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 14 Plaintiff CALIFORNIA NEW CAR
 15 DEALERS ASSOCIATION

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 17 FOR THE COUNTY OF LOS ANGELES

Nancy Newman

18 CALIFORNIA NEW CAR DEALERS
 19 ASSOCIATION, a non-profit trade association,
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 21 Plaintiff,
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 23 vs.
 24 TRUECAR, INC., a Delaware corporation; and
 25 DOES 1-20, inclusive,
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 27 Defendants.
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**CONFORMED COPY
 ORIGINAL FILED**
 Superior Court of California
 County of Los Angeles

MAY 20 2015

Sherri R. Carter, Executive Officer/Clerk
 By Jacqueline Morgan, Deputy

Case No. **SC124196**

**COMPLAINT FOR DECLARATORY
RELIEF AND INJUNCTIVE RELIEF**

CASE MANAGEMENT CONFERENCE
SEP 08 2015 – *Dept. P*
 Date **8:30 A.M.**

1 Plaintiff California New Car Dealers Association (“CNCDA”) files this Complaint based
2 upon the following factual and legal allegations:

3 **NATURE OF THE ACTION**

4 1. This action arises from TrueCar, Inc.’s noncompliance with various sections of the
5 California Vehicle Code (“CVC”) pertaining to dealer licensing, brokering, advertising, and
6 disclosure. Through its failure to obtain the necessary dealer’s license and autobroker’s
7 endorsement, which are required in light of the manner in which TrueCar, Inc. (“TrueCar”) conducts
8 business, TrueCar avoids compliance with a host of CVC sections regulating licensed dealers and
9 autobrokers. Accordingly, TrueCar’s methods of doing business: (a) undermine the purpose of the
10 CVC, to wit, consumer protection; (b) effectively allow TrueCar to function as a dealer and
11 autobroker without complying with CVC regulations pertaining to dealers and autobrokers; and (c)
12 place CNCDA members who are licensed dealers doing business or attempting to do business in a
13 situation of potentially unwittingly not complying with the law.

14 **THE PARTIES**

15 2. Plaintiff CNCDA is a non-profit trade association that represents over 1,100
16 franchised new car and truck dealers in the State of California.

17 3. CNCDA members engage in the retail sale and lease of new vehicles, and also
18 engage in automotive service, repair and part sales.

19 4. CNCDA has standing to assert these claims as an association. The interests CNCDA
20 seeks to protect are germane to its purpose, which is the promotion of a legal and regulatory climate
21 conducive to a robust business environment for California’s new car dealers, compliance with
22 applicable law, and clarification of legal and regulatory mandates. CNCDA members would
23 otherwise have standing to sue TrueCar in their own right. Neither the claims asserted nor the relief
24 CNCDA requests in this complaint requires the participation of individual CNCDA members in this
25 lawsuit because, among other reasons: (a) CNCDA’s claims concern compliance with the CVC,
26 which is directly germane to CNCDA’s purpose; (b) CNCDA’s claims seek clarity of legal and non-
27 legal business practices in the automotive industry, which is also directly germane to CNCDA’s
28 purpose and to CNCDA’s members so they may guide their conduct; and (c) CNCDA does not seek

1 recovery of monetary damages.

2 5. CNCDA represents the association’s members, a readily identifiable group.
3 Additionally, CNCDA’s members have a common interest in the questions of law and fact in this
4 lawsuit because CNCDA members have a common interest in seeing California dealer licensing,
5 brokering, and advertising laws obeyed and enforced, and the elimination of any ambiguity
6 regarding same so they may guide their conduct in accordance with the law.

7 6. Defendant TrueCar is a Delaware corporation with its principal place of business
8 located at 225 Santa Monica Boulevard, 12th Floor, Santa Monica, California 90401.

