

1 MAYER, BROWN, ROWE & MAW LLP  
 Ian N. Feinberg (SBN 88324)  
 2 [ifeinberg@mayerbrownrose.com](mailto:ifeinberg@mayerbrownrose.com)  
 Dennis S. Corgill (SBN 103429)  
 3 [dcorgill@mayerbrownrose.com](mailto:dcorgill@mayerbrownrose.com)  
 Eric B. Evans (SBN 232476)  
 4 [eevans@mayerbrownrose.com](mailto: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  
 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 MILES DENNIS  
 ROBERTSON, JR., 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, Miles Dennis Robertson, Jr., declare as follows:

2 1. I am a resident of Stillwater, Oklahoma. I am a former senior volunteer for The  
3 Freecycle Network, Inc. ("TFN"), the Defendant and Counterclaimant in the above-captioned  
4 lawsuit. I know the following facts of my own knowledge and, if called as a witness, could and  
5 would competently testify to the following facts.

6 2. In late 2003 or early 2004, I read an article about freecycling and the formation of  
7 online freecycling groups. The article contained an email address for Deron Beal, who was  
8 described as a founder of a freecycling group. I sent an email to Mr. Beal and indicated that I  
9 was interested in starting an online freecycling group for my local area. I asked Mr. Beal what I  
10 needed to do. In the ensuing email exchange, Mr. Beal first asked if I had experience moderating  
11 groups. I replied with several examples of groups that I was currently moderating. (Among the  
12 groups that I was then moderating was a weight loss group for men and an equine related buy-  
13 sell-trade group.) Mr. Beal then sent a second email, telling me that the best way to figure out  
14 how to form and moderate an online freecycling group was to join two or three of the groups that  
15 were already active. Mr. Beal indicated that it was pretty much self explanatory. Mr. Beal's two  
16 emails were very brief and to the point. In those emails, Mr. Beal suggested that I could use any  
17 files that I found on an online freecycling group. Mr. Beal also advised that I could copy and use  
18 any files as I found them. Mr. Beal also advised that I could modify any files to suit my local  
19 situation. There was no mention of any requirements that he or his staff be "co-owners" of the  
20 group, nor any mention of any requirement to display a Freecycle logo.

21 3. A few months after my email exchange with Mr. Beal, I acted on the advice that  
22 Mr. Beal had forwarded. I joined Mr. Beal's online freecycling group in Tucson, Arizona, and  
23 one or two others that Mr. Beal recommended. When I joined the freecycling group in Tucson,  
24 Arizona, I was surprised that I did not find any indication that Mr. Beal was actively involved  
25 with that group.

26 4. On April 12, 2004, I entered into a group service account with Yahoo! and started  
27 my own online freecycling group for Stillwater, Okalahoma. I named the online group  
28

1 "FreecycleStillwaterOK." Following upon Mr. Beal's suggestion, I copied files from other  
2 online recycling groups to use to create my own files. Most of the files contained basic  
3 instructions on how to use the online group, what to post, and what not to post. I immediately set  
4 out to modify the copied files to suit my own preferences. After I modified those files, I posted  
5 them to my online freecycling group.

6 5. At no point during the time when I was setting up my own online freecycling  
7 group did anyone contact me to advise me as to what I could do and could not do. No one asked  
8 me to sign a contract agreeing to what was expected of me or my group. I was unaware that any  
9 one checked on what I was doing.

10 6. At the time that I set up my own online freecycling group, I was unaware of TFN  
11 or its website. The website was not mentioned in the article that sparked my interest in  
12 freecycling. In his two emails to me, Mr. Beal did not mention the existence of a freecycle  
13 website, and he did not suggest that I visit a website for information on how to start an online  
14 freecycling group.

15 7. Throughout 2004, I ran the FreecycleStillwaterOK online freecycling group  
16 independently and without any assistance or guidance from any one, including TFN or Mr. Beal.

