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, Plaintiffs, v. COMSCORE, INC., a Delaware corporation, Defendant.	Case No. 1:11-5807 Hon. James F. Holderman Mag. Young B. Kim

PLAINTIFFS MIKE HARRIS' AND JEFF DUNSTAN'S RESPONSE IN OPPOSITION TO DEFENDANT COMSCORE, INC.'S MOTION TO BIFURCATE DISCOVERY

I. INTRODUCTION

Defendant comScore, Inc. ("comScore") has repeatedly argued that this case should not proceed in the Northern District of Illinois because the plaintiffs supposedly consented to a Virginia forum selection clause and because the courts in Virginia are supposedly quicker and more efficient. As part of this argument, comScore represented to the court that it was eager to have a decision on the merits as quickly as possible. Judge Holderman, after investing in numerous expedited hearings over a short period of time, rejected both of comScore's arguments. Judge Holderman held that the Plaintiffs have sufficiently alleged that comScore did not properly obtain consent to its terms and conditions (which included the right to track a user's computer habits as well as the forum selection clause), and made it clear that he would do everything in his power—as the Chief Judge of the Northern District—to ensure that this case moved as quickly as Virginia's supposed "rocket docket."

Judge Holderman went further still, impressing upon comScore the seriousness of the harm it allegedly caused and admonishing comScore that it should "discuss settlement of this

case as promptly as possible" given how quickly the case would progress.

Given this context, comScore's motion to bifurcate discovery—which would only result in numerous discovery fights and significant delay—is surprising to say the least. Indeed, comScore's moving papers make clear that it is not simply trying to limit discovery into certain issues. Instead, even for discovery it concedes relates to class certification, comScore believes that there should be a further limiting order, implicitly prohibiting any discovery that comScore finds invasive. However, the best proof that comScore's position would only lead to delay and unnecessary argument comes from what has happened in this case since the last court hearing—some three weeks ago. comScore has produced not a single document, not a line of computer code, and no responses to interrogatories. In short, it has continued to delay simply for delay's sake.

As explained below, comScore should be held to its original position, and this case should remain on a fast track to trial. Granting comScore's motion will serve no valid purpose.

II. FACTUAL AND PROCEDURAL BACKGROUND

comScore collects and sells personal information without the consent of its panelists

This lawsuit challenges comScore's unlawful collection and dissemination of Plaintiffs' personal information. Plaintiffs allege that comScore causes spyware[1] to be placed on its "panelists"[2] computers and then uses that software to surreptitiously collect data from such consumers without their consent. (Compl., ¶¶1, 6, 7, 40, 69, 73.)

Through its spyware, comScore retrieves a continuous stream of information, no matter how sensitive, about the activities conducted on an individual's computer system—all without

[1] Spyware is "software that is installed in a computer without the user's knowledge and transmits information about the user's computer activities over the Internet." *See*, Merriam-Webster Online

[2] comScore refers to the persons it tracks with the spyware as "Panelists."

the user's knowledge. (Compl., ¶ 7.) comScore accomplishes this by "bundling" its spyware with seemingly innocuous software that consumers download for free on the Internet, such as games and screensavers. (Compl., ¶¶ 33, 34.) Once downloaded, the spyware records and transmits virtually all information inputted into a web browser, including websites viewed, search queries, names, addresses, credit card numbers, usernames/passwords, and Social Security numbers, among others. (Compl., ¶¶ 7, 37.) The spyware also records and transmits information concerning all files on the user's computer, as well as all files located on other computers found on local networks. (Compl., ¶¶ 49-54.) Adding to the problem, comScore designed its spyware so that it is difficult for consumers to locate and delete it. (Compl., ¶¶ 49-54.) As a result, scores of consumers remain unwilling subjects of comScore's clandestine tracking. (Compl., ¶ 29.)

comScore's First Motion to Dismiss and Chief Judge Holderman's Order

comScore has filed two Motions to Dismiss—both of which Judge Holderman, who has presided over no fewer than 4 expedited hearings in this case—denied *sua sponte*. On September 28, 2011, comScore filed its first motion to dismiss under Federal Rule of Civil Procedure 12(b)(3). In the alternative, comScore requested that the Court transfer venue under 28 U.S.C. § 1404(a), asserting that this lawsuit should sent to the Eastern District of Virginia's "Rocket Docket" for a fast resolution. (Dkt. No. 15, p. 13.)

