

EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JEFF DUNSTAN, individually and
on behalf of a class of
similarly situated
individuals, and MIKE HARRIS,

Plaintiffs,

-vs-

comSCORE, INC., a Delaware
corporation,

Defendant.

Case No. 11 C 5807

Chicago, Illinois
July 5, 2012
11:06 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE YOUNG B. KIM, MAGISTRATE JUDGE
APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE CLERK: 11 C 5807, Harris, et al., versus
3 comScore, Inc.

4 MR. SCHAPIRO: Good morning, your Honor. Andrew
5 Schapiro for defendant.

6 MR. STACK: Your Honor, Paul Stack for the
7 defendants.

8 MS. BOWLAND: Your Honor, Robyn Bowland for the
9 defendant.

10 THE COURT: Hold on a sec, Robyn --

11 MS. BOWLAND: Robyn Bowland.

12 MR. SCHAPIRO: Ms. Bowland is an associate in our
13 office who has the answers to any technical questions at her
14 fingertips should that become necessary.

15 THE COURT: Okay. And on the plaintiff's side we
16 have?

17 MR. BALABANIAN: Good morning, your Honor. My name
18 is Rafey Balabanian, spelled B-A-L-A-B-A-N-I-A-N. I'm joined
19 by Chandler Givens on behalf of the plaintiffs.

20 I guess Chandler is Ms. Bowland's counterpart. He'll
21 answer any technical questions the Court might have.

22 THE COURT: So Ms. Bowland and Mr. Chandler are the
23 smartest ones in this courtroom.

24 MR. SCHAPIRO: By far.

25 MR. BALABANIAN: Speaking for myself, for sure.

1 THE COURT: Well, here we go. I've gone through the
2 motion as well as the response. I do want to give the
3 plaintiff an opportunity to -- plaintiffs an opportunity to
4 respond to some of the arguments made by the defendant in its
5 response brief.

6 With respect to Interrogatory No. 8 and Request to
7 Produce No. 34, I do think that the defendant makes a
8 compelling argument here, but I want to give the plaintiffs an
9 opportunity to respond, and let me share with you my thoughts
10 first, and then you can comment.

11 Assuming for the sake of argument that there aren't
12 any complaints whatsoever, even if there are -- there aren't
13 any complaints, your allegations still may be true. It really
14 doesn't matter.

15 In other words, it really comes down to the codes
16 that defendant used. The software was designed a certain way
17 to collect and monitor certain information from panelists'
18 computers. That doesn't change whether collection of that
19 data was without consent or with consent.

20 So it doesn't matter whether there were complaints.
21 The gut of this case is that the defendant monitored and
22 collected and then used that information without consent of
23 the panelists.

24 Response?

25 MR. BALABANIAN: I think it informs the scope of the

1 class though, your Honor. I mean, if we're able to kind of
2 nail down who out there feels as though the same situation
3 happened to them, right, and their story is the same, I agree
4 that it might not go necessarily to pure class issues or -- or
5 it doesn't necessarily change how we frame the class itself,
6 but it does, I think, go to the size and scope of the class
7 and kind of the nuances of whatever that class eventually
8 turns out to be.

9 But I do understand the Court's view that it doesn't
10 change based upon whether or not there's a complaint out
11 there. The software did what it did and irrespective of
12 whether someone consents to it or not, the functionality is
13 the same, that's true. But I do think it informs the size and
14 scope of the class, and so I do think it's relevant to the
15 analysis in some way.

16 THE COURT: With respect to Interrogatory 8 and in
17 Request to Produce No. 34, my ruling is that the motion to
18 compel is denied. The scope, the size of the class is going
19 to be determined by the number of panelists that are impacted
20 by the defendant's software.

21 It really comes down to, as I understand it from the
22 response, the defendant has already provided the number of
23 so-called panelists that are involved with having downloaded
24 this particular software. That's going to be the size.

25 Now, as to whether the class should be certified from

1 my point of view, it really depends on the code, or I'm sorry,
2 the software that was actually downloaded.

