IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

IRA S. NATHAN, Plaintiffs, v. SERGE MATTA, et al., Defendants.	Lead Case No. 16CV32458 Assigned to Hon. Jerry B. Hodson **PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY 3

III. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL 4

A. Final Approval Is Appropriate 4

1. Strength Of Plaintiffs' Case And The Risk, Expense, Complexity, And Likely Duration Of Further Litigation 5

2. The Amount Offered In Settlement 6

3. The Extent Of Discovery Completed And The Views And Experience Of Counsel 11

4. The Settlement Was Reached Via A Mediation 12

B. Class Members Received Notice In The Form Ordered By The Court 13

IV. CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Class Plaintiffs v. City of Seattle,
955 F2d 1268 (9th Cir 1992) 4

D'Amato v. Deutsche Bank,
236 F.3d 78 (2d Cir. 2001) 11

Destefano v. Zynga, Inc.,
12-CV-04007-JSC, 2016 WL 537946 (ND Cal Feb 11, 2016) 9

Fresno County Employees' Retirement Association, et al. v. comScore, Inc., et al.,
No. 1:16-cv-01820 (SDNY) 2

Froeber v. Liberty Mutual Insurance Company,
222 Or App 266 (2008) 4, 5

Hildes v. Arthur Andersen LLP,
734 F3d 854 (9th Cir 2013) 7

In re Activision Blizzard, Inc. Stockholder Litig.,
124 A.3d 1025 (Del. Ch. 2015) 12

In re Am. Int'l Grp., Inc. Sec. Litig.,
293 F.R.D. 459 (S.D.N.Y. 2013) 12

In re Appraisal of Dell Inc.,
No. CV 9322-VCL, 2015 WL 4313206 (Del Ch July 13, 2015) 13

In re Atmel Corp. Derivative Litig.,
No. C 06-4592 JF (HRL), 2010 WL 9525643 (N.D. Cal. Mar. 31, 2010) 12

In re Citigroup Inc. Sec. Litig.,
965 F. Supp. 2d 369 (S.D.N.Y. 2013) 12

In re Delphi Corp. Sec., Derivative & "ERISA" Litig.,
248 F.R.D. 483 (E.D. Mich. 2008) 12

In re Indep. Energy Holdings PLC,
No. 00 Civ. 6689(SAS), 2003 WL 22244676 (S.D.N.Y. Sept. 29, 2003) 13

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000) 8

In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,
991 F. Supp. 2d 437 (E.D.N.Y. 2014) 12

In re Pool Prod. Distribution Mkt. Antitrust Litig.,
No. MDL 2328, 2014 WL 7407492 (E.D. La. Dec. 31, 2014). 12

In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.,
229 F. Supp. 3d 1052 (N.D. Cal. 2017) 11

Lane v. Facebook, Inc.,
No. C 08-3845 RS, 2010 WL 9013059 (N.D. Cal. Mar. 17, 2010) 8

Levine v. AtriCure, Inc.,
508 F Supp 2d 268 (SDNY 2007) 7

Linney v. Cellular Alaska P'ship,
151 F3d 1234 (9th Cir 1998) 5, 12

Monroe v. Hughes,
31 F.3d 772 (9th Cir. 1994) 6

Pollock & Pollock,
357 Or 575 (2015)... 4

Rodriguez v. W. Publ'g Corp.,
563 F.3d 948 (9th Cir. 2009) 11

Satchell v. Fed. Express Corp.,
No. C 03 2878 SI, 2007 WL 1114010 (N.D. Cal. Apr. 13, 2007) 12

Strawn v. Farmers Ins. Co. of Oregon,
353 Or. 210 (2013).. 11

Thomas v. U.S. Bank N.A.,
244 Or App 457 (2011)... 13

Weems v. Am. Int'l Adjustment Co.,
319 Or 140 (1994)... 4

Statutes

15 U.S.C. § 77k(b)(3) 6

15 U.S.C. § 77k(e) 6, 7, 9

15 U.S.C. § 78u-4(f)(7)(B) 7, 9

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Honigsberg, et al., *The Changing Landscape of Auditor Litigation and Its Implications for Audit Quality, Working Paper No. 512 John M. Olin Program in Law and Economics, Stanford Law School (Sept. 27, 2017),* *8, 9*

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.)........ *13*

Laarni T. Bulan et al., Securities Class Action Settlements: 2014 Review & Analysis, CORNERSTONE RESEARCH, at 8 (2015) 10

Rules

FRCP 23(e) 5

ORCP 32 D 4, 5

ORCP 32 F........ 13, 14

UTCR 5.010 CERTIFICATION OF CONFERRAL

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

UNOPPOSED MOTION

Pursuant to the Stipulation of Settlement (the "Stipulation") between certain parties to the above-captioned actions (collectively, the "Action"),[1] previously submitted to the Court, 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 granting final approval of the proposed Settlement on the terms and conditions set forth in the Stipulation.

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.[2] 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

[1] The Stipulation was 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] 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.

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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. The Court has granted preliminary approval of the Settlement and notice has been issued to the Class as set forth in the Court's preliminary approval order. If the Settlement is given final approval by the Court, it will result in a significant payment to the Class and will resolve the claims against EY in their entirety.[3]

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 faced a number of risks in establishing EY's liability, including issues of proof regarding the application of complex and arguably subjective accounting principles. Most importantly, the Settlement *with EY* must be viewed with an eye toward 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"). Absent this Settlement, the Class faced a significant risk that a jury would place all of the blame on comScore and the comScore

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[3] 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, 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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Defendants and conclude that EY was not at fault. If that occurred, the Class would receive nothing from EY. Even if the jury found that EY bore some of the blame, the damages recoverable would be reduced proportionate to EY's relative fault.

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 damages a jury would likely 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 review and analysis of approximately 920,000 pages of documents and taking multiple depositions.

For all these reasons, the Court should approve the Settlement.

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,[4] 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

[4] The other Defendants also sought, unsuccessfully, to have Judge Koeltl of the Southern District of New York stay discovery in this Action.

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1 approximately eighteen months of hard-fought litigation, in the days following an arm's-length
2 mediation by Judge Phillips.

3 A complete background of the litigation is set forth in the Stipulation at Section I and will
4 not be repeated here. Needless to say, following extensive, hard-fought litigation—which included
5 multiple briefs being filed in this Court, the U.S. District Court for the District of Oregon, and the
6 U.S. District Court for the Southern Distirct of New York, as well as a mediation with Judge
7 Phillips—the Settling Parties agreed to settle Plaintiffs' and the Class's claims claims against EY
8 in exchange for EY's agreement to pay $4,750,000 for the benefit of the Class.

9 The benefits of the Settlement are obvious, a significant cash payment that will pass to
10 Class members who file valid proofs of claims in accordance with the Plan of Allocation. In return
11 for the Settlement Payment, EY will obtain a release of claims.

12 **III. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL**

13 Oregon has a well-established and strong public policy favoring compromises of
14 litigation. *See generally Pollock & Pollock*, 357 Or 575, 591 (2015) (recognizing Oregon's
15 "general policy favoring settlements"); *accord Weems v. Am. Int'l Adjustment Co.*, 319 Or 140,
16 145 (1994) ("This court strongly encourages settlement of all kinds of legal disputes.").
17 Nonetheless, the Oregon Rules of Civil Procedure require Court approval and notice before a
18 class action can be settled. *See* ORCP 32 D ("Any action filed as a class action in which there
19 has been no ruling under subsection C(1) of this rule and any action ordered maintained as a
20 class action shall not be … compromised without the approval of the court, and notice of the
21 proposed … compromise shall be given to some or all members of the class in such manner as
22 the court directs… .").

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

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

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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 granted preliminary approval, and approved the details of the Notice. The Notice has been issued consistent with the Court's order. *See* Declaration of Danielle Greene Regarding Notice Dissemination And Requests For Exclusion Received To Date ("Greene Dec.") ¶¶2-10. Now the Court must decide whether to grant final approval.

A. Final Approval is Appropriate

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."[5] *Linney v. Cellular Alaska P'ship*, 151 F3d 1234, 1242 (9th Cir 1998) (internal quotations omitted).[6]

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[5] With respect to the reaction-of-class-members factor, the deadline for Class members to object to or opt out of the Settlement has not yet passed. So far, however, no Class members have filed objections or opt-out requests.

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

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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 admitted in public filings that critical information was concealed from EY. Declaration of Class Counsel ("Class Counsel Dec."), Ex. H ("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…").

Discovery confirmed, in extensive detail, the accuracy of this statement. At trial, EY would have contended—with not-insubstantial evidentiary support—that its highly qualified auditors conducted robust, good-faith 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 comScore's admitted deception of EY. 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").

Even if EY was unable to establish a complete due diligence defense at trial, there was a considerable risk that it could nonetheless obtain a massive damages reduction based on its proportionate fault. Specifically, the Private Securities Litigation Reform Act of 1995 (the "PSLRA") provides that "[i]f a covered person[—a statutory term of art that applies to comScore and the comScore Defendants—]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

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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, if established at trial, 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 continued to argue 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 novel theory, there remained a real possibility that the negative causation defense would be found dispositive of Plaintiffs' claims at summary judgment or trial, thus eliminating EY's liability.

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 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

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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.*[7]

These specific challenges aggravated the risks always present in securities class action litigation—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 for the Class.

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 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

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[7] 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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1 against auditors under federal securities laws, the outcomes of motions to dismiss, and settlement

2 values paid by auditors—all … suggest that" litigation exposure "has significantly declined for

3 auditors over the past two decades." *Id.* at 34.

4 According to the Stanford Study, the **total** of all settlements paid by all auditor

5 defendants in all federal securities class action lawsuits filed between 2011 through June 2016

6 was just $23 million.[8] *Id.* at 45. Looking at all auditor settlements in all securities class actions

7 going back to 1996, the Stanford Study's data shows that the median auditor settlement is $0 and

8 the 75th percentile auditor settlement is $3.3 million. *Id.* at 47 (Panel C). Thus, the $4.75 million

9 Settlement Fund, when considered against the risks extant in this litigation, is an exceptional

10 result.

11 The Settlement Fund also represents a significant recovery when compared to the total

12 potential damages. Section 11(e) provides for a mechanical damages calculation with a

13 rebuttable presumption that damages are equal to the difference between: (1) the purchase (or

14 acquisition) price; and (2) (a) if the security is sold before the action was filed, the sale price; or

15 (b) if the security was still held at the time the action was filed, the value of the security at the

16 time that the action was filed (unless the security was sold for a higher price after the action was

17 filed but before judgement). 15 U.S.C. § 77k(e). Importantly, as noted above, any judgment

18 would then be reduced by the proportion of responsibility borne by comScore and the comScore

19 Defendants as well as by the proportion of the decline in comScore's stock price attributable to

20 factors other than the misstatements certified by EY. 15 USC § 77k(e); 15 U.S.C. § 78u-

21 4(f)(7)(B).

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

23 15.3 million [shares of Rentrak outstanding before the Merger] * 1.15 [shares of

24 comScore issued per share of Rentrak] * ($38.53 [comScore's stock price on the

25 [8] As the authors note, "many of the[ ] cases [brought in 2014 through June 2016] [we]re still

26 pending" at the time of publication. *Id.* at 20.

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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)).

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1 3. <u>The Extent of Discovery Completed And The Views And Experience of Counsel</u>
2
3 This Action had been ongoing for approximately eighteen months at the time the
4 Settlement was reached. Through adversarial discovery—including five motions to compel[9]—
5 Class Counsel obtained and reviewed approximately 920,000 pages of documents from EY,
6 comScore and the comScore Defendants, and multiple third parties including, among others,
7 Rentrak's accounting advisor (Grant Thornton), comScore's forensic auditors (AlixPartners),
8 comScore's outside accounting consultants (CrossCountry), and comScore's counterparties in
9 certain key transactions. Counsel have also taken multiple depositions. *Rodriguez v. W. Publ'g*
10 *Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) ("Extensive discovery had been conducted. … From
11 this the district court could find that counsel had a good grasp on the merits of their case before
12 settlement talks began.").
13 Class Counsel include highly sophisticated attorneys. In evaluating the discovery record
14 in this case, they were able to draw on years of experience in complex shareholder class actions
15 at both plaintiffs' firms and large corporate defense firms. *See* Class Counsel Dec., Exs., F-G; *In*
16 *re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 229 F. Supp. 3d
17 1052, 1067 (N.D. Cal. 2017) ("Parties represented by competent counsel are better positioned
18 than courts to produce a settlement that fairly reflects each party's expected outcome in
19 litigation. Courts afford 'great weight' ... to the recommendation of counsel, who are most
20 closely acquainted with the facts of the underlying litigation.") (internal quotations omitted).
21 Moreover, the interests of Class Counsel are wholly aligned with those of the Class—as
22 they are working on contingency and are seeking compensation solely on the basis of a
23 percentage of the overall Settlement Fund. *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210,
24
25 [9] Plaintiffs' motions to compel were all either granted, mooted, or still pending when the
26 Settlement was reached.

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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[.]").

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.[10] "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-

[10] 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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1 4592 JF (HRL), 2010 WL 9525643, at *13 (N.D. Cal. Mar. 31, 2010) ("Judge Phillips'
2 participation weighs considerably against any inference of a collusive settlement."); *D'Amato v.*
3 *Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (the "mediator's involvement ... ensure[d] that
4 the proceedings were free of collusion and undue pressure"); *In re Indep. Energy Holdings PLC*,
5 No. 00 Civ. 6689(SAS), 2003 WL 22244676, *4 (S.D.N.Y. Sept. 29, 2003) ("[T]hat the
6 Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a
7 private mediator experienced in complex litigation, is further proof that it is fair and
8 reasonable."). It is also worth noting that the mediation was initially unsuccessful; the Settling
9 Parties reached agreement only after additional discussions that included direct communications
10 and the further assistance of Judge Phillips..

11 **B. Class Members Received Notice In The Form Ordered By The Court**

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

18 Here, pursuant to the Court's Preliminary Approval Order and as set forth in the Greene
19 Declaration, notice was provided to all ascertainable members of the Class—as determined by
20 stockholder records produced by Rentrak and its transfer agent in the *In re Rentrak* litigation[11]—

21

22 [11] In addition to the initial mailing to all 156 record holders, (Greene Dec. ¶4-5) subsequent mailings have gone out to thousands of additional potential class members who held their shares
23 in street name. *Id.* ¶¶5-10. "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
24 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
25 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
26 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

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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, 11,722 copies of the Notice have been mailed to potential Class members. Thus far, no Class members have objected to or opted out of the Settlement.

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 Order Granting Final Approval of Class Action Settlement and Judgment, submitted herewith.

Dated this 9th day of October, 2018.

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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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1 CERTIFICATE OF SERVICE

2 I hereby certify that I caused to be served the foregoing **PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT**on the following named persons, on the date indicated below, via the Court's OJD Electronic File & Serve system, which will send electronic notification of such filing on all registered participants per UTCR 21.100. I further certify that I have caused to be served a correct copy of the same to any non-registered parties, as follows:

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