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CLAIMANT FISHMAN'S REPLY TO RESPONDENTS' PARTY STATEMENT

Alexandra Fishman v. Bella Lumière Photography, et al. (Docket No. 25-CCB-0006)

Claimant Alexandra Fishman ("Claimant") submits this response to address the factual inaccuracies and legal mischaracterizations presented in the Respondents' Party Statement dated March 16, 2026.

I. Timely Registration and Statutory Priority

Respondent claims The Belt Photo was not timely registered. The "Belt Photo" was captured on June 13, 2024, and was formally registered with the U.S. Copyright Office shortly thereafter and within the required timeframe. Under 17 U.S.C. § 412, timely registration is a prerequisite for certain remedies and serves as prima facie evidence of the validity of the copyright. This registration puts the world on constructive notice of the Claimant's ownership, negating any claim that the work was "fair game" for professional appropriation. The "Belt Photo" met the requirements for timely registration.

II. The Respondents Failed to Meet the Burden of Establishing an Implied License

The Respondents' entire defense rests on the existence of an implied license. However, an implied license is an affirmative defense for which the Respondents bear the burden of proof. *See Oddo v. Ries*, 743 F.2d 630, 634 (9th Cir. 1984). For an implied license to exist, the "relevant intent is the licensor's objective intent at the time of the [transfer]." *Asset Mktg. Sys., Inc. v. Gagnon*, 542 F.3d 748, 755 (9th Cir. 2008). The objective

evidence here, the July 17, 2024, text message, demonstrates no such intent to license the specific iPhone photo for commercial use or public display. The Claimant's instruction to "put it in your notes so we don't forget to tell you this time" and her statement that she would "prefer them [the belt] included in the detail pics in December" establishes the photo was a visual reference for a future shoot. The Respondents' brief ignores the specific language of my July 17, 2024, text. I stated we "took pics of it the next day at the hotel" but would "prefer them [the belt] included in the detail pics in December". This was a request for *future* photography of a physical object, not a grant of rights to edit and sell my personal digital reference file. Respondents argue that the July 17, 2024, text message created an "implied license" to edit and sell the Claimant's work. This is factually incorrect. An implied license only exists when the circumstances demonstrate that the copyright owner intended the defendant to use the work in a specific manner. The Claimant's message explicitly stated that the photo was being sent as a reminder for the Respondents to "capture it [the belt]" themselves during the December ceremony. Providing a reference photo for a future shoot does not grant a license to distribute, modify, or sell the reference photo itself. Courts have held that where a work is delivered for a specific, limited purpose, no broader license to exploit the work is implied. *See Effects Assocs., Inc. v. Cohen*, 908 F.2d 555, 558 (9th Cir. 1990).

III. The Termination of the December Contract Renders the "Implied License" Impossible

Respondents argue that an implied license was created for the purpose of including the photo in a "future gallery." However, the undisputed timeline shows that the December wedding contract was terminated by the Claimant prior to the Respondents' publication of the infringing derivatives. An implied license requires a "meeting of the minds" regarding the intended use. *See Design Options, Inc. v. BellePointe, Inc.*, 940 F. Supp. 645, 650 (S.D.N.Y. 1996). Once the professional relationship was severed, any "implied" permission to include the photo in a gallery, which was itself a component of the now-voided contract, was revoked as a matter of law. A defendant cannot claim an implied license to perform a service they are no longer contracted to provide. *See Johnson v. Jones*, 149 F.3d 494, 502 (6th Cir. 1998) (holding that no implied license exists when the relationship between the parties is terminated before the work is used).

IV. The Creation of Derivatives Exceeded Any Alleged Scope of Use

Even if the Board were to find an implied license for the mere "inclusion" of the photo in a private gallery, the Respondents' actions far exceeded that scope. The Respondents admitted to creating four distinct derivative works by applying Adobe Lightroom presets and color conversions. By creating four distinct versions and placing them behind a "Buy This Photo" paywall, the Respondents engaged in clear commercial exploitation. Nothing in the Claimant's text message authorized the Respondents to "touch" the digital negative of the iPhone photo. By altering the metadata and creative expression of the photo, the Respondents violated the Claimant's exclusive right under

17 U.S.C. § 106(2) to prepare derivative works. These actions created derivative works without the owner's consent, a direct violation of 17 U.S.C. § 106. Furthermore, by reducing the image to less than 1 megapixel, Respondents damaged the integrity of the creative work. A licensee infringes the owner's copyright if its use exceeds the scope of the license. *See S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1087 (9th Cir. 1989).

