SNELL & WILMER LLP
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
15 West South Temple
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff*
*International Business Machines Corporation*

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

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| THE SCO GROUP, INC.,<br><br>Plaintiff/Counterclaim-Defendant,<br><br>-against-<br><br>INTERNATIONAL BUSINESS MACHINES CORPORATION,<br><br>Defendant/Counterclaim-Plaintiff. | **DECLARATION OF RANSOM LOVE**<br><br>Civil No. 2:03CV-0294 DAK<br><br>Honorable Dale A. Kimball<br><br>Magistrate Judge Brooke C. Wells |

## DECLARATION OF RANSOM LOVE

I, Ransom Love, declare as follows:

1. I co-founded Caldera, Inc. in 1994 as a Linux company and later became CEO when certain Linux divisions became Caldera Systems, Inc in 1998. After I left Caldera in June 2002, it was renamed The SCO Group, Inc. ("SCO"). Presently, I sit on the board of directors of Progeny, Inc. and am employed by the Church of Jesus Christ of Latter-day Saints.

2. Based upon my duties and responsibilities at Caldera, I have personal knowledge of its business. I am knowledgeable regarding the company's Linux products and the licenses, such as the GNU General Public License ("GPL"), under which they were distributed.

3. This declaration is submitted in connection with the lawsuit brought by SCO against IBM, entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). Unless stated otherwise, I make this declaration based upon personal knowledge.

4. In Section I, I provide a brief overview of Linux. Section II describes Novell's involvement with Linux while I was employed there. Section III explains how Caldera began producing a business-oriented Linux distribution. Section IV describes the impact of the GPL on Caldera's business. Section V provides an overview of Caldera's support and promotion of Linux standardization. Section VI describes Caldera's corporate restructuring so that it could further focus on its Linux business, as well as its subsequent Linux promotion activity. In Section VII, I describe Caldera's strategic business alliance with IBM to distribute compatible Linux products. Section VIII describes Caldera's

acquisition of Santa Cruz's UNIX-related assets and Caldera's strategy to unify UNIX products with Linux products. Section IX describes Caldera's participation in the UnitedLinux project. In Section X, I set out my knowledge of SCO's lawsuit with regard to IBM's homegrown code. Finally, Section XI sets out my knowledge of SCO's claims against Linux.

## I. Linux.

5. Linux is an operating system based on collaborative development. Thousands of developers, including developers at SCO, contributed to the further development of Linux.

6. Linux is like the UNIX operating system developed by AT&T in the late 1960s in that it has a monolithic kernel and a hierarchical file system.

7. Linux is an "open-source" program, which means, among other things, that its source code is publicly available, royalty-free, and users have the freedom to run, copy, distribute, study, adapt and improve the software.

8. Linux not only adheres to open standards, but is built and maintained by a worldwide group of engineers who share the common goal of making open systems and open-source ubiquitous.

9. Anyone can freely download Linux and many Linux applications and modify and re-distribute them with few restrictions.

10. The Linux kernel is distributed under the GPL, which provides that a person receiving code under the GPL may copy and distribute verbatim copies of the Program's source code and modify [their] copy or copies of the Program or any portion

of it, provided that they make any published modifications available to others on similar terms.

11. Whereas traditional software licenses often reflect legal limitations restricting the use and reproduction of original works, open-source software licenses are ordinarily designed to keep the source code publicly available. The idea is to ensure that anyone can freely download open-source software and modify and re-distribute it with few restrictions.

12. But for the fact that Linux was developed and is distributed under an open-source license, Linux would never have achieved its present popularity. The public agreement of Linux developers (including Caldera developers) to apply GPL terms expresses, in what we understood to be a binding legal form, the covenant that defines the open-source community.

## II. Novell's Early Linux Involvement.

13. Prior to co-founding Caldera Inc., I was employed by Novell, Inc. as a Product Manager. It was during the course of my employment at Novell that I was first introduced to Linux .

14. Novell, in around 1994, became involved with Linux when Bryan Sparks and I conceived the idea of creating an internet-friendly desktop operating system using Linux as its core. The project was known as "Corsair", and its goal was to allow Novell's customers to better and more easily integrate and manage network access on its networking software.

