

Janet L. Goldstein
THE MARTYN FIRM, PLLC
1054 31st Street, NW
Washington, D.C. 20007
Tel: (202) 965-3060
Fax: (202) 965-3063

Peter W. Chatfield
PHILLIPS & COHEN LLP
2000 Massachusetts Ave., NW
Washington, D.C. 20036
Tel: (202) 833-4567
Fax: (202) 833-1815

Jonathan A. Willens (JW-9180)
JONATHAN A. WILLENS LLC
217 Broadway, Suite 707
New York, New York 10007
Tel: (212) 619-3749
Fax: (800) 879-7938

Attorneys for *qui tam*
plaintiff Ann-Marie Shaw

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)	06 CV 3552 (DLI) (SMG)
ex rel. ANN-MARIE SHAW)	
and)	AMENDED COMPLAINT
)	FOR VIOLATIONS OF
STATE OF CALIFORNIA ex rel. ANN-MARIE SHAW)	FEDERAL AND STATE
DISTRICT OF COLUMBIA ex rel. ANN-MARIE SHAW)	FALSE CLAIMS ACTS
STATE OF FLORIDA ex rel. ANN-MARIE SHAW)	
STATE OF HAWAII ex rel. ANN-MARIE SHAW)	
STATE OF ILLINOIS ex rel. ANN-MARIE SHAW)	
COMMONWEALTH OF MASSACHUSETTS)	
ex rel. ANN-MARIE SHAW)	
STATE OF NEVADA ex rel. ANN-MARIE SHAW)	
COMMONWEALTH OF VIRGINIA)	
ex rel. ANN-MARIE SHAW)	
STATE & CITY OF NEW YORK)	
ex rel. ANN-MARIE SHAW,)	
)	JURY TRIAL DEMANDED
Plaintiffs,)	
)	<u>FILED UNDER SEAL</u>
v.)	
)	
CA, INC.,)	
)	
Defendant.)	
_____)	

Through her attorneys, plaintiff and qui tam relator Ann-Marie Shaw, for her Amended Complaint against Defendant CA, Inc. (“CA”), formerly known as Computer Associates International, Inc. or “Computer Associates,” alleges as follows:

FACTS COMMON TO ALL COUNTS

A. Introduction

1. This is a civil action to recover damages and civil penalties arising from false and/or fraudulent statements, records, and claims made and caused to be made by the Defendant CA and/or its agents and employees in violation of the Federal Civil False Claims Act, 31 U.S.C. §3729 et seq., as amended (“FCA”), and of analogous State and Municipal qui tam statutes.

2. This qui tam case is brought by the Relator Ann-Marie Shaw (“Shaw”) on behalf of the United States pursuant to 31 U.S.C. §3730(b) and on behalf of the States of California (and its political subdivisions), Florida, Hawaii, Illinois, Massachusetts (and its political subdivisions), Nevada (and its political subdivisions), Virginia (including its political subdivisions), the District of Columbia, the State and City of New York (including local government entities) (hereafter, collectively, “the States and Municipalities”) under the States’ and Municipalities’ respective qui tam statutes.

B. Parties

3. Relator Ann-Marie Shaw is a resident of Clearwater, Florida. Ms. Shaw worked for Defendant CA in Tampa, Florida from July 2003 through August 2006 as a technical sales specialist. Ms. Shaw specialized in the sale of CA’s software product licenses to the Federal Government. Based on knowledge she has gained as a CA employee, Ms. Shaw has become aware of the false claims and false statements by Defendant that are the subject of this Complaint.

4. CA is a Delaware corporation with its headquarters and principle place of business in Islandia, New York. CA designs, markets and licenses computer software for businesses throughout the world. CA's reported revenue for fiscal year 2005 was \$3.5 billion. CA markets and licenses its software products to numerous federal, state and municipal government entities throughout the United States.

C. Jurisdiction and Venue

5. This Court has jurisdiction over the subject matter of this action pursuant to both 28 U.S.C. §1331 and 31 U.S.C. §3732, and has pendant jurisdiction over the state and municipal claims pursuant to 28 U.S.C. §1367 and 31 U.S.C. §3732b.

6. Venue is proper in this District pursuant to 31 U.S.C. §3732(a) because the Defendant can be found in, resides in, and transacts business in the Eastern District of New York, and because acts in furtherance of the pattern and practice of misconduct alleged in this action have occurred in this District.

D. General Allegations

7. CA is a provider of management software. Its customers include government agencies, businesses, academic institutions and non-profit organizations world-wide. CA licenses its software products to customers pursuant to license agreements.

8. CA sells software licenses to customers through its employee sales force and through authorized resellers who are trained and certified by CA. CA authorized resellers provide potential customers with quotes for CA products, and, if the quote is accepted, send an invoice or purchase order to and collect payment from the customer. The customer order is forwarded to a CA distributor who in turn transmits the order to CA's order department. CA employees review the order and, upon approval, send the licenses to the customer. Payment from the purchaser for the

order is also transmitted from the reseller to the distributor and finally to CA, minus fees payable to the reseller and distributor for their services on behalf of CA.

9. In addition to licenses for software products, CA also sells through its employee sales force and authorized resellers maintenance protection plans for software licenses purchased by CA customers. This maintenance protection is also referred to as “software maintenance,” “software protection,” “upgrade protection,” and “maintenance renewal.” Maintenance protection plans may be purchased by a customer for a fixed term of one, two or three years. The majority of CA’s customers purchase maintenance protection with their initial software purchase and continue renewing their maintenance protection on an annual basis.

10. The maintenance protection sold by CA includes free upgrades to all new releases of covered software products throughout the maintenance term, free patches for errors or bugs in covered products, and free telephone and web-based technical support.

11. Revenue from CA’s maintenance protection plans comprises a significant portion of the company’s total revenues and CA vigorously markets these plans to its customers.

E. CA’s Scheme to Defraud Purchasers of CA’s Maintenance Protection Plans

12. Beginning at a time unknown but not later than July 2003 and continuing through the present, CA devised a scheme to defraud customers, including federal, state and local government entities (hereinafter “government customers”) of the full value of the maintenance protection plans they purchased and to cause these customers to overpay CA for maintenance protection. As a result of this scheme, CA’s government customers have been damaged, and continue to be damaged, in an amount not yet determined, but that is in the millions of dollars. This scheme was and continues to be accomplished in the following manner:

13. Most CA customers purchase maintenance protection with their initial software license purchase, generally for a one year term. The term of the maintenance plan commences at the time the customer order is received and approved by CA.

14. Approximately three months prior to the expiration date of any CA maintenance plan, CA sends the customer who purchased the plan a notice stating that “the maintenance protection on [the customer’s] CA software is about to expire” and urging the customer to renew the maintenance plan prior to the expiration date. The expiration notification includes the date on which the maintenance plan is allegedly due to expire. A sample expiration notification is attached to this complaint as Exhibit 1.

15. In its expiration notification, CA warns its customers to renew their maintenance protection before expiration to avoid any lapses in technical support and upgrade fees. Customers are told that “[b]y keeping the software maintenance active [they] can save up to 40% off the cost of purchasing upgrades or full products.” Customers are directed to place their maintenance renewal orders with a CA reseller.

16. In addition to sending its customers expiration notifications, CA provides its employee sales force as well as its authorized resellers with a list of customers whose maintenance will expire within the next three months. CA sales representatives and resellers telephone and/or email customers and urge them to renew their maintenance plans as soon as possible.

17. As a result of CA’s marketing campaign, and in order to avoid any lapse in maintenance protection, many customers, including government customers, place their orders for maintenance renewal days, weeks and even months before the expiration of their current maintenance plan. Government customers also may place renewal orders early because their funding authorizations often require them to make purchases within a given fiscal year or time frame.

18. Unbeknownst to these customers who, at CA's behest, place their renewal orders early, CA does not start the term of the maintenance plan purchased at the expiration of the maintenance plan previously in place. Rather, in its internal records, CA records the start of the new maintenance term as the date on which the maintenance order is received and approved by CA, despite the fact that the current maintenance plan is still in effect. By running the new maintenance plan concurrently with the prior maintenance plan, CA fraudulently shortens the term of the new maintenance plan purchased and thereby knowingly deprives the customer of the full value of the purchase.

19. In order to prevent its customers from realizing that CA is short-changing them of the full value of the maintenance plan purchased, CA omits material facts in the maintenance expiration notices it sends to its customers. For example, while CA urges its customers in the expiration notices it sends to "take action right now" to renew their maintenance protection, CA fails to disclose the material fact that, if the customer sends in its renewal order before the expiration date of the maintenance plan currently in place, CA will start the new maintenance term when the maintenance order is received rather than at the expiration of the current maintenance term.

F. Examples of Maintenance Renewal Fraud Perpetrated on Federal and Federally-Funded Purchasers:

20. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on federal and federally-funded purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

National Gallery of Art

21. In December 2004, the National Gallery of Art, a federally-funded entity, purchased through a CA reseller product licenses and a one-year maintenance plan for a series of software data backup and protection programs known as BrightStor ARCserve Backup. CA received a net payment (after fees were paid to the reseller and distributor) of \$15,188.82 for this purchase. The order was processed and approved by CA on or about December 16, 2004. In its internal records, CA recorded a maintenance expiration date for these programs of December 15, 2005.

22. In October 2005, the National Gallery of Art placed a one-year maintenance plan renewal order for its licenses for the BrightStor ARCserve Backup software programs that was processed and approved by CA on October 6, 2005. CA received a net payment of \$4,479 for this maintenance renewal purchase. Rather than start the new maintenance plan on December 16, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on October 6, 2005, and recorded the plan's expiration date as October 5, 2006. As a result, the National Gallery of Art was short-changed approximately 71 days of maintenance protection.

United States Army Special Operations Command

23. In September 2004, the United States Army Special Operations Command (USASOC) purchased through a CA reseller a one-year maintenance plan for its licenses for a security software program known as eTrust Intrusion Detection. CA received a net payment (after fees were paid to the reseller and distributor) of \$25,847.32 for this purchase. The order was processed and approved by CA on or about September 28, 2004. In its internal records, CA recorded a maintenance expiration date for this program of September 27, 2005.

24. In August 2005, the USASOC placed another one-year maintenance plan renewal order for its licenses for the eTrust Intrusion Detection program that was processed and approved by CA on or about August 12, 2005. CA received a net payment (after fees were paid to the reseller and distributor) of \$23,591.63 for this purchase. Rather than start the new maintenance plan on September 28, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on August 12, 2005, and recorded the plan's expiration date as August 11, 2006. As a result, the USASOC was short-changed approximately 47 days of maintenance protection.

TriCare Management Activity

25. In October 2004, the TriCare Management Activity, the United States Department of Defense's managed health care program for the military, purchased through a CA reseller product licenses and a one-year maintenance plan for a database software program known as AllFusion ERwin Data Modeler. CA received a net payment (after fees were paid to the reseller and distributor) of \$14,140.25 for this purchase. The order was processed and approved by CA on or about October 19, 2004. In its internal records, CA recorded a maintenance expiration date for these programs of October 18, 2005.

26. In June 2005, the TriCare Management Activity placed a one-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler program that was processed and approved by CA on June 29, 2005. CA received a net payment of \$5,177.52 for this maintenance renewal purchase. Rather than start the new maintenance plan on October 19, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on June 29, 2005, and recorded the plan's expiration date as June 28, 2006. As a result, the

TriCare Management Activity was short-changed approximately 112 days of maintenance protection.

United States Army Research, Development, & Acquisition Information Systems Agency

27. In March 2004, the United States Army Research, Development, & Acquisition Information Systems Agency (USARDAISA) purchased through a CA reseller product licenses and a one-year maintenance plan for the AllFusion ERwin Data Modeler, and for a model management program and read-only access program known respectively as the All Fusion Model Manager and the AllFusion Model Navigator. CA received a net payment (after fees were paid to the reseller and distributor) of \$39,711.08 for this purchase. The order was processed and approved by CA on or about March 26, 2004.

28. In February 2005, the USARDAISA placed a one-year maintenance plan renewal order for its licenses for these programs that was processed and approved by CA on February 16, 2005. CA received a net payment of \$9,713.68 for this maintenance renewal purchase. Rather than start the new maintenance plans on March 26, 2005, when the maintenance plans that were then in effect expired, CA started the plans' one-year term on February 16, 2005, and recorded the plans' expiration date as February 15, 2005. As a result, the USARDAISA was short-changed approximately 38 days of maintenance protection.

29. In February 2006, the USARDAISA placed another one-year maintenance plan renewal order for its licenses for these programs that was processed and approved by CA on February 6, 2006. CA received a net payment of \$9,699.75 for this maintenance renewal purchase. Rather than start the new maintenance plans on February 16, 2006, when the maintenance plans that were then in effect expired, CA started the plans' one-year term on February

6, 2006, and recorded the plans' expiration date as February 5, 2007. As a result, the USARDAISA was short-changed an additional 10 days of maintenance protection.

United States Department of State

30. In March 2005, the United States Department of State purchased through a CA reseller a one-year maintenance plan for its licenses for the AllFusion ERwin Data Modeler. CA received a net payment (after fees were paid to the reseller and distributor) of \$12,943.80 for this purchase. The order was processed and approved by CA on or about March 11, 2005. In its records, CA recorded a maintenance expiration date for these programs of March 11, 2006.

31. In February 2006, the United States Department of State placed another one-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler program that was processed and approved by CA on February 21, 2006. CA received a net payment of \$12,943.80 for this maintenance renewal purchase. Rather than start the new maintenance plan on March 11, 2006 when the maintenance plan that was then in effect expired, CA started the plan's one-year term on February 21, 2006, and recorded the plan's expiration date as February 20, 2007. As a result, the United States Department of State was short-changed approximately 19 days of maintenance protection.

United States Department of Justice

32. In October 2004, the United States Department of Justice purchased through a CA reseller product licenses and a one-year maintenance plan for the AllFusion ERwin Data Modeler. CA received a net payment (after fees were paid to the reseller and distributor) of \$4,428.41 for this purchase. The order was processed and approved by CA on or about October 21, 2004. In its internal records, CA recorded a maintenance expiration date for these programs of October 20, 2005.

33. In September 2005, the United States Department of Justice placed another one-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler program that was processed and approved by CA on September 28, 2005. CA received a net payment of \$1,294.38 for this maintenance renewal purchase. Rather than start the new maintenance plan on October 21, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on September 28, 2005, and recorded the plan's expiration date as September 27, 2006. As a result, the United States Department of Justice was short-changed approximately 23 days of maintenance protection.

