

AO 68 (Rev. 1/94) Subpoena in a Civil Case - SDNY WEB 4/99

Issued by the
UNITED STATES DISTRICT COURT

DISTRICT OF

California

The SCO Group, Inc.

SUBPOENA IN A CIVIL CASE

V.

International Business Machines Corp.

CASE NUMBER. 1 2:03CV0294 District of Utah

TO: Oracle Corporation
500 Oracle Pkwy.
Redwood City, CA 94065

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Boies, Schiller & Flexner LLP 1999 Harrison Street, Suite 900, Oakland, CA 94612	DATE AND TIME Jan. 27, 2006 9 a.m.
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):


See Attached Exhibit A.

PLACE Boies, Schiller & Flexner LLP 1999 Harrison Street, Suite 900, Oakland, CA 94612	DATE AND TIME Jan. 27, 2006 9 a.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) 	DATE 1-10-06
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Edward Normand, Esq., Boies, Schiller & Flexner LLP 333 Main Street, Armonk NY 10504 (914) 749-8200	

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number

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PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that,

subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

You are instructed to produce the following documents at the time and place specified in the subpoena:

1. Documents concerning any communications with IBM from and after June 1, 2001, relating to SCO.
2. Documents concerning any communication with IBM from and after January 1, 2003, relating to SCO's current lawsuit against IBM, SCO's current lawsuit against Novell, Inc., and SCO's current lawsuit against AutoZone, Inc. or the possibility of legal action by SCO against any of the identified parties.
3. Documents concerning Oracle's decisions to certify any version of any Oracle software product, or to decline to certify any such version of any Oracle software product, for operation on any version of SCO's UnixWare or OpenServer products at any time since January 1, 2000.
4. Documents concerning Oracle's communications, both internally and with any third party, regarding its decision(s) to certify or decline to certify any version of any Oracle software product for operation on any version of SCO's UnixWare or OpenServer products since January 1, 2000.
5. Documents concerning Oracle's business and contractual relationships with SCO, Caldera Systems, Inc., and The Santa Cruz Operation, Inc., including:
 - a. All certifications issued by Oracle for any Oracle software product for operation on any version of UnixWare or OpenServer at any time;
 - b. All software agreements by which Oracle licensed any version of UNIX System V binary or source code from SCO or a predecessor (including any version of OpenServer and UnixWare);
 - c. All agreements of any kind by which Oracle obtained access to any version of UNIX System V (including any version of OpenServer and UnixWare) binary or source code; and
 - d. The purpose, scope, duration and subject matter of all agreements of any kind between Oracle and SCO, Caldera Systems, Inc. and/or The Santa Cruz Operation, Inc. since January 1, 1995.
6. Documents concerning the identification of all versions of all Oracle software products that Oracle certified for operation on any version of any

UNIX-based operating system, including but not limited to UnixWare, OpenServer, AIX, HPUX, Irix, Dynix, and Linux, since January 1, 1995.

7. Documents concerning the identification of all instances in which Oracle has been asked to certify any version of any Oracle software product for operation on any operating system, but has refused to do so, since January 1, 1995.

Instructions and Definitions

A. Definitions

1. The term "AIX" shall mean the UNIX-based operating system known by that name distributed and/or developed by IBM, including all prior versions, releases and maintenance modifications. The term "AIX" shall include, but not be limited to, all versions of the "AIX for Power PC" and "AIX for Itanium" operating systems.
2. The term "concerning" shall mean relating to, referring to, reflecting, describing, evidencing, referencing, discussing, or constituting.
3. The term "document" shall be synonymous in meaning and usage to the broadest scope of the term used in Rule 34(a) of the Federal Rules of Civil Procedure. The term "document" shall include without limitation all written, phonic, graphic or recorded matter, including without limitation, information stored on computers, disks, tapes (i.e., magnetic or other storage media), World Wide Web pages, and electronic mailing lists. The term "document" specifically includes electronic mail ("e-mail") and any attachments and files created, maintained, or existing in electronic form.
4. The term "Dynix" shall mean the UNIX-based operating system known by that name distributed and/or developed by Sequent Computer Systems, Inc. and/or IBM, including all prior versions, releases, derivative works, methods, and modifications. The term "Dynix" shall include, but not be limited to, all versions of the "Dynix/ptx" operating system.
5. The term "include" or "including" shall mean including without limitation.
6. The term "Linux" shall mean any version of Linux.
7. The term "UNIX" shall mean any and all versions, flavors, or other variants of any UNIX computer operating system, including, without limitation, all operating systems certified as conforming to the UNIX-brand standards.

B. Instructions

1. Each paragraph herein should be construed independently and, unless otherwise stated, without reference to any other paragraph for the purpose of limitation.
2. Unless otherwise specified, the documents requested are the responsive documents in your possession, control or custody that were prepared, written, sent, dated, received, applicable or in effect at any time up to the date of your compliance with this demand.
3. Each requested document shall be produced in its entirety. If a document responsive to any request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible.
4. All documents produced in response to this subpoena shall be produced in the same order as they are kept or maintained in the ordinary course of business and, where attached, shall not be separated or disassembled.
5. With respect to any document responsive to this request that is withheld from production based upon a claim of privilege, please provide the information required pursuant to the Federal Rules of Civil Procedure.
6. If, for reasons other than a claim of privilege, you refuse to provide any document requested herein, state the grounds upon which the refusal is based with sufficient specificity to permit a determination of the propriety of such refusal.
7. The deposition will be recorded by stenographic and audio-visual means.