

# EXHIBIT G



1           THE CLERK: 11 CV 5807, Dunstan, et al. versus  
2 Comscore, Inc.

3           MR. SHAPIRO: Good afternoon, Your Honor. Andrew  
4 Shapiro for the defendants, and with me is Robyn Bowland.

5           MR. BALABANIAN: Good afternoon, Your Honor. Rafey  
6 Balabanian on behalf of plaintiffs.

7           THE COURT: Okay. Mr. Shapiro or Miss Bowland, would  
8 you like to respond to the opposition to the motion.

9           MR. SHAPIRO: Yes, Your Honor. We made several  
10 points. I'll start with the computer inspection question. We  
11 have the computer inspection and the interrogatory --

12           THE COURT: Yes --

13           MR. SHAPIRO: -- questions. So with regard to the  
14 computer inspection, we raised essentially three reasons why we  
15 need to see the computer. And I don't believe that the  
16 plaintiff's response refutes those. You know, the  
17 justification for those requests. Our first rationale was that  
18 the plaintiffs have made the computer an issue by describing it  
19 as a facility through which an electronic communications  
20 service is provided under the SCA, the Stored Communications  
21 Act.

22           We think ultimately we're going to win on that  
23 issue. They're just wrong, that a personal computer is a  
24 facility. But they assert that it is. And there's a specific  
25 legal definition of what a computer or a mechanical device has

1 to be in order to meet that definition. And unless they're  
2 going to make -- give us some sort of stipulation saying that  
3 this -- you know, that this is, you know, an ordinary computer  
4 that doesn't meet -- and we can give them a list of  
5 characteristics that we'd to describe -- we have a right to  
6 look at it. And I didn't see an answer to that in their  
7 papers.

8 Nor did I see an answer to our explanation of the  
9 need to see whether on this computer there have been backups or  
10 copies of iPod play lists and smartphone backup files, which  
11 they have also made an issue in this case, as I'm sure Your  
12 Honor knows from reading Judge Holderman's, Chief Judge  
13 Holderman's certification decision in that case.

14 THE COURT: He's now just a regular judge.

15 MR. SHAPIRO: Right. I didn't know what you call it  
16 if he was chief judge when he wrote it. I guess it's still  
17 Judge Holderman, but --

18 THE COURT: Go ahead.

19 MR. SHAPIRO: -- at the time he was the chief. And  
20 one of the issues that they point to when they try to say that  
21 Comscore exceeded the scope of the consent that might have been  
22 granted by the plaintiffs is that, well, they say, well, we  
23 didn't know that it might back up -- sorry, that Comscore might  
24 scan the contents of our iPod play lists or data from our  
25 smartphone that had been -- that was resident on our computer.

1           Judge Holderman said in his decision, in his written  
2 decision, well, if it turns out that there are many people for  
3 whom this isn't true or that there are lots of differences  
4 among class members, we may even have to revisit class  
5 certification. Well, certainly if they're going to be arguing  
6 that we exceeded the scope of, of the authorization, and one of  
7 the ways in which the scope is exceeded is iPod play lists,  
8 smartphone backup files, et cetera, we have a right to see if  
9 that's been -- if that's happened on their computers.

10           And then finally and maybe most importantly, under  
11 the CFAA they have to prove actual damages, \$5,000 in a  
12 calendar year. It appears that the only allegations they've  
13 made of any loss or damage under the CFAA which is relevant to  
14 meeting the standing requirement is that Mr. Dunstan's computer  
15 was somehow harmed by Comscore software. Your Honor will  
16 probably remember we had a back and forth about that earlier in  
17 this case. And the ultimate result was that the plaintiffs,  
18 while they agreed to withdraw a subclass -- or an effort to  
19 have an subclass certified of people for whom problems had  
20 arisen on their computers, they nevertheless insisted that  
21 these allegations stay in the complaint. So it's still in the  
22 case. And as far as we can tell, that's going to be their  
23 basis for damages.

