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.	§	

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER ERISA

Plaintiffs William Lee, Joanne McPartlin, and Edward Pundt, by and through their counsel, pursuant to Fed.R.Civ.Proc. Rule 15(a)(B), file this Amended Complaint for Declaratory and Injunctive Relief Under ERISA and state as follows:[1]

PRELIMINARY STATEMENT

1. On October 17, 2012, Verizon Communications Inc. ("Verizon") filed with the United States Securities and Exchange Commission ("SEC") a Form 8-K announcing it had

[1] The material facts set forth in this Verified Complaint are supported by the sworn affidavits assembled in the previously submitted Appendix efiled as an attachment to Docket 1.

entered into a contract with The Prudential Insurance Company of America ("Prudential") whereby, by the end of 2012, its Verizon Management Pension Plan would end its responsibility to provide pensions to approximately 41,000 management retirees and Prudential would begin providing insurance annuities to such retirees. **(App. 212).** On December 10, 2012, Verizon's contract with Prudential was finalized and executed. In so doing, Verizon evaded the dictates of the Employee Retirement Income Security Act of 1974, as amended , 29 U.S.C. §§ 1001- 1461 ("ERISA"), and the protection accorded by the Pension Benefit Guaranty Corporation ("PBGC"), as Congress contemplated with respect to defined benefit pension plans.

2. The "Press release" attached to Verizon's October 17, 2012 SEC filing emphasizes the abdication of Verizon's responsibility under ERISA and the loss of PBGC protection, in stating "Prudential, rather than Verizon, will be responsible for making these monthly payments. The group annuity includes an irrevocable commitment by Prudential to make annuity payments to affected retirees covered under the annuity contract." **(App. 216).**

3. Verizon's course of action with Prudential, affecting approximately 41,000 pensioners, was not in compliance with standard termination procedures established under ERISA and by the PBGC for a defined benefit pension plan and is unprecedented. Verizon, one of the most financially successful U.S. corporations, "de-risked", or abandoned, its long-term responsibility for financing and paying the pension obligations of 41,000 retirees, simply to enhance its corporate credit rating. Verizon's motive is revealed in a standardized letter sent to affected retirees indicating that "Prudential will assume the responsibility for your pension benefit," so as to allow "Verizon to better focus on the core mission of providing the best communications network around the world." **(App. 220-221, 251-252)**. The annuity transaction

did not follow ERISA's procedures for a standard termination.

4. In shedding the pension obligations in question, Verizon took advantage of the group of retirees least able to defend themselves. The transferred retirees will no longer receive a monthly pension benefit from the Verizon Management Pension Plan. Verizon did not engage in the same or similar action with respect to non-management retirees or those management retirees formerly represented by unions. Retirees formerly represented by unions during employment were not included in the annuity transaction. **(App. 3-4, Lee Aff. ¶ 9).** Also not included are certain retiree participants of the Verizon Management Pension Plan formerly employed by MCI Corporation, whom Verizon is obviously concerned have rights inconsistent with Verizon's intentions. Verizon moved swiftly against management retirees who lack a formalized bargaining representative or other such protection. **(*Id.*).**

5. Verizon's letter to affected retirees is executed by Marc C. Reed, who serves both as Verizon's Chief Administrative Officer and as Chairman of the Verizon Employee Benefits Committee, the named fiduciary and plan administrator of the Verizon Management Pension Plan**. (App. 221).** The standardized letter states, in part: "Let me assure you that this decision was made after careful consideration and a thorough review of both our funding obligations and what is legally permissible under the terns of the Plan." (Emphasis added). **(*Id.*).** To the contrary, Verizon's transaction violated the controlling terms of documents establishing and governing the Verizon Management Pension Plan, constituted a breach of ERISA's fiduciary duty requirements, violated ERISA and Internal Revenue Code restrictions and limitations on making accelerated benefit distributions when a defined benefit plan is less than 80% funded, violated ERISA's prohibition on discriminatory and intentional interference with retirees' rights

under a pension plan and ERISA, and undermined Congressional intent to provide American pensioners with a uniform safety net under the auspices of the PBGC.

6. Plaintiffs, for themselves and on behalf of a putative class of 41,000 pension plan participants and their beneficiaries, seek temporary, preliminary and permanent injunctive relief, as well as declaratory plan-wide relief. Each of the claims asserted in this Amended Complaint, all under ERISA, support such relief against the defendant or defendants, and on the grounds, identified below:

Count One	Verizon Employee Benefits Committee - Violation of ERISA Section 102(b), Failure to Provide Required Disclosure in Summary Plan Descriptions;
Count Two	Verizon Employee Benefits Committee, Verizon Investment Management Corporation - Violation of ERISA Section 404(a)(1), Breach of ERISA Fiduciary Duties;
Count Three	Verizon, Verizon Employee Benefits Committee, Verizon Investment Management Corporation - Violation of ERISA Section 510, Interference with Protected Rights; and
Count Four	Verizon, Verizon Employee Benefits Committee, Verizon Investment Management Corporation - Appropriate Equitable Relief under ERISA Section 502(a)(2) for the Benefit of the Plan.

JURISDICTION AND VENUE

7. The Court has jurisdiction of the claims for relief asserted in this Amended Complaint based upon the civil enforcement provisions of ERISA, 29 U.S.C. §§ 1132(a)(1), 1132(a)(2), 1132(a)(3), 1132(e)(1) and 1132(f), and upon federal question jurisdiction under 28 U.S.C. §§ 1331.

8. Relief is appropriate under 28 U.S.C. §§ 2201 and 2202, granting any district

court of the United States, in a case of actual controversy within its jurisdiction, the power to declare the rights and other legal relations of any interested party seeking such declaration and to grant further necessary or proper relief based upon a declaratory judgment or decree.

9. Venue of this action lies in the Northern District of Texas, pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e)(2), in that the Verizon Management Pension Plan is administered in this District. The Dallas Division of this District is a convenient forum as demonstrated by Verizon Employee Benefits Committee's representations to this Court that "[r]esponsibility for day-to-day administration of the Plan. . . has been delegated by the Verizon Employee Benefits Committee to the pension administration department within the Verizon human resources department in Coppell and Irving, Texas." *Verizon Employee Benefits Committee v. Jaeger*, Not Reported in F.Supp.2d, 2006 WL 2880451 (N.D. TX September 28, 2006).

THE PARTIES and SIGNIFICANT ENTITIES

10. Named Plaintiff William Lee ("Lee") is a United States citizen and resident of Garland, Texas. **(App. 241, Lee Aff. ¶ 1).** In 1997, he retired from NYNEX, a predecessor of Verizon. Within several months after his retirement date, Lee began receiving a service pension in the form of a 100% joint and survivor monthly annuity. **(App. 241, Lee Aff. ¶ 2).**

11. As of the date of the filing of this civil action, Lee was a "participant," as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7), in the Verizon Management Pension Plan. **(App. 242, Lee Aff. ¶ 3).**

12. Named Plaintiff Joanne McPartlin ("McPartlin") is a United States citizen and resident of Venice, Florida. **(App. 246, McPartlin Aff. ¶ 1).** In 1995, she retired from a predecessor of Verizon and began receiving a service pension in the form of a single life

monthly annuity. **(App. 246-247, McPartlin Aff. ¶ 2).**

13. As of the date of the filing of this civil action, McPartlin was a "participant," as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7), in the Verizon Management Pension Plan. **(App. 247, McPartlin Aff. ¶ 3).**

14. Named Plaintiff Edward Pundt ("Pundt") is a United States citizen and resident of Westminster, Maryland. In June 2010, he retired from Verizon and began receiving a service pension in the form of a joint and survivor monthly annuity.

15. Pundt is a "participant," as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7), in the Verizon Management Pension Plan.

16. Defendant Verizon is a Delaware corporation doing business within this District. Verizon maintains a human resources department charged with administering the Verizon Management Pension Plan and various welfare benefit plans within the Dallas Division of this District.

17. Defendant Verizon Corporate Services Group Inc. is a Delaware corporation with operations within this District, and is the plan sponsor of the Verizon Management Pension Plan. Like Verizon, it maintains a human resources department charged with administering the Verizon Management Pension Plan and various welfare benefit plans within the Dallas Division of this District. Hereinafter, both Defendant Verizon Communications Inc. and Defendant Verizon Corporate Services Group Inc. are, together, referred to as "Verizon."

18. Defendant Verizon Employee Benefits Committee ("Verizon EBC") is, pursuant to ERISA Sections 3(21) and 3(16), 29 U.S.C. §§ 1002(21) and 1002(16), the named "fiduciary" and "administrator" of the Verizon Management Pension Plan. The Verizon EBC is also the

named fiduciary and administrator of numerous Verizon welfare benefit plans, and as such owes fiduciary duties to retirees who are either participants in or have colorable claims to payment under Verizon's pension and welfare benefit plans. The Verizon EBC has delegated day-to-day administration of Verizon's employee benefit plans to Verizon's human resources department, including personnel in the offices of Verizon located within this District at 600 Hidden Ridge, Irving, Texas. The Verizon EBC is a body appointed by Verizon, and, as a body, performs certain designated fiduciary and administrative functions under Verizon's employee benefit plans.

