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United States District Court, W.D. Kentucky.

RICHARD JOHNSON, Plaintiff,
v.
LINCOLN LIFE ASSURANCE COMPANY OF BOSTON et al., Defendants.

Civil Action No. 3:22-cv-626-DJH-CHL
|
Filed 11/09/2023

Attorneys and Law Firms

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MEMORANDUM AND ORDER

David J. Hale, Judge United States District Court

***1** Plaintiff Richard Johnson initiated this action in Jefferson Circuit Court against his former employer, Lantech.com, as well as Lincoln Life Assurance Company of Boston and the Lincoln National Life Insurance Company (collectively referred to as Lincoln). (Docket No. 1-2) Johnson asserts the following causes of action: (1) violation of the Employment Retirement Income Security Act of 1974 (**ERISA**) against Lincoln; (2) breach of contract against Lincoln; (3) breach of contract against Lantech; and (4) unjust enrichment against Lantech. (D.N. 1-2, PageID.20–24) Johnson also claims that he is entitled to recover from Lantech under the doctrine of promissory estoppel. (*Id.*) The defendants removed the case to federal court. (D.N. 1-1) Pursuant to Federal Rule of Civil Procedure 12(b)(6), Lantech moves for dismissal, and Lincoln moves for partial dismissal. (D.N. 11; D.N. 13) Johnson only responded to Lantech's motion to dismiss. (D.N. 20) After careful consideration, the motions will be granted for the reasons set forth below.

I.

The Court "takes the facts only from the complaint, accepting them as true as [it] must do in reviewing a 12(b)(6) motion." *Siefert v. Hamilton Cnty.*, 951 F.3d 753, 757 (6th Cir. 2020) (citing Fed. R. Civ. P. 12(b)(6)). Johnson, an engineer, "was employed by Lantech from August 22, 1981[,] through July 30, 2017." (D.N. 1-2, PageID.14 ¶ 19) During that time, he was eligible for and participated in Lantech's "long-term disability insurance plan." (*Id.* at ¶¶ 20–21) The plan was administered "by Lincoln and its predecessor Liberty Life Assurance Company of Boston." (*Id.* at ¶¶ 22–23) "On or about January 27, 2017," Johnson became disabled. (*Id.* at ¶ 17) As a result, "he was unable to perform the material and substantial duties of his own occupation" or any other occupation. (*Id.*, PageID.15 ¶¶ 17–18) "[A]ccording to healthcare providers," Johnson is "permanently and totally disabled." (*Id.* at ¶ 18) Shortly after his disability's onset, Lantech "presented [Johnson] with a confidential Release Agreement," and he agreed to its terms. (*Id.* at ¶¶ 19–20) Johnson applied "for short-term and long-term disability benefits under the disability plan administered by Lincoln." (*Id.* at ¶ 21) On or about July 30, 2017, he was approved for both short-term and long-term disability benefits under the plan. (*Id.* at ¶ 22) Because of "the terms of the long-term disability plan," Johnson also "applied for Social Security disability benefits" with the Social Security Administration (SSA). (*Id.* at ¶ 23) The SSA ruled him disabled. (*Id.* at ¶¶ 23–24)

Although Lincoln and the SSA found that Johnson was disabled, Lincoln "withheld disability benefits" from Johnson "during the first thirty-seven (37) weeks of eligibility." (*Id.*, PageID.15–16 ¶ 25) Johnson claims that this decision was made "under the erroneous theory that [a] payment made by Lantech to Mr. Johnson under their confidential Release Agreement off-set the amounts which Lincoln was obligated to pay pursuant to approving Mr. Johnson to receive long-term disability under the disability insurance plan it administered for Lantech." (*Id.*, PageID.16 ¶ 25) Lincoln ceased paying disability benefits in December 2018 "upon its conclusion that Johnson was 'no longer disabled' because updated medical records documenting [Johnson's] continuing disability were not available." (*Id.* at ¶ 32) The withheld payments totaled $90,500.00. (*Id.* at ¶ 31) On August 1, 2019, Lincoln "reinstated payment of long-term disability benefits to Johnson"; however, several months later—during the beginning of the **COVID-19** pandemic—Lincoln "discontinued paying long-term disability benefits" for the second time. (*Id.*, PageID.17 ¶¶ 33–34) Johnson was informed of this decision on March 12, 2020. (*Id.* at ¶ 35) According to Johnson, the disability benefits were terminated " 'to evaluate whether or not he ... continued to meet the ... definition of disability' set forth in Lantech's LTD Policy." (*Id.* at ¶ 37) Johnson maintains that his healthcare providers have "never questioned or expressed any doubts regarding the permanency and totality of his disability." (*Id.*, PageID.18 ¶ 45)

