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

SUPERMEDIA INC., ET AL.,	§	
	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO.**
v.	§	**3:12-CV-2034-G**
	§	
SANDRA NOE, CARL OHNSTAD, and CLAIRE PALMER, individually, and on behalf of all others similarly situated,	§	
	§	
Defendants.	§	

JOINT MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT AND BRIEF IN SUPPORT

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs SuperMedia Inc., SuperMedia LLC, SuperMedia Services Inc., SuperMedia Sales Inc., SuperMedia Employee Benefits Committee, Idearc Inceptor LTD, Dex Media, Inc., and Dex Media, Inc. Benefits and Compensation Committee (collectively, "SuperMedia" or "Plaintiffs") and Defendants Sandra Noe, Carl Ohnstad and Claire Palmer, individually, and on behalf of all others similarly situated (collectively, the "Defendant Class" or "Class," each a "Member") (collectively, the "Parties") hereby file their Joint Motion in Support of Final Approval of Class Action Settlement and Brief in Support.

As a preliminary matter, this settlement has no effect on any retiree's claims made in the separate suit *Murphy, et al. v. Verizon Communications, et al*. (Civil Action No. 3:09-CV-2262-G), United States District Court for the Northern District of Texas, Dallas Division, now pending in the Fifth Circuit Court of Appeals (Case No. 13-11117) ("Murphy Suit").

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I.
SUMMARY OF BRIEF

After extensive arm's length negotiations and Court-ordered mediation between their respective counsel, SuperMedia and Defendants reached an agreement to settle this class action in a manner that is consistent with federal law under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002 *et seq*., and that is fair, reasonable, and adequate. *See* the Stipulation and Settlement Agreement (the "Settlement Agreement" or "Agreement"), a true and correct copy of which has been attached hereto as Exhibit A (App. 0018). The Settlement Agreement was preliminarily approved by the Court and is intended to fully and finally settle this class action, upon final Court approval.

Generally, the proposed class settlement (the "Class Settlement" or "Settlement"), as set forth in the Agreement, provides that (i) the Court shall issue declarations of SuperMedia's right to modify, amend, or terminate its health and welfare benefits plans, (ii) SuperMedia shall pay class counsel their reasonable and necessary attorneys' fees and costs in the agreed amount of $140,000 for their work on behalf of the Defendant Class and (iii) the final declaratory judgment and release shall bind all class members who have not opted-out of the settlement. The Court granted preliminary approval of the Settlement on January 10, 2014, and directed notice to the putative class members. Final approval is proper because the class members have been notified of the settlement in a reasonable manner, the settlement class satisfies the certification pre-requisites of Rule 23(a) and (b), and the settlement is fair, reasonable and adequate. Fed. R. Civ. P. 23.

Therefore, the Parties respectfully request final approval of the Class Settlement.

II.
SUMMARY OF FACTS

A. PROCEDURAL BACKGROUND

1. For many years, SuperMedia has provided health and welfare benefits to former employees of SuperMedia and its predecessor entities pursuant to ERISA benefits plans.

2. Due to the increasing costs of healthcare and competitive pressure in the marketplace, SuperMedia made the difficult decision to reduce or eliminate health and welfare benefits for affected retirees. Gist Aff. at ¶ 8 (App. 010). On June 25, 2012, SuperMedia amended its retiree health and welfare benefits plans in a manner that changed the plans to access-only plans (without company contributions to premium costs) for the majority of retirees who are not Medicare-eligible, terminated benefits for the majority of participants who are Medicare-eligible, and modified co-pay/co-insurance amounts and deductibles. *Id.* at ¶ 9 (App. 010-011).

3. More than 1,000 retirees initially sent to SuperMedia written objections to the amendments, disputed SuperMedia's right to amend, modify, or terminate the Plans, and made a claim for benefits. *See, e.g.,* Dkt. No. 23, Exhibits AA-AS; Gist Aff. at ¶ 19 (App. 014).

4. To resolve this dispute and bring closure to the company, SuperMedia initiated this suit on June 26, 2012, seeking declarations that it has the right to amend, modify, or terminate its retiree medical benefits plans and that its amendments are legally enforceable and effective under applicable law. *See* Original Class Action Complaint for Declaratory Judgment ("Original Complaint") (Dkt. No. 1); Gist Aff. at ¶ 13 (App. 014-015).

5. In response to the Complaint, Defendants filed Counterclaims, asserting violations of ERISA Sections 404 and 510. (Dkt. No. 73). The Counterclaims were dismissed by Order of the Court on August 7, 2013. (Dkt. No. 98). Subsequently, Defendants filed a

motion for summary judgment dismissal (Dkt. Nos. 108-109).

6. On August 30, 2013, the Court ordered the Parties to participate in a mediation to resolve this dispute with Court-appointed mediator Jeffrey Abrams. (Dkt. No. 105). After extensive arm's length negotiations, including an exchange of documents and proposals, the Parties executed the Settlement Agreement on October 30, 2013. (Exhibit A) (App. 0018). While Defendants initially objected to the amendments and asserted SuperMedia did not have the right to make the changes, Defendants and their counsel now agree that SuperMedia had the right to make the changes to the plans contained in the amendments, pursuant to federal ERISA law, as repeatedly interpreted by the federal courts. *See, e.g., Nichols v. Alcatel USA, Inc.,* 532 F.3d 364, 373 (5th Cir. 2008).

7. On December 12, 2013, the Parties filed a Joint Motion for Preliminary Approval of Class Action Settlement. (Dkt. No. 131). On January 10, 2014, the Court heard oral arguments of counsel for SuperMedia and counsel for Defendants at the preliminary approval hearing and issued an Order for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), in which the Court found that the Settlement appeared to be "within a range of fairness, reasonableness, and adequacy," preliminarily certified the settlement class, and directed notice to Class Members. *See* Preliminary Approval Order (Dkt. No. 147).

8. On February 25, 2014, the Parties, through settlement administrator KCC Class Action Services ("KCC"), sent notice to all potential Class Members, in the form and manner approved by the Court. *See* Class Notice ("Notice"), a true and correct copy of which is attached hereto as Exhibit B (App. 0057). KCC is a class settlement administration firm that specializes in handling the administration of class settlements. The Notice provided detailed information about this action and the proposed Settlement in an easy-to-understand manner. KCC provided

additional information to Class Members through a website and telephone call center, and Defendants Class counsel posted the Notice on a website established early in this litigation to keep Class Members informed. *See* Notice (Exhibit B) (App. 0065); *see In re Heartland Payment Sys.,* 851 F. Supp. 2d 1040, 1061 (S. D. Tex. 2012) (finding notice proper where it summarized the settlement in plain English and provided a website for more information). Because SuperMedia maintains accurate records of its participants, the Notice was individually mailed to each Member based on his current or most recent mailing address. Gist Aff. at ¶ 17 (App. 0014). The Notice provided class members with an opportunity and procedure to object to the proposed Settlement or to opt-out of the Class. Notice (Exhibit B) (App. 0063). To date, no class members have served objections.

