

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNIVERSITY OF WISCONSIN HOSPITAL
AND CLINICS, INC.,

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY,
ADP TOTAL SOURCE INC. HEALTH AND WELFARE PLAN
and ADP TOTALSOURCE, INC.,

Defendants.

ORDER

13-cv-197-bbc

Plaintiff University of Wisconsin Hospital and Clinics, Inc. is suing defendants Aetna Life Insurance Company, ADP TotalSource Inc. Health and Welfare Plan and ADP TotalSource, Inc. under the Employee Retirement Income Security Act for refusing to pay the medical bills of a patient. Plaintiff's amended complaint includes four counts: (1) denial of benefits, in violation of 29 U.S.C. § 1132(a)(1)(B); (2) breach of fiduciary duty; (3) attorney fees; and (4) denial of benefits, in violation of 29 U.S.C. § 1133.

Defendants have filed a motion a to dismiss the second, third and fourth counts. Dkt. #7. They argue that ERISA does not provide a cause of action for breach of fiduciary duty under the circumstances of this case; a request for attorney fees is not a separate claim; and § 1133 does not provide a cause of action for a denial of benefits.

Plaintiff's deadline for filing an opposition brief was July 12, 2013, but it has not filed

a brief or a request for an extension of time. By failing to respond to the motion, plaintiff has forfeited the three claims at issue. Kirksey v. R.J. Reynolds Tobacco Co., 168 F.3d 1039, 1041 (7th Cir.1999) (“Our system of justice is adversarial, and our judges are busy people. If they are given plausible reasons for dismissing a complaint, they are not going to do the plaintiff’s research and try to discover whether there might be something to say against the defendants’ reasoning.”); Stransky v. Cummins Engine Co., Inc., 51 F.3d 1329, 1335 (7th Cir. 1995) (“[W]hen presented with a motion to dismiss, the non-moving party must proffer some legal basis to support his cause of action. The federal courts will not invent legal arguments for litigants.”).

ORDER

IT IS ORDERED that the motion filed by defendants Aetna Life Insurance Company, ADP TotalSource Inc. Health and Welfare Plan and ADP TotalSource, Inc. to dismiss the second, third and fourth counts of plaintiff’s University of Wisconsin Hospital and Clinics, Inc.’s amended complaint, dkt. #7, is GRANTED. The complaint is DISMISSED as to those three claims.

Entered this 10th day of September, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge