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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LEON D. MILBECK, on behalf of
himself and all others similarly situated

Plaintiff,

vs.

TRUECAR, INC., et al.,

Defendants.

No. 2:18-cv-02612-SVW-AGR

CLASS ACTION

**NOTICE AND UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: September 16, 2019
Time: 1:30 p.m.
Place: Courtroom 10A
Judge: Hon. Stephen V. Wilson

1 PLEASE TAKE NOTICE that Lead Plaintiff Oklahoma Police Pension and
2 Retirement Fund (“Lead Plaintiff”) hereby moves the Court pursuant to Rule 23(e)
3 of the Federal Rules of Civil Procedure for an Order: (1) granting preliminary
4 approval of the proposed settlement (the “Settlement”), on the terms set forth in the
5 Stipulation of Settlement and the exhibits attached thereto, dated August 2, 2019
6 (the “Stipulation,” submitted herewith); (2) directing that potential Settlement
7 Class Members be given notice of the proposed Settlement in substantially the
8 same form and manner set forth in the Stipulation; (3) setting a hearing date for the
9 Court to consider final approval of the proposed Settlement; and (4) setting a
10 schedule for various events related thereto.¹

11 Pursuant to Local Rule 7-3, and as set forth in the Stipulation, Lead Counsel
12 has met and conferred with counsel for Defendants, and Defendants do not oppose
13 this motion. The Parties do not believe a hearing is necessary on this unopposed
14 motion for preliminary approval of the Settlement and may be submitted on the
15 papers. Should a hearing be requested by the Court, this motion is noticed for
16 hearing at 1:30 p.m. on September 16, 2019, or at the Court’s convenience, before
17 the Honorable Stephen V. Wilson of the United States District Court for the
18 Central District of California, First Street Courthouse, 350 W. 1st Street,
19 Courtroom 10A, 10th Floor, Los Angeles, California 90012.

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¹ Unless otherwise stated or defined, all capitalized terms used herein shall have the meanings provided in the Stipulation.

1 In support of this Unopposed Motion, Lead Plaintiff relies on the Stipulation
2 and the exhibits attached thereto and the Memorandum of Points and Authorities in
3 Support of the Unopposed Motion for Preliminary Approval of Proposed Class
4 Action Settlement.

5 Dated: August 2, 2019

Respectfully submitted,

6
7 **KAPLAN FOX & KILSHEIMER LLP**

8 By: /s/ Justin B. Farar

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*Lead Counsel for Lead Plaintiff Oklahoma
Police Pension and Retirement Fund and the
Class*

1 **PROOF OF SERVICE VIA ELECTRONIC POSTING PURSUANT TO**
2 **CENTRAL DISTRICT OF CALIFORNIA LOCAL RULES**
3 **AND ECF GENERAL ORDER NO. 10-07**

4 I HEREBY CERTIFY that, on August 2, 2019, I electronically filed the
5 foregoing with the Clerk of Court using the CM/ECF system, which will send a
6 notice of electronic filing to all registered users. I certify under penalty of perjury
7 under the laws of the United States of America that the foregoing is true and
8 correct.

9 Executed on August 2, 2019.

10 */s/ Justin B. Farar*
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EXHIBIT A

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LEON D. MILBECK, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

TRUECAR, INC., et al.,

Defendants.

No. 2:18-cv-02612-SVW-AGR

EXHIBIT A

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING
FOR NOTICE**

WHEREAS, a consolidated class action is pending in this Court entitled *Leon D. Milbeck vs. TrueCar, Inc., et.al*, Case No. 2:18-cv-02612-SVW-AGR (C.D. Cal.) (the “Action”);

WHEREAS, by order dated June 27, 2018, this Court appointed Oklahoma Police Pension and Retirement Fund as Lead Plaintiff and Saxena White P.A. as Lead Counsel;

WHEREAS, on August 24, 2018 Lead Plaintiff filed its Amended Complaint (ECF No. 47), and on February 19, 2019, Defendants filed their Answer. ECF No. 94.

WHEREAS, by orders dated May 9, 2019 and May 24, 2019, this Court certified this Action to proceed as a class action on behalf of all persons or entities who purchased or otherwise acquired (1) the publicly traded common stock of TrueCar, Inc. from February 16, 2017 through November 6, 2017, or (2) the common stock of TrueCar pursuant and/or traceable to the secondary offering of TrueCar common stock conducted on or about April 26, 2017 and were damaged thereby (the “Class” or the “Settlement Class”);¹

¹ Excluded from the Settlement Class are Defendants, the Officers and Directors of TrueCar at all relevant times, and all such excluded persons’ Immediate Family members, legal representatives, heirs, agents, affiliates, predecessors, successors and assigns, and any entity in which any excluded person has or had a controlling interest. Also excluded from the Settlement Class are those persons and entities who timely and validly request exclusion from the Settlement Class.

1 WHEREAS, (a) Lead Plaintiff Oklahoma Police Pension and Retirement
2 Fund, on behalf of itself and the Settlement Class (defined below), and (b)
3 Defendants TrueCar, Inc., Victor “Chip” Perry, Michael Guthrie, John Pierantoni,
4 Abhishek Agrawal, Robert Buce, Christopher Claus, Steven Dietz, John Krafcik,
5 Erin Lantz, Wesley Nichols, and Ion Yadigaroglu (the “Defendants”) have entered
6 into a Stipulation and Agreement of Settlement dated August 2, 2019 (the
7 “Stipulation”), subject to approval of this Court (the “Settlement”);

8 WHEREAS, Lead Plaintiff has made an application, pursuant to Rule 23 of
9 the Federal Rules of Civil Procedure, for an order preliminarily approving the
10 Settlement in accordance with the Stipulation, and allowing notice to Settlement
11 Class Members, as more fully described herein;

12 WHEREAS, the Court has read and considered: (a) Lead Plaintiff’s motion
13 for preliminary approval of the Settlement, and the papers filed and arguments
14 made in connection therewith; and (b) the Stipulation and the exhibits attached
15 thereto; and

16 WHEREAS, unless otherwise defined herein, all capitalized words
17 contained herein shall have the same meanings as they have in the Stipulation;

18 NOW THEREFORE, IT IS HEREBY ORDERED:

19 1. **Preliminary Approval of the Settlement** – The Court hereby
20 preliminarily approves the Settlement, as embodied in the Stipulation, as being
21 fair, reasonable, and adequate to the Settlement Class, subject to further
22 consideration at the Settlement Hearing to be conducted as described below.

23 2. **Settlement Hearing** – The Court will hold a settlement hearing (the
24 “Settlement Hearing”) on _____, 20__ at __:__ .m. in Courtroom 10A
25 of the First Street Courthouse, 350 W. 1st Street, 10th Floor, Los Angeles,
26 California 90012, for the following purposes: (a) to determine whether the
27 proposed Settlement on the terms and conditions provided for in the Stipulation is
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1 fair, reasonable, and adequate to the Settlement Class, and should be approved by
2 the Court; (b) to determine whether a Judgment attached as Exhibit B to the
3 Stipulation should be entered dismissing the Action with prejudice against
4 Defendant Releasees; (c) to determine whether the proposed Plan of Allocation for
5 the proceeds of the Settlement is fair and reasonable and should be approved; (d) to
6 determine whether the motion by Lead Counsel for an award of attorneys' fees and
7 reimbursement of Litigation Expenses should be approved; and (e) to consider any
8 other matters that may be properly brought before the Court in connection with the
9 Settlement. Notice of the Settlement and the Settlement Hearing shall be given to
10 Settlement Class Members as set forth in paragraph 4 of this Order.

11 3. The Court may adjourn the Settlement Hearing without further notice
12 to the Settlement Class, and may approve the proposed Settlement with such
13 modifications as the Parties may agree to in writing, if appropriate, without further
14 notice to the Settlement Class.

15 4. **Retention of Claims Administrator and Manner of Giving Notice**
16 – Lead Counsel is hereby authorized to retain Epiq Class Action & Claims
17 Solutions, Inc. (“Epiq” or the “Claims Administrator”) to supervise and administer
18 the notice procedure in connection with the proposed Settlement as well as the
19 processing of Claims as more fully set forth below. Notice of the Settlement and
20 the Settlement Hearing shall be given by Lead Counsel as follows:

21 a) within five (5) business days of the date of entry of this Order,
22 TrueCar shall provide or cause to be provided to the Claims Administrator (at no
23 cost to the Settlement Fund, Lead Counsel or the Claims Administrator) records
24 reasonably available to TrueCar or its transfer agent concerning the identity and
25 last known address of Settlement Class Members, in electronic form or other form
26 as is reasonably available to TrueCar or its transfer agent, which information the
27 Claims Administrator shall treat and maintain as confidential;

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1 b) not later than twenty-one (21) calendar days after the date of entry of
2 this Order (the “Notice Date”), the Claims Administrator shall cause a copy of the
3 Notice and the Claim Form, substantially in the forms attached hereto as Exhibits
4 A-1 and A-2, respectively (the “Notice Packet”), to be mailed by first-class mail to
5 potential Settlement Class Members at the addresses set forth in the records which
6 TrueCar caused to be provided, or who otherwise may be identified through further
7 reasonable effort;

8 c) contemporaneously with the mailing of the Notice Packet, the Claims
9 Administrator shall cause copies of the Notice and the Claim Form to be posted on
10 a website to be developed for the Settlement, from which copies of the Notice and
11 Claim Form can be downloaded;

12 d) not later than ten (10) business days after the Notice Date, the Claims
13 Administrator shall cause the Summary Notice, substantially in the form attached
14 hereto as Exhibit A-3, to be published once in *Investor’s Business Daily* and to be
15 transmitted once over the *PR Newswire*; and

16 e) not later than seven (7) calendar days prior to the Settlement Hearing,
17 Lead Counsel shall file with the Court proof, by affidavit or declaration, of such
18 mailing and publication.

