IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

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

Hearing: July 27, 2009 at 9:00 a.m. (prevailing Eastern time)
Objection Deadline: July 20, 2009 at 2:30 p.m. (prevailing Eastern time)

DEBTORS' MOTION FOR AUTHORITY TO SELL PROPERTY OUTSIDE THE ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF INTERESTS AND FOR APPROVAL OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONJUNCTION WITH SALE

The above-referenced debtors in possession (collectively, the "**Debtors**"), by undersigned counsel, pursuant to 11 U.S.C. §§ 105(a), 363(b) and (f), and 365, and Rules 2002(a)(2), 6004(a), (b), (e), (c), (f) and (h), 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure, seek an order:

(a) Authorizing the Debtors to sell certain described assets (the "**Purchased Assets**"[2]); outside the ordinary course of business and free of interests to unXis, Inc. (the "**Purchaser**"), pursuant to the terms of a Purchase and Sale Agreement, a true copy of which (without voluminous schedules and exhibits) is attached hereto as **Exhibit A** (the **"Sale"**);

(b) approving the Debtors' assumption and assignment of certain described executory contracts and unexpired leases (**"Assumed** Executory **Contracts"**) in connection with the Sale; and

(c) granting such other and further relief as the Court deems appropriate.

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[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.

[2] All capitalized terms not defined herein shall have the meanings ascribed to them in the Purchase and Sale Agreement (Asset Sale Pursuant to 11 U.S.C. Section 363) (the "**Purchase and Sale Agreement**") attached hereto as **Exhibit A** and incorporated herein.

I. RELEVANT BACKGROUND[3]

1. The Debtors seek authority to sell the Purchased Assets outside the ordinary course of business and free and clear of all liens, claims, interests and encumbrances, with the exceptions of the Assumed Liabilities and Permitted Encumbrances as detailed in the Purchase and Sale Agreement, in order to maximize the value thereof and preserve value for the benefit of the estates.

2. The Debtors' goal has been to preserve their businesses and the marketability and value of their assets for the benefit of creditors and equity holders. With that goal in mind, and as amply supported by the testimony received in Court at the hearing on June 15, 2009, and otherwise, the Debtors have worked diligently nearly non-stop since these cases were commenced to find and negotiate a transaction to sell the Purchased Assets.

3. Specifically, among many other such efforts with other interested parties, the Debtors spent many weeks trying to conclude a transaction with York Capital Management in late 2007 and early 2008. Thereafter, in February, 2008, the Debtors filed a plan based largely around a sale of some of its assets to Steve Norris Capital Partners. These previous efforts foundered on the uncertainty of the Debtors' right to transfer certain rights and intellectual property necessary for a purchaser to successfully operate its business plan surrounding UNIX.

4. As generally testified by the Debtors' Chief Executive Officer, Darl C. McBride, on June 15, 2009, negotiations with respect to a sale of the UNIX assets became somewhat less complex upon the receipt of a ruling by the United States District Court for the District of Utah

[3] For greater detail regarding the background of the Debtors' business and events leading up to the filing of these cases, the Debtors refer the Court and parties to the *Declaration of Darl C. McBride, Chief Executive Officer of the Debtors, in Support of First Day Motions* (Docket No. 3) filed on the Petition Date and incorporated herein.

on June 16, 2008 (the **"Final Judgment"**), that clarified the Debtors' title to the UNIX intellectual property in the following ways:

A. The Final Judgment confirmed that SCO owns the UNIX business, and that, although Novell retained older UNIX copyrights, SCO did obtain other "ownership" rights and, therefore had the right to release claims relating to those ownership rights.

B. The Final Judgment confirmed that Novell never owned or had any license to OpenServer.

C. The Final Judgment confirmed that SCO had the right to conduct its SCOsource licensing business without payment to Novell.

D. The Final Judgment confirmed that Novell had no right to claim any UnixWare royalties after December 2002 and that the requirements for that royalty obligation were never met.

