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COPYRIGHT OFFICE COPYRIGHT CLAIMS BOARD

Kimberly Mullin Claimant, v. Katherine Velasco Respondent.	Case No. 24-CCB-0005 Claimant Kimberly Mullin Opposition to Motion to Exclude Evidence

ARGUMENT

A. Much of the Documentation at Issue Was Disclosed or Was Public Record

Exhibit 5 is a screen print-out of the G-drive link that has been accessible in this case since before it was filed. Thus, Velasco has known about all of its contents, including the data. Exhibit 6 was not disclosed in discovery, but the issues addressed therein were raised by Velasco for the first time in her Response Testimony and were not requested in discovery. Exhibit 7 is an invoice to Mullin Photography LLC and will be addressed more fully below. Exhibit 8 is a collection of images produced before the close of discovery. Exhibit 9 is a screenshot of Claimant's website showing her rates, and has been publicly accessible since long before the case was filed. Exhibit 10. Velasco also did not ask for this in discovery. Exhibit 11 is a printout of the Washington Secretary of State Records of Kimberlin Photography LLC that has is also a self-authenticating

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public record that anyone with an internet connection can look up. Exhibit 12 is a copy of the post-hoc assignment that was necessitated by Velasco's fake concerns over standing.

B. Good Cause Exists to Permit the Evidence Cited by Respondent

Velasco did not submit any discovery requests in this case and chose to rely on the form interrogatories. She could have propounded interrogatories to seek information about proof of payment for the photoshoot, the basis for standing, the reason why the LLC was listed as the owner of the copyright registration, the reason why the case was brought in Mullin's personal name, or the basis why Mullin charges what she does for the Works that Velasco stole. But she did not. Thus, as stated in the Copyright Handbook, Mullin submitted evidence "required to contradict or rebut the specific evidence filed by the other party as part of their response testimony." (*See* https://ccb.gov/handbook/Presenting-Your-Case.pdf). In short, Velasco did not ask the questions that would have unearthed the evidence she later requested in her Response Testimony.

As a reminder, Mullin showed Velasco proof of her ownership of the Works by giving Velasco access to the Google Drive showing dates of creation. (See, e.g., Mullin Witness Statement at ¶¶ 4-6 and Exhibit 1 at MULLIN0028[1].) And contrary to Velasco's suggestion in the Motion to Exclude ("Motion"), the application number and proof of application for the copyright was provided in discovery (produced as MULLIN0052 and MULLIN0062). Searching in the copyright office using the application number in the "Keyword" field would have directed counsel to the registration, as shown in the below screenshot (red lines drawn by counsel):

[1] Indeed the link at MULLIN0028 remains active *to this day* and it clearly shows proof of Mullin's authorship: https://drive.google.com/drive/u/1/folders/16rwElAvbE0LitXhWODqV_EhJ9E3WFScL.

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Public Catalog

Copyright Catalog (1978 to present) at DC4
Search Request: Keyword = 13300361171
Search Results: Displaying 1 of 1 entries

previous next

Labeled View

1 Lake Louise Dr #28, Bellingham, WA.

Relevance:
Type of Work: Visual Material
Registration Number / Date: VA0002381069 / 2023-12-13
Application Title: 1 Lake Louise Dr #28, Bellingham, WA
Title: 1 Lake Louise Dr #28, Bellingham, WA. [Group registration of published photographs. 58 photographs. 2023-10-13 to 2023-10-13]
Description: 58 photographs : Electronic file (eService)
Copyright Claimant: Kimberlin Photography, LLC, 1985- . Address: 5513 Poplar Place, Ferndale, WA, 98248, United States.
Date of Creation: 2023
Publication Date Range: 2023-10-13 to 2023-10-13
Nation of First Publication: United States
Authorship on Application: Kimberlin Photography, LLC, 1985- , employer for hire; Citizenship: United States. Authorship: photographs.
Copyright Note: C.O. correspondence.

Regarding title information: Deposit contains complete list of titles that correspond to the individual photographs included in this group.

Regarding group registration: A group of published photographs may be registered on one application with one filing fee only under limited circumstances. ALL of the following are required: 1. All photographs (a) were created by the same author AND (b) are owned by the same copyright claimant AND (c) were published in the same calendar year AND 2. The group contains 750 photographs or less AND 3. A sequentially numbered list of photographs containing the title, file name and month of publication for each photograph included in the group must be uploaded along with other required application materials. The list must be submitted in an approved document format such as .XLS or .PDF. The file name for the numbered list must contain the title of the group and the Case Number assigned to the application.

