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RESPONSE OF KEIRY BORRUEL TO

REQUEST FOR RECONSIDERATION OF APRIL PECK

Claimant April Peck asserts numerous points of error in her Request for Reconsideration ("Request") of the Final Determination of the Copyright Claims Board ("Board") in this matter. None of Peck's criticisms of the Board's findings and conclusions hold water. The Board's Final Determination was correct and supported by a clear and thorough analysis of the applicable law, facts and evidence of record. In contrast, Peck's Request arrogantly and unjustifiably criticizes the Board for failing to adopt Peck's interpretation of the facts, and fails to identify any clear errors of law or fact, or any technical mistakes, in the Board's Final Determination. Peck's attempt to re-argue the case is not only a violation of the Board's rules and regulations, but is also woefully insufficient and inappropriate. The Board should deny the Request in its entirety because none of the purported errors satisfy the criteria for granting such a request.

I. Standards for Requests for Reconsideration

A request for reconsideration of a final determination of the Board must identify a clear error of law or fact that was material to the outcome, or a technical mistake in the determination. *See* 17 U.S.C. § 1506(w); 37 C.F.R. §§ 230.1-230.2. An error is a "clear error" if it is unquestionably wrong and it is material to the outcome such that the Board's decision would have been different without the error. U.S. Copyright Claims Board Handbook (October 15, 2024) ("CCB Handbook"), Ch. 21 at 3. Additionally, the "request shall not merely repeat any oral or written argument made to the Board as part of the proceeding but shall be specific as to the purported error or technical mistake that is the subject of the request." 37 C.F.R. § 230.2. Each of Peck's purported grounds for reconsideration fail at least one of the forgoing elements of a meritorious request. Her asserted points of error either fail to demonstrate clear error by the board and/or that any such error would have been material to the outcome of the Board's final determination. Moreover, with few exceptions, Peck's arguments are merely repetitive of arguments in her previous filings in this matter.

II. The Board did not err by finding no Post-October 2023 Infringement by Borruel.

As her first asserted point of error, Peck contends that the Board erred by finding "no evidence in the record that Borruel used any of Peck's materials or any of the Work in Borruel's materials after Peck's October 26, 2023 email." Request at 1, Section I (quoting Final Determination at 5, Section II). Peck contends that her evidence documents "continued infringement after that date," first in Borruel's Fall 2023 Canvas shell, and second, on Borruel's supplemental *Learn About Psychology* and *Get Psychology* websites.

A. The Board did not err by finding no post-October 23, 2023, Infringement in Borruel's Fall 2023 Canvas shell.

Peck contends that the Board erroneously "accepted Ms. Borruel's explanation that materials remaining in the [Fall 2023 Canvas shell] after October 23, 2023 did not reflect continued use." Request at 2, Section I. Peck made this argument in her Opening Party Statement. *See* Doc. No. 69 (Opening Party Statement) at 8-9 (asserting that the presence of the copyrighted materials (the "Work") in Borruel's Fall 2023 Psyc 217 Canvas shell at the end of the Fall 2023 semester constituted copyright infringement). As such, it is an inappropriate subject of a request for reconsideration and should be overruled on that basis alone. 37 C.F.R. § 230.2.

Peck fails to demonstrate that the Board erred in finding no post-October 23, 2023, infringement in Borruel's Fall 2023 Canvas shell. The Request presents no argument or explanation to support Peck's contention that the Board should have found that the presence of the Work behind the "modules" tab of Borruel's Fall 2023 shell reflected "continued infringement" or "continued use." Request at 1-2. Instead, the Request merely—and redundantly—points to evidence that during the Fall 2023 semester the Work was accessible to students with access to Borruel's Fall 2023 Canvas shell. *See id.* Calling the Board's attention to evidence it has already considered is insufficient to demonstrate that the Board's conclusions regarding such evidence was clearly erroneous.