15. During the Corsair project, we worked to develop a commercially supported desktop distribution of Linux bundled with commercial components that would compete with Microsoft's Windows. However, when Ray Noorda (then CEO of Novell) retired, the project was terminated before we could realize the goal of creating such a desktop Linux operating system.

## III. Caldera Begins to Develop Linux For Business.

16. After Ray Noorda's departure from Novell in 1994, Bryan Sparks and I left Novell to found Caldera, Inc. Contributing to the development of Linux was a vital part of our business plan as a seller of Linux-based products. It gave us credibility with both customers and partner companies.

17. Caldera, Inc. was formed to develop and market software based on the Linux operating system and to provide related services enabling the development, deployment and management of Linux-specialized servers.

18. Caldera, Inc. was the first company to invest heavily in the establishment of Linux as an acceptable business solution.

19. Continuing the work done by Novell on Project Corsair, Caldera, Inc. developed a Linux desktop operating system, which it called "Caldera Network Desktop" and delivered it to market in 1995.

20. Caldera Network Desktop was based on the Linux 1.2.13 kernel and distributed under the GPL.

21. Like other Linux companies, Caldera, Inc. distributed the Linux kernel and many of the other components of its Linux products under the GPL.

## IV. Business under the GPL.

22. While I was at Caldera, we recognized that the decision to develop the Linux kernel under an open-source license was critical to our company's success. But for the development of Linux under an open-source license (like the GPL or a substantially equivalent license), the development of Linux would have been impossible, and it would have been difficult for Caldera to remain in business. Caldera would not have been able to economically create a product of the scope of the Linux kernel and related programs if not for GPL and other open-source licensed technologies.

23. The GPL affected significant aspects of our business at Caldera. The GPL granted us the right to copy, modify and distribute the Linux kernel, and set the terms according to which we were required to treat the Linux kernel.

24. To the best of my knowledge, while I was employed at Caldera, we adhered to these and the other terms of the GPL. That is not because it was, from our perspective, the ideal open-source license. Rather, it was because we recognized that if we wanted to copy, modify or distribute Linux, we were required to abide by the GPL.

25. We made representations or promises to our partners in the development community (commercial and non-commercial) and prospective customers that we would not copy, modify or distribute the Linux kernel, including code contributed by IBM and others under the GPL, except on the terms set out in the GPL. Caldera also made clear and unambiguous representations or promises not to assert rights to other programs distributed by Caldera under the GPL except on the terms set out in the GPL.

26. We reinforced these representations or promises by our conduct. We grounded our business on open-source licenses, of which the GPL is the most prevalent.

We contributed code to Linux under the GPL. Every Linux product that the company ever used or distributed included code made available to us under the GPL. Similarly, every Linux product that Caldera distributed included a notice that the Linux kernel and various other components were being made available to others under the GPL.

27. To be sure, we understood that developers and users of Linux would reasonably rely upon our representations and that those representations would influence their conduct. Indeed, we understood that in fact developers and users of Linux relied upon our representations and promises and planned their affairs accordingly. We believed that our efforts to champion the open-source movement accelerated the development and market acceptability of Linux.

## V. Standardization.

28. Caldera Inc.'s firm grounding in the open-source movement made it a natural proponent of open standards in the Linux community.

29. The creation of open standards for Linux was important for us at Caldera and other Linux distributors because it permitted Linux to interact with other programs and encouraged beneficial competition and cooperation.

30. To encourage commercial acceptance of Linux, Caldera, Inc. championed the standardization of Linux. We believed that the biggest deterrent to commercial acceptance of Linux was the resource expenditure by independent software vendors associated with porting their software products to multiple versions of Linux.

31. We helped and encouraged independent software vendors and manufacturers to port their programs to our Linux products in an attempt to provide the types of software that had been unavailable for Linux to that time.

32. To facilitate the porting of Linux to applications written primarily for UNIX-based operating systems, Caldera, Inc. worked to make its Linux products compliant with various UNIX standards, including the X/Open brand for UNIX 95, and the POSIX.1 specification.

