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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff and Counterclaim-
Defendant,

v.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-
Plaintiff.

**NOVELL'S RESPONSE TO SCO'S
OBJECTIONS TO BILL OF COSTS**

Case No. 2:04CV00139

Judge Dale A. Kimball

SCO objects to four categories of deposition-related costs. SCO does not contest Novell's other requests for costs and, critically, does not contest that each of the depositions for which Novell seeks to recover costs were "reasonably necessary to the litigation of the case."

1. Room Rental Fees. SCO challenges \$7,592.11 in room rental fees for 8 depositions. Morrison & Foerster will withdraw its request for the conference room charges reflected on Tabs 51, 52, and 62, totaling \$2,522.74. Each of the remaining depositions took place in a location in which neither Morrison & Foerster nor Anderson & Karrenberg has an office. In such circumstances, courts regularly tax the costs of room rental for out-of-town counsel. *See, e.g., Jarvis v. Ford Motor Co.*, No. 92 Civ. 2900 (NRB), 2003 U.S. Dist. LEXIS 4406, *1-*2 (S.D.N.Y. Mar. 21, 2003) (Ex. 1); *Menasha Corp. v. News Am. Marketing In-Store, Inc.*, No. 00 C 1895, 2003 U.S. Dist. LEXIS 13405, *6-*7 (N.D. Ill. July 31, 2003) (Ex. 2).

2. Video Fees. SCO challenges \$20,201.00 in costs incurred in videotaping certain depositions — in particular, costs necessarily incurred in syncing the recorded video to the written transcript. SCO does not challenge the necessity of those depositions, nor even the necessity of videotaping depositions for potential (and in some cases actual) use at trial. SCO simply makes a bald characterization that videotaping depositions was done for "convenience of counsel" and is therefore unrecoverable. The only case SCO cites, *In re Williams Secs. Litig.*, No. 08-5100, 2009 U.S. App. LEXIS 5279 (10th Cir. Mar. 3, 2009), actually affirms a \$600,000 award of costs in its entirety. Moreover, the underlying order that *Williams Secs. Litig.* affirmed awarded substantial deposition videotaping costs. *In re Williams Secs. Litig.*, No. 02-CV-72-SPF-FHM (N.D. Okla. June 10, 2008) (Ex. 3 at 18). That is consistent with Tenth Circuit practice. *See, e.g., Tilton v. Capital Cities/ABC, Inc.*, 115 F.3d 1471, 1478 (10th Cir. 1997) (affirming taxation of "costs of both the preparation and transcription of the . . . videotaped depositions").

3. Other Deposition Costs. SCO challenges \$20,343.74 in miscellaneous costs incurred with various depositions. Again, SCO does not challenge the necessity of the underlying depositions. These costs, the bulk of which were for rough copies or other expedition of transcripts, were necessarily incurred given the nature of this case. This was complex, high-stakes litigation. Deposition discovery occurred at a fast pace, with multiple depositions occurring in some weeks and it was therefore often necessary to obtain transcripts on an expedited basis.

4. Deposition Costs Concerning IBM Litigation. SCO challenges \$2,450.29 in costs incurred in obtaining transcripts from related litigation. As above, SCO does not challenge the necessity of these depositions; it says nothing about their importance. Instead, SCO appears to argue for a blanket rule that because the deposition was noticed in a different case, its costs cannot be recovered. SCO cites no authority for such a rule. SCO ignores that both parties often relied on transcripts from *SCO v. IBM* in this matter. (*See, e.g.*, 1/17/07 SCO's Mem. in Opp. to Novell's Mot. for Partial Summ. J. on 4th Claim, PACER No. 213, at 57; 1/17/07 Decl. of Brent O. Hatch, PACER No. 215, Exs. 61 & 62.)

For these reasons, SCO's challenges to Novell's request for costs should be rejected.

DATED: April 3, 2009

ANDERSON & KARRENBERG

By: /s/ Heather M. Sneddon

Thomas R. Karrenberg
Heather M. Sneddon

-and-

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April, 2009, I caused a true and correct copy of the foregoing **NOVELL'S RESPONSE TO SCO'S OBJECTIONS TO BILL OF COSTS** to be served to the following:

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