B. SUPERMEDIA'S HEALTH AND WELFARE PLANS

9. By way of background, SuperMedia provided retiree benefits to eligible retirees of SuperMedia and its predecessor entities through three plans:

- **a.** The SuperMedia Management and Non-Union Hourly Plan for Group Insurance ("Management Plan"), a true and correct copy of which is attached hereto as Exhibit C (App. 0066);
- **b.** The SuperMedia Plan for Group Insurance for Mid-Atlantic Associates ("Mid-Atlantic Plan"), a true and correct copy of which is attached hereto as Exhibit D (App. 0097); and
- **c.** SuperMedia Plan for Group Insurance for New York and New England Associates ("New York Plan"), a true and correct copy of which is attached hereto as Exhibit E (App. 0129)[1]

(the "Plans"). Gist Aff. at ¶ 6 (App. 0009).

10. In accordance with ERISA, SuperMedia communicated the Plans' key provisions relating to retiree health and welfare benefits through the following Summary Plan Descriptions:

[1] SuperMedia also provides a Medicare Part B reimbursement, pursuant to Internal Revenue Code 401(h), under the SuperMedia Pension Plan for Collectively-Bargained Employees, a true and correct copy of which is attached hereto as Exhibit F (App. 0161).

a. The Retiree Health & Welfare Summary Plan Descriptions: Pre-65 ("Pre-65 SPD"), a true and correct copy of which is attached hereto as Exhibit G (App. 0599);

b. The Retiree Health & Welfare Summary Plan Descriptions: 65+ Medicare ("65 Med SPD"), a true and correct copy of which is attached hereto as Exhibit H (App. 1051); and

c. The Retiree Health & Welfare Summary Plan Descriptions: Mid-Atlantic Plan ("Mid-Atlantic SPD"), a true and correct copy of which is attached hereto as Exhibit I (App. 1401)

(the "SPDs"). Gist Aff. at ¶ 6 (App. 0009-0010). The Plans and SPDs (collectively, the "Plan Documents") describe various welfare benefits, including medical, prescription drug, dental, vision, basic life insurance, and supplemental life insurance. *Id.*

11. Under the Plan Documents, SuperMedia has the unilateral right to amend, modify, revoke, or terminate retiree health and welfare benefits because: (1) the Plan Documents do not contain vesting provisions; (2) the Plan Documents expressly state that no retiree benefits vest; and (3) the Plan Documents expressly reserve the right to amend, modify, revoke, or terminate the Plans. *Id.* For example, section 7.4 of the Management Plan states:

> **7.4 No Vested Rights**
>
> To the maximum extent permitted by law, **no person shall** acquire any right, title, or interest in or to any portion of a Trust, an Insurance Contract, an HMO Contract, or Medicare Plan Contract otherwise than by the actual payment or distribution of such portion under the provisions of the Plan or a Component Benefit, or **acquire any right, title, or interest in or to any benefit referred to or provided for in the Plan or any Component Benefit otherwise than by actual payment of such benefit.**

Exhibit C, at § 7.4 (App. 0087) (emphasis added).[2]

12. The Pre-65 SPD states:

> **The Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate these Plans in whole or in part at any time**, except to the extent limited by an applicable collective bargaining agreement as to

[2] *See* identical language in Exhibit D at § 7.4 (App. 0117), Exhibit E at § 7.4 (App. 0149).

> retirees covered by the collective bargaining agreement. **If a plan is terminated, you will not have any further rights** other than payment of expenses you had incurred before the Plan was terminated.

Exhibit G at 2 (App. 0607) (emphasis added).[3] The SPDs reiterate these rights numerous times:

> [T]he Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate the benefits […]
>
> When Coverages End [. . .] The Plans under the Program terminate […]
>
> Idearc reserves the right to amend, modify, or terminate these plans, in whole or in part [. . .]

Id. (App. 0609, 0628, 0914 and 0939)[4].

13. With the exception of one GTE Corporation ("GTE")[5] plan discussed below, earlier plan documents adopted by predecessors of SuperMedia also expressly reserved the broad right to amend or terminate plan benefits at any time. Gist Aff. at ¶ 7 (App. 0010). For example, a 2004 Verizon SPD states, "the Verizon Employee Benefits Committee (VEBC) also reserves the right to amend, modify, suspend or terminate the plans at any time, at its discretion, with or without advance notice to participants, subject to any duty to bargain collectively." *See* the 2004 Verizon Medical Expense Plan for New York and New England Post-1986 Associate Retirees SPD (a true and correct copy of which is attached hereto as Exhibit J) at p. 5 (App. 1755).

C. THE AMENDMENTS

14. SuperMedia's administration and payment of retiree health and welfare benefits resulted in tremendous expenses and liability for SuperMedia. Gist Aff. at ¶ 8 (App. 0010). Due

[3] *See also* Exhibit H at 2 (App. 1059) ("the Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate these Plans"); Exhibit I at 2 (App. 1408) ("the Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate these Plans").

[4] *See also* Exhibit H (App. 1081, 1269, 1294, 1347 and 1394); Exhibit I (App. 1427, 1644, 1662 and 1714).

[5] GTE is a predecessor entity of SuperMedia.

to rising healthcare costs and a trend towards the reduction or elimination of retiree benefits among SuperMedia's competitors, SuperMedia faces extreme financial pressure to reduce these costs. *Id.* In fact, as of December 2011, SuperMedia carried an unfunded net liability of more than approximately $315 million for retiree health and welfare benefits under the Plans. *Id.* As a result, SuperMedia re-evaluated its Plans. *Id.*

15. On June 25, 2012, based on its express right to amend or terminate, SuperMedia amended the Plans to: (i) reduce its liability; (ii) reduce expenses required to operate its business; (iii) increase efficiency, while meeting customer needs; and (iv) effectively provide for the maintenance of its financial stability and the needs of current and former employees. Gist Aff. at ¶ 9 (App. 0010-11); Exhibit K (App. 1928), a true and correct copy of the June 25, 2012 Amendments. On October 15, 2012, SuperMedia issued subsequent amendments. *See* Exhibit L (App. 1952), a true and correct copy of the October 15, 2012 Amendments. The October 2012 amendments reiterated the June changes, while clarifying that these do not affect certain former bargaining unit employees of Locals 1301, 1302 and 2213, as described below. Gist Aff. at ¶ 9 (App. 0011). On April 23, 2013, as part of the Dex Media merger transaction, SuperMedia amended the Plans to clarify the rights of former employees of Dex One Corporation and SuperMedia, Inc. *Id.;* Exhibit M (App. 1968), a true and correct copy of the April 23, 2013 Amendments.

