

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:18-cv-02612-SVW-AGR	Date	June 27, 2018
Title	<i>Leon D. Milbeck, v. TrueCar, Inc., et al</i>		

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
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N/A	N/A
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**Proceedings:** IN CHAMBERS ORDER GRANTING MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF COUNSEL [31]

**I. INTRODUCTION**

Before the Court is Plaintiff Oklahoma Police Pension and Retirement Fund’s (“Oklahoma Police”) unopposed motion requesting that the Court appoint a Lead Plaintiff and approve Lead Counsel and Liaison Counsel in Plaintiffs’ case against Defendants Truecar and Michael Guthrie. Dkt. 31. Plaintiff Oklahoma Police requests that the Court appoint it Lead Plaintiff. *See* Dkt. 35 at 5:25-28. Oklahoma Police claims that during the class period, it suffered losses of \$274,057 and is unaware of any other plaintiff that has suffered higher losses. *Id.* at 5:23. Oklahoma Police has selected the law firm of Saxena White P.A. (“Saxena White”) as Lead Counsel and Kaplan Fox & Kilsheimer LLP (“Kaplan Fox”) as Liaison Counsel for the Class. *Id.* at 1:5-8. For the reasons stated below, the Court **GRANTS** Plaintiff Oklahoma Police’s motion for appointment as Lead Plaintiff, **GRANTS** Oklahoma Police’s motion to approve Saxena White as Lead Counsel and Fox Kaplan as Liaison Counsel.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

**A. TrueCar’s Allegedly Misleading Statements**

TrueCar, a Delaware corporation with its principal executive officers in Santa Monica, California, develops, publishes, and operates an online automobile information and communication platform. Dkt. 1 at ¶ 2. TrueCar operates its own company-branded platform as well as customized co-

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branded platforms in conjunction with various affinity group marketing partners. *Id.* TrueCar trades on NASDAQ under the ticker symbol “TRUE,” and generates most of its revenue through subscription arrangements with merchants or fees charged per vehicle sold through its platforms. *Id.* at ¶ 4.

Among TrueCar’s affinity group marketing partners, United Services Automobile Association (“USAA”) is the largest source of unique visitors and unit sales for the company. *Id.* at ¶ 3. At some point during the relevant period, USAA made changes to its website that significantly reduced TrueCar’s ability to derive revenues from their partnership with USAA. *Id.* at ¶ 27. The present lawsuit alleges that TrueCar and Michael Guthrie, the Company’s Chief Financial Officer, were aware of the changes being implemented by USAA and the impact they would have on TrueCar’s financial performance. *Id.* Yet Defendants failed to publicly disclose such issues. *Id.* Instead, they gave misleadingly positive assessments of TrueCar’s future performance, particularly regarding the Company’s partnership with USAA. *Id.* Consequently, TrueCar’s share price was artificially inflated between February 16, 2017 and November 6, 2017. *See id.* at ¶ 53.

As a publicly traded company, TrueCar must file quarterly 10-Q Forms and annual 10-K Forms with the SEC. These forms contain periodic statements of TrueCar’s financial performance, as well as commentary on the company’s past performance and future business prospects. The information contained in these forms must also be publicly disseminated. On February 16, 2017, TrueCar issued a press release detailing the Company’s performance from the first quarter of 2017 as well as the whole of 2016. *Id.* at ¶ 19. The press release contained highly positive commentary from management, predicting strong growth rates going forward. *Id.* Press releases dated May 9, 2017 and August 8, 2017 likewise predicted a positive financial outlook for the company. *Id.* at ¶ 25, 29-30.

On November 6, 2017, the Company announced its financial results for the third quarter of 2017. *Id.* at ¶ 32. The press release indicated that TrueCar had missed its sales targets for the quarter. *Id.* That same day, the Company held a conference call in which it explained that USAA had made changes to its website. *Id.* at ¶¶ 33-34. These changes caused a decline in TrueCar’s sales from their partnership with USAA. *Id.* The Company also indicated that they had been aware of the changes USAA intended to implement. *Id.* The Company had not previously disclosed USAA’s planned changes. *See id.* TrueCar’s share price dropped precipitously following the press release and conference call. *Id.* at ¶ 35. By market close on November 7, 2017, the price of TrueCar shares were down more than 35 percent.<sup>1</sup> *Id.*

<sup>1</sup> Shares of TrueCar opened at \$16.34 per share on November 6, 2017. They closed at \$10.58 on November 7, 2017 – a