19. Defendant Verizon Investment Management Corporation ("VIMCO") is, pursuant to ERISA Sections 3(21), 29 U.S.C. §§ 1002(21), a fiduciary of Verizon's several pension plans, including the Verizon Management Pension Plan. VIMCO exercises discretionary authority and control respecting management and disposition of the assets of the Verizon Management Pension Plan and Verizon's master trust, under which the assets are held, known as Bell Atlantic Master Trust. VIMCO is a body appointed by Verizon, and, as a body, performs certain investment functions under Verizon's pension plans and the master trust. VIMCO has the discretionary authority to exercise control over disbursements of assets in the Plan.

20. Defendant Verizon Management Pension Plan (the "Plan") is an "employee pension benefit plan" pursuant to ERISA Section 3(2)(A), 29 U.S.C. § 1002(2)(A). The Plan is a defined benefit employee pension benefit plan. The Plan is a "single-employer plan" and not a "multiemployer plan." As of the filing date of this civil action, the Plan had approximately 100,000 participants, including Plaintiffs and the putative classes. The Plan is subject to the financial protections provided by the PBGC.

21. Defendant Prudential is an insurance company organized and existing under the laws of the State of New Jersey with its principal place of business in Newark, New Jersey. Prudential is an indirect, wholly-owned subsidiary of Prudential Financial Inc., a publicly traded corporation, which owns 10% or more of the stock of Prudential. Prudential is duly authorized to do business in the State of Texas and does business within this District. **(App. 266, Stone Aff. ¶ 3).**

22. Pursuant to a contract between Verizon and Prudential, the Plan purchased a group annuity contract from Prudential, which then assume responsibility for making payments to approximately 41,000 Verizon management retirees. (hereinafter the "Verizon/Prudential annuity transaction). **(App. 267, Stone Aff. ¶ 5)**.[2] The Verizon/Prudential annuity transaction was consummated on December 10, 2012.

FACTS

23. ERISA is principally concerned with protecting the financial security of pension plan participants and beneficiaries. 29 U.S.C. § 1001(b). To this end, Congress created, in the same year it enacted ERISA, the PBGC, a wholly-owned federal government corporation with a

[2] Plaintiffs and all putative class members are not privy to certain details of the transaction, such as any of the analyses conducted by either Prudential and Verizon, any consultants or the so-called 'independent fiduciary" retained by Verizon, the Verizon EBC and VIMCO, to purportedly justify it.

The Verizon Defendants have designated confidential and, thereby cloaked in secrecy, the "Definitive Purchase Agreement", which agreement affects the pension rights of 41,000 retirees. Verizon's stated position is that it need not give any of the retirees the courtesy of a fully informative response to their more specific inquiries about the subject matter, because "[t]he requested information is not required to be provided under ERISA Section 104(b)(4)." **(App. 14,** reflecting response to some putative class members' list of questions sent to Verizon; **App. 240,** list of retirees' questions asked of Verizon senior leadership).

three-member Board of Directors consisting of the Secretary of Labor, as Chair, and the Secretaries of Commerce and Treasury. The PBGC guarantees benefits under defined benefit plans and serves as trustee for under-funded defined benefit plans that terminate. The PBGC is also charged with administering and enforcing compliance with the provisions of Title IV of ERISA relating to standard terminations of fully-funded plans. The PBGC's purpose is to ensure that retirees receive pension benefits they have earned even if their employer has terminated their pension plan or is otherwise unwilling or unable to pay amounts due under their pension plan. *Mead Corp. v. Tilley*, 490 U.S. 714, 717-18, 109 S.Ct. 2156 (1989). The PBGC has promulgated regulations governing its activities and activities of employers administering ERISA-governed pension funds. 29 C.F.R. § 4000, et seq. Among other things, the PBGC oversees terminations of all ERISA plans. A pension plan may pursue a voluntary standard termination if it has sufficient assets to pay all promised benefits. 29 U.S.C. Section 1341(b). The amount of benefits payable in that case are determined under the plan provisions in effect on the plan's termination date. 29 C.F.R. § 4041.8. When a pension plan covered by Title IV of ERISA terminates without sufficient assets to pay all of its promised benefits, PBGC typically becomes trustee of the plan and pays participants their benefits up to statutory limits. See 29 U.S.C. §§ 1321-1322, 1361.[3]

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[3] ERISA and regulations promulgated under it contemplate only two types of defined benefit plan terminations: (1) a "distressed termination" occurs when the PBGC decides the plan sponsor is financially incapable of going forward with funding and administration of the plan, usually due to bankruptcy; and (2) a "standard termination" which occurs when a fully financially capable plan sponsor simply wishes to voluntarily end its funding responsibilities, usually to obtain the benefit of a surplus in funding, and the plan is ended for all persons concerned. There is no statutory concept of a partial termination of a defined benefit plan, although some courts have treated as effectively terminated plans which have had significant numbers of active employees terminated from employment and thereby terminated from their participation in the plan.

24. The PBGC's insurance program is primarily financed by premiums paid by covered plans, including Verizon's pension plans. 29 U.S.C. § 1306(a)(1) ("[PBGC] shall prescribe such insurance premium rates ... as may be necessary to provide sufficient revenue to the fund for [PBGC] to carry out its functions under this subchapter."). Nevertheless, in order to more effectively insure pensioners, the PBGC is authorized to borrow money from the United States Treasury. ERISA Section 4005(c), 29 U.S.C. § 1305(c).

25. The Verizon/Prudential annuity transaction effectively eliminated all of the transferred retirees' ERISA protections for their pensions, including the uniform financial safety net presently provided by the PBGC. **(App. 267, Stone Aff. ¶ 6)**.

26. As a result of the Verizon/Prudential annuity transaction, approximately 41,000 affected retirees lost all ERISA-protected rights, including mandated annual financial disclosures and ready access to the federal courts. **(App. 268, Stone Aff. ¶ 7)**. Prudential will not be subject to ERISA's fiduciary duties standards, minimum funding standards and disclosure requirements. (***Id.***). Prudential will not be required to disclose to any transferred retiree how his or her annuity funding is invested and who is in charge of the underlying investments. (***Id.***).

27. During the planning for the Verizon/Prudential annuity transaction, there was necessarily a Verizon team and a Prudential team. Both teams were comprised of senior level management officers, director level management employees, in-house lawyers, outside counsel and actuaries.

28. Neither the Verizon team nor Prudential team had any member whose role was solely to represent Plaintiffs' and the putative class members' best interests. Throughout the planning of the Verizon/Prudential annuity transaction up to and including the October 17, 2006

public announcement date, Plaintiffs and the putative class members had no effective representation. **(App. 7, Lee Aff. ¶ 7)**.

29. On August 24, 2012, Verizon and VIMCO entered into an engagement agreement with Fiduciary Counselors Inc.("FCI"), whereby it was appointed "independent fiduciary" and assigned the following duties:

A. To represent the interests of the Plan and the participants and beneficiaries in connection with the selection of the insurance company (or insurance companies) to provide an annuity, and the terms of the annuity contract or contracts, so that such selection and terms comply with the fiduciary standards, prohibited transaction restrictions, and all other applicable provisions of ERISA;

B. To represent the interests of the Plan in the reallocation of assets within the master trust, in order to ensure that the Plan is fairly treated and receives appropriate value for any assets exchanged with other plans participating in the master trust;

C. To deliver a written determination to VIMCO, on or about September 8, 2012, stating whether the selection of the annuity provider or providers and the terms of the annuity contract or contracts comply with the fiduciary standards, prohibited transaction restrictions, and all other applicable provisions of ERISA, and to deliver a written update of the determination to VIMCO as of the closing date of the annuity purchase, stating whether any material adverse change has occurred that would affect FCI's earlier determination; and

D. If requested to do so, attend meetings with the PBGC and U.S. Department of Labor jointly with VIMCO's representatives or advisers to explain the proposed transaction. **(App. 38-39, FCI Retainer Agreement)**.

30. Verizon, VIMCO and FCI expressly agreed that FCI was not assigned either the duty to determine whether the subject matter of the parties' agreement conforms to the terms of any Plan or master trust document or the duty to give an evaluation or advise on acts, omissions or conditions regarding the Plan at any time prior to August 24, 2012. **(App. 40, ¶ D)**.

31. As a consequence of the limitation of its duty, FCI did not make any determination whether any summary plan descriptions ("SPDs") issued by Verizon with respect

to the Plan prior to August 24, 2012 complied with ERISA disclosure requirements. Likewise, FCI did not make any determination whether the contract for the Verizon/Prudential annuity transaction was contrary to the terms of Plan documents. **(App. 63-64, FCI Opinion Letter)**.

