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ST. PAUL MERCURY INSURANCE COMPANY

**UNITED STATES DISTRICT COURT****NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**NETSCAPE COMMUNICATIONS  
CORPORATION, et al.,

Plaintiffs,

v.

FEDERAL INSURANCE COMPANY, et al.,

Defendants.

**CASE NO. CV-06-00198 JW (PVT)****SECOND AND SUPERSEDING  
[PROPOSED] ORDER AND  
JOINT STIPULATION CONTINUING  
HEARING OF EXPERT EXCLUSION  
MOTIONS SET FOR JULY 19, 2010****No Hearing Required**

1 **SUBJECT TO THE APPROVAL OF THIS COURT**, Plaintiffs Netscape Communications  
2 Corporation and America Online, Inc. (collectively, “Plaintiffs”) and Defendant St. Paul  
3 Mercury Insurance Company (“St. Paul”) jointly stipulate and agree as follows:

4 **WHEREAS**, pursuant to this Court’s Scheduling Order of November 23, 2009 (the  
5 “Scheduling Order”) (Dkt. # 190), the parties have exchanged expert witness designations; and

6 **WHEREAS**, the parties have each noticed motions seeking to exclude the others’  
7 designations (collectively, the “Expert Exclusion Motions”). See Dkt. # 209 (Plaintiffs’ Motion  
8 to Exclude); Dkt. # 210 (Defendant’s Motion to Exclude); and

9 **WHEREAS**, the scheduling of the Expert Exclusion Motions has been set for July 19,  
10 2010 by reason of the Scheduling Order’s strict timing provisions, which may not be altered  
11 except by Court Order. See Scheduling Order at 2 & ¶ 6; and

12 **WHEREAS**, the Court’s website indicated that it is not available to hear the Expert  
13 Exclusions Motions on July 19, 2010; and

14 **WHEREAS**, in light of the Court’s unavailability, the parties now have scheduling  
15 conflicts which prevent a hearing on July 19, 2010; and

16 **WHEREAS**, the parties learned on June 17, 2010 that the Court is available to hear the  
17 Expert Exclusions Motions on July 19, 2010; and

18 **WHEREAS**, the parties are scheduled to appear for a Preliminary Pretrial Conference on  
19 June 28, 2010. See Scheduling Order at 1; see also Dkt. #211 (Joint Preliminary Pretrial and  
20 Trial Setting Conference Statement); and

21 **WHEREAS**, for reasons of timing, cost, and conservation of legal resources the parties  
22 desire to defer briefing of oppositions of the Expert Exclusion Motions which, under prevailing  
23 rules, are due June 28, 2010 – the same date as the pending Preliminary Pretrial Conference.

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1           **THEREFORE, AND SUBJECT TO THE APPROVAL OF THIS COURT, IT IS**  
2 **HEREWITH STIPULATED AND AGREED BY COUNSEL FOR THE PARTIES AS**  
3 **FOLLOWS:**

4           1.       The pending Expert Exclusions Motions currently set for hearing on July 19, 2010  
5 shall be taken off-calendar;

6           2.       The Expert Exclusion Motions will be reset for hearing by the Court following the  
7 Preliminary Pretrial Conference on June 28, 2010; and

8           3.       The parties' respective oppositions to the Expert Exclusion Motions shall be filed  
9 and submitted in accordance with the new hearing date determined by the Court.

10           **IT IS SO STIPULATED.**

11 Dated: June 18, 2010

**ABELSON | HERRON, LLP**  
Michael Bruce Abelson  
Vincent H. Herron  
Leslie A. Pereira

By /s/ Michael Bruce Abelson  
Michael Bruce Abelson  
Attorneys for Plaintiffs  
Netscape Communications Corporation and  
America Online, Inc.

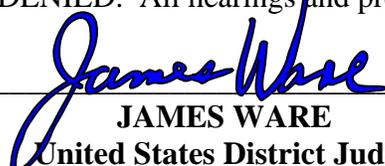
18 Dated: June 18, 2010

**SEDGWICK, DETERT, MORAN & ARNOLD LLP**  
Bruce D. Celebrezze  
Nicholas W. Heldt

By /s/ Bruce D. Celebrezze  
Bruce D. Celebrezze  
Attorneys for Defendant  
St. Paul Mercury Insurance Company

24           **ORDER**

25           **IT IS SO ORDERED** this 24<sup>th</sup> day of June 2010.  
26 The request for continuance is DENIED. All hearings and pretrial dates remain on calendar set  
27 for July 19, 2010.

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JAMES WARE  
United States District Judge