

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

Hearing Date: April 2, 2008 at 2:00 p.m. prevailing Eastern time  
Objection Deadline: March 26, 2008 at 4:00 p.m. prevailing Eastern time

**NOTICE OF DEBTORS' MOTION TO APPROVE SETTLEMENT  
COMPENSATION OR SALE COMPENSATION AND  
EXPENSE REIMBURSEMENT TO PLAN SPONSOR**

TO: (1) the Office of the United States trustee for the District of Delaware; and (2) all parties who have timely filed requests for Notice under Bankruptcy Rule 2002

The captioned debtors and debtors in possession (collectively, the "Debtors") filed the attached *Debtors' Motion to Approve Settlement Compensation or Sale Compensation and Expense Reimbursement to Plan Sponsor* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court").<sup>2</sup> The Motion requests entry of an order approving the Plan Sponsor Protections, including the payment of Settlement Compensation or Sale Compensation, as defined and provided for in the MOU, as and if applicable, as well as the Expense Reimbursement.

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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.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

**OBJECTIONS AND RESPONSES TO THE MOTION, IF ANY, MUST BE IN WRITING AND FILED WITH THE BANKRUPTCY COURT NO LATER THAN 4:00 P.M. PREVAILING EASTERN TIME ON APRIL 26, 2008.**

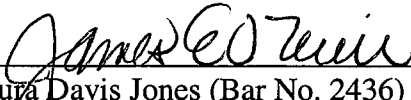
Objections or other responses to the Motion, if any, must also be served so that they are received not later than April 26, 2008, 4:00 p.m., prevailing Eastern time, by (i) counsel to the Debtors: (a) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esquire; and (b) Berger Singerman, P.A., 350 East Las Olas Blvd., Ste. 1000, Fort Lauderdale, FL 33301, Attn: Arthur J. Spector, Esquire; and (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, Delaware 19801, Attn: Joseph McMahon, Esquire.

**IF OBJECTIONS OR RESPONSES ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD BEFORE THE HONORABLE KEVIN GROSS, UNITED STATES BANKRUPTCY COURT, 824 MARKET STREET, SIXTH FLOOR, COURTROOM 3, WILMINGTON, DELAWARE 19801 ON APRIL 2, 2008 AT 2:00 P.M. PREVAILING EASTERN TIME.**

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 14, 2008

PACHULSKI STANG ZIEHL & JONES LLP

  
\_\_\_\_\_  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**Hearing Date: April 2, 2008 at 2:00 p.m. prevailing Eastern time**  
**Objection Deadline: March 26, 2008 at 4:00 p.m. prevailing Eastern time**

**DEBTORS' MOTION TO APPROVE SETTLEMENT COMPENSATION OR  
SALE COMPENSATION AND EXPENSE REIMBURSEMENT TO PLAN SPONSOR**

The SCO Group, Inc. ("SCO") and SCO Operations, Inc. ("Operations") (SCO and Operations, collectively, the "Debtors") seek the approval of certain protections to Stephen Norris Capital Partners, LLC ("SNCP") on the terms provided in the Memorandum of Understanding ("MOU") attached as **Exhibit A** hereto, in consideration for SNCP's commitment to finance the *Debtors' Joint Plan of Reorganization* (the "Plan"), and pursuant to the definitive agreements contemplated thereby (the "Definitive Documents"). The Debtors will file the Plan and related Disclosure Statement by February 29, 2008, and seek a hearing on this Motion at the same time as the hearing to approve the Disclosure Statement. The Debtors will file the forms of the Definitive Documents (including those to be executed at the Effective Date of the Plan), at least 5 business days before the hearing on approval of the Disclosure Statement. In support of this motion (the "Motion"), the Debtors state:

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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.

## **Jurisdiction and Background**

1. This Court has jurisdiction over these cases pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. The statutory predicates for the relief sought herein include: 11 U.S.C. §§ 105(a), 363(b), 364 and 503, implemented by Rules 2002(a)(2), 3017, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure.
3. On September 14, 2007, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
4. For greater detail regarding the background of the Debtors' business and events leading up to the filing of these cases, the Debtors refer the Court and parties to the *Declaration of Darl C. McBride, Chief Executive Officer of the Debtors, in Support of First Day Motions* (the "McBride Declaration") (Docket No. 3) filed on the Petition Date and incorporated herein.
5. Within no more than 15 days of the filing of this Motion, the Debtors will file the Plan and *Disclosure Statement in Connection with Debtors' Joint Plan of Reorganization* (the "Disclosure Statement"). On February 13, 2008, in contemplation of the Plan, the Debtors executed the MOU with SNCP. A copy of the MOU is attached as **Exhibit A**.
6. The MOU commits SNCP to finance up to \$100 million for a plan of reorganization that provides for, among other things:
  - (a) payment in full of all creditors, including all trade and other unsecured creditors and the contingent, unliquidated and disputed claims of Novell and IBM, each on the earlier of the effective date of the Plan or the date when such claim becomes an allowed claim;

- (b) extinguishment of the existing equity securities (including common stock equivalents) of SCO;
- (c) On the Effective Date of the Plan, SNCP to pay \$5,000,000 (in cash or via wire transfer) to the reorganized SCO in consideration of a new class of preferred stock to be issued by SCO ("Series A Preferred") which shall have the liquidation, voting and distribution preferences described in the MOU. At its option, the holder of the Series A Preferred will be able to convert the Series A Preferred into between 51% and 85% of SCO's equity, depending on the amount drawn under the Debt Financing as defined and described below;
- (d) The reorganized Debtors to retain all of their intellectual property and all of their pending litigation rights and claims, including without limitation the potential liability or recoveries under the pending cases titled *The SCO Group, Inc. v. Novell, Inc.*, pending in the United States District Court for the District of Utah, Civil No. 2:04 CV-00139, and the related pending litigation, *The SCO Group, Inc. v. International Business Machines*, pending in the United States District Court for the District of Utah, Case No. 2:03CV0294DAK (the "Novell/IBM Litigation"). The MOU provides that the reorganized SCO will pursue the Novell/IBM Litigation and other pending litigation claims aggressively;
- (e) SNCP to also provide reorganized SCO with financing up to US \$95 million (the "Debt Financing"), available for, among other purposes, supporting appellate bonds (and, although SCO expects to prevail in the pending litigation claims, providing for full payment of allowed claims, if so required by final judgment adverse to reorganized SCO) in the Novell/IBM Litigation and other pending litigation claims. The Debt Financing will provide a five year non-revolving credit line and bear a high but appropriate rate of return (LIBOR plus 17%), reflecting the risks of this investment commitment and an commensurate rate of return. The Debt Financing shall be secured by all of the assets of SCO, including all of its present and future litigation claims;
- (f) The conversion percentage of the Series A Preferred to vary depending on the amount drawn on the facility after the Novell/IBM litigation claims resolve. Should the amount drawn be \$0, then the Series A Preferred will convert into 51% of reorganized SCO's equity. Should the amount drawn be \$30 million or more, then the Series A Preferred will convert into 85% of reorganized SCO's equity. Should the amount drawn be between \$0 and \$30 million, then the Series A Preferred will

convert into a percentage of the then-outstanding common stock of SCO proportionally;

- (g) Equity holders (and holders of common stock equivalents, including stock options) of SCO existing as of confirmation of the Plan to receive a pro-rata interest in a grantor trust (the "Trust"). The Trust shall be the holder of the new common stock (and new common stock equivalents) of SCO ("New Common Stock"), representing between 49% and 15% of SCO's fully diluted equity after conversion of the Series A Preferred, the precise amount of which shall be determined based upon the conversion rights of the Series A Preferred. The beneficial interests in the Trust to be issued to SCO's equity holders shall represent a *pro rata* interest in the outstanding New Common Stock held by the Trust, which will correspond to the percentage interests of SCO's equity holders (and common stock equivalent holders) at the time of the organization of the Trust. The Trust will receive \$2 million on the Effective Date of the Plan (from the \$5 million proceeds of the Series A Preferred), which will be distributed to Trust beneficiaries (in respect of holdings of common stock and excluding holders of common stock equivalents) after reserving for reasonable Trust expenses. Within one year after the pending litigation claims in the Novell/IBM Litigation are finally resolved (by final order, not subject to further appeal, or settlement), reorganized SCO will make a final payment to redeem all New Common Stock held by the Trust in an amount equal to the sum of (a) a percentage of any net recovery reorganized SCO realizes from the final resolution of the Novell/IBM litigation (net of any recovery on or settlement of counterclaims and cross claims against SCO, and net of all taxes, and legal and other professional fees and expenses incurred by SCO in connection therewith), such percentage to vary between 15% and 49% depending on the conversion percentage of the Series A Preferred, and (b) the product obtained by multiplying (i) SCO's earnings (excluding any earnings arising from a Novell/IBM litigation recovery) before interest, taxes, depreciation and amortization (over the four full fiscal quarters immediately preceding the resolution of the Novell/IBM litigation), by (ii) the product of four times the percentage (between 15% and 49%) determined under (a), above; and
- (h) Interests in the Trust shall not be transferrable, and the reorganized SCO will no longer be a public company and shall not be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended.

