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8 Attorneys for Defendant  
 ST. PAUL MERCURY INSURANCE COMPANY

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT COURT OF CALIFORNIA  
 11 SAN JOSE DIVISION

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12	NETSCAPE COMMUNICATIONS CORPORATION, a Delaware corporation;	}	CASE NO. 5:06-CV-00198 JW (PVT)
13	and		}
14	AMERICAN ONLINE, INC., a Delaware corporation,	}	
15	Plaintiffs,		}
16	vs.	}	
17	FEDERAL INSURANCE COMPANY, an Indiana corporation; et al.,		}
18	Defendants.	}	
19			}
20		}	

21 I, Sara Thorpe, declare as follows:  
 22 1. I am an attorney duly licensed to practice law in the State of California and  
 23 before the federal courts in this State and a partner in the law firm of Gordon & Rees  
 24 LLP. I am counsel of record for defendant St. Paul Mercury Insurance Company ("St.  
 25 Paul") in this matter. I have personal knowledge of the matters stated herein except as  
 26 to matters upon which I state they are based upon information and belief. If called as a  
 27 witness, I could and would competently testify to the same.  
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1           2.       This declaration is prepared in support of a request that this Court seal the  
2 Reply Brief to St. Paul's Opposition to Motion to Compel Production ("Reply Brief") and  
3 Declaration of Leslie A. Pereria ("Pereira Dec.") with Exhibits A to F filed by America  
4 Online, Inc., and Netscape Communications Corporation (collectively "Plaintiffs") on  
5 October 12, 2006.

6           3.       Attached as Exhibit D to the Pereira Dec. was an email communication I  
7 inadvertently sent to counsel for Plaintiffs. In that email, advice was being provided  
8 regarding various issues in this lawsuit. After sending that email, I sent another email  
9 requesting Plaintiffs delete the communication (although, I later discovered my email did  
10 not reach Plaintiffs).

11          4.       I did not receive any word from Plaintiffs' counsel that they had received  
12 the inadvertently produced attorney client communication.

13          5.       On October 16, 2006, in preparing for the hearing of the motion to compel,  
14 I reviewed my "sent" emails and determined the email intended to be sent to Plaintiffs'  
15 counsel asking them to delete the inadvertently disclosed attorney client  
16 communication, had been sent only to myself. I advised Plaintiffs' counsel of the  
17 inadvertent disclosure, the failed attempt to have them delete the email, and reminded  
18 them of their ethical duties under *State Comp. Ins. Fund v. Telanoff*, 70 Cal.App.4<sup>th</sup> 644  
19 (1999). We agreed to raise the issue with the Court at the hearing the next day.

20          6.       The parties appeared at the hearing on the motion to compel. I was  
21 prepared to discuss the inadvertently disclosed attorney client communication and other  
22 misstatements in the Reply Brief and to request the opportunity to file a Surreply. But  
23 the Court ordered the hearing vacated because of procedural defects in Plaintiffs' filing.  
24 Therefore, there was no opportunity to make a record or request additional briefing.

25          7.       Following this turn of events, I met and conferred further with Plaintiffs'  
26 counsel. The parties were able to resolve several pending discovery and scheduling  
27 issues which included changes to the briefing schedule, agreement to continue some  
28 depositions, stipulations as to evidence, and the providing of some, but not all, of the

1 information at issue in Plaintiffs' motion to compel, rendering the motion to compel  
2 moot. As part of this compromise, the parties stipulated to "withdraw" the Reply Brief  
3 from the Court file because it contains inadvertently produced attorney client privileged  
4 communications, other provisions to which St. Paul would take exception, and was  
5 mooted by the parties' resolution of various disputes.

6 8. The parties filed a Stipulation to withdraw the Reply Brief, but this request  
7 was denied.

8 9. The parties have entered into a Stipulation to Seal the Reply Brief and  
9 accompanying papers, filed herewith.

10 10. The Reply Brief contains other disparaging and inaccurate statements,  
11 Including that:

12 a. Eric Solberg was unprepared to testify as a witness about changes  
13 to the policy forms. However, at his deposition which during which I  
14 defended him, Mr. Solberg testified that he was the "principal  
15 architect and approver" of the form changes.

16 b. Plaintiffs disparage the knowledge of Ms. Lamble, suggesting  
17 Bonnie Girard is the more knowledgeable witness. Yet, St. Paul  
18 advised Plaintiffs during initial disclosures in March 2006, and in  
19 connection with the scheduling of depositions, that Ms. Girard was  
20 no longer working with St. Paul (and, therefore, the web-site  
21 information upon which Plaintiffs rely must not be up to date).

22 11. St. Paul requests this Court seal the Reply Brief, Pereira Dec., and  
23 Exhibits. Redacting only portions will result in a "swiss-cheese" like document

24 I declare under penalty of perjury of the laws of the State of California that the  
25 foregoing is true and correct.

26 Executed this 21st day of November 2006, in San Francisco, California.

27   
28 SARA M. THORPE

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