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.	§	Civil Action No. 3:09-cv-2262-G
VERIZON COMMUNICATIONS, INC., et al. Defendants.	§ § §	

DEFENDANT SUPERMEDIA EMPLOYEE BENEFITS COMMITTEE'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant SuperMedia Employee Benefits Committee f/k/a Idearc Employee Benefits Committee ("SuperMedia EBC") hereby moves to dismiss the claims against it in Plaintiffs' Second Amended Complaint for failing to state claims upon which relief may be granted (the "Motion"). A Brief in Support of this Motion more fully setting forth the SuperMedia EBC's arguments is filed contemporaneously herewith and incorporated by reference as if fully set forth herein.

1. Plaintiffs' Second Amended Complaint includes three claims against SuperMedia EBC. "Claim One" alleges SuperMedia EBC breached its fiduciary duty to Plaintiffs by not affording a full and fair review of their administrative claim. *See* Pls.' Second Am. Compl. at 28-32 (Docket No. 64). "Claim Five" alleges SuperMedia EBC failed to comply with the statutorily prescribed 90-day deadline to provide participants with a copy of the SuperMedia Pension Plans summary plan descriptions ("SPDs"). *See id.* at 50-52. Finally, "Claim Six" seeks equitable relief against SuperMedia EBC in the form of an order (1) directing it to transfer Plaintiffs and class members back to Verizon's plans and (2) removing from serving on

SuperMedia EBC those persons who supported, assisted, and acquiesced in and defended the transfer under ERISA § 502(a)(2)-(3) for SuperMedia EBC's violation of ERISA and/or terms of the plans. *See id.* ¶¶ 227, 229, 231.

2. After three attempts at pleading, and after almost six years since they were transferred, Plaintiffs have failed to point to any ERISA violation committed by SuperMedia EBC because there was none. Claim One[1] fails as a matter of law because (1) Plaintiffs still do not allege they were denied their promised benefits, and (2) Plaintiffs' purported administrative claim to be moved from SuperMedia to Verizon pension plans is merely a complaint about the mode or manner of benefits delivery and not subject to ERISA's review requirements. Claim Five[2] fails as a matter of law because (1) the relief sought is not available, (2) SuperMedia EBC supplied participants SPDs within the required 90 days, and (3) a mere technical/procedural violation without prejudice is insufficient to state a claim. Claims One and Five fail for the additional reason that Plaintiffs do not allege any injury that was caused by SuperMedia EBC's alleged violations of ERISA. Finally, in order to receive equitable relief under ERISA § 502(a)(2)-(3), Plaintiffs must allege conduct by SuperMedia EBC that violates a duty imposed by ERISA or the plans. Because Claims One and Five fail as a matter of law, no violation of a duty imposed by ERISA or the plans occurred, and Claim Six must also be dismissed.

3. SuperMedia EBC respectfully submits that Plaintiffs have failed to state any claim for relief against the SuperMedia Employee Benefits Committee in their Second Amended Complaint and request the claims asserted against it be dismissed.

[1] Plaintiffs are not seeking class certification for this claim.

[2] This claim has not been certified as a class, as discussed more fully in Defendant's brief.

REQUESTED RELIEF

For the foregoing reasons, and as set out in more detail in the concurrently-filed Brief in Support of this Motion (which is incorporated here by reference), SuperMedia EBC respectfully submits that Plaintiffs have failed to state any claim for relief against the SuperMedia Employee Benefits Committee in their Second Amended Complaint and request the claims asserted against it be dismissed. SuperMedia EBC further requests such other relief to which it may be justly entitled.

Dated: July 12, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 2011, 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 the following counsel of record via E-Mail:

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DEFENDANT SUPERMEDIA EMPLOYEE BENEFITS COMMITTEE'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Respectfully submitted,

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I. PRELIMINARY STATEMENT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant SuperMedia Employee Benefits Committee f/k/a Idearc Employee Benefits Committee ("SuperMedia EBC") moves to dismiss the claims against it in Plaintiffs' Second Amended Complaint for failing to state claims upon which relief may be granted.

II. SUMMARY OF ARGUMENT

Plaintiffs' Second Amended Complaint includes three claims against SuperMedia EBC. "Claim One" alleges SuperMedia EBC breached its fiduciary duty to Plaintiffs by not affording a full and fair review of their administrative claim. *See* Pls.' Second Am. Compl. at 28-32 (Docket No. 64). "Claim Five" alleges SuperMedia EBC failed to comply with the statutorily prescribed 90-day deadline to provide participants with a copy of the SuperMedia Pension Plans summary plan descriptions ("SPDs"). *See id.* at 50-52. Finally, "Claim Six" seeks equitable relief against SuperMedia EBC in the form of an order (1) directing it to transfer Plaintiffs and class members back to Verizon's plans and (2) removing from serving on SuperMedia EBC those persons who supported, assisted, and acquiesced in and defended the transfer under ERISA § 502(a)(2)-(3) for SuperMedia EBC's violation of ERISA and/or terms of the plans. *See id.* ¶¶ 227, 229, 231.

After three attempts at pleading, and after almost six years since they were transferred, Plaintiffs have failed to point to any ERISA violation committed by SuperMedia EBC because there was none. Claim One[1] fails as a matter of law because (1) Plaintiffs still do not allege they were denied their promised benefits, and (2) Plaintiffs' purported administrative claim to be moved from SuperMedia to Verizon pension plans is merely a complaint about the mode or

[1] Plaintiffs are not seeking class certification for this claim.

manner of benefits delivery and not subject to ERISA's review requirements. Claim Five[2] fails as a matter of law because (1) the relief sought is not available, (2) SuperMedia EBC supplied participants SPDs within the required 90 days, and (3) a mere technical/procedural violation without prejudice is insufficient to state a claim. Claims One and Five fail for the additional reason that Plaintiffs do not allege any injury that was caused by SuperMedia EBC's alleged violations of ERISA. Finally, in order to receive equitable relief under ERISA § 502(a)(2)-(3), Plaintiffs must allege conduct by SuperMedia EBC that violates a duty imposed by ERISA or the plans. Because Claims One and Five fail as a matter of law, no violation of a duty imposed by ERISA or the plans occurred, and Claim Six must also be dismissed.

III. PROCEDURAL BACKGROUND

On November 25, 2009, Plaintiffs filed suit against Verizon Communications, Inc., Verizon Employee Benefits Committee, Verizon Pension Plan for New York and New England Associates, Verizon Management Pension Plan (collectively, the "Verizon Defendants"), SuperMedia EBC, SuperMedia Pension Plan for Management Employees f/k/a Idearc Pension Plan for Management Employees, and SuperMedia Pension Plan for Collectively Bargained Employees f/k/a Idearc Pension Plan for Collectively Bargained Employees (collectively, the "SuperMedia Defendants") for breaches of fiduciary duties, violations of ERISA, statutory damages, and injunctive relief. Plaintiffs generally complained they were improperly transferred from the pension rolls of Verizon into the SuperMedia Pension Plan for Management Employees f/k/a Idearc Pension Plan for Management Employees and the SuperMedia Pension Plan for Collectively Bargained Employees f/k/a Idearc Pension Plan for Collectively Bargained

[2] This claim has not been certified as a class, as discussed in Section III below.

Employees (collectively, the "SuperMedia Pension Plans") in 2006 when Verizon spun off its Information Services Division. *See generally* Pls.' Compl. (Docket No. 1).

Plaintiffs amended their complaint once as a matter of right on January 4, 2010. *See* Pls.' Am. Compl. (Docket No. 6). Thereafter, the SuperMedia Defendants filed a Motion to Dismiss Plaintiffs' claims under Rule 12(b)(6). *See* SuperMedia Defs.' Mot. to Dismiss & Brief in Support of Mot. (Docket Nos. 22 & 23). In granting and denying in part that motion, the Court dismissed the SuperMedia Pension Plans from the lawsuit because Plaintiffs' allegations did not support an inference that the SuperMedia Pension Plans were liable for any conduct, let alone conduct that violated a duty imposed upon them by ERISA or the terms of the plans. Mem. Op. & Order at 10 (Docket No. 33) (hereinafter, "Oct. 18, 2010 Order").

Further, the Court dismissed the claim against SuperMedia EBC for failure to comply with certain document requests made under ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), because again Plaintiffs failed to state a viable claim. *Id.* at 11-19. The Court dismissed on the same grounds Plaintiffs' breach of fiduciary duty claim based on SuperMedia EBC's alleged violation of ERISA § 104(b)(4). *Id.* at 19-20.

In its original 12(b)(6) motion, SuperMedia EBC did not directly address any fiduciary duty claims based on SuperMedia EBC's alleged failure to provide a "full and fair review" of Plaintiffs' administrative claim because SuperMedia EBC did not believe Plaintiffs asserted such a claim in their Amended Complaint. The Court concluded Plaintiffs alleged the claim, but noted "[q]uestions abound regarding whether the plaintiffs' claims for benefits have been denied within the meaning of ERISA section 503(2). The parties neither raised nor briefed the issue... ." Oct. 18, 2010 Order at 20.

SuperMedia EBC then moved for judgment on the pleadings under Rule 12(c) to dismiss the "full and fair review" claim. *See* SuperMedia EBC's Mot. for Judgment on the Pleadings & Brief in Support of Mot. (Docket Nos. 36 & 37). Before the Court had the opportunity to rule on SuperMedia EBC's 12(c) motion, Plaintiffs sought leave to file a second amended complaint, which attempted to clarify their "full and fair review" claim (Claim One) and added an entirely new claim for allegedly failing to timely provide Plaintiffs with a copy of the SPD (Claim Five). *See* Pls.' Mot. for Leave to File Second Am. Compl. (Docket No. 59).

