

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

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STEVEN BABCOCK, on behalf of the Computer
Management Sciences Inc., Employee Stock Ownership Plan
and Trust, and himself and all others similarly situated,

Plaintiff,

Index No. CV 00 1648

Seybert, J.
Orenstein, M.

v.

COMPUTER ASSOCIATES INTERNATIONAL, INC.,
JERRY DAVIS, ANTHONY V. WEIGHT, WALTER S.
MILLSAPS, IRA ZAR, HALSEY WISE, STEVEN
WOGHIN, COMPUTER MANAGEMENT SCIENCES,
INC., DONALD C. WHITE and COMPUTER
MANAGEMENT SCIENCES, INC. EMPLOYEE STOCK
OWNERSHIP PLAN AND TRUST fully and as Nominal
Defendant,

Defendants.

**SETTLEMENT
AGREEMENT**

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This Settlement Agreement (“Agreement”) is entered into this 31st day of March, 2008,
between Plaintiff and the Class and Defendants, subject to Court approval under Rule 23 of the
Federal Rules of Civil Procedure.

WHEREAS, *Steven Babcock v. Computer Associates International, Inc., Jerry Davis, Anthony V. Weight, Walter S. Millsaps, Ira Zar, Halsey Wise, Steven Woghin, Computer Management Sciences, Inc., Donald C. White and Computer Management Sciences, Inc. Employee Stock Ownership Plan and Trust fully and as nominal defendant*, Index No. CV 00 1648 (“Lawsuit”), is currently pending and unresolved;

WHEREAS, the Third Amended Complaint in the Lawsuit alleges, *inter alia*, that Plaintiff and the Class are entitled to recovery because of alleged breaches of fiduciary duty and other alleged misconduct by Defendants in connection with the Plan;

WHEREAS, Defendants vigorously deny any misconduct, deny any liability whatsoever, deny anyone was injured by their conduct, and further assert that numerous legal and other defenses are available to them;

WHEREAS, on January 8, 2003, the Court certified this action as a class action under Rule 23(b)(1) and (b)(3), Fed. R. Civ. P., on behalf of a class defined in its Memorandum of Decision and Order of even date;

WHEREAS, notice of the pendency of this action as a class action was thereafter provided per Order of the Court;

WHEREAS, certain members of the certified class (referred to as “Opt Outs”) thereafter exercised their right to “opt out” or exclude themselves from the Lawsuit;

WHEREAS, the parties, each represented by competent counsel, have held extensive arms-length settlement discussions and negotiations, including mediation sessions on November 27, 2006 and November 30, 2007, under the auspices of JAMS, and in addition have engaged in extensive factual investigation, claim procedures, motion practice, fact and expert discovery and trial preparation;

WHEREAS, the parties recognize continued litigation of the Lawsuit will be costly, time-consuming and inconvenient, and desire to enter into this Agreement to avoid such burdens as well as the inherent risks of litigation, and obtain the benefits hereof, without admission of liability on the part of Defendants, which liability is expressly denied;

WHEREAS, Class Counsel have concluded that this Agreement, and the settlement embodied herein, is fair, reasonable, and adequate, and in evaluating the settlement have considered, *inter alia*, the expense and time necessary to prosecute the Lawsuit through trial, the defenses asserted by and/or available to Defendants, the inherent risks of litigation, the

uncertainty involved in the outcome of litigation of this nature, the fact that resolution of Plaintiff's and the Class's claims at the trial level could involve appellate review, and the substantial immediate cash benefit provided to the Class by this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements and promises contained herein, it is stipulated and agreed by and among Plaintiff, the Class and Defendants that the Lawsuit shall be resolved by the terms and conditions hereinafter set forth, upon approval of the Court.

ARTICLE I

DEFINITIONS

The below-listed terms as used in this Agreement are defined as follows:

1.1 **Account Balance.** The amount allocated to each Class Member's account with the Plan as of December 31, 1999 as reflected in the Annual Allocations for the Computer Management Sciences, Inc. Employee Stock Ownership Plan prepared by Pencor, Inc.

