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15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **OAKLAND DIVISION**

18 FREECYCLESUNNYVALE,
 19 a California unincorporated association,

20 Plaintiff,

21 v.

22 THE FREECYCLE NETWORK,
 23 an Arizona corporation,

24 Defendant.

CASE NO. C06-00324 CW

**STIPULATED REQUEST FOR ORDER
 CHANGING TIME UNDER CIVIL L.R. 6-2**

Before: Honorable Claudia Wilken

25 THE FREECYCLE NETWORK, INC., an
 26 Arizona Corporation,

27 Counterclaimant,

28 v.

FREECYCLESUNNYVALE, a California
 unincorporated association,

Counterdefendant.

1 PURSUANT TO CIVIL L.R. 6-2, Plaintiff FreecycleSunnyvale and Defendant The
2 Freecycle Network, Inc., respectfully request this Court to enter an order changing time.

3 **I. INTRODUCTION**

4 The above-captioned lawsuit concerns The Freecycle Network's claim of trademark rights
5 over the term "freecycle" and a stylized logo depicting that term. FreecycleSunnyvale seeks a
6 declaration of non-infringement or, in the alternative, that the alleged trademarks are generic or
7 that The Freecycle Network has engaged in naked licensing. The Freecycle Network filed
8 counterclaims, alleging trademark infringement, contributory infringement, and unfair
9 competition under the Lanham Act, as well as California state-law claims for unfair competition.
10 Counsel for both parties appear *pro bono*.

11 Not yet resolved are FreecycleSunnyvale's Motions to Dismiss Amended Counterclaims
12 under FED.R.CIV.P. 12(b)(6), to Strike State-Law Counterclaim under Cal.Civ.Proc. § 425.16,
13 and to Strike Immaterial Allegations under FED.R.CIV.P. 12(f). Those motions are scheduled to
14 be heard on October 6, 2006. Additionally, in a related case, the parties have agreed to participate
15 in the Mediation Program of the Ninth Circuit. The parties are attempting to schedule the
16 mediation in late November or early December. This Court's Case Management Order presently
17 sets the fact discovery cutoff for November 1, 2006. *See* Order Changing Time (Docket # 44,
18 filed August 1, 2006).

19 For the following reasons, FreecycleSunnyvale and The Freecycle Network respectfully
20 request (1) a continuance of the hearing on FreecycleSunnyvale's motions until December 15,
21 2006, at 10:00 a.m., and (2) a ninety (90) day extension of the fact discovery cutoff and all other
22 deadlines in the Case Management Order.

23 **II. REASONS FOR THE REQUESTED ENLARGEMENT OF TIME**

24 First, the hearing on FreecycleSunnyvale's pending motions should be continued because
25 the parties are scheduled to participate in court-ordered mediation. A related case was selected
26 for inclusion in the Mediation Program of the United States Court of Appeals for the Ninth
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1 Circuit. The Ninth Circuit appeal was taken by Tim Oey from a preliminary injunction issued by
2 the District of Arizona, against Mr. Oey, and in favor of The Freecycle Network.¹ Tim Oey is the
3 leading member of FreecycleSunnyvale, and he is authorized to represent FreecycleSunnyvale in
4 the Ninth Circuit mediation. Mr. Oey, on behalf of himself and FreecycleSunnyvale, and The
5 Freecycle Network indicated to the Circuit Mediator that they will attempt to reach a global
6 settlement that will include the action in this Court. The parties are attempting to schedule the
7 mediation in late November or early December. If the parties reach a settlement, this Court will
8 not need to address FreecycleSunnyvale's pending motions to dismiss and strike, which are
9 currently scheduled to come on for hearing before the mediation.

10 Second, fact discovery should be extended because the issues that will be litigated before
11 this Court have not yet been framed. The Freecycle Network filed its amended counterclaims on
12 August 8, 2006. FreecycleSunnyvale filed its motions to dismiss and strike on August 28, 2006.
13 The parties have briefed the motions, and the hearing is scheduled for October 6, 2006, just 26
14 days before the current fact discovery cutoff, which is set for November 1, 2006. Given the close
15 proximity between the hearing and the fact discovery cutoff, FreecycleSunnyvale at best will
16 answer the counterclaims (assuming those counterclaims survive the motions to dismiss and
17 strike) on the eve of the fact discovery cutoff or, more likely, after the fact discovery cutoff.

18 Third, the parties believe that additional discovery is necessary in this case. For example,
19 the parties have scheduled depositions but have not yet completed their production of documents.

20 Fourth, assuming that fact discovery will be extended, the other deadlines in this Court's
21 Case Management Order should be similarly extended by ninety (90) days.

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24 ¹ The action in the District of Arizona is entitled, *The Freecycle Network, Inc. v. Tim Oey and*
25 *Jane Doe Oey*, Case No. C06-00173 TUC-RCC (D. Ariz., filed Apr. 4, 2006). The Ninth
26 Circuit Appeal bears docket number 06-16219. The District Court of Arizona stayed the
27 action in that court pending the outcome of proceedings before this Court, but did not stay the
28 preliminary injunction. The Ninth Circuit stayed the preliminary injunction pending
resolution of the appeal, and the parties have just completed briefing on the appeal of the
preliminary injunction.

1 **III. DISCLOSURE OF PREVIOUS TIME MODIFICATIONS**

2 The parties previously sought an order modifying time in this case. The parties filed a
3 stipulated request for an order changing time on July 26, 2006. This court granted that stipulated
4 request and entered an order on August 1, 2006.

5 **IV. EFFECT OF THE TIME MODIFICATION ON THE SCHEDULE OF THE CASE**

6 The parties attach a proposed order that (1) continues the hearing on
7 FreecycleSunnyvale's motions to dismiss and strike until December 15, 2006, after the Ninth
8 Circuit mediation and (2) revises this Court's Case Management Order by extending the fact
9 discovery cutoff and all other deadlines by approximately ninety (90) days. The following table
10 summarizes the proposed changes to the Case Management Order.

Deadline	Current Cutoff	Proposed Cutoff
Completion of Fact Discovery:	11/01/06	02/02/07
Disclosure of identities and reports of expert witnesses:	12/01/06	03/02/07
Completion of Expert Discovery:	01/29/07	03/30/07
Plaintiff to file dispositive motion and notice for hearing on 12/8/06 at 10:00 a.m.:	01/29/07	03/30/07
Defendant opposition and any cross motion (contained in one brief):	02/12/07	04/13/07
Plaintiff reply/opposition:	02/20/07	04/20/07
Surreply:	02/27/07	04/27/07
Further Case Management Conference and all case-dispositive motions to be heard at 10:00 a.m. on or before:	03/16/07	05/11/07
Final Pretrial Conference at 1:30 p.m. on:	[to be set]	[to be set]

