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

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In re:

The **SCO GROUP, INC.**, et al.,  
  
Debtors.

Chapter 11

Case No. 07-11337 (KG)  
(Jointly Administered)

Hearing:

December 30, 2009 at 10:00 a.m.

Related Docket Nos.: 990, 1006

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**REPLY OF PETROFSKY TO OBJECTION OF CHAPTER 11 TRUSTEE TO  
MOTION OF PETROFSKY FOR AN ORDER COMPELLING THE  
TRUSTEE'S COMPLIANCE WITH REPORTING REQUIREMENTS AND  
SETTING REPORTING DEADLINES**

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1. I, Alan P. Petrofsky, an equity security holder of Debtor The SCO Group, Inc., hereby reply to the objection of the Chapter 11 trustee (Docket No. 1006, December 23, 2009) (the "Objection") to the *Motion of Petrofsky for an Order Compelling the Trustee's Compliance with Reporting Requirements and Setting Reporting Deadlines* (Docket No. 990, December 13, 2009) (the "Motion")<sup>1</sup>.

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<sup>1</sup>A footnote in the first paragraph of the Objection says, "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." It is unclear to me what the trustee believes the relevance of these points would be, but in an attempt to provide the trustee with some clarity, I will respond as follows: (1) I am not now, nor have I ever been, a member of the bar of this state nor of any other jurisdiction; (2) As I believe is clear in the Motion, I am the sole movant, moving the Court on my own behalf and not as a representative of any other party: "I, Alan P. Petrofsky, an equity security holder of Debtor The SCO Group, Inc., hereby move the court" (Motion at ¶1). Any individual equity security holder has a "Right to be heard" and "may raise and may appear and be heard on any issue in a case under this chapter." (11 U.S.C. §1109); and (3) In connection with these cases, I have not engaged, nor sought to engage, counsel from Delaware nor from any other jurisdiction.

## **I. The Quarterly Disbursements Statements and the Ordinary Course Professionals Statement**

2. Less than two hours before the objection deadline for the Motion, the trustee filed Monthly Operating Reports (“MOR”s) for July, August, and September, 2009, which appear to include sufficient information to satisfy, for the third calendar quarter of 2009, the Quarterly Disbursements Statements requirement and the Quarterly Ordinary Course Professionals Statement requirement.

3. The original proposed order would have, quite leniently, compelled the filing of this information in early January 2010 — or as the trustee put it, “by certain arbitrary dates set by Petrofsky” (Objection at ¶7). However, these items’ original and never-extended deadlines — which the trustee missed by a wide margin — were not set by me. Specifically, the October 20, 2009 deadline for the Ordinary Course Professionals Statement, which the trustee missed by 64 days, was set by order of this court, and the October 31, 2009 deadline for the Quarterly Disbursements Statements, which the trustee missed by 53 days, was set by order of the Supreme Court of the United States. See the Ordinary Course Professionals Order, Docket No. 192, November 6, 2007, at ¶10; and the Order adopting bankruptcy rule amendments, 500 U.S. 1019, April 30, 1991 (adding subsection (a)(5) to Rule 2015).

4. The trustee’s unexcused failures to meet these deadlines, and still-unexplained failures even to file motions attempting to show cause to extend the deadlines, are the basis for my assertions that the trustee had been ignoring his reporting obligations.

5. The trustee is correct that his untimely filing of these statements, as part of the July through September MORs, has mooted the Motion as to paragraphs 2 and 3 of the original proposed order, and I have therefore removed those paragraphs from the revised proposed order, which I am attaching hereto as Exhibit A, with a blackline version in Exhibit B.

## **II. Monthly Operating Reports for October through December, 2009**

6. The original proposed order would set MOR filing deadlines for October, November, and December 2009, respectively, on January 15, January 15, and January 20, 2010. The trustee states in the Objection that the MOR for October will be delayed by fiscal year-end accounting, but that “the October 2009 MOR should be filed in January 2010” (Objection at ¶8). In the revised proposed order, I have moved these three deadlines out by 16, 16, and 11 days, to put them all at January 31, 2010.

