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8 Attorney for Plaintiff
 9 ROBERT JACOBSEN

10 UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 ROBERT JACOBSEN,

14 Plaintiff,

15 v.

16 MATTHEW KATZER, et al.,

17 Defendants.

No. C-06-1905-JSW

**DECLARATION OF JOHN MICHAEL
 PLOCHER IN OPPOSITION TO
 DEFENDANTS MATTHEW KATZER
 AND KAMIND ASSOCIATES, INC.'S
 SPECIAL MOTION TO STRIKE
 PLAINTIFF'S LIBEL CLAIM**

Date: Aug. 4, 2006
 Time: 9:00 a.m.
 Courtroom: 2, 17th Floor
 Judge: Hon. Jeffrey S. White

21 I, John Michael Plocher, based upon personal knowledge hereby declare as follows:

22 1. I am a Railroad enthusiast living in San Jose, California. In my non-work related hobby
 23 time, I am an active member of the JMRI community, where I help with webmaster
 24 activities, architectural and usability design and testing. I have been involved with this
 25 project for about 5 years.

26 2. The JMRI Project is a group of software developers who write code as a hobby. This is an
 27 instance of what is commonly called "an open source project". Such community driven
 28

1 projects are characterized by being non-proprietary and open to anyone who wishes to
2 contribute. In particular, open source projects such as JMRI are not "owned", "controlled"
3 or "sponsored" by a corporate entity.

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5 3. I do not work for the U.S. Department of Energy, nor does the U.S. Department of Energy
6 sponsor the project.

7
8 4. I've known Matt Katzer for about 3 years. He knows about our project, and has been
9 involved in it as a member of the JMRI project's "Yahoo Groups" email discussion list for
10 many years. While I have never met him in person, our public and private email
11 correspondence has never given him the impression that the JMRI project was sponsored by
12 any entity other than our group of hobbyists and software developers. In fact, until this
13 legal action was publicized, I was unaware that Robert Jacobsen worked for the U.S.
14 Department of Energy.

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16 5. At the conferences, I have never said, heard or seen anything that suggests JMRI software is
17 or was sponsored by the U.S. Department of Energy.

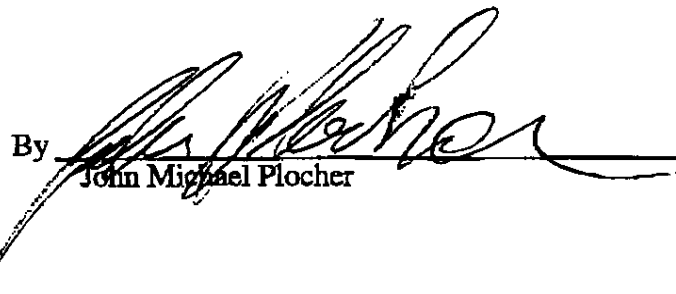
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19 6. I have never heard of anyone (other than Matt Katzer, in this claim) who believed that the
20 U.S. Department of Energy sponsored the JMRI project.

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22 7. As indicated by Matt's email to the project mailing lists on 6 Feb, 2004
23 (<http://groups.yahoo.com/group/jmriusers/message/4756>), Matt was certainly aware at that
24 time of the open source nature of the JMRI project, which includes the DecoderPro
25 functionality being discussed.

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27 I declare under penalty of perjury under the laws of the United States of America that the
28 foregoing is true and correct to the best of my knowledge.

Executed this 7th day of June, 2006.

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By 
John Michael Plocher