UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 24, 2017 (October 23, 2017)

MENTOR CAPITAL, INC.

(Exact name of Registrant as specified in its charter)

Delaware	**000-55323**	**77-0395098**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

511 Fourteenth Street, Suite A-2, A-4, A-6, Ramona, CA	**92065**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(760) 788-4700**

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

[ ] Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

[ ] Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

[ ] Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

[ ] Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01. Other Events.

On October 23, 2017 Mentor Capital moved the Federal District Court in Utah to reconsider its ruling granting partial summary adjudication to the plaintiffs in the case pending there. Mentor concludes its brief that:

"New evidence shows that Plaintiffs' asserted facts (disputed by Mentor) are untrustworthy. Mentor reasserts its objections to Plaintiffs' unverified Complaint and the declarations and exhibits attached to their reply memorandum as evidence in support of their Motion.

"Because (i) several material facts on which the Order was based are incorrect, (ii) Mentor discovered substantial new facts showing a genuine material dispute as to the privity element of Count I, (iii) the Order is manifestly unjust to the thousands of Mentor creditors operating under the Plan for the last 17 years, and (vi) the statute of repose ran in 2003 for any §12 claim related to securities issued under Mentor's bankruptcy, Mentor's motion for reconsideration of the Order should be granted. The Order should be vacated and Plaintiffs' Motion should be denied."

Item 9.01. Financial Statements and Exhibits.

Mentor attaches hereto as Exhibit 99.1 its Memorandum of Points and Authorities requesting reconsideration of the Court's September 25, 2017 Order; as Exhibit 99.2 the Declaration of Paul Marotta in Support of Mentor Capital, Inc.'s Motion for Reconsideration (without exhibits); as Exhibit 99.3 the Declaration of Chet Billingsley in Support of Mentor Capital, Inc.'s Motion for Reconsideration (without exhibits); as Exhibit 99.4 the Declaration of Megan Jeanne in Support of Mentor Capital, Inc.'s Motion for Reconsideration (without exhibits); and as Exhibit 99.5 its Request for Judicial Notice in Support of Mentor Capital, Inc.'s Motion for Reconsideration (with the December 29, 2016 Judgment attached).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Mentor Capital, Inc.

Date: October 24, 2017

By: */s/ Chet Billingsley*
Chet Billingsley,
Chairman and Chief Executive Officer

PAUL DAVID MAROTTA (CA State Bar No. 111812)
MEGAN JEANNE (CA State Bar No. 251294)
THE CORPORATE LAW GROUP
1342 ROLLINS ROAD
BURLINGAME, CA 94010
Telephone: (650) 227-8000
Facsimile: (650) 227-8001
Email: paul@tclg.com
megan@tclg.com

TRENT J. WADDOUPS
CARR & WADDOUPS
ATTORNEYS AT LAW, LLC
8 EAST BROADWAY, SUITE 609
SALT LAKE CITY, UTAH 84111
Telephone: (801) 363-0888
Facsimile: (801) 363-8512
Email: trent@cw-law.net

Attorneys for Defendant
MENTOR CAPITAL, INC., a Delaware corporation

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF UTAH

GENA GOLDEN, an individual and SUSAN GOLDEN, an individual, Plaintiffs, v. MENTOR CAPITAL, INC., a Delaware corporation, LABERTEW & ASSOCIATES, a Utah limited liability company, and MICHAEL L. LABERTEW, an individual, Defendants.	CIVIL ACTION NO. 2:15-CV-00176-JNP-BCW Honorable Jill N. Parrish Magistrate Brooke C. Wells MENTOR CAPITAL, INC.'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY ADJUDICATION, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
MENTOR CAPITAL, INC., a Delaware corporation, Third-Party Plaintiff, v. RICHARD GOLDEN, an individual, and SCOTT VAN RIXEL, an individual, Third-Party Defendants.	

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I. MOTION FOR RECONSIDERATION

Mentor brings this Motion, under Fed.R.Civ.P. 54(b) and 59(e), for Reconsideration of the Court's September 25, 2017 order granting Plaintiffs' Motion for Partial Adjudication as to Count I of their Second Amended Complaint ("Order") on the grounds that (i) since filing its opposition on November 10, 2016, Mentor has obtained new evidence and facts, (ii) the Order contains incorrect facts and information, and (iii) the declaration of ineffectiveness of the Plan is manifestly unjust to thousands of Mentor creditors who have operated under the Plan for 17 years.

II. RELIEF SOUGHT

Mentor was surprised by the Court's Order. Mentor asks the Court to reconsider its September 25, 2017 Order, vacate that Order, and deny Plaintiffs' Motion for Summary Adjudication ("Plaintiffs' Motion").

Since opposing Plaintiffs' Motion, Mentor conducted discovery including deposing Susan, Gena, and Richard Golden. Mentor has more outstanding discovery due from the Goldens and Scott Van Rixel ("Van Rixel")[1]. As a result, Mentor learned substantial new material facts directly related to (i) the privity element required by Count I of Plaintiffs' Second Amended Complaint ("Complaint"), and, thus, their standing and (ii) the securities registration exemptions available for the shares of Mentor stock held by Plaintiffs.

The primary points made in this motion are as follows:

1. Subsequently discovered evidence belies Plaintiffs' claims that Mentor knew Susan and Gena Golden were paying for shares of Mentor stock; this evidence shows a genuine dispute as to the purchaser of the Mentor shares, the seller thereof, and, in turn, privity between the parties.

2. The unauthenticated August 6, 2014 email message from Chet Billingsley is not, and never was, what it is argued to be. The relationship between the plaintiffs and Van Rixel, especially how that relationship was represented to Mentor, is material because it impacts the securities registration exemptions available for Plaintiffs' shares.

3. Declaring Mentor's Bankruptcy Plan ineffective operates as a forfeiture of rights of bankruptcy stakeholders not before the Court; an action manifestly unjust to those persons.

4. The Order is an improper collateral attack on a Bankruptcy Court order.

[1] In contrast, Plaintiffs' Motion was brought without conducting even one deposition.

5. The Bankruptcy Plan, as an agreement between Mentor and its creditors and stakeholders, should be analyzed under contract law.

6. The Supreme Court's recent decision holds that the statute of repose for a violation of Section 12 of the Securities and Exchange Act ("§12") is three years from the time of offer.

Some of the newly discovered evidence include that:

1. Van Rixel stipulated that *his family trust* purchased 105,000 shares of Mentor common stock for an aggregate purchase price of $204,750.[2]

2. Richard Golden learned about the Mentor securities only through reading the Bhang Chocolate – Mentor Capital Cannabis Brands Cooperative Funding Agreement (the "Bhang Agreement"); securities which were only offered to the three principals of Bhang Chocolate Company, Inc. ("Bhang"): Van Rixel, Richard Sellers ("Sellers"), and William Waggoner ("Waggoner").

3. Neither of the plaintiffs nor Mr. Golden ever communicated directly with any person from Mentor prior to the purchase of Mentor shares from Van Rixel.

4. Neither of the plaintiffs, Mr. Golden, nor Van Rixel ever told any person from Mentor, including Chet Billingsley, that the persons to whom Van Rixel wanted to 'gift' the shares of Mentor stock were paying Van Rixel for those shares.

5. Neither of the Plaintiffs nor Mr. Golden understand that exemptions from the registration requirements of Section 5 of the Securities Act of 1933 other than under Section 1145 of the Bankruptcy Code ("§1145") apply to the shares of Mentor stock they purchased from Van Rixel.

6. Neither of the Plaintiffs nor Mr. Golden were ever told that the shares of Mentor stock were rejected for deposit with a broker because they were restricted.[3]

7. Neither of the Plaintiffs nor Mr. Golden were ever told that the shares of Mentor stock were rejected for deposit by a broker because Mentor's Plan was ineffective, amended Articles were not timely filed, or they were purchased on exercise of warrants.

For all of foregoing, the Order should be vacated and Plaintiffs' Motion should be denied.

III. GROUNDS FOR RELIEF

A. Motion for Reconsideration

Mentor brings this motion for reconsideration pursuant to Federal Rules of Civil Procedure

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[2] See Request for Judicial Notice, Ex. A, ¶¶6 and 9. Consequently, Plaintiffs' shares may be returned to Mentor in exchange for approximately $2.45 per share.

[3] This is important. Plaintiffs' argument that the Bankruptcy exemption does not apply to the stock they bought from Van Rixel is made for convenience; as a reason to complain against Mentor. Plaintiffs and Mr. Golden deny that anyone ever told them that they could not deposit their stock because §1145 did not apply. In other words they suffered no real world issue with their stock due to any bankruptcy or securities failing.

54(b) and 59(e)[4]. A motion for reconsideration may be warranted on several grounds including, "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000), citing *Brumark Corp. v. Samson Resources Corp.*, 57 F.3d 941, 948 (10th Cir. 1995). Therefore, a motion for reconsideration may be appropriate, "where the court has misapprehended the facts, a party's position, or the controlling law." *Id.*, *see also* Fed.R.App.P. 40(a)(2)(similar grounds for a rehearing). Both of tests (2) and (3) are present here.

As a result of additional discovery, Mentor has obtained relevant evidence and facts which show a genuine dispute of material facts related to Plaintiffs' cause of action for violation of §12 (Count I of their Complaint), including whether privity exists between either of the plaintiffs and Mentor and whether any securities registration exemptions exist.

Additionally, several of the undisputed facts included in the Order are provably false, or at least in dispute, including several facts apparently taken from the Declaration of Richard Golden, dated September 24, 2015, and attached as Exhibit B to Plaintiffs' Reply Brief ("Golden Declaration"). During his May 3, 2017 deposition, Mr. Golden admitted that several statements in his eight paragraph declaration under penalty of perjury are, in fact, false.

Lastly, whether anticipated by the Court or not, the practical effect of declaring the 17 year-old ineffective Plan is harmful to Mentor, its current and former creditors, its shareholders, its warrant holders, its officers, directors, and employees, and all of its other stakeholders. And even if the Bankruptcy stakeholders were not damaged, all §12 claims related to Mentor issuing warrants are barred by the three year statute of repose in Section 13 of the Securities Act of 1933.

B. Summary Judgment Standards and Burdens

Mentor challenges the determination that no genuine dispute of material fact existed as to

[4] In reference to a motion filed pursuant to "Federal Rules of Civil Procedure 50, 52(b), 56, 57, 59, 60 and 62, and 'any other applicable rule of law'", the court has held that, "'regardless of how it is styled or construed" a timely filed motion, "that questions the correctness of the judgment is properly treated as a Rule 59(e) motion.'" *Phelps v. Hamilton*, 122 F.3d 1309, 1323 (10th Cir. 1997), citing *Vreeken v. Davis*, 718 F.2d 343, 345 (10th Cir. 1983).

Count I of Plaintiffs' Complaint.[5] The Supreme Court has held that, "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Moreover, at "the summary judgment stage the judge's function is not [] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Id.* at 249. In short, "if an inference can be deduced from the facts whereby the non-movant might recover, summary judgment is inappropriate." *Henderson v. Inter-Chem Coal Co., Inc.*, 41 F.3d 567, 570 (10th Cir. 1994), citing *Stevens v. Barnard*, 512 F.2d 876, 878 (10th Cir. 1975).

In addition to several declarations submitted by Mentor, Mentor's opposition pointed to at least 21 additional disputed facts that go directly to who, "purchased," the 75,000 shares of Mentor common stock in Plaintiffs' possession [6]. The identities of the purchaser and seller are material to both the privity element required for §12 and the identification and applicability of available securities registration exemptions.

If the shares purchased by Van Rixel actually were *gifted* to the Goldens as Van Rixel said, several registration exemptions could exist, including exemptions under Section 4(2), Regulation D, and Securities Act Rule 144. If Van Rixel *purchased* the shares and then sold them to the Goldens, different registration exemptions could apply[7].

Under *Busch v. Carpenter*, 827 F.2d 653 (10th Cir. 1987) a non-moving issuer is *not*

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[5] For example, it is not incumbent on Mentor to *prove* an exemption here. It is only incumbent on Mentor to point out that there are several exemptions from registration that could apply to these facts, thus creating a genuine issue of material fact which necessitates a trial.

[6] Plaintiffs, on the other hand, identified one fact by pointing to their unverified Complaint and attached to their Reply memorandum two declarations (one of which includes admittedly false statements), two unauthenticated letters, and one unauthenticated email for which no context was provided. None of this 'evidence' meets admissibility standards.

