

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. )

**DECLARATION OF DARL C. MCBRIDE,  
CHIEF EXECUTIVE OFFICER  
IN SUPPORT OF FIRST DAY PLEADINGS**

My name is Darl C. McBride. I am over the age of 18 years and, unless otherwise indicated, make the following representations based upon my personal knowledge and in support of the relief sought in the various pleadings filed with the Court herewith (the “First Day Pleadings”):

**A. General Background**

1. I am the chief executive officer of The SCO Group, Inc. (“SCO Group” or the “Company”), as well as of SCO Operations, Inc. (“Operations”). Collectively SCO Group and Operations are referred to as “SCO” or “Debtors.”

2. SCO Group and Operations are each a Delaware corporation headquartered in Lindon, Utah.

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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. The address for both Debtors is 355 South 520 West, Lindon, UT 84042.

3. Operations is wholly owned by SCO Group and operates the research, development, sales and implementation of technology owned by SCO Group as further described hereinbelow.

4. In addition to Operations, SCO Group has the following subsidiaries located both in and outside the United States as follows:

- a. SCO Global, Inc. (U.S.);
- b. Me, Inc. (U.S.);
- c. Me Software Limited (U.S.);
- d. Cattleback Holdings, Inc. (U.S.);
- e. SCO Canada, Inc. (Canada);
- f. SCO Software (UK) Ltd. (United Kingdom);
- g. SCO Japan, Ltd. (Japan);
- h. The SCO Group (Deutschland) GmbH (Germany);
- i. The SCO Group (France) Sarl (France); and
- j. SCO Software (India) Private Ltd. (India).

5. SCO Group's common stock is publicly traded on the NASDAQ stock market under the ticker symbol "SCOX." As of September 10, 2007, there were 21,782,164 shares of common stock outstanding and the closing price for the Company's common stock, as reported by The Nasdaq Capital Market, was \$0.71. As of September 10, 2007, there were 402 holders of common stock of record.

6. As of September 10, 2007, SCO and their foreign subsidiaries and affiliates had a total of 123 full and part-time equivalent employees employed in various

capacities including, but not limited to, finance, human resources, executive management and information systems. SCO also regularly engages independent contractors to support the Companies' professional services, product development, sales and marketing organizations. SCO's employees are not represented by any labor union and are not subject to a collective bargaining agreement, and SCO has never experienced a work stoppage. In general, SCO believes that relations with its employees are good.

7. SCO leases administrative, sales and marketing and product development facilities in Lindon, Utah; Scotts Valley, California and Murray Hill, New Jersey.

*i. UNIX Business*

8. SCO's core business focus is to serve the needs of small-to-medium sized businesses and branch offices and franchisees of Fortune 1000 companies, by providing reliable, cost-effective UNIX software technology for distributed, embedded and network-based systems. SCO also provides a full range of pre- and post-sales technical support for all of its products, primarily focusing on OpenServer and UnixWare. Additionally, SCO provides UNIX-based technical support services and consulting services.

9. SCO's largest source of revenue for its core UNIX business is derived from its worldwide, indirect, leveraged channel of partners, which includes distributors and independent solution providers (collectively, "resellers"). SCO has employees or contractors in a number of countries that provide support and services to customers and resellers. The other principal channel for selling and marketing SCO's products is through large corporations, which have a large number of branch offices or franchisees. SCO accesses these corporations

through its information technology or purchasing departments. In addition, SCO also sells its UNIX products to original equipment manufacturers (“OEMs”).

10. The original UNIX operating system was conceived on the premise that an operating system should be easily adapted to a broad range of hardware platforms and should provide a simple way of developing programs. Over the years, the UNIX operating system has been adapted for almost every OEM’s hardware architecture, and today UNIX has achieved the goal of seamlessly sharing data across heterogeneous environments. SCO owns certain intellectual property rights relating to the UNIX operating system, which is enforced and protected through the Company’s SCOSource business.

11. UNIX has had a long history of business implementation, and has a large and loyal base of both customers and vendors that provide solutions and applications. On the Intel platform, the Company’s OpenServer and UnixWare products represent a low-cost UNIX operating system available for businesses. The Company’s UNIX product offerings allow its customers to take advantage of the reliability of UNIX at a relatively low cost. Today, SCO continues to focus and generate revenue from small-to-medium business resellers as well as from large corporations, including numerous Fortune 1000 companies. SCO also has continuing relationships with hardware vendors and have received certifications on many of the industry’s top hardware platforms.