3 You know how we started this path of bifurcating the
4 discovery to class certification issues and merits issues
5 because everything should be contained in the software codes
6 that the defendant provided to the plaintiffs.

7 I don't know where you are in the analysis of the
8 software, whether in fact the software was designed to collect
9 surreptitiously certain information and -- and the class
10 certification issue then hinges on that as well as whether
11 proper consent was obtained by the defendant.

12 So we have a battle over as to the consent issue; but
13 how somebody feels about the software, how somebody feels
14 about whether it's doing its job or it's slowing down the
15 computer really isn't required to the analysis of
16 certification issues. So that's my ruling as to 8 and --
17 Interrogatory No. 8 and Request to Produce No. 34.

18 Moving on to Interrogatory Numbers 16 and 17, I
19 understand the defendant's argument here that plaintiffs are
20 trying to get blood out of a stone, okay, but I think the
21 plaintiffs are just simply doing their job, and the attorneys
22 are doing their job and reading the response carefully.

23 From the plaintiffs' point of view, defendant has
24 only provided information that are current, but no prior -- no
25 information regarding what the defendant may have collected in

1 the past was ever shared with the plaintiffs.

2 Defendant's response to that is it's going to be
3 very, very difficult because you don't keep a running list or
4 a log of information that you no longer collect and that
5 somehow you need to have technicians or experts go into the
6 source codes to figure out what was, in fact, collected in the
7 past. And, again, I'm sharing with you my gut reaction to the
8 response, and we can comment on my reaction.

9 I'm assuming that defendant, when it started its
10 business, it had a business model. The business model, at
11 least as I understand it from this particular case, they were
12 going to design certain softwares to be downloaded by
13 consumers.

14 Consumers then, by consenting, they are willing to
15 share some information with the defendant company. The
16 defendant company then sells that information anonymously,
17 without any attachment to any personal information, to
18 third-party vendors who may have some use for that
19 information.

20 I'm assuming also that before they sat down to
21 discuss the software to be designed, defendant company said,
22 hey, these are -- these are the things that we're interested
23 in because I think that we can market this type of information
24 to third-party vendors.

25 And then after you come up with a list of information

1 to be monitored, collected and sold, you had somebody design a
2 software which is going to actually do that job.

3 But the response sounds to me like, well, the
4 software was designed, and then it just kind of collected
5 information and for us to figure out what list of information
6 we collected, we have to go back to the source code. I think
7 that's kind of backwards way of looking at it.

8 Somebody must have come up with a list of information
9 to be collected from these panelists, and I'm not sure that
10 you need to go back to the source codes to figure that out. I
11 mean, somebody within the company should have this
12 information, at least from my point of view.

13 MR. SCHAPIRO: I think there are two different
14 questions there. Your Honor is correct about the business
15 model at a general level, at least as well as I understand it.
16 Robyn can elbow me if I'm wrong about anything I'm about to
17 say. There are two different questions, I think, in the
18 motion.

19 One is there was a dispute about what information
20 we're providing with regard to Mac and Windows, right? And I
21 think I can probably clear that one up, so there might have
22 been some artful drafting in our answer where we said, well,
23 the Macintosh software was designed to collect the same
24 material that the Windows software collects, and the only
25 reason for that is that the Macintosh -- there never was a

1 Macintosh panel. That was never actually commercially used.
2 But there's no distinction, so this is at least I think part
3 of the -- this part of the motion, there's no distinction
4 between what was collected for Windows --

5 THE COURT: I'm sorry, can I just interrupt just for
6 a second?

7 Alex, I think they were here for the White case.
8 Would you let them know what happened? Appreciate it. Thank
9 you.

10 I apologize. Go ahead.

11 MR. SCHAPIRO: So -- and we can supplement if
12 necessary here. We're not trying to hide the ball in any way,
13 we just don't want to say something that suggests that
14 material was shared from the Macintosh panel.

15 So when we referred back at one point in our answer
16 and said for the answer to this, look back at the other
17 description we gave you, it was merely to say that there
18 weren't different sets of information that were sought from
19 the two panels.

