DRAFT

IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

CAPITAL MARKETS PARTNERSHIP (CMP)	)	
INSTITUTE FOR MARKET TRANSFORMATION	)	
TO SUSTAINABILITY (MTS)	)	
STAND.EARTH	)	
SIERRA CLUB	)	
RAINFOREST ACTION NETWORK	)	
NATURAL RESOURCES DEFENSE COUNCIL	)	
DOGWOOD ALLIANCE	)	
GREENPEACE	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO. ____
v.	)	
	)	
US GREEN BUILDING COUNCIL (USGBC)	)	
GREEN BUSINESS CERTIFICATION INC. (GBCI)	)	
	)	
Defendants.	)	

COMPLAINT, REQUEST FOR RESTRAINING ORDER, PRELIMINARY INJUNCTION & MONEY DAMAGES
ACTIONS FOR PIRACY, ANTITRUST & DUE PROCESS

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I. INTRODUCTION & SUMMARY

This is a Complaint to rectify a durable monopoly with over 95% market share that regulates a $1 trillion / yr. of commerce that's gone rogue.

It is secretly yet blatantly and intentionally trampling the Constitutionally protected due process rights of hundreds of thousands of interested and affected parties in violation of longstanding legal norms, standards' practices, Defendants' own policies, and repeated votes of 20,000 of its own Members.

It is intentionally pirating protected Standards that is a *per se* infringement in conflict with the legal framework recently articulated by this Court in *ASTM v. Public Resource*.

Its rogue acts are so outside longstanding legal and procedural norms that there previously has been no need for regulatory oversight.

Existing conservatively calculated antitrust damages below are $150 million but potentially $1 billion if all adversely affected States were to enjoin Defendants.

If not stopped with the requested hearing for injunctive relief below, its rogue actions have paramount and unprecedented adverse impacts imminently and irreparably harming:

- The fiscal solvency of the US to pay for estimated and unprecedented $100 trillion in existing resilience costs that need to be accessed by national consensus underwriting bond standards. Further delay can cause financial contagion according to the Defense Department and capital markets, and are the cause of S&P and Moody's credit rating downgrades required by law to warn investors of accelerating systemic damages documented by these two largest credit rating agencies rating many trillions of dollars of assets per year.
- The integrity, rigor, protectiveness and sovereignty of building requirements of 34 States, over 200 cities, 12 federal agencies and projects in over 150 other countries that have already been secretly, unilaterally, undemocratically, and unlawfully weakened.

- The viability of global forests to protect the Earth from illegal logging in violation of strict criminal liability provisions of the Lacey Act with jurisdiction for the laws of all countries affecting the forest.

Detailed below are Defendants' violations of piracy, procedural due process, and antitrust. These violations adversely impact capital markets' bond, design and construction standards including Plaintiff's National Consensus Resilience Standard (RELi) (also a bond and stock underwriting standard), for the unprecedented, existing $100 trillion in US resilience costs. EXHIBITS 1 and 2 to this Complaint extensively detail existing, partial resilience costs of $1.6 trillion for Massachusetts and $5.3 trillion for Pennsylvania. Also adversely affected is the Forest Stewardship Council (FSC) Wood Standard that has been commercially used by Plaintiffs for over 25 years and adopted as a prerequisite into Plaintiff's national consensus sustainable product standard SMaRT, approved for Defendants' LEED standard credit since 2006.

First, Defendants committed piracy *per se* by appropriating in October 2015 and unilaterally and unlawfully issuing as the LEED Resilience Standard, the identical contents of Plaintiffs' National Consensus Resilience Standard (RELi). See EXHIBIT 3. Defendants' appropriation of RELi was ten months after RELi's national consensus approval in a 30 day vote of interested and affected parties on December 1, 2014 pursuant to Plaintiffs' American National Standards Institute's (ANSI) Accredited Process requiring use of the ANSI Essential Procedural Due Process Requirements. Piracy was *per se* because the LEED Resilience Standard is a subset of Integrative Design in LEED, which adopted Plaintiff's ANSI Integrative Process (IP) American National Standard as the reference standard. This LEED subset of RELi and piracy *per se,* is depicted in a Venn Diagram in EXHIBIT 3. ANSI IP is also a prerequisite for RELi because IP reduces construction change orders by 90% as documented by the Navy, and substantially reduces construction costs, e.g., saving an estimated $125 million for Heathrow Airport renovation. *Innovations in Lean Design: Heathrow T5,* Lean Construction Institute 2005. The substantial similarity of LEED Resilience to RELi, was also documented by an ordinary observer / an *Environmental Building*

News reporter who wrote to Plaintiffs' RELi National Consensus Committee Chairman (Feb. 1, 2016): *"it seems like there is a lot of similarity there"* between RELi and the LEED Resilience Pilot. Further, LEED's Resilience Committee Chairman Alex Wilson and Vice Chair Mary Ann Lazarus requested and received a detailed briefing and were transmitted RELi in August 2015 by RELi Chairman Doug Pierce.

Second, Defendants also violated Plaintiffs' and the public's procedural due process rights ignoring democratic requirements for standards including Defendants' own ANSI Accredited Standards Process. By unilaterally issuing the RELi Standard repackaged as its own LEED Resilience Standard without required procedural due process notice and opportunity to be heard by interested and affected parties, Defendants violated Plaintiff's and the public's Constitutionally protected due process rights: See EXHIBIT 4, Memorandum of Law & Fact requested and reviewed by Attorneys General, Sierra Club Legal Department, and California Treasurer General Counsel. Defendants caused similar violations by unilaterally without required due process approved the greenwash industry dominated Sustainable Forestry Initiative (SFI) standard thus impairing the FSC leadership standard unanimously approved in LEED's 1998 national consensus vote of approval.

EXHIBIT 4 shows that the Supreme Court in *Hydrolevel* defines Defendants as an *"extra-governmental agency prescribing rules for the regulation and restraint of interstate commerce,"* thus subject to antitrust. Both government, and extra-government agencies like Defendants, are required to provide due process procedures for substantive standards like LEED Resilience affecting $ trillions of market share of interested and affected parties. For over 40 years to provide Constitutionally protected procedural due process, governments must follow State and Federal Administrative Procedure Acts, and extra-governmental agencies like Defendants must follow voluntary consensus due process procedures like ANSI Essential Due Process Requirements (which were used for RELi and SMaRT) as detailed extensively by the Supreme Court in EXHIBIT 4.

Defendants intentionally and or recklessly ignored these due process requirements. EXHIBIT 4 extensively details secret LEED V4 due process and antitrust appeals by the chemical / oil and wood industries, that resulted in secret agreements with Defendants, whereby Defendants unilaterally *greenwashed* / weakened LEED with no required due process. These controversial new substantive but unilateral and undemocratic changes to LEED, included toxic chemical use in buildings, and SFI wood standard that allows illegal logging as shown by many national environmental groups. Some 20,000 of Defendants' members previously rejected this wood standard in an earlier LEED V4 votes. Rather than providing for the due process these industries complained of, Defendants unilaterally and substantively changed LEED with NO due process, automatically changing building requirements of 34 States, over 200 cities, 12 federal agencies, projects in over 150 countries, and about $1 trillion / yr. of certified construction as detailed in EXHIBIT 4. Similarly, Defendant's unilateral, undemocratic issuance of the LEED Resilience and SFI Standards with no due process, also automatically changed government building requirements.

Third, Defendants violated antitrust. Defendants' piracy and due process violations were part of its attempt to willfully maintain and perpetuate its substantial and durable monopoly, and thus violated the Sherman Act §2 resulting in treble damages as detailed in EXHIBIT 4 and this Complaint. Defendants' US market share of certified green buildings is well over 90% with Defendants identifying about $455 million / yr. in certified LEED construction in the US alone.

Defendants' piracy, due process, and antitrust violations are highly significant because they impair FSC, and RELi as the national consensus resilience bond standard for needed higher credit ratings, and to help access the over $70 trillion in investor assets available to pay for the estimated, existing, partial $100 trillion in US resilience costs (*Green Bond Business Case* 2016). The separate RELi National Consensus Green Home Underwriting Standard achieved higher credit ratings for Green Home Bonds being structured with Morgan Stanley. These extraordinary US resilience costs were reported in a June 30, 2015 S&P meeting where S&P informed the US Conference of Mayors, JPMorgan, Investor

Network on Climate Risk representing investors with over $12 trillion in assets, environmental groups, and Plaintiffs, that S&P was issuing climate credit rating downgrades required by law to warn investors of well documented, accelerating, systemic damages. Moody's subsequently followed suit. The $1.6 trillion in Massachusetts and $5.3 trillion in Pennsylvania existing and partial resilience costs detailed in EXHIBITS 1 and 2, show $84 million in damages by Defendants in increasing these costs through piracy, due process, and antitrust violations.

Finally, Defendants are covering up the secret industry appeals and resulting agreements required to be in the public domain, that automatically *greenwashed* / weakened State and City building requirements. These substantive changes are highly controversial and unpopular with Defendants' most important constituents, and are the reason for national environmental groups' negative public campaign against Defendants. Substantive comments / appeals on standards regulating interstate commerce, are required to be in the public domain. However, Defendants' refuse to publicly acknowledge or release these appeals extensively quoted and resulting agreements documented in EXHIBIT 4, and are unlawfully trying to keep them secret even though they have enormous economic implications. The public has a right to know. EXHIBIT 4 contains one of these secret industry appeals, as well as a description of the resulting secret agreements quoted from a confidential Venable memorandum as counsel to one of the industries that filed a secret LEED V4 appeal. This Venable memo was shared electronically by Plaintiffs with Defendants' incoming CEO and General Counsel during a phone conversation on this topic (Sept. 28, 2016 10:02 am), thus verifying with Defendants, the existence of these secret agreements.

In addition to the need to comply with due process and antitrust legal requirements to prevent standards from being impaired and struck down legally, there are many important economic reasons to protect and require consensus standards. They reduce risk and uncertainty, resolve disputes, provide for rigorous scientific and technical peer-review reducing error, and thus greatly facilitate commercialization of complex public / private technologies like resilience. Following democratic standard procedures also

provide affected industries with $ trillions of market share at stake, and government and public interest groups, an important seat at the table in standards development and approval which encourages their buy in and needed market adoption of standards. In addition to due process protections, this is why the Technology Transfer Act requires the federal government to use democratic consensus standards where there is no comparable federal standard. See EXHIBIT 4.

LEED is Defendants' green building standard with amendments administered by USGBC, and LEED Certification is by USGBC's subsidiary Green Business Certification, Inc. (GBCI). Defendants and Plaintiffs MTS and CMP are private, voluntary standard-setting entities. Remaining Plaintiffs are national environmental organizations. RELI National Public Meeting Announcement is EXHIBIT 5, RELI Resilience Standards are EXHIBIT 6, and LEED Resilience Standard is EXHIBIT 7. In summary, this Complaint shows:

1. LEED Resilience Standard is a *Per Se* Piracy Violation of RELi (EXHIBIT 3)
2. DC Cir. *Ordinary Observer Piracy Test* is met (EXHIBIT 3)
3. Identical Content and Comparison Charts of RELI & LEED Resilience Standards, showing common elements / overlaps, & identical key words (EXHIBIT 3)
4. Procedural due process violations caused by Defendants' Resilience, SFI and other standards (EXHIBIT 4)
5. Independent Sherman Act §2 *Per Se* Antitrust Violations by LEED Resilience and SFI Standards:

Sherman Act §2 *Per Se* Antitrust Violations by LEED Resilience Standard

Attribute	RELi Lawful National Consensus Approval	LEED Resilience Nonconsensus, Antitcompetitive Standard
Relationship to Antitrust	RELI unanimously approved in 2014 National Consensus vote. No basis for liability.	Not developed in an open and transparent process with an opportunity for participation, comments, or to resolve objections as required by law. Memo of Law & Fact documents due process violations to consumers. Defendants are a substantial & durable monopoly & LEED Resilience Standard is not exempt from Antitrust Liability. *Hydrolevel:* Defendants are extra-governmental agency, regulating / restraining interstate commerce.
Basis of Violations	RELi vote of approval protected due process rights complying with antitrust law.	Non-regulated monopoly harming consumers and market competition from due process violations. LEED is adopted globally & $1 trillion / yr. industry with 90% market share.
Willful Violations Defendants were on notice since 2013 by filed complaints that nonconsensus process was anticompetitive, & subsequently amended LEED through more egregious undemocratic violations.	Indisputed US & international law document that RELi as National Consensus Standard unanimously approved using its ANSI Accredited Process, protected due process rights of affected parties, & is immune from antitrust / restraint of trade liability as are participants in consensus processes.	Defendant liable under Sherman Act §2 prohibiting willful maintenance of monopoly harming consumers. Violations were egregious & *per se* with no defenses. Additional cause of action for interlocking directorates evidencing collusion & secret settlement agreements with industry. Defendant also violated its Antitrust Policy stating that violators are subject to expulsion.
Defendant Incurs Treble Damages & Attorneys Fees DOJ wrote that USGBC did not exercise statutory safe harbor.	No liability. ANSI documents that it is well established legally that consensus standards are protected from antitrust.	*Per se* liability. No defenses.
LEED Resilience Nonconsensus Standard Inappropriately Competes with RELi harming commerce.	RELi national consensus approval is not anticompetitive because due process rights were protected.	Not consensus. Used for LEED approximate $1 trillion global industry, thus causing market confusion & irreparable economic harm to and pre-empting RELi.
RELi is appropriately being used & adopted by Governments.	Federal consensus standards use is encouraged by OMB A-119, & 2004 Standards Development Organization Advancement Act providing antitrust safe harbor from treble damages, & required by Technology Transfer Act where there is no Federal Standard.	Federal Government is not lawfully allowed to use LEED Resilience Standard since not consensus & violates due process rights of affected parties with $ trillions of market share at stake.

