

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re : Chapter 11  
:   
The SCO GROUP, INC., *et al.*,<sup>1</sup> : Case No. 07-11337 (KG)  
: (Jointly Administered)  
Debtors. :   
: Re Dkt No. 990  
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**OBJECTION OF CHAPTER 11 TRUSTEE TO MOTION OF PETROFSKY  
FOR AN ORDER COMPELLING THE TRUSTEE’S COMPLIANCE WITH  
REPORTING REQUIREMENTS AND SETTING REPORTING DEADLINES**

Edward N. Cahn, Esq. (the “Chapter 11 Trustee” or “Trustee”), in his capacity as chapter 11 trustee for The SCO Group, Inc. and SCO Operations, Inc. (collectively, the “Debtors”), hereby files this objection (this “Objection”) to *the Motion of Petrofsky for an Order Compelling the Trustee’s Compliance with Reporting Requirements and Setting Reporting Deadlines* [Docket No. 990] (the “Petrofsky Motion”)<sup>2</sup>. In support of this Objection, the Chapter 11 Trustee respectfully submits as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and this Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates upon which this Court should consider the relief sought in the Petrofsky Motion are 11 U.S.C. § 704(a)(8) and Fed. R. Bankr. P. 2015(a)(3), (a)(5) and 2015.3.

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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> The Trustee notes that Mr. Petrofsky has appeared repeatedly in these cases *pro se* and has filed at least nine (9) responsive pleadings and one (1) affirmative motion seeking relief from this Court. It is unclear to the Trustee if Mr. Petrofsky is an attorney, is representing himself alone or the interests of others and whether he has sought to engage Delaware counsel.

## **BACKGROUND**

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

3. On September 18, 2007, this Court entered an Order Authorizing Joint Administration of Related Chapter 11 Cases: 07-11337 and 07-11338 [Docket No. 25]. The Debtors continued in the management and operation of their businesses and property as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108 until August 25, 2009 (the “Appointment Date”) when this Court appointed a chapter 11 trustee.

4. On September 28, 2007, the Office of the United States Trustee filed its Statement that an Unsecured Creditors’ Committee has not been Appointed [Docket No. 67].

5. In connection with contested motions to convert the Debtors’ chapter 11 cases to chapter 7 cases, on or about July 27, 2009, this Court directed the United States Trustee to appoint a chapter 11 trustee.

6. On the Appointment Date, the Office of the United States Trustee filed its Notice of Appointment of Edward N. Cahn, Esquire as Chapter 11 Trustee [Docket No. 898] and, on the same day, this Court entered an Order Approving Appointment of Chapter 11 Trustee [Docket No. 900].

## **OBJECTION**

7. By the Petrofsky Motion, the movant (“Petrofsky”) seeks entry of an order (i) compelling the Trustee, by certain arbitrary dates set by Petrofsky, to separately file statements of disbursement and payments to ordinary course professionals, monthly operating reports (each an “MOR” and collectively, “MORs”), and financial information regarding nondebtor entities in

which the Debtors may have a controlling or substantial interest and (ii) prescribing a mandatory twenty-day period, subject to extension only by court order, for prospective filings of MORs by the Trustee. The Trustee agrees that “timely and accurate financial disclosure is the lifeblood of the chapter 11 process.” *Petrofsky Motion* at ¶ 35, citing *In re Berryhill*, 127 B.R. 427, 433 (Bankr. N.D. Ind. 1991). However, the Trustee objects to the Petrofsky Motion for the following reasons: the requested relief is (a) moot with respect to financial information requested for the months of July, August and September 2009; (b) overbroad and arbitrary with respect to separate and “redundant” requests for financial information for the same periods and by a certain date; (c) in respect of the reporting requirements imposed by Fed. R. Bankr. P. 2015.3, not applicable to these cases or, alternatively, subject to separate notice and hearing on the matter; and (d) unsupported and factually incorrect with respect to characterization of the Trustee as “ignoring” his reporting duties. For the foregoing reasons, the Trustee respectfully submits that the relief requested by the Petrofsky Motion must be denied.

8. First, as of the date hereof, MORs for the months of July, August and September 2009 have been filed. [See Docket Nos. 1000, 1001, 1002, 1003, 1004 and 1005, respectively]. Accordingly, Petrofsky’s requested relief regarding those time periods is moot. As the Trustee indicated to Petrofsky, the Trustee’s financial advisors were working on these MORs fully intending to file them as soon as possible and, in fact, they were filed on the same date as this Objection. With respect to the October 2009 MOR, the Debtors’ fiscal year ends on October 31<sup>st</sup> and accordingly the Trustee and his financial advisors require additional time to close the company’s books, review the historical data and prepare the MORs. This process is underway and the October 2009 MOR should be filed in January 2010.

9. The Trustee must note for this Court, however, that July and August 2009 MORs predate the appointment of the Chapter 11 Trustee and, as such, reflect financial information of the Debtors and their professionals prior to the Appointment Date. Furthermore, the Trustee and his financial advisors have not had sufficient time to review all of the historical information previously reported by the Debtors and, therefore, the Trustee has filed the MORs with a reservation of right to amend those MORs, including, without limitation, any recharacterization of liabilities as pre- or post-petition obligations of the Debtors or of nondebtor subsidiaries. Accordingly, nothing therein should be deemed an admission by the Trustee as to the characterization of such obligation(s). With respect to the September 2009 MOR, in order to provide information to this Court and parties in interest without further delay, the Trustee filed the September 2009 MOR consistent with the format and allocations of liabilities previously adopted by the Debtors prior to the Appointment Date. However, similar to the July and August 2009 MORs, because the Trustee and his financial advisors have not had sufficient time to review all of the historical information previously reported by the Debtors, the Trustee asserts a similar reservation of rights as with the July and August MORs<sup>3</sup>.

10. Second, the Trustee agrees with the assertions made in the Petrofsky Motion that additional requests for quarterly disbursement and ordinary course professionals' statements for the same time period would be "redundant." See *Petrofsky Motion* at ¶¶ 24, 30. Accordingly, to the extent the Petrofsky Motion seeks separate and redundant filings by the Trustee of financial information, the Trustee submits that those efforts would be burdensome to these estates and not

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<sup>3</sup> Ideally the Trustee would have instructed his financial advisors to undertake a thorough analysis of the process adopted by the Debtors historically in compiling the financial information for July, August and September 2009. However, being appointed nearly 2 years into the chapter 11 cases and taking over the Debtors' operations has required the Trustee and his advisors to focus on multiple issues simultaneously, including restructuring the businesses to preserve value for creditors. The Trustee is mindful of his responsibilities and will file revised MORs, if he determines such re-filing is needed, for July, August and September 2009, before the end of January 2010.

in the best interest of these estates or its creditors and should be denied. To the extent any payments were made, they would be reflected in the MORs which has now been filed. A separate filing with this information is unnecessary.

11. Third, Petrofsky erroneously insists that the Trustee is bound to comply with the reporting guidelines in Rule 2015.3 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), which requires a trustee or debtor in possession to “file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest.” Fed. R. Bankr. P. 2015.3(a). Importantly though, a court may “after notice and a hearing, vary the reporting requirement” established by Fed. R. Bankr. P. 2015.3(a) “for cause” if a trustee is “not able to comply with those reporting requirements.” Fed. R. Bankr. P. 2015.3(d).

12. Petrofsky’s criticism of the Trustee’s alleged failure to comply with Bankruptcy Rule 2015.3 is misplaced. The Rule became effective on December 1, 2008 and, in accordance with the order entered by the United States Supreme Court, governs “in all proceedings in bankruptcy cases *thereafter* commenced and, *insofar as just and practicable*, all proceedings then pending.” *Order of the Supreme Court dated April 23, 2008* (emphasis added). Accordingly, the Trustee submits that Bankruptcy Rule 2015.3 is not applicable to these cases because the extensive nature of the information required pursuant to Bankruptcy Rule 2015.3 and Official Form 26 makes such disclosure impracticable and unnecessary at this stage of the Debtors’ chapter 11 cases. Alternatively, to the extent this Court finds Bankruptcy Rule 2015.3 may be applicable to these cases, the Trustee requests there be separate notice and a hearing scheduled in respect of this matter so that the Trustee may present evidence as to whether there is

cause to modify the Bankruptcy Rule 2015.3 reporting requirements and/or whether requiring such reporting at this juncture of these cases is impracticable or unjust.

13. Finally, the Trustee objects to assertions made in the Petrofsky Motion that the Trustee has simply “ignored” his reporting requirements. To the contrary, as addressed above, meeting the duties imposed upon the Trustee under the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (“Local Rules”), and other applicable laws, including reporting requirements, necessitates, among other things, a thorough review of historical information. As this Court is aware (by motion practice before this Court and by representations made to this Court by the Trustee at prior hearings), the Trustee has remain diligent in executing all of his duties and has done so in a timely and efficient manner - which inures to the benefit of these estates. The Trustee continues to investigate the Debtors’ historical financial reporting, while at the same time, assessing and actively pursuing the estates’ claims against IBM and Novell, settling litigation with AutoZone, restructuring the Debtors’ businesses, identifying assets to be sold, and negotiating a new lease for the Debtors’ headquarters, among other things. As stated above, the Trustee is and will continue to prepare and file the required MORs in as timely a fashion as is practicable under the circumstances.

**WHEREFORE**, the Trustee respectfully requests that this Court enter an order denying the Petrofsky Motion and granting such other and further relief as this Court deems just, proper and necessary.

Dated: Wilmington, Delaware  
December 23, 2009

Respectfully submitted,

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