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 15 NETSCAPE COMMUNICATIONS
 16 CORPORATION and AMERICA ONLINE, INC.

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

19 NETSCAPE COMMUNICATIONS
 20 CORPORATION, et al.;

21 Plaintiffs,

22 v.

23 FEDERAL INSURANCE COMPANY, et al.,

24 Defendants.

CASE NO. 5:06-CV-00198 JW (PVT)

**DECLARATION OF LESLIE A.
 PEREIRA IN SUPPORT OF
 PLAINTIFFS’ OPPOSITION TO ST.
 PAUL’S MOTION TO AMEND
 ADMISSION**

Magistrate Judge Patricia V. Trumbull

Date: April 17, 2007
 Time: 10:00 a.m.
 Dept.: 5

1 I, Leslie A. Pereira, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and before
3 the bar of this Court. I am of counsel to the law firm of Abelson | Herron LLP and, in that
4 capacity, I am counsel of record for Plaintiffs Netscape Communications Corporation and
5 America Online, Inc. in this action. I have personal knowledge of the matters stated herein,
6 except as to matters upon which I state are based upon information and belief. I could and would
7 competently testify to the same.

8 2. On June 19, 2006, the Court held a case management conference. During that
9 conference, the parties jointly agreed and proposed that this coverage litigation proceed in two
10 phases. "Phase One" would include discovery and motion practice on the issue of whether St.
11 Paul had a duty to defend AOL and Netscape under its policy. As part of Phase One, the
12 parties' would file Cross-Motions for Partial Summary Judgment Re: Duty to Defend (the
13 "Cross-Motions"). Thereafter, "Phase Two" would proceed (if necessary) on the contingent
14 issues relating to the causes of action for breach of the covenant of good faith and fair dealing
15 and unfair business practices.

16 3. Immediately after the conference, and consistent with the parties' proposals made
17 therein, the Court entered an order setting the hearing on the parties' Cross-Motions for
18 November 20, 2006. For a variety of reasons, the hearing date was changed on multiple
19 occasions. The parties' Cross-Motions are currently set to be heard on April 30, 2007.

20 4. Immediately after the June scheduling conference, the parties proceeded with
21 discovery pertinent to the issues to be raised in the Cross-Motions. In response to St. Paul's
22 discovery requests, Plaintiffs produced the following information during the summer of 2006:

- 23 • The deposition of former Netscape employee David Park, including all exhibits
24 thereto [NET/SDL 0004457-0004863];
- 25 • A settlement presentation prepared by the claimants' attorney, Joshua Rubin, in
26 the underlying SmartDownload litigations [NET/SDL 00011245-00011342] (the "Settlement
27 Presentation").

1 5. The Settlement Presentation – produced to St. Paul on June 22 – made numerous
2 advertising-related allegations, including its repeated assertions that Netscape was partnered with
3 an ad-serving company called “AdForce” and sent the claimants’ private information collected
4 by SmartDownload to AdForce.

5 6. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs’ Supplemental
6 Responses to St. Paul’s Requests for Admission.

7 7. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiffs’ Second
8 Supplemental Responses to St. Paul’s First Set of Interrogatories.

9 8. In an effort to identify St. Paul’s purported defenses to coverage, and to narrow
10 the issues that required briefing in the parties’ Cross-Motions, Plaintiffs served St. Paul with a
11 set of nine requests for admission (“RFA”) on July 24, 2006. Attached hereto as Exhibit 3 is a
12 true and correct copy of Plaintiff AOL’s First Set of Requests for Admission to St. Paul.

13 9. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiff Netscape’s
14 First Set of Specially Prepared Interrogatories to St. Paul.

15 10. Attached hereto as Exhibit 5 is a true and correct copy of St. Paul’s Response to
16 Plaintiffs’ First Set of Requests for Admission.

17 11. Attached hereto as Exhibit 6 is a true and correct copy of St. Paul’s Response to
18 Netscape’s First Set of Specially Prepared Interrogatories.

19 12. Plaintiffs understood St. Paul’s response to RFA No. 4 to mean that St. Paul
20 would not defend against this coverage action on the ground that the Online Activities Exclusion
21 applied because the SmartDownload Claim involved “3rd party advertising.”

22 13. Throughout the fall, Plaintiffs took numerous depositions of St. Paul’s witnesses,
23 including claim handlers Daniel Weiss and Dale Evensen, and underwriter Michelle Midwinter.
24 In response to Plaintiffs’ request that St. Paul designate a corporate representative to testify
25 regarding its written discovery responses – including its RFA responses – St. Paul designated all
26 three of these individuals. Plaintiffs took Ms. Midwinter’s deposition in September, 2006, and
27 took Mr. Weiss’ and Mr. Evensen’s depositions in October and November, 2006.

1 14. Attached hereto as Exhibit 7 is a true and correct copy of St. Paul's Supplemental
2 Response to Plaintiffs' First Set of Requests for Admission.

3 15. Attached hereto as Exhibit 8 is a true and correct copy of St. Paul's Supplemental
4 Response to Netscape's First Set of Specially Prepared Interrogatories.

5 16. At the time Plaintiffs deposed Mr. Weiss in October and November, 2006,
6 Plaintiffs were not aware that St. Paul contended that the "3rd party advertising" prong of the
7 Online Activities Exclusion barred coverage, or that Mr. Weiss had information in that regard.

8 I declare under penalty of perjury of the laws of the United States of America that the
9 foregoing is true and correct.

10 Executed this 12th day of April 2007 at Los Angeles, California.

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Leslie A. Pereira

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