UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

PHILIP A. MURPHY, JR.	§
SANDRA R. NOE, and	§
CLAIRE M. PALMER, et al.	§
Plaintiffs,	§
	§
V.	§
	§
VERIZON COMMUNICATIONS, INC., et	§
al.	§
Defendants.	§
	§

Civil Action No. 3:09-cv-2262-G

SUPERMEDIA DEFENDANTS' REPLY BRIEF IN RESPONSE TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS

Respectfully submitted,

ANDREWS KURTH LLP

/s/ David P. Whittlesey

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ATTORNEYS FOR DEFENDANTS SUPERMEDIA EMPLOYEE BENEFITS COMMITTEE, SUPERMEDIA PENSION PLAN FOR MANAGEMENT EMPLOYEES, AND SUPERMEDIA PENSION PLAN FOR COLLECTIVELY BARGAINED EMPLOYEES The SuperMedia Defendants¹ file this Reply Brief in response to Plaintiffs' Opposition to the SuperMedia Defendants' motion to dismiss, and respectfully show as follows:

I. <u>SUMMARY OF REPLY ARGUMENT</u>

Plaintiffs spend the first five pages of their opposition restating the allegations in the Amended Complaint. Most of those allegations relate to alleged wrongful conduct of the Verizon defendants in "improperly" transferring the Plaintiffs to the SuperMedia Pension Plans. Plaintiffs do not allege the SuperMedia Defendants committed any wrongful conduct in this regard. And Plaintiffs have failed to specifically identify a single plan benefit that they were entitled to under law that the SuperMedia Pension Plans denied. In fact, Plaintiffs' Amended Complaint is completely devoid of any claim against the SuperMedia Pension Plans themselves. The only claims Plaintiffs have attempted to assert against any of the SuperMedia Defendants relate to SuperMedia EBC's alleged failure to provide plan documents upon request. These claims fail as a matter of law because Plaintiffs received all of the documents they were entitled to under ERISA. As a result, Plaintiffs' claims against the SuperMedia Defendants should be dismissed under Rule 12(b)(6).

II. ARGUMENT AND AUTHORITIES

To survive a Rule 12(b)(6) motion, a complaint must allege sufficient factual allegations to state a claim that is plausible on its face. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

¹ Defined terms in this Reply will have the same meaning as those defined terms in the original motion to dismiss [Docket No. 23].

A. Plaintiffs Have Failed to State Any Claims Against the SuperMedia Pension Plans.

A full examination of Plaintiffs' Amended Complaint reveals they have not alleged the SuperMedia Pension Plans are responsible in any way for the alleged statutory violations and breaches of fiduciary duties directed against the Verizon Defendants and SuperMedia EBC.

1. Plaintiffs' Response Brief fails to identify claims against the SuperMedia Pension Plans.

Plaintiffs' Opposition to SuperMedia Defendants' Motion to Dismiss ("Response Brief") makes Defendants' point as to the SuperMedia Pension Plans. Despite Plaintiffs' recharacterization of each of their six claims, Plaintiffs point to no factual allegations that would impose liability against the SuperMedia Pension Plans. *See* Pls.' Resp. Br. at 2-5. Likewise, no claim can be found in Section B where Plaintiffs specifically address the plans. *See id.* at 7-9. The closest Plaintiffs come is their assertion in the Response Brief that "Plaintiffs seek an order directing *all defendant parties* restore all involuntarily transferred retirees into Verizon's pension plans." *Id.* at 7 (emphasis added). The support for this statement, Plaintiffs' citation of the Amended Complaint at paragraph 151 and Prayer G.4. Paragraph 151 simply states, "Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 150, inclusive, as if they were fully set forth herein." *Id.* ¶ 151. It is followed by paragraphs stating a claim for violation of ERISA § 502(a)(1)(B) exclusively against the Verizon Management Pension Plan and the Verizon Plan for New York & New England Associates. *See id.* ¶ 152.

Paragraph G.4 of the Prayer, which cannot possibly meet the notice pleading standard on its own,² requests injunctive relief against SuperMedia EBC f/k/a Idearc EBC,³ not the

² See Fed. R. Civ. P. 8(a) (requiring a pleading that states a claim for relief contain a short and plain statement of the claim showing that the pleader is entitled to relief *and* a demand for the relief sought).

SuperMedia Pension Plans. *See id.* at Prayer G.4. While Plaintiffs may be correct that ERISA § 502(d)(1), "does not limit the forms of relief that may be sought against a plan" (Pls.' Resp. Br. at 7), the Amended Complaint still fails to actually state a factual basis for relief from the SuperMedia Pension Plans.

2. Plaintiffs' attempt to argue the SuperMedia Pension Plans are necessary parties is a red herring.

Rather than pointing to actual claims asserted against the SuperMedia Pension Plans, the thrust of Plaintiffs' argument is that they are necessary parties to this litigation under Federal Rule of Civil Procedure 19(a). However, "it is implicit in Rule 19(a) itself that . . . before [a party] will be joined as a defendant the plaintiff must have a cause of action against it." *Vieux Carre Prop. Owners, Residents, & Assocs., Inc. v. Brown*, 875 F.2d 453, 457 (5th Cir. 1989). Plaintiffs' failure to assert any claims against or to seek any relief from the plans precludes retaining the plans as "necessary parties." *See Coward v. Dickens*, No. Civ. A. 04-2124, 2005 WL 1330491, at *1 (W.D. La. May 13, 2005) (unpublished) (granting defendant's 12(b)(6) motion where plaintiffs argued defendant was necessary party but did not allege any actions taken by defendant nor request any relief involving defendant). In any event, the SuperMedia Pension Plans are not necessary for complete relief to be granted, just as the plans' sponsor, SuperMedia Inc., is not necessary for relief.⁴ As a result, Plaintiffs' "claims" against the SuperMedia Pension Plans should be dismissed with prejudice.

³ Plaintiffs also seek injunctive relief from SuperMedia Inc. f/k/a Idearc Inc.; however, the parties agreed to a stipulation voluntarily dismissing SuperMedia Inc., which this Court entered on February 9, 2010. *See* Order Granting Stipulation of Dismissal of Def. Idearc, Inc. n/k/a SuperMedia, Inc. under Fed. R. of Civ. P. 41(a)(1)(ii) (Docket No. 17).

⁴ See Order, supra note 3. To the extent the Court determines a SuperMedia Defendant is needed to effectuate an order transferring retirees back to Verizon pension plans, the plans' administrator is the appropriate party—SuperMedia EBC. If the Court makes such a determination, SuperMedia EBC could remain in the case, after dismissing all claims against it, for the *sole purpose* of facilitating the enforcement of any orders that may be made by the court with respect to transferring the retirees.

