UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE, and WILLIAM HUFF, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. COMSCORE, INC., SERGE MATTA, MELVIN WESLEY III, MAGID M. ABRAHAM, KENNETH J. TARPEY, WILLIAM J. HENDERSON, RUSSELL FRADIN, GIAN FULGONI, WILLIAM KATZ, RONALD J. KORN, JOAN LEWIS, RENTRAK CORPORATION, DAVID BOYLAN, DAVID I. CHEMEROW, WILLIAM ENGEL, PATRICIA GOTTESMAN, WILLIAM LIVEK, ANNE MACDONALD, MARTIN O'CONNOR, BRENT ROSENTHAL, and RALPH SHAW, Defendants.	Case No. 1:16-cv-01820-JGK

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

John C. Browne
Jesse L. Jensen
Kate W. Aufses
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

Lead Counsel for Lead Plaintiffs and the Settlement Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("Lead Counsel"), respectfully submits this memorandum of law in support of its motion, on behalf of Plaintiffs' Counsel, for an award of attorneys' fees in the amount of 23% of the Settlement Fund. Lead Counsel also seeks reimbursement of $296,362.39 in Litigation Expenses that Plaintiffs' Counsel reasonably incurred in prosecuting and settling the Action.[1]

PRELIMINARY STATEMENT

The proposed Settlement, if approved by the Court, will resolve this case in its entirety in exchange for a $110 million payment consisting of $27,231,527.20 in cash and $82,768,472.80 in comScore common stock valued pursuant to the Stipulation. Under any measure, the Settlement represents an outstanding result. It provides truly meaningful compensation to the Class while avoiding the risks and delay of continued litigation, including the risks and hard limits to recovery posed by comScore's financial condition.

The $110 million Settlement not only exhausts all of comScore's available insurance proceeds, but obtains a very significant value for the Class above insurance (approximately $83 million in stock). This is a considerable achievement given the ability to pay issues and other risks Lead Plaintiffs faced in this case. Notably, the proposed Settlement recovers approximately

---

[1] Lead Counsel are simultaneously submitting the Declaration of John C. Browne in Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Browne Declaration") (cited as "¶"). Capitalized terms have the meanings ascribed to them in the Browne Declaration or the Stipulation of Settlement (ECF No. 250-1) (the "Stipulation").

24% of the *maximum* Class-wide damages using plaintiff-friendly damages assumptions, and nearly 60% of the damages using more conservative defense-style assumptions.

The benefits of the Settlement are particularly noteworthy when weighed against the risk that the Class might recover less (or nothing) if the Action were litigated through summary judgment, trial, and any appeals. In particular, there is a genuine risk that comScore—a company with a history of net losses that is delisted from NASDAQ and only recently filed current financial statements—would be unable at the conclusion of protracted litigation to fund a judgment in excess of the proposed Settlement. *See* ¶¶144-40.

The Settlement eliminates this risk, provides a large recovery to the Class, and allows comScore to focus on its business with an eye towards relisting its common stock to the benefit of the Class. Indeed, Lead Counsel specifically negotiated for and obtained a requirement that comScore use "commercially reasonable" efforts to cause its stock to be relisted on a major national exchange. *See* ¶¶64-67 (highlighting other beneficial settlement terms relating to the stock component of the Settlement Amount).

In addition to the challenging ability to pay issues present in this case, Lead Plaintiffs faced significant risks to proving liability and damages. ¶¶151-59. While this case is clearly meritorious—and comScore's restatement is strong evidence in support of Lead Plaintiffs' claims—Defendants nonetheless would mount substantial arguments against both liability and damages.

If this case is not resolved, Defendants will argue that Lead Plaintiffs cannot establish scienter—*i.e.*, that Defendants acted with a fraudulent state of mind and not merely negligence. ¶152. Defendants vigorously contend that the restatement does not constitute an admission that any Defendant violated the federal securities laws—indeed, certain Individual Defendants do not

even concede that the restatement is correct. ¶153. Defendants would point to the subjective nature of the accounting principles at the core of this case and argue that even if they were mistaken in their application of those principles, they were at all times making good faith judgments without any intent to defraud. These arguments could be persuasive given that the case revolves around revenue recognition practices that almost always require a certain amount of judgment—and particularly so here, given the nonmonetary nature of the transactions in question and the niche consumer data that comScore exchanged with counterparties. ¶¶150-57.

There would be hotly contested disputes over the meaning of terms such as "fair value," "reasonable basis," and "commercial substance." To carry their burden of proof, Lead Plaintiffs would have to muster evidence on complex and technical issues relating to subjective accounting principles and Defendants' state of mind. Defendants would also argue that the subjectivity of the accounting principles may explain why comScore's auditor failed to detect any errors in the Company's financial statements during most of the Class Period. These disputes would involve fundamental disagreements about complicated matters, the resolution of which would require dueling expert and other testimony.

