

1 Steven L. Krongold (State Bar No. 125952)
2 **KRONGOLD LAW CORP., P.C.**
3 **A PROFESSIONAL CORPORATION**
4 100 Spectrum Center Drive, Suite 900
Irvine, California 92618
Phone: 949-651-1900
Email: *steve@krongoldlaw.com*

5 Attorney for Defendant
6 **MARY HUDSON-MCKINNEY**

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION—FIRST STREET COURTHOUSE**

10
11 **TAMARA EICHELBERGER,**
12 **Plaintiff,**

13 **v.**

14 **MARY HUDSON-MCKINNEY,**
15 **WESTERN UNIVERSITY OF HEALTH**
SCIENCES, and DOES 1 - 10, inclusive,
16 **Defendants.**

Case No. 2:22-cv-00663-MCS-SK
Hon. Mark C. Scarsi, Ctrm. 7C

**COUNTERCLAIMS FOR
CANCELLATION OF
COPYRIGHT REGISTRATION**

Complaint filed: 1/31/2022
Trial date: 5/16/2023

17
18 **MARY HUDSON-MCKINNEY,**
19 **Counterclaimant,**

20 **v.**

21 **TAMARA EICHELBERGER,**
22 **Counterdefendant.**

1 COMES NOW, Defendant and Counterclaimant, Dr. Mary Hudson-
2 McKinney (“Counterclaimant”), individually, and hereby asserts the following
3 Counterclaim against Plaintiff and Counterdefendant Tamara Eichelberger
4 (“Counterdefendant”) as follows:

5 **JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction of this action under Federal
7 Rule of Civil Procedure 13 since a claim is asserted against an opposing party that
8 arises out of the transaction or occurrence that is the subject matter of the complaint,
9 which asserts federal question jurisdiction, 28 U.S.C. § 1331, and does not require
10 adding another party over whom the Court cannot acquire jurisdiction.

11 2. Venue is proper in this district as the complaint was filed in this judicial
12 district and a substantial part of the material acts and omissions giving rise to the
13 claims occurred within this judicial district pursuant to 28 U.S.C. § 1391(b).

14 **PARTIES**

15 3. Counterclaimant is, and at all times mentioned herein was, an
16 individual residing in this judicial district, and a named defendant in the above-
17 entitled action.

18 4. Counterdefendant is, and at all times mentioned herein was, an
19 individual residing in this judicial district, and a named plaintiff in the above-
20 entitled action.

21 **SUBJECT COPYRIGHT REGISTRATION**

22 5. Counterdefendant alleges that she had permission to adapt the text of
23 *Neuroanatomy through Clinical Cases* by Hal Blumenfeld, M.D., Ph.D.
24 (“Blumenfeld Textbook”) and create a derivative work based thereon, to wit, a
25 unique arrangement of video slides, outlines and graphics, along with a laboratory
26 manual (“Work”). First Amended Complaint (“FAC”), Doc. 37, at ¶¶ 10-11.

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1 11. Counterdefendant admits she created a derivative work based on the
2 Blumenfeld Textbook. The Copyright Act defines “derivative work” as “a work
3 based upon one or more preexisting works, such as a translation . . . abridgment,
4 condensation, or any other form in which a work may be recast, transformed, or
5 adapted. A work consisting of editorial revisions, annotations, elaborations, or other
6 modifications which, as a whole, represent an original work of authorship, is a
7 derivative work.” 17 U.S.C. § 101.

8 12. Counterclaimant is informed and believes, and based thereon alleges,
9 that the first edition of the Blumenfeld Textbook is protected by U.S. Copyright
10 Registration No. TX0005471559, dated December 28, 2001, and that the second
11 edition is protected by U.S. Copyright Registration No. TX0007249087, dated
12 September 3, 2010.

13 13. Counterdefendant was required to disclose to the Copyright Office the
14 existence of the preexisting work, i.e., the Blumenfeld Textbook, when she applied
15 to register the copyright in the Work. 17 U.S.C. § 409(9) [application for copyright
16 registration shall include “in the case of a compilation or derivative work, an
17 identification of any preexisting work or works that it is based on or incorporates,
18 and a brief, general statement of the additional material covered by the copyright
19 claim being registered.”].

20 14. Counterclaimant is informed and believes, and based thereon alleges,
21 that Counterdefendant represented to the Copyright Office that she created an
22 original work of authorship and failed to disclose in her application to the Copyright
23 Office that (a) she created a derivative work; (b) an identification of the preexisting
24 work that her work was based on or incorporated, i.e., the Blumenfeld Textbook;
25 and (c) a brief, general statement of the additional material covered by her copyright
26 claim being registered.