On October 7, 2011, Chief Judge Holderman denied comScore's first Motion to Dismiss in a written opinion. (Dkt. No. 31, attached as Exhibit A). Chief Judge Holderman denied the Motion to Transfer Venue on the grounds that the issue of whether the Plaintiffs were ever reasonably apprised of comScore's terms and conditions (so as to have manifested assent to that agreement) was at the center of the Parties' dispute.

comScore's Second Motion to Dismiss

Soon after its first Motion to Dismiss was denied, comScore filed a second one—this time under Rules 12(b)(1) and 12(b)(6). (Dkt. Nos. 39, 42-1.) Plaintiffs filed a Motion to Strike on the grounds that successive Motions to Dismiss are disfavored. (Dkt. No. 43.) In response to the Motion to Strike, comScore reiterated its preference for the case to been transferred to the Eastern District of Virginia's "Rocket Docket" so that comScore could obtain speedy relief. (Dkt. No. 45 at 6-7.)

At the presentment hearing, Chief Judge Holderman denied the second motion, again without requiring a response from the Plaintiffs, finding "[t]here wasn't merit in [comScore's] motion." (The transcript of the November 15, 2011 hearing is attached hereto as Exhibit B, p. 10:22.) Chief Judge Holderman then asked comScore how long it would take to answer the Complaint, and comScore responded it would need some time. Judge Holderman responded "I understand. *But you want expedition*. You told me about the rocket docket." (Ex. B, p. 9:7-8) (emphasis added.) At the close of the hearing, Chief Judge Holderman squarely admonished comScore to "discuss settlement of this case as promptly as possible in order to evaluate the risks of going forward with this litigation." (*Id.*, p. 12:4-11.)

comScore's promised—yet ever elusive—discovery

Despite promising over three weeks ago to provide relevant software code, comScore has disclosed nothing to Plaintiffs. Further, comScore has simply ignored Plaintiffs attempts to meet and confer on what class discovery, if any, comScore would agree to produce in the interim before a ruling is entered on bifurcation. At this time, and notwithstanding both its earlier pleas for expediency and Chief Judge Holderman's promise to deliver prompt jurisprudence, comScore's willingness to participate in this litigation has suddenly come to a halt as it seeks

bifurcation of discovery that all but guarantees the case will experience significant delay.

III. ARGUMENT

This Court should deny comScore's about-face effort to delay these proceedings. There is no good cause for bifurcating discovery between class and merits issues—especially where, as here, none of comScore's proffered bases support bifurcation, bifurcation contradicts comScore's prior calls for the case to be handled expeditiously, and there is significant disagreement between the Parties over whether the issues overlap. Likewise, comScore's promise to provide certain documents that it claims are sufficient at this point in time is hollow. Plaintiffs need more than just comScore's as-yet-undisclosed computer code to prove their claims. Finally, comScore's proposed bifurcation isn't really a request to separate class from merits issues at all—comScore actually seeks a protective order shielding it from whatever discovery it doesn't want to answer. comScore needs to come to the realization that it will have to produce information in this lawsuit that it would prefer not to.

Ultimately, the question before the Court is bifurcation. Because attempting to separate discovery in such a manner in this case will undoubtedly slow down and add layers of complexity to the case, as opposed to speeding it up and making things more efficient, this Court should reject comScore's proposed bifurcation—or grant Plaintiffs' alternative requests for stipulations regarding the need to produce and relevancy of certain material—as explained below.

A. Bifurcation is disfavored where no good cause is shown to support conducting the case in phases and where the line between class issues and merits issues is unclear.

The "decision to bifurcate discovery is within the discretion of the district court," *Am. Nurses' Assoc. v. State of Illinois*, 1986 WL 10382, at *2 (N.D. Ill. Sept. 12, 1986). "Discovery

on the merits should not normally be stayed pending so-called class discovery, because class discovery is frequently not distinguishable from merits discovery, and classwide discovery is often necessary as circumstantial evidence even when the class is denied." 3 *Newberg on Class Actions* § 7:8 (4th ed.); *see also Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 n. 12 (1978).

