

1 Andrew E. Monach (CA SBN 87891)  
2 [amonach@mofo.com](mailto:amonach@mofo.com)  
3 Nicholas S. Napolitan, (CA SBN 251762)  
4 [nnapolitan@mofo.com](mailto:nnapolitan@mofo.com)  
5 MORRISON & FOERSTER LLP  
6 425 Market Street  
7 San Francisco, CA 94105  
8 Telephone: 415-268-7000  
9 Facsimile: 415-268-7522

10 Attorneys for Defendant  
11 Sheet Metal and Air Conditioning  
12 Contractors' National Association, Inc.

13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 PUBLIC.RESOURCE.ORG

16 Plaintiff,

17 vs.

18 SHEET METAL AND AIR  
19 CONDITIONING CONTRACTORS'  
20 NATIONAL ASSOCIATION, INC.

21 Defendant.

)  
)  
) Case No. cv-13-0815 (SLC)  
)  
)  
)

) **DECLARATION OF JON L.**  
) **FARNSWORTH IN PARTIAL**  
) **OPPOSITION TO PLAINTIFF'S**  
) **MOTION FOR DEFAULT**  
) **JUDGMENT AND IN OPPOSITION**  
) **TO REQUEST FOR ATTORNEYS'**  
) **FEES**  
)  
)

22 I, Jon L. Farnsworth, declare pursuant to 28 U.S.C. § 1746 as follows:

23 1. I am an attorney for the Sheet Metal & Air Conditioning Contractors'  
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 Duct Leakage Test Manual (hereafter, the "Disputed Copyrighted Publication").  
28

1           3.     As shown in Exhibit 1 of the May 6, 2013 Declaration of Corynne  
2     McSherry (Doc. No. 18), I exchanged correspondence with Plaintiff's attorney and  
3     informed her of SMACNA's intention to default (*i.e.*, not file a responsive pleading  
4     to Plaintiff's Complaint for declaratory relief). SMACNA's intention to default  
5     was based on its goal of ending the dispute without further cost to either party.  
6     SMACNA intended to default even though I believed, for the reasons stated in my  
7     prior correspondence with Plaintiff (*see e.g.*, Complaint at Ex. C) and the  
8     memorandum of law being filed with this Declaration, that SMACNA's copyright  
9     in the Disputed Copyrighted Publication was valid and enforceable.  
10    

11           4.     Plaintiff did not request any license to use the Disputed Copyrighted  
12    Publication.  
13    

14           5.     Plaintiff did not request that SMACNA enter into a covenant not to sue  
15    Plaintiff related to the Disputed Copyrighted Publication.  
16    

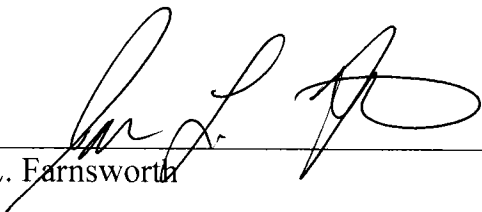
17           6.     As the Declaration of Vince Sandusky confirms, had Plaintiff  
18    requested such relief, it would have been provided by SMACNA. SMACNA's goal  
19    was to simply exit this litigation at the lowest cost possible.  
20    

21           7.     I expected that my email to Plaintiff's counsel would cease  
22    SMACNA's involvement in this matter. However, after being served with a  
23    voluminous brief and a request for attorneys' fees, I contacted counsel in California  
24    to ensure the Court had a complete understanding of SMACNA's: a) well-founded  
25    belief in its legal rights, b) good-faith efforts to exit the litigation at the lowest cost,  
26    and c) attempts to minimize disruption to the Court.  
27    

28    494162.1

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

3  
4 Executed this 17<sup>th</sup> day of June, 2013.

5  
6   
Jon L. Farnsworth