Photographs: Published in October 2023 (8 photographs): 1 Lake Louise Dr #28, Bellingham,WA 51, 1 Lake Louise Dr #28, Bellingham,WA 52, 1 Lake Louise Dr #28, Bellingham,WA 53, 1 Lake Louise Dr #28, Bellingham,WA 54, 1 Lake Louise Dr #28, Bellingham,WA 55, 1 Lake Louise Dr #28, Bellingham,WA 56, 1 Lake Louise Dr #28, Bellingham,WA 57, 1 Lake Louise Dr #28, Bellingham,WA 58

Published in October 2023 (50 photographs): 1 Lake Louise Dr #28, Bellingham,WA 1, 1 Lake Louise Dr #28, Bellingham,WA 2, 1 Lake Louise Dr #28, Bellingham,WA 3, 1 Lake Louise Dr #28, Bellingham,WA 4, 1 Lake Louise Dr #28, Bellingham,WA 5, 1 Lake Louise Dr #28, Bellingham,WA 6, 1 Lake Louise Dr #28, Bellingham,WA 7, 1 Lake Louise Dr #28, Bellingham,WA 8, 1 Lake Louise Dr #28, Bellingham,WA 9, 1 Lake Louise Dr #28, Bellingham,WA 10, 1 Lake Louise Dr #28, Bellingham,WA 11, 1 Lake Louise Dr #28, Bellingham,WA 12, 1 Lake Louise Dr #28, Bellingham,WA 13, 1 Lake Louise Dr #28, Bellingham,WA 14, 1 Lake Louise Dr #28, Bellingham,WA 15, 1 Lake Louise Dr #28, Bellingham,WA 16, 1 Lake Louise Dr #28, Bellingham,WA 17, 1 Lake Louise Dr #28, Bellingham,WA 18, 1 Lake Louise Dr #28, Bellingham,WA 19, 1 Lake Louise Dr #28, Bellingham,WA 20, 1 Lake Louise Dr #28, Bellingham,WA 21, 1 Lake Louise Dr #28, Bellingham,WA 22, 1 Lake Louise Dr #28, Bellingham,WA 23, 1 Lake Louise Dr #28, Bellingham,WA 24, 1 Lake Louise Dr #28, Bellingham,WA 25, 1 Lake Louise Dr #28, Bellingham,WA 26, 1 Lake Louise Dr #28, Bellingham,WA 27, 1 Lake Louise Dr #28, Bellingham,WA 28, 1 Lake Louise Dr #28, Bellingham,WA 29, 1 Lake Louise Dr #28, Bellingham,WA 30, 1 Lake Louise Dr #28, Bellingham,WA 31, 1 Lake Louise Dr #28, Bellingham,WA 32, 1 Lake Louise Dr #28, Bellingham,WA 33, 1 Lake Louise Dr #28, Bellingham,WA 34, 1 Lake Louise Dr #28, Bellingham,WA 35, 1 Lake Louise Dr #28, Bellingham,WA 36, 1 Lake Louise Dr #28, Bellingham,WA 37, 1 Lake Louise Dr #28, Bellingham,WA 38, 1 Lake Louise Dr #28, Bellingham,WA 39, 1 Lake Louise Dr #28, Bellingham,WA 40, 1 Lake Louise Dr #28, Bellingham,WA 41, 1 Lake Louise Dr #28, Bellingham,WA 42, 1 Lake Louise Dr #28, Bellingham,WA 43, 1 Lake Louise Dr #28, Bellingham,WA 44, 1 Lake Louise Dr #28, Bellingham,WA 45, 1 Lake Louise Dr #28, Bellingham,WA 46, 1 Lake Louise Dr #28, Bellingham,WA 47, 1 Lake Louise Dr #28, Bellingham,WA 48, 1 Lake Louise Dr #28, Bellingham,WA 49, 1 Lake Louise Dr #28, Bellingham,WA 50

Names: Kimberlin Photography, LLC

If we are to believe Velasco's Motion, her counsel apparently gave up looking after making one search. Thus, any doubt as to the owner or author of the works in a single member LLC is a fabricated and disingenuous attempt to distract from the merits of the case.

