

No. 18-1150

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**In the Supreme Court of the United States**

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STATE OF GEORGIA, ET AL., PETITIONERS,

*v.*

PUBLIC.RESOURCE.ORG, INC.

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*ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

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**JOINT APPENDIX  
(VOLUME 2 OF 3)**

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|                                |                                  |
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**PETITION FOR CERTIORARI FILED MARCH 1, 2019  
CERTIORARI GRANTED JUNE 24, 2019**

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## APPENDIX FF

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### CODE REVISION COMMISSION

September 28, 2015

Meeting Minutes

#### In Attendance:

**Members:** Chairman Johnnie Caldwell, Vice-chairman Senator Jesse Stone (via telephone), Senator William Ligon, Senator Josh McKoon, Senator Curt Thompson, Representative Stacey Evans, Representative Tom Weldon, Representative Wendell Willard, Albert J. Bolet, Ashley Wright (via telephone)

**Office of Legislative Counsel:** Ms. Betsy Hower-ton, Mr. Wayne Allen, Ms. Joyce Hall, Ms. Doris Ragland

**Other legislative staff:** Mr. Jourdan Reed (Representative Willard's legal counsel)

**LexisNexis:** Mr. Anders Ganten, Mr. Brian Kennedy, Mr. Kermit Lowery

**Outside Counsel for the Commission:** Mr. Tony Askew, Ms. Lisa Pavento

#### 1. Lexis discussion

Chairman Caldwell confirmed that a quorum is present for the meeting. He stated that LexisNexis requested this meeting after correspondence they received from the Commission concerning the pending

lawsuit and demand for assistance with legal fees.

Mr. Kermit Lowery, legal counsel for LexisNexis, addressed the Commission. Their position is that there are questions concerning the requirements of the contract and that the contract does to require LexisNexis to pay 50 percent of the legal fees regarding the copyright lawsuit. LexisNexis wants to work with the Commission but they are not sure what is needed by outside counsel for the Commission. LexisNexis does not have a list of what they are willing to provide to the Commission but are willing to go beyond what is considered reasonable cooperation. Mr. Lowery has been in contact with the Commission's outside counsel.

Mr. Anders Ganten then stated the cost incurred by them to correct the copyright registrations was more than \$10K and they are therefore, he said, willing to pay the \$15K toward legal fees relating to the copyright registrations.

Chairman Caldwell read to the Commission the letter dated June 11, 2013, from Brian Kennedy of LexisNexis to Ms. Howerton. In this letter, Lexis notified Ms. Howerton of a potential copyright violation. The letter further stated that the Commission owns the copyright to the O.C.G.A. and that LexisNexis requested that the Commission take action to defend such copyright.

Mr. Anders Ganten responded, stating that under the contract LexisNexis has the exclusive license to publish and sell the Code. He stated that the Georgia contract with publisher is very unique. LexisNexis produces the annotated Code and does the work up front. The challenge is that Lexis still needs to recoup costs they put up front for Code publication. In other states, the work on annotations is done in house or contracted

as a fee for service arrangement. The implications going forward with the contract going into 2017, they cannot guarantee that they will recoup their costs. The current arrangement is most cost efficient with LexisNexis doing the work up front.

Chairman Caldwell stated he has been a lawyer in Georgia for 43 years. He buys the Code for the annotations and that is the reason LexisNexis sells the Code. He stated that under the current contract, LexisNexis should participate and help with the expense of the lawsuit.

Representative Wendell Willard stated that under Section 6.1(d) of the contract, the publisher is required to cooperate and assist with the defense of the copyright.

Mr. Kermit Lowery stated that reasonable assistance is understandable but he does not feel LexisNexis is obliged to pay half of the legal fees of the Commission's lawsuit but that LexisNexis is willing to provide some assistance, which needs to be determined.

Representative Wendell Willard stated that there are two sides of this issue with the Commission's position and LexisNexis's position. He stated that the state started with the Harrison Company publishing the Code and that they are now out of business. The Code is a product protected by the state copyright and is a valuable commodity that LexisNexis has been selling for many years. We are trying to protect the copyright and the business right. He further questioned whether LexisNexis's position would be considered by Legislative Counsel to be a material breach of the contract.

Mr. Wayne Allen was asked his opinion but for certain reasons declined comment. Representative

Willard said that LexisNexis has had the sole license to the O.C.G.A. since 1982. Ms. Betsy Howerton stated that the contract is effective through March 2017. Chairman Caldwell told the Commission that there is a 90 day provision to terminate the contract.

Mr. Anders Ganten stated that it is hard to put a dollar figure on the value of their contract with Georgia. The cost of publishing the Code rises each year and the figures differ. He stated that in publishing the Georgia Code, LexisNexis may break even or do slightly better monetarily. He also stated that LexisNexis has not been successful in requesting price increases for the Code and that the print publication is a struggle each year.

Senator Josh McKoon asked LexisNexis what they were willing to offer the Commission.

Mr. Kermit Lowery said they were looking into options of what they will offer including an amicus brief.

In response to Mr. Ganten's statement, Mr. Wayne Allen reminded the Commission that LexisNexis entered into the current contract with the understanding as a gentleman's agreement that LexisNexis would not ask for an increase in the cost of the Code during the first five years of the contract.

Chairman Caldwell asked for a motion to go into Executive Session to discuss litigation matters. A motion was made, seconded, and passed unanimously. Executive Session ensued and concluded.

Chairman Caldwell addressed LexisNexis and requested that they put in writing what they are willing to provide to the Commission with respect to litigation assistance. Legislative Counsel will put in writing for the Commission's review a proposal stating the

minimum expectations of LexisNexis going forward to include cooperation concerning witnesses, interrogatories, notice to produce documents, and responsibility for the expense of witnesses. Once received, LexisNexis will have ten days to respond.

Mr. Anders Ganten thanked the Commission and felt that the outcome of the meeting resulted in a good approach going forward for both parties. LexisNexis also wants a solution and he reiterated that they will pay the \$15K toward correcting the copyright registrations.

**Adjournment**

There being no further business, Chairman Caldwell requested a motion to adjourn. A motion was made and seconded and passed unanimously.



**APPENDIX GG**

---

March 29, 2016

**VIA E-MAIL**

Elizabeth H. Rader  
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Washington, DC 2004

Jason D. Rosenberg  
Sarah Parker LaFantano  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309

Re: *Code Revision Commission v. Public.Resource.Org, Inc.*

United States District Court for the  
Northern District of Georgia Civil Action  
No. 1:15-cv-02594-MHC

Dear Counsel,

In response to Public Resource's First Requests for Production of Documents, we provide herewith a link to Commission's document production containing documents bearing Bates numbers COMM0000229 – COMM000260.

Pursuant to Section 7 of the Protective Order, and in further response to Public Resource's Interrogatory No. 5, Commission states that it received royalties from the licensing fees of the CD-ROM and on-line versions of the O.C.G.A. in the amount of \$86,747.91 in the state's fiscal year 2014.

We have identified several privileged documents that we are not producing. Please let us know if you need additional information about these documents. We note that you have not identified any privileged documents of Public Resource.

Sincerely,

Lisa C. Pavento  
Of Counsel

Enclosure

cc: Anthony B. Askew, Esq.  
Warren J. Thomas, Esq.

**APPENDIX HH**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                            |   |              |
|----------------------------|---|--------------|
| CODE REVISION              | ) |              |
| COMMISSION on Behalf of    | ) |              |
| and For the Benefit of the | ) |              |
| GENERAL ASSEMBLY OF        | ) |              |
| GEORGIA and the STATE OF   | ) |              |
| GEORGIA,                   | ) | CIVIL ACTION |
|                            | ) | NO. 1:15-cv- |
| Plaintiff,                 | ) | 2594-MHC     |
|                            | ) |              |
| v.                         | ) |              |
|                            | ) |              |
| PUBLIC.RESOURCE.ORG,       | ) |              |
| INC.,                      | ) |              |
| Defendant.                 | ) |              |
|                            | ) |              |

**DECLARATION OF CLAY JOHNSON IN  
SUPPORT OF PUBLIC.RESOURCE.ORG'S  
MOTION FOR SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, Clay Johnson, hereby declare and state as follows:

1. My name is Clay Johnson. I have personal knowledge of the facts stated in this declaration and know them to be true and correct. I could competently testify to them if called as a witness.

2. Since 2013, I have been the founder and CEO of the Department of Better Technology, a small business based in Georgia which builds products to help government acquire technology faster and cheaper. Our

customers include government organizations throughout the country, such as the City of Oakland, California, the Colorado Secretary of State, and the U.S. Agency for International Development.

3. In 2014, I was appointed a Senior Fellow at the Center for American Progress, a nonprofit, nonpartisan research institution in Washington, D.C., where I work on Federal IT procurement policy reform.

4. In 2012, I was appointed as a Presidential Innovation Fellow by the White House. I was assigned to the White House Office of Science and Technology Policy and the Small Administration [sic] where I was the team leader for the RFP-EZ program, which helps small technology companies get easier access to the Federal Government's nearly \$77 billion information technology supply chain. Our program made it easier for small businesses to bid on opportunities, and the resulting bids were shown to be 30% lower than those through the traditional FedBizOps procurement process. Our program allowed 270 small businesses that had never before participated in federal contracting to take part.

5. From 2008 to 2010, I was the founding Director of Sunlight Labs at the Sunlight Foundation. Our team pioneered numerous open source solutions that are used throughout the country to analyze and interact with government information sources. For my efforts, Google and O'Reilly Media named me "Open Source Organizer of the Year" at the Open Source Convention, the largest annual gathering of this type of developer.

6. From 2003 to 2004, I was the Senior Web Programmer for the Dean for America Campaign and from 2004 to 2008 I was the co-founder of Blue State

Digital, a firm that provided the technology that powered many political campaigns, including the 2008 Obama for America effort.

7. In 2014, I was appointed by the National Archives and Records Administration to serve on the Freedom of Information Act Advisory Committee.

8. In my work, I have become very familiar with the creation and operation of government Information Technology projects. I am an experienced computer programmer and am familiar with the full range of modern Internet and World Wide Web technologies.

9. In this declaration, I wish to focus exclusively on a technical evaluation of the web site that the Georgia General Assembly provides links to. The Georgia General Assembly web site is at <http://www.legis.ga.gov/en-US/default.aspx>

10. By clicking on the link entitled "Georgia Code," I am directed to a web site operated by LexisNexis, where I must first agree to terms and conditions. As a citizen of Georgia, I find the terms distasteful, particularly the provision in which I agreed to jurisdiction in a New York court and the provisions prohibiting my use of any of the data, including "public and non-profit users." The web site address is at: <http://www.legis.ga.gov/en-US/default.aspx>

11. When I first examined the site, on October 4-5, 2015, the site used the secure HTTP protocol (HTTPS), which is the same mechanism used by banks and major web sites as a way of assuring the user that they are communicating with their intended destination and that their conversations are secure. However, because the site had "mixed content," which means that some of the elements used on the page did not use the HTTPS, and this generated a security error. Because

of the security error, users of the Firefox and Chrome browsers saw a blank screen and a security alert. While it is possible for an advanced user to manually put in an exception to then view the site, this is not something most users would know how to do. In addition, users in a corporate or institutional setting (such as a government agency) would not have sufficient privileges to do this.

12. When I examined the site again on October 14, it had dispensed with the HTTPS protocol. This meant the site worked in the Firefox and Chrome browsers, but a significant cost to integrity, security and user confidence. When I went back again, the site had once again reverted to the HTTPS protocol and was not usable for ordinary users. This lack of stability makes it very hard for ordinary users to learn how to use the site. It also does not inspire confidence.

13. Once in the site, a user is able to search the table of contents of the code or manually navigate through volumes. Both of these procedures are very cumbersome. The site uses custom navigation elements that do not adhere to standard, intuitive controls for navigating large documents.

14. As an example, I tried to find the state code provisions naming the brown thrasher as the official Georgia state bird. This provision is in OCGA 50-3-50. When I searched for “brown thrasher,” I received a message that no documents were found. I went back and removed the default search of “Table of Contents (TOC) only” and was able to find the section I needed.

15. Once a user is looking at the relevant section of the code, in this case OCGA 50-3-50, there is no ability to bookmark the section and come directly back to it. The site does offer a “Copy w/ Cite” function which

displays a pop-up window with the citation OCGA 50-3-50 and any text that was highlighted. However, the hyperlink under that text directs the user to the Lexis proprietary Total Research System which requires a fee and subscription.

16. Lack of proper navigation and permanent links are only two of the technical issues I have found on the system. When I used an HTML validator on the displayed text, I found a large number of HTML and CSS errors on the site. This means that the site will not necessarily display reliably on different kinds of computers and browsers. For example, the site uses a character encoding called windows-1252, which is obsolete.

17. The site makes extensive use of the Javascript scripting language, which obfuscates the site, making it difficult to use from an accessibility standpoint, such as people who are visually impaired. In addition, the code they use has a large number of errors. For example, when I accessed the OCGA 20-2-520 provision (“Acquiring and disposing of school sites”) in the Chrome browser, 2 security errors and 29 JavaScript errors were generated. Chrome is the most popular browser in the United States.

18. It is unclear to me what the vendor operating the site is doing with my search terms and navigation history. The terms of use state that I have agreed to allow the vendor to “invite me to participate in surveys, sweepstakes, competitions, and similar promotions” and I have no idea if the vendor is engaged in web tracking or markets my usage data to firms such as advertising bureaus or credit agencies. While I have come to expect such mechanisms from commercial sites, as a citizen of Georgia consulting my laws, I am not comfortable with this arrangement.

19. As an individual who was worked [sic] with government's adoption of information technology for much of my career, I am familiar with the costs and obstacles in building effective Information Technology using typical models of implementation. But, because communicating with citizens effectively is hard is precisely why government needs to make core information available in bulk so that others can help us out. Discouraging citizens from building web sites that build on the Official Code of Georgia Annotated is counter-productive and makes the job of government harder. In addition, creating a website that allows for open, unrestricted access to the law is not costly. It has been done in an effective way in many local, state, and national governments.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 19, 2016 in Chattahoochee Hills, GA,

/s/ Clay Johnson  
CLAY JOHNSON



**APPENDIX II**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                            |   |              |
|----------------------------|---|--------------|
| CODE REVISION              | ) |              |
| COMMISSION on Behalf of    | ) |              |
| and For the Benefit of the | ) |              |
| GENERAL ASSEMBLY OF        | ) |              |
| GEORGIA and the STATE OF   | ) |              |
| GEORGIA,                   | ) | CIVIL ACTION |
|                            | ) | NO. 1:15-cv- |
| Plaintiff,                 | ) | 2594-MHC     |
|                            | ) |              |
| v.                         | ) |              |
|                            | ) |              |
| PUBLIC.RESOURCE.ORG,       | ) |              |
| INC.,                      | ) |              |
| Defendant.                 | ) |              |
|                            | ) |              |

**DECLARATION OF EDWARD WALTERS IN  
SUPPORT OF PUBLIC.RESOURCE.ORG's  
MOTION FOR SUMMARY JUDGMENT**

I, Edward Walters, declare and state as follows:

1. I have personal knowledge of the facts stated in this Declaration and know them to be true and correct except as otherwise stated. I could competently testify to them if called as a witness.

2. I am trained as a lawyer and received a J.D. from the University of Chicago Law School, where I was an Editor of the University of Chicago Law Review. I am a member of the Virginia State Bar and the D.C. Bar, and I am admitted to practice before the U.S.

Supreme Court, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. Court of Appeals for the Fifth Circuit.

3. From May 1991 to January 1993, I served in The White House Office of Media Affairs, then the Office of Presidential Speechwriting, where I conducted research and wrote speeches for President George H.W. Bush.

4. From November 1997 to November 1999, I was an attorney at the firm of Covington & Burling.

5. From November 1999 until the present, I have been the co-Founder and CEO of Fastcase, a legal publishing company.

6. Since May 2014, I have served as an Adjunct Professor at the Georgetown University Law Center where I teach a class on the Law of Robots.

7. Since August 2013, I have served on the Board of Directors of Public.Resource.Org. I also serve as the Vice Chair of the Board of Directors of ProBono.Net.

8. My company, Fastcase, provides subscribers a comprehensive legal research service, including cases, statutes, regulations, court rules, and constitutions for all 50 states. We also provide access to a comprehensive library law journals [sic] and other materials in partnership with HeinOnline, a joint service which won the New Product of the Year award in 2014 from the American Association of Law Libraries.

9. The Fastcase service is often offered to end users as part of an arrangement with state and local bar associations, who contract with us so they may offer this as a free benefit to their members.

10. In January 2011, Fastcase and the State Bar of Georgia announced a partnership which made the

Fastcase service available to the 42,000 members of the State Bar of Georgia.

11. We have attempted, on numerous occasions to license the Official Code of Georgia from the State of Georgia and LexisNexis, however we have been informed that no license would be granted, at any price.

12. As part of our service to all of our subscribers, we offer a version of the Code of Georgia, but it is what OCGA 1-1-1 terms an “unofficial compilation.” In particular, we write our own section titles and catchlines. Members of the State Bar of Georgia thus access this unofficial compilation instead of the Official Code of Georgia Annotated when they access our service.

13. Fastcase would prefer to offer the Official Code of Georgia Annotated, instead of an unofficial compilation, to our subscribers as that is the version of these edicts of government that is promulgated by the State of Georgia.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 10, 2016, in Washington, District of Columbia

/s/ Edward Walters  
EDWARD WALTERS

**APPENDIX JJ**

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Senate Bill 340

By: Senators Stone of the 23rd and Hufstetler of the  
52nd

**AS PASSED**

**A BILL TO BE ENTITLED**

**AN ACT**

To amend the Official Code of Georgia Annotated, so as to revise, modernize, correct errors or omissions in, and reenact the statutory portion of said Code, as amended, in furtherance of the work of the Code Revision Commission; to repeal portions of said Code, or Acts in amendment thereof, which have become obsolete, have been declared to be unconstitutional, or have been preempted or superseded by subsequent laws; to provide for other matters relating to revision, reenactment, and publication of said Code; to provide for effect in event of conflicts; to provide for effective dates; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY  
OF GEORGIA:**

**SECTION 1.**

Reserved.

**SECTION 2.**

Title 2 of the Official Code of Georgia Annotated, relating to agriculture, is amended in:

(1) Code Section 2-8-90, relating to definitions regarding the Agricultural Commodity Commission for Georgia Grown Products, by redesignating current paragraphs (5) and (6) as new paragraphs (6) and (5),

respectively, and reordering such paragraphs so as to put definitions in alphabetical order.

(2) Code Section 2-8-93, relating to the composition and membership of the Agricultural Commodity Commission for Georgia Grown Products, in paragraph (4) of subsection (a), by replacing “House of Representatives Committee on Agriculture and Consumer Affairs” with “House Committee on Agriculture and Consumer Affairs” and in subsections (b) and (c) and paragraph (3) of subsection (d), by replacing “appointive” with “appointed”.

(3) Code Section 2-8-98, relating to the recommendation of promulgation of a marketing order by the Agricultural Commodity Commission for Georgia Grown Products, in paragraph (1), by replacing “name; provided” with “name; and provided”.

(4) Code Section 2-8-99, relating to amendments to marketing orders, notice, rules and regulations, and termination of orders by the Agricultural Commodity Commission for Georgia Grown Products, in paragraph (1) of subsection (a), by replacing “appointive” with “appointed”.

### **SECTION 3.**

Reserved.

### **SECTION 4.**

Reserved.

### **SECTION 5.**

Reserved.

### **SECTION 6.**

Reserved.

**SECTION 7.**

Reserved.

**SECTION 8.**

Title 8 of the Official Code of Georgia Annotated, relating to buildings and housing, is amended in:

- (1) Code Section 8-2-144, relating to reporting and accounting for fees by the Commissioner of Insurance, by replacing “Senate Budget Office” with “Senate Budget and Evaluation Office” and “House Budget Office” with “House Budget and Research Office”.

**SECTION 9.**

Reserved.

**SECTION 10.**

Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is amended in:

- (1) Code Section 10-1-393, relating to unfair or deceptive practices in consumer transactions unlawful and examples, in subparagraph (b)(16)(N), by replacing “Chapter 17 of Title 48” with “Article 3 of Chapter 27 of Title 50”.

**SECTION 11.**

Reserved.

**SECTION 12.**

Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, is amended in:

- (1) Code Section 12-3-50, relating to the powers and duties of the Department of Natural Resources as to historic preservation and promotion, by designating the introductory text as subsection (a) and by redesignating paragraph (7) as subsection (b).

**SECTION 13.**

Reserved.

**SECTION 14.**

Reserved.

**SECTION 15.**

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in:

- (1) Code Section 15-1-16, relating to mental health court divisions, after paragraph (3) of subsection (a), by inserting a paragraph (4) designation preceding the subparagraph (A) designation.
- (2) Code Section 15-3-4, relating to the election and term of office of Judges of the Court of Appeals, in the introductory text, by replacing “state election to be held on Tuesday after the first Monday in November of the even-numbered years” with “primary in each even-numbered year”.
- (3) Code Section 15-6-77.4, relating to an additional divorce case filing fee for the Children’s Trust Fund, in subsection (a), by replacing “House Budget Office” with “House Budget and Research Office” and “Senate Budget Office” with “Senate Budget and Evaluation Office”.
- (4) Code Section 15-9-60.1, relating to an additional marriage license fee for the Children’s Trust Fund, by replacing “House Budget Office” with “House Budget and Research Office” and “Senate Budget Office” with “Senate Budget and Evaluation Office”.
- (5) Code Section 15-11-282, relating to the service of a summons in regard to the termination of parental rights, at the end of subsection (c), by replacing “request” with “requested”.

(6) Code Section 15-18-12, relating to travel expenses, provision of county vehicle, and budget request for state funds regarding district attorneys, in paragraph (3) of subsection (e), by replacing “House Budget Office” with “House Budget and Research Office” and “Senate Budget Office” with “Senate Budget and Evaluation Office”.

(7) Code Section 15-21-74, relating to the assessment and collection of penalties, transfer of payments to Georgia Superior Court Clerks’ Cooperative Authority, and quarterly accounting regarding peace officer, prosecutor, and indigent defense funding, by replacing “House Budget Office” with “House Budget and Research Office” and “Senate Budget Office” with “Senate Budget and Evaluation Office”.

(8) Code Section 15-21-113, relating to the assessment and collection of penalty, payment to the Georgia Superior Court Clerks’ Cooperative Authority, and quarterly reports and accounting regarding compensation to victims of violators of driving under the influence statute, by replacing “House Budget Office” with “House Budget and Research Office” and “Senate Budget Office” with “Senate Budget and Evaluation Office”.

(9) Code Section 15-21A-6.1, relating to the judicial operations fund fee and collection and reporting procedure, in subsection (c), by replacing “House Budget Office” with “House Budget and Research Office” and “Senate Budget Office” with “Senate Budget and Evaluation Office”.

(10) Code Section 15-21A-6.2, relating to the exemption from judicial operations fund fee and collection and reporting procedures, in subsection (c), by replacing “House Budget Office” with “House Budget and



Research Office” and “Senate Budget Office” with “Senate Budget and Evaluation Office”.

(11) Code Section 15-21A-7, relating to judicial rules, regulations, reporting, and accounting by the Georgia Superior Court Clerks’ Cooperative Authority, in subsection (c), by replacing “House Budget Office” with “House Budget and Research Office” and “Senate Budget Office” with “Senate Budget and Evaluation Office”.

#### **SECTION 16.**

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is

amended in:

(1) Code Section 16-13-21, relating to definitions regarding schedules, offenses, and penalties in the regulation of controlled substances, by redesignating and reordering current paragraph (29) as new paragraph (17.1), so as to put definitions in alphabetical order.

(2) Code Section 16-13-71, relating to the definitions of dangerous drugs, by redesignating current paragraphs (77.5) and (78) as new paragraphs (78) and (77.5), respectively, and reordering such paragraphs so as to put definitions in alphabetical order.

#### **SECTION 17.**

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended in:

(1) Code Section 17-5-22, relating to the issuance of search warrants by judicial officers generally and maintenance of docket record of warrants issued, in the last sentence, by inserting “that” after “however,” and by inserting a comma after “him”.

- (2) Code Section 17-5-32, relating to search and seizure of documentary evidence in the possession of an attorney and exclusion of illegally obtained evidence, in subsection (d), by replacing “case in chief” with “case-in-chief”.
- (3) Code Section 17-10-6.1, relating to punishment for serious violent offenders and authorization for reduction in mandatory minimum sentencing, in paragraph (4) of subsection (c), by replacing “however, during” with “however, that during”.
- (4) Code Section 17-12-7, relating to the Georgia Public Defender Standards Council councilmembers, responsibilities, voting, removal, quorum, meetings, officers, and expenses, in subsection (c), by replacing “council members” with “councilmembers”.
- (5) Code Section 17-15-8, relating to victim compensation and required findings, amount of award, rejection of claim, reductions, exemption from garnishment and execution, exemption from treatment as ordinary income, effective date for awards, psychological counseling for relatives of deceased, and memorials for victims of DUI homicide, in paragraph (1) of subsection (c), by replacing “with respect” with “that with respect” each time the term appears.
- (6) Code Section 17-17-7, relating to the notification to a victim of an accused’s arrest and proceedings where the accused’s release is considered and the victim’s right to express an opinion in pending proceedings and to file a written complaint in the event of release, in subsection (e), by designating the introductory text as paragraph (1) and by redesignating current paragraphs (1) and (2) as new paragraphs (2) and (3), respectively.

(7) Code Section 17-17-9, relating to the exclusion of a testifying victim from criminal proceedings and separate victims' waiting areas, in subsection (b), by replacing "Code Section 24-6-616" with "Code Section 24-6-615".

(8) Code Section 17-17-14, relating to a victim being required to provide a current address and phone number to notifying parties, in paragraph (2) of subsection (a), by deleting "and" after the semicolon at the end.

#### **SECTION 18.**

Reserved.

#### **SECTION 19.**

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended in:

(1) Code Section 19-11-30.2, relating to definitions and information from financial institutions regarding the "Child Support Recovery Act," in paragraph (3) of subsection (a), by deleting "listed in paragraph (3) of this subsection".

(2) Code Section 19-11-32, relating to the process to collect delinquent support accounts and limitation regarding child support recovery actions, in subsection (c), by replacing "paragraph (3)" with "paragraph (2)".

#### **SECTION 20.**

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended in:

(1) Code Section 20-1A-30, relating to definitions regarding background checks in the Department of Early Care and Learning, in subparagraph (C) of paragraph (3), by deleting ", relating to battery,".

(2) Code Section 20-2-54, which is repealed, by designating said Code section as reserved.

- (3) Code Section 20-2-102, which is repealed, by designating said Code section as reserved.
- (4) Code Section 20-2-105, which is repealed, by designating said Code section as reserved.
- (5) Code Section 20-2-106, which is repealed, by designating said Code section as reserved.
- (6) Code Section 20-2-107, which is repealed, by designating said Code section as reserved.
- (7) Code Section 20-2-320, relating to the Education Information Steering Committee, identification of data to implement the Quality Basic Education Program, and the state-wide comprehensive educational information network, in subsection (c), by replacing “Senate Budget Office” with “Senate Budget and Evaluation Office”, “House Budget Office” with “House Budget and Research Office”, and “House and Senate Appropriations, Education, Education and Youth, and Higher Education committees” with “House and Senate Appropriation Committees, the House Committee on Education, the Senate Education and Youth Committee, the House Committee on Higher Education, and the Senate Higher Education Committee”.
- (8) Article 13 of Chapter 2 of Title 20, which is repealed, by designating said article as reserved.
- (9) Article 24 of Chapter 2 of Title 20, which is repealed, by designating said article as reserved.
- (10) Code Section 20-2-2062, relating to definitions regarding charter schools, in paragraph (3.1), by replacing “Code Section 20-2-2063.1” with “Code Section 20-2-2063.2”.
- (11) Code Section 20-2-2114, relating to qualifications for scholarship, financial responsibility, state-wide assessments, exception, and compliance, in

paragraph (3) of subsection (a), by deleting “(IEP)” after “Individualized Education Program”.

(12) Code Section 20-3-45.1, relating to the powers and duties of the Georgia Historical Records Advisory Council, in paragraph (10), by replacing “this part” with “this article”.

(13) Code Section 20-3-133, relating to payments from the Board of Regents of the University System of Georgia to local operating authorities, local support from fees and taxes, and audits, by replacing “Senate Budget Office” with “Senate Budget and Evaluation Office” and “House Budget Office” with “House Budget and Research Office”.

(14) Code Section 20-14-26.1, relating to the authority to incorporate nonprofit corporation as public foundation, requirements, Public Education Innovation Fund Foundation, and reporting regarding the Office of Student Achievement, in subsection (a), by replacing “department” with “office”.

#### **SECTION 21.**

Title 21 of the Official Code of Georgia Annotated, relating to elections, is amended in: (1) Code Section 21-4-3, relating to definitions regarding the recall of public officers, in paragraph (10), by deleting “as defined in paragraph (4) of this Code section” and by redesignating and reordering said current paragraph (10) as new paragraph (3.1), so as to put definitions in alphabetical order.

#### **SECTION 22.**

Reserved.

**SECTION 23.**

Title 23 of the Official Code of Georgia Annotated, relating to equity, is amended in:

- (1) Code Section 23-3-125, relating to civil investigative demands under taxpayer protection against false claims, in subsection (k), by inserting a paragraph (3) designation preceding the subparagraph (A) designation following subparagraph (k)(2)(B).

**SECTION 24.**

Reserved.

**SECTION 25.**

Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, is amended in:

- (1) Code Section 25-9-13, relating to penalties for violations of the chapter, bonds, enforcement, advisory committee, dispose of settlement recommendations regarding blasting or excavating near utility facilities, in subparagraph (h)(2)(A), by deleting the subsection (h) designation preceding the subparagraph (2)(A) designation.

**SECTION 26.**

Reserved.

**SECTION 27.**

Reserved.

**SECTION 28.**

Title 28 of the Official Code of Georgia Annotated, relating to the General Assembly, is amended in:

- (1) Code Section 28-5-6, relating to the powers, duties, and responsibilities of the Senate Budget Office and the House Budget Office, by replacing “Senate Budget Office” with “Senate Budget and Evaluation

Office” and “House Budget Office” with “House Budget and Research Office” each time those terms appear throughout said Code section and in subsection (c) by replacing “House Appropriations Committee” with “House Committee on Appropriations”, “House Budget and Fiscal Affairs Oversight Committee” with “House Committee on Budget and Fiscal Affairs Oversight”, and “Speaker of the House” with “Speaker of the House of Representatives”.

(2) Code Section 28-5-42, relating to the introduction of bills having significant impact upon anticipated revenues or expenditures and furnishing of fiscal notes by the General Assembly, in paragraph (1) of subsection (c), by replacing “Senate Budget Office” with “Senate Budget and Evaluation Office” and “House Budget Office” with “House Budget and Research Office”.

(3) Code Section 28-9-5, relating to the publication of the Official Code of Georgia Annotated, the authority to make corrections and editorial changes, the authority to introduce legislation, and the effect of corrections and changes, by:

(A) Redesignating current subsection (c) as new undesignated text at the end of subsection (a) and by replacing “subsection (a) of this Code section” with “this subsection” and “subsection (b)” with “subsection (c)” in said undesignated text;

(B) Redesignating current subsection (b) as new subsection (c);

(C) Codifying subsection (d) of Section 54 of an Act to amend the Official Code of Georgia Annotated, so as to revise, modernize, and correct errors or omissions in said Code in furtherance of the work of the Code Revision Commission, approved April

24, 2013 (Ga. L. 2013, p. 141), as new subsection (b) to read as follows:

“(b) For purposes of publishing volumes, replacement volumes, and supplements to the Official Code of Georgia Annotated pursuant to this chapter: legislation enacted at the same session of the General Assembly and amending the same statutory provision shall be considered in pari materia, and full effect shall be given to each if that is possible; Acts enacted during the same session shall be treated as conflicting with each other only to the extent that they cannot be given effect simultaneously; in the event of such a conflict, the latest enactment, as determined by the order in which bills became law with or without the approval of the Governor, shall control to the extent of the conflict unless the latest enactment contains a provision expressly ceding control in such an event; and language carried forward unchanged in one amendatory Act shall not be read as conflicting with changed language contained in another Act passed during the same session.”; and

(D) Adding to the end of new subsection (c) the following:

“Except as otherwise provided by law, such reenactment of the Official Code of Georgia Annotated shall have the effect of adopting and giving force and effect of law to all the statutory text and numbering as contained in such volumes, pocket parts, and supplements, including but not limited to provisions as published therein in accordance with subsections (a) and (b) of this Code section.”

#### **SECTION 29.**

Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is amended in:



(1) Code Section 29-5-32, relating to the investment of estate funds by a conservator, in paragraph (12), by repealing and reserving said paragraph, which refers to an obsolete entity.

**SECTION 30.**

Reserved.

**SECTION 31.**

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in:

(1) Code Section 31-8-179.2, relating to the Department of Community Health authorized to assess one or more provider payments on hospitals for the purpose of obtaining federal financial participation for Medicaid, in the introductory text of subsection (a), by replacing “42 CFR 433.68” with “42 C.F.R. 433.68” and in paragraph (2) of subsection (a), by inserting a comma after “2012”.

(2) Article 10 of Chapter 8, relating to the Georgia Alzheimer’s and Related Dementias State Plan Task Force, which task force stands abolished on March 31, 2014, is hereby repealed.

**SECTION 32.**

Reserved.

**SECTION 33.**

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in:

(1) Code Section 33-13-3.1, relating to the acquisition of insurer and effect on competition regarding insurance holding company systems, in subsection (f), by replacing “Paragraphs” with “Subsections”.

- (2) Code Section 33-23-12, relating to limited licenses regarding insurance agents, agencies, sub-agents, counselors, and adjusters, in subsection (a), by replacing “this Code Section” with “this Code section”.
- (3) Code Section 33-24-21.1, relating to group accident and sickness insurance contracts, conversion privilege and continuation right provisions, and impact of federal legislation, in subsection (n), by designating the introductory text as paragraph (1) and by redesignating current paragraphs (1) and (2) as new paragraphs (2) and (3), respectively.
- (4) Code Section 33-29-22, relating to notice of individual accident and sickness insurance policy premium increase and notification of impact of the Patient Protection and Affordable Care Act, in subsection (b), by replacing “paragraph” with “subsection”.
- (5) Code Section 33-29A-9, relating to the discontinuance of state assignment of health care policies under the Georgia Health Insurance Assignment System and the Georgia Health Benefits Assignment System, by designating the introductory text as subsection (a), by redesignating paragraph (1) as subsection (b), and in paragraph (2), by replacing “paragraph” with “subsection” and by redesignating said paragraph as subsection (c).
- (6) Code Section 33-30-13, relating to notices of group or blanket accident and sickness insurance premium increases to be mailed or delivered to group policyholder and notification of impact of federal Patient Protection and Affordable Care Act, in subsection (b), by replacing “paragraph” with “subsection”.

**SECTION 34.**

Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, is amended in:

- (1) Code Section 34-14-20, relating to definitions regarding local workforce and the Georgia Workforce Investment Board, in division (5)(A)(i), by replacing “Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States” with “United States army, navy, air force, coast guard, or marine corps”.
- (2) Code Section 34-14-28, relating to the definition of supportive services and the payment cap as established by the Georgia Workforce Investment Board, in subsection (a), by replacing “needs-related” with “needs related”.

**SECTION 35.**

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended in:

- (1) Code Section 35-2-41.1, relating to the donation or conveyance of property, equipment, or services to the Department of Public Safety and procedure, in subsection (a), by replacing “Senate Budget Office” with “Senate Budget and Evaluation Office” and “House Budget Office” with “House Budget and Research Office”.

**SECTION 36.**

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended in:

- (1) Code Section 36-80-21, relating to definitions and electronic transmission of budgets regarding general provisions applicable to counties, municipal corporations, and other governmental entities, in

subparagraph (a)(2)(B), by replacing “paragraph (3) of subsection (a) of Code Section 20-2-167” with “Code Section 20-2-67”.

**SECTION 37.**

Reserved.

**SECTION 38.**

Reserved.

**SECTION 39.**

Reserved.

**SECTION 40.**

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended in:

- (1) Code Section 40-1-161, relating to the revocation, alteration, or amendment of a limousine certificate, by inserting a comma between “Act” and the quotation mark.
- (2) Code Section 40-2-152, relating to fees for apportionable vehicles and restricted license plates for vehicles, in subsection (d), by inserting a comma after “plates”.
- (3) Code Section 40-8-91, relating to marking and equipment of law enforcement vehicles and motorist allowed to continue to safe location before stopping for law enforcement officer vehicles, in subsection (b), by deleting the undesignated paragraph at the end of such subsection as such paragraph was automatically repealed on June 30, 2013.

**SECTION 41.**

Reserved.

**SECTION 42.**

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended in:

(1) Code Section 42-8-1, relating to the creation, composition, selection of members, and terms of office regarding the Advisory Council for Probation, by replacing “council members” with “councilmembers”.

**SECTION 43.**

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended in:

(1) Code Section 43-11-1, relating to definitions relative to general provisions regarding dentists, dental hygienists, and dental assistants, in paragraph (8), by replacing “state board” with “board”.

(2) Code Section 43-14-6, relating to the powers and duties of the divisions of electrical contractors, plumbers, conditioned air contractors, low-voltage contractors, and utility contractors, at the beginning of paragraph (1) of subsection (d), by replacing “With respect to Conditioned Air Contractor Class I and Class II licenses, the Division of Conditioned Air Contractors shall be authorized to require persons seeking renewal of licenses” with “The Division of Conditioned Air Contractors shall be authorized to require persons seeking renewal of Conditioned Air Contractor Class I and Class II licenses”; at the beginning of paragraph (1) of subsection (e), by replacing “With respect to Electrical Contractor Class I and Class II licenses, the Division of Electrical Contractors shall be authorized to require persons seeking renewal of licenses” with “The Division of Electrical Contractors shall be authorized to require persons seeking renewal of Electrical Contractor Class I and Class II licenses”; at the beginning of

paragraph (1) of subsection (f), by replacing “With respect to utility foreman certificates and utility manager certificates issued under this chapter, the Division of Utility Contractors shall be authorized to require persons seeking renewal of such certificates” with “The Division of Utility Contractors shall be authorized to require persons seeking renewal of utility foreman certificates and utility manager certificates issued under this chapter”; and at the beginning of paragraph (1) of subsection (g), by replacing “With respect to Journeyman Plumber, Master Plumber Class I, and Master Plumber Class II licenses, the Division of Master Plumbers and Journeyman Plumbers shall be authorized to require persons seeking renewal of such licenses” with “The Division of Master Plumbers and Journeyman Plumbers shall be authorized to require persons seeking renewal of Journeyman Plumber, Master Plumber Class I, and Master Plumber Class II licenses”.

(3) Code Section 43-14-15, relating to certain military certifications that entitle persons to obtain certain professional licenses, in subsections (b) and (c), by replacing “meet or exceed” with “meets or exceeds”.

(4) Code Section 43-26-50, relating to definitions relative to mandatory reporting requirements for nurses, by revising paragraph (1) as follows:

“(1) ‘Board’ means the Georgia Board of Nursing; ~~with respect to registered professional nurses and advanced practice registered nurses, and the Georgia Board of Examiners of Licensed Practical Nurses, with respect to licensed practical nurses.~~”

(5) Code Section 43-26-51, relating to the mandatory reporting requirement for violations of grounds for discipline and no reporting requirement for

knowledge obtained via privileged communications for nurses, by replacing “applicable board” with “board” each time the term appears.

(6) Code Section 43-26-52, relating to institutional reporting requirements and voluntary suspension to alternative to discipline program not subject to reporting requirements for nurses, by replacing “applicable board” with “board”, “such board” with “the board”, and “Each board” with “The board” each time those terms appear.

(7) Code Section 43-26-53, relating to reportable incidents for nurses, by replacing “applicable board” with “board” each time the term appears.

(8) Code Section 43-26-54, relating to court orders and citation for civil contempt for nurses, by replacing “applicable board” with “board” each time the term appears.

(9) Code Section 43-26-55, relating to immunity from liability for good-faith reporting for nurses, by replacing “applicable board” with “board” each time the term appears.

(10) Code Section 43-34-5, relating to election of the Georgia Composite Medical Board officers, reimbursement of members, meetings, powers and duties, and no restriction on licenses, in paragraph (8), by replacing “limited, to” with “limited to,”.

(11) Code Section 43-41-18, relating to certain military specialties or certifications that entitle persons to obtain certain professional licenses and definitions regarding residential and general contractors, in subsection (c), by replacing “meet or exceed” with “meets or exceeds”.

**SECTION 44.**

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in: (1) Code Section 44-14-361.5, relating to liens of persons without privity of contract in regard to mechanics and materialmen, in subsection (a), by replacing “Notice to Contractor” with “notice to contractor”.

**SECTION 45.**

Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, is amended in:

- (1) Code Section 45-9-4, relating to the commissioner of administrative services to purchase insurance or indemnity contracts, self-insurance program, Hazardous Materials Liability Reserve Fund, insurer becoming insolvent, and provision of liability coverage to nonprofit agencies and employees contracting with certain state agencies, each time the term appears in subsection (e), by replacing “Georgia State Finance and Investment Commission” with “Georgia State Financing and Investment Commission”.
- (2) Code Section 45-11-4, relating to unprofessional conduct, misdemeanor, applicability, and indictment regarding miscellaneous offenses concerning public officers and employees, in paragraphs (1), (2), and (3) of subsection (a), by replacing “shall mean” with “means”.
- (3) Code Section 45-12-75.1, relating to zero-base budgeting, intent, and departmental priority lists regarding management of budgetary and financial affairs by the Office of Planning and Budget, in subsection (b), by replacing “House Budget Office and Senate Budget Office” with “House Budget and Research



Office and Senate Budget and Evaluation Office” each time those terms appear.

(4) Code Section 45-12-82, relating to periodic work programs to be filed, funds not to be allotted until program approved, content and form of program, amendment of program, and filing of copies of program regarding management of budgetary and financial affairs by the Governor’s Office of Planning and Budget, by replacing “Senate Budget Office, and the House Budget Office” with “Senate Budget and Evaluation Office, and the House Budget and Research Office”.

(5) Code Section 45-12-85, relating to the examination and investigation of periodic work programs and requests for allotment of funds regarding management of budgetary and financial affairs by the Office of Planning and Budget, in subsection (b), by replacing “House Budget Office and the Senate Budget Office” with “House Budget and Research Office and the Senate Budget and Evaluation Office”.

(6) Code Section 45-12-95, relating to the duty of Office of Planning and Budget to encourage state agencies to identify and implement cost-saving measures and to decentralize state government, in subsection (d), by replacing “House Budget Office and the Senate Budget Office” with “House Budget and Research Office and the Senate Budget and Evaluation Office”.

(7) Code Section 45-12-110, relating to notification of intention to apply for federal assistance and adoption and promulgation of rules and regulations and forms by House Budget Office, Senate Budget Office, and director of Office of Planning and Budget, in subsections (a) and (b), by replacing “House Budget Office, the Senate Budget Office” with “House Budget and

Research Office, the Senate Budget and Evaluation Office”.

(8) Code Section 45-13-22, relating to the distribution of Georgia Laws and journals of House and Senate and pricing as part of the powers and duties of the Secretary of State, in paragraph (21) of subsection (c), by replacing “House Budget Office and Senate Budget Office” with “House Budget and Research Office and Senate Budget and Evaluation Office”.

(9) Article 3 of Chapter 13 of Title 45, which is redesignated and repealed, by designating said article as reserved.

(10) Code Section 45-15-13, relating to representation of state authorities by the Attorney General, by deleting “Georgia Building Authority (Hospital), Georgia Building Authority (Markets),” which refers to obsolete entities.

(11) Code Section 45-16-27, relating to death investigations by coroners and when inquest is to be held, special situations, coroner’s fee, issuance of subpoenas for books, records, or papers, cost of copying, and limited disclosure of photographs, in subsection (b.1), by replacing “coroner may, elect” with “coroner may elect”.

#### **SECTION 46.**

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended in:

(1) Code Section 46-2-26.3, relating to recovery of costs of conversion from oil-burning to coal-burning generating facility, filing of request, public hearing, determination of rate, and adjustments regarding the jurisdiction, powers, and duties generally of the Public

Service Commission, in subparagraph (b)(3)(A), by deleting the subsection (b) designation preceding the subparagraph (3)(A) designation.

(2) Code Section 46-3-128, relating to the Municipal Electric Authority of Georgia and the declaration of authority property as public property, payments by authority in lieu of taxes, and tax exemption for authority property, income, obligations, and debt interest, in subparagraph (b)(2)(A), by deleting the subsection (b) designation preceding the subparagraph (2)(A) designation.

(3) Code Section 46-5-1, relating to exercise of power of eminent domain by telephone companies, placement of posts and other fixtures, regulation of construction of fixtures, posts, and wires near railroad tracks, liability of telephone companies for damages, required information, and due compensation, in paragraph (7) of subsection (b), by replacing “subsection (b) of this Code section” with “this subsection”.

(4) Code Section 46-5-121, relating to legislative intent by the General Assembly regarding the emergency telephone number 9-1-1 system, in subsections (b) and (c), by replacing “life-saving” with “lifesaving”.

#### **SECTION 47.**

Reserved.

#### **SECTION 48.**

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in:

(1) Code Section 48-5-7.6, relating to the definition of “brownfield property”, related definitions, qualifying for preferential assessment, disqualification of property receiving preferential assessment, responsibilities of owners, transfers of property, costs, appeals,

creation of lien against property, and extension of preferential assessment in regard to ad valorem taxation of property, in subparagraph (e)(1)(B), by replacing “Code section 36-62-5.1” with “Code Section 36-62-5.1”.

(2) Chapter 5B of Title 48, which is repealed, by designating said chapter as reserved.

(3) Code Section 48-8-2, relating to definitions regarding general provisions under the state sales and use tax, at the beginning of the second sentence of paragraph (7), by deleting the quotation marks around “Conference bridging service”; at the beginning of the second and third sentences of paragraph (12), by deleting the quotation marks around “Direct mail”; at the beginning of the second sentence of paragraph (16), by deleting the quotation marks around “Food and food ingredients”; at the beginning of the second and third sentences of the introductory text of paragraph (17), by deleting the quotation marks around “Lease or rental”; in the second sentence of the introductory text of paragraph (20.1), by deleting the quotation marks around “over-the-counter drug”; in the second sentence of paragraph (21), by deleting the quotation marks around “place of primary use”; in subparagraph (B) of paragraph (27), by deleting the quotation marks around “Prepared food”; in paragraph (28.1), by deleting the quotation marks around “computer software,” and “computer software”, by deleting in the second sentence the quotation marks around “prewritten computer software” and “prewritten computer software.”, by deleting at the beginning of the third and fifth sentences the quotation marks around “Prewritten computer software”, and by deleting in the fifth sentence the quotation marks around “prewritten computer software” and “prewritten computer software.”; in the undesignated text at the end of paragraph (29), by

deleting the quotation marks around “Prosthetic device”; in the introductory text of paragraph (31), by replacing “shall himself be liable” with “shall be liable”; in the introductory text at the beginning of subparagraphs (B) and (C) of paragraph (34), by deleting the quotation marks around “Sales price”; in subdivision (34)(C)(iv)(II), by deleting the quotation marks around “preferred customer”; at the beginning of the second and third sentences of paragraph (37), by deleting the quotation marks around “Tangible personal property”; in the second sentence of the introductory text of paragraph (39), by deleting the quotation marks around “telecommunications service” and at the beginning of the third sentence, by deleting the quotation marks around “Telecommunications service”; and at the beginning of the second sentence of paragraph (43), by deleting the quotation marks around “Voice mail service”.

(4) Code Section 48-8-3, relating to exemptions regarding sales and use taxes, in subparagraph (B) of paragraph (80), by deleting the colon following “term” and in paragraph (81), by deleting the quotation marks around “Food and food ingredients”.

(5) Code Section 48-8-17, relating to the suspension of the collection of taxes on gasoline and aviation fuel and ratification of temporary suspension regarding state sales and use taxes, in paragraph (4) of subsection (a), by deleting “and” after the semicolon at the end.

(6) Code Section 48-8-75, relating to a purchaser’s immunity from liability for failure to pay correct sales tax under certain circumstances, in paragraph (4) of subsection (a), by replacing “databases” with “data bases”.

(7) Code Section 48-8-89, relating to distribution and use of proceeds, certificate specifying percentage of proceeds for each political subdivision, determination of proceeds for absent municipalities, procedure for filing certificates, effect of failure to file, and renegotiation of certificate regarding joint county and municipal sales and use tax, in paragraph (1) of subsection (a), by inserting “and” after the semicolon at the end.

(8) Code Section 48-8-161, relating to definitions regarding uniform sales and use tax administration, in paragraph (7), by replacing “\$500 million dollars” with “\$500 million”.

#### **SECTION 49.**

Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended in:

(1) Code Section 49-4-193, relating to established drug testing, ineligibility for benefits based upon positive tests, drug treatment, impact of drug use by parents on children, confidentiality, and exceptions, in subsection (a) by replacing “Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 C.F.R. 11979, et seq., as amended)” with “Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the United States Department of Health and Human Services”.

(2) Code Section 49-4A-2, relating to the creation of the Board of Juvenile Justice, appointments, terms, vacancies, chairperson, per diem and expenses, and responsibilities and duties, in paragraph (5) of subsection (b), by replacing “Senate State Judiciary Committee” with “Senate Judiciary Committee”.

(3) Code Section 49-6-62, relating to the establishment of a community care unit, provision of services, annual service plan, implementation plan, annual progress report, fees and contributions, and funding regarding community care and services for the elderly, in subsection (g), by inserting a comma after “House Committee on Health and Human Services”.

#### **SECTION 50.**

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended in:

(1) Code Section 50-7-17, relating to the State-wide Tourism Marketing Program and the Georgia Tourism Foundation, in paragraph (2) of subsection (e), by replacing “Board of Development” with “Board of Economic Development”.

(2) Code Section 50-8-18, relating to energy efficient construction of major state-funded facility projects, a short title, legislative findings, and “major facility project” defined, in the introductory language of subsection (d), by replacing “Georgia State Finance and Investment Commission” with “Georgia State Financing and Investment Commission”.

(3) Code Section 50-17-21, relating to definitions regarding the Georgia State Financing and Investment Commission, in paragraph (9), by deleting “Georgia Building Authority (Markets),” which refers to an obsolete entity.

(4) Code Section 50-18-72, relating to when public disclosure not required regarding inspection of public records, in paragraph (26) of subsection (a), by replacing “paragraph (3)” with “paragraph (5)”.

(5) Code Section 50-25-7.1, relating to the technology empowerment fund, appropriations, initiatives,

and steering committee regarding the Georgia Technology Authority, by replacing “Senate Budget Office” with “Senate Budget and Evaluation Office” and “House Budget Office” with “House Budget and Research Office” each time those terms appear throughout said Code section and in subsection (d) by replacing “House Appropriations Committee” with “House Committee on Appropriations”.

(6) Code Section 50-27-70, relating to legislative findings and definitions regarding general provisions of bona fide coin operated amusement machines, in the undesignated text at the end of subparagraph (b)(2)(A), by replacing “means machine” with “means a machine”.

(7) Code Section 50-27-87, relating to master licensees and requirements and restrictions for licensees regarding bona fide coin operated amusement machines, in paragraph (3) of subsection (b), by replacing “location owner or location owner” with “location owner or location operator”.

(8) Code Section 50-32-11, relating to the powers of the Georgia Regional Transportation Authority generally, in paragraph (26) of subsection (a), by inserting a comma after “state agencies”.

(9) Code Section 50-34-17, relating to the establishment and duties of the OneGeorgia Authority Overview Committee, in subsection (a), by replacing “Senate Budget Office” with “Senate Budget and Evaluation Office” and “House Budget Office” with “House Budget and Research Office”.

## **SECTION 51.**

Reserved.



**SECTION 52.**

Title 52 of the Official Code of Georgia Annotated, relating to waters of the state, ports, and watercraft, is amended in:

- (1) Code Section 52-7-8, regarding classification of vessels and required equipment regarding the registration, operation, and sale of watercraft, in subsection (k), by replacing “the words” with “the term”.
- (2) Code Section 52-7-12, relating to the operation of watercraft while under influence of alcohol, toxic vapors, or drugs, legal drug use not exempted, blood and other chemical tests, test refusal, owner’s liability for allowing another to operate while intoxicated, civil and criminal actions, and child endangerment, in subparagraphs (m)(1)(D), (m)(2)(D), (m)(3)(D), and (m)(4)(D), by replacing “Department of Drivers Service’s approval” with “Department of Driver Services’ approval”.

**SECTION 53.**

Reserved.

**SECTION 54.**

(a) Except for Title 47, the text of Code sections and title, chapter, article, part, subpart, Code section, subsection, paragraph, subparagraph, division, and subdivision numbers and designations as contained in the Official Code of Georgia Annotated published under authority of the state by The Michie Company in 1982 and contained in Volumes 3 through 40 of such publication or replacement volumes thereto, as amended by the text and numbering of Code sections as contained in the 2013 supplements to the Official Code of Georgia Annotated published under authority of the state in 2013 by LEXIS Publishing, are hereby reenacted.

(b) Annotations; editorial notes; Code Revision Commission notes; research references; notes on law review articles; opinions of the Attorney General of Georgia; indexes; analyses; title, chapter, article, part, and subpart captions or headings, except as otherwise provided in the Code; catchlines of Code sections or portions thereof, except as otherwise provided in the Code; and rules and regulations of state agencies, departments, boards, commissions, or other entities which are contained in the Official Code of Georgia Annotated are not enacted as statutes by the provisions of this Act. Material which has been added in brackets or parentheses and editorial, delayed effective date, effect of amendment, or other similar notes within the text of a Code section by the editorial staff of the publisher in order to explain or to prevent a misapprehension concerning the contents of the Code section and which is explained in an editorial note is not enacted by the provisions of this section and shall not be considered a part of the Official Code of Georgia Annotated.

(c) The reenactment of the statutory portion of the Official Code of Georgia Annotated by subsection (a) of this section shall not affect, supersede, or repeal any Act of the General Assembly, or portion thereof, which is not contained in the Official Code of Georgia Annotated and which was not repealed by Code Section 1-1-10, specifically including those Acts which have not yet been included in the text of the Official Code of Georgia Annotated because of effective dates which extend beyond the effective date of the Code or the publication date of the Code or its supplements.

(d) The provisions contained in Sections 1 through 53 of this Act and in the other Acts enacted at the 2014 regular session of the General Assembly of Georgia

shall supersede the provisions of the Official Code of Georgia Annotated ratified and reenacted by subsection (a) of this section.

(e) In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2014 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.

#### **SECTION 55.**

(a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) The amendments made by paragraphs (4) through (9) of Section 43 of this Act shall be effective the later of July 1, 2014, or when funds are specifically appropriated for purposes of Ga. L. 2013, p. 830, §4, in an Appropriations Act making specific reference to such Act.

#### **SECTION 56.**

All laws and parts of laws in conflict with this Act are repealed.

**APPENDIX KK**

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**USER'S GUIDE**

[Table of contents omitted]

*Citation Form*

The Official Code of Georgia Annotated may be cited as "O.C.G.A." See Code Section 1-1-8 as to citation of the Official Code of Georgia Annotated.

*Arrangement and Numbering System*

The Official Code of Georgia Annotated is arranged into 53 Code titles. In addition to the 53 titles, the Constitution of the United States and the Constitution of Georgia are included in separate volume's with their original internal numbering systems retained. No Code title numbers have been assigned to the Constitutions.

With the exception of Title 1, "General Provisions," titles within the Code are arranged in alphabetical order. A list of the Code title numbers and names appears in the front of each volume of the Code.

Where appropriate, titles within the Code are divided into chapters, chapters are divided into articles, articles are divided into parts, and parts are divided into subparts. An exception to this arrangement occurs in Title 11, "Commercial Code." Because of the importance of maintaining the numbering scheme of the Uniform Commercial Code throughout the United States, Title 11 does not follow the numbering scheme used in the remaining titles of the Code.

Titles, chapters, articles, parts, and subparts of the Code are designated with Arabic numerals. If a new title, chapter, article, part, or subpart is added

between two existing titles, chapters, articles, parts, or subparts, it will be designated by the preceding numeral plus a capital letter. Thus, if two new chapters are to be added between Chapters 4 and 5 of a title, they will be designated as Chapters 4A and 4B.

A three-unit numbering system is used to designate Code sections. Thus, Code Section 2-5-1 is the first Code section of Chapter 5 of Title 2. Code section numbers are not consecutive in the Code. At the end of each article, part, and subpart, gaps are left in Code section numbers to allow for future legislation. If a new Code section is added between two existing Code sections, the new Code section will be designated with the preceding Code section number followed by a period and one or more numerals. Thus, if two new Code sections are added between Code Sections 2-5-38 and 2-5-39, the new Code sections will be designated as Code Sections 2-5-38.1 and 2-5-38.2.

Where appropriate, Code sections are divided into subsections, subsections are divided into paragraphs, paragraphs are divided into subparagraphs, subparagraphs are divided into divisions, and divisions are divided into subdivisions. These units are designated as follows:

Subsections—(a), (b), (c), (d), etc.

Paragraphs—(1), (2), (3), (4), etc.

Subparagraphs—(A), (B), (C), (D), etc.

Divisions—(i), (ii), (iii), (iv), etc.

Subdivisions—I, (II), (III), (IV), etc.

If it becomes necessary to add new subsections, paragraphs, subparagraphs, divisions, or subdivisions between existing subsections, paragraphs,

subparagraphs, divisions, or subdivisions, the new material will be designated as follows:

Subsection—(a), (a.1), (a.2), (b)

Paragraph—(1), (1.1), (1.2), (2)

Subparagraph—(A), (A.1), (A.2), (B)

Division—(i), (i.1), (i.2), (ii)

Subdivision—(I), (I.1), (I.2), (II)

If a Code section has introductory language followed by a list, subsection designations are not used to designate the items in the list, but each item is given a paragraph designation. This helps to maintain the flexibility of the numbering system. Definitions sections are examples of this system of numbering items in a list.

*Arrangement of Specific Types of Material Within the Code*

Title 1 of the Official Code of Georgia Annotated relates to general provisions applicable either to the adoption of the Code itself or to the enactment of laws generally. Title 1 contains an expression of legislative intent in the enactment of the Code, provides for severability for the Code and future laws as well, preserves certain types of Acts which are not codified, provides for the specific repeal of prior codes and laws, describes classes and categories of persons, provides for rights of persons, provides for rules of statutory construction, and provides for definitions of terms used throughout the Code. All persons are urged to read Title 1 prior to using the Code.

In the same manner that Title 1 contains material which is applicable to the entire Code, most titles within the Code contain a general provisions chapter

as Chapter 1 of the title. This chapter contains definitions and other material of general application throughout the particular title.

Within each chapter, article, part, and subpart, certain types of material generally will be arranged in a uniform manner throughout the Code. The short title of a law, if any, will be the first Code section, followed by the Code section stating the purpose or legislative findings, followed by Code section defining certain words and phrases used in that law. Within the body of the chapter, article, part, or subpart, related Code sections will be grouped together. Penalty Code sections are generally at the end of the material to which they relate.

#### *Title and Chapter Analyses*

Preceding each title in the Code is a title analysis which lists the numbers and captions of each chapter within the title.

Preceding each chapter in the Code is a chapter analysis which lists each article, part, and subpart within the chapter and each Code section and its catchline.

#### *History Lines*

Generally, each Code section is followed by a history line which includes citations to the Georgia Laws and prior official compilations of the laws of the state, pertaining to substantially the same subject matter as the present Code section. Unofficial codes are not cited in the history lines. No history line is included for those Code sections which are enacted by the Official Code of Georgia Annotated itself. Examples of these types of Code sections include those Code sections in Title 1 dealing with the enactment of the Official Code

of Georgia Annotated and Code sections in other titles which provide new title-wide definitions not previously included in the law.

Quite often the history lines not only will reflect the most recent specific enactment of a Code section but also will trace similar provisions of law existing prior to the most recent specific enactment, even though that enactment may not have expressly amended any of the prior similar provisions and may in fact have repealed them. For example, Ga. L. 1977, p. 396 enacted a new game and fish code (now codified primarily at Title 27) which repealed most of the then-existing provisions of law relating to game and fish. However, rather than beginning each history line in Title 27 with the most recent specific enactment (Ga. L. 1977, p. 396), the editors have examined the pre-1977 game and fish Acts, compared the subject matter of those Acts with the subject matter of each section of Ga. L. 1977, p.396, and added history where appropriate. This tracing procedure serves the purpose of providing more complete historical information and recognizes the fact that many repeals by the General Assembly have the practical effect of amending or renumbering existing provisions of law.

In some cases the history lines may provide a quick method of translating sections of the Code to sections of prior codes. However, since the history lines do not cite unofficial codifications of provisions of Georgia law, reference generally should be made to the conversion tables in Volume 41 whenever a translation of a new Code section to a prior provision of law is desired.

Bill numbers are included in history lines for Acts enacted in 2005 and later.



History lines are provided for those numbered paragraphs of the 1983 Georgia Constitution that have been amended or added since that Constitution was ratified in 1982.

#### *Repeal Lines*

Where a Code section is repealed, its Code section number and catchline are set out, followed by a notation that the particular section has been repealed. An Editor's note under the repeal line lists citations to the Georgia Laws on which the repealed Code section was based, and refers the user to the Code provisions, if any, now covering the subject of the repealed Code section.

#### *Cross References*

Appropriate cross references between related provisions of the Code are included at the beginning of the annotations for a particular title, chapter, article, part, subpart, or Code section.

#### *Case Annotations*

LexisNexis® has prepared and included in the Official Code of Georgia Annotated a complete set of case annotations. All decisions of the Supreme Court of Georgia and the Court of Appeals of Georgia and all decisions of the federal courts in cases which arose in Georgia construing any portion of the general statutory law of the state, the Constitution of the United States, and the Constitution of Georgia have been examined and appropriate annotations have been prepared and included under a "judicial Decisions" heading following the title, chapter, article, part, subpart, or Code section designation of the Official Code of Georgia Annotated to which they relate. Annotations contain the name of the case, the complete official and

unofficial citations, and the year of the decision. Normally, constructions of statutes relating to constitutionality thereof appear first in the annotations for a particular provision of the Code.

*Editor's Notes and Code Commission Notes*

If the editorial staff of LexisNexis®, the Code Revision Commission, or the commission's staff felt that an explanatory note would be helpful to users of the Code, such notes were added as editor's notes or Code Commission notes.

*Law Reviews*

Appropriate articles and notes from each law review which is published in the State of Georgia are noted following the title, Code section, or other designation to which they relate.

*Opinions of the Attorney General of Georgia*

Where appropriate, annotations are included concerning relevant opinions of the Attorney General of Georgia, and citations to those opinions are given. These annotations are included under the heading "Opinions of the Attorney General" following the particular title, Code section, or other designation to which they relate.

*Advisory Opinions of the State Bar*

Where appropriate, annotations are included concerning relevant advisory opinions of the State Bar of Georgia, and citations to those opinions are given. These annotations are included under the heading "Advisory Opinions of the State Bar" following the particular title, Code section, or other designation to which they relate.

*Decisions and Opinions Under Prior Law*

Editor's notes or the subheadings "Decisions Under Prior Law" and "Opinions Under Prior Law" appear in the case annotations and the annotations to Attorney General opinions. These editor notes and sub-headings are utilized to indicate a judicial decision or an Attorney General opinion under a provision of law which was specifically repealed subsequent to the decision or opinion but which was succeeded by a provision similar to the repealed provision, so that the decision or opinion has continued relevance to an effective provision of law.

#### *Research References*

To aid in legal research, collateral references have been included to appropriate material in American Jurisprudence, Corpus Juris Secundum, American Law Reports, and Uniform Laws Annotated. These annotations are included under the heading "Research References" following the particular title, Code section, or other designation to which they relate.

#### *Indexes*

##### *—General Index*

The Official Code of Georgia Annotated contains a completely new general index prepared by LexisNexis®. Index entries have been produced by an actual reading of the body of the statutes and other material and not merely from headings or catchlines. All major headings in the Code are represented in the index.

##### *—Volume Indexes*

In addition to the general index, each volume of the Code contains an individual volume index covering the material contained in that volume. Individual volume indexes will not be revised in the annual supplements

to the volumes but will be revised and updated when a volume is recompiled and republished.

—*Index of Local and Special Laws and General Laws of Local Application*

In addition to the general index, a complete, new index to local and special laws and general laws of local application has been compiled and published as a part of the Code. This index contains citations to the Georgia Laws from 1730 to the present. Entries are divided into current and noncurrent laws in order to eliminate the necessity of having to examine repealed laws when attempting to locate currently effective laws. Index entries were prepared after a complete reading of each statute. After the index was prepared, each entry was compared with the Georgia Laws to ensure the accuracy of the index entries.

For further information regarding the index to local and special laws and general laws of local application, see the foreword to that index and the user's guide preceding the portion of that index dealing specifically with general laws of local application.

*Conversion Tables*

Conversion tables have been included in Volume 41 to assist the user of the Code in converting citations between the Official Code of Georgia Annotated and the Georgia Code Annotated, the Code of Georgia of 1933, and all previous codes of the State of Georgia. Also included are a table showing the location of each section of the Georgia Laws which has been codified in the Official Code of Georgia Annotated and tables which indicate corresponding provisions of the 1877 Constitution of Georgia, the 1945 Constitution of Georgia, the 1976 Constitution of Georgia, and the 1983 Constitution of Georgia. Conversion tables for the

present and prior Constitutions of Georgia are also contained in Volume 2.

*Dictionary*

In the preparation of this Code, the Code Revision Commission and The Michie Company utilized Funk & Wagnalls Standard College Dictionary, copyright 1977 by Harper & Row, Publishers, Inc., as a standard reference work.

*Secretary of State's Certificates*

In each statutory volume as well as in the volume containing the Constitution of Georgia, there is included in the front matter a certification by the Secretary of State of Georgia that the statutes or constitutional provisions contained in that volume are true and correct copies of such material as enacted by the General Assembly of Georgia, all as the same appear of file and record in the office of the Secretary of State.

**APPENDIX LL**

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CODE REVISION  
COMMISSION on behalf of  
and for the benefit of THE  
GENERAL ASSEMBLY OF  
GEORGIA, and THE  
STATE OF GEORGIA,  
Plaintiff,

v.  
PUBLIC.RESOURCE.ORG,  
INC.  
Defendant.

CIVIL ACTION  
NO. 1:15-CV-  
02594-MHC

**PLAINTIFF COMMISSION'S RESPONSE TO  
DEFENDANT PUBLIC.RESOURCE.ORG, INC.'S  
FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Northern District of Georgia, Plaintiff Code Revision Commission on Behalf of and For the Benefit of the General Assembly of Georgia, and the State of Georgia ("Commission"), by and through its attorneys, hereby objects and responds to Defendant Public.Resource.Org, Inc. ("Public Resource")'s First Set of Interrogatories to Plaintiff Code Revision Commission as follows.

## **INTRODUCTION**

The Commission objects to Public Resource's interrogatories to the extent they request identification of documents subject to attorney-client privilege or work product doctrine. The Commission is not producing documents and does not expect Public Resource to produce documents concerning correspondence between the parties and their counsel based on claims of privilege or work product.

**INTERROGATORY NO. 1:** *Identify the portions of the O.C.G.A. in which you claim a valid copyright, including, but not limited to, the statutory text; annotations; editorial notes; Commission notes; research references; notes on law review articles; opinions of the Attorney General of Georgia; indexes; analyses; title, chapter, article, part, and subpart captions or headings; and catchlines of Code sections.*

**RESPONSE:** Commission objects to Public Resource's definition of the term "you" as overly broad and unduly burdensome. Commission's responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia. Commission also objects to Public Resource's definition of "O.C.G.A." as unclear and misleading because Public Resource separately lists "annotations" and certain portions of the O.C.G.A. that are encompassed by the term "annotations," but not other portions of the O.C.G.A. encompassed by the term. Specifically, notes on law review articles, editorial notes, Commission notes, summaries of opinions of the Attorney General, indexes, analyses, title, chapter, article, part, and subpart captions or headings, and catchlines of Code sections are all annotations of the Official Code of Georgia, but listed as

separate from “annotations.” Judicial summaries and summaries of research references are not listed despite also being Official Code of Georgia annotations. Accordingly, in its responses, Commission defines “O.C.G.A.” as “a publication containing the Official Code of Georgia and annotations to the Official Code,” wherein “annotations” refers to all non-statutory elements of the publication. Commission further objects to this interrogatory on the grounds that it seeks information that is not relevant to the claims or defenses of the parties because it seeks information regarding copyrights in works that are not being asserted in this litigation.

Subject to and without waiving these objections, Commission states that it claims copyright in this litigation in those portions of the O.C.G.A. that are asserted, which excludes the O.C.G.A. statutory text and numbers of Titles, Chapters, Articles, Parts, Subparts, and Code Sections. In this case, Commission asserts its copyrights in the following elements of the O.C.G.A. volumes and supplements listed in Exhibit A of the Amended Complaint (Dkt. No. 011) (“Amended Complaint”):

- 1) judicial summaries found under the heading “JUDICIAL DECISIONS” as creative and original text;
- 2) editor’s notes found after the heading “Editor’s notes” as creative and original text;
- 3) summaries of cross references found after the heading “Cross references” as compilations;
- 4) summaries of research references found below the heading “RESEARCH REFERENCES” as compilations;



- 5) summaries of law reviews found after the heading “Law reviews” as compilations;
- 6) summaries of the opinions of the Attorney General of Georgia found below the heading “OPINIONS OF THE ATTORNEY GENERAL” as compilations; and
- 7) compilations of the judicial summaries, editor’s notes, summaries of cross references, summaries of research references, summaries of law reviews, and summaries of the opinions of the Attorney General of Georgia.

All identified hereafter as “Asserted Works.”

**INTERROGATORY NO. 2:** *Identify the portions of the O.C.G.A. in which you do not claim copyright, including, but not limited to, the statutory text, the annotations; editorial notes; Commission notes; research references; notes on law review articles; opinions of the Attorney General of Georgia; indexes; analyses; title, chapter, article, part, and subpart captions or headings; and catchlines of Code sections.*

**RESPONSE:** Commission objects to Public Resource’s definition of the term “you” as overly broad and unduly burdensome. Commission’s responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia. Commission also objects to Public Resource’s definition of “O.C.G.A.” as unclear and misleading because Public Resource separately lists “annotations” and certain items that are encompassed by the term “annotations,” but not other items encompassed by the term. Specifically, notes on law review articles, editorial notes, Commission notes, summaries of opinions of the Attorney General, indexes, analyses, title, chapter, article, part, and

subpart captions or headings, and catchlines of Code sections are all annotations of the Official Code of Georgia, but listed as separate from “annotations.” Judicial summaries and summaries of research references are not listed despite also being Official Code of Georgia annotations. Accordingly, in its responses, Commission defines “O.C.G.A.” as “a publication containing the Official Code of Georgia and annotations to the Official Code,” wherein “annotations” refers to all non-statutory elements of the publication. Commission further objects to this interrogatory on the grounds that it seeks information that is not relevant to the claims or defenses of the parties because it seeks information regarding copyrights in works that are not being asserted in this litigation.

Subject to and without waiving these objections, Commission states that it does not claim copyright in the O.C.G.A. statutory text and numbers of Titles, Chapters, Articles, Parts, Subparts, and Code Sections. In this litigation, Commission asserts its copyrights in the Asserted Works.

**INTERROGATORY NO. 3:** *Describe in detail the process by which the Commission creates the Commission notes of the O.C.G.A. and the extent to which Matthew Bender and Company, a member of the LexisNexis Group, a division of Reed Elsevier Properties, Inc., is involved in their creation.*

**RESPONSE:** Commission objects to Public Resource’s definition of the term “Commission” as overly broad and unduly burdensome. Commission’s responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia. Commission also objects to Public Resource’s definition of

“O.C.G.A.” as unclear and misleading because Public Resource separately lists “annotations” and certain items that are encompassed by the term “annotations,” but not other items encompassed by the term. Specifically, notes on law review articles, editorial notes, Commission notes, summaries of opinions of the Attorney General, indexes, analyses, title, chapter, article, part, and subpart captions or headings, and catchlines of Code sections are all annotations of the Official Code of Georgia, but listed as separate from “annotations.” Judicial summaries and summaries of research references are not listed despite also being Official Code of Georgia annotations. Accordingly, in its responses, Commission defines “O.C.G.A.” as “a publication containing the Official Code of Georgia and annotations to the Official Code,” wherein “annotations” refers to all non-statutory elements of the publication. Commission also objects to this interrogatory on the grounds that it seeks information that is not relevant to the claims or defenses of the parties because it seeks information regarding the Code Commission notes, which are not included in the Asserted Works. No information is being provided in response to this interrogatory.