19 5. **Approval of Form and Content of Notice** – The Court (a) approves,
20 as to form and content, the Notice, the Claim Form, and the Summary Notice,
21 attached hereto as Exhibits A-1, A-2, and A-3, respectively, and (b) finds that the
22 mailing and distribution of the Notice and Claim Form and the publication of the
23 Summary Notice in the manner and form set forth in paragraph 4 of this Order (i)
24 is the best notice practicable under the circumstances; (ii) constitutes notice that is
25 reasonably calculated, under the circumstances, to apprise Settlement Class
26 Members of the pendency of the Action, of the effect of the proposed Settlement
27 (including the Releases to be provided thereunder), of Lead Counsel’s motion for
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1 an award of attorneys' fees and reimbursement of Litigation Expenses, of their
2 right to object to the Settlement, the Plan of Allocation or Lead Counsel's motion
3 for attorneys' fees and reimbursement of Litigation Expenses, of their right to
4 exclude themselves from the Settlement Class, and of their right to appear at the
5 Settlement Hearing; (iii) constitutes due, adequate and sufficient notice to all
6 persons and entities entitled to receive notice of the proposed Settlement; and
7 (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure,
8 the United States Constitution (including the Due Process Clause), the Private
9 Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all
10 other applicable law and rules. The date and time of the Settlement Hearing shall
11 be included in the Notice and Summary Notice before they are mailed and
12 published, respectively.

13 6. **Nominee Procedures** – Brokers and other nominees who purchased
14 or otherwise acquired TrueCar common stock during the Settlement Class Period
15 for the benefit of another person or entity shall either (a) within ten (10) business
16 days of receipt of the Notice, request from the Claims Administrator sufficient
17 copies of the Notice Packet to forward to all such beneficial owners, and within ten
18 (10) business days of receipt of those Notice Packets, forward them to all such
19 beneficial owners; or (b) within ten (10) business days of receipt of the Notice,
20 send a list of the names and addresses of all such beneficial owners to the Claims
21 Administrator, in which event the Claims Administrator shall promptly mail the
22 Notice Packet to such beneficial owners. Upon full compliance with this Order,
23 such nominees may obtain reimbursement of their reasonable expenses incurred in
24 complying with this Order by providing the Claims Administrator with proper
25 documentation supporting the expenses for which reimbursement is sought. Such
26 properly documented expenses incurred by nominees in compliance with the terms
27 of this Order shall be paid from the Settlement Fund, with any disputes as to the
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1 reasonableness or documentation of expenses incurred subject to review by the
2 Court.

3 7. **Participation in the Settlement** – Settlement Class Members who
4 wish to participate in the Settlement and to be potentially eligible to receive a
5 distribution from the Net Settlement Fund must complete and submit a Claim Form
6 in accordance with the instructions contained therein. Unless the Court orders
7 otherwise, all Claim Forms must be postmarked no later than one hundred twenty
8 (120) calendar days after the Notice Date. Notwithstanding the foregoing, Lead
9 Counsel may, at their discretion, accept for processing late Claims provided such
10 acceptance does not delay the distribution of the Net Settlement Fund to the
11 Settlement Class. By submitting a Claim, a person or entity shall be deemed to
12 have submitted to the jurisdiction of the Court with respect to his, her, or its Claim
13 and the subject matter of the Settlement.

14 8. Each Claim Form submitted must satisfy the following conditions: (a)
15 it must be properly completed, signed, and submitted in a timely manner in
16 accordance with the provisions of the preceding paragraph; (b) it must be
17 accompanied by adequate supporting documentation for the transactions and
18 holdings reported therein, in the form of broker confirmation slips, broker account
19 statements, an authorized statement from the broker containing the transactional
20 and holding information found in a broker confirmation slip or account statement,
21 or such other documentation as is deemed adequate by Lead Counsel or the Claims
22 Administrator; (c) if the person executing the Claim Form is acting in a
23 representative capacity, a certification of his, her, or its current authority to act on
24 behalf of the Settlement Class Member must be included in the Claim Form to the
25 satisfaction of Lead Counsel or the Claims Administrator; and (d) the Claim Form
26 must be complete and contain no material deletions or modifications of any of the
27 printed matter contained therein, and must be signed under penalty of perjury.

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1 9. Any Settlement Class Member who or which does not timely and
2 validly submit a Claim Form or whose Claim is not otherwise approved by the
3 Court: (a) shall be deemed to have waived his, her, or its right to share in the Net
4 Settlement Fund; (b) shall be forever barred from participating in any distributions
5 therefrom; (c) shall be bound by the provisions of the Stipulation and the
6 Settlement and all proceedings, determinations, orders and judgments in the Action
7 relating thereto, including, without limitation, the Judgment and the Releases
8 provided for therein, whether favorable or unfavorable to the Settlement Class; and
9 (d) will be permanently barred and enjoined from commencing, maintaining, or
10 prosecuting any of the Released Plaintiffs' Claims against each and all of the
11 Defendant Releasees, as more fully described in the Stipulation and Notice.
12 Notwithstanding the foregoing, late Claim Forms may be accepted for processing
13 as set forth in paragraph 7 above.

14 10. **Exclusion From the Settlement Class** – Any member of the
15 Settlement Class who wishes to exclude himself, herself, or itself from the
16 Settlement Class must request exclusion in writing within the time and in the
17 manner set forth in the Notice, which shall provide that: (a) any such request for
18 exclusion from the Settlement Class must be mailed or delivered such that it is
19 received no later than twenty-one (21) calendar days prior to the Settlement
20 Hearing, to: *TrueCar Securities Litigation*, EXCLUSIONS, P.O. Box 3410,
21 Portland, OR 97208-3410, and (b) each request for exclusion must (i) state the
22 name, address, and telephone number of the person or entity requesting exclusion,
23 and in the case of entities, the name and telephone number of the appropriate
24 contact person; (ii) state that such person or entity “requests exclusion from the
25 Settlement Class in *Leon D. Milbeck vs. TrueCar, Inc., et al.*, 2:18-cv-02612-
26 SVW-AGR”; (iii) state the number of shares of TrueCar common stock that the
27 person or entity requesting exclusion purchased/acquired and sold during the
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1 Settlement Class Period, as well as the dates and prices of each such
2 purchase/acquisition and sale, and the number of shares held at the beginning of
3 the Settlement Class Period; and (iv) be signed by the person or entity requesting
4 exclusion or an authorized representative. A request for exclusion shall not be
5 effective unless it provides all the required information and is received within the
6 time stated above, or is otherwise accepted by the Court.

7 11. Any person or entity who or which timely and validly requests
8 exclusion in compliance with the terms stated in this Order and is excluded from
9 the Settlement Class shall not be a Settlement Class Member, shall not be bound by
10 the terms of the Settlement or any orders or judgments in the Action, and shall not
11 receive any payment out of the Net Settlement Fund.

12 12. Any Settlement Class Member who does not timely and validly
13 request exclusion from the Settlement Class in the manner stated in this Order:
14 (a) shall be deemed to have waived his, her, or its right to be excluded from the
15 Settlement Class; (b) shall be forever barred from requesting exclusion from the
16 Settlement Class in this or any other proceeding; (c) shall be bound by the
17 provisions of the Stipulation and Settlement and all proceedings, determinations,
18 orders and judgments in the Action, including, but not limited to, the Judgment and
19 the Releases provided for therein, whether favorable or unfavorable to the
20 Settlement Class; and (d) will be permanently barred and enjoined from
21 commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims
22 against any of the Defendant Releasees, as more fully described in the Stipulation
23 and Notice.

24 13. **Appearance and Objections at Settlement Hearing** – Any
25 Settlement Class Member who does not request exclusion from the Settlement
26 Class may enter an appearance in the Action, at his, her, or its own expense,
27 individually or through counsel of his, her, or its own choice, by filing with the
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1 Clerk of Court and delivering a notice of appearance to representatives of both
2 Lead Counsel and Defendants' Counsel, at the addresses set forth in paragraph 14
3 below, such that it is received no later than twenty-one (21) calendar days prior to
4 the Settlement Hearing, or as the Court may otherwise direct. Any Settlement
5 Class Member who does not enter an appearance will be represented by Lead
6 Counsel.

