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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AMERICAN SOCIETY FOR TESTING
AND MATERIALS, et al., CA No: 1:13-cv-01215-TSC-DAR

Plaintiffs, Washington, D.C.
March 19, 2015
vs. 2:11 p.m.

PUBLIC.RESOURCE.ORG, INC.,

Defendant.

- - - - - x
- - - - - x
AMERICAN EDUCATIONAL RESEARCH
ASSOCIATION, INC., et al., CA No: 1:14-cv-00857-TSC-DAR
Plaintiffs,

vs.

PUBLIC.RESOURCE.ORG, INC.,

Defendant.
- - - - - x

TRANSCRIPT OF STATUS HEARING
HELD BEFORE THE HONORABLE DEBORAH A. ROBINSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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P R O C E E D I N G S

1
2 THE COURTROOM DEPUTY: The matter now pending
3 before this court is *American Society for Testing and*
4 *Materials, et al. vs. Public.Resource.org, Incorporated* and
5 *American Educational Research Association, Incorporated, et*
6 *al. vs. Public.Resource.org, Incorporated* in Civil Action
7 Nos. 13-1215 and 14-857.

8 Jordana Rubel and Kevin Fee are representing
9 plaintiff ASTM; Nathan Rehn is representing plaintiff NFPA;
10 Antonio Lewis is representing plaintiff ASHRAE; Jonathan
11 Hudis and Kathleen Cooney-Porter are representing plaintiffs
12 American Educational Research Association, Incorporated and
13 American Psychological Associations, Incorporated. And
14 David Halperin and Matthew Becker are representing the
15 defendants, *Public.Resource.org, Incorporated*.

16 We're here for the purpose of a status hearing.

17 THE COURT: Now, again, good afternoon to all of
18 you. We have called the cases together, I scheduled them
19 together, and we are going to proceed to make an effort to
20 address a coordinated effort to complete discovery.

21 At the time I scheduled the hearing in this
22 fashion, there was an outstanding question concerning
23 whether or not the two cases would be consolidated for the
24 purpose of discovery. It appears that as of this time none
25 of you believe that that would be an appropriate exercise of

1 the Court's discretion, and no order consolidating the cases
2 has been entered.

3 Nonetheless, there are some issues which are
4 common to both cases which concern scheduling and, to some
5 extent, a single deposition, the deposition of Mr. -- the
6 proposed deposition of Mr. Malamud and Public Resource that
7 perhaps we can address in a coordinated fashion.

8 More broadly, however, the Court's concern is that
9 the parties do not yet appear to have committed to the
10 completion of discovery without the need for micromanagement
11 by the Court. The Court has -- the assigned district judge
12 has, of course, referred these cases to me for the purpose
13 of management of discovery, but that should not be regarded
14 by the parties or by counsel as an invitation to resist
15 every effort by the opposing party or opposing parties to
16 take discovery, and, particularly in the case which has been
17 pending for the longer period of time, it is imperative that
18 you commit to a schedule which will permit you to complete
19 discovery as expeditiously as possible and move on to the
20 next phase of the litigation.

21 Another reason that the Court scheduled this
22 hearing in this fashion is because the Court was not
23 confident that the parties had complied with the letter and
24 spirit of the local rule directing that parties meet and
25 confer with respect to nondispositive matters. All of the

1 matters pending at this time are nondispositive. And while
2 it will certainly be incumbent upon me to conduct hearings
3 with respect to any matters that you are unable to resolve
4 through your efforts to meet and confer, my review of the
5 pending motions, at least as of this point, suggests that
6 there is no reason that the Court should not expect that you
7 won't resolve these matters without the need for the
8 intervention of the Court.

9 Having said that, I will hear from counsel in turn
10 regarding how you believe we should proceed. I am not
11 prepared to hear argument this afternoon on the substance of
12 any motion, and instead, what it is, consistent with all
13 that I've said thus far, that I want you to do is address
14 what you have agreed to do and what you have committed to do
15 in order to ensure that discovery is completed promptly.

16 It appears that the parties in the case filed more
17 recently may actually be further along in that effort
18 because I see that in the 2014 case there -- at least it
19 appears that there is an agreement regarding new deadlines
20 for the completion of discovery. In the 2013 case, in which
21 completion of discovery may have greater urgency given the
22 length of time the case has been pending, I am not certain
23 that there is an agreement. I have read your respective
24 contentions, but I cannot discern that you have reached any
25 agreement, and that is certainly a matter as to which the

1 parties should be able to agree.

2 So we can do one of several things. I can take a
3 recess at this point so that you can discuss what agreements
4 you might make regarding any such matters, or I can hear you
5 preliminarily beginning with counsel in the 2013 case
6 regarding your status.

7 Do you want to just take a moment? We'll go off
8 the record briefly, and you can consider those options; or
9 alternatively, I will hear from counsel beginning with
10 plaintiffs' counsel, and I imagine there are three of you
11 who will want to be heard -- am I correct? -- in the 2013
12 case.

13 MR. REHN: Thank you, Your Honor. I believe I can
14 cover most of what needs to be said.

15 THE COURT: For the record, you are Mr...?

16 MR. REHN: I'm Mr. Rehn representing the plaintiff
17 NFPA in the 2013 case, and I think I can cover most of the
18 key issues with respect to our case. And if need be, my
19 co-plaintiffs' counsel can fill in some of the details.

20 We don't believe a recess is necessary at this
21 time, Your Honor, because we -- at plaintiffs' request we
22 had a meet-and-confer with -- I'm sorry -- yes, at
23 plaintiffs' request, our request, we met and conferred with
24 Public Resource shortly before this conference, and we made
25 every attempt to offer them a compromise. We offered to

1 accept the date for the close of discovery that they have
2 proposed in their motion, and we said, "Is there any
3 compromise that you are willing to reach with respect to the
4 number of depositions that you've requested?" And they said
5 flat out, "No."

6 So we feel like the parties right now are very far
7 apart on this issue, and I can give you a little bit of
8 background as to how we've gotten to this place.

9 THE COURT: Well, before you move on, Mr. Rehn,
10 does that mean that the principal dispute regarding
11 completion of discovery has to do with the number of
12 depositions?

13 MR. REHN: I think that's accurate except that
14 Public Resource informed us, I believe it was yesterday,
15 that they no longer stand by the position they took in their
16 own motion of concluding discovery on April 13th. Their
17 position now is that discovery should conclude on April
18 30th.

19 So they've moved the date back even further from
20 where they were just a few days ago. And we have
21 continually tried to accommodate them, but they keep -- it's
22 sort of like when you're approaching a mirage in the desert,
23 it keeps receding into the distance, from our perspective,
24 as much as we try to accommodate them. So even the date now
25 may be up to some dispute because of that.

1 THE COURT: Would the parties be aided by a brief
2 recess to agree upon a date?

3 MR. REHN: I mean, we'd be willing to -- again,
4 our offer would be to agree on the date that they've put in
5 their motion, which is a month past the date we proposed in
6 opposition, which was already a compromise of a month and a
7 half after the Court ordered close of discovery. We've said
8 notwithstanding your failure to take any depositions or to
9 take all the depositions you want so far, we're willing to
10 give you a few -- some more time, and they've rejected that.

11 But we're willing to make that offer again here on
12 the record. Just with respect to the date. Now, there are
13 some issues with respect to how many depositions are
14 covered, but at least with respect to the date.

15 THE COURT: Are those the only issues that exist
16 regarding a timetable and other limits for the completion of
17 discovery --

18 MR. REHN: I believe that once a date --

19 THE COURT: -- in the 2013 case?

20 MR. REHN: Yes. I believe that once a date for
21 the close of fact discovery were to be agreed upon, I think
22 the parties -- substantively our positions on how expert
23 discovery should proceed after that point are basically the
24 same. It's just the matter of when you start that clock on
25 the expert reports.

1 So once we set a date on that, I believe we'd be
2 able to agree on a complete date certain for the close of
3 discovery with respect to --

4 THE COURT: You agree right now we're speaking
5 only for a date for the close of fact discovery.

6 MR. REHN: That's correct, but my expectation is
7 there would not be further scheduling disputes following the
8 date on the agreement of the close of fact discovery because
9 there's never been any disagreement as to the amount of time
10 needed for the parties to complete expert discovery.

11 THE COURT: May I ask you to briefly summarize the
12 plaintiffs' contention in the 2013 case with respect to the
13 number of additional depositions, if any, which should be
14 permitted?

