

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)

**SETTLEMENT AGREEMENT FOR CLAIMS
OF HAWAII, ILLINOIS, MASSACHUSETTS,
VIRGINIA, DISTRICT OF COLUMBIA AND
STATE AND CITY OF NEW YORK**

THIS SETTLEMENT AGREEMENT (the “Agreement”) is entered into by the States of Hawaii, Illinois, and New York, the Commonwealths of Massachusetts and Virginia, the District of Columbia and the City of New York, for themselves and for other governmental entities within their jurisdictions, (collectively, the “States and Municipalities”), CA, Inc. (“CA”) and Ann-Marie Shaw (the “Relator”) (collectively the “Parties”), by and 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, Civil Action No. 06-3552 (the “Civil Action”), and subsequently filed an amended complaint in the Civil Action on or about May 23, 2007; and

WHEREAS, the States and Municipalities contend they have certain civil claims against CA for improperly recording the beginning and end dates of software maintenance purchased by themselves, political subdivisions or other governmental customers within the jurisdictions of the States and Municipalities (“Affected Governmental Customers”), on behalf of which the States and Municipalities have the power and authority to settle these claims, during the period from 2001 through 2009, resulting in these customers paying for periods of software maintenance for which they already paid; specifically, when a 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 (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 States and Municipalities that their 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 States and Municipalities, for themselves and for the Affected Governmental Customers, the total amount of \$1,628,740.40 (the “Settlement Amount”), to be paid to each of the States and Municipalities as follows:

- (a) State of Hawaii: \$25,734.90;
- (b) State of Illinois: \$426,641.31;
- (c) Commonwealth of Massachusetts: \$204,639.00;
- (d) State of New York (inclusive of the City of New York): \$708,795.08;
- (e) Commonwealth of Virginia: \$227,583.37;
- (f) District of Columbia: \$35,346.74.

Such amounts are to be paid by electronic funds transfer pursuant to written instructions to be provided by the attorneys for each respective State and Municipality 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 States and Municipalities are authorized to accept payment from CA on behalf of the Affected Governmental Customers and are responsible for distributing payment to their Affected Governmental Customers in the manner and amount determined by the States and Municipalities under their respective False Claims Acts.

4. Relator’s Share. Each of the States and Municipalities will pay or arrange for payment to Relator, within ninety (90) days of receipt of the Settlement Amount, an amount equal to 20% of its Settlement Amount.

Mutual Releases

5. Subject to the exceptions in Paragraph 10 (concerning excluded claims) below, and CA having represented to the States and Municipalities that it is not aware of any notices, claims, disputes or actions concerning the Covered Conduct made by any of the Affected Governmental Customers other than in this action, in consideration of the obligations of CA in this Agreement, conditioned upon CA's full payment of the Settlement Amount, and subject to Paragraph 14, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the States and Municipalities, for themselves and for their Affected Governmental Customers, release 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 each of the States and Municipalities and their respective Affected Governmental Customers has, or may have, for the Covered Conduct under the States' and Municipalities' and their Affected Governmental Customers' respective False Claims Acts,¹ contract dispute-related statutes, and any fraud-related statutes, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and/or fraud.

6. Subject to the exceptions for excluded claims identified in Paragraph 10, 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

¹ D.C. Code § 2-308.13 *et seq.*; Haw. Rev. Stat. §661-21 *et seq.*; 740 Ill. Comp. Stat. §175/1 *et seq.*; Mass. Gen. Laws ch. 12 §5 *et seq.*; N.Y. State Fin. §187 *et seq.*; N.Y.C. Admin. Code, Title 7, §§7-801 *et seq.*; Va. Code Ann. §8.01-216.3 *et seq.*

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 her original and amended complaints.

7. CA fully and finally releases the States and Municipalities, Affected Governmental Customers, and their 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 any of the States and Municipalities, and their agencies, officers, employees, servants, and agents, related to the Covered Conduct and the States' and Municipalities' investigation and prosecution thereof.

8. 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.

9. Upon receipt of the payments described in Paragraphs 2 and 4 above, the States and Municipalities and Relator shall, within fourteen (14) 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 States and Municipalities and their Affected Governmental Customers, excluding any claims identified in Paragraph 10.

Excluded Claims

10. Notwithstanding the releases given in Paragraphs 5 and 6 of this Agreement, or any other term of this Agreement, the following claims of the States and Municipalities, Affected Governmental Customers, and/or Relator are specifically reserved and are not released:

a. Any civil, criminal, or administrative liability arising under tax laws of the respective States and Municipalities;

b. Any criminal liability;

c. Any administrative liability, including the suspension and debarment rights of any of the States' or Municipalities' agencies or any of the agencies of political subdivisions or of any Affected Governmental Customer;

d. Any liability to the States and Municipalities (or any of their agencies or political subdivisions) for conduct other than the Covered Conduct;

e. Any liability based upon such obligations created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

g. Any liability for failure to deliver goods or services due;

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

i. All claims asserted on behalf of California, Florida and Nevada in Counts Five (V), Seven (VII) and Eleven (XI) of the First Amended Complaint.

j. Any claims by Relator for reasonable expenses, attorneys' fees and costs in the Civil Action.