7. A primary purpose and intended results of the Plan, and the financing commitments provided under the MOU, is to encourage and promote an early and favorable resolution of the Novell/IBM Litigation. Notwithstanding the August 2007 interim ruling by the Utah District Court in the Novell Litigation, SCO believes it has an excellent chance to prevail in the Novell/IBM Litigation, including potential for an award of substantial damages in its favor should SCO prevail. The financing commitments provided under the MOU increase SCO's ability to succeed in the Novell/IBM Litigation from a practical perspective, and therefore SNCP has required the inclusion of the Plan Sponsor Protections (as defined below) in the MOU.

8. SNCP requires the following in the MOU (the "Plan Sponsor Protections"): (a) the right to participate directly in any settlement discussions relating to the Novell/IBM Litigation, and (b) the right to share equally with SCO in any net proceeds of a favorable resolution of the Novell/IBM Litigation prior to the Effective Date of the Plan (whether structured as a settlement, a purchase of SCO, or an exclusive licensing arrangement) as an administrative expense. The MOU provides that SNCP has no obligation to proceed with its financing commitments or the Plan unless the Court approves the Plan Sponsor Protections.

9. The Debtors concede that the Plan Sponsor Protections seek extraordinary relief from the Court. The Debtors' support for that relief, and the benefits that the SNCP financing commitments and the Plan offer this estate, are at least as extraordinary. SCO's litigation position in the Novell/IBM Litigation will benefit immediately and substantially by SNCP's \$100 million financing commitments.



10. The Debtors' creditors will benefit from SNCP's financing under the Plan as they will be paid in full, with interest, on the earlier of the Effective Date of the Plan or the date their claims are allowed.

11. The benefits of the Plan and financing to SCO's equity interest holders are extraordinary. The Plan allows SCO's equity holders to receive not only payment in full of the present value of their common stock, on or about the Effective Date of the Plan, but also preserves for equity holders the benefit of a potential subsequent distribution to retire their interests in SCO, in cash equal to up to almost half of: (i) the net proceeds from the resolution of the Novell/IBM Litigation, plus (ii) 4 times SCO's 12-month trailing EBITDA value.

12. The Plan Sponsor Protections grant SNCP an extraordinary share in the potential Novell/IBM Litigation net settlement proceeds generated before the Effective Date of the Plan because of: (a) the possibility that the SNCP financing commitments and Plan could be the cause creating Novell/IBM Litigation net settlement proceeds, in substantial amounts, before the Effective Date of the Plan, (b) the entire certainty that if there are no Novell/IBM Litigation net settlement proceeds generated before the Effective Date of the Plan, the Plan Sponsor Protections are, and were always, entirely moot, and never cost the Debtors a penny, and (c) the extraordinary benefits the Plan offers all parties in interest in these cases.

13. The Plan Sponsor Protections first focus on allowing SNCP to participate in negotiations to resolve the Novell/IBM Litigation. Pursuant to the MOU, if SCO receives either: (a) a written or oral offer or counteroffer to settle the Novell/IBM Litigation, Autozone Litigation or any other pending litigation (collectively, the "Pending Litigation") prior to the Effective Date of the Plan; or (b) a written or oral offer or counteroffer to acquire the Debtors by,

or for the account of, a defendant in the Pending Litigation, the Debtors shall promptly notify SNCP of the offer and all material terms thereof. Similarly, the Debtors shall promptly advise SNCP of all offers (including counteroffers) it makes to settle or resolve the Pending Litigation. At its option, one or more representatives of SNCP may attend settlement conferences or conference calls between the parties to the Pending Litigation, whether the same are directed at settling the Pending Litigation or acquiring the Debtors. At the request of the Debtors, each representative of the SNCP who shall attend settlement conferences or conference calls between the parties to the Pending Litigation shall execute a confidentiality agreement reasonably acceptable to the Debtors and SNCP.

14. The Plan Sponsor Protections also implement the intent of the MOU for the Debtors and SNCP to share equally the Novell/IBM Litigation net settlement proceeds that may be realized before the Effective Date of the Plan, despite the form that resolution the pending litigation may take, including a sale or exclusive licensing arrangement. If the Novell/IBM Litigation is not resolved before the Effective Date, these Plan Sponsor Protections cost the Debtors' estates nothing.

15. The Debtors believe that absent the SNCP financing commitments provided for under the Plan, the Debtors' chances to reach a favorable resolution of the Novell/IBM Litigation by the proposed Effective Date of the Plan (i.e., not later than August 15, 2008) would be more difficult. In all events, it is certain that SNCP's \$100 million financing commitment to support the Novell/IBM Litigation will immediately and substantially enhance SCO's litigation position.

16. If the Novell/IBM Litigation is resolved in reorganized SCO's favor after the Effective Date of the Plan, the MOU gives the equity security holders of SCO essentially as much as SNCP requests in the Plan Sponsor Protections. Specifically, under the MOU and Plan, within one year after the Novell/IBM Litigation resolves, reorganized SCO will redeem the Trust's common stock interests for up to 49% of the net settlement proceeds (vs. 50% required by the Plan Sponsor Protections) plus an equal share of SCO's value at 4 times EBITDA.

17. In the extraordinary event that the Novell/IBM Litigation is resolved in SCO's favor before the Effective Date of the Plan, and the Court nonetheless does not confirm the Plan, the Plan Sponsor Protections grant SNCP an equal share of such net proceeds as an administrative expense, payable promptly after the Debtors' receipt of such net settlement (or sales proceeds) and subsequent Bankruptcy Court order refusing to permit confirmation or consummation of the Plan.

18. In addition to the Settlement Compensation, SNCP shall be entitled in the circumstances in which the Settlement Compensation becomes payable, to complete its acquisition of the Series A Preferred upon payment of the \$5 million purchase price therefor, before, at the time of, or immediately after the Reorganized Debtor emerges from bankruptcy. In connection with the payment of the Settlement Compensation or the Sale Compensation or if the MOU is terminated by SNCP for any of the reasons set forth under the "Termination of the Transaction" section of the MOU that are not directly attributable to the act or omission of the SNCP, then SNCP shall also be entitled to an administrative claim for reimbursement from the Debtors of its out of pocket fees, costs and expenses (up to \$500,000) incurred in connection therewith (the "Expense Reimbursement"). Significantly, SNCP shall not be entitled to any

Expense Reimbursement if it terminates the Plan as a result of its due diligence investigations regarding the Debtor, and SNCP's rights to so terminate the Plan expire at the hearing on approval of the Disclosure Statement.

### **Relief Requested**

19. By this Motion, the Debtors request entry of an order, in the form attached hereto approving the Plan Sponsor Protections, including the payment of Settlement Compensation or Sale Compensation, as defined and provided for in the MOU, as and if applicable, as well as the Expense Reimbursement. The MOU requires that the Plan Sponsor Protections be allowed as an administrative expense, payable promptly after the Debtors' receipt of net settlement or sale proceeds and after the Court enters an order denying confirmation of the Plan.

