IN THE CIRCUIT COURT FOR THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

IN RE RENTRAK CORPORATION SHAREHOLDERS LITIGATION,	CONSOLIDATED LEAD CASE NO. 15CV27429 Assigned to Judge Litzenberger **PLAINTIFFS' UNOPPOSED MOTION FOR ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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Unopposed Motion

Pursuant to a Stipulation of Settlement between the parties to the above-captioned action,[1] submitted herewith, Andrew B. Nathan, Trustee for the Ira S. Nathan Revocable Trust ("Andrew Nathan"), and John Hulme ("Hulme," and collectively with Andrew Nathan, "Plaintiffs") submit this unopposed motion for an Order Granting Final Approval of Class Action Settlement and for entry of the proposed Judgment.

UTCR 5.010 Certification Of Conferral

This motion is made pursuant to the Stipulation and is unopposed.

[1] The Stipulation is made and entered into by and among the following settling parties: Defendants William P. Livek, David Chemerow, Brent D. Rosenthal, David Boylan, William E. Engel, Patricia Gottesman, Anne MacDonald, Martin B. O'Connor, Ralph R. Shaw (collectively, the "Individual Defendants"), Rentrak Corporation ("Rentrak," and collectively, with the Individual Defendants, the "Rentrak Defendants") and comScore, Inc. ("comScore," collectively with the Rentrak Defendants, the "Defendants") and Plaintiffs (collectively with Defendants, the "Parties"), by and through their respective counsel of record, in the above-captioned action (collectively, the "Action"). Pursuant to the Stipulation, the Parties are presenting the proposed settlement (the "Settlement") to the Court for approval.

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Memorandum

I. Introduction

The proposed Settlement provides for the establishment of a $19,000,000 common fund for the benefit of the Class. We believe this to be one of (and perhaps *the*) largest cash settlement(s) in the history of merger-and-acquisition litigation in Oregon. This is also one of the most significant merger litigation settlements in *any* jurisdiction in recent years. The well-respected economics firm, Cornerstone Research ("Cornerstone"), has published data for all settlements of merger litigation, throughout the country, since 2010. Of the settlements identified by Cornerstone, this is the fourth-largest settlement of any merger litigation arising from a transaction valued at less than $1 billion. And it is the largest settlement of merger litigation arising from a transaction valued at less than $1 billion that did not involve a sale to a controlling shareholder or disproportionate consideration paid to a controlling shareholder.[2] To counsel's knowledge, this is the **only** cash settlement of an all-stock transaction that did not involve a controlling shareholder.

Both the Rentrak Defendants and comScore are contributing to the common fund payment. The Rentrak Defendants' insurers will pay $15,833,333, which will exhaust nearly all of the insurance coverage available to the Rentrak Defendants—leaving, at most, a few hundred thousand dollars after the payment of defense costs and the Settlement amount. Consequently, the Settlement grants a full release of Rentrak shareholders' claims against the Rentrak Defendants.[3]

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[2] Appendix A hereto provides the complete methodology for our compilation of Cornerstone's data as well as a list of all the settlements that Cornerstone identified.

[3] Certain of the Rentrak Defendants are or may become defendants in derivative actions brought by comScore shareholders on behalf of comScore for their alleged actions/failures to act in their capacity as comScore officers/directors after the Transaction closed. *See Wayne County Employees' Retirement System v. Fulgoni et al.*, No. 1:16-cv-09855 (SDNY); and *Donatello v. Fulgoni, et al.*, No. 1-17-cv-01245

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The balance of the common fund payment—$3,166,667—will be made by comScore and/or its insurers. Critically, however, the Settlement's release of claims against comScore is extraordinarily narrow. The only claims released against comScore are claims for aiding-and-abetting the Rentrak Defendants—a claim that the Court has already dismissed once (albeit with leave to replead). Plaintiffs and the Class are not releasing any other claims against comScore or its officers and directors, including claims against comScore and comScore's officers and directors under the federal securities laws in both the Southern District of New York and this Court.

II. Statement of Facts and Procedural History

As the Court knows, the Action has been hard-fought. Represented by highly sophisticated counsel,[4] Defendants waged a scorched-earth campaign, filing multiple motions to dismiss, resisting producing discovery until forced to do so in the face of motions to compel, seeking stays of discovery both here and in the Southern District of New York, and resisting motions to amend the complaint, for class certification, and for substitution. Through adversarial discovery, Class Counsel obtained and reviewed approximately 320,000 pages of documents from Defendants and multiple third parties and took a number of key depositions. The proposed resolution embodied in the Settlement was reached only after eighteen months of litigation, in the days following an arm's-length mediation conducted by former United States District Court Judge, Layn R. Phillips (retired).

(SDNY) (collectively, the "Federal Derivative Action"); *Murphy v. Matta*, et al., 2016-006874 (Fairfax County, Virginia); *Levy v. Matta*, et al., 2016-009465 (Fairfax County, Virginia); and *Assad v. Fulgoni, et al.*, 2017-005503 (Fairfax County, Virginia) (collectively, the "Virginia Derivative Actions"). Those claims are not being released by the Settlement.

[4] comScore's current counsel, Jones Day, is one of the largest law firms in the world. comScore's former counsel, Quinn Emanuel, is the largest law firm in the world devoted solely to business litigation. The Perkins Coie firm, representing the Rentrak Defendants, is one of the top law firms in the Pacific Northwest and ranked as a "Band 1" firm for commercial litigation in Oregon by Chambers and Partners.

