

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN EDUCATIONAL RESEARCH
ASSOCIATION, INC., AMERICAN
PSYCHOLOGICAL ASSOCIATION, INC., and
NATIONAL COUNCIL ON MEASUREMENT IN
EDUCATION, INC.,

Plaintiffs,

v.

PUBLIC.RESOURCE.ORG,

Defendant.

Case No. 1:14-CV-00857-TSC-DAR

**DECLARATION OF MATTHEW
BECKER IN SUPPORT OF
DEFENDANT-COUNTERCLAIMANT
PUBLIC.RESOURCE.ORG'S MOTION
FOR SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AND PERMANENT
INJUNCTION**

Action Filed: May 23, 2014

I, Matthew Becker, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice in the District of Columbia and am an associate with the law firm of Fenwick & West LLP, counsel of record for Defendant-Counterclaimant Public.Resource.Org, Inc. ("Public Resource"). Except where otherwise indicated, I have personal knowledge of the facts herein and could and would testify competently hereto.

DEPOSITION EXCERPTS

2. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 2** is a true and correct copy of excerpts of the deposition of Diane L. Schneider, dated April 23, 2015.

3. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 3** is a true and correct copy of excerpts of the deposition of Marianne Ernesto, dated April 29, 2015.

4. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 4** is a true and correct copy of excerpts of the deposition of Wayne Camara, dated May 1, 2015.

5. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 5** is a true and correct copy of excerpts of the deposition of Felice Levine, dated May 4, 2015.

6. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 6** is a true and correct copy of excerpts of the deposition of Laress Wise, dated May 11, 2015.

7. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 7** is a true and correct copy of excerpts of the deposition of Carl Malamud, dated May 12, 2015.

8. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 8** is a true and correct copy of excerpts of the deposition of Kurt F. Geisinger, dated September 10, 2015.

DEPOSITION EXHIBITS

9. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 9** is a true and correct copy of Exhibit 43 from the deposition of Carl Malamud, entitled "Public Works for a Better Government."

10. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 10** is a true and correct copy of a document entitled "Form TX | United States Copyright Office." This exhibit was marked as Exhibit 1064 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NOME_0031521-22.

11. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 11** is a true and correct copy of a letter from Plaintiffs to a person identified as a member of the Joint Committee to Revised [sic] the 1985 Standards for Educational and Psychological Testing, dated April 21, 2014. This exhibit was marked as Exhibit 1065 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0004708-09.

12. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 12** is a true and correct copy of a letter from Wayne Camara to Gerald Covey, dated May 19, 1994. This Exhibit was marked as Exhibit 1068 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0014887-93.

13. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 13** is a true and correct copy of a letter from Plaintiffs to a person identified as a member of the Joint Committee to Revised [sic] the 1985 Standards for Educational and Psychological Testing, dated April 21, 2014. This exhibit was marked as Exhibit 1069 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031486-87.

14. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 14** is a true and correct copy of a document entitled "Copyright Assignment." This exhibit was marked as Exhibit 1070 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031803-806.

15. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 15** is a true and correct copy of an April 21, 2014 correspondence. This exhibit was marked as Exhibit 1071 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031459-60.

16. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 16** is a true and correct copy of a document marked as Exhibit 1072 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0004710.

17. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 17** is a true and correct copy of a document marked as Exhibit 1075 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031139-40.

18. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 18** is a true and correct copy of a document marked as Exhibit 1078 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031116-19.

19. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 19** is a true and correct copy of a document marked as Exhibit 1082 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0004719-20.

20. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 20** is a true and correct copy of a document marked as Exhibit 1085 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031456-58.

21. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 21** is a true and correct copy of a document marked as Exhibit 1086 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0004713-14.

22. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 22** is a true and correct copy of a document marked as Exhibit 1089 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031461-62.

23. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 23** is a true and correct copy of a document marked as Exhibit 1090 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031430-31.

24. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 24** is a true and correct copy of a document marked as Exhibit 1091 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0004715-16.

25. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 25** is a true and correct copy of a document marked as Exhibit 1094 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0004717-18.

26. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 26** is a true and correct copy of a document marked as Exhibit 1097 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031414-16.

27. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 27** is a true and correct copy of a letter from P.R. Jeanneret to Norman Abeles, dated July 11, 1997. This Exhibit was marked as Exhibit 1099 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0026988-89.

28. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 28** is a true and correct copy of a Certificate of Registration from the U.S. Copyright Office. This exhibit was marked as Exhibit 1104 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031478-79.

29. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 29** is a true and correct copy of excerpts from the 1999 Standards, including the Preface. This exhibit was marked as Exhibit 1105 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME0031885-92.

30. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 30** is a true and correct copy of a document titled "Professional Standards to Ensure the Fair and Appropriate Use of Testing in High-Stakes Educational Decisions," dated February 28, 2001. This Exhibit was marked as Exhibit 1112 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031463-65.

31. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 31** is a true and correct copy of a letter from Raymond Fowler to an unnamed U.S. Senator, dated May 7, 2001. This Exhibit was marked as Exhibit 1114 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031523.

32. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 32** is a true and correct copy of a document entitled "Highlights of APA's Involvement in Educational Testing Provisions of the 'No Child Left Behind Act.'" This Exhibit was marked as Exhibit 1116 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0031518-20.

33. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 33** is a true and correct copy of a letter and enclosure from Frank Farley to Elliot Eisner and Ronald Berk, dated January 5, 1993. This Exhibit was marked as Exhibit 1121 in the deposition of Marianne Ernesto, produced by Plaintiffs bearing control number AERA_APA_NCME_0004820-23.

34. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 34** is a true and correct copy of a document marked as Exhibit 1157 in the deposition of Wayne Camara, produced by Plaintiffs bearing control number AERA_APA_NCME_0004946-56.

35. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 35** is a true and correct copy of a document marked as Exhibit 1197 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0004519-20.

36. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 36** is a true and correct copy of a document marked as Exhibit 1198 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0004542-43.

37. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 37** is a true and correct copy of a document marked as Exhibit 1200 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0004546-48.

38. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 38** is a true and correct copy of a document entitled "American Educational Research Association | Standards of Educational and Psychological Testing | Statement of Revenue and Expenses | (FY2000 – 12/31/2013)". This Exhibit was marked as Exhibit 1205 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0004818.

39. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 39** is a true and correct copy of a document entitled "Standards for Educational and Psychological Testing | Sales Report, 1999 Edition." This Exhibit was marked as Exhibit 1207 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0031848.

40. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 40** is a true and correct copy of a document entitled "Standards for Educational and Psychological Testing | Sales Report." This exhibit was marked as Exhibit 1208 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0005137.

41. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 41** is a true and correct copy of a document entitled "American Educational Research Association | Standards of Educational and Psychological Testing | Statement of Revenue and Expenses | (FY2000 – 12/31/2014)". This exhibit was marked as Exhibit 1211 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0032527.

42. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 42** is a true and correct copy of a document entitled "Standards for Educational and Psychological

Testing (Fund Balance Report).” This exhibit was marked as Exhibit 1212 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0032526.

43. Attached to Public Resource’s Index of Consolidated Exhibits as **Exhibit 43** is a true and correct copy of a document entitled “Notes from Management Committee Meeting,” and dated December 17, 2008. This Exhibit was marked as Exhibit 1214 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0032520–23.

44. Attached to Public Resource’s Index of Consolidated Exhibits as **Exhibit 44** is a true and correct copy of page 8 of the Monitor on Psychology. This Exhibit was marked as Exhibit 1217 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0004706.

45. Attached to Public Resource’s Index of Consolidated Exhibits as **Exhibit 45** is a true and correct copy of what appears to be a compilation of documents beginning with a Table of Contents. This exhibit was marked as Exhibit 1218 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0004746–55.

46. Attached to Public Resource’s Index of Consolidated Exhibits as **Exhibit 46** is a true and correct copy of a document entitled “New! Revised! Expanded! Standards for Educational and Psychological Testing.” This exhibit as marked as Exhibit 1219 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0013137–39.

47. Attached to Public Resource’s Index of Consolidated Exhibits as **Exhibit 47** is a true and correct copy of webpages from www.aera.net, and printed on May 4, 2015 at 9:16 AM. This exhibit was marked as Exhibit 1220 in the deposition of Felice Levine.

48. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 48** is a true and correct copy of webpages from www.aera.net, and printed on May 4, 2015 at 9:19 AM. This exhibit was marked as Exhibit 1221 in the deposition of Felice Levine.

49. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 49** is a true and correct copy of a photograph of six people. This exhibit was marked as Exhibit 1222 in the deposition of Felice Levine.

50. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 50** is a true and correct copy of an Investment Access Account Statement addressed to American Educational Research from RBC Wealth Management, for the period from September 1, 2014 through September 30, 2014. This exhibit was marked as Exhibit 1263 in the deposition of Kurt Geisinger.

ADDITIONAL DOCUMENTS

51. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 51** is a true and correct copy of the Expert Report of James R. Fruchterman, dated June 13, 2015.

52. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 52** is a true and correct copy of Wayne Camara, "OCR Issues Draft Guide on Disparate Impact in Educational Testing," Society for Industrial and Organizational Psychology, October 1999, at <http://www.siop.org/tip/backissues/tipocto99/22Camara.aspx>

53. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 53** is a true and correct copy AERA Membership Benefits, at <http://www.aera.net/Membership/MembershipBenefits/tabid/10224/Default.aspx>;

54. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 54** is a true and correct copy of American Psychological Association Member information at <http://www.apa.org/membership/member/index.aspx?tab=4>.

55. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 55** is a true and correct copy of Matthew Bender/LexisNexis store sales link for the "District of Columbia Official Code" for \$849.00, at <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&catId=364&prodId=prod19670410>

56. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 56** is a true and correct copy of Matthew Bender/LexisNexis store sales link for the "Criminal Jury Instructions for the District of Columbia, Fifth Edition" for \$186.00 at <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&skuId=SKU44095&catId=128&prodId=44095>

57. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 57** is a true and correct copy of Thomson Reuters/WestLaw sales link for "District of Columbia Rules of Court – District, 2015 ed. (Vol. 1, District of Columbia Court Rules)" for \$182.00 at <http://legalsolutions.thomsonreuters.com/law-products/Court-Rules/District-of-Columbia-Rules-of-Court---District-2016-ed-Vol-I-District-of-Columbia-Court-Rules/p/101765392>.

58. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 58** is a true and correct copy of a Barnes & Noble sales link for "Moby Dick" for \$8.99 in paperback as part of its Barnes & Noble Classics Series. Barnes & Noble includes additional interpretive material such as "new introductions," "chronologies of contemporary historical, biographical, and cultural events," "study questions," etc." Barnes & Noble further states that the book is "beautifully designed and []printed to superior specifications": <http://www.barnesandnoble.com/w/moby-dick-melville-herman/1110282307?ean=9781593080181#productInfoTabs>

59. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 59** is a true and correct copy of a Barnes & Noble sales link for "The Adventures of Tom Sawyer" for \$6.25 in paperback as part of its Barnes & Noble Classics Series. Barnes & Noble includes additional interpretive material such as "new introductions," "chronologies of contemporary historical, biographical, and cultural events," "study questions," etc." Barnes & Noble further states that the book is "beautifully designed and []printed to superior specifications."
<http://www.barnesandnoble.com/w/adventures-of-tom-sawyer-barnes-noble-classics-series-mark-twain/1106017534?ean=9781593081393>.

60. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 60** is a true and correct copy of website link for Barnes & Noble, which promotes its Barnes & Noble Classics by calling attention to the "original ancillary materials included in each edition."
<http://www.barnesandnoble.com/h/bnclassics/about>.

61. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 61** is a true and correct copy of excerpts of the deposition of Christopher Butler, dated December 2, 2014.

62. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 62** is a true and correct copy of Plaintiff's Objections and Answers to Defendant/Counterclaim Plaintiff's First Set of Interrogatories (Nos. 1-10), dated January 20, 2015.

63. Attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 63** is a true and correct copy of email correspondence from Mitch Stoltz to Jonathan Hudis et al., re: "AERA, APA, NCME v. Public Resource – Discovery Issues Followup," dated March 17, 2015.