17 8. Toward the end of 2004, as the activity of freecycling was getting more publicity,  
18 I happened upon another article that mentioned a website, and I visited it for my first time. This  
19 turned out to be TFN's website at [www.freecycle.org](http://www.freecycle.org). In searching the website, I found where  
20 "approved" groups were listed by their State. I sent an email to an address on the website and  
21 inquired about getting my local group listed. Afterwards, my online freecycling group showed  
22 up in the listing on TFN's website. Again, no one from TFN contacted me to advise me as to  
23 what I could do and could not do. No one asked me to sign a contract agreeing to what was  
24 expected of me or my group. I was unaware of whether anyone joined my group to look over the  
25 files or archives. If someone did join my group to look over the files, they did not identify  
26 themselves or contact me in any way.

1           9.       Later, perhaps in an email exchange with another freecycling group moderator, I  
2 learned that TFN had an online discussion group for moderators. I joined that discussion group  
3 for additional information, as I was interested in finding more information to help my group  
4 grow.

5           10.      Shortly after joining the online discussion group for moderators, I read about  
6 leadership groups that had formed. I sent an email to the person posting the message about the  
7 leadership groups, indicating that I had time on my hands to volunteer and would be willing to  
8 assist in anyway I could.

9           11.      Shortly after I volunteered for a leadership group, I received an email from a  
10 woman who was known to me as Deanna and who identified herself as TFN's Group Outreach  
11 and Assistance ("GOA") for Oklahoma. Deanna asked if I would be interested in being a New  
12 Group Approver ("NGA") for Oklahoma. This was sometime right after the Christmas holiday  
13 2004 or possibly the first week of January 2005. I agreed to become the NGA for Oklahoma.  
14 On January 9, 2005, Nancy Castleman sent a congratulatory email, announcing that I had agreed  
15 to take the appointment as NGA for Oklahoma. Shortly thereafter I received my first new group  
16 to approve.

17           12.      The training that I received to be an NGA came by joining an online discussion  
18 group for TFN NGAs. This discussion group was moderated by an "NGA Coordinator."  
19 Basically, the training came when an NGA would post a question to the group and the members  
20 of the group with an interest in the question would offer suggestions.

21           13.      While I was an NGA, the applicants who wanted an online freecycling group to  
22 be listed on TFN's website received minimal guidance. TFN's website contained some very  
23 brief instructions on how to set up an online group through Yahoo! TFN's website also provided  
24 group files that an applicant could use or modify for an online freecycling group. For example,  
25 there was a "welcome" file which contained the text of an email message for a new member, a  
26 "Freecycle Etiquette" file which provided instructions on how members could use the online  
27 group, and an "exit" file which contained the text of an email message for a member departing  
28

1 from the group. Moderators of new online freecycling groups were supposed to read these files  
2 and to conduct themselves accordingly. Otherwise, there was no formal instruction or training  
3 whatsoever. In the NGA discussion group, we were often reminded by one or more of the more  
4 experienced NGAs that NGAs needed to give new online freecycling groups minimum  
5 instructions on how to set up an online group with Yahoo! and how to get the group up and  
6 running. The reason was that, if the owner and moderator of a new online group could figure out  
7 how to set up the group on their own, then they could figure out how to run the group by, for  
8 example, copying files from TFN's website.

9 14. My typical practice as an NGA was as follows: (1) An individual who wanted to  
10 set up a new online freecycling group would apply through TFN's website. (2) I would receive  
11 information from TFN regarding an application to set up a group in my state, Oklahoma. (3) I  
12 would contact the individual and obtain basic information about where they were located, how  
13 large of a geographic area they intended to cover, and whether they lived in that area. NGAs  
14 were not supposed to approve groups that would geographically cover an area that was too small  
15 or too large, groups that overlapped with existing groups, or groups where the owner did not live  
16 in the area covered by the group. (4) I would advise that person to set up an online group and get  
17 back to me when the online group was up and running. (5) While the individual was setting up  
18 the online freecycling group, I would contact moderators in Oklahoma, typically by posting an  
19 email to an online discussion group for Oklahoma moderators. In my email to the discussion  
20 group, I would ask if there was any reason not to allow the applicant to moderate an online  
21 freecycling group. This was the only reference check. (6) When a new online freecycling group  
22 was set up, the new group notified me that they were ready for an "inspection." This inspection  
23 consisted of making sure that the new group had certain group files, such as the "welcome" file,  
24 the "Freecycle Etiquette" file, and the "exit" file. If the online group contained these files, I  
25 approved the group, and the group was listed on TFN's website.

