

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN EDUCATIONAL) Case No.
RESEARCH ASSOCIATION, INC.) 1:14-cv-00857
) TSC-DAR
AMERICAN PSYCHOLOGICAL)
ASSOCIATION, INC.; and)
)
NATIONAL COUNCIL ON)
MEASUREMENT IN EDUCATION,)
INC.;)
)
Plaintiffs-Counterdefendants)
)
)
vs.)
)
)
PUBLIC.RESOURCE.ORG, INC.,)
Defendant-Counterclaimant)

Videotaped 30(b)(6) Deposition of
AERA, APA and NCME
through the testimony of
Felice J. Levine, Ph.D.
Washington, D.C.
August 16, 2019
9:51 a.m.

Reported by:
Bonnie L. Russo
Job No. 3475330
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<p>1 Videotaped 30(b)(6) Deposition of AERA, APA and 2 NCME through the testimony of Felice J. Levine, 3 Ph.D. held at:</p> <p>4 Spaces 5 1441 L Street, N.W. 6 Washington, D.C.</p> <p>7 Pursuant to Notice, when were present on behalf 8 of the respective parties:</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 C O N T E N T S 2 EXAMINATION OF FELICE J. LEVINE, Ph.D. PAGE 3 BY MS. TURNER 9 4 5 EXHIBITS 6 Exhibit 1300 Public.Resource.Org, 14 7 Inc.'s Rule 30(b)(6) 8 Deposition Notice of 9 American Educational 10 Research Association, Inc. 11 Exhibit 1301 Public.Resource.Org, 14 12 Inc.'s Rule 30(b)(6) 13 Deposition Notice of 14 American Psychological 15 Association Inc. 16 Exhibit 1302 Public.Resource.Org, 15 17 Inc.'s Rule 30(b)(6) 18 Deposition Notice of 19 National Council on 20 Measurement in Education, Inc. 21 Exhibit 1303 Plaintiffs- 15 22 Counterdefendants' 23 Response and Objections 24 to Public.Resource.Org's 25 Second Set of Requests 26 for Production 27 Exhibit 1304 Plaintiffs- 19 28 Counterdefendants' 29 Response to 30 Public.Resource.Org's 31 Third Set of Requests 32 for Production</p>
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<p>1 EXHIBITS (CONTINUED):</p> <p>2 Exhibit 1308 Standards for Educational 56</p> <p>3 & Psychological Testing</p> <p>4 (2014 Edition)</p> <p>5 Exhibit 1309 1999 Standards 59</p> <p>6 Exhibit 1310 AERA Book Order Form 65</p> <p>7</p> <p>8</p> <p>9</p> <p>10 PREVIOUSLY MARKED EXHIBITS:</p> <p>11 Exhibit 1207 Standards for Educational</p> <p>12 and Psychological Testing</p> <p>13 Sales Report, 1999 Edition</p> <p>14 Exhibit 1208 Standards for Educational</p> <p>15 and Psychological Testing</p> <p>16 Sales Report</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 Public.Resource.Org, Incorporated,</p> <p>2 defendant-counterplaintiff, filed in the United</p> <p>3 States District Court for the District of</p> <p>4 Columbia, Civil Action No.</p> <p>5 1:14-cv-00857-TSC-DAR.</p> <p>6 This deposition is being held at</p> <p>7 Spaces, located at 1441 L Street, Northwest,</p> <p>8 Washington, D.C.</p> <p>9 My name is Daniel Russo from the</p> <p>10 firm Veritext Legal Solutions and I'm your</p> <p>11 videographer today. The court reporter is</p> <p>12 Bonnie Russo from the firm Veritext Legal</p> <p>13 Solutions.</p> <p>14 Counsel and all present in the room</p> <p>15 and everyone attending remotely will now state</p> <p>16 their appearances and affiliations for the</p> <p>17 record, please.</p> <p>18 MS. TURNER: Shannon Turner from</p> <p>19 Fenwick & West on behalf of</p> <p>20 Public.Resource.org. With me today is also</p> <p>21 Matthew Becker from Fenwick & West.</p> <p>22 MR. ELGARTEN: Cliff Elgarten,</p>
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<p>1 P R O C E E D I N G S</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Good morning. We</p> <p>4 are going on the record at 9:51 a.m. on August</p> <p>5 16, 2019.</p> <p>6 Please note that the microphones are</p> <p>7 sensitive and may pick up whispering, private</p> <p>8 conversations and cellular interference.</p> <p>9 Please turn off all cell phones or place them</p> <p>10 away from the microphones as they can interfere</p> <p>11 with the deposition audio. Audio and video</p> <p>12 recording will continue to take place unless</p> <p>13 all parties agree to go off the record.</p> <p>14 This is Media Unit 1 of the 30(b)(6)</p> <p>15 video-recorded deposition of APA, NCME, AERA,</p> <p>16 through the testimony of Felice Levine taken by</p> <p>17 counsel for defendant in the matter of American</p> <p>18 Educational Research Association, Incorporated,</p> <p>19 American Psychological Association,</p> <p>20 Incorporated, and National Council on</p> <p>21 Measurement and Education, Incorporated,</p> <p>22 plaintiffs-counterdefendants versus</p>	<p>1 Crowell & Moring.</p> <p>2 MS. OTTAVIANO: Deanne Ottaviano,</p> <p>3 APA.</p> <p>4 THE WITNESS: Felice Levine on</p> <p>5 behalf of the American Educational Research</p> <p>6 Association, the American Psychological</p> <p>7 Association and the National Council of</p> <p>8 Measurement and Education.</p> <p>9 THE VIDEOGRAPHER: Will the court</p> <p>10 reporter please swear in the witness.</p> <p>11</p> <p>12 FELICE LEVINE,</p> <p>13 being first duly sworn, to tell the truth, the</p> <p>14 whole truth and nothing but the truth,</p> <p>15 testified as follows:</p> <p>16 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>17 BY MS. TURNER:</p> <p>18 Q. Good morning.</p> <p>19 A. Hi.</p> <p>20 Q. Will you please state your name and</p> <p>21 spell it for the record.</p> <p>22 A. Sure. Felice, F-E-L-I-C-E, middle</p>
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<p>1 initial is J, Levine, L-E-V-I-N-E.</p> <p>2 Q. My name is Shannon Turner and I will</p> <p>3 be taking your deposition today.</p> <p>4 Have you ever been deposed before?</p> <p>5 A. Yes.</p> <p>6 Q. And how many times?</p> <p>7 A. Once.</p> <p>8 Q. What case was that?</p> <p>9 A. This case.</p> <p>10 Q. Great. So are you the same Felice</p> <p>11 Levine who has given testimony in this case?</p> <p>12 A. To the best of my knowledge.</p> <p>13 Q. Great. And have you ever testified</p> <p>14 at trial?</p> <p>15 A. No.</p> <p>16 Q. And have you ever testified for</p> <p>17 anyone other than AERA?</p> <p>18 A. No.</p> <p>19 Q. I'm going to ask you a series of</p> <p>20 questions today and the court reporter is going</p> <p>21 to record your answer.</p> <p>22 Do you understand?</p>	<p>1 A. Okay.</p> <p>2 Q. So, you know, no head nods, uh-uhs,</p> <p>3 uh-huhs, because that can be hard for the court</p> <p>4 reporter to write down.</p> <p>5 Is there any reason you cannot</p> <p>6 provide truthful and accurate testimony today?</p> <p>7 A. No reason at all.</p> <p>8 Q. Are you taking any medication that</p> <p>9 would affect your ability to give truthful</p> <p>10 answers?</p> <p>11 A. No.</p> <p>12 Q. Great. Are you employed?</p> <p>13 A. Yes.</p> <p>14 Q. By whom?</p> <p>15 A. American Educational Research</p> <p>16 Association.</p> <p>17 Q. Great. And what is your title</p> <p>18 there?</p> <p>19 A. Executive director.</p> <p>20 Q. Can you please state your work</p> <p>21 address for the record.</p> <p>22 A. Yes. 1430 K Street, Northwest,</p>
<p>Page 10</p> <p>1 A. Yes.</p> <p>2 Q. And your answers are under oath and</p> <p>3 under penalty of perjury so it's the same as</p> <p>4 though you're in front of a court and a judge</p> <p>5 and a jury.</p> <p>6 Do you understand?</p> <p>7 A. Uh-huh.</p> <p>8 Q. If I ask a question and anything is</p> <p>9 unclear or ambiguous, please ask me to rephrase</p> <p>10 the question.</p> <p>11 A. Okay.</p> <p>12 Q. If you don't ask me to clarify, then</p> <p>13 I'm going to assume that you understand the</p> <p>14 question.</p> <p>15 If you need a break at any time,</p> <p>16 please let me know and as long as a question is</p> <p>17 not pending, we can break.</p> <p>18 A. Okay.</p> <p>19 Q. And please verbalize your answer so</p> <p>20 that the court reporter can write them down.</p> <p>21 Let me finish a question before you answer,</p> <p>22 that way we are not talking over each other.</p>	<p>Page 12</p> <p>1 Washington, D.C. 20005, Suite 1200.</p> <p>2 Q. Thank you. What did you do to</p> <p>3 prepare for today's deposition?</p> <p>4 A. I essentially reread my filings. I</p> <p>5 thought I might read my prior deposition.</p> <p>6 Q. Did you review your prior deposition</p> <p>7 testimony?</p> <p>8 A. Really only a few pages. A little</p> <p>9 discussion that Mark and I had, it was a little</p> <p>10 joke I made. You laughed. You just laughed.</p> <p>11 That's good.</p> <p>12 Q. Did you review any documents to help</p> <p>13 refresh your recollection?</p> <p>14 A. Just the fillings that I submitted.</p> <p>15 MS. TURNER: I'll ask the court</p> <p>16 reporter to mark this as Exhibit 1300.</p> <p>17 (Deposition Exhibit 1300 was marked</p> <p>18 for identification.)</p> <p>19 BY MS. TURNER:</p> <p>20 Q. Do you recognize this document?</p> <p>21 A. I do.</p> <p>22 Q. And what is it?</p>

