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4 Telephone: [REDACTED]

5 *Pro Se*

6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 DONGXIAO YUE,

11 Plaintiff,

12 v.

13
14 STORAGE TECHNOLOGY
15 CORPORATION, a Delaware corporation;
16 SUN MICROSYSTEMS Inc., a Delaware
17 corporation; Michael Melnick, an individual;
18 Julie DeCecco, an individual; Michael P.
19 Abramovitz, an individual; Lisa K. Rady, an
20 individual; Jonathan Schwartz, an individual;
21 and DOES 1-1000, inclusive,

22 Defendants.

Case No. C07-05850-SI

FIRST AMENDED COMPLAINT FOR
COMPENSATORY DAMAGES,
DISGORGEMENT OF PROFITS,
INJUNCTIVE RELIEF AND
ATTORNEYS' FEES AND COSTS FOR:
Direct, Contributory, and Vicarious
Copyright Infringement Under 17 U.S.C.
Section 101 *et seq.*

DEMAND FOR JURY TRIAL

23 **COMPLAINT**

24 Plaintiff Dongxiao Yue ("Yue" or "Plaintiff") complains and alleges against
25 defendants STORAGE TECHNOLOGY CORPORATION ("StorageTek"), a Delaware
26 corporation; SUN MICROSYSTEMS, Inc ("SUN"), a Delaware corporation; Michael Melnick
27 ("Melnick"), an individual; Julie DeCecco ("DeCecco"), an individual; Michael P. Abramovitz

1 (“Abramovitz”), an individual; Lisa K. Rady (“Rady”), an individual; Jonathan Schwartz
2 (“Schwartz”), an individual; and Does 1-1000 (collectively, "Defendants") as follows:

3 **INTRODUCTION**

4 1. Since 1994, Plaintiff had been developing software he later named “PowerRPC.” In
5 July 1996, Plaintiff founded a Delaware Limited Liability Company named “Netbula, LLC”
6 (“Netbula”) to market the PowerRPC software. Defendants have willfully infringed Plaintiff’s
7 copyrights in the software by making and distributing unauthorized copies of the software,
8 creating and distributing unauthorized derivative works, and other direct and indirect infringing
9 activities.

10 2. The copyrights infringed by Defendants in the instant action are: “Netbula
11 PowerRPC PWRPC32.DLL 00-SDK-STK” registered October 3, 2006 with U.S. registration
12 number TX 6-437-847, a copy of which is attached as Exhibit A (“the 00-SDK copyright”);
13 “NETBULA POWERRPC 2K4” registered on December 15, 2006 with U.S. registration number
14 TX 6-491-697, a copy of which is attached as Exhibit B to this complaint (“the 2K4 copyright”);
15 and the copyrights in unpublished works Plaintiff created before July 1996, with pending
16 copyright registration at the U.S. Copyright Office.

17 3. In September 2007, Plaintiff acquired all exclusive copyrights in the versions of
18 PowerRPC created before January 1, 2007 by written assignment, along with all accrued and
19 prospective claims arising from infringement of these copyrights. A copy of the copyright
20 assignment is attached as Exhibit C.

21 4. In December 2006, Netbula filed a civil action (Case No. C-06-07391-MJJ) against
22 defendants in the Northern District of California alleging infringement of the copyrights in
23 “Netbula PowerRPC” published in 1996, with U.S. registration number TX 6-211-063. Part of the
24 evidence used in this complaint was from discovery of that case.
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1 things herein alleged is ascertained by Plaintiff, Plaintiff will amend this Complaint to set forth the
2 same.

3 **FACTUAL DETAILS**

4 ***PLAINTIFF’S COPYRIGHTED SOFTWARE***

5
6 13. From 1994 to July 1996, as an individual, Plaintiff had been developing a software
7 technology which he later named as “PowerRPC”. PowerRPC was a technology that enabled a
8 program on a computer to execute a command on a remote computer over a network and get
9 results back. PowerRPC was developed for UNIX, Microsoft Windows NT and Windows 95
10 platforms. Plaintiff also developed software called ONC RPC for Microsoft Windows NT/95,
11 which incorporated most of the program files and modules in PowerRPC.

12 14. In July 1996, Plaintiff founded Netbula, LLC, a Delaware Limited Liability
13 Company, to market the aforementioned RPC software that he was developing at the time.

14 15. Plaintiff did not assign or transfer the copyrights in his earlier works created before
15 July 24, 1996 to Netbula, LLC. The PowerRPC software products were derivative works of these
16 earlier unpublished works.