20 The other part of your Honor's question I think has
21 to do with historically whether there have been any changes in
22 what was collected, and as to that maybe I'll ask Robyn to --

23 MS. BOWLAND: Yes, your Honor.

24 My understanding is that the list of what they
25 collect is maintained in a sort of an active page, so it's

1 updated as -- the list is updated.

2 I think what you're suggesting is there might be an
3 initial list somewhere that hasn't been changed, and I think
4 we can probably go back and ask our client to see if that's
5 true. I'm not aware of that existing, but we can doublecheck.

6 THE COURT: Okay. You're right about answer to No.
7 17. The way I read it, and let me address plaintiffs'
8 counsel, the way I read answer to No. 17, defendant didn't
9 collect any information as to Mac users.

10 Is that accurate?

11 MR. SCHAPIRO: We collected information, but the Mac
12 information was never shared or sold, and the information that
13 was collected was in no material or substantive way different
14 from what would have been collected from anyone else.

15 THE COURT: Okay. So I misunderstood where you
16 answer that it was never implemented commercially, you just
17 meant that it was never shared with anyone else.

18 MR. SCHAPIRO: Correct.

19 MS. BOWLAND: Correct, your Honor. It was -- the
20 Macintosh software only made it to the testing stage. It
21 never made it beyond.

22 THE COURT: But the allegation goes -- it's not
23 limited to sharing information with others.

24 MR. BALABANIAN: No.

25 THE COURT: It's the collection part.

1 MR. BALABANIAN: Correct.

2 THE COURT: All right. So as to Interrogatory
3 Numbers 16 and 17, the motion to compel is granted to the
4 extent that the defendant has to do further search as to the
5 list of older information that the defendant may have
6 collected in the past.

7 So I guess what I'm asking the defendant to do is
8 exhaust your research as to the information, sets of
9 information that defendant may have collected in the past; and
10 if the next step in the process is that we don't have such
11 information, that certainly -- then you need to let the
12 plaintiffs know.

13 MR. SCHAPIRO: We will.

14 And, your Honor, the plaintiffs have also asked us
15 for a 30(b)(6) deposition, which I think we -- as to which I
16 think we've just settled on a date or at least tentatively, so
17 it may be that they'll also want to explore this in that
18 deposition and --

19 MR. BALABANIAN: Further to that point, briefly, your
20 Honor, the defendant did supplement their interrogatory
21 responses I think subsequent to the briefing on this motion,
22 and so they did provide us with some of the categories of the
23 types of information that they do collect, but the
24 interrogatory itself asks for an identification of that as
25 well as a description.

1 I don't mean to be picking at the lint here, but, you
2 know, our interrogatory asked for a description, so I think
3 we're entitled to a description, and we haven't gotten that.

4 Now, I understand that it might be useful to go
5 through that during a 30(b)(6), which we intend to do, but I'd
6 like to have some kind of roadmap as to what I'm asking when
7 that time comes.

8 And so they did supplement and they did give us types
9 of categories of the types of information collected, which we
10 appreciate, and, you know, which was closer to what we were
11 looking for, but it still falls slightly short.

12 So I understand the Court's ruling, but I want to
13 make that point for the record because I do think the
14 interrogatory even as supplemented is still deficient to a
15 limited extent.

16 THE COURT: Description, I'm -- I guess I didn't
17 understand the extent of the problem here.

18 When we talk about what sets of information the
19 software collects, I'm assuming that you were listing and
20 providing -- I guess -- I guess I assumed that the listing of
21 the information would provide the description necessarily, but
22 I guess I'm -- I was naive in thinking that.

23 MR. SCHAPIRO: We thought that it did, but maybe we
24 should have an additional meet and confer. I had overlooked
25 the fact that the Court was not informed that we had

1 supplemented in response to this, so --

2 MR. BALABANIAN: And I'm not trying to sandbag
3 counsel. I just -- now that we're here, I want to bring up
4 the issues, but to me it's not self-explanatory. I don't
5 think -- Chandler, if you want to elaborate.