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<p>1 A. This was the filing that set forth, 2 I suppose, primarily focused on the topics of 3 examination but the issues that we might 4 discuss today.</p> <p>5 Q. Is this a 30(b)(6) notice to American 6 Educational Research, Inc.?</p> <p>7 MR. ELGARTEN: We agree it is.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. TURNER:</p> <p>10 Q. And you understand you are produced 11 as a witness designated to answer questions on 12 behalf of AERA today?</p> <p>13 A. Correct, yes.</p> <p>14 MS. TURNER: If I could have the 15 court reporter mark as Exhibit 1301.</p> <p>16 (Deposition Exhibit 1301 was marked 17 for identification.)</p> <p>18 BY MS. TURNER:</p> <p>19 Q. Do you recognize this document?</p> <p>20 MR. ELGARTEN: You can put the other 21 one in front of her and we will agree that she 22 is testifying on behalf of all three</p>	<p>1 Q. Great. And you understand that 2 these are plaintiff's written responses to 3 Public.Resource.Org's request for documents?</p> <p>4 A. Correct.</p> <p>5 Q. Did AERA search for documents in 6 response to these requests?</p> <p>7 A. I did.</p> <p>8 Q. And how did AERA go about searching 9 for documents?</p> <p>10 A. I looked through our files that were 11 saved information in our share drive where we 12 have information on this and through e-mails, 13 as did two other colleagues.</p> <p>14 Q. Did you look for any hard copy 15 documents?</p> <p>16 A. I suppose I did. I mean, I went 17 through the stack of our material.</p> <p>18 Q. And did AERA produce documents in 19 response to these requests?</p> <p>20 A. Yes.</p> <p>21 Q. And did AERA withhold any documents 22 it otherwise found in its search?</p>
<p>Page 14</p> <p>1 organizations.</p> <p>2 THE WITNESS: I see.</p> <p>3 MR. ELGARTEN: We will agree that 4 she's testifying on behalf of all three 5 organizations and this was per agreement with 6 Mr. Becker.</p> <p>7 MS. TURNER: Great. So if you could 8 mark this as Exhibit 1302.</p> <p>9 (Deposition Exhibit 1302 was marked 10 for identification.)</p> <p>11 MR. ELGARTEN: The deposition is 12 half over already.</p> <p>13 MS. TURNER: If we can have the 14 court reporter mark this as 1303.</p> <p>15 (Deposition Exhibit 1303 was marked 16 for identification.)</p> <p>17 BY MS. TURNER:</p> <p>18 Q. Are you familiar with this document?</p> <p>19 A. Yes.</p> <p>20 Q. What is this document?</p> <p>21 A. These were the questions that you 22 all posed and that I responded to.</p>	<p>1 A. No.</p> <p>2 Q. And did APA search for documents in 3 response to these requests?</p> <p>4 A. To the best of my knowledge, they 5 did.</p> <p>6 Q. And how did APA go about searching 7 for documents?</p> <p>8 A. I am assuming a similar mechanism, 9 hard copy files, to the extent -- to the extent 10 we have them and electronic.</p> <p>11 Q. Okay. And did APA produce documents 12 in response to these requests?</p> <p>13 MR. ELGARTEN: I will tell you all 14 documents were produced by all three parties.</p> <p>15 THE WITNESS: Although I think the 16 ones I had are the ones that were responsive. 17 Everybody responded.</p> <p>18 BY MS. TURNER:</p> <p>19 Q. Do you know if the APA withheld any 20 documents it otherwise found in its search?</p> <p>21 A. I am sure as a long-standing member 22 of APA, they withheld nothing.</p>

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5 (Pages 14 - 17)

<p>1 Q. Thank you. And for NCME as well?</p> <p>2 A. I'm less of a long-standing -- I'm</p> <p>3 sure they withheld nothing.</p> <p>4 MR. ELGARTEN: The nature of the</p> <p>5 NCME --</p> <p>6 THE WITNESS: I was going to say,</p> <p>7 NCME is a smaller organization of the three of</p> <p>8 us and they don't really -- they have a</p> <p>9 management company managing the association so</p> <p>10 there is nothing really they would have that I</p> <p>11 wouldn't have.</p> <p>12 BY MS. TURNER:</p> <p>13 Q. Do you know if NCME searched for</p> <p>14 documents?</p> <p>15 A. Yeah, I'm sure they did across</p> <p>16 e-mails, but they are more likely to have</p> <p>17 things that I sent them as attachments by</p> <p>18 virtue of being part of the management</p> <p>19 committee of the testing standards project.</p> <p>20 Q. And do you know if NCME withheld any</p> <p>21 documents?</p> <p>22 A. I am -- I'm sure they didn't.</p>	<p>1 I went through the hard copies, but most things</p> <p>2 I know I have electronically even if a hard</p> <p>3 copy doesn't exist.</p> <p>4 Q. Did AERA produce documents --</p> <p>5 A. Yes.</p> <p>6 Q. -- in response?</p> <p>7 A. Yes.</p> <p>8 Q. Did AERA withhold any documents in</p> <p>9 response?</p> <p>10 A. No.</p> <p>11 Q. What about APA? Did APA search for</p> <p>12 documents in response to these requests?</p> <p>13 A. Yes.</p> <p>14 Q. And how did they go about searching?</p> <p>15 A. I am assuming the same way.</p> <p>16 Q. Okay. Did APA produce documents in</p> <p>17 response to these requests?</p> <p>18 A. Yeah.</p> <p>19 Q. Did APA withhold any documents?</p> <p>20 A. Not to my knowledge. Same response.</p> <p>21 Q. Great. And for NCME, did NCME</p> <p>22 search for any documents responsive to these</p>
<p>Page 18</p> <p>1 Q. Okay.</p> <p>2 A. As sure as one could be who is not</p> <p>3 the executive director of NCME.</p> <p>4 MS. TURNER: We will mark as Exhibit</p> <p>5 1304, please.</p> <p>6 (Deposition Exhibit 1304 was marked</p> <p>7 for identification.)</p> <p>8 BY MS. TURNER:</p> <p>9 Q. And are you familiar with this</p> <p>10 document?</p> <p>11 A. Yes.</p> <p>12 Q. And you understand that these are</p> <p>13 plaintiff's written responses to</p> <p>14 Public.Resource.Org's third request for</p> <p>15 documents?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Did AERA search for documents in</p> <p>18 response to these requests?</p> <p>19 A. Yes.</p> <p>20 Q. How did AERA go about searching?</p> <p>21 A. Essentially have testing standards</p> <p>22 material and this case material in my office.</p>	<p>Page 20</p> <p>1 requests?</p> <p>2 A. Yes. They all -- we all received</p> <p>3 this and searched and provided anything we had.</p> <p>4 Q. Okay. And how did NCME go about</p> <p>5 searching?</p> <p>6 A. There's probably less of a stack</p> <p>7 anywhere because there isn't someone who is</p> <p>8 staffing NCME on this, but went through e-mails</p> <p>9 and whatever someone might have had in print.</p> <p>10 Q. Did NCME withhold any documents in</p> <p>11 response to these requests?</p> <p>12 A. No, not to my knowledge.</p> <p>13 Q. If you could turn to Page 2, please.</p> <p>14 A. Of the last one?</p> <p>15 Q. Yes, of the last one.</p> <p>16 A. Okay.</p> <p>17 Q. If you look at the bottom of the</p> <p>18 page, you see Request for Production No. 44?</p> <p>19 A. Uh-huh.</p> <p>20 Q. The requests asks for all documents</p> <p>21 not previously produced on which you intend to</p> <p>22 rely in this litigation.</p>