24           Well, we have a strong hunch that the real reason Mr.  
25 Dunstan -- because what he describes doesn't comport with what

1 we know our software does. The real reason his computer  
2 started acting badly and slowing down or freezing up is that he  
3 had all sorts of viruses and other problems on his computer.  
4 They gave us a virus log, but that's not enough for us to be  
5 able to defend against claims of damages. There's no burden on  
6 the plaintiffs here. They have already made an image of the  
7 hard drive. And just to be clear, we don't necessarily need to  
8 take his physical computer. We would be happy enough to get a  
9 copy, a forensic copy of the hard drive, which they have  
10 already made and given to an expert. So all we're asking is  
11 that the same thing that they've given to their expert be given  
12 to our expert. We can put in place whatever protective orders  
13 are warranted, but we certainly have a right to obtain these,  
14 and they're relevant to our claims.

15           The final thing I'll say is just the cases that they  
16 discuss in their opposition are completely in opposite. Those  
17 are cases in which -- they're offering them in support of their  
18 argument that we should just make some targeted requests of  
19 them and then they'll answer our requests. The cases that they  
20 cite in their opposition are typically cases in which someone  
21 is accused of downloading or taking proprietary information or  
22 private information on to his or her computer. And that's the  
23 subject of the lawsuit. Did you steal our secret information  
24 at the company or not when you left the company, for example.

25           Perfectly understandable why in that case the Court

1 might say, you know, let's just have, have a very targeted  
2 discovery request on this, whether or not stolen information is  
3 on the computer or is not. Here, though, where the actual  
4 nature of the computer is being asserted as the basis for one  
5 of the claims; that is, that it's a facility through which an  
6 electronic communications service is provided, we have a right  
7 obtain it.

8 THE COURT: Let me ask you, does Comscore have a  
9 forensic ana -- what do they call themselves? Forensic --  
10 computer forensic analyst retained and identified?

11 MR. SHAPIRO: We don't yet.

12 MS. BOWLAND: Not at this moment, Your Honor.

13 MR. SHAPIRO: But there are a lot out there.

14 THE COURT: So let's say I grant you the request  
15 you're asking for and you're able to image the hard drive.  
16 Somebody's going to have to do the search of the hard drive.  
17 Who is going to actually do that work?

18 MR. SHAPIRO: It would be the expert because -- you  
19 know, and I'm not sure I would use the word search. It would  
20 be sort of an analysis of the drives. In some cases it will be  
21 a search for iPod backups, et cetera.

22 THE COURT: But you don't have the expert retained  
23 yet?

24 MR. SHAPIRO: Correct. We could have one very  
25 quickly if that's an issue. They send us solicitations every

1 day.

2 THE COURT: So we'll take it one request at a time  
3 then that's at issue. And we're talking about the request to  
4 produce No. 3. Obviously with respect to Mr. Dunstan -- no,  
5 Mr. Harris, it's not an issue because he no longer has the  
6 computer or the hard drive.

7 MR. BALABANIAN: It was disposed before the lawsuit  
8 was filed.

9 THE COURT: So we have Mr. Dunstan left. And the way  
10 I understand the argument opposing the motion is that it's not  
11 necessary -- well, I mean you do argue relevance to a certain  
12 extent. But the -- I think the more persuasive argument is  
13 that we need to somehow protect the privacy interests of Mr.  
14 Dunstan. While he has made some claims about the software  
15 damaging or harming his computer and harming his right to  
16 privacy, you know, it doesn't mean that the entire hard drive  
17 should be exposed to the world, so to speak.

18 The way I see it it's really a balancing of interests  
19 of Mr. Dunstan and Comscore's interest in examining the hard  
20 drive. Because it's not a situation where Comscore has certain  
21 items or documents that they actually want from the hard drive.  
22 It's actually the other way around. I imagine that Comscore  
23 wants to also verify what's not on the hard drive. Quite  
24 possibly maybe even the software itself is not on the hard  
25 drive. We don't know.



