

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**UNITED STATES OF AMERICA, and the
STATES OF CALIFORNIA, FLORIDA,
HAWAII, ILLINOIS, MASSACHUSETTS,
NEVADA, VIRGINIA, DISTRICT OF
COLUMBIA and STATE and CITY OF
NEW YORK *EX REL.* ANN-MARIE
SHAW,**

Plaintiffs,

-v-

CA, INC.,

Defendant.

Civil Action No. 06-3552 (LDW) (WDW)

**STIPULATION AND ORDER OF
SETTLEMENT**

IT IS HEREBY STIPULATED, AGREED AND ORDERED:

THIS STIPULATION AND ORDER OF SETTLEMENT (the "Agreement") is entered into between the United States of America (the "United States"), CA, Inc. ("CA") and Ann-Marie Shaw (the "Relator") (collectively the "Parties"), through their authorized representatives.

WHEREAS, CA is a Delaware corporation, with a main office located in Islandia, New York, that sells computer software and provides information technology management services to federal and state government agencies (as well as private customers) throughout the United States; and

WHEREAS, Relator is a resident of the State of Florida and commenced this action on or about July 18, 2006 by filing a complaint, as captioned above, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733, in the United States District Court for the Eastern District of New York (the "Civil Action"); and

WHEREAS, on or about May 23, 2007, Relator filed an amended complaint in the Civil Action; and

WHEREAS, on or about June 27, 2013, the United States filed a Notice of Intervention in the Civil Action; and

WHEREAS, the United States contends it has certain civil claims against CA for engaging in the following conduct during the period from 2001 through 2010: (a) CA improperly recorded the beginning and end dates of software maintenance purchased by some federal customers, resulting in these customers paying for periods of software maintenance for which they already paid; specifically, when a federal customer entered into a software maintenance renewal agreement, the renewal period would begin on the day CA processed the order, rather than the day after the expiration of the customer's then-existing maintenance period; and (b) CA improperly steered United States Department of Defense customers away from, and/or processed orders for software from United States Department of Defense customers under contracts other than, Blanket Purchase Agreement Nos. DAAB15-99-A-0018, DAAB15-01-A-0001, and W91QUZ-04-A-0002, and amendments/supplements thereto ("BPAs"), resulting in these customers not taking advantage of the benefits of the prepaid software inventory available under the BPAs (the "Covered Conduct"); and

WHEREAS, this Agreement is made in compromise of disputed claims and is neither an admission of liability by CA nor a concession by the United States that its claims are not well founded; and

WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of the

Agreement, the Parties reach full and final settlement pursuant to the Terms and Conditions below.

IT IS HEREBY AGREED BY THE UNDERSIGNED THAT:

1. All the above "Whereas" paragraphs are incorporated herein.

Settlement Amount

2. CA will pay the United States eight million dollars (\$8,000,000.00) (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of New York on its letterhead. CA agrees to make this electronic funds transfer no later than fifteen (15) days after the later of the Effective Date of this Agreement or CA's receipt of the aforementioned written electronic funds transfer instructions.

3. The United States will pay Relator, within sixty (60) days of receipt of the Settlement Amount, one million six hundred thousand dollars (\$1,600,000.00).

Mutual Releases

4. Subject to the exceptions in Paragraph 9 (concerning excluded claims), below, in consideration of the obligations of CA in this Agreement, conditioned upon CA's full payment of the Settlement Amount, and subject to Paragraph 17, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States releases CA, together with its predecessors and current and former parent corporations; direct and indirect subsidiaries; brother and sister corporations; divisions; current and former owners; and current and former officers, directors, employees, representatives, agents and affiliates; and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has, or may have, for the

Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, 3812, the Contract Disputes Act, 41 U.S.C. §§ 7108, 7109, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and/or fraud.

5. Subject to the exceptions for excluded claims identified in Paragraph 9, below, and conditioned upon CA's full payment of the Settlement Amount, Relator, for herself and her heirs, successors, attorneys, agents, representatives, and assigns, releases CA, together with its predecessors and current and former parent corporations; direct and indirect subsidiaries; brother and sister corporations; divisions; current and former owners; and current and former officers, directors, employees, representatives, agents and affiliates from any claim the Relator has asserted or could have asserted in the Civil Action, including in its original and amended complaints.

6. CA fully and finally releases the United States, its agencies, officers, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that CA has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. CA, on behalf of itself, its predecessors and current and former parent corporations; direct and indirect subsidiaries; brother and sister corporations; divisions; current and former owners; and current and former officers, directors, employees, representatives, agents and affiliates, release(s) and forever discharge(s) the Relator, together with her heirs, executors, administrators, attorneys, agents, personal representatives, family members, successors, and

assigns, from any claims related to the Covered Conduct and the Relator's investigation and prosecution thereof.

8. Upon receipt of the payments described in Paragraphs 2 and 3 above, the Parties and Relator shall, within seven (7) business days, file in the Civil Action a Joint Stipulation of Dismissal of all claims asserted in the Civil Action, with prejudice to the Relator and to the United States, excluding any claims identified in Paragraph 9.