B. Plaintiffs Have Failed to State a Claim Against SuperMedia EBC for Violation of ERISA § 104(b)(4).

Plaintiffs requested twenty categories of documents from SuperMedia EBC in two separate letter requests. *See* Aug. 13, 2008 Letter, attached hereto as Ex. A; Feb. 4, 2009 Letter, attached hereto as Ex. B.⁵ Plaintiffs contend they were entitled to these documents under ERISA § 104(b)(4). *See* Pls.' Am. Compl. ¶¶ 51-58, 86, 105. SuperMedia EBC provided all of the documents Plaintiffs were entitled to under ERISA. *See* Sept. 10, 2008 Letter, attached hereto as Ex. C; Mar. 3, 2009 Letter, attached hereto as Ex. D.⁶ Plaintiffs were apparently satisfied with SuperMedia's response to sixteen of the twenty categories, as they now allege SuperMedia EBC failed to provide documents responsive to only four of these categories:

- 1) Form 5500s;
- 2) Funding and actuarial reports;
- 3) IRS approvals and qualifications;
- 4) Investment policies/guidelines.

See Pls.' Resp. Br. at 10-18. Because documents responsive to these four categories were either provided or are not required to be disclosed, Plaintiffs have failed to state an actionable claim for violation of the statute. The Court should therefore dismiss Count Two as to SuperMedia EBC. *See Shaver v. Operating Eng'rs Local 428 Pension Trust Fund*, 332 F.3d 1198, 1202 (9th Cir.

⁵ The Fifth Circuit recognizes the incorporation-by-reference doctrine. *See Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000) ("Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim.") Plaintiffs quote heavily from the August 13, 2008 and February 4, 2009 letters as the bases for their claims, but fail to attach either to their Amended Complaint. *See* Pls.' Am. Compl. ¶¶ 51-57, 59, 61, 64-66, 86, 103, 111-12. The SuperMedia Defendants attach both hereto for completeness without converting their motion to dismiss to one for summary judgment. *See generally Collins*, 224 F.3d at 498-99.

⁶ SuperMedia EBC's responses to Plaintiffs' letters should be considered part of the pleadings because they are implicitly referred to in Plaintiffs' Amended Complaint and are central to their claims. *See Collins*, 224 F.3d at 498-99. Specifically, Plaintiffs allege that SuperMedia EBC failed to provide some, not all, of the requested information. *See* Pls.' Am. Compl. ¶ 51, 86. SuperMedia EBC's response letters show exactly what was provided and what was not provided. The SuperMedia Defendants attach both hereto for completeness without converting their motion to dismiss to one for summary judgment. *See generally Collins*, 224 F.3d at 498-99. The authenticity of the letters is not in question. *See* Exhibit E, Declaration of Joe A. Garza, authenticating the letters in question.

2003) (holding dismissal of claim appropriate under Rule 12(b)(6) when documents requested did not fall within ERISA § 104(b)(4)).

1. SuperMedia EBC provided Plaintiffs with the latest Form 5500s.

In a letter dated August 13, 2008, Plaintiffs Sandra Noe and Claire Palmer requested from SuperMedia EBC 2006 and 2007 Form 5500s. *See* Pls.' Am. Compl. ¶ 51; Ex. A at 1-2. Form 5500s are also known as annual reports. *See Faircloth v. Lundy Packing Co.*, 91 F.3d 648, 651 (4th Cir. 1996) (using annual report and Form 5500 interchangeably). ERISA § 104(b)(4) requires the plan administrator to provide the latest annual report upon written request. *See* ERISA § 104(b)(4). SuperMedia EBC complied with its obligations under the statute by providing the latest annual report, which was Year 2006. *See* Ex. C. The Amended Complaint demonstrates no plausible claim on its face with respect to this category of documents.

2. ERISA § 104(b)(4) does not require the disclosure of funding and actuarial reports.

In their February 4, 2009 letter, Plaintiffs requested "actuarial studies, funding projections, estimates and final reports concerning pension assets expected to be transferred and confirming the transfer of assets to [SuperMedia] for payment of pension liabilities." *See* Pls.' Am. Compl. ¶ 54; Ex. B. None of these items are enumerated in ERISA § 104(b)(4).

The Fifth Circuit employs the principle of *ejusdem generis* in construing statutory requirements. *See, e.g., Weisbart & Co. v. First Nat'l Bank of Dalhart, Tex.*, 568 F.2d 391, 395 & n.6 (5th Cir. 1978) (applying statutory construction cannon of *ejusdem generis* to narrowly interpret the UCC). "This doctrine counsels that general words following an enumeration of particular or specific items should be construed to fall into the same class as those items specifically named." *Id.* at n.6. In applying this principle to the statutory provision at issue, other circuits have limited the "other instruments" provision to the specific class of documents

immediately preceeding it. *See Allinder v. Inter-City Prods. Corp.*, 152 F.3d 644, 549 (6th Cir. 1998) (applying the construction principle of *ejusdem generis* to the term "other documents" to exclude claims forms). "[A]ctuarial studies, funding projections, estimates and final reports concerning pension assets" are not within the class of documents specifically enumerated in ERISA § 104(b)(4) and no authorities interpret the statute to require their production.

The closest authority Plaintiffs cite is a 1994 Sixth Circuit opinion holding *actuarial* valuation reports must be disclosed upon request under ERISA § 104(b)(4). See Bartling v. Fruehauf Corp., 29 F.3d 1062, 1070 (6th Cir. 1994) (reasoning because 29 U.S.C. § 1023(d) required an actuarial valuation report for every third plan year, they were indispensable to the operation of the plan).⁷ "An actuarial valuation report is a document, prepared by the plans' actuaries, that describes a plan's 'current funded status and future funding obligations.'" Board of Trs. of the CWA/ITU Negotiated Pension Plan v. Weinstein, 107 F.3d 139, 144 (2d Cir. 1997). Plaintiffs did not request an <u>actuarial valuation report</u>. Instead Plaintiffs requested "actuarial studies" and "final reports concerning pension assets expected to be transferred and confirming the transfer of assets to [SuperMedia] for payment of pension liabilities," which do not fall within the scope of the "other instruments" provision. Pls.' Am. Compl. ¶ 54; Ex. B at 3; Aliff v. BP Am., Inc., 826 F. Supp. 178, 182, 188 (S.D. W. Va. 1993) (holding ERISA § 104(b)(4) did not require plan administrator to supply a copy of an actuarial report comparing particular benefit plans prepared at the administrator's request).

Even if the Court interpreted Plaintiffs' request to include 29 U.S.C. § 1023(d) actuarial valuation reports, the Second Circuit, in an extremely thorough and well-reasoned opinion,

⁷ Upon further analysis, courts call into question the *Bartling* court's reasoning. See the *Board of Trustees* of the CWA/ITU Negotiated Pension Plan v. Weinstein discussion infra. See also Faircloth v. Lundy Packing Co., 91 F.3d 648, 654 (4th Cir. 1996) ("We find nothing in the clear and unambiguous statutory language to support [the *Bartling* court's presumption" favoring disclosure).

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analyzed the *Bartling* court's reasoning and held ERISA § 104(b)(4) did *not* require the disclosure of these reports. *Weinstein*, 107 F.3d at 146. Over several pages of detailed analysis, the *Weinstein* court lays out why actuarial valuation reports do not fall within the scope of the "other instruments" provision. In short, "[s]ince actuarial valuation reports are not mentioned in § 104(b)(4), are not required to be reproduced within any of the documents that that section does mention, are not sources of data that plan administrators are required to use, and are not sources of the rights or obligations of any of the participants, beneficiaries, or fiduciaries,... actuarial valuation reports are not within the scope of § 104(b)(4)." *Id.* at 145.