33. Operating system vendors profit in general from standards because standards make it easy for those developing application programs (e.g., word processors, spreadsheets, Web browsers, etc.) to create applications that run on that operating system without the need to create different versions of their applications for different systems. And the more applications that run on an operating system, the more popular it will be.

34. Caldera Inc. sought to make Linux and its Linux products as UNIX-like as it could in order to encourage use by UNIX enthusiasts.

35. To achieve compliance with UNIX standards for its Linux products, Caldera, Inc. hired software developers who had both UNIX and Linux experience.

36. Caldera Inc. also made efforts to acquire key technologies, such as certain of the Single Unix Specification (SUS) APIs and certain UNIX test suites from Lasermoon of Wickham, England to achieve certification for our Linux products on the X/Open brand for UNIX 95. Lasermoon was a Linux company that had pioneered Linux's migration towards X/Open standards and other UNIX certifications.

37. Compliance with the X/Open brand for UNIX 95 required conformance with all of the requirements of the Single Unix Specification (SUS), including the incorporation of all of the required header files into the operating system.

38. Caldera Inc. announced to the Linux community that it was striving for UNIX certification for Linux by 1997, which we believed would definitely help Linux on the road to success. I note, however, that our relationship with Lasermoon ultimately fell through because it could not deliver the UNIX certification test suites.

39. In 1996 Caldera, Inc. began shipping its second Linux-based operating system, Caldera OpenLinux, a new 32-bit, Linux 2.x-based platform for extending local area networks (LANs) to the home, branch office, remote user, Inter/intranet and embedded systems.

40. Caldera, Inc. intended Caldera OpenLinux to be compliant with certain UNIX standards, including the X/Open brand for UNIX 95, and the POSIX.1 specification.

41. Like Caldera Network Desktop, Caldera OpenLinux was distributed under the GPL.

42. Caldera, Inc. continued to promote and develop its Linux products as a high-end operating system appropriate for business use. For example, we not only added features to OpenLinux, we included a wider range of bundled proprietary business software applications.

43. In fact, Caldera, Inc. marketed its Linux products as "an inexpensive alternative to UNIX-based systems", and "a complete networking solution" for "small- to medium-sized businesses and enterprises."

44. To make Linux more UNIX-like, we proposed that Streams technology, originally developed for use in UNIX operating systems, be included in Linux. We required Linux Streams support in order to be able to run our Netware for Linux product.

45. We were unable to persuade the Linux community to include Streams technology in the Linux kernel. However, we made a significant contribution to the project that made Streams a loadable module for use with Linux operating systems. In other words, we helped to develop a Streams module that users could add to the Linux kernel to provide support for Streams.

46. Caldera Inc.'s Streams support resulted in the Linux Streams (LiS) optional package.

47. In addition to participating in the LiS project, which led to the availability of Streams for Linux, Caldera Inc. made the LiS Streams module freely available for download on its website. Indeed, the online announcement of Linux Streams' availability read: "LiS Streams is now available. It is referenced to kernel version 2.0.24. It can be obtained from Caldera's FTP site as follows: ftp.caldera.com: /pub/stuff/LiS-2.0.24.tar.gz".

48. Caldera Inc. was the first corporate signer of the 1998 document proposing the Linux Standard Base ("LSB"). The Linux Standard Base (LSB) Project was an

attempt to define the common core of components that can be expected to be found in any Linux system.

49. The LSB also incorporates by reference requirements of common UNIX standards such as the Single UNIX Specification and POSIX.

50. The main objective of the LSB was to solve the problem facing every commercial independent software vendor (ISV), namely, the resource expenditure associated with porting their software products to multiple versions of the many Linux products and distributions currently in the marketplace.

51. Caldera's Director of Linux Product Development, Ralf Flaxa, chaired the LSB standard implementation.

52. The Santa Cruz Operation, Inc. ("Santa Cruz") also supported the standardization movement with regard to Linux. Santa Cruz encouraged adoption of the LSB and saw compliance with standards as vital to the future success and adoption of Linux.

