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THE SCO GROUP INC CURRAN & PARRY

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE SCO GROUP, INC.,
a Delaware corporation,

Plaintiff,

v.

AUTOZONE, INC.,
a Nevada corporation,

Defendant.

Civil Action File No.

CV-S-04-0237-RCJ-LRL

CERTIFICATION OF GLENN M. MACHADO, ESQ.

GLENN M. MACHADO, an attorney duly admitted to practice before the United States District Court for the District of Nevada, certifies as follows:

1. I am an associate of the law firm Curran & Parry, attorneys for Plaintiff The SCO Group, Inc.

FILED SEPARATELY

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2. Attached as Exhibit A hereto is a true and correct copy of the July 12, 2004 Hearing Transcript.

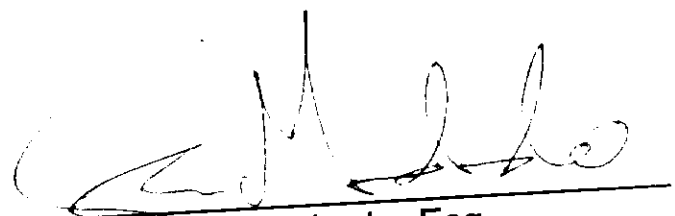
3. Attached as Exhibit B hereto is a true and correct copy of SCO's Memorandum in Opposition to AutoZone's Motion for Stay.

4. Attached as Exhibit C hereto is a true and correct copy of a July 30, 2004 Letter from David S. Stone of Boies, Schiller & Flexner LLP to the Court.

5. Attached as Exhibit D hereto are true and correct copies of AutoZone's First Interrogatories to Plaintiff The SCO Group, Inc., AutoZone's First Request for Production of Documents and AutoZone's Notice of 30(b)(6) Deposition;

6. Attached as Exhibit E hereto is a true and correct copy of SCO's Statement of Basis for Claim for Preliminary Injunctive Relief and Nature of Relief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



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Dated: September 8, 2004

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing CERTIFICATION OF GLENN M. MACHADO, ESQ. was deposited by the undersigned into the U.S. Mail, First Class, postage pre-paid and forwarded via Facsimile Transmission on this 8th day of September, 2004, to the following:

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EXHIBIT "A"

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

THE SCO GROUP, INC.,)

Plaintiff,)

vs.)

AUTOZONE, INC.,)

Defendant.)

Case No.
CV-S-04-237-RCJ(LRL)

TRANSCRIPT OF PROCEEDINGS
OF
ORAL ARGUMENT ON DEFENDANT AUTOZONE, INC.'S
MOTION FOR A STAY
OR, IN THE ALTERNATIVE,
FOR A MORE DEFINITE STATEMENT
AND
DEFENDANT AUTOZONE, INC.'S MOTION TO TRANSFER VENUE
VOLUME 1
BEFORE THE HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

Monday, July 12, 2004

Court Recorder: Lilia Abarca de Carter

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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Also Present:

RYAN E. TIBBITS, ESQ.
Corporate Counsel
The SCO Group, Inc.

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1 (Court convened at 09:26:55 a.m.)

2 THE COURT: SCO Group and Autozone.

3 (Colloquy not on the record.)

4 THE COURT: Good morning. Your appearances,
5 please.

6 MR. PARRY: Good morning, your Honor.

7 Stanley Parry on behalf of the SCO Group and with me this
8 morning is -- and I'll let them introduce themselves, but
9 David Stone is to my right.

10 MR. STONE: Good morning your Honor. Bois,
11 Schiller & Flexner.

12 MR. MAGNANINI: And Bob Magnanini, your Honor,
13 also from Bois, Schiller & Flexner.

14 MR. PARRY: And, also, corporate counsel of SCO,
15 Ryan Tibbits, is here with us, and, your Honor, we have a
16 motion of pro hac vice to allow Mr. Magnanini and Mr. Stone
17 to appear and argue this motion. Could that be granted at
18 this point?

19 THE COURT: That would be granted in the normal
20 course, and they certainly may argue this morning assuming
21 without objection.

22 MR. STONE: Thank you, your Honor.

23 MR. PISANELLI: Good morning, your Honor.

24 James Pisanelli from Schreck Brignone. I'm here with
25 co-counsel from Alston & Bird, David Stewart and Mr. Kenny.

1 MR. STEWART: Good morning, your Honor.

2 MR. KING: Good morning, your Honor.

3 THE COURT: Thank you.

4 MR. PISANELLE: Mr. Stewart will be handling our
5 argument today.

6 THE COURT: Okay.

7 MR. STEWART: Good morning, your Honor. As you
8 know, we've got three motions in front of you this morning,
9 a motion to transfer, a motion to stay, and the motion for a
10 more definite statement.

11 And if you had a preference as to which of those
12 motions you'd like to first hear first --

13 THE COURT: My --

14 MR. STEWART: -- I'll certainly --

15 THE COURT: My preference is to hear all of them
16 from you at the same time.

17 MR. STEWART: Okay.

18 THE COURT: But, of course, one at a time as you
19 may present the argument.

20 MR. STEWART: That's what I'll do, and I will
21 start with the motion to transfer and will do my best not to
22 just parrot back or brief to you, but to sort of hit the
23 high points.

24 THE COURT: I've read them.

25 MR. STEWART: On the motion to transfer, it is

1 certainly true as SCO has pointed out that ordinarily the
2 plaintiff's choice of forum is not to be disturbed lightly
3 on a motion to transfer; however, the law in this circuit is
4 established as it is in other circuits as well.

5 But that rule goes out the window, essentially, if the
6 plaintiff chooses to file outside their home district. And,
7 in particular, the Ninth Circuit has said as we've cited in
8 our brief that if the plaintiff chooses to file outside its
9 own forum its choice of forum is to be given, quote,
10 "minimal consideration."

11 There are a number of factors that this Court has
12 recognized that are properly considered in connection with a
13 motion to transfer brought under 28, USC, Section 1404(a) as
14 this motion is.

15 First is convenience of the witnesses, second is access
16 to proof, third is convenience of the parties, and fourth is
17 the interest of justice.

18 All four of these factors we believe overwhelmingly
19 support transfer of this case to the Western District of
20 Tennessee which is the district to which we requested this
21 case be transferred.

22 And this case could have been filed there originally
23 because that's the district in which Autozone's principal
24 residence is.

25 With regard to the convenience of the witnesses, it is

1 undisputed that not a single relevant witness with material
2 knowledge or information is present within this judicial
3 district. All of the witnesses with knowledge regarding the
4 UNIX code that SCO purports to own reside outside this
5 district.

6 And, more importantly, the most critical witnesses
7 here -- those are the witnesses who have knowledge of
8 Autozone's alleged infringement of that code -- are
9 employees or former employees of Autozone's IT group and all
10 reside in Memphis.

11 Transfer of the case naturally will therefore be more
12 convenient for the witnesses if the case is heard where
13 those witnesses are located.

14 In terms of access to proof, again, all of the relevant
15 documents and code regarding the alleged infringement are
16 located in Memphis.

17 Although it is certainly true as SCO has pointed out
18 that in this day and age of CD-ROMs and broadband Internet
19 connections, documents can be transferred without a horrible
20 amount of burden. The fact remains that is a relevant
21 factor to consider, and it weighs in favor of transfer of
22 the case to Memphis.

23 With regard to the convenience of the parties, neither
24 party resides here. Both parties will therefore have to fly
25 to get here and fly all the witnesses here for trial, for

1 substantive hearings, and motions in the case.

2 Because Autozone resides in Memphis, naturally, it's
3 much more convenient for it to try the case there, and it's
4 not much less inconvenient, if any less convenient, for SCO
5 to try this case in Memphis as opposed to trying it here.

6 Again, they're going to have to travel --

7 THE COURT: Now, were all of these motions
8 presented to the Red Hat Court? Certainly, a motion to stay
9 was presented to that Court.

10 MR. STEWART: No. Actually, there was no motion
11 to transfer in that case. The Court issued the stay
12 sua sponte --

13 THE COURT: I see.

14 MR. STEWART: -- but did so based upon a statement
15 that SCO made to the board in connection with a motion to
16 dismiss the declaratory judgment (indiscernible) ripeness
17 grounds that it would likely move to stay the case because
18 controlling issues are involved in the IBM case, and the
19 Court appears to have picked up on that, and that appears to
20 be the cause for the stay.

21 Red Hat has requested that the Court reconsider that
22 order and has requested that the Court lift the stay.
23 Naturally, counsel for SCO can address those issues better
24 than I can.

25 My understanding is, though, that those issues are

1 fully briefed and awaiting decision by the judge in
2 Delaware.

3 And, finally, in the interest of justice, the Western
4 District of Tennessee has a greater interest in adjudicating
5 the merits of this claim because that's where the alleged
6 infringement took place.

7 And the caseload is substantially lighter in the
8 Western District of Tennessee on the civil side than it is
9 here.

10 And as a consequence of that, naturally, the Western
11 District of Tennessee is able to get its civil cases to
12 trial much more quickly.

13 In fact, in 2003, the average was 18 months from the
14 date of filing to trial in the Western District of Tennessee
15 versus 32 months.

16 THE COURT: That's not true here, anymore. We
17 have two additional judgeships. Our caseload is down now.
18 Mine is below 300, and the average is 375. We can get a
19 case to trial as soon as you want to set it.

20 MR. STEWART: Okay.

21 THE COURT: I can set it in the next six months.
22 I can set it in four months or even next month if you want
23 it.

24 MR. STEWART: I'm not sure we'll be ready to try
25 it that quickly, but --

1 UNIDENTIFIED SPEAKER: (Indiscernible).

2 MR. STEWART: For reasons I'll address in a moment
3 in connection with the motion to stay, all of these issues
4 are already being litigated elsewhere, particularly a case
5 that's substantially farther down the road.

6 I think it's premature in this case to be thinking
7 about a stay -- or pardon me -- thinking about a trial when
8 it's --

9 THE COURT: That's the main concern for me is just
10 duplicative effort --

11 MR. STEWART: Right. Right.

12 THE COURT: -- and whether I should simply -- the
13 better choices are to either transfer it to that court or to
14 simply stay it here like Delaware did.

15 MR. STEWART: Well, I will tell you, your Honor.
16 Our client's principal interest is in the stay. It doesn't
17 want to be investing the substantial time and energy and
18 money into litigating this case when SCO has already brought
19 all of the issues that are relevant to this case in
20 litigation elsewhere or where all of these issues are
21 already in front of Courts in Utah and Delaware.

22 And the motion to transfer is filed because it does
23 believe that eventually if it becomes appropriate for a stay
24 to be lifted that this case should go forward in the Western
25 District of Tennessee.

1 It appeared to us that now is the appropriate time to
2 raise that motion, but, certainly, that's in your Honor's
3 discretion, and, ultimately, it isn't the stay that we're
4 most interested in this morning.

5 With regard to caseloads, it sounds like that's changed
6 recently. The most recent statistics from the Western
7 District of Tennessee are, though, that there are an average
8 of 269 civil cases per judge in that district.

9 The only connection of any kind between this litigation
10 and this forum is the fact that Autozone's incorporated
11 here.

12 Now, we don't obviously by any means intend to say that
13 it was improper for this case to be filed here. We're not
14 arguing over jurisdiction.

15 It's simply a convenience of the party's forum,
16 nonconvenience-type analysis, and this Court has recognized
17 in both the Kingridge (phonetic), Filter (phonetic), and
18 Miracle Blade (phonetic) cases that if all you've got that
19 justifies keeping a court in this district is the fact that
20 one or more of the defendants is incorporated here that that
21 alone is not sufficient to outweigh the balance of the
22 Section 1404 factors, and we'd submit that this case should
23 be transferred to the Western District of Tennessee for
24 those reasons.

25 Now, SCO in its response brief has addressed the

1 possibility of transferring this case to Utah. We've
2 addressed those issues. We don't believe it's any more
3 appropriate to transfer this case to Utah than it is to
4 leave it here. I'd be happy to address those points if
5 you'd like to hear them.

6 THE COURT: I would. What is the status?
7 Primarily, what is the status of the cases pending in Utah?

8 MR. STEWART: Again, I'll give you my
9 understanding, but I will defer to SCO's counsel to make
10 sure that I'm getting all the facts right. I'm sort of
11 looking over everyone's shoulders watching what's going on.

12 My understanding is that at present SCO has filed a
13 motion to dismiss IBM's tenth counterclaim. That tenth
14 counterclaim is a counterclaim that IBM filed to say
15 essentially nothing in Linux infringes any rights that SCO
16 purports to own in UNIX.

17 We believe all of the issues in the present case were
18 already in front of the Court in the IBM case prior to the
19 filing of that counterclaim. And, in fact, let's talk about
20 it in a moment.

