

and sixteen interrogatories [Exhibit B]. Red Hat's requests are sweeping, and would be time-consuming and expensive to fulfill. For example, Red Hat has asked for:

- "All documents concerning the subject matter of the Complaint."¹ Read literally, this request could cover nearly every document in SCO's possession.
- "All documents concerning any customer, or potential customer, of Red Hat."² To the extent that Linux is a derivative of UNIX and these two operating systems are closely related, every one of SCO's customers is potentially a customer of Red Hat's, and as a result this request encompasses all documents pertaining to all of SCO's customers.
- "All documents concerning SCO's legal claims against IBM or any pending litigation against IBM."³ This request duplicates the entire discovery now underway in SCO's litigation against IBM in the District Court for the District of Utah.

Shortly after Red Hat served these requests, SCO filed a motion to dismiss the underlying action in its entirety for lack of subject matter jurisdiction and for failure to state a claim. Because SCO is seeking to dismiss the complaint in its entirety, responding to this extensive discovery when the entire matter may be dismissed would be wasteful. Moreover, none of the requested discovery is needed by Red Hat for responding to or otherwise addressing the pending motion to dismiss. Indeed, Red Hat has already filed its answer brief to SCO's motion to dismiss. Under these circumstances, good cause exists for this Court to stay discovery, including any initial disclosures, pending its ruling on SCO's Motion to Dismiss.

Under the Federal Rules of Civil Procedure, this Court has the discretion to stay discovery upon a showing of good cause. Fed. R. Civ. P. 26(c)(1). Good cause exists, and a stay is therefore proper, where the likelihood that a pending motion to dismiss may result in the narrowing or outright elimination of discovery outweighs the likely harm to be produced by the

¹Request 1.

²Request 2.

³Request 17.

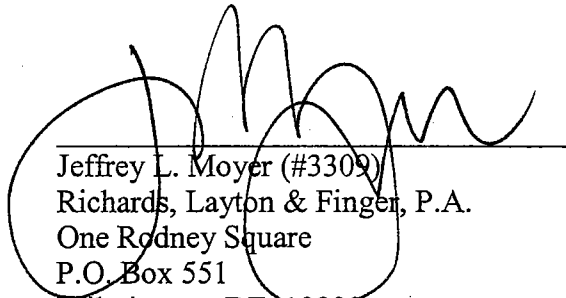
delay. *Weisman v. Mediq, Inc.*, 1995 U.S. Dist. LEXIS 5900 at *4 (E.D.Penn. May 3, 1995) [Exhibit C]. SCO's Motion to Dismiss, now pending before this Court, addresses every count of Red Hat's Complaint. This Court need not express any opinion regarding the merits of that motion to find that it is comprehensive, that it may be decided on the pleadings, and that it may potentially lead to the dismissal of the entire action. *Weisman v. Mediq, Inc.*, 1995 U.S. Dist. LEXIS 5900 at *6.

The harm to SCO in responding to these onerous discovery requests is apparent. "If the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided." *Chudasama v. Mazda*, 123 F.3d 1353, 1368 (11th Cir. 1997). Red Hat's discovery requests, which were propounded before SCO filed its motion to dismiss the case, are not directed towards supporting the sufficiency of its Complaint but go to the merits of the case and, more importantly, would cause SCO to spend significant sums to respond to discovery that may ultimately prove unnecessary.

Balanced against the harm to SCO is the fact that there is little, if any, prejudice to Red Hat if a brief stay is entered until the court has ruled upon the pending motion to dismiss. First, a delay in discovery would not prejudice Red Hat's ability to respond to SCO's Motion to Dismiss because this motion does not raise factual issues. *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984); *Chudasama v. Mazda*, 123 F.3d at 1367. Second, it is also apparent that, were this Court to grant a stay of discovery, there is no danger that any of the requested documents or information might become unavailable by reason of the delay. The ongoing discovery in SCO's litigation against IBM covers much of the same ground as does this case and it proceeds apace.

