

EXHIBIT 48

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

Capital Reporting Company
30(b)(6) Public.Resource.Org 02-26-2015

<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2 For Plaintiff ASTM:</p> <p>3 MORGAN LEWIS & BOCKIUS LLP</p> <p>4 BY: J KEVIN FEE & JORDANA RUBEL</p> <p>5 Attorneys at Law</p> <p>6 1111 Pennsylvania Avenue, NW</p> <p>7 Spear Street Tower, 28th Floor</p> <p>8 Washington, DC 20004</p> <p>9 jkfee@morganlewis.com</p> <p>10 jrubel@morganlewis.com</p> <p>11 (202) 739-5353</p> <p>12 For Plaintiff NFPA:</p> <p>13 MUNGER, TOLLES & OLSON LLP</p> <p>14 BY: THANE REHN & KELLY M KLAUS</p> <p>15 Attorneys at Law</p> <p>16 560 Mission Street</p> <p>17 27th Floor</p> <p>18 San Francisco, California 94105-2907</p> <p>19 Thane Rehn@mto.com</p> <p>20 Kelly Klaus@mto.com</p> <p>21 (415) 512-4073</p> <p>22 For Plaintiff ASHRAE</p> <p>23 KING & SPALDING</p> <p>24 BY: WILLIAM "WES" E STEIMLE</p> <p>25 Attorney at Law</p> <p>101 Second Street</p> <p>Suite 2300</p> <p>San Francisco, California 94105</p> <p>kslaw.com</p> <p>(415) 318-1259</p>	<p style="text-align: right;">4</p> <p>1 INDEX</p> <p>2 WITNESS EXAMINATION</p> <p>3</p> <p>4 THE 30(b)(6) OF PUBLIC.RESOURCE.ORG</p> <p>5 Volume I</p> <p>6 BY MR. FEE 9</p> <p>7 BY MR. REHN 220</p> <p>8 BY MR. STEIMLE 312</p> <p>9</p> <p>10 WITNESS INSTRUCTION NOT TO ANSWER</p> <p>11 PAGE LINE</p> <p>12 37 16</p> <p>13 59 23</p> <p>14 102 16</p> <p>15 103 11</p> <p>16 111 1</p> <p>17 112 6</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES (continued):</p> <p>2 For Defendant Public Resource Org and Carl Malamud</p> <p>3 FENWICK & WEST LLP</p> <p>4 BY: ANDREW P BRIDGES & MATTHEW BECKER</p> <p>5 Attorneys at Law</p> <p>6 1191 Second Avenue</p> <p>7 10th Floor</p> <p>8 Seattle, Washington 98101</p> <p>9 fenwick.com</p> <p>10 (415) 875-2389</p> <p>11 For Carl Malamud:</p> <p>12 ELECTRONIC FRONTIER FOUNDATION</p> <p>13 BY: CORYNNE MCSHERRY & MITCH STOLTZ</p> <p>14 Attorneys at Law</p> <p>15 815 Eddy Street</p> <p>16 San Francisco, California 94109</p> <p>17 corynne@eff.org & mitch@eff.org</p> <p>18 (415) 436-9333</p> <p>19</p> <p>20 ALSO PRESENT: Sally Everett, in-house counsel for</p> <p>21 NFPA (appeared telephonically)</p> <p>22 Videographer: Frankie Quirarte</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 EXHIBITS</p> <p>2 PAGE</p> <p>3 Exhibit 32 Notice of 30(b)(6) Deposition 40</p> <p>4 For Defendant Public Resource Org</p> <p>5 Exhibit 33 E-mail chain from Carl 89</p> <p>6 Malamud to Deborah Hunt dated 6-30-09;</p> <p>7 Bates No PRO_166616 through PRO_166618</p> <p>8 Exhibit 34 E-mail chain from Carl 98</p> <p>9 Malamud to Seamus Kraft dated 3-12-12;</p> <p>10 Bates No PRO_213808 through PRO_213810</p> <p>11 Exhibit 35 E-mail chain from Joseph 126</p> <p>12 Monin to Carl Malamud dated 5-7-12; Bates</p> <p>13 No PRO_167245 through PRO_167247</p> <p>14 Exhibit 36 E-mail chain to Open 136</p> <p>15 Government dated 6-2-09; Bates No</p> <p>16 PRO_211406 through PRO_211408</p> <p>17 Exhibit 37 Document entitled, "Pipeline 139</p> <p>18 and Hazardous Materials Safety Administration</p> <p>19 DOT 192 113"</p> <p>20 Exhibit 38 Document entitled, "Public 141</p> <p>21 Safety Standards United States (Federal</p> <p>22 Government); Bates No PRO_166182 through</p> <p>23 PRO_166257</p> <p>24 Exhibit 39 GPO document 192 7 144</p> <p>25 Exhibit 40 Document entitled "Public 151</p> <p>Safety Codes Incorporated By Law; Bates</p> <p>No PRO_166258 through PRO_166267</p> <p>Exhibit 41 E-mail chain from Rebecca 176</p> <p>Malamud to Carl Malamud dated 1-4-14;</p> <p>Bates No PRO_42286 through PRO_42288</p> <p>Exhibit 42 Public Resource Org's 198</p> <p>Response to ASTM International's Second</p> <p>set of Interrogatories (No 16)</p> <p>Exhibit 43 Spreadsheets (printed in 206</p> <p>Native format)</p> <p>25</p>

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<p style="text-align: right;">6</p> <p>1 EXHIBITS</p> <p>2 PAGE</p> <p>3 Exhibit 44 Spreadsheets (printed in Native format) 208</p> <p>4 Exhibit 45 Spreadsheets (printed in Native format) 212</p> <p>5 Exhibit 46 Spreadsheets (printed in Native format) 218</p> <p>6 Exhibit 47 E-mail chain from NFPA to Carl Malamud dated 8-13-08; Bates No PRO_166295 through PRO_166298 238</p> <p>7 Exhibit 48 Document Bates No IA-ASTM-0013 248</p> <p>8 Exhibit 49 Spreadsheet; Bates No IA-ASTM-1 through IA-ASTM-12 248</p> <p>9 Exhibit 50 Spreadsheet; Bates No PRO_00232652 254</p> <p>10 Exhibit 51 Search Results document; 7 pages 259</p> <p>11 Exhibit 52 GovDocs document; 2 pages 274</p> <p>12 Exhibit 53 GovDocs document; 2 pages 288</p> <p>13 Exhibit 54 Spreadsheet; Bates No PRO_245530 297</p> <p>14 Exhibit 55 Document entitled, "Show Me The Manual"; Bates No PRO_167541 through PRO_167549 302</p> <p>15 Exhibit 56 Spreadsheet; Bates No PRO_245530 316</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 (Exhibits attached to transcript)</p>	<p style="text-align: right;">8</p> <p>1 identify yourself for the record.</p> <p>2 MR. FEE: Kevin Fee from Morgan Lewis,</p> <p>3 along with Jordana Rubel from Morgan Lewis on</p> <p>4 behalf of ASTM.</p> <p>5 MR. REHN: I'm Thane Rehn from Munger,</p> <p>6 Tolles & Olson along with Kelly Klaus from Munger,</p> <p>7 Tolles & Olson on behalf of NFPA.</p> <p>8 MR. STEIMLE: Wes Steimle with King &</p> <p>9 Spalding on behalf of American Society of Heating,</p> <p>10 Refrigerating and Air-Conditioning Engineers.</p> <p>11 MR. BRIDGES: Andrew Bridges, Fenwick &</p> <p>12 West on behalf of Public.Resource.Org.</p> <p>13 MS. McSHERRY: Corynne McSherry,</p> <p>14 Electronic Frontier Foundation on behalf of</p> <p>15 Public.Resource.Org.</p> <p>16 MR. BECKER: Matthew Becker with Fenwick &</p> <p>17 West on behalf of Public.Resource.Org.</p> <p>18 THE VIDEOGRAPHER: On the telephone?</p> <p>19 MS. EVERETT: Sally Everett, general</p> <p>20 counsel, NFPA.</p> <p>21 THE VIDEOGRAPHER: Madame Court Reporter,</p> <p>22 will you please swear in the witness.</p> <p>23 WHEREUPON,</p> <p>24 CARL MALAMUD,</p> <p>25 was called as a corporate representative witness,</p>
<p style="text-align: right;">7</p> <p>1 PROCEEDINGS</p> <p>2 THE 30(b)(6) OF PUBLIC.RESOURCE.ORG,</p> <p>3 called as a witness by the Plaintiffs, who, having</p> <p>4 been duly sworn by me, was examined and testified as</p> <p>5 hereinafter set forth.</p> <p>6 --oOo--</p> <p>7 THE VIDEOGRAPHER: Good morning, ladies</p> <p>8 and gentlemen. This begins Volume I, Tape No. 1 in</p> <p>9 the videotaped deposition of Carl Malamud, taken in</p> <p>10 the matter of National Fire Protection Association,</p> <p>11 Inc., et al., v. Public.Resource.Org, Inc. It's</p> <p>12 being held in the United States District Court for</p> <p>13 the District of Columbia, Case No.</p> <p>14 1:13-cv-01215-EGS.</p> <p>15 This deposition -- this deposition is</p> <p>16 being held in the office of Morgan Lewis located at</p> <p>17 One Market Street, Spear Street Tower, in San</p> <p>18 Francisco, California on February 26, 2015 at</p> <p>19 approximately 10:07 a.m. My name is Frank Quirarte</p> <p>20 with the firm of Capital Reporting Company. I'm a</p> <p>21 legal -- legal video specialist here with our court</p> <p>22 reporter, Ashley Soevyn, also in association with</p> <p>23 Capital Reporting, located at 1050 Northgate Drive,</p> <p>24 Suite 180, San Rafael, California 94903.</p> <p>25 At this time will counsel and all present please</p>	<p style="text-align: right;">9</p> <p>1 and having been duly sworn by the court reporter,</p> <p>2 was examined and testified as follows:</p> <p>3 MR. BRIDGES: I have just a couple of</p> <p>4 preliminaries, I think the case caption was wrong</p> <p>5 as read in by the videographer, because I think</p> <p>6 it's ASTM is the lead plaintiff. And I'm not sure</p> <p>7 what the case number was, but I thought I heard him</p> <p>8 say EGS, whereas the case number I know ends with</p> <p>9 TSC.</p> <p>10 MR. FEE: Yes. The judge was changed</p> <p>11 so...</p> <p>12 MR. BRIDGES: So it's American Society for</p> <p>13 Testing and Materials, d/b/a ASTM International, et</p> <p>14 al. versus Public.Resource.Org, Case No.</p> <p>15 1:13-cv-01215-TSC, as in Tango, Sierra, Charlie.</p> <p>16 MR. FEE: Right.</p> <p>17 EXAMINATION BY COUNSEL FOR PLAINTIFF ASTM</p> <p>18 BY MR. FEE:</p> <p>19 Q Good morning.</p> <p>20 A Good morning, Mr. Fee.</p> <p>21 Q Mr. Malamud, have you ever been deposed</p> <p>22 before?</p> <p>23 A No, I haven't.</p> <p>24 MR. BRIDGES: One -- one quick thing I</p> <p>25 want to put on the record. We do request 30 days</p>

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<p style="text-align: right;">10</p> <p>1 to review and correct the transcript. I'm also 2 going to note that, according to the court's 3 scheduling order, discovery closed on January 30. 4 We've had a number of interactions among counsel. 5 We are proceeding with this deposition in the 6 belief and expectation that the parties will work 7 out mutually agreeable dates for all of the 8 depositions and that the -- and we don't expect the 9 plaintiffs to take the -- have the benefit of 10 having taken this one at a time convenient to all 11 without having -- without affording the defendant 12 similar courtesies. 13 MR. FEE: Well, I think you know what our 14 positions are with respect to depositions, and this 15 is probably not the place or time to get into that 16 any further. But you have that on the record for 17 whatever that's worth. 18 BY MR. FEE: 19 Q So, Mr. Malamud -- 20 MR. BRIDGES: I'm sorry. One last thing. 21 MR. FEE: Okay. 22 MR. BRIDGES: I have a -- I just want 23 everybody to know I have a family member in a true 24 life or death medical crisis that's now on its 25 fourth day, so I'm leaving my cell phone on, and I</p>	<p style="text-align: right;">12</p> <p>1 responsive; is that fair? 2 A Yes, it is. 3 Q Okay. Is there any reason why you can't 4 testify fully and truthfully today? 5 A No, there is not. 6 MR. BRIDGES: I'll ask the witness to give 7 me time to object. These are not objectionable 8 questions -- 9 THE WITNESS: Okay. 10 MR. BRIDGES: -- but I do need time. 11 THE WITNESS: Yes. 12 BY MR. FEE: 13 Q I just want to spend a couple minutes to 14 understand your background. Can you tell us what 15 your educational background is post high school? 16 A I went to Indiana University, where I got 17 a B.S. and an MBA in pursuit of a doctorate which I 18 didn't finish. 19 Q What was the B.S. in? 20 A Business economics and public policy. 21 Q Did the MBA have any focus or 22 concentration? 23 A Business economics and public policy. 24 Q When were those degrees awarded? 25 A I believe 1980 and 1982. I'd have to</p>
<p style="text-align: right;">11</p> <p>1 ask everybody's indulgence if I have to leave to 2 take it. It's -- it's a very serious issue and two 3 crash carts in the last two days, so -- 4 MR. FEE: That's fine. That's fine. 5 MR. BRIDGES: Thanks. 6 BY MR. FEE: 7 Q So, Mr. Malamud, I'm sure your counsel has 8 explained to you today that I'm here to ask you, and 9 so are the other plaintiffs' counsel, here to ask 10 you a series of questions. And I assume you also 11 know that my questions and your answers will be 12 taken down by the court reporter. 13 Do you understand that? 14 A I do. 15 Q Okay. I'm going to ask you to respond to 16 all of our questions verbally because the court 17 reporter can't easily record the nodding of the head 18 or gestures like that. Okay? 19 A Yes. 20 Q Now, I'm going to ask you a series of 21 questions, and if you don't understand any of them, 22 I ask that you let me know that. Is that okay? 23 A Yes, it is. 24 Q And if you answer my question, that would 25 mean that you understood it and your answer is</p>	<p style="text-align: right;">13</p> <p>1 double-check that. 2 Q Do you have any technological 3 certifications beyond what you might have picked up 4 during your college years? 5 MR. BRIDGES: Objection, vague and 6 ambiguous. 7 THE WITNESS: I'm not sure what you mean 8 by "technological." 9 BY MR. FEE: 10 Q Any sort of certified engineer or anything 11 along those lines? 12 MR. BRIDGES: Same objection. 13 THE WITNESS: I've written eight 14 professional reference books in the field of 15 computer science and networks. 16 BY MR. FEE: 17 Q Can you tell me a little bit about where 18 your expertise or understanding of computer science 19 comes from? 20 MR. BRIDGES: Objection, vague and 21 ambiguous. 22 THE WITNESS: I've had a series of -- of 23 jobs, starting with being a professional staff 24 member at Indiana University's computing center. 25 BY MR. FEE:</p>

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<p style="text-align: right;">14</p> <p>1 Q Would you briefly walk me through your 2 professional experience post the granting of your 3 MBA from Indiana University? 4 A After working for the computing center at 5 Indiana University, I worked for the Board of 6 Governors of the Federal Reserve System in 7 Washington, D.C. and subsequently became a 8 consultant to the Board of Governors. 9 Q During what approximate time frame were 10 you working for the Federal Reserve either as an 11 employee or a consultant? 12 A Approximately 1983 or so. 13 Q Did you take employment after that? 14 A I'm sorry? 15 Q Were you employed after 1983? 16 A Yes, I was. I was a consultant for 17 several years. 18 Q What type of consultant? 19 A I was a consultant on relational databases 20 and computer networks to the Department of Defense, 21 to Argonne National Laboratory, to Lawrence 22 Livermore National Laboratory. Those were the 23 primary on consulting. 24 Q During what time frame were you acting as 25 a consultant for those clients?</p>	<p style="text-align: right;">16</p> <p>1 seminar company? 2 A You know, I don't remember. 3 Q Okay. How long were you doing this work 4 for this seminar company? 5 A Did it for a few years. 6 Q Was that still in the '80s? 7 A Yes. 8 Q What did you do professionally after you 9 stopped doing those seminars? 10 MR. BRIDGES: Objection, vague and 11 ambiguous. 12 THE WITNESS: I -- I -- I -- I shifted 13 towards a focus on -- on writing technical 14 documents. 15 BY MR. FEE: 16 Q Were you employed by somebody in that 17 capacity? 18 A I wrote books and I was also a 19 contributing editor to a number of trade 20 publications. 21 Q Can you identify those publications? 22 A Data Communications Magazine, 23 Communications Week International. I also wrote for 24 InfoWorld and the Bangkok Post. 25 Q Were you a freelance writer for all those</p>
<p style="text-align: right;">15</p> <p>1 A Mid '80s. 2 Q At some point time did you stop becoming a 3 consultant for those clients? 4 A I began teaching advanced networking and 5 database seminars. 6 MR. BRIDGES: I'll ask the witness to 7 listen to the question and answer the question. 8 THE WITNESS: I'm sorry. Would you please 9 repeat the question? 10 BY MR. FEE: 11 Q I just asked you at -- at some point in 12 time did you stop becoming a consultant for those 13 clients that you had mentioned? 14 A Yes. 15 Q Okay. And what did you do after you 16 stopped being a consultant for those clients? 17 A I began writing and teaching seminars. 18 Q Where did you write and teach these 19 seminars? 20 A I taught the seminars all over the world 21 as part of a commercial seminar company. We -- we 22 basically would go all over the world and book a 23 hotel room and teach, as well as working for private 24 clients. 25 Q What was the name of that professional</p>	<p style="text-align: right;">17</p> <p>1 publications? 2 A By "freelance," you mean not on staff? 3 Q Yes. 4 A Yes, I was. 5 Q During the time that you were doing this 6 freelance work, did you have any other employment? 7 A I might have been teaching seminars a few 8 times still during that period. 9 Q During what approximate time frame were 10 you doing this freelance work that you referenced? 11 A Late '80s and very early '90s, '91 or so. 12 Q At some time around 1991, did you begin 13 doing a different type of work? 14 A In late 1992, I believe, I founded the 15 Internet Multicasting Service, a nonprofit 16 corporation. 17 Q What was the Internet multitask service? 18 MR. BRIDGES: Objection, misstates 19 testimony. 20 THE WITNESS: Internet Multicasting 21 Service. 22 23 BY MR. FEE: 24 Q Oh, Multicasting. Okay. 25 A We were responsible for founding the first</p>

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<p style="text-align: right;">18</p> <p>1 radio station on the Internet and other activities. 2 Q Is Internet Multicasting Service a 3 corporation? 4 A A what? 5 MR. BRIDGES: Objection, vague and 6 ambiguous. 7 BY MR. FEE: 8 Q Was it incorporated? 9 A It was, yes. 10 Q Okay. Is it still a -- a corporation 11 today? 12 A No, it is not. 13 Q Do you know when Internet Multicasting 14 Services stopped being an active corporation? 15 A It stopped being active in 1997, and I 16 dissolved the corporation -- I think it's the year 17 2000. 18 Q From 1991 to 1997, was it your primary job 19 to be working for Internet Multicasting Service? 20 A From 1992 to 1997, yes, it was. 21 Q In 19 -- 22 A To 1996. 23 Q In 1996 did you begin some other type of 24 employment? 25 MR. BRIDGES: Objection, mischaracterizes</p>	<p style="text-align: right;">20</p> <p>1 Q What was the business of Invisible Worlds? 2 A Invisible Worlds was one of the first 3 semantic web companies. 4 Q Can you explain to me what that means? 5 A We developed a protocol for the transport 6 of metadata and other information across the 7 Internet, similar to a protocol called SOP, which 8 you may have heard of. 9 Q During what time period approximately were 10 you at Invisible Worlds? 11 A '98 to 2000. 12 Q Did you dissolve Invisible Worlds sometime 13 thereafter? 14 A I was a CEO. I left as CEO, and after the 15 management there finished their stint, I ended up 16 becoming the chairman and dissolving the 17 corporation. 18 MR. BRIDGES: I will ask you to listen to 19 his question and to answer his question. His 20 question was did you dissolve the company. 21 THE WITNESS: Yes, sir. 22 23 BY MR. FEE: 24 Q After you left Invisible Worlds, what did 25 you do next professionally?</p>
<p style="text-align: right;">19</p> <p>1 vague and ambiguous. 2 THE WITNESS: I was appointed as a 3 visiting professor at the MIT Media Lab. 4 BY MR. FEE: 5 Q What were you teaching there? 6 A I was doing research on the Internet and 7 writing a book. 8 Q How long were you working at the MIT Media 9 Lab? 10 A I did about nine months there before 11 moving to another university. 12 Q What university did you move to next? 13 A Keio University in Japan. 14 Q Can you spell that for the court reporter? 15 A K-E-I-O. 16 Q How long were you at Keio University? 17 A Until mid 1997. 18 Q What did you do when you left Keio 19 University professionally? 20 A I spent a few months at RIPE, which is the 21 European Internet Numbers Registry. I was not 22 employed, but I had an office there. 23 Q What did you do next professionally? 24 A I founded a company called Invisible 25 Worlds.</p>	<p style="text-align: right;">21</p> <p>1 A I started a company called Net-Top Box, 2 Inc. 3 Q What was the business of Net-Top Box, 4 Inc.? 5 A A better electronic program guide such as 6 a TV guide. 7 Q How long were you working at Net-Top Box, 8 Inc.? 9 A Two years. 10 Q So approximately 2000 to 2002? 11 A That's right. 12 Q Did you wind up dissolving Net-Top Box, 13 Inc.? 14 A Yes. 15 Q What did you do after you stopped working 16 for Net-Top Box, Inc.? 17 A I was hired as a consultant by the 18 Internet Architect Board and the Internet 19 Engineering Task Force. 20 Q In what role? Or strike that. 21 Consultant with respect to what? 22 A I was a consultant charged with examining 23 the governance mechanism for the creation of 24 Internet standards. 25 THE REPORTER: I'm sorry. I'm sorry. One</p>

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<p style="text-align: right;">22</p> <p>1 more time. I was a consultant charged with? 2 THE WITNESS: The governance mechanism for 3 the creation of Internet standards. 4 THE REPORTER: Thank you. 5 BY MR. FEE: 6 Q For what period of time did you hold that 7 position? 8 A It was about a year. 9 Q So 2002 to 2003 approximately? 10 A '3 to '4 at that point. 11 Q What did you do professionally after that? 12 A In 2005 I joined the Center for American 13 Progress as a senior fellow and the chief technology 14 officer. 15 Q How long did you hold that position for? 16 A Two years. 17 Q What did you do next professionally? 18 A I founded Public.Resource.Org. 19 Q Was that in 2007? 20 A Yes, sir. 21 Q Okay. Now, throughout the deposition if I 22 refer to Public Resource, will you understand that 23 to be referencing Public.Resource.Org? 24 A Yes. 25 Q Are you currently employed by Public</p>	<p style="text-align: right;">24</p> <p>1 BY MR. FEE: 2 Q What is Public Resource? 3 MR. BRIDGES: Objection, vague and 4 ambiguous. 5 THE WITNESS: A 501(c)(3) nonprofit 6 corporation. 7 BY MR. FEE: 8 Q What products or services does Public 9 Resource provide? 10 MR. BRIDGES: Objection, vague and 11 ambiguous, argumentative. 12 THE WITNESS: We make government 13 information more broadly available to inform 14 citizens. 15 BY MR. FEE: 16 Q How does Public Resource do that? 17 A I'm sorry? 18 Q How does Public Resource do that? 19 A We use the Internet. 20 Q At this point in time, do you own any 21 controlling interest in the corporation, or do you 22 hold any positions for any nonprofit organizations 23 other than Public Resource? 24 MR. BRIDGES: Objection, compound. 25 MR. FEE: It is compound. I'll break that</p>
<p style="text-align: right;">23</p> <p>1 Resource? 2 A I am. 3 Q What is your position at Public Resource 4 at this time? 5 A I'm the president and founder. 6 Q Has that been your title ever since you 7 founded Public Resource? 8 A Yes. 9 Q Is that a full-time position? 10 A It is. 11 Q Do you do any other work that leads to any 12 sort of compensation other than your work for Public 13 Resource at this time? 14 A I do not. 15 Q As the president and founder of Public 16 Resource, what are your job responsibilities? 17 MR. BRIDGES: Objection, vague and 18 ambiguous. 19 THE WITNESS: I run the corporation. 20 BY MR. FEE: 21 Q Okay. Can you be any more specific than 22 that? 23 MR. BRIDGES: Same objection. 24 THE WITNESS: I speak. I program. I run 25 computers.</p>	<p style="text-align: right;">25</p> <p>1 down. Let me re-ask that. 2 BY MR. FEE: 3 Q First of all, do you own a controlling 4 interest in any corporation putting aside what you 5 do for Public Resource? 6 A No, I do not. 7 Q Do you have a role in connection with any 8 nonprofit organization other than Public Resource 9 at -- 10 MR. BRIDGES: Objection, vague and 11 ambiguous. 12 BY MR. FEE: 13 Q -- at this time? 14 MR. BRIDGES: Objection, vague and 15 ambiguous. 16 THE WITNESS: I'm on the board of 17 directors of Common Crawl, a 501(c)(3) nonprofit 18 corporation. 19 BY MR. FEE: 20 Q Any others? 21 A No, sir. 22 MR. BRIDGES: Just leave me time to 23 object. I should have objected to that one. 24 BY MR. FEE: 25 Q What is Common Crawl?</p>

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<p style="text-align: right;">26</p> <p>1 A It's a nonprofit corporation that is 2 providing an open crawl of the web. 3 Q How long have you been on the board of 4 directors of Common Crawl? 5 A Two or three years. 6 Q Is that a paid position? 7 A No, it is not. 8 Q Are you an officer or director of any 9 other company other than Public Resource at this 10 time? 11 A No, I'm not. 12 Q Does Public Resource operate any websites? 13 A Yes. 14 Q What web sites does it operate? 15 A It's a long list. Public.Resource.Org. 16 Q Any others? 17 A Law.Resource.Org; House.Resource.Org; 18 YesWeScan.Org; WWLBD.Org, which stands for What 19 Would Luther Burbank Do; Yo.YourHonor.Org. 20 THE REPORTER: What is that one? 21 THE WITNESS: Yo.YourHonor.Org. Y-O dot 22 Your Honor dot O-R-G. 23 THE REPORTER: Thank you. 24 THE WITNESS: In addition we operate all 25 the websites of the Internet Multicasting Service I</p>	<p style="text-align: right;">28</p> <p>1 the Internet Archive. I am a registered user of 2 the Internet Archive, which you, of course, could 3 also be. 4 BY MR. FEE: 5 Q Do you have any ability to post things to 6 the Internet Archive in a manner that would be 7 different than an ordinary member of the public? 8 MR. BRIDGES: Objection, lacks foundation, 9 vague and ambiguous. 10 THE WITNESS: There -- 11 MR. BRIDGES: And to a certain extent, 12 it's hypothetical about how members of the public 13 would have access. 14 THE WITNESS: I'm a long-time user of the 15 Internet Archive, and I do have administrator 16 privileges, as do many other people. 17 BY MR. FEE: 18 Q How did you obtain administrator 19 privileges for the Internet Archive? 20 A Oh, gosh. I think I got them in 1997 or 21 1998. 22 MR. BRIDGES: That is not what his 23 question was. 24 THE WITNESS: Okay. 25 MR. BRIDGES: I'll ask the court reporter,</p>
<p style="text-align: right;">27</p> <p>1 had created, which includes Park.Org, P-A-R-K, 2 Town.Hall.Org; North.Pole.Org. 3 I think that's all of them. There may be 4 a few more, though. Museum.Media.Org. 5 BY MR. FEE: 6 Q Are there any subsidiaries to 7 Public.Resource.Org Inc.? 8 A No. 9 Q Is there any parent company to that 10 organization? 11 A No. 12 Q Does Public Resource have any relationship 13 with the Internet Archive? 14 MR. BRIDGES: Objection, vague and 15 ambiguous. 16 THE WITNESS: I'm not sure what you mean 17 by "relationship." 18 BY MR. FEE: 19 Q Are you aware of any rights or power that 20 Public.Resource.Org might have that a member of the 21 public such as myself wouldn't have with respect to 22 the Internet Archive? 23 MR. BRIDGES: Objection, vague and 24 ambiguous. 25 THE WITNESS: We have no contracts with</p>	<p style="text-align: right;">29</p> <p>1 please, to repeat the question and I'll ask the 2 witness to answer. 3 (The reporter read the record 4 as requested.) 5 MR. BRIDGES: Objection, vague and 6 ambiguous. 7 THE WITNESS: I don't recall. 8 BY MR. FEE: 9 Q I believe you just testified that you 10 believe that many people had administrator 11 privileges for the Internet Archive; is that right? 12 MR. BRIDGES: I think misstates his 13 testimony. 14 BY MR. FEE: 15 Q Well, is it your understanding that many 16 people have administrator privileges for the 17 Internet Archive? 18 MR. BRIDGES: Objection, vague and 19 ambiguous. 20 THE WITNESS: It is my belief that I -- 21 there are a -- a fairly large number of people that 22 have the ability to create objects and manage those 23 objects. 24 THE REPORTER: And manage those objects, 25 you said?</p>

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<p style="text-align: right;">30</p> <p>1 THE WITNESS: And -- and manage those 2 objects, yes. 3 BY MR. FEE: 4 Q Can you explain to me what the basis is 5 for that belief? 6 A Well, there are a large number of 7 collections on the Internet Archive, such as the 8 Grateful Dead Archive, for example. 9 Q Has Public.Resource.Org ever posted any 10 materials to the Internet Archive? 11 A Yes. 12 Q Does Public Resource have any employees 13 besides yourself? 14 A No. 15 Q Since its found -- founding, did Public 16 Resource have any employees other than yourself? 17 A Yes, I had one employee. 18 Q Who is that? 19 A Joel Hardi, H-A-R-D-I. 20 Q What was Joel Hardi's role at Public 21 Resource while he was there? 22 A He was a systems administrator and 23 programmer. 24 Q During what time frame did Mr. Hardi work 25 at Public Resource?</p>	<p style="text-align: right;">32</p> <p>1 Q Public Resource retains contractors; is 2 that correct? 3 A Yes. 4 Q Can you identify what contractors Public 5 Resource currently is working with? 6 A Yes, I can. 7 Q Who are those persons or companies? 8 A Currently? 9 Q Yes. 10 A Mike D. Kail, K-A-I-L, is our systems 11 administrator and Point.B Studio, Point period B 12 Studio, is a contractor. David Halperin is of 13 counsel. 14 THE REPORTER: H-A-L? 15 THE WITNESS: H-A-L-P-E-R-I-N. 16 BY MR. FEE: 17 Q Any other contractors currently? 18 A That's it. 19 Q Besides the current contractors, can you 20 identify any other past contractors of Public 21 Resource? 22 A A firm called HTC. 23 Q Any others? 24 A I don't think so. 25 Q Mr. Malamud, is it your understanding that</p>
<p style="text-align: right;">31</p> <p>1 A 2008. 2 Q Now, besides yourself and Mr. Hardi, there 3 have never been any employees of Public Resource? 4 A No. 5 Q That's probably a poorly worded question. 6 Let me ask that one more time to make sure we're 7 clear. 8 Can you identify any employees besides 9 yourself and Mr. Hardi that have ever been employed 10 by Public Resource? 11 A No. 12 Q Does Public Resource retain any 13 independent consultants in connection with its work? 14 MR. BRIDGES: Objection, vague and 15 ambiguous. 16 THE WITNESS: We have some contractors 17 that work for us. 18 BY MR. FEE: 19 Q Okay. 20 MR. BRIDGES: All right. Again, I'll ask 21 you to -- 22 THE WITNESS: Yes, sir. 23 MR. BRIDGES: -- answer his question. 24 THE WITNESS: No. 25 BY MR. FEE:</p>	<p style="text-align: right;">33</p> <p>1 you're testifying today on behalf of Public 2 Resource? 3 A Yes. 4 Q Are you represented -- is Public Resource 5 represented by counsel today? 6 A Yes. 7 Q Can you identify Public Resources' counsel 8 at the deposition today? 9 A Currently present are Mr. Bridges, Corynne 10 McSherry and Mr. Becker. 11 Q Did you do anything to prepare for your 12 deposition today to testify on behalf of the 13 corporation? 14 A I reviewed the subpoena. 15 MR. BRIDGES: Objection. He asked you -- 16 I'm sorry. 17 THE WITNESS: Yes. 18 MR. BRIDGES: He asked you a question, did 19 you do anything. 20 THE WITNESS: Yes. 21 BY MR. FEE: 22 Q What did you do? 23 A I reviewed the subpoena. 24 Q Anything else? 25 A I reviewed my electronic mail.</p>

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1 Q Anything else?
2 A I reviewed our finances.
3 Q Anything else?
4 A I think that's it.
5 Q Did you have any meetings with any persons
6 in connection with your preparation to testify
7 today?
8 MR. BRIDGES: I will -- I'll acknowledge
9 that he met with counsel and I'll ask him not to
10 divulge the contents of any communications with
11 counsel on the grounds that it's covered by the
12 attorney-client privilege, and I would instruct the
13 witness not to divulge the contents of any
14 attorney-client communication.
15 BY MR. FEE:
16 Q Is it correct that you met with counsel to
17 prepare for your deposition today?
18 A I met with counsel.
19 Q Okay. When was that meeting?
20 A Yesterday.
21 Q Were there any other meetings prior to
22 yesterday?
23 A Two weeks ago, I think.
24 Q Were there any other meetings that were in
25 connection --

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1 MR. BRIDGES: His question was were there
2 any other. He did not say when were other
3 meetings. Were there any other meetings?
4 BY MR. FEE:
5 Q Besides the meeting yesterday and the
6 meeting two weeks ago, did you have any other
7 meetings with counsel to prepare for your deposition
8 testimony today?
9 A No, I did not.
10 Q Besides meetings with counsel, did you
11 have meetings with any other persons to prepare to
12 testify for your deposition today?
13 A No, I did not.
14 Q For example, you didn't meet with or speak
15 with -- well, let me ask -- take a step back.
16 Besides your meetings with counsel, did
17 you have any other conversations or communications
18 with counsel in order to prepare for your deposition
19 today?
20 MR. BRIDGES: I'm going -- I'm going to
21 actually instruct him not to answer that question.
22 MR. FEE: You're going to instruct him not
23 to answer if he --
24 MR. BRIDGES: Yeah, because it's --
25 MR. FEE: -- had any communications?

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1 MR. BRIDGES: It's --
2 MR. FEE: I didn't ask for the substance
3 of the communications.
4 MR. BRIDGES: I understand, but I'm -- I'm
5 going to instruct him on that for the reasons that
6 I'm going to maintain -- to maintain the privilege.
7 MR. FEE: Can you explain how he's unable
8 to disclose whether or not a communication took
9 place?
10 MR. BRIDGES: Because I think there is a
11 question as to whether certain conversations were
12 about a case generally or just about the
13 deposition. If you want to ask him about whether
14 there were any other conversations purely about the
15 deposition, you may ask that question. I won't
16 object.
17 MR. FEE: Okay.
18 MR. BRIDGES: I'm not going to allow any
19 questions beyond that.
20 BY MR. FEE:
21 Q Can you identify -- well, strike that.
22 Are there any communications that you're
23 aware of besides the meetings that you've already
24 identified today in connection with your preparation
25 for testifying today?