Data from well established antitrust law. Prepared Dec. 5, 2015 & Amended May 16, Sept. 11 & Nov. 27, 2016.

ll. BASIS OF DEFENDANTS' LIABILITY & FACTS GIVING RISE TO CLAIMS FOR RELIEF

Plaintiffs are entitled to relief requested based on the following 11 key and material facts:

1. Most Standards are Voluntary Consensus Standards according to the Federal Trade Commission and Federal law:

> *"Most standards developed and used in the United States are voluntary consensus standards created through private sector leadership.16 In some instances, United States Government (USG) agencies need standards to achieve their own regulatory and procurement objectives. In these situations, the USG*

prefers that the federal agencies rely on voluntary consensus standards instead of government standards." (Intellectual Property and Standard Setting, Federal Trade Commission at 4, Dec. 8, 2014).

"While in most countries standards are promulgated by government agencies, the United States has shifted toward a model whereby standard development organizations develop voluntary consensus standards for use by industry and various levels of government." Legislative History, Standards Development Act of 2004, House Report 108-125 at 3 (May 22, 2003).

2. RELi Consensus Development and Approval. RELI was initially unanimously approved in a 30 day National Ballot Vote on September 7, 2009 as National Consensus Green Building and Home Underwriting Standards after a National Public Meeting at JPMorgan's Wall Street Office, and a subsequent National Consensus Committee Meeting at Wells Fargo's Wall Street Office. USGBC participated in the meeting at JPMorgan and obtained the draft copy of RELi. Development and approval was in an ANSI Accredited Standards Process.

3. RELi Resilience Amendments National Public Meeting for buildings, homes, and infrastructure was conducted on September 16, 2014 in Washington, DC at Perkins+Will. USGBC leaders were notified and many thousands of other interested and affected parties. See Invite as EXHIBIT 5 below.

4. RELi Resilience Amendments were Unanimously Approved December 1, 2014 in a 30 day Ballot Vote of interested and affected parties with no negative votes.

5. RELi Developed and Launched its Education Program Critical to Commercializing Resilience especially in this highly confused resilience market. It was launched through Resilient Buildings Workshops in May 2015 with the Minnesota Pollution Control Agency and Minnesota Department of Industry and Labor. Many outreach RELi education events were also conducted including in 2015 with the American Institute of Architects Washington DC Chapter, before several hundred corporate building owners in 2015 in the Twin Cities, and at the American Institute of Architects' (AIA) Annual Meeting in Philadelphia in May 2016.

The RELi National Consensus Committee Chairman delivered a presentation at the October 16, 2015 Resilience Summit hosted by AIA at the National Building Museum (AIA, *Reframing Resilience, Proceedings of the AIA 2015 Resilience Summit).*

6. LEED Resilience Standard Leaders Unique Access to RELi in August 2015. LEED Resilience Standard Committee Chairman and an additional Resilience Committee leader requested and conducted a conference call with RELi Resilience National Consensus Committee Chairman on August 13, 2015. The stated purpose of the call by these LEED leaders in a communication to RELi leaders, was for LEED Resilience Standard leaders to understand the nature of and *"coordinate"* with RELi. RELi Action List and Credits were sent to LEED Resilience Standard Leaders and questions about RELi were answered in a roughly 90 minute call. In an August 3, 2015 email to the RELi Standard Chairman, the LEED Resilience Standard Chairman and another leader wrote:

> *"[W]e were excited to learn recently about your RELi Action List. Congrats on that effort. I'm writing to let you know that Alex Wilson and I are part of a core team working on a draft LEED Resilient Design Pilot credit suite. We'd love to have a chance to talk with you about RELi, its goals and status, and talk about potential coordination of these efforts."*

The "coordination" referred to in this email never occurred. There was no further communication between the parties before the LEED Resilience Standard was unilaterally and undemocratically issued in October 2015 with no required procedural due process.

7. LEED Resilience Standard Release in October 2015 and SFI Standard Amendment in April 2016 With NO Opportunity for Due Process for Interested and Affected Parties including Plaintiffs. When the LEED Resilience Standard Credits were announced, several people on the LEED Resilient Design / Standard Committee were recognized for their contributions, but neither the RELi Chairman / LEED Fellow nor RELi were mentioned. The SFI unilateral amendment to LEED was accompanied by a simultaneous massive wood industry PR campaign.

LEED representatives were given the opportunity to participate in RELi, whereas, Plaintiffs and all other interested and affected parties were not given an opportunity to participate in the secret LEED Resilience and SFI Standards development. The LEED Resilience and SFI Standards meets OMB Circular A-119 definition of a "standard:"

> "*2. What is a Standard?*
> *a. The term "standard," or "technical standard," (hereinafter "standard") as cited in the NTTAA,*

includes all of the following:

(i) common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods, and related management systems practices;

(ii) the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, processes, products, systems, services, or practices; test methods and sampling procedures; formats for information and communication exchange; or descriptions of fit and measurements of size or strength; and

(iii) terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process, or production method." (Id. Revised OMB Circular A-119, *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* at 15 (Jan 22, 2016).

8. Material Facts Regarding *Substantial Similarity* of LEED Resilience Standard to RELi by an Ordinary Observer. *BuildingGreen* magazine interviewed Perkins+Will RELi leaders for an article covering the LEED Resilience Standard and RELi. In a February 1, 2016 email to Perkins+Will, the article author pointed out as an *ordinary observer* who is not a resilience expert, the *substantial similarity* of the LEED Resilience Standard with RELi:

"I'm researching for a feature article for BuildingGreen on resilient design and am wondering if you might have time to talk with me about the new LEED Innovation credits.

"We've been following your innovative work with the Resiliency Task Force [for Perkins+Will] *and I'd love to know how the new [LEED] credits might align/misalign with how Perkins + Will has approached resiliency assessments and concepts like thermal safety. For example, I know Perkins + Will had a hand in RELi and it seems like there is a lot of similarity there."*

9. Defendant Was First Notified of Infringement AND Antitrust Concerns in November and December 2015. USGBC outside counsel and LEED Resilience Pilot Chairman were notified by Plaintiffs of possible infringement violations of RELi by the LEED Resilience Standard on November 15, 2015, and outside counsel stated that USGBC General Counsel was notified by USGBC outside counsel. Charts 1 and 2 in EXHIBIT 3 were transmitted to USGBC outside counsel and the LEED Resilience Chairman. USGBC outside counsel denied the piracy violations in an email stating that *"concepts are not protected."* USGBC Outside Counsel was notified of Antitrust concerns in a call of the parties on December 12, 2015. Defendants' General Counsel was notified of possible antitrust violations by Plaintiffs on May 2, 2016, and provided a Draft copy of this Complaint on May 16, 2016. Plaintiffs met with Defendant and its outside counsel in July 2016 and 2017 in unsuccessful settlement meetings. Plaintiffs were told in June 2017 by leading USGBC Member Perkins+Will, a RELi Partner, that the LEED Resilience Standards were removed from USGBC's website for legal reasons. A 2017 article

written about the LEED Resilience Standard stated that USGBC removed the LEED Resilience Standards from the USGBC Website to "update references." Also at that time, Plaintiffs tried to access the LEED Resilience Standards from Defendants' website and they were not available.

10. Facts of Substantial Similarity. LEED Resilience Chairman sent Plaintiffs a January 4, 2016 Letter Denying Any Intentional Infringement, stating that the LEED thermal resilience component was much more detailed than RELI's, indicating that resilience has common components, and pointing out that RELi has many components that are not in the LEED Pilot. However, the infringement factual test is identification of similarities, not differences. *Atkins v. Fischer,* 331 F.3rd 988 (DC Cir. June 20, 2003).

The LEED Resilience Chairman's comments do not address the following material facts in Chart 2 in EXHIBIT 3 on Identical Content of RELI & LEED Standard showing that the LEED Pilot / Resilience Standard is substantially similar to RELi with the following common elements:

- Identical Scope
- Identical Prerequisite: part of Plaintiff MTS / CMP ANSI Consensus Integrative Process Standard
- Identical Content
- Assessment & Planning for Resilience
    - Assess Hazards
    - Climate Change Assessment
    - Emergency Planning
- Design for Enhanced Resilience
- Floods, tornados, high winds, hurricanes, earthquakes, tsunami, wildlife, drought, landslides, terrorism
- Passive Survivability
    - Thermal Resilience
    - Backup Power
    - Access to Potable Water

EXHIBIT 3 provides a side-by-side comparison showing seven major categories of both standards with many specified common elements / overlaps, as well as many identical key words.

The LEED Resilience Standard is essentially identical to RELI with some substitution of words with the same meaning, some embellishment of detail with thermal resilience, and some new references, and therefore is *"very similar," i.e.,* substantially similar as described by the BuildingGreen ordinary observer writer in communication to RELi leaders.

LEED Resilience Standard Chairman's letter states *"If there are some common words or phrases used in the documents, that is most likely due to the fact that the issues of resilience are widely written about and many of your and my sources are no-doubt the same."* However, USGBC does not identify any resilience documents with the same contents as RELi and the LEED Resilience Standard. In fact, Plaintiffs are not aware of any other resilience document that contains all of the identical elements of the LEED Resilience that are in RELi. Resilience elements in the literature are highly variable, and the resilience market is very confused with an immense amount of activity:

> *"'Everyone is talking about resilience' Mitchell (2013)*
>
> *Over the last few years, resilience has emerged as the new preferred paradigm among development organisations, including both non-governmental organisations and donors, to meet a future world of uncertainty and change The growth of the popularity of resilience within the development discourse, and the adoption of resilience widely across programmatic pillars within NGOs and donor agencies, has led to an explosion of resiliencefocussed frameworks. The measurement of resilience is a new and rapidly developing area of research and practice (Bahadur et al., 2015; Winderl, 2014), and a growing number of NGOs and organisations have developed and highlighted resilience indicators as a key component of measuring programme success." A comparative overview of resilience measurement frameworks,* Overseas Development Institute at 7 (July 2015).

Fortified and the Red Cross Assessment that are a part of RELi, were subsequently made part of the LEED Resilience Standard. RELi first started working with the insurance industry leaders that developed the Fortified Standards (Insurance Institute for Business & Home Safety) incorporated by reference in RELi, at the RELi National Consensus Resilience Standard Planning Meeting on Oct. 26, 2011 in Orlando with the following leading groups participating:

Community and Regional Resilience Institute (CARRI)
Department of Homeland Security - Policy
Department of Homeland Security - Science and Technology
Eaton Corporation
Electrical Safety Foundation International (ESFI)
Federal Alliance for Safe Homes (FLASH)
Federal Emergency Management Agency (FEMA)
Insurance Institute for Business & Home Safety (IBHS)
National Association of State Fire Marshalls (NASFM)
National Fire Protection Association (NFPA)
National Fire Protection Association Research Foundation
National Storm Shelter Association (NSSA)
Resilient Home Program
SmarterSafer
Underwriters Laboratories (UL)
Council on Tall Buildings & Urban Habitat (CTBUH)
Institute for Market Transformation to Sustainability (MTS)
Capital Markets Partnership (CMP)

11. Harm From Defendant's Due Process Violations and Piracy. Plaintiffs have been harmed by Defendants' lack of procedural due process in developing the LEED Resilience Standard and

infringement / piracy of REli that was intentional. Plaintiffs were not provided an opportunity to participate in or comment or vote on the LEED Resilience Standard or SFI. Defendants' offer of "cooperation" in securing a briefing on RELi before the announcement of the LEED Resilience Standard never materialized and Plaintiffs' were not afforded this opportunity.

