

Plaintiff, the SCO Group, Inc. (“SCO”), respectfully seeks leave of Court to amend its Complaint and file a First Amended Complaint (attached hereto as Exhibit A) pursuant to Federal Rule of Civil Procedure 15(a), and in support of this Motion states as follows:

BACKGROUND

SCO instituted this action on March 3, 2004, asserting a single claim for copyright infringement based on AutoZone’s conduct in migrating from SCO’s OpenServer operating system to the Linux operating system. In its Complaint, SCO alleges that Linux contains and is a derivative of SCO’s copyrighted UNIX System V technology.

In 2004, the Court stayed the action pending resolution of related cases proceeding in the Federal District Courts for the Districts of Utah and Delaware. Pursuant to its August 4, 2004 Order, as amended, the Court authorized limited discovery to permit SCO to determine whether or not it was appropriate for SCO to move for preliminary injunctive relief. During the course of that limited discovery, SCO uncovered evidence that AutoZone had made thousands of unauthorized copies of OpenServer materials in converting its computer systems from OpenServer to Linux at its headquarters and 3,500 retail stores in the United States and Mexico. (See May 27, 2005 Report of Plaintiff The SCO Group Inc. Regarding Discovery, at 6-11.)

On September 22, 2008, the Court lifted the stay effective December 31, 2008. On January 16, 2009, the Court entered the Stipulated Discovery Plan and Scheduling Order, which sets July 1, 2009, as the deadline for the parties to amend their pleadings, and January 15, 2010, as the deadline for them to complete fact discovery. Since January 16, 2009, the parties have exchanged Rule 26 Initial Disclosures, but have not otherwise conducted discovery in this case.

Based on the evidence it discovered in 2004, SCO seeks leave to file a First Amended Complaint to (1) expand the scope of the copyright claim to include infringement of OpenServer and related copyrights, and (2) add a single claim for breach of the agreements under which AutoZone licensed OpenServer and related materials from SCO's predecessor-in-interest.

ARGUMENT

Under Rule 15, which governs the amendment of pleadings, "leave shall be freely given when justice so requires." FED. R. CIV. P. 15. "The purpose of pleading is to facilitate a proper decision on the merits . . . and not erect formal and burdensome impediments to the litigation process. Unless undue prejudice to the opposing party will result, a trial judge should ordinarily permit a party to amend its complaint." Howey v. United States, 481 F.2d 1187, 1190 (9th Cir. 1973). The Ninth Circuit has repeatedly emphasized that "Rule 15's policy of favoring amendments to pleadings should be applied with extreme liberality." DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir.1987).

Courts should grant leave to amend unless the non-moving party shows that the proposed amendment is unduly delayed, prompted by bad faith or dilatory motive, would unduly prejudice the opposing party, or would be futile. Foman v. Davis, 371 U.S. 178, 182 (1962). "Absent prejudice, or a strong showing of any of the remaining Foman factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (emphasis in original). Here, AutoZone cannot make any showing of prejudice or the other factors, let alone a showing sufficient to overcome the presumption in favor of granting this Motion.

First, SCO seeks to amend its Complaint by the deadline for amendment of pleadings in the Scheduling Order, just a few months after the Court lifted the stay that was in place in this case virtually since its inception. There can be no serious argument that SCO has unduly delayed or acted in bad faith by filing this Motion by the Court-ordered and stipulated deadline, especially where SCO could not have filed the Motion during the pendency of the stay.

Second, SCO uncovered the evidence in support of the proposed amendment over four years ago, and in January of this year informed counsel for AutoZone that SCO would seek to file an amended complaint based on that evidence. Counsel for AutoZone did not object, but rather agreed to the stipulated deadline for amendment of pleadings. Under these circumstances, there can be no credible argument that AutoZone has been prejudiced, much less unduly prejudiced, by the timing of this Motion, especially where AutoZone has subsequently elected not to take discovery to this point under the Scheduling Order.

Third, where more than six months remain for the parties to complete fact discovery and where the Scheduling Order sets May 10, 2010 as the deadline to file dispositive motions and June 9, 2010, as the deadline to file a joint pre-trial order, AutoZone cannot make the required showings. See, e.g., Golden Hour Data Systems, Inc. v. Health Services Integration, Inc., 2008 WL 2622794 (N.D.Cal. July 1, 2008) (granting leave to amend where discovery cut-off remained more than three months away and trial was not scheduled to begin for more than nine months); Jefferson v. Rowe, 2008 WL 669894 (E.D. Cal., Mar. 7, 2008) (granting leave where the case was still in the discovery phase).