7 14. Any Settlement Class Member who does not request exclusion from
8 the Settlement Class may file a written objection to the proposed Settlement, the
9 proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys'
10 fees and reimbursement of Litigation Expenses and appear and show cause, if he,
11 she, or it has any cause, why the proposed Settlement, the proposed Plan of
12 Allocation or Lead Counsel's motion for attorneys' fees and reimbursement of
13 Litigation Expenses should not be approved; *provided, however*, that no Settlement
14 Class Member shall be heard or entitled to contest the approval of the terms and
15 conditions of the proposed Settlement, the proposed Plan of Allocation, or the
16 motion for attorneys' fees and reimbursement of Litigation Expenses unless that
17 person or entity has filed a written objection with the Court and served copies of
18 such objection on Lead Counsel and Defendants' Counsel at the addresses set forth
19 below such that they are received no later than twenty-one (21) calendar days prior
20 to the Settlement Hearing.

21
22 **Lead Counsel**

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24 Lester Hooker, Esq.
150 E. Palmetto Park Road, Suite 600
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Defendants' Counsel

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304-1050

25 15. Any objections, filings and other submissions by the objecting
26 Settlement Class Member: (a) must state the name, address, and telephone number
27 of the person or entity objecting and must be signed by the objector; (b) must
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1 contain a statement of the Settlement Class Member's objection or objections, and
2 the specific reasons for each objection, including any legal and evidentiary support
3 the Settlement Class Member wishes to bring to the Court's attention; and (c) must
4 include documents sufficient to prove membership in the Settlement Class,
5 including the number of shares of TrueCar Common stock that the objecting
6 Settlement Class Member purchased/acquired and sold during the Settlement Class
7 Period, as well as the dates and prices of each such purchase/acquisition and sale,
8 and the number of shares held at the beginning of the Settlement Class Period, and
9 must be accompanied by adequate supporting documentation for the transactions
10 and holdings reported therein, in the form of broker confirmation slips, broker
11 account statements, an authorized statement from the broker containing the
12 transactional and holding information found in a broker confirmation slip or
13 account statement. Objectors who enter an appearance and desire to present
14 evidence at the Settlement Hearing in support of their objection must include in
15 their written objection or notice of appearance the identity of any witnesses they
16 may call to testify and any exhibits they intend to introduce into evidence at the
17 hearing.

18 16. Any Settlement Class Member who or which does not make his, her,
19 or its objection in the manner provided herein shall be deemed to have waived his,
20 her, or its right to object to any aspect of the proposed Settlement, the proposed
21 Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and
22 reimbursement of Litigation Expenses and shall be forever barred and foreclosed
23 from objecting to the fairness, reasonableness, or adequacy of the Settlement, the
24 Plan of Allocation, or the requested attorneys' fees and Litigation Expenses, or
25 from otherwise being heard concerning the Settlement, the Plan of Allocation, or
26 the requested attorneys' fees and Litigation Expenses in this or any other
27 proceeding.

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1 17. **Stay** – Until otherwise ordered by the Court, the Court stays all
2 proceedings in the Action other than proceedings necessary to carry out or enforce
3 the terms and conditions of the Stipulation.

4 18. **Settlement Administration Fees and Expenses** – All reasonable
5 costs incurred in identifying Settlement Class Members and notifying them of the
6 Settlement as well as in administering the Settlement shall be paid as set forth in
7 the Stipulation without further order of the Court.

8 19. **Settlement Fund** – The contents of the Settlement Fund held by
9 IberiaBank, for which IberiaBank will serve as the Escrow Agent, shall be deemed
10 and considered to be *in custodia legis* of the Court, and shall remain subject to the
11 jurisdiction of the Court, until such time as they shall be distributed pursuant to the
12 Stipulation or further order(s) of the Court.

13 20. **Taxes** – Lead Counsel are authorized and directed to prepare any tax
14 returns and any other tax reporting form for or in respect to the Settlement Fund, to
15 pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund,
16 and to otherwise perform all obligations with respect to Taxes and any reporting or
17 filings in respect thereof without further order of the Court in a manner consistent
18 with the provisions of the Stipulation.

19 21. **Termination of Settlement** – If the Settlement is terminated as
20 provided in the Stipulation, the Settlement is not approved, or the Effective Date of
21 the Settlement otherwise fails to occur, this Order shall be vacated, rendered null
22 and void, and be of no further force and effect, except as otherwise provided by the
23 Stipulation, and this Order shall be without prejudice to the rights of Lead Plaintiff,
24 the other Settlement Class Members, and Defendants, and the Parties shall revert to
25 their respective positions in the Action as of August 2, 2019, as provided in the
26 Stipulation.

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1 22. **Use of this Order** – Neither this Order, the Stipulation (whether or
2 not consummated), including the exhibits thereto and the Plan of Allocation
3 contained therein (or any other plan of allocation that may be approved by the
4 Court), the Supplemental Agreement, and the documents prepared to effectuate
5 this Settlement, the negotiations leading to the execution of the Stipulation, nor any
6 proceedings taken pursuant to or in connection with the Stipulation, or approval of
7 the Settlement (including any arguments proffered in connection therewith):

8 (a) shall (i) be offered against any of the Defendant Releasees as evidence
9 of, or construed as, or deemed to be evidence of any presumption,
10 concession, or admission by any of the Defendant Releasees with respect to,
11 (aa) the truth of any fact alleged by Lead Plaintiff; (bb) the validity of any
12 claim that was or could have been asserted in the Action or in any other
13 litigation; (cc) the deficiency of any defense that has been or could have
14 been asserted in this Action or in any other litigation; (dd) any liability,
15 negligence, fault, or other wrongdoing of any kind of any of the Defendant
16 Releasees; or (ee) any damages suffered by Plaintiff or the Settlement Class;
17 or (ii) in any way referred to for any other reason as against any of the
18 Defendant Releasees, in any civil, criminal, or administrative action or
19 proceeding (including any arbitration), other than such proceedings as may
20 be necessary to effectuate the provisions of the Stipulation;

21 (b) shall be (i) offered against any of the Plaintiff Releasees, as evidence of,
22 or construed as, or deemed to be evidence of any presumption, concession,
23 or admission by any of the Plaintiff Releasees (aa) that any of their claims
24 are without merit, that any of the Defendant Releasees had meritorious
25 defenses, or that damages recoverable under the Complaint would not have
26 exceeded the Settlement Amount; or (bb) with respect to any liability,
27 negligence, fault, or wrongdoing of any kind; or (ii) in any way referred to
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1 for any other reason as against any of the Plaintiff Releasees, in any civil,
2 criminal, or administrative action or proceeding (including any arbitration),
3 other than such proceedings as may be necessary to effectuate the provisions
4 of the Stipulation; or (c) shall be construed against any of the Releasees as
5 an admission, concession, or presumption that the consideration to be given
6 under the Settlement represents the amount which could be or would have
7 been recovered after trial; *provided, however*, that if the Stipulation is
8 approved by the Court, the Parties and the Releasees and their respective
9 counsel may refer to it to effectuate the protections from liability granted
10 thereunder or otherwise to enforce the terms of the Settlement.

11 23. **Supporting Papers** – Lead Counsel shall file the opening papers in
12 support of the proposed Settlement, the Plan of Allocation, and Lead Counsel’s
13 motion for an award of attorneys’ fees and reimbursement of Litigation Expenses
14 no later than thirty-five (35) calendar days prior to the Settlement Hearing; and
15 Lead Plaintiff and Lead Counsel are authorized to file reply papers, which shall be
16 filed no later than seven (7) calendar days prior to the Settlement Hearing.

17 24. **CAFA Notice** – As set forth on the Stipulation, and pursuant to the
18 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. Sec. 1715, TrueCar shall
19 timely serve the CAFA notice.

20 25. The Court retains jurisdiction to consider all further applications
21 arising out of or connected with the proposed Settlement.

22 SO ORDERED this _____ day of _____, 2019.

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The Honorable Stephen V. Wilson
United States District Judge

Copies:
Counsel of Record

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the Class*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LEON D. MILBECK, on behalf of
himself and all others similarly situated

Plaintiff,

vs.

TRUECAR, INC., et al.,

Defendants.

