

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AT&T SERVICES, INC.,

Index No.: 654490/2024

IAS Part 54

Plaintiff,

Motion Seq. No. 1

-against-

Hon. Jennifer G. Schecter, J.S.C.

BROADCOM INC., as successor-in-interest to
VMware, Inc., and VMWARE, INC.

Defendants.

I, **DAVID J. BRICKHAUS**, affirm as follows:

1. I am the Vice President of Global Technology and Operations at AT&T Services, Inc. (“AT&T”). I have been employed at AT&T for over 37 years. In my current role I oversee the technical operations for the company, including the day-to-day operations of AT&T’s on-premise servers and the software and applications that run on those servers. Additionally, I oversee technical support for AT&T’s retail stores, as well as the company’s executives and board members.

2. I submit this supplemental affirmation (“Supplemental Affirmation”), pursuant to CPLR Section 2106, in further support of AT&T’s Order to Show Cause for a Preliminary Injunction. The statements in this Supplemental Affirmation are based on my own personal knowledge, experience, and information available to me through my role with AT&T.

A. Defendants’ Claims Regarding AT&T’s Use of Older, Unsupported Software Are Misleading.

3. I understand that Defendants have asserted in their Memorandum of Law in Opposition to AT&T’s Order to Show Cause for Preliminary Injunction (“Opposition”) that AT&T is running “old versions of VMware software . . . some of which was already running

unsupported due to AT&T's failure to upgrade." (Opp. at 17, NYSCEF Doc. No. 57 (citing Affirmation of Randall Gressett ("Gressett Affirmation") ¶¶ 51, 53, 69, NYSCEF Doc. No. 61).)

4. These statements mischaracterize AT&T's IT infrastructure and grossly overstate AT&T's use of older versions of VMware software on its servers.

5. As discussed in my original affirmation submitted in support of AT&T's Order to Show Cause for Preliminary Injunction (NYSCEF Doc. No. 15), AT&T runs VMware software on approximately 8,600 physical servers. Of these 8,600 servers, approximately 3% are currently running older versions of VMware software, which lost support services as of March 15, 2024. However, *none* of these servers are dedicated to any of the mission critical functions described in my prior Affirmation or the Affirmations of Jill A. Singer, Bill Barry or Scott Agnew submitted in Support of AT&T's Order to Show Cause (collectively, the "Supporting Affirmations"). Instead, the roughly 3% of AT&T's servers to which Defendants' statements refer assist with billing and other operations.

6. The vast majority of AT&T's operations rely on the remaining approximately 97% of physical servers using the current VMware software for which Defendants are currently providing Support Services. These servers house AT&T's operations relating to the mission critical services described in AT&T's Verified Complaint, its Memorandum of Law in Support of the Order to Show Cause for Preliminary Injunction and the Supporting Affirmations, including the First Responder's Network and services provided to Government customers.

7. Moreover, the servers operating on the older versions of the VMware software are currently undergoing a significant, multi-year application upgrade, which prevents them from being upgraded to the most current version of the VMware software. Once the upgrade process

for the hardware is complete, these servers will be compatible with the latest version of VMware software.


B. A Potential Migration Away from VMware Software Will Incur Significant Expense and Take a Period of Years.

8. The Gressett Affirmation also mischaracterizes AT&T's stance on transitioning away from using VMware software. My team and others at AT&T have been exploring a possible migration away from the VMware software since Broadcom announced in December 2023 that it would force customers to employ a new, more costly subscription model for its VMware software licenses. Our best understanding at this time is that any such migration would involve significant cost, engineering and technical efforts, and require a number of years to complete.

C. Defendants' Claim That They Will Continue To Provide Security Patches is Misleading.

9. I am also aware that Defendants have claimed that "all customers"—presumably including AT&T, "will have access to all patches for Critical Severity Security Alerts for supported versions of VMware vSphere" Software. (Gressett Aff. ¶ 68.) What Broadcom neglects to say is that "Critical Severity Security Alerts" comprise a very small percentage of all events for which security patches are needed. Defendants' provision of patches for "Critical Severity Security Alerts" will not address the overwhelming majority of security incidents likely to befall AT&T in the event Defendants terminate their Support Services to AT&T.

I affirm this 26th day of September, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true to the best of my knowledge, information, and belief, and I understand that this document may be filed in an action or proceeding in a court of law.


David J. Brickhaus

RULE 17 CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT

I hereby certify that the foregoing document complies with the word count limit set forth in Rule 17 of the Rules of Practice for the Commercial Division of the Supreme Court. I relied on the word count of the word-processing system used to prepare the document. The total number of words in this document, exclusive of the caption and signature block, is 751 words.

By: /s/ Jonathan D. Pressment
Jonathan D. Pressment