Fourth, since AutoZone has conducted little to no discovery in this case, it cannot be argued that it will be prejudiced by having to re-take discovery based on new allegations in the proposed First Amended Complaint.

Fifth, because the proposed amendment relates to the same subject matter already at issue – AutoZone’s actions in converting its computer systems from OpenServer to Linux – the proposed amendment will not substantially expand the scope of discovery or litigation, and AutoZone cannot argue that it will be unduly prejudiced by the amendment. See, e.g., LeaseAmerica Corp. v. Eckel, 710 F.2d 1470, 1474 (10th Cir. 1983) (no prejudice where the amended complaint referred “to the same chattels, the same consideration, and the same transaction” already at issue in the case); Kreinik v. Showbran Photo, Inc., No. 02 Civ. 1172 (RMB) (DF), 2003 WL 22339268, at *10 (S.D.N.Y. Oct. 14, 2003) (plaintiff’s amendment would not cause the defendant any prejudice where new claims related to claims already at issue).

CONCLUSION

For the foregoing reasons, SCO respectfully requests that the Court grant leave for SCO to file its First Amended Complaint in this action.

DATED this 1st day of July 2009.

BOIES, SCHILLER & FLEXNER LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Boies, Schiller & Flexner LLP and that on this 1st day of July 2009, I caused to be deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing SCO's Motion to Amend Complaint addressed as follows:

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/s/ Shilah Wisniewski
An employee of Boies, Schiller & Flexner LLP

Exhibit A

Exhibit A

COMES NOW, the Plaintiff, The SCO Group, Inc. (“SCO”), and sues the Defendant, AutoZone, Inc. (“AutoZone”), and alleges as follows:

I. NATURE OF THIS ACTION

1. AutoZone uses one or more versions of the Linux operating system that infringe on SCO’s exclusive rights in its propriety UNIX System V operating system technology.

2. In addition, as SCO confirmed through the limited discovery the Court previously authorized in this action, contrary to AutoZone’s public statements to this Court and others, AutoZone made many thousands of unauthorized copies of materials from SCO’s OpenServer operating system and related products, in migrating from OpenServer to Linux in AutoZone’s headquarters and 3,500 retail stores.

3. SCO seeks relief under the Copyright Act to compensate SCO for damages it has sustained as result of AutoZone’s unlawful use of Linux and to enjoin AutoZone’s further unlawful use of Linux. SCO also seeks relief under applicable contract law to compensate SCO for damages it has sustained as a result of AutoZone’s breach of the agreements through which it obtained limited licenses to OpenServer and related materials. SCO also seeks relief under the Copyright Act to compensate SCO for damages it has sustained as a result of AutoZone’s unlawful use of OpenServer and related products outside the scope of those limited licenses.

II. PARTIES, JURISDICTION, AND VENUE

4. SCO is a Delaware corporation with its principal place of business in Utah County, Utah.

5. AutoZone is a Nevada corporation with its headquarters in Tennessee.

6. This Court has subject matter jurisdiction over SCO's copyright claims pursuant to 28 U.S.C. §§ 1331 and 1338. Based on this jurisdiction, the Court also has supplemental jurisdiction over SCO's contract claim.

7. This Court has personal jurisdiction over AutoZone because it is incorporated and conducts substantial business in Nevada.

8. Venue is properly situated in this District pursuant to 28 U.S.C. §§ 1391 and 1400, and the prior order of this Court.

III. FACTUAL BACKGROUND

A. SCO's Rights in UNIX Code and Products.

9. UNIX is a computer software operating system. Operating systems serve as the link between computer hardware and the various software programs (known as applications) that run on a computer. Operating systems allow multiple software programs to run at the same time and generally function as "traffic control" for those programs.

10. UNIX is widely used in the business-computing environment of the Fortune 1000 companies and other large corporations (often called the "enterprise computing market").

11. The UNIX operating system was originally developed by AT&T Bell Laboratories ("AT&T"). Over the years, AT&T and its successors progressively developed updated versions and releases of the operating system. UnixWare is the brand name for the most current releases of UNIX System V.