***2** Johnson sued Lantech and Lincoln, alleging violations of **ERISA**, breach of contract, and unjust enrichment. (D.N. 1-2, PageID.20–24) Johnson also asserts that he is entitled to recover from Lantech under the doctrine of promissory estoppel. (*Id.*) Lantech moves for dismissal, and Lincoln moves for partial dismissal. (D.N. 11; D.N. 13) Both defendants argue that Johnson's state-law claims are preempted by **ERISA**. (D.N. 11; D.N. 13) Johnson did not respond to Lincoln's motion, and in response to Lantech's motion, Johnson only asserts that his breach-of-contract claim against Lantech is not preempted. (D.N. 20, PageID.209–10) The Court will evaluate both motions to dismiss in turn.

II.

To survive a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Factual allegations are essential; "[t]hreadbare recitals of the elements of a cause of action, supposed by mere conclusory statements, do not suffice," and the Court need not accept such statements as true. *Id.* If a complaint's "well-pleaded facts do not permit the court to infer more than mere possibility of misconduct," then it fails to show that the plaintiff "is entitled to relief," Fed. R. Civ. P. 8(a)(2), and thus will not withstand a motion to dismiss. *Iqbal*, 556 U.S. at 679.

A. ERISA Preemption

"There are two forms of **ERISA** preemption: express preemption (which applies broadly) and complete preemption (which applies narrowly)." *Lowe v. Lincoln Nat'l Life Ins. Co.*, 821 F. App'x 489, 491 (6th Cir. 2020) (quoting *K.B. ex rel. Qassis v. Methodist Healthcare -Memphis Hosps.*, 929 F.3d 795, 800 (6th Cir. 2019)). Lantech and Lincoln invoke **ERISA's** express-preemption clause to assert that Johnson's state-law claims should be dismissed. (*See* D.N. 11; D.N. 13) "If express preemption applies, the state-law claims 'should be dismissed with prejudice.' " *Lowe*, 821 F. App'x at 491 (quoting *Loffredo v. Daimler AG*, 500 F. App'x 491, 500 (6th Cir. 2012)).

ERISA's express-preemption clause, 29 U.S.C. § 1144(a), is broad because Congress intended to "establish pension regulation as exclusively a federal concern." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981). The clause provides that "the **ERISA** remedial scheme 'shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan' covered by the statute." *Briscoe v. Fine*, 444 F.3d 478, 497 (6th Cir. 2006) (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96–97 (1983)); *see* 29 U.S.C. § 1144(a). The Supreme Court has explained that a state-law claim " 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw*, 463 U.S. at 96–97 (citing Black's Law Dictionary 1158 (5th ed. 1979)). Consistent with *Shaw*, the Sixth Circuit has "repeatedly recognized

that virtually all state law claims relating to an employee benefit plan are preempted by **ERISA**." *Cromwell v. Equicor-Equitable HCA Corp.*, 944 F.2d 1272, 1276 (6th Cir. 1991) (collecting cases); *see, e.g., Smith v. Commonwealth Gen. Corp.*, 589 F. App'x 738, 744 (6th Cir. 2014) ("**ERISA** broadly pre-empts state laws that relate to an employee-benefit plan." (quoting *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 733 (1985))).

