IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KAREN SAUNDERS, Plaintiff, vs. DYCK O'NEAL, INC., Defendant.	)	CIVIL ACTION 1:17-CV-00335-GJQ-RSK

DEFENDANT DYCK O'NEAL, INC.'S RESPONSE IN OPPOSITION TO PLAINTIFF KAREN SAUNDERS'S MOTION FOR SUMMARY JUDGMENT

Plaintiff's Motion for Summary Judgment (ECF No. 106) (the "Motion") fails in the starting blocks. As a procedural matter, Plaintiff has failed to comply with Rule 56(c), which requires the movant to support a Rule 56 motion with evidentiary citations to the record. Plaintiff has failed to cite to ***any*** record evidence that would enable the Court to grant her Motion.

Plaintiff also cannot satisfy the substantive elements of her claim under 47 U.S.C. § 227(b)(1)(A)(iii) of the Telephone Consumer Protection Act ("TCPA"). To prevail on her claim, Plaintiff must prove a call was placed to her ***cellular phone number*** via an automatic dialing system or which left an artificial or prerecorded message, and Plaintiff ***did not consent*** to the call. *See* 47 U.S.C. § 227(b)(1)(A); *Harris v. World Fin. Network Nat'l Bank*, 867 F. Supp. 2d 888, 892 (E.D. Mich. 2012) (setting forth elements of *prima facie* case).

Here, Plaintiff's proof falls short in two ways. First, the only telephone number the VoApps technology ever "called" in this case was assigned to a business class landline and ***not*** a number assigned to a cellular device. Second, even if the Court were to determine that Defendant placed a call to Plaintiff's assigned cellular telephone number—which it did not—the record shows

that at a minimum, there is a genuine issue of material fact as to whether Plaintiff consented to receiving such call within the meaning of the TCPA. Therefore, Defendant respectfully requests that Plaintiff's Motion be denied.

I. PROCEDURAL POSTURE

Plaintiff filed this putative class action on April 12, 2017. *See* Complaint, ECF No. 1. On July 21, 2017, the parties filed their Joint Proposed Discovery Plan. ECF No. 9. On July 26, 2017, a Rule 16 Scheduling Conference was held before the Court.[1] The Court then entered a Scheduling Order. ECF No. 11, PageID.44.

On April 18, 2017, Defendant filed its Motion for Summary Judgment. ECF No. 25. On May 25, 2018, Plaintiff filed her response to Defendant's Motion for Summary Judgment. ECF No. 36. On July 16, 2018, the Court entered its Opinion and Order Denying Defendant's Motion for Summary Judgment. ECF No. 50. The Order framed the legal issue before the Court as follows:

> The parties dispute whether Dyck O'Neal's direct-to-voicemail messages—by VoApp[s]—qualify as a 'call' under §°227(b)(1)(A)(iii) of the TCPA. If the messages are a 'call,' then Dyck O'Neal's motion must be denied as a matter of law—and vice versa.

Id. at PageID.500–01. After reviewing both parties' arguments on that issue, the Court concluded: "Dyck O'Neal's direct-to-voicemail messages are a 'call' under the TCPA, and Saunders' claim will proceed." *Id.* at PageID.504.

On August 19, 2019, the Court held a hearing and entered a briefing schedule for Plaintiff's motion for summary judgment, (ECF No. 103), which Plaintiff now has filed, (ECF No. 106).

[1] At the time of the scheduling conference, Defendant was represented by Attorney Charity Olson, who is no longer counsel of record for Defendant.

II. LEGAL STANDARD

Summary judgment is proper if the pleadings, discovery, and disclosure materials on file, including any affidavits or declarations, show there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. The central inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986). In deciding a Rule 56 motion, the Court must view the evidence in a light most favorable to the non-movant. *Pack v. Dammon Corp.*, 434 F.3d 810, 813 (6th Cir. 2006).