Plaintiffs have failed to state a plausible claim for relief with respect to SuperMedia's failure to provide actuarial studies, funding projections, estimates and final reports concerning pension assets expected to be transferred and confirming the transfer of assets to SuperMedia.

3. ERISA § 104(b)(4) does not require the disclosure of IRS approvals and qualifications.

In their February 4, 2009 letter, Plaintiffs also requested "documents reflecting application made to the IRS for approval of the transfer or retirees and pension assets and qualification of the pension plans, as well as letters and responses by the IRS." *See* Pls.' Am. Compl. ¶ 56; Ex. B at 8. Any application to the IRS for a particular tax status and determination letter therefrom are not the formal instruments establishing or operating a plan contemplated by ERISA § 104(b)(4)'s "other instrument" provision. *Faircloth*, 91 F.3d at 654 (holding IRS determination letter is not within scope of ERISA § 104(b)(4)). In stating "there are no published court cases directly on point," Plaintiffs ignore the *Faircloth* decision, upon which they rely heavily for other arguments in their Response Brief. Pls.' Resp. Br. at 14, 16-17. Plaintiffs have failed to state a plausible claim for relief with respect to this category of documents.

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4. ERISA § 104(b)(4) does not require the disclosure of investment policies/guidelines.

Finally, Plaintiffs requested "all other documents created *since September 2008* under which the pension plans and the master trust are established and operated within the meaning of ERISA Section 104(b)(4), including asset allocation policy/guidelines and investment policy/guidelines and proxy voting guidelines." *See* Pls.' Compl. ¶ 86; Ex. B at 9. Plaintiffs fail to cite any controlling authority that these documents should be considered within the "other instruments" listed in ERISA § 104(b)(4).

Instead, Plaintiffs rely on *Faircloth*, in which the Fourth Circuit reversed the district court's holding that participants were not entitled to the requested employee stock ownership plan's funding and investment policies, but affirmed the district court in all other respects, including that IRS determinations of tax qualification, bonding policies, appraisal reports and supporting documentation, meeting minutes, cost-sharing policies, and trustee expense policies did not fall within the narrow scope of ERISA § 104(b)(4). *Id.* at 652-58. Plaintiffs have failed to demonstrate that the Fifth Circuit would agree with this fourteen year old holding with regard to investment policies and guidelines.

Considering the same issue, and with the benefit of eight years of case law development since *Faircloth*, the Northern District of Ohio in the *Hickey v. Pennywitt* case properly excluded from ERISA § 104(b)(4): (1) investment guidelines, (2) classes of assets that comprise the investment portfolio and target percentages, (3) insurance coverage, (4) the risk/return characteristics of the fund, and (5) the name of the investment manager. *Hickey v. Pennywitt*, No. 3:03CV7307, 2004 WL 1304933, at * 7 (N.D. Ohio, May 20, 2004) (unpublished). Relying on many of the cases cited herein, including *Faircloth*, the *Hickey* court held ERISA § 104(b)(4) did not require the defendants to provide plaintiffs with requested investment guidelines. *Id.* at

*6-7. The *Hickey* court's treatment of investment policies and similar documents is more in line with other circuits and a narrow construction of ERISA § 104(b)(4). *See, e.g., Weinstein,* 107 F.3d at 143 (reasoning the "other documents" clause "was meant to refer to formal documents that govern the plan, not all documents by means of which the plan conducts operations"). Asset allocation and investment policies do not fall within the scope of ERISA § 104(b)(4).

In sum, SuperMedia EBC provided the latest annual report and ERISA § 104(b)(4) does not require SuperMedia EBC to provide the other three categories of documents Plaintiffs claim were withheld; therefore, Plaintiffs have failed to state a claim against SuperMedia EBC in Count Two. Accordingly, the claim should be dismissed. *See Shaver*, 332 F.3d at 1202 (affirming district court's dismissal of claims on 12(b)(6) motion).

C. Plaintiffs Have Failed to State a Claim Against SuperMedia EBC for Breach of Fiduciary Duty.

Because Plaintiffs failed to state a claim for failure to provide documents under ERISA § 104(b)(4), Plaintiffs' claim for breach of fiduciary duty fails as well. Plaintiffs argue in their Response Brief "that they can demonstrate circumstances which justify expansion of the pension plan administrators' respective duties to make required disclosures to Plaintiff beyond the matters specifically listed in ERISA Section 104(b)(4)." Pls.' Resp. Br. at 18-19. A plan administrator's duty to produce documents, however, is defined by ERISA. *See* ERISA § 104(b)(4); *Faircloth*, 91 F.3d at 657 (holding ERISA's general fiduciary duty provision does not create additional disclosure obligations beyond those found in ERISA § 104(b)(4)). Expanding the scope of this duty would eviscerate the plain language of the statute, conflict with the principle that specific statutes govern general statutes, and upset the delicate balance crafted by Congress in providing participants with information about their rights and remedies with

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respect to employee benefit plans and the burden and expense placed on plan administrators in having to provide unlimited information to curious participants. *See id.* at 657-58.

Because SuperMedia EBC did not violate ERISA § 104(b)(4), Plaintiffs have failed to state a breach of fiduciary duty claim that is plausible on its face. *Shaver*, 332 F.3d at 1202 (affirming district court's dismissal under 12(b)(6) of breach of fiduciary duty claim based on withheld documents where court determined ERISA § 104(b)(4) did not compel same documents to be provided). Count One should, therefore, be dismissed as to SuperMedia EBC as well.

D. Plaintiffs Have Failed to State a Claim Against SuperMedia EBC for Equitable Relief Under ERISA §§ 502(a)(2) and (a)(3).

Section E of Plaintiffs' Response Brief reiterates the SuperMedia Defendants' point that the injunctive relief sought in Count Four is properly asserted against the Verizon Defendants and not SuperMedia EBC. That SuperMedia EBC may "fully recognize[] that plaintiffs seek to rescind their involuntary transfers," does not mean it can be held liable for this alleged wrongdoing. Pls.' Resp. Br. at 22. Plaintiffs' Amended Complaint does not contain sufficient factual allegations against SuperMedia EBC to support injunctive relief for any violation of the plans or any other ERISA provision. Likewise, SuperMedia EBC is not a "necessary party" under Rule 19(a) for the reasons outlined in Part II.A.2, *supra*. Count Four should be dismissed with prejudice as to SuperMedia EBC.

III. CONCLUSION AND PRAYER

For the reasons outlined above, Plaintiffs have failed to state any plausible claims for relief against the SuperMedia Defendants. Therefore, the SuperMedia Defendants respectfully request all claims against them be dismissed with prejudice.

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of April 2010, I electronically filed the foregoing document with the clerk of the 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 counsel of record, each of whom has registered as users of the ECF system. A courtesy copy has also been sent to counsel of record via United States Mail.

/s/ David P. Whittlesey David P. Whittlesey

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ALSO ADMITTED IN: UNITED STATES SUPREME COURT

STATE OF ARIZONA

STATE OF OKLAHOMA STATE OF TEXAS WASHINGTON, D.C.

