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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

IN RE RENTRAK CORPORATION) Consolidated Lead Case No. 15CV27429
SHAREHOLDERS LITIGATION)
) Assigned To Judge Litzenberger
)
) SECOND AMENDED CLASS ACTION
) COMPLAINT (Breach Of Fiduciary Duty)
)
) NOT SUBJECT TO MANDATORY
) ARBITRATION
)
) Fee Authority: ORS 21.135(1), 2(a)
)
) JURY TRIAL DEMANDED

Plaintiff Ira S. Nathan (“Plaintiff”), individually and on behalf of all others similarly situated, brings this class action complaint against Rentrak Corporation (“Rentrak” or the “Company”), Rentrak’s Board of Directors (the “Board” or the “Director Defendants”), and its Chief Executive Officer and Chief Financial Officer (collectively with the Board, the “Individual Defendants” and with Rentrak, the “Rentrak Defendants”). Plaintiff brings claims against the Individual Defendants for breaching their fiduciary duties arising from the sale of Rentrak to comScore Inc. (“comScore”) in an all-stock transaction (the “Transaction”), which was announced on September 29, 2015 and closed on February 1, 2016. Plaintiff also asserts claims against comScore for aiding and abetting the Individual Defendants’ breaches of fiduciary duty and against Rentrak and comScore for equitable relief.¹

¹ Plaintiff, by and through his attorneys, alleges upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters. Plaintiff’s allegations are based upon the investigation conducted by and through his attorneys, which included, among other things, a review of documents filed by Defendants with the United States Securities and Exchange Commission (the “SEC”)—including the definitive Form S-4 (or “Registration Statement”) filed with the SEC on December 23, 2015—news reports, press releases and other

1 NATURE AND SUMMARY OF THE ACTION

2 “The directors’ duty under Delaware law, and presumptively under other state laws as
3 well, is to maximize the price received by stockholders in the merger.”

4 - Thomas J. Dougherty, *The Directors’ Handbook: 2015 Edition*

5 1.

6 This is a case about a Board that utterly failed to maximize shareholder value and instead
7 allowed the greed and pride of two senior executives—Rentrak’s former CEO William P. Livek
8 (“Livek”) and its former CFO David Chemerow (“Chemerow”)—to override the interests of
9 shareholders.

10 2.

11 With the acquiescence of a supine Board, Livek and Chemerow sold the Company to
12 comScore in an all-stock transaction in which Rentrak shareholders received 1.15 shares of
13 comScore common stock for each share of Rentrak that they held (the “Exchange Ratio”). Based
14 on the price of comScore stock at the time the Transaction was announced, this reflects an
15 implied value of \$47.69 per share of Rentrak (the “Implied Transaction Value”).

16 3.

17 The Transaction did not come close to maximizing shareholder value. A
18 contemporaneous discounted cash flow (“DCF”) analysis² by Rentrak’s own financial advisor,
19 Goldman Sachs, & Co. (“Goldman Sachs”), projected Rentrak’s value as a stand-alone company
20 to be \$63.52 to \$79.29 per share—**\$15.83 to \$31.26 per share more** than the Implied Transaction
21 Value. Moreover, in the course of negotiations with comScore, Rentrak had received an
22 unsolicited offer of \$75 to \$80 per share from a competing bidder, Company B—representing

23 _____
24 publicly available documents, as well as an extremely limited set of internal documents produced
25 by Rentrak and “Company B” (defined herein). Company B was identified previously in sealed
26 filings.

² As Delaware’s Court of Chancery has repeatedly recognized, a DCF analysis is “the most
reliable and pertinent” method to determine the value of a company. *Global GT LP v. Golden
Telecom, Inc.*, 993 A.2d 497, 510 (Del. Ch. 2010).

1 ***\$27.31 to \$32.31 per share more*** than the Implied Transaction Value. Rather than
2 embrace Company B’s premium offer, Livek and Chemerow chased Company B away by
3 refusing to provide answers to even basic diligence requests.

4 4.

5 Why did Livek, Chemerow, and the other Individual Defendants favor comScore’s bid,
6 which was inferior to both Company B’s offer and the value of continuing as a stand-alone
7 company?

8 5.

9 *First*, comScore was willing to give the Individual Defendants everything they wanted.
10 Livek and Chemerow negotiated the terms of their continuing employment with comScore ***at the***
11 ***same time*** they were negotiating the material terms of the Transaction—including the
12 consideration that comScore would pay Rentrak shareholders. Shockingly, Livek implied to
13 comScore’s CEO that he and the Rentrak Board would ***not*** be focused on maximizing value or
14 require a very favorable exchange ratio as long as comScore agreed to give Livek, Chemerow,
15 and certain Rentrak board members their desired roles in the combined company.

16 6.

17 comScore did exactly that. Livek became comScore’s Executive Vice Chairman and
18 President. Chemerow became a “strategic advisor” to comScore’s CEO and the combined
19 company’s Chief Revenue Officer. Similarly, four members of Rentrak’s Board—Defendants
20 Livek, Rosenthal, Gottesman and Engel—joined the comScore board upon completion of the
21 Transaction. Furthermore, any outstanding Rentrak stock options and/or restricted and deferred
22 stock units automatically vested resulting in an immediate windfall to the Board and executive
23 officers in excess of \$35.4 million.

