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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

14 FREECYCLESUNNYVALE,
 a California unincorporated association,
 15
 Plaintiff,

16 v.

17 THE FREECYCLE NETWORK, INC.,
 18 an Arizona corporation,
 Defendant.
 19

CASE NO. C 06-00324 CW

**THE FREECYCLE NETWORK, INC.'S
 NOTICE OF ADMINISTRATIVE MOTION
 AND MOTION TO CHANGE HEARING
 DATE ON PLAINTIFF'S MOTION FOR
 SUMMARY ADJUDICATION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

20 THE FREECYCLE NETWORK, INC.
 21 an Arizona corporation,

22 Counterclaimant,

23 v.

24 FREECYCLESUNNYVALE,
 a California unincorporated association,
 25
 Counterdefendant,
 26

1 PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 6(b) and
2 Local Rule 6-3, defendant The Freecycle Network, Inc. will move, and hereby moves, for a
3 change in the time for the hearing on plaintiff FreecycleSunnyvale's Motion for Summary
4 Adjudication Under Federal Rule of Civil Procedure 56 ("Motion") such that the Motion will
5 now be heard on February 28, 2008, as mandated by this Court's July 30, 2007, Order Granting
6 as Modified the Parties' Stipulated Request for Order Changing Time (Docket Entry No. 81)
7 ("Order"), and the due dates for filing opposition and reply papers to the Motion shall be
8 changed in accordance with the new hearing date.

9 This administrative motion is based on this Notice of Motion and Motion, the
10 Memorandum of Points and Authorities below, the Declaration of Esha Bandyopadhyay in
11 Support of The Freecycle Network, Inc.'s Administrative Motion to Change Hearing Date of
12 Motion for Summary Adjudication filed herewith, the Proposed Order filed herewith, the records
13 on file in this action, and such evidence as may be presented at the hearing of this motion.

14 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE**
15 **FREECYCLE NETWORK, INC.'S ADMINISTRATIVE MOTION TO CHANGE**
16 **HEARING DATE ON PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION**

17 **I. INTRODUCTION**

18 Pursuant to Federal Rule of Civil Procedure 6(b) and Local Rule 6-3, defendant The
19 Freecycle Network, Inc. ("The Freecycle Network") respectfully seeks an order changing the
20 hearing date and related briefing schedule on plaintiff FreecycleSunnyvale's ("Plaintiff") Motion
21 for Summary Adjudication Under Federal Rule of Civil Procedure 56 ("Motion"), such that the
22 hearing on the Motion will be continued from August 23, 2007, to February 28, 2008, and the
23 due dates for filing opposition and reply papers to Plaintiff's Motion shall be changed
24 accordingly. The present administrative motion is brought on the grounds that this Court issued
25 an Order Granting as Modified the Parties' Stipulated Request for Order Changing Time (Docket
26 Entry No. 81) on July 30, 2007 ("Order") specifically requiring Plaintiff to "re-notice its motion
27 for summary judgment for hearing on February 28, 2008" in the event The Freecycle Network
28 was unable to submit its motion for summary judgment as a cross-motion to Plaintiff's Motion

1 by August 9, 2007. The Freecycle Network will be unable to submit its motion for summary
2 judgment as a cross-motion to Plaintiff's Motion by August 9, 2007, and has indicated the same
3 to counsel for Plaintiff. However, despite the Court's explicit instruction in regard to re-noticing
4 the hearing, Plaintiff has not responded to The Freecycle Network's requests that the hearing be
5 re-noticed, and has failed to re-notice the same. Accordingly, The Freecycle Network is left no
6 choice but to file the present administrative motion requesting a continuance of the hearing date
7 on the pending Motion.

8 II. ARGUMENT

9 A. Good Cause Exists for an Order Changing the Hearing Date on Plaintiff's 10 Motion

11 On a showing of good cause, the court may sign an order extending the time within
12 which any act is required or allowed to be done. Fed. R. Civ. Proc. 6(b). The present
13 administrative motion requests that the Court change the hearing date on Plaintiff's currently
14 pending Motion, which was initially noticed for August 23, 2007. Good cause for changing the
15 hearing date on this Motion exists not only due to the circumstances of this case, but also based
16 on the Court's own preference for hearing dispositive motions.

17 Here, the Court has specifically stated that it "prefers to consider all summary judgment
18 motions and cross-motions at the same time." Order at 1-2 (Docket Entry No. 81). In the
19 present matter, the current hearing date for case dispositive motions is February 28, 2008. Order
20 Changing Time for Fact Discovery Cutoff and Other Deadlines ("Order Changing Time")
21 (Docket Entry No. 78). Despite this deadline, mutually agreed upon by the parties, and ordered
22 by the Court (*Id.*), Plaintiff's currently pending Motion was originally noticed for hearing August
23 23, 2007. Notice of Motion and Motion for Summary Adjudication (Docket Entry No. 68).
24 Subsequently, in its July 30, 2007, Order, the Court specifically stated that if The Freecycle
25 Network is not prepared to submit its motion for summary judgment as a cross-motion to the
26 pending Motion by today, August 9, 2007, then "Plaintiff shall re-notice its motion for summary
27 judgment for hearing on February 28, 2008." Order (Docket Entry No. 81).

1 The Freecycle Network will be unable to submit its motion for summary judgment as a
2 cross-motion to Plaintiff's Motion by August 9, 2007. Declaration of Esha Bandyopadhyay in
3 Support of The Freecycle Network, Inc.'s Administrative Motion to Change Hearing Date of
4 Motion for Summary Adjudication ("Bandyopadhyay Decl.") filed herewith, ¶ 2. Specifically,
5 discovery is still continuing in this case, and depositions have not yet commenced. *Id.* Without
6 conducting this pertinent deposition discovery, The Freecycle Network will be unable to
7 complete its motion for summary judgment. *Id.*

8 Accordingly, based on the Court's own preference to hear all dispositive motions at the
9 same time, and The Freecycle Network's inability to submit its motion for summary judgment by
10 August 9, 2007, there exists good cause for the Court to continue the hearing date on the Motion
11 to February 28, 2008, and the due dates for filing opposition and reply papers to Plaintiff's
12 Motion should be changed in accordance with the new hearing date.

13 **B. The Freecycle Network Has Attempted to Obtain a Stipulation to Change the**
14 **Hearing Date**

15 Counsel for The Freecycle Network has now repeatedly attempted to meet and confer
16 with Plaintiff's counsel and specifically indicated in written and telephonic correspondence that
17 it will be unable to submit its motion for summary judgment as a cross-motion to Plaintiff's
18 Motion by August 9, 2007. Bandyopadhyay Decl., ¶¶ 3-5, Exhs. A-B. In addition, The
19 Freecycle Network has brought to Plaintiff's attention the Court's July 30th Order and requested
20 that Plaintiff re-notice the hearing on its pending motion for summary judgment. However, on
21 August 9, 2007, counsel for Plaintiff indicated that it is evaluating its options in light of the
22 Court's Order and that Plaintiff will not agree to a stipulation to continue the hearing date,
23 despite the explicit requirement contained in the Court's Order. Bandyopadhyay Decl., ¶ 6.

24 Since, despite the Court's preference regarding dispositive motions and its specific
25 instruction regarding re-noticing the hearing on the Motion, FreecycleSunnyvale refuses to
26 cooperate with The Freecycle Network and abide by the terms of the Order, The Freecycle
27 Network is left with no choice but to file the present administrative motion. Given the highly
28 unreasonable position taken by Plaintiff, the Court should grant The Freecycle Network's request

1 for a continuance of the hearing on the Motion, which is simply in accordance with the Court's
2 July 30th Order.

3 **C. The Freecycle Network Will be Severely Prejudiced if the Hearing Date is not**
4 **Changed**

5 As stated above The Freecycle Network will be unable to submit its motion for summary
6 judgment as a cross-motion to Plaintiff's Motion by August 9, 2007, as it will not have had an
7 opportunity to conduct pertinent deposition discovery necessary for its summary judgment
8 motion. *See* Bandyopadhyay Decl., ¶ 2. Accordingly, should The Freecycle Network's request
9 for a continuance be denied, The Freecycle Network will not have sufficient opportunity to
10 prepare its summary judgment motion, and will therefore be severely prejudiced. As such, the
11 Court should grant The Freecycle Network's request that the hearing on the Motion be changed
12 to February 28, 2008, per the Court's July 30th Order.

13 **D. Prior Time Modifications in this Case have not Impacted the Present Motion**

14 This administrative motion is the second request for a time modification specific to
15 Plaintiff's Motion. On August 27, 2007, the parties filed a joint stipulation requesting that the
16 Court change the hearing date on the Motion to September 6, 2007. Stipulated Request for Order
17 Changing Time (Docket Entry No. 79). It was in response to the filing of that joint stipulation
18 that the Court issued its July 30th Order. *See* Order (Docket Entry No. 81). All prior requests for
19 modification have pertained generally to the discovery cutoff and the deadline within which to
20 complete court-connected mediation, and none have related to a specific dispositive motion. *See*
21 Order (June 2, 2006; Docket No. 35); Order (August 1, 2006; Docket No. 44); Order (October 3,
22 2006; Docket No.57); Order (December 22, 2006; Docket No. 62); Order (April 3, 2007; Docket
23 No. 65).

24 **E. The Requested Time Modification Would Have No Effect on the Remaining**
25 **Schedule for this Case**

26 As discussed in the Court's Order (Docket Entry No. 81), on July 28, 2007, this Court
27 signed an Order Changing Time for Fact Discovery Cutoff and Other Deadlines, extending the
28 deadline to file dispositive motions to January 10, 2008, and changing the hearing date on such

1 dispositive motions to February 28, 2008. Order Changing Time (July 26, 2007; Docket Entry
2 No. 78). Accordingly, changing the hearing date on Plaintiff's present dispositive Motion to
3 February 28, 2008, the exact date set by the Court for such hearing, will in no way impact the
4 remaining schedule for this case. As such, this Court should grant The Freecycle Network's
5 request to change the current hearing date on Plaintiff's Motion, and extend the related deadlines
6 on the briefing schedule accordingly.

7 **III. CONCLUSION**

8 Based on the foregoing, Defendant respectfully requests that the Court enter an order
9 continuing the hearing on Plaintiff's Motion for Summary Adjudication to February 28, 2008,
10 and extending the due dates for filing opposition and reply papers to Plaintiff's Motion in
11 accordance with the new hearing date.

12
13 DATED: August 9, 2007

PERKINS COIE LLP

14
15 By /s/ Esha Bandyopadhyay
16 Paul J. Andre
17 Lisa Kobialka
18 Esha Bandyopadhyay
19 Sean Boyle
20 Attorneys for Defendant
21 THE FREECYCLE NETWORK, INC.