

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

<p><b>COREY McNAMEE,</b></p> <p style="padding-left: 40px;"><b>Plaintiff,</b></p> <p style="padding-left: 40px;"><b>v.</b></p> <p><b>FAMILY FOCUS, INC.,</b></p> <p style="padding-left: 40px;"><b>Defendant.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>No. 2:14 CV 260</b></p>
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**ORDER**

On September 1, 2016, this court referred defendant’s motion to dismiss to Magistrate Judge Paul R. Cherry. (DE # 52.) On October 6, 2016, Magistrate Judge Cherry issued an order recommending that this court deny in part and grant in part the motion to dismiss. (DE # 53.) In his report, Magistrate Judge Cherry informed the parties that any objections to the report and recommended finding must be made within 14 days after being served with a copy of the report. (DE # 53 at 6.) That time has passed, and no objections have been filed. Therefore, the court **ACCEPTS and ADOPTS** Magistrate Judge Cherry’s report and recommendation (DE # 53). Accordingly, the court **DENIES in part** and **GRANTS in part** defendant’s motion to dismiss (DE # 50).

As to the request to dismiss under Rule 41(b) of the Federal Rules of Civil Procedure, the court **DENIES** the motion. As to the request to dismiss under Rule 37(d), the court **GRANTS relief different than requested** in the form of an award of reasonable expenses, including attorney fees, against plaintiff and in favor of defendant

for the time and expense incurred as a result of plaintiff's lack of response to the discovery served on him and failure to appear for his deposition, and the costs incurred in bringing this motion. The court **GRANTS** defendant until **December 8, 2016** to file a request for these attorney fees and expenses, itemized by task and time expended where appropriate. Plaintiff is **ORDERED** to file his response, if any, on or before **December 22, 2016**.

The court **GRANTS** plaintiff a final extension to file responses to the outstanding discovery requests and **EXTENDS** the discovery deadline to allow defendant time to reschedule plaintiff's deposition. The length of the extension and the new discovery deadline will be set by Magistrate Judge Cherry in a separate order. The court also **WARNS** plaintiff that this cause of action will likely be dismissed pursuant to Federal Rule of Civil Procedure 37(d) or 41(b) if he fails to (1) respond to discovery requests, (2) appear for his deposition, if he receives notice of one, or (3) prosecute this cause of action.

**SO ORDERED.**

Date: November 8, 2016

s/ James T. Moody \_\_\_\_\_  
JUDGE JAMES T. MOODY  
UNITED STATES DISTRICT COURT