24 7.

25 *Second*, the Transaction served the interests of WPP LLC (“WPP”)—a multinational
26 advertising firm—which held large stakes in both comScore and Rentrak. At the time the

1 Transaction was announced, WPP owned approximately 15% to 20% of each company,
2 respectively. The Transaction was largely driven by WPP’s desire to create a significant rival to,
3 and thereby gain leverage over, Nielsen Holdings N.V. (“Nielsen”)—a large information and
4 measurement company with whom WPP regularly both competes and cooperates. A month prior
5 to the announcement of the Transaction, WPP urged comScore and Rentrak to “*come together*”
6 in order to compete with Nielsen. Additionally, the Registration Statement is replete with
7 references to WPP’s central role in the negotiation of the Transaction. The problem for Rentrak
8 shareholders, however, is that WPP’s interests diverged from other shareholders. WPP was
9 pursuing size at any cost and was indifferent to price.³

10 8.

11 Rentrak shareholders’ last hope was at the ballot box. In recognition of the extraordinary
12 nature of sale transactions—and the tremendous potential for abuse—Oregon law imposes a
13 critical safeguard: a requirement that shareholders vote to approve the sale. For this vote to be
14 meaningful, however, directors must discharge their fiduciary duty to disclose all material facts
15 to shareholders prior to the shareholder vote.

16 9.

17 Here, however, the Rentrak Board failed to disclose no less than two key pieces of
18 material information prior to the shareholder vote—violating their fiduciary duties and
19 completely vitiating shareholders’ ability to give informed consent. The shareholder vote to
20 approve the Transaction took place on January 28, 2016, but was fatally tainted by Defendants’
21 failure to disclose all material information.

22 10.

23 Specifically, among other things, the definitive Registration Statement failed to disclose:

- 24 • The price or any other terms of Company B’s proposal, which even Livek and

25 ³ A merger with any exchange ratio (or, indeed, any combination of cash-and-stock
26 consideration) was desirable for WPP because any harm to its interests as a Rentrak shareholder
would be effectively offset by a gain in its interests as a comScore shareholder and *vice versa*.

1 Chemerow agreed provided more shareholder value than comScore’s offer; and

- 2 • The findings of a report to the Rentrak Board by Grant Thornton LLP (“Grant
3 Thornton”), which investigated comScore’s controversial revenue recognition
4 practices relating to barter transactions. That report found that:
 - 5 ○ Barter transactions “may have provided opportunities for [comScore]
6 Management to ‘manage’ revenues to meet targets”; and
 - 7 ○ Grant Thornton was concerned that comScore’s barter transactions “may
8 not be fully understood by research analysts and the ‘street’ [i.e., Wall
9 Street / investors]” and “[i]t [was] unclear how much the current stock
10 price may be impacted if these [barter] arrangements [were] better
11 understood.”

9 The Board’s failure to disclose this material information violated their fiduciary duties
10 and denied shareholders their right to cast a fully informed vote.

11 11.

12 The Implied Transaction Value was poor when the Transaction was entered into and has
13 only become more pronounced now that comScore’s stock price has cratered because of
14 accounting improprieties. Less than six weeks after the Transaction closed, comScore announced
15 that its Audit Committee was investigating “potential accounting matters,” causing its stock to
16 plummet by over 30%. This reduced the implied value of the consideration that Rentrak
17 shareholders received in the Transaction to just \$31.10 per share. Moreover, the recent revelation
18 suggests that the Registration Statement misstated comScore’s prior financial statements (which
19 is, of course, critical information in an all-stock transaction). comScore jointly issued the
20 Registration Statement, fully understood that the Individual Defendants had fiduciary obligations
21 to Rentrak shareholders, including a duty to disclose material information in a truthful way, but
22 nonetheless actively and knowingly hid these facts from Rentrak investors, thus aiding and
23 abetting the Individual Defendants’ breaches of fiduciary duty.

24 12.

25 Oregon law makes clear that “[d]issenters rights shall not apply to the holders of shares
26 of any class or series if the shares of the class or series were registered on a national securities

1 exchange on the record date ... of the merger...” ORS 60.554(3). The Registration Statement
2 confirms that “Rentrak shareholders are not entitled to dissenters’ rights of appraisal for their
3 shares under Oregon law in connection with the merger.” Thus, this Court is best suited to
4 address Defendants’ breaches of fiduciary duty alleged herein through an award of money
5 damages and/or equitable relief.

6 **PARTIES**

7 13.

8 Plaintiff, at all relevant times, was a significant holder of Rentrak common stock. On the
9 day the Transaction was announced, Plaintiff’s investment in Rentrak common stock was valued
10 at well over a million dollars. When the Transaction closed, Plaintiff’s Rentrak holdings were
11 converted into shares of comScore common stock and he has therefore suffered significant
12 financial harm and damages resulting from Defendants’ actions.

13 14.

14 Defendant Rentrak is an Oregon corporation that maintains its corporate headquarters at
15 7700 NE Ambassador Place in Portland, Oregon. Rentrak operates as a media measurement and
16 advanced consumer targeting company serving the entertainment, television, video, and
17 advertising industries worldwide. Upon the closing of the Transaction, Rentrak became a wholly
18 owned subsidiary of comScore.

19 15.

20 Defendant Brent D. Rosenthal (“Rosenthal”) was the non-executive Chairman of the
21 Board. He served as a director of Rentrak from August 2008 until consummation of the
22 Transaction. He became Vice Chairman of the Board in September 2010 and was selected to
23 serve as non-executive Chairman of the Board upon his re-election in 2011. Following
24 consummation of the Transaction, Rosenthal became a comScore director.

25 16.

26 Defendant Livek was director and CEO of Rentrak from June 15, 2009 until the

1 consummation of the Transaction. Except for formally voting on the Transaction along with all
2 other Board members, Livek's role negotiating and pushing for the Transaction was done in his
3 capacity as the Company's CEO. The rest of the Board played a minimal role in negotiating the
4 Transaction and Livek and Chemerow (the Company's CFO and not a Board member) had
5 primary authority meeting with potential suitors and negotiating the Transaction. In addition,
6 following consummation of the Transaction, Livek became comScore's Executive Vice
7 Chairman and President.

8 17.

9 Defendant David Boylan ("Boylan") served as a director of Rentrak from September
10 2013 until consummation of the Transaction.

11 18.

12 Defendant William E. Engel ("Engel") served as a director of Rentrak from August 2010
13 until consummation of the Transaction. Following consummation of the Transaction, Engel
14 became a comScore director.

15 19.

16 Defendant Patricia Gottesman ("Gottesman") served as a director of Rentrak from
17 August 2014 until consummation of the Transaction. Following consummation of the
18 Transaction, Gottesman became a comScore director.

19 20.

20 Defendant Anne MacDonald ("MacDonald") served as a director of Rentrak from August
21 2009 until consummation of the Transaction.

22 21.

23 Defendant Martin B. O'Connor ("O'Connor") served as a director of Rentrak from
24 August 2010 until consummation of the Transaction.

25 22.

26 Defendant Ralph R. Shaw ("Shaw") served as a director of Rentrak from 2004 until

1 consummation of the Transaction. Shaw served as an advisor to the Board from 2001 to 2004
2 and as an outside director of one of Rentrak’s subsidiaries from 2000 through 2003.

3 23.

4 Defendant Chemerow served as Rentrak’s Chief Operating Officer and Chief Financial
5 Officer since 2009. Upon consummation of the Transaction, Chemerow became comScore’s
6 Chief Revenue Officer and a “strategic advisor” to comScore’s CEO.

7 24.

8 Rosenthal, Livek, Boylan, Engel, Gottesman, MacDonald, Shaw, and O’Connor are,
9 collectively, the “Board” or the “Director Defendants.” Livek and Chemerow are the “Officer
10 Defendants.” The Officer Defendants and the Director Defendants are, collectively, the
11 “Individual Defendants.” Rentrak and the Individual Defendants are, collectively, the “Rentrak
12 Defendants.”

13 25.

14 Defendant comScore is a global media measurement and analytics company,
15 headquartered in Virginia and incorporated in Delaware, which uses its data to help media
16 buyers and sellers understand and make decisions based on how consumers use different media,
17 such as TV, video, mobile, desktop and other mediums.

18 **RELEVANT NONPARTIES**

19 26.

20 WPP is a London-based advertising and public relations conglomerate. It is the largest
21 advertising company in the world as measured by revenue and controls a number of marquee
22 subsidiaries, including Millward Brown, Grey, Burson-Marsteller, Hill & Knowlton, JWT,
23 Ogilvy & Mather, TNS, Young & Rubicam and Cohn & Wolfe.

24 27.

25 Nielsen is a leading media measurement and analytics company that is a primary
26 competitor of Rentrak and comScore.

1 28.

2 Goldman Sachs is an investment bank, headquartered in New York, with offices
3 throughout the world. Goldman Sachs acted as Rentrak’s financial advisor in connection with the
4 Transaction. As set out below, Goldman Sachs has also performed extensive work on behalf of
5 WPP. All three of WPP CEO Martin Sorrell’s sons have worked for Goldman Sachs. Mark
6 Sorrell is currently a Goldman Sachs Partner and Co-Head of U.K. Investment Banking.

7 **JURISDICTION AND VENUE**

8 29.

9 This Court has jurisdiction over each Defendant named herein because each Defendant is
10 either a corporation that conducts business or maintains operations in this county, or is an
11 individual or entity who has sufficient minimum contacts with Oregon so as to render the
12 exercise of jurisdiction by the Oregon courts permissible under traditional notions of fair play
13 and substantial justice.

14 30.