12. The Company anticipates that the OpenServer and UnixWare products will continue to provide a future revenue stream for SCO’s UNIX business. Both of these UNIX products have a strong and loyal existing customer base of small-to-medium businesses

and enterprise customers and constitute a well-known brand with a reputation for quality and reliability.

13. SCO also has a seasoned, mature sales channel of resellers focused on the small-to-medium sized business market. This channel is a unique asset that should allow SCO to continue to provide reliable UNIX operating systems for small-to-medium sized business customers.

14. SCO plans to continue to focus its UNIX development resources on current UNIX products. In addition, SCO will focus other engineering resources on mobility products and services for personal and professional productivity. The Company expects that these mobility products and services will enable easy, secure, real-time mobile access to all kinds of information stored in enterprise and web-based systems without the need for direct connection between end-point devices and those systems.

## Products and Services

### ii. *OpenServer*

15. OpenServer is a UNIX-based offering targeted at small-to-medium businesses. Businesses use OpenServer to simplify and speed business operations, better understand and respond to their customers' needs and achieve a competitive advantage. OpenServer excels at running multi-user, transaction and business applications, communications gateways, and mail and messaging servers in both host and client/server environments. The Company continues to fully support existing users of OpenServer, keeping the operating system current as well as obtaining certain hardware certifications.

### **iii. *UnixWare***

16. UnixWare is a UNIX-based offering targeted at medium-size businesses and enterprise customers. UnixWare is an advanced deployment platform for industry standard Intel processor systems. UnixWare is a foundation for solutions where proven scalability, reliability and affordability are critical. UnixWare includes enhancements and refinements to the UNIX platform, representing added value for existing UnixWare customers.

### **iv. *Other Products***

17. In addition to OpenServer and UnixWare, SCO offers product maintenance and additional UNIX-related products, such as SCOofficeServer, a UNIX-based e-mail and collaboration system and other UNIX system add-ons.

### **v. *Technical Support Services***

18. The Company provides a full range of pre- and post-sale technical support for all of its products, primarily focusing on OpenServer and UnixWare.

19. SCO also provides technical support to its partners, including resellers, hardware and software vendors and solution providers, as well as directly supporting SCO's end-user customers. SCO's partners have the option to direct their customers to SCO for technical support or to provide first-level customer support themselves and utilize our technical expertise for second-tier support.

20. Technical support services include a range of options from single incident e-mail and telephone support to dedicated "enterprise" level support agreements. Customers seeking additional technical support directly from SCO may enter into service agreements that best suit their needs.

**vi. *Other Services***

21. SCO provides other services, including software development and programming, migration tools and services and assisting customers with modernizing and integrating legacy applications with web services. SCO assists its end-user customers and solution providers in planning, creating, implementing and deploying business application solutions.

**vii. *Mobility Products and Services***

22. SCO's new Mobility Server product provides a secure, reliable connection point between handheld devices and corporate infrastructure applications and servers; a HipCheck Service which enables pro-active mobile administration for UNIX and Windows servers; a Shout product which enables users to communicate multimedia messaging to groups of any size via a mobile smart phone or rich media web landing page; and a Shout Postcard product which allows users to send virtual postcards from their smart phone.

23. The Company has business alliances with a number of key global industry partners. These relationships encompass product integration, two-way technology transfers, product certification, channel partnerships and revenue generating initiatives in areas of product bundling, OEM agreements and training and education. The Company also has alliances with a number of solution providers who write and develop custom applications to run on UNIX operating systems. Most of SCO's small business customers that cannot afford high-end solutions or an information technology staff rely on one of SCO's channel partners for these services. Maintaining these strategic alliances for the year ending October 31, 2007 will be critical to the success of SCO's UNIX business. The Company intends to continue to

keep relationships with key partners in certain vertical markets such as retail, medical/pharmaceutical, manufacturing and accounting where the Company's UNIX operating systems have an existing presence. The Company's efforts to maintain or expand industry partnerships may be adversely impacted by issues related to the Litigation (defined hereinafter).

24. The Company's UNIX sales and marketing and field operations are organized by geographic area: SCO's Americas division and its International division. Each division includes a sales organization, field marketing, pre- and post-sales technical support, and local professional services personnel.

25. The Americas team has field sales and support personnel located around the United States, Latin America and Canada. This region delivered approximately 54% of the total revenue for the year ended October 31, 2006.

