

1 MAYER, BROWN, ROWE & MAW LLP  
Ian N. Feinberg (SBN 88324)  
2 [ifeinberg@mayerbrownrowe.com](mailto:ifeinberg@mayerbrownrowe.com)  
Dennis S. Corgill (SBN 103429)  
3 [dcorgill@mayerbrownrowe.com](mailto:dcorgill@mayerbrownrowe.com)  
Eric B. Evans (SBN 232476)  
4 [eevans@mayerbrownrowe.com](mailto:eevans@mayerbrownrowe.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 Attorneys for Plaintiff  
8 FREECYCLESUNNYVALE,

9  
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,  
17 an Arizona corporation,

18 Defendant.

19 AND RELATED COUNTERCLAIMS  
20

Case No. C06-00324 CW

**DECLARATION OF DENNIS S.  
CORGILL IN SUPPORT OF  
PLAINTIFF AND  
COUNTERDEFENDANT  
FREECYCLESUNNYVALE'S  
REPLY IN SUPPORT OF  
ADMINISTRATIVE MOTION FOR  
RECONSIDERATION**

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. Throughout the above-captioned litigation, Defendant and Counterclaimant The  
8 Freecycle Network ("TFN") has noticed the depositions of only three individuals, Jason Wong,  
9 Lisanne Abraham, and Timothy Oey, all of whom are members of Plaintiff and  
10 Counterdefendant FreecycleSunnyvale. The deposition of Jason Wong was completed on  
11 August 9, 2007. The deposition of Lisanne Abraham was completed on August 10, 2007. The  
12 deposition of Timothy Oey was taken on August 17, 2007. At the end of Mr. Oey's day-long  
13 deposition, counsel for TFN, Lisa Kobialka indicated that she had no further questions pending  
14 supplemental document production in response to requests that TFN previously served and  
15 FreecycleSunnyvale previously answered.

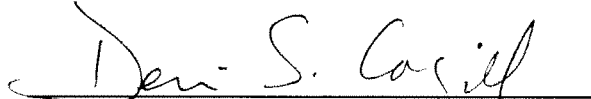
16 3. There are no outstanding discovery requests that TFN has served upon  
17 FreecycleSunnyvale and that FreecycleSunnyvale has not answered.

18 4. On July 24, 2007, counsel for TFN, Esha Bandyopadhyay, initiated a meet and  
19 confer process pertaining to the declaration of Miles Dennis Robertson, which was filed on July  
20 17, 2007, in support of FreecycleSunnyvale's motion for summary adjudication. Attached to this  
21 Declaration as Exhibit A is a true and correct copy of letters and email correspondence that Ms.  
22 Bandyopadyhay and I exchanged in the course of the meet and confer.

23 5. The last communication that I received from Ms. Bandyopadyhay in the meet and  
24 confer process pertaining to the declaration of Miles Dennis Robertson is an email dated July 31,  
25 2007, and is time-stamped 10:53 a.m. In that email, TFN rejected FreecycleSunnyvale's offer to  
26 extend the discovery cutoff of August 3, 2007, solely with respect to a deposition of Miles  
27  
28

1 Dennis Robertson. TFN stated that it was "willing to hear alternative proposals." *See* Exhibit A  
2 at page 12 (next to last page). TFN never identified any "alternative proposals."

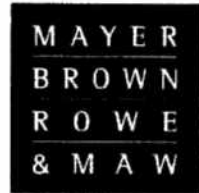
3  
4 I declare under penalty of perjury under the laws of the United States of America that the  
5 foregoing is true and correct. Executed in Palo Alto, California, on August 21, 2007.

