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WRITTEN TESTIMONY: PATRICK NAGLE PART 1 GERVASI CLAIM 24-CCB-0254

RE: Susan Gervasi and her film On The Trail of Jack Thorp

1. In 2008 my wife Catherine and I moved to Sarasota from our home in Paris. We had been living in Paris for 10 years at that point. Before that, we lived between New York and Los Angeles for 30 years. 2. My filmmaking, writing, producing and distribution commencing in 1969 had evolved over the years from Patrick Nagle Inc. a New York State corporation to series production and development to partnerships in film production and distribution with the number of partners within the international broadcast community and professional documentary filmmaking circles primarily in Europe. (Paris, London and Dublin). Over the years, we had made a number of films and put together a library that we distribute to international television and streaming markets worldwide attending the International markets in Cannes each Fall and Spring. 3. We in 2008 had just completed an award-winning 3-hour series about Andy Warhol called Andy Warhol's Factory People, and we brought the series to Sarasota to enter it in the 2009 Sarasota Film Festival. The film was turned down as being too long.
   In the rejection letter I received from the festival management group, I noticed that they had accidentally included 350 other e-mail addresses of the other film makers whose films had also been rejected. It made sense to me to contact these film makers individually and invite them to join me in creating a new festival that I titled the 2009 Sarasota Fringe Film Festival. 4. Susan Gervasi was one of the filmmakers on the list and she dropped me a note indicating that she would like to volunteer her support and work on the festival. Working together, we created a very good relationship. I produced (financed) a very successful festival due in part to the work that Susan and others contributed. In 2009, you may remember there was a severe recession happening in the United States, and we were very proud that we could give these “Fringe” filmmakers a leg up. After our Fringe Festival, Jay Handelman of the Sarasota Herald

Tribune announced early in 2010 that our Festival had been one of the top 10 events that had happened in Sarasota in 2009. 5. In 2010 we decided that we would run the festival again with the help of several other Sarasota friends. That was the final year. 6. Then, several years afterwards, I started to a film distribution marketing segment in the United States selling DVD films with PPR (Public Performance Rights) to colleges and universities. We concentrated on reaching out to the top colleges and universities, starting with our Warhol series which has to this date has been licensed to hundreds of universities and academic institutions. A feature documentary version currently streams on KANOPY. 7. From 2011 to 2015 a few of our films found limited success here in the United States in that market. It was at that time, in 2015. that I decided that Susan's film “On The Trail of Jack Thorp” could be popular based on what we had known of the college market for musically culturally-oriented films, but we knew we were looking at a dying market, as DVD sales at the Academic high end were no longer being licensed very often. Still, I wanted to try with Susan’s film. 8. On Wednesday June 3, 2015, I wrote to Susan explaining our business of selling films to colleges and universities in the United States, and I hoped she was well. That email was at 7:37 PM. 9. On Thursday June 4 2015, Susan replied at 12:40 AM, that she was delighted to know that my company would be interested in marketing the film. 10.On Thursday June 4th of 2015 at 6:34 PM I wrote “That's great that you would want to go along with our plan. I said I had no idea how strong the market could possibly be for the film, but that I had a hunch it could work and that I was attaching a contract that I wrote for her review. I requested that “she just print & and return a copy at her convenience.” I attached the letter agreement in that email. 11. On Tuesday June the 9th 2015 At 9:57 (Five days later) in the morning Susan wrote back that she had been under the weather but would be getting the Jack Thorp materials over soon. Shortly afterwards I replied on June the 9th 2015 at 11:37 I wrote, “That’s great Susan, I'm very happy that you have agreed” and “to feel better soon”. 12. On July 20th 2015 at 1:16 PM (Sixteen days later) Susan wrote to me saying that, after recovering from the summer flu or whatever, it was that she had another film project to finish up but, she then said and I quote: “I will be sending you the contract within the next day or two. Hope all is well with you, best wishes, Susan”. I wrote back the same day telling her that it wasn't necessary or for her to send any other copies of the film and

that we would be beefing up the sound (at our expense) because her levels were not good. Then I mentioned that “If you have a long form interview with Don Edwards (the music star in the film) that would be something that could add a lot of value to the project”.

