

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FRANK WARREN, et al.,	:	
	:	
Plaintiffs,	:	No. CV-01-2909(JG)
	:	Judge Gleeson
v.	:	Magistrate Judge Matsumoto
	:	
XEROX CORPORATION,	:	
	:	
Defendant.	:	

PROPOSED CONSENT DECREE

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I. INTRODUCTION

- A. This Consent Decree ("Decree") sets forth the full and final terms by which the Class Representative Plaintiffs, on behalf of themselves and the other Settlement Class Members, and Xerox Corporation ("Xerox"), have settled and resolved all claims that were or could have been raised in this Litigation.
- B. Class Counsel, on behalf of the Class Representative Plaintiffs and the Settlement Class Members, and Xerox have entered into this Decree voluntarily, and are submitting this Decree to the United States District Court for the Eastern District of New York for approval.

II. PURPOSES OF THE CONSENT DECREE

- A. Class Counsel, Class Representatives, Xerox and Xerox Counsel have entered into this Decree for the following purposes:
1. To resolve all disputes covered by this Decree in such a way as to avoid further expensive and protracted litigation.
 2. To continue to ensure equal employment opportunity for African-American sales employees of Xerox through the equitable relief provided for herein.
 3. To create an expedited and efficient procedure for implementing equitable relief pursuant to the terms of this Decree.
 4. To provide finality to the resolution of all claims and defenses asserted in this Litigation.

III. DEFINITIONS

In addition to the terms identified and defined elsewhere in this Consent Decree, the following terms shall have the following meanings:

- A. “African-American” is defined as “Black” in conformance with Equal Employment Opportunity Commission Standard Form 100, Employer Information Report EEO-1. The terms “African-American” and “Black” are used interchangeably herein.
- B. “Approval Date” means the date upon which the Court approves this Decree, having determined that it is fair, adequate, and reasonable after: (i) notice to the Settlement Class; (ii) opportunity to submit timely objection to the Decree; (iii) opportunity to request exclusion from the Settlement Class with respect to monetary damages; and (iv) a hearing on the fairness of the settlement.
- C. “Best Efforts” means reasonable steps consistent with prudent business practices to realize or comply with the specific objective to which the Best Efforts are directed. Where no time frame is otherwise specified in the Decree, Best Efforts shall be utilized within a reasonable time period. Best Efforts shall not require the taking of steps that would result in an unreasonable burden or expense to Xerox.
- D. “Claims Administrator” means the company/firm retained as provided in Article XVII, Section B.1 of this Consent Decree to assist in the administration of the monetary awards made pursuant to this Consent Decree.
- E. “Class” or “Class Members” refers to the class of African-American or Black persons employed by Xerox in a sales representative position with USCO, XBS or NASG who holds or held a quota-bearing sales territory assignment and was part of the commissioned sales force, also referred to herein as “field sales representative” at any time from February 1, 1997 through the Preliminary Approval Date of this Decree as defined in this Article III, Section O below.
- F. “Class Counsel” means all counsel of record for the Settlement Class and Class Representative Plaintiffs, namely, Milberg Weiss LLP, Diane Bradley & Associates, PLLC and Leeds Morelli & Brown, P.C., or any attorney designated pursuant to Article XVI, Section D.
- G. “Class Representative Plaintiffs” means Frank Warren, Ken Jimerson, Dora Miller, Alicia Dean Hall, Clifford Brooks, Gene Simms and Heather Jason. Heather Jason is hereby added as a class representative for purposes of this settlement in light of the role she has played in this litigation. Class Representative Plaintiffs as referred to herein are, at all times, acting on behalf of the Class.

- H. “Compensatory Damages” means emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and does not include back pay, interest on back pay, or front pay.
- I. “Court” means the United States District Court for the Eastern District of New York.
- J. “Defendant’s Counsel” for purposes of this Consent Decree refers to: Nixon Peabody LLP on behalf of Xerox.
- K. “Effective Date” is the date following Final Approval of this Decree on which the later of the following has occurred: (1) the Court has entered an Order dismissing the Litigation with prejudice, with continuing jurisdiction limited to enforcing this Decree; (2) the time for appeal from the Final Approval of this Decree has run without an appeal being filed; (3) if a timely appeal is filed, the final resolution of the appeal (including any requests for rehearing and/or petitions for writ of certiorari), and/or the expiration of any time period for any further appeal, resulting in final judicial approval of the Consent Decree; or (4) the date on which no further appeals, requests for rehearing and/or petitions for a writ of certiorari can be filed in connection with the Decree.
- L. “Final Approval” means the entry of this Decree, Final Judgment and Order on the Approval Date by the Court.
- M. “Final Approval Hearing” means the fairness hearing held by the Court at which any challenges to this Decree are heard.
- N. “Litigation” means *Warren, et al. v. Xerox Corp.*, Civil Action No. 01-2909 (E.D.N.Y.) and allegations in administrative charges as they relate to claims of race discrimination or retaliation by African American field sales representatives employed in USCO, XBS or NASG.
- O. “Preliminary Approval Date” means the date upon which the Court enters an Order preliminarily approving this Decree; conditionally certifying the Settlement Class; and establishing the procedures for class notice and Final Approval of this Decree.
- P. “Testifying Party” means Sandra Nelms, Diane P. Wilson and Eric Smith.
- Q. “Settlement Class” is defined in Article VII.
- R. “Xerox” and the “Company” means Xerox Corporation.
- S. “Term of the Decree,” “Period of the Decree,” or “Duration of the Decree” is the period from the Effective Date until the expiration of the Decree, as described in Article VI.

IV. LITIGATION BACKGROUND

- A. The named plaintiffs filed the Complaint in this Litigation, *Warren, et al. v. Xerox Corp.*, on May 9, 2001, in the United States District Court for the Eastern District of New York ("Complaint"). This Complaint alleged that Xerox engaged in a pattern and practice of unlawful discrimination against plaintiff class members on account of their race and otherwise intentionally violated their civil rights by: (1) systematically assigning Black sales people to inferior sales territories, often located in low-income or minority neighborhoods; (ii) refusing to promote them or transfer them to more lucrative territories no matter how hard they work or how well they perform; (iii) denying them sales commissions they have rightfully earned; and (iv) retaliating against Black salespeople who assert their civil rights.
- B. In addition to equitable relief, the Class Complaint sought monetary damages which the class and individual plaintiffs had allegedly sustained as a result of defendant's purported conduct, including back pay, front pay, pre-judgment interest, post-judgment interest, and compensatory and punitive damages plus costs, attorneys' fees, and such other relief the court found necessary and proper.
- C. Xerox answered the Complaint on or about August 9, 2001 denying all material allegations, denying any liability to Plaintiffs and denying that it engaged in any unlawful conduct.
- D. Plaintiffs filed a motion for class certification which was opposed by Xerox. On January 30, 2004, Judge Roanne L. Mann issued a Report and Recommendation that a class be certified comprised of all Black sales people who have been, continue to be, or may in the future be, affected by Defendant's alleged pattern and practice of racial discrimination in assignments of sales territories, promotions and compensation. The Court recommended denial of Plaintiffs' request to certify subclasses based upon claims of retaliation or state law violations.
- E. On March 11, 2004, Judge John Gleeson issued an order adopting Magistrate Judge Mann's Report and Recommendation in full.
- F. Xerox and Class Counsel agree that the formal discovery conducted in this action, the depositions taken by both sides, and the documents, statistical and other information produced or exchanged during this Litigation and the settlement discussions, are sufficient to assess the merits of the respective parties' positions and to compromise the issues on a fair and reasonable basis. This Decree shall constitute a resolution of all claims that were or could have been asserted in the Complaint in this Litigation. As indicated by the signature of counsel at the end of this document, Class Counsel and Xerox have consented to the entry of this Decree.

V. JURISDICTION

The Court has jurisdiction over the parties and subject matter of this lawsuit. This Decree conforms with the Federal Rules of Civil Procedure, Title VII of the Civil Rights Act of 1964 ("Title VII"); the 1991 Civil Rights Act, 42 U.S.C. §1981a *et seq.*; 42 U.S.C. §1981("Section 1981") *et seq.*; all as amended, and all applicable state laws and is not in derogation of the rights and privileges of any person. The Court shall retain jurisdiction of this action for the duration of the Decree solely for the purpose of entering all orders, judgments and decrees that may be necessary to implement the relief provided herein.

VI. EFFECTIVE DATES AND DURATION OF THE DECREE

- A. Unless otherwise provided, the equitable provisions in this Decree are effective immediately upon the Effective Date.
- B. The provisions of this Decree shall remain in effect for a period of three (3) years from the Effective Date, and shall expire at midnight on the last day of the thirty-sixth (36) month after the Effective Date.
- C. In the event that Final Approval is not obtained, nothing in this Decree shall be deemed to waive Xerox' objections and defenses to liability or to plaintiffs' entitlement to monetary or equitable relief, or any other issue in the Litigation, and this Decree shall then be deemed null and void and not citable or admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural, including, but not limited to, any issue regarding the propriety of class certification, liability or entitlement to monetary or equitable relief, or any other issue in the Litigation.

