

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

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

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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:

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/s/ Jordana Rubel

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