



GRANTED WITH MODIFICATIONS

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Case No. 7368-VCMR



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE COMVERGE, INC.) CONSOLIDATED
SHAREHOLDERS LITIGATION) C.A. No. 7368-VCMR

[PROPOSED] SCHEDULING ORDER

WHEREAS, the parties to the above-captioned action (collectively, the “Parties” and individually a “Party”), having applied pursuant to Court of Chancery Rule 23(e) for an order approving the proposed settlement of the Action in accordance with the Stipulation and Agreement of Compromise, Settlement, and Release entered into by the parties on June 2, 2017 (the “Stipulation”), and for dismissal of the Action on the merits with prejudice upon the terms and conditions set forth in the Stipulation (the “Settlement”);

NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with the Court and the Exhibits annexed thereto, and after due deliberation,

IT IS HEREBY ORDERED this ____ day of _____, 2017, that:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.
2. The Action has been certified as a non-opt-out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), on behalf of all record holders and beneficial owners of Comverge, Inc. (“Comverge” or the “Company”)

on May 15, 2012, and their successors in interest, successors, predecessors in interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors in interest, predecessors, successors in interest, successors, and assigns, but excluding Comverge, H.I.G. Capital, LLC (“HIG”), and officers or directors of Comverge, HIG and any person, firm, trust, corporation or other entity related to or affiliated with Comverge and/or HIG as of May 15, 2012.

3. A hearing (the “Settlement Hearing”) shall be held on _____, 2017 at _____ .m., in the Court of Chancery, Leonard L. William Justice Center, 500 North King Street, Wilmington, DE 19801, to:

a. Determine whether the Court should confirm its prior certification of the Class pursuant to Court of Chancery Rule 23 subject to the revisions set forth in the Stipulation;

b. Determine whether Plaintiffs and Class Counsel have adequately represented the Class;

c. Determine whether the proposed Settlement should be approved as fair, reasonable and adequate;

d. Determine whether all Released Claims should be dismissed with prejudice as against the Released Parties;

e. Determine whether a Final Order and Judgment approving the Settlement should be entered;

f. Determine whether and in what amount any Fee and Expense Award should be paid to Plaintiffs out of the Settlement Fund;

g. Hear and determine any objections to the Settlement or Plaintiffs' application for a Fee and Expense Award; and

h. Determine any other matters the Court of Chancery deems appropriate.

4. The Court may adjourn and reconvene the Settlement Hearing or any adjournment thereof, including the consideration of an application for a Fee and Expense Award, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, or a notation on the docket in the Action.

5. The Court may approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties and without further notice to the Class. Further, the Court may render its Judgment, and order the payment of a Fee and Expense Award, all without further notice to the Class.

6. The Court approves, in form and substance, the Notice of Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear (the “Notice”) substantially in the form attached as Exhibit [B] to the Stipulation.

7. The Court finds that the mailing and publication of the Notice in substantially the manner set forth in paragraphs [9] and [10] of this Order constitute the best notice practicable under the circumstances to all persons entitled to such notice of the Settlement Hearing and the proposed Settlement, and meets the requirements of Court of Chancery Rule 23 and of due process.

8. The Court approves the firm of Epiq Systems, Inc. as the Settlement Administrator, with the responsibilities set forth in the Stipulation. Payment of the Settlement Administrator’s fees and expenses shall be made solely from the Settlement Fund.

9. As soon as practicable after the date of entry of this Order, and in any event at least sixty (60) calendar days prior to the Settlement Hearing, the Settlement Administrator shall cause the Notice along with a proof of claim form (the “Proof of Claim”), substantially in the form attached as Exhibit [C] to the Stipulation, to be mailed by U.S. Mail, First Class, postage pre-paid to all record holders of Comverge common stock on May 15, 2012 who are members of the Class at their last-known addresses appearing in the stock transfer records maintained by or on behalf of the Company. All stockholders of record in the

Class who received the Notice who were not also the beneficial owners of Comverge common stock held by them of record shall be requested to forward the Notice to such beneficial owners of those shares. Within five (5) business days of the execution of the Stipulation, Comverge shall provide or cause to be provided to the Settlement Administrator and Class Counsel stockholder information from Comverge's transfer agent as appropriate for providing notice to the Class. The Settlement Administrator shall use reasonable efforts to give notice to such beneficial owners by making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners.

