

1 PAUL J. ANDRE, Bar No. 196585
 (pandre@perkinscoie.com)
 2 LISA KOBIALKA, Bar No. 191404
 (lkobialka@perkinscoie.com)
 3 ESHA BANDYOPADHYAY, Bar. No. 212249
 (ebandyopadhyay@perkinscoie.com)
 4 SEAN M. BOYLE, Bar No. 238128
 (sboyle@perkinscoie.com)
 5 PERKINS COIE LLP
 101 Jefferson Drive
 6 Menlo Park, CA 94025
 Telephone: (650) 838-4300
 7 Facsimile: (650) 838-4350
 8 Attorneys for Defendant
 The Freecycle Network, Inc.
 9

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **OAKLAND DIVISION**
 13

14 FREECYCLESUNNYVALE,
 a California unincorporated association,
 15
 Plaintiff,
 16

17 v.

18 THE FREECYCLE NETWORK, INC.,
 an Arizona corporation,
 19
 Defendant.
 20

21 THE FREECYCLE NETWORK, INC.
 an Arizona corporation,
 22
 Counterclaimant,
 23

24 v.

25 FREECYCLESUNNYVALE,
 a California unincorporated association,
 26
 Counterdefendant.
 27
 28

CASE NO. C 06-00324 CW

**THE FREECYCLE NETWORK, INC.'S
 NOTICE OF ADMINISTRATIVE
 MOTION AND MOTION FOR LEAVE
 TO FILE DOCUMENTS UNDER SEAL**

Date: September 27, 2007
 Time: 2:00 p.m.
 Before: Honorable Claudia Wilken
 Location: Courtroom 2

NOTICE OF MOTION AND MOTION

TO PLAINTIFF FREECYCLESUNNYVALE AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that The Freecycle Network, Inc. (“The Freecycle Network”)

hereby move for an order sealing the following document:

1. **EXHIBITS 1, 3-14, 16, 18-20, 26, 28-31, 33-39, 43-48, 50-64, 66-72, 74, 76-94, 97-101, AND 103-109 TO THE DECLARATION OF LISA KOBIALKA IN SUPPORT OF THE FREECYCLE NETWORK, INC.’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY ADJUDICATION UNDER FED.R.CIV.P. 56;**
2. **EXHIBITS 5-6, 8-11, 13-16, 18-21 AND 23-43 TO THE DECLARATION OF DERON BEAL IN SUPPORT OF THE FREECYCLE NETWORK, INC.’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY ADJUDICATION UNDER FED.R.CIV.P. 56.**

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Pursuant to Federal Rule of Civil Procedure 26(c), Civil Local Rules 7-10, 7-11, and 79-5, The Freecycle Network makes this Miscellaneous Administrative Request for an Order allowing The Freecycle Network to file under seal certain exhibits to the declarations of Lisa Kobialka and Deron Beal.

Specifically, The Freecycle Network requests that the Court file the following documents set forth below under seal:

1. **EXHIBITS 1, 3-14, 16, 18-20, 26, 28-31, 33-39, 43-48, 50-64, 66-72, 74, 76-94, 97-101, AND 103-109 TO THE DECLARATION OF LISA KOBIALKA IN SUPPORT OF THE FREECYCLE NETWORK, INC.’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY ADJUDICATION UNDER FED.R.CIV.P. 56;**
2. **EXHIBITS 5-6, 8-11, 13-16, 18-21 AND 23-43 TO THE DECLARATION OF DERON BEAL IN SUPPORT OF THE FREECYCLE NETWORK, INC.’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY ADJUDICATION UNDER FED.R.CIV.P. 56.**

Good cause exists to justify the filing of the above pleadings and exhibits under seal because these pleadings and exhibits contain specific confidential competitive and business information of The Freecycle Network and/or Freecyclesunnyvale. The Freecycle Network

1 and/or Freecyclesunnyvale could be irreparably harmed if such confidential information is made
2 available to the public.

3 II. Argument

4 A. Good Cause Exists to Protect The Freecycle Network and 5 Freecyclesunnyvale's Confidential Business and Competitive Information.

6 Upon a showing of good cause, a court may make any order that justice requires to protect
7 a party, including an order "that a trade secret or other confidential research, development, or
8 commercial information not be revealed or be revealed only in a designated way."
9 Fed.R.Civ.P. 26(c)(7). In particular, a court may order that court documents be filed under seal
10 where such good cause is shown to override the public's right to access. *See, San Jose Mercury*
11 *News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir. 1999). The factors relevant to a
12 determination of whether the presumption of access is overcome include "the public interest in
13 understanding the judicial process and whether disclosure of the material could result in improper
14 use of the material for . . . infringement upon trade secrets." *Hagestad v. Tragesser*, 49 F.3d
15 1430, 1433-34 (9th Cir. 1995) ("Every court has supervisory power over its own records and files,
16 and access has been denied where court files might have become a vehicle for improper
17 purposes.") (citations and quotations omitted).

18 Good cause exists for this Court to grant this Miscellaneous Administrative Request. The
19 Freecycle Network seeks to file under seal only the specific documents or portions of documents
20 which contain The Freecycle Network's and/or Freecyclesunnyvale's confidential business and
21 competitive information. If any of this confidential information is not sealed and is permitted to
22 be in the public record, The Freecycle Network and/or Freecyclesunnyvale may suffer irreparable
23 harm if competitors have access to such information.

24 B. Request For Filing Under Seal Is Narrowly Tailored.

25 This Miscellaneous Administrative Request should be granted because it is narrowly
26 tailored to cover only the documents to be filed for which good cause for filing under seal exists.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. Conclusion

As set forth above, The Freecycle Network has shown good cause for this request to file the above-referenced documents containing The Freecycle Network's and/or Freecyclesunnyvale's confidential business and competitive information under seal. Further, this request is narrowly tailored to seal only confidential information designated by The Freecycle Network. For these reasons, The Freecycle Network respectfully requests that the Court grant their Miscellaneous Administrative Request in the form of the [Proposed] Order Allowing Confidential Information to be Filed under Seal filed herewith.

DATED: September 6, 2007

PERKINS COIE LLP

By /s/ Lisa Kobialka
Paul J. Andre
Lisa Kobialka
Esha Bandyopadhyay
Sean Boyle
Attorneys for Defendant
THE FREECYCLE NETWORK, INC.