There is confusion in the market over these LEED and RELi and FSC and SFI competing standards adversely impacting RELi and FSC. Yet simultaneously, there is an unprecedented and paramount market need to commercialize resilience through a consensus standard like RELi., and commercialize the Lacey Act through FSC in Plaintiff's National Consensus Lacey Act Due Care Standard unanimously approved in a national vote of interested and affected parties in Plaintiff MTS / CMP's American National Standards Institute (ANSI) accredited due process requirements.

BuildingGreen magazine's March 7, 2016 article covers both similar resilience standards and the article author cites the similarity between LEED and RELi. Similar articles in 2015 created confusion in Green Biz electronic publication in 2015 first on RELi and then the LEED Resilience Standard.

Plaintiffs and Defendants were invited to jointly present on RELi and the LEED Resilience Standard at the AIA National Convention on May 20, 2016. This Event is typical of the substantial market confusion being caused by both Standards further harming Plaintiffs, in an already very confused, but critically important resilience market. Since that conference, AIA has stopped partnering with CMP most likely due to LEED's overwhelming market / monopoly power.

Such continued confusion greatly impedes the ability to commercialize (1) resilience and prevent likely financial contagion from S&P and Moody's climate credit rating downgrades from accelerating systemic financial damages, and (2) Lacey Act global illegal logging protections; the forest is well recognized as serving as a sink for 20% of global carbon and habitat to most of the worlds species.

Due to this market confusion caused by the LEED Resilience Standard, it is harder for a consensus standard like RELi to conduct needed education programs and raise needed funding including from RELi Standard sales.

Without a consensus standard commercialization of resilience, the damage to society will be enormous as documented above including separate damages to Massachusetts and Pennsylvania of $84 million by Defendants for increasing and impairing these States' ability to pay for their accelerating $6.9 trillion in existing, partial resilience costs as documented in EXHIBITS 1 & 2, and $100 trillion in US estimated resilience costs as reported to S&P. Subsequently, S&P announced its intent to issue credit rating downgrades for the damages, warned the US Conference of Mayors, and then S&P and Moody's started issuing downgrades for these systemic damages.

Seven additional factors are detailed below that are material to the basis of Defendants' liability.

1. Successful Precedent for RELi. Plaintiffs' top management is experienced in developing and launching similar national consensus standards adding substantial national economic value and revenue generation for the standards developer:

- Phase 1 Environmental Site Assessment National Consensus Standard approved in 1986 providing a defense to environmental cleanup liability for innocent property owners and secured creditors, codified by EPA, unfreezing US commercial real estate transactions and helping the nascent commercial mortgage backed security market grow to a $ trillion industry before the financial crisis. This consensus standard has been required for commercial mortgage backed securities from 1986 to today and has generated many millions of dollars in standard related revenue.
- Risk Based Corrective Action Waste Site National Consensus Standard approved in 1989 adopted by EPA, States, Defense Department, US Department of Energy, the oil and chemical industries, accelerating waste site cleanup and saving $ trillions while protecting public health and environment.
- Founded USGBC in 1992 and as a USGBC CEO, General Counsel, Officer, and Director, managed development & unanimous approval by interested and affected parties in a 30 national vote of LEED 1.0 in 1997, which was Launched in 2000 and Effective Until 2007. LEED 1.0

was the National Consensus Standard Green Building Standard. LEED is now a $1 trillion / yr. global industry as documented by the *Green Bond Business Case*. USGBC in 2007 went away from being a consensus standard with LEED 2.0 – 4.0.

2. RELi is the National Consensus Resilience Standard undergoing two unanimous national democratic votes of approval in an American National Standards Institute Accredited Process, thus providing important due process and democratic consensus protections to facilitate commercialization of resilience. This included required procedural due process, notice, an opportunity to be heard by interested and affected parties, and voting on the Standard.

3. The LEED Resilience Pilot is an Undemocratic, Non-Consensus Standard, there was no notice and opportunity to be heard for affected and interested parties, and the Standard, announced about one year after RELi Resilience Standard approval, is substantially similar to RELi violating copyright / piracy laws and causing irreparable harm to Plaintiffs while confusing the market. The LEED Resilience Standard was simply issued by an appointed USGBC committee. Federal policy discourages competing standards because they impair commerce, and for this reason for example, there is just one Federal Clean Water and Clean Air Act with similar State statutes that can be more stringent.

4. The Chemical / Oil & Wood Industries Filed Secret Legal Complaints / Appeals Against USGBC / LEED V4 For Its Failure to be a Consensus Standard, Identifying Due Process Violations, and its Anticompetitive Effect, with the wood industry appeal quoted in detail in the EXHIBIT 4 Memorandum of Law & Fact. As a result of these industry complaints, the Federal Government adopted a competing consensus standard to LEED and LEED placed these industries in leadership roles in writing unilaterally approved and controversial LEED credits as publicly announced by USGBC and the chemical industry (*U.S. Green Building Council and the American Chemistry Council to Work Together to Advance LEED*, American Chemistry Council Press Release, Aug. 27, 2014). These lengthy industry appeals are secret and have not been publicly released by USGBC, but key USGBC Members have been critical of the new chemical industry leadership role in LEED (e.g.,*Truce or Surrender at USGBC,* Healthy Building Network's (HBN) *Healthy Building News* (Sept. 3,

2014). As detailed in EXHIBIT 4, eight national environmental groups including Plaintiffs, have a public campaign in opposition of the unilateral wood standard amendment to LEED.

5. Federal Government Policy States That Voluntary Standards Like LEED Resilience, Should Be Consensus as detailed in EXHIBIT 4 identifying due process violations by USGBC's undemocratic substantive amendments of LEED without the required votes of approval including for resilience.

The test for required due process and democratic voting is whether the amendment has a substantive impact (as opposed to editorial change) upon interested and affected parties, notwithstanding whether the amendment is characterized as a "Pilot" or "Innovation Credit." This is the due process protection legal requirement of longstanding Federal statutes, policy, and the American National Standards Institute (ANSI) Essential Due Process Requirements as documented in EXHIBIT 4.

6. Further, Federal Law States that Standard Setting Organizations Like Defendant, are Subject to Antitrust Liability. By Registering With the Justice Department, a Standard Setting Entity Like Defendant Could Have Been Shielded From Antitrust Treble Damages as Documented in the Attached Memorandum. The Justice Department states USGBC did not so register (Aug. 16, 2016 email from the DOJ Antitrust Division). The Standards Development Act of 2004 provides this protection for registrants:

> *"Standards development organizations develop technical standards that are essential to the efficient functioning of our national economy. Congress has determined that the threat of treble damages pressures SDOs to restrict their standards development activities at a great cost to the United States. The Standards Development Organization Advancement Act of 2004 relieves SDOs from certain antitrust concerns and facilitates the development of pro-competitive standards."* DOJ Press Release June 24, 2004.

Federal law provides limited antitrust protection where notified by the standard setting entity, because these entities are *"unlikely to engage in anti-competitive conduct creating market dominance, … Potential anticompetitive conduct is also mitigated by the manner in which the voluntary consensus standards are developed and implemented"* through openness, balance, cooperation, transparency, consensus and due process (*Id. and as codified in §102, PL 108-237, 15 USC 4301*):

> *"Antitrust challenges to standard-setting activities are currently evaluated under the ''rule of reason''—a judicially-created doctrine that seeks to balance the pro-competitive and anti-competitive market effects of a challenged practice before determining whether a violation of the antitrust laws has occurred (See Northwest Wholesale Stationers, Inc. v. Pacific Stationery and Printing*

Company, 472 U.S. 284 (1985). The rationale for this antitrust standard is that SDOs, as non-profits serving a cross-section of an industry, are unlikely to engage in anti-competitive conduct creating market dominance. Potential anti-competitive conduct is also mitigated by the manner in which voluntary consensus standards are developed and implemented. In order to be used by Federal agencies, the process of developing voluntary standards must adhere to principles of openness, voluntariness, balance, cooperation, transparency, consensus, and due process. These requirements were most recently articulated in OMB Circular A–119 (February 19, 1998). Legislative History, Standards Development Act of 2004, House Report 108-125 at 3-4 (May 22, 2003).

For both stated reasons that Congress provided for the statutory treble damage exemption, the LEED Resilience and SFI Standards failed to comply: Defendants are extending their market dominance through anticompetitive conduct as part of LEED's substantial and durable monopoly, and provide no due process protection, violating the requirements for openness, balance, cooperation, voting and consensus.

7. RELi Adhered to NIST, OMB, and US Technology Transfer Act Federal Antitrust Due Process Protection Policy Consistent with *Hydrolevel* and *Allied Tube. However*, the LEED Resilience and SFI Standards Did Not thus violating Plaintifs' due process rights causing irreparable harm, and violating Defendants' own Antitrust Policy to preserve *"a free competitive economy …* [and avoid] *severe penalties for violations of the antitrust laws:"*

"USGBC's long insistence upon full compliance with all legal requirements in the antitrust area has not been based solely on the desire to stay within the bounds of the law, but also on our conviction that the preservation of a free competitive economy is essential to the welfare of USGBC's members and the country. ... This policy is consistent with USGBC's broader philosophy - that is, to conduct our relations and activities, both internal and external, with high legal and ethical standards. ... Any member or employee who intentionally violates the antitrust compliance policy will be subject to severe disciplinary action, including possible expulsion from USGBC. ... This means not only simply following the written law - it means conducting all business in conformity with the highest standards of ethics and morality, and avoiding conduct that might give even the appearance of wrongdoing. ... There also are severe penalties for violations of the antitrust laws by individuals and corporations. ... " (U.S. GREEN BUILDING COUNCIL ANTITRUST COMPLIANCE POLICY, approved by the USGBC Board of Directors Feb. 2015).

As an "*Extra-governmental Agency Prescribing Rules for the Regulation and Restraint of Interstate Commerce"* as Defined by the Supreme Court in *Hydrolevel*, Defendants are Required to Provide Procedural Due Process Protections, but Did Not. The Attached EXHIBIT 4 Memorandum Documents Defendants' Substantial & Durable Monopoly Power, Willful Maintenance of that Power, and Improper Due Process Violations Unlawfully Excluding Rivals & Harming the Competitive Process in Violation of Sherman Act §2. Section 2 of the Sherman Act declares:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony …" 15 U.S.C. § 2 (2007)

As a private sector standards developer / extra-governmental agency prescribing rules for the regulation and restraint of interstate commerce, Defendants are not immune from antitrust. *Allied Tube v. Indian Head*, Inc., 486 U.S. 492 (1988). Defendants are also required to protect due process rights of interested and affected parties in standard setting which they failed to do as detailed in EXHIBIT 4. These damaged parties are a wide variety of consumers. Private parties injured by a violation of §2 may sue in federal court for treble damages, injunctive relief, and reasonable attorneys' fees. 15 U.S.C. §§ 15, 26 (2007).

Defendants' Monopoly Power is Both Substantial and Durable with Enormous Market Share and Adoption, thus creating great barriers to entry recognized by the courts as monopolies for purposes of Section 2. *See generally* 1 ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS 229–40 (6th ed. 2007). Monopolization shown by the EXHIBIT 4 Memorandum is the core §2 offense. As demonstrated by Defendants' efforts to expand into resilience and unilaterally issue SFI, use of monopoly power attained in one market to gain a competitive advantage in another is a §2 violation, even if there has not been an attempt to monopolize the second market; it is the use of economic power that creates the liability. *Berkey Photo v. Eastman Kodak* (603 F.2d 263. 2d Cir. 1979).

As market power increases, the concept of abuse pursuant to §2 broadens to encompass otherwise ordinary business practices. For example, it has been held to be "monopolization" for a company with monopoly power merely to embrace each new business opportunity arising in its industry (by expanding capacity to meet anticipated demand, for example), because by doing so the entity effectively keeps anyone else from coming in. *Antitrust Guidelines,* Carter Ledyard & Milburn LLP at 9 (July 2013).

Moreover, §2 provides liability even for the lower threshold attempted monopolization (*Spectrum Sports*, 506 U.S. at 456), and conspiracy to monopolize, but the EXHIBIT 4 Memorandum is clear that Defendants have an existing monopoly both in conventional construction market share, but more importantly, in green building construction where no competitor has very likely even more than 10% of the green construction market with Defendants' share at least at 90%.

Sherman Act §2 prohibits improper, willful maintenance of monopoly power as decided in the longstanding precedent by the Supreme Court in *Grinnell*. 384 U.S. 563 (1966). *Grinnell* condemned *"willful acquisition or maintenance of [monopoly] power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident."* *Id.* at 571. In *Spectrum Sports,* the Supreme Court added *"The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself."* 506 U.S. 447, 458 (1993). *"The purpose of the [Sherman] Act, is not to protect businesses from the working of the market; it is to protect the public from the failure of the market."* *Id*. Protection of the competitive process is required. *Copperweld Corp. v. Independence Tube Corp.,* 467 U.S. 752, 767-68 (1984), Id. at 767 n.14 (quoting *Brunswick Corp. v. Pueblo* Bowl-O-Mat, Inc., 429 U.S. 477, 488 (1977) (quoting Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962)).