11. 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 each State's and Municipality's False Claims Act. Conditioned upon Relator's receipt of the payment described in Paragraph 4, which Relator agrees is for good and valuable consideration, Relator and her heirs, successors, attorneys, agents, representatives, and assigns fully and finally release, waive and forever discharge each of the States and Municipalities, Affected Governmental Customers, and their agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under its respective False Claims Act (including attorney's fees, costs, and expenses of every kind and however denominated), and from any claims to a share of the proceeds of this Agreement and/or claims asserted on behalf of the States and Municipalities and their Affected Governmental Customers in the Civil Action.

12. 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 States and Municipalities and their respective Affected Governmental Customers concerning the characterization of the Settlement Amount for purposes of their respective tax laws.

Binding Effect of Agreement/No Third Party Beneficiaries

13. 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

14. 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 States and Municipalities; 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 States and Municipalities, each at its sole option, may rescind the releases in this Agreement insofar as it affects that State or Municipality 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 5-7, above, CA agrees that (i) any such claims, actions, or proceedings brought by any of the States or Municipalities 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 States’ or Municipalities’ 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 States or Municipalities 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) each State and Municipality has a valid claim against CA in the amount of treble damages plus penalties under its respective False Claims Act, and 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

15. 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

16. 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

17. 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

18. 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

19. 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

20. In the event that any action or other proceeding is brought by any of the parties hereto to enforce the terms of this Agreement, this Agreement shall be governed by the laws of the respective State or Municipality which either brought the action or on which the action was

brought against. 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

21. 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 its valid and legally binding obligation, enforceable against it in accordance with its terms.

Effective Date

22. 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

23. All parties consent to the States’ and Municipalities’ disclosure of this Agreement, and information about this Agreement, to the public.

IN WITNESS WHEREOF, the Parties hereto affix their signatures.

DISTRICT OF COLUMBIA

DATED: October 18, 2013

IRVIN B. NATHAN
Attorney General for the District of Columbia

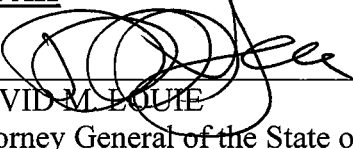
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HAWAII

DATED: October 16, 2013



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ILLINOIS

DATED: October 16, 2013

LISA MADIGAN
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BY: Jennifer Zlotow

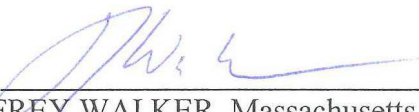
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MASSACHUSETTS

DATED: October 16, 2013

COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

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NEW YORK

DATED: October 16, 2013

BY: ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 

RANDALL FOX

Bureau Chief

Taxpayer Protection Bureau

Office of the New York Attorney General

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Tel: 212-416-6012

VIRGINIA

DATED: October 15, 2013

KEN CUCCINELLI
Attorney General of the State of Virginia


By: 
ELLEN PORTER
Assistant Attorney General
Director of Special Counsel Program
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Richmond, Virginia 23219
Phone: 804-786-9138

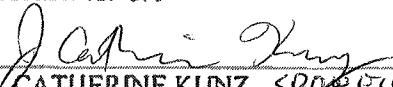
CA, INC.

DATED: October 24, 2013

BY: 
RICHARD J. BECKERT
CFO, CA Technologies

DATED: October 25, 2013

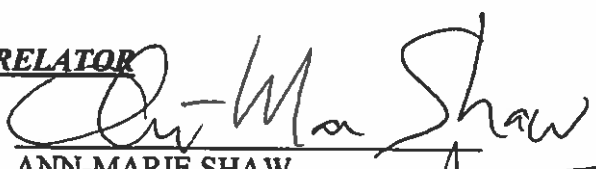
BY: 
MARC EFRON, CROWELL + MORNING LLP
Counsel for CA


CATHERINE KUNZ, CROWELL + MORNING LLP
Counsel for CA

DATED: October 15, 2013

RELATOR

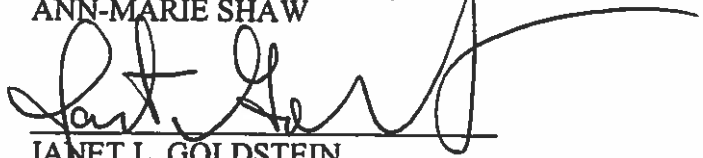
BY:



ANN-MARIE SHAW

DATED: October 15, 2013

BY:



JANET L. GOLDSTEIN
PETER W. CHATFIELD
Counsel for Relator

SO ORDERED:

On this ____ day of October, 2013

Honorable Leonard D. Wexler
United States District Judge