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Department of Justice

U.S. Attorney's Office

District of New Jersey

FOR IMMEDIATE RELEASE

Thursday, December 3, 2015

Civil Settlement Reached With Environmental Testing Company Over Claims That Testing Procedures Were Not Followed

NEWARK, N.J. – An environmental testing company headquartered in Dayton, New Jersey, will pay \$3 million to resolve allegations that it failed to follow proper EPA methodology during some of its tests, U.S. Attorney Paul Fishman announced today.

Accutest Corp., also known as Accutest Laboratories (Accutest) is an environmental testing laboratory founded in 1956. It provides environmental analytical services to industrial, engineering/consulting, and government clients, according to its website.

The settlement resolves allegations that between Jan. 1, 2011, and Dec. 31, 2013, Accutest failed to properly follow EPA standards in analyzing certain soil and water samples in its semi-volatile and extraction laboratories. It was alleged that Accutest did not properly extract samples because: (1) It did not perform the required number of shakes for waste water samples, (2) it did not wait the required amount of time in between shakes of the samples, and (3) it did not properly "spike" samples with a known compound as part of the quality control process, possibly affecting the quality control process in place to ensure that materials in the sample were fully extracted. It was also alleged that Accutest altered the settings on their gas chromatography/mass spectrometry machines and disregarded calibration protocols.

In addition to the \$3 million payment by Accutest, the company has agreed to fully comply with the requirements of its certifying bodies regarding notice of the allegations and has agreed to notify any of its clients that could have been impacted by the alleged conduct.

U.S. Attorney Fishman credited special agents of the Environmental Protection Agency under the direction of Special Agent in Charge Thomas E. Muskett of the Environmental Protection Agency, Office of Inspector General, Office of Investigations, Washington Field Office; the U.S. Department of Defense, Defense Criminal Investigative Service, under the direction of Special

Agent in Charge Craig W. Rupert; the U.S. Army Criminal Investigation Division, Major Procurement Fraud Unit, Mid-Atlantic Fraud Field Office, under the direction of Special Agent in Charge Larry S. (Scott) Moreland. He also thanked the U.S. Navy Criminal Investigative Service – Northeast Field Office and the U.S. Air Force Office of Special Investigations.

The government is represented by Assistant U.S. Attorney Mark C. Orlowski of the U.S. Attorney's Civil Division in Newark.

The case is captioned *U.S. ex rel. Koroush Vaziri, et al. v. Accutest Laboratories, Civil Action*, No. 3:13-CV-02223-FLW-TJB.

Defense counsel: Lisa A. Krigsten Esq., Kansas City, Missouri

Counsel for relator: Neil Mullen Esq., Montclair, New Jersey

15-442

USAO - New Jersey

Civil Div. I: General (e.g., DOT, FEC, FOIA, FTC (except antitrust), HUD)

[Download accutest final executed settlement agreement.pdf](#) (244.98 KB)

Updated December 3, 2015

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into by and between the United States of America (the "United States"), acting through the United States Department of Justice, Office of the United States Attorney for the District of New Jersey (collectively "United States"), and Accutest Corporation, also known as Accutest Laboratories ("Accutest"), a corporation headquartered at 2235 U.S. Highway 130, Dayton, New Jersey 08810, and doing business in the State of New Jersey, through its authorized representatives.

II. RECITALS

As a preamble to this Agreement, the United States and Accutest (collectively, the "Parties") agree to the following:

A. Accutest is a member of a network of environmental testing laboratories across the United States each with a common parent owner. Accutest is engaged in the business of environmental testing services, including but not limited to the testing of semi-volatile organic compounds. The United States and its agencies, including but not limited to the United States Department of Defense ("DOD") and the Environmental Protection Agency ("EPA"), have contracted with Accutest to perform various environmental tests in Accutest's Semi-Volatile ("SVOA") and Extraction laboratories.

B. On or around April 4, 2013, Koroush Vaziri ("Vaziri" or "Relator") filed a *qui tam* action in the United States District Court for the District of New Jersey captioned United States of America, *et al.*, *ex rel.* Koroush Vaziri v. Accutest Laboratories, Civil Action No. 3:13-CV-02223-FLW-TJB, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) ("FCA"), and then subsequently filed an Amended Complaint on or about October 9, 2014 (the "Civil Action"). The Civil Action alleges that Accutest violated the FCA, and several state false claims acts, by not following appropriate EPA guidelines in the extraction and testing of certain compounds. Specifically, the Civil Action alleges that some line-level technicians in Accutest's Extraction laboratory did not fully comply with the Standard Operating Procedures for extractions, and that line-level analysts in Accutest's SVOA laboratory did not properly calibrate the gas chromatography/mass spectrometry ("GC/MS") instruments or maintain instrument data files.