August 13, 2008

Idearc Pension Plan for Management Employees Plan Administrator Idearc Pension Plan for Collectively Bargained Employees Plan Administrator Idearc, Inc. Master Trust Plan Administrator c/o William Gist c/o Idearc Employee Benefits Committee IDEARC, INC. 2200 West Airfield Drive DFW Airport, TX 75261-4008

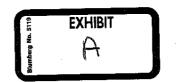
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Re: ERISA Request for Plan Documents

Plan Administrator and Mr. WilBanks:

This request is made on behalf of Sandra R. Noe, active participant in the Idearc Pension Plan for Collectively Bargained Employees, and Claire M. Palmer, active participant in the Idearc Pension Plan for Management Employees, both necessary participants and beneficiaries of the Idearc, Inc. Master Trust. Accordingly, please treat this as an ERISA Section 104(b)(4), 29 U.S.C. § 1024(b)(4), request for the following documents and information concerning the pension plans and the master trust:

1. Year 2006, and 2007 Form 5500s for the pension plans and master trust, together with all schedules (including schedule of investments, accounting report), exhibits



and attachments thereto, as filed with the Internal Revenue Service and Department of Labor.¹

- 2. The controlling/governing plan documents for the pension plans and the master trust, together with all amendments and appendices created and adopted *since January 2006* to the current controlling plan documents, the summary plan description for the pension plans and the current trust agreement, and all summary of material modifications from *January 2006* to the present;
- 3. Documents that comply with the requirements of ERISA Section 402(b)(3), 29 U.S.C. § 1102(b)(3),² setting forth the procedure for amending the pension plans, and for identifying the persons who have authority to amend the plans;
- 4. All resolutions and actions *since January 2006* by the Verizon Board of Directors, the Verizon Plan Design Committee, the Verizon Employee Benefits Committee and Verizon Pension Plan administrators concerning the pension plans and the trusts;
- 5. All resolutions and actions *since January 2006* by the Idearc Board of Directors, the Idearc Plan Design Committee, the Idearc Employee Benefits Committee and Idearc Pension Plan administrators concerning the pension plans and the trusts;
- 6. The last report (including schedules, accounting report) exhibits and attachments thereto submitted to the Pension Benefit Guaranty Corporation; and
- 7. All other documents created *since January 2006* under which the pension plans and the master trust are established and operated within the meaning of ERISA Section 104(b)(4), including asset allocation policy/guidelines and investment policy/guidelines and proxy voting guidelines.

¹ In the event the Form 5500s for year ending 2007 have not yet been filed due to a requested extension of time, please agree to provide the reports soon after being filed in accordance with the extension of time.

² ERISA Section 402(b)(3) states that "every employee benefit plan shall– provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan." 29 U.S.C. § 1102(b)(3).

Please advise me of the cost of photocopies which charge will promptly be paid. Of course, we believe all such documentation can be sent to me in electronic form (**CurtisLKennedy@aol.com**), especially the Form 5500s, which is the preferred manner of delivery and there should be no photocopying charges. But, let us know.

Sincerely,

utuz/Kenno tis L. Kenned...

Sandra R. Noe 72 Mile Lane Ipswitch, MA 01938 Tele: 978-356-0209 capsan@comcast.net (Sandra R. Noe)

C;

Claire M. Palmer 26 Crescent Street West Newton, MA 02465-2008 Tele: 617-332-4913 priesing@aol.com (Claire M. Palmer)

Association of BellTel Retirees, Inc.

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> STATE OF OKLAHOMA STATE OF TEXAS WASHINGTON, D.C.

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February 4, 2009

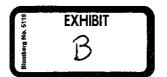
Verizon Management Pension Plan Administrator Verizon Pension Plan for New York and New England Associates Administrator Verizon Pension Plan for Mid-Atlantic Associates Administrator Verizon Master Trust Administrator Verizon Employee Benefits Committee c/o Marc Schoenecker, Assistant General Counsel - Employee Benefits VERIZON COMMUNICATIONS, INC. 600 Hidden Ridge, HQE02J19 Irving, Texas 75038 Tele: 972-718-2903 Fax: 972-719-0034 Marc Schoenecker@verizon.com (Marc Schoenecker, Esq.)

Idearc Pension Plan for Management Employees Plan Administrator Idearc Pension Plan for Collectively Bargained Employees Plan Administrator Idearc, Inc. Master Trust Administrator Idearc Employee Benefits Committee c/o Joe A. Garza, Jr., Vice President & Associate General Counsel IDEARC, INC. 2200 West Airfield Drive DFW Airport, TX 75261-9810 Tele: 972-453-7160 Fax: 972-453-6869 Joe.Garza@idearc.com (Joe Garza, Esq.)

Re: Class-wide Administrative Claim and ERISA Request for Plan Documents

Plan Administrators:

This is both an administrative claim *and* a request for ERISA documents on behalf of Phillip A. Murphy, Jr., Susan A. Burke, Sandra R. Noe, Joanne Jacobsen, David L. Wibbelsman, and Claire M. Palmer (hereinafter "Claimants"), all active retired plan participants in Idearc's pension plans and former retired plan participants in Verizon's pension plans. While both Verizon's and Idearc's pension plans have clear language with respect to claims challenging denial of benefits, certainly, none of the applicable plans contain language mandating exhaustion of administrative claims for breach of fiduciary duty claims and other ERISA violations,



including interference with protected rights. Therefore, while it is Claimants' position that exhaustion of remedies for the claims asserted herein are not required under the terms of any of the applicable pension plans, Claimants proceed in good faith with this administrative process and they request Respondents to reciprocate in good faith in this endeavor. Therefore, please treat the following as a class-wide claim on behalf of all Claimants and all similarly situated *retired* pension plan participants who, too, were transferred from Verizon pension plans into the current Idearc pension plans.

In addition, Claimants ask Respondents to treat the 13 separate document requests set forth herein as ERISA Section 104(b)(4), 29 U.S.C. § 1024(b)(4), requests for documents and that Respondents timely respond accordingly.

As you must know, in early October, 2006, Verizon announced that its Board of Directors had approved the proposed spin-off of its Information Services division (i.e., domestic print and internet yellow pages directories publishing operations) to its stockholders. The spin-off was completed on or about Nov. 17, 2006 resulting in a new public company called Idearc, Inc. ¹ This class-wide claim arises out of that spin-off and formation of Idearc. As part of the spin-off transaction, Verizon selected Claimants and other retired plan participants in Verizon's pension plans for transfer into Idearc pension plans. When Verizon transferred its obligation to provide Claimants' pension benefits to Idearc, Verizon also transferred pension assets. Claimants contend that Verizon pension plan fiduciaries beached duties owed, pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1002, et seq. ("ERISA"), which duties were owed to Claimants and all other transferred retirees.

At the time of the spin-off, all Claimants were already retired from Verizon and receiving monthly service pension annuities paid out of Verizon's pension plans. Claimant Phillip A. Murphy, Jr., retired from NYNEX in December 1996. Claimant Susan A. Burke retired from the yellow pages division of Bell Atlantic, Corp., in July 1998. Claimant Sandra R. Noe retired from NYNEX Information Resources, Corp., in April, 1995. Claimant Joanne Jacobsen retired from NYNEX Information Resources in January 2002. Claimant David L. Wibbelsman retired from NYNEX Information Resources Co., in January 1988. Claimant Claire M. Palmer retired from NYNEX Information Resources Co., in December 1996. When the spin-off occurred, all Claimants, together with over 2,000 other retirees, were involuntarily transferred from Verizon pension plans into Idearc pension plans.