6 MR. GIVENS: Right, and the information to be clear
7 that they supplemented with was contained in footnote 3 of
8 their brief that they describe what they're going to give to
9 us.

10 MR. BALABANIAN: In their response.

11 MR. GIVENS: In their response. But by way of
12 example, you know, they say that something that the Mac
13 software was intended to collect, one example is something
14 called DB source.

15 We're left to our own devices to try to figure out
16 what exactly that means. I could guess, but --

17 MS. BOWLAND: Your Honor --

18 THE COURT: Yes.

19 MS. BOWLAND: -- I'm sorry to interrupt, but to be
20 clear, we were referring to another document when we said DB
21 source, so it was a listing of information under the heading
22 DB source.

23 THE COURT: Sounds to me -- I'm sorry.

24 MS. BOWLAND: We can get together.

25 THE COURT: Yeah, exactly, that's what I was going to

1 say. Once defendant exhausts its search and provides a final
2 set of supplement if there is anything to be supplemented, you
3 can then make a list of codes or categories that you don't
4 understand and Ms. Bowland will answer all your questions,
5 right?

6 MS. BOWLAND: To the best of my ability, your Honor.

7 THE COURT: By the way, when is the 30(b)(6)
8 deposition scheduled for?

9 MR. SCHAPIRO: Tentatively for the 19th of July,
10 subject to the plaintiffs' confirming -- we only offered the
11 date today, so --

12 MR. BALABANIAN: Part of the issue with getting the
13 30(b)(6) scheduled though is the fact that this motion
14 practice is ongoing, so we've had issues with the documents,
15 as the Court's aware of, and, you know, we want to move
16 forward with that dep, but we want to move forward with it so
17 it's useful.

18 THE COURT: All right. Okay.

19 All right. Moving on to Interrogatory -- so as to
20 Interrogatory Numbers 16 and 17, the motion is granted.

21 MR. STACK: Your Honor, I have a question on that.

22 THE COURT: Yes.

23 MR. STACK: May I ask the time period --

24 THE COURT: Let me get -- I'm sorry, go ahead.

25 MR. STACK: It's simply I think a fair amount of work

1 to try to go back to figure out what the legacy is and I think
2 we ought to at least limit it to some discrete time period. I
3 would suggest that probably it would be appropriate first to
4 go back (inaudible) whatever legacy information he can find
5 within the period of limitations.

6 THE COURT: And what would that be?

7 MR. STACK: Huh?

8 THE COURT: What would that be?

9 MR. STACK: All of the counts except one, one of the
10 counts.

11 THE COURT: Thoughts? Which count is three years, is
12 there a state claim here?

13 MR. STACK: It's a state claim. (Inaudible)

14 THE COURT: Okay.

15 MR. STACK: The federal claims are also (inaudible.)

16 MR. GIVENS: My argument would be, your Honor, that
17 if the software is still out there and being used, the harm is
18 ongoing. The statute hasn't started running yet.

19 THE COURT: So when we say three years, if we take
20 three years, that would be from three years --

21 MR. STACK: Date of filing.

22 THE COURT: Correct. Let's go ahead and use that
23 period, and if we need to expand it for some reason, I'm sure
24 you'll file a motion and we'll deal with that issue.

25 MR. BALABANIAN: Very well.

1 THE COURT: Moving on to Interrogatory 13. I'm going
2 to address the plaintiffs' counsel on this one because I read
3 the interrogatory, I read the response, the supplemental
4 response, and I agree with the defendant that defendant
5 described exactly how consents are obtained.

6 The fact that defendant couldn't locate and deliver
7 all copies of all screen shots that third-party vendors used
8 doesn't necessarily mean that defendant did not fully answer
9 the interrogatory.

10 Response?

11 MR. BALABANIAN: Sure.

12 So I guess the biggest problem we have is that if
13 they don't have the info, so be it, that's fine, and I
14 understand that they answered the interrogatory with a
15 substantive description. That's great.

16 I want to be able to compare that to the documents
17 that also shed light on that issue, and we almost have the
18 entire universe or we think we do, but if we can't get it from
19 them, then I don't see why we just can't get it altogether.