1.2 **Claims.** All direct or indirect suits, claims, or causes of action, whether in law or equity, including claims for attorneys' fees and costs, of any Class Member related to or arising from the Plan, matters asserted in the Third Amended Complaint and lump sum benefits under the Plan.

1.3 **Class.** All persons who are or were participants in the CMSI ESOP between January 1, 1998 and January 8, 2003, except for the Opt Outs, who are not in the Class. "Class Member" means an individual member of the Class.

1.4 **Class Counsel.** Charles R. Watkins, Esq. and John R. Wylie, Esq. of Futterman Howard Watkins Wylie & Ashley, Chtd., 122 South Michigan Avenue, Suite 1850, Chicago,

Illinois 60603; and David Harrison, Esq. of Lowey, Dannenberg, Cohen & Hart, P.C., The Gateway, 11th Floor, 1 North Lexington Avenue, White Plains, New York 10601.

1.5 **Court.** The United States District Court for the Eastern District of New York.

1.6 **Defendants.** Computer Associates International, Inc., now known as CA, Inc., Jerry Davis, Anthony V. Weight, Walter S. Millsaps, Ira Zar, Halsey Wise, Steven Woghin, Computer Management Sciences, Inc., Donald C. White and Computer Management Sciences, Inc. Employee Stock Ownership Plan and Trust fully and as nominal defendant.

1.7 **Defendants' Counsel.** John P. McEntee, Esq., Farrell Fritz, P.C., 1320 RexCorp Plaza, Uniondale, New York 11556.

1.8 **Effective Date of Settlement.**

(a) If there are no proper Objections to the Agreement by Class Members, the Effective Date of Settlement shall be the first business day following entry of the Order of Final Judgment.

(b) If there are proper Objections to the Agreement by Class Members (the Court will determine on application of one or more parties what constitutes an "Objection" if they cannot agree), the Effective Date of Settlement shall be the first business day after entry of the Order of Final Judgment and after which no timely notice of appeal may be filed, or, if a timely notice of appeal has been filed, either the appeal has been withdrawn or dismissed, or finally adjudicated affirming such order.

1.9 **Eligible Class Member.** Any Class Member who properly completes and timely returns his/her Eligibility Form to the Settlement Administrator in accordance with the requirements and instructions set forth in the Settlement Notice and the Eligibility Form.

1.10 **Eligibility Form.** A document in substantially the form attached hereto as Exhibit A.

1.11 **Expenses and Costs of Administration.** All reasonable or necessary charges, payments, costs or expenses associated with and/or related to notice, administration and implementation of this Agreement, including, but not limited to, charges, payments, costs or expenses incurred by the Settlement Administrator and any accountants or other professionals, printers and subcontractors retained by the Settlement Administrator; identifying and locating Class Members; calculating amounts due to Class Members; making payments to Class Members and/or Class Counsel or any cy pres recipients of settlement funds; providing notice to the Class and reproducing and mailing the Settlement Notice to the Class; establishing and maintaining a website or telephone/mail inquiry system; calculating, processing and verifying amounts due Class Members and addressing and/or adjudicating any disputes with respect to payment of, and paying recoveries to, the proper persons and in the proper manner pursuant to this Agreement; and preparing and issuing any necessary 1099 or other tax forms, reports, reconciliations or tax returns. Expenses and Costs of Administration shall not include Plaintiff's Counsel's legal fees, but shall include legal fees, if any, reasonably incurred by the Settlement Administrator in connection with performance of his duties hereunder.

1.12 **Net Settlement Fund.** The Net Settlement Fund means the Settlement Fund less deductions and payments for attorneys' fees, litigation costs and expenses and any incentive payment, as awarded by the Court; Expenses and Costs of Administration in excess of \$50,000; and any other deduction properly approved or ordered by the Court.

1.13 **Notice Date.** The date the Settlement Notice is mailed to the Class Members.

1.14 **Objection.** A written document made by a Class Member opposing or objecting to the Agreement and complying with the requirements set forth in the Settlement Notice.

