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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 Plaintiff,

15 v.

16 THE FREecycle NETWORK,
 an Arizona corporation,

17 Defendant.

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 19 THE FREecycle NETWORK, INC., an
 20 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 LISANNE
 ABRAHAM IN SUPPORT OF
 PLAINTIFF
 FREECYCLESUNNYVALE'S MOTION
 FOR SUMMARY ADJUDICATION**

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

1 I, Lisanne Abraham, 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 know the following facts of my own
5 knowledge and, if called as a witness, could and would competently testify to the following facts.

6 2. "Freecycling" is a practice whereby a person who owns an item he or she no
7 longer wants gives the item free to someone who wants it, so that the item doesn't end up as
8 trash in a landfill. When a person with an unwanted item, a "freecycler," gives the item to
9 someone who wants it, then the item has been "freecycled." Because freecycling involves the
10 free exchange of items that can be quite large (bookshelves, for example), freecycling is
11 primarily a local activity.

12 3. Many community freecycling organizations promote freecycling by maintaining
13 online groups, such as those available for free from Yahoo! An online freecycling group
14 comprises owners, moderators, and members.

15 4. By default, the person who starts an online group, by registering with an internet
16 provider such as Yahoo!, is the group's owner. An owner can control the group and has the
17 authority to perform various group maintenance functions, such as making another member an
18 owner or a moderator. A group can have multiple owners and moderators.

19 5. A moderator of an online group is a person who oversees the group's activities,
20 answers members' questions, deals with guideline violations, and so on. By default, the group's
21 owner is also its first moderator. A moderator has the same ability to perform various group
22 maintenance functions an owner does, except for the ability to make another member a group
23 owner. Moderators (and owners) can require a member's email messages to be reviewed (by a
24 moderator or owner) before posting to the online group. If a member's messages must be
25 approved before they can be posted, that member is said to be "on moderation." Moderators can
26 put members on or take members off moderation. Unmoderated members can post messages to
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1 the group without having to be approved first. Moderators can also set up a group so that
2 someone who wants to join the group must be approved before he or she can become a member.

3 6. A member of an online group is anyone who joins the online group. (The owners
4 and moderators are also members.)

5 7. Anyone can find a local online freecycling group by using Google or another
6 internet search engine and searching for the term "freecycle" and the name of the community.
7 To freecycle an unwanted item, an individual (a) joins a group and (b) sends an "offer" email
8 describing the item to the group; then, (c) individuals who want the item reply to the "offer"
9 email, and (d) the individual offering the item arranges an exchange with one of the individuals
10 wanting the item. A similar procedure is followed by members who post "wanted" emails for
11 items they are looking for.

12 8. FreecycleSunnyvale is a group of volunteers who owned and moderated the
13 online group "freecyclesunnyvale" until November 21, 2005, when Yahoo! terminated
14 freecyclesunnyvale at the behest of The Freecycle Network. The FreecycleSunnyvale volunteers
15 now own and moderate another Yahoo! group known as "sunnyvalefree." Except for a very
16 short time at the beginning, the original freecyclesunnyvale online group, and the current
17 sunnyvalefree online group, did/does not require new members to be approved before becoming
18 members. In other words, anyone could/can become a member of either of these groups, without
19 the knowledge of the group's owner or moderator.

20 9. I first learned about online freecycling on October 3, 2003, when I received an
21 email from an acquaintance, Albert Kaufman. I had known Mr. Kaufman casually for
22 approximately ten years, only in a social context, not a business context. Mr. Kaufman's
23 email—a "shotgun" email sent to many of his friends and acquaintances—explained the
24 freecycling concept and encouraged people to set up their own local online groups. At the time,
25 Mr. Kaufman was an owner and moderator of an online freecycling group in Portland, Oregon.
26 Mr. Kaufman's email said "Feel free to copy anything from my list [freecycleportland] to yours.
27 We also have people that can help with a logo." Mr. Kaufman's email also included a link to
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1 The Freecycle Network (“TFN”), the online freecycling group that Mr. Kaufman was associated
2 with. A true and correct copy of Mr. Kaufman’s email is attached to this Declaration as Exhibit
3 A.

4 10. Because of my active interest in the environment, I started an online freecycling
5 group for Sunnyvale, California. On October 7, 2003, I independently contacted Yahoo! and
6 obtained a group service account for an online group with the name “freecyclesunnyvale.” I
7 started the freecyclesunnyvale group completely on my own and without the involvement of Mr.
8 Kaufman, TFN, Deron Beal (TFN’s Executive Director), or anyone else.