21 THE COURT: SCO filed a motion to dismiss --

22 MR. STEWART: To dismiss or --

23 THE COURT: -- or IBM filed a motion for summary
24 judgment --

25 MR. STEWART: Yeah. Both.

1 THE COURT: -- upon failure to allow discovery?

2 MR. STEWART: Both. SCO filed a motion to dismiss
3 or stay the tenth counterclaim pending resolution of this
4 lawsuit claiming that this was the first filed suit on those
5 issues.

6 And IBM has filed a motion for summary judgment on its
7 tenth counterclaim saying that discovery's been completed.
8 SCO says it has complied with all of its discovery
9 obligations.

10 IBM's gone through the code. There is no infringing
11 code, and so IBM has moved for summary judgment on that
12 basis.

13 My understanding is that the district court in Delaware
14 has scheduled all of those motions for hearing on
15 August 4th. And, again, I'll --

16 THE COURT: That's in Delaware.

17 UNIDENTIFIED SPEAKER: No, your Honor.

18 MR. STEWART: No. That's in --

19 UNIDENTIFIED SPEAKER: No. It's in Utah,
20 your Honor.

21 MR. STEWART: That's in Utah. That's the IBM case
22 in Utah.

23 THE COURT: All right.

24 MR. STEWART: Delaware --

25 THE COURT: Those are scheduled for a hearing as

1 well?

2 MR. STEWART: Pardon me?

3 THE COURT: Those are scheduled for a hearing?

4 MR. STEWART: The --

5 THE COURT: The Utah court. The Utah court,
6 that's the one I'm focussing on.

7 MR. STEWART: Right.

8 THE COURT: That's the one I'm trying to
9 understand. How soon will we get an answer, so we can avoid
10 duplicative effort? How soon will we get an answer on the
11 basic issue in IBM and the Linux versus the UNIX code?

12 MR. STEWART: Right. I'll have to answer that a
13 couple of different ways. If the Court grants IBM's motion
14 for summary judgment, it could be very quick, and those
15 issues are briefed, and the Court's going to hear argument
16 on that on August 4th.

17 I don't know how quickly the Court would rule after
18 that. But if the Court grants the motion, then the case
19 would be over. If that case is decided against SCO --

20 THE COURT: All right.

21 MR. STEWART: -- SCO has no cause of action
22 against Autozone.

23 THE COURT: Let me hear from SCO, please.

24 (Colloquy not on the record.)

25 THE COURT: And I'd like you to primarily address

1 those two issues and, of course, your argument that it ought
2 to be transferred to Utah, but I'm not too enamored with the
3 idea of sending it to Tennessee.

4 But it seems to me that a very good option here is
5 simply to stay it briefly at least until we see whether
6 we're going to get an answer from the Utah court.

7 MR. STONE: Your Honor, first of all, I'd like to
8 thank you for allowing me to argue here today. I appreciate
9 it.

10 If your Honor will indulge me, I'd like to place this
11 case in context because I think it's important towards the
12 motions that are before your Honor to understand the context
13 in which this case was brought and the importance of this
14 case to SCO.

15 And I think that the complaint which is really
16 focussing on the copyright infringement doesn't give you
17 that overview.

18 But since they have now brought in these other cases, I
19 think it's important to understand why they are not
20 dispositive of this case and why this case really is
21 different to some extent from those cases.

22 UNIX is an operating system. It's an operating system
23 which for 20 years has been the dominant operating system on
24 enterprise servers.

25 Enterprise servers are computers which run the most

1 sophisticated software in the United States and in the
2 world.

3 For example, Credit Suisse, the New York Stock
4 Exchange, most Fortune 500 companies use some version of
5 this UNIX software which was originally developed by AT&T.

6 The reason they use it is because it's got something
7 called Five Nines capability which means it's 99.999 error
8 free. It's very, very efficient.

9 If your Honor has ever used, for example, Microsoft
10 Windows and has noticed where it freezes whenever you try to
11 run any other different programs at the same time, the value
12 of something like UNIX is that it's so error free and so
13 efficient that when you're doing big, important operations
14 or if you're doing operations of national scope, you need a
15 much more sophisticated operating system.

16 Several years ago, a person named Linus Torvault
17 (phonetic) who's from Finland created a primitive version of
18 a UNIX-type operating system which he essentially put on the
19 Internet and invited people to contribute to it to make it
20 better.

21 Basically, it's SCO's position that certain
22 companies -- one of them being IBM -- contributed code and
23 other types of materials that are protected by not only
24 licensing agreements but copyright laws to Linux for its own
25 business purposes in order to create a competitor to the

1 Microsoft software and the UNIX software which SCO owns and
2 which SCO receives millions and millions of dollars in
3 royalties from every year.

4 THE COURT: And so that I understand -- and, of
5 course, I don't want to cut you off.

6 MR. STONE: Um-h'm.

7 THE COURT: Please keep going. But the issue of
8 ownership is pending in the Utah Novell case, and the issue
9 of the conflict is pending in the IBM Utah case.

10 MR. STONE: Your Honor, that's not quite accurate.
11 If you'll allow me to -- the first statement I believe is
12 somewhat accurate.

13 In the Novell case, what happened is that Novell was
14 going around saying in the press SCO doesn't own the
15 copyrights, even though we sold them to SCO for more than,
16 potentially, \$100,000,000 and even though for the last, you
17 know, umpteen years people have been paying royalties to
18 SCO, and we've been receiving percentages of those royalties
19 with the understanding that SCO owned all this, but now they
20 say SCO doesn't own the copyrights.

21 We sued them for essentially a slander of title. It is
22 not a copyright case. It is not a copyright-infringement
23 case. It's a slander-of-title case which was removed to the
24 federal court.

25 That case, nothing has occurred in it at this point,

1 other than that Judge Kimball (phonetic) has ruled that it's
2 going to stay in the federal court. There's been no
3 discovery. Nothing happened. To just go on with my story
4 because I think it's important to place this in context.

5 So one of the concerns that SCO has is entities such as
6 IBM and individuals who have access through their licensing
7 agreements with SCO to our source code which is proprietary
8 using that and somehow contributing either modifications,
9 derivative works, concepts and methods, or the code itself
10 into Linux. That's one issue. There's a second issue.

11 The second issue is end users of Linux who have
12 previously been SCO customers such as Autozone which used
13 UNIX System V which is -- they used our open-server software
14 for many years and paid us royalties for it migrating --
15 what we call migrating -- to Linux, in other words, changing
16 all those computers all over the country and instead of
17 running our software which is proprietary, and they paid
18 royalties on it to Linux.

19 Now, there are many issues which can arise in this
20 migration process which don't necessarily have to do with
21 what's in Linux.

22 For example, we allege in our complaint that Autozone
23 has violated our copyrights in something that's called
24 static shared libraries.

25 Static shared libraries are an older version of

1 libraries that SCO used in its open-server software which is
2 the software that they licensed to Autozone.

3 Since that time, these libraries have been improved,
4 and now there's something called dynamic shared libraries
5 which is what Linux uses because Linux was only recently
6 created. It wasn't created at the time of static shared
7 libraries.

8 If you wanted to migrate from this open server and pay
9 all the applications which have been written to run on that
10 operating system and then run them flawlessly on Linux, you
11 need the static shared libraries.

12 And we have reason to believe -- and that's why we
13 allege it in the complaint -- that what they did is they
14 copied our static shared libraries which they have licensed
15 from us which they owe us royalties for into these
16 applications, so they could run them on Linux.

17 That's something that has nothing to do with IBM or the
18 IBM case because IBM does not use to our knowledge -- and we
19 haven't had discovery, yet. But based on what we know, they
20 don't use static shared libraries.

21 So that's an example of how this case could go in a
22 totally different direction than the IBM case because the
23 IBM case is about putting things into Linux that you don't
24 have a right to.

25 This case is about to illustrate to end users the

1 problems that they have in migrating to Linux and basically
2 leaving our system without violating our copyrights.

3 So this case if it was resolved on the static shared
4 libraries based on what we know today -- we haven't had the
5 discovery, yet -- wouldn't implicate the IBM case at all, so
6 that's an example of why you can't just simply look at these
7 cases and say they're the same. They're not the same.

8 The other point about the IBM case which I think is
9 critical is that that case was really brought -- it was
10 brought by SCO as a breach-of-license case.

11 We have a license which says to IBM that they can have
12 our source code which is like the keys to the kingdom. If
13 you don't have the source code, you can't write the
14 applications. You can't run the software, and so, you know,
15 you're very limited in what you can do, so IBM paid us a lot
16 of money for this source code.

17 They then modified it, created derivative works from
18 it, used methods and concepts in other products that they
19 created which under our license we claim we control. That
20 they cannot just release that into the public because
21 every --

22 THE COURT: And what's the status of that lawsuit?

23 MR. STONE: That lawsuit is the lawsuit right now
24 in which various motions to compel, motions to dismiss,
25 motions for summary judgment are pending.

1 What happened is in March of this year --

2 THE COURT: Who's that before?

3 MR. STONE: That's before Judge Kimball.

4 THE COURT: And how soon are those hearings set?

5 MR. STONE: August 4th there's going to be an
6 argument on that, your Honor, but I would point out that the
7 likelihood of IBM getting summary judgment -- their
8 summary-judgment motion was not based on material,
9 undisputed facts.

10 It was based on the fact that even though there were no
11 copyright claims asserted by either party in the case until
12 February of this year -- and, in fact, IBM did not bring end
13 user or any kind of claims into the case until March of this
14 year -- that somehow, you know, SCO was not giving them
15 sufficient discovery; and, therefore, the Court should just
16 as a sanction, essentially, against SCO grant summary
17 judgment.

18 I mean, they're not saying that they proved or the
19 evidence shows that they --

20 THE COURT: I understand. Now, Red Hat is --

21 MR. STONE: -- didn't do those --

22 THE COURT: Was it through Red Hat that Autozone
23 originally licensed?

24 MR. STONE: Linux? Yeah. What happened is when
25 Autozone made a decision to move to Linux, it had to find a

1 distributor of Linux to help it do that, and Red Hat was the
2 distributor that it found.

3 THE COURT: And the stay in the Red Hat case is
4 applicable how long?

5 MR. STONE: What the judge has done is put the
6 case on an indefinite stay with 90-day status reports. We
7 just recently reported to the judge within the last two
8 weeks as to what's going on in the IBM case, and the judge
9 has taken no action in that.

10 THE COURT: You moved to dissolve the stay.

11 MR. STONE: Auto's -- I'm sorry. There's a lot of
12 parties here. Red Hat moved for reconsideration of the
13 judge's stay, and we opposed that, and the judge has made no
14 ruling on that to my knowledge at this point.

15 But if I may, your Honor? I don't know if you want me
16 to address the issues of transfer because I don't
17 (indiscernible).

18 THE COURT: Well, my inclination is to do just as
19 the Red Hat Court has done. That is to give 90-day stays
20 with status checks shortly after status checks are due in
21 the Red Hat case -- they're the licensor -- but to except
22 from the stay an opportunity for brief discovery and the
23 movement of an injunction from an injunction pending the
24 case.

25 So, I mean, your complaint is, you know, we'll be hurt

1 if you stay us --

2 MR. STONE: Yes, your Honor.

3 THE COURT: -- indefinitely. On the other hand,
4 it occurs to me that, first of all, the IBM case and,
5 secondarily, the Red Hat case which are the licensors to
6 Autozone, those cases ought to be resolved, so that the
7 Court without duplicating the effort can make its final
8 conclusions on the case here.

9 So it seems to me that what I ought to do is impose a
10 stay just as the Red Hat Court has done, put you on 90-day
11 statuses shortly after, two weeks after, the status is due
12 to the Delaware court, but to allow you an exception for the
13 brief discovery necessary and for the presentation of a
14 motion or an injunction pending trial.

15 MR. STONE: So, your Honor, if I understand you,
16 you're going to allow us to have some discovery on the
17 infringement issue to be able to show that there is
18 irreparable harm that could potentially arise from the
19 ongoing infringement.

20 THE COURT: (Indiscernible) not to present an
21 issue for preliminary injunction.

22 MR. STONE: Thank you, your Honor. Unless you
23 have other issues you want me to address --

24 THE COURT: I --

25 MR. STONE: -- I think I'll --

1 THE COURT: I think I understood --

2 MR. STONE: -- shut up.

3 THE COURT: -- pretty well, and I've reviewed your
4 pleadings.

5 MR. STONE: Thank you, Judge.

6 MR. STEWART: Your Honor, can I be heard on the
7 point of that discovery and preliminary injunction?

8 THE COURT: Please.

9 MR. STEWART: A couple of points in regard to
10 that. First, SCO has never asked for a preliminary
11 injunction --

12 THE COURT: No.

13 MR. STEWART: -- in any case.

14 THE COURT: Uh-uh.

15 MR. STEWART: Until today, they had never
16 identified in this case anything that they allege that
17 Autozone has done that somebody else didn't do.

