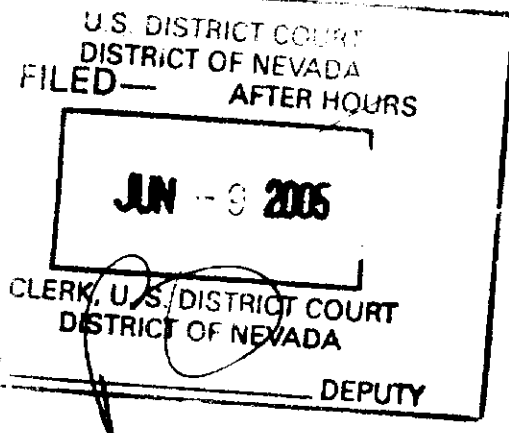


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10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

12 THE SCO GROUP, INC. )  
13 a Delaware Corporation )  
14 Plaintiff, )  
15 v. )  
16 AUTOZONE, INC. )  
a Nevada Corporation )  
17 Defendant. )

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

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18 **DEFENDANT'S RESPONSE TO PLAINTIFF'S DISCOVERY REPORT**

19 On May 27, 2005, Plaintiff The SCO Group, Inc. ("SCO") filed a document with the  
20 Court entitled "Report of Plaintiff The SCO Group, Inc. Regarding Discovery Pursuant to the  
21 Order of the Court Dated August 6, 2004" (the "SCO Report"). SCO contends that the SCO  
22 Report is submitted pursuant to the terms of the Court's August 6 Order; however, the SCO  
23 Report is in no way properly responsive to the Court's Order. SCO's decision not to pursue a  
24 motion for preliminary injunction against Defendant AutoZone, Inc. ("AutoZone") renders this  
25 case stayed pursuant to the Court's August 6 Order. Thus, no reason exists for SCO to have  
26 submitted discovery to the Court at this time or to have filed a lengthy brief that argues the  
27 merits of its claims.  
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1 AutoZone is reluctant to respond to SCO's unnecessary filing. Nevertheless, because the  
2 SCO Report contains numerous material misstatements of the record and attempts to improperly  
3 impugn AutoZone's reputation to the Court, AutoZone is compelled to file this Response to  
4 correct the record.

5 **I. PROCEDURAL AND FACTUAL BACKGROUND**

6 SCO purports to own the copyright in a computer operating system known as UNIX.  
7 AutoZone formerly used a version of the UNIX operating system known as "OpenServer" that  
8 AutoZone licensed from SCO on its store servers. As a result of an announcement by SCO in  
9 1999 that it would no longer support the OpenServer system, AutoZone decided to switch its  
10 store servers to the competing Linux operating system. This migration process took  
11 approximately three years and was completed in 2003.

12 SCO filed this lawsuit against AutoZone on March 3, 2004, alleging that AutoZone's use  
13 of Linux infringes copyrights that SCO purports to own in the code for UNIX System V and  
14 various supporting materials. At the time it filed this case, three cases involving SCO were  
15 already pending in federal courts in Utah and Delaware that involve seminal issues of fact and  
16 law also at issue in this case; namely, whether SCO owns the copyright in UNIX and whether  
17 Linux infringes UNIX. On April 23, 2004, AutoZone moved to stay this case pending resolution  
18 of the prior filed cases.

19 In its opposition to AutoZone's motion, SCO contended that AutoZone had infringed  
20 SCO's purported copyrights in OpenServer "static shared libraries" when AutoZone converted  
21 from OpenServer to Linux. (Hearing on Motion to Stay Transcript pg. 17, ln. 19 – pg. 18, ln. 3.)  
22 SCO further contended that these alleged infringements were not at issue in the other federal  
23 court actions. (Id.)

24 In an Order dated August 6, 2004, the Court stayed this action pending resolution of the  
25 three prior filed cases; however, the Court permitted SCO to take expedited discovery for the  
26 limited purpose of determining whether it needed to file a motion for preliminary injunction.  
27 Through extensions, SCO had until May 30, 2005 to decide whether to file a preliminary  
28 injunction motion. Nothing in the August 6 Order or any subsequent orders of the Court

1 requested or envisioned that SCO would file a document with the Court that reported on what  
2 SCO discovered during the expedited discovery process if SCO elected not to move for a  
3 preliminary injunction (which SCO has elected not to do), and nothing in the Court's orders  
4 requested or anticipated that SCO would file deposition transcripts and other discovery with the  
5 Court if SCO elected not to so move.<sup>1</sup> Indeed, SCO's filing of such materials violates the  
6 provision in Local Rule 26-8 that "[u]nless otherwise ordered by the court, written discovery,  
7 including responses thereto, and deposition transcripts, shall not be filed with the court."

8 The SCO Report contains numerous material misstatements of the facts discovered  
9 during discovery and omits certain facts necessary to understand the proper factual and legal  
10 significance of the facts discovered. AutoZone is loathe to file with the Court yet another  
11 unnecessary document in light of the stay that is now in place; nevertheless, because SCO has  
12 attempted to impugn AutoZone's reputation to the Court and argue the facts and merits of the  
13 case through its Report, AutoZone believes it has no alternative but to respond.

14 In an effort to limit the amount of information that the Court needs to review to  
15 appreciate the inaccuracies in the SCO Report, AutoZone has addressed in summary fashion  
16 below the more significant misstatements contained in the Report. For the sake of completeness,  
17 AutoZone has included a discussion of additional, but less significant, inaccuracies in the  
18 document attached as Exhibit A.

## 19 II. CLARIFICATION OF THE RECORD

### 20 A. AutoZone Has at All Times Been Candid and Truthful With the Court and SCO

21 When this case began, AutoZone's software developers understood that they had properly  
22 migrated all of AutoZone's applications to Linux by recompiling the applications under Linux.  
23 All statements that AutoZone made to the Court at the outset of this case regarding the nature of  
24 AutoZone's migration from UNIX to Linux were truthful to the best of AutoZone's knowledge  
25 and understanding at the time made.

---

26  
27 <sup>1</sup> The August 6 Order states only that "SCO will file its motion for preliminary injunction  
28 and supporting memorandum of authorities within twenty days after the conclusion of  
discovery." Order dated August 6, 2004.

1           Upon in-depth analysis of its servers as a result of the discovery process, AutoZone  
2 discovered that there were a limited number of programs that had been errantly copied to its store  
3 server image that were old OpenServer compiled programs. Because these programs had been  
4 compiled under OpenServer, they included copies of certain SCO libraries (an issue that is  
5 discussed in detail in Section B below). AutoZone further discovered a limited number of old  
6 Xenix files that it did not need, was not using, and that had been copied by mistake to  
7 AutoZone's store server image (these issues are also addressed further in Section B below).

8           As soon as AutoZone discovered these facts, it promptly reported the same to SCO.  
9 Significantly, AutoZone made no attempt to hide the fact that its original representations were  
10 incorrect. To the contrary, AutoZone went well beyond its discovery obligations by repeatedly  
11 volunteering information to SCO as a part of the discovery process that AutoZone could well  
12 have left for SCO to attempt to discover on its own. (*See e.g.* Letter from David Stewart dated  
13 October 27, 2004, attached as Exhibit B hereto and Letter from David Stewart dated  
14 November 24, Exhibit B to Declaration of David S. Stone accompanying the SCO Report.)

15           In short, AutoZone has been truthful with both the Court and SCO to the best of  
16 AutoZone's knowledge, information and belief at all times in this litigation. Moreover, not only  
17 has AutoZone discharged its obligations in this case in good faith, it has exceeded the  
18 requirements of the discovery process in an attempt to expedite discovery and resolve these  
19 issues as efficiently as possible.<sup>2</sup>

20 **B. SCO Materially Overstated the Nature of the Alleged Unauthorized Copying at**  
21 **Issue.**

22           SCO contends that AutoZone has copied tens of thousands "of what SCO believes to be  
23 programs containing SCO proprietary code." (SCO Report at 2.) The implication of this and  
24

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25 <sup>2</sup> SCO's counsel asserts in the SCO Report that AutoZone hampered SCO's discovery  
26 efforts by refusing to produce relevant source code. This assertion is simply untrue. On  
27 October 27, 2004, *more than seven months ago*, AutoZone produced all source code that it had in  
28 its possession for all AutoZone programs that are on its store servers. (*See* Letter of David J.  
Stewart to David Stone dated October 27, 2004 discussing and forwarding the requested source  
code, included in Exhibit B hereto).

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1 similar representations in the SCO Report is that AutoZone has copied tens of thousands of SCO  
2 programs or files. In reality, the expedited discovery process revealed the existence of only a  
3 handful of unique SCO files on AutoZone's servers, and AutoZone has licenses to use virtually  
4 every one of these files.

5 Most of SCO's claims are premised on the allegation that AutoZone is running programs  
6 on its Linux servers that include copies of OpenServer libraries. As set forth in more detail in  
7 Exhibit A, AutoZone's intention in its migration from OpenServer to Linux was to recompile all  
8 of its application programs using a Linux compiler so that none of those programs would contain  
9 any OpenServer libraries. (Celmer Deposition 26:5-13, attached hereto as Exhibit C.) AutoZone  
10 was surprised to find when it analyzed its servers during discovery that approximately 127  
11 programs existed on its store servers (out of thousands of programs on AutoZone's typical store  
12 server) that were compiled under OpenServer and therefore included SCO libraries. (See Letter  
13 from David Stewart dated October 27, 2004.) Of these programs, only two appear to have been  
14 used on any of AutoZone's servers at any time since the migration process was completed:  
15 CompX, and DecompX. Since they had not been used, the remainder of the 127 programs clearly  
16 were copied by mistake to the store servers. Out of all of the OpenServer compiled programs  
17 that AutoZone discovered on its servers, AutoZone's initial analysis indicates that only  
18 approximately twenty OpenServer libraries were included in the programs.

19 This state of affairs is further underscored by the fact that, as soon as AutoZone  
20 discovered the existence of the SCO compiled programs, it immediately deleted or recompiled  
21 the programs. Significantly, AutoZone was under no legal obligation to delete or recompile most  
22 of the programs because it has valid and subsisting licenses to continue to use them.

23 By virtue of its purchase of a license for a software developer's kit from SCO, AutoZone  
24 is licensed to develop programs, compile them under OpenServer and copy the resulting  
25 programs on computers running any operating system. Additionally, AutoZone purchased end  
26 user licenses from SCO to use SCO compiled code on more than 2900 computers. These  
27 licenses cover the vast majority of the copies about which SCO complains in the SCO Report to  
28 the Court. Thus, AutoZone's deletion or recompilation of the programs discovered in the

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1 expedited discovery process was almost entirely an accommodation to SCO, and furthermore not  
2 an action that AutoZone was legally obligated to undertake.

3 Finally, and most importantly, the totality of the facts revealed in the expedited discovery  
4 process has made abundantly clear that any copying that occurred was mistaken and resulted  
5 from the complexities of a huge project to transition AutoZone's operating system, rather than  
6 SCO's implication of an institutional intent on the part of AutoZone to inappropriately benefit  
7 from SCO's alleged proprietary rights.

8 C. **SCO's Allegations of Proprietary Rights are Subject to Significant Question**

9 The SCO Report contends that it has uncovered "extensive copying" of "SCO proprietary  
10 OpenServer code." (SCO Report at 2). Despite this broad assertion, there may in fact be nothing  
11 that SCO owns -- since the copyrightability of the materials is subject to question, and if the  
12 materials are found to be copyrightable, there is significant dispute as to the nature and extent of  
13 SCO's ownership rights in them. Also, there is substantial reason to believe that the libraries  
14 may not be subject to protection under U.S. copyright laws on functionality or other grounds.  
15 (See AutoZone's Memorandum of Law in Support of Its Motion to Stay or, in the Alternative,  
16 Motion for a More Definite Statement, at 16.)<sup>3</sup>

17 Even assuming for purposes of argument that any of the SCO code is subject to copyright  
18 protection, there is no evidence in the record that SCO owns the copyright and this is also the  
19 subject of significant dispute.<sup>4</sup> There is also the very real possibility that the code is in the public  
20 domain. AutoZone expects to explore both of these issues extensively (among others) if the

21  
22 <sup>3</sup> AutoZone has not evaluated this issue for itself because SCO has not produced the source  
23 code for the libraries to AutoZone as a result of the parties' agreement that SCO would not have  
24 to respond to AutoZone's discovery requests unless SCO elected to move for a preliminary  
25 injunction.

26 <sup>4</sup> Novell and SCO agree that SCO could only own the copyright in UNIX System V if  
27 Novell assigned those rights to SCO pursuant to an Asset Purchase Agreement dated  
28 December 6, 1995 or by a later executed amendment to this agreement. In *The SCO Group, Inc.*  
*v. Novell*, No. 2:04CV00139 (D.Utah), Novell contends that this agreement does not assign the  
copyright to SCO. If Novell is adjudged to be correct, and if the OpenServer libraries at issue in  
this case are entirely UNIX System V libraries, then SCO would not own the copyright in the  
libraries.

1 issues in this case are not resolved by the *Novell*, *IBM* and/or *Red Hat* cases, and AutoZone  
2 expects that one or both of these issues will be fatal to SCO's claims. Thus, given that SCO's  
3 claims that AutoZone has copied "proprietary" SCO code are unsupported by any evidence in the  
4 record and are further the subject of significant legal and factual questions, to waive the  
5 conclusory wand of copyright infringement over the results of limited discovery as SCO has  
6 done in its Report is wholly inappropriate.

7 **D. SCO's Ad Hominem Attacks on Jim Greer are Inappropriate and Unfounded**

8 Jim Greer is a developer who was previously employed by AutoZone and who was  
9 responsible for AutoZone's initial actions to port AutoZone's code from OpenServer to Linux.  
10 Mr. Greer left AutoZone in January 2002, before the migration process was completed. For  
11 reasons that AutoZone fails to understand, SCO perceived the need in its Report to level  
12 unfounded attacks on Mr. Greer's veracity – a third party with no interest in this litigation.

13 In footnote 3 of its Report, SCO insinuates that Mr. Greer misrepresented the facts in a  
14 pre-litigation Internet post when he stated that AutoZone had not copied SCO libraries in  
15 AutoZone's migration to Linux and that Mr. Greer recanted those alleged misrepresentations in  
16 his deposition. (See SCO Report at 5, n.3.) What the record in fact reflects is that Mr. Greer  
17 testified that AutoZone's objective was to recompile all AutoZone programs under Linux such  
18 that none of the programs would include any SCO libraries when the migration was completed.  
19 (Greer Deposition 43:2 – 46:19, attached hereto as Exhibit D.) When Mr. Greer made his  
20 Internet post, it was his understanding that this objective had been met. Mr. Greer only later  
21 discovered, as a result of AutoZone's investigations in this case, that some pre-migration  
22 OpenServer compiled programs had been copied errantly to the store server image.  
23 Significantly, all of this copying occurred after Mr. Greer's AutoZone's employ. Accordingly,  
24 Mr. Greer would have had no way of knowing about the errant copying when he made his  
25 Internet post. Mr. Greer's Internet post was therefore wholly truthful to the best of his  
26 knowledge and information at the time made, and SCO's ad hominem attacks on Mr. Greer's  
27 veracity are utterly unfounded.

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III. CONCLUSION

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After more than a year of litigation, the evidentiary posture of this case is identical to the *IBM* case. Despite SCO's wide ranging claims in the *IBM* case that Linux infringes UNIX, SCO has still failed to identify even a single line of Linux code in that case that infringes UNIX. The absence of such evidence prompted Judge Kimball to write in an Order entered on February 5, 2005, that it is "astonishing" that SCO had not offered "any competent evidence" to create a disputed fact regarding SCO's allegations that IBM has infringed SCO's alleged copyrights through IBM's Linux activities.<sup>5</sup>

In this case, despite nine months of discovery, SCO is unable to establish that code found on AutoZone's computers infringes any code in which SCO can legitimately claim to own any rights it could assert against AutoZone. This would appear to be one of the principle reasons SCO decided not to file a motion for preliminary injunction against AutoZone, in addition to the fact that any claim for preliminary injunction would be moot because AutoZone voluntarily deleted all SCO compiled code from its servers as an accommodation to SCO.

Regardless of why SCO elected not to move for a preliminary injunction, no legitimate reason existed for SCO to file its Report with the Court. The Report was unnecessary and contained numerous misstatements and omissions. Because of SCO's decision not to move for a preliminary injunction, AutoZone submits that all issues in this case are now properly stayed

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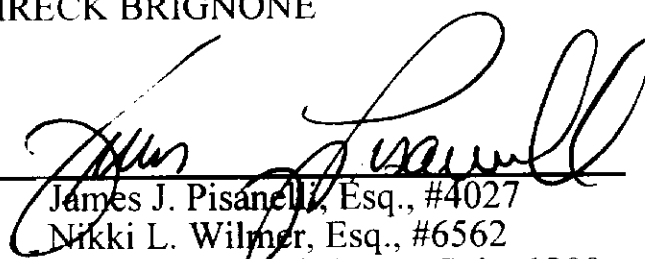
<sup>5</sup> Judge Kimball noted in the same order that SCO "chose to cavalierly ignore IBM's claims that SCO could not create a disputed fact regarding whether it even owned the relevant copyrights." Nevertheless, the Court resisted the "temptation to grant IBM's motion" and held that summary judgment was premature because of ongoing discovery in the case. *The SCO Group v. International Business Machines Corp.*, No. 2:03CV294 (D.Utah), Memorandum and Order dated February 9, 2005, pg. 10.

1 pending the resolution of the related *IBM*, *Novell*, and *RedHat* cases without need for further  
2 briefing by either party regarding any issue.

