

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

AMERICAN SOCIETY FOR TESTING AND
MATERIALS d/b/a ASTM INTERNATIONAL;

NATIONAL FIRE PROTECTION
ASSOCIATION, INC.; and

AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR CONDITIONING
ENGINEERS,

Plaintiffs/Counter-defendants,

v.

PUBLIC.RESOURCE.ORG, INC.,

Defendant/Counterclaimant.

Case No. 1:13-cv-01215-TSC

**SUPPLEMENTAL DECLARATION OF MATTHEW BECKER IN OPPOSITION TO
[198] PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND PERMANENT
INJUNCTION AND IN SUPPORT OF DEFENDANT PUBLIC RESOURCE'S
SECOND MOTION FOR SUMMARY JUDGMENT**

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

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

I. NEWLY OBTAINED OR NOW UNABRIDGED DEPOSITION TESTIMONY

2. The first two deposition transcripts provide newly obtained testimony from current and former government officials that is pertinent to several aspects of the incorporation process,

use of the standards as laws, and public access to those laws, among other issues. After those, I attach here complete copies of deposition transcripts that had previously been provided to the Court only in part. These complete copies are attached both for the convenience of having them collected in one place, and also in case unabridged copies might aid the Court in its analysis.

3. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 36** is a true and correct transcript of the deposition of Mia D. Marvelli, dated August 19, 2019.

4. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 37** is a true and correct transcript of the deposition of Mary H. Saunders, dated August 15, 2019.

5. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 38** is a true and correct transcript of the deposition of Plaintiffs' expert, John Jarosz, dated August 27, 2015. Portions of this transcript were previously provided at Dkt. 122-1, Ex. 9.

6. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 39** is a true and correct transcript of the deposition of Public Resource's expert, James Fruchterman, dated July 31, 2015. Portions of this transcript were previously provided at Dkt. 122-1, Ex. 7.

7. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 40** is a true and correct transcript of the deposition of Daniel Smith, one of ASTM's Rule 30(b)(6) designees, dated July 24, 2015. Portions of this transcript were previously provided at Dkt. 122-2, Ex. 13.

8. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 41** is a true and correct transcript of the deposition of Christian Dubay, one of NFPA's Rule 30(b)(6) designees, dated April 1, 2015. Portions of this transcript were previously provided at Dkt. 122-1, Ex. 6.

9. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 42** is a true and correct transcript of the deposition of Bruce Mullen, one of NFPA's Rule 30(b)(6) designees, dated March 31, 2015. Portions of this transcript were previously provided at Dkt. 122-2, Ex. 11.

10. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 43** is a true and correct transcript of the deposition of Stephanie Reiniche, one of ASHRAE's Rule 30(b)(6) designees, dated March 30, 2015. Portions of this transcript were previously provided at Dkt. 122-2, Ex. 12.

11. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 44** is a true and correct transcript of the deposition of Steven Comstock, one of ASHRAE's Rule 30(b)(6) designees, dated March 5, 2015. Portions of this transcript were previously provided at Dkt. 122-1, Ex. 5.

12. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 45** is a true and correct transcript of the deposition of Jeffrey Grove, one of ASTM's Rule 30(b)(6) designees, dated March 4, 2015. Portions of this transcript were previously provided at Dkt. 122-1, Ex. 8.

13. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 46** is a true and correct transcript of the deposition of Donald Bliss, one of NFPA's Rule 30(b)(6) designees, dated March 3, 2015. Portions of this transcript were previously provided at Dkt. 122-1, Ex. 4.

14. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 47** is a true and correct transcript of the deposition of Carl Malamud, dated February 27, 2015. Portions of this transcript were previously provided at Dkt. 122-12, Ex. 3.

15. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 48** is a true and correct transcript of the deposition of Carl Malamud as Rule 30(b)(6) designee for Public Resource, dated February 26, 2015. Portions of this transcript were previously provided at Dkt. 118-12, Ex. 2.

16. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 49** is a true and correct transcript of the deposition of Vikas Bhutada, Rule 30(b)(6) designee for third party HTC Global Services, dated November 5, 2014. Portions of this transcript were previously provided at Dkt. 122-12, Ex. 5.

17. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 50** is a true and correct transcript of the deposition of Rebecca Malamud, Rule 30(b)(6) designee for third party Point B Studio, dated November 13, 2014. Portions of this transcript were previously provided at Dkt. 122-1, Ex. 10.

18. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 51** is a true and correct copy of ASHRAE's Answers and Objections to Public Resource's Third Set of Interrogatories, dated June 26, 2019.

19. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 52** is a true and correct copy of NFPA's Answers and Objections to Public Resource's Third Set of Interrogatories, dated July 1, 2019.

20. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 53** is a true and correct copy of ASTM's Second Supplemental Objections and Responses to Public Resource's Third Set of Interrogatories, dated September 9, 2019.

21. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 54** is a true and correct copy of ASTM's Objections and Responses to Public Resource's First Set of Interrogatories, dated March 24, 2014.

22. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 55** is a true and correct copy of ASHRAE's 2016-17 Financial Update and Budget Board of Directors Presentation, produced as begin Bates reference ASHRAE0045821.

23. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 56** is a true and correct copy of ASHRAE's 2017-18 Financial Update and Budget Board of Directors Presentation, produced as begin Bates reference ASHRAE0045848.

24. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 57** is a true and correct copy of Exhibit 5 from the deposition of Mary Saunders.

25. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 58** is a true and correct copy of Exhibit 9 from the deposition of Mary Saunders. This exhibit is the Office of the Federal Register's "IBR Handbook," dated July 2018, available at <https://www.archives.gov/federal-register/write/handbook>.

26. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 59** is a true and correct copy of Exhibit 10 from the deposition of Mary Saunders.

27. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 60** is a true and correct copy of Exhibit 11 from the deposition of Mary Saunders.

28. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 61** is a true and correct copy of Exhibit 13 from the deposition of Mary Saunders.

29. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 62** is a true and correct copy of Exhibit 14 from the deposition of Mary Saunders.

30. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 63** is a true and correct copy of Exhibit 21 from the deposition of Mary Saunders.

31. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 64** is a true and correct copy of Exhibit 23 from the deposition of Mary Saunders.

32. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 65** is a true and correct copy of Exhibit 24 from the deposition of Mary Saunders.

33. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 66** is a true and correct copy of Exhibit 25 from the deposition of Mary Saunders.

34. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 67** is a true and correct copy of Exhibit 26 from the deposition of Mary Saunders.

35. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 68** is a true and correct copy of Exhibit 28 from the deposition of Mary Saunders.

36. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 69** is a true and correct copy of Exhibit 37 from the deposition of Mary Saunders.

37. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 70** is a true and correct copy of Exhibit 43 from the deposition of Mary Saunders.

38. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 71** is a true and correct copy of Exhibit 46 from the deposition of Mary Saunders.

39. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 72** is a true and correct copy of the December 31, 2015 and 2014 National Fire Protection Association Financial Statements, produced as begin Bates reference NFPA-PR0097912.

40. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 73** is a true and correct copy of the December 31, 2016 and 2015 National Fire Protection Association Financial Statements, produced as begin Bates reference NFPA-PR0097936.

41. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 74** is a true and correct copy of December 31, 2017 and 2016 National Fire Protection Association Financial Statements, produced as begin Bates reference NFPA-PR0097961.

42. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 75** is a true and correct copy of the December 31, 2018 and 2017 National Fire Protection Association Financial Statements, produced as begin Bates reference NFPA-PR0097987.

43. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 76** is a true and correct copy of the NFPA income statement, produced as begin Bates reference NFPA-PR0098016.

44. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 77** is a true and correct copy of the Code and Standard Units Sold, produced as begin Bates reference NFPA-PR0098022.

45. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 78** is a true and correct copy of page view and sales information, produced as begin Bates reference NFPA-PR0098023.

46. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 79** is a true and correct copy of NFPA Publication sales 2009-2013, produced as begin Bates reference NFPA-PR0098028.

47. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 80** is a true and correct copy of NFPA Publication sales 2014-2018, produced as begin Bates reference NFPA-PR0098029.

48. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 81** is a true and correct copy of an email produced as begin Bates reference NFPA-PR0098030.

49. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 82** is a true and correct copy of the NEC adoption maps, produced as begin Bates reference NFPA-PR0098046.

50. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 83** is a true and correct copy of CodeFinder Tool Disclaimer, produced as begin Bates reference NFPA-PR0098059.

51. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 84** is a true and correct copy of Exhibit 3 from the deposition of Mia Marvelli.

52. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 85** is a true and correct copy of Exhibit 4 from the deposition of Mia Marvelli.

53. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 86** is a true and correct copy of Exhibit 7 from the deposition of Mia Marvelli.

54. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 87** is a true and correct copy of Exhibit 8 from the deposition of Mia Marvelli.

55. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 88** is a true and correct copy of Exhibit 9 from the deposition of Mia Marvelli.

56. Attached as **Exhibit 89** is a table of the ASHRAE standards at issue in this case, and text of applicable incorporations into law. Because incorporations into law are numerous and

occur at the federal, state, and local levels of government, this table does not exhaust every incorporation for the relevant standards.

57. Attached as **Exhibit 90** is a table of the ASTM standards at issue in this case, and text of applicable incorporations into law. Because incorporations into law are numerous and occur at the federal, state, and local levels of government, this table does not exhaust every incorporation for the relevant standards.

58. Attached as **Exhibit 91** is a table of the NFPA standards at issue in this case, and text of applicable incorporations into law. Because incorporations into law are numerous and occur at the federal, state, and local levels of government, this table does not exhaust every incorporation for the relevant standards.

59. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 92** is a true and correct copy of a printout from the National Archives website, titled "Incorporation by Reference", available at <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

60. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 93** is a true and correct copy of the Declaration in Support of Probable Cause, *California v. Harris*, No. 17-CR-017349A (Cal. Super. Ct. June 5, 2017), available at <https://www.scribd.com/document/350446988/Ghost-Ship-fire-criminal-charges>.

61. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 94** is a true and correct copy of the Criminal Complaint, *California v. Harris*, No. 17-CR-017349A (Cal. Super. Ct. June 5, 2017), available at <https://web.archive.org/web/20170729051241/https://cbssanfran.files.wordpress.com/2017/06/almena-and-harris-complaint.pdf>).

62. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 95** is a true and correct copy of the internal document produced by ASTM at ASTM102031-2.

63. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 96** is a true and correct copy of the Expert Report of James Fruchterman, previously submitted at Dkt. 122-6 and resubmitted for the convenience of the Court.

64. Attached to Public Resource's Consolidated Index of Exhibits as **Exhibit 97** is a true and correct copy of the internal document produced by ASTM at ASTM19297-9.

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

Executed this 12th day of November, 2019 at San Francisco, California.

/s/ Matthew B. Becker

Matthew B. Becker