IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF TEXAS
DALLAS DIVISION

PHILIP A. MURPHY, JR. SANDRA R. NOE, and CLAIRE M. PALMER, Individually, and as Representatives of plan participants and plan beneficiaries of VERIZON's PENSION PLANS involuntarily re-classified and treated as transferred into IDEARC's PENSION PLANS, Plaintiffs, vs. VERIZON COMMUNICATIONS, INC., VERIZON EMPLOYEE BENEFITS COMMITTEE, VERIZON PENSION PLAN FOR NEW YORK AND NEW ENGLAND ASSOCIATES, VERIZON MANAGEMENT PENSION PLAN, IDEARC EMPLOYEE BENEFITS COMMITTEE, IDEARC PENSION PLAN FOR MANAGEMENT EMPLOYEES, and IDEARC PENSION PLAN FOR COLLECTIVELY BARGAINED EMPLOYEES, Defendants.	§ §	CIVIL ACTION NO. **3:09-cv-2262-G**

PLAINTIFFS' OPPOSITION TO "THE VERIZON DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIFTH CLAIM FOR RELIEF"

Plaintiffs PHILIP A. MURPHY, JR., SANDRA R. NOE, and CLAIRE M. PALMER, by and through their counsel, file their brief in opposition to Docket No. 18, "The Verizon Defendants' Motion to Dismiss Plaintiffs' Fifth Claim for Relief."

I. Background

On November 25, 2009, Philip A. Murphy, Jr., Sandra R. Noe and Claire M. Palmer (collectively, "plaintiffs"), filed this case against the Verizon Defendants and the Idearc/SuperMedia Defendants on behalf of themselves and others similarly situated, alleging

that their suit should be certified as a class action. On January 6, 2010, plaintiffs filed their "Amended Complaint for Proposed Class Action Relief." (Docket No. 6).

The plaintiffs' claims arise out of Verizon Defendants' actions taken during November-December 2006 when plaintiffs and a putative class of several thousand retirees were involuntarily transferred out of Verizon's long established pension plans into pension plans of a newly formed, highly leveraged spin-off company, Idearc, Inc., now known as SuperMedia Inc. [1] The involuntary transfer of plaintiffs and putative class members proved to be an economic detriment to the retirees and their beneficiaries. The transferred retirees suffered significant loss of retiree benefits not suffered by tens of thousands of retirees who remained enrolled in Verizon sponsored pension and employee benefit plans. (*Id.* at ¶¶ 49, 66, 150).

In their Amended Complaint, plaintiffs have asserted six separate claims for relief and each count is briefly summarized in the following paragraphs.

In Count One, plaintiffs contend pension plan administrators (both Defendant Verizon EBC and Defendant Idearc/SuperMedia EBC) breached fiduciary duties under ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1), which statutory provision mandate that fiduciaries act in the best interests of plan participants. (*Id.* at ¶ 101). Pension plan administrators denied many of plaintiffs' requests for plan documents and other pension plan information, all of which information was necessary for plaintiffs' internal administrative claims asserted before filing this civil action. (*Id.* at ¶ 99). Plaintiffs contend that the pension plan administrators' evasive and

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[1] On March 31, 2009, Idearc, Inc. and its domestic subsidiaries filed within the Dallas Division of this District voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code. As of January 4, 2010, Idearc emerged from Chapter 11 bankruptcy proceedings and changed its name to SuperMedia, Inc. (Docket No. 6, Amended Complaint at ¶¶ 19, 62)

