
In Re: Aquatic Sensor Network Technology, LLC, et al.

U.S. Attorney's Office, District of Connecticut

USAO Civil # 2014V00061

SETTLEMENT AGREEMENT

I. Parties

This Settlement Agreement ("Agreement") is entered into by the United States of America, acting through the United States Department of Justice and on behalf of the United States National Science Foundation ("NSF"); and by Aquatic Sensor Network Technology, LLC ("AquaSeNT"), Dr. Jun-Hong Cui, Dr. Shengli Zhou, Dr. Zhijie Shi, Dr. Yong Ma, and Juanjuan Liao (collectively with AquaSeNT, the "AquaSeNT Parties"), acting through their authorized representatives. All of the foregoing are hereafter collectively referred to as "the Parties."

II. Recitals

1. AquaSeNT is a Storrs, Connecticut company formed in October of 2007 with a focus on the development of underwater wireless communications and networking solutions.
2. Paragraphs 3 through 13 of this section constitute the Agreement's "Covered Conduct," i.e., the underlying facts and circumstances encompassed within this Agreement.
3. Dr. Cui was a founder of AquaSeNT, and at all times relevant to this settlement, was the president of AquaSeNT and also a professor at the University of Connecticut ("UConn").

4. Dr. Shi was a founder of AquaSeNT, and at all times relevant to this settlement, was a professor at UConn.

5. Dr. Zhou was a founder of AquaSeNT, and at all times relevant to this settlement, was a professor at UConn.

6. At all times relevant to this settlement, Ms. Liao was the principal engineer for AquaSeNT.

7. At all times relevant to this settlement, Dr. Ma was the chief financial officer, then later chief operating officer, for AquaSeNT.

8. NSF is an independent federal agency created by the National Science Foundation Act of 1950, as amended (42 U.S.C. §§ 1861-75) ("Act"). The Act states the purpose of NSF is "to promote the progress of science; [and] to advance the national health, prosperity, and welfare by supporting research and education in all fields of science and engineering."

9. The Small Business Innovation Research Program ("SBIR Program") was established in 1982 as part of the Small Business Innovation Development Act to financially support innovative small business concerns ("SBC") through federally funded research and development, and to increase competition, productivity, and economic growth. This program is a set-aside benefit program designed to further the success of SBCs. Over eleven federal agencies participate in the SBIR Program, including NSF.

10. NSF implements this government-wide benefit program by making grants under its own SBIR program (the "NSF SBIR Program") that are designed to increase the incentive and opportunity for small firms to undertake cutting-edge, high risk, high quality scientific, engineering, or science and engineering education research.

11. Since 2008, AquaSeNT has applied for and NSF has awarded more than \$1,124,000 in grants to AquaSeNT under the NSF SBIR Program. These grants are: SBIR Phase I No. IIP-0839667, awarded on November 13, 2008 (the "Phase I Grant"); SBIR Phase IB No. IIP-0937900, providing for supplemental funding to the Phase I Grant, awarded on June 28, 2009 (the "Phase IB Grant"); SBIR Phase II No. IIP-1026790, awarded August 24, 2010 (the "Phase II Grant"); and SBIR Phase IIB No. IIP-1341451, providing for supplemental funding to the Phase II Grant, awarded on July 29, 2013 (the "Phase IIB Grant"). These four grants will be collectively referred to as the "NSF SBIR Grants," of which amount AquaSeNT has received approximately \$924,618 to date.

12. The NSF SBIR Grants have certain program requirements that must be met in order to participate and to receive funds from NSF, including certifications as to the primary employment of the principal investigator with the SBC; certifications as to the truth and accuracy of information contained in the SBIR proposals for funding, including the location and size of the company's facilities and the identity of any third party investors; the submission of a Financial Management Systems Questionnaire ("FMSQ") that NSF uses to ensure that accounting and timekeeping requirements are understood and followed; and the submission of project reports that are certified as truthful and accurate.

