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FARMERS GROUP DISABILITY INCOME PLAN, and  
7 LIBERTY LIFE ASSURANCE COMPANY OF BOSTON

8  
9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11  
12 NARCISIO CUARESMA, JR.,  
13 Plaintiff,  
14 v.  
15 FARMERS GROUP DISABILITY INCOME  
PLAN, an ERISA Plan, and LIBERTY LIFE  
16 ASSURANCE COMPANY OF BOSTON,  
17 Defendants.

Case No. 2:15-CV-02192-JAM-EFB

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT  
ON THEIR SIXTH AFFIRMATIVE  
DEFENSE FOR FAILURE TO  
EXHAUST ADMINISTRATIVE  
REMEDIES [FRCP 56]**

Date: September 6, 2016  
Time: 1:30 p.m.  
Judge: Hon. John A. Mendez

18  
19 The Motion for Summary Judgment of Defendants Liberty Life Assurance Company of  
20 Boston and the Farmers Group Disability Income Plan, pursuant to Rule 56 of the Federal Rules  
21 of Civil Procedure, came on regularly for hearing before this Court on September 6, 2016 at 1:30  
22 p.m., in Courtroom 6, 14<sup>th</sup> Floor, the Honorable John A. Mendez presiding. Robert M. Forni, Jr.  
23 of Ropers, Majeski, Kohn & Bentley appeared on behalf of Defendants. Laurence F. Padway of  
24 the Law Offices of Laurence F. Padway appeared on behalf of Plaintiff Narcisio Cuaresma, Jr.

25 After considering the evidence properly received at and before the hearing on the Motion,  
26 the moving, opposition and reply papers, the oral arguments of counsel, and good cause appearing  
27 therefore, **IT IS ORDERED** that Defendants' Request for Judicial Notice in support of their  
28

1 Motion for Summary Judgment (Document No. 12-2) is **DENIED**.

2 **IT IS FURTHER ORDERED** that Defendants' Objections to Plaintiff's Evidence in  
3 Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment (Document No.  
4 17-2) are **OVERRULED**.

5 **IT IS FURTHER ORDERED** that Defendants' Motion for Summary Judgment is  
6 hereby **GRANTED** on the grounds that Plaintiff failed to exhaust his administrative remedies for  
7 the reasons stated at the hearing on Defendants' Motion, including as follows:

8 The case law, although not Ninth Circuit case law, makes it clear that, while there may  
9 have been a technical violation of ERISA regulations here, there has been no showing whatsoever  
10 by Plaintiff that he did not have meaningful access to an administrative remedy procedure, or that  
11 the appeal procedure that was set up did not give him a sufficient period of time. There has been  
12 no complaint by Plaintiff that he was unable to meet the deadlines that were set. And there has  
13 been, most importantly, no showing of prejudice, which the case law cited by Defendants  
14 indicates is the standard that courts should use to review these types of cases under these  
15 circumstances.

16 There, again, has not been a showing such as that Defendants failed to review the  
17 documents that would have been submitted or could have been submitted within the timeline.  
18 And, again, there is nothing and there is no evidence whatsoever that Defendants did anything to  
19 prevent Plaintiff from making such a submission within the 180 days that Plaintiff was given to  
20 submit such documents.

21 Under these circumstances, the Court finds that Plaintiff did, in fact, fail to exhaust his  
22 administrative remedies and grants Defendants' motion for summary judgment on the sixth  
23 affirmative defense.

24 **IT IS SO ORDERED.**

25 Dated: October 18, 2016

26 /s/ John A. Mendez  
27 Hon. John A. Mendez  
28 United States District Court Judge