20. The MOU provides that SNCP may terminate its financing and other commitments to SCO unless the Court approves the Plan Sponsor Protections. The Court should approve the Plan Sponsor Protections because the Plan it sponsors provides for full payment of all claims and interests on the Effective Date (or the date the claim or interest becomes allowed), and essentially up to an almost equal sharing of Novell/IBM Litigation net proceeds plus SCO's equity value, payable to holders of equity interests by a distribution after the Effective Date. The Plan proposes to pay all creditors in full plus interest, gives holders of common stock an immediate distribution about equal to their present market value, and substantial additional potential upside in a distribution after the Effective Date.

21. The Debtors acknowledge the lack of precedent for the Settlement Compensation and Sale Compensation components of the Plan Sponsor Protections. However,

the Debtors believe that the Plan Sponsor Protections are necessary and will benefit the Debtors' estates, their creditors and equity security holders because: (i) approval of the Plan Sponsor Protections by the Court is a condition to the effectiveness of the MOU; (ii) the MOU provides the funding and financing necessary for the Plan; (iii) any scenario under which the Debtors would settle the Pending Litigation or sell substantially all of their assets would be premised upon: (a) creditors of the estates being treated as they would under the Plan, and (b) holders of equity interests getting greater value than proposed under the Plan even after the payment of the Plan Sponsor Protections.

22. The Bankruptcy Code authorizes the Court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]."

11 U.S.C. § 105. One purpose of the Bankruptcy Code, and chapter 11 in particular, is to allow the reorganization of a company. Here, the Plan Sponsor Protections are part and parcel of the Debtors' Plan and will allow the Debtors to reorganize and emerge successfully from their chapter 11 cases. The Third Circuit has interpreted section 105 on numerous occasions:

In *In re Continental Airlines*, 203 F.3d 203 (3d Cir.2000), we observed that § 105(a) "supplements courts' specifically enumerated bankruptcy powers by authorizing orders necessary or appropriate to carry out provisions of the Bankruptcy Code." *Id.* at 211. We cautioned that § 105(a) "has a limited scope. It does not 'create substantive rights that would otherwise be unavailable under the Bankruptcy Code.'" *Id.* (quoting *United States v. Pepperman*, 976 F.2d 123, 131 (3d Cir.1992)). This instruction was consistent with our earlier observation in *In re Morristown & Erie Railroad Co.*, 885 F.2d 98 (3d Cir.1990), that § 105(a) authorize[s] the bankruptcy court, or the district court sitting in bankruptcy, to fashion such orders as are required to further the substantive provisions of the Code. Section 105(a) gives the court general equitable powers, but only insofar as those powers are applied in a manner consistent with the Code. Nor does section 105(a) give the court the power to create substantive rights that

would otherwise be unavailable under the Code. *Id.* at 100 (citations omitted).

*Morristown* reveals this Court's considered view that § 105(a) is a powerful, versatile tool, but that it operates only within the context of bankruptcy proceedings. Section 105(a) empowers bankruptcy courts and district courts sitting in bankruptcy to fashion orders in furtherance of Bankruptcy Code provisions.

*In re Joubert*, 411 F.3d 452, 455 (3d Cir. 2005).

23. In *U.S. v. Energy Resources Co., Inc.*, the bankruptcy court confirmed a plan of reorganization that designated tax payments as trust funds. The Supreme Court held that:

The Bankruptcy Code does not explicitly authorize the bankruptcy courts to approve reorganization plans designating tax payments as either trust fund or nontrust fund. The Code, however, grants the bankruptcy courts residual authority to approve reorganization plans including "any ... appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(5); see also § 1129. The Code also states that bankruptcy courts may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code. § 105(a). These statutory directives are consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships. *See Pepper v. Litton*, 308 U.S. 295, 303-304, 60 S.Ct. 238, 243-244, 84 L.Ed. 281 (1939); *United States National Bank v. Chase National Bank*, 331 U.S. 28, 36, 67 S.Ct. 1041, 1045, 91 L.Ed. 1320 (1947); *Katchen v. Landy*, 382 U.S. 323, 327, 86 S.Ct. 467, 471, 15 L.Ed.2d 391 (1966).

495 U.S. 545, 549 (1990). Here, the Debtors are asking the Court to supplement rights for purposes that exist under the Bankruptcy Code. The Debtors are seeking approval of a transaction that will enable them to reorganize and emerge from these cases pursuant to terms that would be enforceable under state contract law. The Debtors submit that there will not be any modification of the creditor-debtor relationship and holders of equity interests of SCO will not be in any worse position as a result of the requested relief.

24. The Debtors further submit that the Plan Sponsor Protections should be allowed as an administrative expense because, as discussed hereinabove, the Debtors believe that if the Novell/IBM Litigation is resolved favorably or if a third party makes an offer to purchase substantially all of the Debtors' assets, the cause for such settlement or sale will have been the fact that SNCP committed to provide the financing necessary for the Debtors to emerge from bankruptcy, continue the research, development and growth of their businesses and continue the Novell/IBM Litigation and other pending litigation. The Debtors submit that the Plan Sponsor Protections can be analogized to the allowance of an administrative expense to a creditor that provided a "substantial contribution." Substantial contribution has been interpreted as a contribution that "foster[s] and enhance[s], rather than retard[s] or interrupt[s] the progress of reorganization." *Speights & Runyan v. Celotex Corp., (In re Celotex Corp.)*, 227 F.3d 1336, 1338 (11<sup>th</sup> Cir. 2000) (quoting *In re Consolidated Bancshares, Inc.*, 785 F.2d 1248, 1253 (5<sup>th</sup> Cir. 1986) (quoting *In re Richton Int'l Corp.*, 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981)). A creditor can be reimbursed for providing a substantial contribution where it "directly and materially" contributes to a reorganization. *Id.* (citing *In re Lebron*, 27 F.3d 937, 943 (3<sup>rd</sup> Cir. 1994)). See also *In re Best Products Co., Inc.*, 173 B.R. 862, 865 (Bankr. S.D.N.Y. 1994) (substantial contribution require applicants to prove that they provided "**actual and demonstrable benefit** to the debtor's estate, its creditors and to the extent relevant, the debtor's shareholders") (emphasis added) (citations omitted)); *In re Big Rivers Elec. Corp.*, 233 B.R. 739, 746 (W.D. Kentucky 1998) ("the court must determine whether the party's action conferred a direct, substantial, or meaningful benefit to the bankruptcy estate"). Such involvement "takes the form of constructive contributions in key reorganizational aspects, when **but for** the role of the creditor, the movement

towards final reorganization would have been substantially diminished.” *In re 9085 E. Mineral Office Bldg., Ltd.*, 119 B.R. 246, 250 (Bankr. D. Colo. 1990) (emphasis added).

25. While the Debtors admit that SNCP is not a creditor, the Debtors believe that “but for” SNCP’s commitments under the MOU, the Debtors’ chances for achieving a favorable settlement of the Novell/IBM Litigation or sale of substantially all of their assets would be more difficult.

26. Further, the Debtors believe that the Plan Sponsor Protections encourage a potential plan sponsor who invests time, money and effort to negotiate with a debtor to take the risks and uncertainties that come with the Chapter 11 bankruptcy process.

27. In consideration of the benefits of the Plan Sponsor Protections, and the value of the Debtors as a going concern, the Debtors submit that the Plan Sponsor Protections are reasonable and appropriate and will serve to maximize the value that the Debtors’ creditors and equity holders will recover under the Plan.

### **Notice**

28. Notice of this Motion has been or will be given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) all creditors; (iii) all holders of equity interests in SCO; and (iv) any party which has filed a request for notices with this Court prior to the date of this Motion. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.



WHEREFORE, the Debtors respectfully request entry of an order in the form attached granting the relief requested herein, as well as granting any other and further relief the Court deems just and proper.

Dated: February 14, 2008

PACHULSKI STANG ZIEHL & JONES LLP



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Debtors-in-Possession

# **EXHIBIT A**

# MEMORANDUM OF UNDERSTANDING (“MOU”)

- Investment Team:** Stephen Norris Capital Partners, LLC, a Delaware limited liability company (“SNCP”).
- Debtor:** The SCO Group, Inc., and its direct or indirect subsidiaries, both prior to and after emerging from bankruptcy (collectively, “SCO,” “Debtor” or the “Company,” and after the effective date of the Proposed Plan of Reorganization sometimes “Reorganized SCO” or “Reorganized Debtor,” and together with SNCP, the “Parties”).
- Overview:** SNCP proposes to finance a plan of reorganization (the “Proposed Plan of Reorganization”) of SCO to be filed in its Chapter 11 bankruptcy case presently pending in the United States Bankruptcy Court for the District of Delaware, *In Re: The SCO Group, Inc.*, Case No. 07-11337 (KG) (the “Bankruptcy Case”), all on the terms provided for in this Memorandum of Understanding (“MOU”) and the definitive agreements and documents contemplated hereby (the “Definitive Documents”).

Under the Proposed Plan of Reorganization, SCO will emerge from the Bankruptcy Case and attempt to implement the business plan described in a private placement memorandum to be prepared by SCO, a copy of which shall be provided to SNCP. To fund the Proposed Plan of Reorganization and finance the business of SCO after it emerges from the Bankruptcy Case, SNCP will provide up to US\$100 million of financing. In consideration of the US\$100 million of financing to be provided as described below, SNCP requires that the Reorganized Debtor issue the following securities:

- US\$5 million for the purchase of a new class of Preferred Stock (the “Series A Preferred”) to be issued by SCO which shall have the liquidation, voting and distribution preferences described hereafter. At its option, the holder of the Series A Preferred will be able to convert the Series A Preferred into between 51% and 85% of the then-outstanding shares of common stock of SCO, as described in the next bullet.
- SCO expects to prevail in the matter of *The SCO Group, Inc. v. Novell, Inc.*, pending in the United States District Court for the District of Utah, Civil No. 2:04 CV-00139, and the related pending litigation, *The SCO Group, Inc. v. International Business Machines*, pending in the United States District Court for the District of Utah, Case No. 2:03CV0294DAK (the “Novell/IBM Litigation”), so that the final award in the Novell/IBM Litigation will be made in favor of SCO. However, if an award were entered against SCO in the Novell/IBM Litigation or other pending litigation matters, including proceedings involving Red Hat (the “Litigation Claims”), SNCP anticipates that the damages awarded against SCO could range from US\$0 to more than US\$30 million, and would be paid by draw under the Debt Financing. Should the amount drawn under the Debt Financing solely to effect payment (a “Novell/IBM Payment”) of a final, non-appealable judgment in the Novell/IBM Litigation (or to settle the Novell/IBM Litigation in a settlement transaction that requires a net payment to Novell/IBM) be \$0, then the Series A Preferred shall convert into 51% of the then-outstanding common stock of SCO, on a fully diluted basis. Should the amount drawn under the Debt Financing to effect a Novell/IBM Payment be \$30 million or more, then the Series A Preferred shall convert into 85% of the then-outstanding common

stock of SCO, on a fully diluted basis. Should the amount drawn under the Debt Financing to effect a Novell/IBM Payment be between \$0 and \$30 million, then the Series A Preferred shall convert into a percentage of the then-outstanding common stock of SCO proportionally. For the avoidance of doubt, the conversion percentage of the Series A Preferred shall not adjust by reason of any draws under the Debt Financing other than draws to effect a Novell/IBM Payment, and without limiting the generality of the foregoing, the conversion percentage of the Series A Preferred shall not adjust by reason of draws under the Debt Financing to fund litigation costs or working capital requirements of SCO or the provision of letters of credit or other credit support (including cash payments) in connection with appealing (and posting bonds to stay judgments or rulings pending appeal) a District Court or other judgment in the Novell/IBM Litigation that is subject to further appeal. The Preferred Stock financing described in this and the preceding bullet points and in more detail below is sometimes hereinafter referred to as the “Equity Financing.”

- US\$95 million under the terms of a five year non-revolving credit line. The credit line shall be secured by all of the assets of SCO, including all of its present and future litigation claims. The terms will be as set forth hereafter. The credit facility described in this bullet point and in more detail below is sometimes herein referred to as the “Debt Financing.”

Upon the effective date of the Proposed Plan of Reorganization, SNCP will pay \$5,000,000 to the Reorganized Debtor in consideration of the issuance of the Series A Preferred. The Reorganized Debtor will retain all of the pending litigation claims, including the potential liability in respect of the Litigation Claims or recoveries under the Pending Litigation.

Also upon the effective date of the Proposed Plan of Reorganization, the existing common stock and common stock equivalents of the Debtor shall be extinguished, and in exchange therefor the then-current equity holders (and holders of common stock equivalents, including stock options) of SCO shall receive a pro-rata interest in a grantor trust (the “Trust”). The Trust shall be the holder of shares of new common stock (and new common stock equivalents) of SCO (“New Common Stock”), representing between 49% and 15% of SCO’s fully diluted equity after conversion of the Series A Preferred, the precise conversion percentage of which shall be determined based upon the conversion rights of the Series A Preferred as described herein. Interests in the Trust shall not be transferable, and the Reorganized Debtor will no longer be a public company and shall not be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended.

Also upon the effective date of the Plan of Reorganization, the Trust will enter into a Shareholders’ Agreement with the Company and the holders of the Series A Preferred which shall provide, among other things, that; (i) the Trust will not sell or transfer its New Common Stock, except to the Company and on the terms provided for in this MOU and the Definitive Agreements, and (ii) the Trust, Company and the holders of Series A Preferred shall have “tag along, drag along” rights and obligations to participate in a sale of all or substantially all of the Company’s outstanding equity securities (or a merger or other corporate reorganization relating to the Company that has the same effect as such a sale of all or substantially all of the Company’s outstanding equity securities). Any such sale transaction shall provide the Trust with immediately available funds at least equal to

the Redemption Price.

Also upon the effective date of the Proposed Plan of Reorganization, the existing CEO of the Company, Darl McBride, will resign immediately. The newly reorganized company will have seven members on its Board of Directors, four of which will be named by the holders of the Series A Preferred.

Also upon the effective date of the Proposed Plan of Reorganization, SCO will continue to pursue aggressively the Company's claims in the Novell/IBM Litigation and other pending litigation, including *The SCO Group, Inc. v. Autozone, Inc.*, pending in the United States District Court for the District of Nevada, Case No. CV-S-04-0237-RCJ-LRL (the "Autozone Litigation").

Stephen Norris Capital Partners, LLC shall have the right to assign and delegate its rights and obligations hereunder to a special purpose entity created for the purpose of engaging in this transaction and in which Stephen L. Norris is a manager or executive officer.

**Availability of Funds:**

SNCP has a financing commitment sufficient to provide the Equity Financing and the Debt Financing. SNCP will provide the Debtor with a copy of a firm financing commitment sufficient to provide the Equity Financing and the Debt Financing at least five (5) business days prior to the commencement of the Bankruptcy Court hearing on the approval of the Disclosure Statement relating to the Proposed Plan of Reorganization.

**Creation of Trust:**

Upon the effective date of the Proposed Plan of Reorganization, the then-current equity (and common stock equivalents) of SCO shall be extinguished and the equity holders of SCO shall receive a pro-rata interest in the Trust based upon their percentage ownership of the Company's then outstanding Common Stock and common stock equivalents. The beneficial interests in the Trust to be issued to the Company's equity holders shall represent a pro rata interest in the outstanding New Common Stock held by the Trust, which will correspond to the percentage interests of the Company's equity holders (and common stock equivalent holders) at the time of the organization of the Trust. Interests in the Trust shall be non-transferable, except pursuant to the laws of descent and distribution. The trustee of the Trust shall be a national bank or trust company selected by SCO. The Trust will receive \$2 million at the effective date of the Plan (from the proceeds of the Series A Preferred), which will be distributed to Trust beneficiaries (in respect of the holdings of New Common Stock and excluding common stock equivalents) after reserving for reasonable Trust expenses. Within one year after the pending litigation claims in the Novell/IBM Litigation are finally resolved (by final judgment or order, not subject to further appeal, or settlement), the Reorganized Debtor will make a final payment to redeem all New Common Stock held by the Trust in an amount (the "Redemption Price") equal to the sum of (a) a percentage of any net recovery the Reorganized Debtor realizes from the final resolution of the Novell/IBM Litigation (net of any recovery on or settlement of counterclaims and cross claims against the Debtor, including a Novell/IBM Payment, if any, and net of all taxes, and Ongoing Legal Fees and Costs incurred by the Debtor or the Reorganized SCO in connection therewith), such percentage to vary between 15% and 49% depending on the conversion percentage of the Series A Preferred, and subject to the anti-dilution rights of the holders of the Series A Preferred, and (b) the product obtained by multiplying (i) the earnings of the Debtor (and the Reorganized SCO) (excluding any earnings arising from a Novell/IBM Litigation recovery) before interest, taxes, depreciation and amortization (over the four full fiscal quarters immediately preceding the resolution of the

Novell/IBM Litigation), by (ii) the product of four times the percentage (between 15% (as may be reduced by the anti-dilution rights of the holders of the Series A Preferred) and 49%) determined under (a), above.