The TCPA makes it unlawful for any party "to make any call . . . with[out] the prior express consent of the called party using an artificial or prerecorded voice to any telephone number assigned to . . . cellular telephone service." *See* 47 U.S.C. § 227(b)(1)(A)(iii). Under § 227(b)(1)(A), a plaintiff must show: (1) a call; (2) that was placed to a number assigned to a wireless or cellular phone; (3) using any automatic dialing system or which left an artificial or prerecorded message. *Strand v. Corinthian Colleges, Inc.*, 2014 WL 1515494, at *5 (W.D. Mich. Apr. 17, 2014). A defendant may defeat a § 227(b)(1)(A) claim by showing it had prior consent. *Boyd v. Gen. Revenue Corp.*, 5 F. Supp. 3d 940, 954 (M.D. Tenn. 2013); *Gary v. TrueBlue, Inc.*, 17-CV-10544, 2018 WL 3647046, at *24–27 (E.D. Mich. Aug. 1, 2018).

III. ARGUMENT

As an initial matter, Plaintiff has failed to comply with Rule 56(c), which requires a movant to support a Rule 56 motion with citations to the record. Here, Plaintiff has failed to cite to record evidence that would enable the Court to grant her Motion.

Plaintiff's Motion also fails as a matter of law if she cannot show the called number was a wireless or cellular telephone number, or if Dyck O'Neal shows she provided consent within the meaning of § 227(b)(1)(A). As detailed below, the telephone number "called" by the VoApps technology at issue was assigned to a ***landline***, not a ***cellular***, telephone service. The evidence also shows that Plaintiff provided consent within the meaning of the TCPA. Therefore, Plaintiff's Motion must fail.

a. Plaintiff's Motion Must be Denied because Plaintiff Failed to Comply with Rule 56(c).

If Plaintiff fails to meet her initial burden to show that no genuine issue of material fact exists by providing evidence of one or more of the sources listed in Rule 56(c), Plaintiff's Motion must be denied. *See Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir.1989). Here, Plaintiff's Motion fails to cite any record evidence to satisfy her burden. *See generally* ECF No. 106. Accordingly, Plaintiff's Motion must be denied.

As the moving party, Plaintiff has the initial burden of proving that no genuine issue of material fact exists and that she is entitled to judgment as a matter of law. *See Street*, 886 F.2d at 1477. To meet her burden, Plaintiff must provide evidence from one or more of the sources listed in Rule 56(c). *Id.* at 1478.

Here, Plaintiff's Motion relies solely on the Court's Order denying Defendant's Motion for Summary Judgment, holding: "Dyck O'Neal's direct-to-voicemail messages are a 'call' under the TCPA, and Saunders' claim will proceed." *See generally* ECF No. 106. As detailed below, the Order did not address whether the "call" was initiated to a number assigned to cellular telephone service or whether Saunders consented to the calls at issue. *See generally* ECF No. 50.

Therefore, because Plaintiff "failed to support [her Motion] in accordance with Rule 56(c)," the Motion must be denied. *See Knop v. Johnson*, 667 F. Supp. 512, 526–27 (W.D. Mich. 1987).

b. Plaintiff Cannot Show the Existence of Any Call Being Placed by the VoApps Technology to a Number Assigned to Any Cellular Service, Let Alone Plaintiff's Assigned Cell Phone Number.

Applying the ordinary rules of statutory interpretation to § 227(b)(1)(A), a plaintiff must plead and prove the telephone number at issue falls within one of three enumerated categories. *See* 47 U.S.C. § 227(b)(1)(A)(i)–(iii). To do so, Plaintiff relies solely on subsection (iii), which requires the telephone number to be "assigned to a . . . ***cellular*** telephone service." *See* Compl., ECF No. 1, at 2 ¶¶ 8, 18, 22, 24 (emphasis added). The telephone number at issue here, however, is assigned to landline—not cellular—service; thus, it does not fall within one of the three enumerated categories. *See* Gies Dep., Ex. D to ECF No. 36, Resp. to Pl.'s Mot. for Summ. J. at pp. 32:18–33:4 ("The voice mail platform has different numbers. Cellular numbers are—think of it as a hotel. It's an address within the—instead of going to the front desk, which is going to be a different number, we can actually deposit it to make sure it goes into the right room. So, it's not a call to the cellular number. There's actually a different number associated with the voice mail platform than just that [cellular] number." Q. "Okay. So it's a call to the voice mail platform number?" A. "Yes."), *id.* at p. 34:4-8 (Q. "What happens as to . . . the consumer phone number?" A. "Think of it as the room number in the voice mail system that helps identify the individual mail box."); *accord* D. King Decl. at ¶ 28, attached hereto as Ex. 1 ("Instead of a call being made from Adapti-Sig to a cellular handset, the technology makes only a direct connection between the Adapti-Sig servers and the servers comprising the voicemail service provider's voicemail platform, each of which are owned by business operators. This connection is a landline-to-landline

connection, a business-to-business connection that VoApps pays for at business class rates."); *see also* ¶¶ 14–27, 29; Gies Dep., Ex. D to ECF No. 36, Resp. to Pl.'s Mot. for Summ. J. at. pp. 11:16, 14:17–15:14, 17:22–24, 19:6–9, 21:19–22:1, 46:4–6, 48:2–5. Plaintiff's Motion therefore fails as a matter of law.[2]

