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*[Handwritten signature]*

Attorneys for Defendant AutoZone, Inc.

**Defendant.**

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**Civil Action File No.**

**CV-S-04-0237-RCJ-LRL**

Defendant AutoZone, Inc. (“AutoZone”) moves this Court, pursuant to 28 U.S.C. § 1404(a), for an Order transferring venue to the United States District Court for the Western District of

9

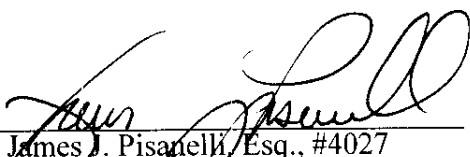
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1 Tennessee. The grounds in support of AutoZone's Motion are set forth in detail in the attached  
2 Memorandum of Law.<sup>1</sup>

3 DATED this 22nd day of April, 2004.

4 SCHRECK BRIGNONE

5  
6 By:   
7 James J. Pisanielli, Esq., #4027  
8 Nikki L. Wilmer, Esq., #6562  
300 South Fourth Street, Suite 1200  
Las Vegas, Nevada 89101

9 and

10 Michael P. Kenny, Esq.  
11 James A. Harvey, Esq.  
12 David J. Stewart, Esq.  
13 Christopher A. Riley, Esq.  
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1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

15 Attorneys for Defendant  
16 AutoZone, Inc.

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27 <sup>1</sup> As the record in this matter reflects, AutoZone has filed, concurrently with this Motion, a  
28 Motion to Stay or in the Alternative, For a More Definite Statement. AutoZone respectfully requests  
the Court to consider the present Motion initially, and then, if the Court deems it appropriate, to  
consider the Motion to Stay. In the event the Court grants the present Motion to Transfer Venue, the  
Court may defer the Motion to Stay to the United States District Court for the Western District of  
Tennessee.

## **MEMORANDUM OF LAW**

Defendant AutoZone, Inc. ("AutoZone") moves the Court, pursuant to 28 U.S.C. § 1404(a), for an Order transferring venue to the United States District Court for the Western District of Tennessee.

### **INTRODUCTION**

This case has almost no relevant connection with the District of Nevada. Although AutoZone is incorporated in Nevada, virtually all of AutoZone's relevant witnesses and documents are located in Memphis, Tennessee, where AutoZone is headquartered. Plaintiff The SCO Group, Inc. ("SCO") is headquartered in Salt Lake City, Utah, and, to AutoZone's knowledge, none of SCO's relevant witnesses or documents are located in this district. Accordingly, it will be just as easy for SCO to try this case in Memphis as in Las Vegas.

Venue is proper in the Western District of Tennessee because of AutoZone's residence in that district, and the Western District of Tennessee's caseload is lighter than the caseload of this district. This case will therefore likely get to trial more quickly in Memphis than in this district. As plaintiff, SCO certainly will have no objection to the prospect of getting to trial more quickly on its claims.

In short, trial of this case would be easier, more expeditious, and less expensive in the Western District of Tennessee, yet the interests of justice will be equally well served. AutoZone therefore respectfully requests that this Court transfer venue of this case to the Western District of Tennessee.

### **STATEMENT OF FACTS**

On March 3, 2004, SCO, a Delaware corporation with its principal place of business in Utah County, Utah, filed and served its Complaint on AutoZone, a Nevada corporation with its principal place of business in Memphis, Tennessee. Complaint ¶¶ 2 – 3. SCO's Complaint alleges that AutoZone has infringed on unspecified copyrights SCO purports to own in the UNIX computer

1 operating system through AutoZone's internal distribution and copying of the Linux computer  
2 operating system. *Id.* ¶¶ 20–21.<sup>2</sup>