17 16. On September 26, 2007, Netbula executed a written copyright assignment,
18 transferring all exclusive rights in all PowerRPC and ONC RPC for Windows software created
19 before January 1, 2007 back to Dr. Dongxiao Yue -- Plaintiff. The copyright assignment further
20 assigned all past and future claims of infringement to Plaintiff.

21 17. In the following, Plaintiff will use “PowerRPC” to refer to both “PowerRPC
22 software” and “ONC RPC for Windows software”. Both were written by Plaintiff, and both had
23 the same program modules with one exception -- they used different Interface Description
24 Language (“IDL”) compilers.

25
26 18. The PowerRPC software contained two parts: (1) the "Software Development Kit"
27 ("SDK") that consists of the software tools which allow programmers to create applications based

1 Agreement”). The 2000 Agreement was governed by the laws of California and “may not be
2 assigned by either party or amended without the written consent of both parties...”

3 31. Among other things (such as provisions on copyright), the 2000 Agreement
4 contained the following terms (with the portions drafted by Michael Melnick underlined):

5 NETBULA grants STORAGETEK, a non-exclusive, perpetual,
6 irrevocable license for use by STORAGETEK’s employees,
7 consultants and subsidiaries for up to ONE user(s), for each of the
8 licenses purchased, to use the PowerRPC SDK Product under
9 Windows NT and 95/98 platforms; each user can only use the
10 software on one computer....

11 The license is not transferable without written permission of
12 Nebula...

13 You must treat the software as copyrighted material. You may not
14 copy and redistribute the software except as permitted under this
15 Agreement.

16 ...

17 Limited Distribution. You agree to maintain reasonable records of
18 the number of copies of the Supporting Programs distributed
19 hereunder and to pay NETBULA as set forth in Exhibit C for
20 such copies....

21 ...

22 Payment. You agree to pay NETBULA the amounts set forth in
23 Exhibit C in full payment for the rights and licenses granted
24 herein, thirty (30) days after receipt of an invoice referencing a
25 valid purchase order number.

26

27 Support is for SDK Products and Supporting Programs on the
28 specific platforms only...

EXHIBIT B

NETBULA COMPONENTS PERMITTED TO BE
DISTRIBUTED

...

* Pmapsvc.exe The portmapper service for Windows NT

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EXHIBIT C
PAYMENT

STORAGETEK shall pay NETBULA a one-time fee of \$895 per license for all rights granted under this Agreement with respect to the SDK Product, and one-time fee of \$5,995 for the right to distribute up to 1000 units of software containing the Supporting Programs, thirty (30) days after receipt of an invoice referencing a valid purchase order number. NETBULA agrees that future SDK license purchases will be at a mutually agreed to price. NETBULA agrees to offer STORAGETEK additional units of Supporting Program licenses for the limited distribution license, at the cumulative license purchased prices as provided listed below. Pricing is based on cumulative purchases, not single purchase events. Additional licenses purchased are subject to the terms and conditions of this Agreement.

32. Pursuant to the 2000 Agreement, StorageTek issued a purchase order for the purchasing of eight (8) developer licenses and 1000 runtime licenses. Plaintiff then created a customized copy of the PowerRPC software embedded with license information and delivered the software to StorageTek on a CD with the following information on the CD label: name of the software, name of licensee (“StorageTek”), invoice number (“1605”), license type and license quantity (“8 Developers 1000 runtime”).

33. StorageTek later paid invoice 1605 in full, as required by the 2000 Agreement.

34. On May 1, 2000, Scott Painter, an engineer at StorageTek, emailed Netbula about customizing Netbula’s “PowerRPC Portmapper” software, that email was copied to Michael Abramovitz, who was also a StorageTek engineer.

35. In June 2001, a StorageTek developer named Anton Vatchky requested a Windows 2000 version of PowerRPC for testing a software product called REELs.

36. In May 2001, Netbula sent a license usage audit request to StorageTek.

COPYRIGHT INFRINGEMENT FACTS

1 37. On June 21, 2001, Tracy Gagnon, Program Manager of the Backup & Recovery
2 Software at StorageTek, sent an email to Mr. Melnick with the subject title “Netbula License
3 Report for Audit 06/21 – REELNT Product”. She wrote:

4 Enclosed are the Netbula licenses for the REELNT product I
5 am showing to date. I arrived at these numbers by going
6 through the history report from SCH. I am not sure if I have
7 caught all the data points...

