EXHIBIT S

1   <u>**TRANSCRIBED FROM DIGITAL RECORDING**</u>

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

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

11   TRANSCRIPT OF PROCEEDINGS
         BEFORE THE HONORABLE YOUNG B. KIM, MAGISTRATE JUDGE
12   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.

17

18 */s/Kathleen M. Fennell*   *August 31, 2012*

19 _____   _____
    Kathleen M. Fennell   Date
20 Official Court Reporter

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