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COURTS

## Lab settles case over kickbacks

By Bob Egelko

A California medical laboratory agreed Monday to pay \$19.4 million to the federal and state governments and two former employees who said they were fired after reporting secret discounts and kickbacks.

The agreement settles a lawsuit by the ex-employees and the state of California who accused Diagnostic Laboratories and Radiology, the West Coast's largest supplier of laboratory and X-ray services to nursing homes, of cheating the Medicare and Medi-Cal programs for years by billing them at standard

rates while secretly charging cut-rate fees to the nursing homes.

Those fees were as much as 80 percent below the lab's normal rates, according to the lawsuit. In exchange, the lawsuit said, the nursing homes agreed to use Diagnostic Laboratories for other Medicare and Medi-Cal services.

"Deep discounting harms competition, squeezes out small businesses, and ultimately hurts patients," said Justin Berger, a lawyer for the two former employees. By law, he said, the discounts should have been passed along to the government programs.

In a statement, the Burbank company said it believes it could have vindicated itself in a jury trial, but decided to settle to avoid the time and expense of further litigation. The settlement "relates to practices begun under prior ownership" and allows the company to concentrate on delivering health care services for the elderly, the statement said.

The two employees, Jeffrey Hauser and Jon Willem Pasqua, worked in the company's sales office and said they tried to report the questionable discount practices to supervisors but were ignored. They then provided information to state and federal officials, and were fired from their jobs shortly before filing suit in February 2010, their lawyers said.

"Jeff and Jon put their livelihoods and reputations on the line to return

money to taxpayers," said Niall McCarthy, another attorney for Hauser and Pasqua.

A federal judge had refused to dismiss the suit, and McCarthy said it had been scheduled to go to trial next week before the settlement was reached.

The settlement initially provides \$12.95 million to the federal government, \$4.55 million to the state and \$1.9 million to the two men's lawyers. But under federal whistleblower laws, McCarthy said, Hauser and Pasqua will be entitled to 20 percent or more of the federal and state settlements, a share that will either be negotiated with the government agencies or determined by the judge.

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