8 38. On June 22, 2001, Mike Melnick responded to Netbula’s audit request via email,
9 stating:

10 The license count you request is 107, this leaves us the rights
11 to distribute 893...

12 Mr. Melnick did not inform Netbula that the report for REELNT was probably incomplete.

13 39. On September 9, 2002, responding to another audit request, Mike Melnick sent an
14 email stating that StorageTek ceased distributing PowerRPC in 2002. Mr. Melnick wrote:

15 We no longer distribute the runtimes with our products. Our
16 count remains the same as provided to you in June of 01.

17 40. In fact, StorageTek had been developing and distributing PowerRPC with other
18 StorageTek products, including LibAttach and LibAttach Integrators’ Kit. On March 2, 2004, Lisa
19 Rady, the program manager at StorageTek in charge of LibAttach development, wrote in an
20 internal StorageTek email:

21 As you can see, we have exceeded the 1,000 distributions that
22 we had right to with Netbula.... I think it is obvious that
23 engineering has not and did not monitor the distributions on
24 this product.

25 In another email to Mr. Melnick, Lisa Rady wrote:

26 I have a CD in my hand called “Netbula ONC RPC for Win32
27 Development Toolkit”, licensed to StorageTek (1605) 8
28 Developers 1000 runtime. Inside the CD was the Receipt that
included the PO number CCOL122576, your name as the buyer,
and a date of 3/24/2000.

1 Responding to Ms. Rady's email message, Mr. Melnick wrote:

2 The agreement is specific to platform (Win NT and 95/98
3 platforms) types of Netbula software (PowerRPC SDK). This
4 concerns me greatly as we have already told them we are no
5 longer shipping it with our product.

6 41. After the above internal discussion, Mr. Melnick sent an email to Netbula, stating:

7 Could you provide me with the StorageTek sales
8 representative or if possible give me a quote on distributing
9 an additional 1000 units of RPC? The platform used will
10 need to be Windows 2003.

11 Mr. Melnick concealed from Netbula the fact that StorageTek had been distributing
12 PowerRPC, had exceeded the purchased license count, and had used and distributed PowerRPC on
13 unauthorized platforms.

14 42. Since 2000, Netbula increased its prices. In 2003, the price for a 1000-copy client
15 runtime license was about \$18,000, while the price for a server runtime license was about \$800.

16 43. In March 2004, Netbula and StorageTek negotiated an agreement for the 2004
17 version of PowerRPC. Netbula provided the then current license agreement template with the
18 price of \$18,000 for 1000 client runtime licenses, and \$800 for one server runtime license.
19 Michael Melnick represented that StorageTek's use of the PowerRPC software was for client only
20 and deleted the server license portion of the agreement and changed the prices.

21 44. Netbula and StorageTek signed a second license agreement (the "2004
22 Agreement") in March 2004. Because StorageTek previously represented that it only used 107
23 licenses out of the 1000 licenses purchased (thus with 893 licenses wasted), Netbula gave
24 StorageTek price much lower than the standard pricing at the time.

25 45. Pursuant to the 2004 Agreement, StorageTek issued a purchase order for one (1)
26 developer license and 1000 runtime licenses.

27 46. Pursuant to the 2004 Agreement and this purchase order, Plaintiff mailed the 2004
28 version of the RPC software to StorageTek on a CD which had a label with the license type and

1 license quantity information similar to the CD delivered to StorageTek in 2000.

2 47. Netbula invoiced StorageTek for the amount on the purchase order. StorageTek
3 later paid the invoiced amount in full.

4 48. StorageTek made no other license purchases for PowerRPC licenses.

5 49. On information and belief, Lisa Rady and other StorageTek employees devised a
6 new scheme of selling LibAttach in large blocks, including a 1000-license package and an
7 unlimited package.

8 50. On October 25, 2004, Michael Abramovitz, an engineer involved in the
9 development of REEL and LibAttach software, sent an email to Netbula, stating that StorageTek
10 bundled PowerRPC into several StorageTek products. On the same day, Netbula emailed
11 StorageTek requesting a license usage report. StorageTek did not provide any report for this
12 request.

13 51. On June 15, 2005, Netbula emailed StorageTek again for an audit of license usage
14 and inquired about the impending SUN- StorageTek merger. Mr. Melnick responded:

15 As for Sun, it should be completed by the end of summer... The
16 only thing that you and I may have to do is for you to allow
17 assignment of the agreement to Sun. The agreements calls [*sic*]
18 for your approval. I assume you would allow [*sic*] this as if you
19 did not the agreement would be terminated.

20 52. On June 20, 2005, Holly Wagner, a Software Product Planner at StorageTek,
21 emailed Michael Melnick, Lisa Rady, Michael Abramovitz and others, stating:

22 The SAP query I ran this morning shows 2,386 models shipped.
23 This number is low due to the fact that the query does not have
24 the capability of pulling the client feature quantities that were
25 released in November of last year.