The Trust agreement shall provide for liquidating distributions if the following events occur before the New Common Stock held by the Trust are redeemed under the foregoing provisions, as follows: (i) if the Company makes an initial public offering of its securities, the shares of New Common Stock held by the Trust shall be distributed to the beneficiaries (in compliance with applicable securities laws and regulations); (ii) if all or substantially all of the assets of the Company (or any series of related transactions resulting in the sale or other transfer of all or substantially all of the assets of the Company) are sold or a merger, reorganization or other transaction in which holders of a majority of the outstanding voting control of the Company immediately prior to the transaction do not own a majority of the outstanding voting shares of the surviving corporation occurs, the proceeds of such sale or other transaction which are payable to the Trust shall be distributed to the beneficiaries; and (iii) if the Company voluntarily or involuntarily liquidates, dissolves or winds up, the proceeds payable to the trustee in connection therewith shall be distributed to the beneficiaries.

#### **The Equity Financing:**

- Securities: Series A Preferred Stock ("Series A Preferred").
- Closing Date: The closing (and effective date of the Proposed Plan of Reorganization) shall occur within twenty (20) days after the entry of a final order (not stayed pending appeal) confirming the Proposed Plan of Reorganization.
- Purchase Price: The Purchase Price for the Series A Preferred shall be US\$5,000,000 to be paid on the Closing Date. The Purchase Price will be payable by cash or wire transfer.
- Conversion Rights: The Series A Preferred shall convert into New Common Stock of SCO, the amount of which will be determined based on the amount drawn under the Debt Financing to effect a Novell/IBM Payment following the final resolution of the Novell/IBM Litigation. Should the amount drawn under the Debt Financing solely to effect a Novell/IBM Payment be \$0, then the Series A Preferred shall convert into 51% of the then-outstanding common stock of SCO, on a fully diluted basis. Should the amount drawn under the Debt Financing to effect a Novell/IBM Payment be \$30 million or more, then the Series A Preferred shall convert into 85% of the then-outstanding common stock of SCO, on a fully diluted basis. Should the amount drawn under the Debt Financing to effect a Novell/IBM Payment be between \$0 and \$30 million, then the Series A Preferred shall convert into a percentage of the then-outstanding common stock of SCO proportionally. For the avoidance of doubt, the conversion percentage of the Series A Preferred shall *not* adjust by reason of any draws under the Debt Financing other than draws to effect a Novell/IBM Payment, and without limiting the generality of the foregoing, the conversion percentage of the Series A Preferred shall *not* adjust by reason of draws under the Debt Financing to fund litigation costs or working capital requirements of SCO or the provision of letters of credit or other credit support (including cash payments) in connection with appealing (and posting bonds to stay judgments or rulings pending appeal) a District Court or other judgment in the Novell/IBM Litigation that is subject to further appeal. The conversion percentage of the Series A Preferred shall not exceed 85% of the fully converted New Common Stock irrespective of whether (or the extent to which) any additional equity securities may be

issued in payment-in-kind of dividends accruing on the outstanding Series A Preferred (i.e., if holders of Series A Preferred receive New Common Stock as paid-in-kind dividends on the Series A Preferred, then their conversion provisions shall contemplate that after giving effect to the conversion, such holders will not own (including both the New Common Stock issued upon conversion and by paid-in-kind dividends, combined) more than 85% of the fully converted New Common Stock).

Use of Proceeds	The proceeds shall be used to fund the Proposed Plan of Reorganization.
Dividends	<p>The holders of Series A Preferred shall be entitled to receive cumulative dividends at the rate of 10% per annum, which shall be payable as and when declared by the Company's Board of Directors and out of retained earnings. Dividends may be payable in cash or in shares of the Company's New Common Stock (valued by the Company's Board of Directors in good faith) at the option of the Company. In the event of an initial public offering, accrued but unpaid dividends shall be payable in cash or New Common Stock at the option of the Company.</p>
Liquidation Preference	<p>In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Company, the funds available for distribution shall be paid out as follows:</p> <p>(1) the holders of Series A Preferred shall be entitled to receive, prior and in preference to the holders of the Company's New Common Stock, an amount equal to the result obtained by dividing \$5 million by the number of shares of New Common Stock into which the Series A Preferred is convertible based on the conversion formula described in the section entitled "Conversion Rights" above (the "<u>Original Series A Price</u>"), multiplied by 3; and thereafter,</p> <p>(2) any remaining assets shall be paid out on a <i>pro rata</i> basis to the Trust and the other holders of New Common Stock and share equivalents and Series A Preferred (on an as-converted basis).</p> <p>In the event of a sale of all or substantially all of the assets of the Company (or any series of related transactions resulting in the sale or other transfer of all or substantially all of the assets of the Company) or a merger, reorganization or other transaction in which holders of a majority of the outstanding voting control of the Company immediately prior to the transaction do not own a majority of the outstanding voting shares of the surviving corporation, the funds available for distribution shall be paid out as follows:</p> <p>(1) the holders of Series A Preferred shall be entitled to receive, prior and in preference to the holders of the New Common Stock, an amount equal to three times the Original Series A Price (as adjusted for recapitalizations, stock splits, stock dividends, and the like), plus accrued and unpaid dividends; and thereafter,</p> <p>(2) any remaining assets shall be paid out on a <i>pro rata</i> basis to the Trust and the other holders of New Common Stock and share equivalents and Series A Preferred (on an as-converted basis).</p>
Voting Rights	<p>The holder of each share of Series A Preferred shall have the right to a number of votes equal to the number of shares of New Common Stock issuable on conversion of the Series A Preferred. In addition, the holders of the Series A Preferred shall be entitled to vote as a single class to elect four members of the Company's Board of Directors (as set forth below). Except as provided herein or as required by law, the holders of Series A</p>

Preferred and New Common Stock shall all vote together as a single class and voting group on all matters.

Voting  
Protections:

The Company may not, without the affirmative vote or written consent of the holders of not less than 66 2/3% of the issued and outstanding shares of Series A Preferred:

(1) authorize or issue any securities with any rights that are senior to or on parity with Series A Preferred;

(2) declare or pay dividends or make any distributions on any of the Company's equity securities (other than the distribution of \$2 million at the effective date of the Proposed Plan of Reorganization);

(3) sell or otherwise transfer all or substantially all of its assets, tangible or intangible, grant any exclusive rights or license to all or substantially all of the Company's products or intangible assets, or merge or consolidate into or with any other entity in a transaction or series of related transactions;

(4) purchase, redeem, or otherwise acquire any of the Company's outstanding equity securities (including warrants, stock options and other rights to acquire equity securities), other than redemption of the New Common Stock of the Trust as contemplated by this MOU and repurchases pursuant to stock restriction agreements approved by a majority of the Board of Directors that grant to the Company a right of repurchase upon termination of the service or employment of a consultant, director or employee;

(5) make any changes in the rights, preferences, or privileges of the Series A Preferred;

(6) amend or repeal or add any provision to the Company's Certificate of Incorporation or Bylaws, if such action would adversely affect the preferences, rights, privileges, or powers of, or restrictions provided for the benefit of, the Series A Preferred;

(7) take certain other actions materially affecting the Series A Preferred;

(8) change the size or election procedure of the Board of Directors; or

(9) authorize any changes in material accounting methods, policies or practices of the Company or change the Company's auditors.