32. When carrying out its appointed duties, FCI never communicated with any Plaintiff nor any of the putative class members. Likewise, neither Verizon, the Verizon EBC, VIMCO nor any other Plan fiduciary communicated with either Plaintiffs Lee, McPartlin or any putative class members or solicit and obtained potentially affected retirees' input, feedback or opinions about the Verizon/Prudential annuity transaction. **(App. 243, Lee Aff. ¶ 8; App. 248, McPartlin Aff. ¶ 7; App. 263, Jones Aff. ¶¶ 10-11).**

33. No one associated with or represented of either Verizon or Prudential obtained either Plaintiffs' or any putative class member's consent to be transferred out of the Plan into a Prudential annuity or any other aspect of the Verizon/Prudential annuity transaction, including its consummation. **(*Id.*)**.

34. Prior to the Verizon's agreement to the Verizon/Prudential annuity transaction, there existed no Plan term or provision allowing Verizon to terminate retirees' rights to continued participation in the Plan and transfer the retirees' pensions into a non-ERISA regulated and non-PBGC protected annuity.

35. Prior to the contract to the Verizon/Prudential annuity transaction, the Plan's controlling terms allowed for Plan assets to be used only for providing Plan benefits and defraying Plan expenses, not for purchasing annuities held outside the Plan. Article 8.5 of the restated Plan[4] states, in pertinent part, ". . all Company contributions to the Pension Fund and all

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[4] The Plan was most recently restated at the end of year 2009. **(App. 23).**

property of the Pension Fund, including income from investments and other sources, shall be used for the exclusive benefit of Employees, Retired Employees, former Employees, and Beneficiaries and shall be used to provide benefits under the Plan and to pay reasonable expenses of administering the Plan and the Pension Fund, except to the extent such expenses are paid by the Company." **(App. 25)**. Article 8.5 of the restated Plan has not been amended.

36. Prior to the contract to the Verizon/Prudential annuity transaction, the Plan's controlling terms of the Plan only allowed, in the absence of a standard termination of the Plan,[5] a transfer of pension assets into either another ERISA-regulated pension plan or trust qualified under Internal Revenue Code Section 401(a), 26 U.S.C. § 401(a). Specifically, Article 11.3 of the Plan states only states that "the Plan may be merged into or consolidated with another plan, and its assets or liabilities may be transferred to another plan." **(App. 30)**. Article 11.3 of the restated Plan has not been amended.

37. Prior to the contract for the Verizon/Prudential annuity transaction, the Plan's controlling terms, in the absence of a standard termination of the Plan, did not allow for the forfeiture of a retired employee's pension benefit payable under the Plan and replacement by an insurance annuity that is held outside the Plan, unregulated by ERISA and unprotected by the PBGC.

38. The current SPD for the Plan states, in pertinent part:

How benefits could be reduced, lost, suspended or delayed

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[5] At all times, the Plan has contemplated extinguishment of pension liabilities through the purchase of insurance annuities *when* a standard *termination* of the Plan *occurs*. **(App. 33, Article 12.3 "Provision for Pensions After Plan Termination": (App. 33-34, Article 12.7 "Satisfaction of Liabilities on Plan Termination."** However, the Verizon/Prudential annuity transaction occurred at the pleasure and for the convenience of Verizon, without the full Plan being terminated.

> Your pension benefits under the plan will be reduced, lost, suspended or delayed if one of the following conditions applies:
> . . .
> • You transfer to another company as a result of a sale, spinoff or outsourcing arrangement, and your benefit is transferred to and paid from another pension plan maintained by such other company. (Emphasis in original). **(App. 20-22)**.

The SPD, thereby contemplates the possibility of a transfer of pension benefits under the Plan to another pension plan, but does not inform the participants that pension benefits could be transferred out of the Plan into an insurance annuity.

39. The funding of the Plan is subject to restrictions provided under the Pension Protection Act of 2006 (Pub. Law No. 109-280,120 Stat. 780), including certain restrictions tied to the Plan's funding level.

40. January 1 of each calendar year is the "valuation date" for the Plan for purposes of determining the Plan's funding level to be reported in annual notices sent to Plan participants.

41. Under ERISA Section 206(g)(3)(C), 29 U.S.C. § 1056(g)(3)(C), and IRC Section 436(d)(3)(A), 26 U.S.C. § 436(d)(3)(A), limitations on distributions are imposed on the Plan if the funding of the Plan drops below eighty percent as of the valuation date, January 1 of each calendar year.[6]

42. On the January 1, 2011 valuation date, the Plan was underfunded.

43. On January 1, 2011, the fair market value of the Plan's assets was approximately $9.6 billion. On this same date, the Plan's liabilities were approximately $11.7 billion. Thus on January 1, 2011, the Plan had an "adjusted funding target attainment percentage" ("AFTAP"), as defined by both ERISA Section 206(g)(9)(B) and Internal Revenue Code Section 436(j)(2), of

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[6] Pursuant to ERISA § 303(g)(2) and IRC § 430(g)(2), a defined benefit pension plan with more than 100 participants must use the first day of the plan year as the valuation date.

approximately 81.5%. The Plan's enrolled actuary certified the AFTAP was 81.5%.

44. Effective as of April 1, 2012, the AFTAP was presumed, under ERISA Section 206(g)(7)(C), 20 U.S.C. § 1056(g)(7)(C), and IRC Section 436(h)(3), 29 U.S.C. § 436(h)(3), to have decreased by ten percentage points, thus being reduced to 71.5%, unless the Plan's enrolled actuary had actually certified a higher AFTAP for plan year 2012.

45. In late April 2012, the Verizon Defendants disclosed in an annual funding notice sent to Plaintiffs and all other Plan participants that, on the date immediately before January 1, 2012, the fair market value of the Plan's assets was approximately $9.7 billion. On this same date, the Plan's liabilities were approximately $12.8 billion. Thus, whether or not the enrolled actuary had yet certified an updated AFTAP, it was well known by the Verizon Defendants that the Plan had an AFTAP of approximately 76% on the January 1, 2012 valuation date.

46. The actual AFTAP ultimately certified by the Plan's enrolled actuary after January 1, 2012 has never been disclosed nor produced to Plaintiffs and the Plan's retirees.[7]

47. To the extent that, after January 1, 2012 and before August 15, 2012, the Verizon Defendants made contributions to the Plan to be credited as prior year contributions, those contributions were not sufficient to increase the AFTAP above the 80% threshold.

48. Presently included within the Court's record is a chart filed by Prudential which chart shows that before the Verizon/Prudential annuity transaction was consummated the "adjusted funded ratio" of the Plan was less than 80%. (Docket 32, at "Appendix 9.2(f)").

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[7] If the Plan's enrolled actuary certified an AFTAP for 2012 using a temporary estimated range of over 80%, that estimation is wrong and it should be disqualified for being inaccurate.

49. When a single-employer defined benefit pension plan is less than 80% funded as of the valuation date, both ERISA and the Internal Revenue Code impose certain restrictions and limitations on the plan with respect to making "accelerated benefit distributions". ERISA Section 206(g)(3)(C), 29 U.S.C. § 1056(g)(3)(C); IRC Section 436(d)(3)(A, 26 U.S.C. § 436(d)(3)(A). The purpose of imposing restrictions and limitations on making accelerated benefit distributions is to ameliorate the loss of pension funding and preserve the on-going administration of the plan. One example of a restricted accelerated benefit distribution is making a lump-sum payment distribution.

50. Another such limitation on making accelerated benefit distributions imposed on a single-employer defined benefit pension plan when it is less than 80% funded as of the valuation date pertains to any payment for the purchase of an irrevocable commitment from an insurer to pay benefits. ERISA Section 206(g)(3)(E)(ii), 29 U.S.C. § 1056(g)(3)(E)(ii) (defining "prohibited payment" as a payment for an insurance annuity); IRC Section 436(d)(5)(B), 26 U.S.C. § 436(d)(5)(B) (same).

51. During year 2012, since the Plan had a less than 80% AFTAP as of January 1, 2012, the Plan was restricted from paying more than 50% of the necessary payment for the purchase of an irrevocable commitment from Prudential to pay benefits. ERISA Section 206(g)(3)(E)(ii), 29 U.S.C. § 1056(g)(3)(E)(ii); IRC Section 436(d)(3)(A)(i), 26 U.S.C. § 436(d)(3)(A)(i).

52. To the extent that, after January 1, 2012 and before August 15, 2012, the Verizon Defendants made contributions to the Plan to be credited as prior year contributions, those contributions were not sufficient to increase the AFTAP so as to avoid the restrictions on

prohibited accelerated benefit payments imposed by ERISA Section 206(g)(3)(E)(ii), 29 U.S.C. § 1056(g)(3)(E)(ii); IRC Section 436(d)(3)(A)(i), 26 U.S.C. § 436(d)(3)(A)(i).

53. In order to move forward with the Verizon/Prudential annuity transaction, Verizon and Plan fiduciaries and administrators ignored or flouted the aforesaid specific restrictions of ERISA Section 206 and IRS Section 436 that were operative during year 2012, since the Plan had an AFTAP of less than 80% as of the January 1, 2012 valuation date.