C. The United States contends that it has civil causes of action against Accutest for violations of the False Claims Act, 31 U.S.C. §§ 3729 et seq., and for common law remedies, relating to some line-level Accutest employees' alleged failure to strictly follow EPA Method SW-846 3510/8270, 3550/8270, and/or EPA Method 625 (collectively, the "Applicable EPA Methods"), which are used to analyze certain soil and waste water SVOA samples. Specifically, the United States contends that, on one or more occasions during the period of January 1, 2011, through December 31, 2013, some employees, agents and/or representatives of the Extraction laboratory did not strictly follow the Applicable EPA methods, including in the following ways: (1) not performing the required number of "shakes" and/or not waiting the required period of time between "shakes" of waste water samples, potentially resulting in the inability to fully extract all of the SVOA compounds in the samples; and (2) not "spiking" a soil or waste water sample with a known compound in the correct sequence or manner, potentially affecting the quality control process that ensured all SVOA compounds in a sample were likely to be fully extracted. In addition, during the same time period, the United States contends that some employees, agents and/or representatives of the SVOA laboratory did not strictly follow the Applicable EPA methods by altering the

settings on GC/MS instruments or disregarding calibration protocols. The contentions in this Paragraph are hereinafter referred to as the "Covered Conduct."

D. This Settlement Agreement is not an admission of liability or wrongdoing by Accutest, and Accutest specifically does not admit any of the alleged Covered Conduct. It also is not a concession by the United States that its claims are not well founded.

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

F. 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 the Settlement Agreement, the Parties have reached a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Accutest agrees to pay to the United States Three Million Dollars (\$3,000,000.00) (the "Settlement Amount"), of which Five Hundred Thousand (\$500,000.00) will be paid within ninety (90) days of this Agreement and the remaining amount will be paid in Five Hundred Thousand Dollar (\$500,000.00) installments on March 1st and October 1st of each year until the amount is fully satisfied. Following any change in control of Accutest after execution of this Agreement, the remaining Settlement Amount will be due in full and owing within ninety (90) days. The payments of the Settlement Amount to the United States shall be made by electronic funds transfer pursuant to written instructions to be provided by the undersigned attorneys for the United States. In the event Accutest fails to pay the Settlement Amount in the manner and within the time frame described above, the United States may, at its option: a) declare Accutest to be in default and may take any action necessary to enforce the terms of this Agreement; or b) file a civil action alleging that Accutest violated the False Claims Act, 31 U.S.C. §§ 3729 et seq., and/or is liable under common law theories for the alleged Covered Conduct. If the United States is required to take legal action to collect the full Settlement Amount under this Agreement, Accutest shall pay to the United States all reasonable costs and fees.

2. Conditioned upon the United States receiving the Settlement Proceeds from Accutest, the United States agrees that it shall pay to Relator by electronic funds 20% of each payment received from Accutest under the Settlement Agreement as soon as feasible after receipt of the payment.

3. Accutest will fully comply with the requirements of its certifying bodies (including, but not limited to, the National Environmental Laboratory Accreditation Program, U.S. Department of Defense Environmental Laboratory Program ("DOD ELAP"), ISO/IEC 17025.2005 Certificate of Accreditation Program for the Laboratory Accreditation Bureau, and any state accreditations held by Accutest) regarding notice of the alleged Covered Conduct and the relevant terms of this Agreement.

4. Accutest agrees to notify any of its clients that could have been impacted by the activity described in the alleged Covered Conduct. Accutest will provide a copy of the notice, as well as a list of clients to which the notice will be sent, to the EPA for its review and comment before it is sent. In the event that the Parties do not agree on either the list of clients to whom the notification is to be sent, or the content of the notification, Accutest agrees to provide the EPA with a client list, along with the dates of the samples (if applicable), and the EPA, in its discretion, shall be entitled to send a notification to clients that it determines could have been impacted by the alleged Covered Conduct. Prior to sending such notice, the EPA shall provide a copy to Accutest for its review and comment.

5. Subject to the exceptions in Paragraph 9 and conditioned upon the full payment of the Settlement Amount in Paragraph 1, the United States releases Accutest from all civil monetary claims based upon the alleged Covered Conduct that the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, the Civil Monetary Penalties Law, 42 U.S.C. 1320(a)-(7a), the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or common law theories such as breach of contract, payment by mistake, unjust enrichment, and fraud.

6. Accutest fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Accutest has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, solely related to civil claims involving the alleged Covered Conduct and the United States' civil investigation and prosecution thereof. Accutest does not release and specifically reserves any and all claims that have been asserted, could be asserted, or may be asserted in the future related to any criminal or administrative investigation or action by the United States.