Even if Peck had presented a persuasive argument—or any argument for that matter—in support of her first point of error, it would not change the outcome of the Board's final

determination. Courts have found express and implied licenses to include a reasonable post-termination transition period. *See, e.g., Quinn v. City of Detroit,* 23 F. Supp. 2d 741, 750 (E.D. Mich. 1998); *ACS Transport Sols. v. Nashville Metro. Transit Auth*., 2016 WL 1756443, *3 (M.D. Tenn. Apr. 29, 2016). Peck presents no argument or legal authority to rebut the proposition, made in Borruel's Response Party Statement, that even if Borruel had used the Work during the 12 weeks between October 23, 2023 and the end of the Fall 2023 semester, such use would have constituted a reasonable post-termination transition period. *See* Doc. No. 81 (Response Party Statement) at 6, fn. 6.

B. The Board did not err by finding no post-October 23, 2023, Infringement on the *Learn about Psychology* and *Get Psychology* websites.

Peck's first point of error further contends that the Board erred by failing to find continued infringement on Borruel's *Learn about Psychology* and *Get Psychology* websites. *See* Request at 2-3, Section I. Specifically, Peck asserts that the websites contained "derivative versions" of Peck's lab materials. *Id.* Relatedly, Peck asserts, as her Second and Third points of error, that the websites remained "publicly accessible" after Borruel ceased teaching Psyc 217, and that the websites thereby exceeded any license to use the Materials to teach that class. *See* Request at 3-4, Sections II. and III. Each point of error fails for the following reasons:

Peck's Opening Party Statement asserts that the websites contained materials derivative of the Work and that the websites were fully accessible to the public. *See* Doc. 69 (Party Opening Statement) at 6-10, Sections III B. – IV.A. As such, it is an inappropriate subject of a request for reconsideration and should be overruled on that basis alone. 37 C.F.R. § 230.2.

Peck has not demonstrated that the Board erred by finding no infringement on Borruel's websites because the materials on the sites are not derivative of the Work; Borruel made the sites accessible only to her students, to Peck, and to the Board; and Borruel did not exceed the bounds of the license granted by Peck.

1. The materials on Borruel's website are not derivative of Peck's Materials.

Peck takes it as given that the study aids on Borruel's websites were "derivative of [Peck's] lab materials." Request at 2, Section I. Such an assumption is patently insufficient to support Peck's contention that the Board should have found that Borruel's materials infringed the Work. Moreover, as set forth in Borruel's Respondent Party Statement, the evidence of record establishes not that the lab materials on Borruel's website were derivative of the Work, but that any commonalities in the parties' materials were due to the common subject matter and/or use of common third-party source material. *See* Doc. No. 81 (Response Party Statement) at 6, Section II.B.; and Doc. No. 80 (Borruel Witness Statement), ¶ 51 ("[T]he materials on my websites are adapted and derived from the sources listed on my website").

2. Borruel did not distribute materials via the websites to anyone other than her Psyc 217 students, the Board, and Peck.

Peck incorrectly contends that Borruel's websites were "freely and publicly accessible without any login requirement," and that Borruel was therefore "distributing derivative content on a public website" after Peck withdrew her permission for Borruel to use the Materials. Request at 2-3, Section I. Peck's contention flies in the face of Borruel's uncontested testimony that neither website has ever been discoverable by the general via public search engines, such as Google. In other words, without an active link to the websites or knowledge of the websites' URLs—information Borruel provided only to her students, to Peck, and to the Board—the websites cannot be found and are extremely unlikely to be accessed by members of the general public. *See* Doc. No. 80 (Borruel Witness Statement), ¶¶ 47-49.

Peck's evidence that she has been able to access the websites at various times says nothing about the general public's ability to access the sites. Peck identifies no evidence in the record that any materials on Borruel's websites have ever been accessed by any individuals other than Borruel's students and Peck herself, let alone that Borruel has ever "distributed" her lab materials to the public by any means.