12. In the 1980s, AT&T began to license UNIX System V as a commercial product for use in enterprise applications by large companies and institutions. Pursuant to standard licensing agreements, AT&T granted the world's leading computer manufacturers the right to use

a specific release of the valuable UNIX source code to develop UNIX-derived versions of the operating system, known as UNIX flavors, optimized to run on their respective computers. International Business Machines, Hewlett-Packard, Sun Microsystems, Silicon Graphics, Sequent Computer Systems, and Santa Cruz Operation, Inc. (“Santa Cruz”), among others, became important vendors of UNIX flavors.

13. Licensees obtained those rights subject to strict restrictions on the use and disclosure of UNIX source code and intellectual property, including the UNIX flavors themselves. These restrictions protected the rights of AT&T and its successors, including today SCO, in the UNIX technology and business.

14. Through a series of corporate acquisitions – from AT&T, to Novell, to Santa Cruz, to SCO – SCO today owns (among other assets related to UNIX) all right, title, and interest in and to:

- a. the source code for UNIX, UnixWare, and the UNIX flavor OpenServer,
- b. the licensing agreements with the foregoing UNIX vendors,
- c. all claims for breach of those agreements,
- d. copyrights in and to UNIX and UnixWare, and
- e. copyrights in and to OpenServer and related products.

15. Upon information and belief, SCO owns all copyrights to UNIX, UnixWare, OpenServer, and related products.

16. On August 10, 2007, the Federal District Court for the District of Utah ruled on summary judgment that SCO has a license and other ownership rights, but does not own the copyrights, to certain older versions of UNIX and UnixWare. SCO has appealed this ruling in the United States Court of Appeals for the Tenth Circuit, which heard oral argument on the

appeal on May 6, 2009. The appeal was briefed and argued on an expedited basis; SCO does not know when the Tenth Circuit will issue a decision.

B. AutoZone's Unauthorized Use of Linux.

17. Linux is a form of "open source" software. The Linux source code is freely available to the public – unlike the source code for proprietary programs such as UNIX and its flavors. The code for the Linux kernel can be freely downloaded from a public website and installed on a computer. Like other open source software, Linux is modified on an ongoing basis, based on voluntary contributions from users around the world.

18. Starting approximately in early 2000, Linux was wrongfully transformed from an upstart hobbyist's program into a powerful general enterprise operating system competitive with UNIX and Windows. According to leaders within the Linux-development community, Linux is intended to displace UNIX System V.

19. Linux is in material respects a variant or clone of UNIX System V technology. Linux is a derivative of, and substantially similar to, UNIX System V under the Copyright Act.

20. Subsequent to the transformation of Linux into a commercially viable operating system, AutoZone started to use, copy, modify, and/or distribute one or more implementations of Linux in its business operations. AutoZone today continues to use, copy, modify, and/or distribute Linux. AutoZone thus has infringed and continues to infringe SCO's exclusive rights as owner of the copyrights to UNIX System V.

C. AutoZone's Limited Licenses to OpenServer Technologies.

21. In 1988, Santa Cruz licensed UNIX System V Release 3.2 from AT&T. As a UNIX licensee, Santa Cruz then developed and marketed OpenServer, based on that UNIX

release. In 1995, Santa Cruz purchased the base UNIX technology and the UNIX licensing business from Novell, Inc., which had acquired them from AT&T. In 2001, SCO acquired the base UNIX technology and the UNIX licensing business, as well OpenServer and related products, from Santa Cruz.

22. By the late 1990s, before Linux was transformed into a commercially viable competitor to UNIX, OpenServer was a market leader in worldwide UNIX sales. Today, OpenServer accounts for the majority of SCO's revenues.

23. On May 14, 1990, Santa Cruz entered into an Authorized Industry Reseller Agreement with AutoZone (the "AIRA") granting AutoZone a limited license to "LICENSED PRODUCT," including OpenServer and related products.

24. Under the AIRA, AutoZone obtained the right to use the LICENSED PRODUCT "exactly as shipped . . . by SCO." (AIRA § 1.) The AIRA also provides that AutoZone "may not modify or change LICENSED PRODUCT in any manner" and "may not make or cause to be made any copy of any part of LICENSED PRODUCT." (*Id.* (emphasis added).) In addition, AutoZone agreed to "modify . . . SCO LICENSED PRODUCT . . . only with SCO's prior permission." (*Id.* § 2.1.H.)