1 MR. BALABANIAN: Well, it's not --

2 THE COURT: But in order to, in order to actually  
3 look at the assigned spaces as well as unassigned spaces, the  
4 only way to do that inspection is to actually look at the hard  
5 drive, the image of the hard drive. So this is what I propose  
6 and this is my ruling: The motion to compel response to  
7 request to produce No. 3 is granted. However, I am going to  
8 enter a protective order where the expert designated by the  
9 defendant, where the expert designated by the defendant is  
10 allowed to examine at the direction of Comscore, but he or she  
11 cannot pre -- cannot share the results until the results are  
12 first shared with plaintiff's counsel so that plaintiff's  
13 counsel can come in and pose objections if necessary. And then  
14 once I rule on the objections, if any, the expert may then  
15 share those results with defendant. That's how we're going to  
16 proceed.

17 This is an identical approach that I took in a  
18 different case where a hard drive was at issue, and it worked  
19 out fine in that case. There wasn't any problem whatsoever  
20 with the expert sharing the information with plaintiff's  
21 counsel. As a matter of fact, there weren't any objections at  
22 that time. And so the defendants -- the defendant's attorneys  
23 were able to view the results promptly. Okay.

24 Now, because Judge Holderman has denied their motion  
25 to extend the discovery deadline, we do need to move very

1 quickly with respect to this. You need to first identify the  
2 expert very quickly because plaintiff's counsel is only going  
3 to be providing the hard drive to that particular expert. In  
4 the meantime we also have to work out the protective order so  
5 that the identified expert -- and I want to put that person's  
6 name in the protective order. And so he or she who is going to  
7 be retained must be agreeable to fall within the jurisdiction  
8 of this Court for any contempt proceedings. So that's how  
9 we're going to deal with No. 3.

10 MR. BALABANIAN: And that's, of course, fine with us.

11 THE COURT: So let's move on and we'll let Mr.  
12 Shapiro or Miss Bowland talk about -- let's do  
13 interrogatories -- no, actually we can do all four of them  
14 together because they're classified as contention  
15 interrogatories. And Mr. Balabanian's response isn't that  
16 we're not going to give the information, but just that the  
17 timing and the sequence of the answer is going to be different  
18 than what you prefer. Rule 32 (a) 2 is specific in this  
19 regard, that contention interrogatories are required but that  
20 the Court can stay answering these interrogatories until even  
21 after discovery is over. So who would like to respond.

22 MR. SHAPIRO: If I may.

23 THE COURT: Sure.

24 MR. SHAPIRO: First of all, your characterization of  
25 the gap between us I think is exactly right. As far as we see

1 it, it's less about the substance than about the timing and the  
2 mechanics. And initially I would say that the suggestion that  
3 contention interrogatories should be answered at the end of  
4 discovery is answered in part by the order that's already in  
5 place, because the order in place says (A), that written  
6 discovery isn't supposed to be over. So this is the end of  
7 written discovery now. And all fact discovery is supposed to  
8 be concluded by December 20th. So we are near the end of fact  
9 discovery. And if they need an extra week or something to do  
10 it, that that's fine.

11 But the suggestion that the legal framework says this  
12 should happen near the end of discovery, I think is -- we're  
13 already near the end of discovery. And the point that we made  
14 in our papers in which we said they can always supplement them  
15 was not a concession as I think they've tried to describe it in  
16 their papers, you know, that we know they're going to be  
17 incomplete now. I don't understand why some of these would be  
18 incomplete now. If the question is what damages -- for  
19 example, what damages did you suffer, what year and to what  
20 dollar amount, there's no reason why they can't tell us that  
21 now. Further discovery won't answer that one for them.

22 And so it sounds like the request from the other side  
23 is to some extent more of a strategic than a practical  
24 objection. We're certainly -- our reference to the fact that  
25 they can supplement was just a nod to the obvious, which is as

1 with any discovery. If it turns out that down the road they  
2 learn something new, of course, they can tell us more. But if  
3 they have information now, and it sounds like they do, if they  
4 know what their answer is to whether, for example, fusification  
5 is something different than filtering, it doesn't advance the  
6 litigation, it doesn't help us, and it's not really fair for  
7 them to say but we're not going to tell you now what our  
8 positions are.