Even if Lead Plaintiffs were successful in establishing liability, they still faced challenges in establishing loss causation and damages. Defendants would argue that much of the decline in comScore's stock price during the Class Period was not attributable to the revelation of the alleged fraud. They would contend that Class members could not recover for any stock price declines that occurred after comScore's February and March 2016 disclosures that the Company could not file financial statements, and that its Audit Committee was investigating "potential accounting matters" it had proactively reported to the SEC. ¶¶159. Defendants would claim that the market appreciated by no later than March 2016 that comScore's internal investigation could

result in the discovery of misstatements and omissions. Consequently, any stock drops relating to the investigation and occurring after those dates were merely materializations of known risks. While Lead Plaintiffs would have credible responses to this argument, if it were to prevail at summary judgment, in *Daubert* motions, or at trial, it would eliminate a significant portion of the Class's damages. ¶¶128-31.

Despite the risks and fully contingent nature of the case, Lead Counsel devoted substantial resources to prosecuting and settling this Action against highly competent opposing counsel. Among other work detailed in the Browne Declaration, Lead Counsel: (i) conducted a comprehensive investigation of the claims and potential claims (¶¶30-33); (ii) consulted with multiple experts concerning loss causation, damages, market efficiency, and accounting (¶¶33, 116-18, 147); (iii) contacted potential witnesses (including 137 former comScore employees) (¶32); (iv) obtained and reviewed a critical nonpublic audio-recording of certain Individual Defendants communicating with analysts, which became a crucial part of the complaint (¶14); (v) reviewed the voluminous public record, including relevant accounting standards, SEC filings, analyst reports, news articles, and investor calls (¶32); (vi) drafted two detailed amended complaints, each over 150 pages (¶¶37-39); (viii) opposed Defendants' motions to dismiss that included more than 1,100 pages of briefing and exhibits (¶¶47-51); and (ix) successfully participated in oral argument on those motions (¶52).

Lead Counsel also engaged in lengthy and hard-fought settlement negotiations with Defendants, including a formal mediation overseen by an experienced and highly respected mediator, Judge Layn Phillips (ret.). ¶¶57-61. During these negotiations, in addition to arguing the merits, comScore argued that it did not have the resources to pay a substantial settlement above insurance policy limits. Nonetheless, Lead Plaintiffs and Lead Counsel continued to insist

that they would only accept a settlement that included Due Diligence Discovery, a meaningful stock contribution above insurance, and representations regarding comScore's intent to relist the stock on a national exchange. *See* ¶¶63-66.

The resultant Settlement negotiated by Lead Counsel is significant and creative. It provides substantial compensation to the Class in a difficult situation where many firms (reasonably) would have viewed available insurance proceeds as the ceiling on recovery. Indeed, as the Court is aware, the insurance-limits settlement in the related *In re Rentrak* case in Oregon state court released certain of Lead Plaintiffs' claims in this case. This is not in any way a criticism of that settlement—which the Oregon state court rightly rule was fair, reasonable, and adequate—but it does help place in context the outsized result achieved here. ¶¶79-80.

In part because this case settled a few months after motions to dismiss were decided, Lead Plaintiffs conducted a significant amount of Due Diligence Discovery in order to ensure that the Settlement was fair and adequate. Lead Counsel took its Due Diligence Discovery obligations seriously, obtaining and reviewing more than 178,000 emails, accounting memoranda, and other documents from comScore, consulting with experts to analyze comScore's financial health and prospects, and conducting multiple interviews of senior comScore executives. *See* at ¶¶92-115. As discussed in more detail below in Section III.A., Lead Counsel conducted this Due Diligence Discovery as efficiently as possible given the volume of material, the short time frame, and the additional disclosures comScore made during the diligence period. ¶¶89, 119-124.

Against this backdrop, Lead Counsel requests a fee of 23% of the Settlement Fund in the same proportion of stock and cash as obtained for the Class (resulting in a lodestar multiple of 1.41), and reimbursement of Plaintiffs' Counsel's expenses in the amount of $296,362.39. As

demonstrated below, the request is squarely within the range of percentage attorneys' fees typically awarded in securities class actions, and is well supported by both case law and the facts of this case. *See* Section II(A) below.

