



1 ERISA. *Id.* at 2. For the reasons below, the Court **GRANTS** Defendants’ Joint Motion for  
2 Judgment on the Pleadings. (Docket No. 47).

3 **I. Relevant Factual Background**

4 Taking the Amended Complaint’s well-pled facts as true, and drawing all reasonable  
5 inferences in favor of the non-movant/pleading parties, the facts are as follows: On November 7,  
6 1973, the International Longshoremen’s Association-PRSSA Welfare Plan (“the Welfare Plan”)  
7 was established through an Agreement and Declaration of Trust. (Docket Nos. 43 at ¶ 4.1; 45 at ¶  
8 4.1; and 46 at ¶ 4.1). The Welfare Plan is a multiemployer welfare benefit plan subject to ERISA,  
9 29 U.S.C. § 1001 *et seq.* (Docket No. 43 at ¶ 4.3). The Agreement and Declaration of Trust was  
10 formed and executed pursuant to a collective bargaining agreement between the International  
11 Longshoremen’s Association, AFL-CIO (“ILA”), members of Local 1575 International  
12 Longshoremen’s Association (“Local 1575”), and Horizon Lines, Inc. (“Horizon”). (Docket Nos.  
13 43 at ¶ 4.1; 47 at 3). The Welfare Plan was “irrevocable trust created pursuant to Section 302(c)  
14 of the Labor-Management Relations Act of 1947 and a multiemployer welfare plan as defined in  
15 ERISA,” which offered welfare and health benefits for eligible participants, dependents, and  
16 beneficiaries. (Docket Nos. 43 at ¶ 4.3; 45 at ¶ 4.3; and 46 at ¶ 4.3)

17 The Welfare Plan was overseen by six Trustees. Horizon named three Trustees on behalf  
18 of the contributing parties, while the ILA and Local 1575 (collectively the “Union”), named three  
19 additional Trustees. (Docket No. 43 at ¶ 4.8). As of March 31, 2015, Horizon was the sole  
20 employer contributor to the Welfare Plan. *Id.* at ¶ 4.12. At that time, the three Trustees appointed  
21 by Horizon were Defendant Mark R. Blankenship (“Defendant Blankenship”), Paul Hydock, and  
22 Héctor Rosario. The Trustees appointed by the Union were Defendant Franciso González,  
23 Defendant Ángel Febres-Alméstica, and Efraín Robles Albarrán. (Docket Nos. 43 at ¶ 4.14; 45 at  
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1 ¶ 4.14; 46 at ¶ 4.14). Defendants are the current remaining Trustees (Id. at ¶ 3.6) and are  
2 responsible for making determinations and decisions on behalf of the Welfare Plan. (Docket Nos.  
3 43 at ¶ 4.7; 47 at 3).

4 Matson Navigation Company, Inc. completed an asset purchase agreement with Horizon  
5 on May 29, 2015, acquiring Horizon’s liabilities and obligations for their Puerto Rico operations,  
6 including the duty to designate the Employer Trustee. (Docket No. 43 at ¶ 4.15). Local 1575 ceased  
7 to exist at the completion of the asset purchase agreement. Id. at ¶ 4.16. Once the asset purchase  
8 agreement was finalized and Local 1575 was dissolved, former members of Local 1575 formed  
9 Comité with the aim of preserving their interests. Id. On April 27, 2016, Efraín Robles Albarrán  
10 resigned from his position as trustee. Id. at ¶ 4.17. As Local 1575 no longer exists, the position left  
11 by Robles’s resignation has remained vacant. Id. at ¶ 4.17. Benefits ceased and termination of the  
12 Welfare Plan began on December 31, 2016. Id. at ¶ 4.7.

13 Individual plaintiffs Ramón Ojeda-Restro (“Plaintiff Ojeda”), Aníbal Rodríguez-Serrano  
14 (“Plaintiff Rodríguez”), and Nelson Cruz (“Plaintiff Cruz”), as former members of Local 1575,  
15 were participants of the Welfare Plan and are current members of Comité. Plaintiff Ojeda, Plaintiff  
16 Rodríguez, and Plaintiff Cruz worked for Horizon until March, 2015, when Horizon halted  
17 operations in Puerto Rico. (Docket No. 43 at ¶ 3.1) As members of the corporation Comité,  
18 Plaintiff Ojeda serves as treasurer, Plaintiff Rodríguez serves as secretary, while Plaintiff Cruz is  
19 a rank-and-file member. Id. Plaintiffs claim that Defendants have violated their management  
20 obligations while operating and winding down the Welfare Plan. Id. at ¶ 4.18.

