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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 Plaintiffs,) 14 vs.) 15 FEDERAL INSURANCE COMPANY, an) Indiana corporation; et al.,) 16 Defendants.) 17	CASE NO. 5:06-CV-00198 JW (PVT) ADDITIONAL DECLARATION OF SARA M. THORPE IN SUPPORT OF ST. PAUL'S MOTION FOR LEAVE TO AMEND ADMISSION 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. During the course of the discovery in this coverage lawsuit, plaintiffs produced
 26 over 11,842 pages of documents over the course of the following dates: May 2006, June 22,
 27 2006, and July 28, 2006. In May 2006, plaintiffs produced to St. Paul's counsel documents bates
 28 labeled NET/SDL 1 through 1944. On June 22, 2006, plaintiffs produced to St. Paul's counsel

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1 documents bates labeled NET/SDL 1945 through 7842 and 8603-11342. On July 28, 2006,
2 plaintiffs produced to St. Paul’s counsel documents bates labeled NET/SDL 7843 through 8602,
3 and 11343 through 11824. Among the documents produced are pleadings, correspondence,
4 deposition transcripts, information about settlement discussions, and other documents.

5 3. On June 12, 2006, plaintiffs responded to St. Paul’s RFA #12, a true and correct
6 copy of which is attached here as Exhibit 8. The RFA states: “Admit the UNDERLYING
7 COMPLAINTS do not allege any user information allegedly collected by AOL/Netscape
8 through its SmartDownload program was made known to any person.” Plaintiffs responded:
9 “Deny.”

10 4. On June 12, 2006, plaintiffs responded to St. Paul’s interrogatories, a true and
11 correct copy of which is attached here as Exhibit 9. Plaintiffs answered Interrogatory #9
12 (“identify and describe *in detail* the information upon which AOL relies for its response”
13 [emphasis added]) with numerous general objections and the following: “The Underlying
14 Actions allege that information allegedly collected by Netscape and/or AOL was made known to
15 Netscape and/or AOL. Moreover, the plaintiffs in the Underlying Actions asserted that
16 information allegedly collected by Netscape and/or AOL either was – or was to have been –
17 shared with third parties.” In response to Interrogatory #10 (persons with knowledge), plaintiffs
18 objected that the request was not relevant and that interpretation of the complaints in the
19 underlying actions called for a legal conclusion. In response to Interrogatory #11 (requesting
20 documents), plaintiffs indicated: “Complaints in Underlying Actions.”

21 5. On June 23, 2006, plaintiffs provided Supplemental Responses in connection with
22 RFA #12, a true and correct copy of which are attached here as Exhibit 10. As a Supplemental
23 Response to #9 (information), they provided the same answer as in the original response. As a
24 Supplemental Response to #10 (persons with knowledge), they provided the same answer as in
25 their original response. As a Supplemental Response to #11 (documents), they indicated:
26 “Complaints in Underlying Actions, St. Paul Policy.”

27 6. Attached here is a copy of Exhibit 129, the *Specht* class action complaint, which
28 is the representative complaint plaintiffs and St. Paul rely upon in their cross-motions for

1 summary judgment.

2 7. Attached here is a copy of Exhibit 217, AOL/Netscape's Memorandum of Law in
3 Support of Motions to Dismiss filed in January 2003 in the class actions in which AOL/Netscape
4 argued that the class action plaintiffs had failed to allege that there was any disclosure of private
5 information to third parties. (See, at NET/SDL 0004012).

6 8. Attached here is a copy of Exhibit 226, Joshua Rubin's Amended Memorandum
7 of Law in Opposition to AOL/Netscape's Motion to Dismiss filed in March 2003 in which the
8 class action plaintiffs argued that they need not allege disclosure of private information to third
9 parties in order to prevail on their claims of violation of the criminal statutes under which their
10 claims were brought. (See, at NET/SDL 0004140).

11 9. Attached here is a copy of Exhibit 229, which are additional excerpts from the
12 deposition of David Park (taken on October 20, 2003), which exhibit was used by St. Paul in the
13 cross-motions for partial summary judgment.

14 Executed this 18th day of April, 2007 in San Francisco, California.

15 Sara M. Thorpe
16 SARA M. THORPE

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