1.15 **Order of Final Judgment.** An Order of the Court substantially in the form attached hereto as Exhibit B.

1.16 **Order Preliminarily Approving Settlement.** An order of the Court substantially in the form attached hereto as Exhibit C.

1.17 **Objection Deadline.** The date set by the Court for filing any Objection.

1.18 **Plaintiff.** Steven Babcock.

1.19 **Plan.** The Computer Management Sciences Inc. Employee Stock Ownership Plan and Trust.

1.20 **Released Parties.** The Defendants and any and all other Plan fiduciaries, and their predecessors, successors, assigns, heirs, legal representatives, subsidiaries and affiliates, officers, directors, employees, members, agents and attorneys.

1.21 **Settlement Administrator.** A person selected by Plaintiff's Counsel to perform or assist in performing one or more administrative or other services or tasks related to notice and implementation of this Agreement. The Settlement Administrator shall be permitted, without limitation, to communicate with Class Members and to issue 1099 and any similar forms, as appropriate, and to take such other and further actions in connection with settlement administration as are appropriate, usual and customary.

1.22 **Settlement Fund.** The Settlement Fund shall consist of the Settlement Payment, including any interest or earnings on any or all of such funds through such time as the Settlement Fund is disbursed to Class Counsel, the Settlement Administrator and/or Eligible Class Members in accordance with this Agreement. The Settlement Fund shall be held in such account or accounts pursuant to such documentation and invested in such manner as Class Counsel direct. The parties agree that payments to Eligible Class Members, attorneys' fees, litigation costs and

expenses of the Lawsuit, any Expenses and Costs of Administration in excess of \$50,000, and any incentive payment, as well as any other Court-approved payment or deduction, shall be paid from the Settlement Fund and that the Settlement Fund shall be, and be treated as, part of the common fund recovery and in *custodia legis*. The Settlement Fund shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder and shall make any required tax filings and provide reports to Class Counsel for tax purposes. The parties shall not take a position in any filing or before any tax authority inconsistent with such treatment. The Settlement Fund will pay any federal, state, and local taxes that may apply to the income of the Settlement Fund. The Settlement Administrator shall arrange for the preparation and filling of all tax reports and tax returns required to be filed by the Settlement Fund and for the payment from the Settlement Fund of any taxes owed, and will send Class Counsel copies of all such filings and receipts of payment in a timely manner. The Settlement Administrator shall be authorized to retain a certified public accounting firm for those purposes. All taxes on the income of the Settlement Fund shall be paid solely out of the Settlement Fund, shall be considered a cost of administration of the settlement, but not Expenses and Costs of Administration under Paragraph 1.11 hereof, and shall be timely paid without further order of the Court. The Settlement Administrator shall arrange for the preparation and issuance of any required Forms 1099 and costs incurred in connection therewith shall be considered as Costs and Expenses of Administration, and shall be timely paid without further order of the Court.

1.23 **Settlement Hearing Date.** The date set by the Court for the final hearing on the appropriateness of this Agreement and on any Objections to this Agreement or related matters.

1.24 **Settlement Notice.** A document substantially in the form attached hereto as Exhibit D.

1.25 **Settlement Payment.** In immediately available funds, the sum of \$1,975,000, plus interest on such sum calculated at the short-term applicable federal rate ("AFR") in effect from time to time, compounded quarterly and calculated from December 15, 2007 through the date after the Effective Date of Settlement on which such funds are transferred pursuant to directions from Class Counsel. For purposes hereof, "AFR" has the meaning given to such term in Section 1274(d) of the Internal Revenue Code of 1986, as amended. Any change in the AFR shall become effective on the date such change is publicly announced. Interest shall be calculated on the basis of actual days elapsed over a 365/366 day year.

ARTICLE II

SETTLEMENT AND RELEASE

In compromise and settlement of the Claims of Plaintiff and the Class against Defendants, the parties agree that the WHEREAS clauses above form part of the basis of this Agreement and further agree as follows:

2.1 **Exhibits:** Exhibits A through D, attached hereto and referred to herein, are incorporated as part of this Agreement.

2.2 **Implementation:** Upon execution hereof, the parties shall cooperate in efforts to promptly implement and consummate this Agreement.

2.3 **Preliminary Approval:** Upon execution hereof, the parties shall promptly and jointly seek entry of the Order Preliminarily Approving Settlement.

2.4 **Final Court Approval:** If the Court enters the Preliminary Order Approving Settlement, the parties shall promptly and jointly seek entry of the Order of Final Judgment.

2.5 **The Settlement Payment:** Class Counsel shall provide directions to Defendants regarding disposition of the Settlement Payment on or before the Effective Date of Settlement. Within three (3) business days of the Effective Date of Settlement, or three (3) days of when Class Counsel provides notice to Defendants regarding disposition of the Settlement Payment, whichever is later, Defendants shall cause the Settlement Payment to be transferred and delivered, in immediately available funds, into such account or accounts as Class Counsel may direct. Upon and after the Effective Date of Settlement, Defendants shall have no right, title in, interest in, or claim to the Settlement Payment. Upon and after the Effective Date of Settlement, Defendants shall continue to hold the Settlement Payment until transferred and delivered pursuant to the direction of Class Counsel.

2.6 **Mediation Fees:** Within three (3) business days after the Effective Date of Settlement, Defendants will reimburse Class Counsel \$6,322.15 in fees that Class Counsel paid to JAMS in connection with this Lawsuit; this is over and above the amount of the Settlement Payment and the Expenses and Costs of Administration.

2.7 **Expenses and Costs of Administration:** Without regard to whether this Agreement is fully consummated and without regard to whether the Effective Date of Settlement ever occurs, Defendants agree to pay upon the request of Class Counsel and shall be solely responsible for, all Expenses and Costs of Administration, up to a maximum of \$50,000.00. Defendants shall make payment of same directly to the Settlement Administrator, or as Class Counsel may otherwise notify Defendants. Any Expenses and Costs of Administration in excess of \$50,000.00 shall be paid and be a deduction from the Settlement Fund without further Order of the Court.

2.8 **Release of Claims.** As of the Effective Date of Settlement, other than in connection with enforcement of the Agreement: all Claims of Plaintiff and the Class Members shall be barred, released, discharged, compromised and extinguished as to the Released Parties, and all claims, demands, suits and controversies of Defendants against Plaintiff and/or Class Members or Class Counsel arising from or relating to the Lawsuit or matters alleged in the Third Amended Complaint shall be barred, released, discharged, compromised and extinguished.

2.9 **Settlement Fund.** The Settlement Fund shall be used first to pay any Court-awarded attorneys' fees, litigation costs and expenses of the Lawsuit, then any Expenses and Costs of Administration in excess of \$50,000, and then any incentive award or other Court-approved deduction, and then the remainder, referred to as the Net Settlement Fund, shall be paid to Eligible Class Members. Each Eligible Class Member shall receive an amount equal to:

$$\left(\begin{array}{l} \text{Net} \\ \text{Settlement} \\ \text{Amount} \end{array} \times \frac{\text{Eligible Class Members' Account Balance}}{\text{Total of all Account Balances of Eligible Class Members}} \right)$$

2.10 **Tax Treatment.** It is the parties' intent that funds received by Class Members hereunder be eligible to the maximum extent allowed by law, if any, for favorable rollover tax treatment, but neither the parties nor Class Counsel, Defendants' Counsel or the Settlement Administrator make any warranty or representations in this regard, and they undertake no responsibilities therefore. Defendants, Defendants' Counsel, Plaintiff, Class Counsel and the Settlement Administrator are not responsible or liable for any Eligible Class Member's choice of distribution or method of payment or tax consequences associated therewith. No Class Member who is not also an Eligible Class Member shall receive funds from the Net Settlement Fund. Payments to Eligible Class Members shall occur at such time and in such manner, after the Effective Date of Settlement, as Plaintiff's Counsel determine.