18 And they don't even know if, in fact, Autozone did it.
19 They don't have any evidence to point to to that. From what
20 I've heard, they don't even have good-faith information and
21 belief on which to base that claim.

22 We're about ready to engage on a fishing expedition,
23 and it's hard to say how broad that's going to be. It
24 presumably could end up encompassing everything that's also
25 at issue in Red Hat and IBM and Novell.

1 And so if we are going to go down this road, I would
2 ask the Court to enter additional guidance on the scope of
3 the discovery, so that it is, perhaps, very limited to just
4 what, if anything --

5 THE COURT: I think the way I would limit it is I
6 would give them 30 days to propound it. The normal 30-day
7 response time follows, of course.

8 And I'm not going to limit scope other than to say that
9 it is limited to any factual predicates or to obtain factual
10 predicates to a request for preliminary injunction.

11 The only reason for doing that is because they raise
12 that issue in their responses that they would be harmed if
13 the Court simply held off and did not let them proceed here
14 one way or the other.

15 MR. STONE: Your Honor, I just want to be clear.
16 We'll be permitted to take depositions? It will be any type
17 of discovery that is permitted under the rules?

18 THE COURT: My contemplation was to allow you
19 during 30 days to propound discovery sufficient to form a
20 factual presentation to the Court. That you had the right
21 to a preliminary injunction.

22 If you don't have the right to preliminary injunction,
23 you shouldn't proceed with discovery at all, but to answer
24 your complaint that, yeah, you would be prejudiced by a stay
25 because then users, end users, can proceed to use your

1 copyrighted materials without royalties.

2 It occurred to me that I should give you the
3 opportunity to present a motion for preliminary injunction,
4 and that would be the only exception to the stay, so there
5 would be a brief period.

6 The discovery would be limited in time, 30 days, plus
7 the normal -- if it's interrogs, the 30-day response time to
8 follow from your presentation -- and any other discovery
9 necessary but limited in scope only by the inquiry as to
10 facts predicate to preliminary injunction; otherwise, you
11 shouldn't go on a free-ranging discovery course preparatory
12 to a trial.

13 MR. PARRY: Your Honor, there is the Rule 26
14 procedure that I consider discovery. Are we dispensing with
15 that right now or did the Court want us to --

16 THE COURT: We'll be staying --

17 MR. PARRY: -- (indiscernible)?

18 THE COURT: -- the lawsuit.

19 MR. PARRY: Okay.

20 THE COURT: So you will not go through the normal
21 26 or 16 time periods and procedures with the magistrate
22 judge.

23 MR. PARRY: And then, your Honor, just so it's
24 kind of clear, so we don't have to come back, why doesn't
25 the Court say you can take like five depositions or three

1 depositions or something like that? Otherwise, I think we
2 end upcoming back and arguing this all (indiscernible).

3 THE COURT: I'd be glad to pick an arbitrary
4 number out of the air, but I think maybe it makes sense for
5 you to consult together.

6 MR. PARRY: Okay.

7 THE COURT: Here's three or five that we need, and
8 this is why we need them. This is why it's applicable.

9 MR. PARRY: I've always assumed that we could come
10 back to the Court --

11 THE COURT: You can.

12 MR. PARRY: -- both parties --

13 THE COURT: I'm available --

14 MR. PARRY: -- and ask for --

15 THE COURT: -- on the telephone --

16 MR. PARRY: -- (indiscernible).

17 THE COURT: -- of course, and the magistrate judge
18 would be, too.

19 MR. STEWART: Your Honor, before we go too far
20 down this road -- and I may very well be a salmon swimming
21 unsuccessfully upstream -- I respectfully request that the
22 Court reconsider this part of the order that you're
23 contemplating for several reasons.

24 One -- and I have not looked at the Ninth Circuit
25 standards for the issuance of a preliminary injunction in

1 some time, but my understanding is that you have to show
2 irreparable harm.

3 It is clear in every circuit I can think of that the
4 loss of the license fee is not irreparable harm. It cannot
5 justify the entry of an injunction. That is the only harm
6 that we've heard today.

7 The only other harm that SCO has even alleged in any of
8 their moving papers is a presumption of irreparable harm
9 that just naturally flows by law from proof of copyright
10 infringement, but that is a rebuttable presumption. And in
11 this case, it's easily rebutted.

12 And just in terms of the irreparable-harm factor for
13 the entitlement to a preliminary injunction, they've known
14 about --

15 THE COURT: You're arguing the merits of a
16 motion --

17 MR. STEWART: Well --

18 THE COURT: -- that's not even before me.

19 MR. STEWART: Your Honor, these issues are already
20 before the Court on the papers that are in front of you.

21 UNIDENTIFIED SPEAKER: Yeah.

22 MR. STEWART: And so my point is that giving them
23 the opportunity to take discovery before a preliminary
24 injunction that you can already ascertain they can't get
25 will cause the parties to engage in substantial time and

1 expense that ultimately will not be fruitful. They
2 cannot --

3 THE COURT: I don't think 60-days' worth is
4 unnecessary time and expense, so that will be the order.
5 I'll ask for counsel to prepare an order.

6 Would you like to undertake to prepare an order
7 reflecting the stay with the exception, one-time exception,
8 for a motion for preliminary injunction.

9 MR. STEWART: We will, your Honor.

10 THE COURT: And pass it by counsel and then submit
11 it to the Court.

12 MR. STEWART: We'll do.

13 THE COURT: Okay.

14 MR. STONE: Thank you, your Honor.

15 THE COURT: Thank you.

16 UNIDENTIFIED SPEAKER: Thank you, your Honor.

17 MR. MAGNANINI: Your Honor, one last thing on your
18 order is they need to file an answer.

19 UNIDENTIFIED SPEAKER: No.

20 MR. MAGNANINI: I guess they should put that in
21 the order.

22 MR. STEWART: Your Honor, my understanding is the
23 case has been stayed.

24 THE COURT: It will be stayed.

25 UNIDENTIFIED SPEAKER: (Indiscernible).

1 UNIDENTIFIED SPEAKER: Okay.

2 THE COURT: Thank you.

3 (Court concluded at 09:57:43 a.m.)

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1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.
4

5
6 *Lisa L. Cline*

7 Lisa L. Cline, Transcriptionist

7/21/04

Date

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE SCO GROUP, INC.,)
a Delaware corporation,)
Plaintiff,)
v.)
AUTOZONE, INC.,)
a Nevada corporation,)
Defendant.)

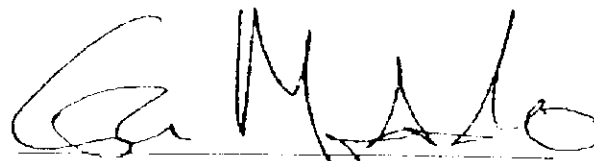
Civil Action File No.
CV-S-04-0237-RCJ-LRL

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT AUTOZONE'S
MOTIONS TO (1) TRANSFER THIS ACTION TO THE WESTERN DISTRICT OF
TENNESSEE, AND (2) STAY THIS ACTION OR, IN THE ALTERNATIVE, FOR A
MORE DEFINITE STATEMENT**

COMES NOW, Plaintiff THE SCO GROUP, INC. by and through its attorneys, the law
firms of Curran & Parry and Boies, Schiller & Flexner, LLP, hereby files its OPPOSITION TO
DEFENDANT AUTOZONE'S MOTIONS TO (1) TRANSFER THIS ACTION TO THE

1
2 WESTERN DISTRICT OF TENNESSEE, AND (2) STAY THIS ACTION OR, IN THE
3 ALTERNATIVE, FOR A MORE DEFINITE STATEMENT. This Motion is based upon the
4 following Memorandum of Points and Authorities as well as upon all other papers and pleadings
5 on file in this action.

6 DATED this 24th day of May, 2004.

7
8
9 

10 Stanley W. Parry, Esq.

11 Nevada Bar No. 1417

12 Glenn M. Machado, Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiff The SCO Group ("SCO") submits this Memorandum in opposition to AutoZone's motions to (1) transfer this action to Tennessee, and (2) stay this action or for a more definite statement.

SCO filed this action to prevent what it has reason to believe is ongoing infringement by AutoZone of SCO copyrights in connection with AutoZone's use and implementation of versions of the Linux operating system. (See Complaint ¶¶ 20-21) AutoZone, in filing its present motion to stay, claims it is seeking only to advance the goal of judicial efficiency. An examination of AutoZone's arguments shows that this claim is not accurate. For example, AutoZone's motion asks this Court to stay this action in deference to several other proceedings (including already stayed proceedings, and proceedings in which broad copyright counterclaims were filed after the filing of the present case). The cases relied upon by AutoZone also involve different legal theories and different facts. For example, SCO's investigation has given SCO reason to believe that, apart from IBM's challenged conduct, AutoZone has engaged in separate improper conduct transgressing SCO's rights. AutoZone's motion to stay overlooks this basic fact. Yet at the same time, AutoZone expressly states that if the courts in those cases use their scarce resources to decide those issues in a way that AutoZone does not like, AutoZone can then require this Court to expend its scarce resources to *relitigate* all of the very same factual and legal issues. (See AutoZone Motion to stay at 9, n. 5)¹

¹ Defendant AutoZone's Memorandum of Law in Support of its Motion to Stay or, in the Alternative, For a More Definite Statement is herein referred to as "AZ. Stay br. at" and Defendant AutoZone's Memorandum of Law in Support of its Motion to Transfer Venue is herein referred to as "AZ. Transfer br. at". Also, throughout this Memorandum, SCO refers to its Complaint and previously filed federal and state cases, of which SCO asks this Court to take

1 Even assuming it was proper to consider each of the proceedings (and claims) to which
2 AutoZone refers -- and under governing law it is not -- AutoZone's arguments in support of its
3 motion to stay still lack merit. For example, there are a great many bases on which those other
4 actions could be decided, including but not limited to decisions in SCO's favor, which would
5 still require all of SCO's copyright claims relating to infringing use of Linux to be litigated in
6 this action. The high number of such possible outcomes further highlights the low likelihood of
7 any savings in judicial resources -- even under AutoZone's legally improper framing of the
8 issues.
9

10
11 On the other side of the balance, SCO -- as a plaintiff -- has a presumptive ability to
12 proceed in this forum to protect and vindicate its federally secured rights and to seek the
13 opportunity to obtain judicial review and a potential judicial remedy designed to stop the
14 continued violation of those federal rights.

15 AutoZone's reliance on the *Novell* action as a basis for its motion to stay also warrants
16 close examination. Although a number of specific factors set forth in Section II. C.1, below are
17 independently sufficient to preclude this ground for AutoZone's motion, there is an additional
18 factor that bears emphasis at the outset. The *Novell* matter arises because Novell, Inc. ("Novell")
19 after selling all of its UNIX assets in return for substantial consideration, in addition to the
20 substantial value of a separate income stream, now effectively asserts that the only thing it
21 "gave" SCO in return are obligations and costs (i.e., negative value to SCO, and still more
22 benefit to Novell).² Merely by advancing these extraordinary claims, Novell has already
23 severely and improperly prejudiced SCO. It would be highly inequitable if -- at AutoZone's
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judicial notice. See *U.S. ex rel Robison Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d
244, 248 (9th Cir. 1992).

² After Novell advanced these positions, IBM invested \$50,000,000 in Novell.

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1 request -- this prejudice could be extended to the point of preventing SCO from obtaining judicial
2 review of the separate and additional continuing violation of its rights here.

3
4 AutoZone's motion to transfer also lacks merit. For example, AutoZone asks this Court
5 to move the present action to Tennessee (where AutoZone could have filed a declaratory action),
6 rather than to Utah where AutoZone itself argues that two related actions are venued. If those
7 actions were as closely related to this one as AutoZone contends in support of its motion to stay,
8 and if AutoZone were actually pursuing the goal of judicial efficiency, then it would be logical
9 for AutoZone to also seek a venue where close coordination could most easily be achieved,
10 whether or not a stay were granted. Finally, AutoZone's motion for a more definite statement
11 should be denied. The Complaint fully complies with the notice pleading requirements under
12 federal law and identifies the copyright infringement issues necessary to defend this case. Under
13 basic procedural law, further details are properly the subject of discovery.

