

EXHIBIT 7

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING AND
MATERIALS D/B/A ASTM INTERNATIONAL;
NATIONAL FIRE PROTECTION, INC.;
AND AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR-CONDITIONING
ENGINEERS, INC.

Plaintiffs, /
Counter-Defendants, Case No.:

vs. 1:13-cv-01215-EGS

PUBLIC.RESOURCE.ORG, INC.

Defendant/
Counter-Plaintiff

----- /
VIDEOTAPED DEPOSITION OF THE 30 b) 6) OF
PUBLIC.RESOURCE.ORG

DATE: Thursday, February 26, 2015

TIME: 10:07

LOCATION: 1 Market Street, Spear Tower, Suite
2000, San Francisco, California

Reported by: Ashley Soevyn
Certified Shorthand Reporter
License Number 12019

126	<p>1 law has no copyright in the United States, and if a 2 standard is incorporated by reference into law, it 3 is the law. 4 THE REPORTER: Next one is 35. 5 (Exhibit 35 marked for identification.) 6 BY MR. FEE: 7 Q I'm going to hand you what has been marked 8 as Exhibit 35. Appears to be a chain of e-mails 9 between you and Joseph Mornin; Bates-labeled 10 PRO_167245 through -47. 11 A I recall this exchange. 12 Q So Exhibit 35 is an e-mail between -- or a 13 series of e-mails between and Mr. Mornin; is that 14 right? 15 A That's correct. 16 Q I want to turn your attention to the 17 second page of Exhibit 35. Towards the bottom you 18 see it says, "on 5/1/12 at 11:06 a.m. Carl Malamud 19 wrote." Do you see that? 20 A Yes, I do. 21 Q Okay. Second paragraph in -- in that 22 e-mail starts with the open task, we have -- are to 23 pick an appropriate state. Do you see that part? 24 A Yes, I do. 25 Q Okay. The second sentence in that</p>	128	<p>1 hypothetical and implicitly calls for a legal 2 opinion, vague and ambiguous. 3 You can answer. 4 THE WITNESS: Some states are -- are 5 sloppy and nonspecific, and again, we look for a 6 very specific and deliberate incorporation by 7 reference of a specific standard into the law. 8 BY MR. FEE: 9 Q So when you're talking about five listed 10 standards there, are you referring to five versions 11 of one standard? Is that what you're saying? 12 MR. BRIDGES: Objection, misstates the 13 document, lacks foundation, vague and ambiguous. 14 THE WITNESS: I was giving Mr. Mornin an 15 example of something that was not a specific 16 reference, a -- a specific incorporation of a 17 specific year of a standard into law, and it was a 18 hypothetical example. 19 BY MR. FEE: 20 Q Who is Joseph Mornin? 21 A Mr. Mornin was a Harvard undergrad that 22 was then going to go to Berkeley law school and 23 wanted a job for the summer, and so we gave him a 24 little bit of money -- it was like \$1,500 -- and he 25 became a fellow.</p>
127	<p>1 paragraph says, "It has to be an explicit 2 incorporation of a specific standard. Then it 3 falls, under the Veeck decision, e.g., it can't be, 4 quote, you can meet this legal requirement by, for 5 example, using one of these five listed standards. 6 Any version will do. It has to be, quote, the 7 Secretary of State here -- does hereby incorporate 8 the 1962 version of this standard and it is required 9 by law." 10 Do you see that? 11 A Yes, I do. 12 Q Can you explain what you meant there? 13 MR. BRIDGES: Objection to the extent it 14 calls for a legal conclusion. 15 THE WITNESS: I meant exactly what I -- I 16 have been -- been telling you, that in order for us 17 to post a standard, it must be explicitly 18 incorporated by law and must be a specific version 19 of that standard. 20 BY MR. FEE: 21 Q And I want to get a -- your explanation 22 for the part of that quote that we just read where 23 it says, "using one of these five listed standards." 24 Any -- what are you referring to there? 25 MR. BRIDGES: Objection, calls for a</p>	129	<p>1 MR. BRIDGES: I'll ask you to answer the 2 question. 3 THE WITNESS: Okay. 4 BY MR. FEE: 5 Q Besides Mr. Mornin, have there been any 6 other fellows of Public Resource since 2007? 7 A No. 8 Q Can you describe how Public Resource 9 decided which standards that were incorporated by 10 reference that it would post on its website? 11 A Looked for these specific incorporation of 12 a specific standard, the deliberate and -- and 13 explicit incorporation of a specific year of a 14 specific standard by a governmental authority into 15 law. 16 Q How did you decide which of those 17 standards that were specifically incorporated would 18 be first put on the Public Resource website? 19 A I looked for compelling examples. 20 Q How did you go about doing that? 21 A I read through the law and looked at what 22 was incorporated by reference. 23 Q Did you start with the CFR or some other 24 source of law? 25 A Well, we began in 2008 with -- with Title</p>