9 THE COURT: Mr. Balabanian.

10 MR. BALABANIAN: Thank you, Judge. I don't agree  
11 with Mr. Shapiro that some of those at the very least can be  
12 answered now when we're talking about damages under the CFAA,  
13 because I think that's all we're talking about as far as actual  
14 damages. We have the other two claims that's a statutory  
15 damage model. So under the CFAA, though, one of the central  
16 issues is what are the class' damages. And we don't -- we're  
17 not privy to that information at this point in time. Part of  
18 the reason is because we think that we're going to rely on the  
19 complaints that Comscore has received from analysts about this  
20 issue. And based on those complaints we think we'll be able to  
21 glean and have a much better sense of what the damages are.

22 Those complaints like the other part of the document  
23 production, but specifically the complaints themselves, have  
24 been an issue between us as far as meeting and conferring  
25 about -- just actually recently corresponding with Miss Bowland

1 about getting access to the complaints because at first  
2 Comscore didn't produce those. So I think that's a key part of  
3 it. And we haven't been given access to that yet. Though  
4 we're working together to get that accomplished very soon.

5           And though -- so it's not -- yes, we could probably  
6 identify Dunstan's and Harris' damages right now, but that's  
7 not what those interrogatories go to. It speaks to the class  
8 as a -- it goes beyond just our two named plaintiffs. And then  
9 beyond that, Judge, I don't believe that the damages are simply  
10 within our, our ability to answer, right. So under the SCA,  
11 part of -- I believe it's the SCA unless I'm misspeaking. But  
12 part of the damage calculation can actually be the profits  
13 derived by the wrongdoer. That can go into what the damages  
14 the class suffered. And at this point in time we don't have  
15 that information yet.

16           A lot of it goes to the fact that we are waiting --  
17 we are trying to get through this document production. And I  
18 don't mean to toot my own horn, but I was right about Judge  
19 Holderman not extending the discovery cutoff when we appeared  
20 here the only day. And I had a feeling he wouldn't, and he  
21 didn't. And so the reality is we are pounding through it, and  
22 we're making good progress. And we'll meet the deadline  
23 regardless. But we're not there yet. And I think it is  
24 premature.

25           Yes, discovery is getting to the end, but we're not

1 at the end. And it's not unreasonable for us to wait on these  
2 types of contention interrogatories. Certainly with respect to  
3 things like electronic communication or fusify versus filter,  
4 that information is within the possession of Comscore, Judge.  
5 And we will define and further refine our theory based on the  
6 merits discovery that we get. But I don't see how -- we're not  
7 taking the position right this second that we know the entire  
8 universe of the differences between fusify and filter.

9           Though, we think there are serious differences, and  
10 we think that Comscore itself has identified some of those  
11 differences, we don't think we're all the way there as far as  
12 understanding that stuff. And so we're kind of -- that's the  
13 position we're in with respect to where we're at with  
14 discovery.

15           MR. SHAPIRO: I want to correct one thing, Your  
16 Honor, which is our interrogatories 16 and 17 simply ask for  
17 damages with regard to the named plaintiffs. I believe Mr.  
18 Balabanian said a moment ago that they can provide us with  
19 those. If they can, then we don't have a dispute on No. 16 and  
20 17.

21           THE COURT: Well, as I understand it, depending on  
22 what information was, in fact, collected and how that  
23 information was used by Comscore, I think Mr. Balabanian is  
24 arguing that that may calculate into personal losses and  
25 damages incurred by Harris and Dunstan. For that reason Harris

1 and Dunstan can't give a complete answer to 16 and 17.

2           But I -- here's the situation, though: Again, it's a  
3 balancing act that we have to perform here. Because typically  
4 if we, if we knew that we would have some leeway after  
5 December 20th, I'll be of the mind-set that there's no harm in  
6 waiting until end of discovery for plaintiff to go ahead and do  
7 everything all in one shot as opposed to doing things in  
8 installments and piecemeal. But that doesn't seem -- that does  
9 not appear to be the case. And I don't want to prejudice the  
10 defendant by delaying any available answers until  
11 December 20th.

