

**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  
PLAINTIFFS JEFF DUNSTAN'S AND MIKE HARRIS'S  
MOTION TO COMPEL THE DEPOSITION OF MAGID ABRAHAM**

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 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. Following their initial review of comScore's document production on merits issues, Plaintiffs scheduled and took the depositions of five comScore employees: (i) Steven Chase, Director of Software Engineering; (ii) Glenn Marchione, Senior Director of Quality Assurance; (iii) Yvonne Bigbee, Senior Vice President of Technology; (iv) John O'Toole, Vice President of Panel Operations; and (v) Latoya Peterson-Renfrow, Panel Operations Manager. These depositions took place on November 13, 14, 20, 21, and 22 respectively.

3. Based on Plaintiffs' further review of comScore's document production—and

later confirmed through testimony obtained during this first round of depositions on merits issues—Plaintiffs served on comScore notices for the depositions of four more comScore employees, including Chief Executive Officer, Magid Abraham, on November 1, 2013. (*See* Notice of Deposition of Magid Abraham, a true and accurate copy of which is attached hereto as Exhibit A.) Plaintiffs also noticed the depositions of Chris Lin (General Counsel), Richard Weaver (Deputy Privacy Officer), and Joshua Chasin (Chief Research Officer). Of these four witnesses, comScore produced two for depositions—Richard Weaver and Joshua Chasin—but refuse to produce Magid Abraham and Chris Lin.

4. Plaintiffs’ counsel deposed Richard Weaver and Joshua Chasin on December 3, 2013 and December 13, 2013, respectively.

5. In a letter dated November 18, 2013, comScore formally objected to the noticed depositions of Magid Abraham and Chris Lin (*See* November 18, 2013 Letter, a true and accurate copy of which is attached hereto as Exhibit B) and stated that it would not produce Mr. Abraham or Ms. Lin for deposition.

6. Following discussions with comScore’s counsel, Plaintiffs have elected not to pursue the deposition of Ms. Lin at this time.

7. On November 21, 2013, Plaintiffs deposed comScore’s Vice President of Panel Operations, John O’Toole. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*See* CS0043028\_ Confidential--Attorney's Eyes Only.pdf, a true and accurate copy of which is attached hereto as Exhibit C.) [REDACTED]

[REDACTED]

[REDACTED]

(See excerpts from the November 21, 2013 deposition of John O'Toole, comScore's Vice President of Panel Operations, true and accurate copies of which are attached hereto as Exhibit D.)

8. In a November 27, 2013 email to comScore, Plaintiffs outlined their reasons for seeking Mr. Abraham's testimony notwithstanding comScore's objections. (See November 27, 2013 Email to comScore, a true and accurate copy of which is attached hereto as Exhibit E.) There, Plaintiffs explained that (i) Mr. Abraham played an important role in comScore's decisions regarding its data collection practices, (ii) these early and ongoing decisions are crucial to their claims in this case, and (iii) Mr. Abraham was therefore best suited to testify about such decisions at comScore.

9. On December 4, 2013, the Parties met and conferred telephonically regarding Mr. Abraham's noticed deposition. During the call, Plaintiffs explained that Mr. Abraham's deposition was necessary because, *inter alia*, comScore had refused to produce any individuals capable of testifying to the decision-making processes at comScore—despite Plaintiffs' intent to obtain this discovery as evinced by their 30(b)(6) deposition notice and the topics identified therein. (See comScore's response to Plaintiffs' Notice of Rule 30(b)(6) Deposition, a true and accurate copy of which is attached hereto as Exhibit F.)

10. In a December 6, 2013 email, comScore reiterated its objections to Mr. Abraham's deposition, but also agreed to produce a Rule 30(b)(6) designee capable of testifying about the "decision-making" topics Plaintiffs sought to discover. (See December 6, 2013 email, a true and accurate copy of which is attached hereto as Exhibit G.)

11. On December 13, 2013, Plaintiffs' deposed comScore's Chief Research Officer,

Joshua Chasin. [REDACTED]

[REDACTED]

[REDACTED]

(See CS0083728\_Confidential--Attorney's Eyes Only.pdf, a true and accurate copy of which is attached hereto as Exhibit H.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. In a letter dated December 17, 2013, Plaintiffs' counsel expressed to comScore that—given Mr. Chasin's testimony and among other reasons—they intended to move forward with Mr. Abraham's deposition. (See December 17, 2013 Letter to comScore, a true and accurate copy of which is attached hereto as Exhibit I.) Plaintiffs' counsel additionally informed comScore that they believed the Parties had exhausted their meet and confer obligations regarding the noticed deposition of Mr. Abraham, and intended to move the Court to compel his testimony.

13. Attached hereto as Exhibit J is a true and accurate copy of a document marked as "CS0076479\_Confidential--Attorney's Eyes Only.htm," which comScore provided to Plaintiffs as a part of its September 2013 document production.

14. Attached hereto as Exhibit K is a true and accurate copy of a document marked as "CS0036962\_Confidential--Attorney's Eyes Only.htm," which comScore provided to Plaintiffs as a part of its September 2013 document production.

15. Attached hereto as Exhibit L is a true and accurate copy of a document marked as

“CS0096521\_Confidential--Attorney’s Eyes Only.htm,” which comScore provided to Plaintiffs as a part of its November 2013 document production.

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

Executed this 20th day of December 2013 at Chicago, Illinois.

s/ Rafey S. Balabanian

**CERTIFICATE OF SERVICE**

I, Benjamin S. Thomassen, an attorney, certify that on December 20, 2013, I served the above and foregoing ***Declaration of Rafey S. Balabanian in Support of Plaintiffs Jeff Dunstan's and Mike Harris's Motion to Compel the Deposition of Magid Abraham***, 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 20th day of December 2013.

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