Relevant to this case, bifurcation will be fraught with inefficiency and unnecessary involvement of the Court to resolve endless motion practice regarding whether discovery should be characterized as "class" or "merits." *See Eggleston v. Chicago Journeymen Plumbers' Local Union*, No. 130, U.A., 657 F.2d 890, 895 (7th Cir. 1981) (noting that, because of bifurcation of discovery, trial courts became embroiled for months in disputes over permissible scope of "class" discovery); *see also Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 41 (N.D. Cal. 1990) (characterizing bifurcation as "inefficient" since it would undoubtedly require ongoing court supervision).

Also relevant here is that when a defendant moves to bifurcate discovery, "[i]n effect, [the] defendant is seeking a stay of 'merits' discovery pending resolution of the class certification issue, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. Consequently, defendant bears the burden of establishing 'good cause' for that form of protective order." *Hines v. Overstock,com, Inc.*, 2010 WL 2775921, at *1 (E.D.N.Y. July 13, 2010). Accordingly, bifurcation should be avoided where no good cause exists for it and where it may lead to endless discovery disputes over what is a "class" versus a "merits" issue.

B. comScore offers no good cause in this case to support bifurcation.

In this case, comScore provides no "good cause" for bifurcation—most likely because none exists. First, none of comScore's arguments in support of bifurcation has merit. comScore argues that bifurcation will save it from having to produce information in case no class is

certified and that, even if the Court did certify a class, bifurcation would somehow help "narrow the issues." comScore further argues that bifurcation is needed because, supposedly, if the Court were to restrict certification only to Mac[3] users, information regarding Windows users would be irrelevant and, if the Court were to certify a Windows-only class, information relevant to its Mac users would be irrelevant. None of these arguments have merit.

Second, comScore's proposed bifurcation flatly contradicts its earlier position in this case that the matter should move forward expeditiously. Bifurcation here will slow the entire case down. This is readily apparent from the Parties' current disagreement regarding the scope of Plaintiffs' discovery requests and whether they seek information relevant to merits as opposed to class certification issues. Both of these arguments, and suggestions for alternative relief in the form of discovery stipulations, are explained below.

1. Contrary to comScore's assertions, bifurcation will not increase efficiency in this litigation.

comScore first argues that bifurcation is needed in the event the Court declines to certify the proposed classes (which comScore "expects" will be the case). (Def. Mot. at 6-7.) According to comScore, individual damages are small, meaning class certification is likely to control whether the case continues after that point at all. This is not a proper grounds for bifurcation. comScore's confidence in its arguments—like its conviction that the case would be dismissed or transferred to Virginia—is misplaced. Further, and if anything, given that class actions are meant for cases where individual damages are relatively small, *see Murray v. GMAC Mortg. Corp*., 434 F.3d 948, 953 (7th Cir. 2006) (Rule 23 "was designed for situations such as this, in which the potential recovery is too slight to support individual suits, but injury is substantial in the

[3] "Mac" and "Windows" in this context refer generally to Apple's Macintosh operating system and the P.C. Windows platform from Microsoft.

aggregate"), comScore's position would create a rule favoring bifurcation in nearly all class action cases. No such rule or presumption exists. Accordingly, that comScore believes it may defeat Plaintiffs' Motion for Class Certification cannot absolve the company of its duty to participate meaningfully in discovery.

comScore next argues that class certification will help narrow the issues in light of Plaintiffs' expansive discovery. (Def. Mot. at 7.) comScore argues that the Court could certify a class of only Mac users, rendering Windows-related information irrelevant. Or, the Court could certify a Windows-only class, placing discovery related to Mac users outside the scope of the case.[4] Neither argument is persuasive. Again, that the Court may ultimately deny a Motion for Class Certification is not grounds for denying discovery related to class certification issues. Tellingly, comScore has no answer for what happens in the event the Court certifies the classes sought. Apparently, in such a case comScore is comfortable that any time wasted by having not conducted discovery simply be lost in the name of its piecemeal strategy.

Accordingly, bifurcation will not lead to increased efficiency.