The Sixth Circuit has further instructed that "the express-preemption inquiry should 'consider the kind of relief that [the plaintiff] seek[s], and its relation to the pension plan." *Lowe*, 821 F. App'x at 492 (quoting *Ramsey v. Formica Corp.*, 398 F.3d 421, 424 (6th Cir. 2005)). And the Sixth Circuit has identified three types of state laws that are preempted by **ERISA**: "state laws that (1) 'mandate employee benefit structures or their administration;' (2) provide 'alternate enforcement mechanisms;' or (3) 'bind employers or plan administrators to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an **ERISA** plan itself.' " *Id.* (quoting *Penny/Ohlmann/Nieman, Inc. v. Miami Valley Pension Corp.*, 399 F.3d 692, 697 (6th Cir. 2005)) (hereinafter *PONI*). Thus, depending on the case, a court's analysis of the express-preemption issue will "consider whether the state law itself is preempted by **ERISA**, or 'whether a state-law claim relates to plans covered by **ERISA**.' " *Id.* (quoting *Briscoe*, 444 F.3d at 497). Here, the Court takes the latter approach.

1. Claim Against Lincoln

***3** Johnson's state-law claim against Lincoln alleges breach of contract. (D.N. 1-2, PageID.22 ¶¶ 75–78) Specifically, Johnson alleges that Lincoln breached the parties' contract—that is, the "long term disability insurance policy"—by (1) "discontinu[ing] payment of long-term benefits" and (2) "ceasing payments and subsequently failing to make factual findings regarding [his] ability to perform essential functions/duties of any occupation." (*Id.* at ¶¶ 76–77) He further alleges that the decision to cease payments contravened "the evidence of record establishing" that he was still eligible for benefits. (*Id.* at ¶ 78) Johnson seeks, in part, "payment of disability benefits due to him as calculated from [the] date which benefits were withheld and/or ceased until judgment [is] awarded to him by the Court." (*Id.*, PageID.24) Lincoln argues that this claim is preempted by **ERISA** because it "directly 'relates to' the disability plan." (D.N. 13, PageID.190–92) Johnson did not respond to Lincoln's motion to dismiss; nevertheless, the Court is "required, at a minimum, to examine the movant's ... motion to dismiss for failure to state a claim" and assess its merits. *Carver v. Bunch*, 946 F.2d 451, 455 (6th Cir. 1991).

Even "tak[ing] the facts only from the complaint" and "accepting them as true," *Siefert*, 951 F.3d at 757 (citing Fed. R. Civ. P. 12(b)(6)), the Court concludes that Johnson's breach-of-contract claim is preempted by **ERISA** and must be dismissed. The claim relates to disability benefits, which are regulated by an **ERISA** plan. Johnson specifically references the **ERISA** plan in his allegations, and he claims that "equity require[s] that Lantech and/or Lantech's Plan Administrator/Lincoln remedy this matter by reimbursing $90,500.00 in previously withheld/offset benefits." (D.N. 1-2, PagID.22–24) The Sixth Circuit has explained that "it is not the label placed on the state law claim that determines whether it is preempted, but whether in essence such a claim is for the recovery of an **ERISA** plan benefit." *Cromwell*, 944 F.2d at 1276 (citing *Scott v. Gulf Oil Corp.*, 754 F.2d 1499 (9th Cir. 1985)); *see, e.g., Marks v. Newcourt Credit Grp. Inc.*, 342 F.3d 444, 453 (6th Cir. 2003) ("In deciding whether state-law claims are preempted by **ERISA**, we have focused on the remedy sought by the plaintiffs." (citing *Lion's Volunteer Blind Indus., Inc. v. Automated Group Admin., Inc.*, 195 F.3d 803, 806 (6th Cir. 1999))). Moreover, Johnson's state-law claim against Lincoln "does not seek to correct any violation of a legal duty that is independent of **ERISA**." *Howard v. Prudential Ins. Co. of Am.*, 248 F. Supp. 3d 862, 867 (W.D. Ky. 2017). Thus, the breach-of-contract claim is expressly preempted by **ERISA**, and the Court will grant the partial motion to dismiss. *Id.* (dismissing a state-law claim that (1) related to a policy that was regulated by **ERISA** and (2) did "not seek to correct any violation of a legal duty" independent of **ERISA**).