Claim Five is asserted on behalf of Plaintiffs and class members. *See* Second Am. Compl. at 50-52. However, Plaintiffs have not sought or received class certification of Claim Five. On December 2, 2010, Plaintiffs moved for class certification on three claims against Verizon (Claims Three, Four, and Six) contained in the Amended Complaint. *See* Pls.' Mot. for Class Certification at 2-5 (Docket No. 42). SuperMedia EBC did not oppose class certification on said claims because Plaintiffs alleged no wrongdoing by SuperMedia EBC in connection with their class action allegations. *See* Def. SuperMedia EBC's Resp. to Pls.' Mot. for Class Certification at 2 (Docket No. 46). The only relief sought as to SuperMedia on the class claims was an "order requiring Idearc/SuperMedia and Idearc EBC to transfer back to Verizon all Plaintiffs and putative class members." Pls.' Am. Compl. ¶ 140. The Verizon Defendants did not oppose class certification, and the Court ordered class certification on the specified claims from the (First) Amended Complaint. *See* Verizon Defs.' Resp. to Pls.' Mot. for Class Certification (Docket No. 46); Order on Class Certification (Docket No. 55).

Plaintiffs now assert for the first time a "new" claim in their Second Amended Complaint regarding SuperMedia EBC's alleged failure to provide an SPD to participants within 90 days. *See* Pls.' Second Am. Compl. at 50-52. This claim was not a part of the first Amended

Complaint and has not been class certified. Accordingly, SuperMedia EBC addresses Claim Five as to *Plaintiffs only* in this Motion.

On June 20, 2011, the Court granted Plaintiffs' Motion for Leave to File Second Amended Complaint, and denied SuperMedia's Motion for Judgment on the Pleadings as moot. *See* Docket No. 63. SuperMedia EBC now moves this Court to dismiss the claims asserted against it in the Second Amended Complaint under Rule 12(b)(6) because Plaintiffs have failed to state claims upon which relief can be granted.

IV. RELEVANT FACTS

Verizon executed amendments to its plans on December 22, 2006, which removed Plaintiffs and class members from Verizon's pension plans and transferred them to the SuperMedia Pension Plans. *See* Pls.' Second Am. Compl. ¶¶ 212-13. On that date, SuperMedia EBC became the administrator of the Plaintiffs' and class members' plans. *See id.* ¶ 214. SuperMedia EBC promptly, and within the 90 days prescribed by ERISA § 104(b)(1), sent the SPDs in force at the time to the participants of the SuperMedia Pension Plans. *See id.* ¶ 217; Exs. A & B (March 19, 2007 letters to participants, which enclosed appropriate SPDs and summary material modifications ("SMMs")).[3]

On February 4, 2009 Plaintiffs' counsel sent a letter to SuperMedia EBC asserting "both an administrative claim *and* a request for ERISA documents" on behalf of Plaintiffs. Ex. C (emphasis in original); *see also* Pls.' Second Am. Compl. ¶ 82. SuperMedia EBC responded seeking more information and noting that benefits had not been denied:

> [Y]ou 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***.

[3] The exhibits attached hereto may be considered as part of the complaint as outlined in Section V.B below.

Ex. D (emphasis added). Thereafter, Plaintiffs sent another letter complaining SuperMedia EBC "did not send Named Claimants a formal written response to the merits of their administrative claim." Ex. E; *see also* Pls.' Second Am. Compl. ¶ 95. Plaintiffs characterized this letter as an appeal of the denial of their proposed class-wide administrative claim, despite SuperMedia EBC having denied nothing. *See* Pls.' Second Am. Compl. ¶ 95. In a letter dated October 29, 2009, SuperMedia EBC once again tried to ascertain what exactly Plaintiffs were claiming:

> ***[Y]ou have provided no evidence or allegation that the Idearc Pension plan has failed to make any payment*** required under the plan. If you have such a claim, please provide the information necessary for us to deal with the claim.

Ex. F (emphasis added); *see also* Pls.' Second Am. Compl. ¶ 95. Instead of providing evidence or allegation that the SuperMedia Pension Plans failed to make a payment, Plaintiffs filed the instant suit.

V. ARGUMENT AND AUTHORITIES

A. Standard of Review.

The U.S. Supreme Court has recently issued two opinions—*Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*—explaining the standard by which motions to dismiss under Rule 12(b)(6) must be decided. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1951-52 (2009). In order to survive a Rule 12(b)(6) motion post *Twombly* and *Ashcroft*, a complaint must contain enough factual allegations "'to state a claim to relief that is plausible on its face.'" *Ashcroft*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility only when the well-pleaded facts allow the court to draw the reasonable inference, based on its "experience and common sense," that the defendant is liable as alleged. *Id.* at 1940 (citing *Twombly*, 550 U.S. at 556).

To meet this standard, Plaintiffs' allegations must cross two thresholds. First, the Court must "identify[] the allegations in the [Second Amended] [C]omplaint that are not entitled to the assumptions of truth" because of their conclusory nature. *Id.* at 1951. Second, considering only the well-pleaded facts, the Court must determine whether the Second Amended Complaint "plausibly suggest[s] an entitlement to relief" on the claim at issue. *Id.* at 1950; *Twombly*, 550 U.S. at 570.

B. The Attached Evidence May Be Considered as Part of the Complaint for Purposes of This Motion.

Although a court must generally limit its Rule 12(b)(6) inquiry to the allegations stated in the complaint, it may also consider the documents attached to or incorporated in such complaint. *See Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1017-18 (5th Cir. 1996). The Fifth Circuit has also held that critical documents that assist the plaintiff in establishing his or her claims are considered part of the pleadings, even if not attached to such pleadings. *See Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000). In *Collins v. Morgan Stanley Dean Witter*, for example, the Fifth Circuit stated:

> We note approvingly, however, that various other circuits have specifically allowed that "[d]ocuments 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***." In so attaching, the defendant merely assists the plaintiff in establishing the basis of the suit, and the court in making the elementary determination of whether a claim has been stated.

Id. (emphasis added) (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir.1993)).

Under this Fifth Circuit authority, SuperMedia EBC has attached several letters, including (a) a March 19, 2007 letter to Idearc Pension Plan for Management Employees participants, which enclosed the appropriate SPD and SMM, (b) a March 19, 2007 letter to

Idearc Pension Plan for Collectively-Bargained Employees participants, which enclosed the appropriate SPD and SMM, (c) a February 4, 2009 letter in which Plaintiffs made their purported administrative claim, (d) a March 3, 2009 response letter from SuperMedia EBC, (e) a September 15, 2009 letter from Plaintiffs, and (f) an October 29, 2009 response letter from SuperMedia EBC. *See* Exs. A-F. The attached letters are properly considered because the Second Amended Complaint references these documents,[4] and/or these documents are central to Plaintiffs' claims.

C. Plaintiffs Have Failed to State a Viable Claim for Equitable Relief Under ERISA § 502(a)(3) for SuperMedia EBC's Alleged Violation of ERISA § 503.

Plaintiffs allege in Claim One that even though they were not seeking payment of additional benefits from the SuperMedia Pension Plans, Plaintiffs' "attempted class-wide administrative claim should have been treated by SuperMedia EBC as one arising under ERISA [§] 502(a)(1)(B), 29 U.S.C. § 502(a)(1)(B)." Pls.' Second Am. Compl. ¶ 117. Plaintiffs further allege that because SuperMedia EBC did not provide Plaintiffs a full and fair review of their class-wide administrative claim, SuperMedia EBC breached its fiduciary duty to Plaintiffs. *See id.* at 28-32. In Claim One the Plaintiffs ask the Court to grant "appropriate equitable relief" under ERISA § 502(a)(3) and "declare that both Verizon and SuperMedia EBC failed to provide Plaintiffs with a full and fair review and, as a consequence, Plaintiffs' claims asserted herein should be deemed tolled during the administrative process and Plaintiffs should recover an award

[4] Specifically, Plaintiffs refer to the March 19, 2007 letters by bates number and allege these letters failed to comply with the statutorily prescribed 90 day deadline. *See* Exs. A & B; *see also* Pls.' Second Am. Compl. ¶¶ 217-19. Plaintiffs acknowledge pursuing a "class-wide internal administrative claim" through the February 4, 2009 letter. *See* Ex. C; Pls.' Second Am. Compl. ¶ 82. Plaintiffs contend "SuperMedia EBC and pension plan administrators never rendered a decision addressing the merits of Plaintiffs' internal claims." Pls.' Second Am. Compl. ¶ 87; *but see* Ex. D. Plaintiffs claim they appealed SuperMedia EBC's "denial" in their September 15, 2009 letter. Pls.' Second Am. Compl. ¶ 95; Ex. F. And Plaintiffs quote from SuperMedia EBC's October 29, 2009 response letter. Pls.' Second Am. Compl. ¶ 95; Ex. F.

of reasonable attorney's fees and costs necessarily incurred in this civil action in order to litigate the class certification issue and the merits of Plaintiffs' administrative claim." *Id.* ¶ 132.

Claim One should be dismissed because (1) Plaintiffs did not assert a claim for benefits that have been denied, (2) Plaintiffs' "claim" was at best a request to change the manner or mode in which Plaintiffs received their benefits, and (3) Plaintiffs have not alleged how SuperMedia EBC's alleged breach injured them.