26 Responding to this email, Mr. Melnick wrote on June 28, 2005:

27 The number that Holly has provided and thought it may be low
28 causes quite a problem for you. We have only made 2
purchases for the rights to distribute a total of 2000 licenses.

1 53. StorageTek initially refused to provide Netbula a license usage report. After
2 numerous exchanges, StorageTek finally provided a purported PowerRPC runtime usage report in
3 August 2005, which showed that StorageTek made 7455 copies. According to the report, the
4 StorageTek products that include PowerRPC runtime code are LibAttach (model code 1191NLC)
5 and INTGRTRS LIBATTACH (model code 1191NLI). The report also shows that StorageTek
6 copied and distributed PowerRPC on Windows 2000 before it purchased any license for that
7 operating system.

8 54. After performing some statistics, Plaintiff raised numerous issues with StorageTek,
9 including the use of PowerRPC on unauthorized platforms before March 2004, the unauthorized
10 copies distributed in excess of the purchased quantities, and a 10-fold increase of licenses in the
11 fourth quarter of 2004. Plaintiff believed that StorageTek under-reported the licenses before Q4
12 2004.

13 55. LibAttach is a key software technology for using StorageTek's tape products on
14 Windows. Most of StorageTek's revenue comes from tape products. From StorageTek's financial
15 reports, its revenue was quite stable over the years, averaging approximately \$2 billion per year
16 from products and services. Tape products generated about 77% of StorageTek's product revenue,
17 totaling approximately \$1 billion per year. There were no major fluctuations that could explain the
18 10-fold increase in LibAttach license usages since the fourth quarter of 2004.

19 56. On August 31, 2005, StorageTek became wholly owned subsidiary of SUN.
20 Afterwards, the dispute relating to PowerRPC was handled by SUN.
21

22 57. Unable to reconcile the differences after many rounds of communication with
23 SUN/StorageTek, Plaintiff requested SUN StorageTek to provide one final report on PowerRPC
24 license usage. From StorageTek's customer testimonials on the internet, Plaintiff learned that there
25 were customers with hundreds of Windows servers before 2004. Plaintiff chose two such
26 customers and requested SUN StorageTek to identify which lines in its royalty report
27 corresponded to these two customers and perform verification of the number of copies.
28

1 58. On or about December 16, 2005, Sun StorageTek Legal Department sent Plaintiff a
2 revised license usage report and a six-page letter (titled "Letter to Don Yue") setting forth the
3 bases of the report. In this letter, Sun StorageTek refused to identify the two customers on its
4 report. As a result, Plaintiff was unable to get minimum verifiable information.

5 59. The December 2005 StorageTek license usage report showed it continued to sell
6 LibAttach software which included PowerRPC components after it became a subsidiary of Sun
7 Microsystems in August 2005. StorageTek also admitted that it had sold unlimited licenses for
8 LibAttach software containing Plaintiff's code to multiple customers.

9
10 60. Subsequently, Plaintiff made numerous attempts to resolve the dispute with SUN as
11 a business matter. In June 2006, Plaintiff had a telephone conference with Julie DeCecco (Sun's
12 Assistant General Counsel), Michael Melnick and other SUN employees. At the conference call,
13 DeCecco claimed that SUN and StorageTek did not infringe copyright and threatened Plaintiff
14 with counter-action. The parties nevertheless agreed to have further discussions. DeCecco asked
15 for additional information such as pricing information for PowerRPC, Plaintiff agreed to provide
16 the information. However, SUN did not respond to any of Plaintiff's followup communications,
17 such as emails to Julie DeCecco.

18
19 61. Without getting any response from DeCecco or anyone else from SUN, in August
20 and September 2006, Plaintiff twice emailed SUN's CEO and President, Jonathan Schwartz,
21 informing him about the infringement. No SUN employee responded to the two email messages.

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23 62. On information and belief, Julie DeCecco and Jonathan Schwartz, instead of
24 stopping the infringement, employed delay tactics to continue the infringement. Schwartz and
25 DeCecco forwarded Plaintiff's email messages and related documents to other SUN employees
26 (including Melnick) and potentially SUN's outside counsel, preparing for lawsuit while permitting
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1 the infringement to continue at SUN and its customers. One of SUN's planned strategies was to
2 sue Plaintiff personally by alleging trademark infringement on the JAVA and SUN marks.