3 DATED this 9th day of June, 2005.

4 SCHRECK BRIGNONE

5  
6 By:



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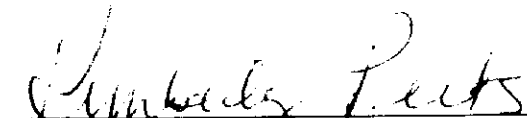
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANT**  
3 **AUTOZONE, INC.'S RESPONSE TO PLAINTIFF'S DISCOVERY REPORT** upon all  
4 counsel of record by depositing copies of the same in the United States mail with adequate postage  
5 affixed thereon, or hand-delivered, addressed as follows:

6 Stanley W. Parry, Esq.  
7 Glenn M. Machado, Esq.  
8 CURRAN & PARRY  
9 300 South Fourth Street, Suite 1201  
10 Las Vegas, Nevada 89101  
11 (*Hand-delivered*)

12 Stephen N. Zack, Esq.  
13 Mark J. Heise, Esq.  
14 BOIES, SCHILLER & FLEXNER, LLP  
15 Bank of America Tower  
16 1000 South East 2<sup>nd</sup> Street, Suite 2800  
17 Miami, Florida 33131  
18 (*Via United States Mail*)

19 Dated this 9th day of June, 2005.

20   
21 \_\_\_\_\_  
22 An employee of SCHRECK BRIGNON  
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1 **EXHIBIT A - ADDITIONAL MISSTATEMENTS**

2 The following is set forth in order to detail several additional misstatements made in  
3 SCO's Report.

4 1. **AutoZone's Migration Process was Neither Ad Hoc nor Undertaken with Disregard**  
5 **for SCO's Alleged Copyright Rights**

6 SCO's Report states that Bob Celmer testified that AutoZone developers were not  
7 "focused on protecting SCO's OpenServer copyright materials and were, instead, focused on the  
8 most efficient way to modify the binaries AutoZone created to work on OpenServer so that they  
9 would run on Linux." (SCO Report pg. 7-8.) This statement implies that AutoZone undertook  
10 the transition process with a careless disregard for the intellectual property of SCO, which is  
11 inaccurate. In fact, the entire transition was structured so that SCO's alleged proprietary materials  
12 would not be inappropriately copied or otherwise infringed as a result of the transition process.  
13 While it is true that AutoZone located some SCO materials that may have been copied in error, it  
14 is not true that the process was either ad hoc or undertaken with disregard for SCO's alleged  
15 copyright rights.

16 SCO's specific misstatement is noteworthy in this instance, but the larger  
17 mischaracterization of AutoZone's transition process is of perhaps more importance.  
18 Mr. Celmer's actual testimony was that AutoZone's purpose was to change the *source code* for all  
19 of AutoZone's programs such that they could be recompiled to work on Linux, not to modify  
20 AutoZone's binaries to work on Linux as stated by SCO in its report. (Celmer Deposition  
21 26:5-13.) This distinction is significant. By virtue of recompiling the *source code* for  
22 AutoZone's binaries to work on Linux, AutoZone instituted a process that was designed to result  
23 in absolutely no code from SCO being used either during or after the transition from Open Server  
24 to Linux. In order to appreciate the fundamental nature of this distinction, some discussion of  
25 basic software development in the context of transition between operating systems is necessary.

26 Source code is human readable code that is used to create software programs. SCO has  
27 not alleged that any of AutoZone's source code for its application programs (as opposed to the  
28 operating system on which those programs run) infringes SCO's purported copyrights, nor could

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1 they. Virtually all of such code is wholly original to AutoZone. SCO's allegations, however,  
2 appear to relate to the transformation of human-readable source code into executable code that a  
3 computer can understand. In order to create code that a computer can understand, the source  
4 code is run through a program called a compiler. This results in "object code," which is in binary  
5 form (i.e., strings of ones and zeros). After the program is transformed into object code by the  
6 compiler, the program is "linked" with any libraries that it needs. Libraries are repositories of  
7 software functions and routines that can be used by application developers to perform common  
8 tasks. Once compiled into object code and linked to the appropriate libraries, the resulting file (in  
9 binary, ones and zeros format) is the file that is executed when users of a particular program  
10 actually run that application on a computer. If this object code file is linked to the libraries by  
11 actually incorporating them into the object code (a method known as "static linking"), that file  
12 would necessarily contain libraries provided by the operating system (e.g., UNIX or Linux).

13 AutoZone's entire transition process was designed so that all of AutoZone's application  
14 programs were to have been recompiled under the Linux operating system without any reference  
15 to or reproduction of either SCO OpenServer libraries or, in fact, SCO code of any variety. As  
16 Mr. Celmer testified, all of the *source code* for AutoZone applications was intended to be  
17 recompiled entirely within a Linux environment with Linux libraries and without any reference to  
18 or use of SCO's libraries. (Celmer Deposition 26:5-13.) Mr. Celmer specifically stated that  
19 AutoZone's intent was not to modify binary application files compiled for use in connection with  
20 the OpenServer operating system. (Id.) SCO's statement in the SCO Report that AutoZone was  
21 working to modify binary files so that they would work on Linux represents a misstatement and,  
22 of more concern, a potential misunderstanding of the development process. The combination of  
23 this misstatement and SCO's overall mischaracterization of AutoZone's software transition  
24 process amply illustrates that conclusory statements by SCO to the effect that no regard was given  
25 to SCO's intellectual property rights are incorrect and unfounded.<sup>1</sup>

26  
27 <sup>1</sup> AutoZone is also somewhat surprised by SCO's statements as to the "ad hoc" nature of  
28 the transition process, since SCO previously represented to IBM in an interrogatory filed before  
the commencement of this lawsuit that AutoZone's migration occurred with "precision and

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2. **AutoZone is Licensed to Run OpenServer Compiled Programs on Its "Spirit" Server**

SCO notes on Page 9 of the SCO Report that discovery revealed that OpenServer compiled programs were on AutoZone's server named "Spirit." In deposition testimony, Mr. Celmer stated that AutoZone initially ran the Spirit server on the OpenServer operating system under license from SCO until the server experienced a hardware failure. (Celmer Deposition 100:12 – 102:19.) When AutoZone restored the server after the failure, per Mr. Celmer's testimony, it decided to load the Linux operating system on the server. (Id.) Significantly, AutoZone had at that time and continues to have a license from SCO to use OpenServer on the Spirit machine through the more than 2900 end user licenses AutoZone has obtained from SCO.

Moreover, software AutoZone reloaded onto the Spirit server was intended to be a copy of the original software that was on the original Spirit machine. Thus, even if AutoZone had not been licensed to load the programs on the machine, AutoZone has the legal right to create a copy of a program for archival purposes. 17 U.S.C. § 117(a)(2). Because any OpenServer compiled program loaded onto the new Spirit server would likely not be able to run on that server (since it was now running the Linux operating system), the only possible reason for keeping programs compiled to run on OpenServer on the Spirit server was for archival purposes. Thus, AutoZone both had a license to copy the programs onto the Spirit server and a legal right to do so for archival purposes, even without the benefit of the license.

3. **AutoZone is Licensed to Copy SCO Files onto Its Vision Server**

SCO notes on page 10 of the SCO Report that AutoZone's developers copied numerous SCO files onto AutoZone's server named "Vision."<sup>2</sup> This statement is correct insofar as it goes,

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efficiency." SCO's Revised Supplemental Response to IBM's First and Second Set of Interrogatories, pg. 51 (Excerpt attached hereto as Exhibit E).

<sup>2</sup> SCO represents that "the precise number" of SCO files on the Vision computer "has not been disclosed in discovery." This is another misstatement. On October 27, 2004, AutoZone

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however, SCO neglects to point out that Mr. Celmer also testified that the Vision server is running a properly licensed copy of SCO's OpenServer operating system. (Celmer Deposition 73:7 – 74:8.) The Vision server runs, and is intended to run application programs on the OpenServer operating system, and AutoZone's 30(b)(6) witness testified in response to questions from SCO during his deposition that AutoZone had a license from SCO to operate the OpenServer operating system on the Vision server. SCO's attempt to paint the presence of SCO files on this properly licensed machine as an unspecified violation of its legal rights is simply further evidence of convenient and artful omissions and the overreaching nature of many statements in the SCO Report.

---

produced to SCO a listing of every file on the Vision computer. Letter from David Stewart dated October 27, 2004 (attached hereto as Exhibit B.)

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October 27, 2004

## *Via Facsimile and UPS OVERNIGHT*

David S. Stone, Esq.  
Boies, Schiller & Flexner LLP  
150 John F. Kennedy Parkway, 4<sup>th</sup> Floor  
Short Hills, NJ 07078

**Re: *The SCO Group, Inc. v. AutoZone, Inc.*  
*Civil Action No. CV-S-04-0237-RCJ-LRL***

Dear David:

Enclosed are the following documents and things that are being produced under the agreed protective order in response to your client's first requests for documents;

1. Two hard drives that contain the AutoZone store server image as of October 15, 2004 (Bates Nos. AZ 00393 and AZ 00394)
2. A DVD that contains the AutoZone RCS as it existed on October 7, 2004. (AZ 00395)
3. A CD that contains the binary image of the version of RedHat Linux AutoZone was using on its store servers in late 2002. (AZ 00399)
4. A CD that contains the binary image of the AutoZone applications run on Linux store servers as they existed in late 2002. (AZ 00398)
5. A CD that contains a list of all files on the "Wrangler" computer as of October 7, 2004. (AZ 00396)
6. A CD that contains a list of all files included on the "Vision" computer as of October 7, 2004. (AZ 00397)

Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
704-444-1000  
Fax: 704-444-1111

50 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: 919-862-2280

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



This letter also serves as our response to your letter dated September 28, 2004, and to the various requests for documents contained therein. Your letter lists four specific categories of documents that it requests AutoZone produce. The first paragraph of your letter also appears to request a fifth category, namely, a copy of the image containing the applications that AutoZone is running under Linux on its store servers. For clarity of reference, we will address the store image request under paragraph number 5 below. Otherwise, we respond to the requests in your letter as they are numbered therein.