[7] However, Van Rixel *re-selling* the shares created other securities issues since he was arguably an affiliate of Mentor (as Mentor was obligated to put him on its Board) and therefore held restricted shares only capable of resale through a broker transaction. *See*, e.g., Rule 144(b)(2) and (f). And, in such event, the sale by Mentor to Van Rixel would have been clearly exempt under Regulation D as a sale to a Board member.

required to *prove* that an exemption from registration applies. *Busch* concerned cross-motions for summary judgment and the lower court's grant of summary judgment *for the issuer defendant*.

Unlike *Busch* Mentor was not moving for summary judgment here. Mentor intends to file its own motion for summary judgment at a later date once it completes discovery.[8] There is no burden on the issuer other than identifying fact questions concerning exemptions that could apply. *Busch, supra, at* 657[9]. How the Plaintiffs came to hold Mentor shares is relevant to which exemptions may apply. Such a determination is fact-driven and this material dispute should be left to the trier of fact.

A reasonable jury could find incredible the Goldens' unsupported facts related to ownership of the Mentor shares and, as such, one or more exemptions from registration may apply to the securities they now hold.

IV. ARGUMENT[10]

A. The Declaration of Richard Golden Includes Incorrect Statements and Facts.

Several statements in Richard Golden's Declaration are admitted by him to be false[11]. Yet they seem to have been adopted by the Court.[12] In addition to those identified in footnotes, the

[8] Mentor notes that its own efforts to complete discovery (all of which was propounded before the discovery cutoff) have been stalled by Plaintiffs. The Goldens have been ordered to serve complete responsive responses by November 2nd.

[9] *Busch* also cites to *Securities & Exch. Com'n v. Murphy*, 626 F.2d 633, 641 (9th Cir. 1980) which found that "On a motion for summary judgment, however, 'it is the moving party who carries the burden of proof; he must show that no genuine issue of material fact exists ... even though at trial his opponent would have the burden of proving the facts alleged.'" *Doff v. Brunswick Corp.*, 372 F.2d 801, 805 (9th Cir. 1966), *cert. denied*, 389 U.S. 820 (1967). Although the SEC introduced evidence that a defendant violated the registration provisions, the SEC was entitled to summary judgment "only if it demonstrated that there was no genuine issue of material fact as to [defendant's] affirmative defense or that, viewing the evidence and the inferences which could be drawn therefrom in the light most favorable to [defendant], the SEC was clearly entitled to prevail as a matter of law." *Id.*

[10] In accordance with DUCivR 7-1(a)(3), Mentor has limited the Argument portion of this Memorandum to 10 pages.

[11] At several points in his declaration Mr. Golden included admittedly erroneous statements (e.g., misidentifying his wife and daughter, ¶¶2 & 6). [See also Marotta Decl. ¶¶121, 122, and 123]. While not all such facts are material, the fact that several of the statements in the eight paragraph declaration are incorrect speaks to the credibility of the declaration.

[12] Similarly, referenced Exhibit A is missing. Even if Mentor and the Court assume that this missing Exhibit A is the

erroneous facts include that, "The Goldens and Mr. Van Rixel sought to confirm with Mentor that the shares were unrestricted. Mr. Billingsley responded via e-mail that, 'The [shares] are unrestricted and fall under the exemption from registration afforded under Section 1145 [of the Bankruptcy Code].'" [Order, Undisputed Fact No. 17]. This stated fact is erroneous.

As seen from the email attached as Exhibit B to Van Rixel's Declaration [Dkt. #77], the "Richard" in question is clearly Richard *Sellers*, an officer of Bhang, not Richard Golden.[13] Richard Golden never sought to confirm anything with Mentor and Mentor never confirmed anything to him. Mentor had no idea who Richard Golden was when Van Rixel bought Mentor stock. In fact Richard Golden testified that he got all of his information from a draft of the Bhang Agreement. [See, *e.g.* Marotta Decl. ¶¶ 81, 72 – 80, 82, 89 – 92, 95, 99, and 103].

Basing the Order on the disputed facts of Richard Golden's Declaration is not only improper, but sets a bad precedent and is manifestly unjust to Mentor. If no other argument for reconsideration is persuasive, the Order should be reconsidered because it is based on facts which are, by Plaintiffs' own admission, incorrect.

B. New Evidence Shows Even More Facts in Dispute as to the Purchaser of Mentor Shares: Neither Plaintiff Nor Richard Golden Had Any Contact With or Paid Any Funds to Mentor.

The Supreme Court held that §12(a)(2) does not apply to a private contract for a secondary market sale of securities[14]. *Gustafson v. Alloyd Co.*, 513 U.S. 561 (1995). The new evidence

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same Exhibit A as attached to Richard Golden's declaration submitted in support of Plaintiffs' opposition to Mentor's Motion to Dismiss the Second Amended Complaint [Dkt. #46-1], the email attached to Mr. Golden's declaration does not say anything about shares being, "freely tradable," so the representation of the evidence by Mr. Golden is inconsistent with the actual evidence.

[13] It is also important to note that Mr. Golden's Declaration, dated two years earlier, was originally submitted in opposition to Mentor's Motion To Dismiss [Dkt #36-1], and Mentor already pointed out to Plaintiffs that several of these 'facts' were incorrect, including that the "Richard" to whom Billingsley sent an email was Richard Sellers, not Golden [Dkt #47]; yet Plaintiffs resubmitted Golden's Declaration with its Reply without any corrections.

[14] §12(a)(1) also only allows a purchaser to bring an action against the immediate seller of the unregistered securities at issue. As held, "strict privity remains an essential element of the section 12(1) claim." *In re Laser Arms Corp. Sec. Lit.*, 794 F.Supp. 475, 482 (S.D.N.Y. 1989)("aiding and abetting is not a sufficient substitute for the strict privity requirement of section 12(1)").

learned by Mentor through discovery and depositions show genuine disputes as to the material facts concerning the privity element of Count I of Plaintiffs' Complaint. If no privity exists between the plaintiffs and Mentor, Plaintiffs' standing is also called directly into question.

During depositions of the Goldens Mentor learned that: (i) neither plaintiff had any contact with any person from Mentor at any point in time, (ii) Richard Golden had absolutely no interactions with any person from Mentor until several weeks after he purchased securities from Van Rixel, (iii) Richard Golden learned of Mentor and the offer of securities solely through the Bhang Agreement[15] and emails forwarded to him from Van Rixel, (iv) 100% of the Goldens' funds were paid directly to Van Rixel, none were received by Mentor, and no one ever told Mentor that the Goldens had paid for the shares until July 25, 2014[16], (v) neither of the plaintiffs even had the funds available to pay for the Mentor shares on the date they claimed to have purchased them, (vi) none of the Goldens were ever told that their shares were rejected for deposit with a broker because the shares were restricted, and (vii) since late 2016 Plaintiffs have had the ability to return their shares to Mentor in exchange for approximately $2.45 per share. Van Rixel also stipulated that his family trust purchased 105,000 shares of Mentor stock that were issued in part to plaintiffs.

The case highlighted by the Court to show that Plaintiffs were the purchasers is not quite on-point with the facts here[17]. In that case McDonald was well-known by and had a long-standing relationship with his broker, Mrs. DeCasenave, who had "regularly serviced…[his] account for about three years." *Lewis v. Walston & Co, Inc.*, 487 F.2d 617, 619 (5th Cir. 1973). Additionally, McDonald participated in several meetings with Allied Automation's officers including one

[15] The Bhang Agreement limited the offer of Mentor securities to "Bhang management", e.g., Van Rixel, Sellers, and Waggoner. Despite Richard Golden's claims that he was acting as Bhang's counsel, Van Rixel testified that Bhang had no legal representation in connection with the Bhang Agreement. See Jeanne Decl. ¶¶5-8, 10-13, Exs. A and B].

[16] See Mentor's Additional Disputed Material Facts [Dkt. #71-1, Facts 1, 2, 4, 5, 6, 10, 13, and 15, among others]; Marotta Decl. ¶¶ 22, 23, 24, 40 (as to Susan Golden), 48, 57, 63, 64, 66 (as to Gena Golden), 72, 77, 78, 89, 117, and 125 (as to Richard Golden); Billingsley Decl. ¶ 15.

[17] *Lewis* was also subsequently overruled by *Pinter v. Dahl*, 486 US 622 (1988) when the Supreme Court held that "§ 12's failure to impose express liability for mere participation in unlawful sales transactions suggests that Congress did not intend that the section impose liability on participants collateral to the offer or sale." *Id.* at 650, fn. 25

meeting which lasted over an hour and a half. Although McDonald did use funds from other people to purchase the shares of Allied stock, he planned on keeping such shares in his name until Allied Automation went public. As determined by that court, the test to determine the "seller" of securities, is "whether the party is the 'proximate cause' of the sale." *Id.* at 622. Proximate cause must be determined by the factfinder[18].

No similar facts exist here. Mentor offered its securities to Van Rixel, Sellers and Waggoner as part of Bhang management. Golden did not represent Bhang as a lawyer, and his wife and daughter were not, "Bhang management." Mentor did not interact with any Golden in any way prior to issuance of the stock and Mentor received no money from any Golden. Who actually purchased and paid Mentor for the shares and how the Goldens came to hold 75,000 shares goes directly to the privity element of Plaintiffs' claims.[19]

As Mentor discovered new evidence concerning the privity element of Plaintiffs' Count I which shows a genuine dispute as to the material facts related to the purchaser of the Mentor shares, Mentor requests that the Court reconsider and vacate its Order and deny Plaintiffs' Motion.

C. There are Serious Problems with the Challenge to Mentor's Bankruptcy.

1. Declaring Mentor's Bankruptcy Plan Ineffective Operates as a Forfeiture of Rights of Many Parties Not Before the Court.

For 17 years Mentor and both its secured and unsecured creditors have operated under the terms of the Plan, including creditors' agreements to exchange their debt for Mentor warrants and the creditors' recovery of over $10,000,000 of that debt through exercise of the warrants and sale of the underlying shares of common stock. To undo all of the benefits gained by Mentor's creditors, shareholders, stakeholders, warrant holders, and Mentor itself, for two persons whose

[18] Questions of proximate cause are adjudicated on summary judgment only "if the facts are not in dispute and 'reasonable persons could not differ about the application to those facts of . . . 'proximate cause.'" *Trask v. Franco*, 446 F.3d 1036, 1047 (10th Cir. 2006), citing W. Page Keeton et al., *Prosser and Keeton on Torts* § 45, at 321 (5th ed.1984). Mentor demonstrates that the sale of shares to plaintiffs was the result of Van Rixel's actions, not Mentor's.

[19] Van Rixel had reason to mislead Mentor regarding who was purchasing these shares since all purchases by Bhang management resulted in further investment in Bhang. All money sent by Van Rixel was sent right back to Bhang as part of Mentor's investment in Bhang. See Billingsley Decl. ¶¶ 36-42.

shares were never rejected for deposit by any broker on such basis, and who have been able to return their shares to Mentor, with interest, for over a year, on the grounds that the Plan was ineffective, is astounding.

A bankruptcy plan is deemed to be "substantially consummated" upon "[i] transfer of substantially all of the property proposed by the plan to be transferred; [ii] the reorganized debtor's assumption of the debtor's business; and [iii] commencement of distribution under the plan." 11 U.S.C. §1101(2). Courts generally loath reversing confirmation or final decrees of the Bankruptcy Court when a plan has been substantially consummated and if the result would be inequitable:

> "a court should apply the doctrine when reaching the merits would be unfair or impractical, taking into consideration the following questions: ¶'…(2) Has the appealed plan been substantially consummated? (3) Will the rights of innocent third parties be adversely affected by reversal of the confirmed plan? (4) Will the public-policy need for reliance on the confirmed bankruptcy plan — and the need for creditors generally to be able to rely on bankruptcy court decisions — be undermined by reversal of the plan? (5) If appellant's challenge were upheld, what would be the likely impact upon a successful reorganization of the debtor? And (6) based upon a quick look at the merits of appellant's challenge to the plan, is [the argument] legally meritorious or equitably compelling?'"