54. In order to move forward with the Verizon/Prudential annuity transaction, on October 17, 2012, Verizon purportedly amended the Plan and inserted a new Article 8.3(b), to be effective December 7, 2012. **(App. 60-62)**. The new purported Plan amendment directs the Plan to purchase one or more annuity contracts to pay all pension benefits earned by designated retirees (i.e., Plaintiffs Lee, McPartlin and putative class members – approximately 41,000 persons who retired prior to January 1, 2010 and were receiving payment in the form of an annuity under the Plan) and, thus, extinguish the designated participants' rights to pension benefits payable under the Plan and extinguish the Plan's obligation to make pension payments to the designated retirees. **(*Id.*)**.

55. The new purported Plan amendment, Article 8.3(b), creates an ambiguity concerning the authority under the Plan for the Verizon/Prudential annuity transaction because it conflicts with Articles 8.5, 11.3, 12.3 and 12.7 and the aforesaid limited disclosures made in the SPDs issued to Plaintiffs and putative class members prior to August 24, 2012.

56. Immediately before the Verizon/Prudential annuity transaction was consummated, there were approximately 47,000 retired or separated Plan participants receiving benefits. The latest Internal Revenue Service ("IRS") Form 5500 executed by the Plan administrator and filed

with the IRS and US Department of Labor during October 2012 reports on line 6b that at the end of year 2011 there were 47,115 "Retired or separated participants receiving benefits". **(App. 50)**.

57. The Verizon/Prudential annuity transaction involved a significant reduction in the Plan's total number of pension-eligible participants. The result of dividing the total number of involuntarily terminated Plan participants (approximately 41,000) by the total number of Plan participants (approximately 100,000) meets, unquestionably, the "significant percentage test" federal courts have uniformly applied when determining whether a "partial termination" of a pension plan has occurred. The Court should declare that the Verizon/Prudential annuity transaction will result in a partial termination of the Plan and, accordingly, enforce the Plan's controlling terms applicable when a partial termination occurs.

58. Prior to the Verizon/Prudential annuity transaction, the Plan's controlling terms in Article 12.1 provided that "[i]n case of a termination or partial termination of the Plan, the rights of all affected Employees, Retired Employees, and Beneficiaries to benefits accrued under the Plan to the date of such termination or partial termination, to the extent then funded, shall be nonforfeitable." The current SPD for the Plan states, in pertinent part:

> ***Changes in the plan***
> . . .
> Upon termination or partial termination of the plan, the accrued benefits of each participant affected by the termination or partial termination (as determined by the plan administrator) shall become fully vested to the extent funded. (Emphasis in original). **(App. 17)**.

Since Verizon recognizes the necessity of full vesting of benefits in the case of even a partial termination of the Plan, Verizon should give those retirees affected by the Verizon/Prudential annuity transaction the option of taking a lump sum payment directly from the Plan.

59. Prior to the Verizon/Prudential annuity transaction, Plaintiffs Lee, McPartlin and all potential class members had Plan benefits that were insured or guaranteed by the PBGC up to a monthly limit of $4,353.41, or approximately $55,800 per year per retiree who is at least age 65 years, and that annual protection is for an unlimited number of consecutive years. The protected annual rate is higher for retirees over age 65.[8]

60. The Verizon/Prudential annuity transaction placed the affected retirees in an inferior safety-net, not governed by a uniform federal law, but governed by non-uniform laws relating to insurance guaranty associations of 50 separate states. All fifty states and two territories have a guaranty association that is supposed to protect policyholders in the event that a life insurance company becomes insolvent or impaired. **(App. 268, Stone Aff. ¶ 8)**.

61. State guaranty association relief varies from state to state and benefits are not provided in a uniform fashion. Most state guaranty associations categorize annuity policies as either "allocated" or "unallocated" with significantly greater protection for allocated policies. Allocated contracts provide benefits directly to individuals with the coverage limits as set forth below. Unallocated contracts are held by the corporate employer or retirement plan trustees and the "policyholder" is considered to be the group. Guaranty fund limits for unallocated group policies generally range from $1 million to $5 million in total and the determination of which contracts are allocated versus unallocated varies from state to state and courts have not definitively or uniformly determined how these concepts apply. **(App. 268, Stone Aff. ¶ 9)**.

62. As a result of the consummation of the Verizon/Prudential annuity transaction,

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[8] The PBGC's maximum benefit guarantee is set each year under provisions of ERISA. The PBGC posts at its website its maximum monthly guarantee tables: http://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee.html#2012

Plaintiffs Lee, Plaintiff McPartlin and all other transferred retirees have been injured and they have lost all federal protection through the PBGC, now replaced, in the event of the inability of Prudential to make payments to them, by the following insufficient and varying insurance guaranty coverage amounts determined by the retirees' respective states of residence, as follows:

- Eight states and one territory – AK, AZ, IN, MA, MS, MO, NH, NV and Puerto Rico – limit coverage for annuity holders in case of a default or shortfall to a lifetime maximum of $100,000;

- Twenty eight states – CA, CO, DE, HI, ID, IL, IA, KS, KY, LA, ME, MD, MI, MN, MT, NE, NM, ND, OH, RI, SD, TN, TX, UT, VT, VA, WV, WY – limit coverage for annuity holders in case of a default or shortfall to a lifetime maximum of $250,000;

- Ten states – AL, AR, FL, GA, NC, OK, OR, PA, SC, WI and the District of Columbia – limit coverage for annuity holders in case of a default or shortfall to a lifetime maximum of $300,000; and

- Four states – CT, NJ, NY and WA – limit coverage for annuity holders in case of a default or shortfall to a lifetime maximum of $500,000.[9] **(App. 269-70, Stone ¶ 11)**.

63. Individual coverage limits under state guaranty statutes vary from $100,000 to $500,000 per person and are generally determined by the state of residency at the time of impairment or insolvency of an insurance company. **(App. 270, Stone Aff. ¶ 12)**. Most state guaranty associations are underfunded or unfunded, relying on future premium assessments to fund unknown liabilities. **(*Id.*)**.[10] State guaranty association coverage amounts and rules of the game can be subject to change without notice. **(App. 270, Stone Aff. ¶ 14)**. Relocating retirees may unwittingly divest themselves of guaranty association coverage. For example, an annuitant

[9] If the annuity to be issued pursuant to the Verizon/Prudential annuity transaction is regarded as unallocated, the coverage amounts may be even more limited in certain states.

[10] Insurance guaranty associations are funded by assessments on insurance companies. They are not guaranteed by state governments. (Docket 30, Jacobs' Declaration, p. 48 of 53, ¶ 26).

living in Connecticut with $500,000 of potential coverage, after relocating residence to Arizona, could find himself or herself with just $100,000 of coverage. [11] **(App. 270, Stone Aff. ¶ 15)**.

64. In addition to the patchwork nature of state guaranty funds, putative class members who already hold a Prudential annuity may be further damaged by the Verizon/Prudential annuity transaction as coverage amounts are per person, not per policy. **(App. 270, Stone Aff. ¶ 13)**.

65. Retirees and their spouses, especially those who reside in states with the lowest protection levels, will be seriously harmed and left with as little as two years pension benefit replacement in case of default by Prudential on its annuity obligation. **(App. 271, Stone Aff. ¶ 17)**.

66. Moreover, state guaranty funds have been known to assert their subrogation rights as priority claims and net out coverage amounts against remaining estate assets. This means that the actual dollar amount of benefits funded out of the individual state guaranty association coffers themselves are invariably less than the fund limits they promote. **(App. 270-271, Stone Aff. ¶ 16)**.

67. Now that the Verizon/Prudential annuity transaction has been consummated, Prudential could choose to re-sell or transfer to another unknown insurance company all or part of its annuity responsibilities for the Plaintiffs Lee, McPartlin and the putative class of transferred retirees, further diluting and eviscerating the present ERISA-regulated and PBGC-insured rights of the retirees.

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[11] The annuitant "must rely primarily (if not exclusively) on state-contract remedies if they do not receive proper payments or are otherwise denied access to their funds." *Beck v. PACE Intern. Union,* 551 U.S. 96, 106, 127 S.Ct. 2310, 2318 (2007).

68. Since the Verizon/Prudential annuity transaction was consummated, Plaintiffs Lee, McPartlin and all other approximately 41,000 retirees have lost all ERISA protected rights, including uniform protection from creditors, rights to mandated annual financial disclosures and ready access to the federal courts. Prudential will not be subject to ERISA's fiduciary duties standards, minimum funding standards and disclosure requirements. Basic data regarding the funded status of a pension annuity, changes in assets and liabilities, and the amount that annuitants would stand to lose if an underfunded annuity was terminated are vitally important to retirees. Prudential will not be required to disclose to any transferred retiree how his or her annuity funding is invested and who is in charge of the underlying investments, as Verizon is required to do with respect to the Plan. **(App. 268, Stone Aff. ¶ 7)**.

69. Since the Verizon/Prudential annuity transaction was consummated, the public policies expressed by Congress and set forth within ERISA have been thwarted. Short of a standard termination of the Plan approved by the PBGC, ERISA simply does not permit an involuntary removal of Plan participants from an on-going pension plan and the consequential canceling of Verizon's obligation to pay PBGC required annual premium payments on account of such pension plan participants. Since the Verizon/Prudential annuity transaction was consummated, the PBGC's overall mission has been impaired. A very wealthy, solid Fortune 5 U.S. corporation will no longer annually contribute millions of dollars in premiums to the PBGC, as needed by the PBGC in order to protect the financial security of numerous other U.S. employer defined benefit pension plans.[12]

[12] For each of the 41,000 management participants Verizon removed from the Plan, Verizon has avoided an obligation to make a $42 payment to the PBGC on February 28, 2013. Thus, in 2013, the PBGC's total loss of recurring annual premium revenues from Verizon will be $1,722,000.00.

70. The Verizon/Prudential annuity transaction could very well lead to a series of copycat transactions that unravel long-range Congressional intent when enacting ERISA and establishing the PBGC. If numerous corporate sponsors of well-managed defined pension benefit plans engage in the same sort of de-risking scheme and hand over their pensioners to insurance annuity providers, the situation could lead to the PBGC holding all of the potential liability for much financially weaker under-funded defined benefit pension plans. The Verizon/Prudential annuity transaction thereby threatens the long term financial solvency of the PBGC insurance program, requires other sponsors that have acted financially responsibly to pay higher PBGC premiums, and potentially could lead to the PBGC's call for a rescue of the entire program with taxpayer funds. Indeed, a number of factors – a current requirement of disclosure to the SEC of the status of funding of pensions, increased longevity of retirees and recent declines in interest rates and other rates of return – are increasingly leading sponsors of pension plans to consider not only mitigating so-called "pension risk," but transferring risk, as in the case of the Verizon/Prudential annuity transaction. When an employer transfers pension risk by using plan assets to remove plan participants and relegate them to a group annuity, it is not only depriving retirees of the protections of ERISA and the PBGC, it is foregoing other alternatives which might be equally acceptable to retirees without so offending ERISA. These include offering lump-sum payments to participants or purchasing a group annuity as an asset of the plan.

71. The Verizon/Prudential annuity transaction is not what the Plaintiffs and the putative class of management retirees bargained for when they loyally served Verizon and predecessor companies, including the business entities comprising the former old Bell System.

Those retirees chose to receive a federally protected monthly annuity pension, not an insurance annuity. The involuntary removal of Plaintiffs Lee, McPartlin and the putative class of retirees from the Plan and their transfer to Prudential's control is not in the retirees' best long-term financial interests and they do not consent to this change. **(App. 243, Lee Aff. ¶ 8; App. 248, McPartlin Aff. ¶ 7; App. 263, Jones Aff. ¶¶ 10-11)**.[13]

72. The Verizon Defendants cannot seek to assert failure to exhaust administrative remedies as a defense to Plaintiffs' claims. Neither the Plan nor the Verizon EBC recognize a class-wide administrative claim internally submitted as a benefit claim or to obtain redress of any other kind. The Plan has no administrative procedure or effective available remedy so as to provide Plaintiffs and putative class members the plan-wide relief requested in this Amended Complaint and necessary to protect their interests. Any internal claim to pursue class-wide relief for violation of ERISA's requirements, violation of the terms of the Plan or the fiduciary duty of the Verizon Defendants with respect to the Plan is futile, a meaningless exercise, as the Verizon Defendants have committed themselves to a course of action incompatible with Plaintiffs' and putative class members' best interests.

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[13] As of the end of year 2011, Prudential formally disclosed in its annual statement that it had approximately $246.8 billion in assets with an estimated $238.6 billion in liabilities, revealing it, then, had a surplus of approximately $8 billion overall, or a less than a 4% financial cushion. In the same annual statement, Prudential reported $7.7 billion in investments tied to other ("non-agency") mortgage-backed securities and a combined concentration in affiliated debt or equity investments of $8.9 billion and more than $15 billion in exposure to commercial mortgages. In addition, in Note 11B to its 2011 annual statement to state insurance commissioners, Prudential reported $2.8 billion in assets pledged to the Federal Home Loan Bank of New York, of which $0.9 billion is reflected as borrowed money. Finally, on Schedule S, Part 3, Section 1 of the same annual statement, Prudential records a "reserve credit" for liabilities transferred to a 100% owned captive insurance company known as Prudential NJ Captive Insurance Company. **(App. 266-67, Stone Aff. ¶ 4)**. In light of these multiple disclosed risks, Prudential's ability to withstand a liquidity crisis or another economic downturn is not at all certain. A Prudential insolvency could create major disruptions in payments flowing to the retirees.

FIRST CLAIM FOR RELIEF
(Against Verizon EBC for Breach of Fiduciary Duty
Due to Failure to Make Disclosure in Pension Plan SPDs)

73. Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through **72**, inclusive, as if they were fully set forth herein.

74. ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a civil action "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."

75. ERISA Section 102(b) requires, in part, that a pension plan administrator provide each plan participant with an SPD which describes the "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." 29 U.S.C. § 102(b). U.S. Department of Labor regulations require, in part, that an SPD contain a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reductio or recovery. . . of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits. . . 29 C.F.R. § 2520.102-3-(*l*).

76. An SPD is considered essential in informing employees and retirees of their rights, seasonable expectations and obligations under a pension plan.

77. Verizon EBC has issued numerous SPDs with respect to the Plan, all of which have consistently failed to meet ERISA's requirement to disclose all circumstances that may result in Plaintiffs' and putative class members' ineligibility for or loss of benefits provided by

the Plan.

78. While Verizon's SPDs with respect to the Plan have contained a standard reservation of rights clause ("ROR") which allows for changes to be made to the Plan and permits a standard termination of the Plan, such ROR does not fulfill either the general statutory requirements of ERISA Section 102(b) or the more specific requirements of 29 C.F.R. § 2510.102-3-(*l*).

79. In none of the SPDs issued to Plaintiffs and putative class members by the Plan administrators is there any discussion, disclosure or notice that either a single retiree or large group of retirees with vested rights could be involuntarily removed from enrollment in the Plan and transferred to either Prudential or any other insurance company and, thereby, made ineligible for continued receipt of pension benefits under the Plan.

80. The failure to provide Plaintiffs and putative class members with an SPD containing a disclosure about the possible removal from the Plan of certain retirees, and in fact, discrimination against such retirees by comparison with other Plan participants, by termination of their pension participation in the Plan and purchase of replacement annuities issued by an insurance company, is a statutory violation of ERISA Section 102 (b) subject to remedy under ERISA Section 502(a)(3) and breach of fiduciary duty subject to remedy under ERISA Section 502(a)(2). "The duty to disclose material information is the core of a fiduciary's responsibility, animating the common law of trusts long before the enactment of ERISA." *Eddy v. Colonial Life Ins. Co. of Am.*, 919 F.2d 747, 750 (D.C. Cir. 1990). Verizon EBC, as Plan administrator, has been obligated to provide each Plaintiff and each putative class member with such disclosure without any request being made by anyone. Since there has been no such disclosure, the SPDs

given to Plaintiffs and putative class members "ha[ve] the effect of failing to inform" the retirees of a key limitation on their right to recover benefits under the Plan, a violation of 29 C.F.R. § 2520.102–3(b).

81. All of the SPDs issued to Plaintiffs and putative class members have fallen short of the high standards of clarity and completeness to which SPDs are held and have been inadequate.

82. No average Plan participant would understand from reading any SPDs that he or she could be abandoned by Verizon, removed from the on-going Plan which is protected by ERISA and the PBGC, and involuntarily transferred to either Prudential or another insurance company and, thereby, forever lose all protections provided by ERISA and the PBGC.

83. Verizon has no basis to contend the SPDs are the products of an innocent mistake or omission. The Verizon Defendants contend the SPD's contained no mistake or omission.

84. Prior to Verizon's agreement to the Verizon/Prudential annuity transaction, no Plan documents contained any terms that authorize the involuntary removal of retirees from continued participation in the Plan.

85. The contract providing for the Verizon/Prudential annuity transaction is not a Plan amendment.

86. While the Plan permits itself to be merged into or consolidated with another Internal Revenue Code qualified pension plan, and its assets or liabilities may be transferred to another qualified pension plan, there is no term, rule or directive that allows retired Plan participants, as opposed to assets or liabilities, to be removed from the Plan and transferred without his or her knowledge and consent. There are no terms in the Plan documents allowing

either the Plan sponsor or Plan administrator to segregate and allocate vested pensioners to an insurance company.

