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DISTRICT OF UTAH  
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Sun Microsystems, Inc.*

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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CALDERA, INC.

Plaintiff,

vs.

MICROSOFT CORPORATION

Defendant.

No. 2:96 CV 0645B

**SUN MICROSYSTEMS, INC.'S  
MOTION TO INTERVENE UNDER  
FED. R. CIV. P. 24(B) TO MODIFY  
PROTECTIVE ORDER**

Judge Dee V. Benson

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Pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, Sun Microsystems, Inc. ("Sun") hereby moves the Court to intervene for the limited purpose of modifying the May 30, 2000 Stipulation Concerning Preservation of Documents.

Sun seeks to modify the Stipulation to permit The Canopy Group, Inc. (“Canopy”) (successor-in-interest to Plaintiff Caldera, Inc.) to deliver the documents preserved in accordance with the Stipulation to Sun pursuant to a subpoena issued by Sun in *Sun Microsystems, Inc. v. Microsoft Corp.*, MDL 1332 (D. Md. 2002).

The grounds for this motion are:

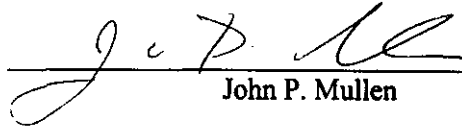
1. Sun has filed its motion to intervene in a timely manner.
2. Sun’s claims in its collateral litigation share common issues of law and fact with the instant case.
3. Sun has served Canopy with a subpoena requesting all documents produced to Caldera, Inc. pursuant to the Protective Order in this case.
4. On October 18, 2002, the Court entered an order proposed by Canopy that permits Canopy to destroy the documents produced to Caldera, Inc. pursuant to the Protective Order.
5. By permitting Canopy to respond to Sun’s subpoena by producing the documents produced to Caldera, Inc pursuant to the Protective Order, the Court would promote considerable efficiency in Sun’s discovery efforts and avoid unnecessary and duplicative costs.
6. No person or entity that has produced documents pursuant to the Protective Order would suffer any tangible prejudice by permitting Canopy to comply with Sun’s subpoena.

Therefore, as a matter of fairness and economy, the Protective Order should be modified to permit Canopy to deliver the documents to Sun pursuant to Sun's subpoena.

A supporting Memorandum, Declaration and Proposed Order are filed concurrently.<sup>1</sup>

Dated: November 13, 2002

ANDERSON & KARREBERG

  
John P. Mullen

*Attorneys for Intervenor  
Sun Microsystems, Inc.*

Intervenor's address:

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<sup>1</sup> Ordinarily, Fed. R. Civ. P. 24(c) requires that a party seeking to intervene submit a pleading setting forth the claim or defense for which intervention is sought. Because Sun seeks to intervene only for the limited purpose of modifying the Protective Order in this case, no pleading setting forth a claim or defense has been submitted. *See Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F. 2d 470, 474-75 (9<sup>th</sup> Cir. 1992).