2.11 **Attorneys' Fees, Litigation Costs and Expenses.** In connection with this Agreement, Plaintiff's Counsel shall apply to the Court via motion or in another proper manner for an award of attorneys' fees, litigation costs and expenses to be paid out of the Settlement Fund, which shall, together with the Expenses and Costs of Administration paid by Defendants and the Mediation Fees referred to in Paragraph 2.6 hereof, be deemed a common fund recovery by the Class. Plaintiff's Counsel will file motion(s) or fee petition(s) with the Court to cover all attorneys' fees, litigation costs and expenses, and shall be entitled to request an incentive award to Plaintiff not in excess of \$10,000.00, to be paid from the Settlement Fund. All attorneys' fees, litigation costs and expenses awarded shall be paid as soon as practicable after the Effective Date

of Settlement either to Futterman Howard Watkins Wylie & Ashley, Chtd., or as they direct to the other counsel as appropriate under the Order of Final Approval.

2.12 **Settlement Notice.** Within 15 (fifteen) business days of the entry of the Order Preliminarily Approving Settlement, Plaintiff shall cause the Settlement Notice to be mailed first class postage prepaid to all Class Members as their addresses appear on the best and most current records reasonably available from CA, Inc., provided that Plaintiff's Counsel have the right to update such addresses prior to mailing as they deem appropriate. Defendant CA, Inc. shall provide Class Counsel with its most current records regarding the names and addresses of the Class Members.

2.13 **Termination of Agreement.** If the Court refuses to enter the Order Preliminarily Approving Settlement, or refuses to enter the Order of Final Judgment, or if the Order of Final Judgment is reversed on appeal, the Settlement Payment will be paid to Defendants and the parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and shall proceed with the litigation and otherwise to the maximum extent practicable as if this Agreement had never been executed, except that any and all Expenses and Costs of Administration theretofore paid or incurred shall be and remain the sole responsibility of Defendants, up to a maximum of \$50,000, and will not be repaid or refunded to them.

ARTICLE III

ADMINISTRATION AND COURT APPROVAL

3.1 **Administration.** The administration of this Agreement shall be under the direction of Plaintiff's Counsel. Plaintiff's Counsel has the right under this Agreement to retain or hire one or more Settlement Administrators. All charges, fees, costs and fees of or relating to

such Settlement Administrator are included in and treated as Expenses and Costs of Administration.

3.2 **Appeal of Attorneys' Fees and Litigation Costs or Expenses.** Recognizing that an objection or appeal may be made or taken relating not to the Agreement itself but solely to attorneys' fees, litigation costs or expenses, or an incentive award, it is agreed that, notwithstanding anything to the contrary elsewhere herein, such a limited objection or appeal will not affect or delay the Effective Date of Settlement. Class Counsel shall determine whether and to what extent to distribute funds pending resolution of such objection or appeal.

3.3 **Undistributable Funds.** Distribution of the Net Settlement Fund to Eligible Class Members shall be made at the direction of Class Counsel at such times as they deem appropriate. All funds in the Net Settlement Fund shall be distributed to Eligible Class Members, provided, however, that, notwithstanding anything to the contrary elsewhere herein, if, and at such time as, Class Counsel believe the funds remaining in the Net Settlement Fund, after reasonable efforts to locate and pay Eligible Class Members have been made, are too few to be economically distributed to Eligible Class Members or appropriately distributed to a charity or similar cy pres recipient, they may apply to the Court for direction in this regard and any remaining funds will be distributed per Court order.

ARTICLE IV

GENERAL PROVISIONS

4.1 **Defendants' Participation.** Notwithstanding anything to the contrary elsewhere herein, no Defendant shall object to, oppose or interfere with any aspect of the administration or implementation of this Settlement Agreement, the process of obtaining or seeking approval hereof or any application for attorneys fees, expenses, or costs or an incentive award.