**INTERROGATORY NO. 4:** *Identify those state- and county-operated facilities at which a member of the public could access the complete, annotated O.C.G.A. for free, including, but not limited to, state and county libraries, state universities, high and junior high schools, state prisons, etc.*

**RESPONSE:** Commission objects to Public Resource’s definition of “identify” and its requirement for “the present or last known address of each established place of business, and the officers and/or partners of each entity” as being overly burdensome with respect

to the state and county facilities identified. Commission provides the name, city, state and zip code of each facility, which is the information in the possession of the Commission. Commission objects to Public Resource's definition of "O.C.G.A." as unclear and misleading. Specifically, Public Resource separately lists "annotations" and multiple items that are encompassed by the term "annotations," making it unclear to what "annotations" refers. Specifically, notes on law review articles, editorial notes, Commission notes, summaries of opinions of the Attorney General, indexes, analyses, title, chapter, article, part, and subpart captions or headings; and catchlines of Code sections are all annotations of the Official Code of Georgia, but listed as separate from "annotations." Judicial summaries and summaries of research references are not listed despite also being Official Code of Georgia annotations. Accordingly, in its responses, Commission defines "O.C.G.A." as "a publication containing the Official Code of Georgia and annotations to the Official Code," wherein "annotations" refers to all non-statutory elements of the publication.

Commission further objects to this interrogatory on the grounds that the term "complete, annotated O.C.G.A." as used in this interrogatory is vague, ambiguous and misleading. The term O.C.G.A. is an acronym for the Official Code of Georgia Annotated, and accordingly, Commission cannot discern to what an annotated form of the already annotated Official Code of Georgia would refer. Commission further objects to this interrogatory as being overly burdensome and seeking information that is not relevant to the claims or defense of the parties and not proportional to the needs of the case. More specifically, "state- and county-operated facilities" are not limited to facilities within

Georgia. It would be extremely burdensome, if not impossible, for Commission to identify any and all state- and county-operated facilities anywhere in the U.S. at which a member of the public could access the O.C.G.A. for free. It is also impossible for the Commission to determine the onsite-O.C.G.A. accessibility conditions within a state- or county-operated facility within the State of Georgia.

Subject to and without waiving these objections, Commission states that a CD-ROM Edition of the O.C.G.A. is provided by LexisNexis for free on a yearly basis to state- and county-operated facilities such as state and county libraries, state universities, and county law enforcement offices within the State of Georgia as follows.

1. DeKalb County Law Library, Decatur, Georgia 30030
2. Carroll County Law Library, Carrollton, Georgia 30117
3. Douglas County Law Library, Douglasville, Georgia 30134
4. Hall County Law Library, Gainesville, Georgia 30501
5. Turner County Law Library, Ashburn, Georgia 31714
6. Thomas County Law Library, Thomasville, Georgia 31799
7. Grady County Law Library, Cairo, Georgia 39827
8. Bulloch County Law Library, Statesboro, Georgia 30460
9. Cook County Law Library, Adel, Georgia 31620

10. Tattnall County Law Library, Reidsville, Georgia 30453
11. Laurens County Law Library, Dublin, Georgia 31040
12. Toombs County Law Library, Lyons, Georgia 30436
13. Tift County Law Library, Tifton, Georgia 31794
14. Douglas County Law Library, Douglasville, Georgia 30134
15. Wilkes County Law Library, Washington, Georgia 30673
16. Muscogee County Law Library, Columbus, Georgia 31901
17. Chattooga County Law Library, Summerville, Georgia 30747
18. Barrow County Law Library, Winder, Georgia 30680
19. Baldwin County Law Library, Milledgeville, Georgia 31061
20. Oconee County Law Library, Watkinsville, Georgia 30677
21. Jefferson County Law Library, Louisville, Georgia 30434
22. Richmond County Law Library, Augusta, Georgia 30901
23. Wilkinson County Law Library, Irwinton, Georgia 31042
24. Clayton County Law Library, Jonesboro, Georgia 30236

25. Lincoln County Law Library, Lincolnton, Georgia 30817
26. Chatham County Law Library, Savannah, Georgia 31401
27. Appling County Law Library, Baxley, Georgia 31513
28. White County Law Library, Cleveland, Georgia 30528
29. Lowndes County Law Library, Valdosta, Georgia 31603
30. Coffee County Law Library, Douglas, Georgia 31533
31. Cherokee County Law Library, Canton, Georgia 30114
32. Cobb County Law Library, Marietta, Georgia 30090
33. Catoosa County Law Library, Ringgold, Georgia 30736
34. Jasper County Law Library, Monticello, Georgia 31064
35. Dade County Law Library, Trenton, Georgia 30752
36. Heard County Law Library, Franklin, Georgia 30217
37. Gwinnett County Law Library, Lawrenceville, Georgia 30046
38. Columbia County Law Library, Evans, Georgia 30809
39. Putnam County Law Library, Eatonton, Georgia 31024

40. Hall County Law Library, Gainesville, Georgia 30501
41. Irwin County Law Library, Ocilla, Georgia 31774
42. Mercer University School of Law, Macon, Georgia 31207
43. Georgia State University, Atlanta, Georgia 30303
44. University of Georgia School of Law, Athens, Georgia 30602
45. University of Georgia Institute of Continuing Legal Education, Athens, Georgia 30603
46. University of Georgia, Vinson Institute of Government, Athens, Georgia 30602
47. Institute of Community and Area Development, Athens, Georgia 30602
48. Abraham Baldwin Agricultural College, Tifton, Georgia 31794
49. Coastal Georgia Community College, Brunswick, Georgia 31520
50. Dekalb College Library, Clarkston, Georgia 30021
51. Roberts Memorial Library, Cochran, Georgia 31014
52. North Metro Tech, Acworth, Georgia 30102
53. Armstrong State College, Savannah, Georgia 31419
54. Georgia Southwestern State University, Americus, Georgia 31709



55. Augusta State University, Augusta, Georgia 30904
56. Gordon College, Barnesville, Georgia 30204
57. East Georgia College Library, Swainsboro, Georgia 30401
58. DeKalb County Police Department, Lithonia, Georgia 30058
59. Gwinnett County Police Department, Lawrenceville, Georgia 30043
60. Georgia Department of Corrections, Forsyth, Georgia 31029
61. Georgia Board of Pardons and Paroles, Atlanta, Georgia 30334
62. Henry County Sheriff's Department, McDonough, Georgia 30253
63. Cherokee County Sheriff's Office, Canton, Georgia 30115
64. Ware County Sheriff's Office, Waycross, Georgia 31503

**INTERROGATORY NO. 5:** *Identify the total revenue the Commission received in 2014 from the following sources: (1) royalties from sales of the printed bound volumes of the O.C.G.A.; (2) royalties from the licensing fees of the CD-ROM of the O.C.G.A.; and (3) royalties from the licensing of the on-line version of the O.C.G.A.*

**RESPONSE:** Commission objects to Public Resource's definition of the term "Commission" as overly broad and unduly burdensome. Commission's responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia. Commission objects to Public Resource's definition of

“O.C.G.A.” as unclear and misleading. Specifically, Public Resource separately lists “annotations” and multiple items that are encompassed by the term “annotations,” making it unclear to what “annotations” refers. Specifically, notes on law review articles, editorial notes, Commission notes, summaries of opinions of the Attorney General, indexes, analyses, title, chapter, article, part, and subpart captions or headings; and catchlines of Code sections are all annotations of the Official Code of Georgia, but listed as separate from “annotations.” Judicial summaries and summaries of research references are not listed despite also being Official Code of Georgia annotations. Accordingly, in its responses, Commission defines “O.C.G.A.” as “a publication containing the Official Code of Georgia and annotations to the Official Code,” wherein “annotations” refers to all non-statutory elements of the publication.

Subject to and without waiving these objections, Commission states that it does not receive revenue from royalties from the sales of printed bound volumes of the O.C.G.A. Commission will provide information regarding the royalties it received in 2014 from the licensing fees of the CD-ROM of the O.C.G.A. and the licensing of the on-line version of the O.C.G.A. within six weeks of the date specified by Public Resource in its First Set of Interrogatories. This time period is reasonable as it gives Commission one week from the end of the current legislative session to provide the information.

**INTERROGATORY NO. 6:** *Identify all facts, documents, or other information on which you rely to support the assertion in Paragraphs 29 and 35 of the Amended Complaint that “there is no adequate remedy at law” for Plaintiff.*

**RESPONSE:** Commission objects to Public Resource’s definition of the term “you” as overly broad and unduly burdensome. Commission’s responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia. Commission also objects to Public Resource’s definition of the term “documents” to the extent that it encompasses e-mail correspondence. Public Resource has not propounded specific discovery requests for e-mails as required by and stipulated to in the Joint Preliminary Report and Discovery Plan. (Dkt. No. 012, Item No. 11(b)(1)) Commission further objects to this interrogatory since it improperly calls for legal conclusions.

Subject to and without waiving these objections, Commission states the following: Commission owns copyrights in the Asserted Works, which are found in seventy seven (77) O.C.G.A. volumes and supplements. The Asserted Works were published and sold for a fee as parts of the O.C.G.A., a serial publication. The owner of a copyright has the exclusive right to reproduce the copyrighted work in copies, to prepare derivative works based upon the copyrighted work, and to distribute copies of the copyrighted work pursuant to 17 U.S.C. § 106. In contravention of Commission’s exclusive rights, Public Resource has on multiple occasions copied, made derivative works of, and distributed via the internet, on multiple websites, the entirety of all 77 O.C.G.A. volumes and supplements that contain the Asserted Works, including front and back covers. Public Resource has facilitated, enabled, encouraged and induced others to view, download, print, copy, further distribute and produce derivative works of each and every Asserted Work without compensation to the Commission. The uncontrollable nature and the extent

of this past infringement by Public Resource could never be compensated or redressed by damages. Any attempt by the Commission to obtain compensation for the damages caused by this past infringement would require multiple lawsuits against multiple parties in multiple jurisdictions. Furthermore, Public Resource has demonstrated its intention to continue to infringe, and to continue to induce others to infringe, the copyrights in the Asserted Works and future editions of the O.C.G.A. by copying and distributing additional editions of the O.C.G.A. after the filing of the present lawsuit. This continued infringement falls squarely within Public Resource's established history of taking steps to cause policy change and force entities, including copyright owners, to yield to its demands. Public Resource itself praises the act of deliberate, continued and extremely wide distributions of documents via the internet in order to ensure that the documents are "copied thousands of times." See Dkt. No. 001-02. Public Resource further indicates that there is "power" in putting such "large document archives online. Aggressively." *Id.* Public Resource simply will not stop seeking its desired policy changes, and will not stop infringing Commission's copyrights in the O.C.G.A., until it is forced to do so by a court of law via the issuance of a permanent injunction. Consequently any available legal remedy would not be adequate.

Commission further identifies the following documents: Amended Complaint and Exhibits (Dkt. Nos. 011 and 011-1 through 011-6); Stipulation of Facts and Exhibits (Dkt. Nos. 017 and 017-1 through 017-13); COMM000001, COMM000042; COMM000044; and PRO-000564.

**INTERROGATORY NO. 7:** *Identify all facts, documents, or other information on which you rely to*

*support the assertion in Paragraphs 29 and 35 of the Amended Complaint that “Defendant’s conduct will continue to cause severe and irreparable harm to Plaintiff.”*

**RESPONSE:** Commission objects to Public Resource’s definition of the term “you” as overly broad and unduly burdensome. Commission’s responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia.

Commission also objects to Public Resource’s definition of the term “documents” to the extent that it encompasses e-mail correspondence. Public Resource has not propounded specific discovery requests for e-mails as required by and stipulated to in the Joint Preliminary Report and Discovery Plan. (Dkt. No. 012, Item No. 11(b)(1)) Commission further objects to this interrogatory since it improperly calls for legal conclusions.

Subject to these objections, Commission states the following: Commission owns copyrights in the Asserted Works. The Asserted Works were published and sold for a fee as parts of the O.C.G.A., a serial publication. The owner of a copyright has the exclusive right to reproduce the copyrighted work in copies, to prepare derivative works based upon the copyrighted work, and to distribute copies of the copyrighted work pursuant to 17 U.S.C. § 106. In contravention of Commission’s exclusive rights, Public Resource has on multiple occasions copied, made derivative works of, and distributed via the internet the Asserted Works. Public Resource has facilitated, enabled, encouraged and induced others to view, download, print, copy and distribute each Asserted Work without charging a fee for the Asserted Works and without compensation to the

Commission. Public Resource will continue its infringing activity, unless enjoined by this Court. The Commission has experienced and will experience irreparable harm because there is no adequate remedy at law for the widespread infringement caused by Public Resource as indicated in Commission's response to Interrogatory No. 6, which is hereby incorporated by reference.

Commission further identifies the following documents: Amended Complaint and Exhibits (Dkt. Nos. 011 and 011-1 through 011-6); Stipulation of Facts and Exhibits (Dkt. Nos. 017 and 017-1 through 017-13); COMM000001, COMM000042; COMM000044; and PRO-000564.

**INTERROGATORY NO. 8:** *Identify all facts, documents, or other information on which you rely to support the assertion in Paragraph 2 of the Amended Complaint that “[w]ithout providing the publisher the ability to recoup its costs for the development of these copyrighted annotations, the State of Georgia will be required to either stop publishing the annotations altogether or pay for development of the annotations using state tax dollars.”*

**RESPONSE:** Commission objects to Public Resource's definition of the term “you” as overly broad and unduly burdensome. Commission's responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia. Commission also objects to Public Resource's definition of the term “documents” to the extent that it encompasses e-mail correspondence. Public Resource has not propounded specific discovery requests for e-mails as required by and

stipulated to in the Joint Preliminary Report and Discovery Plan. (Dkt. No. 012, Item No. 11(b)(1))

Subject to and without waiving these objections, Commission states the following: Commission owns copyrights in the Asserted Works that were developed pursuant to a work for hire agreement with the publisher, LexisNexis. The Asserted Works were published and sold for a fee as parts of the O.C.G.A., a serial publication. LexisNexis bears its own costs for development of the Asserted Works in the O.C.G.A. and bears the O.C.G.A. publication costs. LexisNexis receives revenue from the sales of the O.C.G.A. that contain the Asserted Works. LexisNexis is a for-profit company. The Commission's operations are funded by state tax dollars. An increase in the Commission's operations in order to develop its own Asserted Works (or works similar to the Asserted Works) in the O.C.G.A. would require increased funding or would cause the Commission to stop creating the Asserted Works.

Commission further identifies at least the following documents: Amended Complaint and Exhibits (Dkt. Nos. 011 and 011-1 through 011-6); Stipulation of Facts and Exhibits (Dkt. Nos. 017 and 017-1 through 017-13); COMM000001, COMM000042; and COMM000044.

**INTERROGATORY NO. 9:** *Identify all facts, documents, or other information on which you rely to support the assertion in Paragraph 2 of the Amended Complaint that “[u]nless Defendant’s infringing activities are enjoined, Plaintiff and the citizens of the State of Georgia, will face losing valuable analysis and guidance regarding their state laws.”*

**RESPONSE:** Commission objects to Public Resource’s definition of the term “you” as overly broad and unduly

burdensome. Commission's responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia.

Commission also objects to Public Resource's definition of the term "documents" to the extent that it encompasses e-mail correspondence. Public Resource has not propounded specific discovery requests for e-mails as required by and stipulated to in the Joint Preliminary Report and Discovery Plan. (Dkt. No. 012, Item No. 11(b)(1))

Subject to and without waiving these objections, Commission states the following: Commission owns copyrights in the Asserted Works that were developed pursuant to a work for hire agreement with the publisher, LexisNexis. The Asserted Works were published and sold for a fee as parts of the O.C.G.A., a serial publication. The owner of a copyright has the exclusive right to reproduce the copyrighted work in copies, to prepare derivative works based upon the copyrighted work, and to distribute copies of the copyrighted work pursuant to 17 U.S.C. § 106. In contravention of Commission's exclusive rights, Public Resource has on multiple occasions copied, made derivative works of, and distributed via the internet the Asserted Works. Public Resource has facilitated, enabled, encouraged and induced others to view, download, print, copy and distribute each Asserted Work without compensation to the Commission. LexisNexis bears its own costs for development of the Asserted Works in the O.C.G.A. and bears the O.C.G.A. publication costs. LexisNexis receives monies from the sales of the O.C.G.A. that contain the Asserted Works. LexisNexis is a for-profit company. If Lexis Nexis is not compensated for the creation and publication of the Asserted



Works and/or works similar to the Asserted Works (“Annotations”), it is unlikely that they will continue to create and publish the Annotations. The Commission’s operations are funded by state tax dollars. An increase in the Commission’s operations due to its own development of Official Code of Georgia Annotations would require increased funding. Such increase funding [sic] may not be available. Thus the Commission may not be able to create and publish the Annotations. If Lexis Nexis does not create and publish the Annotations and the Commission is unable to obtain additional funding, the public will lose the benefit of reviewing those Annotations.

Commission further identifies at least the following documents: Amended Complaint and Exhibits (Dkt. Nos. 011 and 011-1 through 011-6); Stipulation of Facts and Exhibits (Dkt. Nos. 017 and 017-1 through 017-13); COMM000001, COMM000042; and COMM000044.

**INTERROGATORY NO. 10:** *Identify all facts, documents, or other information on which you rely to support any contention regarding the effect of Public Resource’s use of the O.C.G.A. upon the potential market for, or value of, the copyrighted works.*

**RESPONSE:** Commission objects to Public Resource’s definition of the term “you” as overly broad and unduly burdensome. Commission’s responses will be made only on behalf of the Code Revision Commission on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia. Commission also objects to Public Resource’s definition of the term “documents” to the extent that it encompasses e-mail correspondence. Public Resource has not propounded specific discovery requests for e-mails as required by and

stipulated to in the Joint Preliminary Report and Discovery Plan. (Dkt. No. 012, Item No. 11(b)(1)) Commission further objects to this interrogatory since it improperly calls for legal conclusions.

Subject to and without waiving these objections, Commission states the following: Commission owns copyrights in the Asserted Works. The Asserted Works were published and sold for a fee as parts of the O.C.G.A., a serial publication. The owner of a copyright has the exclusive right to reproduce the copyrighted work in copies, to prepare derivative works based upon the copyrighted work, and to distribute copies of the copyrighted work pursuant to 17 U.S.C. § 106. In contravention of Commission's exclusive rights, Public Resource has on multiple occasions copied, made derivative works of, and distributed via the internet the Asserted Works. Public Resource has facilitated, enabled, encouraged and induced others to view, download, print, copy and distribute each Asserted Work without charging a fee for the Asserted Works and without compensation to the Commission. As a result of Public Resource making the copyrighted Asserted Works available to the public for free, the ability of Lexis Nexis to market the Asserted Works and/or works similar to the Asserted Works ("Annotations") for a fee will be effected and its sales of the Annotations as part of the O.C.G.A. will be reduced.

Commission further identifies at least the following documents: Amended Complaint and Exhibits (Dkt. Nos. 011 and 011-1 through 011-6); Stipulation of Facts and Exhibits (Dkt. Nos. 017 and 017-1 through 017-13); COMM000001, COMM000042; and COMM000044.

[Signature block omitted]

**APPENDIX MM**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CODE REVISION  
COMMISSION on behalf of  
and for the Benefit of THE  
GENERAL ASSEMBLY OF  
GEORGIA, and THE  
STATE OF GEORGIA,

Plaintiff,

v.

PUBLIC.RESOURCE.ORG,  
INC.

Defendant.

CIVIL ACTION  
NO.

1:15-CV-02594-  
MHC

**PLAINTIFF’S LOCAL RULE 56.1 STATEMENT  
OF UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1(A), Plaintiff and Counterclaim-Defendant the Code Revision Commission, on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia (“Commission”), and in support of Plaintiff’s Motion for Summary Judgment, states that there is no genuine issue to be tried as to the following material facts:

1. Each Official Code of Georgia Annotated (“OCGA”) volume and supplement in Exhibit A to the

Stipulation of Facts (“Exhibit A”) contains statutory text and non-statutory annotation text. Dkt. 17 ¶ 1.

2. The 2014 and 2015 State of Georgia session laws each state in part:

Annotations; editorial notes; Code Revision Commission notes; research references; notes on law review articles; opinions of the Attorney General of Georgia; indexes; analyses; title, chapter, article, part, and subpart captions or headings, except as otherwise provided in the Code; catchlines of Code sections or portions thereof, except as otherwise provided in the Code; and rules and regulations of state agencies, departments, boards, commissions, or other entities which are contained in the Official Code of Georgia Annotated are not enacted as statutes by the provisions of this Act.

2014 Ga. Laws 866, § 54; 2015 Ga. Laws 5, § 54. Dkt. 17 ¶ 2.

3. The non-statutory annotation text of each OCGA volume and supplement in Exhibit A includes summaries of judicial decisions. Dkt. 17 ¶ 3.

4. The summaries of judicial decisions in the non-statutory annotations of each OCGA volume and supplement in Exhibit A are prepared by Matthew Bender and Company, a member of the LexisNexis Group, a division of Reed Elsevier Properties, Inc. (“LexisNexis”) under contract for the State of Georgia, and are finalized under the direct supervision of and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 4.

5. The judicial decisions summarized in the judicial decision summaries in each OCGA volume and supplement in Exhibit A have been selected by

LexisNexis to be summarized for inclusion in the OCGA, under the direct supervision and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 5.

6. The content of the summaries of judicial decisions in each OCGA volume and supplement in Exhibit A has been selected for inclusion in the OCGA. Dkt. 17 ¶ 6.

7. The summaries of judicial decisions in each OCGA volume and supplement in Exhibit A have been coordinated with an OCGA statute (statutory text). Dkt. 17 ¶ 7.

8. The summaries of judicial decisions in each OCGA volume and supplement in Exhibit A are arranged under the heading “Judicial Decisions” prior to or following an OCGA statute (statutory text). Dkt. 17 ¶ 8.

9. The summaries of judicial decisions are selected, coordinated and arranged in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 9.

10. The non-statutory annotation text of each OCGA volume and supplement in Exhibit A includes editor’s notes. Dkt. 17 ¶ 10.

11. Editor’s notes in each OCGA volume and supplement in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 11.

12. The editor’s notes in each OCGA volume and supplement in Exhibit A have been coordinated with an OCGA statute (statutory text). Dkt. 17 ¶ 12.

13. The editor’s notes in each OCGA volume and supplement in Exhibit A are arranged after the

heading “Editor’s notes” prior to or following an OCGA statute (statutory text). Dkt. 17 ¶ 13.

14. The editor’s notes are coordinated and arranged in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 14.

15. Each OCGA volume and supplement in Exhibit A is the subject of a U.S. Copyright Registration as shown in Exhibit A. Dkt. 17 ¶ 17; Dkt. 17-1.

16. The non-statutory annotation text of each OCGA volume and supplement listed in Exhibit A includes summaries of opinions of the Attorney General of Georgia. Dkt. 17 ¶ 18.

17. The summaries of opinions of the Attorney General of Georgia in the non-statutory annotations of each OCGA volume and supplement listed in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision of and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 19.

18. The opinions of the attorney general of Georgia referenced in each OCGA volume and supplement listed in Exhibit A have been selected for inclusion in the OCGA. Dkt. 17 ¶ 20.

19. The opinions of the Attorney General of Georgia referenced in the opinion of the attorney general summaries are selected in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 21.

20. The content of the summaries of opinions of the Attorney General of Georgia in each OCGA volume and supplement listed in Exhibit A has been selected for inclusion in the OCGA. Dkt. 17 ¶ 22.

21. The summaries of opinions of the Attorney General of Georgia in each OCGA volume and supplement

listed in Exhibit A have been coordinated with an OCGA statute (statutory text). Dkt. 17 ¶ 23.

22. The summaries of opinions of the Attorney General of Georgia in each OCGA volume and supplement listed in Exhibit A are arranged under the heading “Opinions of the Attorney General” prior to or following an OCGA statute (statutory text). Dkt. 17 ¶ 24.

23. The summaries of the opinions of the Attorney General of Georgia are selected, coordinated and arranged in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 25.

24. The non-statutory text of each OCGA volume and supplement listed in Exhibit A includes summaries of research references. Dkt. 17 ¶ 26.

25. The summaries of research references in the non-statutory annotations of each OCGA volume and supplement in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 27.

26. The research references referenced in each OCGA volume and supplement in Exhibit A have been selected for inclusion in the OCGA. Dkt. 17 ¶ 28.

27. The research references are selected in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 29.

28. The content of the summaries of the research references in each OCGA volume and supplement listed in Exhibit A has been selected for inclusion in the OCGA. Dkt. 17 ¶ 30.

29. The summaries of research references in each OCGA volume and supplement listed in Exhibit A

have been coordinated with an OCGA statute (statutory text). Dkt. 17 ¶ 31.

30. The summaries of research references in each OCGA volume and supplement listed in Exhibit A are arranged under the heading “Research References” prior to or following an OCGA statute (statutory text). Dkt. 17 ¶ 32.

31. The summaries of research references are selected, coordinated and arranged in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 33.

32. Public Resource purchased from LexisNexis and copied the entirety of 186 volumes and supplements of the OCGA, including front and back covers, which 186 volumes include the volumes and supplements of the OCGA listed in Exhibit A. Dkt. 17 ¶ 34.

33. Public Resource posted on its website <https://law.resource.org> the copies it made of the OCGA including the volumes and supplements of the OCGA listed in Exhibit A. Dkt. 17 ¶ 36.

34. Public Resource has facilitated, enabled, encouraged and induced others to view, download, print, copy and distribute each OCGA volume and supplement listed in Exhibit A without limitation or compensation to the State of Georgia. Dkt. 17 ¶ 38.

35. Public Resource created works containing each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 39.

36. The annotations to each OCGA volume and supplement listed in Exhibit A include summaries of cases that relate to the OCGA, summaries of Opinions of the Attorney General of Georgia and summaries of research references related to the OCGA. Dkt. 17 ¶ 40.



37. Public Resource actively encourages all citizens to copy, use, and disseminate to others in Georgia and elsewhere and to create works containing the OCGA volumes and supplements listed in Exhibit A. Dkt. 17 ¶ 41.

38. The Commission does not assert copyright in the OCGA statutory text itself because the laws of Georgia are and should be free to the public. Dkt. 17 ¶ 45.

39. Subsequent to July 22, 2015 and with full knowledge of the Commission's Complaint (Dkt. No. 1), Public Resource copied the entirety of the volumes and supplements of the 2015 OCGA shown in Exhibit A and distributed those copies via posting them on its website <https://law.resource.org>. Dkt. 17 ¶ 46.

40. Public Resource's posting of the entirety of the 114 volumes and supplements of the OCGA listed in Exhibit A on its website <https://law.resource.org> was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the OCGA. Dkt. 17 ¶ 48.

41. Public Resource's posting of the entirety of the 114 volumes and supplements of the OCGA listed in Exhibit A on its website <https://law.resource.org> resulted in the copying (downloading) of those volumes and supplements from that website by members of the public. Dkt. 17 ¶ 49.

42. Public Resource posted on a website, [www.archive.org](http://www.archive.org), copies of the entirety of the volumes and supplements of the OCGA listed in Exhibit A. Dkt. 17 ¶ 50.

43. Subsequent to July 22, 2015 and with full knowledge of the Commission's Complaint (Dkt. No. 1), Public Resource copied the entirety of the volumes and supplements of the 2015 OCGA listed in Exhibit A and posted them on the website [www.archive.org](http://www.archive.org). Dkt. 17 ¶ 52.

44. Public Resource's posting of the entirety of the volumes/supplements of the OCGA on the website [www.archive.org](http://www.archive.org), including those volumes/supplements listed in Exhibit A, was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the OCGA. Dkt. 17 ¶ 54.

45. Public Resource's posting of the entirety of volumes and supplements of the OCGA on the website [www.archive.org](http://www.archive.org), resulted in the copying (downloading) of each of those volumes/supplements of the OCGA from the website by members of the public as listed in Exhibit A. Dkt. 17 ¶ 55.

46. Public Resource distributed USB thumb drives containing scanned copies of the OCGA to members of the State of Georgia Legislature. Dkt. 17 ¶ 63.

47. Public Resource distributed copies of the entirety of 90 volumes and supplements of the OCGA to at least eight institutions in and around the state of Georgia, Honorable David Ralston, Speaker of the House, Georgia House of Representatives and Mr. Wayne Allen, Legislative Counsel, Office of Legislative Counsel, Georgia General Assembly, including those shown in Exhibit A, by placing those copies on USB thumb drives and mailing them. Dkt. 17 ¶ 64.

48. Public Resource's distribution of the entirety of 90 volumes and supplements of the OCGA to at least eight institutions in and around the state of Georgia,

including those volumes and supplements shown in Exhibit A, was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the OCGA. Dkt. 17 ¶ 65.

49. The Commission has not authorized Public Resource to copy, distribute or make derivative works of any entire volume or supplement of the OCGA, including those shown in Exhibit A, and upon receiving cease and desist letters from the Commission, Public Resource refused to remove any and all copies of the OCGA that it had posted on any website. Dkt. 17 ¶ 66.

50. The statutory text and numbering of the OCGA is accessible by the public through the Georgia General Assembly website at [www.legis.ga.gov](http://www.legis.ga.gov) and the Georgia Senate website at [www.senate.ga.gov](http://www.senate.ga.gov) by clicking on the “Georgia Code” link on each of those websites which will direct the user to the LexisNexis website operated for the State of Georgia. Dkt. 17 ¶ 73.

51. The “Georgia Code” links on the websites [www.legis.ga.gov](http://www.legis.ga.gov) and [www.senate.ga.gov](http://www.senate.ga.gov) link to the LexisNexis website <http://www.lexisnexis.com/hottopics/gacode/Default.asp> (“LexisNexis GA Code website”), which is operated for the State of Georgia, and the LexisNexis GA Code website contains the statutory text and numbering of the OCGA. Dkt. 17 ¶ 74.

52. There is no fee to access the statutory text and numbering of the OCGA through the LexisNexis GA Code website. Dkt. 17 ¶ 75.

53. The statutory text and numbering of the OCGA can be electronically copied and/or printed from the LexisNexis GA Code website. Dkt. 17 at ¶ 76.

54. The statutory text of the OCGA is searchable by term on the LexisNexis GA Code website. Dkt. 17 ¶ 77.

55. Public Resource operates the websites public.resource.org, law.resource.org, house.resource.org, bulk.resource.org and others. Dkt. 17 ¶ 79.

56. At least one copy of each OCGA volume and supplement that Public Resource posted on its <https://law.resource.org> website is in an electronic format that displays an image of the printed publication as copied by Public Resource, which image allows for electronic page turning of the printed publication. Exhibit B to the Stipulation of Facts (Dkt. 17-2) is a true and correct copy of the front cover of one such image. Dkt. 17 ¶ 37.

57. The preface in each OCGA volume and supplement in Exhibit A of the Stipulation of Facts (Dkt. 17-1) is prepared under contract by LexisNexis for the State of Georgia and under the direct supervision and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 15.

58. Public.Resource.Org has argued:

The distinction between ‘the statutory text itself’ and additional materials perhaps would have some bearing if the publication in question were the independent commercial endeavor of a publication firm. If such firm were to copy the state statutes and compile that information with additional analyses and summaries and were to do so as a strictly commercial endeavor, we understand and respect that this material would be their private property. Dkt. No. 17-4, p. 2.

59. The Official Code of Georgia Annotated is a compilation of the Georgia statutes and other non-

statutory materials, or annotations, which has been published yearly since 1982. Exhibit 1, Declaration of Elizabeth P. Howerton ¶ 3.

60. The annotations in the OCGA provide analyses and other information that allow for a better or easier understanding of a relevant statute. The annotations included in the OCGA are original and creative summaries of judicial decisions, editor's notes, summaries of opinions of the Attorney General of Georgia, and compilations thereof. Ex. 1 ¶¶ 3, 4.

61. The OCGA is published by Matthew Bender and Company, Inc., a member of the LexisNexis Group ("LexisNexis"), a division of Reed Elsevier Properties, Inc. under a work for hire agreement with the State of Georgia. Ex. 1 ¶ 5.

62. When entering the contract with LexisNexis, the ability of the state to keep the price of the OCGA low for the benefit of the citizens of Georgia was an important consideration. Ex. 1 ¶ 6.

63. West's Code of Georgia Annotated is another compilation of the Georgia statutes and annotations thereof that is published by West Publishing. Ex. 1 ¶ 7.

64. The OCGA contains the official, or State of Georgia-approved, codified statutory text (OCGA. 1-1-1), whereas the statutory text in West's Code of Georgia Annotated is not approved by the State. Ex. 1 ¶ 8.

65. The current price of a complete OCGA set is \$404.00 as compared to \$2,570.00 for a complete set of West's Code of Georgia Annotated. Ex. 1 ¶ 9.

66. The entire OCGA, including the annotations, is available for viewing on compact disc at over 60 state- and county-operated facilities such as state and county

libraries, state universities, and county law enforcement offices within the State of Georgia. Ex. 1 ¶ 10.

67. The Georgia General Assembly has websites at <http://www.legis.ga.gov>, <http://www.house.ga.gov>, and <http://www.senate.ga.gov> that provide live broadcasts of both legislative houses, links to the Georgia Code, and the ability to search pending legislation, obtain contact information for legislators, and obtain state budget documents. Ex. 1 ¶ 11.

68. The Georgia Code was accessed almost 79 million times between 2007 and 2015 via the website that is linked to the Georgia General Assembly websites. Ex. 1 ¶ 12.

69. In 1994, the Board of Regents of the University System of Georgia and the University of Georgia created GALILEO, the first state wide digital library. Ex. 1 ¶ 13.

70. GALILEO can be found at <http://dlg.galileo.usg.edu>. Ex. 1 ¶ 13.

71. GALILEO provides access to the Georgia Laws, which is a publication of Georgia laws (both codified and uncodified) as enacted by the Georgia Legislature. Ex. 1 ¶ 14.

72. In 1996, the Georgia Government Publications database (GGP) was created as GALILEO's first digital conversion initiative of publications released by agencies of Georgia's executive branch. Ex. 1 ¶ 15.

73. Georgia law (OCGA. 20-5-2) requires Georgia state agencies to submit publications to GALILEO that they produce for the public. Ex. 1 ¶ 16.

74. The GGP database consists of over 70,000 documents produced by Georgia state agencies. Ex. 1 ¶ 17.

75. Prior to the State of Georgia filing a lawsuit against Public Resource, Public Resource copied and distributed hundreds of annotated state code volumes of several states, including Georgia, Mississippi and Idaho, and then informed each state of its actions. Ex. 1 ¶ 18.

76. Under the Publication Agreement between the State of Georgia and LexisNexis, the annotations in the OCGA remain the property of the State of Georgia and LexisNexis obtains copyright registrations therefore. Exhibit 2, Agreement for Publication, § 6.1.

77. LexisNexis is granted the exclusive right to publish and sell the OCGA according to the prices set in the publication contract, with any price increases at the sole discretion of the Commission. Ex. 2 §§ 5, 8.

78. LexisNexis created the summaries of judicial decisions in the OCGA works using a lengthy process of selection, analysis and summarization. Exhibit 3, Declaration of Anders X. Ganten ¶¶ 3-15.

79. LexisNexis identified and read each potentially relevant judicial decision, determined how the case relates to a statute, and then determined the type of annotation that should be created. Ex. 3 ¶¶ 4, 5.

80. For those cases of significance, LexisNexis created an original several line summary of the case that distills the case's relevant holding relating to the statute. Ex. 3 ¶¶ 7, 8.

81. The OCGA annotation of the judicial decision *Cho Carwash Property, LLC. v. Everett* (326 Ga. App. 6 (2014)) published in the 2014 edition of the OCGA, as associated with Georgia statute § 34-9-260 is as follows:

Average weekly wage calculated correctly. – Award of workers’ compensation benefits was upheld because there was some evidence to support the administrative law judge’s calculation of the claimant’s average weekly wage under OCGA. § 34-9-260(3) based on the claimant’s testimony that the claimant was supposed to work from the car wash’s opening until its close. *Cho Carwash Property, LLC. v. Everett*, 326 Ga. App. 6, 755 S.E.2d 823 (2014).

Ex. 3 ¶¶ 9, 13.

82. Each of the OCGA Works further contains original and creative compilations of summaries of judicial decisions, editor’s notes, summaries of opinions of the Attorney General of Georgia, summaries of research references, and compilations of these compilations. Ex. 3 ¶ 5.

83. Each judicial decision summary, editor’s note, and summary of an opinion of the Attorney General of Georgia was first selected for inclusion in the OCGA by LexisNexis and then coordinated with a particular statute. Ex. 3 ¶ 3.

84. When multiple summaries or editor’s notes were coordinated with a single code section, each was arranged in a particular order. Ex. 3 ¶ 4.

85. The correspondence shown in Exhibit C to the Stipulation of Facts (Dkt. 17-3) is a true and exact copy of a letter written by Mr. Malamud and sent to David Ralston and Wayne Allen on May 30, 2013. Dkt. 17 ¶ 67.

