

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

<p>AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a/ ASTM INTERNATIONAL;</p> <p>NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and</p> <p>AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS,</p> <p style="text-align: center;">Plaintiffs/ Counter-Defendants,</p> <p>v.</p> <p>PUBLIC.RESOURCE.ORG, INC.,</p> <p style="text-align: center;">Defendant/ Counter-Plaintiff.</p>	<p style="text-align: center;">Case No. 1:13-cv-01215-TSC</p>
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DECLARATION OF JAMES THOMAS

Pursuant to 28 U.S.C. § 1746, I, James Thomas, declare the following statements to be true under the penalties of perjury:

1. I am over the age of 18 years and am fully competent to testify to the matters stated in this Declaration.

2. This declaration is based on my personal knowledge. If called to do so, I would and could testify to the matters stated herein.

3. I am the President of ASTM International (“ASTM”), which is a not-for-profit organization headquartered in Pennsylvania. I have worked at ASTM since 1972.

4. ASTM was founded in 1898 when a group of railroad experts and engineers got together to respond to technical issues that had been identified in the early days of the railroad industry. The very first ASTM standard, standard A1, provided uniform specifications for

carbon steel rails. This made it possible for manufacturers from different parts of the country to produce uniform rails that could be used in a national railroad.

5. ASTM's activities have expanded over the past one hundred years and ASTM now develops standards that are used in a wide range of fields, including consumer products, iron and steel products, rubber, paints, plastics, textiles, medical services and devices, electronics, construction, energy, water, and petroleum products.

6. The term "standards" refers to a variety of technical works, including works that contain product specifications, installation methods, methods for manufacturing or testing materials, recommended practices to ensure safety or efficiency, or other guidelines or best practices.

7. An organization that develops standards is a "standards development organization" or "SDO."

8. In the United States, standards are typically developed by private organizations that have technical expertise in the relevant area.

9. Standards are usually highly technical and specialized, and are written for audiences that have particular expertise in the relevant fields.

10. Standards are used by industry actors as a form of self-regulation and as a source of best practices.

11. ASTM's mission is to be recognized as the premier developer and provider of voluntary consensus standards, related technical information and services that promote public health and safety, support the protection and sustainability of the environment, and improve the overall quality of life; contribute to the reliability of materials, products, systems and services; and facilitate international, regional, and national commerce.

12. ASTM develops voluntary consensus standards and is accredited by the American National Standards Institute.

13. ASTM standards are developed based on public demands, industry needs, and public safety concerns and advancements in technology. They address a technical issue or problem identified by a group of people in the relevant sector that can be addressed with a standard-based solution.

14. ASTM's standards are used by scientists and engineers in their laboratories, by architects and designers in their plans, and by industry in their business contracts.

15. On occasion, government agencies incorporate ASTM's standards by reference into regulations. Approximately 10 percent of ASTM's standards are incorporated by reference into federal regulations.

16. ASTM standards are not developed for the purpose of being incorporated into regulations.

17. When it develops a new standard, ASTM does not know whether the standard will be incorporated by reference into government regulations.

18. ASTM does not lobby government agencies to reference its standards.

19. Membership in ASTM costs \$75 per year for an individual member and \$400 per year for an organizational member. Each member receives one free volume of the Annual Book of ASTM Standards as well as other membership benefits.

20. ASTM has kept its membership fees at \$75 for over fifteen years to permit the widest participation possible in the standard development process, so as to prevent its standards from being biased toward the interests of only stakeholders who can afford to pay higher membership fees. ASTM's membership fees have never exceeded \$75.

21. ASTM has over 140 technical committees made up of over 23,000 technical members representing producers, users, consumers, government, and academia from more than 150 countries.

22. Each technical committee contains a balanced voting membership, including industry representatives, government representatives, consumers, people with particular expertise in the subject matter, and others.

23. Throughout the standards development process, ASTM and its committees make it clear that all participants' contributions to any particular standard will be merged into a unitary standard.

24. ASTM's standard development process begins with an individual registering a "work item," which describes the idea for a new standard that will be published and owned by ASTM, or moving to draft a new standard at a subcommittee meeting.

25. The chair of the relevant subcommittee then reviews the work item request and considers, among other things, whether there is a need for the proposed standard and whether there will be sufficient interest from a balanced group necessary to develop the standard. If the chair approves the work item or if the subcommittee approves the motion for a new standard, a task group will develop a draft of the standard.