<p style="text-align: right;">130</p> <p>1 24 of the California Code of Regulations. 2 Q What made a particular standard a 3 compelling standard for purposes of posting it on 4 your website? 5 A I looked for standards that I thought were 6 compelling and were critical to the public safety. 7 Q How did you make an assessment as to 8 whether or not a standard was critical for public 9 safety? 10 A Well, that was simply my opinion. I read 11 the standard. 12 Q After you dealt with Title 24 of the 13 California Code, how did you next go about 14 identifying standards that were incorporated by 15 reference that you would post on the Public Resource 16 website? 17 MR. BRIDGES: Objection, vague and 18 ambiguous. 19 THE WITNESS: I did a survey of state 20 regulations looking for similar public safety 21 codes. 22 23 BY MR. FEE: 24 Q Did you do all that work yourself? 25 A I did.</p>	<p style="text-align: right;">132</p> <p>1 ambiguous, lacks foundation. 2 THE WITNESS: And I'm sorry. Could you 3 repeat the question? 4 BY MR. FEE: 5 Q When you were doing your review of the 6 state regulatory materials and statutes, did you 7 encounter any state statutes or regulatory -- or 8 regulations that incorporated by reference anything 9 other than a standard? 10 MR. BRIDGES: Objection, vague and 11 ambiguous. 12 THE WITNESS: "Standard" is a very broad 13 term, sir. 14 BY MR. FEE: 15 Q Okay. Well, maybe we should start with 16 that, then. The -- what is your understanding as to 17 what would be a standard that could be incorporated 18 by reference? 19 MR. BRIDGES: Objection, may call for a 20 legal opinion, vague and ambiguous, competence. 21 THE WITNESS: I -- I think it's up to the 22 government to decide what can be incorporated by 23 reference, not me. 24 BY MR. FEE: 25 Q Okay. What do you understand a standard</p>
<p style="text-align: right;">131</p> <p>1 Q When you're identifying standards to post 2 on Public Resource's website, do you search for a 3 particular standard development organization's 4 standards? 5 MR. BRIDGES: Objection, vague and 6 ambiguous. 7 THE WITNESS: I -- I look for particular 8 areas of public safety, like building codes. 9 BY MR. FEE: 10 Q Any other particular areas that you were 11 looking for? 12 A I -- I think there are a number of 13 critical areas of public safety in -- in U.S. law, 14 occupational safety, for example. 15 Q How did you go about reviewing various 16 states' statutes and regulations to identify 17 standards that have been incorporated by reference 18 by those states? 19 A I read the regulations. 20 Q While you were reading the regulations of 21 the various states, did you encounter any types of 22 works other than standards that were incorporated by 23 reference by any of the state statutes or 24 regulations that you were reviewing? 25 MR. BRIDGES: Objection, vague and</p>	<p style="text-align: right;">133</p> <p>1 to be? 2 MR. BRIDGES: Objection, vague and 3 ambiguous, competence, lacks foundation, calls for 4 speculation. 5 THE WITNESS: A standard is a document 6 that establishes norms in a particular area of 7 application. 8 BY MR. FEE: 9 Q Now, is it Public Resource's public 10 position that it can only publish standards 11 incorporated by reference when they are a specific 12 standard in a specific year? 13 MR. BRIDGES: Objection, calls for a legal 14 opinion, assumes facts not in evidence, lacks 15 foundation. 16 MR. FEE: I'll actually withdraw that 17 question. 18 MR. BRIDGES: Okay. 19 BY MR. FEE: 20 Q Is there -- is it Public Resource's public 21 position that it can only incorporate the precise 22 standard that has been incorporated by reference -- 23 strike that. 24 Is it Public Resource's public opinion 25 that it can only copy the precise standards that are</p>