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1 MR. BRIDGES: So I'm going to object to
2 that. If you want to ask him if there were any
3 other communications purely about the deposition,
4 feel free.
5 I'm sorry. I need -- I need a short
6 break. I've got a call.
7 THE VIDEOGRAPHER: Going off the record.
8 The time is 10:39 a m.
9 (Recess taken.)
10 THE VIDEOGRAPHER: Back on the record.
11 The time is 10:40 a m.
12 MR. FEE: And before the break, Andrew, I
13 just want to make sure the record is clear. Were
14 you instructing the witness not to answer the
15 question I just asked?
16 MR. BRIDGES: Yeah, because as I said, if
17 you want to ask him if he had questions purely
18 about the deposition, totally fair game, but if
19 you're going to start asking about other
20 conversations or if your question embraces
21 something that's broader than that, where it would
22 start to veer into other topics, then I'm asserting
23 the question -- I'm asserting the privilege and
24 instructing.
25 So ask him that question and you'll get an

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<p style="text-align: right;">38</p> <p>1 answer and no objection from me. 2 MR. FEE: I think I did just ask him that 3 question, but I'll ask it one more time. 4 BY MR. FEE: 5 Q Beside the communications that you've 6 already talked about today, can you identify any 7 other communications that you had to prepare for 8 your deposition today? 9 MR. BRIDGES: That's still not the 10 question I was suggesting -- 11 MR. FEE: Are you instructing him not to 12 answer that question? 13 MR. BRIDGES: Yeah. 14 MR. FEE: Okay. On privilege grounds? 15 MR. BRIDGES: Yeah. If you ask him if he 16 had any other -- any other conversations purely 17 about the deposition, I'm not going to -- I'm not 18 going to object to that. And that's not what 19 you're asking him. 20 MR. FEE: So your position is I have to 21 say "purely"? Is that -- 22 MR. BRIDGES: It has to be clear that -- I 23 don't care what the word is, but it has to be a 24 question about whether it was a conversation purely 25 about the deposition.</p>	<p style="text-align: right;">40</p> <p>1 been marked as Exhibit 32. It's the notice of a 2 30(b)(6) deposition for defendant 3 Public.Resource.Org, Inc. 4 (Exhibit 32 marked for identification.) 5 THE REPORTER: Kevin, did we just mark 6 that? 7 MR. FEE: Yes. 8 THE REPORTER: As 32? 9 MR. FEE: 32. 10 THE REPORTER: Okay. Thank you. 11 THE WITNESS: Yes, sir. 12 BY MR. FEE: 13 Q Earlier you said you had reviewed a 14 subpoena in preparing for your deposition. Do you 15 recall that? 16 A Yes, I do. 17 Q Okay. Is this the document that you were 18 referencing as a subpoena? 19 A It appears to be. 20 Q It wasn't a trick question. I'm just 21 asking you to identify -- 22 A Yeah, it appears to be. 23 Q All right. If you turn to the seventh 24 page of this document, please, it has a heading in 25 the middle of the page that says Topics on Which</p>
<p style="text-align: right;">39</p> <p>1 BY MR. FEE: 2 Q You're going to follow your counsel's 3 instruction and not answer that question? 4 A I will always follow my counsel's 5 instructions. 6 Q Okay. Did you meet with or have any 7 communications with Rebecca Malamud in preparing for 8 your deposition today? 9 A No. 10 Q When's the last time you had any 11 communication with Ms. Malamud? 12 A Yesterday. 13 Q Did you discuss this litigation at all 14 during that conversation? 15 A No. 16 Q And was that conversation via telephone? 17 A No. 18 Q Was it e-mail? 19 A Electronic mail. 20 Q Did you have any discussions with any of 21 the contractors or current or former employees that 22 you had identified today to prepare for your 23 deposition today? 24 A No. 25 Q Mr. Malamud, I'm going to hand you what's</p>	<p style="text-align: right;">41</p> <p>1 Examination Is Required. Did you review these 2 topics yesterday? 3 A Yes, I did. 4 Q Did you prepare to testify on behalf of 5 Public Resource on these topics? 6 A Yes, I did. 7 Q Were there any topics for which you felt 8 you were unprepared to testify on behalf of Public 9 Resource? 10 A I'm not sure what you mean by 11 "unprepared." I -- I -- I did review the list 12 carefully and I -- I believe I'm -- I'm ready to 13 discuss these topics. 14 Q And you are authorized to speak on behalf 15 of Public Resource on these topics? 16 A I am indeed. 17 Q Now, in connection with preparing to 18 testify on the topics listed in Exhibit 32, did you 19 review any particular documents? 20 MR. BRIDGES: Objection, vague and 21 ambiguous. 22 THE WITNESS: I believe I already answered 23 that. You had asked me what I reviewed in 24 preparation. 25 BY MR. FEE:</p>

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42	<p>1 Q And you -- you said you reviewed Exhibit 2 32, correct? 3 A (Witness nodding.) 4 Q You have to answer verbally. 5 A Yes. 6 Q Okay. You said you reviewed your e-mails, 7 correct? 8 A Some of them, yes. 9 Q Okay. And then some documents regarding 10 the finances of Public Resource? 11 A Yes. 12 Q And nothing else? 13 A I believe that's correct. 14 Q How did you go about identifying which 15 e-mails you would review in order to prepare for 16 your testimony today? 17 A I looked at a small subset of the 18 documents that were disclosed to -- as part of the 19 disclosure process. 20 Q Did you select those documents yourself? 21 A Yes, I did. 22 Q How did you go about identifying which 23 documents to review? 24 A I pulled up the first PDF file and I 25 started looking through it.</p>	44	<p>1 Q All right. And did posting those Court of 2 Appeals opinions somehow lead you to a desire to 3 start posting standards incorporated by reference? 4 MR. BRIDGES: Objection, lacks foundation, 5 vague and ambiguous, argumentative. 6 THE WITNESS: Legal materials, the law, 7 includes court opinions as well as statutes and 8 regulations, and that was the area that we began 9 working in, was to make the law available to 10 citizens in the United States. 11 BY MR. FEE: 12 Q And at some point in time Public Resource 13 became interested in making standards incorporated 14 by reference by statutes or regulations available on 15 the Internet; is that right? 16 MR. BRIDGES: Objection, vague and 17 ambiguous. 18 THE WITNESS: We posted the California 19 Code of Regulations, which includes Title 24, which 20 are the public safety standards for the state of 21 California. 22 23 BY MR. FEE: 24 Q At some point in time did Public Resource 25 become interested in posting the standards that were</p>
43	<p>1 Q And is it your understanding that you're 2 here to testify on behalf of Public Resource on all 3 38 topics in Exhibit 32? 4 A Yes. 5 Q Mr. Malamud, can you tell me when you 6 first became interested in the issue of the 7 availability of documents that have been 8 incorporated by reference by some governmental 9 agency? 10 MR. BRIDGES: By "you," are you referring 11 to Public.Resource.Org, the deponent at this 12 deposition? 13 MR. FEE: Yes. 14 BY MR. FEE: 15 Q I'm asking you in your corporate capacity. 16 A 2008. 17 Q How did Public.Resource.Org first become 18 interested in this issue? 19 MR. BRIDGES: Objection, vague and 20 ambiguous. 21 THE WITNESS: We began Public.Resource.Org 22 by posting legal materials such as Court of Appeals 23 opinions that were not available on the Internet at 24 the time. 25 BY MR. FEE:</p>	45	<p>1 incorporated by reference by Title 24? 2 A I think I just -- 3 MR. BRIDGES: Objection, lacks foundation, 4 vague and ambiguous. 5 THE WITNESS: I -- I think I answered that 6 yes, in 2008. 7 BY MR. FEE: 8 Q And can you explain to me how Public 9 Resource first decided that it was going to start 10 posting standards incorporated by reference by 11 statutes as opposed to just the statutes or 12 regulations themselves? 13 MR. BRIDGES: Objection, vague and 14 ambiguous. 15 THE WITNESS: Title 24 is part of the 16 California Code of Regulations and it's one of 17 the -- the laws that are in effect in the state of 18 California. 19 BY MR. FEE: 20 Q I understand that. And Title 24, just so 21 we're clear, right, is -- is a statute in 22 California? Is that your understanding? 23 A No, it's not a statute. It's a 24 regulation. 25 Q Statute.</p>

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<p style="text-align: right;">46</p> <p>1 A It's a regulation. 2 Q Okay. Okay. So the regulations that are 3 written by governmental agencies in -- in 4 California, correct? 5 MR. BRIDGES: Objection, lacks foundation, 6 argumentative, assumes facts not in evidence -- 7 THE WITNESS: Title -- 8 MR. BRIDGES: -- and vague and ambiguous. 9 THE WITNESS: Title 24 is part of the 10 California Code of Regulations, which are the 11 regulations promulgated by the state. 12 BY MR. FEE: 13 Q And Title 24 incorporates standards 14 written by private organizations, correct? 15 MR. BRIDGES: Objection, vague and 16 ambiguous. 17 THE WITNESS: Title 24 is -- 18 MR. BRIDGES: And -- I'm sorry -- and 19 lacks foundation, assumes facts not in evidence. 20 THE WITNESS: Title 24 is a publication of 21 the state of California, part of the California 22 Code of Regulations. 23 BY MR. FEE: 24 Q And it references standards that are not 25 written by any California government employee,</p>	<p style="text-align: right;">48</p> <p>1 reproduced in Title 24, correct? 2 A No. 3 Q I asked a bad question again. 4 Is it true that the ASTM standards are not 5 actually typed into Title 24? 6 MR. BRIDGES: May lack competence, vague 7 and ambiguous. 8 THE WITNESS: I don't believe they are. 9 BY MR. FEE: 10 Q And at some point in time did you decide 11 that you wanted to make standards such as ASTM 12 standards that were referenced in Title 24 available 13 on the Internet? 14 MR. BRIDGES: Lacks foundation, vague and 15 ambiguous, argumentative. 16 THE WITNESS: I -- I never -- no. 17 BY MR. FEE: 18 Q At some point in time did you decide that 19 Public Resource should make standards that are 20 incorporated by reference in Title 24 available on 21 Public Resources' website or websites? 22 MR. BRIDGES: Objection, lacks foundation, 23 vague and ambiguous, argumentative. 24 THE WITNESS: Again, I think you're 25 confusing incorporation by reference with the</p>
<p style="text-align: right;">47</p> <p>1 correct? 2 MR. BRIDGES: Objection, maybe -- may lack 3 competence, calls for speculation, vague and 4 ambiguous, lacks foundation. 5 THE WITNESS: Title 24 is published by 6 the -- by the state of California. 7 BY MR. FEE: 8 Q Right. Did -- did Title 24 refer to any 9 ASTM standards? 10 A Refers to, do you -- you mean in -- in 11 the -- I don't know what you mean by "refers to." 12 Q Does it incorporate by reference any ASTM 13 standard, Title 24? 14 A Title 24 doesn't incorporate anything by 15 reference. It's a publication of the state of 16 California. 17 Q Does Title 24 refer in the text to any 18 ASTM standard? 19 MR. BRIDGES: Objection, vague and 20 ambiguous. 21 THE WITNESS: There are numerous 22 references in the -- in Title 24 to ASTM standards 23 in the building code, for example. 24 BY MR. FEE: 25 Q The ASTM standards themselves are not</p>	<p style="text-align: right;">49</p> <p>1 publication of the state of California, which is 2 Title 24. There are other places that incorporate 3 things by reference, but Title 24 is -- is a 4 publication of the building, electrical, fire and 5 other public safety codes. 6 MR. BRIDGES: Focus on just answering his 7 questions. 8 THE WITNESS: Yes. Fine. 9 BY MR. FEE: 10 Q Maybe we should take a step back. 11 You do at Public Resource have ASTM 12 standards available for the public to view, correct? 13 MR. BRIDGES: Objection, argumentative, 14 vague and ambiguous, lacks foundation. 15 MR. FEE: Just go with form. It covers 16 all those. 17 BY MR. FEE: 18 Q Go ahead. 19 A Repeat that question for me, please. 20 (The reporter read the record 21 as requested.) 22 MR. BRIDGES: And then I had an objection, 23 but I thought -- 24 THE REPORTER: Yes. 25 MR. BRIDGES: I thought there was a later</p>

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<p style="text-align: right;">50</p> <p>1 question. 2 MR. FEE: No. I just suggested you could 3 go with form. You looked like you were still 4 thinking about other ones. 5 MR. BRIDGES: I'm sorry. You just 6 suggested that? 7 MR. FEE: It doesn't matter. 8 MR. BRIDGES: I can't hear you that well. 9 MR. FEE: Move on. 10 THE WITNESS: Yes. 11 MR. BRIDGES: I'm sorry. I don't know -- 12 I didn't know that there was a -- a question 13 pending enough to know whether to make an 14 objection, so can you please repeat to me what the 15 last question is in the transcript -- 16 THE REPORTER: Sure. That was -- 17 MR. BRIDGES: -- the last statement from 18 Mr. Fee? 19 THE REPORTER: I read -- 20 MR. BRIDGES: The last statement from 21 Mr. Fee. That wasn't the question. 22 THE REPORTER: Oh, the last -- that wasn't 23 a question and you asked for a question. 24 (The reporter read the record 25 as requested.)</p>	<p style="text-align: right;">52</p> <p>1 vague and ambiguous. 2 THE WITNESS: Yes. Me, for example. 3 BY MR. FEE: 4 Q Besides yourself, can you identify any 5 other persons who are unable to access one of 6 plaintiffs' standards prior to you posting on your 7 website? 8 MR. BRIDGES: Same objections. 9 THE WITNESS: Yes. I did meet a lot of 10 people in the state of California that were unable 11 to access California's Title 24. 12 BY MR. FEE: 13 Q Can you identify the names of any of these 14 people? 15 A The chief building inspector for Sonoma 16 County was a gentleman by the name of Shems, 17 S-H-E-M-S, Peterson, P-E-T-E-R-S-O-N, I believe. 18 And Mr. Peterson told me that there were many people 19 that he dealt with as a building inspector who were 20 unable to access California's Title 24. 21 MR. BRIDGES: I'll ask you to listen to 22 his question and answer his question. 23 BY MR. FEE: 24 Q Can you identify any other persons that 25 you're aware of that you believe had trouble</p>
<p style="text-align: right;">51</p> <p>1 BY MR. FEE: 2 Q Why don't you explain to me why you think 3 Public Resource permitted to post ASTM standards on 4 its website? 5 MR. BRIDGES: Objection, may call for a 6 legal conclusion, vague and ambiguous, lacks 7 foundation. 8 THE WITNESS: In the United States the -- 9 the law is owned by the people and has no copyright 10 and people are free to read and speak the law to 11 inform other citizens. 12 BY MR. FEE: 13 Q And is it your belief that at least 14 certain ASTM standards are the law? 15 MR. BRIDGES: Same objections. 16 THE WITNESS: Some ASTM standards are 17 incorporated by reference into the Code of Federal 18 Regulations and, therefore, are the law. 19 BY MR. FEE: 20 Q Prior to making any of the plaintiffs' 21 standards available on a Public Resource website, 22 were you aware of any instances where persons were 23 unable to obtain access to any of the standards that 24 are now available on your website? 25 MR. BRIDGES: Objection, lacks foundation,</p>	<p style="text-align: right;">53</p> <p>1 accessing one of the plaintiffs' standards that were 2 incorporated by reference -- 3 MR. BRIDGES: Objection. 4 BY MR. FEE: 5 Q -- prior to them being made available on 6 your website? 7 MR. BRIDGES: Objection, lacks foundation, 8 vague and ambiguous. 9 THE WITNESS: No, not by name. 10 BY MR. FEE: 11 Q Now, this Shamus -- or Shames you said his 12 name was? 13 A Shems. 14 Q Shems. Shems Peterson, did he tell you 15 that he couldn't access a particular ASTM standard 16 that's now available on Public Resource's website? 17 MR. BRIDGES: Objection, vague and 18 ambiguous. 19 THE WITNESS: No, we were referring to 20 California's Title 24, not ASTM standards, sir. 21 BY MR. FEE: 22 Q So Mr. Peterson didn't complain about 23 accessing any of the plaintiffs' standards; is that 24 right? 25 MR. BRIDGES: Objection, lacks foundation,</p>

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<p>54</p> <p>1 argumentative, vague and ambiguous. 2 THE WITNESS: California Title 24 includes 3 at least one of the plaintiffs' standards. 4 BY MR. FEE: 5 Q Is that NFPA? 6 A Yes. 7 Q So Mr. Peterson never complained about 8 accessing either ASTM or ASHRAE standards to you? 9 MR. BRIDGES: Objection, lacks foundation, 10 vague and ambiguous. 11 THE WITNESS: I don't recall. 12 BY MR. FEE: 13 Q Can you identify any person who has ever 14 complained to you about an inability to access an 15 ASTM standard? 16 MR. BRIDGES: Objection, vague and 17 ambiguous. 18 THE WITNESS: Yes. 19 BY MR. FEE: 20 Q Who? 21 A I've received electronic mail from people 22 complaining about ASTM standards. 23 Q Can you identify any of those persons? 24 A No. I believe it's in the material we 25 disclosed, though.</p>	<p>56</p> <p>1 standards on Public Resource's website? 2 MR. BRIDGES: Objection, vague and 3 ambiguous. 4 THE WITNESS: I had quite a few meetings 5 with government officials in which they were 6 complaining about lack of availability of standards 7 incorporated by reference. 8 BY MR. FEE: 9 Q Were they referring to ASTM standards? 10 A Yes. 11 Q Who? 12 A I had several meetings at OSHA, for 13 example. 14 Q What persons at OSHA complained about 15 access to ASTM standards? 16 A I met with the administrator of OSHA, a 17 Dr. David Michaels, and his staff, and it was one of 18 his staff members who said that lack of availability 19 is -- is an issue for the agency. 20 Q Do you know that person's name? 21 A No. 22 Q Did that person say he was unable to 23 access ASTM standards? 24 A He said it was an issue when it came to 25 enforcement more generally.</p>
<p>55</p> <p>1 Q Did -- did these people not have Internet 2 access, to the best of your knowledge? 3 MR. BRIDGES: Objection, competence, 4 assumes facts not in evidence, may call for 5 speculation. 6 THE WITNESS: They sent me electronic 7 mail. 8 BY MR. FEE: 9 Q So it suggests that they have access to 10 the Internet, then, correct? 11 A Yes. 12 Q And were they aware that ASTM has a 13 reading room online that has standards incorporated 14 by reference on them? 15 MR. BRIDGES: Objection, lacks foundation, 16 assumes facts not in evidence, argumentative, vague 17 and ambiguous. 18 THE WITNESS: I believe electronic mail, 19 at least some of that was received before the 20 reading room took operation. 21 BY MR. FEE: 22 Q So besides any e-mails that you've 23 received that were produced in this case, can you 24 identify any other persons who had troubles 25 accessing ASTM standards prior to your posting those</p>	<p>57</p> <p>1 Q So it wasn't a problem he was having 2 accessing the standard as far as you recall? 3 MR. BRIDGES: Objection, may call for 4 speculation. 5 THE WITNESS: I don't know. 6 BY MR. FEE: 7 Q He didn't tell you that he was having 8 trouble personally accessing ASTM standards? 9 MR. BRIDGES: Lacks foundation, vague and 10 ambiguous. 11 THE WITNESS: He did not say that 12 specifically the way you did. He complained about 13 access. 14 BY MR. FEE: 15 Q When was the first time that you decided 16 to make a copy of one of the plaintiffs' standards? 17 MR. BRIDGES: Objection. I'm interpreting 18 you throughout as referring to Public.Resource.Org, 19 but also argumentative and vague and ambiguous. 20 THE WITNESS: Do you mean a printed copy, 21 sir? 22 BY MR. FEE: 23 Q Any copy, printed or electronic. 24 A In 2012.</p>

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<p style="text-align: right;">58</p> <p>1 Q How did Public Resource make the decision 2 to make a copy of one of plaintiffs' standards in 3 2012? 4 MR. BRIDGES: Vague and ambiguous. 5 THE WITNESS: What do you mean, how did I 6 make the decision? I -- I made the decision. 7 BY MR. FEE: 8 Q Right. You made the decision personally, 9 Carl Malamud? 10 A Yes. 11 Q Why did you make that decision? 12 A Because I felt incorporation by reference 13 at the federal level was an important issue. 14 Q Did you just come to that conclusion in 15 2012? 16 MR. BRIDGES: Objection, argumentative, 17 vague and ambiguous. 18 THE WITNESS: No, I had studied the issue 19 very carefully for several years. 20 BY MR. FEE: 21 Q Okay. And why, then, in 2012 did you 22 finally start making copies of plaintiffs' 23 standards? 24 MR. BRIDGES: Objection, argumentative and 25 lacks foundation.</p>	<p style="text-align: right;">60</p> <p>1 Q Are you going to follow that instruction? 2 A Absolutely. 3 Q Where did Public Resource purchase the 73 4 standards from? 5 A Off the Internet through a variety of 6 sources. I believe we furnished our invoices to 7 you. 8 Q Were any of the standards purchased 9 directly from one of the plaintiffs? 10 A Yes. 11 Q Which standards were purchased directly 12 from the plaintiffs? 13 A I don't recall precisely, but I believe 14 NFPA and perhaps ASTM. 15 Q In the original -- or strike that. 16 The source copies for the 73 standards 17 that you acquired on -- in connection with this 18 project were all hard copies; is that right? 19 A Yes. 20 Q And you said you scanned the -- the -- the 21 standards that you acquired? 22 A I did. 23 Q And Carl Malamud himself did all the 24 scanning? 25 A I personally did it.</p>
<p style="text-align: right;">59</p> <p>1 THE WITNESS: Because it's when I decided 2 to do it. 3 BY MR. FEE: 4 Q There was no triggering event that you 5 could recall sitting here today? 6 A I had spent a lot of 2011 studying the 7 incorporation by reference issue as part of my 8 membership of the Administrative Conference of the 9 United States. 10 Q Can you describe how Public Resource went 11 about making the first copies of one or more of 12 plaintiffs' standards in 2012? 13 MR. BRIDGES: Objection, vague. 14 THE WITNESS: I purchased 73 standards, 15 scanned them, printed them and bound them with what 16 are known as Chicago screws, which are brass 17 screws. 18 BY MR. FEE: 19 Q Before you made those copies of the 73 20 standards, did you obtain or did Public Resource 21 obtain any legal opinion with respect to that 22 matter? 23 MR. BRIDGES: Objection. Instruct not to 24 answer on the grounds of attorney-client privilege. 25 BY MR. FEE:</p>	<p style="text-align: right;">61</p> <p>1 Q And you did the printing and binding as 2 well? 3 A Absolutely. 4 Q What did you do those with those 73 5 standards? 6 MR. BRIDGES: Objection, vague and 7 ambiguous. 8 THE WITNESS: I sent them to ten standards 9 development organizations and to seven government 10 officials. 11 THE REPORTER: Seven or -- 12 THE WITNESS: Seven. 13 BY MR. FEE: 14 Q Why did you do that? 15 A I raised a number of issues in the seven 16 letters to the government officials regarding the 17 availability of standards incorporated by reference 18 and I requested comment back from the ten standards 19 development organizations about those issues. 20 Q Did you receive any responses from any of 21 the recipients of the copies of the standards that 22 you circulated in 2012? 23 MR. BRIDGES: Objection, vague and 24 ambiguous. 25 THE WITNESS: Yes, I did.</p>

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<p style="text-align: right;">62</p> <p>1 BY MR. FEE: 2 Q From whom did you receive responses? 3 A The Archivist of the United States, the 4 chairman of the Federal Trade Commission and 5 Chairman Darrell Issa of the House of 6 Representatives. 7 THE REPORTER: I-S? 8 THE WITNESS: I-S-S-A. 9 BY MR. FEE: 10 Q Are those all the responses you received? 11 MR. BRIDGES: Objection, vague and 12 ambiguous. 13 THE WITNESS: Two organizations returned 14 the boxes. 15 BY MR. FEE: 16 Q What organizations? 17 A The White House, British Standards 18 Institution and maybe the National Sanitation 19 Foundation. I forget. 20 Q Can you describe the content of the 21 responses from the three people who responded to 22 your delivery of the 73 standards? 23 A They loved the packaging. 24 Q Do you recall anything else about any of 25 their responses?</p>	<p style="text-align: right;">64</p> <p>1 electronic copy as opposed to just having the 2 electronic copy? 3 MR. BRIDGES: I'll object -- I object. 4 Argumentative terminology, vague and ambiguous. 5 THE WITNESS: Yes, you scan it and make an 6 electronic copy. 7 BY MR. FEE: 8 Q So wouldn't it have been easier to 9 purchase electronic copies from the standards 10 organizations? 11 MR. BRIDGES: Objection, lacks foundation, 12 vague and ambiguous, argumentative. 13 THE WITNESS: No, it wouldn't be. 14 BY MR. FEE: 15 Q And your decision to buy paper copies as 16 opposed to electronic copies was not in order to 17 avoid any terms of use in connection with a license 18 agreement of an electronic copy? 19 MR. BRIDGES: Objection, lacks foundation, 20 vague and ambiguous. 21 THE WITNESS: Both terms of use and the 22 way a PDF document are packaged make them much 23 harder to work with. 24 BY MR. FEE: 25 Q If you had purchased an electronic copy of</p>
<p style="text-align: right;">63</p> <p>1 A No, that was it. 2 Oh, I'm sorry. I got e-mail from 3 Mr. Cooper at ANSI as well. 4 Q Do you recall the substance of that 5 e-mail? 6 A I think he liked the packaging. 7 THE REPORTER: You said that he's from 8 ANSI? 9 THE WITNESS: A-N-S-I, American National 10 Standards Institution -- or Institute. 11 BY MR. FEE: 12 Q When you were purchasing the 73 standards, 13 why did you decide to buy paper copies as opposed to 14 electronic copies? 15 MR. BRIDGES: Objection, vague, ambiguous, 16 relevance. 17 THE WITNESS: It's by far the easiest way 18 to process them. 19 BY MR. FEE: 20 Q Can you explain why it would be easier to 21 process paper documents than to, for example, print 22 electronic copies? 23 A A paper document you throw it on a scanner 24 and you scan it. 25 Q So you take the paper and make an</p>	<p style="text-align: right;">65</p> <p>1 the standards from the organizations, then it would 2 have been more accurate, wouldn't it have? 3 MR. BRIDGES: Objection, vague and 4 ambiguous. 5 THE WITNESS: No, it's the same document. 6 BY MR. FEE: 7 Q When you made any of the purchases that 8 you identified as direct purchases from one or more 9 of the plaintiffs, did you agree to any terms of -- 10 or conditions in connection with those purchases? 11 MR. BRIDGES: Objection, lacks foundation, 12 may call for a legal conclusion, assumes facts not 13 in evidence, argumentative, vague and ambiguous. 14 THE WITNESS: And I'm sorry. Would you 15 repeat that question? 16 BY MR. FEE: 17 Q When you made any of the purchases that 18 you identified as direct purchases from one or more 19 of the plaintiffs, did you agree to any terms or 20 conditions in connection with those purchases? 21 MR. BRIDGES: Same objections. 22 THE WITNESS: I -- I believe there may 23 have been terms and conditions. 24 BY MR. FEE: 25 Q Do you recall what the terms and</p>

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<p style="text-align: right;">66</p> <p>1 conditions were for any of those purchases? 2 MR. BRIDGES: Objection, lacks foundation, 3 vague and ambiguous. 4 THE WITNESS: No, I don't recall right 5 now. 6 BY MR. FEE: 7 Q Do you recall which organizations you may 8 have entered into a terms and conditions agreement 9 with? 10 MR. BRIDGES: Objection, lacks foundation, 11 calls for speculation, may call for a legal 12 conclusion, vague and ambiguous. 13 THE WITNESS: So as part of the checkout 14 process for purchasing a standard, I believe some 15 of the organizations had a -- a terms of use. 16 BY MR. FEE: 17 Q Do you recall which organizations? 18 A Well, I purchased standards directly, like 19 I said before, from NFPA and ASTM, and -- and I -- I 20 believe they probably had terms of use. 21 MR. BRIDGES: I'll ask the witness not to 22 speculate. If you -- please testify as to what you 23 recall. 24 THE WITNESS: Okay. I -- I -- 25 MR. BRIDGES: Only testify as to what you</p>	<p style="text-align: right;">68</p> <p>1 THE WITNESS: I wanted to focus on the 2 core issue of incorporation by reference of the 3 standards in the law and not confuse that with 4 terms of use. 5 BY MR. FEE: 6 Q So the terms of use didn't make the 7 processing of the document itself more difficult, it 8 made you making your point more difficult; is that 9 fair to say? 10 MR. BRIDGES: Objection, misstates the -- 11 misstates the testimony, argumentative, lacks 12 foundation. 13 THE WITNESS: Difficulty of processing is 14 the format of the PDF files that you purchase 15 electronically. 16 BY MR. FEE: 17 Q Okay. So the actual processing of a PD -- 18 of an electronic document as a PDF made it difficult 19 to make paper copies? 20 MR. BRIDGES: Objection, lacks foundation, 21 I think it misstates testimony, vague and 22 ambiguous, argumentative. 23 THE WITNESS: And I'm sorry. Could you 24 repeat that question for me? 25 BY MR. FEE:</p>
<p style="text-align: right;">67</p> <p>1 know. 2 THE WITNESS: I -- I do not recall 3 precisely, no. 4 MR. BRIDGES: You know, we've been going a 5 little bit over an hour and I need to make a -- 6 check in -- 7 MR. FEE: Yeah, we can take a break now. 8 That's fine. 9 MR. BRIDGES: Okay. 10 THE VIDEOGRAPHER: We're going off the 11 record. The time is 11:13 a.m. 12 (Recess taken.) 13 THE VIDEOGRAPHER: Back on the record, the 14 time is 11:25 a.m. 15 BY MR. FEE: 16 Q Mr. Malamud, earlier you had said that the 17 terms of use and the way that PDF documents are 18 packaged made them harder to work with. Do you 19 recall our discussion along those lines? 20 A Yes, I do. 21 Q Can you explain to me how the terms of use 22 made it harder to work with electronic documents 23 than paper documents? 24 MR. BRIDGES: Objection, may call for a 25 legal conclusion, vague and ambiguous.</p>	<p style="text-align: right;">69</p> <p>1 Q I just want to make sure I understand your 2 testimony about the difficulty in processing the 3 PDFs. You said that the way they are packaged 4 somehow made it more difficult, correct? 5 A Yes. 6 Q Can you explain that to me? 7 A Yes. They have digital rights management. 8 Q Are there any other issues with respect to 9 the way PDFs are packaged other than digital rights 10 management that made it difficult for you to process 11 an electronic file for your copies of the 73 12 standards? 13 MR. BRIDGES: Objection, vague and 14 ambiguous, lacks foundation. 15 THE WITNESS: Again, I prefer paper 16 copies. I just find them easier to process. 17 BY MR. FEE: 18 Q Earlier we were talking a bit about people 19 who had identified access problems with respect to 20 standards that were incorporated by reference. Do 21 you recall that? 22 A Yes, I do. 23 Q And you had identified, I believe, a 24 couple of governmental officials who you said had 25 identified an access problem; is that right?</p>

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<p style="text-align: right;">70</p> <p>1 A Yes.</p> <p>2 Q Are you aware of any access problem that</p> <p>3 had been suffered by a person who was actually being</p> <p>4 governed or regulated by a standard that was</p> <p>5 incorporated by reference?</p> <p>6 MR. BRIDGES: Objection, lacks foundation,</p> <p>7 argumentative, vague and ambiguous.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. FEE:</p> <p>10 Q Who?</p> <p>11 A Mr. Peterson explained that there were</p> <p>12 several homeowners and --</p> <p>13 MR. BRIDGES: His question was --</p> <p>14 THE WITNESS: I -- I don't know any</p> <p>15 specific names.</p> <p>16 BY MR. FEE:</p> <p>17 Q Are you aware of any evidence that any</p> <p>18 person who is being governed by a standard written</p> <p>19 by one of the plaintiffs actually had trouble</p> <p>20 accessing one of the plaintiffs' standards?</p> <p>21 MR. BRIDGES: Lacks foundation, assumes</p> <p>22 facts not in evidence, argumentative, vague and</p> <p>23 ambiguous.</p> <p>24 THE WITNESS: So lack of availability is</p> <p>25 certainly a general problem that has been discussed</p>	<p style="text-align: right;">72</p> <p>1 access.</p> <p>2 Q Any others that you can identify?</p> <p>3 MR. BRIDGES: Same -- same objections as</p> <p>4 to my earlier -- as -- as my earlier objections.</p> <p>5 THE WITNESS: Again, in the dockets there</p> <p>6 were a large number of groups that identified</p> <p>7 access problems.</p> <p>8 BY MR. FEE:</p> <p>9 Q But the only individual that you've</p> <p>10 identified is Carl Weimer; is that right?</p> <p>11 A That I --</p> <p>12 MR. BRIDGES: Same -- same objections as</p> <p>13 my earlier ones.</p> <p>14 THE WITNESS: The only one identified by</p> <p>15 name, yes.</p> <p>16 BY MR. FEE:</p> <p>17 Q And Mr. Weimer, as you said, was the</p> <p>18 executive director of Pipeline Safety Trust; is that</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q And what did he tell you about his</p> <p>22 inability to access one of the plaintiffs'</p> <p>23 standards?</p> <p>24 MR. BRIDGES: Objection, lacks foundation,</p> <p>25 vague and ambiguous.</p>
<p style="text-align: right;">71</p> <p>1 in many news media reports, for example.</p> <p>2 BY MR. FEE:</p> <p>3 Q Are you aware of any individuals who</p> <p>4 actually had a problem accessing one of the</p> <p>5 plaintiffs' standards and -- and that were governed</p> <p>6 by those standards via incorporation by reference?</p> <p>7 MR. BRIDGES: All the same objections as I</p> <p>8 last said.</p> <p>9 THE WITNESS: Yes, I am.</p> <p>10 BY MR. FEE:</p> <p>11 Q Identify all those for me.</p> <p>12 A I don't know if I can identify all of</p> <p>13 them, but can -- can I --</p> <p>14 Q Identify all that you can think of sitting</p> <p>15 here right now.</p> <p>16 A Okay. Mr. Carl Weimer is the executive</p> <p>17 director of the Pipeline Safety Trust.</p> <p>18 MR. BRIDGES: You've been asked to</p> <p>19 identify the individuals. That's what he's asked</p> <p>20 you to do.</p> <p>21 BY MR. FEE:</p> <p>22 Q Who else.</p> <p>23 A There were a large number of submissions</p> <p>24 to federal information gathering that included</p> <p>25 submissions by groups that complained about lack of</p>	<p style="text-align: right;">73</p> <p>1 THE WITNESS: He spoke at a information</p> <p>2 gathering process at PHMSA, P-H-M-S-A, which is a</p> <p>3 federal government agency.</p> <p>4 MR. BRIDGES: I'll ask the witness to</p> <p>5 listen to the question and to answer the question.</p> <p>6 THE WITNESS: Okay.</p> <p>7 BY MR. FEE:</p> <p>8 Q So what did Mr. Weimer say about his</p> <p>9 inability to access plaintiffs' standards?</p> <p>10 MR. BRIDGES: Objection, lacks foundation,</p> <p>11 vague and ambiguous.</p> <p>12 THE WITNESS: He said that lack of</p> <p>13 availability of the standards was a significant</p> <p>14 issue for him.</p> <p>15 MR. FEE: Did he identify the lack of</p> <p>16 availability of one of the plaintiffs' standards in</p> <p>17 particular?</p> <p>18 A I don't recall.</p> <p>19 Q Did he explain to you or to -- this is a</p> <p>20 group speech he made; is that what you said? He</p> <p>21 made a presentation?</p> <p>22 MR. BRIDGES: Objection, compound, vague</p> <p>23 and ambiguous.</p> <p>24 THE WITNESS: It was testimony before a</p> <p>25 federal proceeding.</p>

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<p style="text-align: right;">74</p> <p>1 BY MR. FEE: 2 Q During his testimony did Mr. Weimer 3 explain why he was unable to access any standards 4 through reading rooms who were purchasing copies of 5 those standards? 6 MR. BRIDGES: Objection, lacks foundation, 7 argumentative, vague and ambiguous. 8 THE WITNESS: I don't recall. 9 BY MR. FEE: 10 Q Do you recall any explanation as to why 11 Mr. Weimer could not access any of the plaintiffs' 12 standards? 13 MR. BRIDGES: Objection, lacks foundation, 14 vague and ambiguous. 15 THE WITNESS: I don't recall. 16 BY MR. FEE: 17 Q Do you recall any testimony about why 18 Mr. Weimer couldn't access any standard that had 19 been incorporated by reference by any governmental 20 agency? 21 MR. BRIDGES: Objection, lacks foundation, 22 vague and ambiguous. 23 THE WITNESS: I remember the general topic 24 of his testimony, but not the specifics. 25 BY MR. FEE:</p>	<p style="text-align: right;">76</p> <p>1 THE WITNESS: It's in a video on our 2 website. 3 BY MR. FEE: 4 Q And it's one home builder? 5 MR. BRIDGES: Same objection. 6 THE WITNESS: I -- I don't recall. 7 BY MR. FEE: 8 Q Do you recall there being more than one 9 home builder that he referenced? 10 A I'd have to review the transcript to see 11 if he was speaking about one or many. 12 MR. BRIDGES: The answer (sic) is do you 13 recall. 14 THE WITNESS: No, I don't. 15 MR. BRIDGES: Please -- 16 BY MR. FEE: 17 Q Are you aware of any circumstances -- 18 MR. BRIDGES: I've just -- I've got to 19 instruct the witness. Please listen carefully to 20 his questions and answer his question. 21 THE WITNESS: Okay. 22 23 BY MR. FEE: 24 Q Are you aware of any of the circumstances 25 that led to this home builder's inability to access</p>
<p style="text-align: right;">75</p> <p>1 Q So you can't recall any circumstance that 2 prevented him from accessing any particular 3 standard? 4 MR. BRIDGES: Objection, lacks foundation, 5 vague and ambiguous. 6 THE WITNESS: I -- I don't recall. 7 BY MR. FEE: 8 Q Can you identify any circumstances in 9 which any home builder, for example, was unable to 10 access standards that were incorporated by reference 11 that might be relevant to someone building a home? 12 MR. BRIDGES: Objection, competence, may 13 call for speculation, vague and ambiguous, lacks 14 foundation. 15 THE WITNESS: Mr. Peterson related such a 16 story. 17 BY MR. FEE: 18 Q Any others? 19 MR. BRIDGES: Same objections. 20 THE WITNESS: I don't recall. 21 BY MR. FEE: 22 Q So Mr. Peterson identified one instance in 23 which a home builder was unable to access a standard 24 as incorporated by reference? 25 MR. BRIDGES: Same objections.</p>	<p style="text-align: right;">77</p> <p>1 standards that he was governed by via incorporation 2 by reference? 3 MR. BRIDGES: Objection, lacks foundation, 4 assumes facts not in evidence, vague and ambiguous, 5 argumentative. 6 THE WITNESS: No. 7 MR. BRIDGES: I'm sorry? 8 THE WITNESS: No. 9 BY MR. FEE: 10 Q Are you aware of any evidence that that 11 home was actually not built due to this inability to 12 access standards incorporated by reference? 13 MR. BRIDGES: Objection, completely lacks 14 foundation, vague and ambiguous, argumentative. 15 THE WITNESS: No. 16 BY MR. FEE: 17 Q Have you been looking for somebody who you 18 could identify as an example of a person who 19 suffered as a result of inability to access a 20 standard incorporated by reference? 21 MR. BRIDGES: Objection, argumentative, 22 lacks foundation, argumentative -- or that's -- I 23 guess I said that -- vague and ambiguous. 24 THE WITNESS: No. 25 BY MR. FEE:</p>

