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Reply Testimony to Nagle Response Testimony from Claimant Susan Gervasi

Gervasi v Nagle, 24-CCB-0254

Patrick Nagle was never authorized to distribute and license my copyrighted film, “On the Trail of Jack Thorp.” Nevertheless, he did so from 2015 through early 2022, as I learned in 2021 (See Susan Gervasi Opening Direct Party Statement).

In Mr. Nagle’s Evidence item “D,” titled “HI SUSAN SOME INTERESTING NEWS,” he exhibits friendly emails exchanged in June and July of 2015 about the possibility of his marketing the film. (Except for its typeface, Evidence item “E,” titled “PDF GERVASI AGREE TO SIGN” appears identical to “D.”) After some thought, however, I had decided against signing on with him.

On page 3 of his Response at item 13., he states that he “felt confident that Susan would be sending the contract. I was not concerned… then we did indeed get started…[We] put together the package and the materials that we needed to get it off the ground.” At no point in getting the film “off the ground” did Mr. Nagle contact me to ask why he had not received a signed agreement. Had he asked, I would have told him that I had decided against his distributing the film. His Evidence item “F,” “JACK THORP DISTRIBUTION LETTER AGREEMENT, ” shows the document he wanted me to sign. I had decided not to, primarily because I was uncomfortable with one particular item:

“The share of all gross revenues shall apply after the following expenses…

6. A one-time amount to Sarasota Fringe Films LLC of $350 to cover start-up marketing charges.”

Uncomfortable with this item, I let the possible distribution matter drop, assumed he would do the same, and forgot all about it until October, 2021, when I first saw his Planet Group Entertainmentwebsite. (See Gervasi Evidence “U” “V” “W”).

Mr. Nagle’s Evidence item “I,” titled “PDF TOTAL THORP SALES WITH PPR,” confirms that sales and licensing of my film to five universities occurred from 2015 through 2019.

Mr. Nagle redesigned the DVD case cover and the disc itself, deleting the original 2008 copyright notice that had been placed on both. (See Gervasi Evidence “B”). He replaced them with “Copyright 2015, Planet Group Entertainment” (See Gervasi Evidence “F”) On page 6 of his Response testimony, Mr. Nagle defends putting a company copyright notice on the redesigned DVD case cover and disc of my film:

“I NEVER change the FILM copyright on ANY of the films I have in Academic educational distribution or broadcast distribution or commercial streaming systems…I do however copyright the artwork that I CREATE for BRANDING PURPOSES…”

Nagle evidence item “J,” titled “PDF GERVASI COPYRIGHT 2008 ON THORP FILM SCREENSHOT,” is a screenshot of the of my original 2008 copyright notice, which lasts for two seconds at the end of the rolling film credits. On page 6 of his Response, he states that “our MASTER DVD of the Thorp Film…when played on a DVD player will clearly indicate the LAZY G FILMS, INC…”

On his Planet Group Entertainment company website, Mr. Nagle posted an image of the redesigned DVD case bearing a Planet Group Entertainment copyright

notice (See Gervasi Evidence “U”). It seems like common sense that any potential customer who saw “Copyright 2015, Planet Group Entertainment” on a DVD case cover would assume that Planet Group Entertainment held the copyright for the *film,* not the “art work” University libraries to which he licensed the film received cases and discs with the“Planet Group Entertainment” copyright notice. (See Gervasi Evidence “F” “G and “H.”)

On page 3 of his Response, Mr. Nagle states that his sales of “On the Trail of Jack Thorp” suffered because “Susan was selling the film [on Amazon” (5th line from bottom). However, I never sold “On the Trail of Jack Thorp” on Amazon. Mr. Nagle appears to offer as evidence for this contention items “K,” titled “GARY LAY UTEXAS DOCUMENT” and “L,” titled JACK THORP ON AMAZON.” In reality, “K” and “L” contain no evidence I was selling the film on Amazon.

“K” show emails between Nagle and then-University of Texas employee Gary Lay. One is an August 19, 2015 solicitation email for “On the Trail of Jack Thorp” from Mr. Nagle to Mr. Lay which uses copyrighted text from my original DVD case back cover (See Gervasi Evidence “L”). Mr. Lay responds on August 20th: “Can order this next week… Since this is from Amazon, it should arrive quickly.” The same day, Mr. Nagle responds, “Hi, Gary, Why don’t you order Jack Thope *(sic)* from us?”

Two other emails from Evidence item “K” are dated “Nov. 21, 2024.” On Nov. 21, 2024 at 10:14 a.m, an email from Patrick Nagle to Patrick Nagle states: “Austin-UTexas order given to Amazon in 2015. We were given no response.” On Nov. 21, 2024 at 1:06 pm, in an email from Patrick Nagle to Patrick Nagle, the following question is asked:

“Gary, You bought it from Amazon? What price was paid? Thanks-P [Quoted text hidden]”

Nagle Evidence “L,” titled “JACK THORP ON AMAZON,” is an undated Amazon ad for “On the Trail of Jack Thorp” showing my original DVD case and listing Kelli Biggs as the contributor of the film.