Optional  
Conversion

The shares of Series A Preferred are convertible at the option of the holder, and at any time and from time to time, into shares of New Common Stock. The conversion rate of the Series A Preferred will initially be at the rate corresponding to the convertibility of all Series A Preferred into 51% of the fully diluted common stock of the Reorganized Debtor, and will be subject to anti-dilution adjustment as described below, as well as adjustments for re-capitalizations, stock splits, stock dividends, and the like. The conversion percentage shall be subject to adjustment based upon the amount(s) drawn on the Debt Financing to effect a Novell/IBM Payment following the final resolution of the Novell/IBM Litigation, as described in the section entitled "Conversion Rights," above.

Automatic  
Conversion

Each share of Series A Preferred shall automatically convert into the number of shares of New Common Stock determined by dividing (i) the sum of the Original Series A Price plus all accrued and unpaid dividends by (ii) the then-applicable conversion rate, on the earlier to occur of (a) the written consent of holders of at least 66 2/3% of the outstanding Series A Preferred, and (b) a firmly committed underwritten initial public



offering of Common Stock with total proceeds to the Company of at least \$40 million (a “Qualified Offering”).

Anti-dilution Protection	The conversion price of the Series A Preferred shall be subject to adjustment on a proportionate basis, reflecting one-third (1/3) of the dilution effected from an issuance of New Common Stock to fund working capital requirements of the Company. The remaining two-thirds (2/3) dilution from such issuances of New Common Stock shall proportionately effect the holders of New Common Stock held by the Trust and any other holders. The purpose of this adjustment is to provide limited price protection to SNCP in the event that the Company issues additional shares of its capital stock at a price below the Series A Preferred purchase price to fund working capital requirements of the Company. This protection shall be subject to customary exceptions.
Redemption	If the Series A Preferred has not been converted to New Common Stock prior to the 5 <sup>th</sup> anniversary of the closing (the “ <u>Initial Redemption Date</u> ”), then the holders of the outstanding shares of Series A Preferred shall have the option, exercisable at any time after such anniversary, to require the Company to redeem the Series A Preferred in two equal and yearly installments beginning on the anniversary of the Closing Date after such option is exercised. If a holder elects to require the Company to redeem its Series A Preferred, it must provide the Company with written notice at least 90 days in advance of the Initial Redemption Date. The redemption amount shall be paid from retained earnings and shall be equal to the Original Series A Price, plus any accrued but unpaid dividends plus an additional amount that would result in an additional 12% annual rate of return compounded annually from the Closing Date. In any simultaneous redemption of the Series A Preferred and any other class or series of stock, the Series A Preferred shall have preference.
Right to Maintain Proportionate Interest	Each holder of the Series A Preferred shall have a right of participation to purchase such holder’s <i>pro rata</i> share of any offering of new securities of the Company, subject to customary exceptions.
Registration Rights	<ol style="list-style-type: none"><li>1. <u>Demand Rights</u>: Holders of at least 30% of the shares of Series A Preferred (or New Common Stock issuable on conversion thereof) may demand registration by the Company of their shares of New Common Stock and the Company will use its best efforts to cause such shares to be registered. The Company will not be obligated to effect nor pay for more than 3 registrations pursuant to such demand registration rights provisions. These rights are exercisable only after the earlier of (i) 180 days after a Qualified Offering (as defined under “Automatic Conversion” above), and (ii) the 5th anniversary of the closing of this financing.</li><li>2. <u>“Shelf” Registrations on Form S-3</u>: Holders of at least 20% of the shares of Series A Preferred (or New Common Stock issued on conversion thereof) shall have the right to require the Company to file an unlimited number of and pay for not more than 2 registration statements on Form S-3 registering their shares of New Common Stock per year, provided that the Company is then eligible to use the S-3 registration statement and the anticipated aggregate offering price to the public for any such registration would exceed \$1 million.</li><li>3. <u>Piggy-Back Registrations</u>: Holders of Series A Preferred shall be entitled to unlimited “piggy-back” registration rights with respect to the New Common Stock issuable upon conversion of the Series A Preferred on all registrations of the Company (other than S-8’s, S-4’s or similar registrations of business combination</li></ol>

transactions or employee benefit plans), subject to the right of the Company and its underwriters to reduce the number of shares of the Investor proposed to be registered in view of market conditions.

4. Registration Expenses: All registration expenses (exclusive of selling expenses), shall be borne by the Company.

Other terms: The registration rights shall include other customary terms and conditions, including a customary “market-standoff” agreement in connection with a Qualified Offering and public offerings conducted by the Company thereafter.

#### **Governance:**

Resignation of the Current CEO	Upon the effective date of the Proposed Plan of Reorganization, the existing CEO of SCO, Darl McBride, shall resign.
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Board of Directors	Upon the effective date of the Proposed Plan of Reorganization, the Company’s Board of Directors will be comprised of seven members. The holders of Series A Preferred shall be entitled to elect four directors. The holders of Series A Preferred and the Trust, in respect of the shares of New Common Stock issued to the Trust on behalf of the holders of New Common Stock prior to the effective date of the Proposed Plan of Reorganization, and any holders of additional New Common Stock issued after such effective date, all voting together as a single voting group, shall be entitled to elect the remaining three directors, one of whom shall be the Chief Executive Officer of the Company and one of whom shall be an outside executive with suitable industry expertise who is designated by a majority of the Board.
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The Company and the representatives of Series A Preferred who serve as members of the Board shall enter into indemnification agreements in a form acceptable to SNCP on the Closing Date. In addition, the Company’s Certificate of Incorporation shall provide for indemnification of directors to the maximum extent permitted by law, and the Company will, within 90 days after the Closing Date, obtain Directors and Officers insurance in an amount satisfactory to SNCP. The Reorganized Debtor shall purchase “tail” directors and officers insurance coverage to protect against claims arising prior to the effective date of the Proposed Plan of Reorganization.

Inspection Rights	The Series A Preferred holders shall have the right to inspect the Company’s premises and books at times convenient to both parties.
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Information Rights	So long as any of the Series A Preferred is outstanding, the Company will deliver to the holders of Series A Preferred unaudited monthly financial statements within 15 days of the end of each calendar month; unaudited quarterly financial statements within 15 days of the end of each fiscal quarter thereafter; annual audited financial statements within 90 days of the end of each fiscal year; and any other information reasonably requested by the holders of Series A Preferred. At least 30 days prior to the beginning of each fiscal year, the Company will deliver to holders of Series A Preferred the financial budget and business and strategic plan for the next fiscal year that will be submitted for approval to the Company’s Board of Directors no later than 30 days following the beginning of the fiscal year. With respect to monthly, quarterly and annual financial statements, such statements shall be accompanied by a written report of the CEO of the Company identifying operating highlights for the period and a comparison of such financial statements to the Company’s budget for the corresponding period.
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**Debt  
Financing:**

