UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re: **The SCO GROUP, INC.** *et. al.*, Debtors.	**Chapter 11** **Case No. 07-11337 (KG)** **(Jointly Administered)** Docket Entry No. 815, 832 and 833

ORACLE USA, INC.'S LIMITED OBJECTION TO AND RIGHTS RESERVATION REGARDING THE NOTICE OF CURE AMOUNTS IN CONNECTION WITH THE ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS ("LIMITED OBJECTION")

Oracle USA, Inc., successor in interest to Oracle Corporation ("Oracle"), is a creditor and contract counter-party in the above-captioned jointly administered Chapter 11 cases. Oracle submits this Limited Objection to the Notice of Cure Amounts in Connection With the Assumption and Assignment of Unexpired Leases and Executory Contracts ("Cure Notice"), filed by The SCO Group, Inc. *et al.* (the "Debtors"). In support of the Limited Objection, Oracle submits:

I. FACTUAL BACKGROUND

1. In connection with the Debtors' Motion For Authority to Sell Property Outside the Ordinary Course of Business ("Sale Motion"), the Debtors filed and served the Cure Notice. Exhibit "A" to the Cure Notice identifies Oracle as a contract counter-party with certain contracts to be assumed and assigned through the Sale Motion.

2. Based on the descriptions provided in the Cure Notice, Oracle is unable to identify the contracts described. No date, title or specific license agreement is identified. Without additional information from the Debtors, Oracle is unable to determine either which contract(s) the Debtors seek to assume and assign or the appropriate cure amount owed under the targeted contract(s).

3.   Oracle has contacted Debtors' counsel in an attempt to obtain clarification regarding the contracts identified in the Cure Notice. It will continue to seek to resolve this concern prior to the hearing. However, to reserve its rights to be heard, if necessary, once this information is obtained, Oracle files this Limited Objection.

4.   unXis, Inc. ("unXis") has been identified as the purchaser of the Debtors' assets. It appears that no auction is contemplated. If UnXis, Inc. is the eventual purchaser, and Oracle obtains the other information needed to allow it to consent to the proposed transfer, such as proper identification of the contracts and payment of the resultant cure amount, Oracle also, pre-assignment would need confirmation of unXis' willingness to execute an Oracle Assignment Agreement.

5.   For these reasons, Oracle requests that the Court deny, at this time, the Debtors' request for an order authorizing assumption and assignment of any Oracle executory agreement in the absence of Oracle's consent.

II.   ARGUMENT

A.   The Debtors May Not Assume And Assign Any Oracle Agreement(s), As They Pertain To Licenses Of Intellectual Property And Oracle Does Not Consent To The Proposed Assignments At This Time

6.   Section 365(c)(1) of the Bankruptcy Code provides, in relevant part:

> The trustee may not assume or assign any executory contract … of the debtor … if (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor …, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (B) such party does not consent to such assumption or assignment.

7.   Federal law makes non-exclusive patent licenses non-assignable absent consent of the licensor. *In re* Catapult Entertainment, Inc., 165 F.3d 747 (9th Cir. 1999), *cert. dismissed,* 528 U.S. 924 (1999). *See also, In re* ANC Rental Corporation, Inc., 277 B.R. 226, 235 (Bankr.

D. Del. 2002); *In re* Golden Books Family Entertainment, Inc., 269 B.R. 311, 316 (Bankr. D. Del. 2001). As license agreements involve the licensing of non-exclusive, patented software, and Oracle does not consent to the assignment, the license agreement(s) is non-assignable. Accordingly, the assumption and assignment should be denied with respect to the Oracle agreement(s).

B.   The Sale Motion Should Be Denied With Respect to the Oracle Agreement(s) Because the Cure Notice Fails to Provide for Payment of Appropriate Amounts Required Prior to Any Assignment

8.   Because the Debtors have not identified the contracts sought to be assumed/assigned with certainty, Oracle is unable to determine the cure amount owed. The Debtors cannot assign the license agreement until all arrearages are tendered, which is a precondition to Oracle's consent to the proposed assignment. For this additional reason, Oracle withholds its consent to any assignment of the Oracle agreement(s). *See* 11 U.S.C. § 365(b)(1)(A).

9.   Absent payment of the appropriate amounts to Oracle, the Oracle agreement(s) may not be assumed, assumed and assigned or otherwise transferred. Oracle reserves its right to object to the cure until more certainty on the contract or contracts at issue is provided.

III.   CONCLUSION

10.   The Debtors are prohibited from assuming and assigning any Oracle contract in the absence of obtaining Oracle's consent, pursuant to § 365(c) and applicable case law. Such consent cannot be given because of the open issues presented by the Cure Notice. The Debtors have failed to comply with the statutory prerequisites for assumption and assignment of the Oracle agreements by, among other things, failing to identify with certainty all of the contracts at issue so as to permit an evaluation of the accuracy of the resultant cure payment.

11. For these reasons, and all those set forth above, Oracle respectfully requests that the Court deny, at this time, the Debtors' effort to seek assumption and assignment of any Oracle agreement(s).

Dated: July 20, 2009
   Wilmington, Delaware

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