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

WILLIAM LEE, JOANNE McPARTLIN,	§
and EDWARD PUNDT, Individually,	§
and as Representatives of plan participants	§
and plan beneficiaries of the	§
VERIZON MANAGEMENT PENSION PLAN,	§
	§
Plaintiffs,	§
	§
VS.	§ CIVIL ACTION NO. 3:12-cv-04834-D
	§
VERIZON COMMUNICATIONS INC.,	§
VERIZON CORPORATE SERVICES GROUP	§
INC., VERIZON EMPLOYEE BENEFITS	§
COMMITTEE, VERIZON INVESTMENT	§
MANAGEMENT CORP., and VERIZON	§
MANAGEMENT PENSION PLAN,	§
	§
Defendants.	§

RESPONSE TO (Docket 53) VERIZON DEFENDANTS' MOTION TO DISMISS

Plaintiffs William Lee and Joanne McPartlin, by and through their counsel, hereby respond to Docket 53, Verizon Defendants' motion to dismiss and state as follows:

- 1. The motion to dismiss should be declared moot. On this date, Plaintiffs filed their Amended Complaint which addresses any deficiencies argued in Verizon Defendants' motion. In addition, a new named Plaintiff, Edward Pundt, has been added to this civil action as well as a new Count Four.
- 2. "An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading." *Probado Technologies Corp. v. Smartnet, Inc.*, Not Reported in

F.Supp.2d, 2010 WL 918573 (S.D. Tex. March 12, 2010) (citing *King v. Dogan*, 31 F.3d 344, 346 (5th Cir.1994); see *Carroll v. Fort James Corp.*, 470 F.3d 1171, 1176 (5th Cir.2006). See also, *Summit Office Park, Inc. v. U.S. Steel Corp.*, 639 F.2d 1278, 1281 fn 6 (5th Cir. 1981) ("the filing of the Amended Complaint moots the pending motions for partial summary judgment and dismissal on this issue"). In responding to the motion to dismiss, Plaintiffs do not adopt and incorporate by reference the original complaint filed herein. They rely upon the Amended Complaint.

3. In light of Plaintiffs' filing of the Amended Complaint in reliance upon it, the Amended Complaint supersedes the original, making the earlier complaint a dead letter, and moots the motion to dismiss, and requiring its denial. McKeithan v. Boarman, Not Reported in F.Supp.2d, 2011 WL 2669060 (D. D.C. July 07, 2011) (citing Wultz v. Islamic Republic of Iran, Not Reported in F.Supp.2d, 2009 WL 4981537, at *1 (D. D.C. Dec.14, 2009); Wheeler v. HXI, LLC, Not Reported in F.Supp.2d, 2010 WL 3211127 (D. N.H. August 11, 2010) (citing Connectu LLC v. Zukerberg, 522 F.3d 82, 91 (1st Cir. 2008) (internal quotation marks omitted); Kolling v. Am. Power Conversion Corp., 347 F.3d 11, 16 (1st Cir.2003). See also, Rutherford County v. Bond Safeguard Ins. Co., Not Reported in F.Supp.2d, 2010 WL 2775626 (W.D. N.C. July 13, 2010) ("By amending their Complaint . . . within 21 days of defendant's Motion to Dismiss, see Fed.R.Civ.P. 15(a), the Motion to Dismiss became moot as a matter of law.") (citing Taylor v. Abate, 1995 WL 362488, *2 (E.D. N.Y.1995) ("Defendants' motion to dismiss is addressed solely to the original complaint.... Consequently, upon the filing of the amended complaint, their motion is mooted and, therefore, denied."); Robinson v. Dean Foods Co., Not Reported in F.Supp. 2d, 2009 WL 723329, *4 (D. Colo. Mar. 18, 2009); see *Mink v. Suthers*,

482 F.3d 1244, 1254 (10th Cir. 2007) (citations omitted) (noting that filing of amended complaint supersedes original complaint and renders it without legal effect); *Mata—Cuellar v. Tennessee*, Not Reported in F.Supp.2d, 2010 WL 3122635 at *2 (M.D. Tenn. Aug. 6, 2010) ("It is well-settled that, because a properly filed amended complaint supersedes and replaces all previous complaints, the filing of an amended complaint generally moots a pending motion to dismiss"); *United States v. Aegis Ins. Co.*, Not Reported in F.Supp.2d, 2009 WL 577286, at *2 (M.D. Pa. Mar. 5, 2009) (ruling that the filing of an amended complaint moots pending motion).

WHEREFORE, the Court should enter an order denying Verizon Defendants' motion to dismiss as moot.

DATED this 25th day of January, 2013.

Respectfully submitted,

s/ Curtis L. Kennedy

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2013, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and causing a copy to be emailed to Defendants' counsel as follows:

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