IN THE CIRCUIT COURT FOR THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

IRA S. NATHAN,

Plaintiffs,

v.

SERGE MATTA, et al.,

Defendants.

Lead Case No.16CV32458
Assigned Judge: Hon. Jerry B. Hodson

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND APPROVAL OF NOTICE TO CLASS

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UNOPPOSED MOTION

Pursuant to a Stipulation of Settlement (the "Stipulation") between certain parties to the above-captioned actions (collectively, the "Action"),[1] submitted herewith, Class Representative John Hulme ("Hulme"), and Plaintiff Andrew B. Nathan, Trustee for the Ira S. Nathan Revocable Trust ("Nathan" and with Hulme, "Plaintiffs"), submit this unopposed motion for an order:

(i) Granting preliminary approval of the proposed Settlement on the terms and conditions set forth in the Stipulation;

(ii) Approving the form of notice (the "Notice")—substantially in the form annexed as Exhibit A-1 to the Stipulation, filed concurrently herewith—as sufficiently fair, reasonable, and adequate to warrant providing notice of the Settlement to the Class[2]; and

(iii) Scheduling a final settlement hearing (the "Fairness Hearing") at least seventy (70) days following the initial mailing of the Notice.

UTCR 5.010 CERTIFICATION OF CONFERRAL

This motion is made pursuant to the Stipulation and the relief requested herein is unopposed.

[1] The Stipulation is made and entered into by and among Defendant Ernst & Young LLP ("EY") and Plaintiffs (collectively with EY, the "Settling Parties"). Pursuant to the Stipulation, the Settling Parties have agreed to present the proposed settlement (the "Settlement") to the Court for approval.

[2] The Class consists of: "All record and beneficial holders of Rentrak Corporation stock whose Rentrak Corporation stock was, upon the closing of the merger between Rentrak and comScore, Inc. ('comScore') on January 29, 2016, converted to comScore stock issued pursuant to comScore's registration statement on Form S-4 (File No. 333-207714), filed with the Securities and Exchange Commission and declared effective on December 23, 2015 (the 'Registration Statement'). Excluded from the Class are Defendants, and any person who was an officer or director of Rentrak Corporation, comScore, Inc., or a partner of Ernst & Young LLP on January 29, 2016 (the 'Excluded Persons')."

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MEMORANDUM

I. INTRODUCTION

This is a class action on behalf of the former shareholders of Rentrak Corporation ("Rentrak") arising from the sale of Rentrak to comScore in a stock-for-stock transaction (the "Transaction"). The newly issued comScore shares that Plaintiffs and Class members received were issued pursuant to a registration statement (the "Registration Statement") that included comScore's financial statements for 2013, 2014, and the first three quarters of 2015. Plaintiffs allege that Defendant EY certified the 2013 and 2014 results.[3] Several weeks after the Transaction closed, comScore announced an internal investigation into accounting issues. comScore subsequently admitted that the financial statements included in the Registration Statement were materially misstated and were required to be restated (the "Restatement"). Plaintiffs allege that these corrective disclosures caused the comScore shares issued to Plaintiffs and other members of the Class to drop in value.

Plaintiffs, on behalf of the Class, have reached an agreement to settle the claims asserted against EY for $4,750,000. If the Settlement is approved by the Court, it will result in a significant payment to the Class and will resolve the claims against EY in their entirety.[4] Pursuant to Rule 32 D of the Oregon Rules of Civil Procedure. Plaintiffs seek the Court's

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[3] EY disputes that its audit opinions as to comScore's year-end 2013 and 2014 financial statements, which were incorporated by reference into the Registration Statement, constituted a "certification" of those financial statements within the meaning of Section 11 of the Securities Act. The parties agree that EY did not issue any audit opinions as to the first three quarters of 2015 and, therefore, did not certify the 2015 numbers.