12           So I think with respect to 16 and 17, with respect to  
13 16 and 17, I would like the plaintiffs to answer those two  
14 interrogatories on behalf of themselves by October 25. So with  
15 respect to 21 and 22, I will grant plaintiffs until  
16 December 6th to answer those two interrogatories.

17           MR. BALABANIAN: I am, of course, fine with Your  
18 Honor's ruling and that's not terribly relevant. I guess I'll  
19 just make one point and -- regardless. The 25th seems fine.  
20 The complaints are -- the complaints I think are relevant not  
21 just because -- they're relevant actually to the plaintiffs  
22 themselves' ability to answer as well. Because we're talking  
23 about a \$5,000 threshold. And I don't know if the plaintiffs  
24 meet it necessarily with just information that pertains to them  
25 right now.

1 THE COURT: I'm sorry. Say that one more time.

2 MR. BALABANIAN: The CFAA has a \$5,000 threshold.

3 THE COURT: Yes. But you don't need to meet that  
4 threshold?

5 MR. BALABANIAN: Well, you do I believe. But I don't  
6 know if the plaintiffs can meet -- if we respond right now, I  
7 don't know if we meet that threshold. But you can aggregate  
8 damages under the CFAA, and it would apply to the class. Is  
9 there any way we can get an extra week to respond to those  
10 interrogatories? Because I think we'll at least be underway  
11 with respect to the complaint inspection, and it would be a  
12 more fulsome answer.

13 THE COURT: That's fine by me. But, you know, the  
14 obligation to supplement continues.

15 MR. BALABANIAN: Of course.

16 THE COURT: So it would be November 1st. So let's  
17 step back. Now, that I have ruled on all of the discovery  
18 requests, we should step back and get some deadlines. Today's  
19 the 16th. What do you need -- how much time do you need to  
20 designate a forensic expert?

21 MR. SHAPIRO: I think we could have someone lined up  
22 Monday or Tuesday.

23 THE COURT: So I need if defendant could provide me  
24 with me -- well, do you prefer to do that?

25 MR. BALABANIAN: I can do that.



1 THE COURT: The protective order draft?

2 MR. BALABANIAN: I can do it. That's fine. Sure.

3 THE COURT: Since you have more incentive to make  
4 sure that the protective order says what you prefer, I'll have  
5 you, Mr. Balabanian, provide a draft protective order by  
6 Friday, October 18th. Just leave the name blank.

7 MR. BALABANIAN: Yes. Sure.

8 THE COURT: Once you have the name, I guess I'll have  
9 the defendant submit the forensic expert's -- I guess just his  
10 name or her name. I don't know that I need the CV or a resume  
11 submitted. I just need his or her name with the mailing  
12 address. And you can just go ahead and submit that by Tuesday,  
13 October 22nd. I'll look at the protective order. I'll put the  
14 name and address in, make modifications, if necessary, and  
15 issue the protective order on the 23rd. Yes.

16 MR. BALABANIAN: The protective order goes to  
17 Comscore on Friday for review and comment, or does -- it  
18 doesn't?

19 THE COURT: No. File your --

20 MR. BALABANIAN: It goes directly to the Court?

21 THE COURT: File your version --

22 MR. BALABANIAN: Okay.

23 THE COURT: File your version with the Court on the  
24 18th.

25 MR. SHAPIRO: And if we have any comment or

1 objections to the way the protective order is --

2 THE COURT: You can make your comments by the 22nd  
3 when you submit the name.

4 MR. SHAPIRO: Okay. Great.

5 THE COURT: No harm.

6 MR. SHAPIRO: Thanks.

7 THE COURT: And I'll go ahead and do my best -- ah,  
8 shoot. I'm going to be out of the country on the 23rd. But I  
9 can still do it probably. Well, I'll do my best to issue it  
10 the 23rd or the 24th. And how long will it take to get the  
11 hard drive over to the expert? Do you know whether he or she  
12 is going to be local?

