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November 5, 2015

SENT VIA CERTIFIED MAIL

David L. Kian
General Counsel
Florida Atlantic University
Administration Building, Room 370
777 Glades Road
Boca Raton, FL 33431

Re: Cease and Desist

Dear Mr. Kian:

We represent Charles Nettleman III, (“Dr. Nettleman” or “our client”). As you are aware, Dr. Nettleman is teaching in your department at Florida Atlantic University (“FAU”) for the duration of the Fall 2015 semester.

Our client first taught a Fundamentals of Surveying course at FAU in fall 2014. During that semester, he used teaching materials that he had developed in 2008—years before he was invited to teach at FAU. After the semester and his teaching commitment ended, you asked Dr. Nettleman whether his materials could be used by a different professor who would be teaching Fundamentals of Surveying in spring 2015. Our client regretfully informed you that he licenses his teaching materials to various universities and would be unable to give away the intellectual property for which others compensate him. In spite of Dr. Nettleman’s understandable refusal to allow you to use work at no cost, he has learned that you have allowed at least two other professors to use his teaching materials dozens if not hundreds of times during the Spring 2015, Summer 2015, and Fall 2015 semesters. Neither professor could have obtained the materials without you granting access to Dr. Nettleman’s blackboard class page.

These materials were created by Dr. Nettleman outside of the course of his employment with FAU. As such, he owns the copyright to them—and has indeed registered his copyright with the United States Copyright Office. By impermissibly allowing others to use our client’s materials, you are committing copyright infringement in violation of the Copyright Act (17 U.S.C. §§ 101 et seq.).

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You are also violating FAU's own intellectual property policy ("IPP"). The IPP states that "this policy promotes the long-standing academic tradition . . . that treats the faculty member as the copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes . . ." See the IPP at Section 10.6.1. The IPP later states that a work made due to independent efforts is the property of the creator. See Section 10.1.3.

We write today to demand that you immediately cease and desist from your infringement of our client's intellectual property. You must immediately remove it in its entirety from the university's "Blackboard" online learning management system, and you must prevent all future display, reproduction, distribution, and transmission of Dr. Nettleman's teaching materials until this matter is resolved. In addition, we insist that you compensate him for your unlawful acts. We are aware that Dr. Nettleman has demanded payment from you of \$66,000.00 -this sum is a bargain when compared with the minimum \$150,000.00 statutory award – *per infringement* - and/or royalty fees a court could order you to pay in the event of litigation.

Please be aware that if we are unable to resolve this issue amicably, my client has authorized us to protect his rights to the fullest extent possible. Such protection may include, but is certainly not limited to, filing a lawsuit seeking damages, punitive damages, attorneys' fees, and costs. Please contact the undersigned within seven (7) business days from your receipt of this letter.

We look forward to your prompt cooperation in this matter. Kindly govern yourself accordingly.

Sincerely,



Lorri Lomnitzer