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May 9, 2011

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May 9, 2011

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VIA FAX AND U.S. MAIL

Hon. David G. Larimer
U.S. District Court Judge
2500 U.S. Courthouse
100 State Street
Rochester, New York 14614

Re: *Kunzman, et al. v. Conkright, et al.*
Case No. 08-06080

Dear Judge Larimer:

This letter is submitted by defendants Sally Conkright, Patricia Nazemetz and Lawrence M. Becker, individually and as plan administrators, the Xerox Corporation ("Xerox"), and the Xerox's Retirement Income Guarantee Plan ("RIGP") in accordance with this Court's March 21, 2011 and April 27, 2011 Orders, requesting that the parties summarize their respective positions as to what motions are currently pending that need to be decided by the Court, as well as motions that need to be briefed either for the first time or with supplemental briefing in light of the decisions from the Second Circuit Court of Appeals and the United States Supreme Court in *Conkright v. Frommert* ("*Frommert*"). See *Frommert*, 130 S. Ct. 1640 (2010)..

As the Court may recall, this action was commenced on February 20, 2008, by plaintiffs against defendants Sally Conkright, Patricia Nazemetz and Lawrence M. Becker, individually and as plan administrators, Xerox Corporation, Xerox's Retirement Income Guarantee Plan ("RIGP"), Hewitt Associates and Hewitt Management Company, LLC. Notably, there is no evidence that Hewitt Associate or Hewitt Management Company was ever served with the Complaint. Plaintiffs were previously represented by Robert H. Jaffe of Robert H. Jaffe & Associates, P.A., who was admitted *pro hac vice* in this matter. We have been advised that Mr. Jaffe has since passed away.

One of the plaintiffs, Mr. McNeil has retained the law offices of Shapiro Haber & Urmy LLP and Chamberlain, D'Amanda, Oppenheimer & Greenfield ("Chamberlain") to represent him in this matter. The following twenty-seven individual plaintiffs retained the Law Offices of John A. Strain and Chamberlain to represent them in this action:

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Ann Adams	Paul John Marshall	Anne M. Trocano
Donna E. Beckles	Robert C. Meyers	Ronald T. Turk
Richard O. Carville, Jr.	Doris Milazo	Peter D. Ventress
Kevin D. Cass	Kathleen S. Mudd	Earl Wahl
Sandra M. Fuller	Louis N. Nost	John W. Whipple
Neal A. Gorla	Susan A. O'Kelly	
Bruce D. Kunsman	Ernest Reyes	
Patricia M. Lippold	William D. Robinson	
Concetta Luppino	Kathleen P. Santelli	
Robert E. Lutz	Bonnie Stramer	

Upon information and belief, the remaining fifty-seven (57) plaintiffs are unrepresented. Thirty-seven (37) of the eighty-three (83) individual plaintiffs have executed a general release in exchange for the receipt of salary continuance.

Currently pending before this Court is defendants' motion to dismiss the claims asserted in this case, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants' motion was filed on June 10, 2008, on several grounds, including that plaintiffs' claims for additional pension benefits under the Employee Retirement Income Security Act ("ERISA") are untimely interposed. Plaintiffs filed their opposition to the motion on August 1, 2008, and defendants filed a Reply on August 18, 2008. The Court heard oral argument on February 4, 2009, and reserved ruling on the motion pending submission of defendants' Sur-Reply in response to a letter submitted by plaintiffs one day prior to oral argument. Defendants submitted a Sur-Reply on February 11, 2009. A decision on defendants' motion is still pending.

On February 3, 2009, Plaintiff McNeil filed a Motion to Stay this action pending a motion to intervene in *Conkright v. Frommert* ("*Frommert*"), which was then pending before the Supreme Court. To date, this Court has not issued a ruling on Plaintiff McNeil's motion, but that motion is now moot given that the Supreme Court has rendered its decision in 2010.

No further briefing on the pending motion to dismiss is required as a result of the Supreme Court's decision in *Frommert* or the Second Circuit's August 2, 2010 Order remanding that case for further proceedings. Unlike the *Frommert* plaintiffs, who had timely commenced their ERISA action, plaintiffs in this case did not do so. Thus, for the reasons discussed in defendants' motion papers, the Complaint should be dismissed.

Although not raised in the pending motion to dismiss, in the event this case is not dismissed, the Second Circuit's ruling on the enforceability of the Xerox releases reported at *Frommert v. Conkright*, 535 F.3d 111 (2d Cir. 2008), supports the dismissal of the claims of those thirty-seven individual plaintiffs who executed releases in exchange for salary continuation benefits.

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Respectfully submitted,



Margaret A. Clemens

MAC/smb

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