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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

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<p>11 NETSCAPE COMMUNICATIONS CORPORATION, a Delaware corporation;      12 and      13 AMERICAN ONLINE, INC., a Delaware corporation,</p>	<p>14 Plaintiffs,</p>	<p>} CASE NO. 5:06-CV-00198 JW (PVT)        } <b>STIPULATION CLARIFYING AND CORRECTING THE RECORD REGARDING ST. PAUL MERCURY INSURANCE COMPANY'S MOTION FOR ADMINISTRATIVE RELIEF TO SEAL REPLY BRIEF ON MOTION TO COMPEL [CIVIL L.R. 7-11(a) AND FRCP 26(c)]</b>        }        } Complaint Filed: 12/12/05        } Amended Complaint: 2/24/06        } <b>Accompanying Documents:</b>        } Motion to Seal; Declaration of Sara M. Thorpe; Proposed Order</p>
<p>15 vs.</p>		
<p>16 FEDERAL INSURANCE COMPANY, an Indiana corporation; et al.,</p>	<p>17 Defendants.</p>	

20 COMES NOW the parties, by and through their respective counsel, and stipulate  
 21 as follows:

- 22 1. Pending before the Court is St. Paul's Motion to Seal Reply Brief on  
 23 Motion to Compel (the "Motion to Seal").
- 24 2. In support of the Motion to Seal, St. Paul has filed a Stipulation between  
 25 St. Paul and Plaintiffs Netscape and AOL, wherein Plaintiffs agree that they do not  
 26 oppose St. Paul's Motion to Seal (the "Stipulation of Non-Opposition"). See Stipulation  
 27

1 of Non-Opposition at ¶ 3. As a consequence, St. Paul has presented the instant Motion  
2 to Seal as unopposed. See Motion to Seal at 2.

3 3. Following the filing of the Motion to Seal, Plaintiffs contacted St. Paul and  
4 requested that the instant Motion to Seal be *withdrawn* because St. Paul had misused  
5 Plaintiffs' Stipulation of Non-Opposition and overstated Plaintiffs' position. Plaintiffs  
6 contended that the instant Motion to Seal made it appear that Plaintiff agreed with the  
7 substantive bases of the Motion to Seal, including St. Paul's contention that the Reply  
8 Brief and Declaration of Leslie A. Pereira contained privileged communications and  
9 made disparaging and inaccurate statements. Clearly, this is not Plaintiffs' position. It  
10 is St. Paul's position, and St. Paul's position alone.

11 4. To be absolutely clear, Plaintiffs do not agree with (nor do they in any way  
12 endorse) the contents of St. Paul's Motion to Seal or any of its supporting  
13 documentation, including the Declaration of Sara Thorpe. Plaintiffs have merely agreed  
14 not to oppose the Motion to Seal, Ms. Thorpe's Declaration, or any other supporting  
15 documents or arguments. Suffice it to say that Plaintiffs' position is diametrically  
16 opposed to St. Paul's position on all substantive points.

17 4. Following the filing of the Motion to Seal, St. Paul also discovered an error  
18 in its [Proposed] Order Granting Motion to Seal. As set forth in the [Proposed] Order on  
19 file with the Court, St. Paul failed to include language – which Plaintiffs deemed  
20 essential to their Stipulation of Non-Opposition – providing that Plaintiffs' agreement and  
21 non-opposition shall not preclude or otherwise bar them from re-asserting in subsequent  
22 pleadings and proceedings any of the arguments or evidence contained in the sealed  
23 Reply Brief and supporting documents. St. Paul agrees that the Court's Order should  
24 include this provision. Accordingly, the parties request the Court disregard and not

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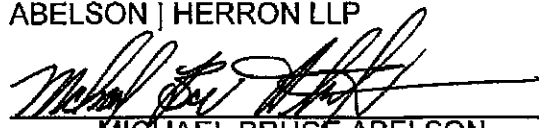
1 execute the [Proposed] Order on file with the Court and, instead, they ask the Court to  
2 sign the [Proposed Corrected Order] filed concurrently herewith.

3 IT IS SO STIPULATED.

4 Dated: November \_\_, 2006 GORDON & REES LLP

5  
6 By: \_\_\_\_\_  
7 SARA M. THORPE  
8 Attorneys for Defendant ST. PAUL  
9 MERCURY INSURANCE COMPANY

10 Dated: November ~~22~~<sup>22<sup>nd</sup></sup>, 2006

11 ABELSON | HERRON LLP  
12 By:   
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