VII. DEFINING THE SETTLEMENT CLASS

- A. For purposes of settlement only, the Settlement Class is certified under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and consists of all African American or Black persons, including the Class Representative Plaintiffs, who are, or have been employed by Xerox in a sales representative position with USCO, XBS or NASG at any time from February 1, 1997 through the Preliminary Approval Date and who holds or held a quota-bearing sales territory assignment and is or was a part of the commission sales workforce.
- B. The Settlement Class closes on the Preliminary Approval Date. All African American or Black sales persons employed in a field sales representative position who are placed in such a position after the Preliminary Approval Date may avail themselves of the equitable relief provided in this Decree, but are not entitled to any portion of the monetary relief provided for herein.

- C. Settlement Class Members, including Testifying Parties, who signed a waiver and general release as part of a severance agreement or as part of a settlement agreement for claims relating in part or whole to his/her termination of employment with Xerox, or who otherwise previously dismissed or released claims covered by this Decree, or who had claims covered by this Decree adjudicated in court to a final determination, may avail themselves of the equitable relief provided in this Decree, but are not entitled to any portion of the monetary relief provided for herein except as provided for in Section XVII.D hereof.
- D. Settlement Class Members who have filed a timely request to opt out of eligibility for the monetary provisions of this settlement shall be bound by the equitable provisions of the Decree but shall not be held to release any claims for individual monetary relief. All Settlement Class Members who have not timely opted out shall be bound by all of the provisions of the Decree, including the release of claims as provided for in Article VIII.
- E. A proposed Preliminary Order providing notice and hearing in connection with the settlement proceedings is being filed concurrent with this Consent Decree.

VIII. RELEASES

- A. Release of Claims by Settlement Class
 - 1. Upon Final Approval of the Consent Decree, and subject to Article VII, and for and in consideration of the mutual promises, terms and conditions (including monetary and equitable relief) set forth in the Consent Decree, by and between the Settlement Class and each member of the Settlement Class (as defined in Article VII) for himself, herself, heirs, executors, administrators, trustees, legal representatives, successors, assigns and estates (collectively the "Settlement Class Releasers") and Xerox and the Company's directors, officers, managers, agents, employees, attorneys, and its past, present, and/or future parent entities, subsidiaries, divisions, affiliates, benefits plans and agents or administrators thereof ("Releasees"), the sufficiency of which consideration is expressly acknowledged, the Settlement Class Releasers do hereby fully, finally, unconditionally and forever release, waive and discharge and covenant not to sue the Releasees from any and all individual and/or class-wide claims, demands, complaints, rights and causes of action of any kind, known or unknown, whether seeking monetary relief and/or equitable relief of any sort which were or could have been asserted in the Litigation, and all claims concerning acts, omissions, nondisclosures, or oral or written statements or representations in connection with or directly or indirectly relating to the Decree and/or the settlement of the

Litigation, occurring, in part or in whole, from the beginning of time up to and including the Effective Date of this Decree including, but not limited to:

- (a) Any claim for race discrimination and/or retaliation under Title VII of the Civil Rights Act of 1964; the 1991 Civil Rights Act, 42 U.S.C. §1981a *et seq.*; 42 U.S.C. §1981 *et seq.*; all as amended;
 - (b) Any other claim (whether based on federal, state, and/or local law, statutory or decisional) relating to or arising out of racial discrimination or retaliation in connection with Settlement Class Releasers' employment and/or separation therefrom, which could have been asserted in the Litigation, including but not limited to any claims subject to tolling agreements, as well as any claims for reinstatement, promotions, back or front pay, wage increases, breach of contract (express or implied), retaliation, harassment, fraud, duress, misrepresentation, wrongful discharge, detrimental reliance, defamation (libel or slander), emotional distress and/or compensatory or punitive damages; and
 - (c) Any claim for attorneys' fees, costs, interest, disbursements and/or the like.
- 2. In addition to the foregoing Release of Claims, Class Representative Plaintiffs and Testifying Parties must sign the General Release attached hereto as Exhibit 1 prior to, and as a condition of, the receipt of any monetary award under this Decree.
 - 3. This release is final and shall survive the expiration of the Decree's term.
 - 4. The Settlement Class Releasers, except for opt-outs, agree to voluntarily dismiss with prejudice this Litigation and any and all other actions they have initiated against Xerox which are covered by this release, and authorize the Court to enter an Order fully and finally enjoining further prosecution of all claims released herein, and ordering the voluntary dismissal with prejudice of the instant Litigation.
 - 5. Notwithstanding this Article VII, Section A, claims released do not include those for worker's compensation or unemployment insurance benefits by Settlement Class Members.

B. Final Approval and Final Judgment and Order Approving Settlement

If, after the Final Approval Hearing, the proposed Consent Decree settling this Litigation is approved by the Court, then Class Counsel and Xerox shall seek and

obtain from the Court a Final Judgment and Order Approving Settlement, which shall, among other things:

1. Approve this Consent Decree and the proposed settlement as fair, reasonable and adequate, consistent and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court, and any other applicable law; declare that this Consent Decree is narrowly tailored to achieve the goals and objectives of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S. C. §§ 2000e et seq. (“Title VII”) and 42 U.S.C. §1981, and 1991 Civil Rights Act, as amended, 42 U.S.C. § 1981a et seq. “Section 1981”); direct Xerox and Class Counsel to implement and consummate this Consent Decree according to its terms and provisions; and declare this Consent Decree to be binding on the Class Representative Plaintiffs and all other members of the Settlement Class, as well as their heirs, executors and administrators, successors and assigns, and to have preclusive effect in all pending or future lawsuits with respect to all matters encompassed by the release described in Section A of this Article VIII;
2. Voluntarily dismiss the Litigation on the merits and with prejudice, without fees or costs, except as provided in this Consent Decree;
3. Incorporate the Release set forth in this Article VIII, make the Release effective as of the date of Final Approval of the Consent Decree, and forever discharge the Releasees from any claims or liabilities arising from or related to the matters encompassed by the Release;
4. Permanently bar and enjoin all members of the Settlement Class, including the Class Representative Plaintiffs and Testifying Parties who have executed Releases as described in this Article VII, Section A.2, and any other Settlement Class Releasers from asserting, commencing, prosecuting, maintaining, intervening in, participating in (whether individually, as class members or otherwise), or receiving any benefits or other relief from any other lawsuit or proceeding, or receiving any individual benefits from any administrative, regulatory or other proceeding or order, against the Releasees, in any jurisdiction, based on or relating to the claims and causes of action, or the facts and circumstances relating to this Litigation. Nothing in this Consent Decree and Release shall be construed to prohibit a Settlement Class Member from filing a charge with, or participating in any investigation or proceeding conducted by, the EEOC or comparable state or local fair employment agency. Notwithstanding the foregoing sentence, the Settlement Class Members shall be permanently barred and

enjoined from recovering monetary damages in connection with any such charge, complaint or lawsuit filed by the Settlement Class Member or anyone else on his or her behalf.

5. Require anyone seeking to appeal from the Court's rulings to post an appropriate bond.

C. No Bar to Future Claims

1. Nothing in the Decree shall be construed to bar any claims of members of the Settlement Class or the Class Representative Plaintiffs and Testifying Parties that arise after the Final Approval Date or, if applicable, after their execution of the General Release, whichever is later.
2. Nothing in this Decree is intended to affect any claims by Settlement Class Releasers to vested benefits that have accrued as of the date of this Consent Decree, if any, in any employee benefit or pension plans of Xerox in which said Releaser is a participant, and any such claims shall be governed in accordance with the terms of such plans and applicable law; provided, however, that it is expressly agreed and understood that any back pay received by any Settlement Class Member shall not be used as the basis for a claim for additional benefits pursuant to any Xerox benefit or pension plan.

IX. NO ADMISSION OF LIABILITY

- A. By entering into this Consent Decree, Xerox denies and does not admit, either expressly or implicitly, that it has violated any federal, state and/or local law, regulation, and/or ordinance, or that it has any liability under any of the charges/claims which were or could have been raised in the Litigation. In this regard, Xerox denies that it has discriminated, harassed, or retaliated against the Class Representative Plaintiffs, the Testifying Parties, the Settlement Class, or any member thereof in violation of federal, state, and/or local laws, regulations, or ordinances.
- B. Xerox maintains and has maintained throughout this Litigation that it provides equal employment opportunities for all employees and is and has been in full and complete compliance with the provisions of Title VII, the Civil Rights Acts of 1866 and (42 U.S.C. §1981) the New York State Executive Law, the New York State Human Rights Law, the New York City Administrative Code, Title 8 of the Administrative Code of the City of New York §§ 8-101 et seq. ("Title 8"); and the California Fair Employment and Housing Act, Government Code Section 12900 et seq., the common law of any jurisdiction, and all other federal, state or local laws, statutes, ordinances, regulations, rules or executive orders

prohibiting discrimination and retaliation in employment. The Class Representative Plaintiffs and Settlement Class Members disagree with the Defendant's position as to its compliance with federal, state and/or local laws and regulations prohibiting discrimination and retaliation in employment.

- C. Xerox has entered into this Consent Decree to avoid the disruption, burdens, distractions and expense that would be involved in continued litigation and to put to rest all further controversy with respect to the charges, claims and issues raised in this Litigation.
- D. Nothing in or related to this Consent Decree – including any and all parts of the Consent Decree itself, and including any action taken to implement it, or any statements, discussions, communications, or any materials prepared for the negotiations leading up to the Consent Decree – may be introduced, used or admitted in any way in any judicial, arbitral, administrative, investigative or other proceeding of any kind or nature whatsoever as evidence of the existence of any class, or of discrimination, and/or retaliation, and/or any violation of Title VII, the Civil Rights Acts of 1866 (42 U.S.C. §1981), Article 15 of the New York State Executive Law, Title 8 of the New York City Administrative Code, California Fair Employment and Housing Act, Government Code section 12900 et seq., the common law of any jurisdiction, or any other federal, state, or local law, statute, ordinance, regulation, rule, executive order, or obligation or duty at law or in equity.

X. PUBLICITY/MEDIA

Class Representative Plaintiffs, Testifying Parties, Settlement Class Members, Class Counsel and Xerox agree that they will not issue, or cause to be issued, to the media or any member thereof, including but not limited to print, electronic, Internet and other outlets, any statement or press release in connection with the Litigation and/or this Consent Decree except as set forth in Exhibit 2 hereto. They further agree that they will not initiate, or cause to be initiated, any contact with the media (as defined above) with respect to the Litigation and/or this Consent Decree except for the release of such press release, and in all communications with the media will make no statements inconsistent with the agreed upon press releases. Any inquiries by the media concerning the substance of the Consent Decree that are not addressed by the press release shall be responded to by directing the inquirer to the Consent Decree itself and shall not otherwise be responded to. If there is a claimed breach of this provision, then such claim may be brought before the Court, which shall adjudicate such claim using such procedures as it may deem appropriate and the Court shall award damages and, as it deems appropriate, fees, costs, and expenses, to the prevailing party.

XI. MODIFICATION OF THE CONSENT DECREE

- A. Except as specifically provided for herein, this Consent Decree may not be amended or modified without the express written consent of Class Counsel and Xerox. In the event that changed or other circumstances make a modification to the terms of this Decree necessary to ensure its material purposes are fully effectuated, Xerox and Class Counsel shall negotiate concerning any desired modifications to the Decree before moving to the Court for modification.
- B. If good faith negotiations seeking such modifications are unsuccessful, any party to the Decree shall have the right to move the Court to modify it if there is a change in the operations of Xerox covered by this Consent Decree that materially impairs its purposes or Xerox' ability to comply with one or more of its provisions. Such motion shall be granted only upon the movant's presentation of clear and convincing evidence that changed or other circumstances make such modification necessary, after an opportunity for the other parties to be heard on the motion.
- C. Any such modification to this Decree by the Court shall be ordered in such a fashion as will limit the burden of compliance and/or cost to Xerox (out-of-pocket or otherwise) to the extent possible consistent with effectuating the purposes of this Decree.
- D. Class Counsel and Xerox shall bear their own attorneys' fees and costs in seeking or opposing modification of the Decree, provided, however, that if either party unsuccessfully seeks the Court's modification of the Consent Decree, the successful party may seek recovery of the reasonable attorneys' fees and costs incurred in opposing such modification.

XII. SEVERABILITY OF THE CONSENT DECREE

- A. Whenever possible, each provision and term of this Decree shall be interpreted in such a manner as to be valid and enforceable; provided, however, that in the event after Final Approval hereof, any provision or term of this Decree should be determined to be, or rendered unenforceable on collateral review, all other provisions and terms of this Decree and the application thereof to all persons and circumstances subject thereto shall remain unaffected to the extent permitted by law.
- B. If any application of any provision or term of this Decree to any specific person or circumstance should be determined to be invalid or unenforceable, such provision shall be given effect to the maximum extent possible, and the application of such provision or term to other persons or circumstances shall remain unaffected to the extent permitted by law.

XIII. DUTY TO SUPPORT AND DEFEND THE DECREE

- A. Class Representative Plaintiffs, Class Counsel, Xerox and Xerox' Counsel agree to abide by all of the terms of this Decree in good faith and to support it fully, and shall use their Best Efforts to defend this Decree from any legal challenge, whether by appeal or collateral attack.
- B. In executing this Decree, Class Counsel and counsel for Xerox shall recommend this Decree to their respective principals for ratification and approval of its terms.

XIV. EXECUTION IN COUNTERPARTS

The parties agree that the Decree may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be part of the same Decree.

XV. CONFLICTS, CONFIDENTIALITY, AND RETURN OF DOCUMENTS

- A. Class Counsel acknowledges that during the course of the Litigation they have received confidential information regarding Xerox and its personnel, including, but not limited to, personnel files, internal memoranda, personnel plans, programs, policies and procedures, computerized data, work assignment statistics, internal complaints and investigation materials, and other information. Class counsel, Class Representative Plaintiffs and members of the Settlement Class agree that they will continue to be bound by the Stipulation and Order of Confidentiality entered by the Court on March 4, 2002, which will remain in full force and effect and govern all confidentiality issues with respect to such documents and information. Class Counsel, Class Representative Plaintiffs, and members of the Settlement Class further agree that in the event they receive a demand for documents produced by Xerox in this Litigation pursuant to a lawful and valid subpoena, they will provide written and oral notice to Xerox of any such subpoena within five days of its receipt. Xerox shall have the option of moving for a protective order against any such subpoena, during which time no documents will be provided pursuant to the subpoena unless and until the Court so orders.
- B. Class Counsel will use their Best Efforts to retrieve any and all data and documents produced by Xerox in this Litigation that were provided to any Class Member, fact witness (whether a Testifying or not) or expert witness. Any Settlement Class Members who have received documents that were produced by Xerox in this Litigation must destroy and disgorge themselves of all such documents and to obtain any payment hereunder, they must sign a representation to the effect that they are not in possession, custody or control of any documents (including electronic data) that were produced by Xerox in this Litigation and that they will keep such

information confidential. Class Counsel must represent that they have used their Best Efforts to retrieve all data and documents provided by Xerox, including any working data sets derived from data produced by Xerox, from all expert witnesses retained by Class Counsel and that they have destroyed all such materials.

- C. Class Counsel agree that three (3) years after the Effective Date, they shall either (i) destroy any and all confidential information referenced in this Article and so notify Xerox; or (ii) return any and all confidential information to Xerox, which shall be responsible for postage and storage or disposal of it at its own expense.
- D. Notwithstanding anything to the contrary, Class Counsel, Xerox, the Settlement Class Members, and the Class Representative Plaintiffs (and any employees, agents or representatives thereof) may disclose to their tax or financial advisors, the tax treatment and tax structure of this Consent Decree and all materials of any kind (including tax opinions and/or analyses) that are provided to them related to such tax treatment or tax structure.
- E. Due to Class Counsel's representation of the Class Members, their receipt of confidential information during the course of the Litigation, and their continuing receipt of confidential information in connection with the implementation of the Decree, subject only to any ethical prohibitions, Class Counsel agree not to undertake any representation other than their representation of the Class Members and the Class Representative Plaintiffs that would create a conflict of interest or involve the use of Xerox's confidential information for purposes unrelated to the implementation and enforcement of this Decree; and further, Class Counsel agree not to undertake any consultative role (whether formal or informal) which would call for them to use or convey to third parties any of Xerox' confidential information.
- F. It is understood that Class Counsel may continue to represent Class Representative Plaintiffs and Class Members in connection with the implementation and enforcement of the Decree.

XVI. EQUITABLE RELIEF

- A. Xerox agrees that, within thirty (30) days of the Final Approval of the Consent Decree, it will commission a task force, comprised of Xerox personnel, designed to evaluate disparities, if any, with respect to compensation for African-American commissioned sales representatives. ("The Task Force") The purpose of the Task Force will be, among other things, to evaluate and ensure that territory configurations, assignments, quotas and budgets are meted out in a non-discriminatory manner among similarly-situated commissioned sales representatives. The Task Force

may also consider whether the statistical and other reports and computer programs utilized by sales managers to evaluate and generate territories and budgets should be expanded, replaced or modified in any manner. Absent events occurring prior to Final Approval that make it not feasible to use the Lean Six Sigma business model, the Task Force team shall use such model to conduct its evaluation and assessment to determine whether the sales accounts, territories and budgeting process is conducted in a non-discriminatory fashion.

- B. Xerox shall use its best efforts to include on the Task Force a diverse group of Xerox personnel (by race, gender and age) who have knowledge and experience as commissioned sales representatives or management of those individuals, and may include personnel from diverse parts of the Xerox organization and different parts of the country. The first meeting of the Task Force shall take place within forty-five (45) days of the commissioning of the Task Force. Thereafter, subsequent meetings and agenda items shall be set by a consensus of the Task Force. It is the intention of Xerox for the Task Force to meet at least quarterly, until the final recommendation report is completed, absent good reason to do otherwise.
- C. The Task Force may utilize whatever statistical or other analytical tools it deems relevant and useful to its evaluation of the above-mentioned territory, assignment, budget and compensation issues, including, but not limited to, the various statistical and other analyses prepared by the respective parties' experts in this Litigation. There shall be no limitations on the information, analyses and data that the Task Force may utilize in its review, nor shall there be any limitation on the consultants whose advice and opinions may be sought to assist the Task Force in its review.
- D. Upon conclusion of the Task Force's analysis, a list of draft recommendations shall be prepared. Xerox agrees that it will share the Task Force's draft recommendations with designated Lead Counsel, Diane Bradley, who shall have at least thirty (30) days to provide written comments on these recommendations. In the event that Ms. Bradley is unable to fulfill this role, Class Counsel shall designate another attorney to review and provide written comments on the Task Force recommendations within the time allotted. Any comments or recommendations provided by Lead Counsel shall be considered for implementation by the Task Force and, within a reasonable period of time after receipt of Lead Counsel's comments, but no later than ninety (90) days after receipt, the Task Force shall provide written notice to Lead Counsel as to those comments or recommendations it has accepted or not accepted. After consideration of any such written comments, the Task Force's recommendations shall be finalized. Included in any such recommendations will be a timetable or time frame by which any such recommendations will be initiated or implemented.

- E. Xerox will be solely responsible for the implementation of all programmatic relief under the terms of the Consent Decree, except as otherwise provided in this Consent Decree. Xerox is not precluded from developing and implementing such additional programs as it may find appropriate. Subject to its obligations under this Agreement, Xerox shall retain full operational authority over all of its human resources, EEO and legal functions, and sales operations.
- F. Documents prepared in connection with the activities of the Task Force – including notes, agenda items, interim memos and the like – shall be deemed confidential and shall not be disclosed to anyone outside the membership of the Task Force; provided, however, that the Task Force’s draft recommendations will be shared with Lead Counsel as described above. The Task Force’s final recommendations shall not be treated as confidential.
- G. Xerox shall not intentionally enact, maintain or implement any policy, or intentionally engage in any practice or procedure that discriminates against African-Americans on the basis of race, and/or color; or intentionally retaliate against anyone, in violation of Title VII of the Civil Rights Act of 1964, as amended, or because such individual furnished information or participated in the Litigation and/or implementation of this Consent Decree, or sought and/or received any monetary and/or non-monetary relief pursuant hereto.
- H. Reporting, Recordkeeping And Compliance Meetings

For the duration of the Decree, Xerox agrees to retain and not destroy documents and datasets that were produced in the course of discovery in the Litigation and to retain and not destroy all documents that are reviewed by and/or presented to the Task Force.

- I. Access to Documents.
 - 1. Lead Counsel shall, upon reasonable notice, be entitled to review all documents, including electronic data in machine-readable form, that are required to be maintained under Article XVI, Section H above. Lead Counsel shall not be entitled to review any such documents that are protected by attorney-client privilege or attorney work product doctrine (“privileged documents”).
 - 2. Lead Counsel may seek access to non-privileged documents, not previously produced in this Litigation, described in Section H above by making a written request to Xerox’ counsel, who shall respond to that request within ten (10) business days.
 - 3. All documents required to be maintained by the express terms of the Decree, and all documents that are provided to Lead Counsel

under the terms of the Decree, are and shall be treated as confidential business records consistent with the obligations of the Stipulation and Order of Confidentiality entered by the Court on March 4, 2002. Lead Counsel shall not divulge any such documents to any third party unless so ordered by the Court after notice to Xerox and an opportunity for Xerox to object to such disclosure and be heard. Upon expiration of this Decree, Lead Counsel shall promptly return to Xerox any and all documents Xerox furnished under this Decree, or provide a written representation that all such documents have been destroyed. This provision shall not prevent a party from filing otherwise confidential documents with the Court, provided that, either: (a) such documents are filed under seal; or (b) Lead Counsel gives ten (10) days' advance notice to Xerox, to permit opportunity to seek a protective order sealing such documents.

J. Compliance Meetings

Within three months of the Final Approval Date, representatives of Xerox and Lead Counsel shall confer in order to review the initial implementation of the Task Force Obligations under the Decree. Thereafter, representatives of Xerox and Lead Counsel shall confer every six months to review the implementation of the Decree.

K. Status Conference with Court

The parties shall conduct a status conference with the Court at the expiration of the Decree to discuss the status of implementation of the Decree. Xerox and Lead Counsel will be represented at the status conference. No party shall file any document with the Court in conjunction with the status conference, unless directed to do so by the Court.

XVII. MONETARY RELIEF

A. Establishment of the Settlement Fund

1. No later than fourteen (14) days after the Effective Date of this Decree, Xerox shall deposit the sum of Twelve Million Dollars (\$12,000,000.00), less the amount of dollars to be deducted therefrom pursuant to Section E hereof, into a Qualified Settlement Fund (in accordance with Internal Revenue Code Section 468B) ("Settlement Fund"), an interest-bearing account. This payment is made in order to satisfy and finally settle the claims of the Class Representative Plaintiffs, Testifying Parties and eligible Settlement Class Members in accordance with the provisions of this Article XVII.

2. The Settlement Fund shall constitute monies to be paid by Xerox in connection with the resolution of the Litigation and is inclusive of (a) all awards to Class Representative Plaintiffs, Testifying Parties and Settlement Class Members; (b) all attorneys' fees, costs and expenses; and (c) all taxes imposed on the Settlement Fund subsequent to the date of its creation.

B. Claims Administrator

1. The Claims Administrator for the Settlement Fund shall be Settlement Services, Inc. of Tallahassee, Florida. The Claims Administrator will be responsible for:
 - (a) distributing to Class Representative Plaintiffs the amounts listed in Section C of this Article XVII ("Payments to Class Representative Plaintiffs");
 - (b) distributing to Testifying Parties the amounts listed in Section D.1 of this Article XVII ("Payments to Testifying Parties");
 - (c) distributing to Class Counsel any attorneys' fees and costs awarded pursuant to Section T of this Article XVII;
 - (d) preparing and mailing Claim Forms, where applicable, and Notices to Settlement Class Members describing the Decree and their right to object or opt out of eligibility to receive Monetary Damages as part of any payment from the Settlement Fund;
 - (e) locating Settlement Class Members whose addresses are unknown, via a tracing service;
 - (f) receiving and evaluating claim eligibility;
 - (g) answering procedural questions from class members;
 - (h) seeking additional information from claimants, when appropriate;
 - (i) receiving, processing, and serving on Class Counsel, Xerox, and the Court, Settlement Class Member Objections, Opt-Out Statements, Withdrawals of Objections, and Rescissions of Opt-Out Statements, and filing such documents with the Court;
 - (j) receiving, processing, and determining the timeliness and completeness of Claim Forms and, where applicable, General Releases;
 - (k) receiving, processing and determining the timeliness, compliance, and completeness of Opt-Out Statements;

- (l) determining point allocations with respect to eligible Settlement Class Members' claims;
 - (m) preparing a list of eligible Settlement Class Members;
 - (n) determining, processing and mailing payments to eligible Settlement Class Members under the Back Pay Funds and the Compensatory Damages Fund;
 - (o) preparing, processing, and mailing all tax withholding documents;
 - (p) preparing, processing, and filing all applicable tax returns on behalf of the Settlement Fund;
 - (q) remitting all taxes and other payments due with respect to disbursements from the Settlement Fund;
 - (r) preparing and filing all appropriate tax documents and reports, including but not limited to, W-2 and 1099 forms for all Class Representative Plaintiffs and designated Testifying Parties, eligible Settlement Class Members and Class Counsel for their payments from the Settlement Fund; and
 - (s) carrying out other related tasks in accordance with the provisions of this Decree.
2. The Claims Administrator shall establish a toll-free telephone number and be available to respond to questions or requests for assistance from Settlement Class Members regarding the claims procedure. The Claims Administrator shall also establish a website on which it shall post all pleadings, notices, and other information as determined by the Claims Administrator to be relevant to this settlement and claims procedure.
3. In order to best fulfill the stated intent in Section R of this Article XVII, the Claims Administrator will make all reasonable attempts to ensure that payments reach the intended Settlement Class Members, including the following:
- (a) At approximately two (2) months from check issuance, the Claims Administrator will send postcards to each person for whom the Claims Administrator's records reflect an uncashed check(s) at the addresses obtained pursuant to Section F of this Article XVII. The postcards will state that the individual has been sent a check(s) that remains uncashed and that the person should contact the Claims Administrator to verify his/her identity and address. Upon verification of the individual's identity and current address, the Claims Administrator will stop payment on the original check and

reissue a new check(s); provided, however, that if a check is returned and the individual's identity and current address subsequently verified, the original check will be re-sent to that individual.

(b) At approximately four (4) months from check issuance, with respect to uncashed or returned checks still not verified pursuant to Section B.3(a) above, the Claims Administrator will conduct a telephone trace for the remaining outstanding individuals for whom checks have not been cashed or have been returned. The Claims Administrator will then call the telephone numbers obtained in order to locate and verify the identity of the individuals for whom checks have not been cashed or have been returned.

4. All direct and indirect fees and expenses incurred by the Claims Administrator, provided they are reasonably incurred and adequately documented, up to \$165,000.00, shall be paid by Xerox, subject to possible offset, as set forth in Section R below. The Plaintiffs shall contract with the Claims Administrator this fixed fund liquidated amount for administration.

C. Payments to Class Representative Plaintiffs

1. The Class Representative Plaintiffs provided services and undertook risks in prosecuting this Litigation, such as by assisting with discovery, providing affidavits, identifying witnesses, and giving deposition testimony, warranting an allocation from the Settlement Fund reflecting the value of their services, as well as the extent of harm and economic losses each, purportedly, has suffered.
2. Subject to the Court's approval, the parties agree that each of the Class Representative Plaintiffs shall receive a liquidated amount of up to Fifty Thousand Dollars (\$50,000) as the Court chooses to award for services he/she has provided to the Class, the risks he/she has taken on behalf of the Class, and/or the work opportunities he/she has missed by virtue of the time spent providing such services to the Class.
3. The Claims Administrator shall pay such amounts designated in this Section C to the Class Representative Plaintiffs within twenty (20) days after the Effective Date of the Decree, provided that they have abided by the terms of Article XVII.A.2 ("Releases").
4. The payment referred to in this Section C is in addition to any monetary award the Class Representative Plaintiffs may be entitled

to or seek under Sections L and M below and shall not be payments for wages or subject to W-2 income tax withholding.

D. Payments to Testifying Parties

1. Testifying Parties

- (a) Subject to the Court's approval, Sandra Nelms, Diane Wilson and Eric Smith, Testifying Parties, shall each receive a liquidated amount of \$5,000. This amount is intended to compensate the Testifying Parties for the time and effort expended in the Litigation through their submission to a deposition and/or the supply of information used in support of the Litigation.
- (b) The Claims Administrator shall pay such amounts designated in this Section D.1 to the Testifying Parties within twenty (20) days after the Effective Date of the Decree, provided that they have abided by the terms of Article VIII.A.2 ("Releases") and they have not opted out of this Decree.
- (c) Each Testifying Party designated in Section D.1. previously signed a waiver which precludes them from seeking any monetary recovery from any monetary relief from the Back Pay or Compensatory Damages Funds established by the Consent Decree. Notwithstanding the foregoing, the parties agreed to provide for the liquidated amounts in Sec. D.1 (a) to these designated Testifying Parties. This payment shall not be subject to W-2 tax withholding.

E. Class Monetary Fund

- 1. The remainder of the Settlement Fund (*i.e.*, the Settlement Fund less the amounts specified in Article XVII, Section C "Payments to Class Representative Plaintiffs" and "Payment to Testifying Parties," Article XVI, Section J ("Opt-Out Credits"), and Article XVI, Section T, "Attorneys' Fees, Costs and Expenses") (the "Remainder Settlement Fund") shall be used to pay eligible Settlement Class Members, in accordance with the Allocation Plans described in below.
- 2. Settlement Class members who have exercised their right to opt-out pursuant to this Article XVII, Section H, are not eligible to receive Back Pay or Compensatory Damages as part of any payment from the Settlement Fund. Settlement Class Members and Testifying Parties who have signed a waiver and general release as part of a severance agreement or as part of a settlement agreement for claims relating in part or whole to his/her termination of employment with Xerox, or who otherwise

previously dismissed or released claims covered by this Decree, or who had claims covered by this Decree adjudicated in court to a final determination, are not entitled to any portion of the monetary relief provided for herein except as provided for in Section J of this Article XVII.

F. Class Action Settlement Notice

1. No later than fifteen (15) business days following the Preliminary Approval Date, Xerox shall prepare and deliver to the Claims Administrator a computer disk containing the following information with respect to each Settlement Class Member:
 - (a) Name;
 - (b) Social Security number;
 - (c) Birth date;
 - (d) Last-known address;
 - (e) Last-known telephone number;
 - (f) Beginning and (if applicable) end date of employment with Xerox; and
 - (g) All positions held during the Class Period.
2. If Lead Class Counsel can provide clear written evidence (with a copy to Xerox Counsel) within 45 days following the first mailing of Class Notice that a person is, in fact, a Settlement Class Member but has not been included on Xerox' listing of Settlement Class Members delivered to the Claims Administrator, then notice as provided for herein shall be sent to such Settlement Class Member and he/she shall be eligible to participate in this settlement as per the terms hereof.
3. Upon request by the Claims Administrator, Class Counsel shall provide to the Claims Administrator any of the above information regarding Settlement Class Members requested by the Claims Administrator that is in its possession, custody or control.
4. The Claims Administrator shall update the information provided by Xerox and Class Counsel with any new addresses for such Settlement Class Members it may obtain from the National Change of Address System to create a Class Notice List.

5. Within fifteen (15) days following the receipt of the list of Settlement Class Members, the Claims Administrator shall mail, via first class United States Mail, postage prepaid, the Class Action Settlement Notice in the form attached hereto as Exhibit 3 (which includes an explanation of the opt-out procedure) and an explanation of the settlement set forth in the proposed Consent Decree, and, if applicable, General Release, in the forms attached hereto as Exhibits 1 and 3 to each eligible Settlement Class Member on the Class Notice List.
6. The Claims Administrator shall, within three (3) business days following a request, by either by phone or mail, from a Settlement Class Member for a Claim Form for Compensatory Damages, mail, via first class United States Mail, postage prepaid, the Claim Form, in the form attached hereto as Exhibit 4 as well as the General Release attached hereto as Exhibit 1. In addition, Class Counsel will mail, via first class United States Mail, postage prepaid, the Claim Form and General Release to those Settlement Class Members identified during the discovery phase of this litigation as having made written complaints as defined in Section XVII. O. 5. of this Decree or as having testified under oath as defined under Section XVII.O.8 (a) of this Decree along with a cover letter notifying them that they appear to be eligible for Compensatory Damages relief. Settlement Class Members identified during the discovery phase of this litigation as having made written complaints or given testimony are attached, as well as Class Counsels' letter, as Exhibit 6 of this Decree.
7. In the event that the Class Action Settlement Notice, Claim Form and Explanation of Claims Procedure are returned to the Claims Administrator as "undeliverable" the Claims Administrator shall update that Settlement Class Member's address by using the United States Postal Service National Change of Address list and/or routine and customary skip trace procedures and shall re-mail the materials once to such person. No further checking or re-mailing, except as provided by Section B.3 of this Article XVII, shall be required.

G. Objections

1. Settlement Class Members (with the exception of Class Representative Plaintiffs who shall have no right to object) who wish to present objections to the proposed settlement must do so in writing. Written objections shall state with specificity the provision(s) of the Decree to which the Settlement Class Member objects, plus the reason(s) for the objection(s). Written objections shall be mailed to the Claims Administrator and must be received

by the Claims Administrator on or before a date to be determined by the Court. Settlement Class Members who have not submitted timely objections to the proposed settlement will not be permitted to present any objection to the settlement at the Fairness Hearing.

2. The Claims Administrator shall:

- (a) date stamp the original of any objection it receives;
- (b) serve copies on Class Counsel and Xerox' Counsel no later than two (2) business days after the Claims Administrator receives the objection or immediately if received within five (5) business days of the Final Approval Hearing date;
- (c) file the date-stamped originals with the Clerk of the Court no later than five (5) business days prior to the date of the Final Approval Hearing or immediately upon the Claims Administrator's receipt of such objection if received less than five (5) business days prior to the date of the Final Approval Hearing.
- (d) retain copies of all written objections until the Claims Administrator is relieved of its duties and responsibilities under this Decree.

H. Opt-Outs

- 1. Settlement Class Members (with the exception of Class Representative Plaintiffs, who shall have no right to opt-out) have the right to opt-out of eligibility for the monetary provisions of the Decree, but are nonetheless bound by all provisions regarding equitable and injunctive relief.
- 2. Any Settlement Class Member who timely files an Opt-Out Statement with the Claims Administrator pursuant to this Article XVII, Section H, shall not be eligible to receive any monetary compensation from the Settlement Fund.
- 3. Settlement Class Members (with the exception of Class Representative Plaintiffs, who shall have no right to opt-out) who wish to exercise their right to opt-out of eligibility for the monetary provisions of the Decree must do so by mailing a written notice of intent to opt-out ("Opt-Out Statement") to the Claims Administrator. In order to be valid, the Opt-Out Statement **must** include certain identifying information, as well as affirmative provision of certain substantive information. The written Opt-Out Statement must indicate the Settlement Class member's full name, address, Social Security number, and day and evening telephone numbers and the following language:

“I understand that I am requesting to be excluded from the class monetary settlement and that I will receive no money from the settlement fund created under the Consent Decree.”

4. Written Opt-Out Statements shall be signed and dated and must be received by the Claims Administrator on or before a date to be determined by the Court in order to be valid.
5. The Claims Administrator shall:
 - (a) date stamp the original of any Opt-Out Statements it receives;
 - (b) serve copies on Class Counsel and Xerox’s Counsel no later than two (2) business days after the Claims Administrator receives the Opt-Out Statement or immediately if received within five (5) business days of the Final Approval Hearing date;
 - (c) file the date-stamped originals with the Clerk of the Court no later than five (5) business days prior to the date of the Final Approval Hearing or immediately upon the Claims Administrator’s receipt of such Opt-Out Statement if received less than five (5) business days prior to the date of the Final Approval Hearing;
 - (d) retain copies of all Opt-Out Statements until the Claims Administrator is relieved of its duties and responsibilities under this Decree.
6. In the event that the Claims Administrator requests that a Settlement Class Member provide additional information in order to evaluate the Opt-Out Statement, such Settlement Class Member shall timely respond to the request. Failure to submit a valid Opt-Out Statement as set forth in Section H.2-4 above of this Article XVII and/or to timely respond to a request for additional information shall result in the Settlement Class Member being included in the Settlement Class.
7. As of the Effective Date of the Decree, and pursuant to the Court’s authority under the All Writs Act and Anti-Injunction Act, 28 U.S.C. §§ 1651, 2283, and Federal Rule of Civil Procedure 23, each and every Settlement Class Member who has not filed a timely request to opt-out shall and hereby is permanently enjoined from bringing any claims released pursuant to Article VIII (“Releases”) in any court, agency or adjudicative body, whether federal, state or local.

I. Rescissions of Opt-Outs and Withdrawals of Objections

1. Xerox and Class Counsel recognize that some Settlement Class Members who initially submit objections to this Decree, and some Settlement Class Members who opt-out of eligibility for the monetary provisions of the Decree may, upon further reflection, consultation, or the receipt of additional information regarding this Decree, wish to withdraw such Objections or rescind such Opt-Out Statements. Xerox and Class Counsel agree that Settlement Class Members shall be permitted to withdraw such objections and/or rescind such Opt-Out Statements by submitting a Withdrawal of Objection form, or a Rescission of Opt-Out Statement along with a completed Claim Form and, if applicable, General Release, to be received by the Claims Administrator on or before a date to be set by the Court (“Rescission/Withdrawal Date”), and shall be deemed to have withdrawn any objection or rescinded any opt-out from the Decree. Withdrawal of Objection forms and Rescission of Opt-Out Statements shall be made available and provided by the Claims Administrator upon request.
2. The Claims Administrator shall:
 - (a) date stamp the original Withdrawal of Objection forms and Rescission of Opt-Out Statements it receives;
 - (b) serve copies on Class Counsel and Xerox’ counsel no later than two (2) business days after the Claims Administrator receives the Withdrawal of Objections or Rescission of Opt-Out Statements;
 - (c) file the date-stamped originals with the Clerk of the Court within three (3) business days after the Rescission/Withdrawal Date;
 - (d) retain copies of all Withdrawal of Objections and Rescission of Opt-Out Statements until the Claims Administrator is relieved of its duties and responsibilities under this Decree.

J. Opt-Out Credits

1. Where an Opt-Out Statement is filed by a Settlement Class Member, without regard to a determination of their eligibility for the monetary provisions of the Decree, credits will be \$10,000 per opt-out; provided, however, that Xerox will not receive such credit where the Opt-Out Statement is filed by a Settlement Class Member who has signed a waiver and general release as part of a severance agreement or as part of a settlement agreement for claims relating in part or whole to his/her termination of employment with Xerox, or who otherwise previously dismissed or released claims covered by this Decree, or who had claims covered

by this Decree adjudicated in court to a final determination. Opt-Out credits to Xerox will be capped at One Million Dollars (\$1,000,000.00).

2. The total credit amount for all Opt-Outs shall be deducted from the payment to Plaintiffs as provided for in Article XVII, Section E.1 and the net thereof shall be paid into the Qualified Settlement Fund.

K. Excessive Number of Opt-Outs

1. If the number of Opt-Outs equals a total credit of greater than \$350,000, then Xerox may, at its sole option, withdraw from and void this Decree. Such decision shall be made within ten (10) business days of the last day for opt-outs.
2. In the event that Xerox elects to void this Decree pursuant to this Article XVII, Section K:
 - (a) all of Xerox' obligations under this Decree shall cease to be of any force or effect, and the Decree and any orders entered in connection therewith shall be vacated, rescinded, canceled and annulled, and the parties shall return to the status quo in the Litigation as if the plaintiffs and Xerox had not entered into the Consent Decree;
 - (b) the Consent Decree and all negotiations, court orders, and proceedings related thereto shall be without prejudice to the rights of any and all parties thereto, and evidence relating to the Consent Decree and all negotiations shall not be admissible or discoverable in the Litigation or otherwise; and
 - (c) no party shall be deemed to have waived any claims, defenses or arguments with respect to the appropriateness of class certification.

L. Distribution Plan for the Back Pay Funds

1. The Remainder Settlement Fund shall be allocated between the Back Pay Funds and the Compensatory Damages Fund with forty-eight point six percent (48.6%) being allocated to the Back Pay Fund. No claims form is required in order to receive an award from the Back Pay Fund.
2. The eligibility requirements shall be measured by the Settlement Class member's years of employment at Xerox during the class period. Each eligible Class Member will accrue "points" based on the years in which he/she was employed at Xerox during the class period. For the purposes of calculating a recovery from the Back

Pay Fund, a “point” shall be 1 full calendar year. The total number of years will be prorated for individuals who did not work a full calendar year and based on the number of months and/or days worked. After each Class Member has been assigned a total number of points representing their loss, the Class Member’s Payment will be calculated by dividing the Class Member’s points by the total number of points for all Settlement Class Members relative to the Back Pay Fund. This relative fraction would then be multiplied by the total Back Pay Funds pool to yield the Back Pay Award, which shall be distributed to the respective Settlement Class Members by the Claims Administrator. All payments from this Back Pay Fund Pool shall be subject to W-2 withholdings for wages.

3. The parties understand and agree that Xerox may possess information that may assist in the determination of eligibility of potential class members for back pay compensation. Xerox shall reasonably cooperate in providing such information which Class Counsel or the Claims Administrator deems reasonably necessary to assist in determining the eligibility of any class member for back pay relief. Xerox shall attempt to provide such information within fourteen (14) days of any written requests for the information.

M. Procedure for Filing a Claim for Compensatory Damages

1. Settlement Class Members who seek recovery of compensatory damages from the Compensatory Damages Fund must sign, under penalty of perjury, and return a Claim Form supplying information related to his or her claim to the Claims Administrator (in the form annexed hereto as Exhibit 4) postmarked no later than a date to be determined by the Court.
2. Failure to file a timely Claim Form, for any reason whatsoever, shall bar the Settlement Class Member from having his or her claim for compensatory damages considered and from receiving compensatory damages from the Compensatory Damages Fund.
3. Class Members who file a Claim Form must notify the Claims Administrator of any subsequent change of address. A failure to notify the Claims Administrator of a change of address may result in the forfeiture of a monetary award.
4. The Claims Administrator shall be available through a toll-free telephone number and via e-mail to respond to requests from Class Members for assistance in completing and filing Claim Forms.

5. Claims for compensatory damages made on behalf of a deceased eligible Settlement Class Member must be filed by the administrator or legal representative of the deceased eligible Settlement Class Member's estate and must be accompanied by a certified copy of the deceased eligible Settlement Class Member's death certificate.
6. In addition to mailing Claim Forms by Class Counsel as provided in Section XVII. F.6., the Claims Administrator also shall make Claim Forms available to eligible Settlement Class Members who make written or oral requests for such Claim Forms.
 - (a) No more than three (3) business days after receiving a request, the Claims Administrator shall mail a Claim Form and instructions for completing the form via first class United States Mail, postage prepaid or via facsimile or e-mail, to the eligible Settlement Class Member requesting the form;
 - (b) If an eligible Settlement Class Member requests a Claim Form from Class Counsel or Xerox, the eligible Settlement Class Member shall be referred to the Claims Administrator;
 - (c) The Claims Administrator shall retain documentation of all requests for Claim Forms it receives and the date of each request until the Claims Administrator is relieved of its duties under this Decree, upon final distribution of all Residual Funds pursuant to Article XVIII, Section R.

N. Processing of Claim Forms

1. The Claims Administrator shall process and review for timeliness, completeness, and validity each Claim Form it receives. Claims that are untimely or otherwise invalid shall be rejected.

2. Determining Eligibility

The Claims Administrator shall make the determination as to whether a Claim Form is complete. If it is not complete, the Claims Administrator shall request additional information from the claimant, if it appears that such additional information would complete the Claim Form. Such requests for information shall be in writing and shall specify the information necessary to complete the Claim Form. The requests for information must be sent via first class mail and must inform the claimant that a response must be returned no later than thirty (30) calendar days from the date the request for information was mailed. The claimant must provide the requested information, signed under penalty of perjury, to the Claims Administrator by mail with a postmark no later than thirty (30) calendar days from the date of the mailed request for information. Such

additional information shall be considered part of the original Claim Form and will relate back to the original filing date. The failure of a claimant to timely respond to the request for information may result in the denial of a claim for compensatory damages.

3. Late Filed Claims

For claims received after the filing deadline, the Claims Administrator shall notify the late-filing claimants that their claims are untimely and that they are not eligible for any compensatory damages award from the Compensatory Damages Fund. The Claims Administrator shall also inform late-filing claimants that they may seek a review of the determination that they filed untimely by requesting the Claims Administrator to reconsider its determination. The Claims Administrator may reverse its determination that a claim was not timely filed only if the claimant proves that the Claim Form was filed on or before the filing deadline and that the untimeliness determination is erroneous.

4. Appeals of Claims Eligibility for Compensatory Damages

(a) Within forty-five (45) days of the close of the claims filing period or as soon as practical thereafter, all claimants shall be mailed written notice of the Claims Administrator's determination regarding their claim for compensatory damages. The determination shall include whether the claim was deemed ineligible or eligible for a compensatory damages award and the reason(s) for this determination. If a claimant is determined by the Claims Administrator to be eligible for a compensatory damages award, the written notice shall include the amount of the award. Any claimants wishing to seek review of their determinations must do so by returning a written request for review to the Claims Administrator by mail with a postmark no later than fourteen (14) business days from the date of the notice of claim determination. The written request for review must state the specific grounds for disputing the Claims Administrator's determination and include an explanation as to why the determination should be adjusted. Failure to file a timely request for review shall bar a claimant from challenging a determination of ineligibility or challenging the amount of their compensatory damages award.

(b) The Claims Administrator shall resolve the requests for review based on the written request for review and any other documentation or written information submitted by the claimant, or deemed necessary by the Claims Administrator. The Claims Administrator may seek further written information from the claimant as to the basis for their request and may consider written arguments of Class Counsel or Xerox.

- (c) The Claims Administrator shall attempt to expeditiously resolve any requests for review within twenty (20) days after the filing of the request for review. The Claims Administrator's decisions shall be communicated to the claimant in writing.

O. Distribution Plan for the Compensatory Damages Fund

1. Fifty-one point four percent (51.4%) of the Remainder Settlement Fund will be allocated to the Compensatory Damages Funds.
2. In addition to other awards or payments Class Representative Plaintiffs and Settlement Class Members may receive under this Decree, the Compensatory Damages Fund shall be used to satisfy Settlement Class Members' claims for compensatory damages for claims of race discrimination, including retaliation, made against Xerox. Payments from this Compensatory Damages Funds Pool shall not be wages and shall be reported as non-wage income on an IRS Form 1099-MISC.
3. Class Members who may qualify for compensation from the Compensatory Damages Fund must timely file a Claim Form with the Claims Administrator. Based on the criteria enumerated in Sections 7-9 herein, the Claims Administrator shall assign points to each claim.
4. To qualify for a Compensatory Damages award under Section O.7(a)-(i), a claimant must have made a written complaint as defined in Section O.5 below. To qualify for a Compensatory Damages award under Section O.8(a)-(d), a claimant must have made a written complaint as defined in Section O.5 below, or must have testified under oath as defined by Section O.8.(a).
5. For the purposes of awarding points for the Compensatory Damages Fund, a "written complaint" shall be deemed any of the following:
 - (a) the claimant is a named plaintiff in this lawsuit; or
 - (b) the claimant is or was a plaintiff in any lawsuit alleging race discrimination and/or retaliation at Xerox filed within the class period provided that the claimant has not previously executed a release in favor of Xerox, or the claim was not otherwise adjudicated to a final determination; or
 - (c) the claimant filed a complaint or charge of race discrimination and/or retaliation against Xerox with the EEOC or other governmental human rights agency; or

- (d) the claimant made a written complaint asserting race discrimination or retaliation to Xerox; or
 - (e) medical records from health care providers, mental health professionals or insurance carriers documenting emotional distress suffered due to race discrimination during the Class Period.
- 6. A claimant may rely upon evidence developed during the discovery phase of this lawsuit or other Court records for this case to satisfy his/her evidentiary showing that (a) a complaint of race discrimination or retaliation was made; (b) a racial incident, harassment or discipline resulted from the complaint; and (c) that a particularized racial incident occurred. Class Counsel will assist the Claims Administrator in locating the relevant evidence in the discovery record.
- 7. Emotional Distress
 - (a) A claimant who was employed by Xerox for 1-5 years shall be awarded 1 point if he/she claims to have suffered emotional distress due to race discrimination during the Class Period which can be supported through documentation.
 - (b) A claimant who was employed by Xerox for 6-10 years shall be awarded 2 points if he/she claims to have suffered emotional distress due to race discrimination during the Class Period which can be supported through documentation.
 - (c) A claimant who was employed by Xerox for 11 years or more shall be awarded 3 points if he/she claims to have suffered emotional distress due to race discrimination during the Class Period which can be supported through documentation.
 - (d) A claimant who was employed by Xerox for 1-5 years shall be awarded 4 points if he/she claims to have suffered emotional distress due to race discrimination during the Class Period which led to the claimant taking disability leave as a result of emotional distress.
 - (e) A claimant who was employed by Xerox for 6-9 years shall be awarded 5 points if he/she claims to have suffered emotional distress due to race discrimination during the Class Period which led to the claimant taking disability leave as a result of emotional distress.
 - (f) A claimant who was employed by Xerox for 10 years or more shall be awarded 6 points if he/she claims to have suffered emotional distress due to race discrimination during the Class Period which

led to the claimant taking disability leave as a result of emotional distress.

- (g) A claimant may only recover once under this Section O.7.
- (h) For purposes of Section O.7.(a)-(f), a year of employment at Xerox shall be defined as any portion of a calendar year in which the claimant was employed at Xerox and otherwise meets the class definition.

8. Retaliation

- (a) A claimant who was employed by Xerox for 1-5 years shall be awarded 1 point if, during the Class Period, he/she made a written complaint, per Section O.5. (a) – (d), of retaliation, or testified under oath in a deposition or an administrative proceeding related to this Litigation that he/she was retaliated against during the Class Period.
- (b) A claimant who was employed by Xerox for 6-10 years shall be awarded 2 points if, during the Class Period, he/she made a written complaint, per Section O.5. (a) – (d), of retaliation, or testified in a deposition related to this Litigation that he/she was retaliated against during the Class Period.
- (c) A claimant who was employed by Xerox for 11 years or more shall be awarded 3 points if, during the Class Period, he/she made a written complaint, per Section O.5. (a) – (d), of retaliation, or testified in a deposition related to this Litigation that he/she was retaliated against during the Class Period.
- (d) Provided that the Class Member is still employed at Xerox as of the Preliminary Approval date of this Decree and they have been awarded point(s) under this Section, the following adjustments shall be made to the points awarded:
 - (1) If the claimant recovered under Section (8)(a), they shall be awarded an additional .3 point.
 - (2) If the claimant recovered under Section (8)(b), they shall be awarded an additional .6 point.
 - (3) If the claimant recovered under Section (8)(c), they shall be awarded an additional .1 point.
- (e) A claimant may only recover once under Section O.8. (a) - (c).
- (f) A claimant may only recover once under Section O.8. (d) (1) -(3)

9. Point Distribution Based on Written Complaint
- (a) Claimants who filed a written complaint as defined in Section O.5. (a) – (d) and were not awarded any points under Sections O.7. or O.8. shall received the following points based on the date which their complaint was filed:
 - (b) A claimant who filed a written complaint between February 1, 1997 through May 9, 2001 shall receive .5 point.
 - (c) A claimant who filed a written complaint between May 10, 2001 through the preliminary approval date of this Consent Decree shall receive .25 point.
 - (d) A claimant can only recover once under this Section O. 9.
10. Allocation of Compensatory Damages Awards
- (a) After each Class Member has been assigned a total number of points, then the Class Member's payment will be calculated by dividing the Class Member's points by the total number of points for all Settlement Class Members relative to the Compensatory Damages Fund. The relative fraction would then be multiplied by the total Compensatory Damages Pool to yield the Class Member's Compensatory Damages Award, which amount shall be distributed to the respective Settlement Class Member by the Claims Administrator; provided, however, that no Settlement Class Member shall receive more than One Hundred and Fifty Thousand Dollars (\$150,000) in total payments out of the Compensatory Damages Fund, unless the amount of approved claims does not exceed the total amount of the funds in the Compensatory Damages Fund.
 - (b) If after payment of all Compensatory Damages Awards, there are any amounts left in the Compensatory Damages Fund that are not required to be distributed as provided for by Section XVII, O. 10(a), 50% of such undistributed amounts shall be distributed on a pro rata basis to the eligible claimants according to the eligibility requirements. Eligible claimants who have been awarded points by the Claims Administrator that equal or exceed the \$150,000 cap shall also be eligible to receive a pro-rata share of this distribution. However, the pro-rata share for all eligible claimants shall be calculated using only the amount of compensatory damages actually awarded under XVII. O. 10(a).
 - (c) The remaining 50% of the undistributed amounts shall be moved to the Back Pay Fund and distributed as part of that Fund in accordance with Section XVII. L. 1.-3.

P. Taxation Issues

1. Class Counsel and Xerox intend that the Settlement Fund be treated as a “qualified settlement fund” within the meaning of Treas. Reg. Section 1.468B-1. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver any necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.
2. For the purposes of Section 468B of the Internal Revenue Code of 1986 and Treas. Reg. Section 1.468B-2(k)(3), the “administrator” shall be the Claims Administrator. The Claims Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund.
3. The payments designated as lost wages shall be subject to FICA, required income tax withholdings and any other deductions required of wage payments, and shall be reported to the IRS as wages. The Claims Administrator shall calculate and withhold from each gross payment to a Class Representative Plaintiff, Testifying Parties and eligible Settlement Class Members, the amounts due for applicable federal, state, and local taxes; the amount of the employee’s share of FICA; and any other applicable tax withholdings.
4. The Claims Administrator shall distribute to each Class Representative Plaintiff, Testifying Party and eligible Settlement Class Member his or her respective W-2 Form (for all payments attributable to back pay) and 1099 Form (for all payments attributable to Compensatory Damages) and any other applicable reporting forms, and shall make all applicable tax reporting to the IRS or other appropriate federal, state or local agencies.
5. Class Representative Plaintiffs, Testifying Parties and eligible Settlement Class Members shall each be solely responsible for payment of any income taxes owed to any governmental authority on distributions from the Settlement Fund. Neither the Claims Administrator, Class Counsel, nor Xerox or its attorneys will provide advice to Class Representative Plaintiffs, Testifying Parties or Settlement Class Members concerning taxes owed. Class Representative Plaintiffs, Testifying Parties and eligible Settlement Class Members should consult with a tax advisor if they have questions concerning their tax liabilities on distributions from the Settlement Fund. If, for any reason, it is determined by any federal, state or local authority that the above-referenced payment should have been subject to taxation or withholding, the Class Representative Plaintiffs, Testifying Parties and eligible Settlement

Class Members shall assume all responsibility for the payment of any taxes, interest and penalties assessed in connection therewith, and that shall protect, indemnify, defend and hold harmless Xerox from any withholding or tax payment, interest or penalties Xerox may be required to pay thereon.

6. Except as otherwise specifically stated herein, Xerox shall bear no responsibility in connection with (i) the performance by the Claims Administrator of its duties under the Decree; (ii) any determinations of the Claims Administrator with respect to distributions from the Settlement Fund (including eligibility and point allocation determinations); (iii) the tax treatment of such distributions; or (iv) the apportionment, allocation or distribution of the Settlement Fund.

Q. Distribution of Monetary Awards

1. Within thirty (30) calendar days after the conclusion of the claims process and a final determination of the monetary distribution, or as soon as practical thereafter, the Claims Administrator shall distribute the monetary awards to Class Representative Plaintiffs, Testifying Parties and eligible Settlement Class Members via first-class mail. The Claims Administrator shall only issue the checks in the names of Class Representative Plaintiffs, Testifying Parties or eligible Settlement Class Members unless Article XVII, Section M.5 is applicable. Included with the check will be a statement showing the gross amount of the payment and an itemized statement of all deductions made for federal and state income taxes, the employee's and employer's share of Social Security and Medicare taxes, and any local income or payroll taxes that apply.
2. Any amounts designated as amounts paid for emotional distress shall not be subject to withholdings and shall be reported to the IRS on Form 1099-MISC.

R. Residual Fund

It is the intention of the parties to completely distribute the funds in the Remainder Settlement Fund in accordance with the terms hereof. In the event that checks are returned and/or the Settlement Fund is not completely distributed for any reason, the remaining sum which shall include any interest on the Settlement Fund, shall become part of a Residual Fund and shall be used to offset the administrative costs and expenses associated with the Claims Administration process.

S. Report from the Claims Administrator

Within forty-five (45) days of the distribution of the monies from the Settlement Fund, the Claims Administrator shall furnish an accounting of all distributions from the Settlement Fund to the Court with copies to Class Counsel and Xerox.

T. Attorneys' Fees, Costs and Expenses

1. Plaintiffs will file a motion for an award, not to exceed four million dollars (\$4,000,000.00), in full payment of attorneys' fees, costs and litigation-related expenses incurred by Class Counsel in this Litigation inclusive of work performed and attorneys' fees and costs incurred in connection with this Decree and related work as may be necessary during the Term of this Decree. Xerox agrees that it will not oppose the Motion. It is understood and agreed that payment of the amount awarded by the court will satisfy any obligation Xerox may have to pay for attorneys' fees, litigation expenses, and costs for and on behalf of the Class Representative Plaintiffs and the Settlement Class for any and all work performed, and costs and expenses incurred, through the expiration of the Decree as provided for in Article VI. It is further agreed and understood that the payment of the amount awarded by the court shall be paid out of, and is not in addition to, the \$12,000,000 Settlement Fund.
2. The Claims Administrator shall pay to Milberg Weiss LLP the amount, not to exceed Four Million Dollars, awarded by the Court for attorneys' fees, costs, and expenses out of the Qualified Settlement Fund and not in addition thereto, within fourteen (14) days after the Effective Date and all orders concerning attorneys' fees, costs and expenses becoming non-appealable. The Claims Administrator shall issue a Form (or Forms) 1099 to Class Counsel for such fees, costs, and expenses pursuant to the Court's order. Milberg Weiss LLP shall have sole and exclusive responsibility to distribute attorneys' fees, expenses, and costs to other members of Class Counsel, including Diane Bradley & Associates, PLLC and Leeds, Morelli and Brown, P.C., and when the Claims Administrator makes such payments to Milberg Weiss LLP, no Class Counsel may assert any claim for such payments from Xerox.
3. The Court's award of fees, costs and expenses under this Section is in full and complete satisfaction of all fees, costs and expenses incurred with respect to all claims that were or could have been asserted by Class Representative Plaintiffs or the Settlement Class Members in the Litigation including, without limitation, (i) all fees, costs and expenses incurred by Class Counsel; and (ii) any statutory award of attorneys' fees to Class Counsel pursuant to the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* as amended,

42 U.S.C. § 1981, and 42 U.S.C. § 1981a, *et seq.* and any other federal, state or local laws.

4. Xerox shall have no obligation to pay attorneys' fees, costs, expenses or incentive awards to other attorneys or other plaintiffs within the scope of this release, it being the express agreement that Twelve Million Dollars (\$12 Million) plus administrative costs and any FICA, FUTA obligations is the total maximum liability of Xerox under this Consent Decree in connection with the settlement and resolution of any lawsuits or claims within the scope of this Decree.
5. If the Court denies, in whole or in part, Class Counsel's fees, costs and expense application, the remainder of the terms of this Consent Decree shall remain in effect.
6. Class Counsel represent and agree that the only counsel representing any Class Member in this Litigation are the Class Counsel and that Xerox shall have no obligation to pay any fees, costs, or expenses except as expressly provided for herein.
7. Nothing herein shall be interpreted to preclude Xerox or Class Counsel from seeking attorneys' fees, expenses, and costs incurred in litigating disputed arising from the enforcement of this Consent Decree.

XVIII. ENTIRE SETTLEMENT AGREEMENT

1. This Consent Decree, including the Exhibits hereto, contains the entire agreement and understanding of the Class Representative Plaintiffs, the Settlement Class and Xerox with respect to the settlement of this Litigation. This Consent Decree does not impose any obligations on the Class Members and Defendant Xerox beyond the terms and conditions stated herein. Accordingly, this Consent Decree will not prevent or preclude Xerox from revising its employment practices and policies or taking other personnel actions during the term of the Consent Decree that do not violate specific requirements contained herein. Furthermore, nothing in this Consent Decree will be construed as interfering with Xerox' rights to determine the nature, conduct, organization, or structure of its business as Xerox deems appropriate or as may be required by law.
2. This Consent Decree and the terms herein are subject to Xerox' other legal obligations, and nothing herein shall obligate Xerox to take any action that is contrary to said obligations.

3. The Class Representative Plaintiffs, the Settlement Class and Xerox acknowledge that this Consent Decree is final and binding in all respects.

IT IS SO ORDERED, ADJUDGED AND DECREED this ____ day of _____ 2008.

The Honorable John Gleeson
United States District Court Judge
Eastern District of New York

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