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<p style="text-align: right;">78</p> <p>1 Q Besides communications that you've 2 referenced earlier today, can you identify any other 3 evidence that there is a actual problem amongst the 4 public in accessing standards that are incorporated 5 by reference that were authored by one of the 6 plaintiffs in this case? 7 MR. BRIDGES: Objection, vague, ambiguous, 8 argumentative. 9 THE WITNESS: A number of government 10 officials have discussed this as -- as an issue. 11 BY MR. FEE: 12 Q Is that the only other evidence that 13 you're aware of that indicates that there is an 14 access problem with respect to standards 15 incorporated by reference? 16 MR. BRIDGES: Same objections. I'm also 17 going to include an objection about legal 18 conclusion about evidence. 19 THE WITNESS: And I'm sorry. Could you 20 repeat that question? 21 BY MR. FEE: 22 Q I said is that the only other evidence 23 that you're aware of that indicates that there is an 24 access problem with respect to standards 25 incorporated by reference?</p>	<p style="text-align: right;">80</p> <p>1 BY MR. FEE: 2 Q Well, why don't we go through the 3 plaintiffs here if you want to be more specific. 4 What do you know about how ASTM standards 5 are created? 6 MR. BRIDGES: Objection, vague and 7 ambiguous. 8 THE WITNESS: There's a lot of information 9 on their website about the process of creating ASTM 10 standards. 11 MR. BRIDGES: That didn't answer his 12 question. Please answer his question. Listen to 13 his question. 14 THE WITNESS: I -- I -- I know what I read 15 on the ASTM website. 16 BY MR. FEE: 17 Q Can you describe your understanding 18 of those materials? 19 A There's a large number of documents that 20 describe the ASTM standards process. 21 Q Can you summarize them? 22 A There's a -- 23 MR. BRIDGES: Objection, competence. 24 THE WITNESS: There is a style guide. 25 There's a procedures guide. There's committee</p>
<p style="text-align: right;">79</p> <p>1 MR. BRIDGES: Same objections, lacks 2 foundation, calls for a legal conclusion, assumes 3 facts not in evidence. 4 THE WITNESS: When I testified before 5 Congress, several members of Congress stood up 6 and -- and said that that was an issue that they 7 were concerned about. 8 MR. FEE: Any other evidence that you're 9 aware of on that topic? 10 MR. BRIDGES: All the same objections. 11 THE WITNESS: A large number of news media 12 pieces about this issue. 13 BY MR. FEE: 14 Q Anything else? 15 MR. BRIDGES: Same objections. 16 THE WITNESS: No. 17 BY MR. FEE: 18 Q No. Can you describe for me what your 19 understanding is with respect to how standards 20 development organizations create standards? 21 MR. BRIDGES: Objection, competence, vague 22 and ambiguous and -- and lacks -- sorry -- lacks 23 foundation, assumes facts not in evidence. 24 THE WITNESS: Do you have a specific 25 standards organization in mind?</p>	<p style="text-align: right;">81</p> <p>1 charters. 2 BY MR. FEE: 3 Q Do you understand that ASTM members 4 actually draft language that becomes a standard at 5 some point in time? 6 MR. BRIDGES: Objection, vague and 7 ambiguous and lacks foundation. 8 THE WITNESS: I am -- ASTM members or -- 9 so are -- are you asking if just ASTM? No, I'm -- 10 I'm sorry. Repeat the question, please I'm 11 confused about what you're asking. 12 BY MR. FEE: 13 Q Who writes these standards that are 14 authored -- or strike that. 15 Who writes the ASTM standards, to the best 16 of your understanding? 17 MR. BRIDGES: Objection, vague and 18 ambiguous. 19 THE WITNESS: Volunteers. 20 BY MR. FEE: 21 Q Who makes up this group of volunteers that 22 author ASTM standards, to the best of your 23 knowledge? 24 MR. BRIDGES: Vague and ambiguous. 25 Objection. I'm sorry. Could you please repeat the</p>

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<p style="text-align: right;">82</p> <p>1 question for me? 2 (The reporter read the record 3 as requested.) 4 MR. BRIDGES: Okay. Objection, vague and 5 ambiguous, argumentative, lacks foundation, assumes 6 facts not in evidence. 7 THE WITNESS: Each of the committees list 8 the members of those committees and those are the 9 people that draft the standards. 10 BY MR. FEE: 11 Q Is it your understanding that that's how 12 the process works for all three of the plaintiffs? 13 MR. BRIDGES: Objection, vague and 14 ambiguous. 15 THE WITNESS: Volunteers draft the 16 standards for all three of the plaintiffs. 17 BY MR. FEE: 18 Q Do you understand that those standards are 19 eventually registered with the copyright office? 20 MR. BRIDGES: Objection, irrelevant, lacks 21 foundation, may call for speculation, vague and 22 ambiguous. 23 THE WITNESS: I really don't know. 24 BY MR. FEE: 25 Q Have you ever seen a copyright</p>	<p style="text-align: right;">84</p> <p>1 MR. BRIDGES: Please let me -- 2 THE WITNESS: I'm sorry. 3 MR. BRIDGES: -- finish my objections. 4 Assumes facts not in evidence and lacks foundation. 5 BY MR. FEE: 6 Q Are you aware of any evidence that any 7 participants in the NFPA standard development 8 process claim to be the owner of the copyright for 9 any NFPA standards? 10 MR. BRIDGES: All the same objections, and 11 I can't remember if I included argumentative. 12 THE WITNESS: I don't know. 13 BY MR. FEE: 14 Q You don't know if you're aware or you're 15 not aware of any? 16 A I -- I'm not aware of any. 17 Q Are you aware of any evidence that members 18 or participants in the ASHRAE standard development 19 process claimed to be owners of the copyrights that 20 are at issue and were registered by ASHRAE? 21 MR. BRIDGES: I'm -- I'm sorry. Can you 22 repeat that, please? 23 (The reporter read the record 24 as requested.) 25 MR. BRIDGES: Okay. Calls for a legal</p>
<p style="text-align: right;">83</p> <p>1 registration for any of the plaintiffs' standards? 2 MR. BRIDGES: Lacks foundation, vague and 3 ambiguous. 4 THE WITNESS: Yes. 5 BY MR. FEE: 6 Q Have you seen copyright registrations for 7 all three of the plaintiffs' works? 8 MR. BRIDGES: Same objections. 9 THE WITNESS: I don't know. 10 BY MR. FEE: 11 Q Which plaintiffs do you recall seeing 12 copyright registrations for? 13 MR. BRIDGES: Same objections. 14 THE WITNESS: I actually don't recall. 15 BY MR. FEE: 16 Q Are you aware of any evidence that any 17 participants in the ASTM standard development 18 process claimed to be the owner of the copyrights 19 for any of the standards that ASTM claims to be 20 infringed in this case? 21 MR. BRIDGES: Well, objection. Calls for 22 a legal conclusion, may call for attorney-client 23 communications, in which case I would instruct him 24 not to answer. 25 THE WITNESS: I don't know. I'm sorry.</p>	<p style="text-align: right;">85</p> <p>1 conclusion, assumes facts not in evidence, 2 argumentative, lacks foundation, vague and 3 ambiguous. 4 THE WITNESS: I'm not aware of any. 5 MR. BRIDGES: And -- and one other, 6 please, attorney-client privilege. I'm asking him 7 not to testify as to -- attorney-client privileged 8 and work product. Asking you not to testify as to 9 anything you may know from counsel or subject to 10 communication with counsel. 11 BY MR. FEE: 12 Q Are you aware of any evidence that any 13 participants in the ASTM standard development 14 process claimed to be the owners of the copyrights 15 in the standards that they were involved in? 16 MR. BRIDGES: All the same objections. 17 THE WITNESS: Same answer; I'm not aware. 18 BY MR. BRIDGES: 19 Q You're not aware of any evidence along 20 those lines? 21 MR. BRIDGES: All the same objections. 22 23 BY MR. FEE: 24 Q Correct? 25 A I -- I don't want to discuss</p>

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<p style="text-align: right;">86</p> <p>1 communications with my -- my attorney. 2 Q I didn't ask you about any communications 3 with your attorney. 4 Are you aware of any evidence that 5 suggests that any participant in the ASTM standard 6 development process claims to be the owner of any 7 ASTM standard? 8 MR. BRIDGES: And I'm asking him to 9 exclude material that's attorney work products that 10 may have been communicated to him. So his answers 11 have to exclude any reference to what is currently 12 attorney work product. And -- and all the same 13 objections I've been making in this series of 14 questions. 15 THE WITNESS: So in -- in that sense, I am 16 not aware. 17 BY MR. FEE: 18 Q Have you had any communications with any 19 of the participants in any of the plaintiffs' 20 standard development processes regarding their 21 ownership or potential ownership of any of the 22 plaintiffs' standards? 23 MR. BRIDGES: That's going to call for 24 attorney work product and attorney-client 25 communications. I'll instruct him not to respond</p>	<p style="text-align: right;">88</p> <p>1 have legitimate copyright interests in their 2 standards prior to incorporation by reference, 3 correct? 4 MR. BRIDGES: Objection, may call for a 5 legal conclusion and lacks foundation, assumes 6 facts not in evidence, vague and ambiguous. 7 THE WITNESS: The sole extent of my 8 knowledge is that a standard incorporated by 9 reference into law is the law and has no copyright, 10 and that's the limit of my ability to comment on 11 the issue of copyright and ownership. 12 BY MR. FEE: 13 Q Well, in the past, haven't you told others 14 that the standards development organizations have 15 strong copyright interests in the standards prior to 16 incorporation by reference? 17 MR. BRIDGES: Same objections. 18 THE WITNESS: Do you have a specific 19 example? That doesn't sound like something I would 20 say. 21 BY MR. FEE: 22 Q Do you deny saying that? 23 MR. BRIDGES: Objection, argumentative, 24 lacks foundation. 25 BY MR. FEE:</p>
<p style="text-align: right;">87</p> <p>1 to that extent. And then beyond that, I think 2 calls for a legal conclusion and vague and 3 ambiguous. 4 THE WITNESS: Again, not aware. 5 BY MR. FEE: 6 Q So you've had no communications with 7 persons regarding that subject matter, correct? 8 MR. BRIDGES: Misstates testimony. All 9 the same objections as to the previous line of 10 questions. 11 THE WITNESS: No. 12 BY MR. FEE: 13 Q I think that was poor phrasing by my 14 question. Let me try it one more time. 15 Can you identify any communications that 16 you've had with any members or participants in 17 plaintiffs' standard development process regarding 18 whether or not they owned the copyrights to the 19 standards that they were involved in? 20 MR. BRIDGES: All the same objections. 21 THE WITNESS: No. 22 23 BY MR. FEE: 24 Q Okay. And you have in the past 25 acknowledged that standard development organizations</p>	<p style="text-align: right;">89</p> <p>1 Q Do you deny saying that? 2 A I don't think I would ever use the phrase, 3 "strong copyright interests," sir. 4 Q No? 5 A That doesn't sound like me. 6 Q Okay. Who is Debra Hunt? 7 A I -- I don't recall. 8 Q I'm going to hand you what's been marked 9 as Exhibit 33. It's a series of e-mails between you 10 and Debra Hunt, Bates-labeled PRO_166616 through 18. 11 (Exhibit 33 marked for identification.) 12 THE WITNESS: Yeah, this appears to be an 13 exchange between me and -- and Ms. Hunt. 14 BY MR. FEE: 15 Q Have you had a chance to read this e-mail 16 enough to see that you referred to the standards 17 having a strong copyright interest? 18 A I do indeed. 19 Q Okay. Does that refresh your recollection 20 about whether or not you've referred to the 21 standards as having strong copyright interests in 22 the past? 23 MR. BRIDGES: Objection, may call for a 24 legal conclusion and vague and ambiguous. 25 THE WITNESS: And I think you've pulled</p>

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<p style="text-align: right;">90</p> <p>1 that phrase out of context. What I specifically 2 said is while many of these standards have a strong 3 copyright interest, there is a subset of those that 4 have been incorporated by reference into the Code 5 of Federal Regulations. 6 BY MR. FEE: 7 Q Right. And then you say because those 8 subsets have been incorporated by reference, they 9 are not subject to copyright, correct? 10 MR. BRIDGES: Objection, misstates the 11 document, misstates his testimony. 12 THE WITNESS: I'm sorry. Repeat the 13 question, please. 14 BY MR. FEE: 15 Q I'll actually withdraw the question. 16 Aren't you saying here that the standards 17 have a strong copyright interest up until the point 18 that they are incorporated by reference, at which 19 point they have no copyright interest? 20 MR. BRIDGES: Objection, misstates the 21 document. 22 THE WITNESS: That's not what I said. I 23 say while many of these standards have a strong 24 copyright interest, there is a subset of those that 25 have been incorporated by reference into the Code</p>	<p style="text-align: right;">92</p> <p>1 have a strong copyright interest, there is a subset 2 of those that are incorporated by reference into the 3 CFR. 4 BY MR. FEE: 5 Q Okay. And what was your assertion that 6 many of the standards have a strong copyright 7 interest based upon? 8 MR. BRIDGES: Objection, may call for a 9 legal conclusion. 10 THE WITNESS: I believe I was -- I -- I 11 was contrasting the standards that I'm specifically 12 interested, which are those incorporated by 13 reference into the Code of Federal Regulations with 14 those that are not incorporated by reference. 15 BY MR. FEE: 16 Q Which standards have a strong copyright 17 interest? 18 MR. BRIDGES: Objection, calls for a legal 19 conclusion, vague and ambiguous. 20 THE WITNESS: I -- I really am not a 21 copyright expert, and I was simply trying to 22 contrast the -- the standards that were 23 incorporated by reference with those that were not. 24 BY MR. FEE: 25 Q Do you know who Debra Hunt is now that</p>
<p style="text-align: right;">91</p> <p>1 of Federal Regulations. 2 BY MR. FEE: 3 Q Explain to me why many of these standards 4 have a strong copyright interest. 5 MR. BRIDGES: Objection, calls for legal 6 conclusion, vague and ambiguous. 7 THE WITNESS: Many standards have not been 8 incorporated into the Code of Federal Regulations. 9 BY MR. FEE: 10 Q Okay. And with respect to those 11 standards, you would say that they have strong 12 copyright interests? 13 MR. BRIDGES: Objection, calls for a legal 14 conclusion, vague and ambiguous. 15 THE WITNESS: I -- I have no -- I -- I -- 16 I'm not a lawyer. 17 BY MR. FEE: 18 Q Okay. Well, that's what you said in 19 Exhibit 33, right? 20 MR. BRIDGES: Objection, misstates the -- 21 misstates the document. The document speaks for 22 itself. 23 BY MR. FEE: 24 Q You can answer. 25 A Again, I say while many of these standards</p>	<p style="text-align: right;">93</p> <p>1 you've seen this e-mail? 2 A Yes. 3 Q Who is she? 4 MR. BRIDGES: I'll ask the witness to 5 testify as to whether he knows or whether he's 6 simply reading from a -- a document. He should 7 testify about his knowledge. 8 THE WITNESS: I've never met Ms. Hunt, but 9 her -- her signature line on the electronic mail 10 says that she is manager of the learning commons of 11 the Exploratory. 12 BY MR. FEE: 13 Q Do you recall how you came in touch with 14 her? 15 MR. BRIDGES: Objection, vague and 16 ambiguous. 17 THE WITNESS: No, I don't. 18 BY MR. FEE: 19 Q Is it your testimony that that's the only 20 time that you've acknowledged that at least some 21 standards may have a strong copyright interest? 22 MR. BRIDGES: Objection, misstates his 23 testimony, lacks foundation, vague and ambiguous. 24 THE WITNESS: I don't recall. 25 BY MR. FEE:</p>

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<p style="text-align: right;">94</p> <p>1 Q So is it possible that you have said in 2 the past that the standards development 3 organizations have strong copyright interests prior 4 to incorporation by reference? 5 MR. BRIDGES: Objection, calls for 6 speculation, lacks foundation, vague and ambiguous. 7 THE WITNESS: I -- I don't recall. 8 BY MR. FEE: 9 Q You don't deny saying that in the past? 10 MR. BRIDGES: Argumentative, lacks 11 foundation, vague and ambiguous. 12 THE WITNESS: I -- I don't recall. 13 BY MR. FEE: 14 Q Okay. Well, if you don't recall, you 15 can't deny it, correct? 16 MR. BRIDGES: Objection, argumentative, 17 lacks foundation, vague and ambiguous. 18 BY MR. FEE: 19 Q So you deny having ever said that 20 standards development organizations have strong 21 copyright interests in works before they're 22 incorporated by reference? 23 MR. BRIDGES: Objection, argumentative, 24 lacks foundation, vague and ambiguous. 25 THE WITNESS: I -- I'd be happy to confirm</p>	<p style="text-align: right;">96</p> <p>1 A No, I don't -- 2 MR. BRIDGES: Excuse me. You've asked the 3 exact same question. Asked and answered. Keep 4 asking it, we'll just keep objecting and you'll 5 keep getting the same answer. It's asked and 6 answered and all the other objections I've given 7 before. 8 BY MR. FEE: 9 Q Is that your answer, that you don't recall 10 if it's possible? 11 MR. BRIDGES: Objection, argumentative. 12 THE WITNESS: That's not what I said. I 13 said I don't recall if I did. 14 BY MR. FEE: 15 Q Okay. And is it possible that you did? 16 MR. BRIDGES: Objection, calls for 17 speculation, asked and answered, and all the other 18 objections. 19 THE WITNESS: I don't recall if I did. 20 BY MR. FEE: 21 Q Is it possible that you did? 22 MR. BRIDGES: Asked and answered and all 23 the other objections. 24 THE WITNESS: I -- I don't recall if I 25 did.</p>
<p style="text-align: right;">95</p> <p>1 a specific thing if you want to talk about that, 2 but I -- I don't recall. 3 BY MR. FEE: 4 Q It's -- it's possible that you've said 5 that in the past, correct? 6 MR. BRIDGES: Objection, calls for 7 speculation, asked and answered, vague and 8 ambiguous, lacks foundation. 9 THE WITNESS: I don't recall. 10 BY MR. FEE: 11 Q You don't recall if it's possible? 12 MR. BRIDGES: Objection, asked and 13 answered, lacks foundation, argumentative, vague 14 and ambiguous. 15 THE WITNESS: I don't recall. 16 BY MR. FEE: 17 Q Is it possible that you've said that the 18 standards development organizations have strong 19 copyright interests in the past? 20 MR. BRIDGES: Asked and answered, 21 argumentative, vague and ambiguous, lacks 22 foundation, calls for speculation. 23 THE WITNESS: I don't recall. 24 BY MR. FEE: 25 Q You don't recall if it's possible?</p>	<p style="text-align: right;">97</p> <p>1 BY MR. FEE: 2 Q Do you recall saying that any 3 copyrights -- or strike that. 4 Do you recall saying that standards -- 5 actually, do you recall saying that the 73 standards 6 that you made copies of in 2012 were all heavily 7 copyright protected? 8 MR. BRIDGES: Objection, may call for 9 legal conclusions, vague and ambiguous, lacks 10 foundation. 11 THE WITNESS: I don't know. Do you have a 12 specific example for me? 13 BY MR. FEE: 14 Q Do you recall saying that? That's my 15 question. 16 MR. BRIDGES: Same objections. 17 THE WITNESS: No, I don't recall. 18 BY MR. FEE: 19 Q Is it possible that you said such a thing? 20 MR. BRIDGES: Objection, calls for 21 speculation, competence, vague and ambiguous, lacks 22 foundation. 23 THE WITNESS: I can only tell you what I 24 did or didn't do. I don't recall. 25 BY MR. FEE:</p>

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<p style="text-align: right;">98</p> <p>1 Q I'm going to hand you Exhibit 34. It's an 2 e-mail chain between you and Seamus Kraft, 3 Bates-labeled PRO_213808 through 810. 4 (Exhibit 34 marked for identification.) 5 THE WITNESS: This appears to be 6 electronic mail that I sent. 7 BY MR. FEE: 8 Q Who is Seamus Kraft? 9 A Seamus Kraft was the -- I believe his 10 title was press officer for the Committee on 11 Oversight & Government Reform of the United States 12 House of Representatives. 13 Q In this e-mail do you see a reference, 73 14 standards? 15 A Yes. 16 Q Are those the 73 standards that we were 17 talking about earlier today? 18 A Yes. 19 Q Did those 73 standards include standards 20 that were ASTM standards? 21 A Yes. 22 Q Did those 73 standards include NFPA 23 standards? 24 A Yes. 25 Q Did those 73 standards include ASHRAE</p>	<p style="text-align: right;">100</p> <p>1 Do you see that? 2 MR. BRIDGES: Objection, misstates the 3 document and -- yeah, misstates -- misdescribes the 4 document. 5 THE WITNESS: I see that sentence in that 6 paragraph, yes. 7 BY MR. FEE: 8 Q Okay. And you wrote that, correct? 9 A Yes, I did. 10 Q And you were referencing the 73 standards, 11 correct? 12 A Yes, sir. 13 Q What did you mean when you said that all 14 of the 73 standards are heavily copyright protected? 15 MR. BRIDGES: Objection to the extent it 16 calls for a legal conclusion, vague and ambiguous. 17 THE WITNESS: I meant that the standards 18 bodies were very aggressive in claiming copyright 19 on those documents. 20 BY MR. FEE: 21 Q So you understood that they were copyright 22 protected? 23 MR. BRIDGES: Objection. That calls for a 24 legal conclusion. 25 THE WITNESS: That's not what I said. I</p>
<p style="text-align: right;">99</p> <p>1 standards? 2 A I don't recall. 3 Q I want to draw your attention to the first 4 page you see at the top it says -- on March 12, 2012 5 at 12:41 p m., Seamus Kraft wrote -- and it says, 6 "can you give me a few more details on what is going 7 to happen?" 8 Do you see that? 9 A Uh-huh. Yes. 10 Q And then below there is one, two, three, 11 four, five -- six paragraphs and a numbered list of 12 three items. Do you see that? 13 A Yes, I do. 14 Q And then your name is below that, correct? 15 A Yes. 16 Q And isn't it correct that you wrote those 17 paragraphs that list the three items and your name 18 there? 19 A Yes. 20 Q I want to turn your attention to the 21 second paragraph on this, the one that starts with 22 sure. Do you see that? 23 A Uh-huh. Yes. 24 Q So the third sentence says all of these 25 standards are heavily copyright protected.</p>	<p style="text-align: right;">101</p> <p>1 said that the standards bodies were aggressive in 2 claiming copyright on those documents. 3 BY MR. FEE: 4 Q Well, but you did say that they were 5 heavily copyright protected, right? 6 MR. BRIDGES: Objection. The document 7 speaks for itself. 8 THE WITNESS: By which I meant the 9 standards bodies were aggressive in claiming 10 copyright protection. 11 BY MR. FEE: 12 Q That's not what you wrote here. 13 MR. BRIDGES: Objection. You asked him 14 what he meant by what he wrote. The document 15 speaks for itself. You've already asked him what 16 he meant by what he wrote. You've asked him if 17 it's in the document. It's all asked and answered. 18 THE WITNESS: That's what I meant. I'm 19 not a lawyer, sir. 20 BY MR. FEE: 21 Q Did you go to law school? 22 A Yes. 23 Q Where did you go to law school? 24 A Georgetown. 25 Q Did you graduate?</p>

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<p style="text-align: right;">102</p> <p>1 A No, I didn't. 2 Q How long did you attend law school? 3 A I did one year in the night program. 4 Q Why did you leave Georgetown law school? 5 MR. BRIDGES: Objection, argumentative, 6 vague and ambiguous, lacks foundation. 7 THE WITNESS: The Internet was starting to 8 take off and I decided to devote my -- my attention 9 to that. 10 BY MR. FEE: 11 Q Are you aware of any evidence that any of 12 the plaintiffs' members did not properly transfer 13 their copyright interests to plaintiffs? 14 MR. BRIDGES: Okay. I'm going to object 15 to this line of questioning, attorney-client 16 privilege, attorney work product, and instruct the 17 witness not to answer on that topic. 18 MR. FEE: Even if it's not from you? 19 MR. BRIDGES: You can ask him if he has 20 any independent nonattorney-related factual 21 knowledge as a percipient witness. You can ask him 22 that. 23 MR. FEE: Well, I asked him my question. 24 You can instruct him. 25 MR. BRIDGES: And I'm instructing him not</p>	<p style="text-align: right;">104</p> <p>1 aside interactions with counsel on this, calls for 2 a legal conclusion, calls for legal expertise and 3 vague and ambiguous. 4 THE WITNESS: I noticed on the NFPA 5 website that there were a lot of government -- 6 federal government employees that had submitted 7 comments and submissions into the standards 8 process. 9 BY MR. FEE: 10 Q Anything else? 11 MR. BRIDGES: All the same objections and 12 instruction. 13 THE WITNESS: I saw that there were a lot 14 of federal government employees who contributed to 15 the standards process for both ASHRAE and ASTM. 16 BY MR. FEE: 17 Q Where did you see this information that 18 you're referencing? 19 MR. BRIDGES: I need -- need to instruct 20 him not to refer to any attorney-client 21 communication or any fruit of the attorney-client 22 communication having to do with the assessment, 23 analysis, investigation of this case. And if he 24 can testify independently of that, he may answer; 25 but otherwise, I'm instructing him not to go there</p>
<p style="text-align: right;">103</p> <p>1 to answer your question as phrased. 2 MR. FEE: In its entirety? 3 MR. BRIDGES: Yeah. 4 BY MR. FEE: 5 Q Are you going to follow that instruction? 6 A Of course. 7 Q So you refuse to identify any facts that 8 you're aware of that suggest that there was a 9 problem with any of the assignments at issue in this 10 case? 11 MR. BRIDGES: I'm objecting and 12 instructing -- and instructing on that basis. You 13 can ask him a very narrow question that excludes 14 attorney-client, but I am objecting on that basis. 15 BY MR. FEE: 16 Q You're refusing to answer that question I 17 just asked, correct? 18 A That's correct. 19 Q Putting aside whatever you learned from 20 counsel, can you identify any evidence that there's 21 any problems in the attempted transfer of copyright 22 interest from any member of any of the plaintiffs' 23 organizations to the plaintiffs? 24 MR. BRIDGES: Bearing in mind I want the 25 witness to make sure that he was saying putting</p>	<p style="text-align: right;">105</p> <p>1 in his answer on the basis of attorney-client 2 privilege and work product. 3 THE WITNESS: On the websites. 4 BY MR. FEE: 5 Q Can you tell me what exactly you saw on an 6 ASTM website regarding federal government employees' 7 participation in the writing of any particular 8 standard? 9 MR. BRIDGES: All the same objections and 10 instruction. 11 THE WITNESS: A large number of the 12 committees that author standards from the ASTM 13 include federal government employees. 14 BY MR. FEE: 15 Q Did you see anything on these websites 16 regarding the contributions that were actually made 17 by the federal government employees to any 18 particular work? 19 MR. BRIDGES: Objection, lacks foundation, 20 vague and ambiguous. 21 THE WITNESS: I noticed many federal 22 government employees played key roles in the 23 committees. 24 BY MR. FEE: 25 Q Okay. My question was if you are aware of</p>

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<p style="text-align: right;">106</p> <p>1 any information regarding federal government 2 employees' actual contributions to the writing of 3 standards. 4 MR. BRIDGES: All the same objections and 5 limitations and instructions as -- as to the 6 earlier questions. 7 THE WITNESS: I don't want to discuss 8 my -- my discussions with -- with my attorneys on 9 that subject. 10 BY MR. FEE: 11 Q So you can't identify any nonprivileged 12 information that's responsive to my question? 13 MR. BRIDGES: Same objections. 14 THE WITNESS: No, I can't. 15 BY MR. FEE: 16 Q Is the same true for the other two 17 plaintiffs? 18 MR. BRIDGES: Objection, vague and 19 ambiguous, lacks foundation and all the other same 20 objections, totally lacks foundation. 21 THE WITNESS: So for NFPA, I -- I gave you 22 a -- a much more specific example. 23 BY MR. FEE: 24 Q Okay. So for NFPA, you were aware of some 25 information regarding specific contributions made by</p>	<p style="text-align: right;">108</p> <p>1 Q So it's your understanding that the NFPA 2 web -- NFPA website has evidence of federal 3 government employees attempting to assign whatever 4 copyrights they have to NFPA? 5 MR. BRIDGES: All the same objections as 6 to the earlier line of questions and same 7 instruction. 8 THE WITNESS: Yes. 9 BY MR. FEE: 10 Q Did you see similar information with 11 respect to the other plaintiffs in this case? 12 MR. BRIDGES: All the same objections, 13 plus lacks foundation, vague and ambiguous. 14 THE WITNESS: I actually don't recall. 15 BY MR. FEE: 16 Q Aside from federal government employees, 17 are you aware of any other evidence that 18 participants in the standard development for any of 19 the plaintiffs failed to properly transfer their 20 copyright interests to the plaintiffs in this case? 21 MR. BRIDGES: All the same objections. 22 THE WITNESS: That's totally beyond my 23 expertise. I -- I can't answer that question. 24 BY MR. FEE: 25 Q Does Public Resource claim to be the owner</p>
<p style="text-align: right;">107</p> <p>1 federal -- federal government employees to 2 particular standards at issue in this case? 3 MR. BRIDGES: All the same objections as 4 to the earlier line of questioning. 5 THE WITNESS: Yes. 6 BY MR. FEE: 7 Q What about with respect to ASHRAE? 8 MR. BRIDGES: All the same objections as 9 to the line of questions -- as to the earlier line 10 of questions. 11 THE WITNESS: The same as with ASTM; a 12 number of government officials played key 13 leadership roles in the formulation of the 14 standards at issue. 15 BY MR. FEE: 16 Q Do you have any knowledge regarding 17 whether or not these federal government employees 18 purported to assign whatever copyright interests 19 they might have to the plaintiff organizations? 20 MR. BRIDGES: Objection, lacks competence, 21 may call for speculation, vague and ambiguous, may 22 call for a legal conclusion, argumentative. 23 THE WITNESS: The submissions on the NFPA 24 website appeared to do that. 25 BY MR. FEE:</p>	<p style="text-align: right;">109</p> <p>1 of any copyrighted interest in any of the standards 2 at issue in this case? 3 MR. BRIDGES: Objection, calls for a legal 4 conclusion. 5 THE WITNESS: No. 6 BY MR. FEE: 7 Q Do you personally claim to be the owner of 8 any copyright interest for any of the standards at 9 issue in this case? 10 MR. BRIDGES: Same objections. 11 THE WITNESS: No. 12 BY MR. FEE: 13 Q Do you acknowledge that the writing of 14 plaintiffs' standards requires some sort of 15 creativity to actually put words on paper? 16 MR. BRIDGES: Objection to the extent it 17 calls for a legal conclusion, assumes many facts 18 not in evidence, lacks foundation, competence, 19 calls for speculation and vague and ambiguous. 20 THE WITNESS: I'm not qualified to answer 21 that question, sir. 22 23 BY MR. FEE: 24 Q Are you aware of any evidence that would 25 suggest that any of the standards at issue in this</p>

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<p style="text-align: right;">110</p> <p>1 case are an expression that can only be said in one 2 particular way? 3 MR. BRIDGES: All the same objections. 4 THE WITNESS: I'm not a lawyer, sir. I'm 5 not qualified to answer that question. 6 BY MR. FEE: 7 Q You can't identify any evidence along 8 those lines, then, correct? 9 MR. BRIDGES: All the same objections. 10 You're asking for legal -- legal opinion. 11 THE WITNESS: I -- I'm simply not 12 qualified to -- to answer that. 13 BY MR. FEE: 14 Q Is it Public Resource's position that once 15 a standard is incorporated by reference by any 16 governmental agency in the United States, it loses 17 all of its copyright protection? 18 MR. BRIDGES: Objection. The lawyers are 19 stating the legal positions in their formal papers. 20 Calls for a legal conclusion, argumentative and, to 21 the extent it requires the witness to testify about 22 legal strategy analysis and the like, then it's 23 calling for -- for attorney work product and 24 attorney-client communications, and I would 25 instruct the witness not to answer on that basis.</p>	<p style="text-align: right;">112</p> <p>1 ask what -- if you want to ask a question along the 2 lines of earlier question about what the public 3 statements are that's nonlitigation statements, 4 that's fine, but if you're asking what the legal 5 position is, that's attorney work product and 6 attorney-client communication, and I would instruct 7 not to answer. 8 BY MR. FEE: 9 Q Are you going to follow that instruction? 10 A I -- I think he asked what your question 11 was. Maybe you could restate it. 12 MR. BRIDGES: Well, no. And I -- I 13 objected and instructed not to answer this 14 question -- 15 THE WITNESS: Okay. 16 MR. BRIDGES: -- but if he wants to ask 17 you another question that refers to expressions 18 that Public Resource has made apart from the 19 filings in this case and the characterization of 20 filings in this case, then he could ask that 21 question. 22 THE WITNESS: Okay. 23 MR. BRIDGES: It wouldn't be 24 objectionable -- it wouldn't be instructible. 25 BY MR. FEE:</p>
<p style="text-align: right;">111</p> <p>1 THE WITNESS: I'm not going to answer that 2 question. 3 BY MR. FEE: 4 Q Has Public Resource ever publicly taken 5 the position that once a standard is incorporated by 6 reference, it loses its copyright protection? 7 MR. BRIDGES: All the same objections with 8 respect to the pleadings in the case. If you -- if 9 the witness can testify about nonlitigation 10 statements, then subject to objections about 11 calling for a legal opinion, legal conclusion and 12 the like and vague and ambiguous, the witness may 13 testify. 14 THE WITNESS: In the United States the law 15 is owned by the people and has no copyright. A 16 standard incorporated by reference into the Code of 17 Federal Regulation is a law and, therefore, has no 18 copyright. 19 BY MR. FEE: 20 Q Is it Public Resource's position that once 21 a standard is incorporated by reference by a state 22 statute or regulation that it loses all copyright 23 protection? 24 MR. BRIDGES: All the same objections with 25 respect to attorney work product. If you want to</p>	<p style="text-align: right;">113</p> <p>1 Q So you're going to follow an instruction 2 not to answer my last question? 3 A That's correct. 4 Q Has Public Resource ever publicly taken 5 the position before that standards incorporated by 6 reference by a state governmental authority lose all 7 their copyright protection? 8 MR. BRIDGES: And I'm objecting to the 9 extent it may refer to the positions in the 10 pleadings in this case. The witness may testify 11 beyond that, although it may call for a legal 12 conclusion, is vague and ambiguous. 13 THE WITNESS: It is my position that the 14 standards incorporated by reference by the states, 15 that we have posted that those specific standards 16 are the law and have no copyright. 17 BY MR. FEE: 18 Q Does that mean that it -- Public Resource 19 acknowledges that there are some standards that are 20 incorporated by reference by a state governmental 21 authority that maintain their copyright interest? 22 MR. BRIDGES: Objection, calls for a legal 23 conclusion. I'm sorry. Can you please read -- 24 read -- read the question? 25 (The reporter read the record</p>

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<p style="text-align: right;">114</p> <p>1 as requested.) 2 MR. BRIDGES: Objection, calls for a legal 3 opinion, argumentative, lacks foundation and 4 may call for attorney work product and 5 attorney-client communications. If the witness 6 can testify beyond attorney work product and 7 attorney-client communications subject to the 8 other objections, the witness may answer. I 9 would not instruct. 10 THE WITNESS: That's a hypothetical 11 question, and so, no, we are not acknowledging 12 that. 13 MR. FEE: I think we're out of time on the 14 video, so we need to take a short break. 15 MR. BRIDGES: Okay. 16 THE VIDEOGRAPHER: We're going off the 17 record. The time is 12:17 p m. This marks the end 18 of Disc No. 1 in the deposition of Carl Malamud. 19 (Recess taken.) 20 THE VIDEOGRAPHER: We're back on the 21 record. The time is 12:31 p m. This marks the 22 beginning of Disc No. 2 in the deposition of Carl 23 Malamud. 24 BY MR. FEE: 25 Q Has Public Resource taken a public</p>	<p style="text-align: right;">116</p> <p>1 that specific instance of incorporation had, in 2 fact, pulled those standards into the law. 3 BY MR. FEE: 4 Q What in particular about Las Vegas's 5 incorporation by reference of that ASTM standard led 6 to the conclusion that you've discussed publicly 7 that the ASTM standard had lost its copyright 8 protection? 9 MR. BRIDGES: Argumentative, misstates 10 testimony, calls for a legal conclusion, assumes 11 facts not in evidence, lacks foundation, vague and 12 ambiguous. 13 THE WITNESS: It was a specific and 14 deliberate incorporation of a specific standard in 15 a specific year. 16 BY MR. FEE: 17 Q Anything else? 18 A No. That -- that was the criteria. 19 MR. BRIDGES: Same -- same objections. 20 BY MR. FEE: 21 Q Is Public Resource taking a public 22 position with respect to whether or not 23 incorporation by reference of a governmental 24 authority outside the United States would eliminate 25 any copyright protection for standards in the United</p>
<p style="text-align: right;">115</p> <p>1 position with respect to whether or not standards 2 incorporated by reference by townships or municipal 3 authorities are capable of copyright protection 4 thereafter? 5 MR. BRIDGES: Interpreting the question as 6 excluding attorney work product and attorney-client 7 communications, I'll object on the basis of calling 8 for a legal opinion. My client may testify. It's 9 vague and ambiguous also. 10 THE WITNESS: We have not taken a public 11 position on this general principle we have on a 12 specific instance. 13 BY MR. FEE: 14 Q What instance was that? 15 A That is the incorporation by the City of 16 Las Vegas of, I believe it was, amusement park 17 standards from ASTM. 18 Q And is it safe to assume that it was 19 Public Resource's public position that once Vegas 20 had incorporated by reference an ASTM standard, it 21 was no longer capable of copyright protection? 22 MR. BRIDGES: Objection, argumentative, 23 lacks foundation, assumes facts not in evidence, 24 vague and ambiguous, calls for a legal conclusion. 25 THE WITNESS: It was our position that</p>	<p style="text-align: right;">117</p> <p>1 States? 2 MR. BRIDGES: Objection, argumentative, 3 assumes facts not in evidence, lacks foundation, 4 vague and ambiguous, calls for a legal 5 conclusion -- legal opinion. 6 THE WITNESS: I think that's a 7 hypothetical. I don't believe we've ever 8 encountered that issue. 9 BY MR. FEE: 10 Q Has Public Resource ever taken a public 11 position with respect to whether or not standards 12 that were incorporated by reference by another 13 standard that was incorporated by reference by a 14 governmental agency loses its protection? 15 MR. BRIDGES: I'm sorry. I -- I didn't -- 16 just didn't get the question. If you could -- 17 THE REPORTER: Yeah, it was a bit fast for 18 me, so can we do it one more time? 19 MR. FEE: Sure. 20 BY MR. FEE: 21 Q Has Public Resource ever taken a public 22 position about whether a standard that is 23 incorporated by reference by another standard that 24 was incorporated by reference by a governmental 25 authority in the United States loses its copyright</p>