G. Examples of Maintenance Renewal Fraud Perpetuated on State and Municipal Purchasers:

California

34. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on California government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

Los Angeles County Sanitation District

35. In March 2005, the Los Angeles County Sanitation District purchased through a CA reseller a one-year maintenance plan for its licenses for the AllFusion ERwin Data Modeler. CA received a net payment (after fees were paid to the reseller and distributor) of \$4,530.33 for this purchase. The order was processed and approved by CA on or about March 25, 2005. In its internal records, CA recorded a maintenance expiration date for these programs of March 31, 2006.

36. In January 2006, the Los Angeles County Sanitation District placed another one-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler program that was processed and approved by CA on January 23, 2006. CA received a net payment of \$4,530.33 for this maintenance renewal purchase. Rather than start the new maintenance plan on April 1, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on January 23, 2006, and recorded the plan's expiration date as January 22, 2007. As a result, the Los Angeles County Sanitation District was short-changed approximately 68 days of maintenance protection.

California Teachers Retirement System

37. In June 2004, the California Teachers Retirement System purchased through a CA reseller product licenses and a two-year maintenance plan for CA's Desktop Management Suite program. CA received a net payment (after fees were paid to the reseller and distributor) of \$86,632 for this purchase. The order was processed and approved by CA on or about June 30, 2004. In its internal records, CA recorded a maintenance expiration date for these programs of June 29, 2006.

38. In May 2006, the California Teachers Retirement System placed a one-year maintenance plan renewal order for its licenses for the CA Desktop Management Suite that was processed and approved by CA on May 24, 2006. CA received a net payment of \$13,547.60 for this maintenance renewal purchase. Rather than start the new maintenance plan on June 30, 2006, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on May 24, 2006, and recorded the plan's expiration date as May 23, 2007. As a result, the California Teachers Retirement was short-changed approximately 37 days of maintenance protection.

City of Santa Maria

39. In February 2005, the City of Santa Maria purchased through a CA reseller a one-year maintenance plan for its licenses for virus protection software known as eTrust Antivirus. CA received a net payment (after fees were paid to the reseller and distributor) of \$2,323.69 for this purchase. The order was processed and approved by CA on or about February 24, 2005.

40. In January 2006, the City of Santa Maria placed a two-year maintenance plan renewal order for its licenses for the eTrust Antivirus program that was processed and approved by CA on January 12, 2006. CA received a net payment of \$6,015.00 for this maintenance renewal purchase. Rather than start the new maintenance plan on February 24, 2006, when the maintenance plan that was then in effect expired, CA started the plan's two-year term on January 12, 2006, and recorded the plan's expiration date as January 11, 2008. As a result, the City of Santa Maria was short-changed approximately 43 days of maintenance protection.

Superior Courts of California

41. In December 2004, the Superior Courts of California purchased through a CA reseller a one-year maintenance plan for its licenses for the BrightStor ARCserve Backup software programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$2,731.93 for this purchase. The order was processed and approved by CA on or about December 29, 2004. In its internal records, CA recorded a maintenance expiration date for these programs of December 28, 2005.

42. In November 2005, the Superior Courts of California placed another one-year maintenance plan renewal order for its licenses for the BrightStor ARCserve Backup software programs that was processed and approved by CA on November 28, 2005. CA received a net payment of \$2718.00 for this maintenance renewal purchase. Rather than start the new

maintenance plan on December 29, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on November 28, 2005, and recorded the plan's expiration date as November 27, 2006. As a result, the Superior Courts of California were short-changed approximately 31 days of maintenance protection.

District of Columbia

43. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on District of Columbia government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

Office of the DC Auditor

44. In May 2004, the Office of the DC Auditor purchased through a CA reseller product licenses and a two-year maintenance plan for the BrightStor ARCserve Backup software programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$1,486.70 for this purchase. The order was processed and approved by CA on or about May 17, 2004.

45. In March 2006, the Office of the DC Auditor placed a two-year maintenance plan renewal order for its licenses for the BrightStor ARCserve Backup software programs that was processed and approved by CA on March 9, 2006. CA received a net payment of \$724.50 for this maintenance renewal purchase. Rather than start the new maintenance plan on May 17, 2006, when the maintenance plan that was then in effect expired, CA started the plan's two-year term on March 9, 2006, and recorded the plan's expiration date as March 8, 2008. As a result, the Office of the DC Auditor was short-changed approximately 69 days of maintenance protection.

Florida

46. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on Florida government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

The Supreme Court of Florida

47. In September 2003, the Supreme Court of Florida purchased through a CA reseller a one-year maintenance plan for its licenses for the AllFusion ERwin Data Modeler. CA received a net payment (after fees were paid to the reseller and distributor) of \$1,438.00 for this purchase. The order was processed and approved by CA on or about September 30, 2003.

48. In June 2004, the Supreme Court of Florida placed another one-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler program that was processed and approved by CA on June 29, 2004. CA received a net payment of \$1,308.31 for this maintenance renewal purchase. Rather than start the new maintenance plan on September 30, 2004, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on June 29, 2004, and recorded the plan's expiration date as June 29, 2005. As a result, the Supreme Court of Florida was short-changed approximately 92 days of maintenance protection.

Florida Department of Law Enforcement

49. In December 2003, the Florida Department of Law Enforcement purchased through a CA reseller a one-year maintenance plan for its licenses for the AllFusion ERwin Data Modeler. CA received a net payment (after fees were paid to the reseller and distributor) of \$10,081.33 for this purchase. The order was processed and approved by CA on or about December 19, 2003.

50. In December 2004, the Florida Department of Law Enforcement placed another one-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler program that was processed and approved by CA on December 9, 2004. CA received a net payment of \$9,074.59 for this maintenance renewal purchase. Rather than start the new maintenance plan on December 19, 2004, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on December 9, 2004, and recorded the plan's expiration date as December 8, 2005. As a result, the Florida Department of Law Enforcement was short-changed approximately 10 days of maintenance protection.

Hawaii

51. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on Hawaii government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

Hawaii Department of Public Safety

52. In April 2005, the Hawaii Department of Public Safety purchased through a CA reseller product licenses and a one-year maintenance plan for the BrightStor ARCserve Backup software programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$6,736.92 for this purchase. The order was processed and approved by CA on or about April 20, 2005.

53. In April 2006, the Hawaii Department of Public Safety placed a two-year maintenance plan renewal order for its licenses for the BrightStor ARCserve Backup software programs that was processed and approved by CA on April 5, 2006. CA received a net payment of \$5,023.50 for this maintenance renewal purchase. Rather than start the new maintenance plan

on April 20, 2006, when the maintenance plan that was then in effect expired, CA started the plan's two-year term on April 5, 2006, and recorded the plan's expiration date as April 4, 2008. As a result, the Hawaii Department of Public Safety was short-changed approximately 15 days of maintenance protection.

Illinois

54. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on Illinois government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

Illinois Department of Public Aid

55. In July 2004, the Illinois Department of Public Aid purchased through a CA reseller a one-year maintenance plan for its licenses for the AllFusion ERwin Data Modeler and the AllFusion Model Manager programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$9,055.80 for this purchase. The order was processed and approved by CA on or about July 16, 2004.

56. In May 2005, the Illinois Department of Public Aid placed another one-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler and the AllFusion Model Manager programs that was processed and approved by CA on May 12, 2005. CA received a net payment of \$9,055.80 for this maintenance renewal purchase. Rather than start the new maintenance plan on July 16, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on May 12, 2005, and recorded the plan's expiration date as May 11, 2006. As a result, the Illinois Department of Public Aid was short-changed approximately 65 days of maintenance protection.

