

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

In re XEROX CORPORATION ERISA
LITIGATION

This Document Relates To:

All Actions

Master File No. 02-CV-1138 (AWT)

CLASS ACTION

_____, 2009

[PROPOSED] ORDER AND FINAL JUDGMENT

This matter came before the Court for a hearing on April 14, 2009, pursuant to Fed. R. Civ. P. 23(e) and the Order of this Court dated January 28, 2009 (the “Preliminary Approval Order”), on the application of the parties for approval of the Settlement set forth in the Settlement Agreement, executed on January 26, 2009, on behalf of the Parties and restated to incorporate clarifying amendments, as set forth in the Parties’ Stipulation and [Proposed] Order Regarding Clarifying Amendments To Settlement Agreement filed on March 24, 2009 (as so restated, the “Settlement Agreement”). Notice having been given to the Settlement Class as required in the Preliminary Approval Order, and the Court having considered the Settlement Agreement, all papers filed and proceedings held herein, and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement, a true and correct copy of which is attached hereto as Exhibit 1.

2. This Court has jurisdiction over the subject matter of this Action and over all parties to the Action, including all members of the Settlement Class.

3. The Court determines that Plaintiffs are asserting alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq. (“ERISA”), set forth in Plaintiffs’ Third Consolidated Amended Complaint dated July 1, 2008, with respect to The Xerox Corporation Savings Plan and The Savings Plan of Xerox Corporation and the Xerographic Division, UNITE HERE (Formerly “The Savings Plan of Xerox Corporation and the Xerographic Division, Union of Needletrades, Industrial and Textile Employees, A.F.L.-C.I.O.-C.L.C.”), together with their predecessors and successors, and any trust created under such plans (the “Plans”).

4. The Court determines that the Settlement has been negotiated vigorously and at arm’s length by the Parties, that the Settlement arises from a genuine controversy between the Parties and is not the result of collusion, nor was the Settlement procured by fraud or misrepresentation.

5. Pursuant to Fed. R. Civ. P. 23, the Court hereby approves and confirms the settlement embodied in the Settlement Agreement as being a fair, reasonable and adequate settlement and compromise of the Action, adopts the Settlement Agreement as its judgment, and orders that the Settlement Agreement shall be herewith effective, binding, and enforced according to its terms and conditions.

6. The Court finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the Settlement Class, in that:

- a. The Settlement Class is ascertainable from records kept with respect to the Plans and from other objective criteria, and the members of the Settlement

Class are so numerous that their joinder before the Court would be impracticable.

- b. There are one or more questions of fact and/or law common to the Settlement Class.
- c. The claims of the Named Plaintiffs are typical of the claims of the Settlement Class.
- d. The Named Plaintiffs will fairly and adequately protect the interest of the Settlement Class in that (i) the interests of Named Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class, (ii) there are no conflicts between or among the Named Plaintiffs and the Settlement Class, and (iii) the Named Plaintiffs and the members of the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions.
- e. The prosecution of separate actions by individual members of the Settlement Class would create a risk of (i) inconsistent or varying adjudications as to individual class members, that would establish incompatible standards of conduct for the parties opposing the claims asserted in the Action or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests.

7. Notice of the pendency of this action as a class action and of its proposed settlement has been provided and made in accordance with the Preliminary Approval Order and the Court finds as follows:

- a. such notices and the method by which they were provided to the Settlement Class were appropriate and reasonable;
- b. such notices included individual notice to all members of the Settlement Class who could be identified through reasonable efforts;
- c. such notices provided valid, due and sufficient notice of these proceedings and of the matters set forth therein, including the settlement described in the Settlement Agreement, and including information regarding the procedure for the making of objections by all persons to whom such notices were directed; and
- d. such notices fully satisfied the requirements of Fed. R. Civ. P. 23 and the requirements of due process.

8. The Court finds that the Plans' participation in the Settlement is on terms no less favorable than Plaintiffs and the Settlement Class and that the Plans do not have any additional Claims against any Released Party above and beyond the Released Claims (i) that are, were or could have been alleged, asserted, or set forth in the Complaint or (ii) that would be barred by principles of res judicata had the claims asserted in the Complaint been fully litigated and resulted in a Final judgment or order. The Court further finds that the Plans engaged an independent fiduciary to review the Settlement, and that such fiduciary has authorized the Plans to give the release provided for in the Settlement Agreement. Accordingly, the Court determines

that the negotiation and consummation of the Settlement by Named Plaintiffs on behalf of the Plans and the Settlement Class do not constitute “prohibited transactions” as defined by ERISA § 406(a) or (b), 29 U.S.C. § 1106(a) or (b). Further, the Court finds that, to the extent any of the transactions required by the Settlement constitute a transaction prohibited by ERISA § 406(a), 29 U.S.C. § 1106(a), such transactions satisfy the provisions of Prohibited Transaction Class Exemption 2003-39, 68 Fed. Reg. 75632 (2003).

9. The Court hereby certifies the Settlement Class for settlement purposes as a non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1), with the class being defined as follows:

all current and former participants and beneficiaries of the Plans for whose individual accounts the Plans purchased and/or held interests in the Xerox Stock Fund at any time during the period May 12, 1997 through and including June 28, 2002, excluding the Individual Defendants.

The Court finds that the Settlement Class is sufficiently well-defined and cohesive, and meets the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23.

10. Plaintiffs’ Counsel appointed by this Court as conditional Class Counsel in the Preliminary Approval Order, are hereby appointed class counsel pursuant to Fed R. Civ. P. 23 (g).

11. The Action is hereby dismissed as against all Defendants, with prejudice, each party to bear his, her or its own costs, except as provided herein, in the Settlement Agreement, or in a separate order entered by the Court.

12. As of the effective date of this judgment, each member of the Settlement Class, on their own behalf and on behalf of those who directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have Released Claims, and the Plans and their current and former fiduciaries, shall be deemed to have and shall have absolutely and

unconditionally released and forever discharged with prejudice the Released Parties from all Released Claims.

13. All members of the Settlement Class and the Plans are permanently barred and enjoined from the institution and prosecution, either directly or indirectly, of any other actions in any court asserting any and all Released Claims against any Released Party.

14. By operation of this judgment, each of the Defendants shall be deemed to have, and shall have, absolutely and unconditionally released and forever discharged the Plaintiff Releasees from any and all Claims relating to the institution or prosecution of the Action or the settlement of any Released Claims, except that the release described in this paragraph shall not include claims relating to the covenants or obligations set forth in this Settlement Agreement or in the Amended Consent Protective Order entered by the Court in this Action on August 1, 2006.

15. The Plan of Allocation attached hereto as Exhibit 2 is approved as fair and reasonable. The Court finds payments and distributions made in accordance with such Plan of Allocation to be “restorative payments” as defined in IRS Revenue Ruling 2002-45. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

16. Neither the Settlement Agreement nor the terms of the Settlement Agreement shall be offered or received into any Action or proceeding for any purposes, except: (a) in an action or proceeding arising under this Settlement Agreement or arising out of or relating to the Preliminary Approval Order or the Final Order; (b) in any action or proceeding where the Releases provided pursuant to this Settlement Agreement may serve as a bar to recovery; or (c) in any action or proceeding to determine the availability, scope, or extent of insurance coverage

(or reinsurance related to such coverage) for the sums expended for the settlement and defense of this Action.

17. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing and exclusive jurisdiction over: (a) implementation of the Settlement and any award or distribution of the Settlement Fund; (b) disposition of the Settlement Fund and implementation of the Plan of Allocation; (c) hearing and determining applications for attorneys' fees, costs, interest and reimbursement of expenses in the Action; and (d) all Parties hereto for the purpose of construing, enforcing and administering the Settlement.

18. In the event that the Settlement Agreement is terminated in accordance with its terms then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

19. Final Judgment shall be entered herein.

SO ORDERED this ___ day of _____ 2009.

