

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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

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v.

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

VERIZON COMMUNICATIONS, INC., et
al.
Defendants.

**DEFENDANT SUPERMEDIA EBC’S RESPONSE TO PLAINTIFFS’ AMENDED
MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL STATEMENT OF
ADMISSIONS MADE BY SUPERMEDIA EBC**

Defendant SuperMedia Employee Benefits Committee (“SuperMedia EBC”) files this Response to Plaintiffs’ Amended Motion for Leave to Submit Supplemental Statement of Admissions Made by SuperMedia EBC and states as follows:

1. On April 24, 2012 SuperMedia EBC timely filed its answer to Plaintiffs’ Second Amended Complaint for Proposed Class Action Relief Under ERISA (“SuperMedia EBC’s Answer”) (Dkt. 115). Shortly thereafter, Plaintiffs conferred with SuperMedia EBC about a Motion for Leave to Submit Supplemental Statement of Admissions Made by SuperMedia EBC (“Motion for Leave”) in which Plaintiffs intended to ask the Court to take notice of certain admissions made in SuperMedia EBC’s Answer when making rulings on the parties’ pending motions for summary judgment. Specifically, Plaintiffs wished to request the Court take notice of paragraphs 58, 61, 109, and 227 of SuperMedia EBC’s Answer.

2. Upon reviewing Plaintiffs’ Motion for Leave, SuperMedia EBC realized it had inadvertently admitted paragraph 58 of Plaintiffs’ Second Amended Complaint. It informed

Plaintiffs of this fact, its plan to amend its Answer under Federal Rule of Civil Procedure 15(a)(3) as a matter of right, and that it opposed the Motion for Leave based on these grounds.

3. Plaintiffs filed their Motion for Leave on May 2, 2012 (Dkt. 116). Later that same day, Plaintiffs filed an Amended Motion for Leave to Submit Supplemental Statement of Admissions Made by SuperMedia EBC (the “Amended Motion for Leave”) (Dkt. 117) to correct the Certificate of Conference. The only difference in the original Motion for Leave and the Amended Motion for Leave is a clarification on the Verizon Defendants’ opposition to the motion. SuperMedia EBC now responds to Plaintiffs’ Amended Motion for Leave.

4. Six days after Plaintiffs filed their Amended Motion for Leave, and within the time period allowed by Rule 15(a)(3), SuperMedia EBC filed its Amended Answer to Plaintiffs’ Second Amended Complaint (“SuperMedia EBC’s Amended Answer”) (Dkt. 118) as a matter of right, correcting paragraph 58 among other things. SuperMedia EBC’s Amended Answer *replaced* its original Answer to Plaintiffs’ Second Amended Complaint. *Proctor & Gamble Def. Corp. v. Bean*, 146 F.2d 598, 601 (5th Cir. 1945) (holding an amended answer has the effect of superseding the original answer). Consequently, Plaintiffs’ Amended Motion for Leave to supplement the summary judgment record with SuperMedia EBC’s inadvertent admission in paragraph 58 of its original Answer is moot. The Court may no longer consider this admission, and must instead look to paragraph 58 of SuperMedia EBC’s Amended Answer, which states:

SuperMedia EBC admits that assets associated with the pension benefit obligations for VIS employees and inactive employees whose last service was with a VIS business unit were transferred from Verizon Plans to SuperMedia (f/n/a Idearc) pension plans, but otherwise denies the allegations of paragraph 58.

Dkt. 118 ¶ 58.

5. As to the remaining paragraphs cited by Plaintiffs—paragraphs 61, 109, and 227—SuperMedia EBC disagrees that the statements found therein support Plaintiffs’ arguments

on summary judgment, but do not contest their accuracy. SuperMedia EBC believes these statements to be immaterial to the motions for summary judgment and refers the Court to the arguments made in its Brief in Support of Its Motion for Summary Judgment (Dkt. 82) and its Response to Plaintiffs' Motion for Partial Summary Judgment (Dkt. 91). Finally, because the Court may consider the statements contained in SuperMedia EBC's Amended Answer when ruling on the parties' summary judgment motions under Rule 56(c)(3), Plaintiffs' Amended Motion for Leave is unnecessary.

6. For the reasons set forth above, Plaintiffs' Amended Motion for Leave to Submit Supplemental Statement of Admissions Made by SuperMedia EBC should be denied. Defendant SuperMedia Employee Benefits Committee requests any other relief to which it is entitled.

Respectfully submitted,

ANDREWS KURTH LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May 2012, 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:

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/s/ Martha Hopkins

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