7. Subject to Accutest's full payment of the Settlement Amount to the United States and the statutory attorneys' fees identified in Paragraph 8, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to irrevocably and unconditionally waive, release and forever discharge Accutest, and its respective present, past, and future direct and indirect parents, subsidiaries, and affiliated corporations, divisions, affiliates, predecessors, principals, members, partners, joint venturers, co-investors, representatives, financing sources, successors, and assigns, and their past and present owners, members, directors, officers, employees, employers, stockholders, attorneys, agents, and insurers, and all persons acting by, through, under or in concert with any of them and all other persons, firms and corporations whomsoever (collectively "Released Parties") from any and all claims, demands, debts, actions or causes of action, obligations, damages, expenses, fees (including attorney's fees, court costs, expert witness fees, and expense of any kind), and liabilities whatsoever, at law, in equity, or mixed, known and unknown, asserted or unasserted, which the Relator has or may have against the Released Parties, including but not limited to the allegations contained in the Civil Action, based on any alleged violation of the United States Constitution; the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*; Sections 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*; the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621, *et seq.*; the Older Worker Benefit Protection Act, 29 U.S.C. § 621, *et seq.*; the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*; the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*; the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. § 1161 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*; the Family and Medical Leave Act; the New Jersey State Constitution; the New Jersey Equal Pay Act, N.J.S.A. §§ 34:11-56.2; the New Jersey Minimum Wage Law, N.J.S.A. § 34:11-56(a) *et seq.*; the non-discrimination and anti-retaliation provisions of the New Jersey Workers' Compensation Act, N.J.S.A. § 34:15 *et seq.*; the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-12; the New Jersey Conscientious Employee Protection Act, N.J.S.A. § 34:19-1 *et seq.*; the New Jersey occupational safety and health laws; the New Jersey wage-hour and wage-payment laws; and/or any other federal, state, city, local or other human rights, civil rights, wage-hour, wage-payment, immigration, pension, employee benefits, labor, employment or other laws, rules, regulations, codes, guidelines, constitutions, ordinances, public policies, contracts (whether oral or written, express or implied) or tort laws; any claim arising under the health, welfare and/or employee benefit plans or programs of any of the Released Parties; any claims arising under any policy, procedure or practice of any of the Released Parties; any claims for emotional distress, pain and suffering or mental anguish; any

claims for any costs, fees or other expenses, including but not limited to any claims for attorneys' fees and/or costs; and any claims arising under the common law.

8. The Parties agree that the statutory attorneys' fees to be paid are in addition to the Settlement Amount, and are stipulated to be \$600,000. The attorneys' fees shall be paid directly to Relator's counsel within 90 days of the Effective Date of this Agreement.

9. Notwithstanding any term of this Agreement, the following potential claims of the government against Accutest are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability, including but not limited to the criminal liability of individuals (including current or former directors, officers, employees, agents or shareholders);
- c. Any administrative action or liability, including suspension and debarment rights of any federal agency;
- d. Any liability to the United States for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by the execution of 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;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury, property damage, or for other consequential damages resulting from the alleged Covered Conduct, including but not limited to, remediation necessitated by improper testing performed by Accutest;
- i. Any liability to the various states for which Accutest performed testing and which are named in the Civil Action;
- j. Any liability of individuals.

10. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement, and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action, as it relates to the claims involving the United States.

11. If Accutest should ever be the subject of administrative or criminal proceedings for offenses related to the alleged Covered Conduct, it waives and shall not assert any defense 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.

12. Nothing in this Agreement constitutes agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

13. Accutest fully and finally releases the Relator and/or his attorneys from any claims (including attorneys' fees, cost, and expenses of every kind and however denominated) that Accutest has asserted, could have asserted, or may assert in the future against the Relator and/or his attorneys, related to the alleged Covered Conduct and the Relator's investigation and prosecution thereof by the United States.

14. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulations 48 C.F.R. § 31.205-47) incurred by or on behalf of Accutest, and its present or former officers, directors, employees, shareholders, and agents in connection with

1. The matters covered by this Agreement;
2. The United States' civil, administrative, and/or criminal investigation of the matters covered by this Agreement;
3. Accutest's investigation, defense, and corrective actions undertaken in response to the United States' civil, administrative, and/or criminal investigation 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(s) made to the United States pursuant to this Agreement

shall be "unallowable costs" for government contract accounting purposes, including costs and attorneys' fees.

b. Future Treatment of Unallowable Costs: Unallowable costs shall be separately determined and accounted for by Accutest, and Accutest will not charge such unallowable costs directly or indirectly to any contracts with the United States or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Accutest or any parent, subsidiary, or affiliate, to the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Accutest further agrees that within 90 days of the Effective Date of this Agreement, it will identify to the United States any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests, already submitted by Accutest, or any parent, subsidiary, or affiliate, and will request, and agree, that such costs reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of unallowable costs. Accutest agrees that the United States, at a minimum, will be entitled to recoup from Accutest any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, Office of the United States Attorney for the District of New Jersey. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Accutest's books and records and to disagree with any calculations submitted by Accutest or any parent, subsidiary, or affiliate, regarding any Unallowable Costs included in payments previously sought by Accutest, or the effect of any such Unallowable Costs on the amount of such payments. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the Unallowable Costs in this Paragraph.