Hon. Alvin W. Thompson, U.S.D.J.

EXHIBIT 1
TO
ORDER AND FINAL JUDGMENT

(CLASS ACTION SETTLEMENT AGREEMENT - RESTATED)

**CLASS ACTION SETTLEMENT AGREEMENT
(Restated)**

This CLASS ACTION SETTLEMENT AGREEMENT (“*Settlement Agreement*”) is entered into by and between *Named Plaintiffs* (as defined below) in the action titled In re Xerox Corporation ERISA Litigation, Civ. No. 3:02-CV-01138 (AWT) (D. Conn.) for themselves and on behalf of the *Settlement Class* (as defined below) and the *Plans* (as defined below), on the one hand, and the *Defendants* (as defined below) on the other, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

NOW, THEREFORE, without any admission or concession on the part of the *Named Plaintiffs* of any lack of merit of the action, and without any admission or concession on the part of *Defendants* as to the merit of the action, it is hereby STIPULATED AND AGREED, by and among the *Parties* (as defined below) to this *Settlement Agreement*, through their respective attorneys, subject to approval of the Court pursuant to the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the *Parties* hereto from the *Settlement Agreement*, that all *Released Claims* (as defined below) as against the *Released Parties* (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. Definitions.

As used in this *Settlement Agreement*, italicized and capitalized terms and phrases not otherwise defined herein have the meanings provided below:

1.1 “*Action*” shall mean: *In re Xerox Corporation ERISA Litigation*, Civ. No. 3:02-CV-01138 (AWT), United States District Court for the District of Connecticut, and any and all cases now or hereafter consolidated therewith.

1.2 “*Agreement Execution Date*” shall mean: the date on which this *Settlement Agreement* is fully executed, as provided in Section 12.11 below.

1.3 “*Other Appointed Counsel*” shall mean: McTigue & Porter LLP, Stember Feinstein Doyle & Payne, LLC, Barroway Topaz Kessler Meltzer Check, LLP, Berger & Montague, P.C., Law Offices of Daniel M. Harris, and Goodman Rosenthal & McKenna PC. and their predecessors and *Successors-In-Interest*.

1.4 “*Claims*” shall have the meaning set forth in Section 3.2.

1.5 “*Class Notice*” shall mean: the forms of notice appended as Exhibits 2 and 3 to the form of Preliminary Approval Order, attached hereto as Exhibit A.

1.6 “*Class Period*” shall mean: May 12, 1997 through and including June 28, 2002.

1.7 “*Co-Lead Counsel*” shall mean: Lynn Sarko, Keller Rohrback L.L.P. and Charles R. Watkins, Futterman Howard Watkins Wylie & Ashley, Chtd. (previously of Susman & Watkins and Susman, Watkins & Wylie).

1.8 “*Company*” or “*Xerox*” shall mean: Xerox Corporation, each of *Xerox*’s predecessors and *Successors-In-Interest*; any *Person* that controls, is controlled by, or is under common control with *Xerox*; any of its direct and indirect parents and subsidiaries, and any company whose employees participated in either of the *Plans*. For the purposes of this *Settlement Agreement* only, one company “controls” another company if (i) the former company, directly or indirectly, or acting through one or more other persons owns, has owned, or has or had the power to vote more than 50 percent of any class of voting securities of the latter company; or (ii) the former company has or had the right to determine in any manner the election of a majority of the directors or trustees of the latter company.

1.9 “*Complaint*” shall mean: the Third Consolidated Amended Complaint in the *Action*, filed July 1, 2008.

1.10 “*Court*” shall mean: the United States District Court for the District of Connecticut.

1.11 “*Defendants*” shall mean the following persons and/or entities: Lawrence Becker, Sally Conkright, Patricia M. Nazemetz, Arlyn B. Kaster, Myra R. Drucker, Kathleen Russell, William Strusz, Lance Davis, Gregory B. Tayler, Christina Clayton, Gary Kabureck, Lawrence Zimmerman, Paul A. Allaire, Anne M. Mulcahy, William F. Buehler, Barry D. Romeril, B.R. Inman, Vernon E. Jordan, Jr., Hilmar Kopper, George J. Mitchell, N.J. Nicholas, Jr., Patricia F. Russo, Martha R. Seger, Thomas C. Theobald, G. Richard Thoman, Barbara D. Roscoe as beneficiary of property passing pursuant to the Last Will and Testament of William C. Roscoe, dated December 30, 2005, Henry Charles Filter, III, as beneficiary of property passing pursuant to the Will of Eunice M. Filter dated February 25, 2002 to the Eunice M. Filter Revocable Trust dated February 25, 2002, Henry Charles Filter, III, and John Musicaro, Jr., as Trustees of the Trust for the benefit of Henry Charles Filter, III and his descendants under Article II of the Eunice M. Filter Insurance Trust under Agreement dated January 19, 1995, as beneficiary of property passing pursuant to the Will of Eunice M. Filter dated February 25, 2002 to the Eunice M. Filter Revocable Trust dated February 25, 2002, c/o John Musicaro, Jr., Cummings & Lockwood LLC, Six Landmark Square, Stamford, CT 06901, and Jerry W. Hostetter and John Musicaro, Jr. as Trustees of the Marital Trust under Article IV of the Eunice M. Filter Revocable Trust dated February 25, 2002, as beneficiary of property passing pursuant to the Will of Eunice M. Filter dated February 25, 2002 to the Eunice M. Filter Revocable Trust dated February 25, 2002, c/o John Musicaro, Jr., Cummings & Lockwood LLC, Six Landmark Square, Stamford, CT 06901 (collectively, the “*Individual Defendants*”), and *Xerox*.

1.12 “*ERISA*” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder, and court decisions interpreting such Act or regulations.

1.13 “*Fairness Hearing*” shall have the meaning set forth in Section 2.2.4.

1.14 “*Final*” shall mean: with respect to any judicial ruling or order, that the period for any appeals, petitions, motions for reconsideration, rehearing, or *certiorari* or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a *Review Proceeding*, or, if a *Review Proceeding* has been timely initiated, that there has occurred a full and final disposition of any such *Review Proceeding* without a reversal or any material modification, including the exhaustion of proceedings in any remand and/or subsequent appeal after remand.

1.15 “*Financial Institution*” shall have the meaning set forth in Section 7.1.1.

1.16 “*Independent Fiduciary*” shall mean the *Person* retained for the purposes set forth in Section 2.4.

1.17 “*Judgment*” shall have the meaning set forth in Section 2.2.4. A proposed form of the *Judgment* is attached hereto as Exhibit B.

1.18 “*Named Plaintiffs*” shall mean: Plaintiffs David Alliet, Linda Willis, Cheryl Wright and Thomas Patti.

1.19 “*Parties*” shall mean: the *Plaintiffs* and the *Defendants*.

1.20 “*Person*” shall mean: an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.21 “*Plaintiffs*” shall mean: *Named Plaintiffs* and each member of the *Settlement Class*.

1.22 “*Plaintiff Releasees*” shall have the meaning set forth in Section 3.3.

1.23 “*Plans*” shall mean: The Xerox Corporation Savings Plan and The Savings Plan of Xerox Corporation and the Xerographic Division, UNITE HERE (Formerly “The Savings Plan of Xerox Corporation and the Xerographic Division, Union of Needletrades, Industrial and Textile Employees, A.F.L.-C.I.O.-C.L.C.”), together with their predecessors and successors, and any trust created under such plans.

1.24 “*Plan of Allocation*” shall mean: the plan of allocation approved by the Court. Attached as Exhibit C hereto is the form of plan of allocation that will be submitted to the Court for approval.

1.25 “*Preliminary Approval Order*” shall have the meaning set forth in Section 2.2.1.

1.26 “*Preliminary Motion*” shall have the meaning set forth in Section 2.2.1.

1.27 “*Released Claims*” shall have the meaning set forth in Section 3.2.