14
15
16 In sum, granting AutoZone's motion to stay could result in a great many possible
17 outcomes that would waste substantial judicial resources, and a great many outcomes that would
18 not save any judicial resources -- each of which would have the effect of insulating AutoZone
19 from judicial review of the propriety of its conduct. At the same time, SCO will suffer
20 substantial prejudice if it is blocked from the opportunity to obtain judicial review of the merits
21 of its present claims and the opportunity to obtain a judicial remedy to stop the continuing
22 violation of its federally secured rights. Under governing law, AutoZone's arguments and the
23 factors AutoZone raises do not approach the level needed to justify precluding a federal plaintiff
24 from obtaining that opportunity.
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RELEVANT PROCEDURAL HISTORY

1
2
3 Plaintiff SCO is the successor in interest to certain assets of the Santa Cruz Operation,
4 Inc. (the "Santa Cruz Operation"). SCO, therefore, owns certain assets which Santa Cruz
5 Operation purchased from Novell, Inc. ("Novell") pursuant to an integrated agreement. The
6 assets include right and title to all of the UNIX operating system technology including, without
7 limitation, all claims that arise from any right or asset purchased from Novell, copyrights in the
8 UNIX software and derivative works thereof, source code, object code, programming tools, and
9 documentation ("the Copyrighted Material").
10

11 SCO was informed and believed that AutoZone was infringing SCO's UNIX copyrights.
12 Accordingly on March 4, 2004, SCO therefore initiated this copyright infringement action to
13 protect its rights. SCO alleges that parts or all of the Copyrighted Material or derivative works
14 of that Material has been copied improperly and/or used in or with versions 2.4 and 2.6 of the
15 Linux operating system without the permission of SCO. SCO alleges that AutoZone, a prior
16 licensee of SCO, has infringed and will continue to infringe SCO's copyrights in and relating to
17 the Copyrighted Material by employing one or more versions of the Linux operating system in
18 its business. To date, AutoZone has declined to answer these allegations and has instead filed
19 the instant motions seeking to delay the resolution of the merits of SCO's claims.
20

LEGAL ARGUMENT

I. AUTOZONE'S MOTION TO TRANSFER SHOULD BE DENIED.

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25 AutoZone's request to shift this action to the site of its headquarters in Memphis,
26 Tennessee should be denied by this Court. No judicial efficiency would result since the majority
27 of SCO's witnesses are located in nearby Utah, and AutoZone subjected itself to this Court's
28

1 jurisdiction by incorporating in Nevada. A motion to transfer should be granted only if: (1) the
2 district to which the party seeks a transfer is a district where the suit might have been brought,
3 and (2) the convenience of the parties and witnesses and the interest of justice support the
4 transfer. See 28 U.S.C. § 1404(a). Such a transfer “should not be freely granted,” *Gherebi v.*
5 *Bush*, 352 F.3d 1278, 1303 (9th Cir. 2003) (quoting *Van Dusen v. Barrack*, 376 U.S. 612 (1964)),
6 and is permitted only to a *more* convenient forum, “not to a forum likely to prove equally
7 convenient or inconvenient.” *Id.* Moreover, the heavy burden of demonstrating that the transfer
8 is appropriate is squarely on AutoZone. *Id.* at 1302 (“The [movant] must make a strong showing
9 of inconvenience to warrant upsetting the plaintiff’s choice of forum.”).

12 A. AutoZone’s Motion to Transfer Should be Denied Because SCO Correctly Chose
13 to Vindicate its Legal Rights in the District of Nevada.

14 Under 28 U.S.C. § 1391(c), a corporate defendant is deemed a resident of any judicial
15 district in which it is subject to personal jurisdiction. It is undisputed that AutoZone is
16 incorporated in Nevada. SCO, which resides in Utah, properly chose to bring suit against
17 AutoZone in Nevada, because AutoZone is subject to personal jurisdiction in Nevada *and*
18 because SCO and its principal decision makers, and other witnesses are located in neighboring
19 Utah.
20

21 SCO’s choice to vindicate its rights in a particular court should not be lightly disturbed.
22 See *Gherebi*, 352 F.3d at 1303 (“[T]here is a strong presumption in favor of plaintiff’s choice of
23 forums.”) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)); see also *STX Inc. v. Trik*
24 *Stik, Inc.*, 708 F. Supp. 1551, 1555-56 (N.D. Cal. 1988) (“[A] defendant bears a heavy burden of
25 proof to justify the necessity of the transfer. The plaintiff’s choice of forum should not be easily
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2 overturned.”) (citing *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970), cert. denied,
3 401 U.S. 910 (1971)).

4 B. AutoZone’s Motion To Transfer Should Be Denied Because Neither Convenience
5 Nor Judicial Efficiency Are Served by Transferring the Action to Tennessee.

6 AutoZone’s motion completely ignores the fact that transferring this action to Tennessee
7 is inconvenient for SCO, which chose to vindicate its rights in Nevada. In evaluating a transfer
8 motion, courts consider the following three factors: (1) the convenience of the parties; (2) the
9 convenience of the witnesses; and (3) the interests of justice. See *Miracle Blade, LLC v.*
10 *Ebrands Commerce Group, LLC*, 207 F.Supp.2d 1136, 1155-56 (D. Nev. 2002).

11
12 AutoZone’s argument that the convenience of the parties requires transfer to the Western
13 District of Tennessee completely ignores the fact that it will be significantly less convenient for
14 SCO’s witnesses with knowledge who are located in Utah if this action is transferred. Section
15 1404(a) is not intended to merely shift the burden of inconvenience from one party’s witnesses to
16 the other. See *Gherebi*, 352 F.3d at 1303. Accordingly, there is no merit to AutoZone’s
17 convenience argument.

18
19 AutoZone also argues that its transfer motion should be granted because it claims that
20 “almost all” of AutoZone’s relevant documents related to this litigation are located in Memphis,
21 Tennessee. AutoZone does not, however, explain why this is significant. “[T]he fact that records
22 are located in a particular district is not itself sufficient to support a motion for transfer.” See
23 *Royal Queentex Enterprises Inc., v. Sarah Lee Corporation*, No. C-99-4787 MJJ, 2000 WL
24 246599 (N.D. Cal. March 1, 2000). Furthermore, courts have recognized, in the age of
25 electronic discovery, that the location of documents is a minor factor since documents are often
26 kept in electronic form and, in any event, are easily converted to electronic data which is
27 transmitted wherever needed. See, e.g., *Affymetrix v. Synteni, Inc.*, 28 F. Supp. 2d 192, 208 (D.
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Decl. 1998) (“while many (if not all) of the documents are located elsewhere, recent technological advances have reduced the weight of this factor to virtually nothing”); *Coker v. Bank of America*, 984 F. Supp. 757, 766 (S.D.N.Y. 1997) (“In today’s era of photocopying, fax machines and Federal Express, [defendant’s] documents easily could be sent to [the chosen forum]”); *Met-L-Wood Corp. v. SWS Industries, Inc.*, 594 F. Supp. 706, 710 (N.D. Ill. 1984) (document location not an important factor in transfer calculus absent substantial difficulties with transporting them).

Finally, AutoZone argues that its motion should be granted because transfer to Tennessee would serve judicial efficiency. (*See AZ, Transfer br. at 6*). Once again, AutoZone fails to address how transferring the case to Tennessee is more efficient than proceeding in Nevada . . . AutoZone’s state of incorporation and a forum in which it clearly expects, and consents, to be subject to suit. Again, AutoZone is only concerned with making it easier and less expensive for it to try this case, to the detriment of SCO – an outcome not intended by Section 1404(a).³

C. If This Court Is Inclined To Transfer the Action, It Should Be Transferred To Utah Not Tennessee.

Although SCO maintains that the Court should not transfer this action, should this Court elect to do so, SCO respectfully requests that this case be transferred to the District of Utah. The law is clear that this Court may, on its own initiative, *sua sponte* transfer this action to the District of Utah. *See Washington Public Utilities Group v. U.S. Dist. Court for Western Dist. of Washington*, 843 F.2d 319, 326 (9th Cir. 1987) (Section 1404(a) does not require that a formal motion be made for the court to decide that a change of venue is appropriate). Furthermore, if

³ Similarly, AutoZone’s additional argument that the Western District of Tennessee has fewer cases pending per judge than the District of Nevada at the current time is irrelevant given the fact that AutoZone admittedly seeks to stay this action wherever it is venued.

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2 necessary, SCO could move to transfer venue on convenience grounds under § 1404(a), even
3 though it had the original choice of forum. *See Ferens v. John Deere Co.*, 494 U.S. 516, 524
4 (1990) (recognizing plaintiff's right to move to transfer pursuant to § 1404(a)). *See Anadigics,*
5 *Inc. v. Raytheon Co.*, 903 F. Supp. 615, 617 (S.D.N.Y. 1995) (where defendant moved under
6 1404(a) to transfer to Massachusetts and plaintiff then moved to transfer to New Jersey,
7 defendant's motion to transfer constituted "changed circumstances," so plaintiff's motion was
8 proper).

9
10 This Court may transfer this action pursuant to Section 1404(a), because this action
11 "might have been brought" initially in the District of Utah. SCO has alleged in this action that
12 AutoZone illegally infringed upon its copyrights in violation of 28 U.S.C. § 1400(a). In a
13 copyright infringement action, venue is proper in *any* judicial district in which a defendant "may
14 be found." *See* 28 U.S.C. § 1400(a) ("Civil actions, suits, or proceedings arising under any Act
15 of Congress relating to copyrights . . . may be instituted in the district in which the defendant or
16 his agent resides or may be found."). As a practical matter, the test for venue in a copyright
17 action is identical to the test for determining personal jurisdiction. *See Milwaukee Concrete*
18 *Studios, Limited v. Field Manufacturing Company, Inc.*, 8 F.3d 441, 445 (7th Cir. 1993) ("Section
19 1400(a)'s 'may be found' clause has been interpreted to mean that a defendant is amenable to
20 personal jurisdiction in a particular forum.") Venue also may be appropriate in the district where
21 the infringement allegedly occurred. *See Eddy Clover Productions, Inc. v. NBC, Inc.*, 572 F.2d
22 119, 120-21 (3d Cir. 1978).

23
24
25 Convenience of the parties and witnesses and the interest of justice support a transfer of
26 venue to the District of Utah if any transfer is to occur. First, judicial efficiency will also be
27 served because actions involving related claims are already being litigated there. Second,
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1 transfer to Utah would be much more convenient for SCO and SCO's witnesses and documents
2 that reside there while at the same time it would be equally convenient to AutoZone and its
3 witnesses as Nevada where AutoZone chose to incorporate. Based on the forgoing, AutoZone's
4 motion to transfer should be denied.
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6 II. AUTOZONE'S MOTION TO STAY SHOULD BE DENIED.

7 A. Standard of Review.

8 AutoZone's motion to stay should also be denied because the prejudice to SCO would far
9 outweigh any judicial efficiency that might result from such a stay. To determine whether to
10 exercise its discretion to stay a federal action, this Court must first look to the potential prejudice
11 to the parties and, second, to the judicial efficiency that might result from a stay. *See Filtrol*
12 *Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1973) (citing *Landis v. North American Co.*, 299
13 U.S. 248, 254-55 (1936)).
14

15 With respect to the issue of prejudice, SCO initiated this litigation in federal court to
16 invoke the Court's jurisdiction and to seek damages and equitable remedies to protect itself from
17 what it alleges to be AutoZone's ongoing, widespread infringement of its intellectual property.
18 Staying this action would severely prejudice SCO by allowing AutoZone to continue to infringe
19 on its copyrights unimpeded for an unknown period of time without contributing any judicial
20 efficiency to the present action. Conversely, AutoZone has identified no prejudice from having
21 to defend itself now in this action. Thus, on the primary issue of prejudice, this factor clearly
22 weighs in favor of SCO - not AutoZone. *See, e.g., Dunn v. Airline Pilots Ass'n*, 836 F. Supp.
23 1574, 1584 (S.D. Fla. 1993) (movant must show "a clear case of hardship or inequity if the case
24 proceeds or little possibility the stay will harm others") (citing *Landis v. North American Co.*,
25 299 U.S. 248, 254-55 (1936)); *Jouker v. Murphy Motor Freight, Inc.*, 84 B.R. 537, 539 (N.D.
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2 Ind. 1987) (denying stay where stay could delay proceedings indefinitely to the prejudice of
3 plaintiff); *Valmar Distributors v. N.Y. Post Co.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993) (basic goal
4 of stay analysis is “to avoid prejudice”).

5
6 It is axiomatic that this Court has discretion concerning whether or not to stay
7 proceedings before it. This authority is incidental to the power inherent in every court to control
8 its docket. *See Landis*, 299 U.S. at 254. However, AutoZone, the party seeking a stay, bears the
9 burden of establishing its need. *See Clinton v. Jones*, 520 U.S. 681, 708 (1997) (“The proponent
10 of a stay bears the burden of establishing its need.”). Specifically, AutoZone must demonstrate
11 “a clear case of hardship or inequality” to itself if this action continues. *See Hertz Corp. v. The*
12 *Gator Corp.*, 250 F. Supp. 2d 421, 424-25 (D.N.J. 2003) (citing *Landis v. North American Co.*,
13 299 U.S. 248, 255 (1936)).⁴ If there is even a “possibility” that the stay would work damage on
14 SCO, the stay should be denied. *See Hertz Corp.*, 250 F. Supp. at 424-25; *accord Landis*, 299
15 U.S. at 255.