6  
7   
8 Dennis S. Corgill

# **Exhibit A**

August 21, 2007 Declaration of Dennis S. Corgill in Support of  
Plaintiff and Counterdefendant FreecycleSunnyvale's  
Reply in Support of Administrative Motion for Reconsideration

FreecycleSunnyvale v. The Freecycle Network  
Case No. C06-00324  
(N.D. Cal. filed Jan. 18, 2006)



July 25, 2007

VIA EMAIL AND U.S. MAIL

Esha Bandyopadhyay  
Perkins Coie LLP  
101 Jefferson Drive  
Menlo Park, CA 94025

Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, California 94306-2112

Main Tel (650) 331-2000  
Main Fax (650) 331-2060  
[www.mayerbrownrowe.com](http://www.mayerbrownrowe.com)

**Dennis S. Corgill**  
Direct Tel (650) 331-2058  
Direct Fax (650) 331-4558  
[dcorgill@mayerbrownrowe.com](mailto:dcorgill@mayerbrownrowe.com)

Re: Disclosure of Witness in *FreecycleSunnyvale v. The Freecycle Network, Inc.*, Case No. C 06-00324 CW (N.D. Cal. filed Jan. 18, 2006)

Dear Esha:

Thank you for your telephone call yesterday during which you initiated the meet and confer process for a FED.R.CIV.P. 37 motion on the grounds that Miles Dennis Robertson, Jr., was not disclosed as a potential witness.

Under FED.R.CIV.P. 37(c)(1), evidence from an undisclosed witness may be used if any failure to disclose the witness is "harmless." A failure to disclose a witness is harmless if the witness's identity is already known to the other party or disclosed by other parties. *See* Advisory Committee Notes to 1993 Amendments to FED.R.CIV.P. 37(c).

Mr. Robertson is not a surprise witness. Mr. Robertson is well-known to The Freecycle Network ("TFN") and to its Executive Director, Deron Beal. Mr. Robertson was an NGA, a GOA, the GOA Coordinator, and a member of The Hub.

Further, TFN disclosed the identity of Mr. Robertson, as well as his senior status within TFN. *See, e.g.*, FN 066925, FN 068170, FN 070599.

Pursuant to FED.R.CIV.P. 26(e), FreecycleSunnyvale will supplement its Initial Disclosures to include the identity of Mr. Robertson, an identity already known to TFN.

We consider this matter resolved pursuant to L.R. 37-1.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis S. Corgill", written over a horizontal line.

Dennis S. Corgill



July 25, 2007

VIA EMAIL AND U.S. MAIL

Esha Bandyopadhyay  
Perkins Coie LLP  
101 Jefferson Drive  
Menlo Park, CA 94025

Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, California 94306-2112

Main Tel (650) 331-2000  
Main Fax (650) 331-2060  
[www.mayerbrownrowe.com](http://www.mayerbrownrowe.com)

**Dennis S. Corgill**  
Direct Tel (650) 331-2058  
Direct Fax (650) 331-4558  
[dcorgill@mayerbrownrowe.com](mailto:dcorgill@mayerbrownrowe.com)

Re: Disclosure of Witness in *FreecycleSunnyvale v.*  
*The Freecycle Network, Inc.*, Case No. C 06-  
00324 CW (N.D. Cal. filed Jan. 18, 2006)

Dear Esha:

Thank you for returning my telephone call today. On condition that The Freecycle Network agrees not to bring a motion under FED.R.CIV.P. 37, FreecycleSunnyvale will agree (1) that the discovery cut-off of August 3, 2007, does not apply to a deposition of Miles Dennis Robertson, Jr., and (2) that the hearing date for the motion currently scheduled for August 23, 2007, may be moved to September 6, 2007, with corresponding adjustments to the briefing schedule.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis S. Corgill".

Dennis S. Corgill

**Corgill, Dennis S.**

---

**From:** Corgill, Dennis S.  
**Sent:** Thursday, July 26, 2007 8:53 AM  
**To:** 'Bandyopadhyay, Esha (Perkins Coie)'  
**Subject:** RE: Disclosure of Witness in FreecycleSunnyvale v. The Freecycle Network

Esha,

I will let you know as soon as I am able. By the way, the offer in my last letter remains open.

Cheers,  
Dennis

-----Original Message-----

From: Bandyopadhyay, Esha (Perkins Coie) [mailto:BANDE@PerkinsCoie.com]  
Sent: Thursday, July 26, 2007 8:18 AM  
To: Corgill, Dennis S.  
Subject: RE: Disclosure of Witness in FreecycleSunnyvale v. The Freecycle Network

Dennis:

Please advise as to FreecycleSunnyvale's position on our proposal as we will otherwise need to move forward with a motion in order to continue the August 23rd hearing date. I look forward to hearing from you.

