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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRIAN TRENZ, FRANCIS
BREIDENBACH, and CAITLYN
FARRELL, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

ON-LINE ADMINISTRATORS, INC.
(dba PEAK PERFORMANCE
MARKETING SOLUTIONS), a
California Corporation; VOLKSWAGEN
GROUP OF AMERICA, INC., a New
Jersey Corporation; and DOES 1-5,

Defendants.

Case No. 2:15cv08356-AB-KS

CLASS ACTION

STIPULATED PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further

1 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
2 does not entitle them to file confidential information under seal; Civil Local Rule 79-5
3 sets forth the procedures that must be followed and the standards that will be applied
4 when a party seeks permission from the court to file material under seal.

5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve trade secrets, customer lists and other valuable
7 marketing, commercial, financial, technical and/or proprietary information for which
8 special protection from public disclosure and from use for any purpose other than
9 prosecution of this action is warranted. Such confidential and proprietary materials and
10 information consist of, among other things, confidential business or financial information,
11 information regarding confidential business practices, or other confidential marketing or
12 commercial information (including information implicating privacy rights of third
13 parties), information otherwise generally unavailable to the public, or which may be
14 privileged or otherwise protected from disclosure under state or federal statutes, court
15 rules, case decisions, or common law. Accordingly, to expedite the flow of information, to
16 facilitate the prompt resolution of disputes over confidentiality of discovery materials, to
17 adequately protect information the parties are entitled to keep confidential, to ensure that
18 the parties are permitted reasonable necessary uses of such material in preparation for and
19 in the conduct of trial, to address their handling at the end of the litigation, and serve the
20 ends of justice, a protective order for such information is justified in this matter. It is the
21 intent of the parties that information will not be designated as confidential for tactical
22 reasons and that nothing be so designated without a good faith belief that it has been
23 maintained in a confidential, non-public manner, and there is good cause why it should
24 not be part of the public record of this case.

25 **2. DEFINITIONS**

26 2.1 Action: this pending federal law suit.

27 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
28 information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
2 is generated, stored or maintained) or tangible things that qualify for protection under
3 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
4 Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
6 support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or items
8 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

9 2.6 Disclosure or Discovery Material: all items or information, regardless of the
10 medium or manner in which it is generated, stored, or maintained (including, among other
11 things, testimony, transcripts, and tangible things), that are produced or generated in
12 disclosures or responses to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
15 expert witness or as a consultant in this Action.

16 2.8 House Counsel: attorneys who are employees of a party to this Action. House
17 Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.9 Non-Party: any natural person, partnership, corporation, association, or other
19 legal entity not named as a Party to this action.

20 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
21 this Action but are retained to represent or advise a party to this Action and have appeared
22 in this Action on behalf of that party or are affiliated with a law firm which has appeared
23 on behalf of that party, and includes support staff.

24 2.11 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this Action.

1 2.13 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
4 their employees and subcontractors.

5 2.14 Protected Material: any Disclosure or Discovery Material that is designated
6 as “CONFIDENTIAL.”

7 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
8 a Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected
11 Material (as defined above), but also (1) any information copied or extracted from
12 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
13 Material; and (3) any testimony, conversations, or presentations by Parties or their
14 Counsel that might reveal Protected Material.

15 Any use of Protected Material at trial shall be governed by the orders of the trial
16 judge. This Order does not govern the use of Protected Material at trial.

17 **4. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations imposed
19 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
20 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
21 dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final
22 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
23 trials, or reviews of this Action, including the time limits for filing any motions or
24 applications for extension of time pursuant to applicable law.