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A complete background of the litigation is set forth in the Stipulation, which was filed with the Motion for Preliminary Approval. For purposes of this motion, the Court may wish to recall the following.

On September 29, 2015, comScore and Rentrak announced the Transaction: an all-stock merger between the two companies in which Rentrak shareholders would receive 1.15 shares of comScore common stock for each share of Rentrak that they held.

On October 9, 2015, Andrew Nathan's predecessor trustee (and late father), Ira Nathan, filed suit on behalf of the Class against Rentrak Corporation, David Boylan, William Engel, Patricia Gottesman, William Livek, Anne MacDonald, Martin O'Connor, Brent Rosenthal, and Ralph Shaw in the matter captioned *Nathan v. Rentrak Corporation, et al.*, No. 15CV27429 (the "Nathan Rentrak Action"). The Nathan Rentrak Action was subsequently consolidated with three related actions: *Blum v. Rentrak Corporation, et al.*, No. 15CV27443; *Stein v. Rentrak Corporation, et al.*, No. 15CV27520; and *Sikorski v. Rentrak Corporation, et al.*, No. 15CV27932 (collectively, the "Related Rentrak Actions"). Ira Nathan was appointed as Lead Plaintiff and Block & Leviton LLP as Lead Counsel.

On October 30, 2015, comScore and Rentrak filed a joint proxy statement/prospectus with the Securities and Exchange Commission ("SEC") on Form S-4, which was amended (via Form S-4/A) on December 7, 2015, and declared effective by the SEC on December 23, 2015 (the "Registration Statement"). On November 19, 2015, Ira Nathan filed his First Amended Class Action Complaint in the Nathan Action, adding David Chemerow as a defendant and adding breach of fiduciary duty claims for alleged material omissions in the Registration Statement.

On January 29, 2016, the Transaction closed.

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On March 7, 2016, comScore filed a Form 8-K with the SEC, which stated that "on February 19, 2016, the Audit Committee of comScore's Board of Directors received a message regarding certain potential accounting matters," and that comScore was "delaying the filing of its Annual Report on Form 10-K for the year ended December 31, 2015." Shortly thereafter, Ira Nathan informed the Court that he intended to seek leave to file an amended complaint.

On March 10, 2016, Elliot Sommer filed a related action in the United States District Court for the Southern District of New York asserting federal securities claims against comScore, Serge Matta, and Melvin Wesley III, captioned *Sommer v. comScore, Inc., et al.*, No. 1:16-cv-01820 (the "Federal Securities Action").

On July 21, 2016, following negotiations between the parties, the Court issued an order granting Ira Nathan's motion for leave to file a revised Second Amended Class Action Complaint. Ira Nathan filed the Second Amended Class Action Complaint that day, adding comScore as a defendant.

On October 4, 2016, Ira Nathan filed an action captioned as *Nathan v. Matta, et al.*, No. 16CV32458 (the "*Nathan v. Matta* Action") that asserted claims against certain current and former officers and directors of comScore as well as Ernst & Young LLP on behalf of the Class.[5]

On January 5, 2017, John Hulme sent prelitigation demand notices pursuant to ORCP 32 H to Defendants in the *In re: Rentrak Action* and the *Nathan v. Matta* Action. *See* Authenticating Declaration Of Jason M. Leviton In Support Of Plaintiff's Unopposed Motion For Consolidation, Substitution, Certification Of Settlement Class, Preliminary Approval Of Settlement And Approval Of Notice To Class (hereinafter "Leviton Decl."), at Exs. A, B. On January 16, 2017,

[5] On November 7, 2016, defendants in the *Nathan v. Matta* Action removed the action to the United States District Court for the District of Oregon. Following briefing and argument, the action was remanded.

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Ira Nathan died. Andrew Nathan subsequently sought leave to substitute for Ira Nathan. On February 6, 2017, Hulme filed a complaint asserting claims on behalf of the Class against Defendants in the matter captioned *Hulme v. Livek, et al.*, No. 17CV04984 (the "Hulme Rentrak Action").

On or about March 15, 2017, the Parties began discussions regarding postponing further depositions until May 1, 2017 and scheduling a mediation prior thereto. Ultimately, the parties agreed to schedule a mediation with Judge Phillips on April 14, 2017 and to postpone depositions until May 1, 2017.

On March 17, 2017, Hulme filed a Class Action Complaint in the Circuit Court of the State of Oregon for the County of Multnomah asserting claims on behalf of the Class against the defendants in the *Nathan v. Matta* Action in the matter captioned *Hulme v. Matta, et al.*, No. 17CV11445 (the "*Hulme v. Matta* Action").

On March 24, 2017, the Court entered an Order Regarding Defendant comScore's Motion to Dismiss Second Amended Complaint, granting comScore's motion to dismiss for failure to allege ultimate facts, with leave to replead.

On April 7, 2017, the Parties exchanged mediation statements. On April 14, 2017, the Parties, including Defendants' insurers, attended a mediation session with Judge Phillips. During the course of an all-day mediation, the Parties negotiated in good-faith, at arm's-length in an attempt to settle the Action.

The mediation was unsuccessful, but the Parties continued to negotiate throughout the Easter holiday weekend. On April 17, 2017, as a result of post-mediation communications conducted through Judge Phillips, the Parties reached an agreement-in-principle to settle the Action. That same day, the Parties informed the Court of their agreement.

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On April 20, 2017, the Parties executed a term sheet and, thereafter, negotiated the complete terms of the Settlement, which are set forth in the Stipulation.