13. The United States contends that it has certain civil claims against the AquaSeNT Parties arising from: 1) misrepresentations and false certifications made to NSF, prior to the award of the Phase I Grant, involving the principal investigator's primary employment at AquaSeNT and the size and scope of AquaSeNT's facilities; 2) misrepresentations made to NSF prior to the award of the Phase II Grant, including the submission of a false FMSQ purporting to detail, among other matters, AquaSeNT's time and effort policies and procedures, including the

maintenance of bi-weekly timesheets; 3) misrepresentations made to NSF during the conduct of the Phase I and Phase II Grants that resulted in the release of incremental funding, including false certifications as to the Phase I principal investigator's primary employment with AquaSeNT and the submission of Phase II project reports misrepresenting that the funds expended on time and effort were supported by timesheets or other time and effort documentation; 4) misrepresentations to NSF's Office of Inspector General (OIG) in connection with its investigation into these matters by submitting multiple false timesheets in response to OIG's requests and subpoenas; and 5) misrepresentations to NSF in connection with the identity and number of third party investors, whose investment NSF was asked to match in the Phase IIB Grant application.

14. The AquaSeNT Parties expressly deny each and every of the Government's allegations set forth herein, and they expressly deny they engaged in any wrongful conduct whatsoever. This Settlement Agreement is made in compromise of disputed claims and is neither an admission of wrongdoing or liability by the AquaSeNT Parties, nor a concession by the United States that its contentions and claims are not well-founded. The Government acknowledges the AquaSeNT Parties' cooperation with its investigation.

15. 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 Agreement, the Parties agree and covenant as follows:

III. Terms And Conditions

1. The AquaSeNT Parties shall pay to the United States the sum of \$400,000 (hereafter referred to as the "Settlement Amount") by electronic funds transfer, pursuant to written instructions to be provided by the Financial Litigation Unit of the United States

Attorney's Office, District of Connecticut, by no later than ninety (90) days after the Effective Date of this Agreement. (*See infra* & 19.)

2. Subject to the exceptions below in Paragraph 3 (concerning excluded claims), and conditioned upon the AquaSeNT Parties's full payment of the Settlement Amount as described in Paragraph 1 of this Section, the United States releases the AquaSeNT Parties, together with any current and former parent corporations; direct and indirect subsidiaries; current or former owners, members, and shareholders; officers, employees, directors, and agents; and the successors and assigns of any and all 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 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.

3. Notwithstanding the release given in Paragraph 2 of this Section this Agreement, or in any other term of this Agreement, the following claims 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, 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 claims of the United States based upon such obligations as are 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; and

g. any liability for the failure to deliver goods or services due.

4. The AquaSeNT Parties waive and shall not assert any defenses the AquaSeNT Parties 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.

5. 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 Title 26 of the United States Code (the Internal Revenue laws).

6. The AquaSeNT Parties fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any and all claims, causes of action, adjustments, and set-offs of any kind (including attorney's fees, costs, and expenses of every kind and however denominated) that the AquaSeNT Parties have 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 and the United States' investigation and prosecution thereof.

7. Unallowable Costs Provisions

a. Unallowable Costs Defined: All costs (as defined by the Federal Acquisition Regulation, C.F.R. § 31.205-47) incurred by or on behalf of the AquaSeNT Parties, to the extent the AquaSeNT Parties are involved in government cost-reimbursable contracting, and the AquaSeNT Parties' present or former officers, directors, employees, shareholders, members, and agents, in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audits and civil investigation of the matters covered by this Agreement;
- (3) The AquaSeNT Parties' investigation, defense, and corrective actions undertaken in response to the United States' audits and civil and any investigations in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment the AquaSeNT Parties make to the United States pursuant to this Agreement, are unallowable costs for government contracting purposes (hereafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the AquaSeNT Parties, and the AquaSeNT Parties 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: If applicable, within 90 days of the Effective Date of this Agreement (*see infra* para. 19), the AquaSeNT Parties shall identify and repay, by adjustment to future claims for payment or

otherwise, any Unallowable Costs included in payments previously sought by the AquaSeNT Parties, or any of its subsidiaries or affiliates, from the United States. The AquaSeNT Parties agree that the United States, at a minimum, shall be entitled to recoup from the AquaSeNT Parties 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 the AquaSeNT Parties's books and records and to disagree with any calculations submitted by the AquaSeNT Parties or any of its agencies or departments regarding any Unallowable Costs included in payments previously sought by the AquaSeNT Parties, or the effect of any such Unallowable Costs on the amount of such payments.