In re Stephens, 704 F.3d 1279, 1282-1283 (10th Cir. 2013), citing *In re Paige*, 584 F.3d 1327, 1339 (10th Cir. 2009)(adopting the equitable mootness doctrine; a court may decline to hear appeal of a bankruptcy court's decision where "reaching the merits would be unfair or impracticable"); *see* also *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2nd Cir. 2005)("When a plan has been substantially consummated, an appeal should be dismissed unless several enumerated requirements are satisfied,"); *In re UNR Indus.*, 20 F.3d 766, 769 (7th Cir. 1994)("In common with other courts of appeals, we have recognized that a plan of reorganization, once implemented, should be disturbed only for compelling reasons."). The question "is not solely whether we *can* provide relief without unraveling the Plan, but also whether we *should* provide such relief in light of fairness concerns." *In re Metromedia*, 416 F.3d at 145.

The Order operates to essentially unwind 17 years of transactions and reliance by Mentor and its creditors. Thousands of creditor / warrant holders have recovered millions of dollars from the exercise of their warrants and sale of Mentor shares. Undoing all of this by declaring the Plan

ineffective is inequitable to the non-party creditors and is a forfeiture of such creditors' property in violation of the Fifth and Fourteenth Amendments of the US Constitution.

Additionally, at no point in §1145, a "Postconfirmation Matter", is there any requirement that the Plan be effective to claim such exemption. In fact, many courts have upheld the §1145 securities exemptions for *proposed plans*. *In re Stanley Hotel, Inc.,* 13 BR 926, 933 (Bankr. D. Colo. 1981)("If the combination of the purchase agreement, deed of trust, and plan constitutes a security as Mr. Normali contends, clearly that security is 'issued under' this plan, for without the plan, no 'security' would be offered at all!"); *In re Food City, Inc.*, 110 BR 808, 810 (Bankr. WD Tex. 1990)(§1145 is "salutary not regulatory" and it merely "operates to excuse debtors from the cumbersome registration process that might otherwise be imposed by state and federal securities laws on proposed reorganization plans.").

The fact that the Plan was confirmed, accepted by the SEC and FINRA, and has been operating without issue for 17 years should be sufficient evidence that any perceived problem with the Plan is inconsequential and the Plan should be left alone.

2. The Order is an Improper Collateral Attack on the Bankruptcy Court.

The Supreme Court disfavors collateral attacks. It has said that:

> "Persons who have no right to appeal from a final judgment — either because the time to appeal has elapsed or because they never became parties to the case — may nevertheless collaterally attack a judgment on certain narrow grounds. If the court had no jurisdiction over the subject matter, or if the judgment is the product of corruption, duress, fraud, collusion, or mistake, under limited circumstances it may be set aside in an appropriate collateral proceeding…In both civil and criminal cases, however, the grounds that may be invoked to support a collateral attack are much more limited than those that may be asserted as error on direct appeal." *Martin v. Wilks*, 490 US 755, 771-772 (1989) [emphasis added; citations omitted].

Here, Plaintiffs opportunistically attack Mentor's 17 year old Bankruptcy Plan, creating confusion and uncertainty for the thousands of Mentor creditors and shareholders who have taken advantage of the Plan, had debts cancelled, and received warrants.

The Supreme Court found that collaterally attacking a bankruptcy court order in another district should not be permitted as it seriously undercuts, "the orderly process of the law." *Celotex*

v. Edwards, 514 US 300, 313 (1995).

3. The Bankruptcy Plan Should be Analyzed Under Contract Law.

The Plan was a contract for the settlement of various claims. All parties and stakeholders involved in that proceeding have treated the contract for all purposes as fully performed. That this Plan contract was entered into under supervision of a court does not alter its essence as a settlement of litigation and potential litigation. Therefore, contract law and the doctrine of substantial performance should be followed in interpreting the Plan.

Section 6.7 merely created a default date of effectiveness without creating a condition precedent (consisting of a mostly-meaningless ministerial act of filing with a state agency) as compared to the viability of *literally* everything else the bankruptcy court thought it was doing. Only this interpretation matches with the fact that all involved creditors treated the Plan, Mentor, discharge of their claims, and their warrants, as effective.

Judged in the proper light of a contract, Mentor's efforts at performance and the effects of non-performance become important in determining breach or satisfaction. Therefore, the actions by Mentor's Board, correspondence with the California Secretary of State, the filed Articles noting the number of shares as unchanged, Mentor's contacts with its lawyers around the time the filing was due, the purpose of the amendment, the impact on other parties of non-performance, all become important facts at trial for a trier of fact to determine compliance with Plan obligations.

D. The Section 12 Statute of Repose has Long Ago Run with Regard to Any Claim Related to Securities Issued under Mentor's Bankruptcy.

Though Plaintiffs have never clarified whether their §12 claim is under subpart (a)(1) or (a)(2), the statute of repose for either is three years. The latest a §12 claim may be brought is, "three years after the security was bona fide offered to the public," or "three years after the sale." 15 U.S.C. §77m ("§13"). A security issued under §1145 in exchange for debt is "deemed to be a public offering." 11 U.S.C. §1145(c). Since the warrants and underlying shares at issue were issued by Mentor in 2000 as part of its bankruptcy, all possible statutes of repose ran in 2003.

Recently, the Supreme Court found that statutes of repose, such as the three year bar found

in §13, "effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." *CalPERS v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2045 (2017), citing *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014). Further the statute "runs from the defendant's last culpable act (the offering of the securities), not from the accrual of the claim" to the plaintiffs. *Id.* The Court held that the petitioner's untimely filing of its complaint more than three years after the relevant securities offering was grounds for dismissal.[20]

As part of its bankruptcy structure, approved by the Court and Mentor's creditors, Mentor issued approximately 28 million warrants to creditors which, by the terms of the Plan, may be transferred to new warrant holders who can then exercise. This is how Van Rixel came to own the warrants he exercised in March 2014. No new warrants or securities were issued to Van Rixel, or Plaintiffs, by Mentor. Van Rixel was assigned a warrant originally issued in 2000, which he then exercised in accordance with the warrant terms agreed in the bankruptcy.

As to Plaintiffs' claims that they did not know the shares arose from warrants [See ¶¶ 9 and 21 of the Complaint], the Bhang Agreement mentions warrants dozens of times. Since that is the document on which Richard Golden says he relied [Marotta Decl., ¶¶ 102, 116, 118, 128, 134, etc.] in purchasing Mentor stock from Van Rixel, the claim of ignorance must be false.

E. Mentor Reasserts Its Objections to Plaintiffs' Undisputed Fact No. 9 and to the Declarations and Exhibits Attached to Plaintiffs' Reply Memorandum.

1. Plaintiffs' Unverified Complaint is Not Evidence.

The entirety of Plaintiffs' motion was supported by (i) two allegations in their unverified Complaint, and (ii) the declaration of a paid expert. It is well settled that in, "certain circumstances a verified pleading may itself be treated as an affidavit in support of a motion for summary judgment, but only if it satisfies the standards for affidavits set out in Rule 56(e)." *Hall v. Bellmon*, 935 F.2d 1106, 1111 (10th Cir. 1991), citing *Gordon v. Watson*, 622 F.2d 120, 123 (5th Cir. 1980).

Mentor objected to Plaintiffs' Fact No. 9 which was supported only by paragraphs 16 and

[20] The Supreme Court also found that no equitable tolling could apply to a statute of repose under §13.

17 of their unverified Complaint. The Complaint, including paragraphs 16 and 17, does not meet the requirements for an affidavit under Rule 56(e) because, as learned by Mentor during Plaintiffs' depositions, the allegations were not made on personal knowledge and were not made by any person who was competent to testify on the matters set forth in the Complaint. Fed.R.Civ.P. 56(c)(4). [See e.g., Marotta Decl., ¶ 20] Neither plaintiff had knowledge about the Mentor securities, the transaction itself, or how they each came to own the securities nor did either plaintiff have any knowledge regarding the registration of Mentor's securities or the understanding of what that even meant.

2. Unauthenticated Exhibits and Declarations Attached to a Reply Memorandum are not Evidence.

Plaintiffs submitted as part of their reply two declarations, a myriad of unauthenticated documents, and an email which was neither authenticated nor even referenced in Plaintiffs' reply memorandum [Dkt #77]. Mentor timely filed objections to the declarations and exhibits attached thereto on the grounds that such evidence was improper and untimely per Local Rules DUCivR 7-1(b)(1)(B) and 56-1(d) [Dkt #80]. The 10th Circuit has held that materials supporting or opposing a motion for summary judgment may be submitted to the court in one of three ways:

> "…(3) Finally, there are extra-record documents that are not part of the case (e.g., a land deed not produced in discovery). *Unless this type of extra-record document is self-authenticating and intrinsically trustworthy on its face (a rare situation), this type of document must be introduced by affidavit to ensure its consideration by the court…*
>
> "*Unauthenticated documents, once challenged, cannot be considered by a court in determining a summary judgment motion.* In order for documents not yet part of the court record to be considered by a court in support of or in opposition to a summary judgment motion they must meet a two-prong test: (1) the document must be attached to and authenticated by an affidavit which conforms to Rule 56(e); and (2) the affiant must be a competent witness through whom the document can be received into evidence. . . .
>
> "Documentary evidence for which a proper foundation has not been laid cannot support a summary judgment motion, even if the documents in question are highly probative of a central and essential issue in the case." *In re Harris*, 209 BR 990, 996 (BAP, 10th Cir. 1997), citing 11 James Wm. Moore et al., *Moore's Federal Practice* §§ 56.10[4][c][i] & 56.14[2][c] (3d ed. 1997) (footnotes omitted) (emphasis added).

accord School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1261-1262 (9th Cir. 1993) (failure to

attach contracts referred to in affidavit testimony supported trial court's determination to deny summary judgment), *cert. denied*, 512 U.S. 1236, (1994); *Investors Credit Corp. v. Batie (In re Batie)*, 995 F.2d 85, 89 (6th Cir. 1993) "[D]ocuments . . . [that] are not part of the 'pleading, depositions, answers to interrogatories, and admissions on file,' can only enter the record as attachments to an appropriate affidavit to constitute a basis for summary judgment."); *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir. 1987) ("It is well settled that unauthenticated documents cannot be considered on a motion for summary judgment. In order to be considered by the court, 'documents must be authenticated by and attached to an affidavit that meets the requirements of [Fed.R.Civ.P.] 56(e) and the affiant must be a person through whom the exhibits could be admitted into evidence.' This court has consistently held that documents which have not had a proper foundation laid to authenticate them cannot support a motion for summary judgment.") (alteration in original; some footnotes and citations omitted)).

Federal Rule of Evidence 901 "makes authentication a condition precedent to admissibility that can be 'satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.'" Fed.R.Evid. 901(a); *In re Harris*, 209 BR at 997, citing *Citibank South Dakota v. Dougherty (In re Dougherty)*, 84 B.R. 653, 655 (9th Cir. BAP 1988) ("The essential question for authentication purposes is whether a reasonable jury could conclude that the evidence is what its proponent claims it is.").

As stated in Mentor's original objection, Exhibit E had never been introduced into evidence and was not authenticated, and Plaintiffs never deposed Billingsley about Exhibit E or anything else, yet the email appears to form a substantial basis of the Court's Order. Such evidence should never have been considered by the Court and Mentor reasserts its objections to such evidence.

3. Even Assuming the Unauthenticated August 6, 2014 Email from Billingsley was Appropriate Evidence, the Email is Not What Plaintiffs Claim it to Be.

Even if allowed, the August 6, 2014 email is not the bombshell that Plaintiffs assert. First, the email is incomplete and does not include the attachments sent to Mr. DiTommaso highlighting that Van Rixel purchased the shares. Second, the part of this email to which Plaintiffs point is

nothing more than a recitation of what Billingsley was told by Richard and Adam Golden, in a further attempt to help them deposit the stock in a brokerage. As Mentor was never given the opportunity to provide context of this email, it presents so here in Chet Billingsley's Declaration.

It is important to keep in mind that Billingsley authored this email more than four months after receiving Van Rixel's check but only shortly after learning that the Goldens paid Van Rixel. Billingsley was confirming certain things to an attorney helping to get the shares deposited with a broker. [Billingsley Decl. ¶¶5-22].

Billingsley's statement that "For administrative convenience Scott issued a single check to pay for all shares and then he received checks from the Goldens to reimburse him at cost a few days later." is not an admission of anything. It is undisputed that the Goldens never remitted any funds to Mentor nor ever told Mentor that Plaintiffs were purchasing shares. As Billingsley cannot confirm the truth of transactions between Van Rixel and Goldens of which he was no part, he is merely repeating what the Goldens told him (e.g., that they paid Van Rixel for the 75,000 shares).