3 AutoZone is a corporation formed under the laws of the State of Nevada, but its principal  
4 place of business and headquarters are located in Memphis, Tennessee. Declaration of Jon Bascom  
5 (hereinafter "Bascom Decl.") (attached hereto as Ex. A) ¶ 2. The AutoZone computers that use the  
6 Linux operating system are configured and managed by AutoZone's information technology staff  
7 located in Memphis, Tennessee. *Id.* ¶ 3. In addition, the computers running Linux that help manage  
8 and operate the AutoZone computer network throughout the country are located in Memphis,  
9 Tennessee. *Id.*

11 The witnesses with relevant knowledge of AutoZone's installation and use of Linux,  
12 including all of AutoZone's information technology staff, are located in Memphis. *Id.* ¶ 4.  
13 AutoZone is unaware at this time of any witnesses with knowledge of the operative facts that are  
14 located in Nevada. *Id.*

15 Virtually all documents in AutoZone's possession that relate to AutoZone's adoption and use  
16 of Linux are located in Memphis. *Id.* ¶ 5. Few – if any – are located in Nevada. *Id.*

17 SCO maintains offices in the United States in Utah, California, and New Jersey, but not  
18 Nevada. SCO Corporate Contact Information, at <http://www.thescogroup.com/worldwide/us.html>.  
19 Therefore, SCO likely has no relevant employees or documents located in this district.  
20

## 21 ARGUMENT AND CITATION OF AUTHORITY

### 22 A. This Court Should Transfer this Action to the United States District Court for the 23 Western District of Tennessee Pursuant to 28 U.S.C. § 1404(a).

24 Pursuant to 28 U.S.C. § 1404(a), this Court has authority to transfer any civil action "[f]or  
25 the convenience of parties and witnesses, in the interest of justice . . . to any other district or  
26 division where it might have been brought." 28 U.S.C. § 1404(a); *see also Miracle Blade, LLC v.*

27  
28 <sup>2</sup> Additional detail regarding the UNIX and Linux operating systems, SCO's claimed  
copyrights in UNIX, and AutoZone's use of Linux are set forth in AutoZone's Memorandum of Law  
in Support of Its Motion to Stay or, in the Alternative, for a More Definite Statement, filed  
concurrently herewith.

1 *Ebrands Commerce Group, LLC*, 207 F. Supp. 2d 1136, 1155 (D. Nev. 2002). By enacting this  
2 statute, Congress “intended to place discretion in the district court to adjudicate motions for transfer  
3 according to an ‘individualized, case-by-case consideration of convenience and fairness.’” *Stewart*  
4 *Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). Transfer of venue is appropriate if venue is  
5 proper in the transferee district and transfer will serve the convenience of parties and witnesses and  
6 the interests of justice. In this case, these requirements are fully satisfied and transfer of this action  
7 to the United States District Court for the Western District of Tennessee is warranted.  
8

9 **1. Venue is Proper in the Western District of Tennessee.**

10 SCO could have filed this case in the Western District of Tennessee because venue is proper  
11 there pursuant to 28 U.S.C. § 1391(a) and 28 U.S.C. § 1400(a). Under both 28 U.S.C. § 1391(a), the  
12 general venue statute, and 28 U.S.C. § 1400(a), the copyright venue statute, venue is proper in a  
13 judicial district where the defendant resides. *See* 28 U.S.C. § 1391(a) (“A civil action wherein  
14 jurisdiction is founded only on diversity of citizenship may . . . be brought only in (1) a judicial  
15 district where any defendant resides, if all defendants reside in the same State . . . .”); 28 U.S.C. §  
16 1400(a) (“Civil actions . . . arising under any Act of Congress relating to copyrights . . . may be  
17 instituted in the district in which the defendant or his agent resides or may be found.”).  
18

19 AutoZone resides in the Western District of Tennessee for purposes of venue because it is  
20 subject to personal jurisdiction in that district. 28 U.S.C. § 1391(c) (“For purposes of venue under  
21 this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in  
22 which it is subject to personal jurisdiction at the time the action is commenced.”). Venue is  
23 therefore proper in the Western District of Tennessee, meaning that this suit may be properly  
24 transferred there.