15 Venue is proper in this Court because one or more of the Defendants either resides in or
16 maintains executive offices in this county, a substantial portion of the transactions and wrongs
17 complained of herein, including the Individual Defendants’ primary participation in the wrongful
18 acts detailed herein, occurred in this county, and Defendants have received substantial
19 compensation in this county by doing business here and engaging in numerous activities that had
20 an effect in this County.

21 **SUBSTANTIVE ALLEGATIONS**

22 **I. Background**

23 31.

24 Prior to the announcement of the Transaction, Rentrak was delivering a steady mix of
25 positive financial results, optimistic valuation announcements and strong business indicators for
26 a number of consecutive quarters and had clearly demonstrated the Company’s robust growth

1 potential. In the 52 weeks prior to the announcement of the Transaction, Rentrak shares
2 traded as high as \$85.69 in November 2014. As recently as August 4, 2015, Rentrak shares
3 traded for \$71.26 per share. Just days prior to the announcement of the Transaction, the mean
4 target price for Rentrak shares, set by six Wall Street analysts, was \$74.13, with at least one
5 analyst targeting \$100 per share. Analysts such as Needham & Co. LLC and Brean Capital
6 projected a target of \$85-86 a share in late September 2015. The Company's positive financial
7 results and optimistic valuation announcements continued after the announcement of the
8 Transaction. On November 5, 2015, the Company announced its second quarter 2016 financial
9 results. Among other things, the Company reported \$0.29 earnings per share for the quarter,
10 **topping** Thomson Reuters' consensus estimate of \$0.12 by **141%**.

11 32.

12 At all relevant times, WPP owned between 15% to 20% of both comScore and Rentrak.⁴
13 WPP wanted to increase its leverage over Nielsen by building up a rival. In April 2015, for
14 example, *Variety* published an interview with WPP CEO Martin Sorrell ("Sorrell"), in which
15 Sorrell emphasized that WPP wanted to build a "better mousetrap" to compete with Nielsen.

16 33.

17 The announcement of the Transaction laid bare WPP's strategy for confronting Nielsen: a
18 combination of Rentrak and comScore. In the aftermath of the announcement of the Transaction,
19 a number of media outlets highlighted this motivation. For example, *Variety* wrote
20 "[c]ollaboration between ComScore [*sic*] and Rentrak has the backing of a prominent industry
21 player: Sir Martin Sorrell. His British advertising conglomerate, WPP, is an investor in both
22 Rentrak and ComScore [*sic*], and could hold up to 19.9% of the new company after the two
23 parties complete their transaction. To Nielsen supporters, Sorrell's presence behind the scenes
24 might suggest a lack of some of the independence under which Nielsen operates." Similarly,

25 _____

26 ⁴ Goldman Sachs — Rentrak's financial advisor in the Transaction — acted as financial advisor to WPP in its acquisition of its 15% ownership in comScore.

1 Forbes wrote that “Sir Martin Sorrell (whose WPP not incidentally has been a
2 shareholder in both companies) spoke for many during Advertising Week when he championed
3 the deal’s benefits for competition in measurement, and similar words emerged from many of
4 those bloodied by battles with Nielsen for years.” Following the announcement of the
5 Transaction, Nielsen’s CEO Mitch Barns stated that “[t]he two that have come together recently,
6 look, they had a matchmaker in the form of WPP.” Barns went on to question WPP’s
7 independence in comScore’s future operations, noting that “[t]hey still have an issue too—a very
8 important one—which is the issue of independence. ... I’ve read where they’ve said that WPP
9 (PLC) doesn’t have a board seat, as if that solves the problem—but of course it doesn’t. WPP is
10 still their largest shareholder.”

11 **II. Sales Process Claims**

12 **A. The Individual Defendants Tilted The Sales Process In Favor of comScore** 13 **and Against Company B**

14 34.

15 As noted above, the Board ultimately approved the sale of the Company at an implied
16 price that was *\$15.83 to \$31.26 less* than the per-share value generated by Goldman Sachs’ DCF
17 analysis. This violated their duty to ensure that any price achieved in a sale would yield value
18 exceeding what the corporation otherwise would generate for stockholders over the long-term.

19 35.

20 Moreover, Company B was a serious bidder that offered *\$27.31 to \$32.31 per share*
21 *more* than the Implied Transaction value. Yet the Individual Defendants treated Company B in a
22 materially different way than comScore. The Individual Defendants biased the process against
23 Company B and toward comScore, not in a reasoned effort to maximize value for the
24 shareholders, but to tilt the process toward the Individual Defendants’ preferred bidder who
25 promised Livek, Chemerow, and certain of the Director Defendants favorable roles in the
26 combined company. By failing to act in a neutral manner to encourage the highest possible price

1 for shareholders, the Board skewed the auction in favor of comScore and deprived shareholders
2 of the best offer reasonably attainable.

3 36.

4 Finally, the Board failed to prevent Livek and Chemerow from negotiating their own
5 employment with comScore at the same time as the Exchange Ratio and, ultimately, trading
6 away additional value for shareholders in exchange for personal concessions. This inappropriate
7 tactic meant that Livek and Chemerow had a completely different incentive system than
8 stockholders, which the Board failed to supervise.

9 37.