86. The correspondence shown in Exhibit D to the Stipulation of Facts (Dkt. 17-4) is a true and exact copy of a letter written by Mr. Malamud and sent to Joshua



McKoon, David Ralston and David Shafter on July 30, 2013. Dkt. 17 ¶ 68.

87. The correspondence shown in Exhibit E to the Stipulation of Facts (Dkt. 17-5) is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on July 25, 2013. Dkt. 17 ¶ 69.

88. The correspondence shown in Exhibit F to the Stipulation of Facts (Dkt. 17-6) is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on August 15, 2013. Dkt. 17 ¶ 70.

89. The correspondence shown in Exhibit G to the Stipulation of Facts (Dkt. 17-7) is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on April 2, 2014. Dkt. 17 ¶ 71.

90. To access the statutory text and numbering in the OCGA via the website link found on the State of Georgia website, [www.legis.ga.gov](http://www.legis.ga.gov), one must accept the terms and conditions of use generally applicable to the LexisNexis websites (“LexisNexis Website Use Terms and Conditions”). A true and correct copy of the LexisNexis Website Use Terms and Conditions is attached to the Stipulation of Facts as Exhibit I (Dkt. 17-9). The access page that allows users to access the online publication by accepting the LexisNexis Website Use Terms and Conditions explicitly states that the LexisNexis Website Use Terms and Conditions do not apply to the OCGA statutory text and numbering. A true and correct copy of this access page is attached to the Stipulation of Facts as Exhibit J (Dkt. 17-6). Dkt. 17 ¶ 86.

WHEREFORE, there being no genuine issue of material fact and being entitled to judgment as a matter of law on the issues addressed herein, Plaintiff requests that this Court grant its motion as to all of

Plaintiff's counts of copyright infringement, pursuant to Rule 56 and Local Civil Rule 56.1.

Respectfully submitted, this 17th day of May, 2016.

[Signature block omitted]

**APPENDIX NN**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                                                                                                                                                                                                                          |                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| CODE REVISION<br>COMMISSION on behalf of<br>and for the benefit of THE<br>GENERAL ASSEMBLY OF<br>GEORGIA, and THE<br>STATE OF GEORGIA,<br><br>Plaintiff,<br><br>v.<br><br>PUBLIC.RESOURCE.ORG,<br>INC.<br><br>Defendant. | CIVIL ACTION<br>NO.<br><br>1:15-CV-02594-<br>MHC |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|

**DECLARATION OF ELIZABETH P.  
HOWERTON**

I, Elizabeth P. Howerton, hereby testify and state by declaration as follows:

1. I began working as an attorney in the State of Georgia's Office of Legislative Counsel in November of 2002. I assumed my current position as Deputy Legislative Counsel in 2004.

2. I make the following declaration on personal knowledge and belief. If called upon to testify to the statements in this Declaration, I could and would competently testify to these facts.

3. The Official Code of Georgia Annotated is a compilation of the Georgia statutes and other non-statutory materials, or annotations, which has been published yearly since 1982.

4. The annotations in the O.C.G.A. provide analyses and other information that allow for a better or easier understanding of a relevant statute. The annotations included in the O.C.G.A. are original and creative summaries of judicial decisions, editor's notes, summaries of opinions of the Attorney General of Georgia, and compilations thereof

5. The O.C.G.A. is published by Matthew Bender and Company, Inc., a member of the LexisNexis Group ("LexisNexis"), a division of Reed Elsevier Properties, Inc. under a work for hire agreement with the State of Georgia.

6. When entering the contract with LexisNexis, the ability of the state to keep the price of the O.C.G.A. low for the benefit of the citizens of Georgia was an important consideration.

7. West's Code of Georgia Annotated is another compilation of the Georgia statutes and annotations thereof that is published by West Publishing.

8. The O.C.G.A. contains the official, or State of Georgia-approved, codified statutory text (O.C.G.A. 1-1-1), whereas the statutory text in West's Code of Georgia Annotated is not approved by the State.

9. Currently, the price of a complete O.C.G.A. set is \$404.00 as compared to \$2,570.00 for a complete set of West's Code of Georgia Annotated.

10. The entire O.C.G.A., including the annotations, is available for viewing on compact disc at over 60 state- and county-operated facilities such as state and

county libraries, state universities, and county law enforcement offices within the State of Georgia.

11. The Georgia General Assembly has websites at <http://www.legis.ga.gov>, <http://www.house.ga.gov>, and <http://www.senate.ga.gov> that provide live broadcasts of both legislative houses, links to the Georgia Code, and the ability to search pending legislation, obtain contact information for legislators, and obtain state budget documents, among other things.

12. The Georgia Code was accessed almost 79 million times between 2007 and 2015 via the website that is linked to the Georgia General Assembly websites.

13. In 1994, the Board of Regents of the University System of Georgia created GALILEO, the first state wide digital library, which can be found at <http://dlg.galileo.usg.edu>.

14. GALILEO provides access to the *Georgia Laws*—a publication of Georgia laws as enacted by the Georgia Legislature that includes uncodified laws.

15. In 1996, the Georgia Government Publications database (GGP) was created as GALILEO's first digital conversion initiative of publications released by agencies of Georgia's executive branch.

16. Georgia law (O.C.G.A. 20-5-2) requires Georgia state agencies to submit publications to GALILEO that they produce for the public.

17. The GGP database consists of over 70,000 documents produced by Georgia state agencies.

18. Prior to the State of Georgia filing a lawsuit against Public Resource, Public Resource copied and distributed hundreds of annotated state code volumes of several states, including Georgia, Mississippi and

Idaho, as well as the District of Columbia, and then informed each of its actions.

I declare under the penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing testimony is true and accurate to the best of my knowledge, information, understanding, and belief.

May 17, 2016

/s/ Elizabeth P. Howerton  
Elizabeth P. Howerton

**APPENDIX OO****AGREEMENT FOR PUBLICATION**

THIS AGREEMENT (“Agreement”), is made this 27th day of December, 2006, by and between the Code Revision Commission of the State of Georgia (“Commission” or “State”) and Matthew Bender & Company, Inc., a member of the LexisNexis Group (“Publisher”).

**WITNESSETH:**

This Agreement is entered into between the Code Revision Commission of the State of Georgia, as established pursuant to Official Code of Georgia Annotated § 28-9-2, and the Publisher pursuant to a Request for Proposals (“RFP”) issued on October 3, 2006 by the Commission for the purpose of providing for the publication, maintenance, and distribution of the Official Code of Georgia Annotated (“Code”) and other related services and products as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Commission and the Publisher agree as follows:

**1. EDITORIAL DUTIES OF THE PUBLISHER****1.1 General.**

(a) The Publisher shall be responsible for the ongoing publication and maintenance of the Code, and shall perform and provide all services necessary for the preparation, editorial revision, publication and maintenance of the Code, in printed, electronic and any other form. Duties of the Publisher shall extend to all Code publications in whatever form or medium covered by this Agreement. The editorial and quality standards provided in this Section 1 shall apply to all

supplements and replacement volumes prepared by the Publisher and to each updated general index prepared by the Publisher.

(b) The Publisher shall bear all editorial, publication and distribution costs associated with the production and maintenance of the Code, without any contribution, subsidy or expense by the Commission, or any consideration from the Commission other than the consideration provided for in this Agreement.

(c) Upon request of the Commission, the Publisher's editors or other representatives, as determined by the Commission, shall confer with the Commission or its staff, either in Atlanta, Georgia, or at the offices of the Publisher.

(d) Consultations between and decisions by the editorial staffs of the Commission and the Publisher shall be amply documented in memoranda prepared by each party, so as to provide documentation of and accountability for editorial decisions.

(e) The ultimate right of editorial control over all material contained in the Code shall be in the Commission, and in the event of any disagreement between the Commission and the Publisher over the material to be included, the decision of the Commission shall control.

(f) The Publisher shall be required to publish the Code in conformity with the Commission's *Publication Manual for the Official Code of Georgia Annotated* as provided by staff of the Commission to the Publisher, which manual shall reflect those specific content, style, and publishing standards of the Code as adopted, approved, or amended from time to time by the Commission or its staff pursuant to Code Section 28-9-3 of the Official Code of Georgia Annotated. Such



manual is hereby incorporated into this Agreement by reference. The Publisher agrees that the contents and specifications of such manual are controlled by the Commission and that the information contained in the manual is neither confidential nor proprietary to any publisher nor does it constitute a trade secret of any publisher.

(g) The provisions contained in this Section 1 may be varied by mutual written consent of the Publisher and the Commission.

### **1.2 Name of Publication.**

The name of the publication produced and maintained pursuant to this Agreement shall be the "Official Code of Georgia Annotated".

### **1.3 Content of Publication.**

The material comprising the Code shall include:

(a) All statutory provisions, annotations, captions, catchlines, headings, history lines, editorial notes, cross-references, indices, title and chapter analyses, research references, amendment notes, Code Commission notes, and other material related to or included in such Code at the direction of the Commission;

(b) The United States Constitution and the Georgia Constitution, as amended;

(c) General index, indices related to local and special laws, and conversion tables; and

(d) Other material as provided in this Agreement.

The Code shall include the codification of Georgia laws prepared by the Code Revision Commission and The Michie Company and enacted by the General Assembly of Georgia by an Act approved September 3, 1981 (Ga. L. 1981, Ex. Sess., p. 8), and subsequent

current legislative enactments of the General Assembly of Georgia.

#### **1.4 Organization, Arrangement and Numbering.**

The Publisher shall maintain the organization and arrangement of the current Code in all supplements and replacement volumes published under this Agreement. In addition, the Publisher shall continue the section numbering system currently in use in the Code. The United States Constitution and the Constitution of Georgia, in place of the regular numbering system should carry, at the top of the page as well as at the beginning of each article, section, paragraph, or amendment, the appropriate article, section, paragraph, and amendment numbers. The Publisher shall provide for descriptive headings known as catchlines to denote the contents of a Code section. Such catchlines shall be printed in boldface type to the right of a Code section number. The Publisher shall also include any catchlines at the subsection, paragraph, subparagraph, division, or subdivision level of any Code section as contained in legislation enacted by the General Assembly and such catchlines shall be printed in italics or large and small capitals within the text of a Code section. The Publisher shall also provide for descriptive headings known as captions to denote the contents of a title, chapter, article, part, subpart, or other subdivision of the Code. The form and style of the organization, arrangement, catchlines, and captions shall be subject to the approval of the Commission.

#### **1.5 User's Guide.**

The Publisher shall provide a User's Guide in the bound Volume 1 of the Code containing instructions for the use of the Code, which shall be usable and

easily understood by both lay and legal professional persons. A reference to such User's Guide shall be included in each other bound volume of the Code. A guide for users shall be set out in other parts of the Code or other publications under this Agreement, as requested by the Commission.

### **1.6 Case Annotations.**

(a) The Publisher shall compile a complete set of annotations to each statute appearing in the Code from all court cases that are available up to the date of adjournment sine die of the regular session of the General Assembly. Case annotations shall include all published opinions of the Georgia Supreme Court and the Court of Appeals of Georgia, and all published opinions of the United States Supreme Court and other federal courts that arose in Georgia and construed Georgia general statutes, whether such decisions favor plaintiffs, defendants, or the prosecution. Additional annotations to those required by this Paragraph may be included where determined useful as determined or approved by the Commission. References to the annotations shall include both the official publication and the national reporter system reference where available. The official state or U.S. citation shall be given first followed by the unofficial citation. The form of the annotations shall be subject to the approval of the Commission.

(b) Every case decided by the courts mentioned in subparagraph (a) of this Paragraph shall be read by the Publisher's editors for the purpose of preparing annotations for the Code and the Publisher's editors shall extract from such cases all direct constructions and applications. Annotation material shall be extracted from the cases showing reference to all pertinent

amendments, additions, and deletions in statutory and constitutional provisions subsequent to the date of the decision being annotated. In reading cases and extracting material therefrom, the Publisher's editors shall avoid the inclusion of long factual annotations where they do not bear directly upon the statute involved. The Publisher's editors shall take from the cases constructions concerning constitutionality, purpose, intent, and meaning of words and phrases as well as illustrations as to what a particular provision applies and to what a particular provision does not apply.

(c) After the annotations have been extracted from the cases, they shall be completely edited and arranged under appropriate headings. Unless otherwise appropriate, constitutional constructions shall be arranged first, followed by annotations concerning purpose, meaning, and application of the particular provision. Larger annotations shall be given appropriate analysis lines which shall be selected to cover the content of the material. Where headings are supplied for annotations, such headings shall be carried so as to present a scheme at the beginning of the annotated material. After a logical arrangement of annotation material has been made, the individual annotation or paragraph shall be appropriately catchlined, the catchline stating in a few words the general content of the annotation.

(d) The Publisher shall verify each completed annotation, including the name and citation of the case and its arrangement and catchline.

### **1.7 Research References.**

(a) The Publisher shall include the following research references in the Code:

(1) Collateral references to American Law Reports, American Jurisprudence 2nd, American Jurisprudence Trials, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, Corpus Juris Secundum, Uniform Laws Annotated, related legislation from the federal government, law reviews and other research aids currently included in the Code;

(2) Annotations to opinions of the Georgia Attorney General;

(3) Cross-references to related Code sections and provisions; and

(4) Any new annotations as determined by the Publisher's editorial staff and approved by the Commission, or as required by the Commission.

(b) The Publisher shall update all existing research references and historical data, and check for continuing validity of any existing references, annotations and editor's notes before publication of the annual supplements and replacement volumes.

(c) The form, arrangement, and content of research references shall be subject to the approval of the Commission.

### **1.8 Legislative History.**

The Publisher shall insert immediately after each Code section the source and history of that section, including the volume, page number, and section number of the Georgia Laws for the original Act and all amendatory Acts relative to such section, the 1933 Code or any prior officially enacted Code, or the court decision citation or other source of such section, including an indication of the English common law as a source. Historical notes shall be added when the

source of the section cannot be simply or adequately expressed by using the volume, page number, and section number of the Georgia Laws. In addition, a note shall be included at an appropriate location within the Code which relates the history of Georgia's Codes and which specifically refers to the incorporation of principles from Georgia case law and from English statutes in the Georgia Code of 1863. The Publisher also shall insert the bill number or bill numbers constituting the source of the section and the amendments or modifications to the section for all Acts enacted in 2005 or later. The form of the history lines shall be subject to the approval of the Commission.

#### **1.9 Notes.**

The Publisher shall provide for editor's notes, amendment notes, Code Commission notes, effective date notes, and such other notes as may be required by the Commission. Unless otherwise directed by the Commission, such notes shall be placed at the end of Code sections for purposes of explanation of unusual situations, description of changes, correction of errors, reference to uncodified provisions of Acts, delayed effectiveness, and other purposes. Such notes shall be organized and styled in accordance with the Publication Manual for the Official Code of Georgia Annotated and as approved by the Commission.

#### **1.10 Volume Index.**

Each volume of the Code containing statutory titles shall contain an individual volume index covering the material contained in such volume. Each volume index shall be prepared in accordance with the specifications for the general index. Individual volume indexes shall not be revised in the annual supplements to the

volumes but shall be revised and updated when a volume is recompiled and republished.

### **1.11 General Index.**

(a) The general index shall be updated and published annually. The general index shall be published in two (2) softcover volumes in a format similar to the current Index, unless otherwise specified by the Commission. Repealed laws shall be deleted from the general index and references to new laws or new subjects in amended laws shall be integrated annually. General index volumes will be bound with flexible, perfect bound covers. The general index shall be prepared in accordance with the following general specifications:

(1) Lines will be produced by an actual reading of the body of the statutes and other material, not merely from headings or catchlines;

(2) All sections of the Code, appropriate statutes, and other appropriate material will be separately indexed, although blanket references may also be used where a group of sections includes the same general subject matter or where separate indexing of each section will serve no useful purpose;

(3) The headings used in the index shall not be a mere alphabetical arrangement of those used in the body of the statutes and other material. In choosing index headings, the indexers shall, whenever practical, break down the large divisions employed by the compilers of the statutes and arrange index lines under such group headings as the user may reasonably be expected to look for in an index prepared on an alphabetical or catchword plan. All major terms used in the statutory portion of the Code shall be represented in the index. All short titles used in the statutory portion of the Code shall

be represented as main headings in the index and shall also be compiled in a separate table index preceding the general index entries;

(4) Headings, subheadings, and the lines and sublines under the headings and subheadings shall be arranged alphabetically throughout;

(5) Where matter may be reasonably indexed under more than one descriptive word, it shall be indexed under each of such descriptive words either by a direct reference or a cross-reference, and no section shall be indexed in less than two entries;

(6) Under each heading the lines will begin with some descriptive word, so as to be readily located without the necessity of scanning everything under such heading;

(7) The index shall include popular names of Acts;

(8) All cross-references shall be made:

(A) Wherever a heading consists of an expression for which there is a common synonym;

(B) Whenever there is a group of lines (one flush line and two or more indented lines) which, having been put under a chosen heading, might also properly be put under other headings; the object being to gather all related matter together in one place, with cross-references in all the other places, rather than scattering the lines around, with some under one heading and others under different headings; but this will not apply to single lines, which shall be duplicated in all appropriate places;



(C) Where matter under a heading might reasonably be expected to be found under some other heading; and

(D) In all other instances, where, in the judgment of the indexers or the Commission, cross-references would be helpful to the user.

(b) Adequate precautions shall be taken to see that all cross-references correctly refer to the place intended and are not of the “blind” or “double jump” type, leading either to nothing or to another cross-reference.

(c) The Publisher shall annually provide the updated general index upon its completion to the Commission in an electronic format acceptable to the Commission as readily usable for the purposes of research and generating a display and printout of how any one or more sections are indexed.

### **1.12 Local and Special Law Index.**

(a) A complete index to all local and special laws and general laws of local application shall be published as a part of the Code. The local and special laws index shall contain references to the volume and page of the Georgia Laws at which all local and special laws may be found.

(b) Entries relating to each municipality, county, authority, court, or other topic shall be divided into two sections. The first section shall contain all currently effective local and special laws pertaining to such topic and each amendment to such laws, even though any such amendments may have been superseded by a later amendment. The second section under each topic shall contain references to all local and special laws pertaining to such topic which have been

repealed and which are no longer in effect. In the event that the name of any municipality, county, authority, court, or other topic for which index entries are made in the local and special laws index has been changed, index entries shall be made under the current name and cross-references shall be made to former names.

(c) Care shall be taken to ensure consistency in the manner in which Acts of similar subject matter pertaining to the same topic are indexed.

(d) The local and special laws index shall also include an index of general laws of local application, arranged according to the census under which they were originally enacted. Such local and special laws index shall also include a table showing the population of Georgia counties according to each census beginning with the United States Decennial Census of 1920 and shall likewise include a list of the population of each county in order according to the population of each county according to the most recent census available.

(e) As used in this Paragraph or elsewhere in this Agreement, the term "local and special laws" shall include laws enacted by the General Assembly of Georgia which, by their terms, are of less than state-wide application and shall also include ordinances and resolutions adopted by municipalities and counties under their home rule powers and which are published in the Georgia Laws, local amendments to the Constitutions of Georgia, miscellaneous resolutions adopted by the General Assembly which are not codified but which appear in the Georgia Laws, and other laws and resolutions which appear in the Georgia Laws but which are not included in the general index.

### **1.13 Tables.**

The Publisher shall publish as a part of the Code parallel reference tables between the Code, the Code of Georgia Annotated (published by the Harrison Company), the 1933 Code, and all previous Codes, and between previous Constitutions of Georgia. In addition, the Publisher shall include such additional reference tables as the Publisher determines to be appropriate with the approval of the Commission, or as requested by the Commission.

**1.14 Constitutions of the United States and the State of Georgia.**

(a) The Publisher shall include in the Code the Constitution of the United States and the Constitution of the State of Georgia, with appropriate annotations and references to those Constitutions in all respects conforming to the statutory annotations set forth in Paragraphs 1.6 and 1.7 of this Agreement; however, annotations to the United States Constitution for federal court cases need only refer to those cases that arose in the State of Georgia and construed general Georgia statutes or Georgia constitutional provisions. The Publisher shall prepare separate indices for each Constitution.

(b) As a part of preparing the supplements and replacement volumes for the 2007 general session of the Georgia General Assembly, the Publisher shall provide for the replacement of the volume containing the Georgia Constitution which shall be revised to include a history line for each Constitutional provision containing its origin with ratification of the 1983 Constitution and any subsequent amendments. Such history line shall be annually updated as appropriate by the Publisher in subsequent years. The form of the history line shall be subject to the approval of the Commission.

### **1.15 Limitations of Editorial Changes.**

(a) In performing editorial services, the Publisher shall copy the exact language of the text of those statutes as it appears in the enrolled acts sent to the Publisher by the Commission staff, except as otherwise specifically instructed by Commission staff, including, but not limited to, changes to the statutory text under the authority of Code Section 28-9-5.

(b) The Publisher shall call to the attention of the Commission staff any Code sections or provisions that it believes may have been repealed by implication either by judicial action or by enactment of subsequent legislation or that the Publisher believes may keep the laws from being accurate, clear, and harmonious, as for example statutes that are obsolete; that are inconsistent, duplicating, or overlapping with others; that contain grammatical or typographical errors; or that are otherwise defective in form, substance, or relation to other statutes affecting the same subject. The Publisher shall take only such action as the Commission staff may approve, if any.

(c) The Commission, from time to time, shall confer with the Publisher's editors and shall instruct the editors as to the manner of handling the individual suggestions and specify whether to incorporate suggested changes and additions into the Code or whether such suggestions and changes must be effected by the General Assembly of Georgia.

### **1.16 Editor's Qualifications.**

All editors and indexers involved in the preparations of upkeep materials for the Code, other than copy editors and index technicians, shall be lawyers. As used in this Paragraph, "lawyer" means a graduate of an accredited law school admitted to the practice of

law in one or more jurisdictions. All copy editors and index technicians must have been appropriately trained and must be supervised by lawyer editors. The Publisher shall designate one (1) lawyer editor for primary editorial responsibility of the Code. The Publisher shall notify the Commission of any staffing changes in editors, indexers, and other key staff involved in producing the materials for the Code within ten (10) days of such change.

### **1.17 Prepublication Review.**

With respect to supplements, replacement volumes, and updates of the general index, the Publisher shall afford the Commission an opportunity for prepublication review and correction of errors therein. Such prepublication review process shall meet the following standards:

(1) The Publisher shall be responsible for proofreading and other quality control procedures sufficient to ensure that such materials accurately incorporate the enactments of the General Assembly and meet the requirements of this Section 1;

(2) The purpose of prepublication review by the Commission shall not be to serve as a primary proofreading or quality control function but to ensure to the Commission's satisfaction that the Publisher has properly carried out its proofreading and quality control procedures;

(3) Submission of material to the Commission for prepublication review shall be according to a schedule approved in advance by the Commission so as to allow the Commission ample time for review; and

(4) Any errors or deficiencies noted by the Commission during prepublication review shall be corrected by the Publisher prior to publication at no charge to the Commission.

## **2. PUBLICATION DUTIES OF THE PUBLISHER.**

### **2.1 General.**

The Publisher shall provide all printing and distribution services necessary to publish and distribute the Code and all other publications described in this Agreement, in printed, electronic and any other form. The Publisher shall secure all materials needed to compile the Code, except copies of legislative acts in printed, electronic, or both printed and electronic format furnished by the Commission. The Publisher agrees to maintain at all times an adequate staff and adequate publishing and distribution facilities necessary to carry out its duties under this Agreement.

### **2.2 Supplements.**

Supplements shall, as directed by the Commission, contain legislation of a general and permanent nature enacted and approved at the preceding regular session of the Georgia General Assembly, as well as legislation of a general and permanent nature enacted and approved at any preceding special session, and not yet included in the bound volumes of the Code. For the benefit of Code users requiring supplemental information more frequently than annually, material and data for ad-interim update between publications of supplements may be prepared and sold separately by the Publisher; provided, however, the Commission retains the right to require the Publisher to publish interim updates within a reasonable period containing

general legislation enacted at a special session of the General Assembly.

### **2.3 Replacement Volumes.**

(a) When supplements become inconveniently large or when major legislation affects the contents of bound volumes, the Publisher may recompile and replace the affected bound volumes with the prior consent and approval of the Commission. The Commission staff shall make an annual recommendation to the Commission regarding a schedule of replacement volumes for the following general session updates. Prior to this, the Publisher may make recommendations to Commission staff regarding such schedule. The Publisher shall schedule for publication replacement volumes as approved by the Commission.

(b) If the content or arrangement of a volume proposed as a replacement volume is different from the content or arrangement of the volume to be replaced, the changes shall be specified by the Publisher and subject to approval by the Commission. The present style of numbering volumes shall be continued, unless a change is authorized by the Commission. The Commission also reserves the right to change volumes to be replaced if circumstances, such as legislative actions, make those changes desirable.

(c) The Publisher, through an experienced editorial staff, shall review material in each volume before its replacement and refer to the Commission or its staff any laws in such volume that it considers to be archaic, obsolete or unconstitutional. Any archaic or obsolete research references or annotations shall be removed before replacement, with the approval of the Commission.

(d) The Publisher shall possess sufficient production capacity to provide replacement volumes in a timely manner as directed by the Commission. Those volumes shall match the current publication in materials and form as closely as possible. The publication of all replacement volumes and their retail prices shall require the prior approval of the Commission.

#### **2.4 Inventory of Additional Code Sets or Volumes.**

At all times during the period of this Agreement the Publisher shall keep available a reasonable supply of complete sets of the Code and supplements and individual volumes of the Code and supplements, to meet the needs or requests of users for purchase or replacement, or shall have the ability to produce and distribute a complete set or any individual volume that is requested for purchase or replacement within two (2) weeks from the date of the request. The Publisher shall be required to provide an accounting of available inventory at any time, upon request of the Commission.

#### **2.5 Internet Access to Georgia Code.**

(a) The Publisher shall provide access to the Code on the Internet as follows:

(1) The Publisher shall publish and maintain an unannotated Code on the Publisher's Internet site, at no charge to the Commission or the State. The Commission and the State Bar of Georgia shall be authorized to provide for a weblink from the website of the Georgia General Assembly and the State Bar of Georgia to such unannotated Code at no charge. There shall be no charge to users for accessing the unannotated Code on the Publisher's Internet site. The Publisher shall track usage of the



Code on its Internet site, and after each year of publication, the Publisher shall provide usage reports to the Commission with usage and the effect, if any, on subscriptions to the Code in print and on CD-ROM.

(2) The online unannotated Code shall be accessible to the public 24 hours per day, 7 days per week. In no event shall a user be required to register, log-in, or establish a username or password in order to access the unannotated Code. The online unannotated Code shall include the text and numbering of all Code sections; numbers of titles, chapters, articles, parts, and subparts; catchlines, captions, and headings; and history lines. The online unannotated Code shall be fully searchable, including text in the catchlines, captions, and headings and shall also be accessible by links from the table of contents.

(3) For any publication on the Internet of the unannotated Georgia Code or the Code, the Publisher shall provide appropriate notices of the State's copyright interest. All visitors to the Internet site shall be notified that reproduction of any portion of the unannotated Georgia Code or the Code, other than Code section text and numbering, is prohibited unless permission has been granted by the State. The copyright notice shall appear at the outset of each "session" with the unannotated Code, and each screen shall display the copyright. The form and content of the notice shall be as approved by the Commission.

(b) The Publisher shall provide the Commission with the data for an unannotated Georgia Code to be

used on an Internet site maintained by the State, if requested by the Commission.

### **2.6 Electronic Version.**

(a) The Publisher shall provide to the Commission in electronic format the current Code. Such electronic format shall be approved annually as to format, content, and coding by the Commission prior to its production by the Publisher so as to ensure that it is usable for the purposes desired by the Commission. Without limiting the generality of the foregoing, it is contemplated that these purposes shall include computerized bill drafting, computerized search and retrieval and printing of all materials in the Code, and computerized legal research. It is contemplated that the electronic format furnished will completely eliminate the state's need for the separate statutory computer data base heretofore maintained by the state.

(b) The electronic format of the Code furnished pursuant to subparagraph (a) of this Paragraph may be used by the State in any manner in which it deems fit, provided that such electronic format shall not be used in any manner to generate printed volumes or sets of the Code which would compete with the printed volumes or sets produced by the Publisher except as specifically authorized by Paragraph 8.2 or by subparagraph (c) of this Paragraph.

(c) Upon and after the termination of the Publisher's right to sell and distribute the Code under this Agreement, or upon and after the state's award of a successor agreement for publication of the Code and within the final twelve (12) months of the Publisher's right to sell and distribute the Code under this Agreement, the Commission may furnish another successor publisher with whom it contracts originals or copies of

the electronic format Code furnished pursuant to subparagraph (a) of this Paragraph for the successor publisher's use in the performance of its Agreement.

### **2.7 Database Compare.**

The Publisher shall provide for the electronic comparison of its Code database with the database of statutory text of the State. The comparison shall include all of the statutory text and Code section numbering. The comparison shall result in a document containing discrepancies between the databases including all material that is in the Publisher's Code database but not in the State Code database and material that is in the State's Code database but not in the Publisher's Code database.

### **2.8 CD-ROM.**

(a) The Publisher shall:

(1) Publish, license and distribute a CD-ROM Edition of the Code. The Publisher shall render and perform all services necessary for the preparation and publication of the CD-ROM, and shall bear all editorial, publication and distribution costs, without any contribution, subsidy or expense by the State. General requirements for the contents and the publication of the CD-ROM are as stated in Exhibit C, which is incorporated into and made a part of this Agreement.

(2) Bear sole responsibility to assure that the statutory text and other materials on the CD-ROM are accurate and are in compliance with this Agreement.

(3) Provide the Commission with a list of the subscribers to the CD-ROM Edition in the

same manner as required for the Code under Paragraph 2.10.

(b) There shall be no charge for subscriptions to the CD-ROM Edition for State Government Subscribers. State Government Subscribers may use subscriptions to the CD-ROM Edition on stand-alone computers or on local area networks or intranets without incurring any charges therefor, including concurrent user charges, regardless of the number of concurrent users. Any department or agency of the state which desires to reproduce and distribute or sell copyrighted materials from the Code in printed book format as authorized by Paragraph 8.2 and which is a State Government Subscriber may download and prepare for printing a copy of such material from the CD-ROM which the department or agency receives as a State Government Subscriber.

(c) For purposes of this Agreement, the term:

(1) "CD-ROM" means compact disc-read only memory format, and shall also mean and include DVDs (Digital Versatile Discs).

(2) "CD-ROM Edition" means the CD-ROM or DVD version of the Official Code of Georgia Annotated together with other data bases and retrieval software contained on a CD-ROM or DVD, or both, as published by the Publisher pursuant to this Agreement.

(3) "General Subscribers" means all Subscribers who are not State Government Subscribers.

(4) "Hypertext linking" means the ability to directly access referenced material contained on

the CD-ROM Edition from a referencing citation on the CD-ROM Edition.

(5) “State Government Subscribers” means subscribers which are departments, agencies, divisions, authorities, entities, or officials of the state government of the State of Georgia, and shall include the Office of Legislative Counsel and other offices, officials, and employees of the General Assembly of Georgia and each house thereof, members of the General Assembly of Georgia, Justices of the Supreme Court of Georgia, Judges of the Court of Appeals of Georgia, judges of the superior courts, judges of the state courts, judges of the probate courts, judges of the juvenile courts, chief magistrates of the magistrate courts, district attorneys, the Attorney General and the Department of Law, the state law library, county law libraries, libraries of law schools, colleges, and universities which are units of the University System of Georgia, and any other entities, including nonprofit organizations, or groups of officials or employees of the State of Georgia or of any counties, municipalities, boards of education, authorities, or political subdivisions which have been designated by the Code Revision Commission as State Government Subscribers.

(6) “Subscriber” means any individual or any private, government, or other entity which has executed a Subscription Agreement with the Publisher for the license and use of the CD-ROM Edition, and includes General Subscribers and State Government Subscribers.

(7) “Subscription Agreement” means an Agreement between the Publisher and any private,

governmental, or other entity or person for the license and use of the CD-ROM Edition.

### **2.9 Errata Notices.**

Whenever the Commission or Publisher discovers any errors or omissions in the published materials comprising the Code, the Commission may direct the Publisher to correct such errors and omissions, at the Publisher's expense, through the distribution of errata notices, paste-in correction sheets, or such other corrective matter as may be directed by the Commission. The Publisher shall notify the Commission staff immediately upon discovery of any errors or omissions that may warrant an errata notice.

### **2.10 Subscriber Information.**

The Publisher shall furnish the Commission on an annual basis and upon request by the Commission the number of subscribers to the Code. The Publisher also shall furnish the Commission with a listing of persons or entities subscribing to the Code, upon request of the Commission or its staff. The subscriber list shall be furnished in both printed form and in a data processing medium reasonably designed to facilitate use by the Commission. The Publisher agrees that the Commission may furnish the subscriber list to any successor publisher to facilitate a transition between publishers and waives any rights in the subscriber list to the contrary. The Commission agrees not to use the subscriber list for purposes of marketing any product competing with the Code or any Code product.

### **2.11 Subscriber Assistance.**

(a) The Publisher shall maintain a toll-free telephone number and fax number and an e-mail address at which Code subscribers and other purchasers may

consult the Publisher concerning billing, editorial, or index questions. The Publisher also shall provide postage paid response and suggestion cards similar to those currently in use for the convenience of subscribers and other purchasers.

(b) The Publisher shall annually provide the Commission with a summary of problems reported to it concerning the Code.

### **2.12 Online Access for Legislators.**

The Publisher shall arrange for its affiliate LexisNexis to provide members of the Georgia General Assembly with access through Lexis.com to fully searchable Georgia primary law materials and federal statutory and case law materials for use by the legislators only in their official duties directly related to their elected office. Such access shall be provided at no charge to the members. The materials included are as listed on Exhibit E, attached hereto and incorporated herein, and are subject to change as LexisNexis adds or deletes material in this menu for distribution to its customers at large. An authorized agent of the Commission shall sign on behalf thereof LexisNexis's regular terms and conditions for use of Lexis.com for purposes of this paragraph and shall certify to LexisNexis the names of those members to whom such access is provided. The online service shall be available annually November 1 through the end of each year's legislative session and will be accessible through a customized webpage created specifically for the Georgia General Assembly members.

## **3. SPECIFICATIONS.**

(a) The Publisher shall publish the Code in the number of volumes approved in writing by the Commission. The volumes shall continue to be similar to

the volumes of the present Code in style, format, appearance and quality. The final decision as to contents of each volume shall rest with the Commission as communicated by the Commission staff. The Code shall be divided so as to equalize the number of pages for the volumes as closely as possible. No volume shall have less than 700 pages or more than 1,400 pages except upon approval of the Commission. The Publisher shall attempt to effect a uniform thickness for individual volumes. Different weights and bulk of paper may be used to accomplish this, but the Commission shall approve all paper differing from the standard specified prior to actual printing. The printing specifications shall be the same as the printing specifications for the Code in effect on the day before the effective date of this Agreement. Larger or smaller volumes in particular instances may be published with the written approval of the Commission through the Commission staff.

(b) All sets of the Code, replacement volumes and supplements shall be made to conform in all respects to existing volumes of the Code. Materials shall be equal or superior quality to existing volumes. Books shall be Smyth sewn in sheets folded, where possible, in thirty-two page signatures and on three, seven-sixteenth tapes, or sewn by a process to produce a volume as strong as that commonly known as "Library Editions." Each signature shall be collation marked.

(c) End sheets shall be 80-lb. offset with a grain running parallel with the binding edge, and the first and last signatures shall be tipped and reinforced using one inch gummed Cambric, gathered, sewn using textbook thread, smashed, glued off, resmashed, three sides trimmed, rounded and backed with the backing not to exceed 1/4 inch; and, also, lined up using legal



super which extends at least 1/4 inch beyond the reinforced area, covered with heavy Kraft paper glued affording proper adhesion to allow loose-back casing in. Mercerized headbands shall be applied and the book shall be cased in using suitable adhesive to prevent warpage and to penetrate Pyroxylin cloth.

(d) All of the material used in binding or printing that has a grain shall have the grain running parallel to the binding edge of the book.

(e) The binders shall be so designed that when the volume is opened for use, it will remain open without further physical support and will afford a full view of the page to the reader.

(f) The back cover shall have a reinforced pocket to accommodate pocket part supplements. A stub is to be left in the binding of each volume to accommodate pocket part supplements of no less than 1/4 the size of that volume or 300 pages, whichever is greater, so that the binding of the volumes will not be strained; provided, however, that the requirements of this subparagraph may be amended by mutual consent of the Publisher and the Commission.

