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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

vs.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-
Plaintiff.

**DECLARATION OF DAVID E.
MELAUGH IN SUPPORT OF
NOVELL'S BILL OF COSTS**

Case No. 2:04CV00139

Judge Dale A. Kimball

I, David E. Melaugh, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and an associate at the law firm of Morrison & Foerster LLP, counsel of record for Defendant and Counterclaim-Plaintiff Novell, Inc. (“Novell”) in this action. I was admitted to practice before this Court *pro hac vice* by this Court’s Order of July 30, 2004. The statements made herein are based on my personal knowledge.

2. On November 20, 2008, the Court entered final judgment. (Docket No. 565.)

3. Novell is a “prevailing party” in this action because it prevailed against every claim asserted by SCO and has prevailed on the bulk of its counterclaims.

4. Under Federal Rule of Civil Procedure 54(d)(1), Novell is presumptively entitled to recover its taxable costs. Fed. R. Civ. P. 54(d)(1) (“[C]osts – other than attorney’s fees – should be allowed to the prevailing party.”).

5. Allowable costs under Federal Rule of Civil Procedure 54(d)(1) are identified in 28 U.S.C. §§ 1821, 1920, 1923, and Local Rule 52-2. Novell moves for the following costs, all of which are allowed by law, are correctly stated, and were actually and necessarily performed or incurred during this litigation:

6. **Fees of the Clerk** in the amount of \$290.00, as further described in Exhibit 1.

These fees are taxable pursuant to 28 U.S.C. §§ 1920(5), 1923 and Local Rule 54-3(a)(1) (“The Clerk’s filing fee is allowable if paid by the claimant.”).

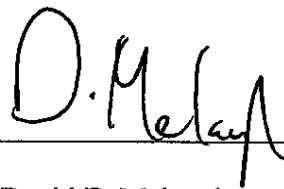
7. **Fees for service of summons and subpoenas** in the amount of \$2,810.50, as further described in Exhibit 2. These fees are taxable pursuant to 28 U.S.C. § 1920(1).

8. **Fees of the court reporter and deposition costs** in the amount of \$124,331.70, as further described in Exhibit 3. Court reporter fees for hearing and trial transcripts are taxable

pursuant to 28 U.S.C. § 1920(2). Recovery of deposition costs is permitted “with respect to all depositions reasonably necessary to the litigation of the case.” *Furr v. AT&T Techs., Inc.*, 824 F.2d 1537, 1550 (10th Cir. 1987) (quotation marks and citation omitted); *see also* 28 U.S.C. §§ 1920(2), (4). The attached deposition costs were reasonably incurred in prosecuting and defending this complex matter. As just one indicator of the complexity of this case, the parties’ motions for summary judgment involved over 1,500 pages of briefing, numerous declarations, and many hundreds of pages of exhibits. As a result of that complexity, all of the deposition fees sought were reasonably necessary “in light of the facts known to the parties at the time the expenses were incurred.” *Mitchell v. City of Moore*, 218 F.3d 1190, 1205 (10th Cir. 2000) (rejecting requirement that transcripts be used in motions or at trial, affirming restoration by district court of deposition costs cut by clerk on that basis).

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 10th day of December, 2008 in San Francisco, California.

A handwritten signature in black ink, appearing to read "D. Melaugh", written over a horizontal line.

David E. Melaugh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December, 2008, I caused a true and correct copy of the **DECLARATION OF DAVID E. MELAUGH IN SUPPORT OF NOVELL'S BILL OF COSTS** to be served to the following:

Via CM/ECF:

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