15 MR. REHN: Yes, Your Honor. And I think, to put
16 this in some context, Public Resource first noticed a number
17 of depositions -- I believe it was eight depositions -- in
18 December. Plaintiffs offered dates for those depositions in
19 January. For example, NFPA offered dates -- and Public
20 Resource specifically requested that the depositions be done
21 in the first half of January at that time. So in compliance
22 with Public Resource's request, we offered dates for those
23 witnesses in early January.

24 Two days before those depositions were to take
25 place, before the first of those was to take place, Public

1 Resource informed us they didn't intend to go forward at
2 that time. We asked them if they would reschedule in late
3 January. They said no, they were unwilling to take
4 depositions in late January.

5 Our position was and remains that Public Resource
6 should not be permitted to take depositions that weren't
7 noticed in sufficient time for the depositions to be
8 scheduled before the close of discovery.

9 Now, Public Resource has taken the position that
10 it should be able to notice depositions even after the close
11 of discovery up to whatever the number is, ten or if the
12 Court would agree on more than ten. Our position has been
13 that there is no reason, unless you can point to a
14 particular discovery of a name in the documents, for you to
15 be able to notice additional depositions beyond that.

16 So that continues to be the plaintiffs' position,
17 that the depositions they should be permitted to take are
18 those that they noticed in a timely fashion. We're willing
19 to compromise on scheduling those after the close of
20 discovery, but not to create an open-ended opportunity for
21 them to continue to notice additional depositions beyond
22 that.

23 THE COURT: What is the status, from your
24 perspective, in the 2013 case of the proposed deposition of
25 Mr. Malamud and the extent to which that is a deposition

1 that can be accomplished in a single deposition session? I
2 don't know whether we should term that a joint deposition or
3 a single deposition in which all counsel would participate.

4 MR. REHN: Yes, Your Honor. That issue has been
5 rendered moot because plaintiffs in the ASTM case have now
6 taken the deposition of Mr. Malamud and of Public Resource.
7 We took those depositions on February 26th and 27th. That
8 was the subject of intensive negotiations between the
9 parties, and Public Resource agreed on February 25th to
10 provide Mr. Malamud -- to make him available.

11 We took that opportunity, jumped on it. We took
12 that deposition. Therefore, there's no remaining
13 overlapping discovery issues between the two cases, and
14 consistent with that, Public Resource withdrew their motion
15 for consolidation.

16 THE COURT: Very well. In that event, I am
17 pleased to note that at least one matter has been resolved.

18 What else is there to be resolved concerning the
19 completion of fact discovery?

20 MR. REHN: There are no outstanding issues with
21 written discovery or document discovery of which at least
22 plaintiffs are aware. The only remaining issue is whether
23 Public Resource should be entitled to take -- how many
24 depositions Public Resource should be entitled to take.

25 THE COURT: Very well. We've already included

1 that in the list, the date for the close of fact discovery,
2 and the second issue, seemingly the one to which you just
3 referred, the number of additional depositions, if any.

4 MR. REHN: That's correct, Your Honor.

5 THE COURT: Does that mean, then, that you know of
6 no further issue to be addressed in the 2013 case affecting
7 the completion of fact discovery?

8 MR. REHN: Well, I should say the plaintiffs have
9 filed a motion for a protective order that would limit -- so
10 the plaintiffs have certainly agreed to proceed with
11 30(b)(6) depositions on the few topics that are remaining.
12 Public Resource has taken a 30(b)(6) deposition of each
13 plaintiff with respect to a number of the noticed topics.
14 Plaintiffs have certainly agreed to go forward with the
15 remaining topics with the exception that we filed a motion
16 for a protective order with respect to some of those.

17 THE COURT: You're speaking of 86?

18 MR. REHN: I believe it's Docket No. 86.

19 MR. FEE: Right.

20 MR. REHN: Yes. So we would request that the
21 deposition not be scheduled until the Court has had an
22 opportunity to address that protective order.

23 THE COURT: Now, what have the parties done to
24 resolve the dispute which is presented by the motion for
25 protective order?

1 MR. REHN: We have met and conferred repeatedly.
2 This has been a subject the parties have been at odds over
3 for several months, I would say, the subject of -- I would
4 describe it as very extensive meet-and-confer sessions both
5 in person, over the telephone, and in email regarding
6 whether the defendant, in a copyright action who doesn't
7 claim any rights in the copyrighted works at issue, has
8 standing to challenge the validity of the assignment of
9 those rights to the plaintiff in that action; and, if the
10 defendant lacks standing to make that challenge, then all of
11 the discovery that Public Resource is seeking with respect
12 to the assignment forms, which is the subject of the
13 protective order motion, would be irrelevant as a matter of
14 law. I think the parties don't disagree on that. They just
15 disagree on whether the cases actually say that Public
16 Resource lacks standing.

17 We filed our motion for protective order. We
18 requested an expedited briefing schedule, but the Court
19 hasn't ruled on that, and I believe the Public Resources
20 opposition is due on Monday to that motion.

21 THE COURT: In other words, you agree we cannot
22 address this motion today because it has not been fully
23 briefed?

24 MR. REHN: That's correct, and that would affect
25 whether the remaining 30(b)(6) depositions can go forward

1 because those would relate to the topics that are covered by
2 the protective order, at least in part.

3 THE COURT: What is the reason that the parties
4 cannot resolve the dispute?

5 MR. REHN: Well, I think -- the parties disagree
6 on that, but from the plaintiffs' perspective, the issue has
7 been, as I mentioned earlier, a repeated pattern of
8 plaintiffs trying to accommodate requests by Public
9 Resource, and then Public Resource moving the goal line a
10 little bit further away.

11 So, for example, there are two depositions of NFPA
12 witnesses that are -- that Public Resource noticed back in
13 December. These are witnesses Public Resource has been
14 aware of since before this case was even filed. These are
15 of the current and former president of NFPA. They're well
16 known to Public Resource. They've been in our disclosures
17 for many months, and they're not the subject of any of the
18 recent document productions that Public Resource complains
19 about.

20 There's no reason these depositions couldn't have
21 been taken a year ago. We offered dates in January. We
22 offered dates for these witnesses in February. We offered
23 dates for these witnesses in March.

24 And just to give you an example, counsel for
25 Public Resource informed us at the beginning of March that

1 only lead counsel for Public Resource could take those
2 depositions, and lead counsel was only available on March
3 12th, and that was it. So we said, well, any time in the
4 week of March 9th, the week of March 16th, the week of March
5 23rd we can try to schedule these, but they're just -- they
6 refused to give us dates, and we've just been facing an
7 impasse with respect to that.

8 We've had similar problems with scheduling for the
9 other plaintiffs as well. We've offered many dates, and
10 Public Resource has just declined to go forward with those,
11 and they've continued to insist that only their lead counsel
12 can take depositions. I guess he's very busy. He's
13 certainly not here today. I guess they can appear in court
14 without their lead counsel, but they can't take any
15 depositions, which is why we cannot get discovery completed,
16 which all plaintiffs are interested in doing, getting
17 discovery completed in a timely fashion.

18 THE COURT: Very well. Thank you very much,
19 Mr. Rehn.

20 I should inquire whether other counsel wish to be
21 heard, or if you are prepared simply to concur in Mr. Rehn's
22 proffers and arguments?

23 Mr. Fee?

24 MR. FEE: Yes, Your Honor. I don't disagree with
25 anything that Mr. Rehn said, but I thought a little bit of

1 specific detail with respect to ASTM might be helpful.

2 I'm not sure this came across as clearly as maybe
3 it should have in our papers, but I want to make sure Your
4 Honor understands that the real source of all this problem
5 is we were served with 20 deposition notices the day after
6 fact discovery closed in this case. Many of the witnesses
7 had never been identified before the 30(b)(6) or before the
8 depositions were served the day after the close of fact
9 discovery. So in addition to fighting about when the
10 discovery period should be over, it's ASTM's position -- I
11 believe the other plaintiffs are in a similar position --
12 that persons that they had never asked to take the
13 deposition of until the day after the close of fact
14 discovery are not an appropriate witness to be deposed
15 during some -- you know, after the close of the fact
16 discovery deposition process.

17 We don't believe that any of these people have
18 important information that's relevant to this case that
19 hasn't been the subject of a 30(b)(6) deposition of ASTM.
20 And just so you know, we already did provide a witness on 26
21 out of the 29 subjects that were in their 30(b)(6)
22 deposition notice. The only topics that we did not provide
23 a witness on so far related to the motion for a protective
24 order.