1. CD's of AutoZone's Revision Control System: We interpret this request to fall within the documents requested by Document Request No. 2, and, as set forth above, we have produced the RCS to you on DVD, subject to the removal of two programs as discussed in 2 below. This DVD is the only document we have designated "Highly Confidential" under the protective order. We have done so because it contains the source code for numerous applications that are proprietary to AutoZone. To facilitate your client's review of the disk, we are amenable to allowing one technical person at SCO to review the disk, provided that: (1) you provide us with the person's name and title in advance; (2) the person executes the Form of Nonparty Agreement and Acknowledgement to Be Bound by Protective Order, attached as Exhibit A to the Protective Order, and agrees not to disclose the DVD or its contents in any form whatsoever to any individual prohibited from having access to "Highly Confidential" information pursuant to the Protective Order; (3) you fax a copy of the signed Form of Nonparty Agreement and Acknowledgement to Be Bound by Protective Order to me before you disclose the DVD and its contents to the relevant technical person, and (4) you fax a letter to me that confirms in writing your client's agreement to be bound by and comply with the foregoing restrictions.

2. Third Party Applications: We interpret this request as being encompassed within Document Request No. 2. As you know, AutoZone does not have the source code for two of the third party applications it has used on its store servers, CompX and DcompX. However, the binaries for the programs have been produced on the disk that bears the Bates No. AZ 00398. The only other third party applications AutoZone has run in the relevant time period are Drun and Ctree. AutoZone has the source code for these programs in its RCS, but we do not believe we can produce the source code at this time. The Drun license agreement requires that we secure the copyright owner's approval prior to disclosure. We are in the process of contacting the copyright owner, and we will provide the code when/if we are authorized to do so. We have been unable to find a copy of the Ctree software license agreement, so we are in the process of contacting the copyright owner to secure approval for the production. We are unaware of whether there is any authority in the Ninth Circuit that highly confidential documents can be produced in litigation regardless of confidentiality restrictions in third party license agreements, provided there is an adequate protective order in place. If you have such authority, please forward it to me for review as it might speed up the production process.

David S. Stone, Esq.  
October 27, 2004  
Page 3

3. Data from the Wrangler Computer: We do not believe that the files on the Wrangler computer fall within the scope of any of your document requests. We are not agreeable to providing copies of all of the files because of the burden of doing so. You mention at the end of your letter that Mr. Greer testified that data such as the data on the Wrangler computer could be downloaded onto a CD in a matter of hours. I am not certain that Mr. Greer was testifying as to the files on the Wrangler computer when he made that statement, but, if he was, his understanding is incorrect. The Wrangler computer contains more than 60 gigabytes of data which, if copied to CD's, would fill more than 100 CD's. There is no easy way to copy the data onto CD's. Additionally, the Wrangler computer is a test computer that has never been used in a store and contains many files that have nothing to do with the conversion. Data from the computer is thus irrelevant with regard to the issues before the court at this time. As a courtesy to you, we have nevertheless produced on CD a list of the files contained on the computer. If, after reviewing this list, you determine that you need to see the object code for specific files on the computer, call me and we can discuss the issues further. (As an aside, your letter refers to "data." We have interpreted your request to be asking for copies of source or object code because the raw data on the computer would be outside the scope of your client's claims. If this understanding is incorrect, please let me know.)

4. CD's of Data from the "Vision" Computer: Our response to your request for files from the Vision computer is the same as our response to your request for data from the Wrangler computer. The Vision computer contains 40 gigabytes of data. We have therefore produced at this time only file listings from the computer.

5. Store Server Image: We interpret the store image request as being responsive to Document Request No. 2. We are producing herewith a copy of the store server image as it appeared on October 15, 2004.

I believe the foregoing covers everything in your letter. If not, please do not hesitate to call.

Very truly yours,



David J. Stewart

DJS:jl

cc: Michael P. Kenny, Esq.  
James A. Harvey, Esq.  
Christopher A. Riley, Esq.  
Douglas L. Bridges, Esq.

ATL01/11768783v1

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

---

THE SCO GROUP, INC.,  
A DELAWARE CORPORATION,

Plaintiff,

VS.

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

AUTOZONE, INC., A NEVADA  
CORPORATION,

Defendant.

---

VIDEOTAPED DEPOSITION OF BOB CELMER

MAY 9, 2005

---

ALPHA REPORTING CORPORATION  
KORIAN NEAL, RPR, CCR  
100 North Main Building, The Lobby  
Memphis, Tennessee 38103  
(901) 523-8974

Page 2

1 The videotaped deposition of BOB CELMER,  
 2 taken on behalf of the Plaintiff, pursuant to Notice,  
 3 on May 9, 2005, beginning at approximately 9:00 a.m.,  
 4 in the law offices of Baker, Donelson, Bearman &  
 5 Caldwell, 165 Madison Avenue, Suite 2000, Memphis,  
 6 Tennessee.

7 This deposition is taken in accordance  
 8 with the terms and provisions of the Federal Rules of  
 9 Civil Procedure.

10 All forms and formalities are waived, and  
 11 objections alone as to relevancy, materiality and  
 12 competency are reserved, to be presented at or before  
 13 the hearing. Objections as to the form of the  
 14 question must be made at the time of the taking of the  
 15 deposition. The signature of the witness is not  
 16 waived.

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19 ALSO PRESENT: REBECCA W. BALLOU, ESQ.  
 JOHN DUBOIS  
 WILL SMITH, VIDEO SPECIALIST

23 COURT REPORTING FIRM: ALPHA REPORTING CORPORATION  
 Koran Neas, RPK, CCP  
 100 North Main Street  
 The Lobby  
 Memphis, Tennessee 38103  
 (901) 523-8974

Page 5

1 VIDEO SPECIALIST: Today is May 9th,  
 2 2005, 9:05. Location is Baker, Donelson, Bearman &  
 3 Caldwell, 165 Madison Avenue in Memphis, Tennessee.  
 4 My name is Will Smith, certified video specialist with  
 5 Alpha Legal Productions, located in the lobby of the  
 6 100 North Main Building in Memphis.

7 This case is entitled The SCO Group, Inc. versus  
 8 AutoZone, Inc. Our deponent today is Mr. Bob Celmer.  
 9 This video deposition is requested by the plaintiff's  
 10 counsel, Mr. David Stone. Will counsel and all present  
 11 please identify themselves for the record at this time.

12 MR. STONE: David Stone and Chris  
 13 Iannicelli from Boies, Schiller & Flexner for the  
 14 plaintiff, SCO Group.

15 MR. MCBRIDE: Kevin McBride for the  
 16 plaintiff.

17 MR. TIBBITTS: Ryan Tibbitts, general  
 18 counsel, and John DuBois, both from the SCO Group.

19 MR. STEWART: David Stewart and Doug  
 20 Bridges, Alston & Bird for the defendant, AutoZone.

21 MS. BALLOU: Rebecca Ballou from  
 22 AutoZone.

23 MR. CELMER: Bob Celmer, senior  
 24 technology advisor for AutoZone.

25 VIDEO SPECIALIST: The deponent may now

Page 70

1 A. Yes.

2 Q. Other than Spirit and Wrangler, did you find

3 COFF files on any of the other machines in your

4 headquarters?

5 A. Other than Spirit or Wrangler. I really don't

6 remember specifically where we found COFF files. Seems

7 that we may have -- I just don't know. We may have

8 found them on other machines. I just don't remember

9 right now.

10 Q. If you found them on other machines, did you

11 produce discovery to us which would allow us to

12 determine what the files were and what machines you

13 found them on?

14 A. Yes.

15 Q. Am I right that Spirit and Wrangler were

16 machines that you used when you -- when AutoZone made

17 the migration to Linux?

18 A. Yes.

19 Q. And am I correct that what you did is you --

20 you had the Spirit machine was running OpenServer and

21 the Wrangler machine was running Linux?

22 A. Right.

23 Q. And that Mr. Greer told us -- and that's why

24 I'm saying it -- you can tell me if you understand that

25 to be the case -- that you were running these two

Page 71

1 machines simultaneously and using them to help port the

2 source code that had been written for the OpenServer

3 system to the Linux system. Is that right?

4 A. Wrangler was the development machine on which

5 we did compiles and editing of source. Spirit was the

6 source code repository. So we would have checked code

7 out of the repository from Spirit on to Wrangler, made

8 our changes on Wrangler, and then put those changed

9 files back on to Spirit to safe keep source.

10 Q. And Spirit also had SCO licensed code on it,

11 as well. Correct? It didn't just have your source

12 code?

13 A. It was an OpenServer machine. Yes.

14 Q. Right. And you kept those machines till -- to

15 the date of filing of this lawsuit. And when you looked

16 as those machines, you found that there were COFF files

17 that that been compiled for OpenServer on both those

18 machines. Correct?

19 A. That's right.

20 Q. And I'll get into it in the letter. But you

21 found that. Correct?

22 A. Yes.

23 Q. Is Spirit currently being used for any purpose

24 by AutoZone or was it prior to the filing of this

25 lawsuit?

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1 MR. STEWART: I'm sorry. Which question?

2 MR. STONE: Well, let's start with the

3 first one.

4 Q. (BY MR. STONE) Is it currently being used

5 for any purpose?