5. In summary, the Purchase and Sale Agreement provides that the Purchaser will buy and the Debtors will sell generally, the Debtors' UNIX business and many of its subsidiary companies, and certain of their Mobility products. The Debtors will retain certain Mobility applications, their cash, their accounts receivable, and their litigation and related claims against International Business Machines Corporation, Novell, Inc., AutoZone Corporation, Red Hat and certain Linux users which are not material customers of unXis (excluding certain large-scale users of Linux servers) that are claimed to have infringed against UNIX copyrights. The foregoing was an extremely broad generalization; readers are directed to the actual Purchase and Sale Agreement for much more precise detail, and ultimately to the Schedules and Exhibits to the Purchase and Sale Agreement which will be made available at this website: http://www.sco.com/company/legal/unxisagreement. In return for those assets, the Purchaser will pay the Debtors $2.4 million, made up of the $250,000.00 on deposit in the Trust Account of Berger Singerman, P.A., plus $2,150,000.00 payable by delivery of a letter of credit at the

closing of the transaction (the "**Closing**"). In addition, the Purchaser will post a letter of credit for the benefit of Novell, Inc., which shall be used, if necessary, to contribute to the full payment of the judgment against the Debtor, The SCO Group, Inc., held by Novell, Inc., arising from litigation still pending in the United States District Court for the District of Utah, and on appeal. Should that judgment be set aside by the United States Court of Appeals for the Tenth Circuit, the letter of credit shall be extinguished, and none of such funds will be available to the Debtors. Also, the Purchaser will assume certain identified Assumed Liabilities.

II. RELIEF REQUESTED

6. By this Motion, the Debtors request entry of an order, in the form attached hereto as **Exhibit B** authorizing the Sale to the Purchaser pursuant to the terms of the Purchase and Sale Agreement (the "**Sale Order**") and the approval of the Debtors' assumption and assignment of the Assumed Contracts.

A. The Purchase and Sale Agreement

7. The proposed Purchase and Sale Agreement in the form of **Exhibit A** provides for the Sale of the Purchased Assets, with pertinent terms[4] including:

Purchased Assets: Section 2.2	"Purchased Assets" described in Section 2.2 of the Purchase and Sale Agreement including, but not limited to: (A) All Equity Interests and other interests of the SCO Group in each of the Purchased Subsidiaries; (B) All Assumed Executory Contracts; (C) All Products of the Sellers except certain mobility and personal productivity Products; and (D) All technology and intellectual property used by Sellers in the business (except as noted below). (E) See Section 2.2 of the Purchase and Sale Agreement for additional items that are included in the definition of

[4] The terms set forth herein are summary in nature only. All interested persons are respectfully directed to the Purchase and Sale Agreement attached hereto as **Exhibit A** for a complete recitation of all of the terms and conditions of the sale of the Purchased Assets to the Purchaser.

	Purchased Assets.
Excluded Assets Section 2.3 and Exhibit D.	United States Patent No. 6,931,544, "Method and Apparatus for Executing Multiple Java™ Application on a Single Java™ Virtual Machine," issued August 16, 2005, and all foreign counterparts thereof, and all extensions, reissues, and reexaminations thereof (collectively, the "Java Patent"), with certain limitations set forth in Section 2.3 of the APA, and Pending SCO Litigation Claims as defined in the Purchase and Sale Agreement. See Section 2.3 and Exhibit D of the Purchase and Sale Agreement for additional items (including cash and accounts receivable) that are included in the definition of Excluded Assets. Certain mobility and personal productivity Products.
Retained SCO Rights Article XII	SCO Group retains its claims in pending litigation against Novell, IBM, AutoZone and Red Hat, and the rights in copyrights and contracts claimed by the SCO Group in the Novell litigation that are finally determined in the pending Novell litigation to belong to the SCO Group, for the purposes of continuing the pending litigation and also asserting claims against third parties on the grounds that the Linux operating system and Linux-based products infringe those rights. The Purchaser and its present and future material customers (excluding certain large-scale users of Linux servers) are protected against and released from such claims by SCO Group. These rights become vested in the Purchaser upon the occurrence of certain events, and in any event at the end of 10 years.
Assumed Liabilities Section 2.4; Schedule 2.4(a)	"Assumed Liabilities" described in Section 2.4 and Schedule 2.4(a) of the Purchase and Sale Agreement as follows: (A) All Liabilities related to the Purchased Assets, to the extent such Liabilities are expressly set forth in Schedule 2.4(a); and (B) All executory obligations under the Assumed Executory Contracts first arising after the Closing.
Excluded Liabilities Section 2.5	"Excluded Liabilities" described in Section 2.5 of the Purchase and Sale Agreement including, but not limited to: (A) Any Liabilities arising out of or related to Excluded Assets, including Liabilities first arising or accruing prior to Closing under Assumed Executory Contracts; and