26. The technical contact is the leader of the task group.

27. The draft standard is then edited by an ASTM staff member, who also adds certain language and components that are required by the ASTM form and style guide.

28. The draft standard is then voted on by first the entire subcommittee, followed by the entire main committee and the complete Society, and reviewed by the Committee on Standards to ensure that all procedures were followed.

29. Technical committees make decisions about the appropriate content of the standards, including the relevant measurements, values, descriptions, and other specifications, as well as the language with which to express these standards.

30. There are other standard developing organizations that create standards that cover the same or similar subject matter as the standards developed by ASTM, including, for example, the International Organization for Standards, SAE International, and the American Association of State Highway and Transportation Officials. The content and language of these SDO's standards differs from the content of the corresponding ASTM standards.

31. At each level of balloting, voters can suggest edits or provide comments. Each negative vote must be addressed to determine if it is persuasive. At least 66.7% of the voting subcommittee members and 90% of the voting main committee members must approve all standard actions, with not less than 60% of the voting members returning ballots.

32. ASTM has developed over 12,000 standards.

33. All ASTM standards are required to be reviewed on a 5 year schedule and each standard is either reapproved, revised or withdrawn. It takes approximately 8-12 months to complete a revision cycle.

34. ASTM incurs substantial costs for its standards development infrastructure and delivery platforms, including the resources it provides to encourage collaboration among members; expenses relating to technical committee meetings and balloting as the standards make their way through the development process; and editing, producing, distributing and promoting the completed standards.

35. In 2014, ASTM spent more than \$9 million to cover the cost of technical committee operations and \$19 million for publication of copyrighted materials.

36. ASTM develops its standards with the understanding that the standards will be protected by copyright, which provides ASTM with the exclusive right to sell, reproduce, display and create derivative works based on the standards.

37. ASTM depends on the revenue it generates from sales of its copyrighted materials to conduct its operations and requires that revenue to be in a position to continue to develop its standards in the manner in which it currently operates.

38. ASTM generates over two-thirds of its revenue from the sale of copyrighted materials.

39. ASTM has devoted substantial efforts to develop and promote the sale of products and services that are related or complementary to ASTM's standards. ASTM does not generate substantial income from these goods and services.

40. ASTM generated a net loss of \$3 million in 2014 for non-standards related products and services.

41. ASTM's copyrighted materials give ASTM a competitive advantage in selling ancillary or complementary products and services. ASTM can include copies of its standards as part of a package it provides to customers in training or certification programs.

42. ASTM does not consider the likelihood and extent to which a standard will generate revenues when deciding whether to develop or maintain a standard.

43. Sales of a limited number of standards drive the bulk of ASTM's revenues. Because of their relevance to smaller market audiences, many ASTM standards generate very limited revenues, which do not cover the costs of the development process. The sales of the best-selling standards effectively subsidize the creation and maintenance of the remaining standards.

44. ASTM publishes its standards in hard copy and digital formats, including pdfs, html and xml formats, which can be purchased from ASTM or its authorized resellers.

45. When purchased individually, the price per ASTM standard is \$38-\$89.

46. The price of each ASTM new individual standard is calculated based on the number of pages in the standard.

47. ASTM does not seek to obtain higher prices for standards that have been incorporated by reference.

48. ASTM provides copies of its standards at a reduced cost or at no cost when it is informed that the regular cost is a burden to the requester.

49. For example, ASTM has a "10 Standards for Students" program through which professors can select any 10 ASTM standards and students can purchase a packet containing all 10 standards for just \$10 per student.

50. ASTM provides the public with free, read-only access to all ASTM standards that ASTM is aware have been incorporated by reference into federal regulations.

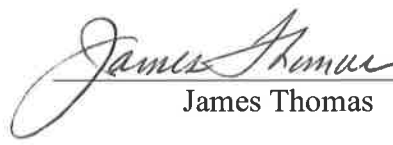
51. ASTM identifies standards that have been incorporated by reference into federal regulations from the database created by the National Institute of Standards and Technology.

52. ASTM publicizes the free read-only access provided on its website.

53. During the notice and comment period regarding proposed federal regulations, upon request by the relevant federal agency, ASTM provides free, read-only access to standards that are incorporated by reference in proposed regulations.

54. ASTM has not received any complaints about lack of accessibility of its standards other than from Defendant.

Dated: November 18, 2015


James Thomas