26. The International region delivered approximately 46% of the total revenue for the year ended October 31, 2006 and includes EMEA (Europe, the Middle East and Africa) and Asia Pacific. SCO has resources, employees or contractors in the United Kingdom, Germany, France, Israel, Italy, China, Korea, Netherlands, Eastern Europe, India, Japan, Australia, and Taiwan.

27. SCO considers its indirect sales channel as one of its most valuable assets. In addition to the current revenue this channel produces, SCO's reseller partners are valuable for the influence they wield on the purchasing decisions of small and medium businesses. SCO's resellers are often not only the primary point of contact for their business customers' purchasing decisions, but are their customers' outsourced information technology



department. The reach of SCO's network of resellers into the small and medium business community is broad as evidenced by its large install base of servers running various versions of SCO's OpenServer and UnixWare operating systems..

28. SCO's marketing efforts support its sales and distribution efforts, promotions and product introductions, and include marketing activities to promote our UNIX and mobile products. Marketing is focused on branding, solutions, advertising, tradeshow, press releases, white papers and marketing literature. In particular, marketing strategy consists of:

- a. branding SCO's UNIX and mobile products through public relations and advertising activities;
- b. maintaining an effective partner program to generate brand awareness and promote SCO's UNIX and mobile products; as well as
- c. increasing public awareness of SCO's UNIX and mobile products by participating in strategic tradeshow, conferences and technology forums.

#### Software Engineering and Development

29. The Company has taken steps to improve its UNIX software products to maintain system reliability, maintain backward compatibility, increase application support, provide broad hardware support, better integrate widely used internet applications, improve usability, and increase system performance. While the Company believes that these product enhancements will extend the lives and improve the functionality of SCO's UNIX products, they will not result in significant revenue increases in the short-term due to the long adoption

cycle for new operating system purchases and the length of SCO's operating system product sales cycle as well as the competition in the Company's markets.

30. The Company also deploys engineering resources for its mobility products and services for personal and professional productivity, as well as custom services for business, government and consumer users. The Company expects these mobility products and services will enable easy, secure, real-time mobile access to all kinds of information stored in enterprise and web-based systems without the need for direct connection between end-point devices and those systems.

31. The Company's product development process is modeled to standard, commercial software engineering practices and it applies these practices to ensure consistent product quality. As a result, SCO is able to offer its platform products to OEM customers in several configurations without significant additional effort. The Company incurred \$8,045,000, \$8,337,000 and \$10,661,000 in research and development expense during the years ended October 31, 2006, 2005 and 2004, respectively.

### ***SCOsorce Business***

32. The Company acquired certain rights relating to the UNIX (including UnixWare) source code and derivative works and other intellectual property rights when it purchased substantially all of the assets and operations of the server and professional services groups of The Santa Cruz Operation, Inc. in May 2001. The Santa Cruz Operation had previously acquired such UNIX source code and other intellectual property rights from Novell in 1995, which Novell acquired from UNIX System Laboratories, a subsidiary of AT&T. Through this process, the Company acquired all UNIX source code, source code license

agreements with thousands of UNIX vendors, certain UNIX intellectual property, all claims for violation of the above mentioned UNIX licenses and copyrights and other claims, and the control over UNIX derivative works. The UNIX licenses the Company obtained has led to the development of several UNIX-based operating systems, including but not limited to UnixWare and OpenServer products, IBM's AIX, Sequent's DYNIX/Ptx, Sun's Solaris, SGI's IRIX and Hewlett-Packard's HP-UX. These operating systems are all derivatives of the original UNIX source code owned by the Company.

33. The success of the Company's SCOSource business depends on its ability to protect and enforce SCO's rights to proprietary UNIX source code, copyrights and other intellectual property rights. To protect SCO's proprietary rights, the Company relies primarily on a combination of copyright laws, contractual rights and related claims.

**B. Events Leading to SCO's Filing of Chapter 11 Case**

**i. *Competition***

34. Sales of SCO's UNIX-based products and services have been declining over the last several years. This decline in revenue has been primarily attributable to significant competition from alternative operating systems, particularly Linux.

35. The Company faces direct competition in the operating system market from Linux

36. operating system providers, other non-UNIX operating system providers and other UNIX-based operating system providers. In the operating system market, some of the Company's competitors include International Business Machines Corporation ("IBM"), Red Hat Inc. ("Red Hat"), Novell Inc. ("Novell"), Microsoft Corporation ("Microsoft"), and Sun

Microsystems (“Sun”). Operating systems, including Linux, are aggressively taking market share away from UNIX and SCO’s UNIX revenue has declined over the last several years.

