

1 Deval R. Zaveri, SBN 213501  
James A. Tabb, SBN 208188  
2 **ZAVERI TABB APC**  
402 West Broadway, 29<sup>th</sup> Floor  
3 San Diego, CA 92101  
Tel: (619) 398-4767  
4 Fax: (619) 756-6991  
[dev@zaveritabb.com](mailto:dev@zaveritabb.com)  
5 [jimmy@zaveritabb.com](mailto:jimmy@zaveritabb.com)

6 James R. Patterson, SBN 211102  
Allison H. Goddard, SBN 211098  
7 **PATTERSON LAW GROUP**  
402 W. Broadway, 29<sup>th</sup> Floor  
8 San Diego, CA 92101  
Tel: (619) 756-6990  
9 Fax: (619) 756-6991  
[jim@pattersonlawgroup.com](mailto:jim@pattersonlawgroup.com)  
10 [ali@pattersonlawgroup.com](mailto:ali@pattersonlawgroup.com)

11 *Attorneys for Representative Plaintiff Brian Trenz*

12  
13 UNITED STATES DISTRICT COURT  
14  
15 CENTRAL DISTRICT OF CALIFORNIA

16 BRIAN TRENZ, on behalf of himself and )  
all others similarly situated, )  
17 )  
18 Plaintiff, )  
19 vs. )  
20 ON-LINE ADMINISTRATORS, INC. )  
(dba PEAK PERFORMANCE )  
21 MARKETING SOLUTIONS), a )  
California Corporation; VOLKSWAGEN )  
22 GROUP OF AMERICA, INC., a Virginia )  
Corporation; and DOES 1-5, )  
23 )  
24 Defendants. )

Case No.  
**CLASS ACTION**  
**COMPLAINT for Damages and  
Injunctive Relief Pursuant To The  
Telephone Consumer Protection Act,  
47 U.S.C. § 227 et seq.**

Jury Trial Demanded

1 **I. INTRODUCTION**

2 1. This is a class action against Defendants On-Line Administrators, Inc. (dba  
3 Peak Performance Marketing Solutions) (“Peak Performance”) and Volkswagen Group  
4 of America, Inc. (“Volkswagen”) (collectively, “Defendants”) in negligently, and/or  
5 willfully, contacting Plaintiff on his cellular telephone in violation of the Telephone  
6 Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”).

7 2. At Volkswagen’s direction, Peak Performance called Plaintiff Brian Trenz  
8 (“Plaintiff”) at least four times on his cellular telephone from an autodialer to solicit his  
9 business. Defendants did not have Plaintiff’s express written consent to contact him for  
10 such purposes. Plaintiff had an attorney write to Peak Performance on his behalf  
11 demanding that the solicitation calls stop, to no avail. Plaintiff has since discovered that  
12 many others across the country have received similar unlawful calls from Defendants.

13 3. Plaintiff brings this class action for damages, injunctive relief, and any other  
14 available legal or equitable remedies, resulting from Defendants' illegal actions.

15 4. Plaintiff alleges as follows upon his personal knowledge as to his own acts  
16 and experiences, and as to all other matters, upon information and belief, including  
17 investigation conducted by his counsel.

18 **II. PARTIES, JURISDICTION, AND VENUE**

19 5. Plaintiff Brian Trenz is, and at all times mentioned herein was, a citizen and  
20 resident of the State of Texas who resides in San Antonio, Texas.

21 6. Defendant On-Line Administrators, Inc. (dba Peak Performance Marketing  
22 Solutions) is a marketing company. Plaintiff is informed and believes and thereon  
23 alleges, that at all times mentioned herein Peak Performance was a corporation founded  
24 under the laws of the State of California, whose primary corporate offices are located at:  
25 26025 Mureau Road, Calabasas, CA 91302, making Peak Performance a citizen of  
26 California. Plaintiff alleges that at all times relevant herein Peak Performance conducted  
27 business in California because its California business offices are located at the same  
28 address, and it performed its business in the State of California, and in the County of

1 Calabasas, and within this judicial district. Peak Performance markets to consumers who  
2 have purchased cars from certain dealerships with whom Volkswagen maintains  
3 contracts.

