

1 DIANA K. TANI, Cal. Bar No. 136656
E-mail: TaniD@sec.gov
2 ALKA PATEL, Cal. Bar No. 175505
E-mail: PatelAL@sec.gov
3 JANET RICH WEISSMAN, Cal. Bar. No. 137023
E-mail: WeissmanJ@sec.gov

4 Attorneys for Plaintiff
5 Securities and Exchange Commission
Rosalind Tyson, Acting Regional Director
6 Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
7 Los Angeles, California 90036
Telephone: (323) 965-3998
8 Facsimile: (323) 965-3815

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 KENT G. BARKOURAS,

18 Defendant.

Case No.

COMPLAINT

19
20 Plaintiff Securities and Exchange Commission (the “Commission”) alleges
21 as follows:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over this action pursuant to Sections 21(e),
24 21A(a), and 27 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15
25 U.S.C. §§ 78u(e), 78u-1(a), and 78aa. Defendant Kent G. Barkouras
26 (“Barkouras”) has, directly or indirectly, made use of the means or
27 instrumentalities of interstate commerce, of the mails, or of the facilities of a
28 national securities exchange, in connection with the transactions, acts, practices,

1 and courses of business alleged in this Complaint.

2 2. Venue is proper in this district pursuant to Section 27 of the Exchange
3 Act, 15 U.S.C. § 78aa, because defendant Barkouras resides and transacts business
4 in this district and because certain of the transactions, acts, practices and courses of
5 conduct constituting violations of the federal securities laws occurred within this
6 district.

7 SUMMARY

8 3. This case involves insider trading by defendant Barkouras in the
9 securities of Santa Barbara-based Mentor Corporation (“Mentor”) before its
10 announcement on November 17, 2006 that the U.S. Food and Drug Administration
11 (“FDA”) had approved its Memory Gel™ silicone-gel filled breast implants (the
12 “Announcement”). Defendant Barkouras is the president, chief executive officer,
13 and largest shareholder of a private Irvine-based company which distributed
14 marketing materials for Mentor’s silicone implants.

15 4. Defendant Barkouras engaged in insider trading when he purchased
16 Mentor call options based on material nonpublic information about the FDA
17 approval. On November 16, 2006, after the close of the securities trading market,
18 Barkouras learned that the FDA had approved Mentor’s silicone implants. Even
19 though Barkouras understood that this information was confidential, he began
20 purchasing Mentor call options as soon as the market opened on November 17.
21 After the close of the market on November 17, Mentor made the Announcement.
22 On the next trading day, Mentor’s stock price closed at \$52.78 per share, up over
23 10 percent on a 650 percent increase in trading volume. Over the next several
24 weeks, Barkouras sold the Mentor options, illegally profiting nearly \$80,000.

25 THE DEFENDANT

26 5. **Kent G. Barkouras**, age 47, resides in Newport Beach, California.
27 He has a law degree, but has never been licensed to practice law. Since 2002, he
28 has been president, chief executive officer, and the largest shareholder of MyPrint

1 Corporation, a private California corporation with its principal place of business in
2 Irvine, California.

3 **NON-PARTY ENTITY**

4 6. **Mentor Corporation** is a Minnesota corporation with its principal
5 place of business in Santa Barbara, California. Its securities are registered with the
6 Commission pursuant to Section 12(b) of the Exchange Act. Mentor's common
7 stock trades on the New York Stock Exchange, and its options trade on the
8 Chicago Board Options Exchange, among other exchanges. Mentor develops,
9 manufactures, licenses and markets a range of products serving the aesthetic
10 market, including surgically implantable breast implants for plastic and
11 reconstructive surgery.

12 **BARKOURAS ENGAGED IN INSIDER TRADING**

13 **A. Background: Defendant Barkouras' Relationship With Mentor**

14 7. In late 2006, Mentor was awaiting FDA approval for its Memory
15 Gel™ silicone gel-filled breast implants.

16 8. Pending FDA approval, Mentor prepared marketing materials for its
17 silicone implants with an advertising agency, which, in turn, subcontracted with
18 MyPrint. It is a technology, print and fulfillment company that specializes in the
19 development and administration of print-related programs. Its services include
20 web-based solutions, print manufacturing, direct mail services, fulfillment,
21 distribution and inventory management. It has many publicly-traded companies as
22 clients, including Mentor. Mentor's marketing materials included "starter kits" for
23 physicians containing manuals, brochures, a DVD, and a sample silicone implant.
24 MyPrint warehoused thousands of Mentor's starter kits.

25 9. Barkouras knew that Mentor was awaiting FDA approval for its
26 silicone implants. Barkouras also knew that his company was warehousing the
27 starter kits and that they would ship them as soon as the FDA approved Mentor's
28 silicone implants.