[4] The Settlement does not release any claims asserted against Defendants Serge Matta, Melvin Wesley III, Magid M. Abraham, Gian M. Fulgoni, Russell Fradin, William J. Henderson, William Katz, Ronald J. Korn, and Joan Lewis (the "comScore Defendants"). On June 7, 2018, however, the United States District Court for the Southern District of New York granted final approval of a proposed settlement in *Fresno County Employees' Retirement Association, et al. v. comScore, Inc., et al.*, No. 1:16-cv-01820 (SDNY) (the "Federal Securities Action" and the "Federal Settlement"). The Federal Settlement released the claims asserted by Plaintiffs and the Class against the comScore Defendants. The Plaintiffs have dismissed their individual claims against the comScore Defendants.

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preliminary approval of the Settlement so that the Notice can be disseminated to the Class and a Fairness Hearing can be scheduled.

The Settlement is in the best interest of the Class. The Settlement must be viewed in light of the risks that further litigation might lead to no recovery, or to a smaller recovery, for the Class balanced against the potential damages that could be recovered if the claims against EY were to proceed to trial. Here, Plaintiffs and their counsel recognize a number of risks in establishing EY's liability, including complex issues of proof regarding the application of accounting principles, which Defendants have consistently argued involved significant judgment. In addition, and most importantly, this Settlement *with EY* must be viewed in relation to EY's liability relative to the comScore Defendants. There is little doubt that comScore—through certain of its officers and directors—committed significant misconduct; that fraud led to a $110 million Federal Settlement in the Southern District of New York (from which all Class members in this action were able to seek a recovery) and a formal investigation by the U.S. Securities and Exchange Commission (the "SEC"). Thus, absent this Settlement, the Class faced a significant risk that a jury would place all of the blame on comScore and the comScore Defendants and conclude that EY was not at fault. If this occurred, the Class would receive nothing from EY.

The Settlement ultimately provides a substantial recovery that is particularly noteworthy because, notwithstanding the particular risks noted above, it is consistent with the average settlement amount paid by auditor defendants in recent class action lawsuits under the federal securities laws and represents a large percentage of the total likely damages a jury would find against EY.

Plaintiffs and their counsel are well-informed regarding the merits and risks of the litigation. The Settlement is the product of a robust mediation process under the auspices of an experienced and highly respected mediator, the Honorable Layn Phillips, a retired federal judge. Prior to mediation, Plaintiffs had defeated Defendants' motions to dismiss, won an order certifying the Class's claims against EY, and conducted significant discovery, including the

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review and analysis of approximately 920,000 pages of documents and taking multiple depositions.

At the Fairness Hearing, the Court will have before it more extensive motion papers in support of the Settlement and will be asked to make a determination as to whether the Settlement is fair, reasonable, and adequate. At this time, however, Plaintiffs request only that the Court grant preliminary approval of the Settlement so that the Notice can be provided to the Class.

For the reasons set forth below, Plaintiffs request that this Court enter the Preliminary Approval Order, which will: (i) preliminarily approve the terms of the Settlement set forth in the Stipulation; (ii) approve the form and content of the Notice, and Claim Form, attached as Exhibits A-1 and A-2 to the Preliminary Approval Order; and (iii) set a date for the Fairness Hearing no earlier than seventy days after entry of the Preliminary Approval Order.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

This Action has been fiercely litigated. Represented by highly sophisticated counsel, EY vigorously litigated this matter: removing the action and seeking transfer to the Southern District of New York, moving to dismiss, contesting several motions to compel, asking the Court to defer ruling on Plaintiffs' motion for class certification, and so on. Through adversarial discovery, Class Counsel have obtained and reviewed approximately 920,000 pages of documents from Defendants and multiple third parties and have taken certain key depositions. The Settlement was reached after approximately eighteen months of hard-fought litigation, in the days following an arm's-length mediation conducted by former United States District Court Judge, Layn R. Phillips (retired).

A complete background of the litigation is set forth in the Stipulation at Section I and will not be repeated here. Needless to say, following extensive, hard-fought litigation—which included multiple briefs being filed in this Court, the U.S. District Court for the District of Oregon, and the U.S. District Court for the Southern Distirct of New York, as well as a mediation with Judge Phillips—the Settling Parties finally agreed to settle Plaintiffs' and the

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Class's claims claims against EY in exchange for EY's agreement to pay $4,750,000 for the benefit of the Class.

