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12
13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 THE SCO GROUP, INC.) Case No.: 2:04-cv-0237-RCJ-GWF
16)
Plaintiff,) **DEFENDANT AUTOZONE, INC.’S**
17) **ANSWER TO PLAINTIFF’S FIRST**
v.) **AMENDED COMPLAINT**
18)
19 AUTOZONE, INC,) **(JURY DEMAND)**
Defendant.)
20)
21)

22 Defendant AutoZone, Inc. (“AutoZone”), for its Answer and Affirmative Defenses to the
23 First Amended Complaint of Plaintiff The SCO Group, Inc. (“SCO”), responds as follows:

24 **I. NATURE OF THIS ACTION**

- 25 1. AutoZone admits that it uses one or more versions of the Linux operating system.
26 AutoZone denies each and every remaining allegation contained in Paragraph 1.
27 2. AutoZone denies the allegations contained in Paragraph 2.
28

1 3. AutoZone admits that SCO purports to bring claims under the Copyright Act and
2 contract law but denies that any of SCO’s legal rights have been violated or that SCO is entitled to
3 any relief on its claims. AutoZone denies each and every remaining allegation contained in
4 Paragraph 3.

5 **II. PARTIES, JURISDICTION AND VENUE**

6 4. AutoZone admits the allegations contained in Paragraph 4.

7 5. AutoZone admits the allegations contained in Paragraph 5.

8 6. AutoZone denies that this Court has jurisdiction over SCO’s claims related to
9 UNIX System V and UnixWare. AutoZone is without knowledge or information sufficient to
10 form a belief as to whether this Court has subject matter jurisdiction over SCO’s claims as alleged
11 in Paragraph 6, and the same is therefore denied.

12 7. AutoZone admits the allegations contained in Paragraph 7.

13 8. AutoZone admits the allegations contained in Paragraph 8, however, AutoZone
14 denies that this District is the most convenient forum as no relevant witnesses or documents are
15 located in this District.

16 **III. FACTUAL BACKGROUND**

17 9. AutoZone admits the allegations contained in Paragraph 9.

18 10. AutoZone is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in Paragraph 10, and the same are therefore denied.

20 11. AutoZone admits that the UNIX operating system was developed at least in part by
21 AT&T Bell Laboratories and that AT&T at least in part developed updated versions of the UNIX
22 operating system. AutoZone denies each and every remaining allegation contained in Paragraph
23 11.

24 12. AutoZone admits that AT&T licensed UNIX to third parties. AutoZone is without
25 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
26 contained in Paragraph 12, and the same are therefore denied.

27 13. AutoZone is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in Paragraph 13 and the same are therefore denied.

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1 14. AutoZone admits that Novell acquired certain rights from AT&T related to the
2 UNIX operating system, including certain copyrights. AutoZone denies each and every remaining
3 allegation contained in Paragraph 14.

4 15. AutoZone denies the allegations contained in Paragraph 15.

5 16. AutoZone admits that the Federal District Court for the District of Utah ruled on
6 summary judgment on August 10, 2007 in the *Novell v. SCO* litigation. AutoZone states that the
7 court’s order speaks for itself; however, contrary to SCO’s allegation, the Court ruled that SCO
8 does NOT own rights to UNIX. AutoZone further admits that SCO appealed the district court’s
9 decision to the United States Court of Appeals for the Tenth Circuit and also admits that oral
10 arguments were held on that appeal on May 6, 2009. AutoZone denies each and every remaining
11 allegation contained in Paragraph 16.

12 17. AutoZone admits the allegations contained in Paragraph 17.

13 18. AutoZone is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in Paragraph 18 and the same are therefore denied.

15 19. AutoZone is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in Paragraph 19 and the same are therefore denied.

17 20. AutoZone admits that it has used and copied Linux in certain of its business
18 operations. AutoZone further admits that it continues to use and copy Linux in connection with its
19 business operations. AutoZone denies each and every remaining allegation contained in Paragraph
20 20.

21 21. AutoZone denies that Santa Cruz purchased the UNIX technology from Novell, Inc.
22 or that SCO acquired this technology from Santa Cruz. AutoZone is without knowledge or
23 information sufficient to form a belief as to the truth of the remainder of the allegations contained
24 in Paragraph 21, and the same are therefore denied.

25 22. AutoZone is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in Paragraph 22 and the same are therefore denied.