37. SCO believes that it competes favorably with many of its operating system competitors in a number of respects, including product performance, functionality and networking capability.

38. Notwithstanding these factors, the Company’s revenue has declined over the last several years. Many of SCO’s competitors are significantly larger than SCO and have much greater access to funding, technical expertise, marketing, and research and development. In addition, many of SCO’s competitors have established brand recognition and market presence that may prevent SCO from obtaining or retaining market share. Additionally, there has been negative publicity surrounding the litigation relating to the Company’s ownership of UNIX and related copyrights that has, to some degree, hampered SCO’s ability to compete favorably.

39. The success of SCO’s UNIX business will, in large measure, depend on the level of commitment and certification it receives from industry partners and developers. In recent years, the Company has seen hardware and software vendors as well as software developers turn their certification and application development efforts toward Linux and elect not to continue to support or certify SCO’s UNIX operating system products. This trend continued for the Company’s fiscal year ended October 31, 2006, and it continue during the year ending October 31, 2007. If this trend continues, SCO’s competitive position will be adversely impacted and future revenue from UNIX business will decline. The decline in SCO’s UNIX business may be accelerated if industry partners withdraw their support from the

Company as a result of the litigation between the Company and IBM, Novell and Red Hat (collectively the “Litigation”).

40. The market for mobility products and services is relatively young, and the Company believes it is poised for rapid growth. Competition is strong and takes numerous forms, including database vendors who are providing mobile extensions of their current offerings as well as start-up companies and other large corporations who are focusing on custom solutions based on proprietary middleware. The Company believes that the landscape and competition will change rapidly and that no single company has established firm leadership. The success of SCO’s mobility products and services offerings will depend in part, on the level of commitment and resources SCO is able to devote to these offerings, the partnerships SCO is able to establish, SCO’s ability to attract and retain new customers and partners, and the strength of our mobility offerings.

**ii. Litigation**

**a. IBM Corporation**

41. On or about March 6, 2003, SCO filed a civil complaint against International Business Machines Corporation (“IBM”). The case is pending in the United States District Court for the District of Utah, under the caption *The SCO Group, Inc. v. International Business Machines Corporation*, Case No. 2:03CV0294 (the “IBM Litigation”). In this action SCO claims that IBM breached its UNIX source code licenses (both the IBM and Sequent Computer Systems, Inc. “Sequent” licenses) by disclosing restricted information concerning the UNIX source code and derivative works and related information in connection with its efforts to promote the Linux operating system. The complaint includes, among other

things, claims for breach of contract, unfair competition, tortious interference and copyright infringement. SCO is seeking damages in an amount to be proven at trial and injunctive relief.

42. On or about March 6, 2003, SCO notified IBM that IBM was not in compliance with SCO's UNIX source code license agreement and on or about June 13, 2003, SCO delivered to IBM a notice of termination of that agreement, which underlies IBM's AIX software. On or about August 11, 2003, SCO sent a similar notice terminating the Sequent source code license. IBM disputes SCO's right to terminate those licenses. If the validity of SCO's termination of those licenses is upheld the Company believes that IBM is exposed to substantial damages and injunctive relief based on its continued use and distribution of the AIX operating system. On June 9, 2003, Novell sent SCO a notice purporting to waive SCO's claims against IBM regarding its license breaches. The Company does not believe that Novell had the right to take any such action relative to our UNIX source code rights.

43. February 27, 2004, SCO filed a second amended complaint which added a claim for copyright infringement, and removed the claim for misappropriation of trade secrets. IBM filed an answer and 14 counterclaims. IBM's counterclaims include claims for breach of contract, violation of the Lanham Act, unfair competition, intentional interference with prospective economic relations, unfair and deceptive trade practices, promissory estoppel, patent infringement and a declaratory judgment claim for non-infringement of copyrights. On October 6, 2005, IBM voluntarily dismissed with prejudice its claims for patent infringement.

44. At the present time, IBM and SCO have filed expert reports and substantially completed expert discovery. IBM has filed six motions for summary judgment that, if granted in whole or in substantial part, could substantially reduce SCO's claims. SCO

has filed three motions for summary judgment. The summary judgment motions have not, as yet, been decided. “Several of SCO’s claims against IBM have been effectively dismissed pursuant to a summary judgment entered in the Novell case on August 10, 2007. The court ruled that Novell had the right to direct SCO to waive certain of its contractual claims against IBM.”

**b. Novell, Inc.**

45. On January 20, 2004, SCO filed a lawsuit in Utah state court against Novell, Inc. (“Novell”) asserting slander of title and seeking relief for Novell’s alleged bad faith effort to interfere with SCO’s ownership of copyrights related to the Company’s UNIX source code and derivative works and UnixWare product. The case was removed by Novell to the United States District Court for the District of Utah and is styled *The SCO Group, Inc. v. Novell, Inc.*, Case No. 2:04CV00139. In the lawsuit, SCO seeks preliminary and permanent injunctive relief as well as damages. Specifically, SCO requests the court to compel Novell to assign to SCO all copyrights wrongfully registered to Novell, preclude Novell from claiming any ownership interest in such copyrights, and require Novell to retract or withdraw all representations it has made regarding its purported ownership of such copyrights and UNIX itself.

46. Novell filed two motions to dismiss, which were denied. Thereafter, Novell filed its answer and asserted counterclaims alleging breaches of the Asset Purchase Agreement between Novell and SCO’s predecessor-in-interest, The Santa Cruz Operation, for slander of title, restitution/unjust enrichment, an accounting related to Novell’s retained binary royalty stream, and for declaratory relief regarding Novell’s alleged rights under the Asset

Purchase Agreement. On or about December 30, 2005, SCO filed a motion for leave to amend the complaint against Novell to assert additional claims including copyright infringement, unfair competition and a breach of Novell's limited license to use SCO's UNIX code. Novell consented to the filing of the additional claims.

47. On or about April 10, 2006, Novell filed a motion to stay the case pending a request for arbitration that Novell and SuSE Linux, GmbH ("SuSE") filed (on the same date) in the International Court of Arbitration in France (the "SuSE Arbitration"). The SuSE Arbitration concerns claims by Novell that SCO granted SuSE the right to use SCO's intellectual property through SCO's participation in the UnitedLinux initiative in 2002 and through Novell's subsequent acquisition of SuSE, Novell acquired SuSE's rights as a member of UnitedLinux. The District Court ordered that portions of claims relating to the SuSE Arbitration should be stayed but the other portions of claims in the case should proceed. The three-person arbitration panel has been selected for the SuSE Arbitration in Switzerland, and that process has commenced. The arbitration has been scheduled for December 2007 but is stayed due to SCO's bankruptcy.

48. Meanwhile, in September 2006, Novell filed an Amended Counterclaim seeking, in relevant part, imposition of a constructive trust over certain revenue the Company collected from Sun Microsystems and Microsoft Corporation in 2003. Novell moved for a preliminary injunction, which was denied. However, on August 10, 2007, SCO's motions for summary judgment were denied and Novell's was granted in part. Partial summary judgment was granted to Novell on its claims for breach of fiduciary duty and conversion. While the district court held that imposition of a constructive trust was warranted in theory, the court



denied that part of the motion for partial summary judgment seeking the imposition of a constructive trust until it could determine the appropriate amount of SVRX Royalties, and left this determination for trial. Another ruling by the court was that SCO's predecessor's 1995 Asset Purchase Agreement with Novell did not include Novell's Unix and Unixware copyrights, which, the court ruled, are still owned by Novell. This ruling puts a large part of the Company's future business model in jeopardy as noted by several media that follow the industry.

49. The court's summary judgment in favor of Novell held that Novell was entitled to receive at least some portion of the funds received by SCO in 2003 from the Sun and Microsoft Agreements. The trial previously set to commence on September 17, 2007 in the District Court on SCO's claims and Novell's counterclaims is, therefore, now limited to determining the amount of SVRX Royalties to be awarded to Novell and whether a declaratory judgment should be issued that SCO was not authorized to enter into these agreements. Novell claims that it is entitled to the full amount of the Microsoft and Sun payments and to all other SCOSource agreements, which, collectively constitute a principal amount in excess of \$26 million, and, with claimed interest, in excess of \$37 million. Novell also seeks the imposition of a constructive trust on whatever such funds are currently in the Debtors' possession can be properly traced backed to those transactions. The entry of a substantial judgment against SCO would likely impair the Debtors' ability to conduct their business in the ordinary course and the value of SCO's litigation claims relating to infringement of its intellectual property rights in UNIX.