As 'support' for this statement Billingsley attached copies of Van Rixel's emails committing to purchasing the 105,000 shares and asking if he could have a portion of the shares issued in others' names. Tellingly, Billingsley muses in the email whether other registration exemptions exist if the transaction did not occur as represented to him. [Billingsley Decl. ¶¶23-30].

All of this equals nothing. Billingsley does not admit privity between plaintiffs and Mentor, does not admit that Mentor sold securities to the Goldens, and does not negate Mentor's contention that it had no idea who the Goldens were at the time the shares were purchased.

V. CONCLUSION

New evidence shows that Plaintiffs' asserted facts (disputed by Mentor) are untrustworthy. Mentor reasserts its objections to Plaintiffs' unverified Complaint and the declarations and exhibits attached to their reply memorandum as evidence in support of their Motion.

Because (i) several material facts on which the Order was based are incorrect, (ii) Mentor

discovered substantial new facts showing a genuine material dispute as to the privity element of Count I, (iii) the Order is manifestly unjust to the thousands of Mentor creditors operating under the Plan for the last 17 years, and (vi) the statute of repose ran in 2003 for any §12 claim related to securities issued under Mentor's bankruptcy, Mentor's motion for reconsideration of the Order should be granted. The Order should be vacated and Plaintiffs' Motion should be denied.

DATED this 23rd day of October, 2017.

The Corporate Law Group

/s/ Megan Jeanne
Megan Jeanne (admitted *pro hac vice*)
Attorneys for Defendant Mentor Capital, Inc.

Trent J. Waddoups
CARR & WADDOUPS
ATTORNEYS AT LAW, LLC
Attorneys for Defendant Mentor Capital, Inc.

CERTIFICATE OF SERVICE

I, Megan Jeanne, Esquire, counsel for the above-named Defendant, hereby certify that the foregoing was filed via this Court's Electronic Case Filing system, which will cause a copy of the this filing to be forwarded to all counsel of record.

Date: October 23, 2017

/s/ Megan Jeanne
Megan Jeanne, Esquire

PAUL DAVID MAROTTA (CA State Bar No. 111812)
MEGAN JEANNE (CA State Bar No. 251294)
THE CORPORATE LAW GROUP
1342 ROLLINS ROAD
BURLINGAME, CA 94010
Telephone: (650) 227-8000
Facsimile: (650) 227-8001
Email: paul@tclg.com
megan@tclg.com

TRENT J. WADDOUPS
CARR & WADDOUPS
ATTORNEYS AT LAW, LLC
8 EAST BROADWAY, SUITE 609
SALT LAKE CITY, UTAH 84111
Telephone: (801) 363-0888
Facsimile: (801) 363-8512
Email: trent@cw-law.net

Attorneys for Defendant
MENTOR CAPITAL, INC., a Delaware corporation

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF UTAH

GENA GOLDEN, an individual and SUSAN GOLDEN, an individual, Plaintiffs, v. MENTOR CAPITAL, INC., a Delaware corporation, LABERTEW & ASSOCIATES, a Utah limited liability company, and MICHAEL L. LABERTEW, an individual, Defendants.	CIVIL ACTION NO. 2:15-CV-00176-JNP-BCW Honorable Jill N. Parrish Magistrate Brooke C. Wells DECLARATION OF PAUL MAROTTA IN SUPPORT OF MENTOR CAPITAL, INC.'S MOTION RECONSIDERATION OF THE COURT'S ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY ADJUDICATION
MENTOR CAPITAL, INC., a Delaware corporation, Third-Party Plaintiff, v. RICHARD GOLDEN, an individual, and SCOTT VAN RIXEL, an individual, Third-Party Defendants.	

I, Paul Marotta, declare as follows:

1. I am one of the attorneys representing Mentor Capital, Inc. ("Mentor") in the above captioned matter. I am admitted to practice *pro hac vice* in the United States District Court for the District of Utah.

2. The matters stated herein are known to me personally, and if called and sworn as a witness I could competently testify thereto.

Testimony of Susan Golden

3. On May 3, 2017 I took the deposition of Plaintiff Susan Golden before a certified shorthand reporter.

4. Susan Golden knew of no substantial evidence that supports the claims in her complaint.

5. Attached hereto as Exhibit A is a true and correct copy of the transcript of the deposition of Plaintiff Susan Golden, and the exhibits discussed herein which were shown to Susan Golden at that deposition.

6. Susan Golden relied on her husband, Richard Golden, in making the investment in Mentor and did not research Mentor herself. [SG; 8:12-21].

7. Richard Golden did not tell Susan Golden that Mentor helped fund cannabis companies. [SG; 8:22-24].

8. Susan Golden understood Mentor was publicly traded but did not know where it was traded. [SG; 9:2-10].

9. Susan Golden knows of no evidence supporting the claim in paragraph 9 of her Second Amended Complaint that, "[Richard Golden] was affirmatively told by Chester Billingsley, the CEO of Mentor, in an email dated March 10, 2014 that the opportunity was to purchase common stock [of Mentor]." [SG; 9:23-10:11].

10. Susan Golden knows of no evidence supporting the claim in paragraph 10 of her Second Amended Complaint that, "As part of [Richard Golden's] investigation into Mentor for his

wife and daughter, Richard reviewed a 'Blanket Opinion Letter.'" [SG; 10:21-11:3].

11. Susan Golden knows of no evidence supporting the claim in paragraph 11 of her Second Amended Complaint that, "The BOL was also drafted by Billingsley." [SG; 11:4-11:10].

12. Susan Golden knows of no evidence supporting the claim in paragraph 12 of her Second Amended Complaint that, "The BOL authored by Labertew contains numerous false, inaccurate and misleading statements." [SG; 11:11-17].

13. Susan Golden knows of no evidence supporting the claim of a purportedly false statement in subparagraph 12a of the Second Amended Complaint, "That the transfer agent for Mentor was authorized to issue Mentor warrants or common shares without a restrictive legend." [SG; 11:18-24].

14. Susan Golden knows of no evidence supporting the claim of a purportedly false statement in subparagraph 12b of the Second Amended Complaint, "That such warrants or shares were subject to an exemption from," registration. [SG; 11:25-12:6].

15. Susan Golden knows of no evidence supporting the claim of a purportedly false statement in subparagraph 12c of the Second Amended Complaint, "That certain warrants and warrant series were approved by the Bankruptcy Court for [Mentor]." [SG; 12:7-14].

16. Susan Golden knows of no evidence supporting the claim of a purportedly false statement in subparagraph 12d of the Second Amended Complaint, "That Securities and Exchange Commission had issued a "No Action" letter," and is unaware of what a no action letter is [SG; 12:15-13:1].

17. Susan Golden does not contend that there are any misstatements in the BOL not identified in the Second Amended Complaint. [SG; 20:14-21].

18. Susan Golden knows of no evidence supporting the claim in paragraph 13 of her Second Amended Complaint that, "[t]he approved Plan of Reorganization provided that the warrants had to be issued," within a certain period of time unless extended, nor whether there had been such an extension. [SG; 13:2-14].

19. Susan Golden knows of no evidence supporting the claim in paragraph 14 of her Second Amended Complaint that, "In reality, any warrants and shares issued were not exempt from registration." [SG; 13:15-20].

20. Susan Golden knows of no evidence supporting the claim in paragraph 15 of her Second Amended Complaint that, "In reality, the [SEC] did not issue a 'No Action' letter." [SG; 13:21-14:4].

21. Susan Golden knows of no evidence supporting the claim in paragraph 16 of her Second Amended Complaint that, "Mentor did not issue warrants to Golden but indicated that it had already completed the conversion to shares upon receipt of the purchase funds." [SG; 14:5-10].

22. Susan Golden was not aware that her husband Richard Golden had written two checks to Scott Van Rixel for purchase of Mentor stock and never asked her husband why he was doing that. [SG; 14:13-15:2].

23. Susan Golden knows of no evidence supporting the claim in paragraph 18 of her Second Amended Complaint that, "Golden communicated directly with Mentor personnel concerning the purchase of shares including, but not limited to, Chester Billingsley." [SG; 15:3-17:5].

24. Susan Golden has never (i) spoken to Chet Billingsley, (ii) written Mr. Billingsley a letter, (iii) talked to Mr. Billingsley about buying stock, (iv) talked to Scott Van Rixel about buying stock in Mentor, or (v) communicated with anyone at Mentor Capital, including by letters or phone calls, about anything. [SG; 15:3-17:5].

25. Susan Golden only remembers trying to deposit the shares at Morgan Stanley, no other brokerage. [SG; 17:6-14].

26. Susan Golden did not have long or substantive conversations with her husband concerning depositing the Mentor stock with a brokerage, or what 'issues' there may have been. [SG; 17:15-18:8].

27. Susan Golden does not follow the price of Mentor stock and was not aware that it had closed well above the price that she paid for it in the 90 days prior to her deposition. [SG; 18:9-19:5].

28. Susan Golden was not aware that following an arbitration between Mentor and Bhang, Bhang was awarded the ability to turn the stock back in for the price paid, and she never discussed that with Scott Van Rixel of her husband Richard Golden. [SG; 19:7-19:16].

29. Susan Golden does not know for how long she was trying to deposit the Mentor stock with Morgan Stanly, has not tried to deposit the stock since 2014, and does not know where the Mentor stock certificate is. [SG; 19:17-20:6].

30. Susan Golden was not aware that Mentor had worked with her husband and son to try to help them get the stock deposited into a brokerage account. [SG; 20:7-10].

31. Susan Golden does not know about Rule 144 or the safe harbor it provides to resell stock even if restricted. [SG; 20:11-13].

32. Susan Golden knows of no evidence supporting the claim in paragraph 30 of her Second Amended Complaint that, "Golden did in fact rely upon the BOL and the representations made by Mentor in making her decision to purchase Mentor stock," and admits that she relied upon her husband. [SG; 20:22-21:13].

33. Susan Golden admits that, as far as she knows, her daughter also relied upon her husband in deciding to buy Mentor stock. [SG; 21:14-16].

34. Susan Golden knows of no evidence supporting the claim in paragraph 38 of her Second Amended Complaint that, "Defendants made numerous false and misleading statements or omission of material fact." [SG; 21:17-22:13].

35. Susan Golden knows of no evidence supporting the claim of a purportedly false statement in subparagraph 38a of the Second Amended Complaint, "That Mentor was authorized to issue Mentor warrants or common shares without a restrictive legend." [SG; 22:15-23].

36. Susan Golden knows of no evidence supporting the claim of a purportedly false

statement in subparagraph 38a of the Second Amended Complaint, "That Mentor was authorized to issue Mentor warrants or common shares without a restrictive legend." [SG; 22:15-23]. [Specifically admits nothing that she could look at to refresh].

37. Susan Golden knows of no evidence supporting the claim of a purportedly false statement in subparagraph 38b of the Second Amended Complaint, "That such warrants or shares were subject to an exemption from the registration requirements … of the Securities Act." [SG; 22:24-23:14].

38. Susan Golden knows of no evidence supporting the claim of a purportedly false statement in subparagraph 38c of the Second Amended Complaint, "That the SEC had issued a 'No Action' letter." [SG; 23:15-23].

39. Susan Golden did not recall seeing any documents relevant to this matter, including the BOL. [SG; 25:11-30:23].

40. Susan Golden was not aware that Scott Van Rixel was sending money to Mentor and that she and her daughter were to reimburse Scott Van Rixel. [SG; 30:24-31:3].

41. No one ever told Susan Golden that Mentor stock was not freely trading, though she recalls 'conversation'. [SG; 36:20-37:2].

Testimony of Gena Golden

42. On June 29, 2017 I took the deposition of Plaintiff Gena Golden before a certified shorthand reporter.

43. Attached hereto as Exhibit B is a true and correct copy of the transcript of the deposition of Plaintiff Gena Golden, and the exhibits discussed herein which were shown to Gena Golden at that deposition.

44. Gena Golden knew of no substantial evidence that supports the claims in her complaint.

45. Gena Golden agreed that it would be fair to say that the decision to invest in Mentor Capital was made by her father. [GG; 6:19-21].