(g) The case shall consist of such material as shall be approved by the Commission, with the advice of the Publisher, but in no event shall the case be of a quality less than Pyroxylin coated Buckram equal to "F" grade Legal (or equal) over No. 18 binders board with the grain running parallel to the binding edge.

(h) All words and numbers on bindings shall be stamped in imitation gold foil of permanent nature. The corners of the case are to be square with a minimum of 1/2 inch in-turning on all four edges and the case lining strip is to be of suitable material for loose-back binding.

(i) The paper, including the weight, finish, and color thereof, to be used in printing shall be specified by the Commission with the advice of the Publisher. The Publisher shall furnish paper samples to the Commission.

(j) The color and texture of the binding cloth shall be selected by the Commission after consultation with the Publisher. The Commission shall approve the design, materials, stamping, etc., after receiving samples submitted by the Publisher. Each bound volume shall be individually shrink wrapped or boxed in such a manner as to protect the volume from dust and damage during storage and shipment.

(k) Unless otherwise directed by the Commission, all supplements shall be in all respects of equal quality with the bound volumes of the Code except that a different weight or thickness of paper may be used, if approved by the Commission.

(l) The specifications contained in this Section 3 may be varied by mutual written consent of the Publisher and the Commission.

#### **4. SCHEDULES AND DELIVERY.**

##### **4.1 Annual Updates.**

Supplements, replacement volumes, an updated general index, and any other applicable update materials shall be prepared and shipped by the Publisher no later than 75 days following the receipt by the Publisher of the text of all enrolled acts enacted at each regular session of the General Assembly (exclusive of approval dates, page numbers, or other material added after adoption by the General Assembly) in an electronic format specified by the Commission, beginning after the 2007 regular session of the General Assembly

and annually thereafter during the term of this Agreement.

#### **4.2 Internet Access to Georgia Code.**

The online unannotated version of the Code, as provided for in Paragraph 2.5, shall be made available no later than January 15, 2007. Such online version shall be updated no later than thirty (30) days following the date of publication of the annual supplements and other update materials.

#### **4.3 Electronic Version.**

The Publisher shall deliver the electronic version of the Code, as provided for in Paragraph 2.6, no later than thirty (30) days following the date of publication of the annual supplements and other update materials, or at such earlier time as the electronic version may otherwise be distributed to search service companies. The electronic version shall be delivered to the Commission as directed by the Commission staff. The Publisher agrees to provide such assistance as may be necessary to enable the Commission to make full use of the electronic version.

#### **4.4 Database Comparison.**

The Publisher shall complete the database comparison provided for in Paragraph 2.7, including a list of any errors which may warrant any errata notices, and provide the same to the Commission no later than thirty (30) days following the date of publication of the annual supplements and other update materials.

#### **4.5 CD-ROM.**

The Publisher shall make available an updated version of the CD-ROM required in Paragraph 2.8 no later than thirty (30) days following the date of publication of the annual supplements and other update

materials, or the beginning of the next calendar quarter following such publication, whichever is later.

#### **4.6 Errata Notices.**

Any corrections as provided for in Paragraph 2.9 shall be made to the Publisher's database and published and shipped no later than thirty (30) days after the date the Commission directs the Publisher to make such corrections.

### **5. PRICES.**

#### **5.1 Setting of Prices.**

(a) Except as otherwise provided in subparagraph (b) of this Paragraph, on and after July 1, 2007, and for the remainder of the term of this Agreement, unless otherwise adjusted pursuant to Paragraph 5.2, the prices charged by the Publisher shall not exceed the prices specified in Exhibit D, which is incorporated into and made a part of this Agreement. From December 1, 2006 through June 30, 2007 the Publisher may sell any inventory of the Code at the prices approved by the Commission in July 2006 pursuant to the Agreement dated December 2, 1998 between the State of Georgia and LEXIS Law Publishing.

(b) From December 1, 2006 through June 30, 2007, the Publisher may sell any inventory of the Code that the Publisher purchases from the preceding publisher pursuant to Section 2-6-7 of the Agreement dated December 2, 1998 between the State of Georgia, acting through its Code Revision Commission, and LEXIS Law Publishing at the prices approved by the Commission in July 2006 pursuant to such 1998 Agreement; provided, however, that this provision shall be inapplicable in the event that the Publisher is the same as, or a successor-in-interest to, the preceding publisher.

(c) The Publisher shall provide annual updates at no charge to those State entities having subscriptions on November 15, 2006. For purposes of this subparagraph, "State entity" is defined to include only:

(1) Departments, agencies, divisions, authorities, entities, or officials of the state government of the State of Georgia, and includes the Office of Legislative Counsel and other offices, officials, and members and employees of the General Assembly of Georgia;

(2) The Justices of the Supreme Court of Georgia, Judges of the Court of Appeals of Georgia, and the judicial circuits, state courts and superior courts;

(3) The state's district attorneys and solicitors, and the state's public defenders; and

(4) The law schools, colleges, and universities which are units of the University System of Georgia.

Such annual updates will be provided for the duration of this Agreement.

## **5.2 Price Changes.**

(a) In the absolute and sole discretion of the Commission, the prices fixed in Paragraph 5.1 may be adjusted once a year by the Publisher effective on or after the date of publication of annual supplements or other update materials of each year beginning in 2008, in light of all relevant factors. Relevant factors shall include but not be limited to: (1) quality of work performance, including but not limited to accuracy and editorial quality of page proofs submitted for prepublication review, quality of the final published product, and number and severity of errata sheets required after publication; (2) number of days that the previous year's annual supplements and update materials were shipped earlier than the 75 days required in

Paragraph 4.1, if any; (3) rate of inflation; (4) cost of labor and materials; (5) quantity of printed pages; (6) rates of local, state, and federal taxes; (7) energy costs; and (8) extra or extraordinary functions required by the Commission to be performed by the Publisher for the benefit of the general public, the state, or both. The Commission may, in its absolute and sole discretion, approve a price change initiated by either party. The Publisher shall provide the Commission with all relevant information relating to a proposed price change.

(b) Both parties to this Agreement recognize that the provisions herein governing time of availability and accuracy of published materials are of the essence. Both parties recognize that failure of the Publisher to comply with such provisions may decrease the value of the Code to subscribers. Accordingly, in the event of material failure of the Publisher to comply with such provisions, the Commission is authorized in its sole discretion (after notice to and consultation with the Publisher) to decrease any or all of the maximum prices otherwise chargeable by the Publisher, so as to compensate subscribers reasonably and proportionately for any such decrease in value. However, such a decrease shall not apply if the failure to comply is due to the Commission's acts or omissions or is due to any matter beyond the control of the Publisher.

### **5.3 Discounts.**

The failure of the Publisher to have the supplements, replacement volumes, and other update materials shipped not later than seventy-five (75) days as required by Paragraph 4.1, shall give rise to a discount on purchases of the Code, supplements, individual volumes, replacement volumes, and index volumes. Unless waived by the Commission, the amount of the

discount shall be equal to one percent (1%) of the price for each of those Code products for each period of three (3) working days or less by which shipment is late. The additional discount shall be in effect through the end of the calendar year in which the failure to meet the deadline occurs.

## **6. COPYRIGHT.**

### **6.1 General.**

(a) The work of the Publisher on the Code, the CD-ROM Edition, and other publications covered under this Agreement is work made for hire for the purposes of the copyright laws of the United States, and shall be and remain the sole and exclusive property of the State of Georgia, acting through the Commission.

(b) All the contents of the Code, including all supplements and replacement volumes, the CD-ROM Edition, and those parts of any other publications required by this Agreement or authorized by the Commission that incorporate Code copyrightable materials, to the extent of such incorporation, shall be copyrighted in the name of the State of Georgia, acting through the Commission, and all copyrights thereto shall be vested, held, and renewed in the name of the State of Georgia, acting through the Commission. The copyrights shall cover all copyrightable parts of the Code in all relevant media, including print and electronic forms.

(c) The Publisher, on behalf of the Commission and in the name of the State of Georgia as copyright owner, shall take all necessary actions to obtain and register a copyright on any new or additional materials prepared for the Code and other publications. In addition, the Publisher shall take all necessary actions to renew any existing copyrights on the Code, the CD-ROM

Edition, and Code materials in the name of the State of Georgia, acting through the Commission. The Publisher shall annually provide evidence of the registration or renewal of all copyrights to the Commission staff.

(d) The Publisher shall cooperate with and assist in the defense or initiation of any actions relating to the copyright rights referenced in this Agreement.

(e) The Commission shall be the sole entity of the State that may exercise control over the State's copyright on the Code, the CD-ROM Edition, and Code materials.

## **6.2 Notice of Copyright.**

(a) Any publication of the Code or portions of the Code shall identify it as the "Official Code of Georgia Annotated" or a selected portion thereof without any additional qualifier or name that would indicate to a user that the Code is not a State copyrighted publication, and shall include notice of the State's copyright.

(b) The Publisher shall label the CD-ROM Edition, both in documentation and on an initial screen which is displayed before a user obtains access to the Code, with the following statement:

"The Code Revision Commission of the State of Georgia, as holder of the copyright to the Official Code of Georgia Annotated, has licensed the use of the Code by \_\_\_\_\_ on this CD-ROM (or DVD) version. This CD-ROM (or DVD) version contains a merged version of the Code in which the material in the supplements has been merged with the material in the case bound, printed volumes of the Code to form a single data base. In the event of any discrepancy or difference between the Code



contained on the CD-ROM (or DVD) version and the Code contained in the printed volumes and supplements, the printed volumes and supplements shall control.”

## **7. SUPERVISION.**

If there is any disagreement as to material to be included in the Code or as to any codification, annotation or other matter of editorial content, the Publisher shall abide by and follow the decision of the Commission as communicated by the Commission staff. If there is any other dispute between the Publisher and the Commission concerning publication of the Code or the Publisher’s duties or performance under this Agreement, the decision of the Commission shall prevail.

## **8. RIGHTS TO PUBLISH AND SELL.**

### **8.1 Publisher’s Right to Publish and Sell.**

(a) Except as otherwise provided in this Agreement, the Publisher is granted the exclusive right to distribute and sell in printed, bound book format sets and volumes of the Code as well as the exclusive right to publish, distribute, and sell printed annual supplements and periodic printed replacement volumes to the Code from March 2, 2007 through the term of this Agreement. Notwithstanding any rights granted pursuant to this Agreement, the Commission retains all rights to grant to others the right to use captions, catchlines, history lines, and other components of the Code, CD-ROM Edition, and on-line version.

(b) From December 1, 2006 through March 1, 2007, the Publisher is granted non-exclusive rights to distribute and sell any inventory of the Code that the Publisher purchases from the preceding publisher

pursuant to Section 2-6-7 of the Agreement dated December 2, 1998 between the State of Georgia, acting through its Code Revision Commission, and LEXIS Law Publishing, provided, however, that this provision shall be inapplicable in the event that the Publisher is the same as, or a successor-in-interest to, the preceding Publisher.

(c) Ninety days prior to the termination of the Publisher's right to sell and distribute the Code under this Agreement, a successor publisher shall have non-exclusive rights to distribute and sell any inventory of the Code that the successor publisher purchases pursuant to subparagraph (c) of Paragraph 9.6. During this same period, the Publisher shall have non-exclusive rights to distribute and sell any existing inventory of the Code that the successor publisher does not purchase.

## **8.2 State Agencies.**

(a) Notwithstanding the provisions of Paragraph 8.1, any department or agency of the state shall have the right to reproduce and distribute or sell any one or more titles or parts of titles of the Code (including annotations, indexes, editorial notes, and other material referred to in Paragraph 1.3 of this Agreement) which are administered by, or substantially related to the administration of, that department or agency. Any such use of copyrighted material by a department or agency of the state shall contain the appropriate copyright notices showing the state's copyright in the selected portions of the Code.

(b) Subparagraph (a) of this Paragraph does not impose any burdens or responsibilities on the Publisher nor does it preclude the Publisher from entering into a separate agreement, or agreements, with any

department or agency of the state to reproduce and distribute or sell on behalf of such department or agency any one or more titles or parts of titles of the Code, including any editorial material in which the state owns the copyright. Any such use of copyrighted material by the Publisher or by a department or agency of the state shall contain the appropriate copyright notices showing the state's copyright in the selected portions of the Code.

### **8.3 Reprint of Selected Portions.**

The Publisher is granted the right to reprint selected portions of copyrighted material from the Code in other publications it might publish for use by the bench and bar of Georgia; e.g., a practice manual which includes selected statutes annotated from the Code, which right shall survive the expiration of this Agreement. Any such use of copyrighted material by the Publisher shall contain the appropriate copyright notices showing the state's copyright in the selected portions of the Code.

### **8.4 CD-ROM.**

(a) The State of Georgia grants the Publisher the exclusive right to publish, distribute, market, sell, and sublicense for publication, distribution, marketing, and sale, CD-ROM Editions of the Code.

(b) The State of Georgia grants the Publisher the right to license, distribute, and market the CD-ROM Edition and services described herein to all interested parties.

(c) The Publisher is granted the right to republish selected portions of copyrighted material from the Code in other electronic publications it might publish for use by the bench and bar of Georgia; e.g., a practice

manual which includes selected statutes and annotations from the Code.

(d) The Commission grants the Publisher the right to grant sublicenses to publish, distribute, market, and sell CD-ROM and DVD versions of either the Code, a limited portion of the Code consisting of the text of Code sections plus the captions, catchlines, and history lines, or selected portions of the Code, in accordance with the provisions of this Section 8. The Publisher shall, subject to the terms and conditions of a License Agreement provided by or approved by the Commission, grant such sublicenses to any entities desiring to obtain them. The Publisher shall furnish each such sublicensee a current edition of the Code, or portion thereof, as appropriate, in electronic data base format, in accordance with the terms and conditions of the applicable License Agreement. A License Agreement shall be executed by and between the Publisher and any such sublicensee, and the Publisher shall file a copy of any such executed License Agreement with the Commission no later than 10 days after execution by all the parties thereto. The Publisher shall not grant any sublicense to any entity for publication, distribution, marketing, and sale of CD-ROM versions of either the Code or portions thereof other than by execution of a License Agreement provided by or approved by the Commission.

(e) After the end of each quarter, the Publisher shall make payment to the State of Georgia in an amount equivalent to the percentage specified in Exhibit D of the sum of all licensing fees received by the Publisher during the quarter just ended under any and all License Agreements executed pursuant to subparagraph (d) of this Paragraph. Such payments shall be

made no later than thirty (30) days after the end of each quarter.

(f) Concurrent with any payment made pursuant to subparagraph (e) of this Paragraph, the Publisher, by and through a knowledgeable officer of the company having responsibility for accurate reporting of all revenues received by the Publisher, shall make an affidavit under penalty of false swearing and misappropriation of state funds, and submitting to the jurisdiction of the Superior Court of Fulton County, Georgia, stating that the amount of the payment made to the State of Georgia is equivalent to the percentage specified in Exhibit D of the sum of all fees received by the Publisher during the quarter just ended under any and all License Agreements executed pursuant to subparagraph (d) of this Paragraph.

(g) Neither the Commission, the State of Georgia, or any official, officer, employee, or agent thereof shall be responsible or liable in any way for the accuracy of material contained in any electronic data base version furnished by the Publisher pursuant to this Paragraph, and no warranty therefor, express or implied, shall be created as a result of this Agreement. Any License Agreement entered into by the Publisher shall be subject to this subparagraph.

### **8.5 Online Licensees.**

(a) The Commission grants the Publisher the right to create electronic data bases containing the Code and to license the use of the Official Code of Georgia Annotated by on-line licensees, as approved by the Commission. The Publisher is authorized to contract with on-line licensees for the use of such materials in the creation and operation of computer data bases of the

Official Code of Georgia Annotated, provided that such use shall be subject to the provisions of this Paragraph.

(b) The Publisher agrees to furnish to each on-line licensee the Code in electronic data base format compiled and updated at the Publisher's expense and with no cost to the State of Georgia.

(c) The Publisher agrees to pay to the State of Georgia an annual license fee of the amount specified in Exhibit D for each on-line licensee using the Official Code of Georgia Annotated pursuant to this Paragraph plus a variable royalty in an amount equal to the percentage specified in Exhibit D of the gross receipts the on-line licensee receives from its use of the Official Code of Georgia Annotated on such on-line service.

(d) The Publisher agrees to make the Official Code of Georgia Annotated and revisions and updates thereto available in electronic format to all on-line licensees simultaneously.

(e) The rights granted to the Publisher to furnish electronic data base versions to all online licensees by this Section 8 shall expire upon the expiration or termination of this Agreement.

(f) All sums due the State of Georgia pursuant to this Paragraph shall be payable no later than thirty (30) days after the end of each quarter of each year for the duration of this Agreement. The Commission shall have the right to an accounting for all funds due under this Agreement.

(g) Concurrent with any payment made pursuant to subparagraph (f) of this Paragraph, the Publisher, by and through a knowledgeable officer of the company having responsibility for accurate reporting of all

revenues received by the Publisher, shall make an affidavit under penalty of false swearing and misappropriation of state funds, and submitting to the jurisdiction of the Superior Court of Fulton County, Georgia, stating that the amount of the payment made to the State of Georgia is equivalent to any annual license fees received as specified in Exhibit D for each on-line licensee plus a variable royalty in an amount equal to the percentage specified in Exhibit D of the gross receipts the on-line licensee receives from its use of the Official Code of Georgia Annotated on such on-line service received by the Publisher during the quarter just ended under any and all licensing contracts entered into pursuant to this Paragraph.

(h) There shall be no automatic renewal of the agreement contained in this Paragraph.

(i) Neither the Commission, the State of Georgia, nor any official, officer, employee, or agent thereof shall be responsible or liable in any way for the accuracy of material furnished by the Publisher pursuant to this Paragraph, and no warranty, express or implied, shall be created as a result of this Paragraph.

(j) Any contract between the Publisher and any on-line licensee shall be subject to this Paragraph and other terms of this Agreement. All contracts between the Publisher and an online licensee shall be in a form approved by the Commission prior to entering into the contract.

### **8.6 Reservation of Rights.**

(a) Other than those rights expressly granted the Publisher in this Agreement, all right, title, and interest in and to the Code and all materials comprising the Code, including without limitation those materials prepared and created by the Publisher for inclusion in

the Code, shall remain with the State of Georgia and the Publisher is granted no rights with respect to the Code other than as expressly set forth in this Agreement. Any and all rights granted to the Publisher in this Agreement with respect to the Code are to be construed as a license and such license shall not limit the ability of the State of Georgia to grant or enter into other licenses or Agreements not in conflict with the licenses granted in this Agreement.

(b) Except as otherwise provided in this Agreement, the Commission shall have the exclusive right to sell, license, or otherwise permit the Publisher or third parties to use the Code in any electronic, microfilm, microform, or other format. Except as otherwise provided in this Agreement, the Publisher shall not have any right to distribute the Code in electronic or other format or to sell, license, or otherwise permit third parties to use the Code in electronic or other format, except to the extent that such rights may be granted to the Publisher by the Commission upon such terms as may be approved by the Commission.

## **9. TERM AND TERMINATION.**

### **9.1 Term.**

This Agreement shall take effect December 1, 2006, and shall remain in effect until March 1, 2012, unless terminated earlier pursuant to this Section 9. The Commission retains an option to renew this Agreement for a five-year term or on a year-to-year basis on or after March 1, 2012.

### **9.2 Termination for Cause.**

(a) The Commission may terminate this Agreement for cause whenever the Commission determines that the Publisher has failed to perform one (1) or more of



its contracted duties and responsibilities in a timely and proper manner or in a manner satisfactory to the Commission, or if the Publisher fails to adhere to any of the terms of this Agreement, and the Publisher is unable to cure the failure within a reasonable period of time as specified by the Commission. This termination shall be known as “termination for cause.”

(b) If there is termination for cause as provided by this Paragraph, the Commission may procure, upon such terms and in such manner as the Commission deems appropriate, services similar to those terminated, and the Publisher shall be liable to the Commission for any excess costs for those similar services. In addition, the Publisher shall be liable to the Commission for administrative costs or other damages incurred by the Commission in procuring those similar services. The Commission agrees to negotiate in good faith to procure those similar services at a reasonable cost.

(c) The rights and remedies of the Commission provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. Notwithstanding the above, the Publisher shall not be relieved of its liability to the Commission for damages sustained by virtue of breach of this Agreement by the Publisher.

### **9.3 Termination for Convenience.**

(a) The Commission may terminate this Agreement for convenience without cause by giving written notice to the Publisher at least ninety (90) days before the effective date of the termination, if for any reason the Commission determines, in its sole discretion, that the termination is in the best interest of the State.

(b) If the Commission terminates this Agreement for convenience, it shall allow the Publisher to complete and sell publications previously authorized and begun as of the date of notice of termination. In addition, the Commission agrees to license Code material to the Publisher for electronic publication until such time as a successor publisher begins providing electronic publication of the Code.

#### **9.4 Force Majeure.**

Performance of any duty on the part of the Publisher may be excused by the Commission in its sole discretion if it determines in writing that the performance of the specified duty was prevented by fire, strike, flood, war, act of God or other circumstances beyond the control of the Publisher.

#### **9.5 Termination of Rights.**

Upon expiration or termination of this Agreement, all rights granted to the Publisher under this Agreement will cease and terminate. Further, upon termination of this Agreement the Publisher will cease all publication and sale of the Code, CD-ROM Edition, and on-line licensing except as otherwise provided in this Section 9. The Publisher will have the right to sell its remaining inventory of the Code in accordance with the terms and conditions of subparagraph (c) of Paragraph 9.6 and will have the right to license, market, and sell its remaining inventory of the CD-ROM Edition for a period of 120 days following expiration or termination of this Agreement. Neither party hereto will be liable to the other party hereto for damages, losses, costs, or expenses of any kind or character whatsoever arising from the termination or expiration of this Agreement whether such damages, losses, costs, or expenses arise from the loss of prospective sales or

expenses incurred or investments made in connection with the establishment, development, or maintenance of the Publisher's business or any other reason whatsoever; provided, however, that such termination or expiration will not affect any claim, demand, liability, or right of either party hereto arising pursuant to this Agreement prior to such termination or expiration or after such termination or expiration in connection with the sale by the Publisher of its remaining inventory of the Code and CD-ROM Edition.

#### **9.6 Transition.**

(a) If this Agreement expires or is terminated pursuant to this Section 9, the Publisher shall cooperate in any transition to a successor publisher.

(b) Ninety days prior to the termination of the Publisher's right to sell and distribute the Code under this Agreement, the Publisher shall provide to the Commission for use by the Commission and the successor publisher a complete, then current list of the Publisher's subscribers to the Code.

(c) Ninety days prior to the termination of the Publisher's right to sell and distribute the Code under this Agreement, the Publisher agrees to sell its existing inventory of the Code or such portion of its existing inventory of the Code as the successor publisher wishes to purchase to the successor publisher at the Publisher's cost, including all manufacturing and editorial costs, not to exceed 80 percent of the retail prices. Any dispute as to the Publisher's inventory cost shall be resolved through good faith negotiations between the Publisher and the successor publisher.

### **10. MISCELLANEOUS.**

#### **10.1 Documents Incorporated.**

The Publisher agrees to perform the duties and obligations described in the RFP, as amended if applicable, and the Publisher's Technical Proposal ("Proposal"), which are hereby incorporated into this Agreement by reference and attached as Exhibits A and B; however, the Commission is not bound by any provision of the Proposal. If there is any actual conflict, the documents shall govern in the following descending order of superiority:

- (a) This agreement;
- (b) RFP amendments and addenda (Answers to questions submitted pursuant to Sections 1.2 and 1.3 of the RFP);
- (c) The RFP;
- (d) The Proposal.

### **10.2 Amendments.**

This Agreement may be amended from time to time upon mutual agreement of the Commission and the Publisher. All amendments shall be made in writing, and fully executed by duly authorized representatives of both parties.

### **10.3 Contract Cannot be Assigned.**

The Publisher shall not assign, delegate or subcontract this Agreement or any part of this Agreement without the prior written consent of the Commission. The Commission's consent to the performance of such obligations by third parties shall in no way release the Publisher from responsibility for the performance of any obligations under this Agreement. In no event shall any publications under this Agreement, including but not limited to Code sets, annual update sets, volumes, supplements, or other materials, be printed,

bound, or produced outside of the continental United States.

#### **10.4 Entire Agreement.**

This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements. This Agreement may not be amended or modified, except by a further written agreement signed by the parties hereto.

#### **10.5 Counterparts.**

This Agreement may be executed in two (2) counterparts, each of which shall constitute an original, but both of which taken together shall constitute only one (1) instrument.

#### **10.6 Headings.**

Section and paragraph headings in this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

#### **10.7 Financial Responsibility.**

The Publisher shall submit satisfactory evidence to the Commission staff of its compliance with the requirement to obtain a One Million Dollar (\$1,000,000.00) performance bond, and of the approval of the bond by the Commission.

#### **10.8 Additional Remedies.**

The Publisher agrees that its obligations set forth in this Agreement and the restrictions on its use, publication, sale, and distribution of the Code, CD-ROM Edition, and on-line version are reasonable and necessary to protect and preserve the interests and properties of the State of Georgia; and that irreparable loss and damage will be suffered by the State of Georgia

should the Publisher breach any of its obligations or restrictions with respect to the Code, CD-ROM Edition, and on-line version. Therefore, the Publisher agrees and consents that, in addition to all the remedies provided at law or in equity, the State of Georgia will be entitled to a temporary restraining order and temporary and permanent injunctions to prevent a breach or contemplated breach of any of the covenants. The existence of any claim, demand, action, or cause of action of the Publisher against the State of Georgia shall not constitute a defense to the enforcement by the State of Georgia of any of the covenants or agreements herein.

#### **10.9 Indemnification.**

(a) The Publisher agrees to protect, indemnify, save and hold harmless the Commission, the State, all State agencies, departments, boards, commissions and institutions, and all officers, agents, servants and employees of the State, from any and all claims, demands, damages, judgments, and liability arising directly or indirectly out of this Agreement, and from any and all costs, expenses and attorneys' fees (including costs of work done by the Georgia Attorney General or his designees) incurred as a result of any claim, demand, lawsuit or cause of action; however, the Publisher shall not be responsible for any claim, demand, damage, judgment or liability arising from the negligent or willful conduct of the Commission or the State.

(b) The Commission or the State or any official, officer, employee, or agent thereof shall not be liable to any third party who is licensed to use any on-line version, electronic version, or CD-ROM of the Code. The Publisher shall save and hold the Commission and the State harmless from any and all claims, demands,

damages, judgments, and liability arising directly or indirectly out of the use of any on-line version, electronic version, or CD-ROM of the Code, including the use of any data that the Publisher has provided to the Commission; however, the Publisher shall not be responsible for any claim, demand, damage, judgment or liability arising from the negligent or willful conduct of the Commission or the State.

(c) The Commission shall give the Publisher written notice of any such claim, demand or lawsuit, if the Commission is notified first, and full right and opportunity to conduct the Publisher's defense of the claim, demand or lawsuit. However, the Commission does not accord to the Publisher, through its attorneys, any rights to represent the Commission, the State, any State agency, department, board, commission or institution, or any officer, agent, servant or employee of the State, in any legal matter.

#### **10.10 Non-Discrimination.**

No person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of the Publisher under this Agreement or in the employment practices of the Publisher on the grounds of disability, age, race, color, religion, sex, national origin or any other classification protected by federal or Georgia constitutional or statutory law. The Publisher, upon request, shall show proof of such non-discrimination and shall post in conspicuous places, available to all employees and applicants, notices on non-discrimination.

#### **10.11 Interpretation and Venue.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. Any controversy arising under, or in relation to,

this Agreement shall be resolved in accordance with the laws of Georgia and the Publisher hereby consents to the jurisdiction of the Superior Court of Fulton County, Georgia. The Publisher further consents that any process or notice of motion or other application to the court or any judge thereof may be served upon the Publisher by service upon the Secretary of State of Georgia, with a copy of such being forwarded to the Publisher by the Secretary of State via registered mail.

**10.12 Prohibited Payments.**

The Publisher warrants that no part of the total Agreement amount shall be paid directly or indirectly to an employee or an official of the State as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Publisher in connection with any work contemplated or performed under this Agreement.

**10.13 Financial Responsibility.**

Notwithstanding any provision in this Agreement to the contrary, in no event is the State or the Commission financially responsible to the Publisher under this Agreement.

**10.14 Waiver.**

No failure or delay on the part of the Commission in exercising any right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or of any other right or remedy. No provision of this Agreement may be waived except in a writing signed by the party granting such waiver.

**10.15 Severability.**



In the event any one or more of the provisions, or parts of any provisions, contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction for any reason, the same will not invalidate or otherwise affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision, or part of any provision, had never been contained in this Agreement.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the first above written.

[Signature blocks omitted]

\* \* \*

## **EXHIBIT C**

### **CD-ROM PRODUCT**

#### 1. Contents.

(a) The CD-ROM Edition shall include published decisions of the Supreme Court of Georgia and the Court of Appeals of Georgia which are in the public domain, the Official Code of Georgia Annotated, and the Publisher's publication containing the rules of Georgia courts and federal courts in Georgia with annotations. The CD-ROM version of the Code shall include all current material contained in the printed book format version of the Code, including, but not limited to, all Code sections, catchlines, history lines, annotations, research references, editor's notes, Code Commission notes, effective date notes, effect of amendment notes, cross-references, annotations of the Opinions of the Attorney General, the Constitution of the United States, the Constitution of the State of Georgia, the general index, the index of local and special laws, and conversion tables, provided that such CD-ROM version shall

not include the individual volume indexes contained in the printed book version or any other material which the Commission has agreed to exclude from the CD-ROM version. The index of local and special laws shall be included on the CD-ROM Edition. The CD-ROM Edition may also include other material as deemed appropriate and useful by the Publisher.

(b) The CD-ROM Edition shall include software required for performing search and retrieval operations on the Code and case decisions along with various control files and installation software. A set of data bases containing statutes and case reports shall be stamped on the CD-ROM disc for purposes of user self-instruction.

(c) The Code, case decisions, and rules of court shall be loaded onto the CD-ROM disc as separate data bases.

(d) The CD-ROM Edition provided for in this Agreement shall meet the generally accepted standards of the electronic legal publication industry for quality and usability.

(e) All material on the CD-ROM Edition shall comply with the requirements of the Agreement and shall have been approved by the Commission or Commission staff. Any proposed additions to the CD-ROM shall be discussed in advance with the Commission.

## 2. Updates.

The CD-ROM Edition shall be updated quarterly by adding the most recent case reports, statutory changes, research references, and rules changes to each quarterly update. Annually, the Publisher shall issue to each Subscriber a historical CD-ROM disc containing the Code as it then exists, the rules of court,

and the licensed program. The Subscriber shall have the right to retain and use such historical CD-ROM disc indefinitely subject to the Subscriber's agreeing to use the retained system according to all the terms and conditions of this Agreement and the Subscriber's Agreement with the Publisher.

### 3. Technology.

The entire body of materials required to be included on the CD-ROM shall be stamped on a single CD-ROM platter using a special compression process called "underhead" technology, or similarly effective technology.

### 4. Search capabilities.

(a) The materials required to be included on the CD-ROM shall be loaded onto the CD-ROM platter as separate databases so that the databases can be searched together or individually.

(b) Every word in the databases shall be searchable including short words normally not searchable by other software products. The CD-ROM shall allow for both boolean searching (AND, OR, NOT) as well as proximity searching (a search term within a specific range of another search term).

(c) The information in each database shall be broken down into fields or segments to allow searches to be restricted to certain parts of the database for more precise recall. In the Code, some example fields would be: text, annotations, and statutes catchlines. In the judicial decisions database, some example fields would be: court, judges, case date, and case text, and in the Court Rules: annotations, rules catchlines and rules text.

### 5. Hypertext capability.

The Publisher shall provide the following hypertext linking capabilities with the CD-ROM Edition of the Code:

(a) Each frontal analysis (listing of inclusive titles, chapters, Code sections, etc.) shall have links to the subservient material in the Code;

(b) Internal references from within a statute or a cross-reference note shall be linked to those referenced Code sections;

(c) References to other case reports contained on the CD-ROM disc shall be linked from case citations within case reports;

(d) References to Code sections from within case reports shall be linked;

(e) References to case reports from annotations of the Code shall be linked;

(f) References to specific pages in the case reports shall be linked to windows containing the paragraphs that end on that referenced page; and

(g) References between rules of court and case reports, annotations, or statutes shall be linked.

#### 6. Other features.

(a) The CD-ROM shall include an electronic [sic] cut and paste capability to allow the user to extract small or large passages of information from the disc and save them in a generic word processing format that can be imported into Word Perfect and Microsoft Word.

(b) The Publisher shall display a page number on each paragraph of the CD-ROM Edition of the case reports of the Georgia Reports and the Georgia Appeals Reports. The page number shall indicate where the

paragraph can be located in the printed version of these reports.

(c) The Publisher shall provide software with the CD-ROM Edition that provides the ability to block out electronically information passages from the CD-ROM data bases and save these passages to an attached hard or floppy disk or diskette.

#### 7. Documentation.

The Publisher shall provide each Subscriber with documentation to consist of:

(a) A learning guide which provides step-by-step instructions together with examples that a Subscriber can perform at the Subscriber's own computer; and

(b) A quick reference guide which provides a source of frequently used commands and search examples.

#### 8. Sales and marketing.

(a) The Publisher shall provide sales personnel adequate to promote the CD-ROM product to the courts, government agencies, law libraries, law firms, members of the Georgia Bar, legal assistants and other potential subscribers.

(b) The Publisher shall issue press releases announcing the CD-ROM service and shall advertise the service in law publications.

(c) The Publisher shall distribute information concerning the CD-ROM product by direct mail to potential subscribers.

#### 9. Training and support.

(a) The Publisher shall provide training to General Subscribers with a qualified CD-ROM Training and Support Representative. General Subscribers to the CD-ROM Edition shall receive basic training on the

features and use of the CD-ROM Edition on a complimentary basis.

(b) Training shall be provided for State Government Subscribers by training designees of the Commission and by furnishing CD-ROM discs for use in training.

(c) The Publisher shall provide a group of knowledgeable, experienced professionals who will answer CD-ROM support calls associated with any aspect of the CD-ROM Edition. Both State Government Subscribers and General Subscribers shall be entitled to use this support service free of charge. The Publisher shall provide a toll-free telephone line for this purpose and shall make this number generally known. The Publisher shall make this support service available on a Monday through Friday basis from 8:30 A.M. until 5:00 P.M. Eastern Time, excluding standard and customary holidays.

(d) The Publisher shall support the CD-ROM Edition in multiple-user environments using several third-party software products. The Publisher shall use all best efforts to provide a range of solutions for Subscribers' use of the CD-ROM Edition on local area networks and intranets.

(e) The Publisher shall maintain for distribution to State Government Subscribers and General Subscribers an adequate inventory of the CD-ROM Edition. Such inventory shall include CD-ROM discs and documentation.

#### 10. Requisite hardware.

The Publisher shall provide the CD-ROM Edition in one or more versions that operate on an IBM or IBM-compatible personal computer with an operating

system which is in general use by the citizens of the State of Georgia and an appropriate CD-ROM or DVD reader.

#### 11. Local area networks.

The Publisher shall support the CD-ROM product in multiple user environments using several third party software products. The Publisher shall use all best efforts to provide a range of solutions to users who have local area networks.

#### 12. Subscription agreements

(a) Any subscription agreement must be approved as to form and content by the Commission prior to its use by the Publisher. No term or provision in any subscription agreement shall vary or supersede the terms of this Agreement without the express prior written consent of the Commission. The text of subscription agreements proposed for use by the Publisher may be amended with the prior consent of the Commission. The execution of a subscription agreement by an agent of the Commission shall in no manner limit any previously existing rights of the Commission.

(b) No person or entity shall be a State Government Subscriber unless such person or entity has executed a subscription agreement, has an appropriate personal computer and an appropriate reader or is in the process of acquiring such equipment, and agrees to use the CD-ROM Edition furnished to such subscriber for the performance of such subscriber's governmental duties. Any person who serves as a judge of more than one of the courts listed in Paragraph 2.8 of this Agreement shall receive only one disc as a State Government Subscriber.

(c) The Commission shall appoint a designee or designees who will be responsible for obtaining executed Subscription Agreements from State of Georgia officials and forwarding them to the Publisher for the purpose of enrolling the official's office as a State Government Subscriber. Delivery to the State Government Subscribers of the CD-ROM Edition shall be made by the Publisher.

(d) The Commission will use all best efforts to assist the Publisher in enforcing the terms and conditions of the Subscription Agreement for State Government Subscribers.

