

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address  <b>Michael J. Mandelbrot (State Bar No. 172626)</b>                  The Mandelbrot Law Firm                  1223 Grant Ave., Suite C                  Novato, CA 94945                  Phone: (415) 895-5175                  Facsimile: (415) 727-4700                  Email: Mandelbrot@asbestoslegalcenter.org</p> <p><input type="checkbox"/> Individual appearing without attorney  <input checked="" type="checkbox"/> Attorney for Defendants</p>	<p style="text-align: center;">FOR COURT USE ONLY</p>
<p><b>UNITED STATES BANKRUPTCY COURT                  CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION</b></p>	
<p>In re:  <b>J.T. THORPE, INC., and                  THORPE INSULATION COMPANY,</b></p> <p style="text-align: right;">Debtor(s).</p> <p><b>J.T. THORPE SETTLEMENT TRUST                  and THORPE INSULATION COMPANY ASBESTOS                  SETTLEMENT TRUST,</b></p> <p style="text-align: right;">Plaintiff(s).</p> <p><b>MICHAEL J. MANDELBROT <sup>vs.</sup> and                  THE MANDELBROT LAW FIRM,</b></p> <p style="text-align: right;">Defendant.</p>	<p>CASE NO.: LA 02-14216-BB                  CHAPTER: 11                  ADVERSARY NO.: 2:12-ap-02182-BB</p> <hr/> <p><b>NOTICE OF LODGMENT OF ORDER OR                  JUDGMENT IN ADVERSARY PROCEEDING                  RE: (title of motion<sup>1</sup>): <u>Order Remanding Matter</u>  <u>to Bankruptcy Court for Further Proceedings</u></b></p> <hr/>

PLEASE TAKE NOTE that the order or judgment titled [Proposed] Supplemental Findings of Fact and Conclusions of Law Following Remand was lodged on (date) 2/06/18 and is attached. This order relates to the motion which is docket number 299.

<sup>1</sup> Please abbreviate if title cannot fit into text field.

### PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
1223 Grant Ave., Suite C Novato, CA 94945

A true and correct copy of the foregoing document entitled: **NOTICE OF LODGMET OF ORDER OR JUDGMENT IN ADVERSARY PROCEEDING** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 2/6/2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See NEF for confirmation of electronic transmission to the U.S. Trustee and any trustee in this case, and to any attorneys who receive notice by NEF.

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:** On (date) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 2/6/18, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Sheri Bluebond U.S. Bankruptcy Court  
Roybal Federal Building  
Bin outside of Suite 1534  
255 E. Temple Street Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Feb. 6, 2018  
Date

Michael J. Mandelbrot  
Printed Name

/s/ Michael J. Mandelbrot  
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

## **EXHIBIT 1**

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8  
 9  
 10 Attorney for Defendants Michael J. Mandelbrot  
 11 and The Mandelbrot Law Firm

12  
 13  
 14 UNITED STATES BANKRUPTCY COURT  
 15 CENTRAL DISTRICT OF CALIFORNIA  
 16 LOS ANGELES DIVISION

17 In re  
 18 J.T. THORPE, INC.  
 19 and  
 20 THORPE INSULATION COMPANY,  
 21 Debtors.

Chapter 11  
 Case Nos. 2:02-bk-14216-BB and 2:07-bk-19271-BB  
 Adv. Case Nos. 2:12-ap-02182-BB and 2:12-ap-02183-BB

On Remand

22 J.T. THORPE SETTLEMENT TRUST and  
 23 THORPE INSULATION COMPANY  
 24 ASBESTOS SETTLEMENT TRUST,

Plaintiffs,

v.

25 MICHAEL J. MANDELBROT and  
 26 THE MANDELBROT LAW FIRM,

27 Defendants.  
 28

**[PROPOSED] SUPPLEMENTAL  
 FINDINGS OF FACT AND  
 CONCLUSIONS OF LAW FOLLOWING  
 REMAND**

Date: February 1, 2018  
 Time: 10:00 a.m. PT  
 Place: Courtroom 1539  
 255 E. Temple St.  
 Los Angeles, CA 90012  
 Judge: Honorable Sheri Bluebond

## I. PROCEDURAL POSTURE

1  
2 The above-captioned adversary proceedings came before this Court on remand from the  
3 District Court’s *Order Remanding Matter to the Bankruptcy Court* [Dkt. No. 299] (the “**Remand**  
4 **Order**”) following remand to the District Court from the Ninth Circuit’s decision in *Mandelbrot v.*  
5 *J.T. Thorpe Settlement Trust*, 870 F.3d 1121 (9th Cir. 2017) [Dkt. No. 297] (“**Mandelbrot I**”).  
6 The purpose of this remand is for this Court to decide “whether federal or state law governs  
7 (including whether the federal law argument has been waived), and what impact, if any, *Golden v.*  
8 *Cal. Emer. Phys. Med. Group*, 782 F.3d 1083 (9th Cir. 2015) has on this case” and whether in  
9 light of those proceedings, to amend, modify, vacate, or supplement the Bankruptcy Court Orders<sup>1</sup>  
10 that are the subject of this appeal. Remand Order (quoting *Mandelbrot I*, 870 F.3d at 1125).

