

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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**UNITED STATES OF AMERICA**  
**ex rel. JACQUELINE KAY POTEET,**

Plaintiff,

vs.

**Case No. 03-2979 D/A**

**MEDTRONIC, INC., et al.,**

Defendants.

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**ORDER DENYING MOTION FOR RECONSIDERATION**

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Before the Court is the motion (D.E. # 86) of relator Jacqueline Kay Poteet (“Relator”) for reconsideration of the Court’s January 23, 2007 order granting the United States’ motion to dismiss the present qui tam action. For the reasons stated herein, the Court denies the motion for reconsideration.

**I. LEGAL STANDARD**

“A motion to reconsider, which is more properly a motion to alter or amend judgment under Fed. R. Civ. P. 59(e), is not intended to be utilized to relitigate issues previously considered . . . [W]here the movant is attempting to obtain a complete reversal of the court's judgment by offering essentially the same arguments presented on the original motion, the proper vehicle for relief is an appeal.” Keweenaw Bay Indian Comty. v. State of Michigan, 152 F.R.D. 562, 563 (W.D.Mich.1992), *affirmed*, 11 F.3d 1341 (6th Cir.1993) (citations omitted). A motion to alter or amend judgment made pursuant to Fed. R. Civ. P. 59(e) may be made for one of three reasons: 1) an intervening

change of controlling law; 2) availability of evidence not previously available; or 3) necessity to correct a clear error of law or prevent manifest injustice. Helton v. ACS Group, 964 F.Supp. 1175, 1182 (E.D. Tenn. 1997)

## **II. DISCUSSION**

Relator argues that a proper analysis by the Court of the validity of her qui tam suit under the “first-to-file” and “public disclosure” rules is necessarily dependant upon close scrutiny of the government’s settlement agreement with Defendants Medtronic, Inc. and Medtronic Sofamor Danek USA, Inc. Attached to her motion to reconsider are copies of that agreement and its amendments.

The essence of Relator’s argument appears to be that the “Covered Conduct” of the agreement comes directly from the substance of the two related qui tam suits, and therefore the government cannot rightly argue that Relator’s suit is based on allegations of which the government had prior knowledge. Approaching the same issue from a different angle, Relator argues that the settlement agreement makes clear that the government has “proceeded with the [Poteet] action” while simultaneously moving for its dismissal in an attempt to deny Relator her rightful share of the proceeds of the settlement.

Relator’s arguments raise serious issues as to the consistency of the government’s actions in the various proceedings. These issues will undoubtedly be central to the Court’s deliberations if and when the Court is asked to approve the negotiated settlement agreement. However, these issues lie entirely outside of the scope of the Court’s determination as to dismissal of Relator’s case.

Relator has cited no intervening change of controlling law, nor has she established that the Court has made any error in its application of the law. The settlement agreement she offers as evidence is not pertinent to the Court's decision that Relator's case was both duplicative of a prior case and based on previous public disclosures.

Accordingly, the Court hereby **DENIES** Relator's motion for reconsideration and reaffirms its dismissal of this case.

**IT IS SO ORDERED** this 1st day of February, 2007.

s/Bernice B. Donald \_\_\_\_\_  
BERNICE B. DONALD  
UNITED STATES DISTRICT JUDGE