Best regards,  
Esha

-----Original Message-----

From: Bandyopadhyay, Esha (Perkins Coie)  
  
Sent: Wednesday, July 25, 2007 2:47 PM  
To: 'Corgill, Dennis S.'  
Subject: RE: Disclosure of Witness in FreecycleSunnyvale v. The Freecycle Network

Dennis:

Thank you for your letter of earlier this afternoon. We are hopeful that the parties can reach some sort of mutual agreement in order not to unnecessarily burden the Court. We propose the following: The Freecycle Network will agree not to bring a motion under Federal Rule of Civil Procedure 37 if FreecycleSunnyvale will agree that 1) the August 3, 2007, discovery cutoff will not apply to depositions of Miles Dennis Robertson, Jr. or Kenneth A. Hedden, Sr. and 2) that the hearing date for the motion currently scheduled for August 23, 2007, may be moved to September 20, 2007, with corresponding adjustments to the briefing scheduling in order to afford The Freecycle Network sufficient opportunity to conduct the additional depositions.

Please feel free to contact me should you have any questions or concerns.

Best regards,  
Esha

-----Original Message-----

From: Corgill, Dennis S. [mailto:DCorgill@mayerbrownrowe.com]

Sent: Wednesday, July 25, 2007 2:12 PM  
To: Bandyopadhyay, Esha (Perkins Coie)  
Subject: Disclosure of Witness in FreecycleSunnyvale v. The Freecycle Network

Esha,

Thank you for returning my call today. I am sorry that the tenor of our discussion became acrimonious, and I apologize for my part in that.

Please see the attached letter.

Cheers,  
Dennis

Dennis S. Corgill  
Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, CA 94306-2112  
Direct Telephone: 650.331.2058  
Direct Facsimile: 650.331.4558  
Email: dcorgill@mayerbrownrowe.com  
Mobile Telephone: 650.248.0340

IRS CIRCULAR 230 NOTICE. Any advice expressed above as to tax matters was neither written nor intended by the sender or Mayer, Brown, Rowe & Maw LLP to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then (i) the advice was written to support the promotion or marketing (by a person other than Mayer, Brown, Rowe & Maw LLP) of that transaction or matter, and (ii) such taxpayers should seek advice based on the taxpayers particular circumstances from an independent tax advisor.

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.



July 27, 2007

VIA EMAIL AND U.S. MAIL

Esha Bandyopadhyay  
Perkins Coie LLP  
101 Jefferson Drive  
Menlo Park, CA 94025

Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, California 94306-2112

Main Tel (650) 331-2000  
Main Fax (650) 331-2060  
www.mayerbrownrowe.com

**Dennis S. Corgill**  
Direct Tel (650) 331-2058  
Direct Fax (650) 331-4558  
dcorgill@mayerbrownrowe.com

Re: Hearing on Motion in *FreecycleSunnyvale v. The Freecycle Network, Inc.*, Case No. C 06-00324  
CW (N.D. Cal. filed Jan. 18, 2006)

Dear Esha:

With respect to the recently filed Motion for Summary Judgment, FreecycleSunnyvale agrees to moving the hearing date to September 6, 2007, the date originally requested by The Freecycle Network.

With respect to the Declaration of Mr. Robertson, as I explained earlier, any objection under FED.R.CIV.P. 37 is unfounded and, therefore, frivolous. If you are aware of legal authority to the contrary, please let us know. Otherwise, we consider this matter concluded.

With respect to depositions of Messrs. Hedden and Robertson, FreecycleSunnyvale will not agree to extend discovery. The Freecycle Network's failure to seek any third party discovery during the discovery period is not grounds to delay the hearing on the Motion for Summary Judgment.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in cursive script, reading "Dennis S. Corgill".

Dennis S. Corgill

**Corgill, Dennis S.**

---

**From:** Bandyopadhyay, Esha (Perkins Coie) [BANDE@PerkinsCoie.com]  
**Sent:** Friday, July 27, 2007 11:56 AM  
**To:** Corgill, Dennis S.  
**Subject:** RE: Timing issues in FreecycleSunnyvale v. The Freecycle Network



FRE\_Joint FRE\_Order - Joint  
Stipulation re\_ MSJ.. Stipulation...