The benefits of the Settlement are obvious, a cash payment 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. In return for the Settlement Payment, EY will obtain a release of claims. Notably, the Settlement does not release any claim asserted in the parallel Federal Securities Action. (As noted above, those claims were addressed by the Federal Settlement).

III. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

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 putative 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 Mut. Ins. Co.*, 222 Or. App. 266 (2008), there are three steps to approve a class action settlement following class certification:

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

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- *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.

Through this Motion, the parties are asking the Court to take steps one and two and schedule the fairness hearing required by step three.

A. Preliminary Approval is Appropriate

Oregon has not expressly adopted a standard for preliminary approval. In *Froeber*, however, 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)." *Id.* at 275 (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) ("[The] universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable.")). It stands to reason, therefore, that Oregon's standard for *preliminary* approval should also track the federal standard.

Under the federal standard, "courts will grant preliminary approval where the proposed settlement is neither illegal nor collusive and is within the range of possible approval." NEWBERG ON CLASS ACTIONS § 13:13 (5th ed) (collecting cases); *see, e.g.*, *Reyes v. CVS Pharmacy, Inc.*, No. 1:14-CV-00964-MJS, 2016 WL 524762, at *6 (E.D. Cal. Feb. 10, 2016) ("[T]he Court determines whether the proposed agreement is within the range of possible approval and whether or not notice should be sent to class members.").

Here, the Settlement easily meets this standard. In considering whether to grant final approval, 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; and [3] the extent of discovery completed, and the stage of the proceedings; and the experience and views of counsel[.]" *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).[5] As shown

[5] *Linney* identifies several other factors that are irrelevant at this stage or to this case.

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below, Plaintiffs faced significant risks in establishing EY's liability and ultimate proportionate culpability. Yet, the Settlement Fund provides a substantial recovery for the Class, and the Settlement was reached after extensive litigation by well-informed and experienced counsel.

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

While Plaintiffs and their counsel believe strongly in the merits of their claims, they acknowledge that they faced serious risks in prosecuting the claims against EY through trial. Specifically, comScore has admitted in public filings that critical information was concealed from EY. Declaration of Joel Fleming ("Fleming Dec."), Ex. A ("The Audit Committee's investigation also identified concerns regarding internal control deficiencies, including … information not having been provided to the Company's accounting group and its external auditors…").

Suffice to say that discovery confirmed, in extensive detail, the accuracy of this statement. EY would have argued that it complied with Public Company Accounting Oversight Board ("PCAOB") auditing standards when it issued its audit opinions for the misstated 2013 and 2014 financial statements. At trial, EY would have contended that highly qualified auditors conducted robust audits of comScore's financial statements, and the misstatements would not have occurred but for comScore's failure to disclose critical facts to EY. Plaintiffs determined that there was a particularly acute risk that the jury would accept this argument, given the deception of EY by comScore. If proven, this could establish a complete affirmative due diligence defense. *See* 15 U.S.C. § 77k(b)(3); *Monroe v. Hughes*, 31 F.3d 772, 774 (9th Cir. 1994) (holding that "an accountant's good faith compliance" with applicable professional standards "discharges the accountant's professional obligation to act with reasonable care").

In addition, Plaintiffs recognized a considerable risk that, even if EY was unable to establish a complete due diligence defense at trial, it could nonetheless obtain a massive damages reduction based on its proportionate fault. Specifically, the Private Securities Litigation Reform

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Act of 1995 (the "PSLRA") provides that "[i]f a covered person enters into a settlement with the plaintiff prior to final verdict or judgment, the verdict or judgment shall be reduced by the greater of (i) an amount that corresponds to the percentage of responsibility of that covered person; or (ii) the amount paid to the plaintiff by that covered person." 15 U.S.C. § 78u-4(f)(7)(B). In other words, the Federal Settlement would entitle EY to a substantial damages reduction on the basis of comScore and the comScore Defendants' proportionate fault.