Kelli Biggs, great-granddaughter of early western movie star Tom Mix, narrated my film. I contacted Kelli to ask whether she’d sold a copy of the film on Amazon. She was quite surprised, and said she had never sold the film anywhere.

Mr. Nagle offers Evidence item “H,” titled ATTORNEY ANDREA EVANS LETTER. On page 4 of his Response, he states that “On June 16, 2022…I received a notice in the mail from the law firm of Andrea Evans…Her letter said…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.” In fact, nowhere in Ms. Evans’s June 16, 2022 cease and desist letter (Nagle evidence “H”) does she state that Mr. Nagle made “tons of money” from the film. Nor did I ever sell the film on Amazon. I did discover similar Amazon ads in French and Spanish.

On page 5 of his Response, Mr. Nagle cites a June 10, 2022 email he sent me shortly before receiving my attorney’s Cease and Desist letter Nagle evidence “G,” titled “HI SUSAN, CATCHING UP HERE. RE: ON THE TRAIL OF JACK THORP. He presumably did not know that I was aware of his website and had hired an attorney, since neither I nor Ms. Evans spoke with him before her letter went out.

He wrote the June 22 email to get my consent for digital distribution of the film via the Kanopy streaming service. By then I had officially registered my copyright, and theorized that Kanopy may have told him he needed my consent. In his testimony, he writes that "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."

In fact, in "G" he says nothing about "hard feelings" or an "opportunity for her to finally make money" or about "recovering losses" or about licensing arrangements made without my signature or about the institutions he *had* sold it to. He stated that my film "didn't seem to work with our price points with academic college and university libraries."

I refute Mr. Nagle's claim that his 10-line "contract" letter (Nagle Evidence item "F") provided me with inside information about the world of educational film licensing. On page 5 he writes that "Gervasi had ALL of the details I proposed in my contract letter" and then "'ghosted' us, she never got back to me.." On page 9, first line, he says that "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…" Not once during the six years he was licensing my film did Mr. Nagle attempt to contact me about the missing agreement.

Mr. Nagle states on page 7 of his Response, marked 4.: “My website NEVER directly offered its page viewers free viewing of an entire film…” This statement is about midway down the page. In fact, I have previously submitted evidence that he repeatedly offered free viewings of the film on his site (See Gervasi Evidence “GG”). He adds that “on occasion I did permit - only if one had the proper password - a SCREENING WINDOW.” He states that the password “revolved from week to week.” However, on the many screenshots I took of the website as it appeared between 2016 and 2022 - using the Internet Archive’s Wayback Machine search engine, the only password provided was “jackthorp” (See Gervasi Evidence “GG”).

On page 6 of his Response, he refutes my view that his offering free screenings of my film on his website could have cut into my own website sales and makes an extraordinary claim in point 2. “On the contrary, she MADE sales, due to my email solicitations to our university clients…I felt sure I had an agreement with Gervasi…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.”

It’s interesting that Mr. Nagle claims his actions “MADE sales” for me, when I did not receive a cent in compensation or for six years any information about his activities vis-a-vis my film, including his redesigning the DVD case cover and disc with his company copyright or that from 2015 into early 2022 he was actively selling and licensing it. As to Mr. Nagle’s claim that he brought the soundtrack up to “professional

standards," there is no detectable difference in the sound quality of the "master copy" and the sound quality of my original film. In fact, in a June 5, 2015 email to me, Mr. Nagle wrote that "The picture looks great. The only thing I would like to do… is 'beef up the tracks a bit' and 'level them out' so that the sound can be better, *although it's fine the way it is, actually."* (My italics) (Nagle evidence "D" and "E")

Mr. Also Nagle states, 5th line down from the top on page 8 of his Response: "Because of the Gervasi film's poor production quality [his wife's sister] advised me against taking it on. I thought I should still give Ms. Gervasi a chance…Indeed and sadly, no good deed goes unpunished."

I must respond to Mr. Nagle's denigration of my film's "poor production quality." "On the Trail of Jack Thorp" won the 2009 Will Rogers Medallion Award for Western Media - Film, presented by the Academy of Western Artists. It won the "Silver Lei Award for Excellence in in Filmmaking" from the 2009 Honolulu Film Festival and And was officially selected for screening at a number of other film festivals and western events in New Mexico, Florida, Nevada, Oklahoma, and Toronto, Canada.

In fact, Mr. Nagle used the above information to solicit potential clients. He mentions it as a "p.s." in his Aug. 19, 2015 email to Gary Lay (Nagle Evidence item "K," GARY LAY UTEXAS DOCUMENT). Nor did my film's "poor production quality" prevent his unauthorized licensing of it to two Ivy League universities - Princeton and Cornell - as well as to New York University, the University of New Mexico, and Washington State University (Nagle Evidence "I").

Proof of Delivery

I hereby certify that on Thursday, September 25, 2025, I provided a true and correct copy of the Gervasi Reply to Nagle Written Testimony - 24-CCB-0254 to the following:

Patrick Nagle, represented by Patrick Nagle, served via MANUALEEMAIL

Signed: /s/ Susan Gervasi