9 11. Mr. Kaufman’s freecycleportland group and Mr. Beal’s Tucson freecycling group
10 included etiquette guidelines for using the group. Mr. Kaufman’s and Mr. Beal’s instructions
11 used the word “freecycle” and its variants to describe the activity of freecycling. When I started
12 the freecyclesunnyvale group, I used the instructions I found on either Mr. Kaufman’s or Mr.
13 Beal’s site. (I lightly edited the instructions, so mine were very similar to the other two groups’,
14 but not verbatim.) A welcoming email message was sent to each new member of
15 freecyclesunnyvale, and that email stated,

16 Hello,

17 Welcome to the freecyclesunnyvale group at Yahoo! Groups, a
18 free, easy-to-use email group service. Please take a moment to
19 review this message.

20 To learn more about the freecyclesunnyvale group, please visit
21 <http://groups.yahoo.com/freecyclesunnyvale>

22 To start sending messages to members of this group, simply send
23 an email to freecyclesunnyvale@yahogroups.com

24 If you do not wish to belong to freecyclesunnyvale, you may
25 unsubscribe by sending an email to [freecyclesunnyvale-](mailto:freecyclesunnyvale-unsubscribe@yahogroups.com)
26 unsubscribe@yahogroups.com

27 To see and modify all of your groups, go to
28 <http://groups.yahoo.com/mygroups>

Regards,

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Moderator, freecyclesunnyvale

The etiquette, or instructions on how to use freecyclesunnyvale, were posted on the home page of freecyclesunnyvale, and that etiquette stated,

Welcome to the Sunnyvale Freecycle Network!

To post a message to members of this group, send an email to freecyclesunnyvale@yahoogroups.com

FREEYCLING ETIQUETTE

1) NO POLITICS & NO SPAM. Two strikes & you're out.

2) SUBJECT LINE

Use these phrases:

OFFER:

TAKEN:

WANTED: [Use sparingly]

ADMIN: [Use for new idea specifically related to freecycling]

3) RESPONSES go only to offerer (not to the whole group)

4) PICKUP of items: Arrange however you want. Generally, 1st response, 1st served; if a nonprofit/charity responds, you may want to give it first shot.

5) CAN WE USE FREECYCLE TO FIND NEW HOMES FOR PETS? Yes, keep it legal & be lovingly careful

6) KEEP IT FREE. No trading or bartering, please.

To unsubscribe, send an email to freecyclesunnyvale-unsubscribe@yahoogroups.com.

Have fun & keep on freecylin' ...

freecyclesunny@yahoo.com
Moderator

12. On October 7, 2003, I emailed Mr. Kaufman and asked how my new group could obtain a logo. In an email response of the same date, Mr. Kaufman said, "Mark [Messinger] may be willing to help you out with a funky logo. Or, I can just send you the font people are using, or

1 you can just create something in photo shop [sic]" Mr. Kaufman included Mr. Beal and Mr.
2 Messinger on his reply, and requested that I send freecyclesunnyvale's URL to Mr. Beal so that
3 it could be listed with other groups on www.freecycle.org. A true and correct copy of my email
4 inquiry and Mr. Kaufman's email response is attached to this Declaration as Exhibit B.

5 13. On October 7, 2003, I sent an email to Mr. Beal and Mr. Messinger asking if they
6 could make me a logo for freecyclesunnyvale. In the next day or two, I spoke with Mr. Beal
7 over the telephone. This email and telephone conversation mark the first times that I
8 communicated with Mr. Beal.

9 14. On October 9, 2003, Mr. Beal replied: "You can get the neutral logo from
10 <http://www.freecycle.org>, just don't use it for commercial purposes or you [sic] maybe Mark or
11 Albert can help you to do your own fancy schmancy logo!" Other than this request, neither TFN
12 nor Mr. Beal placed any requirements, restrictions, or conditions on my use of the logo. Mr.
13 Beal's October 9, 2003, email is the only communication, in writing or otherwise, from TFN or
14 Mr. Beal and regarding the use of the logo. On the same day, Mr. Messinger replied that he
15 could create me a logo. A true and correct copy of these emails are attached to this Declaration
16 as Exhibit C.