**c. *Red Hat, Inc.***

50. On August 4, 2003, Red Hat, Inc. filed a complaint against the Company. The action is pending in the United States District Court for the District of Delaware under the case caption, *Red Hat, Inc. v. The SCO Group, Inc.*, Civil No. 03-772. Red Hat seeks a declaratory judgment for non-infringement of copyrights and no misappropriation of trade secrets, asserting that the Linux operating system does not infringe on SCO's UNIX intellectual property rights. In addition, Red Hat claims that SCO had engaged in false advertising in violation of the Lanham Act, deceptive trade practices, unfair competition, tortious interference with prospective business opportunities, trade libel and disparagement. The Delaware court has stayed the case pending the outcome of the IBM Litigation and requires reports every 90 days on the status thereof.

**d. *Other Matters***

51. There is a lawsuit pending in India that was filed in April, 2007 by a former Indian distributor claiming that SCO is responsible to repurchase certain software products and to reimburse the distributor for certain other operating costs. The Company does not believe that it is responsible to reimburse the distributor for any operating costs and also believes that the return rights related to any remaining inventory has lapsed. The distributor requested that the Indian courts grant pre-judgment attachment of SCO assets located in India. The request was denied and hearings on the main claims are ongoing. The Debtors are vigorously defending this action.

C. Relief Requested in First Day Pleadings

i. *Emergency Relief*

a. *Motion for Order Authorizing The Debtors, Inter Alia, to Pay Prepetition Wages, Compensation and Employee Benefits (“Prepetition Wage Motion”)*

52. The Debtors seek, *inter alia*, entry of an order authorizing, but not directing, them to: (a) (i) pay prepetition wages, salaries, commissions, employee benefits and other compensation; (ii) remit withholding obligations; (iii) maintain employee benefits programs and pay related administrative obligations; and (iv) authorizing the Debtors’ banks and other financial institutions to receive, process, honor and pay certain checks presented for payment and to honor certain fund transfer requests related to the foregoing (collectively, the “Prepetition Employee Obligations”), (b) authorizing, but not directing, the Debtors to continue their practices, programs and policies in effect as of the Petition Date with respect to all Prepetition Employee Obligations as of the Petition Date, and (c) authorizing, but not directing the Debtors to issue new postpetition checks or effect postpetition transfers in respect of Prepetition Employee Obligations, if necessary.

53. As set forth above, the Company and its subsidiaries and affiliates employ approximately 123 employees (including independent contractors who, to the best of my knowledge and belief, earned at least 75% of their total earnings for the 12 months preceding the Petition Date from SCO). While the U.S. salaried Employees have been paid current through the Petition Date, I have been advised by counsel that in the absence of an order of the Court providing otherwise, the Debtors will be prohibited from paying or otherwise satisfying its prepetition obligations to its U.S. Commissioned and all Foreign

Employees - the Prepetition Employee Obligations. In addition, checks, wire transfers and direct deposit transfers issued in respect of the Prepetition Employee Obligations will be dishonored. To ensure that Employees do not terminate their employment at this critical time for SCO, and to minimize the personal hardship the Employees would suffer if prepetition employment-related obligations are not paid or honored when due, the Debtors seek authority to honor, in their discretion, such obligations, including those described above.

54. In the ordinary course of its business, SCO funds the payroll of foreign affiliates/subsidiaries on a monthly basis. SCO also funds the payroll for the foreign subsidiaries, which Employees are paid current, on a monthly basis on the 25<sup>th</sup> of each month. SCO's payroll obligations are transferred approximately three days before the upcoming payday from Operations' payroll account. The next foreign payroll obligation is due September 25, 2007. While these payroll amounts do not need to be funded until after the filing of the petitions for relief, I have been informed by counsel that the Debtors cannot, absent Court authorization, transfer funds representing payment of wages earned prior to the Petition Date. Accordingly, the Debtors seek permission by the Prepetition Wage Motion to pay such amounts (or have the appropriate foreign payroll processing entity pay such amounts on their behalf) in the ordinary course of business. The aggregate amount to be paid to the U.S. Commissioned Employees and Foreign Employees, including foreign Commissioned Employees, on account of the September 21, 2007 and September 25, 2007 foreign payroll, for the month of September 2007 is approximately \$467,160.