Claimants do not have information to determine whether or not Verizon transferred funds sufficient to support Idearc's pension obligations to the transferred retirees. Accordingly, Claimants <u>request Respondents produce</u> all documents related to the establishment and operation of the Idearc pension plans, including: 1) summaries and estimates of costs of providing benefits for transferred retirees; 2) summaries and estimates of savings to Verizon by

¹ As a result of the spin-off, Verizon expected to reduce its outstanding indebtedness by approximately \$7 billion through a debt-for-debt exchange as described in the Form 10 Registration Statement filed with the Securities and Exchange Commission.

transferring retirees; 3) summaries and estimates of administrative costs associated with administering pension benefits for all transferred retirees; and 4) actuarial studies, funding projections, estimates and final reports concerning pension assets expected to be transferred and confirming the transfer of assets to Idearc for payment of pension liabilities.

Claimants understand that Verizon did not transfer any funds to Idearc for purposes of Claimants' welfare benefits (i.e., medical, dental and life). If this understanding is incorrect, please advise.

Claimants contend that the decision to take them out of the well funded Verizon pension plans and master trust and place them into an upstart company's pension plans was not an act in their best interest. Furthermore, Claimants contend that removing them from the Verizon pension plans was a violation of their contractual rights under the Verizon pension plans and in violation of the controlling terms. Accordingly, all Claimants contend there has been a violation of ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1).

ERISA Section 404(a)(1) provides that fiduciaries must discharge their duties "(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B). "As this section suggests, the duties of an ERISA fiduciary are not limited by that statute's express provisions but instead include duties derived from common law trust principles. "[R]ather than explicitly enumerat[e] <u>all</u> of the. . . duties [of ERISA fiduciaries], Congress invoked the common law of trusts to define the general scope of their. . . responsibility." *Eddy v. Colonial Life Ins. Co.*, 919 F.2d 747, 750 (D.C. Cir. 1990), quoting *Cent. States, SE & SW Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570, 105 S.Ct. 2833, 2840 (1985) (additional citations omitted). Courts have ruled this statutory provision imposes an unwavering duty on an ERISA plan fiduciary "to make decisions with single-minded devotion to a plan's participants and beneficiaries and, in so doing, to act as a prudent person would act in a similar situation." *Adams v. Avondale Indus., Inc.*, 905 F.2d 943, 946 (6th Cir.1990) (quoting *Morse v. Stanley*, 732 F.2d 1139, 1145 (2d Cir.1984)).

Claimants contend that as of the date the spin-off was concluded - November 17, 2006 and they had been selected for transfer to Idearc pension plans, none of the then existing terms of the applicable Verizon pension plans authorized such activity. While the applicable Verizon pension plans each contain a specific provision allowing for mergers and consolidations of the pension plans, as of November 17, 2006 there were no existing terms that either specifically allowed either a spin-off or involuntary transfer of retired pension plan participants into a newly formed pension plan. Claimants contend that Verizon amended the pension plans after the fact, almost a month after the spin-off and creation of Idearc. The pension plan amendments were executed and dated December 22, 2006.

For instance, there is a 'Fourteenth Amendment to the Verizon Management Pension Plan' dated and executed by Marc C. Reed, EVP-Human Resources which belated plan

amendment provides, in pertinent part:

3. Effective November 17, 2006, the following new Schedule XLV is hereby added to the Plan:

SCHEDULE XLV

A. For each former Employee who:

(1) on November 1, 2006 or the date on which the shares of Idearc Inc. were spun-off to the shareholders of Verizon Communications, Inc. (The "spin-off date"), was employed by Idearc Inc. or an entity that after the spin-off date is an "Affiliate" as defined in Article II with respect to Idearc Inc. or

(2) is not described in (1), but whose employment with an Affiliate before the spin-of date has been determined by the Plan Administrator to have been with Idearc, Inc., an entity that after the spin-off date is an "Affiliate" as defined in Article II with respect to Idearc, Inc., or a predecessor of either, and:

(a) had an accrued benefit under the Plan that had been fully cashed-out before the spin-off date, or

(b) had an accrued benefit under the Plan as of the spin-off date which he was eligible to receive as a retirement or early retirement pension (<u>i.e.</u>, other than as a deferred pension) and which had not previously been paid in full (whether or not payments had begun to the individual or his beneficiary),

assets and liabilities for benefit obligations under the Plan, if any, for employment before the spinoff date, including the related Net Credited Service and Pension Accrual Service and any right to restoration of such service following a break in employment, cash-out, forfeiture, or otherwise under any provision of the Plan, shall be transferred from the Plan to the Idearc Pension Plan for Management Employees (the "Idearc Plan"). (emphasis added).²

Even more troubling is the fact that when Verizon's retirees were transferred to Idearc, there was no pension plan document in existence at Idearc! Indeed, the Idearc Management Pension Plan document was not created until October 17, 2007, almost a year after the fact, when Idearc Senior Vice President Georgia R. Scaife signed the document.

On January 26, 2009, the United States Supreme Court entered a unanimous decision in the case of *Kennedy v. Plan Administrator for DuPont Savings and Investment*, --- S.Ct. ----, 2009 WL 160440, U.S., January 26, 2009 (NO. 07-636). The outcome of the *Kennedy* case turned on whether or not there had been compliance with the plan's specific terms, the "plan documents rule." Justice Souter, writing for the Court, pointed out that the "case does as well as any other in pointing out the wisdom of protecting the plan documents rule" The Court ruled that there is a "bright-line requirement to follow plan documents in distributing benefits". The

² There is a nearly identically worded December 22, 2006 dated plan amendment for the Verizon Pension Plan for New York and New England Associates, now set forth in Article 5.11 on page 51 of the newly restated governing document, since some of those retiree plan participants were transferred into the Idearc Pension Plan for Collectively-Bargained Employees.

Court's ruling confirms that ERISA provides no exception to the plan administrator's duty to act in accordance with plan documents:

The plan administrator is obliged to act "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [Title I] and [Title IV] of [ERISA]," § 1104(a)(1)(D), and the Act provides no exemption from this duty when it comes time to pay benefits.

(<u>Id</u>. at p. 11). See also, Allison v. Bank One-Denver, 289 F.3d 1223, 1236 (10th Cir. 2002) ("we have repeatedly rejected efforts to stray from the express terms of a plan, regardless of whom those express terms may benefit.").

Claimants contend the December 22, 2006 dated plan amendments made retroactive should be declared null and void. As of November 17, 2006 when the retirees were transferred, the pension plan administrators did not act in accordance with then existing rules. Despite any announcement by Verizon to its retirees that they would be transferred to Idearc and despite any informal understanding on the part of Verizon and Idearc there would be a transfer of retirees, on November 17, 2006 the pension plan documents were not in order so as to allow any transfer of retirees. The express terms of the pension plans were violated. In other words, when retirees were transferred, there was a violation of the "plan documents rule", ERISA Section 404(a0(1)(D), 29 U.S.C. 1104(a)(1)(D), and all Claimants and transferred have been prejudiced by this conduct.

