

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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★ MAR 19 2015 ★

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UNITED STATES OF AMERICA *ex rel.*
JOHN DOE,

LONG ISLAND OFFICE

MEMORANDUM AND ORDER

Plaintiff,

CV 10-4819

-against-

(Wexler, J.)

ACUPATH LABORATORIES, INC.,

Defendant.

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APPEARANCES:

SADOWSKI FISCHER PLLC
BY: Andrea Fischer, Esq.
Attorneys for the Relator
39 Broadway, Suite 1540
New York, NY 10006

O'CONNELL AND ARONOWITZ
BY: Jeffrey Sherrin, Esq.
Attorneys for Defendant
54 State Street
Albany, NY 12207

WEXLER, District Judge:

This qui tam action was commenced against Defendant Acupath Laboratories, Inc. on October 20, 2010, alleging violations of the False Claims Act, 31 U.S.C. § 3729 et seq., in connection with violations of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and the submission of false claims for payment to the Medicare Program. The parties ultimately entered into a settlement agreement with respect to those claims.

On July 21, 2014, Relator filed a motion for attorney's fees and costs, which Defendant opposed on a number of grounds. Defendant also cross-moved to recover its own attorney's fees in connection with its opposition to Relator's motion. Those motions were referred to Magistrate Judge Tomlinson for a Report and Recommendation. In a thorough and extensive Report and Recommendation dated February 27, 2015, Magistrate Tomlinson recommended that Relator's motion for attorney's fees and costs be granted in the amount of \$95,051.33.¹ Magistrate Tomlinson further recommended that Defendant's cross-motion to recover its own attorney's fees and costs be denied.

Magistrate Tomlinson's Report and Recommendation advised the parties that any written objections were to be filed within fourteen days from service of the Report and Recommendation. (R&R at 31.) The Report and Recommendation was docketed on the Court's electronic filing system on February 27, 2015. To date, no objections have been received. Nor does it appear that any are forthcoming since by letter dated March 13, 2015, the parties advised the Court that they "have agreed to accept Magistrate Tomlinson's report without objection." (Docket Entry #41.)


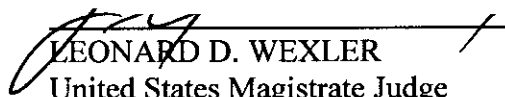
Accordingly, the time to file objections to the recommendation of Magistrate Tomlinson having passed without receipt of any objections thereto, and based on the parties' correspondence advising of their acceptance of the Report and Recommendation without objection, the Report and Recommendation is hereby adopted.

The Clerk of the Court is directed to enter judgment in the amounts referred to above and to thereafter close this action.

¹ This amount represents \$93,035.59 in attorney's fees and \$2,015.74 in costs.

SO ORDERED:

Dated: Central Islip, New York
March 19, 2015


s/ Leonard D. Wexler

LEONARD D. WEXLER
United States Magistrate Judge