1.28 “*Released Parties*” shall mean: the *Defendants*, the *Plans*, every *Person* who, at any time during or after the Class Period, was a director, officer, employee or agent of the *Company* or a trustee or fiduciary other than any *Independent Fiduciary* of either or both of the *Plans*, together with, for each of the foregoing, any predecessors, *Successors-In-Interest*, present and former *Representatives*, direct or indirect parents and subsidiaries, insurers and any *Person* that controls, is controlled by, or is under common control with any of the foregoing.

1.29 “*Releases*” shall mean the releases set forth in Article 3.

1.30 “*Representatives*” shall mean: attorneys, agents, directors, officers, and employees.

1.31 “*Securities Actions*” shall mean: *Carlson v. Xerox Corporation*, Case No. 3:00-CV-1621 (AWT) (D. Conn.), *In re: Xerox Securities Litig.*, 3:99-CV-02374 (AWT) (D. Conn.), and any and all cases now or hereafter consolidated therewith, and the SEC Fair Fund. *Securities Actions* shall not include the *Action*.

1.32 “*Settlement*” shall mean: the settlement to be consummated under this *Settlement Agreement*.

1.33 “*Settlement Administrator*” shall mean: the *Person* who is so appointed pursuant to the *Preliminary Approval Order* and who is responsible for calculating, implementing, and overseeing the *Plan of Allocation*.

1.34 “*Settlement Class*” shall mean: all current and former participants and beneficiaries of the *Plans* for whose individual accounts the *Plans* purchased and/or held interests in the Xerox Stock Fund at any time during the period May 12, 1997 through and including June 28, 2002, excluding the *Individual Defendants*.

1.35 “*Settlement Fund*” shall have the meaning set forth in Section 7.1.

1.36 “*Successor-In-Interest*” shall mean: a *Person*’s estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

2. Implementation of the Settlement.

This *Settlement* shall be implemented in accordance with the provisions of this Settlement Agreement including Section 2 hereof, and, subject to the provisions of Section 10 hereof, shall be final when the conditions specified in Section 2 have been satisfied or waived.

2.1 Class Certification. The *Court* shall have certified this *Action* as a class action for settlement purposes only pursuant to Rule 23(a)(1)-(4), 23(b)(1)(A) and/or (B) and 23(e) of the Federal Rules of Civil Procedure, and with a *Settlement Class* defined as set forth in Section 1.34 above as a non-opt-out class. The Parties stipulate to certification of the *Settlement Class* for purposes of this *Settlement* only. The *Parties* agree that if the *Court* does not enter the

Judgment, or if the *Judgment* does not become *Final*, no *Settlement Class* will be deemed to have been certified by or as a result of this *Settlement Agreement*, and the *Action* will for all purposes with respect to the *Parties* revert to its status as of December 15, 2008. In such event the *Defendants* will not be deemed to have consented to the certification of any class, the agreements and stipulations in this *Settlement Agreement* concerning class definition or class certification shall not be used as evidence or argument to support class certification or class definition, and the *Defendants* will retain all rights to oppose class certification.

2.2 Court Approval. The *Settlement* shall have been approved by the *Court*, as provided for in this Section 2.2. *Co-Lead Counsel* shall move the *Court* for an order and judgment approving this *Settlement Agreement* and the *Settlement* contemplated hereunder in the form of the *Judgment* attached as Exhibit B hereto. The *Named Plaintiffs* shall recommend to the *Court* that such order and judgment be entered; the *Defendants* will not object to such recommendation; and the *Parties* shall cooperate in good faith, including taking all steps and efforts contemplated by this *Settlement Agreement* and any other steps or efforts that may become necessary by order of the *Court* (unless such order materially modifies the terms of this *Settlement Agreement*), to carry out this *Settlement Agreement*, including the following:

2.2.1 Motion for Preliminary Approval of Settlement and of Notice. As soon as reasonably possible upon the full execution of this *Settlement Agreement* by the *Parties*, *Named Plaintiffs* will file a motion or other appropriate document(s) as directed by the *Court* (“*Preliminary Motion*”) with the *Court* for an order substantially in the form annexed hereto as Exhibit A, including the exhibits thereto (the “*Preliminary Approval Order*”). The *Parties* waive oral argument on the *Preliminary Motion*.

2.2.2 Request by Court, Named Plaintiffs, or Defendants for Information. If the *Court* requests or orders *Named Plaintiffs* or *Defendants* to supply non-privileged information in their possession as part of the *Court*’s review of the *Settlement Agreement*, the *Named Plaintiffs* and *Defendants* agree to promptly provide such information. If *Named Plaintiffs* deem it necessary for the *Defendants* to supply non-privileged information in their possession, and not otherwise available to the *Named Plaintiffs*, in order to respond to any timely filed objection or *Court* request/order, the *Defendants* agree to promptly provide such non-privileged information that has been reasonably requested, which shall be treated as Confidential under the Amended Consent Protective Order entered by the *Court* in this *Action* on August 1, 2006. If *Defendants* deem it necessary for the *Named Plaintiffs* to supply non-privileged information in their possession in order to respond to any inquiry from the *Independent Fiduciary* or the Department of Labor, the *Named Plaintiffs* agree to promptly provide such non-privileged information that has been reasonably requested, which shall be treated as Confidential under the Amended Consent Protective Order entered by the *Court* in this *Action* on August 1, 2006.

2.2.3 Issuance of Class Notice. On the date and in the manner set by the *Court* in its *Preliminary Approval Order*, the *Plaintiffs* shall cause the *Class Notice* to be transmitted in the form and manner approved by the *Court* as directed in the *Preliminary Approval Order*. The *Parties* agree, and the form of *Preliminary Approval Order* shall provide, that the last known addresses for the *Plaintiffs* in the possession of the *Plans*’ current record-keeper will suffice for

all purposes in connection with this *Settlement* and the *Plan of Allocation*, including, without limitation, the mailing of the *Class Notice*.

2.2.4 The Fairness Hearing. On or after the date set by the *Court* for the hearing (the “*Fairness Hearing*”) the *Court* will determine: (i) whether to enter judgment finally approving the *Settlement* (which judgment is referred to herein as the “*Judgment*”); and (ii) the amount of legal fees, compensation, and expenses to be awarded to *Co-Lead Counsel* and *Other Appointed Counsel*, and to the *Named Plaintiffs* as provided in Section 11 of this *Settlement Agreement*.

2.3 Finality of Judgment. The *Court* shall have entered the *Judgment* substantially in the form attached as Exhibit B hereto, as more fully discussed in Section 2.2, and the *Judgment* shall have become *Final*.

2.4 Settlement Authorized by Independent Fiduciary. At least fifteen (15) days prior to the *Fairness Hearing*, an *Independent Fiduciary* chosen by the *Company*, who shall acknowledge in writing that it is a fiduciary on behalf of the *Plans* with respect to the settlement of this *Action*, shall have approved and authorized in writing the *Settlement* in accordance with Prohibited Transaction Class Exemption 2003-39. If the *Independent Fiduciary* disapproves or otherwise does not authorize the *Settlement*, the *Defendants* shall have the option to waive this condition. Such option is to be exercised in writing within the earlier of (i) ten (10) days of the *Defendants*’ receipt of the *Independent Fiduciary*’s written determination, or (ii) three (3) days prior to the date set for the *Fairness Hearing*. If the *Defendants* elect in writing to waive this condition, the *Settlement* shall become *Final* if all other conditions in Section 2 are satisfied. If the *Defendants* elect not to waive this condition, the *Settlement Agreement* shall terminate and become null and void and the provisions of Section 10.2 shall apply.