uncooperative stance thwarted Congress' intent behind ERISA that individuals, such as plaintiffs, have access to information necessary to determine the credibility of their claims for pension benefits. (*Id.* at ¶ 88). Plaintiffs contend that they can demonstrate circumstances which justify expansion of the pension plan administrators' respective duties to make required disclosures to plaintiffs beyond the matters specifically listed in ERISA Section 104(b)(4). (*Id.* at ¶ 95). Plaintiffs contend that pension plan administrators' failure to produce requested documents and to make requested disclosures during plaintiffs' internal administrative claims process was a violation of applicable pension plan rules requiring disclosure of information relevant to plaintiffs' internal claims. (*Id.* at ¶ 100). Pursuant to ERISA Section 502(a)(3), 29 U.S.C. Section 1132(a)(3), plaintiffs ask this court to grant appropriate equitable relief including injunctive relief ordering both Defendant Verizon EBC and Defendant Idearc/SuperMedia EBC to disclose the information and produce the documents each has in its respective possession that is responsive to plaintiffs' request for information enumerated in paragraph 86 of the Amended Complaint, which paragraph reiterates what plaintiffs set forth in a February 4, 2009 demand letter. (*Id.* at ¶ 103, Prayer at ¶ D). Plaintiffs also seek disclosure of the full administrative record, including all letters received by said defendants from other retirees and the responsive letters sent to those retirees. (*Id.*).

In Count Two, plaintiffs contend pension plan administrators (both Defendant Verizon EBC and Defendant Idearc/SuperMedia EBC) violated ERISA Section 104(b)(4), 29 U.S.C. § 1024(b)(4), by refusing to honor within 30 days of plaintiffs' several written requests for pension plan documents, including instruments under which plans are established or operated. (*Id.* at ¶ 105). By way of example, pension plan administrators refused to honor plaintiffs' request for

production of the pension plan's investment policy guidelines, which requested documents are "instruments" under which the pension plan is "established or operated," within the meaning of ERISA Section 104(b)(4). (*Id.* at ¶ 106). Pursuant to ERISA Section 502(c)(1)(B), 29 U.S.C. § 1132(c)(1)(B), plaintiffs request this court assess penalties up to $110 a day against both Defendant Verizon EBC and Defendant Idearc EBC for their respective failure or refusal to provide plaintiffs requested documents and instruments under which the pension plans are established or operated. (*Id.* at ¶¶ 110-112, Prayer at ¶¶ B-C).

In Count Three, plaintiffs contend Defendant Verizon EBC violated ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), the duty to comply with pension plan document rules. (*Id.* at ¶ 136). Plaintiffs contend that all actions taken with respect to pension assets and retired plan participants had to be in exact accordance with then existing governing plan terms and rules, but that defendant acted contrary to the controlling terms and rules. (*Id.* at ¶ 128). Plaintiffs invoke *Kennedy v. Plan Administrator for DuPont Savings and Investment*, __ U.S.__, 129 S.Ct. 865 (2009), wherein the Supreme Court confirmed that ERISA provides no exception to the plan administrator's duty to act in accordance with existing plan documents and stated rules. (*Id.* at ¶ 129). Plaintiffs contend that Verizon EBC's involuntary reclassification and removal of plaintiffs and the putative class of retirees from Verizon sponsored pension plans as of November 17, 2006 was action taken in violation of the retirees' contractual rights under the Verizon pension plans and action taken in violation of controlling pension plan terms and rules. (*Id.* at ¶ 134). Plaintiffs seek a declaration from this Court that Defendant Verizon EBC failed to act in compliance with Verizon's pension plan documents rules and violated ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). (*Id.*, Prayer at ¶ G.2).

In Count Four, plaintiffs seek appropriate equitable relief against the pension plan sponsors and plan administrators. Plaintiffs contend that the pension assets, if any, that Verizon may have transferred to Idearc/SuperMedia were excess or surplus pension assets not earmarked or tied to any liabilities. (*Id.* at ¶ 138). Pursuant to ERISA Sections 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), plaintiffs request this court grant them appropriate equitable relief, including a declaration that the transfer of surplus assets, whenever it did occur, did not serve to change the retirees' status and did not extinguish any plaintiff's or putative class member's rights to payment of benefits from Verizon's pension plans. (*Id.* at ¶ 138, Prayer at ¶ G.3). Plaintiffs contend the December 22, 2006 pension plan amendments were illegally applied retroactively and they request a declaration that the December 22, 2006 plan amendments are null and void. (*Id.* at ¶ 139, Prayer at G.3). Plaintiffs seek injunctive relief rescinding Verizon's reclassification of plaintiffs and the putative class and an order requiring all retirees be restored to their former status as participants and beneficiaries enrolled in Verizon's pension and welfare plans and that they be made whole. (*Id.* at ¶140, Prayer at ¶ G.4). Plaintiffs request an order requiring Idearc/SuperMedia Defendants transfer back to Verizon pension and welfare plans plaintiffs and all putative class members. (*Id.*, Prayer at ¶ G.5).

In Count Five, plaintiffs contend that Verizon Defendants violated ERISA Section 510, 29 U.S.C. § 1140, when plaintiffs and putative class members were expelled from Verizon's pension plans and involuntarily transferred into Idearc/SuperMedia's pension plans. (*Id.* at ¶ ¶ 145-148). Count Five is the subject of the instant motion to dismiss and, therefore, is more fully described in Section II hereinbelow.

In Count Six, plaintiffs seek payment of benefits from Verizon's pension plans. Plaintiffs assert their ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), claim as an alternative claim to their ERISA Sections 502(a)(2) and (a)(3) based claims, should the Court not grant full relief under those claims. (*Id.* at ¶ 152). Plaintiffs contend that Verizon vested pension plan benefits due and payable under the terms in existence before December 22, 2006 were not actually provided to plaintiffs and putative class members. (*Id.* at ¶ 157). Plaintiffs seek for themselves and the putative class members benefits payable under the unaltered terms and plan language in existence before December 22, 2006. (*Id.* at ¶ 158, Prayer at ¶ H).

The Court has jurisdiction of each claim for relief based upon the civil enforcement provisions of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1132(a)(1), 1132(a)(2), 1132(a)(3), 1132(e)(1) and 1132(f), and upon 28 U.S.C. § 1331.

On February 9, 2010, the parties filed a stipulation and agreement that SuperMedia, Inc. need not remain in the case as a named defendant party since no monetary damages are being sought against SuperMedia, which entity has agreed to abide by any equitable or injunctive relief to be ordered by the Court. (See Docket No. 15, "Stipulation of Dismissal of Idearc, Inc. n/k/a SuperMedia, Inc. Under Federal Rule of Civil Procedure 41(a)(1)(ii))". On that same date, the Court entered an order dismissing without prejudice SuperMedia, Inc. (Docket 17, Order).

On March 10, 2010, Verizon Defendants filed an Answer generally denying all counts except the Fifth Count, based upon ERISA Section 510. (Docket No. 20). With respect to the Fifth Count, Verizon Defendants filed a motion to dismiss under Rule 12(b)(6) of the Federal Rule of Civil Procedure contending the Fifth Count is time-barred. (Docket No. 18).

II. Count Five - Plaintiffs' ERISA Section 510 Claim

Count Five, Plaintiffs' ERISA Section 510 Claim, incorporates previously stated allegations and is set forth at paragraphs 141-150 of Docket 6, the Amended Complaint. The Fifth Count is asserted only against the Verizon Defendants.

ERISA Section 510, in relevant part, makes it "unlawful for any person to. . . expel. . . a participant or beneficiary. . . for the purposes of interfering with the attainment of any rights to which such participant may become entitled under the plan. . . " 29 U.S.C. § 1140. As of November 2006, each plaintiff had been retired from employment with a Verizon predecessor for at least 10 years and each was receiving vested pension benefits, plus retiree welfare benefits from financially secure Verizon sponsored employee benefit plans. (Docket No. 6, Amended Complaint at ¶¶ 6-12, 26). In year 2006, plaintiffs, together with over 2,000 other retirees, were reclassified and involuntarily transferred out of Verizon's sponsored pension plans into SuperMedia's sponsored pension plans. (*Id.* at ¶¶ 39-40). Plaintiffs and putative class members were not informed that they had been chosen for involuntary transfer out of Verizon's sponsored pension plans until several months after the fact. (*Id.* at ¶¶ 45-46).

Plaintiffs contend that Verizon Defendants' reclassification and transfer of the retirees from ongoing participation in Verizon's pension plans violated the terms of Verizon's pension plans, and plaintiffs request, pursuant to ERISA Sections 502(a)(2) and (a)(3), 29 U.S.C. Section 1132(a)(2) and (a)(3), appropriate equitable relief, including injunctive relief ordering Verizon's reclassification of retirees be rescinded and that all plaintiffs and putative class members be restored to their former status as participants in Verizon's pension and welfare plans and that they be made whole. (*Id.* at ¶ 140). Plaintiffs request an order requiring defendants

parties to transfer back to Verizon all involuntarily transferred retirees. (*Id.* at ¶ ¶ 19, 69, 140, 177 and Prayer at ¶ ¶ G.4, G.5).

