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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 IRA S. NATHAN, individually and on behalf of all
7 others similarly situated,

8 Plaintiff,

9 v.

10 RENTRAK CORPORATION, DAVID BOYLAN,
11 WILLIAM ENGEL, PATRICIA GOTTESMAN,
12 WILLIAM LIVEK, ANNE MACDONALD,
13 MARTIN O'CONNOR, BRENT ROSENTHAL,
14 RALPH SHAW, and DAVID CHERMEROW,

15 Defendants.

CASE NO. 15CV27429

FIRST AMENDED CLASS
ACTION COMPLAINT

INJUNCTIVE RELIEF
BREACH OF FIDUCIARY DUTY

NOT SUBJECT TO MANDATORY
ARBITRATION

JURY TRIAL DEMANDED

16 Plaintiff Ira S. Nathan ("Plaintiff"), by and through his attorneys, alleges upon personal
17 knowledge as to himself and his own acts, and upon information and belief as to all other
18 matters, based upon the investigation conducted by and through his attorneys, which included,
19 among other things, a review of documents filed by Defendants (defined below) with the United
20 States Securities and Exchange (the "SEC"), news reports, press releases and other publicly
21 available documents, as follows:

22 **NATURE AND SUMMARY OF THE ACTION**

23 1.

24 Plaintiff, individually and on behalf of all others similarly situated, brings this class
25 action complaint against Rentrak Corporation (NASDAQ: RENT) ("Rentrak" or the
26 "Company"), Rentrak's Board of Directors (the "Board"), and its Chief Financial Officer
(collectively with the Board, the "Individual Defendants" and with Rentrak, "Defendants") for
breaches of fiduciary duty arising from the Company's attempt to sell Rentrak to comScore Inc.

1 (NASDAQ: SCOR) (“comScore”).

2 2.

3 This shareholder class action arises out of the Board’s failure to live up, and adhere to, its
4 fiduciary duties in connection with comScore acquiring all of Rentrak’s shares in a stock-for-
5 stock transaction (the “Proposed Transaction”). The Board is in breach of its fiduciary
6 obligations if its members act as passive instrumentalities during merger proceedings, and as
7 fiduciaries of the Company may not place their own interests ahead of the interests of the
8 Company’s shareholders. Rather, directors must exercise the utmost standard of care and loyalty
9 on behalf of shareholders, which includes taking an active role in every material decision
10 involving a sale of the corporation. In particular, before embarking on a sale transaction, the
11 Board must determine that a sale will yield value for shareholders exceeding what the
12 corporation otherwise would generate for shareholders over the long-term as a stand-alone
13 company. The Board, in consultation with its supposed adviser Goldman Sachs, has
14 unquestionably failed to meet those burdens here.

15 3.

16 Moreover, in Oregon, as in Delaware,¹ the Board had a fiduciary duty to disclose all
17 material information to shareholders prior to seeking a shareholder vote on the Proposed
18 Transaction. The Registration Statement (or “S-4”) jointly filed by Rentrak and comScore with
19 the SEC on October 30, 2015 falls woefully short of that standard. Thus, a vote on the Proposed
20 Transaction must be enjoined. Giving the information currently available, any shareholder vote
21 would be tainted because shareholders are uninformed of important, necessary information that is
22 only known by Defendants.

23
24
25 ¹ *Naito v. Naito*, 178 Ore. App. 1, 20 (Or. Ct. App. 2001) (“Majority or other controlling
26 shareholders owe fiduciary duties of loyalty, good faith, fair dealing, and full disclosure to the
minority. ... Directors owe similar duties[.]”) (internal citations omitted). *See, e.g., Malone v.*
Brincat, 722 A.2d 5, 9 (Del. 1998) (directors have “a fiduciary duty to disclose fully and fairly
all material information within the board’s control when it seeks shareholder action.”).

1 4.

2 The Proposed Transaction was announced on September 29, 2015. In a press release
3 issued that day, comScore announced that it intended to acquire Rentrak in an all-stock deal as
4 detailed in the Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to the terms
5 of the Merger Agreement, Rentrak shareholders will receive a fixed ratio of 1.15 shares of
6 comScore common stock for each share of Rentrak common stock held (the "Exchange Ratio").
7 Based on the closing price of comScore stock on September 29, 2015 (*i.e.*, the last trading day
8 prior to the announcement of the Proposed Transaction), this valued Rentrak shares at
9 approximately \$47.69, representing a mere 9.9% premium to Rentrak's closing price on
10 September 29, 2015, and more than a 45% *discount* to Rentrak's 52-week trading high. The total
11 deal value, as announced, is approximately \$732 million.

12 5.

13 As stated in Rentrak and comScore's September 29, 2015 press release, "Rentrak will
14 merge into a wholly-owned subsidiary of comScore, and each share of Rentrak will be converted
15 into the right to receive 1.15 shares of comScore. Upon completion of the merger, comScore
16 shareholders are expected to own approximately 66.5% and Rentrak shareholders are expected to
17 own approximately 33.5% of the combined company on a fully diluted basis." In other words,
18 Rentrak shareholders will own significantly less of the combined company than current
19 comScore shareholders.

20 6.

21 The Exchange Ratio is inadequate and fails to compensate Rentrak shareholders for their
22 investment in the Company. Indeed, Goldman Sachs' own discounted cash flow analysis
23 ("DCF") of the Proposed Transaction illustrates that Rentrak's stand-alone company value was
24 worth \$63.52 to \$79.29 per share—*\$15.83 to \$31.26 more* than the per-share value implied by
25 the Exchange Ratio. As Delaware's Court of Chancery has repeatedly recognized, a DCF

1 analysis is “the most reliable and pertinent” method to determine the value of a company.² It is
2 therefore shocking that Goldman Sachs’ own DCF analysis shows the current Exchange Ratio to
3 be unfair.

4 7.

5 Both Goldman Sachs analyses described in the Registration Statement that yielded an
6 implied per share value for Rentrak as a stand-alone company showed a range of values far
7 greater than the implied consideration offered in the Proposed Transaction. Even the modest
8 9.9% premium over Rentrak’s September 29, 2015 closing price is illusory, as the announcement
9 of the acquisition of Rentrak coincided with a significant one-day drop in Rentrak’s share price.
10 On Friday September 25, Rentrak’s stock price closed at \$46.20. The following Monday—the
11 day before Rentrak and comScore announced the Proposed Transaction—Rentrak’s stock
12 dropped 9.5% to close at \$43.82. Thus, the Proposed Transaction represented a mere 3%
13 premium against Rentrak’s September 25 closing price.

14 8.

15 There are also significant conflicts of interest that infected the Proposed Transaction and
16 polluted the sales process. Most significantly, in the last year, WPP LLC (“WPP”)—a
17 multinational advertising firm—took large stakes in both comScore and Rentrak. WPP currently
18 owns between 15% and 20% of each company, respectively. The Proposed Transaction was
19 driven by WPP’s desire to create a significant rival to, and thereby gain leverage over, Nielsen
20 Holdings N.V. (“Nielsen”)—a large information and measurement company with whom WPP
21 regularly both competes and cooperates. A month prior to the announcement of the Proposed
22 Transaction, WPP urged comScore and Rentrak to “come together” in order to compete with
23 Nielsen. Additionally, the Registration Statement is replete with references to WPP’s central role

24 _____
25 ² *Global GT LP v. Golden Telecom, Inc.*, 993 A.2d 497, 510 (Del. Ch. 2010). *See also, e.g., Cede*
26 *& Co. v. JRC Acquisition Corp.*, 2004 Del. Ch. LEXIS 12, at *6 (Del. Ch. Feb. 10, 2004) (“In
recent years, the DCF valuation methodology has featured prominently in this Court because it is
the approach that merits the greatest confidence within the financial community.”) (internal
quotations omitted).

1 in the negotiation of the Proposed Transaction. The problem for Rentrak shareholders, however,
2 is that WPP's interests diverged from other shareholders. WPP was pursuing size at any cost and
3 was indifferent to price. A merger with any exchange ratio (or, indeed, any combination of cash-
4 and-stock consideration) was desirable for WPP because any harm to its interests as a Rentrak
5 shareholder would be effectively off-set by a gain in its interests as a comScore shareholder.

6 9.

7 Moreover, assuming the Proposed Transaction is consummated, William Livek—
8 Rentrak's current Chief Executive Officer ("CEO")—will become comScore's Executive Vice
9 Chairman and President and David Chemerow—Rentrak's current Chief Operating Officer and
10 Chief Financial Officer—will become a "strategic advisor" to comScore's CEO. Livek and
11 Chemerow negotiated the terms of their continuing employment with comScore *at the same time*
12 they were negotiating the material terms of the Proposed Transaction—including the
13 consideration that comScore would pay Rentrak shareholders. Similarly, four members of
14 Rentrak's Board—Defendants Livek, Rosenthal, Gottesman and Engel—will join the comScore
15 board if the merger becomes effective. Furthermore, any outstanding Rentrak stock options
16 and/or restricted and deferred stock units will automatically become vested resulting in an
17 immediate windfall to the Board and executive officers *in excess of \$35,451,692.00*.

18 10.

19 In addition to the Board's and executive officer's significant conflicts of interest,
20 Goldman Sachs was conflicted and incapable of rendering independent advice to the Board
21 concerning a strategic combination with comScore. Prior to Goldman Sachs being retained by
22 the Board, Goldman Sachs performed significant financial advisory services for WPP, which was
23 intent on seeing a merger between comScore and Rentrak—at any price. For example, Goldman
24 Sachs acted as financial advisor to WPP in its acquisition of comScore stock in February 2015.
25 Also in July 2014, Goldman Sachs was a party to WPP's Amendment and Restatement
26 Agreement, pursuant to which it acted as lead arranger and additional lender under WPP's

1 \$2,500,000 revolving credit facility, a fact not disclosed in Goldman Sachs' fairness opinion and
2 presumably never disclosed to the Board. Finally, all three of WPP CEO Martin Sorrell's sons
3 have worked for Goldman Sachs. Two have since left, but Mark Sorrell is *currently* Goldman
4 Sachs' Co-Head of U.K. Investment Banking.

5 11.

6 Immediate action is necessary to protect shareholders. In addition to the deflated value
7 provided by the terms of the Exchange Ratio, the Merger Agreement includes burdensome deal
8 protection provisions that discourage third parties from submitting superior offers, to the
9 detriment of Rentrak's shareholders. These protections include: (i) a strict no-solicitation
10 provision prohibiting Rentrak or any of its representatives from soliciting any competing offer
11 and permitting a third-party to review nonpublic information or engage in discussion with the
12 Company if, and only if, that third-party submits an unsolicited, written proposal and the Board
13 believes it would result in a superior proposal to the Proposed Transaction after consulting with
14 legal and financial advisors; (ii) a requirement that comScore receive near immediate notice of
15 any competing proposal, along with the details of any such proposal; (iii) a termination fee of
16 \$28.5 million, equating to nearly 4% of the total value of the Proposed Transaction; and (iv) a
17 "force-the-vote" provision which requires the Board to submit the Proposed Transaction for
18 approval from the Company's shareholders *even if* the Board no longer recommends the
19 Proposed Transaction for approval. Collectively, these terms are designed to, and do, prohibit
20 and chill the ardor of any third party considering a fair, reasonable and superior offer for
21 Rentrak.

22 12.

23 As noted herein, compounding the harm to shareholders, the Registration Statement
24 misrepresents and fails to disclose material information necessary for the Company's public
25 shareholders to cast an informed vote on the Proposed Transaction.

13.