2. comScore's proposed bifurcation would delay these proceedings in contravention of its own expressed desire for expediency.

comScore's motion to bifurcate discovery contradicts its earlier position that this case should be litigated as quickly as possible. comScore urged Chief Judge Holderman to transfer this lawsuit to the Eastern District of Virginia citing its efficient and expeditious docket: "the

[4] It should be noted that in making these arguments, comScore introduces several "facts" which this Court need not accept as true. First, comScore asserts that certain software problems identified in the pleadings were present only with Mac users. Second, comScore states that it never commercialized the Mac users, supposedly suggesting they have no damages. Third, comScore asserts that only information from Windows users comprise its database. Fourth, comScore contends that its third-party partners—which the Plaintiffs have called "bundlers"—do not bundle; but rather, they offer comScore's software as a separate download with their own products. None of these so-called facts—which are more appropriate for discovery, not for motions seeking to avoid discovery—should influence this Court's bifurcation analysis, except insofar as it demonstrates comScore cannot be unilaterally trusted to provide whatever information it fancies.

median months from filing to trial in the Northern District of Illinois is 28.2 months. In comparison … the median months from filing to trial in the Eastern District of Virginia is 9.3 months." (Dkt. No. 15, p. 13.) Chief Judge Holderman noted that comScore had "extol[led] the virtues of the rocket docket in Virginia," (Ex. B, p. 12:4-5), and that comScore wants "expedition." (Ex. B, p. 9:7-8.) On that basis, in an effort to accelerate litigation, Chief Judge Holderman set an expedited schedule so that the Parties could quickly "move forward with the litigation." (Ex. B, p. 10:1-3.)

comScore cannot now pull a 180 degree turn and propose a discovery plan designed to slow the case down simply because it banked on avoiding the discovery process. To be certain, that is precisely what would occur with comScore's plan here. As explained above, bifurcation is disfavored where the case will become consumed by discovery disputes over whether certain matter relates to class certification as opposed to the merits. These disputes occur because often "[d]iscovery relating to class certification is closely enmeshed with merits discovery, and in fact cannot be meaningfully developed without inquiry into the basic issues of the litigation." *Gray,* 133 F.R.D. at 41; *see also In re Hamilton Bancorp, Inc. Sec. Litig.,* No. 01-CV-0156, 2002 WL 463314, at *1 (S.D. Fla. Jan. 14, 2002) (when class and merits discovery are tightly intertwined, parties are likely to engage in "endless disputes over what is 'merit' verses 'class' discovery."); *Barnhart v. Safeway Stores, Inc.,* No. 92-0803, 1992 WL 443561, at *3 (E.D. Cal. Dec. 14, 1992). As a result, bifurcating discovery often runs counter to the objective of the Federal Rules of Civil Procedure to achieve a "just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. *See also Barnhart*, 1992 WL 443561, at *3.

In this case, Plaintiffs dispute several, if not all, of comScore's assessments of various discovery requests as being related to class certification as opposed to merits issues. Moreover,

Plaintiffs contest comScore's other objections, such as that unquestionably relevant material is too much trouble for comScore to produce. The present disputes are explained below:

a. Discovery relevant to the information that comScore sells to its customers.

comScore opposes answering Requests to Produce Nos. 29 and 30 as well as Interrogatory Nos. 10 and 11 on the basis that Plaintiffs mostly challenge issues that were present in comScore's Mac software and comScore never "commercialized" the Mac users' information. (Def. Mot. at 11.) This argument misunderstands both class actions and Plaintiffs' claims. The discovery sought is directly relevant to class certification issues including whether the class members suffered damages and, if so, whether such damages predominate (such that certification is most appropriately sought under Rule 23(b)(3)) or if they are incidental (and amenable to certification under Rule 23(b)(2)). *See In re Sulfuric Acid Antitrust Litig.*, 2011 WL 6155845, at *1 (N.D. Ill. Dec. 12, 2011) (common issues predominate when the plaintiffs "establish that they have realistic methodologies for establishing damages on a classwide basis") (internal quotations omitted).

comScore also argues that "discovery focused on comScore's customers has nothing to do with whether comScore Panelists share common claims." (Def. Mot. at 12.) This is simply untrue. The challenged discovery seeks to identify the types of personal information that comScore sold to its customers, which bears directly on the issue of what personal information comScore collected from Plaintiffs and the Class and whether it obtained consent--common issues of law and fact that are common to every class member. The challenged discovery is also relevant to show that comScore profits from selling Plaintiffs' and the Class' personal information, a common issue of fact that cuts to the heart of their unjust enrichment claim. Tellingly, comScore offers no explanation as to why this discovery supposedly goes to the

merits, rather than class certification. Ultimately, the point is that the Parties strongly disagree on this issue, signaling that bifurcation will slow down this case.