3 63. On information and belief, Schwartz owned millions shares of SUN stocks and
4 derivative securities and was involved in the day-to-day management of SUN's operations,
5 including operating a blog and answering questions from customers or prospective customers.
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7 64. On information and belief, after Michael Abramovitz learned of the dispute
8 between Netbula and SUN/StorageTek, he and potentially other StorageTek employees,
9 presumably under direction of SUN's managing agents, systematically erased the Netbula SDK
10 software from their computers, thus destroying part of the evidence.

11 65. On information and belief, the LibAttach software is a crucial technology for SUN
12 and StorageTek's tape products. LibAttach allows a Windows application to control a tape library
13 by executing RPC commands on an ACSLS server (or Library Station/Library Manager) over a
14 network, which is essential for utilizing the StorageTek tape libraries from Windows.

15 66. On further information and belief, LibAttach versions 1.1 to 1.4 were developed
16 with PowerRPC. The PowerRPC source code was incorporated into the LibAttach software, the
17 "pwrpc32.dll" and "pmapsvc.exe" software were bundled with the LibAttach software. LibAttach
18 was thus based on PowerRPC.

19 67. Defendants sell LibAttach licenses to end users under the "1191NLC" main
20 product code. According to StorageTek's pricing list, it sells the single LibAttach license under
21 the code 1191NLC-S001, 500 licenses under the code 1191NLC-S500, or 1,000 licenses under the
22 code 1191NLC-S1K0. As Netbula later discovered, Defendants also sold unlimited LibAttach
23 licenses under the code 1191NLC-SENT.
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25 68. StorageTek also develops and sells software called "LibAttach Integrator's Kit"
26 under the product code "1191NLI" to software developers who develop data backup software for
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1 StorageTek tape libraries. On information and belief, the 1991NLI product also includes
2 “pwrpc32.dll”, “pmapsvc.exe” and PowerRPC generated code.

3 69. On information and belief, numerous third parties acquired various versions of the
4 “REELS”, “LibAttach” and/or “LibAttach Integrators’ Kit” from StorageTek and copied these
5 products (which included the “pwrpc32.dll” and “pmapsvc.exe” files) in their use of StorageTek
6 tape libraries and/or in development of their own software.

7
8 **CLAIMS FOR RELIEF**
9 **COPYRIGHT INFRINGEMENT**
10 **(DIRECT, CONTRIBUTORY, AND VICARIOUS)**

11 (17 U.S.C. § 101 et seq.)

12 70. Plaintiff has invested substantial time, effort, intellectual labor and resources in the
13 creation and public distribution of his PowerRPC software, based in part upon the opportunity to
14 recover his investment from the copyrighted content, and to obtain the revenues and business
15 advantages the copyrighted content provides in connection with Plaintiff’s offering of computer
16 software programs and licenses to the public.

17 71. Defendants’ LibAttach, LibAttach Integrator’s Kit, REELS and other products
18 contain copies of significant material portions of the content of Plaintiff’s technology and
19 products, including Plaintiff’s “pwrpc32.dll”, “pmapsvc.exe” files and the code generated by
20 “rpcgen.exe”. Defendants’ LibAttach and REEL software incorporates the source code generated
21 by Plaintiff’s “rpcgen.exe” program and includes the “pwrpc32.dl” and “powerrpc.h” files, they
22 are derivative works of Plaintiff’s software.

23 72. Defendants intentionally reproduced, displayed, adapted, exhibited, and/or publicly
24 distributed Plaintiff’s software and other copyrighted content in Defendants’ “LibAttach”,
25 “REELS” and other products without Plaintiff’s authorization, consent, license or out of the scope
26 of licenses.

1 their unlawful conduct with respect to Plaintiff's copyrighted materials, as well as from the
2 unlawful and infringing conduct of each other and of third parties.

3 77. Each infringing act of copying, reproducing, displaying, adapting, exhibiting,
4 and/or distributing the content of Plaintiff's RPC technology (including the "pwrpc32.dll" and
5 "pmapsvc.exe" files), as well as the continuing threat of the same, constitutes a separate claim
6 against Defendants, and each of them, under the Copyright Act.

7 78. Each post, copy, reproduction, adaptation, exhibition, display, and/or distribution of
8 Plaintiff's copyrighted materials on and through Defendants' products, or by any other means,
9 constitutes a separate and distinct act of infringement, whether committed by individual
10 Defendants or combinations of them, and including acts of third parties for which Defendants are
11 contributorily and/or vicariously liable.

12 79. Defendants have realized unlawful and unjust profits from the unauthorized and
13 illegal copying, reproduction, adaptation, exhibition, and/or displaying of the above-referenced
14 content of Plaintiff's copyrighted works. As a result of Defendants' acts of intentional direct,
15 contributory, and/or vicarious infringement, Plaintiff is without an adequate remedy at law, in that
16 actual damages are difficult to ascertain. Accordingly, Plaintiff requests that this Court grant the
17 injunctive relief prayed for herein.

