

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

MIKE HARRIS and JEFF DUNSTAN,	)	
individually and on behalf of a class of similarly	)	
situated individuals,	)	
	)	
Plaintiffs,	)	Case No. 1:11-5807
	)	
v.	)	Hon. James F. Holderman
	)	
COMSCORE, INC., a Delaware corporation,	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFFS’ MOTION FOR APPROVAL OF CLASS NOTICE PLAN**

Plaintiffs Mike Harris and Jeff Dunstan, through their undersigned counsel, respectfully move the Court for approval of their proposed Notice Plan, which fully satisfies all requirements under Rule 23(c) and Due Process. In support of their Motion, Plaintiffs state as follows:

**I. INTRODUCTION**

On April 2, 2013, the Court entered an Order in this case granting class certification of a Class and Subclass under Rule 23(b)(3). (Dkt 186.) Following entry of the Court’s Order certifying the Class and Subclass, and pursuant to Rule 23(c)(2), Plaintiffs solicited bids from reputable class action administrators experienced in developing and implementing notice plans in complex class actions. Plaintiffs ultimately retained Kurtzman Carson Consultants (“KCC”), and with its assistance, developed the proposed Notice Plan.<sup>1</sup> As demonstrated below, the proposed notice constitutes the best notice practicable under the circumstances and otherwise satisfies the requirements of Rule 23(c)(2)(B) and Due Process. Accordingly, Plaintiffs respectfully request

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<sup>1</sup> It should be noted that on April 4, 2013, Class Counsel requested to hold a meet and confer conference with comScore’s counsel to obtain comScore’s input and views on how to provide Class members with notice in the hopes of providing the Court with an agreed-upon plan. To date, comScore’s counsel have not responded to Class Counsel’s request.

that the Court approves their proposed Notice Plan.

## **II. THE PROPOSED NOTICE PLAN IS THE BEST PRACTICABLE UNDER THE CIRCUMSTANCES.**

Rule 23(c)(2)(B) provides that “[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2558 (2011). Class notice must be “reasonably calculated, under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *F.C.V., Inc. v. Sterling Nat. Bank*, 652 F. Supp. 2d 928, 944 (N.D. Ill. 2009). Further, Rule 23 “accords considerable discretion to a district court in fashioning notice” and seeks “cooperative ingenuity on the part of counsel and the court in determining the most suitable notice in each case.” *Tylka v. Gerber Prods. Co.*, 182 F.R.D. 573, 578 (N.D. Ill. 1998) (quotations and citations omitted). The Federal Judicial Center has concluded that a notice plan that reaches at least 70% of the class is reasonable. *Federal Judicial Center, Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), p. 3.

Plaintiffs propose that class notice be disseminated through a comprehensive four-pronged approach. First, comScore will “push” the Summary Notice through its OSSProxy software to all current “panelists” by rendering a dialogue (or pop-up) box on their computer screens. (The Declaration of Gina M. Intrepido-Bowen is attached hereto as Exhibit A, ¶ 20.) The proposed Summary Notice, which will contain an active hyperlink to the Case Website, is attached to the Intrepido-Bowen Declaration as Attachment 1-B.

Second, KCC will send the Summary Notice through and e-mail and First Class U.S. Mail to all addresses obtained from comScore’s records. (Intrepido-Bowen Decl., ¶¶ 21-22). The

proposed forms of the e-mail and postcard versions of the Summary Notice are attached to the Intrepido-Bowen Declaration as Attachments 1-C and 1-D, respectively.

Third, KCC will supplement the “push” notice and mail and e-mail campaigns with Internet banner ads on the 24/7 Real Media Internet Network, which allows access to over 4,000 premium websites. (Intrepido-Bowen Decl., ¶¶ 24-25.) These ads will run for a one-month period, contain active hyperlinks to the Case Website, and make 115 million *unique* impressions. (Intrepido-Bowen Decl., ¶ 24.) Depending on the percentage of Class members reached through the OSSProxy “push” notice and direct mail and e-mail campaigns, KCC will supplement the Notice Plan with publication notice and a second Internet media campaign sufficient to achieve notice reach to over 70% of Class members. (Intrepido-Bowen Decl., ¶ 26.) The proposed banner ads are attached to the Intrepido-Bowen Declaration as Attachment 1-E.

Fourth, the direct “push” notices, mail and e-mail campaigns, and supplemental Internet notices will direct Class members to a website, [www.comScoreClassAction.net](http://www.comScoreClassAction.net), which will be created and maintained by KCC. (Intrepido-Bowen Decl., ¶ 27.) This website is an easily remembered domain that will serve as the traditional “long form” notice, will provide access to relevant Court documents, and will provide Class members with additional information about the litigation and their options and rights, and contact information for Class Counsel and KCC.<sup>2</sup> The

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<sup>2</sup> The Manual For Complex Litigation confirms that using a dedicated website to provide supplemental information is an effective notice technique:

Posting notices on dedicated Internet sites, likely to be visited by class members and linked to more detailed certification information, is a useful supplement to individual notice, might be provided at a relatively low cost, and will become increasingly useful as the percentage of the population that regularly relies on the Internet for information increases. An advantage of Internet notice is that follow-up information can easily be added, and lists can be created to notify class members of changes that may occur during the litigation. Similarly, referring class members to an Internet site for further information can provide complete

proposed Long Form Notice is attached to the Intrepido-Bowen Declaration as Attachment 1-F.