9 7. CNCDA is informed and believes, and thereon alleges, that Defendants Does 1
10 through 20, inclusive, are sued herein under fictitious names. Their true names and capacities are
11 unknown to CNCDA. When their true names and capacities are ascertained, CNCDA will amend
12 this Complaint by inserting their true names and capacities herein. CNCDA is informed and
13 believes, and on that basis alleges, that each of the fictitiously named Defendants is the agent,
14 servant, employee, representative, partner, consultant, board member, and joint-venturer of their co-
15 defendants, and in doing the things herein alleged, was acting within the course and scope of such
16 agency, employment, representation, partnership, consultancy, board membership and joint venture
17 with the knowledge, permission and consent of their co-defendants, and so ratified all of their acts
18 and conduct. Therefore, each Doe Defendant is responsible in some manner for the occurrences
19 herein alleged, and CNCDA’s injury as herein alleged was proximately caused by said Defendants.

20 **VENUE**

21 8. Venue is proper in the County of Los Angeles because Los Angeles is the county in
22 which TrueCar maintains its principal place of business.

23 **FACTUAL ALLEGATIONS**

24 **The California Vehicle Code**

25 9. TrueCar’s 10-K filed on March 3, 2015, for the period ending December 12, 2014,
26 states: “We are subject to a complex framework of federal and state laws and regulations primarily
27 concerning vehicle sales, advertising and brokering, many of which are unsettled, still developing
28 and contradictory, which have in the past, and could in the future, subject us to claims, challenge our

1 business model or otherwise harm our business.”

2 10. CVC sections 11700, *et seq.*, contain a comprehensive legislative structure governing
3 California vehicle dealers and autobrokers. The dominant purpose of the CVC is the protection of
4 consumers from irresponsible or unscrupulous dealers. *See Valiyee v. Department of Motor*
5 *Vehicles*, 74 Cal. App. 4th 1026, 1032 (1999) (*quoting Merrill v. Department of Motor Vehicles*, 71
6 Cal.2d 907, 920 (1969)).

7 11. TrueCar’s conduct is in violation of CVC provisions alleged herein.

8 12. CVC section 285, subdivision (a), defines a “dealer” as a person who:
9 “For commission, money, or other thing of value, sells, exchanges, buys, or offers for
10 sale, negotiates or attempts to negotiate, a sale or exchange of an interest in, a vehicle
11 subject to registration, a motorcycle, snowmobile, or all-terrain vehicle subject to
12 identification under this code, or a trailer subject to identification pursuant to Section
13 5014.1, or induces or attempts to induce any person to buy or exchange an interest in
14 a vehicle and, who receives or expects to receive a commission, money, brokerage
15 fees, profit, or any other thing of value, from either the seller or purchaser of the
16 vehicle.”

17 Cal. Veh. Code § 285(a).

18 13. CVC section 11700 states:

19 “***No person shall act as a dealer...without having first been issued a license as***
20 ***required in Section 11701*** [requiring dealers to apply to the California Department
21 of Motor Vehicles for a license] or temporary permit issued by the department,
22 except that, when the license or temporary permit has been canceled, suspended, or
23 revoked or has expired, any vehicle in the dealer's inventory and owned by the dealer
24 when the dealer ceased to be licensed may be sold at wholesale to a licensed
25 dealer...”

26 Cal. Veh. Code § 11700 (emphasis added).

27 14. Accordingly, in order to function in the capacity of a “dealer,” a license must
28 be obtained, and a failure to do so is a violation of California law.

1 15. CVC section 232.5 defines “brokering” as “an arrangement under which a
2 dealer, for a fee or other consideration, regardless of the form or time of payment, provides
3 or offers to provide the service of arranging, negotiating, assisting, or effectuating the
4 purchase of a new or used motor vehicle, not owned by the dealer, for another or others.”
5 Cal. Veh. Code § 232.5.

6 16. CVC section 11735, subdivision (a), states:
7 *“No dealer shall engage in brokering a retail sales transaction without first paying*
8 *the fee required by subdivision (d) of Section 9262 and obtaining from the*
9 *department an autobroker's endorsement to the dealer's license. . . .”*
10 Cal. Veh. Code § 11735(a) (emphasis added).