87. Since Plaintiffs and putative class members have not known about the possibility that Verizon could someday, in the absence of a standard termination of the Plan, end the retirees' participation in the Plan and their ERISA and PBGC protections, each has been harmed and each has lost the opportunity to be fully informed and take timely appropriate action so as to attempt to obtain a Plan amendment, or take other organized and, perhaps, legal steps, so as to obtain an enforceable commitment by defendants not to take such action against affected retirees. *CIGNA Corp. v. Amara*, 536 U.S. __, 131 S.Ct. 1866, 1881 (2011). **(App. 242-43, Lee Aff. ¶ 5**; **App. 247-48, McPartlin Aff. ¶ 5**; **App. 262, Jones Aff. ¶ 7**).

88. There is no provision of ERISA dictating specific relief for violation of ERISA Section 102(b). Therefore, nothing precludes equitable relief for violation of Section 102 (b). Since the SPDs issued to Plaintiffs and putative class members prior to the defendants' contract for the Verizon/Prudential annuity transaction have not satisfied ERISA's disclosure requirements, the Court should estop the defendants from exercising undisclosed rights. More specifically, this Court should estop the defendants from removing Plaintiffs and putative class members from the Plan.

89. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs ask this Court to grant appropriate class-wide equitable relief, including a declaration that Verizon EBC violated ERISA Section 102(b), 29 U.S.C. § 1022(b) and DOL Regulation 29 C.F.R. § 2520.102-3-(*l*) by failing to make disclosure in any SPD issued to Plaintiffs and putative class members with respect to the Plan that Verizon could remove the retirees from the Plan and

involuntarily make them annuitants of a Prudential annuity not regulated by ERISA and not protected by the federal uniform PBGC guarantee regime. Plaintiffs ask this Court to grant appropriate equitable relief. The Court should order defendants to provide Plaintiffs and each putative class member an elective choice of either: (1) keeping his pension benefit in the Plan; (2) receiving a lump sum distribution of Plan pension benefits; or (3) selecting Prudential or some other issuer of an annuity equivalent to his or her existing Plan benefits.

SECOND CLAIM FOR RELIEF
(Against Verizon EBC and VIMCO For Breach of Fiduciary Duty, Including Failure to Comply with Plan Document Rules)

90. Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through **89**, inclusive, as if they were fully set forth herein.

91. One of ERISA's cardinal duties imposed on pension plan administrators is that they must act in strict conformity with existing plan terms and rules, to the extent the plan's terms and rules are not inconsistent with ERISA.

92. The transfer of Plaintiffs Lee, McPartlin and putative class members out of the Plan into a Prudential annuity was conducted with the intent by Verizon and the Verizon EBC to evade a standard termination of the Plan, the only process allowed by the Plan's controlling terms so as to immediately end Plan participation by the group of 41,000 retirees.

93. A standard termination of the Plan requires regulatory approval by both the PBGC and the Internal Revenue Service, which dual federal agency oversight was avoided by the Verizon Defendants through the Verizon/Prudential annuity transaction.

94. When purchasing an annuity as part of a standard termination of the Plan, Verizon and the Verizon EBC would be required to provide each Plaintiff and putative class member at

least 60 days before the proposed termination date an informative notice of intent to terminate the Plan with annuity information in advance of the annuity purchase. 29 CFR § 4041.23 and 29 CFR § 4041.27 These notice requirements were avoided by Verizon and the Verizon EBC through the Verizon/Prudential annuity transaction. .

95. The transfer of Plaintiffs Lee, McPartlin and putative class members out of the Plan and into a Prudential annuity was action not in accordance with controlling Plan terms and rules. *Kennedy v. Plan Administrator for DuPont Savings and Investment*, 555 U.S. 285, 129 S.Ct. 865 (2009) (ERISA provides no exception to the plan administrator's duty to act in accordance with existing plan documents and stated rules).

96. The Plan contains provisions contemplating there could be mergers, consolidations of pension plans, and transfers of "assets" or "liabilities" to another Internal Revenue Code Section 401(a) qualified pension plan protected by the PBGC. Prior to the Verizon/Prudential annuity transaction, none of the terms of the Plan authorized the involuntary transfer of retirees' pensions out of the on-going administered Plan to be replaced by an insurance annuity. Likewise, the Plan does not contain a ROR that allows Verizon, in the absence of a standard termination of the Plan, to involuntarily extinguish Plaintiff's and putative class members' ERISA rights and PBGC protection.

97. Article 11.2 of the restated Plan states, in part, "no amendment shall reduce any benefit, that is accrued or treated as accrued under section 411(d)(6) of the [Internal Revenue] Code, of any participant, or the percentage (if any) of such benefit that is vested, on the later of the date on which the amendment is adopted or the date on which the amendment becomes effective."

98. By allowing Plaintiffs' and putative class members' rights to receive payment of accrued pension benefits paid directly from the Plan to be reduced to zero through the Verizon/Prudential annuity transaction, the Verizon EBC's conduct violated the terms of Article 11.2 of the Plan.

99. The Verizon EBC's and VIMCO's participation in and consent to the transfer of Plaintiffs' and putative class members' pensions out of the Plan, while maintaining the Plan's coverage for over 50,000 other Plan participants, is discriminatory action taken in violation of Plaintiffs' and putative class members' rights under the Plan and ERISA.

100. Throughout the planning for the Verizon/Prudential annuity transaction, the Verizon EBC, VIMCO and other Plan fiduciaries and Plan administrators owed all Plaintiffs and putative class members the highest duty of care.

101. The inclusion of Plaintiffs Lee, McPartlin and putative class members in the Verizon/Prudential annuity transaction is not a Plan design function. While a decision to terminate a plan, such as a standard termination which necessarily ends participation for all involved is deemed to be a design function immune from ERISA's fiduciary obligations, a decision to remove only some of the participants and beneficiaries without their consent from a lively on-going plan is a fiduciary function and must be one conducted with an eye single to the best interest of the affected participants and beneficiaries.

102. The Verizon Defendants were not free to unilaterally remove Plan participants and beneficiaries from the on-going Plan and Master Trust. Neither the Plan nor the Master Trust contained any provision either expressly stating or implying that the settlor – Verizon – reserved the power to terminate the retirees' rights to continued participation in the on-going

Plan and on-going Master Trust. Therefor, the inclusion of Plaintiffs Lee, McPartlin and putative class members in the Verizon/Prudential annuity transaction was a breach of their ERISA fiduciary duties to serve loyally, impartially and protect the retirees' rights under the Plan, Master Trust and ERISA.

103. At common law, a trustee has a duty to administer the trust in a manner that is impartial with respect to the various beneficiaries of the trust. Likewise, under ERISA, as plan administrators and fiduciaries, the Verizon EBC and VIMCO cannot discriminate and accord different or special treatment to one group of retirees. The Verizon Defendants have not attempted to apply a uniform change to all retirees in the Plan. Verizon, as the employer plan sponsor has now excluded one group of retirees from the Plan while maintaining plan participation for another group of retirees. The Verizon/Prudential annuity transaction resulted in one group of retirees – pre-January 1, 2010 management retirees not represented by a union and not former MCI employees – losing all Plan provided pension benefits and ERISA protections and the financial security provided by the PBGC and resulted in another group of retirees – non-management retirees, pre-January 1, 2010 formerly represented management employees and former MCI employees and post-January 1, 2010 management retirees – maintaining all Plan pension benefits and ERISA and PBGC protections. Such non-uniform treatment of retirees is a breach by the Verizon EBC and VIMCO of ERISA duties of loyalty and impartiality to Plaintiffs Lee, McPartlin and all putative class members.

104. The failure on the part of Verizon EBC and VIMCO in the exercise of their fiduciary duty to even inquire whether Plaintiffs Lee, McPartlin and putative class members are willing to have the Plan transfer its obligation for their pensions to Prudential, or prefer to have

their pension entitlements paid directly to them or to tax-qualified accounts they have established in a lump sum, is also a breach of their ERISA duty of loyalty and duty of impartiality to the retirees.

105. The decision by the Verizon EBC and VIMCO either directly or indirectly, by reliance upon FCI as an independent fiduciary proxy, to either allow, or participate in Verizon's selection of, Prudential as the lone insurer to issue an annuity subjects Plaintiffs Lee, McPartlin and all putative class members to the risk of a single insurer undergoing some future unexpected and catastrophic event that could place many retirees and their beneficiaries in potential financial ruinous circumstances. Verizon's annuity transaction with Prudential is one of the largest in U.S. history. Prudential is not too big to fail. If the current economic situation has taught retirees anything, it is that the funded status of a behemoth insurer can change in an instant and cause devastating economic harm for the whole country.

106. Soon after Verizon publicly announced the Verizon/Prudential annuity transaction, Moody's Investors Service Inc., a highly regarded insurance rating agency, stated in a credit outlook report that the Verizon/Prudential annuity transaction is "credit negative" for Prudential because the transaction:

> increases the insurer's risk concentrations, further exposing it to the challenges of estimating longevity risk, managing a long-duration portfolio and investing any portion of the proceeds not provided through existing investments in a low-yield environment. In addition, we believe that the transaction artificially boosts the company's regulatory capital by reducing the amount of minimum required reserves. **(App. 218)**.

