

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11200 / June 5, 2023

SECURITIES EXCHANGE ACT OF 1934
Release No. 97649 / June 5, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4415 / June 5, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21481

In the Matter of

MICHAEL K. LAWLOR

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Michael K. Lawlor (“Lawlor” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter arises from Michael K. Lawlor's role in the improper revenue recognition practices by USA Technologies, Inc., the predecessor entity of Cantaloupe, Inc., ("USAT"), between the fourth quarter fiscal year-end ("FY") 2017 and third quarter-end FY 2018. As a result, USAT, a Malvern, Pennsylvania-based manufacturer and distributor of cashless payment devices, filed with the Commission materially misstated financial statements in its annual, quarterly, and current reports filed with the Commission during the period.

2. As USAT's then-Chief Services Officer, Lawlor participated in USAT's efforts to maximize end-of-quarter revenue and meet internal sales targets – in contravention of its publicly-stated sales and revenue recognition policies and generally accepted accounting principles ("GAAP"). Lawlor facilitated USAT's use of purported "bill and hold" sales transactions, a type of sale that, if certain criteria are met, may properly result in a company recognizing revenue for a transaction before shipping the product to the customer, without conforming those transactions to GAAP principles. In addition, Lawlor participated in the shipment of certain devices to USAT customers, who had not ordered or had explicitly told USAT that they wanted other devices that were not available at the time, which led USAT to report inflated quarterly sales revenue.

3. On September 11, 2018, the Company issued a Form 8-K filing announcing that it was currently unable to file its 10-K for FY 2018. On October 9, 2019, the Company announced the results of an Audit Committee internal investigation. As a result of that investigation, the Company restated its FY 2017 Form 10-K and its Form 10-Q filings for the first three quarters of FY 2018. The company overstated revenue by \$2.56 million, or 2.53%, for FY 2017, and an additional \$2.05 million cumulatively for first three quarters of FY 2018, resulting in a total overstatement of \$4.61 million or 3.5%, for the entire period.

4. Accordingly, Lawlor violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and Rule 13b2-1 of the Exchange Act and was a cause of USAT's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13, and 12b-20 thereunder. A violation of Section 17(a)(2) or 17(a)(3) does not require scienter and may be established by a showing of negligence. *Aaron v. SEC*, 446 U.S. 680, 697 (1980); *SEC v. Glt. Dain Rauscher, Inc.*, 254 F.3d 852, 856 (9th Cir. 2001).

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. **Michael K. Lawlor**, age 61, is a resident of Paoli, Pennsylvania. At all relevant times, Lawlor was employed by USAT as Chief Services Officer until his resignation in January 2019.

Related Entity

6. **Cantaloupe, Inc.** is a Pennsylvania corporation with its principal place of business in Malvern, Pennsylvania. Its common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ Stock Market under the symbol “CTLP.” Prior to April 15, 2021, and at all times relevant to this Order, the Company operated and traded under the name “USA Technologies, Inc.”

Facts

USAT’s Business

7. USAT facilitates electronic payment transactions primarily within the unattended point of sale market and operates primarily within the small ticket beverage and food vending industry in the United States. The company generates the majority of its revenues from the sale or lease of its point of sale electronic payment devices and accompanying license, transaction and service fees.

USA Technologies’ Revenue Recognition Policy

8. USA Technologies stated in its FY 2017 Form 10-K and its FY 2018 Form 10-Qs for the relevant periods that it prepared its financial statements in accordance with GAAP.

9. The relevant GAAP revenue recognition rules are set forth in Accounting Standards Codification (“ASC”) Subtopic 605-10-25, *Revenue Recognition - Recognition*. Specifically, ASC 605-10-25-1 states that revenue is generally recognized when it is (1) earned and (2) realized or realizable. Consistent with this GAAP principle, USAT stated in its FY 2017 10-K that “[i]n all cases, revenue is only recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed and determinable, and collection of the resulting receivable is reasonably assured.”

Lawlor Contributes to USAT’s Improper Recognition of Revenue from Bill and Hold Transactions that Did Not Meet the Requirements for Revenue Recognition

10. On two occasions within days of the end of certain fiscal quarters in FY 2017 and 2018, Lawlor participated in the facilitation of transactions that led USAT to recognize revenue from sales that had not been completed in contravention of both GAAP and USAT’s own revenue recognition policies. As a result, USAT misrepresented the revenue USAT had earned by improperly treating purported sales of its devices as “bill and hold” transactions. In this manner,

USAT recognized revenue from the sale of payment devices before delivering those products to its customers and before USAT expected its customers to pay for those products.

