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 SuperMedia's PENSION PLANS,	§	
-	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. 3:09-cv-2262-G
	§	ECF
VERIZON COMMUNICATIONS INC.,	§	
VERIZON CORPORATE SERVICES GROUP INC.,	§	
VERIZON EMPLOYEE BENEFITS COMMITTEE,	§	
VERIZON PENSION PLAN FOR NEW YORK	§	
AND NEW ENGLAND ASSOCIATES,	§	
VERIZON MANAGEMENT PENSION PLAN,	§	
VERIZON ENTERPRISES MANAGEMENT	§	
PENSION PLAN,	§	
VERIZON PENSION PLAN FOR MID-ATLANTIC	§	
ASSOCIATES,	§	
SUPERMEDIA EMPLOYEE BENEFITS COMMITTEE,	§	
	§	
Defendants.	§	

<u>PLAINTIFFS' AMENDED MOTION FOR LEAVE TO SUBMIT</u> SUPPLEMENTAL STATEMENT OF ADMISSIONS MADE BY SUPERMEDIA EBC

Plaintiffs PHILIP A. MURPHY, JR., SANDRA R. NOE and CLAIRE M. PALMER, by

and through their counsel, pursuant to Local Rule 56.7, move to supplement Plaintiffs' Motion

for Partial Summary Judgment (Docket 81) and their oppositions to Defendants' respective

summary judgment motions (Dockets 86 and 88), by calling to this Court's attention admissions

made by SuperMedia EBC in its recently filed Answer to Plaintiffs Second Amended Complaint.

As grounds, Plaintiffs state:

1. On April 24, 2012, months after the parties' filed their motions for summary

judgment, and after receiving more time, Defendant SuperMedia EBC filed its Answer to the Second Amended Complaint (See Docket 115). In the Answer, said defendant has finally admitted to several material factual matters which the Court should take into consideration when making rulings on the parties' pending motions for summary judgment.

2. SuperMedia EBC admits that: "In November 2006, Verizon and VIMCO transferred a portion of the *surplus* assets out of the Bell Atlantic Master Trust into SuperMedia's master trust." (emphasis added; Docket 115, ¶ 58; compare Docket 64 ¶ 58). This admission not previously made by any defendant party supports Plaintiffs' contentions that the pension assets transferred were surplus assets, not tied to or traceable to any identifiable retiree Class member. (See Plaintiffs' memorandum brief, Docket 87, at p. 10.)

3. SuperMedia EBC admits that: ". . .no one associated with SuperMedia Inc. obtained Plaintiffs' or class members consent to be transferred out of Verizon pension plans into SuperMedia (f/n/a Idearc pension plans)." (Docket 115, \P 61; compare Docket 64 \P 61). This admission goes further than the defendant's prior stipulation that "SuperMedia EBC has not identified any documents or information indicating that anyone obtained Plaintiffs' or Class members' consent to be transferred out of Verizon sponsored pension plans into Idearc sponsored pension plans." (See Plaintiffs' Appendix, Docket 85, at 5, \P 11).

4. SuperMedia EBC admits that: "Neither Verizon's pension plans nor SuperMedia's pension plans have a written procedure to address either an individual or class-wide claim for violation of ERISA's fiduciary duty provisions." (Docket 115, ¶ 109; compare Docket 64 ¶ 109). This admission defeats and nullifies the defendants' respective asserted defense that Plaintiffs and Class members have failed to exhaust their administrative remedies.

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5. SuperMedia EBC admits that: "... it will not transfer Plaintiffs and class members 'back into Verizon's pension plans' without a directive and order by this Court."" (Docket 115, ¶ 227; compare Docket 64 ¶ 227). This admission reinforces Plaintiffs' contention that administrative remedies are futile and the only avenue available for Plaintiffs and the Class is to seek federal judicial relief.

6. Plaintiffs believe this Court, when determining the parties' respective motions for summary judgments, will be assisted by the aforesaid recent admissions made by SuperMedia EBC in its Answer filed on April 24, 2012.