Moody's stated that the transaction also is credit negative because it represents more than 5% of Prudential's general account holdings. **(*Id.*).** The report, published on October 22, 2012, thereby implies that either Prudential is more likely to default, or it has fewer assets than is

desirable if it does default. This does not give Plaintiffs Lee, McPartlin and putative class members any, much less be required, level of comfort about the Verizon/Prudential annuity transaction, considering the fiduciary duty of defendants.

107. When the Verizon/Prudential annuity transaction was consummated, the Plan was less than 80% funded and the Verizon Defendants either ignored or flouted the restrictions and limitations imposed by ERISA Section 206 and IRS Section 436 on making accelerated benefit distributions, thereby harming the Plan by improperly causing it to fund the entire approximately $8.4 billion payment made to Prudential.

108. Prior to the Verizon/Prudential annuity transaction, Section 8.5 of the Plan required that Plan assets be used for the "exclusive benefit" of participants to "provide benefits under the terms of the Plan" and pay "reasonable expenses" of administering the Plan. (**App. 25**). However, almost $1 billion more than necessary to cover the transferred liabilities was paid to Prudential by the Plan. The extra $1 billion payment was applied towards excessive and unreasonable expenses, <u>not for administering the on-going Plan</u>, but for commissions and excessive legal fees generated by many third parties, including consultants to the Verizon/Prudential annuity transaction, thus, violating Section 8.5 and the terms of the Master Trust. Those unreasonable and excessive expenses and fees should have been charged to Verizon's operating revenues, not charged to the Plan and Master Trust.

109. Verizon EBC and VIMCO have each violated ERISA Section 404(a)(1), which provision, in part, mandates that fiduciaries discharge their "duties with respect to a plan solely in the interest of the participants and beneficiaries and– for (A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; . . . (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; . . . and (D) in accordance with the documents and instruments governing the plan. . ." 29 U.S.C. § 1104(a)(1).

110. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs ask this Court to grant appropriate class-wide equitable relief, including a declaration that the Verizon EBC and VIMCO each failed to comply with the restrictions and limitations imposed by ERISA Section 206 and IRS Section 436 on making accelerated benefit distributions, and each failed to meet and breached its statutory fiduciary duty under ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1), and grant Plaintiffs and putative class members temporary, preliminary and permanent injunctive and other appropriate equitable relief.

THIRD CLAIM FOR RELIEF
(ERISA Section 510 Claim Against Verizon, the Verizon EBC and VIMCO)

111. Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through **110**, inclusive, as if they were fully set forth herein.

112. ERISA Section 510, "Interference with Protected Rights," reads in pertinent part: "It shall be unlawful for any person to discharge, fine, suspend, *expel*, discipline, or *discriminate* against a participant or beneficiary. . . for the purpose of interfering with the attainment of any right to which such participant my become entitled under the plan, for exercising any right to which he is entitled to under the provisions of an employee benefit plan, this title or Welfare and Pension Plans Disclosure Act." (Emphasis added). 29 U.S.C. § 1140. The Fifth Circuit's own review of ERISA's legislative history "found nothing to suggest that Congress intended to

protect the pension and welfare benefits of active employees any more strenuously than that of retirees." *Heimann v. National Elevator Industry Pension Fund*, 187 F.3d 493, 508 (5th Cir. 1999). Instead, Congress's aim was to safeguard equally the rights of all participants.

113. By choosing to remove from the Plan the pensions of approximately 41,000 retirees and entering into the Verizon/Prudential annuity transaction without there being a standard termination of the Plan, Verizon, the Verizon EBC and VIMCO had the specific intent to violate ERISA, to discriminate against and expel Plaintiffs Lee, McPartlin and the putative class of retirees from ongoing participation in the Plan and interfere with retirees' rights and protections accorded by the terms of the Plan and ERISA.

114. This District Court holds that an employer should provide uniform treatment to participants in a retirement plan. However, the Verizon Defendants decided to carve out and save from being transferred to a Prudential annuity thousands of retirees in two group of participants. The benefits of former MCI employees and former union-represented Plan participants. Verizon Defendants had no legitimate business justification for giving these two groups of retirees preferential treatment and maintaining their favorable enrollment in the Plan. Verizon, the Verizon EBC and VIMCO have accordingly violated ERISA Section 510, 29 U.S.C. § 1140.

115. The Verizon Defendants were motivated by a desire to deprive Plaintiff Lee, McPartlin and other retirees of existing right to which they had and may become entitled. Among the Plan rights that the Verizon/Prudential annuity transaction interferes with are Plaintiff Lee's, McPartlin's and putative class members' rights to continued participation in the Plan until such time as their respective vested pension benefits are paid in full. The current SPD

for the Plan states, in pertinent part:

> ***When participation ends***
> You are a plan participant as long as you have a vested benefit [i.e. accrued] in the plan that has not been paid to you in full. (Emphasis in original). **(App. 19)**.

Clearly, the SPD reflects that, until all pension benefits are *paid to* the retiree, he or she will continue participating in the Plan. Without their consent and in violation of the Plan, Plaintiffs' and putative class members' rights to receive a full distribution of their respective vested pension benefits are being defeated.

116. On October 17, 2012, the Verizon Board of Directors passed a resolution expressing the Board's intent that, "after the annuity purchase, individuals who receive annuity certificates shall no longer be participants in or beneficiaries of the Plan under the Department of Labor's regulation at 29 C.F.R. § 2510.3-3(d)(2)(ii) with respect to their pension benefits, and the Plan shall have no further obligation to make any payment with respect to any pension benefit of a Designated Participant, including with respect to any survivor, alternate payee, beneficiary, or other person claiming by or through the Designated Participant." **(App. 55)**.

117. Verizon explains in a "Q&A" accompanying the letter mailed to affected pensioners regarding the Verizon/Prudential annuity transaction that, while their pension participation rights in the Plan are to be ended, "If you qualify for the Pensioner Death Benefit, your eligible beneficiaries will receive this benefit from the Verizon Management Pension Plan (subject to the terms of the Plan)." **(App. 257, ¶ 8)**. The transferred retirees are deemed to remain participants of the Plan with respect to their rights to the Pension Death Benefit. Nevertheless, the change to the transferred retirees' other rights was one that did not apply uniformly to all Plan participants and beneficiaries and, therefore, runs afoul of ERISA Section

510's prohibition on discrimination and expelling participants.

118. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs ask this Court to grant appropriate class-wide equitable relief, including a declaration that the conduct by Verizon, the Verizon EBC and VIMCO violates ERISA Section 510, 29 U.S.C. § 1410, and grant Plaintiffs and putative class members temporary, preliminary and permanent injunctive and other appropriate equitable relief.

FOURTH CLAIM FOR RELIEF
(ERISA Section 502(a)(2) Claim for Appropriate Equitable Relief Against Verizon EBC and VIMCO)

119. Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through **118**, inclusive, as if they were fully set forth herein.

120. Plaintiff Pundt asserts this claim under ERISA Section 502(a)(2) for the benefit of the Plan, seeking appropriate relief under ERISA Section 409.[14]

121. When the Verizon/Prudential annuity transaction was consummated, the Plan was less than 80% funded and the Verizon Defendants either ignored or flouted the restrictions and limitations imposed by ERISA Section 206 and IRS Section 436 on making accelerated benefit distributions, thereby harming the Plan by improperly causing it to fund the entire approximately $8.4 billion payment made to Prudential.

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[14] ERISA Section 409(a) states: Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title. 29 U.S.C. § 1109(a).

122. When the Verizon/Prudential annuity transaction was consummated, there were no excess or surplus Plan assets to be utilized in the transaction. Section 8.5 of the Plan required that Plan assets be used for the "exclusive benefit" of participants to "provide benefits under the terms of the Plan" and pay "reasonable expenses" of administering the Plan. (**App. 25**). However, the Verizon Defendants permitted the Plan to excessively pay Prudential approximately $1 billion more than was actually necessary to fully support the approximately $7.4 billion in liabilities that were transferred to Prudential. (Docket 32, Waldeck Declaration, p. 5 of 12, ¶ 20). The extra $1 billion payment was applied towards excessive and unreasonable expenses, not for administering the on-going Plan, but for commissions and excessive legal fees generated by many third parties, including consultants to the Verizon/Prudential annuity transaction, thus, violating Section 8.5 and the terms of the Master Trust. There was a breach of the general ERISA duty to use Plan monies to pay only reasonable expenses of Plan administration. Those unreasonable and excessive expenses and fees should have been charged to Verizon's operating revenues, not charged to the Plan and Master Trust. All losses to the Plan should be restored.

123. The Verizon Defendants have depleted the Plan and Master Trust of necessary funding, undermined and scaled back the Plan's and Master Trust's ability to generate much larger investment returns and, thereby, jeopardized the financial security of Plaintiff Pundt's and the remaining Plan participants' benefits. After the Verizon/Prudential annuity transaction was consummated, the Plan was left underfunded on an actuarial basis, insufficient to fully support all of the expected payments to Plaintiff Pundt and remaining Plan participants.