6 A. Yes, it is.

7 Q. What is it used for?

8 A. It is still our source code repository.

9 Q. So this is the source code that you wrote

10 during the time that you were licensing the OpenServer

11 software that you used to compile binaries to work on

12 the OpenServer software stored on the Spirit server. Is

13 that right?

14 A. Yes.

15 Q. And then there's additional source code you've

16 written since that time since you migrated to Linux? Is

17 that right?

18 A. Yes.

19 Q. Is that -- yes?

20 A. Yes.

21 Q. Is that also stored on the Spirit server?

22 A. Yes.

23 Q. And is the Wrangler machine currently being

24 used?

25 A. Yes, it is.

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1 Q. What is it being used for?

2 A. It is still a Linux development machine.

3 Q. So was it used as a Linux development machine

4 from the time that you first started using it when you

5 began the porting process until this date, essentially?

6 A. Yes.

7 Q. Have you heard of a machine called Vision?

8 A. Yes.

9 Q. Tell me what that is.

10 A. It was the development machine for SCO

11 development.

12 Q. So that was the equivalent of Wrangler for

13 Linux? Is that right?

14 A. That's right. It was the machine that

15 developers used while we were using SCO.

16 Q. And does Vision still exist?

17 A. Yes, it does.

18 Q. And is it still used for any purpose?

19 A. It doesn't get much use. But the files that I

20 made copies of before deleting them from our stores are

21 housed on Vision. And it probably gets occasional use

22 but not much.

23 Q. Do you know if Vision was used during the

24 porting process by AutoZone?

25 A. It was definitely in use during the porting

1 process because we were still using SCO in our stores.  
 2 And so we were still doing development on that machine.  
 3 Q. Did you look at the Vision machine -- I guess  
 4 you're telling me the Vision machine had the OpenServer  
 5 operating system on it, then?  
 6 A. That's right.  
 7 Q. So it had SCO license code on it, as well?  
 8 A. Yes.  
 9 Q. And have you produced to us whatever code you  
 10 found on that Vision machine? Do you know?  
 11 A. I doubt it.  
 12 Q. Okay. So the code that you produced to us is  
 13 the only code that you found on Linux server machines  
 14 and on Spirit. Is that right?  
 15 A. That's right.  
 16 Q. All right. Let's take a look at Exhibit 36.  
 17 You recall that after the previous exhibits we looked  
 18 at, you went back and you looked further at what  
 19 OpenServer compiled programs might be in the Linux  
 20 operating system at AutoZone?  
 21 A. Say that again.  
 22 Q. We've discussed, you know, the request for  
 23 admissions and the interrogatories. Correct?  
 24 A. Right.  
 25 Q. And we went through the answers that you gave

1 on behalf of AutoZone in those. Correct?  
 2 A. Right.  
 3 Q. And you agree that you later learned that  
 4 those were incomplete. Correct?  
 5 A. Right.  
 6 Q. And in some cases, they were inaccurate where  
 7 you, for example, denied using a program which you later  
 8 learned was used, for example, Derompx and Compx.  
 9 Correct?  
 10 A. Right.  
 11 Q. What I'm talking about now is that this  
 12 Exhibit 36 was the document by which you were informing  
 13 us of this additional information that you'd learned  
 14 since the previous exhibits that we've discussed. Okay?  
 15 A. Okay.  
 16 Q. And what I was asking you is, in order to come  
 17 up with the information in Exhibit 36, did you go back,  
 18 and did you look at the store servers and the servers in  
 19 AutoZone to discover whether there was additional COFF  
 20 files that were compiled for OpenServer on Linux  
 21 machines?  
 22 A. Again, I'm not sure of the timing. But we  
 23 have -- after the initial release that identified and  
 24 removed the COFF files on the very first round, we did  
 25 go back to the stores just to verify that they were a!

1 gone, and we went back through the Linux servers in the  
 2 corporate offices, also.  
 3 Q. Okay. All right. Well let's just look at the  
 4 document and go from there. It says in the second  
 5 paragraph under the word store servers. Do you see  
 6 that?  
 7 A. Yes.  
 8 Q. It says, On October 19th, 20th, and 21,  
 9 AutoZone sent the release of its software to its store  
 10 servers that updated the store servers to replace 9 COFF  
 11 files with Linux files and to delete 19 unused COFF  
 12 files. Do you see that?  
 13 A. Yes.  
 14 Q. So does this refresh your recollection that  
 15 there were 9 COFF files that were used up until that  
 16 date in the store servers and that there were 19 files  
 17 that you believed were unused?  
 18 MR. STEWART: Object to form. You can  
 19 answer.  
 20 A. There were 9 COFF files, which -- let me start  
 21 at the other side. There were 19 that we were never  
 22 going to use. They were just useless files. There were  
 23 9 that we might some day need. Therefore, they were not  
 24 obsolete programs. So we needed to replace them in case  
 25 they were needed.

1 Q. (BY MR. STONE) Okay. Let me -- with that  
 2 clarification, let me ask the question again. When  
 3 you referred to the 19 unused COFF files, you were  
 4 confident that they hadn't been used based on your  
 5 review of those files. Is that correct?  
 6 A. That's right.  
 7 Q. With respect to the 9 COFF files referred to  
 8 here, we discussed this before, you're not sure, as you  
 9 sit here today, whether or not they may have been used  
 10 at some time. Is that correct?  
 11 A. That's right.  
 12 Q. Okay. And you had to rewrite them because  
 13 they were needed for -- well, you had to do something  
 14 with them -- I don't want to use the wrong term. But  
 15 you had to do something with them because this type of  
 16 program was needed for your stores. Is that right?  
 17 MR. STEWART: Object to form.  
 18 A. It might be needed for the stores. In  
 19 particular, I keep saying might because of those sort  
 20 programs.  
 21 Q. (BY MR. STONE) Okay. And these nine  
 22 programs, you recompiled for Linux. Is that right?  
 23 A. That's right.  
 24 Q. And are these programs that as we discussed,  
 25 you went in and modified the source code so it would

Page 98

1 did the program actually do?

2 A. It converted data formats from a pre-Y2K

3 format, that was in use on the mainframe, to a post-Y2K

4 format that is required by the stores.

5 Q. And that was -- was that something that had to

6 be done every time a program that had that pre-Y2K

7 format was being sent to the stores?

8 A. The process of creating an image for a new

9 store involves loading that image with programs but also

10 with some of the data that the store is going to need.

11 So when we decide today's the day to build an

12 image, part of that process involves running some

13 programs on the mainframe that generate data. We move

14 that data to the store image machine. We convert its

15 format along the way. And that way when the computer

16 arrives at the store, it already has some foundation

17 data to go along with the executables.

18 So that program was used basically once every time

19 you would open -- every time we wanted to open a new

20 store.

21 Q. Okay. So every time you opened a new store,

22 then you -- how did you reco -- you say that you

23 recompiled this program. What did you do to recompile

24 this program?

25 A. I didn't personally recompile it. So I don't

Page 99

1 know whether there were any code changes necessary. But

2 I do know it only took a short period of time to

3 recompile and test. So the changes could not have been

4 extensive.

5 Q. And as you sit here today, you can testify

6 that the current version of this program does not

7 contain any SCO licensed code?

8 A. That's right. It was recompiled on the Linux

9 machine for Linux.

10 Q. And then what did you do? Did you take a

11 previous copy and make a copy and put it on the Spirit

12 machine?

13 A. Vision.

14 Q. I'm sorry. The Vision machine?

15 A. (Witness nod affirmatively.)

16 Q. Is that what you did with all the -- anything

17 that you deleted, any program that you deleted?

18 A. Yes.

19 Q. And would that copy contain the information

20 about, you know, when the program was deleted and when

21 it was loaded on the machine?

22 A. I don't know. For some of the copies of COFF

23 files over to Vision, the system administrators used a

24 utility called CPIO, which may retain the original date

25 on the file. So that when you load it on to Vision, it

Page 100

1 will look as if it's been there for a long time.

2 For other files, that's not the case. We FTPed a

3 copy from -- used a utility called FTP to transfer a

4 file from wherever it was originally on to Vision. And

5 in that case, it would retain the date on which it was

6 copied.

7 Q. Okay. Was dexpan.d.x a binary that was created

8 with the SCO developer kit to run on OpenServer?

9 A. Originally, yes.

10 Q. By AutoZone?

11 A. Yes.

12 Q. Okay. Go on, it says AutoZone's IT personnel

13 also discovered that the Spirit server had some

14 OpenServer compiled programs on it because of a recent

15 restoration of the server after it crashed. The Spirit

16 server is -- isn't that an OpenServer machine?

17 A. Spirit was an OpenServer machine. We were

18 having some problems with Spirit. In particular, we

19 knew the disks were going bad. And so our system

20 administrators were preparing a replacement machine.

21 Well, apparently, they didn't prepare it quickly enough.

22 Because one evening, Spirit died. And so we worked

23 through most of the night trying to restore all of

24 Spirit's data on to that replacement machine.

25 Q. The replacement machine that was being

Page 101

1 prepared?

2 A. Right.

3 Q. Is that what you mean?

4 A. Right.

5 Q. And in doing that, you loaded 1130 SCO

6 compiled programs on to the machine? Is that right?