46. Gena Golden does not know how many shares of Mentor Capital she owns. [GG; 9:21-23].

47. Gena Golden does not pay attention to what the trading prices of Mentor Capital stock are, did not notice that earlier in 2017 it was at $4 per share, and does not know what price she paid for the stock. [GG; 9:24-10:7].

48. Gena Golden has never spoken to Chet Billingsley. [GG; 12:8-16].

49. No brokerage told Gena Golden why they would not accept the Mentor stock. [GG; 13:18-20].

50. No brokerage told Gena Golden they would not accept the Mentor stock because of something having to do with Mentor Capital's bankruptcy. [GG; 13:21-24].

51. Gena Golden does not know who, if anyone, told her father about the possibility of purchasing freely trading Mentor common stock. [GG; 16:3-14].

52. Gena Golden does not recall getting any email from Mentor Capital or Chet Billingsley. [GG; 16:15-20].

53. Gena Golden has never seen the BOL. [GG; 17:2-4].

54. The only evidence Gena Golden has that the stock is not able to be sold is that she has not been able to deposit the stock at a brokerage. [GG; 17:10-21].

55. Gena Golden knows of no evidence supporting the claims in her complaint that anything in the BOL is untrue. [GG; 17:22-25; 18:19-21].

56. Gena Golden does not know whether there was a restrictive legend on the back of the Mentor share certificate. [GG; 18:1-3].

57. Gena Golden knows of no evidence supporting the claim in paragraph 18 of her Second Amended Complaint that, "Golden communicated directly with Mentor personnel concerning the purchase of shares including, but not limited to, Chester Billingsley." [GG; 18:13-18].

58. Gena Golden knows of no evidence that, outside the BOL, Mentor Capital said

anything to her or her family that was untrue. [GG; 18:22-25].

59. Gena Golden has never said to her father in words or substance, "Why don't we find a buyer for the Mentor stock." [GG; 19:24-20:2].

60. Gena Golden has never said to her father in words or substance, "Let's see if Mentor will repurchase the shares from us." [GG; 20:3-6].

61. Gena Golden was not aware that Mentor might have been amenable to accepting the stock certificate back and giving her money back. [GG 20:7-22].

62. Gena Golden does not recognized the address in Exhibit 14, 6515 Biscayne Boulevard. It is not her parents' home address or work address. Gena Golden's address is in Puerto Rico. [GG; 21:8-18; 4:12-19].

63. Gena Golden does not know the amount she invested in Mentor Capital stock. [GG; 22:17-25].

64. Before making the investment in Mentor, Richard Golden never said to Gena Golden in words or substance, "Gena, I'm writing a check to Scott Van Rixel because he's writing a check to Mentor," and she was not aware that was the way things happened. [GG 23:11-19].

65. Gena Golden does not know when Mentor first heard that she was a purchaser of some of its stock. [GG 23:20-22].

66. Gena Golden never discussed with her father the fact that the investment in Mentor was made through the exercise of warrants, and her father never complained to her in words or substance that, "Oh my goodness, I didn't realize we were exercising warrants to buy the Mentor stock." [GG 23:23-25:1].

67. Gena Golden had never seen the email from Chet Billingsley to Scott Van Rixel (Exhibit 6 to her deposition) dated March 10, 2014 in which Mr. Billingsley answers certain questions posed by Mr. Van Rixel. [GG 25:2-13].

68. Other than not being able to deposit the Mentor stock at a brokerage, there is nothing in this case that Gena Golden thinks Mentor did not do right. [GG 26:11-14]

69. Gena Golden agrees that it is fair to say that if she had been able to deposit the stock in a brokerage and sell it, she would not have brought this lawsuit. [GG 26:15-20].

Testimony of Richard Golden

70. On May 3, 2017 I took the deposition of Cross-Defendant Richard Golden, husband of Plaintiff Susan Golden, father of Plaintiff Gena Golden, and the person whom both Plaintiffs identified as the one who made the family decision to invest in Mentor stock [SG; 8:12-21; GG; 6:19-21], before a certified shorthand reporter.

71. Attached hereto as Exhibit C is a true and correct copy of the transcript of the deposition of Plaintiff Richard Golden, and the exhibits discussed herein which were shown to Richard Golden at that deposition.

72. At some point Richard Golden talked to Scott Van Rixel about investing in Mentor. [RG 5:23-25].

73. Richard Golden testified that there was discussion with Scott Van Rixel, "about the availability of Mentor stock as a result of the agreement between Bhang and Mentor. … Part of that agreement had the proviso for purchase of stock." [RG; 6:4-9].

74. Richard Golden saw a copy of the agreement between Bhang and Mentor around the last day of February, 2014. [RG 6:16-22].

75. Richard Golden's understanding of the provision was that, "Bhang would have the ability to purchase stock at a discount off of a specific date of what the stock was trading at." [RG 7:10-18].

76. Richard Golden knows of no evidence that any of Chet Billingsley's emails were addressed to him, Susan Golden, or Gena Golden. [RG 6:8-13].

77. Richard Golden never wrote to Chet Billingsley and say in words or substance, "Does this include me?" [RG 6:14-20].

78. Richard Golden never called Chet Billingsley and say in words or substance, "Does this include me?" [RG 6:22-25].

79. Richard Golden may have spoken to Chet Billingsley once but does not recall doing so. [RG 9:1-19].

80. Richard Golden knows of no evidence that his wife or daughter spoke to Chet Billingsley. [RG 9:20-25].

81. The email that Richard Golden saw was from Chet Billingsley to Scott Van Rixel and Richard Sellers and was first showed to him by Scott Van Rixel. [RG 10:1-7].

82. Richard Golden testified that he, "reviewed, carefully, the contract [between Bhang and Mentor] and also Addendum 1 to that contract which provided for the purchase of the stock." [RG; 10: 10-23].

83. Richard Golden incorrectly understood that 'registering' was taking the stock to a brokerage firm so the stock could be traded. [RG; 12:15-13:4; 87:1-5; 89:9-15].

84. Richard Golden does not recall seeing any restrictive legends on the back of the Mentor stock certificates. [RG; 13:5-15].

85. When asked for his understanding of the meaning of 'no-action' letter Mr. Golden testified that, "from what I understood and what I tried to glean from the [BOL] was that whatever issues there may have been with the SEC, the SEC kind of said, 'we're not going to bother you, we're not going to take any action against Mentor Capital.' That was my understanding." [RG; 13:16-24].

86. Richard Golden found out later that No-Action Letters were publically available on the SEC website, but he did not look on the SEC website for a no-action letter involving Mentor Capital. [RG; 13:25-5].

87. Richard Golden did not make any notes on the BOL, or highlight or use yellow marker to mark anything on the BOL. [RG 15:18-24].

88. Richard Golden did not review any of Mentor's bankruptcy documents, the plan of reorganization, or the disclosure documents, on Mentor's website. [RG; 15:25-16:7]

89. Richard Golden learned of the opportunity to invest in Mentor stock, "through the

agreement that was drafted by someone on behalf of Mentor and delivered to Scott and then Scott delivering it to us." [RG; 16: 8-21].

90. Richard Golden was told about the possibility of purchasing freely trading Mentor common stock, as claimed in paragraph 9 of Plaintiff's complaint, through the Bhang-Mentor agreement and emails from Chet Billingsley to Scott Van Rixel. [RG; 16:22-17:6].

91. Richard Golden's evidence that, as claimed in paragraph 9 of Plaintiff's complaint "He was affirmatively told by Chester Billingsley, the CEO of Mentor, in an email dated March 10, 2014, that the opportunity was to purchase common stock," is a single email from Chet Billingsley to Scott Van Rixel. [RG; 17:7-15].

92. Richard Golden knows of no evidence that Scott Van Rixel told anyone at Mentor that he was sharing an email to him, with his lawyer. [RG; 17:16-20].

93. Richard Golden knows of no evidence supporting the claim in paragraph 11 of Plaintiff's Complaint that, "The BOL was also drafted by Billingsley." [RG; 18:21-19:2].

94. Richard Golden's only evidence supporting the claim in paragraph 12 of Plaintiff's Complaint that, "The BOL authored by Labertew contains numerous false, inaccurate and misleading statements," is that (i) there is no no-action letter and (ii) there was, "some issue regarding the issuance of stock out of the bankruptcy that was not discussed with us." [RG; 19:3-17].

95. Richard Golden identified the only statements made by Mentor Capital, claimed to be false, and on which he claims to have relied as, "the language in Addendum Number 1 to the [Bhang] contract and the email from Chester to Scott and Bhang." [RG; 20:25-21:6].

96. Richard Golden believes that Chet Billingsley knew who he was prior to Plaintiff's investment, "Because of our representation of Bhang in review of the agreement. And he knew of Susan and Gena by virtue of the emails that were sent to him regarding the purchase of stock." [RG; 21:7-13].

97. Any such emails were represented by Richard Golden's counsel as having to have

come from Van Rixel. [RG; 21:14-22:3] But Mentor never received any such emails and Mr. Van Rixel never produced any such emails.

98. Van Rixel testified in the related Arbitration that Mr. Golden did not represent Bhang in the transaction with Mentor.

99. Richard Golden believes that the language of addendum number 1 mentioning that, "BHANG management may buy MNTR shares," included his wife Susan and daughter Gena. [RG; 22: 5-16].

100. Despite this being an important investment for his family Richard Golden did not call Chet Billingsley, opting to rely on the Bhang agreement, emails from Billingsley to Van Rixel, and the BOL. [RG; 22:17-23:6].

101. Richard Golden never said to Scott Van Rixel in words or substance that, "I'd like to talk to the CEO before we invest." [RG; 23:19-22].

102. Richard Golden claims he did not know that the investment involved exercising warrants [RG; 23:23-24:13] despite the fact that the word warrant appears in the Bhang agreement many times.

103. When Richard Golden testifies that, 'he was told,' something, he is referring to the emails from Chet Billingsley to Scott Van Rixel. [RG; 24:14-16].

104. Richard Golden's knowledge of evidence supporting the claim in paragraph 18 of Plaintiff's Second Amended Complaint that, "Golden communicated directly with Mentor personnel concerning the purchase of shares including, but not limited to, Chester Billingsley," is that he, "recall[s] that at some time we had to send information to the company. I know that we had Chester's email." But all such emails were sent long after the investment had been made, and Richard Golden admitted (i) it could have been the end of March, 2014, (ii) that they were providing the identity of the shareholders, and (iii) the information was provided, "to Chester and to Scott." [RG; 26:17-28:2].

105. For over three years, since July, 2014 Richard Golden has not tried to deposit the

Mentor stock into a brokerage account. [RG; 38:10-13].

106. Richard Golden saw that the price of Mentor stock was above $2.00. [RG; 39:11-12].

107. In all of Richard Golden's discussions with brokers, no broker ever told him that the Mentor stock was restricted, in words or substance. [RG; 39:14-17].

108. Richard Golden's understanding of, 'freely trading,' is that, "I would be able to have an account open for Susan, an account open for Gena, or that we could deposit the shares into an existing account so that the shares would be in a brokerage account and not just sitting in a drawer somewhere." [RG; 40:9-16]. This is a fundamentally flawed and inaccurate view of what, 'freely trading,' means.

109. Richard Golden's understanding of, 'registered,' is the same as 'freely trading.' [RG; 40:17-21; 41:25-42:2].

110. No broker ever told Richard Golden that, in words or substance, "there was some restriction on the stock placed by a bankruptcy court," or that, "We won't accept this [Mentor stock] because Mentor didn't timely file amended articles." [RG; 41:9-14; 123:7-11].

111. Richard Golden has no information that Mentor shareholders don't have their stock in accounts at Charles Schwab, Merrill Lynch, Wells Fargo, Scottrade, Underhill, Spencer Edwards, or BMA. [RG; 42:24-43:24].

112. When Richard Golden was doing due diligence on Mentor he did not look to see where Mentor stock was traded. [RG; 45:3-5].

113. When asked if he, "made the decision to buy the [Mentor] stock, Richard Golden testifies that he, "gave them [Susan and Gena] the advice that it seemed like a good investment." [RG; 47:20-23]

114. Richard Golden admits that neither he, nor his wife or daughter, bought the $204,750 in stock mentioned in a [misdated] March 20, 2014 letter addressed to Susan Golden but mailed to Scott Van Rixel at a Bhang address. [RG; 46:22-48:12].