Plaintiffs contend that when they were expelled from continued participation in Verizon's pension plans, Verizon was motivated in part to interfere with their rights to continue receiving payment of their vested Verizon pension benefits as well as unvested retiree welfare benefits. (*Id.* at ¶ 143). Plaintiffs seek an order holding Verizon Defendants liable for violations of ERISA Section 510, and plaintiffs seek appropriate equitable relief under ERISA Section 502(a)(3), including an order directing all defendant parties restore all involuntarily transferred retirees into Verizon's pension plans and that Plaintiffs and putative class members be made whole. (*Id.* at ¶ ¶ 135, 140 and Prayer at ¶ G.4).

For their Rule 12(b)(6) motion to dismiss, Verizon Defendants contend plaintiffs' ERISA Section 510 claim is time-barred by a two year Texas statute of limitations period.

III. ARGUMENT

A. Rule 12(b)(6) Motion to Dismiss Standard

The Verizon Defendants move to dismiss the Fifth Count pursuant to Federal Rule of Civil Procedure 12(b)(6). "To survive a Rule 12(b)(6) motion, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974 (2007)), *cert. denied*, __, U.S. __, 128 S.Ct. 1230 (2008). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 127 S.Ct. at 1965). "The court accepts all

well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Id*. (internal quotation marks omitted) (quoting *Martin K. Eby Construction Company v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)).

In their Rule 12(b)(6) motion to dismiss, Verizon Defendants do not contend that plaintiffs' factual allegations are insufficient to raise a claim under ERISA Section 510. Rather, Verizon Defendants contend the claim should be deemed time-barred. Verizon Defendants contend the ERISA Section 510 claim should have been filed within two years after November-December 2006, when plaintiffs were involuntarily expelled from continued participation in Verizon's pension plans and enrolled into SuperMedia's pension plans.

Plaintiffs agree with Verizon Defendants' contention that "[a] statute of limitations [defense] may support dismissal under Rule 12(b)(6) where it is evident from the plaintiffs' pleadings that the action is [time-]barred and the pleadings fail to raise some basis for tolling or the like." *Jones v. ALCOA, Inc*., 339 F.3d 359, 366 (5th Cir. 2003). However, Verizon Defendants have mischaracterized the underlying basis for plaintiffs' ERISA Section 510 claim and, therefore, the motion to dismiss should be denied.

B. ERISA Provides No Statute of Limitations For a Section 510 Claim of Being Expelled From Continued Participation in a Pension Plan

The courts have long recognized that ERISA "[s]ection 510 was designed primarily to prevent 'unscrupulous employers from discharging or harassing employees in order to keep them from obtaining vested pension rights." (emphasis added). *West v. Butler*, 621 F.2d 240, 245 (6th Cir.1980)); *Hines v. Massachusetts Mut. Life Ins. Co.*, 43 F.3d 207, 210 FN5 (5th Cir. 1995) (expressly reserving decision on whether ERISA Section 510 claim is limited to employer-

employee relationships). Protecting the employer-employee relationship from abusive employer misconduct is not the exclusive purpose of ERISA Section 510. By its express written terms, the statute prohibits any person, including corporations and pension plan fiduciaries, from expelling a plan participant so as to prevent him or her from continuing to receive vested pension benefits. Here, that is exactly what happened to plaintiffs and the putative class of several thousand Verizon retirees. When the retirees were involuntarily reclassified they were effectively expelled from Verizon's pension plans. This civil action is not either a wrongful discharge or employment discrimination case. Indeed, all putative class members have long been retired from employment and none of them are seeking reinstatement of employment. Plaintiffs are also not seeking monetary damages for loss of earnings or any of the other typical spoils of a loss of employment claim.

