

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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The SCO GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 07-11337 (KG)
	:	(Jointly Administered)
Debtors.	:	
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		Hearing Date: 2/16/2011 at 4:00 p.m. (ET)

**DECLARATION OF W. BRUCE COMER, III 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, W. Bruce Comer, III, declare as follows:

1. I am the founder and a Managing Director of Ocean Park Advisors, LLC ("OPA"), a position I have held since 2004. I have broad experience in the software and technology industry, including as an advisor, investor, and in mergers & acquisitions. OPA was retained by the trustee appointed in these chapter 11 cases (the "Trustee") as financial advisors and investment bankers as of September 15, 2009. In that capacity, I am familiar with the Debtors' day-to-day operations, business and financial affairs.

2. I submit this declaration (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"). Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information supplied to me by members of the Debtors' management team or other professionals employed by the Trustee, or my opinion based upon my education, training, experience and

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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.

knowledge of the Debtors' business and financial condition. If called upon to testify, I could and would testify competently to the facts set forth herein.

3. In May 2010, OPA began gathering information from the Debtors to commence marketing the Debtors' assets, including the Software Business assets<sup>2</sup>. By authorization of the Trustee, the formal marketing of the Debtors' Software Business assets started on July 19, 2010. Prior to commencement of the marketing of such assets, OPA, in conjunction with the Debtors' management and counsel for the Trustee, prepared (i) a brief marketing summary (a "teaser"), (ii) a confidential information memorandum, (iii) a list of potential purchasers, and (iii) a data room for potential purchasers to conduct due diligence.

4. On August 9, 2010, the Trustee filed the Sale Motion. On August 23, 2010, this Court entered the order (the "Sale Procedures Order") authorizing the marketing, auction and sale of substantially all of the Debtors' Software Business assets, among other things. [Docket No. 1161]. Pursuant to the Sale Procedures Order, (i) the bid deadline for qualifying bids was October 5, 2010 (the "Initial Bid Deadline"), (ii) the auction, if necessary, was scheduled for October 25, 2010 (the "Initial Auction Date"), and (iii) the sale hearing was scheduled for November 8, 2010 (the "Initial Sale Hearing Date"). Importantly, the Sale Procedures Order provided at paragraph 9 therein that such "proposed timeline to effectuate the Transactions, including hearing and deadlines other than the Sale Hearing, may be extended upon notice to parties in interest, as appropriate, without further order of this Court, subject to this Court's calendar." As described below, the Trustee's professionals had received no acceptable, qualified bids for the Software Business assets as of the Initial Bid Deadline.

5. OPA worked with the Debtors to prepare and place public notices of the sale of the Debtors' Software Business assets. In connection therewith, a press release announcing the sale was released on September 17, 2010, a legal notice was run during the week of September 17-23, 2010 in the Salt Lake Tribune, Deseret News and Utahlegals.com, and a ¼-page color advertisement was also placed in the September 27, 2010 issue of *ComputerWorld*.

6. In discussion with Debtors' management and industry contacts, OPA developed a list of over 100 potential bidders that included many strategic buyers as well as private equity investors. OPA and the Debtors' management ensured that bidders who participated or expressed interest in the Debtors' prior sale process(es) were included. In addition, OPA sent the teaser to over twenty-five (25) intermediaries that included investment bankers, business brokers and industry executives. In total, OPA sent teasers to one hundred and seven (107) parties, of which seventy-eight (78) were potential bidders and the rest were intermediaries. As part of this marketing process, OPA directly contacted via telephone or electronic mail ninety-three (93) potential bidders about their interest in acquiring the Debtors' Software Business assets. Throughout the five month period of marketing efforts, the Debtors entered into eighteen (18) non-disclosure agreements ("NDAs") with interested parties.

7. OPA engaged in discussions with all parties that had submitted a bid by the Initial Bid Deadline or had indicated that they were close to submitting a bid. Neither of the bids

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such term in the Sale Motion.

received by the Initial Bid Deadline was acceptable or qualified. Accordingly, the Trustee and his professionals determined that it would be best to extend the Initial Bid Deadline a few days, until October 11, 2010 (the “Second Bid Deadline”), in order to have Qualified Bids for the Auction. By the Second Bid Deadline, OPA had received five (5) preliminary and unqualified bids (each such bidder, an “Initial Bidder”). Some of those bids were highly conditional, ambiguous and/or even verbal.