2.5 Assurances From the Department of Labor. *Defendants* may discuss this *Settlement* and the subject matter of this *Action* with the Department of Labor. If the *Defendants* discuss the *Settlement* or the subject matter of this *Action* with the Department of Labor and the *Defendants* fail to obtain reasonable assurance from the Department of Labor that it will not object to this *Settlement* or institute suit or an administrative proceeding against any *Defendant* at least twenty-five (25) days prior to the *Fairness Hearing*, and if *Xerox*, in its sole discretion, fails to waive this condition, then, upon *Xerox* notifying *Named Plaintiffs* in writing that this condition has failed, the *Settlement Agreement* shall terminate and become null and void and the provisions of Section 10.2 shall apply; provided that this reasonable assurance may be contingent on this *Settlement* becoming *Final*.

2.6 Agreement With Settlement Administrator. Prior to the entry of the *Preliminary Approval Order*, there shall be negotiated with the putative *Settlement Administrator* the form of agreement, acceptable to *Named Plaintiffs* and *Xerox* in their respective reasonable discretion, under which the *Settlement Administrator* will, subject to its appointment in the *Preliminary Approval Order*, perform the functions set forth in this *Settlement Agreement* relating to implementation of the *Plan of Allocation*. If such form of agreement is not reached prior to entry of the *Preliminary Approval Order*, then each of *Named Plaintiffs* and *Xerox* shall have the right to terminate this *Settlement Agreement* by written notice to the other, in which event the

Settlement Agreement shall terminate and become null and void and the provisions of Section 10.2 shall apply.

3. Releases.

3.1 Releases of the Released Parties. Subject to Section 10 hereof, and the *Class Settlement Amount* stated in Paragraph 7.2 hereof having been deposited by *Defendants* into the *Settlement Fund*, effective upon the entry of the *Judgment* by the *Court*, *Named Plaintiffs* on behalf of themselves and on behalf of the *Settlement Class* and the *Plans* absolutely and unconditionally release and forever discharge with prejudice the *Released Parties* from *Released Claims* that the *Plans*, the *Plaintiffs*, the *Settlement Class* or *Named Plaintiffs* directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have, except that the release under this Section 3.1 shall not include claims relating to the covenants or obligations set forth in this *Settlement Agreement*. Also effective upon entry of the *Judgment* by the *Court*, the *Plans*, the *Plans*' fiduciaries, the *Named Plaintiffs* and all other members of the *Settlement Class* shall be permanently and finally enjoined without the necessity of posting a bond from commencing or prosecuting any actions or other proceedings asserting any of the *Released Claims* either directly, indirectly, derivatively, or in any other capacity, against any of the *Released Parties*.

3.2 Released Claims. Subject to Section 3.4 below, the *Released Claims* shall be: any and all claims of any nature whatsoever under ERISA arising during the Class Period (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), whether accrued or not, whether known, unknown, or unsuspected, in law or equity, as well as any claim or right obtained by assignment, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim or otherwise, in any court or other tribunal, arising out of or in any way related to, directly or indirectly, any or all of the acts, omissions, facts, matters, transactions or occurrences (collectively, "*Claims*"), (i) that are, were or could have been alleged, asserted, or set forth in the *Complaint* or (ii) that would be barred by principles of *res judicata* had the claims asserted in the *Complaint* been fully litigated and resulted in a *Final* judgment or order. With respect to the *Released Claims*, it is the intention of the *Parties* and of the *Plans*, the *Named Plaintiffs* and all other members of the *Settlement Class* expressly to waive to the fullest extent of the law: (a) the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides that "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor"; and (b) the provisions, rights and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable. The *Released Claims* do not include any ERISA Section 502(a)(1)(B) claim for vested benefits by any *Plaintiff* where such claims are unrelated to any matter asserted in this *Action*.

3.3 Defendants' Releases of Named Plaintiffs, the Settlement Class and Co-Lead and Other Appointed Counsel. Subject to Section 10 hereof, effective upon the entry of the *Judgment* by the *Court*, the *Defendants* absolutely and unconditionally release and forever discharge with prejudice the *Named Plaintiffs*, the *Settlement Class*, *Co-Lead Counsel*, *Other*

Appointed Counsel, Dalton Gotto Samson & Kilgard PLC and Susman, Heffner & Hurst, LLP, and their and *Co-Lead Counsel* and *Other Appointed Counsel*'s current and former members, partners, partnerships, professional corporations and firms, and their respective shareholders, partners, officers, directors, associates, agents, employees, consultants, Of Counsels, experts, vendors, predecessors (including all firms with which any *Person* currently employed or affiliated with *Co-Lead Counsel* or *Other Appointed Counsel* was employed or affiliated during the pendency of the *Action*, and the current and former members, partners, partnerships, shareholders, partners, officers, directors, associates, agents, employees, consultants, and Of Counsels of such firms), successors and assigns (collectively, the "*Plaintiff Releasees*"), from any and all *Claims* relating to the institution or prosecution of the *Action* or the settlement of any *Released Claims*, except that the release under this Section 3.3 shall not include claims relating to the covenants or obligations set forth in this *Settlement Agreement* or in the Amended Consent Protective Order entered by the *Court* in this *Action* on August 1, 2006.

3.4 Claims Not Affected. Nothing in this *Settlement Agreement* shall affect the settlement and release of claims in the *Securities Actions*, or bar, waive or otherwise affect any *Claim* that has been or could be asserted under state or federal securities laws by the *Plans* and/or any member of the *Settlement Class* in the *Securities Actions*.

4. Covenants.

The *Parties* covenant and agree as follows:

4.1 Taxation of Class Settlement Amount. The *Released Parties* shall have no responsibility for any taxes due with respect to funds deposited in, income earned on or funds distributed from the *Settlement Fund*, including funds that the *Plaintiffs* or *Co-Lead Counsel* or *Other Appointed Counsel* receive from the *Class Settlement Amount*.

4.2 Cooperation. The *Company* shall cooperate with *Co-Lead Counsel* by providing, in electronic format, the names and addresses of *Persons* to whom the *Class Notice* is to be sent pursuant to the *Preliminary Approval Order*, in accordance with Section 2.2.3. *Plaintiffs* shall use any information provided by the *Company* pursuant to the preceding sentence solely for the purpose of providing notice in this *Action* and for no other purpose. The *Parties* shall reasonably cooperate with each other to effectuate this *Settlement*, and shall not do anything or take any position inconsistent with obtaining a prompt *Judgment* approving the *Settlement* unless expressly permitted by this *Settlement Agreement*.

4.3 Covenant Not to Sue. Subject to Section 10 hereof, *Plaintiffs* covenant and agree on their own behalf, and on behalf of the *Settlement Class* and the *Plans*: (i) not to file against any *Released Party* any *Claim* based on, related to, or arising from any *Released Claim*; and (ii) that the foregoing covenants, agreements and releases shall be a complete defense to any such *Claims* against any of the respective *Released Parties*.

4.4 Confidentiality. Except as otherwise provided by law or as may result in the ordinary course from submission of the *Settlement* to the *Court* pursuant to Section 2.2.1 hereof, the *Parties* agree that the *Settlement* shall remain confidential until the *Company* publicly

announces the *Settlement*. *Co-Lead Counsel* and *Other Appointed Counsel* agree to refrain from publishing, releasing, or otherwise publicly communicating any terms of the *Settlement* in advance of the public announcement of the *Settlement* by the *Company* without the prior approval of the *Company* acting on behalf of *Defendants*. *Defendants* retain the right to disclose the existence and terms of this *Settlement* to their external auditors and insurers at any time. *Named Plaintiffs*, on the one hand, and *Defendants*, on the other, further agree that they shall not disparage the other in any public statements regarding the *Action*, the *Settlement*, or the facts the subject matter of the *Action*. As used herein, “public statement” means any statement made in the press, broadcast, cable, or electronic media, or otherwise made in a manner designed to make the statement available to the public generally.

5. Representations and Warranties.

5.1 *Named Plaintiffs’ Representations and Warranties.*

5.1.1 *Named Plaintiffs* represent and warrant that they have not assigned or otherwise transferred any interest in any *Released Claims* against any *Released Party*, and further covenant that they will not assign or otherwise transfer any interest in any *Released Claims*; and

5.1.2 Pursuant to Sections 3 and 4, *Named Plaintiffs* represent and warrant that upon this *Settlement* becoming final, they shall have no *Released Claims* against any of the *Released Parties*.

