IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MIKE HARRIS and JEFF DUNSTAN, Individually and on behalf of a class of similarly Situated individuals,)))
Plaintiff,) Case No. 1:11-5807
v.) Hon. James F. Holderman
COMSCORE, INC., a Delaware corporation,)
Defendant.)
	<u>)</u>

<u>OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE</u>

I, Ray Sardo, declare as follows:

- 1. I am an attorney duly licensed by the State of California and have been admitted *pro hac vice* to practice before this Court. I am an associate at Cooley LLP, counsel for Defendant, comScore, Inc. ("comScore"). The matters set forth herein are of my own personal knowledge, and if called and sworn as a witness, I could competently testify regarding them.
- 2. On August 23, 2011, Plaintiffs filed a class action complaint in this District alleging several causes of action under state and federal law (Docket No. 1). On the same day, comScore agreed to accept service of process without interposing the procedural steps it could have insisted on.
- **3.** comScore and Plaintiffs conferred, and agreed that comScore would file a response to the Complaint on October 3, 2011. comScore filed its initial response, a Motion to Dismiss under 12(b)(3), or in The Alternative, to Transfer Venue under 28 U.S.C. 1404(A), on September 28, 2011. The Court denied comScore's motion on October 7, 2011.
 - 4. After the Court ruled on comScore's venue motion, Plaintiffs' counsel agreed, in

writing, that comScore would have until November 4, 2011 to "respond to the complaint." I

have attached a true and correct copy of this written agreement, in the form of an e-mail from

Plaintiffs' counsel, to my Declaration as Exhibit "A." During these discussions, Plaintiffs'

counsel never took the position, as it does now, that it was expecting comScore to file an answer

before making a substantive challenge to the Complaint.

5. In fact, Plaintiffs' counsel's position is directly contrary to the position it has

taken in other cases involving these same two law firms. For example, in other written

agreements between these firms, the parties have agreed to a date for a defendant "to answer or

otherwise respond to" the Complaint – reflecting their mutual understanding that "respond[ing]"

to a complaint is not limited to filing an answer. These agreements are often filed as stipulations

with the Court, and I have attached true and correct copies of four such stipulations to my

Declaration as Exhibits "B," "C," "D," and "E." In accordance with those agreements, Cooley,

LLP has thereafter moved under Rule 12, on behalf of its clients, without filing a prior answer,

and without incident or objection from Plaintiffs' counsel.

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

Executed on November 14, 2011, at San Francisco, California.

By: /s/ Ray Sardo

Ray Sardo (admitted pro hac vice)

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Attorney for Defendant comScore, Inc.

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CERTIFICATE OF SERVICE

I, Ray Sardo, an attorney, certify under penalty of perjury that I caused a copy of the forgoing document to be served on counsel listed below via the Court's CM/ECF online filing system this 14th day of November 2011.

By: _	/s/ Ray Sardo	
	One of Its Attorneys	

TO:

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