There was Willful Intent to Maintain and Extend Defendants' Monopoly. Defendants' due process violations detailed in the EXHIBIT 4 Memorandum were legal violations in and of themselves, but also violated §2 by willfully destroying competition for the entire market comprising "*exclusionary acts, which reduce social welfare.*" *United States v. Microsoft Corp.*, 253 F.3d 34, 58 (D.C. Cir. 2001) (en banc) (per curiam). The EXHIBIT 4 Memorandum shows at 20-21 that Defendants knew its conduct was improper since it secretly settled with industry because of due process violations in standard-setting contrary to statutory, regulatory, market and their own antitrust requirements, and then proceeded to make even more egregious substantive, unilateral, undemocratic standard amendments with no required due process voting.

Further, Defendants have an ANSI accredited democratic standard process required in the market for standards developers or an equivalent to protect due process. Defendants' tried using its ANSI Accredited Process for its LEED Neighborhood Development Standard, but could not achieve consensus and stopped the process. Thus based on repeated experience, Defendants' knew their unilateral, undemocratic amendments detailed in the EXHIBIT 4 Memorandum did not meet the legally required due process whereby substantive standard amendments require approval by voting of interested and

affected parties. This behavior constituted a specific willful maintenance and expansion of Defendants' monopoly power. Similar evidence of intent was found in *Microsoft* whereby the government's economic expert stated *"that memoranda and other internal communications from Microsoft officers and employees that could be read as suggesting an anticompetitive intent, supplied the critical evidence that Microsoft's actions were not competitive acts but instead were violations of Section 2."* Cass & Hylton, *Antitrust Intent*, Harvard University Regulatory Policy Program Report RPP-2001-12 at 48 (2001). *Spectrum Sports*, 506 U.S. at 459 (suggesting that proof of the anticompetitive acts "may be sufficient" to prove specific intent). See also *Shoppin' Bag of Pueblo*, 783 F.2d at 163 *("Often no direct evidence of specific intent exists and inferences from conduct are necessary.")*

Defendants' Global Scope of the Harm was Vast & Affects Most US Construction as documented by the EXHIBIT 4 Memorandum. *"Aggressive, exclusionary conduct is deleterious to consumers, and courts should condemn it."* Frank H. Easterbrook, *When Is It Worthwhile to Use Courts to Search for Exclusionary Conduct?*, 2003 COLUM. BUS. L. REV. 345, 345. The author is Judge, United States Court of Appeals for the Seventh Circuit; Senior Lecturer, The Law School, The University of Chicago.

"[B]ecause it can be so difficult for courts to restore competition once it has been lost, the true cost of exclusion to consumer welfare—and its benefit to dominant firms—are likely to be understated." Andrew I. Gavil, *Exclusionary Distribution Strategies by Dominant Firms: Striking a Better Balance, 72 ANTITRUST L.J.* 3, 5 (2004). Acting to stop Defendants' due process violations as part of its durable monopoly, avoids *"very likely substantial adverse consequences for . . . nascent competition." Id.* Defendants' monopoly has proven to be quite durable and will even be more so, especially if allowed to erect entry barriers as exclusionary conduct aimed at artificially prolonging its existence. Sherman Act Section 2 FTC / DOJ Joint Hearing: Section 2 Policy Issues Hr'g Tr. 45, May 1, 2007 at 34-35 (Jacobson).

Defendants' anticompetitive harm was broad, adversely affecting and violating Constitutionally protected due process rights of the entire market as detailed in EXHIBIT 4, with no apparent procompetitive benefit, and was contrary to the holding in *Microsoft* providing a rule of reason in evaluating similar conduct under Sherman Act §1. USGBC / GBCI *"harm[ed] the competitive process and thereby harm[ed] consumers."* *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30, 59 (D.D.C. 2000).

Defendants are Unregulated by Government with no Oversight Agencies with Proscribed Enforcement Authority unlike in *Verizon*: Verizon's conduct was subject to detailed regulatory control which the Supreme Court identified as a factor in §2 liability: *"One factor of particular importance is the existence of a regulatory structure designed to deter and remedy competitive harm."* *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko*, LLP, 540 U.S. 398, 409 (2004).

Defendants' Underlying Due Process Legal Violations Made its §2 Violation *Per Se* Illegal based on the spectrum of competitive harm to the market and relevant case law, thus no defense is permitted for such egregious violations. There is no justification for fraud or as in Defendants' actions, denying the market Constitutionally required due process rights. Defendants' due process violations are similar to other clearly unlawful acts constituting harm to the competitive process and §2 liability, with no viable defenses:

- Bad faith enforcement of invalid patents. *See, e.g., Handgards, Inc. v. Ethicon, Inc.*, 601 F.2d 986, 993 (9th Cir. 1979) (Section 2 violation when patentee initiated litigation knowing patent invalid because of onsale bar).
- Sham litigation. *See Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60–61 (1993).
- Assertion of patents obtained by fraud on the Patent Trademark Office. *See Walker Process*, 382 U.S. at 178. The classic case of a monopolist torching a rival's factory also belongs in this category.

This spectrum of harm is set forth in detail including nearly *per se* §2 violations as a principle of identifying liability. Popofsky, DEFINING EXCLUSIONARY CONDUCT: SECTION 2, THE RULE OF REASON, AND THE UNIFYING PRINCIPLE UNDERLYING ANTITRUST RULES, Antitrust Law Journal No. 2, starting at p. 441 (2006):

> *"Sorting these relatively few "guidepost" decisions from least to most interventionist is illuminating. The spectrum demonstrates that Section 2 is not "incoherent" and that an underlying principle is indeed at work. Courts select the legal test that assertedly maximizes long-term consumer welfare or, put in the language of balancing, is on balance best for consumers. The appropriate test—the level of intervention—does not necessarily ask whether the conduct produces net anticompetitive effects in a particular case. Rather, courts determine at the step of selecting the appropriate legal test whether the proposed test itself is better for consumers than other liability tests."* *Id.* at 448.

Importantly, this *per se* rule for §2 liability engendering the most or egregious acts of harm, e.g., for underlying acts of fraud or very likely intentional due process violations, is ratified by the Supreme Court:

> *"The per se rule "avoid[s] the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken." Ariz. v. Maricopa County Med. Soc'y*, 457 U.S. 332, 351 (1982).

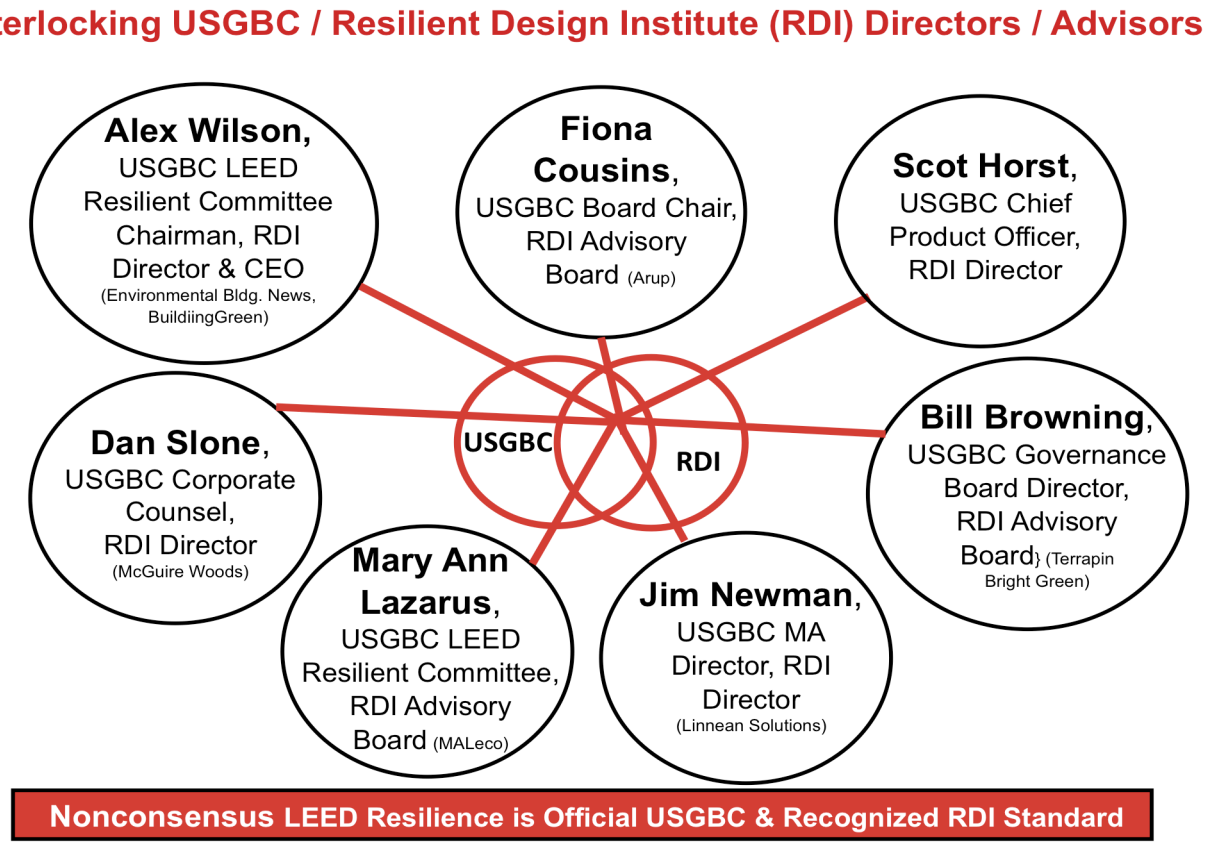
The *per se* rule covering underlying egregious actions producing the most harm, avoids more subjective decisions where there can be a reluctance of courts to uphold §2 liability due to costs to society from decision error and legal process.

Since Defendants substantively, unilaterally, undemocratically, with nor required due process, and unlawfully amended its standard repeatedly in three different areas, its conduct *"reasonably appear[s] capable of making a significant contribution" to such monopoly power*. *United States v. Microsoft Corp*., 253 F.3d 34, 79 (D.C. Cir. 2001) *(en banc) (per curiam)*.

Defendants' Interlocking Directorates are the Source of Inappropriate Collusion Between Defendants and the Resilient Design Institute (RDI). RDI had access to Plaintiff's RELi resilience Standard and RDI Officers are also leaders of the LEED Resilience Standard and Defendants. This Complaint shows piracy *per se* and other evidence of piracy by the RDI / LEED officers who had unique access to RELi before issuing the LEED standard. RDI's Chairman who is the LEED Resilience Chairman, knows that the LEED Resilience Standard is a subset of LEED Integrative Design with Plaintiff's ANSI Integrative Process (IP) Standard as the LEED Integrative Design Reference Standard. IP is also a prerequisite for RELi. Further, an ordinary observer stated that the two standards are substantially similar, which is the legal test for piracy in DC. The LEED Resilience Standard is the standard used by RDI as a key part of RDI's business model.

Section 8 of the Clayton Act was enacted in 1914 to remove any temptation for corporations to coordinate their activities through a shared board member. In that regard, a judge denied a motion to dismiss in a case where a firm had board membership on two competing movie chains, although different firm executives served on the two boards, finding that a conspiracy between them to eliminate competition was plausible. *Reading Int'l Inc. v. Oaktree Capital LLC*, 317 F. Supp. 2d 301 (S.D. N.Y. 2003). Such

interlocking directorates exist between RDI and Defendants as documented in the figure below, and may be a vehicle or facilitating device for improper collusion.



Antitrust Damage Award. Antitrust injury has four elements: *"(1) unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) is of the type the antitrust laws were intended to prevent."* *American Ad Mgmt., Inc. v. Generla Tel. Co.*, 190 F.3d 1051, 1055 (9th Cir. 1999), *citing Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.* 429 U.S. 477, 489 (1977). The attached EXHIBIT 4 Memorandum documents that Defendants' conduct was unlawful in violation of due process. Plaintiffs were injured from the unlawful conduct since Defendants pirated Plaintiffs' consensus Resilience Standard and in violation of due process rights of interested and affected parties including Plaintiffs, unilaterally, undemocratically, and unlawfully issued the pirated Standard as its own. Since Defendants were

maintaining and expanding their durable and substantial monopoly power by issuance of Plaintiffs' pirated standard and in violation of procedural due process, this unlawful conduct is the type the antitrust laws were intended to prevent. Plaintiffs are entitled to the profits it would have realized without the unlawful monopoly. *Brunswick* at 488.

