

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT TESTA, an individual,

Plaintiff,

-against-

LAWRENCE BECKER, as plan administrator of the
Xerox Corporation Retirement Income Guarantee
Plan, and XEROX CORPORATION RETIREMENT
INCOME GUARANTEE PLAN, an Employee
Pension Benefit Plan,

Defendants.

Civil Action No. 10-cv-06229

**DECLARATION OF
MARGARET A. CLEMENS, ESQ.**

I, Margaret A. Clemens, declare and state as follows:

1. I am a member of the law firm Littler Mendelson, P.C., attorneys for Defendants Lawrence Becker and the Xerox Corporation Retirement Income Guarantee Plan (the "RIGP") (collectively, "Defendants"). I make this Declaration in opposition to Plaintiff Robert Testa's motion for entry of summary judgment (Dkt. No. 49) and in support of Defendants' cross-motion for summary judgment.

2. Plaintiff commenced this action by filing a Summons and Complaint in the District Court for the Central District of California on January 28, 2010, and the case was transferred to the Western District of New York. *Testa v. Becker*, 2010 U.S Dist. LEXIS 47130 (CD. Cal. Apr. 22 2010). For ease of reference, I attach a copy of Plaintiff's Complaint as **Exhibit A**.

3. Defendants filed a motion to dismiss the Complaint on May 21, 2010. (Dkt. No. 22).

4. In the Court's Decision and Order dated October 30, 2013 (Dkt. No. 44) (the "Decision and Order"), this Court dismissed Plaintiff's First, Second and Fourth causes of action. *Testa v. Becker*, 979 F. Supp. 2d 379, 384 (W.D.N.Y. 2013) (Dkt. No. 44).

5. Defendants filed a timely Answer to the Complaint denying the sole remaining claim in the Complaint on January 15, 2014. (Dkt. No. 47).

6. Plaintiff filed a motion for entry of summary judgment on July 26, 2016 ("Plaintiff's motion for summary judgment"). (Dkt. No. 49).

7. On August 22, 2016, the Court granted an extension up to and including September 28, 2016 of Defendants' time to respond to that motion. (Dkt. No. 51).

8. With their response in opposition to Plaintiff's motion for summary judgment, Defendants file a cross-motion for summary judgment ("Defendants' cross-motion").

9. Submitted in support of Defendants' cross-motion are: (i) the Declaration of Lawrence M. Becker, dated September 26, 2016, with its attached exhibits; (ii) Defendants' Local Rule 56 Statement of Undisputed Facts in Support of Defendants' Cross-Motion for Summary Judgment and (iii) Defendants' Memorandum of Law, submitted in opposition to Plaintiff's motion for summary judgment and in support of Defendant's cross-motion.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: September 27, 2016
Fairport, New York

/s/Margaret A. Clemens
Margaret A. Clemens