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15 Attorneys for Plaintiff Public.Resource.Org

16  
 17 IN THE UNITED STATES DISTRICT COURT  
 18 THE NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN FRANCISCO DIVISION

21 PUBLIC.RESOURCE.ORG., a California non- ) Case No. 3:13-CV-02789-WHO  
 profit organization, )

22 Plaintiff, ) **DECLARATION OF KEN BERGER**

23 v. )

24 UNITED STATES INTERNAL REVENUE )  
 25 SERVICE, )

26 Defendant. )  
 \_\_\_\_\_ )

1 I, Ken Berger, declare as follows:

2 1. Since 2008, I have been the President and CEO of Charity Navigator, a 501(c)(3)  
3 nonprofit with a mission of helping charitable givers and social investors make more intelligent  
4 giving decisions by providing information and evaluating the financial health, accountability, and  
5 transparency of over 7,500 charities. I have personal knowledge of the matters stated in this  
6 declaration and could competently testify to them if called as a witness.

7 2. Our web site has had over 6.9 million visits in 2013 and we estimate that our  
8 service influences the decisions of donors for approximately \$10 billion of their charitable  
9 donations each year.

10 3. Our ratings examine the financial health, accountability & transparency, and results  
11 reporting of the nonprofits we evaluate.

12 4. In preparing our analysis and our ratings, we make intensive use of the Form 990 to  
13 evaluate the charities we are rating and to compare their performance to other similar nonprofit  
14 organizations.

15 5. Information we gather from the Form 990 helps us analyze the independence of the  
16 board, look for material diversion of assets, evaluate if the organization has prepared audited  
17 financials by an independent accountant with an audit oversight committee, examine if there are  
18 any loan(s) to or from related parties, whether the form 990 was provided to the organization's  
19 governing body in advance of filing, whether the organization has a conflict of interest policy, a  
20 whistleblower policy, and records retention and destruction policy. We also carefully examine the  
21 CEO and other executive salaries, the process for determining CEO compensation, and the board  
22 listing and any compensation for board members.

23 6. Many of the nonprofits we examine are either required to e-file their returns (i.e.  
24 over \$10 million in annual gross receipts) or have chosen to do so (i.e. the remainder of those we  
25 examine are over \$1 million in annual gross receipts).

26 7. We work with the image format of the Form 990, which has substantial  
27 disadvantages. The images automatically created by the IRS from e-file returns are low-resolution  
28 and small font sizes, which means they are hard to read. Because the numbers and other data are

1 difficult to read, when we retype this information into our own spreadsheets and databases, errors  
2 get introduced and we are forced to double and triple check our data entry work. However, errors  
3 are still introduced. Because the data we enter comes from low-resolution image files, the process  
4 is very tedious. In addition, the cost of manual data entry is vastly higher than simply importing  
5 digitized information which in turn limits our capacity to rate as many charities as we would like  
6 so as to further assist charitable givers.

7 8. Release of the e-file version of the Form 990 would be of great benefit to us and  
8 others who regularly analyze non-profit organizations. Release of e-file versions of the Form 990  
9 would also permit us to perform a much broader comparative analysis on topics such as CEO  
10 compensation and results reporting.

11 9. We have carefully followed the evolution of the IRS e-file programs since they  
12 began to require this procedure for larger charities in 2004. It has always been our expectation  
13 that because the Form 990 is intended for public inspection that the e-file version of these returns  
14 would be released. Only releasing this information in image format has a substantial negative  
15 effect on the accountability and effectiveness of the nonprofit sector of our economy as well as on  
16 the access to meaningful analysis by the donors who support the work of the sector.

17 I declare under penalty of perjury under the laws of the United States that the  
18 foregoing is true and correct and that this declaration was executed this 26<sup>th</sup> day of September,  
19 2014 at Glen Rock, NJ.

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22 KEN BERGER  
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