Novell, Inc.

10. Reservation of Right. DCC reserves the right, upon completion of its discovery and investigation or otherwise, to assert such additional defenses as may be appropriate.

WHEREFORE, Defendant DaimlerChrysler Corporation respectfully requests that this Court dismiss Plaintiff's Complaint with prejudice, award DCC its costs and attorney's fees as may be permitted by law, and grant such other relief as may be appropriate.

DYKEMA GOSSETT PLLC

By: 
James P. Feeney (P3335)
Thomas S. Bishoff (P53753)
Stephen L. Tupper (P53918)
Attorneys for DaimlerChrysler Corporation
39577 Woodward Avenue, Suite 300
Bloomfield Hills, Michigan 48304-2820
(248) 203-0700

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Of Counsel:

HALE and DORR LLP

Mark G. Matuschak
Michelle D. Miller
60 State Street
Boston, MA 02109
617-526-6000

Robin L. Alperstein
300 Park Avenue
New York, NY 10022
(212) 937-7200