SEE A. SARASOTA 350 LETTER,
SEE B. FRINGE PRESS 5
SEE C. FRINGE PRESS 2
SEE D. “Hi SUSAN SOME INTERESTING NEWS
SEE E. PDF GERVASI AGREE TO SIGN,
SEE F. JACK THORP DISTRIBUTION LETTER AGREEMENT

13. Therefore, on July the 20th 2015, I felt confident that Susan would be sending the contract. I was not concerned in the least. So, then we did indeed get started. The timing was not good, but we put together the package and the materials that we needed to get it off the ground. The timing had not been good for my health either. In 2013, at the age of 69, I had not been feeling well, and went to see my GP, who found my PSA levels (Prostate-specific antigen) very high, so I contacted a series of urologists. Prostate cancer was suspected, and confirmed. According to Doctor Steven Scionti, the disease had advanced close to the margins and cryotherapy surgery was recommended. In October of 2014 (Age 70), I had major surgery at Doctor’s Hospital in Sarasota and then experienced a long recovery period, during which time my overburdened wife Catherine had to quickly learn how to help me with my business, paying the bills, writing checks etc. I was too weak to work my usual ten-hour days, and we lost business, and consequently our home on Siesta Key. With the help of friends, we found a small apartment and sold off most of our furniture. I slowly recovered. My college and university business in the States did not. During that period of recovery we made few sales of Susan Gervasi’s Jack Thorp film to University customers. My wife was trying to handle my business, along with her own work. A few sales of the Jack Thorp film would not have made a blip to her. Then we discovered that one of the reasons was that Susan was selling the film on Amazon. One of my clients at The University of Texas, Gary Lay, informed me that he had found the film for sale on Amazon, and was thankful that he had found out about the Thorp film from my email to him. Then in 2019, at the age of 76, I was hit with a recurrence of prostate cancer, and I became a patient of the

Florida Cancer Specialists, with Dr. Elizabeth Guancial as my caring oncologist. I spent months enduring radiation therapy and have yet to fully recover my health. For the past number of years my wife Catherine and I have been living on Social Security, a small pension, an occasional film sale and license fees from Kanopy. But the DVD business, which began to die in 2015, is now dead. Arts and Humanities Academic programs are sadly dying, too. I am now 80 years old. 14. On June 10, 2022 I wrote to Susan about KANOPY and received a reply from here attorney. On June 16 2022, more than seven years later, I received a notice in the mail from the law firm of Andrea Evans, a trademark copyright attorney in Laurel MD. Her letter said that I was conducting an unauthorized licensing of the film “On the Trail of Jack Thorp” and that I had to cease and desist etcetera, and that I had “made tons of money” selling the film. Hardly. I had given up on Gervasi and her film long before. Why would I even try to offer it to my select group of universities for $300, when Gervasi had been selling it on Amazon for $18.

SEE G. HI SUSAN CATCHING UP HERE RE:ON THE TRAIL OF JACK THORP
SEE H. ATTORNEY ANDREA EVANS LETTER
SEE I. PDF TOTAL RECEIPTS FROM THORP SALES DVD WITH PPR

15. After checking our back sales, finding and collecting the information in detail that we had, I wrote back to the Gervasi attorney, Andrea Evans, and explained through a trail of emails that I had been under the distinct impression that Susan Gervasi had given us full authority to go ahead and do marketing and distribution for the film to the college and university academic library market based on the terms and conditions in our contract, and that we had never received any notice otherwise. 16. Therefore, in keeping with the attorney’s request, we immediately removed the Jack Thorp web page from our website. During this 7-year period we only accomplished 3 or 4 sales, which was head-scratching. The reason became evident when we discovered that there seemed to be MANY other people marketing the film for prices that were truly ridiculous in my opinion ($19.95) including Amazon. We also discovered that there were a few people that had old Thorp DVDs, and they were selling them as “antiques” for $199. More head-scratching. We tallied our exact number of sales

and sent the attorney copies of our actual receipts. After my letters to the attorney including copies of my emails to Susan, and hers in return, including a copy of the original contract sent to Susan, I heard NOTHING back from the attorney Evans, nor Susan. My thinking at the time was that I indeed had been “good to go” after all, and/or that the attorney felt that Susan did not have a serious case against us. Actually, I had another takeaway at this point, and that is: Gervasi had ALL of the details I proposed in my contract letter, and very much liked the idea and my approach, but ultimately, even after going along with us, she “ghosted” us, she never got back to me, and determined that she could do this business by herself. So she tried from 2015 and on, and I expect, much to her surprise, she realized the Academic DVD with PPR market was, in general, dead. 17. So, then I had expected to hear something back from Susan from 2022 until 2025. I was quite surprised that she never sent me a note nor responded in any way, and I assumed that the matter was finished. Our Academic DVD business had dwindled to nothing. In 2019 we had been approached by Kanopy to consider streaming films in our collection. We researched all the educational streaming offers and went with Kanopy. We went from streaming three hours of films to forty. The Kanopy stream reaches 4000 colleges and universities in the United States and 30,000 domestic public libraries and world-wide. Now we have up to close to 50 hours of our films on the Kanopy system. Once again, I thought of reaching out to Susan with another note to tell her about it and make her an offer. In my note I told her that we still love the Thorp film and from our point of view there are no hard feelings because we have a tremendous opportunity for her to finally make money and for me to recover my losses. I sent her another note June the 14th of 2022 asking Susan “if she was still out there”, as we had had no communication. 18. That brings us up to where we are today in 2025 with receipt of her meritless claim before the Copyright Claims Board.

The Copyright Issue. I NEVER change the FILM copyright on ANY of the films I have in Academic educational distribution or broadcast distribution or commercial streaming systems with broadcasters worldwide. I do however copyright the artwork that I CREATE for BRANDING purposes. I do this to protect OUR image as producers and distributors. Unlike the United States where artwork is automatically protected, many countries do not protect copyright of any sort. I sent Gervasi our MASTER DVD of the Thorp Film, which when played on a DVD player will clearly indicate the LAZY G Films, Inc.

SEE J. PDF GERVASI COPYRIGHT 2008 0N THORP FILM (SCREEN SHOT)

2. The Gervasi Claim that she “lost sales” due to my website postings between 2016 and 2022: On the contrary, she MADE sales, due to my email solicitations to our university clients. As explained in Part 1, I felt sure I had an agreement with Gervasi. After decades in this business, I had yet to have a complaint. Until now. And what is she complaining about? That I cost HER sales? In good faith, and after bringing the film’s soundtrack up to professional standards, I began to approach some of the academic buyers that I had known and worked with for many years. Below is only one example of the results of that experience. I can supply more. On August 20,2015, just before I was taken ill with prostate cancer, I emailed a well-known contact at the University of Texas, Gary Lay. Gary wrote back to me thanking me for telling him about the film, which he then promptly bought from AMAZON (He did not mention the price, which I believe was $18). If he had purchased the film from me, he would have paid $300 for the DVD with PPR license, of which Gervasi would have received $150. The Amazon listing is still up.

   SEE K. GARY LAY UTEXAS DOCUMENT
   SEE L. PDF JACK THORP ON AMAZON
   SEE M.PDF SCOTT SPICER HISTORY OF THE EDUCATIONAL LICENSE WITH LIB PAGE HISTORY OF EDUCATIONAL LICENSE

3. As you may know, the value for DVD with PPR in the educational market only holds up in the event your BRAND is the only sales agent

with rights to the educational market for distribution, and then one can create a LICENSE because you are the ONLY marketer authorized. For additional backup on this point I want to refer you to my relationship with associates within the Academic Library community, and a stream posted called: ‘The History of the Educational License’ which included Scott Spicer at The University of Minnesota and his postings December 16, 2024. I urge everyone to read this on VIDEO LIB which reaches about 1000 top domestic US Librarians via the UC Berkeley ‘videolib page’. SEE VideoLib page: “History of the Educational License” Scott is one librarian of many who have studied, and know well, the history and ultimate demise of the DVD hard copy sales to colleges and universities. One of the comments in Scott’s notes, written by Mark Gooch from The College of Wooster Libraries, reads as follows: “I will first state I’m not a lawyer and am open to any corrections, but we need to be careful about language. Copyright and license are NOT the same thing. Under copyright, the exemptions mentioned exist. So, if one purchased a copy of a DVD from Amazon for $25 with the intention of ONLY using it in an educational setting, that is allowable as described.” 4. My website NEVER directly offered its page viewers free viewing of an entire film. Why on earth would I? This is a business, not a charity. On occasion I did permit—only if one had the proper password—a SCREENING WINDOW. This feature was designed to allow serious potential licensees the opportunity to see more than a short trailer, and the password for the window revolved from week to week. Also, please note that my Planet Group Entertainment website was always targeted by me personally to our Academic Buyers via direct personal email. These buyers are familiar with our pricing and are primarily purchasing DVDs with PPR for their institutions. They understand that they can legally purchase a film on Amazon for a non-PPR based price and add it directly to their library. In effect my direct email solicitations unintentionally became a PROMOTION for our longtime clients to purchase the ‘Jack Thorp’ DVD from Amazon. I expect that there are many unknown others. Gervasi, instead, accused me of selling more DVDs than those few we actually sold. To WHO? At what price? And if I indeed had, there would surely be a record of those ‘sales’. I had already been completely undercut and had yet to recoup expenses. No good deed goes unpunished. (SEE AGAIN PDF GARY LAY UTEXAS) My wife, Catherine Shorr, is of the firm belief that Gervasi was monitoring my practices all along after she ghosted me back in 2015. Before retiring