<<FRE: Joint Stipulation re: MSJ Hearing.DOC>> <<FRE: Order - Joint  
Stipulation re: MSJ Hearing.DOC>> Dennis-

I write in response to your letter of earlier this morning. We will not file The Freecycle Network's motion to change the hearing date, though it is unfortunate that your delay in responding to our proposal has resulted in wasted time and resources in preparing the motion.

Thank you for agreeing to move the hearing date on FreecycleSunnyvale's Motion for Summary Judgment to September 6, 2007. Attached please find a joint stipulation and proposed order pursuant to Local Rule 6-2. Please let me know if the attached drafts are acceptable, and we will take care of the filing.

As I clearly stated during our telephonic discussion on Wednesday, July 25th, we disagree with your assertions regarding The Freecycle Network's grounds for filing a motion under Federal Rule of Civil Procedure 37. FreecycleSunnyvale violated the Federal Rules of Civil Procedure in failing to identify a key witness, Mr. Miles Dennis Robertson, Jr., prior to the close of discovery. As you are no doubt aware, Federal Rule of Civil Procedure 26(a) requires a party to disclose the names of "each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses...." FreecycleSunnyvale failed to meet this burden. In addition, it is well-established that failure to comply with the disclosure requirements of the Federal Rules of Civil Procedure will result in the exclusion of that evidence unless the failing party shows that there was substantial justification for the failure or that the failure was harmless. Fed.R.Civ.Proc. 37(c); Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1001, 1106 (9th Cir. 2001). FreecycleSunnyvale has neither established that it was justified in failing to identify Mr. Robertson during the discovery period, nor has it established that the failure to identify Mr. Robertson was harmless. Failing to identify a witness prior to the close of discovery that FreecycleSunnyvale is relying upon in a summary judgment motion, after entering into a stipulation precluding The Freecycle Network from taking this witness' deposition, does not satisfy FreecycleSunnyvale's burden in this case. As such, The Freecycle Network will be filing a cross-motion under Federal Rule of Civil Procedure 37 as we have complied with our meet and confer requirements. To this end, we need to address the briefing schedule based on the new proposed hearing date. We propose setting August 23, 2007, as the date by which FreecycleSunnyvale may oppose The Freecycle Network's cross-motion, and August 30, 2007, as the date by which The Freecycle Network may file a reply brief in response to FreecycleSunnyvale's opposition. We are happy to discuss this further.

Please let me know if you have any further questions.

Regards,

Esha

-----Original Message-----

From: Corgill, Dennis S. [mailto:DCorgill@mayerbrownrowe.com]

Sent: Friday, July 27, 2007 10:02 AM

To: Bandyopadhyay, Esha (Perkins Coie)

Subject: Timing issues in FreecycleSunnyvale v. The Freecycle Network

Esha,

Thank you for your patience. Please see the attached letter. Please call if you have any questions.

Cheers,  
Dennis

Dennis S. Corgill  
Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, CA 94306-2112  
Direct Telephone: 650.331.2058  
Direct Facsimile: 650.331.4558  
Email: dcorgill@mayerbrownrowe.com  
Mobile Telephone: 650.248.0340

IRS CIRCULAR 230 NOTICE. Any advice expressed above as to tax matters was neither written nor intended by the sender or Mayer, Brown, Rowe & Maw LLP to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then (i) the advice was written to support the promotion or marketing (by a person other than Mayer, Brown, Rowe & Maw LLP) of that transaction or matter, and (ii) such taxpayers should seek advice based on the taxpayers particular circumstances from an independent tax advisor.

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.



July 27, 2007

VIA EMAIL AND U.S. MAIL

Esha Bandyopadhyay  
Perkins Coie LLP  
101 Jefferson Drive  
Menlo Park, CA 94025

Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, California 94306-2112

Main Tel (650) 331-2000  
Main Fax (650) 331-2060  
www.mayerbrownrowe.com

**Dennis S. Corgill**  
Direct Tel (650) 331-2058  
Direct Fax (650) 331-4558  
dcorgill@mayerbrownrowe.com

Re: Disclosure of Witness in *FreecycleSunnyvale v. The Freecycle Network, Inc.*, Case No. C 06-00324 CW (N.D. Cal. filed Jan. 18, 2006)

Dear Esha:

This letter continues the meet and confer process for a FED.R.CIV.P. 37 motion on the grounds that Miles Dennis Robertson, Jr., was not disclosed as a potential witness.