17 15. On October 9, 2003, Mr. Messinger emailed me a logo, which I posted to the
18 freecyclesunnyvale website. The logo included the same "freecycle" logo as Mr. Beal's and Mr.
19 Kaufman's online freecycling group, but said "Sunnyvale" in place of their city names. In other
20 words, the logo on the freecyclesunnyvale website was a combination of the stylized version of
21 the word "freecycle" (in green), depicting a guitar and a bicycle, and a stylized version of the
22 word "Sunnyvale" (in yellow). True and correct copies of the emails that led to Mr. Messinger's
23 email is attached to this Declaration as Exhibit D.

24 16. Sometime between October 7, 2003 and October 9, 2003, freecyclesunnyvale was
25 added to the list of online freecycling groups on www.freecycle.org. Visitors to TFN's website
26 could click a link that took them directly to the freecyclesunnyvale online group.

1 17. On October 9, 2003, Mr. Beal sent an email to moderators of 19 online
2 freecycling groups. The “To” field indicates that 17 of these groups identified themselves as a
3 “Freecycle Network” or a “Freecycle” group by conjoining the name of the community with that
4 phrase—for example, the “Seattle Freecycle Network,” the “Las Vegas Freecycle Network,” and
5 “Freecycle Central New Jersey.” Mr. Beal did not indicate any requirements, restrictions, or
6 conditions for the use of the word “freecycle” or phrases like “Seattle Freecycle Network” and
7 “Las Vegas Freecycle Network.” In this email, Mr. Beal said, “What makes this network work
8 ... is that each city has it’s [sic] own volunteer moderator that makes it happen. Each local group
9 can get as big or stay as small as you yourself like!” Mr. Beal also said, “So that people at cities
10 nearby you can find out how to set up their own freecycle network, you might want to add
11 mention of freecycle.org ... in your intro paragraph or something.” A true and correct copy of
12 Mr. Beal’s email is attached to this Declaration as Exhibit E.

13 18. On October 13, 2003, I received an email invitation to join the
14 “freecyclemodsquad,” an online discussion group for moderators of online freecycling groups
15 that are listed on TFN’s website. A true and correct copy of that email is attached to this
16 Declaration as Exhibit F.

17 19. I immediately joined the freecyclemodsquad group, and read the email exchanges
18 for a month or two. After that, the volume of email was so high that I didn’t regularly read the
19 messages, although for several months I saved the emails to an electronic folder. At the end of
20 February 2004, I quit reading or saving unread emails from the modsquad online discussion
21 group.

22 20. On January 4, 2004, Mr. Beal had a poll for the modsquad that asked, “Do you
23 believe we should require that all local groups have the rule “Keep It Free, Legal & Appropriate
24 For All Ages?” A true and correct copy of the email notification of the poll is attached to this
25 Declaration as Exhibit G.

26 21. While the moderators were voting on the issue of whether to adopt “free, legal,
27 and appropriate for all ages” for all online freecycling groups, Mr. Beal sent an email to the
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1 modsquad, emphasizing that “it is not my decision as to what happens but is OUR decision as a
2 group.” A true and correct copy of this email is attached to this Declaration as Exhibit H.

3 22. On January 11, Mr. Beal posted an email to the modsquad, announcing the results
4 of the poll. In another email of that same date, Mr. Beal “pledge[d] to keep out of what each
5 local group wants to do when humanly and legally possible!!!” Mr. Beal also stated that, “Since
6 I am dealing with all of the Chiefs out there, I’ll try to remember to be an Indian myself.” True
7 and correct copies of Mr. Beal’s emails are attached collectively to this Declaration as Exhibit I.

8 23. Much of the discussion on the modsquad concerned the interpretation of “free,
9 legal, and appropriate for all ages,” and whether moderators should allow certain items to be
10 posted. Mr. Beal participated in many of the discussions on the modsquad concerning what
11 items are “free, legal, and appropriate for all ages.” Mr. Beal routinely encouraged each online
12 freecycling group to decide, for itself, what items are “free, legal, and appropriate for all ages.”

13 24. One issue regarding the interpretation of “free, legal, and appropriate for all ages
14 was the question of whether postings for animals, such as pets, should be permitted. On
15 February 18, 2004, Mr. Beal sent an email to the modsquad, stating, “Every group has their own
16 policy on pets. I suggest that you let the group decided [sic] by e-mailing you their thoughts and
17 you make the tough call.” A true and correct copy of that email is attached to this Declaration as
18 Exhibit J. On February 27, 2004, in a response to a posting from a South Jersey moderator, Mr.
19 Beal sent an email to the modsquad stating, “It sounds like South Jersey has put together a
20 thoughtful pet policy of their own. I’m sure you each have worked out your own pet policy
21 which balances the varying needs of your members. ... Each local group needs to figure out
22 their own pet policy based on the input from their members. However, we do need to stick to
23 our one overriding rule of keeping stuff free.” A true and correct copy of that email is already
24 attached to this Declaration as Exhibit K.