On May 12, 2017, Plaintiffs moved to certify a class and to preliminarily approve the Settlement. On May 19, 2017, non-party William Huff moved for leave to file an opposition to the preliminary approval motion. After a lengthy hearing on May 23, 2017, the Court stated that it would grant preliminary approval and deny Huff's motion. The Court's order granting preliminary approval was entered on June 7, 2017. The Court-appointed claims administrator has issued notice to the Class pursuant to that order. *See* Declaration of Alexander Villanova ("Villanova Dec.") ¶¶3-10.

III. The Terms and Benefits of the Proposed Settlement

The Parties' negotiations resulted in an arm's-length agreement to settle, on behalf of Rentrak shareholders at the time the Transaction closed: (i) all claims against the Rentrak Defendants and (ii) all claims against comScore for aiding-and-abetting the Rentrak Defendants in exchange for Defendants' (and/or their insurers') agreement to pay $19,000,000 for the benefit of the Class (the "Settlement Fund" or "Settlement Payment").

The benefits of the Settlement are obvious, a cash payment establishing the Settlement Fund that will—after notice costs and attorneys' fees and expenses—pass to Class members who file valid proofs of claims in accordance with the Plan of Allocation and as set forth in the Stipulation and in the Notice to the Class. *See generally*, Stipulation and Ex. A-1 thereto. In return for the Settlement Payment, Defendants will obtain a release of claims as set forth in the Stipulation and outlined in the Notice to the Class. *Id.* Ex. A-1 § B.

Specifically, as noted above, the Rentrak Defendants' insurers will pay $15,833,333 and the Settlement grants a full release of Rentrak shareholders' claims against the Rentrak

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Defendants.[6] The balance of the Settlement Payment—$3,166,667—will be made by comScore and/or its insurers. The only claims released against comScore (including its officers, directors, and agents) are claims for aiding-and-abetting the Rentrak Defendants. Plaintiffs and the Class are not releasing *any* other claims against comScore or its officers and directors.

In particular, Rentrak shareholders remain free to assert claims under the federal securities laws against comScore, its officers and directors, and comScore's auditor, Ernst & Young LLP, in both the Federal Action in the Southern District of New York and the Section 11 Action pending in this Court.

IV. The Proposed Settlement Should Be Granted Final Approval

A. Procedure For Approval Of A Class Action

Oregon has a well-established and strong public policy favoring compromises of litigation. *See generally Pollock & Pollock*, 357 Or 575, 591 (2015) (recognizing Oregon's "general policy favoring settlements"); *accord Weems v. Am. Int'l Adjustment Co.*, 319 Or 140, 145 (1994) ("This court strongly encourages settlement of all kinds of legal disputes."). Nonetheless, the Oregon Rules of Civil Procedure require Court approval and notice before a class action can be settled. *See* ORCP 32 D ("Any action filed as a class action in which there has been no ruling under subsection C(1) of this rule and any action ordered maintained as a class action shall not be … compromised without the approval of the court, and notice of the proposed … compromise shall be given to some or all members of the class in such manner as the court directs… .").

As the Appeals Court described in *Froeber v. Liberty Mutual Insurance Company*, 222 Or App 266 (2008), there are three steps to approve a class action settlement:

[6] As noted above, the Settlement does not release claims in the Federal Derivative Action or the Virginia Derivative Actions.

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First, the Court must certify the class "for settlement purposes," grant "preliminar[y] approv[al] [of] the settlement agreement," and approve "the details of the notice to be disseminated to all potential class members[.]" *Id.* at 270, 272.

Second, notice must be disseminated to potential class members. *Id.*

Third, after notice has been disseminated, the Court must hold a Fairness Hearing—*i.e.*, "a hearing to determine the fairness, reasonableness, and adequacy of the settlement." *Id.* at 273.

The first two steps have been completed. The Court certified the class for settlement purposes, granted preliminary approval, and approved the details of the Notice. The Notice has been issued consistent with the Court's order. *See* Villanova Dec. ¶¶3-10. Now the Court must decide whether to grant final approval.

B. The Proposed Settlement Warrants Final Approval

In *Froeber*, the court adopted the standard for final approval used by "federal courts evaluating proposed class action settlements under ORCP 32 D's federal counterpart, FRCP 23(e)." 222 Or App at 275 (quoting *Class Plaintiffs v. City of Seattle*, 955 F2d 1268, 1276 (9th Cir 1992) (the "universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable.")).

Under the federal standard, the Court will consider "several factors which may include, among others, some or all of the following: [1] the strength of plaintiffs' case [and] the risk, expense, complexity, and likely duration of further litigation; … [2] the amount offered in settlement; [3] the extent of discovery completed, and the stage of the proceedings [and] the experience and views of counsel; … and [4] the reaction of the class members to the proposed settlement." *Linney v. Cellular Alaska P'ship*, 151 F3d 1234, 1242 (9th Cir 1998) (internal

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quotations omitted).[7]

1. Strength of Plaintiffs' Case and The Risk, Expense, Complexity, and Likely Duration Of Further Litigation

While Plaintiffs believe strongly in the merits of their claims, they acknowledge that they faced serious risks in prosecuting this Action through trial.

(i) There Would Have Been Little Money Available To Pay A Meaningful Judgment Against The Rentrak Defendants

First, it appeared highly unlikely that the Rentrak Defendants would personally have sufficient assets available to satisfy a judgment. Regardless of how strong a liability case is, "you can't get blood from a stone." *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F Supp 2d 277, 281 (D Mass 2009) (approving settlement where there were concerns about "the ability of the defendants to withstand a greater judgment … because of … limited finances and questionable insurance coverage") (internal quotation marks omitted).

