

1 Christopher Seidman (SBN 98884)  
Harmon & Seidman LLC  
2 101 South Third Street, Suite 265  
Grand Junction, Colorado 81501  
3 Tel: (970) 245-9075  
Fax: (970) 245-8086  
4 E-mail: chris@harmonseidman.com

5 Robert W. Crockett (SBN 79918)  
Harmon & Seidman LLC  
6 33 Spindrift Passage  
Corte Madera, California 94925  
7 Tel: (415) 945-1830  
E-mail: robert@harmonseidman.com

8 *Attorneys for Plaintiff Minden Pictures, Inc.*

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11	MINDEN PICTURES, INC.,	)	Case No. CV 11-05385-WHA
12		)	
13	Plaintiff,	)	DECLARATION OF RICHARD L. MINDEN
14	v.	)	IN OPPOSITION TO DEFENDANT
15	PEARSON EDUCATION, INC.,	)	PEARSON EDUCATION, INC.'S MOTION
16	Defendant.	)	FOR SUMMARY JUDGMENT
17		)	Date: February 28, 2013
		)	Time: 8:00 a.m.
		)	Courtroom: 8, 19th Floor

18 I, Richard L. Minden, hereby declare pursuant to 28 U.S.C. § 1746:

19 1. I am a United States citizen residing in Watsonville, California, and I am the owner  
20 and President of Minden Pictures, Inc. ("Minden Pictures"), Plaintiff in this action. Minden  
21 Pictures is a stock photography agency in the business of licensing images to publishers, including  
22 Pearson Education, Inc. ("Pearson"), Defendant in this action. Minden Pictures' office is located in  
23 Watsonville, California. I have first-hand, personal knowledge of all matters stated herein and if  
24 called upon to do so could testify to them.

25 2. I have been involved on a full-time basis in the business of photography, including  
26 licensing photography, for approximately 30 years. I am experienced with photography licensing

1 practices, having licensed thousands of images for textbooks, magazines, paper products,  
2 advertising and many other uses.

3 3. Exhibits 1a, 1b and 2c to the Third Amended Complaint in this action list the  
4 copyright infringement claims involved in this case, including the photographers who created each  
5 of the images in suit (“the Photographers”). Before issuing licenses to Pearson, Minden Pictures  
6 entered into agency agreements with the Photographers or their representatives (“Agency  
7 Agreements”). Copies of those Agency Agreements are attached to this declaration as Exhibits 1-1  
8 through 1-12. The Agency Agreements authorized Minden Pictures to sell licenses to publishers  
9 allowing them to reproduce the Photographers’ copyrighted images and to distribute copies of the  
10 images to the public.

11 4. With the exception of any instances in which Pearson used the images in suit  
12 without any license at all – which, because Pearson alone knows those wholly unauthorized uses,  
13 Minden Pictures cannot yet identify without further discovery from Pearson – all of the claims in  
14 suit – 100% of them – are based on licenses issued to Pearson by Minden Pictures. Stated another  
15 way, there are no claims in suit pertaining to licenses Pearson obtained directly from any of the  
16 Photographers or from any other person or entity other than Minden Pictures. Pearson’s copyright  
17 infringements that are the subject of this action are the result of its uses of the images in suit  
18 beyond the scope of the permission Minden Pictures, acting with authority from its contributing  
19 photographers, granted Pearson.

20 5. Before filing this action Minden Pictures obtained from each of the Photographers  
21 or their representatives a Copyright Assignment, Accrued Causes of Action, and Litigation  
22 Agreement (collectively, “Copyright Assignments”). Copies of those Copyright Assignments are  
23 attached to the Third Amended Complaint and to this declaration as Exhibits 2a, 2b and 2c. With  
24 the exception of one pertaining to Photographers Michael and Patricia Fogden, they are in their  
25 original, unaltered form.