4 7. Plaintiff is informed and believes, and thereon alleges, that Defendant  
5 Volkswagen Group of America, Inc. is the American branch of an international car  
6 manufacturer with dealerships across the United States, and is, and at all times mentioned  
7 herein was, a corporation founded under the laws of the Commonwealth of Virginia,  
8 whose primary corporate offices are located at: 2200 Ferdinand Porsche Dr., Herndon,  
9 Virginia 20171. Plaintiff alleges that at all times relevant herein Volkswagen conducted  
10 business in, among others, the State of California, the County of Calabasas, and within  
11 this judicial district. Volkswagen is a car manufacturer and retailer and is the parent  
12 corporation for the Audi of America, which manufactures and sells Audi brand vehicles.  
13 Volkswagen, through Audi, also offers service packages to repair and perform  
14 maintenance on Audi brand vehicles purchased in the United States.

15 8. This Court has federal question subject matter jurisdiction under 28 U.S.C. §  
16 1331 because this lawsuit seeks enforcement of rights under the TCPA, a federal statute.

17 9. This Court has personal jurisdiction over Defendants due to their substantial  
18 contacts with California, as alleged herein. Peak Performance is in fact headquartered in  
19 California, and Volkswagen operates throughout California.

20 10. Venue is proper in the United States District Court for the Central District of  
21 California. Under 28 U.S.C. § 1391(b)(1), venue is proper in any district where at least  
22 one defendant resides if all defendants are residents of the state in which the district is  
23 located. A corporate defendant is deemed to reside in any state where it is subject to  
24 personal jurisdiction (28 U.S.C. § 1391(c)), and as alleged herein, all Defendants are  
25 subject to personal jurisdiction in California. In a state with multiple judicial districts, a  
26 corporate defendant is also deemed to reside in any judicial district within the state in  
27 which it would be subject to personal jurisdiction if that district were a separate state (or,  
28 if no such district exists, then the district in which it has the most contacts). 28 U.S.C. §

1 1391(d). Here, at least one Defendant, Peak Performance, is a resident of this district –  
2 indeed, it is headquartered here. Thus, venue is proper under 28 U.S.C. § 1391(b)(1).  
3 Venue is also proper under 28 U.S.C. § 1391(b)(2) because, on information and belief, a  
4 substantial number of the calls complained of in this lawsuit originated from this district.

5 **III. THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (TCPA)**  
6 **47 U.S.C. § 227**

7 11. In 1991, Congress enacted the Telephone Consumer Protection Act  
8 (TCPA) in response to a growing number of consumer complaints regarding certain  
9 telemarketing practices.

10 12. The TCPA regulates, among other things, the use of automated telephone  
11 equipment, or “autodialers.” Specifically, the plain language of section  
12 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number  
13 in the absence of an emergency or the prior express consent of the called party. 47  
14 U.S.C. § 227(b)(1)(A)(iii).

15 13. According to findings by the Federal Communication Commission  
16 (“FCC”), the agency Congress vested with authority to issue regulations implementing  
17 the TCPA, such calls are prohibited because, as Congress found, automated or  
18 prerecorded telephone calls are a greater nuisance and invasion of privacy than live  
19 solicitation calls, and such calls can be costly and inconvenient. The FCC also  
20 recognized that wireless customers are charged for incoming calls whether they pay in  
21 advance or after the minutes are used. Rules and Regulations Implementing the  
22 Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and  
23 Order, 18 FCC Rcd. 14014 (2003).

24 14. Since then the FCC promulgated several other orders necessarily limiting  
25 the phone calls that can be made by telemarketers. In 2012, the FCC expanded the  
26 scope of the TCPA by eliminating the established business relationship exemption for  
27 all telemarketing calls, mandating that all telemarketing calls require prior express  
28 written consent to be obtained from the called party. *In the Matter of Rules and*

1 *Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket  
2 No. 02-278, FCC 12-21, issued Feb. 15, 2012 (holding in part, “Specifically, in this  
3 Order, we: (1) revise our rules to require prior express written consent for all autodialed  
4 or prerecorded telemarketing calls to wireless numbers and residential lines and  
5 accordingly eliminate the established business relationship exemption for such calls to  
6 residential lines while maintaining flexibility in the form of consent needed for purely  
7 informational calls.”).

8 **IV. FACTUAL ALLEGATIONS**

9 15. At all relevant times, Plaintiff was and is a citizen of the State of Texas,  
10 and is a “person” as defined by 47 U.S.C. § 153(32).