20 And that's my bigger issue is if they don't have it
21 and one of their bundling partners has it, then it's not that
22 hard for me to get it from that bundling partner; but thus
23 far, kind of the issue has been we've got all the information,
24 we've got all the information that's relevant to your request.
25 They don't have anything that we don't have. Discovery on

1 them is inappropriate, so it shouldn't be had.

2 And so we've been kind of foreclosed from
3 understanding who these third-party bundling partners are so
4 that we can get the info from them, and I think that we're
5 entitled to it because I understand --

6 THE COURT: But then aren't we then kind of leaking
7 into over to the merits side which we're not doing at the
8 moment? I mean the important part, again, let's go back to
9 the scope, certification issues. How are consents obtained
10 and, you know, and was the methodology used by the defendant
11 proper and did it actually work as intended. That's the real
12 question.

13 And 60-odd-some screen shots should give the
14 plaintiff some idea as to how these things were -- how these
15 things were implemented by the third-party vendors as well as
16 the defendant.

17 MR. BALABANIAN: And it certainly does. I guess it's
18 just my concern is what if they're wrong and what if there's
19 more out there, but I understand the Court's position.

20 THE COURT: I mean the suit here is against the
21 defendant company.

22 MR. BALABANIAN: It is.

23 THE COURT: So as to Interrogatory No. 13, the motion
24 to compel is denied.

25 I had the most problem with this last issue raised by

1 your motion. Plaintiff argues that the files cannot be
2 searched in any way, that the production is not labeled to
3 correspond to plaintiffs' requests, that the files are not
4 organized in the defendant's usual course of business the way
5 the defendant uses the files in the normal course of business;
6 therefore, that these files have to be organized, labeled and
7 then identified pertaining to specific requests, right?

8 MR. BALABANIAN: Correct.

9 THE COURT: So far so good?

10 MR. BALABANIAN: That's our view.

11 THE COURT: Unfortunately defendant says they are
12 searchable, that keyword searches may be conducted on these
13 files, that these files are kept the way they are kept for
14 their business.

15 The problem here, and this comes up quite often
16 actually, the problem here is that defendant has a proprietary
17 software that it uses to use the data that's already in the
18 database.

19 So when the other person doesn't have the same
20 software, the proprietary software, whatever the defendant
21 provides over to the plaintiff is not all that useful because
22 the data is categorized and organized in a certain fashion so
23 that the software running the data is able to produce
24 something that's useful.

25 So if you don't have that, then you're not ever going

1 to get the useful data. That's the problem. There's a
2 disconnect between the information that the defendant has and
3 the information that the plaintiffs are able to get and
4 actually use.

5 All right. As it stands now, given the declaration
6 provided by the defendant that it is searchable, that these
7 files are actually kept this way within the defendant's
8 organization for use, I don't see how I can force the
9 defendant to do anything else except, and this is something
10 that I would like for the parties to talk about, and I --
11 because I don't know enough about the technical aspects that I
12 should be dictating how this should be done.

13 But in other cases what I've done is I've asked the
14 party with the information to share the database, to share the
15 software at the party's site so that we don't deal -- we don't
16 have any issues of proprietary information being leaked out,
17 we don't have any problems with defendants or plaintiffs
18 violating their licensing agreement. And in some cases what
19 the parties have done is they actually segregate the data so
20 that whoever is coming in to inspect and to review the
21 information is only looking at the relevant information.

22 We do have some problems with privileged information,
23 so this may be a little more difficult; but if the plaintiffs
24 are saying that we just can't digest this information, it may
25 be because you don't have the software necessary to actually

1 review the information.

2 And if that is, in fact, the case, you may have to
3 have some dialogue about going over, looking at the soft --
4 looking at the system as it is and do some search as to what
5 you are looking for.

6 MR. SCHAPIRO: Your Honor, we're always happy to
7 talk, and I think thus far we've done a pretty good job --

8 MR. BALABANIAN: Yeah, I agree.

9 MR. SCHAPIRO: -- of working things out among
10 ourselves and taking things off the table; but from our
11 standpoint, the plaintiff should be in a position to -- should
12 be in a position to get all the information that they need
13 with -- from what we've provided to them.

