

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

Hearing Date: 2/16/2011 at 4:00 p.m. (ET)

DECLARATION OF WILLIAM M. BRODERICK IN SUPPORT OF THE MOTION OF THE CHAPTER 11 TRUSTEE FOR ORDER (1) AUTHORIZING THE MARKETING, AUCTION AND SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' SOFTWARE BUSINESS ASSETS CONSISTENT WITH FORM ASSET PURCHASE AGREEMENT AND FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, (2) AUTHORIZING ASSUMPTION, ASSIGNMENT, AND SALE OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (3) APPROVING BIDDING PROCEDURES IN CONNECTION WITH AUCTION, (4) ESTABLISHING SALE HEARING DATE AND (5) GRANTING RELATED RELIEF

I, William M. Broderick, declare as follows:

1. I submit this declaration in support of the *Motion of the Chapter 11 Trustee for Order (1) Authorizing the Marketing, Auction and Sale of Substantially All of the Debtors' Software Business Assets Consistent with Form Asset Purchase Agreement and Free and Clear of Liens, Claims and Encumbrances, (2) Authorizing Assumption, Assignment, and Sale of Certain Executory Contracts and Unexpired Leases, (3) Approving Bidding Procedures in Connection with Auction, (4) Establishing Sale Hearing Date and (5) Granting Related Relief* (the "Sale Motion"). Unless otherwise noted or evident from context, this declaration is based on my personal knowledge.

2. I have served as the Director of Software Licensing for The SCO Group, Inc. ("SCO") since 2001 and currently perform the same function under an independent consulting arrangement with SCO, which is the result of a recent restructuring. My office is located in Florham Park, New Jersey. Since December 1991, I have been continuously involved with UNIX business contracts for the successive companies that have owned the Debtors' core software business, which serves the needs of small-to-medium sized businesses and branch offices and franchisees of Fortune 1000 companies, by providing reliable cost-effective UNIX software technology for distributed, embedded, and network-based systems (the "Software Business").

¹ 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.

3. From December 1991 to June 1993, I was the Manager of Sales Operations for UNIX System Laboratories (“USL”), a company that owned and operated the Software Business that AT&T originally created. When AT&T sold USL to Novell, Inc. (“Novell”) in June 1993, I remained with the Software Business as a Novell employee performing substantially the same work as at USL. During most of my time at Novell, my title was Contract Manager.

4. When Novell sold the Software Business to The Santa Cruz Operation (“Santa Cruz”) in 1995, I remained with the Software Business as a Santa Cruz employee performing substantially the same work as at Novell. During my employment at Santa Cruz, my title was Manager, Law and Corporate Affairs.

5. When Santa Cruz sold the Software Business to Caldera, Inc. (“Caldera”) in 2001, I remained with the Software Business as a Caldera employee performing substantially the same work as at Santa Cruz. For a short period after the sale to Caldera, my official title remained the same, but it later changed to my current title, Director of Software Licensing. In addition, for a few months from late 2002 to early 2003, I technically served as a consultant to Caldera. In 2003, Caldera changed its name to SCO.

6. In sum, my career has followed the Software Business as it has been transferred successively from AT&T/USL to Novell to Santa Cruz to Caldera (now SCO). I personally witnessed and experienced the transition of the business from one owner to the next.

7. In each instance (USL to Novell, Novell to Santa Cruz, and Santa Cruz to Caldera), the company selling the UNIX technology also transferred to its successor control of the commercial enterprise that developed, marketed, and licensed that technology (the Software Business). In each instance, the operation of the Software Business continued as constituted through and after each transition.

8. In each instance, the successive transfers of the Software Business also included all or many of the people who managed and operated the business, including senior-level managers, engineers, sales people, support staff and other employees. It also included customer, supplier, and vendor relationships.

9. In each instance, the transferred Software Business also included then current office space, leaseholds, furniture, and equipment.