5.2 *Parties’ Representations and Warranties.* The *Parties*, and each of them, represent and warrant as follows, each acknowledging that each is relying on these representations and warranties in entering into this *Settlement Agreement*:

5.2.1 That they have conducted voluminous discovery and have diligently prepared for trial pursuant to the *Court’s* orders; that they are voluntarily entering into this *Settlement Agreement* as a result of arm’s-length negotiations among their counsel, with the assistance of an experienced mediator; that in executing this *Settlement Agreement* they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as otherwise explicitly set forth in this *Settlement Agreement*, they have not been influenced to any extent whatsoever in executing this *Settlement Agreement* by any representations, statements, or omissions pertaining to any of the foregoing matters by any *Party* or by any *Person* representing any *Party* to this *Settlement Agreement*. Each *Party* assumes the risk of mistake as to facts or law, except for the express representations and warranties set forth in this *Settlement Agreement*.

5.2.2 That they have carefully read the contents of this *Settlement Agreement*, and this *Settlement Agreement* is signed freely by each *Person* executing this *Settlement Agreement* on behalf of each of the *Parties*. The *Parties*, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to the

Settlement, this *Settlement Agreement*, and all of the matters pertaining thereto, as he, she, or it deems necessary.

5.2.3 That in entering into this *Settlement Agreement*, the *Plaintiffs* have not relied on any representations or arguments by the *Defendants* that a class can, could, or should be certified for any purpose; that the *Plaintiffs* would not be prejudiced if (i) this *Settlement* were not approved or such approval were reversed on appeal and (ii) the *Defendants* were later to object to the certification of any proposed class in this action; and that in the event that this *Settlement* does not become *Final*, the *Plaintiffs* will not assert that the *Defendants* are equitably or judicially estopped from contesting the certification of any class in this *Action*.

5.3 Signatories' Representations and Warranties. Each *Person* executing this *Settlement Agreement* on behalf of any other *Person* does hereby personally represent and warrant to the other *Parties* that he or she has the authority to execute this *Settlement Agreement* on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

6. No Admission of Liability.

The *Parties* understand and agree that this *Settlement Agreement* embodies a compromise settlement of disputed claims, and that nothing in this *Settlement Agreement*, including the furnishing of consideration for this *Settlement Agreement*, shall be deemed to constitute any finding of fiduciary status under *ERISA* or wrongdoing by any of the *Defendants*, or give rise to any inference of fiduciary status under *ERISA* or wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This *Settlement Agreement* and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. The *Defendants* specifically deny any such liability or wrongdoing and state that they are entering into this *Settlement Agreement* to eliminate the burden and expense of further litigation. Further, the *Named Plaintiffs*, while believing that all *Claims* brought in the *Action* have merit, have concluded that the terms of this *Settlement Agreement* are fair, reasonable and more than adequate to the *Plans*, themselves and members of the *Settlement Class* given, among other things, the inherent risks, difficulties and delays in complex *ERISA* litigation such as this. Neither the fact nor the terms of this *Settlement Agreement* shall be used or offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this *Settlement Agreement* or arising out of or relating to the *Judgment*.

7. The Settlement Fund; Deliveries into the Settlement Fund.

7.1 The Settlement Fund.

7.1.1 Within five (5) days after the *Agreement Execution Date*, *Co-Lead Counsel* shall establish at a federally-insured financial institution (the "*Financial Institution*") identified to and reasonably agreed on by counsel for *Xerox*, a settlement fund account (the "*Settlement Fund*") which, along with net earnings thereon, shall be considered a common fund created as a result of the *Action*. Each *Co-Lead Counsel* firm and counsel for *Xerox* shall

designate at least one person with signature authority over this account (the “*Signers*”), and shall direct the *Financial Institution* to make distributions from the *Settlement Fund* only in accordance with this *Settlement Agreement* upon written direction from each *Signer*; provided that the *Parties* agree that upon the *Judgment* becoming *Final*, the *Signers* will notify the *Financial Institution* that written direction from counsel for *Xerox* shall no longer be required. For the avoidance of doubt, the *Financial Institution* shall be instructed that, absent a *Court* order, no funds are to be paid or withdrawn from the *Settlement Fund* except pursuant to Section 8 of this *Settlement Agreement* (and the Sections of this *Settlement Agreement* explicitly cross-referenced therein) or, upon termination of this *Settlement Agreement*, pursuant to Section 10 of this *Settlement Agreement*. *Co-Lead Counsel* shall promptly notify *Xerox* of the date of the establishment of the *Settlement Fund*, shall confirm the identity of the *Financial Institution* including any information, including but not limited to wiring instructions, needed to make the deposit in section 7.2, and shall confirm that withdrawals and distributions from the *Settlement Fund* are subject to the restrictions set forth in the preceding sentence.

7.1.2 The funds on deposit in the *Settlement Fund* shall be invested only in United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury, and mutual funds or money market accounts that invest exclusively in the foregoing securities. The *Settlement Fund* shall be structured and managed to qualify as a “qualified settlement fund” described in the Treasury regulations promulgated under Section 468B of the Internal Revenue Code and no *Party* shall take any position in any filing or before any tax authority that is inconsistent with such treatment. The *Financial Institution* or another person designated by *Co-Lead Counsel* (other than a *Released Party*) shall be the *Settlement Fund* “administrator,” as that term is used in the Section 468B Treasury regulations (the “*Administrator*”). The *Administrator* shall (a) prepare and file all income tax and information returns required to be filed, and provide payees with copies of such information returns; (b) pay all taxes owed by the *Settlement Fund*; (c) at the *Company*’s request, join with *Xerox* in timely making the “relation-back” election permitted under the Section 468B Treasury regulations in the form prescribed therein; (d) pay the fees and expenses incurred by the *Financial Institution* associated with the administration of the *Settlement Fund* and (e) obtain and provide the *Company* with the *Settlement Fund*’s federal taxpayer identification number on or before the date that the *Company* transfers funds to the *Settlement Fund*. The *Administrator* shall be authorized to retain a certified public accounting firm for these purposes. All taxes on the income of the *Settlement Fund* and tax-related expenses, including the expenses, if any, of a certified public accounting firm, incurred in connection with the administration of the *Settlement Fund* shall be paid solely out of the *Settlement Fund*, shall be considered a cost of administration of the *Settlement*, and shall be timely paid without further order of the *Court*. All fees and expenses of the *Administrator* or the *Financial Institution*, and of professional advisors engaged by the *Administrator* or the *Financial Institution* in connection with the *Settlement Fund*, shall be funded solely from the *Settlement Fund*. *Co-Lead Counsel*, with written authority from the *Signers*, may instruct the *Financial Institution* to reserve any portion of the *Settlement Fund* for the purpose of satisfying future or contingent expenses or obligations, including expenses of *Settlement Fund* administration or any disbursement provided in Section 8 of this *Settlement Agreement*. The *Parties* agree that neither *Defendants* nor any *Released Party* has any responsibility, authority, or liability, respecting the operation, expenses, obligations and administration of the *Settlement Fund*.

7.2 The Class Settlement Amount. In consideration of, and expressly in exchange for, all of the promises and agreements set forth in this *Settlement Agreement*, the *Company* will cause to be deposited into the *Settlement Fund* within ten (10) business days after the entry of the *Preliminary Approval Order* or after the receipt of the wiring instructions and *Financial Institution* information referenced in Section 7.1.1, whichever is later, the aggregate sum of fifty-one million dollars in United States currency (\$51,000,000.00) (the “*Class Settlement Amount*”).

7.3 Sole Monetary Contribution. The *Class Settlement Amount* shall be the full and sole monetary contribution made by or on behalf of the *Defendants* in connection with the *Settlement* effected between *Plaintiffs* and the *Defendants* under this *Settlement Agreement*. Provided the *Class Settlement Amount* is deposited in the *Settlement Fund* as provided in Section 7.1, no *Individual Defendant* will have any personal obligation to fund any or all of the *Class Settlement Amount*.

8. Payments From The Settlement Fund.

8.1 Expenses of Class Notice. After the entry of the *Preliminary Approval Order*, *Co-Lead Counsel* shall direct the *Financial Institution* in writing to disburse from the *Settlement Fund* an amount for the payment of reasonable, customary and feasible costs associated with the *Class Notice*, not to exceed \$200,000. If the *Settlement Agreement* is terminated for any reason, neither *Co-Lead Counsel* nor any other person shall have any obligation to reimburse to the *Settlement Fund* the costs of the *Class Notice*, or any other reasonable costs or expenses of the *Settlement Fund* charged to, or paid or incurred by or out of the *Settlement Fund* under this *Settlement Agreement*.

8.2 Disbursements from Settlement Fund. Except as provided in Section 7.1.2, Section 8.1, or in Section 10 below, no distribution of any part or all of the *Settlement Fund* shall be paid from the *Settlement Fund* until the *Financial Institution* has received (a) a joint notice signed by *Co-Lead Counsel* and by counsel for the *Company*, or (b) a *Court* order directing that the *Settlement Fund* be disbursed. When the condition in (a) or (b) has been satisfied, *Co-Lead Counsel* shall direct the *Financial Institution* to disburse money from the *Settlement Fund* as follows:

8.2.1 For Attorneys’ Fees and Expenses. As provided in Section 11.2 hereof.

8.2.2 For Named Plaintiff compensation. As provided in Section 11.2 hereof.

8.2.3 For taxes and expenses of the Settlement Fund. As provided in Section 7.1.2 hereof.

8.2.4 For Settlement Administrator Expenses. *Settlement Administrator Expenses* shall mean all reasonable fees and expenses of the *Settlement Administrator* to calculate, implement, and oversee the *Plan of Allocation*, including, but not limited to, expenses incurred in calculating and allocating the share of the *Net Proceeds*, as defined in Section 8.2.5, for each member of the *Settlement Class*. The *Settlement Fund* (and this allocation) shall be the

sole source used to pay for these fees and expenses. The *Parties* agree to cooperate to seek to minimize the *Settlement Administrator Expenses*. The *Parties* also agree that *Settlement Administrator Expenses* shall not be incurred until reasonably necessary in light of the conditions to the *Settlement*.

8.2.5 For the *Plan of Allocation*. The *Plan of Allocation* attached as Exhibit C hereto provides for the allocation of the *Settlement Fund* net of the disbursements called for in Sections 8.2.1, 8.2.2, 8.2.3, and 8.2.4 (“*Net Proceeds*”). Upon the *Judgment* becoming *Final* as provided in Section 2.3, and after the amounts payable pursuant to Sections 8.2.1, 8.2.2, 8.2.3 and 8.2.4 have been determined and disbursed, *Co-Lead Counsel* shall direct the *Financial Institution* to disburse the *Net Proceeds* to the master trust for the *Plans* for allocation to or for the benefit of members of the *Settlement Class*. The *Parties* agree that the deposit of the *Net Proceeds* into the trust created under the *Plans* shall constitute “restorative payments” within the meaning of Revenue Ruling 2002-45 for all purposes. *Defendants* shall direct State Street Bank and Trust Company, or any successor Trustee of the *Plans*, or any other authorized entity, to allocate the *Net Proceeds* received by the *Plans*’ trust according to the *Plan of Allocation* and shall notify *Co-Lead Counsel* as to the date(s) and amount(s) of said allocation(s), but *Defendants* shall have no liability for the failure by State Street Bank and Trust Company, or any successor Trustee of the *Plans*, the *Plans*’ record-keeper, or any other authorized entity, to follow such directions provided that, in the event of any failure by State Street Bank and Trust Company, or any successor Trustee of the *Plans*, or any other authorized entity, to follow directions from *Defendants* given pursuant to this Section 8.2.5, the *Defendants* shall assist in seeking to enforce such directions. All reasonable fees and expenses of State Street Bank and Trust Company, or any predecessor or successor Trustee of the *Plans*, the *Plans*’ record-keeper or any other authorized entity, with respect to implementation of the *Plan of Allocation* shall be *Plans*’ expenses paid solely out of the *Net Proceeds* and shall be timely paid by the *Plans* without further order of the *Court*. *Defendants* warrant that they either have obtained or will obtain the authority to direct that the *Net Proceeds* received by the *Plans*’ trust be allocated according to the *Plan of Allocation*. *Defendants* shall have no responsibility for structuring the content of the *Plan of Allocation*, or for its design or implementation, but will have the right to review it for feasibility and cost before presentation to the *Court*. The *Plan of Allocation* is a matter separate and apart from the *Settlement* between the *Parties*, and no decision by the *Court* that modifies the *Plan of Allocation* shall in any manner affect the validity of this *Settlement Agreement*, or the finality of the *Settlement*, or the binding character of the releases provided for hereunder.

9. Additional Conditions

9.1 Asset Management. The Xerox Retirement Investment Committee (“*XRIC*”), consisting of specified members of the *Company*’s management (Treasurer; Chief Accounting Officer; Vice President, Worldwide Taxes; Vice President, Human Resources; and Chief Information Officer), will abide by the terms of each of the *Plans* with respect to asset management, including asset management of the Xerox Stock Fund, in a manner consistent with *ERISA* and other applicable law.

9.2 Other Funds. Unless otherwise required by law, the *Company* shall not amend the *Plans* to prevent participants and beneficiaries from investing all or any part of their account balances in funds other than the Xerox Stock Fund.

9.3 XRIC Composition. The composition of *XRIC* will be identified to participants in the *Plans*.

9.4 Disclosure. Annually, the investment objectives of the Xerox Stock Fund will be published to the participants and beneficiaries of each of the *Plans*.

9.5 Independent Fiduciary. The *Company* shall pay the costs of the *Independent Fiduciary* using corporate assets.

10. Termination of the Settlement Agreement.

10.1 Termination. This *Settlement Agreement* may terminate if (a) the *Court* declines to enter the *Judgment*, (b) the *Judgment* entered by the *Court* is reversed or modified in any material respect on appeal, (c) the *Independent Fiduciary* does not approve the *Settlement* as set forth in Section 2.4, and such condition is not waived in writing by *Defendants*, or (d) the Department of Labor takes any of the actions described in Section 10.3. This *Settlement Agreement* shall not terminate if a court of competent jurisdiction modifies, reverses, or refuses to enter any order relating to the award of legal fees and expenses, or *Named Plaintiff* compensation, or the *Plan of Allocation*. If, within thirty (30) days after the date when any reversal or modification which would cause this *Settlement Agreement* to terminate becomes *Final*, the *Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* in light of such ruling, this *Settlement Agreement* shall automatically terminate and thereupon become null and void.

10.2 Consequences of Termination of the Settlement Agreement. If the *Settlement Agreement* terminates, the following shall occur:

10.2.1 *Co-Lead Counsel* and *Defendants' Counsel* shall within ten (10) days after the date of termination of the *Settlement Agreement* jointly notify the *Financial Institution* in writing to return to the *Defendants* the amount contributed by them to the *Settlement Fund*, with all net income earned thereon, after deduction of the amount earlier disbursed for *Class Notice* described in Section 8.1 and the expenses charged by the *Administrator* and the *Financial Institution*, directing the *Financial Institution* to effect such return within fourteen (14) days after such notification. Prior to the return of amounts contemplated by this Section 10.2.1, the *Administrator* shall fully and finally fulfill all tax obligations of the *Settlement Fund* as set forth in Section 7.1.2 and the *Defendants* shall have no past, present, or future liability whatsoever for any such tax obligations.