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**B. Defendant Guthrie’s Alleged Involvement**

Defendant Guthrie, TrueCar’s CFO, frequently made statements reiterating the positive outlook found in TrueCar’s press releases. *See generally id.* Guthrie held a conference call in conjunction with the Company’s February 16, 2017 press release. *Id.* at ¶ 20. He stated that TrueCar would continue to experience strong growth through its partnership with USAA. *Id.* Guthrie made similar statements at a conference on February 28, 2017. *Id.* at ¶ 21. Guthrie provided generally positive assessments of the Company’s prospects in conference calls following the May 9 and August 8, 2017 press releases. *Id.* at ¶¶ 25, 29. Guthrie resigned as CFO on February 1, 2018. *Id.* at ¶ 41.

The Complaint alleges that TrueCar and Defendant Guthrie knew or should have known that the above press releases and statements were misleading. *Id.* at ¶¶ 36-37. Nevertheless, Defendants allegedly approved the reports containing misleading statements and publicly disseminated them. *Id.* at ¶ 51. The Complaint alleges that the misleading representations artificially inflated TrueCar’s share price. *Id.* at ¶ 42. Defendants benefitted from the artificially inflated share price because they each sold large portions of their respective TrueCar stock during the relevant period. *Id.* at ¶¶ 39-40. Had Plaintiffs been aware of the misleading nature of Defendants’ periodic reports and statements, they would not have purchased TrueCar’s shares at the artificially inflated price. *Id.* at ¶ 53.

**III. LEGAL STANDARD**

The Private Securities Litigation Reform Act (“PSLRA”) governs the appointment of a Lead Plaintiff for “each private action arising under the [Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.” 15 U.S.C. §§ 78u-4(a)(1), (3). It provides that within 20 days of the filing of the action, the plaintiff is required to publish notice in a widely circulated business-oriented publication or wire service, informing class members of their right to move the Court, within 60 days of publication, for appointment as Lead Plaintiff. *See In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (*citing* 15 U.S.C. § 78u-4(a)(3)(A)(i)); *Tanne v. Autobyte, Inc.*, 226 F.R.D. 659, 664 (C.D. Cal. 2005) (same).

decline of \$5.76 (35.25%) per share. Compl. at ¶ 35.

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Under 15 U.S.C. § 78u-4(a)(3)(B)(i), the Court must then consider any motion made by class members and appoint as Lead Plaintiff the movant that the Court determines to be “most capable of adequately representing the interests of class members.” Under the statute, there is a rebuttable presumption that the “most adequate plaintiff” is the movant that (1) has filed the complaint or made a timely motion for lead plaintiff, (2) possesses the largest financial interest in the litigation, and (3) satisfies the requirements of Federal Rule of Civil Procedure 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *Cavanaugh*, 306 F.3d at 730 (describing the PSLRA’s competitive process for determining the “most adequate plaintiff”); *Schrivver v. Impact Mortg. Holdings, Inc.*, No. SACV 06-31 CJC (RNBx), 2006 U.S. Dist. LEXIS 40607, at \*8-10 (C.D. Cal. May 1, 2006).

Once the court determines who among the movants seeking appointment as Lead Plaintiff is the presumptive Lead Plaintiff, the presumption can be rebutted upon proof by a class member that the presumptive Lead Plaintiff: “(aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *see also Cavanaugh*, 306 F.3d at 730; *Schrivver*, 2006 U.S. Dist. LEXIS 40607, at \*8 (same).

The PSLRA’s “straightforward” and “sequential” selection process mandates that “[i]f the plaintiff with the greatest financial stake does not satisfy the Rule 23(a) criteria, the court must repeat the inquiry, this time considering the plaintiff with the next-largest financial stake, until it finds a plaintiff who is both willing to serve and satisfies the requirements of Rule 23.” *See Cavanaugh*, 306 F.3d at 729-32; *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 267 (3d Cir. 2001) (“If (for any reason) the court determines that the movant with the largest losses cannot make a threshold showing of typicality or adequacy, then the court should . . . disqualify that movant from serving as lead plaintiff.”). The PSLRA “does not permit courts simply to ‘presume’ that the movant with ‘the largest financial interest in the relief sought by the class’ satisfies the typicality and adequacy requirements.” *Cendant*, 264 F.3d at 264.