14 This is one of those instances where the rules that
15 were written in a time when people exchanged documents in
16 bankers' boxes --

17 THE COURT: Sure.

18 MR. SCHAPIRO: -- don't translate so well to
19 electronics, so the plaintiffs have asked for two forms of
20 relief. They've said either give it to us exactly as you keep
21 it, or you have to tie each one to a discovery request. And
22 in the old days when there were bankers' boxes, it made
23 perfect sense because you wouldn't want a party to just take
24 everything out of folders, mix it up, throw it in a box and
25 then the party reviewing it is stuck trying to figure out what

1 it all means. So if something was in a folder, you provide it
2 in a folder; and if it was kept on a pad, you provide it on a
3 pad, but it would be a photocopy.

4 Here we have printed out for them all of the data,
5 anything that's relevant and non-privileged from our wiki.
6 The numbers are large primarily because the bulk of this
7 material is from something called the JIRA -- I can't remember
8 what it stands for, but it's J-I-R-A -- was something that
9 they requested. These JIRAs are basically they're referred to
10 within the company as tickets.

11 When there's a change made to the software or a bug
12 in the software, so every time there's a little update, one of
13 these JIRA forms is filled out. So in their papers and before
14 the Court when they've referred to the large number of
15 documents, the, you know, some large percentage, probably over
16 90 percent of the production or more is the printout of this
17 JIRA database.

18 It is true that on our -- and that is in at least
19 text searchable form, right?

20 MS. BOWLAND: It is. Your Honor, it's been OCR'd.

21 MR. SCHAPIRO: So electronically, they can search if
22 they're looking for words.

23 They can't click on links. What they can't do that,
24 if I'm understanding this correctly, that comStore can do, the
25 same way if you were looking at an Internet page, you could

1 click on a link and it would take you to another page.

2 THE COURT: Yes.

3 MR. SCHAPIRO: We've provided the data that comes
4 from that link. They just can't click on it, but we've given
5 them all the data from it.

6 So it would be -- to me, it's not materially
7 different than if someone asked for the contents of my e-mail
8 box and I print -- gave it to them in a text searchable or
9 printable form, but not in Microsoft Outlook. You can still
10 search it. You still have all the data there.

11 So we think they should be able to get what they need
12 from this, but if they can't and they make a -- and they want
13 to sit down with us and explain why they think they need
14 either to have us label it all or do something else, we're
15 always willing to listen.

16 MR. STACK: Your Honor, this (inaudible) I don't want
17 to put you in a difficult position (inaudible) and I think
18 that perhaps for -- your Honor perhaps might want to enter and
19 continue that and let the parties (inaudible.)

20 THE COURT: Well, from my standpoint, as I see it
21 based on the response, I think the defendant's production is
22 in compliance with Rule 34. The fact that there was some
23 conversion is not really -- does not really then place the
24 burden on the defendant to start organizing and categorizing
25 the information.

1 The Rule 34 actually requires -- I mean does allow
2 the defendant to put them in some useful format, and defendant
3 is saying that it has done that. In fact, defendant says that
4 it has gone beyond what it was required to do.

5 And I'm not sure, and I didn't really go into this
6 issue as to whether plaintiffs asked for technical assistance.
7 At some point somewhere in the response, defendant says that
8 plaintiff never even asked for technical assistance as to how
9 to go about searching or using what's already provided to the
10 plaintiffs.

11 So if that dialogue has to happen, you know, let's
12 move forward, but I'm just giving you an alternative in the
13 event that you just simply cannot move forward with the
14 information that you have, the next step in the process might
15 be that you just do an on-site inspection and examination of
16 the database.

17 MR. BALABANIAN: So then could I just clarify one
18 point, Judge?

19 THE COURT: Sure.

20 MR. BALABANIAN: Is the Court's ruling on that issue
21 without prejudice to our ability to meet and confer further on
22 that in hopes of perhaps reaching some type of an accord in
23 that regard?

