

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 WITH  
FLORIDA**

**THIS SETTLEMENT AGREEMENT** (the “Agreement”) is entered into by the State of Florida (the “State”), 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 State contends that it has certain civil claims against CA for improperly recording the beginning and end dates of software maintenance it purchased as do certain local governmental customers within Florida (“Affected Governmental Customers”), as listed on Exhibit 1, 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**, the Attorney General’s Office signs this agreement on behalf of the State only. The Attorney General’s Office will recommend to the Affected Governmental Customers through the process referenced in Paragraph 6 below that they join the settlement and facilitate their understanding of the settlement’s terms and of the Attorney General’s Office’s recommendation that the Affected Governmental Customers join the settlement.

**WHEREAS**, this Agreement is made in compromise of disputed claims and is neither an admission of liability by CA nor a concession by the State 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 Amounts

2. CA will pay to the State \$66,614.64. CA will also pay to the Relator \$16, 653.66 for Relator's share.

3. CA will pay the State by electronic funds transfer pursuant to written instructions to be provided by the attorneys for the State 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.

4. Within five (5) days of the Effective Date of this Agreement, Relator's counsel will provide to CA a U.S. Internal Revenue Service Form W-9. CA will pay Relator by wire transfer made to Phillips & Cohen LLP's client escrow account, in accordance with directions to be provided to CA by Phillips & Cohen LLP. CA agrees to make this 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 wire transfer instructions.

5. Within fifteen (15) business days of the Effective Date of this Agreement, CA will issue to the State checks in the name of each Affected Governmental Customer in the amount determined by the State set forth in Exhibit 1, Column D, not to exceed a collective total of \$244,148.94. The amounts designated in Exhibit 1, Column D represent the amount due to each Affected Governmental Customer under the terms of this Agreement. Relator acknowledges that she is not entitled to a share of the amounts due the Affected Governmental Customers.

6. Within twenty (20) business days of the Effective Date of this Agreement, the State will provide to each Affected Governmental Customer its check along with the written notification and consent form ("Notification and Consent") attached as Exhibit 2 of this

Agreement; contemporaneous copies of the notifications will be provided to CA. Each Affected Governmental Customer will have until January 13, 2014 to review the Notification, seek additional information, if needed, from the State, and decide whether to consent to the settlement.

7. An Affected Governmental Customer's failure to deposit the check by January 13, 2014 will not result in any increase in the pro rata share of the settlement funds to which any other Affected Governmental Customer is entitled under the terms of this Agreement.

Releases

8. Subject to the exceptions in Paragraph 12 (concerning excluded claims) below, and CA having represented that it is not aware of any notices, claims, disputes or actions concerning the Covered Conduct made by any of the State 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 16, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State 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 State has, or may have, for the Covered Conduct under the Florida False Claims Act, any 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.

9. Subject to the exceptions for excluded claims identified in Paragraph 12, 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 her original and amended complaints.

10. 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.

11. Upon receipt of the payments described in Paragraph 2 above, the Parties shall, within fourteen (14) business days thereafter, 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 State, excluding any claims identified in Paragraph 12.

*Excluded Claims*

12. Notwithstanding the releases given in Paragraphs 8 and 9 of this Agreement, or any other term of this Agreement, the following claims of the State and/or Relator are specifically reserved and are not released:

- a. Any civil, criminal, or administrative liability arising under Florida's tax laws;
- b. Any criminal liability;
- c. Any administrative liability, including the suspension and debarment rights of any of the State's agencies;
- d. Any liability to the State 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. Any claims by Relator for reasonable expenses, attorneys' fees and costs in the Civil Action.

13. 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 the Florida False Claims Act.

Conditioned upon Relator's receipt of the payment described in Paragraph 2, 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 the State from any claims arising from the filing of the Civil Action or under the Florida 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 their behalf in the Civil Action.

14. 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 State concerning the characterization of the Settlement Amount for purposes of its tax laws.

*Binding Effect of Agreement/No Third Party Beneficiaries*

15. 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*

16. 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 State; 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 State, at its sole option, may rescind the releases in this Agreement insofar as it affects that State 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 above, CA agrees that (i) any such claims, actions, or proceedings brought by the State 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 State's 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 State 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 State has a claim against CA in the amount of treble damages plus penalties under the Florida 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

17. Except as expressly provided to the contrary in this Agreement with regard to CA's liability for Relator's 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

18. 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

19. 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

20. 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

21. 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*

22. 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*

23. 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*

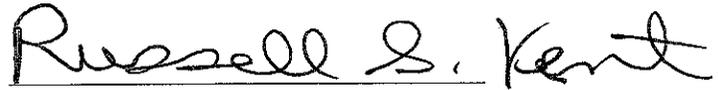
24. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date").