b. Discovery relevant to Third-Party Bundling Partners.

comScore's motion glosses over a critical fact—this lawsuit is limited to consumers who downloaded comScore's spyware from one of its third-party "bundling" partners. As such, it is the third party partners—not comScore—that have knowledge and information relating to *what terms*, if any, they displayed to Plaintiffs and the Class members before comScore's spyware was downloaded. This is important. To succeed on their Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701, *et seq.*, Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. §§ 2510, *et seq.,* and Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. §§ 1030, *et seq.* claims, Plaintiffs will have to show that comScore's spyware either accessed certain information on their computers without authorization, or exceeded the authorization that was given (i.e., exceeded the scope of the terms of service displayed by comScore's third party bundling partners). The identities of the bundling partners, the information they possess, and their relationship with comScore are thus highly relevant to both merits and class certification issues.

Nevertheless, comScore opposes producing contracts or related documents, even though the agreements could show that comScore made its bundling partners agree on specific consent protocols, that comScore knew its bundling partners had insufficient disclosures, or that comScore neglected to maintain oversight of its partners consent procedures—all of which are highly relevant for class certification purposes.

c. comScore's internal emails.

comScore also opposes providing any internal emails regarding the design and deployment of its software and terms of service agreements. Such emails could show changes to

the terms of service, whether notice of such changes were provided, whether the disclosures were appropriate, comScore's knowledge of any disclosure issues affecting its bundling partners, the method by which comScore makes personal information available, and other issues. Moreover, comScore ignores that intent to access unauthorized information is a required element for Plaintiffs' statutory claims under the SCA, ECPA, and CFAA. *See Shurland v. Bacci Cafe & Pizzeria on Ogden, Inc*., 271 F.R.D. 139, 147 (N.D. Ill. 2010) (predominance requirement satisfied because "the question of whether Defendant acted willfully is central both to Plaintiff's individual claim and to the claims of the class as a whole.")

d. Trees for the Future

comScore conclusively asserts that it has "explained above" its relationship with Tress for the Future. No explanation is present in its Motion, so Plaintiffs are left to guess as to what comScore means by this. Moreover, Plaintiffs disagree with comScore's general assertion that such information is irrelevant to class certification issues. comScore has repeatedly indicated that consumers "volunteer" to having its spyware placed on their computers "in exchange" for having trees planted through its Trees for the Future program. (Dkt. No. 41-1, p. 11.) If comScore plans to defend the existence of a contract supposedly entered into by Plaintiffs whereby these actions qualify as valid consideration, then Plaintiffs' are entitled to discovery to test whether comScore performed its obligations under the purported contract.

e. Termination of the Mac Panel.

Plaintiffs now understand that comScore has "terminated" the Mac Panel. comScore asserts that any information regarding the termination is not relevant to class certification. This argument is false. Whether and to what extent the Mac Panel has been terminated, if at all, impacts the injunctive relief to be sought via any Rule 23(b)(2) class. This is especially so given

the requirement that injunctive relief apply to all the class members. Accordingly, understanding which of comScore's practices require reformation is unmistakably relevant to class certification. Furthermore, the design of the Mac Panel is relevant to evaluating whether, pursuant to Rule 23(a)(2), Mac Panel users' were all affected in a common, uniform way.

Again, that comScore disagrees only serves to highlight the fact that its plan for bifurcation will stifle this proceeding.

f. comScore's other objections

comScore's final objection is to Requests to Produce 1, 39, 44, and 45 as well as Interrogatory Nos. 2, 3, 4, 5, 15 , 20, and 21 on the grounds that these requests also seek information not relevant to class certification.[5] (Def. Mot. 15.) This is simply not true. For example, comScore released a public response to this litigation in which it claimed:

> comScore prides itself on its privacy and recruitment practices, which have been rigorously reviewed in annual privacy audits conducted by independent third party auditors for the last 10+ years.