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<p style="text-align: right;">118</p> <p>1 protection? 2 MR. BRIDGES: Objection, argumentative to 3 begin with, lacks foundation, assumes facts not in 4 evidence, calls for a legal conclusion, vague and 5 ambiguous. 6 THE WITNESS: No. 7 BY MR. FEE: 8 Q I just want to make sure you understand 9 what I'm saying, because it sounds like some of us 10 are at least confused about this. 11 If, for example, California incorporated 12 by reference the NEC and then the NEC incorporates 13 by reference an ASTM standard, would Public Resource 14 take the position that the ASTM standard has lost 15 its copyright protection? 16 MR. BRIDGES: Okay. Argumentative again, 17 assumes facts not in evidence, lacks foundation, 18 calls for a legal conclusion, vague and ambiguous 19 and hypothetical. 20 THE WITNESS: California did not 21 incorporate by reference the National Electrical 22 Code. 23 BY MR. FEE: 24 Q Okay. If -- if any governmental agency 25 incorporated by reference the National Electric Code</p>	<p style="text-align: right;">120</p> <p>1 recall. 2 BY MR. FEE: 3 Q Okay. Well, can you say that it -- it was 4 as of the day that the standard actually became 5 incorporated by reference by Las Vegas? 6 MR. BRIDGES: All -- all the same 7 objections. You're asking him for legal positions, 8 and competence, legal opinion and all the other 9 objections. 10 THE WITNESS: I -- I don't know at what 11 point in time. I know that -- that the law in the 12 United States has no copyright because it's owned 13 by the people. 14 BY MR. FEE: 15 Q So before Las Vegas actually incorporated 16 by reference the ASTM standard, you don't take the 17 position that it was impossible for that standard to 18 be copyright protected, correct? 19 MR. BRIDGES: Objection. Objection, calls 20 for a legal conclusion, may call for speculation, 21 competence, lacks foundation, vague and -- assumes 22 facts not in evidence. 23 THE WITNESS: That's a very broad 24 question. All I can tell you is that when 25 Las Vegas incorporated that specific year of a</p>
<p style="text-align: right;">119</p> <p>1 and the National Electric Code incorporates by 2 reference any ASTM standard, is it Public Resource's 3 position that the ASTM standard loses its copyright 4 protection? 5 MR. BRIDGES: All the same objections. 6 THE WITNESS: We have not taken a position 7 on that issue. 8 BY MR. FEE: 9 Q I want to go back to the Las Vegas 10 incorporation by reference of an ASTM standard that 11 you mentioned a moment ago. At what point in time 12 is it Public Resource's position that the ASTM 13 standard lost its copyright protection as a result 14 of the incorporation by reference by Las Vegas? 15 MR. BRIDGES: Okay. Objection, calls for 16 a legal conclusion and argumentative and assumes 17 facts not in evidence, lacks foundation, vague and 18 ambiguous. And if it's calling for a position 19 within this litigation, it's attorney-client 20 privileged and attorney work product and I would 21 instruct. But to the extent the witness can 22 testify beyond that subject to those objections, 23 he's free to testify. And hypothetical. 24 THE WITNESS: I -- I -- I don't know at 25 what point in time. I -- I just really don't</p>	<p style="text-align: right;">121</p> <p>1 specific standard, it became the law. 2 BY MR. FEE: 3 Q When it became incorporated by reference 4 by Las Vegas is what you're saying, right? 5 MR. BRIDGES: Objection, vague and 6 ambiguous, lacks -- misstates testimony, lacks 7 foundation. 8 THE WITNESS: Yeah. What -- what I said 9 is when -- when the City of Las Vegas incorporated 10 the specific addition of a specific standard in the 11 law, it became the law. 12 BY MR. FEE: 13 Q What happens to the copyright at that 14 point in time? 15 MR. BRIDGES: Total -- assumes facts not 16 in evidence, lacks foundation, argumentative and 17 calls for a legal conclusion. 18 BY MR. FEE: 19 Q You can answer. 20 A All I know is that the law in the United 21 States has no copyright. 22 Q Are you aware of the fact that ASTM 23 standards are often published along with appendices 24 that are not part of the standard? 25 MR. BRIDGES: Objection, lacks foundation,</p>

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<p style="text-align: right;">122</p> <p>1 vague and ambiguous, assumes facts not in evidence. 2 THE WITNESS: I believe your 3 characterization is incorrect. ASTM standards have 4 normative and nonnormative sections to them, but 5 they're both part of the standard. 6 THE REPORTER: Have what sections to them? 7 THE WITNESS: Normative and nonnormative 8 sections. 9 BY MR. FEE: 10 Q What do you consider to be a nonnormative 11 section of a standard? 12 MR. BRIDGES: Objection, calls for a legal 13 conclusion, vague and ambiguous, calls for lay 14 opinion. 15 THE WITNESS: ASTM has defined the 16 normative and the nonnormative portions of the 17 standard, so it's according to their -- their rules 18 as to what that is. 19 BY MR. FEE: 20 Q Does the public have to follow the 21 nonnormative portions of the standard, to your 22 understanding, if that standard is incorporated by 23 reference? 24 MR. BRIDGES: Objection, calls for a legal 25 conclusion, lacks foundation, assumes facts not in</p>	<p style="text-align: right;">124</p> <p>1 director or -- or his assistant. 2 Q Is it Public Resource's public position 3 that if complying with a standard is one of many 4 ways to be in compliance with the CFR that that 5 standard is no longer capable of being protected by 6 copyright? 7 MR. BRIDGES: Objection, calls for a legal 8 opinion, lacks foundation, vague and ambiguous. 9 And to the extent it reflects a litigation 10 position, it's attorney work product and may be the 11 subject of attorney-client privilege, and I would 12 give a limited instruction not to refer to 13 positions in the litigation if there's testimony 14 about what was said. Entirely outside of the 15 context of the pleadings, he may answer subject to 16 the other objections. 17 THE WITNESS: Well, as Mr. Boccio from the 18 American National Standards Institute said, a 19 standard incorporated by reference is the law. 20 BY MR. FEE: 21 Q So even if the standard is just one 22 alternative way of complying with a regulation, it's 23 not capable of being protected by copyright any 24 longer, according to Public Resource? 25 MR. BRIDGES: Objection, misstates</p>
<p style="text-align: right;">123</p> <p>1 evidence and vague and ambiguous. 2 THE WITNESS: The Office of the Federal 3 Register has incorporated the entire standard as 4 part of their regulations for incorporation by 5 reference into the Code of Federal Regulations. 6 BY MR. FEE: 7 Q Does that mean that the public is required 8 to follow the nonnormative portions of the standard 9 in that circumstance -- 10 MR. BRIDGES: Objection. 11 BY MR. FEE: 12 Q -- to your understanding? 13 MR. BRIDGES: Objection, calls for a legal 14 conclusion and lacks foundation and assumes facts 15 not in evidence, vague and ambiguous. 16 THE WITNESS: I specifically asked the 17 Office of the Federal Register whether the entire 18 standard is incorporated by reference into law and 19 the answer was yes. 20 BY MR. FEE: 21 Q When did you do that? 22 A Approximately 2011. 23 Q Do you recall who you spoke to? 24 A I believe it was in the material we 25 disclosed to you. It was either the executive</p>	<p style="text-align: right;">125</p> <p>1 testimony, calls for a legal opinion, and I'll add 2 the other objections and partial instruction that I 3 made earlier. 4 THE WITNESS: That's not what I said. 5 What -- what I said is a standard incorporated by 6 reference into law is the law, and in the United 7 States the law has no copyright. 8 BY MR. FEE: 9 Q I wasn't purporting to parrot back your 10 answer here. I'm asking you a question about 11 whether or not it's Public Resource's position that 12 if a standard is one of many ways that a person can 13 comply with the federal regulation, is it Public 14 Resource's position that that is no longer capable 15 of copyright protection? 16 MR. BRIDGES: All the same objections, 17 calls for a legal conclusion, may call for attorney 18 work product and attorney-client communication. If 19 you're asking if Public Resources expressed that 20 publicly in those terms, I may -- I would let the 21 question be answered subject to objections. But it 22 sounds to me as though you're asking for legal 23 analysis of -- of the case, and I would instruct on 24 that basis. 25 THE WITNESS: It is our position that the</p>

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<p style="text-align: right;">126</p> <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>	<p style="text-align: right;">128</p> <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>
<p style="text-align: right;">127</p> <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>	<p style="text-align: right;">129</p> <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>

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<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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<p style="text-align: right;">134</p> <p>1 incorporated by reference by governmental agencies 2 and not later or earlier versions of those 3 standards? 4 MR. BRIDGES: Okay. Objection, calls for 5 a legal opinion, lacks foundation, confusing, vague 6 and ambiguous. And I'm assuming that the question 7 omits any reference to positions taken in the 8 pleadings in this case. 9 THE WITNESS: A -- a standard that has 10 been reaffirmed by the standards body as the 11 identical standard is the same as -- as the 12 original standard. 13 BY MR. FEE: 14 Q Putting aside a reaffirmance of the exact 15 same standard, what is Public Resource's public 16 position with respect to its ability to publish 17 earlier or later versions of a standard that were 18 incorporated by reference? 19 MR. BRIDGES: Calls for a legal 20 conclusion, also lacks foundation, assumes facts 21 not in evidence, vague and ambiguous, 22 argumentative. 23 THE WITNESS: Our practice is to look for 24 the specific incorporation of a specific standard. 25 BY MR. FEE:</p>	<p style="text-align: right;">136</p> <p>1 Q I'm going to hand you what's been marked 2 as Exhibit 36. It's an e-mail Bates-labeled 3 PRO_211406 through -08. 4 (Exhibit 36 marked for identification.) 5 THE WITNESS: Yes, this appears to be a 6 message that I sent. 7 BY MR. FEE: 8 Q So Exhibit 36 is a message you sent to 9 Open Government. Do you see that? 10 A Yes, I do. 11 Q What is the Open Government e-mail 12 reference? 13 A It's just a mailing list. 14 Q Okay. Is that a mailing list that you 15 have compiled? 16 A I may have created that group, but I don't 17 recall. 18 Q I want to turn your attention to -- 19 described as the fourth paragraph and start with, 20 "in order to incorporate." 21 Do you see that? 22 A Uh-huh. Yes. 23 Q First of all, you wrote this entire 24 message, correct? 25 A Yes.</p>
<p style="text-align: right;">135</p> <p>1 Q Does Public Resource take the public 2 position that it is entitled to make copies of 3 subsequent versions of standards that are 4 incorporated by reference? 5 MR. BRIDGES: Objection, argumentative, 6 lacks foundation, assumes facts not in evidence, 7 calls for a legal opinion -- 8 THE WITNESS: No, we do not. 9 MR. BRIDGES: -- vague and ambiguous. 10 THE WITNESS: I'm sorry. Done? 11 MR. BRIDGES: I'm sorry. 12 THE WITNESS: No, we do not. 13 BY MR. FEE: 14 Q So I just want to make sure I'm clear on 15 this. Public Resource doesn't take the position 16 publicly that it's entitled to post subsequent 17 versions of standards that have been incorporated by 18 reference? 19 MR. BRIDGES: Same objections. And in 20 addition, this question has to be read in the 21 context of the earlier questions and answers that 22 may effectively limit this question. 23 THE WITNESS: We have not taken a position 24 on that topic. 25 BY MR. FEE:</p>	<p style="text-align: right;">137</p> <p>1 Q Getting back to that paragraph, it says, 2 "In order to incorporate a standard by inclusion, we 3 must match the exact version of the standard with 4 the language in the Code of Federal Regulations. 5 For example, if the CFR incorporates the 2000 6 version of ANSI's Z21.1-2000, Household Cooking Gas 7 Appliances, we can only incorporate that specific 8 version and not subsequent or prior editions." 9 Do you see that? 10 A Yes. 11 Q Okay. Is that Public Resource's 12 understanding as of today? 13 MR. BRIDGES: Objection, lacks foundation, 14 misleading based on the document. 15 THE WITNESS: I was describing -- 16 MR. BRIDGES: Excuse me. May call for -- 17 the question as phrased appears to call for a legal 18 conclusion. I'm not sure it's about a legal fact. 19 THE WITNESS: I was describing our 20 specific practice in this case. 21 BY MR. FEE: 22 Q Has Public Resource taken a different 23 position publicly since the time of this e-mail? 24 MR. BRIDGES: Objection, lacks foundation. 25 As framed, it's sounding as though it's calling for</p>

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<p style="text-align: right;">138</p> <p>1 a legal conclusion, could be misleading, vague and 2 ambiguous. 3 THE WITNESS: The practice which I've 4 described several times is that we will only post a 5 standard that has been explicitly incorporated by 6 reference with the specific version. 7 BY MR. FEE: 8 Q Does Public Resource believe that it's 9 entitled to post subsequent versions of standards of 10 incorporation by -- incorporated by reference? 11 MR. BRIDGES: Objection, asked and 12 answered, calls for a legal conclusion. To the 13 extent it calls for beliefs obtained in conjunction 14 with attorney representation, calls for attorney 15 work product/attorney-client privilege, and I would 16 instruct on that limited basis. And -- and also 17 calls for -- may lack foundation, call for -- lack 18 of foundation. 19 THE WITNESS: We have not taken a public 20 position on that -- that -- that question. 21 BY MR. FEE: 22 Q And it's your belief that Public Resource 23 has not published any standards other than the 24 precise versions that have been incorporated by 25 reference?</p>	<p style="text-align: right;">140</p> <p>1 Q And do you see -- 2 MR. BRIDGES: Well, actually, I'm -- I'm 3 concerned as to whether this is an integral 4 document. 5 MR. FEE: Towards the bottom of the first 6 page of 37. 7 MR. BRIDGES: Okay. I -- I -- I reserve 8 objections about the possible integrity of this 9 document. I -- I don't know enough to able to make 10 a final objection on it. 11 BY MR. FEE: 12 Q Is Section 192.113 an example of a federal 13 regulation that incorporates standards by reference? 14 MR. BRIDGES: Objection, may call for a 15 legal conclusion, vague and ambiguous. 16 THE WITNESS: No, it is not. 17 BY MR. FEE: 18 Q What is Section 192.113's references to 19 various standards, then? 20 A It's a listing of standards. 21 Q Have you cited 49 CFR, Section 192.113 as 22 a basis for publishing any standards of plaintiffs 23 in this case? 24 MR. BRIDGES: Objection, vague and 25 ambiguous.</p>
<p style="text-align: right;">139</p> <p>1 MR. BRIDGES: Objection, calls for a legal 2 conclusion, lacks foundation, vague and ambiguous, 3 argumentative. 4 THE WITNESS: We publish -- post -- I'm 5 sorry -- the specific version of a specific 6 standard that has been deliberately incorporated by 7 reference. 8 BY MR. FEE: 9 Q And no other standards, correct? 10 MR. BRIDGES: All the same objections. 11 THE WITNESS: Correct. 12 BY MR. FEE: 13 Q I'm going to hand you Exhibit 37, which is 14 a -- which includes -- it's 49 CFR Section 192.113. 15 (Exhibit 37 marked for identification.) 16 BY MR. FEE: 17 Q First of all, Mr. Malamud, do you 18 recognize this symbol in the top left-hand corner of 19 this document? 20 A That appears to be the Government Printing 21 Office digital signature, but of course, one can't 22 verify that in a paper copy. 23 Q And do you see that there's -- that 49 24 CFR, Section 192.113 is contained in Exhibit 37? 25 A That's what it appears to be, yes.</p>	<p style="text-align: right;">141</p> <p>1 THE WITNESS: A specific incorporation by 2 reference for PHMSA, of the Pipeline and Hazardous 3 Materials Safety Administration is actually Section 4 192.7 of that section of the CFR. 5 BY MR. FEE: 6 Q Okay. 7 MR. FEE: What are we on? 8 THE REPORTER: Now we're on 38. 9 (Exhibit 38 marked for identification.) 10 BY MR. FEE: 11 Q I'm going to hand you what's been marked 12 as Exhibit 38. It's entitled, "Public Safety 13 Standards, United States Federal Government," 14 PRO_166182 through 166257. 15 MR. BRIDGES: Do you have any further 16 questions on Exhibit 37 or -- 17 MR. FEE: We're going to be going back to 18 that. 19 BY MR. FEE: 20 Q Mr. Malamud, do you recognize what Exhibit 21 38 is? 22 A It appears to be our U.S. manifest for the 23 Code of Federal Regulations. 24 Q Can you identify a place in Exhibit 38 25 where you identify any standard -- or identified</p>

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142	<p>1 ASTM Standard A106 and where it's incorporated by 2 reference? I think it's on the page ending with 196 3 if that helps. 4 MR. BRIDGES: Well, I -- I will ask him to 5 check the -- to review the document to the extent 6 he needs to review it. 7 THE WITNESS: Yes, I see Page 196, the 8 Bates number. 9 BY MR. FEE: 10 Q Okay. And on that Bates number, there's a 11 reference to ASTM Standard A106. Do you see that? 12 A Yes, I do. 13 Q Okay. And in the far right-hand column, 14 the row that corresponds with ASTM A106 references 15 49 CFR -- or 49 CFR 192.113. Do you see that? 16 A Yes. 17 Q Okay. And that far right column with that 18 CFR reference is supposed to be the CFR authority 19 for incorporation that incorporates by reference the 20 ASTM standard; isn't that right? 21 MR. BRIDGES: Objection, calls for a legal 22 conclusion, lacks foundation, assumes facts not in 23 evidence, argumentative, vague and ambiguous. 24 THE WITNESS: The standard was 25 incorporated in 192.7 and used in 192.113.</p>	144	<p>1 THE WITNESS: And I believe I answered 2 that the explicit incorporation was in 192.7. The 3 use of the standard was in A -- was in 192.113. 4 BY MR. FEE: 5 Q Okay. And Exhibit 37 is a -- it's saying 6 192.113 that you're referencing? 7 MR. BRIDGES: Objection, asked and 8 answered. The document speaks for itself. 9 THE WITNESS: Exhibit 37 is what purports 10 to be 192.113 of the CFR. 11 BY MR. FEE: 12 Q Okay. And then looking back at Exhibit 13 37, do you see there's a reference to ASTM A106 at 14 the bottom? 15 A Uh-huh. Yes. 16 Q All right. I'm going to hand you Exhibit 17 39, which contains 49 CFR 192.7. 18 (Exhibit 39 marked for identification.) 19 BY MR. FEE: 20 Q Now, Exhibit 39 is the CFR provision that 21 you were referencing earlier, correct? 22 A That's correct. 23 Q All right. And do you see on the second 24 page there is a highlighted section that references 25 an ASTM standard A105 -- oh, A106/A106M-08?</p>
143	<p>1 BY MR. FEE: 2 Q Okay. So is 192.113 the basis for your 3 incorporation -- or the basis for your inclusion of 4 the ASTM A106 standard on your website? 5 MR. BRIDGES: Objection, calls for a legal 6 opinion, lacks foundation, assumes facts not in 7 evidence, vague and ambiguous, argumentative. 8 THE WITNESS: The basis for the decision 9 was 192.7. 10 BY MR. FEE: 11 Q Okay. The CFR authority was 192.113, 12 right? 13 MR. BRIDGES: Objection, argumentative, 14 misstates testimony. Are you saying what's in the 15 document? I'm sorry. I don't need to ask. Just 16 argumentative, lacks foundation, misstates 17 testimony, vague and ambiguous. 18 THE WITNESS: You're asking whether the -- 19 the -- the -- the table header says CFR authority? 20 BY MR. FEE: 21 Q No. I'm asking you if the CFR authority 22 for the inclusion of ASTM A106 on your website is 23 49 CFR 192.113. 24 MR. BRIDGES: Objection, calls for a legal 25 conclusion, lacks foundation, vague and ambiguous.</p>	145	<p>1 A Yes, I see that. 2 Q Okay. And in -- in this publication, it 3 references a specific date of that, correct? 4 MR. BRIDGES: Objection, lacks foundation, 5 the document speaks for itself, assumes facts not 6 in evidence. 7 THE WITNESS: The 2010 version of the Code 8 of Federal Regulations for this section does, in 9 fact, refer to A106/A106M-08. 10 BY MR. FEE: 11 Q And then at the end it says, "July 15th, 12 2008," correct? 13 A That's correct. 14 MR. BRIDGES: All the same -- 15 THE WITNESS: I'm sorry. 16 MR. BRIDGES: All the same objections, 17 please. 18 BY MR. FEE: 19 Q So is that the version of ASTM A106 that 20 should be posted on Public Resource's website. 21 MR. BRIDGES: Argument -- objection, 22 argumentative, calls for a legal conclusion, calls 23 for hypothetical and speculation, lacks foundation, 24 vague and ambiguous. 25 THE WITNESS: I would need to look at two</p>

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<p style="text-align: right;">146</p> <p>1 things. The first is other versions of the Code of 2 Federal Regulations and the second is whether the 3 2004 standard was reaffirmed in 2008. 4 BY MR. FEE: 5 Q But either -- well -- getting back to 6 Exhibit 38, what is the purpose of this document? 7 MR. BRIDGES: Objection, lacks foundation, 8 vague and ambiguous. 9 THE WITNESS: It's a web page. 10 BY MR. FEE: 11 Q Why did you spend the time to create this 12 document? 13 A It's an index to the documents that were 14 on the website. 15 Q That's all I was trying to ask you. So 16 every standard that you've listed in Exhibit 38 is a 17 standard that you've posted on your website? At 18 least that's the -- the goal of this document? 19 MR. BRIDGES: Objection, lacks foundation, 20 vague and ambiguous. 21 THE WITNESS: Maybe. 22 23 BY MR. FEE: 24 Q Why do you say just maybe? 25 A You're asking me whether every document</p>	<p style="text-align: right;">148</p> <p>1 MR. BRIDGES: And hypothetical. Sorry. 2 THE WITNESS: If the 2004 standard was 3 reaffirmed in 2008 or if a prior version of the 4 Code of Federal Regulations incorporated the 2004 5 standard. 6 BY MR. FEE: 7 Q Those are the only two scenarios under 8 which the 2004 version of ASTM A106 should be posted 9 on your website? 10 MR. BRIDGES: Objection, misstates 11 testimony, calls for a legal conclusion and the 12 other objections I mentioned earlier. 13 THE WITNESS: Those are two scenarios in 14 which we would post them. 15 BY MR. FEE: 16 Q Is there any other scenario that you can 17 identify today under which it would be compliant 18 with Public Resource's policy to post the 2004 19 version of ASTM A106? 20 MR. BRIDGES: Calls for speculation, vague 21 and ambiguous and lacks foundation. 22 THE WITNESS: If it were explicitly and 23 deliberately incorporated by reference into state 24 law with the specific version of the standard. 25 BY MR. FEE:</p>
<p style="text-align: right;">147</p> <p>1 listed here is posted on our website. I'd want to 2 verify that with the HTML. 3 Q Okay. But that was the intent of -- when 4 you were creating Exhibit 38, correct? 5 A Yes. 6 Q Then getting back to the ASTM A106 7 reference in Exhibit 38, you indicate that there's a 8 2004 version of that publication on your website in 9 Exhibit 38, correct? 10 MR. BRIDGES: Objection, lacks foundation. 11 The document speaks for itself. If he recalls 12 independently he may testify, but otherwise calls 13 for speculation. 14 THE WITNESS: That's what this HTML page 15 says. 16 BY MR. FEE: 17 Q And if the cited CFR reference that -- 18 that you say is 49 CFR 192.7 refers to a 2008 19 version of the standard, is there a circumstance in 20 which it would be appropriate to have the 2004 21 version on your website? 22 MR. BRIDGES: Objection, misstates 23 testimony, lacks foundation, calls for a legal 24 conclusion, argumentative. 25 THE WITNESS: If the 2004 --</p>	<p style="text-align: right;">149</p> <p>1 Q If that standard, the A106 standard from 2 2004, was incorporated by reference by a state, 3 would there be a document within Public Resource's 4 possession that would identify that as a basis for 5 posting that cite -- or posting that standard? 6 MR. BRIDGES: Objection, hypothetical, 7 vague and ambiguous, lacks foundation. 8 THE WITNESS: You asked me whether there 9 were any other circumstances in which we would 10 consider posting a document and I gave you a -- a 11 hypothetical example. This particular web page 12 appears to identify specific incorporation in the 13 Code of Federal Regulations. 14 BY MR. FEE: 15 Q Is there an equivalent to Exhibit 38 for 16 state standards -- or standards incorporated by 17 states? 18 MR. BRIDGES: Objection, vague and 19 ambiguous. 20 THE WITNESS: Yes, we have a web page 21 that -- that lists state incorporations. 22 23 BY MR. FEE: 24 Q And so if we looked at that web page to 25 see if there were any references to ASTM A106 and</p>

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<p style="text-align: right;">150</p> <p>1 there are none, are there any other bases other than 2 either a reaffirmance of the 2004 version in 2008 or 3 an older CFR reference to A106's 2004 version that 4 would justify putting the 2004 version of A106 on 5 Public Resource's website? 6 MR. BRIDGES: Objection, hypothetical, 7 argumentative, calls for a legal conclusion, vague 8 and ambiguous, lacks foundation. 9 THE WITNESS: You're asking with specific 10 reference to the Code of Federal Regulations as 11 opposed to your hypothetical with the states? 12 BY MR. FEE: 13 Q No, I'm just trying to -- 14 MR. FEE: Why don't we read back the 15 question. Would you mind reading that back, 16 please? 17 THE REPORTER: Sure. 18 (The reporter read the record 19 as requested.) 20 MR. BRIDGES: And the objections I voiced 21 stand. 22 THE WITNESS: For incorporation by 23 reference into the Code of Federal Regulations, we 24 look at the versions of the CFR, which could be 25 earlier or later, and we look at the reaffirmation</p>	<p style="text-align: right;">152</p> <p>1 ambiguous. 2 THE WITNESS: I don't know. 3 BY MR. FEE: 4 Q So if a standard isn't listed in either 5 Exhibit 38 or Exhibit 40, is there any circumstance 6 under which it would be consistent with Public 7 Resource's policy to post the standard on its 8 website? 9 MR. BRIDGES: Objection, hypothetical, 10 vague and ambiguous. 11 THE WITNESS: The criteria for posting a 12 standard on our website is that it was explicitly 13 incorporated by reference into law and it was a 14 specific version of the standard. 15 BY MR. FEE: 16 Q And isn't Exhibit 38, when combined with 17 Exhibit 40, the universe of circumstances that 18 Public Resource is currently aware of where that 19 happened? 20 MR. BRIDGES: Objection, lacks foundation, 21 vague and ambiguous. 22 THE WITNESS: No, it's not. 23 BY MR. FEE: 24 Q Where else, if anywhere, has Public 25 Resource identified standards that have been</p>
<p style="text-align: right;">151</p> <p>1 of the specific standard. Those are the two 2 criteria we use. 3 THE REPORTER: 40. 4 (Exhibit 40 marked for identification.) 5 BY MR. FEE: 6 Q I'm going to hand you what's been marked 7 as Exhibit 40. It's a -- entitled, "Public Safety 8 Codes Incorporated by Law," PRO_166258 through -267. 9 Mr. Malamud, is Exhibit 40 essentially the 10 state version of Exhibit 38 that you were testifying 11 about earlier? 12 MR. BRIDGES: Objection, vague and 13 ambiguous. 14 THE WITNESS: This appears to be an older 15 version of our -- there's no date on this. When 16 was this screen dump taken? 17 BY MR. FEE: 18 Q Your -- you produced this document. Do 19 you see the Bates label? 20 A Okay. Yeah, this -- this says, "Public 21 Safety Codes Incorporated by Law" and by States 22 and -- and one city. 23 Q Do you believe Exhibit 40 to be an old 24 version of this document? 25 MR. BRIDGES: Objection, vague and</p>	<p style="text-align: right;">153</p> <p>1 incorporated by reference and identify the specific 2 governmental regulation or statute that incorporate 3 that standard? 4 MR. BRIDGES: Objection, lacks foundation, 5 confusing, vague and ambiguous. 6 THE WITNESS: It's on the cover page of 7 each of the PDF files. 8 BY MR. FEE: 9 Q Is there any other list other than Exhibit 10 38 and 40 that you've produced in this case that 11 you're aware of? 12 MR. BRIDGES: Objection, vague and 13 ambiguous, lacks foundation. You're asking what -- 14 what got produced in the litigation? Is that what 15 you mean by produced? 16 BY MR. FEE: 17 Q You can answer. 18 MR. BRIDGES: And I'm objecting. I don't 19 understand the question. 20 BY MR. FEE: 21 Q You can answer. 22 A Yes. There's another HTML page that lists 23 the PHMSA standards, the Pipeline Hazardous 24 Materials Safety Administration. 25 Q Are there any other lists along those</p>

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<p style="text-align: right;">154</p> <p>1 lines? 2 MR. BRIDGES: Objection, vague and 3 ambiguous. 4 THE WITNESS: If you go to a directory in 5 the web server, it lists all the files in that 6 directory. That's a list. 7 BY MR. FEE: 8 Q But it doesn't identify both the standard 9 and the incorporating reference, correct? 10 MR. BRIDGES: Objection, lacks foundation, 11 vague and ambiguous. 12 THE WITNESS: I seem to recall that it 13 might -- I don't know. 14 BY MR. FEE: 15 Q Are there any other lists of standards 16 incorporated by reference and the authority that 17 incorporated them other than the ones you've 18 testified about now? 19 MR. BRIDGES: Objection, lacks foundation, 20 vague and ambiguous. 21 THE WITNESS: I don't think so. 22 23 BY MR. FEE: 24 Q Is it your understanding that Public 25 Resource posted a copy of every standard that is</p>	<p style="text-align: right;">156</p> <p>1 of the standards that were posted on Public 2 Resource's website as a result of an incorporation 3 by reference by a nonfederal government entity? 4 A I think so. 5 MR. FEE: We've been going about an hour 6 again. Do you want to take a lunch break now? 7 MR. BRIDGES: If you want. 8 MR. FEE: Why don't we do that. 9 THE VIDEOGRAPHER: We're going off the 10 record. The time is 1:29 p m. 11 (Lunch recess taken.) 12 THE VIDEOGRAPHER: We're back on the 13 record. The time is 2:26 p m. 14 BY MR. FEE: 15 Q Mr. Malamud, before lunch we spoke a 16 little bit about the process that you went through 17 in purchasing and making copies of the 73 standards. 18 I -- I want to talk to you now about the process you 19 used to make electronic copies of some of the 20 standards going forward. 21 Can you describe briefly what process you 22 go through to post the standards at issue on your 23 website? 24 A Step one is to determine whether a 25 standard has been explicitly incorporated by</p>
<p style="text-align: right;">155</p> <p>1 listed in Exhibit 38? 2 MR. BRIDGES: Objection, argumentative, 3 assumes facts not in evidence, lacks foundation, 4 vague and ambiguous. 5 THE WITNESS: Maybe. I'd want to verify 6 the HTML with the actual files. 7 BY MR. FEE: 8 Q That's the intention of Exhibit 38, 9 though, correct, to list every standard it's posted 10 on the Public Resource website that was incorporated 11 by the federal government? 12 MR. BRIDGES: Same objections. 13 THE WITNESS: It was the intent at the 14 time that this page was created to list at least 15 some, if not, all of those standards. 16 BY MR. FEE: 17 Q And is the same true with respect to state 18 incorporations in Exhibit 40? 19 MR. BRIDGES: Objection, vague and 20 ambiguous. 21 THE WITNESS: It lists some, if not all, 22 of the state incorporated codes. 23 BY MR. FEE: 24 Q So at least as of the date that Exhibit 40 25 was created, you believe it listed some, if not all,</p>	<p style="text-align: right;">157</p> <p>1 reference. Step two is to get a copy of the 2 standard and scan it. Step three is to append a 3 cover sheet. And then Step four is to transfer it 4 onto the htdocs segment of our web server, which is 5 where documents live. 6 Q And once the document is on your htdocs 7 web server, is it generally accessible to the 8 public? 9 A Yes. 10 Q Now, for the standards that are posted on 11 your website, did you always purchase paper copies 12 of those standards and then scan them, or did you 13 buy electronic copies at times? 14 A For the standards at issue they're all 15 paper copies. 16 Q Did you purchase any of the paper copies 17 of the standards at issue directly from one of the 18 plaintiffs? 19 MR. BRIDGES: Objection, asked and 20 answered. 21 THE WITNESS: We -- we already went over 22 that, I believe, on NFPA and ASTM for -- 23 BY MR. FEE: 24 Q And that was with respect to standards 25 that are on the Public Resource website? You did</p>

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158	<p>1 purchase directly from NFPA and ASTM? 2 MR. BRIDGES: Same objection. 3 THE WITNESS: Yes. 4 BY MR. FEE: 5 Q And, to the best of your recollection, you 6 never purchased electronic copies of any of the 7 standards at issue; is that right? 8 A That is correct. 9 Q Now, how did you determine whether or -- 10 strike that. 11 Once you obtained a paper copy of the 12 standard, who scanned that paper copy? 13 A I did. 14 Q And that's true for all the standards at 15 issue in this case? 16 A Yes. 17 Q In what file format was the output from 18 your scan? 19 MR. BRIDGES: Objection, vague, ambiguous. 20 THE WITNESS: PDF. 21 BY MR. FEE: 22 Q Did you post a PDF copy of every of the 23 standards at issue in this case on the Public 24 Resource website? 25 MR. BRIDGES: Objection, vague and</p>	160	<p>1 workflow is the double-key operation, um, and 2 that's the conversion into an HTML file with JPG 3 images, J -- J-P-G. 4 BY MR. FEE: 5 Q Who did the conversion of the HTM -- HTML 6 file into JPG? 7 A HTC did. 8 THE REPORTER: HTC? 9 THE WITNESS: HTC. 10 BY MR. FEE: 11 Q What would happen after the file was 12 converted into a JPG format and before it was posted 13 on the Public Resource website? 14 A I'm not sure I understand that question. 15 Q Okay. Right. Isn't it the case that at 16 least with some of the standards at issue you posted 17 file formats that included SVG and/or MathML 18 elements? 19 A That would be the third step of the 20 workflow after the HTML JPG step. 21 Q Okay. That's what I was trying to get at. 22 Who did that work? 23 A Point.B Studio. 24 Q And Point.B Studio is run by your wife, 25 Rebecca Malamud, correct?</p>
159	<p>1 ambiguous. 2 THE WITNESS: Each of the standards at 3 issue were posted on our website. 4 BY MR. FEE: 5 Q In PDF format? 6 A In PDF format. 7 Q Now, is it true that you also posted at 8 least a subset of the standards at issue in a file 9 format other than PDF? 10 A Yes. 11 Q How did you go about taking the PDF file 12 format and wind up with some other file format? 13 A Sent it to our contractor, HTC, which 14 double-keyed the standards into HTML. 15 THE WITNESS: We're going to be doing a 16 lots of acronyms, so let me know. 17 THE REPORTER: Okay. Slow it down. 18 BY MR. FEE: 19 Q Are there any other steps that were 20 implemented to take the PDF file format and arrive 21 at some other file format that was posted on the 22 Public Resource website? 23 MR. BRIDGES: Objection, vague and 24 ambiguous. 25 THE WITNESS: Well, the second step of the</p>	161	<p>1 A That's correct. 2 Q Have you read the deposition transcripts 3 of either HTC or Point.B Studio? 4 A Yes, I did. 5 Q Did you read both those transcripts? 6 A Yes, I did. 7 Q Do you recall there being any errors in 8 the descriptions of how they would process the files 9 that you provided to them? 10 MR. BRIDGES: Objection. This is 11 ambiguous. Are you asking him whether he recalls 12 from those deposition transcripts or -- I'll ask 13 the witness to testify as to what he recalls 14 independently. 15 THE WITNESS: What I know is what I give 16 them and what I get back. The -- the rest is 17 really up to my contractors. 18 BY MR. FEE: 19 Q Do you have any understanding as to how 20 your contractors went about doing the work that you 21 asked them to do in connection with the standards at 22 issue in this case? 23 MR. BRIDGES: Objection, vague and 24 ambiguous. 25 THE WITNESS: I -- I have a vague</p>

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<p style="text-align: right;">162</p> <p>1 understanding, yes. 2 BY MR. FEE: 3 Q Do you have any more detailed knowledge 4 regarding the process used that were used by your 5 contractors other than what you've already described 6 to me? 7 MR. BRIDGES: Objection, argumentative, 8 vague and ambiguous. 9 THE WITNESS: Yeah, I have a vague and 10 overall understanding of the process they went 11 through. 12 BY MR. FEE: 13 Q Okay. Well, let's start with HTC, then. 14 First of all, I want to make sure I understand. You 15 delivered to HTC PDFs of the standards at issue in 16 this case, correct? 17 A That's correct. 18 Q After HTC received the PDF files, what is 19 your understanding as to the next step that was done 20 by HTC Global? 21 A The next -- 22 MR. BRIDGES: Objection, vague and 23 ambiguous. 24 Sorry. 25 THE WITNESS: Next step is to take each of</p>	<p style="text-align: right;">164</p> <p>1 Q Why did you decide to ask HTC Global to 2 use a double-key process for the standards at issue? 3 MR. BRIDGES: Objection, lacks foundation, 4 vague and ambiguous. 5 THE WITNESS: Because it's the industry 6 standard used by most legal publishers. 7 BY MR. FEE: 8 Q How did you come to that understanding? 9 A I read several news reports about 10 organizations such as LexisNexis and their use of 11 double-key. 12 Q Anything else? 13 A I asked a -- a -- a person in the industry 14 his advice. 15 Q Who's that? 16 A His name is Anurag, A-N-U-R-A-G, Acharya, 17 A-C-H-A-R-Y-A. 18 Q Was your understanding as to the industry 19 standard based on anything other than those two 20 things? 21 MR. BRIDGES: Objection, lacks foundation, 22 vague and ambiguous, argumentative. 23 THE WITNESS: That was my understanding 24 based on my research that -- that double-key is -- 25 is what legal publishers use.</p>
<p style="text-align: right;">163</p> <p>1 the images inside of the document and save them as 2 a separate JPG file with a very specific 3 file-naming convention which I gave them. 4 BY MR. FEE: 5 Q What happens next at HTC, to the best of 6 your knowledge? 7 A They then go through the double-key 8 process with the text. 9 Q What is the double-key process? 10 A In the double-key process, two individuals 11 or two teams of individuals independently type in 12 the document and then the two versions are compared 13 to find any errors. 14 Q Is it your understanding as of today that 15 HTC Global engaged in a double-key process for the 16 standards at issue? 17 A Yes. 18 Q You don't believe that HTC was using OCR 19 software to deliver the HTML that was provided to 20 you? 21 MR. BRIDGES: Objection, lacks foundation, 22 vague and ambiguous, argumentative. 23 THE WITNESS: I -- I don't believe they 24 were. 25 BY MR. FEE:</p>	<p style="text-align: right;">165</p> <p>1 BY MR. FEE: 2 Q Did you consider using a triple-key 3 process with HTC Global? 4 MR. BRIDGES: Objection, vague and 5 ambiguous. 6 THE WITNESS: I asked HTC for a quote for 7 triple-key. 8 BY MR. FEE: 9 Q Did HTC provide a quote for triple-key? 10 A They did. 11 Q I'm going to hand you -- I'm going to hand 12 you what's previously been marked as Exhibit 2. 13 It's an e-mail to you from Hemant Talwalkar, 14 Bates-label PRO_4964. 15 MR. BRIDGES: I'm sorry. Can you read 16 back his statement? 17 (The reporter read the record 18 as requested.) 19 MR. BRIDGES: I'm sorry. 20 THE REPORTER: Sure. 21 BY MR. FEE: 22 Q First of all, do you recognize Exhibit 2 23 as an e-mail between you and Hemant Talwalkar? 24 A It appears to be a message from Hemant to 25 me.</p>