8. The AquaSeNT Parties warrant that they have reviewed their financial situation and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to the AquaSeNT Parties, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which the AquaSeNT Parties were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

9. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, the AquaSeNT Parties commence, 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 the AquaSeNT Parties's debts, or seeking to adjudicate the AquaSeNT Parties as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for the AquaSeNT Parties or for all or any substantial part of the AquaSeNT Parties' assets, the AquaSeNT Parties agree as follows:

a. The AquaSeNT Parties' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and the AquaSeNT Parties shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) the AquaSeNT Parties' obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) the AquaSeNT Parties were 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 the AquaSeNT Parties.

b. In the event that the AquaSeNT Parties' obligations hereunder 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 the AquaSeNT Parties for the claims that would otherwise be covered by the releases provided for in this Agreement. If the United States chooses to do so, the AquaSeNT Parties agree 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 proceeding described in this paragraph above, and that the AquaSeNT Parties shall not argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay; and (ii) the AquaSeNT Parties 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 proceedings that are brought by the United States within one hundred eighty (180) calendar days of written notification to the AquaSeNT Parties that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the United States has a valid claim against the AquaSeNT Parties for common law damages and pre-judgment interest, as reduced by any payments already made, and the United States may pursue its claims 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. The AquaSeNT Parties acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

11. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Each Party and signatory to this Agreement represents that it freely and voluntarily entered into this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Connecticut. 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.

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

15. The individual(s) signing this Agreement on behalf of the AquaSeNT Parties represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement. In addition, the undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

17. This Agreement is binding on the AquaSeNT Parties' successors, transferees, and assigns.

18. All Parties consent to the United States' disclosure of this Agreement to the public.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date" of this Agreement). Facsimile or electronic copies of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the Parties hereto affix their signatures:

FOR THE UNITED STATES OF AMERICA

DEIRDRE M. DALY
UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT

DATED: 5/17/16

William A. Collier
WILLIAM A. COLLIER
ASSISTANT U.S. ATTORNEY

FOR THE AQUASENT PARTIES

DATED: 5/20/2016

Yong Ma
YONG MA
AQUASENT, LLC

--in his capacity as--

Chief Operating Officer of AquaSeNT, LLC

DATED: 05/20/2016

Jin-Hong Cui
DR. JIN-HONG CUI

DATED: 5/20/2016

Yong Ma
DR. YONG MA

DATED: _____

DR. ZHIJIE SHI

DATED: _____

DR. SHENGLI ZHOU

IN WITNESS WHEREOF, the Parties hereto affix their signatures:

FOR THE UNITED STATES OF AMERICA

DEIRDRE M. DALY
UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT

DATED: 5/17/16

William A. Collier
WILLIAM A. COLLIER
ASSISTANT U.S. ATTORNEY

FOR THE AQUASENT PARTIES

DATED: _____

YONG MA
AQUASENT, LLC

--in his capacity as--

Chief Operating Officer of AquaSeNT, LLC

DATED: _____

DR. JUN-HONG CUI

DATED: _____

DR. YONG MA

DATED: 5/20/2016

Zhi Shi
DR. ZHIJIE SHI

DATED: _____

DR. SHENGLI ZHOU

IN WITNESS WHEREOF, the Parties hereto affix their signatures:

FOR THE UNITED STATES OF AMERICA

DEIRDRE M. DALY
UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT

DATED: 5/17/16

William A. Collier
WILLIAM A. COLLIER
ASSISTANT U.S. ATTORNEY

FOR THE AQUASENT PARTIES

DATED: _____

YONG MA
AQUASENT, LLC

--in his capacity as--

Chief Operating Officer of AquaSeNT, LLC

DATED: _____

DR. JUN-HONG CUI

DATED: _____

DR. YONG MA

DATED: _____

DR. ZHIJIE SHI

DATED: 5/20/16

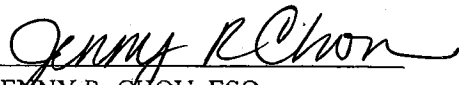
Shengli Zhou
DR. SHENGLI ZHOU

DATED: 5/20/16



JUANJUAN LIAO

DATED: 5/20/2016



JENNY R. CHOU, ESQ.
WIGGIN AND DANA LLP
New Haven, Connecticut

--in her capacity as--

Counsel for the AquaSeNT Parties