Specifically, among other things, the Registration Statement fails to disclose:

- Rentrak management's free cash flow projections, which Goldman Sachs relied upon in conducting its DCF analysis;
- The fee paid by Rentrak to Goldman Sachs in connection with the Proposed Transaction (and the extent to which that fee is contingent on the Proposed Transaction closing);
- That WPP CEO Martin Sorrell's son is a current partner at Goldman Sachs; and
- All prior engagements in which Goldman Sachs performed services for and/or received a fee from WPP and the amount of all fees received by Goldman Sachs for work performed on behalf of WPP.

14.

Prior to any shareholder vote on the Proposed Transaction this material information, and other material information noted herein, must be disclosed so that the Company's public shareholders may cast a fully informed vote on the Proposed Transaction.

15.

The Board has a fiduciary duty to act in the best interest of Rentrak's shareholders—treating the shareholders' interests with the same care and solicitude as they would their own interests. Once it became clear that there would be an offer for Rentrak and a possible change in control, the Board was required to take all necessary steps to ensure that Rentrak's shareholders receive proper compensation for their interest in the Company—including ensuring that a sale would yield value for shareholders exceeding what the corporation otherwise would generate for shareholders over the long-term. The Board failed to live up to its fiduciary obligations, agreeing to sell the Company for grossly inadequate consideration, and agreeing to burdensome and onerous deal protection provisions that prevent Rentrak investors from achieving the best possible price for their shares under the circumstances.

16.

For these reasons, as set forth more fully herein, Plaintiff seeks to enjoin the Defendants

1 from proceeding with the Proposed Transaction, and for other relief the Court may deem
2 appropriate.

3 17.

4 Oregon law makes clear that “[d]issenters rights shall not apply to the holders of shares
5 of any class or series if the shares of the class or series were registered on a national securities
6 exchange on the record date ... of the merger...” ORS 60.554(3). The Registration Statement
7 confirms that “Rentrak shareholders are not entitled to dissenters’ rights of appraisal for their
8 shares under Oregon law in connection with the merger.” Thus, this Court is best suited to
9 address Defendants’ breaches of fiduciary duty alleged herein.

10 **PARTIES**

11 18.

12 Plaintiff, at all times relevant, has been a significant holder of Rentrak common stock.
13 On the day the Proposed Transaction was announced, and still today, Plaintiff’s investment in
14 Rentrak common stock is valued at well over a million dollars.

15 19.

16 Defendant Rentrak is an Oregon corporation that maintains its corporate headquarters at
17 7700 NE Ambassador Place in Portland, Oregon. Rentrak operates as a media measurement and
18 advanced consumer targeting company serving the entertainment, television, video, and
19 advertising industries worldwide.

20 20.

21 Defendant Brent D. Rosenthal (“Rosenthal”) is the non-executive Chairman of the Board.
22 He has served as a director of Rentrak since August 2008. He became Vice Chairman of the
23 Board in September 2010 and was selected to serve as non-executive Chairman of the Board
24 upon his re-election in 2011. Mr. Rosenthal has been a Research Analyst for WRH Partners II,
25 LLC and its affiliates since 2002. Mr. Rosenthal also serves on the boards of directors of various
26 private companies and is an adviser to the board of directors of Park City Group. Prior to 2002,

1 Mr. Rosenthal served as Director of Mergers & Acquisitions for RSL Communications Ltd. from
2 1997 to 2001. Prior to joining RSL, Mr. Rosenthal served as emerging media companies for
3 Deloitte & Touche LLP from 1993 to 1997.

4 21.

5 Defendant William P. Livek ("Livek") has been director and CEO of Rentrak since June
6 15, 2009. From December 2008 until June 2009, Livek was founder and CEO of Symmetrical
7 Capital, an investment and consulting firm focused on the marketing/media measurement
8 industry. From February 2007 until December 2008, he was Senior Vice President, Strategic
9 Alliances and International Expansion, of Experian Information Solutions, Inc., a provider of
10 information, analytical and marketing services worldwide, and was Co-President of Experian's
11 subsidiary, Experian Research Services from October 2004 to February 2007. From 1992 until
12 1998, Livek was President and co-founder of Symmetrical Resources Inc., which acquired
13 Simmons Market Research Bureau in 1998, in addition to owning shares in other information
14 companies. From 1998, Livek also served as Co-Chairman/Co-Owner at Simmons Market
15 Research Bureau, where he directed the growth and evolution of the company into a media-
16 neutral, consumer centric research and information business prior to its sale to Experian in 2004.

17 22.

18 Defendant David Boylan ("Boylan") has served as a director of Rentrak since September
19 2013. From 2003 to 2013, Boylan was the Vice President and General Manager of the ABC
20 affiliate television station serving the Miami market. He served as the Board Chair of the ABC
21 Affiliate Association from 2011 to 2013. Prior thereto, he served as the Vice President and
22 General Manager for FOX owned-and-operated television stations in Greensboro, North
23 Carolina, Tampa, Florida and Los Angeles, California. Boylan serves on the Board of Advisors
24 for a startup data analytics company, SiteZeus as of January 2015.

25 23.

26 Defendant William E. Engel ("Engel") has served as a director of Rentrak since August

1 2010. Since 2009, Engel has served as Chairman and is now a minority owner of Consumer
2 Orbit LLC, a marketing information aggregator. Engel served as Senior Vice President of
3 Innovation for the Marketing Services Group of Experian, Inc., a provider of information,
4 analytical and marketing services worldwide, from February 2007 until December 2008, and was
5 Co-President of Experian's subsidiary, Experian Research Services from October 2004 until
6 February 2007. From 1998 until 2004, he was Chairman and CEO of Simmons Market Research
7 Bureau following its acquisition by Symmetrical Resources Inc., co-founded by Mr. Engel in
8 1992. Engel formerly served as President of Research and Operations for VNU (now The
9 Nielsen Company) from mid-1989 to 1991.

10 24.

11 Defendant Patricia Gottesman ("Gottesman") has served as a director of Rentrak since
12 August 2014. Since August 2013, Gottesman has also served as Chairman of the Advisory Board
13 of Ninah, the analytics and marketing science arm of Publicis Groupe S.A. She has also served
14 as a Trustee for the Washington, D.C.-based Committee for Economic Development, a business-
15 led policy organization composed of CEOs and corporate directors from major companies and
16 institutions across the country, since September 2013. Since 2011, Gottesman has served as a
17 member of the board of directors of World Wrestling Entertainment, Inc. From 2010 through
18 2012, Gottesman was President, CEO and Corporate Director of Crimson Hexagon, Inc. From
19 2008 thru 2010, Gottesman was the founder and principal of Omnibus PG. Prior to 2008,
20 Gottesman served for 29 years with Cablevision Systems Corporation in numerous senior
21 product, marketing and operations positions, including Executive Vice President, Digital
22 Marketing and Commerce from 2007 to 2008 and Executive Vice President, Executive Vice
23 President, Digital Marketing and Commerce from 2007 to 2008 and Executive Vice President,
24 Product Management and Marketing from 2000 to 2006.

25 25.

26 Defendant Anne MacDonald ("MacDonald") has served as a director of Rentrak since

1 August 2009. MacDonald currently provides consulting and advisory services through her
2 independent consulting firm MacDonald Marketing Consultancy LLC. She serves on the board
3 of Hiscox Ltd., as of May 2015. Previously, MacDonald was Executive Vice President and Chief
4 Marketing Officer for The Travelers Companies until 2011. She was a partner of The
5 Rockefeller Consulting Group from 2007 until 2009. MacDonald was also President and Chief
6 Marketing Officer of Macy's from 2006 until 2007. She was Chief Marketing Officer for the
7 Consumer Division of Citigroup from 2004 until 2006, and held various executive marketing
8 positions in Citigroup from 1997 until 2004. She was Vice President of Marketing for Pizza Hut
9 from 1993 until 1997. MacDonald worked at NW Ayer agency from 1983 until 1993, holding
10 the positions of Executive Vice President and Managing Director from 1991 to 1993. She served
11 on the board of Catalina Marketing from 2003 until 2006, and the Advisory Board of SS+K
12 Advertising Agency from 2007 until 2009. She also serves on the non-profit boards of
13 Schumacher Center for New Economics and American Friends of ZanaAfrica.

14 26.

15 Defendant Martin B. O'Connor ("O'Connor") has served as a director of Rentrak since
16 August 2010. O'Connor is the managing partner of the law firm O'Connor, Morss & O'Connor,
17 P.C. in Union, New Jersey. O'Connor has been a director of Cinedigm Digital Cinema Corp. and
18 Digital Cinema Destinations Corp since 2010. He also serves as a director of various closely-
19 held companies, charitable organizations, foundations and professional boards.

20 27.

21 Defendant Ralph R. Shaw ("Shaw") has served as a director of Rentrak since 2004. Prior
22 to 2004, Shaw served as an advisor to the Board from 2001 to 2004 and as an outside director of
23 one of Rentrak's subsidiaries from 2000 through 2003. Shaw has been president of Shaw
24 Management Company since 1980, and general partner of a succession of three venture capital
25 funds beginning in 1983. Shaw is a trustee of the Tax-Free Trust of Oregon. From 1993 to 2011,
26 Shaw served on the board of Schnitzer Steel Industries, Inc. and was a member of its audit,

1 compensation and governance committees.

2 28.

3 Defendant David Chemerow ("Chemerow") has served as Rentrak's Chief Operating
4 Officer and Chief Financial Officer since 2009.

5 **RELEVANT NONPARTIES**

6 29.

7 comScore is a global media measurement and analytics company, which uses its data to
8 help media buyers and sellers understand and make decisions based on how consumers use
9 different media, such as TV, video, mobile, desktop and other mediums.

10 30.

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

15 31.

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

18 32.

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

24 **JURISDICTION AND VENUE**

25 33.

26 This Court has jurisdiction over each Defendant named herein because each Defendant is

1 either a corporation that conducts business or maintains operations in this county, or is an
2 individual who has sufficient minimum contacts with Oregon so as to render the exercise of
3 jurisdiction by the Oregon courts permissible under traditional notions of fair play and
4 substantial justice.

5 34.

6 Venue is proper in this Court because one or more of the Defendants either resides in or
7 maintains executive offices in this county, a substantial portion of the transactions and wrongs
8 complained of herein, including the Individual Defendants' primary participation in the wrongful
9 acts detailed herein, occurred in this county, and Defendants have received substantial
10 compensation in this county by doing business here and engaging in numerous activities that had
11 an effect in this County.

12 SUBSTANTIVE ALLEGATIONS

13 **I. Background**

14 35.

15 Rentrak is a global media measurement and research company serving the entertainment
16 industry. Rentrak has developed metrics to be used as database currencies for the evaluation and
17 selling of entertainment content across many platforms including box office, multi-screen
18 television, and home video. The Company tracks viewing behavior from more than 35 million
19 televisions across 210 markets. It is also the only company in the media measurement industry to
20 provide video on demand measurement, obtained from set-top box data, and is also the sole
21 provider of real-time box office ticket sales intelligence worldwide.

22 36.

23 Rentrak's share price has fluctuated over the past year, ranging from a high of \$87.40 on
24 November 28, 2014, to a low of \$42.03. As recently as August 4, 2015, Rentrak shares traded at
25 \$71.89.

37.

In the weeks leading up to the announcement of the Proposed Transaction, analysts projected that Rentrak stock would dramatically increase in value going forward. In an *Enterprise Leader* article titled "Momentum Stock in Focus: Rentrak Corporation," Rentrak stock was pointed to as a **strong buy**: "According to Zacks, Rentrak Corporation has a consensus rating of 1.5. The number is based on a simplified 1-5 scale where analysts giving a Strong Buy rating would be given a 1 and those giving a Sell rating would be given a 5. This is the consensus number of all tracked analysts who have published ratings on the stock."

38.

Indeed, just days prior to the announcement of the Proposed Transaction, the mean target price for Rentrak shares, set by six Wall Street analysts, was \$74.13, with at least one analyst targeting \$100 per share. Analysts such as Needham & Co. LLC and Brean Capital projected a target of \$85-86 a share in late September 2015.

39.

On Friday, September 25, 2015, Rentrak announced that it had acquired SponsorHub, an online data platform for the sports and entertainment industry, offering proprietary social media measurement for sports, political and advertising brands. The Company touted the benefits of the transaction, stating that it was "excited to add social media measurement to [its] TV Everywhere products, as it will give additional transparency and purchasing flexibility for brands and agencies through SponsorHub's social media products."

40.

The following Monday, September 28, 2015, Rentrak saw its shares decline by 9.5% to close at \$43.82, one of the lowest closing prices Rentrak shares had seen all year.

41.

Then, on September 29, 2015 after the market closed, the Proposed Transaction was announced. Pursuant to the Merger Agreement, the all-stock deal will convert each Rentrak share

1 into 1.15 shares of comScore common stock, representing a mere 9.9% premium to Rentrak's
2 September 29, 2015 closing price of \$43.82.

3 **II. Rentrak's Recent Financial Performance**

4 42.

5 Rentrak has been delivering a steady mix of positive financial results, optimistic
6 valuation announcements and strong business indicators for a number of consecutive quarters
7 and has clearly demonstrated the Company's robust growth potential.

8 43.

9 For example, on May 12, 2015, Rentrak announced its revenue results for the full year
10 ended March 31, 2015 in a press release and in a filing with the SEC. In the announcement,
11 Rentrak reported a 36% increase in revenue for fiscal 2015, up from \$75 million in 2014 to
12 \$102.9 million.

13 44.

14 The May 12, 2015 press release also projected that the Company's revenue would
15 increase between 36% and 39% in fiscal 2016. Defendant Livek was quoted in assuring
16 shareholders and investors of future growth: "Over the coming months, we will monetize these
17 achievements and further expand our customer base. I believe Rentrak has reached an important
18 inflection point, and we look forward to translating that into increasing value for all of our
19 stakeholders."

20 45.

21 On May 27, 2015, in a press release and in a filing with the SEC reporting its fourth
22 quarter growth, Rentrak again projected 36% to 39% revenue growth for fiscal 2016. It also
23 reported that total Company revenue increased 32% for the fourth quarter of 2015 to \$28.5
24 million, up from \$21.6 million for the same period in 2014.

1 46.

2 Once again, Levik emphasized the Company's continued growth: "Rentrak's fourth
3 quarter was characterized by strong revenue growth, substantial bottom-line improvement and
4 many significant operational achievements. Profit contribution, on an adjusted basis, in each of
5 our three major product lines grew significantly for fiscal 2015, and we are especially proud of
6 our gains in TV, which improved from a loss of \$1.6 million for the full fiscal 2014 year to a
7 profit of \$9.0 million for fiscal 2015 as our business model continues to scale."

8 47.

9 On August 10, 2015, Rentrak reported strong earnings results for its first quarter 2016
10 via press release and in an SEC filing. The Company stated that "[t]otal revenue for the quarter
11 was \$27.5 million, an increase of 23% from the same period last year. Net income for the
12 quarter was \$1.6 million, an increase of 265% compared to the same period last year."

13 48.

14 The August 10, 2015 press release reiterated the Company's guidance for the remainder
15 of fiscal year 2016 and that each of the Company's selected long-term metrics would rise.

16 49.

17 Commenting on these results, Livek remarked, "[w]e are very pleased with our progress
18 this quarter, and continue to believe that we are firmly on target to achieve our full year
19 guidance given the health of our business in the media ecosystem. Our partnership with Oracle
20 Data Cloud will expand our Advanced Demographics offering to help advertisers and networks
21 better understand how to reach their customers and viewers. We are also making great headway
22 with Rubik, where we increased our client base from 10 to 14 in a short period of time. Our
23 political vertical will benefit from almost \$4.5 billion in expenditures related to the 2016
24 elections, and our sports business addresses a very large market. We are excited about these and
25 many other opportunities and our ongoing ability to monetize them."

The Company's positive financial results and optimistic valuation announcements did not cease after the announcement of the Proposed Transaction. On November 5, 2015, the Company announced its second quarter 2016 financial results. Among other things, the Company reported \$0.29 earnings per share for the quarter, *topping* Thomson Reuters' consensus estimate of \$0.12 by a staggering *141%*. Additionally, the Company reported \$32.8 million in earnings for the quarter compared to analyst estimates of \$32.6 million, an increase of 30.2% on a year-over-year basis. In this same press release to shareholders (and contradicting the downward revision in the Company's management's financial projections discussed below) the Company reiterated its bullish forecast of the Company's future growth, noting that:

Business Outlook

Rentrak reiterated its fiscal 2016 guidance and selected longer-term metrics, including:

- Total company revenue growth of 36 percent to 39 percent.
- TV Everywhere™ revenue growth of 55 percent to 65 percent.
- Accelerating Movies Everywhere™ growth in the second half of fiscal 2016 related to anticipated contract renewal increases from large domestic studios. The product line will continue to be affected by foreign exchange movements.
- Adjusted EBITDA before acquisition and reorganization costs of \$22.7 million to \$25.9 million, or 16 percent to 18 percent of revenues.
- Longer-term adjusted EBITDA return on revenue target of 35%.
- Tax expense of approximately \$4.0 million for the year, most of which is expected to be non-cash.
- Approximately 16.4 million fully diluted weighted average shares outstanding.
- Capital spending of approximately \$13.0 million to \$14.0 million.

Livek, commenting on the Company's second quarter financial results remarked that: "We had a great quarter, generating 30 percent total company revenue growth and 53 percent

1 growth in our TV product line, while driving considerable profitability. We remain on target to
2 achieve our full year guidance as Rentrak continues to demonstrate its value throughout the
3 media ecosystem.” And, that the Company’s “proposed merger with comScore adds even more
4 excitement as we will work together to accelerate the pace of innovation, and offer new and
5 improved solutions for cross-platform TV measurement, not available anywhere else.” Thus, all
6 financial guidance by the Company before and after the announcement of the Proposed
7 Transaction evinces future growth and provides no rational basis or explanation for Company
8 management to revise its financial projections—provided to Goldman Sachs to perform the
9 Fairness Opinion—downward.

10 **III. WPP Wants To Create A Strong Rival To Nielsen**

11 52.

12 In addition to being competitors, WPP and Nielsen have a complicated relationship and a
13 long history of transactions and temporary alliances. For example:

- 14 • In November 2008, WPP swapped its 50% stake in AGB Nielsen Media Research
15 in exchange for Nielsen’s SRDS, a media rates and data company, along with
16 healthcare media group PERQ/HCI, and Nielsen’s 11% stake in IBOPE Group, a
17 Brazilian-based research firm.
- 18 • In July 2011, Nielsen, and WPP subsidiary, Kantar Media, announced a multi-
19 year agreement providing Nielsen with set top box data from Kantar Media’s
20 DIRECTView(TM) service for use in local TV audience measurement.
- 21 • In July 2014, Nielsen and Kantar Media announced an alliance between Nielsen
22 Scarborough and Kantar Media to deliver a new health care insights service: the
23 Nielsen Scarborough MARS Healthcare Module.

24 53.

25 There is no reason to believe that WPP and Nielsen will not continue to cooperate and
26 compete in the years to come. Recently, WPP signaled that it wants to increase its leverage over
27 Nielsen by building up a rival. In April 2015, for example, *Variety* published an interview with
28 WPP CEO Martin Sorrell, in which Sorrell emphasized that WPP wanted to build a “better
29 mousetrap” to compete with Nielsen:

Media consumption behavior is in such flux, but what sort of new status quo do you see emerging in the years to come? What will be the new norm for how advertisers determine what audience is out there?

We would like there to be an industry standard and we would like it to be our industry standard, measuring both offline and online, in the same way we measure TV audiences in 45 countries. A non-U.S. Nielsen, if you like. We have a partnership with Nielsen in one or two places, and in the same way they are regarded as a sort of industry standard for offline in the U.S., we want to make sure we have as good an offline standard as possible and also have an online standard that is acceptable to our clients, who want to measure the effectiveness of their return on investment, and see who can accumulate things more effectively.

In the U.S., the TV upfront is fast approaching and early signals suggest another slice of advertising is about to go to digital and social outlets. If that's the case, this would mark the fourth straight decline in ad commitments for U.S. broadcast and the second for U.S. cable. How do you see ad support for TV playing out over the longer term?

Until we have a sort of right road and right measurement, you can't answer the question. It's all very well to look at Nielsen data and say the real Nielsen data is what I want, but it doesn't measure out-of-home. They don't measure if you're sitting in an airport like I am now, and they don't measure if you're in a bar and watching an NFL or NBA or whatever kind of match. ... We have to come up with a better measurement mousetrap in order to solve that issue. I think there's a strong argument to say that traditional media are underpriced, because we don't know fully where the audiences are. ... We know Nielsen doesn't measure everything. ... There have to be bigger samples. At the same time, there has to be a balance not just geographically but functionally, too. People are consuming media on the go, all the time. If I'm getting on a plane and I download a film, which may or may not have advertising on it, or if I'm sitting on an airplane watching ads on the plane, Nielsen doesn't measure that. It becomes more and more important because clients want more value for their money.

54.

The announcement of the Proposed Transaction lays bare WPP's strategy for confronting Nielsen: a combination of Rentrak and comScore. In the aftermath of the announcement of the Proposed Transaction, a number of media outlets highlighted this motivation. For example, *Variety* wrote "[c]ollaboration between ComScore [*sic*] and Rentrak has the backing of a prominent industry player: Sir Martin Sorrell. His British advertising conglomerate, WPP, is an

1 investor in both Rentrak and ComScore [sic], and could hold up to 19.9% of the new company
2 after the two parties complete their transaction. To Nielsen supporters, Sorrell's presence behind
3 the scenes might suggest a lack of some of the independence under which Nielsen operates."
4 Similarly, Forbes wrote that "Sir Martin Sorrell (whose WPP not incidentally has been a
5 shareholder in both companies) spoke for many during Advertising Week when he championed
6 the deal's benefits for competition in measurement, and similar words emerged from many of
7 those bloodied by battles with Nielsen for years."

8 55.

9 WPP's strategy in orchestrating the Proposed Transaction has also been criticized by
10 industry participants, including Nielsen. Following the announcement of the Proposed
11 Transaction, for example, Nielsen's CEO Mitch Barns stated that "[t]he two that have come
12 together recently, look, they had a matchmaker in the form of WPP." Barns went on to question
13 WPP's independence in comScore's future operations, noting that "[t]hey still have an issue
14 too—a very important one—which is the issue of independence. ... I've read where they've said
15 that WPP (PLC) doesn't have a board seat, as if that solves the problem—but of course it
16 doesn't. WPP is still their largest shareholder."

17 **IV. WPP Obtains a Foothold in Rentrak and comScore**

18 56.

19 WPP executed its strategy in stages. On December 1, 2014, Rentrak acquired the U.S.
20 television measurement business related to tuning analytics from The Kantar Group ("Kantar")
21 and GroupM, affiliates of WPP. Under the agreements, the Company integrated its national and
22 local TV measurement business with a number of Kantar's U.S.-based services that focus on
23 digital media, advertising expenditure and purchase data. In exchange, WPP received 1,526,790
24 restricted shares of Rentrak common stock. This acquisition gave WPP a 16.7% stake in Rentrak,
25 which was subsequently increased to 19.8%.

1 57.

2 On February 11, 2015, comScore entered into a material definitive agreement with WPP.
3 The agreement provided for: (i) a strategic alliance between comScore and WPP, and its
4 affiliates, including Kantar, and (ii) the acquisition of a portion of WPP's internet audience
5 measurement business in Europe.

6 58.

7 Pursuant to the agreements, comScore eventually issued 1,605,330 treasury shares of its
8 common stock, representing 4.45% of the Company's post-transaction outstanding common
9 stock with a fair value of \$82.5 million in exchange for the European internet audience
10 measurement ("IAM") business and a strategic alliance between comScore and WPP on cross-
11 media audience measurement. Soon thereafter, WPP commenced a tender offer to purchase up to
12 15.45% of comScore's common stock. Pursuant to the tender offer, WPP agreed to acquire each
13 share tendered for \$46.13 per share. The tender offer ultimately failed causing comScore to
14 directly issue and sell additional shares at the tender offer price of \$46.23 to WPP to achieve its
15 minimum 15% ownership in comScore. WPP holds an option to acquire an additional 5% of
16 comScore's common stock at WPP's request. Goldman Sachs—now Rentrak's financial
17 advisor—acted as financial advisor to WPP in its acquisition of its 15% ownership in comScore.

18 **V. Shareholder WPP Orchestrates a Strategic Combination between comScore and**
19 **Rentrak**

20 59.

21 Immediately after becoming Rentrak's and comScore's largest shareholders, WPP set out
22 to unite the companies in an effort to enhance its market share in the measurement and
23 informational services industry. From the inception of this effort, the Board mismanaged a
24 "process" that advanced the interest of its and comScore's largest shareholder, WPP, rather than
25 the interests of Rentrak's public shareholders. The Board acted as passive instrumentalities by
26 deferring to management in the downward revision of its own internal projections and
management's creation of a set of comScore projections. Indeed, upon information and belief, it

1 appears that all meetings of the Board were held telephonically, including the fairness
2 presentation. Moreover, the Board failed to properly vet Goldman Sachs regarding its long-
3 standing relationship financial advisory relationship with WPP. Most notably, the Board
4 approved the sale of the Company at an implied price that was *\$15.83 to \$31.26 less* than the
5 per-share value generated by Goldman Sachs' DCF analysis (using the revised, lower numbers).
6 Individually and certainly collectively these breaches of fiduciary duty rise to the level of gross
7 negligence and/or bad faith.

8 60.

9 On April 21, 2015—approximately two months after WPP became the largest
10 shareholder of comScore and Rentrak—Serge Matta ("Matta"), comScore's CEO, met with
11 Livek at an industry conference to discuss the possibility of a business combination between
12 their two companies.

13 61.

14 On April 23, 2015, following a comScore board of directors meeting, Matta called Livek
15 to inform him that the comScore board of directors had blessed further discussions between the
16 Company and comScore involving a potential strategic transaction. That same day, J.P. Morgan
17 Securities LLC ("J.P. Morgan") was retained as comScore's financial advisor to advise the
18 comScore board of directors with respect to a strategic acquisition of Rentrak.

19 62.

20 Further evincing WPP's influence over these negotiations, on April 28, 2015, Matta and
21 Livek participated in a conference call with representatives of WPP purportedly to inform WPP
22 of what it already knew: that comScore and Rentrak were exploring a strategic combination.

23 63.

24 On May 1, 2015, the Board, subject to a previous engagement letter, authorized Goldman
25 Sachs to coordinate with J.P. Morgan to set a meeting with comScore management. Prior to this
26 directive, the Board appears to have taken no steps to vet Goldman Sachs' relationship with WPP

1 or determine whether a second, independent financial advisor was necessary.

2 64.

3 On May 6, 2015, Rentrak and comScore entered into an amended confidentiality
4 agreement to include discussions about a possible business combination.

5 65.

6 On May 7, 2015, following a meeting between Matta, Christina Lin (“Lin”)—Executive
7 Vice President, General Counsel, and Chief Privacy Officer of comScore—Livek and the
8 companies’ financial advisors, comScore delivered its initial proposal of terms for an acquisition
9 of Rentrak (the “comScore’s May 7 Proposal”). Despite the obvious materiality of this
10 information, the S-4 provides none of the material terms of comScore’s May 7 Proposal.

11 66.

12 In response to comScore’s May 7 Proposal, on May 10, 2015 the Rentrak Board met to
13 discuss the proposal. Although the Board claims to have discussed the May 7 Proposal, possible
14 valuation, and opportunities for improving the proposed valuation, the Board appears to have not
15 authorized Livek to make a counterproposal to comScore.

16 67.

17 On May 19, 2015, Livek again met with Matta and Lin, and the companies’ legal and
18 financial advisors to discuss Livek’s counterproposal with respect to *potential board*
19 *composition and management roles* only. Despite Livek and the Board’s fiduciary duty to place
20 shareholder’s interests ahead of their own, no discussion appears to have taken place at this
21 meeting regarding the possible consideration to be received by shareholders. A day later, Matta
22 and Livek met again to discuss comScore’s reaction to Livek’s counterproposal *focusing solely*
23 *on board composition and management roles*. Later that same day, Livek met with “Company
24 A” (as identified in the S-4) to discuss a potential strategic transaction.

25 68.

26 On May 22, 2015, Livek met with the CEO of “Company B”. Company B indicated its

1 interest in making an offer to acquire Rentrak. On May 29, 2015, the CEO of Company B
2 contacted Livek informing him that Company B had retained a financial advisor and was
3 prepared to make a formal offer to acquire Rentrak.

4 69.

5 Demonstrating Company B's seriousness, on June 7, 2015, Company B delivered a non-
6 binding proposal to acquire Rentrak for a combination of stock and cash ("Company B's June 7
7 Proposal"). Remarkably, the S-4 fails to disclose any of the terms proposed by Company B on
8 June 7.

9 70.

10 On June 10, 2015, the Board met to discuss the status of negotiations between the
11 Company and comScore. Among other things, Goldman Sachs discussed its preliminary
12 financial analysis of the comScore May 7 Proposal. At this same meeting, Goldman Sachs
13 discussed its analysis of Company B's June 7 Proposal. It is unclear from the S-4 whether
14 Goldman Sachs disclosed to the Board its financial and familial ties with WPP before rendering
15 its financial analysis regarding Company B's June 7 Proposal to the Board. Those ties are highly
16 material considering the likelihood of skewing Goldman Sachs' analysis and judgment of
17 Company's B's June 7 Proposal and favoring any proposal put forward by comScore, WPP's
18 preferred acquiror.

19 71.

20 Between June 11, 2015 and June 24, 2015, Livek met with Company B's CEO to discuss
21 further a potential strategic transaction between Company B and Rentrak. Despite the highly
22 questionable critique of Company B's proposal by Goldman Sachs, the S-4 makes no mention of
23 the specific topics discussed between Livek and Company B's CEO at these meetings. On June
24 18, 2015, Rentrak executed a nondisclosure agreement with Company B.

25 72.

26 To further create the appearance of a robust market check, and with negotiations between

1 comScore and Rentrak well underway, on June 24, 2015 and June 26, 2015, Goldman Sachs
2 contacted “Company C” and “Company D” inquiring whether either company would be
3 interested in a possible acquisition of Rentrak. Soon after, despite entering nondisclosure
4 agreements, Company C and Company D communicated that neither company was interested.
5 The S-4 fails to explain either company’s rationale for bowing out of the process.

6 73.

7 On June 26, 2015, comScore delivered a non-binding letter of intent outlining the terms
8 of a proposed business combination between the two companies (“comScore’s June 26
9 Proposal”). Here too, the S-4 makes no mention of the terms proposed by comScore or how they
10 materially differed from comScore’s May 7 Proposal. Thus, Rentrak shareholders have no
11 information regarding any possible differences between comScore’s June 26 Proposal and
12 comScore’s May 7 Proposal. Presumably, any differences are immaterial between the two
13 proposals. However, this is currently unknown considering the terms of both proposals are still
14 being concealed.

15 74.

16 On July 2, 2015, Matta, Magid Abraham (“Abraham”)—Executive Chairman of the
17 board of directors and co-founder of comScore—Lin, Levek, Brent Rosenthal (“Rosenthal”)—
18 Non Executive Chairman of the Board of Rentrak—and Chemerow met with their financial
19 advisors in New York. Among other things, each of the companies’ management teams made
20 presentations and presented their financial projections. Additionally, the parties discussed the
21 proposed composition of the post-close board. A day later, on July 3, 2015, Lin and Rosenthal
22 met again with comScore to discuss the composition of the post-close Board.

23 75.

24 Also, on July 3, 2015, Rentrak delivered a revised draft of the letter of intent setting forth
25 its counterproposal of the terms proposed in the comScore June 26 Proposal (the “July 3
26 Counterproposal”). Other than noting that the Board rejected exclusivity with comScore, the S-4

1 makes no mention of the terms provided in Rentrak's July 3 Counterproposal.

2 76.

3 On July 6, 2015, the Board held a meeting to discuss the status of negotiations with
4 comScore and Company B, as well as efforts to contact other parties regarding potential interest
5 in a strategic combination. At this meeting, Goldman Sachs informed that Board that Company B
6 had communicated that it did not intend to improve its offer (the terms of which have still not
7 been disclosed). Although projections were provided to comScore earlier in the process, the S-4
8 does not disclose whether the Board delivered these same financial projections to Company B in
9 an effort to improve Company B's June 7 Proposal.

10 77.

11 On July 7, 2015, in spite of several parties communicating their interest in a potential
12 strategic acquisition of Rentrak—including Company B's formal proposal—Chemrow met with
13 only a representative of comScore to discuss Rentrak's upcoming earnings announcement.

14 78.

15 On July 8, 2015, Livek, Chemerow, Rosenthal (all of whom have obtained post-close
16 employment with comScore following the closing of the merger) met with Company C to discuss
17 Company C's interest in a potential transaction with Rentrak.

18 79.

19 On July 9, 2015, Company B informed Livek that it was no longer interested in pursuing
20 a strategic combination with Rentrak. The S-4 provides no rationale for Company B's exit from
21 the process.

22 80.

23 On July 10, 2015, the Board authorized Goldman Sachs to send management's financial
24 projections to J.P. Morgan, comScore's financial advisor. These management projections likely
25 include management's unlevered free cash flow projections which continue to be concealed from
26 shareholders.

1 81.

2 On July 14, 2015 Matta, Abraham, Lin, Livek, Rosenthal and Chemerow, along with
3 their financial advisors, met to discuss, among other things, the exchange ratio for any proposed
4 transaction.

5 82.

6 On July 16, 2015, Rentrak entered into nondisclosure agreements with Company A and
7 Company D. Later that same day, Livek and Chemerow, along with members of Rentrak
8 management, met with Company D to discuss the companies' products. Later still, comScore
9 entered into an engagement letter with J.P. Morgan concerning a potential transaction with
10 Rentrak.

11 83.

12 On July 17, 2015, Livek and Chemerow met with Company A to discuss each other's
13 products and to discuss a possible strategic combination between the two companies. On July 21,
14 2015, Company A communicated that it was no longer interested in a transaction with Rentrak.

15 84.

16 On July 22, 2015, with no financial advisors present, Livek and Matta met to discuss the
17 exchange ratio.

18 85.

19 On July 23, 2015, Livek, Chemerow, and members of Rentrak's management met with
20 representatives of Company D to provide a demonstration of the Company's products. And, on
21 July 24, 2015, Livek met telephonically with a representative of Company D to discuss a
22 potential strategic transaction between Company D and Rentrak and to set a meeting with
23 Company D's senior management.

24 86.

25 Despite comScore's refusal to improve its offer, Rentrak made available a data room to
26 perform due diligence on the Company.

1 87.

2 Further demonstrating the *fait accompli* that was the negotiations between Rentrak and
3 comScore, on August 1, 2015 comScore's legal counsel circulated a draft merger agreement to
4 Rentrak's legal advisors.

5 88.

6 On August 4, 2015, the Board met via conference call. At this meeting, Rosenthal
7 updated the Board with respect to ongoing negotiations with comScore and discussions with
8 parties expressing interest in a strategic combination with Rentrak. Goldman Sachs also presented
9 preliminary analyses of Rentrak, and the Company's legal advisor provided its initial reaction to
10 the draft merger agreement.

11 89.

12 On August 6, 2015, Livek and Goldman Sachs met with Company D regarding additional
13 details of a potential business combination.

14 90.

15 On August 8, 2015, Rentrak's legal advisors circulated a revised draft of the merger
16 agreement back to comScore's legal counsel. Later that same day, Company D indicated that
17 while it still had interest in the "long term" of a possible business combination, at this time it was
18 proposing a so-called "commercial arrangement". Livek discussed preliminary terms of a
19 commercial arrangement with Company D. The Company has failed to provide any information
20 regarding this commercial arrangement to shareholders.

21 91.

22 On August 15, 2015, Matta, Abraham, Livek, Rosenthal and Gian Fulgoni—co-founder
23 and executive chairman emeritus of comScore—met telephonically to discuss the exchange ratio,
24 board composition and management roles. Following the meeting, Rentrak closed its data room
25 and cancelled upcoming meetings with comScore management. On this same day, Livek met
26 telephonically with the CEO of Company B to discuss whether Company B would be potentially

1 interested in re-engaging with Rentrak regarding a business combination. Unsurprisingly, having
2 been rebuffed once before, Company B's CEO expressed little interest in a strategic combination
3 with Rentrak.

4 92.

5 On August 18, 2015, Matta and Livek met to resolve issues raised at the August 15, 2015
6 meeting. Rentrak reopened its data room and due diligence activities resumed.

7 93.

8 On August 26, 2015, Matta, Abraham, Livek and Rosenthal met telephonically to discuss
9 among other things, board composition, Livek's employment terms and identification of key
10 personnel.

11 94.

12 On August 27, 2015, the Board convened a meeting telephonically. The Board discussed
13 the status of communications with other parties, including two parties that expressed pursuing
14 commercial relationships instead of a strategic transaction with the Company. Rosenthal also
15 updated the Board regarding points of difference, including the exchange ratio. The S-4 does not
16 disclose whether Rosenthal informed the Board that Livek was negotiating his own employment
17 terms at the same time he was negotiating the exchange ratio on behalf of the Company's
18 shareholders.

19 95.

20 On August 28, 2015, Livek called Matta to communicate Rentrak's counterproposal to
21 the positions outlined by Matta at the August 26 meeting (the "August 28 Counterproposal").

22 96.

23 On August 29, 2015, Matta and Livek met telephonically to discuss, among other things,
24 Livek's employment terms.

25 97.

26 On September 3, 2015, comScore circulated a support agreement to WPP pursuant to

1 which WPP would vote to support the transaction between comScore and Rentrak.

2 98.

3 On September 4, 2015, Matta and Livek met telephonically to discuss the exchange ratio.

4 **VI. The Board Accedes to comScore's Demands and Management Manipulates**
5 **Projections to Ostensibly Show the Exchange Ratio is Fair**

6 99.

7 Following the September 4th call, comScore discontinued access to the company's data
8 room. Later that same day, Livek emailed Matta to inform him that Rentrak was still interested
9 in a deal with comScore but that additional due diligence was necessary. In other words, Livek
10 would need a justification that would allow management to modify the Company and
11 comScore's projections downward to allow Goldman Sachs to fit the exchange ratio into a range
12 of reasonableness.

13 100.

14 On September 6, 2015, in a further effort to pressure the Board into submission, Matta
15 emailed representatives of WPP to "alert" them that comScore had ceased discussions with
16 Rentrak. Later that day, Livek and Matta met telephonically and agreed to conduct a "final due
17 diligence call" and "a final discussion related to outstanding issues relating to the exchange
18 ratio[.]"

19 101.

20 On September 7, 2015, with an agreement already in place between Matta and Livek,
21 comScore reauthorized Rentrak's access to its data room. On that same day, Matta, Lin, Livek,
22 Chemerow, and their financial advisors met telephonically to discuss final outstanding issues,
23 including Livek's employment terms.

24 102.

25 On September 8, 2015—to reach the predetermined conclusion that the exchange ratio
26 was fair to the Company's shareholders—Chemerow discussed with the Board revised
assumptions for earlier sets of projections for both comScore and Rentrak that would make the

1 exchange ratio appear more palatable to the Company's shareholders. Notably, the downward
2 revisions to the Company's projections do not comport with the rosy financial forecasts
3 disclosed by the Company in public filings before and after the merger was announced.
4 (Compare with ¶¶ 50-51 *supra*).

5 103.

6 Ironically, the revised projections appeared to spook comScore. On September 9, 2015,
7 Goldman Sachs, with the Board's blessing, sent the revised projections to J.P. Morgan. Later that
8 day, Matta and representatives of J.P. Morgan met telephonically with Livek and Chemerow to
9 discuss the scope of the revisions made to Rentrak's financial projections. In light of Rentrak's
10 management's downward revision in the financial projections, J.P. Morgan was no longer able to
11 justify the exchange ratio. Thus, the comScore board of directors after meeting with J.P. Morgan
12 instructed J.P. Morgan to advise Goldman Sachs that it would not proceed with the proposed
13 transaction.

14 104.

15 Frustrated by the lack of progress made between the parties and sensing that negotiations
16 between comScore and Rentrak were teetering on the edge of collapse, WPP intervened yet
17 again to discuss the discontinuation of negotiations between comScore and Rentrak.

18 105.

19 After speaking to WPP and, apparently, newly committed to consummating a transaction
20 with comScore, on September 13, 2015, Livek emailed Matta yet again expressing his belief that
21 a strategic combination between the parties could make sense. Matta responded to Livek's email
22 that comScore was focused on its upcoming client day and would touch base after the conclusion
23 of that event.

24 106.

25 On September 22, 2015, the comScore board of directors convened a meeting. Among
26 other things, the comScore board of directors discussed Rentrak's revised projections and agreed

1 that evaluation of a potential strategic combination would have to be reconsidered in light of the
2 revised projections. In other words, the revised projections would require further discussions
3 regarding the exchange ratio. Following discussion, the comScore board of directors authorized
4 management to review Rentrak's revised projections and to conduct due diligence to understand
5 the impact of the changed projections and to understand the value of the strategic business
6 combination of the companies.

7 107.

8 On September 25, 2015, Wesley communicated to Chemerow comScore's financial
9 projections for comScore's quarter ended September 30, 2015. Later that day, Matta and Livek
10 met to discuss Rentrak's most recent financial projections.

11 108.

12 Between September 25, 2015 and September 29, 2015, Rentrak and comScore along with
13 its advisors negotiated the terms of the Merger Agreement. On September 29, 2015, the Board
14 met telephonically with their respective legal and financial advisors. Following a presentation by
15 Goldman Sachs, the Board unanimously approved the Merger Agreement and resolved to
16 recommend to its shareholder to vote for the Proposed Transaction.

17 **VII. The Proposed Transaction Undercompensates Rentrak's Shareholders**

18 109.

19 On September 29, 2015, Rentrak and comScore issued a joint press release announcing
20 the Proposed Transaction. The press release provides in part:

21 comScore, Inc. (NASDAQ: SCOR) and Rentrak Corporation (NASDAQ: RENT)
22 today announced that the companies have entered into a definitive merger
agreement under which the companies will combine in a stock-for-stock merger.

23 Pursuant to the terms of the merger, which has been approved by the Boards of
24 Directors of both companies, Rentrak will merge into a wholly-owned subsidiary
of comScore, and each share of Rentrak will be converted into the right to receive
25 1.15 shares of comScore. Upon completion of the merger, comScore shareholders
are expected to own approximately 66.5% and Rentrak shareholders are expected
26 to own approximately 33.5% of the combined company on a fully diluted basis.

110.

While the announcement of the Merger Agreement lavished praise on the Proposed Transaction, a closer examination of the merger reveals serious shortcomings for the Company's investors.

111.

While the Exchange Ratio of \$47.69 represented a 9.9% premium against Rentrak's closing price, this modest premium itself is illusory because the announcement of the acquisition of Rentrak coincided with a significant one-day drop in Rentrak's share price. Indeed, Rentrak's stock closed at \$46.20 on Friday, September 25. As measured against Friday's close, the Proposed Transaction represents an even more modest 3% premium for Rentrak's shareholders.

112.

In the 52 weeks prior to the announcement of the Proposed Transaction, Rentrak shares traded as high as \$85.69 in November 2014. And, as recently as August 4, 2015, shares traded for \$71.26.

113.

Indeed, as illustrated in the chart below, Rentrak shares were lower at the time the Proposed Transaction was announced than they had been for the vast majority of the prior year.

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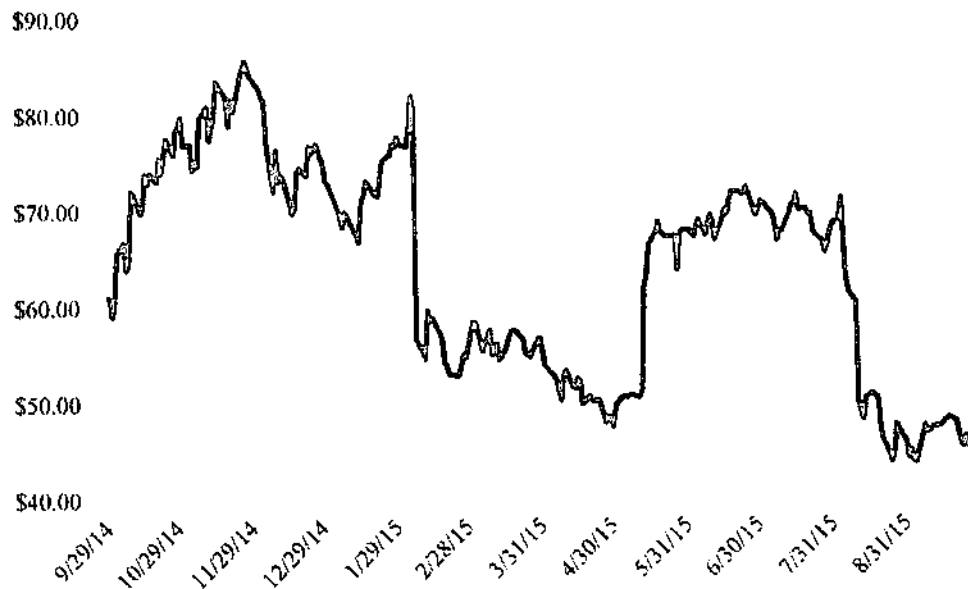
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Rentrak Closing Price
9/29/14 - 9/29/15



114.

What is worse, analysts have set their median target price for Rentrak at \$74.13, with the most bullish analyst reaching a target price of \$100. Moreover, as detailed herein, Goldman Sachs' DCF analysis—even with the revised projections—yielded a range of implied values per share of Rentrak of \$63.52 to \$79.29. Had the original forecasts been used, Goldman Sachs' DCF analysis would have yielded a value of \$87.42 - \$112.39 per share.

115.

Thus, the \$47.69 effective offer price vastly undervalues Rentrak and fails to account for the company's outstanding potential growth.

116.

Compounding the inadequate price negotiated by the Board is that, in accordance with the terms of the Merger Agreement, the Proposed Transaction is without a price collar to protect Rentrak investors.

1 **VIII. Goldman Sachs' Financial Analyses Do Not Support The Merger Consideration**

2 117.

3 To aid the Board in its effort to convince Rentrak shareholders that the Exchange Ratio is
4 palatable, the Board retained the advisory services of Goldman Sachs to issue a fairness opinion
5 (the "Fairness Opinion"). Yet both Goldman Sachs analyses described in the Registration
6 Statement that yielded an implied per share value for Rentrak as a stand-alone company showed
7 a range of values vastly greater than the implied consideration offered in the Proposed
8 Transaction. The *Illustrative Discounted Cash Flow Analysis* yielded a per-share value of \$63.52
9 - \$79.29. The *Present Value of Implied Future Rentrak Share Price Analysis* yielded a per-share
10 value of \$69.33 - \$85.74.

11 118.

12 Moreover, as part of Goldman Sachs' assessment of the Proposed Transaction, Goldman
13 Sachs performed a *Selected Companies Analysis*. The *Selected Companies Analysis* is irrelevant
14 and the valuation multiples are inconclusive for several reasons. *First*, despite Rentrak
15 performing an annual report that highlights five publicly traded companies that the Company
16 considered comparable to Rentrak, Goldman Sachs only analyzed *one* of these companies in this
17 analysis. *Second*, two of the multiples in this analysis (*i.e.*, EV/SALES 2015 and EV/SALES
18 2016) demonstrate that the proposed Exchange Ratio is not fair to Rentrak shareholders. *Third*, it
19 appears that Goldman Sachs utilized sales and EBITDA (earnings before interest tax
20 depreciation and amortization) estimates from a less reliable source rather than utilizing the most
21 reliable source, the Company's management's projections. *Fourth*, while on the surface, price-
22 to-earnings multiples suggest the Proposed Transaction is fair, after normalizing Rentrak's
23 earnings for expected future growth the Exchange Ratio is not at all fair to shareholders and falls
24 outside the range of reasonableness.

25 119.

26 Similarly, Goldman Sachs' analysis of precedent transactions is inconclusive and does

1 not demonstrate that the Exchange Ratio is fair to Rentrak shareholders. Goldman Sachs
2 performed a *Selected Transaction Analysis*, which generally compares multiples of prior
3 transactions to the present transaction. As an initial matter, of the twenty-one completed deals
4 analyzed by Goldman Sachs *only two* are relevant because Goldman Sachs analyzed transactions
5 from various sectors that in no way equally compare to the transaction between comScore and
6 Rentrak. Thus, it is impossible to draw any conclusion regarding the fairness of the Proposed
7 Transaction from Goldman Sachs' *Selected Transactions Analysis*.

8 120.

9 In sum, the Rentrak Board relied upon a fairness opinion that did not indicate the
10 Proposed Transaction is fair.

11 **IX. Conflicts of Interest Permeate the Proposed Transaction**

12 121.

13 As fiduciaries, the Company's Board and management owe fiduciary duties to place the
14 shareholders' interest ahead of their own. Livek and Chemerow violated that duty in their
15 negotiations with comScore. Despite Livek and Chemerow acting as lead negotiators for
16 shareholders in negotiating the Exchange Ratio that shareholders would receive, Livek and
17 Chemerow placed their own interests ahead of shareholders by negotiating for themselves
18 continued employment with comScore post-close. (See S-4 at 36, 37, 38, 39, 40, and 41).
19 Specifically, following consummation of the Proposed Transaction, Livek will be appointed the
20 Executive Vice Chairman of the Board of Directors and President of the combined company, and
21 Chemerow will be appointed a strategic advisor to the CEO of the combined company.³
22 Additionally, as a result of the immediate vesting of Rentrak stock options and restricted and
23 deferred stock units with the closing of the Proposed Transaction, the Board and the Company's
24 executive officers stand to receive a windfall in excess of **\$35,451,692.00**. Thus, the Company's

25 _____
26 ³ Additionally, certain Rentrak Board members who played significant roles in the negotiation
process also obtained for themselves representation on the combined company's board of
directors post-close, including directors: Engel, Rosenthal and Gottesman.

1 executives and directors were highly motivated to consummate a transaction with comScore at any
2 cost, in spite of the inadequacy of the consideration to be received by Rentrak shareholders.

3 122.

4 In connection with the Proposed Transaction, Livek and Chemerow will also receive
5 change-in-control payments, also known as "golden parachute" payments, totaling as much as
6 *\$14.9 million and \$11.5 million*, respectively.

7 123.

8 In addition to these significant change-in-control payments from Rentrak, Livek will
9 receive the following as compensation from comScore upon assuming his new role with in the
10 combined company:

11
12 comScore and Mr. Livek have executed an offer letter that entitles Mr. Livek to a
13 specific position at comScore and a compensation package, contingent upon the
14 closing of the merger prior to June 6, 2016. comScore and Mr. Livek have agreed
15 that Mr. Livek will serve as Executive Vice Chairman and President of comScore
16 and will be entitled to a base salary of \$435,000 per year. Mr. Livek will also be
17 awarded 10,000 restricted stock units on the 15th day of the month immediately
18 following the closing of the merger that will vest in equal annual installments
19 over a three-year period, beginning on the first anniversary of the closing of the
20 merger based on Mr. Livek's continued employment by comScore or its
21 subsidiaries. For calendar years beginning in 2016, Mr. Livek will also be entitled
22 to receive a short term incentive award and a long term incentive award consistent
23 with senior executives of comScore. comScore and Mr. Livek have also entered
24 into a Change of Control and Severance Agreement that becomes effective upon
25 the closing of the merger and has an initial term of three years and that will renew
26 automatically for an additional three years unless terminated by either party. In
the event Mr. Livek is terminated without cause or resigns for a good reason prior
to a change of control of comScore, he will be entitled to receive a severance
payment in an amount equal to two years of his then-existing annual base salary
and reimbursement for health insurance premiums. In the event Mr. Livek is
terminated without cause or resigns for a good reason on or within 12 months
after a change of control of comScore, Mr. Livek will be entitled to receive a
severance payment in an amount equal to two years of the greater of his then-
existing annual base salary or his annual base salary at the time of the change of
control of comScore, for a period of two years from the date of such termination,
reimbursement for health insurance premiums, and any then-outstanding unvested
equity awards will vest in full.

For its part, Goldman Sachs was conflicted and incapable of rendering independent judgment to the Board. As discussed above, Company B was the only other company to make a formal proposal to the Board. However, because of Goldman Sachs' family ties to and long-standing relationship with WPP,⁴ and WPP's insistence—as comScore's and Rentrak's largest shareholder—that comScore and Rentrak merge, Goldman Sachs sabotaged Company B's offer and ability to consummate a transaction with Rentrak. Among other things, Goldman Sachs challenged Company B's "ability to obtain financing for the transaction, the mix of consideration, [and] the expected effect of an acquisition of Rentrak on Company B's financial condition and specific risks facing Company's business." Moreover, the Registration Statement fails to disclose when, if at all, Goldman Sachs disclosed to the Board its significant conflicts vis-à-vis WPP including that: (i) all three of Martin Sorrell's sons have worked for Goldman Sachs and Mark Sorrell, a Goldman Sachs partner who has worked for the firm for over twenty years, is currently its Co-Head of U.K. Investment Banking; (ii) Goldman Sachs was financial advisor to WPP in its acquisition of a stake of comScore in February 2015; and (iii) Goldman Sachs was the additional Mandated Lead Arranger under WPP's \$2,500,000 revolving credit facility as amended on July 18, 2014. Thus, Goldman Sachs' substantial conflicts as to WPP eviscerate Goldman Sachs' ability to either independently evaluate Company B's offer or provide unbiased advice to the Rentrak Board.

⁴ Indeed, Goldman Sachs has performed significant financial advisory and/or underwriting services to WPP and has received significant *undisclosed* advisory fees which, upon information and belief, trump the fees to be received by Goldman Sachs for acting as financial advisor to Rentrak on this transaction. The advisory and underwriting services include, among other things acting as: (i) financial advisor to WPP in its acquisition of a stake of comScore in February 2015; (ii) bookrunner with respect to WPP's 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.

X. The Merger Agreement Contains Onerous and Preclusive Deal Protection Provisions

125.

Compounding the harm to investors, the Individual Defendants have agreed to onerous deal protections that will dissuade other competing bidders from coming forward and submitting bids offering a higher price. Indeed, the Merger Agreement contains numerous terms and conditions that prevent the Board from fulfilling its fiduciary duties to its shareholders and discourage competing bidders from coming forward to compensate shareholders in an amount truly reflective of the Company's worth. Many of these provisions are contained in a section of the Merger Agreement entitled "Non-Solicitation of Alternative Transactions," making quite clear that the Rentrak Board has agreed to provisions designed to prevent the Company from obtaining the best possible price for Rentrak shareholders.

126.

Section 6.2 of the Merger Agreement broadly provides that neither Rentrak nor any of its representatives can solicit, provide information to, or engage in discussions with any potential bidder. In fact, the Company may not solicit or encourage a bid, provide any non-public information to interested third parties or endorse or recommend any unsolicited proposal barring extremely limited circumstances. Section 6.2 states, in pertinent part:

Subject to Section 6.3, at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Section 9.1 and the Effective Time, neither Rentrak nor comScore shall, nor shall either of them authorize or permit any of their respective Representatives to, directly or indirectly:

- (a) solicit, initiate or knowingly encourage or facilitate, the making, submission or announcement of an Acquisition Proposal or Acquisition Transaction relating to Rentrak or comScore, respectively;
- (b) furnish to any Person (other than the other party hereto or any designees of such other party) any nonpublic information relating to Rentrak or comScore, respectively, or any of their respective Subsidiaries, or afford access to their business, properties, assets, books or records, or the business, properties, assets, books or records of any of their respective Subsidiaries, to any Person (other than to the other party hereto or any designees of such other party), in either case in a

manner intended to assist or facilitate any inquiries or the making of any proposal that constitutes or would reasonably be expected to lead to an Acquisition Proposal relating to Rentrak or comScore, respectively, or take any other action intended to assist or facilitate any inquiries or the making of any proposal that constitutes or would reasonably be expected to lead to an Acquisition Proposal or Acquisition Transaction relating to Rentrak or comScore, respectively;

- (c) participate or engage in discussions or negotiations with any Person (other than the other party hereto and its Representatives) with respect to an Acquisition Proposal or Acquisition Transaction relating to Rentrak or comScore, respectively;
- (d) approve, endorse or recommend an Acquisition Proposal or Acquisition Transaction relating to Rentrak or comScore, respectively;
- (e) enter into any letter of intent, memorandum of understanding or other Contract contemplating any Acquisition Proposal or Acquisition Transaction relating to Rentrak or comScore, respectively;
- (f) terminate, amend or waive any rights under any confidentiality, nondisclosure, "standstill" or other similar Contract between it or any of its Subsidiaries and any Person (other than the other party hereto);
- (g) waive the applicability of Section 203 of the DGCL or Sections 825845 of the OBCA, as applicable, or any portion thereof, to any Person (other than the other party hereto or in connection with the Rentrak Support Agreements or the comScore Support Agreements); or
- (h) propose publicly or agree to any of the foregoing with respect to an Acquisition Proposal or Acquisition Transaction relating to Rentrak or comScore, respectively.

