

**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,

v.

COMSCORE, INC., a Delaware corporation,

Defendant.

Case No. 1:11-cv-5807

Hon. James F. Holderman

Magistrate Judge Young B. Kim

**DECLARATION OF RAFEY S. BALABANIAN IN SUPPORT OF PLAINTIFF  
JEFF DUNSTAN'S RENEWED MOTION TO COMPEL COMSCORE, INC. TO  
RESPOND TO PLAINTIFF'S WRITTEN DISCOVERY**

I, Rafey S. Balabanian, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Partner at the law firm of Edelson LLC, which has been retained to represent Plaintiffs Mike Harris and Jeff Dunstan (collectively, "Plaintiffs") in this matter. I am an adult over the age of 18 and I am fully competent to make this Declaration. I have personal knowledge of all matters set forth herein. If called upon to testify as to the matters stated herein, I could and would competently do so.

2. Presently, the Parties are engaged in the merits phase of discovery in this case.

3. On July 31, 2013, Plaintiffs propounded on comScore Plaintiff Dunstan's First Set of Interrogatories and Requests for the Production of Documents and Plaintiff Harris's Second Set of Interrogatories. (See Plaintiff Jeff Dunstan's First Set of Requests for Production of Documents to comScore, Inc. ("Dunstan's Requests"), Plaintiff Jeff Dunstan's First Set of Interrogatories to comScore, Inc. ("Dunstan's Interrogatories"), and Plaintiff Mike Harris's Second Set of Interrogatories to Defendant comScore, Inc. ("Harris's Interrogatories"), true and

accurate copies of which are attached as Exhibit Nos. A, B, and C, respectively).

4. On August 30, 2013 comScore responded in writing to Plaintiffs' written discovery. On September 17, 2013, Plaintiffs received comScore's document production via a hard drive containing files Bates-labeled "CS0016909-CS0096420."

5. Pursuant to this Court's September 17th Order, the Parties met and conferred on September 26, 2013 regarding certain deficiencies regarding comScore's discovery responses, and thereafter exchanged several letters outlining their positions as to the contested discovery issues. Through those letters, comScore agreed to supplement its responses regarding certain information and requests, but confirmed that it would not supplement in regards to others.

6. Following the Parties' hearing before this Court on October 10, 2013, the Parties continued to work through aspects of comScore's discovery responses and production. As a result, comScore provided Plaintiffs with additional information, including (i) selected Panelist complaints, (ii) comScore's relevant insurance policies, and (iii) documents concerning comScore's relationship with the "Trees for the Future" program.

7. At the same time, Plaintiffs redoubled their efforts to review comScore's document production and, in the course of that process, identified new issues with comScore's production. The Parties met and conferred about, but were unable to resolve, those issues on October 30, 2013.

8. Plaintiffs have also identified areas where more information is needed to fully understand the documents that comScore has produced—including the many code words that comScore uses internally to refer to certain tasks (such as "[REDACTED]," which appears to be comScore's internal designation for this case).

9. As for the newly identified deficiencies, Plaintiffs have found that comScore has

apparently not produced emails originating from most members of comScore’s executive team. Plaintiffs have identified many instances where comScore employees forward or otherwise include messages from the executive team in their own correspondence, but cannot find produced versions of the original executive messages. Many of those emails discuss matters central and directly relevant to this case, including comScore’s development of policies relating to its collection of data from its Panelists.

10. Plaintiffs concluded that comScore made the decision not to produce the aforementioned emails, as it did not include members of the executive team—apart from Mike Brown and Cameron Meirhoefer (both of whom became executives well after Plaintiffs’ claims arose)—as record custodians. As it turns out, comScore self-selected 14 total custodians for its document production, and some of them—like those from paralegal Katherin Calloway—are associated with documents that have nothing to do with this case. Plaintiffs took no part in choosing which custodians comScore selected for its document production, and comScore never sought Plaintiffs’ input for that selection in any way.

11. For its part, comScore indicated that it had no obligation to produce emails from its executive team because they were not selected by comScore as record custodians.

12. In terms of documents relating to the development of comScore’s User License Agreements (“ULAs”) for its panelist software, comScore produced documents showing the drafting and development process for an early version of the ULA, made in or around 2005. Those documents included revisions and discussions by and between members of comScore’s in-house legal team. comScore did not produce any subsequent documents dealing with those issues (*i.e.*, showing developments of and changes to the ULA between its early 2005 version and its current iteration).

13. During the October 30, 2013 meet and confer, comScore indicated that the reason additional documents about the development of the ULA were not produced was because they had probably been marked as privileged. At that time, comScore also acknowledged that it hadn't produced a privilege log for those documents, and Plaintiffs indicated that, in the absence of the documents and a privilege log, they would move to compel their production.

14. On October 2, 2013, comScore's counsel contacted Plaintiffs' counsel about a privileged document that comScore had inadvertently produced. The Parties ultimately decided that Plaintiffs would indefinitely sequester the document, and comScore eventually produced a privilege log for that single document on October 23, 2013.

15. As noted above, comScore did produce certain "complaints" relating to its panelist software. Namely, through discussions with Plaintiffs' counsel, comScore produced a report that shows information concerning some 26,000 complaints that were logged in a "complaint system" regarding bundled versions of comScore's software. Other than that report, however, comScore did not produce any other complaints it had received concerning its panelist software.

16. During their review, Plaintiffs identified references to other complaints—*i.e.*, ones not reflected in the complaint system. Likewise, Plaintiffs have long been aware of many institutions—including prominent universities—that have blocked comScore's panelist software, yet have not seen any materials produced by comScore referencing communications from such institutions.