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1 deposition of Carl Malamud --
2 MR. BRIDGES: I'm sorry, Carl. Is there
3 anything we should designate as confidential?
4 THE WITNESS: No.
5 MR. BRIDGES: Okay. Sorry. You may
6 proceed.
7 MR. BRIDGES: We reserve the right -- I
8 believe we have 30 days -- well, if you can --
9 let's go off the record for a second to determine
10 whether we'll go back on the record to make a
11 confidentiality request.
12 THE VIDEOGRAPHER: Going off the record,
13 the time is 6:37 p.m.
14 (Recess taken.)
15 THE VIDEOGRAPHER: We're back on the
16 record. The time is 6:38 p.m.
17 MR. BRIDGES: Okay. We can now determine
18 that the deposition is concluded. We're not making
19 any confidentiality designations.
20 THE VIDEOGRAPHER: All right. This
21 concludes today's deposition of Carl Malamud.
22 Master discs of today's deposition will remain in
23 the custody of Capital Reporting. The time is 6:38
24 p.m.
25 MR. BRIDGES: I just want to say it's the

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1 deposition of Public.Resource.Org, not of Carl
2 Malamud. He was the designated witness of the
3 deponent and the deponent was Public.Resource.Org.
4 THE VIDEOGRAPHER: The time is 6:38 p.m.
5 We are now off record.
6 (Whereupon, at 6:38 p.m., the deposition of THE
7 30(b)(6) OF PUBLIC.RESOURCE.ORG was concluded.)
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1 CERTIFICATION OF DEPOSITION OFFICER
2 I, Ashley Soevyn, CSR, duly authorized to
3 administer oaths pursuant to Section 2093(b) of the
4 California Code of Civil Procedure, hereby certify
5 that the witness in the foregoing deposition was by
6 me sworn to testify to the truth, the whole truth
7 and nothing but the truth in the within-entitled
8 cause; that said deposition was taken at the time
9 and place therein stated; that the testimony of the
10 said witness was thereafter transcribed by means of
11 computer-aided transcription; that the foregoing is
12 a full complete and true record of said testimony;
13 and that the witness was given an opportunity to
14 read and correct said deposition and to subscribe
15 the same.
16 I further certify that I am not of counsel or
17 attorney for either or any of the parties in the
18 foregoing deposition and caption named or in any
19 way interested in the outcome of this cause named
20 in said caption.
21
22
23
24
25

ASHLEY SOEVYN
CSR No. 12019

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1 FENWICK & WEST
2 CARL MALAMUD
3 c/o ANDREW BRIDGES
4 555 California Street
5 12th Floor, San Francisco, CA 94104
6 IN RE: ASTM V. PUBLIC.RESOURCE.ORG
7 Dear Mr. Malamud:
8 Please be advised that, pursuant to California
9 Code of Civil Procedure Section 2025.520 or Federal
10 Rule of Civil Procedure 30, the original transcript
11 of your deposition, taken Thursday, February 26,
12 2014, in the above-referenced matter, has been
13 completed and is not ready for your reading,
14 correcting, and signing.
15 Pursuant to the applicable rles, the transcript
16 will be available for 30 days. Any errata changes
17 must be signed by the deponent within the 30-day
18 time period.
19
20 The official transcript for the noticing
21 counsel, with exhibits, will be mailed in
22 accordance with said rules, depending on the action
23 of the deponent.
24 Please do not hesitate to contact us if you
25 have any questions.

Best Regards,

Ashley Soevyn
CSR No. 12019

cc: Original Transcript
All Counsel

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1 ACKNOWLEDGEMENT OF DEPONENT

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4 I, Carl Malamud, 30(b)(6) witness, do hereby
5 acknowledge I have read and examined the foregoing
6 pages of testimony, and the same is a true, correct
7 and complete transcription of the testimony given
8 by me, and any changes or corrections, if any,
9 appear in the attached errata sheet signed by me.

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25 _____
Date Carl Malamud

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1 Capital Reporting Company
1821 Jefferson Place, NW
2 Third Floor
Washington DC 20036
3 (415) 499-DEPO (3376)
4 E R R A T A S H E E T
5 Case Name: ASTM V. PUBLIC.RESOURCE.ORG
6 Witness Name: THE 30(B)(6) OF PUBLIC.RESOURCE.ORG
7 Deposition Date: THURSDAY, FEBRUARY 26
8 Page No. Line No. Change/Reason for Change
9

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25 _____
Signature Date