11 16. Defendants are, and at all relevant times were, entities that meet the  
12 definition of “person,” as defined by 47 U.S.C. § 153(32).

13 17. At all relevant times, Defendants conducted business in the State of  
14 California and in the County of Calabasas, within this judicial district.

15 18. In 2011, Plaintiff purchased an Audi A4 automobile in Austin, Texas, from  
16 a used automobile dealer. At the time of the purchase, the car was equipped with an  
17 Audi manufacturer’s warranty covering the vehicle until 2012.

18 19. Shortly after purchasing the Audi, Plaintiff brought the car into Cavender  
19 Audi, a San Antonio Audi Dealership, for maintenance and service. Plaintiff provided  
20 his contact information to the dealership solely for the purpose of providing the  
21 dealership the ability to notify him when the servicing was complete. Plaintiff did not  
22 then give, nor at any other time has given, his written consent to receive autodialed  
23 telemarketing calls from Defendants or any other entity or agent acting on behalf  
24 Defendants. At the end of 2012, the Audi full service warranty expired and Plaintiff  
25 discontinued using the Audi Dealership to service his vehicle.

26 20. For several months following the expiration of the warranty, Plaintiff  
27 received multiple calls on his cell phone from Peak Performance. Based on information  
28 and belief, Peak Performance contacted Plaintiff on behalf of Volkswagen, the parent

1 company of Audi, to encourage him to either purchase a new Audi or retain his use of  
2 the Audi service center.

3 21. Peak Performance is a marketing company that has agreements with  
4 Volkswagen to be its customer retention management (CRM) partner for all Audi  
5 vehicles. Peak Performance holds out on its website that is the preeminent and  
6 exclusive CRM marketing provider for Audi and Volkswagen. Peak Performance's  
7 website states, "No other automotive CRM company is better equipped to help you  
8 acquire new customers... We return your lost customers with impressive efficiency,  
9 utilizing effective email marketing, highly targeted mail, customized offers and even  
10 phone calls." <http://gotopeak.com/service/recapturing-customers/>

11 22. Plaintiff avers based on information, belief, and research on Peak  
12 Performance's and other websites, that Peak Performance contacts previous service  
13 customers of Volkswagen and Audi on their cell phones and using an autodialer in order  
14 to solicit business; specifically, to encourage previous customers to again utilize the  
15 dealership's repair and maintenance services. Plaintiff spoke to a Peak Performance  
16 agent or employee who indicated to Plaintiff that the local dealership had given Peak  
17 Performance Plaintiff's contact information to solicit repair and maintenance services to  
18 him. Thus, Peak Performance was acting as an agent for Volkswagen pursuant to CRM  
19 agreements for the benefit of Volkswagen.

20 23. In June 2013, Peak Performance called Plaintiff on his cellular telephone  
21 number, ending in "1870," in an attempt to telemarket Volkswagen's products and  
22 services. Between June 2013 and July 2013 Plaintiff received multiple calls from Peak  
23 Performance, and has, at the time of filing this complaint, received at least 4  
24 telemarketing calls from Peak Performance on Defendant Volkswagen's behalf. When  
25 Plaintiff answered, he briefly heard "dead air" then a "click" before the agent came on  
26 the line to speak to Plaintiff, evidencing that Peak Performance used an autodialer to  
27 make the call. Another time, Plaintiff called the number that was on his caller  
28

1 identification log and spoke to the agent who confirmed that the agent was calling on  
2 behalf of Peak Performance to sell its services.

3 24. Plaintiff did not provide Peak Performance with his cellular phone number,  
4 nor did he ever give his verbal or written consent to be called by any Defendant for the  
5 solicitation of services. Nor did Plaintiff give any Defendant prior express verbal or  
6 written consent to call him on his cellular telephone with the use of an autodialer,  
7 pursuant to 47 U.S.C. § 227(b)(1)(A).

8 25. Notwithstanding the fact that Plaintiff did not provide Peak Performance  
9 with his cellular number at any time, Volkswagen, or its agents, have called Plaintiff on  
10 his cellular telephone via an “automatic telephone dialing system,” as defined by 47  
11 U.S.C. § 227(a)(1). This automatic telephone dialing system has the capacity to store or  
12 produce telephone numbers to be called, using a random or sequential number  
13 generator, to dial such numbers.