13 MS. BOWLAND: I think we can make that happen, Your  
14 Honor, if that's -- if that is preferable.

15 THE COURT: I don't want to tell you what to do and  
16 who to hire. I just want to kind of get a sense of how long it  
17 might take for the hard drive to be provided.

18 MR. SHAPIRO: I think what we're going to be -- to  
19 quote a wise jurist, it's a balancing question.

20 THE COURT: Who said that?

21 MR. SHAPIRO: Because it may turn out that someone  
22 who's available right away is in California and somebody who's  
23 local is tied up on a case until Friday. I don't know. Or  
24 someone is very expensive or someone else is less expensive.

25 THE COURT: Who has the hard drive? Your expert?

1           MR. BALABANIAN: Yes. A company called Cyra  
2 (phonetic) in Florida, but we can Fed Ex it right away  
3 overnight.

4           THE COURT: All right. So my hope is we can get the  
5 hard drive to the expert by Friday the 25th. And I am sure --  
6 sometimes imaging takes hours I think, and then you have to do  
7 the inspection. Well, so that we have a deadline in place  
8 let's have the expert do the inspection by November 1st, and  
9 then we'll go from there. And depending on what the -- what  
10 the expert found, expert is to then provide -- well, I'll  
11 address this in the protective order. I would like to have  
12 some protocol in place how the expert's going to share the  
13 information with plaintiff's counsel. Okay. In the protective  
14 order.

15           MR. BALABANIAN: Yes.

16           THE COURT: So are we clear on that? Do you have any  
17 questions?

18           MR. SHAPIRO: I think we understand it. And as long  
19 as there's -- it would be acceptable for us to, you know, send  
20 Your Honor a letter if it turns out we misunderstood. My  
21 understanding is expert -- we will sit down and talk to the  
22 expert. We'll say these are the things we'd like to try and  
23 analyze about this hard drive, X, Y, Z. The expert will do  
24 that. Then before reporting back to us, will speak to the  
25 plaintiff's lawyers and say, you know --

1 THE COURT: The expert will.

2 MR. SHAPIRO: Yes, the expert will speak to --

3 MR. BALABANIAN: Yes.

4 MR. SHAPIRO: But to you guys, not to your expert.

5 MR. BALABANIAN: Exactly.

6 MR. SHAPIRO: Will speak to the plaintiff's lawyers  
7 and say here's what I'm proposing to tell Comscore about what I  
8 have found.

9 THE COURT: Yes.

10 MR. SHAPIRO: And they will have a certain period  
11 within which to lodge objections or not. And then the  
12 information will be provided to us either when those objections  
13 are resolved or if there are no objections.

14 THE COURT: Yes.

15 MR. SHAPIRO: Whenever the time runs out.

16 THE COURT: That way you get what you need and  
17 plaintiffs are -- well, plaintiff Dunstan is able to protect  
18 his interests or privacy to the extent possible. So I think  
19 that's the way to -- that's the way we're going to do this. Do  
20 we have all the deadlines? So 16 and 17 by November 1st. 21  
21 and 22 by December 6th. Now, we'll just have to do what we  
22 can. I understand the deadline is the 20th, and so I'm trying  
23 to sort of again balance everyone's interests here given what  
24 we have. Go ahead.

25 MS. BOWLAND: Okay. I guess maybe we can address

1 this with plaintiffs, but we just need to make sure that the  
2 image of the hard drive includes the registry entries. I  
3 believe that was the case based on the previous discussions,  
4 but we'll talk with them about it. If that's not --

5 THE COURT: Registry information?

6 MS. BOWLAND: Correct.

7 THE COURT: Is that something that's on the hard  
8 drive?

9 MR. BALABANIAN: I don't see why it wouldn't be on  
10 the hard drives, yes.

11 THE COURT: If the, if the -- the way I understand  
12 the technical aspect of imaging hard drive, it is a carbon copy  
13 of the hard drive. So it should not miss anything that was on  
14 the original computer. So when I say, you know, allow the  
15 expert to image the hard drive, it's, you know, to be including  
16 everything. Not anything to be taken out.

