

Exhibit B

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

4	JEFF DUNSTAN, individually and	}	
5	on behalf of a class of		
6	similarly situated		
7	individuals, and MIKE HARRIS,		
8			Case No. 11 C 5807
9	Plaintiffs,		
10	-vs-		Chicago, Illinois
11	comSCORE, INC., a Delaware		August 13, 2012
12	corporation,		11:10 a.m.
13	Defendant.		

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. SHAPIRO: Good morning. Andrew Shapiro for
5 comScore. With me is Robyn Bowland from our office and Paul
6 Stack from Stack & O'Connor.

7 MR. STACK: Good morning.

8 MR. THOMASSEN: Good morning, your Honor. Ben
9 Thomassen here for plaintiffs.

10 THE COURT: Okay. Last time the parties reported
11 that defendants -- defendant did make the supplemental
12 response. Plaintiffs were having some difficulty in sort of
13 interpreting or going through the documents that had been
14 produced by defendant, and I think at that point I advised or
15 suggested to the parties that the vendors, the ESI vendors,
16 meet and discuss as to whether there are any ways for the --
17 to make it easier on the plaintiff to go ahead and view the
18 documents.

19 MR. SHAPIRO: That's right. And I think we've --
20 that was very productive, your Honor.

21 Mr. Thomassen will correct me if I'm
22 mischaracterizing anything, but I think we at least agree now
23 on what the issues are, and we might be at loggerheads about
24 who ends up paying for some remediation, but otherwise we're
25 close.

1 So there were a pair of issues that ultimately I
2 think the plaintiffs have. A first is that the Bates stamping
3 of the documents that we provided doesn't appear in the OCR'd
4 version. We've checked with our vendor. We can have that,
5 have it redone and do that at a cost of about \$300, and we're
6 willing to just do that ourself.

7 Ms. Bowland will correct me if I'm misstating.

8 MS. BOWLAND: I believe that is correct.

9 MR. SHAPIRO: So I don't think we've communicated yet
10 to the plaintiffs until this very moment that we're happy to
11 do that for them and provide them with -- with all of that
12 material with fresh Bates stamps, so that will be done.

13 The second area on which there -- we've at least
14 identified the problem, although this was, I believe, new to
15 us during the course of these discussions, the plaintiffs have
16 complained to us that they are not able to separate out --
17 they would like the production separated out by JIRA ticket.
18 Your Honor may recall that these JIRA tickets are internal
19 working notes when there needs to be a change made to the
20 software. We've provided them all to them, but it's not
21 broken out by ticket.

22 Our position is and has been that it's quite simple
23 to search through. This is how we, the defense lawyers, have
24 been searching. You type in the name of an attachment. One
25 of their clients said they can't find the attachments. You

1 type in the name of the file. It goes to it. You find it.
2 We're not using any special method or software ourselves to
3 work through all the JIRA tickets.

4 If they want someone to go ahead and break down what
5 is now a large document by JIRA ticket, it can be done. It
6 can be done manually by their vendor, by our vendor, perhaps
7 even by a smart paralegal somewhere. What one would need to
8 do is say, all right, JIRA Ticket No. 1 is on Pages 1 through
9 5 of the document, and you put in a little code. JIRA Ticket
10 No. 2 is on Pages 6 through 20, and you put in a little code
11 and then code the attachments.

12 It's manual work. The production that we're working
13 with is not in that form. It will cost 15 or \$20,000. Our
14 feeling is if they want to be able to work through the
15 documents in that form, they're welcome to, but they should
16 pay for it. We shouldn't.

17 THE COURT: Okay. Mr. Thomassen?

18 MR. THOMASSEN: A lot of what --

19 THE COURT: Before I go to -- any other issues that
20 you're aware of?

21 MR. SHAPIRO: Not on this issue of the production of
22 discovery.

23 MS. BOWLAND: Your Honor --

24 THE COURT: Yes.

25 MS. BOWLAND: If I can clarify one thing.

1 THE COURT: Yes.

2 MS. BOWLAND: The OCRing (inaudible) JIRA tickets,
3 just to clarify.

4 MR. SHAPIRO: You mean with the new Bates numbers.

5 MS. BOWLAND: With the new Bates numbers.

6 MR. SHAPIRO: Yes. It's already OCR'd.

7 MR. THOMASSEN: So this issue, your Honor, with the
8 matching of individual tickets to the attachment to the
9 tickets, that's something that's been on the table here for a
10 while, and you originally identified that when you talked
11 about, well, plaintiffs had received all this information.
12 When comScore views it at its headquarters, it has proprietary
13 software where you can look at an individual ticket, each of
14 which has several attachments to the tickets and hyperlinks
15 throughout. You can click on those attachments and open them
16 right up, or you can click on the individual hyperlinks in
17 them and open them right up, and so there's this ease of
18 movement from one to the other here.

19 Now, comScore has the ability to do that. That's --
20 that's not with the produced documents that were given to us.
21 Those were exported to us in these large batch formats that
22 stand about 1,500 pages or more in length and are comprised of
23 hundreds of JIRA tickets. So we have this batch production of
24 tickets. Then following that, we have the production of
25 attachments and hyperlinks, things of that nature.

1 And so to move between one and the other for us is a
2 multistep process because you have to first sort through these
3 long documents that are comprised of all these tickets. You
4 have to identify a ticket, and then if you want to start
5 viewing the attachments to that ticket, you have to do a
6 separate search using metadata to find the separate ticket
7 numbers that correspond to that.

8 Now, throughout our discussions with defendants in
9 this case, the understanding we were given was that there was
10 only one way that they could produce all of these tickets to
11 us, and that's in these large batch formats. They can only
12 produce us -- produce a thousand tickets to us at once in one
13 clump.

14 Now, since our discussion last week with the vendors,
15 comScore went back or comScore's vendor, I understand, went
16 back and looked at comScore's systems to confirm that, no, it
17 is possible to also produce tickets individually. So you
18 could print out a ticket, print out that ticket's attachments
19 and hyperlinked documents and produce that as one little
20 clump. So then you would have this ease of movement between
21 the ticket and the attachments.

22 They have the ability to do that. I don't know if
23 they investigated that initially, but that's not how they were
24 initially produced to us.

25 THE COURT: It's not defendant's responsibility,

1 though, right?

2 MR. THOMASSEN: Well, their responsibility under
3 Rule 34 is to produce --

4 THE COURT: Is simply to produce in native format,
5 the format that they have documents.

6 MR. THOMASSEN: Well, sure, and this --

7 THE COURT: But this issue I already ruled on. You
8 know, it was part of the motion to compel, which I denied.
9 But go on. It's possible to go ahead and organize the tickets
10 by ticket as well as -- and then to correlate the ticket with
11 the corresponding attachments.

12 MR. THOMASSEN: Right.

13 THE COURT: It's possible to do so.

14 MR. THOMASSEN: Correct. And to clarify, your Honor,
15 we're not trying to reopen the door on the previous issue,
16 which was -- that was really we were asking the defendant to
17 match up their individual documents to our individual
18 discovery requests, and that's something that -- I mean we're
19 not trying to do that here.

20 What we're looking at here is whether or not the
21 production they've given us, and these are -- these are
22 printouts. They are printed TIFF pages with associated OCR
23 data, so this is not native JIRA ticket files. They're just
24 printed pages with associated OCR data.

25 They produced them in a way to us that makes it very

1 difficult to move between tickets and attachments. And we
2 think since they have the ability to do this, they had the
3 ability to do this at the outset, we think it's their
4 responsibility to make the -- their production reasonably
5 useful so that we can move between things easily.