10 Beginning on April 21, 2015—approximately two months after WPP became the largest
11 shareholder of comScore and Rentrak—comScore and Rentrak began to discuss in earnest the
12 possibility of a business combination between their two companies. On May 7, 2015, comScore
13 delivered its initial proposal of terms for an acquisition of Rentrak (“comScore’s May 7
14 Proposal”), proposing an “at-the-market exchange ratio” (in other words, an exchange ratio that
15 did not provide any premium to Rentrak shareholders, meaning the implied value per share to
16 Rentrak shareholders was \$50.70/share based on the Company’s May 7, 2015 price).

17 38.

18 Upon receiving this proposal, in both internal discussions among Rentrak’s Board and in
19 direct communications with comScore, the Rentrak Defendants focused on their own
20 management roles to the detriment (and, in some cases, the complete exclusion) of shareholder
21 value.

22 39.

23 On May 22, 2015, Livek met with the CEO of Company B. Company B’s CEO indicated
24 Company B’s interest in making an offer to acquire Rentrak. In an email sent to Chemerow
25 shortly after his conversation with Company B’s CEO, Livek wrote that Company B’s CEO was
26 **“begging me not to sell to anyone else until she can make the offer.”**

1 40.

2 On June 7, 2015, Company B’s CEO delivered a proposal (“Company B’s June 7
3 Proposal”) to acquire Rentrak for a combination of cash and stock worth \$75 to \$80 per share of
4 Rentrak, with no financing contingency. Company B’s CEO stated that Company B would be
5 willing to pay 50% to 75% of the total consideration in cash and “should Rentrak so desire,
6 possibly up to 100%.” Company B’s June 7 Proposal was non-binding and required
7 “confirmatory diligence.” Remarkably, the Registration Statement failed to disclose the price or
8 any of the other terms that Company B proposed, so shareholders were completely unaware of
9 this premium offer prior to the vote.

10 41.

11 On June 11, 2015, Livek and Company B’s CEO spoke by phone. According to a script
12 for that call, prepared by Goldman Sachs, and sent to Livek, Livek was to tell Company B’s
13 CEO that Rentrak was refusing to offer even basic diligence. By stark contrast, Goldman Sachs’
14 script for Livek’s call with the CEO of comScore, Serge Matta, on that same day, envisioned
15 close collaboration including face-to-face meetings between both management and financial
16 advisors even though the offer was objectively less advantageous to Rentrak shareholders. The
17 script went on to suggest that Livek was to make clear to comScore that the Individual
18 Defendants were prioritizing their preferred management structure *over* an increase in the
19 Exchange Ratio:

20 *If Serge reacts immediately and pushes back on the management structure, asking*
21 *if an alternative structure would work*

- 22 • I don’t know if I could sell an alternative structure to my Board given their
focus on execution.

23 *If Serge pushes further*

- 24 • I could take something else to my Board but I would think it would have
25 to meaningfully reduce risk for them through a very favorable exchange
ratio
- 26 • If you push in this direction, our Board will be focused on maximizing
value and certainty of value

1 42.

2 In other words, the message that Livek delivered to comScore was that the Board would
3 *not* focus on “maximizing value” or “a very favorable exchange ratio” so long as comScore
4 acceded to the personal demands of Livek, Chemerow, and Rentrak Board members. Ultimately,
5 of course, comScore went along with this plan. comScore agreed that Livek would serve as the
6 combined company’s Executive Vice Chairman & President, Chemerow would serve as Chief
7 Revenue Officer and a strategic advisor to the CEO and the combined company’s board would
8 include four directors from Rentrak.

9 43.

10 Following the June 11, 2015 call, Livek and Chemerow continued to resist providing the
11 diligence that Company B sought.

12 44.

13 Yet, despite claiming that Company B’s offer was insufficient to justify even
14 participating in preliminary diligence, Livek acknowledged in a June 21, 2015 email to
15 Chemerow that “[o]ur duty is to get the best deal for shareholders and right now it is
16 **[Company B]. SCOR [i.e., comScore] has no idea how complex what we do is and it will show**
17 **up in our stock price at some point.”** This is an express admission both that Company B’s offer
18 was superior and that comScore’s at-the-market offer seriously undervalued the Company.
19 Notably, comScore’s offer did not improve—the ultimate Exchange Ratio was still, essentially,
20 an at-the-market offer. Yet despite recognizing that comScore “has no idea how complex what
21 we do is and it will show up in our stock price” the Individual Defendants accepted comScore’s
22 insufficient offer.

23 45.

24 Despite Livek’s recognition that Company B’s bid was the best bid for shareholders, he
25 and Chemerow continued to push Company B away by refusing to provide the requested
26 diligence. On June 27, 2015 (a Saturday), Livek and Chemerow exchanged emails suggesting

1 that they expected to receive an offer from Company B’s CEO on June 29, 2015 relating to the
2 personal compensation they could expect at Company B. A discussion about compensation
3 would, of course, necessarily have included a discussion about the roles that Livek and
4 Chemerow were expected to play at the combined company.

5 46.