53. In addition to its own support of the LSB, Caldera exhorted all members of the Linux community to support the LSB and Linux standardization in a whitepaper it distributed:

> "Linux is at a crossroads, and the path seems clear. All Linux providers must give up some immediate and transitory gains today so that the Linux Standard Base can be allowed to establish unifying software porting standards. A long-term vision of the Linux opportunity should encourage all providers to move toward LSB."

54. In addition to participating in the LSB project, Caldera, Inc. and/or Santa Cruz also participated in the following other community projects directed as creating uniform standards for Linux:

- the Linux Professional Institute, an independent organization dedicated to the establishment of professional certification standards for Linux professionals;
- the Linux Internationalization Group (a voluntary Linux community working group, which Caldera helped to found, dedicated to addressing interoperability, internationalization and localization of Linux applications in the international context;
- the IA64 Linux Project, an Intel-sponsored initiative to port the Linux kernel to the Intel Itanium processor; and
- the Open-source Development Lab (the goal of which was to "foster and support the development of additional open-source and Linux enhancements").

## VI. Caldera Spin Off and Business Marketing.

55. In 1998, Caldera, Inc. split and placed its assets relating to its business of developing and marketing Linux software into Caldera Systems, Inc., a newly formed corporation.

56. Unlike Caldera Inc., which maintained both a Linux business and a business line that was not engaged in developing and marketing Linux software, Caldera Systems was dedicated solely to the development and marketing of Linux-based business solutions.

57. Caldera Systems continued to upgrade its Linux products, for which it received numerous awards and recognitions, including Internetweek's Best of the Best, The Linux Show's Best Distribution of Millennium, Linux Journal's Product of the Year

award at Comdex and Network Computing's Well-Connected Award for Best Network Operating System.

58. We not only continued to market our Linux products as suitable for business but also we represented them as a replacement for UnixWare and OpenServer. For instance, in 1998, while I was the President and CEO of Caldera Systems, I stated, "Linux does a better job than SCO UNIX, has better scalability and will run most applications written for SCO UNIX without modification.".

59. Caldera Systems also continued the work of Caldera, Inc., driving Linux community projects directed at creating uniform standards for Linux, including the Linux Standard Base, the Linux Professional Institute, the Linux Internationalization Group, the IA64 Linux Project, an Intel-sponsored initiative to port the Linux kernel to the Intel Itanium processor, and the Open-source Development Lab.

60. At Caldera Systems, we consistently contributed to the Linux and Open-source community by, among other things:

- providing engineering assistance and specifications for the IPX kernel development;
- helping with the development of SPX in the kernel;
- contributing to the development of DOSEMU;
- participating in the development of WINE, supporting WABI;
- being an early sponsor and architect of the Redhat Package Manager (RPM);
- helping sponsor the development of WABI and extensions;
- contributing equipment and funding for the SMP project;
- being an early contributor to the development of various kernel drivers, including Ethernet and Frame Relay;

- helping incorporate some NT drivers for the XFree Organization;
- helping fund the development of the K Desktop Environment (KDE);
- helping make patches to streams available to the Open-source community;
- helping fund the initial porting of Netscape for Linux and Fast-Track for Linux;
- developing, then open-sourcing Novell's Netware Client for Linux;
- funding work on NFS for Linux;
- co-sponsoring the initial porting of WordPerfect to Linux;
- helping finance the development of StarOffice with Star Division;
- GPL'ing COAS, the Caldera Open Administration System;
- being among the very first Linux distributors to work with commercial developers, promoting the porting of many important software works to Linux;
- GPLing its Linux Wizard, Lizard; and
- continuing to provide manpower and funding to vendor-neutral initiatives such as Linux Standard Base and the Linux Professional Institute.

61. Caldera Systems also expanded its Linux technical training, certification and support, and began partnering with more schools and training centers to offer its courses.

62. The Company's educational programs were designed to help its customers develop, deploy and administer Linux systems.

63. Caldera Systems was at the forefront of Linux development and promotion. But for our efforts, Linux would not have progressed as rapidly as it did to become an enterprise-ready operating system.