Request 44 asks for the documents upon which statements like these were based. As comScore's privacy practices, and their application to the classes as a whole, are at the center of the class certification issue, comScore's assertion that such information should be safeguarded from disclosure defies reason. Again, that the Parties disagree on this point is the key issue—it shows comScore's ideas for bifurcation are unrealistic and will fail to appreciably expedite the case.

Accordingly, comScore's bifurcation proposal will—despite its prior protests before Chief Judge Holderman that it needed a "rocket docket"—delay this case. It is premised on the false presumption that no discovery should issue where it might ultimately prevail on certification. Also, it is clear the Parties will battle endlessly over

[5] Plaintiffs agree with comScore that experts may be disclosed consistent with the statements set forth in the Parties' Form 52 submission.

whether specific discovery requests are relevant to class certification or merits issues. Bifurcation should not issue under such circumstances.

C. comScore's agreement to provide source code for the Windows and Mac platforms at some point in the future along with limited other information is insufficient for discovery purposes.

a. The Source Code

The source code for both the Mac and Windows platforms are not enough. comScore claims that Plaintiffs and the Classes authorized comScore to collect, transmit, and sell information collected from their computers to third parties. Plaintiffs claim that they did not provide such authorization and that, if they did, comScore knowingly exceeded the scope of such authorization. Although comScore agrees that one of the *main* issues on class certification will be "whether [its] software impacted the putative class members in a common manner," (Def. Mot. at 9), and recognizes that discovery relating to its software's functionality "goes to the core issues of commonality and predominance on class certification" (Def. Mot. at 10), comScore refuses to respond to discovery on these issues—not even with respect to what the software collects and transmits from the consumers' computers. Instead, comScore intends to simply produce the software's source code and tell Plaintiffs to "go fish" through extensive and highly sophisticated code.

Denying Plaintiffs the opportunity to issue written discovery and take depositions on issues related to the functionality of comScore's software prejudices the Plaintiffs and will impede the discovery process. Without the ability to conduct discovery on the software's functionality, Plaintiffs will be unable to determine whether the software collected and transmitted personal information that exceeds the scope of authorization allowed by the terms that Plaintiffs and the Classes supposedly consented to (which, as discussed throughout this

brief, comScore also seeks to have excluded from its first phase of discovery).

b. Consent materials

Recognizing that consent is a crucial element of this lawsuit, comScore has apparently "committed" to produce "the source code for its RK Verify software … as well as additional materials sufficient to demonstrate the *methods* for presenting comScore's disclosures and obtaining consent." (Def. Mot. at 12) (emphasis added.) comScore's "commitment," however, misses the point—the RK Verify software and materials relating to the disclosure *methods* have nothing to do with *what specific terms* were displayed to Plaintiffs and the Classes by comScore's third party bundling partners. Further, the RK Verify software will only identify whether or not a consumer pressed the "accept" button in the dialogue box—it does not, however, identify what content, if any, was displayed to the consumer in the dialogue box.

As a result, comScore's proposed disclosures do not obviate the need for other discovery.

D. Proposals for streamlining discovery

Given comScore's concerns about the burdens and expenses of producing discovery, Plaintiffs will agree to withdraw Interrogatory Nos. 16 and 17, and Document Request Nos. 2, 27, and 28 in exchange for a stipulation from comScore that its spyware collected and transmitted personal information from all class members in the same, or substantially the same manner. Similarly, Plaintiffs will agree to withdraw their discovery relating to communications between comScore's employees in exchange for a stipulation from comScore that the questions of whether comScore intentionally exceeded the scope of the authorization given by Plaintiffs and the Classes is subject to the same, or substantially the same, common body of proof.

CONCLUSION

For these reasons, the Court should deny comScore's motion to bifurcate discovery.

Dated January 19, 2012

RESPECTFULLY SUBMITTED,

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INDIVIDUALLY AND ON BEHALF OF A CLASS
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CERTIFICATE OF SERVICE

I, Ari J. Scharg, an attorney, certify that on January 19, 2012, I served the above and foregoing ***Plaintiffs' Response in Opposition to Defendant comScore, Inc.'s Motion to Bifurcate Discovery***, 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 the 19th day of January, 2012.

/s/ Ari J. Scharg