

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**
NORTHERN DISTRICT OF CALIFORNIA
 11 **OAKLAND DIVISION**

12
 13 FREECYCLESUNNYVALE,
 a California unincorporated association,

14 Plaintiff,

15 v.

16 THE FREECYCLE NETWORK, INC.,
 an Arizona corporation,

17 Defendant.

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

20 Counterclaimant,

21 v.

22
 23 FREECYCLESUNNYVALE,
 a California unincorporated association,

24 Counterdefendant,

CASE NO. C 06-00324 CW

**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**

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

25
 26 I, LISA KOBIALKA, declare:

27 1. I am an attorney with the law firm of Perkins Coie LLP, counsel of record for

28 Defendant and Counterclaimant The Freecycle Network, Inc. ("The Freecycle Network"). I

1 have personal knowledge of the facts set forth in this declaration and can testify competently to
2 those facts.

3 2. On behalf of The Freecycle Network, Inc. ("The Freecycle Network"), I have
4 been in contact with an expert who was willing to provide an expert report on behalf of The
5 Freecycle Network on the timeline set forth in the Court-approved schedule. The expert report
6 was to include the subject matter of Plaintiff's Motion for Summary Judgment, Or In The
7 Alternative, Summary Adjudication ("Plaintiff's Motion"). On August 24, 2007, the date of this
8 Court's Order Granting Plaintiff's Motion for Leave To File a Motion For Reconsideration And
9 Granting The Motion For Reconsideration, I spoke with this expert, who informed me that he
10 was unable to provide a declaration by September 6, 2007, the date by which the Court ordered
11 The Freecycle Network to file its opposition due to previous plans.

12 3. Attached hereto as Exhibit 1 is a true and correct copy of an email bearing Bates
13 number FN073660.

14 4. Attached hereto as Exhibit 2 is a true and correct copy of pages from The
15 Freecycle Network Web site bearing Bates numbers FN000015-16.

16 5. Attached hereto as Exhibit 3 is a true and correct copy of emails bearing Bates
17 numbers FN077508-15.

18 6. Attached hereto as Exhibit 4 is a true and correct copy of an email bearing Bates
19 number FN078230-02.

20 7. Attached hereto as Exhibit 5 is a true and correct copy of an email bearing Bates
21 numbers FN073554-55.

22 8. Attached hereto as Exhibit 6 is a true and correct copy of a document bearing
23 Bates numbers FN076455.

24 9. Attached hereto as Exhibit 7 is a true and correct copy of a document bearing
25 Bates numbers FN076447-48.

26 10. Attached hereto as Exhibit 8 is a true and correct copy of a document bearing
27 Bates number FN076444.

28

1 11. Attached hereto as Exhibit 9 is a true and correct copy of an email bearing Bates
2 numbers FN080817.

3 12. Attached hereto as Exhibit 10 is a true and correct copy of an email bearing Bates
4 number FN081260-61.

5 13. Attached hereto as Exhibit 11 is a true and correct copy of an email bearing Bates
6 numbers FN079059-62.

7 14. Attached hereto as Exhibit 12 is a true and correct copy of an email bearing Bates
8 numbers FN080713-14.

9 15. Attached hereto as Exhibit 13 is a true and correct copy of emails bearing Bates
10 number FN077582-87.

11 16. Attached hereto as Exhibit 14 is a true and correct copy of emails bearing Bates
12 numbers FN076503-19.

13 17. Attached hereto as Exhibit 15 is a true and correct copy of a State of Arizona
14 Trade Name Certification for FREECYCLE bearing Bates number FN076409.

15 18. Attached hereto as Exhibit 16 is a true and correct copy of an email bearing Bates
16 number FN073672-73.

17 19. Attached hereto as Exhibit 17 is a true and correct copy of a definition of the
18 word "Freecycle" from the Web site <http://www.google.com>.

19 20. Attached hereto as Exhibit 18 is a true and correct copy of emails bearing Bates
20 numbers FN077494-98.

21 21. Attached hereto as Exhibit 19 is a true and correct copy of emails bearing Bates
22 numbers FN077408-13.

23 22. Attached hereto as Exhibit 20 is a true and correct copy of emails bearing Bates
24 numbers FN077390-92.

25 23. Attached hereto as Exhibit 21 is a true and correct copy of an article entitled
26 "Trading stuff for free on Net takes off" bearing Bates numbers FN001178-80.

27 24. Attached hereto as Exhibit 22 is a true and correct copy of an article entitled
28 "Recycling soars online" bearing Bates number FN001221-26.

1 25. Attached hereto as Exhibit 23 is a true and correct copy of an article entitled
2 “Lockergnome.com Newsletter Article” bearing Bates numbers FN001273.

3 26. Attached hereto as Exhibit 24 is a true and correct copy of an article entitled
4 “Skip the dump, avoid the legwork and visit Maine’s online junkyard” bearing Bates numbers
5 FN001327-29.

6 27. Attached hereto as Exhibit 25 is a true and correct copy of an article entitled
7 “Freecycle: A Revolution of Reuse” bearing Bates number FN001415.

8 28. Attached hereto as Exhibit 26 is a true and correct copy of emails bearing Bates
9 numbers FN077552-56.

10 29. Attached hereto as Exhibit 27 is a true and correct copy of pages from The
11 Freecycle Network Web site bearing Bates numbers FN081701-28.

12 30. Attached hereto as Exhibit 28 is a true and correct copy of emails bearing Bates
13 numbers FN077408-13.

14 31. Attached hereto as Exhibit 29 is a true and correct copy of a document bearing
15 Bates numbers FN077482-83.

16 32. Attached hereto as Exhibit 30 is a true and correct copy of an email bearing Bates
17 numbers FN077372-73.

18 33. Attached hereto as Exhibit 31 is a true and correct copy of an email bearing Bates
19 numbers FN076915-18.

20 34. Attached hereto as Exhibit 32 is a true and correct copy of an article entitled
21 “Free-For-All” bearing Bates numbers FN000712-13.

22 35. Attached hereto as Exhibit 33 is a true and correct copy of emails bearing Bates
23 numbers FN077508-16.

24 36. Attached hereto as Exhibit 34 is a true and correct copy of an email bearing Bates
25 number FN077627-68.

26 37. Attached hereto as Exhibit 35 is a true and correct copy of an email bearing Bates
27 numbers FN080716-17.

28

1 38. Attached hereto as Exhibit 36 is a true and correct copy of an email bearing Bates
2 number FN073581.

3 39. Attached hereto as Exhibit 37 is a true and correct copy of emails bearing Bates
4 number FN076914-18.

5 40. Attached hereto as Exhibit 38 is a true and correct copy of an email bearing Bates
6 numbers FN079937-39.

7 41. Attached hereto as Exhibit 39 is a true and correct copy of an email bearing Bates
8 numbers FN080467-68.

9 42. Attached hereto as Exhibit 40 is a true and correct copy of a page from The
10 Freecycle Network Web site, retrieved from the Web site <http://web.archive.org>, bearing Bates
11 number FN081492.

12 43. Attached hereto as Exhibit 41 is a true and correct copy of pages from The
13 Freecycle Network Web site, retrieved from the Web site <http://web.archive.org>, bearing Bates
14 numbers FN081499-502.

15 44. Attached hereto as Exhibit 42 is a true and correct copy of pages from The
16 Freecycle Network Web site bearing Bates numbers FN000028-29.

17 45. Attached hereto as Exhibit 43 is a true and correct copy of a document bearing
18 Bates number FN076453-54.

19 46. Attached hereto as Exhibit 44 is a true and correct copy of a document bearing
20 Bates number FN076457.

21 47. Attached hereto as Exhibit 45 is a true and correct copy of a document bearing
22 Bates number FN076463.

23 48. Attached hereto as Exhibit 46 is a true and correct copy of a document bearing
24 Bates number FN076464

25 49. Attached hereto as Exhibit 47 is a true and correct copy of emails bearing Bates
26 numbers FN080332-37.

27 50. Attached hereto as Exhibit 48 is a true and correct copy of a document bearing
28 Bates number FN076462.

1 51. Attached hereto as Exhibit 49 is a true and correct copy of a page from The
2 Freecycle Network Web site bearing Bates number FN081661-63.

3 52. Attached hereto as Exhibit 50 is a true and correct copy of an email bearing Bates
4 numbers FN079989-92

5 53. Attached hereto as Exhibit 51 is a true and correct copy of an email bearing Bates
6 numbers FN080050-53.

7 54. Attached hereto as Exhibit 52 is a true and correct copy of an email bearing Bates
8 number FN080572-73.

9 55. Attached hereto as Exhibit 53 is a true and correct copy of an email bearing Bates
10 numbers FN080653-54.

11 56. Attached hereto as Exhibit 54 is a true and correct copy of an email bearing Bates
12 number FN077859.

13 57. Attached hereto as Exhibit 55 is a true and correct copy of a document bearing
14 Bates number FN076455.

15 58. Attached hereto as Exhibit 56 is a true and correct copy of an email bearing Bates
16 numbers FN080124-26.

17 59. Attached hereto as Exhibit 57 is a true and correct copy of a document bearing
18 Bates numbers FN076445-46.

19 60. Attached hereto as Exhibit 58 is a true and correct copy of emails bearing Bates
20 numbers FN077562-65.

21 61. Attached hereto as Exhibit 59 is a true and correct copy of an email bearing Bates
22 numbers FN080444-45.

23 62. Attached hereto as Exhibit 60 is a true and correct copy of a document bearing
24 Bates number FN076458.

25 63. Attached hereto as Exhibit 61 is a true and correct copy of emails bearing Bates
26 number FN077357-65.

27 64. Attached hereto as Exhibit 62 is a true and correct copy of a document bearing
28 Bates number FN076465.

1 65. Attached hereto as Exhibit 63 is a true and correct copy of a document bearing
2 Bates numbers FN076452.

3 66. Attached hereto as Exhibit 64 is a true and correct copy of documents bearing
4 Bates number FN076445-61.

5 67. Attached hereto as Exhibit 65 is a true and correct copy of a page from The
6 Freecycle Trademark Web site, retrieved from the Web site <http://web.archive.org>, bearing Bates
7 numbers FN081493-94.

8 68. Attached hereto as Exhibit 66 is a true and correct copy of an email bearing Bates
9 numbers FN079596.

10 69. Attached hereto as Exhibit 67 is a true and correct copy of an email bearing Bates
11 number FN014741.

12 70. Attached hereto as Exhibit 68 is a true and correct copy of emails bearing Bates
13 numbers FN077486-89.

14 71. Attached hereto as Exhibit 69 is a true and correct copy of an email bearing Bates
15 numbers FN073568-69.

16 72. Attached hereto as Exhibit 70 is a true and correct copy of an email bearing Bates
17 number FN002739-40.

18 73. Attached hereto as Exhibit 71 is a true and correct copy of an email bearing Bates
19 numbers FN077741-42.

20 74. Attached hereto as Exhibit 72 is a true and correct copy of an email bearing Bates
21 number FN076930.

22 75. Attached hereto as Exhibit 73 is a true and correct copy of pages from The
23 Freecycle Network Web site bearing Bates numbers FN000017-21.

24 76. Attached hereto as Exhibit 74 is a true and correct copy of an email bearing Bates
25 numbers FN073612-13.

26 77. Attached hereto as Exhibit 75 is a true and correct copy of pages from The
27 Freecycle Network Web site bearing Bates numbers FN000006-07
28

1 78. Attached hereto as Exhibit 76 is a true and correct copy of emails bearing Bates
2 number FN078749-57.

3 79. Attached hereto as Exhibit 77 is a true and correct copy of an email bearing Bates
4 numbers FN078107.

5 80. Attached hereto as Exhibit 78 is a true and correct copy of emails bearing Bates
6 numbers FN077227-35.

7 81. Attached hereto as Exhibit 79 is a true and correct copy of an email bearing Bates
8 number FN077444.

9 82. Attached hereto as Exhibit 80 is a true and correct copy of an email bearing Bates
10 numbers FN077268-70.

11 83. Attached hereto as Exhibit 81 is a true and correct copy of an email bearing Bates
12 numbers FN078234.

13 84. Attached hereto as Exhibit 82 is a true and correct copy of an email bearing Bates
14 number FN073489-90.

15 85. Attached hereto as Exhibit 83 is a true and correct copy of an email bearing Bates
16 numbers FN077059-61.

17 86. Attached hereto as Exhibit 84 is a true and correct copy of emails bearing Bates
18 numbers FN077494-96.

19 87. Attached hereto as Exhibit 85 is a true and correct copy of an email bearing Bates
20 numbers FN080672-73.

21 88. Attached hereto as Exhibit 86 is a true and correct copy of a document bearing
22 Bates numbers FN080680-81.

23 89. Attached hereto as Exhibit 87 is a true and correct copy of an email bearing Bates
24 numbers FN076997-98.

25 90. Attached hereto as Exhibit 88 is a true and correct copy of a document bearing
26 Bates numbers FN081741-74.

27 91. Attached hereto as Exhibit 89 is a true and correct copy of a document bearing
28 Bates numbers FN081802-06.

1 92. Attached hereto as Exhibit 90 is a true and correct copy of an email bearing Bates
2 numbers FN077521-22.

3 93. Attached hereto as Exhibit 91 is a true and correct copy of emails bearing Bates
4 numbers FN060059-60.

5 94. Attached hereto as Exhibit 92 is a true and correct copy of emails bearing Bates
6 numbers FN080459-66.

7 95. Attached hereto as Exhibit 93 is a true and correct copy of a document bearing
8 Bates numbers FN080467-70.

9 96. Attached hereto as Exhibit 94 is a true and correct copy of an email bearing Bates
10 number FN078142.

11 97. Attached hereto as Exhibit 95 is a true and correct copy of an email bearing Bates
12 numbers FN001893-94.

13 98. Attached hereto as Exhibit 96 is a true and correct copy of a page from The
14 Freecycle Trademark Web site, retrieved from the Web site <http://web.archive.org>, bearing Bates
15 numbers FN081661-63.

16 99. Attached hereto as Exhibit 97 is a true and correct copy of emails bearing Bates
17 number FN079816-19.

18 100. Attached hereto as Exhibit 98 is a true and correct copy of an email bearing Bates
19 numbers FN076484-85.

20 101. Attached hereto as Exhibit 99 is a true and correct copy of an email bearing Bates
21 number FN076490.

22 102. Attached hereto as Exhibit 100 is a true and correct copy of an email bearing
23 Bates number FN076494.

24 103. Attached hereto as Exhibit 101 is a true and correct copy of emails bearing Bates
25 numbers FN077629-31.

26 104. Attached hereto as Exhibit 102 is a true and correct copy of an article entitled "A
27 website where the price is always right" bearing Bates numbers FN001262-66.
28