2. Claims Against Lantech

a. Breach of Contract

Johnson also asserts a state-law breach-of-contract claim against Lantech. (D.N. 1-2, PageID.22–23 ¶¶ 79–82) Johnson alleges that Lantech breached the parties' contract by "not adher[ing] to the terms of the confidential Release Agreement." (*Id.*,

PageID.22 ¶ 80) Johnson describes the breach as "[t]he disclosure and characterization of the confidential Release Agreement to Lincoln." (*Id.*, PageID.16 ¶ 27) Johnson contends that because of Lantech's breach he has "been deprived of enjoyment of $90,500.00." (*Id.* at ¶ 81) And Johnson "seeks compensation" for his loss. (*Id.* at ¶ 82) Lantech moves for dismissal of this claim, arguing that it is preempted by **ERISA** because "[it] directly relate[s] to the **ERISA**-covered plan sponsored by Lantech and administrated by Lincoln." (D.N. 11-1, PageID.159) Lantech contends that any duty it owed to Johnson arose from the plan, "not an independent source from within Kentucky's statutory or common law." (*Id.*) According to Lantech, Johnson is seeking a state-law remedy "that provide[s] an alternative enforcement mechanism to **ERISA's** statutory remedies." (*Id.*) In his response, Johnson insists that his "claim against Lantech for violating the confidentiality provision of th[e release] agreement is not subject to **ERISA** preemption" because it "arises from a legal duty which is unrelated to employee benefits" and the release agreement "neither mentions nor involves employee benefits." (D.N. 20, PageID.209 (citing *Qassis*, 929 F.3d at 802)) [1]

i. Express Preemption

***4** The Court first considers Johnson's argument that his breach-of-contract claim is not preempted by **ERISA** because it arises out of the parties' release agreement rather than any duty imposed by **ERISA**. (D.N. 20, PageID.209) **ERISA's** express preemption clause was intended to "give effect to Congress's intent 'that the civil enforcement provisions of **ERISA** § 502(a) be the exclusive vehicle for actions by **ERISA**-plan participants and beneficiaries asserting improper processing of a claim for benefits.' " *Ramsey*, 398 F.3d at 424 (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 52 (1987)). The preemption provision thus bars state-law claims that amount to "alternate enforcement mechanisms" for **ERISA** rights. *see Lowe*, 821 Fed. App'x at 492. It does not, however, reach state-law claims that "attempt to correct [a] violation of a legal duty independent of **ERISA**." *Howard*, 248 F. Supp. 3d at 867.

Johnson's breach-of-contract claim is based on two alleged breaches by Lantech: the disclosure and characterization of the confidential agreement to Lincoln (D.N. 1-2, PageID.16 ¶ 27) and the "withholding/off-setting of long-term disability payments owed to Mr. Johnson by Lantech's Plan Administrator." (*Id.*, PageID.16 ¶ 28-29) The second "breach," withholding disability payments owed by the "Plan Administrator," is a violation of Johnson's rights under the benefit plan rather than his rights under the confidential release agreement. Johnson's breach-of-contract claim seeking to remedy this second alleged breach is thus an alternative enforcement mechanism for his **ERISA** rights and is expressly preempted under § 1144(a). *See Lowe*, 821 Fed. App'x at 492.

The breach-of-contract claim based on the first alleged breach, by contrast, seeks to enforce the confidentiality clause of a severance agreement. [2] (D.N. 1-2, PageID.16 ¶ 27; *Id.*, PageID.14 ¶ 80-82) Although Johnson alleges that Lantech's breach of confidentiality caused Lincoln to violate the terms of the benefit plan, that would give Johnson a claim to enforce his **ERISA** rights against Lincoln, not against Lantech. The only claim against Lantech arising from the breach of confidentiality is a conventional breach-of-contract action for damages caused by the disclosure. *See, e.g., Linton v. Streetsboro City Sch. Dist. Bd. of Educ.*, 162 F. App'x 532, 534 (6th Cir. 2006) (affirming verdict and damages award to plaintiff for breach of contract due to employer's breach of the confidentiality provision of the severance agreement); *Kuklinski v. Lew*, No. 3:14-CV-00843-CRS-DW, 2017 WL 360920, at *4 (W.D. Ky. Jan. 24, 2017) (finding breach of confidentiality claim was not preempted by Title VII because it was properly brought as a breach of contract action). That Johnson uses the value of the benefits that he lost because of Lantech's disclosure of the severance agreement as the measure of damages (D.N. 1-2, PageID.22-23 ¶ 81-82), does not make his claim an "alternate enforcement mechanism" or trigger express preemption under § 1144(a). *See Lowe*, 821 Fed. App'x at 492; *Marks v. Newcourt Credit Grp., Inc.*, 342 F.3d 444, 453 (6th Cir. 2003) ("Because he seeks damages equaling the benefits he would have received under the plan, it seems at first glance that [plaintiff's] claims relate to an **ERISA** benefit plan. However, a close reading of [the] complaint reveals that the reference to plan benefits was only a way to articulate "specific, ascertainable damages." (citing *Wright v. Gen. Motors Corp.*, 262 F.3d 610, 615 (6th Cir. 2001))).