11 17. Accordingly, in order to engage in “brokering,” CVC section 11735,
12 subdivision (a), requires the payment of a fee and an autobroker’s endorsement. Failure to
13 do so by a party engaging in the activity defined as brokering is a violation of California law.
14 **Despite TrueCar’s Activities That Render It A “Dealer” And Constitute “Brokering,”**
15 **TrueCar Does Not Have A Dealer’s License Or Autobroker’s Endorsement**
16 **Or Maintain An Autobroker’s Log**

17 18. CNCDA is informed and believes, and thereon alleges, that TrueCar actually
18 arranges an automobile purchase transaction by a specific purchaser of a specific make and
19 model at a specific price at a specific dealership.

20 19. CNCDA is informed and believes, and thereon alleges, that TrueCar, through its
21 website, issues a Guaranteed Savings Certificate, which, following issuance by TrueCar, the
22 consumer brings to a specific dealership to purchase a specific automobile at a specific price as
23 stated in the Guaranteed Savings Certificate issued by TrueCar.

24 20. CNCDA is informed and believes, and thereon alleges, that TrueCar does not have a
25 dealer’s license.

26 21. CNCDA is informed and believes, and thereon alleges, that TrueCar does not have an
27 autobroker’s endorsement.

28 22. CNCDA is informed and believes, and thereon alleges, that TrueCar does not

1 maintain an autobroker's log.

2 **TrueCar's Advertisements And Public Statements Make Clear That It**
 3 **Functions As A Dealer And Autobroker**

4 23. CNCDA is informed and believes, and thereon alleges, that TrueCar connects
 5 prospective new and used car buyers to sellers of such vehicles through its website,
 6 www.truecar.com. TrueCar generates consumer interest through a variety of means, including but
 7 not limited to, television commercials, and radio, online, and print advertisements.

8 24. CNCDA is informed and believes, and thereon alleges, that TrueCar actually
 9 arranges an automobile purchase transaction by a specific purchaser of a specific make and model at
 10 a specific price at a specific dealership.

11 25. CNCDA is informed and believes, and thereon alleges, that TrueCar, through its
 12 website, issues a Guaranteed Savings Certificate, which the consumer brings to a specific dealership
 13 to purchase a specific automobile at a specific price as stated in the Guaranteed Savings Certificate.

14 26. TrueCar commercials viewable on television and the Internet contain representations
 15 and customer "testimony" that state the following:

- 16 • "TrueCar.com is the hassle-free way to purchase a new car. First, you see what others paid
 17 for the car you want in your area. Second, register with TrueCar.com to see upfront
 18 guaranteed savings off MSRP from nearby TrueCar Certified Dealers. Third, print your
 19 Guaranteed Savings Certificate and take it to a TrueCar Certified Dealer to get your new car.
 20 Visit <http://www.truecar.com>."
- 21 • "When you're ready to buy a car, save time, save money, and never overpay. Visit
 22 TrueCar.com."
- 23 • "TrueCar is the radically new way to buy a car."
- 24 • "Using TrueCar, I've loosened up a bit and it's not as stressful. I simply printed my
 25 certificate and drove to the dealership. It made it so easy."

26 27. CNCDA is informed and believes, and thereon alleges, that TrueCar attempts to
 27 induce and in fact induces prospective purchasers of new and used cars to actually purchase
 28 automobiles by representing, among other things:

- 1 • “How do we do this? It's simple. We show you what others paid for the car you are
- 2 considering. That gives you confidence that TrueCar Certified Dealer prices are honest and
- 3 fair. Then our dealers offer guaranteed savings to TrueCar customers for new vehicles in-
- 4 stock and on the lot.”
- 5 • “Car buying that shows you what others paid, so you never overpay. Upfront pricing info.
- 6 Guaranteed savings.* No Negotiation.”
- 7 • “No surprises. Our TrueCar Certified Dealer Network believes in transparency so you can
- 8 trust that everything is upfront and out in the open. No hidden costs or surprise fees. Ever.”
- 9 • “Buying a car can be stressful. That's why we decided to reinvent it. We believe that car
- 10 buying should be transparent and anxiety free. So we partnered with like-minded dealers to
- 11 address the primary stress point – the negotiation and haggling of price.”
- 12 • “See what others paid. Get Guaranteed Savings.* Never overpay. It's really that simple.”