) No. 2:18-cv-02612-SVW-AGR
) CLASS ACTION
) **LEAD PLAINTIFF'S**
) **MEMORANDUM OF POINTS**
) **AND AUTHORITIES IN**
) **SUPPORT OF UNOPPOSED**
) **MOTION FOR PRELIMINARY**
) **APPROVAL OF PROPOSED**
) **CLASS ACTION SETTLEMENT**

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1 **I. INTRODUCTION**

2 Lead Plaintiff and Defendants have negotiated, at arm’s length and with the
3 assistance of an experienced and neutral mediator, a proposed Settlement of all
4 claims in this Action for \$28,250,000.00 in cash for the benefit of the Class.¹ The
5 terms of the Settlement are set forth in the Stipulation and Agreement of Settlement
6 (“Stipulation”), filed simultaneously herewith.²

7 This resolution, which represents a substantial recovery that falls well within
8 the range of possible approval, involved, among other things: (i) a thorough
9 investigation, which included locating and interviewing numerous confidential
10 witnesses who provided Lead Plaintiff with information that was critical in pleading
11 its claims; (ii) the filing of a detailed amended complaint; (iii) consultation with
12 various experts; (iv) successfully opposing Defendants’ motion to dismiss; (v)
13 engaging in extensive class certification discovery and successfully moving for class
14 certification; (vi) engaging in comprehensive fact discovery, including obtaining,
15 reviewing, and analyzing approximately 3.5 million pages of documents on an
16 expedited schedule; (vii) engaging in significant discovery motion practice; (viii)
17 defending depositions of Lead Plaintiff’s Executive Director, Lead Plaintiff’s
18 investment manager, and Lead Plaintiff’s expert on market efficiency, and preparing

19 ¹ The “Class” or the “Settlement Class” is the same as the Class certified in the
20 Court’s orders dated May 9, 2019 and May 24, 2019. ECF Nos. 155, 167.
21 Specifically, the Settlement Class includes all persons or entities who purchased or
22 otherwise acquired (1) the publicly traded common stock of TrueCar, Inc. from
23 February 16, 2017 through November 6, 2017, or (2) the common stock of TrueCar
24 pursuant and/or traceable to the secondary offering of TrueCar common stock
25 conducted on or about April 26, 2017 and were damaged thereby. Excluded from
the Settlement Class are Defendants, the Officers and Directors of TrueCar at all
relevant times, and all such excluded persons’ Immediate Family members, legal
representatives, heirs, agents, affiliates, predecessors, successors and assigns, and
any entity in which any excluded person has or had a controlling interest. Also
excluded from the Settlement Class are those persons who file valid and timely
requests for exclusion in accordance with the Preliminary Approval Order.

26 ² Unless otherwise stated or defined, all capitalized terms used herein shall have the
27 meanings provided in the Stipulation. Additionally, unless otherwise indicated, all
emphasis in this brief has been added, and all internal citations and quotation marks
28 have been omitted.

1 for 24 fact witness depositions; (ix) the submission of detailed mediation statements
2 setting forth Lead Plaintiff’s positions on the hotly disputed issues in the case; and
3 (x) two formal day-long mediation sessions before noted mediators involving
4 rigorous and extensive negotiations.

5 Lead Plaintiff and Lead Counsel approve the Settlement. Lead Plaintiff
6 “vigorously prosecuted the action” and authorized the Settlement. *Milbeck v.*
7 *TrueCar, Inc.*, 2019 WL 2353010, at *3 (C.D. Cal. May 24, 2019). Indeed, the Court
8 held that Lead Plaintiff is an “adequate putative class representative” and the “exact
9 type of sophisticated institutional investor that Congress intended to lead securities
10 class actions under the PSLRA.” *Id.* Lead Counsel has substantial securities
11 litigation experience and is recognized as a leading expert in the field. Based upon
12 their experience, their evaluation of the facts and the applicable law, their
13 recognition of the substantial amount of the Settlement, and of the risk and expense
14 of protracted litigation against Defendants, Lead Counsel and Lead Plaintiff submit
15 that the proposed Settlement is fair, reasonable and adequate, and is in the best
16 interests of the Settlement Class. This is especially so in light of the risk that the
17 Settlement Class might recover substantially less (or nothing) if the Action were
18 litigated through dispositive motions, trial, and the likely post-trial motions and
19 appeals that would follow (a process that could last several years). Indeed, Lead
20 Plaintiff faced significant risks with regard to establishing liability, particularly on
21 the issues of falsity and scienter, which Defendants vigorously disputed, among
22 other issues.

23 Given these and other risks inherent in this complex securities class action,
24 and the Settlement’s substantial value, the Settlement represents an excellent result
25 for the Settlement Class. At this preliminary approval stage, the Court need only
26 make a preliminary evaluation of the Settlement’s fairness, such that the Settlement
27 Class should be notified of the proposed Settlement. In light of the substantial
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1 recovery obtained, and the risks and expenses posed by protracted litigation against
2 Defendants, Lead Plaintiff respectfully requests that the Court grant preliminary
3 approval of the Settlement and enter the Preliminary Approval Order, which will,
4 among other things:

- 5 (i) preliminarily approve the Settlement on the terms set forth in the
6 Stipulation;
- 7 (ii) approve the form and content of the Notice and Summary Notice
8 attached as Exhibits A-1 and A-3 to the proposed Preliminary Approval
9 Order;
- 10 (iii) find that the procedures for distribution of the Notice and publication
11 of the Summary Notice in the manner and form set forth in the
12 Preliminary Approval Order constitute the best notice practicable under
13 the circumstances, and comply with the notice requirements of due
14 process, Rule 23 of the Federal Rules of Civil Procedure, and the
15 Private Securities Litigation Reform Act of 1995 (“PSLRA”); and
- 16 (iv) set a schedule and procedures for: (1) disseminating the Notice and
17 publication of the Summary Notice; (2) requesting exclusion from the
18 Settlement Class; (3) objecting to the Settlement, the Plan of
19 Allocation, Lead Counsel’s application for an award of attorneys’ fees
20 and reimbursement of litigation expenses, or Lead Plaintiffs’
21 representative reimbursement; (4) submitting papers in support of final
22 approval of the Settlement; and (5) the Final Approval Hearing.

23 **II. HISTORY OF THE LITIGATION**

24 The original securities class action complaint in the Action was filed in this
25 District on March 30, 2018, alleging violations of Sections 10(b) and 20(a) of the
26 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated
27 thereunder. On June 27, 2018, the Court appointed Oklahoma Police Pension and
28

1 Retirement Fund as Lead Plaintiff pursuant to the requirements of the PSLRA and
2 approved Lead Plaintiff’s selection of Lead Counsel and Liaison Counsel. ECF No.
3 39.

4 Following an extensive investigation, and after consultation with various
5 experts, on August 24, 2018, Lead Plaintiff filed its Amended Class Action
6 Complaint for Violations of the Federal Securities Laws and Jury Trial Demand
7 (“Amended Complaint” or “Complaint”), adding claims based on TrueCar’s April
8 26, 2017 secondary offering (the “Offering”)³ for violations of Section 11, Section
9 12(a)(2) and Section 15 of the Securities Act of 1933 (the “Securities Act”). ECF
10 No. 47. The Amended Complaint alleges, among other things, that throughout the
11 Settlement Class Period, Defendants misrepresented TrueCar’s business and failed
12 to disclose to investors that TrueCar’s most important and largest “affinity” partner,
13 United Services Automobile Association (“USAA”), had informed the Company
14 that it planned to significantly redesign its car-buying website before gaining access
15 to the TrueCar website, which change would significantly decrease web traffic and
16 negatively impact TrueCar’s financial results. The Complaint further alleges that
17 TrueCar’s stock price was artificially inflated as a result of Defendants’ false and
18 misleading statements, and that TrueCar’s stock price declined when the truth
19 regarding Defendants’ misrepresentations was revealed.

20 On October 2, 2018, the Court held a Status Conference during which the
21 Court, after hearing the facts of the case from all parties, set a trial date of August 6,
22 2019. ECF No. 68. On November 5, 2018, Defendants filed their motion to dismiss
23 the Amended Complaint. ECF No. 88. Lead Plaintiff filed its opposition on

24 _____
25 ³ Lead Plaintiff added the underwriters of the Offering as defendants, including
26 Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, RBC Capital Markets,
27 LLC, JMP Securities LLC, B. Riley FBR, Inc., Craig-Hallum Capital Group LLC,
28 Stephens Inc. and Loop Capital Markets LLC (the “Underwriters”). Lead Plaintiff
and the Underwriters subsequently entered into a confidential agreement whereby
Lead Plaintiff agreed to voluntarily dismiss the Underwriters in return for the
Underwriters’ agreement to participate in discovery. ECF No. 82.

1 December 20, 2018, and on January 31, 2019, Defendants filed their reply. ECF
2 Nos. 90, 91.

3 On February 5, 2019, the Court entered an Order denying Defendants' motion
4 to dismiss in its entirety. The Court found that for purposes of the motion to dismiss
5 stage, under both the plausibility and heightened pleading standards, Lead Plaintiff
6 adequately alleged that Defendants made materially false and misleading statements
7 "by making risk statements regarding TrueCar's reliance on USAA's website
8 without alerting the public that the risk had already come to fruition" and
9 "representing that USAA would be a key driver of unit and revenue growth in 2017."
10 ECF No. 93. The Court also held that Lead Plaintiff alleged a strong inference of
11 scienter by alleging that Defendants knew about USAA's website redesign and its
12 impact as of January 2017. *Id.* Defendants filed their Answer to the Amended
13 Complaint on February 19, 2019. ECF No. 94.

14 Discovery commenced immediately after the Court's denial of Defendants'
15 motion to dismiss. Lead Plaintiff sought discovery from TrueCar, each of the
16 Individual Defendants, as well as USAA and several non-parties. Defendants sought
17 discovery from Lead Plaintiff, Lead Plaintiff's investment manager and Lead
18 Plaintiff's expert on market efficiency.

19 After the parties agreed on search terms, Defendants produced, and Lead
20 Plaintiff reviewed, approximately 3.5 million pages of documents in eight separate
21 productions over the course of approximately two months. Conducting this
22 discovery required a monumental effort given the expedited schedule. Additionally,
23 USAA produced, and Lead Plaintiff reviewed, approximately 78,000 pages of
24 documents. The amount of work done by Lead Plaintiff in a mere two months is
25 evidence of Lead Plaintiff's vigorous prosecution of this Action.