26 15. Only at a later time did I learn that a moderator's handbook had been created by a  
27 moderator of an online freecycling group in Virginia. That handbook, which was created in



1 approximately November 2004, was not yet approved by TFN. Because this handbook was  
2 available and other moderators on the moderator online discussion group recommended it, I let  
3 moderators of new groups know about this manual. Several months later, in the spring of 2005,  
4 TFN approved a moderator's manual that was posted on TFN's website.

5 16. One other thing that a NGA had to do was to make sure that "EF", or  
6 "Ersatzfriend" was a co-owner of the group. EF was a fictional person who was created by TFN.  
7 EF had an email account, which permitted EF to be listed as a co-owner. EF was passed off to  
8 the online freecycling group owner as a safety valve in case something ever happened. For  
9 example, if the owners and moderators were locked out of their group by Yahoo!, EF could  
10 always go in and save the group.

11 17. Even though I required new groups to have EF as a co-owner before the new  
12 groups would be approved and listed on TFN's website, at this time I did not add EF as a co-  
13 owner of my online freecycling group in Stillwater. I knew that, if EF was listed as a co-owner,  
14 TFN could come in and take over my group. I just did not want to risk losing ownership and  
15 control of my online freecycling group.

16 18. When I started as an NGA, I approved many groups that did not adopt TFN's  
17 logo, which is a stylized presentation of the word "freecycle" and includes a guitar and a bicycle.  
18 Some did not like the color. Some did not like the stylized presentation or the overall  
19 appearance, and many previously had their own graphics and logos. Later, NGAs were told that  
20 new groups had to use TFN's logo and to include a trademark and copyright notice on the home  
21 page of the group. I then began to inspect new groups to make sure that the new groups had  
22 TFN's logo as well as the trademark and copyright notice.

23 19. After having served as the NGA of Oklahoma for a short period of time, a woman  
24 known to me as Nancy Castleman sent an email to me, stating that the GOA of Oklahoma  
25 (Deanna) had recommended me as a possible GOA. Ms. Castleman asked if I would be  
26 interested in becoming a GOA. Again having time on my hands, and believing in freecycling, I  
27 accepted and became a volunteer GOA. A GOA was not allowed to be a GOA for the state in  
28

1 which he or she had an online freecycling group or for the state in which the GOA was also the  
2 NGA. I started as the GOA for Kansas, Nebraska, South Dakota, and North Dakota. By the  
3 time I left TFN in August 2005, I had been the GOA over at least a dozen states at one time or  
4 another. Even though I took on these new volunteer duties for TFN, I continued as the NGA for  
5 Oklahoma until August 2005. When I took on additional volunteer work at the beginning of  
6 August 2005, I trained my co-owner of the Stillwater online freecycling group to become the  
7 NGA for Oklahoma. My co-owner was subsequently appointed NGA for Oklahoma.

8 20. The duties of a GOA were quite separate and different from the NGA duties. As  
9 an NGA, I contacted individuals who indicated they were interested in starting an online  
10 freecycling group or had already started their own freecycling group, and wanted to get it listed  
11 on TFN's website. As a GOA, we were listed as "Group Outreach Assistance", to "help" groups  
12 owners make their groups run well. I also responded to complaints about online freecycling  
13 groups. NGAs were forbidden from looking at up and running online groups to see if there were  
14 any problems. If an NGA heard about a problem, the NGA was supposed to report the problem  
15 to the appropriate GOA.

16 21. There was an online discussion group for GOAs that was moderated by Nancy  
17 Castleman. Nancy Castleman and other senior volunteers instructed GOAs that we were not, in  
18 any way, to get involved in any group other than our own, unless a complaint was made against  
19 an online freecycling group. We were advised not to join local groups or even to join online  
20 local discussion groups for moderators in our assigned states. The only reason that we were to  
21 make contact with an online freecycling group was if a member of a group listed on TFN's  
22 website initiated a complaint against a particular group. Then, and only then, was a GOA to join  
23 or apply for membership in that particular group. The GOA would then make contact with the  
24 group's owners to discuss the "problems." GOAs were told that the reason for our "non-  
25 involvement" was to assure the local group owners that they had full and total control over their  
26 local groups. Mr. Beal did not want it to appear that TFN was monitoring groups in anyway.  
27 Mr. Beal specifically told the online discussion group for GOAs that we should not look for  
28

1 problems. GOAs were not to go looking for problems but were supposed to let problems come  
2 to them.