1. Plaintiffs did not assert a claim for benefits that have been denied.

ERISA requires plans to "afford a reasonable opportunity to any participant whose ***claim for benefits has been denied*** for a full and fair review by the appropriate named fiduciary of the decision denying the claim." ERISA § 503, 29 U.S.C. 1133(2) (emphasis added). Almost three decades ago, the Second Circuit concluded it was "abundantly clear" that Congress's purpose behind ERISA § 503 "was to provide safeguards to participants for the payment of their benefits. ***Neither the Act nor its legislative history comments on the mode or manner in which benefits should be paid***." *Pompano v. Schiavone & Sons, Inc.*, 680 F.2d 911, 916 (2d Cir. 1982) (emphasis added).

In *Pompano*, a retiree requested the plan distribute his benefits as a lump-sum. *Id*. at 913. The plan denied this request, and it was undisputed that the retiree was receiving his entitled monthly benefits. *Id*. The retiree sued claiming, among other things, the plan failed to give him an opportunity for review under ERISA § 503(2). *Id*. at 915. The trial court concluded "no benefits were denied plaintiff. Rather it was only the requested mode of distribution. . . ." *Id*. The Second Circuit agreed; a "reading of ERISA, together with its legislative history, supports the finding of inapplicability of § 1133 [ERISA § 503]. . . ." *Id*. The court held, "[t]here is strong evidence to suggest that the procedural protection set forth in the statute is intended to safeguard the participant's substantive rights to receive benefits." *Id.* The court concluded:

> ***Appellant … is receiving his rightful due*** in monthly distributions. The inescapable conclusion is that ***the denial of the particular method of payment*** requested in this case did not, on the facts, constitute a denial of a 'claim for benefits,' and thus ***did not necessitate written notice and fair review*** under either § 1133(1) or (2) [ERISA § 503].

Id. at 916 (emphasis added); *see also Gardner v. Central States, Se. and Sw. Areas Pension Fund*, No. 93-3070, 1993 WL 533540, at *3 (6th Cir. Dec. 21, 1993) (holding ERISA § 503 does not apply where claim for pension benefits were granted); *Woolsey v. Marion Labs., Inc.*, 934 F.2d 1452 (10th Cir. 1991) (holding ERISA § 503 does not apply to denial of request to receive portion of benefits in employer's stock); *Challenger v. Local Union No. 1 of the Int'l Bridge, Structural, and Ornamental Ironworkers, AFL-CIO*, 619 F.3d 645, 648 (7th Cir. 1980) (noting "it is not at all clear that [appellant's] request for information" about his pension plan was a claim within the meaning of ERISA § 503); *Clarke v. Bank of N.Y.*, 698 F. Supp. 863, 870-71 (S.D.N.Y. 1988) (holding ERISA § 503 does not apply to denial of a specific rate of return on his investment and noting defendant never "denied plaintiff's right to receive his substantive benefits due him under the plan"); *McBride v. Chesebrough-Ponds, Inc.*, No Civ. B-86-329(JAC), 1988 WL 121922, at *4 n. 1 (D. Conn. Nov. 1, 1988) ("As plaintiff admittedly did receive the proper amount of severance pay, he received the benefits to which he was entitled under defendant's ERISA plan," and even if requested relief was encompassed by plan, it likely did not constitute a benefit under ERISA § 503).

Plaintiffs do not contend they have been denied benefits owed under the plans. Plaintiffs wrote SuperMedia EBC a letter dated February 4, 2009 Plaintiffs characterize as asserting "both an administrative claim *and* a request for ERISA documents on behalf of" the Plaintiffs. Ex. C (emphasis in original); *see also* Pls.' Second Am. Compl. ¶ 82. That letter, however, contained

no reference to a denial of benefits. Indeed, SuperMedia EBC responded seeking more information and specifically noted that *benefits had not been denied*:

> [Y]ou 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***.

See Ex. D (emphasis added). In no later correspondence did Plaintiffs ever claim benefits were denied. Instead, Plaintiffs sent a September 15, 2009 letter complaining SuperMedia EBC "did not send Named Claimants a formal written response to the merits of their administrative claim." Ex. E; *see also* Pls.' Second Am. Compl. ¶ 95. Plaintiffs characterize this letter as an appeal of the denial of their proposed class-wide administrative claim, even though SuperMedia EBC had not denied any benefits, explicitly stated so in its communications, and openly attempted to ascertain the root of Plaintiffs' complaint(s). Pls.' Second Am. Compl. ¶ 95. SuperMedia EBC once again tried to discover what exactly Plaintiffs were claiming:

> ***[Y]ou have provided no evidence or allegation that the Idearc Pension plan has failed to make any payment*** required under the plan. If you have such a claim, please provide the information necessary for us to deal with the claim.

Ex. F (emphasis added); *see also* Pls.' Second Am. Compl. ¶ 69. Plaintiffs did not respond and have still to this day not articulated what benefit SuperMedia EBC has denied them. Plaintiffs cannot articulate a specific benefit denial because one simply does not exist.

2. At best Plaintiffs' "claim" was a request to change the manner or mode in which Plaintiffs' benefits were being paid.

Plaintiffs contend their purported administrative claim was to be removed from SuperMedia's pension plans and returned to Verizon's pension plans. In other words, instead of receiving a benefits check from the SuperMedia Pension Plans, Plaintiffs desire to receive the same check from the Verizon pension plan. Even if SuperMedia EBC had "officially" denied

this request, this would not constitute a denial of benefits as that term is understood under ERISA. Instead, it would be a denial of a request to change the manner or mode in which Plaintiffs' benefits were being paid. *See Pompano*, 680 F.2d at 915. As noted above, the "full and fair" review provisions of ERISA § 503, 29 U.S.C. § 1133, do not encompass this claim.

3. Plaintiffs are not entitled to the relief sought under § 502(a)(3).

In Claim One, Plaintiffs seek "appropriate equitable relief" under § 502(a)(3). For Plaintiffs to be entitled to such relief, they must establish that SuperMedia EBC is "(a) a plan fiduciary, (b) has breached its fiduciary duties under ERISA, (c) that such a breach caused the plaintiff injury and (d) that the equitable relief sought is indeed appropriate." *Hobbs v. Baker Hughes Oilfield Operations*, 2007 WL 4223666, at *5 (S.D. Tex. Nov. 28, 2007), *aff'd* 294 Fed. Appx. 156 (5th Cir. 2008). For the reasons stated above, SuperMedia EBC did not breach its fiduciary duty under § 503. Furthermore, Plaintiffs have not alleged any injury they have suffered as a result of SuperMedia EBC's alleged failure to provide a full and fair review of their administrative claims. For all of these reasons, Claim One should be dismissed.

D. Plaintiffs Have Failed to State a Viable Claim for Equitable Relief Under ERISA § 502(a)(3) for SuperMedia EBC's Alleged Violation of ERISA § 104(b)(1).

In Claim Five, Plaintiffs seek "appropriate class-wide equitable relief" under ERISA § 502(a)(3)—including a "declaration that SuperMedia EBC failed to meet and breached its statutory duty" under ERISA § 104(b)(1)—for SuperMedia EBC's alleged failure to provide participants with a SPD within 90 days of becoming participants in the SuperMedia Pension Plans. *See* Second Am. Compl. at 52. ERISA § 104(b)(1) provides: "The administrator shall furnish to each participant…a copy of the summary plan description…within 90 days after he becomes a participant…." 29 U.S.C. § 1024(b)(1). Claim Five should be dismissed because (1) the relief sought is not available, (2) SuperMedia EBC provided the SPDs within 90 days, (3) a

mere technical or procedural violation without prejudice is insufficient to state a claim, and (4) Plaintiffs have not alleged how SuperMedia EBC's alleged breach injured them.

Plaintiffs originally alleged they were entitled to statutory damages under ERISA § 502(c) because SuperMedia EBC violated ERISA § 104(b)(4) by not providing certain governing documents *requested by* Plaintiffs, and that consequently, SuperMedia EBC breached its fiduciary duty to Plaintiffs. *See* Pls.' Am. Compl. at 24-30. The Court dismissed both the statutory damages claim and breach of fiduciary claim based thereon under Rule 12(b)(6) as detailed above. *See* Oct. 18, 2010 Order. In an attempt to side step this ruling, Plaintiffs reframe this claim under ERISA § 502(a)(3) and § 104(b)(1) in their Second Amended Complaint. Now Plaintiffs seek equitable relief for SuperMedia EBC's alleged failure to automatically provide Plaintiffs with a copy of the relevant SPD within 90 days of becoming participants. *See* Pls.' Second Am. Compl at 50-52. The Court should dismiss this claim as it did Plaintiffs' previous claims for failure to provide documents for the reasons outlined below.

