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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHEEMA KOLOFF,)	Case No.: 1:11-cv-00195 OWW DLB
)	
Plaintiff,)	
)	ORDER RE BRIEFING ON EXHAUSTION OF
v.)	ADMINISTRATIVE REMEDIES
)	
METROPOLITAN LIFE INSURANCE)	
COMPANY,)	
)	
Defendant.)	

On January 5, 2012, the Court conducted the settlement conference in this matter. At the time, the issue of Plaintiff’s failure complete an administrative appeal was presented by the parties. The Court expressed an intention to require briefing on topics related to the exhaustion issue and its impact on these proceedings. As a result, counsel conferred with their clients and indicated that they wished to consent to Magistrate Judge jurisdiction for the limited purpose of deciding what would be treated as dispositive motion on this issue.

Given this background, and though recognizing that the failure to exhaust administrative remedies is “prudential rather than jurisdictional” (Mack v. Kuckenmeister, 619 F.3d 1010, 1020 (9th Cir. 2010)), the Court **ORDERS:**

1. The parties SHALL brief the following issues:
 - a. Whether Plaintiff failed to exhaust her administrative remedies,

1 b. If Plaintiff failed to exhaust her administrative remedies, whether she
2 should be relieved of her obligation to exhaust her administrative
3 remedies,

4 c. If Plaintiff should not be excused from exhausting her administrative
5 remedies, whether the matter should be dismissed or remanded for further
6 administrative proceedings,

7 d. Any other related topics deemed pertinent by counsel.

8 2. Opening briefs SHALL be filed no later than January 27, 2012;

9 3. Responding briefs SHALL be filed no later than February 10, 2012;

10 4. Based upon the oral consent of the parties to the Magistrate Judge's jurisdiction
11 for this motion only, the telephonic hearing on this motion SHALL occur on
12 February 22, 2012 at 10 a.m. before Magistrate Judge Thurston. The parties'
13 request to appear via teleconference is GRANTED. Counsel SHALL determine
14 which of them will initiate the conference call. Once all counsel are on the line,
15 the call SHALL be placed to chambers at (661) 326-6624;

16 5. Counsel are ORDERED to file their consent to the Magistrate Judge jurisdiction
17 for the limited purpose of this motion, no later than January 10, 2012;

18 6. The Clerk of the Court is DIRECTED to provide a copy to the parties of the
19 Magistrate Judge the modified "consent form" reflecting the limited purpose
20 consent.

21 IT IS SO ORDERED.

22 Dated: January 5, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE