

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. )

Objection Deadline: January 29, 2008 at 4:00 p.m. prevailing Eastern time  
Hearing: February 5, 2008 at 10:00 a.m. prevailing Eastern time

**DEBTORS' MOTION TO APPROVE THE EXPANSION OF  
THE SCOPE OF RETENTION OF TANNER LC TO PREPARE TAX  
RETURNS FOR THE DEBTORS *NUNC PRO TUNC* TO JANUARY 10, 2008**

The SCO Group, Inc. ("SCO Group") and SCO Operations, Inc. ("SCO Operations"), debtors-in-possession herein (collectively, the "Debtors"), file this motion (the "Motion") for entry of an order, pursuant to sections 327(a), 328 and 1107(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving the expansion of the scope of retention and employment of Tanner LC ("Tanner"), as accountants to the Debtors *nunc pro tunc* to January 10, 2008 to prepare the Debtors' tax returns. In support of this Motion, the Debtors respectfully represent as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

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

2. The statutory predicates for the relief sought herein are sections 327(a), 328 and 1107(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a), 2016 and 5002.

### **Background**

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

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

5. On October 24, 2007, the Debtors filed the *Debtors’ Application to Approve the Retention and Employment of Tanner LC as Accountants to the Debtors Nunc Pro Tunc to October 2, 2007* (Docket No. 158) (the “Tanner Application”). Through the Tanner Application, the Debtors sought approval to retain Tanner LC (“Tanner”) as their accountants to perform an audit of the Debtors’ consolidated financial statements for their fiscal year ending October 31, 2007 and to assist the Debtors review their financial statements for information to be included in The SCO Group, Inc.’s 10-Q’s to be filed with the Securities and Exchange Commission for the fiscal quarters ending January 31, 2008, April 30, 2008 and July 31, 2008. In support of the Tanner Application, the Debtors submitted the declaration of Kent M. Bowman (the “Bowman Declaration”). No objections were received to the Tanner Application, and on December 5, 2007, the Court entered the *Order Authorizing the Employment and Retention of Tanner LC as Accountants to the Debtors* (Docket No. 259).

6. Since Tanner's retention, the Debtors have decided to expand the scope of the retention to include the preparation of the Debtors' consolidated federal and state income tax returns for their fiscal year ended October 31, 2007. Attached as **Exhibit A** is the proposed form of engagement letter (the "Engagement Letter").

### **Relief Requested**

7. By this Motion, the Debtors request the Court's approval of the expansion of the scope of Tanner's employment as their accountants in these Chapter 11 cases *nunc pro tunc* to January 10, 2008 to include the preparation of the Debtors consolidated federal and state income tax returns for the fiscal year ended October 31, 2007 in accordance with the Engagement Letter.

8. Pursuant to the Engagement Letter, Tanner prepare and sign as preparer, the consolidated federal and state income tax returns for the fiscal year ended October 31, 2007 for The SCO Group, Inc. and its subsidiaries as follows:

- a. Form 1120: U.S. Income Tax Return;
- b. Form 120: Arizona Corporation Income Tax Return;
- c. Form 100W: California Franchise or Income Tax Return – Water's Edge Filers;
- d. Form Il-1120: Illinois Corporation Income and Replacement Tax Return;
- e. Form NH-1120: New Hampshire Combined Business Profits Tax Return; and
- f. Form TC-20: Utah Corporation Franchise or Income Tax Return.

9. In addition, Tanner will prepare and sign as preparer, the stand-alone state income tax returns for the fiscal year ended October 31, 2007 for SCO Operations, Inc. as follows:

- a. Form CT-1120: Connecticut Corporation Business Tax Return;
- b. Form F-1120: Florida Corporate Income/Franchise and  
Emergency Tax Return;
- c. Form 600: Georgia Corporation Tax Return
- d. Form 500: Maryland Corporation Income Tax Return;
- e. Form 355: Massachusetts Business Corporation Excise Return
- f. Form C-8000: Michigan Single Business Tax Annual Return;
- g. Form CBT-100: New Jersey Corporation Business Tax Return;
- h. Form CT-3: New York General Business Corporation Franchise  
Tax Return;
- i. Form NYC-3L: New York City General Corporation Tax Return;
- j. Form FT-1120: Ohio Corporate Franchise Tax Report;
- k. Form FAE 170: Tennessee Franchise, Excise Tax Return; and
- l. Form 500: Virginia Corporation Income Tax Return.