7. Because all of the briefing on the summary judgment motions was complete long before SuperMedia EBC made the aforesaid admissions, Plaintiffs request leave to supplement their statement of undisputed material facts in support of Plaintiffs' Motion for Partial Summary Judgment (Docket 81) and in support of their oppositions to Defendants' respective summary judgment motions (Dockets 86 and 88) by including the April 24, 1012 Answer in their summary judgment evidence.

8. As stated in the following "Certificate of Conference", Verizon Defendants originally consented to this motion and stated:

While the Verizon Defendants consented to plaintiffs' request to supplement their statement of facts, they do not concede the accuracy of plaintiffs' additional statements and disagree that they are relevant to either their or plaintiffs' motions for summary judgment. The Verizon Defendants also note that SuperMedia's admissions do not constitute admissions by the Verizon Defendants, and should not be construed as such. The Verizon Defendants respectfully refer the Court to their answer to plaintiffs' second amended complaint and summary judgment briefs.

Defendant SuperMedia EBC stated that certain admissions were a mistake and said defendant

opposes this motion.

9. Accordingly, today, Plaintiffs filed the original of this motion, docket 116.

Unbeknownst to Plaintiffs' counsel who was then filing docket 116, there was in route an email message coming from one Verizon Defendants' counsel who was attempting to report that consent was being withdrawn and that the Verizon Defendants were, now, opposed to the motion. Therefore, this amended motion is filed to show in good faith to show that all defendants oppose the motion.

WHEREFORE, Plaintiffs respectfully request leave to submit the aforesaid admissions made by Defendant SuperMedia EBC as supplemental fact matters in support of Plaintiffs' Motion for Partial Summary Judgment (Docket 81) and in support of Plaintiffs' oppositions to all Defendants' respective summary judgment motions (Dockets 86 and 88).

DATED this 2nd day of May, 2012.

Respectfully submitted,

s/ Curtis L, Kennedy Texas State Bar No. 11284320 Colorado State Bar No. 12351 Curtis L. Kennedy, Esq. 8405 E. Princeton Avenue Denver, Colorado 80237-1741 Tele: 303-770-0440 CurtisLKennedy@aol.com *CLASS COUNSEL* <u>s/ Robert E. Goodman, Jr.</u> Texas State Bar No. 08158100 Robert E. Goodman, Jr., Esq. KILGORE & KILGORE LAWYERS 3109 Carlisle Street Dallas, Texas 75204 Tele: 214-969-9099 Fax: 214-953-0133 reg@kilgorelaw.com *CLASS COUNSEL*

CERTIFICATE OF CONFERENCE

On April, 30, 2012, Plaintiffs' counsel sent to all defense counsel a draft of this motion, together with a request that Defendants not oppose this motion. On May 2, 2012, counsel for the Verizon Defendants responded by email stating they consent and specifically asked Plaintiffs to include the Verizon Defendants' stated consent in the body of Plaintiffs' motion and supplemental filing. Also, on May 2, 2012, counsel for SuperMedia EBC telephone Plaintiff's counsel stating that SuperMedia EBC will oppose the motion on the grounds that certain admissions made by SuperMedia EBC were mistakes. However, as explained in the text of this motion, Verizon Defendants had a change in position which was attempted to be communicated by email transmission and that transmission became delayed due to the working so multiple email servers. Therefore, the motion is opposed by both the Verizon Defendants and Defendant SuperMedia EBC.

DATED this 2nd day of May, 2012.

Respectfully submitted,

s/ Curtis L, Kennedy Texas State Bar No. 11284320 Colorado State Bar No. 12351 Curtis L. Kennedy, Esq. 8405 E. Princeton Avenue Denver, Colorado 80237-1741 Tele: 303-770-0440 CurtisLKennedy@aol.com *CLASS COUNSEL* <u>s/ Robert E. Goodman, Jr.</u> Texas State Bar No. 08158100 Robert E. Goodman, Jr., Esq. KILGORE & KILGORE LAWYERS 3109 Carlisle Street Dallas, Texas 75204 Tele: 214-969-9099 Fax: 214-953-0133 reg@kilgorelaw.com *CLASS COUNSEL*

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2012, 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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Also, copy of the same was delivered via email to Plaintiffs as follows:

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