25 But they, on the day after close of fact

1 discovery, wanted to depose for the first time the president
2 of ASTM, Jim Thomas. We had identified him back in January
3 of 2014 as one of our two witnesses in our initial
4 disclosures that we knew would be testifying and had
5 relevant information in this case. There were no documents
6 -- you know, their excuse for a lot of this is we produced a
7 lot of documents towards the end of discovery. And it is
8 true we produced about 40,000 documents towards the end of
9 December. Primarily they were examples of granting
10 permission requests when somebody would say, "I want to use
11 some portion of ASTM's standard in our textbook," and we
12 said, "Yes, go ahead."

13 There are no documents from Jim Thomas that could
14 possibly explain why they did not think it was appropriate
15 to take his deposition from January of 2014 until January
16 31, 2015, and then send us a deposition notice that Saturday
17 morning. In addition, we had identified him in our initial
18 disclosures of having a wide range of knowledge of all
19 topics that would be relevant to this case. So I just don't
20 understand how it could be that, having been aware of him
21 for the past year, they could wait until the close of fact
22 discovery to ask for his deposition, especially when the
23 topics which he's knowledgeable about are also topics that
24 were covered during the 30(b)(6) deposition of ASTM.

25 There are a couple of other similar circumstances.

1 They recently, on the 31st of January, said they wanted to
2 take our, you know, manager of IT. We never identified him
3 in our initial disclosures because we don't believe he's got
4 really any relevant information to this case. It's
5 possible. And I think their explanation for listing him is
6 that they want to know information about our reading room
7 where we post standards for free access by members of the
8 public.

9 There was already a 30(b)(6) deposition on that
10 topic. We identified this guy as the head of our IT
11 department in October of 2014, and they have not identified
12 any specific emails that were produced towards the end of
13 discovery that somehow explained why he only became
14 identified as a witness in this case until after the close
15 of fact discovery.

16 I don't want to bore you with the details of all
17 these, but there are three other witnesses that they want to
18 take depositions of with respect to ASTM that are all
19 persons that they had known about for some time, and they've
20 also -- for most of these people there were virtually no
21 documents produced with respect to them.

22 They asked for depositions of Randy Jennings and
23 Steve Cramer. Randy Jennings, I think, was mentioned in a
24 couple of documents, none of which were produced in January
25 and only, you know, listing members and things of that

1 nature. There are no hot Randy Jennings documents that were
2 produced in January.

3 Same goes for Steve Cramer. I think he was listed
4 on two -- identified in two documents in our entire document
5 production, and they were both lists of members or lists of
6 participants in a very large group.

7 And Kathe Hooper is our person who is responsible
8 for rights and permissions. We identified her in that
9 regard on our organizational chart that was produced in
10 October of 2014. They've, again, not identified any reason
11 why they need to take her deposition and certainly haven't
12 identified anything that was missing with respect to rights
13 and permissions during the 30(b)(6) deposition.

14 And in that regard, they actually took the
15 30(b)(6) deposition several weeks ago, and we have not heard
16 any complaints about the witness being inadequately prepared
17 until I raised this point in our meet-and-confer a few
18 minutes ago and I was told, oh, some day they'll get us a
19 letter with the supposed inadequacies of our preparation.

20 So we don't think that they've made any showing
21 that they should be permitted to take extra depositions, let
22 alone take depositions within the ten of persons that were
23 not properly noticed within the fact discovery deadline.

24 THE COURT: Very well. Thank you very much,
25 Mr. Fee.

1 Mr. Lewis?

2 MR. LEWIS: ASHRAE has nothing to add, Your Honor.

3 THE COURT: Very well. Thank you, Mr. Lewis.

4 Now, Mr. Halperin or Mr. Becker?

5 MR. BECKER: Good afternoon, Your Honor. Matthew
6 Becker for the defendant Public.Resource.org.

7 THE COURT: Good afternoon, Mr. Becker.

8 MR. BECKER: So Public Resource has been trying to
9 work with the plaintiffs to get their cooperation in
10 reaching an orderly completion of discovery. Public
11 Resource believes that part of that means that they need to
12 cooperate with us to provide deponents just as we've
13 cooperated with them; for instance, in February, when we
14 provided Mr. Malamud and Public Resource as a 30(b)(6) on
15 separate days despite the fact that we did have an
16 opposition as to the separate depositions apart from the
17 AERA plaintiffs.

18 As you are likely aware, the plaintiffs had
19 produced over 92 percent of their documents in the last
20 month of discovery. This made it incredibly difficult for
21 us to identify the witnesses that should be the proper
22 deponents in this case. They had 16 individuals listed on
23 their initial disclosures, some of which were added within
24 the last month, even up to the day before the close of
25 discovery, and as such, it was incredibly difficult for us

1 to actually provide these notices for them.

2 We believed that we had an agreement with the
3 plaintiffs such that any notices that were provided by the
4 close of discovery on January 30th would be honored for
5 depositions that would take place after January 30th. It
6 now --

7 THE COURT: What is the basis of your assertion
8 that you believe the parties had an agreement?

9 MR. BECKER: That was because we had discussed
10 this with the parties, and we have email records that show
11 this discussion with the parties. It was an offer that had
12 been made by the plaintiffs, and Public Resource then
13 provided their documents to the plaintiffs on January 30th.

14 THE COURT: How many depositions has Public
15 Resource taken thus far in the 2013 case?

16 MR. BECKER: Public Resource has taken three
17 depositions: one 30(b)(6) of each of the plaintiffs, but
18 there are additional topics outstanding for the plaintiffs.

19 THE COURT: Very well. You may continue.

20 MR. BECKER: Since the filing of our motion
21 initially at the end of January, there have been a number of
22 incidents that have made it even more difficult for Public
23 Resource to obtain the discovery that it needs. The
24 plaintiffs have not been cooperative in providing dates for
25 depositions as they said, for instance, with regards to the

1 former president of NFPA. They have provided two dates for
2 that individual, none of which were workable.

3 For other individuals, they tried to provide them
4 on dates such as the exact same date that we were -- had
5 offered Mr. Malamud for deposition and that they intended to
6 take Mr. Malamud's and did take Mr. Malamud's deposition.
7 They wanted us to simultaneously take the deposition of
8 their 30(b)(6) on the other side of the country, which was
9 simply unworkable.

10 And so many of the offers that have been made have
11 been -- they're not true offers. All three plaintiffs will
12 offer depositions on the exact same day, which they know is
13 not going to be workable for the defendant.

14 Additionally, since the filing of the motion to
15 extend discovery, NFPA has filed a motion to amend the
16 complaint to include another standard, the 2014 National
17 Electric Code, which has its own specific issues and appears
18 to have been designed in part to try to get around the
19 problems with copyrightability that are evident in the prior
20 versions of the National Electric Code.

21 And the plaintiffs have additionally filed their
22 emergency motion for protective order which, as one of the
23 plaintiffs mentioned just a moment ago, is -- they believe
24 is going to delay the time at which a final set of 30(b)(6)
25 topics can be taken as to all three plaintiffs. And for all

1 of these factors, that's the reason why Public Resource now
2 believes that it needs an additional two weeks beyond the
3 original date that it had asked for back in January.

4 THE COURT: Is it correct that the -- that
5 deponents or designees were available to address all but
6 three of the twenty -- I believe someone referred to the
7 number 27 topics?

8 MR. BECKER: No, they have not all been made
9 available for us. So there are still --

10 THE COURT: What is your response to Mr. Rehn's
11 contention that, except for the three that are the subject
12 of the motion for protective order, a witness addressed all
13 the remaining topics?

14 MR. BECKER: That's not true, Your Honor.
15 Witnesses had been provided --

16 THE COURT: What did occur, in your view?

17 MR. BECKER: Public Resource took the depositions
18 of three individuals, one for each plaintiff, that were --
19 they were each designated for a subsidiary of the number of
20 topics that had been provided other than the three that are
21 the subject of the motion.

22 Now, the exception for that would be ASTM, which
23 has -- which claimed that the single individual they
24 provided had been provided as to all topics except for those
25 three that are the subject of the protective order motion.

1 However, Public Resource encountered a great amount of
2 difficulty from ASTM at that deposition, did not believe
3 that that single deponent had been adequately prepared and
4 was able to adequately respond to many of the topics that
5 were addressed, and so therefore Public Resource is in the
6 process of preparing to meet and confer with ASTM regarding
7 providing additional time or an additional deponent to
8 address the insufficient topics.

9 THE COURT: What is the reason that the other
10 depositions were not noticed until the deadline for the
11 close of discovery?

12 MR. BECKER: The reason has been -- so --

13 THE COURT: We agree that that is a period of
14 approximately one year from when their identities first
15 became known?

16 MR. BECKER: It depends on the individuals.

17 Your Honor, a party is entitled to know the scope
18 of discovery and the scope of the individuals that are
19 involved in an action prior to noticing its' ten deponents,
20 particularly in a circumstance like this where Public
21 Resource believes, because of the complexity of the case and
22 because of the number of parties, that Public Resource would
23 need to take more than ten depositions.

24 THE COURT: And my question is -- my request is
25 that you address the failure to even notice the depositions

1 for a period of one year and further failing to notice them
2 until the date for fact discovery -- the date for the close
3 of fact discovery had already arrived.

4 MR. BECKER: Yes, Your Honor. We had noticed some
5 of the depositions, but we weren't -- did not want to notice
6 the full scope of ten depositions because we were still in
7 the process of determining who would be our remaining ten
8 and discovering that, with the complexity of the case, it
9 was necessary to go beyond ten deponents.

10 And so although in November -- I believe it was
11 November 16th -- we had noticed a number of those
12 individuals, there were questions as to which should the
13 remaining deponents be, and that was pushed back because the
14 plaintiffs had not produced -- they didn't produce over 92
15 percent of their documents until the last month of
16 discovery. A large number of those individuals who we had
17 subsequently noticed were individuals who were discovered
18 through that document production. And furthermore, it would
19 have been impossible for us to be certain that those -- that
20 individuals such as the president of ASTM was the correct
21 person to be noticing before we had the opportunity to
22 review those documents.

23 THE COURT: To what extent do those circumstances
24 have a bearing upon the decision that a Court must make
25 regarding additional depositions? In other words, would a

1 Court not be within the bounds of its discretion to
2 determine that if, for a period of one year, a party took no
3 depositions, that there is no basis for permitting the
4 original number allowed and some more?

5 MR. BECKER: Your Honor, the question as to
6 allowing the depositions is one that does involve the
7 Court's discretion, but it's also a question of whether the
8 parties -- specifically the party that's asking for relief
9 -- have been prejudiced and whether the party that's asking
10 for relief has been reasonably diligent given the
11 circumstances.

12 I believe that Public Resource --

13 THE COURT: Well, perhaps the answer bespeaks the
14 second of the two concerns, and that is the extent to which
15 the party has been diligent. It was for that reason that I
16 referred to what appear to be the undisputed facts here, and
17 that is for a period of one year after the identities of the
18 witnesses had become known that no depositions at all of
19 those individuals were noticed until the date for the close
20 of discovery had passed.

21 MR. BECKER: Your Honor, they had identified 16
22 individuals on their initial disclosures. That's more than
23 the ten individuals that we would initially be allowed to
24 notice. And so we needed to actually have the documents and
25 be able to review the discovery in order to know who we

1 needed to depose.

2 If we had noticed them prior and then subsequently
3 discovered, with the massive last-minute productions by
4 plaintiffs, that we had noticed the wrong individuals, we
5 would simply have been out of luck. And so we're put in a
6 Catch-22 where because --

7 THE COURT: You still have not addressed the delay
8 until after the close of discovery to serve the notices. Do
9 you agree that the notices were served on the day after fact
10 discovery closed?

11 MR. BECKER: No, I do not, Your Honor. They were
12 served at 9:42 p.m. on the day of the close of discovery.
13 The plaintiffs --

14 THE COURT: You say 9:42 p.m.?

15 MR. BECKER: Yes. And the plaintiffs argue that
16 that is after the close of discovery because --

17 THE COURT: What is your argument concerning when
18 discovery would have closed?

19 MR. BECKER: Your Honor --

20 THE COURT: When discovery did close on that day?

21 MR. BECKER: The rules for service are that when a
22 document is, for instance, put in a mailbox on a particular
23 date, that is the date of service. And so if that -- if we
24 had placed -- instead of providing electronic service, if we
25 had mailed out these notices at that time on that date, then

1 it would have been sufficient. To have provided it to the
2 parties -- the plaintiffs in a more immediate fashion, some
3 of which are located in San Francisco and therefore received
4 it at that time, at 9:42 p.m., it's therefore proper
5 service.

6 THE COURT: My question did not go to proper
7 service. My question went to the date on which discovery
8 closed.

9 MR. BECKER: Yes.

10 THE COURT: Do you agree that discovery had closed
11 at the time the notices were served?

12 MR. BECKER: Without an order from the Court, yes,
13 discovery had closed on that date.

14 THE COURT: Had discovery closed -- what is your
15 contention regarding whether discovery had closed as of the
16 time you served the notices?

17 MR. BECKER: No, we do not believe that the
18 discovery had closed as of the time that we served the
19 notices.

20 THE COURT: Let me ask you to explain why that --
21 on what basis you ask the Court to make such a finding?

22 MR. BECKER: Because there had been a previous
23 offer by the plaintiffs to accept any notices that were
24 served up and through January 30th to then allow the
25 depositions to be taken thereafter, and that the notices

1 were served on January 30th to all three plaintiffs.

2 THE COURT: By that, do you mean that the emails
3 were sent at 9: -- did you say 48?

4 MR. BECKER: 9:42 p.m., Your Honor.

5 THE COURT: 9:42 p.m. Very well. You may
6 continue.

7 MR. BECKER: Your Honor, with regards to the date
8 of the close of discovery, plaintiffs have been -- have said
9 that they think that they would suffer prejudice because of
10 the date that we're asking discovery to be extended to.
11 Public Resource --

12 THE COURT: For what purposes should discovery be
13 extended, in your view?

14 MR. BECKER: Discovery should be extended for the
15 purposes of allowing Public Resource to take the depositions
16 that it has noticed, and, if the Court intends to allow the
17 plaintiff NFPA to amend the complaint to introduce the 2014
18 National Electric Code, Public Resource believes that it
19 should be allowed to take written discovery as to the 2014
20 National Electric Code and its relationship to the previous
21 versions of the National Electric Code because it does
22 appear that the 2014 version has been crafted to avoid the
23 problems with copyrightability that the plaintiffs face with
24 their other standards at issue in this case. And --

25 THE COURT: Do you agree that the time to address

1 the need for further discovery arising from any amendment of
2 the complaint would be after there is a ruling on the motion
3 for leave to amend, bearing in mind that at this time none
4 of us know whether or not that motion will be granted?

5 MR. BECKER: Your Honor, Public Resource had --
6 Public Resource would be willing to address that again if
7 Your Honor chose that she wanted to decide as to the motion
8 to amend prior to determining whether discovery on that
9 amended standard would be allowed. But Public Resource
10 simply wanted to raise the issue that we would not object to
11 the amendment so long as Public Resource is allowed fair
12 discovery on that particular standard.

13 THE COURT: What other discovery does Public
14 Resource require? I'm speaking now of the 2013 case.
15 You've indicated that your request is to extend discovery to
16 permit Public Resource to take depositions, both those that
17 were not noticed until discovery had closed -- were not
18 noticed until the date on which discovery was set to close,
19 depending on what finding the Court might make, and that
20 there could be a request based upon an amendment of the
21 complaint.

22 What is the other -- what additional discovery is
23 there that Public Resource believes it requires --

24 MR. BECKER: It is --

25 THE COURT: -- in the 2013 case?

1 MR. BECKER: In the 2013 case, it is just the
2 extension of the discovery to the end of April so as to take
3 those depositions that had -- that Public Resource has
4 already noticed and to -- if there is amendment, to allow
5 the 2013 National Electric Code -- to have written discovery
6 as to the National Electric Code and its relationship to
7 prior standards and to, of course, be able to address the
8 2014 National Electric Code in its depositions, which would
9 include potentially amending the 30(b)(6) notice to the
10 National Fire Protection Association to have targeted topics
11 based off of the 2014 National Electric Code.

12 THE COURT: Am I correct in my impression that
13 should the Court deny the plaintiffs' motion for protective
14 order, that Public Resource would wish to reconvene or
15 reopen the 30(b)(6) depositions?

