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

<p>THE SCO GROUP, INC., a Delaware corporation,</p> <p style="text-align: center;">Plaintiff and Counterclaim-Defendant,</p> <p>v.</p> <p>NOVELL, INC., a Delaware corporation,</p> <p style="text-align: center;">Defendant and Counterclaim-Plaintiff.</p>	<p>NOVELL'S OPPOSITION TO SCO'S MOTION TO STAY TAXATION OF COSTS</p> <p>Case No. 2:04CV00139</p> <p>Judge Dale A. Kimball</p>
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Federal Rule of Civil Procedure 54 entitles Novell to its costs. SCO moves to stay taxation of costs. The only reason SCO provides in favor of such a stay is the possibility that things will turn out differently for SCO on appeal. Several courts have held that the hope of an appellate victory is an insufficient reason to overcome the Rule 54 presumption in favor of a timely award of costs. This Court should, accordingly, deny SCO's motion.

In support of its motion to stay taxation, SCO cites only *How v. City of Baxter Springs*, Nos. 04-2256 & 04-2257 JWL, 2006 U.S. Dist. LEXIS 23951 (D. Kan. Apr. 26, 2006) (Ex. A hereto), in which the court, *on an uncontested motion*, stayed costs pending appeal. A subsequent case considering *How* concluded that *How* should be limited to unopposed stay requests. *See Maytag Corp. v. Electrolux Home Prods., Inc.*, No. C 04-4067-MWB, 2006 U.S. Dist. LEXIS 89383 (N.D. Iowa Dec. 11, 2006) (Ex. B hereto). Examining the caselaw on staying costs, the *Maytag* court concluded that “the consensus seems to be that the court must have some valid reason for not awarding costs at the customary stage of the proceedings.” *Id.* at *5; *see also* Fed. R. Civ. P. 54(d) (creating presumption in favor of costs award). In *How*, the “valid reason” was the consensus of the parties, a consensus not present here. In *Maytag*, the offered “valid reason” was the same as SCO offers — the possibility of reversal on appeal. *Id.* at *6. The *Maytag* court explicitly rejected such an argument:

The possibility that the underlying judgment might be reversed, with the result that the award of costs must also be reversed, is simply too speculative to outweigh the benefit of the trial court conducting a review of the bill of costs while the case is still fresh. The marginal difficulties of vacating an award of costs, upon which Maytag also relies, simply do not justify a stay based on the losing party's speculation that it might do better on appeal. Finally, the court notes that far more judicial resources have been expended to resolve the parties' dispute over whether or not to stay the taxation of costs than could possibly have been saved by delaying the taxation of costs to a later date, so that Maytag's judicial economy argument also is not persuasive. Therefore, the court will deny Maytag's motion to stay the taxation of costs.

Id. at *7-8 (internal citation omitted).

Here, there are at least three compelling reasons to deny this motion. First, as the *Maytag* court noted, it makes sense for this Court to review and determine costs while the facts of the case are fresh. *Id.* at *7; *see also Le Moine v. Combined Commc'ns Corp.*, No. 95 C 5881, 1996 U.S. Dist. LEXIS 10838 (N.D. Ill. July 30, 1996) (Ex. C hereto) (expressing preference for review of costs while case fresh). Second, it avoids the possibility of piecemeal appeals, as “[w]ith prompt taxation, any appeal from the award of costs [can] feasibly be consolidated with the pending appeal on the merits, thereby enhancing judicial efficiency.” *Singleton v. Dep’t of Corr. Educ.*, No. 1:03CV00004, 2003 U.S. Dist. LEXIS 17834, *4-5 (W.D. Vir. Oct. 3, 2003) (Ex. D hereto); *see also Holley v. Giles County*, No. 1:03-0071, 2005 U.S. Dist. LEXIS 44372, *6 (M.D. Tenn. Sept. 12, 2005) (Ex. E hereto) (same); *Epcon Gas Sys. v. Bauer Compressors, Inc.*, No. 98-CV-75392, 2001 U.S. Dist. LEXIS 12665 (E.D. Mich. Mar. 26, 2001) (Ex. F hereto) (same). Third, establishing costs is the last step in determining how much SCO owes Novell, which will in turn allow Novell to amend its proof of claim before the Bankruptcy Court to set forth the precise and full amount of its claim. With the December 31, 2008, deadline for SCO to file its plan imminent and, presumably, confirmation proceedings to follow in short order, clarity as to the amount of Novell’s claim will be important in the bankruptcy case, the more so because, if granted, Novell’s costs will not be merely nominal.

DATED: December 31, 2008

ANDERSON & KARRENBURG

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 31st day of December, 2008, I caused a true and correct copy of **NOVELL'S OPPOSITION TO SCO'S MOTION TO STAY TAXATION OF COSTS** to be served to the following:

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