



JOSH STEIN
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

SETH DEARMIN
CHIEF OF STAFF

August 7, 2018

North Carolina Senate President Pro Tempore Phil Berger
North Carolina House of Representatives Speaker Tim Moore
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator Warren Daniel
Senator Shirley Randleman
Senator Norman W. Sanderson
Representative James Boles, Jr.
Representative Ted Davis, Jr.
Representative Allen McNeill
Representative Rena W. Turner
Co-Chairs, Appropriations Subcommittee on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5; Report on Settlement Agreement for Alere San Diego, Inc.

Dear Members:

Section 114-2.5 of the North Carolina General Statutes requires the Attorney General to report to the Joint Committee on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the state and federal governments in the above-referenced matter. Pursuant to federal law (42 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the state and federal governments.

A settlement has been executed between Alere and the State of North Carolina.

The settlement resolves allegations that from January 1, 2006 through March 31, 2012, Alere manufactured and distributed triage devices for use in rapid point-of-care testing, whose precision varied significantly from the precisions stated in the tests' package inserts and FDA approval documents.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$459,033.22. Of that amount the federal government will receive \$312,185.17 for North Carolina's federal portion of Medicaid recoveries. Pursuant to G.S. § 1-610, the qui tam plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$28,828.24 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$85,883.81 as restitution and interest. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$26,287.81 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 1-608(c), the North Carolina Department of Justice will receive \$5,848.19 for investigative costs and costs of collection.

We will be happy to respond to any questions you may have regarding this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth Dearmin', followed by a horizontal line.

Seth Dearmin
Chief of Staff

cc: John Poteat, NCGA Fiscal Research Division