7 A. Right. We restored everything onto that

8 replacement machine, and that included some SCO

9 binaries.

10 Q. And what was that replacement machine going to

11 be used for after that?

12 A. It was going to continue to be used for our

13 software repository.

14 Q. Okay. So this is this revision control system

15 that you had spoken of earlier where you keep your

16 source code? Is that right?

17 A. That's right.

18 Q. So had you originally intended to remove the

19 SCO code from that machine and only have AutoZone's home

20 grown codes, so to speak?

21 A. Right. In an orderly migration, we would have

22 copied the repository, and then we would have copied

23 only the other directories that we needed rather than

24 just a wholesale replacement of everything.

25 Q. So based on what you've now done, did you do

Page 102

1 something to remove all the SCO licensed code from that  
2 machine?  
3 A. Yes.  
4 Q. So that was one machine that these 1130  
5 programs were on. Right? It was not --  
6 A. Right.  
7 Q. Do you know what -- what operating system did  
8 that machine use?  
9 A. It was OpenServer 505, I think, before the  
10 crash, and then it was Red Hat. I don't -- I really  
11 don't know what it is right now. I believe it's 7 dot  
12 2, but it might be Red Hat Version 9. I really don't  
13 know.  
14 Q. So it's some version of Red Hat's Linux  
15 distribution.  
16 A. That's correct.  
17 Q. You switched it from a OpenServer machine to a  
18 Linux machine after the crash.  
19 A. That's right.  
20 Q. But when you did that, you copied these 1130  
21 programs on to the machine?  
22 A. Right.  
23 Q. When did that occur?  
24 A. I'm sorry. I don't remember the date.  
25 Q. Can you give me the year?

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1 A. No. I really can't. I don't know when that  
2 was. I believe it was last year, but I really don't  
3 know.  
4 Q. So there may be a year that you were using  
5 this machine where it had the 1130 -- the 1,130 SCO  
6 files on it. Is that right?  
7 A. I don't know how long that Linux machine was  
8 up before we removed these files.  
9 Q. Do you know whether any of these files were  
10 used during that time period?  
11 A. I don't think any of these files would have  
12 been used because they would have been in individuals'  
13 home directories. And that machine is no longer used as  
14 the machine that people log into to perform work. So...  
15 Q. What machine is used as the machine that  
16 people log in to perform work?  
17 A. Only a machine called Wrangler and a machine  
18 called Jeep for Linux development.  
19 Q. So Jeep and Wrangler are two different  
20 machines?  
21 A. (Witness nods affirmatively.)  
22 Q. Is this something to do with the Jeep Wrangler  
23 or just a coincidence?  
24 A. Our system administrators find it an amusing  
25 policy to name machines after cars.

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1 Q. So Wrangler was the machine that you  
2 originally used, right, to develop Linux?  
3 A. Yes.  
4 Q. Did Jeep come after that or something?  
5 A. Jeep came after that.  
6 Q. Did you look on Jeep to see if Jeep had any  
7 COFF files on it?  
8 A. Yes.  
9 Q. Did you find any?  
10 A. I think we did, but I really don't remember.  
11 Q. But they would be in that -- the CDs or that  
12 hard drive that you produced to us. Is that right?  
13 A. Yes.  
14 Q. It goes on and says, finally, we've reviewed  
15 the relevant OpenServer agreements between SCO and  
16 AutoZone. These agreements are still in place and do  
17 not include any prohibitions on AutoZone's use of  
18 OpenServer compiled code on Linux machines. Did you  
19 have anything to do with that review?  
20 A. I tried to find copies of these agreements.  
21 But no, I didn't have anything to do with the review.  
22 Q. Did you find any copies of the agreements?  
23 A. I did find some documents that I forwarded to  
24 the attorneys.  
25 Q. Can you tell me the names of the documents?

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1 Do you remember?  
2 A. No. I'm sorry. I don't remember.  
3 MR. STONE: Okay. This seems like a good  
4 time to break for lunch. Actually, can we stay on for  
5 one second?  
6 Q. (BY MR. STONE) I just have one question  
7 about something that we had gone over earlier. It's  
8 on Page 2 of Exhibit 36. It says, In addition to  
9 the -- it's in the first paragraph like five lines  
10 down -- five lines down. In addition to the help  
11 utilities, there were four SCO compiled programs  
12 that were copied to the Linux machines errantly  
13 because the programs were not located in the proper  
14 directory. We talked about the fact that that  
15 happened. Correct?  
16 A. Yes.  
17 Q. I just wanted to know what these four programs  
18 were intended to do, if you remember.  
19 A. I'm sorry. I don't remember. I believe they  
20 were located in the directory where we usually keep  
21 data. But I don't -- I don't remember what the programs  
22 were.  
23 Q. You don't remember what they were actually  
24 intended to do? Is that right?  
25 A. That's right.



1                   IN THE UNITED STATES DISTRICT COURT  
2                   DISTRICT OF NEVADA

3                   \_\_\_\_\_  
4                   THE SCO GROUP, INC.,  
5                   A DELAWARE CORPORATION,

6                                   Plaintiff,

7                   vs.

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

10                   AUTOZONE, INC., A NEVADA  
11                   CORPORATION,

12                                   Defendant.

13                                   DEPOSITION

14                                   OF

15                                   JIM GREER

16                                   SEPTEMBER 24, 2004

17                                   ALPHA REPORTING CORPORATION  
18                                   KORIAN NEAL, RPR, CCR  
19                                   100 North Main Building, The Lobby  
20                                   Memphis, Tennessee 38103  
21                                   (901) 523-8974  
22

1 The deposition of JIM GREER is taken on  
 2 behalf of the Plaintiff, on this the 24th day of  
 3 September, 2004, pursuant to notice and consent of  
 4 counsel, beginning at approximately 9:30 a.m. in the  
 5 offices of Baker, Donelson, Bearman, Caldwell &  
 6 Berkowitz, 165 Madison Avenue, Suite 1800, Memphis,  
 7 Tennessee.

8 This deposition is taken pursuant to the  
 9 terms and provisions of the Federal Rules of Civil  
 10 Procedure.

11 All forms and formalities, including the  
 12 signature of the witness, are waived and objections  
 13 alone as to matters of competency, relevancy and  
 14 materiality of the testimony are reserved, to be  
 15 presented and disposed of at or before the hearing.  
 16 Objections as to the form of the question must be made  
 17 at the taking of the deposition.

18  
19  
20  
21  
22  
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24  
25

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1 format or the ELF file format?

2 A. I don't know. I believe it may use both. I'm  
3 not aware of the format that -- the format of Red Hat's  
4 applications, for instance.

5 Q. Okay. All right. Now, comes the time when I  
6 give you your chance to explain to me what you did. And  
7 basically, what I'd like to do is give you an  
8 opportunity in your own words to just explain to me how  
9 you carried out the migration from where AutoZone was at  
10 the point in time when it was running on Open Server  
11 software to where the stores were primarily running on a  
12 Linux operating system software. And tell me the steps  
13 along the way that you were involved in. If you could  
14 please do that for me.

15 MR. STEWART: And I'm going to object to  
16 the question. And I wouldn't normally clarify my  
17 objection in a deposition. But the reason for it is  
18 that it assumes the fact that isn't in evidence yet,  
19 and that is that this witness was there when the  
20 stores were primarily running on Linux.

21 MR. STONE: Okay.

22 MR. STEWART: So what I'd prefer we do is  
23 have -- and I don't mind the witness giving a  
24 narrative answer -- of just from the beginning of  
25 migration to the point he left.

1 Q. And to your knowledge, does that list exist  
2 anywhere where we could get our hands on it, so to  
3 speak?

4 A. I'm not aware of that list. I don't have a  
5 copy of that list. I don't know if it still exists.

6 Q. Did you leave it in your files when you left  
7 AutoZone?

8 A. I don't even know the status of the machine  
9 that that file would be -- had been present on.

10 Q. Okay. You can continue. I'm sorry.

11 A. Then I solicited help. I requested from the  
12 various AutoZone directors that they essentially give me  
13 some of their developers, you know, let me use the time  
14 and resources of some of their developers as part of  
15 this conversion process. So I gathered a list of  
16 developers. And for those developers, then, we  
17 parcelled out the porting of applications to those  
18 developers.

19 I personally worked on porting the libraries that  
20 AutoZone had developed internally from SCO to Linux. We  
21 also had a couple of third-party libraries for which we  
22 had source code. I was also responsible for porting  
23 that library and those libraries. And then I also  
24 individually worked on porting applications.

25 At some point into the work, I installed Linux on

1 MR. STONE: That's fine.

2 Q. (BY MR. STONE) And then we'll get into the  
3 specifics after I sort of have a general overview of how  
4 you did it. Okay?

5 A. Okay. Generally, I installed Red Hat Linux on  
6 the computer to serve as a compilation or development  
7 machine.

8 Q. Is that Wrangler?

9 A. Yes. I called it Wrangler. And then I  
10 installed or created user accounts on this computer such  
11 that development staff could log into this machine and  
12 use it. I then installed some utilities, created  
13 utilities such that they could, or one could check out  
14 code from the source code repository.

15 Then I produced -- I started producing a list of  
16 AutoZone applications and went through several revisions  
17 of gathering this list up of all of the executables of  
18 things that are actually part of that AutoZone store  
19 system. Then I solicited development.