16
17 SCO’s right to proceed in this Court should not be denied “except under the most
18 extreme circumstances.” *GFI Advantage Fund, LTD v. Colkitt*, No. 02ms475, 2003 WL
19 21660058 (D.D.C. July 15, 2003) (quoting *Commodity Futures Trading Comm’n v. Chilcott*
20 *Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10th Cir. 1983)). Moreover, the mere fact that a
21 defendant has to defend claims against it does not constitute prejudice. *See Baychar, Inc. v.*
22

23
24 ⁴ *See also, Bayoil Supply & Trading of Bahamas v. Jorgen Jahre Shipping*, 54 Supp. 2d 691
25 (S.D. Tex. 1999) (a court should grant a discretionary stay only upon the showing of “something
26 close to genuine necessity”); *Dawn v. Mecom*, 520 F. Supp. 1194 (D. Colo. 1981) (denying stay
27 where related action sought only limited relief and would not necessarily resolve the claims at
28 issue in the federal action); *Federal Deposit Ins. Corp. v. First National Bank & Trust Co. of*
Oklahoma City, 496 F. Supp. 291 (W.D. Oklahoma 1978) (moving party must show “a pressing
need for delay and that the other party will not suffer harm from entry of the stay order”) (citing
Ohio Environmental Council v. U.S. District Court, Southern District of Ohio, Eastern Division,
565 F.2d 393 (6th Cir. 1977)).

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Frisby Technologies, No. 01-CV-28-B-S, 2001 WL 856626 * 10 (D. Me. July 26, 2001) (“Just because defending oneself in court takes money and time does not substantiate a motion to stay.”). Otherwise, a stay would be appropriate in every case. On the other hand, delaying a plaintiff’s ability to vindicate its rights in the forum of its choice to prevent infringement of its intellectual property does constitute prejudice which justifies denial of a motion for stay. See *Filtrol Corp.*, 467 F.2d at 244 (citing *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936)).

B. SCO Will Be Substantially Prejudiced If A Stay Is Granted.

This case alleges that AutoZone is infringing valid and valuable copyrights that SCO owns in the UNIX software by using and implementing Linux software in its business. It is well settled that infringement of copyrights such as alleged here constitutes irreparable harm that entitles the copyright holder to injunctive relief. See *Triad Systems Corporation v. Southeastern Express Company*, 64 F.3d 1330, 1335 (9th Cir. 1995) (“In a copyright infringement action . . . [a] showing of a reasonable likelihood of success on the merits raises a presumption of irreparable harm.”) Granting a stay under the procedural posture of the cases that AutoZone has relied upon would amount to giving AutoZone free license to continue to infringe upon SCO’s copyrights for the foreseeable future, while preventing SCO from even obtaining discovery concerning the breadth of such copyright infringements and the damages such infringements may have caused.

Remarkably, AutoZone has not identified any prejudice to it if this action proceeds. Accordingly, this Court need not even weigh the prejudice between the parties and must resolve the prejudice prong of the analysis in favor of SCO, the plaintiff, and allow this action to

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2 proceed. *See Valmar Distributors*, 152 F.R.D. at 39 (holding that the basic goal of stay analysis
3 is “to avoid prejudice”).

4 C. Judicial Efficiency Will Not Be Served By Staying This Litigation.

5
6 This Court need not reach the issue of judicial efficiency, because a stay would cause
7 prejudice to SCO while AutoZone has identified no prejudice to it from allowing this case to
8 proceed. Nevertheless, AutoZone has also failed to meet its burden to show that imposition of a
9 stay in this action would result in judicial efficiency. AutoZone’s arguments for judicial
10 efficiency do not support a stay and are, for the most part, illusory. AutoZone identifies three
11 other litigations that it claims are related to this action and that require this action to be stayed.
12 Those actions are: (1) the *Novell* action pending in federal court in Utah; (2) the *Red Hat* action
13 pending and stayed in federal court in Delaware; and (3) the *IBM* action pending in federal court
14 in Utah.
15

16 However, AutoZone’s papers make it clear that it does not intend to be bound by any
17 decision in SCO’s favor in *any* of the three actions it identifies. On the contrary, it intends to re-
18 litigate those issues before this Court. (*See AZ. Stay br.* at 9, n. 5) As explained below, none of
19 these actions are likely to be outcome determinative of issues in this litigation and, therefore,
20 staying this litigation in favor of those actions will not promote judicial efficiency.
21

22 I. SCO v. Novell

23 SCO originally filed the *Novell* action in state court in Utah to address actions by Novell
24 that SCO believes constituted slander of title. In that case, SCO claims that Novell has falsely
25 represented that it owns UNIX copyrights. Accordingly, factual issues concerning statements
26 relating to copyright ownership issues may be involved. But it is equally likely that the case may
27 be resolved by settlement or based on some factual or legal issue having nothing to do with
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2 copyright issues. For example, Novell has challenged whether or not SCO has made out
3 essential elements of the slander of title cause of action pertaining to issues such as special
4 damages and/or legal elements of slander. If the case is decided on these preliminary issues, the
5 court would not necessarily reach any issues even arguably related to the copyright ownership
6 issues that are at issue in this action. More importantly, AutoZone has stated that it will not be
7 bound by decisions as to ownership and enforcement issues if the *Novell* case is resolved in
8 SCO's favor because AutoZone is not a party to that action. (AZ. Stay br. at 9, n. 5) If
9 AutoZone is right about its ability to re-litigate the ownership issues in the *Novell* case, very
10 little, if any, judicial efficiency is likely to result if this action were to be stayed in favor of the
11 *Novell* action, and the prejudice to SCO of such a stay far outweighs any such judicial efficiency.
12

13
14 2. Red Hat v. SCO

15 AutoZone does not and cannot rely on the *Red Hat* declaratory judgment litigation to
16 support a stay in this case because the *Red Hat* litigation itself is stayed and it is unclear when or
17 how that action will proceed in the future. Presently, the *Red Hat* Court has elected to stay the
18 action *sua sponte* and asked the parties to report every 90 days on the progress in the *IBM*
19 litigation. Accordingly, it is uncertain at this time when, if ever, that action will go forward, and
20 its pendency should not be a basis at this time to stay the *AutoZone* action. Moreover, even if the
21 stay is ultimately lifted, as with the *Novell* and *IBM* litigations, the *Red Hat* litigation may be
22 resolved on legal or factual issues having nothing to do with the determinative issues in this case.
23 For example, the *Red Hat* case is a declaratory judgment action. SCO has defended this action, in
24 part, by asserting *Red Hat* has no reasonable apprehension of being sued. This defense could be
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2 dispositive, thereby precluding the *Red Hat* case from reaching the substance of the infringement
3 issues.⁵

4 Recognizing this, AutoZone instead relies upon arguments made to the *Red Hat* court
5 regarding the *IBM* litigation.⁶ However, as we show below, under the current posture of the *IBM*
6 litigation, those arguments are not a valid basis for a stay of this action.
7

8 3. SCO v. IBM

9 The *IBM* litigation pending in federal district court in Utah is, in large part, a breach of
10 contract action. The action, as it was filed originally, pertained primarily to IBM's alleged
11 unlawful distribution of original and/or derivative and other works in violation of SCO's UNIX
12 licenses. However, on March 29, 2004, almost one month *after* SCO filed this action against
13 AutoZone, IBM attempted to import copyright issues regarding the use by end-users of the Linux
14

15 ⁵ In fact, SCO has not sued Red Hat and as SCO has recently pointed out in its papers in
16 opposition to Red Hat's motion to reconsider the stay, Red Hat's Linux business has actually
17 substantially improved since the filing of its case, belying Red Hat's claim that SCO has
18 damaged its business.

19 ⁶ AutoZone argues that its motion is supported by an earlier statement by SCO in Red Hat that
20 the *IBM* case involved, at that time, "most if not all" of the copyright infringement issues at issue
21 in Red Hat. (See AZ. Stay br. at 8) (emphasis added). SCO continues to believe that the
22 potential copyright (and other even more basic) consequences for Linux of IBM's license
23 violations -- the contract violations at the center of the *IBM* case -- are of paramount importance
24 compared to the other potential infringement issues that affect Linux. That comparative fact was
25 true then and it remains true now -- and it remains true even though, since the time of SCO's
26 quoted statement to the Red Hat court, SCO has the opportunity for further investigation of
27 improper conduct affecting Linux independent of IBM's conduct. The fact that the impact on
28 Linux of IBM's conduct will be comparatively much greater does not mean that SCO may not
protect against violations of its rights by other parties *unrelated* to IBM's violations. Nor can it
mean that SCO may not, since the time of its quoted statement, engage in continuing
investigation and act on the results of that over time. In fact, IBM itself, recognizing the potential
impact of such further investigation, has now -- after the filing of the AutoZone case -- tried to
add a declaratory counterclaim that would add all of those additional issues to the *IBM* case.

1
2 software itself, including infringement and copying issues that had nothing to do with IBM's
3 contributions to Linux, into the *IBM* litigation.

4 SCO has moved to dismiss that claim (IBM's Tenth Counterclaim), *inter alia*, on the
5 basis that it is being litigated here in this first-filed action against AutoZone. Accordingly, it is at
6 best uncertain whether the copyright infringement claims to be litigated here will go forward at
7 all in the *IBM* litigation. But, whether or not this happens, it is clearly not a basis to stay this
8 action because SCO filed those claims first in this action and SCO, therefore, has a right to
9 litigate them in the court of its choice. "The first-to-file rule was developed to 'serve the purpose
10 of promoting efficiency well and should not be disregarded lightly.'" *Alltrade, Inc. v. Uniweld*
11 *Products, Inc.*, 946 F.2d 622, 625 (9th Cir. 1991) (quoting *Church of Scientology v. United States*
12 *Dep't of the Army*, 611 F.2d 738, 750 (9th Cir. 1979)).

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15 Also, as with the *Novell* and *Red Hat* actions, there are various procedural and
16 substantive issues that could resolve the *IBM* litigation without implicating issues to be litigated
17 in this case. The *IBM* litigation involves numerous claims such as licensing, interference with
18 contractual and prospective economic relations that are not at issue here. Accordingly, the
19 possibility that staying this action in favor of the *IBM* action would promote judicial efficiency is
20 dubious at best.

21
22 Finally, none of the cases relied upon by AutoZone supports entering a stay in this
23 litigation. Each case was stayed in favor of parallel litigations between the same parties and
24 involving identical or virtually identical issues. See *Mediterranean Enterprises, Inc. v.*
25 *Ssangyong Corporation*, 708 F.2d 1458 (9th Cir. 1983) (district court stayed the federal litigation
26 pending binding arbitration between the parties); *Cohen v. Carreon*, 94 F. Supp. 2d 1112 (D. Or.
27 2000) (district court stayed a federal litigation in Oregon in favor of a virtually identical
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2 litigation between almost identical parties that had been previously filed in California and to
3 which the plaintiff could not establish a prejudice as a result of the stay); *Gen-Probe, Inc. v.*
4 *Amoco Corporation*, 926 F. Supp. 948 (S.D. Cal. 1996) (district court stayed the federal
5 litigation between the parties pending resolution of a state case that had been filed two years
6 prior between the parties). Because the defendants in each of the stayed cases were parties to the
7 parallel litigations, issues of *res judicata* and judicial efficiency played a much more important
8 role in the district courts' balancing of the equities. While defendants in those cases were
9 seeking to avoid litigating similar issues twice in parallel actions, in this case AutoZone is
10 seeking to avoid litigating the issues even once.

11
12 Moreover, the one case AutoZone relies upon that is arguably legally and factually
13 similar to the case at hand, *Filtrol Corporation v. Kelleher*, 467 F.2d 242 (9th Cir. 1973), actually
14 supports denial of AutoZone's motion to stay. In *Filtrol*, the defendants in a California patent
15 infringement action argued that a negative outcome to the plaintiff in a similar action against a
16 different defendant pending in federal court in Connecticut with respect to the validity of the
17 patent would eliminate the necessity of the California action. *See id.* at 244. The district court
18 refused to stay the infringement issue simply because the patent validity issue was being litigated
19 in another federal court. *See id.* at 245. In affirming, the Ninth Circuit held that the district court
20 did not abuse its discretion and specifically noted that the pendency of the Connecticut action
21 would not guarantee that the patent validity issue would not be re-litigated in the California
22 action. *See id.*

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25 In short, there is no basis to delay this litigation. None of the other three litigations (to
26 which AutoZone is not a party) will necessarily resolve this matter. Moreover, as set forth at
27 length, the prejudice to SCO if the stay is granted far outweighs potential judicial efficiencies in
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this case.

