

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE UNITED STATES OF AMERICA, and
THE STATE OF CALIFORNIA, ex rel. KIMBERLY
HERMAN, AMY LESTAGE and KEVIN ROSEFF,

Plaintiffs,

v.

COLOPLAST A/S, COLOPLAST CORP., HOLLISTER,
INC., 180 MEDICAL INC., A-MED HEALTH CARE
CENTER, BYRAM HEALTHCARE CENTERS, INC.,
CCS MEDICAL, INC., LIBERATOR MEDICAL
SUPPLY, INC., RGH ENTERPRISES, INC. d/b/a
EDGE PARK MEDICAL SUPPLIES, and SHIELD
CALIFORNIA HEALTH CARE CENTER, INC.,

Defendants.

Civil Action No. 11-12131-RWZ

**CCS MEDICAL, INC.’S MOTION TO RECONSIDER THE COURT’S AUGUST 24, 2016
ORDER OR TO CERTIFY THE MATTER FOR INTERLOCUTORY APPEAL
PURSUANT TO 28 U.S.C. § 1292(b)**

CCS Medical, Inc. (“CCS”) moves this Court to reconsider, or to certify to the First Circuit Court of Appeals, the proper interpretation of the safe harbor regulations promulgated by the Office of the Inspector General for Health and Human Services (“HHS OIG”) for discount arrangements to shield them from liability under the Anti-Kickback Statute. The interpretation of those regulations set forth in the Court’s August 24, 2016 Opinion is contrary to the plain language of the regulations and undoes the very change to the regulations that HHS OIG implemented in 1999 seeking to broaden the protections for discounts. The interpretation also is inconsistent with the Supreme Court’s recently-announced test to determine the adequacy of claims brought under the False claims Act that seek to invoke the “implied false certification” theory.

For these reasons, and those set forth in the accompanying Memorandum in Support of CCS's Motion, the Court should reconsider its August 24, 2016 Opinion or, in the alternative, certify this controlling question of law for interlocutory appeal to the First Circuit pursuant to 28 U.S.C. § 1292(b), along with *United States of America ex. rel Banigan v. Organon*, Civil Action No. 1:07-cv-12153, which addresses the very same issue.

Dated: September 15, 2016

Respectfully submitted,

CCS MEDICAL INC.

By its attorneys,

/s/ Ingrid S. Martin

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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that on September 13, 2016, I conferred with counsel of record for the Relators regarding this motion and the parties attempted in good faith to narrow the issues presented.

/s/ Ingrid S. Martin

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2016, I caused a true and correct copy of the foregoing document to be served upon all counsel of record via CM/ECF electronic filing.

/s/Ingrid S. Martin