Illinois State Police

57. In November or December 2004, the Illinois State Police purchased through a CA reseller licenses and a one-year maintenance plan for the AllFusion Modeling Suite Bundle program. CA received a net payment (after fees were paid to the reseller and distributor) of \$3,547.72 for this purchase. The order was processed and approved by CA on or about December 1, 2004. In its internal records, CA recorded a maintenance expiration date for these programs of November 30, 2005.

58. In October 2005, the Illinois State Police placed a one-year maintenance plan renewal order for its licenses for the AllFusion Modeling Suite Bundle program that was processed and approved by CA on October 21, 2005. CA received a net payment of \$1,133.19 for this maintenance renewal purchase. Rather than start the new maintenance plan on December 1, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on October 21, 2005, and recorded the plan's expiration date as October 20, 2006. As a result, the Illinois State Police Aid was short-changed approximately 41 days of maintenance protection.

Massachusetts

59. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on Massachusetts government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

Massachusetts Division of Medical Assistance

60. In October 2004, the Massachusetts Division of Medical Assistance purchased through a CA reseller a one-year maintenance plan for its licenses for the AllFusion ERwin Data

Modeler and the AllFusion Model Manager programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$9,069.73 for this purchase. The order was processed and approved by CA on or about October 1, 2004. In its internal records, CA recorded a maintenance expiration date for these programs of September 30, 2005.

61. In September 2005, the Massachusetts Division of Medical Assistance placed another one-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler and the AllFusion Model Manager programs that was processed and approved by CA on September 15, 2005. CA received a net payment of \$9,055.80 for this maintenance renewal purchase. Rather than start the new maintenance plans on October 1, 2005, when the maintenance plans that were then in effect expired, CA started the plans' one-year term on September 15, 2005, and recorded the plans' expiration date as September 14, 2006. As a result, the Massachusetts Division of Medical Assistance was short-changed approximately 16 days of maintenance protection.

Massachusetts State Treasury

62. In December 2003, the Massachusetts State Treasury purchased through a CA reseller product a one-year maintenance plan for its licenses for the BrightStor ARCserve Backup software programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$2,071.93 for this purchase. The order was processed and approved by CA on or about December 23, 2003.

63. In November or December 2004, the Massachusetts State Treasury placed another one-year maintenance plan renewal order for its licenses for the BrightStor ARCserve Backup software programs that was processed and approved by CA on December 1, 2004. CA received a net payment of \$3,150.90 for this maintenance renewal purchase. Rather than start the new

maintenance plan on December 23, 2004, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on December 1, 2004, and recorded the plan's expiration date as November 30, 2005. As a result, the Massachusetts State Treasury was short-changed approximately 22 days of maintenance protection.

Nevada

64. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on Nevada government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

Nevada Legislative Counsel Bureau

65. In February 2004, the Nevada Legislative Counsel Bureau purchased through a CA reseller product a two-year maintenance plan for its licenses for the BrightStor ARCserve Backup software programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$5,377.95 for this purchase. The order was processed and approved by CA on or about February 20, 2004. In its internal records, CA recorded a maintenance expiration date for these programs of February 19, 2006.

66. In January 2006, the Nevada Legislative Counsel Bureau placed another two-year maintenance plan renewal order for its licenses for the BrightStor ARCserve Backup software programs that was processed and approved by CA on January 18, 2006. CA received a net payment of \$2,830.50 for this maintenance renewal purchase. Rather than start the new maintenance plan on February 20, 2006, when the maintenance plan that was then in effect expired, CA started the plan's two-year term on January 18, 2006, and recorded the plan's

expiration date as January 17, 2008. As a result, the Nevada Legislative Counsel Bureau was short-changed approximately 33 days of maintenance protection.

Las Vegas Clark County Public Library

67. In February 2005, the Las Vegas Clark County Public Library purchased through a CA reseller product a one-year maintenance plan for its licenses for the BrightStor ARCserve Backup software programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$1,788.27 for this purchase. The order was processed and approved by CA on or about February 25, 2005.

68. In February 2006, the Las Vegas Clark County Public Library placed a two-year maintenance plan renewal order for its licenses for the BrightStor ARCserve Backup software programs that was processed and approved by CA on February 1, 2006. CA received a net payment of \$4,731.00 for this maintenance renewal purchase. Rather than start the new maintenance plan on February 25, 2006, when the maintenance plan that was then in effect expired, CA started the plan's two-year term on February 1, 2006, and recorded the plan's expiration date as January 31, 2008. As a result, the Las Vegas Clark County Public Library was short-changed approximately 24 days of maintenance protection.

Virginia

69. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on Virginia government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

Virginia Department of Transportation

70. In October 2003, the Virginia Department of Transportation purchased through a CA reseller a one-year maintenance plan for its licenses for the AllFusion ERwin Data Modeler and the AllFusion Model Manager programs. CA received a net payment (after fees were paid to the reseller and distributor) of \$16,104.60 for this purchase. The order was processed and approved by CA on or about October 31, 2003. In its internal records, CA recorded a maintenance expiration date for these programs of October 30, 2004.

71. In September or October 2004, the Virginia Department of Transportation placed a three-year maintenance plan renewal order for its licenses for the AllFusion ERwin Data Modeler and the AllFusion Model Manager programs that was processed and approved by CA on October 1, 2004. CA received a net payment of \$43,496.35 for this maintenance renewal purchase. Rather than start the new maintenance plan on October 31, 2004, when the maintenance plans that were then in effect expired, CA started the plans' one-year term on October 1, 2004, and recorded the plans' expiration date as September 30, 2007. As a result, the Virginia Department of Transportation was short-changed approximately 30 days of maintenance protection.

Virginia Department of Labor & Industry

72. In November 2003, the Virginia Department of Labor & Industry purchased through a CA reseller a two-year maintenance plan for its licenses for the eTrust Antivirus program. CA received a net payment (after fees were paid to the reseller and distributor) of \$2407.93 for this purchase. The order was processed and approved by CA on or about November 25, 2003.

73. In November 2005, the Virginia Department of Labor & Industry placed a one-year maintenance plan renewal order for its licenses for the eTrust Antivirus program that was

processed and approved by CA on November 9, 2005. CA received a net payment of \$1,665.00 for this maintenance renewal purchase. Rather than start the new maintenance plan on November 25, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on November 9, 2005, and recorded the plan's expiration date as November 8, 2006. As a result, the Virginia Department of Labor & Industry was short-changed approximately 16 days of maintenance protection.

New York State and Local Government Entities

74. The following are examples of maintenance renewal contracts with respect to which CA perpetrated fraud on New York state and local government purchasers. Based upon CA's uniform practices and policies with respect to renewals of maintenance contracts, Relator believes and alleges that similar misconduct occurred whenever such renewals were purchased.

District Attorney of the County of New York

75. In December 2003, the District Attorney of the County of New York purchased through a CA reseller a one-year maintenance plan for its licenses for the AllFusion Model Manager program. CA received a net payment (after fees were paid to the reseller and distributor) of \$1,435.50 for this purchase. The order was processed and approved by CA on or about December 15, 2003.