1. The equitable relief sought by Plaintiffs is not available for a violation of ERISA § 104(b)(1).

ERISA does not provide specific relief for failing to automatically send a participant the SPD within 90 days unlike, for example, the statutory penalty available under 502(c) when the administrator fails to provide documents requested by the participant. Under the statutory construction doctrine of *inclusion unius est exclusion alterius*, that Congress provided specific redress for violations of ERISA § 104(b)(4) and *not* § 104(b)(1), evidences Congress' intent to afford relief for violations of the reporting and disclosure provisions only where the claiming participant requested information. *See, e.g.*, *LaSalle Bank Nat'l Assoc. v. Sleutel*, 289 F.3d 837, 841 (5th Cir. 2002) (relying on principle to consider inclusion of waiver in one section of Texas Property Code and not the other as evidence the Texas Legislature knows how to preclude

waiver of statutory provisions when it so desires, and the fact that it did not do so in this case indicates it intended to allow the provision to be waived). The Fifth Circuit has made clear that "even though ERISA requires that plan administrators automatically issue SPDs irrespective of whether a plan participant has requested one, there is no private right of action to recover a penalty for nondisclosure unless a request for an SPD is first made." *Amat v. Seafarers' Int'l Union*, 54 Fed. Appx. 414 (5th Cir. Nov. 15, 2002) (*per curiam*) (unpublished). Here there is no allegation that any Plaintiff requested the SPD. The Fifth Circuit has yet to recognize a claim for equitable relief under ERISA § 502(a)(3) for failure to automatically provide participants with a SPD within 90 days of becoming participants, and this Court should not do so now.[5]

2. SuperMedia EBC provided SPDs to participants within 90 days.

In the event the Court determines the equitable relief requested in Claim Five is cognizable under ERISA § 502(a)(3), Plaintiffs still have not alleged facts sufficient to state a claim for violation of ERISA § 104(b)(1). As stated above, this subsection requires a plan administrator to automatically send a copy of the SPD to individuals within 90 days of them becoming participants. *See* 29 U.S.C. § 1024(b)(1). Verizon executed amendments to its plans on December 22, 2006, which removed Plaintiffs and class members from Verizon's pension plans to the SuperMedia Pension Plans. *See* Second Am. Compl. ¶¶ 212-13. On December 22, 2006, SuperMedia EBC became the administrator of the Plaintiffs' and class members' plans. *See id.* ¶ 214. SuperMedia EBC sent the SPDs in force at the time to participants in the SuperMedia Pension Plans on March 19, 2007—less than 90 days from December 22, 2006. *See*

[5] Courts in other circuits have suggested that while statutory damages under 502(c) are not available for a violation of 104(b)(1), equitable relief may be available under § 502(a)(3). *See, e.g., Carder-Cowin v Unum Life Ins. Co. of Am.*, 560 F. Supp. 2d 1006, 1014 (W.D. Wash. 2008) (holding where there is no request for documents the court in its discretion may, but is not required to, provide equitable relief for a procedural violation of ERISA § 104(b)(1)); *Noel v. Laclede Gas Co.*, 612 F. Supp. 2d 1061, 1066 (E.D. Mo. 2009) (reasoning that ERISA § 502(a)(3) permits suit for equitable relief, but holding essence of plaintiffs' claim was one for money damages, which are not available for breaches of duty to automatically provide SPDs).

id. ¶¶ 216-17; Exs. A & B. Under the facts alleged in Plaintiffs' complaint, SuperMedia complied with § 104(b)(1).

3. A technical or procedural violation of ERISA § 104(b)(1) without prejudice is insufficient to state a claim under that section.

Plaintiffs appear to argue that because the December 22, 2006 amendments made Plaintiffs and class members retroactive participants in the SuperMedia Pension Plans effective as of November 17, 2006, the 90-day clock starting ticking for SuperMedia EBC to provide the relevant SPDs on November 17, rather than December 22. Computing the deadline from November 17, 2006—90 days later is February 15, 2007. As stated in Plaintiffs' complaint, SuperMedia EBC provided the SPDs on March 19, 2007, approximately one month after the purported deadline as alleged by Plaintiffs. Even if the Court were to accept Plaintiffs' argument and calculate the deadlines from November 17, 2006, such a technical and/or procedural violation does not present a viable claim without detrimental reliance by or prejudice to the Plaintiffs. *See Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560, 569 (7th Cir. 1995) ("[T]echinal violations of ERISA requirements do not justify relief absent a showing of bad faith, active concealment, or detrimental reliance."); *Risch v. Waukesh Title Co., Inc.*, 588 F. Supp. 69, 72 (E.D. Wis. 1984) (holding despite defendant's procedural violation, the forfeiture clause was enforceable because defendant's failure to provide SPD within 90 days did not prejudice plaintiffs); *Carder-Cowin*, 560 F. Supp. 2d at 1015 (holding equitable relief inappropriate where alleged procedural violation of not providing SPD was not tantamount to a failure to exercise discretion).

The circuits are divided over whether detrimental reliance or prejudice is required to recover in deficient SPD cases. The Third, Seventh, and Eleventh Circuits require detrimental reliance. *See Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310, 1319 n.8 (3rd Cir. 1991);

Andersen v. Chrysler Corp., 99 F.3d 846, 859 (7th Cir. 1996); *Branch v. G. Bernd Co.*, 955 F.2d 1574, 1578-79 (11th Cir. 1992). These courts generally require an affirmative showing by the plaintiff that he read the SPD and that but for the inaccurate description he would have acted differently. The First, Fourth, Eighth, and Tenth Circuits allow recovery upon a showing of either reliance or prejudice. *See Govoni v. Bricklayers, Masons & Plasterers Int'l Union of Am., Local No. 5 Pension Fund*, 732 F.2d 250, 252 (1st Cir. 1984); *Aiken v. Policy Mgmt. Sys. Corp.*, 13 F.3d 138, 141-42 (4th Cir. 1993) (*per curiam*); *Palmisano v. Allina Health Sys., Inc.*, 190 F.3d 881, 887088 (8th Cir. 1999); *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1519 (10th Cir. 1991). The Second Circuit has adopted the lowest standard, and requires a showing of "likely prejudice" in order for a claim for failure to provide plan documents to exist. *Weinreb v. Hosp. for Joint Diseases Orthopaedic Inst.*, 303 F.3d 167, 171-72 (2d Cir. 2005).

It appears the Fifth Circuit has yet to decide whether the standard should be detrimental reliance or prejudice in order to state a claim under ERISA § 104(b)(1). In all likelihood the Fifth Circuit would join its sister courts in requiring *some* showing of detrimental reliance or prejudice to support a claim for the failure to provide plan documents. Plaintiffs have completely failed to allege any harm that came to them by not receiving the SPD within 90 days of "becoming participants."

Applying even the lowest standard adopted by Second Circuit, Plaintiffs have failed to state a claim for relief because they have not and cannot show they were likely to have been harmed by the failure to timely receive a SPD. At most, Plaintiffs received the SPD 33 days late. The lack of likely harm from receiving the SPD *at most* 33 days late is evidenced by Plaintiffs' failure to plead this claim in either their original or amended complaint, despite the fact that they had full knowledge of all of the supporting facts. Plaintiffs' inclusion of this claim at the

eleventh hour is a thinly veiled attempt to breathe life into its case against SuperMedia EBC that is otherwise dead.

Because Plaintiffs have not so much as alleged any type of prejudice, Plaintiffs cannot state a claim against SuperMedia EBC for violating § 104(b)(1). *See Burns v. Marley Co. Pension Plan for Hourly Employees at Stockton, Ca.*, 663 F. Supp. 2d 135, (E.D.N.Y. 2009) (concluding that plaintiff had not stated a claim for violation of 104(b)(1) because he did not suffer prejudice, and dismissing under 12(b)(6)); *Robbins v. N.Y. State Elec. &* Gas, 2010 WL 1038495, at *5 (N.D.N.Y. Mar. 19, 2010) (dismissing on summary judgment claim that defendant violated ERISA by failing to provide him with SPD because there was no evidence of (1) bad faith on the part of the defendant, (2) that plaintiff ever made any requests that were ignored, and (3) that plaintiff suffered any prejudice); *Weinreb*, 404 F.3d at 172 (upholding district court's dismissal on summary judgment ERISA claim premised on complete absence of a SPD because plaintiff failed to raise any material issue of fact demonstrating likely prejudice).

4. Plaintiffs are not entitled to the relief sought under § 502(a)(3).

Finally, even if the Court declines to adopt a prejudice standard under ERISA § 104(b)(1), in order to receive relief under ERISA § 502(a)(3), Plaintiffs must independently allege injury caused by SuperMedia EBC's alleged breach. Claim Five seeks "appropriate equitable relief" under § 502(a)(3). For Plaintiffs to be entitled to such relief, they must establish that SuperMedia EBC is "(a) a plan fiduciary, (b) has breached its fiduciary duties under ERISA, (c) that such a breach caused the plaintiff injury and (d) that the equitable relief sought is indeed appropriate." *Hobbs*, 2007 WL 4223666, at *5. For the reasons stated above, SuperMedia EBC did not breach its fiduciary duty under § 104(b)(1). Furthermore, Plaintiffs' complaint is devoid of any allegations of harm caused by Plaintiffs' allegedly receiving their SPDs 33 days late. For all of these reasons, Claim Five should be dismissed.

E. Plaintiffs Cannot Maintain a Claim for Equitable Relief Under ERISA § 502(a)(2)-(3).

For the reasons detailed above, Plaintiffs have failed to state claims upon which relief can be granted in either Claim One or Five. Without Claims One and Five, the Second Amended Complaint is devoid of any alleged wrongdoing by SuperMedia EBC. For Plaintiffs' ERISA § 502(a)(2)-(3) claim (Claim Six) against SuperMedia EBC to survive the present motion to dismiss, Plaintiffs must allege conduct by SuperMedia EBC that violated a duty imposed by ERISA or the plans. *See* Oct. 18, 2010 Order at 10. Without Claims One and Five, Plaintiffs' claim for equitable relief cannot stand.