III. AUTOZONE'S MOTION FOR A MORE DEFINITE STATEMENT SHOULD BE DENIED.

AutoZone's argument that SCO's complaint lacks the specificity required by Fed. R. Civ. P. 8(a) is without merit. "Rule 8(a)(2) requires only that the complaint include 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). "To be sufficient under Rule 8 a claim for infringement must state, *inter alia*, which specific original work is the subject of the copyright claim, that plaintiff owns the copyright, that the work in question has been registered in compliance with the statute and by what acts and during what time defendant has infringed the copyright." *Gee v. CBS, Inc.*, 471 F. Supp. 600, 643-44 (E.D. Pa. 1979).

SCO's complaint fully complies with Rule 8. The complaint identifies specific UNIX works that are the subject of the copyright claims, as well as the UNIX works' copy registration numbers. (See ¶¶ 15 -17). In addition, SCO specifically alleges ownership of those works. (See ¶¶ 11, 15). Finally, SCO alleges that AutoZone, by using and implementing the Linux operating system, has infringed, and continues to infringe, on SCO's UNIX copyrights. (See ¶¶ 13, 20-23).

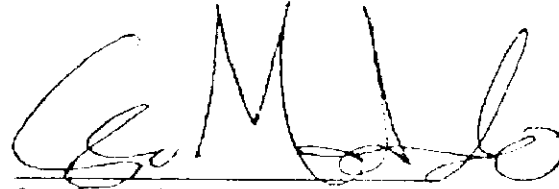
AutoZone's motion for a more definite statement pursuant to Fed. R. Civ. P. 12(e) is nothing more than an improper attempt to obtain discovery. However, "Rule 12(e) is designed to strike at unintelligibility, rather than want of detail." *Woods v. Reno Commodities, Inc.*, 600 F. Supp. 574, 580 (D. Nev. 1984). As such, "[a] motion for more definite statement should not be granted to require evidentiary detail that may be the subject of discovery." *See id.* This Court should reject AutoZone's attempts to exploit IBM's slanted characterizations of discovery issues

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2 in the *IBM* case to impact this Court's decision on AutoZone's motion. In fact, as AutoZone will
3 learn when it conducts appropriate discovery, SCO has fully complied with its obligations in the
4 *IBM* litigation by providing all information in its possession at this early stage of discovery
5 concerning IBM's improper contributions to Linux. Indeed, the Magistrate Judge in the *IBM* case
6 recognized this in a recent decision where she found that SCO has acted in "good faith" with
7 respect to such discovery.⁷ In short, AutoZone's professed need for the "details" of the "lines,
8 files, or organization of Linux code" that is the subject of the litigation is precisely the purpose of
9 discovery, not the purpose of a motion for a more definite statement. Because there is nothing
10 "unintelligible" about SCO's complaint, AutoZone's motion for a more definite statement should
11 be denied. *See id.*
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26 ⁷ At this early stage of discovery in the *IBM* case, although SCO has identified numerous
27 specific examples of improper contributions by IBM to Linux, SCO has been prevented from
28 identifying all possible infringements based on IBM contributions because IBM has, thus far, not
produced all versions of its AIX operating system which was derived from UNIX. These
versions are not publicly available.

1
2 CONCLUSION

3 For all of the foregoing reasons, SCO respectfully request that this Court deny
4 AutoZone's motions in their entirety.
5

6
7 

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION was hand-delivered on this 24th day of

May, 2004, to the following:

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Hon. Robert C. Jones

July 30, 2004

Page 2

2. Discovery by AutoZone.

AutoZone is demanding that the Order include a provision that it be permitted concurrent discovery at the same time as SCO is conducting the limited discovery ordered by the Court. Again, the transcript of Your Honor's ruling nowhere states that AutoZone will be permitted such discovery and, therefore, such a provision does not belong in the Order on that ground alone. (See, e.g., Tr. at 22, Ln 12-19.) Furthermore, given the limited time for discovery that the Court has permitted to require SCO to be responding to discovery from AutoZone would needlessly complicate and burden the parties and interfere with the procedure that we believe the Court intended. This is particularly so where the Court clearly intended SCO to decide whether or not to move for a preliminary injunction after discovery was concluded. In the event SCO were to elect not to move for a preliminary injunction, the discovery by AutoZone would be superfluous. Equally important, AutoZone moved for a stay on the basis that it does not want to spend needless resources litigating claims that may not need to be litigated. It is totally inconsistent with that position for AutoZone to now wish to conduct discovery with respect to a preliminary injunction that may never be filed. Although the Court did not order that AutoZone should have discovery, SCO has offered to agree that AutoZone may have discovery (if the Court believes this is appropriate) if and when SCO elects to file a preliminary injunction. At that point, AutoZone will know precisely what the basis is for seeking the preliminary injunction and can target its discovery to those issues which are actually before the court. SCO has agreed that it would not seek a decision on its preliminary injunction motion if it files one until AutoZone has had a reciprocal opportunity to conduct discovery into these issues. While the Court did not order this, we have included this in the proposed Order submitted in the event the Court determines that such discovery would be appropriate for the reasons discussed.

3. Motion To Transfer

At the argument, the Court on several occasions stated its reluctance to transfer this matter to the Western District of Tennessee. In particular, specifically the Court stated in Tr. at 13 Ln. 5-6; Tr. at 14, Ln. 1-6 ("but I'm not too enamored with the idea of sending it to Tennessee"). The Court further stated that the Court was in an excellent position to capably manage and try this action. (Tr. at p. 8 Ln. 16-23.) The Court also indicated some possibility that it might consider transferring the action to Utah. (Tr. at 14, Ln. 1-2.) Based on these statements, SCO believes that the appropriate provision in an Order should include a statement that AutoZone's motion to transfer the matter to the Western District of Tennessee was denied and that we should provide the Court with a choice as to whether such denial was with or without prejudice. The parties were not completely clear on the Court's position in this regard. AutoZone took the position the

Hon. Robert C. Jones
July 30, 2004
Page 3

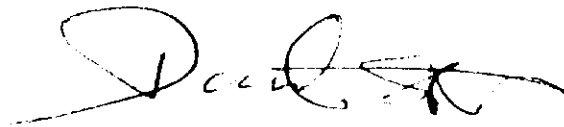
decision was clearly without prejudice and wished the Order to so read. Our proposed Order gives the Court the choice to deal with this motion in the appropriate manner. However, we would respectfully submit that given the fact that the issue has been fully argued and the Court has elected not to transfer the matter to Tennessee and has, instead, directed that SCO may conduct discovery and both parties were ordered to submit status letters to the Court, that it is the Court's intention not to transfer this matter to Tennessee. Our proposed Order leaves open the possibility that the Court may at some later date transfer the matter to Utah.

4. Motion For More Definite Statement

AutoZone's motion for more definite statement was clearly made as an alternative to its motion for a stay. AutoZone clearly stated in the papers that were submitted to the Court that, if a stay was granted, it would not seek a more definite statement. Accordingly, it is SCO's position that, in light of the Court's grant of AutoZone's motion for a stay, its motion for a more definite statement has been denied. AutoZone disagrees with this position.

Other than the items set forth above, the parties are essentially in agreement as to all other aspects of the Order, including timeframes for SCO's discovery for the filing of SCO's motion if it elects to do so and to the number of depositions. We respectfully request that the Court determine which Order more clearly reflects its ruling as expressed in the enclosed transcript and advise the parties as to how it wishes them to proceed.

Respectfully submitted,



David S. Stone

DSS/r
Enclosure
cc: Michael Kenny, Esq.

14 days following the dates on which SCO's status letters are due to the court in the *Red Hat* case.

2. Notwithstanding the stay of this case, the court will allow the parties to take limited expedited discovery related to the issue of preliminary injunctive relief.

3. Discovery and briefing shall occur according to the following schedule and limitations:

(a) SCO shall have 30 days from the date of this Order to propound discovery pursuant to Federal Rules of Civil Procedure.

(b) All relevant party and non-party discovery must be completed within 90 days of the date of this Order.

(c) The parties may take no more than six depositions each, including 30(b)(6) and third party depositions.

(d) If SCO elects to file a motion, it shall advise AutoZone of such intention within ten (10) days following the close of discovery described above and shall serve AutoZone with a summary statement of the facts upon which it will seek preliminary injunctive relief and the nature of such relief.

(e) AutoZone will then have 60 days from the date of receipt of SCO's statement to conduct limited discovery. Such discovery shall be limited to the issues identified in SCO's statement of its claim. Following the conclusion of such reciprocal discovery, SCO shall have twenty (20) days to file its motion for preliminary injunction.

(f) AutoZone shall have 33 days from the date of service of a motion for preliminary injunction to file a brief in opposition to SCO's motion for preliminary injunction.

The motion will thereafter be scheduled by the court for hearing at the court's earliest opportunity.

(g) Defendant AutoZone's alternative motion for a more definitive statement is denied in light of the Court's grant of its motion for a stay.

(h) Defendant AutoZone's motion to transfer this matter pursuant to 28 U.S.C. § 1404(c) to the Western District of Tennessee is denied with prejudice/without prejudice.

SO ORDERED, this _____ day of July, 2004.

ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

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4th Floor
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Re: *The SCO Group v. AutoZone, Inc.*

Dear David:

We are serving the following documents this afternoon:

- Defendant AutoZone, Inc.'s First Interrogatories to Plaintiff The SCO Group, Inc.
- Defendant AutoZone, Inc.'s First Requests for Production of Documents and Things to Plaintiff The SCO Group, Inc.
- Notice of 30(b)(6) Deposition of Plaintiff The SCO Group, Inc.

We have tentatively noticed the 30(b)(6) deposition for October 13, 2004. Nevertheless, we anticipate that the parties will discuss and agree upon a date that is mutually convenient for the parties and witnesses. Please let us know what dates in mid to late October work for you and your client.

In addition to the 30(b)(6) deposition, we will want to take the depositions of Darl McBride and Chris Sontag. (We may also have other depositions we wish to take after we receive your client's responses to our first set of discovery requests, but these are two individuals that we know in particular we will want to depose.) We would like to take these depositions on consecutive days within the last two weeks of October in Las Vegas. Please give us several available dates, and we will confirm dates and send out appropriate notices.

Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
704-444-1000
Fax 704-444-2111

90 Park Avenue
New York, NY 10016
212-210-9400
Fax 212-210-9444

3201 Beechleaf Court, Suite 600
Raleigh, NC 27604-1062
919-862-2200
Fax 919-862-2260

601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, DC 20004-2601
202-756-3300
Fax 202-756-3333

David S. Stone, Esq.
September 1, 2004
Page 2

With regard to Jim Greer, I have contacted him for available dates, and will get back with you as soon as I have heard from him.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Stewart". The signature is stylized and somewhat cursive.

David J. Stewart

CAR:ms

cc: Michael P. Kenny, Esq.
Christopher A. Riley, Esq.

ATL01/11729893v1

SCHRECK BRIGNONE
300 South Fourth Street
Suite 1200
Las Vegas, Nevada 89101
(702) 382-2101

1 James J. Pisanelli
2 Nevada Bar No. 4027
3 Nicki L. Wilmer
4 Nevada Bar No. 6562
5 SCHRECK BRIGNONE
6 300 South Fourth Street, Suite 1200
7 Las Vegas, Nevada 89101
8 (702) 382-2101

6 Michael P. Kenny, Esq.
7 James A. Harvey, Esq.
8 David J. Stewart, Esq.
9 Christopher A. Riley, Esq.
10 Douglas L. Bridges, Esq.
11 ALSTON & BIRD LLP
12 1201 W. Peachtree Street
13 Atlanta, Georgia 30309-3424
14 (404) 881-7000

12 Attorneys for Defendant AutoZone, Inc.

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 THE SCO GROUP, INC.)
16 a Delaware Corporation)
17 Plaintiff,) Civil Action File No.
18 v.)
19 AUTOZONE, INC.) CV-S-04-0237-RCJ-LRL
20 a Nevada Corporation)
21 Defendant.)

22 **DEFENDANT AUTOZONE, INC.'S FIRST INTERROGATORIES TO**
23 **PLAINTIFF THE SCO GROUP, INC.**

24 Pursuant to Rule 33 of the Federal Rules of Civil Procedure (hereinafter
25 "FRCP"), Defendant AutoZone, Inc. ("AutoZone" or "Defendant") requests that
26 Plaintiff The SCO Group, Inc. ("SCO" or "Plaintiff") respond to the following
27 interrogatories. In accordance with FRCP 33, each interrogatory is to be answered
28 fully and in writing under oath within thirty (30) days after service hereof.

1 Each interrogatory is addressed to the knowledge of SCO, as well as to
2 knowledge, information or documents in the possession, custody or control of SCO
3 and SCO's attorneys, accountants, agents, employees, or officers.

4 INSTRUCTIONS AND DEFINITIONS

5 AutoZone incorporates herein by reference each of the Instructions and
6 Definitions contained in Defendant AutoZone, Inc.'s First Requests for Production
7 of Documents and Things to Plaintiff The SCO Group, Inc., served concurrently
8 herewith. Each of the Definitions apply with respect to each of the following
9 interrogatories, and each of the terms defined therein, when used in any interrogatory
10 below, shall have the meaning given therein.