25 **2. Transfer of Venue to the Western District of Tennessee Will Serve the**  
26 **Convenience of the Parties and Witnesses and the Interests of Justice.**

27 The following factors should be considered in evaluating a transfer motion: (1) the  
28 convenience of the parties, (2) the convenience of the witnesses, and (3) the interests of justice.

*Miracle Blade*, 207 F. Supp. 2d at 1155-56 (citing *Los Angeles Mem’l Coliseum Comm’n v. Nat’l*

1 *Football League*, 89 F.R.D. 497, 499 (C.D. Cal. 1981)). These criteria involve the following  
2 straightforward relevant considerations: “convenience of the witnesses, convenience of the parties,  
3 relative ease of access to proof, judicial economy, and availability of compulsory process.” *Miracle*  
4 *Blade*, 207 F. Supp. 2d at 1156. Based on these criteria, this case should be transferred to the  
5 Western District of Tennessee.

6 **a. Convenience of the Witnesses and Parties.**

7  
8 The convenience of the witnesses and parties weighs heavily in favor of transfer. As set  
9 forth above, virtually all of the individuals with relevant knowledge of AutoZone’s adoption and use  
10 of Linux, including all of AutoZone’s information technology staff, are located in Memphis,  
11 Tennessee. Bascom Decl. ¶ 4. As such, it would be burdensome for these witnesses to travel to  
12 Nevada for trial of this case. *Id.* There are likely no AutoZone witnesses with relevant knowledge  
13 located in Nevada. *Id.* Moreover, there are likely no SCO witnesses with relevant knowledge  
14 located in Nevada because SCO’s United States offices are located in Utah, California, and New  
15 Jersey. This factor therefore weighs heavily in favor of transfer.

16 **b. Access to Proof.**

17  
18 The access to proof factor also weighs heavily in favor of transfer. Almost all of the relevant  
19 documents related to AutoZone’s adoption and use of Linux are located in Memphis. *Id.* ¶ 5. By  
20 contrast, there are likely few, if any, relevant AutoZone documents located in Nevada. *Id.* Based  
21 upon the facts as AutoZone knows them, it is highly unlikely that any relevant SCO documents are  
22 located in Nevada because SCO has no offices in the state. This factor therefore favors transfer.

23 **c. Judicial Economy and Interests of Justice.**

24 “In its determination of whether to transfer a case pursuant to 28 U.S.C. § 1404(a), a district  
25 court may consider which forum will provide a ‘speedier trial.’” *Miracle Blade*, 207 F. Supp. 2d at  
26 1157. This Court recognized in *Miracle Blade* that the location of documents in the proposed  
27 transferee district “would make trial of this case easier, more expeditious, and less expensive.” *Id.*  
28 Transfer to Memphis would thus make trial of this case easier, more expeditious, and less expensive.

The Western District of Tennessee also had approximately 20% fewer pending cases per judge than the District of Nevada for the twelve month period ending September 30, 2003 (361 cases per judge versus 439 cases per judge). U.S. District Court – Judicial Caseload Profile at <http://www.uscourts.gov/cgi-bin/cmsd2003.pl> (attached hereto as Ex. B). Cases also proceeded to trial in the Western District of Tennessee approximately 45% faster than cases pending in the District of Nevada during this same time period (18 months from filing versus 32 months). *Id.* Accordingly, the interests of justice would be served by the transfer of this case to the Western District of Tennessee because that forum could provide the parties with a “speedier trial.”

Finally, Tennessee has at least as strong, if not stronger, interest than Nevada in “protecting the interests of persons and businesses that reside and conduct business” in Tennessee, such as AutoZone. *Miracle Blade*, 207 F. Supp. 2d at 1157. Nevada’s only connection to this case is based on AutoZone’s incorporation in Nevada. Therefore, the interests of the relevant forums strongly favor transfer to the Western District of Tennessee.