It is not an accident that the releases negotiated by Plaintiffs do **not** release claims in the Federal Action (or the Oregon Section 11 Action) against comScore, comScore's officers and directors, or comScore's auditor, Ernst & Young. That is because, among other reasons, there is more money to be had from those Defendants[8] and Plaintiffs are confident that Class members will be able to achieve additional recoveries through further litigation in the Oregon Section 11 Action and/or the Federal Action. Indeed, just last week, both Judge Koeltl of the Southern District of New York and Judge Hodson of this Court entered orders denying motions to dismiss filed in those actions by comScore, comScore's officers and directors, and Ernst & Young.

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[7] *Linney* identifies certain other factors not relevant to this case (*e.g.*, the presence of a governmental participant).

[8] To be clear, however, there are also concerns about comScore's available assets. comScore's stock has been delisted. As of February 6, 2017, comScore had only $116 million in cash on its balance sheet—$25.8 million less than the amount of cash on its balance sheet as of September 30, 2015. *See* Leviton Decl., Ex. F, *cf.* Ex. G.

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The **only** claims asserted in the Federal Action that will be released by the Settlement are claims against the Rentrak Defendants. That is because, among other reasons, there is simply no more money to get from those Defendants.

To be more specific, there were three insurance policies whose coverage was triggered by the claims against the Individual Defendants—a $10 million policy issued by Chubb,[9] a $5 million policy issued by Travelers,[10] and a $5 million policy issued by Navigators[11]—providing a total of $20 million in coverage.[12]

At the time of the mediation, the Rentrak Defendants had already incurred millions of dollars in defense costs (and have since incurred and will incur additional unavoidable costs in bringing this litigation and the claims against them in the Federal Action to a conclusion). The proposed payment of $15,833,333 represents a payment of more than 95% of the insurance coverage available after payment of those costs.

If Plaintiffs had refused to settle and pushed forward with the litigation—through extensive depositions all over the country, trial, and appeals—those defense costs would have increased exponentially, further draining the policies. *Lane v. Page*, 862 F Supp 2d 1182, 1219 (DNM 2012) ("Insurance policies in which defense costs are included within the policy limits are often referred to as 'wasting' … policies, because their limits are reduced as defense costs are incurred.") (citing John M. Palmeri & Franz Hardy, Protecting Your Law Practice: Malpractice Insurance Basics, 34 APR COLO LAW 45, 46 (2005)).

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[9] Declaration of Joel Fleming In Support of Opposition to Nonparty William Huff's Motion To File Opposition to Plaintiff's Motion for Preliminary Approval (filed May 21, 2017) ("Fleming Response Dec."), Ex. G (Chubb policy).

[10] Fleming Response Dec., Ex. H (Travelers policy).

[11] Fleming Response Dec., Ex. I (Navigators policy).

[12] Plaintiffs assert an equitable claim against Rentrak Corporation— but its cash and other assets were transferred to comScore when the Transaction closed. Fleming Response Dec., Ex. J at 7.

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If Plaintiffs ultimately prevailed through trial and appeal, the insurance policies might have been unavailable altogether. Plaintiffs would have proceeded on the theory that the Rentrak Defendants improperly enriched themselves at the expense of shareholders. But the policies expressly excluded coverage for claims "based upon, arising from or in consequence of … an Insured having gained any profit, remuneration or other advantage to which such Insured was not legally entitled, established by a final, non-appealable adjudication in any underlying action or proceeding[.]"[13] In that unpleasant scenario, Class members could attempt to recover from the Rentrak Defendants personally but none appeared to have personal assets available that would be significant enough to pay a meaningful award.

(ii) Plaintiffs Were Proceeding On Novel Legal Theories That Could Have Resulted In Outright Dismissal As A Matter of Law

Plaintiffs' claims were, in large part, based on novel legal theories.

Their aiding-and-abetting claim against comScore was based on comScore's joint filing of the Registration Statement, which Plaintiffs alleged contained material omissions, in breach of the Rentrak Defendants' fiduciary duty of disclosure. Courts have previously sustained aiding-and-abetting claims against **financial advisors** for misstatements in proxy filings, *see, e.g., RBC Capital Markets, LLC v. Jervis*, 129 A3d 816 (Del 2015), but the extension of this theory to **acquirers** was, as yet, largely untested.

Indeed, shortly after the mediation was scheduled but before it took place, the Court granted comScore's motion to dismiss for failure to state a claim. The Court gave Plaintiffs leave to replead, but expressed skepticism that comScore could be liable as an aider-abettor for including misstated financial statements in the Registration Statement. Plaintiffs could have filed

[13] Fleming Response Dec., Ex. G at RENT008949.

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a third amended complaint with additional details about comScore's knowledge. But if the Court did not accept that the joint filing of a materially misleading Registration Statement constituted concerted action, comScore would likely have escaped again.

Similarly, Plaintiffs' Sales Process claims against the Rentrak Defendants hinged, in significant part, on their assertion that corporate fiduciaries' actions are subject to enhanced scrutiny when they agree to a stock-for-stock merger. While Plaintiffs believe this to be the correct answer as a matter of policy and Oregon law,[14] the well-respected courts of Delaware have, so far, rejected this view.[15] Defendants offered strong arguments that the Sales Process claims should, instead, be reviewed under the deferential business judgment standard, which is far more difficult to overcome.

Plaintiffs' strongest claims were their Disclosure Claims against the Rentrak Defendants. The Rentrak Defendants argued, however, that these claims had been waived because they were not asserted prior to the shareholder vote. While Plaintiffs believe this argument would have failed, the issue of when disclosure claims are waived remains a live and uncertain issue under Delaware law and Plaintiffs faced a risk of an unfavorable outcome on this question.

(iii) Class Members Were At Risk Of Receiving Less Compensation In A Global Settlement

Finally, Class members—*i.e.*, legacy Rentrak shareholders—were competing for consideration with a much larger class of legacy comScore shareholders who brought suit against comScore in the Federal Action. Lead counsel in the Federal Action have a serious and irreparable conflict of interest because the harm suffered by legacy Rentrak shareholders (the

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[14] *See, e.g.*, J. Travis Laster, *Revlon Is A Standard of Review: Why It's True and What It Means*, 19 FORDHAM J CORP & FIN L 5, 6 (2013); *Crandon Capital Partners v. Shelk*, 219 Or App 16, 31 (2008).

[15] *See, e.g., Paramount Commc'ns Inc. v. QVC Network Inc.*, 637 A2d 34, 46 (Del 1994); *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A2d 59, 71 (Del 1995).

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putative class in this Action) was comScore's underpayment for their shares of Rentrak, which inured *directly to the benefit of legacy comScore shareholders*. Those legacy comScore shareholders include both of the Lead Plaintiffs in the Federal Action, whose comScore shares increased in value because comScore acquired Rentrak for significantly less than it was worth.

Courts have repeatedly recognized that this type of intra-class conflict can harm class members. *See Ortiz v. Fibreboard Corp.*, 527 US 815, 857 (1999) (denying certification where "Pre–1959 claimants ... had more valuable claims than post–1959 claimants, the consequence being a second instance of disparate interests within the certified class."); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 12-4671-CV, 2016 WL 3563719, at *6 (2d Cir June 30, 2016) (reversing district court's approval of $7.25 billion settlement reached after ten years of litigation because the differing strengths of class members' claims meant that "[c]lass representatives had interests antagonistic to those of some of the class members they were representing."); *In re Literary Works in Electronic Databases*, 654 F3d 242, 254 (2d Cir 2011) (reversing certification, in absence of independent counsel, where subgroups had claims "of different strength [which] ... command[] a different settlement value.").

Here, in the judgment of Class Counsel, Rentrak shareholders were at risk of receiving significantly less money if comScore attempted to resolve all of the claims pending against it and the Rentrak Defendants via a global settlement run through the Federal Action.

2. The Amount Offered In Settlement

As noted above, Cornerstone Research has published reports identifying every settlement from 2010 through the first half of 2016 of merger litigation brought on behalf of the shareholders of the target company (*i.e.*, the seller).[16] Appendix A hereto lists all of those

[16] Courts routinely rely on Cornerstone's data in evaluating the merits of settlements of shareholder litigation. *See, e.g., In re Ocean Power Techs., Inc.*, No 3:14-CV-3799, 2016 WL 6778218, at *14 (DNJ

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settlements (as well as the two additional settlements after the first half of 2016 of which Class Counsel is aware), the amount of the settlement, the size of the transaction challenged, and key facts about each case.

An analysis of the other settlements demonstrates that a $19,000,000 common fund for shareholders is an extraordinary result in any merger litigation, whether in Oregon or anywhere else. It is particularly meaningful here because it effectively exhausts the Rentrak Defendants' insurance coverage.

The patterns shown in Appendix A demonstrate three other reasons why the Settlement amount is particularly impressive here.

First, the size of settlements is driven in significant part by the size of the transaction being challenged. The Transaction here was (relatively speaking) small—at the time it was announced, it was valued at $732 million. The Settlement Amount, therefore, represents 2.6% of the total transaction value. Only seven other settlements achieved a higher percentage of the overall Transaction size and this was the fourth-largest settlement arising from a transaction with an announced value of less than $1 billion.

Second, as the Cornerstone data shows, the largest settlements in merger litigation usually involve either (1) an acquisition by a controlling stockholder or disproportionate consideration

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Nov. 15, 2016) ("As the Court will address in its discussion of range and reasonableness, this [settlement] is … above the median in cases with similar investor losses according to Cornerstone Research's analysis in 'Securities Class Action Settlements: 2015 Review and Analysis.'"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No 02-CV-3400 CM PED, 2010 WL 4537550, at *20 (SDNY Nov. 8, 2010) ("According to objective data recently published by Cornerstone Research, the $24.4 million recovery here is more than three times the median settlement ($7.4 million) in class actions reported during the period 1996 through 2008 and three times the median settlement ($8.0 million) reported for 2009 settlements."); *In re Veeco Instruments Inc. Sec. Litig.*, No 05 MDL 01695 (CM), 2007 WL 4115809, at *12 (SDNY Nov. 7, 2007) (reviewing Cornerstone's "published data on securities fraud settlements" to evaluate "the quality of the proposed Settlement.").

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paid to a controlling stockholder; or (2) a sale to a private equity firm.[17]

Neither factor was present here, making the Settlement even more remarkable. Indeed, this appears to be the **only** cash settlement since 2010 of litigation involving a transaction valued at less than $1 billion that did not involve either a controlling stockholder, management buyout or sale to a private equity firm. It is also extraordinarily rare for there to be a cash settlement arising from an all-stock transaction, in the absence of a controlling shareholder. (Counsel are not aware of any such case).