	(B) Any Contracts of the Subsidiaries and all Liabilities arising thereunder, other than Assumed Executory contracts and related Liabilities as set forth in Section 2.4(b).
Purchase Price: Section 3.1-3.3	The aggregate purchase price for the Purchased Assets is up to (i) $5,400,000.00 payable by delivery of: (a) the Cash Deposit; (b) the Letter of Credit-Balance; and (c) the Letter of Credit-Sun, and (ii) assumption of the Assumed Liabilities. See Sections 3.1-3.3 of the Purchase and Sale Agreement for details of the Purchase Price.
Cash Deposit: Section 3.1, 3.2 and 4.6(c)	$250,000.00 (in the possession of the Escrow Agent). The Cash Deposit will be forfeited to the Sellers if the Purchase and Sale Agreement is terminated by the Sellers due to a breach by the Purchaser pursuant to section 4.4(f) of the Agreement.
Private Sale: Purchase and Sale Agreement Generally; Section 7.2(d)	This is a private sale; no auction is contemplated. However, if the Court determines that an auction is necessary, or if the Court accepts a higher or otherwise better bid at the Sale Hearing, the Purchase and Sale Agreement includes certain stalking horse protections for the Purchaser, including a break-up fee in an amount equal to 4% of the Purchase Price.
Agreements with Management: Section 4.2(g) and 4.2(h); Exhibit E	One condition of closing is an employment agreement, in a form satisfactory to the Purchaser, regarding certain persons identified in Exhibit E. Another condition of closing is a non-compete agreement with the CEO of the SCO Group.
Non-Compete: Section 8.9	An agreement by the Sellers not to engage in a competitive business for a period of 5 years (3 years in the UK) after the Closing Date in the U.S., Canada, Fran, Germany, India, Japan, the UK, and all of the countries in which the Sellers have provided products and services through distributors or resellers (except as otherwise provided for in Article XII of the Purchase and Sale Agreement).
Closing Deadline: Section 1.1	The closing deadline is set forth in the definition of "Termination Date" in section 1.1.
Use of Proceeds: Section 3.3	As contemplated by the Letter of Credit-Sun, some portion of the Purchase Price, based on terms and conditions set forth in subsection 3.3(a)-(c), will be paid to Novell, Inc.
Record Retention: Section 2.2(j)	The Sellers have the right to retain copies of Books and Records that are included in the Purchased Assets.
Successor Liability: Section 1.1	Subsection (viii) of the defined term Sale Order contemplates that that Order determine that the Purchaser is not a successor to the Sellers or otherwise liable for any of the Excluded Liabilities and permanently enjoining each and every holder of

	any of the Excluded Liabilities from commencing, continuing or otherwise pursuing or enforcing any Action or Encumbrances against Purchaser or the Purchased Assets related thereto.
Sale Free and Clear of Liens: Section 1.1	Subsection (ii) of the defined term Sale Order contemplates that that Order approving the Sale of the Purchased Assets to Purchaser be free and clear of all Encumbrances (other than Permitted Encumbrances) whatsoever under Section 363 of the Bankruptcy Code and any other applicable sections of the Bankruptcy Code on the terms and conditions set forth in the Purchase and Sale Agreement including, specifically and without limitation, the release and covenant in Section 12.3, and authorizing Sellers to proceed with the transaction.
Relief from Bankruptcy Rule 6004(h): Section 1.1	Subsection (iii) of the defined term Assumption and Assignment Order contemplates that that Order provide, in part, that the provisions of Bankruptcy Rule 6004(h) will not apply and that there would be no stay of execution under Rule 62(a) of the Federal Rules of Civil Procedure.

B. The Sale Hearing

8. The hearing to consider authorizing the proposed sale of the Purchased Assets as contemplated by the Purchase and Sale Agreement and to approve the assumption and assignment of Assumed Contracts incident to the Sale will be held on July 27, 2009.

III. AUTHORITY FOR RELIEF

C. Sales Pursuant to 11 U.S.C. § 363(b) and Bankruptcy Rule 6004(f)

9. Sales of assets outside the ordinary course of business are governed by section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004(f). Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part that, "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a sound business justification for such action. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983);

In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval under section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith and supported by a good business reason).

10. The business judgment rule is a "policy of judicial restraint born of the recognition that directors are, in most cases, more qualified to make business decisions than are judges." *International Ins. Co. v. Johns*, 874 F.2d 1447. 1458 n.20 (11th Cir. 1989). In that regard, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *See Committee of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted). When a valid business justification exists, the law vests the debtor's decision to use property out of the ordinary course of business with a strong presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted).

11. Lastly, as noted in *In re Trans World Airlines, Inc.*, 2001 WL 1820326, *4 (Bankr. D. Del. April 2, 2001), "a § 363(b) sale transaction does not require an auction procedure." *Accord* Fed. R. Bankr. P. 6004(f)(1) (providing for "Public ***or*** Private Sale.") (Emphasis Added); *Ramsay v. Vogel*, 970 F.2d 471, 473 (8th Cir. 1992) ("Under Bankruptcy Rule 6004(f)(1) such a sale may be "by private sale or by public auction."); Local Rule 6004-1(b)(iv)(D) (requiring, in part, that sales motions disclose whether an auction is contemplated). The Court also noted that

"[t]he auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction." *Id.*

12. For the reasons explained herein, the decision by the Debtors to enter into the Purchase and Sale Agreement with the Purchaser is one that is well within the scope of their business judgment, and the sale can and shall proceed without an auction. In any event an auction is not practicable here primarily because the Debtors cannot afford having an investment banker run the process, there is simply no time left to do so in light of the July 27, 2009 hearing date, and this Court directed at the June 15, 2009 hearing that there would be no auction but, instead, that the Court would rule on or shortly after the July 27th hearing whether to authorize this sale. . Regardless, the purpose of an auction, to produce "an arm's length fair value transaction," *id.*, has in fact been met in this case by the significant prior sale efforts made by the Debtors as referenced herein.

D. Assumption And Assignment of Executory Contracts and Unexpired Leases

13. The assumption and assignment of the Assumed Contracts is an integral part of the proposed sale and should be approved by the Court. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. §365(a). By enacting section 365(a) of the Bankruptcy Code, Congress intended to allow a debtor in possession to assume those leases/contracts that benefit the estate, and to reject those that are of no value or are burdensome to the estate. *See Cinicloa v. Scharffenberger*, 248 F.3d 110, 119 (3d Cir. 2001); *Leland v. Gardinier, Inc. (In re Gardinier, Inc.)*, 831 F.2d 974, 976 n.2 (11th Cir. 1987); *In re Whitcomb & Keller Mortgage Co., Inc.*, 715 F.2d 375, 379 (7th Cir. 1983).

14. It is well established that decisions to assume or reject executory contracts or unexpired leases are matters within the "business judgment" of the debtor. *See Gardinier,* 831 F.2d at 976 n.2; *In re G. Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (noting that "[i]n determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of discretion, the debtor's business judgment will not be altered") (citations omitted); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Sharon Steel Corp. v. National Fuel Gas Dist Corp.*, 872 F.2d 36, 40 (3d Cir. 1989). Accordingly, courts approve the assumption or rejection of an executory contract or unexpired lease unless evidence is presented that the debtor's decision to assume or reject was "so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *In re Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985).

15. Adequate business justification exists to merit judicial approval of the proposed assumption and assignment of the Assumed Contracts. The Assumed Contracts are valuable assets of the Debtors' estates and represent an integral part of the proposed sale of the Purchased Assets. To the extent that the Debtors can assign them as part of the sale, the sale will generate cash which the estate can use to satisfy claims and avoid or reduce potential claims against the estate.