10. In short, through and after each transaction, my colleagues and I almost universally kept doing the same work, with the same people, from the same offices and buildings, developing and delivering the same UNIX products and services to the same customers. We also continued to develop the same technology, service the same contracts, and collect revenues under those contracts.

11. In each instance, after each transaction, neither the seller nor its employees (who did not transition to the purchaser) remained involved in managing or operating the business. The buyer (mainly through its retention of the former employees) took over those responsibilities.

12. During the foregoing employment, I have had an understanding of the scope of the license agreements under which USL, Novell, Santa Cruz, Caldera and SCO have licensed UNIX source-code to various licensees, whose licenses my colleagues and I oversaw and managed for many years, including up to the present. My understanding is based on my review of the licenses, my discussions with my colleagues, my work and management experience with the Software Business and the training I received from my supervisors and legal counsel.

13. I have reviewed and am familiar with the Asset Purchase Agreement by and between The SCO Group, Inc. and SCO Operations, Inc. and unXis, Inc. (the “Agreement”), including the Sublicensing Agreement attached thereto as Exhibit “C.” A true and correct copy of the Sublicensing Agreement is attached hereto as Exhibit 1. The Sublicensing Agreement, which grants a sublicense to unXis, is substantially similar to third-party source-code license agreements executed by SCO and each of its predecessors with respect to the Software Business: AT&T, USL, Novell, and Santa Cruz. True and correct copies of third-party source-code license agreements executed by (i) AT&T with Sun Microsystems, Inc., (ii) USL with U.S. Amada, Ltd., (iii) Novell with Supercomputers International, and (iv) Santa Cruz with Samsung Electronics, Co., Ltd., respectively, each of which are attached hereto as Exhibits 2-5.

14. Furthermore, the Sublicensing Agreement attached as Exhibit “C” to the Agreement is substantially similar to third-party source-code license agreements historically executed by Caldera/SCO. A true and correct copy of the third-party source-code license agreements executed by Caldera/SCO with (i) Cisco Systems, (ii) Northrop Grumman Space and Mission Systems Corp, (iii) Samsung Electronics, Co., Ltd., and (iv) Trusted Systems on the Net, Co., Ltd., respectively, is attached hereto as Exhibits 6-9.

15. Accordingly, SCO, along with its predecessors with respect to the Software Business, have historically, in the ordinary course of such business, executed third-party source-code license agreements (including all copyrights necessary thereto – and notwithstanding any issues as to whether such successor owned, licensed or otherwise had the right to use the same). Pursuant to the Sublicense Agreement, SCO is granting a nonexclusive third-party source-code license, among other things, in nearly identical form to which it has historically done without objection from Novell. Indeed, as outlined in paragraph 13 above, Novell similarly licensed source-code to third-parties in the course of conducting the Software Business.

16. Moreover, Novell provided the third-party source-code license agreement form to SCO and suggested to SCO that it should proceed in the same manner, utilizing substantially the same form of source-code license agreement Novell had used historically. A true and correct copy of a UnixWare transition team document from Novell (Lou Ackerman) to Santa Cruz (the “Transition Document”) is attached hereto as Exhibit 10. In the Transition Document, Novell requests that Santa Cruz confirm it intends to:

1. Use the standard Software Agreement and Sublicensing Agreement currently used by Novell, with the exception of the necessary name and address changes, for any new customers,

2. Use the current UnixWare product schedules with the necessary name and address change where appropriate, and
3. Use the existing schedules for SVRx and Auxiliary Products with the necessary name and address changes when appropriate.

17. Finally, as noted above, SCO, along with its predecessors with respect to the Software Business, have historically, in the ordinary course of such business, executed third-party source-code license agreements. Pursuant to the Sublicense Agreement, SCO is granting a nonexclusive third-party source-code license, among other things, in nearly identical form to which it has historically done without objection from Novell.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

February 13, 2011



William M. Broderick