a. The Amendments Impact "Majority" and "GTE CIC" Retirees

16. The changes enacted in June 2012, October 2012, and April 2013 (collectively, the "Amendments") impact all Defendant Class Members. Generally, the Amendments modify the Plans by reducing or eliminating SuperMedia's contribution to premium costs (thereby increasing retiree responsibility for premium costs), modifying co-pay amounts, and/or modifying deductible amounts. Gist Aff. at ¶ 10 (App. 0011). Specific provisions distinguish

between two primary subgroups affected by the Amendments (i) the majority of participants ("Majority Retirees") and (ii) former GTE employees subject to "Change in Control" protection ("GTE CIC Retirees"). *Id.*

17. The sections applicable to the Majority changed the Plans by: (1) eliminating eligibility of retirees and retiree dependents who are Medicare-eligible (generally age 65 or older); (2) eliminating SuperMedia's premium contributions for retirees not eligible for Medicare; and (3) eliminating Medicare Part B reimbursements. *See* Exhibits K, L (App. 1928, 1952); Gist Aff. at ¶ 11 (App. 0011-12). SuperMedia continues to provide important benefits to the Majority, including eligibility to participate in a number of medical and vision plans, sponsored by SuperMedia for participants who are not eligible for Medicare. Thus, the Amendments create an "access-only" plan for Majority participants who are not eligible for Medicare that continues to facilitate the Plans without the company-paid premium subsidies. *Id.*

18. For GTE CIC Retirees, the changes are consistent with a provision in a predecessor plan document applicable to this subgroup: the GTE Retiree Medical Choices SPD ("GTE Retiree SPD"). Gist Aff. at ¶ 12 (App. 0012). GTE CIC Retirees are those who met criteria for "Change in Control" protection, under the GTE Retiree SPD, a true and correct copy of which is attached hereto as Exhibit N (App. 1996).[6, 7] In this SPD, GTE provided Change in Control restrictions on the rights of a successor to make certain amendments or discontinue the retiree benefits, subject to reserved rights. *Id.* at 3 (App. 1999). Notwithstanding this limitation,

[6] Specifically, retirees who are subject to the GTE Change in Control are retirees who (i) were participants in the GTE Retiree Choices Medical Plan as of May 18, 1999 and (ii) either (a) retired from GTE before May 18, 1999 (other than with a deferred vested pension) or (b) retired (other than with a deferred vested pension) from GTE or any successor after May 18, 1999 and were within five years of reaching eligibility for retirement (not including eligibility for a deferred vested pension) under the applicable GTE pension plan as of May 18, 1999. *See* GTE Retiree SPD (Exhibit N) at p. 3 (App. 1999).

[7] Former employees of GTE who do not meet the change-in-control criteria (described in Fn. 5, *supra*) are treated as Majority Retirees under the Amendments.

"any successor to GTE may in the ordinary course of business […] (ii) change, increase or decrease co-payments, deductibles and other requirements for coverage and benefits; and/or (iii) make other changes in administration or changes in the Plan's design and its coverage and benefits." *Id*. Therefore, the Amendments treat GTE CIC Retirees differently. Gist Aff. at ¶ 12 (App. 0012). In conformity with the Change in Control provision, the Amendments modify co-pays, deductibles, and other administrative costs for GTE CIC Retirees, but continue to provide all retirees access to medical benefits, regardless of age or Medicare status. *Id.* Thus, the Amendments are consistent with SuperMedia's rights under the Plan Documents and the GTE Retiree SPD.

b. The Amendments Exclude "MERP" and "Post 2008 NY/NE" Retirees

19. Additionally, the Amendments exclude certain participants—who are therefore excluded from the Defendant Class (as discussed below): (i) former executives subject to individual separation agreements or plans ("MERP Retirees") and (ii) certain former New York / New England bargaining unit employees who retired on or after December 7, 2008 ("Post 2008 NY/NE Retirees"). Gist Aff. at ¶ 13 (App. 0012).

20. *Excluded MERP Retirees.* The Amendments do not affect the benefits of certain former executives of SuperMedia and its predecessors because they are subject to individual separation agreements or plans (including the Medical Executive Replacement Plan or "MERP" and the Executive Supplemental Insurance Plan) that may provide for certain health and welfare benefits to vest. Gist Aff. at ¶ 14 (App. 0012). These MERP Retirees are: Joseph Porter, Charles Higgins, Wayne Kauffman, Donald Marinari, Al Dilorenzo, Audrey Tracey, Adeline Feltmann and Lester Luedecker. *Id.* (App. 0012-3).

21. *Excluded Post 2008 NY/NE Retirees.* The Amendments also do not impact the benefits of Post 2008 NY/NE Retirees. This exclusion is based on the execution of three

collective bargaining agreements ("CBAs") on December 7, 2008. Gist Aff. at ¶ 15 (App. 0013). The Post 2008 NY/NE Retirees are comprised of all former bargaining unit employees who: (i) retired on or after December 7, 2008, and (ii) were formerly represented by: (a) the International Brotherhood of Electrical Workers, AFL-CIO Local 2213 ("Local 2213");[8] (b) Communications Workers of America, AFL-CIO Local 1301 ("Local 1301");[9] or (c) Communications Workers of America, AFL-CIO Local 1302 ("Local 1302").[10] *See* Exhibit L (App. 1953-4); Gist Aff. at ¶ 15 (App. 0013). Unlike the majority of SuperMedia's CBAs, the 2008 CBAs of Locals 2213, 1301 and 1302 contain sections pertaining to retiree medical benefits. Therefore, SuperMedia excluded Post 2008 NY/NE Retirees from the Amendments and intends to engage in collective bargaining with Locals 1301, 1302 and 2213.

22. Importantly, the retiree healthcare benefits of former Local 2213, 1301 and 1302 union employees who retired *before* the execution of the 2008 CBAs are not subject to the terms of any collective bargaining agreements, and are governed only by the Plan Documents. Therefore, these retirees are included in the "Majority" group under the Amendments. Additionally, many other Majority participants were formerly represented by various labor unions. These participants are not excluded from the Amendments because the relevant CBAs in effect at the time of their retirement did not include agreements regarding retiree healthcare benefits. *See, e.g.,* the Communications Workers of America and Idearc Media Sales – East Co. Philadelphia (Bensalem), Pennsylvania Sales Office, February 8, 2009 CBA, a true and correct

[8] Local 2213 is a party to the Collective Bargaining Agreement between Idearc Media North Greenbush, NY – Directory Clerical Unit and International Brotherhood of Electrical Workers, AFL-CIO Local 2213 that became effective on December 7, 2008.

