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By _____, Deputy
Case Number:
34-2021-80003612

1 KELLY M. KLAUS (State Bar No. 161091)
kelly.klaus@mto.com
2 BRYAN H. HECKENLIVELY (State Bar No. 279140)
bryan.heckenlively@mto.com
3 ROSE LEDA EHLER (State Bar No. 296523)
rose.ehler@mto.com
4 MUNGER, TOLLES & OLSON LLP
560 Mission Street
5 Twenty-Seventh Floor
San Francisco, California 94105-2907
6 Telephone: (415) 512-4000
7 Facsimile: (415) 512-4077
8 Attorneys for Intervenor National Fire Protection
Association, Inc.

9
10 LOUIS Y. LEE (State Bar No. 315753)
louis.lee@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
11 One Market, Spear Street Tower
San Francisco, CA 94105-1596
12
13 J. KEVIN FEE (admitted *pro hac vice*)
kevin.fee@morganlewis.com
14 JANE W. WISE (admitted *pro hac vice*)
jane.wise@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
15 1111 Pennsylvania Ave. NW
Washington, DC 20004-2541
16
17 Attorneys for Intervenor
International Code Council, Inc.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SACRAMENTO

20 Public.Resource.Org., Inc.,

21 Petitioner,

22 vs.

23 California Office of Administrative Law, and
the California Building Standards
24 Commission,

25 Respondents.

Case No. 34-2021-80003612

ANSWER-IN-INTERVENTION

Date: Dec. 17, 2021

Time: 10:00 a.m.

Dept.: 27

Judge: Hon. Steven M. Gevercer

Action Filed: March 17, 2021

1 Intervenors National Fire Protection Association, Inc. (“NFPA”) and International Code
2 Council, Inc. (“ICC”) answer the Verified Petition for Writ of Mandate on file in this action as
3 follows:

- 4 1. Answering paragraph 1, Intervenors allege that the paragraph consists of legal conclusions that
5 do not require a response.
- 6 2. Answering paragraph 2, Intervenors allege that the last clause consists of a legal conclusion to
7 which no response is required. Intervenors lack sufficient information to admit or deny the
8 remaining allegations in paragraph 2 and on that basis deny them.
- 9 3. Answering paragraph 3, Intervenors allege that the second and third sentences consist of legal
10 conclusions to which no response is required. Intervenors lack sufficient information to admit
11 or deny the remaining allegations in paragraph 3 and on that basis deny them.
- 12 4. Answering paragraph 4, Intervenors allege that the paragraph consists of legal conclusions that
13 do not require a response.
- 14 5. Answering paragraph 5, Intervenors lack sufficient information to admit or deny the
15 allegations in paragraph 5 and on that basis deny them.
- 16 6. Answering paragraph 6, Intervenors allege that the paragraph consists of legal conclusions that
17 do not require a response.
- 18 7. Answering paragraph 7, Intervenors allege that the paragraph consists of legal conclusions that
19 do not require a response.
- 20 8. Answering paragraph 8, Intervenors allege that the paragraph consists of legal conclusions that
21 do not require a response.
- 22 9. Answering paragraph 8, Intervenors allege that the paragraph consists of legal conclusions that
23 do not require a response. To the extent there are factual allegations in this paragraph,
24 Intervenors lack sufficient information to admit or deny them and on that basis deny them.
- 25 10. Answering paragraph 10, Intervenors allege that the first sentence of paragraph 10 consists of
26 legal conclusions that do not require a response. Intervenors lack sufficient information to
27 admit or deny the remaining allegations in paragraph 10 and on that basis deny them.

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1 Intervenor state that Exhibits A and B are documents that speak for themselves, and
2 Intervenor therefore deny the characterization of the documents as set forth in paragraph 10.