26 During the course of discovery, Lead Plaintiff also actively engaged in motion
27 practice on a variety of issues. The Parties exchanged numerous letters between
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1 March 10, 2019 and May 14, 2019; and engaged in multiple meet and confer
2 conferences in an attempt to come to an agreement on, among other things, whether
3 Defendants should search for and produce materials responsive to Lead Plaintiff’s
4 requests that were contained in a messaging application TrueCar utilized during the
5 Class Period to communicate internally and with USAA, known as Slack. The
6 Parties were not able to come to an agreement on this and other issues. The Parties
7 filed their Joint Report submitting, among other things, Lead Plaintiff’s motion to
8 compel Defendants’ production of responsive Slack data. ECF No. 110. A lengthy
9 telephonic conference was held before Magistrate Judge Rosenberg on April 17,
10 2019. ECF No. 113.

11 On April 26, 2019, Lead Plaintiff filed a motion to compel Defendants’
12 production of Slack data responsive to the requests. ECF No. 125. On the same day,
13 Defendants filed an opposition to Lead Plaintiff’s motion not disputing the potential
14 importance or responsiveness to Lead Plaintiff’s requests but arguing that it would
15 be too burdensome to search for and produce such data given the expedited case
16 schedule. ECF No. 128. On May 2, 2019, Magistrate Judge Rosenberg issued an
17 Order acknowledging that although production of the Slack data was “significant to
18 resolution of the case,” the expedited case schedule prevented Defendants from
19 producing such information on a timely basis and denied Lead Plaintiff’s motion to
20 compel, without prejudice, in the event Lead Plaintiff sought and the Court granted
21 a continuance so that the Slack data could be produced and reviewed “in time to be
22 used in depositions and expert discovery.” ECF No. 137.

23 Accordingly, the Parties filed a joint stipulation to continue pre-trial deadlines
24 and extend the trial date from August 6, 2019, to January 27, 2020. ECF No. 144.
25 The Court granted the motion, but only agreed to extend the trial date to November
26 5, 2019. *See* ECF No. 155. On May 16, 2019, the Parties filed another joint
27 stipulation extending certain deadlines, including the fact discovery cutoff to
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1 September 6, 2019. ECF No. 163. The Court granted this stipulation on June 20,
2 2019. ECF No. 168.

3 While discovery was underway, Lead Plaintiff filed a Motion for Class
4 Certification on March 8, 2019. ECF No. 98. On April 3, 2019, Defendants took
5 the deposition of the Executive Director of Lead Plaintiff in Chicago, Illinois. On
6 April 4, 2019, Defendants took the deposition of Lead Plaintiff's investment
7 manager, and on April 8, 2019, Defendants took the deposition of Lead Plaintiff's
8 expert on market efficiency, both of which also took place in Chicago, Illinois.
9 Defendants filed their Opposition to the Motion for Class Certification on April 17,
10 2019. ECF No. 118. On May 6, 2019, Lead Plaintiff filed its reply. ECF No. 150.
11 On May 9, 2019, the Court granted the Motion for Class Certification, and on May
12 24, 2019, the Court issued a more detailed Order setting forth the Court's rationale
13 for granting the motion. ECF Nos. 155, 167.

14 **III. SUMMARY OF SETTLEMENT NEGOTIATIONS**

15 On February 5, 2019, prior to the issuance of the Court's order on Defendants'
16 motion to dismiss, the Parties held their first mediation session, which concluded
17 with the Parties at an impasse. In advance of the mediation, the Parties prepared and
18 exchanged detailed mediation statements addressing the facts and law of the case,
19 including, among other things, Defendants' defenses on the issues of falsity and
20 scienter.

21 In May 2019, prior to the Court's order granting Lead Plaintiff's motion for
22 class certification and as the Parties continued to undertake extensive fact discovery,
23 the Parties engaged Jed Melnick as a mediator. Mr. Melnick is an acclaimed, widely-
24 respected JAMS mediator who has mediated hundreds of complex disputes with
25 aggregate values in the billions of dollars. He is also the Managing Mediator for the
26 Weinstein Melnick Team, which includes the Hon. Daniel Weinstein (Ret.), one of
27 the nation's preeminent mediators of complex civil disputes. Mr. Melnick agreed to
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1 accelerated mediation given the expedited schedule. The Parties conducted
2 telephonic discussions and prepared submissions to Mr. Melnick in advance of a
3 mediation session. These discussions and submissions addressed issues of liability,
4 damages and collectability.

5 On June 5, 2019, the Parties and Defendants’ directors’ and officers’ liability
6 insurance carriers (the “D&O Insurers”) participated in a mediation session. At the
7 conclusion of the mediation, the Parties still had not reached an agreement.
8 Thereafter, the Parties continued to negotiate with each other and with Mr. Melnick,
9 culminating in a mediator’s proposal, which the Parties accepted on July 2, 2019.
10 The Parties provided a Notice of Settlement on July 3, 2019. ECF No. 169.

11 In light of the substantial benefit achieved (\$28.25 million for the benefit of
12 the Settlement Class), the significant costs and risks of continuing litigation through
13 trial and appeals, and the fact that the proposed Settlement is the result of arm’s-
14 length negotiations by experienced counsel overseen by a well-respected mediator,
15 it is respectfully submitted that the Settlement warrants preliminary approval so that
16 notice can be provided to the Settlement Class.

17 **IV. THE SETTLEMENT TERMS**

18 The Settlement provides that Defendants will cause the D&O Insurers to pay
19 \$28.25 million into the Escrow Account, which amount comprises the Settlement
20 Fund. Stipulation ¶2.1. Notice to the Class and the cost of settlement administration
21 (“Notice and Administration Costs”) will be funded by the Settlement Fund.
22 Stipulation ¶2.9. Lead Plaintiff proposes a nationally recognized class action
23 settlement administrator, Epiq Class Action & Claims Solutions, Inc. (“Epiq”), to be
24 retained here subject to the Court’s approval.

25 The Notice provides that Lead Counsel will submit an application with their
26 opening papers in support of final approval of the Settlement for an award of
27 attorneys’ fees in the amount of 25% of the Settlement Fund (*i.e.*, 25% of the
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1 Settlement Amount, plus interest earned thereon) and payment of Plaintiffs’
2 Counsel’s expenses or charges resulting from the prosecution of the Litigation of as
3 much as \$650,000. The Notice explains that such fees and expenses shall be paid
4 from the Settlement Fund upon entry of the order awarding such fees and expenses.

5 Once Notice and Administration Costs, Taxes, Tax Expenses, Court-approved
6 attorneys’ fees and expenses and any award to Lead Plaintiff in connection with its
7 representation of the Class have been paid from the Settlement Fund, the remaining
8 amount, the Net Settlement Fund, shall be distributed pursuant to the Court-
9 approved Plan of Allocation to Authorized Claimants who are entitled to a
10 distribution of at least \$10. Any amount remaining following the distribution shall
11 be redistributed in an economically feasible manner. The Plan of Allocation treats
12 all Settlement Class Members equitable based on the timing of their TrueCar
13 common stock purchases, acquisitions and sales. The proposed Plan of Allocation,
14 which is set forth in the Notice to be mailed to Settlement Class Members, is
15 comparable to plans of allocation approved in numerous other securities class
16 actions.

17 The Parties have entered into a Supplemental Agreement which provides that
18 if prior to the Final Approval Hearing, the number of shares of TrueCar common
19 stock purchased or acquired, represented by valid claims by persons who would
20 otherwise be members of the Settlement Class, but who request exclusion from the
21 Settlement Class, exceeds a certain amount, TrueCar shall have the option to
22 terminate the Stipulation. Stipulation ¶9.2.

23 In exchange for the benefits provided under the Stipulation, Settlement Class
24 Members will release the “Released Plaintiffs’ Claims,” which include:

25 [A]ll claims, demands, losses, rights, liability, or causes of action, in
26 law or in equity, accrued or unaccrued, fixed or contingent, direct,
27 individual or representative, of every nature and description
28 whatsoever, whether known or unknown, or based on federal, state,
local, statutory or common law or any other law, rule or regulation,

1 (including the law of any jurisdiction outside the United States), that
2 were or could have been asserted in the Action or could in the future be
3 asserted in any forum, whether foreign or domestic, against Defendant
4 Releasees by Class Representative or any member of the Settlement
5 Class, or their successors, assigns, executors, administrators,
6 representatives, attorneys and agents in their capacity as such, which
7 arise out of, are based upon, or relate in any way to the factual predicate
8 of the Action, including (i) any of the allegations, facts, transactions,
9 events, matters, occurrences, acts, disclosures, oral or written
10 statements, representations, omissions, failures to act, filings,
11 publications, disseminations, press releases, or presentations involved,
12 set forth, alleged or referred to in the Action; and (ii) all claims that
13 arise out of, are based upon, or relate in any way to the purchase,
14 acquisition, holding, sale, or disposition of any TrueCar securities
15 during the Settlement Class Period.

9 The proposed Settlement does not release other pending derivative claims
10 against Defendants.

11 The proposed Settlement is an excellent recovery on the claims asserted in
12 this Action, and is in all respects fair, adequate, reasonable, and in the best interests
13 of the Settlement Class.