Congress did not establish a statute of limitations for ERISA Section 510 claims. When Congress fails to provide a statute of limitations for claims arising under federal statutes, a court must apply the limitations period of the state-law cause of action most analogous to the federal claim being asserted. *North Star Steel Co. v. Thomas*, 515 U.S. 29, 33, 115 S.Ct. 1927, 1930, (1995); *Wilson v. Garcia*, 471 U.S. 261, 267-68, 105 S.Ct. 1938, 1942-43 (1985).

Before determining the most analogous state statute to apply to plaintiffs' ERISA Section 510 claim, the Court must properly address, as a preliminary matter, the underlying characterization of the Fifth Count. The essence of plaintiffs' Fifth Count has nothing to do with loss of employment. Here, all plaintiffs are long-term retirees fully vested in their rights to continue receiving annuity-type pensions, and they were involuntarily expelled from Verizon's pension plans, dis-enrolled and transferred to SuperMedia's pension plans. Besides the

wrongdoing by the corporate sponsor, Plaintiffs contend the plan fiduciary, Verizon Employee Benefits Committee, directly aided in the erstwhile endeavor. (Docket No. 6, Amended Complaint at ¶ ¶ 117, 135, 145 and Prayer at ¶ G.7).

The distinction between plaintiffs' ERISA Section 510 claim and a more typical Section 510 claim for wrongful employment termination is further reflected in the different remedies available under each theory. Damages for lost earnings are generally available in a wrongful employment termination or employment discrimination suit. However, plaintiffs are not seeking monetary damages under their ERISA Section 510 claim.[2]

C. The Underlying Substantive Rights to Count Five Involve a Breach of Contract; Plaintiffs Were Expelled From Continued Participation in Verizon's Pension Plans

Courts have concluded that when a business decides whether to terminate an employee, it is acting as an employer and not as a fiduciary. See, e.g., *Hickman v. Tosco Corporation*, 840 F.2d 564, 567 (8th Cir. 1988). ("[The defendant's] decisions to terminate appellants rather than carry them on the payroll were employment decisions that did not directly affect the administration of the pension plan or the investment of its assets."); *Moehle v. NL Industries, Inc*., 646 F. Supp. 769, 778-80 (E.D. Mo. 1986) (employer's refusal to place former employees on layoff status -- which would have maximized their pension benefits -- were employment decisions), *aff'd*, 845 F.2d 1027 (8th Cir. 1988) (table). Such conduct by the employer may give

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[2] This is expressly reflected and set forth in the parties' recent stipulation and agreement that SuperMedia, Inc. need not remain in the case as a named defendant party since no monetary damages are being sought against SuperMedia, which entity has agreed to abide by any equitable or injunctive relief to be ordered by the Court. (See Docket No. 15, "Stipulation of Dismissal of Idearc, Inc. n/k/a SuperMedia, Inc. Under Federal Rule of Civil Procedure 41(a)(1)(ii))".

rise to a wrongful employment discharge claim to which the courts have applied Texas's two year statute of limitations period.

In this case, the underlying substantive rights are significantly different than the rights in the cases cited by Verizon Defendants, because in all such cases the ERISA Section 510 claim involved a loss of employment. Here, loss of employment is not at issue. For instance, in *McClure v. Zoecon, Inc.*, 936 F.2d 777 (5th Cir.1991), the plaintiff was terminated from his employment after having personality clashes with his supervisors. Mr. McClure filed suit in this District exactly four years later, and he contended, as the basis for his ERISA Section 510 claim, that his employment was ended in order to forestall his receipt of medical and disability benefits. *McClure*, 936 F.2d at 777. In a split decision, the appellate panel determined that Mr. McClure's ERISA Section 510 claim was most analogous to a wrongful employment discharge claim, a personal injury tort claim. *Id.* at 779. Therefore, the appellate court applied Texas's two year statute of limitations set forth in Tex. Civ. Prac. & Rem. Code Ann. § 16.003 and determined Mr. McClure's ERISA Section 510 claim was time-barred. *Id.*