[9] Local 1301 is a party to the Collective Bargaining Agreement between Idearc Media and Communications Workers of America, AFL-CIO Local 1301 Directory Sales that became effective on December 7, 2008.

copy of which is attached hereto as Exhibit O (App. 2062).

23. Thus, the Amendments are consistent with SuperMedia's rights to modify, amend, or terminate under the Plan Documents and ERISA.

III.
ARGUMENT AND AUTHORITIES

Final approval of the Settlement is proper because the class satisfies the certification prerequisites of Rule 23(a) and (b) and because the Settlement is fair, reasonable and adequate.

A. THE PROPOSED SETTLEMENT

a. Definition of the Settlement Class

The Defendant Class (also, the "Settlement Class") consists of all retirees and dependents of retirees who were participants in SuperMedia's Plans and whose rights to benefits were affected by the Amendments and who are not Excluded Persons, as defined below.

The following persons are EXCLUDED from the Settlement Class:

- current employees of SuperMedia;
- Post 2008 NY/NE Retirees; and
- the following persons who are participants in the Medical Executive Replacement Plan ("MERP") or like plans: Joseph Porter, Charles Higgins, Wayne Kauffman, Donald Marinari, Al Dilorenzo, Audrey Tracey, Adeline Feltmann and Lester Luedecker.

Additionally, any potential Member who opts-out of the Settlement on or before March 27, 2014, using the procedure described in the Class Notice, is to be excluded from the Settlement Class (all, collectively, the "Excluded Persons"). *See* Notice (Exhibit B) (App. 0063).

[10] Local 1302 is a party to the Collective Bargaining Agreement between Idearc Media New England Directory Clerical Unit and Communications Workers of America, AFL-CIO Local 1302 that became effective on December 7, 2008.

b. Terms of the Proposed Settlement

(1) *Payment of Class Counsel's Fees and Costs*

First, under the Settlement, SuperMedia would pay reasonable and necessary attorneys' fees and costs to counsel for the Class, Curtis Kennedy and Robert Goodman, Jr. ("Class Counsel") in the agreed amount of $140,000 (one hundred forty thousand dollars). Agreement (App. 0026); Affidavit of Class Counsel, a true and correct copy of which is attached hereto (App. 2135).

(2) *Declarations of SuperMedia's Right to Amend or Terminate*

Additionally, the Court would issue the following declarations ("Declarations"), which the Parties agree are consistent with SuperMedia's rights under applicable law:

1. The June 25, 2012 amendments, the October 15, 2012 amendments, and the April 23, 2013 amendments (collectively, the "Amendments") enacted by SuperMedia are legal, valid, binding, and enforceable;

2. The Amendments enacted by SuperMedia do not violate, conflict with, or breach any provision of or obligation under the retiree health and welfare benefits plans, collective bargaining agreements, or any other operative agreements;

3. As to participants who (i) are not subject to the GTE Change in Control[11], (ii) are not subject to the MERP[12], and (iii) are not Post December 7, 2008 NY/NE Retirees[13], SuperMedia has the unilateral right to modify, amend, revoke or terminate the plans or any provisions therein at any time;

[11] Participants subject to the GTE Change in Control are: (i) retirees who were participants in the GTE Retiree Choices Medical Plan as of May 18, 1999 and (ii) either (a) retired from GTE before May 18, 1999 (other than with a deferred vested pension) or (b) retired (other than with a deferred vested pension) from GTE or any successor after May 18, 1999 and were within five years of reaching eligibility for retirement (not including eligibility for a deferred vested pension) under the applicable GTE pension plan as of May 18, 1999, and their dependents.

[12] Participants subject to the MERP are: Joseph Porter, Charles Higgins, Wayne Kauffman, Donald Marinari, Al Dilorenzo, Audrey Tracey, Adeline Feltmann and Lester Luedecker.

[13] Post December 7, 2008 NY/NE Retirees are those who (i) were formerly bargaining unit employees represented by one of the following three labor unions: (a) the International Brotherhood of Electrical Workers, AFL-CIO Local 2213, a party to the Collective Bargaining Agreement between Idearc Media North Greenbush, NY – Directory Clerical Unit and International Brotherhood of Electrical Workers, AFL-CIO Local 2213 that became effective on December 7, 2008; (b) Communications Workers of America, AFL-CIO Local 1301, a party to the Collective Bargaining Agreement between Idearc Media and Communications Workers of America, AFL-CIO Local 1301

4. As to GTE retirees who are subject to the provisions of the GTE Change in Control, SuperMedia has the unilateral right to modify or amend: (i) the co-payments, deductibles, and other requirements for coverage and benefits; and (ii) the administration, design, coverage, and benefits of the plans.

(3) *Release*

Finally, the Settlement includes a release by Class Members of all actual or potential claims relating to the Amendments or to the claims in this action. The Release would thus bar Members from filing additional lawsuits relating to the Amendments. *See* Agreement (App. 0025). Notably, the Settlement has no effect on any retiree's claims made in the separate suit *Murphy, et al. v. Verizon Communications, et al*. If the Settlement is approved, the Declarations and release will be binding on all Class Members.

B. STANDARD FOR FINAL APPROVAL

Rule 23(e) provides that a settlement of class claims or defenses must be approved by the Court. To approve a class settlement, the Court must find (i) that the certification requirements of Rule 23(a) and (b) are satisfied and (ii) that the settlement is fair, reasonable and adequate under 23(e). Fed. R. Civ. P. 23. The party(ies) seeking certification must establish the criteria of Rule 23(a) and (b) by a preponderance of the evidence. *In re Heartland Payment Sys.,* 851 F. Supp. 2d 1040, 1052 (S. D. Tex. 2012). Additionally, before final approval, the Court must direct notice to all prospective class members, as this Court has done. Fed. R. Civ. P. 23(e)(1). Notably, the Court has already found that "the Settlement appears to be within a range of fairness, reasonableness, and adequacy sufficient to warrant [. . .] notice." Preliminary Approval Order (Dkt. No. 147) at ¶ 2.

Directory Sales that became effective on December 7, 2008; or (c) Communications Workers of America, AFL-CIO Local 1302, a party to the Collective Bargaining Agreement between Idearc Media New England Directory Clerical Unit and Communications Workers of America, AFL-CIO Local 1302 that became effective on December 7, 2008; and (ii) retired on or after December 7, 2008. The benefits of Post December 7, 2008 NY/NE Retirees are not affected by the Amendments.