Statutory interpretation begins with the text itself,[3] and § 227(b)(1)(A) of the TCPA prohibits placing calls without consent using an automatic telephone dialing system or which deliver prerecorded messages to:

> (i) to any emergency telephone line . . . ;
>
> (ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
>
> (iii) ***to any telephone number assigned to*** a paging service, ***cellular telephone service***, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States;

47 U.S.C. § 227(b)(1)(A)(i)–(iii); *see also Strand*, 2014 WL 1515494, at *5. Because Congress included subsections (A)(i)–(A)(iii), "***any call***" will not do. Rather, a plaintiff must satisfy (A)(i), (A)(ii), or (A)(iii).[4] With respect to the third element, Judge Bell observed:

---

[2] In her Motion for Summary Judgment, Plaintiff does not even suggest Dyck O'Neal initiated a call to a number assigned to cellular service. Instead, she implies the Court determined that issue in denying Dyck O'Neal's Motion for Summary Judgment. The Court never addressed, much less ruled, that Defendant "called a specific telephone number ***and*** that the telephone number was assigned to a cellular telephone service." *See Strand*, 2014 WL 1515494, at *9 (emphasis added). Instead, in denying Defendant's prior Motion for Summary Judgment, the Court limited its ruling as follows: "Dyck O'Neal's direct-to-voicemail messages are a 'call' under the TCPA." *See* ECF No. 50 at PageID.504.

[3] *Strand*, 2014 WL 1515494, at *5; *Broadcast Music, Inc. v. Roger Miller Music, Inc.*, 396 F.3d 762, 769 (6th Cir. 2005) ("To determine legislative intent, a court must first look to the language of the statute itself." (citing *Bd. of Ed. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 237 (1990); *Mills Music, Inc. v. Snyder*, 469 U.S. 153, 164 (1985))).

[4] *See also Gary v. Trueblue, Inc.*, 346 F. Supp. 3d 1040 (E.D. Mich., 2018) (granting defendants' second motion for summary judgment and holding the "clear text" of § 227(b)(1) requires: (a) a

> The ***plain language*** of the statute refers to calls placed to a "telephone number assigned to a . . . cellular telephone service." 47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added). A plain reading of the statute then, shows that to prove her case ***a plaintiff must prove that a defendant called a specific telephone number and that the telephone number was assigned to a cellular telephone service***.

Strand, 2014 WL 1515494 at *3 (emphasis added). Indeed, to hold otherwise would effectively eliminate the plain language of subsections (A)(i) through (A)(iii) from the TCPA, which would be improper.[5]

Notwithstanding the plain language of the TCPA, even if the Court were to consider the TCPA's underlying purpose or Congressional intent, the TCPA's language still provides the "best" indication of such purpose.[6] Here, the TCPA's language compels the conclusion that § 227(b)(1)(A)(iii) does not encompass numbers assigned to a landline service. Section 227(b)(1)(A)(iii) lists only telephone numbers assigned to "paging," "cellular telephone," specialized mobile radio," and "other radio common carrier" service. 47 U.S.C. § 227(b)(1)(A)(iii). Had Congress intended to include landline service in § 227(b)(1)(A)(iii), it

---

call; (b) using an automatic dialing system or prerecorded or artificial voice; (c) ***to a telephone number assigned to cellular service***) (emphasis added); *L. A. Lakers, Inc. v. Fed. Ins. Co.*, 869 F.3d 795 (9th Cir. 2017) (requiring a plaintiff to plead and prove that "the defendant called a ***cellular telephone number***" as one of three elements of a TCPA claim) (emphasis added).

[5] *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'" (citing *United States v. Menasche*, 348 U.S. 528, 538–539 (1955); *Williams v. Taylor*, 529 U. S. 362, 404 (2000) (describing this rule as a "cardinal principle of statutory construction"); *Market Co. v. Hoffman*, 101 U. S. 112, 115 (1879) ("As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'")).

[6] *L. A. Lakers, Inc. v. Fed. Ins. Co.*, 869 F.3d 795 (9th Cir. 2017) ("[T]he language of the statute is 'the best guide to the purposes of a statute,' because 'statutes are records of legislative compromise.'" (citing *Am. Ass'n of Retired Pers. v. EEOC*, 823 F.2d 600, 604 (D.C. Cir. 1987); *System v. Dimension Financial Corporation*, 474 U.S. 361, 106 S.Ct. 681, 88 L.Ed.2d 691 (1986)) (emphasis added)).

could have done so. *See, e.g.*, 47 U.S.C. § 332 (distinguishing preemption in connection with "mobile services" and "landline telephone exchange service"). It did not. The inclusion of "cellular service" with other enumerated categories implies the exclusion of a landline service. Therefore, Plaintiff must adduce evidence showing DONI placed a call to a telephone number ***and*** that such number was assigned to ***cellular***—not landline—telephone service.

Plaintiff's Complaint, (ECF No. 1), tacitly acknowledges that Plaintiff must plead and prove the relevant number was assigned to her cellular telephone service. *See, e.g.*, ECF No. 1 at PageID.3, ¶ 11 ("Defendant has initiated multiple telephone calls to *Plaintiff's cellular telephone* in an attempt to collect a debt.") (emphasis added); *Id.* at ¶ 12 ("Defendant, or some person authorized by Defendant, called *Plaintiff's cellular telephone number*.") (emphasis added); *see also id.* at PageID.5, ¶¶ 24, 25, 27.

In contrast to the Complaint, however, Plaintiff's Motion for Summary Judgment neither argues nor cites any evidence to show that Defendant used the VoApps technology to place any calls to the telephone number assigned to Plaintiff's cellular service. *See* Pl.'s Mot. for Summ. J., ECF No. 106, *passim*. Nor could Plaintiff do so because ***all*** of the record evidence shows that the telephone number VoApps called was assigned to a business class landline service.

The VoApps "Adapti-Sig technology does not interact with ***any*** components of the Radio Access Network," commonly referred to as the cellular network. D. King Decl. at ¶¶ 15(a), 20. Specifically, the Adapti-Sig technology does not interact with any of cellular towers, radio transmission equipment, or actual cellular devices or telephones in any way. *Id.* Nor does the Adapti-Sig technology place a call to the consumer's cellular phone number. *Id.* at ¶ 28. Instead,

the only call is placed to a voicemail service provider's business class, ***landline*** number.[7] *Id.* at ¶¶ 28–29.

Therefore, because all record evidence shows the relevant number was assigned to land line and not cellular service, Plaintiff's Motion must fail.

c. A Genuine Issue of Material Fact Remains as to Whether Plaintiff Provided Prior Express Consent.

Plaintiff's TCPA claim must fail for an independent reason if she provided prior consent.[8] *See* 47 U.S.C. § 227(b)(1)(A)(3). Plaintiff cosigned the Wells Fargo mortgage upon which Defendant sought to collect. Moreover, Plaintiff concedes she generally provides her cellular telephone number to her creditors. Indeed, she even testified she would not have been surprised if her husband provided her cell phone number to Wells Fargo. Because a person "consents" within the meaning of § 227(b)(1)(A) by providing a cellphone number to a creditor, either directly or through a spouse, Plaintiff's claims must fail.

A person "consents" for TCPA purposes by providing her cellphone number to a creditor. *See Baisden v. Credit Adjustments, Inc*., 813 F.3d 338, 344–45 (6th Cir. 2016). A person also

---

[7] Furthermore, by contrast to SMS text messages, which deliver the message content to the consumer's handset, voicemail messages are delivered to and stored on a voicemail service provider's server. *Id.* at ¶¶ 8–10, 30–35.

