

Brent O. Hatch (5715)
Mark F. James (5295)
HATCH, JAMES & DODGE, PC
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Stephen N. Zack (admitted Pro Hac Vice)
BOIES SCHILLER & FLEXNER LLP
Bank of America Tower, suite 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

David Boies (admitted pro hac vice)
Robert Silver (admitted pro hac vice)
Edward Normand (admitted pro hac vice)
BOIES SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Stuart Singer (admitted pro hac vice)
BOIES SCHILLER & FLEXNER LLP
401 East Las Olas Blvd.
Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

Devan V. Padmanabhan (admitted pro hac vice)
DORSEY & WHITNEY LLP
50 south Sixth Street, Suite 1500
Minneapolis, Minnesota 55402
Telephone: (612) 340-2600
Facsimile: (612) 340-2868

Attorneys for Plaintiff, The SCO Group, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC., a Delaware corporation,</p> <p style="text-align: center;">Plaintiff/Counterclaim-Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation,</p> <p style="text-align: center;">Defendant/Counterclaim-Plaintiff.</p>	<p>SCO'S OBJECTIONS TO NOVELL'S BILL OF COSTS</p> <p>Civil No. 2:04 CV-00139 Judge Dale A. Kimball Magistrate Brooke C. Wells</p>
---	--

Plaintiff/Counterclaim-Defendant, The SCO Group, Inc. (“SCO”), respectfully submits its Objections to Novell’s Bill of Costs.

“[T]he burden is on the prevailing parties to establish the amount of compensable costs and expenses to which they are entitled. Prevailing parties necessarily assume the risks inherent in a failure to meet that burden.” English v. Colo. Dep’t of Corrections, 248 F.3d 1002, 1013 (10th Cir. 2001); Griffith v. Mt. Carmel Med. Ctr., 157 F.R.D. 499, 502 (D. Kan. 1994).

Expenses not specifically authorized by 28 U.S.C. § 1920 are not recoverable as costs. Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441-42 (1987); Bee v. Greaves, 910 F.2d 686, 690 (10th Cir. 1990); Perry v. Taser Int’l Corp., Civil No. 07-cv-00901-REB-MJW, 2008 WL 4829850, at *1 (D. Colo. Nov. 4, 2008) (Ex. A). “The Court has the discretion to award those costs specifically enumerated in section 1920, and may not tax as costs any items not included in the statute.” Davis v. Sailormen, Inc., No. 6:05-cv-1497-Orl-22JGG, 2007 WL 1752465, at *1 (M.D. Fla. June 15, 2007) (Ex. B).

Section 1920(2) provides for taxation of fees for “printed or electronically recorded transcripts necessarily obtained for use in the case.” 28 U.S.C. § 1920(2). This section authorizes “recovery of costs with respect to all depositions reasonably necessary to the litigation of the case.” Mitchell v. City of Moore, Okla., 218 F.3d 1190, 1204 (10th Cir. 2000).

SCO objects to \$50,586.14 for the following categories of deposition costs in Novell’s Bill of Costs, as these costs are not taxable under the statute.

1. Room Rental Fees. Novell seeks \$7,592.11 in costs for the rental of deposition rooms. (Ex. 1.) These costs are not taxable under the statute. See, e.g., Boyer v. Cline, No. 85-1562-C, 1989 WL 89935, at *4 (D. Kan. July 19, 1989) (disallowing “the cost of the conference

room used to take depositions, as this item of cost is not specifically allowed under § 1920”) (Ex. C).

2. Video Synchronization Fees. In addition to reporting costs, Novell seeks \$20,201.00 in video synchronization fees. (Ex. 2.) Novell does not even attempt to show that these costs are taxable under the statute. Section 1920 “does not allow a prevailing party to recover costs for materials that merely added to the convenience of counsel or the district court.” In re Williams Secs. Litig.-WCG Subclass, No. 08-5100, 2009 WL 514097, at *3 (10th Cir. March 3, 2009) (Ex. D).

3. Other Convenience Costs. In addition to reporting costs, Novell also seeks \$20,343.74 for “Interactive Realtime,” “Expedited Delivery,” “Rough” or “Ascii” transcripts, “Condensed Transcripts,” and other convenience costs. (Ex. 3.) Novell does not even attempt to show that these costs are taxable under the statute. Such convenience costs are disallowed. In Williams Secs., 2009 WL 514097, at *3 (Ex. D); Sailormen, 2007 WL 1752465, at *4 (costs for expedited transcripts not taxable under similar circumstances) (Ex. B).

4. Depositions from the IBM Litigation. Novell seeks \$2,450.29 for costs related to the depositions of Ed Chatlos and Jack Messman in the IBM Litigation. (Ex. 4.) These costs were not “necessarily obtained” or “reasonably necessary” because SCO produced the transcript of the Chatlos deposition to Novell in discovery (see Ex. 6.) and Novell could have obtained the transcript of the Messman deposition from its co-defendant IBM or from SCO, without incurring these costs. In addition, even if Novell were entitled to costs for the transcripts, Novell also seeks \$689.00 for the rough transcript of the Chatlos deposition and \$437.89 for the videotape of the Messman deposition. (Ex. 4.) The cost of the rough transcript is disallowed as a

convenience cost, and the cost of either the Messman transcript or videotape is disallowed because Novell has not shown that it reasonably needed both.¹

Wherefore, for the reasons set forth above, SCO objects to \$50,586.14 of the costs Novell claims in its Bill of Costs, and asks the Court to strike that amount from the Bill. (Ex. 5.)

DATED this 27th day of March, 2009.

HATCH, JAMES & DODGE, P.C.
Brent O. Hatch
Mark F. James

BOIES, SCHILLER & FLEXNER LLP
David Boies
Robert Silver
Stuart H. Singer
Edward Normand

DORSEY & WHITNEY LLP
Devan V. Padmanabhan

By: /s/ Edward Normand

¹ The transcript of a videotaped deposition can be taxed only if the transcript “had a legitimate use independent from or in addition to the videotape which would justify its inclusion in an award of costs.” Tilton v. Capital Cities/ABC, Inc., 115 F.3d 1471, 1478 (10th Cir. 1997). Conversely, “only the cost of the stenographic transcript is taxable, unless the witness also testified at trial.” Karsian v. Inter-Regional Fin. Group, Inc., 13 F. Supp. 2d 1085, 1088 (D. Colo. 1998) (“Pursuant to the test set out above, Defendants will be taxed for the stenographic transcription but not for the videographing of the [relevant] depositions.”)

CERTIFICATE OF SERVICE

Plaintiff/Counterclaim-Defendant, The SCO Group, Inc., hereby certifies that on this 27th day of March, 2009, a true and correct copy of the foregoing SCO Objections to Novell's Bill of Costs was electronically filed with the Clerk of Court and delivered by CM/ECF to:

Thomas R. Karrenberg
John P. Mullen
Heather M. Sneddon
ANDERSON & KARRENBERG
700 Bank One Tower
50 West Broadway
Salt Lake City, UT 84101

Michael A. Jacobs
Matthew I. Kreeger
MORRISON & FOERSTER
425 Market Street
San Francisco, CA 94105-2482

By: /s/ Edward Normand