**B. The Substantial Contacts with the Western District of Tennessee and the Lack of Relationship with the District of Nevada Weigh in Favor of Transfer of this Action Despite Plaintiff’s Choice of Forum.**

A district court should “balance the preference accorded plaintiff’s choice of forum with the burden of litigating in an inconvenient forum.” *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9<sup>th</sup> Cir. 1986). However, a plaintiff’s choice of forum is less significant if the plaintiff does not reside in the chosen forum.

A plaintiff’s choice of forum is normally only given substantial deference if the plaintiff is a resident of the district in which the action is brought. Otherwise, this bears little significance on determining whether to grant a discretionary transfer.

*Miracle Blade*, 207 F. Supp. 2d at 1155.

Similarly, a plaintiff’s choice of forum is less significant when the factual allegations in dispute have no relationship to the forum.

In judging the weight to be accorded [plaintiff’s] choice of forum, consideration must be given to the extent of both [plaintiff’s] and [defendant’s] contacts with the forum, including those relating to [plaintiff’s] cause of action. If the operative facts have not occurred

1 within the forum and the forum has no interest in the parties or subject  
2 matter, [plaintiff's] choice is entitled to only minimal consideration.

3 *Lou v. Belzberg*, 834 F.2d 730, 739 (9<sup>th</sup> Cir. 1987) (internal citations omitted); *see also Paul v.*  
4 *Lands' End, Inc.*, 742 F. Supp. 512, 514-15 (N.D. Ill. 1990) ("The plaintiff's choice of forum is  
5 given less deference when, as in this case, there is relatively little connection between the forum and  
6 the plaintiff's cause of action.").

7 In the present case, SCO's choice of forum should be afforded "little significance" and given  
8 only "minimal consideration" because SCO does not reside in Nevada and this case has only  
9 nominal relationship to Nevada. *Miracle Blade*, 207 F. Supp. 2d at 1155; *Lou*, 834 F.2d at 739. The  
10 Court should therefore give little deference to SCO's choice of forum in this case.

### 11 CONCLUSION

12 All of the relevant factors strongly favor transfer of this case to the Western District of  
13 Tennessee. AutoZone therefore respectfully requests that this Motion be granted.

14 This 23rd day of April, 2004.

15 SCHRECK BRIGNONE

16 By: 

17 James J. Pisanelli, Esq., #4027  
18 Nikki L. Wilmer, Esq., #6562  
19 300 South Fourth Street, Suite 1200  
20 Las Vegas, Nevada 89101

21 and

22 Michael P. Kenny, Esq.  
23 James A. Harvey, Esq.  
24 David J. Stewart, Esq.  
25 Christopher A. Riley, Esq.  
26 Douglas L. Bridges, Esq.  
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28 1201 West Peachtree Street  
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Attorneys for Defendant  
AutoZone, Inc.



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Las Vegas, Nevada 89101  
(702) 382-2101

CERTIFICATE OF SERVICE

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

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

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

This 23rd day of April, 2004.

  
An employee of SCHRECK BRIGNONE



A

## DISTRICT OF NEVADA

**Defendant.**

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

Pursuant to 28 U.S.C. § 1746, Jon A. Bascom makes the following declaration under penalty of perjury.

1.

I am more than 18 years of age and I am competent to make this Declaration based on my personal knowledge. I am Vice President, Information Technology, of AutoZone, Inc. (“AutoZone”).

2.

AutoZone is a corporation formed under the laws of the State of Nevada. AutoZone’s principal place of business and headquarters are located in Memphis, Tennessee within the Western District of Tennessee.

3.

AutoZone has computers that use the Linux operating system installed in stores across the United States. The AutoZone computers that use the Linux operating system are configured and managed by AutoZone's information technology staff located in Memphis, Tennessee. In addition, the computers that use the Linux operating system and

that help manage and operate the AutoZone computer network throughout the country are located in Memphis, Tennessee.

4.

The likely witnesses of AutoZone with relevant knowledge of the issues asserted in the Complaint, including the information technology staff familiar with the Linux operating system utilized by AutoZone, are primarily located in Memphis, Tennessee. It would be a significant burden for these witnesses, especially the information technology staff familiar with the Linux operating system and its use within AutoZone, to travel to Nevada. There are likely no AutoZone witnesses with relevant knowledge located in Nevada.