115. Richard Golden admits getting the email marked as Exhibit 3 to his deposition, from Chet Billingsley to Scott Van Rixel, that says, "Please advise any that receive shares that about half of brokers will accept marijuana-related shares and about half will not. Often within the same brokerage company, there is a lack of uniformity between office to office." [RG 50:7-22].

116. Richard Golden never asked Scott Van Rixel in words or substance, "Hey, Scott, this refers to 'Mentor warrants.' What's that about?" [RG; 54:13-16].

117. Richard Golden wrote his checks to Scott Van Rixel on March 20, 2014. [RG; 54:17-55:3].

118. Richard Golden claims that he first became aware that warrants had been used after the purchase date and that warrants being used were material, [RG 55:20-56:21] despite warrants being mentioned many time in the Bhang agreement he claims to have reviewed.

119. Richard Golden was never told by a broker, in words or substance, "Whoa, if you had bought this directly from Mentor, we'd deposit it. But because it was a warrant exercise we won't." [RG; 56:22-57:1].

120. Richard Golden never called Chet Billingsley and asked, in words or substance, "If [the Mentor stock] is unrestricted, why do I have to know someone at Wells [Fargo] to get the shares deposited." [RG; 63:15-19].

121. When Richard Golden says in his Declaration Under Penalty of Perjury dated September 24, 2015, Exhibit 8 to his deposition, that, "The opportunity Billingsley described seemed ideal," he is referring to the 'opportunity' described in Addendum 1 to the Bhang Agreement. [RG; 66:20-67:13].

122. Richard Golden agrees that paragraph 5 of his Declaration Under Penalty of Perjury dated September 24, 2015, Exhibit 8 to his deposition, is untrue where it says that he, "decided to commit funds on behalf of [his] wife and daughter from their respective trusts." [RG; 67:24-68:6].

123. Richard Golden agrees that paragraph 6 of his Declaration Under Penalty of Perjury

dated September 24, 2015, Exhibit 8 to his deposition, is untrue and backward where it refers to, "my wife Gena and my daughter Susan." [RG; 68:7-10].

124. Richard Golden agrees that paragraph 6 of his Declaration Under Penalty of Perjury dated September 24, 2015, Exhibit 8 to his deposition, is also untrue where it says that his wife and daughter *received* a confirmation, "On March 20, 2014," since the letter was dated on that date and further since it was addressed to Scott Van Rixel's address. [RG; 68:11-21].

125. Richard Golden admits that an, "email confirmation that he was going to buy [Mentor Stock]," was sent to Scott Van Rixel. [RG; 68:22-69:2].

126. The copy of the BOL produced by Richard Golden at his deposition is dated March 13, 2014. [RG; 72:1-74:6; Exhibit 10].

127. The only document Richard Golden had in his Mentor file before investing was the BOL. [RG; 76:4-6].

128. Richard Golden does not know whether the Bhang agreement mentions warrants, but admits he read the whole Bhang agreement. [RG 81:5-14].

129. Despite claiming that Mentor told Bhang it could identify 'designees' to purchase Mentor stock, Richard Golden never asked Scott Van Rixel or Chet Billingsley, "What does 'designee' mean?" [RG 82:3-17].

130. After Richard Golden read in the BOL that Mentor had been through a bankruptcy, he did not say to Scott Van Rixel in words or substance, "I'm not going to invest. I don't know anything about a bankruptcy," or, "What is this stuff about Mentor going through a bankruptcy?" [RG; 82:18-25; 91:12-16].

131. Richard Golden has no information that anything about the Mentor bankruptcy caused any of the brokers he talked to, to not deposit the Mentor stock." [RG; 83:13-24].

132. No broker told Richard Golden that, "We won't deposit the [Mentor] stock because there's not a no-action letter," or words to that effect. [RG 84:14-18; 86:6-10].

133. Richard Golden acknowledged that the BOL was directed to the Mentor Transfer

agent. [RG; 90:7-16].

134. Richard Golden testifies that he, "noticed [mention of] warrants," in the BOL but did, "not know[] that they had anything to do with the transaction between Bhang and Mentor." [RG; 90:17-22].

135. Richard Golden never asked Scott Van Rixel in words or substance, "Why does this BOL refer to warrants." [RG 91:1-4].

136. Richard Golden never discussed with Scott Van Rixel that he had gone to Mentor's website and read the BOL, or suggest to Scott Van Rixel that he read the BOL. [RG 91:5-11].

137. Richard Golden never asked Scott Van Rixel if Scott was an affiliate of Mentor, despite the BOL stating to the Transfer Agent that it had, "received sufficient confirmation that the shareholder is not … an officer, director, 10 percent shareholder … or affiliate of [Mentor]." [RG; 91:20-92:4].

138. Richard Golden has no idea if Chet Billingsley and Scott Van Rixel discussed Mentor's bankruptcy. [RG; 93:25-94:3].

139. Richard Golden has no idea if Chet Billingsley and Scott Van Rixel discussed Mentor's warrants. [RG; 94:4-7].

140. When Richard Golden read a reference to Section 3(a)(7) of the Securities Act in the BOL he did not go look that up. [RG; 95:9-11].

141. When Richard Golden read a reference to Section 1145 of the U.S. Bankruptcy Code in the BOL he did not go look that up. [RG; 95:12-14].

142. When Richard Golden read a reference to Series A, Series B, Series C, or Series D warrants in the BOL he did not wonder what the difference between Series A, Series B, Series C, and Series D warrants was. [RG; 95:24-96:9].

143. After Richard Golden read in the BOL that the transfer agent has, "confirmed that either; (1) the shareholder in question already holds validly issued warrants in one of the above Series," he never asked Scott Van Rixel in words or substance, "Do I have to be a warrant holder

to buy stock from Mentor?" [RG; 96:10-18].

144. After Richard Golden read in the BOL the requirement that, "there are warrants remaining available in the particular series that are being acquired, exercised, and converted to common shares," he never asked anyone, "Are there warrants remaining available in the series that I'm going to exercise?" [RG; 96:19-25].

145. After Richard Golden read in the BOL the requirement that the transfer agent has, "confirmed that … the shareholder has been delegated as a designee by the company," he never asked Scott Van Rixel, in words or substance, "Do I have to be delegated as a designee by the company?" [RG; 97:1-98:15].

146. After Richard Golden read in the BOL the requirement that, "The shareholder has paid to the company the proper and necessary funds for such conversion," he never said to Scott Van Rixel, in words or substance, "Scott, I'm concerned because I'm giving you money, I'm not giving Mentor money." [RG; 98:16-25].

147. After Richard Golden read in the BOL that, "This letter is intended to be relied on by you [the transfer agent], the company, and such described shareholders in issuing … shares," he never said to Scott Van Rixel, in words or substance, "Gee, Scott, this seems to be identified to the transfer agent, the company, and certain described shareholders. It might not cover me." [RG; 99:1-14].

148. Richard Golden was not concerned despite the statements that the BOL, "should not be relied on by any other person or in connection with any other transaction," that it did not apply to him. [RG; 100:8-20].

149. Richard Golden never contacted Mr. Labertew to see if the BOL applied to him. [RG; 100:21-23].

150. Richard Golden never asked Scott Van Rixel if the BOL applied to him. [RG; 100:24-101:1].

151. Richard Golden never asked anyone at Mentor if the BOL applied to him. [RG;

101:2-4].

152. After Richard Golden read in the BOL that the transfer agent needed to get, "confirmations from the company that the warrants' exercise prices have been repriced and exercise time periods extended by the company," he never asked Scott Van Rixel, in words or substance, "Why did the warrants need to be repriced and extended?" [RG; 102:7-14].

153. Before Richard Golden gave a check to Scott Van Rixel, he never asked anyone at Mentor what it meant that the warrants had to be repriced and exercise periods extended. [RG; 102:15-18].

154. Richard Golden did not ask Mr. Labertew to update his opinion as of the day Mr. Golden was reading it, despite the opinion stating that it was, "valid as of the date of this opinion." [RG; 103:12-23].

155. Richard Golden never asked Mr. Labertew if he could rely on Mr. Labertew's BOL. [RG; 103:24-104:14].

156. Richard Golden, "ha[s] no clue," concerning the risk profile for his investment accounts. [RG; 105:15-21].

157. Richard Golden does not recall whether or not the broker for the Morgan Stanley account from which the funds came to invest in Mentor gave him advice. [RG; 106:11-23].

158. Richard Golden first learned of the argument that possibly Mentor had not timely filed some Articles of Incorporation until after he was already trying to get his money back. [RG; 107:6-13].

159. Richard Golden never asked Scott Van Rixel for a prospectus on Mentor; he never looked on Mentor's website for a prospectus; and he never asked Chet Billingsley for a prospectus before he wrote a check to Scott Van Rixel. [RG; 123:19-124:7].

160. Richard Golden never asked Scott Van Rixel, "Does Mentor know that I'm part of [Scott's] team. [RG; 125:2-4].

161. Richard Golden was not aware that the money Scott Van Rixel sent Mentor was

sent by Mentor back to Bhang as part of Mentor's investment in Bhang. [RG; 125:17-126:5].

162. Before he sent Scott Van Rixel money, Richard Golden did not tell Chet Billingsley that he had read Chet's March 9th email to Scott Van Rixel, and was relying on statements made therein. [RG; 126:9-20].

163. Richard Golden has never asked Scott Van Rixel for his money back. [RG; 126:6-8].

164. Richard Golden has done nothing to mitigate damages since August, 2014. [RG; 108:11-109:6].

I declare under penalty of perjury under the laws of the State of Utah and the laws of the United States of America that the foregoing is true and correct and that this Declaration was signed by the undersigned on October 23, 2017 at Burlingame, California.

/s/ Paul Marotta
Paul Marotta

CERTIFICATE OF SERVICE

I, Megan Jeanne, counsel for the above-named Defendant, hereby certify that the foregoing was filed via this Court's Electronic Case Filing system, which will cause a copy of the this filing to be forwarded to all counsel of record.

Date: October 23, 2017

/s/ Megan Jeanne
Megan Jeanne

PAUL DAVID MAROTTA (CA State Bar No. 111812)
MEGAN JEANNE (CA State Bar No. 251294)
THE CORPORATE LAW GROUP
1342 ROLLINS ROAD
BURLINGAME, CA 94010
Telephone: (650) 227-8000
Facsimile: (650) 227-8001
Email: paul@tclg.com
megan@tclg.com

TRENT J. WADDOUPS
CARR & WADDOUPS
ATTORNEYS AT LAW, LLC
8 EAST BROADWAY, SUITE 609
SALT LAKE CITY, UTAH 84111
Telephone: (801) 363-0888
Facsimile: (801) 363-8512
Email: trent@cw-law.net

Attorneys for Defendant
MENTOR CAPITAL, INC., a Delaware corporation

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF UTAH

GENA GOLDEN, an individual and SUSAN GOLDEN, an individual, Plaintiffs, v. MENTOR CAPITAL, INC., a Delaware corporation, LABERTEW & ASSOCIATES, a Utah limited liability company, and MICHAEL L. LABERTEW, an individual, Defendants.	CIVIL ACTION NO. 2:15-CV-00176-JNP-BCW Honorable Jill N. Parrish Magistrate Brooke C. Wells DECLARATION OF CHET BILLINGSLEY IN SUPPORT OF MENTOR CAPITAL, INC.'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY ADJUDICATION
MENTOR CAPITAL, INC., a Delaware corporation, Third-Party Plaintiff, v. RICHARD GOLDEN, an individual, and SCOTT VAN RIXEL, an individual, Third-Party Defendants.	

I, Chet Billingsley, declare as follows:

1. I am the President, Chief Executive Officer, and Chairman of Defendant Mentor Capital, Inc. ("Mentor").

2. The matters stated herein are known to me personally, and if called and sworn as a witness I could competently testify thereto.

The August 6, 2014 Email Message

3. In their Reply briefing on their motion for Partial Summary Adjudication, Plaintiffs attached, with no context, verification, or testimony from me, an email dated August 6, 2014 which I sent to Adam Golden, the son and brother, respectively, of Plaintiffs Susan Golden, and Gena Golden, and attorney Todd DiTommaso, to assist Mr. DiTommaso in writing an opinion letter so that the Plaintiffs could deposit their Mentor stock with a brokerage.

4. A true and correct copy of this entire email message is attached hereto as Exhibit A.

5. When I sent this email message I included, within the body of the email, copies of Van Rixel's emails committing to purchase securities and asking if he could have his purchased shares issued in other persons' names.