EY also asserted that none of comScore's stock price decline resulted from the misstatements in the financial statements audited by EY (*i.e.*, the financial statements for 2013 and 2014, but not 2015), which would give EY an affirmative "negative causation" defense under Section 11(e). *See* 15 U.S.C. § 77k(e); *Hildes v. Arthur Andersen* LLP, 734 F3d 854, 860 (9th Cir 2013) ("The affirmative defense of negative causation prevents recovery for losses that the defendant proves are not attributable to the alleged misrepresentation or omission in the registration statement.").

While comScore's stock price dropped as a result of the March 7, 2016 and June 27, 2016 disclosures— announcing delays in comScore's 2015 financial statements—its stock price actually increased slightly on September 15, 2016 when changes to the 2013 and 2014 numbers were announced. At summary judgment and trial, EY would have argued that this pattern disproved any causal relationship between the price declines and the misstatements in comScore's 2013 and 2014 financial statements that EY audited. Though Plaintiffs had strong arguments in response to this theory, there remained a real possibility that the negative causation defense would be found dispositive of Plaintiffs' claims at summary judgment or trial, completely eliminating EY's liability.

Finally, even if EY could not establish a complete negative causation defense, EY would almost certainly have been able to reduce significantly the total damages owed by showing that a large portion of the decrease in comScore's stock price was caused by factors other than the misstated 2013 and 2014 results. *See* 15 U.S.C. 77k(e); *Levine v. AtriCure, Inc.*, 508 F Supp 2d

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268, 272 (SDNY 2007) ("Congress enacted § 11(e), which makes the absence of loss causation, also known as 'negative causation,' an affirmative defense to reduce or avoid liability under § 11."). The Restatement had a far more significant impact on comScore's unaudited 2015 results than the 2013 and 2014 results that EY did audit. Specifically, the Restatement wiped out $98 million of revenue in 2015 compared to $24.8 million of revenue in 2014, and just $4.2 million of revenue in 2013. Fleming Dec., Ex. B at 35-37. In other words, the 2013 and 2014 financial statements that EY audited accounted for less than 25% of the total revenue reversed by the Restatement. *Id.*[6]

These specific challenges aggravated the risks always present in securities class action litigiation—including prevailing at trial and overcoming the likely appeals—all of which could extend litigation for years and might lead to a smaller recovery, or no recovery at all, for the Class. *See, e.g.*, *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) ("Complex litigation is inherently uncertain … In addition, the issues in this case involved complex and highly technical areas of … accounting."). Given the significant risks of continued litigation, the $4,750,000 Settlement provides an excellent resolution against EY in this Action.

2. The Amount Offered In Settlement

When considering a settlement, the court must question whether, in light of litigation risks and in the context of settlements involving similar claims, the amount offered in settlement is substantial. *Lane v. Facebook, Inc.*, No. C 08-3845 RS, 2010 WL 9013059, at *4 (N.D. Cal. Mar. 17, 2010), *aff'd*, 696 F.3d 811 (9th Cir. 2012). In evaluating this question, a recent study of securities class action lawsuits against auditors published by Stanford Law School is illuminating. *See* Honigsberg, et al., *The Changing Landscape of Auditor Litigation and Its*

[6] In addition to the argument that a portion of the drops were attributable to the misstatements in comScore's unaudited 2015 financial figures, EY would also have been able to show an industry-wide decline of approximately 28% across companies in the internet marketing segment in early 2016 and analyst reports suggesting that comScore investors were concerned about other issues that contributed to comScore shares underperforming during the relevant period.

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Implications for Audit Quality, Working Paper No. 512 John M. Olin Program in Law and Economics, Stanford Law School (Sept. 27, 2017), available at http://ssrn.com/abstract=3074923 (the "Stanford Study"). The Stanford Study concluded that "the frequency of lawsuits brought against auditors under federal securities laws, the outcomes of motions to dismiss, and settlement values paid by auditors—all … suggest that" litigation exposure "has significantly declined for auditors over the past two decades." *Id.* at 34.