VI. CONCLUSION AND PRAYER

In accordance with *Twombly* and *Ashcroft*, SuperMedia EBC respectfully submits that Plaintiffs have failed to state any claim for relief against the SuperMedia Employee Benefits Committee in their Second Amended Complaint and request the claims asserted against it be dismissed.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 2011, 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 a user of the ECF system. A courtesy copy has also been sent to the following counsel of record via E-Mail:

Curtis L. Kennedy
8405 E. Princeton Avenue
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1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

ATTORNEYS FOR PLAINTIFFS

ATTORNEYS FOR DEFENDANTS Verizon COMMUNICATIONS, INC., VERIZON EMPLOYEE BENEFITS COMMITTEE VERIZON PENSION PLAN FOR NEW YORK AND NEW ENGLAND ASSOCIATES; VERIZON MANAGEMENT PENSION PLAN

/s/ Martha Hopkins
Martha Hopkins

EXHIBIT A

March 19, 2007

Idearc Pension Plan for Management Employees
Summary of Material Modifications

Dear Participant:

The purpose of this letter is to update your pension plan Summary Plan Description ("SPD") to reflect Idearc Inc. ("Idearc") specific information.

Your current Idearc pension benefits mirror the management pension benefits of Verizon Communications Inc. ("Verizon") on the day before the spin-off (November 17, 2006). Enclosed are copies of the Verizon SPD and a Verizon summary of material modifications ("SMM") for the pension benefits provided by Idearc to management employees, as follows:

SPD
- Verizon Management Pension Plan/Verizon Enterprises Management Pension Plan

SMM
- Retirement Benefits Changes for Verizon Management Employees

Note: If you are reviewing this letter on-line, the SPD and SMM available to you are in the left margin of this page.

Taken together, Verizon's SPD, Verizon's SMM, and this letter will serve as your Idearc SPD until a new SPD is prepared.

Administrative Information

The following changes apply to the ***Administrative Information*** section of your SPD. However, these changes will apply throughout your SPD, if and as applicable:

Plan Sponsor / Employer / Company:
Any references to Verizon Communications Inc. or other Verizon company as the plan sponsor / employer / company should be changed to **Idearc Inc.** at the following address:

2200 West Airfield Drive
P.O. Box 619810
D/FW Airport, Texas 75261

Plan Administrator:
The plan administrator is:

Idearc Employee Benefits Committee
2200 West Airfield Drive
P. O. Box 619810
D/FW Airport, Texas 75261
Telephone number: 972-453-7000

For the time being, Hewitt, via the Verizon Benefits Center, will continue to be your primary contact point for pension plan information, including general inquiries, pension calculations, qualified domestic relations order ("QDRO") procedures, etc. So, for day-to-day information about the Idearc pension plan and your benefits, you should contact:

Idearc Employee Benefits Committee
c/o Verizon Benefits Center
100 Half Day Road
P.O. Box 1457
Lincolnshire, IL 60069-1457
Telephone number: 1-877-275-8947

Claims and Appeals Administrators:
Your claims and appeals procedures under the Employee Retirement Income Security Act of 1974 ("ERISA") will remain the same, as outlined in the SPD and updated in the above-named SMM.

Initial claims should be directed to the Idearc Claims Review Unit, and appeals of denied claims should be directed to the Idearc Claims Review Committee, c/o the Idearc Claims Review Unit. In either case, the claims and appeals should be addressed to:

Idearc Claims Review Unit
P.O. Box 1438
Lincolnshire, IL 60069-1438

Plan Name / Identification:
Any reference in the Verizon SPD and SMM to a pension plan governing pension benefits for management employees will now be changed to the **Idearc Pension Plan for Management Employees**, plan number 001.

Employer Identification Number ("EIN"):
Idearc's EIN is 20-5095175.

Agent for Service of Legal Process:
For Idearc legal matters, you should **not** send a copy to the Verizon Legal Department, as specified in the SPD. The agent for service of legal process is the Director of Benefits at Idearc, with a copy to the Executive Vice President and General Counsel at:

Idearc Inc.
2200 West Airfield Drive
P.O. Box 619810
D/FW Airport, Texas 75261

Service of legal process may also be made on the plan trustee or the plan administrator.

Participating Companies:
The list of participating companies applicable to Verizon no longer applies. The Idearc participating companies for purposes of the Idearc pension plan are:

- Idearc Media Corp.
- Idearc Media Services – East, Inc.
- Idearc Media Services – West, Inc.
- Idearc Media Sales – East Co.
- Idearc Media Sales – West Inc.

Additional Changes

References to Verizon in the SPD and the SMM generally should be read as references to Idearc.

The rights and responsibilities of Verizon as the plan sponsor / employer / company will now apply to Idearc. So, it is important to understand that Idearc, as plan sponsor / employer / company, is the entity that has the full and final discretionary authority to interpret the terms of the Idearc Pension Plan; publish related plan documents and communications; and, as needed, amend, modify, suspend, or terminate the Idearc Pension Plan. Idearc currently expects to continue the Idearc Pension Plan, but must reserve its rights to amend or terminate the Idearc Pension Plan, just as Verizon historically has, as outlined in more detail in the SPD. Furthermore, Idearc may delegate its rights in the same manner as Verizon, as outlined in the SPD. An important statement regarding your rights is outlined in the ***Administrative Information*** section of the SPD, entitled *Rights of participants and beneficiaries under ERISA*.

In general, Verizon transferred pension assets and liabilities from the Verizon Management Pension Plan (VMPP) and the Verizon Enterprises Management Pension Plan (VEMPP) to the Idearc Pension Plan (1) for management participants in these Verizon plans who worked for a company on November 17, 2006 that became Idearc, such as Verizon Information Services, and (2) for management individuals whose employment is or was transferred from Verizon to an Idearc participating company after November 17, 2006 by agreement of Verizon and Idearc as described under Section 2.1(b) of the Employee Matters Agreement by and between Verizon and Idearc (a "Delayed Transfer Employee").

- If you transferred from Verizon to Idearc on November 17, 2006 or are a Delayed Transfer Employee **and** Verizon pension assets and liabilities were transferred to Idearc for your management pension benefits, your Idearc employment will count as additional net credited service for your pension benefits, which will be paid from the Idearc pension plan.

- If you otherwise became employed with Idearc after November 17, 2006, Verizon Communications will retain responsibility and liability for your benefits earned under the Verizon Management Pension Plan.

EXHIBIT B

March 19, 2007

Part 3 of the Idearc Pension Plan for Collectively-Bargained Employees Summary of Material Modifications

Dear Participant:

The purpose of this letter is to update your pension plan Summary Plan Description ("SPD") to reflect Idearc Inc. ("Idearc") specific information.

Your current Idearc pension benefits mirror the North associate pension benefits of Verizon Communications Inc. ("Verizon") on the day before the spin-off (November 17, 2006). Enclosed are copies of the Verizon SPD and Verizon summaries of material modifications ("SMMs") for the pension benefits provided by Idearc to North associates, as follows:

SPD
- Verizon Pension Plan for New York and New England Associates

SMMs
- Changes to Your Employee Benefits (New England IBEW)
- Changes to Your Employee Benefits (New York IBEW; New York and New England CWA)

Note: If you are reviewing this letter on-line, the SPD and SMM available to you are in the left margin of this page.

Taken together, Verizon's SPD, Verizon's SMMs, and this letter will serve as your Idearc SPD until a new SPD is prepared.

Administrative Information

The following changes apply to the ***Administrative Information*** section of your SPD. However, these changes will apply throughout your SPD, if and as applicable:

Plan Sponsor / Employer / Company:
Any references to Verizon Communications Inc. or other Verizon company as the plan sponsor / employer / company should be changed to **Idearc Inc.** at the following address:

2200 West Airfield Drive
P.O. Box 619810
D/FW Airport, Texas 75261

Plan Administrator:
The plan administrator is:

Idearc Employee Benefits Committee
2200 West Airfield Drive
P. O. Box 619810
D/FW Airport, Texas 75261
Telephone number: 972-453-7000

For the time being, Hewitt, via the Verizon Benefits Center, will continue to be your primary contact point for pension plan information, including general inquiries, pension calculations, qualified domestic relations order ("QDRO") procedures, etc. So, for day-to-day information about the Idearc Pension Plan and your benefits, you should contact:

Idearc Employee Benefits Committee
c/o Verizon Benefits Center
100 Half Day Road
P.O. Box 1457
Lincolnshire, IL 60069-1457
Telephone number: 1-877-Ask-VzHR (1-877-275-8947)

Claims and Appeals Administrators:
Your claims and appeals procedures under the Employee Retirement Income Security Act of 1974 ("ERISA") will remain the same, as outlined in the SPD and updated in the above-named SMMs.

Initial claims should be directed to the Idearc Claims Review Unit, and appeals of denied claims should be directed to the Idearc Claims Review Committee, c/o the Idearc Claims Review Unit. In either case, the claims and appeals should be addressed to:

Idearc Claims Review Unit
P.O. Box 1438
Lincolnshire, IL 60069-1438

Plan Name / Identification:
Any reference in the Verizon SPD and SMMs to a pension plan governing pension benefits for New York/New England associates will now be changed to **Part 3 of the Idearc Pension Plan for Collectively-Bargained Employees**, plan number 002.

Employer Identification Number ("EIN"):
Idearc's EIN is 20-5095175.

Agent for Service of Legal Process:
For Idearc legal matters, you should **not** send a copy to the Verizon Legal Department, as specified in the SPD. The agent for service of legal process is the Director of Benefits at Idearc, with a copy to the Executive Vice President and General Counsel at:

Idearc Inc.
2200 West Airfield Drive
P.O. Box 619810
D/FW Airport, Texas 75261

Service of legal process may also be made on the plan trustee or the plan administrator.