In *McClure,* Judge Thornberry, while agreeing with the majority that the situation involved an involuntary employment termination, wrote a dissenting opinion stating that, "[f]or the purposes of selecting an appropriate statute of limitations, our focus must remain on the rights and duties involved and not on the actions taken by the parties." *McClure,* 936 F.2d at 780. He concluded he would apply Texas's four-year statute of limitations for contract actions, Tex. Civ. Prac. & Rem. Code Ann. § 16.004. *Id.*

Each Texas based ERISA Section 510 case following the *McClure* statute of limitations

ruling has involved an alleged wrongful loss of employment claim. [3] For instance, in the other case cited in Verizon Defendants' memorandum brief, *Lopez ex rel. Gutierrez v. Premium Auto Acceptance Corp*., 389 F.3d 504 (5th Cir. 2004), the appellate panel, following the ruling in *McClure*, noted that the underlying basis for the plaintiff's claim was that her mother's employment had been wrongfully terminated in order to end her insurance coverage. *Lopez*, 389 F.3d at 507. Ms. Lopez's civil action, filed nearly 5 years later, was deemed time-barred based on *McClure*. *Id*.

In every case where federal courts have followed the ruling in *McClure*, the courts have characterized the central dispute as pertaining to someone's loss of employment. There are no reported ERISA Section 510 cases within the Fifth Circuit Court of Appeals involving a situation where long term retirees receiving vested pension benefits have claimed they were expelled from continued participation in their pension plan and involuntarily transferred to another company's pension plans in violation of ERISA Section 510.

D. Since the Underlying Substantive Rights to Count Five Involve a Breach of Contract, the Texas Four Year Statute of Limitations Period Should Be Applied

The facts and circumstances as pled in plaintiffs' Count Five directly involve the

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[3] *Wynn v. J.C. Penney Co., Inc*., 2005 WL 3299715, *1-2 (E.D. Tex. Dec 05, 2005) (employment termination alleged to be in violation of FMLA and ERISA Section 510); *Onyebuchi v. Volt Management Corp*., 2005 WL 1981393, *4 (N.D. Tex. Mar 31, 2005) (wrongful employment termination alleged to be in violation of ERISA Section 510); *Berry v. Allstate Ins. Co.*, 84 Fed. Appx. 442, 444 (5th Cir. 2004) (termination of regular office staff workers and immediate rehiring them as temporary, leased workers alleged to be in violation of ERISA Section 510); *Atkins v. Dresser Industries, Inc*., 66 F.3d 319, 319 (5th Cir. 1995) (employment termination alleged as intentional infliction of emotional distress claim); *Christopher v. Mobil Oil Corp*., 149 F.R.D. 549, 551 (E.D. Tex. Jun 01, 1993) (constructive discharge of employment alleged to be in violation of ERISA Section 510)

administration of the pension plans and the disposition of surplus plan assets. The rights involved solely pertain to continued participation in pension plans. The situation is most analogous to a violation of a trust agreement, a breach of contract. Therefore, the four year Texas statute of limitations for specific performance of a contract, the right to continued participation in Verizon's pension plans, i.e., TEX. CIV. PRAC. & REM. CODE § 16.004(a)(1), ought to be applied to plaintiffs' Section 510 claim. Likewise, because the underlying action taken by pension plan administrators to oust plaintiffs and putative class members from Verizon's pension plans was a violation of their fiduciary duties, subpart (a)(5) of the same statute, likewise providing a four year statute of limitations for breach of fiduciary duty, ought to be applied to Count Five, plaintiffs' ERISA Section 510 claim.

Plaintiffs filed their action in November 2009, well within four years after November-December 2006 when all the retirees were expelled from continued participation in Verizon's sponsored employee benefit plans. Accordingly, Verizon Defendants' motion to dismiss Count Five should be denied.

IV. CONCLUSION and REQUEST FOR ORAL ARGUMENT

For all the foregoing reasons, the court should deny Docket No. 18, "The Verizon Defendants' Motion to Dismiss Plaintiffs' Fifth Claim for Relief." Due to the importance of the issues in this civil action, which case is being monitored by hundreds of putative class members, the complexity of the case and the unique legal arguments posed by both sides, an oral argument hearing may be useful to the Court and is requested.

DATED this 30th day of March, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March, 2010, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and a courtesy copy was emailed to Defendants' counsel as follows:

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