Because Johnson's breach-of-contract claim seeks to correct a violation of the confidentiality clause of the release agreement——"a legal duty independent of **ERISA**"—it does not operate as an alternate enforcement mechanism for Johnson's

ERISA rights and the Court will not apply **ERISA's** express-preemption clause. *See Lowe*, 821 Fed. App'x at 492; *Howard*, 248 F. Supp. 3d at 867. Instead, the Court will analyze Johnson's breach-of-contract claim under the standard Rule 12(b)(6) analysis. *See* Fed. R. Civ. P. 12(b)(6).

ii. Breach of Contract

***5** "To plead breach of contract under Kentucky law, a plaintiff[ ] must plead the following elements: (1) a contract existed; (2) ... the contract was breached; and (3) damages resulted from the breach." *Robards v. BLK Out Transp.*, 623 F. Supp. 3d 810, 821 (W.D. Ky. 2022) (citing *Barnett v. Mercy Health Partners-Lourdes, Inc.*, 233 S.W. 3d 723, 727 (Ky. Ct. App. 2007)). It is undisputed that the confidential release agreement was a contract between Johnson and Lantech. [3] (D.N. 21-2, PageID.234–35) Thus, prong one is satisfied. *See Robards*, 623 F. Supp. 3d at 821. Johnson contends that Lantech breached the agreement by "providing a copy" of it to Lincoln. (D.N. 20, PageID.208) Lantech maintains that the breach-of-contract claim fails because, "as the fiduciary of the **ERISA**-regulated disability benefit plan at issue, [it] had a duty to comply with the plan documents which required it to disclose relevant employee information to Lincoln." (D.N. 21, PageID.217–220)

To start, the parties identified the release agreement as a "severance agreement." (D.N. 21-2, PageID.234 ("[Johnson] acknowledges the receipt of said amount, which is severance pay that [Johnson] is not otherwise entitled to receive. Per this severance agreement, $90,500.00 ... will be paid to [him] in a lumpsum payment.")) Thus, the Court will give effect to the parties' description of the agreement and payment. *See Henderson v. Skyview Satellite Networks, Inc.*, 474 F. Supp. 3d 893, 904 (W.D. Ky. 2020) ("Under well-settled contract law in Kentucky, '[i]n the absence of ambiguity a written instrument will be strictly enforced according to its terms.' " (quoting *Mounts v. Roberts*, 388 S.W.2d 117, 119 (Ky. 1965))). And the release agreement states, in part:

> [Johnson] and Lantech agree that they will keep the terms, conditions[,] and existence of this Agreement and Release confidential. [Johnson] and Lantech agree that each may discuss such matters only with their spouses, attorneys[,] and accountants or tax preparers. To the extent either party is permitted to disclose and does disclose such information, each agrees to require and warrants that the person receiving such information shall maintain its confidentiality.