Loan Amount and Type:	The loan is for the principal amount up to US \$95,000,000. The loan is a non-revolving line of credit pursuant to which draws or disbursements may be made from time to time in accordance with the terms and conditions contained in the loan documents to be negotiated and filed with the Bankruptcy Court prior to the hearing on approval of the Disclosure Statement relating to the Proposed Plan of Reorganization and executed by SCO on the Closing Date (the " <u>Loan Documents</u> ").
Purpose of Loan:	The purpose of the loan is to provide funds for (i) working capital for SCO following its emergence from bankruptcy, (ii) to pay interest when due under the Debt Financing, and (iii) to support the prosecution of the Reorganized Debtor's Litigation Claims, including providing letters of credit or other financial arrangements adequate to support any required appellate bonds (in which event the Reorganized SCO shall pay the reasonable letter of credit fees and expenses), and to effect payment of any final award against the Reorganized Debtor). Advances to SCO under (i) above shall be subject to the achievement of milestones and maintenance of loan covenants to be established by SNCP and SCO in the Loan Documents.
Loan Term:	The term of the loan will be for a period of five (5) years (the " <u>Loan Term</u> ") commencing on the first day of the month following the Closing Date.
Interest Rate:	Interest will accrue on the outstanding principal balance at a variable or floating rate, expressed as an annual percentage rate, equal to LIBOR plus 1,700 basis points (the " <u>Effective Rate</u> "). Adjustments to the Effective Rate will be made effective on the first day of each month. Interest will be calculated on the basis of a 360-day year and charged for the actual number of days elapsed.
Payments:	The Reorganized Debtor shall pay accrued interest on the outstanding principal balance in arrears monthly on the first day of each month commencing on the first day of the month following the Closing Date. The entire unpaid principal balance, together with any accrued interest and other unpaid charges, shall be due on the first day of the month following the expiration of the Loan Term (which date is sometimes referred to as the " <u>Maturity Date</u> ").
Late Charges Default Interest Rate:	Any payment not paid within ten (10) days of its scheduled payment date shall be subject to a late charge equal to the greater of \$50.00 or five per cent (5%) of the amount of the delinquent payment. Upon the occurrence of an event of default, the margin used to compute the Effective Rate will automatically increase by an additional four percent per annum from the date thereof until the delinquent payment has been fully paid, both before and after judgment.
Prepayment Privilege:	Reorganized SCO may prepay principal at any time without penalty or premium; <i>provided, however</i> , Reorganized SCO shall not be entitled to re-borrow funds it has prepaid.
Collateral:	To secure the Loan, SCO shall grant a valid, perfected and enforceable first prior security interest in favor of SNCP in (or shall cause a security interest to be granted in), all present and future assets of SCO, including litigation recoveries.
<b>Preclosing Protections to</b>	Should the Company receive a written or oral offer or counteroffer to settle the Novell Litigation, the Novell/IBM Litigation, the Autozone Litigation or any other Litigation

**SNCP:**

Claims (collectively, the “Pending Litigation”) prior to the effective date of the Proposed Plan of Reorganization (or if the Company shall receive a written or oral offer or counteroffer to acquire the shares or assets of the Company, including by or for the account of a defendant in the Pending Litigation), the Company shall promptly notify SNCP of the offer and all material terms thereof. Similarly, the Company shall promptly advise SNCP of all offers (including counteroffers) it makes to settle or resolve the Pending Litigation or relating to any proposed sale of the shares or assets of the Company. At its option, one or more representatives of SNCP may attend merger and acquisition negotiations, settlement conferences or conference calls between the parties to the Pending Litigation, whether the same are directed at settling the Pending Litigation or acquiring the shares or assets of the Company. At the request of the Company, each representative of SNCP who shall attend merger and acquisition negotiations, settlement conferences or conference calls between the parties to the Pending Litigation shall execute a confidentiality agreement reasonably acceptable to the Company and SNCP.

The Debtor and SNCP acknowledge and agree that a purpose and intended effect of the Proposed Plan of Reorganization is to maximize the Debtor’s litigation recovery under the Pending Litigation. Except as expressly set forth herein, the Debtor and SNCP agree that developments in (including a resolution of) the Pending Litigation shall not constitute a basis to prevent or delay the confirmation or effective date of the Proposed Plan of Reorganization. If the Pending Litigation shall resolve by a sale of the Company to or an exclusive licensing transaction relating to all or substantially all of SCO’s intellectual property with or for the account of a defendant in the Pending Litigation), by or in connection with a sale of the Company or an exclusive licensing transaction relating to all or substantially all of SCO’s intellectual property to a person which is not a party (including an affiliate of such party) to the Pending Litigation, or net settlement in Debtor’s favor prior to the consummation of the Proposed Plan of Reorganization, then, except as provided below, the Equity Financing and the Debt Financing will not be consummated and SNCP shall be entitled to an administrative claim, payable promptly after the Debtor’s receipt of such net settlement, sales or licensing proceeds, in an amount equal to fifty percent (50%) of either (a) the Debtor’s net recovery in such settlement or any agreement or transaction in connection with, or in lieu of, settlement of claims in the Pending Litigation (including the fair value of any non-monetary consideration) (net of any recovery on or settlement of counterclaims and cross claims against Debtor, any taxes directly attributable to the net recovery or settlement, and the “Ongoing Legal Fees and Costs,” as defined below (the “Settlement Compensation”), or (b) the net proceeds and purchase price (including the fair value of any non-monetary consideration) paid to acquire the Company, all or substantially all of the Company’s assets, control of the Company or a material license relating to SCO’s intellectual property (not in the ordinary course of business), net of any taxes directly attributable to the net proceeds and purchase price, and all Ongoing Legal Fees and Costs (the “Sale Compensation”). In addition to the Settlement Compensation, SNCP shall be entitled in the circumstances in which the Settlement Compensation becomes payable, to complete its acquisition of the Series A Preferred upon payment of the \$5 million purchase price therefor, before, at the time of, or immediately after the Reorganized Debtor emerges from the Bankruptcy Case. In connection with the payment of the Settlement Compensation or the Sale Compensation or if this MOU is terminated by SNCP for any of the reasons (other than failure to execute the Definitive Agreements or SNCP’s dissatisfaction with the results of its due diligence investigation) set forth under the “Termination of the Transaction” section below that are not directly attributable to the act or omission of the SNCP, then SNCP shall also be entitled to an administrative claim for reimbursement from the Debtor of its out of pocket fees, costs and expenses (up to

\$500,000) incurred in connection herewith.

As used herein, "Ongoing Legal Fees and Costs" means positive difference between:

I. The sum of (a) all legal fees and chargeable expenses paid to Boies, Schiller & Flexner LLP and any other law firms (collectively, "BSF") pursuant to paragraphs (d) or (e) of the engagement agreement between SCO and BSF dated October 31, 2004, as amended to the date hereof (the "BSF Engagement Agreement"), plus (b) other professional fees and expenses incurred by the Debtor since September 14, 2007 directly related to the Litigation Proceedings or the transactions by reason of which the Settlement Compensation or Sale Compensation is paid; *minus*

II All hourly legal fees and chargeable paid at any time to BSF or any of the Three Original Firms (as that term is defined in the BSF Engagement Agreement) in connection with any of the Pending Litigation, which amount is credited in reduction of the contingency fees payable under paragraphs (d) or (e) of the BSF Engagement Agreement.

SCO will obtain court approval of the Settlement Compensation and the Sale Compensation by a motion for Plan Sponsor Protection Arrangements to be filed with the Bankruptcy Court with the Debtor's Motion to Approve the Disclosure Statement relating to the Proposed Plan of Reorganization, and in all events, prior to the submission of the Proposed Plan of Reorganization to creditors and interest holders for voting purposes. If SCO fails to obtain court approval for the Settlement Compensation and the Sale Compensation, SNCP shall have no further obligations under this MOU.

**Plan  
Treatment of  
Creditors**

The Proposed Plan of Reorganization shall provide for the following treatment of claims:

(1) Secured Creditors – (estimated at \$0)

Paid in Full at the effective date

(2) Priority Creditors – Taxing Authorities

Paid in full at the effective date OR paid over period of time not to exceed 5 years

(3) General Unsecured Creditors

○ Trade – to be assumed or paid in full at the effective date, from the proceeds of the Preferred Stock

○ Novell/IBM Litigation (if any) depending on outcome of litigation, paid in full when claim is liquidated after the effective date, by draw under the Debt Facility.

(4) All to be paid in full at the effective date:

- Administrative – Legal, Accounting, Financial Advisors, etc.
- US Trustee Fees
- Court/Clerk Fees

**SNCP's  
Conditions to  
Closing:**

The obligation to provide the Equity Financing and Debt Financing is subject to (i) the compliance by the Debtor with its obligations under this MOU, (ii) the accuracy in all material respects of all representations and certifications set forth in this MOU and its attachments, (iii) the execution and delivery of the Definitive Documents, (iv) the accuracy in all material respects of all representations and certifications set forth in the Definitive Documents and its attachments, (v) the absence of any default or event of default under this MOU or the Definitive Documents by the Debtor, (vi) the entry of an order of the bankruptcy court in the Bankruptcy Case confirming the Proposed Plan of Reorganization and all other motions and pleadings required to implement the Proposed Plan of Reorganization (and the absence of any effective stay of such confirmation order) on or before 5:00 pm New York City time on August 15, 2008 (such date, as the same may be extended by SNCP in its sole discretion in writing, the "Commitment Expiration Date"); (vi) the inclusion in the order confirming the Proposed Plan of Reorganization of a finding that the Debt Financing is extended by SNCP in good faith, (vii) the due diligence investigation of SCO (which shall end at the commencement of the Bankruptcy Court hearing on the approval of the Disclosure Statement relating to the Proposed Plan of Reorganization) is not reasonably satisfactory to SNCP; (vii) no Material Adverse Change following the filing of the Proposed Plan of Reorganization, (ix) no relevant threatened or pending litigation by a governmental authority, and (x) there being no injunction, court order/judgment or other ruling, edict or pronouncement with the force of law prohibiting the consummation of any of the material transactions contemplated in this MOU, the Definitive Documents and the Proposed Plan of Reorganization.