127.

Section 6.3 of the Merger Agreement purports to allow for certain "*bona fide*" acquisitions proposal discussions, but limits the situations in which such discussions may occur as to render the purported exception meaningless. Section 6.3 provides:

Notwithstanding the terms of Section 6.2 or anything else to the contrary set forth in this Agreement, at any time prior to the receipt of the Requisite Rentrak Shareholder Approval in the case of Rentrak, or receipt of the Requisite comScore Shareholder Approval in the case of comScore, each of Rentrak or comScore may, directly or indirectly through their respective Representatives:

- (a) engage or participate in discussions or negotiations with any Person that has made after the date hereof (and not withdrawn) a *bona fide*, unsolicited Acquisition Proposal in respect of such party that such

1 party's board of directors determines in good faith (after consultation
2 with a financial advisor of nationally recognized standing and its
outside legal counsel) constitutes or is reasonably likely to lead to a
Superior Proposal in respect of such party; and/or

- 3 (b) furnish any nonpublic information relating to such party or any of its
4 Subsidiaries to any Person that has made after the date hereof (and not
5 withdrawn) a *bona fide*, unsolicited Acquisition Proposal for such party
6 that such party's board of directors determines in good faith (after
7 consultation with a financial advisor of nationally recognized standing
8 and its outside legal counsel) constitutes or is reasonably likely to lead
to a Superior Proposal in respect of such party; provided that, in the
case of any action proposed to be taken pursuant to the foregoing
clauses (a) or (b), all of the following conditions are satisfied (and
continue to be satisfied at all times during the period in which any such
actions are proposed to be ongoing and continuing):
- 9 (i) such Acquisition Proposal did not result from or arise out of a
10 breach of any provisions of Section 6.1 or Section 6.2 (as
11 modified by this Section 6.3), and the Person from whom such
12 party received such Acquisition Proposal has not made any other
13 Acquisition Proposals (either alone or together with one or more
other Persons) that resulted from or arose out of a breach of any
provisions of Section 6.1 or Section 6.2 (as modified by this
Section 6.3);
- 14 (ii) the party proposing to take such action has not breached any of
15 the provisions of Section 6.1 or Section 6.2 in respect to such
16 Acquisition Proposal (and any other Acquisition Proposal made
by the same Person, whether alone or together with one or more
other Persons);
- 17 (iii) the board of directors of the party proposing to take such action
18 determines in good faith (after consultation with outside legal
19 counsel) that that the failure to take such action would reasonably
be expected to be inconsistent with its fiduciary duties under
Delaware Law or Oregon Law, as applicable;
- 20 (iv) prior to or simultaneously with engaging or participating in any
21 such discussions or negotiations with, or initially furnishing any
22 nonpublic information to, such Person after the date hereof, the
23 party proposing to take such action gives the other party hereto
24 written notice of the identity of such Person and the material terms
25 and conditions of such Acquisition Proposal (unless such
Acquisition Proposal is in written form, in which case the party
proposing to take such action shall give the other party hereto a
copy of all written materials comprising or relating thereto) and of
such party's intention to engage or participate in discussions or
negotiations with, or furnish nonpublic information to, such
Person pursuant to this Section 6.3;
- 26 (v) prior to engaging or participating in any such discussions or
negotiations with, or initially furnishing any nonpublic

1 information to, such Person after the date hereof, the party
2 proposing to take such action enters into a written confidentiality
3 agreement, each of the terms of which are no less favorable to
such party than those contained in the Confidentiality Agreement
(*provided, however*, that no such confidentiality agreement need
include "standstill" provisions); and

4 (vi) promptly (and in no event later than 24 hours) after furnishing any
5 nonpublic information to such Person, the party hereto proposing
6 to take such action furnishes such nonpublic information to the
other party hereto (to the extent such information has not been
previously furnished to such other party).

7
8 128.

9 Additionally, Section 7.4(d) of the Merger Agreement contains a "force-the-vote"
10 provision whereby the Board must submit the Proposed Transaction for shareholder vote *even if*
the Board no longer deems the merger as in the best interest of the Company's shareholders.

11 Section 7.4(d) states in its entirety:

12
13 (d) Subject to the terms of this Agreement, Rentrak shall submit the Rentrak
14 Voting Proposal to the Rentrak Shareholders at the Rentrak Shareholders
15 Meeting for the purpose of acting upon such proposal, and comScore shall
16 submit the comScore Voting Proposal to the comScore Shareholders at the
17 comScore Shareholders Meeting for the purpose of acting upon such proposal, in
18 each case whether or not (i) the Rentrak board of directors or the
19 comScore board of directors, as the case may be, at any time subsequent to the
date of this Agreement and prior to the Merger Shareholder Meetings shall effect
a Rentrak Board of Directors Recommendation Change in the case of Rentrak or
a comScore Board of Directors Recommendation Change in the case of
comScore, or (ii) any actual, potential or purported Acquisition Proposal or
Superior Proposal has been commenced, disclosed, announced or submitted to
the Rentrak board of directors of directors in the case of Rentrak or the
comScore board of directors of directors in the case of comScore.

20 129.

21 Section 7.4(f)(i)(A) requires Rentrak, upon receipt of any other Superior Proposal, notify
22 comScore and allow them three (3) business days to amend or modify the Merger Agreement:

23 (f) Subject to the terms of this Section 7.4(f), (x) neither the Rentrak board of
24 directors nor any committee thereof shall withhold, withdraw, amend, modify,
25 qualify or condition, or publicly propose to withhold, withdraw, amend, modify,
26 qualify or condition, the Rentrak board of directors Recommendation (an
"Rentrak Board of Directors Recommendation Change"), and (y) neither the
comScore board of directors nor any committee thereof shall withhold, withdraw,
amend, modify, qualify or condition, or publicly propose to withhold, withdraw,
amend, modify, qualify or condition, the comScore board of directors

1 Recommendation (a “comScore Board of Directors Recommendation Change”);
2 *provided, however*, that notwithstanding the foregoing, at any time prior to the
3 receipt of the Requisite Rentrak Shareholder approval in the case of Rentrak, or
4 receipt of the Requisite comScore Shareholder Approval in the case of comScore,
5 the Rentrak board of directors may effect a Rentrak Board of Directors
6 Recommendation Change and, in the case of subclause (i) below, terminate this
7 Agreement to enter into a Contract with respect to a Superior Proposal, and the
8 comScore board of directors may effect a comScore Board of Directors
9 Recommendation Change and, in the case of subclause (i) below, terminate this
10 Agreement to enter into a Contract with respect to a Superior Proposal, and, in
11 either case if and only if either:

12 (A) the party proposing to take such action has received after the date hereof an
13 Acquisition Proposal relating to such party that its board of directors has
14 determined in good faith (after consultation with its financial and legal advisors)
15 constitutes a Superior Proposal, (B) such Acquisition Proposal did not result from
16 or arise out of a breach of any provisions of Section 6.1 or Section 6.2, and the
17 Person from whom such party received such Acquisition Proposal has not made
18 any other Acquisition Proposal (either alone or together with one or more other
19 Persons) that resulted from or arose out of a breach of any provisions of Section
20 6.1 or Section 6.2, (C) the party proposing to take such action has not breached
21 any of the provisions of Section 6.1 or Section 6.2 in respect of such Acquisition
22 Proposal (and any other Acquisition Proposal made by the same Person making
23 such Acquisition Proposal, whether alone or together with one or more other
24 Persons), (D) prior to effecting such Rentrak Board of Directors Recommendation
25 Change or the comScore Board of Directors Recommendation Change, as the case
26 may be, the party proposing to take such action shall have given the other party
hereto at least three (3) Business Days’ notice thereof (which notice shall not, by
itself, constitute a Rentrak Board of Directors Recommendation Change or a
comScore Board of Directors Recommendation Change) and the opportunity to
meet and discuss in good faith potential amendments or other modifications to the
terms and conditions of this Agreement so that the Merger and other transactions
contemplated by this Agreement may be effected, (E) the other party hereto shall
not have made, within the foregoing three (3) Business Days after receipt of such
party’s written notice of its intention to effect a Rentrak Board of Directors
Recommendation Change or a comScore Board of Directors Recommendation
Change, as the case may be, a counteroffer or proposal that the board of directors
of the party proposing to take such action determines in good faith (after
consultation with its financial advisor of nationally recognized standing and its
outside legal counsel) is at least as favorable to its shareholders as such Superior
Proposal, and (F) after such discussions, the board of directors of the party
proposing to take such action determines in good faith (after consultation with its
outside legal counsel and after considering in good faith any counteroffer or
proposal made by the other party hereto pursuant to the immediately preceding
clause (E)) that the failure to effect such Rentrak Board of Directors
Recommendation Change or a comScore Board of Directors Recommendation
Change, as the case may be, would reasonably be expected to be a breach of its
fiduciary duties under Delaware Law or Oregon Law, as applicable;

130.

Finally, section 9.3(b) of the Merger Agreement would require Rentrak to pay comScore

1 an onerous termination fee of \$28.5 million if the Agreement is terminated, which equates to
2 nearly 4% of the total value of the Proposed Transaction and is a significant tax on any other
3 potential bidder.

4 131.

5 By the terms of sections 6.2, 6.3, and 7.4, and 9.3 of the Merger Agreement, Rentrak's
6 Board is essentially required to consider only unsolicited offers, and even then, the Board may
7 only consider those unsolicited offers that it has determined are so superior to the Proposed
8 Transaction that it would be a breach of their fiduciary duties not to consider said offers. The
9 Company must also provide full details of the offer to comScore, which receives 3 full business
10 days in which they can negotiate to improve their own insufficient offer.

11 132.

12 Even if, despite the protections in place, the Board determines that it is in the best interest
13 of the Company shareholders to reject the Proposed Transaction in favor of an unsolicited
14 superior offer, the Board must nonetheless take the Proposed Transaction to the shareholders for
15 vote. Moreover, if the Board ultimately accepts a superior unsolicited offer in lieu of the
16 proposed Transaction, Rentrak must pay a termination fee of \$28.5 million pursuant to Section
17 9.3 of the Merger Agreement.

18 133.

19 Therefore, these onerous deal protection provisions of the Merger Agreement act as a
20 barrier to any other bidders coming forward to make an offer for Rentrak. Absent equitable
21 relief, these provisions will prevent Rentrak's shareholders from obtaining the best possible price
22 for their shares, and prevent the Board from fulfilling its fiduciary duties in connection with this
23 Proposed Transaction.

24 **XI. The Board Omits Material Information from the Registration Statement**

25 134.

26 The Board further breached its fiduciary duties to Rentrak shareholders by filing the

1 materially misleading and incomplete Registration Statement, which fails to disclose, among
2 other material issues, the material facts described herein. If the omitted information is not
3 disclosed before shareholders are forced to vote on the Proposed Transaction, they will be
4 irreparably harmed by being forced to cast an informed vote without the total mix of information
5 being made available to them.

6 135.