The reasonableness of the fee request is further confirmed by the fact that it is a reduction from the fees permitted in retainer agreements between Lead Plaintiffs and Lead Counsel that were entered into prior to the outset of the litigation. ¶185. The Lead Plaintiffs in this case are quintessential sophisticated investors of the type favored by the PSLRA. ¶199. Moreover, as disclosed in the Stipulation and the Notice disseminated to the Class, the Settlement releases certain securities claims asserted in Oregon state court in the *Nathan* Action. The *Nathan* plaintiff is joining the Class here, and fully endorses the Settlement and Lead Counsel's application for an award of attorneys' fees. ¶80, Ex. 5D.

Finally, Lead Counsel wishes to answer the three questions asked by the Court during the January 29, 2018 preliminary approval hearing. *See* Jan. 29, 2018 Hr'g Tr. 5-9. As set forth below and in Section IV of the Browne Declaration: (1) Lead Counsel estimates that the Settlement will result in a recovery for the Class of anywhere from 24% of the total Class-wide damages (using plaintiff-friendly assumptions) to approximately 60% (using a more conservative defense-friendly estimate) (¶¶128-33); (2) the percentage of Plaintiffs' Counsel's lodestar that was devoted to Due Diligence Discovery is 80%—in other words, Plaintiffs' Counsel have a total lodestar of $17,959,973.75 and $14,440,741.25 of that amount was devoted to Due Diligence Discovery while $3,519,232.50 was devoted to other matters (¶134); and (3) a chart of all securities class action fee awards by this Court in the past ten years is set forth below and at ¶135 of the Browne Declaration.

For the foregoing reasons, Lead Counsel respectfully submits that Lead Counsel's efforts and the results achieved in this Action justifies the requested fees and expenses.

ARGUMENT

I. THE REQUESTED FEE IS REASONABLE AND SHOULD BE APPROVED

The Supreme Court has emphasized that private securities actions are "an essential supplement to criminal prosecutions and [SEC] civil enforcement actions." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide "a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action")). Compensating counsel for bringing these actions is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

A. The Requested Attorneys' Fees Are Reasonable As A Percentage Of The Common Fund

Lead Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained. The Second Circuit has approved the percentage method, recognizing that it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution *and early resolution of litigation*." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (emphasis added); *see also*, *e.g.*, *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 48-50 (2d Cir. 2000) (either percentage of fund method or lodestar method may be used to determine fees, but "lodestar method proved vexing" and results in "inevitable waste of judicial resources"); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) ("percentage-of-the-fund method has been deemed a solution to

certain problems that may arise when the lodestar method is used in common fund cases"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010).

As the Second Circuit has noted the "trend in this Circuit is toward the percentage method." *Id.*

II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-THE-FUND METHOD OR THE LODESTAR METHOD

Here, the requested fee award—23% of the Settlement Amount and a lodestar multiplier of 1.41—is well supported under both the "percentage" and "lodestar" methods.

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

The 23% fee requested by Lead Counsel represents a discount from the 25% authorized by its retainer agreements with Lead Plaintiffs and is well within the range of percentage fees awarded in the Second Circuit in similar actions achieving significant recoveries. ¶183, 185. *See, e.g.*, *In re Salix Pharmaceuticals, Ltd.*, 2017 WL 3579892, at *7-*8 (S.D.N.Y. Aug. 18, 2017) (21.24% of $210 million settlement fund); *In re Pfizer Inc. Sec. Litig.*, No. 04-cv-09866 (LTS) (HBP), slip op. at 2 (S.D.N.Y. Dec. 21, 2016), ECF No. 727 (28% of $486 million settlement) (Ex. 16); *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 2016 WL 3369534, at *1 (S.D.N.Y. May 2, 2016) (21% of $272 million settlement); *In re JPMorgan Chase & Co. Sec. Litig.*, No. 1:12-cv-03852-GBD, slip op. at 2 (S.D.N.Y. May 10, 2016), ECF No. 211 (21% of $150 million settlement) (Ex. 17); *N.J. Carpenters Health Fund v. DLJ Mortgage Capital, Inc.*, No. 08-cv-5653-PAC, slip op. at 2-3 (S.D.N.Y. May 10, 2016), ECF No. 277 (28% of $110 million settlement) (Ex. 18); *In re Bank of New York Mellon Corp. Forex. Trans. Litig.*, 148 F. Supp. 3d 303, 304, 309 (S.D.N.Y. Dec. 4, 2015) (25% of $180 million settlement); *Bd. of*

Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, Inc., 2012 WL 2064907, at *1-*2 (S.D.N.Y. June 7, 2012) (25% of $150 million settlement).

The requested fee is also consistent with awards by this Court over the previous decade. As requested by the Court during the Preliminary Approval Hearing (*see* Jan. 29, 2018 Hr'g Tr. at 9:4-19), the following chart represents the fee awards in securities class actions that this Court has granted in the last ten years (*see* ¶¶135-36):

Case	Settlement Amount	Lodestar	Fee Amount Awarded	Lodestar Multiplier	Percentage Fee Award
Ellenburg III v. JA Solar Holdings Co., Ltd., No. 08 Civ. 10475, ECF Nos. 80, 88 (June 30, 2011), Ex. 7	$4,500,000	$491,723.50	$1,035,000	2.10	23%
Katz v. Image Innovations Holdings, Inc., No. 06-CV-03707, ECF Nos. 253, 255 (Sept. 29, 2011), Ex. 8	$400,000	$1,291,328.75	$100,000	0.077	25%
City of Roseville Employees' Ret. Sys. v. EnergySolutions, Inc., No. 1:09-cv-08633, ECF Nos. 99, 112 (Mar. 14, 2013), Ex. 9	$26,000,000	$2,208,520.75	$6,500,000	2.94	25%
In re New Oriental Educ. & Tech. Group Sec. Litig., No. 12-cv-05724, ECF No. 97 (Nov. 17, 2014), Ex. 10	$4,500,000	$860,260	$877,500	1.02	19.5%
Tardio v. New Oriental Educ. & Tech. Group, Inc., No. 12-cv-06619, ECF No. 42 (Nov. 17, 2014), Ex. 11	$250,000	$210,432.50	$48,750	0.23	19.5%
Plumbers & Pipefitters Nat'l Pension Fund v. Orthofix Int'l N.V., No. 1:13-cv-5696, ECF No. 132 (Apr. 29, 2016), Ex. 12	$11,000,000	$3,252,076.25	$3,025,000	0.93	27.5%
In re Penn West Petroleum Ltd. Sec. Litig., No. 14-cv-6046, ECF No. 144 (June 28, 2016), Ex. 13	$19,759,282	$2,546,427.50	$3,951,856.40	1.55	20%

Case	Settlement Amount	Lodestar	Fee Amount Awarded	Lodestar Multiplier	Percentage Fee Award
Birmingham Ret. and Relief Sys. v. S.A.C. Capital Advisors, L.P., No. 13 Civ. 2459, ECF Nos. 68, 80 (Oct. 3, 2016), Ex. 14	$10,000,000	$4,430,286	$3,000,000	0.68	30%
Kaplan v. S.A.C. Capital Advisors, L.P., No. 12 Civ. 9350, ECF Nos. 374, 375, 388 (May 12, 2017), Ex. 15	$135,000,000	$20,688,558.50	$27,000,000	1.30	20%
Average:				**1.203**	**23%**

The percentage fee requested here is within the range of fees—from 19.5% to 30%—this Court has awarded in these actions, and in fact is the precise average percentage the Court has awarded across its securities class actions in the past decade.

B. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit encourages district courts to cross-check the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50.

Here, Plaintiffs' Counsel spent a total of 44,278.85 hours of attorney and other professional support time prosecuting the Action. ¶190. Plaintiffs' Counsel's lodestar, derived by multiplying the hours spent by each attorney and paraprofessional by their hourly rates, is $17,959,973.75. The requested fee of 23% of the Settlement Amount (in the same proportion of stock and cash as the Class), therefore represents a multiplier of 1.41 of the total lodestar.

In similar cases, fees representing multiples *above* the lodestar are regularly awarded to reflect the contingency fee risk and other relevant factors. *See In re FLAG Telecom,* 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("[A] positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent

nature of the engagement, the skill of the attorneys, and other factors[.]"); *Comverse*, 2010 WL 2653354, at *5 ("Where, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar[.]").

Indeed, in complex contingent litigation, lodestar multipliers between 2 and 5 are commonly awarded. *See, e.g., Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable); *NECA-IBEW*, 2016 WL 3369534, at *1 (awarding 21% fee on $272 million settlement; a 3.9 multiplier); *In re Deutsche Telekom*, 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005) (awarding 25% of $120 million settlement; a 3.96 multiplier); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), slip op. at 4 (S.D.N.Y. July 18, 2011), ECF No. 117 (awarding fee equal to a 4.7 multiplier) (attached hereto as Ex. 19); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee equal to a 4.65 multiplier, "well within the range awarded by courts in this Circuit"); *In re AremisSoft*, 210 F.R.D. 109, 135 (D.N.J. 2002) (awarding 28% of gross recovery of $194 million settlement; a 4.3 multiplier); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d at 537, 589-90 (E.D. Pa. 2005) (awarding 25% of $126.6 million settlement; a 6.96 multiplier); *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (awarding fee equal to a 4.7 multiplier).

