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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

16 **BRENDAN CONCANNON,**
17 **INDIVIDUALLY AND ON**
18 **BEHALF OF ALL OTHERS**
SIMILARLY SITUATED,

19 Plaintiff,

21 v.

22 **INSURANCE CARE NOW, LLC**

24 Defendant.

Case No.: '17CV0301 WQHBGS

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

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28 //

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INTRODUCTION

1. Plaintiff BRENDAN CONCANNON (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of INSURANCE CARE NOW, LLC (hereinafter “Defendant”) in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.”
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12;

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1 4. Congress also specifically found that “the evidence presented to the
2 Congress indicates that automated or prerecorded calls are a nuisance and an
3 invasion of privacy, regardless of the type of call...” *Id.* at §§ 12-13.

4 **JURISDICTION AND VENUE**

5 5. This Court has federal question jurisdiction because this case arises out of
6 violation of federal law. 47 U.S.C. §227(b).

7 6. Venue is proper in the United States District Court for the Southern District
8 of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
9 Plaintiff resides in the City of La Mesa, County of San Diego, State of
10 California which is within this judicial district; (ii) the conduct complained
11 of herein occurred within this judicial district; and, (iii) many of the acts and
12 transactions giving rise to this action occurred in this district because
13 Defendant:

- 14 (a) is authorized to conduct business in this district and has
- 15 intentionally availed itself of the laws and markets within this
- 16 district;
- 17 (b) does substantial business within this district;
- 18 (c) is subject to personal jurisdiction in this district because it has
- 19 availed itself of the laws and markets within this district; and,
- 20 (d) the harm to Plaintiff occurred within this district.

21 **PARTIES**

22 7. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
23 the City of La Mesa, County of San Diego, State of California. Plaintiff is,
24 and at all times mentioned herein was, a “person” as defined by 47 U.S.C. §
25 153(3).

26 8. Defendant is, and at all times mentioned herein was, a limited liability
27 corporation incorporated under the laws of the State of Florida with a
28 headquarters at 1001 West Newport Center Drive, #111, Deerfield Beach,

1 Florida 33442, and is a “person,” as defined by 47 U.S.C. § 153 (39).
2 Plaintiff alleges that at all times relevant herein Defendant conducted
3 business in the State of California and in the County of San Diego, and
4 within this judicial district.

5 **FACTUAL ALLEGATIONS**

6 9. Plaintiff alleges that at all times relevant herein Defendant conducted
7 business in the State of California, County of San Diego, and within this
8 judicial district.

9 10. At no time did Plaintiff ever enter into a business relationship with
10 Defendant.

11 11. Beginning in September 2016, Defendant initiated multiple telephonic
12 communications to Plaintiff’s cellular telephone number ending in “6643”.

13 12. On September 26, 2016 at approximately 10:05 a.m. P.S.T., Defendant
14 initiated a telephonic communication from telephone number (669) 238-
15 4304 to Plaintiff’s telephone number ending in “6643”.

16 13. On September 26, 2016 at approximately 12:33 p.m. P.S.T., Defendant
17 initiated a telephonic communication from telephone number (908) 432-
18 8055 to Plaintiff’s telephone number ending in “6643”.

19 14. On September 26, 2016 at approximately 1:56 p.m. P.S.T., Defendant
20 initiated a telephonic communication from telephone number (661) 247-
21 8043 to Plaintiff’s telephone number ending in “6643”.

22 15. On September 27, 2016 at approximately 10:51 a.m. P.S.T., Defendant
23 initiated a telephonic communication from telephone number (669) 238-
24 4304 to Plaintiff’s telephone number ending in “6643”.

25 16. On September 28, 2016 at approximately 10:26 a.m. P.S.T., Defendant
26 initiated a telephonic communication from telephone number (502) 601-
27 0041 to Plaintiff’s telephone number ending in “6643”.

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1 17. These telephonic communications constituted telephone solicitations, as
2 defined by 47 U.S.C. § 227(a)(4).