6. At the bottom of the email I say that, "3 email copies on election to exercise follow directly below." These 3 email copies were omitted by Plaintiffs. This single email is bates stamped Mentor 126-135.

7. To be clear, this email was authored by me more than four months after we received the check from Scott Van Rixel buying the stock, and less than two weeks after learning that the Goldens had paid Van Rixel for their stock.

8. I was trying to help the Goldens get their Mentor stock deposited into a brokerage account. None of our other shareholders had had as difficult a time obtaining a broker. I sent this August 6 email to assist that process as I was trying to help the Goldens. The Goldens are here trying to use my good deed against me and Mentor.

9. In my email message I was commenting on (confirming, etc.) questions posed to me by Mr. DiTommaso.

10. For example I confirmed in the second paragraph that the statement Mr. DiTommaso makes in the first paragraph that the shares held by the Goldens were obtained on exercise of warrants issued in connection with the Mentor bankruptcy proceedings. This is true.

11. I also confirmed that, "issuance of the warrant was exempt from registration pursuant to 11. U.S.C. 1145(a) and exercise of the warrant resulted in freely trading stock pursuant to 11 U.S.C. 1145(a)(2)." I am not a lawyer but I understand this to be true.

12. I confirm in the third paragraph that, "the election to exercise the warrant was completed on March 10, 2014 by Scott Van Rixel." This is true.

13. I also confirm that, "On that day or the next day he asked if he could designate others to receive his shared [sic]." This is also true.

14. Note that I did not say, "resell," and I used the phrase, "his [Van Rixel]'s shares," because I had no idea, when he asked in March, 2014, that Mr. Van Rixel was reselling shares to the Goldens.

15. I first learned that Mr. Van Rixel had sold his stock to the Goldens on July 25, 2014, and saw the Goldens checks to Van Rixel on July 29, 2014, both only a few days before preparing this August 6 email message to Mr. DiTommaso.[1]

16. Apparently at the time the Goldens supposedly bought stock from Mentor they did not even have the funds to pay for such stock. This makes it look even more like a resale. You can't buy securities that you can't pay for. Van Rixel's check was apparently more than an, 'administrative convenience.'

17. I continued in the August 6, 2014 email confirming that, "Soon thereafter he [Van

[1] On July 24, 2014 I asked the Goldens in an email, "Why are you receiving shares from the Van Rixel Family Trust?" The Goldens responded that, "[D]ue to short term cash liquidity on our part, and we subsequently re-paid him for the same."

Rixel] supplied the names of Susan and Gena Golden." This is true. Mr. Van Rixel supplied the names on March 23, 2014 and we issued certificates to Susan Golden and Gena Golden.

18. On March 25, 2014 we mailed the Goldens' stock certificates to Mr. Van Rixel.

19. We did not know the address for the Goldens until April 17, 2014 when it was provided to us by Mr. Van Rixel.

20. On April 8th in an email I wrote to Mr. Van Rixel I asked for contact info for the people he was gifting shares to: I said "By the way, if these (3) folks are going to be shareholders, we'll eventually need address, email, & phone so that they get all notices they have the right to."

21. I continued in the email confirming that, "We said Yes [to issuing stock to 'others'] and issued separate warrant certificates to each person." This is also true.

22. The email then continues where I say that, "For administrative convenience Scott issued a single check to pay for all shares and then he received checks from the Goldens to reimburse him at cost a few days later." This is what was represented to me by the Goldens and Van Rixel. I do not know this to be true and could not say so since I was not involved in their dealings prior to telling Scott that he could gift some stock to unknown, 'others.'

23. This is no sort of admission of anything by me. As is undisputed, I had no idea that Van Rixel was selling stock to the Goldens until late July when I saw copies of the checks the Goldens gave Van Rixel. And this was only a few days before I wrote this email message in an attempt to help the Goldens.

24. For them to try to spin this email as me confirming what they told me is cynical and untrue. I could not confirm what they told me they did between themselves.

25. In fact in the next (fourth) paragraph of the email I am posing some thoughts and questions about what exemptions might apply to a resale (since I had just learned that is what happened here).

26. I say that, "my investigation indicates that MNTR staff and Warrant Transfer Agent treated it as an original purchase, not resale right from the outset." This is true since when Van

Rixel asked if he could use the stock as, "Thank Yous," we accommodated him and issued the stock directly to those we thought were his giftees (the Goldens).

27. Nowhere in this email do I admit or agree that there was any privity between Susan Golden and Mentor, Gena Golden and Mentor, or even Richard Golden and Mentor.

28. It was generally our practice to issue certificates directly to those identified to us as giftees, and that is what we did with respect to the Goldens.

29. Had we known that this was a resale we would have treated the transaction differently right from the start. But the nature of the transaction was misrepresented to us for over four months.

30. As is clear from the other evidence presented, none of those people and Mentor communicated in any way prior to the stock being sold to Van Rixel.

31. The Goldens were unnamed and unknown to Mentor when Van Rixel, a member of Bhang's management, who received Mentor's "turnaround" money, and who Mentor had an obligation to put on its Board of Directors, exercised long outstanding Mentor warrants.

32. The only evidence is that Richard Golden read the agreement that Mentor and Bhang were about to sign; supposedly (and incorrectly) assumed that, "Bhang management,"[2] included him and, when Scott Van Rixel offered him some stock, accepted that from Van Rixel and paid Van Rixel.

33. And that doesn't even include the problem that the stock was actually purchased by Gena Golden and Susan Golden, clearly not, "Bhang management," either.

34. None of this and nothing in my August 6, 2014 email message creates any sort of relationship between the Goldens and Mentor.

Fraud by Van Rixel

35. On top of this, there is a perverse reason why Van Rixel hid from us that the

[2] Paragraph B of Addendum I also refers to Bhang principals interchangeably with Bhang management. Golden was neither.

Goldens were paying him.

36. I had told Van Rixel that everything paid to us by him, Richard Sellers and William Waggoner (the real, "Bhang management") would be re-invested in Bhang.

37. The Bhang Agreement required that, "Funds delivered by Bhang principals will be paid out to Bhang" (Page 8, Line 17). All funds paid in for the purchase of the Mentor stock were immediately paid out to Bhang, indicating all came from principals and none came from the Goldens, which funds would have been retained by Mentor.

38. When we received Van Rixel's check we turned around and sent that money right back to Bhang as part of Mentor's investment in Bhang.

39. Had we known that Van Rixel was reselling stock to others, unrelated to Bhang management, we never would have invested those funds back in Bhang.

40. So had Van Rixel said in words or substance, "I'm reselling a bunch of this stock to other people," or, "We're aggregating money from non-Bhang persons," we never would have sent that money to Bhang.

41. In not telling us that he was reselling the stock, Mr. Van Rixel was, in effect, defrauding Mentor.

42. After the fraudulent representation of a gift, the resulting standard processing, coincidentally as if in an original sale, does not make it so, and does not change the fact that this was a purchase under contract to a party of the contract followed by a resale to a non-party.

43. The nature of the paperwork under a fraudulent representation does not in itself establish a contract, nor privity. This is especially true when the parties of one side are unknown, the parties are never contacted, no money is received by Mentor, an offer to business partners, "Bhang management," is hijacked, and for over four months the exchange of money by Van Rixel and the Goldens was kept secret.

44. Mentor wanted the Bhang principals (Van Rixel, Sellers, and Waggoner) to have some skin in the game with Mentor, because they were business partners, because Mentor had an

obligation to put Van Rixel on its Board of Directors, and because we were offering to Bhang management to exercise warrants at a 50% discount to market.

45. Richard Golden may try to claim to have acted as Bhang's lawyer in connection with the agreement between Mentor and Bhang, and claim that this somehow makes him, "Bhang management," but Van Rixel already testified under oath that Golden did not represent Bhang in connection with the agreement with Mentor. [See Declaration of Megan Jeanne, ¶¶5-8, 10-13].

46. Even if Richard Golden did do legal work for Bhang, that doesn't make him Bhang management. And it certainly doesn't make Susan Golden or Gena Golden, "Bhang management."

47. And as is clear from Richard Golden's testimony [See, eg. Marotta Declaration] he never reached out to Mentor or I (as he was supposedly reading the agreement between Mentor and Bhang) though he could have at any time.

48. In the Bhang agreement the Bhang principals Scott Van Rixel and Richard Sellers were required to, and did, "inform MNTR of their commitment and anticipated funding" for 100% of the shares purchased (page 8, line 15). Susan and Gena Golden made no such commitment and were unknown to Mentor.

49. In Scott Van Rixel's commitment to purchase email [March 10, 2014 email from Scott Van Rixel; See page two of Exhibit A] he writes, "I, Scott J. Van Rixel agree to purchase … 105,000 shares at $1.95" not "we" or "on behalf of myself and others, etc."

50. In the arbitration between Mentor and Bhang (in which Mentor prevailed) the arbitration panel and court ruled that the, "Van Rixel Family Trust paid $204,750 …for the purchase of 105,000 … shares of Mentor common stock," (Page 2, Line 20) and that, "the Van Rixel Family Trust shall return the 105,000 shares." (Page 3, Line 5).

51. Since Mentor did not know that the Goldens had purchased their stock from Van Rixel for several months, it may have led brokerages investigating the stock's issuance to conclude that there was something fishy about the stock's origins, as Mentor did not know they had bought

it. This may very well have been the reason the Goldens could not get their stock deposited in 2014.

52. Had Van Rixel and the Goldens been honest from the beginning about the resale, Mentor may have been able to help get their stock deposited and avoided all of this. There is nothing intrinsically wrong with a resale. Free trading shares held and resold by non-affiliates, are free trading.

I declare under penalty of perjury under the laws of the State of Utah and the laws of the United States of America that the foregoing is true and correct and that this Declaration was signed by the undersigned on October 23, 2017 at Ramona, California.

/s/ Chet Billingsley
Chet Billingsley

CERTIFICATE OF SERVICE

I, Megan Jeanne, counsel for the above-named Defendant, hereby certify that the foregoing was filed via this Court's Electronic Case Filing system, which will cause a copy of the this filing to be forwarded to all counsel of record.

Date: October 23, 2017

/s/ Megan Jeanne
Megan Jeanne

PAUL DAVID MAROTTA (CA State Bar No. 111812)
MEGAN JEANNE (CA State Bar No. 251294)
THE CORPORATE LAW GROUP
1342 ROLLINS ROAD
BURLINGAME, CA 94010
Telephone: (650) 227-8000
Facsimile: (650) 227-8001
Email: paul@tclg.com
megan@tclg.com

TRENT J. WADDOUPS
CARR & WADDOUPS
ATTORNEYS AT LAW, LLC
8 EAST BROADWAY, SUITE 609
SALT LAKE CITY, UTAH 84111
Telephone: (801) 363-0888
Facsimile: (801) 363-8512
Email: trent@cw-law.net

Attorneys for Defendant
MENTOR CAPITAL, INC., a Delaware corporation

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF UTAH

GENA GOLDEN, an individual and SUSAN GOLDEN, an individual, Plaintiffs, v. MENTOR CAPITAL, INC., a Delaware corporation, LABERTEW & ASSOCIATES, a Utah limited liability company, and MICHAEL L. LABERTEW, an individual, Defendants.	CIVIL ACTION NO. 2:15-CV-00176-JNP-BCW Honorable Jill N. Parrish Magistrate Brooke C. Wells DECLARATION OF MEGAN JEANNE IN SUPPORT OF MENTOR CAPITAL, INC.'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
MENTOR CAPITAL, INC., a Delaware corporation, Third-Party Plaintiff, v. RICHARD GOLDEN, an individual, and SCOTT VAN RIXEL, an individual, Third-Party Defendants.	

I, Megan Jeanne, declare as follows:

1. I am one of the attorneys representing Mentor Capital, Inc. ("Mentor") in the above captioned matter. I am admitted to practice *pro hac vice* in the United States District Court for the District of Utah.

2. The matters stated herein are known to me personally, and if called and sworn as a witness I could competently testify thereto.

3. On or about January 9, 2015 Mentor filed a Demand for Arbitration with the American Arbitration Association against Bhang Chocolate Company, Inc., Bhang Corporation (the successor in interest of Bhang Chocolate Company, Inc. and together therewith "Bhang"), Scott Van Rixel ("Van Rixel"), Richard Sellers, and William Waggoner. The arbitration is titled *Mentor Capital, Inc. v. Bhang Chocolate Company, Inc. et al.*, Case #01-15-0002-3436 ("Arbitration").