A "Material Adverse Change" shall mean any change or effect that is or could be reasonably expected to result in a material adverse change in: SCO's business, considered as a whole; or the consolidated financial condition or results of operations of SCO, other than changes associated with the bankruptcy of SCO or general economic conditions.

**Termination of  
the  
Transaction:**

The Debt Financing and the Equity Financing will be terminable in the following circumstances:

- by mutual written consent of SCO and SNCP;
- if SCO fails to obtain court approval for the Settlement Compensation and the Sale Compensation upon the approval of the Disclosure Statement relating to the Proposed Plan of Reorganization and prior to the submission of the Proposed Plan of Reorganization to creditors and interest holders for the purpose of voting thereon;
- the due diligence investigation of SCO (which shall end at the commencement of the Bankruptcy Court hearing on the approval of the Disclosure Statement relating to the Proposed Plan of Reorganization) is not reasonably satisfactory to SNCP;
- by SNCP upon written notice of a material breach of any covenant or agreement to be performed or complied with by SCO which, if capable of being cured, is not cured within 15 business days after notice;
- by SCO upon written notice of a material breach of any covenant or agreement to be performed or complied with by SNCP which, if capable of being cured, is not

cured within 15 business days after notice;

- by either SNCP or SCO if any foreign, federal, state, local or other governmental, administrative or regulatory authority, body, agency, court, tribunal or similar entity (other than the Bankruptcy Court) having competent jurisdiction issues a final and non-appealable order, decree or ruling prohibiting the transaction;
- by SNCP upon a determination by SCO or SCO's board of directors to pursue a Competitive Transaction;
- by SNCP, if the Bankruptcy Court shall not have entered an order approving the Settlement Compensation and Sale Compensation in form and substance reasonably acceptable to SNCP on or before April 28, 2008; and
- this MOU shall be terminated if an Order of the Bankruptcy Court approving the Debtor's execution hereof and performance hereunder is not entered by April 28, 2008, or if the Bankruptcy Court does not enter an Order confirming the Proposed Plan of Reorganization as contemplated hereby by August 15, 2008.

**Restriction on  
Affirmative  
Seeking  
Competitive  
Transactions**

SCO acknowledges that it is not actively seeking financing for a plan of reorganization, except as set forth in this MOU. SCO agrees that, until August 15, 2008, neither SCO nor its agents or representatives shall solicit or encourage submission of inquiries, proposals or offers from any third parties regarding any potential financing of a plan of reorganization for SCO (each, a "Competitive Transaction"). SCO shall immediately notify SNCP in writing if it receives an offer or proposal relating to a Competitive Transaction.

**Good Faith  
Negotiations:**

The Parties agree to negotiate in good faith the Definitive Documents contemplated by this MOU, so that forms of all such Definitive Documents, in substantially final form, shall be filed with the Bankruptcy Court prior to the hearing on approval of the Disclosure Statement relating to the Proposed Plan of Reorganization.

**Due Diligence:**

The Debtor will afford to SNCP all access, cooperation, documents and information reasonably requested by SNCP in connection with its due diligence examination of the Debtor and its business. SNCP may terminate this MOU if it is not satisfied with the results of such due diligence examination. Such due diligence period and termination rights shall end at the commencement of the Bankruptcy Court hearing on the approval of the Disclosure Statement relating to the Proposed Plan of Reorganization.

**Governing  
Law:**

This Memorandum of Understanding shall be governed by Delaware law and all Parties consent to the exclusive jurisdiction of the Bankruptcy Court hearing the Bankruptcy Cases to determine any controversy arising hereunder. The Definitive Documents executed on the Closing Date (including the Loan Agreement) shall be governed by New York law.

The terms set forth above summarize the major points we have discussed, but are not intended to be the entirety of the terms of the Proposed Plan of Reorganization, the Equity Financing or the Debt Financing and are subject to the drafting and execution of Definitive Documents. The Debtor's execution of this MOU is subject in all respects to the entry of an Order of the Bankruptcy Court approving this MOU and the Definitive

Documents contemplated hereby, which Order will be sought in connection with the motion for approval of the Disclosure Statement relating to the Proposed Plan of Reorganization. This MOU shall not be enforceable against the Debtor until such Bankruptcy Court order is entered and shall be subject to the terms of such Order, when entered. If such Bankruptcy Court approval is not obtained by April 28, 2008, then this MOU shall terminate.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.]**



IN WITNESS WHEREOF, the parties have entered into this MOU as of February 13, 2008.

THE SCO GROUP, INC.

By: 

Name: Ralph Yarro III

Title: SCO Chairman

STEVE NORRIS CAPITAL PARTNERS, LLC

By: \_\_\_\_\_

Name: Stephen L. Norris


Title: SNCP Chairman

IN WITNESS WHEREOF, the parties have entered into this MOU as of February \_\_, 2008.

THE SCO GROUP, INC.

By: \_\_\_\_\_  
Name: Ralph Yarro III  
Title: SCO Chairman

STEVE NORRIS CAPITAL PARTNERS, LLC

By:  \_\_\_\_\_  
Name: Stephen L. Norris  
Title: SNCP Chairman

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**ORDER APPROVING PLAN SPONSOR PROTECTIONS**

The Court having considered the *Debtors' Motion To Approve Settlement Compensation Or Sale Compensation And Expense Reimbursement To Plan Sponsor* (the "Motion") filed by the debtors in possession (collectively, the "Debtors"), any responsive pleadings filed in connection with the Motion, the record and representations of counsel at the hearing on the Motion; and the Court having determined that notice of the Motion was adequate and sufficient under the circumstances and that the relief sought in the Motion is reasonable, necessary, and in the best interests of the Debtors' respective estates, their creditors and interest holders; and after due deliberation and sufficient cause appearing therefore; does ORDER as follows:

1. The Motion is GRANTED.
2. If the Pending Litigation is resolved by a sale of the Debtors to a third party, a net settlement in Debtors' favor, or by the acquisition of the Debtors by or for the account of a defendant in the Pending Litigation,<sup>2</sup> prior to confirmation of the Plan,<sup>3</sup> then

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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.

<sup>2</sup> Capitalized terms not otherwise defined have the meanings ascribed in the Motion.

Stephen Norris Capital Partners, LLC (“SNCP”) shall be entitled to an amount equal to fifty percent (50%) of either: (a) the Debtors’ net recovery in such settlement (net of any recovery on or settlement of counterclaims and cross claims against Debtor, and any taxes, and all legal and other professional fees and expenses incurred by the Debtor in connection therewith) (the “Settlement Compensation”), or (b) the proceeds and purchase price paid to acquire the Debtors, as aforesaid (the “Sale Compensation”), plus a reasonable amount as reimbursement for all expenses incurred by SNCP in connection with the MOU (the “Expense Reimbursement”) (the Settlement Compensation, Sale Compensation and Expense Reimbursement collectively referred to as “Plan Sponsor Protections”).

3. The Plan Sponsor Protections shall be allowed as an administrative expense under 11 U.S.C. § 503, and payable promptly after the Debtors’ receipt of such net settlement (or sales proceeds) and after the entry of an Order by this Court denying confirmation of the Plan without further order of this Court. If the Debtors and SNCP do not agree on the calculation of some or all the Plan Sponsor Protections, the Court shall determine the appropriate amount of the disputed portion of the Plan Sponsor Protections.

4. The Court reserves jurisdiction to interpret, enforce and implement this Order.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Kevin Gross  
United States Bankruptcy Judge

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<sup>3</sup> The Plan as filed on \_\_\_\_\_, 2008.