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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANK BILELLO, individually and on :
behalf of all others similarly :
situated, :
 :
Plaintiff, :
 :
-v- :
 :
JPMORGAN CHASE RETIREMENT PLAN, :
JPMORGAN CHASE DIRECTOR OF HUMAN :
RESOURCES, as administrator of the :
JPMorgan Chase Retirement Plan, :
Defendants. :
-----X

07 Civ. 7379
(DLC)
ORDER

DENISE COTE, District Judge:

Defendants have filed a motion to dismiss the above-captioned matter. An Order of January 6 requested supplemental briefing on the issue of whether plaintiff Frank Bilello's claims must be dismissed for failure to exhaust his administrative remedies under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq., because he accepted a lump-sum payout of his retirement benefits without disputing the amount of the payment. In the supplemental briefing, which was fully submitted on February 6, 2009, defendants argued for the dismissal of only the putative class-wide claims, Counts 1 through 9 of the amended complaint, on exhaustion grounds.

ERISA's exhaustion requirement is a judge-made policy requiring exhaustion of the administrative remedies provided in

a plan or policy before a lawsuit may be brought. Paese v. Hartford Life Accident Ins. Co., 449 F.3d 435, 445 (2d Cir. 2006). Because Bilello brings statutory claims raising questions requiring the interpretation of ERISA, rather than the interpretation and application of terms of an ERISA plan, the exhaustion requirement shall not apply here. See Nechis v. Oxford Health Plans, Inc., 421 F.3d 96, 100, 102 (2d Cir. 2005). The benefits of the exhaustion requirement, such as deferring to plan administrators' expertise through arbitrary-and-capricious review, are inapplicable to statutory claims, which test the plan against the ERISA statute, rather than examining whether a particular award of benefits complies with a plan. See Paese, 449 F.3d at 445 (purposes of exhaustion requirement).

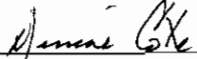
Defendants do not dispute that statutory claims or claims that a plan violates ERISA are not subject to exhaustion. Instead, they attempt to characterize plaintiff's class-wide claims as non-statutory, neglecting the fact that each claim describes a way in which either the plans or the notices describing the plans have violated ERISA. Accordingly, it is hereby

ORDERED that Counts 1 through 9 of the amended complaint

shall not be dismissed for failure to exhaust administrative remedies.

SO ORDERED:

Dated: New York, New York
April 10, 2009



DENISE COTE
United States District Judge