16. Section 365 of the Bankruptcy Code authorizes a debtor to assume and assign an executory contract if the debtor:

> (A) cures, or provides adequate assurance that [it] will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations

> under an expired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease. . . .
>
> (f)(2) The trustee may assign an executory contract or unexpired lease of the debtor only if—
>
> (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
>
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

See 11 U.S.C. §§ 365(a), (b)(1), (f)(2). Accordingly, section 365 of the Bankruptcy Code authorizes the proposed assumptions and assignments of executory contracts and unexpired leases, provided that the defaults under such contracts are cured and adequate assurance of future performance is provided.

17. It is well settled that the meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but that a contract counterparty is not required to receive an absolute guarantee of future performance. *See, e.g., In re Glycogensys, Inc.*, 352 B.R. 568, 578 (Bankr. D. Mass. 2006) ("[I]t is appropriate to evaluate the financial condition of the assignee and the likelihood that the non-debtor party will receive the benefit of

its bargain from the assignee"); *Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D. N.J. 1989) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (same). The Debtors will provide all parties to executory contracts and unexpired leases to be assumed and assigned pursuant to this Motion with an opportunity to be heard, and in connection with the Sale Hearing, the Debtors will provide evidence that all requirements for the assumption and assignment of the Assumed Contracts to be assigned to the Purchaser will be satisfied. Thus, the Debtors respectfully submit that, by the conclusion of the Sale Hearing, assumption and assignment of the Assumed Contracts should be approved.

E. Procedures Regarding Cure Amounts

18. To facilitate the sale and the assumption and assignment of the Assumed Contracts, the Debtors propose to serve a notice of assumption and assignment and of the proposed cure amounts relating to such Assumed Contracts in the form annexed hereto as **Exhibit C** (the "**Assumption Notice**") no later than 15 days prior to the Sale Hearing and request that the Court approve the following procedure for fixing any cure amounts owed on all Assumed Contracts.

19. The Debtors will attach to the Assumption Notice their calculation of the undisputed cure amounts that the Debtors believe must be paid to cure all prepetition defaults under all Assumed Contracts (the "**Cure Amount**"). The Debtors request that if a non-debtor party to any Assumed Contract disputes the Cure Amount or objects to the assumption and/or assignment of an Assumed Contracts that such party be required to file an objection (the "**Cure Objection**") on or before 4:00 p.m. (prevailing Eastern Time) five calendar days prior to the Sale Hearing (the "**Cure Objection Deadline**") and serve a copy of the Cure Amount Objection so as to be

received no later than 4:00 p.m. (prevailing Eastern Time) on the same day, upon (a) the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801; (b) counsel for the Debtors: Berger Singerman, P.A., Attn.: Arthur J. Spector, Esq., 350 East Las Olas Blvd., 10th Floor, Ft. Lauderdale, Florida 33301; (c) the Debtors: c/o Mr. Ryan Tibbitts, General Counsel, The SCO Group, Inc., 355 South 250 West, Lindon, Utah 84042; and (d) counsel for the Purchaser: Leslie Allen Bayles, Esq., Bryan Cave LLP, 161 North Clark Street, Suite 4300, Chicago, Illinois 60601.

20. If any such party fails to timely file and serve a Cure Amount Objection by the Cure Objection Deadline, such party shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Assumed Contracts and the Debtors shall be entitled to rely solely upon the Cure Amount; and (ii) be deemed to have consented to the assumption and assignment of such Assumed Contracts and shall be forever barred and estopped from asserting or claiming against the Debtors, the Purchaser (or a higher and better bidder at the Sale Hearing as determined by the Court) or any other assignee of the relevant Assumed Contracts that any additional amounts are due or defaults exist, or conditions to assumption and assignment must be satisfied under such Assumed Contracts.

21. If a Cure Amount Objection is timely filed, the Cure Amount Objection must set forth (i) the basis for the objection, and (ii) the amount the party asserts as the Cure Amount. After receipt of the Cure Amount Objection, the Debtors will attempt to reconcile any differences in the Cure Amount believed by the non-debtor party to exist. In the event, however, that the Debtors and the non-debtor party are unable to consensually resolve the Cure Amount Objection, the Debtors will segregate any disputed Cure Amount pending the resolution of any such disputes by this Court or mutual agreement of the parties.

