

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KAREN BOWENS

CIVIL ACTION

VERSUS

NO. 16-16752

CONVERGENT OUTSOURCING, INC

SECTION "N" (3)

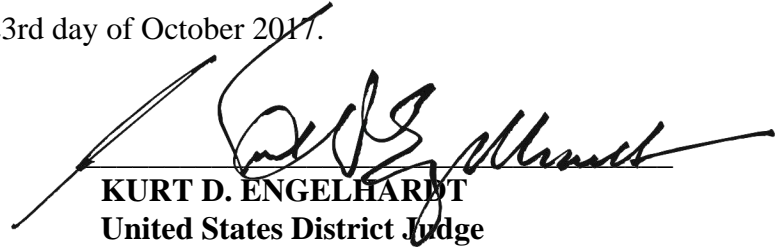
ORDER AND REASONS

Presently before the Court is the motion for summary judgment (Rec. Doc. 24) filed by Plaintiff, Karen Bowens, who alleges that Defendant, Convergent Outsourcing Inc., committed violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, by using an automatic telephone dialing system and pre-recorded message to call Plaintiff's cell phone number without Plaintiff's prior consent.

Having carefully considered the parties' competing submissions and applicable law, the Court finds that Plaintiff's motion must be denied. Construing Defendant's submissions in its favor, as Rule 56 of the Federal Rules of Civil Procedure requires at this juncture, the Court, on the instant showing made, is not in a position to conclude, as a matter of law, that Plaintiff did not consent to Defendant's use of her cell phone number. Rather, the declarations of Shannon Picchione and Jeff Hunter, considered together with Dish Network's account records, create a genuine dispute of material fact as to whether Plaintiff provided her cell phone number to a Dish Network representative, in August 2014, for account-related purposes. *See* Rec. Doc. 39-3 at ¶¶ 5 and 7; Rec.

Doc. 39-4 at ¶¶ 8 and 9; Rec. Doc. 39-2, p. 9 of 34 and pp. 19-21 of 34. Accordingly, **IT IS ORDERED** that "Plaintiff's Motion for Summary Judgment" (Rec. Doc. 24) is **DENIED**.

New Orleans, Louisiana, this 23rd day of October 2017.



KURT D. ENGELHART
United States District Judge

Clerk to Copy:

Magistrate Judge Knowles