24 THE COURT: Well, as it stands now, I'm going to
25 grant -- deny the motion to compel as to that issue because

1 what the motion is asking me to do is force the defendants to
2 actually organize these files, 17,000-some files, and actually
3 number the -- identify the Bates numbers for each request to
4 produce. The rule doesn't require the defendant to do so,
5 given how these files are maintained by the defendant. As to
6 that particular issue, the motion is denied.

7 MR. BALABANIAN: I understand.

8 THE COURT: Moving forward, you know, if you're
9 still -- what I'm saying is if you're still having trouble
10 digesting the information, meet with Ms. Bowland first, figure
11 out what technical assistance you may require, and if that
12 doesn't help, then the next step might have to be that you
13 inspect the actual JIRA system.

14 MR. BALABANIAN: I understand.

15 THE COURT: So that takes care of the motion to
16 compel.

17 What else is happening in terms of discovery?

18 MR. SCHAPIRO: We have a deposition of Plaintiff
19 Harris scheduled for July 13th.

20 THE COURT: July 13th.

21 MR. SCHAPIRO: We have noticed the deposition of
22 Plaintiff Dunstan. We noticed it for I think a date about two
23 weeks from now. The plaintiffs have told us that that date
24 doesn't work well for them, and they're going to get back to
25 us shortly with a date that works for them and Mr. Dunstan.

1 There's been an interesting development that I might
2 as well flag for the Court. The Court will recall that
3 Mr. Harris said that he threw away his computer. He was the
4 Macintosh user.

5 Now Mr. Dunstan, the person who says that his
6 computer was slowed down and he had to go buy a \$40 anti-virus
7 program to get comScore off of his software, has gotten cold
8 feet when asked to produce the anti-virus log because our
9 strong belief is that what he described is consistent with a
10 different kind of virus that has nothing to do with comScore.
11 So we've asked for the log of his anti-virus software to see
12 what else was taken off his computer, what other viruses he
13 was infected with; and rather than producing that, the
14 plaintiffs have told us that they're going to withdraw the
15 Dunstan subclass entirely.

16 So they're, as I understand it, withdrawing from this
17 case the claims about people having to go out and buy
18 anti-virus software or being harmed in that way.

19 We have, in turn, asked them to provide -- and this
20 was to resolve the issue about getting his anti-virus logs,
21 we -- in our view, that requires some form of amended
22 complaint because it knocks out their Illinois fraud claim
23 which requires money damages. It knocks out all of the
24 allegations that are specific to the Dunstan subclass.

25 So that's something that we've asked them for, but

1 this has just arisen over the last five days.

2 THE COURT: Okay.

3 MR. SCHAPIRO: So just flagging that.

4 THE COURT: Okay.

5 MR. BALABANIAN: If the Court would like, I could
6 speak to that briefly.

7 THE COURT: No. I mean, I don't have an issue in
8 front of me to deal with.

9 MR. BALABANIAN: Okay.

10 THE COURT: I'll just take it as information,
11 background information, as to what's happening.

12 MR. BALABANIAN: I wouldn't have characterized it as
13 cold feet, but that's --

14 THE COURT: Okay. Look, if the issues are out, the
15 issues are out.

16 MR. BALABANIAN: Sure.

17 THE COURT: If the issues are in, we'll litigate
18 them.

19 In terms of analyzing the source codes, where are you
20 with that?

21 MR. GIVENS: The review is ongoing. We're making
22 pretty good progress. There's -- you know, there's a lot of
23 source code there, so I'm not going to lie to you and say it's
24 a total -- not that would ever lie --

25 (Laughter.)

1 MR. BALABANIAN: He never lies to the Court.

2 MR. SCHAPIRO: Not today.

3 MR. BALABANIAN: Just for some added protection,
4 Judge.

5 MR. GIVENS: It's a lot of source code is what I'm
6 saying, but we're making a lot of headway, and --

7 THE COURT: Are you having an expert do the work
8 or --

9 MR. GIVENS: Yes. We have a little team that's
10 located in Florida that's working on it.

11 So we have a lot of the consent issues hammered out
12 at this point, and then we're really delving into -- we broke
13 it up into two main parts, the first being analyzing how
14 they're obtaining consent, the second being the information to
15 be collected. So we're on phase 2 of that right now.