18 80. Plaintiff is entitled to recover from Defendants the damages he has sustained and
19 will sustain, and any gains, profits, and advantages obtained by Defendants as a result of
20 Defendants' acts of infringement alleged above, be they direct or indirect. At present, the amount
21 of such damages to Plaintiff and the gains, profits, and advantages Defendants have obtained by
22 reason of the unlawful conduct described herein cannot be fully ascertained by Plaintiff, but are
23 likely to exceed \$20,000,000.

24 81. Furthermore, Plaintiff has no adequate remedy at law. Unless Defendants are
25 preliminarily and permanently enjoined from committing the unlawful acts described herein,
26 Plaintiff will continue to suffer irreparable harm. Plaintiff's harm is irreparable because
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1 Defendants are in possession of Plaintiff's software and it is extremely difficult control their
2 copying and distribution unless they are enjoined by a court from doing so. Plaintiff is entitled,
3 pursuant to 17 U.S.C. § 502, to injunctive relief in the form of a temporary restraining order, a
4 preliminary injunction, and/or a permanent injunction restraining Defendants and all persons
5 acting in concert with them, from engaging in any further such acts in violation of the Copyright
6 Act and from distributing Defendants' products which are the unlawful fruits of their unlawful
7 conduct.

8 82. On information and belief, Defendants' unlawful conduct includes but not limited
9 to the acts of infringement described below.

10 **COUNT I: COPYRIGHT INFRINGEMENT BY MAKING UNAUTHORIZED COPIES**
11 **OF THE WINDOWS NT/98/95 VERSION OF THE SDK**

12 (Copyright registration No. TX 6-437-847)

13 *(Against StorageTek and SUN. For Damages and Profits, and Injunctive Relief)*

14 83. Plaintiff re-alleges and incorporates herein by reference the allegations of
15 paragraphs 1 through 82, inclusive, of this Complaint.

16 84. In March 2000, pursuant to the 2000 Agreement, StorageTek purchased eight (8)
17 SDK licenses for Microsoft Windows NT/98/95 (the "NT SDK"). Each SDK license granted one
18 user the right to use the NT SDK on one computer to develop applications for Windows NT/98/95.

19 85. On information and belief, multiple groups in StorageTek and SUN had copied and
20 used the NT SDK, without internal control of the copying.

21 86. On further information and belief, many StorageTek employees, including Anton
22 Vatsky and Scott Painter, made numerous copies of the NT SDK onto many computers without
23 licenses, in violation of Plaintiff's copyright in the NT SDK.

1 **COUNT II: COPYRIGHT INFRINGEMENT BY MAKING UNAUTHORIZED**
2 **DERIVATIVE WORKS OF THE NT SDK**

3 *(Copyright registration No. TX 6-437-847)*

4 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

5 87. Plaintiff re-alleges and incorporates herein by reference the allegations of
6 paragraphs 1 through 86, inclusive, of this Complaint.

7 88. On information and belief, StorageTek developed REELS, LibAttach and
8 LibAttach Integrators' Kit products with unauthorized copies of the NT SDK.

9 89. On further information and belief, the REELS, LibAttach and LibAttach
10 Integrators' Kit products incorporated header files, "pwrpc32.dll" runtime library, "pmapsvc.exe"
11 program and other software written by Plaintiff.

12 90. The REELS, LibAttach and LibAttach Integrators' Kit products developed with
13 unauthorized copies of NT SDK were thus infringing derivative works of Plaintiff's copyrighted
14 software.

15 91. On further information and belief, numerous third parties also used infringing
16 LibAttach Integrators' Kit to create derivative works without authorization.

17 **COUNT III: COPYRIGHT INFRINGEMENT BY CREATING UNAUTHORIZED**
18 **DERIVATIVE WORKS FOR WINDOWS 2000**

19 *(Copyright registration No. TX 6-437-847)*

20 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

21 92. Plaintiff re-alleges and incorporates herein by reference the allegations of
22 paragraphs 1 through 91, inclusive, of this Complaint.

23 93. The 2000 Agreement was restricted to the Windows NT/98/95 operating systems.

24 94. StorageTek's engineers and managers knew the 2000 Agreement was for Windows
25 NT/98/95 only. In March 2004, Michael Melnick wrote in an internal email stating that the 2000
26 Agreement was specific to Windows NT and 95/98 platforms). In July 2005, Michael Melnick
27 acknowledged that the 2000 Agreement was for Windows NT/98/95 only. Lisa Rady and Michael
28

1 Abramovitz also knew that the PowerRPC software on the CD StorageTek received was for
2 Windows Nt/98/95 only.

3 95. But, Defendants developed LibAttach and LibAttach Integrators' Kit software for
4 Windows 2000 with the NT SDK, without a license for Windows 2000.