Any motion would be frivolous. This conclusion is not changed by *Yeti By Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101 (9th Cir. 2001). In that case, evidence from a timely identified expert witness was excluded because the expert's report was not provided until two years after discovery closed and twenty-eight days prior to trial.

Even if *Yeti* pertained to identifying a potential witness, *Yeti* concerned an expert witness. A party has no reason to know the identity of an opposing party's expert. Here, The Freecycle Network ("TFN") knew the identity of Mr. Robertson, and TFN identified Mr. Robertson in documents that TFN produced.

If you are aware of relevant authority that would make a FED.R.CIV.P. 37 motion not frivolous, please let us know. Otherwise, we consider this matter concluded. There is no need to discuss a briefing schedule on any cross-motion.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis S. Corgill", written over a horizontal line.

Dennis S. Corgill

**Corgill, Dennis S.**

---

**From:** Bandyopadhyay, Esha (Perkins Coie) [BANDE@PerkinsCoie.com]  
**Sent:** Monday, July 30, 2007 10:20 AM  
**To:** Corgill, Dennis S.  
**Subject:** RE: Meet and Confer

Dennis-

I write in response to your letter of Friday, July 30th, regarding The Freecycle Network's cross-motion under Federal Rule of Civil Procedure 37 based on FreecycleSunnyvale's failure to identify Miles Dennis Robertson, Jr. as a potential witness. Based on our correspondence last week, both written and telephonic, we do not believe there is any need to "continue" the meet and confer process regarding this cross-motion. Indeed, The Freecycle Network has already met its meet and confer requirements and our position has been set forth clearly with citations to legal authority. Despite your assertions to the contrary, this matter will not be "concluded" until the Court rules upon The Freecycle Network's cross-motion. Moreover, your repeated refusal to acknowledge The Freecycle Network's intent to file a cross-motion will not alter our position. As we stated clearly last week, this is an issue on which we will have to agree to disagree.

To be clear, The Freecycle Network will be filing a cross-motion under Federal Rule of Civil Procedure 37. FreecycleSunnyvale will then have an opportunity to oppose The Freecycle Network's motion. We believe it is in the best interests of both parties to arrive at some sort of agreement regarding the briefing schedule for the cross-motion. Should FreecycleSunnyvale continue to simply deny the existence of the motion, and continue to fail to cooperate in this endeavor, we will have no choice but to indicate the same to the Court.

Please let me know if you have any questions or concerns.

Best regards,  
Esha

-----Original Message-----

From: Corgill, Dennis S. [mailto:DCorgill@mayerbrownrowe.com]

Sent: Friday, July 27, 2007 5:04 PM  
To: Bandyopadhyay, Esha (Perkins Coie)  
Subject: Meet and Confer

Esha,

Please see the attached letter.

Cheers,  
Dennis

Dennis S. Corgill  
Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, CA 94306-2112  
Direct Telephone: 650.331.2058  
Direct Facsimile: 650.331.4558  
Email: dcorgill@mayerbrownrowe.com  
Mobile Telephone: 650.248.0340

IRS CIRCULAR 230 NOTICE. Any advice expressed above as to tax matters was neither written nor intended by the sender or Mayer, Brown, Rowe & Maw LLP to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then (i) the advice was written to support the promotion or marketing (by a person other than Mayer, Brown, Rowe & Maw LLP) of that transaction or matter, and (ii) such taxpayers should seek advice based on the taxpayers particular circumstances from an independent tax advisor.

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

**Corgill, Dennis S.**

---

**From:** Corgill, Dennis S.  
**Sent:** Monday, July 30, 2007 3:21 PM  
**To:** 'ebandyopadhyay@perkinscoie.com'  
**Subject:** Rule 37 Motion

Esha,

With respect to the Declaration of Miles Dennis Robertson, Jr., as previously indicated, any objection under Fed.R.Civ.P. 37 is unfounded and, therefore, frivolous. In an effort not to burden the court with motions, however, FreecycleSunnyvale will not object to extending the discovery cutoff of August 3rd solely with respect to a deposition of Miles Dennis Robertson, Jr. If this is agreeable to The Freecycle Network, please let me know.