16 MR. BECKER: I'm not certain if I understand, Your
17 Honor.

18 THE COURT: The plaintiffs have moved for a
19 protective order precluding witnesses from testifying
20 regarding certain matters. Is that your understanding of
21 the motion?

22 MR. BECKER: Yes.

23 THE COURT: Am I correct that that is your
24 understanding of the motion?

25 MR. BECKER: Yes.

1 THE COURT: Should the motion be denied, would it
2 be Public Resource's intention to seek to reopen those
3 depositions to ask questions with respect to the topic as to
4 which seemingly there was no inquiry?

5 MR. BECKER: Yes, though I should note that only
6 one plaintiff, ASTM, has provided what it claims to be the
7 single witness that's necessary for 30(b)(6)s. As to NFPA
8 and ASHRAE, they have not yet provided the remaining
9 30(b)(6) witnesses, and so it would not be necessary so much
10 to reopen unless we had gone past the close of discovery by
11 that point.

12 THE COURT: What have the parties discussed
13 regarding completion of the depositions?

14 MR. BECKER: So, for instance, Your Honor, ASHRAE
15 has worked with Public Resource to schedule the deposition
16 of Ms. Reinecke, which I believe is scheduled for April
17 10th, if I'm not mistaken, and Ms. Reinecke is noticed for a
18 number of topics, some of which include those topics that
19 are the subject of the protective order. And so if the
20 protective order was decided prior to that point, then there
21 would be no need to go back and have yet a further designee
22 from ASHRAE because that designee would be able to address
23 that subject.

24 THE COURT: Very well. Thank you very much,
25 Mr. Becker.

1 Is that the extent, the full extent, of the
2 remaining discovery that Public Resource expects or wishes
3 to take?

4 MR. BECKER: Yes, Your Honor.

5 THE COURT: Very well. Thank you very much.

6 MR. BECKER: Your Honor, may I address just one
7 more subject?

8 THE COURT: Yes.

9 MR. BECKER: With regards to the plaintiffs' claim
10 of prejudice, I'd simply like to address the fact that
11 plaintiffs -- documents that we've submitted in our reply
12 brief show that the plaintiffs have been planning this
13 litigation since February 2011 and such that an extension of
14 discovery for an additional month doesn't seem like it would
15 be so much of a hardship to plaintiffs as they're now
16 claiming that it is, which is simply to say that this has
17 been -- this is a matter that has been going on for quite
18 some time, and that Public Resource should be entitled to
19 have a fair opportunity to take discovery.

20 And furthermore, with regards to plaintiff ASTM's
21 comments regarding Randy Jennings and Steve Cramer, these
22 are individuals who plaintiffs say were not -- that they did
23 not believe that there were important documents that were
24 produced at the last minute as to their involvement in
25 relationship to this case. Those were individuals who were

1 identified in Public Resource -- excuse me, in plaintiffs'
2 initial disclosures, some of which I believe were amended
3 and added in in January.

4 And so Public Resource has tried to work with
5 plaintiffs in order to take the ten depositions -- ten of
6 the depositions that it has noticed and had hoped that we
7 would be able to schedule and have taken those ten
8 depositions by this time so that Your Honor would be able to
9 address just the issue of the remaining depositions, many of
10 which are individuals who had been on plaintiffs' amended
11 initial disclosures or who are individuals who we believe
12 have information that would go beyond the topics that the
13 30(b)(6) designees would be knowledgeable about.

14 THE COURT: And just so the record is clear, when
15 were those amended disclosures served?

16 MR. BECKER: So there were multiple amended
17 disclosures that were served by plaintiffs --

18 MR. FEE: Your Honor, I can answer that, if you'd
19 like.

20 THE COURT: I will hear Mr. Becker's response. It
21 is principally the month and the year that is of concern to
22 the Court. My impression is that you've referred to initial
23 disclosures served at the latest January of 2014, but if I
24 am incorrect, please so indicate.

25 MR. BECKER: Plaintiff National Fire Protection

1 Association served an amended disclosure on the 14th of
2 January 2015. On January 30, 2015, plaintiff ASHRAE served
3 an amended initial disclosure.

4 THE COURT: Is it your contention that the January
5 2015 amended initial disclosures included names of
6 additional witnesses?

7 MR. BECKER: Yes. Yes, Your Honor.

8 Excuse me, it was ASTM that had served on the 14th
9 day of January, and it was NFPA that served -- let's see. I
10 don't have the date for NFPA.

11 THE COURT: Very well. Thank you very much,
12 Mr. Becker.

13 MR. BECKER: Thank you, Your Honor.

14 THE COURT: I have a brief question of plaintiffs,
15 and we will then take a brief recess.

16 Mr. Rehn, perhaps I will hear from you first, and
17 we'll proceed in the same sequence that we did earlier.
18 What additional discovery -- what additional fact discovery,
19 if any, do the plaintiffs wish to take? The only motion
20 that the plaintiffs have filed, of course, is the motion for
21 protective order precluding further discovery, precluding
22 discovery on those designated topics, I should note. What,
23 at this point, is the additional discovery that the
24 plaintiffs believe plaintiffs should be permitted to take?

25 MR. REHN: We do not believe there is additional

1 discovery needed on behalf of NFPA.

2 THE COURT: Very well. Thank you, Mr. Rehn.

3 Mr. Fee?

4 MR. FEE: Your Honor, we took all the depositions
5 that we thought needed to be taken during the discovery
6 period that was set forth by the Court's order.

7 THE COURT: Very well. Thank you, Mr. Fee.

8 And Ms. Rubel, you and Mr. Fee are co-counsel with
9 respect to your client?

10 MR. RUBEL: That's correct.

11 THE COURT: Very well. Mr. Lewis? Good
12 afternoon.

13 MR. LEWIS: Good afternoon.

14 THE COURT: The Court has been reminded that the
15 motion which was filed for your admission pro hac vice has
16 not yet been ruled upon. I believe that's an oversight on
17 the Court's part, and because it will be granted before the
18 end of the day, I will ask you to please proceed.

19 MR. LEWIS: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. LEWIS: ASHRAE does not believe that it needs
22 any additional discovery.

23 THE COURT: Very well. Thank you very much,
24 Mr. Lewis.

25 I believe one of you -- perhaps it was you,

1 Mr. Fee -- who seemingly wished to respond to the question
2 about the amended initial disclosures. Am I correct?

3 MR. FEE: Yes, Your Honor. I was just going to
4 let you know that when opposing counsel referenced an
5 initial disclosure that added Mr. Jennings and Mr. Cramer,
6 those witnesses were identified in a December 2014 initial
7 disclosure, not in a January 2015 initial disclosure, as had
8 been suggested. And I have a copy of that, if you'd like to
9 see it.

10 THE COURT: I will ask you to first share it with
11 Mr. Halperin and Mr. Becker, please.

12 MR. REHN: If I may, Your Honor?

13 THE COURT: Mr. Fee. Excuse me --

14 MR. REHN: Mr. Rehn.

15 THE COURT: -- Mr. Rehn.

16 MR. REHN: On behalf of NFPA, yes. And the
17 witnesses at issue for NFPA were also disclosed November 29,
18 2014 or earlier. Some in January of 2014 and some in an
19 amended on November of 2014. And there was an amendment on
20 January 20th, but that witness has not been at issue in the
21 discussions we're having right now.

22 THE COURT: Thank you very much, Mr. Rehn.

23 Mr. Lewis, do you wish to address this issue
24 concerning amendment of the initial disclosures?

25 MR. LEWIS: Yes, Your Honor. Briefly, we did

1 amend our initial disclosures earlier this year, but it was
2 only to add the name of one witness who had already been
3 noticed for deposition by defendants. So it was not a new
4 -- a newly identified individual.

5 THE COURT: Very well. Thank you very much,
6 Mr. Lewis.

7 At this time, we will take a brief recess, and the
8 Court will be prepared -- will prepare at that time to
9 address the requests for extension of time in which to
10 complete fact discovery and the issue concerning the number
11 of additional depositions, if any. We recognize that the
12 motion for protective order has not yet been fully briefed.
13 Perhaps it will be necessary to set a date for argument on
14 that motion, or alternatively you may agree whether it may
15 be decided by the Court based upon the parties' written
16 submissions.

17 So my suggestion is that during the recess, you
18 address that last question that I just posed, in other
19 words, whether, as to 86, the parties agree that the Court
20 can decide the party without oral argument; in other words,
21 based solely on your written submissions once it has been
22 fully briefed.