<p>1 Do you see that request?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Okay. If you turn the page, the</p> <p>4 plaintiffs' response, it states that:</p> <p>5 "Plaintiffs have already produced or are</p> <p>6 producing all documents on which they intend to</p> <p>7 rely on this litigation, but note they have not</p> <p>8 made any final determination."</p> <p>9 Do you see that response?</p> <p>10 A. Yes.</p> <p>11 Q. When the plaintiffs respond "or are</p> <p>12 producing," what does that mean?</p> <p>13 MR. ELGARTEN: This is my language</p> <p>14 because this asked what we're going to rely on</p> <p>15 as a legal matter in the case, so you could ask</p> <p>16 that question of me.</p> <p>17 MS. TURNER: Well, these are also</p> <p>18 plaintiffs' responses to the document request.</p> <p>19 MR. ELGARTEN: That's right, and I</p> <p>20 answered this question because I make the</p> <p>21 determination of what we're going to rely on</p> <p>22 ultimately in the case, and I do this in</p>	<p>1 which we gave you, but unless you asked for new</p> <p>2 forms of information.</p> <p>3 MS. TURNER: If the court reporter</p> <p>4 could please mark this as Exhibit 1305.</p> <p>5 (Deposition Exhibit 1305 was marked</p> <p>6 for identification.)</p> <p>7 BY MS. TURNER:</p> <p>8 Q. Are you familiar with this document?</p> <p>9 A. Yes.</p> <p>10 Q. What is this document?</p> <p>11 A. These were additional sets of</p> <p>12 requests or questions that you asked and our</p> <p>13 responses.</p> <p>14 Q. So you understand these are</p> <p>15 plaintiffs' written responses to</p> <p>16 Public.Resource.Org's interrogatories?</p> <p>17 A. Yes.</p> <p>18 Q. If you could just let me finish the</p> <p>19 question.</p> <p>20 A. Sorry.</p> <p>21 Q. It's a little tough for the court</p> <p>22 reporter to get it when we are talking over</p>
<p>Page 22</p> <p>1 consultation with Ms. Levine in connection with</p> <p>2 this, and so if you want to pose this question</p> <p>3 to me, you can, but you can't make the judgment</p> <p>4 about what we legally -- the documents to rely</p> <p>5 on.</p> <p>6 MS. TURNER: I understand that's a</p> <p>7 legal question but what I wanted to ask Dr.</p> <p>8 Levine is the language "or are producing."</p> <p>9 BY MS. TURNER:</p> <p>10 Q. So are plaintiffs withholding any</p> <p>11 documents?</p> <p>12 A. No. No.</p> <p>13 Q. Okay.</p> <p>14 MR. ELGARTEN: Sorry.</p> <p>15 THE WITNESS: Really, you got</p> <p>16 everything the first time around, folks. It</p> <p>17 was -- this was a no-brainer to give you</p> <p>18 whatever was left because there was nothing</p> <p>19 left.</p> <p>20 BY MS. TURNER:</p> <p>21 Q. Great. Thank you.</p> <p>22 A. I mean, there were some things left</p>	<p>Page 24</p> <p>1 each other.</p> <p>2 A. Okay.</p> <p>3 Q. If you could turn to Page 10,</p> <p>4 please, which is the last page of the document.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Is this your signature?</p> <p>7 A. Yes.</p> <p>8 Q. And it's verifying that the</p> <p>9 statements in plaintiffs' responses are true</p> <p>10 and correct?</p> <p>11 A. Correct.</p> <p>12 Q. Do you have any reason to believe</p> <p>13 that any of the statements in here are</p> <p>14 incomplete or incorrect?</p> <p>15 A. No, I have no reason to believe</p> <p>16 that.</p> <p>17 Q. Okay. Did plaintiffs withhold any</p> <p>18 information responsive to these</p> <p>19 interrogatories?</p> <p>20 A. No.</p> <p>21 Q. Thank you.</p> <p>22 MS. TURNER: The court reporter can</p>

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<p>1 please mark this as Exhibit 1306. 2 (Deposition Exhibit 1306 was marked 3 for identification.) 4 MS. TURNER: For the record, this is 5 a document produced by plaintiffs that is 6 identified as Bates No. 7 AERA_APA_NCME_RFP2_0000027. 8 BY MS. TURNER: 9 Q. Dr. Levine, do you recognize this 10 document? 11 MR. ELGARTEN: Well, we have two 12 different questions here. I produced this 13 document from my files because I felt I had 14 told Mr. Becker -- I think it was Mr. Becker 15 that we looked for certain documents. This 16 document was not present in the files of the 17 client, but it was present in my law firm files 18 and since I had said something to Mr. Becker 19 that I would try to find something, and he 20 asked, I said, I didn't think I could find real 21 old information but he asked and I really 22 didn't object to it. I decided to produce this</p>	<p>1 A. Yes. 2 Q. What is this document? 3 A. This document is a sales report of 4 the 1999 edition of the testing standards and 5 the preceding edition before the 1999 edition. 6 Q. Okay. What was the preceding 7 edition? 8 A. I think it was '85. I don't 9 remember exactly the year without looking at 10 the -- I think it was '85. 11 Q. Is this a document that is kept in 12 the ordinary course of business? 13 A. This or something equivalent. 14 Q. How is this document created? 15 A. I'm going to not exactly guess, but 16 I'm going to extrapolate from my knowledge, 17 how's that, because I did not -- I didn't 18 become executive director until 2002. 19 Q. Okay. 20 A. And I had no contact with the prior 21 edition, so when I came in 19 -- 2002, the 1999 22 edition was already published.</p>
<p>Page 26</p> <p>1 to him. 2 So Ms. Levine had no role in this 3 because it followed the prior production, it 4 was pursuant to a discussion I had with Mr. 5 Becker. I think it was you, Matt. 6 MS. TURNER: Was this document 7 produced by plaintiffs on behalf of plaintiffs? 8 MR. ELGARTEN: It is produced on 9 behalf of all plaintiffs, yes, and she may know 10 what it is because -- 11 THE WITNESS: I know what it is. 12 MR. ELGARTEN: -- the original 13 source of the document was the client files, so 14 you can ask those questions but she doesn't 15 know that it was produced. 16 MS. TURNER: Understood. 17 BY MS. TURNER: 18 Q. Are you familiar with this document? 19 A. Yeah. I mean, I know what it is, I 20 can tell you what it is. 21 Q. Do you believe this document is 22 authentic?</p>	<p>Page 28</p> <p>1 Q. Okay. 2 A. The prior edition was published by 3 -- on behalf of the three organizations by the 4 American Psychological Association. So this 5 was -- I'm going to assume a running tab, as it 6 were, of each year's sales for the years 7 preceding the 1999 edition. 8 Q. Okay. When say, "preceding the 1999 9 edition" -- 10 A. The 1999 edition picks up with 11 probably the 1768 as my -- this will be my 12 guess, as the partial year sales of the 1999 13 edition. 14 Q. Okay. 15 A. Because that's what we did similarly 16 in triangulating to the new edition. 17 So this is the sales report then of 18 the 1999 edition through 2013, which was the 19 end of December 2013 when this issue arose in 20 2014. 21 Q. Okay. If you look at the line where 22 it says: "1999 through 8-99," is it just --</p>

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<p>1 can you tell what the time period is there?</p> <p>2 A. I'm going to allow -- again, infer</p> <p>3 that this is the sales from -- from January</p> <p>4 through -- January through August 1999, and</p> <p>5 depending upon when it was literally published,</p> <p>6 I suspect it might be the old edition. I don't</p> <p>7 -- there is usually kind of a crossover.</p> <p>8 Q. Okay. Were there any sales between</p> <p>9 August and December of 1999?</p> <p>10 A. I literally don't know but I can</p> <p>11 only assume so.</p> <p>12 Q. Okay. Is that --</p> <p>13 A. Although it may be crumpled in the</p> <p>14 2000 -- in other words, it might have been --</p> <p>15 the new edition -- I don't know when the new</p> <p>16 edition literally came out, so let's say it</p> <p>17 came out in September, so it might have been</p> <p>18 incorporated in to what you are seeing as 2000.</p> <p>19 I don't believe there is a gap. It's just a</p> <p>20 matter of when the cutoff of one edition</p> <p>21 happened and when the new edition happened.</p> <p>22 Q. So when calculating a sales number,</p>	<p>1 November 1999. I just don't know.</p> <p>2 It may have been so de minimis at</p> <p>3 that point that it was really a 2000 -- the</p> <p>4 beginning of the reported sales might have been</p> <p>5 in 2000 depending upon when the release of that</p> <p>6 edition happened.</p> <p>7 I could go a step further. It could</p> <p>8 also be there is a little hiatus that they were</p> <p>9 taking orders but then not selling because</p> <p>10 maybe it didn't come out until November.</p> <p>11 BY MS. TURNER:</p> <p>12 Q. Dr. Levine, do you want to take a</p> <p>13 quick break?</p> <p>14 A. No, I'm fine.</p> <p>15 Q. I think we will take a quick break</p> <p>16 right now if that's okay with you.</p> <p>17 A. Sure.</p> <p>18 THE VIDEOGRAPHER: We are going off</p> <p>19 the record. The time is 10:14.</p> <p>20 (A short recess was taken.)</p> <p>21 THE VIDEOGRAPHER: We are going back</p> <p>22 on the record. The time is 10:20.</p>
<p>1 if a new edition comes out mid-year, let's say,</p> <p>2 would that -- those numbers for the new</p> <p>3 edition, the sales numbers be encompassed in</p> <p>4 the following year's sales?</p> <p>5 A. Well, I can tell you about 2014.</p> <p>6 You have that report. 2014, we continued to</p> <p>7 monitor 1999 in 2014, and you will see</p> <p>8 something that looks like July or August 2014</p> <p>9 to the end of the year. That is under my</p> <p>10 watch. I don't know exactly what happened</p> <p>11 under somebody else's watch.</p> <p>12 MR. ELGARTEN: I believe Ms. Levine</p> <p>13 is referring to the additional documents</p> <p>14 showing sales figures that were provided to</p> <p>15 you.</p> <p>16 THE WITNESS: Yeah. Exactly. So</p> <p>17 that's how we do it now. That's why I</p> <p>18 extrapolated but logically, there is a little</p> <p>19 bit of a hiatus so that side of the -- and I</p> <p>20 don't know when it came out, so I suppose it</p> <p>21 was either incorporated in or maybe it came out</p> <p>22 at the end of the year. Maybe it came out in</p>	<p>1 MS. TURNER: Thank you.</p> <p>2 BY MS. TURNER:</p> <p>3 Q. Dr. Levine, during the break, did</p> <p>4 you have an opportunity to review your prior</p> <p>5 testimony in this case?</p> <p>6 A. I did.</p> <p>7 Q. Okay. And I will introduce to you</p> <p>8 previously marked Exhibit 1207.</p> <p>9 A. Thank you.</p> <p>10 Q. And I will represent that this was</p> <p>11 marked during your previous deposition in this</p> <p>12 matter.</p> <p>13 And, Dr. Levine, if you could state</p> <p>14 whether or not the Exhibit 1207 and Exhibit</p> <p>15 1306, the numbers between 1999 and 2013 are the</p> <p>16 same?</p> <p>17 A. Well, 1207 and 1306 are not</p> <p>18 identical insofar as 1207 is reporting on the</p> <p>19 1999 edition and 12 -- 1306 has information</p> <p>20 about the prior edition which I believe is '85</p> <p>21 but I would need to verify that by looking.</p> <p>22 Q. Thank you. And if you can clear up</p>

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<p>1 for the record, 1999 in 1306, what standard is 2 that -- are those sales for? 3 A. In 1306, I believe they are the 1999 4 edition. 5 Q. Okay. Thank you. And, Dr. Levine, 6 if you could turn back to 1306, Exhibit 1306. 7 A. Uh-huh. 8 Q. For the 19 -- if you see 1989 there 9 at the top through 1998. 10 A. Uh-huh. 11 Q. What versions of the standard are 12 encompassed in these sales units? 13 A. I am going to -- I am going to -- 14 1989 shows a number of 21,920, so therefore, in 15 my -- I am inferring therefore that that 16 encompasses -- it could encompass a prior 17 edition, four years of sales at 21,000, seems 18 to me like that 21,000 might aggregate a prior 19 edition. 20 Q. Thank you, Dr. Levine. Let's -- 21 A. But I don't know. I mean, you know, 22 it's roughly -- you could see roughly 5,000 a</p>	<p>1 go back and review that detail. 2 BY MS. TURNER: 3 Q. Thank you. And then for the 1989 4 through 1998, those numbers there -- 5 A. Uh-huh. 6 Q. -- which standard is that for? 7 A. '99. 8 Q. So 1989 -- 9 A. I'm sorry. '85 -- that continues 10 with the '85 through, let's say, the 11 presumptive '85 through 1998, so -- and not 12 atypically as the scientific and research and 13 practice community are anticipating a new -- an 14 updated revision like all of us, you know, want 15 the I10 and not the I8 so people are waiting 16 for the new edition of the -- the sales 17 declines not because of the lack of value of 18 the product but because the communities are 19 aware that a new edition is under preparation. 20 Q. Thank you. 21 A. Or new standards that will be 22 published in the new edition are under</p>
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<p>1 year times four years, it could be -- it could 2 be just '85 to '89. That's what I guess I'd 3 estimate, within our set of typical rate of 4 production of sales in the early -- in the 5 early years of publication. 6 Q. Thank you, Dr. Levine. Just to 7 clarify for the record, are you speaking about 8 the entry for pre-1989? 9 A. Yes, right, which says -- which is a 10 summated, pre-1989 is summated from '85 -- 11 well, I don't know when it starts, but let's 12 say '85, '86, '87, '88, four years times X, 13 let's say four years times 4500 would give you 14 roughly this 21,000. 15 Q. Thank you. And so your testimony is 16 that this is the 1985 standard? 17 A. If -- yeah. 18 MR. ELGARTEN: I believe it's her 19 assumption or inference. 20 THE WITNESS: Yes. If we looked -- 21 if we opened it up, it would say the last 22 edition was, and I think it's '85 but I didn't</p>	<p>1 preparation. 2 MS. TURNER: And if the court 3 reporter can please mark as Exhibit 1307. 4 (Deposition Exhibit 1307 was marked 5 for identification.) 6 MS. TURNER: And for the record, 7 this is a document produced by plaintiffs 8 identified as Bates 9 No. AERA_APA_NCME_RFP2_000001 through 26. 10 BY MS. TURNER: 11 Q. Dr. Levine, do you recognize this 12 document? 13 A. Yes. 14 Q. What is this document? 15 A. This document is aggregation of our 16 various sales reports from the 2014 edition 17 through -- what we've had in our files that you 18 asked us to produce, through 2018. 19 Q. Do you believe this document 20 produced by plaintiffs is authentic? 21 A. All of the pieces are authentic. 22 Q. Thank you.</p>
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<p>1 A. What I mean by that is, doesn't -- 2 it wasn't prepared initially as one document. 3 It's several different pieces of documents for 4 different purposes, so as you see, additive 5 documents so they were not all produced at 6 once.</p> <p>7 Q. Thank you. And as the aggregate, 8 this is authentic?</p> <p>9 A. Correct.</p> <p>10 Q. And is this --</p> <p>11 A. And it's everything we have.</p> <p>12 Q. Thank you. And are these documents 13 that are in the aggregate, this document, is it 14 something that's kept in the ordinary course of 15 business?</p> <p>16 A. Yes.</p> <p>17 Q. And how was it created?</p> <p>18 A. It's created through our inventory 19 sales report, through our association 20 management system and through our financial 21 accounting system.</p> <p>22 Q. And do you know what association</p>	<p>1 Do you see that?</p> <p>2 A. Yes, I do, uh-huh.</p> <p>3 Q. And what does that mean?</p> <p>4 A. I would say -- I believe it's the 5 sales of the 1999 edition.</p> <p>6 Q. And if you look under "Actuals," the 7 column "Actuals, December 31, 2014," do you see 8 that 42,219.40?</p> <p>9 A. Isn't that what you were asking me 10 about?</p> <p>11 Q. Yes.</p> <p>12 A. -- before, previously. Did I 13 misinterpret your prior question?</p> <p>14 Q. No. I was asking about what the 15 publication income was. We will walk through 16 the numbers.</p> <p>17 A. Okay. Fine.</p> <p>18 Q. Do you see the numbers in 19 December --</p> <p>20 A. Yes.</p> <p>21 Q. -- are those for sales of the 1999 22 standards?</p>
<p>Page 38</p> <p>1 management system that is? Is that 2 proprietary?</p> <p>3 A. It's NOAH and I believe it's through 4 NOAH although we may keep the standards on a 5 separate spreadsheet, that are -- but it is 6 definitely through our own financial reporting 7 system.</p> <p>8 Q. Okay. Thank you. And if you could 9 please turn to what is identified as Page 7, 10 and can you tell me what this page is?</p> <p>11 A. Are these numbered?</p> <p>12 Q. If you look at the bottom, there is 13 a number.</p> <p>14 A. There are numbers. Okay.</p> <p>15 So this is our reporting of the 16 standards development fund from the end of -- 17 for fiscal years 2014, '15, '16, '17, '18, at 18 that point unaudited and projected through 19 April 30, 2019.</p> <p>20 Q. And if you look under "Profit and 21 Loss," there is an entry for "Publication 22 Income."</p>	<p>Page 40</p> <p>1 A. Yes. It could have something else 2 in it, but I don't think so. I mean, I can't 3 think of what it would be.</p> <p>4 Q. Okay. And if we turn to the next 5 column, which is December 31, 2015.</p> <p>6 Do you see that 6995?</p> <p>7 A. Uh-huh.</p> <p>8 Q. How many sales -- again, is this for 9 sales of the 1999 standard?</p> <p>10 A. It -- yes, it should be. Net of 11 expenses.</p> <p>12 Q. Okay.</p> <p>13 A. And that's true of 42,219.40, net of 14 expenses.</p> <p>15 Q. And how many sales would that be for 16 6995?</p> <p>17 A. Depending upon who purchased it, it 18 could be two.</p> <p>19 Q. If we go to the next column under 20 December 31, 2016, you see it says: "Zero 21 Dollars?"</p> <p>22 A. Uh-huh.</p>

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<p>1 Q. Is it accurate to say that there 2 were no sales of the 1999 standard in 2015 -- 3 I'm sorry, in 2016?</p> <p>4 A. Yes.</p> <p>5 Q. And the next column under December 6 31, 2017, it says: "Zero dollars."</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is it accurate to say that there 9 were no sales of the 1999 standard in 2017?</p> <p>10 A. Correct.</p> <p>11 Q. And moving to the next column for 12 December 31, 2018, it says: "137.85."</p> <p>13 A. Uh-huh.</p> <p>14 Q. And about how many sales is this of 15 the 1999 standard?</p> <p>16 A. Could be -- depending upon who 17 purchased it, it could be four or five I 18 suppose.</p> <p>19 Q. And when you say, "depending on who 20 purchased it," what do you mean?</p> <p>21 A. Whether it was a member or nonmember 22 of one of our associations. I don't quite</p>	<p>1 that sales declined of the 1999 standard 2 between 2014 and 2019?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And why is that?</p> <p>5 A. Because the 2014 edition was 6 released in mid-year.</p> <p>7 Q. And why would the release of the 8 2014 standard affect the sales?</p> <p>9 A. It's updated and expanded guidance 10 about best practices and testing, and our user 11 community of scientists and students and 12 faculty and teachers and test administrators 13 and test developers would turn to the new 14 standard.</p> <p>15 Q. Thank you. If we could turn to the 16 next item, it says: "Book royalty revenues," 17 that's right below the publication income.</p> <p>18 A. Correct.</p> <p>19 Q. What does that mean?</p> <p>20 A. That's the -- that's income from the 21 new -- from the 2014 edition.</p> <p>22 Q. And if you look under "actual," the</p>
<p>Page 42</p> <p>1 remember the selling price at that point or if 2 it was an institutional sale, a library sale.</p> <p>3 Q. Are there different prices?</p> <p>4 A. Yeah, for members and -- members get 5 a discount in all three organizations. It's 6 the same amount, whatever that might be.</p> <p>7 Q. And you mentioned institutions, do 8 they get any kind of discount?</p> <p>9 A. Only for book sales, because it 10 would be much higher than 137. I think it's 11 more than ten but it's bulk.</p> <p>12 Q. And moving to the next column, it 13 says: "Projection as of April 30, 2019." 14 You see it says: "Zero dollars" 15 there?</p> <p>16 A. Yes.</p> <p>17 Q. Is it accurate to say that there are 18 no projected sales numbers for the 1999 19 standards in 2019?</p> <p>20 A. Up through that point, yeah.</p> <p>21 Q. Looking at these numbers across the 22 board from 2014 to 2019, is it accurate to say</p>	<p>Page 44</p> <p>1 next column "actuals as of December 31, 2014," 2 it is "119,113.49."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And what does that represent?</p> <p>6 A. That represents the standard 7 development fund's royalty from the sales of X 8 number which we can see from the sales report 9 edition.</p> <p>10 Q. When you say, "edition," do you 11 mean --</p> <p>12 A. 2014.</p> <p>13 Q. Okay. And moving to the next column 14 where it has "actuals as of December 31, 2015," 15 do you see the number "130,425.40?"</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that for sales of the 2014 18 standard as well?</p> <p>19 A. Correct. The royalty.</p> <p>20 Q. Royalty. Thank you. 21 And moving to the next column for 22 "actuals as of December 31, 2016," do you see</p>

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<p>1 that number, "110,046.35?"</p> <p>2 A. Uh-huh.</p> <p>3 Q. Is that for sales of the 2014</p> <p>4 standard during 2016?</p> <p>5 A. It's the fund's royalty from that</p> <p>6 period.</p> <p>7 Q. And moving to the next column where</p> <p>8 it says: "Actuals as of December 31, 2017,"</p> <p>9 the number "97,407.50."</p> <p>10 Accurate to say that is also for the</p> <p>11 royalty for the sale of the 2014 standard?</p> <p>12 A. Correct.</p> <p>13 Q. And moving to the next column,</p> <p>14 "unaudited as of December 31, 2018," see that</p> <p>15 number, "\$98,994.98?"</p> <p>16 A. Uh-huh.</p> <p>17 Q. Accurate to say that that's for</p> <p>18 royalties from the sale of the 2014 standard?</p> <p>19 A. Correct.</p> <p>20 Q. And then the last column there is</p> <p>21 "projection of April 30, 2019," it says: "Zero</p> <p>22 dollars."</p>	<p>1 Q. And what does royalty mean here?</p> <p>2 A. Royalty is a percent of the gross</p> <p>3 sales.</p> <p>4 Q. Do you know what that percent is?</p> <p>5 A. I would need to -- I would need to</p> <p>6 refresh my memory. I think it is now 50/50.</p> <p>7 Q. And are you certain that the numbers</p> <p>8 here under book royalty revenues are royalties</p> <p>9 according to that split rather than gross</p> <p>10 revenues?</p> <p>11 A. Under book royalty revenue?</p> <p>12 Q. Yes.</p> <p>13 A. Yes, I am. That's why it is called</p> <p>14 something different.</p> <p>15 Q. Thank you. If you could please turn</p> <p>16 to Page 19 of the document in front of you.</p> <p>17 A. Yes.</p> <p>18 Q. Do you recognize this chart?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What is it?</p> <p>21 A. This is the sales report of the 2014</p> <p>22 edition starting in July when it was released</p>
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<p>1 A. It didn't tank.</p> <p>2 Q. So is it accurate to say that there</p> <p>3 were no sales projected of the 2014 standard in</p> <p>4 2019?</p> <p>5 A. It -- this reflects when the royalty</p> <p>6 payments are made. It's a different -- it's a</p> <p>7 different process for the 2014 edition than for</p> <p>8 the 1999 edition.</p> <p>9 Q. Can you tell me a little bit about</p> <p>10 that process?</p> <p>11 A. In 2019 -- the 1999 edition, AERA as</p> <p>12 publisher underwrote -- AERA as publisher was</p> <p>13 reimbursed for all expenses, so this is the --</p> <p>14 you will see -- you will see printing and other</p> <p>15 items -- well, you would see if you looked at</p> <p>16 your prior report, printing and other items.</p> <p>17 If you went through those documents</p> <p>18 that you got, so this is the -- with the 2014</p> <p>19 edition, the AERA underwrites all costs and so</p> <p>20 this is the royalty. We have a royalty</p> <p>21 arrangement to reimburse us for costs.</p> <p>22 Functionally, it's the same.</p>	<p>1 through -- at that point, it was the report</p> <p>2 through end of September or almost the end of</p> <p>3 September 2016.</p> <p>4 Q. Okay. And looking at the total sold</p> <p>5 number, is it accurate to say that the total</p> <p>6 number of units sold had declined between 2014</p> <p>7 and 2016?</p> <p>8 A. Between 2014 and 2016?</p> <p>9 Q. Yes.</p> <p>10 A. Without looking at the end of the</p> <p>11 year report, I'm not sure it is accurate to say</p> <p>12 that.</p> <p>13 Q. I'm sorry, you --</p> <p>14 A. Because you are comparing ---well,</p> <p>15 you are clearly comparing the 3242 and asking</p> <p>16 that question to the 2474, but sales come in,</p> <p>17 I'm going to say unanticipated ways, so there</p> <p>18 could be a bookstore ordering X number of</p> <p>19 copies for a university bookstore or a college</p> <p>20 bookstore for costs for January, February,</p> <p>21 March and sometimes we get very large sales</p> <p>22 orders in November preparing for the next</p>
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<p>1 semester, and so it might have bumped up, so 2 this could have been 3242 for a fall semester 3 cost, so I can't infer that without looking at 4 the final, you know, set of -- the final end of 5 year because -- in particular, because for 6 training and academic purposes, sales don't 7 just come linearly by month and it really 8 depends upon -- kind of in the aggregate, who 9 is teaching what, when, or who is having a 10 workshop when, and I know it seems sort of 11 weird, but we have been getting a lot of orders 12 in the past couple of years in that November 13 and even December period for the new semester, 14 and it seemed like in the beginning, it was 15 happening in the summer for the fall semester 16 and who's to explain what the academic 17 workplace is like, so the best way of looking 18 at it is the, you know, the stable end of 12 19 months particularly because -- because this is 20 used for training and workshop and course 21 purposes.</p> <p>22 Q. And is there any reason why, for</p>	<p>1 Q. And can you tell me what the dates 2 are, the sales comparison is for? 3 A. This is comparing 2015 through -- it 4 was prepared undoubtedly for the same 5 management committee meeting and it's comparing 6 January through September 28, 2015, to '16 in 7 the same period. 8 Q. Okay. And why is it comparing on a 9 ten-month basis here between 2015 and 2016? 10 A. The same reason, because of it being 11 an interim report before this committee met, or 12 I had a conference call or something, but there 13 is always an end of year report and you could 14 see, this report gives more nuanced information 15 as I was saying in my earlier statement about 16 member and nonmember purchases and about E-book 17 purchases and print purchases and bundled 18 purchases. 19 Q. What is a bundle? 20 A. Bundle is, you could buy -- and a 21 further discount, the E-book edition and get a 22 hard copy.</p>
<p>1 this chart, there are cutoffs through September 2 of 20 -- 3 A. Yes, because we tend to prepare this 4 report that you are looking at for a meeting of 5 our management committee. Management committee 6 is a joint committee of the three organizations 7 and so whenever the management committee has 8 its meetings typically twice a year, we will 9 produce them, and since you asked us to produce 10 anything we had, you'll see some unusual 11 reports, like, we are going to have a meeting 12 in November and so there will be the equivalent 13 one in November and we had one in -- we had a 14 phone call this past July. We probably have an 15 equivalent one up through July just to kind of 16 keep everybody updated. 17 Q. Okay. If you could please turn to 18 the next page, Page 20. So I think it's the 19 one -- right there. 20 A. Yes. This one. 21 Q. Do you recognize this chart? 22 A. Yes.</p>	<p>1 Q. And looking at these numbers for the 2 ten-month period of January 1, 2015 through 3 September 28, 2015, and the same period for 4 2016, is it accurate to say that sales 5 declined? 6 A. It is only accurate to say it 7 declined in comparing the same ten-month period 8 which could have the same distortion I 9 previously spoke to. 10 Q. And turning back, you had mentioned 11 the print E-book bundle? 12 A. Uh-huh. 13 Q. Why would someone want both an 14 E-book and a print copy? 15 A. Well, I can tell you why I would 16 want it and then we could -- you could deduce 17 why others would want it. I suppose those of 18 us trained and reared in the nonelectronic 19 world, like to touch print, but yet most of us 20 are also technologically savvy as around this 21 room so you might want for reading purposes the 22 electronic version, to be able to skim, remind</p>

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<p>1 yourself of what you are doing, you might want 2 it for a lecture, like, I would bring an iPad 3 into a lecture or seminar or discussion or 4 workshop, but when I am really planning what I 5 am going to say, I might want to be able to 6 have hard copy to line and take notes or, you 7 know, to do a deeper reading.</p> <p>8 And I think that's an extrapolatable 9 experience, though I can't speak for every user 10 that if for a modest amount extra, you can get 11 the print, I suppose 50 years from now, nobody 12 will know what the word print means, but if you 13 can have both, you know, for a modest amount, 14 then you could have your cake and eat it.</p> <p>15 Q. Any other reasons?</p> <p>16 A. It's good enough that I can think 17 of. And other forms of users similarly. I 18 suppose having one on their shelf if you -- if 19 your briefing staff, let's say, you are 20 developing new tests and you run a test company 21 or revising tests and you can project it on a 22 screen, but if you had a print edition, you</p>	<p>1 it, but that's what I'd recommend somebody do. 2 MS. TURNER: If the court reporter 3 can please mark this as Exhibit 1308. 4 (Deposition Exhibit 1308 was marked 5 for identification.) 6 THE WITNESS: Meaning we do have 7 some distributor sales. 8 BY MS. TURNER: 9 Q. Do you recognize this document? 10 A. Yes. And would this represent, if I 11 can ask, would this 8-14 be when you downloaded 12 this? 13 Q. Correct, yes. 14 A. Okay. Okay. 15 Q. So what is this document then? 16 A. This is from AERA website and it is 17 the publications part of our portal, and this 18 is the -- the access to ordering the 2014 19 edition. 20 Q. Does this appear to be an accurate 21 capture of the AERA website? 22 A. Yes.</p>
<p>1 know, you could say, hey, look, look, look. 2 Similar. I'm not saying it's only used for, 3 you know, courses, lectures and workshops. 4 It's for the deeper, I suppose the deeper 5 reader and maybe more particularly for those of 6 us who have at least had more print experience.</p> <p>7 Though there is some -- I think 8 there is some degree of research that you might 9 find it even with your own e-mailing, you know, 10 kind of out of sight, out of mind a bit, so 11 that if you only have it electronically, you 12 might not recall things as easily as being able 13 to just pull it off a shelf and remind 14 yourself, get up to speed quickly, even for 15 those who read electronically.</p> <p>16 Q. So for someone to purchase the 2014 17 standard, how do they go about doing that?</p> <p>18 A. They can do it in a range of ways. 19 The most immediate, I suppose, would be through 20 the AERA website because we are the publisher. 21 Of course, there are some bookstores 22 that carry it, so there's other ways of buying</p>	<p>1 Q. Great. So you had spoken about 2 ordering the 2014 standard. 3 A. I suppose we could update our 4 website and take the word "now" out, since it 5 has been available for a while. Got to get 6 that staff to it. 7 Q. You had said that one way that 8 someone can order a copy of the 2014 standard 9 is through the online store, and would they -- 10 on this website, how would they go about doing 11 that? 12 A. Well, there is a hypertext link -- 13 well, including ordering the 1999 edition. 14 Read more. I would have to scroll down and 15 remind myself since I don't order it but there 16 is a hypertext link to the online book store. 17 Q. I can represent, I think it's at the 18 top, right above the -- 19 A. You are right. Order now. Right. 20 Q. Great. So do you offer electronic 21 copies of the 2014 standard for sale through 22 the website?</p>