11. In other words, on these occasions USAT recognized revenue from uncompleted sales as if they were bona fide “bill and hold” transactions. That is, USAT would “bill” its customers for payment (sending a bill that it did not expect to collect upon until after delivery) and would “hold” the devices, if it even had them in stock, for future delivery (often at some indefinite date).

12. Generally, the criteria to recognize revenue from bona fide bill and hold transactions require that: (i) the risks of ownership pass to the buyer; (ii) the buyer makes a fixed commitment to purchase the goods; (iii) the buyer, not the seller, requests that the transaction be on a bill and hold basis; (iv) the buyer has a substantial business purpose for the bill and hold arrangement; (v) there is a fixed schedule for delivery of the goods; (vi) the seller does not retain any specific performance obligations related to the sale; and (vii) the goods are complete and ready for shipment at the time of the bill and hold transaction.² USAT did not publicly disclose its use of bill and holds and did not have a written policy regarding the use of bill and holds.

13. The purported bill and hold transactions did not meet several of these criteria for properly recording revenue. For example, late in the fourth quarter of FY 2017, Lawlor and another USAT representative (“Executive A”) participated in an effort to persuade a customer to purchase 5,000 devices despite the customer’s lack of an immediate need for the devices. When the customer advised that it would not take possession of the devices by quarter-end, Lawlor consulted with Executive A and approved a plan to temporarily ship the devices to a third party, to extend the payment terms indefinitely, and to allow the customer to cancel the transaction within 90 days. Lawlor never ensured that USAT’s finance function was informed of this arrangement for review and proper accounting treatment. USAT improperly recognized approximately \$1.17 million in revenue as a result of this transaction – approximately one-quarter of the total amount of restated revenue.

14. In the third quarter of FY 2018, Lawlor participated in convincing a customer to purchase 2,000 devices when the customer lacked an immediate need for the entire order. USAT, in turn, arranged to hold the devices in its warehouse on behalf of the customer. The agreement, which was signed by Lawlor on behalf of the Company, provided payment terms that allowed the customer to withhold payment until the devices were delivered to the customer and installed on the customer’s machines. Although USAT recognized revenue on the sale of all 2000 devices within the third quarter of FY 2018, it only shipped 560 devices before quarter-end. USAT improperly recognized approximately an additional \$415,000 in revenue as a result of this transaction.

15. Although USAT recorded these transactions as bill and hold sales, they failed to meet the accounting criteria required for proper revenue recognition under GAAP and USAT’s own revenue recognition policy because, among other reasons: USAT, through Lawlor, Executive

² See *In re Stewart Parness*, SEC Exchange Act Release No. 23507 (Aug. 5, 1986)

A, and others, initiated the bill and hold treatment, not the customer; the customers did not have a fixed commitment to purchase the goods in light of Lawlor's modification to provide nonstandard, flexible payment terms and/or return policy; and the devices lacked a fixed delivery date. As a result, USAT improperly recognized revenue from these incomplete sales.

Lawlor Contributes to USAT's Improper Recognition
of Revenue Relating to the Shipment of Wrong Inventory

16. In the second quarter of FY 2018, USAT lacked sufficient inventory to meet customer demand for a certain type of cashless payment device (called "Seed") and would not have sufficient inventory to meet such demand until at least the following quarter. The Company, however, had an excess inventory of a different type of device (called "ePort").

17. Lawlor and Executive A participated in an effort to solicit customers to purchase the in-stock ePort devices and enable the Company to ship the goods before quarter-end. However, two large USAT customers expressed that they wanted the Seed devices. Nonetheless, USAT shipped ePort devices to those customers, with the explicit understanding that they could exchange them for Seeds when they received new inventory.

18. Late in the second quarter FY 2018, a customer who required Seed devices agreed to purchase several thousand ePorts on the condition that the shipped order also included available Seed devices and that the ePorts could be exchanged without penalty when inventory became available. During the ensuing months, the customer exchanged a portion of the devices as USAT Seed inventory became available. Lawlor signed the sales contract on behalf of USAT and advised Executive A and others to ship the ePorts to the customer with the expressed promise to "swap them out" with Seed units if the customer requested.