14 **V. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL**

15 The Ninth Circuit and courts around the country recognize that there is a
16 “strong judicial policy that favors settlements, particularly where complex class
17 action litigation is concerned.” *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at
18 *2 (C.D. Cal. Oct. 25, 2016). “Settlement is the offspring of compromise; the
19 question we address is not whether the final product could be prettier, smarter or
20 snazzier, but whether it is fair, adequate and free from collusion.” *Hefler v. Wells*
21 *Fargo & Co.*, 2018 WL 4207245, at *8 (N.D. Cal. Sept. 4, 2018) (“*Hefler*”).

22 Federal Rule of Civil Procedure 23(e) requires judicial approval for any
23 compromise of claims brought on a class basis. Determining whether to approve a
24 proposed class action settlement is generally a two-step process. *See Hefler*, 2018
25 WL 4207245, at *7. Pursuant to Rule 23(e)(1), as recently amended, the preliminary
26 approval of a settlement is appropriate where “the parties show[] that the Court will
27 likely be able to: approve the proposal under Rule 23(e)(2); and (ii) certify the class
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1 for purposes of judgment on the proposal.”⁴ Rule 23(e)(2)—which governs final
2 approval—identifies factors that courts must consider in determining whether a class
3 action settlement is “fair, reasonable, and adequate,” including whether:

- 4 (A) the class representatives and class counsel have adequately represented
5 the class;
- 6 (B) the proposal was negotiated at arm’s length;
- 7 (C) the relief provided for the class is adequate, taking into account:
- 8 (i) the costs, risks, and delay of trial and appeal;
- 9 (ii) the effectiveness of any proposed method of distributing relief
10 to the class, including the method of processing class-member claims;
- 11 (iii) the terms of any proposed award of attorney’s fees, including
12 timing of payment; and
- 13 (iv) any agreement required to be identified under Rule 23(e)(3);
14 and
- (D) the proposal treats class members equitably relative to each other.

15 In addition, the Ninth Circuit considers the following factors (certain of which
16 overlap with Rule 23(e)(2)): (1) the strength of plaintiffs’ case; (2) the risk, expense,
17 complexity, and likely duration of further litigation; (3) the risk of maintaining class
18 action status throughout the trial; (4) the amount offered in settlement; (5) the extent
19 of discovery completed and the stage of the proceedings; (6) the experience and
20 views of counsel; (7) the presence of a governmental participant; and (8) reaction
21 of the class members to the proposed settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d
22 1011, 1026 (9th Cir. 1998).⁵ Because some of the factors bearing on the propriety
23 of a settlement cannot be assessed prior to the final approval hearing, “a full fairness
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25 _____
26 ⁴ The Court need not determine whether it could certify a class because it already
has certified a class. *See Milbeck*, 2019 WL 2353010, at *5.

27 ⁵ Because Notice of the Settlement had not yet been provided to the Class, the Court
28 does not yet have the benefit of the Class’s reaction.

1 analysis is unnecessary at this stage.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665
2 (E.D. Cal. 2008).

3 As discussed below, the proposed \$28.25 million Settlement satisfies each of
4 the applicable factors such that Notice of the proposed Settlement should be sent to
5 the Settlement Class in advance of the Final Approval Hearing.

6 **A. Lead Plaintiff and its Counsel have Adequately Represented the**
7 **Class**

8 The Settlement is the product of vigorous prosecution of the Action by Lead
9 Plaintiff and Lead Counsel and no conflicts have ever existed in this litigation.
10 “[A]dequacy of representation . . . requires that two questions be addressed: (a) do
11 the named plaintiffs and their counsel have any conflicts of interest with other class
12 members and (b) will the named plaintiffs and their counsel prosecute the action
13 vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
14 462 (9th Cir. 2000).

15 Here, as the Court held in certifying the Class, Lead Plaintiff’s interests in this
16 case are directly aligned with those of the other Class members. *See TrueCar*, 2019
17 WL 2353010, at **3-4. Lead Plaintiff has demonstrated its ability and willingness
18 to pursue the Action on the Class’ behalf through its active involvement in the
19 litigation and in approving the Settlement. Lead Plaintiff and its counsel zealously
20 advocated for the interests of TrueCar shareholders and have obtained excellent
21 results. Lead Plaintiff’s decision to settle this case was informed by a thorough
22 investigation of the relevant claims; the filing of a detailed Complaint; success in
23 defeating a motion to dismiss and in obtaining class certification; extensive review
24 of documents from Defendants and third parties; active discovery motion practice;
25 consultation with experts; and research and preparation for depositions. The
26 Settlement is demonstrably the product of well-informed negotiations and vigorous

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1 advocacy on behalf of TrueCar shareholders. Accordingly, this factor weighs in
2 favor of approval.

3 **B. The Settlement Results From Good-Faith, Arm's-Length**
4 **Negotiations**

5 The Settlement arises out of serious, informed, and non-collusive negotiations
6 between the experienced counsel for Lead Plaintiff and Defendants. By the time
7 they came to agreement, the Parties had benefited from extensive motion practice
8 and document discovery, affording them the opportunity to carefully consider the
9 unique legal and factual issues at stake in this case.

10 Moreover, the Settlement came about after two in-person mediation sessions
11 under the guidance of experienced and prominent mediators, as well as numerous
12 direct negotiations between counsel. The Parties conducted settlement discussions
13 in February 2019, before this Court issued its motion to dismiss order, that were
14 unsuccessful. Then, after the Court denied Defendants' motion to dismiss, certified
15 the Class, and after significant document discovery, the Parties restarted negotiations
16 in May 2019, under the supervision of Mr. Melnick. After written submissions, a
17 mediation session on June 5, 2019 and intense continued discussions with Mr.
18 Melnick, Mr. Melnick made a mediator's recommendation to settle the case, which
19 the Parties accepted on July 2, 2019.

20 Accordingly, the advanced posture of this case and the deliberative nature of
21 the negotiations evidence a fair process involving good-faith arm's-length
22 bargaining. *See, e.g., Hefler*, 2018 WL 4207245, at *9 (“[I]n light of the fact that the
23 Settlement was reached after the parties engaged in motion practice and participated
24 in multiple days of formal mediation, the Court concludes that the negotiations and
25 agreement were non-collusive”); *In re China Med. Corp. Sec. Litig.*, 2014 WL
26 12581781, at *5 (C.D. Cal. Jan. 7, 2014) (“Moreover, this settlement is the result of
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1 a mediation held before Jed Melnick, Esq., a JAMS mediator. . . Mr. Melnick’s
2 involvement in the settlement supports the argument that it is non-collusive.”).

3 **C. The Relief Provided for the Settlement Class is Adequate**

4 **1. The Amount Offered in the Settlement Favors Approval**

5 To evaluate the adequacy of the settlement amount, “courts primarily consider
6 plaintiffs’ expected recovery balanced against the value of the settlement offer.” *In*
7 *re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). But “[i]t
8 is well-settled law that a cash settlement amounting to only a fraction of the potential
9 recovery will not per se render the settlement inadequate or unfair.” *Officers for*
10 *Justice v. Civil Serv. Comm’n of City & County of S.F.*, 688 F.2d 615, 628 (9th Cir.
11 1982).

12 Under the proposed Settlement, Defendants shall cause the D&O Insurers to
13 pay \$28,250,000—an excellent result for the Class. In this case, there is a broad
14 range of potential recovery if the case were litigated to a conclusion rather than
15 settled. It is possible that Defendants could prevail on one or more of their legal or
16 factual arguments to defeat liability entirely.

17 Plaintiff’s realistic assessment based on the evidence is that damages range
18 from \$66 million to \$240 million.⁶ The Settlement thus represents a recovery of
19 12% to 43% of Plaintiff’s potential recoverable damages. In comparison, the median
20 recovery in securities class actions in 2018 was approximately 2.6% of estimated
21 damages. *See* Stefan Boettrich and Svetlana Starykh, Recent Trends in Securities
22 Class Action Litigation: 2018 Full-Year Review (NERA Jan. 29, 2019) at p. 36, Fig.
23 28; *see also* *IBEW v. Int’l Game Tech., Inc.*, 2012 WL 5199742, at *3 (D. Nev. Oct.
24 19, 2012) (approving settlement where recovery was 3.5% of maximum damages
25 and noting “[t]his amount is within the median recovery in securities class actions
26 settled in the last few years”).

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28 ⁶ In fact, Defendants’ damages calculations were substantially lower.

1 As discussed below, given the complexities of the Action and the continued
2 risks if the Parties were to proceed to trial, the Settlement represents a more than
3 reasonable resolution of this Action and eliminates the risk that the Settlement Class
4 might not otherwise recover from Defendants. The proposed Settlement will allow
5 the Class to receive a concrete benefit now, not a hypothetical benefit after years of
6 uncertain litigation and a far-from-guaranteed jury verdict. *See In re AOL Time*
7 *Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *13 (S.D.N.Y. Apr. 06, 2006)
8 (recognizing that an immediate, substantial and concrete benefit of settlement
9 outweighs possibility of higher recovery after trial).