Furthermore, Claimants question the discriminatory treatment with respect to transferring retirees. No retiree with a deferred vested pension benefit was transferred, as they were exempt as shown in the above quoted language in the 14th plan amendment to the Verizon Management Pension Plan. Claimants ask why were the deferred vested pensioners left secure in the Verizon pension plans while those on current pay status were transferred to their detriment over to the less financially secure Idearc pension plans. The action taken demonstrates an intent to get rid of active pay status retirees, so as to interfere with their rights to attainment of future pension and welfare benefits. Certainly, by getting rid of all the active pay status retirees, Verizon was relieved of on-going responsibilities to pay welfare benefits (i.e., medical, dental and life) which enormous expenses are charged to Verizon's operating revenues. This brings into question whether there has been an ERISA Section 510, 29 U.S.C. § 1140 violation. Please treat Claimant's claim as one asserting such a violation.

It is Claimants' understanding that since 2006, there have been two separate spin-offs concerning portions of Verizon businesses, covered employees and pension assets. Of course, the first spin-off concerned the creation of Idearc. A second spin-off concerned the transfer of employees and pension assets to FairPoint Communications Northern New England.

In both instances, the applicable Verizon pension plans assigned the task of identifying and determining the participants to be transferred to the Plan Administrator (i.e., the Verizon Employee Benefits Committee). Claimants find it most peculiar that Verizon gave the <u>Plan</u> <u>Administrator</u>, a fiduciary, the responsibility for determining what "Eligible Employees" should be transferred to Idearc. Usually that job is a plan sponsor activity making the action immune from legal challenge under federal law ERISA on the grounds there has been a breach of fiduciary duty. But here, the assignment of determining who would be transferred to Idearc's pension plans was given to the plan fiduciaries. Thus, this activity constituted discretionary plan administration subject to ERISA's fiduciary duty standards. Claimants challenge the selection of them and all other retired plan participants as conduct amounting to a breach of ERISA Section 404 fiduciary duties.

After plan administrators/fiduciaries carried out the transfer of retirees to Idearc, the first spin-off, they acted differently when carrying out the second spin-off. Claimants understand that there exists a document entitled "Amendment No. 2 to the Verizon Pension Plan for New York and New England Associates, Restated with Amendments through December 31, 2006" which document concerns transfer of workers and pension assets to FairPoint Communications.³ That document is dated April 17, 2008. It provides that for each "Eligible Employee" who was determined by the Plan Administrator (i.e., the Verizon Employee Benefits Committee) to have been last employed with Northern New England Spinco, Inc. or its predecessors, the pension assets and liabilities for benefit obligations under the Plan shall be transferred from the Plan to FairPoint Communications Northern New England Pension Plan for Represented Employees (the "FairPoint Plan, no person already in retirement status was transferred to the FairPoint Plan. Apparently, plan administrators were looking out for the best interest of retirees when carrying out the spin-off to the FairPoint Plan. If this information is incorrect, please advise.

Idearc, Inc. reports in its Form 10-K filed with the Securities Exchange Commission that the company "was formed as a Delaware corporation in June 2006 in anticipation of the spin-off from Verizon." ⁴ Therefore, Verizon's pension plan fiduciaries had almost ½ year to think about the consequences of involuntarily switching retirees over to Idearc. Claimants complain that Verizon pension plan fiduciaries did not seek the opinion of an independent pension plan fiduciary to guide them in the decision whether or not to transfer retired plan participants. Moreover, Claimants contend the Verizon pension plan fiduciaries did not promote the best interests and protect the welfare of retired plan participants. ERISA fiduciaries are "... obliged at a minimum to engage in an intensive and scrupulous independent investigation ... to insure that they act in the best interests of the plan beneficiaries." Fought v. UNUM Life Ins. Co. of Am., 379 F. 3d. 997, 1013 (10th Cir. 2004) (citing Hightshue v. AIG Life Ins. Co., 135 F.3d 1144, 1148 (7th Cir. 1998). When Verizon pension plan fiduciaries begin selecting retired plan

³ In Mr. Schoenecker states in his letter dated November 7, 2008 in response to Pam Harrison's ERISA document request that he has <u>not</u> produced Amendment No. 1 because it has not yet been adopted by Verizon. Claimants have no idea about the subject matter of this undisclosed Amendment No. 1 not yet adopted. In any event, they hereby request disclosure of this document.

⁴ Idearc, Inc. Form 10-K for year 2007 at p. 1.

participants to be transferred, they were faced with a true conflict of interest and, consequently, the plan fiduciaries should have (1) resigned and quit serving as a plan fiduciaries and they should have secured the appointment of persons or an entity free from a conflict of interest, and (2) informed the soon to be transferred retirees that Idearc might not be a reliable source of pension and welfare benefits and that they might need to make alternative arrangements for the welfare benefits they had become accustomed to receiving as participants in Verizon's employee benefit plans. See *Holdeman v. Devine*, 474 F.3d 770, 782-83 (10th Cir. 2007) (remanding and instructing trial court to consider those issues). By not taking any such action, all Verizon pension plan administrators and fiduciaries involved in the decision to transfer retirees violated their duty of loyalty to Claimants all other retired plan participants.

Claimants contend a prudent plan fiduciary charged with a duty of loyalty and having responsibility to act in the best interests of Claimants and other retired plan participants and beneficiaries would want to take whatever action was necessary to protect their rights to remain within the better maintained Verizon pension plans. The duty to take action is well rooted in the common law of trusts, as reiterated by the distinguished appellate panel in *Eddy*:

as Judge Cardozo noted more than 70 years ago: "The trustee is free to stand aloof, while others act, if all is equitable and fair. He cannot rid himself of the duty to warn and to denounce, if there is improvidence or oppression, either apparent on the surface or lurking beneath the surface, but visible to his practiced eye."

Eddy, supra, 919 F. 2d at 752 (citing *Globe Woolen Co.,* 224 N.Y. at 489, 121 N.E. at 380). In that regard, Claimants hereby request disclosure of any opinion given to Verizon's pension plan fiduciaries by an independent pension plan fiduciary and opinions provided by legal counsel.

Claimants are concerned that Verizon pension plan administrators/fiduciaries were motivated by company interests, or self-dealing consideration. Obviously, the outcome of the transfer soon proved to be imprudent and manifestly adverse to Claimants' financial interests. Not long after being transferred into Idearc pension plans, Claimants and all other transferred retirees suffered loss of retirement benefits not witnessed by those who stayed behind in the more secure Verizon pension plans. The evidence proves that Idearc is a much less stable or secure sponsor of its employee benefit plans. Certainly, Claimants cannot expect any improvement in benefits and they have good reason to look forward to further cuts in benefits and they believe their pension benefits may be in jeopardy. Claimants expect when Idearc makes required disclosure of the year end 2008 pension plan funding status, there will be disappointing if not alarming news. In short, Claimants contend Verizon pension plan administrators/fiduciaries acted underhanded and abused their discretion when involuntarily transferring retirees and putting them into a less desirable financial predicament.