16 MR. BALABANIAN: Your Honor, to flag another issue
17 for the Court --

18 THE COURT: Sure.

19 MR. BALABANIAN: -- and you're not going to like me
20 after this, Judge, but I don't think --

21 THE COURT: I don't know. You're too well dressed to
22 not be liked.

23 Go ahead.

24 MR. BALABANIAN: Thank you, your Honor. That means a
25 lot.

1 (Laughter.)

2 MR. BALABANIAN: I don't think we're going to make
3 the current class discovery cutoff of September 14th. I will
4 say I think the parties have been very diligent in meet and
5 conferring. We've had a bunch. We continue to do so, and I
6 think they've all been very professional in tone, but I don't
7 think we're going to make it at this rate, and I need to flag
8 that issue for the Court because I don't want two months from
9 now --

10 THE COURT: I appreciate that.

11 MR. BALABANIAN: -- you to be sitting there warning
12 me I should have --

13 THE COURT: I mean, I myself took some time with this
14 motion, too, so -- go ahead.

15 MR. BALABANIAN: How should we address that, in a
16 motion before your Honor or in front of Judge Holderman? I
17 guess Judge Holderman set the schedule, right, but --

18 THE COURT: If Judge Holderman set the schedule, then
19 it would be up to him to move.

20 MR. BALABANIAN: He set it, right? Yeah, okay.

21 THE COURT: So if it is his deadline, he should move
22 it. If it's something that I set, come to me.

23 MR. SCHAPIRO: Okay.

24 MR. BALABANIAN: Okay.

25 THE COURT: Anything else? I will -- let's see. Are

1 you going to need this supplemental information by July 13th
2 when Harris is deposed, what I'm asking the defendant to do?

3 MR. BALABANIAN: No, I don't believe so, Judge, no.

4 THE COURT: All right. I'm going to require the
5 defendant to go ahead and conduct another search by -- conduct
6 another search and provide a supplemental response or a
7 clarification to the plaintiffs by July 20, and I guess then
8 your 30(b)(6) dep might have to be moved.

9 MR. BALABANIAN: Right, and I'm going to go check
10 with -- I'm going to confirm my schedule to make sure that
11 works for us, and given these other issues, given the Court's
12 ruling today with respect to the documents and whatnot, I
13 don't know if that date's going to work, but we understand the
14 urgency, and we want to move forward with it, so we will.

15 THE COURT: All right. Let's have a status hearing
16 on July 26th at 11:00 a.m. Is that okay?

17 MR. BALABANIAN: Sure.

18 THE COURT: Are you all open?

19 MR. SCHAPIRO: What day of the week is that?

20 MR. BALABANIAN: Is there any way you could do the
21 25th? I know I'm flying out of town in the afternoon for a
22 mediation, but I have to leave at like noon, I think, so --
23 oh, but you know what? I should be fine on the 26th. Yeah,
24 that should be fine.

25 THE COURT: July 26th at 11:00 a.m., and, you know,

1 whatever issues you have, bring them with you. We'll discuss
2 them and see if we can make any headway.

3 Anything else?

4 MR. SCHAPIRO: Nothing from the defendants, your
5 Honor.

6 MR. BALABANIAN: No, your Honor. Thank you for your
7 time.

8 MR. STACK: Thank you.

9 MR. GIVENS: Thank you.

10 (Which were all the proceedings heard.)

11 CERTIFICATE

12 I certify that the foregoing is a correct transcript from
13 the digital recording of proceedings in the above-entitled
14 matter to the best of my ability, given the limitations of
15 using a digital-recording system.

16
17 */s/Kathleen M. Fennell*

July 10, 2012

18 _____
19 Kathleen M. Fennell
Official Court Reporter

Date

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