[8] Although the Sixth Circuit has not held whether "consent" is an element of a plaintiff's *prima facie* case, or an affirmative defense, Michigan federal district courts generally treat proof of a lack of consent as an element of the plaintiff's prima facie claim. *See Harris v. World Fin. Network Nat. Bank*, 867 F. Supp. 2d 888, 892 (E.D. Mich. 2012) ("[T]o establish a prima facie case under § 227(b)(1)(A), a plaintiff must show that: "(1) a call was placed to a cell or wireless phone; (2) by the use of any automatic dialing system and/or leaving an artificial or prerecorded message, and (3) without prior consent of the recipient."), *see also Davis v. Quicken Loans, Inc*., 14-CV-12665, 2014 WL 12662068, at *1 (E.D. Mich. Nov. 14, 2014); *Duchene v. Onstar, LLC*, 15-13337, 2016 WL 3997031, at *1 (E.D. Mich. July 26, 2016).

Other courts have explicitly held "consent" is an affirmative defense. *See, e.g.*, *Gary v. TrueBlue, Inc*., 17-CV-10544, 2018 WL 3647046, at *9 (E.D. Mich. Aug. 1, 2018) ("The seller bears the burden of demonstrating that it obtained unambiguous consent."); *Pugliese v. Prof'l Recovery*

consents for TCPA purposes if a spouse provides the called party's cellphone number to a creditor. *See Mais v. Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110, 1123 (11th Cir. 2014) (holding, consistent with FCC ruling, that "consent [may be] obtained and conveyed by an intermediary"); *see also Baisden*, 813 F.3d at 346 (finding *Mais* "persuasive").

At Plaintiff's July 9, 2019 deposition, Plaintiff testified she was a cosigner on a Wells Fargo mortgage pertaining the 1655 Alpine premises, stating as follows:

> Q Now, this 1655 Alpine property that was foreclosed upon, were you a cosigner on that?
> A Yes.
> Q Do you know who the lender was on that loan?
> A I believe it was Wells Fargo on that loan.
> Q Do you know if that was the property that Dyck O'Neal was contacting you regarding?
> A Yes, it is.

Pl.'s Dep. at 24; *see also id.* at 28 ("Q: When the Wells Fargo loan was taken out, I think you indicated you had cosigned on that property; is that correct? A: Yes."). Plaintiff's testimony stands in stark contrast to sworn statements she made in a prior declaration submitted in opposition to Defendant's prior Summary Judgment Motion, in which Plaintiff stated, subject to penalty of perjury, that she was not liable on the Wells Fargo loan on which Defendant sought to collect.[9]

Serv., Inc., 09-12262, 2010 WL 2632562, at *7 (E.D. Mich. June 29, 2010) ("The burden of establishing prior consent is on the defendant.").

Regardless of whether "consent" is an element of Plaintiff's *prima facie* claim or an affirmative defense, the Court has never addressed the consent issue in this case. More importantly, the only evidence Plaintiff provided the Court, via a sworn declaration submitted in opposition to Defendant's prior Summary Judgment Motion, contains materially false averments that only came to light during Plaintiff's subsequent deposition taken after the Court denied Defendant's Motion for Summary Judgment and new counsel assumed the defense of this case.

[9] *See* K. Saunders Dec., Exhibit A to ECF No. 36. Unfortunately, current counsel for the Defendant does not have a copy of Plaintiff's prior Declaration as it was filed under seal and was not provided in the files received from prior counsel's firm after transfer, and it was originally filed under seal with this Court. Counsel requested it from both Plaintiff's counsel and prior defense counsel. Prior counsel indicated the declaration was not in its database; Plaintiff's counsel has not provided

In addition to the conflicting testimony detailed above, Plaintiff's further testimony, excerpted below, at a minimum, creates a genuine issue of material fact as to whether she provided consent to be contacted on her cell phone. Specifically, Plaintiff testified that she has provided her cell phone number to other creditors, stating as follows:

> Q: With respect to your credit cards, what telephone number did you provide the creditors when you completed those applications?
> A: My cell phone.

Id. Finally, Plaintiff testified her husband "may have" provided her cell phone number to creditors, including Wells Fargo:

> Q: [W]hen your husband was buying these rental properties and you had cosigned on some of them, do you know whether he provided your residential phone number or a cell phone number to the lenders?
> A: I would imagine his cell phone number.
> Q: Do you know if he ever provided your cell phone number to any of the lenders?
> A: He may have.
> Q: Either on an application or during a subsequent phone conversation?
> A: I would think that a lender would want all that information, so I would have to guess that yes.
> Q: So would it surprise you if your husband had provided your cell phone number to Wells Fargo at some point regarding this loan that went into foreclosure?
> A No.
> Q Now, during the time that you were married, would you provide your husband's cell phone number to anyone?
> A Yes.
> Q And would he provide your cell phone number as well?
> A Yes.