13 28. CNCDA is informed and believes, and thereon alleges, that TrueCar has contractual
 14 arrangements with new car dealerships in California that are members of CNCDA under which
 15 TrueCar receives a fee, either on a per-car for sale basis or a subscription-based fee, or a
 16 combination thereof.

17 29. TrueCar’s prospectus Form 424B4 filed on May 16, 2014, in connection with its
 18 initial public offering, represents to prospective investors that its “[t]ransaction revenues primarily
 19 consist of fees paid to us by our network of TrueCar Certified Dealers under our pay-for-
 20 performance business model *where we generally earn a fee only when a TrueCar user purchases a*
 21 *car from them.* (Emphasis added.)

22 30. TrueCar’s 10-K filed on March 3, 2015, for the period ending December 12, 2014,
 23 states, with emphasis added:

Revenues consist of fees paid by dealers participating in the Company’s dealer network with which the Company has an agreement (“TrueCar Certified Dealers” or “Dealers”). TrueCar Certified Dealers pay the Company fees either on a per - vehicle basis for sales to Auto Buying Program users or in the form of a subscription arrangement.

The Company recognizes revenue for fee arrangements based on a per - vehicle basis when the vehicle sale has occurred between the

Auto Buying Program user and the Dealer. . . .

The Company also recognizes revenue from dealers under subscription agreements. . . .

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31. On or around March 3, 2015, Scott Painter, TrueCar’s CEO and founder, appeared on Jim Cramer’s “Mad Money” on CNBC and stated: “we get paid when somebody buys a car.”

32. CNCDA is informed and believes, and thereon alleges, that TrueCar is acting as a dealer as defined by the CVC by attempting to induce, and in fact inducing, persons to buy or exchange an interest in a vehicle and receives or expects to receive money from the seller of the vehicle, and therefore violates California law through its failure to obtain a dealer’s license.

33. CNCDA is informed and believes, and thereon alleges, that TrueCar is brokering as defined by the CVC by arranging, negotiating, assisting or effectuating the purchase of a new or used vehicle by connecting its visitors and car dealerships with each other regarding the purchase of a specific vehicle, and therefore violates California law through its failure to obtain an autobroker’s endorsement.

FIRST CAUSE OF ACTION

(Declaratory Relief as to TrueCar’s Violation of Dealer’s Licensing Requirement)

Against TrueCar and Does 1 through 20, inclusive

34. CNCDA realleges paragraphs 1 through 33, inclusive, and incorporates them herein by reference as though fully set forth.

35. An actual controversy has arisen and now exists between CNCDA and TrueCar relating to TrueCar’s business activities as a “dealer” as defined by the CVC and TrueCar’s failure to obtain a dealer’s license required by the CVC.

36. CNCDA desires a declaration that TrueCar’s business activities bring it within the CVC definition of “dealer,” and TrueCar’s failure to obtain a dealer’s license is a violation of California law.

37. CNCDA is informed and believes, and thereon alleges, that TrueCar denies that it functions as a “dealer” under California law and that it is required to obtain a dealer’s license. An actual controversy has arisen and now exists between CNCDA and TrueCar relating to TrueCar’s noncompliance with statutory requirements set forth in CVC sections 11713, 11713.1 and 11736

1 that regulate dealer advertising and autobroker disclosures.

