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8 Attorneys for Plaintiff
 FREECYCLESUNNYVALE,

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

13 FREECYCLESUNNYVALE,
 a California unincorporated association,

14
 15 Plaintiff,

16 v.

17 THE FREecycle NETWORK,
 an Arizona corporation,

18 Defendant.

19
 20 THE FREecycle NETWORK, INC., an
 Arizona Corporation,

21 Counterclaimant,

22 v.

23 FREECYCLESUNNYVALE, a California
 24 unincorporated association,

25 Counterdefendant.

Case No. C06-00324 CW

**DECLARATION OF DENNIS S.
 CORGILL IN SUPPORT OF
 PLAINTIFF AND
 COUNTERDEFENDANT
 FREECYCLESUNNYVALE'S MOTION
 FOR SUMMARY ADJUDICATION**

Date: August 23, 2007
 Time: 2:00 p.m.
 Before: Hon. Claudia Wilken
 Location: Courtroom 2

1 I, Dennis S. Corgill, declare as follows:

2 1. I am an attorney licensed to practice in the State of California. I am an associate
3 in the law firm Mayer, Brown, Rowe & Maw LLP, counsel of record for Plaintiff and
4 Counterdefendant FreecycleSunnyvale in the above-captioned action. I am one of the attorneys
5 representing FreecycleSunnyvale. I know the following facts of my own knowledge and, if
6 called as a witness, could and would competently testify to the following facts.

7 2. On June 30, 2006, I initiated a meet and confer process with regard to several
8 discovery issues in the above-captioned action. One of those issues concerns
9 FreecycleSunnyvale's Request for Production Number 64, which requested, "Any and all
10 documents, including archived electronic files, concerning a website, webpage, home page, or
11 internet posting of any freecycle community, individual group, or local groups within the
12 [Defendant and Counterclaimant The Freecycle Network's] network." The Freecycle Network
13 has not agreed to produce any documents in response to this request.

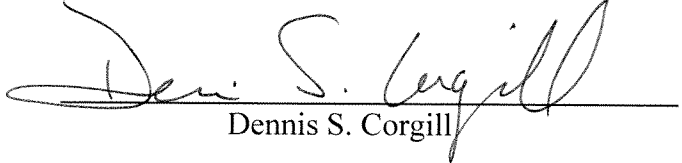
14 3. In the course of the meet and confer, I have exchanged letters and held telephone
15 conferences with Esha Bandyopadhyay and with Shane M. Glynn. Ms. Bandyopadhyay and Mr.
16 Glynn are attorneys in the law firm of Perkins Coie LLP and who represent Defendant and
17 Counterclaimant, The Freecycle Network, Inc. ("TFN"). True and correct copies of the letters
18 that have been exchanged are attached collectively to this Declaration as Exhibit A.

19 4. Throughout the meet and confer, TFN has never objected that Request for
20 Production Number 64 does not seek responsive documents. In a telephone conference on
21 Tuesday, July 11, 2006, Ms. Bandyopadhyay agreed that Request for Production Number 64
22 seeks documents that are relevant to the issues of (i) whether "freecycle" is a generic term, (ii)
23 whether TFN engaged in naked licensing, and (iii) whether TFN dedicated its alleged trademarks
24 to the public domain.

25 5. In a telephone conference with Mr. Glynn on June 8, 2007, TFN raised, for the
26 first time, the objection that TFN does not have possession, custody, or control of all of the
27 documents that are responsive to Request for Production Number 64. Mr. Glynn explained that
28

1 TFN is not a co-owner, moderator, or member of every online freecycling group that is listed as
2 an approved group on TFN's Web site. Mr. Glynn explained that, where TFN is not a co-owner,
3 moderator, or member, TFN does not have access to archived group files without the permission
4 of the group's owners or moderators. Mr. Glynn suggested that FreecycleSunnyvale might need
5 to seek responsive documents from Yahoo! Corporation by way of a third-party subpoena.
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7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed in Palo Alto, California, on July 17, 2007.
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12 Dennis S. Corgill
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