14 26. The telephone number Defendants and/or their agents called is assigned to  
15 a cellular telephone service for which Plaintiff incurs a charge for incoming calls  
16 pursuant to 47 U.S.C. § 227(b)(1).

17 27. These telephone calls constituted calls that were not for emergency  
18 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

19 28. These telephone calls by Defendants and/or their agents violated 47 U.S.C.  
20 § 227(b)(1).

21 29. Under the TCPA and pursuant to the FCC’s February 2012 Declaratory  
22 Ruling, the burden is on Defendants to demonstrate that Plaintiff provided prior express  
23 written consent within the meaning of the statute.

24 **V. CLASS ACTION ALLEGATIONS**

25 30. Plaintiff brings this action on behalf of himself and on behalf of all others  
26 similarly situated (“the Class”). Plaintiff represents, and is a member of, the Class,  
27 consisting of:  
28

1 All persons within the United States who received any telephone call from  
2 Defendants or their agents to said person's cellular telephone through the use  
3 of any automatic telephone dialing system and who did not provide prior  
4 express written consent to be called, within the four years prior to the filing  
5 of the Complaint in this action.

6 31. Excluded from the Class are Defendants; any entities in which any  
7 Defendant has a controlling interest; any of Defendant's agent(s) and employee(s);  
8 Plaintiff's counsel; the Court to whom this action is assigned and any member of the  
9 Court's staff and immediate family; and claims for personal injury, wrongful death,  
10 and/or emotional distress.

11 32. Plaintiff does not know the number of members in the Class, but believes  
12 the Class members number in the tens of thousands, if not more. Plaintiff believes that  
13 Defendant engaged in a pattern and practice of contacting former dealership customers  
14 in the same manner that they used to contact him. Thus, this matter should be certified  
15 as a class action to assist in the expeditious litigation of this matter.

16 33. Plaintiff and members of the Class were harmed by the acts of Defendant  
17 in, but not limited to, the following ways: Defendants, directly and/or through their  
18 agents, illegally contacted or attempted to contact Plaintiff and the Class members via  
19 their cellular telephones by using an autodialer, thereby causing Plaintiff and the Class  
20 members to incur certain cellular telephone charges or reduce cellular telephone time for  
21 which Plaintiff and the Class members previously paid; by having to retrieve or  
22 administer messages left during those illegal calls; and invading the privacy of Plaintiff  
23 and the Class members. Plaintiff and the Class members were damaged thereby.

24 34. This suit seeks only damages and injunctive relief for recovery of  
25 economic injury on behalf of the Class and it expressly is not intended to request any  
26 recovery for any personal injury and claims related thereto. Plaintiff reserves the right  
27 to expand the Class definition to seek recovery on behalf of additional persons as  
28 warranted as facts are learned in further investigation and discovery.



1           35. The joinder of the Class members is impracticable and the disposition of  
2 their claims in the class action will provide substantial benefits both to the parties and to  
3 the Court. The disposition of the claims in a class action will provide substantial benefit  
4 to the parties and the Court in avoiding a multiplicity of identical suits. The Class can  
5 be identified through the records of Defendants and/or their agents.

6           36. There is a well-defined community of interest in the questions of law and  
7 fact involved affecting the parties to be represented. The questions of law and fact  
8 common to the Class predominate over questions that may affect individual Class  
9 members, including the following:

- 10           a.) Whether, within the four years prior to the filing of this Complaint,  
11 Defendants and/or their agents made any call (other than a call made for  
12 emergency purposes or made with the prior express consent of the called  
13 party) to a Class member using any automatic telephone dialing system to  
14 any telephone number assigned to a cellular telephone service;
- 15           b.) Whether Defendants' conduct was knowing and/or willful;
- 16           c.) Whether Defendants are liable for damages, and the extent of statutory  
17 damages for such violation; and
- 18           d.) Whether Defendants should be enjoined from engaging in such conduct in  
19 the future.

20           37. As a person who received numerous calls by Defendants and/or their  
21 agents using an automatic telephone dialing system without his prior express consent,  
22 Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and  
23 adequately represent and protect the interests of the Class in that Plaintiff has no  
24 interests antagonistic to any member of the Class.