Claimants were vested in their pensions and no one obtained their consent to be transferred out of the better funded and well maintained Verizon pension plans into the care of a novice. Had Claimants and all other retirees stayed put, there would have been continued savings in administrative costs. Due to the transfers of retirees there is duplication and wasteful unnecessary administrative cost, all of which could have been avoided. Since those costs are charged to the pension funds, the costs erode the financial security for all transferred retirees. Idearc plan administrators/fiduciaries should have stepped into the foray and advocated against having the retirees transferred, because the transfers needlessly caused increased costs of administering the soon to be established Idearc pension plans. Accordingly, Claimants contend that since the Idearc plan administrators/fiduciaries either acquiesced or consented to the unnecessary and involuntary transfer of retirees from Verizon pension plans over to Idearc pension plans, those plan administrators/fiduciaries did not meet their ERISA fiduciary duties of "defraying reasonable expenses of administering the plan." ERISA Section 404(a)(1)(A)(ii), 29 U.S.C. § 1104(a)(1)(A)(ii).

Claimants <u>request Respondents produce</u> documents disclosing the identities of the plan administrator decision makers and reflecting their meetings concerning transferring retirees, including the following documents: 5) notices, agenda, documents presented or distributed at or in preparation for such meetings, and minutes of such meetings, including any summaries or notes of such meetings; 6) all employee matters agreements; ⁵ 7) reports discussing, explaining and describing any curtailment gain or settlement gain on Verizon's financial statements as a result of the transfer of retirees; 8) legal opinions with respect to Verizon plan administrators' decisions to transfer retirees, including all related communications from legal counsel advising plan fiduciaries and plan administrators; and 9) reports, opinions by independent fiduciaries and consultants with respect to Verizon plan administrators' decision to transfer retirees.

To date, Claimants have not been informed whether the spin-off transaction was approved by the Treasury Department and whether the Idearc pension plans have been qualified under the Internal Revenue Code and applicable Treasury Department regulations. Therefore, Claimants request Respondents produce the following documents: 10) documents reflecting application made to the IRS for approval of the transfer of retirees and pension assets and qualification of the pension plans, as well as letters and responses by the IRS.

Claimants demand that their status as transferred retirees into Idearc pension plans be rescinded and that Respondents agree that Claimants and all other transferred retirees be restored to their former status as participants in Verizon's pension plans. It is <u>not</u> in Claimants' best interests to continue in the retirement rolls of Idearc, a sentiment shared by all other transferred retirees. No one can dispute that Idearc does not have the financial wherewithal to maintain the

⁵ Despite a August 13, 2008 dated ERISA Section 104(b) document request by Claimants Claire Palmer and Sandra Noe for, *inter alia*, "[a]ll other documents created *since January 2006* under which the pension plans and the master trust are established and operated within the meaning of ERISA Section 104(b)(4)," to date, Idearc has failed to provide Claimants with any "Employee Matters" or "Employee Benefits Agreement" which documents concern the establishment of Idearc's pension plans. Idearc's Form 10-K for year 2007 lists as Exhibit 10.8 a document described as "Employee Matters Agreement, dated November 17, 2006, between Verizon Communications Inc. and the Registrant (incorporated by reference to Exhibit 10.8 to the Registrant's Current Report on Form 8-K, filed November 21, 2006)." That document should have been *timely* produced.

same level of retiree benefits comparable to what Verizon maintains for its retirees.⁶

In the event this claim is denied, Claimants wish to gather additional information with respect to the administration of the Idearc pension plans. In addition to those document requests set forth hereinabove, Claimants seek the following: 11) all amendments and appendices created and adopted *since September 2008* to the controlling/governing plan documents for the pension plans and the master trust, together with all summary of material modifications from *September 2008* to the present; 12) all resolutions and actions *since September 2008* by the Idearc Board of Directors, the Idearc Plan Design Committee, the Idearc Employee Benefits Committee and Idearc Pension Plan administrators concerning the pension plans and the trusts; and 13) all other documents created *since September 2008* under which the pension plans and the master trust are established and operated within the meaning of ERISA Section 104(b)(4), including asset allocation policy/guidelines and investment policy/guidelines and proxy voting guidelines.

Please promptly email me to acknowledge receipt of this class-wide claim letter and advise me of the cost of photocopies which charge will promptly be paid. Of course, all requested documentation can be emailed to CurtisLKennedy@aol.com, as that is the preferred manner of delivery/receipt.

Sincerely, Centro J. Kinndy

<u>Claimants</u>:

Curtis L. Kennedy

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Sandra R. Noe	Claire M. Palmer
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⁶ Soon after the November 17, 2006 spin-off, Idearc common stock rose to about \$23.00 per share. On October 24, 2008, Idearc received notice from the New York Stock Exchange that it is not in compliance with continued listing standards because the 30 trading-day average closing price of Idearc common stock was less than \$1.00 per share. Now, Idearc's common stock trades over the counter on the Pink Sheets under the trading symbol of IDAR. Currently, the closing price of Idearc common stock is *less* than \$0.10 per share.

Case 3:09-cv-02262-G



The Official Publisher of Verizon Print Directories

September 10, 2008

VIA OVERNIGHT MAIL

Curtis L. Kennedy, ESQ Attorney at Law 8405 E. Princeton Avenue Denver, Colorado 80237-1741

Re: ERISA Request for Plan Documents Relating to the Idearc Pension Plan for Management Employees, Idearc Pension Plan for Collectively Bargained Employees and the Idearc. Inc. Master Trust

Dear Mr. Kennedy:

As a follow-up to my letter of September 3, 2008 and to your email to me, please find attached additional information responsive to your request for documents submitted on August 13, 2008, including the following:

- Year 2006 Form 5500s for the Idearc Pension Plan for Management Employees (the "Management Plan"), the Idearc Pension Plan for Collectively Bargained Employees (the "Union Plan") and the Idearc Inc. Master Trust, together with all schedules;¹
- 2. Original version of the Idearc Pension Plan for Management Employees (the "Management Plan");
- 3. Original version of Part 3 of the Idearc Pension Plan for Collectively Bargained Employees (the "Union Plan"), and Freeze Agreement to the Union Plan; and

Joe A. Garza, Jr. VP & Assoc. General Counsel Idearc Media Corp.

2200 West Airfield Dr., TX 29 P.O. Box 619810 D/FW Airport, TX 75261-9810

T 972 453 7160 F 972 453 6869 Joe.Garza@idearc.com



¹ Again, please note that these Form 5500s are being amended. The amended forms will be provided after being filed.

Case 3:09-cv-02262-G Document 29-4



The Official Publisher of Verizon Print Directories Curtis L. Kennedy, Esq. September 10, 2008 Page 2 of 2

1.

4. Applicable summary plan descriptions and summaries of material modifications for the Management Plan and the Union Plan created and adopted since January 2006.

Board resolutions and other actions, asset allocation policy/guidelines, investment policy/guidelines and proxy voting guidelines are not pertinent for these purposes. Therefore, no such documents are being provided. If you feel that such resolutions, actions, policies or guidelines must be provided, please provide the authority you are basing such contention on.

Please note that there are no resolutions or other actions that provide anything that the plans themselves do not provide. The Management Plan and Union Plan documents attached contain all of the terms of their operation.

