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REPLY PARTY STATEMENT OF APRIL PECK

This statement responds to the claims made in the Respondent's July 2025 filing, particularly her assertion that she had permission to use my course materials. I will address the lack of such permission, clarify the nature and limits of our communication, and explain how the Respondent's own conduct and admissions undermine her defense. I will also respond to claims made about my own actions and refute her suggestion that her copying falls under fair use.

I. RESPONDENT DID NOT HAVE PERMISSION

"Peck's authorization of such copying and use was manifested by, among other things, Peck's provision to Borruel of instructions on how to copy the Prior Course Materials using Canvas"

This statement appears in Ms. Borruel's Claim Response dated January 17, 2025 (Doc. RR, p. 3). On the first day of discovery, I requested that Ms. Borruel produce any evidence supporting this claim, including documentation that I gave permission or provided instructions on how to copy or import my Fall 2020 course (Doc. SS). To date, no such evidence has been produced because none exists.

Ms. Borruel has since abandoned that vague framing and instead asserts that I granted permission through "verbal conversations… in or around January 2022…" and that I gave her "oral instructions on how to import [my course] into a blank Canvas shell" (Doc. NN, p. 1). This claim does not withstand scrutiny when the timeline is examined.

I did not teach during the Winter 2022 session, which ran from Monday, January 3 to Saturday, February 12, 2022 (Doc. J, p. 2; Doc. I). I was not required to be on campus during that time, so I wasn't. I remained available via email to support faculty remotely. Any communication during this period would be documented in a verifiable form, such as email. The January 4 email exchange confirms that Ms. Borruel and I discussed her preparation for Research Methods and that I provided her access to my Canvas course (Doc. K, pp. 7-8). There

is no written evidence showing that Ms. Borruel ever requested permission to copy or reuse my materials, or that I ever granted such permission.

Ms. Borruel wants to sow doubt about the nature of our communication. She would like the Board to believe that we were exchanging text messages beginning in November 2020 and to question my credibility by pointing out a single discrepancy in my interrogatories. I did not intend to mislead – I simply forgot about an inconsequential text message that occurred 4 ½ years ago during the COVID lockdown. Proof that I forgot, and proof of the way we communicated is the May 2022 *email* that *she* sent me on a *Sunday* (Doc. TT, p. 4). I included my cell number in my reply, indicating that we didn't communicate via phone or text. Email was the only way we communicated through May 2022 when Ms. Borruel was a part-time instructor, and this can be observed in the record. The content of our communications covered a range of topics, including routine issues such as a malfunctioning projector and concerns like the possible presence of mice in the ceiling (Doc. TT, pp. 1-4).

Ms. Borruel now claims that over 1,800 text messages were exchanged between us and that "sometimes work was referenced" (Borruel Witness Statement, p. 1, ¶ 4). Even if that number is accurate, the assertion actually undermines her own position. Between February 2022 and October 2023 -- a span of ***18 months*** in which she taught three sections of PSYC 217 Research Methods (Doc. L, pp. 3–6) – there is ***not a single message*** referencing any of the ***99 instructional files, handouts, videos, or other lab materials*** from my Canvas course (Doc. M). With the exception of the initial January 4, 2022 email exchange in which she asked for my syllabus and I granted access to the course, there are no emails and no text messages that discuss or even mention the lab assignments or any other instructional content from my course. Given these details, the ***complete absence of any written communication*** about the lab materials

significantly undermines her claim that I granted permission to use those materials or that I was aware that she was actively reusing my content.