Given the expense and effort involved, and the small likelihood of harm caused by the delay, it would be a proper exercise of this Court's discretion to grant a temporary stay of discovery while SCO's Motion to Dismiss is pending. *Jackson v. Northern Telecom, Inc.*, 1990

U.S. Dist. LEXIS 3572 (E. D. Penn. April 2, 1990) (court exercised discretion to stay discovery until such time as time as the court ruled on the motion to dismiss) [Exhibit D]. SCO, therefore, respectfully requests that this Court stay all discovery, including initial disclosures, until it rules upon the pending motion to dismiss. Specifically, if this Court grants the motion to dismiss in its entirety, then there will be no need to ever respond to the discovery. Conversely, if the motion to dismiss is denied in whole or in part, then SCO seeks 30 days in which to respond to Red Hat's discovery requests.



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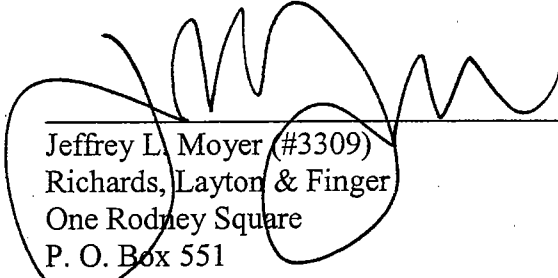
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Dated: October 1, 2003

**CERTIFICATION PURSUANT TO
DISTRICT OF DELAWARE LOCAL RULE 7.1.1**

Counsel for defendants has consulted with counsel for plaintiff pursuant to District of Delaware Local Rule 7.1.1 and determined that plaintiff is not in a position to consent to the relief sought by the foregoing motion.