Participating Companies:
The list of participating companies applicable to Verizon no longer applies. The Idearc participating companies for purposes of the Idearc Pension Plan are:

- Idearc Media Services – East, Inc.
- Idearc Media Sales – East Co.

Additional Changes

References to Verizon in the SPD and the SMMs generally should be read as references to Idearc.

The rights and responsibilities of Verizon as the plan sponsor / employer / company will now apply to Idearc. So, it is important to understand that Idearc, as plan sponsor / employer / company, is the entity that has the full and final discretionary authority to interpret the terms of the Idearc Pension Plan; publish related plan documents and communications; and, as needed, amend, modify, suspend, or terminate the Idearc Pension Plan, subject to the duty to collectively bargain. Idearc currently expects to continue the Idearc Pension Plan, but must reserve its rights to amend or terminate the Idearc Pension Plan, just as Verizon historically has, as outlined in more detail in the SPD. Furthermore, Idearc may delegate its rights in the same manner as Verizon, as outlined in the SPD. An important statement regarding your rights is outlined in the ***Administrative Information*** section of the SPD, entitled *Rights of Participants and Beneficiaries Under ERISA*.

In general, Verizon transferred pension assets and liabilities from the Verizon North associate pension plan to the Idearc pension plan (1) for participants in the Verizon North associate pension plan who worked for a company on November 17, 2006 that became Idearc, such as Verizon Information Services, (2) for individuals whose employment is or was transferred from Verizon to an Idearc participating company after November 17, 2006 by agreement of Verizon and Idearc as described under Section 2.1(b) of the Employee Matters Agreement by and between Verizon and Idearc (a "Delayed Transfer Employee"), and (3) for former Verizon North associates with deferred vested pension benefits under the Verizon North associate pension plan who formerly worked for a company that became Idearc.

- If you transferred from Verizon to Idearc on November 17, 2006 or are a Delayed Transfer Employee **and** Verizon pension assets and liabilities were transferred to Idearc for your North associate pension benefits, your prior Verizon North associate service will be credited under the Idearc Pension Plan. In this case, your Idearc pension benefits will include your Verizon North associate pension benefits.

- If you otherwise become employed with Idearc after November 17, 2006, your prior Verizon North associate service may be credited as ERISA Service (for participation and vesting purposes only) under the Idearc pension plan. In this case, your Idearc pension benefits may include your Verizon North associate pension benefits. Please contact the Idearc plan administrator for further information.

- If you are a former Verizon North associate for whom pension assets and liabilities were transferred, the Idearc pension plan will now pay your vested Verizon North associate pension benefits. If you later become employed with Idearc, your Idearc service **may** include your prior Verizon North associate service in certain instances. Please contact the Idearc plan administrator for further information.

EXHIBIT C

CURTIS L. KENNEDY
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TELEPHONE (303) 770-0440

FAX (303) 843-0360

ALSO ADMITTED IN:
UNITED STATES SUPREME COURT
STATE OF ARIZONA
STATE OF OKLAHOMA
STATE OF TEXAS
WASHINGTON, D.C.

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 Verizon 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 request Respondents produce 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] all 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 (i.e., **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 spin-off 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

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[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.

(*Id.* 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 Plan Administrator, 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"). Claimants understand that while Verizon transferred "Eligible Employees" to 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

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[3] In Mr. Schoenecker states in his letter dated November 7, 2008 in response to Pam Harrison's ERISA document request that he has not 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 request Respondents produce 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 *not* 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

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[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,

Curtis L. Kennedy

Claimants:

Curtis L. Kennedy

Philip A. Murphy, Jr. 25 Bogastow Circle Mills, MA 02054 phil.murphy@polimortgage.com (Phillip Murphy, Jr.)	Joanne Jacobsen 456 Cerromar Road, # 167 Venice, FL 34293 Jjacobsen2@hotmail.com (Joanne Jacobsen)
Susan A. Burke 2 Berube Road Salem, MA 01970 Susanburke2001@yahoo.com (Susan Burke)	David L. Wibbelsman 4052 Eagle Nest Lane Danville, CA 94506 dlwibbe@aol.com (David Wibbelsman)
Sandra R. Noe 72 Mile Lane Ipswitch, MA 01938 capsan@comcast.net (Sandra R. Noe)	Claire M. Palmer 26 Crescent Street West Newton, MA 02465-2008 priesing@aol.com (Claire M. Palmer)

[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.

EXHIBIT D

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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.

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 and Exchange Commission's Interactive Data Electronic 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.

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).

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,

Mark S. Miller

EXHIBIT E

CURTIS L. KENNEDY
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TELEPHONE (303) 770-0440

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ALSO ADMITTED IN:
UNITED STATES SUPREME COURT
STATE OF ARIZONA
STATE OF OKLAHOMA
STATE OF TEXAS
WASHINGTON, D.C.

September 15, 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 and Appeals Committee
c/o Joe A. Garza, Jr., Vice President & Associate General Counsel
IDEARC, INC.
2200 West Airfield Drive
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Tele: 972-453-7160
Fax: 972-453-6869
Joe.Garza@idearc.com (Joe Garza, Esq.)

Verizon Claims Review Committee
c/o Verizon Claims Review Unit
P.O. Box 1438
Lincolnshire, IL 60069-1438

Re: **Appeal - Class-wide Administrative Claim and Renewed Request for Documents**

Plan Administrators:

This is an administrative appeal of the July 31, 2009 dated denial of the February 4, 2009 dated claim, as supplemented on May 27, 2009, submitted on behalf of Phillip A. Murphy, Jr., Susan A. Burke, Sandra R. Noe, Joanne Jacobsen, David L. Wibbelsman, and Claire M. Palmer

(hereinafter "Named Claimants"), all active retired plan participants in Idearc's pension plans and former retired plan participants in Verizon's pension plans. Although, the administrative claim was submitted as a proposed class-wide claim, both Respondent Verizon and Respondent Idearc refused to treat the claim as a class-wide claim.

Respondent Idearc did not send Named Claimants a formal written response to the merits of their administrative claim. Idearc did not offer Named Claimants any internal avenue to appeal their administrative claim. Anyhow, Named Claimants hereby appeal to Idearc's Employee Benefits Committee or any other Idearc entity charged with handling appeals of internal claims.

By letter dated July 31, 2009, the Verizon Claims Review Unit ("VCRU") responded to the merits of Named Claimants' administrative claim. The VCRU contends that Named Claimants' complaints about matters the VCRU characterizes as "business decisions" are matters not subject to review under the ERISA claims procedures of the pension plans. To the extent the VCRU treated Named Claimants' demands that they, together with a proposed class of similarly situated retirees, be restored to their former positions as active retirees enrolled in Verizon's pension plans, the VCRU denied all claims.

The VCRU states that each Named Claimant was last employed in a "Spinco Business" within Verizon and, for that reason was transferred from a Verizon pension plan into a new pension plan sponsored by Idearc. Named Claimants have neither documents nor statements to submit challenging Verizon's determination that their last employment was with the Spinco Business within Verizon. The VCRU did not address Named Claimants' contentions that Verizon pension plan fiduciaries and administrators did not act in their best interest and that there were breaches of ERISA fiduciary duties. Instead, the VCRU opined that all actions taken with respect to Named Claimants were the result of "business decisions" immune from challenge under either the terms of the Verizon pension plans or ERISA's statutory provisions.

Accordingly, Named Claimants bring this matter to the attention of the Verizon Claims Review Commitee. Since the individual members charged with handling appeals for both Respondents have not been identified by either Respondent, a copy of this letter is also sent to the original named addressees with the reasonable expectation that it will be forwarded to the proper decision makers.

In addition, Named Claimants renew their request for the not yet produced documents listed in their February 4, 2009 dated letter.[1] Named Claimants demand that all of that missing and or withheld information and documentation be included in the administrative record for this

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[1] To date, Named Claimants have not received documents and information responsive to the following numbered requests set forth in their February 4, 2009 letter: Nos. 1-3 (Verizon's documents withheld); No. 4 (Final actuarial report not produced by either Respondent); No. 5 (Both Verizon's and Idearc's documents withheld); Nos. 7, 8 and 9 (Verizon's documents withheld); No. 10 (Idearc's documents not withheld but missing); and Nos. 12 and 13 (Idearc's documents withheld).

appeal. The failure or refusal to produce the remaining requested documents interferes with Named Claimants' rights to perfect this administrative appeal and, likewise, is another example of non-compliance with applicable pension plan rules. For instance, Section 9.13 appearing on page 99 of the Verizon Management Pension Plan, as amended and restated effective January 1, 2002, states that "[i]n connection with an appeal, the claimant (or his duly authorized representative) may review documents and other information relevant to the claim (copies of which shall be provided free of charge upon request) and may submit evidence and arguments in writing to the VCRC." By not producing the remaining myriad of documents and information Named Claimants deem relevant to this administrative claim, Respondents have effectively made this appeals procedure futile.

Named Claimants reiterate their contention 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 in their best interest. Furthermore, Named Claimants contend that removing them in November 2006 from Verizon's pension plans was a violation of their contractual rights under the pension plans and in violation of controlling plan terms. Accordingly, all Claimants contend there have been violations of ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1) and its several subdivisions.

The Employee Matters Agreement is Not a Plan Amendment and it Did Not Give Any Authority to Make Retiree Pension Plan Changes in November 2006

In the VCRU's July 31, 2009 denial letter, there appears to be great reliance placed on the terms of the Employee Matters Agreement ("EMA") executed on November 17, 2006 by a Verizon officer and an Idearc officer. But, the EMA is neither a governing pension plan document nor an amendment to Verizon's pension plans. There are no terms within Verizon's pension plans expressly making the EMA part of the pension plans and there is no incorporation of any EMA. The November 17, 2006 EMA was neither executed by the Verizon Board of Directors nor signed by the "most senior Human Resources officer of Verizon," the person to whom the Verizon Board has delegated authority to amend Verizon's pension plans. Likewise, there is no evidence that Verizon's Board, either by duly adopted written resolutions or by unanimous written consent, delegated the power to amend Verizon's pension plans to EVP John W. Dierckson, the only Verizon officer who executed the EMA. Therefore, the EMA fails to follow the amendment procedure specified in Verizon's pension plans. (See, e.g., Section 11.2 appearing on page 103 of the Verizon Management Pension Plan).

Verizon's pension plan fiduciaries and administrators cannot justify their conduct adverse towards Named Claimants and other retirees by placing reliance on the EMA because previously they took the legal position that the EMA is not a document under which a Verizon pension plan is established or operated within the meaning of ERISA Section 104(b)(4). When Verizon Management Pension Plan participant Michael S. Kucklinca submitted a written request dated September 18, 2007, he specifically requested production of "[a]ll amendments *since September 2006* to the current controlling plan document," . . . and "[a]ll other documents created *since*

September 2006 under which said pension plan [i.e., Verizon Management Pension Plan] is established and operated within the meaning of ERISA Section 104(b)(4)." (bracketed portion added). But, the EMA document was not timely produced in October 2007 within 30 days after receipt of Mr. Kucklinca's letter. The EMA was produced together with a letter dated March 6, 2009. In his March 6, 2009 dated letter Verizon's Assistant General Counsel Marc Schoenecker professed that "ERISA Section 104(b) does not require us to produce the EMA."

Similarly, when Named Claimant Claire Palmer sent her August 13, 2008 dated ERISA document request to Respondent Idearc, there was no timely production of the EMA. The EMA was not produced by Idearc until sent with a letter dated March 9, 2009. Both Verizon and Idearc did not treat the EMA as a plan amendment or other document that governed the terms of the pension plans in November 2006. Both parties to the EMA chose not to characterize the EMA as an ERISA controlled document. Section 12.8 of the EMA states that the laws of the State of Delaware govern the EMA. The EMA is merely a contract between Verizon and Idearc governing their business dealings, not a pension plan document governing retired plan participants' rights to Verizon pension plan benefits. The EMA specifically states it cannot be construed to serve as a pension plan amendment. (See Section 12.6(c) appearing on page 27 of the "Execution Copy" of the EMA: "Nothing in this Agreement shall amend or shall be construed to amend any plan [e.g., pension plan], program or arrangement described in or contemplated by this Agreement.") (bracketed portion added).

Even if Verizon's pension plan fiduciaries and administrators now choose to qualify the EMA as an ERISA governed plan amendment granting them authority in November 2006 to manipulate certain retirees' accrued pension plan rights, the July 31, 2009 claims denial letter at page 5 confirms that 16 days before the EMA document was properly executed pension assets, together with selected management retirees, were prematurely "transferred" on November 1, 2006. Likewise, an actuarial spreadsheet prepared by Hewittt & Associates entitled "Idearc Asset Transfer Amount" reports that on November 1, 2006, $119 million together with 584 retirees and beneficiaries in pay status were transferred to Idearc from the Verizon Management Pension Plan and on November 18, 2006, $250 million together with 1,278 retirees and beneficiaries in pay status plus 743 deferred vested pensioners were transferred to Idearc from the Verizon Pension Plan for New York and New England Associates. Hewitt & Associates' spreadsheet discloses nothing about the amount of "liabilities," if any, transferred to Idearc.

Therefore, when pension plan fiduciaries and administrators acted in November 2006 and "transferred" Named Claimants and other retired plan participants together with pension plan assets, they acted without authority and did not act in accordance with the terms and rules of Verizon's pension plans as existing during November 2006.

In November 2006, Verizon Pension Plan Fiduciaries and Pension Plan Administrators Violated the 'Plan Documents Rules'

The VCRU's July 31, 2009 claim denial letter strongly suggests that Verizon's transfer of

pension plan assets to Idearc was not an ERISA fiduciary act, but rather it was a "business decision" that cannot be challenged under federal law ERISA. To the contrary, even if the transaction is deemed to be the result of a "business decision," Verizon representatives still had to comply with ERISA which dictates there be strict compliance with the plans' rules and terms. When the involuntary transfer occurred during November 2006, there was simply no modification, amendment or termination of the transferred retirees' rights to receive benefits under Verizon's pension plans under which the involuntarily transferred retirees previously retired and initially received benefits. When Verizon transferred pension plan assets and all of the selected retired plan participants during November 2006 there was a failure to abide by the 'plan documents rules' and, therefore, a violation of ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

Named Claimants contend that as of the date the spin-off was concluded - November 17, 2006 - and their rights to receive payment from Verizon's pension plans were involuntarily terminated, none of the then existing terms and rules of the applicable Verizon pension plans authorized such activity. Although, during November 2006, Verizon's pension plans contained a specific provision contemplating there could be mergers, consolidations of the pension plans, and transfers of "assets" or "liabilities," there were no plan terms or rules that either specifically allowed the curtailment of payment of accrued pension plan benefits and the simultaneous involuntary transfer of Named Claimants and other retired pension plan participants into Idearc's pension plans. To be sure, Name Claimants are neither "assets" nor "liabilities," they are real persons, plan participants with rights to vested accrued benefits. At least throughout November 2006, Verizon's pension plan fiduciaries and plan administrators continued to owe all Named Claimants and other similarly situated retired plan participants and their beneficiaries the highest duty of care.

The VCRU denial letter does not dispute Named Claimants' contention that Verizon amended several of its pension plan documents *after the fact*, more than a month after the spin-off creation of Idearc and the transfer of pension plan assets together with selected retired plan participants. The pension plan amendments were executed and adopted on December 22, 2006. At least during the seven week period November 1, 2006 through December 21, 2006, pension plan fiduciaries and plan administrators were not excused from their obligation to continue paying retired pensioners and their beneficiaries on pay status their accrued benefits directly from Verizon's pension plans. Likewise, during November 2006 there was no existing plan amendment giving anyone any authority to send millions of dollars of plan assets over to Idearc.

The fact that Verizon's pension plans might allow amendments to be effective on any given date, did <u>not</u> relieve the plan fiduciaries and administrators of their responsibility, obligation, or duty imposed by or under ERISA' statutory provisions. See, e.g., Section 14.4 appearing on page 128 of the Verizon Management Pension Plan stating "[n]othing in the Plan shall relieve or be deemed to relieve any Plan fiduciary, obligation, or duty imposed by ERISA." One of ERISA's duties imposed on plan administrators is that they must act in strict conformity with existing rules and plan terms, not later adopted rules.

Named Claimants' position is that before December 22, 2006 all action taken with respect to all pension assets and all retired plan participants had to be in exact accordance with then existing governing plan terms and rules. Named Claimants invoke the teachings and pronouncements by the United States Supreme Court in the case of *Kennedy v. Plan Administrator for DuPont Savings and Investment*, 129 S.Ct. 865 (2009), wherein the Supreme Court confirmed that ERISA provides no exception to the plan administrator's duty to act in accordance with then existing 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.

(*Id.*, at 875). Verizon cannot escape liability for failure to comply with plan terms and rules existing during November 2006 by focusing on the company's intent when it transferred assets to Idearc during November 2006. In *Kennedy*, the Supreme Court also confirmed that ". . . ERISA forecloses any justification for enquiries into nice expressions of intent." (*Id.*). Due to ERISA preemption, and the Supreme Court's recent ruling in *Kennedy*, Verizon cannot rely upon any argument that, notwithstanding the express governing terms of the pension plans, there was an understanding between Verizon and Idearc as set forth in the EMA, an extraneous non-plan document. *Kennedy* mandates that pension plan benefits should have been paid out to Named Claimants and all other similarly situated plan participants during November 2006 in accordance with the unamended rules presently in effect. At no time during November 2006 were there any plan terms or rules which effectively extinguished any retired plan participant's right to continued payment of his or her accrued service pension benefits. At least prior to the December 22, 2006 adopted plan amendments, Verizon's pension plan fiduciaries and administrators were required to continue to act as they had before in exact compliance with then existing governing pension plan terms.

Named Claimants acknowledge that Verizon's pension plans contemplated that when liabilities would be transferred to another plan the benefits linked to those liabilities would cease to be payable under the transferor plan. See, e.g., Section 11.3 appearing on page 104 of the Verizon Management Pension Plan which states, "[a]ny liability transferred from the Plan to another plan pursuant to this Section 11.3 shall result in the extinguishment of such liability immediately upon such transfer, and no benefit previously payable under the Plan on account of such liability shall be payable under the Plan following such transfer." But, there are no plan provisions which segregate certain assets or identify certain liabilities as being associated with either a single plan participant or group of plan participants. When hundreds of millions of dollars in pension assets were transferred to Idearc during November 2006 there were no plan terms that identified and traced the transferred monies to particular plan participants. Since Verizon's pension plans were over funded during November 2006, the transferred assets can just as easily be deemed to be surplus monies not associated with any liabilities.