5.

The documents relating to the use of the Linux operating system by AutoZone are primarily located in Memphis, Tennessee where the information technology staff manages and configures the AutoZone computer network. Accordingly, the likely documents of AutoZone that relate to the issues asserted in the Complaint are primarily located in Memphis, Tennessee. Similarly, there are likely few relevant AutoZone documents located in Nevada.

5.

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

Executed this 21 day of April, 2004.

  
JON A. BASCOM  
AutoZone, Inc.



B

## U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

					12-MONTH PERIOD ENDING SEPTEMBER 30							
TENNESSEE WESTERN					2003	2002	2001	2000	1999	1998	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*				2,003	1,978	1,826	1,943	1,887	1,913	U.S.	Circuit
	Terminations				1,716	1,787	1,820	1,923	1,964	1,949		
	Pending				1,803	1,521	1,324	1,301	1,262	1,403		
	% Change in Total Filings		Over Last Year		1.3					49	7	
			Over Earlier Years			9.7	3.1	6.1	4.7	52	6	
Number of Judgeships					5	5	5	5	5	5		
Vacant Judgeship Months**					5.5	10.6	12.0	7.6	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS		Total	401	395	365	389	377	383	62	7	
			Civil	269	278	296	328	302	316	68	9	
			Criminal Felony	104	100	69	61	75	67	23	2	
			Supervised Release Hearings**	28	17	-	-	-	-	21	2	
	Pending Cases		361	304	265	260	252	281	59	8		
	Weighted Filings**		484	501	439	431	451	431	48	4		
	Terminations		343	357	364	385	393	390	72	9		
	Trials Completed		24	17	18	25	27	30	24	3		
MEDIAN TIMES (months)	From Filing to Disposition		Criminal Felony	9.1	8.4	7.9	8.3	7.2	8.7	70	7	
			Civil**	10.5	9.5	9.7	9.1	10.7	9.1	63	4	
	From Filing to Trial** (Civil Only)			18.0	20.0	16.5	17.3	18.5	19.6	17	2	
OTHER	Civil Cases Over 3 Years Old**		Number	31	30	22	13	24	51			
			Percentage	2.5	2.9	2.2	1.2	2.5	4.6	36	4	
	Average Number of Felony Defendants Filed Per Case			1.3	1.5	1.7	1.6	1.6	1.5			
	Jurors		Avg. Present for Jury Selection	43.27	40.67	39.53	40.17	37.18	37.90			
			Percent Not Selected or Challenged	42.3	40.5	43.8	47.8	36.8	37.9			

2003 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1344	55	3	399	24	3	47	190	159	19	368	3	74
Criminal*	515	17	12	215	1	35	108	**	21	53	3	13	37

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

## U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

					12-MONTH PERIOD ENDING SEPTEMBER 30							
NEVADA					2003	2002	2001	2000	1999	1998	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*				3,312	3,257	2,825	2,837	3,199	3,451	U.S.	Circuit
	Terminations				3,219	3,110	2,693	2,874	3,145	3,046		
	Pending				3,074	3,076	2,963	2,954	2,940	2,968		
	% Change in Total Filings		Over Last Year		1.7					48	9	
			Over Earlier Years			17.2	16.7	3.5	-4.0	75	11	
Number of Judgeships					7	7	7	6	4	4		
Vacant Judgeship Months**					.0	6.0	21.5	15.4	.0	5.0		
ACTIONS PER JUDGESHIP	FILINGS		Total	473	466	404	473	800	863	47	8	
			Civil	355	343	329	392	668	732	45	6	
			Criminal Felony	97	101	75	81	132	131	26	9	
			Supervised Release Hearings**	21	22	-	-	-	-	39	13	
	Pending Cases		439	439	423	492	735	742	33	7		
	Weighted Filings**		517	497	422	487	863	816	36	7		
	Terminations		460	444	385	479	786	762	40	8		
	Trials Completed		17	17	17	18	28	34	55	6		
MEDIAN TIMES (months)	From Filing to Disposition		Criminal Felony	8.0	9.3	10.0	9.9	8.2	9.1	55	8	
			Civil**	8.1	8.6	10.6	8.1	9.2	7.5	20	5	
	From Filing to Trial** (Civil Only)			32.0	31.0	33.0	28.0	27.7	28.0	75	8	
OTHER	Civil Cases Over 3 Years Old**		Number	109	112	81	87	33	54			
			Percentage	4.4	4.5	3.3	3.5	1.4	2.1	59	5	
	Average Number of Felony Defendants Filed Per Case			1.2	1.2	1.3	1.3	1.5	1.4			
	Jurors		Avg. Present for Jury Selection	41.09	43.03	39.05	42.36	45.03	39.81			
			Percent Not Selected or Challenged	29.9	36.8	40.1	38.5	32.5	36.0			

