

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

NETSCAPE COMMUNICATIONS  
CORPORATION,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY, et  
al.,

Defendants.

Case No.: C 06-0198 JW (PVT)

**ORDER DENYING PLAINTIFFS'  
MOTION TO COMPEL WITHOUT  
PREJUDICE TO A PROPERLY  
SUPPORTED MOTION**

On September 29, 2006, Plaintiffs filed a motion to compel, but failed to file copies of the actual discovery requests at issue.<sup>1</sup> On October 16, 2006 this court issued an interim order requiring Plaintiff to cure that defect by filing the requests by 9:00 a.m. on October 17, 2006 (the date set for the hearing). Plaintiff failed to comply with that order, instead again filing a document purporting to set forth the requests and responses, and which Plaintiff's counsel for the first time admitted "differs substantially from the original request and responses." Based on the papers submitted by the parties, and the file herein,

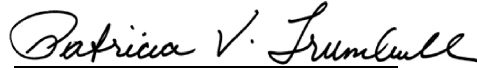
IT IS HEREBY ORDERED that Plaintiffs' motion to compel is DENIED without prejudice

<sup>1</sup> The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

1 to filing a properly supported motion. Without copies of the original requests, as served on  
2 Defendant, there is nothing for this court to compel. The Federal Rules of Civil Procedure only  
3 authorize the court to compel responses to requests that have been served as required by those rules.  
4 There is no legal authority for a court to “compel” a party to comply with requests modified pursuant  
5 to meet and confer efforts where that party does not agree with the scope of the purportedly agreed to  
6 modified language.

7 IT IS FURTHER ORDERED that this order is without prejudice to Plaintiffs filing a properly  
8 supported motion to compel. While Plaintiffs’ failure to follow the Federal Rules of Civil Procedure  
9 has resulted in a waste of time and resource for the parties (as well as this court), any prejudice to  
10 Defendant can be addressed through a sanctions award to Defendant for the duplicate motion work  
11 in the event Plaintiffs re-file the motion.<sup>2</sup>

12 Dated: 10/17/06

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14 PATRICIA V. TRUMBULL  
15 United States Magistrate Judge  
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28 <sup>2</sup> If Plaintiffs wonder why they are paying for duplicative motion work for both sides,  
Plaintiffs’ counsel should give a copy of this order to their clients.