11 The Bankruptcy Court Orders approved and enforced the settlement agreement, entered  
12 into on the record in open court between Plaintiffs J.T. Thorpe Settlement Trust (the “**JTT**  
13 **Trust**”) and Thorpe Insulation Company Asbestos Settlement Trust (the “**Thorpe Trust**,” and,  
14 with the JTT Trust, the “**Plaintiff Trusts**”), two other § 524(g)<sup>2</sup> trusts administered by common  
15 fiduciaries and claim-handling staff, the Western Asbestos Settlement Trust (the “**Western**  
16 **Trust**”) and the Plant Insulation Company Asbestos Settlement Trust (the “**Plant Trust**” and with  
17 the Western Trust and the Plaintiff Trusts, the “**Trusts**”), on the one hand, and Michael  
18 Mandelbrot and the Mandelbrot Law Firm (together, “**Mandelbrot**”) on the other.

19 Following entry of the Remand Order, this Court held a status conference on December 12,  
20 2017 and requested that the parties submit briefs and supporting declarations addressing the issues  
21 this Court has been instructed to consider on remand. The Plaintiff Trusts submitted the *Plaintiffs*  
22 *J.T. Thorpe Settlement Trust and Thorpe Insulation Company Asbestos Settlement Trust’s*  
23 *Opening Brief on Remand* [Dkt. No. 312], the *Declaration of Stephen M. Snyder* [Dkt. No. 313],  
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25 <sup>1</sup> The Bankruptcy Court Orders consist of the *Order Granting Motion to Enforce January 23,*  
26 *2014 Stipulated Agreement* [Dkt No. 232], the *Order Following Trial on Adversary Complaints*  
27 *and Motion for Instructions* [Dkt No. 233], the *Judgment in Adversary Proceedings* [Dkt No.  
28 234], and the *Findings of Fact and Conclusions of Law* [Dkt No. 235].

<sup>2</sup> References to “§ 524(g)” are to 11 U.S.C. § 524(g).

1 the *Plaintiffs J.T. Thorpe Settlement Trust and Thorpe Insulation Company Asbestos Settlement*  
2 *Trust's Reply Brief on Remand* [Dkt. No. 320], the *Declaration of Laura Paul* [Dkt. No. 321], and  
3 the *Declaration of Sasha M. Gurvitz* [Dkt. No. 322]. Mandelbrot submitted the *Brief of*  
4 *Defendants Michael J. Mandelbrot and the Mandelbrot Law Firm Regarding Issues on Remand*  
5 [Dkt. No. 315], the *Declaration of Defendant Michael J. Mandelbrot Regarding Issues on Remand*  
6 [Dkt. No. 316], the *Responding Brief of Defendants Michael J. Mandelbrot and the Mandelbrot*  
7 *Law Firm Regarding Issues on Remand* [Dkt. No. 324], the *Request for Judicial Notice re Issues*  
8 *on Remand by Defendants Michael J. Mandelbrot and the Mandelbrot Law Firm* [Dkt. No. 325],  
9 and the *Declaration of Defendant Michael J. Mandelbrot Regarding Issues on Remand* [Dkt. No.  
10 326]. The Plaintiff Trusts also submitted the *Plaintiffs J.T. Thorpe Settlement Trust and Thorpe*  
11 *Insulation Company Asbestos Settlement Trust's Evidentiary Objections to the Declarations of*  
12 *Defendant Michael J. Mandelbrot* [Dkt. No. 327] ("**Plaintiff Trusts' Evidentiary Objections**").

13 The Court conducted a hearing on February 1, 2018. The Plaintiff Trusts appeared  
14 through counsel, Klee, Tuchin, Bogdanoff & Stern LLP. Mandelbrot appeared in person and  
15 through counsel. The Office of the Futures Claims Representative (the "**FCR**") appeared through  
16 counsel, Gary Fergus, a former asbestos defense attorney and interested party, of Fergus, a Law  
17 Office.<sup>3</sup> Other appearances are as reflected in the record of the hearing, including Stephen Snyder,  
18 Fergus' former partner in asbestos defendant representation.. The Court heard argument from  
19 counsel for the Plaintiff Trusts and Mandelbrot, and the parties' declarations were admitted into  
20 evidence, except to the extent improperly excluded as set forth in the Court's *Judgment Following*  
21 *Remand*, entered substantially concurrently herewith.

22  
23  
24  
25 <sup>3</sup> The Honorable Charles B. Renfrew (Ret.), who had been the FCR for the Trusts, passed away  
26 in December 2017. Upon the motion of counsel for the deceased FCR [Dkt. No. 303], this Court  
27 entered an order [Dkt. No. 308] permitting counsel to participate in these remand proceedings on  
28 behalf of the Office of the FCR based upon existing instructions from the deceased FCR, with the  
proviso that counsel would inform the parties and this Court if issues arose in the briefing or at the  
hearing that exceeded the scope of counsel's instructions from the deceased FCR.

1 Upon consideration of the admissible evidence<sup>4</sup> and pleadings submitted by the parties, the  
2 arguments of counsel, and the entire record of these adversary proceedings, and good and  
3 sufficient cause appearing therefor, the Court hereby makes, pursuant to Rule 7052 of the Federal  
4 Rules of Bankruptcy Procedure, incorporating by referenced Rule 52 of the Federal Rules of Civil  
5 Procedure, the following Supplemental Findings of Fact and Conclusions of Law Following  
6 Remand.