10. The Settlement Administrator shall provide further notice to the Class within fourteen (14) business days of the entry of this Order by causing the Stipulation and the Notice to be placed on the Settlement Administrator's website and/or a dedicated website specific to the Settlement, announcing the Settlement and informing Class Members how to obtain a copy of the Notice and the Proof of Claim.

11. At least twenty (20) business days prior to the Settlement Hearing, the Parties shall file with the Court any opening briefs in support of the proposed Settlement, and Class Counsel shall file Plaintiffs' application for a Fee and Expense Award, including any supporting affidavits.

12. Any brief in support of any objection(s) to the Settlement or to Plaintiffs' application for a Fee and Expense Award shall be filed at least ten (10) business days prior to the Settlement Hearing.

13. At least five (5) business days prior to the date of the Settlement Hearing, Class Counsel shall file with the Court proof of mailing of the Notice.

14. At least five (5) business days prior to the Settlement Hearing, the Parties may file with the Court a responsive brief to any objections made to the Settlement and Class Counsel shall file any reply in support of Plaintiffs' application for a Fee and Expense Award.

15. Any Class Member who objects to the Settlement, the Final Order and Judgment to be entered in the Action, and/or Plaintiffs' application for a Fee and Expense Award, or who otherwise wishes to be heard, may appear in person or by such member's attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; *provided, however*, that, except for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless not later than ten (10) business days prior to the Settlement Hearing such person files with the Court and, on or before such filing, serves (by hand, e-mail or overnight mail) upon counsel listed below: (a) a written notice of intention to appear; (b) proof of membership in the Class; (c) a statement of such person's

objections to any matters before the Court; and (d) the grounds for such objections and the reasons that such person desires to appear and be heard, as well as all documents or writings such person desires the Court to consider. Such filings shall be served, on or before such filing with the Court, by hand, e-mail or overnight mail upon the following counsel:

Michael Van Gorder
FARUQI & FARUQI, LLP
20 Montchanin Road, Suite 145
Wilmington, Delaware 19807

P. Bradford deLeeuw
ROSENTHAL, MONHAIT &
GODDESS, P.A.
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Wilmington, Delaware 19801

Edward M. McNally
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500 Delaware Avenue, Suite 1500
Wilmington, Delaware 19801

Brian D. Long
RIGRODSKY & LONG, P.A.
2 Righter Parkway, Suite 120
Wilmington, Delaware 19803

16. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in the Action or any other action or proceeding. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval, but must submit a Proof of Claim form if they want to obtain a distribution from the Net Settlement Fund.

17. All proceedings in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the Stipulation, are hereby stayed and suspended until further order of this Court.

18. If the Settlement provided for in the Stipulation is approved by the Court at or following the Settlement Hearing, the Court shall enter a Final Order and Judgment substantially in the form attached as Exhibit [D] to the Stipulation.

19. The effectiveness of the Final Order and Judgment shall not be conditioned upon the approval of a Fee and Expense Award, either at all or in any particular amount, by the Court.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class Members, and the Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

Vice Chancellor Montgomery-Reeves

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Tamika Montgomery-Reeves

File & Serve

Transaction ID: 60676830

Current Date: Jun 16, 2017

Case Number: 7368-VCMR

Case Name: CONF ORD ON DISC - CONS W/ 7371, 7386, 7398, 7399, 7438-VCP IN RE
COMVERGE INC. SHAREHOLDERS LITIGATION

Court Authorizer: Montgomery-Reeves, Tamika

Court Authorizer

Comments:

A settlement hearing will be held on Friday, September 8, 2017 at 2:00 p.m.

/s/ Judge Montgomery-Reeves, Tamika