1	Andrew E. Monach (CA SBN 87891)	
2	amonach@mofo.com   Nicholas S. Napolitan, (CA SBN 251762)	
3	nnapolitan@mofo.com	
4	MORRISON & FOERSTER LLP 425 Market Street	
5	San Francisco, CA 94105	
6	Telephone: 415-268-7000   Facsimile: 415-268-7522	
7		
8	Attorneys for Defendant Sheet Metal and Air Conditioning Contractors' National Association, Inc.	
9	Contractors' National Association, Inc.	
	UNITED STATES DISTRICT COURT	
10	NORTHERN DISTRICT OF CALIFORNIA	
11 12		
13	PUBLIC.RESOURCE.ORG	) Case No. cv-13-0815 (SLC)
		)
14	Plaintiff,	
15	VS.	DECLARATION OF JON L. FARNSWORTH IN PARTIAL
16	SHEET METAL AND AIR	OPPOSITION TO PLAINTIFF'S
17	CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION, INC.	MOTION FOR DEFAULT JUDGMENT AND IN OPPOSITION
18	Defendant.	TO REQUEST FOR ATTORNEYS'
19	Defendant.	FEES
20		
21	I, Jon L. Farnsworth, declare pursuant to 28 U.S.C. § 1746 as follows:	
22	1. I am an attorney for the Sheet Metal & Air Conditioning Contractors'	
23		
24	National Association ("SMACNA").	
25	2. I communicated with Plaintiff's attorney in this matter concerning	
26	Plaintiff's unauthorized publication of SMACNA's copyrighted 1985 HVAC Air	
27		
28	Duct Leakage Test Manual (hereafter, the "Disputed Copyrighted Publication").	
	Declaration of Jon Farnsworth in Opposition to Motion for Default Judgment Case No. C-13-0815	
	sf-3296536	Docke

- 3. As shown in Exhibit 1 of the May 6, 2013 Declaration of Corynne McSherry (Doc. No. 18), I exchanged correspondence with Plaintiff's attorney and informed her of SMACNA's intention to default (*i.e.*, not file a responsive pleading to Plaintiff's Complaint for declaratory relief). SMACNA's intention to default was based on its goal of ending the dispute without further cost to either party. SMACNA intended to default even though I believed, for the reasons stated in my prior correspondence with Plaintiff (*see e.g.*, Complaint at Ex. C) and the memorandum of law being filed with this Declaration, that SMACNA's copyright in the Disputed Copyrighted Publication was valid and enforceable.
- 4. Plaintiff did not request any license to use the Disputed Copyrighted Publication.
- 5. Plaintiff did not request that SMACNA enter into a covenant not to sue Plaintiff related to the Disputed Copyrighted Publication.
- 6. As the Declaration of Vince Sandusky confirms, had Plaintiff requested such relief, it would have been provided by SMACNA. SMACNA's goal was to simply exit this litigation at the lowest cost possible.
- 7. I expected that my email to Plaintiff's counsel would cease SMACNA's involvement in this matter. However, after being served with a voluminous brief and a request for attorneys' fees, I contacted counsel in California to ensure the Court had a complete understanding of SMACNA's: a) well-founded belief in its legal rights, b) good-faith efforts to exit the litigation at the lowest cost, and c) attempts to minimize disruption to the Court.

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

Executed this  $\frac{17}{2}$  day of June, 2013.

Jon L. Farnsworth