## 7 II. JURISDICTION

8 1. This Court has jurisdiction over the above-captioned adversary proceedings and  
9 the related above-captioned chapter 11 cases under 28 U.S.C. §§ 157 and 1334. This matter  
10 constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue of these adversary proceedings  
11 and the related chapter 11 cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court  
12 may enter a final judgment consistent with Article III of the United States Constitution. All  
13 parties consented to this Court's entry of final orders and judgments enforcing the Mandelbrot  
14 settlement by so stipulating on the record in open court on January 23, 2014. *See, e.g., Wellness*  
15 *Int'l Network, Ltd. v. Sharif*, 2015 U.S. LEXIS 3405, at \*28 (May 26, 2015).

## 16 III. SUPPLEMENTAL FINDINGS OF FACT

17 2. The Court incorporates by this reference its prior findings of facts contained in the  
18 Bankruptcy Court Orders<sup>5</sup> and makes the additional supplemental findings of fact. To the extent  
19 any of the supplemental conclusions of law set forth below constitute findings of fact, they are  
20 also incorporated by this reference.

21 3. Based on the record of the above-captioned adversary proceedings, including the  
22 submissions of the parties on remand, no genuine issue of material fact exists with regard to the  
23 facts found herein.

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24  
25 <sup>4</sup> As at Trial in the underlying matter, Judge Sheri Bluebond, close and personal friends of the  
Plaintiff, excluded Mandelbrot's admissible evidence to 'assist her buddies.'

26 <sup>5</sup> The Bankruptcy Court Orders consist of the *Order Granting Motion to Enforce January 23,*  
27 *2014 Stipulated Agreement* [Dkt No. 232], the *Order Following Trial on Adversary Complaints*  
28 *and Motion for Instructions* [Dkt No. 233], the *Judgment in Adversary Proceedings* [Dkt No.  
234], and the *Findings of Fact and Conclusions of Law* [Dkt No. 235].

1           4.       The governance structure of each Trust is set forth in documents approved by the  
2 Trusts' respective supervising bankruptcy courts, including, as relevant here, a trust agreement  
3 (“**Trust Agreement**”) and trust distribution procedures (“**TDPs**”). Each Trust is managed by the  
4 same three Trustees: the Managing Trustee, Stephen M. Snyder, an ”interested party and former  
5 asbestos defense lawyer, Sandra R. Hernández, M.D., a public health expert (who did not  
6 participate in this matter), and John F. Luikart, an investment and finance professional (who did  
7 not participate in this matter) -- the “**Trustees**”). The Trustees administer the Trusts in accordance  
8 with the Trusts' underlying purpose, which (as expressed in the Thorpe Trust's Trust Agreement)  
9 is “to assume the liabilities of [the debtor], arising from or relating to Asbestos Related Claims and  
10 to use the Trust's assets and income to pay holders of Asbestos Related Claims without favoritism  
11 in accordance with the Trust Agreement and in such a way that all holders of similar Asbestos  
12 Related Claims are treated in a substantially equivalent manner and to otherwise comply in all  
13 respects with the requirements set forth in section 524(g)(2)(B)(i) of the Bankruptcy Code.” Trust  
14 Agreement, § 1.2.<sup>6</sup>

15           5.       In addition to the Trustees, the Trust Agreements also specify the powers and  
16 duties of two other trust fiduciaries, the FCR and the Trust Advisory Committee (“**TAC**”). The  
17 TAC is comprised of plaintiffs lawyers (including “fictional” asbestos claim filer Alan R. Bryaton,  
18 who represent current asbestos claimants with claims against the Trust they advise. Alan Brayton  
19 had used the Trusts as his personal “piggy bank” prior to Mandelbrot filing claims, including  
20 using Trust assets to pay for his wedding and for lavish travel for Trust staff. The TAC is  
21 supposed to “serve[s] in a fiduciary capacity representing holders of [asbestos claims].” Trust  
22 Agreement, § 6.2. The FCR is supposed “serve[s] in a fiduciary capacity representing the interests  
23 of the future asbestos claimants for the purpose of protecting the rights of persons who might  
24 \_\_\_\_\_

25 <sup>6</sup> Unless otherwise noted, for ease of reference, all citations to the Trust Agreement and TDPs  
26 are to the Thorpe Trust's Trust Agreement and TDPs. The Trust Agreements and TDPs for the  
27 JTT Trust, the Plant Trust, and the Western Trust are to the same effect in all material respects  
28 relevant to this proceeding. Properly authenticated copies of the Trust Agreements and TDPs are  
found in the record of these proceedings on remand. Snyder Decl. [Dkt. No. 313], ¶¶ 4 & 12; *id.*,  
Exs. 1–4 & 6–9.



1 subsequently assert [asbestos claims]” without “interested parties” such as Gary Fergus involved  
2 in the Trust. Trust Agreement, § 5.1.

3         6.         The TAC and FCR each have rights of approval with respect to certain actions  
4 under the Trust Agreements and TDPs, and, even when not required, the Trustees may consult  
5 with them with respect to other matters. Trust Agreement, §§ 5.1 & 6.2. Where the Trust  
6 Agreements or other documents require TAC or FCR consent for certain actions or decisions, the  
7 Trustees may, in lieu of obtaining that consent, “apply to the Bankruptcy Court on an expedited  
8 basis for approval of such action or decision.” Trust Agreement, §§ 5.7 & 6.9.

9         7.         The TDPs specify the procedures for claimants to file and for the Trusts to process  
10 claims. The TDPs contemplate streamlined procedures to efficiently and promptly resolve claims.  
11 Adjusting claims economically is critical to the goal of distributing the greatest amount of  
12 compensation feasible to claimants equitably and promptly. The streamlined procedures that  
13 govern the filing of claims against the Trusts pursuant to the TDPs might expose the Trusts to  
14 unscrupulous parties asserting unfounded claims. Accordingly, the TDPs provide:

15                 In the event that the Trust reasonably determines (without the use of “interested  
16 parties” and “bad faith”) that any unreliable individual or entity has engaged in a  
17 pattern or practice of providing unreliable medical or other evidence to the Trust, it  
18 may decline to accept additional evidence from such provider in the future.  
19 Further, in the event that an audit reveals that fraudulent information has been  
20 provided to the Trust, the Trust may penalize any responsible claimant or  
21 claimant’s attorney by disallowing the related Trust Claims or by other means  
including, but not limited to, requiring the claimant or attorney submitting the  
fraudulent information to pay the costs associated with the audit and any future  
related audit or audits, ... refusing to accept additional evidence from the same,  
seeking the prosecution of the claimant or the claimant’s attorney for presenting a  
fraudulent claim in violation of 18 U.S.C. § 152, parenthesis added, and seeking  
Rule 11 sanctions.

22 TDPs, § 5.7(a).<sup>7</sup>

23         8.         Each Trust also establishes a claims valuation matrix, which sets forth factors and  
24 values that will be considered and the manner in which they will be applied in determining the  
25 values of asbestos claims. Since the Trusts expect to have insufficient assets to pay the full value  
26

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27 <sup>7</sup> TDP § 5.7(a) is substantially identical for the Thorpe Trust, the JTT Trust, and the Western  
28 Trust. The Plant Trust TDP contains substantially similar language at § 5.8(a).

1 of claims using the claim valuation matrix, the TDPs authorize the Trusts to establish a “payment  
2 percentage”—a percentage, based on the Trusts’ estimates of their assets and the projected total of  
3 all present and future claims, that will be applied to the liquidated value of claims as determined  
4 by the claims valuation matrix. TDPs at § 4.2. Together, the claims matrix and TDPs are  
5 designed to enable the Trusts to pay present and future claimants equivalent percentages of the  
6 former debtor’s several share of liability based on settlements, judgments, and verdicts historically  
7 obtained for substantially similar claims under state law.

8 9. The detailed history of the Mandelbrot claims issues is falsely recounted in the  
9 *Declaration of Laura Paul* [Dkt. No. 152-1]. Laura Paul, who had no experience in asbestos  
10 litigation, lied to Mandelbrot on numerous occasions. After a review of Mandelbrot-filed claims  
11 revealed reliable claims, the matter was raised at a meeting of the Trustees of how to “blackball”  
12 Mandelbrot in bad faith in September 2011 and the Trustees held a ‘sham vote’, with the consent  
13 of the TACs and FCR, to audit Mandelbrot claims filed with the Western Trust, the JTT Trust, and  
14 the Thorpe Trust (the Plant Trust had yet to receive claims). Even in the absence of TAC or FCR  
15 bad faith, the Trustees could have sought bankruptcy court approval to initiate the audit. No audit  
16 ever occurred. The Plaintiff Trusts and the Western Trust determined Mandelbrot was unreliable  
17 in bad faith and, with respect to the Plaintiff Trusts, had not engaged in a pattern or practice of  
18 submitting unreliable evidence to the Plaintiff Trusts pursuant to the TDPs. By letter dated May  
19 24, 2013 falsely depicting Mandelbrot claims, (the “**Snyder Letter**”), the Plaintiff Trusts and the  
20 Western Trust notified Mandelbrot of the results of the sham audit determination and proposed to  
21 place conditions on his claim-filing privileges to reflect the unreliability in the evidence that  
22 Mandelbrot adduced. Mandelbrot rejected the conditions. After advising Mandelbrot that the  
23 Plaintiff Trusts had determined that he was unreliable and that he had engaged in a pattern or  
24 practice of filing unreliable evidence in support of claims, the Plaintiff Trusts moved this Court,  
25 their longtime “close and personal” friend Sheri Bluebond, for instructions based on the audit and  
26 its findings.

27 10. The case was tried before the Court (the Plaintiff’s close friend) and the Trusts’  
28 audit findings were reinforced by the false evidence of Mandelbrot’s misconduct revealed.