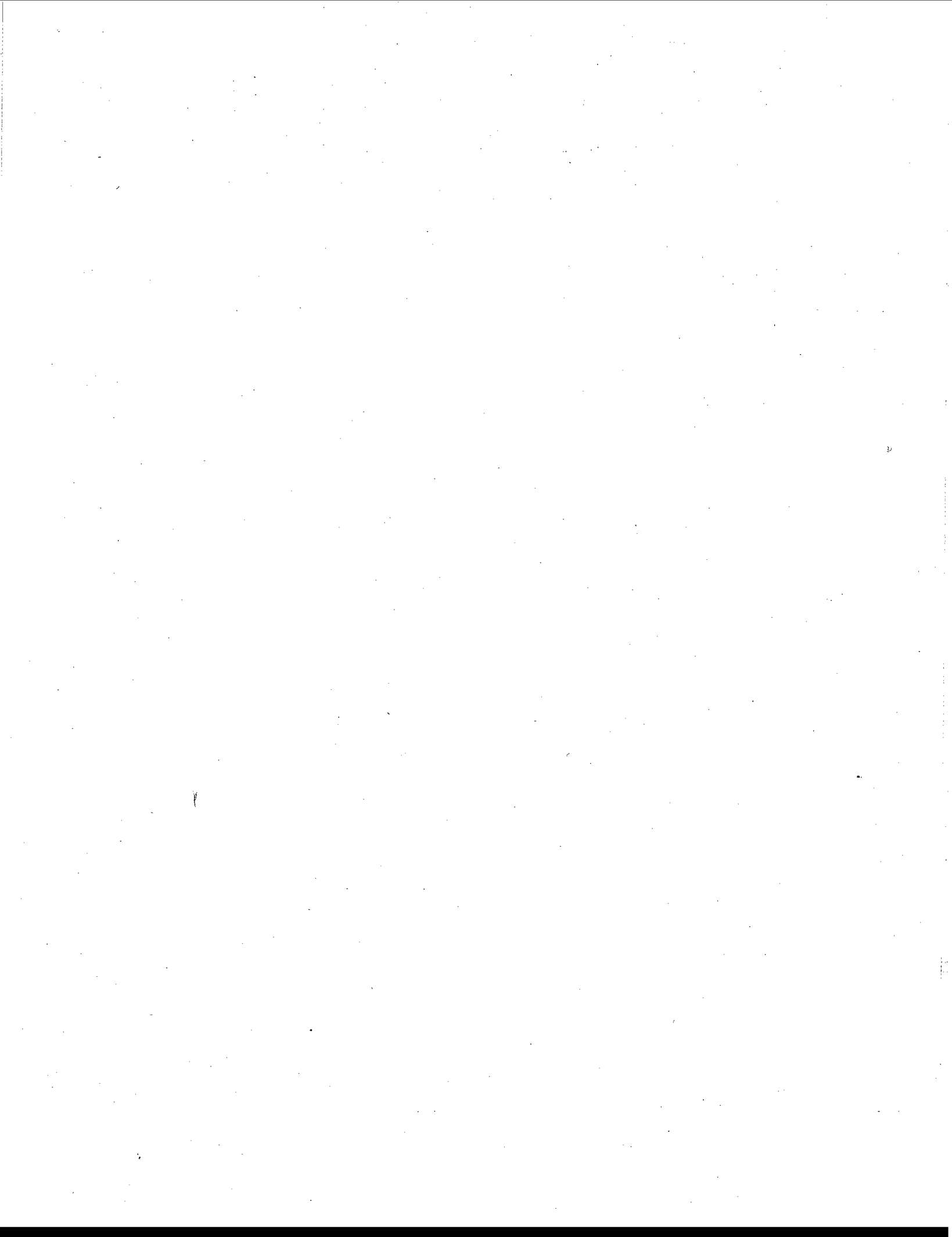


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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RED HAT, INC.,)	
)	
Plaintiff,)	Civil Action No.: 03-772-SLR
)	
v.)	
)	
THE SCO GROUP, INC. (formerly Caldera International, Inc.),)	
)	
Defendant.)	
)	

**PLAINTIFF RED HAT, INC.'S FIRST REQUEST
FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Please take notice that, pursuant to Rule 34 of the Federal Rules of Civil Procedure, The SCO Group, Inc. ("SCO") is commanded to produce and permit Red Hat, Inc. ("Red Hat") to inspect and copy each of the documents and things requested below on or within thirty (30) days at the offices of Hale and Dorr LLP, 60 State Street, Boston, Massachusetts, 02109.

DEFINITIONS

A. The term "documents" shall mean both "documents" and "things" as those terms are used in Fed. R. Civ. P. 34, and includes without limitation data, computer files or other information stored electronically or by any other means.

B. The phrase "documents sufficient to show" shall mean enough documents to adequately, accurately and completely address the subject matter of the request.

C. The term "communication" as used herein shall mean any document or tangible thing, oral statement, meeting or conference, formal or informal, at any time or place and under

any circumstance whatsoever, whereby information of any nature was stated, written, disclosed, transferred, exchanged, recorded or in any manner transmitted or transferred.

D. The term "concerning" shall mean referring to, describing, evidencing, or constituting.

E. The term "all" as used herein also shall mean "any and all."

F. The terms "and" and "or" as used herein shall be construed conjunctively or disjunctively to bring within the scope of these interrogatories any and all information which might otherwise be construed as outside their scope.

G. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa; the use of the masculine form of a pronoun also includes within its meaning the feminine form of the pronoun so used, and vice versa; and the use of any tense of any verb includes also within its meaning all other tenses of the verb so used.

H. The term "SCO" shall mean The SCO Group, Inc., including any officers, directors, employees, representatives, attorneys, agents and any predecessor of SCO (e.g., Caldera International, Inc.).

I. Unless specified in a particular request, the term "you", "your", or "yours" as used herein shall mean SCO, and any other person acting or authorized to act on the defendant's behalf.

J. The terms "person" and "persons" as used herein shall mean any legal entity including natural persons, corporations, partnerships, estates, unions, associations, federations, or any other kind of legal entity.

K. All legal entities referred to herein shall be deemed to include any parent companies, predecessors-in-interest, subsidiaries, affiliates, directors, officers, employees, agents, and representatives thereof, including attorneys, consultants, accountants, and investment bankers.