"Proof of the amount of a plaintiff's damages is subject to a lower burden of proof [than] the existence of the antitrust injury [since] the vagaries of the marketplace usually deny us sure knowledge of what plaintiff's situation would have been in the absence of the defendant's antitrust violation." *J. Truett Payne Co. v. Chrysler,* 451 U.S. 557, 565-68 (1891). *"'The tendency of courts is to find some way in which damages can be awarded where a wrong has been done. Difficulty in ascertainment is [not to be] confused with right of recovery' for a proven invasion of the plaintiff's rights."* *Bigelow v. RKO,* 327 U.S. 252, 265-66 (1946), *quoting Story Parchment Co. v. Patterson Parchment Paper Co.,* 282 U.S., 555, 563 (1931).

The Supreme Court held that damages may be shown using *"a just and reasonable estimate, based on relevant data,"* including *both "probable and inferential as well as direct and positive proof."* *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969), and a reasonable approximation:

> *"Trial and appellate courts alike must also observe the practical limits of the burden of proof which may be demanded of a treble-damage plaintiff who seeks recovery for injuries from a partial or total exclusion from a market; damage issues in these cases are rarely susceptible of the kind of concrete, detailed proof of injury which is available in other contexts. The Court has repeatedly held that in the absence of more precise proof, the factfinder may "conclude as a matter of just and reasonable inference from the proof of defendants' wrongful acts and their tendency to injure plaintiffs' business, and from the evidence of the decline in prices, profits and values, not shown to be attributable to other causes, that defendants' wrongful acts had caused damage to the plaintiffs."* 395 U.S. 100, 124 (1969) *citing Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251 (1946).

Courts have measured damages as the lost profits of the plaintiff encompassing both the income and the product substitution effects on a company, which may include damages that exceed higher prices alone. (*H.J., Inc. v. ITT*, 867 F.2d 1531 (8th Cir. 1989), *D & S Redi-Mix v. Sierra Redi-Mix and Contracting Co.*, 692 F.2d. 1245 (9th Cir. 1982); *Copper Liquor, Inc. v. Adolph Coors Co.*, 624 F.2d 575 (5th Cir. 1980); *Lee-Moore Oil Co. v. Union Oil Co., 599 F.2d 1299* (4th Cir. 1979)).

It is Well Settled that Consensus Standards Are Protected From Piracy. *Voluntary Consensus Standards are Copyright Protected Including Those Incorporated by Reference into Federal Government Regulations*, American National Standards Institute, 2011:

> *"Copyright protection must be afforded to standards developers for their original works of authorship. Thus, most courts have found that standards incorporated into law do not lose their copyright protection and the copyright holder does not lose its right to commercial exploitation. See, e.g.:* ***Practice Mgt. Info. Corp. v. American Med. Ass'n, 121 F.3d 516 (9th Cir. 1997), opinion amended by (9th Cir. 1998) 133 F3d 1140*** *(the AMA did not lose the right to enforce copyright when use of its promulgated coding*

system was required by government regulations); ***CCC Info. Servs. v. Maclean Hunter Mkt. Reports, Inc., 44 F.3d 61, 74 (2nd Cir. 1994)*** *(upholding copyright of privately prepared listing of automobile values that states required insurance companies to use), but cf.* ***Veeck v. Southern Building Code Congress International, Inc., 293 F.3d 791, 804 (5th Cir. 2002), cert. denied, 539 U.S. 969 (2003)*** *(holding that "as law, the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives. As model codes, however, the organization's works retain their protected status");* ***BOCA v. Code Tech. Inc., 628 F.2d 730, 736 (1st Cir. 1980)*** *(expressing doubt over the enforceability of the copyright given that the state had adopted the code and remanding the case for further development); see generally,* ***Amicus Brief of ANSI, et al. Veeck v. Southern Building Code Congress International Inc., No. 99-40632*** *(discussion of relevant authorities)." (Id. at 2).*

Defendants Have Been Notified of These Piracy and Antitrust Claims which provide for injunctive relief, treble damages and attorneys fees, and were provided a copy of earlier yet comprehensive versions of this Complaint on May 16, 2016, and June 8, 2017 and Defendants and its counsel participated in the July 2016 and 2017 unsuccessful Settlement Conferences.

III. JURISDICTION & VENUE

Jurisdiction and venue for Piracy pursuant to statute is in Federal District Courts:

> *"Title 28 — Judiciary and Judicial Procedure, U.S. Code*
> *Part IV — Jurisdiction and Venue*
>
> *Chapter 85 — District Courts; Jurisdiction*
> ** * * * * * **
> *§ 1338 · Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition*
>
> *(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.*
>
> *(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.*
>
> *Chapter 87 — District Courts; Venue*
> ** * * * * * * * **
> *§ 1400 · Patents and copyrights, mask works, and designs2*
> ** * * * * * * * **
> *(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found."*

Jurisdiction and venue for antitrust: Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district where it is an inhabitant, but also in any

district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. Clayton Act § 12. 15 U.S.C. §22. *"A civil action may be brought in—**(1)** a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;"* 28 U.S. Code § 1391 - Venue generally.

Plaintiffs and Defendants are headquartered in Washington, DC.

IV. PARTIES

Plaintiff MTS is the owner of RELi, and an IRC §501(c)(3) nonprofit public charity coalition of leading designers including companies, and governments. It is incorporated in Washington DC. MTS' mission is accelerating the global market transformation to sustainability. MTS is an ANSI Accredited Standards Developer and RELi, the National Consensus Resilience Standard, was developed and approved in MTS' ANSI Accredited Process.

Plaintiff CMP is a Wholly-Owned Nonprofit Coalition of MTS of leading professional firms including governments, financial institutions, and environmental groups. CMP's mission is using the capital markets to stimulate and protect the economy through green + resilient bonds, and securing through the capital markets, the needed NEAR TERM 60 gigatons / $6 trillion in carbon pollution reductions to keep dangerous climate change manageable and allow resilience to work, as documented in the *Green Bond Business Case* by California, IPCC scientists, NASA, JPMorgan, and leading economists.

In addition to resilience, long term core MTS / CMP values are advancing FSC Certified Wood, Lacey Act commercialization, reducing product toxicity, and advancing the capital markets to address resilience financing needs.

Plaintiffs National Environmental Groups led by STAND.EARTH are IRC §501(c)(3) nonprofits. They have been FSC environmental partners since 1990, conducting many commercial FSC campaigns including since 1998 with LEED that helped FSC grow to a $40 billion / yr. global industry that is imperative to Lacey Act commercialization that fights illegal logging protecting the forest and its habitat. Importantly, the construction industry regulated by LEED uses the most wood of any other industry by far, and it is sourced from around the world.

Defendant USGBC is an IRC §501(c)(3) nonprofit coalition headquartered in Washington, DC and owner of LEED and the LEED Resilience Standard. **GBCI** is a wholly owned subsidiary of USGBC headquartered in Washington, DC and conducts the certification of LEED and the LEED Resilience Standard.

VI. CAUSES OF ACTION & STANDING

The intersection of intellectual property and anti-competitive activities like the subject of this Complaint, have an important role in standard-setting as stated by the Justice Department and Federal Trade Commission with jurisdiction for enforcement in these fields of law:

> *"The Agencies recognize that the core principles of antitrust and intellectual property law can help ensure that any competition enforcement involving standard setting protects competition and*

consumers, and encourages investment, innovation, and participation in standard-setting activity." *Intellectual Property and Standard Setting,* Federal Trade Commission at 2, Dec. 8, 2014.

A cause of action exists for a violation of due process including procedural fairness and for anti-competitive activity, based on the attached EXHIBIT 4 Memorandum of Law & Fact documenting Defendants' failure to adhere to the legal requirements of due process in standard-setting set forth comprehensively and unequivocally by:

- Federal statutes and longstanding White House OMB Guidance
- Longstanding market requirements set by ANSI's Essential Due Process Requirements
- Supreme Court in *Hydrolevel* and *Allied Tube* finding antitrust liability for standard-setting
- Federal Agency, ANSI, and leading ANSI Standards Developers' administrative ratification and broadcast in 1990 of the enhanced due process requirements for standards as a result of a comprehensive review after *Hydrolevel / Allied Tube*, led by the National Institute of Standards & Technology in the Commerce Department, ANSI, leading standards developers, and guidance by the Justice Department
- Some 13 applicable Supreme Court cases upholding procedural due process protections required for interested and affected parties in standard-setting as identified in EXHIBIT 4.

A cause of action exists pursuant to Sherman Act §2 *per se* violation for willful harm in maintaining Defendants' substantial and durable monopoly; such monopoly is documented in the attached EXHIBIT 4.

A separate cause of action exists for piracy / infringement due to the substantial similarity of Defendant's subsequent LEED Resilience Standard to a documented ordinary observer, meeting the infringement / piracy test of the DC Circuit.

The tests for an injunction and damages have been met and documented including a preliminary restraining order and calculated damages for the irreparable harm in COUNT IV below.

COUNT I
Antitrust

Section 2 of the Sherman Act as a *per se* violation documented above in Section ll of this Complaint, Basis of Liability above:

- The Facts Show That Defendant Used its Monopoly Power and Exclusionary Conduct in violation of the Sherman Act §2. 15 U.S.C. §2.

The attached EXHIBIT 4 Memorandum of Law & Fact documents the underlying due process violations by Defendants, causing harm to consumers and excluding competition. By failing to provide accepted due process protections that the Supreme Court requires as identified in the Memorandum, the LEED Resilience Standard and SFI are unfair and unlawful threats to competition and consumers. See ABA *Handbook on the Antitrust Aspects of Standard Setting* at 3 (2004).

Pursuant to *Hydrolevel,* Defendant is an extra-governmental agency, prescribing rules for the regulation and restraint of interstate commerce with the concomitant power to frustrate competition. As noted by the Justice Department above taking into account standard setting liability following *Hydrolevel* and *Allied Tube*, fundamental fairness in standard-setting procedures is an important due process component important in protecting competition:

> *"A standards making body's attention to procedural due process is important not only because it suggests fairness, but because fair procedures are more likely to produce a correct decision, one that courts need not review. The fairer the decision making process appears, the less inclined the courts will be to question the merits of the standards making decision.*
>
> [Defendants failing procedural due process face] *risks of exposure to antitrust liability, and concomitant treble damages."* (*How Due Process in the Development of Voluntary Standards Can Reduce the Risk of Antitrust Liability*, NIST-GCR-90-571, 1990)

Taking into account *Hydrolevel* and *Allied Tube*, the Federal statutes defining required due process for voluntary standards, and in concert with leading standards developers, the Federal Government's legal advice through the National Institute for Standards & Technology to standards developers, was identical to that of the Justice Department, i.e., the priority for procedural fairness:

> *"Whether identified as 'minority views,' 'negative votes,' 'unfavorable comments,' 'dissents,' 'objections,' or by some similar term, no due process protection is more important to fairness that the assurance that all viewpoints are considered and appropriately dealt with."*
>
> * * *
>
> *V. Summary*
> *This report has explained, in lay terms, how good due process protections can help reduce the risk of antitrust liability faced by all standards developers, and in some instances their volunteer standards writers. In brief, the rule of thumb is: the better the procedural protections, the less the less the liability." How Due Process in the Development of Voluntary Standards Can Reduce the Risk of Antitrust Liability*, NIST-GCR-90-571, 1990.

In contrast to this compelling precedent from the Supreme Court and the federal agencies responsible for antitrust and standards, Plaintiffs' are unaware of any procedural due process protections, including fairness, by the LEED Resilience and SFI Standards.

LEED has a substantial marketplace dominance as an estimated $554 billion / yr. US industry (*Green Bond Business Case* at 31), a likely equal dollar value outside the US, thus its power to frustrate and harm competition is substantial, and its concomitant responsibility to protect competition is paramount given the urgent and compelling need to commercialize resilience and avoid great harm to the economy and public welfare.

Defendants' Monopolization shows (1) substantial and durable monopoly power and (2) the willful acquisition and maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. Defendants' unlawful standards actions in violation of due process, are *per se* §2 violations impermissibly excluding rivals, and harming the competitive process and the wide variety of consumers who are interested and affected parties including Plaintiffs.

Plaintiffs have standing to sue because the following have been shown:

- The LEED Resilience and SFI Standards are the material and substantial cause of Injury to FSC and RELi which caused economic loss for RELi's commercialization of resilience in the market, including needed future revenues for this purpose. FSC's further commercialization through the Lacey Act and the National Consensus Lacey Act Due Care Standard is urgently needed to protect the forest globally which are the sink for 20% of the World's carbon and most of the World's species. These damages are direct and not speculative. Further, commercialization of resilience and FSC / Lacey Act through consensus standards has enormous economic and public welfare value to society, and is urgently needed. Plaintiff CMP's National Consensus Green Home Underwriting Standards have achieved higher credit ratings for Green Home Bonds, a nascent trillion dollar market. A key component of the higher ratings are FSC as part of the Lacey Act National Consensus Due Care Standard prescribing how to achieve due care and avoid strict criminal liability by using FSC.