3. Borruel did not exceed the license granted by Peck

Borruel's websites did not exceed the license granted by Peck for at least three reasons. First and foremost, as discussed above, the materials on the websites were developed solely by Borruel using third-party source material, so the materials are not derivative of, and did not infringe, Peck's copyright. Second, Peck did not distribute the materials or make them accessible to the general public via the websites, which were inaccessible to anyone without a link or URL or, in some cases, a password. Finally, to the extent Peck provided access to the sites to her Psyc 217 students at VVC, such use was well within the license granted by Peck.

Peck's first, second, and third points of error are duplicative of prior arguments made to the Board, are baseless, and fail to identify a clear, material error in the Board's final determination. The Board should reject each purported point of error in its entirety.

III. Alleged legal errors—Implied license analysis

For her fourth point of error, Peck's Request purports to identify four material "clear errors of law" in the Board's final determination. Request at 4-6, Section III. Each lacks merit.

A. The Board's final determination addressed access vs. permission to reproduce.

Peck incorrectly asserts that the Board "did not address the distinction between access and permission to reproduce." Request at 4, Section III. In fact, the Board's Final Determination *explicitly* addressed that very issue:

> Because Borruel had never taught the class before, Peck offered to be of assistance and gave Borruel full access to materials from Peck's teaching of [Psyc 217] in 2020. Peck Decl. ¶ 2; Borruel Decl. ¶¶ 5-6. Those materials included the syllabus and, importantly for this case, full access to Peck's Research Methods "Canvas" Course shell (the "Work"). . . .
>
> **Peck, who is seemingly very familiar with how Canvas works, did not give access to Borruel as just an observer, but gave full access, including the ability to download materials to use**. . . .

Final Determination at 2, Section II (emphasis added). The foregoing is consistent with the Board's overall finding that "[t]here is no question that the 'totality of the parties' conduct' indicates that Borruel was granted a license to use the Work." *Id.* at 6, Section III. Peck does not argue that the

"totality of the parties' conduct" standard is incorrect—nor could she—and her objection that Board did not address the distinction between access and permission to reproduce is, itself, unmistakably wrong. *See id.* ("When the totality of the parties' conduct indicates an intent to grant such permission, the result is a nonexclusive license") (quoting 3 *Nimmer on Copyright* § 10.03[A][7] (2026)).

B. Board did not err in finding that Borruel had permission to copy the Work into successive Canvas shells.

Peck contends, without citation to legal authority, that each time Ms. Borruel copied the Work into a new Canvas shell, "she was making a separate copy that needed its own authorization." Request at 5, Section IV. From this unsupported premise, Peck concludes that Board erred because it did not analyze each "copying event" separately. *Id.*

Peck is incorrect. The Board considered the evidence reflecting the "totality of the parties' conduct"—including Peck's insistence that Borruel teach Psyc 217 over multiple semesters—and found that Borruel had a license to use the Work to teach Psyc 217 up until the time Peck terminated the license on October 23, 2023. *See* Final Determination at 6, Section III. That such use necessitated copying the Work from shell to shell is immaterial to the Board's findings and conclusions.

C. Whether Peck granted Borruel an irrevocable license to use the Work is immaterial to the Board's Final Determination.

In footnote 3 of the Board's final determination, the Board posited that, pursuant to federal copyright and California law, Peck arguably granted Borruel an irrevocable license to use the Work to teach Psyc 217. Final Determination at 5, fn. 3, Section III. The Board explicitly stated, however, that "**whether the permission could be or was revoked or not does not change the outcome of this determination**." *Id.* (emphasis added).

Despite the Board's statement that the issue of irrevocability is immaterial, Peck contends that the Board erred by raising the possibility without resolving it. *See* Request at 5, Section IV. Peck further contends, without example or elaboration, that the Board "allowed that unresolved

question to shape its entire analysis in Ms. Borruel's favor" and "rel[ied] on irrevocability to support its conclusion." *Id*.