3 18. Defendant's calls constituted calls that was not for emergency purposes, as
4 defined by 47 U.S.C. § 227(b)(1)(A)(i).

5 19. Defendant's calls were placed to telephone number assigned to a cellular
6 telephone service for which Plaintiff incurs a charge for incoming calls
7 pursuant to 47 U.S.C. § 227(b)(1).

8 20. Defendant did not have prior written express consent to call Plaintiff and
9 make these telephone solicitations, as defined by 47 U.S.C. § 227(a)(4).

10 21. On information and belief, Plaintiff believes that Defendant used an
11 "automatic telephone dialing system" (or "ATDS"), as defined by 47 U.S.C.
12 § 227(a)(1) to repeatedly call Plaintiff because Plaintiff was greeted by a
13 prerecorded message prior to speaking with Defendant's representative.

14 22. This ATDS has the capacity to store or produce telephone numbers to be
15 called, using a random or sequential number generator.

16 23. These telephone communications by Defendant, or its agent, violated 47
17 U.S.C. § 227(b)(1).

18 24. Through this action, Plaintiff suffered an invasion of a legally protected
19 interest in privacy, which is specifically addressed and protected by the
20 TCPA.

21 25. Plaintiff was personally affected because he was frustrated and distressed
22 that Defendant harassed Plaintiff with solicitation calls using an ATDS.

23 26. Defendant's telephone calls forced Plaintiff and class members to live
24 without the utility of their cellular phones by forcing Plaintiff and class
25 members to silence their cellular phones and/or block incoming numbers.

26 27. Through the aforementioned conduct, Defendant has violated 47 U.S.C.
27 § 227 et seq.
28

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CLASS ACTION ALLEGATIONS

1
2 28. Plaintiff brings this action on behalf of himself and on behalf of all others
3 similarly situated (“the Class”).

4 29. Plaintiff represents, and is a member of the Class, consisting of:

5 All persons within the United States who received any
6 telephone call from Defendant or their agent/s and/or
7 employee/s, not sent for emergency purposes, to said
8 person’s cellular telephone made through the use of any
9 automatic telephone dialing system and/or with an
prior to the filing of this Complaint.

10 30. Defendant and its employees or agents are excluded from the Class.

11 Plaintiff does not know the number of members in the Class, but believes the
12 Class members number in the hundreds of thousands, if not more. Thus, this
13 matter should be certified as a Class action to assist in the expeditious
14 litigation of this matter.

15 31. Plaintiff and members of the Class were harmed by the acts of Defendant in
16 at least the following ways: Defendants, either directly or through its agents,
17 illegally contacted Plaintiff and the Class members via their cellular
18 telephones by using an ATDS, thereby causing Plaintiff and the Class
19 members to incur certain cellular telephone charges or reduce cellular
20 telephone time for which Plaintiff and the Class members previously paid,
21 and invading the privacy of said Plaintiff and the Class members. Plaintiff
22 and the Class members were damaged thereby.

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

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1 33. The joinder of the Class members is impractical and the disposition of their
2 claims in the Class action will provide substantial benefits both to the parties
3 and to the court. The Class can be identified through Defendants’ records or
4 Defendants’ agents’ records.

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

- 9 a) Whether, within the four years prior to the filing of this Complaint,
10 Defendant or its agents initiated any telephonic communications to the
11 Class (other than a message made for emergency purposes or made
12 with the prior express consent of the called party) to a Class member
13 using any automatic dialing to any telephone number assigned to a
14 cellular phone service;
- 15 b) Whether Defendant can meet its burden of showing it obtained prior
16 express consent (i.e., consent that is clearly and unmistakably stated);
- 17 c) Whether Defendant’s conduct was knowing and/or willful;
- 18 d) Whether Plaintiff and the Class members were damaged thereby, and
19 the extent of damages for such violation; and
- 20 e) Whether Defendants and its agents should be enjoined from engaging
21 in such conduct in the future.