76. In November 2004, the District Attorney of the County of New York placed another one-year maintenance plan renewal order for its licenses for the AllFusion Model Manager programs that was processed and approved by CA on November 19, 2004. CA received a net payment of \$1,447.44 for this maintenance renewal purchase. Rather than start the new maintenance plan on December 15, 2004, when the maintenance plan that was then in effect expired, CA started the plan's one-year term on November 19, 2004, and recorded the plan's

expiration date as November 18, 2006. As a result, the District Attorney of the County of New York was short-changed approximately 26 days of maintenance protection.

77. In November 2005, the District Attorney of the County of New York placed another one-year maintenance plan renewal order for its licenses for the AllFusion Model Manager programs that was processed and approved by CA on November 11, 2005. CA received a net payment of \$1,291.95 for this maintenance renewal purchase. Rather than start the new maintenance plan on November 19, 2005, when the maintenance plan that was then in effect expired, CA started the plan's one year term on November 11, 2005, and recorded the plan's expiration date as November 10, 2005. As a result, the District Attorney of the County of New York was short-changed approximately another 8 days of maintenance protection.

78. Other New York state and local government entities that have bought CA software licenses, maintenance plans, and maintenance renewal plans include but are not limited to: the New York State ("NYS") Board of Elections, the NYS Commission on Quality of Care and Advocacy for Persons with Disabilities, the NYS Department of Education, the NYS Department of Insurance, the NYS Department of Motor Vehicles, the NYS Department of Health, the NYS Department of Taxation and Finance, the NYS Division of Criminal Justice Services, the NYS Office for the Aging, the NYS Office of General Services, the NYS Office for the State Comptroller, the NYS Office of Technology, the NYS Police, the NYS Workers Compensation Board, the State University of New York, the Amherst Central School District, the Berkshire Union Free School District, the Deer Park School District, the Fallsburg Central School District, the Glen Cove School District, the Gouverneur Central School District, the Greece Central School District, the Hewlett-Woodmere Public School System, the Hilton Central School District, the Johnson City Central School District, the Kingston City Schools, the Levittown Public Schools,

the Maryvale School District, the McGraw Central School District, Monroe Community College, the Niagara Falls School District, the Pelham Union Free School District, the Plattsburg City School District, the South Country Central School District, the Wappinger's Central School District, the Williamson Central School District, Westchester Community College, the Yonkers Public Schools, the Town of Islip, the Town of Perinton, the City of Troy and the Queens Borough Public Library.

79. As set forth, above, it was CA's uniform practice and policy to fraudulently deprive its customers, including state and local government entities, of the full value of the maintenance protection plans they purchased and to cause these customers to overpay for maintenance protection by starting the term of maintenance renewal orders that these customers placed on the date the customer's renewal order was received by CA rather than at the expiration of the previously purchased maintenance plan.

80. Upon information and belief, CA applied and continues to apply this uniform practice and policy to maintenance renewal orders placed by New York state and local government entities, thereby depriving these entities of the full value of the maintenance protection plans they purchased and causing these customers to overpay for maintenance protection.

FACTS UNIQUE TO CLAIMS OF THE UNITED STATES

81. As part of its Enterprise Software Initiatives ("ESI") program, beginning in or about 1998, the Department of Defense ("DOD") negotiated and entered into Blanket Purchasing Agreement arrangements with CA and other software manufacturers in order to gain substantial discounts off the normal purchase prices. These arrangements called for the DOD to make large up-front payments for blocks of software user licenses (or "seats") that could then be redeemed, as needed, from the software companies by DOD offices, bases, or contractors.

82. In the case of CA, DOD's original blanket purchase order called for the up front purchase of 30,000 seats of Enterprise Management Software at a 64% discount of the normal purchase price of a single software license. Payment to CA for such blanket purchases was made by DOD by borrowing from the Army Working Capital Fund ("AWCF"). Offices of the Army and Army contractors could then order from CA for their various facilities on an as-needed basis, and pay for their purchases by repaying the AWCF from their own authorized funding, by submitting a Military Interdepartmental Purchase Request ("MIPR") to the Army Small Computer Program ("ASCP") in Fort Monmouth, New Jersey, or by issuing checks made out to the U.S. Department of Treasury. The price quoted for each contract line item number offered for sale under the BPA included the amount CA was paid for the software (or other schedule item) ordered plus an intra-governmental program administration funding fee.

83. By early 2000, there was already concern within DOD that procurement officials were not taking full advantage of these initiatives, and were instead often purchasing the same software that was available to them through such blanket purchasing agreements through other, more costly procurement channels. Therefore, in July, 2000, DOD's Deputy CIO issued a memorandum that specifically required contracting officers to consult the ESI program first when buying commercial software and maintenance services. While this requirement was not intended to force contracting officers to purchase software that was not their first choice for their needs, it was designed to ensure that software and maintenance services that were available through ESI were purchased from that prepaid inventory.

84. CA's blanket purchase agreement with DOD covered products in the company's ERwin data modeling software suite (whether purchase as a suite or as individual products) and its BPwin process modeling tool to analyze, document and improve complex business processes.

85. On March 30, 2001, DOD and CA entered into a new BPA for those products pursuant to contract number DAAB15-01-A-0001, and its Modification P00001 (which hereafter may be referred to jointly as “the BPA” or “the BPA contract”). Under this new agreement, DOD purchased a total of 2143 prepaid licenses for ERwin and 836 licenses for BPwin (also known as “Process Modeler”) to be delivered by CA over the 5-year life of the agreement to the Product Manager of the Small Computer Program (“PM-SCP”). At least \$1,714,312 was paid to CA by DOD toward those prepaid licenses at the commencement of the contract, and at least \$1,669,588 more was paid to CA toward those prepaid licenses each year thereafter for the remaining four years of the original contract life.

86. In addition to the prepaid licenses, the contract provided for purchases of new copies of ERwin and BPwin software, ERwin Examiner software, Modelmart software, Paradigm Plus software, ERwin Link for People Soft software, and for maintenance renewals of licenses that had already exceeded their warranty periods, generally at prices 20%-60% off GSA pricing over the 5-year life of the contract. Special pricing was provided under the BPA contract as well for purchases of software under CA’s Jasmine ii Special Solutions software line and for purchases of professional services of CA consultants and project managers. Pricing under the BPA, moreover, was required throughout the life of the contract to be the lowest price offered by Computer Associates (now, CA) to Federal and Civilian Government agencies for similar quantities, products and services that are acquired together.

87. With respect to all licenses purchased through BPA DAAB15-01-A-0001, the contract provided as well for extended warranty coverage at no additional cost to the Government. Specifically, section “1. Products Available Under this BPA” stated, in relevant part:

Five year warranty support, to include software fixes in the form of commercially available product revisions, updates and new releases, are included with each license. The software fixes shall be provided by the BPA holder (CA), at no additional cost to the Government, to all addressees that have previously received shipments under the BPA for the software product subject to fix, update or new release. The warranty term shall commence upon the date of the award and conclude 30 March 2006 for the entire quantity purchased under this agreement regardless of the DOD deployment date. . . .

Help desk/technical service support for all software products sold under this BPA shall be provided by CA for the purpose of providing user assistance and guidance in the implementation of the software, for those users who have issued a valid order under this BPA.. The toll free help desk/technical support number is available 24 hours per day, seven days a week

88. The effective date and duration of the BPA DAAB15-01-A-0001, as modified under Modification P00001, was from the date of the BPA award through March 30, 2006. Ordering privileges extended to any DOD purchaser.

