

1 SARA M. THORPE (SBN 146529)
 sthorpe@gordonrees.com
 2 GORDON I. ENDOW (SBN 099638)
 gendow@gordonrees.com
 3 JEFFREY M. RATINOFF (SBN 197241)
 jratinoff@gordonrees.com
 4 GORDON & REES LLP
 5 Embarcadero Center West
 275 Battery Street, Suite 2000
 6 San Francisco, CA 94111
 Telephone: (415) 986-5900
 7 Facsimile: (415) 986-8054

8 Attorneys for Defendant
 ST. PAUL MERCURY INSURANCE COMPANY
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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Gordon & Rees LLP
 Embarcadero Center West
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

13 NETSCAPE COMMUNICATIONS)
 CORPORATION, a Delaware corporation; and)
 14 AMERICA ONLINE, INC., a Delaware)
 corporation;)

15 Plaintiffs,)

16 v.)

17 FEDERAL INSURANCE COMPANY, an)
 Indiana corporation; ST. PAUL MERCURY)
 18 INSURANCE COMPANY, a Minnesota)
 corporation; EXECUTIVE RISK SPECIALTY)
 19 INSURANCE COMPANY; a Connecticut)
 corporation, and DOES 1 through 50,)

20 Defendants.)
 21)
 22)

CASE NO. C-06-00198 JW (PVT)

**[PROPOSED] ORDER GRANTING
 DEFENDANT ST. PAUL’S MOTION
 TO DISMISS PLAINTIFFS’
 SEVENTH CAUSE OF ACTION**

[F. R. Civ. P. 12(b)(6)]

Date: April 17, 2006
 Time: 9:00 a.m.
 Judge: James Ware
 Dept.: Courtroom 8

Complaint Filed: December 12, 2005
 Amended Complaint: February 24, 2005

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 24 This matter came on for hearing on April 17, 2006, in Courtroom 8, of the above-
 25 entitled court on Defendant St. Paul Mercury Insurance Company’s (hereinafter “St.
 26 Paul”) Motion to Dismiss Plaintiffs’ Seventh Cause of Action, pursuant to Rule 12(b)(6),
 27 Fed. R. Civ. P.

28 The Court, having considered all papers filed in favor of, and in opposition to, St.

1 Paul's Motion to Dismiss, and good cause appearing,

2 The Court HEREBY GRANTS St. Paul's Motion to Dismiss on the grounds that
3 the Seventh Cause of Action for Unfair Business Practices asserted by Netscape
4 Communications Corporation and America Online, Inc. against St. Paul fails to state a
5 cognizable claim under Section 17200 of the Calif. Business & Professions Code. The
6 Seventh Cause of Action to the Complaint is therefore dismissed, with prejudice.

7 IT IS SO ORDERED.

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9 Dated: April __, 2006

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HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

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