#### EXHIBIT D

##### 2007 PRICE LIST

##### OFFICIAL CODE OF GEORGIA ANNOTATED

**The prices specified below notwithstanding, this price list includes annual updates to the printed version of the Official Code of Georgia Annotated which will be provided at no charge for the duration of this Agreement as provided in paragraph 5.1 of this Agreement.**

| Printed Bound Volumes               | Price     |
|-------------------------------------|-----------|
| (1) Complete Code Sets              | \$ 360.00 |
| (2) General Index                   | \$ 29.70  |
| (3) Complete Annual Supplement Sets | \$ 61.20  |
| (4) Individual Supplements          | \$ 6.75   |
| (5) Replacement Volumes             |           |
| (A) Subscribers                     | \$ 18.90  |
| (B) Non-Subscribers                 | \$ 23.40  |
| (6) Individual Volumes              |           |



|                      |          |
|----------------------|----------|
| (A) Subscribers      | \$ 20.70 |
| (B) Non- Subscribers | \$ 25.20 |

CD-ROM

Royalty to Commission:

20 percent of the sum of all CD-ROM licensing fees received by the Publisher

On-line Licensees

Royalty to Commission:

Annual license fee of \$ 10,000.00 for each on-line licensee; and

Amount equal to 5 percent of the gross receipts the on-line licensee receives from its use of the Code on its on-line service

\* \* \*

**AMENDMENT**

THIS AMENDMENT (“Amendment”) to the Agreement entered into December 27, 2006, by and between the Code Revision Commission of the State of Georgia (“Commission” or “State”) and Matthew Bender & Company, Inc., a member of the LexisNexis Group (“Publisher”) for the purpose of providing for the publication, maintenance, and distribution of the Official Code of Georgia Annotated (“Code”) and other related services and products, is hereby made this 5<sup>th</sup> day of January, 2012, by and between the Commission and the Publisher.

**WITNESSETH:**

This Amendment is entered into by the parties hereto for the purpose of extending the contract term and revising certain terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Commission and the Publisher agree as follows:

- I. Paragraph 2.2 of the Agreement, “Supplements,” is hereby revised by adding to the end of such paragraph the following:

The Publisher shall produce a standalone Supplement for Volume 20 (Title 24) as part of the 2012 general session updates, in addition to a pocket part supplement produced for such Volume. The pocket part supplement shall include all amendments to the current Title 24 which are enacted at the 2012 general session. The standalone Supplement shall include all material comprising Title 24, including annotations to appropriate Code sections, as it will become effective on January 1, 2013. The

standalone Supplement shall be included in the prices specified in Paragraphs (1) and (3) of the Section titled "Printed Bound Volumes" in Exhibit D of this Agreement for Complete Code Sets and Complete Annual Supplement Sets.

- II. Paragraph 9.1 of the Agreement, "Term," is hereby revised to read as follows:

**9.1 Term.**

This Agreement shall take effect December 1, 2006, and shall remain in effect until March 1, 2017, unless terminated earlier pursuant to this Section 9. The Commission retains an option to renew this Agreement for a five-year term or on a year-to-year basis on or after March 1, 2017.

- III. Exhibit D of the Agreement is hereby revised by adding the following to the end of the Section titled "Printed Bound Volumes":

(7) 2011 Special Session Supplement \$ 6.00

(8) 2012 Standalone Supplement for  
Volume 20 (Title 24) \$ 8.00

- IV. Except as set forth in this Amendment, all terms and conditions of the Agreement remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed this Amendment on the date first above written.

[Signature blocks omitted]



statements in this Declaration, I could and would competently testify to these facts.

3. LexisNexis editors create original judicial summary annotations in the O.C.G.A. using the procedures as described in paragraphs 4 through 8.

4. In correlation with summary and headnote creation, LexisNexis attorney case law editors create substantive and descriptive original case notes, including fact-specific case notes and black-letter-law case notes. Editors analyze the relevant opinion text and endeavor to provide researchers checking statutes, court rules, and constitutional references a snapshot of how that provision was applied or construed in case law. When a provision has been applied in an opinion without significant discussion or construction, editors additionally create citation-only case notes to alert researchers that the provision was cited.

5. Editors pull an opinion from their assigned task list and open the case in the editing tool (Fab Editor). Once editors have identified the cited and referenced provisions, the editors determine the noteworthiness of the provisions by analyzing whether the provision has been applied or construed, and deciding whether the court's discussion is relevant to an understanding of the provision. Editors additionally evaluate whether a provision falls into a limited non-annotated category.

6. Noteworthy provisions are verified online to ensure the court's cited reference is valid. Editors check the editorial guidelines and jurisdictional instructions to determine the specific case note requirements for the jurisdiction. For Georgia case notes, *inter alia*, editors utilize state-specific cite formats and, with limited exceptions, omit gender-specific pronouns.

7. The Lexis Nexis case note creation tool (Note-Writer), part of FabEditor, is utilized to create the case note. Editors select the appropriate jurisdiction, provision type, and section number for case note placement. The appropriate publication status for the opinion is assigned to the case note. For fact-specific case note creation, editors summarize the court's application of the law to the particular facts of the case. For new rules of law, editors create a black letter law case note by summarizing the court's discussion of the provision and relaying the rule of general applicability as it is relevant to the court's resolution of the parties' dispute. Editors may write the black letter rules of law case notes in a fact-specific combination format. Where there is limited discussion of a provision, a citation-only note is assigned to the provision to which it pertains.

8. The case note text is checked for accuracy, style guideline compliance, size requirements, and jurisdictional requirement compliance. For full case notes, the most on-point and specific classification is assigned to the case note from the Lexis Nexis taxonomy scheme for internal indexing. Additionally, the most on-point and specific catchline is selected from existing catchlines, or created as a new catchline, for jurisdictional-specific indexing. The editor proofreads and edits the note and then marks it as complete. With the completion of additional case law enhancement, the case note is transferred to the Statutory Unit for finalization and online and print product publication.

9. One example of a judicial summary created by LexisNexis using the above procedures is provided in paragraphs 10 through 15. As indicated below, the case of *Cho Carwash Property, LLC. v. Everett*, (326 Ga. App. 6 (2014)) was selected by a LexisNexis editor,

summarized, and coordinated with O.C.G.A. 34-9-260 and then published in the 2014 edition of the O.C.G.A.

10. As an editor read the *Cho Carwash Property, LLC. v. Everett* case for legal holdings and analysis for summary and headnote processing, the editor correspondingly read for cited provisions and statutory references. The first provision cited in the instant case is O.C.G.A. § 34-9-260, the compensation schedule related to calculating an injured claimant's average weekly wage. The court initially specifies that the employer does not dispute that subsection (3) is the applicable provision for calculating the claimant's average weekly wage in the instant case.

11. The editor analyzed the discussion of whether the lower court erred in applying the statute by using the claimant's training schedule for the compensation determination and whether evidence supports the calculation. In deciding noteworthiness, the editor made a determination that the court relied upon application of the statute to rule that the some evidence [sic] supports the administrative law judge's calculation of the average weekly wage.

12. Once the editor had an understanding of the provision application, the editor began the technical aspects of creation of the note. The editor checked the provision online to ensure that the cite in the opinion was accurate and the note was properly placed. The editor opened the NoteWriter tool in FabEditor and created a new note, selecting Georgia as the jurisdiction, and 34-9-260 as the proper code section placement. The editor also checked the publication status of the case and marked the note as published in the editing tool.

13. In creating the case note text, the editor avoided editorializing and tracked the language of the court to create an original summary of the court's verification of the proper weekly wage calculation. The editor summarized the court's compensation holding as follows:

Award of workers' compensation benefits was upheld because there was some evidence to support the administrative law judge's calculation of the claimant's average weekly wage under O.C.G.A. § 34-9-260(3) based on the claimant's testimony that the claimant was supposed to work from the car wash's opening until its close.

14. The editor used Lexis Advance to select the most specific and on-point catchline to index the note for print and online publication. The editor marked the catchline as an existing catchline in the editing tool. Additionally, the editor assigned the most specific on-point classification from the LexisNexis taxonomy scheme to index the annotation internally. The editor proofread the note and made any necessary edits before marking the note as completed.

15. The editor continued reading the opinion for additional cited provisions. When reaching the end of the opinion, the editor did a final opinion skim to ensure all provisions are accounted for and all necessary case notes were completed. When additional case law enhancement was completed, the case note was sent to the Statutory unit for any final edits and placement in print and online products.

16. Further, a LexisNexis editor selected each judicial decision summary, editor's note, and summary of an opinion of the Attorney General of Georgia for inclusion in the O.C.G.A. and then coordinated the selection with a particular O.C.G.A. statute.



17. When multiple summaries or editor's notes were coordinated with a single code section in the O.C.G.A., LexisNexis arranged in a particular order.

18. Therefore, each O.C.G.A. publication contains original and creative compilations of summaries of judicial decisions, editor's notes, summaries of opinions of the Attorney General of Georgia, summaries of research references and compilations thereof.

May 17, 2016

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Anders P. Ganten

**APPENDIX QQ**

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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|                            |   |              |
|----------------------------|---|--------------|
| CODE REVISION              | ) |              |
| COMMISSION on behalf of    | ) |              |
| and for the benefit of THE | ) |              |
| GENERAL ASSEMBLY OF        | ) |              |
| GEORGIA and the STATE OF   | ) |              |
| GEORGIA,                   | ) |              |
|                            | ) |              |
| Plaintiff,                 | ) | CIVIL ACTION |
|                            | ) | NO. 1:15-CV- |
|                            | ) | 02594-MHC    |
| v.                         | ) |              |
|                            | ) |              |
| PUBLIC.RESOURCE.ORG,       | ) |              |
| INC.,                      | ) |              |
| Defendant.                 | ) |              |
|                            | ) |              |

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**DEFENDANT PUBLIC.RESOURCE.ORG, INC.'S  
RESPONSES AND OBJECTIONS TO  
PLAINTIFF CODE REVISION COMMISSION'S  
FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (the "Federal Rules"), Defendant Public.Resource.Org, Inc. ("Public.Resource") hereby responds to the interrogatories contained in Plaintiff Code Revision Commission's ("Commission" or "Plaintiff") First Set of Interrogatories to Public.Resource as follows:

**GENERAL OBJECTIONS**

1. Public.Resource objects to Plaintiff's First Set of Interrogatories to the extent that any interrogatory, definition, or instruction contained therein attempts to impose on Public.Resource obligations beyond those required or authorized by the Federal Rules.
2. Public.Resource objects to Plaintiff's First Set of Interrogatories to the extent that any interrogatory, definition, or instruction contained therein, seeks, or could be construed to seek, information or documents that are within the scope of the attorney-client privilege, the work product doctrine, the common-interest privilege, or any other applicable privilege, protection, or immunity from discovery as recognized by any applicable law. Any inadvertent disclosure of any such protected information is not to be deemed a waiver, and Public.Resource expressly reserves the right to object to the introduction at trial or other use of any such protected information.
3. Public.Resource objects to Plaintiff's First Set of Interrogatories to the extent that any interrogatory could be construed to seek the disclosure of information or the production of documents covered by Rules 26(b)(3) and 26(b)(4) of the Federal Rules without the requisite showings.
4. Public.Resource objects to Plaintiff's First Set of Interrogatories to the extent that any interrogatory is vague, ambiguous, overly broad, unduly burdensome, or seeks the disclosure of information that is not relevant to any claim or defense in this action, or is not reasonably likely

to lead to the discovery of admissible evidence that is relevant to any claim or defense.

5. Public.Resource objects to Plaintiff's First Set of Interrogatories to the extent that any discovery sought by an interrogatory is duplicative and cumulative of the discovery sought by any other interrogatory.
6. Public.Resource objects to Plaintiff's First Set of Interrogatories to the extent that any interrogatory seeks information not within Public.Resource's custody or control.
7. Public.Resource's responses, statements, identification, or documents referenced herein, are not intended to waive or prejudice any objections Public.Resource may assert now or in the future, including, without limitation, objections to the admissibility of any response or document, or category of responses or documents, at trial or otherwise.
8. Public.Resource's responses to Plaintiff's First Set of Interrogatories are based on discovery available after reasonably inquiry. Public.Resource reserves the right to amend, revise, or supplement its responses pursuant to the Federal Rules as additional responsive information becomes available. Public.Resource makes these responses without prejudice to its right to rely upon any subsequently discovered information.
9. Public.Resource repeats and incorporates the above General Objections into its responses to each of the individual interrogatories as if fully contained therein, whether or not expressly incorporated by reference. Without waiving the

above General Objections, Public.Resource object and respond to the individually numbered interrogatories as follows:

**SPECIFIC OBJECTIONS AND RESPONSES**

**INTERROGATORY NO. 1:** *Explain the legal and factual bases of Public.Resource's Second, Third, Fourth, Fifth, Sixth and Eighth Affirmative Defenses as set forth in Public.Resource's Answer to the Amended Complaint and Counterclaim, including an identification of all facts, evidence, documents and witnesses upon which you intend to rely.*

**ANSWER TO INTERROGATORY NO. 1:**

Public.Resource objects to this Interrogatory as a premature [sic], to the extent it seeks the complete factual and legal basis for Public.Resource's claims prior to the close of discovery. *See In re Domestic Air Transp. Antitrust Litig.*, No. 1:90-CV-2485-MHS, 1992 WL 120351, at \*1-2 (N.D. Ga. Apr. 8, 1992) (permitting plaintiffs to delay responses to contention interrogatories until after "meaningful discovery has been completed"); *McCarthy v. Paine Webber Group, Inc.*, 168 F.R.D. 448, 450 (D. Conn. 1996). Subject to and without waiving the foregoing general and specific objections, Public.Resource responds as follows:

- (a) For its Second Affirmative Defense, Public.Resource relies on the legal argument that the annotations and other additions to the statutory text created by LexisNexis are not copyrightable because they lack sufficient originality to constitute a copyrightable work and because the annotations and other additions constitute the official law of Georgia and therefore are not copyrightable. The texts that make up the law reside in the public domain. 17 U.S.C. § 102(b)

prohibits copyright protection for “any idea, procedure, process, system, method of operation, concept, principle or discovery. When a state promulgates an official code, the writings that make up the code become facts under copyright law. The only way to express codified laws is to use the language of the code itself.

- (b) Public.Resource asserts its Third Affirmative Defense to the extent that the Code Revision Commission cannot produce the proper documentation establishing ownership of the asserted copyrights in the O.C.G.A. annotations and additional materials. The annotations and other additions are offered by the State together with the statutory text as the official version of the Georgia statutes and as a product of the Georgia Assembly, termed the O.C.G.A. The State cannot own copyright in the law of Georgia as embodied in the O.C.G.A., the official statutory promulgation of the Georgia Assembly;
- (c) Public.Resource asserts its Fourth Affirmative Defense based on the legal theory of fair use. The purpose and character of Public.Resource’s use of the O.C.G.A. favors fair use. Public.Resource’s mission is to help citizens know the law. Public.Resource’s copying and posting is non-commercial. The copying and posting is sufficiently transformative because Public.Resource copies the annotations and other additional materials to increase public access to the law and encourage scholarship, analysis and other public engagement with the law. Expanding access to the law is transformative. Public policy favors promoting the public’s access to the law. The

nature of the O.C.G.A. also favors fair use because all the code's components are facts and the law of fair use recognizes a greater need to disseminate factual works than works of fiction. Public.Resource uses no more of the O.C.G.A. than is necessary to accomplish its purpose. Copying entire works is fair use when it reasonably fulfills the user's purpose. Public.Resource's copying and posting of the O.C.G.A. annotations and other additional materials also does not harm the market for Plaintiff's works, as those accessing the copies of the O.C.G.A. online at <https://law.resource.org> and [www.archive.org](http://www.archive.org) are not true prospective purchasers of the O.C.G.A., which retails at \$378 for a hard copy at [www.lexis.com](http://www.lexis.com);

- (d) Public.Resource asserts its Fifth Affirmative Defense to the extent that the Code Revision Commission cannot produce the proper documentation establishing registration of the asserted copyrights in the O.C.G.A. annotations and additional materials.

Public.Resource hereby withdraws its sixth and eighth affirmative defenses. Public.Resource reserves the right to supplement these responses as its investigation and discovery continues.

**INTERROGATORY NO. 2:** *Describe the factual basis and identify all websites onto which copies of O.C.G.A. volumes and supplements were or are posted by Public.Resource including (i) the date of said posting; (ii) an identification of the number and type of downloads and/or accesses of said copied volumes and supplements from said websites from the date of said to*

*posting [sic] to the present; and (iii) Public.Resource's control over or ability to remove said posting.*

**ANSWER TO INTERROGATORY NO. 2:**

Public.Resource objects to this Interrogatory as vague and ambiguous to the extent it asks Public.Resource to "describe the factual basis" of "websites onto which copies of O.C.G.A. volumes and supplements" were posted by Public.Resource.

Subject to and without waiving the foregoing general and specific objections, pursuant to Federal Rule 33(d), Public.Resource produces herewith documents identified by the Bates Range PRO-000603 to PRO-000621 and PRO-000632 to PRO-000635 sufficient to answer Interrogatory No. 2. Public.Resource responds that it has the ability to remove the postings listed in the documents identified above. Public.Resource reserves the right to supplement these responses as its investigation and discovery continues.

**INTERROGATORY NO. 3:** *Describe the factual basis and identify all documents and things reflecting or relating to Public.Resource's knowledge of copies of O.C.G.A. volumes and supplements posted on a website by a Third Party including (i) identification of the website and Third Party; (ii) Public.Resource's knowledge of its ability to remove said posting; and (iii) Public.Resource's knowledge of the number and type (e.g., a PDF access, an .xml access) of downloads or accesses of said copied volumes and supplements from said websites.*

**ANSWER TO INTERROGATORY NO. 3:**

Public.Resource objects to this Interrogatory as vague and ambiguous to the extent it asks Public.Resource to "describe the factual basis" of Public.Resource's "knowledge of copies of O.C.G.A. volumes and



supplements posted on a website by a Third Party.” Public.Resource objects to this Interrogatory as overly broad and unduly burdensome in that it asks Public.Resource to identify “all documents and things” “reflecting or relating to” Public.Resource’s “knowledge of copies of O.C.G.A. volumes and supplements posted on a website by a Third Party.” Public.Resource objects to this Interrogatory as seeking information not within Public.Resource’s possession, custody, or control, to the extent the Interrogatory seeks information regarding third parties.

Subject to and without waiving the foregoing general and specific objections, Public.Resource responds that it is unaware of any Third Party Website, other than that operated by Matthew Bender Co/LexisNexis., on which copies of O.C.G.A. volumes and supplements are posted. Public.Resource is unaware of the number and types of volumes/supplements of the O.C.G.A. available thereon. Public.Resource does not have the ability to remove postings from the Matthew Bender Co./LexisNexis website. Public.Resource reserves the right to supplement these responses as its investigation and discovery continues.

**INTERROGATORY NO. 4:** *Describe the factual basis and identify all documents and things reflecting or relating to why Public.Resource purchased the O.C.G.A. in paper or a physical book format instead of a compact disc format.*

**ANSWER TO INTERROGATORY NO. 4:**

Public.Resource objects to this Interrogatory as overly broad and unduly burdensome in that it asks Public.Resource to identify “all documents and things” “reflecting or relating to” why Public.Resource

purchased the O.C.G.A. in physical book format instead of a compact disc format.

Subject to and without waiving the foregoing general and specific objections, Public.Resource responds that it purchased the paper or physical book format of the O.C.G.A. due to the printed book's superior readability, ease of scanning, and absence of the terms of use that accompany the compact disc format. Public.Resource responds that it purchased a copy of the O.C.G.A. in compact disc format on October 7, 2015. Pursuant to Federal Rule 33(d), Public.Resource produces herewith documents identified by the Bates Range PRO-000064 to PRO-000080 as sufficient to identify why Public.Resource originally purchased the O.C.G.A. in a paper or a physical book format. Public.Resource reserves the right to supplement these responses as its investigation and discovery continues.

**INTERROGATORY NO. 5:** *Describe the factual basis and identify all documents and things reflecting or relating to Public.Resource's contact with a state or territory regarding that state or territory's publication or dissemination of its statutes.*

**ANSWER TO INTERROGATORY NO. 5:**

Public.Resource objects to this Interrogatory as overly broad and unduly burdensome in that it asks Public.Resource to identify "all documents and things" "reflecting or relating to" Public.Resource's contact with a state or territory regarding that state or territory's publication or dissemination of its statutes.

Subject to and without waiving the foregoing general and specific objections, pursuant to Federal Rule 33(d), Public.Resource identifies documents with the Bates Range PRO-000636 to PRO-000901 produced herewith as sufficient to identify "Public.Resource's

contact with a state or territory regarding that state or territory's publication or dissemination of its statutes" in response Interrogatory No. 5. Public.Resource reserves the right to supplement these responses as its investigation and discovery continues.

**INTERROGATORY NO. 6:** *Identify each Person, including any Third Party, with knowledge of any facts or assertions set forth in response to any Interrogatory in Commission's First Set of Interrogatories.*

**ANSWER TO INTERROGATORY NO. 6:**

Subject to and without waiving the foregoing general objections, Public.Resource identifies Carl Malamud, President and Founder of Public.Resource, as well as Tim Stanley and Ed Walters, current board members of Public.Resource.

[Signature block omitted]

APPENDIX RR

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                            |   |                       |
|----------------------------|---|-----------------------|
| CODE REVISION              | ) |                       |
| COMMISSION on Behalf of    | ) |                       |
| and For the Benefit of the | ) |                       |
| GENERAL ASSEMBLY OF        | ) |                       |
| GEORGIA and the STATE OF   | ) |                       |
| GEORGIA,                   | ) |                       |
|                            | ) | <b>CIVIL</b>          |
| Plaintiff,                 | ) | <b>ACTION</b>         |
|                            | ) | <b>FILE NO. 1:15-</b> |
|                            | ) | <b>CV-2594-RWS</b>    |
| v.                         | ) |                       |
|                            | ) |                       |
| PUBLIC.RESOURCE.ORG,       | ) |                       |
| INC.,                      | ) |                       |
| Defendant.                 | ) |                       |

**DEFENDANT’S RESPONSE TO PLAINTIFF’S  
STATEMENT OF UNDISPUTED MATERIAL  
FACTS**

Defendant Public.Resource.Org, Inc. hereby re-  
sponds to Plaintiff’s enumerated Statement of Undis-  
puted Material Facts (Dkt. 30-2):

1. *Each Official Code of Georgia Annotated (“OCGA”) volume and supplement in Exhibit A to the Stipulation of Facts (“Exhibit A”) contains statutory text and non-statutory annotation text. Dkt. 17 ¶1.*

**RESPONSE:**

Admitted.

2. *The 2014 and 2015 State of Georgia session laws each state in part:*

*Annotations; editorial notes; Code Revision Commission notes; research references; notes on law review articles; opinions of the Attorney General of Georgia; indexes; analyses; title, chapter, article, part, and subpart captions or headings, except as otherwise provided in the Code; catchlines of Code sections or portions thereof, except as otherwise provided in the Code; and rules and regulations of state agencies, departments, boards, commissions, or other entities which are contained in the Official Code of Georgia Annotated are not enacted as statutes by the provisions of this Act.*

*2014 Ga. Laws 866, § 54; 2015 Ga. Laws 5, § 54. Dkt. 17 ¶ 2.*

**RESPONSE:**

Admitted.

3. *The non-statutory annotation text of each OCGA volume and supplement in Exhibit A includes summaries of judicial decisions. Dkt. 17 ¶ 3.*

**RESPONSE:**

Admitted.

4. *The summaries of judicial decisions in the non-statutory annotations of each OCGA volume and supplement in Exhibit A are prepared by Matthew Bender and Company, a member of the LexisNexis Group, a division of Reed Elsevier Properties, Inc. (“LexisNexis”) under contract for the State of Georgia, and are finalized under the direct supervision of and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 4.*

**RESPONSE:**

Admitted.

*5. The judicial decisions summarized in the judicial decision summaries in each OCGA volume and supplement in Exhibit A have been selected by LexisNexis to be summarized for inclusion in the OCGA, under the direct supervision and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 5.*

**RESPONSE:**

Admitted.

*6. The content of the summaries of judicial decisions in each OCGA volume and supplement in Exhibit A has been selected for inclusion in the OCGA. Dkt. 17 ¶ 6.*

**RESPONSE:**

Admitted.

*7. The summaries of judicial decisions in each OCGA volume and supplement in Exhibit A have been coordinated with an OCGA statute (statutory text). Dkt. 17 ¶ 7.*

**RESPONSE:**

Admitted.

*8. The summaries of judicial decisions in each OCGA volume and supplement in Exhibit A are arranged under the heading “Judicial Decisions” prior to or following an OCGA statute (statutory text). Dkt. 17 ¶ 8.*

**RESPONSE:**

Admitted.

*9. The summaries of judicial decisions are selected, coordinated and arranged in each OCGA. volume and supplement listed in Exhibit A. Dkt. 17 ¶ 9.*

**RESPONSE:**

Admitted.

*10. The non-statutory annotation text of each OCGA volume and supplement in Exhibit A includes editor's notes. Dkt. 17 ¶ 10.*

**RESPONSE:**

Admitted.

*11. Editor's notes in each OCGA volume and supplement in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 11.*

**RESPONSE:**

Admitted.

*12. The editor's notes in each OCGA volume and supplement in Exhibit A have been coordinated with an OCGA statute (statutory text). Dkt. 17 ¶ 12.*

**RESPONSE:**

Admitted.

*13. The editor's notes in each OCGA volume and supplement in Exhibit A are arranged after the heading "Editor's notes" prior to or following an OCGA statute (statutory text). Dkt. 17 ¶ 13.*

**RESPONSE:**

Admitted.

*14. The editor's notes are coordinated and arranged in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 14.*

**RESPONSE:**

Admitted.

15. *Each OCGA volume and supplement in Exhibit A is the subject of a U.S. Copyright Registration as shown in Exhibit A. Dkt. 17 ¶ 17; Dkt. 17-1.*

**RESPONSE:**

Admitted.

16. *The non-statutory annotation text of each OCGA volume and supplement listed in Exhibit A includes summaries of opinions of the Attorney General of Georgia. Dkt. 17 ¶ 18.*

**RESPONSE:**

Admitted.

17. *The summaries of opinions of the Attorney General of Georgia in the non-statutory annotations of each OCGA volume and supplement listed in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision of and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 19.*

**RESPONSE:**

Admitted.

18. *The opinions of the attorney general of Georgia referenced in each OCGA volume and supplement listed in Exhibit A have been selected for inclusion in the OCGA. Dkt. 17 ¶ 20.*

**RESPONSE:**

Admitted.

19. *The opinions of the Attorney General of Georgia referenced in the opinion of the attorney general summaries are selected in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 21.*



**RESPONSE:**

Admitted.

*20. The content of the summaries of opinions of the Attorney General of Georgia in each OCGA volume and supplement listed in Exhibit A has been selected for inclusion in the OCGA. Dkt. 17 ¶ 22.*

**RESPONSE:**

Admitted

*21. The summaries of opinions of the Attorney General of Georgia in each OCGA volume and supplement listed in Exhibit A have been coordinated with an OCGA statute (statutory text). Dkt. 17 ¶ 23.*

**RESPONSE:**

Admitted.

*22. The summaries of opinions of the Attorney General of Georgia in each OCGA volume and supplement listed in Exhibit A are arranged under the heading "Opinions of the Attorney General" prior to or following an OCGA statute (statutory text). Dkt. 17 ¶ 24.*

**RESPONSE:**

Admitted.

*23. The summaries of the opinions of the Attorney General of Georgia are selected, coordinated and arranged in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 25.*

**RESPONSE:**

Admitted.

*24. The non-statutory text of each OCGA volume and supplement listed in Exhibit A includes summaries of research references. Dkt. 17 ¶ 26.*

**RESPONSE:**

Admitted.

*25. The summaries of research references in the non-statutory annotations of each OCGA volume and supplement in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 27.*

**RESPONSE:**

Admitted.

*26. The research references referenced in each OCGA volume and supplement in Exhibit A have been selected for inclusion in the OCGA. Dkt. 17 ¶ 28.*

**RESPONSE:**

Admitted.

*27. The research references are selected in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 29.*

**RESPONSE:**

Admitted.

*28. The content of the summaries of the research references in each OCGA volume and supplement listed in Exhibit A has been selected for inclusion in the OCGA. Dkt. 17 ¶ 30.*

**RESPONSE:**

Admitted.

*29. The summaries of research references in each OCGA volume and supplement listed in Exhibit A have been coordinated with an OCGA statute (statutory text). Dkt. 17 ¶ 31.*

**RESPONSE:**

Admitted.

*30. The summaries of research references in each OCGA volume and supplement listed in Exhibit A are arranged under the heading "Research References" prior to or following an OCGA statute (statutory text). Dkt. 17 ¶ 32.*

**RESPONSE:**

Admitted.

*31. The summaries of research references are selected, coordinated and arranged in each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 33.*

**RESPONSE:**

Admitted.

*32. Public Resource purchased from LexisNexis and copied the entirety of 186 volumes and supplements of the OCGA, including front and back covers, which 186 volumes include the volumes and supplements of the OCGA listed in Exhibit A. Dkt. 17 ¶ 34.*

**RESPONSE:**

Admitted.

*33. Public Resource posted on its website <https://law.resource.org> the copies it made of the OCGA including the volumes and supplements of the OCGA listed in Exhibit A. Dkt. 17 ¶ 36.*

**RESPONSE:**

Admitted.

*34. Public Resource has facilitated, enabled, encouraged and induced others to view, download, print, copy and distribute each OCGA volume and*

*supplement listed in Exhibit A without limitation or compensation to the State of Georgia. Dkt. 17 ¶ 38.*

**RESPONSE:**

Admitted.

*35. Public Resource created works containing each OCGA volume and supplement listed in Exhibit A. Dkt. 17 ¶ 39.*

**RESPONSE:**

Admitted.

*36. The annotations to each OCGA volume and supplement listed in Exhibit A include summaries of cases that relate to the OCGA, summaries of Opinions of the Attorney General of Georgia and summaries of research references related to the OCGA. Dkt. 17 ¶ 40.*

**RESPONSE:**

Admitted.

*37. Public Resource actively encourages all citizens to copy, use, and disseminate to others in Georgia and elsewhere and to create works containing the OCGA volumes and supplements listed in Exhibit A. Dkt. 17 ¶ 41.*

**RESPONSE:**

Admitted.

*38. The Commission does not assert copyright in the OCGA statutory text itself because the laws of Georgia are and should be free to the public. Dkt. 17 ¶ 45.*

**RESPONSE:**

Admitted.

*39. Subsequent to July 22, 2015 and with full knowledge of the Commission's Complaint (Dkt. No. 1),*

*Public Resource copied the entirety of the volumes and supplements of the 2015 OCGA shown in Exhibit A and distributed those copies via posting them on its website <https://law.resource.org>. Dkt. 17 ¶ 46.*

**RESPONSE:**

Admitted.

*40. Public Resource's posting of the entirety of the 114 volumes and supplements of the OCGA listed in Exhibit A on its website <https://law.resource.org> was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the OCGA. Dkt. 17 ¶ 48.*

**RESPONSE:**

Admitted.

*41. Public Resource's posting of the entirety of the 114 volumes and supplements of the OCGA listed in Exhibit A on its website <https://law.resource.org> resulted in the copying (downloading) of those volumes and supplements from that website by members of the public. Dkt. 17 ¶ 49.*

**RESPONSE:**

Admitted.

*42. Public Resource posted on a website, [www.archive.org](http://www.archive.org), copies of the entirety of the volumes and supplements of the OCGA listed in Exhibit A. Dkt. 17 ¶ 50.*

**RESPONSE:**

Admitted.

*43. Subsequent to July 22, 2015 and with full knowledge of the Commission's Complaint (Dkt. No. 1), Public Resource copied the entirety of the volumes and*

*supplements of the 2015 OCGA listed in Exhibit A and posted them on the website [www.archive.org](http://www.archive.org). Dkt. 17 ¶ 52.*

**RESPONSE:**

Admitted.

*44. Public Resource's posting of the entirety of the volumes/supplements of the OCGA on the website [www.archive.org](http://www.archive.org), including those volumes/supplements listed in Exhibit A, was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the OCGA. Dkt. 17 ¶ 54.*

**RESPONSE:**

Admitted.

*45. Public Resource's posting of the entirety of volumes and supplements of the OCGA on the website [www.archive.org](http://www.archive.org), resulted in the copying (downloading) of those volumes/supplements of the OCGA from the website by members of the public as listed in Exhibit A. Dkt. 17 ¶ 55.*

**RESPONSE:**

Admitted.

*46. Public Resource distributed USB thumb drives containing scanned copies of the OCGA to members of the State of Georgia Legislature. Dkt. 17 ¶ 63.*

**RESPONSE:**

Admitted.

*47. Public Resource distributed copies of the entirety of 90 volumes and supplements of the OCGA to at least eight institutions in and around the state of Georgia, Honorable David Ralston, Speaker of the House,*

*Georgia House of Representatives and Mr. Wayne Allen, Legislative Counsel, Office of Legislative Counsel, Georgia General Assembly, including those shown in Exhibit A, by placing those copies on USB thumb drives and mailing them. Dkt. 17 ¶ 64.*

**RESPONSE:**

Admitted.

*48. Public Resource’s distribution of the entirety of 90 volumes and supplements of the OCGA to at least eight institutions in and around the state of Georgia, including those volumes and supplements shown in Exhibit A, was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the OCGA. Dkt. 17 ¶ 65.*

**RESPONSE:**

Admitted.

*49. The Commission has not authorized Public Resource to copy, distribute or make derivative works of any entire volume or supplement of the OCGA, including those shown in Exhibit A, and upon receiving cease and desist letters from the Commission, Public Resource refused to remove any and all copies of the OCGA that it had posted on any website. Dkt. 17 ¶ 66.*

**RESPONSE:**

Admitted.

*50. The statutory text and numbering of the OCGA is accessible by the public through the Georgia General Assembly website at [www.legis.ga.gov](http://www.legis.ga.gov) and the Georgia Senate website at [www.senate.ga.gov](http://www.senate.ga.gov) by clicking on the “Georgia Code” link on each of those websites which*

*will direct the user to the LexisNexis website operated for the State of Georgia. Dkt. 17 ¶ 73.*

**RESPONSE:**

Admitted.

*51. The “Georgia Code” links on the websites [www.legis.ga.gov](http://www.legis.ga.gov) and [www.senate.ga.gov](http://www.senate.ga.gov) link to the LexisNexis website <http://www.lexisnexis.com/hot-topics/gacode/Default.asp> (“LexisNexis GA Code website”), which is operated for the State of Georgia, and the LexisNexis GA Code website contains the statutory text and numbering of the OCGA. Dkt. 17 ¶ 74.*

**RESPONSE:**

Admitted.

*52. There is no fee to access the statutory text and numbering of the OCGA through the LexisNexis GA Code website. Dkt. 17 ¶ 75.*

**RESPONSE:**

Admitted.

*53. The statutory text and numbering of the OCGA can be electronically copied and/or printed from the LexisNexis GA Code website. Dkt. 17 at ¶ 76.*

**RESPONSE:**

Admitted.

*54. The statutory text of the OCGA is searchable by term on the LexisNexis GA Code website. Dkt. 17 ¶ 77.*

**RESPONSE:**

Admitted.

*55. Public Resource operates the websites [public.resource.org](http://public.resource.org), [law.resource.org](http://law.resource.org), [house.resource.org](http://house.resource.org), [bulk.resource.org](http://bulk.resource.org) and others. Dkt. 17 ¶ 79.*



**RESPONSE:**

Admitted.

*56. At least one copy of each OCGA volume and supplement that Public Resource posted on its <https://law.resource.org> website is in an electronic format that displays an image of the printed publication as copied by Public Resource, which image allows for electronic page turning of the printed publication. Exhibit B to the Stipulation of Facts (Dkt. 17-2) is a true and correct copy of the front cover of one such image. Dkt. 17 ¶ 37.*

**RESPONSE:**

Admitted.

*57. The preface in each OCGA volume and supplement in Exhibit A of the Stipulation of Facts (Dkt. 17-1) is prepared under contract by LexisNexis for the State of Georgia and under the direct supervision and subject to the approval of the Code Revision Commission. Dkt. 17 ¶ 15.*

**RESPONSE:**

Admitted.

*58. Public.Resource.Org has argued:*

*The distinction between ‘the statutory text itself’ and additional materials perhaps would have some bearing if the publication in question were the independent commercial endeavor of a publication firm. If such firm were to copy the state statutes and compile that information with additional analyses and summaries and were to do so as a strictly commercial endeavor, we understand and respect that this material would be their private property.*

*Dkt. No. 17-4, p. 2.*

**RESPONSE:**

Public Resource admits that its founder, Carl Malamud, made these statements in a July 30, 2013 letter to Honorable Joshua McKoon, Honorable David Ralston, and Honorable David Shafer.