(D.N. 21-2, PageID.234)

The Court must also "give effect to the unambiguous terms" of the plan. *Barber v. Lincoln Nat'l Life Ins. Co.*, 260 F. Supp. 3d 855, 860 (W.D. Ky. 2017), *aff'd*, 722 F. App'x 470 (6th Cir. 2018) (quoting *Perez v. Aetna Life Ins. Co.*, 150 F.3d 550, 556 (6th Cir. 1998)). The plan provides, in part, "[t]o figure [out] the amount of Monthly Benefit: ... Deduct Other Income Benefits and Other Income Earnings." (D.N. 21-7, PageID.267) "Other Income Earnings" is defined, in part, as: "the amount of earnings the Covered Person earns or receives from any form of employment including *severance.*" (D.N. 21-7, PageID.275 (emphasis added)) And finally, the plan requires that Lantech—the sponsor of the plan—"furnish at regular intervals to [Lincoln]" the following information: (1) "information relative to Employees" "who qualify to become insured"; "whose amounts of insurance change"; and "whose insurance terminates"; and (2) "any other information about th[e plan] that may be reasonably required." (*Id.*, PageID.285) It also provides that Lincoln can inspect Lantech's records "at any reasonable time" if any records are deemed to "have bearing" on the plan (*id.*), and that Lincoln can terminate the plan if Lantech fails to "furnish promptly any information which [Lincoln] may reasonably require" or "perform any other obligation pertaining to th[e plan]." (*Id.*, PageID.283)

***6** The release agreement explicitly allows Lantech to furnish the agreement's confidential information to other parties when permitted. (D.N. 21-2, PageID.234) Further, **ERISA** requires Lantech to "discharge [its] duties with respect to a plan solely

in the interest of the participants and beneficiaries and ... in accordance with the documents and instruments governing the plan." 29 U.S.C. § 1104(a)(1)(D). Pursuant to the plan, Lantech must give Lincoln any "information about th[e plan] that may be reasonably require[d]." (D.N. 21-7, PageID.285) Lincoln needed to know of the severance payout to accurately calculate Johnson's benefit eligibility. (*See* D.N. 21-7, PageID.267, 275) Therefore, because **ERISA** mandates plan compliance, Lantech was permitted—as contemplated by the release agreement's plain text (D.N. 21-2, PageID.234)—to disclose the severance to Lincoln. Lantech thus abided with the release agreement's unambiguous terms. *See Barber*, 260 F. Supp. 2d at 860; *Robards*, 623 F. Supp. 3d at 821 (citing *Barnett*, 233 S.W. 3d at 727). Accordingly, Johnson cannot establish that a breach of the agreement, and this claim will be dismissed. *See id.*

b. Unjust Enrichment and Promissory Estoppel

Lantech next moves to dismiss Johnson's unjust-enrichment and promissory-estoppel claims. (D.N. 1-2, PageID.88–89 ¶¶ 89–94) Johnson alleges that (1) "a benefit was conferred upon Lantech via Mr. Johnson entering into a confidential Release Agreement with" Lantech; (2) "the benefit was enjoyed by Lantech including Mr. Johnson releasing and not pursuing any actions against his former employer"; (3) and [t]he enjoyment of these benefits by Lantech was inequitable because Mr. Johnson was deprived of payment for these benefits due to Lantech's Plan Administrator off-setting payment of benefits otherwise owed to Mr. Johnson." (*Id.* at ¶¶ 84–86) Johnson argues in the alternative that "a benefit was inequitably conferred upon Lincoln in retaining benefits otherwise owed to Mr. Johnson and its retention of these benefits is inequitable." (*Id.* at ¶ 87) Lantech argues that the unjust-enrichment and promissory estoppel claims are preempted by **ERISA** because "[they] directly relate[ ] to the **ERISA**-covered plan sponsored by Lantech and administrated by Lincoln" (D.N. 11-1, PageID.159), and are "derivative of" the breach-of-contract claim. (*Id.*, PageID.162–63) Johnson did not address these arguments in his response. (*See* D.N. 20) The Court therefore deems the unjust-enrichment and promissory-estoppel claims abandoned, and they will be dismissed. *See Bazinski v. JPMorgan Chase Bank, N.A.*, 597 F. App'x 379, 380-81 (6th Cir. 2015) (affirming dismissal where district court found several claims abandoned through plaintiff's failure to address them in response to motion to dismiss).