6 And our vendors have identified two ways that that
7 can happen. One involves reproducing things as I described
8 them to your Honor, so producing a ticket and then producing
9 its attachments, or going through the OCR data itself and
10 doing what's called a Logical Document Determination service,
11 I believe it's called LDD, which involves, as was just
12 explained, programmers going through and saying, yes, this
13 looks like the beginning of a ticket and the end of a ticket.
14 I'm going to make a little note in the code there, and I'll be
15 able to set up these parent-child relationships between
16 tickets on the one hand and attachments on the other.

17 MR. SHAPIRO: Your Honor --

18 THE COURT: The defendant is telling the Court that
19 the defendant counsel -- attorneys for the defendant are
20 working with the same data that the plaintiffs' counsel has to
21 work with and that in order to provide this data in a more
22 useful format would cost \$20,000. Who's going to pay for
23 that?

24 MR. THOMASSEN: Well, and, again, I take a little
25 issue with that. One is that the -- the Logical Document

1 Determination costs that I just talked about, that's a little
2 bit less than this larger cost here, which I believe is
3 associated with reproducing the entire production under
4 this --

5 MS. BOWLAND: Correct, your Honor, but we actually
6 did look at (inaudible) the costs that we're looking at for
7 LDD is --

8 THE COURT: LDE?

9 MR. SHAPIRO: D.

10 MS. BOWLAND: LDD, your Honor, is between 7,000 and
11 14,000, depending -- unfortunately, our vendor can't give us a
12 solid estimate because, again, it's based on someone going
13 into the production and manually doing things. So it's kind
14 of a wide range -- (inaudible).

15 THE COURT: And are we not going to be able to doing
16 what I proposed, which was to give limited access to
17 plaintiffs' counsel to the proprietary software so that data
18 can be viewed easily?

19 MR. SHAPIRO: Here's where we are on that, your
20 Honor. I guess the answer is we're open to the idea, but
21 there's a hurdle that might be hard for us to work through,
22 and that is how we would redact privileged information.

23 There are some items in the JIRA production --

24 THE COURT: Let me stop you. I do have other cases.
25 It's going to take me a little longer to address this issue

1 with the parties. I do want to get to the bottom of it so
2 that we have some -- we know where we're going with this.

3 So I'm going to go ahead and pass this case, call the
4 other cases, and then recall this case and we can talk more
5 about it, all right?

6 MR. SHAPIRO: Thank you, your Honor.

7 THE COURT: Thanks.

8 (Case passed and recalled at 11:55 a.m.)

9 THE CLERK: 11 CV 5807, Harris, et al., versus
10 comScore, Inc.

11 MR. SHAPIRO: Do we need to --

12 THE COURT: Yes. Yes, you do.

13 MR. SHAPIRO: Andrew Shapiro for comScore. With me
14 is Robyn Bowland from our office and Paul Stack from Stack &
15 O'Connor.

16 MR. THOMASSEN: Good morning again, your Honor. Ben
17 Thomassen.

18 THE COURT: Okay. So in terms of written discovery,
19 this is the only sticking point, right? The documents
20 produced and how the plaintiff attorneys are to go about
21 actually reviewing these documents in some meaningful way.

22 Plaintiff attorneys are having difficulty reviewing
23 these documents because they're just pages and pages and pages
24 of information, and it's understandable because defendant
25 company doesn't really store this information in this -- in

1 this form because it's all stored in a proprietary software,
2 and the information resides within that database. And
3 whenever defendant personnel needs to get something out of it,
4 I'm assuming that person then interfaces with the software and
5 out comes the answer, right?

6 MS. BOWLAND: I believe that's right, your Honor.

7 THE COURT: And this is not that different from other
8 cases, where many of the companies are using customized
9 proprietary software for its business, and unfortunately that
10 means that those without this proprietary software can't
11 really view the information in any meaningful way in a
12 cost-effective way.

13 And in those situations, and I think I said this
14 before, in those situations, I have ordered, without much
15 opposition, limited access, you know, in a cubicle or a room
16 with somebody to monitor to get a sense of, you know, how this
17 data fits into the overall scheme of things and to be able to
18 view the information. And last time before we passed the
19 case, I think Mr. Shapiro, your concern is how do we go about
20 protecting attorney-client information.

21 MR. SHAPIRO: Right.

22 THE COURT: I'm wondering if this is then --

23 MR. SHAPIRO: I think we might be able to work this
24 out if we can get some comfort that this is going to end this
25 back and forth because the one statement that your Honor made

1 just a moment ago that I would respectfully disagree with is
2 that we provided materials to them in some way that's very
3 difficult or expensive for them to go through.

4 I've walked into Ms. Bowland's office and seen her
5 just pulling up attachments or JIRA. This is how we're doing
6 it. It's really not that cumbersome.

7 THE COURT: I wonder if you have an advantage --

8 MR. SHAPIRO: But --

9 THE COURT: -- because you have comScore on your
10 side --

11 MR. SHAPIRO: No.

12 THE COURT: -- to counsel you.

13 MR. SHAPIRO: I don't think that's affecting it. I
14 suppose that maybe they want to look at more things or
15 different things, but I think we may be able to work this out.
16 It's just, you know, at each step, first they said we want you
17 to link each document to one of our requests, and your Honor
18 correctly said no, we have no obligation to do that.

19 And then they said, well, we want it all Bates
20 stamped in a certain way, and we've agreed now to Bates stamp
21 it. And now there's this other claim, and, fine. We --
22 assuming we can come up with some protocol that would protect
23 the privilege, let them come and noodle around, but -- but,
24 you know, at some point we -- we'd like to just have some
25 closure on this because we're chugging ahead with, you know,

1 going through even our own documents and theirs. I mean, the
2 privilege issue --

3 THE COURT: Why would we have privilege issues?
4 Because you've already provided the information.

5 MR. SHAPIRO: But we've redacted -- so the only
6 issue, and we can probably find a work around this, when we
7 produced in the OCR form and the other form, there could be a
8 printout, documents, there are a handful of items that are
9 privileged and so we're able just to redact them.

10 If someone is sitting down on the system, obviously
11 the system is what the system is, and there aren't redactions
12 included. There's nothing in there that we're particularly
13 concerned about. It's benign or helpful frankly material, but
14 we don't want there to be any suggestion that we've waived
15 privilege.

16 THE COURT: Sure.

17 MR. SHAPIRO: I think we would also -- I would want
18 to go back and make sure because we can't unring the bell
19 if -- even if we had an agreement about waiver, I want to make
20 sure that there's nothing in there that gives away anything
21 about our strategy that is -- that they're not entitled to
22 because as much as they can say we're not going to treat it as
23 a waiver, it's hard for them once they've seen it -- I'm just
24 going to hypothesize. If we say, you know, here's our
25 great -- here's the flaw in the plaintiffs' case and here's

1 how we're going to demonstrate that they're making this stuff
2 up, and that's in one of the JIRA tickets -- this is just an
3 in-extreme hypothetical -- we don't want them to see that.

4 We may be able to work that out. We actually have a
5 representative of the company here today. We certainly would
6 want some agreement that we're not waiving privilege if we're
7 not able to redact those and we would want someone, as your
8 Honor suggested, to be there to monitor what they're doing.

9 THE COURT: Is Rule 5 -- isn't it Rule 502? You
10 could probably use that, right?

11 MR. SHAPIRO: You'll have to refresh me as to
12 Rule 502, your Honor. I'm not going to fake it.

13 THE COURT: Federal Rule of Evidence 502. It deals
14 with the privilege issue, that you're able to use it, not to
15 waive any privilege.