64. Caldera received numerous awards and recognitions for its work in promoting Linux. During 1999 and 2000 alone, we received the following awards and recognitions:

- CNET Editor's Choice Award (October 2000);
- Network World Blue Ribbon Award (September 2000);
- Linux Magazine's Emperor Award (May 2000); PC ONLiNE Testsieger's (April 2000);
- Listing in Upside Magazine's Millennium 2000 eBusiness 150 (March 2000);
- Andover.net Dave Central's Best of Linux winner (February 2000); Linux Magazine's Cool Product Award (February 2000);
- PC Direct (Ziff-Davis) Best Buy 2000 award (January 2000);
- Internetweek's Best of the Best award for best software for 1999 (December 1999);
- The Linux Show's Best Distribution of Millennium (December 1999);
- Linux Journal's Product of the Year award at Comdex (November 1999);
- Listing in PC Magazine's Top 100 Technology Companies That Are Changing the World (October 1999);
- Linuxworld Editor's Choice Award: Best Client and Distribution (August 1999);
- Highest Rated Linux Distribution by VarBusiness in 2000 Annual Report Card;
- Network Computing's Well-Connected Award for Best Networked Operating System (May 1999); and
- MikroPC's Product of the Year Award (1999).

65. Substantially all of Caldera Systems' revenue was derived from sales of Linux products and services.

## VII. Caldera and IBM.

66. In the late 1990s, Caldera Systems approached IBM about entering into a business relationship relating to Linux, as had other Linux providers. By that time, Linux already was appropriate for business use because of its comprehensive internet functionality, flexibility and customizability, high scalability, stability, interoperability with multiple systems and networks, multiappliance capability, including internet access devices, low acquisition and maintenance costs, and compliance with technical and communications standards.

67. In July 1999, the companies entered into a "Strategic Business Agreement", the purpose of which was to establish a business relationship under which the parties would cooperate to provide products and services for the Caldera OpenLinux operating system. The next year, we executed the Statement of Work ("SOW") with IBM, under which IBM would have the ability to deliver a Caldera Linux solution to end-users.

68. As part of these arrangements, Caldera granted IBM a license to use the material in Caldera Systems' Linux products.

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No reference was made to versions because the renewable license would of course apply to future versions of the products. It is my understanding that after my departure, in a later version of this product line, OpenLinux was renamed "SCO Linux 4.0", and this version was also licensed to IBM under the Strategic Business Agreement.

72. Since the original agreement was for the purpose of creating compatible products and services, section 8.3 of the agreement provides:

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73. The Statement of Work provided a mechanism by which IBM would be considered a "conduit" through which Caldera would license the OpenLinux products to third parties, but it did not place any limitations on the license granted in the Strategic Business Agreement.

74. When I signed the Strategic Business Agreement, I understood and intended this contract between IBM and Caldera to grant IBM a standard license

protecting it against a claim of infringement relating to the material in Caldera's Linux products.

75. In addition to the license granted to IBM, Caldera also warranted in the Strategic Business Agreement that:

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76. In the Strategic Business Agreement, Caldera also promised IBM that it would hold harmless and indemnify IBM from claims that the Deliverables or Services infringe the intellectual property rights of a third party.

77. Further, Caldera licensed its products under the GPL. Under that license, IBM has the right to use the source code of Caldera's Linux products.

78. The GPL provides that a person receiving code under the GPL may copy and distribute verbatim copies of the program's source code and modify their copy or copies of the program or any portion of it. As I understood it, the GPL afforded IBM protection from a claim of infringement by Caldera relating to the contents of Caldera's Linux products

**VIII. The Santa Cruz Acquisition.**

79. On the strength of its Linux business, Caldera Systems went public in March 21, 2000. Santa Cruz supported the move in January 2000 by collaborating with Sun Microsystems Inc., Novell Inc., and several other groups on a $30 million investment in Caldera Systems.