3 11. Answering paragraph 11, Intervenor deny the allegation in the last two sentences of paragraph
4 11 that OAL has “full control” of the contents of the Master Database and “maintains
5 ownership over the CCR,” to the extent that those allegations imply control over the
6 distribution of the works. Intervenor lack sufficient information to admit or deny the
7 remaining allegations in paragraph 11 and on that basis deny them. Intervenor state that
8 Exhibit B is a document that speaks for itself, and Intervenor therefore deny the
9 characterization of the document as set forth in paragraph 11.

10 12. Answering paragraph 12, Intervenor lack sufficient information to admit or deny the
11 allegations in paragraph 12 and on that basis deny them.

12 13. Answering paragraph 13, Intervenor lack sufficient information to admit or deny the
13 allegations in paragraph 13 and on that basis deny them. Intervenor state that Exhibit C is a
14 document that speaks for itself, and Intervenor therefore deny the characterization of the
15 documents as set forth in paragraph 13.

16 14. Answering paragraph 14, Intervenor lack sufficient information to admit or deny the
17 allegations in paragraph 14 and on that basis deny them. Intervenor state that Exhibit D is a
18 document that speaks for itself, and Intervenor therefore deny the characterization of the
19 document as set forth in paragraph 14.

20 15. Answering paragraph 15, Intervenor lack sufficient information to admit or deny the
21 allegations in paragraph 15 and on that basis deny them.

22 16. Answering paragraph 16, Intervenor lack sufficient information to admit or deny the
23 allegations in paragraph 16 and on that basis deny them.

24 17. Answering paragraph 17, Intervenor lack sufficient information to admit or deny the
25 allegations in paragraph 17 and on that basis deny them.

26 18. Answering paragraph 18, Intervenor lack sufficient information to admit or deny the
27 allegations in paragraph 18 and on that basis deny them. Intervenor state that Exhibit D is a
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1 document that speaks for itself, and Intervenor therefore deny the characterization of the
2 document as set forth in paragraph 18.

3 19. Answering paragraph 19, Intervenor lack sufficient information to admit or deny the
4 allegations in paragraph 19 and on that basis deny them. Intervenor state that Exhibit D is a
5 document that speaks for itself, and Intervenor therefore deny the characterization of the
6 document as set forth in paragraph 19.

7 20. Answering paragraph 20 and the footnote thereto, Intervenor lack sufficient information to
8 admit or deny the allegations pertaining to the International Association of Plumbing and
9 Mechanical Officials and on that basis deny them. Intervenor NFPA admits that it sells copies
10 of its copyrighted publication, the National Electrical Code. NFPA also sells copies of the
11 publication entitled the California Electrical Code (“CEC”), which includes the NEC and the
12 California-enacted amendments to the NEC. NFPA publishes and distributes the portions of
13 the CEC that NFPA does not author pursuant to agreement with the BSC. NFPA further
14 admits that it sells printed copies of the CEC for \$216.50. Intervenor ICC admits that it sells
15 copies of its copyrighted publications including the International Building Code, International
16 Residential Code, International Fire Code, and International Existing Building Code. admits
17 that it sells printed copies of the Title 24 of the California Code of Regulations (“CCR”). ICC
18 publishes and distributes the CCR that ICC does not author pursuant to agreement with the
19 BSC. ICC admits that it sells a multi-tiered subscription service (Basic and Premium) that
20 provide additional capabilities for Title 24 of the CCR, Parts 1, 2, 2.5, 6, 8, 9, 10, 11, and 12,
21 referred to as Basic Plus, Premium Lite, and Premium. ICC denies that it sells Title 24 of the
22 CCR through its Basic service, which is offered online at no cost. NFPA and ICC also make
23 the same and other publications available for no charge online in read-only format. Except as
24 otherwise admitted, Intervenor deny the allegations in paragraph 20 and the footnote thereto.

25 21. Answering paragraph 21, Intervenor lack sufficient information to admit or deny the
26 allegations in paragraph 21 and on that basis deny them. Intervenor state that Exhibit F is a
27 document that speaks for itself, and Intervenor therefore deny the characterization of the
28 document as set forth in paragraph 21.