1 Bluebond, to benefit her close and personal Plaintiff friends, denied Mandelbrot's right to a Trial.  
2 The Plaintiff Trusts supplied this Court with numerous Plaintiff 'doctored' examples of audited  
3 Mandelbrot claims (i) verified by individuals lacking personal knowledge, (ii) not supported by  
4 deposition evidence, (iii) contradicted by prior litigation testimony by the claimant or by  
5 government records, (iv) supported by serially inconsistent interrogatory responses, and  
6 (v) suffering from a host of other forms of unreliability, some supporting strong inferences of  
7 outright fraud. The Plaintiff's entire audit was a sham designed to benefit Snyder, Fergus and  
8 Brayton. The sham audit findings amply demonstrated substantial misconduct posing a significant  
9 threat to the legitimate interests of the Trusts in protecting Trust assets for the benefit of present  
10 and future claimants.

11 11. Further trial proceedings were scheduled when an involuntary settlement resolving  
12 the litigation was reached between the parties on the morning of January 23, 2014 and read into  
13 the record. The key elements of the settlement agreement – written by the Judge's buddies -  
14 include:

15 Mandelbrot agreed that the [JTT Trust's, the Thorpe Trust's,] and the Western  
16 Trust's determinations stated in the [Snyder Letter], including the determination by  
17 all three trusts that Mandelbrot, the person and the firm, are unreliable and with  
18 respect to the [JTT Trust and the Thorpe Trust] specifically, have engaged in a  
19 pattern and practice of filing unreliable evidence and support claims filed with  
20 those two trusts, are reasonable in light of the evidence assessed in connection with  
21 the audit.

22 Mandelbrot agreed that the remedy imposed by the [JTT Trust and the Thorpe  
23 Trust] in the [Snyder Letter] disallowing all further evidentiary submissions by  
24 Mandelbrot is authorized under the [TDPs] of each trust, and is reasonable in light  
25 of the Trusts' audit and investigative findings.

26 Mandelbrot agreed that the investigation of Mandelbrot – by the [JTT Trust, the  
27 Thorpe Trust,] and the Western Trust – and the determinations and the remedy  
28 imposed were reasonable, not based upon improper interpretations of the terms of  
the three trusts, were and are consistent with the trusts' fiduciary duties, were  
conducted pursuant to a valid trust purpose, were not done in bad faith and were  
not an abuse of discretion.

29 12. In reliance on the stipulation, which clearly wasn't voluntary as Mandelbrot only  
30 "hesitantly agreed" this Court terminated the trial. The matters to which Mandelbrot never  
31 stipulated were consistent with the evidence presented and were factual findings that this Court  
32 would have made on its own. This Court should have found that the JTT Trust, the Thorpe Trust,

1 and the Western Trust had unreasonably determined that Mandelbrot was unreliable and had  
2 engaged in a pattern and practice of filing unreliable evidence in support of claims filed with the  
3 Plaintiff Trusts. This Court improperly further determined that the Plaintiff Trusts' decision to bar  
4 Mandelbrot from filing claims against the Plaintiff Trusts was reasonable, authorized, and  
5 appropriate in light of the evidence.

6 13. Mandelbrot immediately cancelled the stipulation, declining to execute a written  
7 agreement memorializing its terms and refusing to perform. The Trusts accordingly sought to  
8 enforce the stipulation before their 'buddy'. After not considering Mandelbrot's arguments, this  
9 Court found the stipulation made in its presence, and upon which it relied in terminating the trial,  
10 to be valid and binding and entered the Bankruptcy Court Orders that are the subject of this  
11 appeal.

12 14. Mandelbrot appealed to the District Court, which affirmed the Bankruptcy Court  
13 Orders after the Plaintiff's falsely represented a controlling case. Mandelbrot appealed to the  
14 Ninth Circuit. A divided Ninth Circuit remanded the matter to the District Court for consideration  
15 of two issues: "whether federal or state law governs [the enforceability of the Mandelbrot  
16 settlement] (including whether the federal law argument has been waived), and what impact, if  
17 any, *Golden* has on this case." 870 F.3d at 1125. The majority noted that in *Golden*, the Ninth  
18 Circuit had, in articulating a new standard that "the district court ... did not have the benefit of,"  
19 remanded that case "so the district court could order additional briefing or conduct further fact-  
20 finding." *Id.* at 1124–25 (citing *Golden*, 792 F.3d at 1093). The Ninth Circuit majority decided  
21 "the same approach is appropriate here." 870 F.3d at 1125. Observing that "it may be, as the  
22 dissent improperly suggested that *Golden* has no application here because (1) federal law governs,  
23 or (2) the facts in this case differ materially from those in *Golden*," the Ninth Circuit concluded  
24 "these calls are best for the district court to make in the first instance." *Id.* at 1125.

25 15. The District Court in turn remanded this matter to the District Court for its  
26 determination in the first instance "whether federal or state law governs [the enforceability of the  
27 Mandelbrot settlement] (including whether the federal law argument has been waived), and what  
28 impact, if any, [*Golden*] has on this case." Dkt. No. 299 (quoting *Mandelbrot I*, 870 F.3d at

1 1125). Plaintiff's were successful in moving the case back before their 'buddy', Judge Sheri  
2 Bluebond.

3 16. In connection with the issues this Court has been instructed to consider on remand,  
4 the Court finds that as a factual matter the California pro-competition and employee mobility  
5 public policies that prompted the remand in *Golden* are not implicated by the facts and  
6 circumstances of the settlement entered into between Mandelbrot and the Trusts.