C. APPROVAL IS PROPER

a. The Class is Proper Under Rule 23(a)

First, approval of the Settlement is proper because the proposed Settlement Class satisfies the prerequisites of Rule 23(a). Courts have long recognized the benefits and efficiencies derived from resolving disputes in the form of a single class action, rather than numerous isolated suits. *Shaw v. Toshiba Am. Info. Sys.,* 91 F. Supp. 2d 942, 948 (E. D. Tex. 2000). "In order to facilitate the adjudication of disputes involving common questions and multiple parties in a single action, the English Court of Chancery developed the bill of peace." *Id.* (citing 7A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1751 (1986)). The Bill of Peace provided that "one person, called the adversary, might bring suit in equity against several persons, called the multitude, with separate but similar interests, or the multitude might sue to resolve in one action common questions of law or fact in dispute between the adversary and each member of the multitude." 3 Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 1.09, n. 83 (3d ed. 1992) (citing *How v. Tenants of Brooms Grove*, 1 Vern. 22, 23 Eng. Rep. 277 (1681)). Based upon the precedent of the English Bill of Peace, Rule 23 provides for the certification and settlement of class actions characterized by (1) numerosity, (2) commonality, (3) typicality, and (4) adequate representation. Fed. R. Civ. P. 23(a); *Shaw,* 91 F. Supp. 2d at 949. These requirements are satisfied because:

(1) *Numerosity.* The Settlement Class is comprised of approximately 4,700 former employees and their dependents who were participants in SuperMedia's Plans. *See* Gist Aff. at ¶ 17 (App. 0014).[14] Thus, joinder of all class members is impracticable.

[14] Because of privacy concerns, the Parties have not included as an exhibit a list of Class Members and their information. The Parties will provide a list to the Court for in camera inspection or otherwise upon request.

(2) *Commonality*. All Class Members were participants in SuperMedia's three health and welfare benefits Plans, which contain nearly identical anti-vesting and reservations of rights provisions. *See* Gist Aff. at ¶ 17 (App. 0014); Exhibits C-E (App. 0087, 0117, 0149). Additionally, all Members' health and welfare benefits were affected by the Amendments. *Id.* Therefore, questions regarding the validity of the Amendments and SuperMedia's rights and obligations under ERISA and the Plan Documents are common to the Class.

(3) *Typicality*. Defendants Sandra Noe, Carl Ohnstad and Claire Palmer are class representatives for the Defendant Class (the "Class Representatives"). Defendant Noe retired from SuperMedia's predecessor NYNEX, was a participant in SuperMedia's Plans, and is a Majority Retiree. *See* Noe Objection Form (Exhibit P) (App. 2129); Gist Aff. at ¶ 18 (App. 0014). Defendant Ohnstad is a GTE CIC Retiree and a participant in SuperMedia's Plans. *See* Ohnstad Objection Form (Exhibit Q) (App. 2131); Gist Aff. at ¶ 18 (App. 0014). Defendant Palmer was also a participant in SuperMedia's Plans and is in the Majority Group. *See* Palmer Objection Form (Exhibit R) (App. 2133); Gist Aff. at ¶ 18 (App. 0014). The Class Representatives are similarly situated to all Members because they were all participants in the Plans, their retiree health and welfare benefits were reduced or eliminated under the Amendments, and they initially objected to the Amendments. The rights and defenses of the Class Representatives as well as the un-named Members are all governed by the same Plan Documents and legal issues under ERISA. Thus, the requirement of typicality is satisfied. *See Shaw,* 91 F. Supp. 2d. at 95 ("Typicality exists when the same legal and remedial theories support the claims of named and un-named plaintiffs.").

(4) *Adequacy of Representation*. The Class Representatives will fairly and adequately protect the interests of the Defendant Class. Representatives Noe and Palmer adequately served

as Class Representatives of a similar class of SuperMedia and Verizon retirees in the Murphy Suit. The Class Representatives have taken an active role in this litigation, including by submitting Claim Forms in response to the enactment of the Amendments, filing counterclaims, and actively defending this litigation. *See* Claim Forms (Exhibits P-R) (App. 2129-2134). The Class Representatives do not have any conflicts of interest with the absent Class Members and have pursued the maximum recovery for the Settlement Class in light of SuperMedia's right to amend or terminate the Plans under the Plan Documents and the law of ERISA. Furthermore, Class Counsel satisfy the requirements for appointment under Rule 23. Class Counsel have extensive experience in class actions, representation of benefits plan participants, and the legal and factual issues related to the validity of the Amendments under ERISA. Class Counsel have represented Defendants zealously throughout this action. Additionally, Class Counsel represented a similar class of retirees in the Murphy Suit who are members of pension plans. Thus, the Class Representatives and Class Counsel adequately represent the interests of the Class. *See In re Heartland,* 851 F. Supp. 2d. at 1055-56.

b. The Class is Proper Under Rule 23(b)

Second, the Class may be properly certified under Rule 23(b). Rule 23(b) provides three types of class actions: (1) where separate adjudication would create a risk of individual judgments that vary or conflict or that would be dispositive of another member's interests; (2) where the opposing party's actions apply generally to the class as a whole such that declaratory relief is appropriate to the class as a whole; and (3) where common questions of law and fact predominate. Fed. R. Civ. P. 23(b)(1)-(3); *Shaw*, 91 F. Supp. 2d 942 at 951. The Parties request certification as a 23(b)(3) opt-out class or, alternatively, as a 23(b)(1) or 23(b)(2) class because the Class properly satisfies the requirements for each type. The Class Notice sent to individual class members satisfies the appropriateness requirement of 23(c)(2)(A) for a type (1) or (2) class

and also the more stringent requirements of a (2)(B) opt-out notice for a type (b)(3) class. *See* Notice (Exhibit B) (App. 0057).

(1) The Class Satisfies 23(b)(3)

First, the Parties urge the Court to certify an opt-out class under (b)(3) because the evidence, including the terms of the Plan Documents and the Amendments, show that the additional requirements of predominance and superiority are satisfied. Fed. R. Civ. P. 23(b)(3).