2 38. As a consequence of TrueCar’s failure to obtain the dealer’s license required by CVC
3 sections 11700 and 11701, TrueCar avoids compliance with a host of sections of the CVC that apply
4 to holders of a dealer’s license, including, without limitation:

- 5 (a) CVC section 11713, subdivision (b)(1)(A), which prohibits advertising or offering
6 for sale or exchange in any manner, a vehicle not actually for sale at the premises of
7 the dealer or available to the dealer directly from the manufacturer or distributor of
8 the vehicle at the time of the advertisement or offer;
- 9 (b) CVC section 11713.1, subdivision (x), which prohibits failing to disclose, in a clear
10 and conspicuous manner, that a transaction is, or is not, subject to a fee received by
11 an autobroker from the selling new motor vehicle dealer, and the name of the
12 autobroker, if applicable; and
- 13 (c) CVC section 11713.1, subdivision (n)(1), which prohibits using the terms “invoice,”
14 “dealer’s invoice,” “wholesale price,” or similar terms that refer to a dealer’s cost for
15 a vehicle in an advertisement for the sale of a vehicle or advertise that the price of a
16 vehicle is above, below, or at (a) the manufacturer’s or distributor’s invoice price to a
17 dealer or (b) a dealer’s cost.

18 39. CNCDA desires a declaration that TrueCar conducts business illegally without a
19 dealer’s license required by the CVC, and thereby impermissibly avoids compliance with
20 advertising and disclosure regulations set forth in CVC sections 11713 and 11713.1. CNCDA is
21 informed and believes, and thereon alleges, that TrueCar denies it acts illegally as alleged in
22 paragraph 38, above.

23 40. A judicial declaration is appropriate and necessary at this time to: (a) prevent
24 TrueCar from further violating the law; (b) clarify TrueCar’s legal obligations; (c) permit CNCDA
25 members to guide their conduct in accordance with the law; and (d) protect CNCDA members from
26 participating in a violation of the law, even if unknowingly.

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1 SECOND CAUSE OF ACTION

2 (Declaratory Relief as to Autobroker’s Endorsement Requirement)

3 Against TrueCar and Does 1 through 20, inclusive

4 41. CNCDA realleges paragraphs 1 through 40, inclusive, and incorporates them herein
5 by reference as though fully set forth.

6 42. An actual controversy has arisen and now exists between CNCDA and TrueCar
7 relating to TrueCar’s business activities, which constitute “brokering” as defined by the CVC, and
8 TrueCar’s failure to obtain an autobroker’s endorsement as required by the CVC. CNCDA is
9 informed and believes, and thereon alleges, that TrueCar denies same.

10 43. Through TrueCar’s failure to obtain the dealer’s license required by CVC sections
11 11700 and 11701, TrueCar avoids compliance with a host of sections of the CVC that apply to
12 autobrokers, including, without limitation, CVC section 11736, subdivision (f), which prohibits
13 failing to disclose to the consumer and selling dealer whether the autobroker receives a fee or other
14 compensation, regardless of the form or time of payment, from the selling dealer and the dollar
15 amount of any fee that the consumer is obligated to pay to the autobroker. CNCDA is informed and
16 believes, and thereon alleges, that TrueCar denies same.

17 44. CNCDA desires a declaration that TrueCar’s business activities bring it within the
18 CVC definition of “brokering,” and TrueCar’s failure to obtain an autobroker’s endorsement is a
19 violation of California law.

20 45. CNCDA further desires a declaration that TrueCar conducts business illegally
21 without an autobroker’s endorsement required by the CVC, and thereby impermissibly avoids
22 compliance with disclosure regulations set forth in CVC 11736.

23 46. A judicial declaration is appropriate and necessary at this time to: (a) prevent
24 TrueCar from further violating the law; (b) clarify TrueCar’s legal obligations; (c) permit CNCDA
25 member so to guide their conduct in accordance with the law; and (d) protect CNCDA members
26 from participating in a violation of the law, even if unknowingly.