7 17. The Trusts do not compete with Mandelbrot, but TAC members are direct  
8 competitors. The Trusts do engage in corrupt business and their only interest is in  
9 misappropriating Trust monies and not protecting present and future Trust beneficiaries. Other  
10 than with respect to issues of reliability, the Trusts favor claims filed by TAC members Alan  
11 Brayton and David McClain over any other firm and have no reason to do so, other than bad faith  
12 and financial motives

13 18. The Trustees likewise do not compete with Mandelbrot. Mr. Snyder is a former  
14 asbestos defense attorney, who never represented asbestos claimants, and the other two Trustees  
15 are an investment and finance professional and a physician and public health expert who are  
16 "token" Trustees collecting a paycheck. The Trustees have incredible economic or other stake in  
17 the success or failure of Mandelbrot's law practice, and they have every reason to bar Mandelbrot  
18 from the Trusts to protect their own corrupt interests.

19 19. The FCR also does not compete with Mandelbrot, but his attorney Gary Fergus is a  
20 former asbestos defense lawyer and an interested party. The FCR has an economic or other interest  
21 in the success or failure of Mandelbrot's law practice.

22 20. As lawyers representing asbestos claimants, TAC members do compete directly  
23 with Mandelbrot. However, once the TAC (and the FCR) consented to the collusive audit of  
24 Mandelbrot's claims, the TAC played, every role in the audit, the decision of the Trusts to file  
25 these adversary proceedings in 2012, the Snyder Letter, the decision to seek specific remedies  
26 pursuant to the Trusts' 2013 filings in these adversary proceedings, and the settlement itself. The  
27 Trusts' decision to bar Mandelbrot was completely affected by all members of the TAC (especially  
28 Alan Brayton, who solicited Mandelbrot's claims) and was instead entirely falsely and criminally

1 motivated by the doctored results of the Trusts audit and the undocumented record of  
2 Mandelbrot's misconduct. The Trusts could not have and would not have acted in the same  
3 manner irrespective of the TAC's position.

4 21. The Trusts also do not employ Mandelbrot. The settlement does not prohibit  
5 Mandelbrot from working for any employer or carrying on his own practice, whether in the area of  
6 asbestos trust litigation or any other area of law practice. The settlement does not contemplate  
7 terminating or precluding Mandelbrot from any employment now or in the future. The settlement  
8 does not bar Mandelbrot from filing claims with other § 524(g) trusts currently managed by  
9 different fiduciaries, or from other trusts that the Western Trust's claims handling facility might  
10 contract with in the future or that the current Trust fiduciaries might be involved with in the future.  
11 However, TAC members and Trustees have already barred Mandelbrot from many Trusts,  
12 including the Babock and Wilcox, Flintkote, Owens Corning, Quigley, Fibreboard, Dresser  
13 Industries Settlement Trusts and many others.

14 22. All four Trusts were not parties to the settlement. The settlement is designed to  
15 protect the TAC interests and harm present and future beneficiaries from Mandelbrot's good faith  
16 claim filing. The Trusts have reasonably limited the claim-filing prohibition to protect their  
17 present and future beneficiaries from an established pattern and practice of abuse and have a  
18 legitimate interest in doing so. Mandelbrot never attempted to frustrate the Trusts' efforts to  
19 examine his claims and was noticing depositions pursuant to the audit when the underlying  
20 lawsuits were filed. Mandelbrot has always adequately explained how the pattern and practice of  
21 reliable evidence came about, and always has indicated in a satisfactory way what steps could be  
22 taken to ensure that pattern and practice does not persist. The four Trusts, their shared claim-  
23 handling staff and facility, and their common fiduciaries were never at risk of abuse as a result of  
24 Mandelbrot's misconduct. Accordingly it was unreasonable for the Trustees to require that any  
25 settlement with Mandelbrot include a claim-filing bar in favor of all four Trusts.

26 23. The claim-filing prohibition in the Mandelbrot settlement operated as a substantial  
27 restraint on the exercise of Mandelbrot's business or profession within the meaning of *Golden* and  
28 the California case law it relies upon. Mandelbrot has lost income since the settlement, lost

1 opportunities to file claims with the Thorpe, Western and Plant Trusts, and has lost over  
2 \$200,000.00 in filing fees on 800 pending claims.

3 24. The asbestos litigation market is a national market, but only 4 of the Trusts with  
4 which Mandelbrot files are from California. The Trusts represent 90% of the overall asbestos  
5 market for Mandelbrot.