4.2 **Notices.** All notices that this Agreement contemplates will or may be provided or given shall be delivered by personal delivery, first class certified mail, or telecopy, with a copy of same in pdf via email, as follows:

To Class Counsel:

Charles R. Watkins, Esq.
John R. Wylie, Esq.
Futterman Howard Watkins Wylie & Ashley, Chtd.
122 South Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Phone (312) 427-3600
Fax (312) 427-1850
cwatkins@futtermanhoward.com
jwylie@futtermanhoward.com

and

David Harrison, Esq.
Lowey, Dannenberg, Cohen & Hart, P.C.
The Gateway, 11th Floor
1 North Lexington Avenue
White Plains, NY 10601
Phone (914) 997-0035
Fax (914) 997-0035
dharrison@lowey.com

To Defendants' Counsel:

John P. McEntee, Esq.
Farrell Fritz, P.C.
1320 RexCorp Plaza
Uniondale, NY 11556
Phone (516) 227-0608
Fax (516) 227-0777
jmcentee@farrellfritz.com

Notices and papers delivered by personal delivery shall be deemed received upon delivery. Notices and papers delivered by first class, certified mail, shall be deemed to be received on the second business day following deposit in the U.S. mails. Notices and papers served or delivered by a telecopy shall be deemed served on the date of confirmation of receipt, if such telecommunication is confirmed to be completed on or before 5:00 p.m. (Central Time) on the

date of transmission, or if later than 5:00 p.m. (Central Time) on the date of transmission, on the next business day first following the date of transmission.

4.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and which together shall constitute one and the same Agreement.

4.4 **Entire Agreement.** The entire agreement of the parties relating to the subject matter of this Agreement is contained herein. This Agreement supersedes any prior oral or written agreements, representations and understandings concerning the subject matter hereof. No party shall be deemed to have drafted this Agreement, it being agreed that drafting was a joint effort.

4.5 **Direction From the Court.** Class Counsel have the right but not the obligation to submit to the Court for resolution any dispute, question, issue or matter related to this Agreement, including without limitation any matter relating to any action or payment contemplated by this Agreement, and to defer any such action or payment pending such resolution.

4.6 **Binding Effect.** This Agreement is binding on and inures to the benefit of the parties hereto, Class Members, and their respective successors, administrators, legal representatives, executors, heirs and assigns.

4.7 **No Admission of Liability.** Nothing herein, nor any negotiations or proceedings connected herewith, and no payments made pursuant to this Agreement, are or shall be construed, offered, received as, or deemed to be evidence of liability, which liability Defendants expressly deny.

4.8 **No Waiver.** No waiver or compromise of any default under or breach of this Agreement or any indulgence granted with respect to the performance of any obligation hereunder shall constitute or be deemed to imply a waiver of: (a) any other default under or breach of this Agreement, or (b) the right to strict performance of any other obligation hereunder.

4.9 **Modifications.** No change or modification of or to this Agreement shall be valid unless set forth in writing and signed and dated by Class Counsel and Defendants' Counsel and approved by the Court.

4.10 **Signatures.** Class Counsel warrant and represent by signing that they have authority to execute this Agreement on behalf of Plaintiff and the Class. Defendants' Counsel represent and warrant by signing that they have the authority to execute this Agreement on behalf of Defendants.

4.11 **Retention of Jurisdiction.** The Court shall retain exclusive jurisdiction over the administration, effectuation and enforcement of this Agreement, and the parties, Class Members and counsel in connection therewith as more fully described in the Order of Final Judgment and over such other matters as may properly come before it. Such retention of jurisdiction shall not affect the finality of the Order of Final Judgment.

Accordingly, Defendants have caused this Agreement to be executed by their duly authorized attorneys and Plaintiff and the Class have caused this Agreement to be executed by their duly authorized attorneys.

Defendants:

By: /s/ John P. McEntee
John P. McEntee
Farrell Fritz, P.C.
1320 RexCorp Plaza
Uniondale, NY 11556

Dated: March 31, 2008

Plaintiff and the Class:

By: /s/ Charles R. Watkins
Charles R. Watkins, Esq.
John R. Wylie, Esq.
Futterman Howard Watkins Wylie &
Ashley, Chtd.
122 South Michigan Avenue, Suite 1850
Chicago, Illinois 60603

Dated: March 31, 2008