5 96. On further information and belief, numerous third parties also used the LibAttach
6 Integrators' Kit to create derivative works for unauthorized platforms.

7
8 **COUNT IV: COPYRIGHT INFRINGEMENT BY DISTRIBUTING OR COPYING
9 INFRINGING DERIVATIVE WORKS OF THE NT SDK**

10 *(Copyright registration No. TX 6-437-847)*
11 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

12 97. Plaintiff re-alleges and incorporates herein by reference the allegations of
13 paragraphs 1 through 96, inclusive, of this Complaint.

14 98. On information and belief, Defendants, and each of them, made, offered to sell,
15 sold, and/or distributed copies of the infringing derivative works of the NT SDK, or contributed to
16 these activities.

17 99. Each copy, each distribution of the infringing derivative works and each
18 authorization to do the same constitutes an act of infringement.

19 **COUNT V: COPYRIGHT INFRINGEMENT BY DISTRIBUTING MORE THAN
20 1000 COPIES OF THE WINDOWS NT VERSION OF THE RUNTIME SOFTWARE**

21 *(Copyright registration No. TX 6-437-847)*
22 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

23 100. Plaintiff re-alleges and incorporates herein by reference the allegations of
24 paragraphs 1 through 99, inclusive, of this Complaint.

25 101. StorageTek only made one license purchase for the right to distribute 1000 copies
26 of the runtime software under the 2000 Agreement.

27 102. StorageTek knew it only had the right to distribute 1000 copies under the 2000
28 Agreement.

1 103. StorageTek violated Plaintiff's copyright by distributing more than 1000 copies of
2 the Windows NT version of Plaintiff's software.

3 104. StorageTek further violated Plaintiff's copyright by granting "floating" licenses
4 which permitted its customers to make unlimited number of copies of Plaintiff's software.

5 105. In a document attached to a March 12, 2004 internal StorageTek email, Lisa Rady
6 wrote the following about LibAttach: "There is no license key in the product, and it is apparent
7 that the software has been copied, uncontrolled, for several years" and "engineering has not and
8 did not monitor the distributions."
9

10 106. Defendants thus further violated Plaintiff's copyright by willfully failing to monitor
11 the copying of Plaintiff's software and willfully permitting others to make unauthorized copies.

12 **COUNT VI: COPYRIGHT INFRINGEMENT BY MAKING UNAUTHORIZED**
13 **COPIES OF THE WINDOWS 2003 VERSION OF THE SDK**

14 *(Copyright registration No. TX 6-491-697)*

15 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

16 107. Plaintiff re-alleges and incorporates herein by reference the allegations of
17 paragraphs 1 through 106, inclusive, of this Complaint.

18 108. In March 2004, pursuant to the 2004 Agreement, StorageTek purchased one (1)
19 SDK license to use the 2004 version of the PowerRPC software for Microsoft Windows 2003 and
20 lower (the "2003 SDK"). Each SDK license granted one user the right to use the 2003 SDK on one
21 computer.

22 109. On information and belief, multiple StorageTek or SUN employees, including
23 Abramovitz, had copied the 2003 SDK on multiple computers, without internal control of inside
24 copying, violating Plaintiff's copyright in the 2003 SDK.

25 **COUNT VII: COPYRIGHT INFRINGEMENT BY CREATING UNAUTHORIZED**
26 **DERIVATIVE WORKS OF THE WINDOWS 2003 VERSION OF THE SDK**

27 *(Copyright registration No. TX 6-491-697)*

28 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

1 110. Plaintiff re-alleges and incorporates herein by reference the allegations of
2 paragraphs 1 through 109, inclusive, of this Complaint.

3 111. On information and belief, StorageTek developed LibAttach and LibAttach
4 Integrators' Kit products with unauthorized copies of the 2003 SDK.

5 112. On further information and belief, the LibAttach and LibAttach Integrators' Kit
6 products incorporated header files, "pwrpc32.dll" runtime library, "pmapsvc.exe" program and
7 other software in the 2003 SDK written by Plaintiff.

8 113. The LibAttach and LibAttach Integrators' Kit products developed with
9 unauthorized copies of 2003 SDK were thus infringing derivative works of Plaintiff's copyrighted
10 software.

11 114. On further information and belief, numerous third parties also used the LibAttach
12 Integrators' Kit to create derivative works without authorization.