4. On March 14, 2016, in connection with the Arbitration, Mentor took the deposition of Van Rixel. A true and correct copy of pages 93 and 94 of his deposition are attached hereto as Exhibit A.

5. On or about March 6, 2014 Van Rixel sent Mentor's CEO, Chet Billingsley, an email in which he posed some questions from a "legal due diligence and review team" that had arisen in connection with a draft of the Bhang Chocolate – Mentor Capital Cannabis Brands Cooperative Funding Agreement ("Bhang Agreement").

6. When asked the identity of the attorney or attorneys who made up the "legal due diligence and review team" Van Rixel testified that:

> "You're saying who as part of it. There was no legal reviewed due diligence team to be part of. Richard Sellers independent of me approached someone that he knew who felt may have at least some commentary on the transaction just as I had people that I had talked to as well." [94:18-23]

7. Van Rixel testified that he had used the phrase "legal due diligence and review

team" because he

> "was trying to soften the conversation with [Billingsley] that [Van Rixel would] like these answered, but these aren't me questioning you. I would just like you to answer them. So it was – there was no, you know, legal due diligence and review team per se, or any formal structure." [94:3-8].

8. Van Rixel further stated that "the use of the, let's say, formal legal due diligence and review team would be inaccurate." [94:11-13].

9. On May 9, 2016, a three-day hearing for the Arbitration was commenced during which time Van Rixel testified under oath. A true and correct copy of pages 436, 437, 544, 545, 551, and 552 of the Arbitration transcript are attached hereto as Exhibit B.

10. Van Rixel was asked about the identity of the members of the "legal due diligence and review team":

> "Q: Right. And who is Todd?
>
> "A: A friend of Richard Sellers.
>
> "Q: Okay. And he's a lawyer; right?
>
> "A: Yes.
>
> "Q: And you said in your e-mail to Mr. Billingsley that this was supplied today by our legal due diligence and review team; do you see that?
>
> "A: Yes, sir.
>
> "Q: Why did you - - did you have a legal due diligence and review team?
>
> "A: No, sir." [436:14-24

11. When asked about his understanding of certain provisions of the Bhang Agreement Van Rixel testified that "I was not an attorney. I did not consult directly with an attorney." [545:4-5].

12. Van Rixel further testified that Bhang did not engage the services of an attorney to review the Bhang Agreement:

"Q: Todd is the lawyer that Richard Sellers had review [the Bhang Agreement] before you signed it?

"A: He is an attorney, yes.

He was not engaged by Bhang." [552:5-8].

13. At no point in time when asked to identify the members of the "legal due diligence and review team" or any other attorney who had reviewed the Bhang Agreement did Van Rixel ever identify Richard Golden.

I declare under penalty of perjury under the laws of the State of Utah and the laws of the United States of America that the foregoing is true and correct and that this Declaration was signed by the undersigned on October 23, 2017 at Burlingame, California.

/s/ Megan Jeanne
Megan Jeanne

CERTIFICATE OF SERVICE

I, Megan Jeanne, counsel for the above-named Defendant, hereby certify that the foregoing was filed via this Court's Electronic Case Filing system, which will cause a copy of the this filing to be forwarded to all counsel of record.

Date: October 23, 2017

/s/ Megan Jeanne
Megan Jeanne

PAUL DAVID MAROTTA (CA State Bar No. 111812)
MEGAN JEANNE (CA State Bar No. 251294)
THE CORPORATE LAW GROUP
1342 ROLLINS ROAD
BURLINGAME, CA 94010
Telephone: (650) 227-8000
Facsimile: (650) 227-8001
Email: paul@tclg.com
megan@tclg.com

TRENT J. WADDOUPS
CARR & WADDOUPS
ATTORNEYS AT LAW, LLC
8 EAST BROADWAY, SUITE 609
SALT LAKE CITY, UTAH 84111
Telephone: (801) 363-0888
Facsimile: (801) 363-8512
Email: trent@cw-law.net

Attorneys for Defendant
MENTOR CAPITAL, INC., a Delaware corporation

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF UTAH

GENA GOLDEN, an individual and SUSAN GOLDEN, an individual, Plaintiffs, v. MENTOR CAPITAL, INC., a Delaware corporation, LABERTEW & ASSOCIATES, a Utah limited liability company, and MICHAEL L. LABERTEW, an individual, Defendants.	CIVIL ACTION NO. 2:15-CV-00176-JNP-BCW Honorable Jill N. Parrish Magistrate Brooke C. Wells **MENTOR CAPITAL, INC.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING PLAINTIFFS' PARTIAL MOTION FOR SUMMARY ADJUDICATION**
MENTOR CAPITAL, INC., a Delaware corporation, Third-Party Plaintiff, v. RICHARD GOLDEN, an individual, and SCOTT VAN RIXEL, an individual, Third-Party Defendants.	

COMES NOW DEFENDANT MENTOR CAPITAL, INC. ("MENTOR") and respectfully requests that, pursuant to Federal Rules of Evidence 201, this Court take judicial notice of the following documents and information:

1. The judgment entered in the United States District Court for the Northern District of California matter titled, *Mentor Capital, Inc. v. Bhang Chocolate Company, Inc., et al*, Case No. 3:14-cv-03630-LB, attached hereto as Exhibit A ("Judgment"). Specifically, Mentor requests that this Court take note of the following portions of the Judgment:
    a. At Paragraph 6 on page 2, the Van Rixel Family Trust is adjudged to have purchased 105,000 shares of Mentor common stock for a purchase price of $204,750; and
    b. At Paragraph 9 on page 3, the Van Rixel Family Trust is ordered to return the 105,000 shares of Mentor common stock it purchased from Mentor in exchange for a return of the purchase price plus a pro-rata amount per share returned of the interest calculated in Paragraph 7 on page 2 of the Judgment.
    c. The stock certificates included in the Judgment include the two stock certificates currently held by Susan Golden (Certificate C-3093) and Gena Golden (Certificate C-3092).
2. The proposed judgment submitted to, and eventually entered by, the court was jointly drafted by both Mentor and defendants in that action.

DATED this 23rd day of October, 2017.

The Corporate Law Group

/s/ Megan Jeanne
Megan Jeanne (admitted *pro hac vice*)
Attorneys for Defendant Mentor Capital, Inc.

Trent J. Waddoups

CARR & WADDOUPS
ATTORNEYS AT LAW, LLC
Attorneys for Defendant Mentor Capital, Inc.

EXHIBIT A

PAUL DAVID MAROTTA (State Bar No. 111812)
MEGAN JEANNE (State Bar No. 251294)
THE CORPORATE LAW GROUP
1342 ROLLINS ROAD
BURLINGAME, CA 94010
Telephone: (650) 227-8000
Facsimile: (650) 227-8001
paul@tclg.com
megan@tclg.com

Attorneys for Plaintiff
MENTOR CAPITAL, INC.

Michael J. Low (CA State Bar No. 178517)
mlow@doylelow.com
Jaime B. Herren (CA State Bar No. 271680)
jherren@doylelow.com
DOYLE LOW LLP
3640 Mt. Diablo Blvd., Ste. 202
Lafayette, CA 94549
Telephone: (925) 295-1800
Facsimile: (925) 298-5944

Attorneys for Defendants
BHANG CORP.; SCOTT VAN RIXEL;
And WILLIAM WAGGONER

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MENTOR CAPITAL, INC., Plaintiff. v. BHANG CHOCOLATE COMPANY, INC., a Nevada corporation, BHANG CORPORATION, a Nevada corporation, SCOTT VAN RIXEL, an individual, and WILLIAM WAGGONER, an individual, Defendants.	Civil Action No. 3:14-cv-03630-LB ~~[PROPOSED]~~ **JUDGMENT**

The Parties to the above-captioned matter jointly submit this Judgment pursuant to the Court's December 20, 2016 Order Confirming Arbitral Award. On May 9, 2016 at the San

Francisco offices of the American Arbitration Association, the arbitrators the Honorable Charles B. Renfrew (retired), Thomas J. Klitgaard, and Bruce E. Methven ("Panel"), presiding. Paul David Marotta and Megan Jeanne of The Corporate Law Group appeared as attorneys for the Plaintiff. Nathan Nasson and Noah Tennyson appeared as attorneys for the Defendants.

IT IS ORDERED AND ADJUDGED THAT:

1. The Modified Partial Award issued by the Panel on October 13, 2016 is CONFIRMED.

2. The final award issued by the Panel on October 25, 2016, therein incorporating the Modified Partial Award as part of the final award, is CONFIRMED.

3. Mentor's claim for rescission is GRANTED.

4. Bhang shall pay to Mentor $1,500,000.00.

5. Bhang shall pay to Mentor pre-award interest in the amount of $381,835.62, as calculated below, for the period of time between the date of each payment up to October 13, 2016.

Date of Payment	**Amount of Payment**	**Days Before October 13, 2016**	**Interest per Day**	**Total Interest**
March 12, 2014	$500,000	946	$136.99	$129,589.04
March 21, 2014	$300,000	937	$82.19	$77,013.70
April 3, 2014	$500,000	924	$136.99	$126,575.34
May 9, 2014	$200,000	888	$54.79	$48,657.53
TOTAL	$1,500,000			**$381,835.62**

6. As the Van Rixel Family Trust paid $204,750.00 and Mr. Sellers paid $23,400.00, for purchase of 105,000 and 12,000 shares of Mentor common stock, respectively, Mentor shall return those amounts to the Van Rixel Family Trust and Mr. Sellers, respectively, plus ten percent (10%) interest from the dates of each payment to the date of the Modified Partial Award.

7. Except as adjusted pursuant to paragraph 9, below, pre-award interest to be paid to the Van Rixel Family Trust is calculated to be $52,561.85, as set forth below:

Date of Payment	**Amount of Payment**	**Days Before October 13, 2016**	**Interest per Day**	**Total Interest**
March 21, 2014	$204,750	937	$56.10	$52,561.85

8. Pre-award interest to be paid to Richard Sellers is calculated to be $6,007.07, as set

forth below:

Date of Payment	Amount of Payment	Days Before October 13, 2016	Interest per Day	Total Interest
March 21, 2014	$23,400.00	937	$6.41	$6,007.07

9. The Van Rixel Family Trust shall return the 105,000 shares of Mentor stock purchased from Mentor, represented by stock certificates C-3092, C-3093, C-3094, and C-3095, within one year of the date of this judgment with the backs of each stock certificate completed for transfer, in exchange for payment by Mentor of $257,311.85 if all 105,000 shares are returned. To the extent that cannot be done for any reason, the amounts Mentor is to pay to the Van Rixel Family Trust should be reduced, pro rata.

10. Richard Sellers shall return the 12,000 shares of Mentor stock purchased from Mentor, represented by stock certificate C-3061 within one year of the date of this judgment with the back of the stock certificate completed for transfer, in exchange for payment by Mentor of $29,407.07.

11. Mentor is awarded post-award, pre-judgment interest in the amount of $39,699.00, as calculated below, for the period of time between the date of the Modified Partial Award and the date of this judgment.

Date of Award	Amount of Payment	Days Before December 28, 2016	Interest per Day	Total Interest
October 13, 2016	$1,881,835.62	77	$515.57	$39,699.00

12. The amounts payable by Mentor to the Van Rixel Family Trust and Mr. Sellers may be offset against amounts awarded to Mentor on mutual agreement of the parties.

13. Mentor is awarded post-judgment interest at the legal rate of 10% for the period of time between the date of this judgment and the time that the judgment is satisfied in full.

14. The parties shall split 50%-50% the costs and fees of the American Arbitration Association as incurred.

15. The parties shall split 50%-50% the fees and expenses of the Panel as incurred.

16. No party was a prevailing party in this action and, therefore, no party is entitled to

attorneys' fees or costs.

17. Each party shall bear its own costs for all

IT IS SO ORDERED
MODIFIED
Judge Laurel Beeler
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Dated: December 29, 2016

CERTIFICATE OF SERVICE

I, Megan Jeanne, counsel for the above-named Defendant, hereby certify that the foregoing was filed via this Court's Electronic Case Filing system, which will cause a copy of the this filing to be forwarded to all counsel of record.

Date: October 23, 2017

/s/ Megan Jeanne
Megan Jeanne