23 Very well. Thank you very much. You may remain
24 seated, and we'll take a brief recess. Thank you.

25 (Recess taken)

1 THE COURT: Now, we're back on the record.

2 The Court is now prepared to address the issues in
3 the 2013 case. The principal one, of course, is the request
4 of the defendants to extend discovery. The Court notes that
5 the defendant seeks to extend discovery for the purpose of
6 -- essentially for three purposes: the first, to permit the
7 defendant to take the depositions which were noticed on the
8 date set for the close of fact discovery; second, to take
9 discovery regarding the amended complaint; and third, for
10 the purpose of completion of the 30(b)(6) depositions.

11 Plaintiffs oppose the request and note that there
12 is no additional discovery that the plaintiffs -- no
13 additional fact discovery that the plaintiffs seek.

14 The Court has reviewed the motion and accompanying
15 materials and, in addition, the scheduling order entered by
16 the Court, the initial scheduling order entered by the Court
17 in December of 2013, and considered the arguments made by
18 counsel here in open court. Having done so, the Court will
19 deny the request to extend discovery except to permit a
20 brief period for the completion of the 30(b)(6) depositions
21 to the extent that there is one seemingly underway as to
22 which the parties may have some agreement.

23 The pending motion and any further 30(b)(6)
24 questions that might be occasioned I cannot address now and
25 will provide for that at such time that there is a ruling on

1 the motion. The motion is not ripe, and I cannot consider
2 it at this time.

3 In so ruling, the Court finds that no good cause
4 for the continuance or the extension has been shown by the
5 defendant. The Court principally relies upon the authority
6 in this district which holds that the Court, in making such
7 a finding, may indeed consider whether or not the party
8 seeking the extension has been diligent. In this
9 circumstance, the Court finds that the defendant has not
10 made the requisite showing of diligence.

11 It is not within the province of the Court to
12 require counsel for the defendant to state all of the
13 reasons that the notice was not served until the date set
14 for the close of discovery. Reasons have been proffered.
15 The Court has considered them very carefully; however, the
16 Court is unable to find that the reasons constitute good
17 cause, as that term has been defined by the judges of this
18 court.

19 In addition, the Court notes that the scheduling
20 order entered on December 31, 2013, Document No. 30,
21 precludes -- expressly precludes the very conduct in which
22 defendant engaged. I am referring now to Page 2 of that
23 scheduling order which reads: "Accordingly, the parties are
24 directed to ensure that all discovery requests are served in
25 sufficient time to allow a response consistent with the

1 timing set forth in the Federal Rules of Civil Procedure and
2 the local civil rules unless otherwise stipulated by the
3 parties."

4 The Court reads that provision, a customary
5 provision entered by judges of this court, indeed to
6 preclude the service of a notice of deposition two hours
7 before the end of the day on the date that discovery was set
8 to close. A timely notice of deposition would be one made
9 in accordance with the notice requirements of the applicable
10 rules well in advance of the last day so that the
11 depositions could be completed by that last day.

12 Clearly that did not happen here. There is no
13 scenario in which the Court could find that the service of a
14 notice in the remaining two hours of the day on which
15 discovery closed was a timely notice, as that phrase has
16 been utilized by the judge who entered the scheduling order
17 and other judges of the Court.

18 For the purpose of the completion of any 30(b)(6)
19 deposition that has been the subject of an agreement of the
20 parties, the Court will suggest -- will order that that be
21 accomplished within the next two weeks. In other words, by
22 April 2nd. Any additional discovery consistent with a
23 ruling on the motion which we cannot address at this time
24 will be addressed at the time the motion is decided.

25 If the parties reach an agreement regarding

1 whether or not argument is requested on the plaintiffs'
2 motion for protective order or instead that the Court can
3 simply decide the order based on the parties' written
4 submissions -- perhaps I should inquire of plaintiffs first
5 since plaintiffs filed the motion. We'll proceed in the
6 same sequence.

7 Mr. Rehn?

8 MR. REHN: Yes, Your Honor, and I can speak for
9 all plaintiffs in the case, that we are willing to submit
10 that motion on the papers. We briefly conferred with the
11 defendant. I believe we initially reached an agreement, but
12 I'm not sure if -- I'll let them speak.

13 THE COURT: Very well. Thank you, Mr. Rehn.

14 So all plaintiffs agree that the Court can decide
15 the motion based on the written submissions. Mr. Fee or
16 Ms. Rubel, is that correct?

17 MR. FEE: That's right, Your Honor.

18 THE COURT: And Mr. Lewis?

19 MR. LEWIS: Yes, Your Honor.

20 THE COURT: Very well. Thank you.

21 Mr. Becker or Mr. Halperin? Mr. Becker.

22 MR. BECKER: Yes, Your Honor. We also agree that
23 the motion can be heard on the briefs or decided on the
24 briefs. One matter that we had discussed was whether there
25 would be a need for a sur-reply or not, but we think that

1 that can be addressed later when we see the reply.

2 THE COURT: Very well. Once the motion has been
3 fully briefed -- in other words, once I have received the
4 opposition and the reply -- then the Court will quickly take
5 the matter under advisement.

6 MR. BECKER: Your Honor, may I ask a question
7 regarding your order, an ambiguity that was unclear to me?

8 THE COURT: Yes, of course.

9 MR. BECKER: On November 16th, Public Resource had
10 noticed not just the 30(b)(6) depositions for the
11 plaintiffs, but also a 30(b)(6) deposition for a third
12 party, ANSI, and also for two individuals, Jim Pauley and
13 Jim Shannon. Will Public Resource be permitted to take
14 those depositions as well, Your Honor, as they were noticed
15 in November?

16 THE COURT: The Court intended to indicate that
17 the 30(b)(6) depositions, which I understood to be the
18 subject of some agreement between the parties except in the
19 matters addressed in the motion for protective order, will
20 be completed. Is that your question?

21 MR. BECKER: My question is, will -- it seems that
22 the Court's reasoning was that Public Resource had
23 improperly delayed in noticing the other depositions, but on
24 the same day that Public Resource had noticed the 30(b)(6)
25 depositions in November of 2014, Public Resource had also

1 noticed additional depositions, a 30(b)(6) of a third party,
2 ANSI, as well as the deposition of NFPA member Jim Pauley
3 and NFPA member Jim Shannon. My question is whether Public
4 Resource may be permitted to take those depositions that
5 have been previously noticed in November as well?

6 THE COURT: I will hear from counsel in turn.
7 Thank you, Mr. Becker.

8 Mr. Rehn?

9 MR. REHN: Yes, thank you, Your Honor. I believe
10 he raised two issues. One was the 30(b)(6) deposition of
11 the third-party ANSI, which was served with a subpoena by
12 Public Resource. I don't believe plaintiffs -- at least
13 NFPA does not have any objection to that deposition going
14 forward.

15 With respect to the additional witnesses from --

16 THE COURT: None of you who are seated at
17 plaintiffs' table represent that third party; am I correct?

18 MR. REHN: That's correct, Your Honor, but at
19 least for purposes of NFPA, we don't have an objection to
20 that deposition.

21 THE COURT: Very well.

22 Before we move on, I will suggest that I am making
23 no finding regarding any third-party deposition because I do
24 not know at this point whether counsel for the third party
25 will appear and move to quash the subpoena on some ground.

1 So since that party is not here, I simply can make no
2 finding.

3 MR. REHN: Thank you, Your Honor.

4 And I -- now, with respect to the other matter, as
5 we detail in our papers, I don't think he has his dates
6 right, but certainly there were never any deposition notices
7 served to the NFPA with respect to those witnesses prior to
8 January 31.

9 Now, if there were some emails --

10 THE COURT: Let me interrupt you.

11 MR. REHN: -- identifying those two witnesses --

12 THE COURT: Mr. Becker, was there a notice of
13 deposition served?

14 MR. BECKER: Yes, Your Honor. I believe there
15 was.

16 THE COURT: Do you have it?

17 MR. BECKER: I don't think I have it on me, Your
18 Honor.

19 MR. REHN: I don't believe there was. I do
20 believe there were some emails in which they indicated they
21 were interested in deposing those witnesses. We had
22 suggested we'd be willing to schedule those. But the notice
23 wasn't served, and they -- we asked the notice to be served
24 in January. It wasn't served. So we would say that that
25 should be subject to the same order at this point.

