

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

**Case Number: 09-61136-CIV-MORENO**

DONALD YARBROUGH,

Plaintiff,

vs.

CREDIT CONTROL SERVICES, INC., d/b/a  
CREDIT COLLECTION SERVICES, and  
QUEST DIAGNOSTICS INCORPORATED,

Defendants.

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**ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE**

THIS CAUSE came before the Court upon Plaintiff's Motion to Dismiss for Lack of Jurisdiction (**D.E. No. 34** ), filed on **April 21, 2010**.

The only remaining count in the instant case is a claim based on the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA"). Although the TCPA is a federal statute, the Eleventh Circuit has clearly stated that this private right of action is assigned to state courts exclusively. *Nicholson v. Hooters of Augusta, Inc.*, 136 F.3d 1287, 1289 (11th Cir. 1998). The Eleventh Circuit also specifically rejected the argument that the TCPA provided concurrent jurisdiction as federal courts are courts of limited jurisdiction. *See id.* at 1289. Therefore, the Court dismisses the case for lack of subject matter jurisdiction. Additionally, dismissal of Plaintiff's claim is without prejudice because when a district court lacks subject matter jurisdiction, the court has "no power to render a judgment on the merits." *Crotwell v. Hockman-Lewis Ltd.*, 734 F.2d 767, 769 (11th Cir. 1984) (citation omitted). Accordingly, it is,

**ADJUDGED** that Plaintiff's Motion to Dismiss for lack of subject-matter jurisdiction is GRANTED WITHOUT PREJUDICE. Further, all pending motions are DENIED as moot.

DONE AND ORDERED in Chambers at Miami, Florida, this 4<sup>th</sup> day of May, 2010.

  
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FEDERICO A. MORENO  
CHIEF UNITED STATES DISTRICT JUDGE

Copies provided to:  
Counsel of Record