1           6.       Michael and Patricia Fogden are married, full time professional photographers, co-  
2 authors of their photographs, and are citizens of the United Kingdom currently residing in Ecuador.  
3 The Copyright Assignment, Accrued Causes of Action, and Litigation Agreement was initially  
4 signed by Michael Fogden on February 24, 2010 and by me on March 10, 2010. A copy of that  
5 agreement is attached as Exhibit 3. On February 27, 2012, at my request, Patricia Fogden added  
6 her signature to the agreement and dated it February 24, 2010. A copy of the agreement with her  
7 signature is attached as Exhibit 4.

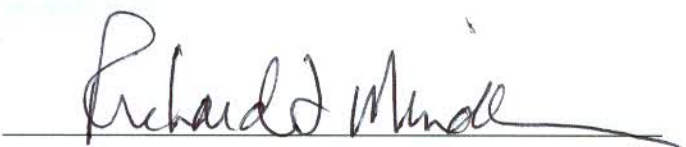
8           7.       Michael Fogden's and Patricia Fogden's photography business is managed by  
9 Michael's sister Susan Fogden, and it has been my understanding at all pertinent times that Susan  
10 Fogden has Michael Fogden's and Patricia Fogden's authority to sign documents on their behalf,  
11 which she has often done. In the e-mail exchange between me and Susan Fogden that Pearson  
12 submitted with its motion,<sup>1</sup> my reference to "faking it" was a cavalier, off-hand comment made  
13 without reflection and with no intent to defraud. While I knew adding signatures and dates to pre-  
14 existing documents was "faking it" in the sense that the documents would be altered, I was not  
15 aware that doing so was illegal if all parties consented, as was the case here. I thought adding  
16 signatures in case Susan's signatures were deemed insufficient was the simplest, clearest way to  
17 confirm the agreements between Minden Pictures and the Fogdens. It has been my understanding  
18 at all pertinent times that Michael Fogden and Patricia Fogden were aware of and approved the  
19 Agency Agreements with Minden Pictures when they were executed on their behalf by Susan  
20 Fogden. It has also been my understanding at all pertinent times that Susan Fogden was aware of  
21 and approved the Copyright Assignment when it was executed by Michael Fogden. There has been  
22 no disagreement, and is no disagreement now, between Minden Pictures and either Michael  
23 Fogden or Patricia Fogden regarding Minden Pictures pursuing this action against Pearson for its  
24 infringements of images licensed by Minden Pictures, and there has been no disagreement about  
25 making whatever assignments are necessary to accomplish that purpose.

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27 <sup>1</sup> Doc. 64-6.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Watsonville, California.

Date: Feb 1 2013



Richard L. Minden

CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of 18 years, and not a party to the above-entitled action. My business address is 33 Spindrift Passage, Corte Madera, California 94925.

I hereby certify that on February 5, 2013 I caused the foregoing DECLARATION OF RICHARD L. MINDEN IN OPPOSITION TO DEFENDANT PEARSON EDUCATION, INC.'S MOTION FOR SUMMARY JUDGMENT to be filed via the CM/ECF system, which will serve a Notice of Electronic Filing to all counsel of record, including the following:

Sharon R. Smith  
Andrew M. Purdy  
Morgan, Lewis & Bockius LLP  
One Market Street, Spear Street Tower  
San Francisco, California 94105-1126  
Tel: (415) 442-1000  
Fax: (415) 442-1001  
E-mail: srsmith@morganlewis.com  
apurdy@morganlewis.com

David W. Marston Jr.  
Karl A. Schweitzer  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, Pennsylvania 19103  
Tel: (215) 963-5000  
Fax: (215) 963-5001  
E-mail: dmarston@morganlewis.com  
kschweitzer@morganlewis.com

I declare under penalty of perjury that I am a member of the bar of this Court and that the foregoing is true and correct.

Executed on February 5, 2013 at Corte Madera, California.

s/ Robert W. Crockett

Robert W. Crockett (SBN 79918)  
Harmon & Seidman LLC  
33 Spindrift Passage  
Corte Madera, California 94925  
Tel: (415) 945-1830  
E-mail: robert@harmonseidman.com