The requested 1.41 multiplier in this Action is well within the range of multipliers that courts, including this Court, commonly award in securities class actions. For example, in the past ten years this Court has awarded an average multiplier of 1.5 in securities class actions that have settled for more than $1 million. *See supra*. While a meaningful portion of Plaintiffs' Counsel's lodestar resulted from Due Diligence Discovery, as set forth in more detail in the Browne Declaration and below, the Due Diligence Discovery performed here was a critical

component of the Settlement and was performed competently and efficiently by Lead Counsel. *See* ¶¶81-125; Section III.A, *infra*.

Moreover, the lodestar is based on Plaintiffs' Counsel's hourly rates as reflected in the community for similar services by attorneys of reasonably comparable skill, experience and reputation. Plaintiffs' Counsel's rates range from $675 to $1,250 for partners and counsel, $375 to $650 for associates, and $255 to $520 for professional support staff, with an overall blended hourly rate of approximately $406.[2] The rates for the attorneys who primarily conducted document analysis ranged from $340 to $395, with an overall blended hourly rate of approximately $367.

These are fair and reasonable market rates for complex litigations. *See In re Platinum & Palladium Commodities Litig.*, 2015 WL 4560206, at *3-*4 (S.D.N.Y. July 7, 2015) (hourly rates ranging from $250 to $950 as reasonable); *In re IndyMac Mortg.-Backed Sec. Litig.*, 94 F. Supp. 3d 517, 528 (S.D.N.Y. 2015) (awarding fee that "result[ed] in a blended hourly rate of $514.29"). They also compare favorably with the rates charged by comScore's primary defense counsel in this action, which range from $650 up to $1,300 for partners and from $510 to $965 for associates, with staff attorney rate being at $475 per hour.[3]

[2] The partner who billed $1,250 per hour is Lead Counsel's founding partner, Max Berger, who has more than 40 years of experience in securities class actions. His modest 80 hours of time related directly to the mediation and negotiations that made possible the settlement.

[3] This information was obtained from sworn fee applications submitted in 2017 in several bankruptcy matters in this district. ¶191 n.11.

In sum, Lead Counsel's requested fee award is easily within the range of what courts in this Circuit and beyond regularly award in comparable class actions, whether calculated as a percentage of the fund or in relation to Plaintiffs' Counsel's lodestar.

III. THE REQUESTED FEE IS FAIR AND REASONABLE

The Second Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50. These factors and the analyses above demonstrate that Lead Counsel's requested fee is reasonable.

A. The Time and Labor Expended Support the Requested Fee

Plaintiffs' Counsel expended substantial time and labor prosecuting this Action and achieving the Settlement. As set forth in greater detail in the Browne Declaration, Lead Counsel, among other things:

- conducted a comprehensive investigation of the claims and potential claims against comScore and Defendants, including consulting with multiple highly-regarded experts, interviewing potential witnesses (including 137 former comScore employees), obtaining and reviewing a nonpublic audio-recording of certain Individual Defendants communicating with analysts, and poring through the voluminous public record (¶¶14, 30-36);

- researched and drafted two detailed amended complaints, each of which consisted of over 160 pages and incorporated expert analysis on accounting standards, material from SEC filings, news articles, research reports by securities analysts, and transcripts of comScore's investor calls (¶¶30-41);

- successfully opposed Defendants' motions to dismiss which consisted of more than 1,100 pages of briefing and exhibits, and filing over 90 pages of opposition briefing responding to Defendants' arguments (¶¶47-51);

- conducted extensive Due Diligence Discovery, which included the review and analysis of more than 178,000 documents produced by comScore and an expert-

guided review of dozens of internal comScore reports concerning its financial position; consultation with retained experts; and interviews of or meetings with current and former comScore senior executives, employees, and consultants (¶¶92-124); and

- engaged in extensive settlement negotiations with Defendants' Counsel (¶¶57-68).

As noted above, Plaintiffs' Counsel expended more than 44,200 hours prosecuting this Action with a lodestar value of over $17,900,000. ¶190. Lead Counsel staffed the matter efficiently and avoided unnecessary duplication of effort. ¶123, 192.

While the Due Diligence Discovery conducted here represents a substantial percentage of Plaintiffs' Counsel's lodestar, Lead Counsel respectfully submits that it was necessary and important to the Settlement in these circumstances. It allowed Lead Plaintiffs to fully evaluate the merits of the Settlement, confirm ability to pay issues (given comScore's lack of public financial disclosures), and evaluate the reasonableness of the Settlement as the Company made frequent material disclosures regarding the Audit Committee investigation, senior executives' resignations, and comScore's financial condition.[4] ¶¶84-91. Lead Plaintiffs had the unfettered right to terminate the settlement if the Due Diligence Discovery revealed that the Settlement was not fair and adequate. ¶81.