The Spring 2022 term started on Monday, February 14, 2022 (Doc. I). At the time, Ms. Borruel was still employed full-time at Barstow Community College, which is located 37 miles away from Victor Valley College (Doc. H, p. 3). She had limited availability to teach at VVC and because of that, our schedules did not overlap (Doc. J, pp. 3-4; Doc. L, p. 6; Doc. UU). There was a gap of over 5 hours between my departure from campus and her arrival on Mondays and Wednesdays. I wasn't on campus on Tuesdays. Ms. Borruel was actively removing my name from "The Happy Lab Handout" at 3:21 PM on Thursday February 17 (Doc. Z, p. 2) while I was in class (Doc. J, p. 3). In sum, this means that there was no opportunity to "run into" Ms. Borruel during that first week of the term to have an impromptu conversation about the use of my materials. There is also no evidence that she reached out to me to arrange a meeting or to ask permission to copy my materials. Ms. Borruel's assertion that we had verbal communication is implausible given the time frame and our schedules.

When I discovered that Ms. Borruel was using my materials, I investigated the claim, confirmed its validity with supporting evidence, and confronted her the next day. As part of that message, I included the January 2022 email thread described above. I did so because it was the only time we had ever discussed the course, my materials, or her lab planning. I wanted her to refer back to the written record that outlined the limited scope and purpose of her access to my Canvas course.

II. RESPONDENT'S OWN WORDS UNDERMINE HER DEFENSE & CLAIMS

On October 26, 2023, Ms. Borruel responded to my concerns about her unauthorized use of my materials and began by apologizing:

"First of all, I am so sorry!… [T]his is a terrible error on my part… This is a big oversight from my part, but I am going to create a blank canvas shell to make sure this does not happen again!" (Doc. K, p. 6).

Ms. Borruel's own words reveal that she was not operating under a shared understanding or with my approval. She repeatedly expresses confusion, surprise, and regret. These reactions make sense if she knew she had reused my materials without permission, but they make no sense if she believed she had my blessing. Her speculative statements ("I think what happened is..."), her purported unawareness of materials ("…did not realize there are links and videos…"), and her disavowal of intent ("They were not supposed to be part of the class…") all contradict her later argument that I gave her instructions, assistance, or approval (Doc. K, p. 6). At the time, I interpreted her lengthy and disjointed responses as an overreaction -- a common response when someone has been caught doing something inappropriate.

While Ms. Borruel also suggested in that email chain that I was aware of her use of my materials, I chose not to confront that misrepresentation directly. I was not her supervisor and held no authority over her. My goal was to ensure my materials were promptly removed and to preserve a cordial professional relationship. Confronting her more directly at that moment could have escalated tensions and derailed both aims. Instead, I simply repeated my demand to remove my materials from her course: "If you are removing my material, that is all I want" (Doc. K, p. 6).

III. RESPONDENT ACTED ON HER OWN ACCORD

To bolster her claim that she copied and used my course materials with my consent, Ms. Borruel argues that the January 2022 email exchange shows I was directing her on how to run her class (Borruel Witness Statement, p. 2, ¶¶ 7 & 8). That interpretation is unsupported by the record. I wrote:

"I'd strongly advise that students do all of their data collection either with archival sources or that they do studies using their own classmates as participants. If they do an observational study, they can collect data in the community as long as they do not interact with the people or record them..." (Doc. K, p. 8).

The phrase *"I'd strongly advise"* reflects professional suggestion, while *"if they do an observational study"* is clearly conditional. Together, they show that Ms. Borruel had decisions to make and options to consider. I was sharing my own approach, not prescribing hers.

Indeed, Article 15 of the part-time faculty contract, which applied to Ms. Borruel at the time, affirms both the *right* and the *responsibility* of instructors to design their own courses (Doc. VV, p. 31). Her copying and reuse of my course materials was entirely *her decision*. It was not something that I requested, expected, or authorized.

