

**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

**PLAINTIFFS' MOTION TO BE EXCUSED FROM PERSONALLY APPEARING AT  
THE PARTIES' NOVEMBER 25, 2013 SETTLEMENT CONFERENCE**

Plaintiffs Jeff Dunstan and Mike Harris respectfully request, pursuant to the Court's Settlement Conference Order entered on November 13, 2013, (Dkt. 273), and the Court's Case Management Procedures regarding Settlement Conferences, that their personal attendances be excused from the settlement conference in the above-entitled case, scheduled for Monday, November 25, 2013, and that each Plaintiff be permitted to appear via telephone and through their attorneys, who will be present in person. In support of this request, Plaintiffs state as follows:

1. This case arises from Plaintiffs' allegations that they each unknowingly installed software designed and operated by Defendant comScore, Inc. that (i) monitored and collected information about them and (ii) damaged their personal computers. Both Plaintiffs—like every member of the certified Class—installed comScore's software only after attempting to download and install an unrelated program off the Internet that was “bundled” with comScore's software. Plaintiffs' personal experiences with comScore's software are no different than the millions of other individuals who comprise the Class, on whose behalf Plaintiffs filed suit.

2. On November 13, 2013, this Court noted that “[a]t the parties' request, an in-person settlement conference is scheduled for November 25, 2013, at 10:30 a.m. in courtroom 1019” and ordered the Parties “to review and follow the court's standing order on ‘Settlement Conferences’ on its webpage.” (Dkt. 273.)

3. Under this Court’s Case Management Procedures for Settlement Conferences, “[i]ndividuals with full and complete settlement authority on behalf of the parties [must] personally attend the conference . . . [absent] extenuating circumstances.” Plaintiffs make this written request to be excused from personally attending because they meet the Court’s requirements to be excused from attendance at the conference.

4. Mr. Dunstan lives and works in Bakersfield, California. (Declaration of Benjamin S. Thomassen (“Thomassen Decl.”) at ¶ 2, a copy of which is attached hereto as Exhibit A.) He currently works at Sears in the retail sector (i.e., he only earns money based on hours worked and on sales commissions) and is of limited means. (*Id.*) As a result, it is important for him to maintain uninterrupted employment both to remain in good standing with his employer and to supplement his income. (*Id.* at ¶¶ 3-4.) Given the pending holiday season, which effectively begins next week (i.e., on the date of the scheduled conference itself) and represents the start of the blackout window for anyone working retail in terms of requesting days off, it is extremely difficult for Mr. Dunstan to secure time off of work to travel from California to Illinois. (*Id.*) Mr. Dunstan’s difficulties in traveling are compounded by the fact that he already took three days off of work this week (Monday through Wednesday, for which he received no pay whatsoever) to travel to Chicago to have his deposition taken by comScore—for the second time in this matter—on November 18, 2013. (*Id.* at ¶ 4.) Although he is presently unable to appear in person—subject to the Court allowing his personal attendance to be excused—Mr. Dunstan

understands the importance of this settlement conference and will be available via telephone during the conference. (*Id.* at ¶ 5.)

5. Mr. Harris lives in Illinois and currently works at another law firm in Chicago as a legal assistant. (*Id.* at ¶ 6.) Like Mr. Dunstan, Mr. Harris is paid on an hourly basis and his livelihood depends on his ability to maintain uninterrupted employment and maintain good standing with his employer. (*Id.* at ¶ 7.) Due in part to his involvement in this litigation, Mr. Harris would have difficulty taking additional time off to personally appear at the Parties' settlement conference—doing so would require that Mr. Harris use up the remaining time he has allocated for possible a sick day (i.e., before he is given more time for 2014) and take time off during an especially important workday, given the shortened work week attributable to the Thanksgiving holiday. (*Id.*) And, like Mr. Dunstan, comScore noticed the deposition of Mr. Harris for a second time in this matter, which may result in Mr. Harris missing at least one additional workday in December (i.e., before he accrues additional paid time off in January 2014). (*Id.* at ¶ 8.) All told, Mr. Harris's personal attendance at the settlement conference would cause him to suffer personal and financial hardship. (*Id.* at ¶¶ 6-7.) Although he is unable to appear in person—subject to the Court allowing his personal attendance to be excused—Mr. Harris too understands the importance of this settlement conference and has indicated that he can be available by telephone throughout its duration. (*Id.* at ¶ 9.)

6. Class Counsel does not believe that Plaintiffs' remote presence would hinder the process of the settlement conference, as both Plaintiffs simply downloaded comScore's software in the same manner as millions of other consumers and brought/maintain this action primarily to protect the interests of absent Class members. While the Plaintiffs' personal accounts of their own experiences with comScore's software are certainly central to this case (even though they

are far from unique), they will be able to elaborate on such facts telephonically if needed and/or consult with Class Counsel on any settlement offers that comScore makes or are otherwise discussed. And given Class Counsel's experience with other matters like this one—including cases involving settlement conferences, both before other acting federal judges and private mediators alike—Class Counsel are confident that they will be able to communicate and help the named Plaintiffs “appreciate the process and the reasons which may justify a change in [the Plaintiffs’] perspective towards settlement.” (*Id.* at ¶ 10.)

7. On November 15, 2013, Plaintiffs’ counsel reached out to comScore to notify them of their intent to request to be excused from personally appearing at the November 25, 2013 settlement conference. (*Id.* at ¶ 11.) For its part, comScore has stated that it takes no position on this request. (*Id.*)

8. For these reasons, Plaintiffs Mike Harris and Jeff Dunstan respectfully request that their personal attendance at the settlement conference be excused and that they be permitted to appear telephonically.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order (1) excusing both named Plaintiffs from personally appearing at the Parties November 25, 2013 settlement conference, and (2) for such further relief as this Court deems just and proper.

Respectfully submitted,

**MIKE HARRIS** and **JEFF DUNSTAN**,  
individually and on behalf of a class of  
similarly situated individuals,

Dated: November 19, 2013

By: s/ Benjamin S. Thomassen  
One of Plaintiffs’ Attorneys

Jay Edelson  
Rafey S. Balabanian  
Chandler R. Givens

Benjamin S. Thomassen  
EDELSON LLC  
350 North LaSalle, Suite 1300  
Chicago, Illinois 60654  
Telephone: (312) 589-6370  
Facsimile: (312) 589-6378  
jedelson@edelson.com  
rbalabanian@edelson.com  
cgivens@edelson.com  
bthomassen@edelson.com

**CERTIFICATE OF SERVICE**

I, Benjamin S. Thomassen, an attorney, hereby certify that on November 19, 2013, I served the above and foregoing ***Plaintiffs' Motion to be Excused from Personally Appearing at the Parties' November 25, 2013 Settlement Conference*** by causing true and accurate copies of such paper to be transmitted to all counsel of record via the Court's CM/ECF system on this, November 19, 2013.

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