

Gordon Rees Scully Mansukhani, LLP  
633 West Fifth Street, 52nd floor  
Los Angeles, CA 90071

A. LOUIS DORNY (SBN: 212054)  
ldorny@grsm.com  
HANNAH E. BROWN (SBN: 311158)  
hbrown@grsm.com  
GORDON REES SCULLY MANSUKHANI, LLP  
633 West Fifth Street, 52<sup>nd</sup> floor  
Los Angeles, CA 90071  
Telephone: (213) 576-5024  
Facsimile: (213) 680-4470

Attorneys for Defendant  
**WESTERN UNIVERSITY OF HEALTH SCIENCES**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DR. TAMARA EICHELBERGER,	)	CASE NO. 2:22-cv-00663-MAA
	)	
Plaintiff,	)	<b>ANSWER TO COMPLAINT</b>
	)	
v.	)	
	)	
DR. MARY HUDSON-MCKINNEY;	)	Complaint Filed: January 31,
WESTERN UNIVERSITY OF HEALTH	)	2022
SCIENCES; DOES 1 - 10, Inclusive,	)	Dept.: 690
	)	Judge: Hon. Maria A. Audero
Defendants.	)	

COMES NOW, Defendant, Western University of Health Sciences  
("Western University"), individually and for no others, and hereby answers the  
complaint dated January 31, 2022 ("Complaint") of Tamara Eichelberger  
("Plaintiff") as follows:

**Allegations Pertaining To Subject Matter Jurisdiction and Venue**

1. Western University denies the allegations in Paragraph 1 of the  
Complaint and admits only that this Court may exercise jurisdiction under 28  
U.S.C. § 1338(a).

2. Western University denies the allegations in Paragraph 2 of the  
Complaint and admits only that venue in this District Court is proper.

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### **Allegations Pertaining To Parties and Personal Jurisdiction**

3. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.

4. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. Western University admits only that it is a business duly organized and existing under the laws of State of California. Western University denies the remainder of the allegations in Paragraph 5.

6. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint, except that Defendant expressly denies that it is an owner or operator of the “GoodPorn Website.”

### **Allegations Pertaining To Plaintiff Tamara Eichelberger, Ph.D.**

8. Western University admits only that Dr. Eichelberger is a college instructor and health care professional with a doctorate in Physical Rehabilitation Science, with an emphasis in human neuromuscular physiology from The University of Iowa. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 8 of the Complaint.

9. Western University admits only that Dr. Eichelberger has taught classes in neurology. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint.

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10. Western University denies the allegations contained in Paragraph 10 of the Complaint.

11. Western University denies the allegations contained in Paragraph 11 of the Complaint.

12. Western University denies the allegations contained in Paragraph 12 of the Complaint.

13. Western University denies the allegations contained in Paragraph 13 of the Complaint.

14. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint.

15. Western University admits only that Western University paid Hudson-McKinney to teach. Western University denies the balance of the allegations contained in Paragraph 15 of the Complaint.

16. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint.

17. Western University admits only that Western University was contacted by Plaintiff. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 17 of the Complaint.

### **Count One: Copyright Infringement**

18. Western University incorporates by reference its responses to Paragraphs 1 through 17 as if fully set forth herein.

19. Western University denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Western University denies having any knowledge or information

1 sufficient to form a belief as to the truth of the allegations contained in Paragraph  
2 20 of the Complaint.

3 21. Western University denies having any knowledge or information  
4 sufficient to form a belief as to the truth of the allegations contained in Paragraph  
5 21 of the Complaint and specifically denies that Western University ever willfully  
6 infringed on any of Plaintiff's alleged copyrights or copyright rights.

7 22. Western University denies the allegations contained in Paragraph 22  
8 of the Complaint.

9 **Count Two: Reverse Passing Off**

10 23. Western University incorporates by reference its responses to  
11 Paragraphs 1 through 22 as if fully set forth herein.

12 24. Western University denies the allegations contained in Paragraph 24  
13 of the Complaint.

14 25. Western University denies the allegations contained in Paragraph 25  
15 of the Complaint.

16 26. Western University denies the allegations contained in Paragraph 26  
17 of the Complaint.

18 27. Western University denies having any knowledge or information  
19 sufficient to form a belief as to the truth of the allegations contained in Paragraph  
20 27 of the Complaint.

21 28. Western University denies having any knowledge or information  
22 sufficient to form a belief as to the truth of the allegations contained in Paragraph  
23 28 of the Complaint.