19. During that same fiscal quarter, Lawlor and Executive A participated in a plan to convince a customer to purchase 2,700 ePort devices before quarter-end instead of the desired Seed devices. The customer, however, did not intend to accept delivery – a fact that was known to Lawlor. USAT, with Lawlor's approval, nevertheless shipped the devices to a third party who held the devices until returning them to USAT during the following quarter. These two transactions resulted in approximately \$1.497 million in improperly recognized revenue for the second quarter of FY 2018.

20. On another occasion late in the third quarter of FY 2018, USAT incurred another inventory shortage involving different versions of its ePort device. Faced with that shortage, Lawlor approved the shipment of unwanted versions of its ePort to a customer to complete an order without notifying the customer. Lawlor signed the agreement on behalf of USAT and helped coordinate the return of the unwanted devices the following quarter. This transaction resulted in approximately \$861,000 in improperly recognized revenue for the quarter.

21. In all of these transactions, USAT improperly recorded revenue because it expected that the shipped devices would be returned by their customers when inventory of a different

product became available. For this reason, USAT had not completed its sale by the end of that quarter and could not properly realize income at the time of shipment.

Lawlor Contributes to Material Errors in USAT's Financial Statements Included in Commission Filings

22. As demonstrated in the table below, USAT materially misstated its consolidated financial statements as of and for the FY ending June 30, 2017 included in the Company's Form 10-K, filed on August 23, 2017, as well its consolidated financial statements for the quarterly periods ended September 30, 2017, December 31, 2017, and March 30, 2018, included in the Company's 2017 and 2018 Forms 10-Q.

(Amounts in 000s)	FY 2017	Q1 2018	Q2 2018	Q3 2018
Revenue as Reported	104,093	25,617	32,506	35,832
Adjustment	(2,568)	(411)	(866)	(768)
Overstatement %	2.53%	1.63%	2.74%	2.19%
Gross Profit as Reported	26,646	7,201	9,201	11,944
Adjustment	(1,405)	(576)	359	(475)
Over/(under)statement %	5.57%	8.69%	(3.76)%	4.14%
Operating (loss) Income as Reported	135	(552)	(3,200)	(500)
Adjustment	(1,405)	(576)	359	(9)
Over/(under)statement %	110.63%	51.06%	(12.64)%	1.77%

23. Lawlor signed internal certifications regarding the Company's financial statements despite failing to timely or fully apprise the Company's finance function of the salient transaction terms known to him, as described in this Order to allow for the proper accounting treatment of the transactions.

24. USAT's internal accounting control "RE-03" required contract signers to notify the Company's Controller of any unusual terms and conditions or customer arrangements at the time of signing. On multiple occasions when he signed sales agreements on USAT's behalf, Lawlor failed to comply with control RE-03.

25. Lawlor received a cash bonus and stock award for FY 2017 based, in part, on the Company's improperly reported revenue figure. Lawlor voluntarily repaid USAT the portion of his bonus attributable to the improperly reported revenue.

USAT Offered and Issued Securities During the Relevant Time Period

26. The Company conducted a public offering in May 2018. The offering prospectus, filed with the SEC on May 23, 2018, incorporated by reference its SEC filings, which included the materially misstated consolidated financial statements in the 2017 Form 10-K and the subsequent Forms 10-Q.

Violations

27. As a result of the conduct described above, Lawlor violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstance under which they are made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sale of securities.

28. As a result of the conduct described above, Lawlor also violated Rule 13b2-1 of the Exchange Act, which prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account subject to Exchange Act Section 13(b)(2)(A).

29. As a result of the conduct described above, Lawlor also was a cause of USAT's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, which require issuers to file accurate annual, current and quarterly reports, which include such further information as may be necessary to make the required statements not misleading.).

30. As a result of the conduct described above, Lawlor also was a cause of USAT's violations of Section 13(b)(2)(A) of the Exchange Act, which requires an issuer to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets.

31. As a result of the conduct described above, Lawlor also was a cause of USAT's violations of Section 13(b)(2)(B) of the Exchange Act, which requires issuers with securities registered under Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Lawlor's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, is hereby ORDERED that:

- A. Respondent Lawlor cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-1 thereunder.
- B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Lawlor as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott A. Thompson, Associate Director, Division of Enforcement, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103.

- C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by,

offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary