

**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 CHANDLER R. GIVENS IN SUPPORT OF
PLAINTIFFS' MOTION TO EXCLUDE DISPUTED DATA**

I, Chandler R. Givens, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an associate 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 unless specified otherwise. If called upon to testify as to such matters, I could and would competently do so.

2. On November 1, 2013, I received a package containing a compact disk ("CD") loaded with data extracted from Plaintiff Jeff Dunstan's ("Dunstan") hard drive (the "Retrieved Data") and a printed copy of a report drafted by Michael Perry of Elysium Digital, LLC (the "Perry Report").

3. According to the Perry Report, the Retrieved Data falls into seven categories: (1) File Listings (which is divided into e-mail listings, (i.e., the subject line and to/from lines from of all e-mails), and a list of every file on Dunstan's hard drive), (2) Windows Registry, (3) Windows Registry – Extracted Data, (4) Event Logs, (5) Event Logs – Extracted Data, (6)

Internet History, and (7) Log Files (which also includes a log file generated by anti-virus/malware software run by Mr. Perry).

4. Along with another attorney at my firm, Amir Missaghi, I reviewed the data extracted from Dunstan's hard drive by Mr. Perry. In the "Internet History" section of the Retrieved Data were over 2,400 Internet search queries presumably conducted by Dunstan. In addition, the "File Listings" section of the Retrieved Data includes things like the names of documents, photos, and images downloaded from the Internet, and files that also reveal Dunstan's Internet browsing history.

5. On November 5, 2013, the Parties met and conferred via telephone to discuss certain of Plaintiffs' concerns with the Retrieved Data.

6. During the call, Plaintiffs explained that Dunstan's File Listings and Internet History weren't relevant to this case because they have no bearing on his claims whatsoever, given that comScore's software was installed in late September 2010. In addition, while Plaintiffs agreed in principle that Windows Registry, Event Logs, and Log Files might be relevant to develop an understanding of the operations of Dunstan's computer, data outside of a limited timeframe had no relevance because Dunstan only had comScore's software installed in late September 2010, and he removed the software using an anti-virus program before the end of the month.

7. During that call, comScore's counsel reiterated that one of its primary focuses in assessing Dunstan's Internet history is to search for "viruses" that could have affected his computer.

8. On November 6, 2013, Plaintiffs suggested that narrowing the files extracted from Dunstan's hard drive to those from the time period between January 1, 2010 and September 30,

2010 (the “2010 Time Period”) would ensure that comScore obtained files from Dunstan’s hard drive leading up to (8 months preceding) and immediately after OSSProxy’s installation (September 25, 2010).

9. Further, in an effort to be reasonable, Plaintiffs agreed to provide comScore with data from five of the seven categories without any date restrictions: Windows Registry, Windows Registry—Extracted Data, Event Logs, Event Logs—Extracted Data, and Log Files (“Uncontested Data”). However, because several of these files also include information revealing Dunstan’s Internet browsing history outside of the 2010 Time Period, Plaintiffs have withheld such files pending the Court’s ruling on Plaintiffs’ Motion.

10. On November 8, 2013, the Parties met and conferred via telephone to discuss Plaintiffs’ concerns with the Retrieved Data and to discuss the e-mail listings (i.e., part of the larger category of File Listings).

11. During the call, comScore agreed to have Mr. Perry re-examine the hard drive and only extract e-mail listings from the 2010 Time Period, and then re-send that extracted data to Plaintiffs’ counsel. Plaintiffs have yet to receive the newly extracted e-mail listings, and the Parties have agreed that once that revised data is produced, Plaintiffs’ counsel will review it for potentially sensitive or privileged information and provide it to comScore (with redactions and a privilege log, if necessary) within a few days following their receipt of it.

12. On November 11, 2013, Plaintiffs counsel produced the Uncontested Data to comScore.

13. Attached hereto as Exhibit A is a true and accurate copy of the Perry Report.

14. Attached hereto as Exhibit B is a true and accurate copy of the November 6, 2013 e-mail from comScore’s counsel to Plaintiffs’ counsel.

15. Attached hereto as Exhibit C is a true and accurate copy of the November 6, 2013 e-mail from Plaintiffs' counsel to comScore's counsel.

16. Attached hereto as Exhibit D is a true and accurate copy of the November 8, 2013 e-mail from comScore's counsel to Plaintiffs' counsel.

17. Attached hereto as Exhibit E is a true and accurate copy of the November 8, 2013 e-mail from Plaintiffs' counsel to comScore's counsel.

18. Attached hereto as Exhibit F is a true and accurate copy of a document marked as "MBAM-log-2013-10-30 (09-25-44).txt," which Mr. Perry provided to Plaintiffs as part of the Retrieved Data.

19. Attached hereto as Exhibit G is a true and accurate copy of the October 16, 2013 Transcript of Proceedings Before Magistrate Judge Young B. Kim.

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

Executed this the 11th day of November 2013 at Chicago, Illinois.

s/ Chandler R. Givens

CERTIFICATE OF SERVICE

I, Benjamin S. Thomassen, an attorney, certify that on November 11, 2013, I served the above and foregoing ***Declaration of Chandler R. Givens in Support of Plaintiffs' Motion to Exclude Disputed Data***, 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 11th day of November 2013.

s/ Benjamin S. Thomassen