1 THE COURT: Very well. Thank you, Mr. Rehn.

2 Are you looking for the notice, Mr. Becker?

3 MR. BECKER: Yes, Your Honor.

4 THE COURT: Very well.

5 (Pause)

6 THE COURT: If you have found it, I will ask you
7 to show it to plaintiffs' counsel before you proceed.

8 MR. BECKER: Your Honor, I have not found it yet.
9 I was wondering if we may be allowed to supplement on that
10 today if we're able to locate the document?

11 MR. REHN: And Your Honor --

12 THE COURT: The Court will permit you an
13 opportunity to file the notice of deposition, if there is
14 one, with a notice of filing. The Court will not require
15 any further briefing by way of supplementation. I have
16 heard all of your arguments. My only question is whether
17 there was a timely notice of deposition --

18 MR. BECKER: Yes, Your Honor.

19 THE COURT: -- that was served. Until you raised
20 this point, I was under the impression that there was only
21 one notice of deposition served, and that was the one served
22 at nearly 10:00 on the date that discovery closed. If I am
23 mistaken, and there was some earlier notice of deposition,
24 then -- earlier and timely in accordance with the
25 requirements of the Court, then I would encourage you to

1 file it, and the Court will determine at that time whether
2 discovery should be -- whether this additional period of
3 discovery should include the deposition of those two
4 individuals.

5 MR. BECKER: Yes, Your Honor.

6 MR. REHN: And, Your Honor, just to state on the
7 record, my recollection is that there was no notice of
8 deposition. If my recollection is incorrect, we would not
9 object, if there was a timely notice served. But my
10 recollection is we specifically requested such a notice, and
11 there wasn't one served as of the close of discovery. But
12 we'll see what the record shows.

13 THE COURT: Very well. Thank you very much.

14 Unless there is something further regarding the
15 2013 case, I believe we can turn our attention to 2014. Is
16 there anything further concerning 2013, Mr. Rehn?

17 MR. REHN: No, Your Honor. That concludes the
18 2013 matters.

19 THE COURT: Very well. Thank you, Mr. Rehn.

20 MR. REHN: And if I may beg Your Honor's
21 permission, I have to catch a plane, if you wouldn't mind if
22 I leave?

23 THE COURT: You may be excused.

24 MR. REHN: Thank you.

25 THE COURT: Ms. Rubel or Mr. Fee, is there

1 anything regarding the 2013 case?

2 MR. FEE: No, Your Honor.

3 THE COURT: Thank you very much, Mr. Fee.

4 Mr. Lewis, is there anything further concerning
5 the 2013 case?

6 MR. LEWIS: No, Your Honor.

7 THE COURT: Very well. The four of you
8 representing the 2013 plaintiffs may be excused. Thank you.

9 MR. FEE: Thank you, Your Honor.

10 THE COURT: Now I believe we're ready to turn our
11 attention to the 2014 case. Do the four of you need further
12 opportunity to confer before we begin?

13 MR. HUDIS: No. No, Your Honor.

14 THE COURT: Very well. Mr. Hudis and Ms. Cooney-
15 Porter, you were present during the discussions of the 2013
16 case so you know the concerns that the Court has regarding
17 completion of discovery. So with that in mind, I will ask
18 you to please turn your attention to the status.

19 MR. HUDIS: Your Honor, thank you very much.
20 Jonathan Hudis for the plaintiffs in the 2014 case. I would
21 like to reserve some time to respond to Mr. Becker's
22 comments regarding Public Resource's needs on discovery. I
23 will address the Court's questions about plaintiffs' needs
24 and what has been accomplished so far.

25 We very much, in order for the plaintiffs to

1 complete discovery, need the Court's guidance on the motion
2 to compel that we filed with the Court on December 15, 2014,
3 which we argued before Your Honor on January 22, 2015. We
4 have been --

5 THE COURT: The Court has not forgotten that the
6 parties have at least preliminarily addressed that motion.
7 However, at that time, because of the concerns that there
8 were -- that the Court had regarding the absence of any
9 meaningful effort to meet and confer, as well as the looming
10 issue concerning consolidation, the expectation of the Court
11 was that the parties would address those two matters and
12 narrow the areas of dispute.

13 MR. HUDIS: When the motion was argued before Your
14 Honor on January 22nd, by that point we had considerably
15 narrowed the issues that were initially addressed in the
16 motion, leaving only what was addressed in the reply when we
17 had that conversation, Your Honor.

18 Since then, we have propounded a second round of
19 written discovery. The issues have not gone away. The
20 parties are at loggerheads on those issues, and until the
21 Court rules, subject to something Mr. Becker might inform
22 the Court, we do need those rulings so that we can go
23 forward taking the depositions of Public Resource and
24 Mr. Malamud as was done in the 2013 case.

25 We have tried very much to come to a resolution of

1 those issues even after the motion was briefed and argued.
2 The issues are still not going away. Since the time that we
3 appeared before Your Honor, we had propounded the second set
4 of discovery. We have had four -- five exchanges of written
5 correspondence back and forth between Mr. Becker's co-
6 counsel and Ms. Cooney-Porter and myself. We had a
7 telephone conversation as late as last -- late last week,
8 which, to my recollection, was over an hour. The
9 conversation was over an hour, Your Honor. The issues are
10 just not going away, and that's why we had to turn to the
11 Court to ask for an extension of -- at least for our
12 discovery, to ask for an extension of time for the close of
13 discovery from March 16th to May 16th so that we could
14 complete the written discovery.

15 And then, for our purposes, we have two
16 depositions left. And that's it. After the paper discovery
17 issues are resolved, we're ready to take the two
18 depositions, and we're ready to close fact discovery.

19 Your Honor, we have been extremely diligent in
20 propounding discovery going after our needs in discovery
21 after the answers and documents that we got were not to
22 plaintiffs' satisfaction. We have been trying our utmost to
23 bring this case, at least on the discovery phase that is
24 before Your Honor, to a close.

25 I would at this point entertain any questions from

1 the Court, and then reserve the rest of my time to respond
2 to Mr. Becker's comments on Public Resource's needs. But
3 that is basically the -- the plaintiffs' position is we need
4 a few rulings on paper discovery, and then going forward
5 with Mr. Malamud's and Public Resource's depositions, and
6 then we should be fine.

7 THE COURT: What have the parties done in an
8 effort to reach an agreement regarding the issues presented
9 by the motion bearing Document No. 27?

10 MR. HUDIS: Your Honor, I want to be very specific
11 to your question. Before we filed a motion, at the time we
12 filed a reply, or since the motion has been argued?

13 THE COURT: Both.

14 MR. HUDIS: Okay. So before the motion was filed,
15 we had an exchange of several letters back and forth. We
16 had one conversation lasting an hour, another conversation
17 lasting about ten minutes to see if Public Resource had
18 changed any of their positions, and then we filed the
19 motion.

20 After we filed the motion, after Public Resource
21 filed its opposition and the time we filed a reply, we still
22 had even more conversations. At the time we filed our reply
23 we had narrowed considerably the areas of disagreement,
24 leaving for decision before Your Honor only those issues.

25 Since that time, we propounded a more specific and

1 targeted set of written discovery. Public Resource's answer
2 to our satisfaction is probably about 60 percent of that
3 written discovery. They have promised to give us a few
4 items more. I'm reluctant to address specifically what
5 those are because in the 2013 case the Court said you were
6 not prepared to address matters that were not already
7 briefed and before the Court, so I am not doing so.

8 We have as late as -- then, after the propounding
9 of the second round of discovery, we had these letters back
10 and forth, the long conversation lasting over an hour late
11 last week, and now we're before you.

12 So we have been discussing matters constantly with
13 Public Resource's counsel, and we're just at points of
14 disagreement. And we very much want to get past paper
15 discovery so we can take depositions and frankly go to the
16 merits.

17 THE COURT: Very well. Thank you very much,
18 Mr. Hudis.

19 MR. HUDIS: And I reserve the rest of my time for
20 Public Resource's arguments.

21 THE COURT: Very well. Thank you very much.

22 Mr. Becker?

23 MR. BECKER: Thank you, Your Honor.

24 So Public Resource has been engaging in many
25 conversations, as Mr. Hudis has said, with the AERA

1 plaintiffs, and we have been attempting to try to come to
2 agreements. We have been addressing both AERA's more recent
3 discovery request to Public Resource as well as Public
4 Resource's discovery requests to AERA and their responses to
5 our discovery requests, and, to some extent, AERA's more
6 resent discovery requests overlap with the matters that were
7 addressed at the previous motion.