*59. The Official Code of Georgia Annotated is a compilation of the Georgia statutes and other non-statutory materials, or annotations, which has been published yearly since 1982. Exhibit 1, Declaration of Elizabeth P. Howerton ¶ 3.*

**RESPONSE:**

Admitted.

*60. The annotations in the OCGA provide analyses and other information that allow for a better or easier understanding of a relevant statute. The annotations included in the OCGA are original and creative summaries of judicial decisions, editor's notes, summaries of opinions of the Attorney General of Georgia, and compilations thereof. Ex. 1 ¶¶ 3, 4.*

**RESPONSE:**

Public Resource admits that the annotations in the OCGA provide for a better or easier understanding of a relevant statute. Public Resource objects to the statement that the annotations are original and creative, as this calls for a legal conclusion. Public Resource denies that the annotations are original and creative.

*61. The OCGA is published by Matthew Bender and Company, Inc., a member of the LexisNexis Group ("LexisNexis"), a division of Reed Elsevier Properties, Inc. under a work for hire agreement with the State of Georgia. Ex. 1 ¶ 5.*

**RESPONSE:**

Public Resource admits that the OCGA is published by Matthew Bender and Company, Inc., a member of the LexisNexis Group (“LexisNexis”), a division of Reed Elsevier Properties, Inc. under the Publication Agreement. See Ex. F to Defendant’s Memorandum in Support of Its Motion for Summary Judgment, Dkt. 29-8. Public Resource objects to the statement that the Publication Agreement is a work for hire agreement, as defined in 17 U.S.C. § 101, as that calls for a legal conclusion. Public Resource denies that the Publication Agreement is a work-for-hire agreement, as defined in 17 U.S.C. § 101.

*62. When entering the contract with LexisNexis, the ability of the state to keep the price of the OCGA low for the benefit of the citizens of Georgia was an important consideration. Ex. 1 ¶ 6.*

**RESPONSE:**

Admitted.

*63. West’s Code of Georgia Annotated is another compilation of the Georgia statutes and annotations thereof that is published by West Publishing. Ex. 1 ¶ 7.*

**RESPONSE:**

Admitted.

*64. The OCGA contains the official, or State of Georgia-approved, codified statutory text (OCGA. 1-1-1), whereas the statutory text in West’s Code of Georgia Annotated is not approved by the State. Ex. 1 ¶ 8.*

**RESPONSE:**

Admitted.

65. *The current price of a complete OCGA set is \$404.00 as compared to \$2,570.00 for a complete set of West's Code of Georgia Annotated. Ex. 1 ¶ 9.*

**RESPONSE:**

Admitted.

66. *The entire OCGA, including the annotations, is available for viewing on compact disc at over 60 state- and county-operated facilities such as state and county libraries, state universities, and county law enforcement offices within the State of Georgia. Ex. 1 ¶ 10.*

**RESPONSE:**

Admitted.

67. *The Georgia General Assembly has websites at <http://www.legis.ga.gov>, <http://www.house.ga.gov>, and <http://www.senate.ga.gov> that provide live broadcasts of both legislative houses, links to the Georgia Code, and the ability to search pending legislation, obtain contact information for legislators, and obtain state budget documents. Ex. 1 ¶ 11.*

**RESPONSE:**

Admitted.

68. *The Georgia Code was accessed almost 79 million times between 2007 and 2015 via the website that is linked to the Georgia General Assembly websites. Ex. 1 ¶ 12.*

**RESPONSE:**

Admitted.

69. *In 1994, the Board of Regents of the University System of Georgia and the University of Georgia created GALILEO, the first state wide digital library. Ex. 1 ¶ 13.*

**RESPONSE:**

Admitted.

70. *GALILEO can be found at <http://dlg.galileo.usg.edu>. Ex. 1 ¶ 13.*

**RESPONSE:**

Admitted.

71. *GALILEO provides access to the Georgia Laws, which is a publication of Georgia laws (both codified and uncodified) as enacted by the Georgia Legislature. Ex. 1 ¶ 14.*

**RESPONSE:**

Admitted.

72. *In 1996, the Georgia Government Publications database (GGP) was created as GALILEO's first digital conversion initiative of publications released by agencies of Georgia's executive branch. Ex. 1 ¶ 15.*

**RESPONSE:**

Admitted.

73. *Georgia law (OCGA. 20-5-2) requires Georgia state agencies to submit publications to GALILEO that they produce for the public. Ex. 1 ¶ 16.*

**RESPONSE:**

Admitted.

74. *The GGP database consists of over 70,000 documents produced by Georgia state agencies. Ex. 1 ¶ 17.*

**RESPONSE:**

Admitted.

75. *Prior to the State of Georgia filing a lawsuit against Public Resource, Public Resource copied and distributed hundreds of annotated state code volumes*

*of several states, including Georgia, Mississippi and Idaho, and then informed each state of its actions. Ex. 1 ¶ 18.*

**RESPONSE:**

Admitted.

*76. Under the Publication Agreement between the State of Georgia and LexisNexis, the annotations in the OCGA remain the property of the State of Georgia and LexisNexis obtains copyright registrations therefore. Exhibit 2, Agreement for Publication, § 6.1.*

**RESPONSE:**

Admitted.

*77. LexisNexis is granted the exclusive right to publish and sell the OCGA according to the prices set in the publication contract, with any price increases at the sole discretion of the Commission. Ex. 2 §§ 5, 8.*

**RESPONSE:**

Admitted.

*78. LexisNexis created the summaries of judicial decisions in the OCGA works using a lengthy process of selection, analysis and summarization. Exhibit 3, Declaration of Anders X. Ganten ¶¶ 3-15.*

**RESPONSE:**

Public Resource admits that LexisNexis selects and summarizes the judicial decision in the OCGA using the detailed criteria set down in the Publication Agreement and Publication Manual. Exhibits F and G to Defendant's Motion for Summary Judgment. Dkt. 29-8; 29-9.

*79. LexisNexis identified and read each potentially relevant judicial decision, determined how the case*

*relates to a statute, and then determined the type of annotation that should be created. Ex. 3 ¶¶ 4, 5.*

**RESPONSE:**

Public Resource objects to this statement as immaterial to the issues presented in Plaintiff's Motion for Partial Summary Judgment, as the copyrightability of a work does not depend upon the "sweat of the brow" of its creator. Public Resource admits that LexisNexis selects and summarizes the judicial decisions in the OCGA using the detailed criteria set down in the Publication Agreement and Publication Manual. Exhibits F and G to Defendant's Motion for Summary Judgment. Dkt. 29-8; 29-9.

*80. For those cases of significance, LexisNexis created an original several line summary of the case that distills the case's relevant holding relating to the statute. Ex. 3 ¶¶ 7, 8.*

**RESPONSE:**

Public Resource admits that LexisNexis created a several line summary of the case that distills the case's relevant holding relating to the statute. Public Resource objects to the statement that such a summary is original, as this calls for a legal conclusion. Public Resource denies that any such summary is original.

*81. The OCGA annotation of the judicial decision Cho Carwash Property, LLC. v. Everett (326 Ga. App. 6 (2014)) published in the 2014 edition of the OCGA. as associated with Georgia statute § 34-9-260 is as follows:*

*Average weekly wage calculated correctly. – Award of workers' compensation benefits was upheld because there was some evidence to support the administrative law judge's calculation of the*

*claimant's average weekly wage under OCGA. § 34-9-260(3) based on the claimant's testimony that the claimant was supposed to work from the car wash's opening until its close. Cho Carwash Property, LLC. v. Everett, 326 Ga. App. 6, 755 S.E.2d 823 (2014).*

*Ex. 3 ¶¶ 9, 13.*

**RESPONSE:**

Admitted.

*82. Each of the OCGA Works further contains original and creative compilations of summaries of judicial decisions, editor's notes, summaries of opinions of the Attorney General of Georgia, summaries of research references, and compilations of these compilations. Ex. 3 ¶ 5.*

**RESPONSE:**

Public Resource admits that the OCGA contains compilations of summaries of judicial decisions, editor's notes, summaries of opinions of the Attorney General of Georgia, summaries of research references, and compilations of these compilations. Public Resource objects to the statement that these compilations are original and creative, as that statement calls for a legal conclusion. Public Resource denies that these compilations are original and creative.

*83. Each judicial decision summary, editor's note, and summary of an opinion of the Attorney General of Georgia was first selected for inclusion in the OCGA by LexisNexis and then coordinated with a particular statute. Ex. 3 ¶ 3.*

**RESPONSE:**

Admitted.



84. *When multiple summaries or editor's notes were coordinated with a single code section, each was arranged in a particular order. Ex. 3 ¶ 4.*

**RESPONSE:**

Admitted.

85. *The correspondence shown in Exhibit C to the Stipulation of Facts (Dkt. 17-3) is a true and exact copy of a letter written by Mr. Malamud and sent to David Ralston and Wayne Allen on May 30, 2013. Dkt. 17 ¶ 67.*

**RESPONSE:**

Admitted.

86. *The correspondence shown in Exhibit D to the Stipulation of Facts (Dkt. 17-4) is a true and exact copy of a letter written by Mr. Malamud and sent to Joshua McKoon, David Ralston and David Shafter on July 30, 2013. Dkt. 17 ¶ 68.*

**RESPONSE:**

Admitted.

87. *The correspondence shown in Exhibit E to the Stipulation of Facts (Dkt. 17-5) is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on July 25, 2013. Dkt. 17 ¶ 69.*

**RESPONSE:**

Admitted.

88. *The correspondence shown in Exhibit F to the Stipulation of Facts (Dkt. 17-6) is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on August 15, 2013. Dkt. 17 ¶ 70.*

**RESPONSE:**

Admitted.

89. *The correspondence shown in Exhibit G to the Stipulation of Facts (Dkt. 17-7) is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on April 2, 2014. Dkt. 17 ¶ 71.*

**RESPONSE:**

Admitted.

90. *To access the statutory text and numbering in the OCGA via the website link found on the State of Georgia website, [www.legis.ga.gov](http://www.legis.ga.gov), one must accept the terms and conditions of use generally applicable to the LexisNexis websites (“LexisNexis Website Use Terms and Conditions”). A true and correct copy of the LexisNexis Website Use Terms and Conditions is attached to the Stipulation of Facts as Exhibit I (Dkt. 17-9). The access page that allows users to access the online publication by accepting the LexisNexis Website Use Terms and Conditions explicitly states that the LexisNexis Website Use Terms and Conditions do not apply to the OCGA statutory text and numbering. A true and correct copy of this access page is attached to the Stipulation of Facts as Exhibit J (Dkt. 17-6). Dkt. 17 ¶ 86.*

**RESPONSE:**

Admitted.

Respectfully submitted this 7th day of June, 2016.

[Signature block omitted]

APPENDIX SS

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

|                            |   |                       |
|----------------------------|---|-----------------------|
| CODE REVISION              | ) |                       |
| COMMISSION on behalf of    | ) |                       |
| and for the benefit of THE | ) |                       |
| GENERAL ASSEMBLY OF        | ) |                       |
| GEORGIA and THE STATE      | ) |                       |
| OF GEORGIA,                | ) |                       |
|                            | ) | <b>CIVIL</b>          |
| Plaintiff,                 | ) | <b>ACTION NO.</b>     |
|                            | ) |                       |
| v.                         | ) | <b>1:15-CV-02594-</b> |
|                            | ) | <b>MHC</b>            |
|                            | ) |                       |
| PUBLIC.RESOURCE.ORG,       | ) |                       |
| INC.,                      | ) |                       |
| Defendant.                 | ) |                       |
|                            | ) |                       |

**PLAINTIFF’S RESPONSES TO DEFENDANT’S  
 STATEMENT OF UNDISPUTED MATERIAL  
 FACTS IN SUPPORT OF ITS MOTION FOR  
 SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1(B)(2), Plaintiff and Counterclaim-Defendant the Code Revision Commission, on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia (“Commission”), responds [sic] Defendant’s Statement of Undisputed Material Facts as follows:

### INTRODUCTION

PR includes many alleged facts in its Statement Of Undisputed Material Facts that are not referenced in its Memorandum Of Law In Support Of Its Motion For Summary Judgment (Dkt. 29-02). Alleged facts upon which PR does not rely in its arguments should not be considered material, and Commission objects accordingly below. Any admissions made by Commission below are for the sole purpose of responding to Defendant's summary judgment motion.

### COMMISSION'S RESPONSES AND OBJECTIONS

1. Carl Malamud is the founder of the nonprofit Public.Resource.org ("Public Resource"). Declaration of Carl Malamud ("Malamud Decl."), Ex. A at ¶¶ 1, 14; Ex. B.

**RESPONSE:** Admitted

2. Mr. Malamud founded Public Resource in 2007 to address an absence of primary legal materials on the Internet, including judicial opinions (and the underlying dockets leading to those opinions), statutes and the codifications of those statutes (including the legislative hearings that led to those statutes [sic]), and federal regulations (including the underlying notices and comments leading to those regulations). Malamud Decl., Ex. A at ¶¶ 15, 19.

**RESPONSE:** Commission admits that Mr. Malamud founded Public Resource in 2007. Commission objects to the fact alleged in the remainder of paragraph two as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments. To the extent that the Mr. Malamud's [sic] opinion testimony is offered as a lay witness under

Fed. R. Evid. 701, Commission objects that the cited paragraphs of Mr. Malamud's Declaration do not support the assertions of fact in the remainder of paragraph two. Otherwise, Commission objects under Fed. R. Evid. 702 because these statements are supported by opinion testimony of Mr. Malamud on a subject for which he has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Malamud as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13. Subject to these objections, Commission admits the remainder of paragraph two.

3. Mr. Malamud found that most states' statutes, regulations, and the codification of those statutes and regulations were publicly available in some form on the Internet. *Id.* at ¶ 33.

**RESPONSE:** Commission admits paragraph three represents Mr. Malamud's opinion as stated. If PR submits the alleged facts in paragraph three as expert testimony, Commission objects under Fed. R. Evid. 702 because these statements are supported by opinion testimony of Mr. Malamud on a subject for which he has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Malamud as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13. Commission objects to the fact alleged in paragraph three as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

4. The technology employed to make those materials available to the public, however, did not provide the

information in a user-friendly fashion or take advantage of the features of the Internet and its potential. *Id.*; *see also* Declaration of Beth Noveck (“Noveck Decl.”), Ex. C at ¶ 14.

**RESPONSE:** Commission objects to the fact alleged in paragraph four as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments. To the extent that Mr. Malamud’s or Ms. Noveck’s opinion testimony is offered as a lay witness under Fed. R. Evid. 701, Commission objects that the cited paragraphs of Mr. Malamud’s and Ms. Noveck’s Declarations do not support the assertions of fact in paragraph four. If PR submits the alleged facts in paragraph four as expert testimony, Commission objects under Fed. R. Evid. 702 because these statements are supported by opinion testimony of either Mr. Malamud or Ms. Noveck on a subject for which he or she has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Malamud or Ms. Noveck as an expert on whom it would rely in accordance with the Court’s scheduling order, Dkt. 13. Subject to these objections, Commission admits paragraph four.

5. In an effort to remedy this shortcoming, Public Resource has made publicly available on the Internet, for example, copies of the Oregon Revised Statutes, California Code of Regulations, District of Columbia Code, and the Chicago Building, Municipal and Zoning Codes. Malamud Decl., Ex. A at ¶¶ 31, 34, 37, 39.

**RESPONSE:** Commission admits that Public Resource has made publicly available on the Internet, for example, copies of the Oregon Revised Statutes, California Code of Regulations, District of Columbia Code,

and the Chicago Building, Municipal and Zoning Codes. Commission objects to the fact alleged in paragraph five as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments. To the extent that the Mr. Malamud's [sic] opinion testimony regarding a "shortcoming" is offered as a lay witness under Fed. R. Evid. 701, Commission objects that the cited paragraphs of Mr. Malamud's Declaration do not support the assertions of fact regarding the "shortcoming." Otherwise, Commission objects under Fed. R. Evid. 702 because this statement is supported by opinion testimony of Mr. Malamud on a subject for which he has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Malamud as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13. Subject to these objections, Commission admits the alleged fact of a "shortcoming."

6. In each of the above instances, Public Resource's posting of these edicts of government resulted in an improved web presence coded by individuals and volunteers and increased public access for the materials. In the cases of Washington, D.C. and Chicago, city officials also were involved in the process.

**RESPONSE:** Commission admits the last sentence of paragraph six. To the extent that the Mr. Malamud's [sic] opinion testimony regarding the first sentence is offered as a lay witness under Fed. R. Evid. 701, Commission objects that the cited paragraphs of Mr. Malamud's Declaration do not support the assertions of fact. Otherwise, Commission objects under Fed. R. Evid. 702 because this statement is supported by opinion testimony of Mr. Malamud on a subject for which he has not been qualified as an expert. Further,

Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Malamud as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13. Commission denies the first sentence of paragraph six. Commission further objects to the fact alleged in paragraph six as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments. *Id.* at ¶¶ 31-41, 44. Subject to these objections, Commission admits the first sentence of this paragraph.

7. Indeed, making edicts of government, such as legal codes, available in bulk leads to more innovation, a better-informed citizenry, and a better democracy. Noveck Decl. Ex. C at ¶ 14.

**RESPONSE:** Commission objects to the fact alleged in paragraph 7 as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments. To the extent that Ms. Noveck's opinion testimony is offered as a lay witness under Fed. R. Evid. 701, Commission objects that the cited paragraphs of Ms. Noveck's Declaration does [sic] not support the assertions of fact in paragraph seven. If PR submits the alleged facts in paragraph 7 as expert testimony, Commission objects under Fed. R. Evid. 702 because these statements are supported by opinion testimony of Ms. Noveck on a subject for which she has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Ms. Noveck as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13. Subject to these objections, Commission admits paragraph seven.



8. The State of Georgia enacts and promulgates its laws through its legislature. Stipulation of Facts (“Stip.”), Dkt. 17 at ¶ 44.

**RESPONSE:** Admitted.

9. Georgia’s Constitution provides that “[t]he General Assembly shall provide for the publication of the laws passed at each session.”

**RESPONSE:** Admitted. Commission objects to the fact alleged in paragraph nine as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

10. It is typical for bills introduced in the General Assembly to begin, “an Act to amend Article...Chapter...Titles of the Official Code of Georgia Annotated,” Stip., Dkt. 17 at ¶ 81, as required by Georgia’s Constitution, Ga. Const., Art. 3, Section 5, ¶ 4.

**RESPONSE:** Commission admits that it is typical for bills introduced in the General Assembly to begin, “an Act to amend Article...Chapter...Titles of the Official Code of Georgia Annotated.” Commission denies the statement “as required by Georgia’s Constitution, Ga. Const., Art. 3, Section 5, ¶ 4” because that paragraph of the Georgia Constitution does not require that bills contain the quoted wording “an Act to amend Article...Chapter...Titles [sic] of the Official Code of Georgia Annotated.” Paragraph four instead states: “No law or section of the Code shall be amended or repealed by mere reference to its title or to the number of the section of the Code; but the amending or repealing Act shall distinctly describe the law or Code section to be amended or repealed as well as the alteration to be made.” Ga. Const., Art. 3, Section 5, ¶ 4. Commission objects to the fact alleged in this paragraph as not

material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

11. Each year the General Assembly passes a bill to reenact the statutory portions of the O.C.G.A. Senate Bill 340 (2014), Ex. M.

**RESPONSE:** Admitted. Commission objects to the fact alleged in paragraph eleven as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

12. The Code Revision Commission assists the legislature in publishing the laws it enacts in the Official Code of Georgia (“O.C.G.A.”). Stip., Dkt. 17 at ¶ 82.

**RESPONSE:** Admitted.

13. The Commission was created by the General Assembly in 1977 and tasked with selecting a publishing firm “possessing the necessary expertise and manpower to accomplish a complete recodification [of the state’s laws] as quickly as possible.” Ga. Code Ann., Foreword, Ex. D at ix-x.

**RESPONSE:** Commission admits paragraph 13 in substance but objects to Defendant’s citation to Ga. Code. Ann., which is an indicator of West’s Georgia Code Annotated. The citation should instead be to the O.C.G.A. Commission further objects to the fact alleged in this paragraph as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

14. The Code Revision Study Committee, also created by the General Assembly, concluded that a complete revision and recodification of the state’s laws was “long overdue” and that “the most economical and satisfactory method to accomplish code revision within the State of Georgia is through a negotiated contract

with a publishing firm possessing the necessary expertise and manpower to accomplish a complete recodification as quickly as possible. “ *Id.* at ix.

**RESPONSE:** Commission admits paragraph 14 in substance but objects to Defendant’s citation to Ga. Code. Ann., which is an indicator of West’s Georgia Code Annotated. The citation should instead be to the O.C.G.A. Commission further objects to the fact alleged in this paragraph as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

15. Upon the Study Committee’s recommendation, the General Assembly created the Commission to select a publishing firm and “resolve the myriad of details connect with the code revision project.” *Id.* at ix.-x.

**RESPONSE:** Commission admits paragraph 15 in substance but objects to Defendant’s citation to Ga. Code. Ann., which is an indicator of West’s Georgia Code Annotated. The citation should instead be to the O.C.G.A. Commission further objects to the fact alleged in this paragraph as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

16. The Commission is composed of the Lieutenant Governor, four members of the Senate, the Speaker of the House of Representatives and four additional members of the House of Representatives, and four members appointed by the State Bar of Georgia, one of whom is a judge or senior judge of the State Superior Courts and one of whom is a State district attorney. *Id.* at x.

**RESPONSE:** Commission admits paragraph 16 in substance but objects to Defendant’s citation to Ga.

Code. Ann., which is an indicator of West's Georgia Code Annotated. The citation should instead be to the O.C.G.A.

17. From five law publishers, the Commission selected the Michie Company to prepare and publish what would become the O.C.G.A., and entered into a contract. *Id.*

**RESPONSE:** Commission admits paragraph 17 in substance but objects to Defendant's citation to Ga. Code. Ann., which is an indicator of West's Georgia Code Annotated. The citation should instead be to the O.C.G.A. Commission further objects to the fact alleged in this paragraph as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

18. Despite contracting with Michie, the Commission itself developed the uniform numbering system and rules of style used in the new (1981) Code and adopted an arrangement into 53 Code titles. *Id.* at xi.

**RESPONSE:** Commission admits that the Commission contracted with Michie and itself developed the uniform numbering system and rules of style used in the new (1981) Code and adopted an arrangement into 53 Code titles. Commission denies the term "despite" since it is not included in the OCGA Forew[o]rd. OCGA, Foreword, Def's Ex. D at xi. Commission further objects to the fact alleged in paragraph 18 as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

23. The Commission has regularly asserted copyright in the "catchlines of Code sections; names of Titles, Chapters, Articles, Parts and Subparts; history lines, editor's notes; Code Commission notes;

annotations; research references; cross-references; indexes and other such materials.” Dkt 17-8 at 1.

**RESPONSE:** Commission objects in accordance with Local Rule 56.1(B)(2)(a)(2)(iii) because the cited document does not support that the Commission has “regularly” asserted copyright in the stated materials. Commission further objects to this alleged fact as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments. Subject to these objections, Commission admits paragraph 23.

24. The Agreement requires Lexis/Nexis to adhere to the organization and numbering used by the previous publisher. Publication Agreement, Ex. F at 3.

**RESPONSE:** Commission admits paragraph 24 since the Agreement requires Lexis/Nexis to maintain the State’s prior general organization and arrangement of the OCGA. Publication Agreement, Def’s Ex. F at 3. Commission objects to the fact alleged in paragraph twenty four as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

25. The Agreement also provides that the Commission, not its hired publisher, has “the ultimate right of editorial control” both over all material contained in the O.C.G.A. and over what material is selected to become part of the O.C.G.A. *Id.* at 2.

**RESPONSE:** Admitted.

26. The Agreement requires Lexis/Nexis to follow the Commission’s detailed publication manual, which “reflect[s] those specific content, style and publishing standards of the Code as adopted, approved or amended from time to time by the Commission or its

staff pursuant to Code Section 28-9-3 of the Official Code of Georgia Annotated.” *Id.*

**RESPONSE:** Admitted.

27. Lexis/Nexis does not choose which cases to summarize in the Code’s annotations, as the Agreement requires Lexis/Nexis to summarize “all published opinions of the Georgia Supreme Court and the Court of Appeals of Georgia, and all published opinions of the United States Supreme Court and other federal courts that arose in Georgia and construed Georgia general statute, whether such decisions favor plaintiffs, defendants, or the prosecution.” *Id.* at 3.

**RESPONSE:** Commission admits that the Publication Agreement contains the quoted statement in paragraph 27, but such statement does not establish Defendant’s alleged fact: “Lexis/Nexis does not choose which cases to summarize in the Code’s annotations.” Commission denies that Lexis/Nexis does not chose [sic] which cases to summarize. Declaration of Anders P. Ganten, [Dkt. 30-05] ¶ 5. Further, the Publication Agreement’s next sentence is “Additional annotations to those required by the Paragraph may be included where determined useful as determined or approved by the Commission.”

28. The Agreement similarly requires that the Annotations include research references and legislative history.” *Id.* at 4-5.

**RESPONSE:** Commission admits that the Agreement requires that research references and legislative history are included in the OCGA, but the Agreement also indicates that the form arrangement and content of the research references and form of the history lines can be chosen by Lexis/Nexis subject to the approval of

the Commission. Publication Agreement, Def's Ex. F at 5.

29. The Commission's Publication Manual is even more detailed in its directions to Lexis/Nexis, for example providing nine pages of instruction in the proper formulation of amendment notes and ten pages to that of Editor's Notes. Publication Manual, Ex. G at 78-79, 99-109.

**RESPONSE:** Commission admits that the Publication Manual provides nine pages of instruction on proper formulation of amendment notes and ten pages of instruction on editor's notes, but since the substance of each amendment note and editor's note is different, the content of each note is not dictated by the Manual. Def's Ex. G at 78-79, 99-109. Commission objects to the fact alleged in paragraph twenty nine as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

30. The Agreement requires that Lexis/Nexis provide Georgia's statutes unannotated ("Unannotated code") on a website that the public can access for free using the Internet. Id. at 11-12; Stip., Dkt. 17 at ¶¶ 73-75.

**RESPONSE:** Admitted.

31. The free public website contains only the statutory text and numbering of the O.C.G.A., stripped of its Annotations. Stip., Dkt. 17 at ¶¶ 73, 75.

**RESPONSE:** Admitted.

32. The Agreement requires Lexis/Nexis to track usage of the Unannotated Code on the public website and to report annually to the Commission the amount of usage and whether its sales of, or subscriptions to, the printed O.C.G.A., the C.D. ROM version and

similar commercial versions have decreased. Publication Agreement, Ex. F at 12; 2015 Usage Report, Ex. H.

**RESPONSE:** Commission admits that the Publication Agreement requires that “The Publisher shall track usage of the Code on its Internet site, and after each year of publication, the Publisher shall provide usage reports to the Commission with usage and the effect, if any, on subscriptions to the Code in print and on CDROM.” Publication Agreement, Ex. F at 12. Commission admits that Def’s Exhibit H is such a usage report, which reflects the effect of Lexis/Nexis providing the Unannotated Code on the internet.

33. The Agreement requires Lexis/Nexis to provide appropriate copyright notice on both the free public website for the unannotated Code and the online O.C.G.A. available as part of the Lexis/Nexis for-profit online services and to notify visitors that any reproduction of the O.C.G.A. other than the statutory text and numbering is prohibited. *Id.* at 12.

**RESPONSE:** Commission admits that the Agreement requires what paragraph 33 states and after the term “is prohibited,” includes “unless permission has been granted by the State.” Publication Agreement, Def’s Ex. F at 12. Commission objects to the fact alleged in this paragraph as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

34. According to Lexis/Nexis’s representative, Anders Ganten, the Agreement between Georgia, through the Commission, and the O.G.C.A.’s publisher is unique. Commission Minutes, Ex. I at 2.

**RESPONSE:** Admitted. Commission objects to the fact alleged in this paragraph as not material. PR does



not rely on or even mention this alleged fact in its summary judgment arguments.

35. “In other states, the work on annotations is done in house or contracted as a fee for service arrangement.” *Id.*

**RESPONSE:** Commission admits that the statement in paragraph 35 was made by Anders Ganten. Commission objects to the fact alleged in this paragraph as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

36. In Georgia, Lexis/Nexis has the exclusive right to publish and sell the O.C.G.A. as a printed publication, on CD-ROM, and in an online version and receives income from its sales of the O.C.G.A. Stip., Dkt. 17 at ¶¶ 84-85.

**RESPONSE:** Admitted.

37. The Commission, however, only receives royalties from the licensing fee for the CD-ROM and online versions of the O.C.G.A. Pl.’s Resp. to D.’s Interrogatories, Ex. O at 14.

**RESPONSE:** Admitted.

38. In fiscal year 2014, the Commission received \$85,747.91 in licensing fee royalties. Mar. 29, 2016 Letter from L. Pavento, Ex. J at 1.

**RESPONSE:** Admitted.

39. For Lexis/Nexis, “the cost of publishing the Code rises each year” and “the print publication is a struggle each year.”

**RESPONSE:** Commission admits that Anders Ganten made the statement in paragraph 39. Commission objects to the fact alleged in this paragraph as not

material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

40. The Legislative Counsel publishes the *User's Guide to the Official Code of Georgia, Annotated*. User's Guide, Ex. N.

**RESPONSE:** Admitted.

41. The User's Guide instructs those citing the Code of Georgia to cite to the O.C.G.A. *Id.* at xvii

**RESPONSE:** Denied. The User's Guide states on the cited page: "The Official Code of Georgia Annotated may be cited as 'O.C.G.A.' See Code Section 1-1-8 as to citation of the Official Code of Georgia Annotated." User's Guide, Def's Ex. N. at xvii. Commission objects to the fact alleged in this paragraph as not material.

42. The User's Guide explains that some annotations are indexes, tables and research references that advise the reader of other materials relevant to understanding the nuances and interpretations of the statutory text itself. *Id.* at xxi-xxii.

**RESPONSE:** Commission admits that the User's Guide explains that some annotations in the OCGA are indexes, tables and research references. Commission denies Defendant's characterization that the indexes, tables and research references "advise the reader of other materials relevant to understanding the nuances and interpretations of the statutory text itself." Commission admits that the User's Guide states that the research references "aid in legal research" and that conversion tables are included in Volume 41 (an OCGA volume not at issue in this case) to assist the user in converting citations between the OCGA and prior Code publications. Commission

objects to the fact alleged in this paragraph as not material.

43. The Annotations to the O.C.G.A. include a summary of a vacated Northern District of Georgia case that quotes “[a]ttorneys who cite unofficial publications of 1981 code do so at their peril.” The heading of that summary reads: “Official Code publication controls over unofficial compilation.” Ga Code Ann. § 1-1-1, note (Judicial Decisions); Stip. Dkt. 17 at ¶ 94.

**RESPONSE:** Commission admits paragraph 43 in substance but objects to Defendant’s citation to Ga. Code. Ann., which is an indicator of West’s Georgia Code Annotated. The citation should instead be to the O.C.G.A. Commission objects to the fact alleged in this paragraph as not material.

44. Lexis/Nexis markets its printed O.C.G.A. stating “the Official Code of Georgia Annotated (O.C.G.A.) provides users with the official Georgia statutes, fully annotated.” Stip., Dkt. 17 at ¶ 95; Ex. M to Stip., Dkt. 17-3.

**RESPONSE:** Admitted. Commission objects to the fact alleged in this paragraph as not material.

45. The Honorable Johnnie Caldwell, Representative, Chairman of the Commission and a lawyer in Georgia for at least 43 years, told the Commission that he buys to [sic] the O.C.G.A. for the annotations. Commission Minutes, Ex. I at 2.

**RESPONSE:** Admitted. Commission objects to the fact alleged in this paragraph as not material.

46. The judicial summary annotation for Ga. Code Ann. § 50-2-1- for the case *Dep’t of Natural Resources v. Joyner*, 241 Ga. 390 (1978) reads:

Salt waters of this state extend from the mean low watermark of the foreshore three geographical miles offshore; except where a low tide elevation is situated within three nautical miles seaward of the low water line along the coast, the state's three mile boundary is measured from such low tide elevation.

Ga. Code Ann. § 50-2-1 ann.

**RESPONSE:** Commission admits paragraph 46 is one of the judicial summary annotations for OCGA § 50-2-1 for the case *Dep't of Natural Resources v. Joyner*, 241 Ga. 390 (1978). Commission objects to Defendant's citation to Ga. Code Ann., which is an indicator of West's Georgia Code Annotated.

47. The judicial summary annotation for West's Code of Georgia Annotated for the same case reads: "Salt waters of Georgia extend from mean low watermark of foreshore three geographical miles offshore, except where a low tide elevation is situated within three nautical miles seaward of low waterline along coast, in which case state's three-mile boundary is measured from such low tide elevation." Ga. Code Ann. § 50-2-1- ann. (West 2016).

**RESPONSE:** Admitted.

48. The judicial summary annotation for Ga. Code Ann. § 50-2-1 for the case *State v. Bruce*, 231 Ga. 783 (1974) reads:

Whichever line is correct, low tide or high tide, as the dividing line between private property sought to be registered and the state's property, the state is still an adjoining landowner and should have been named in the petition and served other than by the advertisement "to whom it may concern," and a land registration judgement, if granted,

would not be binding upon an adjoining landowner who was not named and served.

Ga. Code Ann. § 50-2-1.

**RESPONSE:** Commission admits paragraph 48 is the judicial summary annotation for OCGA § 50-2-1. Commission objects to Defendant's citation to Ga. Code. Ann., which is an indicator of West's Georgia Code Annotated.

49. The judicial summary annotation for West's Code of Georgia Annotated for the same case reads:

Regardless of whether the low-tide line or the high-tide line was the dividing line between property sought to be registered and the States [sic] property as the owner of the ocean within three geographical miles of ordinary low-water mark, State was an "adjoining landowner" and should have been so named in the petition and served other than be [sic] advertisement, despite contention that by reason of statute and revision of the Constitution petitioners were already owners of land between the high and low-tide marks and that the land which they were seeking to register, which had been built up by accretion, was only land above the high-tide line.

Ga. Code Ann. § 50-2-1 ann. (West 2016).

50. The judicial summary annotation for O.C.G.A. § 50-2-1 for the case *Ga. Ry. & Power Co. v. Wright*, 146 Ga. 29 (1916) reads:

That part of the Savannah River which is broken by islands, located between an island the Georgia mainland [sic], is within the jurisdiction and sovereignty of this state by virtue of this section, and a dam constructed across the river from an island to

the Georgia shore is subject to taxation in this state.

**RESPONSE:** Commission admits that paragraph 50 provides one of the judicial summary annotations for OCGA § 50-2-1 for the case *Ga. Ry. & Power Co. v. Wright*, 146 Ga. 29 (1916).

51. The judicial summary annotation for West's Code of Georgia Annotated for the same case reads:

Under Beaufort Convention 1787 and Civ. Code 1910, § 16, that part of the Savannah river which is broken by islands, located between an island and the Georgia mainland, is in Georgia, and a dam from an island to the Georgia shore is subject to taxation in Georgia.

Ga. Code. Ann. § 50-2-1 (West 2016)

**RESPONSE:** Admitted.

52. To access the unannotated code via the website link found on the Georgia website, [www.legis.ga.gov](http://www.legis.ga.gov), one must accept the terms and conditions of use generally applicable to the Lexis/Nexis websites. Stip., Dkt. 17 at ¶ 86; Ex. I to Stip., Dkt. 17-9.

**RESPONSE:** Admitted to the extent that “unannotated code” means “statutory text and numbering in the OCGA.” Commission objects to the fact alleged in this paragraph as not material.

53. The access page that allows users to access the online publication, however, states that the Lexis/Nexis website terms and conditions do not apply to the O.C.G.A. statutory text and numbering. Stip., Dkt. 17 at ¶ 86; Ex. J to Stip., Dkt. 17-10.

**RESPONSE:** Admitted. Commission objects to the fact alleged in this paragraph as not material to any argument offered by PR in its motion.

54. The Lexis/Nexis website use terms and conditions are governed by New York state law and require the user to submit to the personal jurisdiction of New York state courts for the purpose of litigating any action arising out of or relating to the Lexis Nexis website use terms and conditions. Stip., Dkt. 17 at ¶ 87.

**RESPONSE:** Admitted. Commission objects to the fact alleged in this paragraph as not material.

55. Until at least May 28, 2014, the notice displayed before users could access the unannotated code on the public access Lexis/Nexis site included a banner page that the user had to acknowledge to gain access to the Lexis/Nexis site. *Id.* at ¶ 92; Ex. L to Stip., Dkt. 17-12. This banner page stated “the latest print version of the O.C.G.A. is the authoritative version.” Stip., Dkt. 17 at ¶ 92.