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<p style="text-align: right;">166</p> <p>1 Q Is this the price quote that you were 2 referencing? 3 A It is, yes. 4 Q In the chart that has the price quote, do 5 you see that there's a column there that says, 6 "accuracy"? 7 A Yes. 8 Q And for double-key compare, it has an 9 accuracy of 99.51 percent. Do you see that? 10 A I do. 11 MR. BRIDGES: Objection. 12 THE WITNESS: I'm sorry. 13 BY MR. FEE: 14 Q Do you have an understanding as to what 15 that means? 16 MR. BRIDGES: Objection, lack of 17 competence, may call for speculation, vague and 18 ambiguous. 19 THE WITNESS: That is the error tolerance 20 for the double-key versus the triple-key process. 21 BY MR. FEE: 22 Q Is it your understanding that the e-mail 23 from -- Mr. Talwalkar, first of all, he's from HTC 24 Global, right? 25 A Yes.</p>	<p style="text-align: right;">168</p> <p>1 BY MR. FEE: 2 Q Was it your understanding that this error 3 tolerance -- or strike that -- accuracy, I should 4 say, rate was based upon a sampling of the materials 5 that you were asking HTC Global to double-key? 6 MR. BRIDGES: Objection, lacks foundation, 7 assumes facts not in evidence, argumentative, vague 8 and ambiguous. 9 THE WITNESS: 99.51 percent is, I believe, 10 the industry standard for a double-key compare. 11 BY MR. FEE: 12 Q And HTC Global also provided you with a -- 13 a price quote for triple-key compare, correct? 14 A That's correct. 15 Q And the accuracy rate for triple-key 16 compare is greater than the double-key compare, 17 right? 18 MR. BRIDGES: Objection, hypotheticals, 19 lacks foundation, assumes facts not in evidence, 20 argumentative, vague and ambiguous. 21 THE WITNESS: The maximum error tolerance 22 is less for triple-key than it is for double-key. 23 BY MR. FEE: 24 Q And triple-keying is more expensive than 25 double-keying, correct?</p>
<p style="text-align: right;">167</p> <p>1 Q Okay. So does his e-mail to you 2 indicating the double-key compare has an accuracy of 3 99.51 percent mean that there are up to 0.49 percent 4 inaccurate results from double-keying? 5 MR. BRIDGES: Objection, lacks foundation, 6 assumes facts not in evidence, argumentative, vague 7 and ambiguous. 8 THE WITNESS: It's -- it's the error 9 tolerance, are -- there are no more than that many 10 errors. 11 BY MR. FEE: 12 Q You understood that double-key compare 13 would lead to some inaccuracies, right? 14 MR. BRIDGES: Objection, lacks foundation. 15 THE WITNESS: Not necessarily. It depends 16 on the subject matter of -- of the source material. 17 BY MR. FEE: 18 Q Did you have any reason to believe that 19 the standards at issue if double-keyed would lead to 20 100 percent accuracy? 21 MR. BRIDGES: Objection, argumentative, 22 lacks foundation, vague and ambiguous. 23 THE WITNESS: I -- I believe that -- that 24 there would be a -- a maximum error tolerance of -- 25 of 99.51 minus 100.</p>	<p style="text-align: right;">169</p> <p>1 MR. BRIDGES: Objection, lacks foundation, 2 vague and ambiguous. 3 THE WITNESS: On this quote it is. 4 BY MR. FEE: 5 Q And is it correct that after receiving 6 this quote, Public Resource elected to use 7 double-key compare instead of triple-key compare? 8 A Yes. 9 Q Why did it make that decision? 10 A Again, based on my research on standard 11 industry practices, double-key is what's used in the 12 legal industry. 13 Q You understood that double-keying would be 14 less accurate than triple-keying in this 15 circumstance, right? 16 MR. BRIDGES: Objection, misstates 17 testimony, lacks foundation, argumentative and 18 assumes facts not in evidence. 19 THE WITNESS: Again, I think you 20 misstated. It's the maximum error tolerance is 21 less on triple-key than on double-key. 22 BY MR. FEE: 23 Q Is it true that Public Resource was 24 willing to live with a higher error tolerance in 25</p>

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<p style="text-align: right;">170</p> <p>1 order to save money on HTC Global's services? 2 MR. BRIDGES: Objection, lacks foundation, 3 argumentative, vague and ambiguous. 4 THE WITNESS: Double-key seemed to be 5 perfectly appropriate for the task at hand. 6 BY MR. FEE: 7 Q So public Resource was willing to accept 8 the higher error tolerance associated with 9 double-keying -- 10 MR. BRIDGES: Objection -- 11 BY MR. FEE: 12 Q -- right? 13 MR. BRIDGES: Objection, misstates 14 testimony, lacks foundation, vague and ambiguous 15 and argumentative. 16 THE WITNESS: It's potentially higher 17 error tolerance under the double-key method. 18 BY MR. FEE: 19 Q Well, your supplier told you that it was 20 going to be a higher error tolerance, right? 21 MR. BRIDGES: Objection, lacks foundation, 22 vague and ambiguous. 23 THE WITNESS: Again, it depends on the 24 nature of the source material. But, yes, the -- 25 the -- the error tolerance of double-key is, in</p>	<p style="text-align: right;">172</p> <p>1 previously marked, right -- 2 MR. FEE: Yes. 3 THE REPORTER: -- as 21? Thanks. 4 THE WITNESS: This seems like e-mail 5 between me and Rebecca. 6 BY MR. FEE: 7 Q I want to draw your attention to the 8 fourth paragraph of this e-mail chain, fourth from 9 the top of the first page. First of all, that 10 portion of the e-mail is a e-mail written by you to 11 Ms. Malamud, correct? 12 A That's correct. 13 Q And do you see the fourth paragraph it 14 says, "All the does you see are in theory 15 double-keyed. Of course, they may cheat and do OCR 16 first and then do their QA." 17 Do you recall having that communication 18 with Ms. Malamud? 19 A Yes. I just told you that this appears to 20 be e-mail between me and Rebecca. 21 Q Did you have reason to believe that HTC 22 Global may have been -- may have been cheating and 23 not double-keying the work they were doing for you? 24 A No. 25 Q Why did you say that, then?</p>
<p style="text-align: right;">171</p> <p>1 fact, 99.51 percent, which is what HTC quoted. 2 BY MR. FEE: 3 Q At any point in time did you suggest to 4 any person working with Public Resource that HTC may 5 not be double-keying the standards that you had 6 provided to it? 7 MR. BRIDGES: Objection, lacks foundation, 8 vague and ambiguous. 9 THE WITNESS: I don't recall. 10 BY MR. FEE: 11 Q Have you ever suggested to Rebecca Malamud 12 that HTC Global may have been cheating and doing OCR 13 in connection with some of the work it was doing for 14 Public Resource? 15 MR. BRIDGES: Objection, vague and 16 ambiguous. 17 THE WITNESS: No, I don't recall. If you 18 have a specific message, I'd be very happy to look 19 at it. 20 BY MR. FEE: 21 Q I'm going to hand you what's been marked 22 as Exhibit 21. It's a e-mail chain between 23 Mr. Malamud and Mrs. Malamud, Bates-labeled 24 PRO_42289 through -91. 25 THE REPORTER: Kevin, you said that was</p>	<p style="text-align: right;">173</p> <p>1 A I was speculating about a theoretical 2 possibility. 3 Q At the end of that paragraph you say I 4 won't be paying for double-keyed work in the 5 foreseeable future. 6 Do you see that? 7 A Yes, sir. 8 Q Okay. Why weren't you going to be paying 9 for double-keyed work in the foreseeable future? 10 A I couldn't afford it. 11 Q Have you stopped posting any standards 12 subsequent to the date of this e-mail, which is 13 January 4th, 2014? 14 A I'm -- I'm sorry. Repeat that question. 15 Q Did you stop converting any PDF file 16 formats into HTML for standards on your website as 17 of the 4th of January 2014? 18 MR. BRIDGES: Objection, argumentative, 19 lacks foundation, vague and ambiguous, assumes 20 facts not in evidence. 21 THE WITNESS: I would want to consult the 22 invoices, but I believe that was at the end of the 23 work that I had contracted with HTC for. 24 BY MR. FEE: 25 Q Have you used any other vendors for doing</p>

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<p style="text-align: right;">174</p> <p>1 double-key since January of 2014? 2 MR. BRIDGES: Objection, lacks foundation. 3 THE WITNESS: No, I have not. 4 BY MR. FEE: 5 Q If you turn to the next page of Exhibit 6 21, first of all, the first paragraph on Page 42290 7 appears to be a carryover from an e-mail that 8 started on the first page of Exhibit 21 that was 9 written by Rebecca. Do you see that? 10 A Yes, I do. 11 Q Okay. At the end of the first paragraph 12 do you see Rebecca says, "I found a couple of 13 mistakes that appear to be OCR related like the one 14 below"? 15 A Okay. I see what she says. 16 Q What do you understand that to mean? 17 MR. BRIDGES: Objection, calls for 18 speculation, lacks competence, vague and ambiguous. 19 THE WITNESS: Can you show me the 20 screenshot? 21 BY MR. FEE: 22 Q We actually can in a separate e-mail. We 23 have that somewhere. 24 While I'm looking for this, let me ask you 25 if you now recall having any conversations with</p>	<p style="text-align: right;">176</p> <p>1 they were double-keying, they were setting it into 2 HTML. 3 MS. RUBEL: Is this 41? 4 THE REPORTER: Yes. 5 (Exhibit 41 marked for identification.) 6 BY MR. FEE: 7 Q Mr. Malamud, I'm going to hand you Exhibit 8 41, which is an e-mail chain between you and your 9 wife, Bates-labeled PRO_42286 through -88. 10 First of all, do you recognize that as a 11 series of e-mails between you and your wife? 12 MR. BRIDGES: Hang on. Make sure he 13 can -- he has time to read it because I'm still 14 looking through it. 15 THE WITNESS: Yes, it appears to be that. 16 BY MR. FEE: 17 Q Now, when you were reviewing Exhibit 21, 18 you had asked whether or not we had a copy of the 19 example of a mistake that appeared to be OCR 20 related, according to Ms. Malamud. And does Exhibit 21 41 have a -- a better version of what that mistake 22 is? 23 MR. BRIDGES: Objection, vague and 24 ambiguous. 25 THE WITNESS: The PNG graphic that was not</p>
<p style="text-align: right;">175</p> <p>1 Rebecca Malamud or others about the possibility that 2 HTC Global was not double-keying all the work they 3 were doing for Public Resource. 4 MR. BRIDGES: Objection, vague, ambiguous, 5 lacks foundation. 6 THE WITNESS: Yeah, I -- I really have no 7 reason to believe they were doing OCR. 8 BY MR. FEE: 9 Q You said you did read HTC Global's 10 deposition transcript, correct? 11 A Yes. 12 Q You don't recall any discussion in that 13 about OCR work done for Public Resource? 14 A No, but you could refresh my memory. I'd 15 be happy to -- I mean, it's a long time since I 16 looked at that, but I would be happy to look at it 17 again. 18 Q Why did you want the standards at issue to 19 be double-keyed as opposed to using OCR -- OCR 20 software to convert the PDF into HTML? 21 MR. BRIDGES: Objection, lacks foundation, 22 vague and ambiguous, argumentative. 23 THE WITNESS: There's two reasons. One 24 is -- is the -- the coding of the source data is 25 better. But, more importantly, at the same time as</p>	<p style="text-align: right;">177</p> <p>1 shown in the previous message is shown in this one. 2 BY MR. FEE: 3 Q So now that you have the -- the graphic in 4 Exhibit 41, can you explain whether or not that 5 appears to be an OCR-related mistake by HTC Global? 6 MR. BRIDGES: Objection, competence, may 7 call for speculation, lacks foundation, vague and 8 ambiguous. 9 THE WITNESS: Yeah, I have no idea. 10 BY MR. FEE: 11 Q Do you recall that mistake, as Ms. Malamud 12 referred to it in Exhibit 41, being at least part of 13 the reason why in Exhibit 21 you suggested that HTC 14 Global could be OCR'ing instead of double-keying? 15 MR. BRIDGES: Objection, misstates 16 testimony, misstates the document, lacks 17 foundation, vague and ambiguous, argumentative. 18 THE WITNESS: Ms. Malamud was speculating 19 on OCR related. I -- I look at this diagram here 20 and -- and I -- I don't -- I don't know if it was 21 double-keyed or OCR'd. 22 23 BY MR. FEE: 24 Q But you saw this mistake, Ms. Malamud 25 suggested it was OCR related, and then you suggested</p>

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<p style="text-align: right;">178</p> <p>1 that HTC Global may not be double-keying in your 2 responsive e-mail; isn't that right? 3 MR. BRIDGES: Objection, misstates the 4 document, misstates the testimony, lacks 5 foundation, vague and ambiguous. 6 THE WITNESS: I said that was certainly a 7 possibility. 8 BY MR. FEE: 9 Q At any time did you confront HTC Global 10 about whether or not they were double-keying versus 11 OCR? 12 MR. BRIDGES: Objection, vague and 13 ambiguous, lacks foundation. 14 THE WITNESS: No, because what I was 15 worried about was what I gave them and what I got 16 back. And if I got high quality work back, I was 17 happy. 18 BY MR. FEE: 19 Q Is it your belief that you got high 20 quality work back from HTC Global? 21 A Absolutely thrilled with the results. 22 Q Are you aware of any mistakes that were 23 made in HTC Global's work for Public Resource in 24 connection with the standards at issue in this case? 25 MR. BRIDGES: Objection, lacks foundation,</p>	<p style="text-align: right;">180</p> <p>1 A Not that I'm -- 2 MR. BRIDGES: Same objections. 3 THE WITNESS: Not that I'm aware of. 4 BY MR. FEE: 5 Q What, if anything, did Public Resource do 6 to ensure that the text that came back from HTC 7 Global matched the text of the standards at issue? 8 MR. BRIDGES: Objection, argumentative, 9 lacks foundation, vague and ambiguous. 10 THE WITNESS: I made spot checks more so 11 earlier in the process, less so as I gained 12 confidence in -- in the quality of their work. 13 BY MR. FEE: 14 Q Can you describe the process that you used 15 to make these spot checks? 16 A Sure. You pull up a page in the scan, you 17 pull up a page in the HTML and you compare the two. 18 Q And you would do that manually? 19 A Yes. 20 Q Were you the only person who did that? 21 MR. BRIDGES: Objection, lacks foundation, 22 may call for speculation. 23 THE WITNESS: Yes. 24 BY MR. FEE: 25 Q Do you have any particular training or</p>
<p style="text-align: right;">179</p> <p>1 vague and ambiguous. 2 THE WITNESS: Yes. They had a bad habit 3 of tagging some of the HTML differently than I 4 would have preferred. 5 BY MR. FEE: 6 Q Are you aware of any other mistakes with 7 respect to HTC Global's work regarding the standards 8 at issue in this case? 9 MR. BRIDGES: Same objections. 10 THE WITNESS: HTML syntax issues, which I 11 corrected. 12 BY MR. FEE: 13 Q Any other mistakes that you're aware of? 14 MR. BRIDGES: Same objections. 15 THE WITNESS: In their very first runs 16 they were saving the JPG files as low quality JPG 17 files and I instructed them to save them as higher 18 quality. 19 BY MR. FEE: 20 Q Any other mistakes that you were aware of? 21 MR. BRIDGES: Same objections. 22 THE WITNESS: That's all I remember. 23 BY MR. FEE: 24 Q Were you aware of any instances where the 25 text came back different from the original?</p>	<p style="text-align: right;">181</p> <p>1 expertise in doing quality assurance? 2 MR. BRIDGES: Objection, lacks foundation, 3 vague and ambiguous. 4 THE WITNESS: I have 35 years of working 5 with large textual databases and transforming them 6 into new formats and making them available on the 7 Internet. 8 BY MR. FEE: 9 Q Was part of that doing proofreading to 10 compare two versions of the documents' text. 11 MR. BRIDGES: Objection, argumentative, 12 lacks foundation, vague and ambiguous. 13 THE WITNESS: Absolutely. If you're 14 transforming a text into another format, you always 15 have to double-check and make sure you're doing it 16 right. 17 BY MR. FEE: 18 Q Do you have an estimate as to what portion 19 of the pages that you received from HTC Global you 20 would do this spot check on? 21 A No, I don't. 22 Q Was it less than 25 percent of the pages 23 you received back? 24 A I -- I have no idea what the percentage 25 is.</p>

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<p style="text-align: right;">182</p> <p>1 Q Was it less than half of the pages you 2 received back? 3 A Yes. 4 Q But you're not sure if it was less than 5 25 percent? 6 A No, I'm not. 7 Q How many pages of scanned text did you 8 receive back from HTC Global? 9 MR. BRIDGES: Objection, vague and 10 ambiguous. 11 THE WITNESS: I have no idea how many 12 pages. I know how many kilo-characters because I 13 know how much I paid them. 14 BY MR. FEE: 15 Q How many kilo-characters were there? 16 A Well, we paid \$350,000 over the course of 17 the contract from the initial date to the last 18 period and the -- the price per kilo-character, you 19 know, was roughly in the 50 cent per page framework. 20 It varied occasionally based on the volume. 21 Q So if my math is correct, that's about 22 175,000 pages? 23 A I have no idea how you convert 24 kilo-characters into pages. I'm sure we could try 25 to figure that out.</p>	<p style="text-align: right;">184</p> <p>1 in the process at Public Resource? 2 A Performed quality assurance, validated the 3 HTML, made sure that all the JPG images were there, 4 so did a link validity check, and then pushed them 5 to our web server. 6 Q And that would complete the process with 7 respect to standards that are posted in HTML format, 8 right? 9 A That's a good high-level overview of the 10 work flow, yes. 11 Q Now, you had also mentioned that there 12 were some standards for which Point.B Studios did 13 some additional work; is that right? 14 A That's correct. 15 Q Okay. First of all, how would you go 16 about identifying which standards you would had ask 17 Point.B Studios to do work on? 18 A Based on my personal judgment of what 19 were -- were compelling standards that deserved that 20 next level of the workflow, given our limited 21 budget. 22 Q Once you identified an appropriate 23 standard for Point.B Studios to work upon, what 24 happened next? 25 A The job was very specific: take the HTML</p>
<p style="text-align: right;">183</p> <p>1 Q My math is wrong. You can go ahead and 2 say it. 3 It's about 175,000 kilo-characters? 4 A \$350,000 -- 5 MR. BRIDGES: The math will speak for 6 itself. 7 THE WITNESS: Yeah, it's 700,000 8 kilo-characters, right? 9 BY MR. FEE: 10 Q Oh, you're right. It's double. I'm not 11 doing math today. 12 Do you know how many page -- 13 kilo-characters there are on an average page in a 14 standard? 15 MR. BRIDGES: Objection, lacks foundation, 16 vague and ambiguous. 17 THE WITNESS: I knew that at one point. 18 It's not on -- off the top of my head. 19 BY MR. FEE: 20 Q So, Mr. Malamud, we were talking about the 21 process by which you took paper versions and they 22 wound up being posted on your website. And we've 23 now talked a lot about the double-keying that was 24 done by HTC Global. After you received the results 25 or the end work from HTC Global, what happened next</p>	<p style="text-align: right;">185</p> <p>1 file and the JPG images, convert the JPG images 2 exactly into SVG -- SVG, silicon vector graphics or 3 whatever that is -- and MathML, which is a language 4 for typesetting mathematical formulas. 5 Q Prior to the first time you retained 6 Point.B Studios to do this work on converting JPG 7 images, what experience or expertise were you aware 8 of that Point.B Studios had with respect to that 9 type of activity? 10 A Rebecca Malamud is a expert on SVG graphic 11 design, use of graphic processing tools. 12 Q Had -- to the best of your knowledge, had 13 Point.B Studios ever done a project similar to what 14 you had asked Point.B Studios to do for Public 15 Resource? 16 MR. BRIDGES: Objection, competence, vague 17 and ambiguous. 18 THE WITNESS: I know they had worked 19 extensively with SVG and with the -- the tools used 20 to process SVG. 21 BY MR. FEE: 22 Q Would that include taking JPG file formats 23 and converting them into SVG file formats? 24 MR. BRIDGES: Same objections. 25 THE WITNESS: I'm not aware of anyone</p>

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<p style="text-align: right;">186</p> <p>1 having done that before. 2 BY MR. FEE: 3 Q Anybody in the world you're saying? 4 MR. BRIDGES: Same objections. 5 THE WITNESS: Not to my knowledge, no. 6 BY MR. FEE: 7 Q Are you aware of any expertise that 8 public -- or strike that. 9 Were you aware of any expertise that 10 Point.B Studios had in connection with converting 11 JPG images into MathML prior to retaining Point.B 12 Studios? 13 MR. BRIDGES: Objection, vague and 14 ambiguous. 15 THE WITNESS: Again, long experience with 16 web tools including SVG, MathML, Photoshop and the 17 other things that -- that advanced graphic 18 designers work with. 19 BY MR. FEE: 20 Q Any particular experience with converting 21 it to MathML that you're aware of? 22 MR. BRIDGES: Objection, vague and 23 ambiguous. 24 THE WITNESS: A lot of familiarity with 25 MathML. I know that.</p>	<p style="text-align: right;">188</p> <p>1 speculation. 2 THE WITNESS: No, I don't. 3 BY MR. FEE: 4 Q Do you know if children did that work? 5 MR. BRIDGES: Objection, argumentative, 6 lacks foundation. 7 THE WITNESS: I know Rebecca ran a 8 mentoring program teaching people graphic design 9 skills. 10 MR. BRIDGES: Please answer his question. 11 THE WITNESS: Okay. I'm sorry. Please 12 repeat the question. 13 BY MR. FEE: 14 Q My question is if you were aware of 15 whether or not children were doing the conversion 16 from JPG to MathML or SVG. 17 MR. BRIDGES: Objection, argumentative, 18 lacks foundation, vague and ambiguous. 19 THE WITNESS: Children. I'm sorry. Is -- 20 do you have a particular age limit in mind or -- 21 BY MR. FEE: 22 Q Why don't we start with under 18. 23 A Yes, I believe some students were 24 involved. 25 Q Do you know which students were involved?</p>
<p style="text-align: right;">187</p> <p>1 BY MR. FEE: 2 Q Once the files were delivered to Point.B 3 Studios, do you know what Point.B Studios did with 4 those files to convert the JPG images into MathML or 5 SVG? 6 A They replicated them exactly. 7 Q Do you know how Point.B Studios went about 8 doing that? 9 A Again, I have a very vague understanding 10 of the process, but I'm not an expert in -- in 11 graphic design. 12 Q What is your understanding of the process? 13 A Speaking in layman's terms, they traced 14 the image. 15 Q And that's true with respect to converting 16 JPGs to SVG? 17 A That's correct. 18 Q Is that also true with respect to the 19 conversion of JPGs to MathML? 20 A No. That's a process of reading the 21 formula and coding in the appropriate syntax for 22 MathML for that formula. 23 Q Do you know who at Point.B Studios 24 actually did that work? 25 MR. BRIDGES: Objection, may call for</p>	<p style="text-align: right;">189</p> <p>1 A No. 2 Q Was -- were these students involved 3 through something called Rural Design Collection 4 (sic)? 5 A That's correct. 6 Q And are you aware of whether or not Rural 7 Design Collective says that its target group is 8 children ages 7 to 14? 9 A If that's what it says on their website. 10 I -- I just don't recall. 11 Q Would it be your expectation that there 12 are children ages 7 to 14 doing the conversion of 13 the JPG file format images to MathML and SVG on -- 14 for Public Resource? 15 MR. BRIDGES: Objection, lacks foundation, 16 vague and ambiguous. 17 THE WITNESS: I would be speculating, but 18 that sounds awfully advanced for a 7-year-old. 19 BY MR. FEE: 20 Q Do you have any understanding as to the 21 age range of the kids who are working on a 22 conversion process for Point.B Studios' project for 23 Public Resource? 24 MR. BRIDGES: Objection, lacks foundation, 25 may call for speculation, vague and ambiguous,</p>

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<p style="text-align: right;">190</p> <p>1 argumentative. 2 THE WITNESS: My sole point of contact was 3 Rebecca, and the job was very simple: JPG in, SVG 4 and MathML back out. And that was my concern. 5 BY MR. FEE: 6 Q Did you at least understand that a group 7 of students from RDC, Rural Design Collective, were 8 doing the converting of the formulas and graphics on 9 the standards that you asked them to work on? 10 Strike that. 11 Do you at least understand that a group of 12 students from Rural Design Collective were doing the 13 conversion of formulas and graphics for the 14 standards work that you had asked Point.B Studios to 15 do for Public Resource? 16 MR. BRIDGES: Objection, lacks foundation, 17 argumentative, vague and ambiguous. 18 THE WITNESS: They did a lot more than 19 standards, the California Code of Regulations, for 20 example, the graphics images in there which are not 21 standards. 22 23 BY MR. FEE: 24 Q But you understood that children at Rural 25 Design Collective were working on the conversion of</p>	<p style="text-align: right;">192</p> <p>1 would be for the Rural Design Collective mentoring 2 program. 3 BY MR. FEE: 4 Q But you don't know if any of that money 5 was actually paid to the kids who were doing the 6 conversions? 7 MR. BRIDGES: Same objections. 8 THE WITNESS: I really have no idea. 9 BY MR. FEE: 10 Q Are you knowledgeable about what training, 11 if any, Point.B Studios provided to the kids who 12 were doing the conversion work for Public Resource 13 prior to the work being done? 14 MR. BRIDGES: Objection, vague and 15 ambiguous, lacks foundation, argumentative. 16 THE WITNESS: I read some interesting blog 17 posts and web pages that Rebecca put up on her 18 site. 19 BY MR. FEE: 20 Q Did those web pages speak to the training 21 that she provided to the kids before they did work 22 for Public Resource? 23 A They described a variety of -- of 24 tutorial-like posts about how to use Inkscape, which 25 is the authoring language, how to code in MathML,</p>
<p style="text-align: right;">191</p> <p>1 the standards that you posted on your website? 2 MR. BRIDGES: Same objections. 3 THE WITNESS: I know that students were 4 working on a conversion of JPG images into SVG and 5 MathML. I don't know which specific items anybody 6 worked on. 7 BY MR. FEE: 8 Q And you know that those kids were working 9 on that -- a conversion for work that was requested 10 by Public Resource? 11 MR. BRIDGES: Same objections. 12 THE WITNESS: Yes. 13 BY MR. FEE: 14 Q Were those kids paid? 15 MR. BRIDGES: Objection, competence, may 16 call for speculation. 17 THE WITNESS: I really don't know. 18 BY MR. FEE: 19 Q Did Public Resource provide any funds to 20 Point.B Studios for this student program? 21 MR. BRIDGES: Objection, lacks foundation, 22 argumentative, vague and ambiguous. 23 THE WITNESS: Yes. Several summers in a 24 row I added extra money to the monthly fee that we 25 paid to Point.B with the understanding that it</p>	<p style="text-align: right;">193</p> <p>1 the types of graphic design techniques for -- for 2 different types of graphics operations. 3 THE REPORTER: You said Inkscape? 4 THE WITNESS: Inkscape, yeah. All one 5 word, I-N-K-S-C-A-P-E. 6 THE REPORTER: Thank you. 7 BY MR. FEE: 8 Q Was your son one of the children who was 9 working on this project, to the best of your 10 knowledge? 11 A You know, he might have been. I don't 12 know. I don't know. 13 MR. BRIDGES: I'm going to ask the witness 14 not to speculate and answer the questions 15 specifically. 16 BY MR. FEE: 17 Q After Point.B Studios had done its work 18 converting the JPG files, what happened next in the 19 process to get the converted files onto Public 20 Resource's website? 21 A So what I got back were three items. I 22 got a SVG html file. So that's the HTML file, but 23 instead of pointing to all JPG images, it pointed to 24 at least some SVG files. So that's item one. Item 25 two is I got a series of SVG files back that were</p>

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<p style="text-align: right;">194</p> <p>1 optimized for viewing on the web in multiple 2 platforms, all right, so there's a -- and then the 3 third item is an SVG source directory, which 4 included the core work files in MathML and the fully 5 editable SVG graphics. 6 Q What would you do with all those files? 7 MR. BRIDGES: Objection, vague and 8 ambiguous. 9 THE WITNESS: A series of quality 10 assurance checks, link validity, HTML validity, a 11 comparison of at least some of the JPGs to the 12 SVGs, a quality assurance step. 13 BY MR. FEE: 14 Q Did anything else happen after that and 15 before the files were posted to the web? 16 MR. BRIDGES: Objection, vague and 17 ambiguous. 18 THE WITNESS: Once I was satisfied that 19 the work was properly done, then we posted it 20 online. 21 BY MR. FEE: 22 Q Now, for all the files that you posted 23 online, where did you post these files? 24 A On -- 25 MR. BRIDGES: Objection, lacks foundation</p>	<p style="text-align: right;">196</p> <p>1 standards, either in PDF form or HTML with SVG or 2 MathML, are posted on a Public Resource website, 3 would Public Resource also post some version of that 4 standard on the Internet Archive? 5 MR. BRIDGES: Objection, hypothetical, 6 lacks foundation, vague and ambiguous. 7 THE WITNESS: Some of the PDF documents 8 were added to my Internet Archive collection. 9 BY MR. FEE: 10 Q How do you decide which of the PDF 11 documents containing standards were on your Internet 12 Archive collection? 13 MR. BRIDGES: Objection, vague and 14 ambiguous. 15 THE WITNESS: I tried to get most of the 16 ones that were PDF files that were standards 17 incorporated by reference into that -- that 18 collection. 19 BY MR. FEE: 20 Q Why did you only post PDF versions of the 21 standards to the Internet Archive? 22 MR. BRIDGES: Objection, argumentative, 23 lacks foundation. 24 THE WITNESS: The Internet Archive doesn't 25 have an HTML viewing capability.</p>
<p style="text-align: right;">195</p> <p>1 and vague and ambiguous. 2 THE WITNESS: On Law.Resource.Org. 3 BY MR. FEE: 4 Q Did you also post some version of 5 plaintiffs' standards on Internet Archive at or 6 around the same time as you posted them on the 7 Public Resource website? 8 MR. BRIDGES: Objection, argumentative, 9 lacks foundation, vague and ambiguous. 10 THE WITNESS: Are we still talking about 11 SVG and HTML files? 12 BY MR. FEE: 13 Q No. I'm asking a more general question 14 now. I -- maybe I should take a step back. 15 Have you completed the story as to how the 16 files received from Point.B Studios go from Point.B 17 Studios to Public Resource to being posted for the 18 public to view on the web. 19 MR. BRIDGES: Objection, calling for a 20 narrative, vague and ambiguous, argumentative, 21 lacks foundation. 22 THE WITNESS: That was a high-level 23 overview of the workflow. 24 BY MR. FEE: 25 Q So at or around the time that any of the</p>	<p style="text-align: right;">197</p> <p>1 BY MR. FEE: 2 Q Besides the PDF version and the HTML 3 versions of the standards that Public Resource has 4 posted to its website, are there any other file 5 formats that Public Resource has posted standards to 6 its website in? 7 MR. BRIDGES: Objection, vague and 8 ambiguous. 9 THE WITNESS: For the standards at issue, 10 no. 11 BY MR. FEE: 12 Q Are there other file formats used for 13 standards besides the standards at issue in this 14 case? 15 MR. BRIDGES: Same objections. 16 THE WITNESS: Plain text. 17 BY MR. FEE: 18 Q Is there a reason why you don't post the 19 standards at issue in plain text format? 20 MR. BRIDGES: Objection, argumentative, 21 vague and ambiguous. 22 THE WITNESS: Didn't seem like it would 23 add any value over the PDF, HTML and SVG. 24 THE REPORTER: One more time. Didn't seem 25 like it would add --</p>

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<p style="text-align: right;">198</p> <p>1 THE WITNESS: It didn't seem like it would 2 add any value over the PDF, HTML and SVG. 3 THE REPORTER: Okay. 4 MS. RUBEL: We're up to 42? 5 THE REPORTER: Yes. 6 (Exhibit 42 marked for identification.) 7 BY MR. FEE: 8 Q I'm going to hand you what's been marked 9 as Exhibit 42. It's Defendant/Counterclaimant 10 Public.Resource.Org, Inc.'s Response to 11 plaintiff/Counter-Defendant American Society for 12 Testing and Materials, d/b/a ASTM International 13 Second Set of Interrogatories, No. 16. 14 MR. BRIDGES: Check to make sure you're 15 familiar with the document. 16 THE WITNESS: Yeah, yeah. This is a big 17 one. 18 BY MR. FEE: 19 Q Take your time. 20 A So this -- yes, okay. I -- I'm familiar 21 with this document. 22 Q Is Exhibit 42 Public Resource's response 23 to Interrogatory 16 served by ASTM? 24 A It appears to be. 25 Q I want to turn your attention to what</p>	<p style="text-align: right;">200</p> <p>1 uploaded each PDF file to the website. 2 Q How did you compile Appendix A? 3 A I looked at the date on the server for 4 each file. 5 Q And how did you come up with the file 6 listed -- the file names listed here? Same way? 7 A I said LS-L ASTM star. 8 Q And you expected that to identify every 9 ASTM standard that was on the Public Resource server 10 at the time? 11 A Yes. 12 Q And all those standards are available for 13 the public to view on the Internet? 14 MR. BRIDGES: Objection, argumentative, 15 vague and ambiguous. 16 THE WITNESS: I think so. 17 BY MR. FEE: 18 Q Turn to Appendix B then. 19 A Okay. 20 Q What is -- first of all, were you involved 21 in the creation of Appendix B? 22 MR. BRIDGES: Same objections and 23 instruction as to your initial questions about -- 24 BY MR. FEE: 25 Q Did you create exhibit -- Appendix B?</p>
<p style="text-align: right;">199</p> <p>1 comes after Page 11. Do you see there is an 2 Appendix A? 3 A Uh-huh. 4 Q Were you involved in the creation of 5 Appendix A? 6 MR. BRIDGES: Objection, vague and 7 ambiguous. Are you asking him if he was involved 8 in preparing this document or whether he consulted 9 with his attorneys? I'm happy to have him testify 10 with respect to his personal -- whether he 11 personally generated this document or not, if 12 you're asking about his interactions with 13 attorneys, then I'm going to object and instruct. 14 BY MR. FEE: 15 Q Did you create exhibit -- Appendix A? 16 A Yes. 17 Q What is Appendix A? 18 A Appendix A, I believe, is the -- well, 19 hold on. Let's read the interrogatory. 20 Appendix A is the date on which Public 21 Resource acquired the standard. Is that correct? 22 No, no, that's not right. 23 Appendix A provides the name of each PDF 24 format file containing a standard at issue and the 25 date that Public Resource's records indicated it</p>	<p style="text-align: right;">201</p> <p>1 A Yes. 2 Q What is Appendix B? 3 A Appendix B is the name of each HTML format 4 file containing a standard at issue and the date 5 that Public Resource's records indicated uploaded 6 each HTML file to the website. 7 Q Did you create Appendix B in the same 8 manner that you created Appendix A? 9 MR. BRIDGES: Objection, vague and 10 ambiguous. 11 THE WITNESS: It was a slightly more 12 involved command, but, yes, it's generally the same 13 method. 14 BY MR. FEE: 15 Q And it's your expectation that as of the 16 date that you created Appendix B, each of these 17 files were available for the public to view on the 18 Internet? 19 MR. BRIDGES: Objection, argumentative, 20 vague and ambiguous. 21 THE WITNESS: Yes. 22 23 BY MR. FEE: 24 Q Would you turn to Appendix C, please. Did 25 you create Appendix C?</p>

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202	<p>1 A Yes, I did.</p> <p>2 Q What is Appendix C?</p> <p>3 A Appendix C provides the name of each SVG</p> <p>4 format file containing a standard at issue and the</p> <p>5 date that Public Resource's records indicated</p> <p>6 uploaded each SVG file to the website.</p> <p>7 Q How did you create Appendix C?</p> <p>8 A I typed LS minus L ASTM star SVG html.</p> <p>9 Q Your expectation is that that would</p> <p>10 identify all SVG file format files that were related</p> <p>11 to an ASTM standard that were on Public Resource's</p> <p>12 server?</p> <p>13 MR. BRIDGES: Objection, vague and</p> <p>14 ambiguous.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. FEE:</p> <p>17 Q And to the best of your knowledge, as of</p> <p>18 the date you created Appendix C, all those files</p> <p>19 were available on Public Resource's website --</p> <p>20 MR. BRIDGES: Objection.</p> <p>21 BY MR. FEE:</p> <p>22 Q -- for the public to view?</p> <p>23 MR. BRIDGES: I'm sorry. What was the</p> <p>24 ending?</p> <p>25 MR. FEE: For the public to view.</p>
203	<p>1 THE REPORTER: For the public to view.</p> <p>2 MR. BRIDGES: Objection, argumentative,</p> <p>3 vague and ambiguous.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. FEE:</p> <p>6 Q Were you involved in the creation of</p> <p>7 Appendix D?</p> <p>8 A Yes.</p> <p>9 Q What is Appendix D?</p> <p>10 A Appendix D is the name of each file</p> <p>11 containing a standard at issue that Public Resource</p> <p>12 uploaded to the website at www.archive.org and the</p> <p>13 date that the Internet Archive's records indicate</p> <p>14 that the file was uploaded.</p> <p>15 Q How did you create Appendix D?</p> <p>16 A I used the advanced search capability at</p> <p>17 the Internet Archive, specified a search for</p> <p>18 gov.law.astm and indicated that I wanted the</p> <p>19 identifier, the public dates and the title in the</p> <p>20 output results.</p> <p>21 MR. FEE: We need to change the tape now,</p> <p>22 so we can take a break.</p> <p>23 THE VIDEOGRAPHER: We're going off the</p> <p>24 record. The time is 3:32 p m. This marks the end</p> <p>25 of Disc No. 2 in the deposition of Carl Malamud.</p>
204	<p>1 (Recess taken.)</p> <p>2 THE VIDEOGRAPHER: We're back on the</p> <p>3 record. The time is 3:48 p m. This marks the</p> <p>4 beginning of Disc No. 3 in the deposition of Carl</p> <p>5 Malamud.</p> <p>6 BY MR. FEE:</p> <p>7 Q Mr. Malamud, before you posted any copies</p> <p>8 of the plaintiffs' standards at issue on the Public</p> <p>9 Resource website, did you obtain the consent of any</p> <p>10 of the plaintiffs?</p> <p>11 MR. BRIDGES: Objection, argumentative.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. FEE:</p> <p>14 Q Did you attempt to get the consent of any</p> <p>15 of the plaintiffs?</p> <p>16 MR. BRIDGES: Same objections,</p> <p>17 argumentative, vague and ambiguous.</p> <p>18 THE WITNESS: I talked to at least one of</p> <p>19 the plaintiffs, NFPA.</p> <p>20 BY MR. FEE:</p> <p>21 Q Did you ask for NFPA's permission to post</p> <p>22 the standards on the website?</p> <p>23 MR. BRIDGES: Objection, argumentative.</p> <p>24 THE WITNESS: We discussed broader</p> <p>25 availability of standards and the issues that were</p>
205	<p>1 involved.</p> <p>2 BY MR. FEE:</p> <p>3 Q But you don't contend that NFPA consented</p> <p>4 to your posting of the standards on your website,</p> <p>5 correct?</p> <p>6 MR. BRIDGES: Objection. To the extent it</p> <p>7 calls for a legal conclusion or position in this</p> <p>8 lawsuit, that's going to be attorney -- that's</p> <p>9 going to be legal opinion and attorney-client</p> <p>10 privileged and attorney work product. If you want</p> <p>11 to ask what Public Resource's public statements</p> <p>12 have been outside the context of this litigation,</p> <p>13 feel free, but I'm going to instruct him not to</p> <p>14 talk about what the positions are taken by the</p> <p>15 counsel in the lawsuit.</p> <p>16 BY MR. FEE:</p> <p>17 Q You're instructing him not answer whether</p> <p>18 or not NFPA granted consent to the posting of those</p> <p>19 standards on Mr. Malamud's website on the grounds of</p> <p>20 privilege?</p> <p>21 MR. BRIDGES: I don't think that's what</p> <p>22 the question -- maybe I'm wrong, but could the</p> <p>23 court reporter please reread the question?</p> <p>24 THE REPORTER: Okay.</p> <p>25 (The reporter read the record</p>