Predominance. Under the *Wal-Mart v. Dukes* standard, to satisfy the "predominance" prong, class members' claims or defenses must "depend upon a common contention," such that a central issue can be resolved in "one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011); *see also M.D. v. Perry,* 675 F.3d 832, 841 (5th Cir. 2012) (discussing the applicability of the *Wal-Mart* standard); *In re Heartland,* 851 F. Supp. 2d at 1052 ("The *Dukes* Court explained that commonality requires class-wide proceedings to have the ability 'to generate common *answers*'"). This action arises from changes SuperMedia made to its Plans, which reduced or eliminated medical benefits for all Class Members. Thus, the central issues in the litigation are common to the entire Class: whether SuperMedia had the right to amend or terminate retiree health and welfare benefits under the Plans and whether, therefore, the Amendments are valid and enforceable against the Class. The Plan Documents, which reject vesting and provide reservations of rights to SuperMedia, are nearly identical in each Plan Document.[15] Thus, the Court may resolve the issues "in one stroke" by interpreting the Plan Documents as a matter of law and declaring that participants' welfare benefits were not vested and, thus, that SuperMedia had the right to amend or terminate the Plans.

[15] *See, e.g.,* Exhibit C (App. 0087); Exhibit D (App. 0117); Exhibit E (App. 0149); Exhibit G (App. 0607); Exhibit H (App. 1059); and Exhibit I (App. 1408).

Furthermore, groups of participants with distinct legal issues were excluded from the Class. For instance, because Post 2008 NY/NE Retirees' post-employment benefits were impacted by the 2008 collective bargaining agreements; they were excluded. Likewise, former executives participating in the MERP are subject to provisions therein and, thus, were also excluded. As a result, the Class consists entirely of individuals who (i) were participants in almost identical Plans that provided SuperMedia the right to amend and (ii) were affected by the Amendments. Thus, the pleadings and evidence establish the predominance of common questions and answers, and class certification is proper. *See, e.g., In re Deepwater Horizon*, 739 F.3d 790, 812 (5th Cir. 2014) (affirming approval of class settlement and certification where common factual and legal issues "were central to the validity of all the class members' claims").

Superiority. Rule 23(b)(3) also requires that the class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Pertinent considerations in determining superiority include: (A) the class members' interests in individually controlling the defense of separate actions, (B) the extent of any litigation already begun, and (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum.[16] *Id.* No other litigation related to SuperMedia's Amendments has begun, and this is the only forum handling any relevant litigation. The Class Members' interests are best served by representation by the Class Representatives and Class Counsel, who are familiar with the claims and defenses at issue in this litigation, the terms of the Plan Documents, and the likely outcomes of a trial on the merits, in this Court. Therefore, the class may be properly maintained under Rule 23(b)(3).

[16] It is not necessary to consider the "likely difficulties in managing a class action" where a settlement class is presented. *See Amchem Prods. v. Windsor,* 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial.").

(2) Alternatively, the Class Satisfies 23(b)(1)

Alternatively, the Parties urge certification under 23(b)(1). The requested declarations relate to the validity of the Amendments and the interpretation of the Plan Documents, which govern SuperMedia's provision of retiree welfare benefits to all Class Members. If SuperMedia has the right to amend or terminate the Plans—as the law and the Plan Documents explicitly provide—then that right is the same whether applied to one Member or another. Therefore, an adjudication of SuperMedia's rights respecting one participant in its Plans would necessarily be dispositive of its rights regarding all participants. Conversely, separate judgments regarding SuperMedia's right to amend its Plans, if conflicting, would create incompatible standards of conduct for SuperMedia. Fed. R. Civ. P. 23(b)(1). Therefore, the Class satisfies Rule 23(b)(1).

(3) Alternatively, the Class Also Satisfies 23(b)(2)

Also in the alternative, the Parties urge that the Class be maintained under 23(b)(2). In enacting the Amendments, SuperMedia acted on grounds that apply generally to the Settlement Class. Under the Amendments, SuperMedia modified the health and welfare benefits collectively for all Class Members, so that corresponding declaratory relief is appropriate with respect to all Members. Therefore, the Settlement Class also satisfies Rule 23(b)(2), and the class certification prerequisites of Rule 23(a) and (b) are satisfied.

D. **THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

Finally, approval is proper because the proposed Settlement is fair, reasonable and adequate. Fed. R. Civ. P. 23(e)(2). In determining the fairness of a proposed settlement, courts in the Fifth Circuit look to the 6 *Reed* factors:

> (1) evidence of fraud or collusion behind the settlement; (2) the complexity, expense and likely duration of the litigation; (3) the stage of the proceedings and available discovery; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members.

Reed v. General Motors Corp., 703 F.2d 170 (5th Cir. 1983). In examining these factors, Courts employ a presumption in favor of finding a settlement negotiated at arm's length to be fair. *Klein v. O'Neal, Inc*., 705 F. Supp. 2d 632, 650 (N.D. Tex. 2010) ("When considering [the *Reed*] factors, the court should keep in mind the strong presumption in favor of finding a settlement fair."). Indeed, "a presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *In re Heartland,* 851 F. Supp. 2d at 1063. Additionally, while the Court should assess the *Reed* factors, it is not necessary to try the case "because the very purpose of the compromise is to avoid the delay and expense of such a trial." *Reed,* 703 F.2d at 172.

(1) The Settlement is Not Based Upon Fraud or Collusion

First, the Settlement was negotiated at arm's length by experienced and well-informed counsel, leading up to and during mediation before Court-appointed mediator Jeffrey Abrams. *See* Agreement (Exhibit A) (App. 0019); Garza Aff. at ¶ 4 (App. 0004). Counsel and the Parties entered into the Agreement only after extensive investigation into the relevant documents (including the Plans, SPDs, predecessor plan documents, CBAs and Amendments) and applicable law. Garza Aff. at ¶ 5 (App. 0004). Additionally, Class Counsel have significant experience with and knowledge of the interests of the Settlement Class based upon their handling of numerous Members' initial objections and claim forms. Counsel for the Parties communicated and exchanged proposals in the weeks leading up to the mediation and settlement. *Id.* at ¶ 4 (App. 0004). The Settlement is not the result of collusion or fraud. Garza Aff. at ¶ 5 (App. 0004); Agreement (Exhibit A) (App. 0019).

(2) Complexity, Expense and Duration of Litigation

Second, the reasonableness of approving a settlement is strengthened when the prospect of continued litigation "threatens to impose high costs of time and money on the parties." *Klein*,

705 F. Supp. 2d at 651. Both SuperMedia and the Settlement Class desire to avoid the high costs that would likely result from continued litigation. Although SuperMedia's right to modify, amend, or terminate the Plans may be succinctly stated, ERISA law is often complex, and a determination of a company's right to amend involves the interpretation of numerous, lengthy Plan Documents. *See* Second Amended Complaint and numerous attached Plan Documents and other exhibits (Dkt. No. 113). Additionally, it is likely that, without settlement, the Parties would continue to proceed through a costly formal discovery process, summary judgment briefing, and, potentially, a trial on the merits. Formal discovery and trial could potentially involve the testimony of numerous witnesses representing Plaintiffs, SuperMedia's predecessor entities, Class Members, and third parties (such as labor unions). If the case had not settled, Class Counsel intended to seek an award of attorneys' fees and costs. Therefore, the risks and costs of ongoing litigation favor approval of the Settlement.