25. On January 24, 2001, Santa Cruz entered into a Corporate Software License Agreement with AutoZone (the "CSLA"). Section 1.0 of the CSLA, entitled "Grant of Right," provides:

SCO grants Company a non-transferable and non-exclusive license to use the Licensed Products provided to Company under this Agreement and to utilize any SCO Serial Number and Activation Key ("SNAK") or Certificate of License ("COLA") made available to Company to install such Licensed Product on Company's systems worldwide, subject to the terms of this

Agreement. Any use of the SNAK and/or COLA shall be in accordance with the terms and conditions set forth herein.

26. The standard COLA provides: “This certificate licenses the software product listed below according to the rights outlined in the Software License Agreement included with your SCO product.”

27. Section 3.1 of the CSLA provides:

Company shall have the right to reproduce the Licensed Product as expressly set forth herein. The Licensed Products may not be modified or revised in any way, nor may it be translated or localized in any way without the prior written consent of SCO. All copies of the Licensed Product reproduced by Company shall include the copyright notice of SCO and/or its suppliers and all other proprietary markings.

(Emphasis added.)

28. Section 11.2 of the CSLA requires that AutoZone “not reverse engineer or decompile, translate, create derivative works or modify any of the Licensed Product, except as expressly provided herein.” (Emphasis added.) The CSLA does not provide any such exception.

29. SCO owns and is the successor-in-interest to all contractual rights arising under and related to the AIRA, CSLA, and COLA.

D. AutoZone’s Unauthorized Use of OpenServer Technologies.

30. AutoZone licensed OpenServer and related products under the AIRA and CSLA, subject to the terms of those agreements. As explained below, AutoZone breached those agreements in migrating or converting its computer systems at its headquarters and 3,500 stores from a UNIX-based operating system to a Linux-based operating system.

31. Pursuant to this Court’s August 6, 2004 Order, as amended, SCO conducted limited discovery to determine whether or not it was necessary for SCO to move for a

preliminary injunction. Contrary to the statements AutoZone made to this Court at that time and contrary to an Internet posting by AutoZone's former senior technology advisor, AutoZone admitted to extensive copying of programs containing OpenServer code. After such facts came to light, AutoZone swore that it had voluntarily removed all such programs from its Linux servers and certified that other such programs were recompiled without such code. Accordingly, SCO elected not to file for preliminary injunctive relief.

32. In particular, AutoZone admitted that it created what amounts to tens of thousands of copies of OpenServer files in Common Object File Format ("COFF") and installed them onto its various Linux servers located in AutoZone's headquarters and 3,500 stores in the United States and Mexico. With respect to just nine of these COFF files, for example, AutoZone's senior technical advisor testified:

Q. Okay. So I think you earlier told me that there were – there was a Linux release, and then there was some other kind of release, and somehow, the COFF files got into the Linux release. Is that right?

A. Right.

Q. As you sit here today, do you recall how many machines those nine COFF files were on before they were deleted?

A. I believe they were on all of our store servers.

Q. Okay. So all 3500?

A. Right.

33. To illustrate, SCO's limited discovery to date confirms that AutoZone engaged in the following activities, among others, in violation of SCO's contract rights and copyrights:

- a. AutoZone developers copied 1,681 separate COFF files onto at least 387 AutoZone store machines located throughout the United States.
- b. AutoZone developers copied 28 COFF files consisting of sort files, help utilities, and other miscellaneous files, onto all its machines in 3,500 AutoZone stores in the United States and Mexico.
- c. AutoZone copied two COFF files, CompX and DecompX, onto the machines located in those stores. These files were programs that AutoZone had licensed from a third party which contained proprietary SCO code. AutoZone used these files at least from January 2000 until it deleted them during the Court-ordered discovery process. When AutoZone deleted CompX and DecompX from its Linux servers, the replenishment system used by AutoZone to replace inventory from its warehouses failed on approximately 650 machines.
- d. AutoZone's machine load computer was found to contain a program entitled d-expand.x that was compiled under SCO's proprietary OpenServer operating system.
- e. AutoZone copied over 4,500 programs that were compiled to run on OpenServer onto AutoZone's "Spirit Server" which was used to store AutoZone's source code in its headquarters. The vast majority of these programs contain some portion of SCO's proprietary static libraries. AutoZone has admitted to copying on Spirit at least 1,130 programs compiled to run on OpenServer.
- f. In addition, with the aid of a software tool written by SCO's technical consultant, AutoZone discovered an additional fifteen SCO Extensible Linking Format

(“ELF”) and Xenix files which were also compiled to work on SCO proprietary operating systems (earlier versions of OpenServer that were licensed by AutoZone). AutoZone admitted that those files “likely also exist on all 3500 AutoZone store servers.”