B. Jury Trial

The defendants next move to dismiss Johnson's request for a jury trial on the ground that Johnson is not entitled to a jury trial under **ERISA**. (D.N. 11-1, PageID.164–65; D.N. 13, PageID.193) Johnson did not address these arguments in his response. (*See* D.N. 20) As an initial matter, "**ERISA** does not include any provisions regarding the right to a jury trial." *Howard*, 248 F. Supp. 3d at 868. And the "Sixth Circuit has held that **ERISA** claims are equitable in nature and thus not eligible for a jury trial." *Id.* (citing *Wilkins v. Baptist Healthcare Sys.*, 150 F.3d 609, 616 (6th Cir. 1998); *Bair v. Gen. Motors Corp.*, 895 F.2d 1094, 1096 (6th Cir. 1990)). Thus, Johnson cannot rely on **ERISA** to support his request for a jury trial, *id.*, and "any right to trial by jury must arise under the Seventh Amendment." *Id.* But the Sixth Circuit "has determined that 'the Seventh Amendment does not guarantee a jury trial in **ERISA** ... cases.' " *Id.* (quoting *Reese v. CNH Am. LLC*, 574 F.3d 315, 327 (6th Cir. 2009)). Accordingly, the Court agrees that Johnson is not entitled to a jury trial, and the Court will deny his request. *See id.*

C. Compensatory, Consequential, and Incidental Damages

The defendants finally move to dismiss Johnson's request for "[c]ompensatory, consequential[,] and incidental damages in a sum fairly reasonable to compensate [him] for damages proven at trial." (D.N. 11-1, PageID.165; D.N. 13, PageID.193) They contend that any damages recovered by Johnson are limited to those set out in **ERISA's** remedial provision, 29 U.S.C. § 1132(a)(1). (D.N. 11-1, PageID.165; D.N. 13, PageID.193) Johnson did not address these arguments in his response. (*See* D.N. 20)

***7** Section 1132(a)(1)(A) provides that a plan participant may "recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." § 1132(a)(1)(A). It does not, however, expressly provide for compensatory, consequential, or incidental damages. *See id.* And the Supreme Court "has noted that '[t]he six carefully integrated civil enforcement provisions found in [**ERISA**] provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly.' " *Howard*, 248 F. Supp. 3d

at 868 (quoting *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985)). Thus, Johnson's "recovery is limited to benefits allegedly due under the insurance policy, and, depending on the proof that develops, [Johnson] may seek to recover attorney fees under § 1132(g)." *Id.* Accordingly, Johnson may not recover compensatory, consequential, or incidental damages. *See id.*

III.

For the reasons set forth above, and the Court being otherwise sufficiently advised, it is hereby

ORDERED as follows:

(1) Lantech's motion to dismiss (D.N. 11) is **GRANTED**. The Clerk of Court is **DIRECTED** to terminate Lantech.com as a defendant in the record of this matter.

(2) Lincoln's partial motion to dismiss (D.N. 13) is **GRANTED**. Johnson's breach-of-contract claim against Lincoln (Count 2) is **DISMISSED** with prejudice.

(3) Johnson's request for a jury trial (D.N. 1-2, PageID.24) is **DENIED**.

(4) Johnson's request for compensatory, consequential, and incidental damages (D.N. 1-2, PageID.24) is **DENIED**.

(5) The Court requests that Magistrate Judge Colin H. Lindsay schedule a status conference with the parties to set a final bench-trial schedule as to Count 1 and, at his discretion, a settlement conference.

All Citations

Not Reported in Fed. Supp., 2023 WL 12175309

Footnotes

1 *Qassis* addressed complete, rather than express, preemption. *See* 929 F.3d at 798. It thus is inapposite here.

2 As discussed below, the parties describe the release agreement as a "severance agreement." (D.N. 21-2, PageID.234)

3 The Court may properly consider both the agreement, which was attached to the motion to dismiss, as well as the plan, which was attached to the complaint, without converting the 12(b)(6) motion to a motion for summary judgment because the attachments are "referred to in the complaint and [are] central to [Johnson's] claim[s]." *Peach v. Hagerman*, No. 4:22-CV-000133-RGJ, 2023 WL 3826461, at *2 (W.D. Ky. June 5, 2023) (quoting *Greenberg v. Life Ins. Co. of Va.*, 177 F.3d 507, 514 (6th Cir. 1999)).

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