6 It appears that Livek and Chemerow were not offered their desired positions and/or
7 compensation because communications between them and Company B—as well as internal
8 communications at Rentrak about Company B—abruptly ceased. The end came quickly for the
9 Company B bid. The Registration Statement claims that, on July 9, 2015, Livek and Company
10 B’s CEO spoke by phone and Company B’s CEO “told Mr. Livek that [Company B] was no
11 longer interested in pursuing an acquisition of Rentrak.” The Registration Statement offers no
12 explanation or reasoning for the dramatic change of course.

13 47.

14 Discussions with comScore continued apace. Through July and mid-August of 2015,
15 Rentrak and comScore executives met in person and repeatedly discussed the composition of the
16 combined company’s Board and management team at the same time as they were discussing the
17 substantive terms of the Transaction. Rentrak was forthcoming in providing diligence to
18 comScore and its financial advisors, including producing financial projections and opening a
19 data room.

20 48.

21 On August 15, 2015, Livek, Rosenthal, Serge Matta (comScore’s CEO), and Gian
22 Fulgoni (co-founder and executive chairman emeritus of comScore) met telephonically to
23 discuss the exchange ratio, board composition and management roles. Following the meeting,
24 Rentrak closed its data room and cancelled upcoming meetings with comScore management.
25 Given that there appears to have been little dispute over the principle of an at-the-market
26 exchange ratio, it seems likely that this spat was driven by a dispute over board composition and

1 management roles.

2 49.

3 On this same day, Livek met telephonically with Company B’s CEO to discuss whether
4 Company B would be potentially interested in re-engaging with Rentrak regarding a business
5 combination. Unsurprisingly, having been rebuffed once before and having proposed
6 consideration significantly higher than comScore’s bid, Company B’s CEO expressed little
7 interest in a strategic combination with Rentrak.

8 50.

9 On August 18, 2015, Matta and Livek met to resolve issues raised at the August 15, 2015
10 meeting. Rentrak reopened its data room and due diligence activities and other negotiations,
11 including negotiations over management roles, resumed.

12 51.

13 After some additional discussions and disagreements throughout September 2015, the
14 parties finalized the terms of the Transaction. On Monday, September 28, 2015, Rentrak saw its
15 shares decline by 9.5% to close at \$43.82, one of the lowest closing prices Rentrak shares had
16 seen all year—or at any point since January 2014.

17 52.

18 On September 29, 2015, the Board met telephonically with their respective legal and
19 financial advisors. Following a presentation by Goldman Sachs, the Board unanimously
20 approved the Merger Agreement and resolved to recommend to its shareholders that they vote
21 for the Transaction. On September 29, 2015, Rentrak and comScore issued a joint press release
22 announcing the Transaction. Pursuant to the Agreement and Plan of Merger (the “Merger
23 Agreement”), the all-stock deal was to (and ultimately did) convert each Rentrak share into 1.15
24 shares of comScore common stock.

25

26

1 57.

2 Board members discussed the Grant Thornton report and comScore's barter revenue
3 issues at board meetings on September 3, September 8 and September 9, 2015. Representatives
4 of Grant Thornton spoke directly to the Board about comScore's barter accounting and answered
5 questions from the Board. Chemerow also discussed with the Board management's adjustment to
6 the comScore projections to provide a discount for barter-related revenues.

7 58.

8 Yet the Registration Statement contains only a handful of anodyne references to
9 discussions of "accounting due diligence," with no specifics. The word "barter" did not appear in
10 the Registration Statement.

11 **IV. The Transaction Failed to Maximize Shareholder Value**

12 59.

13 While the Exchange Ratio (and its implied value of \$47.69 per Rentrak share)
14 represented a 9.9% premium against Rentrak's one-day closing price, this modest premium itself
15 is illusory because the announcement of the acquisition of Rentrak coincided with a significant
16 one-day drop in Rentrak's share price. Indeed, Rentrak's stock closed at \$46.20 on Friday,
17 September 25. As measured against the September 25th close, the Transaction represented an
18 even more modest 3% premium for Rentrak's shareholders—essentially the "at-the-market" ratio
19 contained in comScore's original proposal.

20 60.

21 Compounding the inadequate price negotiated by the Board is that, in accordance with
22 the terms of the Merger Agreement, the Transaction was without a price collar to protect Rentrak
23 investors from the inevitable disclosure of the accounting shenanigans noted by Grant Thornton.

24 61.

25 To aid the Board in its effort to convince Rentrak shareholders that the Exchange Ratio
26 was palatable, the Board retained the advisory services of Goldman Sachs to issue a fairness

1 opinion (the “Fairness Opinion”). Yet Goldman Sachs’ *Illustrative Discounted Cash*
2 *Flow Analysis* yielded a per-share value of \$63.52 - \$79.29—significantly greater than the
3 Implied Transaction Value. Similarly, Goldman Sachs’ *Present Value of Implied Future Rentrak*
4 *Share Price Analysis* yielded a per-share value of \$69.33 - \$85.74.

5 62.

