

No. 21-1144

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IN THE  
**Supreme Court of the United States**

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LEACH, *et al.*,

*Petitioners,*

v.

MENTOR WORLDWIDE LLC,

*Respondent.*

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**Petition for Reconsideration on the  
Denial of Petition for a Writ of Certiorari  
from the Supreme Court of the United States  
and Judgment of the Ninth Court of Appeals**

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**PETITION FOR RECONSIDERATION**

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May 13, 2022

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## **QUESTIONS PRESENTED**

The first question presented is whether Rule 10 (a), (b) and (c) apply to Petitioners in the denial of the Petition of Writ of Certiorari that was denied on April 18, 2022.

The next question presented is whether preemption under the Medical Device Amendments to the Food, Drug, and Cosmetic Act supports Rule 12(b)(6) dismissal of state common law claims alleging failure to warn by virtue of inaccurate post-approval, post-sale public reporting of adverse events, and claims alleging defective manufacture of medical devices.

(i)

## **PARTIES TO THE PROCEEDING**

Petitioners here were included in an appellate case listed below but chose to go a different direction pursuant to this Court's Rule 10 (a) (b) (c).

*Sewell, et al. v. Mentor Worldwide LLC, et al.*,  
9th Circuit 19-56393; Dist. of Cent. California  
19-cv-01126.

Petitioners herein chose to pursue a different direction as *pro se* filings of: Petition for Rehearing, Petition for Rehearing En Banc and Motion for Reconsideration to file a Stay for purposes of Writ of Certiorari.

### **STATEMENT OF RELATED CASES**

The following proceedings are directly related to this petition:

United States District Court for the Central District of California Judgments:

*Sewell v. Mentor Worldwide LLC*, SA CV 19-01126-AB (PLAx). Judgment entered October 29, 2019.

United States Court of Appeals for the Ninth Circuit Judgments:

*Sewell v. Mentor Worldwide LLC*, 19-56393. Judgment entered February 5, 2021.

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## **PETITION FOR RECONSIDERATION**

Petitioners respectfully ask for their Petition for Reconsideration to be reviewed among all of the Justices. Petitioners also respectfully request their filings be served per Rule 29.4 (a) (b) to the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N.W., Washington D.C. 20530-0001, which is defined by 28 U.S.C. § 451 and pursuant to 28 U.S.C. § 2403(a)(b), filings by Petitioners be served to Rob Bonta, California Attorney General, 1300 "I" Street, Sacramento, CA 95814-2919 per Rule 14.1(a), (b)(i), (c), (d), (e)(i)(ii)(iii)(iv).

Petitioners are filing timely pursuant to Rule 44.1 and Rule 44.2.

Petitioners respectfully petitioned this Court a Writ of Certiorari to review the judgments of the United States Court of Appeals for the Ninth Circuit and Petitioner's Due Process Rights Violations, Federal Rules of the Appellate Procedure Violations and Obstruction of Justice, which was denied on April 18, 2022.

## **PROCEDURAL OF FILINGS IN NEED OF REVIEW**

The judgment of the Ninth Circuit Court of Appeals was entered on February 5, 2021. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

Additionally, Petitioners herein have filings pursuing pro se motions. A Petition for Rehearing and a Petition for Rehearing En Banc were filed by Petitioners. Both were denied, despite meeting the three of the three Federal Rules of the Appellate Procedure (here in F.R.A.P.) required by the rules of the Court to file these Petitions. After the denials,

the appellate judges denied future filings on April 21, 2021 despite the fact Petitioners had further F.R.A.P. rules to pursue within their Due Process Rights. On April 28, 2021, Petitioners filed timely their Motion for Reconsideration and Motion to Stay the Mandate for purposes of filing a Petition for Writ of Certiorari, which the Court never responded back even though this filing was filed timely and Petitioners had further F.R.A.P. Rules to utilize. (Fed. R. App. P. 41(b) and (d)(1)(2)(a)).

