

1 MAYER, BROWN, ROWE & MAW LLP
 Ian N. Feinberg (SBN 88324)
 2 ifeinberg@mayerbrownrose.com
 Dennis S. Corgill (SBN 103429)
 3 dcorgill@mayerbrownrose.com
 Eric B. Evans (SBN 232476)
 4 eevans@mayerbrownrose.com
 Two Palo Alto Square, Suite 300
 5 3000 El Camino Real
 Palo Alto, CA 94306-2112
 6 Telephone: (650) 331-2000
 Facsimile: (650) 331-2060
 7

8 Attorneys for Plaintiff
 FREECYCLESUNNYVALE,

9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT**
 12 **OAKLAND DIVISION**

13 FREECYCLESUNNYVALE,
 a California unincorporated association,

14 Plaintiff,

15 v.

16 THE FREECYCLE NETWORK,
 an Arizona corporation,

17 Defendant.

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 20 THE FREECYCLE NETWORK, INC., an
 Arizona Corporation,

21 Counterclaimant,

22 v.

23 FREECYCLESUNNYVALE, a California
 unincorporated association,

24 Counterdefendant.
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Case No. C06-00324 CW

**DECLARATION OF TIMOTHY OEY IN
 SUPPORT OF COUNTERDEFENDANT
 FREECYCLESUNNYVALE'S MOTION
 TO STRIKE STATE-LAW
 COUNTERCLAIM UNDER CAL.
 CODE. CIV. PROC. § 425.16**

Date: June 9, 2006
 Time: 1:30 p.m.
 Before: Hon. Claudia Wilken
 Location: Courtroom 2

1 I, Timothy Oey, declare as follows:

2 1. I am a resident of Sunnyvale, California, and I am a member of
3 FreecycleSunnyvale, a California unincorporated association that is the Plaintiff and
4 Counterclaimant in the above-captioned lawsuit. I joined FreecycleSunnyvale on January 28,
5 2004. A true and correct copy of my welcome to the group is attached to this Declaration as
6 Exhibit A. FreecycleSunnyvale was formally registered as a California unincorporated
7 association on December 27, 2005. A true and correct copy of the registration is attached to this
8 Declaration as Exhibit B.

9 2. FreecycleSunnyvale is comprised of volunteers who moderate a Yahoo! online
10 group (group moderators). The online group assists individuals (group members) in the local
11 Sunnyvale area who want to freecycle items. FreecycleSunnyvale operated a Yahoo! online
12 group named "freecyclesunnyvale" until November 21, 2005, when Yahoo! terminated this
13 online group account at the behest of The Freecycle Network ("TFN"). The freecyclesunnyvale
14 group had approximately 2200 members when it was deleted. On November 22, 2005,
15 FreecycleSunnyvale obtained and now operates another Yahoo! online group account that is
16 named, "SunnyvaleFree." SunnyvaleFree has grown to about 600 members as of May 1, 2006.

17 3. Freecycling is a practice where someone, who has an item that he or she no longer
18 wants, gives that item for free to someone who wants the item so that the item continues to be
19 used rather than ending up as trash in a landfill. Anyone can find a local online group by using
20 Google or another internet search engine and using search terms "freecycle" and the name of the
21 local community. To freecycle an unwanted item, an individual (a) sends an "offer" email to an
22 online group, (b) the "offer" email is posted on the group's home page and relayed to members,
23 (c) individuals who want the item reply to the "offer" email, and (d) the individual offering the
24 item arranges an exchange with one of the individuals wanting the item.

25 4. When I first joined FreecycleSunnyvale I did not know that TFN existed.
26 Freecycling was simply a popular grassroots movement, involving numerous local online
27 freecycle groups.

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1 5. Moderators are needed for local online groups to make sure, for example, that
2 individuals in a local area do not use the online group to advertise items for sale. Moderators are
3 also needed to prevent spam.

4 6. After I became a moderator of FreecycleSunnyvale's online group, I was added to
5 the "freecyclemodsquad" Yahoo! online group in February 2004. "Freecyclemodsquad" stands
6 for freecycle moderator squad. The freecyclemodsquad online group is where freecycle
7 moderators discuss freecycling issues.

8 7. I never entered into any contract with anyone to become a freecycle moderator or
9 to use the word "freecycle." To the best of my knowledge, FreecycleSunnyvale never entered
10 into any contract with anyone to use the word "freecycle."

11 8. At least until September 2004, I was unaware that anyone claimed trademark
12 rights in the word "freecyle."

13 9. Up to and including September 2004, and even beyond, Deron Beal, the
14 Executive Director of TFN, commonly used "freecyle" as a generic term. Examples of Mr.
15 Beal's use of the word "freecyle" include:

16 (a) Mr. Beal used "freecyle" as a noun in emails dated June 23, 2004 and
17 September 20, 2004. True and correct copies of these two emails are attached
18 collectively to this Declaration as Exhibit C.

19 (b) Mr. Beal used "freecycling" as a gerund in emails dated March 28, 2004
20 and July 27, 2004. True and correct copies of these two emails are attached collectively
21 to this Declaration as Exhibit D.

22 (c) Mr. Beal used "freecycler" as a noun in emails dated June 7, 2004,
23 August 14, 2004, and January 4, 2005. True and correct copies of these three emails are
24 attached collectively to this Declaration as Exhibit E.

25 (d) Mr. Beal used "freecycle" as an adjective in emails dated October 5, 2004,
26 and September 29, 2004. True and correct copies of these two emails are attached
27 collectively to this Declaration as Exhibit F.
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1 (e) Mr. Beal used "freecyle" as a verb in emails dated June 17, 2004, and
2 August 5, 2004. True and correct copies of these two emails are attached collectively to
3 this Declaration as Exhibit G.

