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

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14 FREECYCLESUNNYVALE,
 a California unincorporated association,

15 **Plaintiff,**

16 v.

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

19 **Defendant.**

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21 THE FREECYCLE NETWORK, INC.
 an Arizona corporation,

22 **Counterclaimant,**

23 v.

24 FREECYCLESUNNYVALE,
 a California unincorporated association,

25 **Counterdefendant,**

26

27 I, ESHA BANDYOPADHYAY, declare:

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CASE NO. C 06-00324 CW

**DECLARATION OF ESHA
 BANDYOPADHYAY IN OPPOSITION TO
 FREECYCLESUNNYVALE'S
 ADMINISTRATIVE MOTION FOR
 RECONSIDERATION OF THIS COURT'S
 AUGUST 10, 2007, ORDER DENYING
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT WITHOUT PREJUDICE**

1 1. I am an attorney with the law firm of Perkins Coie LLP, counsel of record for
2 Defendant and Counterclaimant The Freecycle Network, Inc. (“The Freecycle Network”). I have
3 personal knowledge of the facts set forth in this declaration and can testify competently to those
4 facts.

5 2. Discovery is still continuing in this case, and depositions only recently
6 commenced on August 9, 2007. On July 17, 2007, the parties stipulated to extend the discovery
7 deadline to November 1, 2007, and to not propound any additional deposition notices. On that
8 same date, Plaintiff Freecyclesunnyvale (“Plaintiff”) filed its Motion for Summary Adjudication
9 Under Fed.R.Civ.P. 56 (“MSJ”) attaching the declaration of Miles Dennis Robertson, Jr.
10 Plaintiff never disclosed Mr. Robertson, Jr. in either its initial disclosures or discovery responses.
11 I have, on multiple occasions, brought this to the attention of Plaintiff’s counsel. Attached hereto
12 as Exhibit A is a true and correct copy of my July 27, 2007, email to Mr. Dennis Corgill, counsel
13 for Plaintiff. Attached hereto as Exhibit B is a true and correct copy of my July 30, 2007, email
14 to Mr. Dennis Corgill. Attached hereto as Exhibit C is a true and correct copy of my July 31,
15 2007, email to Mr. Dennis Corgill.

16 3. Plaintiff has not provided an explanation as to its failure to disclose Mr.
17 Robertson, Jr.’s name prior to its MSJ. Although Plaintiff has offered to schedule a deposition of
18 Mr. Robertson, Jr. in exchange for an agreement that The Freecycle Network will not bring a
19 motion against Plaintiff under Federal Rule of Civil Procedure 37, the parties have not yet
20 reached agreement on this issue. As such, the deposition of Mr. Robertson, Jr. has not yet
21 commenced. Attached hereto as Exhibits D and E, respectively, are true and correct copies of a
22 July 25, 2007 letter from Mr. Corgill and a July 31, 2007, email from Mr. Corgill, offering to
23 make Mr. Robertson, Jr. available for deposition. Plaintiff subsequently amended its disclosures
24 to include Mr. Robertson, Jr. Attached hereto as Exhibit F is a true and correct copy of
25 Plaintiff’s Supplemental Initial Disclosures, adding the identification of Mr. Robertson, Jr. The
26 deposition of another key witness, Tim Oey, has been scheduled by The Freecycle Network, but
27 also has not yet been completed.

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1 4. Without conducting this pertinent deposition discovery, and subsequent expert
2 discovery, The Freecycle Network was unable to file its motion for summary judgment as a
3 cross-motion to Plaintiff FreecycleSunnyvale's Motion for Summary Adjudication Under
4 Federal Rule of Civil Procedure 56 by August 9, 2007.

5 5. On Monday, August 6, 2007, I sent a letter to Mr. Dennis Corgill, counsel for
6 Plaintiff, setting forth The Freecycle Network's position that it would be unable to submit its
7 motion for summary judgment as a cross-motion to Plaintiff's Motion by August 9, 2007. I
8 further requested in this letter that FreecycleSunnyvale re-notice the hearing on its Motion for
9 February 28, 2008, as ordered by the Court in its July 30, 2007, Order Granting as Modified the
10 Parties' Stipulated Request for Order Changing Time (Docket Entry No. 81). Attached hereto as
11 Exhibit G is a true and correct copy of my August 6, 2007, letter to Mr. Corgill.

12 6. On Wednesday, August 8, 2007, I sent an email to Mr. Corgill following up on
13 my August 6th letter, and requesting confirmation that Plaintiff would agree to re-notice the
14 hearing on its Motion. Attached hereto as Exhibit H is a true and correct copy of my August 8,
15 2007, email to Mr. Corgill.

16 7. On Thursday, August 9, 2007, I telephoned Mr. Corgill and once again requested
17 that Plaintiff agree to re-notice the hearing on the Motion. Given Plaintiff's refusal to re-notice
18 the hearing as ordered by the Court, The Freecycle Network had no choice but to file an
19 administrative motion requesting a change in the hearing date. The Freecycle Network filed its
20 Administrative Motion to Change Hearing Date on Plaintiff's Motion for Summary Adjudication
21 (Docket Entry No. 82) on August 9, 2007.

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct. Executed in Menlo Park, California on August 16, 2007.

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By: /s/ Esha Bandyopadhyay
Esha Bandyopadhyay

Attorney for Defendant and Counterclaimant
The Freecycle Network, Inc.