3 22. In addition to receiving information from the online discussion group for GOAs, I  
4 also communicated regularly with Dianna, the GOA for Oklahoma. Dianna became my mentor  
5 for GOA activities.

6 23. When I first became a GOA, complaints were made to TFN's website. If the  
7 complaint was about an online freecycling group in one of my states, the complaint would be  
8 forwarded to me. Later, a list of the GOAs and our email addresses was posted on TFN's  
9 website. This allowed members to submit complaints directly to the appropriate GOAs.

10 24. While complaints from members of online freecycling groups usually were about  
11 their own groups, complaints might also concern a neighboring group. One reason that this  
12 might happen is that neighboring groups might have different policies on what kinds of items  
13 could be posted. For example, different groups had different policies about whether pets could  
14 be posted. If a member did not believe that pets should be posted, the member might complain  
15 either that his or her own group allowed pet postings or that a neighboring group allowed pet  
16 postings.

17 25. When a member made a complaint about an online freecycling group in one of  
18 my states, I responded by email to let the member know that the complaint had been received  
19 and that I would look into the matter as best as time allowed. Because I was assigned to multiple  
20 states that had numerous online freecycling groups, a complaint was not always investigated  
21 immediately. Most often, a second or third complaint about a particular group was needed  
22 before I would start an investigation.

23 26. As a GOA, I investigated violations of the "rules" set forth in the "Freecycle  
24 Etiquette" file. Those rules basically stated that everything must be free, legal, and appropriate  
25 for all ages. More often, complaints did not focus on the character of the items that members  
26 sought to freecycle. For some people, "appropriate for all ages" applied to a member's email  
27 address that was shown when the email was posted to an online freecycling group. For example,



1 some complaints concerned the signature lines on another member's email post, such as  
2 signature lines with information advertising a business. One signature line indicated that  
3 member was an agent for an insurance company and that people should come see that member  
4 for their insurance needs. Some complaints were that other members used vulgar or offensive  
5 language in their email addresses and that the group owner did not prohibit these kinds of email  
6 addresses.

7 27. When investigating complaints, I kept Nancy Castleman generally informed of  
8 what I was doing. Sometimes, the group owner would agree that the complaint was legitimate  
9 and then resolve the problem. If so, my job was done. Sometimes, the group owner would  
10 refuse to resolve the problem. Group owners who refused to cooperate usually objected that, as  
11 the owner, they ran the group and made the decisions. As a group owner myself, I understood  
12 this concern. In these situations, I had to make judgment calls as to whether to press the issue. I  
13 cannot speak for other GOAs, but personally I usually did not press the issue, especially if the  
14 complaint seemed minor.

15 28. Only if an online freecycling group had flagrant violations, such a permitting  
16 postings of items for sale, was an action ever taken against an owner due to a member's  
17 complaint. The action that I took was to remove the group from the list of approved groups on  
18 TFN's website. The standard practice was to email an individual known to me as Dean, who  
19 worked in the "back office" for TFN's Website. Dean would de-list groups. If the delisting  
20 from the TFN Website did not persuade an owner to comply with my requests, I would then  
21 report the group to Dean, who responsible for sending cease and desist notices to group owners.  
22 If cease and desist notices did not work, TFN would file a report with Yahoo! to get the group  
23 terminated. My understanding is that the person who was actually responsible for filing reports  
24 with Yahoo! was Emily (who had an email address with "gowriterotica"). My understanding  
25 was that Emily had developed a relationship with the trademark officers at Yahoo, and could, it  
26 seemed, get them to act on her wishes.

1           29.     In approximately June or July of 2005, after I had been a GOA for a while, the  
2 GOAs were asked to check to see if EF had been added as a co-owner when they had a  
3 complaint against a group. To do this, we had to email "Judy," the lady who was keeper of the  
4 password for "EF". Approximately that same time, GOAs were also asked to check to see if  
5 TFN's logo had been updated and the trademark and copyright notice was correct and up to date.  
6 I added these additional checks when I investigated complaints. If there was a problem, I would  
7 mention to the group owner that I noticed the problem while looking into the complaint. GOAs  
8 were not asked to routinely check all groups to see if EF was a co-owner, if TFN's logo was up  
9 to date, or if the trademark and copyright notice was correct. I only checked on these matters if I  
10 was already investigating a complaint.

11           30.     Action was taken against group owners who refused to add EF as a co-owner, or  
12 to display either TFN's logo or the trademark and copyright notice. For example, in Oklahoma,  
13 the online freecycling groups for Lawton and Tulsa refused to add EF as a co-owner. These  
14 groups were taken off the list of approved groups on TFN's website. TFN also reported these  
15 groups to Yahoo!, who then terminated these groups. TFN then set up new online freecycling  
16 groups for Lawton and Tulsa. Deanna, as the GOA of Oklahoma, asked me, as the NGA for  
17 Oklahoma, to be an owner of the two replacement groups, and I took on these duties in addition  
18 to my other volunteer responsibilities. The two replacement groups were listed on TFN's  
19 website.

20           31.     During this time period, Dianna, the GOA for Oklahoma, informed me that EF  
21 was not listed as an owner of my Stillwater freecycling group and that I had to add EF as a co-  
22 owner. When I realized that she was serious, I added EF. About six to eight weeks later, I  
23 removed EF as a co-owner of my group. As a senior volunteer within the network, I was seeing  
24 what was being done to groups that did not follow TFN's directions. I did not want to risk losing  
25 ownership and control of my online freecycling group.

26           32.     Although EF was supposed to be used only in the rare case when a group was left  
27 without an owner, I am aware of one instance when TFN used EF to bully its way into a group,  
28

1   displace the original owner, and take over the group. The owner of the group in Lansing,  
2   Michigan known as Mid-Michigan Freecycle Network (or MMFN) was contacted about  
3   complaints of selling and the group being used as a general discussion forum. The owner  
4   refused to contact us, as she told me later, because she didn't know who these people were that  
5   were contacting her about problems with her group. Like all the rest of us, she had been given  
6   no direction or restrictions as it was "her" group. So she ignored our emails and instructed her  
7   co-owner to do the same. During this dispute, Judy specifically noted to other TFN volunteers,  
8   including me, that she was against using EF to take over a group. Judy was instructed to use EF  
9   to replace the owner. TFN first used EF to appoint an interim moderator for MMFN, giving  
10   control of the group to Robin, the coordinator of the "IMOD" team. Then, TFN used EF to  
11   appoint me and the interim moderator as new co-owners. Finally, TFN used EF to remove the  
12   original owner as an owner. By the time the original owner realized she had lost her group, the  
13   IMOD team had control, and the original owner was not one of the people selected to control the  
14   MMFN group from that point.

15         33.    In late July or early August 2005, a senior TFN volunteer known to me as  
16   Stephanie indicated that she and Mr. Beal wanted me to become the most senior GOA (known as  
17   the GOA Coordinator). I accepted the position of GOA Coordinator and became a member of  
18   the Hub. On August 5, 2005, Mr. Beal sent an email announcing that I had accepted the position  
19   as GOA Coordinator.

20         34.    The creation of the Hub was already in the works at the time of my  
21   "promotion", and the Hub was initially started within the first few days after my  
22   accepting the position of GOA Coordinator. The Hub was a group of eight people  
23   who occupied the top TFN positions. I was included because I was the GOA  
24   Coordinator. Mr. Beal told the members of the Hub that all Hub conversations  
25   were strictly confidential and could not be disclosed to others, including TFN  
26   volunteers who were not Hub members. After two weeks as the GOA Coordinator

1 and a member of the Hub, I left TFN. I still own and moderate freecycling groups  
2 that are no longer a part of The Freecycle Network.

3  
4 I declare under penalty of perjury under the laws of the United States of America that the  
5 foregoing is true and correct. Executed in Stillwater, Oklahoma, on 7/14/2007

6  
7  
8   
9

Miles Dennis Roberson, Jr.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

440383591