24 29. Western University denies having any knowledge or information  
25 sufficient to form a belief as to the truth of the allegations contained in Paragraph  
26 29 of the Complaint.

27 30. Western University denies having any knowledge or information  
28 sufficient to form a belief as to the truth of the allegations contained in Paragraph

30 of the Complaint.

**PRAYER FOR RELIEF**

31. Western University denies the allegations contained in Paragraphs (i) of Plaintiff's Prayer for Relief and contends that Plaintiff is not entitled to any relief sought therein.

32. Western University denies the allegations contained in Paragraphs (ii) of Plaintiff's Prayer for Relief and contends that Plaintiff is not entitled to any relief sought therein.

33. Western University denies the allegations contained in Paragraphs (iii) of Plaintiff's Prayer for Relief and contends that Plaintiff is not entitled to any relief sought therein.

34. Western University denies the allegations contained in Paragraphs (iv) of Plaintiff's Prayer for Relief and contends that Plaintiff is not entitled to any relief sought therein.

35. Western University denies the allegations contained in Paragraphs (v) of Plaintiff's Prayer for Relief and contends that Plaintiff is not entitled to any relief sought therein.

36. Western University denies the allegations contained in Paragraphs (vi) of Plaintiff's Prayer for Relief and contends that Plaintiff is not entitled to any relief sought therein.

37. Western University denies the allegations contained in Paragraphs ("iv" [sic]) of Plaintiff's Prayer for Relief and contends that Plaintiff is not entitled to any relief sought therein.

38. Western University denies the allegations contained in Paragraphs ("v" [sic]) of Plaintiff's Prayer for Relief and contends that Plaintiff is not entitled to any relief sought therein.

**JURY DEMAND**

Western University demands a jury on all issues so triable in accordance

with Federal Rule of Civil Procedure 38.

## **AFFIRMATIVE DEFENSES**

Western University asserts and interposes the following affirmative defenses in response to the allegations in Plaintiff's Complaint, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law and for which the law imposes the burden on Western University, regardless of how such defenses are denominated. Western University expressly reserve the right to add additional affirmative defenses, and to assert other defenses, which become known through investigation, discovery, or other proceedings, in this matter.

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Failure to State a Claim)**

1. Plaintiff fails to state a claim for copyright infringement in that Plaintiff does not own any valid copyrights and that there is no substantial similarity between Plaintiff's work and Western University's work.

### **SECOND AFFIRMATIVE DEFENSE**

#### **(Independent Creation)**

2. The copyrightable content of the at-issue teaching materials, excluding the referenced use of Dr. Blumenfeld's textbook, was created independently and without reference to any works protected by any asserted copyrights (hereinafter "Asserted Copyrights").

### **THIRD AFFIRMATIVE DEFENSE**

#### **(De Minimis Copying)**

3. Plaintiff's claims for copyright infringement are barred by the doctrine of *de minimis* copying, as any protectable portions of the works allegedly used that are the subject of the Asserted Copyrights used by Western University would have been *de minimis*.

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**FOURTH AFFIRMATIVE DEFENSE****(Fair Use)**

4. Plaintiff's claims for copyright infringement are barred by the doctrine of fair use.

**FIFTH AFFIRMATIVE DEFENSE****(Unclean Hands)**

5. Plaintiff's claims are barred by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE****(Misuse of Copyright)**

6. Plaintiff's claims are barred by the doctrine of misuse of copyright.

**SEVENTH AFFIRMATIVE DEFENSE****(Invalidity of Copyrights)**

7. Plaintiff's Asserted Copyrights are invalid because they do not involve contain works of original expression protected by the Copyright Act.

**EIGHTH AFFIRMATIVE DEFENSE****(No Infringement)**

8. There is no actionable substantial similarity between Plaintiff's Asserted Copyrights and Western University's work, and therefore there is no claim for direct copyright infringement.

**NINTH AFFIRMATIVE DEFENSE****(Reservation of Defenses)**

9. Western University reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure and any other defenses, at law or in equity

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1 that may be available now or may become available in the future based on  
2 discovery or any other factual investigation in this case.

3  
4 Dated: April 22, 2022

GORDON REES SCULLY  
MANSUKHANI, LLP

5  
6 By: /s/ A. Louis Dorny  
7 A. Louis Dorny  
8 Hannah E. Brown  
9 Attorneys for Defendant  
10 WESTERN UNIVERSITY OF  
11 HEALTH SCIENCES  
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