2003 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2488	18	6	610	63	33	122	320	213	112	504	3	484
Criminal*	676	185	7	174	8	13	71	**	10	104	14	19	71

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

CV-S-04-0252



CV-S-04-0252-0011



04/23/2004



\*A04/23/2004





LELAND E. LUTFY, ESQ.  
LELAND E. LUTFY, CHARTERED  
Nevada Bar No. 1678  
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Las Vegas, Nevada 89101  
Telephone No.: (702) 477-0443  
Facsimile No.: (702) 477-0448  
Attorney for Plaintiff Antal Markus

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ANTAL MARKUS, an individual, ) Case No.: CV-S-04-0252 PMP (PAL)  
)  
)  
Plaintiff, )  
)  
)  
vs. )  
)  
)  
NANOSIGNAL CORPORATION, INC., a )  
)  
Nevada publically traded corporation dba )  
)  
MICROSIGNAL CORPORATION, INC.; )  
)  
GARY WAYNE WALTERS, an individual; )  
)  
DOES I through X, inclusive, )  
)  
)  
Defendants. )

**NOTICE OF APPEARANCE OF  
ATTORNEY FOR PLAINTIFF**

Pursuant to United States District Court, District of Nevada, Local Rules of Practice, Rule  
I A 10-6, LELAND E. LUTFY, ESQ., of the law offices of LELAND E. LUTFY, CHARTERED,

...

...

...

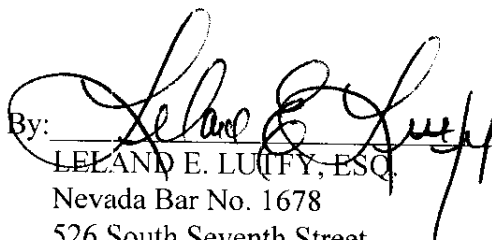
...

11

1 hereby files a Notice with the Court that he is appearing in this case as attorney for Plaintiff, ANTAL  
2 MARKUS, for all purposes.

3  
4 DATED this 23<sup>rd</sup> day of April, 2004.

5 LELAND E. LUTFY, CHARTERED

6  
7 By:   
8 LELAND E. LUTFY, ESQ.  
9 Nevada Bar No. 1678  
10 526 South Seventh Street  
11 Las Vegas, Nevada 89101

12 **CERTIFICATE OF MAILING**

13 I HEREBY CERTIFY on the 23<sup>rd</sup> day of April, 2004, I served the above and foregoing  
14 NOTICE OF APPEARANCE OF ATTORNEY FOR PLAINTIFF by depositing a true and correct  
15 copy in the United States mails, postage prepaid, addressed to counsel for Defendants at their last  
16 known address as follows:

17 Harold P. Gewerter, Esq.  
18 Wendy E. Miller, Esq.  
19 5440 W. Sahara Avenue, Suite 202  
20 Las Vegas, Nevada 89146

21   
22 An Employee of  
23 LELAND E. LUTFY, CHARTERED  
24  
25  
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