- g. AutoZone copied approximately 370 programs onto its Linux development machine known as “Wrangler.” The majority of these programs appear to contain some portion of SCO’s proprietary static libraries.
- h. AutoZone developers copied numerous SCO files, the precise number of which has not been disclosed in discovery, onto AutoZone’s “Vision” server which was used in part by AutoZone to compare the output of programs that it was porting from OpenServer to Linux, to ensure that the output was identical.

34. AutoZone conducted its migration to Linux in an ad hoc manner through developers who had worked and were familiar with SCO’s proprietary OpenServer code and related products, with no formal controls in place to protect those materials. AutoZone has admitted that the persons responsible for implementing the migration were not focused on protecting those materials. Those persons did not consult counsel prior to or during the migration process, nor did they review the AIRA or CSLA to determine if the planned migration ran afoul of those licenses.

35. AutoZone’s conduct constituted a breach of terms of the AIRA and CSLA.

36. AutoZone breached the provisions requiring that it “not make or cause to be made any copy of any part of LICENSED PRODUCT.” (AIRA § 1.)

37. In addition, in taking materials from software products licensed to AutoZone under the AIRA and using them to migrate to Linux, AutoZone breached the provisions requiring it to use those materials “exactly as shipped” and “not modify or change LICENSED PRODUCT in any manner.” (Id.) AutoZone also breached the provisions permitting it to “modify . . . SCO LICENSED PRODUCT . . . only with SCO’s prior permission.” (Id. § 2.1.H.)

38. Similarly, AutoZone’s conduct in migrating to Linux breached Section 3.1 of the CSLA, which provides that “Licensed Products may not be modified or revised in any way,” and Section 11.2 of the CSLA, which requires that AutoZone not “create derivative works or modify any of the Licensed Product, except as expressly provided herein.”

39. AutoZone’s breach of its contractual obligations worked damage upon SCO, including by depriving SCO of the licensing fees that AutoZone was required to pay SCO for each copy and installation of OpenServer and related materials.

40. AutoZone also infringed SCO’s copyrights in the OpenServer and related products licensed through the AIRA and CSLA, by using, copying, reproducing, adapting, modifying, and/or distributing OpenServer and related products in migrating to Linux.

FIRST CAUSE OF ACTION
(Copyright Infringement in Linux)

41. Plaintiff repeats and re-asserts all allegations set forth in the foregoing paragraphs of this First Amended Complaint as though fully set forth herein.

42. Upon information and belief, SCO is the sole and exclusive owner of the copyrights to UNIX, UnixWare, and OpenServer (including related products), including source code, object code, programming tools, documentation, and derivative works thereof (the

“Copyrighted Materials”). SCO is the sole, exclusive, and undisputed owner of certain copyrights to the Copyrighted Materials..

43. SCO and its predecessors-in-interest obtained, and SCO today owns, numerous copyright registrations in Copyrighted Materials, including without limitation registrations for the following reference materials:

<u>TITLE</u>	<u>REGISTRATION NO.</u>
UNIX SYSTEM V RELEASE 4 Integrated Software Development Guide	TX 2 931-646
UNIX SYSTEM V RELEASE 4 Reference Manual For Intel Processor Commands m-z	TX 3 221-656
UNIX SYSTEM V RELEASE 4 Reference Manual for Intel Processors Commands a-1	TX 3 227-639
UNIX SYSTEM V RELEASE 4 Device Driver Interface/Driver Kernel Interface Reference Manual for Intel Processors	TX 3 232-578
UNIX SYSTEM V RELEASE 4 Programmer's Guide: Streams for Intel Processors	TX 3 218-286
UNIX SYSTEM V RELEASE 4 Device Driver Interface/Driver Kernel Interface Reference Manual for Motorola Processors	TX 220-500
UNIX SYSTEM V RELEASE 4 Reference Manual for Motorola Processors Commands a-1	TX 3 220-331
UNIX SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE	TX 2 120-502
UNIX SYSTEM V/386 RELEASE 4 Transport Application Interface Guide	TX 2 881-542
UNIX SYSTEM V/386 RELEASE 4 Device Interface/Driver Kernel Interface (DDI/DKI)	TX 2 883-235