- 1 22. Answering paragraph 22, Intervenors lack sufficient information to admit or deny the
2 allegations in paragraph 22 and on that basis deny them. Intervenors state that Exhibit G is a
3 document that speaks for itself, and Intervenors therefore deny the characterization of the
4 document as set forth in paragraph 22.
- 5 23. Answering paragraph 23, Intervenors admit that print editions of Title 24 are available at
6 libraries and for purchase. Intervenors lack sufficient information to admit or deny the
7 remaining allegations in paragraph 23 and on that basis deny them. Intervenors state that
8 Exhibit G is a document that speaks for itself, and Intervenors therefore deny the
9 characterization of the document as set forth in paragraph 23.
- 10 24. Answering paragraph 24, Intervenors admit that the sections of Title 24 that contain their
11 copyrighted works can be viewed online for free in read-only format. Intervenors lack
12 sufficient information to admit or deny the remaining allegations in paragraph 24 and on that
13 basis deny them. Intervenors state that Exhibit G is a document that speaks for itself, and
14 Intervenors therefore deny the characterization of the document as set forth in paragraph 24.
- 15 25. Answering paragraph 25, Intervenors admit that Title 24 includes standards produced by
16 Intervenors, that BSC does not have the publishing rights to the sections of Title 24 that
17 contain Intervenors' copyrighted works, that it cannot provide free copies to the public, and
18 that those works retain copyright protections. Intervenors lack sufficient information to admit
19 or deny the remaining allegations in paragraph 25 and on that basis deny them.
- 20 26. Answering paragraph 26, Intervenors lack sufficient information to admit or deny the
21 allegations in paragraph 26 and on that basis deny them. Intervenors state that Exhibit H is a
22 document that speaks for itself, and Intervenors therefore deny the characterization of the
23 document as set forth in paragraph 26.
- 24 27. Answering paragraph 27, Intervenors lack sufficient information to admit or deny the
25 allegations in paragraph 28 regarding what Petitioner's letter stated and on that basis deny
26 them. The remaining allegations in paragraph 27 consists of legal conclusions that do not
27 require a response. Intervenors state that Exhibit H is a document that speaks for itself, and
28 Intervenors therefore deny the characterization of the document as set forth in paragraph 27.

- 1 28. Answering paragraph 28, Intervenors lack sufficient information to admit or deny the
2 allegations in paragraph 28 regarding what Petitioner's letter stated and on that basis deny
3 them. The remaining allegations in paragraph 28 consists of legal conclusions that do not
4 require a response. Intervenors state that Exhibit H is a document that speaks for itself, and
5 Intervenors therefore deny the characterization of the document as set forth in paragraph 28.
- 6 29. Answering paragraph 29, Intervenors lack sufficient information to admit or deny the
7 allegations in paragraph 29 regarding what Petitioner's letter stated and on that basis deny
8 them. The remaining allegations in paragraph 29 consists of legal conclusions that do not
9 require a response. Intervenors state that Exhibit H is a document that speaks for itself, and
10 Intervenors therefore deny the characterization of the document as set forth in paragraph 29.
- 11 30. Answering paragraph 30, Intervenors lack sufficient information to admit or deny the
12 allegations in paragraph 30 and on that basis deny them. Intervenors state that Exhibit I is a
13 document that speaks for itself, and Intervenors therefore deny the characterization of the
14 document as set forth in paragraph 30.
- 15 31. Answering paragraph 31, Intervenors allege that the paragraph consists of legal conclusions
16 that do not require a response.
- 17 32. Answering paragraph 32, Intervenors allege that the paragraph consists of legal conclusions
18 that do not require a response.
- 19 33. Answering paragraph 33, Intervenors allege that the paragraph consists of legal conclusions
20 that do not require a response.
- 21 34. Answering paragraph 34, Intervenors allege that the paragraph consists of legal conclusions
22 that do not require a response.
- 23 35. Answering paragraph 35, Intervenors lack sufficient information to admit or deny the
24 allegations in the first sentence of paragraph 35 and on that basis deny them. Intervenors
25 allege that the second sentence of paragraph 35 consists of legal conclusions that do not
26 require a response. Intervenors admit the allegations in the third sentence of paragraph 35.
- 27 36. Answering paragraph 36, Intervenors allege that the paragraph consists of legal conclusions
28 that do not require a response.

