

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )  
The SCO GROUP, INC., et al.,<sup>1</sup> ) Case No. 07-11337 (KG)  
 ) (Jointly Administered)  
Debtors. )

**MOTION OF THE DEBTORS PURSUANT TO SECTIONS 105(A) AND 363  
OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO  
EMPLOY AND COMPENSATE TEMPORARY EMPLOYEES**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) move the Court for entry of an order authorizing the Debtors to employ and compensate temporary employees to assist the Debtors prepare for the Debtors’ fiscal year end (October 31, 2007) as well as other matters as they may arise in the ordinary course of the Debtors’ business. In support of this motion (the “Motion”), the Debtors respectfully state as follows:

**Jurisdiction**

1. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of the cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> The Debtors and the last four digits of each of the Debtors’ federal tax identification numbers are as follows: (a) The SCO Group, Inc., a Delaware corporation, Fed. Tax Id. #2823; and (b) SCO Operations, Inc., a Delaware corporation, Fed. Tax ID. #7393.

2. The statutory bases for the relief sought herein are sections 105(a), 363(c), 1107(a) and 1108 of title 11 of the United States Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Bankruptcy Code”).

### **Background**

3. On September 14, 2007 (the “Petition Date”), the Debtors commenced these cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors have continued in the possession of their property and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee, examiner or committee has been appointed in any of the Debtors’ Chapter 11 Cases as of the date of this Motion.

6. Parties are referred to the *Declaration of Darl C. McBride, Chief Executive Officer of the Debtors, in Support of First Day Motions* (the “McBride Declaration”) filed on the Petition Date and incorporated herein by reference for the factual background relating to the Debtors’ business and their commencement of these Chapter 11 Cases.

7. Prior to the Petition Date, the Debtors’ accounting and finance department had 7 employees. Despite the Debtors’ relatively minor employee turnover in the 10 years preceding the Petition Date, upon, or shortly after, the filing of the bankruptcy petitions, approximately half of the accounting personnel resigned or were terminated, including the resignation of two accounting personnel, each with over ten years’ experience. In addition, the Debtors anticipate that additional employees will resign or be terminated.

8. As a result, the Debtors' accounting and finance department needs to hire, if not on a permanent basis, on a temporary basis, at least 3 accounting personnel to assist the Debtors' accounting needs for their fiscal year ending October 31, 2007, and perhaps for a period of time thereafter.

9. The Debtors propose to use Accountemps for the referenced staffing needs and estimate that it will cost \$20,000.

10. While the retention of temporary staff is typically considered "ordinary course," since the Debtors have been fortunate in the past and have not needed to use hire temporary employees for their accounting department to assist with their fiscal year-end matters, it seeks authorization to do so through this Motion in an abundance of caution.

#### **Relief Requested**

11. By the Motion, pursuant to sections 105(a) and 363(c) of the Bankruptcy Code, the Debtors seek entry of an order by this Court authorizing them to (a) retain and employ, in their discretion, temporary employees to assist the Debtors' on an "as needed" basis in the accounting and finance department as well as other departments if and as their needs arise, and (b) compensate the temporary agency, or individuals, as applicable, in the ordinary course of the Debtors' business.

#### **Basis for Relief**

12. The SCO Group, Inc. is a publicly traded company and the Debtors' fiscal year end is quickly approaching. The Debtors' accounting and finance department is typically busy this time of year in preparing for year end reporting and other requirements. In addition to ordinary course accounting functions, the Debtors' accounting personnel will also be required to

assist in the preparation of schedules, statement of financial affairs as well as the monthly operating reports required of debtors-in-possession.

13. As set forth above, approximately half of the accounting and finance department resigned or was terminated, including two employees that each had over 10 years' experience. Further, it is anticipated that additional personnel will resign or be terminated in various of the Debtors' other departments.

14. The operation of the Debtors' businesses would be severely hindered if the Debtors were not able to hire the staff needed to get through their year end. Moreover, the remaining employees' morale could be impacted which could result in additional resignations, if their workload doubled but their salaries remained the same, especially since the 2005 amendments to the Bankruptcy Code made it difficult, if not impossible for the Debtors' to provide retention bonuses.

15. Accordingly, the Debtors propose that they be permitted to employ and compensate temporary accounting and other staff from time to time, as necessary to meet their needs, including, but not limited to three personnel in their accounting and finance department.

16. In addition, the Debtors seek authority to pay, without further application to and order from this Court, such temporary employees, or the temporary agency, as applicable, all fees and costs associated with the services provided.

17. At the present time the Debtors estimate that it will cost approximately \$20,000 to fulfill the needs of the accounting and finance department. The Debtors anticipate that their needs may rise and seek approval to hire and pay all associated costs with the retention of additional temporary employees.

### **Authority for the Requested Relief**

18. The Bankruptcy Code authorizes a debtor-in-possession to “enter into transactions ... in the ordinary course of business, without notice or a hearing, and [to] use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c). The Bankruptcy Code further authorizes a debtor-in-possession to use property of the estate outside the ordinary course of business upon notice and a hearing. 11 U.S.C. § 363(b).

19. As set forth above, while the retention of temporary staff may typically be considered “ordinary course,” since the Debtors have been fortunate in the past and have not needed to use hire temporary employees for their accounting department to assist with their fiscal year-end matters, it seeks authorization to do so through this Motion in an abundance of caution.

20. The Debtors and their estates will be well served by authorizing the post-petition retention of temporary employees to fulfill staffing needs as they arise in order to allow the Debtors to preserve the value of their assets and fulfill their obligations as debtors-in-possession. It is in the best interest of all of the parties and the creditors to avoid any disruption in the Debtors’ day-to-day operations.

### **Notice**

21. Notice of this Motion has been given to the Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801. As the Motion is seeking “first day” relief, within two business days of the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion as required by Del. Bankr. LR 9013-2(d). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.


**No Prior Request**

22. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: September 16, 2007

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