Cheers,  
Dennis

Dennis S. Corgill  
Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, CA 94306-2112  
Direct Telephone: 650.331.2058  
Direct Facsimile: 650.331.4558  
Email: [dcorgill@mayerbrownrowe.com](mailto:dcorgill@mayerbrownrowe.com)  
Mobile Telephone: 650.248.0340

**Corgill, Dennis S.**

**From:** Bandyopadhyay, Esha (Perkins Coie) [BANDE@PerkinsCoie.com]  
**Sent:** Tuesday, July 31, 2007 10:53 AM  
**To:** Corgill, Dennis S.  
**Subject:** RE: Rule 37 Motion

Dennis-

The Freecycle Network is not agreeable to FreecycleSunnyvale's offer, which is why we made a counter-proposal. However, we are willing to hear alternative proposals. Please feel free to let me know if you have any questions.

Regards,  
Esha

**From:** Corgill, Dennis S. [mailto:DCorgill@mayerbrownrowe.com]  
**Sent:** Tuesday, July 31, 2007 10:33 AM  
**To:** Bandyopadhyay, Esha (Perkins Coie)  
**Subject:** RE: Rule 37 Motion

Esha,

We are aware of The Freecycle Network's counter-proposal in your email of July 25th. FreecycleSunnyvale is not accepting that counter-proposal. FreecycleSunnyvale's offer in my email of yesterday is limited to a deposition of Mr. Robertson.

If you have any questions, please feel free to call.

Cheers,  
Dennis

**From:** Bandyopadhyay, Esha (Perkins Coie) [mailto:BANDE@PerkinsCoie.com]  
**Sent:** Tuesday, July 31, 2007 10:05 AM  
**To:** Corgill, Dennis S.  
**Subject:** RE: Rule 37 Motion

Dennis-

We continue to disagree with your assertions regarding FreecycleSunnyvale's failure to identify its witnesses as required by the Federal Rules of Civil Procedure.

In regard to your proposal below, as you know, FreecycleSunnyvale previously made this proposal in a letter dated July 25, 2007, though FreecycleSunnyvale later withdrew the offer in a subsequent letter. In response to your July 25th letter, I set forth a counter-proposal in an e-mail of that same date. To the extent that FreecycleSunnyvale is now reintroducing its proposal, we request that you please review and respond to The Freecycle Network's counter-proposal in my e-mail of July 25th. Please let me know if you have any further questions.

Regards,  
Esha

8/1/2007

**From:** Corgill, Dennis S. [mailto:DCorgill@mayerbrownrowe.com]

**Sent:** Monday, July 30, 2007 3:21 PM

**To:** Bandyopadhyay, Esha (Perkins Coie)

**Subject:** Rule 37 Motion

Esha,

With respect to the Declaration of Miles Dennis Robertson, Jr., as previously indicated, any objection under Fed.R.Civ.P. 37 is unfounded and, therefore, frivolous. In an effort not to burden the court with motions, however, FreecycleSunnyvale will not object to extending the discovery cutoff of August 3rd solely with respect to a deposition of Miles Dennis Robertson, Jr. If this is agreeable to The Freecycle Network, please let me know.

Cheers,  
Dennis

Dennis S. Corgill  
Mayer, Brown, Rowe & Maw LLP  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, CA 94306-2112  
Direct Telephone: 650.331.2058  
Direct Facsimile: 650.331.4558  
Email: dcorgill@mayerbrownrowe.com  
Mobile Telephone: 650.248.0340

IRS CIRCULAR 230 NOTICE. Any advice expressed above as to tax matters was neither written nor intended by the sender or Mayer, Brown, Rowe & Maw LLP to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then (i) the advice was written to support the promotion or marketing (by a person other than Mayer, Brown, Rowe & Maw LLP) of that transaction or matter, and (ii) such taxpayers should seek advice based on the taxpayers particular circumstances from an independent tax advisor.

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

8/1/2007