

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT GREENEVILLE

RICKY UPCHURCH, as Executor of the )  
Estate of JUANITA UPCHURCH, for the )  
Use and benefit of the Next of Kin, )  
CLAYTON UPCHURCH, )

*Plaintiff,* )

v. )

NATIONAL RIFE ASSOCIATION and LIFE )  
INSURANCE COMPANY OF NORTH )  
AMERICA, )

*Defendants.* )

NO. 2:19-CV-00149-DCLC

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court pursuant to the Court’s earlier order in this case, dated October 6, 2020 [Doc. 44]. At that time, and upon consideration of Defendants’ Motion to Dismiss [Doc. 36], as well as Plaintiff’s Motion in Opposition [Doc. 39], the Court ruled that Defendants’ Motion to Dismiss was denied in part and granted in part [Doc. 44].

The Court denied Defendants’ Motion to Dismiss with regard to all but one claim, which involved an allegation by the Plaintiff that Defendants violated the Tennessee Consumer Protection Act (“TCPA”) [Doc. 44, pg. 9-10]. To this end, the Court ordered Plaintiff “to address whether, considering Tenn. Code. Ann. § 56-8-113, he may proceed with a claim under the TCPA against Defendants.” *Id.* at 10. More specifically, “it appears that Plaintiff is pursuing a claim under the TCPA that has been preempted by Tenn. Code Ann. § 56-8-113.” *Id.* at 9. The Court provided that Plaintiff would have until October 19, 2020 to provide his response. *Id.* at 10.

The time for Plaintiff's response has come and gone, and Plaintiff has failed to provide a basis on which his TCPA allegation could be viable. As this Court's October 6, 2020 order noted, failure to respond by the October 19, 2020 deadline would result in a dismissal of the TCPA claim. *Id.* ("Plaintiff shall file a response by October 19, 2020 or else his claim under the TCPA will be dismissed for failure to state a claim upon which relief can be granted."). Accordingly, and as per the clear terms of this Court's October 6, 2020 order, Plaintiff's TCPA claim is **DISMISSED WITH PREJUDICE**.

SO ORDERED:

s/Clifton L. Corker  
United States District Judge