17 MR. BALABANIAN: Right. And to be clear, at the  
18 outset of this case we imaged the hard drive, and they're going  
19 to get a copy of what we've got. So that's -- so there's been  
20 no --

21 THE COURT: Got it. Manipulation.

22 MR. BALABANIAN: There's a housekeeping matter I'd  
23 like --

24 THE COURT: Yes.

25 MR. BALABANIAN: I don't know if it's a housekeeping

1 matter. I haven't brought it up with counsel. But there's an  
2 issue that I want to fly for the Court for the future. Counsel  
3 has noticed up our clients' depositions for a second time. And  
4 I don't think they're entitled to just a couple more full blown  
5 depositions of my clients, because they've had a chance to  
6 depose them. And we didn't limit it to class or merits issues.  
7 I do recognize that they might want to ask them certain things  
8 that they didn't get a chance to ask them in class discovery  
9 relative to maybe the computer or the antivirus logs or  
10 something like that. But there was no qualification in the  
11 deposition notices for what they would potentially want to ask.

12 And so I'm just putting it out there right now  
13 because I don't want there to be any surprises, that we'll  
14 probably be moving for a protective order. Of course, we're  
15 going to meet and confer first to see if we can just figure it  
16 out. But I just don't think they're entitled to another round  
17 of depositions. Even though discovery was bifurcated, it was  
18 bifurcated at their request. And I don't think it was -- the  
19 depositions were limited in any way for our clients.

20 MR. SHAPIRO: The only depositions that we took other  
21 than of their expert were of the two clients. And my  
22 recollection is I -- and they're the only two depositions that  
23 I think we're going to take in merits discovery. My  
24 recollection is that there were objections -- first of all, we  
25 knew that we were there just for class discovery. And so in

1 writing out the deposition outline and choosing what questions  
2 to ask, we focus on class cert issues and issues that we would  
3 want to use in our class cert papers.

4 I believe, though I'm just saying this on my feet  
5 because I haven't had a chance to look at it, that there were  
6 even objections raised by the other side during the deposition  
7 that certain questions were beyond the scope of class  
8 discovery. But in any event, happy to meet and confer. And if  
9 there's going to be motions practice, we'll put our position  
10 down on paper.

11 THE COURT: All right. I appreciate you raising the  
12 issue. And I guess what I'm trying to work through in my mind  
13 is whether defendant was required to provide notice that the  
14 deposition is limited to class discovery and reserving the  
15 right to redepose or renotice for merit discovery. Because  
16 that will be the argument here, that there was no limitation  
17 placed on the plaintiffs. And, therefore, when they were  
18 produced, the defendant had every opportunity to exhaust all  
19 questioning. And I guess it depends on, you know, what  
20 happened during the deposition, whether there were any  
21 objections posed on the basis that it was class discovery only.

22 I got to tell you just, just the gut reaction. If  
23 the Court had already bifurcated discovery, it would be  
24 redundant to say that your deposition is going to be limited to  
25 class discovery. I think that in these types of situations,

1 perhaps, you know, using this as a lesson, you can say, by the  
2 way, why not just go ahead and do class and merit for these  
3 particular individuals because they're named plaintiffs instead  
4 of waiting around for the class certification so that we don't  
5 redo them again.

6 But again, you raised the issue. I'm just making  
7 some comments.

8 MR. BALABANIAN: Sure.

9 THE COURT: These comments are not meant to be  
10 construed as rulings or anything like that. No advisory  
11 opinions, right? But I thought I'd just share those comments  
12 in case they may help you in conferring about this particular  
13 issue. Okay.

14 MR. BALABANIAN: I appreciate it, Judge.

15 THE COURT: So we have all the deadlines set? Am I  
16 missing anything?

17 MR. SHAPIRO: I don't think so, Your Honor.

18 THE COURT: Okay. We're off the record.

19 (Off the record discussion.)  
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## CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true,  
correct and complete transcript of the proceedings had at the  
hearing of the aforementioned cause on the day and date hereof.

/s/TRACEY D. McCULLOUGH

October 17, 2013

Official Court Reporter  
United States District Court  
Northern District of Illinois  
Eastern Division

Date