

1 ROBBINS GELLER RUDMAN
& DOWD LLP
2 SHAWN A. WILLIAMS (213113)
DANIEL J. PFEFFERBAUM (248631)
3 Post Montgomery Center
One Montgomery Street, Suite 1800
4 San Francisco, CA 94104
Telephone: 415/288-4545
5 415/288-4534 (fax)
shawnw@rgrdlaw.com
6 dpfefferbaum@rgrdlaw.com
- and -

7 BRIAN O. O'MARA (229737)
655 West Broadway, Suite 1900
8 San Diego, CA 92101
Telephone: 619/231-1058
9 619/231-7423 (fax)
bomara@rgrdlaw.com

10 [Proposed] Lead Counsel for Plaintiff

11 [Additional counsel appear on signature page.]

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 HOWARD WELGUS, Individually and on)
16 Behalf of All Others Similarly Situated,)
17 Plaintiff,)

18 vs.)

19 TRINET GROUP, INC., et al.,)
20 Defendants.)

Case No. 3:15-cv-03625-BLF

) CLASS ACTION

) PLAINTIFF HOWARD WELGUS' NOTICE
) OF MOTION AND MOTION FOR
) APPOINTMENT AS LEAD PLAINTIFF
) AND APPROVAL OF SELECTION OF
) COUNSEL; MEMORANDUM OF POINTS
) AND AUTHORITIES IN SUPPORT
) THEREOF

21 DATE: December 10, 2015

22 TIME: 9:00 a.m.

23 CTRM: 3 (5th Floor)

24 JUDGE: Hon. Beth Labson Freeman

1 **NOTICE OF MOTION AND MOTION**

2 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

3 PLEASE TAKE NOTICE that on Thursday, December 10, 2015, at 9:00 a.m., or as soon
4 thereafter as the matter may be heard in Courtroom 3 (5th Floor), 280 South 1st Street, San Jose,
5 California 95113, before the Honorable Beth Labson Freeman, plaintiff and putative class member
6 Howard Welgus (“Mr. Welgus”) will and hereby does move this Court pursuant to the Private
7 Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4(a)(3)(B), for an order: (1)
8 appointing Mr. Welgus lead plaintiff pursuant to 15 U.S.C. §78u-4(a)(3); and (2) approving Mr.
9 Welgus’ selection of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as lead counsel.
10 This Motion is made on the grounds that Mr. Welgus is the “most adequate plaintiff” to serve as lead
11 plaintiff as defined by the PSLRA, 15 U.S.C. §78u-4(a)(3)(B)(iii). In support of this Motion, Mr.
12 Welgus submits herewith a Memorandum of Points and Authorities and the Declaration of Brian O.
13 O’Mara (“O’Mara Decl.”).

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. STATEMENT OF ISSUES TO BE DECIDED**

16 Presently pending in this district is a securities class action brought by Mr. Welgus on behalf
17 of purchasers of TriNet Group Inc. (“TriNet” or the “Company”) common stock between May 5,
18 2014 and August 3, 2015, inclusive (the “Class Period”). Under the provisions of the PSRLA, the
19 Court is to appoint as lead plaintiff the member of the purported class with the largest financial
20 interest in the relief sought by the class that otherwise satisfies the requirements of Rule 23 of the
21 Federal Rules of Civil Procedure. 15 U.S.C. §78u-4(a)(3)(B). Here, Mr. Welgus should be
22 appointed as lead plaintiff because he: (1) timely filed this motion for appointment as lead plaintiff;
23 (2) has the largest financial interest in the outcome of this litigation of any movant of which he is
24 aware; and (3) will adequately represent the interests of the class. *See* 15 U.S.C. §78u-
25 4(a)(3)(B)(iii); *see also* O’Mara Decl., Ex. A.

26 In addition, Mr. Welgus’ selection of Robbins Geller to serve as lead counsel should be
27 approved because the firm possesses extensive experience in the prosecution of securities class
28 actions and will adequately represent the interests of all class members.

1 **II. SUMMARY OF THE ACTION**

2 Headquartered in San Leandro, California, TriNet is a provider of a comprehensive human
3 resources solution for small to medium-sized businesses, enabling clients to outsource their human
4 resources, or HR, function to one strategic partner. The Company's HR solutions include services
5 such as payroll processing, human capital consulting, employment law compliance and employee
6 benefits.

7 During the Class Period, defendants issued materially false and misleading statements
8 regarding the Company's current financial condition and quarterly and year-end revenue and
9 earnings outlook for fiscal 2014 and 2015. Specifically, defendants' statements during the Class
10 Period were each false and misleading, because defendants knew or deliberately disregarded and
11 failed to disclose the following facts: (a) the Company's processes and methodologies for analyzing
12 and accruing claims failed to properly account for historical claims trends; (b) the Company's
13 forecasting process failed to properly incorporate relevant historical and current claims trends; and
14 (c) the Company was experiencing growing claims trends in medical and workers compensation that
15 negatively affected the Company's current and future business prospects. As a result of these
16 misrepresentations and omissions, TriNet stock traded at artificially inflated prices during the Class
17 Period, reaching a high of \$37.88 per share on March 3, 2015.

