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17 CORPORATION and AMERICA ONLINE, INC.

18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

20 NETSCAPE COMMUNICATIONS
21 CORPORATION, et al.;

22 Plaintiffs,

23 v.

24 FEDERAL INSURANCE COMPANY, et al.,

25 Defendants

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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ADMINISTRATIVE
RELIEF [RE: SEALING TWO
CONFIDENTIAL DOCUMENTS
SUBMITTED IN SUPPORT OF
PLAINTIFFS' CROSS MOTION FOR
PARTIAL SUMMARY JUDGMENT];
DECLARATION OF LESLIE A.
PEREIRA IN SUPPORT THEREOF**

Date: March 26, 2007

Time: 9:00 a.m.

Judge: Hon. James Ware

Dept.: Courtroom 8, 4th Floor, San Jose

Complaint filed December 12, 2005

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Abelson | Herron
USDS CASE NO C-06-00198 JW (PVT)

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR
ADMINISTRATIVE RELIEF [RE: SEALING TWO
CONFIDENTIAL DOCUMENTS SUBMITTED IN SUPPORT
OF PLAINTIFFS' CROSS MOTION FOR PARTIAL
SUMMARY JUDGMENT]; DECLARATION OF LESLIE A

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:
2 PLEASE TAKE NOTICE THAT Plaintiffs are hereby moving for administrative relief as
3 follows:

4 Pursuant to Local Rule 7-11, Plaintiffs hereby move the Court for an order permitting
5 them to file under seal the following two documents:

- 6 1. Exhibit H to the Declaration of Patrick J. Carome [NET/SDL00011245-
- 7 00011342].
- 8 2. Exhibit D to the Declaration of David Park [NET/SDL0004475-0004491].

9 **Exhibit H to Declaration of Patrick J. Carome**

10 This document has been produced to St. Paul in this litigation pursuant to the terms of a
 11 Stipulated Protective Order signed by this Court on June 19, 2006 (the “Federal Protective
 12 Order”). See Declaration of Leslie A. Pereira (“Pereira Decl”), attached hereto, at ¶ 2. Prior to
 13 producing this document to St. Paul, it was stamped “Confidential,” as required by the terms of
 14 the Federal Protective Order. Id. Exhibit H is a copy of a confidential settlement presentation
 15 made by Joshua Rubin, counsel for the claimants in the underlying SmartDownload actions. Id.
 16 at ¶ 3. The document is subject to a protective order entered in the SmartDownload actions
 17 which, by its terms, precludes its disclosure to parties outside those actions (the “SDL Protective
 18 Order”). Id. at ¶ 4. Prior to producing the document in this action, Plaintiffs contacted Mr.
 19 Rubin. Id. Mr. Rubin authorized Plaintiffs to produce the document in this litigation, but only
 20 subject to the terms of the Federal Protective Order. Id.

21 Given the confidential nature of this document, the parties have agreed that it should be
22 placed under seal pursuant to the terms of the Federal Protective Order. Id.

23 **Exhibit D to Declaration of David Park**

24 This document has been produced to St. Paul in this litigation pursuant to the terms of
 25 the Federal Protective Order. Plaintiffs stamped it “Confidential,” as required by the terms of the
 26 Federal Protective Order. Pereira Decl. ¶ 5. Exhibit D is a copy of a “Software Requirements
 27 Specification” and was created by a company called Software Builders, Inc. (“SBI”). Id. at ¶ 6.

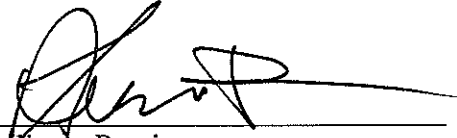
1 SBI is a contractor hired pursuant to a written contract to assist Netscape with the development
2 of SmartDownload. Id. The written contract between Netscape and SBI contains a
3 confidentiality provision which requires that Netscape not disclose to any unauthorized parties
4 documents created by SBI. Id. Thus, the document was also marked "Confidential" pursuant to
5 the terms of the SDL Protective Order Id.

6 Prior to producing the document in this action, Plaintiffs contacted representatives for
7 RealNetworks, the successor-in-interest to SBI. Pereira Decl ¶ 7. RealNetworks authorized
8 Plaintiffs to produce confidential SBI documents (like Exhibit D) in this litigation, subject to the
9 terms of the Federal Protective Order. Given the confidential nature of this document, the parties
10 have agreed that it should be placed under seal. Id.

11 Plaintiffs' request to seal Exhibit H and Exhibit D is made pursuant to the California
12 Protective Order, entered by this Court on June 19, 2006, and is narrowly tailored to seal only
13 that material for which good cause to seal has been established.

14 Dated: January 12, 2007

ABELSON | HERRON LLP
Michael Bruce Abelson
Leslie A. Pereira

17
18 By 
19 Leslie A. Pereira
20 Attorneys for Plaintiffs
21 Netscape Communications Corporation and
22 America Online, Inc.

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DECLARATION OF LESLIE A. PEREIRA

I, Leslie A. Pereira, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and before the bar of this Court. I am of counsel to the law firm of Abelson | Herron LLP and, in that capacity, I am counsel of record for Plaintiffs Netscape Communications Corporation and America Online, Inc. (collectively, the "Insureds") in this action. I have personal knowledge of the matters stated herein, except as to matters upon which I state are based upon information and belief. I could and would competently testify to the same.

Exhibit H to Declaration of Patrick J. Carome

2. This document has been produced to St. Paul in this litigation pursuant to the terms of a Stipulated Protective Order signed by this Court on June 19, 2006 (the "Federal Protective Order") Prior to producing this document to St. Paul, I stamped it "Confidential," as required by the terms of the California Protective Order.

3. The document was provided to us by Plaintiffs' counsel in the underlying SmartDownload Actions. It is a copy of a confidential settlement presentation made by Joshua Rubin, counsel for the claimants in those action. I am informed and believe that the document is subject to a protective order entered in those actions which precludes its disclosure to parties outside those actions (the "SDL Protective Order")

4. Prior to producing Exhibit H in this action, my office called Mr. Rubin. He authorized us to produce the document in this litigation, but only subject to the terms of the California Protective Order. Given the confidential nature of this document, the Federal Protective Order requires that it be placed under seal. *Sara Thorpe, counsel for St. Paul, has stipulated to our request to place this document under seal.*

Exhibit D to Declaration of David Park

5. This document has been produced to St. Paul in this litigation pursuant to the terms of the California Protective Order. Prior to producing this document to St. Paul, I stamped it "Confidential," as required by the terms of the Federal Protective Order.