According to the Stanford Study, the **total** of all settlements paid by all auditor defendants in all federal securities class action lawsuits filed between 2011 through June 2016 is just $23 million.[7] *Id.* at 45. Looking at all auditor settlements in all securities class actions going back to 1996, the Stanford Study's data shows that the median auditor settlement is $0 and the 75th percentile auditor settlement is $3.3 million, while the mean is $8.78 million. *Id.* at 47 (Panel C). Thus, the $4.75 million Settlement Fund, when considered against the risks extant in this litigation, is an exceptional result.

The Settlement Fund also represents a significant recovery when compared to the total potential damages. Section 11(e) provides for a mechanical damages calculation with a rebuttable presumption that damages are equal to the difference between: (1) the purchase (or acquisition) price; and (2) (a) if the security is sold before the action was filed, the sale price; or (b) if the security was still held at the time the action was filed, the value of the security at the time that the action was filed (unless the security was sold for a higher price after the action was filed but before judgement). 15 U.S.C. § 77k(e). Importantly, as noted above, any judgment would then be reduced by the proportion of responsibility borne by comScore and the comScore Defendants as well as by the proportion of the decline in comScore's stock price attributable to factors other than the misstatements certified by EY. 15 USC § 77k(e); 15 U.S.C. § 78u-4(f)(7)(B).

[7] As the authors note, "many of the[ ] cases [brought in 2014 through June 2016] are still pending." *Id.* at 20.

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Therefore, the calculation of approximate classwide damages is as follows:

> 15.3 million [shares of Rentrak outstanding before the Merger] * 1.15 [shares of comScore issued per share of Rentrak] * ($38.53 [comScore's stock price on the day the Transaction closed] - $30.36 [comScore's stock price on the day the action was filed]) * (1 - *Percentage of Responsibility of comScore and the comScore Defendants*) * (1 - *Proportion of Stock Drop Caused By Unrelated Factors*).

Given comScore's admission that significant facts were hidden from EY, it was, in Class Counsel's considered judgment, unlikely that a jury would assign EY more than 10% to 15% of the proportionate responsibility. To the contrary, it seemed significantly more likely that the jury would assess EY's proportionate responsibility in the single digits (*i.e.*, 1% to 9%). Similarly, given that more than 75% of the revenue reversed by the Restatement was recorded in 2015 (and, thus, not audited or certified by EY), Class Counsel believed it unlikely that a jury would find that more than 50% of the decline in comScore's stock price was attributable to the 2013 and 2014 figures that EY did audit.

Assuming these predictions were accurate and based on the calculation above, even if Plaintiffs and the Class were able to establish EY's liability, the total damages recoverable from EY could be as low as $7.2 million. Against this backdrop, the $4.75 million settlement fund represents an extraordinary result. *See, e.g.*, *Destefano v. Zynga, Inc.*, 12-CV-04007-JSC, 2016 WL 537946, at *11 (ND Cal Feb 11, 2016) ("[I]n securities class action cases between 2013 and 2015, settlements involved a median recovery of 2.2 percent of estimated damages. This was an increase from prior years: the median recovery was 2.1 percent in 2011 and 1.8 percent in 2012. The median settlement as a percentage of estimated damages in the Ninth Circuit hovered around at 2.4 percent from 2005 through 2014.") (citing Laarni T. Bulan et al., *Securities Class Settlements: 2014 Review & Analysis*, CORNERSTONE RESEARCH, at 8 (2015)).

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

This Action has been ongoing for approximately eighteen months. Through adversarial

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discovery—including five motions to compel[8]—Class Counsel have obtained and reviewed approximately 920,000 pages of documents from EY, comScore and the comScore Defendants, and multiple third parties including, among others, Rentrak's accounting advisor (Grant Thornton), comScore's forensic auditors (AlixPartners), comScore's outside accounting consultants (CrossCountry), and comScore's counterparties in certain key transactions. Counsel have also taken multiple depositions. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 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. 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* Fleming Dec., Exs., C, D, and E; *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 229 F. Supp. 3d 1052, 1067 (N.D. Cal. 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 intend to seek 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 (E.D.N.Y. 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[.]").