18 On March 3, 2015, TriNet announced disappointing fourth quarter fiscal 2014 financial
19 results, missing both its insurance revenue and income expectations due to an increase in large
20 medical claims. On May 5, 2015, TriNet announced its financial results for the first quarter of fiscal
21 2015, again missing expectations due to higher than expected workers compensation costs. Then on
22 August 3, 2015, the Company issued a press release announcing its second quarter fiscal 2015
23 financial results. The Company reported financial results that missed both revenue and earnings per
24 share estimates by a wide margin due to another increase in high-volume medical claims. On this
25 news, the Company's stock price – which had reached a high of \$37.88 per share on March 3, 2015
26 – declined 38%, from a close of \$26.69 per share on August 3, 2015 to a close of \$16.33 per share on
27 August 4, 2015, on high trading volume.

28

1 **III. MR. WELGUS SHOULD BE APPOINTED LEAD PLAINTIFF**

2 **A. Mr. Welgus Satisfies the PSLRA's Requirements for Appointment as**
3 **Lead Plaintiff**

4 The PSLRA establishes the procedure for the appointment of a lead plaintiff in "each private
5 action arising under [the Securities Exchange Act of 1934] that is brought as a plaintiff class action
6 pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(1); *see also* 15 U.S.C. §78u-
7 4(a)(3)(B)(i). First, the pendency of the action must be publicized in a widely circulated national
8 business-oriented publication or wire service not later than 20 days after filing of the first complaint.
9 15 U.S.C. §78u-4(a)(3)(A)(i). This notice shall advise members of the class of: (1) the pendency of
10 the action; (2) the claims asserted therein; (3) the purported class period; and (4) the right to move
11 the court to be appointed as lead plaintiff within 60 days of publication of the notice. Here, notice
12 was published on August 7, 2015, on *PRNewswire* in connection with the *Welgus* action.¹ *See*
13 *O'Mara Decl., Ex. C.*

14 Next, the PSLRA provides that the court shall adopt a presumption that the most adequate
15 plaintiff is the member of the class that –

16 (aa) has either filed the complaint or made a motion in response to a notice . . . ;

17 (bb) in the determination of the court, has the largest financial interest in the relief
sought by the class; and

18 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
Procedure.

19 15 U.S.C. §78u-4(a)(3)(B)(iii)(I); *see In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002). Mr.
20 Welgus meets each of these requirements and should therefore be appointed Lead Plaintiff.

21 **1. Mr. Welgus's Motion Is Timely**

22 Mr. Welgus has timely filed this Motion within 60 days of the August 7, 2015, notice
23 publication, and has also duly signed and filed a sworn certification evidencing, among other things,
24 his willingness to serve as a representative party on behalf of the class. *See O'Mara Decl., Ex. A.*
25 Accordingly, Mr. Welgus has satisfied the individual requirements of the PSLRA, 15 U.S.C. §78u-
26

27 _____
28 1

1 4(a)(3)(B), and is entitled to have his application for appointment as lead plaintiff considered by the
2 Court.

3 **2. Mr. Welgus Possesses the Largest Financial Interest in the**
4 **Relief Sought by the Class**

5 During the Class Period, Mr. Welgus purchased 1,453 shares of TriNet common stock and
6 lost over \$3,574 due to defendants' conduct. *See* O'Mara Decl., Exs. A and B; *see also* *Cavanaugh*,
7 306 F.3d at 732. To the best of his knowledge, there are no other applicants who have sought, or are
8 seeking, appointment as lead plaintiff that have a larger financial interest. Therefore, Mr. Welgus
9 satisfies the PSLRA's prerequisite of having "the largest financial interest in the relief sought by the
10 class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc).

11 **3. Mr. Welgus Meets Rule 23's Requirements**

12 In addition to possessing a significant financial interest, a lead plaintiff must also "otherwise
13 satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. §78u-
14 4(a)(3)(B)(iii)(I)(cc). Rule 23(a) generally requires that the claims of representative parties be
15 typical of the claims of the class and that the representatives will fairly and adequately protect the
16 interests of the class. *See* Fed. R. Civ. P. 23; *Cavanaugh*, 306 F.3d at 730. As detailed below, Mr.
17 Welgus satisfies the typicality and adequacy requirements of Rule 23(a).