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1 23. AutoZone admits that Santa Cruz and AutoZone entered into an Authorized
2 Industry Reseller Agreement on May 14, 1990. AutoZone responds that the language of the AIRA
3 speaks for itself.

4 24. AutoZone responds that the language of the AIRA speaks for itself, but AutoZone
5 denies the allegations contained in the first sentence of Paragraph 24.

6 25. AutoZone admits the allegations contained in Paragraph 25.

7 26. AutoZone is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in Paragraph 26 and the same are therefore denied.

9 27. AutoZone responds that the language of the CSLA speaks for itself.

10 28. AutoZone responds that the language of the CLSA speaks for itself, but AutoZone
11 denies the allegations contained in the second sentence of Paragraph 28.

12 29. AutoZone is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in Paragraph 29, and the same are therefore denied.

14 30. AutoZone is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in the first sentence of Paragraph 30, and the same are therefore
16 denied. AutoZone denies each and every remaining allegation contained in Paragraph 30.

17 31. AutoZone admits that on August 6, 2004, this Court allowed the parties to take
18 limited expedited discovery. AutoZone further admits that certain SCO compiled programs were
19 discovered on AutoZone’s servers during discovery. AutoZone admits that once discovered, these
20 programs were deleted and/or replaced with Linux compiled versions of the files. AutoZone
21 denies each and every remaining allegation contained in Paragraph 31.

22 32. AutoZone admits that its 30(b)(6) representative provided the testimony cited in
23 Paragraph 32, and responds that such testimony speaks for itself. AutoZone denies each and every
24 remaining allegation contained in Paragraph 32.

25 33. AutoZone denies that it violated SCO’s alleged contract and copyright rights as set
26 forth in Paragraph 33.

27 a. Answering the allegations of Paragraph 33(a), AutoZone admits that in
28 October 2004, upon searching its AutoZone store servers, 1,681 COFF files

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were found on 387 machines. AutoZone denies each and every remaining allegation contained in Paragraph 33(a) and further denies SCO’s legal rights have been violated or that SCO is entitled to any relief on its claim.

b. Answering the allegations of Paragraph 33(b), AutoZone admits the allegations in Paragraph 33(b) but denies SCO’s legal rights have been violated or that SCO is entitled to any relief on its claim.

c. Answering the allegations of Paragraph 33(c), AutoZone admits that it used CompX and DecompX on certain machines in its stores. Because AutoZone does not have the source code for these third-party programs, it is without knowledge or information as to the truth of the allegation that these programs contained proprietary SCO code and this allegation is therefore denied. AutoZone further admits that it deleted the CompX and DecompX files in October 2004. AutoZone admits that upon deletion, the replenishment system, a program used by AutoZone store servers to order and receive new inventory from distribution centers, failed in 650 of its stores. AutoZone denies each and every remaining allegation contained in Paragraph 33(c) and further denies SCO’s legal rights have been violated or that SCO is entitled to any relief on its claim.

d. Answering the allegations of Paragraph 33(d), AutoZone admits that its machine load computer had a program on it called dexpan.d.x that was compiled under OpenServer. AutoZone denies each and every remaining allegation contained in Paragraph 33(d) and further denies SCO’s legal rights have been violated or that SCO is entitled to any relief on its claim.

e. Answering the allegations of Paragraph 33(e), AutoZone admits that 1,130 SCO compiled programs were loaded onto its Spirit Server. AutoZone denies each and every remaining allegation contained in Paragraph 33(e) and further denies SCO’s legal rights have been violated or that SCO is entitled to any relief on its claim.

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f. Answering the allegations of Paragraph 33(f), AutoZone admits that fifteen SCO Extensible Linking Format and Xenix files were identified on AutoZone’s store load machine. AutoZone further admits that its counsel stated that “these files likely also exist on all 3,500 AutoZone store servers.” AutoZone denies each and every remaining allegation contained in Paragraph 33(f) and further denies SCO’s legal rights have been violated or that SCO is entitled to any relief on its claim.

g. Answering the allegations of Paragraph 33(g), AutoZone admits that it has a Linux development machine known as “Wrangler.” AutoZone is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33(g) and the same are therefore denied. AutoZone further denies SCO’s legal rights have been violated or that SCO is entitled to any relief on its claim.

h. Answering the allegations of Paragraph 33(h), AutoZone admits that it utilized a machine called Vision to test certain of its programs during its migration to Linux. AutoZone denies each and every remaining allegation contained in Paragraph 33(h). AutoZone further denies SCO’s legal rights have been violated or that SCO is entitled to any relief on its claim.