80. On May 7, 2001, using most of the proceeds from its initial public offering, Caldera Systems undertook to expand and enhance its Linux business by acquiring the Server Software and Professional Services divisions of Santa Cruz, including their UNIX-related assets. Caldera Systems completed the transaction through a newly formed subsidiary, known as Caldera International, Inc., which then functioned as the operating company of Caldera Systems. I took the leading role in executing this transaction, including the due diligence efforts.

81. In February 2001, following Caldera Systems's announcement of intent to purchase Santa Cruz and prior to SEC approval, Caldera Systems accurately described itself and its Linux products and its Linux services as follows:

- "Caldera Systems Inc. is a 'Linux for eBusiness' technology leader in developing and marketing successful Linux-based business solutions";
- "Caldera has chosen, integrated, and tested key open-source and commercial software to create a predictable business quality server that meets your needs now and years to come";
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82. In the course of preparing for the Santa Cruz acquisition, other Caldera executives and I learned that Santa Cruz had commissioned a study (by a Bob Swartz) in

1999 to compare UNIX and Linux code. We at Caldera were aware that some at Santa Cruz questioned whether Linux included code improperly copied from UNIX System V.

83. We at Caldera did not care whether UNIX source code had been included in Linux improperly and we did not at any point publicly disclose that there might be any problem with Linux.

84. Caldera intended to merge the operating systems and recognized in any event that pursuing litigation against Linux would be bad for business. We made the decision not to attack the operating system that we had promoted from our inception.

85. We purchased the UNIX assets of Santa Cruz with an eye toward open-sourcing the UNIX technology to improve Linux. Caldera stated publicly that Santa Cruz's UNIX assets were rapidly losing their value, that the market was moving toward Linux, and that "UNIX is dead, except as a value add to Linux".

86. Among the source code that we acquired from Santa Cruz—apart from the source code from the ongoing UnixWare and OpenServer product lines—was source code from earlier versions of UNIX operating systems developed at AT&T in the 1970s and 1980s. These predecessor versions of the UNIX software had been replaced by newer and improved versions (such as UnixWare), and were not marketed and distributed by Santa Cruz or by Caldera, after we acquired them. We at Caldera did not believe that these ancient versions of the UNIX software had much, if any, monetary value, as they were outdated and were no longer widely used.

87. In acquiring the UNIX assets of Santa Cruz we hoped to unify UNIX and Linux operating systems, as a way of encouraging businesses to adopt our Linux products

and thereby stimulate revenue. In pursuit of this strategy, we designed Caldera's Linux products to permit existing UNIX-based users to migrate to Linux and assisted customers in developing and deploying unified UNIX and Linux solutions through consulting and custom engineering services.

88. To unify Linux and UNIX, we considered contributing components of source code from UNIX programs to accomplish our goal of establishing ourselves as a key Linux vendor in the marketplace. We assigned key engineers from the UnixWare development group to work with our Linux developers to identify ways in which this could be accomplished.

89. Accordingly, I, together with Dion Johnson (who had formerly been employed by Santa Cruz and joined Caldera after the acquisition) and Drew Spencer, decided to open-source the code for these ancient versions of the UNIX software under a license that allowed licensees to freely copy, modify and distribute the software without any royalty. I made the decision to open-source this code so that it could, among other things, be available to support the development of Linux.

90. Indeed, at first we wanted to open-source all of the code for the UNIX software we had acquired from Santa Cruz so that it could be used to further the development of Linux. Yet we quickly found that even though we owned the source code for the UNIX software, it was full of code copyrighted by other companies and used in the UNIX software, such as UNIX System V, under license. We didn't want to spend years clearing out old copyright issues in the face of corporate opposition. For example, Intel Corp. opposed the open-sourcing of the UNIX software. So instead of unifying the

source codes of Linux and the UNIX software that we had acquired, we decided to pursue other means of obtaining interoperability and unification.

91. Caldera International continued to distribute Santa Cruz's UnixWare and OpenServer products following the acquisition in 2001, but it positioned its Linux products ahead of its UNIX products. For example, Caldera encouraged ISVs and OEMs, such as Oracle, to focus on the certification and support of its Linux products, to the detriment of its UNIX products.