10.2.2 The *Action* shall for all purposes with respect to the *Parties* revert to its status as of December 15, 2008. Any and all statutes of limitations, statutes of repose and/or other defenses based upon the passage of time applicable to the *Claims* asserted in this *Action*

shall be tolled from December 15, 2008 to the date on which this *Settlement Agreement* terminates.

10.2.3 All provisions of this *Settlement Agreement* shall be null and void except as otherwise explicitly provided in this *Settlement Agreement*.

10.3 Intervention by the Department of Labor. If, prior to the entry of the *Judgment* in this case, the Department of Labor files an objection to the *Settlement*, files an amicus curiae brief disapproving of or opposing the *Parties'* *Settlement* in this *Action* or files its own lawsuit against any of the *Defendants* asserting allegations and claims similar to those asserted in the *Action*, *Xerox* shall have the right to terminate this *Settlement Agreement* at its sole discretion.

11. Attorneys' Fees and Expenses and Named Plaintiff Compensation.

11.1 Application for Attorneys' Fees and Expenses and Named Plaintiff Compensation. As provided in Section 2.2, and pursuant to the common fund doctrine and/or any applicable statutory fee provision, *Co-Lead Counsel* may apply to the *Court* for an award to *Co-Lead Counsel* and *Other Appointed Counsel* of attorneys' fees, and for reimbursement of expenses, to be paid solely from the *Settlement Fund*. *Co-Lead Counsel* also may apply to the *Court* for compensation to *Named Plaintiffs*, payable solely from the *Settlement Fund*, and *Named Plaintiffs* shall be entitled to receive such compensation from the *Settlement Fund* to the extent awarded by the *Court*.

11.2 Disbursement of Attorneys' Fees and Expenses and Named Plaintiff Compensation. If the *Court* enters one or more orders allowing payment of attorneys' fees and/or expenses and/or *Named Plaintiff* compensation, then *Co-Lead Counsel* may, not less than five (5) days after the *Judgment* becomes *Final*, instruct the *Financial Institution* in writing to disburse the payments set forth in such order(s) from the *Settlement Fund*.

12. Miscellaneous Provisions.

12.1 Governing Law. This *Settlement Agreement* shall be governed by the laws of the State of New York without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

12.2 Amendment. Before entry of the *Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties*. Following entry of the *Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties* and approved by the *Court*.

12.3 Waiver. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this *Settlement Agreement*.

12.4 Construction. None of the *Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

12.5 Principles of Interpretation. The following principles of interpretation apply to this *Settlement Agreement*:

12.5.1 Headings. The headings of this *Settlement Agreement* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Settlement Agreement*.

12.5.2 Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

12.5.3 Gender. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

12.5.4 References to a Person. References to a *Person* are also to the *Person's* permitted successors and assigns.

12.5.5 Terms of Inclusion. Whenever the words “include,” “includes,” or “including” are used in this *Settlement Agreement*, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

12.5.6 Time. References to “days” in this *Settlement Agreement* are to calendar days, unless otherwise stated.

12.6 Further Assurances. All *Parties* agree, without further consideration, and as part of finalizing the *Settlement* hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

12.7 Notices. Any notice, demand, or other communication under this *Settlement Agreement* (other than the *Class Notice*, or other notice given at the direction of the *Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

IF TO NAMED PLAINTIFFS:

Lynn Sarko
Gary Gotto
Elizabeth Leland
Keller Rohrbach L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

Charles Watkins
John Wylie
Futterman Howard Watkins Wylie & Ashley, Chtd
122 S. Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Telephone: (312) 427-3600
Facsimile: (312) 427-1850

IF TO *DEFENDANTS*

Steven Sacher
Evan Miller
Jones Day
51 Louisiana Ave. N.W.
Washington, DC 20001-2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Any *Party* may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described above.

12.8 Entire Agreement. This *Settlement Agreement* contains the entire agreement among the *Parties* relating to this *Settlement*. It specifically supersedes any settlement terms or settlement agreements relating to the *Defendants* that were previously agreed upon orally or in writing by any of the *Parties*. In the event of any dispute regarding the interpretation of this *Settlement Agreement*, no *Party* may rely upon or cite any previous version of this *Settlement Agreement*.

12.9 Counterparts. This *Settlement Agreement* may be executed by exchange of faxed or scanned executed signature pages, and any signature thereby transmitted for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

12.10 Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors, and successors.

12.11 Agreement Execution Date. The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

12.12 Return of Discovery Documents. Within sixty (60) days after the *Judgment* becomes *Final*, the parties shall comply with the provisions of the Amended Consent Protective Order, issued by the *Court* in this *Action* on August 1, 2006.

IN WITNESS WHEREOF, the *Parties* have executed this *Settlement Agreement* on the dates set forth below.

FOR THE PLAINTIFFS:

By: _____

Lynn Sarko
Gary Gotto
Elizabeth Leland
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

Dated: _____

By: _____

Charles Watkins
John Wylie
Futterman Howard Watkins Wylie & Ashley, Chtd
122 S. Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Telephone: (312) 427-3600
Facsimile: (312) 427-1850

Dated: _____

Co-Lead Counsel for the ERISA Plaintiffs

FOR DEFENDANTS XEROX CORPORATION, LAWRENCE BECKER, SALLY CONKRIGHT, PATRICIA M. NAZEMETZ, ARLYN B. KASTER, KATHLEEN RUSSELL, WILLIAM STRUSZ, LANCE DAVIS, CHRISTINA CLAYTON, GARY KABURECK, LAWRENCE ZIMMERMAN, ANNE M. MULCAHY, B.R. INMAN, VERNON E. JORDAN, JR., HILMAR KOPPER, GEORGE J. MITCHELL, N.J. NICHOLAS, JR., PATRICIA F. RUSSO, MARTHA R. SEGER, THOMAS C. THEOBALD, G. RICHARD THOMAN, BARBARA D. ROSCOE AS BENEFICIARY OF PROPERTY PASSING PURSUANT TO THE LAST WILL AND TESTAMENT OF WILLIAM C. ROSCOE, DATED DECEMBER 30, 2005, HENRY CHARLES FILTER, III, AS BENEFICIARY OF PROPERTY PASSING PURSUANT TO THE WILL OF EUNICE M. FILTER DATED FEBRUARY 25, 2002 TO THE EUNICE M. FILTER REVOCABLE TRUST DATED FEBRUARY 25, 2002, HENRY CHARLES FILTER, III, AND JOHN MUSICARO, JR., AS TRUSTEES OF THE TRUST FOR THE BENEFIT OF HENRY CHARLES FILTER, III AND HIS DESCENDANTS UNDER ARTICLE II OF THE EUNICE M. FILTER INSURANCE TRUST UNDER AGREEMENT DATED JANUARY 19, 1995, AS BENEFICIARY OF PROPERTY PASSING PURSUANT TO THE WILL OF EUNICE M. FILTER DATED FEBRUARY 25, 2002 TO THE EUNICE M. FILTER REVOCABLE TRUST DATED FEBRUARY 25, 2002, C/O JOHN MUSICARO, JR., CUMMINGS & LOCKWOOD LLC, SIX LANDMARK SQUARE, STAMFORD, CT 06901, AND JERRY W. HOSTETTER AND JOHN MUSICARO, JR. AS TRUSTEES OF THE MARITAL TRUST UNDER ARTICLE IV OF THE EUNICE M. FILTER REVOCABLE TRUST DATED FEBRUARY 25, 2002, AS BENEFICIARY OF PROPERTY PASSING PURSUANT TO THE WILL OF EUNICE M. FILTER DATED FEBRUARY 25, 2002 TO THE EUNICE M. FILTER REVOCABLE TRUST DATED FEBRUARY 25, 2002, C/O JOHN MUSICARO, JR., CUMMINGS & LOCKWOOD LLC, SIX LANDMARK SQUARE, STAMFORD, CT:

By: _____

Dated: _____

Steven J. Sacher
Evan Miller
Jones Day
51 Louisiana Ave. N.W.
Washington, DC 20001-2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Attorneys for the Defendants except Myra R. Drucker, Paul A. Allaire, William F. Buehler, Barry D. Romeril, and Gregory B. Tayler

FOR DEFENDANT MYRA R. DRUCKER:

By: _____ Dated: _____

Michael T. Hannafan
Blake T. Hannafan
Hannafan & Hannafan, Ltd.
One East Wacker Drive, Suite 2800
Chicago, IL 60601
Telephone: (312) 527-0055

Attorneys for Defendant Myra R. Drucker

FOR DEFENDANTS PAUL A. ALLAIRE, WILLIAM F. BUEHLER,
BARRY D. ROMERIL, AND GREGORY B. TAYLER:

By: _____ Dated: _____

John A. Valentine
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
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By: _____ Dated: _____

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EXHIBITS TO THE SETTLEMENT AGREEMENT

Exhibits

- A Preliminary Approval Order
- B Judgment
- C Plan of Allocation

EXHIBIT 2
TO
ORDER AND FINAL JUDGMENT
(PLAN OF ALLOCATION)

PLAN OF ALLOCATION

I. Definitions

A. All capitalized terms shall have the same meaning as they are given in the Settlement Agreement dated _____ (“Settlement Agreement”), unless specifically set forth otherwise in this Plan of Allocation. The following definitions shall apply to the Plan of Allocation methodology:

1. **“Plan Account”** means the account maintained on behalf of a participant in either of the Plans.

2. **“Member”** shall mean a member of the Settlement Class who is or was a Participant and whose Plan Account held any units in the Xerox Stock Fund during the Allocation Period.

3. **“Current Plan Participant”** shall mean: (i) a Member who as of the Reference Date has not received a complete distribution from a Plan; and (ii) a beneficiary or beneficiaries of such a Member.

4. **“Allocation Period”** means, for each Member, the period through and including (a) the earlier of (i) January 2, 1998, or (ii) such date from May 12, 1997 through January 1, 1998, as to which such Member provides to the Settlement Administrator “Adequate 1997 Documentation”, and (b) June 28, 2002.

5. **“Adequate 1997 Documentation”** means documentation provided by a Member to the Plan Administrator no later than sixty (60) days after the commencement of the Fairness Hearing, which documentation (i) was created by either of the Plans or their record-keeper or Trustee, or was otherwise contemporaneously created, (ii) shows the acquisition, holding or disposition of units in the Xerox Stock Fund by in such Member’s Plan Account

during the period from May 12, 1997 through January 1, 1998, and (iii) is determined by the Settlement Administrator in its discretion to provide sufficiently reliable information for the Settlement Administrator to be able to use it in calculating such Member's Net Loss in accordance with the provisions of Section II of this Plan of Allocation.

6. **“Former Plan Participant”** shall mean (i) a Member who, as of the Reference Date, is not a Current Plan Participant; and (ii) a beneficiary or beneficiaries of such a Member.

7. **“Xerox Stock”** means the common stock of Xerox Corporation (“Xerox”) traded on the New York Stock Exchange under the symbol XRX.

8. **“Participant”** means a person who was a participant within the meaning of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), in a Plan during the Allocation Period.

9. **“Unlocatable Member”** shall mean a Member who, despite reasonable efforts, cannot be located by the Plan Administrator within a reasonable time.

10. **“Reference Date”** means the date after the Judgment becomes final, established by the Settlement Administrator for determination of whether a Participant is a Current Plan Participant.

II. Calculation of Allocation

A. As soon as administratively feasible after the Settlement becomes final in accordance with the terms of the Settlement Agreement, the Settlement Administrator shall calculate the share of the Net Proceeds for each Member according to the following methodology:

B. For each Member, the Settlement Administrator shall determine a net loss (“Net Loss”) as follows:

1. Net Loss $= (A+B)-(C+D)$, where, for each Member’s Plan Account:

2. A = the total dollar value of his or her Plan Account balance in the Xerox Stock Fund at the beginning of the Allocation Period;

3. B = the dollar value, if any, of all subsequent investments of any nature whatsoever of such Plan Account in units in the Xerox Stock Fund during the Allocation Period, valued as of the time of each such investment as reflected in the records of a Plan;

4. C = the dollar amount of all dispositions of any nature whatsoever of units in the Xerox Stock Fund in the Plan Account, if any, during the Allocation Period, valued as of the time of the disposition, as reflected in the records of a Plan; and

5. D = the dollar value of the Plan Account invested in the Xerox Stock Fund at the end of the Allocation Period.

C. The Settlement Administrator will then total the Net Losses of all Members as calculated in Section II.B to yield the “Aggregate Net Loss,” and shall then divide each Member’s Net Loss by the Aggregate Net Loss to yield each Member’s “Preliminary Fractional Share.”

D. The Settlement Administrator shall then calculate for each Member his or her “Preliminary Dollar Recovery” of the Net Proceeds by multiplying the Member’s Preliminary Fractional Share by the Net Proceeds.

E. The Settlement Administrator shall then identify all Members whose Preliminary Dollar Recovery is less than fifteen dollars (\$15.00) (the “De Minimis Amount”). All such Members’ losses shall be deemed to be zero and no allocation will be made to such Members

(the “De Minimis Loss Members”). The aggregate Net Losses of the De Minimis Loss Members shall be subtracted from the Aggregate Net Loss to yield the “Final Aggregate Net Loss.”

F. The Settlement Administrator shall then calculate for each Member who was not a De Minimis Loss Member (i) his or her “Final Fractional Share” by dividing the Net Loss of each Member who was not a De Minimis Loss Member by the Final Aggregate Net Loss, and (ii) his or her “Final Dollar Recovery” by multiplying the Net Proceeds by each such Members’ Final Fractional Share.

G. Any portion of the Net Proceeds due to Unlocatable Members shall be administered in accordance with the Plans’ procedures regarding unlocatable participants.

H. In light of the manner in which the Plan data are kept and the efficacy with which the Plan data can be used to locate Members and to allocate each Member’s Final Dollar Recovery, it may be appropriate to modify some of the features of these calculations. Such modifications shall be acceptable as long as each Member is allocated his or her share of the Net Proceeds based approximately on the decline in the value of units of the Xerox Stock Fund that he or she held over the Allocation Period as a proportion of the decline in the value of units of the Xerox Stock Fund held by all Members.

III. Distribution of the Allocated Amounts

A. As soon as administratively feasible after calculating each Member’s Final Dollar Recovery pursuant to section II, *supra*, Co-Lead Counsel shall direct the Financial Institution to disburse the *Net Proceeds* to the master trust for the *Plans* for allocation to the Members in accordance with this Plan of Allocation; such disbursement shall be in accordance with wire transfer instructions to be provided by Xerox or the Trustee.

B. The Final Dollar Recoveries of the Current Plan Participants shall be allocated to

each Member's Plan account in their respective Plan and allocated to the Income Fund investment option, or the successor thereto, and administered thereafter for all purposes in accordance with that Plan.

C. The aggregate Final Dollar Recoveries of the Former Plan Participants in the respective Plans shall be invested in a money market fund that invests primarily in United States treasury instruments, pending allocation to the Former Plan Participants. The deposited amount, plus interest, shall then be allocated as soon as is practical to the Plan accounts established for the Former Plan Participants in their respective Plans and allocated to the Income Fund investment option, or the successor thereto, and administered thereafter for all purposes in accordance with the Plan.

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

In re XEROX CORPORATION ERISA
LITIGATION,

Master File No. 02-CV-1138 (AWT)

CLASS ACTION

This Document Relates to:

CERTIFICATE OF SERVICE

ALL ACTIONS

I hereby certify that on April 7, 2009, a copy of foregoing REVISED PROPOSED ORDER AND FINAL JUDGMENT was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/

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