55. I believe that the filing of SCO's bankruptcy petitions will very likely cause the Employees to question their future employment prospects with the Company and its

affiliates. While the Employees have demonstrated loyalty to SCO during the years prior to the commencement of these cases, their search for a sense of stability with regard to compensation and benefits may lead to an epidemic of Employee departures. SCO is a company whose assets are comprised principally of intellectual property and therefore its Employees are critical to the continued successful operations. I believe that a significant deterioration in morale among Employees at this critical time undoubtedly would have a devastating impact on SCO, the value of their assets and business, their ability to maximize value and would result in immediate and irreparable harm to the creditors and the estates.

56. As part of the Debtors' Prepetition Employee Obligations, SCO have also established a variety of benefit plans and programs (the "Employee Benefits") designed to assist the Employees and the Employees' eligible dependents in meeting certain financial burdens, including those that arise from illness, disability and death. The Employee Benefits include a choice of medical and dental plans, employee life and other insurance plans, a flexible spending benefits program, dependent care accounts, and a 401(k) savings and retirement plan. The Debtors believe that all amounts and obligations related to Employee Benefits accrued prior to the Petition Date have been paid in full except as otherwise noted in the Prepetition Wage Motion. However, out of an abundance of caution, the Debtors seek authorization, but not direction, to pay or otherwise honor these Employee Benefits in the ordinary course of business.

57. I am informed by counsel that as a result of the commencement of the SCO's Chapter 11 cases, and in the absence of an order of the Court providing otherwise, SCO will be prohibited from paying or otherwise satisfying prepetition obligations regarding

Prepetition Employee Obligations, and the checks, wire transfers and direct deposit transfers issued in respect of the Prepetition Employee Obligations will be dishonored. To maintain Employee morale at this critical time for the Debtors, and to minimize the personal hardship the Employees would suffer if prepetition Employee-related obligations are not paid or honored when due, the Debtors seek authority to honor in their discretion such obligations.

58. I am informed by counsel that pursuant to section 507(a)(4) of the Bankruptcy Code, the Employees' claims for wages and salaries, including vacation, severance and sick leave pay earned within 180 days before the Petition Date are afforded unsecured priority status to the extent of \$10,950 per Employee. Counsel also informed me that, generally, such claims must be paid in full pursuant to section 1129(a)(9) of the Bankruptcy Code in order to confirm a plan of reorganization and/or liquidation. Therefore, payment of such obligations at this time merely affects the timing of such payments. The Company does not have any prepetition salary or wage claims in excess of the statutory cap.

59. With respect to the accrued and unpaid Prepetition Employee Obligations, the Debtors request that, to the extent practicable, the applicable banks be directed to honor checks or fund transfer requests regardless of whether they were issued before or after the Petition Date. I believe that the Debtors have or will have on deposit sufficient funds in its disbursement accounts to satisfy all the Prepetition Employee Obligations so that the banks will not be prejudiced by an order directing them to honor the Debtors' checks or fund transfer requests with respect to such amounts.

60. Finally, authorization of the payment of the Prepetition Employee Obligations shall not be deemed to constitute postpetition assumption or adoption of any

policy, plan, program or employee agreement pursuant to section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all of their rights under the Bankruptcy Code with respect thereto.

***b. Debtors' Motion for Authority to (I) Maintain Existing Bank Accounts, (II) Continue To Use Existing Business Forms, (III) Continue To Use Existing Cash Management System, And (IV) To Excuse Section 345(B) Deposit And Investment Requirements ("Cash Management Motion")***

61. By the Cash Management Motion, the Debtors seek entry of an order authorizing them to (i) maintain existing bank accounts, (ii) continue to use existing business forms, (iii) continue to use the existing cash management system, and granting them a limited waiver of 11 U.S.C. § 345(b) deposit and investment guidelines.

62. The Debtors also seek authorization to continue using their prepetition bank accounts and business forms, including relief from the requirement that the legend "debtor in possession" be imprinted on any existing business forms and checks printed from the Debtors' check printing software (until the necessary programming changes can be implemented), and to continue its use of the existing cash management system.

63. Finally, the Debtors seek an extension of time to comply with the investment guidelines provided for in section 345(b) of the Bankruptcy Code. The Debtors seek this authorization to insure their orderly entry into bankruptcy and to help efficiently administer their business and avoid the disruptions and distractions that would inevitably divert their attention from urgent matters during the initial stages of these Chapter 11 cases.

64. I am informed by counsel that one provision of the U.S. Trustee Guidelines requires a debtor in possession to open new bank accounts and close all existing