- 1 37. Answering paragraph 37, Intervenors allege that the paragraph consists of legal conclusions
2 that do not require a response.
- 3 38. Answering paragraph 38 and the footnote thereto, Intervenors lack sufficient information to
4 admit or deny the allegations in the final sentence of paragraph 38 and on that basis denies
5 them. Intervenors allege that the remainder of the paragraph and the footnote thereto consists
6 of legal conclusions that do not require a response.
- 7 39. Answering paragraph 39, Intervenors lack sufficient information to admit or deny the
8 allegations in the second sentence of paragraph 39 and on that basis deny them. Intervenors
9 allege that the remainder of the paragraph consists of legal conclusions that do not require a
10 response. Intervenors state that Exhibits D and G are documents that speak for themselves,
11 and Intervenors therefore deny the characterization of the document as set forth in paragraph
12 39.
- 13 40. Answering paragraph 40, Intervenors allege that the paragraph consists of legal conclusions
14 that do not require a response.
- 15 41. Answering paragraph 41 and the footnote thereto, Intervenors lack sufficient information to
16 admit or deny the allegations regarding the agreement between OAL and West and on that
17 basis deny them. Intervenors allege that the remainder of the paragraph and the footnote
18 thereto consists of legal conclusions that do not require a response. Intervenors state that
19 Exhibit B is a document that speaks for itself, and Intervenors therefore deny the
20 characterization of the documents as set forth in paragraph 41.
- 21 42. Answering paragraph 42, Intervenors allege that the paragraph consists of legal conclusions
22 that do not require a response.
- 23 43. Answering paragraph 43, Intervenors allege that the paragraph consists of legal conclusions
24 that do not require a response.
- 25 44. Answering paragraph 44, Intervenors lack sufficient information to admit or deny the
26 allegations in the first sentence of the paragraph and on that basis deny them. Intervenors
27 allege that the remainder of the paragraph consists of legal conclusions that do not require a
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1 response. Intervenor state that Exhibit G is a document that speaks for itself, and Intervenor
2 therefore deny the characterization of the document as set forth in paragraph 44.

3 45. Answering paragraph 45, Intervenor allege that the paragraph consists of legal conclusions
4 that do not require a response.

5 46. Answering paragraph 46, Intervenor allege that the paragraph consists of legal conclusions
6 that do not require a response.

7 47. Answering paragraph 47, Intervenor allege that the paragraph consists of legal conclusions
8 that do not require a response.

9 48. Answering paragraph 48, Intervenor allege that the paragraph consists of legal conclusions
10 that do not require a response.

11 49. Answering paragraph 49, Intervenor lack sufficient information to admit or deny the
12 allegations in the first sentence of paragraph 49 and on that basis deny them. Intervenor
13 allege that the remainder of the paragraph consists of legal conclusions that do not require a
14 response. Intervenor state that Exhibits D and G are documents that speak for themselves,
15 and Intervenor therefore deny the characterization of the documents as set forth in paragraph
16 49.

17 50. Answering paragraph 50 and the footnote thereto, Intervenor admit that ICC makes read-only
18 versions of Title 24, Parts 1, 2, 2.5, 6, 8, 9, 10, 11 and 12 available online for free at the URL
19 alleged and that NFPA makes a read-only version of Title 24, Part 3 available online for free at
20 the URL alleged. Intervenor lack sufficient information to admit or deny the allegations in
21 paragraph 50 regarding (a) statements made by Respondents and (b) the practices of IAMPO
22 and West and on that basis deny them. Intervenor allege that the remainder of the paragraph
23 and the footnote thereto consists of legal conclusions that do not require a response.