11 INTERROGATORIES

12
13 1. Identify with specificity each copyrighted work that you allege
14 AutoZone has infringed, including, but not limited to, each of the works identified in
15 Paragraph 2 of SCO's Injunctive Relief Statement. For source code, identify the
16 specific lines of code that you allege AutoZone has infringed. For non-source code,
17 identify the specific lines or sections of the materials that you allege AutoZone has
18 infringed.
19

20
21 2. For each line of code identified in response to Interrogatory No. 1, (a)
22 identify all products in which, in whole or in part, the code is included or on which,
23 in whole or in part, the code is based, and (b) identify whether SCO has ever
24 distributed the source code under the GPL, LGPL or any other open source license,
25 and if so, the circumstances and license under which it was distributed or otherwise
26 made available.
27
28

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Las Vegas, Nevada 89101
(702) 382-2101

1 3. Identify the author(s) of each work identified in response to
2 Interrogatory No. 1 above.

3 4. Describe in detail when and how SCO obtained ownership of the
4 copyright of each work identified in response to Interrogatory No. 1 above.

5 5. Identify by registration number the United States copyright
6 registration for each copyrighted work identified in response to Interrogatory No. 1
7 above.

8 6. Describe with specificity how AutoZone has infringed the copyright
9 in each work identified in response to Interrogatory No. 1 above.

10 7. Identify the date when SCO first learned that AutoZone was
11 migrating, or had migrated, from OpenServer to Linux.

12 8. Identify the date when SCO first learned that AutoZone had allegedly
13 infringed each of the copyrighted works identified in response to Interrogatory No. 1
14 above.

15 9. Describe in detail all harm that you are suffering as a result of each
16 alleged act of infringement identified in response to Interrogatory No. 6 above.

17 10. Identify all persons who have knowledge or information regarding the
18 creation of the works identified in response to Request No. 1 above, and describe in
19 detail the substance of each person's knowledge.

20 11. Identify all persons who have knowledge or information regarding
21 your ownership of the copyrights identified in response to Request No. 1 above, and
22 describe in detail the substance of each person's knowledge.

23 12. Identify all persons who have knowledge or information regarding
24 your claims that AutoZone has infringed the copyrights identified in response to
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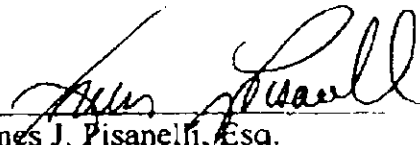
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300 South Fourth Street
Suite 1200
Las Vegas, Nevada 89101
(702) 382-2101

1 Interrogatory No. 1 above, including, without limitation, each of the SCO employees
2 referenced in lines 7 & 8 of Paragraph 2 of SCO's Injunctive Relief Statement, and
3 describe in detail the substance of each person's knowledge.

4 13. Identify all facts, documents and other information in your
5 possession, custody or control that support your stated belief that "it is reasonably
6 likely that AutoZone copied SCO's copyright material during the migration process
7 in violation of its contracts with SCO and in violation of Federal Copyright laws," as
8 stated in Paragraph 2 of SCO's Injunctive Relief Statement, and identify all
9 individuals with knowledge of the same.

10 14. Identify each expert witness that you will call to provide testimony on
11 your behalf in support of your anticipated motion for preliminary injunction, and, for
12 each such expert, state the subject matter and a summary of each such expert's
13 testimony.
14
15

16 This 1st day of September, 2004.

17
18 
19 James J. Pisanello, Esq.
20 Nicki L. Wilmer, Esq.
21 SCHRECK BRIGNONE
22 300 South Fourth Street, Suite 1200
23 Las Vegas, Nevada 89101
24 (702) 382-2101

25
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Attorneys for Defendant
AutoZone, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing
DEFENDANT AUTOZONE, INC.'S FIRST INTERROGATORIES TO
PLAINTIFF THE SCO GROUP, INC. upon all counsel of record addressed as
follows:

Stanley W. Parry, Esq.
Glenn M. Machado, Esq.
CURRAN & PARRY
300 South Fourth Street, Suite 1201
Las Vegas, Nevada 89101
(Via Hand Delivery)

David S. Stone, Esq.
Robert A. Magnanini, Esq.
BOIES, SCHILLER & FLEXNER LLP
150 John F. Kennedy Parkway, 4th Floor
Short Hills, New Jersey 07078
(Via Hand Delivery)

Stephen N. Zack, Esq.
Mark J. Heise, Esq.
BOIES, SCHILLER & FLEXNER, LLP
Bank of America Tower
1000 South East 2nd Street, Suite 2800
Miami, Florida 33131
(Via First Class Mail)

This 1st day of September, 2004.


An employee of Schreck Brignone

SCHRECK BRIGNONE
300 South Fourth Street
Suite 1200
Las Vegas, Nevada 89101
(702) 382-2101

1 James J. Pisanelli
2 Nevada Bar No. 4027
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4 Nevada Bar No. 6562
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9 Michael P. Kenny, Esq.
10 James A. Harvey, Esq.
11 David J. Stewart, Esq.
12 Christopher A. Riley, Esq.
13 Douglas L. Bridges, Esq.
14 ALSTON & BIRD LLP
15 1201 W. Peachtree Street
16 Atlanta, Georgia 30309-3424
17 (404) 881-7000

18 Attorneys for Defendant AutoZone, Inc.

19 UNITED STATES DISTRICT COURT
20 DISTRICT OF NEVADA

21 THE SCO GROUP, INC.)
22 a Delaware Corporation)
23)
24 Plaintiff,) Civil Action File No.
25 v.)
26) CV-S-04-0237-RCJ-LRL
27 AUTOZONE, INC.)
28 a Nevada Corporation)
29)
30 Defendant.)

31 **DEFENDANT AUTOZONE, INC.'S FIRST REQUESTS FOR PRODUCTION**
32 **OF DOCUMENTS AND THINGS TO PLAINTIFF THE SCO GROUP, INC.**

33 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure
34 (hereinafter "FRCP"), Defendant AutoZone, Inc. ("AutoZone") hereby serves these
35 requests for the production of documents and things upon Plaintiff The SCO Group,
36 Inc. ("SCO") ("Plaintiff" or "SCO"). In accordance with FRCP 34, AutoZone
37
38

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Las Vegas, Nevada 89101
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1 requests that SCO respond to these Requests for Production within thirty (30) days
2 after service hereof and that SCO produce the documents identified below for
3 inspection and copying by AutoZone's attorneys at the offices of Alston & Bird,
4 LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia
5 30309-3424, or at such other place as may be agreed upon by counsel for the parties.
6

7 Each Request for Production set forth below is addressed to the knowledge of
8 SCO, as well as to knowledge, information and documents in the possession, custody
9 or control of SCO and SCO's attorneys, accountants, agents, employees, or officers.

10 DEFINITIONS

11 The following definitions apply with respect to each of the following requests
12 for production and each of the terms defined below, when used in any request for
13 production, shall have the meaning given herein:
14

15 (1) "You", "your", "SCO", or "Plaintiff" means and includes The
16 SCO Group, Inc., any parent, subsidiary, affiliate, successor or predecessor-in-
17 interest thereof, and each of their present and former officers, directors, agents,
18 employees, attorneys, accountants, investigators, consultants or other persons acting
19 or purporting to act for them or on their behalf.
20

21 (2) "AutoZone" or "Defendant" means and includes AutoZone,
22 Inc., any parent, subsidiary, affiliate or related company thereof, and any
23 predecessor-in-interest thereof.

24 (3) "Document" means and includes all documents and things
25 covered by Rule 34 of the FRCP and shall have the broadest meaning proscribed
26 therein.
27
28

1 (4) "Person" means and includes natural persons, individuals,
2 firms, corporations, partnerships, proprietorships, joint ventures, unincorporated
3 associations, government agencies, and all other organizations and entities of any
4 type.

5 (5) "Entity" means and includes corporations, companies,
6 businesses, partnerships, proprietorships, or trade names.

7 (6) The term "identify" has the following meanings in the
8 following contexts:

9 (a) When used with respect to a person or persons,
10 "identify" means to provide each such person's name, last known residence
11 address, last known business address, home telephone number, work telephone
12 number, employer, and place of employment.

13 (b) When used with respect to a place, "identify" means
14 to provide the address, city or town, county, and state where that place is located.

15 (c) When used with respect to a document, "identify"
16 means to provide that document's current location, author and date, the identity of
17 each recipient, and the subject of the document.

18 (7) The term "relate to" shall be construed as to include
19 indicating, referring to, mentioning, reflecting, pertaining to, evidencing, involving,
20 describing, discussing, supporting, or contradicting.

21 (8) The term "each" includes the word "every" and "every"
22 includes the word "each." The term "any" includes the word "all" and "all" includes
23 the word "any." The terms "and" as well as "or" shall be construed either
24

1 disjunctively or conjunctively so as to bring within the scope of the request responses
2 that might otherwise be construed to be outside the scope.

3 (9) The singular and masculine form of any word shall embrace,
4 and shall be read and applied as embracing, the plural, the feminine and the neuter.

5 (10) The use of a verb in any tense shall be construed as the use of
6 the verb in all other tenses, wherever necessary to bring within the scope of the
7 interrogatory or request for production all responses that might otherwise be
8 construed to be outside the scope.

9 (11) "AutoZone's First Interrogatories" means Defendant
10 AutoZone, Inc.'s First Interrogatories to Plaintiff The SCO Group, Inc., served
11 simultaneously herewith.

12 (12) "SCO's Injunctive Relief Statement" means SCO's Statement
13 of Basis for Claim for Preliminary Injunctive Relief and Nature of Relief served on
14 AutoZone on August 30, 2004.

15
16
17 **INSTRUCTIONS**

18 Discovery on the merits is limited at this time to SCO's claims that AutoZone
19 infringed SCO copyrights when AutoZone migrated from OpenServer to Linux.

20 Accordingly, the scope of documents and information requested in all of AutoZone's
21 discovery requests is limited at this time to SCO's claims of copyright infringement
22 related to AutoZone's migration to Linux.

23
24 **REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

25 1. One copy of each work identified in response to Interrogatory No. 1
26 of AutoZone's First Interrogatories. For computer code, provide copies of the
27 relevant source and object code.
28

1 2. Documents that reflect or relate to SCO's claims that it owns the
2 copyrights in each of the works, or the relevant sections of the works, identified in
3 response to Interrogatory No. 1 of AutoZone's First Interrogatories.

4 3. All correspondence between SCO and any third party, including but
5 not limited to Novell, Inc., relating to SCO's claims that it owns the copyrights in the
6 works identified in response to Interrogatory No. 1 of AutoZone's First
7 Interrogatories.

8 4. Copies of the certificates of registration for each registration
9 identified in response to Interrogatory No. 5 of AutoZone's First Interrogatories.

10 5. Copies of the applications for registration of each work identified in
11 response to Interrogatory No. 1 of AutoZone's First Interrogatories, including
12 supporting deposit materials.

13 6. All documents, including analyses, that evidence or relate to your
14 claims that the works, or relevant portions thereof, that you identified in response to
15 Interrogatory No. 1 of AutoZone's First Interrogatories are subject to protection
16 under the Copyright Act.

17 7. All documents that evidence, reflect, or relate to each act or instance
18 of alleged copying or infringement of your works by AutoZone.

19 8. All documents that refer, reflect, or relate to AutoZone's use of Linux
20 or its migration from OpenServer to Linux.

21 9. All documents that reflect or regard correspondence or
22 communications to or from AutoZone relating to Linux, and all notes and
23 memoranda regarding or relating to the same.

24 10. Copies of any license agreements between SCO and AutoZone.
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11. Documents reflecting or relating to when SCO first learned of AutoZone's alleged acts of infringement of SCO's copyrights.

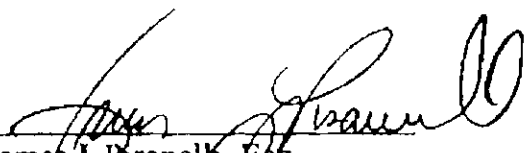
12. Documents evidencing or relating to any harm that SCO alleges it will suffer if AutoZone is not preliminarily enjoined from its purported acts of copyright infringement.

13. Statements of any witness who is identified in response to any of AutoZone's First Interrogatories.

14. All documents, including correspondence, sent to or received from any witness you intend to call as an expert in connection with your motion for preliminary injunction.

15. All documents referenced or relied upon by any witness you intend to call as an expert in connection with your motion for preliminary injunction.

This 1st day of September, 2004.