**RESPONSE:** Admitted. Commission objects to the fact alleged in paragraph fifty five as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

56. This 2014 banner page also did not explicitly state that the Lexis/Nexis terms and conditions of use do not apply to the Georgia Code statutory text and numbering. *Id.* at ¶ 93; Ex. L to Stip., Dkt. 17-12.

**RESPONSE:** Admitted. Commission objects to the fact alleged in paragraph fifty six as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

57. Once within the Lexis/Nexis public access site, one notice on the website is a hyperlink to the terms

and conditions specific to the Georgia Code materials. Stip., Dkt. 17 at ¶ 88; Ex. K to Stip., Dkt 17-11. These terms and conditions explain that a user may copy Georgia Code sections' text and numbering. Stip., Dkt. at ¶ 90.

**RESPONSE:** Admitted. Commission objects to the fact alleged in paragraph fifty seven as not material. PR does not rely on or even mention this alleged fact in its summary judgment arguments.

58. At least one citizen of Georgia found the requirement to accept the Lexis/Nexis terms of use before being able to access the Georgia statutory materials "distasteful," particularly the provision agreeing to jurisdiction in a New York court and the provisions prohibiting use of the data even by "public nonprofit users." Declaration of Clay Johnson ("Johnson Decl.") Ex. K at ¶ 10. The Lexis/Nexis free online site also suffers from technical challenges, including generating unwarranted security errors, displaying a blank screen in certain web browsers, lack of bookmarking function, lack of permanent links, HTML and CSS errors, and limited accessibility for the visually impaired. *Id.* at ¶¶ 11-18. Finally, it is unclear to users what Lexis/Nexis is doing with their search terms and navigation history.

**RESPONSE:** Commission objects to the fact alleged in this paragraph as not material. Commission admits the first sentence of this paragraph. Commission objects that the second and third sentences are not indicated as the personal opinion of a single individual, Mr. Clay Johnson. To the extent that the Mr. Johnson's [sic] opinion testimony is offered as a lay witness under Fed. R. Evid. 701, Commission objects that the cited paragraphs of Mr. Johnson's Declaration



do not support the assertions of fact in the second and third sentences of paragraph fifty-eight. Otherwise, Commission objects to the second and third sentences of paragraph fifty-eight under Fed. R. Evid. 702 because these statements are supported by opinion testimony of Mr. Johnson on a subject for which he has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Johnson as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13. Commission denies the second and third sentences of paragraph fifty-eight.

59. Fastcase, Inc. ("Fastcase") provides subscribers a comprehensive legal research service, including cases, statutes, regulations, court rules and constitutions for all 50 states. Declaration of Edward Walters ("Walters Decl.") Ex. L at ¶ 8.

**RESPONSE:** Admitted. Commission objects that the fact alleged in paragraph 59 is not material since it does not concern or relate to Defendant's copying or distribution of the OCGA or Defendant's fair use arguments in this case.

60. The Fastcase service is often offered to end users as part of an arrangement with state and local bar association[s], which contract with Fastcase so they may offer the service as a free benefit to their members. *Id.* at ¶ 9.

**RESPONSE:** Admitted. Commission objects that the fact alleged in paragraph sixty is not material since it does not concern or relate to Defendant's copying or distribution of the OCGA or Defendant's fair use arguments in this case.

61. In January 2011, Fastcase and the State Bar of Georgia announced a partnership that made the Fastcase service available to the 42,000 members of the State Bar of Georgia. *Id.* at ¶ 10.

**RESPONSE:** Admitted. Commission objects that the fact alleged in paragraph sixty one is not material since it does not concern or relate to Defendant's copying or distribution of the OCGA or Defendant's fair use arguments.

62. Fastcase has attempted on numerous occasions to license the O.C.G.A. from the State of Georgia and Lexis/Nexis, but has been informed that no license would be granted, at any price. *Id.* at ¶ 11.

**RESPONSE:** Admitted. Commission objects that the fact alleged in paragraph 62 is not material since it does not concern or relate to Defendant's copying or distribution of the OCGA or Defendant's fair use arguments in this case.

63. Instead, Fastcase offers its subscribers a version of the Code of Georgia, but it is what O.C.G.A. § 1-1-1 terms an "unofficial compilation." *Id.* at ¶ 12.

**RESPONSE:** Admitted. Commission objects that the fact alleged in paragraph sixty three is not material since it does not concern Defendant's copying or distribution of the OCGA or Defendant's fair use arguments.

64. Fastcase would prefer to offer the O.C.G.A. to its subscribers because it is the version of these edicts of government promulgated by the State of Georgia. *Id.* at ¶ 10.

**RESPONSE:** Admitted. Commission objects that the fact alleged in paragraph sixty four is not material since it does not concern Defendant's copying or

distribution of the OCGA or Defendant's fair use arguments. Commission objects to the remaining assertion that the OCGA is an "edict of government" that is "promulgated" as stating a legal conclusion and as mischaracterizing the OCGA as an edict of government having the force of law. Commission denies the legal conclusion that the OCGA is an edict of government promulgated by the State of Georgia.

65. To make the O.C.G.A., including the annotations, available on the Internet, Public Resource purchase the entirety [sic] of 186 printed volumes and supplements of the O.C.G.A. and them all, [sic] including their front and back covers, and then posted those copies on its website: <https://law.resource.org>. Stip., Dkt. 17 at ¶¶ 34-36.

**RESPONSE:** Admitted.

66. At least one copy of each O.C.G.A. volume and supplement that Public Resource posted on its <https://law.resource.org> website is in an electronic format that displays an image of the printed publication as copied by Public resource, which image allows for electronic page turning of the printed publication. *Id.* at ¶ 37.

**RESPONSE:** Admitted.

67. Public Resource distributed copies of the entirety of the O.C.G.A. contained on USB thumb drives, to the Speaker of the House, Georgia House of Representatives, Mr. Wayne Allen, Legislative Counsel, Office of Legislative Counsel, Georgia General Assembly, and other members of the State of Georgia Legislature. *Id.* at ¶¶ 63-64.

**RESPONSE:** Admitted.

68. Public Resource's purpose in scanning and posting the O.C.G.A. was to facilitate scholarship, criticism and analysis of the official Code, to inform the public about the laws that govern it, for educational purposes and to encourage public engagement with the law. (Malamud Decl., Ex. A. at ¶ 45.

**RESPONSE:** Commission admits that Public Resource's stated purpose in scanning and posting the O.C.G.A. was to facilitate scholarship, criticism and analysis of the official Code, to inform the public about the laws that govern it, for educational purposes and to encourage public engagement with the law.

69. After the Commission commenced this action, Public Resource purchased and copied the 2015 volumes and supplements of the O.C.G.A. and copies and posted them on its website. Stip., Dkt. 17 at ¶ 46.

**RESPONSE:** Admitted.

70. In addition to posting volumes of the O.C.G.A. on its own website, Public Resource also posted them on the Internet Archive website. [www.archive.org](http://www.archive.org). *Id.* at ¶¶ 50-52, 54-56.

**RESPONSE:** Admitted.

71. Each scanned copy has optimal character recognition, making it significantly more accessible to people who are visually impaired. Malamud Decl., Ex. A at ¶ 46.

**RESPONSE:** Admitted. Defendant's statement has an apparent typographical error in that it appears to refer to "*optical* character recognition." Commission objects to the allegation that creating a version of the OCGA having optical character recognition makes it significantly more accessible to people who are visually impaired. Defendant's record evidence, Malamud

Declaration, Ex. A ¶ 46, does not establish this as a fact, but merely presents it as an opinion of a non-expert declarant. Commission also objects to this statement under Fed. R. Evid. 703 because the cited testimony of Mr. Malamud is on a subject for which he has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Malamud as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13.

72. The process of posting each volume includes significant metadata, such as the names of the titles included in each volume, making them more easily discovered using search engines. *Id.*

**RESPONSE:** Admitted. Commission objects to the allegation that each volume includes significant metadata, making them more easily discovered using search engines. Defendant's record evidence, Malamud Declaration, Ex. A ¶ 46, does not establish this as a fact, but merely presents it as an opinion of a non-expert declarant. Commission also objects to this statement under Fed. R. Evid. 703 because the cited testimony of Mr. Malamud is on a subject for which he has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Malamud as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13.

73. The process of posting each volume creates a version that is compatible with e-Book readers, smart phones, and tablets. *Id.*

**RESPONSE:** Admitted. Commission objects to the allegation in paragraph 73 because Defendant's record evidence, Malamud Declaration, Ex. A ¶ 46, does not

establish this as a fact, but merely presents it as an opinion of a non-expert declarant. Commission also objects to this statement under Fed. R. Evid. 703 because the cited testimony of Mr. Malamud is on a subject for which he has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr. Malamud as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13.

74. Public Resource actively encourages all citizens to copy, use, and disseminate the O.C.G.A. volumes and to create works containing them. *Id.*

**RESPONSE:** Admitted.

75. Public Resource also provides all the volumes in bulk on its servers, allowing users to quickly access the entire Code or a specific volume, and copy and paste relevant sections into their own documents. *Id.*

**RESPONSE:** Admitted.

76. The Internet Archive's user interface allows readers to search a volume of the O.C.G.A. displaying "pins" for each page that contain the search terms, allowing a reader to quickly look for key phrases in different locations. *Id.*

**RESPONSE:** Admitted. Commission objects to the allegation in paragraph 76 because Defendant's record evidence, Malamud Declaration, Ex. A ¶ 46, does not establish this as a fact, but merely presents it as an opinion of a non-expert declarant. Commission also objects to this statement under Fed. R. Evid. 703 because the cited testimony of Mr. Malamud is on a subject for which he has not been qualified as an expert. Further, Commission objects under Fed. R. Civ. P. 26(a)(2) and 37(c)(1) because Defendant did not timely disclose Mr.

Malamud as an expert on whom it would rely in accordance with the Court's scheduling order, Dkt. 13.

77. In 2014, Public Resource solicited crowd funding on the website <Indiegogo.com> to support its scanning and posting of the O.C.G.A. *Id.* at ¶ 42.

**RESPONSE:** Admitted.

78. This campaign ended on July 11, 2014 and raised approximately \$3000 *Id.* at ¶ 42, 62.

**RESPONSE:** Admitted.

Respectfully submitted, this 10th day of June, 2016.

[Signature block omitted]

**APPENDIX TT**

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

|                            |   |                       |
|----------------------------|---|-----------------------|
| CODE REVISION              | ) |                       |
| COMMISSION on behalf of    | ) |                       |
| and for the benefit of THE | ) |                       |
| GENERAL ASSEMBLY OF        | ) |                       |
| GEORGIA and THE STATE      | ) |                       |
| OF GEORGIA,                | ) |                       |
|                            | ) | <b>CIVIL</b>          |
| Plaintiff,                 | ) | <b>ACTION NO.</b>     |
|                            | ) | <b>1:15-CV-02594-</b> |
|                            | ) | <b>RWS</b>            |
| v.                         | ) |                       |
|                            | ) |                       |
| PUBLIC.RESOURCE.ORG,       | ) |                       |
| INC.,                      | ) |                       |
| Defendant.                 | ) |                       |
|                            | ) |                       |

**PLAINTIFF’S SUPPLEMENTAL STATEMENT**  
**OF ADDITIONAL UNDISPUTED MATERIAL**  
**FACTS IN SUPPORT OF ITS RESPONSE TO**  
**DEFENDANT’S MOTION FOR SUMMARY**  
**JUDGEMENT**

Pursuant to Local Rule 56.1(A), Plaintiff and Counterclaim-Defendant the Code Revision Commission, on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia (“Commission”), and in support of Plaintiff’s Motion for Summary Judgment (Dkt. 30), states that there is no genuine issue to be tried as to the following additional material facts:



1. PR is paid in the form of grants and contributions. Ex. 1, PRO000591.

2. PR publishes “10 Rules for Radicals” that describes its copying and distribution of documents and teaches others how to take actions similar to PR’s. Ex. 1, PRO000571-PRO000602.

3. PR discusses in “10 Rules for Radicals” its copying and distribution of Oregon’s Revised Statutes, and Rule 9 specifically relates to PR’s experience in this regard. Ex. 1, PRO000596- PRO000598.

4. The annotation of the judicial decision *Cho Carwash Property, LLC. v. Everett* (326 Ga. App. 6 (2014)) in West’s Georgia Code Annotated associated with Georgia statute § 34-9-260 is as follows:

Some evidence supported ALJ's calculation that workers' compensation claimant worked 38 hours per week when he was injured during training and thus that claimant's average weekly wage was \$323, although claimant had worked only three days before being injured, and although employer testified that claimant would have been placed on part-time schedule once training had been completed; evidence indicated that lube technicians, such as claimant, worked four days per week, employer's business was open ten hours per day for six days of the week, claimant was supposed to work from time that business opened until it closed, and employees took 30-minute lunch.

Ga. Code Ann. § 34-9-260 ann. (West 2016).

5. Although at least some of the O.C.G.A. volumes and supplements purchased by Public Resource were available for purchase on compact disc (CD), Public

Resource purchased these volumes and supplements in paper form. Stip. ¶ 35.

6. LexisNexis publishes and sells the O.C.G.A. as a printed publication, on CD-ROM, and in an on-line version. Stip. ¶ 84.

7. LexisNexis receives income from its sales of the O.C.G.A. Stip. ¶ 85.

8. The annotation of the judicial decision *Piedmont Newnan Hosp., Inc. v. Barbour* (333 Ga. App. 620 (2015)) in the O.C.G.A. associated with Georgia statute § 24-4-401 is as follows:

In a medical malpractice case, the trial court did not abuse its discretion in allowing the jurors to touch plaintiff's hand to determine for themselves if there was a detectable difference in the temperature of each hand and which of the parties' experts was correct as to whether plaintiff suffered from Complex Regional Pain Syndrome because the jurors could utilize all their senses, not just hearing and eyesight, in determining factual disputes put to them; the evidence was relevant; and the trial court was not essentially allowing the jurors to make a medical diagnosis as the touching of plaintiff's arm allowed the jurors to determine whether the left arm was cooler than the right arm, and which expert was more credible.

O.C.G.A. § 24-4-401 ann. (2015).

9. The annotation of the judicial decision *Piedmont Newnan Hosp., Inc. v. Barbour* (333 Ga. App. 620 (2015)) in West's Georgia Code Annotated associated with Georgia statute § 24-4-401 is as follows:

Evidence of difference in temperature between patient's two hands was relevant to experts' contested

diagnosis of whether patient suffered from complex regional pain syndrome (CRPS), in medical malpractice action against hospital in which patient alleged that hospital failed to ensure intravenous (IV) needle was correctly installed and properly functioning prior to heart stress test, thus causing infiltration of nuclear tracer material in his arm and development of CRPS.

Ga. Code Ann. § 24-4-401 ann. (West 2016).

10. PR created, uploaded to its website at <https://law.resource.org>, and distributes, an XML-encoded version of the O.C.G.A. Ex. 2, PRO000633–PRO000635, PRO000654.

11. PR's XML-encoded version of Title 1 of the O.C.G.A. is available at <https://law.resource.org/pub/us/code/ga/georgia.xml.2014/TITLE%201.%20GENERAL%20PROVISIONS.xml>. Ex. 2, PRO000634. Exhibit 3 is a true and accurate reproduction of the XML-encoded version of this file. Ex. 3.

12. PR's XML-encoded version of O.C.G.A. Title 1 does not include any annotations. For example, O.C.G.A. § 1-1-1 contains an annotation of the judicial decision *Georgia ex rel. Gen Assy'y v. Harrison Co.*, 548 F. Supp. 110 (N.D. Ga. 1982), while PR's XML-encoded version of that statute includes no annotations other than the revision history. Ex 3, at 1.

WHEREFORE, there being no genuine issue of material fact and being entitled to judgment as a matter of law on the issues addressed herein, Plaintiff requests that this Court grant its motion as to all of Plaintiff's counts of copyright infringement, pursuant to Rule 56 and Local Civil Rule 56.1.

668

Respectfully submitted, this 10th day of June,  
2016.

[Signature block omitted]

APPENDIX UU

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

|                            |   |               |
|----------------------------|---|---------------|
| CODE REVISION              | ) | CIVIL ACTION  |
| COMMISSION on Behalf of    | ) | NO.           |
| and for the Benefit of the | ) | 1:15-CV-2594- |
| GENERAL ASSEMBLY OF        | ) | MHC           |
| GEORGIA and the STATE OF   | ) |               |
| GEORGIA,                   | ) |               |
|                            | ) |               |
| Plaintiff,                 | ) |               |
|                            | ) |               |
| v.                         | ) |               |
|                            | ) |               |
| PUBLIC.RESOURCE.ORG,       | ) |               |
| INC.,                      | ) |               |
|                            | ) |               |
| Defendant.                 | ) |               |
|                            | ) |               |
|                            | ) |               |

**AFFIDAVIT OF ANDERS GANTEN**

I, Anders Ganten, state as follows:

1. I am over the age of 18.
2. I currently serve as Senior Director Government Content Acquisition at LexisNexis, which oversees *amicus* Matthew Bender & Company, Inc. (for purposes of this Affidavit, “LexisNexis”).
3. LexisNexis is a leading global provider of content-enabled workflow solutions designed specifically for professionals in the legal, risk management, corporate, government, law enforcement, accounting, and

academic markets. LexisNexis originally pioneered online information with its Lexis® and Nexis® services. LexisNexis also provides and publishes analytic legal research materials.

4. LexisNexis has executed a contract (the “Contract”) with the Code Revision Commission on Behalf of and For the Benefit of the General Assembly of Georgia and the State of Georgia Commission (the “Commission”) under which LexisNexis is responsible for researching, managing, creating, publishing, and distributing an annotated version of State laws as the Official Code of Georgia Annotated (“O.C.G.A.”).

5. The Contract is awarded under an open bid process, whereby LexisNexis and third parties may present bids to administer the Commission’s project to publish and distribute the laws of the state of Georgia in both hard bound book and electronic format.

6. Under the Contract, LexisNexis provides two functions: (1) publically and freely distributing the statutory texts of Georgia and (2) researching, creating, managing, publishing, and distributing annotations to the O.C.G.A. as a work for hire.

7. To distribute the statutory portion of the codification of Georgia’s laws as required in the Contract, LexisNexis provides online 24/7/365 access to the statutory text of Georgia laws and the Georgia Constitution via a link to the State of Georgia website located at [www.legis.ga.gov](http://www.legis.ga.gov).

8. All statutory text and numbering, numbers of titles, chapters, articles, parts and subparts, captions and history lines are included in this publication. This online resource is entirely free to users.

9. The online electronic version of Georgia's laws includes robust features and capabilities, such as "terms and connectors" searching and "natural language" searching.

10. Online Georgia code users may also print copies, save it to their hard drive in PDF format, or e-mail copies to others.

11. As part of its obligations under the Contract with the Commission, LexisNexis's team of attorney-editors creates annotations for the relevant statutes in the O.C.G.A. (the "Annotations").

12. These editors create substantive original Annotations on select legal cases regarding the constitutionality, purpose, intent, and meaning of words and phrases, as well as illustrations of particular statutory provisions.

13. These Annotations generally provide a brief description of the application or interpretation of statutes, rules, laws or constitution, as well as analysis and guidance of the legal holdings within a case that have relevance to those provisions.

14. The attached document labeled *Amicus Exhibit 2* provides an example of the statutory text and LexisNexis's Annotations to Official Georgia Code § 10-7-21. *Amicus Exhibit 2* is a true and accurate copy of the material.

15. The creation of the Annotations for the entire Georgia code requires a labor-intensive, creative process.

16. The LexisNexis editors, who are all attorneys (which is required under the Contract), begin by reading case law opinions to identify discussion points and

interpretation issues regarding the Georgia code, court rules, and constitutional provisions at issue.

17. The material is subjectively analyzed for noteworthiness, along with a determination of whether the court or other authority's discussion is relevant to an understanding of the provision.

18. After cases are culled and selected for inclusion, the editors then verify each potential source to ensure validity and to gain an understanding of how the statutory provision relates to the issue being discussed.

19. Upon verification, the editors draft the Annotation focusing on succinctness, accuracy, and guidance for future readers.

20. Each Annotation is an original and creative work of authorship that is protected by copyrights owned by the State of Georgia as a work for hire.

21. The Annotation often includes a written analysis of the court's application of the law to the particular facts of the case law opinion, or describing the court's interpretation or construction of the provision.

22. Certain cases are selected for an in-depth review and analysis by a quality review team and further editing.

23. For those Annotations created by the editors in the specialized Prospective Case Law Enhancements group, LexisNexis forwards the Annotations to Georgia legal analysts for additional review and editing.

24. Once the Annotation is checked for accuracy, style, and jurisdictional requirements, the most on-point and specific classification, as selected by the editors, is assigned to the Annotation from the LexisNexis taxonomy scheme for indexing. Upon completion, the



Annotation is included for online and print product publication.

25. The O.C.G.A. is subject to continuous review to ensure that the information is accurate. LexisNexis also makes additions to the statutory text of state laws previously approved and enacted by the legislature of the State of Georgia. When appropriate, subsequent history is added to each case Annotation. When LexisNexis determines that the Annotation is no longer relevant due to negative treatment, it is removed or limited.

26. As shown in *Amicus Exhibit 2*, the Annotations created by LexisNexis not only include case notes, but also Attorney General opinions, advisory opinions of the State Bar, law reviews, and bar journals. The Annotations contain evaluative, analytical or subjectively descriptive analysis and guidance. Moreover, the analysis and guidance, selection [sic] are carefully crafted by LexisNexis' editors, who have years of legal and statutory experience to illustrate and interpret the texts.

27. The LexisNexis editorial staff regularly reviews these materials and subjectively selects those it deems the most noteworthy for inclusion in its Annotations to the statutory and constitutional texts.

28. The Official Code of Georgia Annotated series also includes the United States Constitution, commentary from the Corporate Code Committee of the Business Law Section of the State Bar of Georgia, the Rules and Regulations of the State Board of Workers' Compensation, and the Rules and Regulations of the Subsequent Injury Trust Fund. These secondary and regulatory materials are selected, compiled and assimilated by the LexisNexis editorial staff.

29. Pursuant to the Contract, the State of Georgia owns the copyright in the Annotations as a work for hire, which it exclusively licenses to LexisNexis. LexisNexis does not charge the Commission any fee to create the Annotations. Instead in recognition of the significant time, expertise and creativity required to generate the O.C.G.A., the Contract authorizes LexisNexis to charge a fee to customers accessing online copies of and to sell hardcopy books and CD's of the work. However, the Commission places a contractual cap on the amount LexisNexis may charge for such access and works. Contractually, LexisNexis must also incur the expense of keeping inventory on hand to provide a reasonable supply of complete sets of hard copies of the O.C.G.A. so that it may fill any request within two weeks.

30. If the Annotations were not subject to copyright protection or if the PRO and the public could freely access the O.C.G.A. as a fair use under the Copyright Act, LexisNexis could not recoup its significant investment of creativity and resources in developing the Annotations, and it would lose all incentive to remain in the Contract or create the Annotations unless it were directly paid for such services.

31. PRO does not transform the Annotations. PRO does not add, edit, modify, comment on, criticize or create any analysis or notes of its own. The Annotations are already made available electronically by LexisNexis with a robust, fully searchable engine. PRO's use of the Annotations is for exactly the same purpose as LexisNexis and the Commission makes the Annotations available—for legal and scholarly research and public and judicial review. The activities of PRO destroy the marketplace and economic incentives for LexisNexis to create the Annotations. No person will

pay for annotations when the identical annotations are available online for free.

32. LexisNexis's sole revenue to recoup these costs is through hard copy sales, and licensing online access to the O.C.G.A. as permitted by the Contract, and which are easily and economically offered to the public. Because PRO has copied every word of every Annotation verbatim and posted them free of charge, PRO's misappropriation destroys LexisNexis's ability to recover these costs.

33. Since 2003, Thomson West has created its own annotations to the Official Georgia Code in its *West's® Code of Georgia Annotated*, and it sells hardcopies and licenses access to its annotations to recoup the costs and profit from the efforts.

\* \* \*

FURTHER AFFIANT SAYETH NAUGHT

The undersigned declares under penalty of perjury that the foregoing is true and correct.

Anders Granten

Date: 5/17/16

APPENDIX VV

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                            |   |                |
|----------------------------|---|----------------|
| CODE REVISION              | ) | CIVIL          |
| COMMISSION on Behalf of    | ) | ACTION NO.     |
| and For the Benefit of the | ) |                |
| GENERAL ASSEMBLY OF        | ) |                |
| GEORGIA and the STATE OF   | ) | FILE NO. 1:15- |
| GEORGIA,                   | ) | CV-2594-RWS    |
|                            | ) |                |
| Plaintiff,                 | ) |                |
|                            | ) |                |
| v.                         | ) |                |
|                            | ) |                |
| PUBLIC.RESOURCE.ORG,       | ) |                |
| INC.,                      | ) |                |
|                            | ) |                |
| Defendant.                 | ) |                |

**DEFENDANT’S RESPONSE TO PLAINTIFF’S  
SUPPLEMENTAL STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

Defendant Public.Resource.Org, Inc. hereby responds to Plaintiff Code Revision Commission’s enumerated Supplemental Statement of Additional Undisputed Material Facts (Dkt. 34-5):

1. *PR is paid in the form of grants and contributions. Ex. 1, PRO000591.*

**RESPONSE:**

Admitted.

2. PR publishes “10 Rules for Radicals” that describes its copying and distribution of documents and teaches others how to take actions similar to PR’s. Ex. 1, PRO000571-PRO000602.

**RESPONSE:**

Admitted.

3. PR discusses in “10 Rules for Radicals” its copying and distribution of Oregon’s Revised Statutes, and Rule 9 specifically relates to PR’s experience in this regard. Ex. 1, PRO000596- PRO000598.

**RESPONSE:**

Admitted.

4. The annotation of the judicial decision *Cho Carwash Property, LLC. v. Everett* (326 Ga. App. 6 (2014)) in West’s Georgia Code Annotated associated with Georgia statute § 34-9-260 is as follows:

*Some evidence supported ALJ's calculation that workers' compensation claimant worked 38 hours per week when he was injured during training and thus that claimant's average weekly wage was \$323, although claimant had worked only three days before being injured, and although employer testified that claimant would have been placed on part-time schedule once training had been completed; evidence indicated that lube technicians, such as claimant, worked four days per week, employer's business was open ten hours per day for six days of the week, claimant was supposed to work from time that business opened until it closed, and employees took 30-minute lunch.*

*Ga. Code Ann. § 34-9-260 ann. (West 2016).*

**RESPONSE:**

Admitted.

5. *Although at least some of the O.C.G.A. volumes and supplements purchased by Public Resource were available for purchase on compact disc (CD), Public Resource purchased these volumes and supplements in paper form. Stip. ¶ 35.*

**RESPONSE:**

Admitted.

6. *LexisNexis publishes and sells the O.C.G.A. as a printed publication, on CD-ROM, and in an on-line version. Stip. ¶ 84.*

**RESPONSE:**

Admitted.

7. *LexisNexis receives income from its sales of the O.C.G.A. Stip. ¶ 85.*

**RESPONSE:**

Admitted.

8. *The annotation of the judicial decision Piedmont Newnan Hosp., Inc. v. Barbour, 333 Ga. App. 620 (2015), in the O.C.G.A. associated with Georgia statute § 24-4-401 is as follows:*

*In a medical malpractice case, the trial court did not abuse its discretion in allowing the jurors to touch plaintiff's hand to determine for themselves if there was a detectable difference in the temperature of each hand and which of the parties' experts was correct as to whether plaintiff suffered from Complex Regional Pain Syndrome because the jurors could utilize all their senses, not just hearing and eyesight, indetermining factual disputes put to*

*them; the evidence was relevant; and the trial court was not essentially allowing the jurors to make a medical diagnosis as the touching of plaintiff's arm allowed the jurors to determine whether the left arm was cooler than the right arm, and which expert was more credible.*

*O.C.G.A. § 24-4-401 ann. (2015).*

**RESPONSE:**

Admitted.

*9. The annotation of the judicial decision Piedmont Newnan Hosp., Inc. v. Barbour, 333 Ga. App. 620 (2015), in West's Georgia Code Annotated associated with Georgia statute § 24-4-401 is as follows:*

*Evidence of difference in temperature between patient's two hands was relevant to experts' contested diagnosis of whether patient suffered from complex regional pain syndrome (CRPS), in medical malpractice action against hospital in which patient alleged that hospital failed to ensure intravenous (IV) needle was correctly installed and properly functioning prior to heart stress test, thus causing infiltration of nuclear tracer material in his arm and development of CRPS.*

*Ga. Code Ann. § 24-4-401 ann. (West 2016).*

**RESPONSE:**

Admitted.

*10. PR created, uploaded to its website at <https://law.resource.org>, and distributes, an XML-encoded version of the O.C.G.A. Ex. 2, PRO000633–PRO000635, PRO000654.*

**RESPONSE:**

Admitted.

11. *PR's XML-encoded version of Title 1 of the O.C.G.A. is available at <https://law.resource.org/pub/us/code/ga/georgia.xml.2014/TITLE%201.%20GENERAL%20PROVISIONS.xml>. Ex. 2, PRO000634. Exhibit 3 is a true and accurate reproduction of the XML-encoded version of this file. Ex. 3.*

**RESPONSE:**

Admitted.

12. *PR's XML-encoded version of O.C.G.A. Title 1 does not include any annotations. For example, O.C.G.A. § 1-1-1 contains an annotation of the judicial decision Georgia ex rel. Gen Assy'y v. Harrison Co., 548 F. Supp. 110 (N.D. Ga. 1982), while PR's XML-encoded version of that statute includes no annotations other than the revision history. Ex 3, at 1.*

**RESPONSE:**

Admitted.

Respectfully submitted this 5th day of July, 2016.

[Signature block omitted]



**APPENDIX WW**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CODE REVISION  
COMMISSION on  
behalf of and for the  
benefit of THE  
GENERAL ASSEMBLY  
OF GEORGIA, and THE  
STATE OF GEORGIA,

Plaintiff,

v.

PUBLIC  
RESOURCE.ORG, INC.

Defendant.

CIVIL ACTION NO.

1:15-CV-2594-RWS

**JOINT MOTION FOR ENTRY OF PROPOSED  
PERMANENT INJUNCTION ORDER**

Plaintiff and Counterclaim-Defendant the Code Revision Commission, on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia (“Commission”), and Defendant and Counterclaim-Plaintiff Public.Resource.Org, Inc. (“Public Resource”) jointly move for the Court to enter the below Proposed Permanent Injunction Order following this Court’s Order on March 23, 2017 (Dkt. No. 44) granting Commission’s Motion for Partial Summary

Judgment. On March 23, 2017, upon learning of the Court's Order, Public Resource took down all versions of the O.C.G.A. from its website and any other website within its possession, custody, or control. Public Resource has also removed all fundraising solicitations for its use of the O.C.G.A. from its website and any other website within its possession, custody, or control and from its web server.

The Parties submit this Joint Motion in lieu of a proposed briefing schedule to address the injunctive relief to which Commission is entitled.

Respectfully submitted, this 6th day of April, 2017.

[Signature blocks omitted]

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CODE REVISION  
COMMISSION on  
behalf of and for the  
benefit of THE  
GENERAL ASSEMBLY  
OF GEORGIA, and THE  
STATE OF GEORGIA,

Plaintiff,

v.

PUBLIC  
RESOURCE.ORG, INC.

Defendant.

CIVIL ACTION NO.

1:15-CV-2594-RWS

**[PROPOSED] PERMANENT  
INJUNCTION ORDER**

The Court, having entered an Order on March 23, 2017 granting Plaintiff's Motion for Partial Summary Judgment, with respect to Plaintiff's works that were registered with the United States Copyright Office at the time of briefing, hereby issues the following injunctive relief:

Defendant is permanently enjoined from all unauthorized use, including through reproduction, display, distribution, or creation of derivative works, of the Official Code of Georgia Annotated (O.C.G.A.). Defendant is FURTHER ORDERED to remove all versions of

the O.C.G.A. from its website and any other website within its possession, custody, or control within seven days, wherein “remove” means deletion from the website and wherein merely making the O.C.G.A. versions inaccessible does not amount to a removal of said versions. Defendant may continue to use, in relation to its court submissions, excerpts from versions for the O.C.G.A. that were filed by either party as exhibits to, or quoted in, documents filed with the Court through the ECF system and presently available on the PACER system, and which are part of the record in this case[.] Defendant is

FURTHER ORDERED to remove all fundraising solicitations for the Defendant’s unauthorized use, including through reproduction, display, distribution, or creation of derivative works, of the O.C.G.A. from its website and any other website within its possession, custody, or control within seven days.

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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UNITED STATES  
DISTRICT JUDGE  
NORTHERN DISTRICT  
OF GEORGIA

**APPENDIX XX**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CODE REVISION  
COMMISSION on  
behalf of and for the  
benefit of THE  
GENERAL ASSEMBLY  
OF GEORGIA, and THE  
STATE OF GEORGIA,

Plaintiff,

v.

PUBLIC  
RESOURCE.ORG, INC.

Defendant.

CIVIL ACTION NO.

1:15-CV-2594-RWS

**PUBLIC RESOURCE.ORG'S SUPPLEMENTAL  
STATEMENT IN SUPPORT OF JOINT MOTION  
FOR ENTRY OF PROPOSED PERMANENT  
INJUNCTION ORDER**

Defendant and Counterclaim-Plaintiff Public.Resource.Org, Inc. ("Public Resource") files this supplemental statement to clarify that its joinder in the Motion for Permanent Injunction Order (Dkt. 45) is not intended to waive, and expressly does not waive, its right to appeal the Court's March 23, 2017 Order to the United States Court of Appeals for the Eleventh

Circuit and seek reversal of the order and judgment against it.

On March 23, 2017, upon learning of the Court's Order granting the Commission's motion for partial summary judgment, to comply with the order, Public Resource took down all versions of the O.C.G.A. from its website and every other website within its possession, custody, or control. Public Resource also removed all fundraising solicitations for its use of the O.C.G.A. from its website and any other website within its possession, custody, or control and from its web server. Public Resource joined in the Motion for Permanent Injunction Order to avoid the need for briefing to address the injunctive relief issue and thus preserve the Parties' and Court's resources.

Respectfully submitted, this 7th day of April, 2017.

[Signature block omitted]

**APPENDIX YY**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CODE REVISION  
COMMISSION on  
behalf of and for the  
benefit of THE  
GENERAL ASSEMBLY  
OF GEORGIA, and THE  
STATE OF GEORGIA,

Plaintiff,

v.

PUBLIC  
RESOURCE.ORG, INC.

Defendant.

CIVIL ACTION NO.

1:15-CV-2594-RWS

**NOTICE OF APPEAL**

Notice is hereby given that Defendant and Counterclaim-Plaintiff Public.Resource.Org, Inc. ("Public Resource") appeals to the United States Court of Appeals for the Eleventh Circuit from the Final Judgment entered on April 7, 2017 (D.I. 46) and all other orders decided adversely to Defendants, including, but not limited to, the Court's March 23, 2017 Order granting Plaintiff's Motion for Partial Summary Judgment (D.I. 44). Consistent with Rule 4(a) of the Federal Rules of Appellate Procedure, this Notice of Appeal is

being filed within 30 days of the entry of the District Court's March 23, 2017.

Respectfully submitted, this 7th day of April, 2017.

[Signature block omitted]



**APPENDIX ZZ**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CODE REVISION  
COMMISSION and  
STATE OF GEORGIA,

Plaintiffs,

v.

PUBLIC.RESOURCE.  
ORG, INC.

Defendant.

CIVIL ACTION FILE

NO.1:15-CV-2594-  
RWS

**JUDGMENT**

This action having come before the court, Honorable Richard W. Story, United States District Judge, for consideration of the plaintiffs' motion for partial summary judgment and the court having granted said motion, and granted the parties' joint motion for permanent injunction, it is,

Ordered and Adjudged that this action be and the same hereby is dismissed.

Dated at Atlanta, Georgia, this 7<sup>th</sup> day of April, 2017.

JAMES N. HATTEN  
CLERK OF COURT

690

By: s/ Barbara D. Doyle  
Deputy Clerk

Filed and Entered:  
April 7, 2017  
in the Clerk's Office  
James N. Hatten  
Clerk of Court

By: B. D. Boyle  
Deputy Clerk

APPENDIX AAA

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(Order List: 588 U.S.)

MONDAY, JUNE 24, 2019

**CERTIORARI GRANTED**

\* \* \*

18-1150 GEORGIA, ET AL. V.  
PUBLIC.RESOURCE.ORG, INC.

The petition for a writ of certiorari is granted.

\* \* \*