7 *First*, the Registration Statement fails to disclose the amount of the fee that Goldman
8 Sachs stands to receive for its work on the Proposed Transaction or the extent to which that fee is
9 contingent on the Proposed Transaction closing. This is a material omission. *See, e.g., Frank v.*
10 *Elgamal*, 2014 Del. Ch. LEXIS 37, *112 (Del. Ch. Mar. 10, 2014) (“The compensation and
11 potential conflicts of a financial advisor are most likely material information that the board
12 should generally disclose.”); *In re Atheros Communs., Inc. S’holder Litig.*, 2011 Del. Ch. LEXIS
13 36, at *28-31 (Del. Ch. Mar. 4, 2011) (“Shareholders should know that their financial advisor,
14 upon whom they are being asked to rely, stands to reap a large reward only if the transaction
15 closes and, as a practical matter, only if the financial advisor renders a fairness opinion in favor
16 of the transaction. ... [T]he shareholders should be afforded an opportunity to understand fully
17 the nature and means by which Atheros will compensate Qatalyst. Thus, that would include the
18 amount of the fee as well.”).

19 136.

20 *Second*, the Registration Statement fails to disclose the unlevered free cash flows for both
21 the initial and revised projections. *In re BioClinica S’holder Litig.*, 2013 Del. Ch. LEXIS 52, at
22 *18 (Del. Ch. Feb. 25, 2013) (“Generally, the failure of a company to disclose management’s
23 financial projections in its proxy materials, when those projections have been relied on by a
24 financial advisor to render a fairness opinion, is a material omission[.]”); *Maric Capital Master*
25 *Fund, Ltd. v. Plato Learning, Inc.*, 11 A.3d 1175, 1178 (Del. Ch. 2010) (describing
26 “management’s best estimate of the future cash flow of a corporation” as “clearly material”);

1 *David P. Simonetti Rollover IRA v. Margolis*, 2008 Del. Ch. LEXIS 78, at *30 (Del. Ch. June 27,
2 2008) (“A proxy statement should give the shareholders the best estimate of the company’s
3 future cash flows as of the time the board approved the [transaction].”)

4 137.

5 *Third*, while the Registration Statement discloses *some* of the advisory services Goldman
6 Sachs performed on behalf of WPP—Rentrak and comScore’s largest shareholder—the
7 Registration Statement fails to disclose *all* of the advisory services Goldman Sachs performed on
8 behalf of WPP (*i.e.*, Goldman Sachs acted as lead arranger and additional lender under WPP’s
9 \$2,500,000 revolving credit facility under the Amendment and Restatement Agreement). The
10 Registration Statement also fails to disclose the aggregate *fees* received by Goldman Sachs for its
11 work with WPP. Finally, the Registration Statement fails to disclose that WPP’s CEO’s son is
12 currently a partner at Goldman Sachs and two of his other sons were formerly employed by
13 Goldman Sachs. *See, e.g., Frank v. Elgamal*, 2014 Del. Ch. LEXIS 37, *112 (Del. Ch. Mar. 10,
14 2014) (“The ... potential conflicts of a financial advisor are most likely material information that
15 the board should generally disclose.”).

16 138.

17 Accordingly, Plaintiff seeks injunctive relief to enjoin consummation of the Proposed
18 Transaction for a reasonable period of time for the Board to negotiate amendments to the
19 onerous deal protections in the Merger Agreement and conduct a reasonable sales process, and
20 for the Board to disclose to Rentrak shareholders all material information encompassing the total
21 mix of information available so that the Company’s public shareholders can cast an informed
22 vote on the Proposed Transaction.

23 CLASS ACTION ALLEGATIONS

24 139.

25 Plaintiff brings this action individually and as a class action on behalf of all holders of
26 Rentrak stock who are being and will be harmed by Defendants’ actions described herein (the

1 “Class”). Excluded from the Class are Defendants and any person, firm, trust, corporation, or
2 other entity related to or affiliated with any Defendant.

3 140.

4 This action is properly maintainable as a class action.

5 141.

6 The Class is so numerous that joinder of all members is impracticable. Pursuant to the
7 Company’s SEC filings, there are more than 20 million shares of Rentrak common stock issued
8 and outstanding as of October 27, 2015. Consequently, the number of Class members is believed
9 to be in the thousands and are likely scattered across the United States. Moreover, damages
10 suffered by individual Class members may be small, making it overly expensive and burdensome
11 for individual Class members to pursue redress on their own.

12 142.

13 There are questions of law and fact that are common to the Class and that predominate
14 over questions affecting any individual Class member. The common questions include, *inter*
15 *alia*, the following:

- 16 a. whether the Individual Defendants have breached and continue to breach
17 their fiduciary duties to obtain the best price practicable under the
18 circumstances for the benefit of the Rentrak shareholders;
- 19 b. whether the Individual Defendants, in bad faith and for improper motives,
20 have impeded or erected barriers to limit the Board’s duty to negotiate the
21 best price practicable under the circumstances;
- 22 c. whether the Individual Defendants have disclosed all material information to
23 the Company’s public shareholders; and
- 24 d. whether Plaintiff and the other members of the Class will suffer irreparable
25 injury if the Proposed Transaction complained of herein is consummated.

1 143.

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

4 144.

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

8 145.

9 Defendants have acted in a manner that affects Plaintiff and all members of the Class
10 alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with
11 respect to the Class as a whole.

12 146.

13 The prosecution of separate actions by individual members of the Class would create a
14 risk of inconsistent or varying adjudications with respect to individual members of the Class,
15 which would establish incompatible standards of conduct for Defendants; or adjudications with
16 respect to individual members of the Class would, as a practical matter, be dispositive of the
17 interest of other members or substantially impair or impede their ability to protect their interests.

18 147.

19 Plaintiff anticipates that there will be no difficulty in the management of this litigation. A
20 class action is superior to other available methods for the fair and efficient adjudication of this
21 controversy.

22 148.

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

IRREPARABLE HARM

149.

Plaintiff has no adequate remedy at law. Only through the exercise of the Court's equitable power will Rentrak shareholders receive all material information affecting the total mix of information available to cast a fully informed vote on the Proposed Transaction, and to protect Rentrak's shareholders from the preclusive and onerous terms of the Merger Agreement which prevent Rentrak's board from fulfilling its fiduciary duties in this sale of the company.

**CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
Breach of Fiduciary Duty
(Against the Individual Defendants)**

150.

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

151.

The Individual Defendants have violated the fiduciary duties of care and loyalty owed to the public shareholders of Rentrak in connection with the Proposed Transaction, which will deprive Rentrak shareholders of fair value for their Rentrak shares and which binds Rentrak to the onerous and preclusive provisions contained in the Merger Agreement. By agreeing to these onerous deal protection provisions in the Merger Agreement, the Individual Defendants have failed to fulfill their fiduciary duties to Rentrak shareholders.

152.

As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duties of care, loyalty, and/or candor because, among other reasons:

- they failed to conduct an adequate process to ensure fair treatment to public shareholders;
- they agreed to onerous and preclusive deal protection provisions in the Merger Agreement;

- they negotiated for themselves continued employment and/or representation on the combined company's board following consummation of the Proposed Transaction; and
- they failed to disclose all material information to shareholders to cast a fully informed vote on the Proposed Transaction.

153.

Because the Individual Defendants dominate and control the business and corporate affairs of Rentrak and have access to private corporate information concerning Rentrak's assets, business, and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of Rentrak which makes it inherently unfair for them to pursue and recommend any proposed transaction wherein they will reap disproportionate benefits to the exclusion of maximizing shareholder value.

154.

Even assuming the business judgment rule applies, which it does not, the Individual Defendants actions individually and collectively arise to the level of gross negligence and/or bad faith. These actions include, among other things: (i) the Individual Defendants' failure to vet the long-standing relationship between Goldman Sachs and WPP, prior to the fairness presentation; (ii) relying on Goldman Sachs' fairness opinion even though both Goldman Sachs analyses described in the Registration Statement that yielded an implied per share value for Rentrak as a stand-alone company showed a range of values greater than the implied consideration offered in the Proposed Transaction; (iii) disregarding comScore's financial projections, and management creating its own set of financial projections for comScore; and (iv) revising comScore's and Rentrak's financial projections in September 2015 to allow Goldman to render its Fairness Opinion to the Board.

155.

By reason of the foregoing acts, practices, and course of conduct, the Individual Defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward Plaintiff and the other members of the Class.

1 156.

2 Defendants are not acting in good faith toward Plaintiff and the other members of the
3 Class. The Individual Defendants have, thus, breached and are breaching their fiduciary duties to
4 the members of the Class.

5 157.

6 As a result of the Individual Defendants' unlawful actions, Plaintiff and the other
7 members of the Class will be irreparably harmed in that they will not receive their fair portion of
8 the value of Rentrak's assets and operations. Unless the Proposed Transaction is enjoined by the
9 Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff
10 and the members of the Class, will not engage in arm's-length negotiations on the Proposed
11 Transaction terms and/or will not disclose all material information important to a shareholders
12 decision to vote for or against the Proposed Transaction, all to the irreparable harm of the
13 members of the Class.

14 158.

15 Plaintiff and the members of the Class have no adequate remedy at law. Only through
16 the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from
17 the immediate and irreparable injury that Defendants' actions threaten to inflict.

18 **SECOND CLAIM FOR RELIEF**
19 **Preliminary Injunction**
20 **(Against Defendant Rentrak)**

21 159.

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

24 160.

25 Plaintiffs will be irreparably harmed in that they will not receive their fair portion of the
26 value of Rentrak's assets and operations unless Rentrak is preliminarily and permanently
enjoined from consummating the Proposed Transaction.

PRAYER FOR RELIEF

1 **WHEREFORE**, Plaintiff demands the following relief in his favor and in favor of the
2 Class, and against Defendants, as follows:

3 A. Ordering that this action may be maintained as a class action and certifying
4 Plaintiff as Class representatives and their counsel as Class counsel;

5 B. Preliminarily and permanently enjoining Defendants, and anyone acting in
6 concert with them, from proceeding with the Proposed Transaction;

7 C. Requiring the Individual Defendants to properly exercise their fiduciary duties to
8 Plaintiff and the Class by, among other things: (i) ascertaining the true transactional value of the
9 Company; (ii) considering whether the Proposed Transaction or an alternate transaction provides
10 the best price practicable under the circumstances; and (iii) ensuring that no impediments
11 unreasonably preclude alternative transactions that may provide shareholders a better price than
12 comScore's inadequate offer;

13 D. Enjoining the Proposed Transaction and directing the Individual Defendants to
14 disclose all material information encompassing the total mix of information available to the
15 Company's shareholders so that they can cast an informed vote on the Proposed Transaction;

16 E. Rescinding, to the extent already implemented, the Proposed Transaction and any
17 agreement or transaction attendant thereto or awarding the Class recessionary damages and
18 appropriate compensatory damages;

19 F. Enjoining the accelerated vesting of any options that would be subject to the
20 Proposed Transaction until a proper vote on the Proposed Transaction occurs;

21 G. Awarding Plaintiff the costs of this action, including a reasonable allowance for
22 attorneys' and experts' fees;

23 H. Reforming the Merger Agreement to remove onerous deal protection provisions
24 designed to prevent Rentrak from achieving the highest value for its shares; and

25 I. Granting such other and further equitable relief as this Court deems just and
26 proper.

1 **JURY TRIAL DEMAND**

2 161.

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

4
5 Dated this 19th day of November, 2015.

6 **SAMUELS YOELIN KANTOR LLP**

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8
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing FIRST AMENDED CLASS ACTION COMPLAINT to be served on the following:

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on the date noted below:

- ☒ By mailing a true and correct copy thereof in a sealed, first class postage prepaid envelope, addressed to the last known address as above stated and deposited in the U.S. mail at Portland, Oregon, on the date set forth below;
- ☒ By email to the email addresses listed above.

DATED: November 19, 2015

SAMUELS YOELIN KANTOR LLP

By: /s/ Darlene Pasieczny
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