IV. RESPONDENT CANNOT CLAIM 'FAIR USE'

Although I am not an attorney, my understanding is that 'fair use' is intended to protect limited and transformative use of copyrighted material for purposes such as commentary, criticism, scholarship, or research. It does not protect substantial reproduction of copyrighted material. What Ms. Borruel did was not limited or transformative. She copied entire assignments, Canvas pages, handouts, and instructional materials that I created, and used them in her own course as if they were hers. Even after I confronted her in October 2023, Ms. Borruel *continued* to publish 61% of my registered materials in her Fall 2023 course (Doc. AA; Doc. HH; Doc. II). In some cases, she removed my name and made only superficial edits (Doc. X; Doc. CC). She also created derivative works and published them to the internet without attribution or permission (Doc. P; Doc. DD; Doc. EE). That kind of use does not fit within the boundaries of what I understand 'fair use' to mean.

Ms. Borruel attempts to deflect attention from her own unauthorized use by pointing to two of my instructional handouts, each of which draws minimally on *Discovering the Scientist*

Within, the 543+ page textbook that I required my students to purchase (Borruel Exhibit 5; Borruel Exhibit 9). One handout includes three short, *attributed* definitions from the textbook (Doc. B, p.25). The rest of the language on this 6-page handout is my own expression (Doc. B, pp. 25-30). The other handout is an APA-formatting practice worksheet and answer key based on a selection of references from a model paper in the same text. The practice worksheet includes line numbers and intentional formatting errors -- transformative elements (Doc. B, p. 101). The answer key adds my own original expression in the form of instructional commentary (Doc. B, p. 102). Ms. Borruel's attempt to equate her widespread, uncredited copying with my limited, attributed use distorts the facts and misrepresents the nature of our respective conduct.

V. RESPONDENT'S DOCUMENTED EXPERIENCE UNDERMINES HER 'LIMITED EXPERIENCE' DEFENSE

Ms. Borruel suggests that her "limited experience with Canvas" explains why my materials remained in her class after I told her to remove them (Borruel Response Party Statement, p. 4, footnote #5). This is not credible. I've already outlined the multitude of ways that she curated materials for her use, removed my name from documents, embedded modified files, changed the course navigation, and toggled the "publish" button on content (Peck Opening Party Statement, pp. 6-9).

Additionally, per Article 13 of our contract, faculty at Victor Valley College are required to complete the college's Distance Education Certification training or provide proof of equivalent training from an approved outside provider in order to teach online or hybrid courses (Doc. C, p. 24, Doc. D, p. 36). Ms. Borruel completed *Introduction to Teaching with Canvas* through Barstow Community College in 2019, an approved external provider. The training covered key topics such as course design and organization, use of Modules, and creation of

Pages (Doc. WW). It is highly improbable that an instructor with this certificate would be unaware of how content is structured and accessed within Canvas.

Ms. Borruel has consistently used Canvas across multiple semesters and course modalities (e.g., online, hybrid, face-to-face) during her employment at Victor Valley College (Doc. L, pp. 2-7). She began teaching online in her very first semester as a part-time instructor. Between August 2021 and July 2023, she taught online nine times across a variety of courses. She also taught three hybrids in that same time frame. On October 26, 2023 (the day I confronted her about the infringement), Ms. Borruel was teaching four online courses in addition to her four in-person assignments. And we know that she was even using Canvas to distribute content in her PSYC 217 courses which were all taught face-to-face further demonstrating her *familiarity and preference* for the platform.

VI. CONCLUSION

This entire ordeal is of Ms. Borruel's own making. *She* imported my course materials. *She* distributed them to her students. *She* removed my name. *She* published derivative works on her websites. *She* failed to correct the problem at multiple junctures.

Much has been said in the statements submitted since then, but none of it changes what Ms. Borruel herself said when confronted for the very first time: *"First of all, I am so sorry! ... [T]his is a terrible error on my part."* (Doc. K, p. 8)

I certify that, to the best of my knowledge, the above statement is accurate and truthful.



April Peck
July 22, 2025

Proof of Delivery

I hereby certify that on Tuesday, July 22, 2025, I provided a true and correct copy of the Reply Party Statement of April Peck - 07.22.25 to the following:

Keiry A Borruel, represented by Keiry A Borruel, served via MANUALEEMAIL

Signed: /s/ April M. Peck