89. Within CA, processing of purchases under the BPA is handled out of Tampa, Florida, by CA product-line sales groups who handled both direct BPA and other indirect government sales through referrals to authorized third-party vendors of CA products. All members of these sales teams (from sales representatives through their sales and division managers) are required to meet monthly sales quotas and are paid on a sales commission basis. (Tampa began handling BPA sales when that office opened in December, 2002. Prior to that time these functions were handled either out of Islandia, NY or the Herndon, Virginia offices of CA.)

90. Managers with responsibility for CA employees who service inquiries from DOD purchasing officers about obtaining BPA contract licenses for ERwin or BPwin have directed those employees to steer purchasing officers away from that program. Instead, CA sales representative have been instructed to try to convince such purchasing officers to buy the same software or maintenance agreements through third-party vendors with GSA schedules.

91. These directions are given for at least three reasons that benefit CA and the sales team assigned responsibility for DOD sales at the expense of DOD: (a) Such sales require less time and effort of CA's sales representatives than do BPA orders; (b) they count towards fulfillment of the sales quota requirements their departments are expected to meet each month and year, whereas pre-paid BPA orders do not; and (c) they result in new income to CA which, in accordance with CA corporate policy, means that – unlike BPA orders for prepaid product – they also produce sales commissions for managers and their sales staff. Sales representatives were repeatedly warned by their managers that, if they did not steer BPA-eligible purchasers to other purchasing channels that resulted in “new” sales, they would not meet their quotas and would forfeit pay incentives and rewards.

92. To accomplish the steering of eligible buyers away from using DOD's BPA, CA sales representatives were directed to represent to DOD purchasers, for example, that the software available under the BPA was an older, less reliable version of the software rather than the current version of software that was available if the purchase were made instead through a third-party vendor. This representation was false, as CA was required under the BPA to provide purchasers with the current version of the software as of the date of the shipment from CA to the end user. Moreover, CA sales representatives failed to inform BPA purchasers that they were entitled to receive free upgrades and software fixes for their products throughout the 5-year term of the BPA. Likewise, CA is required under the terms of the contract to notify designated DOD officials charged with responsibility for administering the contract with news about software upgrades and updates.

93. Another tactic CA sales representatives were instructed to use to steer DOD purchasers away from using the BPA contract was to emphasize to the purchasers the additional

paperwork required by all involved to complete those transactions in accordance with the requirements DOD included in the contract. While additional procedural requirements applied in processing orders through the BPA contract, it was not proper for CA to attempt to talk DOD purchasers out of following DOD's requirement that they use the BPA to purchase products available under that contract as a means to increase CA's profits and avoid the obligations CA had agreed itself to undertake by entering into the BPA and accepting the substantial up-front payments it received on prepaid licenses as consideration for undertaking those contractual responsibilities.

94. Despite the substantial volume of direct sales to DOD that CA agreed to undertake under the BPA, CA knowingly failed to institute reasonable internal processes that would permit it timely and effectively to process and fill orders made for BPA purchases. The cumbersome internal system for processing orders that CA created has led to unnecessary delays and difficulties in its ability to deliver product purchased under the BPA. It has also resulted in a lack of proper sales documentation that CA can provide BPA customers for their own records once a purchase is made.

95. Having created a mountain of bureaucracy that its sales force must traverse in order to process and fill BPA orders, CA managers and trainers coached their sales representatives to cite the delay and problems with inadequate documentation that CA itself created as additional reasons that DOD purchasers should avoid using the BPA as the mechanism for completing their purchases of CA products. Of course, CA did not disclose that its own inadequate systems were the cause of the problems it warned potential BPA customers about.

96. To avoid providing DOD purchasers with the substantial discounts promised under the BPA, CA sales representatives were falsely told by their managers and trainers that the BPA

did not cover purchases of any items other than prepaid licenses for ERwin and BPwin. DOD purchasers who called CA wanting to buy the other software products offered in the BPA were thus told in turn by CA sales representatives that they would need to purchase through resellers, where they were charged prices substantially in excess of the discounts promised under the BPA contract.

97. CA also failed to abide by the warranty provisions of the BPA contract cited above. Warranty support CA supplied was limited to just one year after delivery of a product to a customer, and not extended throughout the 5-year term of the contract. After that one-year period, software fixes in the form of commercially available product revisions, updates, and new releases were not provided by CA to BPA purchasers at no additional cost to the Government. Rather, CA managers and trainers directed their sales representatives to charge BPA license holders for new maintenance agreements if inquiries were made about continued maintenance near the end of the first anniversary of the original delivery date of a particular license, and – better yet – to convince them to purchase renewals through third-party vendors at an increased price. BPA license holders that sought warranty service beyond the first anniversary of their purchase under the BPA were told that they would need to purchase a whole new license, as their warranty coverage had been allowed to lapse.

98. Additionally, ERwin and BPwin upgrades and maintenance renewals CA sold to DOD purchasers – properly (with respect to licenses that were not originally purchased under the BPA and thus that were not eligible for the BPA warranty’s five years of free coverage) or not – were processed improperly by referencing the product item numbers for prepaid licenses for those products. Because the proper per-unit cost of a software upgrade or maintenance renewal is significantly lower than the per-unit cost of those prepaid licenses, any improper reduction

ascribed to the prepaid inventory of ERwin or BPwin licenses that may have resulted from such improper product references would have resulted in a substantial loss to the United States of value it had prepaid for ERwin and BPwin licenses.

99. As a readily-foreseeable result of CA's efforts to direct DOD purchasers away from the BPA contract, DOD purchasers did not use the full inventory of prepaid ERwin and BPwin licenses for which the Government had paid prior to the originally-scheduled March 31, 2006 end date of the contract. Consequently, DOD has needed to extend the availability of product to DOD purchasers under the now-closed contract DAAB15-01-A-0001, using a new contract number W91QUZ-04-A-002, "until all existing inventory has been depleted."

100. CA's false statements and improper manipulations have thus allowed it to avoid and decrease its obligation to transmit property to the United States Government in the form of prepaid licenses for ERwin and BPwin software, that the United States had already paid for and was entitled to receive as a first-course option whenever such new licenses were needed by eligible DOD purchasers. Moreover, while improperly retaining such prepaid property of the United States, CA benefitted as well by causing DOD purchasers to buy new licenses from CA through 3rd-party vendors at prices that exceeded the price promised under the BPA.

101. CA's false statements, improper manipulations, and failures to provide full warranty benefits due buyers of licenses under the BPA contract have also allowed CA to avoid and decrease its obligation to transmit property to the United States Government in the form of product revisions, updates and new releases for which the Government had already paid when such licenses were purchased. Moreover, while improperly retaining such prepaid property of the United States, CA benefitted as well by causing BPA software license holders to purchase either new maintenance contracts or renewals or entirely new licenses for which the Government

had already paid. CA often compounded the loss to the United States further by steering defrauded BPA license holders to make those additional purchases from third-party vendors, at a higher price than would be charged for any legitimately-needed purchases made through the BPA.

102. Additionally, by falsely representing to DOD purchasers that other (non-prepaid) products listed in the BPA were not part of that agreement, CA was able to steer DOD purchasers to other procurement channels through which they were not granted the levels of discounts negotiated under the BPA.

COUNT I
False Claims Act
31 U.S.C. §3729(a)(1)

103. Relator realleges and incorporates by reference the allegations in paragraphs 1 through 102 of this complaint.

104. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§3729 *et seq.*, as amended.