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<p style="text-align: right;">206</p> <p>1 as requested.) 2 MR. BRIDGES: Oh, okay. All right. 3 It's -- it's argumentative and vague and ambiguous. 4 THE WITNESS: No. 5 MS. RUBEL: 43? 6 THE REPORTER: 43. 7 (Exhibit 43 marked for identification.) 8 BY MR. FEE: 9 Q Mr. Malamud, I'm going to hand you what's 10 been marked as Exhibit 43. It is a spreadsheet. On 11 the first page it has headers of downloads, 12 identifier and title. 13 Can you identify what Exhibit 43 is? 14 A No. What is this document? 15 Q This is a document that was produced in -- 16 by your -- your counsel in connection with this 17 case. 18 A Okay. 19 Q So what I -- I don't know what this is, 20 obviously, that's why I'm asking, but in the 21 left-hand column you see a reference to downloads. 22 At some point in time did you try to create a 23 spreadsheet that identified the number of downloads 24 of various ASTM standards from your website? 25 A You know, I don't recall this document.</p>	<p style="text-align: right;">208</p> <p>1 Internet Archive had been downloaded by individuals 2 at the Internet Archive website? 3 MR. BRIDGES: Objection, competence, calls 4 for speculation, vague and ambiguous. 5 THE WITNESS: I can run the advanced 6 search query and ask for the download identifier 7 and title fields from the Internet Archive. 8 BY MR. FEE: 9 Q And you had done that before in connection 10 with this matter? 11 A Yes. 12 Q But you're not sure if Exhibit 43 is the 13 end result of that search? 14 A I -- I have no idea if this is 15 intermediate work product, what the date is. I 16 don't know. 17 BY MR. FEE: 18 Q I'm going to hand you a spreadsheet that 19 was produced in native format as PRO_00345530. It's 20 going to be marked as Exhibit 44. 21 (Exhibit 44 marked for identification.) 22 23 BY MR. FEE: 24 Q Can you identify Exhibit 44? 25 A This appears to be an initial stats run on</p>
<p style="text-align: right;">207</p> <p>1 Do you have a date? 2 Q This is the document as it was produced. 3 It's a -- it was produced as an Excel spreadsheet 4 with just this data in it, I believe. The Bates 5 label for the record is PRO_0023265. 6 A So when I see the word "identifier," that 7 tells me that this is data obtained from the 8 Internet Archive search engine. 9 Q Did you at some point in time attempt to 10 determine how many downloads there were from the 11 Internet Archive website of standards that you had 12 posted to the Internet Archive website? 13 MR. BRIDGES: Objection, vague and 14 ambiguous. 15 THE WITNESS: Yes, I did. 16 BY MR. FEE: 17 Q Is that what defendant's exhibit -- or 18 what Exhibit 43 is? 19 MR. BRIDGES: Objection, may call for 20 speculation, competence. 21 THE WITNESS: It would require speculation 22 on my part, that's certain. Yes. 23 BY MR. FEE: 24 Q Are you able to identify how many times 25 any particular ASTM standard that you posted to the</p>	<p style="text-align: right;">209</p> <p>1 a number of accesses from our website for the 2 standards at issue. 3 Q You see one of the columns is labeled 4 "Hits," right? 5 A Yes. 6 Q What is a hit for the purposes of this 7 document? 8 A An access to the document. 9 Q Does the tally of hits give you any 10 information about whether or not a standard was 11 printed or downloaded and copied? 12 A Absolutely not, no. 13 Q So it's just visitors to that page? 14 MR. BRIDGES: Objection, vague and 15 ambiguous. 16 THE WITNESS: It's not even that. It's 17 access to a file. 18 BY MR. FEE: 19 Q Did you compile the data in Exhibit 44? 20 A Yes, I did. 21 Q How did you compile this data? 22 A It's a fairly complicated process of 23 beginning with the server logs and then a series of 24 operations to determine the number of unique 25 accesses.</p>

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210	<p>1 Q Do you believe the process to be accurate? 2 MR. BRIDGES: Objection, lacks foundation, 3 vague and ambiguous. 4 THE WITNESS: Let's see. This is data as 5 of February 2014, and I believe at the time it was 6 accurate for the number of -- of what we call 7 status code 200 and 206 accesses, which is 8 transfer -- a successful transfer of the data to a 9 client. 10 BY MR. FEE: 11 Q Can you describe to me the meaning, if 12 any, of URL identifiers in Exhibit 44? Is there a 13 naming convention that you used? 14 A Yes, there is. 15 Q Okay. Can you describe that naming 16 convention used in Exhibit 44? 17 A Would you like me to take the very first 18 item? 19 Q Sure. 20 A Okay. HTTPS means that it's secure HTTP. 21 Law.Resource.Org is the host name section of what we 22 call the URI. Pub is our publication area. U.S. is 23 for U.S. standards. CFR is the Code of Federal 24 Regulations. IBR is incorporated by reference. 25 Three is a bucket which happens to contain the ASTM</p>	212	<p>1 number there? 2 A Yes. 3 Q Can you explain what that is, please? 4 A That is the sum of Column D. 5 Q So it's the total sum of hits of all the 6 files listed in Exhibit 44? 7 MR. BRIDGES: Objection, misstates 8 testimony. 9 THE WITNESS: It's a sum of the hits, 10 which is Column D. 11 BY MR. FEE: 12 Q I'm going to hand you Exhibit 45, which is 13 a printout of a document produced in native format a 14 PRO_00232654. 15 (Exhibit 45 marked for identification.) 16 THE WITNESS: What is this document? 17 BY MR. FEE: 18 Q I was going to ask you what Exhibit 45 is. 19 This is a -- a file, an Excel spreadsheet produced 20 by Public Resource in connection with this matter. 21 A Would you like me to speculate what this 22 is? 23 Q Do you know what it is or not? 24 A Not for a fact. 25 Q Okay. Do you have an understanding as to</p>
211	<p>1 standards. And then I rigorously name each of the 2 standards with a -- a regular naming screen -- 3 scheme, and so in this case, it's ASTM, the number 4 of the standard, A100. 1969 is the year. And PDF 5 is the format of the file as opposed to HTML, for 6 example. 7 Q And is that naming convention used for all 8 the files referenced in Exhibit 44? 9 MR. BRIDGES: Objection, vague and 10 ambiguous. 11 THE WITNESS: I'm -- I'm very careful with 12 the naming and -- and very precise on that, so yes. 13 BY MR. FEE: 14 Q If a file appears on Exhibit 44, it's your 15 expectation at least as of the date this report was 16 written that that file was available sometime prior 17 to the date of the report being compiled on the 18 Public Resource website; is that right? 19 MR. BRIDGES: Objection, argumentative, 20 may call for speculation, vague and ambiguous. 21 THE WITNESS: Yes. 22 23 BY MR. FEE: 24 Q Would you turn to the last page of Exhibit 25 44? Do you see at the bottom there's a total with a</p>	213	<p>1 what this is? 2 MR. BRIDGES: Objection, vague and 3 ambiguous. 4 THE WITNESS: This appears to be search 5 terms. 6 BY MR. FEE: 7 Q Did you do any attempt to collect data 8 regarding search terms in connection with this 9 matter? 10 MR. BRIDGES: Objection. I'm going to ask 11 him to exclude from his answer work in conjunction 12 with attorneys in connection with this case as 13 governed by attorney work product and 14 attorney-client communications, so objecting and 15 instructing to that extent. Beyond that, he may 16 testify. 17 THE WITNESS: This looks like an -- 18 MR. BRIDGES: I'll ask the witness not to 19 speculate. If he knows what it is -- 20 THE WITNESS: Could you repeat the 21 question, please? 22 23 BY MR. FEE: 24 Q Did you do any attempt to identify 25 information regarding searches in connection with</p>

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<p style="text-align: right;">214</p> <p>1 your document production in this case? 2 A No. 3 Q Did you do any attempt to quantify the 4 number of searches for any particular standards 5 incorporated by reference in connection with your 6 document production in this case? 7 MR. BRIDGES: Objection. I'm going to 8 object and instruct in terms of dealing with the 9 attorneys on this case as attorney work product and 10 attorney-client communication. If you want to ask 11 him what this document is to his knowledge, you can 12 ask that, but in terms of the process between 13 lawyer and client, I'm going to object and 14 instruct. 15 THE WITNESS: This sure looks like 16 Webmaster Tools from Google, which is a service 17 which I don't use on a regular basis. But this 18 looks like a -- a dump. 19 BY MR. FEE: 20 Q Did you use master tools from Google? 21 A Webmaster Tools. 22 Q Oh, Webmaster Tools. I'm sorry. 23 First of all, what is Webmaster Tools? 24 A It -- it's part of the Google tools that 25 allow you to manage your website, for example, by</p>	<p style="text-align: right;">216</p> <p>1 Webmaster Tools dump prior to today? 2 MR. BRIDGES: Same objection, instruction, 3 conditional objection, conditional instruction. 4 THE WITNESS: Like I said, a couple years 5 ago I looked at their interface and obviously -- 6 you know, this is the result of -- of that. I'm 7 sorry. That -- 8 MR. BRIDGES: I'm asking the -- I'll 9 direct the witness to testify as to what he knows 10 and not to speculate. 11 BY MR. FEE: 12 Q Have you ever used Webmaster Tools to try 13 to quantify the amount of clicks or impressions on 14 any pages at your website prior to today? 15 A No. 16 Q Do you have an understanding as to what 17 CTR refers to in the context of Webmaster Tools? 18 A Actually, I have no idea. 19 Q Do you have any knowledge regarding 20 whatever search terms were used by visitors to your 21 websites to arrive at your website? 22 MR. BRIDGES: Objection, calls for 23 speculation, competence, vague and ambiguous. 24 THE WITNESS: No, that's not something I 25 look for.</p>
<p style="text-align: right;">215</p> <p>1 listing a particular URL not to be in the Google web 2 index. 3 Q What work, if any, have you done in 4 Webmaster Tools related to any standards at issue in 5 this case? 6 MR. BRIDGES: Objection. To the extent 7 there's any work that's in conjunction with 8 attorneys as attorney work product or at the 9 direction or in conjunction with attorneys that are 10 covered by attorney-client privilege, I'll object 11 and instruct. 12 If you can testify beyond that, you may. 13 THE WITNESS: I really haven't used web 14 tools for the last couple years with the single 15 exception of listing a document so that it is not 16 included in the Google search engine. 17 BY MR. FEE: 18 Q Have you ever seen a report similar to 19 Exhibit 45 prior to today? 20 MR. BRIDGES: Objection, vague and 21 ambiguous. 22 THE WITNESS: Well, that's why I guessed 23 that this was the Webmaster Tools dump. 24 BY MR. FEE: 25 Q In what circumstance did you encounter a</p>	<p style="text-align: right;">217</p> <p>1 BY MR. FEE: 2 Q Did you provide the spreadsheet that 3 contained the information shown in Exhibit 45 to be 4 produced in connection with this matter? 5 MR. BRIDGES: Objection, may call for 6 speculation, competence, vague and ambiguous. 7 THE WITNESS: I'm not sure I understand 8 that question. Would you mind repeating it? 9 BY MR. FEE: 10 Q Sure. Did you provide the data that was 11 reflected in Exhibit 45 in order to have it 12 produced -- be produced in connection with this 13 litigation? 14 MR. BRIDGES: All the same objections. 15 THE WITNESS: Well, you just told me we 16 produced this, right? 17 BY MR. FEE: 18 Q Public Resource produced the data that's 19 shown in this -- in this exhibit. I'm asking you if 20 that was from you. 21 MR. BRIDGES: Objection, calls for 22 speculation, competence. I think he's testified he 23 didn't recognize this document. 24 THE WITNESS: I -- I really didn't 25 recognize this document.</p>

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<p style="text-align: right;">218</p> <p>1 BY MR. FEE: 2 Q Was anybody besides yourself involved in 3 the document collection process in connection with 4 this litigation, excluding your lawyers? 5 A No. 6 Q I'm going to give you Exhibit 46, which is 7 a printout, a spreadsheet produced in native format 8 as PRO_00232655. 9 (Exhibit 46 marked for identification.) 10 BY MR. FEE: 11 Q Do you know what Exhibit 46 is? 12 A Was there a date in the metadata for this 13 document? 14 Q I don't know the answer to that question 15 off the top of my head. 16 Do you know what Exhibit 46 is? 17 A It appears to be similar to the previous 18 exhibit you showed me. 19 Q You don't know what it is, though? 20 A I -- I don't recollect it. 21 Q And you don't know how to interpret the 22 data contained in Exhibit 46? 23 MR. BRIDGES: Objection, lacks foundation, 24 assumes facts not in evidence, calls for 25 speculation, vague and ambiguous, argumentative.</p>	<p style="text-align: right;">220</p> <p>1 record. The time is 4:27 p m. 2 EXAMINATION BY COUNSEL FOR PLAINTIFF NFPA 3 BY MR. REHN: 4 Q Good afternoon. 5 A Good afternoon. 6 Q I'm Thane Rehn and I'm counsel for NFPA. 7 And do you understand that the same basic ground 8 rules apply for my questions as applied for ASTM's 9 questions? 10 A I do. 11 Q And that you're still under oath? 12 A Yes. 13 Q Now, I would like to direct your attention 14 back to Exhibit 38, which was marked earlier today. 15 THE REPORTER: We're copying them, 16 Counsel. Do you have a copy? 17 MR. REHN: Yeah, I don't have a copy of 18 that. 19 THE REPORTER: They're being copied. 20 MR. REHN: Oh, okay. 21 MS. RUBEL: Here, I still have them. 22 THE REPORTER: Oh, good. Thanks, Jordana. 23 Thank you. 24 THE WITNESS: Exhibit 38? 25 BY MR. REHN:</p>
<p style="text-align: right;">219</p> <p>1 THE WITNESS: Yeah, I guess I would want 2 to pull up the web page for Webmaster Tools and -- 3 and look at the definitions of each of these. 4 BY MR. FEE: 5 Q Did you create Exhibit 46 in its -- in at 6 least an Excel spreadsheet format? 7 MR. BRIDGES: Objection. I think he's 8 testified he didn't recognize the document. 9 THE WITNESS: I -- I don't recollect the 10 document. It was obviously on a disk drive 11 someplace. 12 BY MR. FEE: 13 Q Mr. Malamud, that's all the questions I'm 14 going to have for you in your capacity as a 15 corporate representative. I'll, of course, have 16 questions for you tomorrow in your individual 17 capacity, but I'm going to turn the proceedings over 18 to the other plaintiffs at this juncture. 19 A Okay. Great. Thank you. 20 Q Thanks for your time. 21 A You bet. 22 THE VIDEOGRAPHER: We're going off the 23 record. The time is 4:13 p m. 24 (Recess taken.) 25 THE VIDEOGRAPHER: We're back on the</p>	<p style="text-align: right;">221</p> <p>1 Q Yes. 2 A Okay. 3 Q Now, I believe you testified earlier that 4 exhibit -- do you have Exhibit 38? 5 A Yes, I do. 6 Q Go ahead and find -- I'm not sure which 7 number it is, I'm trying to find that now, but the 8 one -- Exhibit 40 as well. 9 A Yes, I have Exhibit 40. 10 Q Okay. Let's actually start with Exhibit 11 40. 12 Now, I believe you testified earlier that 13 this is a page from Public Resource's website that 14 you prepared? 15 MR. BRIDGES: Actually, I'm not sure that 16 was his testimony, but... 17 THE WITNESS: It appears to be the 18 safety.html page from our website. 19 BY MR. REHN: 20 Q And did you prepare this page? 21 A I -- I believe so. 22 Q And this page has listings of, I believe, 23 all 50 states, and within those listings there are 24 columns labeled; building, fire, mechanical and so 25 forth, do you see that?</p>

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<p style="text-align: right;">222</p> <p>1 A Yes, sir. 2 MR. BRIDGES: Well, are you asking him to 3 verify your statement? If so, I want him to count 4 the states and to review the document more 5 thoroughly. 6 MR. REHN: Well, we don't have to -- 7 BY MR. REHN: 8 Q This has listings of a number of states 9 and within each of those listings there are columns 10 labeled building, fire, mechanical and so forth; is 11 that correct? 12 A Yes. 13 Q And one of those columns is labeled 14 electrical; is that correct? 15 A Yes. 16 Q Now, on -- let -- if we just look at the 17 first state listed, Alabama in that code electrical, 18 do you see what it says there? 19 A It says NEC 2011. 20 Q And it says that twice; is that right? 21 A Yes. 22 Q Do you know why there's two 23 identifications of NEC 2011? 24 A Yes, because the original HTML page is in 25 color and one is, I believe, red and one is green.</p>	<p style="text-align: right;">224</p> <p>1 an HTML version that was produced in conjunction 2 with HTC and -- and yourself; is that correct? 3 MR. BRIDGES: If he's asking about the 4 whole document, then make sure that you understand 5 the whole document and answer the question. 6 THE WITNESS: Uh-huh. Yes. 7 BY MR. REHN: 8 Q And -- and when -- and the other link 9 would generally be a link to a PDF, and -- and the 10 way that that PDF was made was you scanned the 11 standard as it was purchased, ran OCR and uploaded 12 that with your cover page attached as well? 13 A Yes. 14 Q And the cover page has a representation 15 these standards have been incorporated by reference; 16 is that right? 17 A Yes, sir. 18 Q Now, when we see examples of standards 19 where there's only one link, like if you'll turn to 20 the second page of this document, you'll look, for 21 example, in Connecticut and you'll see in the 22 electrical column there's the NEC 2005. Do you see 23 that? 24 A Yes, I do. 25 Q In that case, do you know which -- do you</p>
<p style="text-align: right;">223</p> <p>1 Q And what is the green one? 2 A That would be an HTML version of that 3 document. 4 Q And that -- those are the versions you 5 prepared according to the process that you described 6 earlier working with HTC and Point.B Studios? 7 A For a straight HTML file it would have 8 just been HTC. 9 Q Okay. And what about the ones that are in 10 green? I'm sorry. The green were the HTML. The 11 ones that would be in red, what would those be? 12 A That's a PDF version of the file. 13 Q And is the PDF version just a scan of the 14 standard as you received it -- as you originally 15 purchased it? 16 A It's a scan with OCR and a cover sheet. 17 THE REPORTER: With those what? With -- 18 THE WITNESS: With OCR -- 19 THE REPORTER: Oh. 20 THE WITNESS: -- and a cover sheet. 21 THE REPORTER: Okay. 22 23 BY MR. REHN: 24 Q So wherever we see two separate links 25 referencing the same standard, one of those links is</p>	<p style="text-align: right;">225</p> <p>1 know just by looking at this document which version 2 that would be? Would it be the HTML or the PDF? 3 A I don't know by looking at this document. 4 I -- I know that we only have a PDF version of the 5 NEC 2005. 6 Q So -- so you know by virtue of your own 7 knowledge that that would link to the PDF version? 8 A Yes. 9 Q And do you know why you don't have an HTML 10 version of the 2005 NEC? 11 A Because we didn't give it to HTC to be 12 double-keyed. 13 Q So only for some of the standards you 14 obtained from NFPA did you do the double-keying 15 process in the conversion to HTML? 16 A That's correct. 17 Q And for standards where there is only a 18 PDF version that's linkable from this page, the PDF 19 version is the only version that you're providing on 20 your website? 21 A I think so. 22 MR. BRIDGES: I'll ask the witness to 23 testify only as to what he knows. 24 BY MR. REHN: 25 Q When -- when there's just one link to a</p>

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<p style="text-align: right;">226</p> <p>1 standard and that link takes to you a PDF version, 2 is there -- does that generally mean there is not an 3 HTML version available on the Public Resource 4 website? 5 MR. BRIDGES: Objection, hypothetical. 6 BY MR. REHN: 7 Q Well, let's look at the Connecticut 8 listing, for example. So for the NEC 2005, is there 9 an HTML version available on the Public Resource 10 website? 11 A No, there is not. 12 Q Okay. How about if you look down a little 13 further at Hawaii, you'll see that in the electrical 14 column it says, NEC 2008. And is it your 15 understanding that that would be a link to the PDF 16 version or to the HTML version? 17 A To the PDF version. 18 Q And is that another case where you don't 19 have an HTML version of that code? 20 A That's correct. 21 Q So on the Public Resource website the 22 public can download a scanned and OCR'd PDF version 23 of the 2008 National Electrical Code, but there's 24 not an HTML version available? 25 MR. BRIDGES: Objection, argumentative,</p>	<p style="text-align: right;">228</p> <p>1 THE WITNESS: For your -- for the 2 plaintiffs? 3 BY MR. REHN: 4 Q Let start with the plaintiffs. For any of 5 the plaintiffs, did you upload any standards 6 based -- from electronic versions that you had 7 purchased? 8 A No. 9 Q Now, if you'll look at Exhibit 38, and if 10 you can turn to the page that's Bates-stamped 11 166237. The Bates stamps are the little numbers at 12 the bottom there. 13 A Yes. Okay. 14 Q So you'll see beginning on that page and 15 extending over to the other page there are a number 16 of NFPA standards listed there. 17 A That's correct. 18 Q And, again, for some of those standards 19 there are two links -- actually, for the first one 20 for NFPA 10, there are three links; is that right? 21 A That's correct. 22 Q And so the -- and, again, the PDF would be 23 as we described it earlier. That's just a simple 24 scan of the paper version that you purchased with 25 OCR recognition; is that right?</p>
<p style="text-align: right;">227</p> <p>1 calls for speculation, vague and ambiguous, 2 compound. 3 THE WITNESS: We don't have an HTML 4 version of that standard. 5 BY MR. REHN: 6 Q And you do have a scanned PDF of the 7 standard as you purchased with OCR recognition? 8 A Yes. 9 Q And in a case like that, I believe you 10 testified earlier that you scanned those PDFs from 11 paper versions of the standards? 12 A That's correct. 13 Q And did you always use paper versions of 14 the standards? 15 MR. BRIDGES: Objection, lacks foundation, 16 vague and ambiguous. 17 THE WITNESS: For all the standards at 18 issue we use paper standards. 19 BY MR. REHN: 20 Q And were -- were there other cases for 21 standards other the ones that are identified in the 22 complaint where you did not use paper standards, you 23 used electric -- electronic versions? 24 MR. BRIDGES: Objection, lacks foundation, 25 vague and ambiguous.</p>	<p style="text-align: right;">229</p> <p>1 MR. BRIDGES: Objection. 2 BY MR. REHN: 3 Q And the HTML version is the version we 4 discussed earlier. That would be a double-keyed -- 5 or what -- what you paid HTC to double-key as you 6 received from them and then uploaded; is that 7 correct? 8 MR. BRIDGES: Objection. I think that 9 misstates his testimony, lacks foundation. 10 THE WITNESS: It is a double-keyed HTML 11 file with JPG images. 12 BY MR. REHN: 13 Q Okay. And then the SVG, the one that's 14 labeled SVG, the next one, what -- what is that? 15 A That is an HTML file with links to some 16 SVG images and some JPG images. 17 Q So when it says, SVG, that doesn't 18 necessarily mean that all the graphical information 19 is in SVG format? 20 A Not necessarily. 21 Q Some of it may be in the JPG format? 22 A That's correct. 23 Q Do you know, did -- was there any reason 24 why you left some of the graphical information in 25 the JPG format and you converted some to SVG?</p>

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<p style="text-align: right;">230</p> <p>1 MR. BRIDGES: Objection, argumentative, 2 lacks foundation, vague and ambiguous. 3 THE WITNESS: My instructions to Point.B 4 were to do an exact replication of images, and if 5 for some reason they couldn't do an exact 6 replication, skip them, you know. So then we stick 7 with the JPG. 8 BY MR. REHN: 9 Q Okay. And again, if we -- if we go down a 10 little bit, you'll see NFPA 13 listed here. 11 A Uh-huh. 12 Q In that, there's only one link. Do you 13 know why that is? 14 MR. BRIDGES: Objection, vague and 15 ambiguous. 16 THE WITNESS: Because that's how this web 17 page is coded. 18 BY MR. REHN: 19 Q But do you know if you have a HTML version 20 of the 2002 NFPA 13 standard? 21 A I don't know. 22 Q Do you know in general when there is only 23 one link, are there -- are those generally PDF files 24 or HTML files? 25 MR. BRIDGES: Objection, hypothetical,</p>	<p style="text-align: right;">232</p> <p>1 here, you used paper versions that you scanned into 2 PDFs? 3 MR. BRIDGES: Objection, lacks foundation. 4 What do you mean by all the standards here? 5 BY MR. REHN: 6 Q For the standard -- for the NFPA standards 7 listed on this page and the following page, the PDF 8 versions of those standards that are on your website 9 are scanned from paper copies that you purchased; is 10 that correct? 11 A Yes. 12 Q And you testified about this a little bit 13 earlier, but I -- I just want to come back to it. 14 Was it your understanding that you could purchase 15 PDF versions of the standards directly from NFPA? 16 MR. BRIDGES: Objection, argumentative, 17 lacks foundation, assumes facts not in evidence, 18 may call for a legal opinion, vague and ambiguous. 19 THE WITNESS: I am aware that NFPA does 20 have documents available on their website. 21 BY MR. REHN: 22 Q In PDF format? 23 A Yes. 24 Q And you're aware that you can purchase a 25 PDF version of an NFPA standard from the NFPA</p>
<p style="text-align: right;">231</p> <p>1 vague and ambiguous, compound. 2 THE WITNESS: In this particular page, the 3 manifest.us html, if there's only single listing, 4 it's going to be a PDF file. 5 BY MR. REHN: 6 Q So for NFPA 13, that link would presumably 7 go to a PDF file? 8 THE REPORTER: One more time, Counsel. 9 Too fast. 10 BY MR. REHN: 11 Q So for NFPA 13, as listed here, if you 12 clicked on that link on your website, it would 13 deliver a PDF file? 14 A Presumably, yes. 15 Q And -- and that -- and again -- and again, 16 that would be a file you had purchased a paper copy 17 and scanned that PDF and uploaded it to this website 18 with OCR recognition? 19 A Correct. 20 MR. BRIDGES: Objection, misstates. Give 21 me time to object. 22 THE REPORTER: What was your answer? 23 THE WITNESS: That's correct. 24 BY MR. REHN: 25 Q And again, for all of the standards listed</p>	<p style="text-align: right;">233</p> <p>1 website? 2 MR. BRIDGES: Objection, argumentative, 3 lacks foundation, assumes facts not in evidence, 4 calls for a legal conclusion and vague and 5 ambiguous. 6 THE WITNESS: Yes. 7 BY MR. REHN: 8 Q But -- but you didn't purchase PDFs for 9 these standards; instead, you purchased paper copies 10 and then made your own PDFs based on those paper 11 copies? 12 MR. BRIDGES: Objection, argumentative, 13 lacks foundation, assumes facts not in evidence, 14 underlying legal opinion and vague and ambiguous -- 15 THE WITNESS: Yes. 16 MR. BRIDGES: -- and compound. 17 THE WITNESS: Could you repeat the 18 question, please? 19 THE REPORTER: All right. 20 (The reporter read the record 21 as requested.) 22 MR. BRIDGES: Same objections. 23 THE WITNESS: All of the NFPA standards at 24 issue were -- were based on paper copies. 25 BY MR. REHN:</p>

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<p style="text-align: right;">234</p> <p>1 Q And you -- I believe you said earlier that 2 that was because you were concerned about the terms 3 of use that you would have to click through to 4 access the PDF copies from the NFPA; is that 5 correct? 6 MR. BRIDGES: Objection. That misstates 7 his testimony. 8 THE WITNESS: That's not what I stated. 9 It's far easier -- 10 MR. BRIDGES: Answer his question. 11 THE WITNESS: Will you repeat the 12 question, please? 13 (The reporter read the record 14 as requested.) 15 MR. BRIDGES: Same objection, misstates 16 testimony. 17 THE WITNESS: No. 18 BY MR. REHN: 19 Q You testified earlier that terms of use 20 were one of your concerns with purchasing PDF 21 versions of the standards; is that right? 22 MR. BRIDGES: Objection. That misstates 23 his testimony, I believe, and vague and ambiguous. 24 THE WITNESS: Terms of use are one of the 25 factors that I looked at.</p>	<p style="text-align: right;">236</p> <p>1 A No. 2 MR. BRIDGES: I need time. 3 Objection, lacks foundation, assumes facts 4 not in evidence, vague and ambiguous, 5 argumentative. 6 BY MR. REHN: 7 Q What about for standards other than the 8 standards that are listed here and in exhibit -- I 9 believe it was 40. So there's NFPA -- let's start 10 with this exhibit. Exhibit 38 lists the NFPA 11 standards we've been looking at. For those 12 standards, your testimony is that you did not 13 purchase PDF versions of those standards; is that 14 correct? 15 MR. BRIDGES: Objection, argumentative, 16 completely lacks foundation, vague and ambiguous, 17 calls for a legal conclusion. 18 Just so that my objections are no mystery, 19 is it NFA -- NFPA's position that those 20 documents are available for purchase? Is 21 that -- is that your position? 22 MR. REHN: Well, I -- I'm not going to 23 make factual representations on the record. 24 MR. BRIDGES: Okay. Well, again, it 25 assumes facts not in evidence.</p>
<p style="text-align: right;">235</p> <p>1 BY MR. REHN: 2 Q And was it your understanding that if you 3 purchased an electronic PDF version of a standard 4 from NFPA, that would come with terms of use? 5 MR. BRIDGES: Objection, lacks foundation, 6 assumes facts not in evidence, calls for a legal 7 conclusion and vague and ambiguous. 8 THE WITNESS: It was my understanding that 9 a PDF document would come with digital rights 10 management. 11 BY MR. REHN: 12 Q And what do you mean by "digital rights 13 management"? 14 A That limits the functionality available 15 for a PDF document. 16 Q And was it also your understanding that it 17 would be accompanied by terms of use? 18 MR. BRIDGES: Objection, lacks foundation, 19 vague and ambiguous and -- and may call for a legal 20 conclusion or legal opinion. 21 THE WITNESS: I don't know. I didn't buy 22 any PDF documents from the NFPA website. 23 BY MR. REHN: 24 Q You did not purchase any PDF documents 25 from the NFPA website?</p>	<p style="text-align: right;">237</p> <p>1 MR. REHN: Okay. 2 MR. BRIDGES: And just so you're clear, 3 that's -- that's a lot of the basis for my 4 objection. I'm not sure that -- I'm not sure as a 5 matter of fact that your entire line of questioning 6 is a good-faith -- is grounded, in fact, in good 7 faith. 8 BY MR. REHN: 9 Q For the NFPA standards on these pages that 10 we've been looking at, you did not purchase PDF 11 versions of those standards from NFPA; is that 12 correct? 13 MR. BRIDGES: Same objections. 14 THE WITNESS: Yes, that's correct. 15 BY MR. REHN: 16 Q And is the same answer true for the NFPA 17 standards listed on Exhibit 40? 18 MR. BRIDGES: Same objections. 19 THE WITNESS: Yes, that's correct. 20 BY MR. REHN: 21 Q Did you purchase PDF versions of any NFPA 22 standards other than the NFPA standards listed on 23 these two exhibits? 24 MR. BRIDGES: Same objections. 25 I'm sorry. Could you please -- I may</p>

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<p style="text-align: right;">238</p> <p>1 withdraw those. Can you please reread the 2 question? 3 (The reporter read the record 4 as requested.) 5 MR. BRIDGES: Okay. The same objections. 6 THE WITNESS: I don't think so. 7 MS. RUBEL: Exhibit 47? 8 THE REPORTER: Yep. 9 (Exhibit 47 marked for identification.) 10 BY MR. REHN: 11 Q I would like to hand you what's been 12 marked as Exhibit 47. For the record, this is an 13 e-mail with the Bates stamp PRO_00166295. Do you 14 recognize this as an e-mail to yourself from 15 Custserv@nfpa.org? 16 A Yes. 17 Q And could you read the subject of this 18 e-mail, please? 19 A Order confirmation from NFPA. 20 Q And then if you go to the second paragraph 21 in this e-mail, beginning with the -- the word 22 because, can you just go ahead and read that 23 paragraph? 24 A "Because you purchased a PDF file of one 25 of the NFPA's codes and standards."</p>	<p style="text-align: right;">240</p> <p>1 A Yes, I do. 2 Q Is it your understanding that that 3 represents a purchase of a PDF file of that NFPA 4 standard from the NFPA? 5 A Yes. 6 MR. BRIDGES: Do you have a recollection 7 of that? 8 THE WITNESS: Yes, I do. 9 BY MR. REHN: 10 Q Now, that standard is not listed on 11 Exhibits 38 or 40 I don't believe; is that right? 12 A Which one? 13 Q The one we just looked at, NFPA 17. 14 A That's correct. 15 Q All right. And you'll see just scrolling 16 down that page there's a -- would you agree with me 17 there's quite a few PDFs? 18 MR. BRIDGES: Objection, vague and 19 ambiguous. 20 BY MR. REHN: 21 Q If you look on that page and the following 22 page, maybe a dozen, maybe 15. 23 MR. BRIDGES: Objection, vague and 24 ambiguous. 25 MR. REHN: We can count them if you'd</p>
<p style="text-align: right;">239</p> <p>1 Q Go ahead and read the whole paragraph. 2 A "Your credit card will be charged within 3 24 hours of receipt of your order and as that 4 portion of your order will be automatically 5 fulfilled once you download the file, click on the 6 following link to see the downloading instructions 7 for your PDF." 8 Q Now, does this refresh your recollection 9 that you did purchase some PDF files of some NFPA 10 codes and standards from the NFPA? 11 A Yes, it does. 12 Q And, in fact, you did so; is that right? 13 MR. BRIDGES: Does it -- do you recall? 14 THE WITNESS: Yes. 15 BY MR. REHN: 16 Q So, for example, if we turn to the second 17 page of this document, it lists NFPA 17. 18 A Yes. 19 Q And it -- and that's next to a -- a 20 listing 1702 PDF. 21 A Uh-huh. 22 Q And then it says, "NFPA 17 standard for 23 dry chemical extinguishing systems, 2002 edition, 24 328 kb." 25 Do you see that?</p>	<p style="text-align: right;">241</p> <p>1 like. 2 THE WITNESS: I see 23. 3 BY MR. REHN: 4 Q Twenty-three. So does that mean you 5 purchased 23 standards in PDF format from the NFPA 6 on -- on this date in 2008? 7 MR. BRIDGES: Object to the extent the 8 witness doesn't have an independent recollection. 9 THE WITNESS: Based on this invoice, I -- 10 I would say that's correct. 11 BY MR. REHN: 12 Q Do you recall downloading those standards? 13 A No, I don't. 14 Q Do you recall possessing those standards 15 in PDF format? 16 A No, I don't recall. 17 Q Do you have any reason to believe you 18 would have purchased all these standards and you 19 wouldn't have downloaded them? 20 MR. BRIDGES: Objection, argumentative, 21 vague and ambiguous. 22 THE WITNESS: No, I have no reason. 23 BY MR. REHN: 24 Q So you would expect that you would have 25 gone ahead and downloaded the standards that you</p>