my wife Catherine had been in the Hollywood film industry for 25 years as a screenwriter and award-winning member of the Motion Picture Editor's Guild, IATSE 700. Her late sister was a corporate entertainment lawyer at Disney for 20 years, well-versed in the laws involving copyright protection. Because of the Gervasi film's poor production quality, she advised me against taking it on. I thought I should still give Ms. Gervasi a chance because of all her help with the Fringe Film Festival and her enthusiasm. Indeed and sadly, no good deed goes unpunished. It is my understanding that Gervasi's original attorney is no longer involved and may have determined that there was not case against me, but that is only my opinion. Also, Ms. Gervasi either learned or was advised to FINALLY properly COPYRIGHT her film, which she did in December 2021, minus music rights and necessary mechanicals.

SEE N. DON EDWARDS FEATURED JACK THORP COWBOY SINGER

And now we come to the so-called Wayback Machine, a digital archive that allows users to view past versions of websites. As filmmakers, producers and distributors, if we had monitored the Wayback Machine, we would probably be appalled to see how many folks out there have 'lifted' entire sections of our popular film 'Andy Warhol's Factory People' and content details for their own personal use, all of it unauthorized. So there we would be, wasting precious time chasing down youtubers and tik-tokkers and facebookers etcetera for the rest of our days. I can attest to you that life is more important and too short for that.

WRITTEN TESTIMONY PART 3 PATRICK NAGLE PART 3 GERVASI CLAIM 24-CCB-0254

RE: Susan Gervasi and her film On The Trail Of Jack Thorp

CONCLUSON AND FINAL THOUGHTS

This entire proceeding has convinced me of the following:

1.That was almost 10 years ago, Susan and her husband were determined to ‘learn from me’ the nuances of Academic College and University DVD Licensing and Marketing by reviewing my Letter of Agreement in 2015, and then stalling, promising and leading me on to believe that she was sending it to me. Then ghosting me and proceeding to serve that market herself without me and the expertise and contacts I had created during the heyday and into the twilight of the DVD sales era. I believe that she had every intention to sign and go forward with me, but that her husband held her back. If only she would have been honest with me in the first place and sent a note or even called to say she didn’t want to go forward, I would have understood and stopped immediately. Ghosting is most unprofessional and unfair.

2. Then in 2022, seven years later, after I had told them about the Kanopy opportunity, they hired an attorney to chase me. At that point I immediately did a cease and desist, and sent a list and proof of all sales and the take down of our web-page. Throwing the ball back into Susan’s court, and thinking that her attorney seemed to have been satisfied that Susan did not have a case going forward. Again, a ghosting. Not even a note from the attorney. Very unprofessional.

SEE O. G MAIL OF JUNE 10, 2022 HI SUSAN !

It is interesting to Note that 2022 was the same year that the main Music Rights Holder Don Edwards died.

SEE P. PDF DON EDWARDS FEATURED JACK THORP COWBOY SINGER

SEE Q. EBAY THORP DVD RESIZE

3. Then in late 2024 a process server shows up at my Sarasota address. It’s Gervasi Claim 24-CCB-0254. My statements in Parts 1 and 2 outline my response, and now, I wish to add that Susan and her husband have had to wait to serve their order until now because they had never properly registered their copyright in the first place. Be that as it may, they still do not have licenses for music rights or mechanicals related to the performances presented in the films.

4. From my point of view, as I finalize this aspect of the CCB process, I wish to state that I have lost an inordinate amount of personal and

professional time preparing this response, searching ancient e-documents, talking with clients, and still thinking there are aspects of this case that have not come to fruition. There have been many sleepless nights, and at my age, the details of how one spends one’s time is critical to health and well-being.

I have been creating and distributing documentary films since 1971. This is not my first rodeo.

I bear Susan and her husband no ill will. I just wish she had responded to me all those years ago. It would have saved me a great deal of hurt, frustration, disappointment, and money. In conclusion I will add that I find this assault on my character and reputation frivolous and opportunistic.