

**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/  
Counter-Plaintiff.

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

**PLAINTIFFS' CONSENT MOTION TO FILE REPLY BRIEF OUT OF TIME**

Plaintiffs/Counter-Defendants 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") respectfully move to file a reply brief in support of their Motion for Protective Order out of time. Pursuant to LCvR 7(m), the undersigned counsel discussed this motion with counsel for Defendant/Counter-Plaintiff Public.Resource.Org, Inc. ("Defendant"), who consented to this Motion.

Plaintiffs filed a Motion for Protective Order on July 7, 2014. Defendant filed a brief in opposition to Plaintiffs' Motion on July 24, 2014. Plaintiffs' reply brief was due on August 4, 2014. Due to a calendaring error, Plaintiffs did not file their brief by the August 4 deadline and now move for leave to file their reply brief, attached as Exhibit A hereto, out of time.

Federal Rule of Civil Procedure 6(b)(1)(B) permits the Court to extend a deadline “if the party failed to act because of excusable neglect.” Excusable neglect is an “elastic concept” encompassing “situations in which the failure to comply with a filing deadline is attributable to negligence.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 392, 394 (1993). The determination of whether neglect is “excusable” includes considerations of the circumstances, including (1) the danger of prejudice to the non-moving party; (2) the length of the delay and its potential impact on the judicial proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. *Id.*

Here, the delay is less than 10 days, such that there is no adverse impact on the judicial proceeding, which is still in the discovery phase. There is also no danger of prejudice to Defendant, who has consented to this Motion. Plaintiffs failed to file their brief by the deadline due to an inadvertent calendaring error and have acted in good faith at all times. Thus, the Court should grant Plaintiffs’ Motion. *See Yesudian ex rel. United States v. Howard Univ.*, 270 F.3d 969, 971 (D.C. Cir. 2001) (affirming district court’s grant of motion to file brief out of time where there was no prejudice to the non-moving party, the delay was brief, and the delay was due to an error by the party’s counsel). A proposed Order is attached hereto as Exhibit B.

Dated: August 13, 2014

Respectfully submitted,

/s/ J. Kevin Fee

Michael F. Clayton (D.C. Bar: 335307)  
J. Kevin Fee (D.C. Bar: 494016)  
Jordana S. Rubel (D.C. Bar: 988423)  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
Telephone: 202.739.5215  
Email: mclayton@morganlewis.com  
jkfee@morganlewis.com  
jrubel@morganlewis.com

*Counsel For American Society For Testing And Materials  
d/b/a/ ASTM International*

/s/ Kelly Klaus

Anjan Choudhury (D.C. Bar: 497271)  
Munger, Tolles & Olson LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071  
Tel: 213.683.9100  
Email: Anjan.Choudhury@mto.com

Kelly M. Klaus  
Jonathan H. Blavin  
Munger, Tolles & Olson LLP  
560 Mission St., 27th Floor  
San Francisco, CA 94105  
Tel: 415.512.4000  
Email: Kelly.Klaus@mto.com  
Jonathan.Blavin@mto.com

*Counsel for National Fire Protection Association, Inc.*

/s/ Kenneth Steinthal

Jeffrey S. Bucholtz (D.C. Bar: 452385)  
King & Spalding LLP  
1700 Pennsylvania Avenue, NW, Ste. 200  
Washington, DC 20006-4707  
Tel: 202.737.0500  
Email: jbucholtz@kslaw.com

Kenneth L. Steinthal  
Joseph R. Wetzel  
King & Spalding LLP  
101 Second Street, Ste. 2300  
San Francisco, CA 94105  
Tel: 415.318.1211  
Email: [ksteinthal@kslaw.com](mailto:ksteinthal@kslaw.com)  
[jwetzel@kslaw.com](mailto:jwetzel@kslaw.com)

*Counsel for American Society of Heating, Refrigerating,  
and Air Conditioning Engineers*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Consent Motion to File Reply Brief Out of Time was served this 13th day of August, 2014 via CM/ECF upon the following:

Counsel for Public.Resource.Org, Inc.:

Andrew Bridges

Kathleen Lu

David Halperin

Mitchell L. Stoltz

Corynne McSherry

Joseph Gratz

Mark Lemley

/s/ Jordana Rubel

Jordana Rubel