Reference Manual	
UNIX SYSTEM V/386 RELEASE 4 Programmer's Guide: SCSI Driver Interface	TX 2 902-863
UNIX SYSTEM V/386 RELEASE 4 System Administrator's Reference Manual	TX 2 881-543
UNIX SYSTEM V/386 RELEASE 4 Programmer's Reference Manual	TX 2 853-760
UNIX SYSTEM V/386 RELEASE 4 User's Reference Manual	TX 2 890-471
UNIX SYSTEM V/386 RELEASE 4 User's Reference Manual	TX 2 820-791
UNIX SYSTEM V RELEASE 4 Device Driver Interface/Driver Kernel Interface (DDI/DKI) Reference Manual	TX 3 820-792
UNIX SYSTEM V RELEASE 4 Programmer's Guide: Streams	TX 2 833-114
UNIX SYSTEM V RELEASE 4 Programmer's Reference Manual	TX 2 832-009
UNIX SYSTEM V RELEASE 4 System Administrator's Reference Manual	TX 2 830-989
UNIX SYSTEM V/386 Programmer's Guide Vol. II	TX 2 454-884
UNIX SYSTEM V/386 RELEASE 3.2 Programmer's Reference Manual	TX 2 494-658
UNIX SYSTEM V/386 Programmer's Reference Manual	TX 2 373-759
UNIX SYSTEM V/386 System Administrator's Reference Manual	TX 2 371-952
UNIX SYSTEM V/386 Streams Programmer's Guide	TX 2 367-657

UNIX SYSTEM V/386 Streams Primer	TX 2 366-532
UNIX SYSTEM V RELEASE 3.2 System Administrator's Reference Manual	TX 2 611-860
UNIX SYSTEM V. RELEASE 3.2 Programmer's Reference Manual	TX 2 605-292
UNIX SYSTEM V Documentor's Workbench Reference Manual	TX 2 986-119
UNIX SYSTEM V RELEASE 4 User's Reference Manual/System Administrator's Reference Manual for Motorola Processors Commands m-z	TX 3 218-267
UNIX SYSTEM V RELEASE 4 System Files and Devices Reference Manual for Motorola Processors	TX 3 221-654

44. SCO also obtained and owns registrations for other Copyrighted Materials, including without limitation registrations for the following software code:

<u>TITLE</u>	<u>REGISTRATION NO.</u>
UNIX system V: release 3.0	TX-5-750-270
UNIX system V: release 3.1	TX-5-750-269
UNIX system V: release 3.2	TX-5-750-271
UNIX system V release 3.2/386	TX-5-750-268
UNIX system V: release 4.0	TX-5-776-217
UNIX System V: release 4.1	TX-5-762-234
UNIX system V, release 4.1ES	TX-5-705-356
UNIX System V: release 4.2	TX-5-762-235
UNIX System V: release 4.2MP	TX-5-972-097
UnixWare 7.1.3	TX-5-787-679
SCO OpenServer: release 5.0.5	TX-6-008-305

45. Under 17 U.S.C. § 410 (c), the Certificates of Copyright Registrations identified above constitute prima facie evidence of the validity of the copyrights and of the facts stated in

the Certificates. SCO's registered copyrights in the Copyrighted Materials, and the facts stated in the corresponding Certificates, are entitled to such statutory presumptions.

46. SCO and its predecessors-in-interest created the Copyrighted Materials as original works of authorship, and, as such, the Copyrighted Materials constitute copyrightable subject matter under the copyright laws of the United States. The Copyrighted Materials automatically became subject to copyright protection under 17 U.S.C. § 102(a) when they were fixed in a tangible medium of expression.

47. Copyright protection under 17 U.S.C. §§ 102 and 103 extends to derivative works. Derivative works are defined in 17 U.S.C. § 101 to include works based on the original work and any other form in which the original work may be recast, transformed, modified, or adapted.

48. The Copyrighted Materials include protected expression of code, structure, sequence, and/or organization in many categories of UNIX System V functionality, including but not limited to the following: System V static shared libraries; System V dynamic shared libraries; System V inter-process communication mechanisms including semaphores, message queues, and shared memory; enhanced reliable signal processing; System V file system switch interface; virtual file system capabilities; process scheduling classes, including real time support; asynchronous input/output; file system quotas; support for Lightweight Processes (kernel threads); user level threads; and loadable kernel modules.