**IN WITNESS WHEREOF**, the Parties hereto affix their signatures.

**FLORIDA**

Executed on behalf of the State of Florida

DATED: November 1, 2013

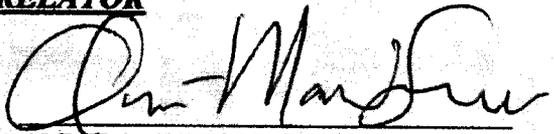
A handwritten signature in black ink that reads "Russell S. Kent". The signature is written in a cursive style with a horizontal line underneath the name.

**For Pamela Jo Bondi, Attorney General:**

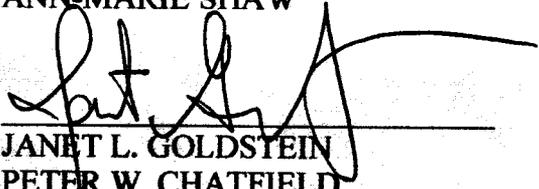
Russell S. Kent  
Special Counsel for Litigation

**RELATOR**

DATED: November 3, 2013

BY:   
ANN-MARIE SHAW

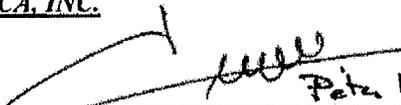
DATED: November 4, 2013

BY:   
JANET L. GOLDSTEIN  
PETER W. CHATFIELD  
Counsel for Relator

CA, INC.

DATED: November 5, 2013

BY:

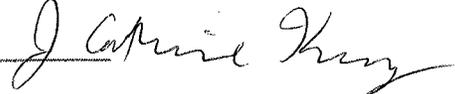
  
RICHARD J. BECKERT  
CFO, CA Technologies

*Peter De Bock*  
*SUP Finance*

DATED: November 5, 2013

BY:

  
MARC EFRON  
J. CATHERRINE KUNZ  
Crowell & Moring LLP  
Counsel for CA



**EXHIBIT 2**

**NOTIFICATION AND CONSENT**



**PAM BONDI  
ATTORNEY GENERAL  
STATE OF FLORIDA**

December \_\_\_, 2013

**VIA U.S. MAIL AND EMAIL**

Contact  
Entity name  
Address

**Notice of and Consent to Settlement and Distribution of Proceeds from Settlement of  
*United States of America et al. ex rel. Ann-Marie Shaw v. CA, Inc.*, Civil Action No. 06-3552,  
United States District Court for the Eastern District of New York**

Dear Sir / Madam:

Enclosed please find a check payable to [entity name] in the amount of [\$\_]. As explained below, this check constitutes the [entity name]'s pro rata share of the settlement proceeds under a settlement agreement entered into by the State of Florida, Relator Ann-Marie Shaw and CA, Inc. ("FL Settlement Agreement") in the above-captioned lawsuit ("the Lawsuit"). The amended complaint in the Lawsuit and the Florida Settlement Agreement also are enclosed.

The Lawsuit was filed in 2006 by Relator Ann-Marie Shaw under federal and state False Claims Acts and was initially investigated by the United States Department of Justice. The Lawsuit alleges that certain federal, state and local government customers of CA, Inc. may have civil claims against CA, Inc. for improperly recording the beginning and end dates of software maintenance they purchased 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"). The Covered Conduct occurred in some, but not all, maintenance renewal transactions processed by CA, Inc.

In connection with the federal investigation, government auditors performed a statistical sampling of federal purchase transactions and developed an audit formula through which they calculated the likelihood of maintenance overlaps and the average amount of overcharge per maintenance renewal transaction. The United States Department of Justice utilized this formula for calculating the average overcharge for all renewal transactions in reaching a settlement with CA, Inc. The States, including the State of Florida, have likewise reached settlement agreements with CA, Inc., utilizing a similar formula to calculate the likelihood of maintenance overlaps and

an average overcharge for maintenance renewal purchases made during the relevant time period by State and/or local government purchasers.

CA, Inc. provided sales records indicating that a number of Florida governmental entities renewed software maintenance contracts during this period. You are receiving this notice and payment because [entity name] has been identified as a governmental entity in the State of Florida that is entitled to participate in the proceeds of the FL Settlement Agreement.

**By accepting and depositing the enclosed check by January 13, 2014, you are consenting to and agreeing to be bound by the provisions of the enclosed FL Settlement Agreement, including the release and excluded claim provisions in paragraphs 8 and 12 of the FL Settlement Agreement.**

**If you do not deposit the enclosed check by January 13, 2014, you will forfeit your pro rata share of the settlement proceeds.**

While the ultimate decision must be made by [entity name], our office recommends that you consent to the settlement. If you have any questions about this notification and payment form, or the terms of the FL Settlement Agreement, please feel free to contact me.

Sincerely,

Russell S. Kent  
Special Counsel for Litigation

Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, FL 32399-1050  
Phone (850) 414-3854  
Fax (850) 488-9134  
*Russell.Kent@myfloridalegal.com*