25           38. Plaintiff and the members of the Class have all suffered irreparable harm as  
26 a result of Defendants' unlawful and wrongful conduct. Absent a class action, the Class  
27 will continue to face the potential for irreparable harm. In addition, these violations of  
28 law would be allowed to proceed without remedy and Defendants would undoubtedly

1 continue such illegal conduct. Because of the size of the individual Class members'  
2 claims, few Class members could afford to seek legal redress for the wrongs complained  
3 of herein.

4 39. Plaintiff has retained counsel experienced in handling class action claims.

5 40. A class action is a superior method for the fair and efficient adjudication of  
6 this controversy. Class-wide damages are essential to induce Defendants to comply  
7 with federal and California law. The interest of Class members in individually  
8 controlling the prosecution of separate claims against Defendants is small because the  
9 maximum statutory damages in an individual action for a violation of this statute is  
10 minimal. Management of these claims is likely to present significantly fewer  
11 difficulties than those presented in many class claims. Defendants have acted on  
12 grounds generally applicable to the Class, thereby making appropriate final injunctive  
13 relief and corresponding declaratory relief with respect to the Class as a whole.

14  
15 **FIRST CAUSE OF ACTION**  
16 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
17 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

18 41. Plaintiff incorporates by reference all of the above paragraphs of this  
19 Complaint as though fully stated herein.

20 42. The foregoing acts and omissions of Defendants constitute numerous and  
21 multiple negligent violations of the TCPA, including but not limited to each and every  
22 one of the above-cited provisions of 47 U.S.C. § 227 et seq.

23 43. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq.,  
24 Plaintiff and the Class members are entitled to an award of \$500.00 in statutory  
25 damages for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). Plaintiff  
26 and the Class are also entitled to and seek injunctive relief prohibiting such conduct in  
27 the future.

28 44. Plaintiff and the Class members are also entitled to an award of attorneys'  
fees and costs.

**SECOND CAUSE OF ACTION**  
**KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
**CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

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45. Plaintiff incorporates by reference the above paragraphs 1 through 42, inclusive, of this Complaint as though fully stated herein.

46. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

47. As a result of Defendants’ knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

48. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendants:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**  
**THE TCPA, 47 U.S.C. § 227 ET SEQ.**

1. As a result of Defendants’ negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 (five-hundred dollars) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
2. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
3. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court deems appropriate, finding that Plaintiff is a

1 proper representative of the Class, and appointing the lawyers and law  
2 firms representing Plaintiff as counsel for the Class.

- 3 4. Any other relief the Court may deem just and proper.

4 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**  
5 **VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 6 1. As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §  
7 227(b)(1), Plaintiff seeks for himself and each Class member treble  
8 damages, as provided by statute, up to \$1,500.00 (one-thousand-five-  
9 hundred dollars) for each and every violation, pursuant to 47 U.S.C. §  
10 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- 11 2. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such  
12 conduct in the future.
- 13 3. An order certifying this action to be a proper class action pursuant to  
14 Federal Rule of Civil Procedure 23, establishing an appropriate Class and  
15 any Subclasses the Court deems appropriate, finding that Plaintiff is a  
16 proper representative of the Class, and appointing the lawyers and law  
17 firms representing Plaintiff as counsel for the Class.
- 18 4. Any other relief the Court may deem just and proper.

19 **TRIAL BY JURY**

20 Pursuant to the Seventh Amendment to the Constitution of the United States of  
21 America, federal law, and FRCP 38, Plaintiff is entitled to, and demands, a trial by jury  
22 on all counts so triable.

23 October 26, 2015

**ZAVERI TABB APC**

24 By: /s/ Deval R. Zaveri \_\_\_\_\_

25 Deval R. Zaveri, SBN 213501  
26 James A. Tabb, SBN 208188  
402 West Broadway, 29<sup>th</sup> Floor  
27 San Diego, CA 92101  
Tel: (619) 398-4767  
28 Fax: (619) 756-6991  
[dev@zaveritabb.com](mailto:dev@zaveritabb.com)

[jimmy@zaveritabb.com](mailto:jimmy@zaveritabb.com)

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402 W. Broadway, 29<sup>th</sup> Floor  
San Diego, CA 92101  
Tel: (619) 756-6990  
Fax: (619) 756-6991  
[jim@pattersonlawgroup.com](mailto:jim@pattersonlawgroup.com)  
[ali@pattersonlawgroup.com](mailto:ali@pattersonlawgroup.com)

*Attorneys for Representative Plaintiff Brian Trezz*

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