Excluded Claims

9. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States and/or Relator are specifically reserved and are not released:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for conduct other than the Covered Conduct, including, but not limited to, any civil or administrative monetary claim the United States has, or may have, for any non-Covered Conduct alleged in any other complaint filed against CA pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733;
- e. All claims asserted in Counts V through XIV of the Amended Complaint in the Civil Action;
- f. Any liability based upon such obligations created by this Agreement;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;**
- h. Any liability for failure to deliver goods or services due;**
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;**
- j. Any claims by Relator for reasonable expenses, attorneys' fees and costs in the Civil Action.**

10. Relator and her heirs, successors, attorneys, agents, representatives, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 3, Relator and her heirs, successors, attorneys, agents, representatives, and assigns fully and finally release, waive and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or claims asserted on behalf of the United States in the Civil Action.

11. CA waives and shall not assert any defenses CA may have to any criminal prosecution or administrative action for the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by

the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

Unallowable Costs

12. ***Unallowable Costs Defined:*** All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of CA, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- a. the matters covered by this Agreement;
- b. the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- c. CA's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- d. the negotiation and performance of this Agreement;
- e. the payment CA makes to the United States pursuant to this Agreement, including related attorney's fees and costs to counsel for relator, are "Unallowable Costs" for government contracting purposes (hereinafter referred to as "Unallowable Costs").

13. ***Future Treatment of Unallowable Costs:*** Unallowable Costs will be separately determined and accounted for by CA, and CA shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

14. ***Treatment of Unallowable Costs Previously Submitted for Payment:*** Within 90 days of the Effective Date of this Agreement, CA shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by CA or any of its subsidiaries or affiliates from the United States. CA agrees that the

United States, at a minimum, shall be entitled to recoup from CA any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine CA's books and records and to disagree with any calculations submitted by CA or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by CA, or the effect of any such Unallowable Costs on the amount of such payments.

Cooperation

15. Upon reasonable notice, CA shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees (and shall use reasonable efforts to make available, and encourage the cooperation of former directors, officers, and employees) for interviews by the United States and testimony reasonably requested and conducted by the United States regarding the Covered Conduct, consistent with the rights and privileges of such individuals. CA further agrees to furnish to the United States, upon reasonable request by the United States, copies of all non-privileged documents, reports, memoranda of interviews, and records, in its possession, custody, or control concerning any investigation of the Covered Conduct it has undertaken, or that has been performed by its counsel and other agent. These cooperation provisions relate to future inquiries regarding the Covered Conduct conducted by the United States on its own behalf and shall continue for a period of 5 years from the Effective Date of this agreement.

Binding Effect of Agreement/No Third Party Beneficiaries

16. This Agreement is binding on CA's successors, transferees, heirs, and assigns. This Agreement is binding on Relator's successors, transferees, heirs, and assigns. Except as otherwise provided herein, this Agreement is intended to be only for the benefit of the Parties.

Bankruptcy Proceedings

17. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, CA commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of CA's debts, or seeking to adjudicate CA as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for CA or for all or any substantial part of CA's assets, CA agrees as follows:

a. CA's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and CA shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) CA's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) CA was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to CA.

b. If CA's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against CA for the claims that would otherwise be covered by the releases provided in Paragraphs 4-7, above,

CA agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and CA shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) CA shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 60 calendar days of written notification to CA that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement; and (iii) the United States has a valid claim against CA in the amount of treble damages plus penalties under the False Claims Act, 31 U.S.C. §§ 3729-33, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. CA acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

Parties To Bear Own Costs

18. Except as expressly provided to the contrary in this Agreement with regard to CA's liability to counsel for Relator for available attorney's fees and costs, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

Entire Agreement/No Oral Modification or Amendment

19. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

Construction/Voluntary and Knowing Execution

20. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

Headings

21. The heading references herein are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect or interpret any of the provisions hereof.

Counterparts

22. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to constitute an original and all of which, when taken together, shall constitute one and the same Agreement. Facsimile, and electronic copies of, signatures shall be deemed originals.

Choice of Law and Consent to Jurisdiction

23. This Agreement shall be governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Eastern District of New York.

Authority

24. Each Party represents and warrants that (i) it has the power and authority to execute, deliver and perform this Agreement, and (ii) this Agreement has been duly executed and delivered by it and constitutes his, her or its valid and legally binding obligation, enforceable against it in accordance with its terms.

Effective Date

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date").

Disclosure and Use of this Agreement

26. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

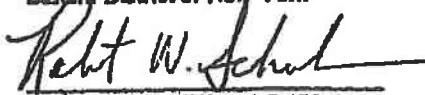
IN WITNESS WHEREOF, the Parties hereto affix their signatures.

THE UNITED STATES OF AMERICA

DATED: August 26, 2013

LORETTA E. LYNCH
United States Attorney
Eastern District of New York

BY:



ROBERT W. SCHUMACHER
Assistant U.S. Attorney

DATED: August 26, 2013

BY:



RICHARD J. BECKERT
CFO, CA Technologies

DATED: August 26, 2013

BY:



MARC EFRON
Counsel for CA

DATED: August 22, 2013

BY:

RELATOR


ANN MARIE SHAW

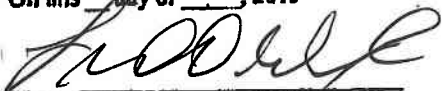
DATED: August 28, 2013

BY:



JANET L. GOLDSTEIN
PETER W. CHATFIELD
Counsel for Relator

SO ORDERED:
On this 28 day of August, 2013



Honorable Leonard D. Wexler
United States District Judge

8/28/13