124. Upon information and belief, in order to minimize the cost of buying the

Prudential group annuity, the Verizon Defendants depleted the Plan's portfolio of fixed income securities (i.e., bonds and U.S. Treasuries) and private equity investments. (Docket 30, Nebens' Declaration, pp. 36-37 of 53, ¶ 7). In so doing, the Plan was left in a less stable financial condition and there was a breach of VIMCO's duty to maintain diversification of Plan assets and comply with the Plan's investment guidelines and asset allocation policies.

125. Plaintiff accordingly requests, pursuant to ERISA Sections 502(a)(2), appropriate equitable relief, including a declaration that VIMCO and Verizon EBC violated ERISA Section 409 and should be required to make the Plan whole. Plaintiff requests the Court grant equitable and remedial relief for the benefit of the Plan, including an order requiring reversal of any transfer of Plan assets by VIMCO from Verizon's master trust to Prudential and restoration of all losses to the Plan and Master Trust.[15]

CLASS ACTION ALLEGATIONS

126. **Class Definition**. Plaintiffs bring this action on behalf of two classes:

> Class No. One: All retirees, plan participants and their beneficiaries of the Verizon Management Pension Plan (approximately 41,000 persons) with respect to whom Verizon and Prudential reached agreement to have the retirees' pensions removed from the Plan and be issued annuities by The Prudential Insurance Company of America; and
>
> Class No. Two: All remaining Plan participants and beneficiaries not included in the group transferred to Prudential pursuant to the Verizon/Prudential annuity transaction that was consummated on December 10, 2012.

The putative classes are easily identifiable by both Verizon's business records and Prudential's

[15] The parties reasonably stipulated to the dismissal of Prudential with an agreement that Prudential could be reinstated as a party for purposes of challenging equitable relief ordered by the Court. (Docket 56, ¶¶ 4-5).

business records.

127. This action should be maintained as a class action under Federal Rule of Civil Procedure Rule 23, subsections (a), (b)(2), and (b)(3).

128. **Class Size**. The size of putative Class No. One is approximately 41,000 persons. The size of putative Class No. Two is over 50,000 persons. The putative classes are so numerous that joinder of all the members of the putative class is impractical.

129. **Questions of Law and Fact Common to the Class**. This suit poses questions of law and fact which are common to and affect the rights of all putative class members. The questions presented include, but are not limited to: (A) whether defendants have provided adequate disclosure of the possibility of a transaction such as the Verizon/Prudential annuity transaction, (B) whether the Verizon/Prudential annuity transaction violates the terms of the Plan, ERISA, accompanying regulations, Internal Revenue Code and accompanying regulations, (C) whether Plan administrators and fiduciaries violated their fiduciary duties under ERISA Section 404(a)(1), (D) whether certain parties to the Verizon/Prudential annuity transaction have violated ERISA Section 510, (E) whether Plaintiffs and other retired plan participants and their beneficiaries are entitled to declaratory and injunctive relief, pursuant to ERISA Section 502(a)(3), and the form and extent of the relief to which they should receive, and (F) whether Plaintiff Pundt and other Plan participants and their beneficiaries remaining in the Plan are entitled to declaratory and injunctive relief, on behalf of the Plan, pursuant to ERISA Section 502(a)(2), and the form and extent of the relief to which the Plan should receive.

130. **Typicality of the Claims of the Representatives**. Plaintiffs’ claims are typical of the claims of the putative classes as a whole.

131. **Adequacy of Representation**. Plaintiffs have no interest antagonistic to or in conflict with the interests of the putative classes. Indeed, Plaintiffs have the support of thousands of putative class members.

132. Plaintiffs' counsel are experienced and competent counsel who have served as class counsel in ERISA cases, collective actions and other complicated employment law cases successfully litigated and concluded.

133. Defendants' plan to involuntarily transfer Plaintiffs' and putative class members' pensions out of the Plan and place them outside ERISA and the federal uniform financial protection provided by the PBGC makes appropriate an award of temporary, preliminary and permanent injunctive, declaratory and other equitable plan-wide and class-wide relief.

134. Questions of law or fact common to the members of the two putative classes predominate over any questions affecting only individual participants and beneficiaries. The predominant questions in this litigation concern the rights of Plaintiffs and putative class members to receive injunctive, declaratory and equitable relief, and whether defendants should be required to provide Plaintiffs Lee, McPartlin and the putative class of retirees with an elective choice of either: (1) keeping his pension benefit in the Plan; (2) receiving a lump sum distribution of Plan pension benefits; or (3) selecting Prudential or some other issuer of an annuity equivalent to his or her existing Plan benefits. And there are predominant questions with respect to what relief should be provided to the Plan.

135. In this case, there are shared legal issues with no divergent factual predicates. In this case, the focus is entirely on the actions of defendants, not the actions of any Plaintiff or putative class member. The evidence of the defendants' common course of conduct will be used

to establish liability under ERISA. Likewise, evidence of Verizon EBC's and VIMCO's fiduciary status and will be common to Plaintiffs and both classes of putative class members.

136. A class action is superior to other available methods for the fair and efficient adjudication of this controversy and members of the putative class have little interest in individually controlling the prosecution of separate actions which would prove uneconomical.

137. In the interests of judicial efficiency, the claims arising out of this controversy should be consolidated in this putative class action before this Court.

138. No undue difficulties are anticipated to result from the prosecution of this proceeding as a class action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs William Lee, Joanne McPartlin and Edward Pundt, individually and on behalf of the putative classes, seek orders and judgments against Defendants as follows:

A. Order the claims in this action be maintained as a class action under Fed.R.Civ.P., Rule 23(a), (b)(2) and (b)(3), that Plaintiffs be appointed Class representatives, the undersigned counsel be appointed Class counsel, and require defendants at their expense to publish and mail notification of this action to all members of the putative classes;

B. Grant Plaintiffs and putative class members temporary, preliminary and permanent injunctive, declaratory and other equitable plan-wide relief requested and set forth within the claims in this action, including:

1. Pursuant to ERISA Sections 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), grant Plaintiffs and putative class members a declaration that the Verizon

EBC breached its ERISA fiduciary duty to make required disclosures in summary plan descriptions for the Plan, as required by ERISA Section 102(b), 29 U.S.C. § 1022(b) and DOL Regulation 29 C.F.R. Section 2520.102-3(*l*);

2. Pursuant to ERISA Sections 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), grant Plaintiffs and Class members a declaration that the Verizon EBC and VIMCO each breached its ERISA duty of loyalty and impartiality and, thus, failed to discharge duties to act in the best interests of Plaintiffs and the putative class members, as required by ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1);

3. Pursuant to ERISA Sections 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), grant Plaintiffs and putative class members a declaration that the Verizon EBC and VIMCO failed to act in compliance with the Plan's rules, the restrictions and requirements of ERISA and the Internal Revenue Code and, thus, violated ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1);

4. Pursuant to ERISA Sections 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), grant Plaintiffs Lee, McPartlin and putative class members appropriate equitable relief, including a declaration that while the Plan authorizes the plan sponsor to transfer "assets" or "liabilities", the Plan does not give either Verizon, the Verizon EBC or VIMCO license to expel retired persons with vested pension rights and to end Plaintiffs Lee's, McPartlin's and putative class members' continued pension participation in the on-going Plan;

5. Pursuant to ERISA Sections 502(a)(3), 29 U.S.C. §§ 1132(a)(3), grant Plaintiffs and putative class members a declaration that Verizon, the Verizon EBC and VIMCO have violated ERISA Section 510, 29 U.S.C. § 1140;

6. Pursuant to ERISA Sections 502(a)(3), 29 U.S.C. §§ 1132(a)(3), grant Plaintiffs and Class members appropriate equitable relief, including a declaration that the Verizon/Prudential annuity transaction is not in the best interests of the retirees, that Plaintiffs Lee, McPartlin and putative class members be given an elective choice of either: (1) returning his or her pension benefit to the Plan; (2) receiving a lump sum distribution of Plan pension benefits; or (3) selecting Prudential or some other issuer of an annuity equivalent to his or her existing Plan benefits.

7. Pursuant to ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), grant equitable and remedial relief for the benefit of the Plan, including an order requiring reversal of any transfer of Plan assets by VIMCO from Verizon's master trust to Prudential and restoration of all losses to the Plan and Master Trust, including those attributable to the use of Plan monies to pay unreasonable and excessive expenses;

8. Grant Plaintiffs and all putative class members such other and further class-wide and plan-wide relief requested within Counts One, Two, Three and Four, including appropriate equitable relief allowable under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), as the Court deems just and proper;

C. Order Defendants' officers, employees and agents not to retaliate against Plaintiffs and putative class members on the basis of the filing or prosecution of this action; and

D. Pursuant to ERISA Section 502(g)(1), 29 U.S.C. § 1132(g)(1), order Defendants to pay the reasonable value of Plaintiffs' interim and final attorney's fees for services performed, expert witness fees, accounting fees, necessary expenses of litigation, and costs of this action.

DATED this 25th day of January, 2013. Respectfully submitted,

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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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