

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the U.S. General Services Administration (“GSA”) (collectively the “United States”), Adobe Inc. (“Adobe”), and Alan Dowless, Barbara Evans, and Carrie Whalen (collectively, “Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. Adobe is a computer software company headquartered in San Jose, California.
- B. On October 3, 2017, Relators filed a *qui tam* action in the United States District Court for the District of Columbia captioned *United States ex rel. Dowless v. Adobe, Inc.*, Civil Action Number 17-cv-02039, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), and filed an Amended Compliant on December 13, 2018 (collectively, the “Civil Action”). The United States intervened in the Civil Action for purposes of this settlement.
- C. The United States contends that it has certain civil claims against Adobe arising from payments made by Adobe under its Solution Partner program to third-parties for favorable treatment in connection with the sale of Adobe software under GSA Contract Numbers GS-35F-0131R, GS-35F-0119Y, 47QSWA18D008F, GS-35F0511T, GS-35F-0195J, GS-35F-0085U, 47QTCA18D004K and GS-35F-0119W (the “GSA Contracts”) during the period from January 2011 through December 2020. The United States contends that these payments were improper and resulted in false claims for

payment for Adobe software under the GSA Contracts during that time period. That conduct is referred to below as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by Adobe nor a concession by the United States that its claims are not well founded.

E. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

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 this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Adobe shall pay to the United States three million dollars (\$3,000,000) (Settlement Amount), of which 1.6 million dollars (\$1,600,000) is restitution, by electronic funds transfer, pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice, no later than 10 days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$555,000 to Relators by electronic funds transfer (Relators' Share) to the Trust Account of Joseph Greenwald & Laake, P.A.

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases Adobe, together with its current and former parent corporations, direct and

indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Anti-Kickback Act, 41 U.S.C. §§ 8701-8707; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 12 below, and upon the United States' receipt of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Adobe, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them, and their officers, agents, and employees, from any civil monetary claim the Relators have arising from the Civil Action.

5. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals; or,
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Relators and their heirs, successors, attorneys, agents, 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 Relators' receipt of the Relators' Share, Relators and their heirs, successors, attorneys, agents, 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 the Civil Action.

7. Adobe waives and shall not assert any defenses Adobe may have to any criminal prosecution or administrative action relating to 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.

8. Adobe fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Adobe has asserted, could have

asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

9. Adobe fully and finally releases the Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Adobe has asserted, could have asserted, or may assert in the future against the Relators, related to the Civil Action and the Relators' investigation and prosecution thereof.

10. a. 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 Adobe, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Adobe's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Adobe makes to the United States pursuant to this Agreement and any payments that Adobe may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Adobe shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Adobe or any of its subsidiaries or affiliates from the United States. Adobe agrees that the United States, at a minimum, shall be entitled to recoup from Adobe 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 Adobe's books and records and to disagree with any calculations submitted by Adobe or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Adobe or the effect of any such Unallowable Costs on the amount of such payments.

11. This Agreement is intended to be for the benefit of the Parties only.

12. Upon receipt of the payment described in Paragraph 1, above, the Relators and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), reserving Relators' claims, under 31 U.S.C. § 3730(d), against Adobe for expenses, attorneys' fees and costs. The

Stipulation of Dismissal will otherwise dismiss claims for the Covered Conduct with prejudice to both Relators and the United States and dismiss all other claims in the Civil Action with prejudice to Relators only and without prejudice to the United States.

Relators may file a petition for attorneys' fees, costs and expenses within sixty (60) days of the date of dismissal of the Civil Action and the Parties agree that the United States District Court for the District of Columbia retains jurisdiction with regard to any disputes over the amounts for expenses, attorneys' fees and costs as provided in the Stipulation of Dismissal.

13. Except for Relators' preservation of their right to file a petition for attorneys fees, costs, and expenses, as provided in Paragraph 12, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Columbia. 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.

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

17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on Adobe's successors, transferees, heirs, and assigns.

20. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures and copies of signatures in pdf shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

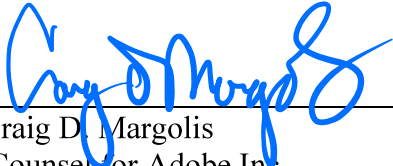
DATED: 3/1/23 BY: Gregory Pearson
Gregory Pearson
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 3/1/2023 BY: Benton Peterson
Benton Peterson
Assistant U.S. Attorney
U.S. Attorney's Office
District of Columbia


ADOBE, INC. - DEFENDANT

DATED: 2/28/23 BY:  Electronically signed by: Karen Robinson
Date: Feb 28, 2023 14:22 PST

Karen Robinson
VP and Associate General Counsel, Legal, Security &
Policy

DATED: 2/28/23 BY: 
Craig D. Margolis
Counsel for Adobe Inc.

RELATORS

DATED: 2/21/23 BY: 
Alan Dowless, Relator

DATED: _____ BY: _____
Barbara Evans, Relator

DATED: _____ BY: _____
Carrie Whalen, Relator

DATED: _____ BY: _____
Jay P. Holland
JOSEPH GREENWALD & LAAKE, PA
Counsel for Relators

RELATORS

DATED: _____ BY: _____
Alan Dowless, Relator

DATED: Feb 28 2023 BY: Barbara Evans
Barbara Evans, Relator

DATED: _____ BY: _____
Carrie Whalen, Relator

DATED: _____ BY: _____
Jay P. Holland
JOSEPH GREENWALD & LAAKE, PA
Counsel for Relators

RELATORS

DATED: _____ BY: _____
Alan Dowless, Relator

DATED: _____ BY: _____
Barbara Evans, Relator

28 February 2023
DATED: _____ BY: _____
DocuSigned by:
Carrie Whalen
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Carrie Whalen, Relator

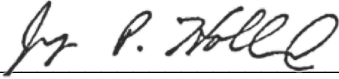
DATED: _____ BY: _____
Jay P. Holland
JOSEPH GREENWALD & LAAKE, PA
Counsel for Relators

RELATORS

DATED: _____ BY: _____
Alan Dowless, Relator

DATED: _____ BY: _____
Barbara Evans, Relator

DATED: _____ BY: _____
Carrie Whalen, Relator

DATED: 02/28/2023 BY: 
Jay P. Holland
JOSEPH GREENWALD & LAAKE, PA
Counsel for Relators