34. AutoZone admits that certain persons involved in the Linux migration did not directly consult copyright counsel or review licenses when making the transition to Linux, nor were they obligated to do so. AutoZone denies each and every remaining allegation contained in Paragraph 34.

- 35. AutoZone denies the allegations contained in Paragraph 35.
- 36. AutoZone denies the allegations contained in Paragraph 36.
- 37. AutoZone denies the allegations contained in Paragraph 37.
- 38. AutoZone denies the allegations contained in Paragraph 38.
- 39. AutoZone denies the allegations contained in Paragraph 39.
- 40. AutoZone denies the allegations contained in Paragraph 40

FIRST CAUSE OF ACTION

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41. AutoZone repeats and realleges its answers to Paragraph 1 - 40 as though fully set forth herein.

42. AutoZone denies the allegations contained in Paragraph 42.

43. AutoZone is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 and the same are therefore denied.

44. AutoZone is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 and the same are therefore denied.

45. AutoZone denies the allegations contained in Paragraph 45

46. AutoZone is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 and the same are therefore denied.

47. AutoZone states that Paragraph 47 contains purported statements of law, and, as such, neither an admission or denial is required as to these statements.

48. AutoZone is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 and the same are therefore denied.

49. AutoZone denies the allegations contained in Paragraph 49.

50. AutoZone admits that it implemented one or more versions of the Linux operating system. AutoZone denies each and every remaining allegation contained in Paragraph 50.

51. AutoZone denies the allegations contained in Paragraph 51.

52. AutoZone denies the allegations contained in Paragraph 52.

53. AutoZone admits that it does not own any copyright to the Copyrighted Materials. AutoZone is uncertain as to what the phrase “as part of a Linux implementation” means and as such AutoZone is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 and the same are therefore denied. AutoZone denies each and every remaining allegation contained in Paragraph 53.

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1 54. AutoZone denies the allegations contained in Paragraph 54.

2 55. AutoZone denies the allegations contained in Paragraph 55.

3 56. AutoZone denies the allegations contained in Paragraph 56.

4 **SECOND CAUSE OF ACTION**

5 57. AutoZone repeats and realleges its answers to Paragraph 1-56 as though fully set
6 forth herein.

7 58. AutoZone denies the allegations contained in Paragraph 58.

8 59. AutoZone denies the allegations contained in Paragraph 59.

9 60. AutoZone denies the allegations contained in Paragraph 60.

10 Except as expressly admitted, AutoZone denies each and every allegation contained in
11 SCO's First Amended Complaint.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST DEFENSE**

14 SCO has failed to state a claim upon which relief can be granted.

15 **SECOND DEFENSE**

16 SCO's claims are barred, in whole or in part, by the doctrine of laches.

17 **THIRD DEFENSE**

18 SCO's claims are barred, in whole or in part, by the doctrine of collateral estoppel.

19 **FOURTH DEFENSE**

20 SCO's claims are barred because one or more of the copyright registrations upon which it
21 relies are invalid.

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FIFTH DEFENSE

1
2 AutoZone’s alleged use of the Copyrighted Material is lawful use based on agreements and
3 licenses with third-parties.

4 DATED this 31st day of August, 2009.

5 /s/ Nikki L. Wilmer

6 James J. Pisanelli

7 Nevada Bar. No. 4027

8 Nikki L. Wilmer

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CERTIFICATE OF SERVICE

I am employed by the law firm of Brownstein Hyatt Farber Schreck, LLP in Clark County. I am over the age of 18 and not a party to this action. My business address is 100 City Parkway, Suite 1600, Las Vegas, Nevada 89106-4614.

On the August 31, 2009, I served the document(s), described as: **DEFENDANT AUTOZONE, INC'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT (JURY DEMAND)**

by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows:

a. **ECF System** (*You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary*)

b. **BY U.S. MAIL.** I deposited such envelope in the mail at Las Vegas, Nevada. The envelope(s) were mailed with postage thereon fully prepaid.

I am readily familiar with Brownstein Hyatt Farber Schreck, LLP. practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

c. **BY PERSONAL SERVICE.**

d. **BY DIRECT EMAIL**

e. **BY FACSIMILE TRANSMISSION**

I declare under penalty of perjury that the foregoing is true and correct.

Date: August 31, 2009

/s/ Carol E. Jorvig
An employee of Brownstein Hyatt Farber Shreck, LLP

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