On April 21, 2021, the Court had denied Petitioners herein their Due Process Rights to use F.R.A.P. Rule 41 even though Petitioners filed timely stating they “must show cause that the Certiorari Petition would present a substantial question and there is a good cause for a Stay”. (Fed. R. App. P. 41(d)(2)(a); (5th Cir. R. 41.1); (6th Cir. R. 41(a); (10th Cir. R. 41.1); (11th Cir. R. 41-1(a); (D.C. Cir. R. 41(a)(2). (Dkt. 94, -100)).

In addition to the Court not responding back after April 28, 2021, regarding Petitioners’ request for a Stay, this obstructed Petitioners’ use of Supreme Court Rules 22, 23, and 33.2. *See* 28 U.S.C. 2101(f).

### **OPINIONS IN THIS CASE**

The opinions of the Ninth Circuit Court of Appeals are reported at:

*Sewell v. Mentor Worldwide LLC*, 847 F. App’x 380 (9th Cir. Feb. 5, 2021), App. 60.

The Orders of the United States District Court for the Central District of California are officially reported or otherwise available at:

*Sewell v. Mentor Worldwide LLC* (No. 8:19-cv 01126 Document 9 Filed 06/10/19 Page ID #: 596 (C.D. Cal. June 2019).

*Sewell v. Mentor Worldwide LLC*, No. 8:19-cv 01126, 2019 WL 4038219 (C.D. Cal. Aug. 2019).

The Orders of the United States Court of Appeals for the Ninth Circuit are officially reported or otherwise available at:

*Sewell et al v. Mentor Worldwide, L.L.C.*, Case No., 19-56393 (C.D. Cal. Nov. 27, 2019).

**Petitioners Are Subject to Rule 10 (a), (b), (c).**

Rule 10 (a), (b), (c) Petitioners are subject to by this Court states “Review on a writ of certiorari is not a matter of right, but of judicial discretion. A Petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court’s discretion, indicate the character of the reasons the Court considers:

- (a) a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals;

- (c) a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A Petition for a Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” Petitioners meet these three Rules as stated in their Writ of Certiorari filed timely as well as meeting the three of the three Federal Rules of the Appellate Procedure, which are similar to Rule 10 a, b and c and there is a conflict of two cases involving the same defendant.

In *Mize v. Mentor Worldwide*, the Panel reversed the dismissal from Federal District Court of California and remanded the case to trial court. Petitioners kindly ask this Court to reverse the California Appellate Court’s decision, as it is the same cause of action and the same Defendant in the same Court as *Mize v. Mentor Worldwide*. (*Mize v. Mentor Worldwide*, B295829 (Cal. App. July 2, 2020) (Fed. R. App. P. 35; Cir. R. 35-1 to -3) (Rule 10 (a), (c)).

In addition to *Mize v. Mentor Worldwide* that Petitioners parallel, Petitioners also have the same cause of action and the same defendant as in *Gravitt v. Mentor Worldwide* and therefore, Petitioners kindly ask for the Opinion to be reversed and remanded to trial court so that Petitioners can have the same procedural processes as in these two parallel cases. In *Gravitt*, the Court has not dismissed the case and is in Federal District Court and in jury trial stages.

(*Gravitt v. Mentor Worldwide, LLC*, No. 1:17-cv-05428 (N.D. Ill. Jan. 11, 2018)) (Rule 10 (c)).

### **CONCLUSION**

Petitioners realize this is a *sui generis* request by this Court, similar to *Sharp et al. v. Albrecht* and these cases are not usually heard by this Court. However, there have been multiple violations within Petitioners' prior filings that deem this Court's attention. (*Sharp et al. v. Albrecht*, No. 17-290).

In light of these two parallel cases, *Mize v. Mentor* and *Gravitt v. Mentor*, Petitioners are the same and therefore, deserve the same procedural processes and are subject to Rule 10 (a), (b) and (c).

Respectfully submitted,

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**CERTIFICATE OF GOOD FAITH**

The undersigned hereby certifies that this Petition for Rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.

Respectfully submitted,

/s/ Valerie Lenie

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