

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:15-CV-00279-FDW**

ROBERT SIX,)
)
 Plaintiff,)
)
 v.)
)
 WELLS FARGO & COMPANY; LIBERTY)
 LIFE ASSURANCE COMPANY OF)
 BOSTON; AND WELLS FARGO &)
 COMPANY GROUP DISABILITY)
 INCOME POLICY PLAN,)
)
 Defendants.)
)

ORDER

THIS MATTER is before the Court on Defendants’ “Motion for Partial Dismissal of the Complaint and to Strike Plaintiff’s Demand for Extra-Contractual Damages.” (Doc. No. 12.)

Defendants’ move, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss Plaintiff’s cause of action for Breach of Contract arising out of North Carolina law. In support of the motion, Defendants argue Plaintiff’s claims are instead governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et. seq.*, which preempts Plaintiff’s state law breach of contract claim. Plaintiff opposes the motion to dismiss and contends resolving this argument is premature at this stage in the litigation. The Court agrees with Plaintiff and will DENY that portion of Defendants’ motion seeking dismissal of Plaintiff’s cause of action for breach of contract. This ruling is WITHOUT PREJUDICE to Defendants’ ability to reassert these arguments at summary judgment.

Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, Defendants also move to strike that portion of Plaintiff’s complaint seeking extra-contractual damages. In his response to

the motion, Plaintiff “does not oppose Defendant’s motion to strike the phrase ‘and compensation for other damages.’” (Doc. No. 14, p. 5.) Accordingly, the Court GRANTS that portion of Defendants’ motion seeking to strike this portion of Plaintiff’s complaint.

IT IS THEREFORE ORDERED that Defendants’ Motion (Doc. No. 12) is DENIED WITHOUT PREJUDICE in part and GRANTED in part as stated herein.

IT IS SO ORDERED.

Signed: October 6, 2015

A handwritten signature in black ink, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