- An injury of the type the antitrust laws were intended to prevent has occurred through the harm to the competitive process and consumers by a substantial and durable monopoly.

- There is a lack of remoteness, but in contrast, a significant connection between the alleged antitrust violation and the alleged harm to RELi and FSC.

Due to the harm to Plaintiffs and society, a request pursuant to the statute is made for treble damages and the fee of the attorney.

COUNT II
Award $48 million in Antitrust Treble Damages for RELi

Award $48 million in Treble Damages through antitrust, for recklessly impeding unprecedented US resilience costs and jeopardizing financial contagion from S&P and Moody's climate credit rating downgrades required by law to warn investors due to well- documented accelerating systemic damages. RELi is the National Consensus Green + Resilient Bond Underwriting Standard that can access the available $70 trillion in assets by investors that want to buy Green + Resilient Bonds. Twenty-five million dollars of this award is respectfully requested to be placed in an independent trust to be invested to provide grants to qualified green building owners that achieve the required legally binding certification of compliance to RELi.

The magnitude of expected harm more than justifies the requested award. The Climate Bubble / Financial Crisis is expected to be worse than the recent Financial Crisis and resulting Great Recession that was documented by the Federal Reserve to have destroyed over $20 trillion in household net worth. ***Figure 1.*** *(Life of a Debt: Data Integrity in Debt Collection, An FTC – CFPB Roundtable, Robert M. Hunt, PhD, Vice President and Director, Payment Cards Center, Federal Reserve Bank of Philadelphia, page 3, June 6, 2013).* At least an equal dollar amount of business net valuation was destroyed.

Plaintiffs are intimately aware that four separate consensus standards similar to RELi in market value, that Plaintiffs' top management led development and approval of, and netted in the first two years of standard sales, over $10 million each average. These consensus standards are:

- **ANSI Phase 1 Environmental Site Assessment Standard** providing defenses to cleanup liability pursuant to federal and state statutes, required for commercial mortgage backed securities (CMBS), and codified by EPA. Approved in 1986 and adopted as a requirement by CMBS in 1986 and still required today, constituting a 30 year highly profitable business model generating

many tens of $ millions through standard sales. CMBS was a $ trillion / yr. industry until 2008, and has averaged about $80 billion / yr. thereafter.

- **ANSI Property Condition Assessment Standard** initiated at the request of S&P and required by CMBS. Approved in 1986 and adopted as a requirement by CMBS in 1986 and still required today providing a 30 year highly profitable business model generating many tens of $ millions through standards sales. CMBS was a $ trillion / yr. industry until 2008, and has averaged about $80 billion / yr. thereafter.

- **ANSI Risk Based Corrective Action (RBCA) Environmental Cleanup Standard** protecting public health & environment, adopted by EPA, DOE, DoD, the States and the oil and chemical industries, with a million dollar government / industry education program saving $ trillions in costs while protecting public health and environment: PIRI (Partners in RBCA Implementation).

- **LEED National Consensus Green Building Standard for commercial buildings** as adopted by leading cities, New York State, and the US Department of General Services. Plaintiffs' top management established and wrote the consensus procedures for LEED 1.0 approval protecting due process, managed standard development and approval by the LEED National Consensus Committee, and successfully resolved the four negative votes on the standard which were withdrawn by the negative voters resulting in unanimous standard approval in a 30 day national ballot vote. Based on USGBC quarterly budgets received by CMP top management when a USGBC Officer and then Director, annual revenue from LEED 1.0 Reference Guide sales and Education were about $10 million / yr. each.

Accordingly, an award of $8 million is requested increased to $24 million due to treble damages based on the annual average first two years expected revenue for standards' sale.

Education fees are a separate revenue stream and recognized as the highest resilience priority by local, State and Federal governments. Accordingly, a separate award of $8 million is requested increased due to treble damages to $24 million for education.

These awards are conservative and do not take into account the long term revenue stream expected as experienced from the similar standards.

Total RELi antitrust award requested is $48 million. These calculations comport to the legal requirements for §2 treble damage calculations set forth in Section ll above of this Complaint including by the Supreme Court.

COUNT III
Award $50 million in Antitrust Treble Damages for FSC

Award an additional $50 million for unilaterally, undemocratically, automatically and inappropriately without required due process and pursuant to secret agreements with industry, adopting a competing greenwash standard to FSC, harming global forests and habitat contrary to Defendants' prior Member votes.

Unilateral and Unlawful 2016 SFI Amendment inappropriately and substantially damaged FSC and SMaRT's positions in the market including their national consensus approvals and the value of their duly recognized credits for building owners achieving LEED certification.

Eroding Negligent & Unlawful SFI Clearcuts on Very Steep Slopes in Violation of Lacey Act Strict Criminal Illegal Logging Provisions

FSC is the leading global wood certification system rigorously verifying protection of the forest through the wood products' global supply chain, with strong support from its some 60 Environmental Partners including Plaintiffs. FSC was duly and unanimously adopted by USGBC as a LEED Credit in 1998 in a National Consensus vote of approval of interested and affected parties protecting due process rights. SMaRT is the National Consensus Sustainable Product Standard containing FSC Wood as a prerequisite, duly adopted by LEED in 2006, LEED Canada, the Australia and New Zealand Green Building Councils, and in April 2017, recommended as an Ecolabel for Federal Procurement by EPA. Prior to those adoptions, SMaRT achieved four unanimous national votes of approval with many hundreds of interested and affected parties in Plaintiff MTS' American National Standards Institute Accredited Process protecting due process rights.

FSC, SMaRT and Plaintiffs had no required due process notice and opportunity to be heard, and were injured from Defendants' unlawful SFI amendment. Defendants were maintaining and expanding their durable and substantial monopoly power by unilaterally, undemocratically, and unlawfully incorporating SFI as a substantive LEED amendment without required due process.

Importantly, this SFI substantive unilateral amendment to LEED, was contrary to the preceding LEED V4 votes of some 20,000 US Green Building Council (USGBC) Members / LEED advocates refusing to incorporate SFI into LEED because:

- FSC has been documented as protective of the forest.

- SFI is industry dominated – it was founded by logging interests, has been funded by logging interests, and is governed by logging interests – without the environmental group support like for FSC.

- Repeated photographs of negligent SFI certified clearcuts on very steep slopes causing substantial erosion and property damage, are Lacey Act strict criminal illegal logging violations. Also, USGBC Members and all other interested and affected parties including Plaintiffs, had no required notice and opportunity to be heard of the unilateral and substantive SFI Amendment to LEED.

$50 Million Treble Damage Award Requested. According to Defendant, it certifies about $500 billion / yr. of buildings in the US. About another $500 billion / yr. is estimated in certifications outside the US which has been Defendant's highest growth market over the last five years, with also according to Defendant, over 150 ongoing non - US projects as of 2016. FSC is a $40 billion / yr. industry according to the peer-reviewed *Green Bond Business Case (*2015) released at the NYSE, and LEED as the dominant global building standard can easily under cut FSC certifications for 2016- 2017 in half causing $20 billion in damage since the building industry is the World's largest and uses the most wood. SFI's wood industry certification is quick because it was documented as far less rigorous than FSC by Perkins+Will, the leading global green building product specifier and USGBC Member *(Criteria for the Identification of Leadership Standards for Sustainable Forestry 2010).* Perkins+Will has over 1,000 USGBC LEED Accredited Professionals, likely more than any other USGBC Member. It is widely recognized that FSC's rapid growth was from the 1998 duly voted on / approved FSC LEED Credit, and the some 34 States, over 200 cities, 12 Federal Agencies, and projects in 150 other countries that adopted LEED. The unilateral, undemocratic SFI amendment occurred automatically for all of these jurisdictions and entities that adopted LEED with no required notice and opportunity to be heard by these primarily affected parties. Accordingly, the $50 million requested is highly likely far below actual damages.

The SFI Industry has substantial, well-funded marketing resources that will continue to promote LEED SFI standard, far in excess of marketing financial resources of FSC, SMaRT and other Plaintiff environmental partners.

The adverse effects to FSC and SMaRT are to market share, revenue, needed market certifications, additional market adoptions including the capital markets, and brand value. There is enormous, economically damaging market confusion incurring irreparable harm from the non-consensus,

undemocratic LEED SFI issuance and accompanying, extensive industry PR campaign.

COUNT IV
Copyright Infringement / Piracy

Consensus standards / codes are copyright protected by statute and case law interpreting the statute as documented above by ANSI citing many cases, and as set forth by the seminal 5th Circuit Case *Southern Building Code Congress International (SBCCI) v. Veek*, denied review by the Supreme Court: *"As the organizational author of original works, SBCCI indisputably holds a copyright in its model building codes. See 17 U.S.C. 102(a). Copyright law permits an author exclusively to make or condone derivative works and to regulate the copying and distribution of both the original and derivative works. 17 U.S.C. 106."* *Veeck v. Southern Building Code Congress International, Inc.*, 293 F.3d 791, 804 (5th Cir. 2002), *cert. denied*, 539 U.S. 969 (2003).

Importantly, this Court in *ASTM v. Public Resource,* No. 13-cv-1215 (TSC, Feb. 2, 2017) clearly ratified that consensus standards like RELi are protected by copyright including §102(b) of the Copyright Act:

> *"[T]he court rejects the argument that voluntary consensus standards, such as those here, are analogous to a list of ingredients or basic instructions in a recipe, or a series of yoga poses, as in the cases cited by Defendant. Not only is there a vast gulf between the simplicity of an ingredient list and the complexity of the standards, but, more importantly, the standards plainly contain expressive content.*
>
> *The standards in these cases contain expression that is certainly technical but that still bears markings of creativity. As the Supreme Court instructed in Feist, "the requisite level of creativity is extremely low; even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, 'no matter how crude, humble or obvious' it might be." 499 U.S. at 345 (quoting 1 M. Nimmer & D. Nimmer, Copyright§ 1.08(C)(1) (1990)). Moreover, as Defendant conceded, there are many possible forms of expression through which the technical material in the standards could be conveyed, and the volunteer and association members who collectively author the standards "debate wording in the standards." (Def. Br. at 32 (ASTM ECF No. 121)). Thus, however "humble" or "obvious" Defendant finds the Plaintiffs' creative choices, the standards still bear at least the "extremely low" amount of creativity required by the Supreme Court.* *Id.* at 17-18.

This Court held in *ASTM* that the copyright protections of consensus standards like RELi, prevent any person or entity "*from copying their [consensus standards] written descriptions of the procedures described in those standards*." *Id*. at 19. In contrast, Plaintiffs are not seeking to block Defendants' use of the procedures described in RELi, and Integrative Process. *"In fact, use of the procedures described is the entire purpose of such voluntary consensus standards*." *Id*.

Clearly Defendants' copyright / piracy violation prohibited by this Court in *ASTM,* are Defendants' wholesale copying of the written descriptions from Plaintiffs' MTS / CMP RELi and Integrative Process Consensus Standards documented extensively in EXHIBIT 3, and are *per se* violations. Defendants' wholesale copying evidenced in EXHIBIT 3 by Defendants' use of Plaintiffs' Integrative Process Standard as Defendants' "Reference Standard" for both LEED Resilience Standards as well as Defendants' extensive multiple page LEED "Integrative Design Credit" as demonstrated in EXHIBIT 3 including the Venn Diagram.

In 2014 testimony before Congress, ANSI reiterated this legal requirement to respect copyright protection of standards pursuant to the copyright statute: *" Every standard is a work of authorship and, under U.S. and international law, is copyright protected* [citing 17 U.S.C.], *giving the owner certain rights of control and remuneration that cannot be taken away without just compensation*." *Written Testimony of the American National Standards Institute before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet Hearing on "The Scope of Copyright Protection" Jan. 14, 2014,* by Patricia Griffin, ANSI General Counsel.

Further, pursuant to *The Takings Clause of the Constitution,* consensus Standards such as RELI, maintain enforceable copyright protection even where adopted by government, and a contrary ruling has not been reached by the Supreme Court. *Practice Management v. AMA,* 121 F. 3d 516 (9th Cir. 1997, emphasis in original.

Defendant's actions go beyond just infringement in standards. The facts herein concern both antitrust and intellectual property protection in standard setting that prescribes three levels of duties for Defendants:

1. The duty to provide due process including fairness in its issuance of the LEED Resilience Standard as a matter of right to interested and affected parties. From the facts and law of Count I above, Defendant provided no due process in issuance of the LEED Resilience Standard.