49. The Copyrighted Materials, in whole or in part, have been unlawfully copied or otherwise improperly used to create a derivative work of UNIX System V, including one or more Linux implementations, including without limitation Linux versions 2.4 and 2.6. As a result,

such versions of Linux are unauthorized derivative works of UNIX System V under the Copyright Act.

50. AutoZone has infringed and will continue to infringe SCO's copyrights to the Copyrighted Materials by using, copying, modifying, and/or distributing parts of the Copyrighted Materials, or derivative works based on the Copyrighted Materials, in connection with AutoZone's implementations of one or more versions of the Linux operating system, inconsistent with SCO's exclusive rights under the Copyright Act.

51. AutoZone has infringed SCO's copyrights in OpenServer 5.0.5 and other Copyrighted Materials, by using, copying, reproducing, adapting, modifying, and/or distributing OpenServer and related products, in AutoZone's migration from OpenServer to Linux.

52. In addition, under the specific terms and conditions set forth in the AIRA and CSLA, SCO granted AutoZone a non-exclusive license to the technologies covered by SCO's copyrights in OpenServer and related products. AutoZone expressly covenanted not to use those technologies except as provided in those agreements. AutoZone infringed SCO's copyrights in OpenServer 5.0.5 and related products, by using, copying, reproducing, adapting, modifying, and/or distributing those materials outside the scope of the limited licenses granted in the AIRA and CSLA.

53. AutoZone does not own any copyright to the Copyrighted Materials, nor does it have permission or proper license from SCO to use any part of the Copyrighted Materials as part of a Linux implementation.

54. Upon information and belief, AutoZone willfully engaged in its infringing conduct, with knowledge of SCO's copyrights in the Copyrighted Materials, and AutoZone continues to engage in such conduct in the same manner.

55. As a result of AutoZone's infringing acts as described above, SCO has been damaged and is entitled to damages, including actual damages pursuant to 17 U.S.C. § 504(a); statutory damages, pursuant to 17 U.S.C. § 504(b); and enhanced damages, costs, and attorney's fees pursuant to 17 U.S.C. § 505.

56. In addition, SCO has no adequate remedy at law. AutoZone's conduct has caused, and if not enjoined, will continue to cause, irreparable harm to SCO. As a result, pursuant to 17 U.S.C. § 502, SCO is also entitled to relief enjoining AutoZone's further use, copying, modification, and distribution of Copyrighted Materials or derivative works of Copyrighted Materials.

SECOND CAUSE OF ACTION
(Breach of Contract)

57. Plaintiff repeats and re-asserts all allegations set forth in the foregoing paragraphs of this First Amended Complaint as though fully set forth herein.

58. AutoZone materially breached its contractual obligations to SCO, including Section 1 of the AIRA, by making many thousands of unauthorized copies of materials licensed to AutoZone under that contract.

59. AutoZone materially breached its contractual obligations to SCO, including Sections 1 and 2.1.H of the AIRA and Sections 3.1 and 11.2 of the CSLA, by taking materials from the operating systems it licensed under those agreements and using those materials in its migration from OpenServer to Linux.

60. AutoZone's breaches of the AIRA and CSLA have caused SCO damage in an amount to be proved at trial. Those breaches have also caused SCO special damages, including without limitation the costs of prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth its complaint, plaintiff prays for relief from this Court as follows:

1. Injunctive relief pursuant to 17 U.S.C. § 502 against AutoZone's further unlawful use of any part of the Copyrighted Materials and derivatives works thereof;
2. SCO's actual damages as a result of AutoZone's infringement and, to the extent applicable and elected by SCO prior to trial pursuant to 17 U.S.C. § 504, SCO's statutory damages and enhanced damages;
3. Attorney's fees and costs pursuant to 17 U.S.C. § 505;
4. SCO's actual damages and special damages as a result of AutoZone's contractual breaches; and
5. Pre- and post-judgment interest, and all other legal and equitable relief deemed just and proper by this Court.

JURY DEMAND

Plaintiff demands that all issues in this case be tried by a jury in accordance with the Seventh Amendment to the United States Constitution and Rule 38(b) of the Federal Rules of Civil Procedure.

DATED this 1st day of July 2009.

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Richard J. Pocker

Richard J. Pocker

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