18 The test of typicality "'is whether other members have the same or similar injury, whether
19 the action is based on conduct which is not unique to the named plaintiffs, and whether other class
20 members have been injured by the same course of conduct.'" *Hanon v. Dataproducts Corp.*, 976
21 F.2d 497, 508 (9th Cir. 1992) (citation omitted); *see also* *In re Advanced Tissue Scis. Sec. Litig.*, 184
22 F.R.D. 346 (S.D. Cal. 1998) (typicality requirement of Rule 23(a)(3) is satisfied when representative
23 plaintiffs' claims arise out of the same event or course of conduct as do the other class members'
24 claims, and are based on the same legal theories). The threshold typicality and commonality
25 requirements are not high; Rule 23(a) requires only that resolution of the common questions affect
26 all, or a substantial number of, class members. *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 657 (C.D.
27 Cal. 2000). The adequacy requirement is met if no conflicts exist between the representative and
28 class interests and the representative's attorneys are qualified, experienced and generally able to

1 conduct the litigation. *Richardson v. TVIA, Inc.*, No. C-06-06304 RMW, 2007 U.S. Dist. LEXIS
2 28406, at *16 (N.D. Cal. Apr. 16, 2007) (citing Fed. R. Civ. P. 23(a)(4) and *Staton v. Boeing Co.*,
3 327 F.3d 938, 957 (9th Cir. 2003)).

4 Here, Mr. Welgus meets the typicality and adequacy requirements because, like all other
5 members of the purported class, he purchased TriNet stock during the Class Period in reliance upon
6 defendants' false and misleading statements and suffered damages thereby. Because Mr. Welgus'
7 claims are premised on the same legal and remedial theories and are based on the same types of
8 alleged misrepresentations and omissions as the class's claims, typicality is satisfied. *See In re*
9 *Surebeam Corp. Sec. Litig.*, No. 03 CV 1721 JM(POR), 2003 U.S. Dist. LEXIS 25022 (S.D. Cal.
10 Jan. 5, 2004). Additionally, Mr. Welgus is not subject to any unique defenses and there is no
11 evidence of any conflicts between him and other members of the class. Consequently, Mr. Welgus
12 has demonstrated that he meets all the PSLRA's requirements of a lead plaintiff.

13 **B. This Court Should Approve Mr. Welgus' Selection of Counsel**

14 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to
15 this Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). Courts should not disturb the lead
16 plaintiff's choice of counsel unless it is necessary to "protect the interests of the class." 15 U.S.C.
17 §78u-4(a)(3)(B)(iii)(II)(aa).

18 Here, Mr. Welgus has selected Robbins Geller as lead counsel for the class. Robbins Geller
19 attorneys have successfully prosecuted numerous securities fraud class actions on behalf of injured
20 investors and has been appointed as lead counsel in landmark class actions, including *In re Enron*
21 *Corp., Sec. Litig.*, 206 F.R.D. 427 (S.D. Tex. 2002). *See also* O'Mara Decl., Ex. D. Thus, the Court
22 may be assured that in the event this Motion is granted, the members of the class will receive the
23 highest caliber of legal representation available from Robbins Geller as lead counsel. Because Mr.
24 Welgus selected and retained counsel experienced in litigating securities fraud class actions with the
25 resources to prosecute this action to the greatest recovery possible for the class, Mr. Welgus' choice
26 of Robbins Geller as lead counsel should be approved.

27

28

1 **IV. CONCLUSION**

2 Based on the foregoing, Mr. Welgus respectfully requests that the Court: (1) appoint Mr.
3 Welgus as Lead Plaintiff; (2) approve Mr. Welgus's selection of Lead Counsel; and (3) grant such
4 other relief as the Court may deem just and proper.

5 DATED: October 6, 2015

Respectfully submitted,

6 ROBBINS GELLER RUDMAN
7 & DOWD LLP
8 BRIAN O. O'MARA

9 s/ Brian O. O'Mara
10 _____
11 BRIAN O. O'MARA

12 655 West Broadway, Suite 1900
13 San Diego, CA 92101
14 Telephone: 619/231-1058
15 619/231-7423 (fax)

16 ROBBINS GELLER RUDMAN
17 & DOWD LLP
18 SHAWN A. WILLIAMS
19 DANIEL J. PFEFFERBAUM
20 Post Montgomery Center
21 One Montgomery Street, Suite 1800
22 San Francisco, CA 94104
23 Telephone: 415/288-4545
24 415/288-4534 (fax)

[Proposed] Lead Counsel for Plaintiff

25 HOLZER & HOLZER, LLC
26 COREY D. HOLZER
27 1200 Ashwood Parkway, Suite 410
28 Atlanta, GA 30338
Telephone: 770/392-0090
770/392-0029 (fax)

Additional Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 6, 2015.

s/ BRIAN O. O'MARA
BRIAN O. O'MARA

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: bomara@rgrdlaw.com

Mailing Information for a Case 5:15-cv-03625-BLF Welgus v. Trinet Group, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Richard L. Gallagher**
richard.gallagher@ropesgray.com,kevin.daly@ropesgray.com,courtalert@ropesgray.com
- **Anne Johnson Palmer**
anne.johnsonpalmer@ropesgray.com,courtalert@ropesgray.com
- **Matthew Austen Tolve**
matthew.tolve@ropesgray.com,courtalert@ropesgray.com
- **Shawn A. Williams**
shawnw@rgrdlaw.com,smorris@rgrdlaw.com,dpfefferbaum@rgrdlaw.com,e_file_sd@rgrdlaw.com,e_file_sf@rgrdlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)