22 35. As a person that received at least one telephonic communication from
23 Defendant’s ATDS without Plaintiff’s prior written express consent,
24 Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly
25 and adequately represent and protect the interests of the Class in that
26 Plaintiff has no interests antagonistic to any member of the Class.

27 36. Plaintiff and the members of the Class have all suffered irreparable harm as
28 a result of the Defendants’ unlawful and wrongful conduct. Absent a class

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1 action, the Class will continue to face the potential for irreparable harm. In
2 addition, these violations of law will be allowed to proceed without remedy
3 and Defendants will likely continue such illegal conduct. Because of the
4 size of the individual Class member’s claims, few, if any, Class members
5 could afford to seek legal redress for the wrongs complained of herein.

6 37. Plaintiff has retained counsel experienced in handling class action claims
7 and claims involving violations of the Telephone Consumer Protection Act.

8 38. A class action is a superior method for the fair and efficient adjudication of
9 this controversy. Class-wide damages are essential to induce Defendants to
10 comply with federal and California law. The interest of Class members in
11 individually controlling the prosecution of separate claims against
12 Defendants is small because the maximum statutory damages in an
13 individual action for violation of privacy are minimal. Management of these
14 claims is likely to present significantly fewer difficulties than those
15 presented in many class claims.

16 39. Defendant has acted on grounds generally applicable to the Class, thereby
17 making appropriate final injunctive relief and corresponding declaratory
18 relief with respect to the Class as a whole.

19 **FIRST CAUSE OF ACTION**
20 **NEGLIGENT VIOLATIONS OF THE**
21 **TELEPHONE CONSUMER PROTECTION ACT**
22 **47 U.S.C. § 227 ET SEQ.**

23 40. Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.

25 41. The foregoing acts and omissions of Defendant constitutes numerous and
26 multiple negligent violations of the TCPA, including but not limited to each
27 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
28

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1 42. As a result of Defendant’s negligent violations of 47 U.S.C. § 227 et seq,
2 Plaintiff and the Class are entitled to an award of \$500.00 in statutory
3 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

4 43. Plaintiff and the Class are also entitled to and seek injunctive relief
5 prohibiting such conduct in the future.

6 **SECOND CAUSE OF ACTION**
7 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
8 **TELEPHONE CONSUMER PROTECTION ACT**
9 **47 U.S.C. § 227 ET SEQ.**

10 44. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 45. The foregoing acts and omissions of Defendant constitutes numerous and
13 multiple knowing and/or willful violations of the TCPA, including but not
14 limited to each and every one of the above-cited provisions of 47 U.S.C.
15 § 227 et seq.

16 46. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C.
17 § 227 et seq, Plaintiff and the Class are entitled to an award of \$1,500.00 in
18 statutory damages, for each and every violation, pursuant to 47 U.S.C.
19 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

20 47. Plaintiff and the Class are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff and the Class Members pray for judgment as
24 follows:

- 25 • Certifying The Class as requested herein;
- 26 • Providing such further relief as may be just and proper.

27 In addition, Plaintiff and The Class Members pray for further judgment as
28 follows:

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

- As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

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

- As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

48. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: February 15, 2017

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: s/ Abbas Kazerounian
ABBAS KAZEROUNIAN, ESQ.
ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CONCANNON, BRENDAN

(b) County of Residence of First Listed Plaintiff SAN DIEGO (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Abbas Kazerounian, Esq. (SBN 249203) Mona Amini, Esq. (SBN 296829) KAZEROUNI LAW GROUP, APC; 245 Fischer Avenue, Unit D1 Costa Mesa, CA 92626; Tel: (800) 400-6808; Fax: (800) 520-5523

DEFENDANTS

INSURANCE CARE NOW, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV0301 WQHBGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): The Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227, et seq. Brief description of cause: Violation of the Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227, et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/15/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Abbas Kazerounian, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [TCPA Class Action Filed Against Insurance Care Now](#)