As the Browne Declaration details, Lead Counsel took its Due Diligence obligation seriously. The process was often adversarial, and Lead Counsel aggressively pushed for and obtained the information necessary to evaluate the Settlement. ¶¶93-94. Lead Counsel obtained,

[4] There were at least fourteen material disclosures by comScore after the Second Amended Complaint was filed, with ten occurring ***after*** the parties agreed in principle to settle. Due Diligence Discovery was necessary to review the facts surrounding these disclosures and ensure that the Settlement remained fair and reasonable. ¶¶89-91.

reviewed and analyzed more than 178,000 documents, many of which related to complex accounting issues. ¶¶95-100. Given the large volume of documents and tight timeline, Lead Counsel assembled a team of highly qualified and experienced staff attorneys to assist with the review and preparation for the witness interviews. Many of these staff attorneys have been with Lead Counsel for years and contributed significantly to some of the Firm's most important cases. ¶¶101-05.

While still reviewing documents, Lead Counsel conducted nine interviews of senior comScore executives, each lasting three to five hours. ¶¶115. Throughout, Lead Counsel conducted the Due Diligence Discovery efficiently and thoroughly. Lead Counsel added attorneys as the volume of documents increased, and reassigned them promptly when only Lead Counsel was prepared for the interviews. ¶¶99, 121.

Indeed, Lead Counsel began reducing the team on March 2, 2018 and reassigned all staff attorneys by March 14, 2018—**even though the Stipulation permitted Due Diligence Discovery to continue until May 3, 2018.** Lead Counsel reduced the document review team to zero nearly two months earlier because it determined in good faith that their assistance no longer necessary, and the primary litigation attorneys on the case could complete the remainder of the Due Diligence Discovery more efficiently. ¶¶121-24.

Multiple courts have awarded fees with significantly higher lodestar multipliers than that requested here in securities class actions where the lead counsel performed substantial due diligence discovery. *See In re MBIA, Inc. Sec. Litig.,* No. 08-cv-264-KMK, slip op. (S.D.N.Y. Dec. 20, 2011) (Karis, J.) (awarding 2.89 multiplier on $68 million settlement where no formal discovery took place but lead counsel reviewed several thousand pages of documents and interviewed three company employees in due diligence discovery), attached as Ex. 20; *In re*

Merrill Lynch & Co., Inc. Sec., Deriv. and ERISA Litig., No. 07-cv-9633, slip op. (S.D.N.Y. Dec. 2, 2009) (Rakoff, J.) (awarding 2.3 multiplier on $150 million settlement in case where settlement reached prior to oral argument on motions to dismiss), attached as Ex. 21; *In re L.G. Philips LCD Co. Sec. Litig.*, No. 1:07-cv-00909, slip op. (S.D.N.Y. Mar. 17, 2011) (Sullivan, J.) (awarding 3.17 multiplier on $18 million settlement where there was no pre-confirmatory discovery), attached as Ex. 22.[5]

B. The Risks of the Litigation Support the Requested Fee

The risks associated with this contingency fee case also support the requested fee. "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Comverse*, 2010 WL 2653354, at *5; *see also In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take [contingent-fee] risk into account in determining the appropriate fee.").

While Lead Counsel believes that Lead Plaintiffs' claims in this Action are meritorious, substantial risks in the litigation could have compromised Lead Plaintiffs' ability to succeed at trial and obtain a substantial judgment.

As discussed in detail in the Browne Declaration, substantial risks existed here with respect to establishing both liability and damages. In recent years even securities class actions

[5] *See also Taft v. Ackermans,* No. 02 Civ. 7951, 2007 WL 414493, at *4-*6 (S.D.N.Y. Jan. 31, 2007) (Leisure, J.) (awarding 1.44 multiplier on settlement of $15.2 million reached when motions to dismiss were pending, and noting that "the confirmatory discovery that Lead Counsel has conducted is sufficient to provide the plaintiffs with a 'clear view of the strengths and weaknesses of their cases' and of the adequacy of the settlement").

that survive pleading-stage motions to dismiss have faced increasing risk of failure at class certification, *Daubert* motions, summary judgment, trial and appeals. ¶¶138-43. In this case, Lead Plaintiffs faced ability to pay risks (¶¶144-49), as well as risks relating to liability (¶¶151-57) and damages (¶¶158-61). The Parties were deeply divided on virtually every issue in the litigation, and there was no guarantee Lead Plaintiffs' position would prevail. If Defendants had succeeded on any of their defenses, Lead Plaintiffs and the Class would have recovered nothing or, at best, far less than the Settlement Amount.

