

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

BARBARA LINK,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-05-0808
	§	
INTERNATIONAL UNION OF PUBLIC AND	§	
INDUSTRIAL WORKERS CANADIAN	§	
BENEFIT FUND, <i>et al.</i> ,	§	
<i>Defendants.</i>	§	

MEMORANDUM AND RECOMMENDATION

Defendants International Union of Industrial Workers Canadian Benefit Fund, Oak Tree Administrators, Inc., and First Class Administrators, Inc. have filed a motion to dismiss, under Federal Rule of Civil Procedure 12(b)(6), those portions of plaintiff Barbara Link’s complaint asserting state law causes of action as preempted by the Employee Retirement Income Security Act of 1974. *See* Dkt. 12. Link has not filed a response, so the court takes the motion as unopposed. *See* S.D. Tex. Loc. R. 7.4 (“Failure to respond will be taken as a representation of no opposition”).

The motion is well-taken on substantive grounds as well. “Plaintiff brings this action pursuant to the provisions of the Employee [Retirement] Income Security Act (“ERISA”) ... and other applicable law both State and Federal due to the improper denial of her health care benefits ... [and] seeks compensatory damages for claims of breach of contract, bad faith, fraud, conversion, negligence, infliction of emotional distress and negligent misrepresentation under the laws of the State of Texas” Dkt. 3, Pl.’s Am.

Compl. To the extent that Link is seeking to recover benefits due her under the terms of an ERISA-governed plan, ERISA provides the exclusive remedy, and preempts her state law claims. *See, e.g., Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 52 (1987) (state law contract and tort claims asserting improper processing of a claim for benefits under an insured employee benefit plan are preempted by ERISA); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 62-63 (1987) (any state law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy is preempted); *Hermann Hosp. v. MEBA Medical & Benefits Plan*, 845 F.2d 1286, 1290 (5th Cir. 1988) (“ERISA preempts all state law claims which ‘relate to any employee benefit plan’”). Therefore, the court recommends the motion to dismiss Link’s state law causes of action be granted.

The parties have ten days to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. P. 72.

Signed on August 11, 2005, at Houston, Texas.

  
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Stephen Wm Smith  
United States Magistrate Judge