

Respectfully submitted,

/s/ Jeffrey G. Huvelle

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Attorneys for the Verizon Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2010, I caused a true and correct copy of the foregoing instrument to be served on counsel for Plaintiffs via the Court's electronic filing system as set forth in Miscellaneous Order 61 as follows:

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First, Plaintiffs allege that the Verizon Defendants improperly “reclassified Plaintiffs and putative class members so as to treat them as being transferred into Idearc’s pension plans.” Compl. ¶ 143. According to Plaintiffs’ Complaint, this reclassification occurred on November 17, 2006. *E.g., id.* at ¶¶ 32, 115.

Second, Plaintiffs allege that the Verizon Defendants violated Section 510 by “retroactively appl[ying]” certain “pension plan amendments” relating to the Idearc spin-off transaction. Compl. ¶ 146. Those amendments, according to Plaintiffs’ Complaint, were adopted on December 22, 2006. *Id.*; *see* Compl. ¶ 43.²

Plaintiffs filed their original complaint in this action on November 25, 2009, more than two years after the last conduct forming the basis of their claims is alleged to have occurred. *See* Dkt. No. 1.

Argument

Congress has not established a statute of limitations applicable to claims for violations of Section 510 of ERISA. *See, e.g., Gutierrez v. Premium Auto Acceptance Corp.*, 389 F.3d 504, 506 (5th Cir. 2004). Where “Congress has provided no period of limitation for a federal claim, the federal courts must borrow the applicable statute of limitations from the state in which it sits.” *McGuire v. Baker*, 421 F.2d 895, 898 (5th Cir. 1970). The Fifth Circuit has “squarely held that Texas’s two-year statute of limitations for wrongful discharge and discrimination applies to section 510.” *Gutierrez*, 389 F.3d at 507 (citing Tex. Civ. Prac. & Rem. Code § 16.003).

² Although Plaintiffs allege that the December 22, 2006 adoption of the plan amendments violated Section 510 of ERISA, Plaintiffs’ Complaint asserts that the Verizon Defendants treated Plaintiffs’ rights “to receive payments of benefits out of Verizon’s pension plans as being terminated” effective November 17, 2006, “[w]hen the spin-off was concluded.” Compl. ¶ 115. Thus, the alleged interference that forms the basis for Plaintiffs’ Section 510 claim was complete by November 17, 2006.

Here, the latest date on which any alleged act of interference with Plaintiffs' rights occurred took place in 2006, well more than two years before Plaintiffs filed their original complaint on November 25, 2009. Accordingly, Plaintiffs' claim under Section 510 of ERISA should be dismissed as time-barred. *See Jones v. ALCOA, Inc.*, 339 F.3d 359, 366 (5th Cir. 2003) ("A statute of limitations may support dismissal under Rule 12(b)(6) where it is evident from the plaintiff's pleadings that the action is barred and the pleadings fail to raise some basis for tolling or the like.").

Conclusion

For the foregoing reasons, the Fifth Count of Plaintiffs' Complaint should be dismissed with prejudice.

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