1   First, it improperly contains an admissibility objection (and long string of case law

2   citations) that must be raised by way of separate motion. See Fed. R. Civ. Proc. 26(b)(1). Thus,

3   the entire following paragraph should be stricken from its response: "St. Paul objects to the

4   consideration of or admission of any information that was not provided to St. Paul at the time the

5   class action suits and AG Investigation involving the SmartDownload product were tendered to

6   St. Paul. Such information is irrelevant and contrary to Virginia and California law. Fed Rule

7   of Evid 401, 402. See, e.g., Resource Bankshares Corp. v. St. Paul Mercury Ins. Co., 407 F 3d

8   631, 636 (4th Cir 2005) (applying Va. Law); America Online, Inc. v. St. Paul Mercury Ins. Co.,

9   347 F.3d 89, 93 (4th Cir. 2003); Waller v. Truck Ins. Exchg., 44 Cal Rptr 2d 370, 378 (Cal.

10   1995); Safeco Ins. Co. v. Parks, 19 Cal.Rptr.3d 17, 24-25, 27 (Cal App. 2004); Haggerty v.

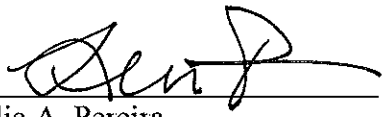11   Federal Ins. Co., 32 Fed Appx. 845, 848 (9th Cir 2002)."

12   Second, St Paul cannot now make any objection to the form of the RFA since it failed to

13   make such objection at the time it first responded to RFA No. 4.[8] Such objection was therefore

14   waived. Thus, the Court should strike the following from St Paul's proposed response: "St.

15   Paul further objects to the term 'involve' as vague and ambiguous such that Request for

16   Admission No. 4 cannot be meaningfully answered." It is also interesting to note that Plaintiffs'

17   other RFAs also used the term "involve" and St Paul did not object to use of that term and had

18   no problem responding to those RFAs.

19   **III.   CONCLUSION**

20   For all of these reasons, St. Paul's Motion to Amend Admission should be denied.

21   Dated: April 12, 2007   ABELSON | HERRON LLP
                                              Michael Bruce Abelson
22   Leslie A. Pereira

23

24   By _____
                                              Leslie A. Pereira
25   Attorneys for Plaintiffs
                                              Netscape Communications Corporation and
26   America Online, Inc.

27   _____

28   [8] St. Paul fails to provide any explanation as to why this objection was not made (and could not have been made) at the time it first responded to Plaintiffs' RFAs.

USDS CASE NO. C-06-00198 JW (PVT)   PLAINTIFFS' OPPOSITION TO ST PAUL'S MOTION TO
                                           AMEND ADMISSION
                                        12

Abelson | Herron LLP