105. Through the acts described in paragraphs 1 through 102, above, Defendant has knowingly presented and caused to be presented to the United States Government – and other purchasers using federal funds – false or fraudulent claims for payment for maintenance / warranty protection on CA’s software licenses.

106. Through the acts described in paragraphs 81-102, above, Defendant has knowingly presented and caused to be presented to the United States Government – and other purchasers using federal funds – false or fraudulent claims for new payment for prepaid software licenses, warranty/ maintenance protection, and other products and services covered under CA’s BPA contract with DOD that should have been sold and delivered through that BPA. Defendant’s

misconduct resulted in causing the United States to pay a second time both for software licenses that should have been delivered to it from prepaid inventory and for software warranty/ maintenance coverage that was included in the original cost of licenses purchased under the BPA contract. Defendant's misconduct also resulted in causing the United States to pay a higher price for such software licenses and other products than it would have paid had the BPA contract been applied as required.

107. Unaware of the falsity of these claims, the United States has paid, and continues to pay, claims that would not be paid, but for Defendant's fraudulent scheme.

108. As a result of paying these false claims, the United been damaged and continues to be damaged, in an amount not yet determined, but that is in the millions of dollars.

COUNT II
False Claims Act
31 U.S.C. §3729(a)(2)

109. Relator realleges and incorporates by reference the allegations in paragraphs 1 through 102 of this Complaint.

110. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§3729 *et seq.*, as amended.

111. Through the acts described 1 through 102, above, Defendant has knowingly made, used and caused to be made and used false records and statements and omitted material facts to get false or fraudulent claims for warranty/ maintenance protection on CA's software licenses paid and approved by the United States Government and other purchasers using federal funds.

112. Through the acts described in paragraphs 81-102, above, Defendant has knowing made, used and caused to be made and used false records and statements and omitted material facts to get Government payment or approval of false or fraudulent claims for new payment for

prepaid software licenses, warranty/ maintenance protection, and other products and services covered under CA's BPA contract with DOD that should have been sold and delivered through that BPA. Defendant's misconduct resulted in causing the United States to pay a second time both for software licenses that should have been delivered to it from prepaid inventory and for software warranty/ maintenance coverage that was included in the original cost of licenses purchased under the BPA contract. Defendants misconduct also resulted in causing the United States to pay a higher price for such software licenses and other products than it would have paid had the BPA contract been applied as required.

113. The United States, unaware of the falsity of Defendant's false records, false statements and omissions of material fact, paid and continues to pay claims that would not have been paid but for Defendant's fraudulent scheme.

114. By reason of Defendant's acts, the United States has been damaged, and continues to be damaged, in an amount not yet determined, but that is in the millions of dollars.

COUNT III
False Claims Act
31 U.S.C. §3729(a)(4)

115. Relator realleges and incorporates by reference the allegations in paragraphs 1 through 102 of this Complaint.

116. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§3729 *et seq.*, as amended.

117. Through the acts described above, Defendant, which controls access to intellectual property and pre-paid warranty and service rights to be used by the Government, with the intent to defraud the Government, delivered less intellectual property and pre-paid warranty and maintenance services than the amount for which Defendant received a receipt or certificate

showing the length of time during which such intellectual property and pre-paid services were due to the Government.

118. As a result of Defendant's fraudulent scheme, the United States has been damaged, and continues to be damaged, in an amount not yet determined, but that is in the millions of dollars.

COUNT IV
False Claims Act
31 U.S.C. §3729(a)(7)

119. Relator realleges and incorporates by reference the allegations in paragraphs 1 through 11 and in paragraphs 81 through 102 of this Complaint.

120. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§3729 *et seq.*, as amended.

121. Through the acts described above, Defendant, which possesses and controls prepaid software licenses and warranty/ maintenance rights and services purchased by the Government, knowingly made, used, and caused to be made and used false records and statements in order to avoid and decrease its obligation to transmit such property to the Government in accordance with the terms of its BPA contract with DOD.

122. As a result of Defendant's fraudulent scheme, the United States has been damaged, and continues to be damaged, in an amount not yet determined.

COUNT V
California False Claims Act
Cal Govt Code §12651(a)(1) and (2)

123. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

124. This is a claim for treble damages and penalties under the California False Claims Act.

125. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the California State Government and its political subdivisions to approve and pay such false and fraudulent claims.

126. The California State Government and its political subdivisions, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

127. By reason of Defendant's acts, the State of California, and its political subdivisions have been damaged, and continue to be damaged, in a substantial amount to be determined at trial.

128. The State of California, and its political subdivisions are entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

COUNT VI

District of Columbia False Claims Act
D.C. Code Ann. §§2-308.14 *et seq.*

129. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this complaint.

130. This is a claim for treble damages and penalties under the District of Columbia False Claims Act.

131. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the District of Columbia for payment or approval.

132. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the District of Columbia approve and pay such false and fraudulent claims.

133. By virtue of the acts described above, Defendant, which controlled access to intellectual property and pre-paid service rights to be used by the District of Columbia, with the intent to defraud the District of Columbia, delivered less intellectual property and pre-paid services than the amount for which Defendant received a receipt or certificate showing the length of time during which such intellectual property and pre-paid services were due to the Government.

134. The District of Columbia unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

135. By reason of the Defendant's acts, the District of Columbia has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

136. The District of Columbia is entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

COUNT VII

Florida False Claims Act
Fla. Stat. Ann. §68.082(2)

137. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

138. This is a claim for treble damages and penalties under the Florida False Claims Act.

139. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the Florida State Government for payment or approval.

140. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Florida State Government to approve and pay such false and fraudulent claims.

141. By virtue of the acts described above, Defendant, which controls access to intellectual property and pre-paid service rights to be used by the Florida State Government, with the intent to defraud the Florida State Government, delivered less intellectual property and pre-paid services than the amount for which Defendant received a receipt or certificate showing the length of time during which such intellectual property and pre-paid services were due to the Florida State Government.

142. The Florida State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

143. By reason of Defendant's acts, the State of Florida has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

144. The State of Florida is entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

COUNT VIII

Hawaii False Claims Act
Haw. Rev. Stat. §661-21(a)

145. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

146. This is a claim for treble damages and penalties under the Hawaii False Claims Act.

147. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the Hawaii State Government for payment or approval.

148. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Hawaii State Government to approve and pay such false and fraudulent claims.

149. The Hawaii State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

150. By reason of Defendant's acts, the State of Hawaii has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

151. The State of Hawaii is entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

COUNT IX

Illinois Whistleblower Reward And Protection Act
740 Ill. Comp. Stat. §175/3(a)(1), (2)

152. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

153. This is a claim for treble damages and penalties under the Illinois Whistleblower Reward and Protection Act.

154. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the State of Illinois for payment or approval.

155. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State of Illinois to approve and pay such false and fraudulent claims.

156. By virtue of the acts described above, Defendant, which controlled access to intellectual property and pre-paid service rights to be used by the State of Illinois, with the intent to defraud the State of Illinois, delivered less intellectual property and pre-paid services than the amount for which Defendant received a receipt or certificate showing the length of time during which such intellectual property and pre-paid services were due to the State of Illinois.