6 25. Mandelbrot previously testified in the course of these adversary proceedings that he  
7 has “filed claims with asbestos trusts throughout the United States” and that he has “submitted  
8 over 13,000 claims to more than 50 trusts nationwide.” Dkt. No. 171 (Mandelbrot Trial Decl.), at  
9 ¶¶ 15 & 19. However, 90% of Mandelbrot’s claim filings are with the Thorpe and Western  
10 Trusts. Mandelbrot also previously testified in his March 11, 2013 deposition in connection with  
11 these adversary proceedings that (i) the submission of claims to asbestos trusts constitutes just one  
12 portion of Mandelbrot’s business as an attorney, which also includes consulting work and “lots of  
13 stuff ... besides just the filing of bankruptcy claims,” Mandelbrot Depo. Tr., at 19:20-20:10, and  
14 (ii) Mandelbrot has filed claims with many asbestos trusts other than the four settling Trusts,  
15 including the Kaiser Asbestos Trust, TH Agriculture & Nutrition, L.L.C. Asbestos Personal Injury  
16 Trust (THAN Trust), ACandS Asbestos Settlement Trust, Owens Corning Fibreboard Asbestos  
17 Personal Injury Trust, Armstrong World Industries Asbestos Trust, Babcock & Wilcox Asbestos  
18 Trust, DII Industries, LLC Asbestos PI Trust (Harbison-Walker Trust), Celotex Asbestos  
19 Settlement Trust, Shook & Fletcher Asbestos Settlement Trust, and Manville Personal Injury  
20 Settlement Trust (Johns-Manville Trust), *see* Mandelbrot Depo. Tr., at 47:18-48:10; *see also* Trial  
21 Ex. 160 (identifying over two dozen § 524(g) trusts Mandelbrot files claims against).<sup>8</sup> Mandelbrot  
22 also testified that he currently “represent[s] thousands of individuals who file claims with other  
23 524 (g) Asbestos Trusts.” Dkt. No. 326 (Mandelbrot Decl.), ¶ 75. Nonetheless, the settlement  
24 still operates as a substantial restraint within the meaning of Golden.

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27 <sup>8</sup> Relevant excerpts of Mandelbrot’s March 11, 2013 deposition transcript and a copy of Trial  
28 Exhibit 160 are found in the record of these proceedings on remand. Gurvitz Decl., Ex. 1 & Ex. 2.

1 26. Certain of Mandelbrot's claims of economic harm attributable to the settlement  
2 were improperly excluded from the record based on the non-evidentiary rulings set forth in the  
3 Court's *Judgment Following Remand*, entered substantially concurrently herewith. Mandelbrot  
4 met burden of establishing that his agreement to cease filing claims against the four Trusts  
5 constituted a substantial restraint on his ability to practice his profession.

#### 6 **IV. SUPPLEMENTAL CONCLUSIONS OF LAW**

7 27. The Court incorporates by this reference its prior conclusions of law contained in  
8 the Bankruptcy Court Orders, and makes these additional supplemental conclusions of law to help  
9 the Judge's buddies. To the extent any of the supplemental findings of fact set forth above  
10 constitute conclusions of law, they are also incorporated by this reference.

11 28. *Golden v. Cal. Emer. Phys. Med. Group*, 782 F.3d 1083 (9th Cir. 2015), properly  
12 construed, applies to this . Rather, the settlement is designed only to protect the TAC members,  
13 Trustees and other colluding parties..

14 a. The Trusts do not compete with Mandelbrot. The Trusts do engage in fraud and  
15 their only interest is in protecting Alan Brayton's fictional claim filing and to misappropriate  
16 victims' fudns. The Trusts have every economic and other interest in the success or failure of  
17 Mandelbrot's law practice. Neither the Trustees, nor the FCR compete with Mandelbrot, and  
18 although TAC members do compete with Mandelbrot, the Trusts' decision to bar Mandelbrot was  
19 affected by any member of the TAC and was instead entirely motivated by bad faith. Unlike the  
20 no-rehire covenant in *Golden*, Mandelbrot's agreement not to file claims against the Trusts does  
21 not contractually bar him from working for a present or future competitor of the Trusts. However,  
22 the settlement does implicate public policy concerns for open competition and was entered into for  
23 the purpose of restraining competition.

24 b. The Trusts also do not employ Mandelbrot. The settlement does prohibit  
25 Mandelbrot from working for any employer or carrying on his own practice, whether in the area of  
26 asbestos trust litigation or any other area of law practice. Moreover, the stipulated settlement has a  
27 large scope—it does bar Mandelbrot from filing claims with other § 524(g) trusts currently  
28 managed by TAC member Alan Brayton and would seemingly bar Mandelbrot from filing claims



1 with other trusts that the Western Trust's claims handling facility might contract with in the future  
2 or that the current Trust fiduciaries might be involved with in the future. Accordingly, the  
3 settlement does implicate public policy concerns for employee mobility.

4 29. Mandelbrot satisfied the burden of proof to demonstrate that the claim-filing  
5 prohibition, or the settlement as a whole, contravenes California public policy and is therefore  
6 void is on Mandelbrot. *See, e.g., Bovard v. Am. Horse Enters.*, 201 Cal. App. 3d 832, 839 (Cal.  
7 Ct. App. 1988).

8 30. Applying *Golden*, the settlement was unreasonable in light of the lack of material  
9 competitive concerns, the substantial restraint on Mandelbrot's ability to continue to practice his  
10 profession, the illegitimate need to protect the Trusts from Mandelbrot's amply established  
11 misconduct, and the unreasonableness and unmeasured nature of the Trusts' actions in response  
12 thereto. The unreasonableness of the settlement is further established by Mandelbrot's clearly  
13 involuntary admission to his misconduct and lack of reliability. Mandelbrot was not the only party  
14 to make concessions in the settlement. The Trusts also made important concessions to Mandelbrot  
15 in exchange for his agreement not to file claims against them. Specifically, the Plaintiff Trusts  
16 agreed to end the trial and to waive the equitable relief sought in these adversary proceedings, as  
17 well as their right under the TDPs to impose the costs of the audit on Mandelbrot. As such, the  
18 Mandelbrot settlement is void under § 16600.