## **III. Monthly Operating Reports for January 2010 and beyond**

7. Going forward, the motion seeks the establishment of MOR filing deadlines for each month’s report on the 20th day of the following month. In the revised proposed order, I have clarified that these deadlines would be without prejudice to extension motions, as I discussed in the Motion at ¶42.

8. The trustee objects to the setting of any deadlines for future Monthly Operating Reports, but, oddly, he does not identify any harm that the establishment of such deadlines would cause.

9. The Objection does include this assertion:

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 [sic] diligent in executing all of his duties and has done so in a timely and efficient manner

(Objection at ¶13) However, the prior motion practice and the representations made by the trustee or his counsel at prior hearings did not in fact make the Court, nor the parties, aware of any information at all about the MORs or why they had not been promptly filed. As to the MOR-filing duty, which is one of “all of his duties”, the trustee does not, and cannot, cite to any part of the prior record that would have

made the Court aware that he had been diligent in executing the duty in a timely and efficient manner.

10. Furthermore, the unexcused failures to meet — or even seek the extension of — the deadlines for the Quarterly Disbursements Statements and the Quarterly Ordinary Course Professionals Statement affirmatively demonstrate that the trustee has not been “diligent in executing *all* of his duties” (*Id.*, emphasis added).

11. The lack of any deadlines for the MORs has been problematic throughout this case, with the parties having to go long stretches without seeing any reports or even seeing any cause shown for the lack of reports (see Motion at ¶¶39-40). This problem will surely recur if no deadlines are set.

12. “The Court nor the creditors should have to neither coerce or implore the Debtor as a fiduciary into filing timely, accurate and complete monthly operating statements” *In re McClure*, 69 BR 282, 290 (Bankr. N.D. Ind. 1987).

13. The proposed order simply seeks to place the burden of either filing a prompt MOR, or a prompt extension motion showing cause for why the MOR cannot be promptly filed, squarely upon the shoulders of the trustee, where it clearly belongs.

#### **IV. The Semi-Annual Subsidiaries Reports**

14. The Supreme Court ordered that Rule 2015.3, requiring semi-annual reports on the value, operations, and profitability of a debtor’s subsidiaries, “shall take effect on December 1, 2008, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending” (Order adopting bankruptcy rule amendments, 553 U.S. \_\_\_\_, April 23, 2008).

15. The trustee argues 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.” (Objection ¶12)

16. The trustee does not specify what “this stage of the Debtors’ chapter 11 cases” is. His list of his recent activities noticeably lacks any indication that an exit from chapter 11 is imminent: “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” (¶13).

17. I would agree that when Rule 2015.3 came into effect on December 1, 2008, it would not have been sensible for it to govern in cases that were on the verge of exiting Chapter 11. In these cases, however, the Debtors and their subsidiaries are now into their thirteenth month of operations since the time that the rule went into effect. Had these cases commenced on December 1, 2008, the *third* semi-annual report would soon be due, and yet the trustee claims that it would be unjust or impracticable for even *one* such report to ever be filed in these cases.

18. Reporting for the non-debtor subsidiaries is especially appropriate in these cases in the wake of the trustee having just reported that, “Historically, the Company may not have distinguished between direct liabilities of debtor and non-debtor companies.” (Disclaimer at page 2 of each of the July, August, and September 2009 MORs, filed December 23, 2009). As stated in the Motion, there has also been the suspect shuffling of money out to a subsidiary and then to Stephen Norris. (Motion at ¶46)

19. In deference to the trustee’s concerns about having an opportunity to file motions pursuant to Rule 2015.3 seeking to modify the reporting required, in the revised proposed order I have explicitly allowed for the filing of such motions on or before January 20, 2010.

## CONCLUSION

20. WHEREFORE, I respectfully request that the Court enter an order substantially in the form of the revised proposed order attached hereto, or granting such other and further relief as the Court deems proper and just.

Dated: December 24, 2009,

/s/ Alan P. Petrofsky

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Alan P. Petrofsky, Equity Security Holder  
PO Box 6263  
San Rafael CA 94903  
Telephone: (650)520-0626  
Facsimile: (415)499-8385  
E-mail: [al@scofacts.org](mailto:al@scofacts.org)