

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

AMERICAN SOCIETY FOR TESTING AND
MATERIALS d/b/a ASTM INTERNATIONAL;

NATIONAL FIRE PROTECTION
ASSOCIATION, INC.; and

AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR CONDITIONING
ENGINEERS,

Plaintiffs/Counter-defendants,

v.

PUBLIC.RESOURCE.ORG, INC.,

Defendant/Counterclaimant.

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

**SUPPLEMENTAL REPLY DECLARATION OF MATTHEW BECKER IN SUPPORT
OF PUBLIC RESOURCE'S SECOND MOTION FOR SUMMARY JUDGMENT**

I, Matthew Becker, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice in the District of Columbia and am an associate with the law firm of Fenwick & West LLP, counsel of record for Defendant-Counterclaimant Public.Resource.Org, Inc. ("Public Resource"). Except where otherwise indicated, I have personal knowledge of the facts herein and could and would testify competently hereto.

2. Attached as **Exhibit 98**¹ is a true and correct copy of the Office of the Federal Register, *Document Drafting Handbook*, Aug. 2018 ed. (Rev. 1.1, dated Aug. 9, 2019), obtained from <https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf>. Further

¹ Exhibit numbering is continued from my prior declaration, Dkt. 204-5.

information on the Document Drafting Handbook and the IBR Handbook is available from the Office of the Federal Register at *OFR Handbooks Frequently Asked Questions*, <https://www.archives.gov/federal-register/write/handbook/faqs.html>.

3. Attached as **Exhibit 99** is a true and correct copy of the 1972 announcement in the Federal Register by the Office of the Federal Register of the incorporation by reference regulations, along with the text of that regulation: *Incorporation by Reference*, 37 Fed. Reg. 23602 (Nov. 4, 1972) (to be codified at 1 C.F.R. 51).

4. Attached as **Exhibit 100** is a true and correct copy of the Office of the Federal Register's announcement, "OFR Director Charley Barth Stepping Down for New Opportunity," accessed Jan. 16, 2020, at <https://www.federalregister.gov/reader-aids/office-of-the-federal-register-blog/2014/10/ofr-director-charley-barth-stepping-down>.

5. Attached as **Exhibit 101** is a true and correct copy of ASHRAE's "Read-Only Versions of ASHRAE Standards" webpage (accessed Jan. 16, 2020), at <https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards>. This page shows that the 1993 ASHRAE Handbook is not among the standards that it makes available for read-only access, even though that standard is incorporated by reference into law at 10 C.F.R. § 434.701 (2011).

6. Attached for the Court's convenience as **Exhibit 102** is a true and correct copy of an email from NFPA, previously submitted at Dkt. 124-5, in which NFPA advertises: "Be confident your electrical work complies with California law. . . . California has adopted the 2011 NEC. Order the NEC Handbook today and receive FREE tabs!"

7. Attached for the Court's convenience as **Exhibit 103** is a true and correct compilation of the statements and contributions from the Consumer Product Safety Commission

that were located at table 6 of “Comment on Safety Standard for Automatic Residential Garage Door Operators”, Public.Resource.Org, Nov. 16, 2015, at <https://law.resource.org/pub/us/cfr/regulations.gov/docket.15/cpsc.gov.20151116.html#t6> (cataloguing nineteen textual contributions to the National Electrical Code from Consumer Product Safety Commission staff), but which are presently unavailable due to maintenance on the Consumer Product Safety Commission website. Automatically archived versions of these documents are available on the Internet Archive at the following locations:

<https://web.archive.org/web/20170207161319/https://www.cpsc.gov/PageFiles/117366/comment422f.pdf>

<https://web.archive.org/web/20170223204422/https://www.cpsc.gov/PageFiles/117373/comment210-12.pdf>

<https://web.archive.org/web/20170222233233/https://www.cpsc.gov/PageFiles/117338/210-8a3.pdf>

<https://web.archive.org/web/20170125025404/https://www.cpsc.gov/PageFiles/117351/210-12c.pdf>

<https://web.archive.org/web/20170207071338/https://www.cpsc.gov/PageFiles/117355/230-xx.pdf>

<https://web.archive.org/web/20170212055701/https://www.cpsc.gov/PageFiles/108276/210.12n.pdf>

<https://web.archive.org/web/20170207065403/https://www.cpsc.gov/PageFiles/109754/210.8A.pdf>

<https://web.archive.org/web/20170211071503/https://www.cpsc.gov/PageFiles/108291/100.pdf>

<https://web.archive.org/web/20170224211212/https://www.cpsc.gov/PageFiles/108285/230.xx.pdf>

<https://web.archive.org/web/20170209202716/https://www.cpsc.gov/PageFiles/109760/210.8B.pdf>

<https://web.archive.org/web/20170210000456/https://www.cpsc.gov/PageFiles/108298/210.12r.pdf>

<https://web.archive.org/web/20170131113344/https://www.cpsc.gov/PageFiles/117282/afci.pdf>

<https://web.archive.org/web/20170212083913/https://www.cpsc.gov/PageFiles/117286/bedrooms.pdf>

<https://web.archive.org/web/20170223052803/https://www.cpsc.gov/PageFiles/117292/editorial.pdf>

<https://web.archive.org/web/20170201050551/https://www.cpsc.gov/PageFiles/117296/smokealarm.pdf>

<https://web.archive.org/web/20170212112237/https://www.cpsc.gov/PageFiles/117301/bioathoists.pdf>

<https://web.archive.org/web/20170201050551/https://www.cpsc.gov/PageFiles/117296/smokealarm.pdf>

https://web.archive.org/web/20170131074532/https://www.cpsc.gov/PageFiles/117275/NFPA70_550_13b.pdf

https://web.archive.org/web/20170212163343/https://www.cpsc.gov/PageFiles/107512/NFPA70_550_25.pdf

https://web.archive.org/web/20170131074532/https://www.cpsc.gov/PageFiles/117275/NFPA70_550_13b.pdf

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

Executed this 16th day of January, 2020 at San Francisco, California.

/s/ Matthew B. Becker

Matthew B. Becker