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<p style="text-align: right;">242</p> <p>1 purchased? 2 MR. BRIDGES: Objection, calls for 3 speculation. 4 THE WITNESS: I'd want to go check on my 5 disk drive and see if they were there. 6 BY MR. REHN: 7 Q Do you think if -- if you did download 8 them, do you think you would still be in possession 9 of those PDFs? 10 MR. BRIDGES: Objection, hypothetical. 11 THE WITNESS: I don't know. 12 BY MR. REHN: 13 Q Do you remember ever being in possession 14 of a PDF from NFPA specifically, a PDF that you had 15 purchased from NFPA specifically? 16 MR. BRIDGES: Same objections as earlier, 17 lacks foundation, may assume facts not in evidence. 18 But go ahead. 19 THE WITNESS: No, I -- I certainly don't 20 remember working with PDF files from NFPA. 21 BY MR. REHN: 22 Q So you don't remember, for example, seeing 23 a PDF that had a -- a watermark or a -- a stamp 24 along the top of it that represented that it was an 25 NFPA standard.</p>	<p style="text-align: right;">244</p> <p>1 A Yes. 2 Q And could you read the first complete -- 3 just the number of the first complete standard 4 there? 5 A NFPA 59. 6 Q 2004 edition? 7 A That's what it says. 8 Q Now, is it your understanding that's the 9 NFPA 59 2004 edition that's represented on the 10 invoice at -- at Exhibit 47? 11 MR. BRIDGES: Objection, lacks foundation, 12 assumes facts not in evidence, vague and ambiguous, 13 argumentative. 14 THE WITNESS: No, that is not my 15 understanding. 16 BY MR. REHN: 17 Q And -- and why is that? 18 A Because I well could have purchased a 19 paper copy of it as well. 20 Q But is it your understanding that NFPA -- 21 the 2004 edition of NFPA 59 is referring to the same 22 document in both of these two exhibits? 23 MR. BRIDGES: Objection, lacks foundation, 24 vague and ambiguous. 25 BY MR. REHN:</p>
<p style="text-align: right;">243</p> <p>1 A No, I don't recollect that. 2 Q Have you seen a PDF like that in somebody 3 else's possession? 4 MR. BRIDGES: Objection, vague and 5 ambiguous, lacks foundation. 6 THE WITNESS: No. 7 BY MR. REHN: 8 Q If I could direct your attention to the 9 page marked -- the page Bates-stamped 166297. 10 A Uh-huh. 11 Q And you'll see first standard listed 12 there -- the first complete standard, can you go 13 ahead read that -- the identity of that standard? 14 MR. BRIDGES: Objection, lacks foundation, 15 vague and ambiguous. 16 THE WITNESS: This is NFPA 59, Utility LP 17 Gas Plant Code 2004. 18 BY MR. REHN: 19 Q All right. And if I could direct your 20 attention back to Exhibit 38. 21 A Uh-huh. 22 Q And if you could turn to the page 23 Bates-stamped 166238. 24 A That number again, 238? 25 Q Yeah. Are you there?</p>	<p style="text-align: right;">245</p> <p>1 Q The same standard? 2 A It is the same standard. 3 Q So is it your understanding that prior to 4 posting the 2004 edition of NFPA 59 on your website 5 in PDF format you purchased a PDF version of that 6 standard from NFPA? 7 MR. BRIDGES: Objection, may call for 8 speculation. You can ask him about his present 9 memory. 10 THE WITNESS: According to this invoice in 11 2008, yes. 12 BY MR. REHN: 13 Q But you don't believe that was the version 14 that you used to post the PDF to your website? 15 MR. BRIDGES: Objection, vague and 16 ambiguous, lacks foundation. 17 THE WITNESS: No, I don't believe so. 18 BY MR. REHN: 19 Q And looking back at Exhibit 47, do you see 20 any indication that you purchased a paper copy of 21 NFPA 59 at this -- on this date? 22 MR. BRIDGES: Objection, lacks foundation 23 argumentative, vague and ambiguous. 24 THE WITNESS: Not on that date in that -- 25 in this invoice.</p>

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<p style="text-align: right;">246</p> <p>1 BY MR. REHN: 2 Q Do you know if you may have purchased a 3 paper version at some other time? 4 A I don't know specifically for a fact. 5 Q Okay. But -- but you're quite sure that 6 the version you posted on your website came from a 7 paper version? 8 A I think so. 9 Q Okay. You can go ahead and put that aside 10 for now. 11 A Okay. 12 Q Now, you've testified a little bit about 13 the website Internet Archive today. 14 A That's correct. 15 Q And you testified that you have an 16 administrative account with the Internet Archive 17 website? 18 A No. I have a user account that has some 19 administrative privileges. 20 Q Okay. So you have administrative 21 privileges and you've had those for some time; is 22 that right? 23 MR. BRIDGES: Objection, vague and 24 ambiguous. 25 THE WITNESS: Correct.</p>	<p style="text-align: right;">248</p> <p>1 ambiguous. 2 A That's correct. 3 MR. REHN: What are we on, 48? 4 THE REPORTER: 48. 5 (Exhibit 48 marked for identification.) 6 BY MR. REHN: 7 Q Handing you what's been marked as Exhibit 8 48. And for the record, this is a document 9 Bates-stamped IA-ASTM-0013. 10 Have you ever seen this document before? 11 A No, I haven't. 12 Q Do you know what this document is? 13 MR. BRIDGES: Objection, calls -- it calls 14 for speculation, competence. 15 THE WITNESS: Not really. I've never seen 16 this. 17 BY MR. REHN: 18 Q Okay. You can set that aside. 19 This will be -- I'll hand you an exhibit 20 that's been marked as Exhibit No. 49. 21 (Exhibit 49 marked for identification.) 22 23 BY MR. REHN: 24 Q And this is a document Bates-stamped 25 IA-ASTM-0001, and I can represent to you that this</p>
<p style="text-align: right;">247</p> <p>1 BY MR. REHN: 2 Q Okay. And you -- you've posted a number 3 of the plaintiffs' standards on the Internet Archive 4 website? 5 MR. BRIDGES: Objection, vague and 6 ambiguous. 7 THE WITNESS: That's correct. 8 BY MR. REHN: 9 Q And for the standards you posted on the 10 Internet Archive website, were those the PDF 11 versions of the -- the same as the PDF versions that 12 were posted on your website? 13 MR. BRIDGES: Objection, lacks -- lacks 14 foundation, vague and ambiguous. 15 THE WITNESS: Yes, any document that came 16 from my website would have gone to the Internet 17 Archive. 18 BY MR. REHN: 19 Q And you posted the HTML versions when you 20 had them as well on the Internet Archive? 21 A No. The Internet Archive doesn't have a 22 capability of posting HTML files. 23 Q So on the Internet Archive, you only 24 posted PDF versions of the standards at issue? 25 MR. BRIDGES: Objection, vague and</p>	<p style="text-align: right;">249</p> <p>1 is a document that was produced pursuant to a 2 subpoena in this litigation by the Internet Archive. 3 And this document has some similarities to an 4 exhibit we looked at earlier where there is a column 5 marked identifier, and then a column marked public 6 date, and then a column marked uploader. 7 Do you see that? 8 A Yes, I do. 9 Q And is it your understanding that the 10 identifier column refers to the file name that you 11 gave to plaintiffs' standards that you uploaded to 12 Internet Archive? 13 MR. BRIDGES: Objection, may call for 14 speculation and vague and ambiguous. 15 THE WITNESS: The identifier is different 16 than the file name on our site, but I attempt to 17 keep those two labels the same. 18 BY MR. REHN: 19 Q So the identifier that you use when you 20 upload standards to Internet Archive is different 21 from the identifier you use on your website? 22 A It could be different. 23 Q Could be different. Do you recognize the 24 identifiers listed here as the identifiers you used 25 when you uploaded plaintiffs' standards to the</p>

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<p style="text-align: right;">250</p> <p>1 Internet Archive website? 2 MR. BRIDGES: Objection, lacks foundation, 3 vague and ambiguous. Are you talking about 4 particular ones? 5 MR. REHN: I'm talking about the 6 identifiers listed in Column A there. 7 MR. BRIDGES: As a whole? 8 BY MR. REHN: 9 Q Do you recognize that format as the format 10 you used generally speaking? 11 MR. BRIDGES: Objection, vague and 12 ambiguous. 13 THE WITNESS: Gov.law. standard name is 14 the naming convention that -- that I use. 15 BY MR. REHN: 16 Q And if you look at just the first 24 or 25 17 standards, they all have an NFPA -- gov.law.NFPA; is 18 that right? 19 A That's correct. 20 Q And is that -- is it your understanding 21 that these are files -- 22 A Twenty-six standards. I'm sorry, sir. 23 Not 24. 24 Q The -- right. Well, Column 1, I think -- 25 or row one is just the -- the dummy row, so I think</p>	<p style="text-align: right;">252</p> <p>1 standards listed on this document, the ASTM 2 standards and the ASHRAE standards: Do you have any 3 reason to believe this doesn't identify standards 4 that you uploaded to the Internet Archive website? 5 MR. BRIDGES: Objection, argumentative -- 6 BY MR. REHN: 7 Q And you can flip through it. It's your 8 e-mail address on every row. 9 MR. BRIDGES: It's not his document. 10 THE WITNESS: So this is, in fact, the 11 naming scheme that -- that I used and I -- I would 12 want to check these all before I say that they are 13 all ones that I uploaded, but it -- it certainly 14 seems to be the same as the standards that we have 15 on our website. 16 BY MR. REHN: 17 Q And then in the details column, you'll see 18 there's actually a website name, a website address. 19 Column D. 20 A Yeah. 21 Q Do you see that? 22 A Yes, I do. 23 Q And it's your understanding that if you 24 went to that website address, you could download a 25 version of plaintiffs' standards -- a copy of</p>
<p style="text-align: right;">251</p> <p>1 it's 24, but -- or 25. I'm sorry. 2 A No, 26. 3 Q Right, but it's Rows 2 through 26? 4 A Got it. Okay, 25. I'll buy that. 5 Q And do you recognize these as NFPA 6 standards that you uploaded to the Internet Archive 7 website? 8 MR. BRIDGES: Objection, it calls for 9 speculation. 10 BY MR. REHN: 11 Q And the titles available on the other side 12 as well? 13 A These are the identifiers I used. 14 Q And it -- where it says uploader in each 15 case, it lists Carl@media.org. Is that your web -- 16 your e-mail address? 17 A Yes, that's my e-mail address. 18 Q Do you have any reason to believe this 19 doesn't represent the standards that you uploaded to 20 the Internet Archive website? 21 MR. BRIDGES: Objection, lacks foundation, 22 argumentative. 23 THE WITNESS: No. 24 BY MR. REHN: 25 Q And -- and the same question for the other</p>	<p style="text-align: right;">253</p> <p>1 plaintiffs' standards from the Internet Archive 2 website? 3 MR. BRIDGES: Objection, lacks foundation, 4 may call for speculation. 5 THE WITNESS: On the Internet Archive an 6 identifier is always used to create what you call 7 the details column, which is actually a -- a URL, a 8 uniform resource locator, URL. 9 BY MR. REHN: 10 Q Or, in common parlance, a website address? 11 MR. BRIDGES: Objection, argumentative, 12 assumes facts not in evidence, lacks foundation, 13 vague and ambiguous. 14 THE WITNESS: On the Internet Archive if 15 you have an identifier, you can access that object 16 by going to https://archive.org/details and then 17 the identifier. 18 BY MR. REHN: 19 Q And that allows you to download a copy of 20 the standards that are listed here? 21 MR. BRIDGES: Objection, argumentative, 22 lacks foundation, vague and ambiguous. 23 THE WITNESS: You can view that web page 24 and do a number of operations. 25 BY MR. REHN:</p>

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<p style="text-align: right;">254</p> <p>1 Q Including downloading a copy of the 2 standards that are listed here? 3 MR. BRIDGES: Objection, lacks foundation, 4 assumes facts not in evidence, vague and ambiguous. 5 THE WITNESS: You can view the object and, 6 yes, they do have a download button. 7 BY MR. REHN: 8 Q So you could, for example, download a copy 9 to your desktop on your computer at home? 10 MR. BRIDGES: Objection, hypothetical and 11 assumes facts not in evidence. 12 THE WITNESS: Yes. 13 BY MR. REHN: 14 Q If you can take a quick look at another 15 document. I think this will be No. 50. Sorry. 16 Wide table here. 17 (Exhibit 50 marked for identification.) 18 BY MR. REHN: 19 Q And Exhibit 50 has a column marked 20 downloads, then a column marked identifier and a 21 column marked title; is that correct. 22 MR. BRIDGES: You're asking about the 23 exhibit paper itself, I assume? Otherwise, I'm 24 objecting. 25 THE WITNESS: That's what this piece of</p>	<p style="text-align: right;">256</p> <p>1 THE WITNESS: Which include the downloads, 2 the identifier and the title. 3 THE REPORTER: Thank you. 4 BY MR. REHN: 5 Q Did you run that query? 6 A Yes. 7 Q To produce this data? 8 A Yes. 9 Q Do you remember when you ran that query? 10 A No. 11 Q Could you give me a -- was it six months 12 ago, a year ago? Do you have any rough ballpark 13 recollection? 14 A January 2014 is my rough recollection. 15 Q So a little over a year ago? 16 A Correct. 17 Q And your understanding is that as of that 18 date, this represents the number of times each of 19 these standards have been downloaded on the Internet 20 Archive website? 21 MR. BRIDGES: Objection, may call 22 speculation, assumes facts not in evidence, lacks 23 foundation. 24 THE WITNESS: Download is a very imprecise 25 term. It's -- it's what the Internet Archive says</p>
<p style="text-align: right;">255</p> <p>1 paper says, yes. 2 BY MR. REHN: 3 Q And I can represent to you that this is a 4 document that Public Resource produced to the 5 plaintiffs in this litigation. 6 MR. BRIDGES: Do you have a Bates number 7 on that, since this doesn't? 8 MR. REHN: Hold on. I e-mailed it to 9 Kevin. It's the first one e-mailed to you today. 10 It should be like one page. 11 MR. FEE: PRO_00232652, 232652. 12 MR. BRIDGES: Thank you. 13 BY MR. REHN: 14 Q But have you seen this document before? 15 A Yes. 16 Q You have seen this document before today? 17 A I have seen the data on this document. 18 Q And what's your understanding of what that 19 data represents? 20 A It's the result of an advanced query on 21 the search interface for the Internet Archive with 22 three pieces of data returned, the number of 23 downloads, the identifier and the title of -- 24 THE REPORTER: I'm sorry. The three 25 pieces of data returned...</p>	<p style="text-align: right;">257</p> <p>1 are the number of accesses for each of the 2 standards. 3 BY MR. REHN: 4 Q Do you know why the column is labeled 5 downloads? 6 A I have no idea why they labeled it 7 downloads. 8 Q So what's your understanding of what it 9 means when the Internet Archive uses the term 10 "downloads"? 11 MR. BRIDGES: Objection, competence, may 12 call for speculation, vague and ambiguous. 13 THE WITNESS: Number of accesses. 14 BY MR. REHN: 15 Q So if someone goes to those URLs that we 16 looked at on Exhibit 49 and actually downloads the 17 document to their desktop, that would be an access? 18 MR. BRIDGES: Objection, argumentative, 19 misstates testimony and lacks foundation. 20 THE WITNESS: I would want to look at 21 the -- how they calculate their statistics. 22 23 BY MR. REHN: 24 Q But you're not sure exactly -- so you're 25 not sure exactly what "downloads" represents there?</p>

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<p style="text-align: right;">258</p> <p>1 MR. BRIDGES: Objection, misstates 2 testimony. 3 THE WITNESS: I believe it's the number of 4 accesses. 5 BY MR. REHN: 6 Q What do you mean when you say "accesses"? 7 A The Internet Archive transforms a PDF file 8 into a number of formats, such as an eBook or a 9 streaming PDF file that can be viewed on the 10 Internet Archive website with a pagination 11 capability, and so those are all examples of ways of 12 accessing the information at the same identifier. 13 Q Okay. So, for example, if we look at -- 14 around maybe 60 percent down on -- in these columns, 15 you'll see that National Electrical Code from 2011. 16 Do you see that? 17 A Yes, I do. 18 Q And the number of downloads is listed as 19 12,767; is that right? 20 MR. BRIDGES: Well, objection, lacks 21 foundation, may be misleading and confusing. 22 THE WITNESS: Again, the number of 23 accesses is 12,767 according to this report. 24 BY MR. REHN: 25 Q So what -- what does that represent in</p>	<p style="text-align: right;">260</p> <p>1 interface that's commonly used on the Internet 2 Archive website? 3 MR. BRIDGES: Objection, vague and 4 ambiguous. 5 THE WITNESS: It appears to be the search 6 interface for the Internet Archive. 7 BY MR. REHN: 8 Q And you'll see there near the top there's 9 a box that says, search, and in that box it says, 10 NFPA? 11 A Uh-huh. Yes, I see that. 12 Q So if we look at the first search result, 13 NFPA 11, Standard for Foam, do you see that? 14 A Yes, I do. 15 Q And how many downloads are listed there? 16 MR. BRIDGES: Objection, lacks foundation, 17 may be misleading. If you're asking him what the 18 number is that is printed on the page that's one 19 thing. If you're asking whether that is the number 20 of -- of actual downloads then I object. 21 THE WITNESS: This page says downloads, 22 685. 23 BY MR. REHN: 24 Q And this would be the same data that you 25 used to generate the query that's the -- the</p>
<p style="text-align: right;">259</p> <p>1 your understanding? 2 MR. BRIDGES: Objection, competence, lacks 3 foundation -- sorry -- lack -- calls for 4 speculation, vague and ambiguous. 5 THE WITNESS: Again, my understanding is 6 that that's the number of accesses to -- to the 7 documents at that identifier. 8 BY MR. REHN: 9 Q Okay. And again, you said you -- you 10 think you ran these queries in January of 2014, give 11 or take? That was your understanding? 12 MR. BRIDGES: Objection, vague and 13 ambiguous. 14 THE WITNESS: Approximately. 15 MR. REHN: Go ahead and mark Exhibit 51. 16 Getting better at it. 17 (Exhibit 51 marked for identification.) 18 BY MR. REHN: 19 Q And I can represent to you that this is a 20 page of search results taken from the Internet 21 Archive website as of yesterday at 11:30 a.m. 22 A Okay. 23 Q At 11:36 a.m. to be more accurate. You 24 can see on the bottom there. 25 Does this look familiar to you as the</p>	<p style="text-align: right;">261</p> <p>1 document that's -- we just looked at as Exhibit 50; 2 is that right? 3 MR. BRIDGES: Objection, lacks foundation, 4 vague and ambiguous. 5 THE WITNESS: I have no idea if they 6 changed the way they calculate that information. 7 BY MR. REHN: 8 Q But you -- to produce this document in 9 this litigation, you used a query in which you took 10 the downloads data from the Internet Archive website 11 as of the time you ran that query; is that right? 12 MR. BRIDGES: Objection, lacks foundation, 13 vague and ambiguous. 14 THE WITNESS: That's correct. 15 BY MR. REHN: 16 Q And here we see the Internet Archive 17 website is listing a number of downloads for each of 18 these standards as well. 19 A Yes. I'm sorry. 20 Q And if you just look at the four that are 21 listed on this first page of Exhibit 51 and compare 22 them to the four -- the first four -- is that right? 23 No, there is actually a difference. The first one 24 is the same, but they're not exactly the same order. 25 Strike that.</p>

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<p style="text-align: right;">262</p> <p>1 Let's go ahead and go to the page that's 2 Page 4 of 7 in this Exhibit 51. And if you look at 3 the bottom of that page, we see that NFPA NEC 2011 4 National Electrical Code. 5 A Yes, I see that. 6 Q And then if you turn to Page 5, it -- it 7 lists the number of downloads there. How many 8 downloads are listed? 9 MR. BRIDGES: Objection, lacks foundation, 10 vague and ambiguous. 11 THE WITNESS: This page says downloads, 12 30,350. 13 BY MR. REHN: 14 Q So the number of downloads that you found 15 in your query from a little over a year ago was 16 around 12,000? 17 MR. BRIDGES: Objection. 18 BY MR. REHN: 19 Q Is that right? 20 MR. BRIDGES: Continuing objection to the 21 use of the word "download" to imply real downloads, 22 lacks foundation, vague and ambiguous. 23 BY MR. REHN: 24 Q The number of downloads listed in this 25 document produced by PRO, as based on the query you</p>	<p style="text-align: right;">264</p> <p>1 A Yes. 2 Q And what does it say under keywords? 3 A Public.Resource.Org. 4 Q Do you know how the keywords are 5 identified for a document on the Internet Archive 6 website? 7 MR. BRIDGES: Objection, may call for 8 speculation, vague and ambiguous. 9 THE WITNESS: It's something I specify on 10 the API call that creates this object on the 11 Internet Archive. 12 BY MR. REHN: 13 Q What's an API call? 14 A API is an application programming 15 interface, and it is the programmatic method that I 16 use to take a PDF document on my server and create 17 an object on the Internet Archive that contains that 18 file. 19 Q So when you use the API call, you have the 20 option of entering keywords for the document that 21 you're uploading to the archive website? 22 A That's correct. 23 Q So when the archive website reports 24 keywords for a document that you uploaded, those 25 would be keywords that you chose?</p>
<p style="text-align: right;">263</p> <p>1 ran in January of 2014 was 12,767. 2 MR. BRIDGES: Same objections. 3 THE WITNESS: 12,767 accesses, yes. 4 BY MR. REHN: 5 Q And then the number of downloads that -- 6 that Internet Archive reported as of yesterday is 7 30,350. 8 MR. BRIDGES: Same objections. 9 THE WITNESS: And again, accesses. 10 BY MR. REHN: 11 Q But -- okay. But the number of -- the -- 12 the -- the thing that they identify on the Internet 13 Archive website as downloads is listed as 30,000 as 14 of yesterday. 15 MR. BRIDGES: The document speaks for 16 itself. If you're asking him to testify from his 17 independent knowledge, he can do that, but 18 otherwise, I object on the grounds of calling for 19 speculation and lack of competence. 20 THE WITNESS: Yes. This piece of paper 21 definitely says downloads, 30,350. 22 23 BY MR. REHN: 24 Q And do you see on this document for that 25 standard there's a -- an entry for keywords as well?</p>	<p style="text-align: right;">265</p> <p>1 A Yes. 2 Q So do you know why you chose 3 Public.Resource.Org for this particular document? 4 A Because every document we upload we put 5 Public.Resource.Org as one of the -- the keywords, 6 or at least I try to. 7 Q Okay. So if we go down to Page 6 of this 8 document -- 9 A Uh-huh. 10 Q -- and you look at the bottom of that 11 page, you see the 2014 National Electrical Code? Do 12 you see that? 13 A Yes, I do. 14 Q And then if you look at the keywords on 15 that listing, could you go ahead and read those 16 keywords? 17 A Yes. 18 MR. BRIDGES: Keyword actually -- I'm 19 going to object on the grounds of relevance. This 20 is not part of this case at the moment, the 2014 21 National Electrical Code. There's a motion pending 22 that's not part of this case, so I'm going to 23 object on the grounds of relevance and other 24 objections I've given earlier, such as lack of 25 foundation.</p>

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<p style="text-align: right;">266</p> <p>1 Go ahead. 2 THE WITNESS: This piece of paper says, 3 "keywords required in all 50 states, public safety 4 code, legally binding document." 5 BY MR. REHN: 6 Q Do you know why it doesn't say 7 Public.Resource.Org? 8 MR. BRIDGES: Objection, argumentative, 9 vague and ambiguous. 10 THE WITNESS: Because when I created this 11 identifier, I specified these keywords. 12 BY MR. REHN: 13 Q I believe you testified a few minutes ago 14 that whenever you upload a document to Archive.Org 15 you put the keyword Public.Resource.Org. 16 A I testified that I try to. Is that not 17 correct? 18 Q So -- so you try to use 19 Public.Resource.Org. Do you know why you sometimes 20 might not use Public.Resource.Org? 21 MR. BRIDGES: Objection, argumentative, 22 hypothetical. 23 THE WITNESS: I -- I don't know. I didn't 24 have coffee that morning. I -- I really have no 25 idea why.</p>	<p style="text-align: right;">268</p> <p>1 how it was typed in -- 2 THE REPORTER: -- in the transcription. 3 MR. REHN: I'll just repeat the question. 4 BY MR. REHN: 5 Q Between -- on Rows 2 through 24 in the 6 identifier column, each identifier begins 7 gov.law.nfpa and is followed by the number of the 8 standard; is that correct? 9 MR. BRIDGES: You're talking about the 10 document? I'll -- I'll object to the extent that 11 you're asking a question beyond what is stated on 12 this document. 13 THE WITNESS: It is Rows 2 through 25, not 14 Rows 2 through 24, and some of the identifiers have 15 a number and some say NEC. 16 BY MR. REHN: 17 Q Right. So, for example, in Row 12 it 18 says, gov.law.nfpa.NEC.2011. 19 A That is, in fact, what it says. 20 Q And then on Row 26, what does the 21 identifier say there? 22 MR. BRIDGES: By the way, objection, lack 23 of foundation, assumes facts not in evidence, vague 24 and ambiguous. 25 THE WITNESS: It says, NFPA.NEC.2014.</p>
<p style="text-align: right;">267</p> <p>1 BY MR. REHN: 2 Q And if we could go back to Exhibit No. 49. 3 A Okay. 4 Q And if I could just direct you to that 5 identifier column again, and you'll see in Rows 2 6 through 25 each of the standards is listed as 7 gov.law.NFPA followed by the identifier of the 8 standard. 9 MR. BRIDGES: Objection. 10 BY MR. REHN: 11 Q Do you see that? 12 MR. BRIDGES: Objection, mischaracterizes 13 the document. I think it pretty seriously 14 misidentifies the document. 15 What was your question again, please? Can 16 the court report please reread it? 17 (The reporter read the record 18 as requested.) 19 MR. BRIDGES: Objection, misleading, lacks 20 foundation, argumentative, vague and ambiguous. 21 THE WITNESS: It -- it doesn't say 22 governmental authority. It says, "G-O-V DOT 23 L-A-W." 24 BY MR. REHN: 25 Q I -- I think that was a mistake in the --</p>	<p style="text-align: right;">269</p> <p>1 BY MR. REHN: 2 Q And is it your understanding that is the 3 identifier you used when you uploaded that 4 particular document to the Internet Archive website? 5 MR. BRIDGES: Objection, lacks foundation, 6 assumes facts not in evidence and argumentative, 7 vague and ambiguous. 8 THE WITNESS: It apparently is. 9 BY MR. REHN: 10 Q I'd invite you just to scroll through this 11 document. Are there any other standards listed in 12 this document that do not begin gov.law? 13 MR. BRIDGES: I'm sorry. Can you -- can I 14 have the court reporter repeat the question? 15 (The reporter read the record 16 as requested.) 17 MR. BRIDGES: Objection, misleading, lacks 18 foundation, mischaracterizes testimony, I think. 19 And if it presumes to be based on earlier 20 testimony, argumentative and vague and ambiguous. 21 THE WITNESS: All of the identifiers in 22 Column A, with the exception of Row 26, begin with 23 gov.law. 24 BY MR. REHN: 25 Q So do you know why you picked a different</p>

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<p style="text-align: right;">270</p> <p>1 identifier than every other one of plaintiffs' 2 standards for this particular standard? 3 MR. BRIDGES: All the same objections, 4 lacks foundation. 5 THE WITNESS: I believe the answer would 6 be the same reason that I had a different keyword 7 there, and I don't know why. Again, perhaps lack 8 of coffee that morning. 9 BY MR. REHN: 10 Q Okay. Is that the only morning in the 11 last few years that you didn't have coffee? 12 MR. BRIDGES: Argumentative. 13 THE WITNESS: I would say yes. 14 BY MR. REHN: 15 Q So it would seem. All right. Let's go 16 ahead and -- 17 MR. BRIDGES: Actually, how long have we 18 been going? 19 THE VIDEOGRAPHER: About an hour and a 20 half. 21 MR. BRIDGES: Yeah, well, let's take a 22 break. 23 THE VIDEOGRAPHER: We're going off record. 24 The time is 5:26 p m. This marks the end of Disc 25 No. 3 in the deposition of Carl Malamud.</p>	<p style="text-align: right;">272</p> <p>1 MR. BRIDGES: Objection, lacks foundation. 2 THE WITNESS: I mean another computer on 3 the Internet that contacts the HTTP server on my 4 computer. 5 BY MR. REHN: 6 Q So when that other computer receives 7 information from your server that they've requested, 8 that's an access? 9 A The way I count accesses is I look for a 10 status code 200, which is a complete transfer of the 11 requested file, or a series of access codes 206, 12 which are partial transfers as used on, for example, 13 a mobile phone that gets a piece of a document, then 14 another piece, then another piece. 15 Q And when you have the series of transfers, 16 you only count it as an access if they sum to the 17 entire document? 18 A No. 19 MR. BRIDGES: Objection, mischaracterizes 20 his testimony. 21 THE WITNESS: The way I count it is very 22 specific. It is the number of 200 or 206 status 23 codes by a unique IP address to a unique document 24 within a given hour. 25 BY MR. REHN:</p>
<p style="text-align: right;">271</p> <p>1 (Recess taken.) 2 THE VIDEOGRAPHER: We're back on the 3 record. The time is 5:41 p m. This marks the 4 beginning of Disc No. 4 in the deposition of Carl 5 Malamud. 6 BY MR. REHN: 7 Q Could I just ask you to clarify again what 8 your understanding of the word "access" is -- is, as 9 we've been discussing it? 10 MR. BRIDGES: Objection to the extent it's 11 not in the context of a particular question, vague 12 and ambiguous, lacks foundation. 13 THE WITNESS: I can tell you what access 14 means in the context of the web server that I 15 operate. 16 BY MR. REHN: 17 Q Sure. 18 A Access is an HTTP GET request from a 19 client, G-E-T, which returns data successfully that 20 the client had asked for. 21 Q So it means that -- when you say "client," 22 you mean somebody who is using your website, 23 somebody who is on the Internet and goes to your 24 website? Is that what you mean by the word "client" 25 in that --</p>	<p style="text-align: right;">273</p> <p>1 Q So if I were to go to the Public Resource 2 website and access a document -- let's say I were to 3 download that document to my desktop. You would 4 count that as an access? 5 MR. BRIDGES: Objection, misstates 6 testimony, compound, lacks foundation, 7 hypothetical. 8 THE WITNESS: I have no idea if you're 9 downloading it to your desktop. I know that there 10 was a GET request and a status code 200 and a 11 transfer of the file to another computer. 12 BY MR. REHN: 13 Q And so that would count as an access? 14 A Yes. 15 Q Now, if I went back from the same computer 16 20 minutes later and did the same thing, would 17 you -- you would not count that as a second access? 18 MR. BRIDGES: Objection, lacks foundation, 19 vague and ambiguous. 20 THE WITNESS: If it's within the same 21 hour, it would count as a single access. If it was 22 on the next hour, it would count as two accesses. 23 BY MR. REHN: 24 Q Is it your understanding that's the 25 industry standard for how accesses are counted?</p>

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<p style="text-align: right;">274</p> <p>1 MR. BRIDGES: Objection, lacks foundation, 2 vague and ambiguous. 3 THE WITNESS: I know that some people 4 count unique accesses over a 24-hour period, not a 5 one-hour period, so I think I'm actually being more 6 conservative. 7 BY MR. REHN: 8 Q And do you -- is it your understanding 9 that the Internet Archive's method for counting 10 accesses is similar to what you've described? 11 MR. BRIDGES: Objection, competence, lacks 12 foundation, may call for speculation, vague and 13 ambiguous. 14 THE WITNESS: My understanding is that 15 they count over a 24-hour period. 16 BY MR. REHN: 17 Q I'm going to hand you what we're marking 18 as Exhibit No. 52. 19 (Exhibit 52 marked for identification.) 20 BY MR. REHN: 21 Q Do you recognize this document? 22 A I certainly did not produce it. 23 Q Do you recognize what it is? 24 MR. BRIDGES: Objection, lacks foundation, 25 vague and ambiguous.</p>	<p style="text-align: right;">276</p> <p>1 documents incorporated by a state. 2 Q So when you upload PDFs to your website or 3 the Internet Archive website, as you testified 4 earlier, those are scans of physical copies of the 5 standards with this cover page that you created 6 placed at the beginning of the PDF; is that correct? 7 MR. BRIDGES: Objection, vague and 8 ambiguous, lacks foundation. 9 THE WITNESS: Sometimes; certainly in this 10 case. 11 BY MR. REHN: 12 Q And do you see some links in a box titled, 13 "View the Book" on the left side of the page? 14 MR. BRIDGES: Objection, may lack 15 foundation, may call for speculation. 16 THE WITNESS: Yes, I see that on this 17 page. 18 BY MR. REHN: 19 Q Do you understand that those links would 20 permit somebody operating a computer on the Internet 21 to download a copy of the 2011 NEC in a variety of 22 formats that are listed here? 23 MR. BRIDGES: Objection, argumentative, 24 may call for a legal conclusion, lacks foundation, 25 vague and -- vague and ambiguous. Sorry.</p>
<p style="text-align: right;">275</p> <p>1 THE WITNESS: It's possible it's a screen 2 dump from the Internet Archive. 3 BY MR. REHN: 4 Q What do you mean by "screen dump"? 5 A It looks like somebody accessed a -- a URL 6 and hit the print command in this case. 7 Q So does -- does this appear to be the URL 8 where the 2011 National Electrical Code is on the 9 Internet Archive? 10 A Yes. 11 Q And I can represent to you -- 12 MR. BRIDGES: I'm sorry. I need more time 13 to object. I am going to object on the basis of 14 vague and ambiguous. 15 BY MR. REHN: 16 Q Well, I can represent to you that you got 17 it right. This is the Internet Archive page where 18 the 2011 National Electrical Code is available. It 19 was accessed yesterday at 11:35 a.m. And there's a 20 box kind of in the center of the page, and in that 21 box we can see a -- a graphic that says, "notice of 22 incorporation." Do you see that? 23 A Yes, I do. 24 Q And do you recognize what that is? 25 A It looks like my standard cover page for</p>	<p style="text-align: right;">277</p> <p>1 THE WITNESS: They can access this 2 document in a variety of formats. 3 BY MR. REHN: 4 Q And by "access," that would encompass the 5 possibility of downloading a copy of the standard to 6 their own computer? 7 MR. BRIDGES: Objection, argumentative, 8 lacks foundation, assumes facts not in evidence, 9 vague and ambiguous. 10 THE WITNESS: "Download" is simply not a 11 term that -- it's just not a very precise term. 12 "Access" is the term that I understand and it's 13 when a computer on the Internet accesses an HTTP 14 server on the Internet. 15 BY MR. REHN: 16 Q Okay. Is it your understanding that a 17 user of a computer on the Internet can go to this 18 web page and obtain a PDF version of this document, 19 save it to their desktop, from which they can then 20 use it as they see fit, without even being connected 21 to the Internet in the future? 22 MR. BRIDGES: Lacks foundation, assumes 23 facts not in evidence, vague and ambiguous, 24 hypothetical. 25 THE WITNESS: Are -- are you asking</p>

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<p style="text-align: right;">278</p> <p>1 whether that capability is possible? 2 BY MR. REHN: 3 Q Yes, using these links here. 4 MR. BRIDGES: Objection, may call for 5 speculation, may lack knowledge. 6 THE WITNESS: It's theoretically possible, 7 yes. 8 BY MR. REHN: 9 Q So -- so -- and that same user, having 10 that -- a copy of that document saved on their 11 desktop, could, say, print a copy of that document 12 if they have a printer attached to their computer? 13 MR. BRIDGES: Objection, hypothetical, 14 lacks foundation, assumes facts not in evidence, 15 vague and ambiguous. 16 THE WITNESS: On -- on some computers, 17 yes. 18 BY MR. REHN: 19 Q And on those computers from which people 20 can print PDFs that are saved to their desktop, they 21 can print as many copies as they like? 22 MR. BRIDGES: Objection, hypothetical, 23 lacks foundation, vague and ambiguous, 24 argumentative. 25 THE WITNESS: It's -- it's very</p>	<p style="text-align: right;">280</p> <p>1 ambiguous. Are you asking specifically about the 2 description? 3 MR. REHN: We'll start with the 4 description. 5 THE WITNESS: Yes. 6 BY MR. REHN: 7 Q And we'll just go through it. Where it 8 says author, National Fire Protection Association, 9 did you enter that information? 10 A Yes. 11 Q When you -- I believe it -- was it the APC 12 call? What was it? 13 A API, application programming interface. 14 Q API call. So when you use the API, does 15 it give you an option to enter an author? Is that 16 one of the options that are identified there? 17 A You can specify any piece of metadata and 18 a value associated with that metadata. 19 Q And you identified National Fire 20 Protection Association as the author of this 21 document? 22 A I did. 23 Q So -- and that was consistent with your 24 understanding that the NFPA is the author of the 25 2011 NEC?</p>
<p style="text-align: right;">279</p> <p>1 hypothetical. It's if -- if you have a printer on 2 your computer, you can print a piece of paper. 3 BY MR. REHN: 4 Q And if you have a file that you've 5 accessed and saved to your desktop from the Internet 6 but is now saved on your computer, you can print 7 multiple copies of that file? 8 MR. BRIDGES: Objection, assumes many 9 facts not in evidence, lacks foundation, 10 hypothetical, vague and ambiguous. 11 THE WITNESS: I believe you accessed a URL 12 on the Internet and printed a file, so I would say 13 yes, you certainly were capable of doing that. 14 MR. BRIDGES: Let the record reflect that 15 the client was holding Exhibit 52 up in the air in 16 context with that response. 17 BY MR. REHN: 18 Q If we could go and look at the information 19 underneath that box in the center, is that 20 information that you entered when you uploaded this 21 document to the Internet Archive website? For 22 example, where it says "description" and then it 23 says "legally binding document," would that be 24 information you entered? 25 MR. BRIDGES: Objection, vague and</p>	<p style="text-align: right;">281</p> <p>1 MR. BRIDGES: Objection, calls for a legal 2 conclusion, lacks -- calls for a legal opinion, 3 assumes facts not in evidence, lacks foundation, 4 vague and ambiguous. 5 THE WITNESS: I don't know the precise 6 meaning of the term "author." They were certainly 7 the source of this document. 8 BY MR. REHN: 9 Q But you identified them as the author 10 here. 11 MR. BRIDGES: Objection, asked and 12 answered. 13 THE WITNESS: Just as you discussed 14 "downloads" as a term. Yes, I -- I use the word 15 "author." 16 BY MR. REHN: 17 Q So it was your understanding when you 18 uploaded this document that the NFPA was the author 19 of this document? 20 MR. BRIDGES: Objection, asked and 21 answered and calls for a legal conclusion, lacks 22 foundation, assumes facts not in evidence, vague 23 and ambiguous. 24 THE WITNESS: I put the word "author," a 25 colon and National Fire Protection Association. As</p>