21 **II. Standard of Review**

22 When considering a motion for judgment on the pleadings, Rule 12(c) of the Federal Rules  
23 of Civil Procedure states that “after the pleadings are closed—but early enough not to delay trial—a  
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1 party may move for judgment on the pleadings.” FED. R. CIV. P. 12(c). Courts must analyze a  
2 Rule 12(c) motion under the same standard as applied to Rule 12(b)(6) motions to dismiss.  
3 Marrero-Gutierrez v. Molina, 491 F.3d 1, 5 (1st Cir. 2007). The court analyzes the complaint in a  
4 two-step process under the current context-based “plausibility” standard established by the  
5 Supreme Court. See Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012)  
6 (citing Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 12 (1st Cir. 2011) which discusses  
7 Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)).  
8 First, the court must “isolate and ignore statements in the complaint that simply offer legal labels  
9 and conclusions or merely rehash cause-of-action elements.” Id. A complaint does not need  
10 detailed factual allegations, but “[t]hreadbare recitals of the elements of a cause of action,  
11 supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678-79. Second, the  
12 court must then “take the complaint’s well-pled (i.e., nonconclusory, non-speculative) facts as true,  
13 drawing all reasonable inferences in the pleader’s favor, and see if they plausibly narrate a claim  
14 for relief.” Schatz, 669 F.3d at 55. Plausible, means something more than merely possible, and  
15 gauging a pleaded situation’s plausibility is a context- specific job that compels the court to draw  
16 on its judicial experience and common sense. Id. (citing Iqbal, 556 U.S. at 678-79). This “simply  
17 calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of” the  
18 necessary element. Twombly, 550 U.S. at 556. “[W]here the well-pleaded facts do not permit the  
19 court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has  
20 not ‘show[n]’—that the pleader is entitled to relief.” Iqbal, 556 U.S. at 679 (quoting FED. R.  
21 CIV. P. 8(a)(2)). If, however, the “factual content, so taken, ‘allows the court to draw the  
22 reasonable inference that the defendant is liable for the misconduct alleged,’ the claim has facial  
23 plausibility.” Ocasio-Hernández, 640 F.3d at 12 (quoting Iqbal, 556 U.S. at 678).

1       **III.    Legal Analysis**

2           Defendants in their Joint Motion for Judgment on the Pleadings and Memorandum of Law  
3 in Support (Docket No. 47), contest that Plaintiffs fail to demonstrate an injury in fact, and  
4 consequentially do not possess Article III constitutional standing to bring this case. Additionally,  
5 Defendants aver that Plaintiffs’ allegations are so threadbare that they warrant dismissal of the  
6 complaint. Id. at 2. Defendants further propound that Comité does not enjoy statutory standing  
7 under ERISA. Id.

8           A) Standing

9           “The presence or absence of constitutional standing implicates a federal court’s subject-  
10 matter jurisdiction. When an issue implicates subject-matter jurisdiction, a federal court is obliged  
11 to resolve that issue even if the parties have neither briefed [n]or argued it.” Merrimon v. Unum  
12 Life Ins. Co, of Am., 758 F.3d 46, 52 (1st Cir. 2014). A case cannot be heard by a federal court in  
13 the absence of Article III constitutional standing, which proffers that a case and controversy is  
14 present and ripe when a plaintiff can demonstrate an injury, causation, and redressability. Id. An  
15 *injury in fact* exists when a plaintiff’s legally protected interest is intruded upon in a manner that  
16 is concrete and particularized or actual and imminent. Id. The threat must not be conjectural nor  
17 hypothetical. Id. at 52. A plaintiff must, in no vague terms, allege facts to establish such a harm.  
18 Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016).

19           A violation of ERISA’s fiduciary requirements does not by its nature open standing to all  
20 plan beneficiaries. ERISA establishes that fiduciaries must adhere to certain standards and allows  
21 beneficiaries to sue for fiduciaries’ failures to comply. See Merrimon, 758 F.3d at 53. Sections  
22 404(a)(1)(A) and (B), under which Plaintiffs bring forth this action, mandates that ERISA  
23 fiduciaries are to discharge their duties in the sole interest of plan participants and beneficiaries,  
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1 and with the diligence, care, prudence, and skill of a prudent person acting in a like capacity. 29  
2 U.S.C. §§ 404(a)(1)(A) and (B). ERISA beneficiaries have legally recognizable rights for plan  
3 fiduciaries to faithfully perform their duties. Merrimon, 758 F.3d at 53. However,

4 Congress' role in identifying and elevating intangible harms does not mean that a  
5 plaintiff automatically satisfies the injury-in-fact requirement whenever a statute  
6 grants a person a statutory right and purports to authorize that person to sue to  
vindicate that right. Article III standing requires a concrete injury even in the  
context of a statutory violation.

7 Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1542 (2016). A beneficiary must still demonstrate a  
8 tangible personal harm beyond the fiduciaries' violation(s). Merrimon, 758 F.3d at 53. Defendants  
9 propound that Plaintiffs have presented no such a harm/injury in their Amended Complaint.  
10 (Docket No. 47 at 1-2). The Court disagrees.

11 Plaintiffs' allegations, if proven, constitute a concrete injury beyond a statutory violation.  
12 Plaintiffs proffer that Defendants have operated the plan in "total obscurity, have refused to  
13 provide participants with copies of the full financial reports ... in spite of the repeated requests ...  
14 have modified the plan eligibility requirements without notifying the changes to the Welfare Fund  
15 participants ... as mandated by the 2000 Trust Agreement and ERISA." (Docket No. 43 at ¶ 4.19).  
16 Additionally, Plaintiffs contend that Defendants made "unauthorized and/or illegal disbursements"  
17 to a disbarred attorney who was acting as legal counsel for the Welfare Fund until 2017. Id.  
18 Furthermore, Plaintiffs state that Defendants have "incurred and continue to incur in excessive  
19 administrative expenses," significantly depleting the assets of the Welfare Fund in violation of the  
20 Trust Agreement under which it was founded and ERISA. Id. Ergo less money and benefits are  
21 available than would have been had the Welfare Plan been operated differently. (Docket No. 43 at  
22 ¶ 4.20; Docket No. 47 at 6). Such actions would demonstrate a tangible harm to Plaintiffs, even in  
23 the event that the actions did/do not result in a financial loss. See Merrimon, 759 F.3d at 53 ("They  
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1 contend that the insurer has wrongfully retained and misused their assets. If proven, this would  
2 constitute a tangible harm even if no economic loss results.”). As such, the Court finds Plaintiffs  
3 do possess Article III constitutional standing.

4 B) Failure to State a Claim

5 While the Court finds Plaintiffs do have standing, fatally, Plaintiffs do not provide  
6 sufficient facts to sustain a plausible claim for relief. Rather, the Amended Complaint presents  
7 threadbare allegations and legal conclusions. A complaint is not obliged to present “detailed  
8 factual allegations” to be valid. Ashcroft v. Iqbal, 556 U.S 662, 678 (2009). However, a complaint  
9 must not simply state mere ““naked assertion[s]’ devoid of ‘further factual enhancement.’” Id.  
10 Well pled facts are non-conclusory and non-speculative. Barchock v. CVS Health Corp., 886 F.3d  
11 43, 48 (1st Cir. 2018). “If a plaintiff’s allegations, taken as true, are insufficient to establish  
12 proximate causation, then the complaint must be dismissed; if they are sufficient, then the plaintiff  
13 is entitled to an opportunity to prove them.” Lexmark Int’l, Inc. v. Static Control Components,  
14 Inc., 572 U.S. 118, 134 n. 6 (2014); see also Iqbal, 556 at 678-679. Courts, however, are to provide  
15 “some latitude” in cases in which “a material part of the information” required is controlled by  
16 defendants. García-Catalán v. United States, 734 F.3d 100, 104 (1st Cir. 2013)(citing Menard v.  
17 CSX Transp. Inc., 698 F.3d 40, 45 (1st Cir. 2012). “At the pleading stage, the plaintiff need not  
18 demonstrate that she is likely to prevail, but her claim must suggest ‘more than a sheer possibility  
19 that a defendant has acted unlawfully.’” García-Catalán v. United States, 734 F.3d 100, 102-03  
20 (1st Cir. 2013)(citing Iqbal, 556 U.S. at 678). The principle that the Court must accept all  
21 allegations as true does not extend to legal conclusions. Iqbal, 556 U.S. at 680.

22 As stated above, section 404(a)(1)(A) and (B), outlines ERISA fiduciaries’ duties of loyalty  
23 and prudence. “Importantly, the Supreme Court has explained that the content of the duty of  
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1 prudence turns on the circumstances prevailing at the time [of] the fiduciary acts. Accordingly,  
2 with respect to whether a complaint states a claim of imprudence under ERISA, the appropriate  
3 inquiry will necessarily be *context specific*.” Barchock v. CVS Health Corp., 886 F.3d 43, 44 (1st  
4 Cir. 2018)(internal quotations marks and citations omitted; emphasis added)(citing Fifth Third  
5 Bancorp v. Dudenhoeffer, 134 S. Ct. 2459, 2471 (2014); 29 U.S.C. § 1104(a)(1)(B)). Whether a  
6 fiduciary is prudent is an evaluation of conduct as opposed to an evaluation of performance in  
7 hindsight. That is to say, “[t]he ‘test is how the fiduciary acted viewed from the perspective at the  
8 time of the challenged decision rather than from the vantage point in hindsight.’” Bunch v. W.R.  
9 Grace & Co., 55 F.3d 1, 7 (1st Cir. 2009) (quoting Roth v. Sawyer-Cleator Lumber Co., 16 F.3d  
10 915, 917-18 (8th Cir. 1994).

11 *I. Alleged Violations*

12 Plaintiffs’ Amended Complaint alleges that Defendant’s violated the duty of prudence and  
13 loyalty required under ERISA. (Docket No. 43 at ¶ 5.2). Specifically, they make five distinct  
14 allegations. Id. at ¶ 4.19- 4.20. Succinctly stated the allegations are as follows; (1) that the Welfare  
15 Fund has been operated and managed in “total obscurity,” and that Defendants have “refused to  
16 provide participants with copies of the full annual financial reports,” (2) Defendants have modified  
17 plan eligibility requirements without notifying participants, (3) that “unauthorized and/or illegal  
18 disbursements” have been made, (4) the purchase of health benefits to individuals who are  
19 ineligible, and (5) excessive administrative expenses and payments that Defendants “have made  
20 and/or contemplate to make,” all actions which Plaintiffs contend depleted the Welfare Fund.  
21 While this may satisfy Article III constitutional standing requirements, Plaintiffs’ allegations,  
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1 taken as true, are insufficient to establish proximate cause.<sup>1</sup> Plaintiffs' Amended Complaint lacks  
2 sufficient factual basis for all five alleged violations.

3 *a) Operating in Obscurity*

4 Plaintiffs claim that Defendants have operated and managed in "total obscurity," while  
5 "[refusing] to provide participants with copies of the full annual financial reports." (Docket No.  
6 43 at ¶ 4.19). Section 1024(b)(4) of ERISA makes available upon written request by a plan  
7 participant or beneficiary the latest annual reports, terminal reports, and summary plan  
8 descriptions. 29 U.S.C. § 1024(b)(4). Thus, Plaintiffs do have a right to access full annual financial  
9 reports if requested in writing, and the denial of access to such reports violates ERISA. However,  
10 Plaintiffs have failed to present any facts to support their assertion that Defendants are refusing to  
11 provide documents to which they are entitled to. Plaintiffs have not stated when they requested the  
12 full annual financial reports, how the requests were made, and whether the request was made in  
13 writing. All this information is within Plaintiffs' realm of knowledge and control. Without more  
14 facts, Plaintiffs are making bare assertions and conclusions that the plan is being managed in  
15 obscurity. A simple statement of a right (right to reports upon *written* request), and a claim that  
16 Defendants' violated said right, with no factual support, is not a well pled allegation under Iqbal.

17 *b) Modification in Plan Eligibility*

18 Plaintiffs state that Defendants "modified the plan eligibility requirements without  
19 notifying the changes to the Welfare Fund participants," (Docket No. 43 at ¶ 4.19) in violation of  
20 ERISA and the Welfare Plan. ERISA does provide plan participants a right to notice of changes in  
21 plan eligibility and benefits. 29 U.S.C. § 1024 (b)(1)(B). In fact, ERISA provides a strict time  
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23 <sup>1</sup> Proximate causation is not a requirement of constitutional standing, which requires only that the  
24 plaintiff's injury be fairly traceable to the defendant's conduct. Lexmark Int'l, Inc. v. Static Control  
Components, Inc., 134 S. Ct. 1377, 1391 n. 6 (2014)

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1 frame in which modifications of benefits must be reported to plan participants. In the case of a  
2 material reduction in coverage or change in benefits to a group health plan, a summary description  
3 of the modifications are to be provided to participants within 60 days. Id. For changes that are  
4 non-material, a summary description of the modifications are to be provided within “210 days after  
5 the end of the plan year in which the change is adopted.” Id.; see also Palino v. Casey, 664 F.2d  
6 854, 859 n. 7 (1st Cir. 1981). Under ERISA the timing of notification and nature of the  
7 modifications are crucial components.

8 In their discussion of plan modification, Plaintiffs do not specify which eligibility  
9 requirements/benefits have been altered, the nature of the modifications, nor when such  
10 modifications occurred. Plaintiffs simply state that changing the Welfare plan eligibility without  
11 notification would violate the trust agreement. They do not state how such modifications would  
12 violate the trust, nor do they direct the Court to any section of the trust which would prohibit such  
13 an action. Furthermore, the Welfare Plan itself provides Defendants with a wide latitude to operate  
14 and manage the plan:

15 The Trustees shall have the exclusive right, power, and authority, in their sole and  
16 absolute discretion to administer, apply, construe and interpret the provisions of the  
17 Agreement and Declaration of Trust ... The authority of the Trustees includes,  
18 without limitation, the sole and absolute discretion to:

- 17 (a) take all actions and make all decisions with respect to the eligibility for, and  
18 the amount of benefits payable.

18 (Docket No. 45-1 at 31). Absent more information as to how such modifications would violate the  
19 plan, or information regarding the date/nature of the alleged modifications, and Defendants’  
20 subsequent failure to timely inform, Plaintiffs are presenting a standalone legal conclusion that  
21 their right to notification has been infringed upon.

- 22 c) Unauthorized/illegal Disbursements  
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1 Plaintiffs allege unauthorized “and/or” unlawful payments made by Defendants. (Docket  
2 No. 43 at ¶ 4.19). As noted above, an attack of a fiduciary’s duty of prudence requires context.  
3 Barchock, 886 F.3d at 44. “The content of the duty of prudence turns on the circumstances  
4 prevailing at the time.” Id. Claims for a breach of fiduciary duty are to be brought

5 ... the earlier of--

- 6 (1) six years after (A) the date of the last action which constituted a part of  
7 the breach or violation, or (B) in the case of an omission, the latest date on  
8 which the fiduciary could have cured the breach or violation, or  
9 (2) three years after the earliest date on which the plaintiff had actual  
10 knowledge of the breach or violation ...

11 29 U.S.C.S § 1113; see also Watson v. Deaconess Waltham Hosp., 298 F.3d 102, 118 (1st Cir.  
12 2002). In the case that there is fraud or concealment the period to file is six years. 29 U.S.C.S §  
13 1113. Plaintiffs state that Defendants’ made illegal payments to an attorney who was disbarred in  
14 2013 and continued to serve as legal counsel until 2017. (Docket No. 43 at ¶ 4.19). Yet, as  
15 proffered by Defendants, Plaintiffs “do not (a) identify to *whom* such payments were made, (b)  
16 *when* the payments were made, or (c) *why* such payments were supposedly ‘unauthorized and/or  
17 illegal.’” (Docket No. 47 at 18). Furthermore, Plaintiffs make no claim that Defendants had  
18 knowledge of the attorney’s disbarment, nor do they make any mention as to when they discovered  
19 such payments were being made. Additionally, they make no accusation of fraud nor concealment.  
20 As alleged, such payments may be ones that Plaintiffs disagree with but ultimately do not violate  
21 the law. Beyond, any claims of illegality in relation to attorney payments may be time barred. An  
22 assertion that a payment was unauthorized “and/or” illegal without any further development is a  
23 classic legal conclusion.

24 d) Purchase of Health Benefits to Ineligible Individuals

Plaintiffs simply state that Defendants have purchased health benefits to individuals who  
are ineligible. However, they fail to present any facts to strengthen this allegation. Such as, how

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1 individuals who have received benefits are ineligible, who said individuals are, or what benefits  
2 are being provided. Such a claim alone is “a naked assertion devoid of further factual  
3 enhancement” Iqbal, 556 U.S. at 678 (internal citations removed). “When allegations, though  
4 disguised as factual, are so threadbare that they omit any meaningful factual content, we will treat  
5 them as what they are: naked conclusions.” A.G. v. Elsevier, Inc., 732 F.3d 77, 81 (1st Cir. 2013).

6 e) Possible Payments

7 Finally, the Court addresses Plaintiffs assertions regarding payments and withdrawals  
8 made by Defendants on behalf of/and from the Welfare Fund. Such claims go to the heart of the  
9 duty of prudence required by fiduciaries. 29 U.S.C. § 404(a)(1)(A). A fiduciary must adhere to the  
10 standard of diligence, care, prudence, and skill of a prudent person acting in a like capacity. Id.  
11 Thus, in order for once to violate their fiduciary duties they must deviate from how a prudent  
12 person would comport themselves.

13 Plaintiffs state that Defendants have incurred in “excessive administrative expenses.”  
14 (Docket No. 43 at ¶ 4.19). Plaintiffs claim that Defendants “have made and/or contemplate to  
15 make,” hefty and, by Plaintiffs’ implication, unnecessary payments, as well as a \$1.2 million  
16 withdrawal. Id. However, Plaintiffs present no information as to what the alleged excessive  
17 administrative expenses pertain to, how they exactly they are excessive, or how they deviate from  
18 standard administrative expenses. Furthermore, Plaintiffs fail to state whether the hefty payments  
19 and \$1.2 million withdrawal from the fund have even occurred. Unfortunately, without further  
20 elaboration, Plaintiffs’ contentions regarding such payments are not actionable. A simple statement  
21 that administrative expenses have been excessive is nothing more than a legal conclusion. Again,  
22 Plaintiffs present standalone legal conclusions.

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1 Plaintiffs' Amended Complaint presents threadbare allegations and legal conclusions that  
2 are lacking in factual support. While Plaintiffs contend that this action is such a case that the  
3 information required to form a well pled complaint is within Defendants' control, and thus they  
4 should be provided leniency (Docket No. 52 at ¶ 2.5), the Court disagrees. Plaintiffs at this  
5 moment, and at the time of filing their Complaint, have in their possession sufficient facts to form  
6 a well pled complaint. Plaintiffs should know full-well when they requested documents/when those  
7 requests were denied, the nature of the changes in plan eligibility, how payments were  
8 unauthorized and/or illegal, and why administrative expenses are excessive. Plaintiffs' Amended  
9 Complaint is too threadbare to pass the pleading stage as it currently stands. Plaintiffs' allegations  
10 merely state "a sheer possibility" that Defendants acted unlawfully and are little more than "the-  
11 defendant-unlawfully-harmed-me accusation[s]". Iqbal, 556 U.S. at 678. As such, the Court will  
12 not continue to delve into Defendants' subsequent claims regarding Comité's statutory standing.

13 **IV. Conclusion**

14 For the reasons stated above, Defendants' Joint Motion for Judgment on the Pleadings and  
15 Memorandum of Law in Support. (Docket No. 47) is **GRANTED**. Judgment shall be entered  
16 accordingly.

17 **SO ORDERED.**

18 In San Juan, Puerto Rico this 26th day of September, 2017.

19 *s/ Gustavo A. Gelpí*  
20 GUSTAVO A. GELPI  
21 United States District Judge  
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