UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

JEREMY FOLL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	3:13-cv-00169-RLY-WGH
PREFERRED HEALTH PLAN, INC.,	)	
	)	
Defendant.	)	

ORDER ON DEFENDANT'S RENEWED MOTION TO DISMISS

Plaintiff, Jeremy Foll, is a plan participant in the OFS Brands, Inc., Employee Health Plan (the "Plan"). On June 17, 2013, he filed a Complaint against the Defendant, Preferred Health Plan, Inc. ("PHP"), in Dubois County, Indiana, Superior Court, Small Claims Division. Under the heading "Statement of Claim," Plaintiff wrote "unpaid hospital accounts turned into insurance." PHP removed Plaintiff's Complaint to this court on August 21, 2013, on grounds that Plaintiff's state law claim is preempted by the Employment Retirement Income Security Act of 1974, as amended ("ERISA").

On August 28, 2013, PHP filed a motion to dismiss for failure to state a claim on two grounds: (1) PHP is not a fiduciary within the meaning of 29 U.S.C. § 1002(21)(A), and thus, is not a proper party to this lawsuit; and (2) Plaintiff failed to submit a claim for unpaid welfare benefits as required by the Plan, and therefore, failed to exhaust his administrative remedies prior to filing suit. Plaintiff, who is proceeding *pro se*, did not

respond to this motion. Nevertheless, on October 7, 2013, the court denied the motion because the Plan was not referenced in, nor attached to, Plaintiff's Small Claims Complaint, leaving Defendant's motion unsubstantiated. The court also ordered the Plaintiff to file an Amended Complaint, compliant with Rules 8(a)(2) and 10 of the Federal Rules of Civil Procedure, to explicitly state the legal injury and provide a clear statement of relief within thirty (30) days of the court's Order.

On November 11, 2013, PHP filed a renewed motion to dismiss, with a copy of the Plan attached as an exhibit. Plaintiff did not respond nor file an Amended Complaint as ordered by the court. The court finds, given the record in this case and the Plaintiff's failure to comply with the court's Order, that this action should be dismissed with prejudice. Defendant's Renewed Motion to Dismiss (Docket # 11) is therefore **GRANTED with prejudice**.

SO ORDERED this 12th day of December 2013.

RICHARD L. YOUNG, CHIEF JUDGE
United States District Court
Southern District of Indiana

Distributed Electronically to Registered Counsel of Record.

Distribution by first-clas U.S. Mail to:

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