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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
(CAMDEN VICINAGE)**

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LINDA WOODSON

Plaintiff,

vs.

ATLANTIC CITY BOARD OF  
EDUCATION, JAMES KNOX, NATIONAL  
ASSOCIATION OF ELEMENTARY  
SCHOOL PRINCIPALS

Defendants.

CIVIL ACTION NO: 1:19-cv-14572-JHR-MJS

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**REPLY BRIEF OF DEFENDANT NATIONAL ASSOCIATION  
OF ELEMENTARY SCHOOL PRINCIPALS IN FURTHER  
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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On the Brief: Jeremy J. Zacharias, Esquire

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### **PRELIMINARY STATEMENT**

This Reply Brief is being filed in further support of Defendant, National Association of Elementary School Principals' ("NAESP") Motion for Summary Judgment.

Plaintiff's Opposition to NAESP's Summary Judgment Motion, which is not an opposition at all, does not provide any reason to deny NAESP's Motion. Plaintiff's Opposition should not be provided any consideration by this Court. Discovery has confirmed that Plaintiff's claims for copyright infringement are out of time based on the three-year statute of limitations. In Plaintiff's Amended Complaint and during discovery and depositions in this case, Plaintiff described conduct that occurred in 2010, as well as her knowledge that she was not being credited for her contributions as early as 2011. Discovery has revealed email correspondence in July of 2010 that shows Plaintiff had direct knowledge that James Knox was working on an article for the *Principal* magazine, and she was the individual that provided the content to Mr. Knox for the article.

Plaintiff's latest argument, that she "does not recall sending an email", that proves that she had knowledge as early as 2010, does not hold merit. NAESP finds it interesting that Plaintiff's Opposition to ACBOE's summary judgment motion is silent as to denying ever sending the subject email. Contrary to Plaintiff's argument in her Opposition Brief to NAESP's Motion for Summary Judgment, the email chain in question, in part, is actually used as an exhibit to Plaintiff's Second Amended Complaint. Therefore, either way Plaintiff chooses to view the Statute of Limitations applicable to her claims, she knew, or should have known, about her cause of action for alleged Copyright Infringement as early as 2011, making her current claims time barred.

Plaintiff wishes the Court to believe that she has proven her case for vicarious copyright infringement against NAESP. However, Plaintiff's deposition testimony is uncontested. Plaintiff admitted that NAESP had no knowledge of Plaintiff's alleged authorship of this work and had no way of knowing of Plaintiff's alleged authorship until her Complaint was filed in 2019. Therefore, there are no genuine issues of material fact that would support a cause of action against NAESP.

For the reasons set forth below and for the reasons set forth in NAESP's Opening Brief, it is respectfully submitted that Defendant NAESP's Motion for Summary Judgment be granted and Plaintiff's Second Amended Complaint be dismissed, with prejudice.

### **LEGAL ARGUMENT**

#### **I. PLAINTIFF'S CLAIMS FOR COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C. 504 ARE BARRED BY THE THREE-YEAR STATUTE OF LIMITATIONS IMPOSED ON THIS CASE**

In Plaintiff's Opposition Brief, Plaintiff is relying on Judge Rodriguez's previous Opinion granting Plaintiff's Motion to Amend the Complaint. However, this Court decision permitting Plaintiff's Second Amended Complaint was before discovery commenced in this matter and was before discovery revealed that Plaintiff had direct knowledge of the article opportunity for *Principal* magazine.

As stated in further detail in NAESP's Opening Brief, on August 2, 2022, over two years after this Court granted Plaintiff's Motion to Amend the Complaint, Defendant ACBOE served supplemental responses to discovery requests in this case (Exhibit "2" to Opening Brief). In these supplemental responses, James Knox certified to the following:

ANSWER: [O]n July 1, 2010, I sent all New York Avenue staff an email with the subject matter: Publishing opportunity with

Principal Magazine. The email that was forwarded was from Kaylen Tucker that asks that I submit an article for a new column in NAESP's Principal magazine. (See Bates Stamped documents R&R Woodson 147-148). After receiving this article, on July 6, 2010 at 10:58 a.m. you sent me an email in response that stated, "Attached is the narrative for the article." However, there was no attachment to this email. (See Bates Stamped document R&R Woodson 165 attached.)

On July 6, 2010 at 11:49 a.m. you responded to my email with the subject matter: Publishing opportunity with Principal magazine. The email from you states:

"Mr. Knox,

This was not the correct "jump drive." I will continue to search for the correct one. I also attempted to see if I had saved the document on the computer I use in the classroom. Unfortunately, the monitor(s) are not working when connected to that particular CPU, I tried substituting monitors twice." (See Bates Stamped documents R&R Woodson 167-169.) I responded to this email. (See Bates Stamped documents 170-172.)