<p>1 A. I believe there is -- yes, I believe 2 there is a hypertext link to the provider who 3 -- whose platform doesn't sit on our own 4 platform. It needs a particular kind of 5 platform and protection of the PDF in such a 6 way that it is -- only purchasable.</p> <p>7 Q. So is it accurate to say that to 8 order online a copy of the -- an electronic 9 copy of the 2014 standard, it's done through 10 some kind of third-party platform?</p> <p>11 A. Correct. I am blocking on the name 12 of the company we use. I should have refreshed 13 my memory, but it's a platform that both does 14 its own publishing, it's own E-publishing, it's 15 storage and works for any number of publishers.</p> <p>16 Q. Thank you. If someone wanted to go 17 about purchasing a copy of the 1999 standard, 18 how would they do that?</p> <p>19 A. Right here. I think it's that 20 hypertext link to order previous edition of the 21 standard. It's in the store.</p> <p>22 Q. Can someone order it online?</p>	<p>1 MR. ELGARTEN: I think this is 2 actually beyond the scope of your deposition 3 notice, but I am not trying to overly restrict 4 you but just keep that in mind.</p> <p>5 MR. BECKER: We just want to --</p> <p>6 MR. ELGARTEN: I am trying not to --</p> <p>7 I am just noting that I believe it is, but you 8 want to ask a few questions, that's fine. I 9 just don't want to spend a lot of time.</p> <p>10 MR. BECKER: We are not. We are 11 just considering it on your sales, but just 12 want to make sure that the method of sales is 13 updated to the present.</p> <p>14 MR. ELGARTEN: Okay.</p> <p>15 MS. TURNER: Thank you.</p> <p>16 MR. ELGARTEN: That's fair, or I 17 think it's fair for the moment.</p> <p>18 MS. TURNER: The questioning will 19 not be long.</p> <p>20 BY MS. TURNER:</p> <p>21 Q. Dr. Levine, do you recognize this 22 document?</p>
<p>1 A. Yes.</p> <p>2 Q. Okay. So --</p> <p>3 A. I believe.</p> <p>4 Q. So if I could --</p> <p>5 A. Yeah.</p> <p>6 Q. If I could turn your attention to 7 order -- to order a previous edition of the 8 standard, 1999, there's a hypertext link, and 9 it says: "Please use the mail fax order form 10 available on the left-hand side of the page 11 under the books tab."</p> <p>12 A. Then I may be wrong. Good reading.</p> <p>13 Q. Thank you. What I went to law 14 school for.</p> <p>15 A. Sure. I almost went.</p> <p>16 MS. TURNER: If you could please 17 mark this as Exhibit 1309.</p> <p>18 (Deposition Exhibit 1309 was marked 19 for identification.)</p> <p>20 THE WITNESS: I hope you don't think 21 AERA is old style. I don't even have a fax 22 machine.</p>	<p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. This is the -- the website specimen 4 information on the 1999 edition informing 5 potential users that there is also a 2014 6 edition.</p> <p>7 Q. Does this appear to be an accurate 8 capture of the AERA website?</p> <p>9 A. Yes.</p> <p>10 Q. And can you purchase -- if you are 11 looking on this website, can you purchase the 12 1999 standards in the online store for AERA?</p> <p>13 A. Well, you've just updated me on the 14 fact that it looks like we did not include 15 that, I suppose as can happen with prior 16 editions of works, that it looks like a mail 17 and fax order.</p> <p>18 Q. Can a person e-mail the form to AERA 19 to purchase the 1999 standard?</p> <p>20 A. E-mail it with an attachment?</p> <p>21 Q. Correct.</p> <p>22 A. Sure.</p>

<p>1 Q. Do you know how to do that from 2 here?</p> <p>3 A. Let's see. From this particular 4 page, from this particular page, no, but there 5 is any number of pages that have a pub's e-mail 6 and -- or in this case, one could, I suppose, 7 call and learn how they could e-mail the -- the 8 form completed without faxing it.</p> <p>9 Q. Okay. Are you certain that you can 10 e-mail the form to order a copy of the 1999 11 standard?</p>	<p>1 look on our website, many publishers are eager 2 to sell the print edition and then delay E-book 3 editions, so we are trying to reach everyone in 4 the modality that they work in and -- which 5 includes with some of our major volumes being 6 able to purchase pieces.</p> <p>7 Q. Any plans to make it available in an 8 electronic format?</p> <p>9 A. Which?</p>
<p>10 A. Am I certain? I am certain that we 11 would take a sale for anything any way it came, 12 we are pretty small. You might think of old 13 AERA, 25,000 members, an annual meeting of 15 14 or 16,000, but our staff is under 30 people, 15 you know, so anything that comes in, we are 16 really pretty user friendly. If somebody 17 answers the phone, it won't be me, but it even 18 could be me and everybody helps everybody out, 19 so if anybody calls and wants to get something 20 done, they'll get to somebody on the</p>	<p>21</p> <p>22</p>
Page 62	MS. TURNER: If the court reporter
<p>1 publication staff or they'll get to our 2 customer service or a membership director, if 3 not, a publications director and somebody will 4 say -- might even say fax it to me and I'll get 5 it done.</p>	<p>1 can please mark this as Exhibit 1310. 2 (Deposition Exhibit 1310 was marked 3 for identification.)</p>
<p>6 Q. Are there any instances that you 7 know of where someone had e-mailed an order 8 form for the 1999 standard?</p>	<p>4 MR. ELGARTEN: Same question. We 5 are wandering from your list of subjects.</p>
<p>9 A. Any instances where they e-mailed 10 it?</p>	<p>6 MS. TURNER: Almost done. Just a 7 few more questions.</p>
<p>11 Q. Correct.</p>	<p>8 THE WITNESS: As long as you fill 9 out one of each, I'm okay, when you are done 10 really. I think your law firm should have one 11 of each of these.</p>
<p>12 A. Not without my checking with our 13 publications director or membership, customer 14 service person.</p>	<p>12 BY MS. TURNER:</p>
<p>15 Q. Is the 1999 standard available in an 16 E-book format?</p>	<p>13 Q. Do you recognize this document?</p>
<p>17 A. No.</p>	<p>14 A. Definitely. I mean more or less.</p>
<p>18 Q. Is it available in any electronic 19 format?</p>	<p>15 Q. And what is this document?</p>
<p>20 A. No. We think of ourselves as quite 21 a progressive, however, publisher, insofar as</p>	<p>16 A. This is an order form for --</p>
<p>22 many -- for many of our products and you can</p>	<p>17 depending upon when you downloaded it, for our 18 various books, AERA's books that are available.</p>
Page 63	Q. Okay.
	<p>19 A. Do you know when you downloaded 20 this?</p>
	<p>21 Q. It's the same as the other ones, so</p>
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<p>1 that would be August 14.</p> <p>2 A. Okay. So then it is current.</p> <p>3 Q. Can someone order the 1999 edition</p> <p>4 through this order form?</p> <p>5 MR. ELGARTEN: Want to call her</p> <p>6 attention to this?</p> <p>7 BY MS. TURNER:</p> <p>8 Q. Sure. If you look down where</p> <p>9 it says: "Standard for educational and</p> <p>10 psychological testing," it is the sixth gray</p> <p>11 bar and at the bottom of that, it says: "1999</p> <p>12 edition."</p> <p>13 So if someone wanted to order the</p> <p>14 1999 edition, would they put in the quantity?</p> <p>15 A. Yes.</p> <p>16 Q. The note?</p> <p>17 A. Yes. Uh-huh.</p> <p>18 Q. Can you PDF this order form and then</p> <p>19 send it via e-mail?</p> <p>20 A. There it is. The answer to your</p> <p>21 question. Members@AERA.net on the other side.</p> <p>22 Q. Perfect.</p>	<p>1 Q. And what is it?</p> <p>2 A. That's the -- I suppose, of course,</p> <p>3 having seen the other two, it looks like it's</p> <p>4 the 1999 edition without that 1999 sales</p> <p>5 estimate.</p> <p>6 Q. And if you could turn back, please,</p> <p>7 to what was marked as Exhibit 1306.</p> <p>8 A. Yes.</p> <p>9 Q. Is this the same document?</p> <p>10 MR. ELGARTEN: As I said, I produced</p> <p>11 this document, the additional document I</p> <p>12 believe it's the same document.</p> <p>13 THE WITNESS: Well, I'm assuming.</p> <p>14 BY MS. TURNER:</p> <p>15 Q. So is the answer yes then?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 MS. TURNER: Why don't we take a</p> <p>19 quick break.</p> <p>20 MR. ELGARTEN: Okay. Are we almost</p> <p>21 done?</p> <p>22 MS. TURNER: We are.</p>
<p>1 A. No heads will roll this afternoon.</p> <p>2 And just so you know, our -- that</p> <p>3 e-mail is customer service and membership.</p> <p>4 It's not membership questions. It's just -- it</p> <p>5 is -- we see our membership team as customer</p> <p>6 service.</p> <p>7 Q. So if someone e-mailed that with the</p> <p>8 order form, would they be able to place an</p> <p>9 order through that e-mail address?</p> <p>10 A. Absolutely, yeah. That's where you</p> <p>11 put the PDF. We don't -- the order for film,</p> <p>12 it comes through customer service, the label on</p> <p>13 the e-mail is membership, but it's really</p> <p>14 membership customer service department or team.</p> <p>15 Q. Okay. I'm going to hand you a</p> <p>16 document that was previously marked 1208,</p> <p>17 Exhibit 1208.</p> <p>18 I'll represent this was previously</p> <p>19 marked in your prior deposition in this matter.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you recognize this document?</p> <p>22 A. Yes.</p>	<p>1 THE VIDEOGRAPHER: We are going off</p> <p>2 the record. This is the end of Media Unit No.</p> <p>3 1. The time is 11:04.</p> <p>4 (A short recess was taken.)</p> <p>5 THE VIDEOGRAPHER: We are going back</p> <p>6 on the record. This is the start of Media Unit</p> <p>7 No. 2. The time is 11:26.</p> <p>8 MS. TURNER: Thank you.</p> <p>9 BY MS. TURNER:</p> <p>10 Q. Dr. Levine, if you could please turn</p> <p>11 back to what has been marked as Exhibit 1307.</p> <p>12 A. Yes.</p> <p>13 Q. And if you could please turn to the</p> <p>14 bottom of the page, No. 7.</p> <p>15 A. Yes.</p> <p>16 Q. And you testified earlier that the</p> <p>17 publication income entry under profit and loss</p> <p>18 is for sales of the 1999 standard?</p> <p>19 A. Yes, publication income.</p> <p>20 Q. And can you let us know if that is</p> <p>21 net of expenses or is that a gross number?</p> <p>22 A. I think that's a -- in that context,</p>