The direct OSSProxy “push” delivery, direct mailing, targeted Internet ads, and website Notice Plan is consistent with other effective court-approved notice plans, is the best practicable notice to the Class under the circumstances, and complies with Rule 23 and Due Process.

(Intrepido-Bowen Decl., ¶¶ 29, 33-34.) Plaintiffs propose that the deadline for a Class member to request to be excluded be fifty-six (56) days after the Notice Plan has been fully effectuated.

### **III. THE PROPOSED NOTICES ARE EASY TO READ AND UNDERSTAND, AND THUS, COMPORT WITH RULE 23 AND DUE PROCESS.**

To satisfy Rule 23(c)(2)(B), the class notice must concisely state in plain, easy-to-understand language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through counsel if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on class members under Rule 23(c)(3). “The federal judicial center has created illustrative clear-notice forms that provide a helpful starting point for actions similar to those described in the forms.” Adv. Cmte. Notes (2003) to Fed. R. Civ. P. 23(c). Ultimately, notice is “adequate if it may be understood by the average class member.” ALBA CONTE & HERBERT B. NEWBERG, 4 NEWBERG ON CLASS ACTIONS, §11:53, 167 (4th ed. 2002).

Here, the Summary Notice (whether delivered via OSSProxy, the U.S. mail, or e-mail) and the Long Form Notice are based upon the question and answer format suggested by the Federal Judicial Center and comply with Rule 23(c)(2)(B) and Due Process. (Intrepido-Bowen

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access to a wide range of information about a class settlement. Many courts include the Internet as a component of class certification and class settlement notice programs.

ANN. MANUAL COMPLEX LIT. § 21.311 (4th ed.).

Decl., ¶¶ 30-32.) The Summary Notice is concise and written in plain, easy-to-understand language. It provides a concise description of the defined class, along with a basic description of the nature of the action and class claims. *See* Intrepido-Bowen Decl., Attachments 1-B, 1-C, and 1-D. The Summary Notice informs each Class member that: he or she may enter an appearance through counsel if the member so desires, the binding effect of a class judgment on Class members, and that the Court will exclude from the Class any member who requests exclusion. If any Class member desires additional information, the Summary Notice provides a toll free telephone number and a website address where they can speak to a claims administrator, reach Class Counsel, and view Court documents.

The Long Form Notice also uses easy-to-understand language to provide additional information about the lawsuit. *See* Intrepido-Bowen Decl., Attachment 1-F. The first page of the Long Form Notice provides a basic description of the nature of the action. This information is further explained in the Answers to Questions Nos. 1-9, which describe the posture of the action, the class claims, the issues, allegations, comScore's response, and the relief sought. The Answers to Questions 10-12 provide a description of the Class and Subclass and explain how to determine if a person is a member. And, if potential Class members are still unsure as to whether they are included, Answer to Question 13 encourages them to call Class Counsel for further help.

The Answer to Question 14 provides an explanation of the rights of Class members should they elect to remain as Class members in the action and informs each Class member about the binding effect of a class judgment on them. The Answer to Question 17 explains that each Class Member may enter an appearance through their own counsel if they so desire. The Answers to Questions 15-16 explain that the court will exclude from the class any member who requests exclusion and the time and manner for requesting exclusion. If further information is

desired, the Answer to Question 23 informs Class members that more information is available by calling Class Counsel and/or the class action administrator.

In sum, the format and language of each form of notice has been drafted so that it is conveyed in plain language, easy to read, and will be readily understood by the members of the Class. (Intrepido-Bowen Decl., ¶¶ 30-32.) Thus, the proposed notices satisfy the requirements of Rule 23 and Due Process.

#### **IV. CONCLUSION**

For the reasons discussed above, Plaintiffs Mike Harris and Jeff Dunstan respectfully request that the Court enter an Order (1) approving the proposed Notice Plan, finding that it satisfies the requirements of both Rule 23 and Due Process, (2) directing comScore, under KCC's supervision, to "push" the Summary Notice to all current panelists, (3) directing comScore to produce a computer-readable file containing the names, mailing addresses, and e-mail addresses of all Class members found on its database, (4) authorizing notice be sent by U.S. first class mail and e-mail to all such Class members, (5) authorizing the dissemination of the Internet advertisements contemplated by the Notice Plan, (6) authorizing the creation of the Case Website, and (7) awarding such additional relief as the Court deems reasonable and just.

Dated: April 16, 2013

Respectfully submitted,

MIKE HARRIS AND JEFF DUNSTAN,

By: /s/ Ari J. Scharg

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**CERTIFICATE OF SERVICE**

I, Ari J. Scharg, an attorney, certify that on April 16, 2013, I served the above and foregoing ***Plaintiffs' Motion For Approval of Class Notice Plan***, by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system, on this 16th day of April, 2013.

/s/ Ari J. Scharg \_\_\_\_\_