James J. Disanelk, Esq.
Nicki L. Wilmer, Esq.
SCHRECK BRIGNONE
300 South Fourth Street, Suite 1200
Las Vegas, Nevada 89101
(702) 382-2101

Attorneys for Defendant
AutoZone, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing
DEFENDANT AUTOZONE, INC.'S FIRST REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS TO PLAINTIFF THE SCO GROUP, INC. upon
all counsel of record addressed as follows:

Stanley W. Parry, Esq.
Glenn M. Machado, Esq.
CURRAN & PARRY
300 South Fourth Street, Suite 1201
Las Vegas, Nevada 89101
(Via Hand Delivery)

David S. Stone, Esq.
Robert A. Magnanini, Esq.
BOIES, SCHILLER & FLEXNER LLP
150 John F. Kennedy Parkway, 4th Floor
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Stephen N. Zack, Esq.
Mark J. Heise, Esq.
BOIES, SCHILLER & FLEXNER, LLP
Bank of America Tower
1000 South East 2nd Street, Suite 2800
Miami, Florida 33131
(Via First Class Mail)

This 1st day of September, 2004.


An employee of Schreck Brignone

SCHRECK BRIGNONE
300 South Fourth Street
Suite 1200
Las Vegas, Nevada 89101
(702) 382-2101

1 James J. Pisanelli
Nevada Bar No. 4027
2 Nicki L. Wilmer
3 Nevada Bar No. 6562
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8 Christopher A. Riley, Esq.
Douglas L. Bridges, Esq.
9 ALSTON & BIRD LLP
10 1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
11 (404) 881-7000

12 Attorneys for Defendant AutoZone, Inc.

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 THE SCO GROUP, INC.)
16 a Delaware Corporation)
17)
Plaintiff,) Civil Action File No.
18 v.)
AUTOZONE, INC.) CV-S-04-0237-RCJ-LRL
19 a Nevada Corporation)
20)
21 Defendant.)

22 **NOTICE OF 30(b)(6) DEPOSITION OF**
23 **PLAINTIFF THE SCO GROUP, INC.**

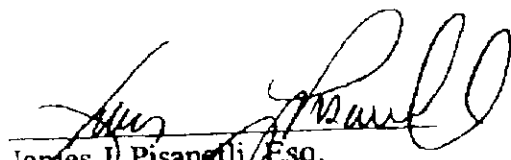
24 Defendant AutoZone, Inc. ("AutoZone") hereby gives notice that, pursuant to
25 Rule 30(b)(6) of the Federal Rules of Civil Procedure, it will take the deposition
26 upon oral examination of Plaintiff The SCO Group, Inc. ("SCO") through one or
27 more of its officers, directors, managing agents, or other persons who consent to
28

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300 South Fourth Street
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Las Vegas, Nevada 89101
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1 testify on its behalf and who are most knowledgeable with respect to the topics set
2 forth in Exhibit "A" attached hereto. The deposition will commence at 9:00 a.m. on
3 October 13, 2004 at the offices of Schreck Brignone, 300 South Fourth Street, Suite
4 1200, Las Vegas, Nevada 89101 and will continue from time to time and day to day
5 until completed. The deposition will be taken before a notary public or other officer
6 duly authorized by law to administer oaths.
7

8 Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, SCO is
9 required to designate one or more persons who will testify to the matters known or
10 reasonably available to SCO regarding each of the subjects set forth on the attached
11 Exhibit "A."
12

13 This 1st day of September, 2004.

14 
15 James J. Pisanelli, Esq.
16 Nicki L. Wilmer, Esq.
17 SCHRECK BRIGNONE
18 300 South Fourth Street, Suite 1200
19 Las Vegas, Nevada 89101
20 (702) 382-2101

21 Attorneys for Defendant
22 AutoZone, Inc.
23
24
25
26
27
28

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300 South Fourth Street
Suite 1200
Las Vegas, Nevada 89101
(702) 382-2101

1 AutoZone incorporates by reference herein the Instructions and Definitions
2 contained in AutoZone's First Requests for Production of Documents and Things to
3 Plaintiff The SCO Group, Inc.

4 **EXHIBIT "A"**

5
6 1. Identification of the specific copyrights that SCO contends that
7 AutoZone has infringed, including the copyrights identified in SCO's Injunctive
8 Relief Statement.

9 2. SCO's acquisition, ownership and licensing of the copyrights SCO
10 contends that AutoZone has infringed, including the copyrights identified in SCO's
11 Injunctive Relief Statement.

12 3. The functionality of any source or object code that SCO contends that
13 AutoZone has copied or otherwise infringed.

14 4. The creation of any source or object code that SCO contends that
15 AutoZone has copied or otherwise infringed.

16 5. How AutoZone has allegedly infringed each of SCO's copyrights,
17 including the copyrights identified in SCO's Injunctive Relief Statement.

18 6. The date(s) when SCO first learned that AutoZone was allegedly
19 infringing SCO's copyrights, including copyrights identified in SCO's Injunctive
20 Relief Statement.

21 7. The factual investigation SCO performed in advance of filing this
22 action against AutoZone.

23 8. The harm that SCO is suffering as a result of AutoZone's alleged acts
24 of infringement.

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9. SCOSource and the SCO Intellectual Property License Program.

10. AutoZone's migration from OpenServer to Linux.

11. Communications between AutoZone and SCO, or any of its predecessors, regarding Linux.

12. Communications between AutoZone and SCO, or any of its predecessors, regarding Unix or OpenServer.

13. The terms of the OpenServer and/or Linux license agreements between SCO and AutoZone.

14. Identification and authentication of each document produced in response to AutoZone's First Requests for Production of Documents and Things to Plaintiff The SCO Group, Inc.

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CERTIFICATE OF SERVICE

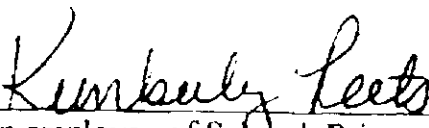
I hereby certify that I have this day served a copy of the within and foregoing
NOTICE OF DEPOSITION OF PLAINTIFF THE SCO GROUP, INC. upon all
counsel of record addressed as follows:

Stanley W. Parry, Esq.
Glenn M. Machado, Esq.
CURRAN & PARRY
300 South Fourth Street, Suite 1201
Las Vegas, Nevada 89101
(Via Hand Delivery)

David S. Stone, Esq.
Robert A. Magnanini, Esq.
BOIES, SCHILLER & FLEXNER LLP
150 John F. Kennedy Parkway, 4th Floor
Short Hills, New Jersey 07078
(Via Hand Deliver)

Stephen N. Zack, Esq.
Mark J. Heise, Esq.
BOIES, SCHILLER & FLEXNER, LLP
Bank of America Tower
1000 South East 2nd Street, Suite 2800
Miami, Florida 33131
(Via First Class Mail)

This 1st day of September, 2004.


An employee of Schreck Brignone

SCHRECK BRIGNONE
300 South Fourth Street
Suite 1200
Las Vegas, Nevada 89101
(702) 382-2101

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 THE SCO GROUP, INC.,)
4 a Delaware corporation.)

5 Plaintiff.)

6 v.)

7 AUTOZONE, INC.,)
8 a Nevada corporation.)

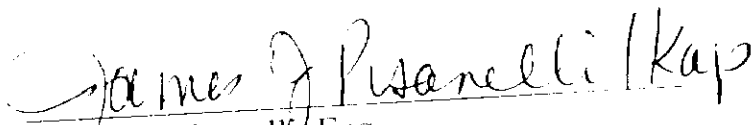
9 Defendant.)

Case Number: CV-S-04-0237-RCJ-(LRI)

10 RECEIPT OF COPY

11 RECEIPT OF COPY of the documents is hereby acknowledged this 30th day of August
12 30, 2004:

13
14 1. **STATEMENT OF BASIS FOR CLAIM FOR PRELIMINARY INJUNCTIVE
15 RELIEF AND NATURE OF RELIEF**

16
17 

18 James J. Pisanello Esq.
19 State Bar No. 4027
20 Nikki L. Wilmer
21 State Bar No. 6562
22 SCHRECK BRIGNONE
23 300 South Fourth Street, Ste. 1200
24 Las Vegas, Nevada 89101
25 Attorneys for Autozone, Inc.

26 Douglas Bridges, Esq.
27 ALSTON & BIRD, LLP
28 One Atlantic Center
1201 Peachtree Street
Atlanta, Georgia 30309-3424
Attorneys for Autozone, Inc.

300 SOUTH FOURTH STREET
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(702) 471-7000

Stanley W. Parry, Esq.
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Glenn M. Machado, Esq.
State Bar No. 7802
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300 South Fourth Street, Suite 1201
Las Vegas, Nevada 89101
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE SCO GROUP, INC.,
a Delaware corporation,

Plaintiff,

v.

AUTOZONE, INC.,
a Nevada corporation,

Defendant.

**STATEMENT OF BASIS FOR
CLAIM FOR PRELIMINARY
INJUNCTIVE RELIEF AND
NATURE OF RELIEF**

Civil Action File No.

CV-S-04-0237-RCJ-LRL

Pursuant to the Court's Order dated August 6, 2004, the Plaintiff, SCO Group, Inc. ("SCO") hereby serves upon Defendant AutoZone, Inc. ("AutoZone") its Statement of Basis for Claim for Preliminary Injunctive Relief and Nature of Relief as follows:

1. In its August 6, 2004 Order, the Court stayed all discovery on SCO's claims in the above-referenced matter with the limited exception of discovery concerning AutoZone's migration from a Unix Operating System to a Linux Operating System. The

Court has permitted SCO to conduct limited expedited discovery on this issue in order to determine whether or not to file a motion for preliminary injunctive relief.

Migration from Unix to Linux

2. SCO is informed and believes that AutoZone may have infringed SCO's copyrights in various SCO Software Products including, without limitation, SCO's OpenServer version of Unix. SCO is informed and believes that AutoZone's servers and other hardware were migrated from SCO's Software Products to the Linux Operating System. Santa Cruz Operations ("old SCO"), a predecessor in interest to SCO, provided consulting services on-site to AutoZone between 1998 and 2000 and became familiar with the hardware and software utilized by AutoZone in its business. Based upon SCO's employees' knowledge of the AutoZone System, SCO is informed and believes that AutoZone "copied"¹ certain copyrighted material contained in SCO's Software including, without limitation, SCO's static shared libraries during its transition to Linux. At least one of the versions of OpenServer utilized by AutoZone operates using static shared libraries. In order to cause Linux to function effectively with legacy applications previously designed for OpenServer Software, SCO believes that it is reasonably likely that AutoZone copied SCO's copyrighted material during the migration process in violation of its contracts with SCO and in violation of Federal Copyright laws. Specifically, SCO is informed and believes that AutoZone has infringed the following

¹ The term "copying" as used herein includes verbatim copying of code or man pages, and copying where the resulting product is substantially similar to the original considering structure, sequence and organization, and other non-literal elements of the code. In addition to copying, SCO's rights may be violated by preparation of derivative works based on the original, gaining beneficial use of the copyrighted materials through interfaces or other means supplied by third parties, or any other act which interferes with the exclusive rights of the copyright owner protected under 17 U.S.C. §106.

SCO copyrights pertaining to code used in or with Open Server versions 5.0.2, 5.0.4 and 5.0.5: TX 5 750-268, TX 5 763-235, TX 2 611-860 and TX 2 605-292.

SCO is further informed and believes that it is reasonably likely that AutoZone has also improperly used and/or copied the following additional copyrighted code and manuals during and after the migration process:

- (a) Dynamic shared libraries;
- (b) Dynamic linking code;
- (c) Kernel optimization features;
- (d) Documentation pertaining to the above including, without limitation, manual pages.

This list is not exhaustive and SCO reserves the right to supplement it in accordance with the rules once SCO has had an opportunity to conduct discovery.

Potential Injunctive Relief

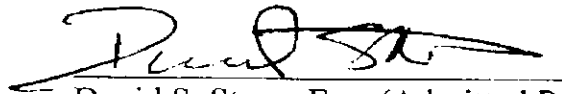
3. Under applicable law in this Circuit, any use of copyrighted materials i.e., source code and manuals, in a way that is inconsistent with exclusive rights of the copyright owner protected under 17 U.S.C.A §106, constitutes a prima facie copyright infringement. See, e.g., MAI Sys. Corp. v. Peak Computer, Inc., 991F.2d 511, 519 (9th Cir. 1993). Furthermore, irreparable harm is presumed and it is not a defense that the defendant could have paid a royalty. See Cadence Design Systems, Inc. v. Avant! Corp., 125 F.3d 824, 827 (9th Cir. 1997) (“It is well settled that availability of money damages does not rebut the presumption of irreparable harm in a copyright case”).

4. Pursuant to the Court's Order, SCO intends to conduct limited discovery into the above issues in order to determine whether or not, under the circumstances, an application for a Preliminary Injunction is warranted.

5. In the event SCO determines Preliminary Relief is warranted, SCO will seek a Preliminary Injunction enjoining AutoZone from using any of the copyrighted materials identified in its motion pending final resolution of this action.

Dated: August 30, 2004

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