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 7 ST. PAUL MERCURY INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT COURT OF CALIFORNIA
 10 SAN JOSE DIVISION

11 NETSCAPE COMMUNICATIONS) CORPORATION, a Delaware corporation; and) 12 AMERICAN ONLINE, INC., a Delaware) corporation,) 13 14 Plaintiffs,) vs.) 15 FEDERAL INSURANCE COMPANY, an) Indiana corporation; et al.,) 16 17 Defendants.)	CASE NO. 5:06-CV-00198 JW (PVT) DECLARATION OF SARA M. THORPE IN SUPPORT OF ST. PAUL'S MOTION TO SHORTEN TIME TO HEAR ST. PAUL'S MOTION FOR LEAVE TO AMEND ADMISSION [L.R. 6-3] Dept.: 5 Magistrate Judge Patricia V. Trumbull
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18 I, Sara M. Thorpe, declare as follows:

19 1. I am an attorney duly licensed to practice law in the State of California and before
 20 the federal courts in this State and a partner in the law firm of Gordon & Rees LLP. I am an
 21 attorney of record for defendant St. Paul Mercury Insurance Company ("St. Paul") in this matter.
 22 I have personal knowledge of the matters stated herein except as to matters upon which I state
 23 they are based upon information and belief. If called as a witness, I could and would
 24 competently testify to the same.

25 2. The "3rd party advertising" issue first arose because of arguments AOL/Netscape
 26 made in their Cross-Motion for partial summary judgment. In their Cross-Motion, plaintiffs took
 27 the position that, despite not providing information to St. Paul during the claims process, the
 28 class actions involved not only spying and gathering of private information, but also allegations

1 that AOL/Netscape was providing the private information to an advertiser, AdForce.

2 3. St. Paul responded to the “3rd party advertising” issue in its Reply brief and also
3 served on February 9, 2007, a Supplemental Response to AOL’s Request for Admission No. 4
4 (pursuant to FRCP 26(e)) indicating the response to that discovery request should be “Deny.”
5 However, at that time we overlooked the procedural requirement of FRCP 36(b).

6 4. Plaintiffs in their Reply Brief (at p. 20) and in Objections filed on March 2, 2007,
7 objected to the revised admission on several bases including that the revised admission was not
8 in compliance with FRCP 36(b). At that time, I was in trial before Judge Stephen Dombrink in
9 Alameda County Superior Court from March 5 through March 15 (with a closing argument brief
10 due March 26, 2007). At that time, the hearing on the parties’ cross-motions was set for March
11 26, 2007. Under the circumstances, St. Paul intended to address AOL’s objection at the hearing
12 of the cross-motions for partial summary judgment.

13 5. On March 20, 2006, the Court on its own continued the hearing date to April 9,
14 2007. Because counsel for all parties were unavailable on that date, both parties requested by
15 way of Stipulation that the Court continue the hearing to April 30, 2007. On March 23, 2007, the
16 Court continued the hearing to April 30, 2007.

17 6. Given the additional time with the continuance of the hearing, I took the
18 opportunity to correct the procedural issue under FRCP 36(b). St. Paul seeks to file the Rule
19 36(b) Motion so that it can be resolved prior to the April 30 hearing on the parties’ cross-motions
20 for summary judgment.

21 7. I advised plaintiffs that St. Paul intended to file a Rule 36(b) Motion for leave to
22 amend the admission, and requested that plaintiffs’ counsel agree to the shortened time in which
23 to bring the motion. Plaintiffs’ counsel declined to agree.

24 8. St. Paul proposes the hearing date on April 24, 2007 in order to have this
25 procedural issue determined before the hearing on the cross-motions for partial summary
26 judgment on April 30, 2007. We suggest that plaintiffs can have until April 18, 2007 in which to
27 file opposition to the motion because I am informed and believe that lead counsel for
28 AOL/Netscape, Michael Abelson, has a family vacation scheduled during the week of April 9th.

1 St. Paul is willing to have a shortened reply time in order to accommodate the schedule of
2 opposing counsel.

3 Executed this 29th day of March 2007 in San Francisco, California.

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