10 **2. The Settlement Weighs the Strength of Lead Plaintiff's**
11 **Claims with the Substantial Risks of Continuing Litigation**

12 Consistent with Rule 23's instruction to consider "the costs, risks, and delay
13 of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), courts in this Circuit evaluate
14 "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration
15 of further litigation." *Hefler v Wells Fargo & Co.*, 2018 WL 6619983, at *7 (N.D.
16 Cal. Dec. 18, 2018) ("*Hefler II*") (citing *Hanlon*, 150 F.3d at 1026).

17 Lead Plaintiff believes that its case has merit. However, Defendants had
18 strong arguments that their statements were not false, and that they did not act with
19 scienter. For example, Defendants would have argued that (1) they did not know
20 about the USAA website redesign until very shortly before that redesign was
21 implemented; (2) they did not believe or know that such redesign would have a
22 negative impact on the Company; and (3) their statements accurately described the
23 state of the Company's business, were forward-looking statements protected by the
24 PSLRA Safe Harbor, and fully informed investors of the risks of which Lead
25 Plaintiff complained. Defendants also had arguments that not all of the decline in
26 the stock price that occurred at the end of the Class Period was related to disclosures
27 regarding the USAA website redesign, but to myriad other factors. Additionally,
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1 Defendants maintained that at the start of Q3 2017, TrueCar’s business was
2 performing at record levels and management was rightly confident about the future.
3 While Lead Plaintiff believes it had responses to these arguments, there is no
4 question that these obstacles would remain throughout the Action, and created a very
5 real risk that Lead Plaintiff could ultimately recover materially less than the
6 Settlement Amount -- or nothing at all.

7 Indeed, complex securities fraud class actions such as this one present myriad
8 risks that plaintiffs must overcome in order to ultimately secure a recovery. *See,*
9 *e.g., In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 395 (9th Cir. 2010) (affirming
10 summary judgment in favor of defendants where plaintiff failed to establish a triable
11 issue on loss causation); *In re Neopharm, Inc. Sec. Litig.*, 705 F. Supp. 2d 946, 966
12 (N.D. Ill. 2010) (granting partial summary judgment where plaintiffs failed to prove
13 material falsity or scienter). While plaintiffs must prove all elements of their claims
14 to prevail, defendants need only succeed on one defense to potentially defeat the
15 entire action. The uncertainty created by these circumstances weighs in favor of
16 approving the Settlement.

17 “In most situations, unless the settlement is clearly inadequate, its acceptance
18 and approval are preferable to lengthy and expensive litigation with uncertain
19 results.” *See Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526
20 (C.D. Cal. 2004) (citing 4 A Conte & H. Newberg, *Newberg on Class Actions*, §
21 11:50 at 155 (4th ed. 2002)). Lead Plaintiff considered the many costly milestones
22 that remain in the Action. Absent settlement now, the Parties faced litigating this
23 action to final resolution, including depositions, dispositive motions, trial, and likely
24 post-trial appeals. *See Hefler*, 2018 WL 4207245, at *9 (discussing “numerous
25 significant obstacles in surviving summary judgment and ultimately prevailing on
26 their claims at trial”). Taking into account the inherent uncertainty and the potential
27 length ahead, further litigation carries a great amount of risk and burden to both
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1 parties. *See Harris v. U.S. Physical Therapy, Inc.*, 2012 WL 3277278, at *5 (D.
2 Nev. July 18, 2012) (discussing the same reasons for approving settlement).

3 Indeed, no matter how efficiently the Action is handled, the Parties would
4 have to spend a considerable sum to see this case to completion, especially in light
5 of its complexity. Settling this action would avoid those costs. In light of these
6 considerations, settlement is less risky, less expensive and less time-consuming
7 while ensuring a recovery, thus weighing in favor of granting preliminary approval
8 of the settlement. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th
9 Cir. 1992).

10 **3. The Proposed Method for Distributing Relief is Effective**

11 The method and effectiveness of the proposed notice and claims
12 administration process (Rule 23(e)(2)(C)(ii)) are effective. Specifically, this
13 includes well-established, effective procedures for processing claims submitted by
14 potential Settlement Class Members and efficiently distributing the Net Settlement
15 Fund. The notice plan includes direct mail notice to all those who can be identified
16 with reasonable effort supplemented by the publication of the Summary Notice in
17 *Investor's Business Daily* and transmitted over the *PR Newswire*. Also, a settlement-
18 specific website will be created where key documents will be posted, including the
19 Stipulation, Notice, Proof of Claim and Preliminary Approval Order.

20 The claims process is also effective and includes a standard claim form that
21 requests the information necessary to calculate a claimant's claim amount pursuant
22 to the Plan of Allocation. The Plan of Allocation will govern how Settlement Class
23 Members' claims will be calculated and how money will be distributed to
24 Authorized Claimants. The Plan of Allocation was prepared with the assistance of
25 Lead Plaintiff's damages consultant and is based primarily on the expert's event
26 study analysis estimating the amount of alleged artificial inflation in the price of
27 TrueCar common stock during the Class Period.

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1 Last, Epiq, the Claims Administrator selected by Lead Counsel subject to
2 Court approval, will process claims under the guidance of Lead Counsel, allow
3 claimants an opportunity to cure any deficiencies in their claims or request the Court
4 to review a denial of their claims, and, lastly, mail or wire Authorized Claimants
5 their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation), after
6 Court-approval. Stipulation ¶4. Claims processing like the method proposed here
7 is standard in securities class action settlements as it has been long found to be
8 effective.

9 **4. Lead Counsel’s Fee and Expense Request is Fair and**
10 **Reasonable**

11 Rule 23(e)(2)(C)(iii) addresses “the terms of any proposed award of attorney’s
12 fees, including timing of payment.” As disclosed in the Notice, Lead Counsel intend
13 to seek an award of attorneys’ fees of 25% of the Settlement Fund and expenses in
14 an amount not to exceed \$650,000, which include eDiscovery costs and costs of
15 retaining experts. This falls within the 25-percent benchmark rate for attorney’s fee
16 awards in the Ninth Circuit and is consistent with awards in similar complex class
17 action cases. *See, e.g., Loritz v. Exide Techs.*, 2016 WL 7246076, at *1 (C.D. Cal.
18 June 15, 2016) (Wilson, J.) (awarding 25% and over \$1.58 million in costs); *Unutoa*
19 *v. Interstate Hotels & Resorts, LLC*, 2016 WL 7496127, at *5 (Wilson, J.) (awarding
20 25% and requested costs) (C.D. Cal. Aug. 23, 2016).

21 Lead Counsel will provide much more detailed information in support of its
22 motion for attorneys’ fees and expenses, to be filed with the Court 35 days before
23 the Final Approval Hearing. While Lead Counsel’s review of its time and Liaison
24 Counsel’s time is not yet complete, Plaintiffs’ Counsel’s estimated lodestar is in
25 excess of the requested 25% of the Settlement Fund and would therefore represent a
26 negative multiplier. Accordingly, a lodestar cross-check would support the
27 reasonableness of such a fee request. *See, e.g., Vizcaino v. Microsoft Corp.*, 290
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1 F.3d 1052–54 (9th Cir. 2002) (concluding that multipliers most commonly fall range
2 from 1.0 to 4.0); *accord Hefler II*, 2018 WL 6619983, at *14 (“Plaintiffs’ Counsel’s
3 total lodestar of \$29,504,271.25 results in a multiplier of 3.22. . . . Because
4 Plaintiffs’ Counsel’s lodestar multiplier is within the range of reasonableness, it
5 supports the requested award”).

6 Further, as explained in the Notice, Lead Plaintiff intends to request an award
7 for reimbursement for its time and expenses in representing the Class in an amount
8 up not to exceed \$5,000. *See, e.g., In re Omnivision Technologies, Inc.*, 559 F. Supp.
9 2d 1036, 1049 (N.D. Cal. 2008) (reimbursing lead plaintiffs for “time and expenses”
10 in the amount of \$29,913.80).

11 **5. The Parties Have No Side Agreements Besides Opt-Outs**

12 Rule 23(e)(2)(C)(iv) requires the disclosure of any side agreement. The
13 Parties have entered into a confidential supplemental agreement which provides that
14 if Settlement Class Members opt out of the Settlement such that the number of shares
15 of TrueCar common stock represented by such opt outs equals or exceeds a certain
16 amount, TrueCar shall have the option to terminate the Settlement. Stipulation ¶9.2.
17 This type of agreement is standard in securities class action settlements and has no
18 negative impact on the fairness of the Settlement. *In re Carrier IQ, Inc. Consumer*
19 *Privacy Litig.*, 2016 WL 4474366, at *5 (N.D. Cal. Aug. 25, 2016) (“opt-out deals
20 are not uncommon as they are designed to ensure than an objector cannot try to
21 hijack a settlement in his or her own self-interest”).

22 **6. All Settlement Class Members are Treated Equitably**

23 Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats
24 class members equitably relative to one another. Here, the proposed Plan of
25 Allocation is fair, reasonable and adequate because it does not treat Plaintiffs or any
26 other Class Member preferentially. *See In re Zynga Inc. Sec. Litig.*, 2015 WL
27 6471171, at *10 (N.D. Cal. Oct. 27, 2015) (finding the plan of allocation “distributes
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1 the funds without giving undue preferential treatment to any class members”). The
2 Plan of Allocation, which is set out in the Notice, explains how the Settlement
3 proceeds will be distributed among Authorized Claimants. Each eligible Settlement
4 Class Member, including the Lead Plaintiff, will receive a distribution pursuant to
5 the Plan of Allocation. Lead Plaintiff, just like all other Class Members, will be
6 subject to the same formulas for distribution of the Settlement.