L. The term "Action" shall mean Red Hat, Inc. v. The SCO Group, Inc., Civil Action No. 03-772, as referenced in the above caption.

M. "Complaint" shall refer to the Complaint filed by Red Hat against SCO on August 4, 2003 in the United States District Court for District of Delaware.

N. The term "interest" shall mean any right, claim, title or legal share, including without limitation any right, claim, title or legal share arising as an assignee, assignor, transferee, transferor, licensee or licensor.

O. Unless otherwise stated, the term "LINUX" refers generally to any version of a LINUX kernel, any LINUX operating system or other LINUX software.

P. Unless otherwise stated, the term "UNIX" refers to any version of a UNIX kernel, any UNIX operating system or other UNIX software generally and not any specific version of UNIX.

Q. The phrase "UNIX intellectual property" means all intellectual property associated with any UNIX software product including patents, trademarks, copyrights, trade secrets or any other type of proprietary information.

INSTRUCTIONS

A. You shall produce all responsive documents and things (including any stored by electronic means). Should you withhold any documents or things responsive to these requests, you are requested to state the basis for withholding the documents and things in a manner sufficient to enable plaintiffs and the Court to evaluate the validity of your withholding of such

materials, including in the case of any documents and things withheld on the grounds of privilege or work product, the following information for each document or thing:

- 1) The request to which the document is responsive;
- 2) The title of the document;
- 3) The date appearing on the document, and if no date appears thereon, so state and give the date, or approximate date, on which the document was prepared;
- 4) The type or general nature of the document (i.e., whether it is a letter, memorandum, minutes of a meeting, etc.);
- 5) The name, title, and company affiliation of the person who prepared the document;
- 6) The name, title, and company affiliation of the person who signed the document;
- 7) The name, title, and company affiliation of each person to whom the document was disclosed, including the person or persons to whom it was addressed and the person or persons to whom the document, or copies of the document, were sent;
- 8) The name, title, and company affiliation of the person or persons who maintain custody of the document; and
- 9) The general subject matter of the document and the basis for withholding the document, in a manner sufficient to determine the validity of any claim of privilege and/or work product.

B. If any one of the document production requests contained herein is claimed to be objectionable, then (1) the portion of such document production request that is claimed to be objectionable shall be identified and the nature and basis of the objection shall be set forth in sufficient fashion to permit the court to rule on the validity of the objection; (2) any document withheld from production pursuant to such objection shall be identified with sufficient particularity and in sufficient detail to permit the Court to determine that such document falls within the scope of such objection; and (3) documents shall be produced in response to any portion of such document production request that is not claimed to be objectionable.

C. If no documents exist that are responsive to a particular request, please state that no documents exist.

D. Produce entire documents, including attachments, enclosures, cover letters, memoranda, and appendices, with all staples and clips attached and with all associated file folders, dividers and file labels.

E. Any document bearing marks that are not part of the original text, or any non-identical reproduction thereof is to be considered a separate document and must be separately produced.

F. If a requested document is in a language other than English, both the original and any existing English translation thereof should be produced. Should you find the meaning of any term in these discovery requests to be unclear, then you should assume a reasonable meaning, state what that assumed meaning is, and answer the request on the basis of that assumed meaning.

G. These document requests are deemed to be continuing in nature. You are requested to amend and/or supplement your responses to the extent required by Fed. R. Civ. P. 26(e).

