

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.

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

14 FREECYCLESUNNYVALE,
 a California unincorporated association,
 15
 Plaintiff,

16 v.

17 THE FREECYCLE NETWORK, INC.,
 an Arizona corporation,
 18
 Defendant.

CASE NO. C 06-00324 CW

**THE FREECYCLE NETWORK, INC.'S
 AMENDED 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

20 THE FREECYCLE NETWORK, INC.
 an Arizona corporation,
 21
 Counterclaimant,

22 v.

23 FREECYCLESUNNYVALE,
 a California unincorporated association,
 24
 Counterdefendant.

AMENDED 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 moves for an order sealing the following:

1. **EXHIBITS 1, 3-5, 9-14, 16, 18-20, 26, 28-31, 33-39, 47, 50, 54, 56, 58-59, 61, 66-69, 71-72, 74, 76-89, 90-94, 97-101, 103 AND 105-109 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 8-11, 13, 15-16, 20 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, and pursuant to the Court’s Order Denying Without Prejudice Defendant’s Motion to Seal (Docket Entry No. 115), The Freecycle Network hereby amends its 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 set forth below under seal:

1. **EXHIBITS 1, 3-5, 9-14, 16, 18-20, 26, 28-31, 33-39, 47, 50, 54, 56, 58-59, 61, 66-69, 71-72, 74, 76-89, 90-94, 97-101, 103 AND 105-109 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 8-11, 13, 15-16, 20 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.**

1 Good cause exists to justify the filing of the above exhibits under seal because these
2 exhibits contain specific confidential competitive and business information of The Freecycle
3 Network. The Freecycle Network could be irreparably harmed if such confidential information is
4 made available to the public.

5 The Freecycle Network withdraws its request to seal exhibits 6-8, 43-46, 48, 55, 57, 60
6 and 62-64 to the Kobiarka Opp. Decl. and exhibits 14, 18-19 and 21 to the Beal Opp. Decl. (*See*
7 Docket Entry No. 107.) Upon further review, The Freecycle Network has determined that these
8 documents are not confidential and should not be placed under seal by the Court.

9 II. Argument

10 A. Good Cause Exists to Protect The Freecycle Network's Confidential Business 11 and Competitive Information.

12 Upon a showing of good cause, a court may make any order that justice requires to protect
13 a party, including an order "that a trade secret or other confidential research, development, or
14 commercial information not be revealed or be revealed only in a designated way."
15 Fed.R.Civ.P. 26(c)(7). In particular, a court may order that court documents be filed under seal
16 where such good cause is shown to override the public's right to access. *See San Jose Mercury*
17 *News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir. 1999). The factors relevant to a
18 determination of whether the presumption of access is overcome include "the public interest in
19 understanding the judicial process and whether disclosure of the material could result in improper
20 use of the material for . . . infringement upon trade secrets." *Hagestad v. Tragesser*, 49 F.3d
21 1430, 1433-34 (9th Cir. 1995) ("Every court has supervisory power over its own records and files,
22 and access has been denied where court files might have become a vehicle for improper
23 purposes.") (citations and quotations omitted).

24 Good cause exists for this Court to grant this Amended Miscellaneous Administrative
25 Request. The Freecycle Network seeks to file under seal only the specific documents or portions
26 of documents which contain The Freecycle Network's confidential business and competitive
27 information. Specifically, these documents are available only to certain members of The
28 Freecycle Network, who have been approved access to these documents. *See* Declaration of

1 Deron Beal in Support of The Freecycle Network's Amended Notice of Administrative Motion
2 and Motion for Leave to File Documents Under Seal filed herewith, ¶¶ 2-3; *see also* Amended
3 Declaration of Lisa Kobialka in Support of The Freecycle Network's Amended Notice of
4 Administrative Motion and Motion for Leave to File Documents Under Seal filed herewith, ¶¶ 2-
5 4. These documents contain confidential information regarding the operations of The Freecycle
6 Network, and are not available to the general public. *Id.* If any of this confidential information is
7 not sealed and is permitted to be in the public record, The Freecycle Network may suffer
8 irreparable harm if competitors have access to such information.

9 **B. Request For Filing Under Seal Is Narrowly Tailored.**

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

13
14 **III. Conclusion**

15 As set forth above, The Freecycle Network has shown good cause for this request to file
16 the above-referenced documents containing its confidential business and competitive information
17 under seal. Further, this request is narrowly tailored to seal only confidential information
18 designated by The Freecycle Network. For these reasons, The Freecycle Network respectfully
19 requests that the Court grant their Amended Miscellaneous Administrative Request in the form of
20 the [Proposed] Order Granting Amended Administrative Motion for Leave to File Documents
21 Under Seal filed herewith.

22 DATED: September 18, 2007

PERKINS COIE LLP

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