92. One of the primary purposes of the Santa Cruz UNIX asset acquisition was to acquire a distribution channel for our Linux products, which were our priority. As I announced at LinuxWorld in August 2000:

> "Business customers tell us that they'd be more aggressive in the adoption of Linux if they could purchase and obtain support through the same distribution channel that they use for everything else. The SCO acquisition gives us more than 15,000 knowledgeable, trained resellers, ISBs and support staff worldwide. This infrastructure would have taken us millions of dollars and years to develop."

93. Our continuing focus on the success of our Linux business was clear from our actions following the Santa Cruz asset acquisition. Like Caldera Systems before the acquisition, Caldera International:

- Expended development funds to promote Linux products;
- Represented Linux as a product that could be used to power internet and software needs of businesses, academics and technical institutions around the world;
- Represented the benefits of Linux specifically to include comprehensive internet functionality, flexibility, customizability and stability, interoperability with multiple systems and networks, low acquisition and maintenance costs, and compliance with technical and communication standards; and

- Provided a full range of pre- and post-sales technical support for SCO Linux.

**IX. UnitedLinux.**

94. In May 2002, Caldera International joined with other Linux vendors, Conectiva, Inc., SuSE Linux AG, and Turbolinux, to form a Joint Development Limited Liability Company called UnitedLinux, LLC ("UnitedLinux").

95. As Caldera International's CEO, I was a driving force behind UnitedLinux and was the signatory for Caldera to the Joint Development Contract ("JDC") and the Master Transaction Agreement ("MTA") that created UnitedLinux.

96. UnitedLinux was formed to streamline Linux development and certification around a global, uniform distribution of Linux for business. Under the terms of the JDC and the MTA, this standardized, uniform distribution of Linux developed by UnitedLinux was defined as the "Software".

97. By developing the Software, Caldera International and the other members of UnitedLinux endeavored to give businesses a reliable, tested and supportable version of Linux.

98. To achieve the above purpose of UnitedLinux, each member assigned to UnitedLinux ownership of the intellectual property rights in the Software that was developed by UnitedLinux. In addition, Pre-Existing Technology was licensed to UnitedLinux. Any enhancements that were made to their Pre-Existing Technology (the "Enhancements") remained the property of the contributing company.

99. Specifically, under the terms of both the JDC and the MTA, each UnitedLinux member agreed:

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100. Caldera intended to assign and assigned ownership of the intellectual property rights in the Software (other than Caldera's Pre-Existing Technology and Enhancements) to UnitedLinux.

101. The Pre-Existing Technology retained by Caldara included the following intellectual property:

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102. Therefore, other than the above Pre-Existing Technology, all of Caldera's intellectual property rights in the Software developed by UnitedLinux, were assigned to UnitedLinux and are owned by UnitedLinux.

## X. SCO's Litigation with IBM.

103. SCO commenced this lawsuit against IBM following my departure from the company, but I have reviewed SCO's complaint and am aware of public statements by it about the case. I understand that, after SCO revisited the earlier Swartz study that both Santa Cruz and Caldera had dismissed, SCO is contending that it has proprietary rights to Linux and to original or homegrown code in IBM's AIX and Dynix/ptx products, and that, pursuant to copyright law, SCO can prohibit the use of certain Linux material.

104. I understand that SCO claims that Linux is an unauthorized derivative of certain UNIX software, that SCO has the right and authority to control the use and distribution of Linux and that neither IBM nor any other person or entity can lawfully use or distribute the Linux kernel without a proprietary license from SCO. I have read SCO statements to this effect in press releases and press interviews.

105. To my knowledge, while I was CEO at Caldera, no one at the company viewed Linux as a derivative of any UNIX software. As we used the term while I was CEO, Linux would not be considered a "derivative" of UNIX software, even if (as SCO contends) certain lines of UNIX software code were included in Linux. As we repeatedly told customers and our employees, anyone can use and distribute the Linux kernel so long as they adhere to the terms of the GPL.