Peck's Request fails even to attempt to show how the question of irrevocability—raised once in a footnote and never mentioned again—"shaped the Board's entire analysis." Such failure precludes a finding that the Board clearly erred in failing to resolve the issue. Moreover, Peck's assertion that the board "relied" on irrevocability to support its conclusion is entirely conclusory. Further, because the issue of irrevocability is immaterial, then whether "the documented sequence of events in the record" supports irrevocability is, likewise, immaterial and not valid grounds for reconsideration. *Id*.

IV. The Board did not err by failing to address the parties' discovery dispute in the final determination.

For her fifth point of error, Peck mistakes counsel's objections to a discovery request for evidence of a guilty state of mind on the part of Borruel. *See* Request at 6, Section V. Peck assigns error to the Board for failing to address in its final determination legal argument made by Borruel's counsel in a written response to Peck's request for a discovery conference. *See id.*; *see also* Doc. Nos. 19, 20, 22, and 23 filed or issued in this proceeding.

Peck had requested the production of Canvas shells in their native format, which, as Peck herself acknowledged, would be inaccessible, and therefore unreviewable, by counsel unless Respondent accepted the burden of printing the materials, one page at a time, in .pdf format. *See* Doc. No. 22 at 2-3 (Response to Request for Conference Related to Alleged Bad Faith Conduct). Counsel for Borruel argued that the burden of producing the shells, and the possible prejudice arising therefrom, outweighed the materials' probative value. *See id.* at 3. Ultimately, during an April 2, 2025, status conference held by the Board, Peck withdrew her request for the shells as non-essential. *See* Doc. No. 23 (Scheduling Order for Written Testimony).

Peck asserts that the Board should have considered counsel's legal argument regarding prejudice as being "inconsistent with a party who has nothing to hide," or at least provided some explanation of how Respondent's resistance to production of the shells in their native format can

"comfortably coexist" with the Board's finding of no infringement. Request at 6-7, Section V. Peck's fifth point of error essentially asserts that the Board should have drawn an adverse inference from Borruel's objection to Peck's discovery request. Such an inference is permissible only under narrow circumstances not present here:

> [A]fter providing notice and an opportunity to respond, and upon good cause shown, the Copyright Claims Board may apply an adverse inference with respect to disputed facts against a party who has failed to timely provide discovery materials in response to a proper request for materials that could be relevant to such facts."

17 USC § 1506(n)(3). Borruel did not "fail to timely provide discovery materials in response to a proper request;" she merely objected to the request, which was later withdrawn by Peck. The adverse inference sought by the Peck is therefore inappropriate and unauthorized by federal statutory law governing proceedings before the Board. Peck has failed to demonstrate clear error by the Board in failing to consider a long-resolved discovery dispute between the parties in making its final determination.

V. The Board made no findings regarding Borruel's level of knowledge of Canvas.

Peck asserts, as her sixth point of error, that the Board erred by accepting Borruel's "Canvas inexperience defense," which, Peck contends, is contradicted by the evidence of record. Request at 7, Section VI ("The Determination accepts Ms. Borruel's explanation that materials remained in her Fall 2023 Canvas shell after October 2023 because she had limited Canvas experience and did not understand how the different views worked").

Peck acknowledges that she "addressed [Borruel's Canvas inexperience defense] directly in [Peck's] Reply Party Statement" *Id*. In fact, Peck devoted the final section of her Reply Party Statement to rebutting the so-called "limited experience defense." *See* Doc. 90 (Reply Party Statement) at 6-7, Section V. Thus, Peck's sixth point of error is merely repetitive of arguments already made to the Board in these proceedings, rendering it in inappropriate subject of a request for reconsideration. 37 C.F.R. § 230.2. Peck's sixth point of error can, and should, be rejected on that basis alone.

Although Peck asserts that the Board erroneously accepted Borruel's "inexperience defense," in fact, the Board made no explicit finding as to Borruel's experience with or understanding of Canvas. The absence of any such finding demonstrates that the issue is immaterial. Moreover, even if the Board had made such a finding, it would not have been clearly erroneous. As explained in Borruel's witness statement, she completed an online introductory on Canvas in 2018 and did not use Canvas again almost until she began working at VVC in the Fall 2021 semester. BWS ¶ 15.[1] Peck makes far too much of Borruel's completion of an introductory Canvas course and subsequent use of Canvas years later. Peck's evidence that Borruel must have had some general knowledge of how to use Canvas falls far short of showing that Borruel had comprehensive knowledge of the program, or knowledge of any particular features.

