Toxicology Testing Laboratory Pays Almost $12 Million To Settle Whistleblower Referral Kickback Allegations

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WASHINGTON, July 23, 2020 /PRNewswire/ -- The U.S. Department of Justice (DOJ) has entered into a settlement with Sterling Healthcare Opco, LLC d/b/a/Cordant Health Solutions (Cordant) to resolve a lawsuit that began five years ago with the filing of a whistleblower lawsuit by a former Cordant employee. The whistleblower alleged that a testing laboratory owned by Cordant, and located in Tacoma, Washington, paid kickbacks to at least two major clients of the laboratory to induce those clients to refer tests to the laboratory.

Cordant agreed to pay the government $11,942,913 to settle the claims, originally filed by the whistleblower under the qui tam provisions of the False Claims Act. Under that law, a private citizen with knowledge of fraud against a government agency or government program can "blow the whistle" by bringing a lawsuit on behalf of the government. Successful qui tam whistleblowers can receive substantial awards. In this case, the government awarded the whistleblower 20% of the settlement amount, which is approximately $2.4 million. Jonathan Tycko, Tycko & Zavareei LLP, based in Washington, D.C., and Felix Gavi Luna, Peterson Wampold Rosato Feldman Luna, based in Seattle, Washington represented the whistleblower.

"This settlement shows that the False Claims Act works," said Jonathan Tycko, one of the whistleblower's lawyers. "Through the qui tam provisions of that law, our client was able to bring the kickbacks to the attention of the government in a way that led to both criminal and civil remedies. We are proud and humbled to represent brave whistleblowers, such as the individual who brought this case."

"We are grateful for how seriously the U.S. Attorney's Office, and all the government lawyers and investigators who have worked on this matter, took our client's allegations, and for the work they did to reach this settlement," added attorney Felix Gavi Luna, who also represented the whistleblowers.

The Whistleblower's Allegations

As described in the allegations of the complaint filed in federal court, the whistleblower worked at the Tacoma, Washington testing lab, which at the time operated under the name Sterling Reference Laboratories. Because of his position at the lab, the whistleblower received monthly "financial reports" showing the expenses incurred by the lab. When the whistleblower first starting working there, he noticed a line item titled "Administrate Service Fees." When he inquired with another employee of the lab about this line item, the whistleblower learned that this was a "kickback" paid to a client of the lab called Northwest Physicians Laboratories (NPL), which referred numerous patients to the lab for testing services. The whistleblower subsequently learned that a similar "Administrate Service Fee" was being paid to another client of the lab called Genesis Marketing Group (Genesis). According to the allegations of the complaint, the whistleblower asked top executives of Cordant, including a Vice President of Operations and the company's Chief Compliance Officer, about the fees, but the payments continued. The whistleblower also learned that the President of the company, Sue Sommer, gave a slideshow presentation to the company's Board of Directors, referencing the allegedly unlawful "administrative service fees."

The whistleblower further alleged that Cordant subsequently billed tests on samples received as a result of referrals from NPL and Genesis to Medicare, Medicaid, and TRICARE – all healthcare programs funded by the government. Because the kickbacks resulted in those claims on federal healthcare programs, they violated a statute known as the Anti-Kickback Statute (AKS). The AKS makes it illegal to offer or pay remuneration to induce someone to make a referral to a healthcare service that will be paid for by Medicare or another federally-funded healthcare program or to persuade someone to purchase something (for example, a drug or medical device) that would be paid for by such a program.

The False Claims Act

The False Claims Act, sometimes referred to as "Lincoln's Law," was initially enacted during the Civil War in response to "profiteering" by companies that sold defective or useless goods to the Union Army. The Act has been amended several times since then. The modern version of the False Claims Act makes it unlawful for a company to submit false claims for payment to the government, or to create false documents or other records to obtain such payment. The False Claims Act also has a so-called "qui tam" provision that permits private whistleblowers to bring a lawsuit in the name of the government against companies or individuals who violate the Act. Under that qui tam provision, a whistleblower award is typically between 15% and 30% of whatever amount is recovered by or for the government as a result of the lawsuit.

Qui tam complaints are filed "under seal" and are then investigated by the Department of Justice, which can then intervene in the lawsuit on the side of the whistleblower. When a qui tam complaint alleges fraud on Medicare or other government-funded healthcare programs, the U.S. Department of Health and Human Services Office of Inspector General (HHS-OIG) is often also involved in the investigation. When TRICARE is involved, the Defense Health Agency of the U.S. Department of Defense may also investigate.

Violations of the AKS can also be violations of the False Claims Act. The AKS incorporates the False Claims Act, stating that a claim for reimbursement from Medicare or another federal health care program resulting from an AKS violation "constitutes a false or fraudulent claim" under the False Claims Act.

Here, the whistleblower filed the qui tam complaint in 2015 in the United States District Court for the Western District of Washington. The case was investigated by the U.S. Attorney's Office for that district, along with investigators from HHS-OIG, the Defense Health Agency, and the Federal Bureau of Investigation. As a result of the whistleblower's disclosures, and the investigation that followed, NPL and a number of individuals associated with NPL face criminal charges, and Cordant subsequently agreed to the settlement of the civil qui tam case.

The qui tam lawsuit at issue is No. C 15-5565-RBL in the United States District Court for the Western District of Washington.

About Tycko & Zavareei LLP

Tycko & Zavareei LLP represents whistleblowers, consumers, employees, and others who seek to remedy corporate fraud and other wrongdoing. The firm has offices in Washington, D.C. and California, and represents clients in litigation in federal and state courts around the country. The firm's whistleblower practice is headed by partner Jonathan Tycko, a graduate of Columbia Law School with more than 25 years of litigation experience, who has represented dozens of whistleblowers in cases under the False Claims Act and similar statutes; those cases have returned hundreds-of-millions of dollars to federal and state governments.

About Peterson Wampold Rosato Feldman Luna

Peterson Wampold Rosato Feldman Luna is a firm of dedicated and knowledgeable trial lawyers. The firm's lawyers have tried hundreds of cases from catastrophic personal injury to complex commercial matters in courts throughout Washington and beyond its borders. Since graduating from the University of Washington School of Law in 1997 with honors, *Order of the Coif* and *Order of the Barristers,* Felix Gavi Luna has tried dozens of jury trials involving commercial disputes, civil rights, and personal injury matters, helping his clients to recover tens of millions of dollars. Felix Gavi Luna has consistently been rated as a Top 100 Super Lawyer in the State of Washington, and is a fellow of the American College of Trial Lawyers.

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