

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**HERIBERTO CHAVEZ; EVANGELINA  
ESCARCEGA as the legal representative of her  
son Jose Escarcega; and JORGE MORENO,  
Plaintiffs,**

**-vs-**

**Case No. A-17-CA-659-SS**

**PLAN BENEFIT SERVICES, INC.; FRINGE  
INSURANCE BENEFITS, INC.; and FRINGE  
BENEFIT GROUP,  
Defendants.**

**FILED**  
**17 NOV -7 AM 9:11**  
**CLERK U.S. DISTRICT COURT**  
**WESTERN DISTRICT OF TEXAS**  
**BY AD CLERK**

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**ORDER**

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically “Defendants’ Motion to Dismiss [sic] and Brief in Support” [#27 filed October 6, 2017] and “Plaintiffs’ Opposition to Defendants’ Motion to Dismiss” [#33 filed October 27, 2017] and, thereafter, enters the following:

The pleading establish that the plaintiffs were at one time employees of Training Rehabilitation and Development Institute, Inc. (“TRDI”). TRDI established a health and welfare plan referred to as “TRDI H&W Plan” and executed an adoption plan with The Contractor’s Plan Trust (“CPT”). The adoption plan set out how the TRDI H&W Plan was to be administered, including the approval of a “stand alone employee pension plan within the meaning of ERISA § 3(2)(a), 29 U.S.C. § 1002(2)(A).” The CERT Master Plan acknowledges that TRDI serves as the TRDI retirement plan’s administrator and the retainer agreement sets forth all duties undertaken by the plan administrator, the employer, the record keeper, and the trustee.

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The plaintiffs sue alleging part time employment status but fail to specify the appropriate times they are alleging. Also, the plaintiffs fail to allege any specific damages other than their allegations of opinions and conclusions without specific fact allegations. The plaintiffs allege the defendants had excessive charges, which in the plaintiffs' and their counsels' opinions reduced the benefits to those employees. Again without factual allegations. The pleadings indicate that the TRDI H&W Plan established with the CPT has not existed for "over a year." The defendants allege "because plaintiffs are no longer participants in the TRDI Plans, [the plaintiffs] have no statutory standing to bring this ERISA action."

The defendants' authority exclusively comes from a contract between the employer TRDI, who contracts with the defendants through the TRDI H&W Plan. TRDI H&W Plan could at any time with or without cause cancel the contract with the defendants and apparently did so over a year prior to the filing of this lawsuit.

The plaintiffs seek to remedy non-described injuries other than alleged losses of the value of retirement payments and/or medical protection, apparently in the past and questionably in the future. There are no specific allegations of damages in these pleadings. The defendants allege the failure of establishing any "injury in fact" for any of the present plaintiffs, and it would appear, if a class action was established as requested by the plaintiffs in their pleadings, only theoretical damages would exist under them

Without any specific allegations of facts in detailed pleadings of excessive fees, breach of fiduciary obligations by having contract(s) with an alleged related company (and allegations of excessive fees but no specifics), the plaintiffs' pleadings are insufficiently specific to state any claim for benefits under ERISA whether or not the defendants were (as alleged by the plaintiffs) fiduciaries. Despite all of the opinions and speculation of plaintiffs' pleadings, it is clear throughout the

pleadings that TRDI, not the defendants in this case, had at all times the final authority and control over the administration of the contract under which the defendants worked. TRDI was the final authority and control over the services and prices provided by the defendants at all times under the performance of the contract.

It is alleged in the defendants' pleadings that TRDI executed a contract "acknowledging that PBS was not serving as a fiduciary to the Plan" and agreed to pay the fees identified in the schedule contained in the adoption agreement. Whether this is important or not, it is clear TRDI had the authority to stop the compensation, fees, and expenses associated with the plan charged or being charged by the defendants. The implications in the plaintiffs' complaint are opinions that charges (not identified) were excessive and certain transactions (not identified) breached alleged fiduciary duties (clearly not established in the pleadings) of defendants and related companies. There is no implication in the pleadings TRDI ever made these allegations before it terminated the contract with the defendants.

In sum, the plaintiffs' allegations in their complaint as well as in plaintiffs' opposition to defendants' Motion to Dismiss ring only with argumentative opinions and without any specific allegations of fact on standing of the name plaintiffs, any allegations of liability and or damages.

The defendants' Motion to Dismiss (not "Dismiss") is GRANTED, and the plaintiffs may file an amended complaint addressing the deficiencies in defendants' motion and specified in this order within twenty days from this date.

SIGNED this the 6<sup>th</sup> day of November 2017.

  
UNITED STATES DISTRICT JUDGE