REQUESTS FOR DOCUMENTS

1. All documents concerning the subject matter of the Complaint.
2. All documents concerning any customer, or potential customer, of Red Hat.
3. All communications between SCO and Red Hat, or any employee of Red Hat.
4. All communications between SCO and any user or potential user of a LINUX product, including any Red Hat LINUX product, concerning any rights to LINUX or UNIX that SCO claims to have or concerning any actions by Red Hat that SCO claims are wrongful.
5. All documents that concern any and all copyrights in which SCO claims an ownership or other legal interest of any kind and that also concern any UNIX software or UNIX product.
6. All documents concerning the registration of any copyrights in any UNIX software or UNIX product, including, without limitation, all documents submitted by SCO to the United States Copyright Office concerning UNIX.
7. All documents concerning the purposes of SCOsource, the formation of SCOsource, any intellectual property managed by SCOsource, and all correspondence to or from SCOsource or any director, officer, employee, attorney or agent employed by, assigned to, or acting on behalf of SCOsource.
8. At least one example of each license agreement that SCO has used to license each and every UNIX product, UNIX software, or UNIX service, any open source software, product or service, any LINUX product, LINUX software or LINUX service, or to license each of the following: UnixWare, UnixWare 7, UnixWare 7.1.1, UnixWare 7.1.2, UnixWare 7.1.3, Open UNIX, Open UNIX 8, Reliant HA, NeTraverse Merge, Merge, Merge 5, SCO OpenServer, SCO OpenServer Release 5.0.5, SCO OpenServer Release 5.0.6, SCO OpenServer Release 5.0.7,

OpenServer Kernel Personality, OpenServer Kernel Personality for UnixWare 7.1.3, SCOx Web Services, SCOx, SCO Update Service, SCO Linux, SCO Linux 4.0 Server for the Itanium[®] Processor Family, SCO Linux 4, SCOoffice, SCO Volution, Caldera Volution Manager 1.1, SCOoffice Mail Server 2.0, Caldera Volution Messaging Server 1.1.1, Caldera Volution Messaging Server 1.1, OpenLinux, OpenLinux 3.1, OpenLinux 3.1.1, OpenLinux 64, UnitedLinux, UnitedLinux 1.0, UnitedLinux 1.0 Service Pack 2, UnitedLinux 1.0 Service Pack 1, Samba, Samba Multi byte version, Cdrtools, Mozilla Browser.

9. Documents sufficient to show each and every entity that had access to any portion of UNIX code that SCO contends was copied or was otherwise incorporated into any LINUX software in violation of any of SCO's copyrights, trade secret or other intellectual property.

10. All documents that concern any SCO licensing program, including any licensing program offered by or in conjunction with SCOsource.

11. All documents concerning any license of any UNIX kernel, UNIX operating system or UNIX intellectual property that SCO has offered, is offering or intends to offer, including, without limitation, all license agreements with any entity that had access to each and every portion of the UNIX code SCO contends was copied or was otherwise incorporated into any LINUX software in violation of any of SCO's copyrights.

12. All documents concerning any SCO license with Microsoft and Sun Microsystems, Inc. ("Sun"), including copies of the licenses, correspondence concerning the licenses, and notes or other documents related to any meeting concerning the licensed technology or negotiation of the license.

13. All documents concerning communications between SCO and Microsoft and/or SCO and Sun Microsystems regarding: Red Hat, Red Hat's actual or potential customers, UNIX,

LINUX, IBM, and Sun Microsystems' or Microsoft's licensing of any SCO technology, software or product.

14. All documents concerning SCO's ownership of UNIX intellectual property and/or concerning SCO's right or ability to enforce or protect UNIX intellectual property.

15. All documents concerning any other person or entity's ownership of any UNIX intellectual property and/or concerning any other person or entity's rights to enforce or protect UNIX intellectual property.

16. All documents concerning communications between SCO and Novell Inc. ("Novell") regarding ownership of UNIX intellectual property, including, without limitation, contracts or agreements between SCO and Novell regarding UNIX or LINUX, all correspondence between SCO and Novell concerning UNIX or LINUX, and documents concerning Novell's past or present ownership of any rights in any UNIX or LINUX technology, software, product or service.

17. All documents concerning SCO's legal claims against IBM or any pending litigation with IBM.

18. All documents concerning both the development of UNIX and ownership rights in UNIX intellectual property.

19. All documents and communications regarding IBM's misappropriation, or alleged misappropriation, of UNIX intellectual property, code, structure, sequence, organization or other proprietary information, including, without limitation, all such documents concerning any agreements with IBM regarding UNIX, the development of UNIX, rights to UNIX software or technology, LINUX, the development of LINUX, or rights to LINUX software.