16 But I'm with you, Mr. Shapiro. We need to bring some
17 closure to this issue.

18 What do you think about that proposal?

19 MR. THOMASSEN: Well, you've got limited access --

20 THE COURT: Limited to the extent, what I mean by
21 that is limited to the data that's already been compiled. I
22 don't even know technically whether we're able to segregate
23 the data you've already segregated, store that into a -- like
24 a terminal or limited-access database, then you can use -- and
25 then plaintiffs' counsel would be able to use the proprietary

1 software to then manipulate or to --

2 MR. SHAPIRO: I'm told that we can segregate it. I
3 don't know whether it would actually be live online with just
4 some mechanism that blocks them from going -- looking around
5 everything else in comScore's system or whether it's, you
6 know, on a separate terminal. I'm told that we can separate
7 it.

8 THE COURT: What do you think?

9 MR. THOMASSEN: Your Honor, I think that a lot of the
10 variations of discussions we've had with counsel here have all
11 been geared towards what could be accomplished by an on-site
12 inspection.

13 It's really, as we've talked about, the issue of
14 finding out how these individual tickets relate to the rest of
15 the documents they produced. I mean, I don't think there's
16 any dispute here that a large number of documents have been
17 produced.

18 And so our ability to navigate from tickets to
19 attachments and hyperlinks in a meaningful way is limited by
20 what we have now. We've discussed various approaches we have
21 to solve that, but this solution could be a perfect --

22 THE COURT: So if defendant is willing to give you
23 that on-site inspection, if you will, are we going to be done
24 with this issue?

25 MR. THOMASSEN: I certainly hope so, your Honor.

1 THE COURT: So then we need to have a specific
2 protocol in place with rules and restrictions.

3 I'm sorry, can we have -- is that a company
4 representative?

5 MR. SHAPIRO: Just came up and whispered something to
6 Robyn.

7 THE COURT: Yeah, I don't want to waste time
8 whispering back and forth.

9 MR. SHAPIRO: Yeah.

10 THE COURT: If there's a concern, let's go ahead
11 and --

12 MR. SHAPIRO: That's a colleague of Mr. Stack who
13 just asked that we find out how much time the plaintiffs
14 anticipate they would need to be on-site for this. That needs
15 to be an important part of the protocol, I think, so that we
16 can plan and make it work right.

17 THE COURT: Yeah, I think that has to be part of the
18 protocol. The protocol is, you know, where, when, how long,
19 who's going to be present, what will the plaintiffs' attorneys
20 be allowed to do on the terminal, or whatever this thing is,
21 whether it's -- maybe even it's possible to do remote access.
22 I don't know.

23 MR. SHAPIRO: It's not.

24 THE COURT: Okay. Just work out the details of the
25 on-site inspection. What we have so far is that defendant's

1 willing to grant limited on-site inspection. We just have to
2 figure out the details of that inspection and how to deal with
3 the privilege issue. I think it's Federal Rule of Evidence
4 502.

5 MR. SHAPIRO: It's certainly the case, your Honor,
6 though I can't cite a rule, that if we have an agreement or a
7 stipulation that it's not a waiver, then it's not a waiver.

8 THE COURT: Of course.

9 MR. SHAPIRO: We just need to --

10 THE COURT: We have a protective order here, don't
11 we?

12 MR. SHAPIRO: Yes. Well, with regard to the source
13 code.

14 THE COURT: Well, anyway, that could also be part of
15 the conversation.

16 MR. SHAPIRO: Yeah. Yes.

17 THE COURT: I'd like to see the parties again on
18 August 23.

19 MR. SHAPIRO: Your Honor, I have an argument in the
20 2nd Circuit on August 23rd. I wonder if -- while someone could
21 stand in for me, I wonder if we can do it on --

22 THE COURT: Yeah, can we have somebody else stand in?

23 MR. SHAPIRO: Sure.

24 THE COURT: Number one, I do want to follow the case
25 closely.

1 MR. SHAPIRO: Sure.

2 THE COURT: And number two, I just want to get a
3 sense of whether we have something in place that we can use.

4 MR. SHAPIRO: Sure.

5 THE COURT: If not, then we have to go to Plan B,
6 which, you know, might involve us trying to figure out who's
7 going to pay for what. I mean, that's the alternative here, I
8 think, right?

9 MR. SHAPIRO: That's fine. 11:00 a.m.?

10 THE COURT: 11:00 a.m., August 23rd.

11 MR. SHAPIRO: And your Honor -- your Honor said a
12 moment ago, and maybe I should have flagged this earlier, that
13 as far as we're concerned, this is the only open issue about
14 documentary discovery.

15 There's one other issue that might fall under that
16 heading. Mr. Stack is going to address this.

17 MR. STACK: Your Honor, this goes to the issue of
18 defendant -- there's actually two issues. When we were last
19 in front of Judge Holderman, plaintiff counsel (inaudible) and
20 we don't know. We haven't seen (inaudible).

21 There's another issue. In the original complaint,
22 the Plaintiff Dunstan alleges that our software jammed his
23 machine. He had to get anti-virus software to clean it out,
24 and so we said may we please have the virus log then which
25 will prove it.

1 Mr. Dunstan was unwilling to turn over the virus
2 logs. He hasn't been able to turn them over.

3 To resolve the issue, plaintiffs' counsel said, well,
4 we're going to drop those claims relating to --

5 THE COURT: Yes, I remember.

6 MR. STACK: And so what we're doing is we're not
7 enforcing our request to produce pending this amendment of the
8 complaint, which is -- which is taking, frankly, too long.

9 And so I'm wondering if your Honor could set a date
10 where either the complaint is amended or else then if it's not
11 amended by that date, then we can come and file the motion to
12 compel.

13 MR. THOMASSEN: If I may, your Honor?

14 THE COURT: Yes.

15 MR. THOMASSEN: We've gone back on forth on this a
16 bit with defense counsel and what we've decided since the
17 hearing that was referred to is we are not adding the
18 trespassing chattels claim. That was considered, and we
19 decided not to. We communicated that multiple times to
20 defense counsel through e-mail.

21 And so what happens here is that what we're planning
22 on doing and what we've said that we're going to do is we're
23 going to drop the subclass that deals with these actual
24 damages, and we're going to drop the one claim that was
25 brought on behalf of the subclass.

1 Now, we thought that the most appropriate way to do
2 this is just to enter a stipulation between the parties that
3 we are not -- plaintiffs are not pursuing relief on behalf of
4 the subclass and are not pursuing recovery under this one
5 claim. The issues are only being limited here. There's
6 nothing being added.

7 So from our view, there's no reason to file a
8 completely new amended complaint if both parties can agree
9 that plaintiffs are not proceeding on behalf of the
10 subclass --

11 THE COURT: So what you're suggesting is that simply
12 filing a stipulation to dismiss portions of the complaint.

13 MR. THOMASSEN: That's the offer we've had on the
14 table for a while now.

15 THE COURT: That's the same thing, right?

16 MR. STACK: Well, it's a little busy because the
17 allegations still remain in the complaint. I -- in the old
18 days before we had word processors, I think there would be
19 some logic to what he's saying, but they have the complaint in
20 a word processing program. If they want to take it out, it's
21 just a whole lot easier just to take it out and send us and
22 file it next week.

23 MR. SHAPIRO: We at least want to see what we'd be
24 stipulating to. Say we're proposing to remove bop, bop, bop,
25 bop and we won't proceed on bop, bop, bop. And we don't want

1 to sign any stipulation until we see what it is we're
2 stipulating to.

3 THE COURT: But defendant is right. Until there is
4 an amended complaint or we have a stipulation to dismiss
5 certain claims from the complaint, that claim remains active,
6 so --

7 MR. THOMASSEN: I agree with you, your Honor.

8 THE COURT: -- the only question is timing. When are
9 the plaintiffs, or I should say when is Mr. Dunstan willing to
10 go ahead and take a position formally on the docket so we all
11 know what to consider?

12 MR. THOMASSEN: We -- and he was willing to make that
13 position a couple weeks ago. And we said, look, if you're
14 willing to stipulate that we'll drop these claims, we'll draw
15 up a stipulation and get it to you in the morning for your
16 review; but defense counsel has been insisting to this point
17 on an amended complaint.

18 And so, I mean, we could draw up the stipulation
19 today and have it for their review tomorrow morning if they'd
20 like it. I mean that's a quick -- I mean, I think that's the
21 quickest and easiest way to resolve this.

22 MR. STACK: Your Honor, we feel strong (inaudible).

23 THE COURT: No, it's really up to the plaintiff,
24 Mr. Dunstan, what he wants to do. Either he can amend the
25 complaint or he can dismiss portions of his complaint; and

1 depending on the scope of that dismissal, it would be up to
2 defendant to then decide, okay, do we now move forward with
3 our motion to compel or do we not?

4 I mean, we -- the Court only has so much power in
5 terms of what -- how to -- I'm sorry, in terms of what we can
6 say to the plaintiff to do.

7 MR. SHAPIRO: Right, we just -- as your Honor has
8 pointed out, we've got an operative complaint right now and we
9 have a document request that hasn't been answered for the --
10 that is a perfectly proper one for the anti-virus laws, and
11 that's the state of play right now. And, you know, we at some
12 point are just going to move, you know, renew our motion to
13 compel on that.

14 THE COURT: But, you know, take a look at the
15 stipulation to dismiss and figure out whether there is any
16 remaining issue as to the outstanding discovery request based
17 on the scope of the dismissal.

18 So Mr. Thomassen has said he will go ahead and draft
19 the stipulation to dismiss and share that draft with
20 defendant, so I will require the Plaintiff Dunstan -- it's
21 Dunstan, right?

22 MR. THOMASSEN: Yes, your Honor.

23 THE COURT: To do so by tomorrow, August 14.

24 And I can't imagine defendant not wanting to
25 stipulate to the dismissal because it's always better to have

1 something dismissed, right?

2 MR. SHAPIRO: But we don't want to end up at trial
3 saying, oh, and they start raising claims about his computer
4 operating slowly and we say we understood that to be within
5 the scope of claims that you were no longer going to pursue,
6 and they say, oh, no, we weren't.

7 THE COURT: Why don't we take a look at the scope of
8 the stipulation --

9 MR. SHAPIRO: Okay.

10 THE COURT: -- before we move forward.

11 MR. STACK: I think your Honor is correct.
12 Stipulation is something we're either going to agree to or we
13 won't. If we don't agree to it (inaudible).

14 THE COURT: All right. Let's have that thing done,
15 filed, if possible, before we see each other again next week,
16 the 23rd.

17 MR. THOMASSEN: Just so I'm clear, your Honor, the
18 order will have us getting the stipulation to defense counsel
19 tomorrow, and then the filing will hopefully follow shortly
20 thereafter.

21 THE COURT: It depends on the defendant's response --

22 MR. THOMASSEN: Of course.

23 THE COURT: -- to the draft of the stipulation because
24 we do have an answer on file, so, you know, otherwise --
25 otherwise, dismissal would have to be with permission of the

1 Court, I believe.

2 MR. SHAPIRO: Correct.

3 THE COURT: Okay? Anything else?

4 MR. SHAPIRO: Not from us.

5 MR. THOMASSEN: That's it.

6 THE COURT: All right. So hopefully we'll have good
7 news next Thursday.

8 MR. THOMASSEN: Thank you, your Honor.

9 MR. SHAPIRO: Thank you, your Honor.

10 THE COURT: Take care.

11 (Which were all the proceedings heard.)

12 CERTIFICATE

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

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18 */s/Kathleen M. Fennell*

August 31, 2012

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Kathleen M. Fennell
Official Court Reporter

Date

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