Third, in evaluating a settlement, the Court must "assess[] the reasonableness of the 'give' and the 'get[.]'" *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A3d 1025, 1043 (Del Ch 2015). And here, unlike every other settlement identified by Cornerstone (other than *Rural Metro*), the "give" is **not** a complete release of all claims against all Defendants. The Settlement releases all claims against the Rentrak Defendants,[18] but the only claims released against

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[17] Conflicted transactions with controlling stockholders are reviewed under the plaintiff-friendly entire fairness standard. *In re S. Peru Copper Corp. S'holder Derivative Litig.*, 52 A3d 761, 787 (Del Ch 2011) ("Where, as here, a controlling stockholder stands on both sides of a transaction, the interested defendants are required to demonstrate their utmost good faith and the most scrupulous inherent fairness of the bargain.") (internal quotation omitted). And sales to private equity firms are notoriously ridden with conflicts—incumbent management often receive a "rollover" equity stake in the new company creating a misalignment between their interests and those of ordinary shareholders. *In re El Paso Corp. S'holder Litig.*, 41 A3d 432, 450–51 (Del Ch 2012) ("The negotiation process and deal dance present ample opportunities for insiders to forge deals that, while 'good' for stockholders, are not 'as good' as they could have been, and then to put the stockholders to a Hobson's choice. Think about some of the early management buyouts of the cappuccino market of 2006 and 2007 in that regard, where the early actions of poorly policed, conflicted CEOs in baking up deals with their favorite private equity sponsors before any market check (or often even board knowledge) likely dampened the competition among private equity firms that could have generated the highest price if proper conduct occurred and the right process had been used.").

[18] This includes a release of the claims asserted against the Rentrak Defendants under the federal securities laws in the Federal Action. The Court has ample authority to release those claims. *Matsushita Elec. Indus. Co. v. Epstein*, 516 US 367, 369 (1996) ("This case presents the question whether a federal court may withhold full faith and credit from a state-court judgment approving a class-action settlement simply because the settlement releases claims within the exclusive jurisdiction of the federal courts. The answer is no."); *Class Plaintiffs v. City of Seattle*, 955 F2d 1268, 1288 (9th Cir 1992) ("a state court was within its power to approve the release of a federal claim, which could not have been brought in the state court.").

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comScore (and its agents) are claims for aiding-and-abetting the Rentrak Defendants. Plaintiffs have preserved Rentrak shareholders' ability to continue to litigate direct claims against comScore, its officers, and directors, and its auditor, Ernst & Young, for violation of the federal securities laws. These Plaintiffs are currently doing just that in the *Nathan v. Matta* action (*i.e.*, the Oregon Section 11 Action)—in which Defendants' motions to dismiss have now been denied—and expect that Rentrak shareholders will obtain significant additional compensation for their losses through those actions.

3. The Extent Of Discovery Completed And The Views And Experience of Counsel

This Action was ongoing for more than eighteen months, with trial less than seven months away at the time the Settlement was finalized. Through adversarial discovery, Class Counsel obtained and reviewed approximately 320,000 pages of documents from Defendants and multiple third parties, including Rentrak's financial advisor (Goldman Sachs), comScore's financial advisor (JPMorgan), Rentrak's accounting advisor (Grant Thornton), a competing bidder (Company B), and took a number of key depositions of Rentrak's corporate designees. The extent of discovery completed supports approval of the Settlement. *Rodriguez v. W. Publ'g Corp.*, 563 F3d 948, 967 (9th Cir 2009) ("Extensive discovery had been conducted … From this the district court could find that counsel had a good grasp on the merits of their case before settlement talks began.").

Class Counsel include highly sophisticated attorneys who have recovered hundreds of millions of dollars for shareholders in their careers. In evaluating the discovery record in this case, they were able to draw on years of experience in complex shareholder class actions at both plaintiffs' firms and large corporate defense firms. *See* Joint Declaration of Jason Leviton and Peter Andrews filed concurrently herewith ("Class Counsel Fee Dec.")., Exs. I and J; *In re*

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Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 316165, at *10 (ND Cal Jan. 23, 2017) ("Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation. Courts afford 'great weight' ... to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.") (internal quotations omitted).

Moreover, the interests of Class Counsel are wholly aligned with those of the Class—as they are working on contingency and are seeking compensation solely on the basis of a percentage of the overall Settlement Fund. *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or 210, 219 (2013) ("In common fund cases … federal and state courts alike have increasingly returned to the percent-of-fund approach"); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F Supp 2d 437, 440 (EDNY 2014) ("The percentage method better aligns the incentives of plaintiffs' counsel with those of the class members because it bases the attorneys' fees on the results they achieve for their clients[.]").

In other words, if Class Counsel believed that continued litigation could obtain a better result for the Class than the Settlement, they would have every incentive to continue litigating. The Court should give great weight to Class Counsel's determination that the Settlement is economically rational and maximizes value for the Class.

4. The Reaction Of The Class

As set forth in the accompanying Declaration of Alex Villanova, the Court-appointed claims administrator issued Notice, pursuant to the Court's preliminary approval order, by mailing 15,712 copies of the notice to potential class members. Although the objection deadline does not run for another two weeks, counsel have received no objections to date.[19] Nor have any

[19] Class Counsel will provide any objections to the Court prior to the Fairness Hearing.

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Class members requested exclusion.

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 FRD 523, 529 (CD Cal 2004). Indeed, courts routinely approve settlements that face dozens of objections where those objectors represent a small percentage of class members. *Id.* (fact that only 47 class members (less than 1% of class) objected was factor favoring final approval); *Lane v. Brown*, 166 F Supp 3d 1180, 1191 (D Or 2016) (approving settlement where "At the time of the fairness hearing, the class was estimated to include about 4,000 persons. … Yet only 32 written objections were received prior to the fairness hearing."); *Arnett v. Bank of Am., N.A.*, No. 3:11-CV-1372-SI, 2014 WL 4672458, at *10 (D Or Sept 18, 2014) ("out of 663,192 Settlement Class Members who received notices in this case, 102,506 claim forms were returned, only 99 opted-out of the Settlement Class, and only four filed objections to the Settlement Agreement. The Court has reviewed the objections and finds that no Settlement Class Member has stated grounds that would provide a substantial reason to deny approval. Thus, this factor weighs in favor of approval.").

5. The Settlement Was Reached Following A Mediation

In addition to the standards identified in *Linney*, the Court should also grant significant weight to the fact that the Settlement was achieved after the exchange of mediation briefs and after a full day mediation with Judge Phillips, a former federal judge and highly respected mediator.[20] "The assistance of an experienced mediator in the settlement process confirms that

[20] Judge Phillips is "a former federal district judge and a respected mediator" of complex class action disputes. *In re Pool Prod. Distribution Mkt. Antitrust Litig.*, No MDL 2328, 2014 WL 7407492, at *3 (ED La Dec 31, 2014). He recently successfully mediated the sprawling *Oregon v. Oracle America, Inc.* dispute, and has helped resolve some of the largest and most complex shareholder class actions in the country. *See, e.g., In re Activision Blizzard, Inc. S'holder Litig.*, 124 A3d 1025, 1042 (Del Ch 2015) ("The Settlement arose out of a mediation conducted by former United States District Court Judge Layn Phillips."); *In re Citigroup Inc. Sec. Litig.*, 965 F Supp 2d 369, 377 (SDNY 2013) ("In early 2012, the parties jointly retained Layn R. Phillips, a retired federal district judge, to mediate their settlement

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the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, No. C 03 2878 SI, 2007 WL 1114010, at *4 (ND Cal Apr 13, 2007); *see also In re Atmel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 WL 9525643, at *13 (ND Cal Mar. 31, 2010) ("Judge Phillips' participation weighs considerably against any inference of a collusive settlement."); *D'Amato v. Deutsche Bank*, 236 F3d 78, 85 (2d Cir 2001) ("mediator's involvement ... ensure[d] that the proceedings were free of collusion and undue pressure"); *In re Indep. Energy Holdings PLC*, No. 00 Civ. 6689(SAS), 2003 WL 22244676, *4 (SDNY Sept. 29, 2003) ("[T]hat the Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable."). It is also worth noting that the mediation was initially unsuccessful and the Parties only reached agreement after additional discussions that included direct communications and the further assistance of Judge Phillips.

C. Class Members Received Notice In The Form Ordered By The Court

Finally, ORCP 32 F requires that notice of any proposed class action settlement be given to the proposed class. *Thomas v. U.S. Bank N.A.*, 244 Or App 457, 461 n5 (2011) ("When ordering that an action be maintained as a class action under this rule, the court shall direct that notice be given to some or all members of the class under subsection E(2) of this rule, shall determine when and how this notice should be given and shall determine whether, when, how, and under what conditions putative members may elect to be excluded from the class.").

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negotiations."); *In re Am. Int'l Grp., Inc. Sec. Litig.*, 293 FRD 459, 462 (SDNY 2013) ("The Settlement, which was negotiated at arm's length over many years with the help of several mediators, including the Honorable Layn R. Phillips (Ret.), creates a Settlement Fund of $115,000,000.00."); *In re Delphi Corp. Sec., Derivative & "ERISA" Litig.*, 248 FRD 483, 488 (ED Mich 2008) ("Following intensive written and face-to-face negotiations facilitated by Judge Phillips in New York and Detroit in July and August 2007 partial settlements were reached in both the securities fraud and ERISA actions.").

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Here, pursuant to the Court's Preliminary Approval Order and as set forth in the Villanova Declaration, notice was provided to all ascertainable members of the Class—as determined by stockholder records provided by Rentrak and its transfer agent[21]—via first class mail. The Notice was issued in a manner that fulfilled due process, complied with the requirements of Oregon law, including ORCP 32 F, and alerted and informed members of the Class of the Settlement and provided each member of the respective Class their opportunity to submit a Proof of Claim, to request exclusion, or to object and to appear and be heard at the Fairness Hearing. In total, 15,712 copies of the Notice have been mailed to potential Class members.

V. Conclusion

The Settlement is a highly favorable resolution of the Action and is in the best interest of the Class. Plaintiffs respectfully request that the Court grant this motion and enter the Order Granting Final Approval of Class Action Settlement and Judgment, submitted herewith.

Dated this 8th day of August 2017.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By: s/ Timothy S. DeJong
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[21] In addition to the initial mailing to all 155 record holders, (Villanova Dec. ¶¶3-6) subsequent mailings have gone out to thousands of additional potential class members who held their shares in street name. *Id.* ¶¶7-9. "The vast majority of publicly traded shares in the United States are registered on the companies' books not in the name of beneficial owners—i.e., those investors who paid for, and have the right to vote and dispose of, the shares—but rather in the name of 'Cede & Co.,' the name used by The Depository Trust Company ('DTC') Shares registered in this manner are commonly referred to as being held in 'street name.' ... DTC holds the shares on behalf of banks and brokers, which in turn hold on behalf of their clients (who are the underlying beneficial owners or other intermediaries)." *In re Appraisal of Dell Inc.*, No. CV 9322-VCL, 2015 WL 4313206, at *4 (Del Ch July 13, 2015) (quoting John C. Wilcox, John J. Purcell III, & Hye–Won Choi, "STREET NAME" REGISTRATION & THE PROXY SOLICITATION PROCESS, IN A PRACTICAL GUIDE TO SEC PROXY AND COMPENSATION RULES 10–3, 10–3 (Amy Goodman et al. eds., 4th ed. 2007 & 2008 Supp.)).