[8] Plaintiffs' motions to compel were all either granted, mooted, or still pending when the Settlement was reached.

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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 Settlement Was Reached Via 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.[9] "The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, No. C 03 2878 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007); *see also In re Atmel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 WL 9525643, at *13 (N.D. Cal. Mar. 31, 2010) ("Judge Phillips' participation weighs considerably against any inference of a collusive settlement."); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (the "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 (S.D.N.Y. Sept. 29, 2003) ("[T]hat the

[9] Judge Phillips—who also mediated the Federal Settlement and the settlement in the related *In re Rentrak* action—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 (E.D. La. Dec. 31, 2014). Judge Phillips 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. Stockholder Litig.*, 124 A.3d 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 (S.D.N.Y. 2013) ("In early 2012, the parties jointly retained Layn R. Phillips, a retired federal district judge, to mediate their settlement negotiations."); *In re Am. Int'l Grp., Inc. Sec. Litig.*, 293 F.R.D. 459, 462 (S.D.N.Y. 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 F.R.D. 483, 488 (E.D. 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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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; the Settling Parties reached agreement only after additional discussions that included direct communications and the further assistance of Judge Phillips.

B. The Court Should Approve the Proposed Form of Notice

ORCP 32 F requires that notice of any proposed class action settlement be given to the proposed class. As agreed to by the Settling Parties, Plaintiffs' Counsel propose the Notice and the Proof of Claim and Release (the "Proof of Claim"), attached to the Stipulation, at Exhibits A-1 and A-2, be provided to all ascertainable members of the Class—as determined by stockholder records previously provided by Rentrak and its transfer agent—via first class mail, and as set forth in the proposed Order Consolidating Actions, Certifying Class, Preliminarily Approving Settlement, and Providing for Notice (the "Order"). Stipulation, Exhibit A. Class Counsel selected the claims administrator via a competitive request-for-proposal process sent to multiple qualified firms.

Notice to the Class in the form and in the manner set forth in the proposed Order will fulfill due process, comply with the requirements of Oregon law, including ORCP 32 F, alert and inform members of the Class of the Settlement, and provide each member of the Class an opportunity to submit a Proof of Claim, to request exclusion, or to object and to appear and be heard at the Fairness Hearing.

C. The Court Should Schedule A Fairness Hearing

The last step in the approval process is the Fairness Hearing, whereby proponents of the settlement may explain the terms and conditions of the Settlement and offer argument in support of approval, and Class members or their counsel may be heard in support of or in opposition to the Settlement. *See Linney*, 151 F.3d at 1243 ("[T]he district judge held a fairness hearing, to which he invited all objectors, and responded to the objections raised. In addition, the district

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judge outlined those objections, gave his responses, and stated why he believed the settlement to be fair, reasonable, and adequate… .”). Plaintiffs request that the Court schedule a Fairness Hearing no earlier than seventy (70) days after entry of the Preliminary Approval Order.

Plaintiffs also request that the Court approve the following schedule of events leading up to the Final Settlement Hearing, as set forth in the proposed Order:

Event	Deadline
Claims Administrator to cause mailing of the Notice and Proof of Claim to the Class (the “Notice Date”)	Fourteen (14) calendar days after entry of the Preliminary Approval Order
Date by which Class Counsel will file papers in support of final approval of settlement and motion for award of attorneys’ fees and expenses	Thirty-five (35) calendar days before the Fairness Hearing
Last day for Class Members to request exclusion from the Class or to object to the Settlement	Twenty-one (21) calendar days after the Notice Date.
Date by which to file reply papers in further support of final approval of settlement and motion for award of attorneys’ fees and expenses	Seven (7) calendar days before the date of the Fairness Hearing
Deadline to file Proof of Claim	Ninety (90) calendar days after the Notice Date
Fairness Hearing	At least seventy (70) calendar days after the Notice Date, in accordance with the Court’s availability

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IV. 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 Preliminary Approval Order ordering, *inter alia*, preliminary approval of the Settlement, approval of the mailing of the Notice and Proof of Claim, and scheduling the Fairness Hearing.

Dated this 18th of July 2018.

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