8 MR. HUDIS: That's right.

9 THE COURT: Are you satisfied that the parties
10 have exhausted their efforts to meet and confer to reach an
11 agreement regarding the pending motion?

12 MR. BECKER: Yes, Your Honor. With regards to
13 the pending motion, I do believe that we, as to borrow
14 Mr. Hudis's words, are at loggerheads.

15 THE COURT: Is there further argument that you
16 request on behalf of your client in opposition to the
17 motion, or do you rest on the oral argument that you
18 previously made?

19 MR. BECKER: Your Honor, we rest on the oral
20 argument that was previously made.

21 THE COURT: Very well. Thank you very much.
22 Thank you, Mr. Becker.

23 Mr. Hudis or Ms. Cooney-Porter? Mr. Hudis.

24 MR. HUDIS: Since Mr. Becker, like plaintiffs'
25 counsel, has listened to Your Honor's directives, we are not

1 bringing anything specifically to you that has not already
2 been briefed. What is on both plaintiffs' and defendant's
3 mind is our consented motion for the two-month extension of
4 the close of fact discovery.

5 THE COURT: May I ask you to articulate for the
6 purposes of the written record the need for that extension
7 independent of discovery which might flow from a ruling on
8 the amended motion to compel. In other words, what else is
9 there that needs to be accomplished?

10 MR. HUDIS: I'm at a quandary to answer Your
11 Honor's question without going into specifics. I will, if
12 the Court wants us to.

13 THE COURT: The Court asked that question so that
14 the basis of the request for an additional two months will
15 be clear.

16 MR. HUDIS: Okay.

17 THE COURT: We will assume for the moment that
18 should the Court grant the motion, the amended motion to
19 compel discovery even in part, that some time would be
20 needed for the parties to complete whatever tasks flow from
21 the ruling. What else could there be?

22 It may be that even a favorable ruling on the
23 entirety of the motion would not require an additional two
24 months.

25 MR. HUDIS: Now that counsel understands the

1 Court's question, I will gladly answer it.

2 THE COURT: Very well.

3 MR. HUDIS: Okay. Presuming, from plaintiffs'
4 point of view, the motion to compel is fully responded to,
5 Your Honor presumably would order the production of the
6 materials requested by a date certain. Public Resource
7 would give us those materials. We would digest them in part
8 with the other 78 documents that they have produced to date.
9 We would then notice -- we have not yet -- notice and take
10 Public Resource's and Mr. Malamud's depositions and complete
11 our discovery.

12 The second sets of --

13 THE COURT: In other words, in addition to the
14 discovery that you seek through this motion, there are two
15 depositions that you want to take?

16 MR. HUDIS: Yes, Your Honor, and that would be our
17 second sets of written discovery.

18 Now, Mr. Becker made a good point. The matters
19 that we disagree over in our second sets of written
20 discovery -- which is not recent; it was a while ago -- some
21 of those items do specifically track the discovery that we
22 ask be ordered in the motion to compel. The other items
23 Mr. Becker and his co-counsel have agreed to provide us; we
24 just don't know when.

25 So apart from the motion to compel, Public

1 Resource has agreed to provide the other pieces of written
2 material that we have asked for in our second round of paper
3 discovery. Then we would take -- notice and take the two
4 depositions, and we're done.

5 Today is March 18th [sic]. The two months would
6 put us at May 16th.

7 And in the other matter, Your Honor, the 2013
8 case, it has been Public Resource's position, we understand,
9 that only lead counsel can take and defend depositions, and
10 Mr. Bridges has a very busy schedule. So if Public Resource
11 is going to take the same position in the 2014 case, that
12 only Mr. Bridges can take and defend all depositions, we're
13 certain -- hopefully we're going to get it all done in two
14 months.

15 Then there is, of course, the needs of Public
16 Resource, and we're trying to meet those. I can tell you,
17 without going into specifics, we did have a conversation
18 about depositions. We identified in our initial disclosures
19 way, way back, probably at the beginning of discovery, that
20 we had five witnesses which we believe would also satisfy
21 any 30(b)(6) topics that Public Resource would propound on
22 us. We believe that's what they would need, unless they
23 tell us otherwise of different witnesses. But that's all
24 they've let us know in a telephone conversation to date.

25 They have certain needs on documentary discovery,

1 and, as Mr. Becker has said, we are trying to work through
2 them. Whether Public Resource is going to file another
3 motion to compel, I do not know.

4 THE COURT: Very well. Thank you very much,
5 Mr. Hudis.

6 Mr. Becker, what is the additional discovery that
7 Public Resource contemplates in the 2014 case?

8 MR. BECKER: Your Honor, as described earlier, we
9 have a number of requests that are pending with the
10 plaintiffs, and we are meeting and conferring in attempting
11 to resolve them. So those matters are outstanding.

12 THE COURT: Are those the issues concerning the
13 responses to the second set of written discovery?

14 MR. BECKER: No, Your Honor. This is Public
15 Resource's first set of discovery to the plaintiffs, and
16 that has not been -- that has not come before Your Honor.

17 THE COURT: When were those requests served?

18 MR. HUDIS: December 15th.

19 MR. BECKER: December 15th, Your Honor.

20 THE COURT: And that is the first set?

21 MR. BECKER: Yes, Your Honor.

22 And once that is resolved, Your Honor, we would
23 then want to take depositions of plaintiffs, and we are
24 contemplating the 30(b)(6)s and the five individuals who
25 have been identified in the initial disclosures. We may, in

1 our review of their documents, identify additional
2 individuals that we may want to depose.

3 THE COURT: Very well. Thank you very much,
4 Mr. Becker.

5 MR. BECKER: If I might just say one note, Your
6 Honor. With regards to the lead trial counsel taking the
7 depositions, Public Resource had wanted the lead trial
8 counsel to take -- to defend Public Resource's depositions
9 and to take what it considered to be the most important
10 depositions in the case. That would not necessarily exclude
11 other counsel from taking other depositions.

12 THE COURT: That does not appear to be a matter
13 that requires the attention of the Court, and I expect that
14 counsel will reach some accommodation regarding who will be
15 present.

16 It is not my practice to indicate which lawyers
17 must take or defend a deposition. Each party in this case
18 or multiple counsel have entered appearances for each party,
19 and I see no reason why you cannot, in a civil matter,
20 decide whose presence is necessary --

21 MR. BECKER: Yes, Your Honor.

22 THE COURT: -- or whose presence is desired. The
23 unavailability of a single counsel of record where there are
24 multiple counsels who have entered an appearance likely
25 would not be regarded as good cause for an extension of time

1 to complete discovery.

2 MR. BECKER: Yes, Your Honor.

3 THE COURT: Very well. Thank you very much.

4 MR. HUDIS: Your Honor?

5 THE COURT: Mr. Hudis, yes.

6 MR. HUDIS: Yes, if Your Honor does not rule on
7 the pending consent motion to extend, then fact discovery
8 would already have been closed. We just want to know, can
9 we go forward?

10 THE COURT: The Court is aware. I'm simply
11 attempting to determine what period of time is reasonably
12 necessary. The Court expects to rule promptly on the
13 amended motion to compel and the motion to extend discovery.

14 MR. HUDIS: Should we -- in the meantime, should
15 the parties just keep going?

16 THE COURT: Yes.

17 MR. HUDIS: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 Now, is there anything further with respect to the
20 2014 case this afternoon? Mr. Hudis or Ms. Cooney-Porter?

21 MS. COONEY-PORTER: No, Your Honor.

22 MR. HUDIS: Not for the plaintiffs, Your Honor.

23 THE COURT: Very well.

24 Mr. Becker or Mr. Halperin?

25 MR. BECKER: No, Your Honor.

1 THE COURT: Very well. I thank all of you very
2 much. Have a good afternoon.

3 MR. HUDIS: You too, Your Honor. Thank you.

4 THE COURT: Thank you.

5 (Whereupon the hearing was concluded at 4:21 p.m.)

6

7

8 **CERTIFICATE OF OFFICIAL COURT REPORTER**

9

10 I, LISA A. MOREIRA, RDR, CRR, do hereby
11 certify that the above and foregoing constitutes a true and
12 accurate transcript of my stenographic notes and is a full,
13 true and complete transcript of the proceedings to the best
14 of my ability.

15 Dated this 26th day of March, 2015.

16

17 /s/Lisa A. Moreira, RDR, CRR
18 Official Court Reporter
19 United States Courthouse
20 Room 6718
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