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THIRD CAUSE OF ACTION

(Injunctive Relief as to TrueCar’s Violation of Dealer’s Licensing Requirements)

Against TrueCar and Does 1 through 20, inclusive

47. CNCDA realleges paragraphs 1 through 46, inclusive, and incorporates them herein by reference as though fully set forth.

48. TrueCar has committed wrongful conduct as herein alleged. Unless and until enjoined and restrained by order of this Court, TrueCar will continue to operate illegally without a dealer’s license as required by the law under the CVC, and will wrongfully harm CNCDA’s members and undermine the statutory purpose of the CVC, thereby causing great and irreparable ongoing harm and injury to CNCDA members’ interests and the public. CNCDA is entitled to an injunction restraining TrueCar from further conducting business in violation of California law as a dealer without the necessary dealer’s license.

49. CNCDA has no adequate remedy at law for injuries currently being suffered and those which are threatened by TrueCar’s wrongful conduct.

FOURTH CAUSE OF ACTION

(Injunctive Relief as to TrueCar’s Violation of Autobroker’s Endorsement Requirement)

Against TrueCar and Does 1 through 20, inclusive

50. CNCDA realleges paragraphs 1 through 49, inclusive, and incorporates them herein by reference as though fully set forth.

51. TrueCar has committed wrongful conduct as herein alleged. Unless and until enjoined and restrained by order of this Court, TrueCar will continue to operate illegally without an autobroker’s endorsement as required by the law under the CVC, and will wrongfully harm CNCDA members and undermine the statutory purpose of the CVC, thereby causing great and irreparable ongoing harm and injury to CNCDA members’ interests and the public. CNCDA is entitled to an injunction restraining TrueCar from further “brokering” as defined by the CVC without an autobroker’s endorsement required by the CVC.

52. CNCDA has no adequate remedy at law for injuries currently being suffered and those which are threatened by TrueCar’s wrongful conduct.

PRAYER FOR RELIEF

1. As to the First Cause of Action for Declaratory Relief:
 - a. For a judicial declaration that TrueCar’s business activities bring it within the CVC definition of “dealer,” and TrueCar’s failure to obtain a dealer’s license is a violation of California law; and
 - b. For a judicial declaration that TrueCar conducts business illegally without a dealer’s license required by the CVC, and thereby impermissibly avoids compliance with advertising and disclosure regulations set forth in CVC sections 11713 and 11713.1.

2. As to the Second Cause of Action for Declaratory Relief:
 - a. For a judicial declaration that TrueCar’s business activities bring it within the CVC definition of “brokering,” and TrueCar’s failure to obtain an autobroker’s endorsement is a violation of California law; and
 - b. For a judicial declaration that TrueCar conducts business illegally without an autobroker’s endorsement required by the CVC, and thereby impermissibly avoids compliance with disclosure regulations set forth in CVC 11736.

3. As to the Third Cause of Action for Injunctive Relief:
 - a. For a temporary injunction, preliminary injunction, and permanent injunction restraining TrueCar from: (i) further conducting business as a dealer as defined by the CVC and without a dealer’s license required by the CVC; and (ii) further violating CVC sections 11713 and 11713.1.

4. As to the Fourth Cause of Action for Injunctive Relief:
 - a. For a temporary restraining order, preliminary injunction, and permanent injunction restraining TrueCar from: (i) further “brokering” as defined by the CVC without an autobroker’s endorsement required by the CVC; and (ii) further violating CVC section 11736.

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5. On all causes of action:

- a. For costs of suit herein;
- b. For reasonable attorney's fees pursuant to California Code of Civil Procedure section 1021.5; and
- c. For such other and further relief as the Court deems just and proper.

DATED: May 20, 2015

GLASER WEIL FINK HOWARD
AVCHEN & SHAPIRO LLP

By: 
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 MICHAEL CYPERS
 JAMES M. DAVIS
 Attorneys for Plaintiff CALIFORNIA NEW CAR
 DEALERS ASSOCIATION