It is to no effect that Verizon's pension plan fiduciaries and administrators violated their strict duties and created new rules to excuse the violations seven weeks after the fact when, for instance, the 'Fourteenth Amendment to the Verizon Management Pension Plan" was executed on December 22, 2006 by Marc C. Reed, EVP-Human Resources. That 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
>
> SPECIAL PROVISIONS FOR PARTICIPANTS WHOSE BENEFITS WERE TRANSFERRED TO AN IDEARC, INC. PENSION PLAN
>
> 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 Committee [i.e., 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 (i.e., 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 spin-off 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").
>
> **As a result**, except as provided in the paragraph below, **former Employees described in the immediately preceding sentence shall cease to be eligible for a Pension or any other benefit from the Plan based upon employment before the spin-off date**. (emphasis in bold added and bracketed portion added). [2]

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[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.

Named Claimants contend the December 22, 2006 dated plan amendments made retroactive so as to provide cover for the fiduciaries' and administrators' breach of the 'plan documents rules' during November 1, 2006 through December 21, 2006 should be declared null and void. At the very least, Named Claimants and all other similarly situated retired pension plan participants should be paid all pension plan benefits they were entitled to receive from the Verizon pension plans during November 1, 2006 through December 21, 2006.

Verizon Pension Plan Fiduciaries and Administrators Breached Their Duty of Loyalty to Retired Plan Participants

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). Various federal cases provide more information about the nature of these fiduciary duties. One court referred to ERISA's fiduciary duty standards as "the highest known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272, n. 8 (2nd Cir. 1982). "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] all 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)).

Just last year, the United States Supreme Court referred to ERISA's fiduciary duty standards as requiring "higher-than-marketplace" standards of conduct. *Metropolitan Life v. Glenn*, 128 S.Ct. 2343, 2350 (2008). This echoes the language of Justice Benjamin Cardozo many years ago when he described fiduciary duties in this way:

> Many forms of conduct permissible in a workaday world for those acting at arms length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

Meinhard v. Salmon, 164 N.E. 545 (N.Y. 1928).

Named Claimants contend a prudent plan fiduciary charged with a duty of loyalty and having responsibility to act in the best interests of Named Claimants and all 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, Named Claimants hereby renew their request for disclosure of any opinion given to Verizon's pension plan fiduciaries by an independent pension plan fiduciary and opinions provided by legal counsel. Named Claimants reasonably suspect that Verizon pension plan fiduciaries failed in their responsibilities to seek the unbiased opinion of an independent pension plan fiduciary to guide them in the decision whether or not to transfer retired plan participants. If such opinion does exist, Named Claimants demand it be made part of the record for this administrative appeals procedure.

Idearc, Inc. reported in its Form 10-K filed with the United States Securities Exchange Commission that the company "was formed as a Delaware corporation in June 2006 in anticipation of the spin-off from Verizon." [3] There is direct evidence that Verizon's pension plan fiduciaries and plan administrators had over ½ year to think about the consequences of involuntarily switching retired plan participants over to Idearc. There are internal email communications dated April 6, 2006 reflecting there were yet to be decided decisions about "the treatment of pension obligations and assets." (See, e.g., April 6, 2006 email from David L Beik to Ed Withrow and Marc Schoenecker stating, "I'll forward pension details to you when senior management signs off on a definitive plan."). Named Claimants demand the follow-up undisclosed written communications about the "pension details" be included in the record for this administrative appeal.

Named 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 began selecting retired plan 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 plan fiduciaries and they should

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[3] Idearc, Inc. Form 10-K for year 2007 at p. 1.

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 Named Claimants and all other retired plan participants.

ERISA Section 510 Discriminatory Treatment and Interference with Vested Benefits; Violation of ERISA's Anti Cut-Back Provision

Named Claimants reassert their contention that there was discriminatory treatment with respect to transferring retirees. No management 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. Yet, nonmanagement retirees with deferred vested pension benefits were involuntarily transferred to Idearc's pension plans. Named Claimants ask the members of the Verizon Claims Review Committee to explain why deferred vested management pensioners were left secure in Verizon's pension plans with the usual panoply of welfare benefits while retired plan participants and deferred vested nonmanagement retirees were transferred to their detriment over to the less financially secure Idearc organization. This discriminatory selection demonstrates an intent to interfere with several thousand plan participants' rights to attainment of future pension and welfare benefits.

Certainly, by getting rid of so many 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. Name Claimants contend there has been a violation of ERISA Section 510, 29 U.S.C. § 1140.

Named Claimants are concerned that Verizon pension plan fiduciaries and plan administrators, some of whom were very high level Verizon officers, were motivated by company interests, or self-dealing consideration. Obviously, the outcome of the transfer soon proved to be imprudent and manifestly adverse to Named Claimants' financial interests. Not long after being transferred into Idearc pension plans, Named Claimants and all other transferred retirees suffered loss of retirement benefits not witnessed by those who stayed behind in the more secure Verizon employee benefit plans. The evidence proves that Idearc is a much less stable or secure sponsor of its employee benefit plans. Certainly, Named Claimants cannot expect any improvement in their welfare benefits and they have good reason to look forward to further cuts in benefits and they believe their pension benefits may be in jeopardy.

Named Claimants were vested in their accrued 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 plan sponsor. Cutting off Named Claimants' rights to receive earned benefits from Verizon's pension benefits during November 2006 violated ERISA Section 204(g)(1), 29 U.S.C. § 1054(g)(1) which statutory provision protects accrued benefits. ERISA's anti-cutback rule states: "The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section §302(d)(2) [i.e., approved by the United States Secretary of Treasury] or 4281 [benefits under certain terminated plans]." (bracketed portions added). Certainly, in this situation there was not a pension plan termination. And there is no evidence that the Secretary of Treasury approved of Verizon's conduct to cut-off payment of pension plan benefits before there was any authority by way of plan amendment.

Demand For Payment of Verizon Pension Plan Benefits and Other Appropriate Equitable Relief

The facts prove that both Verizon and Idearc acted hastily during November 2006 by involuntary transferring several thousand retired pension plan participants without first putting in place the necessary pension plan terms and rules that would allow Named Claimants' and retired pensioners' accrued benefits to be affected. Since Verizon acted during November 2006 without authority to involuntarily transfer retirees to Idearc's pension plans, Named Claimants request enforcement of the rules and terms of Verizon's pension plans as existing during November 2006. Named Claimants request other appropriate equitable relief, including injunctive relief rescinding the transaction, a declaration that the *post hoc* December 22, 2006 plan amendments are null and void, and a decision requiring all involuntarily transferred retiree plan participants be restored to their former status in Verizon's pension plans. Named Claimants and other similarly situated retirees should be considered participants with colorable claims to benefits from Verizon's pension plans. Since at least during the seven week period November 1, 2006 through December 21, 2006 there was no plan rule allowing Named Claimants and others to be involuntarily transferred into Idearc's pension plans, Named Claimants request that they and all other similarly situated retired persons be paid all earned Verizon retirement benefits retroactive to November 1, 2006, plus appropriate accrued interest.

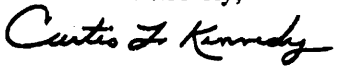
Named Claimants are certain that leaders at both Verizon and Idearc have received written demands from scores of other involuntarily transferred retirees stating they wish join in Named Claimants' internal claim and be included in this administrative claims procedure. Named Claimants demand that all those written demand letters received by Respondents, together with all written response letters, be made part of Named Claimants' internal claim and the same documents be included in the administrative record for this internal claims appeal.

All of the documents referenced in this appeal of the denial of Named Claimants' February 4, 2009 proposed class-wide administrative claim, as supplemented by Named Claimants' May 27, 2009 letter, are already in Respondents' possession. Named Claimants

demand that all such referenced documents be included in the record for this administrative appeal. Named Claimants further demand that all documentation of legal counsel's communications advising the VCRU members and the Verizon Claims Review Committee members, along with all other documentation and information reviewed when deciding the first step claim and this second step appeal be included in the administrative appeals record. Named Claimants demand a complete copy of the administrative claims record and appeals record promptly be produced to their counsel, Curtis L. Kennedy, at the address shown above.

Please promptly email me to acknowledge receipt of this administrative appeals claim letter and advise me of the cost of photocopying the not yet produced but previously requested documentation, as well as the cost of photocopying the complete administrative record as explained in the foregoing paragraph. All reasonable photocopying charges will promptly be paid. Of course, all requested documentation can be electronically formatted and emailed to CurtisLKennedy@aol.com, as that is the preferred manner of delivery/receipt.

Sincerely,



Curtis L. Kennedy

c: BellTel Retirees, Inc., and
Named Claimants

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EXHIBIT F

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The Official Publisher
of Verizon Print Directories

October 29, 2009

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:

I have received your letter dated September 15, 2009. In that letter you ask to appeal a Class Wide Administrative claim to reverse the transfer Idearc retirees from the Verizon pension plans to the Idearc Pension plans. As you know, ERISA does not recognize such a claim.

Additionally, you have provided no evidence or allegation that the Idearc Pension plan has failed to make any payment required under the plan. If you have such a claim, please provide the information necessary for us to deal with the claim.

Very truly yours,

Joe A. Garza, Jr.
JAG:jds

Joe A. Garza, Jr.
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bcc: Mark Miller, Fulbright in Houston

EXHIBIT G

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.	§	Civil Action No. 3:09-cv-2262-G
VERIZON COMMUNICATIONS, INC., et al. Defendants.	§	

DECLARATION OF JOE A. GARZA, JR..

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 - F attached to SuperMedia Employee Benefits Committee's Brief in Support of Its Motion to Dismiss for Failure to State a Claim are true and correct copies of the letters referenced as Exhibits A - F in SuperMedia Employee Benefits Committee's Brief in Support of Its Motion to Dismiss for Failure to State a Claim.

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: July 12, 2011.

Joe A. Garza, Jr.