10. Tanner's requested compensation for the services rendered to the Debtors will be based upon the hours actually expended by each assigned staff member at each staff member's hourly billing rate. Tanner estimates that its fees to prepare the referenced federal and state income tax returns will approximate between \$36,000 - \$38,000. Tanner will charge \$500 for each additional state return not identified in the Engagement Letter that is required to be filed

and prepared. During the course of preparing the tax returns, Tanner may identify additional issues which may require an increase in the \$36,000 - \$38,000 estimated in the Engagement Letter.

11. The Debtors have agreed to compensate Tanner for these services at Tanner's normal and customary hourly rates, which range from \$120 to \$320 per hour.

12. Tanner will also seek reimbursement for necessary expenses incurred, which shall include, but not be limited to, travel, photocopying, delivery service, postage, vendor charges and other out-of-pocket expenses incurred in providing professional services.

13. Tanner intends to apply to the Court for the allowance of compensation for professional services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. Tanner has agreed to accept as compensation such sums as may be allowed by the Court. Tanner understands that interim and final fee awards are subject to approval by this Court. In that regard, Tanner consents to the modification of *Tanner LC General Business Terms* attached to the Engagement Letter to conform to the requirements of the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules and interim compensation procedures established in these cases. In addition, Tanner agrees that the Bankruptcy Court has jurisdiction to hear and determine any disputes arising out of the Engagement Letter.

14. As reflected in the Bowman Declaration attached to the Tanner Application, Tanner has not been paid a retainer for post-petition services and Tanner is not a prepetition creditor of the Debtors' estates.

15. The Debtors believe that Tanner is qualified to perform the services described herein and in the Bowman Declaration previously filed with the Court, and that the expansion of the scope of Tanner's retention is in the best interest of the estates.

**Authority for Relief**

16. A debtor-in-possession, with the Court's approval, is permitted to employ one or more accountants "that do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a).

17. To the best of the Debtors' knowledge and based upon the Bowman Declaration, Tanner is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code as modified by section 1107(b) of the Bankruptcy Code.

18. To the best of the Debtors' knowledge and based upon the Bowman Declaration, (i) Tanner does not hold or represent any interest adverse to the estates and that Tanner is "disinterested" as that term is defined in 11 U.S.C. § 101(14); and (ii) the Tanner professionals working on this matter do not have any connection with the creditors, other parties-in-interest or their respective attorneys, the United States Trustee of the District of Delaware or of any known employee in the office thereof, or any United States Bankruptcy Judge of the District of Delaware.

19. Tanner has represented that it has not provided, and will not provide, any professional services to any of the creditors, other parties-in-interest, or their respective attorneys or accountants with regard to any matter related to these Chapter 11 cases.

20. Tanner will apply for compensation and reimbursement of costs, pursuant to Sections 330 and 331 of the Bankruptcy Code for services rendered and costs incurred on behalf of the Debtors consistent with the terms of the Engagement Letter.

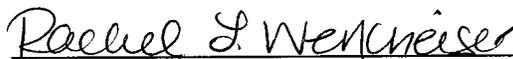
**Notice**

21. 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) the creditors holding the 20 largest unsecured claims against the Debtors' estates (on a consolidated basis); and (iii) 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 that the Court enter an Order, substantially in the form attached hereto, (i) granting this Motion, (ii) approving the expanded scope of Tanner's retention and employment as the Debtors' accountants to perform the services described herein in accordance with the Engagement Letter, *nunc pro tunc* to January 10, 2008, and (iii) granting such other and further relief as is just and proper.

Dated: January 15, 2008

PACHULSKI STANG ZIEHL & JONES LLP



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