Please call with questions, however for purposes of my email box, please do not scan everything I sent you and email it back to me.

Very truly yours,

AG:ids

Attachments

c: Patrick Hamill

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP FULBRIGHT TOWER 1301 MCKINNEY, SUITE 5100 HOUSTON, TEXAS 77010-3095 WWW.FULBRIGHT.COM

Mark S. Miller Partner mmiller@fulbright.com

DIRECT DIAL: TELEPHONE: FACSIMILE: (713) 651-5617 (713) 651-5151 (713) 651-5246

March 3, 2009

BY E-MAIL CURTISLKENNEDY@AOL.COM

Curtis L. Kennedy Attorney at Law 8405 E. Princeton Avenue Denver, Colorado 80237-1741

> Re: ERISA Request for Plan Documents Relating to the Idearc Pension Plan for Management Employees and the Idearc Pension Plan for Collectively Bargained Employees

Dear Mr. Kennedy:

This letter is in response to your letter dated February 4, 2009. As you know, upon written request of any participant or beneficiary, Section 104(b)(4) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), requires the plan administrator to "furnish a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated." We feel that many of your requests that are directed to Idearc do not fall within the required documents that are required to be produced. I tried several months ago to contact you, but we never spoke. Please let me know when you are available and I will call to discuss your request. In the meantime, the following is a response to your most recent letter:

1. Summaries and estimates of costs of providing benefits for transferred retirees;

We do not believe the requested summaries and estimates are required to be disclosed under ERISA Section 104(b)(4).

2. Summaries and estimates of savings to Verizon by transferring retirees;

Idearc does not have such Verizon documents.



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Austin • Beijing • Dallas • Denver • Dubai • Hong Kong • Houston • London • Los Angeles • Minneapolis Munich • New York • Riyadh • San Antonio • St. Louis • Washington DC

Curtis L. Kennedy March 3, 2009 Page 2

> 3. Summaries and estimates of administrative costs associated with administering pension benefits for all transferred retirees;

> > We do not believe the requested summaries and estimates are required to be disclosed under ERISA Section 104(b)(4).

4. Actuarial studies, funding projections, estimates and final reports concerning pension assets expected to be transferred and confirming the transfer of assets to Idearc for payment of pension liabilities;

> We do not believe the requested actuarial studies, funding projections, estimates and final reports concerning pension assets are required to be disclosed under ERISA Section 104(b)(4).

5. Notices, agenda, documents presented or distributed at or in preparation for plan administrator meetings, and minutes of such meetings, including any summaries or notes of such meetings;

> We do not believe the requested notices, agenda, documents presented or distributed at or in preparation for plan administrator meetings, and minutes of such meetings, including any summaries or notes of such meetings, are required to be disclosed under ERISA Section 104(b)(4).

6. All employee matters agreements;

As you have noted, the Employee Matters Agreement by and between Verizon Communications Inc. and Idearc Inc. dated as of November 17, 2006, is a publicly available document through the U.S. Securities Exchange Commission's Interactive Data Electronic and Applications, filed as Exhibit 10.8 to Idearc's Form 8-K filed on November 21, 2006. As a courtesy, please find such document attached.

7. Reports discussing, explaining and describing any curtailment gain or settlement gain on Verizon's financial statements as a result of the transfer of retirees;

Idearc does not have such Verizon documents.

8. Legal opinions with respect to Verizon plan administrators' decisions to transfer retirees, including all related communications from legal counsel advising plan fiduciaries and plan administrators;

Idearc does not have such Verizon documents.

Curtis L. Kennedy March 3, 2009 Page 3

> 9. Reports, opinions by independent fiduciaries and consultants with respect to Verizon plan administrators' decision to transfer retirees;

Idearc does not have such Verizon documents.

10. Documents reflecting application made to the IRS for approval of the transfer of retirees and pension assets and qualification of the pension plans, as well as letters and responses by the IRS;

> Idearc does not have Verizon documents. The Idearc plans have not yet obtained IRS determination letters. Pursuant to IRS Revenue Procedure 2007-44, Idearc intends to submit the plans to the IRS and to request favorable determination letters as to the plans' qualified status under section 401(a) of the Code within the plans' remedial amendment period.

11. All amendments and appendices created and adopted since September 2008 to the controlling/governing plan documents for the pension plans and the master trust, together with all summary of material modifications from September 2008 to present;

> Please find the above documents attached. In addition, in order to correct the misconception that no pension plan document was in existence when the benefits in question were transferred, please find attached resolutions of the Idearc Board of Directors adopted on November 17, 2006, adopting and approving the Idearc pension plans, the original versions of which were sent to you as Items 2 and 3 in my September 9, 2008 letter to you.

12. All resolutions and actions since September 2008 by the Idearc Board of Directors, the Idearc Plan Design Committee, the Idearc Employee Benefits Committee and Idearc Pension Plan administrators concerning the pension plans and the trusts; and

> The plan documents speak for themselves. We do not believe the requested resolutions and actions are required to be disclosed under ERISA Section 104(b)(4).

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Page 4 of 4

Curtis L. Kennedy March 3, 2009 Page 4

> 13. All other documents created since September 2008 under which the pension plans and the master trust are established and operated within the meaning of ERISA Section 104(b)(4), including asset allocation policy/guidelines and investment policy/guidelines.

> > We do not believe asset allocation policy/guidelines and investment policy/guidelines are required to be disclosed under ERISA Section 104(b)(4). As required under ERISA Section 101(f), all Idearc plan participants will be provided an annual funding notice by April 30, 2009, that will include, among other things, a statement of the plan's assets and liabilities and a description of how the plan's assets are invested.

Finally, you ask that your letter be treated as a "claim." Please call me to discuss this aspect of your letter because it is my understanding that your clients have been receiving their monthly pension distributions.

Please call with questions.

Very truly yours,

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Mark S. Miller

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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

PHILIP A. MURPHY, JR.	ş
SANDRA R. NOE, and	Ę
CLAIRE M. PALMER, et al.	ş
Plaintiffs,	ş
	ş
v .	Ş
	ŝ
VERIZON COMMUNICATIONS, INC., et	Ş
al.	Ş
Defendants.	ŝ
	8

Civil Action No. 3:09-cv-2262-G

DECLARATION OF JOE A. GARZA IN SUPPORT OF SUPERMEDIA DEFENDANTS' REPLY BRIEF IN RESPONSE TO PLAINTIFFS' <u>OPPOSITION TO MOTION TO DISMISS</u>

- 1. My name is Joe A. Garza, Jr.. I hold the position of Vice President and Associate General Counsel with SuperMedia Inc., and have personal knowledge of the facts in this declaration by virtue of that position. I am over the age of eighteen, have never been convicted of a felony, and am fully qualified to make this declaration.
- 2. Exhibits A D attached to the SuperMedia Defendants' Reply Brief in Response to Plaintiffs' Opposition to Motion to Dismiss are true and correct copies of the letters referenced in the SuperMedia Defendants' Reply Brief in Response to Plaintiffs' Opposition to Motion to Dismiss.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated:

6119	EXHIBIT	
Blumberg No. 6119		
Stumba		