(3) Stage of the Proceedings and Available Discovery

Third, the current stage of the proceedings and available discovery favor approval. The Parties have engaged in contested litigation and briefing for more than twenty (20) months. Although formal discovery has not concluded, the Parties have informally exchanged all relevant documents. SuperMedia provided a voluminous amount of documents evidencing and relating to the Amendments, the Plan Documents, its collective bargaining with labor unions, and its predecessor plan documents from the onset. *See* Original Complaint (Dkt. No. 1). Thus, the available discovery enabled both Parties to accurately assess the rights of SuperMedia under the Plan Documents and to enter into the Agreement well informed of the relevant facts and law.

(4) Probability of Success on the Merits

Fourth, the Declarations are consistent with federal law under ERISA and the unambiguous terms of the Plan Documents, which plainly reserve to SuperMedia the right to

modify, amend, or terminate. Therefore, it is almost certain that the Court would enter a declaratory judgment consistent with such rights after a trial on the merits. Because of the likelihood of SuperMedia's success on the merits, the benefit to the Settlement Class in obtaining payment of attorneys' fees and costs to Class Counsel and in avoiding continued, costly litigation is great. *See In re Heartland Payment Sys.,* 851 F. Supp. 2d at 1065 ("The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured.").

Federal law is clear that, unlike pension benefits plans, retiree health and welfare benefits do not vest under ERISA and are instead subject to modification and termination. *See, e.g., Inter-Modal Rail Emps. Ass'n v. Atchison, Topeka & Santa Fe Ry. Co.*, 520 U.S. 510, 515 (1997) ("unless an employer contractually cedes its freedom, it is generally free under ERISA, for any reason at any time, to adopt, modify, or terminate its welfare plan"); *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) ("Nor does ERISA establish any minimum participation, vesting, or funding requirements for welfare plans as it does for pension plans."); *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 373 (5th Cir. 2008). Through this distinction between pension plans, on the one hand, and health and welfare plans, on the other, Congress intentionally recognized an employer's inherent need for flexibility in administering health and welfare plans, which, unlike pension plans, are subject to the ever-fluctuating costs of medical care. *See Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 935 (5th Cir. 1993) ("Congress has conspicuously chosen to exempt welfare benefit plans from the full breadth of ERISA's extensive requirements . . . The disparate treatment accorded welfare plans is not accidental. . ."); *see Moore v. Metro. Life Ins. Co.*, 856 F.2d 488, 492 (2d Cir. 1988) ("With regard to an employer's right to change medical plans, Congress evidenced its recognition of the need for flexibility in rejecting the automatic vesting of welfare plans. Automatic vesting was rejected because the costs of such

plans are subject to fluctuating and unpredictable variables."). Therefore, health and welfare benefits do not vest unless an employer explicitly agrees to provide contractually vested benefits.

SuperMedia and its predecessors have never intended for the retiree welfare benefits provided under the Plans to vest, and no language in any of the Plan Documents suggests these benefits vested. Gist Aff. at ¶ 7 (App. 0010). To the contrary, the Plan Documents expressly preclude vesting and instead reserve SuperMedia's right to modify, amend, or terminate at its discretion. Plans at § 7.4 (App. 0087, 0117 and 0149) ("No Vested Rights"); SPDs (App. 0607, 1059 and 1408) ("The Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate these Plans in whole or in part at any time"). Therefore, the Settlement reflects the law of the Fifth Circuit and the likely outcome of a determination on the merits.

(5) Range of Possible Recovery

Fifth, the settlement amount is within a reasonable range of damages recoverable by the Class. *In re Heartland Payment Sys.,* 851 F. Supp. 2d at 1067. Because (i) this is a declaratory judgment action, (ii) Defendants' counterclaims were dismissed by order of the Court, and (iii) Defendants have no valid claim for damages against SuperMedia, the Settlement—which provides for payment of attorneys' fees and costs in the agreed amount of $140,000—is within or exceeds the reasonable range of recovery. This settlement amount is especially reasonable, given that the law under ERISA and the plain terms of the Plan Documents preclude Class Members' ability to recover damages against SuperMedia. *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 373 (5th Cir. 2008). Thus, this factor favors approval of the Settlement.

(6) Opinions of Class Counsel, Representatives and Absent Members

Sixth, as expressed in the Preliminary Hearing and in the Parties' execution of the Agreement, Class Counsel and Class Representatives believe the Settlement benefits the Class by providing for an effective resolution to this action without the need for Class Members to

incur expenses from continued litigation and by providing reasonable attorneys' fees and costs. *See* Declaration of Class Counsel (App. 2135). To date, no Class Members have objected to the Settlement. Thus, this factor, as well as all six *Reed* factors, support approval of the Settlement.

IV.
CONCLUSION AND PRAYER

The Parties reached a Settlement that resolves this action in a manner that is consistent with the terms of the Plan Documents and the law under ERISA and provides payments of attorneys' costs and fees to the Class. It is proper for the Court to approve the Settlement because (i) the proposed Settlement Class complies with the requirements of Rule 23(a) and (b); and (ii) the proposed Settlement is fair, reasonable and adequate. The Settlement Class consists of similarly situated persons who were all participants in the Plans and impacted by the Amendments. The proposed Class Settlement is fair because (1) it is the result of arm's length negotiations by qualified and competent counsel and the Parties, not fraud or collusion; (2) it enables the Parties to avoid the expenses of continued litigation; (3) the Parties entered into the Settlement after full review of the relevant Plan Documents and materials; (4) it resolves this dispute with a declaratory judgment that is consistent with federal law under ERISA and the terms of the Plan Documents, and which would almost certainly have resulted from a more costly trial on the merits; (5) the relief granted the Class is within or exceeds the reasonable range of recovery the Defendant Class could have achieved after a trial because the Class has no valid claims for monetary damages against Plaintiffs; and (6) Class Representatives and Class Counsel believe that the Settlement is in the best interests of all Class Members.

For these reasons, the Parties jointly request that the Court enter an order which (i) certifies the Settlement Class; (ii) finally approves the Settlement, (iii) makes such findings as necessary for final approval of the Settlement, and (iv) issues the follow declarations:

1. The June 25, 2012 amendments, the October 15, 2012 amendments, and the April 23, 2013 amendments (collectively, the "Amendments") enacted by SuperMedia are legal, valid, binding, and enforceable;

2. The Amendments enacted by SuperMedia do not violate, conflict with, or breach any provision of or obligation under the retiree health and welfare benefits plans, collective bargaining agreements, or any other operative agreements;

3. As to participants who (i) are not subject to the GTE Change in Control[17], (ii) are not subject to the MERP[18], and (iii) are not Post December 7, 2008 NY/NE Retirees[19], SuperMedia has the unilateral right to modify, amend, revoke or terminate the plans or any provisions therein at any time;

4. As to GTE retirees who are subject to the provisions of the GTE Change in Control, SuperMedia has the unilateral right to modify or amend: (i) the co-payments, deductibles, and other requirements for coverage and benefits; and (ii) the administration, design, coverage, and benefits of the plans.

The Parties request final judgment consistent with these requests and pray for any such other relief to which they may be entitled at law or in equity.

[17] Participants subject to the GTE Change in Control are: (i) retirees who were participants in the GTE Retiree Choices Medical Plan as of May 18, 1999 and (ii) either (a) retired from GTE before May 18, 1999 (other than with a deferred vested pension) or (b) retired (other than with a deferred vested pension) from GTE or any successor after May 18, 1999 and were within five years of reaching eligibility for retirement (not including eligibility for a deferred vested pension) under the applicable GTE pension plan as of May 18, 1999, and their dependents.

[18] Participants subject to the MERP are: Joseph Porter, Charles Higgins, Wayne Kauffman, Donald Marinari, Al Dilorenzo, Audrey Tracey, Adeline Feltmann and Lester Luedecker.

[19] Post December 7, 2008 NY/NE Retirees are those who (i) were formerly bargaining unit employees represented by one of the following three labor unions: (a) the International Brotherhood of Electrical Workers, AFL-CIO Local 2213, a party to the Collective Bargaining Agreement between Idearc Media North Greenbush, NY – Directory Clerical Unit and International Brotherhood of Electrical Workers, AFL-CIO Local 2213 that became effective on December 7, 2008; (b) Communications Workers of America, AFL-CIO Local 1301, a party to the Collective Bargaining Agreement between Idearc Media and Communications Workers of America, AFL-CIO Local 1301 Directory Sales that became effective on December 7, 2008; or (c) Communications Workers of America, AFL-CIO Local 1302, a party to the Collective Bargaining Agreement between Idearc Media New England Directory Clerical Unit and Communications Workers of America, AFL-CIO Local 1302 that became effective on December 7, 2008; and (ii) retired on or after December 7, 2008. The benefits of Post December 7, 2008 NY/NE Retirees are not affected by the Amendments.

March 18, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2014, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

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s/ Richard S. Krumholz

Declaration A

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

SUPERMEDIA, INC., ET. AL.,	)	
Plaintiffs,	)	CIVIL ACTION NO.
VS.	)	3:12-CV-2034-G
SANDRA NOE, ET. AL.,	)	

DECLARATION OF CURTIS L. KENNEDY
IN SUPPORT OF ATTORNEY'S FEES AND COSTS TO BE PAID BY SUPERMEDIA

I, **Curtis L. Kennedy**, declare as follows:

1. As Co-class counsel, I make this declaration of my own personal knowledge in support of the Parties' Joint Motion for Final Approval of the Class Settlement. This Declaration is being filed in the United States District Court for the Northern District of Texas, Dallas Division, and is the legal equivalent of a statement under oath.

2. I am a sole practitioner with an office in Denver, Colorado. I successfully past bar exams in order to become licensed in the states of Arizona, Colorado, Oklahoma, Texas and the District of Columbia. I am admitted to practice in numerous federal district courts, federal appellate courts and the Supreme Court of the United States. For thirty years, a significant part of my law practice has concentrated on assisting, either on a paid basis or pro bono basis, thousands of employees and retirees of the former Bell System. I have championed numerous individual, multiparty and class action disputes to a successful conclusion.

3. I am counsel of record for the retirees who are Named Defendants, and I serve as Court-appointed Co-class counsel for a Class of over 3,000 retirees in this litigation.

4. I am submitting this declaration in support of the Parties' agreement, as approved by the Court appointed Mediator, that SuperMedia will pay $130,000 for Defendants' attorneys' fees and $10,000 for Defendants' costs and expenses in connection with the Class litigation that has been resolved.

5. Thus far during this litigation, I have performed over 300 billable attorney hours representing almost two dozen retirees residing in numerous states across the country, and those retirees were Named Defendants in this litigation. I have carried out primary responsibility for the work on behalf of the Named Defendants and Class members. In addition, my co-counsel based in Dallas, Texas, Robert E. Goodman, Jr., Esq., has provided well over 30 billable hours in this litigation. Numerous billable hours have also been provided by Mr. Goodman's paralegals for work on behalf of the retirees and their beneficiaries. Both Mr. Goodman and I will continue to expend billable hours until this litigation is concluded.

6. All of the work and services performed were necessary to the administration of and beneficial at the time at which the services were rendered toward resolution of the disputed issues and completion of the above-entitled civil action filed within the Dallas federal court.

7. All of the legal services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the ERISA related problems, issues, or tasks both Mr. Goodman and I had to address.

8. It is my opinion that the agreed upon compensation for attorney's fees is reasonable based on the customary compensation charged by comparably skilled ERISA class action practitioners in similar employee benefit litigation. My current customary hourly rate to represent a single individual in federal court litigation is $425.00, a rate that is reflective of my

30 years of legal practice focused on ERISA employee benefits litigation. My hourly rate is well in line with the hourly rates prevailing in the Dallas metropolitan area community for similar services by lawyers of reasonably comparable skill, experience and reputation for employment and employee benefits litigation. None of the named Defendants were able to personally pay for either mine or Mr. Goodman's legal services rendered.

9. In addition to the attorney time expended, this litigation has required over $10,000 in costs and expenses for necessary travel to Dallas, travel to meet with named Defendants and Class members, photocopying costs, WestLaw legal research, telephone conference calls, maintaining a website and providing newsletters to retirees. A substantial fee was paid for the Mediator's services. None of the named Defendants were able to personally pay any of the costs and expenses of this litigation.

10. No named Defendant and no Class member will pay any attorney's fees or costs. The Parties agreed upon a compromised and fixed amount of attorney's fees and costs to be paid solely by SuperMedia.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of March, 2014 at Denver, Colorado.

/s/ Curtis L. Kennedy

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END OF APPENDIX

In Support of Joint Motion for Final Approval and Brief