25 25. Another issue regarding the interpretation of “free, legal, and appropriate for all
26 ages” was the question of whether postings for firearms or drugs should be permitted. On
27 December 23, 2003, in response to a discussion about whether a ban on postings for firearms was
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1 a political statement, Mr. Beal sent an email to the modsquad, stating, "If you are going to allow
2 gun/legal drug gifts, you'd better make sure you have strong checks and balances[.] I am
3 tempted to not let the Freecycle name be used if firearms, drugs, tobacco or alcohol [are
4 posted.]" A true and correct copy of that email is attached to this Declaration as Exhibit L. On
5 January 28, 2004, in response to a moderator question about whether all member emails should
6 be reviewed to prevent firearm postings, Mr. Beal sent an email to the modsquad, stating, "I
7 don't think it is humanly possible to moderator [sic] all postings, so I'd say don't even sweat it!"
8 A true and correct copy of that email is attached to this Declaration as Exhibit M.

9 26. In his contributions to the modsquad discussion group, Mr. Beal stressed that
10 moderators and online freecycling groups should operate independently and on their own. One
11 example concerns the operation of local websites. On November 5, in response to a discussion
12 about plans for a TFN website, Mr. Beal sent an email to the modsquad stating, "I want to see the
13 freecycle webpage with subwebpages for each local group for free. These webpages need to be
14 as flexible as possible for local designs, updates and molding to fit the local efforts. And, if they
15 want to stay on yahoo groups, no problem! But the more local group[s] which have the freedom
16 to mold a 'subwebpage' or whatever you call it, directly on Freecycle.org the greater the strength
17 of the movement, or grassroots 'revolution in giving'." A true and correct copy of that email is
18 attached to this Declaration as Exhibit N.

19 27. Another example of how Mr. Beal stressed that moderators and online freecycling
20 groups should operate independently and on their own arose in the context of questions
21 concerning access to online groups by non-technical individuals. On November 18, 2003, in
22 response to a posting asking technical questions about use of online groups, Mr. Beal sent an
23 email to the modsquad stating, "The goal is to bring together what has become a movement, to
24 remove commercial influences, to synergize on programming and services and to empower the
25 local groups. AND TO MAKE IT REALLY, REALLY EASY so that other noncomputer buffs
26 can also set their own up." A true and correct copy of that email is attached to this Declaration
27 as Exhibit O.

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1 28. Another example of how Mr. Beal stressed that moderators and online freecycling
2 groups should operate independently arose in the context of questions concerning local
3 governance. On December 10, 2003, Mr. Beal sent an email to the modsquad stating, "I really
4 think it's best when local groups decide for themselves what they want to do." A true and
5 correct copy of that email is attached to this Declaration as Exhibit P.

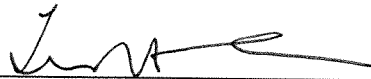
6 29. Another example of how Mr. Beal stressed that moderators and online freecycling
7 groups should operate independently arose in the context of questions concerning the growth of
8 local groups. On January 28, 2004, Mr. Beal sent an email to the modsquad stating, "[O]ne
9 needs local events, local ideas, local webpage design, local logo, etc.. Part of what freecycle is
10 for me is also local community building. Local moderation and local ownership by local
11 members is important. I want it to be possible for each local group to choose it's [sic] own
12 direction and growth as much as possible." A true and correct copy of that email is attached to
13 this Declaration as Exhibit Q.

14 30. Another example of how Mr. Beal stressed that moderators and online freecycling
15 groups should operate independently and on their own arose in the context of questions
16 concerning spam, or unsolicited emails. On February 3, 2004, in the context of a discussion
17 about spam, Mr. Beal sent an email to the modsquad stating, "wait until you do [get spam
18 messages] so that you and your group decide together." A true and correct copy of that email is
19 attached to this Declaration as Exhibit R.

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1 31. Throughout the time that freecyclesunnyvale existed and was affiliated with TFN,
2 I was unaware that Mr. Beal, TFN, or any of its volunteers ever monitored the email postings on
3 freecyclesunnyvale. At no time was I contacted by Mr. Beal, TFN, or any of its volunteers about
4 specific postings on freecyclesunnyvale.
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6 I declare under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct. Executed in Sunnyvale, California, on July 7, 2007.
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12 LISANNE ABRAHAM
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