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<p style="text-align: right;">282</p> <p>1 to the technical meaning of the term "author," 2 that's -- you folks are lawyers. 3 BY MR. REHN: 4 Q Sure. But just in the way you understand 5 the term, that's what -- you understood that NFPA 6 was the author? 7 MR. BRIDGES: Objection, misstates 8 testimony, calls for a legal conclusion, lacks 9 foundation, vague and ambiguous. 10 THE WITNESS: I put the word "author," 11 colon and National Fire Protection Association. 12 BY MR. REHN: 13 Q And if we could turn to the next page, 14 you'll see a section titled, "Selected Metadata." 15 A Yes, I see that. 16 Q And do you see a -- a line that says, 17 "credits"? 18 A I do. 19 Q And what does that say? 20 A It was uploaded by Public.Resource.Org. 21 Q And do you always put that credits line in 22 documents that you upload to the Internet Archive? 23 MR. BRIDGES: Objection, argumentative. 24 THE WITNESS: I don't know if I always do. 25 BY MR. REHN:</p>	<p style="text-align: right;">284</p> <p>1 "licensed URL," and then there is a URL for a 2 Creative Commons website that says, "public domain." 3 Did you put that there? 4 MR. BRIDGES: Objection, lacks foundation, 5 vague and ambiguous. 6 THE WITNESS: What it actually says is 7 "creativecommons.org/publicdomain/0/1.0." 8 BY MR. REHN: 9 Q Slash? 10 A Slash. 11 Q And did you put that URL there when you 12 uploaded this document? 13 A I specified in the API what the licensed 14 URL was going to be. 15 Q Right. Do you always have to specify a 16 licensed URL when you use API, or is that just an 17 option you have? 18 MR. BRIDGES: Objection, lacks foundation, 19 vague and ambiguous -- 20 THE WITNESS: If you don't -- 21 MR. BRIDGES: -- and compound. 22 THE WITNESS: Repeat the question, please. 23 BY MR. REHN: 24 Q When you use the API to upload a document 25 to the Internet Archive, do you always have to</p>
<p style="text-align: right;">283</p> <p>1 Q Do you always try to put that line when 2 you upload a document? 3 MR. BRIDGES: Same objection. 4 THE WITNESS: I -- I certainly did in this 5 case. 6 BY MR. REHN: 7 Q Is that consistent with your general 8 practice when you upload documents to the Internet 9 Archive website? 10 MR. BRIDGES: Same objection. 11 THE WITNESS: I have often done that. 12 BY MR. REHN: 13 Q And why do you do that? 14 A Identifies who did the upload. 15 Q So if you want to identify who did the 16 upload, this is how you would do it? 17 A That's one way I would do it. 18 Q And if you didn't want to identify who did 19 the upload, maybe you wouldn't put that line? 20 MR. BRIDGES: Objection, hypothetical, 21 lacks foundation. 22 THE WITNESS: It's one of the things I try 23 to do. 24 BY MR. REHN: 25 Q And then on the next line it says,</p>	<p style="text-align: right;">285</p> <p>1 specify a licensed URL? 2 MR. BRIDGES: Objection, vague and 3 ambiguous. 4 THE WITNESS: You can create an object 5 using the API without specifying a licensed URL. 6 BY MR. REHN: 7 Q Does that have any effect on the 8 accessibility of that document on the Internet 9 Archive website? 10 MR. BRIDGES: Objection, may call for 11 speculation. 12 THE WITNESS: No, it does not. 13 BY MR. REHN: 14 Q And what -- of these other things we've 15 looked at, do you always have to put credits? 16 A No. 17 Q Do you always have to put an author? 18 A No. 19 Q So you can select the categories that you 20 want to identify when you upload a document? 21 A "Categories" is the wrong word. I can 22 specify metadata and their values. 23 Q So you could decide to identify an author 24 or not, for example? 25 MR. BRIDGES: Objection, argumentative as</p>

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<p style="text-align: right;">286</p> <p>1 we've discussed, the word "author," vague and 2 ambiguous. 3 THE WITNESS: The person who writes the 4 API call specifies what metadata values will be 5 included. 6 BY MR. REHN: 7 Q Sure. So let's go back to that licensed 8 URL line. You chose to specify that Creative 9 Commons URL that you read a short while ago? 10 A Yes, I did. 11 Q Do you -- why did you choose that URL? 12 What's the significance of that? 13 A That is a Creative Commons CC0 universal 14 license. 15 Q And what does that mean? 16 A It means no rights asserted. 17 Q Can you -- no rights asserted by whom? 18 A By the creator of this Internet Archive 19 object, this identifier. 20 Q So you're representing that you do not 21 assert any rights -- 22 MR. BRIDGES: Objection. 23 BY MR. REHN: 24 Q -- in the -- in the document? 25 MR. BRIDGES: Objection, misstates</p>	<p style="text-align: right;">288</p> <p>1 creator of this object was not asserting any 2 rights. 3 BY MR. REHN: 4 Q What do you mean by "creator of this 5 object"? 6 A The person who exercised the API call that 7 resulted in the creation of this identifier; me in 8 this case. 9 Q I'm going to mark Exhibit 53. 10 (Exhibit 53 marked for identification.) 11 BY MR. REHN: 12 Q Do you recognize this document? 13 A It appears to be an Internet Archive 14 screen dump like your previous exhibit. 15 Q And this one is for the 2014 National 16 Electrical Code; is that right? 17 A That is what it appears to be, yes. 18 Q Now, this is -- looks pretty similar to 19 Exhibit 52. Would you agree with that? 20 MR. BRIDGES: Objection, lacks foundation, 21 vague and ambiguous. 22 THE WITNESS: There are some similarities. 23 BY MR. REHN: 24 Q Like there's the box in the middle and 25 then there's options for how to view the book on the</p>
<p style="text-align: right;">287</p> <p>1 testimony, lacks foundation. 2 THE WITNESS: By putting a CC0 license on 3 that, I am specifying that I assert no rights over 4 this object. 5 BY MR. REHN: 6 Q Why does it say "public domain"? 7 MR. BRIDGES: Objection, misstates the 8 document. 9 THE WITNESS: It says public domain/0/1.0, 10 and that's the URL that the Creative Commons 11 organization assigned to the CC0 license. 12 BY MR. REHN: 13 Q Does the CC0 license indicate that the 14 document is in the public domain? 15 A No, it -- 16 MR. BRIDGES: Objection, may call for 17 speculation, may call for a legal opinion, vague 18 and ambiguous. 19 THE WITNESS: No, it does not. 20 BY MR. REHN: 21 Q So you were not representing that this 22 document is in the public domain? 23 MR. BRIDGES: Objection, lacks foundation, 24 vague and ambiguous. 25 THE WITNESS: I was asserting that the</p>	<p style="text-align: right;">289</p> <p>1 left? 2 A Yes. 3 Q And then there's some information below 4 the box in the middle such as author, subject and so 5 forth? 6 MR. BRIDGES: Objection, lacks foundation, 7 vague and ambiguous. 8 THE WITNESS: Yes. 9 BY MR. REHN: 10 Q And you put that information in this -- in 11 this as well when you used the API interface to 12 upload this document? 13 MR. BRIDGES: Objection, vague and 14 ambiguous. 15 THE WITNESS: Yes. 16 BY MR. REHN: 17 Q So again, you have -- you -- you chose to 18 identify the author as National Fire Protection 19 Association? 20 MR. BRIDGES: Objection. To the extent 21 you're asking him a question with significance of 22 legal terms, I'll object on the ground that it 23 calls for a legal opinion. 24 THE WITNESS: Once again, I put the 25 identifier author, colon, and National Fire</p>

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<p style="text-align: right;">290</p> <p>1 Protection Association in -- in the HTML. 2 BY MR. REHN: 3 Q And was -- and that was your understanding 4 at the time you uploaded this document, that the 5 National Fire Protection Association was the author 6 as you would use that word? 7 MR. BRIDGES: Objection, vague and 8 ambiguous, calls -- may call for a legal 9 conclusion, lacks foundation, assumes facts not in 10 evidence. 11 THE WITNESS: Again, I use the label 12 author and a colon and National Fire Protection 13 Association. 14 BY MR. REHN: 15 Q And you -- you chose the word "author"? 16 A Yes. 17 Q And then under subject, there's a few 18 things listed, and the first one -- what is the 19 first one there? 20 MR. BRIDGES: Objection, vague and 21 ambiguous. 22 THE WITNESS: Subject, colon, required in 23 all 50 states, Public Safety Code, legally binding 24 document. 25 BY MR. REHN:</p>	<p style="text-align: right;">292</p> <p>1 subjects you chose to put? 2 MR. BRIDGES: Same objection. 3 THE WITNESS: It's what I just told you, 4 required in all 50 states, Public Safety Code, 5 legally binding document. 6 BY MR. REHN: 7 Q Do you recall why -- you -- you said 8 earlier you don't have any recollection of why you 9 chose a different set of subjects here. 10 A This was done at a different point in 11 time. 12 Q What was the significance of that? 13 MR. BRIDGES: Objection, argumentative. 14 THE WITNESS: I did things differently on 15 two different days. 16 BY MR. REHN: 17 Q Why did you do things differently when you 18 uploaded the 2014 National Electrical Code? 19 MR. BRIDGES: Objection, argumentative, 20 lacks foundation. 21 THE WITNESS: I don't know why I did it 22 differently. 23 BY MR. REHN: 24 Q Do you remember any changes that happened 25 that would have led you to upload standards in a</p>
<p style="text-align: right;">291</p> <p>1 Q And did you choose to put those items 2 there under -- under the heading subject? 3 A Those are the keywords that we 4 previously -- previously discussed and as -- as I 5 told you, yes, I -- I chose those keywords. 6 Q So the -- the subject line represents the 7 keywords that we looked at in the other document? 8 MR. BRIDGES: Objection, may be misleading 9 and vague and ambiguous. 10 THE WITNESS: Yes. 11 BY MR. REHN: 12 Q And again, if -- if we compare it to 13 Exhibit 52, if -- if you look at Exhibit 52 you 14 put -- oh, I'm sorry. 15 MR. REHN: This is 53, right? 16 THE REPORTER: Yes. 17 BY MR. REHN: 18 Q So if you look at 52, what's the subject 19 that you chose to put on Exhibit 52 when you 20 uploaded that document? 21 MR. BRIDGES: Objection, argumentative, 22 vague and ambiguous. 23 THE WITNESS: Public.Resource.Org. 24 BY MR. REHN: 25 Q And then on Exhibit 53, what are the</p>	<p style="text-align: right;">293</p> <p>1 different way by the time this one was uploaded? 2 MR. BRIDGES: Objection, vague and 3 ambiguous. 4 THE WITNESS: This was done at a -- at a 5 later point in time and I obviously typed different 6 things into the API column. 7 BY MR. REHN: 8 Q And you don't remember why you did that? 9 A No. 10 Q Do you know why you put required in all 50 11 states? 12 A Oh. No. 13 Q Is -- was it your understanding that the 14 2014 National Electrical Code was required in all 50 15 states at the time you uploaded this document? 16 A No, it was not. 17 Q Did you have any concern that by putting 18 that, you might mislead somebody who used this 19 website? 20 MR. BRIDGES: Objection, vague and 21 ambiguous. 22 THE WITNESS: I had no concern because I 23 obviously was not paying attention to that 24 particular phrase right there. 25 BY MR. REHN:</p>

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<p style="text-align: right;">294</p> <p>1 Q Where did that phrase come from? 2 MR. BRIDGES: Objection, vague and 3 ambiguous. 4 THE WITNESS: I typed it in. 5 BY MR. REHN: 6 Q So you typed a phrase in without paying 7 attention to it? 8 A The National Electrical Code is required 9 in all 50 states. The 2014 version is not yet 10 required in all 50 states, but the National 11 Electrical Code is, in fact, required in all 50 12 states. 13 Q And so that's why you decided to put that 14 particular subject under the 2014 National 15 Electrical Code? 16 MR. BRIDGES: Objection, misstates 17 testimony, assumes -- lacks foundation, assumes 18 facts not in evidence. 19 THE WITNESS: I think we're speculating as 20 to what my state of mind was when I was writing 21 this particular API column, and I don't recollect. 22 23 BY MR. REHN: 24 Q So you don't remember why you put that 25 particular subject?</p>	<p style="text-align: right;">296</p> <p>1 A The credits field is not present in the 2 selected metadata on this one. 3 Q Do you remember why you chose not to put a 4 credits field in this document? 5 MR. BRIDGES: Objection, lacks foundation, 6 assumes facts not in evidence, vague and ambiguous. 7 THE WITNESS: I created this API call at a 8 different time than I created the other API calls 9 and I obviously did something different. 10 BY MR. REHN: 11 Q And I believe you testified earlier that 12 you would put the credits in when you wanted people 13 to know who had uploaded the standard; is that 14 right? 15 A That -- that's certainly one reason I -- I 16 put that in there, yes. 17 Q So is there a reason you didn't want 18 people to know you uploaded this standard? 19 MR. BRIDGES: Objection, lacks foundation, 20 vague and ambiguous, argumentative. 21 THE WITNESS: Absolutely not. I -- I 22 simply omitted putting that field in. 23 BY MR. REHN: 24 Q And -- and also the -- the name of your 25 organization and the subject as well?</p>
<p style="text-align: right;">295</p> <p>1 MR. BRIDGES: Asked and answered. 2 THE WITNESS: No. 3 BY MR. REHN: 4 Q But you would agree that it's not, 5 strictly speaking, accurate with respect to this 6 particular version of this standard? 7 MR. BRIDGES: Objection, lacks foundation, 8 may call for a legal conclusion. 9 THE WITNESS: I -- I would say that the 10 National Electrical Code is required in all 50 11 states, that's correct. 12 BY MR. REHN: 13 Q But not this particular version? 14 MR. BRIDGES: May call for a legal 15 conclusion, vague and ambiguous. 16 THE WITNESS: The NEC 2014 has not yet 17 been adopted by all 50 states. 18 BY MR. REHN: 19 Q If we can turn to the next page. 20 A Uh-huh. 21 Q And you see the area selected metadata in 22 this document as it was in Exhibit 52 as well? 23 A Yes, I do. 24 Q And there's no credits listed under this 25 particular document; is that right?</p>	<p style="text-align: right;">297</p> <p>1 A The keywords are different, yes. 2 (Exhibit 54 marked for identification.) 3 BY MR. REHN: 4 Q I'm going to hand you what we've marked as 5 Exhibit 54. And this document appears to be a 6 spreadsheet that lists URLs where NFPA standards are 7 available on your website; is that right? 8 MR. BRIDGES: Objection, vague and 9 ambiguous -- 10 THE WITNESS: Yes. 11 MR. BRIDGES: -- and argumentative. 12 THE WITNESS: Yes. 13 MR. BRIDGES: What's the Bates -- what is 14 the Bates number for this? 15 MR. REHN: It's actually the same as -- 16 it's the same as the previous exhibit, with a 17 similar spreadsheet for ASTM, which was 245530. 18 That's a spreadsheet produced by Public Resource 19 that has three separate tabs, one for each of the 20 plaintiffs. This is the tab from that spreadsheet 21 that represents NFPA. We earlier looked at the tab 22 that represents ASTM. 23 MR. BRIDGES: Okay. So these are all 24 parts of the same document it sounds like. 25 MR. REHN: Yes.</p>

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<p style="text-align: right;">298</p> <p>1 BY MR. REHN: 2 Q Have you seen this document before? 3 A Yes, I have. 4 Q And could you tell me what it represents? 5 A The number of accesses to each of these 6 URLs in a given month by a unique IP address in a 7 given hour. 8 Q And is it your understanding that this 9 represents all of the accesses from April 2013 10 through February 2014 to NFPA standards on your 11 website? 12 MR. BRIDGES: Objection, vague and 13 ambiguous and misstates his earlier testimony. 14 THE WITNESS: No, it is not all the 15 accesses from April 2013. It is the accesses from 16 September 2013 on. 17 BY MR. REHN: 18 Q All right. I may have misunderstood 19 earlier. What does the column representing month 20 represent? 21 A It's the month of the year. 8 is August, 22 for example. 23 Q So the first row says 4 -- 24 A Uh-huh. 25 Q -- 2013. Would -- would that be April?</p>	<p style="text-align: right;">300</p> <p>1 A That's correct. 2 Q And then on the last page of this document 3 there's a box for the total. What does that 4 represent? 5 A That is the sum of Column D on the 6 spreadsheet. 7 Q And what does it represent? 8 A Total number of accesses represented in 9 this spreadsheet. 10 Q And this spreadsheet represents NFPA 11 standards that are on your website? 12 A Yes. 13 Q So in a -- in the period from September 14 2013 through February 2014 -- that's a six-month 15 period -- there were a 167,982 accesses of NFPA 16 standards on the Public Resource website? 17 MR. BRIDGES: Objection, misstates 18 testimony, vague and ambiguous, lacks foundation. 19 THE WITNESS: The total column is the 20 total of Column D, which includes some data from 21 April 2013 to February 2014. 22 23 BY MR. REHN: 24 Q Right. So the -- between September 2014 25 and February -- I'll -- I'll -- this is the total</p>
<p style="text-align: right;">299</p> <p>1 A That's April 2013. 2 Q So does this document include accesses 3 beginning in April 2013? 4 MR. BRIDGES: Objection, vague and 5 ambiguous. 6 THE WITNESS: You asked if it was all the 7 accesses from April 2013, and it is not. 8 BY MR. REHN: 9 Q So it -- this represents some accesses 10 from April 2013, but not all of them? 11 A Our previous document retention policy for 12 logs was to keep logs for two weeks. After the 13 litigation commenced, we began keeping the logs 14 permanently. 15 Q I understand. So it begins in August of 16 2013 with all of the accesses? 17 A September is a complete month. Litigation 18 began in mid-August, I believe, right? 19 Q Right. August 6th. 20 A Okay. 21 Q So at least from September 2013 onward 22 until February 2014? 23 A Yes, I believe that's correct. 24 Q With a few -- with some hits noted in 25 earlier months, but not a complete list?</p>	<p style="text-align: right;">301</p> <p>1 number of hits that occurred from September 2013 2 through February 2014 plus a -- a sample of the 3 number of hits that occurred between April and 4 September of 2013? 5 MR. BRIDGES: Objection, misstates 6 testimony, lacks foundation, misleading. 7 THE WITNESS: It -- it's not a sample, 8 it's the logs that we had. 9 BY MR. REHN: 10 Q A subset? 11 A A subset of the total number of hits. 12 That would be a correct characterization. 13 Q So is it safe to say that between April 14 2013 and February 2014, or a period of around ten 15 months, there were more than 167,000 accesses to 16 NFPA standards on Public Resource's website? 17 MR. BRIDGES: Calls for -- may call for 18 speculation and vague and ambiguous. 19 THE WITNESS: Yes. 20 BY MR. REHN: 21 Q We don't know exactly how many more, but 22 certainly more? 23 MR. BRIDGES: Argumentative, lacks 24 foundation. 25 THE WITNESS: Yes, more.</p>

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<p style="text-align: right;">302</p> <p>1 BY MR. REHN: 2 Q We're going to give you a document that 3 we're marking as Exhibit No. 55. And for the 4 record, this is a document produced by Public 5 Resource in this litigation, Bates-stamped 6 PRO_00167541. 7 (Exhibit 55 marked for identification.) 8 BY MR. REHN: 9 Q Do you recognize this document? 10 MR. BRIDGES: He needs to take a look at 11 it first. I was concerned about the way that was 12 stapled. It didn't look consistent with my copy of 13 it. 14 MR. REHN: Have you satisfied your 15 concerns at this point? 16 MR. BRIDGES: I don't want to take more 17 time. I'm going to operate on the assumption that 18 it's okay, but I'll look as we go along. 19 THE WITNESS: This appears to be the 20 transcript for a video called, Show Me the Manual. 21 BY MR. REHN: 22 Q Is Show Me the Manual a video that Public 23 Resource produced? 24 MR. BRIDGES: Objection, vague and 25 ambiguous.</p>	<p style="text-align: right;">304</p> <p>1 done extemporaneously on -- on camera. 2 BY MR. REHN: 3 Q And the first identified speaker on this 4 transcript is Man 1. That's you on the actual 5 video; is that right? 6 A I am Man 1. 7 Q And this video is currently available on 8 the Public Resource website? 9 A It is on Law.Resource.Org. 10 Q Does this video represent the views of 11 Public Resource? 12 MR. BRIDGES: Objection, argumentative 13 vague and ambiguous, lacks foundation. 14 THE WITNESS: It represents the views of a 15 number of people who appeared in the video. 16 BY MR. REHN: 17 Q And public Resource is putting those views 18 out on its website? 19 MR. BRIDGES: Objection, argumentative, 20 vague and ambiguous. 21 THE WITNESS: We published the video on 22 our website, yes. 23 BY MR. REHN: 24 Q Do the statements that you speak in the 25 video represent your views?</p>
<p style="text-align: right;">303</p> <p>1 THE WITNESS: Yeah, we were not the 2 producer of that video, but we -- 3 MR. BRIDGES: That was the end of the 4 question. 5 THE WITNESS: -- we -- we were not the 6 producer of that video. 7 BY MR. REHN: 8 Q Did Public Resource create the video? 9 MR. BRIDGES: Objection, vague and 10 ambiguous. 11 THE WITNESS: No, it didn't create it. 12 BY MR. REHN: 13 Q What was Public Resource's involvement in 14 the creation of the Show Me the Manual video? 15 MR. BRIDGES: Objection, vague and 16 ambiguous. 17 THE WITNESS: Hired the videographers and 18 the producers and paid the money. 19 BY MR. REHN: 20 Q So you paid for the creation of the video? 21 A We did. 22 Q Did you write the script? 23 MR. BRIDGES: Objection, vague and 24 ambiguous. 25 THE WITNESS: There was no script. It was</p>	<p style="text-align: right;">305</p> <p>1 MR. BRIDGES: And you need to review the 2 document if you're going to answer that question. 3 And I'll object on the -- to the question 4 as vague and ambiguous. 5 Read the whole document, please. 6 THE WITNESS: The statements by Man 1 do, 7 in fact, represent my views. 8 BY MR. REHN: 9 Q And did you make the decision that this 10 video should be posted on Public Resource's website? 11 A Yes. 12 Q And do the statements by you in this 13 document represent the views of Public Resource? 14 A Yes. 15 Q So let's take a look at the page 16 Bates-stamped 167544. And it's your view that the 17 National Fire Protection Association does amazing 18 work and saves lives? 19 A Yes, I said that. 20 Q And it's your view that the National Fire 21 Protection Association protects the lives of 22 volunteer firefighters? 23 MR. BRIDGES: Objection. That misstates 24 the document. 25 THE WITNESS: No, that's not what I say on</p>

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<p style="text-align: right;">306</p> <p>1 this page. 2 BY MR. REHN: 3 Q It's your view that the National Fire 4 Protection Association's standards for fire 5 sprinklers, standards for fire hydrants, standards 6 for foam, standards for life safety protect lives of 7 our volunteer firefighters. 8 A Oh. Yes. 9 Q And do you also -- would you also take the 10 view that National Fire Protection itself protects 11 the lives of volunteer firefighters through its 12 activities? 13 MR. BRIDGES: Objection, argumentative, 14 lacks foundation, vague and ambiguous. 15 THE WITNESS: I can't speak to that. I -- 16 the standards certainly do. 17 BY MR. REHN: 18 Q And is it your view that the standards 19 protect the lives of children? 20 A Yes. 21 Q And it's your view that it's important 22 that organizations like the National Fire Protection 23 Association continue to survive? 24 A Absolutely. 25 Q And would you extend that to other</p>	<p style="text-align: right;">308</p> <p>1 MR. BRIDGES: Objection, lacks foundation, 2 vague and ambiguous. 3 THE WITNESS: I think ASHRAE Standard 90.1 4 is an important standard. 5 BY MR. REHN: 6 Q Is it your view that standards development 7 organizations need funding to do the work that they 8 do, including standards development? 9 MR. BRIDGES: Objection, may call for a 10 lay opinion, vague and ambiguous, and -- 11 THE WITNESS: I think -- 12 MR. BRIDGES: -- and to the extent it 13 calls for a legal opinion, I would object on that 14 basis. 15 THE WITNESS: I would want to analyze the 16 specific standards body and their funding sources 17 and the work that they do. 18 BY MR. REHN: 19 Q Can you read the first sentence of that 20 paragraph that begins with, Man 1 804, the sentence 21 following Man 1 804? 22 A "Our goal is here to publish a law to 23 establish the principle that the law become 24 available, but then government should take this over 25 and figure out a way to make the law available and</p>
<p style="text-align: right;">307</p> <p>1 standards development organizations as well, that 2 it's important they continue to survive? 3 MR. BRIDGES: Objection, lacks foundation. 4 THE WITNESS: Do you have a specific 5 standards organization in mind? 6 BY MR. REHN: 7 Q How about ASTM. 8 A I'm a big fan of ASTM. 9 Q So it's important they continue to 10 survive? 11 MR. BRIDGES: Objection, argumentative. 12 THE WITNESS: I think the standards that 13 are -- the subject area of the standards that ASTM 14 works in is very important and we need to continue 15 to have standards in that area. 16 BY MR. REHN: 17 Q And continue to have organizations that 18 develop standards and keep them up-to-date? 19 MR. BRIDGES: Objection, argumentative, 20 lacks foundation. 21 THE WITNESS: Yes, I believe standards are 22 important. 23 BY MR. REHN: 24 Q And would you say the same about the 25 standards of ASHRAE?</p>	<p style="text-align: right;">309</p> <p>1 do it in a way that the standards bodies that make 2 these standards are able to survive because they do 3 need money." 4 Q So is it your view that the standards 5 bodies that make these standards need money to 6 survive? 7 MR. BRIDGES: Objection, calls for lay 8 opinion, vague and ambiguous, lacks foundation. 9 THE WITNESS: As -- any 501(c)(3) 10 nonprofit needs some source of revenue. How much 11 that is or how little that is depends on the 12 specific nature of the organization. 13 BY MR. REHN: 14 Q And is it your view that if Public 15 Resource is successful in its efforts to post 16 standards freely online that government should take 17 this over? 18 MR. BRIDGES: Objection, calls for a lay 19 opinion, calls for a possible legal conclusion, 20 argumentative, vague and ambiguous, lacks 21 foundation. 22 THE WITNESS: What do you mean by "take 23 this over"? 24 BY MR. REHN: 25 Q What did you mean when you said that?</p>

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<p style="text-align: right;">310</p> <p>1 A I meant the government should figure out a 2 way to make the law available and do it in a way 3 that the standards bodies that make these standards 4 are able to survive. 5 Q So the government should step in in some 6 way to enable the standards bodies to survive -- 7 MR. BRIDGES: Objection, misstates 8 testimony -- 9 BY MR. REHN: 10 Q -- if Public Resource establishes -- 11 THE REPORTER: One at a time. One over 12 again. 13 MR. BRIDGES: Objection, misstates the 14 testimony -- misstates the document. 15 THE WITNESS: I think government has an 16 obligation to make sure that the laws that we as a 17 people choose to govern ourselves by, our rights 18 and our obligations are available for citizens to 19 know. 20 BY MR. REHN: 21 Q And if that means that the standards 22 bodies don't have the -- the money to develop 23 standards, then you think government should take 24 this over and figure out a way that the standards 25 bodies are able to survive?</p>	<p style="text-align: right;">312</p> <p>1 so if you want to take over. 2 MR. STEIMLE: I've got just a few, I 3 think. 4 MR. BRIDGES: I will ask you to sit here 5 for the -- 6 THE VIDEOGRAPHER: Want to go off the 7 record for a minute? 8 THE REPORTER: Yes. 9 THE VIDEOGRAPHER: We're going off the 10 record. The time is 6:29 p m. 11 (Recess taken.) 12 THE VIDEOGRAPHER: All right. We're back 13 on the record. The time is 6:30 p m. 14 EXAMINATION BY COUNSEL FOR PLAINTIFF ASHRAE 15 BY MR. STEIMLE: 16 Q Mr. Malamud, do you feel okay to continue 17 tonight? 18 A Yes. 19 Q All right. Just a few more questions on 20 this particular part of the deposition from me, and 21 then I think we'll adjourn until tomorrow. 22 THE REPORTER: Can you state your name for 23 the record? 24 MR. STEIMLE: Sure. My name is Wes 25 Steimle. I represent ASHRAE.</p>
<p style="text-align: right;">311</p> <p>1 MR. BRIDGES: Completely misrepresents the 2 testimony and the document -- 3 THE WITNESS: The -- 4 MR. BRIDGES: -- and -- and argumentative, 5 lacks foundation. 6 THE WITNESS: That's not what I said. I 7 said the government should figure out a way to make 8 the law available. 9 BY MR. REHN: 10 Q And go ahead and finish the sentence. 11 A And do it in a way that the standards 12 bodies that make these standards are able to survive 13 because they do need money. 14 Q And that is your view? 15 MR. BRIDGES: Objection, asked and 16 answered -- 17 THE WITNESS: Yes. 18 MR. BRIDGES: -- the document speaks for 19 itself and he's testified about it. 20 THE WITNESS: This is what I said. 21 You can tell they are techies because they 22 are all trying to figure out how to keep the 23 lights on. 24 MR. REHN: I think I don't have any 25 further questions today for the 30(b)(6) portion,</p>	<p style="text-align: right;">313</p> <p>1 BY MR. STEIMLE: 2 Q PRO did acquire a copy of the ASHRAE 3 Standard 90.1 2004 version; is that correct? 4 A I believe that's correct. 5 Q All right. It also acquired the 2007 6 version of that same document? 7 MR. BRIDGES: Objection, vague and 8 ambiguous. 9 THE WITNESS: A 2007 version of ASHRAE 10 90.1? 11 BY MR. STEIMLE: 12 Q Correct. 13 A Yes. 14 Q And it also acquired the ASHRAE Standard 15 90.1 2010 version, correct? 16 A That's correct. 17 Q All right. Your company also -- your 18 company also acquired a -- the ASHRAE handbook, did 19 it not? 20 MR. BRIDGES: Objection, lacks foundation, 21 vague and ambiguous. 22 THE WITNESS: You mean the document ASHRAE 23 Fundamentals Handbook? 24 BY MR. STEIMLE: 25 Q Yes.</p>

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<p style="text-align: right;">314</p> <p>1 A Yes.</p> <p>2 Q All right. What was the source -- well,</p> <p>3 let me ask you this: Did you acquire all of these</p> <p>4 documents from the same source or were they</p> <p>5 different?</p> <p>6 A I -- I don't recall.</p> <p>7 Q Do you recall the source of any of the</p> <p>8 documents -- the ASHRAE documents that we just</p> <p>9 mentioned, where you acquired them?</p> <p>10 A I -- I don't recall specifically.</p> <p>11 Q Do you recall the format in which you</p> <p>12 acquired all of these documents?</p> <p>13 A Paper.</p> <p>14 Q And that's true for all of them?</p> <p>15 A Yes.</p> <p>16 Q All right. Did you acquire these</p> <p>17 documents in any other form other than paper?</p> <p>18 MR. BRIDGES: Objection, lacks foundation,</p> <p>19 vague and ambiguous.</p> <p>20 THE WITNESS: I don't recall.</p> <p>21 BY MR. STEIMLE:</p> <p>22 Q All right. And was it you, Mr. Malamud,</p> <p>23 personally who acquired them for the company or --</p> <p>24 or would it have been someone else?</p> <p>25 MR. BRIDGES: Objection, vague and</p>	<p style="text-align: right;">316</p> <p>1 THE WITNESS: The invoices would.</p> <p>2 BY MR. STEIMLE:</p> <p>3 Q All right. That's actually all I've got.</p> <p>4 (Sotto voce discussion.)</p> <p>5 MR. STEIMLE: Should we mark it?</p> <p>6 MS. RUBEL: What exhibit number are we up</p> <p>7 to?</p> <p>8 THE REPORTER: We are 56.</p> <p>9 (Exhibit 56 marked for identification.)</p> <p>10 BY MR. STEIMLE:</p> <p>11 Q Mr. Malamud, I've handed you what we've</p> <p>12 marked as Document 56. Have you had a chance to</p> <p>13 take a look at that document?</p> <p>14 MR. BRIDGES: Can I get the Bates number</p> <p>15 on this again, just for the record?</p> <p>16 MR. STEIMLE: It's PRO_00245530.</p> <p>17 MR. BRIDGES: Thank you.</p> <p>18 THE WITNESS: Yes, I've examined this</p> <p>19 document.</p> <p>20 BY MR. STEIMLE:</p> <p>21 Q All right. And you produced this</p> <p>22 document, correct?</p> <p>23 A I did.</p> <p>24 Q All right. And what does this document</p> <p>25 refer to or what is it?</p>
<p style="text-align: right;">315</p> <p>1 ambiguous.</p> <p>2 THE WITNESS: That would be me.</p> <p>3 BY MR. STEIMLE:</p> <p>4 Q Did you acquire all of these documents at</p> <p>5 the same time or were -- did you acquire them at</p> <p>6 different times?</p> <p>7 A I don't recall.</p> <p>8 Q All right. And that's true for all of the</p> <p>9 documents?</p> <p>10 A I -- I don't recall.</p> <p>11 Q All right. Let me ask you this: When did</p> <p>12 you acquire the 2004 version of ASHRAE Standard</p> <p>13 90.1?</p> <p>14 A I really don't recall. We did disclose</p> <p>15 our invoices as part of disclosure.</p> <p>16 Q All right. Would the answer that you do</p> <p>17 not recall be true of all of the other ASHRAE</p> <p>18 documents that are at issue in this litigation?</p> <p>19 A I -- I do not recall without consulting</p> <p>20 the -- the paper. No, I don't recall.</p> <p>21 Q All right. And you believe the paper that</p> <p>22 was produced in this litigation, to the extent there</p> <p>23 was such paper, is -- it would accurately reflect</p> <p>24 the dates of acquisition?</p> <p>25 MR. BRIDGES: Objection, lacks foundation.</p>	<p style="text-align: right;">317</p> <p>1 A It's the number of accesses to documents</p> <p>2 on a monthly basis.</p> <p>3 Q And earlier when discussing the document</p> <p>4 with respect to the other plaintiffs, you had</p> <p>5 indicated that the first complete month showing</p> <p>6 the -- all of the accesses of these documents would</p> <p>7 have been September of 2013. Do you recall giving</p> <p>8 that testimony?</p> <p>9 A Yes.</p> <p>10 Q Is that also true for these ASHRAE</p> <p>11 documents?</p> <p>12 A That is correct.</p> <p>13 Q All right. When -- previously you</p> <p>14 testified you identified that the column indicating</p> <p>15 total represents the sum of all of the -- of all of</p> <p>16 the what's labeled hits in Column B; is that</p> <p>17 correct?</p> <p>18 A Total is the sum of Column D.</p> <p>19 Q All right.</p> <p>20 MR. STEIMLE: I don't think I have anymore</p> <p>21 at this time. I think we're done for the day.</p> <p>22 MR. BRIDGES: Okay. Yeah, this concludes</p> <p>23 the Rule 30(b)(6) deposition of public -- of</p> <p>24 defendant Public.Resource.Org.</p> <p>25 THE VIDEOGRAPHER: This concludes today's</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

2

3

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.

10

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21

22

23

24

25 _____
Date Carl Malamud

323

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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24

25 _____
Signature Date

Capital Reporting Company
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<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$1,500 128:24</p> <p>\$350,000 182:16 183:4</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>0.49 167:3</p> <p>08 136:3</p> <p>0can 80:17</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 1:18 4:16 7:8 114:18 250:24 304:4,6 305:6 308:20,21</p> <p>1:13-cv-01215-EGS 1:8 7:14</p> <p>1:13-cv-01215-TSC 9:15</p> <p>1:29 156:10</p> <p>10 228:20</p> <p>10:07 1:17 7:19</p> <p>10:39 37:8</p> <p>10:40 37:11</p> <p>100 167:20,25</p> <p>101 2:16</p> <p>102 4:14</p> <p>103 4:15</p> <p>1050 7:23</p> <p>10th 3:5</p> <p>11 4:15 199:1 260:13</p> <p>11:06 126:18</p> <p>11:13 67:11</p> <p>11:25 67:14</p> <p>11:30 259:21</p> <p>11:35 275:19</p> <p>11:36 259:23</p> <p>111 4:16</p>	<p>1111 2:4</p> <p>112 4:17</p> <p>1191 3:4</p> <p>12 99:4 268:17</p> <p>12,000 262:16</p> <p>12,767 258:19,23 263:1,3</p> <p>12:17 114:17</p> <p>12:31 114:21</p> <p>12:41 99:5</p> <p>12019 1:20 320:25 321:20</p> <p>126 5:8</p> <p>12th 321:3</p> <p>13 230:10,20 231:6,11</p> <p>136 5:10</p> <p>139 5:12</p> <p>14 189:8,12</p> <p>141 5:14</p> <p>1-4-14 5:20</p> <p>144 5:17</p> <p>15 240:22</p> <p>151 5:18</p> <p>15th 145:11</p> <p>16 4:12,14 5:23 198:13,23</p> <p>166237 228:11</p> <p>166238 243:23</p> <p>166257 141:14</p> <p>166297 243:9</p> <p>167,000 301:15</p> <p>167,982 300:15</p> <p>167544 305:16</p> <p>17 239:17,22 240:13</p> <p>1702 239:20</p>	<p>175,000 182:22 183:3</p> <p>176 5:20</p> <p>18 89:10 188:22</p> <p>180 7:24</p> <p>1821 323:1</p> <p>19 18:21</p> <p>192.113 5:13 139:14,24 140:12,21 142:15,25 143:2,11,23 144:3,6,10</p> <p>192.113's 140:18</p> <p>192.7 5:17 141:4 142:25 143:9 144:2,17 147:18</p> <p>196 142:2,7</p> <p>1962 127:8</p> <p>1969 211:4</p> <p>198 5:22</p> <p>1980 12:25</p> <p>1982 12:25</p> <p>1983 14:12,15</p> <p>1991 17:12 18:18</p> <p>1992 17:14 18:20</p> <p>1996 18:22,23</p> <p>1997 18:15,18,20 19:17 28:20</p> <p>1998 28:21</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 6:15,16 114:22 165:12,22 203:25 251:3 267:5 268:5,13,14</p> <p>2:26 156:13</p> <p>20 273:16</p> <p>200 210:7 272:10,22 273:10</p>	<p>2000 1:18 18:17 20:11 21:10 137:5</p> <p>20004 2:5</p> <p>2002 21:10 22:9 230:20 239:23</p> <p>2003 22:9</p> <p>20036 323:2</p> <p>2004 146:3 147:8,20,25 148:2,4,8,18 149:2 150:2,3,4 243:17 244:6,9,21 245:4 313:3 315:12</p> <p>2005 22:12 224:22 225:5,10 226:8</p> <p>2007 22:19 129:6 313:5,9</p> <p>2008 31:1 43:16 45:6 129:25 145:12 146:3 147:18 148:3 150:2 226:14,23 241:6 245:11</p> <p>2010 145:7 313:15</p> <p>2011 59:6 123:22 222:19,23 258:15 262:3 275:8,18 276:21 280:25</p> <p>2012 57:25 58:3,15,21 59:12 61:22 97:6 99:4</p> <p>2013 298:9,15,16,25 299:1,3,7,10,16,21 300:14,21 301:1,4,14 317:7</p> <p>2014 173:13,17 174:1 210:5 256:14 259:10 263:1 265:11,20 288:15 292:18 293:14 294:9,14 295:16 298:10 299:22 300:14,21,24 301:2,14 321:8</p>
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