2. The duty to provide due process in standard setting so that interested and affected parties with intellectual property rights at stake are treated fairly. This Infringement / Piracy Count II covers this issue. Guidance on avoiding intellectual property right infringement in standard-setting provided by Venable LLP, stresses that the standard developer should ensure the standard-setting process was fair so intellectual property rights are protected:

> *"a. Has there been notice to proper parties?*
> *b. Have everyone's views been aired?*
> *c. Is there transparency and openness? Open standards are consensus–based, transparent standards.*
> *d. Is there a procedure for making one's views known, responding, changing vote?*
> *e. Is the process protected against "hijacking" by one or a few industry leaders? Is there a balance of interests? (No one in group should dominate).*
> *f. Has consensus been achieved? Consensus is not necessarily unanimity – it just means that everyone gets an opportunity to comment, be considered, and be notified of the outcome by group*
> *g. Is there a sound technical basis for adopting a particular standard and have these technical justifications been articulated?"* (*Legal Issues Affecting Standard Setting: Antitrust and Intellectual Property* at 6-7, Apr. 2004).

The LEED Resilience Standard did not follow any of these enumerated due process procedures.

3. The duty to avoid infringement during standard-setting in defining standard contents. Infringement / Piracy Count II covers this issue, and as shown as follows, there was piracy / infringement based on the procedural facts of prior access to RELi including Defendants' participation in the RELi process, conference call with the RELi National Consensus Committee Chairman transmitting the RELi standard, and the facts of substantial similarity of standards' contents.

Procedurally, the RELi consensus standard was approved first with Defendant's staff participation in the process at the National Public Meeting at JPMorgan's Wall Street Offices in 2009. Defendant also had access to RELi from the September 2014 National Public Meeting on RELi resilience amendments with notice and RELI Standards' access provided to many thousands of interested and affected parties.

Further, Defendant's August 2015 requested conference call access to Plaintiffs' consensus standard, was conducted under the premise of *"coordination"* as expressed by Defendants' LEED Resilience Standard leaders. Plaintiffs' RELi National Consensus Committee Chairman in good faith provided this access as documented in Fact 6 above, but was not provided an opportunity to participate in Defendant's subsequently announced LEED Resilience Standard, because it was undemocratic / non-

consensus, unilateral with Standard development conducted in secret by Defendants and simply announced with absolutely NO required due process.

If the RELi National Consensus Resilience Standard Chairman had been given an opportunity to participate in the LEED Resilience Standard development, in contrast to just providing information and contents on RELi at the request of the LEED Resilience Standard leaders, he would have been able to discuss the fact that RELi is protected by copyright and that the issues being considered by the LEED Resilience Committee, were already decided in a national consensus vote of RELi approval and could be amended if the LEED Committee had suggestions. In fact the RELi National Consensus Committee Chairman is an employee of Perkins+Will, a leading Member of Defendants, who achieved the prestigious *LEED Fellow* distinction awarded by Defendant.

Defendants' subsequent October 2015 issuance of a *substantially similar* non-consensus standard was noted by an *ordinary observer* as documented in Fact 8 above in Section II of this Complaint, meeting the legal test of piracy / infringement.

Any attempt by Defendant at summary judgment is barred. The test for infringement in the DC Circuit is whether the works are "*substantially similar"* by an *"ordinary observer"* set forth in *Atkins v. Fischer,* 331 F.3rd 988 (DC Cir. June 20, 2013), where summary judgment for the Defendant is *"appropriate only 'if the works are so dissimilar as to protectable elements that no reasonable jury could find for the plaintiff on the question of substantial similarity.'* " *Sturdza v. United Arab Emirates,* 281 F.3d 1287 at 1297 (D.C.Cir.2002) (*cited in Atkins*). This evidence set forth by an ordinary observer of the LEED Resilience Standard and RELi in Fact 8 above in the email quoted from BuildingGreen, shows that at a minimum, these Standards are not dissimilar: *"it seems like there is a lot of similarity there."* Moreover, Charts 2 and 3 in EXHIBIT 3 and Fact 10 above in this Complaint Section II, documents the substantial similarity of the Standards.

Accordingly, Plaintiffs believe the facts and law show that any summary judgment for Defendants is barred.

The subsequent non-consensus LEED Resilience Standard infringes on the National Consensus RELi Resilience Standard as *Substantially Similar*. Demonstrating infringement is prescribed by *Atkins*, where the DC Circuit test is *"substantially similar by an ordinary observer*" and that the similarities (not differences) are what the focus of the examination is*:*

> *"The Copyright Act defines derivative works as those "based upon" the copyrighted work. 17 U.S.C. § 101. Courts interpret the Act to mandate that derivative work that is "substantially similar" to the original work upon which it is based is an infringement. E.g., Sturdza v. United Arab Emirates, 281 F.3d 1287 (D.C.Cir.2002). Because substantial similarity is an extremely close question of fact, summary judgment has traditionally been frowned upon. Id. at 1296. The question is whether "an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work." Hamil America, Inc. v. GFI, 193 F.3d 92, 100 (2d Cir.1999). Judge Learned Hand previously described the test as whether the ordinary observer, "unless he set out to detect the disparities, would be disposed to over look them, and regard their aesthetic appeal as the same." Id. (quotation omitted). When determining similarity, courts are to look at the "total concept and feel" of the designs. Id. at 102. When comparing the designs, it is not sufficient to dissect separate components and dissimilarities. The original way that the author "selected, coordinated, and arranged the elements" of her work is the focus of the court. Id. at 103. Although all derivative works have differences from the original, it is the similarities, rather than the differences, that inform whether the "total concept and feel" of the works and their "aesthetic appeal" is the same. Knitwaves, Inc. v. Lollytogs Ltd., 71 F.3d 996, 1004 (2d Cir.1995).*

The common elements of the LEED resilience Standard are the same as RELi as shown in Fact 10 above and Charts in EXHIBIT 3:

- Identical Scope
- Identical Prerequisite: Plaintiffs' MTS / CMP Integrative Process Standard
- Identical Content
- Assessment & Planning for Resilience
    - Assess Hazards
    - Climate Change Assessment
    - Emergency Planning
- Design for Enhanced Resilience
- Floods, tornados, high winds, hurricanes, earthquakes, tsunami, wildlife, drought, landslides, terrorism
- Passive Survivability
    - Thermal Resilience
    - Backup Power
    - Access to Potable Water

Charts in EXHIBIT 3 document in a side-by-side comparison, the seven major sections of the standards showing both many key common elements / overlap, and many key identical words. Further, the prerequisite / reference standard for both the LEED Resilience Standard and the RELi Resilience Standard, is one ANSI consensus standard: the MTS / CMP RELI ANSI Integrative Process Standard which constitutes substantial similarity and piracy *per se*.

In conclusion, the *"total concept … of the works … is the same"* constituting an infringement based on the copyright statute as defined and quoted above by *Atkins* and *ASTM*. Further, the substantial copying of textual material protected from infringement as shown by the LEED Resilience Standard, is not a fair use of copyright protected material such as RELi. *Radji v. Khakbaz*,607 F. Supp. 1296 (D.D.C. 1985), *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985).

Plaintiffs are presumed to suffer irreparable injury when its work is infringed. Therefore, it is not necessary for a copyright owner to provide overwhelming evidence demonstrating irreparable injury. *Health Ins. Ass'n of Am. v. Goddard Claussen Porter Novelli,* 211 F. Supp. 2d 23, 28 (D.D.C. 2002), *Substantial Similarity in Copyright Law* §3:3.3 (Osterberg & Osterberg PLI 2015).

COUNT V
Demand for Restraining Order & Preliminary Injunction

Pursuant to Federal Civil Procedure Rule 65, and precedent by this Court, the test for injunctive relief is set forth in *Winstead v. EMC Mortgage*, No. 09-0997 (RMU) US District Court, D.C. (June 5, 2009) at 3 where the movant demonstrates:

> *"[1]that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008) (citing Munaf v. Geren, 128 S. Ct. 2207, 2218-19 (2008))."*

There is a substantial indication of likely success on the merits documented in the facts set forth in this Complaint. As shown in Count I above, Defendants' undemocratic nonconsensus LEED Resilience and SFI standards provided no required due process for Plaintiffs as a *per se* violation of antitrust, as well as precluding an evaluation of intellectual property infringement issues to interested and affected parties including Plaintiffs during secret, unilateral LEED Resilience Standard development.

Further, an unsolicited ordinary observer informed Plaintiffs that the LEED Resilience Standard is substantially similar to the RELi Standard. Evaluations in Charts 2 & 3 in EXHIBIT 3 and Count II above of the textual similarities of the standards, show major provisions to be substantially similar. By requiring Plaintiffs' ANSI Integrative Process Standard as the overall Reference Standard for the LEED Resilience Standard, piracy is *per se* because Plaintiffs' Standard is also a RELi prerequisite. This is unlawful infringement, piracy, and appropriation from RELi.

The Second Part of this Court's Injunctive Relief Test is That There is Irreparable Harm. For copyright infringement, Plaintiffs are presumed to suffer irreparable injury when its work is infringed as shown herein. Detailed description of irreparable harm is documented above by the imminent likelihood that the LEED Resilience Standard with its substantial and durable monopoly power, can easily pre-empt RELi from the market. This precludes RELi's unique ability as the National Consensus Green + Resilient Bond Underwriting Standard from rapidly facilitating deployment of the available $70 trillion in assets by investors that want to buy these bonds, from partially paying for the existing $100 trillion in US resilience costs.

Further irreparable harm is suffered from the unilateral, undemocratic issuance of the SFI Standard with NO required due process that substantially impairs commercialization of the Lacey Act with the National Consensus Lacey Act Due Care Standard incorporating FSC as the primary standard.

Immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. Fed. R. Civ. P. 65. Also, Plaintiffs have made all reasonable efforts over 18 months by furnishing to the adverse party's attorney at the earliest practicable time, a copy of this Complaint with follow-up conversations, communications, and meetings with Defendant and counsel in an attempt to resolve this dispute.

The Balance of Equities Tip in Plaintiffs' Favor. Regarding the third prong of the injunctive relief test, this Court in Winstead states at 3: *"the court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Amoco Prod.*

Co. v. Gambell, 480 U.S. 531, 542 (1987)." The balance of the equities tip in Plaintiffs' favor due to the substantial economic and market benefits of a much needed National Consensus Resilience Standard to commercialize resilience and prevent S&P and Moody's credit rating downgrades required by law to warn investors of well documented, accelerating systemic damages, which could trigger a financial crisis. Progress on use of the national consensus standard can instill the needed market confidence to prevent the well-documented imminent threat of financial contagion. RELi can be the basis of much needed higher credit ratings and be the objective means to accurately and transparently label Green + Resilient Bonds to pay for the enormous US resilience costs and meet that substantial and pent-up investor demand for Green + Resilient Bonds.

Further, RELi as a consensus standard allows identification and elimination of correlative risk, whereby one resilience failure in an area, can shut down the entire region. For example, in using RELi at the Corpus Christi Hospital, the Hospital wanted to remain open in a Category 4 hurricane, but after using RELi's holistic checklist, determined that the Hospital could not because the City wastewater treatment plant would be shut down.

In contrast, such commercialization can fail due to well-documented antitrust risks from due process violations of non-consensus standards like LEED Resilience.

RELi has achieved important traction:

1. Has been successfully market tested by:

- JPMorgan
- The global real estate firms Jones Lang LaSalle and CB Richard Ellis
- The leading investor Transwestern
- Comerica Bank
- Argonne National Lab (resilience amendment)
- IBM Watson (resilience amendment)
- Federal Home Loan Banks
- OMB / White House Council on Environmental Quality (CEQ) / Dept. of Homeland Security (resilience amendment)
- State of Minnesota (resilience amendment)
- American Institute of Architects Minnesota (resilience amendment)

2. Was reviewed at National Public Meetings hosted by the Federal Reserve

3. Was peer-reviewed by Treasury and the Federal Reserve Board at the direction of Treasury Under Secretary Mary Miller and Federal Reserve Board Chairman Ben Bernanke

4. Was launched by the State of Minnesota and Plaintiffs in educational events (resilience amendment)

5. Is being used for higher credit ratings issued by Morningstar for Green Home Bonds being structured with Morgan Stanley by measuring increased bond cashflow.