Nevertheless, to appease the feigned handwringing of Velasco and address her issue raised in her Respondent Testimony, Mullin executed a post-hoc assignment – an entirely appropriate instrument to use in the middle of a case. Even if, for argument's sake, the ownership issue was raised earlier in the case, it has been laid to rest with the post-hoc assignment. Counsel for Mullin even went so far as to ask opposing counsel if he would object to including Kimberlin LLC into the case. Further underscoring her unwillingness to get to the merits, counsel refused, stating he was "unable to consent to the motion to join Kimberlin LLC and must oppose it."

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C. Good Cause Exists to Amend the Pleadings to Reflect the Facts, If Necessary

Velasco offers no argument as to why the post-hoc assignment of the copyright from Kimberlin LLC to Mullin would not suffice as to provide standing, because the law is clear: a post-hoc assignment can confer standing in a copyright infringement case. If the Board were to require the inclusion of Kimberlin, LLC even after the assignment, neither Kimberlin nor Ms. Mullin would happily comply. This approach is far more sensible and efficient, rather than force Mullin to refile the case after having the assignment in her possession.

D. Velasco's Fake Prejudice Can Be Easily Cured with an Extension in Discovery

Velasco has provided zero basis as to how or why she would be prejudiced by Ms. Mullin continuing the case versus the single-member LLC Kimberlin Photography. To the extent any impact exists, Mullin bringing the case in her personal capacity would streamline any collections stemming from counterclaims (that were not filed) and streamline discovery (that was not requested). If Velasco can claim prejudice from the newly submitted evidence (Reply Exhibits 5-12), that can be remedied with an extension of time for Velasco to take any additional discovery based on those submissions. The Board could also allow Velasco another round of briefing to submit additional evidence or testimony. But to outright dismiss a meritorious claim that has not been denied whatsoever would amount to a miscarriage of justice and would be a tremendous waste of the parties' resources and the resources of the federal government. This is particularly true here because the CCB handbook states "If you miss a deadline, you will typically be sent a notice giving you thirty days to respond and take actions to fix the issue."[2] Again, instead of

[2] *See, CCB Handbook at* https://ccb.gov/handbook/Missed-Deadlines.pdf.

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addressing the merits, Velasco resorts to manufactured procedural friction that can easily be addressed, and in the case of the standing issue, *has already been addressed.*

Counsel's memory of the status conference is dubious at best. (*See* Motion at 2.). At that time, Mullin indeed already provided evidence of ownership, evidence rebutting Velasco's internet link purporting to show irrelevant rates of photographers *across the country,* and evidence of Mullin's rates. As noted above, Mullin showed Velasco evidence of ownership in the G Drive and the application receipts which easily have been used to confirm the registration. Indeed, Mullin admitting that the listing agent confirmed Mullin was the author of the images as well. (*See, e.g.,* Exhibit 1 at MULLIN0031-32 ((But the level and tone of the communications from you and the agent were beyond what I thought wasn't a problem. Her communication with me was angry and nasty…") ("You and listing agent were in such an angry fit that you didn't give me much time to even review the details you sent me.".) Mullin also submitted evidence of her own rates that rebut Velasco's random source. (*See, e.g.,* Exhibit 1 at MULLIN0028 ("Licensing for commercial use for rental properties are $35/angle. That gives you rights to advertise using my images as many times as you like and for as long as you want.").) This contemporaneous email exchange is unrefutable. The Board is free to weigh this evidence as it chooses, but Velasco cannot usurp the Board's role by saying this is not evidence at all. Her stating otherwise is demonstrably false.

The email exchange apparently was not enough for Velasco, so she cried about wanting proof of payment *for the first time* in her Response Testimony. Thus, to fight back against the absurd accusation that Mullin was not paid for the work, the Invoice for the photoshoot in Exhibit 7 (produced in December 2024 as MULLIN0457) was submitted. This should have been requested in discovery in the first go-round, but Mullin will consent to an extension and permit Velasco a reasonable amount of time to seek follow-up documentation.

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E. Conclusion

Good cause exists to permit the evidence to remain as-filed because Velasco raised issues in her Response Statement that were not raised in discovery. Alternatively, good cause exists to extend the deadline for written discovery in some capacity

DATED January 14, 2025.

By_____

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Proof of Delivery

I hereby certify that on Tuesday, January 14, 2025, I provided a true and correct copy of the Opposition to Velasco Motion to Exclude to the following:

Katherine Velasco, represented by Katherine Velasco, served via MANUALEEMAIL

Signed: /s/ Timothy J Billick