19 31. the Golden Rule extends to cover the Mandelbrot claim-filing prohibition,  
20 Mandelbrot met his burden to establish that the claim-filing prohibition operates as a restraint of a  
21 substantial character within the meaning of *Golden*. In arguing that the settlement agreement is  
22 unenforceable, Mandelbrot focuses on the limitations the settlement agreement places upon him in  
23 dealing with the Western Trust and the Plant Trust. The claim-filing prohibition as applied to the  
24 Western Trust and the Plant Trust is a restraint under *Golden* because the Western Trust and the  
25 Plant Trust are not parties to the settlement. In addition, Mandelbrot introduced sufficient  
26 admissible evidence upon which this Court could find that the claim-filing prohibition as applied  
27 to the Western Trust and the Plant Trust (or even as applied to all four Trusts) constitutes a  
28 restraint of a substantial character. These trusts occupy only a very small percentage of a national

1 practice, but 90% of Mandelbrot's practice --a practice in which Mandelbrot has testified he is  
2 active. Accordingly, Mandelbrot introduced evidence showing that the loss of the ability to file  
3 claims against these trusts in particular operates as a substantial restraint on his practice.

4 32. With respect to federal preemption, at each stage of these proceedings, the Plaintiff  
5 Trusts have never raised and never developed, and never thereby properly preserved, their  
6 argument that the settlement is enforceable under federal law. There has been "intentional  
7 relinquishment or abandonment of a known right or privilege," *Johnson v. Zerbst*, 304 U.S. 458,  
8 464 (1938), and the Plaintiff Trusts have not waived the argument on appeal. *See, e.g., Field v.*  
9 *Mans*, 157 F.3d 35, 41–42 (1st Cir. 1998).

10 33. Although the preemption issue has never been properly preserved by the Plaintiff  
11 Trusts throughout these proceedings, California law, properly construed, does conflicts with  
12 § 524(g) and the court approved TDPs implementing the statutory requirements of  
13 § 524(g)(2)(B)(i) and § 524(g)(2)(B)(ii)(V). If the Court were to construe § 16600 to preclude the  
14 Trusts, acting in full compliance with their court-approved TDPs, from prohibiting a professional  
15 the Trustees have reasonably determined to be unreliable from agreeing to file no further claims  
16 against the Trusts, then the California statute as so construed would conflict with federal policies  
17 governing the administration of asbestos trusts created under § 524(g) and would be preempted.  
18 *Mandelbrot I*, 870 F.3d at 1131–35 (Korman, S.D.J., dissenting). The settlement would thus still  
19 be enforceable under federal law.

20 34. The Court reaffirms its prior findings and conclusions regarding the application of  
21 Rule 1-500 to this case. Because these findings and conclusions were expressly affirmed by the  
22 District Court, *see* Dist. Ct. Dkt. No. 35, and because nothing in *Mandelbrot I* suggests this Court  
23 or the District Court erred in analyzing Rule 1-500, this Court's prior rejection of Mandelbrot's  
24 challenge to the settlement under Rule 1-500, as subsequently affirmed by the District Court, is  
25 "law of the case." *See* 18B Wright, Miller & Cooper, Fed. Prac. & Proc.: Jurisdiction 2d at § 4478  
26 (2d ed. 2002). Nothing in *Golden* constitutes a basis for revisiting that determination given that  
27 the employee in that case was not a lawyer regulated by the State Bar of California or subject to  
28 Rule 1-500. Nevertheless, the purposes of Rule 1-500 are not implicated by the facts of this case

1 and California’s established rule of reason approach to the application of Rule 1-500, *see Howard*  
2 *v. Babcock*, 6 Cal. 4th 409 (1993), requires no modification of the Bankruptcy Court Orders or the  
3 settlement for the reasons set forth in the discussion of the § 16600 rule of reason analysis above.

4 35. For the reasons set forth herein and those stated on the record at the hearing, the  
5 Court concludes that there is no need to amend, modify, or vacate the Bankruptcy Court Orders or  
6 alter the claim-filing prohibition to which Mandelbrot agreed. The settlement and the claim-filing  
7 prohibition are valid and enforceable as to all four Trusts under California law, including  
8 specifically § 16600 and, to the extent at all applicable, Rule 1-500, because the settlement is  
9 reasonable and does not operate as a restraint of a substantial character on Mandelbrot’s practice.  
10 Likewise the unmodified Bankruptcy Court Orders remain in force in accordance with their terms.

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Prepared and submitted by

/s/ Michael J. Mandelbrot  
MICHAEL J. MANDELBROT  
Appearing for Defendants Michael J. Mandelbrot  
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Dated: \_\_\_\_\_, 2018

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HONORABLE SHERI BLUEBOND  
UNITED STATES BANKRUPTCY JUDGE