24 Intervenor state that Exhibits D and G are documents that speak for themselves, and
25 Intervenor therefore deny the characterization of the documents as set forth in paragraph 50.

26 51. Answering paragraph 51, Intervenor allege that the paragraph consists of legal conclusions
27 that do not require a response. Intervenor state that Exhibit G is a document that speaks for
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1 itself, and Intervenors therefore deny the characterization of the document as set forth in
2 paragraph 51.

3 52. Answering paragraph 52, Intervenors allege that the paragraph consists of legal conclusions
4 that do not require a response. Intervenors state that Exhibit D is a document that speaks for
5 itself, and Intervenors therefore deny the characterization of the document as set forth in
6 paragraph 52.

7 53. Answering paragraph 53, Intervenors allege that the paragraph consists of legal conclusions
8 that do not require a response.

9 54. Answering paragraph 54, Intervenors lack sufficient information to admit or deny the
10 allegations in the first sentence of paragraph 54 and on that basis deny them. Intervenors
11 allege that the remainder of the paragraph consists of legal conclusions that do not require a
12 response. Intervenors state that Exhibits D, G and I are documents that speak for themselves,
13 and Intervenors therefore deny the characterization of the documents as set forth in paragraph
14 54.

15 55. Answering paragraph 55, Intervenors allege that the paragraph consists of legal conclusions
16 that do not require a response.

17 56. Answering paragraph 56, Intervenors allege that the paragraph consists of legal conclusions
18 that do not require a response.

19 57. Answering paragraph 57, Intervenors allege that the paragraph consists of legal conclusions
20 that do not require a response.

21 58. Answering paragraph 58, Intervenors allege that the paragraph consists of legal conclusions
22 that do not require a response.

23 59. Answering paragraph 59, Intervenors allege that the paragraph consists of legal conclusions
24 that do not require a response.

25 60. Answering paragraph 60, Intervenors allege that the paragraph consists of legal conclusions
26 that do not require a response.

27 61. Answering paragraph 61, Intervenors allege that the paragraph consists of legal conclusions
28 that do not require a response.

1 62. Answering paragraph 62, Intervenors allege that the paragraph consists of legal conclusions
2 that do not require a response.

3 63. Answering paragraph 63, Intervenors allege that the paragraph consists of legal conclusions
4 that do not require a response.

5 64. Answering paragraph 64, Intervenors allege that the paragraph consists of legal conclusions
6 that do not require a response.

7 65. Answering paragraph 65, Intervenors allege that the paragraph consists of legal conclusions
8 that do not require a response.

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AFFIRMATIVE DEFENSES

11

In support of their affirmative defenses, NFPA and ICC allege the following facts:

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1. NFPA and ICC are non-profit entities that create voluntary consensus standards in
13 highly technical areas, such as electrical installation and construction. Governmental bodies often
14 incorporate portions of these standards by reference. This is a valuable public-private partnership,
15 and the results of that partnership greatly benefit the public. NFPA's and ICC's standards are
16 developed with substantial expertise and provide accurate, high-quality works that resource-
17 constrained governmental entities otherwise would have to create themselves. The existence and
18 refinement of these standards serves the critical public interest in safety.

19

2. NFPA and ICC receive remuneration when they sell copies to or license the
20 exercise of their exclusive rights to people and businesses that use these works in their commercial
21 trade. NFPA and ICC rely on this revenue to fund their development and updating of their
22 standards.