#### IV. DISCUSSION

##### A. Rebuttable Presumption that Plaintiff Oklahoma Police is Lead Plaintiff

The PSLRA first requires this Court to consider which Plaintiff has the largest financial interest in the litigation. In that regard, Plaintiff Oklahoma Police has the largest loss—over \$270,000 dollars—

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during the class period. Dkt. 35 at 5. The questions that follow such a determination are: (1) Does appointing Oklahoma Police as Lead Plaintiff satisfy the requirements of Federal Rule of Civil Procedure 23? and (2) Can another class member offer proof that Oklahoma Police either will not fairly and adequately protect the interests of the class or that Oklahoma Police is subject to unique defenses that render it incapable of adequately representing the class?

Plaintiff Oklahoma Police fulfills the typicality and adequacy requirements of Rule 23(a). Like all members of the class, Plaintiff Oklahoma Police alleges that Defendants publicly disseminated false and misleading statements about TrueCar and its business. Dkt. 35 at 7. Similarly, Oklahoma Police purchased TrueCar shares at artificially inflated prices due to Defendants’ misrepresentations and omissions. *Id.* Like all other plaintiffs here, Oklahoma Police suffered losses when TrueCar share prices fell from their artificially high perch. *Id.* Oklahoma Police is adequate because its interest in aggressively pursuing claims against Defendants is aligned with the interests of other class members who were similarly harmed. *Id.* at 8. In fact, as a sophisticated institutional investor, Oklahoma Police is exactly the type of Lead Plaintiff Congress sought to carry out class action securities litigation when it enacted the PSLRA. *Id.* at 9 (citing H.R. Conf. Rep. No. 104-369, at \*34 (1995)). Thus, Oklahoma Police’s interests are well-aligned with the rest of the class, it shares substantially similar questions of law and fact with other class members, and its claims are typical of the claims of the class as a whole. Since Oklahoma Police has the largest financial interest in the litigation and satisfies the requirements of Rule 23(a), Plaintiff Oklahoma Police is presumptively the most adequate to be Lead Plaintiff. *Cavanaugh*, 306 F.3d at 730.

The presumption in favor of appointing Oklahoma Police as Lead Plaintiff can only be rebutted by another purported class member who can prove that Oklahoma Police will not adequately protect the interest of the class or “is subject to unique defenses that render [Oklahoma Police] incapable of adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Plaintiff Oklahoma Police’s motion is unopposed, and there is no reason to believe that Oklahoma Police is subject to any unique defenses. Dkt. 35 at 11. As discussed above, it appears that the interests of Oklahoma Police are aligned with the rest of the class. *Id.* at 8.

Accordingly, Plaintiff Oklahoma Police is the most adequate Plaintiff to represent this class and the Court GRANTS Oklahoma Police’s motion to be appointed as Lead Plaintiff.

**B. Approval of Saxena White as Lead Counsel and Kaplan Fox as Liaison Counsel**

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The PSLRA vests authority in the lead plaintiff to select and retain counsel for the class, subject to the Court’s approval. See 15 U.S.C. §§ 77z-1(a)(3)(B)(v), 78u-4(a)(3)(B)(v); *Cavanaugh*, 306 F.3d at 734 (“the [PSLRA] clearly leaves the choice of class counsel in the hands of the lead plaintiff”); *See also In re Cohen v. United States Dist. Court for the N. Dist. of Cal.*, 586 F.3d 703, 712 (9th Cir. 2009) (“if the lead plaintiff has made a reasonable choice of counsel, the district court should generally defer to that choice”). Plaintiff Oklahoma Police has selected Saxena White as Lead Counsel and Kaplan Fox as Liaison Counsel. Dkt. 35 at 9. Saxena White has previously litigated securities fraud class actions and other complex litigations, and has won substantial recoveries for investors. *Id.* at 9-10. Kaplan Fox has also prosecuted multiple securities lawsuits on behalf of both public and private institutional and retail investors. *Id.* at 11.

The Court GRANTS Plaintiff Oklahoma Police’s motion to approve its selection of Saxena White as Lead Counsel and Kaplan Fox as Liaison Counsel.

**V. CONCLUSION**

For the reasons mentioned above, the Court **GRANTS** Plaintiff Oklahoma Police’s motion for appointment as Lead Plaintiff, **GRANTS** Oklahoma Police’s motion to approve Saxena White as Lead Counsel and Fox Kaplan as Liaison Counsel.

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