VI. The Board did not err by finding Borruel's sworn testimony and documentary evidence persuasive evidence that Peck was aware of Borruel's use of the Work.

Finally, for her seventh point of error, Peck contends, first, that the Board erred by giving credit to Borruel's sworn testimony and documentary evidence that she and Peck discussed Borruel's use of the Work in 2022 and 2023 and, second, that the Board erred by finding that Borruel's apologies to Peck after Peck accused Borruel of copyright infringement were not admissions of guilt. Request at 8, Section VII. Peck made identical arguments in her Reply Party Statement. *See* Doc. No. 90 (Reply Party Statement) at 1-3, Sections I and II. Thus, Peck's seventh point of error is merely duplicative of her earlier arguments before the Board in contravention of the standards governing requests for reconsideration. Peck's seventh point of error therefore can, and should, be refused on that basis alone.

[1] The Request erroneously states that Borruel took the introductory Canvas course in 2019. Request at 7, Section VI. Peck's own evidence shows that the course took place from May 21 through June 24, 2018. Peck Doc. WW at 2.

A. The Board did not err in finding that Peck was aware of, and did not object to, Peck's use of the Work prior to October 23, 2023.

Peck contends that, if she and Borruel had periodic discussions regarding Borruel's use of the Works, then "some written trace" of such discussions would exist. *Id*. "Some written trace" of the parties' discussions does, in fact, exist, namely, Borruel's reference to the discussions in her October 26, 2023, email to Peck. *See* Respondent's Exhibit 3 at KB000046 ("As I have shared with you before I kept some assignments but changed and added others as they fit with the Macmillan lectures"). Peck's failure to refute Borruel's statement in real time is persuasive evidence that the discussions did take place, and the October 26, 2023, email gives lie to Peck's contention that the Board should have addressed "the complete absence of any corroborating documentation" of such discussions. Request at 8, Section VII.

The Board was well within its discretion to weigh the conflicting evidence in this matter and to conclude that Peck was aware of Borruel's use of the Work prior to October 23, 2023. Peck fails to show that Board was unquestionably wrong in its findings, or that the issue is material to the Board's finding that the totality of the parties' conduct the indicates that Peck granted Borruel a license to use the Work. *See* Final Determination at 6, Section III.

B. The Board did not err in finding that Borruel's apologies were not admissions.

In what is perhaps the most tone-deaf portion of her Request, Peck again attempts to characterize Borruel's apologies to Peck—the head of the department of the academic institution of which Borruel was a newly-employed full-time instructor—as admissions of guilt. *See* Request at 8, Section VII. Peck's insistence that the Board "engag[e] with" those statements' "plain meaning" defies common sense and, ironically, a basic understanding of human psychology. Peck's seventh point of error fails to demonstrate that the Board was clearly erroneous in its understanding of Borruel's reaction to being accused of plagiarism by her department head.

VII. Conclusion

Claimant's request for reconsideration should be denied because it is in large part duplicative of arguments Peck previously made in this proceeding, and the errors purportedly

identified therein are neither unquestionably wrong nor material to the outcome of the case. Claimant therefore fails to meet the applicable standards for reconsideration.

Dated: April 13, 2026

Respectfully submitted,

THE LOVELL FIRM

By: s/*Tre Lovell*/
Tre Lovell
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KEIRY A. BORRUEL

Proof of Delivery

I hereby certify that on Monday, April 13, 2026, I provided a true and correct copy of the RESPONSE OF KEIRY BORRUEL TO REQUEST FOR RECONSIDERATION OF APRIL PECK to the following:

April M. Peck, represented by April M. Peck, served via ESERVICE at aprilmpeck@gmail.com

Signed: /s/ Sarah Silbert