

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
The SCO Group, Inc., et al.,)
) Case No. 07-11337 (KG)
Debtors.) (Jointly Administered)

**DECLARATION OF ADAM A. LEWIS IN SUPPORT OF
NOVELL'S MOTION FOR ENTRY OF ORDER CONFIRMING CONSTRUCTIVE
TRUST AND DIRECTING THE DEBTORS TO PAY FUNDS TO NOVELL**

I, Adam A. Lewis, declare that:

1. I am an attorney duly licensed to practice law in the State of California and Senior Counsel in the law firm of Morrison & Foerster LLP, counsel of record for Novell, Inc. ("Novell"), in this chapter 11 case of debtors and debtors in possession The SCO Group, *et al* ("SCO").

2. I submit this declaration in support of Novell's Motion for Order Confirming Constructive Trust and Directing the Debtors to Pay Funds to Novell.

3. I know the facts stated herein of my own knowledge and, if called, could testify competently thereto.

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4. Attached hereto as Exhibit A and incorporated herein by reference are certain pages excerpted from SCO's July 31, 2008 Form 10-Q that I personally downloaded from EDGAR.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of October, 2008 in San Francisco, California



Adam A. Lewis

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark one)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended July 31, 2008

OR

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 0-29911

THE SCO GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

87-0662823
(I.R.S. Employer Identification Number)

355 South 520 West
Suite 100
Lindon, Utah 84042
(Address of principal executive offices and zip code)

(801) 765-4999
(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). (Check one): YES NO

As of September 9, 2008, there were 21,886,288 shares of the Registrant's common stock, \$0.001 par value per share, outstanding.

EXHIBIT A

The SCO Group, Inc.

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THE SCO GROUP, INC. AND SUBSIDIARIES
(DEBTORS-IN-POSSESSION)
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

(1) ORGANIZATION AND DESCRIPTION OF BUSINESS

The SCO Group, Inc. (the "Company") markets reliable, cost-effective UNIX software products and related services for the small-to-medium sized business market, including replicated site franchises of Fortune 1000 companies. In 2003, the Company established its SCOSource business to market, protect and defend its intellectual property surrounding the UNIX operating system which it acquired in 2001 from The Santa Cruz Operation ("Santa Cruz"), which changed its name to Tarantella, Inc., and was subsequently acquired by Sun Microsystems.

The Company incurred a net loss of \$7,623,000 for the nine months ended July 31, 2008, and during that same period used cash of \$3,602,000 in its operating activities. As of July 31, 2008, the Company had a total of \$2,117,000 in cash and \$2,680,000 in restricted cash, of which \$1,639,000 is designated to pay for experts, consultants and other expenses in connection with the litigation between the Company and IBM, Novell and Red Hat (the "SCO Litigation"), and the remaining \$1,041,000 of restricted cash is payable to Novell for post bankruptcy petition retained binary royalty stream.

On August 10, 2007, the federal judge overseeing the Company's lawsuit with Novell, Inc. ("Novell") ruled in favor of Novell on several of the summary judgment motions that were before the United States District Court in Utah (the "Court"). The effect of these rulings was to significantly reduce or to eliminate certain of the Company's claims in both the Novell case ("Novell Litigation") and the IBM case, and possibly others (collectively, the "SCO Litigation"). The Court ruled that Novell was the owner of the UNIX and UnixWare copyrights that existed at the time of the 1995 Asset Purchase Agreement between Novell and Santa Cruz (the "APA"), and that Novell retained broad rights to waive the Company's contract claims against IBM. The Court ruled that the Company owns the copyrights to post-APA UnixWare derivatives and that the Company has certain other ownership rights in the UNIX technology. The Company was directed to accept Novell's waiver of its UNIX contract claims against IBM. In addition, the Court determined that certain SCOSource licensing agreements that the Company executed in fiscal year 2003 and thereafter included older SVRx licenses and that the Company was possibly required to remit some portion of the proceeds to Novell. Over the Company's objection, a bench trial was set to begin on September 17, 2007 and the federal judge was to determine what portion, if any, of the proceeds of the SCOSource agreements is attributable to such SVRx licenses and should be remitted to Novell, as well as whether SCO had authority to enter into such SVRx licenses. Based on Novell's allegations, the potential payment to Novell for those SVRx licenses ranged from a de minimis amount to in excess of \$30,000,000, the latter amount being the amount claimed by Novell, plus interest.

The trial of these issues, however, was automatically stayed as a result of the Company's filing a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on September 14, 2007. On October 4, 2007, Novell filed a Motion for Relief from Automatic Stay. On November 27, 2007, the Bankruptcy Court lifted the stay to permit Novell to pursue the trial scheduled in the Court on the allocation of proceeds from the SCOSource agreements and the question of SCO's alleged lack of authority to enter into them, but the Bankruptcy Court retained jurisdiction to determine whether to impose a constructive trust on any amounts found to be payable to Novell. The Bankruptcy Court also ruled that the automatic stay applies to the SuSE arbitration proceeding pending in Europe. Upon the partial lifting of the automatic stay, the Court scheduled a four-day trial on those matters for which the Bankruptcy Court lifted the stay, which started on April 29, 2008 and concluded on May 2, 2008, .

