

**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' MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am an adult over the age of 18 and a citizen of the State of Illinois. I am a partner of the law firm of Edelson PC, and licensed to practice law in the State of Illinois. I represent Plaintiffs Mike Harris and Jeff Dunstan ("Plaintiffs") in this matter. I am fully competent to make this Declaration, have personal knowledge of all matters set forth herein unless otherwise indicated, and could and would testify truthfully to such matters if called as a witness in this action. I make this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement.

2. In a previous declaration, I detailed the litigation history of this case, outlining the discovery conducted, motion practice, and settlement negotiations between the parties through May 30, 2014, when Plaintiffs' filed their Motion for Preliminary Approval of Class Action Settlement. (Dkt. 345-1.)

3. Procedurally, since the filing of my previous declaration, the Court has granted Plaintiffs' Motion for Preliminary Approval (Dkt. 353.) The Notice Plan outlined in Plaintiffs' Motion for Preliminary Approval was effectuated shortly thereafter.

4. To date, 9,660 Claim Forms have been filed pursuant to the Settlement. At the current rate of claims, which is approximately 450 each week, and with more than 14 weeks still remaining before expiration of the Claims Deadline, an additional 6,300 Claim Forms will be filed. In our experience, the claims rate is expected to increase slightly after the Final Approval Hearing, but given that Notice is no longer being disseminated to the Class, the current rate of 450 claims each week is also expected to drop as time goes on. Given these factors, Class Counsel estimates that in the end, Class Members will receive between \$500 and \$700 on account of valid claims.

5. Substantial additional expenses and fees would accrue if litigation between the Parties were to continue to trial. comScore is represented by highly experienced counsel from one of the most preeminent law firms in the world, and has made clear that without a settlement, it was prepared to continue vigorously defending this case—including moving to decertify the Class and Subclass and for summary judgment. Plaintiffs are aware that in the absence of a settlement, they would be subject to the uncertainty and expense of trial, and the risks, delays, expenses, and costs of inevitable appeals. Plaintiffs are also mindful that comScore would continue to assert a number of defenses on the merits—such as consent, which comScore has repeatedly maintained it has obtained from each and every Class member—and more complicated defenses, such as whether Plaintiffs can satisfy the “facility” and “electronic communication service” elements of the SCA, the “interception” and “electronic communication” elements of the ECPA, and the minimum damages requirements of the CFAA.

6. While Plaintiffs are confident of ultimately prevailing at trial, these are issues of first impression, making the chances of doing so something like a coin flip. And assuming Plaintiffs prevailed at trial, they recognize that comScore would certainly appeal the merits of any adverse decision, and that in light of the massive aggregated statutory damages available to the Class, any such recovery, beyond that it would be impossible to collect on, would likely be reduced judicially.

7. In light of these factors, final approval of the Settlement at this point would prevent all Parties from incurring substantial additional expenses and costs that would arise if the case were to proceed to trial. The cost of further expert discovery, litigation expenses, testimony, and further motion practice would be significant and unduly burdensome to the Parties in light of the Settlement that has been agreed to by the Parties and preliminarily approved by this Court. This is especially the case where, as here, the technical issues presented require the use of expert witnesses by both Parties to fully analyze the issues that would be raised at trial.

8. Since the Court's Order granting preliminary approval to the Settlement, and in furtherance of our obligations to the Class, attorneys and staff at my firm have spoken with hundreds of Class Members about the Settlement. Many of these Class Members expressed nearly uniform approval of the Settlement.

9. Attached to this Declaration as Exhibit A is a true and accurate copy of the Declaration of Stefanie C. Gardella Re: Notice Procedures.

10. Attached to this Declaration as Exhibit B is a true and accurate copy of the Declaration of Thomas S. Cushing.

11. Attached to this Declaration as Exhibit C is a true and accurate copy of the Class Action Settlement Agreement entered into by and between the Parties in this Action.

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

Executed this 17th day of September, 2014 at Chicago, Illinois.



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Rafey S. Balabanian

**CERTIFICATE OF SERVICE**

I, J. Dominick Larry, an attorney, hereby certify that on September 17, 2014, I served the above and foregoing ***Declaration of Rafey S. Balabanian in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement***, 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.

s/ J. Dominick Larry  
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