22. Based on the foregoing, the Debtors respectfully request that the Bankruptcy Court approve the assumption and assignment of the Assumed Contracts.

F. The Proposed Notice of the Sale Hearing Is Appropriate

23. The Debtors have marketed these assets (and others) diligently for most of the previous 21 months and the marketplace has spoken. The Debtors believe that the transaction contemplated by the Purchase and Sale Agreement is the highest and best offer for the sale of the Purchased Assets available. The Debtors believe that the consideration offered by the Purchaser is the highest that the Debtors can reasonably attain at this point in time, given the damage that has occurred to UNIX over nearly the last decade. But of additional importance to the Debtors, it is the Debtors' belief that the Purchaser is the best party to whom to entrust the stewardship of the Debtors' UNIX business, and that the interests of the Debtors' employees, resellers and customers will be best served with the Purchaser in control of the UNIX business. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Purchased Assets, including a disclosure of the deadline for filing any objections to the sale and the time and place of the hearing to consider the sale and any objections thereto. The Debtors request that the notice of the Sale Hearing, and the deadline to file objections to the Sale, be deemed adequate if:

(a) Within three business days after the filing of this Motion, the Debtors, or their agent, serve by first class mail, postage prepaid, copies of this Motion and all exhibits thereto, including the Purchase and Sale Agreement (without Schedules and Exhibits), which documents include the date, time and place of the Sale Hearing, and the time fixed for filing of objections to the proposed sale, upon the following entities (collectively, the "**Notice Parties**"):

i. the United States trustee;

ii. all creditors entitled to receive notice pursuant to Bankruptcy Rule 2002;

iii. all taxing authorities who have filed claims or are listed in the Debtors' schedules;

iv. all parties that have requested special notice pursuant to Bankruptcy Rule 2002; and

v. all persons or entities known to the Debtors that have asserted an interest in, all or any portion of the Purchased Assets, including entities that previously pursued a transaction with the Debtors for these assets.

24. Prior to the Sale Hearing, the Debtors or their agent will file an affidavit of service of this Motion.

25. The Debtors submit that the notice procedures herein comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the sale by auction to the Debtors' creditors and other parties-in-interest, as well as those entities that previously expressed an interest to the Debtors in, purchasing the Purchased Assets.

IV. RELIEF UNDER BANKRUPTCY RULE 6004(h) IS APPROPRIATE

26. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property ... is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The Debtors request that any order authorizing them to sell the Purchased Assets pursuant to the Purchase and Sale Agreement be effective immediately by providing that the 10-day stay under Bankruptcy Rule 6004(h) will not apply.

27. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed, R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the 10-day stay period, *Collier on Bankruptcy* suggests that the 10-day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the

procedure." 10 COLLIER ON BANKRUPTCY, ¶ 6004.10 (15th rev. ed. 2006). *Collier* further suggests that if an objection is overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to seek a stay, unless the court determines that the need to proceed sooner outweighs the interests of the objecting party. *Id.*

28. The Debtors request that the Court rule that the 10-day stay period under Bankruptcy Rule 6004(h) not be implemented or, in the alternative, if an objection to the sale is filed, reduce the stay period to the minimum amount of time needed by the objecting party to seek a stay pending appeal.

V. NOTICE

29. Notice of this Motion has been or will be given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) the creditors holding the 20 largest unsecured claims against the Debtors' estates (on a consolidated basis); (iii) all creditors of the Debtors; (iv) those entities that previously expressed to the Debtors an interest in pursuing a transaction for the purchase of the Purchased Assets; and (v) any party that has filed a request for notices with this Court prior to the date of this Motion. The Debtors submit that, in light of the nature of the relief requested, and the July 27, 2009 Sale Hearing Date, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request entry of an order in the form attached hereto granting the relief requested herein, as well as granting any other and further relief the Court deems just and proper.

Dated: June 22, 2009

PACHULSKI STANG ZIEHL & JONES LLP

#5263

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