6 In sum, the Rentrak Board relied upon a Fairness Opinion that did not indicate the
7 Transaction was, in fact, fair. According to the Registration Statement, Goldman Sachs was paid
8 a fee of \$9 million, which was 100% “contingent upon consummation of the transaction” and the
9 Board could pay Goldman Sachs an additional \$2 million in its complete discretion. Thus,
10 Goldman Sachs was highly incentivized to issue the Fairness Opinion, even though its analysis
11 showed that the Company’s standalone value was significantly higher. Moreover, because of
12 Goldman Sachs’ family ties to and long-standing relationship with WPP,⁵ and WPP’s
13 insistence—as comScore’s and Rentrak’s largest shareholder—that comScore and Rentrak
14 merge, Goldman Sachs was predisposed to favor a combination with comScore. Goldman Sachs’
15 significant conflicts vis-à-vis WPP including that: (i) all three of Martin Sorrell’s sons have
16 worked for Goldman Sachs and Mark Sorrell, a Goldman Sachs partner who has worked for the
17 firm for over twenty years, is currently its Co-Head of U.K. Investment Banking; (ii) Goldman
18 Sachs was financial advisor to WPP in its acquisition of a stake of comScore in February 2015;
19 and (iii) Goldman Sachs was the additional Mandated Lead Arranger under WPP’s \$2,500,000
20 revolving credit facility as amended on July 18, 2014.

21 ⁵ Indeed, Goldman Sachs has performed significant financial advisory and/or underwriting
22 services to WPP and received approximately \$5 million in advisory fees from WPP and its
23 affiliates in the two-year period prior to the announcement of the Transaction. The advisory and
24 underwriting services include, among other things, acting as: (i) financial advisor to WPP in its
25 acquisition of a stake of comScore in February 2015; (ii) bookrunner with respect to WPP’s
26 issuance of 3.750% Senior Secured Notes due 2024 (aggregate principal amount \$750,000,000)
in September 2014; (iii) bookrunner with respect to WPP’s issuance of 3.000% Senior
Unsecured Notes due 2023 (aggregate principal amount €750,000,000) in November 2013; and
as a bookrunner with respect to WPP’s issuance of 5.625% Senior Secured Notes due 2043
(aggregate principal amount \$500,000,000) in November 2013.

1 67.

2 The Class is so numerous that joinder of all members is impracticable. Pursuant to the
3 Company's SEC filings, there were more than 38 million shares of Rentrak common stock issued
4 and outstanding as of December 23, 2015. Consequently, the number of Class members is
5 believed to be in the thousands and are likely scattered across the United States. Moreover,
6 damages suffered by individual Class members may be small, making it overly expensive and
7 burdensome for individual Class members to pursue redress on their own.

8 68.

9 There are questions of law and fact that are common to the Class and that predominate
10 over questions affecting any individual Class member. The common questions include, *inter*
11 *alia*:

- 12 a. whether the Director Defendants and Officer Defendants breached their fiduciary
13 duties to obtain the best price practicable under the circumstances for the benefit
14 of the Rentrak shareholders;
- 15 b. whether the Director Defendants disclosed all material information to the
16 Company's public shareholders;
- 17 c. whether comScore aided and abetted such breaches; and
- 18 d. the extent of the Class's damages.

19 69.

20 Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff
21 does not have any interests adverse to the Class.

22 70.

23 Plaintiff is an adequate representative of the Class, has retained competent counsel
24 experienced in litigation of this nature, and will fairly and adequately protect the interests of the
25 Class.

26 71.

The prosecution of separate actions by individual members of the Class would create a

1 risk of inconsistent or varying adjudications with respect to individual members of the
2 Class, which would establish incompatible standards of conduct for Defendants; or
3 adjudications with respect to individual members of the Class would, as a practical matter, be
4 dispositive of the interest of other members or substantially impair or impede their ability to
5 protect their interests.

6 72.

7 There will be no difficulty in the management of this litigation. A class action is superior
8 to other available methods for the fair and efficient adjudication of this controversy.

9 73.

10 Defendants have acted on grounds generally applicable to the Class with respect to the
11 matters complained of herein, thereby making appropriate the relief sought herein with respect to
12 the Class as a whole.

13 **CLAIMS FOR RELIEF**

14 **FIRST CLAIM FOR RELIEF**
15 **Breach of Fiduciary Duty**
16 **(Against the Director Defendants)**

17 74.

18 Plaintiff incorporates by reference and realleges each and every allegation contained
19 above, as though fully set forth herein.

20 75.

21 The Director Defendants, who are comprised of directors of Rentrak, have violated the
22 fiduciary duties of care, loyalty, and/or disclosure owed to the public shareholders of Rentrak in
23 connection with the Transaction, which deprived Rentrak shareholders of fair value for their
24 Rentrak shares.

25 76.

26 As demonstrated by the allegations above, the Director Defendants failed to exercise the
care required, and breached their duties of care, loyalty, and/or disclosure because, among other

1 reasons, they:

- 2 • failed to conduct an adequate process to ensure fair treatment to public shareholders,
3 putting their own interests before those of public shareholders;
- 4 • agreed to onerous and preclusive deal protection provisions in the Merger Agreement;
- 5 • negotiated for themselves continued employment and/or representation on the combined
6 company's board following consummation of the Transaction; and
- 7 • failed to disclose all material information necessary for shareholders to cast a fully
8 informed vote on the Transaction.