17. During the October 30th meet and confer, comScore acknowledged that there may be complaints that are within comScore's possession but exist outside the "complaint system" that comScore produced. comScore claimed that producing such complaints would be too

burdensome, because they would be difficult to locate given the fact that all such complaints were supposed to be logged into comScore's "complaint system" according to some presently unidentified policies.

18. To date, comScore has refused to answer Dunstan's Document Request Nos. 19, 21, and 22, which seek documents relating to comScore's marketing or promotion of its Panelist Software, and Dunstan's Document Request No. 26, which seeks communications between comScore and its bundling partners regarding the functionality of comScore's Panelist Software.

19. When asked during the September 26, 2013 meet and confer, comScore offered two explanations and one compromise regarding its refusal to respond. First, comScore explained that it believes information relating to its marketing or promotion of the Panelist Software is not relevant to this case. Second, comScore asserted that the Requests were overly broad because the only possibly relevant information would be communications with bundling partners about actually bundling OSSProxy (*i.e.*, with the partners' software), along with marketing materials designed to recruit new bundling partners. For the compromise, Plaintiffs understood that comScore then-agreed to produce documents falling into the limited scope of what comScore took to be "possibly relevant" communications—but comScore later clarified that it viewed the "proposed 'narrowing' as an attempt to re-write [Dunstan's] Requests, which is improper [and that it would] not supplement."

20. Plaintiff Dunstan's Document Request Numbers 34 and 36 seek documents and communications relating to "any occurrence where [comScore] did not Purge Personal Information Collected through [its] Panelist Software." comScore responded to these Requests with boilerplate objections and, during the Parties' meet and confer, additionally explained that the Parties' definitions of "purge" were not in accord, but nonetheless agreed to consider

producing documents that explain its purging procedures. Later, however, comScore claimed that is “has no documents to produce responsive to these requests” because it “does not have any documents, including written policies, regarding any such purging.”

21. Dunstan’s Request Numbers 56, 57, 58, 59, 60, and 61 seek documents relating to the revenue and monies generated through comScore’s “sharing, selling, transmitting, and/or disclosing” of the Class’s and Subclass’s personal information and, for its part, comScore simply answered “None” to certain inquires (including Interrogatory Nos. 10 and 11). comScore later clarified that it answered “None” to Interrogatory Nos. 10 and 11 because Plaintiffs’ definition of “Personal Information” didn’t include “aggregated” and/or “anonymized” data.

22. comScore previously indicated that even if Plaintiffs revised their definition of “Personal Information” to include aggregated information, it would object to the requests on relevance grounds. comScore also suggested (presumably for the purposes of compromise) that Plaintiffs examine its publicly available “Quarterly and Annual Financial Reports” for financial information.

23. Attached hereto as Exhibit D is a true and accurate copy of a document marked as “CS0043028\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

24. Attached hereto as Exhibit E is a true and accurate copy of a document marked as “CS0083728\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

25. Attached hereto as Exhibit F is a true and accurate copy of a document marked as “CS0083187\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

26. Attached hereto as Exhibit G is a true and accurate copy of a document marked as “CS0090005\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

27. Attached hereto as Exhibit H is a true and accurate copy of a document marked as “CS0049035\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

28. Attached hereto as Exhibit I is a true and accurate copy of a document marked as “CS0089875\_Confidential—Source code.htm.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

29. Attached hereto as Exhibit J is a true and accurate copy of a document marked as “CS0042536\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

30. Attached hereto as Exhibit K is a true and accurate copy of Defendant comScore, Inc.’s Responses to Plaintiff Jeff Dunstan’s First Set of Requests for Production of Documents to comScore, Inc.

31. Attached hereto as Exhibit L is a true and accurate copy of Defendant comScore, Inc.’s Answers to Plaintiff Jeff Dunstan’s First Set of Interrogatories to comScore, Inc.

32. Attached hereto as Exhibit M is a true and accurate copy of a document marked as “CS0073177\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

33. Attached hereto as Exhibit N is a true and accurate copy of a document marked as “CS0046036\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

34. Attached hereto as Exhibit O is a true and accurate copy of a document marked as “CS0089762\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

35. Attached hereto as Exhibit P is a true and accurate copy of a document marked as “CS0088697\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

36. Attached hereto as Exhibit Q is a true and accurate copy of a document marked as “CS0075487\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

37. Attached hereto as Exhibit R is a true and accurate copy of a document marked as “CS0074729\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

38. Attached hereto as Exhibit S is a true and accurate copy of a document marked as “CS0048493\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

39. Attached hereto as Exhibit T is a true and accurate copy of a letter that Plaintiffs’ counsel sent to comScore’s counsel on September 30, 2013.

40. Attached hereto as Exhibit U is a true and accurate copy of a document marked as “CS0049415\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its September 2013 document production.

41. Attached hereto as Exhibit V are true and accurate copies of excerpts from the October 3, 2013, deposition of Mike Brown, comScore’s Chief Technical Officer and Rule 30(b)(6) designee.



42. Attached hereto as Exhibit W is a true and accurate copy of comScore, Inc.'s Form 10-Q (Quarterly Report) for the Period Ending 06/30/13.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 1st day of November 2013 at Chicago, Illinois.

s/ Rafey S. Balabanian

**CERTIFICATE OF SERVICE**

I, Benjamin S. Thomassen, an attorney, certify that on November 1, 2013, I served the above and foregoing ***Declaration of Rafey S. Balabanian in Support of Plaintiff Jeff Dunstan's Renewed Motion to Compel comScore, Inc. to Respond to Plaintiff's Written Discovery***, 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 1st day of November 2013.

s/ Benjamin S. Thomassen \_\_\_\_\_