13
14 **COUNT VIII: COPYRIGHT INFRINGEMENT BY DISTRIBUTING MORE THAN**
15 **1000 COPIES OF THE 2004 VERSION OF RUNTIME SOFTWARE**
16 *(Copyright registration No. TX 6-491-697)*
17 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

18 115. Plaintiff re-alleges and incorporates herein by reference the allegations of
19 paragraphs 1 through 114, inclusive, of this Complaint.

20 116. In March 2004, pursuant to the 2004 Agreement, StorageTek purchased a license to
21 distributed 1000 copies of the 2004 version of the runtime software (the "2004 Runtime").

22 117. StorageTek knew it only had the right to distribute 1000 copies of the 2004
23 Runtime.

24 118. On information and belief, Defendants distributed more than 1000 copies of the
25 2004 Runtime, without the proper licenses and in violation of Plaintiff's "2K4 copyright."

26 119. Defendants further violated Plaintiff's copyright by willfully failing to monitor the
27 copying of Plaintiff's software and willfully permitting others to make unauthorized copies.

1 120. On further information and belief, numerous third parties also used the infringing
2 LibAttach Integrators' Kit which contained the 2004 Runtime to create derivative works without
3 authorization.

4 **COUNT IX: COPYRIGHT INFRINGEMENT BY SELLING AND/OR OFFERING**
5 **TO SELL UNLIMITED LIBATTACH LICENSES**

6 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

7 121. Plaintiff re-alleges and incorporates herein by reference the allegations of
8 paragraphs 1 through 120, inclusive, of this Complaint.

9 122. Defendants knew that each copy of Plaintiff's software required a license.

10 123. Defendants offered to sell unlimited licenses for LibAttach software which
11 contained Plaintiff's copyrighted software, in violation of Plaintiff's copyright.

12 124. Defendants sold unlimited licenses for LibAttach software which contained
13 Plaintiff's copyrighted software to multiple customers, in violation of Plaintiff's copyright.

14
15 **COUNT X: COPYRIGHT INFRINGEMENT BY CONTINUING TO COPY**
16 **AND/OR DISTRIBUTE PLAINTIFF'S SOFTWARE AFTER STORAGE TEK BECAME A**
17 **SUBSIDIARY OF SUN**

18 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

19 125. Plaintiff re-alleges and incorporates herein by reference the allegations of
20 paragraphs 1 through 124, inclusive, of this Complaint.

21 126. Both the 2000 Agreement and 2004 Agreement were not transferable. Michael
22 Melnick, representing StorageTek, stated that the agreements were not transferable and "would be
23 terminated" upon SUN's acquisition of StorageTek.

24 127. On August 31, 2005, StorageTek became a subsidiary of SUN. StorageTek
25 employees became SUN employees; StorageTek employees' email addresses changed to sun.com
26 domain; StorageTek became "Sun StorageTek."

1 (whether now in existence or hereafter created), including, without limitation, those
2 involving the original content of and works on and in Plaintiff's RPC technology
3 and products and from continuing to market, offer, sell, dispose of, license, lease,
4 transfer, display, advertise, reproduce, develop, or manufacture any works derived
5 or copied from the content of Plaintiff's copyrighted works, all as described in this
6 Complaint;

7 (b) causing, contributing to, enabling, facilitating, supporting, aiding, or
8 participating in any manner in the infringement of Plaintiff's protected works and/or
9 exclusive copyright rights (whether now in existence or hereafter created),
10 including, without limitation, the content of Plaintiff's RPC technology and
11 products, all as described in this Complaint; and

12 (c) otherwise engaging in any conduct that unlawfully, unfairly, and/or
13 fraudulently competes with Plaintiff and Plaintiff's RPC technology and products
14 (including, without limitation, through the unauthorized use and infringement of
15 Plaintiff's original works of authorship), all as described in this Complaint;

16 4. That Defendants and their officers, employees, agents, servants, attorneys,
17 and representatives, and all other persons, firms, or corporations in active concert or privity or in
18 participation with them, be ordered to immediately deliver to the Court for impoundment (and
19 destruction upon entry of final judgment against Defendants) all illegal, unlicensed copies of
20 Plaintiff's software in their possession, custody or control together with an accounting, to be
21 provided to Plaintiff, of: (1) the number of such copies in Defendants' possession, custody or
22 control; (2) where each copy was found; (3) the identity of the individual or individuals having
23 possession, custody or control of each copy at the time it was found; and (4) a sworn explanation
24 of how each copy was obtained, duplicated or distributed, including the identity of all persons
25 involved in such activity for each such copy;
26