6. National RELi Resilience Education for major US metropolitan areas starting with DC is ready to launch by Plaintiffs with IBM, Argonne National Lab, investment banks, insurance and reinsurance industries, and Office of Management and Budget (OMB) with OMB / CEQ taking the lead on resilience for all Federal Agencies. This education is providing those actions recommended to CEQ by its Bi-Partisan Resilience Task Force of 27 leading Governors, Mayors, and Tribal Officials:

- Metropolitan climate data and maps provided by Argonne National Lab
- Technical and financial resilience options through RELi
- Technical assistance in option selection by IBM Watson
- Financial incentives through green + resilient bond cheaper cost of capital and higher credit ratings as documented in the *Green Bond Business Case*
- Possible insurance discounts for owners certifying to RELi based on documented risk reduction, and prevention of S&P downgrades

The equities also balance in Plaintiffs' favor over the unilateral, undemocratic LEED SFI amendment with NO required due process substantially undermining FSC which in contrast was approved for LEED in 1998 in LEED's unanimous National Consensus vote, and ratified by repeated votes of Defendants' 20,000 Members to remain as the sole wood standard in LEED due to FSC's leadership nature protecting global forests.

This request for a Restraining Order and Preliminary Injunction is in the Public Interest due to the important work accomplished by Plaintiffs in providing a National Consensus Resilience Standard that can prevent S&P and Moody's Downgrades and resulting expected contagion and financial crisis, and provide higher credit ratings for urgently needed Green + Resilient Bonds. Further, FSC's important role to commercialize the Lacey Act as the lead Standard incorporated in the Lacey Act National Consensus

Due Care Standard.

The Supreme Court asserted a much broader authority for injunctions based on the government's obligation to protect the general welfare of the nation which the unanimous justices also asserted the courts' independent authority to rely on injunctions to prevent irreparable damage to public interests as well as private property. *In re Debs*, 158 U.S. 564 (1895).

Unlike in the Supreme Court's decision in *Winter v. NRDC*, 129 S. Ct. 365 (2008), where the public interest for injunctive relief in the Navy protecting national security outweighed harm to whales from sonar, Plaintiffs' work in developing and launching RELi provides a unique positive financial solution to stopping S&P and Moody's downgrades threatening global financial markets and society, and a consensus bond standard to access the needed $ trillions for resilience. Also, Plaintiffs work with FSC allows FSC to play the key role in Lacey Act commercialization protecting global forests from illegal logging.

These are unprecedented substantial benefits to the public interest including to financial markets and all aspects of society as documented in the peer-reviewed *Green Bond Business Case* released at the NYSE.

Antitrust test for an Injunction has been met: Defendant's conduct is causing and will further cause loss and damage, and the danger of irreparable loss or damage is immediate, thus a preliminary injunction may issue. Moreover, Defendants' conduct is willfully injuring competition in the market and to a wide variety of interested and affected consumers 15 U.S.C. §26.

COUNT VI
Award of Money Damages for Piracy of $935,910

Plaintiffs registered RELi in the Copyright Office in July 2017.

Plaintiffs have incurred actual damages from piracy calculated based on at least an estimated lost sales of 30 copies of RELi Resilience Standards which sell for $399. This is $11,970 in actual damages. Plaintiffs are also entitled to damages from harm to RELi's market value. *Fitzgerald Publishing Co, Inc. v. Baylor Publishing Co, Inc.*, 670 F. Supp. 1133, 1139 (E.D.N.Y. 1987):

> *"The primary measure for the recovery of actual damages under [Section 504(b)] is the extent to which the market value of the copyrighted work at the time of the infringement has been harmed or destroyed by the infringement."*

Plaintiffs have incurred market damages to RELi's progress through confusion and harm to Plaintiffs' brand and lost opportunities of an estimated $150,000 from Piracy and another $150,000 from antitrust as a result of infringement violations from non-consensus standard setting by Defendant.

Treble damages raise this amount to $935,910.

For example, confusion and lost opportunities have occurred at least from the following actions. Perkins+Will PR department worked to obtain an article in *GreenBiz* published on July 20, 2015 promoting the RELi Resilience Amendments as the National Consensus Standard. On December 15, 2015, GreenBiz published a similar article on the LEED Resilience Standard. The effect of this subsequent article was to confuse the market on resilience, negate the important PR efforts of Perkins+Will for RELi, and make it much harder to commercialize resilience.

On May 20, 2016, Plaintiffs and Defendants delivered presentations on RELi and the LEED Resilience Standard respectively, at the American Institute of Architects National Convention which is further confusing the market and irreparably harming RELi due to LEED's superior power as a $550 billion /yr. US industry.

In October 2016, Defendants conducted resilience workshops using the LEED Resilience Standard with the American Institute of Architects. Furthermore, these are just the marketing efforts that Plaintiffs are aware of from public sources, and the whole of the activity is undoubtedly much greater.

VI. DEMAND FOR JUDGMENT, COSTS & FEES

Pursuant to Fed. R. Civ. P. 54, Plaintiffs request award of all costs and attorneys fees. To date, attorneys fees of $261,000 have been incurred for 580 hrs. @ $450 / hr.

VII. CONDITIONS PRECEDENT ARE SATISFIED

All conditions precedent have been performed or have occurred.

VIII. CERTIFICATION & NOTICE TO DEFENDANT

Plaintiffs declare, verify, and certify under penalty of perjury, that the facts in this Complaint and Request for Restraining Order and Preliminary Injunction are true and are within the personal knowledge of the attorney filing this pleading.

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Notice of this Complaint and facts set forth have been provided via a copy of the Complaint to Defendant's attorney on May 16, 2016 in an effort to resolve this dispute consistent with Fed. R. Civ. P. 65(b).

IX. RELIEF REQUESTED

Plaintiffs respectfully request this Court:

1. Issue a Restraining Order prohibiting Defendant from initiating any further activity on the LEED Pilot / Resilience Standard and SFI LEED Pilot / Standard.
2. Conduct a hearing to require Defendant to pay $935,910 to Plaintiffs for infringement.
3. Find an award of $25 million in RELi treble damages against Defendant to create an independent "Resilience Fund" for qualified green building owners achieving the required legally binding certification of compliance to RELi.
4. Find an award of $23 million to Plaintiffs for RELi for antitrust treble damages.
5. Find an award of $50 million to Plaintiffs for FSC antitrust treble damages.
6. Find an award to Plaintiffs for all costs and attorneys fees of $256,000.

X. CONCLUSION: *How Should Courts Respond to the Rule of Law While Climate's Accelerating Systemic Damages Disrupt Society?*

The preceding resilience perils permanently threatening the economy and our social fabric are recognized as more controversial than abortion and gay rights. *Divided America*, AP's ongoing exploration of the economic, social and political divisions in American society, Aug. 14, 2016:

> *"WASHINGTON (AP) — Tempers are rising in America, along with the temperatures.*
>
> *Two decades ago, the issue of climate change wasn't as contentious. The leading U.S. Senate proponent of taking action on global warming was Republican John McCain. George W. Bush wasn't as zealous on the issue as his Democratic opponent for president in 2000, Al Gore, but he, too, talked of regulating carbon dioxide.*
>
> *Then the Earth got even hotter, repeatedly breaking temperature records. But instead of drawing closer together, politicians polarized.*
>
> * * *
>
> *Democrats (and scientists) became more convinced that global warming was a real, man-made threat. But Republicans and Tea Party activists became more convinced that it was — to quote the repeated tweets of presidential nominee Donald Trump — a 'hoax.' A Republican senator tossed a snowball on the Senate floor for his proof.*
>
> *When it comes to science, there's more than climate that divides America's leaders and people.*
>
> * * *
>
> *But nothing beats climate change for divisiveness.*
>
> *'It's more politically polarizing than abortion,' says Anthony Leiserowitz, director of the Yale Program on Climate Change Communication. 'It's more politically polarizing than gay marriage.' "*

What is not written about as frequently, but well known to the oil and chemical industry relying on carbon as its feedstock, is that the science of climate change concludes that the carbon based economy must go away in order to ensure a healthy Planet. This means that many tens of $ trillions of market share are at stake and this disruptive process will not succeed without an extraordinary fight by the threatened industries and their vast economic resources, acting in many respects like cornered animals.

Revenues to carbon based industries are starting to permanently decline according to Bloomberg and the credit rating agencies from about $5 trillion in carbon industry divestment in the last several years, the *Oil Death Spiral* with permanently declining oil revenues, substantial litigation and contingent liability for $100 trillion from climate investor fraud and US resilience costs, and substantial market acceleration of competing disruptive technologies with over $1.2 trillion / yr. in revenue: green

buildings, wind, solar, clean vehicles, electrification of the global supply chain, FSC Wood, and organic products *(Green Bond Business Case* 2015 released at the NYSE).

Ending slavery is the closest approximation of climate's costs to society. Like slavery, due to climate change and resilience costs, society is dividing and becoming a more perilous and unsafe place, e.g., accelerating extreme droughts being associated to underlying causes of warfare and mass migration, much like slavery caused the US in the 1830's both North and South, to undergo extreme mob violence unstopped by the rule of law.

Lincoln wrote about these effects that also predominate today, in the *Perpetuation of Our Political Institutions*:

> *"Accounts of outrages committed by mobs form the every-day news of the times. They have pervaded the country from New England to Louisiana; they are neither peculiar to the eternal snows of the former nor the burning suns of the latter; they are not the creature of climate, neither are they confined to the slave-holding or the non-slaveholding States. Alike they spring up among the pleasure-hunting masters of Southern slaves, and the order-loving citizens of loving habits.*
>
> * * *
>
> *But you are perhaps ready to ask, 'What has this to do with the perpetuation of our political institutions?' I answer, 'It has much to do with it.'*
>
> * * *
>
> *Thus, then, by the operation of this mobocratic spirit which all must admit is abroad in the land, the strongest bulwark of any government, and particularly of those constituted like ours, may eventually be broken down and destroyed – I mean the attachment of the people.*
>
> * * *
>
> *The question recurs, 'How shall we fortify against it?' The answer is simple. Let every American, every lover of liberty, every well-wisher to his posterity swear by the blood of the Revolution never to violate in the least particular the laws of the country, and never tolerate their violation by others." The Perpetuation of Our Political Institutions,* Address before the Young Men's Lyceum of Springfield, Jan. 27, 1838.

As an IRC §501(c)(3) public charity, USGBC is required to act in the public interest. Further, as the Supreme Court ruled, an *extra-governmental agency regulating and restraining interstate commerce* like USGBC with its LEED Standard controlling an estimated $1 trillion / year in construction, must protect competition. Moreover, like government regulation, USGBC must respect Constituionally protected due process rights of interested and affected parties which is the required norm for voluntary standard setting organizations like USGBC. However, USGBC has declined to so act for resilience or SFI wood.

The question of the public interest governing resilience and global forest integrity through FSC Wood and the Lacey Act global illegal logging protections, is a very important one including its critical

effect on maintaining the economic and societal norms and concomitant health of the Planet currently enjoyed.

We believe the public interest is best served by an approach protecting the rule of law including due process and property rights of interested and affected parties, thus providing an opportunity to ensure resilience and illegal logging are successfully commercialized and can ameliorate the accelerating, systemic, and unprecedented damages to society.

By not adhering to this principle, the undemocratic, nonconsensus LEED Resilience and SFI Standards undermine the fabric of society and the law and should be corrected immediately before causing irreparable harm to society since it cannot be successfully commercialized over the long term due to its undemocratic nature, but it may take the market years before it is struck down. It took the chemical / oil and wood industries seven years to take control of LEED V4 materials credits.

Today, society does not have the luxury of time to repeat that error.

Respectfully Submitted,

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Dated: July , 2017

Counsel for Plaintiffs

EXHIBITS

1. **Massachusetts existing, partial resilience** costs of $1.6 trillion (separate Plaintiffs' Memorandum)

2. **Pennsylvania existing, partial resilience costs of $5.3 trillion** (separate Plaintiffs' Memorandum)

3. **Identical contents of Defendants' Resilience Standard and RELi National Consensus Resilience Standard** (separate document)

4. **Memorandum of Law & Fact prepared for and reviewed by Attorneys General detailing Defendants' violation of procedural due process** and status as an extra-governmental agency regulating and restraining interstate commerce, and a substantial and durable monopoly (separate document)

5. **RELI September 16, 2014 National Public Meeting Invite** Sent to 5,000 Interested & Affected Parties and Published by Leading Trade Publications as Required by MTS' American National Standards Institute Accredited Consensus Process: (see Invite Below)

6. RELi National Consensus Standards: http://mts.sustainableproducts.com/RELi

- RELi Resilience Action List (amendment)
- RELi Green + Resilient Building & Homes Standard (amendment)
- RELi Green + Resilient Infrastructure Standard (amendment)
- RELi Green Building & Homes Underwriting Standards
- RELi Sustainable Manufacturing Underwriting Standard

7. LEED Resilience Standard: http://mts.sustainableproducts.com/USGBC

8. Enormous & Unprecedented Economic Implications of this Legal Action (separate document)