7 **D. The Extent of Discovery Completed and the Stage of the**
8 **Proceedings at Which Settlement was Achieved Strongly Supports**
9 **Preliminary Approval**

10 The extent of discovery completed and the stage of the proceedings also
11 support preliminary approval of the Settlement. *See Cicero v. DirecTV, Inc.*, 2010
12 WL 2991486, at *3 (C.D. Cal. July 27, 2010) (holding that a settlement is
13 “presumptively fair” where, as here, the parties engage in “meaningful discovery”
14 before settlement); *Keegan v. Am. Honda Motor Co, Inc.*, 2014 WL 12551213, at
15 *12 (C.D. Cal. Jan. 21, 2014) (granting approval where “discovery has been
16 sufficient to permit the parties to enter into a well-informed settlement, and this
17 factor weighs in favor of approval”).

18 Lead Plaintiff’s decision to enter into the Settlement was based on its thorough
19 understanding of the strengths and weaknesses of its claims and Defendants’
20 defenses. This understanding was based on Lead Counsel’s diligent prosecution of
21 the Action, which included, among other things: (i) drafting the Amended Complaint
22 subject to the heightened pleading standards of the PSLRA; (ii) conducting an
23 extensive factual investigation, including identifying, contacting and interviewing
24 former employees with direct knowledge of the facts; (iii) consulting with experts;
25 (iv) successfully opposing Defendants’ motion to dismiss; (v) conducting extensive
26 fact discovery, which included seeking and obtaining over 3.5 million pages of
27 documents from Defendants and various third parties, as well as defending and
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1 preparing for depositions; (vi) successfully litigating Lead Plaintiff’s class
2 certification motion; and (vii) preparing for and participating in two mediation
3 sessions before acclaimed, widely-respected mediators. This factor undoubtedly
4 weighs in favor of preliminary approval.

5 **E. Risk of Maintaining Class Action Status Through Trial**

6 Even though the Court granted class certification, there are no guarantees that
7 class action status may remain. *See* Rule 23(c)(1) (“An order that grants or denies
8 class certification may be altered or amended before final judgment”). Lead Plaintiff
9 and the Class cannot completely disregard the possibility that the Court would later
10 decertify the action. Indeed, Defendants had strong arguments that they would raise
11 at summary judgment and trial that the Class Period should not begin until August
12 2017 (or even later), which is when they began to realize that the website redesign
13 was negatively impacting their business. Therefore, in light of these risks, this factor
14 weighs in favor of granting preliminary approval. *See, e.g., In re Immune Response*
15 *Sec. Litig.*, 497 F. Supp. 2d 1166, 1172 (S.D. Cal. 2007) (finding risk that defendants
16 would attempt to shorten class period based on evidence produced during discovery
17 supported settlement).

18 **F. The Experience and Views of Counsel Favors Settlement**

19 The recommendation of experienced counsel in favor of settlement carries a
20 “great deal of weight” in a court’s determination of the reasonableness of a
21 settlement. *Immune.*, 497 F. Supp. 2d at 1174. Lead Counsel has significant
22 experience in securities and other complex class action litigation and has negotiated
23 numerous other substantial class action settlements throughout the country. Lead
24 Counsel has been an integral part of many settlements of this nature, and, in their
25 estimation, this settlement is an excellent result because it provides the Settlement
26 Class with genuine relief under difficult legal and practical circumstances.

1 At the time Lead Counsel agreed to a compromise—after intense litigation
2 and copious discovery—they had obtained a thorough understanding of the strengths
3 and weaknesses of the claims and defenses in this case. It is Lead Counsel’s
4 informed opinion that given the risks and uncertainties inherent in this complex
5 securities class action litigation, the proposed settlement is fair, reasonable and
6 adequate and in the best interest of the Settlement Class. “Based on counsels’
7 knowledge of the specific facts of this action, experience in settlements such as this,
8 and opinion that the Settlement is fair, reasonable, and adequate,” this factor weighs
9 in favor of granting preliminary approval of the Settlement. *Harris*, 2012 WL
10 3277278, at *7 (citation omitted).

11 **VI. NOTICE TO THE SETTLEMENT CLASS IS WARRANTED**

12 In order to comport with due process, “notice must be the best practicable,
13 ‘reasonably calculated, under all the circumstances, to apprise interested parties of
14 the pendency of the action and afford them an opportunity to present their
15 objections.’” *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994) (quoting *Mullane*
16 *v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Additionally,
17 “[s]ettlement notices are supposed to present information about a proposed
18 settlement neutrally, simply, and understandably[.]” *Rodriguez v. W. Publ’g Corp.*,
19 563 F.3d 948, 962 (9th Cir. 2009) (internal citations omitted).

20 As outlined in the agreed-upon form of proposed Preliminary Approval Order,
21 and described above, Lead Counsel will cause the Claims Administrator to notify
22 Settlement Class Members of the Settlement by mailing the Notice and Claim Form
23 to all Settlement Class Members who can be identified with reasonable effort. The
24 Notice will advise Settlement Class Members of: (i) the pendency of the class action;
25 (ii) the essential terms of the Settlement; and (iii) information regarding Lead
26 Counsel’s application for an award of attorneys’ fees and reimbursement of
27 Litigation Expenses. The Notice also will provide specifics on the date, time and
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1 place of the Final Approval Hearing and set forth the procedures, as well as
 2 deadlines, for opting out of the Settlement Class, for objecting to the Settlement, the
 3 proposed Plan of Allocation and/or the application for attorneys’ fees and Litigation
 4 Expenses, and for submitting a Claim Form. The proposed Preliminary Approval
 5 Order also requires Lead Counsel to cause the Summary Notice to be published once
 6 in *Investor’s Business Daily* and to be transmitted over the *PR Newswire*. Lead
 7 Counsel will also cause a copy of the Notice and Claim Form to be readily available
 8 on the Settlement website created specifically for this Settlement.

9 The form and manner of providing notice to the Settlement Class satisfy the
 10 requirements of due process, Rule 23, and the PSLRA.⁷

11 **VII. PROPOSED SCHEDULE OF EVENTS**

12 Lead Plaintiff proposes the following schedule for the Settlement-related
 13 events in this case.

<u>Event</u>	<u>Proposed Due Date</u>
Deadline for mailing the Notice and Claim Form to the Settlement Class (Preliminary Approval Order ¶4(b))	Not later than 21 calendar days after entry of Preliminary Approval Order (the “Notice Date”)
Deadline for publishing the Summary Notice (Preliminary Approval Order ¶4(d))	Not later than 10 business days after the Notice Date
Deadline for filing of papers in support of final approval of Settlement, Plan of Allocation, and Lead Counsel’s application for attorneys’ fees and expenses (Preliminary Approval Order ¶23)	35 calendar days prior to the Final Approval Hearing
Deadline for receipt of exclusion requests or objections (Preliminary Approval Order ¶¶10, 14)	21 calendar days prior to the Final Approval Hearing
Deadline for filing reply papers (Preliminary Approval Order ¶23)	7 calendar days prior to the Final Approval Hearing

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27 ⁷ See, e.g., *Immune*, 497 F. Supp. 2d at 1170; *Hefler*, 2018 WL 4207245, at *11.

<u>Event</u>	<u>Proposed Due Date</u>
Deadline for submitting Claim Forms (Preliminary Approval Order ¶7)	120 calendar days after the Notice Date
Final Approval Hearing (Preliminary Approval Order ¶2)	At least 100 calendar days after the filing of this Motion, or at the Court’s earliest convenience thereafter. Lead Plaintiff respectfully requests that the Court schedule the Final Approval Hearing on a date convenient for the Court between November 18 and December 16, 2019.

VIII. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests the Court approve the proposed form and manner of notice given to the Settlement Class and schedule a hearing on Lead Plaintiff’s motion for final approval of the Settlement and Lead Counsel’s application for an award of attorneys’ fees and expenses. The Parties’ agreed-upon form of proposed Preliminary Approval Order, and exhibits thereto, is attached to the accompanying Notice of Motion as Exhibit A.

Dated: August 2, 2019

Respectfully submitted,

KAPLAN FOX & KILSHEIMER LLP

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Lead Counsel for Lead Plaintiff and the Class

1 **PROOF OF SERVICE VIA ELECTRONIC POSTING PURSUANT TO**
2 **CENTRAL DISTRICT OF CALIFORNIA LOCAL RULES**
3 **AND ECF GENERAL ORDER NO. 10-07**

4 I HEREBY CERTIFY that, on August 2, 2019, I electronically filed the
5 foregoing with the Clerk of Court using the CM/ECF system, which will send a
6 notice of electronic filing to all registered users. I certify under penalty of perjury
7 under the laws of the United States of America that the foregoing is true and correct.

8 Executed on August 2, 2019.

9
10 /s/ Justin B. Farar

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