7 77.

8 Because the Director Defendants dominated and controlled the business and corporate
9 affairs of Rentrak and had access to private corporate information concerning Rentrak's assets,
10 business, and future prospects, there exists an imbalance and disparity of knowledge and
11 economic power between them and the public shareholders of Rentrak, which makes it
12 inherently unfair for them to pursue and recommend any transaction wherein they reaped
13 disproportionate benefits to the exclusion of maximizing shareholder value.

14 78.

15 Even assuming the business judgment rule applies, which it does not, the Director
16 Defendants' actions individually and collectively rise to the level of gross negligence and/or bad
17 faith. These actions include, among other things, without limitation: (i) permitting Livek and
18 Chemerow to negotiate their own roles (and those of certain directors) at the same time as they
19 were negotiating the Exchange Ratio; (ii) refusing to adequately consider and rely upon Grant
20 Thornton's report; and (iii) relying on Goldman Sachs' fairness opinion even though both
21 Goldman Sachs analyses described in the Registration Statement that yielded an implied per
22 share value for Rentrak as a stand-alone company showed a range of values greater than the
23 implied consideration offered in the Transaction.

24 79.

25 By reason of the foregoing acts, practices, and course of conduct, the Director Defendants
26 failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward

1 Plaintiff and the other members of the Class.

2 80.

3 The Director Defendants did not act in good faith toward Plaintiff and the other members
4 of the Class. The Director Defendants have, thus, breached their fiduciary duties to the members
5 of the Class, causing damage.

6 **SECOND CLAIM FOR RELIEF**
7 **Breach of Fiduciary Duty**
8 **(Against the Officer Defendants)**

8 81.

9 Plaintiff repeats and realleges each and every allegation set forth herein.

10 82.

11 Livek and Chemerow, as Rentrak officers, owed the Class the utmost fiduciary duties of
12 care and loyalty. By virtue of their position as CEO and COO and CFO, respectively, Livek and
13 Chemerow were required to: (a) use their ability to manage Rentrak in a fair, just, and equitable
14 manner, and (b) act in furtherance of the best interests of Rentrak and all of its shareholders.

15 83.

16 Livek and Chemerow breached their fiduciary duties by, among other things: (i) placing
17 their own interests ahead of shareholders by negotiating for themselves continued employment
18 with comScore post-close as described in detail above; (ii) chasing away the superior bid by
19 Company B by failing to provide even minimal diligence; and (iii) informing comScore that the
20 Board would not focus on “maximizing value” or a “favorable exchange ratio” as long as they
21 received their preferred roles in a combined company.

22 84.

23 As a consequence of Livek and Chemerow’s breaches of fiduciary duty, the Company’s
24 stockholders have been harmed.

25

26

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff demands the following relief in his favor and in favor of the
3 class, and against defendants, as follows:

- 4 A. Ordering that this action may be maintained as a class action and certifying
5 Plaintiff as Class representatives and their counsel as Class counsel;
- 6 B. Finding the Defendants liable for breaching their fiduciary duties;
- 7 C. Finding comScore liable for aiding and abetting the Defendants breaches of
8 fiduciary duty;
- 9 D. Rescinding the Transaction and any agreement or transaction attendant thereto or
10 awarding the Class recessionary damages and appropriate compensatory damages;
- 11 E. Awarding Plaintiff the costs of this action, including a reasonable allowance for
12 attorneys' and experts' fees;
- 13 F. Granting such other and further equitable relief as this Court deems just and
14 proper.

15 **JURY TRIAL DEMAND**

16 Plaintiff demands a trial by jury on all claims and issues so triable.

17 Dated this 21st day of July, 2016.

18
19 **STOLL STOLL BERNE LOKTING &
SHLACHTER P.C.**

20
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-AND-

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Liaison Counsel for Plaintiff

Trial Attorney: Timothy S. DeJong, OSB No. 940662

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused to be served the foregoing **SECOND AMENDED**
3 **CLASS ACTION COMPLAINT** on the following named persons, on the date indicated
4 below, via the Court's OJD Electronic File & Serve system, which will send electronic
5 notification of such filing on all registered participants per UTCR 21.100. I further certify
6 that I have caused to be served a correct copy of the same to any non-registered parties, as
7 follows:

8 Sarah J. Crooks By Hand Delivery
9 Perkins Coie LLP By E-mail
10 1120 NW Couch, 10th Flr By U.S first class mail
11 Portland, OR 97209 By OJD E-File & Serve
12 scrooks@perkinscoie.com

13 Attorneys for All Defendants

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24 Portland, OR 97204-3183

25 Attorneys for Plaintiffs Dorothy Blum
26 (MCCC Case No.: 15cv27443);
and Stein (MCCC Case No.: 15cv27520)

Dated this 21st day of July, 2016.

STOLL STOLL BERNE LOKTING &
SHLACHTER P.C.

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