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
27 Party or Non-Party that designates information or items for protection under this Order
28 must take care to limit any such designation to specific material that qualifies under the

1 appropriate standards. The Designating Party must designate for protection only those
2 parts of material, documents, items, or oral or written communications that qualify so that
3 other portions of the material, documents, items, or communications for which protection
4 is not warranted are not swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that
6 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
7 to unnecessarily encumber the case development process or to impose unnecessary
8 expenses and burdens on other parties) may expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection, that Designating Party must
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
14 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
15 must be clearly so designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form that allows for a physical stamp (e.g.,
18 paper or electronic PDF documents, but excluding transcripts of depositions or other
19 pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend
20 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains
21 Protected Material, or for information in documentary form that does not allow for a
22 physical stamp (e.g., electronic documents in native format), that the Producing Party
23 include the word "CONFIDENTIAL" in the name of the electronic file that contains
24 Protected Material. If only a portion or portions of the material on a page qualifies for
25 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
26 making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection need
28 not designate them for protection until after the inspecting Party has indicated which

1 documents it would like copied and produced. During the inspection and before the
2 designation, all of the material made available for inspection shall be deemed
3 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
4 copied and produced, the Producing Party must determine which documents, or portions
5 thereof, qualify for protection under this Order. Then, before producing the specified
6 documents, for information in documentary form that allows for a physical stamp (e.g.,
7 paper or electronic PDF documents, but excluding transcripts of depositions or other
8 pretrial or trial proceedings), the Producing Party must affix the “CONFIDENTIAL
9 legend” to each page that contains Protected Material, or for information in documentary
10 form that does not allow for a physical stamp (e.g., electronic documents in native
11 format), the Producing Party must include the word “CONFIDENTIAL” in the name of
12 the electronic file that contains Protected Material. If only a portion or portions of the
13 material on a page qualifies for protection, the Producing Party also must clearly identify
14 the protected portion(s) (e.g., by making appropriate markings in the margins).

15 (b) for testimony given in deposition that contains, reflects, or comments on
16 confidential information, the deposition reporter shall be informed of this Stipulated
17 Protective Order by the Party seeking to invoke its protection. Deposition testimony may
18 be designated as confidential at deposition or, within ten (10) business days of the receipt
19 of the deposition transcript, any Party may designate any sections of the transcript as
20 confidential that were not so designated on the record at the deposition in accordance with
21 the provisions governing the designation of confidential information set forth herein.

22 (c) for information produced in some form other than documentary and for any
23 other tangible items, that the Producing Party affix in a prominent place on the exterior of
24 the container or containers in which the information is stored the legend
25 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
26 the Producing Party, to the extent practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
28 to designate qualified information or items does not, standing alone, waive the

1 Designating Party’s right to secure protection under this Order for such material. Upon
2 timely correction of a designation, the Receiving Party must make reasonable efforts to
3 assure that the material is treated in accordance with the provisions of this Order.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
6 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
8 process under Local Rule 37.1 et seq.

9 6.3 The burden of persuasion in any such challenge proceeding shall be on the
10 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
11 harass or impose unnecessary expenses and burdens on other parties) may expose the
12 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
13 confidentiality designation, all parties shall continue to afford the material in question the
14 level of protection to which it is entitled under the Producing Party’s designation until the
15 Court rules on the challenge.

16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this Action
19 only for prosecuting, defending, or attempting to settle this Action. Such Protected
20 Material may be disclosed only to the categories of persons and under the conditions
21 described in this Order. When the Action has been terminated, a Receiving Party must
22 comply with the provisions of section 13 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location
24 and in a secure manner that ensures that access is limited to the persons authorized under
25 this Order.

26 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
28 may disclose any information or item designated “CONFIDENTIAL” only to:

1 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this Action;

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this Action and who have
6 been informed of the terms of this Protective Order by the Receiving Party's Outside
7 Counsel of Record and have agreed to be bound thereby;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
9 reasonably necessary for this Action and who have signed the "Acknowledgment and
10 Agreement to Be Bound" (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
14 whom disclosure is reasonably necessary for this Action and who have signed the
15 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

16 (g) the author or recipient of a document containing the information or a custodian
17 or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to
19 whom disclosure is reasonably necessary provided: (1) the deposing party requests that
20 the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted
21 to keep any confidential information unless they sign the "Acknowledgment and
22 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party
23 or ordered by the court. Pages of transcribed deposition testimony or exhibits to
24 depositions that reveal Protected Material may be separately bound by the court reporter
25 and may not be disclosed to anyone except as permitted under this Stipulated Protective
26 Order; and

27 (i) any mediator or settlement officer, and their supporting personnel, mutually
28 agreed upon by any of the parties engaged in settlement discussions.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include
7 a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue
9 in the other litigation that some or all of the material covered by the subpoena or order is
10 subject to this Protective Order. Such notification shall include a copy of this Stipulated
11 Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
13 Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action as
16 “CONFIDENTIAL” before a determination by the court from which the subpoena or
17 order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that court of
19 its confidential material and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
21 from another court.