106. I also understand from SCO's public comments that it claims to have proprietary rights to Linux based on certain licenses that IBM entered into with AT&T for UNIX System V in the mid-1980s. As I understand it, SCO believes the AT&T licenses for UNIX System V that Caldera acquired from Santa Cruz (and that Santa Cruz in turn acquired from Novell) gave Caldera the right to control original code written by

licensees (such as IBM) for their own programs, just because those programs might be said to be "derived" from UNIX System V. I believe that SCO's interpretation of these licenses is mistaken.

107. My understanding of the AT&T UNIX System V licenses we acquired from Santa Cruz in 2001 is that they prohibited licensees from disclosing the source code for UNIX System V, even if that source code had been placed by the licensee into another program. The licenses (which are similar, if not identical, to the licenses under which Caldera continued to license the UnixWare software we acquired from Santa Cruz) did not give Caldera any right to control the licensees' "homegrown" code that was written by them and included in their own software programs, even if such software programs could be said to have been "derived" from UNIX System V. In my view, that would not make any sense.

108. During the time that I was at Caldera, neither I nor any of Caldera's employees responsible for the licenses we acquired from Santa Cruz ever advanced the view that the licenses permitted Caldera to control the use and disclosure of our licensees' original code. In addition, I also never heard anyone from Santa Cruz express such a view of the licenses during the negotiations leading up to Caldera's acquisition of Santa Cruz's UNIX-related assets.

109. After Caldera acquired ownership of the UNIX Code, even though we were aware that IBM was disclosing homegrown code, we made a conscious decision to take no action against such disclosure because, in addition to our belief that such disclosure was permitted under the licenses, we believed that such disclosure would benefit the development of Linux and thus Caldera's overall business strategy.

Furthermore, Caldera was concerned that any Caldera action against IBM or other licensees for disclosure of homegrown code would greatly harm our reputation and ability to do business in the open-source community.

## XI. SCO Claims About Linux.

110. I understand that SCO alleges infringement with regard to certain header files required by the Open Group's Single Unix Specification ("SUS Material"), header files associated with the Linux Streams module ("Streams Material"), and files implementing the ELF binary format ("ELF Material") (all collectively, the "Allegedly Infringing Material").

111. The Allegedly Infringing Material has been in Linux since before SCO commenced this lawsuit. All of the SUS Material has all been in Linux since 2000 and some of it has even been in Linux since its inception in 1991. The ELF Material has been in Linux for more than a decade, since version 1.0. And the Streams Material, though never included in the Linux kernel, has been available since at least 1997.

112. We knew the SUS Material and ELF Material was in Linux from the beginning because we advocated the standardization of Linux, and the LSB required compliance with the SUS standard and the ELF format. Caldera's familiarity with the Streams Material dates back to its support of the LiS project, the success of which was vital for our Netware for Linux product.

113. To the best of my knowledge and recollection, all of the files cited by SCO were distributed by SCO in its Linux products or on its website in conjunction with its Linux business. SUS Material, Streams Material, and ELF Material was all included

in Caldera's Linux products. The LiS Streams module was available from Caldera's website from the time of its initial announcement in 1997.

114. OpenLinux 3.1.1 itself included SUS Material, Streams Material, and ELF material.

115. Caldera encouraged the inclusion of much of that material. Caldera, even after acquiring Santa Cruz's UNIX assets, was always first and foremost a Linux company dedicated to the promotion and development of Linux. We promoted and marketed Linux because, as a Linux company, our fate rested upon the success or failure of the product upon which we had staked our future.

116. Caldera's activity concerning Linux was purposeful and intended to be taken seriously by others. In my view, our Linux activities at Caldera demonstrate that we intended that they be relied upon:

- Founding a business on a single product communicates confidence in that product, including its legality.
- Offering Linux products for sale, and selling them, invites customers and potential customers to use and rely upon the products.
- Making a product available for download from the internet, especially the source code of an operating system, which is inherently utilitarian, expresses the intent that it be downloaded and used. Otherwise there would be no reason to make it downloadable.

Because of the commercial nature of our "Linux for Business" strategy, we went to great lengths to convince the Linux community that we were a true supporter of Linux.

117. I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 15, 2006
Salem, Utah

RANSOM LOVE