Id. at 28–29.

---

the declaration. However, it should already be in the Court's record in this matter as an attachment to Plaintiff's prior Summary Judgment Response. *See* K. Saunders Dec., Exhibit A to ECF No. 36.

Plaintiff's testimony confirms she cosigned the Wells Fargo mortgage, and creates at least a genuine issue of material fact as to whether Plaintiff provided her cellular telephone number to Wells Fargo to be contacted regarding the servicing and collection of her loan. Plaintiff also concedes it is possible her husband provided her cellphone telephone number to Wells Fargo in connection with her Wells Fargo mortgage. Because providing a creditor with a cellular telephone number, either directly or indirectly through a spouse, constitutes consent within the meaning of the § 227(b)(1)(A), Plaintiff's claims must fail.

CONCLUSION

For the foregoing reasons, Defendant Dyck O'Neal, Inc. respectfully requests that Plaintiff's Motion for Summary Judgment, (ECF No. 106), be denied.

Dated: September 3, 2019

Respectfully submitted,

/s/ Dale Thomas Golden

Dale Thomas Golden
GOLDEN SCAZ GAGAIN PLLC
201 North Armenia Avenue
Tampa, Florida 33609
Telephone: (813) 251-5500
E-mail: dgolden@gsgfirm.com

Eugene Xerxes Martin, IV
MALONE AKERLY MARTIN PLLC
8750 N. Central Expressway, Suite 1850
Dallas, Texas 75231
Telephone: (214) 346-2630
E-mail: xmartin@mamlaw.com

Attorneys for Defendant
Dyck O'Neal, Inc.

LOCAL RULE 7.2(b)(ii) CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.2(b)(ii), this brief does not exceed ten thousand eight hundred (10,800) words, including headings, footnotes, citations, and quotations. This brief contains 4,178 words. The word count of this brief was prepared using Microsoft Word, Microsoft Office Professional Plus 2016.

Dated: September 3, 2019

Respectfully submitted,

/s/ Dale Thomas Golden

Dale Thomas Golden
GOLDEN SCAZ GAGAIN PLLC
201 North Armenia Avenue
Tampa, Florida 33609
Telephone: (813) 251-5500
E-mail: dgolden@gsgfirm.com

Eugene Xerxes Martin, IV
MALONE AKERLY MARTIN PLLC
8750 N. Central Expressway, Suite 1850
Dallas, Texas 75231
Telephone: (214) 346-2630
E-mail: xmartin@mamlaw.com

Attorneys for Defendant
Dyck O'Neal, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, I sent via email a copy of the instant Motion to all counsel of record, as follows:

Alexander H. Burke
BURKE LAW OFFICES LLC
155 N. Michigan Avenue, Suite 9020
Chicago, IL 60601
Telephone: (312) 729-5288
E-mail: aburke@burkelawllc.com

David Michael Marco
SMITHMARCO, P.C.
55 W. Monroe Street, Suite 1200
Chicago, IL 60603
Telephone: (312) 546-6539
Facsimile: (888) 418-1277
E-mail: dmarco@smithmarco.com

Larry P. Smith
SMITHMARCO, P.C.
55 W. Monroe Street, Suite 1200
Chicago, IL 60603
Telephone: (312) 324-3532
Facsimile: (312) 602-3911
E-mail: lsmith@smithmarco.com

Attorneys for Plaintiff
Karen Saunders

[SIGNATURE BLOCK APPEARS ON THE FOLLOWING PAGE.]

Dated: September 4, 2019

Respectfully submitted,

/s/ Dale Thomas Golden

Dale Thomas Golden
GOLDEN SCAZ GAGAIN PLLC
201 North Armenia Avenue
Tampa, Florida 33609
Telephone: (813) 251-5500
E-mail: dgolden@gsgfirm.com

Eugene Xerxes Martin, IV
MALONE AKERLY MARTIN PLLC
8750 N. Central Expressway, Suite 1850
Dallas, Texas 75231
Telephone: (214) 346-2630
E-mail: xmartin@mamlaw.com

Attorneys for Defendant
Dyck O'Neal, Inc.