V. The Metadata "Smoking Gun": Evidence of Intentional Misrepresentation

The Respondents did not merely "post" the photo; they actively altered it. Technical evidence (Exhibit K) proves that the Respondents stripped the original iPhone 13 Pro Max metadata and replaced it with their own studio "Lightroom" stamps and SmugMug identifiers. This act constitutes a violation of 17 U.S.C. § 1202, which prohibits the removal or alteration of Copyright Management Information (CMI) with the intent to induce or conceal infringement. Replacing a creator's metadata with a "Studio Stamp" is a classic hallmark of intentional infringement designed to misrepresent authorship to the public and potential buyers.

VI. Commercial Exploitation and Lack of Contractual Basis

Respondents placed these unauthorized derivatives in a gallery and offered them for sale via SmugMug. There was no contract in place that authorized this: The elopement contract did not cover images taken privately by the Claimant; The December wedding contract was terminated months prior to any photos being taken, rendering any potential future use rights void.

VII. The "Professional Standard" Duty and Infringement Was Not Innocent

As a commercial photography studio, Bella Lumière operates as a "sophisticated solicitor" of intellectual property. The Respondents utilize a "Riley Print License Agreement" (Exhibit I) to aggressively protect their own copyrights, yet they claim "innocence" when misappropriating the work of a client. The Respondents had a Duty of Inquiry as if there was any ambiguity regarding whether a text-messaged reference photo could be color-graded and sold, a professional is obligated to obtain a written release. Their failure to do so, while simultaneously protecting their own IP, demonstrates "willful blindness." *See In re Aimster Copyright Litig.*, 334 F.3d 643, 650 (7th Cir. 2003) (noting that "willful blindness is knowledge" in copyright law).

Respondents' claim of "innocent infringement" is contradicted by their status as professional photographers and their own business practices. The Respondents are professional photographers who use sophisticated contracts to protect their own intellectual property. They are not "innocent" actors; they are professionals who understand that taking a client's private file, altering it, and selling it back to them without a signed release is a violation of copyright law. Additionally, It is implausible that a professional in this industry would believe that a low-resolution reference photo sent via text message could be legally edited and sold back to the creator without a written license. As professionals who utilize strict licensing agreements for their own work (see Exhibit I, Riley Print License Agreement), the Respondents possess a

sophisticated understanding of copyright law. "Willfulness" in copyright law includes "reckless disregard" for the copyright holder's rights. *See Video Views, Inc. v. Studio 21, Ltd.*, 925 F.2d 1010, 1020 (7th Cir. 1991). By taking a client's personal, private memorial photo and placing it on a commercial SmugMug platform for sale (Exhibits Q-T) without a signed release or written agreement, the Respondents acted with at least reckless disregard for the Claimant's intellectual property. This commercial exploitation of a "sacred" memorial image, reducing it from 12 megapixels to less than 1 megapixel, caused significant distress and professional damage.

VIII. The Nature of the Work and the "Harm" of Commercialization

Under the 17 U.S.C. § 107(2) analysis, the "nature of the copyrighted work" is a core factor. This was not a stock image created for trade; it was a private, "unpublished" memorial image of a deceased family member's heirloom. The Supreme Court has noted that the scope of fair use (and by extension, the mitigation of damages) is narrower with respect to unpublished, private works. *See Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 564 (1985). The "harm" here is not merely the lost licensing fee, but the "moral harm" of having a sacred family moment converted into a low-resolution (1 megapixel) commercial commodity. The Respondents' decision to place a "Buy This Photo" button (Exhibits Q-T) on an image of a deceased brother's belt is an egregious breach of professional ethics and copyright law. This was not a wedding photo; it was a memorial to a deceased family member made in a private memorial service unrelated to a wedding. The Respondents' claim that the damage is

"de minimis" ignores the significant distress caused by seeing a sacred memorial image reduced in quality and commodified for profit.

IX. Conclusion

The Respondents' "implied license" argument is a post-hoc rationalization for the unauthorized commercialization of a client's private property. The Claimant never intended for her personal iPhone photo to become a product for sale by the Respondents. The Respondents' use was neither "innocent" nor "de minimis." It was a calculated professional appropriation of a private work, followed by technical alteration to mask its origin. The Respondents' unauthorized use of a deeply personal memorial photograph for commercial gain has caused significant distress and constitutes a clear violation of copyright law. The Claimant respectfully requests that the Board reject the Respondents' "implied license" defense and award the maximum statutory damages of $15,000 to reflect the willful nature of the infringement and the secondary violation of CMI integrity.

Certification

I, Alexandra Fishman, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signature: /s/ Alexandra Fishman

Date: April 6, 2026

Proof of Delivery

I hereby certify that on Monday, April 06, 2026, I provided a true and correct copy of the Reply Party Statement- CLAIMANT FISHMAN'S REPLY TO RESPONDENTS' PARTY STATEMENT to the following:

Riley-Peyton Priddle, represented by Riley-Peyton Priddle, served via MANUALEEMAIL

Bella Lumière Photography, represented by Matthew J Keeley, served via ESERVICE at joe@keeleylaw.org

Signed: /s/ Alexandra Fishman