On December 21, 2007, Novell filed a motion for summary judgment on the issue of whether the Company had the authority to enter into the SCOSource licenses. The parties have fully briefed the motion, and the Court set oral argument on this and any other pending motions for summary judgment for April 30, 2008. On March 7, 2008, the Company filed a Motion for Judgment on the Pleadings on Novell's Claims for Money or Claim for Declaratory Relief, in which the Company argues, based on Novell's version of the facts, that either its claims for money from SCOSource agreements or its claim seeking a declaration that SCO lacked the authority to enter into those agreements must fail. The Court heard oral arguments on this motion, as well as Novell's pending motion for summary judgment, on the second day of trial, April 30, 2008.

From April 29 through May 2, 2008, the Court held a bench trial on Novell's monetary claim for certain portions of fees SCO received from the SCOSource agreements and on whether SCO had the authority to enter into those agreements. Prior to the commencement of the trial, Novell conceded that it would not be making a claim to a portion of the fees paid to SCO by Microsoft in 2003 and Novell therefore reduced the principal amount of its claim to \$19,979,561.

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After the trial and arguments, the Court took all matters under advisement and stated it would attempt to issue a ruling without undue delay.

On July 16, 2008, the Court entered its Findings of Fact, Conclusions of Law, and Order, ruling that (1) the SCOSource agreements with Linux end-users were not SVRx licenses and therefore Novell is not entitled to revenue from those agreements; (2) the 2003 SCOSource agreement with Microsoft contained an SVRx License that was incidental to the UnixWare license in the agreement, and therefore SCO was authorized to enter into the license and Novell is not entitled to revenue from the agreement; (3) the 2003 SCOSource agreement with Sun also contained an authorized incidental SVRx license and Novell is not entitled to revenue attributable to that license; and (4) the same Sun agreement contained an unauthorized amendment of a prior UNIX agreement, and Novell is entitled to \$2,547,817 of the revenue from the Sun agreement as attributable to that amendment. The Court directed Novell to file a brief identifying the amount of prejudgment interest it seeks based on this award. On August 29, 2008, Novell filed an Unopposed Submission Regarding Prejudgment Interest, informing the Court that the parties agree that Novell is entitled to \$918,122 in prejudgment interest through that date, plus \$489 per day until the entry of final judgment, based on the Court's \$2,547,817 award.

In its ruling of July 16, 2008, the Court also directed Novell to file a proposed Final Judgment consistent with the Court's trial and summary judgment orders. In its proposed submission to the Court in compliance with this order, Novell took the position that final judgment cannot be entered because certain SCO claims are stayed pending arbitration and the imposition of a constructive trust remains an open question in the Bankruptcy Court. Subsequently, in order to expedite the entry of final judgment, SCO sought to resolve these issues with Novell and agreed to an extension of Novell's deadline for filing its submission. Based on SCO's tracing of Sun's payments under its 2003 SCOSource agreement, Novell agreed that only \$625,487 of SCO's current assets were traceable as trust funds. SCO also proposed dismissing its stayed claims with prejudice on the basis of the Court's ruling that Novell owns the pre-APA UNIX copy rights in the Court's summary judgment order of August 10, 2007. On August 29, 2008, in its Submission Regarding the Entry of Final Judgment, Novell informed the Court of the parties' agreement as to the trust amount, but Novell stood by its position that final judgment could not be entered in light of the stayed claims. On September 15, 2008, SCO filed papers arguing for the entry of final judgment.

As a result of this order from the Court, the Company has accrued \$3,473,000 for this contingent liability and related interest. However, the Company, continues to contest this liability. The Company believes that this order is in error, and that the Company has strong grounds to overturn it and the August 10, 2007 summary judgment upon appeal.

The Company intends to appeal the adverse August 10, 2007 summary judgment ruling and the July 16, 2008 order as soon as Final Judgment is entered upon those orders. However, in the event that the Company's assets are further depleted or frozen, the Company may not be in a financial position to appeal those rulings.

The Company's management and board of directors determined that filing for relief under Chapter 11 of the United States Bankruptcy Code on September 14, 2007 was appropriate and necessary. As a result of both the Court's August 10, 2007 order and the Company's entry into Chapter 11, among other factors, there is substantial doubt about the Company's ability to continue as a going concern including continuing the SCO Litigation or appealing the adverse ruling of August 10, 2007 and the July 16, 2008 order.

Absent a significant cash payment to Novell being required by the final resolution for the aforementioned court order, management believes that the undiscounted future cash flows generated by the Company will be sufficient to recover the carrying values of the Company's long-lived assets over their expected remaining useful lives. However, if a significant cash payment is required the carrying amount of the Company's long-lived assets may not be recovered.

Bankruptcy Filing

On September 14, 2007, the Company and its wholly owned subsidiary, SCO Operations, Inc. (collectively the "Debtors"), filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the District of Delaware. The Debtors' Chapter 11 cases are being jointly administered under Case No. 07-11337 (KG). The Debtors continue to exercise control over their assets and operate their businesses as "debtors-in-possession" under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court. The Company's foreign subsidiaries were not included in the filings. The Company's foreign subsidiaries, as non-debtors, are not subject to the requirements of the Bankruptcy Code and are not subject to Bankruptcy Court supervision.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: September 15, 2008

THE SCO GROUP, INC.

By: /s/ Kenneth R. Nielsen
Kenneth R. Nielsen
Duly Authorized Officer and Chief
Financial Officer (Principal Financial and
Accounting Officer)