In the face of the many uncertainties, Lead Counsel undertook this case on a wholly contingent basis, knowing that the litigation would require the devotion of a substantial amount of time and expense with no guarantee of compensation. ¶¶195-200. Lead Counsel's assumption of this contingency fee risk strongly supports the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *Marsh ERISA*, 265 F.R.D. at 148 ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

C. The Magnitude and Complexity of the Action Support the Requested Fee

The magnitude and complexity of the Action also support the requested fee. Courts recognize that securities class action litigation is "notably difficult and notoriously uncertain." *FLAG Telecom*, 2010 WL 4537550, at *27 (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). This case was no exception.

As noted above and in the Browne Declaration, the litigation raised complex questions concerning liability and loss causation, including dense, complicated issues of proof regarding the application of highly technical financial and accounting principles that would have required

extensive efforts by Lead Counsel and consultation with experts to resolve. To build the case, and later to assess the fairness, reasonableness, and adequacy of the Settlement, Lead Counsel dedicated substantial time to conducting an extensive factual investigation. Lead Counsel also worked extensively with Lead Plaintiffs' experts to analyze the claims and the evidence gathered. Accordingly, the magnitude and complexity of the Action supports the conclusion that the requested fee is fair and reasonable.

D. The Quality of Lead Counsel's Representation Supports the Requested Fee

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee. Lead Counsel submits that the quality of its representation is best evidenced by the quality of the result achieved. *See, e.g.*, *In re Veeco*, 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004).

The result obtained for the Class in this case is unquestionably outstanding, particularly in light of the serious risks of continued litigation. It represents a substantial portion—nearly 24%—of the approximately $464 million in likely recoverable damages. ¶129. That percentage is even higher weighed against Defendants expected arguments. ¶¶130-33.

Notably, this recovery far exceeds available insurance coverage, which many firms would have viewed as the ceiling on recovery. Indeed, that occurred (reasonably) in this case where the *In re Rentrak* settlement in Oregon state court released part of Lead Plaintiffs' claims here. ¶¶69-71. It is a testament to Lead Counsel's skill, experience, diligence, and creativity that the Settlement here exceeds the insurance policy limits by $83 million.

The Settlement also contains beneficial terms relating to the stock component of the Settlement Amount designed to protect the Class and enhance the value of the stock received in the Settlement. *See* ¶¶66 (requiring that comScore attempt to relist its stock on a national

exchange, otherwise maintain liquidity in the stock, and make a number of other certifications and representations). These terms were hard fought and Lead Counsel's experience and persistence in the negotiations were critical to obtaining the beneficial Settlement.

Finally, Lead Counsel faced talented adversaries in this Action. Courts recognize that the quality of Plaintiffs' Counsel's opposition should be considered in assessing the quality of the counsel's performance. *See, e.g., Veeco*, 2007 WL 4115808, at *7 (among factors supporting 30% fee award was that defendants were represented by "one of the country's largest law firms"); *In re Adelphia Commc'n Corp. Sec. and Deriv. Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."), *aff'd*, 272 F. App'x 9 (2d Cir. 2008). Throughout this action, Defendants were zealously represented by able counsel from Quinn Emanuel Urquhart & Sullivan, LLP; Jones Day; Steptoe & Johnson LLP; Hogan Lovells U.S. LLP; Williams & Connolly LLP; and Spears & Imes LLP. ¶194.

E. <u>The Requested Fee in Relation to the Settlement</u>

Courts interpret this factor as requiring the review of the fee requested in terms of the percentage it represents of the total recovery. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3. As discussed in detail in Section II, *supra*, the requested fee is well within the range of percentage fees that this Court and other courts have awarded in comparable cases and accordingly, the fee requested is reasonable in relation to the Settlement.

F. Public Policy Considerations Support the Requested Fee

Strong public policy favors rewarding firms for bringing successful securities litigation. *See FLAG Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *Hicks*, 2005 WL 2757792, at *9 ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.") Strong public policy concerns favor granting Lead Counsel's fee and expense application here.

G. The Reaction of the Settlement Class to Date Supports the Requested Fee

The reaction of the Settlement Class to date also supports the requested fee. Through May 2, 2018, JND has disseminated the Notice to 36,673 potential Settlement Class Members and nominees informing them, among other things, that Lead Counsel intended to apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and up to $450,000 in expenses. *See* Cormio Decl. ¶7 and Ex. A thereto. While the time to object to the Fee and Expense Application does not expire until May 17, 2018, to date no objections have been received. Lead Counsel will address any that arrive in its reply papers. ¶171.