8. Accordingly, the Initial Auction Date was adjourned and from mid-October through late December 2010 (the “Extended Marketing Period”), OPA attempted to clarify and qualify the bidders. In consultation with the Trustee, during the Extended Marketing Period, OPA attempted to contact every party that had initially signed an NDA and had completed some amount of diligence but who had not submitted bids by the Second Bid Deadline. Throughout the Extended Marketing Period, OPA continued to search for other potential bidders beyond the initial list of potential purchasers. OPA was receptive to unsolicited calls from all parties who contacted the Debtors about its assets. Some of those parties conducted additional diligence or re-evaluated their interest in submitting a bid for the Debtors’ Software Business assets. One of those parties ultimately made a deposit and submitted a bid. In December 2010, two of the Initial Bidders, including unXis, Inc. (“unXis”), along with a new bidder, were conducting detailed diligence and refining their bids.

9. On January 6, 2011, the Trustee filed modified bidding procedures [Docket No. 1212], which among other things, modified the bidding procedures to set a bid deadline of January 14, 2011 (the “Final Bid Deadline”), set a minimum amount for a deposit at \$100,000, and set a new auction date of January 19, 2011 (the “Final Auction Date”).

10. As of January 14<sup>th</sup>, the Trustee, through OPA, had received two bids:

- unXis submitted a bid, which included (i) \$600,000 in cash and (ii) 2-year warrants to purchase 3% of the outstanding unXis common stock. The unXis bid excluded the net working capital of the business worth, in OPA’s estimate, from \$700,000 - \$900,000. unXis also agreed to pay up to \$50,000 of cure costs. Furthermore, the unXis bid included the acquisition of all of the non-Debtor foreign subsidiaries and provided for the employment of all current employees in the non-Debtor foreign subsidiaries. The liability of having to wind-down these entities has not been determined but OPA preliminarily estimates that those costs would easily exceed \$500,000 and possibly exceed \$1,000,000 – exclusive of time and expenses related to professionals. Importantly, prior to the Final Auction Date, unXis deposited the full amount of the purchase price into escrow with Blank Rome.
- The second bidder submitted a bid of \$18 in cash. Similar to the unXis bid, the second bid also excluded the net working capital of the business, included the acquisition of all non-Debtor foreign subsidiaries and provided for the employment of all current employees in the non-Debtor foreign subsidiaries.

11. An auction occurred on January 19, 2011. unXis and the second bidder attended such auction. At that auction, the second bidder declined to submit a bid above its existing bid.

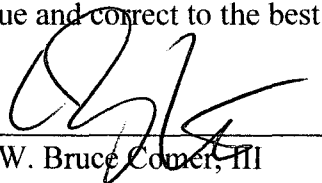
Accordingly, thereafter, the Trustee determined that unXis was the highest and best bidder. The Trustee then entered into the Asset Purchase Agreement by and between The SCO Group, Inc. and SCO Operations, Inc. and unXis, Inc. (the "Agreement").

12. All negotiations among the Debtors' management, the Trustee's professionals and unXis have been at arms' length and in good faith and such negotiations were vigorous. I am not aware of, and have no reason to suspect, any bid collusion or other improper conduct by unXis in connection with this sale process. To the best of my knowledge, unXis is not affiliated with nor an insider of the Debtors.

13. There are sound business reasons for the Trustee to enter into the Agreement and for this Court to enter the proposed sale order. As described in this Declaration, extensive marketing has been undertaken to sell the Debtors' Software Business assets. The transaction contemplated by the Agreement provides cash consideration of \$600,000 for the Debtors' assets. In addition, the proposed transaction with unXis results in (i) the net working capital left behind in the estate, (ii) the payment of cure costs, (iii) the acquisition of the non-Debtor foreign subsidiaries, and (iv) the offer of employment to all current employees in the non-Debtor foreign subsidiaries. In OPA's professional opinion, the market has been thoroughly tested over five months in respect of the Debtors' Software Business assets and unXis' bid is the highest and best bid for such assets.

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

February 14, 2011

  
W. Bruce Comer, III