1 **B. Defendant Barkouras Obtained Material Nonpublic Information**
2 **About The FDA's Approval Of Mentor's Implants**

3 10. On Thursday, November 16, 2006, the FDA informed Mentor that it
4 would be contacting the company on Friday, November 17 at approximately 2 p.m.
5 (Pacific Standard Time) to officially announce the FDA's approval of Mentor's
6 silicone implants. That same day, Mentor communicated this information by
7 telephone to its advertising agency. Both Mentor and the advertising agency knew
8 that the information about the FDA approval was confidential.

9 11. The advertising agency then told MyPrint about the FDA approval so
10 that MyPrint could arrange for the shipment of Mentor's starter kits as soon as the
11 information was public. On November 16, 2006 at 5:49 p.m., an advertising
12 agency employee sent an e-mail message to Barkouras' regional manager with the
13 subject "Approval" and the message "Please call me immediately—its [sic]
14 happening!!" At 6:03 p.m., the regional manager sent an e-mail message to
15 Barkouras: "Mentor we just got FDA approval!! :)" Throughout the evening and
16 continuing the next morning, Barkouras' staff sent e-mail messages to each other
17 regarding the logistics for the planned shipment of Mentor's starter kits on Friday
18 afternoon. Barkouras was copied on these messages.

19 12. On Friday morning, November 17, 2006, at 10:01 a.m., the regional
20 manager sent a brief e-mail message to Barkouras: "Buy Mentor stock Now \$\$."
21 Barkouras sent a strong reply within three minutes, instructing her: "I would keep
22 this quiet if I were you. I do not know if you have 'confidential' information that
23 could get [sic] be classified as inside information." She responded: "Understood."

24 13. Barkouras knew or was reckless in not knowing that that the
25 information about the FDA's approval of Mentor's silicone implants was material
26 nonpublic information. Barkouras also knew or was reckless in not knowing that
27 he owed a duty of trust and confidence to Mentor and that he should not use or take
28 advantage of the nonpublic information.

1 **C. Defendant Barkouras Illegally Traded In Mentor Securities**

2 14. Barkouras traded and profited on the basis of the nonpublic
3 information about Mentor’s FDA approval.

4 15. On November 17, 2006, Barkouras purchased Mentor call options in
5 two securities brokerage accounts.

6 16. The first account was MyPrint’s corporate account (hereinafter
7 referred to as the “corporate account”).

8 17. The second account was jointly held with his wife (hereinafter
9 referred to as the “joint account”). The joint account had neither the cash nor the
10 trading authority to make option trades when the market opened on November 17.
11 Therefore, on November 17, Barkouras deposited a bank check for \$5,000 and
12 submitted an application to add options trading to the joint account.

13 18. As soon as the market opened on November 17, 2006, at 6:31 a.m.
14 (Pacific Standard Time), Barkouras started purchasing Mentor securities.
15 Barkouras bought Mentor call options in four transactions in the two securities
16 brokerage accounts, as reflected below.

17
18

CORPORATE ACCOUNT	Purchase Date	Purchase Amount	Sale Date	Sale Proceeds	Profit (Loss)
Bought 250 December call options with strike price of \$50	Nov. 17 at 6:31 a.m.	\$7,697	Nov. 22 and Dec. 14	\$73,780	\$66,083
Bought 38 December call options with strike price of \$55	Nov. 17 at 10:28 a.m.	\$418	Options expired on Dec. 18	0	(\$418)

21
22
23
24
25
26
27
28

JOINT ACCOUNT	Purchase Date	Purchase Amount	Sale Date	Sale Proceeds	Profit (Loss)
Bought 55 December call options with strike price of \$50	Nov. 17 at 12:37 p.m.	\$2,551	Nov. 21 and Dec. 8	\$16,437	\$13,886
Bought 200 December call options with strike price of \$55	Nov. 17 at 12:42 p.m.	\$2,185	Options expired on Dec. 18	0	(\$2,185)
TOTAL PROFIT					\$77,366

19. Barkouras also tipped a family member about the impending Mentor Announcement.

20. On November 17, 2006, at 8:57 a.m., Barkouras' family member purchased 500 shares of Mentor stock at \$47.51 per share, for \$23,864.

21. Two trading days after the Announcement, his family member sold the Mentor stock, realizing a profit of \$2,929.

22. By purchasing Mentor securities for his own benefit and by tipping his family member about the nonpublic information, Barkouras breached his duty of trust and confidence to Mentor and its shareholders.

23. Barkouras acted with scienter.

D. Mentor's Announcement

24. On Friday, November 17, 2006, at 2:11 p.m. (Pacific Time), after the close of the market, Mentor made the Announcement about the FDA approval of its silicone implants.

25. In the Announcement, Mentor described the FDA approval as a "historic moment" for the company, explaining that it had worked for 14 years to return the silicone implants to the U.S. market.

1 **VI.**

2 Grant such other and further relief as this Court may determine to be just and
3 necessary.

4 DATED: March 7, 2008

/s/ Janet Rich Weissman
Janet Rich Weissman
Attorney for Plaintiff
Securities and Exchange Commission

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28