IV. THE FEE REQUEST IS SUPPORTED BY LEAD PLAINTIFFS

The requested fee of 23% is made pursuant to pre-litigation fee retainers between Lead Plaintiffs and Lead Counsel. ¶22. The requested fee of 23% represents a slight discount from the 25% permitted. ¶185; *see In re Marsh & McLennan Co. Sec. Litig.,* 2009 WL 5178546, at *15 (S.D.N.Y. Dec. 23, 2009) ("Since the passage of the PSLRA, courts have found such an

agreement between fully informed lead plaintiffs and their counsel to be presumptively reasonable.")

Here, Lead Plaintiffs are classic examples of the sophisticated and financially interested investors that Congress envisioned in enacting the PSLRA. Accordingly, Lead Plaintiffs' endorsement of the fee supports its approval. *See Veeco*, 2007 WL 4115808, at *8 ("Public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request[.]").

V. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel's fee application includes a request for reimbursement of Plaintiffs' Counsel's Litigation Expenses, which were reasonably incurred and necessary to prosecute the Action. *See* ¶¶203-04. These expenses are properly recoverable by counsel. *See In re China Sunergy Sec. Litig.,* 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation'").

As set forth in detail in the Browne Declaration (¶¶203-13), Plaintiffs' Counsel incurred $296,362.39 in Litigation Expenses in connection with the Action. ¶205. These include expert fees, online research, court reporting and transcripts, photocopying, travel costs, and postage expenses. ¶205. The largest expense is for retention of Lead Plaintiffs' experts, in the amount of $174,019.39, or 59% of the total Litigation Expenses. ¶206. Also, the combined costs for online legal and factual research, in the amount of $36,115.68, represented 12% of the total amount of expenses. ¶207. A complete breakdown by category of the expenses incurred by Plaintiffs'

Counsel is set forth in Exhibit 6 to the Browne Declaration. These expense items are billed separately by Plaintiffs' Counsel, and such charges are not duplicated in the firm's hourly billing rates.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for reimbursement of Litigation Expenses in an amount not to exceed $450,000 including the costs and expenses of Plaintiffs directly related to their representation of the Settlement Class. The total amount of expenses requested by Lead Counsel is $302,331.87, which includes $296,362.39 in reimbursement of Litigation Expenses incurred by Plaintiffs' Counsel and $5,969.48 in reimbursement of costs and expenses incurred by Lead Plaintiffs, an amount well below the amount listed in the Notice. To date, there has been no objection to the request for expenses.

VI. LEAD PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE AND MODEST COSTS AND EXPENSES UNDER 15 U.S.C. §78u-4(a)(4)

Lead Counsel also seeks reimbursement of $5,969.48 in costs and expenses incurred by Lead Plaintiffs—$950.36 for Baton Rouge, and $5,019.12 for Fresno. ¶¶211-12. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4).

Here, Lead Plaintiffs each took active roles in the litigation and have been fully committed to pursuing the Class's claims since they became involved in the litigation. These efforts required employees of the Lead Plaintiffs to dedicate time and resources they otherwise would have devoted to their regular duties. The requested reimbursement amounts are based on the number of hours that Lead Plaintiffs' employees, committed to these activities. *See* Baton Rouge Decl.¶¶4, 7; Fresno Decl. ¶¶4, 11. *See In re Bank of Am. Corp. Sec., Deriv., & ERISA*

Litig., 772 F.3d 125, 134 (2d Cir. 2014) (affirming over $450,000 award to representative plaintiffs for time spent by their employees); *FLAG Telecom*, 2010 WL 4537550, at *31 (award of $100,000 to Lead Plaintiff for time spent on the litigation).

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys' fees in the amount of 23% of the Settlement Fund; $296,362.39 in reimbursement of Litigation Expenses incurred by Plaintiffs' Counsel; and $5,969.48 in reimbursement of Lead Plaintiffs' costs and expenses.

Dated: May 3, 2018

Respectfully submitted,

/s/ John C. Browne

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
John C. Browne
Jesse L. Jensen
Kate W. Aufses
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1444
JohnB@blbglaw.com
Jai@blbglaw.com
Jesse.Jensen@blbglaw.com
Kate.Aufses@blbglaw.com

Lead Counsel for Lead Plaintiffs and the Settlement Class

#1176110

CERTIFICATION OF COMPLIANCE

As required by this Court's Individual Practice 2.D., I certify that this brief contains 6,572 words (excluding the portions of the brief exempted by the Court's Individual Practices), and further certify that the brief complies with the Court's formatting rules.

Executed on May 3, 2018.

/s/ John C. Browne
John C. Browne