On July 8, 2010 at 6:06 p.m. you responded to my email, "Found it" and attached Meaningful school change is determined by the academic and social outcomes manifested by the students as a word document. (See Bates Stamped documents R&R Woodson 173-186).

(Exhibit "2" to Opening Brief).

On January 4, 2011, Defendant Knox emailed a copy of the published Article to New York Avenue Staff, which included Plaintiff. (Exhibit "F" to Plaintiff's Second Amended Complaint, attached Exhibit "3" to Opening Brief). In the body of the email, Defendant Knox wrote, "Principal's Magazine article...Enjoy!!!" (Id.).

Based on the above chronology, as of 2010, Plaintiff knew, or should have known, that Mr. Knox was publishing an article for the *Principal* magazine and actually provided the narrative article for incorporation into the same. Plaintiff clearly discovered, or at least should have

discovered, her alleged cause of action against the Defendants in 2011 when she actually received a copy of the publication, making her instant claims against NAESP six years too late. Based on the allegations presented in Paragraphs 30 to 42 of Plaintiff's Second Amended complaint, she was aware of the publication at issue as they were occurring.

Accordingly, Plaintiff's Second Amended Complaint must be dismissed pursuant to the three-year statute of limitation imposed on this case by 17 U.S.C. § 507(b).

**II. PLAINTIFF HAS FAILED TO ASSERT THAT SHE SUFFERED ANY ACTUAL DAMAGES BASED ON THE ALLEGED COPYRIGHT INFRINGEMENT**

In Plaintiff's Opposition Brief, she cites to an alleged formal contract with Cognella Publishers. However, not only has Plaintiff failed to produce this contract in discovery, but this alleged contract is dated October 11, 2021, over two years after Plaintiff filed her Copyright Infringement Complaint against Defendants. Therefore, this alleged contract is irrelevant to the claims in Plaintiff's Complaint and has no bearing on this case of Plaintiff's alleged damages.

Irrespective of the timing of the Cognella proposal, Plaintiff, in her deposition, could not cite to any reason as to why the opportunity with Cognella Publishing was no longer viable. Specifically:

Q: [Y]ou identified that Cognella proposal in your Interrogatories.  
Do you remember that?

A: Yes.

Q: In Interrogatory No. 15, you state that the Interrogatory requests a description of a market value i.e., what a willing buyer would have been reasonably required to pay to willing seller at the time of the publication rights of the article. Do you remember that?

A: Yes.

Q: And you state that you may receive 15 or 25 percent of [textbook] sales according to your proposal with Cognella...?

A: I do.

Q: You testified that the Cognella proposal that you provided recently has to do with your work at Stockton University, correct?

A: Correct.

...

Q: What is, what is the reasoning why the Cognella proposal is not viable anymore?

A: I'm no longer employed by Stockton.

Q: Respectfully how has that anything to do with your copyright lawsuit that we're currently at the deposition in today?

A: Because I was deprived of an opportunity to benefit from work that I had written myself.

Q: Dr. Woodson, you are the owner of the copyright, are you not?

A: I am, yes, and I just don't do things that way...

Q: [I]n terms of legally, you are the current owner of the copyright work, correct?

A: That's correct.

Q: So if you went back to Cognella or any other textbook outfit for that matter, you are the owner of the copyright work, right?

A: I am.

Q: What is legally stopping you from using this copyrighted work for -- obviously you are not a Stockton adjunct professor anymore, but that has nothing to do with this copyright lawsuit, correct?

A: I would like to have this adjudicated prior to using anything that I have written before. That's just the way I do things. And I would like for this to be resolved should I go back and do anything with that writing or any other writing. I would like for this to be resolved first.



Q. I understand, Dr. Woodson, that that is your personal -- that is your personal way of doing things. Again, is there anything legally stopping you from using your copyrighted work?

A: No.

(Exhibit "12" to Opening Brief at 164:2- 167:16).

Therefore, Plaintiff's citation to the Cognella Agreement is a red herring since the same does not provide any evidence regarding actual damages. In addition, Plaintiff has failed to present any evidence in discovery regarding any actual damages suffered as a result of the alleged use by Defendant Knox of the work. Plaintiff has failed to present any proof of (1) the fair market value of her work; (2) any actual damages relating to lost profits due to the alleged infringement; or (3) NAESP's gross revenue reasonably related to the infringement.

Therefore, since Plaintiff has failed to provide any evidence of actual damages suffered, Plaintiff's Second Amended Complaint should be dismissed, with prejudice.

### **CONCLUSION**

For the reasons expressed above and for the reasons set forth in Defendant NAESP's Opening Brief, it is respectfully requested that Plaintiff's Second Amended Complaint be dismissed, with prejudice, pursuant to Fed. R. Civ. P. 56.

MARSHALL DENNEHEY  
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*/s/ Jeremy J. Zacharias*  
BY: \_\_\_\_\_  
JEREMY J. ZACHARIAS

Dated: November 28, 2022