22 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
23 **PRODUCED IN THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a Non-Party
25 in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-
26 Parties in connection with this litigation is protected by the remedies and relief provided
27 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
28 from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce a
2 Non-Party's confidential information in its possession, and the Party is subject to an
3 agreement with the Non-Party not to produce the Non-Party's confidential information,
4 then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party that
6 some or all of the information requested is subject to a confidentiality agreement with a
7 Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
9 Order in this Action, the relevant discovery request(s), and a reasonably specific
10 description of the information requested; and

11 (3) make the information requested available for inspection by the Non-
12 Party, if requested.

13 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
14 receiving the notice and accompanying information, the Receiving Party may produce the
15 Non-Party's confidential information responsive to the discovery request. If the Non-Party
16 timely seeks a protective order, the Receiving Party shall not produce any information in
17 its possession or control that is subject to the confidentiality agreement with the Non-
18 Party before a determination by the court. Absent a court order to the contrary, the Non-
19 Party shall bear the burden and expense of seeking protection in this court of its Protected
20 Material.

21 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
25 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
26 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
27 unauthorized disclosures were made of all the terms of this Order, and (d) request such
28 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is

1 attached hereto as Exhibit A.

2 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
3 **PROTECTED MATERIAL**

4 When a Producing Party gives notice to Receiving Parties that certain inadvertently
5 produced material is subject to a claim of privilege or other protection, the obligations of
6 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
7 This provision is not intended to modify whatever procedure may be established in an e-
8 discovery order that provides for production without prior privilege review. Pursuant to
9 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
10 effect of disclosure of a communication or information covered by the attorney-client
11 privilege or work product protection, the parties may incorporate their agreement in the
12 stipulated protective order submitted to the court.

13 **12. MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to disclosing
18 or producing any information or item on any ground not addressed in this Stipulated
19 Protective Order. Similarly, no Party waives any right to object on any ground to use in
20 evidence of any of the material covered by this Protective Order.

21 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
22 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
23 under seal pursuant to a court order authorizing the sealing of the specific Protected
24 Material at issue. If a Party's request to file Protected Material under seal is denied by the
25 court, then the Receiving Party may file the information in the public record unless
26 otherwise instructed by the court.

1 **13. FINAL DISPOSITION**

2 After the final disposition of this Action, as defined in paragraph 4, within 60 days
3 of a written request by the Designating Party, each Receiving Party must return all
4 Protected Material to the Producing Party or destroy such material. As used in this
5 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected Material.
7 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
8 a written certification to the Producing Party (and, if not the same person or entity, to the
9 Designating Party) by the 60 day deadline that (1) identifies (by category, where
10 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
11 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
12 other format reproducing or capturing any of the Protected Material. Notwithstanding this
13 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
14 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition
15 and trial exhibits, expert reports, attorney work product, and consultant and expert work
16 product, even if such materials contain Protected Material. Any such archival copies that
17 contain or constitute Protected Material remain subject to this Protective Order as set forth
18 in Section 4 (DURATION).

19 **14.** Any violation of this Order may be punished by any and all appropriate measures
20 including, without limitation, contempt proceedings and/or monetary sanctions.

21
22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23 DATED: May 25, 2017

24 

25 _____
26 Honorable Karen L. Stevenson
27 United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by
the United States District Court for the Central District of California on [date] in the case
of *Brian Trezn, Francis Breidenbach, and Caitlyn Farrell (on behalf of themselves and
all others similarly situated) v. On-Line Administrators, Inc. (dba Peak Performance
Marketing Solutions) and Volkswagen Group of America, Inc., Case No. 2:15cv08356-
AB-KS, U.S. District Court, C.D. Cal.* I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure to
so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or
any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____