

**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, INC.

Plaintiffs,

v.

PUBLIC.RESOURCE.ORG, INC.,

Defendant.

PUBLIC.RESOURCE.ORG, INC.,

Counterclaimant,

v.

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, INC.

Counterdefendants.

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

**DECLARATION OF KATHLEEN LU
IN SUPPORT OF DEFENDANT-
COUNTERCLAIMANT
PUBLIC.RESOURCE.ORG, INC.'S
MOTION FOR EXTENSION OF
DISCOVERY PERIOD,
CORRESPONDING MODIFICATION
OF SCHEDULING ORDER, AND
LEAVE TO TAKE MORE THAN 10
DEPOSITIONS**

Complaint Filed: August 6, 2013

I, KATHLEEN LU, declare as follows:

1. I am an attorney admitted to practice in the State of California and am an associate with the law firm of Fenwick & West LLP, counsel of record for Defendant/Counter-Plaintiff Public.Resource.Org, Inc. (“Public Resource”).

2. Counsel for Public Resource have conferred with counsel for Plaintiffs on numerous occasions throughout the month of January regarding an extension of the schedule to allow Public Resource time to review Plaintiffs’ many and sizable productions in late December and throughout January before Public Resource takes the depositions it had already noticed and completes its noticing of depositions.

3. Public Resource received nearly 42000 documents from ASTM on January 2, 2015. NFPA has stated that it has sent up to 50 banker’s boxes of paper documents and 11 rolls of microfilm containing 4000-7000 images each to vendors for scanning. Public Resource has not received the scans yet. Based on the rate of review of the productions thus far, counsel for Public Resource estimates that review of the documents that have come in since Christmas will take approximately 400 hours assuming a fairly fast rate. We will not be able to estimate whether we can review the NFPA productions at a similar rate until we receive the productions from the vendors, but if so, we estimate that review will also take several hundred hours. This chart shows, to the best of my knowledge, Plaintiffs’ past and upcoming productions:

Date Sent	Date of Receipt	No. of Docs	Party	Beg Bates	End Bates
08/11/14	08/12/14	19	ASHRAE	ASHRAE0000001	ASHRAE0001618
08/27/14	08/28/14	2076	ASHRAE	ASHRAE0001619	ASHRAE0022482
10/17/14	10/20/14	33	ASHRAE	ASHRAE0022483	ASHRAE0022663
10/30/14	10/31/14	144	ASHRAE	ASHRAE0022664	ASHRAE0024176
11/21/14	11/24/14	349	ASHRAE	ASHRAE0024177	ASHRAE0027441

12/23/14	12/29/14	196	ASHRAE	ASHRAE0027442	ASHRAE0029541
01/09/15	01/09/15	153	ASHRAE	ASHRAE0029542	ASHRAE0029846
07/29/14	07/30/14	310	ASTM	ASTM000001	ASTM001830
10/17/14	10/20/14	266	ASTM	ASTM001831	ASTM007110
12/31/14	01/02/14	41839	ASTM	ASTM007111	ASTM096675
01/16/15	01/20/16	763	ASTM	ASTM096676	ASTM102865
Anticipated 01/30/15	unknown	unknown	ASTM	n/a	n/a
05/22/14	05/23/14	52	NFPA	NFPA-PR0000001	NFPA-PR0013031
06/20/14	06/23/14	24	NFPA	NFPA-PR0013032	NFPA-PR0020392
11/24/14	11/25/14	40	NFPA	NFPA-PR0020393	NFPA-PR0020701
12/30/14	12/31/14	1953	NFPA	NFPA-PR0020702	NFPA-PR0028685
01/05/15	01/06/15	586	NFPA	NFPA-PR0028686	NFPA-PR0038493
1/26/15	unknown	44,000- 77,000 pages	NFPA	n/a	n/a
Anticipated 01/30/15	unknown	unknown	NFPA	n/a	n/a
Unknown	unknown	Up to 50 banker's boxes	NFPA	n/a	n/a

4. From my review of our production log, Public Resource produced 8,560 documents on August 28, 2014; 823 documents on October 31, 2014; 522 documents on November 14, 2014; and 1,968 documents on December 23, 2014.

5. Counsel for Public Resource has communicated with Plaintiffs by telephone and by email about an extension throughout January, including on January 5, January 7, January 8, January 11, January 20, January 21, January 22, January 23, January 27, and January 28. On

Friday, January 23, 2015, Mr. Childs, counsel for ASTM proposed on behalf of all plaintiffs that the parties have until January 30 to notice depositions that they would take “within a reasonable amount of time outside the current discovery period.”

6. On January 28, 2015, counsel for Public Resource had a call with counsel for all three plaintiffs. On that call, counsel for all three plaintiffs reiterated their position that the cutoff for taking depositions should be February 28, and that the cutoff for noticing depositions should be January 30.

7. Also on January 28, 2015, plaintiff NFPA served its amended Rule 26 disclosures, which added one witnesses. On December 24, plaintiff ASTM disclosed three additional witness, and on January 14, it disclosed one additional witness. Today, January 29, 2015, ASHRAE stated that it may disclose one additional witness. In total, Plaintiffs have disclosed 16 witnesses (other than Mr. Malamud).

8. Based on my review of some of the documents Plaintiffs have produced, it appears that Plaintiffs knew of and actively discussed Public Resource’s activities in March 2012.

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

Executed this 29th day of January, 2015.

/s/ Kathleen Lu

Kathleen Lu