<p>1 I'm going to say it's the gross number.</p> <p>2 Q. Okay. If you could please turn to</p> <p>3 Page No. 25 at the bottom.</p> <p>4 A. Yeah, well, I'm doing it. 25 are</p> <p>5 you saying?</p> <p>6 Q. Yes, please.</p> <p>7 A. Of the same document?</p> <p>8 Q. Of the same document.</p> <p>9 A. Okay. Got it. Okay.</p> <p>10 Q. Great. And the top chart here, can</p> <p>11 you tell us what this is?</p> <p>12 A. Okay. So this is total sales by</p> <p>13 year.</p> <p>14 Q. Okay.</p> <p>15 A. For 2014 to 2018.</p> <p>16 Q. Okay. If I could turn your</p> <p>17 attention to 2018.</p> <p>18 A. Uh-huh.</p> <p>19 Q. Is it accurate to say that sales in</p> <p>20 2018 were higher than in 2017?</p> <p>21 A. Correct.</p> <p>22 Q. And why is that?</p>	<p>1 reupdated, to take account of new things that</p> <p>2 didn't exist, so in 1985, for example, there</p> <p>3 was no real use of technology in the way that</p> <p>4 there is in 2018. So this, you know, modest</p> <p>5 increase is probably some number of courses and</p> <p>6 perhaps brought a worldwide distribution.</p> <p>7 Q. And to clarify, these are -- for</p> <p>8 sales of the 2014 standard?</p> <p>9 A. Correct.</p> <p>10 Q. And the chart directly below that?</p> <p>11 A. Uh-huh.</p> <p>12 Q. What does this chart represent?</p> <p>13 A. This is total quantities sold</p> <p>14 through April 30 each year, so building upon my</p> <p>15 prior point about September 28, this document</p> <p>16 was created before we had a mini -- the</p> <p>17 management committee had a mini-meeting in May,</p> <p>18 so it was April 30, so they could get a</p> <p>19 snapshot before their meeting which was</p> <p>20 mid-May, so it is April 30, so then it compares</p> <p>21 year-to-date, you know, as you'll see in</p> <p>22 financial statements year-to-date and</p>
<p>Page 70</p> <p>1 A. Why did it happen?</p> <p>2 Q. Yes, if you know.</p> <p>3 A. More purchases. Sorry. It seemed</p> <p>4 self-evident. Why it happened. I suppose</p> <p>5 really links to my prior point. You know, you</p> <p>6 can't -- you couldn't really necessarily</p> <p>7 abstract -- extrapolate from September 28th</p> <p>8 that -- even though with certain forms of</p> <p>9 quote-unquote publications in the world of</p> <p>10 publications, one might think of them as having</p> <p>11 a limited shelf life.</p> <p>12 This publication is a publication</p> <p>13 about guidance and wisdom and best practices in</p> <p>14 the field, and as that is more wide -- of more</p> <p>15 -- of wider interest, it -- unlike even an</p> <p>16 academic publications, that might be superseded</p> <p>17 by -- well, here, it might be superseded by a</p> <p>18 new edition, but superseded by next, you know,</p> <p>19 next stages of a research program, that a work</p> <p>20 that has value can have expanded in during use.</p> <p>21 So until such point as with other</p> <p>22 guidance, it needs to be, you know, rethought,</p>	<p>Page 72</p> <p>1 comparable period, so the -- we were very</p> <p>2 pleased with the fact that the 2019, you know,</p> <p>3 performance suggests, you know, this -- the</p> <p>4 work is -- is considered, you know,</p> <p>5 increasingly -- is increasingly penetrating new</p> <p>6 users.</p> <p>7 Q. And to clarify, this is also for</p> <p>8 sales of the 2014 standard?</p> <p>9 A. All, correct, yeah.</p> <p>10 Q. And this chart shows through 2015</p> <p>11 through 2019, the total sales just for January</p> <p>12 through April 30 --</p> <p>13 A. Correct.</p> <p>14 Q. -- of each year?</p> <p>15 A. Correct. It's sort of like a</p> <p>16 snapshot of how -- recognizing the variation of</p> <p>17 when it might be audited, which you have no</p> <p>18 control over, it still gives sort of a</p> <p>19 comparable snapshot.</p> <p>20 Q. And is there any reason -- you spoke</p> <p>21 before about the increase between 2018 and</p> <p>22 2019, do you know any reason why there was an</p>

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<p>1 uptick in sales during that same time period?</p> <p>2 A. Without looking at who purchased, I</p> <p>3 might extrapolate that it was used in more</p> <p>4 courses or maybe more workshops, which could be</p> <p>5 a university or college sale anticipating a</p> <p>6 course, maybe even a summer course or courses.</p> <p>7 The 2015 high is reflecting the fact</p> <p>8 that this is really the first six months of</p> <p>9 publication or the availability of the</p> <p>10 standards, so there was a lot of pent up</p> <p>11 interest.</p> <p>12 Q. If you could please turn to Page 2</p> <p>13 of the same document.</p> <p>14 A. Uh-huh.</p> <p>15 Q. It should look like this.</p> <p>16 A. Yes. Yes.</p> <p>17 Q. I think the other side.</p> <p>18 A. Good. Because this one is not made</p> <p>19 for my eyes. Okay.</p> <p>20 Q. Can you tell me what this chart is?</p> <p>21 A. This is new edition -- wow, this is</p> <p>22 a -- you have to be quaintly interested in</p>	<p>1 total number of the total sales, it says:</p> <p>2 "4,227."</p> <p>3 Do you see that?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And if we could just turn</p> <p>6 back to the page we were just looking at, Page</p> <p>7 25.</p> <p>8 A. Yep.</p> <p>9 MR. ELGARTEN: Do the numbers match?</p> <p>10 MS. TURNER: There is a slight</p> <p>11 discrepancy so we just want to clear it up.</p> <p>12 MR. ELGARTEN: Okay.</p> <p>13 THE WITNESS: I was going to say</p> <p>14 somebody on staff can't add a column. I don't</p> <p>15 want to say that. Total sales, 4236.</p> <p>16 BY MS. TURNER:</p> <p>17 Q. Right. So if you see in the column</p> <p>18 of 2014, it says: "Total sales 4,236," and on</p> <p>19 Page 2, it says: 4,227."</p> <p>20 Any reason for that discrepancy?</p> <p>21 A. It's human error, really, I suppose</p> <p>22 one was an effort to do a transfer from an</p>
<p>Page 74</p> <p>1 data, but this is new edition and the number of</p> <p>2 copies sold by member group and nonmembers.</p> <p>3 You see the -- so, for example,</p> <p>4 NCME, two NCME members bought I suppose nine</p> <p>5 copies, so nonmember sales which might be book</p> <p>6 stores or faculty buying for courses but more</p> <p>7 likely university book stores or agents, in</p> <p>8 2014, there were, just as an illustration, six</p> <p>9 purchases of 15 copies. Does that help?</p> <p>10 Q. Yes. So let me try to rephrase it</p> <p>11 just to make sure I have it.</p> <p>12 So, for example, in the column with</p> <p>13 the number of copies at the top, if you go to</p> <p>14 the nine?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And directly below, there is a two</p> <p>17 under NCME member, that means that two NCME</p> <p>18 members bought nine copies each?</p> <p>19 A. Correct.</p> <p>20 Q. And this is for the 2014 standard?</p> <p>21 A. Yes. 2014 standards in 2014.</p> <p>22 Q. Thank you. And if we go over to the</p>	<p>1 Excel spreadsheet or something of the number of</p> <p>2 copies. The other one was a higher number,</p> <p>3 right?</p> <p>4 Q. Yes.</p> <p>5 A. So I am assuming something wasn't</p> <p>6 recorded. It might not have been human error.</p> <p>7 It was missing data, but it should have been --</p> <p>8 in my view as a scientist, it should have been</p> <p>9 recorded as missing data, but it wasn't. So</p> <p>10 just unknown.</p> <p>11 Unknown purchases as to the</p> <p>12 quantity, probably one, you know, just given</p> <p>13 the dominant mode of -- of us also, you know,</p> <p>14 being interested in volume sales because that</p> <p>15 means it penetrates and hits more users and</p> <p>16 students.</p> <p>17 Q. So is the number on Page 25, the</p> <p>18 4236 number, is that the more accurate number?</p> <p>19 A. Let's see. 25. That's the higher?</p> <p>20 Q. Correct.</p> <p>21 A. Yes. At that point, we didn't have</p> <p>22 E because we were just starting.</p>