20 Q. Let me just stop you for one second because  
21 this is important. So you had a list of the  
22 applications?

23 A. I had a list. I began with a large list and  
24 began pairing down that list to include active  
25 applications, those that were actually in use.

1 another computer and configured it such that it was --  
2 had the other hardware and peripherals similar to a  
3 AutoZone store system as one might actually find in the  
4 store, and arranged it such that the programmers and  
5 myself could copy these Linux executables on to the  
6 store system and run them to test their porting work.

7 And so the majority of the work then became making  
8 modifications to executables to the source code.

9 Q. Executables or applications?

10 A. Well, to the source code, compiling  
11 executables and the like, and then testing them and  
12 marking off this inventory of applications.

13 Q. And did you have all the source code for every  
14 application, or were you missing it for some of the  
15 application?

16 A. I was missing it for some.

17 Q. And what did you do when you were missing the  
18 source code?

19 A. Well, in some cases, I recreated the  
20 application. I was fortunate that AutoZone had some  
21 small utility programs for which I could not locate the  
22 source, but I knew the behavior of the application so  
23 well that I was able to write it from scratch.

24 Q. So did you recompile all these applications  
25 that you were porting from open -- I'm sorry. Yeah,

1 that you were porting from Open Server to Linux?

2 A. There were at least a couple that I did not.  
3 There were two third-party applications, a compression  
4 and decompression utility, for which we did not ever  
5 have the source. We had purchased this product. And  
6 the company, to my knowledge, had stopped producing that  
7 product. So we did not recompile that application,  
8 those applications.

9 Q. So what did you do with them? How did you  
10 port them?

11 A. They were able to run under Linux operating  
12 system.

13 Q. So they didn't use any of the Open Server  
14 libraries?

15 A. I don't know.

16 Q. Okay. I'm sorry. You can go on with your  
17 narrative, if there was more to it.

18 A. So eventually all of the executables had been  
19 compiled. The majority of the activity then was just  
20 testing. We went through a period of testing the  
21 applications on this test computer inside of AutoZone's  
22 headquarters.

23 Then I obtained another computer similar to a store  
24 computer, computer that would run in an AutoZone store.  
25 I installed Red Hat Linux on the computer. And then I

1 wanted to go further with it?

2 A. Yes. The second -- the migration to the  
3 second store of the second store was contingent upon,  
4 you know, a period of activity, actually a few weeks of  
5 the first store behaving correctly to insure that  
6 certain applications and certain situations were  
7 encountered.

8 Q. Approximately, when did you do this first  
9 installation in the store 315, if you think it's 315?

10 A. I believe it is. Gosh. I don't really know  
11 when. That was in -- that would have been in -- I can't  
12 really remember. The date's been too long.

13 Q. Let me try this: When did you first begin any  
14 kind of work on porting applications from Open Server to  
15 Linux, to your best recollection?

16 A. Gosh. Let's see. That was in the 1998/1999  
17 time frame.

18 Q. And then when did you leave AutoZone?

19 A. I left AutoZone in early 2002, January of  
20 2002.

21 Q. So can you recall whether the work you were  
22 doing in this store was in 2001 at some point?

23 A. Well, the actual installation of Linux-based  
24 store computers was in 2001, I believe.

25 Q. So you would have been in this Memphis store

1 copied the Linux versions of the AutoZone executables  
2 onto the store computer. I carried that computer to an  
3 AutoZone store and --

4 Q. Which AutoZone store?

5 A. I believe the first store that I installed was  
6 a store here in Memphis. I believe it's Store Number  
7 315, which was on Riverdale. And I installed the --  
8 installed the computer in the store, waited for the  
9 store to perform some task to finish up their daily  
10 activity. I copied the data from the store's computer,  
11 the existing SCO store computer so the AutoZone data  
12 files regarding its inventory and the like to the Linux  
13 based computer.

14 I then shut down the SCO computer, connected the  
15 peripherals and such to the Linux computer, tested to  
16 confirm that the Linux executables and applications were  
17 working correctly. And then the next day, I went to  
18 observe the performance of the Linux computer in the  
19 store.

20 That same manual procedure is what I used then to  
21 install, I think, a total of six computers here in the  
22 Memphis area and observed their performance and tried to  
23 address any defects.

24 Q. Okay. And then what did you do then? Did  
25 you -- did it operate sufficiently for you that you

1 315 some time in 2001?

2 A. Yes.

3 Q. Okay. Later on today, I'll show you some of  
4 those e-mails, and maybe that will help refresh your  
5 recollection.

6 A. Okay.

7 Q. So after you put it in these six stores, what  
8 did do you next?

9 A. Largely, I observed their performance. I  
10 handled calls from the stores regarding behavior that  
11 they -- either problems that they were having or issues,  
12 you know, defects that were being revealed. I either  
13 directed other programmers or myself to make corrections  
14 to the AutoZone source code to correct those defects,  
15 and then began, you know, a plan of considering how we  
16 were going to migrate additional stores.

17 Q. Was that plan ever written down?

18 A. The plan was written down in terms of an  
19 expectation of what a maximum rate of transition might  
20 be and also generally in terms of what the larger steps  
21 would be, you know, what would one need to perform.

22 Q. And then did you carry out that plan?

23 A. I did not carry out that plan.

24 Q. You left AutoZone?

25 A. Yes.

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Attorneys for Plaintiff The SCO Group, Inc.

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

---

THE SCO GROUP, INC.  
a Delaware corporation,

**PLAINTIFF'S REVISED SUPPLEMENTAL  
RESPONSE TO DEFENDANT'S  
FIRST AND SECOND SET OF  
INTERROGATORIES**

Plaintiff,

vs.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION, a  
New York corporation,

Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

Defendant.

---

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and this Court's order dated December 12, 2003, Plaintiff, The SCO Group, Inc. ("SCO"), hereby files this Revised Supplemental Response to Interrogatories No. 1 through 9, 12 and 13.

### **GENERAL OBJECTIONS**

SCO hereby incorporates by reference all of its General Objections set out in Plaintiff's Responses to Defendant's First and Second Set of Interrogatories and First Request for the Production of Documents (the "Plaintiff's Responses"). All of SCO's original General Objections are incorporated into the following Specific Objections and Responses as if fully set forth therein. Pursuant to the Federal Rules of Civil Procedure, SCO's revised and supplemental responses to IBM's Interrogatories are made to the best of SCO's present knowledge, information and belief. In particular, these current responses are based on the evidence SCO has discovered independently and based on information contained in IBM's limited production to date. Upon receiving complete discovery from IBM, including all versions of AIX and Dynix/ptx, there undoubtedly will be further evidence of IBM's contractual breaches and other violations of law. Accordingly, SCO reserves the right to further supplement or amend its answers as discovery or further investigation may reveal.

personnel at IBM who advocated IBM's adoption of Linux. SCO's executives involved in these events included Doug Michaels, Jim Wilt, Jeff Seabrook, and Jay Petersen.

**INTERROGATORY NO. 8:**

Please identify all agreements with which plaintiff alleges IBM interfered and describe, in detail, each instance in which plaintiff alleges or contends that IBM interfered with those agreements, including but not limited to: (a) the date of the alleged interference; (b) all persons involved in the alleged interference; (c) the specific manner in which IBM is alleged to have interfered with the agreement; (d) the specific actions, if any, that IBM induced or encouraged plaintiff's customers or licensees to take; (e) the specific action, if any, that plaintiff's customer or licensee took as a result of the actions allegedly induced or encouraged by IBM; and (f) the specific trade secret or confidential or proprietary information, if any, involved in the alleged interference.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:**

IBM interfered with SCO's software licensing agreement with AutoZone for the SCO OpenServer software operating system, Contract # 1V736, effective January 24, 2001 (the AutoZone OpenServer License Agreement). Under the AutoZone OpenServer License Agreement, AutoZone utilized the SCO software as the foundation from which to conduct all store operations including inventory tracking, point of sale transactions, back office server activities, event monitoring and to enable corporate updates to be transmitted to all retail locations.

In mid-2000, upon information and belief, IBM approached AutoZone in an effort to induce AutoZone to breach its agreement with SCO. In the second quarter of 2001, IBM was actively advising AutoZone's internal software group about converting to Linux. In the second quarter of 2001, despite the AutoZone OpenServer License Agreement with SCO, upon information and belief,

IBM finally successfully induced AutoZone to cease using the SCO software and to use Linux with IBM's version of UNIX. AutoZone ultimately decided not to pay SCO the annual fee to continue to maintain the SCO products and, upon information and belief, with the encouragement of IBM, began the efforts required for conversion to Linux.

Upon information and belief, AutoZone's new Linux based software implemented by IBM featured SCO's shared libraries which had been stripped out of SCO's UNIX based OpenServer by IBM and embedded inside AutoZone's Linux implementation in order to continue to allow the continued operation of AutoZone's legacy applications. The basis for SCO's belief is the precision and efficiency with which the migration to Linux occurred, which suggests the use of shared libraries to run legacy applications on Linux. Among other things, this was a breach of the AutoZone OpenServer License Agreement for use of SCO software beyond the scope of the license.