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APPENDIX A

Methodology

The data below is gathered from annual reports issued by Cornerstone Research.[1] Transaction size as announced is based on public press releases by the companies involved.

Settlement Data

Year	Target Company	Settlement ($M)	Deal Size As Announced ($M)	Settlement As % Of Deal Size	Key Facts
2015	Bluegreen Corp	$36.50	$150.00	24.30%	Sale to controlling stockholder
2015	Dole Food Co	$148.20	$1,200.00	12.40%	Management buyout by CEO owning 39.5% of target
2015	PriMedia Inc.	$39.00	$525.00	7.40%	Sale to private equity firm; eliminated $190 million derivative claim against controlling stockholder for insider trading
2013	CNX Gas	$42.70	$932.00	4.60%	Sale to controlling stockholder
2016	Websense, Inc.	$40.00	$1,000.00	4.00%	Sale to private equity firm
2013	Infogroup	$13.00	$463.00	2.80%	Sale to private equity firm
2014	Jefferies Group LLC	$70.00	$2,500.00	2.80%	Sale to significant stockholder that owned 29% of target
2017	**Rentrak Corporation***	**$19.00**	**$732.00**	**2.60%**	**Arm's length acquisition by competitor that was not controlling stockholder; all shareholders received identical consideration**
2015	Hot Topic Inc.	$14.90	$600.00	2.50%	Sale to private equity firm
2013	Rural/Metro*	$11.60	$620.00	1.90%	Sale to private equity firm
2012	Delphi Financial	$49.00	$2,700.00	1.80%	Disproportionate consideration paid to Class B shares owned by CEO
2014	Epicor Software Corp	$18.00	$976.00	1.80%	Sale to private equity firm
2015	Prospect	$6.50	$363.00	1.80%	Sale to private equity firm

[1] Cornerstone Research, *Shareholder Litigation Involving Acquisitions of Public Companies Review of 2015 and 1H 2016 M&A Litigation*, https://www.cornerstone.com/Publications/Reports/Shareholder-Litigation-Involving-Acquisitions-2016.pdf; Cornerstone Research, *Shareholder Litigation Involving Acquisitions of Public Companies*: Review of 2014 M&A Litigation, https://www.cornerstone.com/Shareholder-Litigation-Involving-Acquisitions-2014-Review; Cornerstone Research, *Settlements of Shareholder Litigation Involving Mergers and Acquisitions*: *Review of 2013 M&A Litigation*, https://www.cornerstone.com/Publications/Reports/Settlements-of-M-and-A-Shareholder-Litigation; Cornerstone Research, *Shareholder Litigation Involving Mergers and Acquisitions: Review of 2012 M&A Litigation*, https://www.cornerstone.com/Publications/Reports/2012-Shareholder-Litigation-Involving-M-and-A; Cornerstone Research, *Recent Developments in Shareholder Litigation Involving Mergers and Acquisitions: March 2012 Update* [providing information on settlements in 2011 and 2010], https://www.cornerstone.com/Publications/Reports/Recent-Developments-in-Shareholder-Litigation-Invo.pdf

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Year	Target Company	Settlement ($M)	Deal Size As Announced ($M)	Settlement As % Of Deal Size	Key Facts
	Medical Holdings Inc.				
2010	Student Loan Corp.	$10.00	$600.00	1.70%	Sale alleged to be driven by controlling stockholder's need for immediate liquidity
2011	Mediacom Communications	$10.30	$600.00	1.70%	Management buyout by controlling shareholder
2011	Del Monte Foods	$89.00	$5,300.00	1.70%	Sale to private equity consortium
2011	GSI Commerce	$24.00	$2,400.00	1.00%	Key assets of target spun off to new company owned by CEO
2015	Globe Specialty Metals, Inc.	$32.50	$3,100.00	1.00%	Sale would have resulted in change-of-control; resulted in enhanced liquidity for founder who owned 12.6% of target
2014	Gardner Denver Inc	$29.00	$3,900.00	0.70%	Sale to private equity firm
2014	ArthroCare Corp	$12.00	$1,700.00	0.70%	Buyer's financial advisor was significant shareholder of target
2011	J. Crew Group	$16.00	$3,000.00	0.50%	Sale to private equity firm with CEO receiving significant equity rollover
2012	El Paso Corp	$110.00	$21,100.00	0.50%	Target's financial advisor owned 19.1% of target
2010	Protection One	$3.20	$828.00	0.40%	Sale to private equity firm, alleged to be driven by controlling stockholder's need for liquidity
2011	Atlas Energy	$5.00	$1,420.00	0.40%	Acquisition by controlling shareholder
2016	Onyx Corporation	$30.00	$10,400.00	0.30%	Arm's length acquisition by competitor that was not controlling stockholder; all shareholders received identical consideration
2010	Talecris Biotherapeutics	$8.10	$3,400.00	0.20%	Arm's length acquisition by competitor that was not controlling stockholder; all shareholders received identical consideration
2013	BMC Software	$12.40	$6,900.00	0.20%	Sale to private equity firm
2014	Cole Real Estate Inc	$14.00	$6,850.00	0.20%	Arm's length acquisition by competitor that was not controlling stockholder; all shareholders received identical consideration

* Partial settlement, preserving some claims against some defendants

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