15. This Agreement is intended to be for the benefit of the Parties and the Relator only. The Parties do not release any claims against any other individual, employee, or entity, except to the extent provided for specifically herein.

16. Upon receipt of the first payment described in Paragraph 1 above, the Parties and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal as to claims made on behalf of the United States in the Civil Action, pursuant to Federal Rule of Civil Procedure 41(a)(1).

17. Except as expressly provided in this Agreement, the Parties and the Relator will bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

19. The Parties and the Relator agree that this Agreement is governed by the laws of the United States.

20. The Parties and the Relator agree that the exclusive jurisdiction and venue for any dispute arising between or among the Parties under this Agreement will be in the United States District Court for the District of New Jersey.

21. This Agreement constitutes the complete agreement between the Parties.

22. This Agreement may not be amended except by written consent of the affected Parties.

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

24. This Agreement is binding on Accutest's successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

26. The Parties and the Relator consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

27. This Agreement is effective on the date of the signature of the last signatory to the Agreement ("Effective Date").

28. Facsimiles or email transmittal of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

29. The United States, Accutest, or the Relator shall not be considered to be the drafter of this Agreement or any of its provisions for the purposes of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement or its provisions.

30. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and/or entities indicated below.

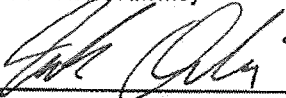
31. The illegality or unenforceability of any non-dependent provision, or any part of any non-dependent provision, of this Agreement shall not affect or impair the validity, legality or enforceability of any other non-dependent provision or any part of any non-dependent provision.

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For the United States of America:

PAUL J. FISHMAN
United States Attorney



By: MARK C. ORLOWSKI
Assistant U.S. Attorney
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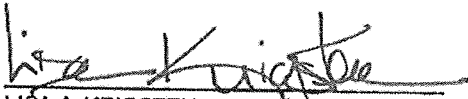
Dated: 11/12/15

For Accutest Laboratories:



DR. KARL SCHOENE
Chief Executive Officer
2235 U.S. Highway 130
Dayton, NJ 08810
On behalf of Accutest Corporation

Dated: 6 Nov 2015

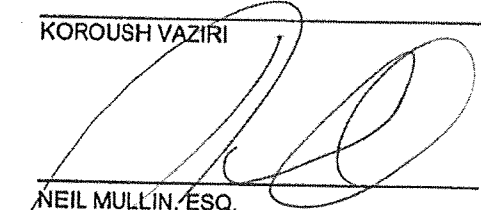


LISA A. KRIGSTEN
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Attorney for Accutest Corporation

Dated: November 6, 2015

For Koroush Vaziri:

KOROUSH VAZIRI



NEIL MULLIN, ESQ.
Smith Mullin, P.C.
240 Claremont Avenue
Montclair, New Jersey
Attorney for Koroush Vaziri

Dated: _____

Dated: 11/10/15

SIGNATURE PAGE


For the United States of America:

PAUL J. FISHMAN
United States Attorney

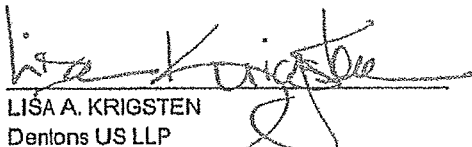
By: MARK C. ORLOWSKI
Assistant U.S. Attorney
U.S. Attorney's Office
District of New Jersey Civil Division
970 Broad Street, Suite 700
Newark, New Jersey 07102

Dated: _____

For Accutest Laboratories:

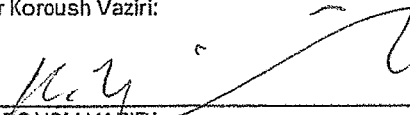

DR. KARL SCHOENE
Chief Executive Officer
2235 U.S. Highway 130
Dayton, NJ 08810
On behalf of Accutest Corporation

Dated: 6 Nov 2015


LISA A. KRIGSTEN
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
Attorney for Accutest Corporation

Dated: November 6, 2015

For Koroush Vaziri:


KORUSH VAZIRI

Dated: 11-10-15

NEIL MULLIN, ESQ.
Smith Mullin, P.C.
240 Claremont Avenue
Montclair, New Jersey
Attorney for Koroush Vaziri

Dated: _____