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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: Robert Testa v. Lawrence Becker, et al.
Case No. 10-06229

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)..

Plaintiff Robert Testa commenced this action on January 28, 2010 in the United States District Court for the Central District of California against the Xerox Corporation, the Retirement Income Guarantee Plan ("RIGP"), and Lawrence M. Becker, as the plan administrator. The case was subsequently transferred to this Court on April 22, 2010. Plaintiff is represented by the Law Offices of John A. Strain PC and Chamberlain D'Amanda Oppenheimer & Greenfield.

On May 21, 2010, defendants moved to dismiss the Complaint, pursuant to Rule 12(b)(6) of the Federal Rule of Civil Procedure, on several grounds, including that plaintiff's claim for additional pension benefits under the Employee Retirement Income Security Act ("ERISA") is untimely interposed. On June 16, 2010, Plaintiff filed his opposition to defendants' motion and Defendants filed a Reply on July, 16, 2010. The Court has not heard oral argument on the pending motion.

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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, plaintiff in this case did not do so. Thus, for the reasons discussed in defendants' motion papers, the Complaint should be dismissed.

Respectfully submitted,



Margaret A. Clemens

MAC/smb

cc: Matthew J. Fusco
Amber M. Ziegler
John A. Strain

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