157. The State of Illinois, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

158. By reason of Defendant's acts, the State of Illinois has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

159. The State of Illinois is entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

COUNT X

Massachusetts False Claims Law
Mass. Gen. Laws ch. 12 §5B(1), (2)

160. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

161. This is a claim for treble damages and penalties under the Massachusetts False Claims Law.

162. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the Commonwealth of Massachusetts and its political subdivisions for payment or approval.

163. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Commonwealth of Massachusetts and its political subdivisions to approve and pay such false and fraudulent claims.

164. The Commonwealth of Massachusetts and its political subdivisions, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

165. By reason of Defendant's acts, the Commonwealth of Massachusetts, and its political subdivisions have been damaged, and continue to be damaged, in substantial amount to be determined at trial.

166. The Commonwealth of Massachusetts is entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

COUNT XI
Nevada False Claims Act
Nev. Rev. Stat. Ann. §357.040(1)(a), (b)

167. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

168. This is a claim for treble damages and penalties under the Nevada False Claims Act.

169. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the State of Nevada and its political subdivisions for payment or approval.

170. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State of Nevada and its political subdivisions to approve and pay such false and fraudulent claims.

171. The State of Nevada and its political subdivisions, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for fraudulent scheme.

172. By reason of Defendant's acts, the State of Nevada, and its political subdivisions have been damaged, and continue to be damaged, in a substantial amount to be determined at trial.

173. The State of Nevada is entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

COUNT XII

Virginia Fraud Against Taxpayers Act
Va. Code Ann. §8.01-216.3(a)(1), (2)

174. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

175. This is a claim for treble damages and penalties under the Virginia Fraud Against Taxpayers Act.

176. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the Commonwealth of Virginia, (including its political subdivisions, as defined in that Act) for payment or approval.

177. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Commonwealth of Virginia to approve and pay such false and fraudulent claims.

178. By virtue of the acts described above, Defendant, which controlled access to intellectual property and pre-paid service rights to be used by the Commonwealth of Virginia, with the intent to defraud the Commonwealth of Virginia, delivered less intellectual property and pre-paid services than the amount for which Defendant received a receipt or certificate showing the length of time during which such intellectual property and pre-paid services were due to the Commonwealth of Virginia.

179. The Commonwealth of Virginia , unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

180. By reason of the Defendant's acts, the Commonwealth of Virginia has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

181. The Commonwealth of Virginia is entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

[PROPOSED] COUNT XIII
New York City False Claims Act
N.Y.C. Admin. Code, Title 7, §§7-801 *et seq.*

182. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

183. This is a claim for treble damages and penalties under the New York City False Claims Act .

184. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the City of New York for payment or approval.

185. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the City of New York to approve and pay such false and fraudulent claims.

186. By virtue of the acts described above, Defendant, which controlled access to intellectual property and pre-paid service rights to be used by the City of New York, with the intent to defraud the City of New York, delivered less intellectual property and pre-paid services than the amount for which Defendant received a receipt or certificate showing the length of time during which such intellectual property and pre-paid services were due to the City of New York.

187. The City of New York, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

188. By reason of the Defendant's acts, the City of New York has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

189. The City of New York is entitled to the maximum penalty of \$15,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

COUNT XIV

New York False Claims Act
N.Y. State Fin. Section 187 *et. seq.*

190. Relator realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 of this Complaint.

191. This is a claim for treble damages and penalties under the New York False Claims Act.

192. Throughout the term of Relator Ann-Marie Shaw's employment with Defendant, CA and its authorized resellers sold software licenses and maintenance and maintenance renewal plans for these licenses to numerous New York state and local government entities.

193. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the State of New York and its local governments for payment or approval.

194. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State of New York and its local governments to approve and pay such false and fraudulent claims.

195. By virtue of the acts described above, Defendant, which controlled access to intellectual property and pre-paid service rights to be used by the State of New York and its local governments, with the intent to defraud the State of New York and its local governments, deliv-

ered less intellectual property and pre-paid services than the amount for which Defendant received a receipt or certificate showing the length of time during which such intellectual property and pre-paid services were due to the State of New York and its local governments.

196. The State of New York and its local governments, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay the claims that would not be paid but for Defendant's fraudulent scheme.

197. By reason of Defendant's acts, the State of New York and its local governments have been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

198. The State of New York and its local governments are entitled to the maximum penalty of \$12,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/relator prays for judgment against Defendant as follows:

- a) that Defendant cease and desist from violating 31 U.S.C. §3729 et seq., and the equivalent provisions of the States' and Municipalities' statutes set forth above;
- b) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the United States has sustained because of Defendant's actions, plus a civil penalty of not less than \$5,000 and not more than \$11,000 for each violation of 31 U.S.C. §3729;

- c) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the State of California has sustained because of Defendant's actions, plus a civil penalty of \$10,000 for each violation of Cal. Govt Code §12651(a);
- d) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the District of Columbia has sustained because of Defendant's actions, plus a civil penalty of \$10,000 for each violation of D.C. Code Ann. §2-308.14;
- e) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the State of Florida has sustained because of Defendant's actions, plus a civil penalty of \$10,000 for each violation of Fla. Stat. Ann. §68.082(2);
- f) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the State of Hawaii has sustained because of Defendant's actions, plus a civil penalty of \$10,000 for each violation of Haw. Rev. Stat. §661-21(a);
- g) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the State of Illinois has sustained because of Defendant's actions, plus a civil penalty of \$10,000 for each violation of 740 Ill. Comp. Stat. §175/3(a);
- h) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the State of Massachusetts has sustained

because of Defendant's actions, plus a civil penalty of \$10,000 for each violation of Mass. Gen. L. Ch. 12 §5B;

- i) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the State of Nevada has sustained because of Defendant's actions, plus a civil penalty of \$10,000 for each violation of Nev. Rev. Stat. Ann. §357.040(1);
- j) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages the Commonwealth of Virginia has sustained because of Defendant's actions, plus a civil penalty of \$10,000 for each violation of Va. Code Ann. §8.01-216.3(A);
- k) that, should New York City join this action as proposed, this Court enter judgment against Defendant in an amount equal to three times the amount of damages the City of New York has sustained because of Defendant's actions, plus a civil penalty of \$15,000 for each violation of N.Y.C. Admin. Code, Title 7, §§7-803.
- l) that this Court enter judgment against Defendant in an amount equal to three times the amount of damages New York state and local government entities have sustained because of Defendant's actions, plus a civil penalty of \$12,000 for each violation of N.Y. State Fin. Section 189;
- m) that qui tam plaintiff be awarded the maximum amount allowed pursuant to §3730(d) of the False Claims Act, and the equivalent provisions of the States' and Municipalities' statutes set forth above; and

n) that qui tam plaintiff be awarded all costs of this action, including attorneys' fees and expenses; and that all plaintiffs recover such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, qui tam plaintiff hereby demands a trial by jury.

Dated: May 22, 2007

Respectfully submitted,

JONATHAN A. WILLENS LLC

By: 

Jonathan A. Willens (JW-9180)
217 Broadway, Suite 707
New York, New York 10007
Tel: (212) 619-3749
Fax: (800) 879-7938

Janet L. Goldstein
MARTYN LILES, PLLC
1054 31st Street, N.W., Suite 415
Washington, DC 20007
Tel: (202) 965-3060

Peter W. Chatfield
PHILLIPS & COHEN LLP
2000 Massachusetts Ave., NW
Washington, DC 20036
Tel: (202) 833-4567

Attorneys for Plaintiff-Relator
Ann-Marie Shaw