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<p>1 Q. So if you could please turn to Page 2 3 of the same document.</p> <p>3 And what's on this page of the 4 document?</p> <p>5 A. Well, the -- what is the whole 6 document about? Is that what you want to know?</p> <p>7 Q. This particular page, yes.</p> <p>8 A. Yeah. So it's -- so it's an effort 9 to depict or report on net sales by number of 10 copies aggregating the copies less than ten and 11 including the nonmembers, so that of the 2,356 12 nonmember sales, less than a third -- probably 13 somewhere in the neighborhood of 28 percent 14 were individual, and you could see that -- if I 15 am not -- I don't know that the 934 were all 16 individual but once you get above ten, you are 17 talking about, you know, persons, merchants or 18 book dealers or book stores.</p> <p>19 Q. And to clarify, this is for sales of 20 the 2014 standards?</p> <p>21 A. 2014, that first year, which is the 22 first six months and I hope those numbers tie.</p>	<p>1 cut off for printing purposes.</p> <p>2 A. Correct. Definitely.</p> <p>3 Q. Okay. Can you tell me what this 4 document is or these pages represent?</p> <p>5 A. These are at the most microlevel 6 number of sales, it looks like somehow we did 7 intervals of five and then above 65, I suppose 8 they are the literal numbers that someone put 9 in, I mean that we were reporting. That's the 10 way we counted, so it's the exact count so you 11 can see it's -- it really isn't in intervals of 12 five. It's under 10. It's 10, 11, 12, so it's 13 the literal count and it jumps from 30 to 35 to 14 40, 47, 50, so it's the literal purchases.</p> <p>15 With some of these categories, there 16 appears to be more than one of those, but -- 17 and then the revenue that it generated and then 18 when you see that discount is for that -- which 19 we saw on another sheet, it's the volume sales 20 discount for above ten.</p> <p>21 Q. To clarify, this is for the 2014 --</p> <p>22 A. 2014.</p>
<p>Page 78</p> <p>1 The financial I have no doubt tie. And this 2 Sheridan Books I believe is our platform for 3 the E-book. That wasn't reflecting E-book. 4 That was reflecting them serving as the 5 printer. I think they were also the platform.</p> <p>6 Q. When you say, "serving as the 7 printer," is that for the physical copy?</p> <p>8 A. Yeah, literal printer. We don't 9 print in-house. So we printed 5,400 -- AERA 10 printed 5,436-ish, I suppose it was probably a 11 run of 5500 initially and then needed to go 12 into a second printing in November.</p> <p>13 Q. If you could please turn to the next 14 page, Page 4.</p> <p>15 A. Uh-huh. Yes.</p> <p>16 Q. And then also on Page 5 as well if 17 you want to take a look.</p> <p>18 A. You must think research is crazy 19 that we do all these little microlevel tables. 20 Okay. Let's see. Okay.</p> <p>21 Q. So I can represent to you, I believe 22 these are the same documents but it was just</p>	<p>1 Q. -- standard?</p> <p>2 A. Correct.</p> <p>3 Q. 2014 standard --</p> <p>4 A. Yes.</p> <p>5 Q. -- in the year 2014.</p> <p>6 A. Correct.</p> <p>7 Q. Okay.</p> <p>8 A. And you didn't receive other copies 9 of this because we were really obsessing on 10 what was happening, you know, we wanted to know 11 kind of what was happening as we were 12 launching, so we were running all this stuff, 13 like, you wouldn't want to see this every year 14 at that level.</p> <p>15 Q. If you could turn to Page 15 of the 16 same document.</p> <p>17 A. Uh-huh. Uh-huh.</p> <p>18 Q. At the top, it states that it's the 19 standards royalty calculation.</p> <p>20 Do you see that?</p> <p>21 A. Yep.</p> <p>22 Q. And then just to clarify for the</p>

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<p>1 record, you testified earlier about the royalty 2 percentage.</p> <p>3 A. Yeah.</p> <p>4 Q. And you believed it was a 50/50 5 split?</p> <p>6 A. It switched though at the beginning 7 of AERA having underwritten -- all these costs 8 had a little bit higher royalty. If you really 9 want to know, I have to double-check but I 10 think now it's 50/50.</p> <p>11 Q. Okay. Do you know when that change 12 happened?</p> <p>13 A. I believe, but I would want to 14 verify that it happened after the first full 15 year, meaning it was -- I would have to look. 16 I don't remember. I think it was the first six 17 months of sales and '15 and then it switched.</p> <p>18 Q. And if I could just draw your 19 attention --</p> <p>20 A. But I would really have to look. If 21 that's important to you, I would need to verify 22 it.</p>	<p>1 Q. And the publisher is 45 percent?</p> <p>2 A. Yeah. I will let our attorney know 3 if I am recalling wrong. So it might have been 4 50/50 at the beginning and then 45/55.</p> <p>5 Q. And then --</p> <p>6 A. That's what happens when you are 7 part of the same family, you forget how much 8 you make.</p> <p>9 Q. And If you could just turn to Page 10 16 there.</p> <p>11 A. 16?</p> <p>12 Q. Yes, the next page.</p> <p>13 Again, this is the royalty for the 14 six months ending June 30, 2018?</p> <p>15 A. Yes.</p> <p>16 Q. To clarify --</p> <p>17 A. It says right here, "development 18 fund," so that is <i>prima facie</i> as it were here.</p> <p>19 Q. And the royalty --</p> <p>20 A. That's 55 percent of the joint 21 project so that's 45 percent to AERA.</p> <p>22 Q. Okay. And then on the following</p>
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<p>1 Q. If I could draw your attention -- 2 where it says royalty percentage, it says: "55 3 percent."</p> <p>4 A. Where are you here?</p> <p>5 Q. If you look down, it says: "Royalty 6 percentage, total royalty," it's kind of 7 grouping of text right before the last one.</p> <p>8 A. Correct. So that's what it was 9 originally I suppose, then 45/55 or something 10 like that I suppose.</p> <p>11 Q. So for the six months ended in 2017, 12 does it refresh your recollection that it was 13 -- 55 percent was the royalty percentage?</p> <p>14 A. So it may -- it might have ended 15 with '17 I suppose, standards royalty 16 calculation. 1, 2, 16. It could be -- it's 17 not 50/50, it might be 45/55.</p> <p>18 Q. And how is that split?</p> <p>19 A. The testing standard is the larger 20 amount.</p> <p>21 Q. Testing standard is 55 percent?</p> <p>22 A. Yes.</p>	<p>1 page, Page 17.</p> <p>2 A. Same, yeah.</p> <p>3 Q. So you are saying 55 percent was the 4 royalty --</p> <p>5 A. Yeah.</p> <p>6 Q. -- for the year ending December 31, 7 2018?</p> <p>8 A. Uh-huh. Yes.</p> <p>9 MS. TURNER: Okay. Unless your 10 counsel has any questions, we are done.</p> <p>11 MR. ELGARTEN: I have no questions.</p> <p>12 Thank you.</p> <p>13 THE VIDEOGRAPHER: We are going off 14 the record at 11:48 a.m. This concludes 15 today's testimony given by Felice Levine on 16 behalf of APA, NCME, AERA. The total number of 17 media units used was two and will be retained 18 by Veritext Legal Solutions.</p> <p>19 (Whereupon, the proceeding was 20 concluded at 11:48 a.m.)</p> <p>21</p> <p>22</p>
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1
2 I declare under penalty of perjury
3 under the laws that the foregoing is
4 true and correct.
5
6 Executed on _____, 20____,
7 at _____, _____.
8
9
10 _____
11 FELICE J. LEVINE, PH.D.
12
13
14 SUBSCRIBED AND SWORN TO BEFORE ME
15
16 THIS ____ DAY OF _____, 2019.
17
18 _____
19 (NOTARY PUBLIC) MY COMMISSION EXPIRES:
20
21
22

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1 CERTIFICATE OF NOTARY PUBLIC
2
3 I, Bonnie L. Russo, the officer before
4 whom the foregoing deposition was taken, do
5 hereby certify that the witness whose testimony
6 appears in the foregoing deposition was duly
7 sworn by me; that the testimony of said witness
8 was taken by me in shorthand and thereafter
9 reduced to computerized transcription under my
10 direction; that said deposition is a true
11 record of the testimony given by said witness;
12 that I am neither counsel for, related to, nor
13 employed by any of the parties to the action in
14 which this deposition was taken; and further,
15 that I am not a relative or employee of any
16 attorney or counsel employed by the parties
hereto, nor financially or otherwise interested
in the outcome of the action.

17
18
19

20 Bonnie L. Russo
21 Notary Public in and for
the District of Columbia
22 My Commission expires: June 30, 2020

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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