4 10. In September 2004, I became aware that TFN wanted to protect "freecycle" as a
5 trademark.

6 11. On October 16, 2004, I sent an email about TFN's trademark claim to the word
7 "freecycle" to a small group of active volunteers within TFN and known as the New Webpage
8 Planning Team ("NWPT"). In that email, I discussed leaving "freecycle" as a common language
9 word rather than seeking to protect "freecycle" as a trademark. In that email, I also included an
10 excellent article about freecycling from the Associated Press that Mr. Beal previously sent to the
11 freecyclemodsquad on October 16, 2004. A true and correct copy of that email is attached to this
12 Declaration as Exhibit H.

13 12. On November 10, 2004, I received an email, sent by Traci Dale to the NWPT
14 group, questioning the viability of claiming trademark rights in "freecycle" given the extensive
15 use of "freecycle" as a generic term. A true and correct copy of that email is attached as Exhibit
16 I to this Declaration.

17 13. On January 5, 2005, Mr. Beal sent an email to the freecyclemodsquad group,
18 acknowledging that the "freecycle" trademark strategy was at risk. A true and correct copy of
19 that email is attached to this Declaration as Exhibit J.

20 14. During January and February 2005, I actively helped author trademark policies
21 for TFN.

22 15. In March 2005, I began to have serious doubts about my earlier decision to
23 support TFN's pursuit of trademark rights in the word "freecycle" after I received an email sent
24 to the entire FreecycleSunnyvale online group on March 19, 2005. A true and correct copy of
25 that email is attached to this Declaration as Exhibit K. Although I had serious doubts, I chose to
26 continue to publicly support TFN's pursuit of trademark rights.

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1 16. From approximately January 2005, to August 2005, TFN steadily lost a number of
2 volunteers. My understanding is that many of these volunteers left over TFN's decision to
3 pursue trademark rights in the word "freecycle" and TFN's treatment of local freecycling groups.
4 I admired these volunteers (particularly Pastor Ken Hedden and David Neeley), and I grew to
5 regret my support of TFN's efforts to obtain trademark rights on the word "freecyle."

6 17. In August 2005, a large group of very active volunteers, all of whom I respected
7 (including Deanna, Judy Ruzich, Lynn Jones, Charlotte Hess, and especially Nancy Castleman
8 who was sometimes known as the 'mother of freecycling'), left TFN suddenly. My
9 understanding is that these individuals left TFN because of TFN's trademark policies and
10 treatment of local freecycling groups. On August 18, 2005, I sent an email to the
11 freecyclemodsquad regarding these developments. A true and correct copy of that email is
12 attached to this Declaration as Exhibit L.

13 18. On September 16, 2005, Paula Spencer, on behalf of TFN, sent me an email
14 requesting that I resign as a moderator of FreecycleSunnyvale. A true and correct copy of that
15 email is attached to this Declaration as Exhibit M.

16 19. On September 17, 2005, Chandan Mishra, a FreecycleSunnyvale volunteer
17 moderator, forwarded an email to me that Paula Spencer had sent to her on September 16, 2005.
18 A true and correct copy of that email is attached to this Declaration as Exhibit N.

19 20. On September 23, 2006, Paula Spencer, on behalf of TFN, sent an email to the
20 FreecycleSunnyvale moderators, including myself, stating, "Having reach the deadline and not
21 having received a reply from you, I have asked that the Sunnyvale link be removed from the
22 Freecycle.org page." A true and correct copy of that email is attached to this Declaration as
23 Exhibit O.

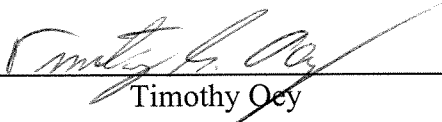
24 21. On November 22, 2005, after Yahoo! deleted FreecycleSunnyvale's online group
25 account, the original FreecycleSunnyvale moderators obtained a new Yahoo! online group
26 account named "SunnyvaleFree" so that individuals in the local Sunnyvale area could continue to
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1 freecycle. A true and correct copy of the home page of the SunnyvaleFree online group is
2 attached to this Declaration as Exhibit P.

3 22. On April 27, 2006, an email was forwarded to me and that had been posted to a
4 Yahoo! online group by Mr. Beal. A true and correct copy of this email is attached to this
5 Declaration as Exhibit Q.

6 23. As of May 3, 2006, the temporary restraining order issued in *The Freecycle*
7 *Network v. Tim Oey and Jane Doe Oey*, Case No. CIV 06-00173-TUC-RCC (D. Ariz. filed Apr.
8 4, 2006), on April 24, 2006, (“TRO”) and that applies to Timothy Oey and “those persons in
9 active concert and participation with Defendant” (which seems to include the online group
10 SunnyvaleFree) is having a significant, detrimental impact on the freecycling activities within
11 SunnyvaleFree. Due to the TRO, none of the moderators are certain that they may approve any
12 of the emails on that group from new members who have joined that group. Normally, these are
13 approved within a few hours or a day at most. As of 9:50 a.m. on May 3, 2006, there are now 24
14 messages waiting to be approved which is blocking 24 freecyclers from freecycling unwanted
15 items in the local Sunnyvale area. If not approved, these messages will be automatically deleted,
16 preventing freecycling. A true and correct copy of the SunnyvaleFree home page showing these
17 unapproved messages is already attached to this Declaration as Exhibit P.

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19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct. Executed in San Jose, California, on May 3, 2006.

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24 Timothy Oey