Upon information and belief, AutoZone is currently in breach of the AutoZone OpenServer License Agreement in that AutoZone is improperly using "shared libraries" (short cuts and methods which allow programs to interface with one another and the services of the operating system) contained in the OpenServer (UNIX based) operating system to enable "legacy applications" to function on Linux. Legacy applications are those versions of software applications that have a lengthy and proven track record of high level function and reliability. The legacy applications utilized by AutoZone were designed specifically to operate with OpenServer (UNIX based) shared libraries, but do not function with Linux shared libraries.

IBM was aware of the AutoZone OpenServer License Agreement. IBM knew that the SCO OpenServer shared libraries were proprietary to SCO. Therefore, IBM knew, or should have known, that by assisting AutoZone to implement Linux to support legacy applications by improperly



incorporating the SCO OpenServer shared libraries, it was interfering with SCO's agreement with AutoZone and otherwise inducing AutoZone to act wrongfully towards SCO. Upon information and belief, IBM's inducing and assisting AutoZone to breach its license agreement with SCO was an act that constitutes interference with contract. Upon information and belief, IBM profited by the interference by earning significant professional services fees in performing the switch from SCO OpenServer to Linux.

SCO does not presently know the specific dates on which the interference occurred, how it occurred or which IBM or AutoZone employees were involved because SCO was not present when IBM sold Linux-related services to AutoZone, when IBM assisted AutoZone in the design of the new Linux system deploying legacy applications that depended on SCO OpenServer shared libraries in order to function, or when IBM performed the professional services to assist AutoZone to improperly deploy OpenServer shared libraries inside its IBM-provided Linux implementation. More specific information, such as which IBM and AutoZone employees were involved, is in the possession of IBM and/or AutoZone and will require additional discovery from at least IBM and AutoZone.

Upon information and belief, IBM interfered with SCO's software licensing agreement with Sherwin Williams for the SCO OpenServer software operating system in existence since at least 1995, (the Sherwin Williams OpenServer License Agreement). Sherwin Williams utilized the SCO software as the key component to operate all of their retail store locations for over 10 years. The software enabled Sherwin Williams to operate its point of sale system and back office server

Upon information and belief, in 2001 and 2002 IBM began working with Sherwin Williams in order to induce Sherwin Williams to breach its agreement with SCO. As a result, upon information and belief, Sherwin Williams is currently in breach of the Sherwin Williams OpenServer License

Agreement in that Sherwin Williams is improperly using the "shared libraries" (short cuts and methods which allow programs to interface with one another and the services of the operating system) contained in the Linux based OpenServer operating system to enable legacy applications to function on Linux. Legacy applications are those versions of software applications that have a lengthy and proven track record of high level function and reliability. The legacy applications utilized by Sherwin Williams were designed specifically to operate with OpenServer (UNIX based) shared libraries, but do not function with Linux shared libraries.

Upon information and belief, IBM induced Sherwin Williams to abandon its use of SCO's OpenServer UNIX product in favor of Linux in the summer of 2001. Upon information and belief, Sherwin Williams' new Linux based software implemented by IBM featured SCO's shared libraries which had been stripped out of SCO's UNIX based OpenServer and embedded inside Sherwin Williams' Linux implementation in order to continue to allow the continued operation of Sherwin Williams' legacy applications. SCO's belief is based upon the precision and efficiency with Sherwin Williams accomplished the migration, which suggests the use of shared libraries to run legacy applications on Linux. However, IBM and Sherwin Williams were not entitled to strip out SCO's shared libraries for use inside their Linux implementation in order to continue operating legacy applications. This was a breach of the Sherwin Williams OpenServer License Agreement for use of SCO software beyond the scope of the license. Upon information and belief, IBM induced Sherwin Williams to use the SCO OpenServer shared libraries beyond the scope of the Sherwin Williams OpenServer License Agreement, and by assisting Sherwin Williams to implement Linux to support legacy applications by improperly incorporating the SCO OpenServer shared libraries. The act of inducing and assisting Sherwin Williams to breach its license agreement with SCO was an act that

constitutes interference with SCO's contract with Sherwin Williams by IBM. Upon information and belief, IBM profited from the interference by earning significant professional services fees in performing the switch from SCO OpenServer to Linux.

SCO does not presently know the specific dates on which the interference occurred, the identities of those involved, nor how the interference occurred because SCO was not present when IBM sold Sherwin Williams Linux-related services, or when IBM assisted Sherwin Williams in the design of the new Linux system deploying legacy applications that depended on SCO OpenServer shared libraries in order to function, or when IBM performed the professional services to assist Sherwin Williams to improperly deploy OpenServer shared libraries inside its IBM-provided Linux implementation. More specific information, such as which IBM and Sherwin Williams employees were involved, is in the possession of IBM and/or Sherwin Williams and will require additional discovery from at least IBM and Sherwin Williams.

IBM interfered with SCO's software licensing agreement with Target for the SCO OpenServer software operating system Contract # 1V743 dated March 2001 (the Target OpenServer License Agreement). Target utilized the SCO software in order to operate store pharmacies.

Within the last month, SCO has been informed that Target has decided to abandon its use of SCO's OpenServer UNIX product. Upon information and belief, Target's decision was induced by IBM. SCO contends that the act of inducing and assisting Target to breach its license agreement with SCO was an act that constitutes interference with contract by IBM. IBM stands to profit from the interference by earning significant professional services fees in performing the switch from SCO OpenServer to Linux.

More specific information, such as which IBM and Target employees were involved, is in the possession of IBM and/or Target and will require additional discovery from at least IBM and Target.

Insofar as IBM has been involved in the sale and deployment of Linux-related products and services to any other customers of SCO for the use and deployment of SCO OpenServer shared libraries inside a Linux implementation, that conduct is also interference with SCO's licensing agreements with such parties and there may in fact be additional SCO customers that have been interfered with other than AutoZone, Sherwin Williams and Target.

IBM has also improperly interfered with SCO's business relationships and prospective economic relationships. The facts known to Plaintiff giving rise to the conduct of such interference started during the LinuxWorld 2003 convention held in New York during or about January 2003. During this event, Darl McBride, SCO's CEO, informed Karen Smith of IBM that SCO intended to offer a software license to Linux users to allow for legal and authorized use of SCO's UNIX OpenServer shared libraries in a Linux implementation. Karen Smith responded by saying that "IBM was not pleased with SCO's plan to offer licenses for OpenServer shared library use in Linux", and that "the licensing plan would kill Linux." Ms. Smith also said that as a result of SCO's licensing plan for SCO OpenServer shared libraries, "IBM was going to cut off all of its business ties with SCO, and would have other IBM business partners do the same." Ms. Smith contacted Mr. Becker of Hewlett Packard during or shortly after the LinuxWorld 2003 convention and stated that IBM was cutting off all business ties with SCO and wanted Hewlett Packard to do the same. On information and belief, Ms. Smith also contacted representatives from Intel, Computer Associates, and Oracle for the same purpose and with the same general statement that IBM wanted each of those respective companies to cut off business ties with SCO. On information and belief, such contact by Ms. Smith

with each of Intel, Computer Associates, and Oracle occurred during or shortly after the LinuxWorld 2003 conference. As a result of IBM's improper contact and improper attempts to destroy plaintiff's existing and prospective business relationships with Hewlett Packard, Oracle, Intel, and Computer Associates, each of those stated companies has slowed or ceased business activities with SCO.

**INTERROGATORY NO. 9**

Please identify all agreements that plaintiff alleges or contends that IBM has breached, including the specific provisions or portions of those agreements that plaintiff alleges or contends that IBM breached, and describe, in detail, each instance in which plaintiff alleges or contends that IBM breached those agreements, including but not limited to (a) the date of the alleged breach; (b) all persons involved in the alleged breach; and (c) the specific manner in which IBM is alleged to have breached the agreement.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:**

Subject to and without waiving its objections, at this time, SCO supplements its answer to Interrogatory No. 9 and states that, as detailed in the Amended Complaint, among the provisions of the Software and Sublicensing Agreements that IBM breached are Sections 2.01, 2.05, 4.01, 6.03 and 7.06, of the Software Agreement. Section 2.01 was breached by IBM's failure to treat modifications and derivative works as part of the original Software Product by contributing such items to open source. Likewise, IBM breached Section 2.05 by allowing use for others and by others as a result of contributing the Protected Materials to open source. Section 4.01 prohibits export of the Software Products, which IBM breached by contributing the Software Product, including methods, modifications and derivative works to open source. As a result, persons anywhere in the world with a

it was distributed and to whom can be found in the invoices in Bates range 1186853 to 1227921. For the narrowing of the appropriate invoices they have been attached as Tab 121.

Respectfully submitted,

DATED this 15<sup>th</sup> day of January, 2004.

HATCH, JAMES & DODGE, P.C.

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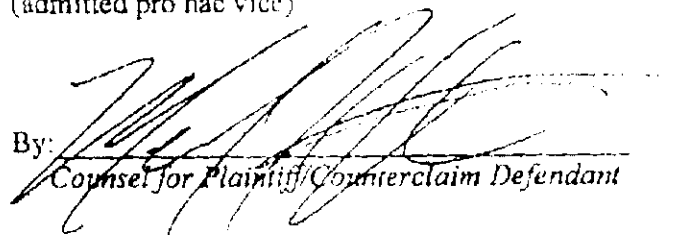
Stephen N. Zack

Mark J. Heise

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By:



*Counsel for Plaintiff/Counterclaim Defendant*