23

3. BSC has incorporated by reference NFPA's National Electrical Code ("NEC"),
24 with certain California-specific amendments. The combined document consisting of the NEC and
25 the California-specific amendments is published under the title, California Electrical Code, which
26 appears at Title 24, Part 3 of the California Code of Regulations. California's Office of
27 Administrative Law ("OAL") has also incorporated other NEC standards into Titles 8 and 19 of
28 the California Code of Regulations.

1 4. BSC has incorporated by reference ICC's International Building Code ("IBC"),
2 International Residential Code ("IRC"), International Fire Code ("IFC"), and International
3 Existing Building Code ("IEBC"), with certain California-specific amendments. The combined
4 document consisting of the IBC and the California-specific amendments is published under the
5 title, California Building Code, which appears at Title 24, Part 2 of the California Code of
6 Regulations. The combined document consisting of the IRC and the California-specific
7 amendments is published under the title California Residential Code, which appears at Title 24,
8 Part 2.5 of the California Code of Regulations. The combined document consisting of the IFC and
9 the California-specific amendments is published under the title, California Fire Code, which
10 appears at Title 24, Part 9 of the California Code of Regulations. The combined document
11 consisting of the IEBC and the California-specific amendments is published under the title,
12 California Existing Building Code, which appears at Title 24, Part 10 of the California Code of
13 Regulations.

14 5. NFPA and ICC retain copyrights in their standards. Title 24, Parts 2, 2.5 9, and 10
15 consists of copyrighted works of ICC. Title 24, Part 3 consists of a copyrighted work of NFPA.
16 Title 8 and Title 19 also contain copyrighted works of NFPA. NFPA and ICC have not authorized
17 BSC, OAL, or any other person or entity to make and distribute unrestricted copies of their
18 copyrighted works. Yet the Petition seeks to compel Respondents to produce copyrighted works
19 created and published by NFPA and ICC without any restrictions on use, copying or
20 dissemination.

21 6. Protecting Intervenor's copyright interest ensures that Intervenor has the
22 resources and incentive to develop and improve standards in areas such as building and fire safety.

23 7. The public interest in the disclosure Petitioner seeks is minimal because the
24 documents are already available online free of charge in read only format. NFPA makes read-only
25 versions of Title 8, Title 19, and Title 24, Part 3 available for no cost online. ICC makes read-only
26 versions of Title 24, Parts 1, 2, 2.5, 6, 8, 9, 10, 11 and 12 available for no cost online. Anyone
27 who wants to learn what the documents say can easily do so and without incurring any cost.
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FIRST AFFIRMATIVE DEFENSE – GOVERNMENT CODE 2654(K)

The portions of Title 8, Title 19, and Title 24, Parts 2, 2.5, 3,9 and 10 consisting of NFPA’s and ICC’s copyrighted material (“Intervenors’ Copyrighted Works”) are exempt from disclosure under Government Code section 6254(k). Federal copyright law prohibits Respondents from disclosing Intervenors’ Copyrighted Works in the manner requested.

SECOND AFFIRMATIVE DEFENSE - PREEMPTION

The Public Records Act is preempted by the federal Copyright Act, 17 U.S.C. § 301, to the extent it would require Respondents to provide unauthorized copies of Intervenor’s Copyrighted Works to Petitioner.

THIRD AFFIRMATIVE DEFENSE – GOVERNMENT CODE 6255

Intervenors’ Copyrighted Works are exempt from disclosure under Government Code section 6255. The public interest served by not disclosing Intervenors’ Copyrighted Works clearly outweighs the public interest served by disclosure of the record.

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DATED: August 31, 2021

MUNGER, TOLLES & OLSON LLP

By: /s/ Bryan H. Heckenlively
BRYAN H. HECKENLIVELY
Attorneys for Intervenor National Fire Protection
Association, Inc.

DATED: August 31, 2021

MORGAN, LEWS & BOCKIUS LLP

By: /s/ Louis Y. Lee
LOUIS Y. LEE
Attorneys for Intervenor International Code Council,
Inc.